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Staff:	K. Kahn - SF
Staff Report:	2/21/2013
Hearing Date:	3/6/2013

STAFF REPORT: CDP APPLICATION

Application Number:	**A-2-MAR-09-010**
Applicant:	**Timothy Crosby**
Project Location:	9 Ahab Drive, Muir Beach, Marin County.
Project Description:	Construction of a 1,886 square-foot addition to an existing 2,058 square-foot single-family residence and installation of a new septic system.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to construct a new 1,886 square-foot addition to an existing 2,058 square-foot single-family residence on a sloping 1.03 acre lot in the Muir Beach area, a predominantly rural residential community in the southern Marin County coastal zone. 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 project also includes the construction of a new septic system in order to serve the residence's expansion. The project site is located on a residential street on the slopes well above Muir Beach itself that is directly adjacent to a public stairway that is maintained by the Muir Beach Community Services District. The stairway connects Ahab Drive (a public County-maintained road) to Sunset Way (a private street) and other stairways that eventually lead to Muir Beach itself. The stairway provides intermittent views of Muir Beach to the south, with the most prominent views from the area at the top of the stairway (at Ahab Drive).

The site is zoned Coastal Residential, Agricultural (C-R-A) with a B-4 combining district, reflecting the semi-rural nature of the Muir Beach community. The purpose of the C-R-A zoning district is to provide for residential use, combined with small scale agricultural activities and home occupations. The B-4 combining district identifies specific design standards with which new development must conform.

The proposed project is revised from a version previously approved by Marin County in 2009. The County's approval of the coastal development permit (CDP) for that prior project was appealed to the Commission on the grounds that a significant public view would be obstructed, inconsistent with the County's certified LCP. On August 12, 2009, the Commission found that no substantial issue existed with respect to the grounds on which that appeal was filed. Following this decision, the Appellants sued the Commission, and the Marin County Superior Court ultimately disagreed with the Commission's determination, finding that the Commission's decision was not supported by substantial evidence. The Court determined that the evidence in the record showed that: (1) the LCP provision prohibiting the obstruction of "significant views" from public viewing places applied to the approved development and the view impacted by the approved development was "significant"; and (2) the LCP provision prohibiting the impairment or obstruction of any existing view of the ocean to the maximum extent feasible also applied to the approved development, whether or not that coastal view was from Highway 1 or the Panoramic Highway. The court remanded the project back to the Commission, and on December 7, 2011, the Commission found substantial issue with respect to the proposed project's impact on coastal views, and deferred the de novo hearing to a later date. In the time since that decision, the Applicant has proposed a revised project that significantly reduces impacts on public views as compared to the originally proposed project.

The revised project proposes to alleviate impacts to coastal views from the public road and public staircase through a revised design that eliminates a portion of the originally proposed expansion that was blocking the coastal view from the area at the top of the public staircase, and instead adds additional square-footage on the southern side of the property in an area where it does not impact the top of the stairway area view. That view, from the top of Ahab Drive at the stairway, frames a particularly dramatic image of Muir Beach itself below. While the proposed revised project obstructs less of this view than did the original design, it remains inconsistent with LCP's visual and scenic resources policies. As interpreted by the Court for this project, the LCP requires new development to be sited and designed so as to not obstruct "significant views" as seen from public viewing places, including views of beaches and the coast, and so as not to impair or obstruct any existing views of the ocean as much as feasible. As proposed, the project would partially obstruct a significant view of Muir Beach from the top of the public stairway. The view is "significant" because it offers the public a particularly dramatic and panoramic view of Muir Beach, sand, waves, coastal hills, and even portions of the city of San Francisco in the far background. Similarly, while the proposed redesign modified the western addition, the eastern addition remains as originally proposed. This addition will obstruct other similar and existing significant views of the ocean and Muir Beach from the public road. In addition, in both cases (i.e., eastern and western additions) the proposed project would impair these existing views of the ocean even though it is feasible to avoid such impairment by confining additions to the southern location where they can be located where they will not obstruct or impair existing ocean

views. Therefore, the proposed project is inconsistent with LCP requirements that prohibit the obstruction of any portion of a significant view from public viewing places as well as with LCP requirements that prohibit the impairment of any existing ocean view as much as feasible.

In order to comply with the LCP, staff recommends special conditions that the project be redesigned to eliminate the western and eastern additions so as to avoid obstruction of existing significant ocean views of Muir Beach from the top of the adjacent public stairway and from Ahab Drive. The southern addition does not obstruct significant views from public viewing places and does not otherwise impair or obstruct existing ocean views, and can be approved as proposed. Other conditions address construction impacts, archaeological resources, and future notice of this CDP via deed restriction. As conditioned, staff believes that the project is consistent with all applicable LCP and Coastal Act standards and requirements, and recommends that the Commission **approve** the CDP subject to the recommended conditions. The motion is found on page 4 below.

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I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission approve Coastal Development Permit Number A-2-MAR-09-010 pursuant to the staff recommendation, and I recommend a yes vote.*

Resolution to Approve CDP: *The Commission hereby approves Coastal Development Permit Number A-2-MAR-09-010 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with Marin County Local Coastal Program policies and Coastal Act access and recreation policies. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two full-size sets of Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be in substantial conformance with the plans submitted to the Coastal Commission (dated received in the Commission's North Central Coast District Office on June 18, 2012 and titled "Alterations and Additions to a Residence for Tim Crosby") except that they shall be revised and supplemented to comply with the following requirements:

   a. **Western Addition Removed.** The residential addition located between the existing house and the existing public stairway along the western property line shall be eliminated.

   b. **Eastern Addition Removed.** The residential addition located east and northeast of the existing house shall be eliminated.

   All requirements above and all requirements of the approved Revised Project Plans shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Revised Project Plans.

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

   a. **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be located outside of the public view as much as possible, and shall be sited to have the least impact on public recreational use and views. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

   b. **Construction Methods and Timing.** The plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from, and to have the least impact on, public recreational use and view areas. All outside work shall take place during daylight hours and all lighting that adversely affects public recreational use and view areas is prohibited.

   c. **Property Owner Consent.** The plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties.

   d. **BMPs.** The plan shall clearly identify all BMPs to be implemented during construction and their location. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the Pacific Ocean. Silt

fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during the rainy weather. The plan shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage; (c) concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas; (d) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.

e. **Construction Site Documents.** The plan shall provide that copies of the signed coastal development permit and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

f. **Construction Coordinator.** The plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

g. **Notification.** The Permittee shall notify planning staff of the Coastal Commission's North Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Minor adjustments to the approved Construction Plan may be allowed by the Executive Director if such adjustments do not substantively revise the terms and conditions of this permit. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Construction Plan.

3. **Archaeological Protection.** If archaeological resources are uncovered during construction, such resources shall remain untouched, and the Permittee shall notify the Executive Director so that a qualified archeologist may evaluate the significance and location of discovered materials, and develop an Archaeological Protection Plan with recommendations for disposition, mitigation, and/or salvage, in compliance with State and Federal law. The Permittee shall pay all costs associated with the evaluation and the Plan, and the Plan shall be submitted for the review and approval of the Executive Director. The Permittee shall undertake development in accordance with the approved Archaeological Protection Plan.

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

IV. COASTAL DEVELOPMENT PERMIT DETERMINATION

In this de novo review of the proposed CDP application, the standard of review is the Marin County certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act.

A. PROJECT LOCATION

The proposed project is located in the Muir Beach area, a community of roughly 300 residents along the southern Marin County coast (see Exhibit 1 for location maps). The community is composed of predominantly single-family residences set along the steep terrain of Marin's coastal hills above Muir Beach itself at the ocean's edge. The project site is a steeply sloping

1.03 acre lot with an existing residence located on the south (downhill) side of Ahab Drive, a County-owned and maintained street. Immediately west (upcoast) of the site is a public pathway maintained by the Muir Beach Community Services District. The pathway includes a wooden stairway that connects Ahab Drive to Sunset Way (a private street) below. There is a particularly dramatic view of Muir Beach itself, sand, waves, coastal hills, and even portions of the city of San Francisco in the far background from the area at the top of the stairway. Further down, the stairway also provides intermittent coastal views to Muir Beach, while also connecting to other stairways that eventually lead down to the beach.

B. PROJECT HISTORY AND DESCRIPTION

History
On March 31, 2009 the Marin County Board of Supervisors approved CDP CP 09-3 with conditions for the construction of a 1,589 square foot addition to an existing 2,058 square foot single-family residence on the project site. The addition was approved in three sections extending from the east, south, and west sides of the existing residence. The County-approved addition was to extend to a maximum height of 25 feet as measured from grade, consistent with the LCP's maximum height requirements for Muir Beach. The County's approval also included a new Advantex septic system and a 5,000 square foot geothermal energy storage field. Pursuant to Coastal Act Section 30603, the County's CDP approval was appealable to the Commission because the development that was approved is located between the sea and the first public road paralleling the sea.

The County's CDP decision was appealed by Dr. Edward Hyman, Dr. Deborah McDonald, Brenda Kohn and Richard Kohn, claiming that the approval was inconsistent with certified LCP requirements protecting visual resources. They claimed that the view of Muir Beach from Ahab Drive and from the public stairway was significant and would be obstructed by the home's expansion. On August 12, 2009, the Commission held a public hearing and found that no substantial issue existed with respect to the grounds on which the appeal was filed, and declined to take CDP jurisdiction over the project. In coming to this conclusion the Commission determined that no LCP-protected views would be obstructed by the approved development, because the view was not significant, including because other spectacular panoramic public coastal views of Muir Beach existed nearby. Following this decision, the Appellants filed suit in Marin County Superior Court challenging the Commission's action.

The Court ultimately found that the Commission's decision was not supported by substantial evidence. The Court first found that the County and the Commission had misinterpreted a number of LCP provisions. The first provision, LCP Land Use Plan (LUP) Visual Resources Policy 21, states: "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." While the County and Commission had interpreted this policy to mean that only views as seen from Highway 1 and the Panoramic Highway were protected in this case, the court disagreed, arguing that the policy must be read that all ocean views, whether from those roads or not, must be protected, to the maximum extent feasible. Thus, because the County-approved development would block a significant view from a public road and public stairway, the Court found that the evidence in front of the Commission did not support a finding of no substantial issue (including due to the potential for said interpretation to

be applied in other cases).

The second LCP standard the court found that the Commission misapplied was with respect to the status of the Muir Beach Community Plan (MBCP). Historically, the County and Commission have not considered the MBCP to be a part of the certified LCP. While the LCP references the MBCP and says that some of the policies pertaining to development within the community were derived from that plan, which was adopted by the Marin County Board of Supervisors in 1979 before the Commission certified the LCP in 1981, the plan itself had never been reviewed by the Commission. However, the Court found otherwise, including because the LCP specifically addresses situations where the LCP and MBCP may have conflicting policies (with LCP language indicating that the LCP's standards take precedence over the MBCP), and thus the Court determined that MBCP's policies were clearly intended to be part of the LCP. As a result, the Court found that the Commission also needed to address consistency with MBCP's statement that new development (explicitly calling out proposed remodels and additions to existing single-family residences) should reflect the small-scale residential character of the Muir Beach community.

The third LCP provision prominent in the Court's decision, LCP Implementation Plan (IP, or zoning code) Section 22.56.130I(O)(3), states that "…Structures shall be…sited so as not to obstruct significant views as seen from public viewing places." With regards to the status of the view from the top of the public stairway at Ahab Drive, the court found that the photographic evidence in the record before the Commission showed that this existing view was in fact "significant", rejecting the Commission's argument that the view in question was not "significant" because other similar panoramic views of the beach were available nearby. The Court made clear that while it was conceivably possible to show that the view was not "significant" (e.g., through additional photos, field work, and analysis), the evidence in front of the Commission did not make this case, including the photos in the record (taken from the nearby Muir Beach Community Center, which the court found to be "far less spectacular" and not "nearly as panoramic" as the view from the top of the stairway at Ahab Drive). Thus, the Court was determinative on this point in terms of the Commission's substantial issue determination, but did not require that the view be considered "significant" in further proceedings. However, consistent with the Court's findings, it would require compelling evidence to find otherwise. For example, the Court found that "in some cases, the impact on a view would be so minimal as compared to remaining surrounding views that it could be deemed not significant"(see page 40 of trial court decision, Exhibit 5).

In addition and related, the Court found a flaw with the Commission's reasoning that a loss of one coastal view was acceptable so long as other similar coastal views remain, citing this as potential precedent that would allow loss of coastal views throughout the state. The Court reasoned that clearly there will always be another coastal view elsewhere, which would thus potentially allow for coastal views to be lost, which is not the intention of the Coastal Act. Finally, the Court made clear that the standard required of IP Section 22.56.130I.(O)(3) is to "not obstruct significant views as seen from public viewing places". The standard is not whether projects "partially obstruct" or "minimally obstruct" "significant" views, but rather whether "significant views" are obstructed at all.

Thus, the Court found that the Commission's "no substantial issue" determination was not supported by substantial evidence, and the Court remanded the project back to the Commission.

Following a December 7, 2011 public hearing, the Commission found that the project did indeed raise a substantial issue of conformity with the Marin County LCP because the Marin County Superior Court had 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 was "significant." By that action the Commission took jurisdiction over the CDP application for the proposed project. At that time, the Commission identified additional information that the Applicant would need to prepare prior to holding a de novo hearing on the CDP application, including providing alternative designs and sites for the proposed addition, with architectural drawings and visual simulations, that adhere to LCP requirements.

Current Proposed Revised Project Description
In the time since the Commission's substantial issue determination, the Applicant has modified the proposed project, attempting to address the fact that the originally proposed project obstructed a "significant view" as seen from the top of the public staircase adjacent to the western (upcoast) side of the property at Ahab Drive. Specifically, the Applicant now proposes to eliminate much, but not all, of the proposed addition that was to be nearest the stairway, and instead to construct the majority of the proposed addition on the southern portion of the property where it would not obstruct the identified view at the top of the stairway. Exhibit 3 provides a comparison of that view in relation to the originally proposed project and the current revised proposed project.

Overall, the current revised proposed project would result in a total addition of 1,886 square feet to the existing 2,058 square-foot single-family residence, for a final total of 3,971 square feet. This represents a 297 square-foot increase over the previous proposal's 1,589 square-foot addition, where most of the increase is due to space needed for a new interior hallway and stairs to access a new bedroom on the western side of the existing house. The new music room on the southern side of the property would be built at grade level against the existing house, with the top of the new structure being a flat patio roof about 10 feet above grade. The eastern side of the property remains as originally proposed with an additional new bedroom. The Applicant still proposes to install a new Adventix septic system to serve the expanded house, but indicates that the geothermal energy storage field is no longer part of the project.

C. VISUAL RESOURCES AND COMMUNITY CHARACTER

The LCP provides a series of principles and objectives for protecting the visual resources of the County, highlighting the importance of the ocean, beaches and other open space shoreline areas, as well as the small-scale character of the built environment. These principles and objectives call for the protection of scenic views for the benefit of the public and call for new development to blend with the existing built environment and natural contours of the landscape. The LCP states:

> ***Muir Beach Community Plan: Residential-Agricultural Zoning.*** *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.* [Emphasis added.]
>
> ***LUP Policy 21: Visual Resources.*** *All new construction in Bolinas, Stinson Beach and*

Muir Beach shall be limited to a maximum height of twenty-five (25) feet; except that in the Highlands neighborhood of Stinson Beach, the maximum height shall be seventeen (17) feet, and in the Seadrift section of Stinson Beach, the maximum height shall not exceed fifteen (15) feet.

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. [Emphasis added.]

IP Section 22.56.130I: Development Standards, Requirements, and Conditions. …

O. Visual Resources and Community Character.

1. All new construction in Bolinas, Stinson Beach, and Muir Beach shall be restricted to a maximum height of twenty-five feet; except that the Stinson Beach Highlands will have a maximum height of seventeen feet, and the Seadrift Subdivision will have a maximum of fifteen feet above finished floor elevation.

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.]

4. Development shall be screened with appropriate landscaping; however, such landscaping shall not, when mature, interfere with public views to and along the coast. The use of native plant material is encouraged.

5. Signs shall be of a size, location and appearance so as not to detract from scenic areas or views from public roads and other viewing points and shall conform to the county's sign ordinance.

6. Distribution utility lines shall be placed underground in new developments to protect scenic resources except where the cost of undergrounding would be so high as to deny service.

IP Section 22.57.201I - Regulations for B districts

In any C district which is combined with any B district, the following design standard regulations, as specified for the respective B district, shall apply.

Zone	*Building Site Requirements*		*Setbacks*			
District	*Lot Area*	*Average Width*	*Front*	*Side*	*Rear*	*Height*

B-4	*1 acre*	*150 ft.*	*30 ft.*	*20 ft.*		

Thus, the certified LCP clearly considers coastal zone scenic values to be an important asset to be protected, preserved and enhanced. To the maximum extent feasible, new development is not allowed to impair or obstruct existing views of the ocean, and it must be sited so as not to obstruct significant public views. New structures must also be compatible with the character of the surrounding environment, including through following natural contours. In Muir Beach, construction and remodeling (such as that proposed) is required to be consistent with surrounding residences and no taller than 25 feet.

Visual Resources and Significant Public Views
The views from both the top of the public stairway at Ahab Drive (near to the western side of the Applicant's existing residence) and along Ahab Drive itself (near to the eastern side of the property) are dramatic and impressive (see photos in Exhibits 3 and 4). They offer the public particularly stunning and panoramic views of Muir Beach proper, taking in the sandy beach, the Pacific Ocean and its waves, coastal hills, and even portions of the city of San Francisco in the far background, where Sutro Tower and Twin Peaks can be seen. Granted, the Ahab Drive accessway and Ahab Drive itself are not the primary public accessways for most coastal visitors to Muir Beach, and are more aptly considered secondary visitor access points, but the views in question are clearly public views from public vantage points (a public road and a public accessway) that are of high value. Although they may be more infrequently seen by the visiting public than views from primary access points in the Muir Beach area, like those from the main beach parking lot and from the Muir Beach Community Center, they remain impressive public views from topographic vantage points that accentuate their attributes. Therefore, the views from the area at the top of the stairway at Ahab Drive and along Ahab Drive itself across the Applicant's property and out toward Muir Beach are significant views as that term is understood in an LCP context (see photos in Exhibit 3 and photo 17 of Exhibit 4).

While the currently proposed western addition has significantly reduced the amount of the coastal view that would be blocked as seen from the area at the top of the public stairwell as compared to the originally proposed addition (see comparison in Exhibit 3), it would still result in a portion of a "significant view" being eliminated from public viewing places (see photos 3, 4, 5, 12, 13, 14, 15, and 16 in Exhibit 4). The LCP does not allow for any such "significant" public view to be obstructed (IP Section 22.56.130I.(O)(3)). Importantly, the LCP does not allow <u>any</u> obstruction of a "significant view" such as this (i.e., it is not a question of disallowing 'significant obstruction' or qualifying the obstruction prohibition in terms of feasibility issues (e.g., "to the extent feasible"). Rather, the policy clearly states that development cannot block "significant views as seen from public viewing places." As found by the Court and as the evidence demonstrates, the view of the Muir Beach shoreline as seen from the area at the top of the public stairway at Ahab Drive is "significant" (see page 40, lines 6-8, of court decision, Exhibit 5; and see photos in Exhibit 3). Thus, the proposed revised project is inconsistent with the LCP on this point.

In addition, while the western addition was redesigned in an attempt to avoid coastal view blockage, the eastern addition remains as originally proposed. As seen in Exhibit 2 and photos 17-19 of Exhibit 4, the eastern addition will also obstruct the existing significant public view of

the ocean and Muir Beach below from Ahab Drive, also inconsistent with the LCP.

Visual Resources and Impairment or Obstruction of Ocean Views
As discussed above, the LCP also requires that new development not impair nor obstruct an existing view of the ocean to the maximum extent feasible (LUP Policy 21). In this case, photos show that the proposed western and eastern additions would block a portion of the view of the ocean proper from the public stairway, roughly from the top step to about six steps down, as well as from Ahab Drive in front of and extending east from the house (see photos 3, 4, 5, 12-19 in Exhibit 4). As the photos demonstrate, the significant view of the ocean from Ahab Drive would be blocked by the proposed eastern addition (see photo 18 of Exhibit 4). The view of the ocean from the top of the stairway area would also be blocked, including an area of wave wash as shown in the photo as well as the wet area on the beach indicating where the ocean had recently been. It seems conceivable that at certain times of the year the proposed revised project would not block views of the ocean proper from the area at the top of the stairway when the beach is larger (e.g., during times when the sandy beach is fuller than others), and the 2009 photo appears to corroborate this possibility. However, the policy refers to both blockage and impairment, and thus the degree to which unblocked views are impaired is also relevant. In this case, the overall views of the ocean from both the area at the top of the public accessway (including the top six steps or so) and along Ahab Drive would be partially blocked by the proposed revised project, as described above, and the overall view of the ocean would be reduced in terms of its overall value, and thus impaired. It is feasible to confine proposed additions to only those additions that are located where they will not impair or obstruct an existing view of the ocean. There is a significant area available for additions to be located on the southern portion of the property. Additions can be made to the southern portion of the property without either impairing or obstructing ocean views or obstructing significant public views. Thus, the proposed western and eastern additions that are otherwise impermissible based on the above-identified IP, are inconsistent with LUP Policy 21 as well.

Required Elimination of Eastern and Western Additions but Not Southern Addition
In order to address these LCP inconsistencies, the proposed project must be modified to eliminate those additions either impairing or obstructing existing ocean views or blocking significant public views. Thus, this approval is conditioned to eliminate the portion of the addition on the western edge of the house (see Special Condition 1a) as well as the eastern addition (see Special Condition 1b). The remainder of the proposed addition (extending south of the existing residence to accommodate a proposed music room; see Exhibit 2)), does not block or impair LCP-protected views, even as one moves further down the stairway towards Sunset Way and further east and northeast along Ahab Drive (see photos in Exhibit 4). Unlike the eastern and western additions, which extend the house laterally, the southern portion of the remodel follows the natural contours of the site and does not impair or obstruct any LCP-protected views (see photos 8, 9, and 19 of Exhibit 4). Thus, this portion of the remodel is consistent with the LCP's requirements for protection of existing ocean views and other significant public views as well as adherence to the natural contours of the environment.

Finally, the proposed addition on the southern side of the property would not affect LCP-protected views when completed, but it is possible that construction activities could impair these existing significant views inconsistent with the LCP if not contained and appropriately confined otherwise. This would apply to construction staging and activities that could extend outside of

the actual addition area, including in the area near the stairway itself, as well as construction noise and activity more broadly that could impair public enjoyment of the views in question. There is also the potential for inappropriate nighttime lighting to impact night sky views. Thus, the approval is conditioned for a construction plan, the objective of which is to limit the effect of construction on LCP-protected views (see Special Condition 2).

Community Character

As stated earlier, the proposed project must be compatible with the character of the surrounding environment, including going no taller than 25 feet, and including the Muir Beach Community Plan's requirement that construction and remodeling (such as that proposed) be consistent with the small-scale residential character of the old community, with consideration for neighboring views and privacy. The proposed project would increase the size of the residence to 3,971 feet, or a total floor area ratio (FAR) of 9%. However, with the requirement to eliminate the eastern and western additions, the increase in proposed square footage would be reduced (the proposed music room on the southern side of the house, which is recommended for approval, is 589 square feet). According to data provided by the Marin County Assessor-Recorder, for the roughly 75 properties within 600 feet of the Crosby residence, sizes range between 475-5,562 square feet, with an average size of 1,768 square feet and median of 1,791 square feet. Nine homes are greater than 3,000 square feet. Thus, while the home would meet all applicable sizing and design criteria for the C-R-A B-4 zoning district, including minimum lot size, building height, and setbacks, the southern addition will still make the home one of the larger residences on Ahab Drive. Even so, however, it will be consistent with the established community aesthetic, consistent with surrounding residences, and show consideration for neighboring views and privacy, and it can be found consistent with the LCP on these points.

Conclusion

There are significant public views across the project site as seen from both the area at the top of the stairway as well as Ahab Drive itself, and these views are required to be protected from obstruction and impairment by the LCP. Provided the project is modified to eliminate the eastern and western additions, and to only allow the southern (music room) addition, it can be found consistent with the LCP's visual resource and community character provisions. The public views in question in this case are stunning, and this approval protects them as directed by the LCP. Equally important moving forward will be to ensure that any future proposed development recognizes the public view context that applies to the site, and is likewise not allowed to obstruct and impair these views (e.g., through inappropriate fencing, landscaping, lighting, etc.). Thus, this approval is also conditioned for a deed restriction designed to ensure that current and future owners are made aware of this CDP, including its terms and conditions, as well as its public viewshed findings and related context, including its litigation context (see Special Condition

D. PUBLIC ACCESS AND RECREATION

The proposed project is located between the first public road (i.e., Highway 1) and the sea, and thus in addition to the LCP, the public access and recreation policies of the Coastal Act also apply to it. Coastal Act Sections 30210 through 30224 specifically protect public access and recreational opportunities, including visitor-serving resources. In particular:

> ***Section 30210:*** *In carrying out the requirement of Section 4 of Article X of the*

California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

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

Section 30212(a): *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where...adequate access exists nearby….*

Section 30213. *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30223. *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

The Marin County LCP also includes policies protecting public recreational access, particularly for projects located between the sea and the first public road. Relevant policies include:

LUP Policy 1: Public Access. *The County's policy is to require provisions for coastal access in all development proposals located between the sea and the first public road. This policy recognizes, however, that in certain locations public access may not be appropriate….*

IP Section 22.56.130I: Development Standards, Requirements, and Conditions. …

E. Coastal Access:

1. All coastal project permits shall be evaluated to determine the project's relationship to the maintenance and provision of public access and use of coastal beaches, waters and tidelands.

a. Except as provided in paragraph b below, for projects located between the sea and first public road (as established by the mapped appeal area), a coastal project permit shall include provisions to assure public access to coastal beaches and tidelands. Such access shall include, either singularly or in combination:

i. The offer of dedication of public pedestrian access easements from the public road to the ocean;

ii. The offer of dedication of public access easements along the dry sand beach areas adjacent public tidelands; and

> *iii. Bluff top trail easements where necessary to provide and maintain public views and access to coastal areas.*
>
> *Such offers of easement shall be for a minimum period of twenty years and shall provide for the easement acceptance by an appropriate public agency and/or private organization. Liability issues pertaining to the access easement shall be resolved prior to acceptance of any offer of dedication.*
>
> *b. Upon specific findings that public access would be inconsistent with the protection of: (1) public safety; (2) fragile coastal resources; or (3) agricultural production or, upon specific findings that public use of an accessway would seriously interfere with the privacy of existing homes, provision for coastal access need not be required. In determining whether access is inconsistent with the above, the findings shall specifically consider whether mitigation measures such as setbacks from sensitive habitats, trail or stairway development, or regulation of time, seasons, or types of use could be developed which would adequately mitigate any potential adverse impacts of public access. A finding that an access way can be located ten feet or more from an existing single-family residence or be separated by a landscape buffer or fencing if necessary should be considered to provide adequately for the privacy of existing homes.*

…

The County's LCP and the public access and recreation policies of the Coastal Act require public recreational access opportunities to be maximized, including, in some circumstances, a requirement that a public pedestrian easement be granted for development between the sea and the first public road. The proposed project is located between the sea and the first public road and is therefore subject to the policies requiring the dedication of public access. However, since an existing public coastal accessway is directly adjacent to the Applicant's property, public access is already sufficiently provided. Therefore, the project meets the requirement of and is consistent with Coastal Act Section 30212(a)(2) and the County's LCP on this point.

In addition, Ahab Drive and the existing public accessway from Ahab Drive to Sunset Way, including the stairway, is available for public use free of charge. As a result, these areas qualify as low-cost (in this case, no-cost) visitor and recreational facilities. By preserving and protecting the significant public views found along Ahab Drive and at the area at the top of the stairway (including with respect to the period of construction), the utility of these low-cost public visitor and recreational facilities are protected, as required by Coastal Act Section 30213.

As modified to eliminate the western and eastern additions, and to provide for a construction plan designed to strictly limit impacts on public use and enjoyment of existing ocean views and other significant public views, the project can be found consistent with LCP and Coastal Act public recreational access provisions.

E. OTHER LCP REQUIREMENTS

IP Section 22.56.130I lists other applicable development requirements, standards, and conditions for all CDPs. These standards include requirements for adequate water and sewage disposal, for grading over 150 cubic yards to be subject to specific requirements to reduce erosion and other water quality impacts, and for sensitive habitats and archeological resources to be protected. Relevant policies include:

A. Water Supply.

Coastal project permits shall be granted only upon a determination that water service to the proposed project is of an adequate quantity and quality to serve the proposed use.

…

B. Septic System Standards.

The following standards apply for projects which utilize septic systems for sewage disposal.

1. All septic systems within the coastal zone shall conform with the "Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems" adopted by the Regional Water Quality Control Board on April 17, 1979, or the Marin County Code, whichever is more stringent. No waivers shall be permitted except where a public entity has formally assumed responsibility for inspecting, monitoring and enforcing the maintenance of the system in accordance with criteria adopted by the Regional Water Quality Control Board, or where such waivers have otherwise been reviewed and approved under standards established by the Regional Water Quality Control Board.

2. Alternate waste disposal systems shall be approved only where a public entity has formally assumed responsibility for inspecting, monitoring and enforcing the maintenance of the system in accordance with criteria adopted by the Regional Water Quality Control Board.

3. Where a coastal project permit is necessary for the enlargement or change in the type of intensity of use of an existing structure the project's septic system must be determined consistent with the current guidelines of the Regional Water Quality Control Board or such other program standards as adopted by the county.

C. Grading and Excavation.

The following standards shall apply to coastal projects which involve the grading and excavation of one hundred fifty cubic yards or more of material:

1. Development shall be designed to fit a site's topography and existing soil, geological, and hydrological conditions so that grading, cut and fill operations, and

other site preparations are kept to an absolute minimum and natural landforms are preserved. Development shall not be allowed on sites, or areas of a site, which are not suited to development because of known soil, geology, flood, erosion or other hazards that exist to such a degree that corrective work, consistent with these policies (including but not limited to the protection of natural landform), is unable to eliminate hazards to the property endangered thereby.

2. For necessary grading operations, the smallest practicable area of land shall be exposed at any one time during development and the length of exposure shall be kept to the shortest practicable time. The clearing of land shall be discouraged during the winter rainy season and stabilizing slopes shall be in place before the beginning of the rainy season.

…

D. Archaeological Resources.

1. Prior to the approval of any proposed development within an area of known or probable archaeological significance, a limited field survey by a qualified professional at the applicant's expense shall be required to determine the extent of the archaeological resources on the site. Where the results of such survey indicate the potential to adversely impact probable archaeological resources, the report shall be transmitted to the appropriate clearinghouse for comment. The county planning department shall maintain a confidential map file of known or probable archaeological sites so as to assist in site identification.

2. Where development would adversely impact archaeological resources or paleontological resources which have been identified, reasonable mitigation measures shall be required as may be recommended by the field surveyor or by the State Historic Preservation Officer. Such mitigation shall include, as necessary:

a. The resiting or redesign of development to avoid the site;

b. That, for a specified period of time prior to the commencement of development, the site be opened to qualified, approved professional/ educational parties for the purpose of exploration/excavation;

c. The utilization of special construction techniques to maintain the resources intact and reasonably accessible;

d. Where specific or long-term protection is necessary, sites shall be protected by the imposition of recorded open space easements; and

e. For significant sites of unique archaeological resource value, where other mitigation techniques do not provide a necessary level of protection, the project

shall not be approved until the determination is made that there are no reasonably available sources of funds to purchase the property.

…

I. Wildlife Habitat Protection.

1. Proposal to remove significant vegetation on sites identified on the adopted natural resource map(s) and generally described in Section 2 of the LCP shall require a coastal permit. Significant alteration or removal of such vegetation shall not be permitted except where it poses a threat to life or property.

2. Siting of New Development. Coastal project permit applications shall be accompanied by detailed site plans indicating existing and proposed construction, major vegetation, watercourses, natural features and other probable wildlife habitat areas. Development shall be sited to avoid such wildlife habitat areas and to provide buffers for such habitat areas. Construction activities shall be phased to reduce impacts during breeding and nesting periods. Development that significantly interferes with wildlife movement, particularly access to water, shall not be permitted.

The proposed project is within the service area of the Muir Beach Community Services District (CSD), which among its other responsibilities supplies drinking water within the Muir Beach area. The CSD has reviewed and recommended approval of the project because it will be able to serve the addition with an adequate water supply. The CSD does not provide public sewer services; instead, individual properties must have their own private septic systems. The current residence is served by a private septic system, which is proposed to be expanded in order to meet the enlarged home's needs. Marin County Environmental Health Services develops and enforces regulations concerning septic systems, and has also reviewed and recommended approval of the enlarged septic system.

In terms of grading, the project would entail less than 100 cubic yards of excavation and fill, and therefore is not subject to the IP's grading standards. Even so, the project is located on an area of steep slopes, and it will be important to ensure that adequate construction BMPs are applied to protect against inadvertent damages on and offsite (see Special Condition 2d).

The project is located within an area that has been deemed archaeologically sensitive by the Marin County Archaeological Sites Inventory. While the excavation work proposed is relatively minor and within a previously developed parcel, there is always the possibility that cultural resources are discovered during construction. In order to meet LCP requirements should there be such discovery, 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 mitigation measures (see Special Condition 3).

Finally, the project site is not located within an area known to provide habitat for rare, threatened, or endangered species. The site is over one-half mile away from known monarch

butterfly nesting trees, and contains no watercourses. It has been developed and used residentially for some time, and is located in an existing residentially developed neighborhood. There is no evidence that the project would impact any LCP-protected habitat resources.

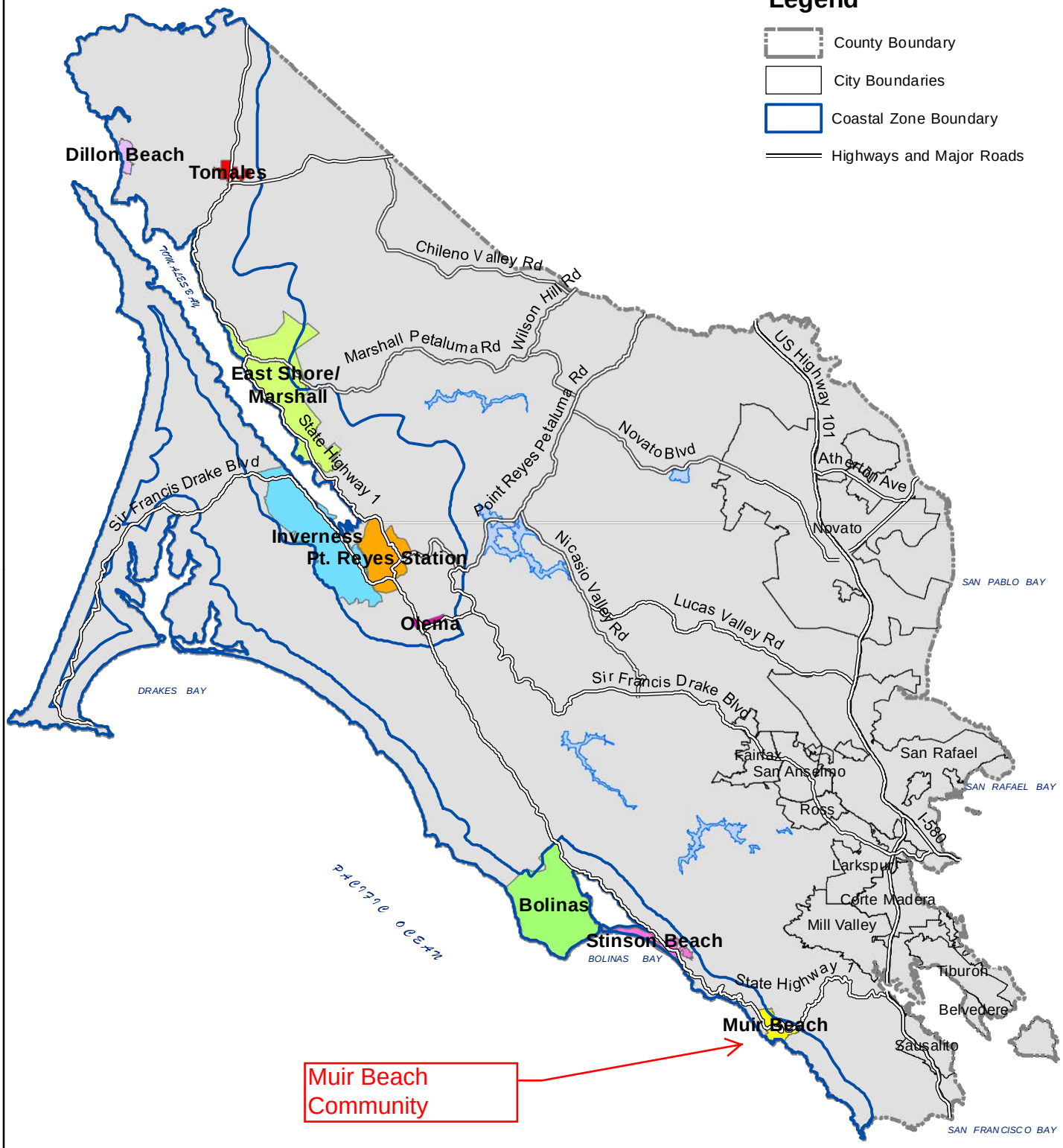
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Marin County, acting as lead agency, found the proposed project to be categorically exempt from the requirements of CEQA per Section 15302, Class 2 of the CEQA Guidelines, because the County determined that the project entails the addition of a large floor area equivalent to the replacement or reconstruction of an existing single-family residence.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues associated with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

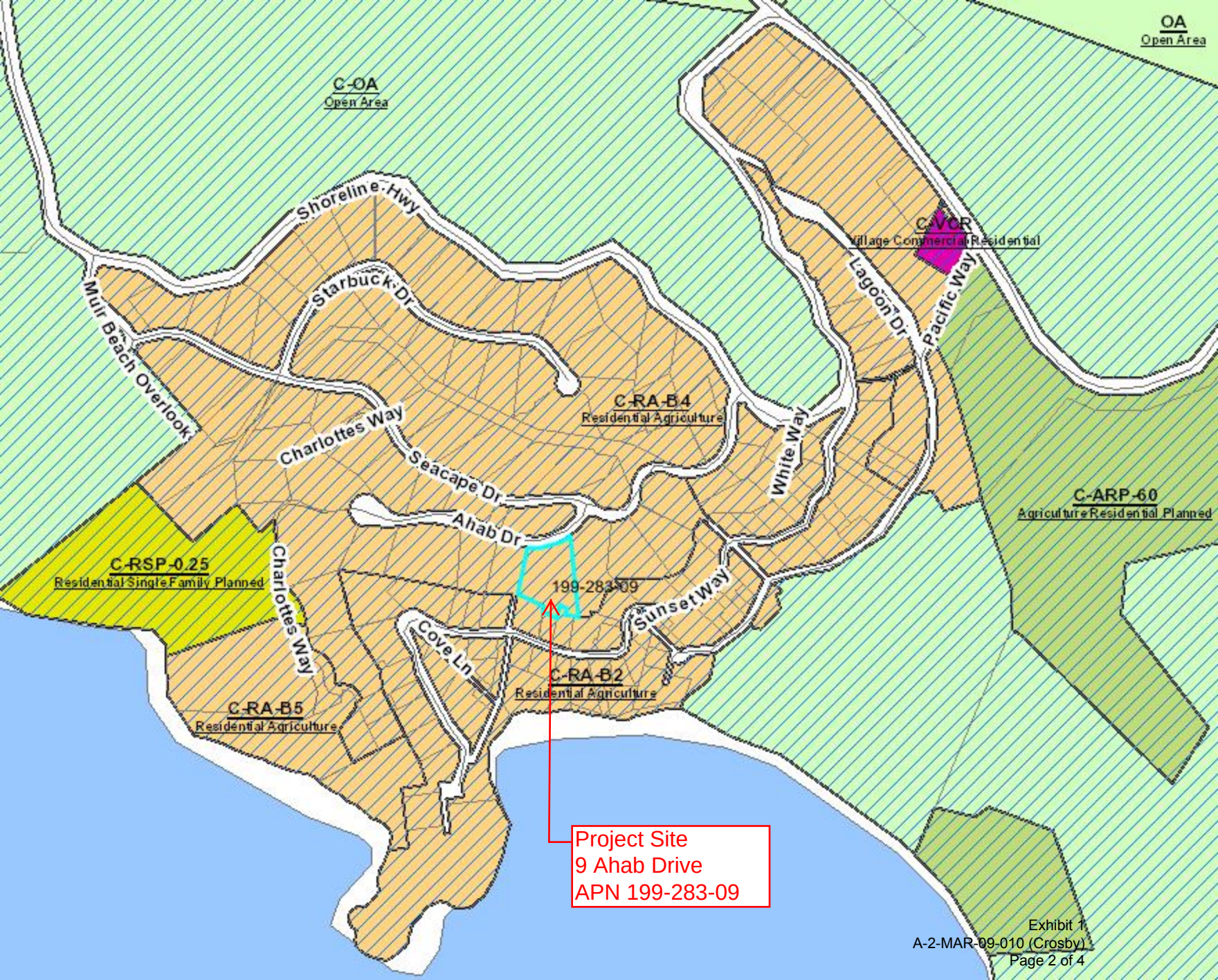
MAP 16
COMMUNITY AREAS



THIS MAP WAS DEVELOPED FOR PLANNING PURPOSES. THE COUNTY OF MARIN IS NOT RESPONSIBLE OR LIABLE FOR USE OF THIS MAP BEYOND ITS INTENDED PURPOSE. THIS MAP IS REPRESENTATIONAL ONLY. DATA ARE NOT SURVEY ACCURATE.

Date: January 31, 2011 File: Map 16_Community Areas.mxd

SOURCE: Marin County Community Development Agency


OA
Open Area
C-OA
Open Area
Shoreline Hwy
Muir Beach Overlook
Starbuck Dr
C-VCR
Village Commercial Residential
Lagoon Dr
Pacific Way
C-RA-B4
Residential Agriculture
Charlottes Way
Seacape Dr
White Way
C-ARP-60
Agriculture Residential Planned
Ahab Dr
C-RSP-0.25
Residential Single Family Planned
Charlottes Way
199-283-09
Sunset Way
Cove Ln
C-RA-B2
Residential Agriculture
C-RA-B5
Residential Agriculture
Project Site
9 Ahab Drive
APN 199-283-09

PTN. RANCHO SAUCELITO

Tax Area Code
75-048

199-28

1" = 100'

4/20/2011 MEM

CHANGES

BLK	PRIOR APN	NEW APN	YR	AUTH
283	199-283-04 199-283-05	199-283-11	08	055
281	Survey		02	

Survey

Map of Seacape, R. M. Bk. 13 - Pg. 54

NOTE -- Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

Assessor's Map Bk. 199-Pg.28
County of Marin, Calif.

Project Site
9 Ahab Drive
APN 199-283-09

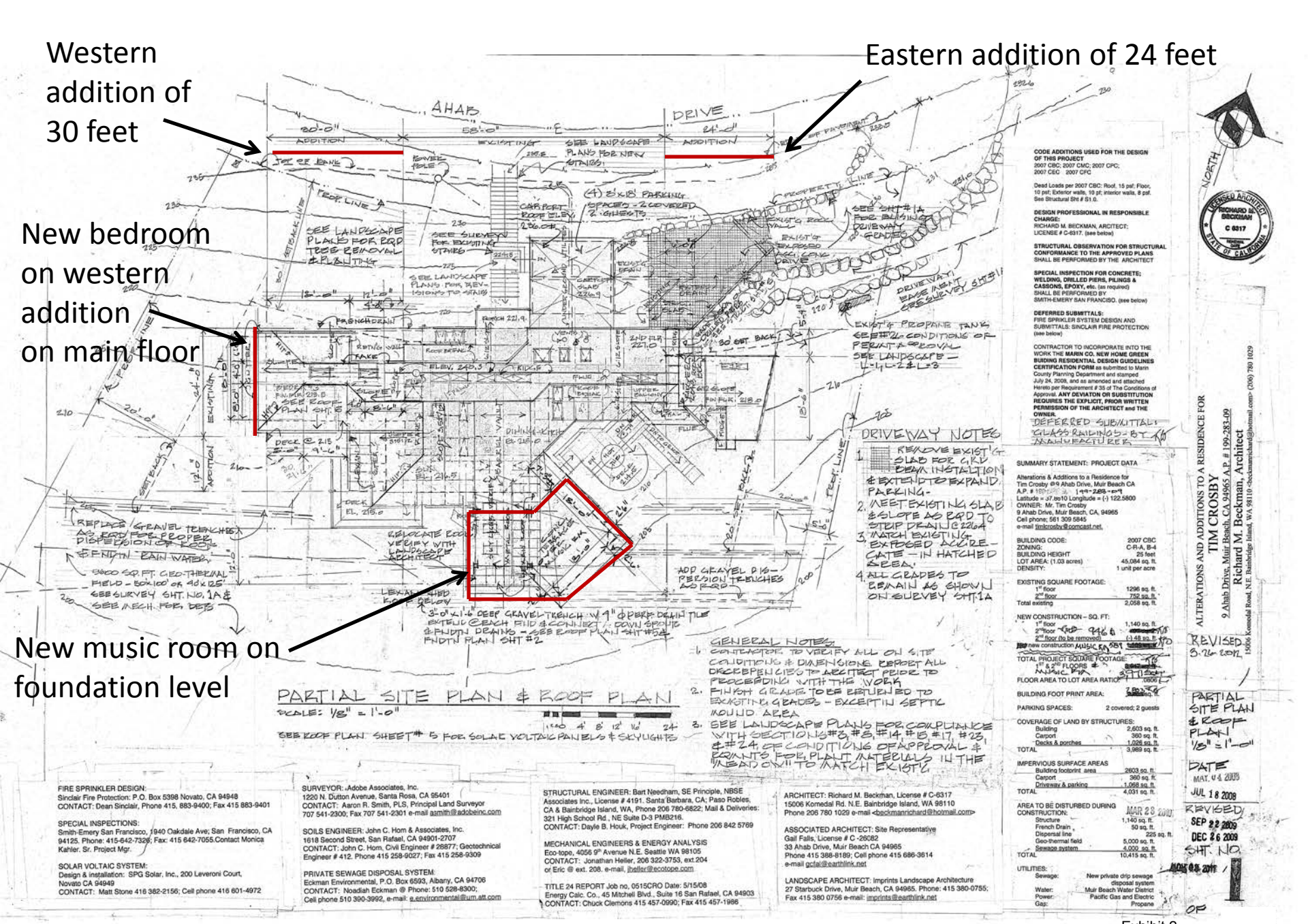

Ahab Dr
Sunset Way
Top of public stairway
Existing residence
Project parcel
Bottom of public stairway

Western addition of 30 feet

Eastern addition of 24 feet

New bedroom on western addition on main floor

New music room on foundation level



CODE ADDITIONS USED FOR THE DESIGN OF THIS PROJECT
2007 CBC; 2007 CMC; 2007 CPC; 2007 CEC 2007 CFC

Dead Loads per 2007 CBC: Roof, 15 psf; Floor, 10 psf; Exterior walls, 10 pf; interior walls, 8 psf. See Structural Sht # S1.0.

DESIGN PROFESSIONAL IN RESPONSIBLE CHARGE:
RICHARD M. BECKMAN, ARCITECT; LICENSE # C-6317. (see below)

STRUCTURAL OBSERVATION FOR STRUCTURAL CONFORMANCE TO THE APPROVED PLANS SHALL BE PERFORMED BY THE ARCHITECT

SPECIAL INSPECTION FOR CONCRETE; WELDING, DRILLED PIERS, PILINGS & CASSIONS, EPOXY, etc. (as required) SHALL BE PERFORMED BY SMITH-EMERY SAN FRANCISO. (see below)

DEFERRED SUBMITTALS:
FIRE SPRIKLER SYSTEM DESIGN AND SUBMITTALS: SINCLAIR FIRE PROTECTION (see below)

CONTRACTOR TO INCORPORATE INTO THE WORK THE MARIN CO. NEW HOME GREEN BUILDING RESIDENTIAL DESIGN GUIDELINES CERTIFICATION FORM as submitted to Marin County Planning Department and stamped July 24, 2008, and as amended and attached hereto per Requirement # 33 of The Conditions of Approval. ANY DEVIATON OR SUBSTITUTION REQUIRES THE EXPLICIT, PRIOR WRITTEN PERMISSION OF THE ARCHITECT and THE OWNER.

DEFERRED SUBMITTALS:
GLASS RAILINGS - BY MANUFACTURER

SUMMARY STATEMENT: PROJECT DATA

Alterations & Additions to a Residence for
Tim Crosby @ 9 Ahab Drive, Muir Beach CA
A.P. # 199-283-09
Latitude = 37.8o10 Longitude = (-) 122.5800
OWNER: Mr. Tim Crosby
9 Ahab Drive, Muir Beach, CA, 94965
Cell phone; 561 309 5845
e-mail timlcrosby@comcast.net

BUILDING CODE:	2007 CBC
ZONING:	C-R-A, B-4
BUILDING HEIGHT	25 feet
LOT AREA: (1.03 acres)	45,084 sq. ft.
DENSITY:	1 unit per acre
EXISTING SQUARE FOOTAGE:	
1st floor	1296 sq. ft.
2nd floor	752 sq. ft.
Total existing	2,058 sq. ft.
NEW CONSTRUCTION – SQ. FT:	
1st floor	1,140 sq. ft.
2nd floor (to be removed)	(148 sq. ft.)
new construction MUSIC RM	581 sq. ft.
TOTAL PROJECT SQUARE FOOTAGE:	
1st & 2nd FLOORS & MUSIC RM	3,971 sq. ft.
FLOOR AREA TO LOT AREA RATIO	.0806
BUILDING FOOT PRINT AREA:	2,603 sq. ft.
PARKING SPACES:	2 covered; 2 guests
COVERAGE OF LAND BY STRUCTURES:	
Building	2,603 sq. ft.
Carport	360 sq. ft.
Decks & porches	1,026 sq. ft.
TOTAL	3,989 sq. ft.
IMPERVIOUS SURFACE AREAS	
Building footprint area	2603 sq. ft.
Carport	360 sq. ft.
Driveway & parking	1,068 sq. ft.
TOTAL	4,031 sq. ft.
AREA TO BE DISTURBED DURING CONSTRUCTION:	MAR 23 2010
Structure	1,140 sq. ft.
French Drain	50 sq. ft.
Dispersal line	225 sq. ft.
Geo-thermal field	5,000 sq. ft.
Sewage system	4,000 sq. ft.
TOTAL	10,415 sq. ft.
UTILITIES:	
Sewage:	New private drip sewage disposal system
Water:	Muir Beach Water District
Power:	Pacific Gas and Electric
Gas:	Propane

ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR TIM CROSBY
9 Ahab Drive, Muir Beach, CA 94965 A.P. # 199-283-09
Richard M. Beckman, Architect
15006 Komedal Road, N.E. Bainbridge Island, WA 98110 <beckmanrichard@hotmail.com> (206) 780 1029

REVISED 3-26-2010

PARTIAL SITE PLAN & ROOF PLAN 1/8" = 1'-0"

DATE MAY. 4, 2009
JUL 18 2008
REVISED SEP 22 2009
DEC 26 2009
SHT. NO. 1 OF

FIRE SPRINKLER DESIGN:
Sinclair Fire Protection: P.O. Box 5398 Novato, CA 94948
CONTACT: Dean Sinclair, Phone 415, 883-9400; Fax 415 883-9401

SPECIAL INSPECTIONS:
Smith-Emery San Francisco, 1940 Oakdale Ave; San Francisco, CA 94125. Phone: 415-642-7326; Fax: 415 642-7055.Contact Monica Kahler. Sr. Project Mgr.

SOLAR VOLTAIC SYSTEM:
Design & installation: SPG Solar, Inc., 200 Leveroni Court, Novato CA 94949
CONTACT: Matt Stone 416 382-2156; Cell phone 416 601-4972

SURVEYOR: Adobe Associates, Inc.
1220 N. Dutton Avenue, Santa Rosa, CA 95401
CONTACT: Aaron R. Smith, PLS, Principal Land Surveyor
707 541-2300; Fax 707 541-2301 e-mail asmith@adobeinc.com

SOILS ENGINEER: John C. Hom & Associates, Inc.
1618 Second Street, San Rafael, CA 94901-2707
CONTACT: John C. Hom, Civil Engineer # 26877; Geotechnical Engineer # 412. Phone 415 258-9027; Fax 415 258-9309

PRIVATE SEWAGE DISPOSAL SYSTEM:
Eckman Environmental, P.O. Box 6593, Albany, CA 94706
CONTACT: Noadiah Eckman @ Phone: 510 528-8300;
Cell phone 510 390-3992, e-mail: e.environmental@um.att.com

STRUCTURAL ENGINEER: Bart Needham, SE Principle, NBSE Associates Inc., License # 4191. Santa Barbara, CA; Paso Robles, CA & Bainbridge Island, WA, Phone 206 780-6822; Mail & Deliveries: 321 High School Rd., NE Suite D-3 PMB216.
CONTACT: Dayle B. Houk, Project Engineer: Phone 206 842 5769

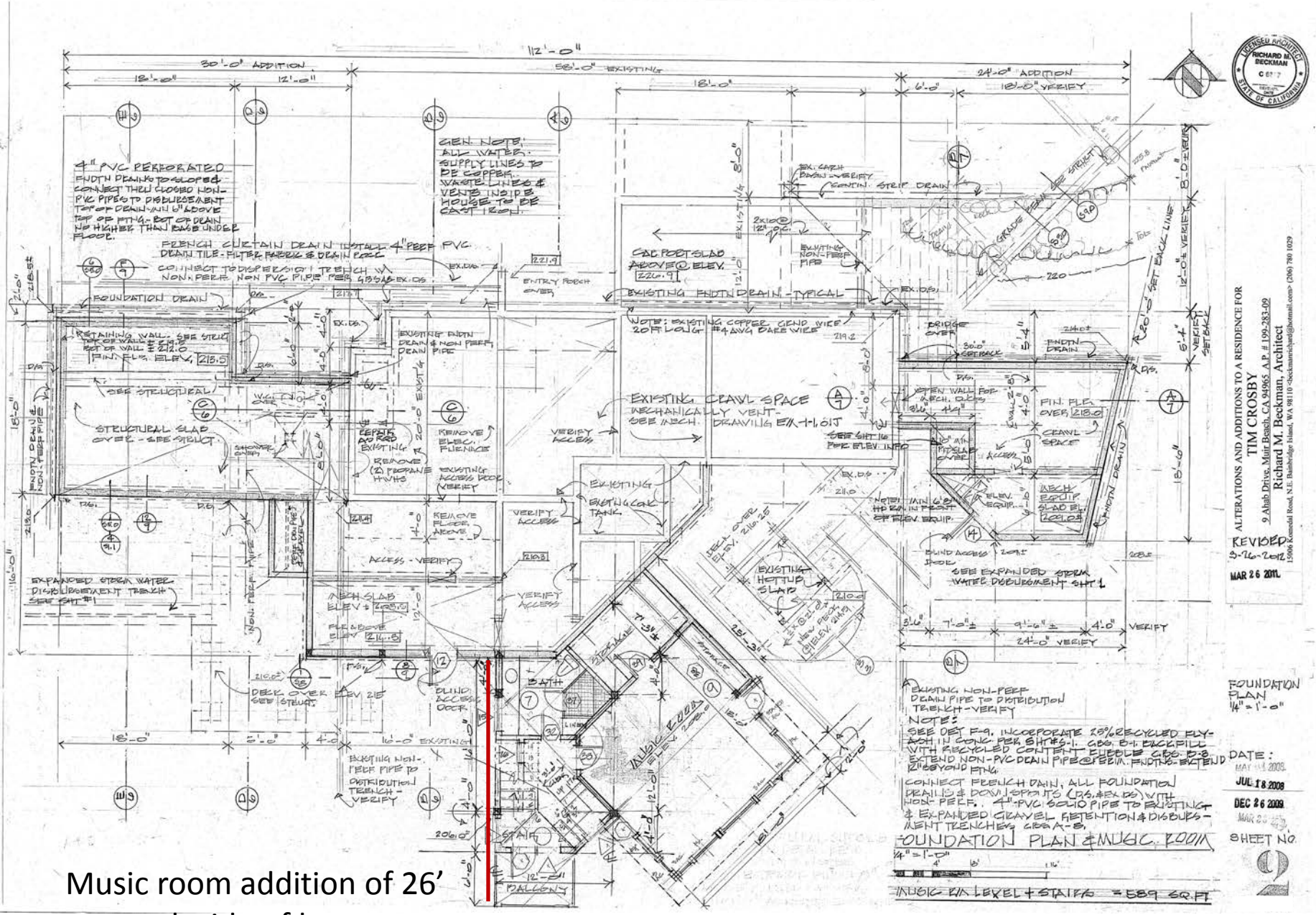
MECHANICAL ENGINEERS & ENERGY ANALYSIS
Eco-tope, 4056 9th Avenue N.E. Seattle WA 98105
CONTACT: Jonathan Heller, 206 322-3753, ext.204
or Eric @ ext. 208. e-mail, jheller@ecotope.com

TITLE 24 REPORT Job no, 0515CRO Date: 5/15/08
Energy Calc. Co., 45 Mitchell Blvd., Suite 16 San Rafael, CA 94903
CONTACT: Chuck Clemons 415 457-0990; Fax 415 457-1986

ARCHITECT: Richard M. Beckman, License # C-6317
15006 Komedal Rd. N.E. Bainbridge Island, WA 98110
Phone 206 780 1029 e-mail <beckmanrichard@hotmail.com>

ASSOCIATED ARCHITECT: Site Representative
Gail Falls; License # C -26082
33 Ahab Drive, Muir Beach CA 94965
Phone 415 388-8189; Cell phone 415 686-3614
e-mail gcfal@earthlink.net

LANDSCAPE ARCHITECT: Imprints Landscape Architecture
27 Starbuck Drive, Muir Beach, CA 94965. Phone: 415 380-0755; Fax 415 380 0756 e-mail: imprints@earthlink.net



Music room addition of 26’ on south side of house

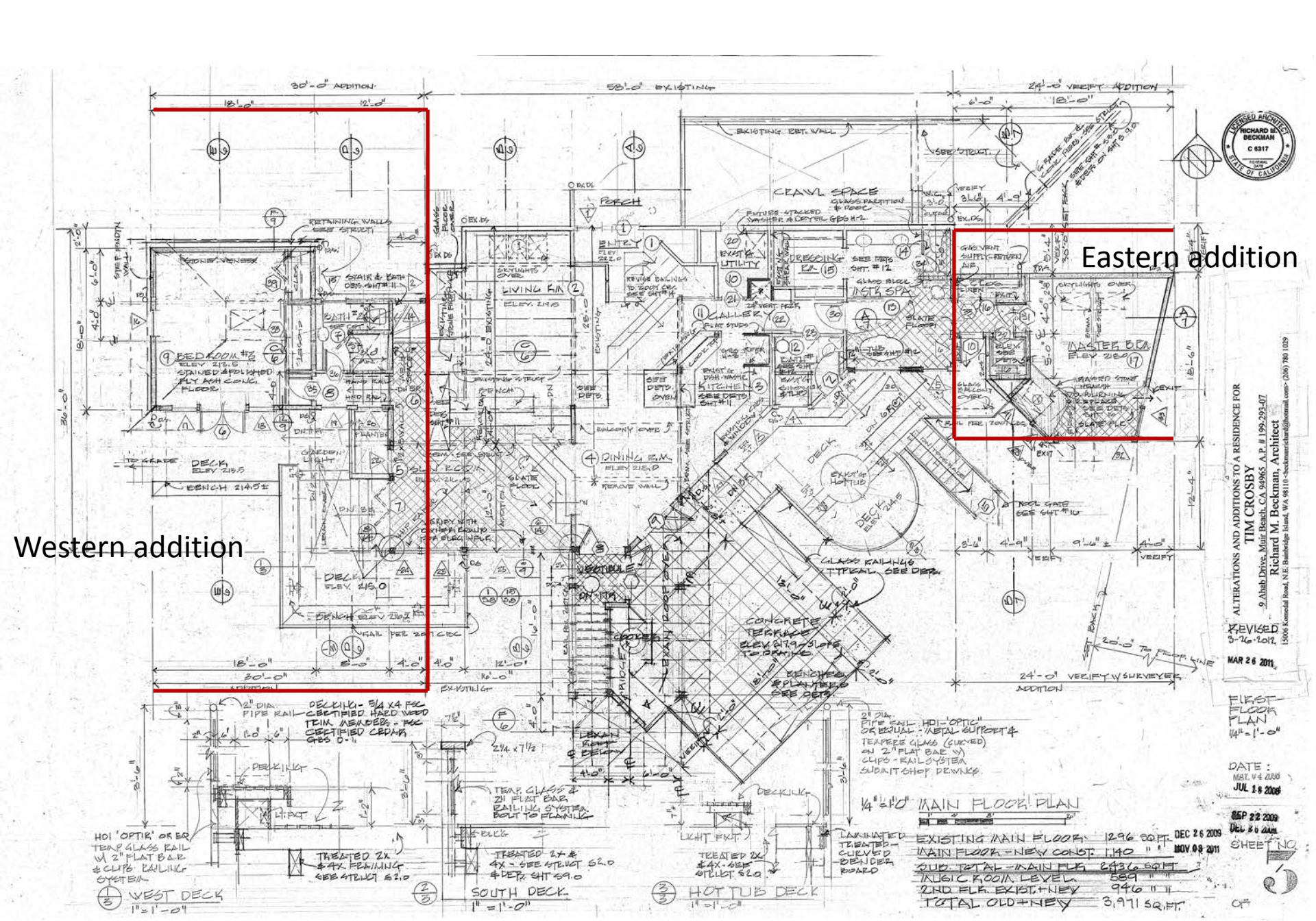
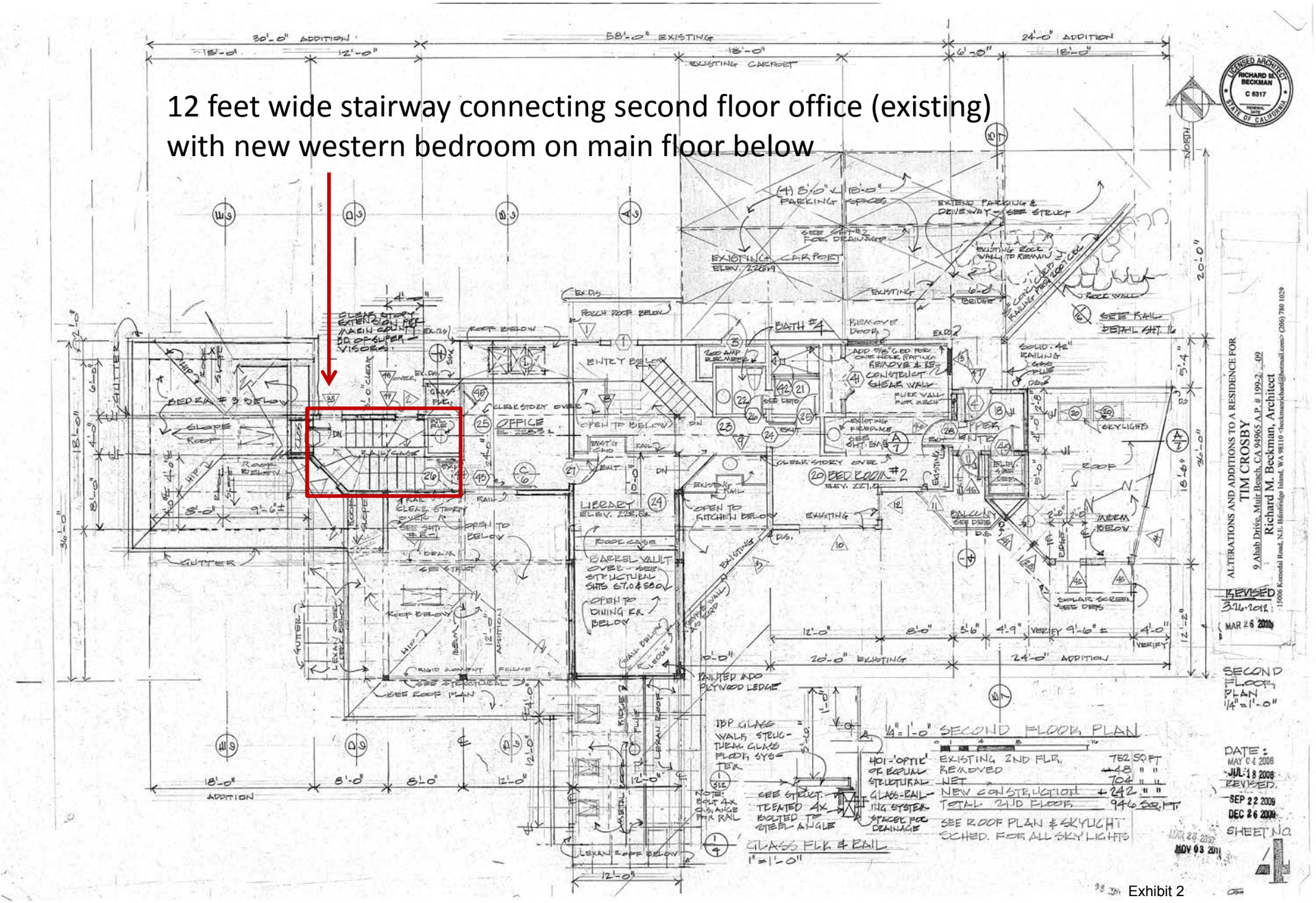
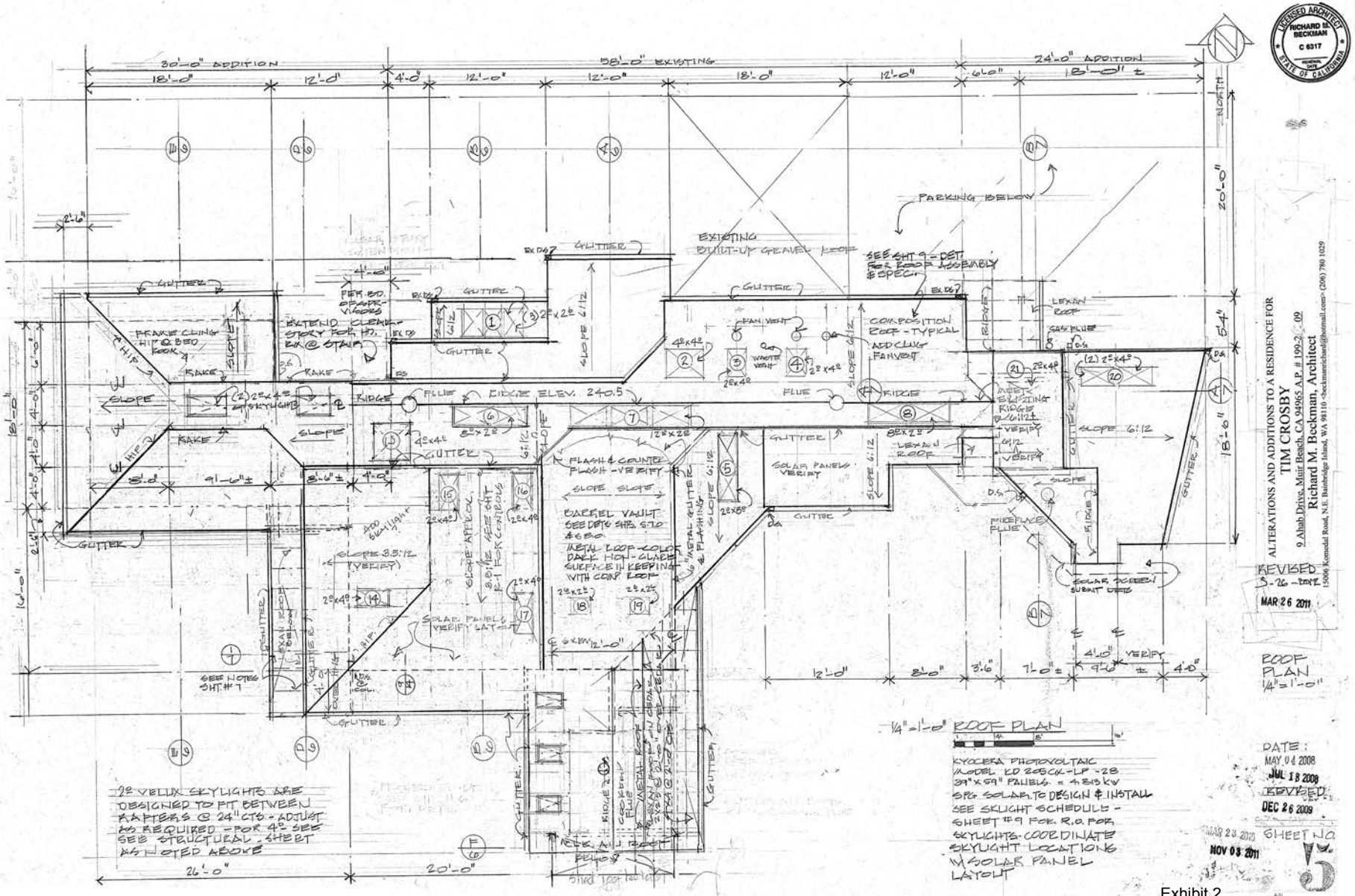


Exhibit 2
A-2-MAR-09-010
Page 3 of 10


12 feet wide stairway connecting second floor office (existing) with new western bedroom on main floor below
30'-0" ADDITION
58'-0" EXISTING
24'-0" ADDITION
OFFICE
LIBRARY
BED ROOM #2
BATH #4
SECOND FLOOR PLAN
1/4"=1'-0"
ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR
TIM CROSBY
Richard M. Beckman, Architect
REVISED
3-16-2012
MAR 26 2012
DATE:
MAY 04 2008
JUL 18 2008
REVISED
SEP 22 2009
DEC 26 2009
SHEET NO.
NOV 03 2011



LICENSED ARCHITECT
RICHARD M. BECKMAN
C 6317
STATE OF CALIFORNIA

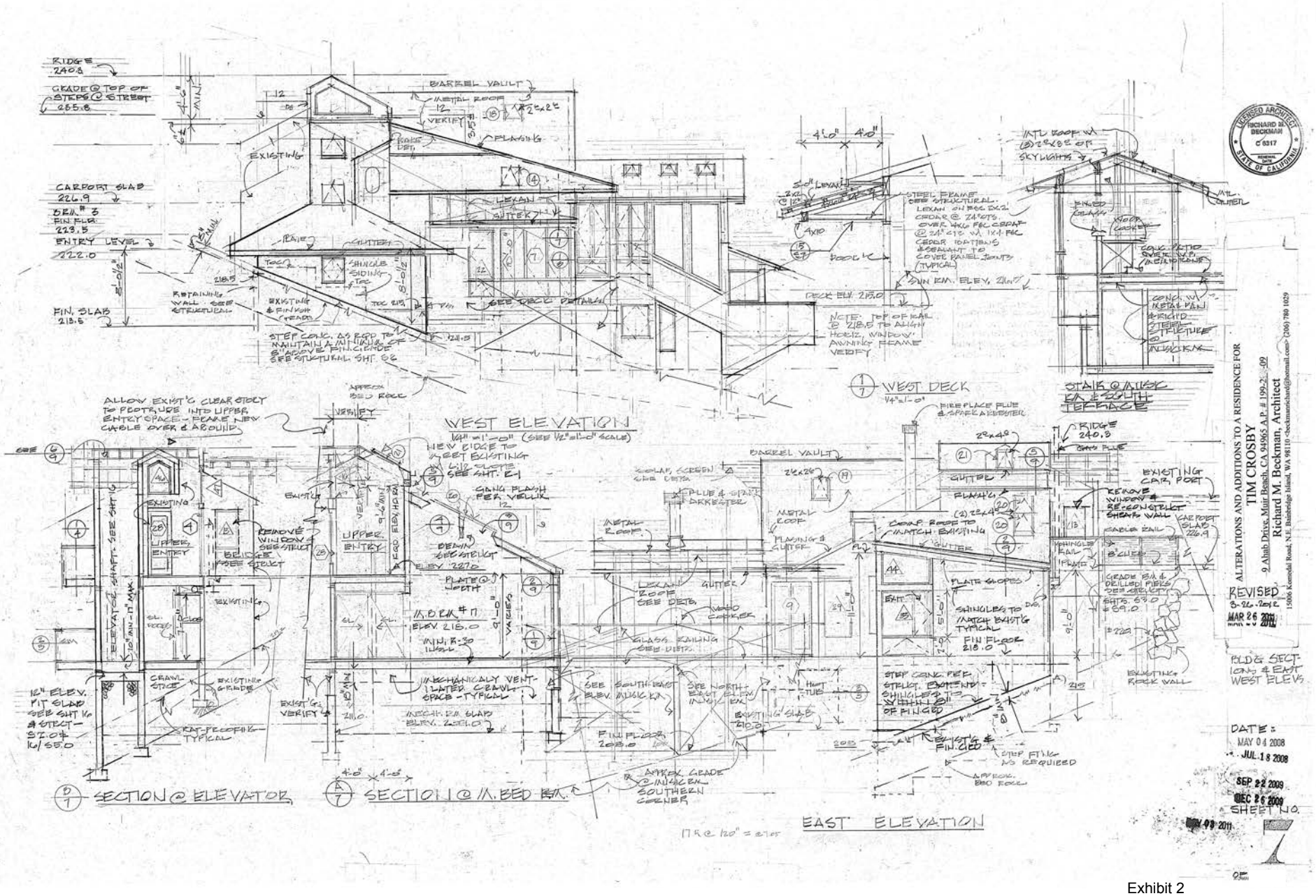
ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR
TIM CROSBY
9 Ahab Drive, Muir Beach, CA 94965 A.P. # 199-2-09
Richard M. Beckman, Architect
15006 Komedal Road, N.E. Bainbridge Island, WA 98110 <beckmanrichard@hotmail.com> (206) 780 1029

REVISED
5-26-2009
MAR 26 2011

DATE:
MAY 04 2008
JUL 18 2008
REVISED
DEC 26 2009
MAR 23 2010
NOV 03 2011

SHEET NO

Exhibit 2
A-2-MAR-09-010
Page 5 of 10



LICENSED ARCHITECT
RICHARD M. BECKMAN
C 6317
RENEWAL DATE
STATE OF CALIFORNIA

ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR
TIM CROSBY
9 Ahab Drive, Muir Beach, CA 94965 A.P. # 199-2-___09

Richard M. Beckman, Architect
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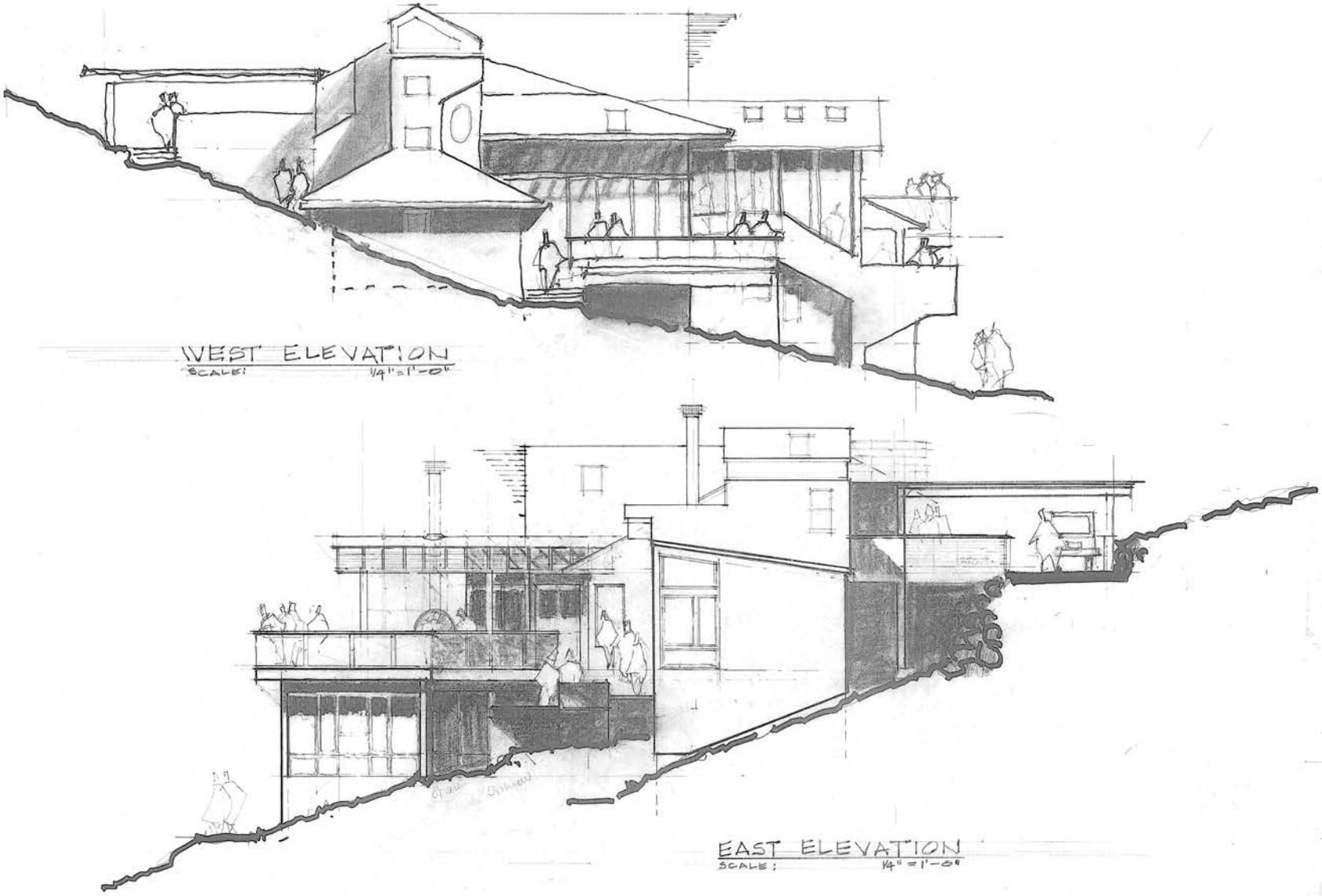
REVISED
3-26-2012
MAR 26 2012

BLDG SECTIONS & EAST WEST ELEVS

DATE:
MAY 04 2008
JUL 18 2008
SEP 22 2009
DEC 26 2009
SHEET NO.
NOV 03 2011

Exhibit 2
A-2-MAR-09-010
Page 6 of 10



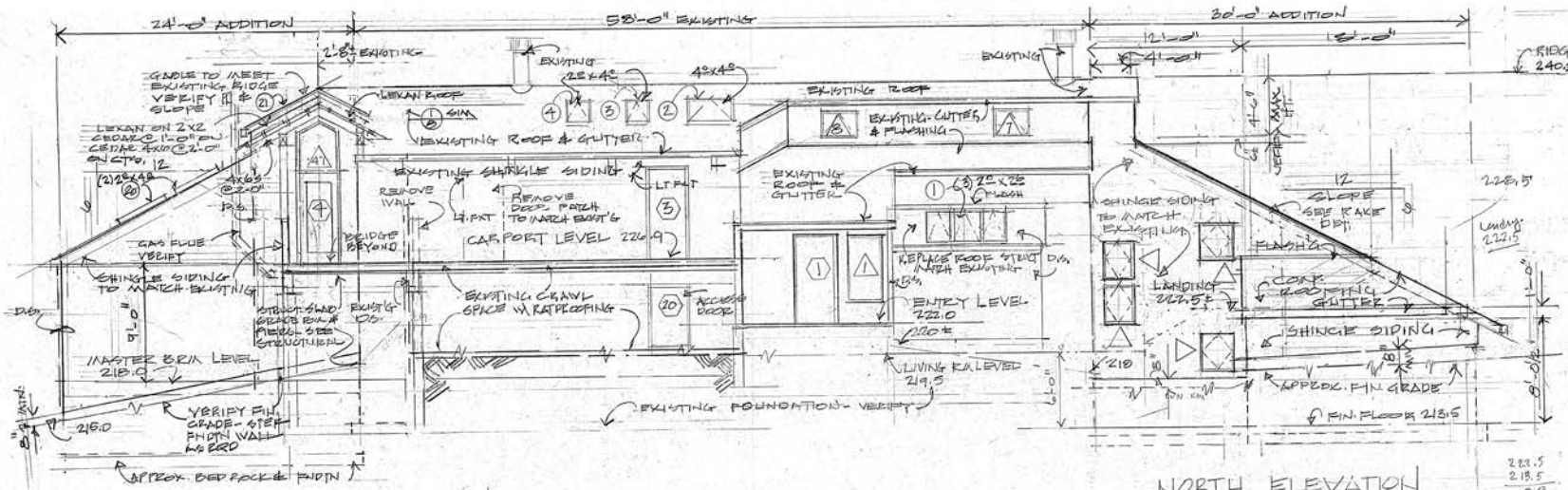
LICENSED ARCHITECT
RICHARD M. BECKMAN
© 2012
RENEWAL DATE
STATE OF CALIFORNIA

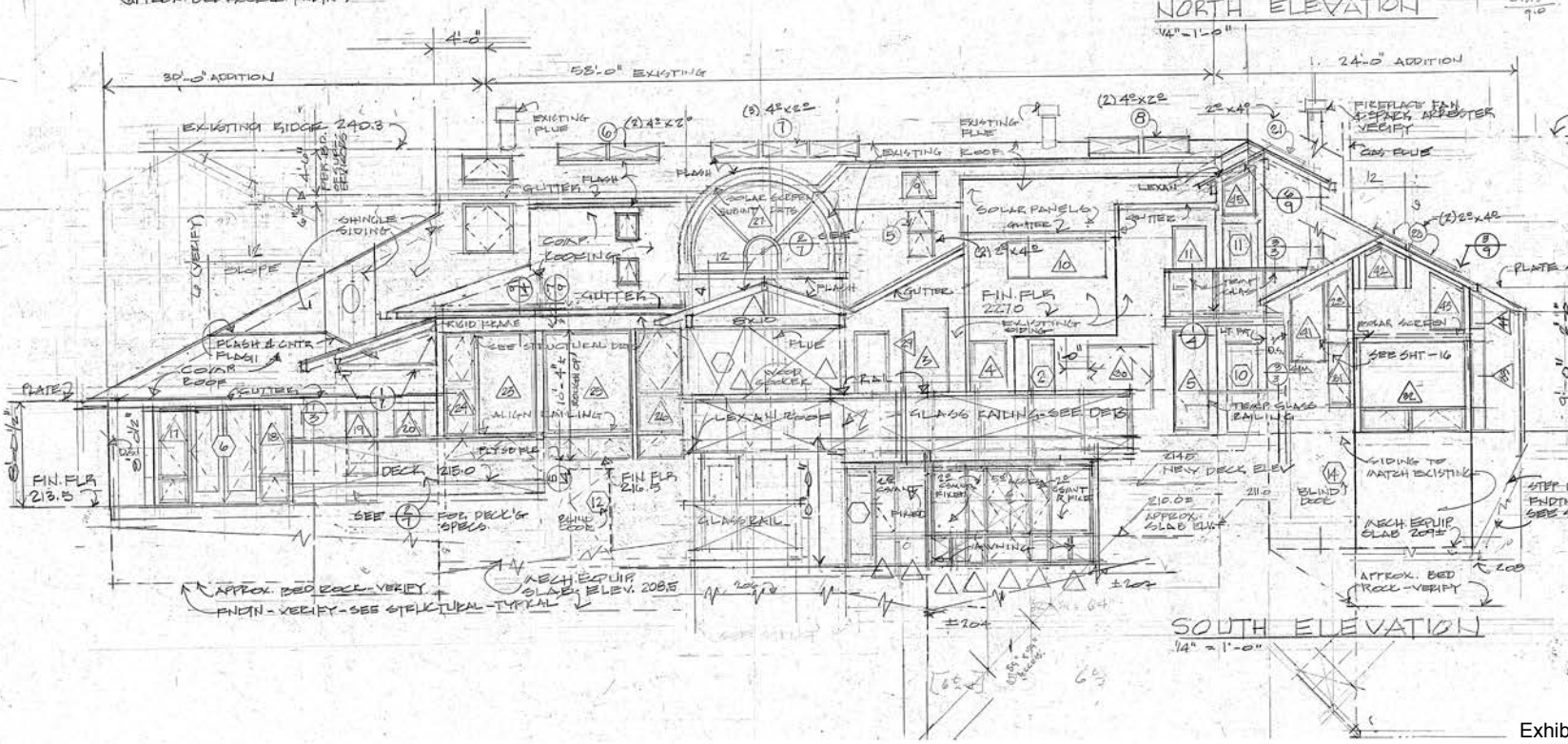
ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR
TIM CROSBY
9 Ahab Drive, Muir Beach, CA 94965 A.P. # 199-283-09
Richard M. Beckman, Architect
15006 Kinnedal Road, N.E. Bainbridge Island, WA 98110 <beckmanrichard@hotmail.com> (206) 780 1029

REVISED
3.26.2012
MAR 26 2012

REVISED
RENDERED
WEST & EAST
ELEVATIONS
MARCH 26 2012
DATE

SHEET NO
7B
OF





LICENSED ARCHITECT
RICHARD M. BECKMAN
C 6317
STATE OF CALIFORNIA

ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR
TIM CROSBY
9 Ahab Drive, Muir Beach, CA 94965 / A.P. # 193-2 09
Richard M. Beckman, Architect
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REVISED 3-26-2011
MAR 26 2011

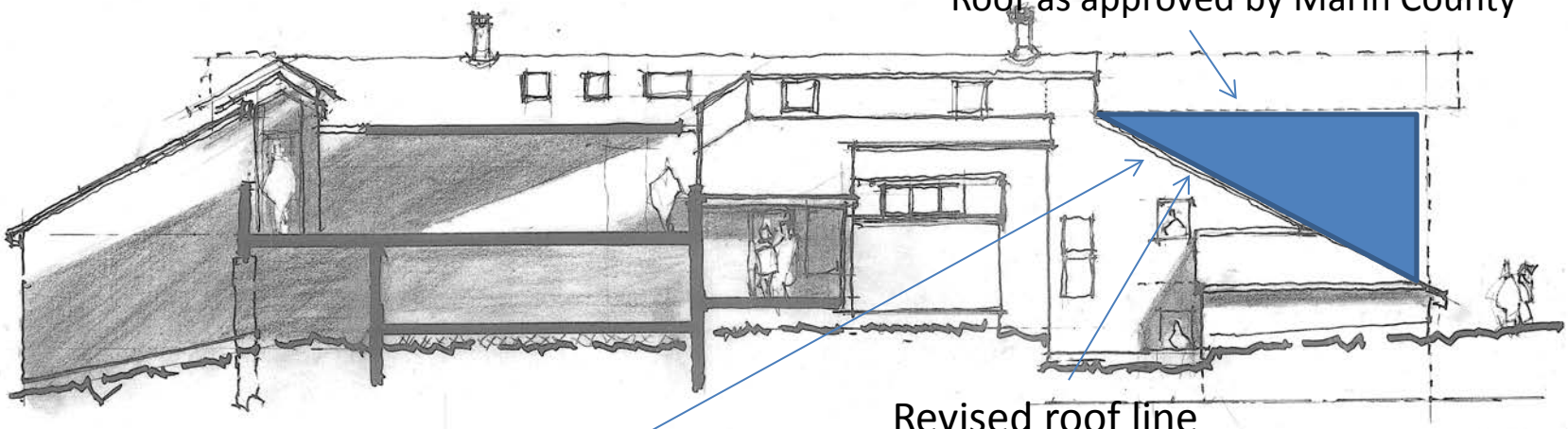
NORTH & SOUTH ELEVS.
1/4" = 1'-0"

DATE
MAY 04 2008
JUL 18 2008
REVISED
SEP 22 2009
DEC 8 2009

SHEET NO
8

NOV 05 2011

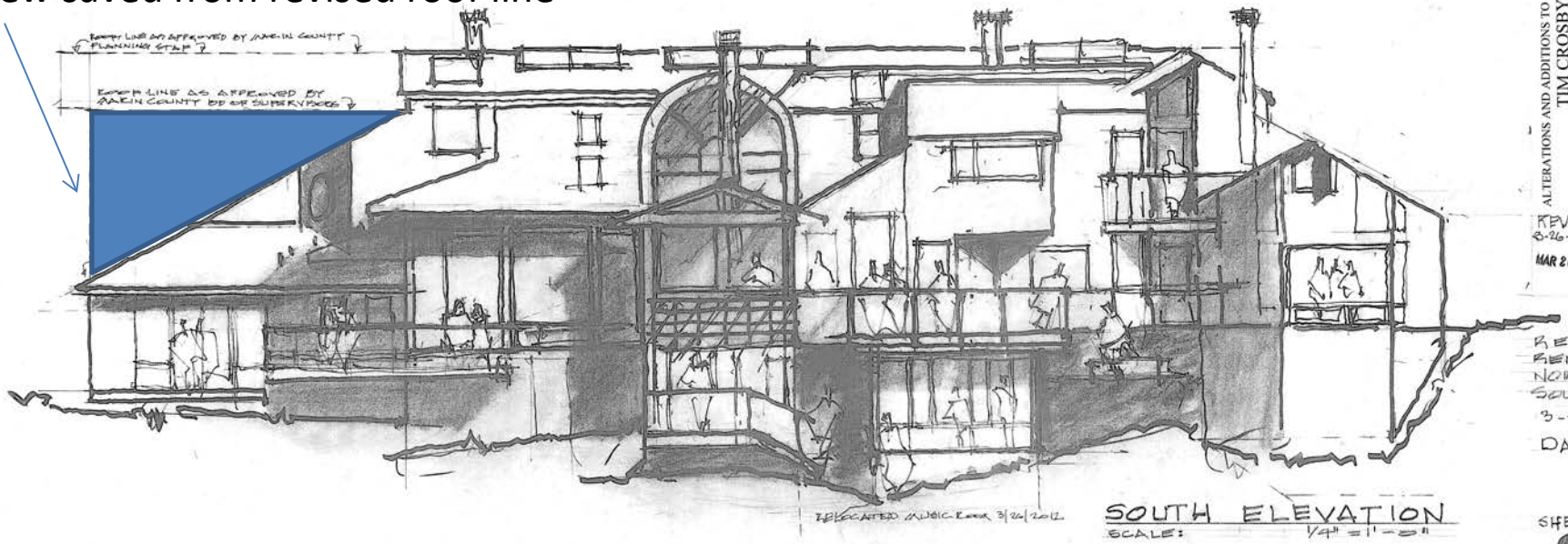
Roof as approved by Marin County



Revised roof line

NORTH ELEVATION
SCALE: 1/4" = 1'-0"

View saved from revised roof line



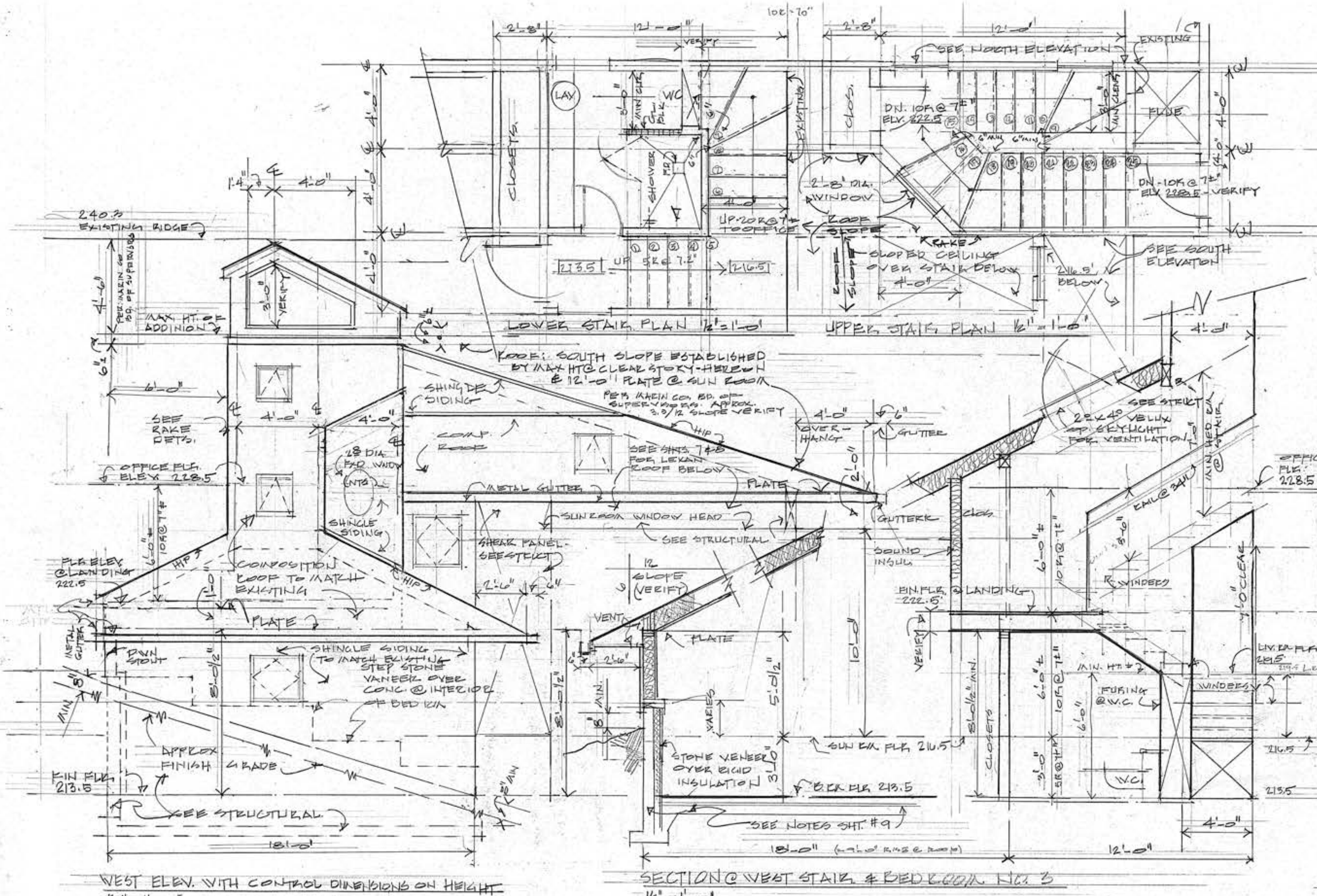
SOUTH ELEVATION
SCALE: 1/4" = 1'-0"

ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR
TIM CROSBY
9 Ahab Drive, Muir Beach, CA 94965 A.P. # 199-283-09
Richard M. Beckman, Architect
15006 Komedal Road, N.E. Bainbridge Island, WA 98110 <beckmanrichard@hotmail.com> (206) 780 1029

REVISED
8-26-2011
MAR 26 2012

REVISED RENDERINGS NORTH & SOUTH ELEVS
3-26-12
DATE

SHEET NO
8B
OF



ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR
TIM CROSBY
9 Ahab Drive, Muir Beach, CA 94965 A.P. # 199-283-09

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

LICENSED ARCHITECT RICHARD M. BECKMAN C 8317 STATE OF CALIFORNIA

REVISED 3-26-2012

MAR 26 2012

3-26-212 REVISED HEIGHT CONTROLS AS ESTABLISHED BY MARIN CO. BD. OF SUPERVISORS

DATE

SHEET NO. R2

Crosby Residence Addition 9 Ahab, Muir Beach CA

Originally proposed and Marin County-approved design with resulting Muir Beach view blockage from top of public stairway, looking south.

2009 Addition

Revised proposed design with resulting view blockage from top of public stairway, looking south.

2012 Revised Addition

Source: Visual Impact Analysis LLC


Photo taken from edge of Ahab Drive from western end of property looking south
Top of public stairway
Story poles of western addition


Photo taken along Ahab Drive
in between public stairway and
western side of house
Story pole showing extent
of western addition


Photo taken from top step of public stairway, looking south towards Muir Beach and towards the proposed western addition
Public view to be lost from proposed addition


Photo taken six steps down stairway
Public view to be lost from proposed addition

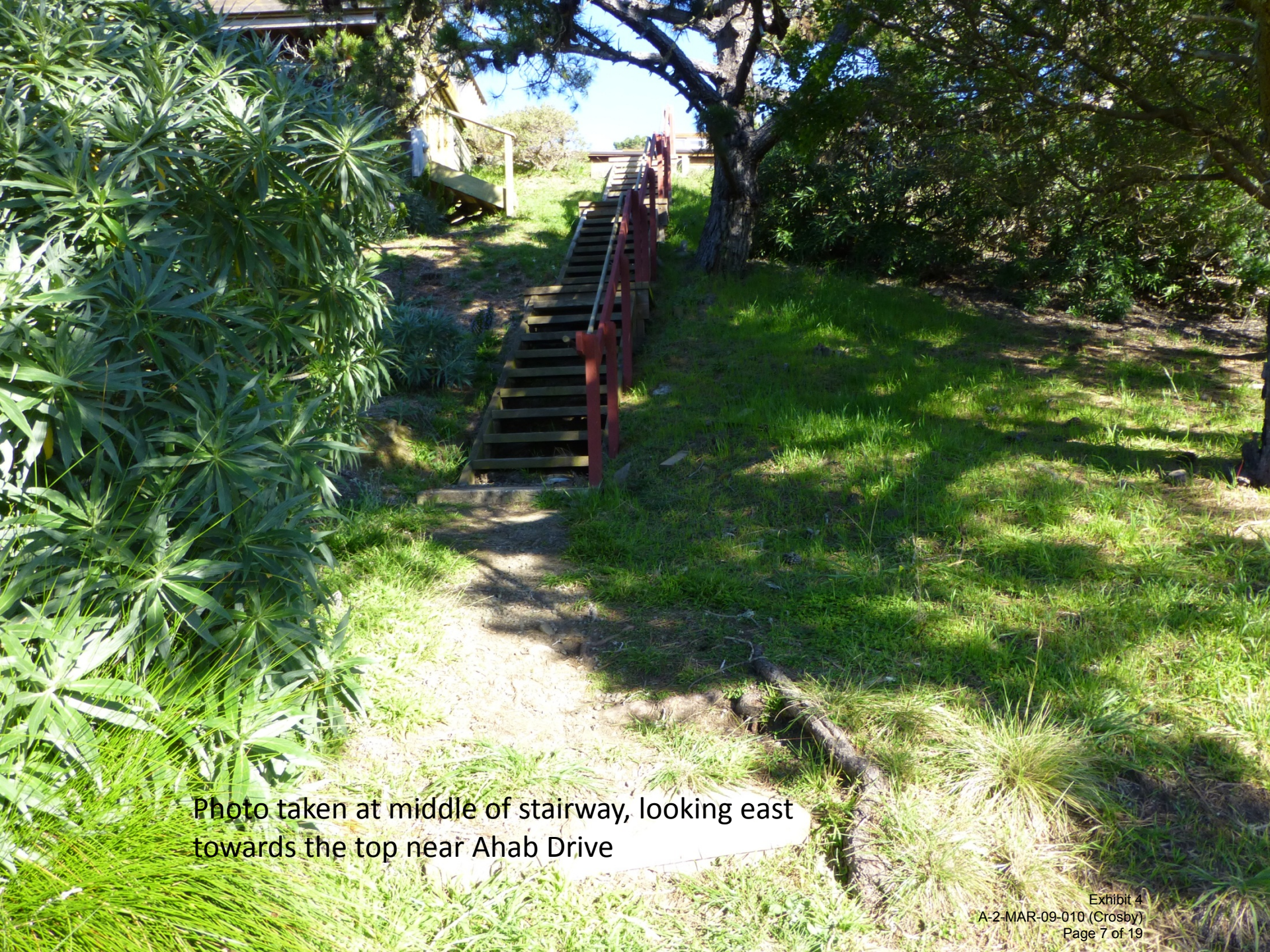


Photo taken at middle of stairway, looking east towards the top near Ahab Drive


Photo taken from middle of stairway looking southeast towards house
Proposed western addition
Proposed southern addition


Proposed western expansion
Proposed southern expansion
Photo taken from lower second set of stairs


Photo taken from second set of stairs, looking west


Photo taken from second set of stairs, looking south towards Muir Beach
View of Muir Beach cove


Photo taken from second step of public stairway, looking south towards Muir Beach cove
Public view to be blocked by proposed western addition


Photo taken from top step of public stairway, looking south towards Muir Beach cove
Public view to be blocked by proposed western addition


Photo taken from edge of Ahab Drive next to private carport for adjacent residence
Public view to be blocked by proposed western addition

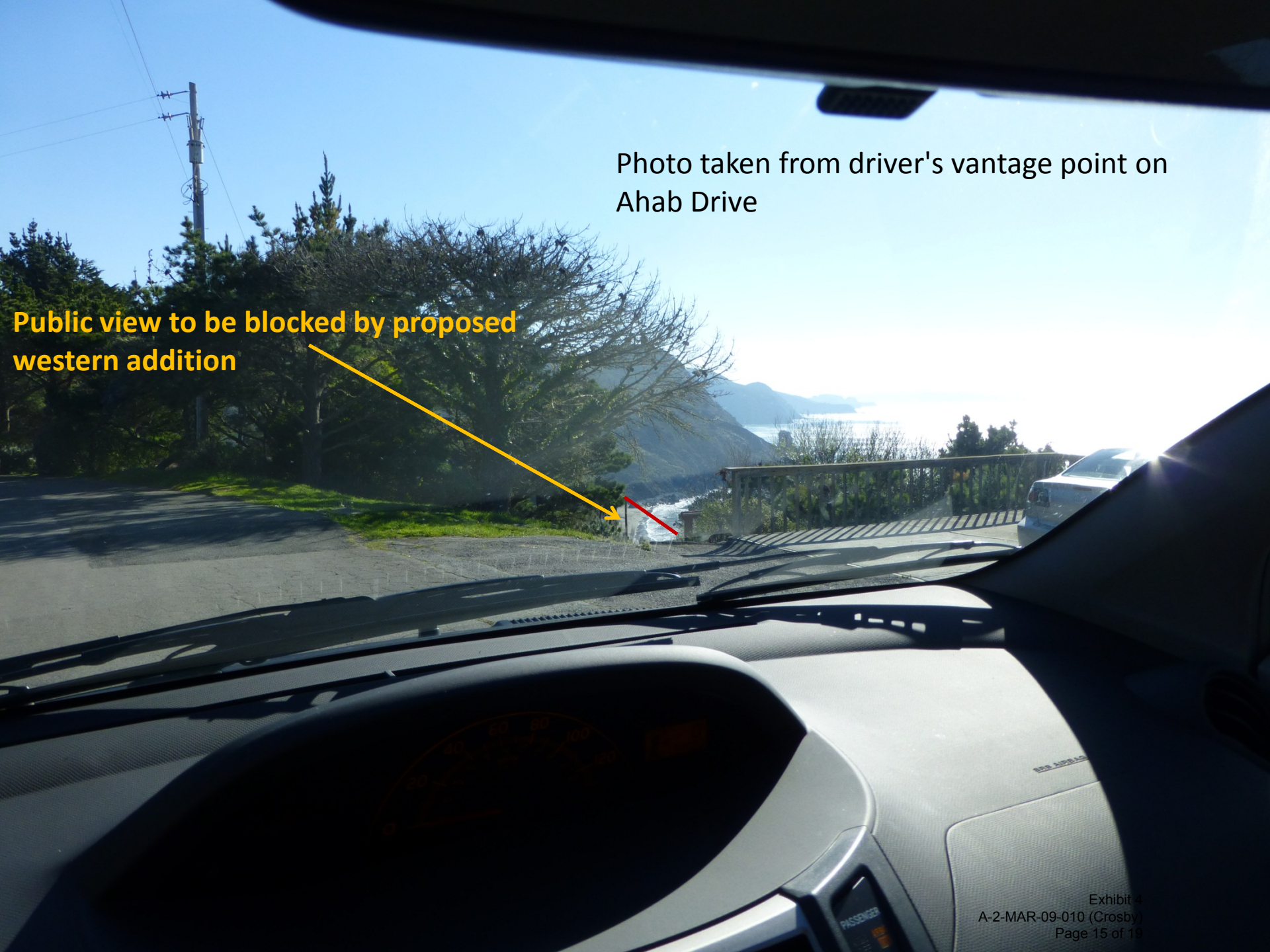


Photo taken from driver's vantage point on Ahab Drive
Public view to be blocked by proposed western addition

Photo taken from Ahab Drive looking at eastern side of existing residence


Coastal views to be blocked
by proposed eastern addition
Story poles showing proposed
eastern addition


Story poles showing proposed southern/downcoast expansion
(no coastal views lost)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

Edward J. Hyman, Deborah A. McDonald, Richard S. Kohn and Brenda F. Kohn, Petitioners, v. California Coastal Commission, Respondent, Timothy Crosby, County of Marin and Marin County Community Development Agency, Real Party In Interest	CASE NO. CIV 094682 RULINGS ON PETITIONERS' REQUEST FOR JUDICIAL NOTICE, PETITIONERS' MOTION TO DEEM FACTS ADMITTED, REQUEST TO STRIKE VERIFIED CROSBY ANSWER AND AUGMENT THE RECORD, AND THE PETITION FOR WRIT OF MANDATE

Petitioners' Request for Judicial Notice, Petitioners' Motion to Deem Facts Admitted, Request to Strike Verified Crosby Answer and Augment the Record, and the hearing on the Writ Petition were before the Court on January 21, 2011. Self represented Petitioners Edward Hyman, Deborah McDonald, Brenda Kohn and Richard Kohn appeared. Joseph C. Rusconi, Esq. appeared for Respondent California Coastal Commission. David Zaltsman, Esq. appeared on behalf of Real Party In Interest Marin County Community Development Agency and County of Marin. Reuben Becker, Esq. appeared for Real Party In Interest Timothy Crosby.

Having heard argument from the self represented litigants, Respondents and Real Parties in Interest, the court took its tentative rulings under submission. Having reviewed the new cases cited by respondent at the hearing and reviewed anew the issues, the court, adopting its tentative rulings, sets forth its final rulings on each of the matters.

Court review of the January 21, 2011 arguments

At the hearing on the writ petition, respondent's counsel characterized the court's finding as that: "No reasonable person could find that the view impacted was not significant...." Actually, the court found that "no reasonable person could find that *the view shown in the photos*"—i.e., the photos in the record before the commission—"is not 'significant' in itself." Respondent's counsel argued at the hearing that the view was not significant *because* "similar views can be seen nearby in areas more frequently used by the public." Thus, this case involves the use of *standards* not spelled out in the applicable statutes or case law, which might affect many other cases.

Respondent's counsel also argued that the court's decision ignores three of the four other factors historically applied by respondent. In this case, the first factor is closely intertwined with each of those factors. The Planning Commission, the Board of Supervisors and respondent presented a mixture of sometimes conflicting theories in favor of real party's application and the lack of a "substantial issue"—including application of the LCP only to "signed" or designated viewing areas, the "fleeting" view theory, the interpretation of a zoning ordinance to effectively add the word "all" to the term "public viewing places," the availability of substantially equivalent views, the interpretation of the LCP to incorporate no part of the Muir Beach Community Plan, and the interpretation of LCP Policy 21 (final paragraph) to apply only to views from Highway 1 and the Panoramic Highway.

By finding "factual and legal support" for the local government's decision, at the same time it rejects at least part of the local government's rationale, respondent's "no substantial issue" determination creates potential confusion for future cases involving "fleeting" views from non-designated areas other than the listed highways, where views from other points might be described as similar. According to Real Party Crosby's own statement, his property is not even in the subdivision where the county's resolution would find this view impairment to be acceptable. (See AR 1:89, AR 6:945-6:946.) By relying on a purported local interpretation of LCP Policy 21, without citing any portion of the record where that interpretation was actually

made (see AR 6:935), respondent also left confusion as to interpretation of Policy 21—applying countywide. At the hearing, respondent's counsel did not argue that the second traditional factor—extent of the development—helped to support its decision. Respondent approved a staff recommendation deleting references to the project as "modest." (AR 5:711.)

Respondent and the County further argue that this court is incorrect in concluding that respondent's interpretation of LCP Policy 21 (final paragraph)—to protect only views from "Highway 1" or the "Panoramic Highway"—is clearly erroneous. Deputy County Counsel David Zaltsman asked the court for clarification of its reasoning that respondent's view was inconsistent with the sentence construction. "A longstanding rule of statutory construction--the 'last antecedent rule'--provides that 'qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote.' " (See, e.g., *Renee J.* v. *Superior Court* (2001) 26 Cal.4th 735, 743 (citations omitted).) Here, a comma separates the phrase "Bolinas Lagoon" from "the national or State parklands from Highway 1 or the Panoramic Highway." This rule of statutory interpretation has an exception where "the sense of the entire act requires that a qualifying word or phrase apply to several preceding words...." (Id.) As explained by this court, an interpretation whereby the words "from Highway 1 or the Panoramic Highway" would *not* modify "Bolinas Lagoon" or "an existing view of the ocean" is the only reasonable interpretation consistent with the Coastal Act and the whole of the LCP. (See AR 5:552 (giving equal importance to view protection "from public roads, beaches, trails, and vista points), AR 6:497 (purpose of LCP to ensure local actions' conformance with Coastal Act), and Public Resources Code, §30251 (requiring that permitted development be "sited and designed to protect views to and along the ocean and scenic coastal areas," without limitation to views from highways).) The distinction which deputy county counsel attempts to draw between zoning section 22.56.130(O)(2) and section 22.56.130(O)(3) also is not applicable; it would limit view impairment from original construction but have no effect in cases, such as this one, where new construction would add nearly 1,600 square feet—making the structure effectively "new." (See AR 5:661, 6:931.) The court also notes that the interpretation offered by deputy county counsel at the hearing—that section 22.56.130(O)(3) does not apply to a "remodel"—appears to differ with the expressed reasoning of respondent. (See AR 6:933 (finding that the approved addition "is also compatible with the character of the surrounding environment *as required by* zoning

code section 22.56.130(O)(3)...").) It remains difficult to determine exactly what "determination" of local government that respondent finds to have "factual and legal support."

As to the incorporation of the Muir Beach Community Plan, the county argued that the LCP would prevail to the extent of an inconsistency. As interpreted by the court, the documents would not be inconsistent in any way relevant here. The community plan, adopted at the same time as the LCP, aids in the interpretation of the LCP.

Conceding that "consideration and protection of the views" is required by Public Resources Code, section 30251 (which differs from a theory that ocean views are protected only from certain highways), respondent's counsel went on to argue that "there was...an overall enhancement of the views that were available to the public from the trail." This "overall enhancement of the views" theory is backed only by the shifting and somewhat conflicting positions of local decision-makers and respondent.

Respondent is correct that the court must give deference to an agency's legal interpretation "appropriate to the circumstances of the agency action." (See, e.g., *Reddell* v. *California Coastal Com.* (2009) 180 Cal.App.4th 956, 965.) That does not mean, however, that the court must give deference to an interpretation which clearly conflicts with well-established principles of statutory construction. Respondent's interpretation of LCP Policy 21, protecting ocean views only as found from certain highways, simply cannot be reconciled with section 30251 and other portions of the LCP.

The cases cited by respondent at the hearing, each related to the standard of review, did not change the legal landscape on which the court's ruling was based. Some part of the court's ruling consists of legal interpretation where respondent is entitled to somewhat less deference. Respondent's cited cases of *Coastal Southwest Dev. Corp.* v. *California Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d 525, and *City of Chula Vista* v. *Sup. Ct.* (1982) 133 Cal.App.3d 472, involve the different matters of the commission's denial of a permit and the commission's refusal to approve an LCP. In *Whaler's Village Club* v. *California Coastal Com.* (1985) 173 Cal.App.3d 240, the court applied the substantial evidence test to evaluate the commission's imposition of permit conditions. Nothing in the courts' holdings is inconsistent with the standard applied by this court.

FACTS

This case involves a procedural and substantive challenge to a decision of the California Coastal Commission ("respondent") which would allow a private party's home addition to undermine views from the top of a stairway path to the beach.

In May, Judge Ritchie granted petitioners' motion for a stay of respondents' decision to dismiss their appeal. In recommending that order, Dennis Leader summarized the relevant facts as follows:

> Petitioners as self represented litigants, residents of Muir Beach, filed an appeal to the California Coastal Commission of the decision of the Board of Supervisors to issue a Coastal Development Permit to Real Party in Interest Timothy Crosby, to construct an addition to his home at 9 Ahab Dr. The permit allows Crosby to construct a 1,589 sq. ft. addition to his 2,058 sq. ft. house overlooking Muir Beach Cove. In the proceedings before the County Planning Commission and the Board of Supervisors, Petitioners objected to Crosby's application, arguing it would block the public's unique coastal view of the cove and beach from the public road (Ahab Dr.) and from the top of the public stairs leading down to the beach.
>
> In their appeal to the California Coastal Commission (Public Resources Code § 30603), Petitioners claimed the project is inconsistent with the County's Local Coastal Program (LCP), which provides for the protection of visual resources, because the contraction would impair a significant public view of Muir Beach as seen from these venues, *supra*. (LCP § 22.56.130(O)); and the project is incompatible with the character of the surrounding nature of the built environment.
>
> Evidence from the Board of Supervisors' hearing and from the California Coastal Commission appeal shows that from the vantage point at the top of the stairwell, a person has a view down to the beach, white water view and ocean view; a view which the Board Supervisor Kinsey described as "absolutely a spectacular jewel of a view." Planning Commissioners Holland said of that view: "there is that view there and it's undeniable and it's a wonderful view down to the big beach." (Am. Motion, Ex. 1, p. 9; Kohl ¶ 15). Other Supervisors made similar remarks. (Kohn ¶ 16)
>
> Evidence from the California Coastal Commission hearing establishes that the construction would obstruct this view: As Commission Staff Senior Deputy Director Lester stated: "And so you can see from this vantage point of that view, that there is no question that the view would be obstructed, . . ." (California Coastal Commission transcript p. 3:5-7, 16:9-14)
>
> The California Coastal Commission Staff concluded that while this view would be obstructed by the construction, there were other public places to view the cove and beach below: "Our analysis and recommendation of no substantial issue is raised

because we don't think, in the context of the views available from other public areas in this vicinity, that this would constitute a significant view that would be obstructed, or impacted, by the development." (*Id.* at p. 3:13-17)

On August 12, 2009, by a vote of 6:4, the California Coastal Commission dismissed the appeal as raising "no substantial issue" pursuant to Public Resources Code § 30625(b), adopting the staff's conclusion that while the view that will be impacted by the project, it is neither significant nor unique. (California Coastal Commission transcript p. 22-24) While that appeal was pending, the effect of the County's actions was automatically stayed. (Public Resources Code § 30623.)

Petitioners have filed this petition for Administrative Mandamus (Code Civ. Proc. § 1094.5), seeking to reverse the decision of the California Coastal Commission to dismiss the appeal, arguing: the California Coastal Commission violated its own procedures while processing Petitioners' appeal; the California Coastal Commission misinterpreted the policy behind LCP; and its finding there was no "significant impact" to the coastal view was erroneous as a matter of law.

The merits of the petition are not currently before us.

Petitioners ask this court for a discretionary stay of the California Coastal Commission's decision (i.e., to dismiss the appeal) pending determination of the mandamus petition. (Code Civ. Proc. § 1094.5(g).) ...The State has taken no position on the issue whether the stay would be against the public interest. (Oppo. p. 1, n.1)

Crosby opposes the request, arguing Petitioners have not provided any admissible evidence to show that the public interest will not be harmed by a stay.

On May 10, 2010, Judge Ritchie confirmed, *inter alia*, the following portion of his tentative ruling:

> PETITIONERS' REQUEST FOR A STAY OF RESPONDENT CALIFORNIA COASTAL COMMISSION'S DECISION TO DISMISS THEIR APPEAL, PENDING THIS COURT'S DETERMINATION OF THE SUBJECT PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS, IS GRANTED. (CODE CIV. PROC. § 1094.5(g).)
>
> PETITIONERS' ALTERNATIVE REQUEST FOR A PRELIMINARY INJUNCTION IS DENIED. (CODE CIV. PROC. § 526).
> RESPONDENT TAKES NO POSITION ON WHETHER A STAY SHOULD BE GRANTED. (OPPO. P. 1, N.1) RESPONDENT CONCEDES THE ADMINISTRATIVE RECORD WILL NOT BE READY UNTIL SOME TIME IN JUNE. FURTHER, THE FAILURE TO GRANT A STAY WILL MAKE THE CONTROVERSY RAISED BY THE PETITION MOOT.

ALSO, THE NATURE OF THIS LITIGATION, AS REFLECTED IN THE PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS, REAL PARTY IN INTEREST'S OPPOSING PAPERS TO THIS MOTION, THE TRANSCRIPT OF THE HEARING BEFORE RESPONDENT, AND RESPONDENT'S STAFF'S ORIGINAL REPORT, ESTABLISH THAT THIS ACTION CONCERNS THE CONSTRUCTION OF AN ADDITION TO A SINGLE FAMILY DWELLING, AND ANY DELAY AFFECTS ONLY THE HOMEOWNER, REAL PARTY IN INTEREST. ON THIS RECORD, THIS STAY WILL NOT BE "AGAINST THE PUBLIC INTEREST." (CODE CIV. PROC. § 1094.5(g).)

IN REACHING THIS CONCLUSION, THE COURT DID NOT CONSIDER NOR ADDRESS THE MERITS OF THE PETITION. THE COURT'S REVIEW OF THE EVIDENCE ON APPEAL BEFORE RESPONDENT COMMISSION WAS ONLY FOR PURPOSES OF CHRONOLOGY AND BACKGROUND INFORMATION. THIS COURT DID NOT CONSIDER INADMISSIBLE HEARSAY EVIDENCE OR EXTRA-RECORD EVIDENCE.

ACCORDINGLY, PETITIONERS' REQUEST TO TAKE JUDICIAL NOTICE OF THE CERTIFIED COPY OF THE CALIFORNIA COASTAL COMMISSION'S HEARING TRANSCRIPT, AND THE COPY OF THE STAFF'S ORIGINAL REPORT IS GRANTED. (EV. CODE § 452(d).) THE REMAINDER OF THE REQUEST TO TAKE JUDICIAL NOTICE IS DENIED.

REAL PARTY IN INTEREST CROSBY'S REQUEST TO TAKE JUDICIAL NOTICE OF THE BUREAU OF LABOR STATISTICS, IS GRANTED (EV. CODE §. 452(h); BUT THE REQUEST TO TAKE JUDICIAL NOTICE OF THE WALL STREET JOURNAL ARTICLE IS DENIED.

RESPONDENT'S AND REAL PARTY IN INTEREST'S REMAINING EVIDENTIARY OBJECTIONS AND MOTIONS TO STRIKE PETITIONERS' EVIDENCE ARE OVERRULED AND/OR DENIED.

However, Judge Ritchie altered his tentative ruling insofar as it went on to deny Crosby's request for a bond requirement; the final order conditioned the stay on a $20,000 bond.

On August 23, 2010, petitioners filed notice of a motion to augment the administrative record with three items: 1) A document called "Frequently Asked Questions: The Coastal Commission Permit Appeal Process", (hereinafter "FAQ document"), lodged with the clerk in support of petitioners' first request for judicial notice; 2) declaration of petitioner Richard S. Kohn dated February 19, 2010, filed in support of the stay and relating a conversation with Commission Executive Director Peter Douglas; and 3) DVD of respondent's 8/12/10 meeting "for the limited purpose of visually showing the distribution of the pink covered Addendum to the Commission during the 3:30 break." (Notice, p.2:12-21.) In the same motion, petitioners

requested that the court strike the unverified answer of homeowner Crosby, and deem certain allegations in the petition (¶¶39, 42 and 43) established.

Petitioners accompanied the motion with a second request for judicial notice. The parties have asserted strong positions in favor and in opposition to the request; the briefing on it alone totals 29 pages. The motion was set for hearing on December 1, 2010. Judge Ritchie continued the hearing to January 5, 2011, the same date as the hearing on the writ[1]. Respondent filed opposition to: 1) petitioners' second request for judicial notice; 2) petitioners' motion to augment, strike, deem facts admitted; and 3)the writ petition itself. Petitioners filed reply memoranda.

I. PETITIONERS' SECOND REQUEST FOR JUDICIAL NOTICE.

Petitioners seek judicial notice of seven items. Respondent does not object to most of item 6, pertaining to statutes and regulations. This would have the court notice specific sections of the Public Resources Code, Code of Civil Procedure and Government Code; the California Code of Regulations, Title 14, sections 15301-15303 and 13115; and Marin County interim zoning regulation §22.56.1301(o)(2) and (o)(3). Respondent objects only to notice of sections 15301-15303, as irrelevant to the writ; these pertain to CEQA, and this is not a CEQA writ. Petitioners contend that the regulations help to clarify the meaning of the reference to "Class 2" and "Class 1" in part of the record. (See AR 1:19 (comments by county environmental coordinator).) Sections 15301-15302 do define Classes 1-3, so they actually may be relevant to explain certain comments in the record. As respondent does not oppose the remaining request and the court specifically is permitted to notice regulations and legislative enactments (Ev. Code, §452, subd.(b)), judicial notice of item 6 is granted.

The other six items are more controversial. These include: 1) the "FAQ" document; 2, 3) minutes of the July 23, 1979 and August 21, 2979 meetings of the Marin County Board of Supervisors (hereinafter "MCBOS"); 4) the Muir Beach Community Plan; 5, 6) video recordings of a hearing of the Marin County Planning Commission ("MCPC") February 9, 2009 and a

[1] Although the wording of the motion might suggest the need for an order prior to the hearing on the writ, the matters all bear on the merits. Also, the motion to "deem facts established" is not a discovery motion—it is addressed to three paragraphs of the Petition akin to a motion for summary judgment. " .

hearing of the MCBOS on March 31, 2009; and 7)the American Heritage Dictionary definition of the word, "unique."

Respondent argues that generally, California courts "will not take judicial notice of material that is not contained in the administrative record." That is true insofar as the material would affect the weight of the evidence that the petitioner claims is insufficient to support the findings. However, it seems that the court may take judicial notice of material outside the record when offered for some other purposes.

As to judicial notice in a mandamus proceeding, one treatise offers the following opinion:

> Judicial notice provides a method for obtaining the admission of certain extra-record evidence. However, the evidence must fall into one of the groups of judicially noticeable matters set forth in Evid C §§451-453, and it must be relevant. For example, certified copies of the official records of cities, counties, special districts, the State of California, and the courts may be judicially noticed....

(See C.E.B., California Administrative Mandamus (3rd ed.2009), §4.4.) As a "practice tip," the authors observe:

> Documents referred to in the petition for writ of mandate, but not attached to the petition, can also be judicially noticed. For example, if the issue is whether a public agency proceeded in the manner required by law, and the applicable law is a local ordinance, resolution or general plan that is not contained in the administrative record, that ordinance, resolution, or general plan can be judicially noticed. Note, however, that not all legislative records concerning a statute are judicially noticeable. [citing *Kaufman & Broad Communities, Inc.* v. *Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31....] Judicial notice can be used to have the court consider extra-record evidence to support such affirmative defenses as res judicata, collateral estoppel, lack of standing, and the statute of limitations. Thus, certified copies of court documents can establish a res judicata or collateral estoppel defense, and the records of the Secretary of State and County Recorder can be used to establish a standing defense. *The official records and enactments of a public agency can also be used to establish that the agency failed to proceed in the manner required by its own regulations*, and legislative history can be judicially noticed when a government statute is ambiguous and as not been interpreted in a reported decision. (Id.)

In *Western States Petroleum Assn.* v. *Sup. Ct.* (1995) 9 Cal.4th 559, the court wrote at page 573, fn.4:

> We need not decide whether courts may take judicial notice of evidence not contained in the administrative record *when reviewing a quasi-legislative decision for substantial evidence* under Public Resources Code section 21168.5. (See Evid.

Code, §§ 451-460.) In light of the analogy we draw in this case, it would seem logical to conclude that the rules governing judicial notice in such instances would be akin to those applicable in reviewing courts. (*Id.*, §459.) However, it would never be proper to take judicial notice of evidence that (1) is absent from the administrative record, *and* (2) was not before the agency at the time it made its decision. This is so because only relevant evidence is subject to judicial notice (*People v. Superior Court (Smolin)* (1986) 41 Cal.3d 758, 768 [225 Cal.Rptr. 438, 716 P.2d 991], revd. on other grounds *sub nom. California v. Superior Court of California* (1987) 482 U.S. 400 [96 L.Ed.2d 332, 107 S.Ct. 2433]; *Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578 [136 Cal.Rptr. 751]), and the only evidence that is relevant to the question *of whether there was substantial evidence to support a quasi-legislative administrative decision* under Public Resources Code section 21168.5 is that which was before the agency at the time it made its decision. [Emphasis added.]

Thus, the rules for judicial notice are closely tied to the rules for when extra-record evidence is admissible. At pages 578-579, the *Western States* court wrote:

WSPA contends that evidence that could not be produced at the administrative level "in the exercise of reasonable diligence" should be admitted in traditional mandamus proceedings. We agree. Extra-record evidence is admissible in administrative mandamus proceedings under such circumstances (Code Civ. Proc., § 1094.5, subd. (e)) and we see no reason to apply a different rule in traditional mandamus proceedings....

[A]lthough we agree that there is such an exception in traditional mandamus proceedings challenging quasi-legislative administrative decisions, this exception is to be very narrowly construed. Extra-record evidence is admissible under this exception only in those rare instances in which (1) the evidence in question existed *before* the agency made its decision, and (2) it was not possible in the exercise of reasonable diligence to present this evidence to the agency *before* the decision was made so that it could be considered and included in the administrative record.

In reaching the conclusion we provide today, we do not foreclose the possibility that extra-record evidence may be admissible in traditional mandamus actions challenging quasi-legislative administrative decisions under unusual circumstances or for very limited purposes not presented in the case now before us. Indeed, as we noted earlier, the federal courts have allowed admission of extra-record evidence under certain circumstances. (See, e.g., *Asarco, Inc. v. U.S.E.P.A.*, *supra*, 616 F.2d 1153, 1160 [extra-record evidence is admissible "only for

> background information ... or for the limited purposes of ascertaining whether the agency considered all the relevant factors or fully explicated its course of conduct or grounds of decision"].) We have on occasion looked to the federal courts for persuasive authority in the area of environmental law. (See *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 201 [132 Cal.Rptr. 377, 553 P.2d 537] ["Recognizing that [CEQA] was modeled after the [National Environmental Policy Act, 42 U.S.C. § 4321 et seq.], we have consistently treated judicial and administrative interpretation of the latter enactment as persuasive authority in interpreting CEQA."].) In addition, commentators have suggested other limited exceptions to the general rule of inadmissibility. (See fn. 5, *ante*.) However, *extra-record evidence can never be admitted merely to contradict the evidence the administrative agency relied on in making a quasi-legislative decision or to raise a question regarding the wisdom of that decision.* [Emphasis added.]

In footnote 5 at pages 575-576, the Supreme Court cited the opinion of well-known authors (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (C.E.B. 1993)) that extra-record evidence should generally not be admissible in traditional mandamus actions challenging quasi-legislative administrative decisions. The court added:

> These commentators propose several limited exceptions to the general rule excluding extra-record evidence in traditional mandamus actions challenging quasi-legislative administrative decisions. Specifically, they suggest that courts should admit evidence relevant to (1) issues other than the validity of the agency's quasi-legislative decision, such as the petitioner's standing and capacity to sue, (2) affirmative defenses such as laches, estoppel and res judicata, (3) the accuracy of the administrative record, (4) procedural unfairness, and (5) agency misconduct. (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *op. cit. supra*, § 23.55, pp. 967-968.) Because none of these exceptions apply to the case at bar, we need not consider them.

In *San Joaquin Local Agency Formation Com'n* v. *Superior Court* (2008) 162 Cal.App.4th 159,

the court addressed the issue of "whether a disappointed applicant to a local agency formation commission can take the depositions of the commissioners to learn what extra-record information the commissioners had when they denied the application and what additional information they needed to approve the application." It held that such depositions cannot be taken because "extra-record evidence is not admissible in an action or proceeding challenging a quasi-legislative administrative decision and because the discovery permitted in this case would violate the deliberative process privilege...." (Id. at 163.) Concerning the exception described in *Western States*, it wrote at pages 168-169:

This exception applies to evidence the applicant or opponent had, but was unable to present to the agency for some reason despite the exercise of reasonable diligence. The District contends this exception applies because it asserts it was held to a standard it did not know existed. The commissioners required additional information, but did not tell the District what that information was. The District construes the commissioners' remarks that they needed more information to approve the Application as invocation of a secret law or unwritten rules that were not disclosed to the District.

The lower court's discovery order permits depositions limited to "all unprivileged information that the deponents had prior to June 16, 2006, ... and what additional information the Commissioner deponents needed to recommend adoption of the staff recommendation to approve the project." The information sought does not fall within the exception noted in *Western* States....

The first category of discovery does not disclose any purported secret law applied by SJ LAFCO. Rather, the District suggests SJ LAFCO relied on information not in the administrative record in making its decision. If so, its decision will not be supported "by substantial evidence in light of the whole record." [Citation.]

The second category of information asks what more is needed to change the commissioners' minds about the Application. Government Code section 56824.12 sets forth the necessary information for an Application, including information about costs and a plan for financing the establishment of the new class of services. Section 56824.12 does not set a threshold of information for approval; rather, SJ LAFCO is faced with a policy decision. The commissioners voting against the Application stated they found the information insufficient to carry the District's burden. A resolution stated the Application was denied for failure to satisfactorily demonstrate "administrative, technical, and financial capabilities[.]"

It is speculative that any additional information necessary to obtain approval existed, but, in the exercise of reasonable diligence, was unable to be presented to SJ LAFCO. While the District argues there is some secret category of information it did not know was needed, we read the commissioners' remarks as simply stating they were not persuaded by the District's proposal. The denial was on the merits. If the District had a stronger case to make, reasonable diligence required the District to make that case at the hearing.

The court went on to address the "procedural unfairness" and "agency misconduct" exceptions which the *Western States* court had left open as a possibility. It wrote at pages 169-171:

The District contends the exception for procedural unfairness applies because SJ LAFCO applied secret standards to the Application. As discussed above, the District has failed to show secret standards were applied to its Application. SJ LAFCO denied the proposal on its merits; permitting disappointed applicants to inquire as what further showing was necessary would result in unending cases and impede upon the separation of powers and the deference accorded quasi-legislative decisions. (*Western States, supra*, 9 Cal.4th at p.572....)

The District contends the exception for agency misconduct applies because the commissioners were influenced by their bias against the exercise of eminent domain. In moving to deny the request, Commissioner Giovanetti stated he was convinced it would be an eminent domain issue. Chairman Sieglock agreed with the comments about eminent domain. All of the commissioners voting to deny the Application, however, also stated they did not believe the District had provided sufficient information about the financial aspects of the proposal. Commissioner Giovanetti was concerned about relying solely on the District's information. Commissioner Mow found the documents supporting the financial analysis insufficient to substantiate the analysis. Chairman Sieglock found a lack of information to address the terms of Government Code section 56824.12 and Commissioner Nilssen found insufficient information on the total estimated costs.

Assuming that extra-record evidence would be admissible to show agency misconduct, the District has failed to make a sufficient showing. In *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 99 Cal.Rptr.2d 378, a company challenged approval of a landfill project. It sought discovery to show the approval was illicitly influenced by the project proponent. In particular, it sought to depose a man in prison about his illegal activities in regard to the landfill project. The trial court denied the discovery request and the appellate court affirmed. It found that since there was no personal knowledge of the alleged illicit acts, "the trial court could reasonably find that Cadiz failed to establish that the requested depositions were reasonably calculated to lead to admissible evidence of agency misconduct." (*Id.* at p. 123, 99 Cal.Rptr.2d 378.) The District has made a lesser showing of misconduct here. While the issue of eminent domain was mentioned, all of the commissioners voting against the Application cited a legitimate reason--the lack of information--as the reason for their vote. The District has not established any exception to the rule of *Western States*... that extra-record evidence is inadmissible.

Further, the court held that even if an exception applied, the deliberative process privilege would preclude the deposition. It explained at page 170:

> Under the deliberative process privilege, senior officials of all three branches of government enjoy a qualified, limited privilege not to disclose or to be examined concerning not only the mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated.

It then cited *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, explaining that:

> [A]pplicants who had been denied a permit for a planned unit shopping center development sought a writ of mandate. They sought to depose the two legislators as to the evidence they relied on in voting against the application, and they sought to obtain extrinsic evidence showing that the legislators had stated their opposition to the application prior to the public hearing on the application. After the trial court ordered the council members to answer, the city sought a writ of prohibition. In granting the writ, the Supreme Court explained that the applicants could not question the council members on the evidence they relied on or the reasoning they employed in voting against the application. (*Id.* at pp. 777-779....) The rule prohibiting inquiry into thought processes applies to local legislators such as SJ LAFCO.
>
> Prohibiting inquiry into thought processes of SJ LAFCO commissioners exercising quasi-legislative powers comports with the separation of powers. In an ordinary mandamus review of a legislative or quasi-legislative decision, courts decline to inquire into thought processes or motives, but evaluate the decision on its face because legislative discretion is not subject to judicial control and supervision. (Id. at 171.)

Although the present case does not involve depositions, the *San Joaquin* decision is helpful in showing the limits on extra-record evidence regarding even procedural unfairness—the main contention of petitioners here.

In their reply brief, petitioners contend that *Western States* is limited to traditional mandamus cases. In *Friends of the Old Trees* v. *Dept. of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, the court noted that judicial review normally is limited to the administrative record as to *both* quasi-judicial determinations by administrative mandamus and quasi-legislative decisions by traditional mandamus. (Id. at 1390.) Petitioners try to draw a distinction for cases subject to the independent judgment standard of review. Assuming that a procedural fairness claim would be governed by such standard, the rule is that:

> Whether the independent judgment test...or the substantial evidence test...applies, the trial court must consider properly admitted evidence contained within the

> administrative record....and may not consider papers appearing in the agency's file that were not introduced in evidence at the hearing. (C.E.B., Cal. Administrative Mandamus, *supra*, §6:156.)

In section 6.169, the authors add: "If the independent judgment test applies, the trial court, *having decided that augmentation of the record is appropriate*, may admit such evidence at the trial...and consider that evidence with the evidence in the administrative record."

With review in traditional and administrative mandate being subject to the same limitations as to the administrative record, it makes no sense to disregard *Western States* in this case. The *Western States* court indicated that besides compliance with Evidence Code, section 451 et seq., a party seeking judicial notice must show relevance to the claim being asserted. (9 Cal.4th at 573, fn.4.) In a substantial evidence case, that would be the information that is part of the record or information augmenting the record under section 1094.5. The commentators suggest that further information possibly should be admitted with defenses unlikely to fully appear in the record, such as procedural unfairness or collateral estoppel. But if the matter only would support an improper inquiry into commissioner's mental processes, it should not be deemed relevant and judicial notice should be denied.

Petitioners' reply to the opposition to judicial notice focuses on two cases—*McAllister* v. *California Coastal Commission* (2008) 169 Cal.App.4th 912, and *Clark* v. *City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170. In the C.E.B. treatise, California Administrative Mandamus, the authors cite *Clark* as a case that may contradict the general rule limiting mandamus review to the record—even in cases of claimed procedural unfairness. In *Clark*, citizens challenged a planning commission's approval of permits for a view-impairing duplex. The city council—including one of those citizens ("Benz")—then denied the permits on the ground the building's size would be excessive. The trial court granted the owners' writ petition and directed the city to reinstate the planning commission's approval. The appellate court found that the writ was proper (though it held that the trial court should have remanded the matter to the city council to provide the owners with a second, fair hearing). Its decision rested on the conflict of interest of Benz and the council's consideration of two issues after the close of the public hearing. The court wrote at page 1170, fn.17:

> In reviewing the propriety of the trial court's writ of administrative mandate, the City contends that we cannot consider any evidence that was not before the Council at

> the time of its decision, i.e., not part of the formal administrative record. In particular, the City objects to evidence concerning the approval of, and Mr. Benz's opposition to, the Clarks' 1989 permit application. Such an objection might be well taken if we were determining whether the Council's decision was supported by substantial evidence. (See *Housman v. Board of Medical Examiners (1948)* 84 Cal.App.2d 308, 313 [190 P.2d 653].) However, where the challenge involves one of procedural fairness, including the potential bias of a councilmember, we are not necessarily limited to the evidence that was before the Council. [Citing a prior version of the C.E.B. treatise and *Western States*]

In *Clark*, the evidence would have pertained to such unequivocal facts as that Benz was one of the citizens objecting to the owner's 1989 application and that the specific project before the council would have directly impacted the quality of his residence. It apparently did not concern what Benz was thinking. The court noted that where the vote of an interested member is necessary to pass an ordinance or bylaw, "such ordinance or bylaw is *void*...." (Id. at 1171.)

In *McAllister*, 169 Cal.App.4th 912, 923, the court simply took judicial notice of a land use plan and zoning ordinance under Evidence Code, section 452, subdivision (c). That would not pose the danger of circumventing rules limiting mandamus review to the record.

Turning to the specific requests for judicial notice, they are:

(1) ***ITEM 1 The FAQ Document— (Respondent's "Frequently Asked Questions Document)***:

The petition alleges in paragraphs 15-16: "The Coastal Act presumes that an appeal raises a substantial issue. [citing FAQ, Exh.A, p.3.] If it is determined that an appeal raises a substantial issue, then the appeal may proceed. Normally, it takes approximately 6-8 months to reach a final decision on the merits. If, however, the Respondent finds 'no substantial issue,' the decision of the local agency becomes final. [citing FAQ, Exh.A, p.3.][2]"

This is important background to the decision of the respondent at issue—where it found no "substantial issue." It pertains to the procedure actually used, and not an impermissible inquiry into commissioners' mental processes.

In *Harris* v. *Alcoholic Beverage Control Appeals Bd.* (1965) 62 Cal.2d 589, 595-596, the court wrote:

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[2] It is not as though staff is offering an interpretation different from the commissioners. Respondent's brief acknowledges that the Coastal Act presumes an appeal raises a substantial issue. (P.5:9.)

The Appeals Board requests that judicial notice be taken of a bulletin *from the director of the Department* to area administrators containing a schedule of penalties under which the standard penalty, in the absence of mitigating or aggravating circumstances, is suspension for a total of not more than 75 days for the same or similar offenses as the ones for which the Department ordered revocation of Belfiore's license. Judicial notice may be taken of public and private official acts of the executive department of the state. (Code Civ. Proc., § 1875, subd. 3; *Pearson v. State Social Welfare Board*, 54 Cal.2d 184, 210 [5 Cal.Rptr. 553, 353 P.2d 33].)

We do not agree with the Department's contention that the failure to make the bulletin a part of the administrative record precludes this court from taking judicial notice of it.

This document offers background information as to the procedure actually used by the Commission. This is relevant to petitioners' claims of procedural unfairness, not a question of whether substantial evidence supports the administrative decision. (see, generally, *Western States Petroleum Assn. V. Sup. Ct.* (1995) 9 Cal.4th 559, 573, fn.4, 578-579; *Clark* v. *City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170, fn.17; and C.E.B., California Administrative Mandamus (3rd ed.2009), §4.4. See also Ev. Code, §452, subd.(c), and *Harris* v. *Alcoholic Beverage Control Appeal Bd.* (1965) 62 Cal.2d 589, 595-596.)

Here, notice would not affect the weight of the evidence petitioners claim to be insufficient to support the decision, or raise a question regarding the wisdom of that decision. (see *Western States, supra*, at pp.578-579.)

This request is granted given it is part of respondent's own records and relevant to petitioners' procedural claims and reflects the agency's *own* interpretation of the steps required[9].

(2) ITEMS (2), (3), (4) Minutes of the MCPC dated July 23, 1979 adopting the Muir Beach Community Plan, minutes of the MCBD dated August 21,1979 , and the Plan itself—

In the petitioner's paragraph 58(m), the petitioners allege that: "The finding that the Muir Beach Community Plan is not part of the certified LCP is clearly erroneous as a matter of law as shown by the MBCP itself at p.79."

[9] This appears to be a situation where judicial notice will provide helpful background explanation that is not part of the administrative record, because it already was part of the agency's general records.

Petitioners ask for judicial notice of the MCPC minutes—normally judicially noticeable under Evidence Code, section 452, subd.(c). (See "notice of lodging of materials in connection with petitioners' second request for judicial notice" filed August 23, 2010, Exh.A.) The minutes reflect that the MCPC incorporated the staff report into the minutes of the meeting; the staff report recommended adoption of the plan "as a broad policy guide for use in the consideration of any future developments within the Muir Beach Community." They also ask for judicial notice of the MCBOS minutes of August 21, 1979 (notice of lodging, Exh.B, p.7, reflecting that no comment occurred on the proposed negative declaration and Muir Beach Community Plan.) The supervisors unanimously approved the plan "as a general policy document." Further, petitioners seek judicial notice of the plan, which they claim shows itself to be part of the LCP.

In their appeal to respondent (AR 6:6-7), petitioners cited the LCP and the Community Plan. They later argued that the Plan was incorporated into the LCP in 1980. (AR 6:16-17.) Also in the record, petitioners' APPEAL quoted the relevant part of the Plan (AR 1:66-67) which specifies concerns about "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." Page 79 of the LCP—which also is part of the administrative record (AR 1:69-70)—states that with two exceptions (not applicable here): "The Muir Beach LCP land use designations shall follow the Community Plan land use designations...." Respondent certified that LCP on April 1, 1980. (AR 1:69.) Thus, the important information from Exhibits A-C already was before respondent. Petitioners' request for judicial notice simply provides the entire documents, and historical support, as background.

The issue here is whether respondent erroneously interpreted the LCP *it had certified* to not incorporate the Muir Beach Community Plan. That is an issue of law where review of an entire document may be important. It does not pose the danger of impermissibly inquiring into commissioners' thought processes or providing new information that might produce a different conclusion as to the existence of a "substantial issue."

Respondent's opposition brief confuses the merit of this argument with whether the court may judicially notice the documents. Regardless of whether petitioners' position is correct, the documents may help the court to determine the issue.

These documents are appropriate for judicial notice even if they were not generated by respondent. (see Ev. Code, §452, subd.(c).) They offer background relevant to the legal question of whether respondent properly interpreted the LCP to not incorporate the Muir Beach Community Plan. (see 6 AR 6-7, 16-17; 1 AR 69-70.) Again, they do not pertain to a "substantial evidence" issue or pose a danger of improper inquiry into commissioners' thought processes.

Judicial notice of items 2, 3 and 4 is granted.

(3) ***ITEM 5 Video recordings of the MCPC hearing on 2/9/09 and MCBO hearing on 3/31/09 "for the limited purpose of verifying statements made by the Planning Commissioners and Supervisor Kinsey regarding the significance of the view in question"—***

The statements of four planning commissioners and Supervisor Kinsey already are in the administrative record. In their appeal to respondent, petitioners' May 2009 brief quoted the statements of the planning commissioners (AR 6:768); a letter brief repeated the quotes and offered a summary of Kinsey's statements. The videotapes were not part of the record, and respondent does not question petitioners' quotations so that the videotapes might be needed for confirmation.

This petition mainly concerns respondent's interpretation of the term, "no substantial issue" (*i.e.*, whether it can be found where a project admittedly impacts one public view but leaves "similar" views intact). The comments here would not pertain to that pure legal issue. They would pertain to the significance of the view being blocked—which really is a substantial evidence question. As to that question, what would be important is the information *given to respondent* to justify its decision of "no substantial issue." The videotapes are not of *respondent's* meetings and statements by the *respondent's members.* If petitioners believed the videotapes were necessary to make a point, they should have made them part of the record.

Petitioners apparently want to show that one commissioner (Secord) suggested that the commission would have to rely on "those who have seen it," and *those who had seen it* actually thought the view was spectacular. The opinions of one commissioner are irrelevant to show the reasoning of the commission as a whole. (See *State of California* v. *Sup. Ct.* (1974) 12 Cal.3d 237, 257-258 (objections should have been sustained where interrogatories sought to determine what material the commission read and relied upon in reaching its decision and to the

extent they sought to probe the "mental processes of the Commission") , and *San Joaquin Local Agency Formation Com'n* v. *Superior Court, supra,* 162 Cal.App.4th 159, 168-171.)

Petitioner offers these recordings to confirm comments pertaining to "the significance of the view in question." As mere confirmation, it is unclear how the recordings would be helpful; the commissioners' statements do not appear to be in dispute. Concerning the actual significance of the view, what is important is the information which was before respondent. The full version of the comments was not before respondent. (see *Western States, supra,* at 573, fn.4.) To the extent this might reflect on the thought process of one commissioner (see petitioner's memorandum supporting judicial notice, and 6 AR 926), it is irrelevant. (see, e.g., *State of California* v. *Sup. Ct.* (1974) 12 Cal.3d 237, 257-258, and *San Joaquin Local Agency Formation Com'n* v. *SuperiorCcourt* (2008) 162 Cal.App.4th 159, 168-171.) This request is denied.

(4) ***ITEM 6 STATUTES AND REGULATIONS***

The request for notice of California Code of Regulations, Title 14, sections 15301-15303, is granted. These sections may be relevant to explain the references to "class 1" and "class 2" in part of the administrative record. Due to the lack of opposition and for good cause appearing (see Ev. Code, §452, subd.(b)), petitioners' request for judicial notice of other statutes and regulations is granted.

(5) ***ITEM 7 Dictionary definition of the word "unique"***—

As respondent was quick to point out in its opposition, petitioners' request for judicial notice did not explain their reason for this request. In reply, petitioners contend that this would explain the comment of senior Deputy Director Charles Lester during the staff presentation to respondent. Lester said the view that would be obstructed is "unique" (AR 6:922), but added that staff struck that language because similar views exist in the area. Petitioners apparently want to use this definition to establish what one staff member must have meant in making one comment to respondent. To that extent, it would apply to the thought process of one individual. The definition thus would be irrelevant under rules explained in *State of California* v. *Sup. Ct., supra,* 12 cal.3d 237, 257-258, and, e.g., *San Joaquin Local Agency Formation Com'n* v. *Superior Court, supra,* 162 Cal.App.4th 159, 168-171.)

This request is denied.

II. MOTION TO DEEM FACTS ESTABLISHED, STRIKE UNVERIFIED ANSWER OF CROSBY AND AUGMENT THE ADMINISTRATIVE RECORD.

A. DEEM FACTS ESTABLISHED: This is a procedurally odd motion, where petitioners seek to have certain allegations of their pleading "deemed established" because respondent denied them on information and belief—and, they say, respondent clearly had the information and belief to respond.

Respondent contends that the allegations are not "material" to the writ, and thus it had the right to an information-and-belief denial. Further, it contends that the language of the paragraphs was so vague that the court cannot infer respondent's knowledge or figure what "facts" would be established.

Respondent's position arguably may be correct, but Petitioners cite no authority whatsoever for this "deemed established" motion. It has the character of a summary adjudication motion, without meeting procedural requirements for such a motion. If it was intended to be a sanction for what they consider to be sloppy pleading, they have not cited authority for such a sanction. The court has some inherent power to order non-monetary sanctions for a party's misconduct in "extreme situations" (See, e.g., *Del Junco* v. *Hugnagel* (2007) 150 Cal.App.4th 789, 799-800), but this would not even arguably constitute such a situation.

The motion does not meet procedural requirements of Code of Civil Procedure, section 437c. Even if petitioners are correct that respondent necessarily had the information to admit or deny these allegations, this would not be the type of "extreme situation" where the court might utilize its inherent powers to order sanctions. (see, e.g., *Del Junco* v. *Hugnagel* (2007) 150 Cal.App.4th 789, 799-800.)

Petitioners' motion to deem facts established is denied.

B. STRIKE UNVERIFIED ANSWER OF CROSBY.

The original answer of the real party in interest was unverified, prompting petitioners to request that the answer be stricken. (See Code Civ. Procedure, §446, subdivision (a)(when complaint is verified, answer must also be verified).) On September 17, 2010, Crosby filed an answer with a verification. Petitioners' reply memo does not argue that *this* answer should be stricken. They have effectively withdrawn this part of the motion. (See reply memo, p.8:15-16 (reiterating petitioners' request that the court deem facts admitted and augment record, but not

mentioning Crosby's answer).) To the extent petitioners requested an order striking the unverified answer of Timothy Crosby, the motion is moot. (see declaration of Rueben J. Becker in support of Crosby's opposition to petitioner's motion, exh.1.)

C. AUGMENT RECORD: As to petitioners' motion to augment the record, the court rules as follows:

1. *THE FAQ DOCUMENT:* The court has taken judicial notice of the document. This part of the motion is denied as moot.

2. *STATEMENTS ALLEGEDLY MADE BY PETER DOUGLAS TO PETITIONER KOHN:*

Petitioners contend that shortly before the hearing on the Crosby appeal, Douglas admitted to petitioner Richard Kohn that the reason for the staff recommendation of "no substantial issue" was manpower shortages and the need to prioritize. That is what they allege in paragraph 42 of the petition. In his declaration supporting petitioners' motion for a stay, Kohn stated:

> During the 3:30 break at the August 12, 2009 hearing, I approached Executive Director Peter M. Douglas and introduced myself. I asked him what steps the Commission had taken to correct an erroneous staff note in the original staff report concerning the accuracy of the photographs submitted by Petitioners. He asked me if I had seen the Addendum to the report, which I had not. **Mr. Douglas told me that the reason for the no substantial issue determination in this case was manpower shortages and the need to prioritize. About the same time, Senior Deputy Director Charles Lester handed me three copies of the pink covered Addendum and exhibits.** [Emphasis added.]

Clearly petitioners are offering this information to show what they consider to be the *real* reason for respondent's determination. As such, it is irrelevant—and section 1094.5 only provides for the consideration of *relevant* evidence that could not be produced at the hearing. Petitioners fail to recognize the considerable case law prohibiting inquiry into an agency's thought processes. (see, e.g., *State of California* v. *Sup. Ct., supra*, 12 Cal.3d 237, 257-258, and *San Joaquin Local Agency Formation Com'n* v. *Superior Court, supra*, 162 Cal.App.4th 159, 169-171.) Here, the statements were not even by a commissioner but a staff member. In any event, the court cannot assume that the entire commission shared the reason attributed to staff. Since it would not be appropriate for the court to consider the Kohn declaration, this part of the motion is denied.

3. VIDEO RECORDING OF THE AUGUST 12, 2009 HEARING:

Respondent argues that this DVD is not needed in the proceeding, because the time of the distribution already is apparent from the record. They point to AR 6:920-921, where deputy director Lester stated: "I believe the addendum was finished sometime yesterday afternoon. And, ordinarily, we attempt to transmit addendums to interested parties as soon as they are completed. That may not have been accomplished here—obviously, it wasn't in the one case. But, it was done sometime yesterday afternoon. [¶] I did hand it, as appellant indicated, a few hours ago, or an hour ago, to them."

The transcript shows the time of 4 p.m. Lester made his comment 15 pages into the transcript, so possibly "an hour ago" meant 3:30 p.m. But he said "a few hours ago, or an hour ago...." Based on the comment, it appears that the addendum also could have been distributed at 1 or 1:30 p.m., which could make a substantive difference. Petitioners raise an issue as to whether the late distribution of the addendum deprived the public of notice. If they had the addendum as early as 1 or 1:30 p.m., they might have had adequate time for review before the hearing. So, it seems that the DVD cannot be deemed unnecessary. Obviously the DVD could not have been produced at the time of the hearing (and would not have been needed at the hearing, since the commissioners obviously knew what time the addendum was distributed). (Code of Civ. Procedure §1094.5, subd.(e).) This goes to an issue of procedural fairness, without posing the danger of intruding into the commissioners' thought processes. Respondent's argument that a 3:30 p.m. distribution could not violate due process misses the point. The DVD confirms petitioner's factual allegation to allow the court's determination, if necessary, as to whether a due process violation occurred. (see Petition, ¶43.) The evidence does not pose a danger of intruding into Commissioners' thought processes.

This part of the motion is granted.

III. HEARING ON THE WRIT PETITION.

A. THE "NO SUBSTANTIAL ISSUE" DETERMINATION.

Paragraph 2 of the petition sets forth in pertinent part:

> The purpose of [the Commission's August, 12, 2009] hearing was to determine the preliminary question of whether the appeal presented a 'substantial issue' according to criteria prescribed by the Respondent. Instead, in violation of its own

> procedures, the Respondent turned the inquiry into a summary adjudication of the merits....

Public Resources Code, section 30625, subdivision (b)(2), provides that respondent "*shall* hear an appeal" on the merits unless it determines that "no substantial issue" exists.

Thus, petitioners do not ask the court to compel the commission to vote any particular way; for now, they simply want the court to order that the commission give Crosby's development application a *de novo* review.

Within 49 days after an appeal is filed, respondent's executive director must make a recommendation to respondent as to whether an appeal presents a "substantial issue." (Public Resources Code, §30621, subd.(a).) Petitioners concede that respondent's standards for determining a "substantial issue" are accurately set forth in Lester's August 12, 2009 memorandum to commissioners:

> The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commissioner 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 determination [that the development is consistent or inconsistent with the LCP]; 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 determinations of its LCP; and, whether the appeal raises only local issues, or those of regional or statewide significance.
>
> (Pet., ¶14, and staff recommendation, petition Exh.C, p.2, fn.1; AR 709-710. See also *Hines* v. *California Coastal Com.* (2010) 186 Cal.App.4th 849 (decision of First District, Division Two, reiterating list of considerations).)

As stated in respondent's FAQ document, the Coastal Act presumes the existence of a substantial issue. The determination of no substantial issue has a great impact on the degree of scrutiny by respondent. If respondent finds "no substantial issue," the local agency's decision becomes final; this takes about 2-3 months. If respondent wants to hear a discussion on the substantial issue question, the appellant and applicant each will have three minutes to present his or her case. If it finds a substantial issue, the appeal normally takes 6-8 months to reach a decision on the merits. In the de novo phase of the hearing, the appellant usually would be

allowed 15 minutes for comments. (FAQ, request for judicial notice item (1), and petition, Exh.A, p.25.)

Petitioners urge that the "no substantial issue" determination was arbitrary and capricious. (Pet., ¶55(b)(1st C/A).

In *Alberstone* v. *California Coastal Com'n* (2008) 169 Cal.App.4th 859, the court wrote at page 862:

> [T]he trial court presumes that the agency's decision is supported by substantial evidence, and the party challenging that decision bears the burden of demonstrating the contrary....In reviewing the agency's decision, the court examines the whole record and considers all relevant evidence, including that evidence which detracts from its decision...."Although this task involves some weighing to fairly estimate the worth of the evidence, that limited weighing does not constitute independent review where the court substitutes its own findings and inferences for that of the Commission. Rather, it is for the Commission to weigh the preponderance of conflicting evidence, as [the court] may reverse its decision only if, based on the evidence before it, a reasonable person could not have reached the conclusion reached by it." [Citations.]

With that degree of deference in mind, the court noted that Public Resources Code, section 30625, subdivision (b), requires the Commission to hear an appeal from a local agency decision *unless* it finds no substantial issue was raised. The court continued at pages 863-864:

> It must first be noted that the question here is not whether appellants' appeal raises *any* issue but whether it raises *a substantial one*. A substantial issue is defined as one that presents a "significant question" as to conformity with the certified local coastal program. (Cal.Code of Regs., tit. 14, § 13115.) We review the Commission's determination of whether a substantial issue has been raised for abuse of discretion; we grant broad deference to the Commission's interpretation of the LCP since it is well established that great weight must be given to the administrative construction of those charged with the enforcement and interpretation of a statute. [Citations omitted.] We will not depart from the Commission's interpretation unless it is clearly erroneous.

(See also *Hines* v. *California Coastal Comm., supra*, 186 Cal.App.4th 830, 849 (quoting *Alberstone* (which it mis-cites as "Albertson") in agreeing with the commission that appellants had not raised a substantial issue that required it to engage in de novo review of a development application).)

Review of issues of legal interpretation also requires some deference to the commission, though not as much as the factual issues. In *Reddell* v. *California Coastal Com.* (2009) 180 Cal.App.4th 956, 965, the court wrote:

> We generally defer to an agency's interpretation where the agency " 'possess[es] special familiarity with satellite legal and regulatory issues'...." (*Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281, 1289....Therefore, while we exercise our independent judgment in reviewing the Commission's interpretation of the Coastal Act and LCP policies, we exercise that judgment " ' "... '... giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action.' [Citation.]" ' " (*Ibid.*)
>
> "Absent a compelling reason to do otherwise, we strive to construe each statute in accordance with its plain language." [Citation.]

In evaluating the writ on this ground, the "substantial issue" determination does not compel any particular decision on the merits; it merely subjects the appeal to a de novo hearing. Yet, the "substantial issue" determination itself requires some evaluation of the merits, in that one criterion is "the degree of factual and legal support for the local government's determination." This criterion calls for at least some preliminary evaluation of the merits—in this case, whether the visual impacts of the project are not significant. The statute does not have set procedures for the determination—such as with preliminary injunction or attachment motions, where the court determines "probable" validity. However, it seems that an intensive review of the merits would have a putting-the-cart-before-the-horse effect. Perhaps it is more important to look at whether the local agency applied correct standards.

That also would pertain to the factors of "the precedential value of the local government's decision for future determinations of its LCP," and "whether the appeal raises only local issues, or those of regional or statewide significance."

In recommending a finding of "no substantial issue," staff's report first stated:

> A drainage easement and pathway with wooden stairs set into the hillside runs downhill through trees on the western edge of the property and provides intermittent coastal views to Muir Beach (Exhibit 3). It 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 and merely connects a narrow side-street (Ahab Drive) with a narrow private street (Sunset Way), both of which are cul-de-sacs.

> Appellants...claim that the approval is inconsistent with the certified LCP (Unit 1) requirements on protection of visual resources, and with the Muir Beach Community Plan concerning small-scale community character....

The report added:

> [T]he approved project raises no substantial issue of conformity with the LCP in regards to visual resources because there are no significant visual resources obstructed by the County approval....Second, the Muir Beach Community Plan is not a legal standard of review because it is not part of the LCP and is primarily a descriptive document without specific land use policies. (AR 5:710.)

Staff noted that as to the "visual resources" policies in the LCP, certified zoning section 22.56.130(O) provides in part: "...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 spaces*." (AR 5:710-711.) In deeming the views to lack significance, the report continued:

> The view that would be impacted by the development is not significant, nor is it unique. This part of the street and pathway is relatively isolated, and *very similar views can be seen nearby in areas that are more frequently used by the public, such as the official Muir Beach access stairway on Pacific Way to the south and the Muir Beach Overlook on Highway 1 to the north. Further, the view from this particular location is intermittent at best, and the scale of the additions is modest. Moreover, no significant view from either the street or pathway would be completely obstructed.* The County's approval noted that the additions would have minor visual impacts along Ahab Drive and that the pathway with wooden stairs maintained by MBCSD but determined that these minor visual impacts are not significant *in relation to the overall panoramic views available to the public from the street and trail.* In addition, the height would comply with the LCP 25-foot height limit and the size of the dwelling would be typical of a moderate to large residence in the Muir Beach community....
>
> Therefore, the Commission finds that no significant LCP-protected public views would be obstructed by the approved development in contravention of zoning section 22.56.130(O).
>
> Overall, the County has provided factual and legal support for its decision...As summarized above, the extent and scope of the approved development is modest, does not raise significant concerns with respect to compatibility with the

surrounding built environment, and would not completely obstruct significant views from either the street or the pathway with wooden stairs maintained by MBCSD.

No adverse precedent will be set for future interpretations of the LCP. Finally, the appeal does not raise issues of regional or statewide significance. (AR 5:711.)

Footnote 2 was a "staff note" providing:

The photographs included with the appellants submittal (Exhibit 2), show the story poles before the latest revisions to the design which lowered the western roof height.

The MCBOS' determination (resolution No.2009-26 at AR 5:715) states:

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 addition 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 Seascape Subdivision, and not considered to be a substantial view impact to public views." (AR 5:722.)

In responding to the staff recommendation for the August 12, 2009 meeting, petitioners made various comments including that: 1) footnote 2 in the staff recommendation was erroneous, in that appellants' photographs *did* reflect the latest design revisions; 2) it doesn't matter whether the view is *completely* obstructed, only if it is significantly obstructed; 3) no adjacent views would match the view, and the emphasis on overall views would set terrible precedent in that Marin County has many spectacular ocean views; 4) the Planning Commission erroneously concluded that only views from designated public places like overlooks are protected; 5) this public easement has been in use for about 40 years; 6) the "modest" designation conflicts with statements of the deputy county counsel at the BOS hearing that the completed structure would be larger than 88% of surrounding structures;

7) respondent's staff report does not address the "fleeting moment" or "designated viewing platform" theories, which may continue to be applied by local government without commission clarification; and 8) staff's photos do not accurately reflect the view from Ahab Drive and the top of the trail. Respondent's stamp shows that it received the document on August 3, 2009.

Around 3:30 p.m. on August 12, 2009 (according to the record as augmented), staff circulated an addendum which: 1) deleted footnote 2, acknowledging that it was in error; 2) replaced page 3 of the staff report with one altering the wording of regarding impacts on views; and 3) added a legal analysis as to interpretation of the LCP. Staff altered page 3, among other ways, to read:

> The LCP...requires that approved development not obstruct significant views as seen from public viewing places and that it be compatible with the character of the surrounding environment. With regard to the obstruction of significant views, significant views shall not be obstructed from all public viewing places, regardless if the viewing area is a signed or designated viewing area.
>
> In addition to staff's review of the local record, staff visited and photographed the site. The view that would be impacted by the approved addition to the existing single family residence ~~development~~ is not significant~~, nor is it unique~~. (See staff slide presentation and photos attached to the staff report and its addendum.) This part of the street and pathway is relatively isolated, and very similar views can be seen nearby in areas that are more frequently used by the public, such as the official Muir Beach access stairway on Pacific Way to the south and the Muir Beach Overlook on Highway 1 to the north. ~~Further, the view from this particular location is intermittent at best, and the scale of the additions is modest.~~ Moreover, no significant view from either the street or pathway would be completely obstructed. The County's approval noted that the additions would have minor visual impacts along Ahab Drive and that the pathway with wooden stairs maintained by MBCSD but determined that these minor visual impacts are not significant *in relation to the overall panoramic views available to the public from the street and trail.* In addition, as proposed by the applicant, some of the landscaping that currently blocks the view from the pathway and the road will be removed. Regarding the approved addition's compatibility with the surrounding environment, the height of the approved addition would comply with the LCP 25-foot height limit and the size of the dwelling would be typical of a moderate to large residence in the Muir Beach community....
>
> Therefore, the Commission finds that (1)the approved addition is compatible with the character of the surrounding environment; and (2) no significant LCP-protected

public views would be obstructed by the approved development in contravention of zoning section 22.56.130(O).

Overall, the County has provided factual and legal support for its decision...As summarized above, the extent and scope of the approved development ~~is modest,~~ does not raise significant concerns with respect to compatibility with the surrounding built environment, and would not completely obstruct significant views from either the street or the pathway with wooden stairs maintained by MBCSD.

No adverse precedent will be set for future interpretations of the LCP. Finally, the appeal does not raise issues of regional or statewide significance. (AR 5:711.)

Looking at each of respondent's factors individually:

a) ***The degree of factual and legal support for the local government's determination***— One of the interesting aspects of respondent's decision is that it finds the local government's determination to have factual and legal support, but then disagrees with some aspects of it.

One ground for petitioner's appeal of the MCPC decision was that: "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." (See AR 5:717.) The MCBOS' Resolution No.2009-26 did not specifically address that finding, but it did sustain the commission's approval of the Crosby permit with conditions. As noted, respondent later adopted the staff-recommended language: "With regard to the obstruction of significant views, significant views shall not be obstructed from all public viewing places, *regardless if the viewing area is a signed or designated viewing area.*"

When faced with petitioner's comments that the scale of the addition was not "modest," the staff addendums simply omitted that language—without adding anything further to support the decision. Respondent adopted the staff's final version.

Respondent's adopted findings repeated staff's original language that the addition would not "completely obstruct" significant views from the street or pathway, which is not the defining standard; according to zoning regulations, structures must be designed and sited "so as not to obstruct significant views...." (AR 5:933.) In an attempt to reconcile its findings with the

language of the county's zoning regulations, respondent then offered its interpretation of the regulations as:

> With regard to the obstruction of significant views, significant views shall not be obstructed from all public viewing places, regardless if the viewing area is a signed or designated viewing area.

Again, this clarified that "public viewing places" need not be a "signed or designated viewing area," which is consistent with petitioners' position. However, it also interpreted local zoning regulations to mean that it was okay to obstruct significant views, as long as it was not from "*all* public viewing places." Here, the interpretation of respondent or the BOS does not seem reasonable. They simply added the word "all," without pointing to any language in the resolution which would support its addition. The regulation is plain and clear where it states that structures are to be designed and sited "so as not to obstruct *significant views*...." (See Code Civ. Procedure, section 1858 (In construing a statute or instrument, "the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted....").)

As stated in *Reddell, supra*, the court exercises its independent judgment in reviewing legal issues, but gives some deference to the agency's expertise. Nothing about adding the word "all" seems to pertain to the particular expertise of the agency.

Respondent's findings then cite the staff's own slide presentation and photos attached to the staff report and addendum to show the view was not significant. It is difficult to see how a reasonable person could view the slides and photos and find that the view was *not* significant in itself. (See, in particular, AR 6:895-898.) The Board of Supervisors found the view not "significant" only because "the effects are relatively small in relationship to the overall panoramic views available to the public from the street and the trail." (AR 1:187.) Thus, the strength of the local government determination largely depends on whether the county was correct in looking to the existence of equivalent or superior views in the area.

As noted, the MCBOS resolution stated in part:

> The public vantage points are from public rights-of-way where people are typically in motion to reach a destination, and consequently the proposed addition 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 Seascape Subdivision, and not considered to be a substantial view impact to public views." (AR 1:187-188.)

Respondent's staff report did not specifically address this "transitory" theory. But it appears that it did not find it persuasive, since it deleted the language in the original report: "[T]he view from this particular location is intermittent at best." (AR 6:748.)

The staff addendum did retain the earlier language: "The County's approval noted that the additions would have minor visual impacts along Ahab Drive and that the pathway with wooden stairs maintained by MBCSD but determined that these minor visual impacts are not significant *in relation to the overall panoramic views available to the public from the street and trail.*" The problem with that statement is that respondent cites nothing in the record showing that the BOS actually was presented with "overall panoramic views," and none of the pictures indicate "overall panoramic views." The photos seem to be of the particular area in question. If the local government decision depended on equivalent "panoramic views," logically respondent could not find lack of a "substantial issue" based on the "degree of factual and legal support for the local government's determination"—unless it had some confirmation of those equivalent "panoramic views." Petitioners' argument to respondent on appeal included the following statement:

> The view of Muir Beach Cove, Big Beach and Pacific Ocean from Ahab Drive and the top of the public easement is one in a million. As you go down the public easement towards the beach there is a steep grade. The view from the top is not visible as you descend the steps. Even if there were any credence to the "fleeting moment" theory, this particular viewshed cannot be recaptured as you move further along to your destination. There is no other view like it from Ahab Drive. It cannot even be seen from the Marin Overlook.

No evidence has been cited that actually contradicts that statement. The staff did provide photos from the Muir Beach Community Center. (AR 6:899-900.) But the view is far less spectacular than from the point at issue as it does not seem nearly as panoramic. (Compare 6:895-8:898.) The MCBOS' theory seems reasonable if the same area did have equivalent views; e.g., if one part of a house interrupted a view extending a couple hundred yards of a street or trail. But here, it seems that the view which would be lost could not be caught by moving a short distance. Yet, that seems to be the theory. If the theory actually is

that a view is not significant when it is repeated in other areas of the coast, that would not appear to be consistent with the LCP or the Coastal Act. There most always would be an equivalent or superior view somewhere.

This is not to suggest that respondent could not ultimately reach a conclusion that the view was not significant—perhaps with more photos or a site visit. Rather, the support for the MCBOS' decision does not seem so clear as to allow a finding of "no substantial issue."

Also, the decision would condition the approval on some removal of vegetation to re-open the view. Respondent cites no part of the record indicating what would happen to the view if vegetation were removed. The positive effect respondent cites seems founded on speculation and some photos from the applicant that seem rather ambiguous. (See AR 6:856-859.) The adopted findings themselves merely state, "*some* of the landscaping that currently blocks the view from the pathway and the road will be removed." (AR 6:933.)

This case presents two other legal issues where the court may afford respondent's determination a lesser degree of deference. One is whether the LCP incorporates the Muir Beach Community Plan. The other is whether respondent properly interpreted LCP Policy 21 to apply only to views from Highway 1 or the Panoramic Highway.

As to incorporation of the Muir Beach Community Plan (hereinafter "MBCP"), the court finds that respondent's finding on this point was "clearly erroneous." (*Hines, supra*, 186 Cal.App.4th 830, 849.) Respondent's brief cites the following paragraph of the LCP:

> This Section contains the land use/zoning proposals for Unit I and represents the basic element of the LCP. These proposals are based upon the County-wide Plan (1973), *as supplemented by the three Community Plans adopted since 1975.* Many of the LCP policies have been referenced to the appropriate sections of the Countywide and Community Plans to provide policy background material. The proposals contained herein *use, for the most part, the land use policies of these Community Plans*; therefore, the Community Plans are used as *descriptive base references* in describing the LCP policies. It should be clear, however, that based upon Coastal Act requirements, selected modifications to the land use policies and designations in the Community Plans are being proposed by the LCP. *Where plans and policies of the local coastal program conflict with policies of local plans, the policies of the LCP shall govern.* Maps showing the LCP land use designations are on file with the Marin County Planning Department.

Respondent emphasizes the MBCP's description of community plans as "descriptive base references," in arguing that the MBCP was *not* "incorporated" into the LCP. However, the only reasonable interpretation is that the MBCP *was* incorporated. Respondent completely ignores the language: "These proposals are based upon the County-wide Plan (1973), as supplemented by the three Community Plans adopted since 1975...." As shown by petitioner's request for judicial notice, the MBCP was adopted on August 21, 1979, the same time the BOS approved the LCP. Also, if the MBCP was not incorporated, it would not have been necessary to state that LCP policies control over community plans where the two conflict. Respondent's brief then tries to avoid the paragraph stating that Muir Beach land use designations "shall *follow* the Community Plan land use designations," with two specific modifications. (AR 5:575.) With no authority for the contention, it suggests that the LCP could not have incorporated the MBCP without such language as "*incorporated*" or "adopted." *Clearly* the intent of the LCP was to make the MBCP part of the LCP except where the two conflicted. The same applies to the paragraph of the LCP stating, "The proposed Muir Beach Land Use Plan *follows* the adopted Community Plan." (AR 564.) Respondent urges that the court should defer to its judgment that the MBCP was not part of the LCP, since it was the entity approving the LCP. The court need not defer to decisions which are clearly erroneous, which seems to be the case with respondent's determination about the MBCP.

Respondent's adopted findings stated that even if the MBCP was part of the LCP, respondent's decision was consistent with the part of the MBCP emphasized by petitioners:

> We are concerned with the often destructive effect 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....

Respondent does not explain that conclusion. As the court sees it, the problem with this finding is that petitioners asked the BOS to consider the MBCP (AR 1:64-65), but the BOS resolution never mentions it. This makes the issue presented on this appeal more "substantial."

The next issue is whether respondent erred in concluding that LCP Policy 21 protects only views from Highway 1 and the Panoramic Highway. Policy 21 states: "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." (AR

5:661.) Respondent interprets the latter phrase, "from Highway 1 or the Panoramic Highway," to apply to the phrases "existing view of the ocean" or "Bolinas Lagoon" as well as "Highway 1 or Panoramic Highway." In other words, it views the "maximum extent feasible" limitation to apply only to existing views from Highway 1 or the Panoramic Highway. Such construction is erroneous. Despite the use of a comma between "Lagoon" and "or," respondent argues that this is the only way to interpret zoning code section 22.56.130(O)(2) consistent with Policy 21. Section 22.56.130(O)(2) states: "To the maximum extent feasible, new development shall be designed and sited as to not impair or obstruct existing coastal views from Highway 1 or the Panoramic Highway." (AR 5:661.) This makes it sound as though the zoning code's view-impairment restrictions were limited to views from Highway 1 or the Panoramic Highway. This quote is misleading. The very next provision is section 22.56.130(O)(3), which states: "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.*" Thus, while the ordinance gives additional protection to views from Highway 1 or the Panoramic Highway, it clearly is intended to address "significant views as seen from *public viewing places*," not limited to highway views. (See AR 5:661.) So, Policy 21 need not be interpreted to avoid a conflict with zoning regulations. The LCP itself provides: "The primary concern of the Coastal Act is to protect views to scenic resources from public roads, beaches, *trails, and vista points.*" (AR 6:552.) Respondent then argues that interpretation of Policy 21 to limit "existing views of the ocean [and] Bolinas Lagoon," even if not from Highway 1 or the Panoramic Highway, would "severely limit, if not entirely halt, all development in the County's Coastal Zone." All Policy 21 says is that development shall not impair or obstruct existing views to the "maximum extent *feasible*." That does not call for an effective halt on development. Stretching further, respondent's brief argues that its interpretation is consistent with Public Resources Code, section 30251, which provides 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 maximize 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...shall be subordinate to the character of its setting.

This does not reference anything about limiting view protection to highways. Respondent goes on to argue that respondent did consider the scenic qualities of Muir beach and "appropriately concluded that the County's action adequately protected those resources." (See opposition memorandum, p.13:3-5.) That sounds more like a determination of the merits of the local agency's decision, not a determination of whether a "substantial issue" arises. In any event, section 30251 does not support respondent's interpretation of the statute.

Respondent's adopted findings state that the appellant incorrectly identified LCP Policy 21 as an additional LCP standard. They add that Policy 21 "has been interpreted by both the County and the Commission to regulate impacts to views from Highway 1 or Panoramic Highway," rather than all existing views of the ocean in general. (AR 6:935.) However, the court cannot find such an interpretation of LCP Policy 21 within either the Planning Commission or BOS' findings. Further, the findings state: "Requiring that all development not impair ocean views would significantly restrict all development seaward of Highway 1...." Again, respondent has not considered the words, "to the maximum extent feasible." Moreover, if the local agency did not actually apply Policy 21 in this manner, respondent's own interpretation cannot add to the "degree of factual and legal support for the local government's decision...." (*Hines, supra*, 186 Cal.App.4th at 849.)

Finally, the BOS resolution deemed the "transitory and short-term visual effect" to be "acceptable within the residential community of the Seascape Subdivision," without any further discussion of that subdivision or which members thereof found it acceptable. Nothing in the record verifies that the subject property is even within that subdivision. At the court hearing on January 21, 2011, Mr. Saltzman stated the subject property was within the Seascape Subdivision and Mr. Kohn corrected his statement, noting that the subject property was never in the Seascape Subdivision, that the properties on Ahab Drive, where the subject property is located, were not part of Seascape Subdivision.

The court does not find substantial evidence supports respondent's decision that the County provided factual and legal support for its decision. (AR 6:934.)

As to the other factors listed:

1) *Extent and scope of the development*—Respondent's final findings eliminate the earlier language about the project being "modest."

2) *Significance of coastal resources affected by the decision*—Respondent concluded that the affected resources were not "significant" because of the way it interpreted the LCP. As noted, the court finds that respondent's interpretation was "clearly erroneous."

3) *Precedential value of the local government's decision*"—The local decision, left intact, may be read to mean that the LCP only regulates views from signed or designated viewing areas. Not even respondent argues that such interpretation is correct. Also, it would leave the "fleeting" view theory intact, without further review, despite its potentially great impact on Marin County coast development issues. (AR 5:187.)

4) *Whether the appeal raises only local issues, or those of regional or statewide significance*—The "fleeting" view theory is one that might be argued up and down the coast.

These other factors all support the finding of a substantial issue.

At the same time, the court is not persuaded by petitioners' citation to *LT-WR, LLC* v. *California Coastal Commission* (2007) 152 Cal.App.4th 770. The court did define the issue as "*individual* significant adverse impacts on visual resources from public areas." (Id. at 797.) But the court was not addressing a situation such as the one here, where the local agency has discounted "micro" views or found a view not to be significant in light of other panoramic views. The question was not whether an issue was "substantial," but whether the commission abused its discretion in denying plaintiff's application for a coastal development permit. Plaintiff LT-WR contended that Commission did not have adequate photos to show the property was visible from surrounding trails or properties. The court deferred to the commission's determination and said the photos reasonably supported an inference that the development would significantly impact visual resources from public viewing areas. The context here is completely different; petitioners challenge a determination of *no* significant impact, on a preliminary "substantial issue" question. Further, respondent's finding of impairment with a mobile home/caretaker's residence project—*regarding grading in the ridgeline*—would not compel a finding of impairment with a home addition obstructing the view. These are entirely different matters. If anything, the case shows deference to respondent's expertise.

In *Alberstone* v. *California Coastal Com'n* (2008), *supra*, the court actually addressed the issue of whether an appeal raised a substantial issue. The court upheld the commission's

finding that a substantial issue was *not* raised. The city council had approved an application to allow construction of a beachfront home next to their property. Respondent found that appellants objecting to the project had not raised a "substantial issue," and the trial court denied their petition for a writ. Affirming, the appellate court pointed to respondent staff's "unique position" of "knowing the LCP policy," since it wrote the policies. (Id. at 865.) It also found other policies consistent, and respondent's interpretation to be reasonable. (Id. at 866.) Appellants' second argument—that the merged lot did not meet lot size requirements in the LCP—also failed to raise a substantial issue, because "there was a clear benefit to reducing the total number of parcels." (Id.) So, the court apparently viewed the argument as hyper-technical—which would be a reason for finding no substantial issue to be raised.

In *Hines, supra*, appellants contended that an LCP policy and case law "absolutely prohibit the development of [a] single-family home and garage within 100 feet of the riparian area." (Id. at 845.) The court conducted its own review of the relevant parts of the plan. The court wrote at page 850:

> Appellants fail to cite to any part of the record indicating the Coastal Commission staff recommendation or the Commission approval was based on the erroneous conclusion that the project was "dependent on riparian resources." Rather, the record is clear that the recommendation was based upon the application of the exception set forth in attachment "M" and the criteria used by the Coastal Commission in determining whether an appeal presents a "substantial issue." (Id. at 850.)

Further, the court noted:

> The county's decision on the Star property was not precedential, as evidenced by the Board's determination that a taking would result on the Star property if a buffer were not reduced and its prior determination that a taking would not result on the adjacent larger parcel if the 100-foot buffer were maintained as to that parcel. The issue is purely local, involving a single property and does not raise regional or statewide concerns. Because attachment "M" requires careful consideration of a wide variety of site-specific factors before the Board may determine that a buffer of less than 100 feet is adequate to protect riparian resources, the appeal did not raise precedential concerns that could threaten riparian resources elsewhere in the county. (Id. at 850-851.)

Here, in contrast, the "fleeting" view theory could be argued in any number of development applications. Respondent's determination leaves intact a Planning Commission interpretation which it considered erroneous. Finally, it offers interpretations of the LCP which the court finds clearly erroneous—including a controversial one which was not part of the Board of Supervisors or Planning Commission decision.

The Coastal Act presumes the existence of a substantial issue. (see Public Resources Code, §30625, subd.(b), and Cal. Code Regs. Title 14, §13115.) Although the determination of a "substantial issue" affects only the *right* of appeal (rather than compelling any decision on the merits), this determination itself requires some preliminary evaluation of the merits—in that one traditional consideration is "the degree of factual and legal support for the local government's determination." (see AR 6:932, and *Hines, supra*, 186 Cal.App.4th 849.) Significantly, respondent found the local agency's determination to have factual and legal support, but apparently disagreed with aspects of that determination.

One ground for appeal of the planning commission determination was that such commission had improperly construed zoning regulations to protect coastal views from development "only when viewed from 'public viewing areas'...," meaning "signed vista points, platforms, or overlooks...." (AR 5:717.) The board of supervisors found that the bases for appeal could not be sustained and that the planning commission "acted appropriately...." (AR 5:721.) However, respondent adopted staff-recommended language clarifying that: "with regard to the obstruction of significant views, significant views shall not be obstructed from all public viewing places, *regardless if the viewing area is a signed or designated viewing area.*" (AR 5:748, 6:933.) Further, the board of supervisors found that "view impacts would be fleeting and soon disappear as a person moves further along the public way to reach their destination," i.e., they would have a "transitory and short-term visual effect...." (AR 5:721.) The Addendum of respondent's staff raised a question about this "transitory" theory, by deleting the originally recommended finding: "[t]he view from this particular location is intermittent at best." (AR 5:748.) The Addendum also corrected a prior mis-statement and deleted two references to the proposed addition as "modest," without setting forth any compensating factors to support the local decision. (AR 5:747-749.) Respondent adopted the recommended language. (AR 6:933-6:934.) Respondent's adopted findings use the term "completely obstructed," which is not the defining standard. (AR 6:933.) Moreover, in determining that the board of supervisors'

decision had legal and factual support, respondent interpreted certified zoning section 22.56.130(o)(3) to mean: "with regard to the obstruction of significant views, significant views shall not be obstructed from all public viewing places...." (id.) The word "*all*" does not appear in the regulation, and respondent cites nothing to support adding that word to a plain and clear statement that "structures shall be...sited so as not to obstruct significant views as seen from *public viewing places.*" (see Code Civ. Procedure, §1858.) Respondent's adopted findings cite its staff's slide presentation and photos. (AR 6:933.) No reasonable person could find that the view *the view shown in the photos*"—i.e., the photos in the record before the commission—"is not 'significant' in itself." (see, e.g., AR 6:895-896.)

Thus, the strength of the local government determination largely depends on whether the county was correct in looking to the existence of equivalent or superior views in the area. It is possible that in some cases, the impact on a view would be so minimal as compared to remaining surrounding views that it could be deemed not "significant." However, based on the record, a reasonable person could not find that to be the case. The parts of the record cited by respondent do not show essentially the same view. (see, e.g., AR 6:899-900.) Also, it does not appear from the record that landscaping conditions would restore essentially the same view. (AR 6:1073-1075.) Respondent's adopted findings merely conclude that "*some* of the landscaping that currently blocks the view from the pathway and the road will be removed." (AR 6:933.)

Respondent's determination also is based on two interpretations of the LCP which the court finds to be clearly erroneous. With no authority for the contention, respondent suggests that the LCP could not have incorporated the Muir Beach Community Plan without such specific language as "incorporated." The only reasonable construction of the LCP is that it made the Muir Beach Community Plan a part of the LCP, regardless of whether it used the term "incorporated." (see AR 5:564, 5:576.) It expressly provided for situations where the two documents might conflict. (AR 5:575.) Further, LCP Policy 21 cannot reasonably be read to protect only views from Highway 1 and the Panoramic Highway. Respondent's view is inconsistent not only with the sentence construction but with other parts of the LCP and Public Resources Code, section 30251. Its construction of LCP Policy 21 also is not necessary to avoid conflict with county zoning regulations. Zoning section 22.66.130(o)(2) must be read together with section 22.56.130(o)(3), which protects "significant views as seen from public

viewing places"—not limited to the two highways. (see AR 5:661. See also AR 5:552, 5:497 (citing policies of the Coastal Act and its concern with protecting views "from public roads, beaches, trails, and vista points).) Nor is respondent's construction necessary to avoid a halt to all development along the coast. LCP Policy 21 restricts the impairment or obstruction of existing views by new development to the "maximum extent *feasible*." Respondent's adopted findings state that the appellant incorrectly identified LCP Policy 21 as an additional LCP standard. They add that Policy 21 "has been interpreted by *both* the county and the commission to regulate impacts to views from Highway 1 or Panoramic Highway," rather than all existing views of the ocean from public viewing places. (AR 6:935.) In arguing that its decision should be upheld, respondent fails to cite the portion of the record showing that the planning commission or board of supervisors actually interpreted the LCP in that manner. If that was not part of the local decision, it cannot add to the "degree of factual and legal support for the local government's decision...." (*Hines, supra*, 186 Cal.App.4th at 849.) The Board of Supervisors resolution also makes confusing references to the "Seascape Subdivision." (AR 5:721-722.) Substantial evidence does not support respondent's finding that the county "overall" provided factual and legal support for its decision. (AR 6:934.)

As to the other factors pertinent to respondent's decision, respondent's adopted findings eliminated earlier staff-recommended language that the proposed addition was "modest." Respondent suggests that the affected resources were not "significant" because of the way it interpreted the LCP. However, as explained above, its interpretation of LCP Policy 21 to apply only to views from Highway 1 and the Panoramic Highway was clearly erroneous. The decision of the Board of Supervisors may be read to mean that the LCP only regulates views from signed or designated viewing areas—an interpretation with which respondent itself disagrees. It would leave the local decision intact insofar as it is based on a "fleeting" view theory, which conceivably could be argued in many other development applications. In sum, none of the applicable factors supports respondent's determination of "no substantial *issue*."

On this petition, the court must evaluate whether substantial evidence supports respondent's finding of no substantial *issue* allowing further review. Even resolving all doubts in favor of respondent and respecting respondent's broad discretion, the court cannot make that finding.

The writ is granted on this ground. Respondent's determination of "no substantial issue" is not supported by substantial evidence, even considering the deferential standard applicable to this petition. (*Hines, supra*, 186 Cal.App.4th 830, 839-840.)

B. PETITIONER'S PROCEDURAL FAIRNESS ARGUMENT: THAT THE COMMISSION WAS IMPROPERLY INFLUENCED BY CONSIDERATIONS OF STAFF WORKLOAD.

Petitioners' other claims, regarding procedural fairness, lack merit. Petitioners' argument pertains to what they suggest was the *real* reason for the commission's decision. As explained above, such inquiries are prohibited. The standard is whether substantial evidence supports the agency's decision.

Petitioners also argue that it was procedurally unfair for respondent to consider a new interpretation of LCP Policy 21 that only was circulated the day of the hearing. This did not pertain to a factual matter where petitioners should be given an opportunity to respond. It pertained to a legal question. Petitioners then argue that respondent's interpretation was wrong. Even if petitioners are correct, that is not a matter of *procedural* unfairness.

The court declines to grant the writ on this ground.

Summary:

a) At the conclusion of the January 21, 2011 hearing, upon the unopposed request by Petitioner Richard Kohn, the Administrative Record was moved into evidence.

b) The relief sought in the petition for writ of administrative mandate was for an order that respondent set aside the decision, obtain a new staff recommendation, and hold a new hearing on the question of whether petitioners' appeal raised a substantial issue, in accordance with the views expressed in the court's opinion. Petitioners are directed to serve and submit a proposed judgment and order to that effect.

Date: February 3, 2011

Judge Kaye D'Opal

Matters no longer under submission

February 14, 2013

5 Ahab Drive
Muir Beach, CA 94965

To: Commissioners of the
California Coastal Commission

Re:Crosby coastal permit application
Appeal from Marin County Board of Supervisors

Dear Commissioners,

This appeal is on remand from the Marin County Superior Court pursuant to a writ of administrative mandamus. We are the appellants from the Board of Supervisor's decision as well as the petitioners in the mandamus case and are opposed to the granting of a coastal development permit for this project.

On very short notice, we have been informed that our appeal has been placed on the agenda for the Coastal Commission's March meeting in San Diego, even though the Commission is meeting in Marin County in May and even though the property and the parties are located in Marin County. Our request for a May hearing was rejected. We have been informed that the staff recommendation may be released as early as Friday February 15. Since time is of the essence, we are sending you a supplemental appeal argument. Of course, we are providing coastal commission staff with the same material at the same time.

For those commissioners who use the San Francisco office of the Coastal Commission as their mailing address, we have requested Coastal Commission staff to forward our appeal brief to you forthwith so that everyone is on the same page at the hearing.

Thank you for your consideration.

Very truly yours,

Edward Hyman, Ph.D, Deborah McDonald Ph.D, Richard S. Kohn and Brenda F. Kohn

By, Richard S. Kohn

Richard S. Kohn

Encl.

BEFORE THE CALIFORNIA COASTAL COMMISSION

Appeal from the Marin County Board of Supervisors' Decision re:Timothy Crosby Application for a Coastal Development Permit, Application No. CP09-3 Commission Appeal No.A-2-MAR-09-010.

Supplemental Argument on Behalf of Appellants Dr. Edward Hyman and Dr. Deborah McDonald, Richard Kohn and Brenda Kohn

INTRODUCTION

This is the second time that this appeal has come before the California Coastal Commission. This application offers the Coastal Commission the opportunity to create good public policy by rejecting the efforts by some to transform Muir Beach into a community of mega-homes of the super rich, thereby preserving its historical small-scale heritage.[1]

Mr. Crosby's application for a Coastal Development Permit (CDP) for the total reconstruction of the premises at 9 Ahab Drive in Muir Beach was the subject of a hearing before the Board of Supervisors (BOS) on March 31, 2009. The BOS voted to grant the permit with conditions. The Petitioners appealed that decision to the Coastal Commission. On August 12, 2009, the Commission held that the appeal did not raise a substantial issue. Petitioners then filed a petition for a writ of administrative mandamus in the Marin County Superior Court. Subsequently, the Court issued a writ of mandate requiring the Coastal Commission to vacate its decision.

The Superior Court remanded the case to the Coastal Commission with instructions to reconsider the "no substantial issue" determination in light of the Court's written decision dated February 3, 2011. At its meeting held on December 7, 2011, the Commission decided that the Petitioners' appeal raised a substantial issue warranting *de novo* review. The Commission ruled that an alternatives analysis was required in order to determine whether the proposed addition was consistent with the LCP.

[1] Petitioners incorporate by reference their initial argument filed with the Coastal Commission on May 6, 2009 with exhibits, Petitioners' letter briefs to the Commissioners dated July 29, 2009 and August 3, 2009, the Administrative Record compiled in this matter, the Opinion of the Marin County Superior Court dated February 3, 2011 and all motions and arguments previously submitted.

The Coastal Commission instructed the applicant as follows:

> "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."

In addition, the Superior Court held that the Muir Beach Community Plan (hereinafter MBCP) had been incorporated into the certified LCP. Therefore, on remand, the Commission must consider the question of whether the proposed addition meets the requirements of the MBCP.

In June 2012, the Applicant submitted a revised set of architectural plans to the Coastal Commission staff. As far as we know, his submission does not include visual simulations or an alternatives analysis as required. The Applicant has never withdrawn the original proposal that was the subject of the Petitioners' appeal. Neither the original proposal nor the revised plans submitted in June are compatible with the certified LCP, as interpreted by the Superior Court.

The original proposal

The original proposal entailed the construction of a 1,589 square foot addition to an existing 2,058 square foot single-family residence in Muir Beach.

It is clear that when the standards set forth in the Court's February 3, 2011 opinion are applied, the original proposal that was approved by the BOS does not comply with the certified LCP. With regard to protecting visual resources, the LCP for Unit 1 recognizes that "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). The LCP states that "To the maximum extent feasible, new development shall not *impair or obstruct* an existing view of the ocean, Bolinas Lagoon, or national or State parklands from Highway 1 or Panoramic Highway." LCP p. 65(emphasis added)

The Superior Court resolved several legal issues in the Petitioners' favor. It rejected the interpretation of the visual resources provisions adopted by the Commission that only

existing views from Highway 1 or Panoramic Highway were protected (Opinion pp. 34-,36). It observed that the Commission itself had rejected the interpretation advanced by the County that only views from designated viewing areas were protected. (Opinion pp. 39, 41. The Court also held that based upon the slides and photographic evidence in the record, no reasonable person could conclude that the view from Ahab Drive and the public easement was not significant in itself. (Opinion p. 31) It is also clear, as shown by the slides and photographs introduced into the record at the hearing on August 12, 2009 by the Coastal Commission staff, the Petitioners and by the Applicant himself, that the approved addition to the existing single family residence would obstruct the view. Deputy Director Charles Lester acknowledged at the August 12, 2009 hearing that the view would indeed be obstructed. Transcript of Hearing p. 16, line 11. The Court also held, as noted above, that the MBCP had been incorporated into the certified LCP in 1980. (Opinion pp. 33-34, 40)

The BOS had advanced a theory that a view impact would not be considered substantial if the view could be recaptured as a person moves along a public way to reach his/her destination. The Court pointed out that the Commission staff report by implication had found this 'transitory' theory unpersuasive because it had deleted language in its original report that "[T]he view from this particular location is intermittent at best." (Opinion pp. 32, 39)

The BOS's theory is neither legally nor factually correct. Agency interpretations of a statute must further the purpose of the underlying legislation, not undercut it. There is nothing in the LCP, which incorporates Section 30251 of the Coastal Act, that would allow the protection of visual resources to be circumvented by such a destructive concept. And, there is no evidence in the record to show that the view from the public easement or Ahab Drive could be recaptured as one descends the steps to the beach. (Opinion p. 32)

In its "no significant issue" determination, the Commission had concluded that no significant obstruction occurs if there are other "overall panoramic views" in the area. The adoption of such a theory would eviscerate the visual resource protections of the LCP because there are many wonderful coastal views in Marin County (Opinion pp. 33). Also, as the Court pointed out, the record did not contain any evidence that there were any *equivalent* views in the vicinity of the development project (Opinion. p. 32).

The Court also held that the evidence in the record did not support the assertion that removal of some vegetation would re-open the view. (Opinion p. 33).

The LCP requires that "to the maximum extent feasible" new development not impair or obstruct existing coastal views from public viewing places. The Applicant failed to meet his burden of proof that his proposal had exhausted all other possibilities in order to preserve the view in question.

In addition, the scale and design of the original proposal is incompatible with the character of the surrounding natural or built environment and was not designed to follow the natural contours of the landscape, as required by Zoning Regulation 22.56.130(o)(3) which states:

> "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."

The Commission staff addressed this provision in the August 9, 2009 Addendum as follows: "The approved addition is also compatible with the character of the surrounding environment as required by Zoning Code Section 22.56.130(o)(3) because its size is within the range of existing houses in the area which range from 475 square feet to 5,562 square feet." Addendum p. 2. This statement did not accurately reflect the data which was provided by the County and completely misses the point. The evidence was that:

> "The median total building size on each lot in the neighborhood (75 properties) is 1,791 square feet. The range is 475 square feet to 5,562 square feet with 12 per cent of the properties (9 lots) having total building areas of more than 3000 square feet."

Exhibit 1. Thus, the project as approved by the BOS—totaling 3647 square feet-- would have been larger than 88 per cent of the surrounding built environment.

Furthermore, the Commission had erroneously concluded that the MBCP had not been incorporated in the certified LCP and was not part of the standard of review. The Court held as a matter of law that it had been incorporated. The MBCP provides:

> "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 enforced."

The Court also rejected the conclusory finding included in the Addendum that even if the MBCP had been incorporated, the project would be consistent with the MBCP. Opinion p. 34.Specific evidence, and not unsupported conclusions, are needed to make that determination. As described above, the only evidence in the record-evidence produced by the County-shows that the proposed development project would be larger than 88 per cent of the surrounding dwellings.

Even the Coastal Commission staff appeared to recognize the large scale of the project because, as the Court pointed out, the staff deleted a reference in the Addendum to the development being "modest" in scale. (Opinion. pp. 3, 29-30) Thus, based on the record, it would clearly not be compatible with the small-scale residential character of the old community or with surrounding residences as required by the MBCP.

This disparity can clearly be seen by reference to **Exhibits 2-9** attached hereto. **Exhibit 2** shows the existing structure. **Exhibits 3 and 4** are photographs of a model created by the Applicant's architect depicting the changes to the existing structure. [2] Storey poles, as shown in **Exhibits 5 and 6** depict the enormous impact of the "barrel vault" and the deck that extends from it on the scale of the project. The small-scale residential character of the old community reflects the arrival of Portugese settlers from the Azores who came here between 1900 and the 1930s. The vast majority of dwellings reflect that heritage both in scale and design. (**Exhibits 7-9**) While the Applicant's design might be suitable for a Miami Beach mansion, it is alien to the historical character of Muir Beach.

When the original design is subjected to scrutiny under the certified LCP as interpreted in the Court's decision, it is apparent that it violates the visual resource provisions. In fact, the staff recommendation dated November 18, 2011 that was adopted by the Commission on December 7, 2011 finding that the Petitioners' appeal raises a substantial issue contains the following statement: "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." (Staff Recommendation p. 4 of 5)

In light of the above, plainly the original planned additions would have impaired or obstructed a significant coastal view and the record evidence does not support any claim that the design seeks to preserve the view "to the maximum extent feasible." Nor is it compatible with the character of Muir Beach or follow the natural contours of the landscape. Based upon a *de novo* review of the evidence in the administrative record, the CDP should be denied.

The alternative proposal

Subsequent to the Commission's December 7, 2011 decision finding that the Petitioners' appeal raises a substantial issue, the Applicant submitted a revised set of architectural drawings. The new plans also do not meet the standards set by the Court.

[2] Source: Website for Richard M. Beckman, Architect. The model depicts the plans prior to adjustments to the roofline ordered by the DZA, Planning Commission and BOS. However, it clearly shows the enormous scale of the "barrel vault" and deck additions.

With respect to the western side, the new plans call for relocating the so-called music room (actually a fourth bedroom with bath) to the south side of the building. Storey poles and tape that have been erected show that the new design would still "impair or obstruct" approximately 50 per cent of the view of Big Beach from the public easement and Ahab Drive. See **Exhibits 10-23**. This obstruction is caused by the pitched roof that extends from the current roofline down to the new addition. The plans do not reveal whether this pitched roof is necessary and sadly, the architect Richard Beckman, passed away and so is unavailable to provide answers. In any event, the view could be preserved by eliminating the addition to the house on the western side. Also, as shown by **Exhibit 24,** on the *eastern* side the roofline would impair a view of the ocean as seen from Ahab Drive.[3]

Clearly, the new design still "impairs or obstructs" the view of Muir Beach from public places and therefore violates the certified LCP. The Applicant has failed to meet his burden of showing that "to the maximum extent feasible" the new design seeks to preserve the public view.

Mr. Crosby may argue, as he has in the past, that he is technically in compliance with zoning regulations. While this claim is not true as we address below, it is well settled that "[c]ompliance with zoning laws does not necessarily entitle one to a permit." *Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328. As the Court said: "In reviewing a proposed project, the administrative body is entitled to consider subjective matters such as the spiritual, physical, aesthetic and monetary effect the project may have on the surrounding neighborhood." In *Dore,* the Court upheld the denial of a planned development permit because the facts showed that the development would not maintain the character and integrity of the community.

Viewed *in toto*, the new design fails to comply with Zoning Regulation Sec. 22.56.130(o)(3) and the MBCP. The original plans discussed above would have expanded the size of the dwelling from 2058 square feet to 3647 square feet, an increase of 77 per cent. The new plans would increase the size of the development to 3971 square feet, an increase of 92.95 per cent over the existing dwelling. As Marin County Planning Commissioner Greenberg pointed out with respect to the *original* design "I don't like the size of the house. In my view, it's clearly inconsistent-it will set a new standard and next time we have an application, a problem, an appeal here we'll be told the one down the street is this big...This one is out of character." (Petitioners' May 6, 2009 Argument p. 8, included in Deputy Director's Report W19a Addendum August 12, 2009).Thus, as Commissioner Greenberg pointed out, approving the plans would create a precedent for the next person who applies for a CDP to build a monster home in Muir Beach. Obviously, the outsized proportions of the original design are even more egregious in the proposed alternative plans.

[3] By necessity, this photograph was taken of the original design because no storey poles have been erected showing the impact of the alternative design on the eastern side. The roofline is the same although the diamond shaped wooden structure has been eliminated.

The revised architectural plans entail a complete reconstruction of the existing dwelling. The enormous scale and inappropriate design of the planned dwelling violate zoning regulation 22.56.130(o)(3) that requires new construction to be "compatible with the character of the surrounding natural or built environment" and "follow the natural contours of the landscape." (The Court points out that given the size of the project, even under the original plans discussed above, it was effectively "new" construction)(Opinion p. 3)

The alternate plans also contravene the standard in the MBCP that remodeling and new construction be in keeping with the small scale residential character of the old community and be consistent with surrounding residences. While the plans indicate that the relocated and enlarged "music room" would now be in the front of the house between the hot tub and the runway (see Sheet #s 1-3), absent visual simulations as ordered by the Commission it is impossible to visualize the exact scale of the new dwelling. Storey poles that originally portrayed the "fan shaped" perimeter of the "barrel vault" and the extensive new decking, as well as the roofline on the eastern side, have been removed.

Notwithstanding the absence of an architect's model to show the scale and design as with the original plan discussed above, it is obvious that it would be even larger and more out of keeping with the "small scale residential character of the old community" and not be "consistent with surrounding residences." *No reasonable person could conclude that this design is compatible with these standards.* Pursuant to the MBCP, the requirements of Regulation 22.56.130(o)(3), described above, must be strictly enforced.

Because, the County and the Coastal Commission had both erroneously held, prior to the Superior Court's decision, that the MBCP was not incorporated into the certified LCP, this is the first development project in Muir Beach to be subject to the requirements of the MBCP. Since the Applicant has now purchased another house in Muir Beach (65 Sunset Way) where he spends most of his time when he is not at his house in Florida where he has his domicile, it is not clear what the purpose of constructing such a grandiose building is. While he is free to develop his property, it must comply with applicable standards, which his alternative design plainly does not.

Petitioners respectfully request that the Commission grant their appeal and deny the CDP.

Respectfully submitted,

February 15, 2013

Dr. Edward J. Hyman

Dr. Deborah McDonald

Brenda F. Kohn

Richard S. Kohn

By,

Richard S. Kohn Brenda F. Kohn

Richard S. Kohn and Brenda F. Kohn

TABLE OF EXHIBITS

Exhibit Number **Description**

MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY
BRIAN C. CRAWFORD, DIRECTOR

MEMORANDUM

TO: Planning Commission
FROM: Neal Osborne, Planner
RE: Kohn, Hyman, and McDonald Appeal of the Crosby Coastal Permit (CP 09-3)
February 9, 2009 Planning Commission Item 4
DATE: February 6, 2009

Please delete Finding VII from the proposed Resolution for this project. Upon detailed review of the applicability of the Muir Beach Community Plan for a project only subject to a Coastal Permit, and following consultation with County Counsel, staff determined that the Muir Beach Community Plan does not apply to this project because:

- The Muir Beach Community Plan was adopted in 1978 and was not incorporated into the Local Coastal Program Unit I when it was certified by the California Coastal Commission in 1980.
- The project is only subject to a discretionary Coastal Permit, and no other discretionary permit is required that would mandate consistency findings regarding Community Plan and Countywide Plan policies.
- The Muir Beach Community Plan consistency findings should be deleted from the proposed Planning Commission Resolution for the same reason that the Deputy Zoning Administrator deleted the Countywide Plan consistency findings from the DZA Resolution.

Please review the attached Excel spreadsheet indicating building and lot sizes of the surrounding properties within 600 feet of the Crosby property based on the County Assessor's records. The median total building size on each lot in the neighborhood (75 properties) is 1,791 square feet. The range is 475 square feet to 5,562 square feet with 12% of the properties (9 lots) having total building areas of more than 3,000 square feet. Additionally, staff received the attached letters and e-mails from neighbors (1 opposed and 13 in support), after preparation of the staff report. The comments are from:

- Richard Kohn (appellant) with excerpts from *LT-WR, LLC v. California Coastal Commission, 60 Cal.Rptr.3d 417 (Cal. App. 2 Dist. 2007).*
- Gay Friedman and Patricia McCall
- Gail Falls
- Brad and Lisa Eigsti
- Rene Boche and Bob Bowyer
- Harold Pearlman
- Lynda Grose Silva and Matthew Silva
- Robert Wynn
- Michael Moore
- Marilyn Laatsch
- Dan Fitzpatrick
- Linda Hulley and Stephen Hulley
- Elizabeth Benedict
- Pam Barlow and Bruce Barlow

ATTACHMENTS: 1) Property Characteristics Table; 2) Public Correspondence
I\Cur\NO\memo\PC\Kohn Hyman McDonald Appeal of Crosby 2.6.09_final

3501 CIVIC CENTER DRIVE, ROOM 308 – SAN RAFAEL, CA 94903-4157 – 415-499-6269 – FAX 415-499-7880

PROPERTY CHARACTERISTICS IN THE VICINITY OF 9 AHAB DRIVE, MUIR BEACH

(Based on data from the Marin County Assessor's Office)

APN	Address	Owner(s)	Garage (sf)	Living Area (sf)	Unfinished Area (sf)	Lot Size (sf)	Zoning
199-201-03	69 STARBUCK DR	EQUITY TRUST CO /CSTDN/FBO JOHN MURRAY IRA	400	2208	0	36830	C-RA-B4
199-201-08	51 STARBUCK DR	MC CRARY JAMES M	525	3094	0	38745	C-RA-B4
199-202-10	1887 STATE ROUTE 1	LUDWIG RONALD L & CARRIE G	0	1388	0	21112	C-RA-B2
199-202-11	11 SEACAPE DR	DUFF JOHN P	506	1584	1584	17172	C-RA-B2
199-221-05	104 SUNSET WAY	PATTISON STEVEN N &	400	1951	0	8000	C-RA-B2
199-221-06	106 SUNSET WAY	VEYS VICTORIA	0	676	0	23500	C-RA-B2
199-221-11	25 SEACAPE DR	HERWITZ JAMES A /TR/ &	960	2574	0	35560	C-RA-B4
199-221-15	70 SUNSET WAY	HELDT WAYNE H	0	1607	0	7930	C-RA-B2
199-221-18	90 SUNSET WAY	LINDHOLDT GEORGE K	440	1753	0	9000	C-RA-B2
199-222-01	85 SUNSET WAY	HWANG HSIN M	0	1760	0	12580	C-RA-B2
199-222-02	250 PACIFIC WAY	SHAFFER STEVEN S	240	0	0	3080	C-RA-B2
199-222-03	240 PACIFIC WAY	SHAFFER STEVEN S	0	1577	0	3003	C-RA-B2
199-222-11		NYGREN SHIRLEY A	0	0	0	3030	C-RA-B2
199-222-12		SCHWARTZ DAVID &	0	0	0	2790	C-RA-B2
199-222-19	105 SUNSET WAY	BARLOW PAMELA /TR/ &	0	1184	240	6048	C-RA-B2
199-222-21	109 SUNSET WAY	LAVINE JOHN &	462	2404	0	8064	C-RA-B2
199-222-24	270 PACIFIC WAY	LINDHOLDT GEORGE C	0	995	230	8928	C-RA-B2
199-231-03	226 SUNSET WAY	JOHNSTON KATHLEEN A	0	814	0	7000	C-RA-B2
199-231-04	230 SUNSET WAY	WEINER RICHARD I /TR/ &	364	1504	80	7500	C-RA-B2
199-231-05	220 SUNSET WAY	VILLERE BETHANY	0	1357	0	15250	C-RA-B2

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199-232-01	267 SUNSET WAY	PANDAPAS MARK G &	0	1804	0	10900	C-RA-B2
199-232-03	219 SUNSET WAY	CALLANDER DAVID B	0	475	0	7000	C-RA-B2
199-232-04	21 COVE LN	MULLIN SHARON /TR/	220	960	288	6600	C-RA-B2
199-232-05		ROBERTSON ARLENE	0	0	0	1240	C-RA-B2
199-232-06		SCHWARTZ DAVID A /TR/ &	0	0	0	1620	C-RA-B2
199-233-01	40 COVE LN	ROBERTSON ARLENE A TR	362	1598	0	3000	C-RA-B2
199-233-05	20 COVE LN	BROWNING BRYCE /TR/	689	2014	0	14040	C-RA-B2
199-233-06	285 SUNSET WAY	SCALERA ERIC R	0	1278	420	3500	C-RA-B2
199-234-06	200 SUNSET WAY	FITZPATRICK DANIEL R	0	1064	0	6000	C-RA-B2
199-234-10	210 SUNSET WAY	PINTO ERIN	0	720	0	12000	C-RA-B2
199-234-20	170 SUNSET WAY	PURCELL JIM P /TR/	0	832	0	7565	C-RA-B2
199-234-21	180 SUNSET WAY	LAATSCH MARILYN M	0	0	0	0	C-RA-B2
199-235-01	209 SUNSET WAY	HILLS LEIGHTON J	0	1472	120	6120	C-RA-B2
199-235-10	181 SUNSET WAY	GRONEMAN ERIC A TR &	200	657	0	8330	C-RA-B2
199-235-26	161 SUNSET WAY	CASE CHARLAINE TR ETAL	0	1736	403	7708	C-RA-B2
199-235-40	308 PACIFIC WAY	NYGREN SHIRLEY A	200	912	546	2871	C-RA-B2
199-235-44	310 PACIFIC WAY	EICHENBAUM ROBERT C &	1298	1650	0	5740	C-RA-B2
199-235-45	175 SUNSET WAY	FRIEDMAN GARY J TR &	0	1708	0	12091	C-RA-B2
199-235-47		GRONEMAN ERIC A TR &	0	0	0	9700	C-RA-B2
199-235-48		GRONEMAN ERIC A TR &	0	0	0	7728	C-RA-B2
199-235-60	185 SUNSET WAY	THEODORE R ELLIOTT FAMILY PARTNERHSIP	0	1470	825	20091	C-RA-B2
199-235-63	320 PACIFIC WAY	WEISBERGER JASON L &	0	2588	0	18560	C-RA-B2
199-251-38	320 SUNSET WAY	NORTON MISTI	0	1470	0	81081	C-RA-B2,C-RA-B5
199-251-	341 SUNSET WAY	CAMERON SUSAN A ETAL	200	1956	660	13875	C-RA-B2

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199-251-50	310 SUNSET WAY	SIMMONS TONI M &	0	1637	0	20700	C-RA-B2,C-RA-B4
199-272-03	40 STARBUCK DR	MC GEE TAYLOR W /TR/ &	706	2326	0	33383	C-RA-B4
199-272-04		MAMONE MICHAEL J	0	0	0	27336	C-RA-B4
199-281-05	50 SEACAPE DR	CASE CHARLES H &	492	1988	628	27324	C-RA-B4
199-281-06	46 SEACAPE DR	RUMSEY DAVID M	400	1550	0	39672	C-RA-B4
199-281-07	38 SEACAPE DR	HALLIWELL BERNARD J ETAL	496	2134	472	44322	C-RA-B4
199-281-09		BOWYER ROBERT TR &	0	0	0	37513	C-RA-B4
199-282-03	43 SEACAPE DR	SABRINA HOLDING LLC TR	0	0	0	0	C-RA-B4
199-282-07		HYMAN EDWARD J &	0	0	0	4450	C-RA-B4
199-283-02	17 AHAB DR	BENEDICT ELIZABETH H	0	2183	0	27540	C-RA-B4
199-283-03	21 AHAB DR	WYNN ROBERT A	0	1490	0	30290	C-RA-B4
199-283-09	9 AHAB DR	CROSBY TIMOTHY L	0	2084	176	44702	C-RA-B4
199-234-23	150 SUNSET WAY	PICKENS SHARON A	0	804	460	12717	C-RA-B2
199-234-22	190 SUNSET WAY	SILVA MATTHEW C &	340	1972	190	7800	C-RA-B2
199-232-11		BURN-CALLANDER DAVID	0	0	0	600	C-RA-B2
199-251-54	290 SUNSET WAY	MURRAY JAMES F /TR/	0	1089	588	12990	C-RA-B2
199-251-53	330 SUNSET WAY	CRAWFORD THOMAS H &	0	790	0	16564	C-RA-B2
199-233-07	30 COVE LN	SCHWARTZ DAVID A &	0	1902	0	25968	C-RA-B2
199-201-05	8 SEACAPE DR	WELLS FARGO BANK	473	2081	0	35144	C-RA-B4
199-201-06	60 STARBUCK DR	WOOD PETER F /TR/ &	360	2114	0	25200	C-RA-B4
199-201-07	55 STARBUCK DR	BENDER SCOTT /TR/ &	462	2245	0	39900	C-RA-B4
199-221-10	21 SEACAPE DR	HERWITZ JAMES A /TR/ &	0	1758	0	35584	C-RA-B4
199-221-16		HELDT WAYNE H /TR/	0	0	0	10922	C-RA-B2

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199-221-20	100 SUNSET WAY	LAMBERT PETER C	0	1395	0	19193	C-RA-B2
199-222-10		NYGREN SHIRLEY A	180	0	0	2880	C-RA-B2
199-222-25	280 PACIFIC WAY	BRUNNER PAUL A /TR/ &	429	1879	348	21844	C-RA-B2
199-232-10		SUNSET COVE LLC	0	0	0	10899	C-RA-B2
199-235-51	50 COVE LN	HILLS LEIGHTON J	0	0	0	29160	C-RA-B2
199-235-52		ROBERTSON ARLENE	0	0	0	5265	C-RA-B2
199-235-56	295 PACIFIC WAY	MOSER SIGWARD /TR/	0	936	0	13520	C-RA-B2
199-235-57		THEODORE R ELLIOTT FAMILY PARTNERHSIP	0	0	0	8000	C-RA-B2
199-235-59	187 SUNSET WAY	HIGH CHRISTINE M /TR/	484	1597	204	17600	C-RA-B2
199-235-65	195 SUNSET WAY	NEUMANN YESHI /TR/	0	0	0	12000	C-RA-B2
199-251-49	280 SUNSET WAY	COLLIER MARY E T /TR/	0	1024	290	21135	C-RA-B2
199-251-58	9 CHARLOTTES WAY	BIONDI BEVERLY /TR/	0	0	0	10000	C-RA-B4
199-251-59	300 SUNSET WAY	STEEL BRIAN A C /TR/ &	0	1176	140	6800	C-RA-B2
199-272-12	50 STARBUCK DR	ADAMS KEITH	0	1928	0	36200	C-RA-B4
199-272-13	44 STARBUCK DR	OSTROFF MAURY	480	2059	0	27795	C-RA-B4
199-281-08	34 SEACAPE DR	BOWYER ROBERT /TR/ &	400	2504	208	42000	C-RA-B4
199-281-10		BOWYER ROBERT TR &	0	0	0	22000	C-RA-B4
199-282-02	39 SEACAPE DR	HYMAN EDWARD J &	0	3057	0	18315	C-RA-B4
199-282-04	47 SEACAPE DR	GILLESPIE STEPHEN D &	460	3280	0	38000	C-RA-B4
199-282-08	35 SEACAPE DR	HAYDEN ROBERT T /TR/ &	0	2564	210	24000	C-RA-B4
199-282-09	55 SEACAPE DR	SCHOENFELD FRANK B TR &	0	1482	0	56375	C-RA-B4
199-283-06	33 AHAB DR	FALLS GAIL C	516	1506	0	23346	C-RA-B4
199-283-08	5 AHAB DR	KOHN RICHARD S & BRENDA F	0	2058	0	45758	C-RA-B4
199-283-	25 AHAB DR	LEVIN WILLIAM A &	0	5562	0	67095	C-RA-B4

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199-290-35		COLLIER ROBIN	0	0	0	46173	C-RA-B4,C-RA-B5
199-290-36	260 SUNSET WAY	COHON J DONALD JR /TR/	480	3082	0	66646	C-RA-B2,C-RA-B4
199-290-37	240 SUNSET WAY	KAUFMAN MICHAEL E TR &	0	1224	0	22815	C-RA-B2
199-201-02		MUIR BEACH COMMUNITY SVC DIST	0	0	0	0	C-RA-B4
199-221-09	19 SEACAPE DR	MUIR BEACH COMMUNITY SERV DIST	0	0	0	0	C-RA-B4
199-241-03	201 PACIFIC WAY	UNITED STATES OF AMERICA	0	0	0	0	C-OA
199-281-01		MUIR BEACH COMMUNITY SERV DIST	0	0	0	0	C-RA-B4

MEDIAN BUILDING AREA: 1,791 SQ. FT.

PC ATTACHMENT 1

Exhibit 6
A-2-MAR-09-010 (Crosby)
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Exhibit No. 2 The existing house as seen from the public easement on the downslope

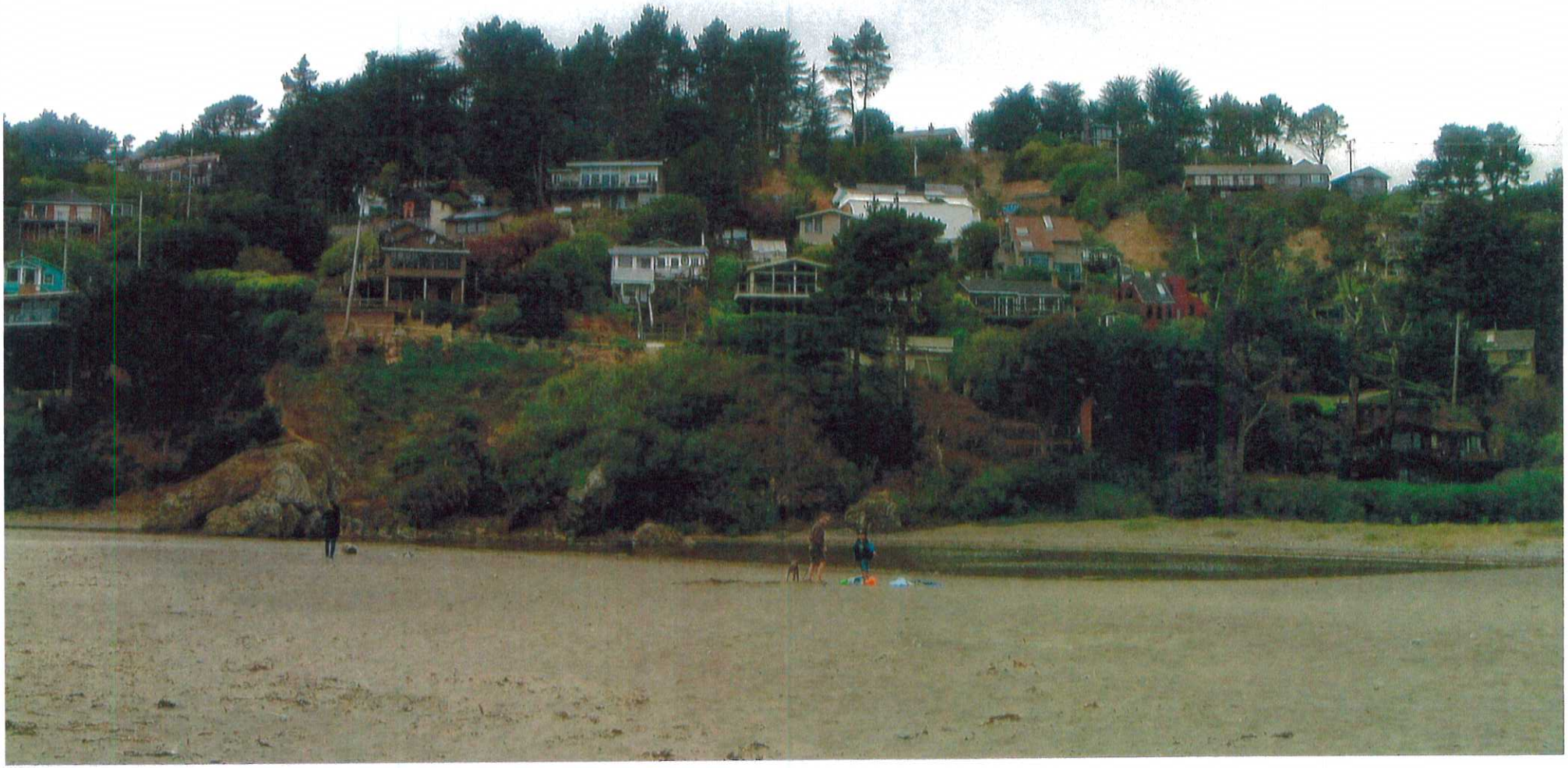
Exhibit No. 3 Architect's Model of The original redesign

Exhibit No. 4

Architect's Model of the original redesign


Barrel Vault
Exhibit #5

Exhibit No. 6
The Barrel Vault



The small scale residential character of Muir Beach

Exhibit No. 7

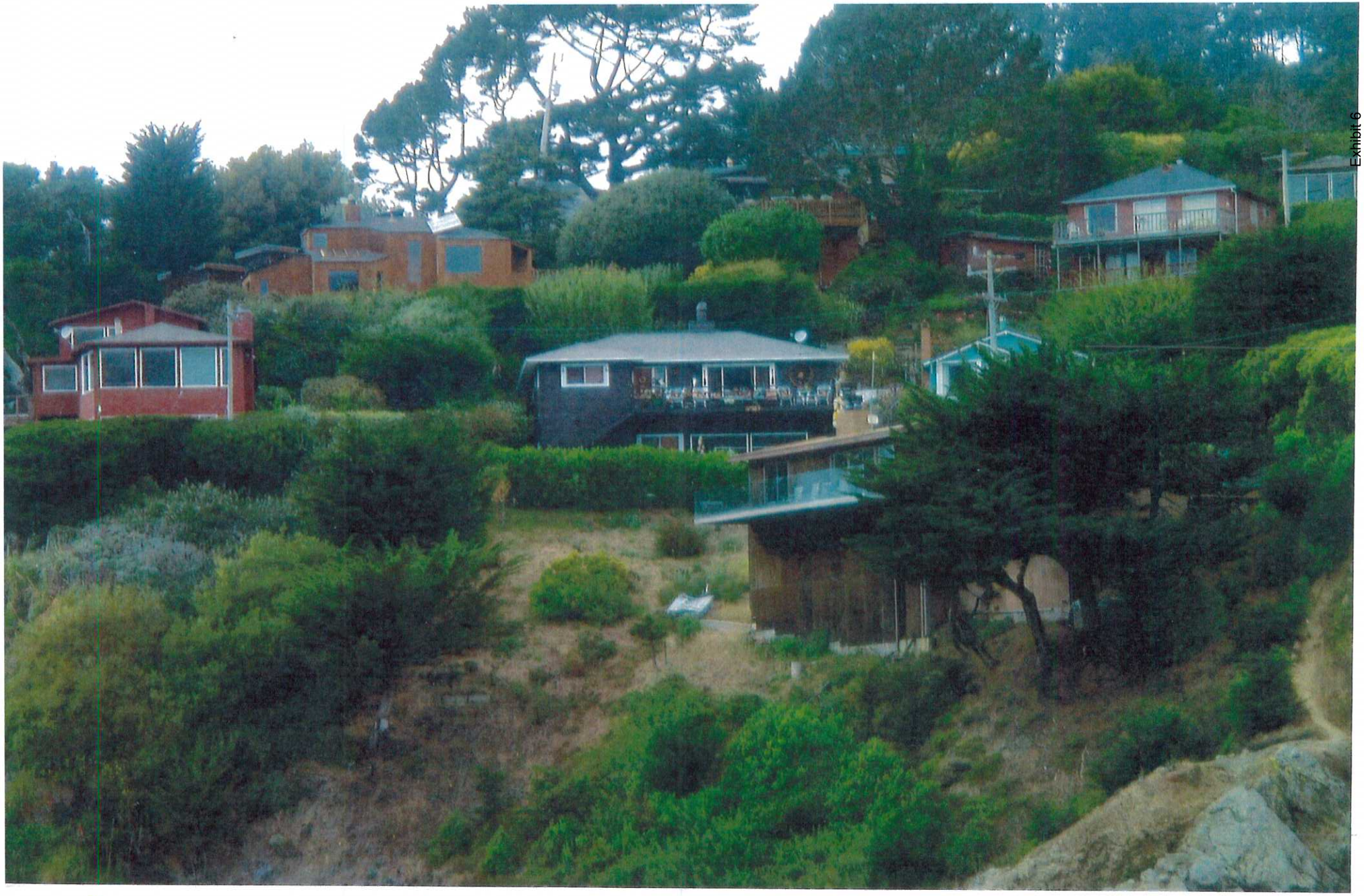


Exhibit No. 8

The small scale residential character of the old community of Muir Beach

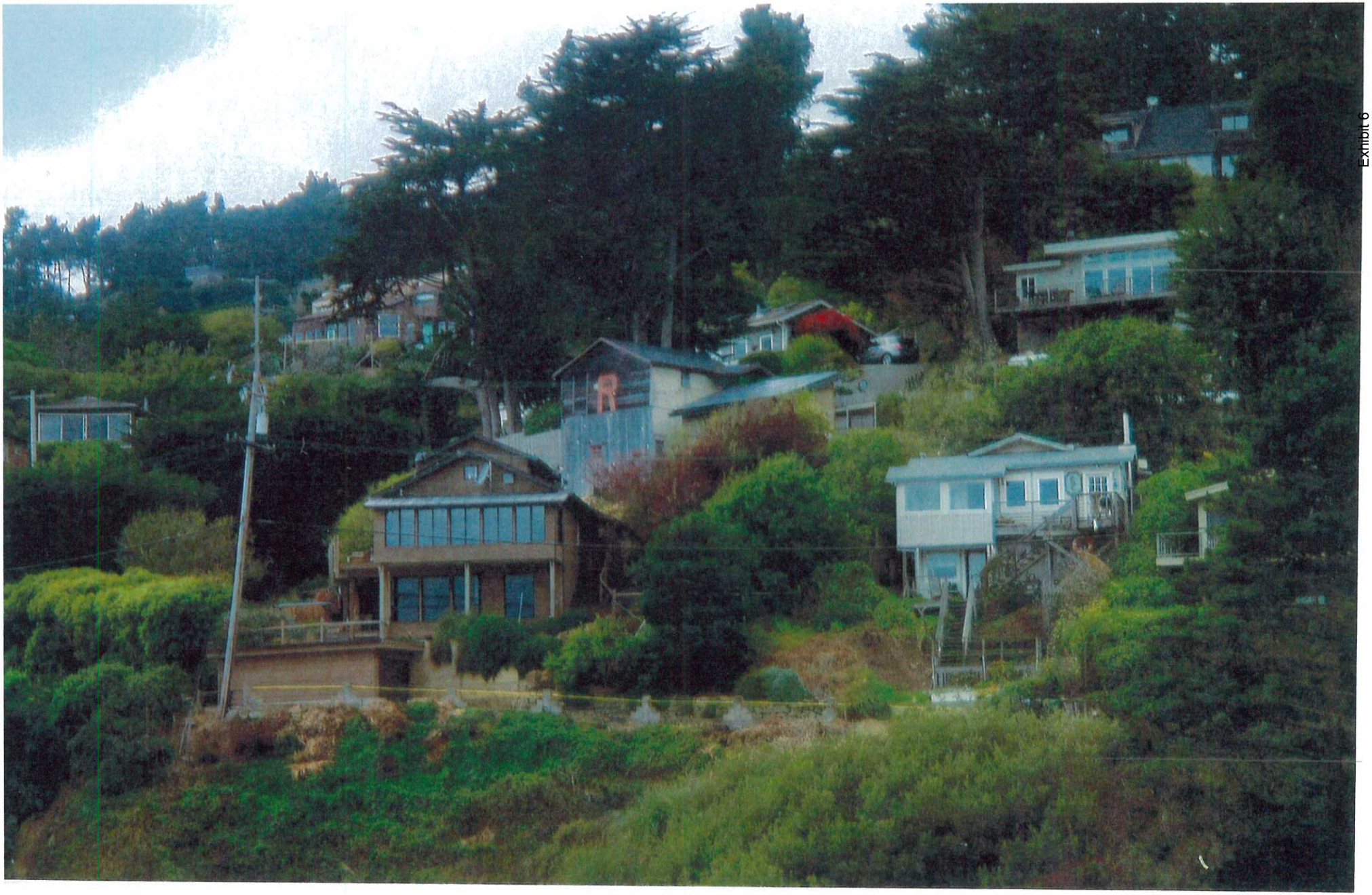


Exhibit No. 9

The small scale residential character of the old Community of Muir Beach

High tide from the top of the easement with tape showing alternative design

Exhibit no. 10

Exhibit No. 11

High tide from the top of the easement with tape
Showing alternative design

High tide from the top of the easement with tape showing alternative design

Exhibit No. 12

Exhibit No. 1

High tide from the top of the easement with type
Showing alternative design

Exhibit No. 14

High tide from Ahab Drive with tape showing alternative design.

High tide from Ahab Drive with tape showing alternative design

Exhibit No. 15

High tide from Ahrob Drive with tape showing alternative design

Exhibit No. 6

Exhibit No. 17

Low tide from top of the seawall showing erosion

Exhibit No. 18

Low tide from top of the easement showing alternate design

Exhibit # 19

Low tide from Ahab Drive showing alternative design

Exhibit No. 20

Low tide from Ahab Drive showing alternative design

Exhibit No. 21

Low tide from Ahab Drive showing alternative design

Low tide from top of the easement showing alternative design

Exhibit no. 2.2

Low tide from top of the easement showing alternative design

Exhibit No. 23

Exhibit No. 24

The eastern side showing roofline - wooden diamond is no longer part of the design.