

Attachment B
Draft Board Resolution with Conditions
of Approval

**ATTACHMENT B
DRAFT BOARD RESOLUTION**

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No. _____

- Resolution by the Monterey County Board of Supervisors:)
1. Denying the appeal by Timothy and Kathleen Rhein)
from a decision of the Director of RMA-Planning)
approving an application (Sims/PLN150582) for a)
Design Approval for a six-foot tall redwood fence)
located along the side yard property line of 26401)
Scenic Road, Carmel;)
2. Finding the application categorically exempt under)
CEQA; and)
3. Approving the application for a Design Approval for)
a six-foot tall redwood fence along the side yard)
property line of 26401 Scenic Road, Carmel.)

The appeal by Timothy and Kathy Rhein from the Resource Management Agency- Planning Director approval of the application for a Design Approval (PLN150582) came on for public hearing on February 9 and 23, 2016 before the Board of Supervisors of the County of Monterey. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and all other evidence presented, the Board of Supervisors hereby finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – a Design Approval for a six-foot tall redwood fence along the side yard property line of 26401 Scenic Road, Carmel. The applicant is James and Catherine Sims.
EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN150582.
2. **FINDING:** **CONSISTENCY:** The Project is consistent with the applicable plans and policies which designate this area as appropriate for development.
EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
- the 1982 Monterey County General Plan;
- Carmel Area Land Use Plan;
- Monterey County Coastal Implementation Plan Part 4;
- Monterey County Zoning Ordinance (Title 20);
b) The property is located at 26401 Scenic Road, Carmel (Assessor’s Parcel Number: 009-463-018-000), Carmel Area Land Use Plan. The parcel is zoned “MDR/2/-D (18’) (CZ)” [Medium Density Residential, two units per acre, with a Design Control Overlay (18 foot height limit) (Coastal Zone)]. Pursuant to Section 20.06.1200, fences up to six feet in height are not structures and typically do not require any type of Coastal Development permit unless they qualify as non exempt development (Significant Environmental Impact, within the Critical Viewshed, on

Slopes greater than 30%, Ridgeline Development, within 100 feet of ESHA, on sites with archaeology or land divisions.) The fence does not trigger any of these thresholds and thus is permitted as part of the residential development of the parcel subject to a Design Approval.

- c) Design Control: The property contains a Design Control Zoning Overlay and therefore, the project must be consistent with the regulations of the Design Control Chapter of the Zoning Ordinance (Chapter 20.44). Section 20.44.010 requires the location, size, configuration, materials, and colors of fences to be reviewed to assure protection of the public viewshed, neighborhood character, and to assure the visual integrity of certain developments without imposing undue restrictions on private property. As stated below, Evidence d, the fence does not impact the public viewshed. The fence location, size and configuration, six-foot high side yard fence, is common along Scenic Road for privacy and provides separation between neighbors. The colors and material are natural redwood which would naturally blend into the landscaping on both the Sims and Rhein property. The visual integrity and character of the neighborhood will not be affected by the project. Therefore, the project is consistent with the regulations of the Design Control Chapter of the Zoning Ordinance (Chapter 20.44).
- d) Visual Resources: The project is located along Scenic Road which is identified as a designated public viewshed (Map A, General Viewshed and Policy 2.2.1 Carmel Area Land Use Plan). Within the viewshed, development, including fences, shall be sited and designed not to detract from the natural beauty of the shoreline and the undeveloped ridgelines and slopes in the public viewshed (Policy 2.2.3.1, Carmel Area Land Use Plan). Structures shall be subordinate to and blend into the environment (Policy 2.2.3.6). Structures located in the viewshed shall be designed so they blend into the site and surroundings; height and bulk shall be modified to protect the viewshed (Policy 2.2.4.10.c, Carmel Area Land Use Plan). The Sims' property is located opposite of the ocean, so no development on the property blocks ocean views or ridgeline views from Scenic Road. The fence would have very minor impact on the viewshed on Isabella Avenue. The analysis has shown that as one travels on Isabella Avenue, approaching Scenic Road, views of the ocean and beach are obscured by existing vegetation and improvements on the Rhein's and Sim's properties. In the location of the proposed fence, the Rhein property has landscaping along a retaining wall between the Sims and Rhein properties. The fence will not significantly impact the scenic quality and visual access to the shorelines or ridgelines, as it only affects a couple of inches of visibility for a very limited distance on Isabella Avenue. The fence will only affect visibility of a small portion of the sand dune along Scenic Road just north of Carmel River Beach; and therefore, no views of the actual beach; ocean or mountains will be obscured by the fence from Isabella Avenue. The fence is a natural redwood material that will blend into the existing landscaping of the surrounding properties. Therefore, the fence does not constitute a significant impact to visual resources and is consistent with the viewshed policies of the Carmel Area Land Use Plan.
- e) The project planner conducted site inspections on December 10, 2015 and February 1, 2016. The project on the subject parcel conforms to the plans listed above.

- f) The project was not reviewed by the Carmel/Carmel Highlands Land Use Advisory Committee (LUAC). Based on the LUAC Procedures adopted by the Monterey County Board of Supervisors, this application did not warrant review by the LUAC because the Design Approval, prior to this appeal, did not require a public hearing.
- g) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN150582.

3. **FINDING:** **CEQA (Exempt):** - The project is categorically exempt from environmental review.

EVIDENCE: Section 15303(e) of the CEQA Guidelines exempts accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences. There is no evidence supporting any of the exceptions to this categorical exemption. Therefore, the fence project is exempt.

4. **FINDING:** **PROCEDURAL BACKGROUND** – The project has been processed in compliance with Chapter 20.44, Design Approval Chapter of the Monterey County Zoning Ordinance (coastal).

- EVIDENCE:**
- a) On June 17, 2015, a Design Approval Application (PLN150582) was submitted for a fence along the side yard property line of James and Catherine Sims' property. The initial submittal included wicker material instead of redwood and did not extend to the street.
 - b) On August 18, 2015, the Design Approval Application (PLN150582) was deemed incomplete, requiring the fence to be staked to height along the side yard property line to ensure the fence would not impact public views of the shoreline and ridgelines when viewed from the intersection of Isabella Avenue and Scenic Road.
 - c) On September 30, 2015, the fence was revised with a six-foot high redwood fence design that extends to the front of the property.
 - d) On December 10, 2015, a site inspection was conducted to review the staking and viewshed along Isabella Avenue to Scenic Road. No impacts were identified. The Design Approval was approved by the Resources Management Agency – Planning Director on December 11, 2015.
 - e) An appeal was timely filed on December 22, 2015 by Andrew Swartz of Spiering, Swartz and Kennedy representing the appellants, Timothy and Kathy Rhein.
 - f) A public hearing on the appeal before the Board of Supervisors was duly noticed for February 9, 2016. On February 9, 2016, upon request of staff and with the concurrence of applicant and appellant, the Board of Supervisors continued the hearing on the appeal to February 23, 2016. At least 10 days prior to the public hearing, notices of the public hearing were published in Monterey County Weekly and were posted on and near the property and mailed to the property owners within 300 feet of the subject property as well as interested parties.
 - g) Staff report, minutes of the Board of Supervisors, information and documents in Planning file PLN150582.

5. **FINDING:** **APPEAL AND APPLICANT CONTENTIONS.** The appellant requests that the Board grant the appeal regarding the Sims' Design Approval Application (PLN150582). The appeal alleges the findings or decision or conditions are not supported by the evidence, the decision is

contrary to law and disagrees with the Findings made. The contentions are contained in the notice of appeal (**Attachment E** of the February 23 staff report) and summarized below with responses. The Board of Supervisors makes the following findings regarding the appellant's contentions:

Contention 1: *A Coastal Development Permit is required because the proposed Sims' fence is a "structure," as it is not less than six feet (Section 20.06.1200, Zoning Ordinance).*

Response 1: The argument presented by the appellant is that the definition of "Structure" taken from Title 20 states a fence is not a structure if it is "under six feet in height." Therefore, they argue, a fence of six feet tall would not fall under the exemption from being a structure and thus require a Coastal Development Permit. The County has consistently interpreted this definition to mean a fence of up to 6 feet in height. So when a six foot tall fence is approved, it is a fence of up to six feet in height, and not over six feet. This definition actually has nothing to do with whether a Coastal Development Permit is required. Section 20.70.120, Exemptions from Coastal Development Permits in provision A exempts the following from a Coastal Development Permit: "*The maintenance, alteration, or addition to existing single-family dwellings, including the establishment or expansion of non-habitable accessory structures not exceeding 1000 square feet and normally associated with residential uses such as garages, decks, workshops, and storage buildings not exceeding 1000 square feet; ...*" Fences are normally part of the residential use of a property and would qualify under this exemption, unless they trigger another resource or watershed protection policy in the Local Coastal Plan. This fence does not trigger another other requirement for a Coastal Development Permit.

Contention 2: *The fence is not exempt from Coastal Development Permit requirements because it is within 50 feet of the edge of a coastal bluff (Section 20.70.120.A.1, Zoning Ordinance).*

Response 2: The California Coastal Commission defines a coastal bluff as, "the entire slope between a marine terrace or upland area and the sea." Based on this definition, the fence is within 50 feet of a coastal bluff. However, the County has not required development on the landward side of Scenic Road to obtain a Coastal Development Permit for development within 50 feet of a coastal bluff. Scenic Road provides a physical barrier between development on the landward side of Scenic and the coastal bluff. Typically the development on the landward side of Scenic within this 50 foot zone is landscaping, fences, and driveways. The requirement for the Coastal Development Permit is to address situations where the lot goes out to or over the coastal bluff and development can occur in a manner that may have an impact on the bluff, beach or marine environment below. With a physical barrier (Scenic Road) between the bluff and development, there is no need for that type of review. This has been the practice of the County, and the California Coastal Commission staff has not objected to this interpretation based on past review of entitlements along Scenic Road which are appealable to the Coastal Commission.

Contention 3: *The Coastal Development Permit application for the fence must be considered by the Planning Commission (Section 20.44.040.E, Zoning Ordinance).*

Response 3: Section 20.44.040.E, Design Control Chapter of the Zoning Ordinance, states “The Planning Commission is the appropriate authority to consider Design Approval applications for those structures which have the greatest potential to impact public views such as structures along scenic highways or road corridors, in areas designated as critical viewshed, or which may be prominent from common public viewing areas.” As stated above in the Project Analysis section, the fence does not impact the viewshed along Scenic Road or Isabella Avenue. Therefore, the Director of RMA-Planning is the appropriate authority (Section 20.44.040.D, Zoning Ordinance). In this case the Board is the appropriate appeal authority.

Contention 4: *The Design Approval finding of “consistency” with the neighborhood character is not the necessary finding. The required finding for Design Approval is “protection” of the neighboring character. Protection of the neighborhood character essentially requires no harm result to the neighborhood character. Critical to the Scenic Road neighborhood character is the existing openness between properties affording view opportunities both public and private. The original application acknowledged the neighborhood character by proposing only a four foot fence within 25 feet of the road. County planners orally confirmed to Mr. & Mrs. Rhein that fences no higher than four feet would be approved near Scenic Road.*

Response 4: The Design Approval Chapter of the Monterey County Zoning Ordinance, as well as the Visual Resources Section of the Carmel Area Land Use Plan, does not contain policies or regulations that protect private views. These policies and regulations ensure protection of public views from Scenic Road and protect the neighborhood character. The project analysis found that the fence does not obstruct views of the shoreline or ridgelines from Scenic Road or Isabella Avenue, and the colors and materials of the fence are natural and are consistent with fences and locations of fences along Scenic Road. There are other fences in the immediate vicinity within the front yards and so this is not unprecedented from a neighborhood character perspective. The discussion between the County planner and Rheins was based on Policy 2.2.4.10.c of the Carmel Area Land Use Plan which requires the height and bulk of a structure to be modified as necessary to protect the viewshed. The RMA-Planning Department conducted a thorough analysis and found that a six foot fence does not have any additional impact on the scenic viewshed or neighborhood character than a four foot fence at this location. The fence does not obstruct or significantly impact the viewshed.

Contention 5: *The six foot height of the proposed fence within 25 feet of Scenic Road intentionally, unfairly and maliciously blocks public and private views from and along Isabella and Scenic Road and offers no privacy protection to the Sims.*

Response 5: As stated in Finding 1, Evidence d, the fence does not impact views from Scenic Road at the intersection of Scenic Road and Isabella

Avenue. However, the fence will obstruct private views from Mr. and Mrs. Rhein's property. As stated in Response 4 above, the applicable County regulations do not protect private views.

Contention 6: *The approved six foot fence would conflict with the visual integrity of the neighborhood which is a designated scenic area. If six foot fences were permitted up to the edge of the road on all properties along Scenic Road the cumulative impact would dramatically disrupt and alter the integrity and character of the neighborhood.*

Response 6: See previous responses. The fence does not obstruct or significantly impact the viewshed and therefore does not result in a cumulative impact.

Contention 7: *Section 5.3.1 and 5.3.2 of the Carmel Area Land Use Plan states that one of the "General Policies" is to protect "existing visual access from scenic viewing corridors (e.g. Highway 1, Scenic Road...)...should be permanently protected as an important component of shoreline access and public recreational use."*

Response 7. Sections 5.3.1 and 5.3.2 of the Carmel Area Land Use Plan protect visual access along scenic viewing corridors for public access purposes. As stated in Finding 1, evidence d, the fence is on private property outside of public access points. Therefore, the project will not impact visual access from scenic viewing corridors or from major public viewpoints.

II. DECISION

NOW, THEREFORE, BASED ON THE ABOVE FINDINGS AND EVIDENCE, BE IT RESOLVED, that the Board of Supervisors does hereby:

1. Deny the appeal by Timothy and Kathleen Rhein from a decision of the Director of RMA-Planning approving an application (Sims/PLN150582) for a Design Approval for a six-foot tall redwood fence located along the side yard property line of 26401 Scenic Road, Carmel;
2. Find the application (Sims/PLN150582) for a Design Approval categorically exempt from CEQA pursuant to section 15303(e) of the CEQA Guidelines; and
3. Approve the application for a Design Approval (Sims/PLN150582) for a six-foot tall redwood fence along the side yard property line of 26401 Scenic Road, Carmel subject to the conditions of approval attached hereto as Attachment B.1 and in substantial conformance with the plan attached hereto as Attachment B.2, both being incorporated herein by reference.

PASSED AND ADOPTED on this 23rd day of February, 2016, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book ___ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy

Monterey County RMA Planning

DRAFT Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN150582

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Design Approval permit (PLN150582) allows a six-foot tall redwood fence along the side yard property line of 26401 Scenic Road, Carmel (Assessor's Parcel Number 009-463-018-000), Carmel Area Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

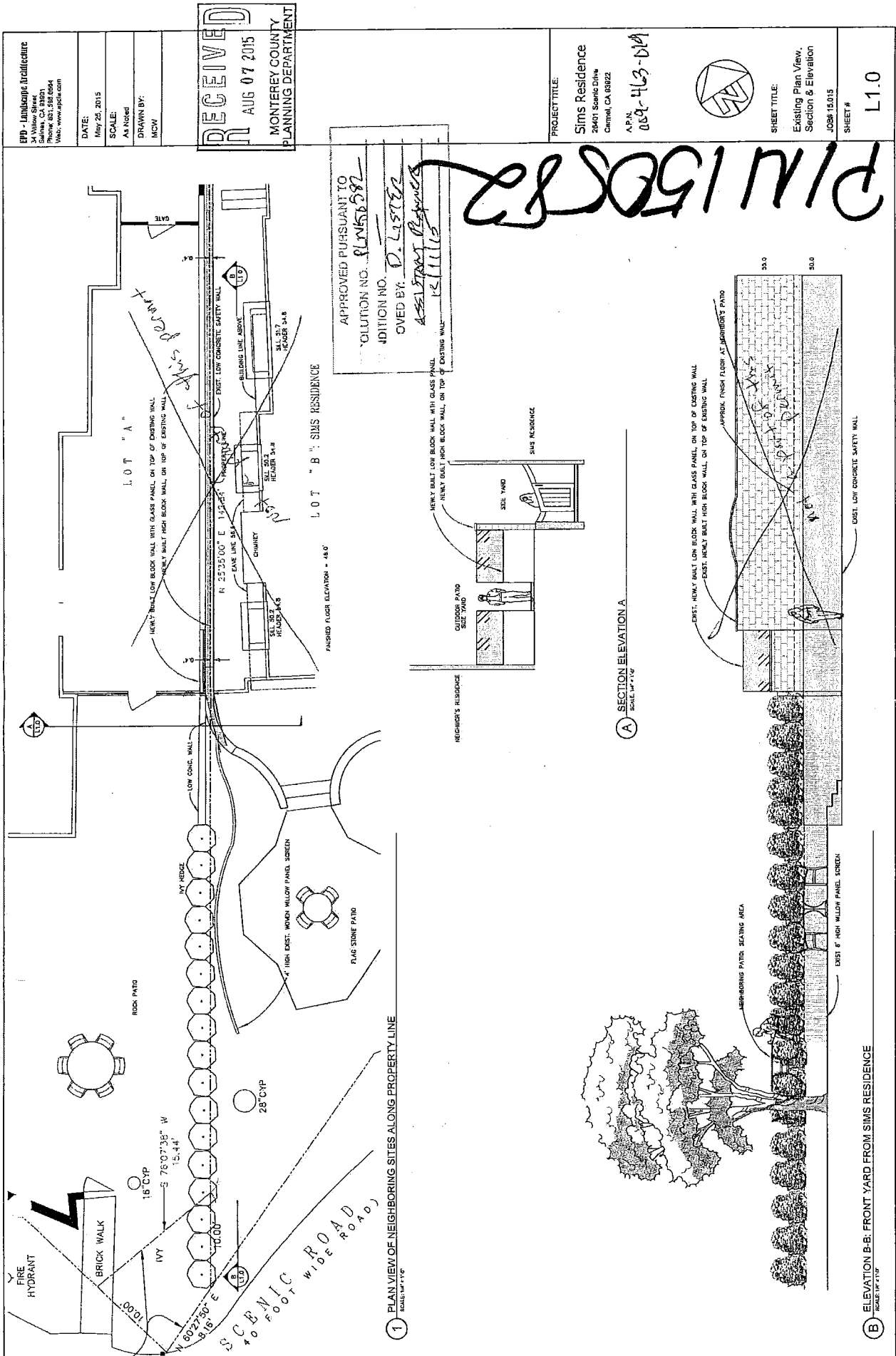
2. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, or recordation of Certificates of Compliance, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to RMA-Planning .



EPH - Landscape Architecture
 34 Willow Street
 San Jose, CA 95001
 Tel: 408.631.582.8964
 Web: www.ephlandscape.com

DATE: May 25, 2015
 SCALE: AS NOTED
 DRAWN BY: MCW

RECEIVED
 AUG 07 2015
 MONTEREY COUNTY
 PLANNING DEPARTMENT

PROJECT TITLE:
Sims Residence
 26401 Soaks Drive
 Carmel, CA 95022

APP N
 009-463-1014



SHEET TITLE:
 Existing Plan View,
 Section & Elevation
 JOB# 15.015

SHEET #
L1.0

APPROVED PURSUANT TO
 ORDINANCE NO. PLN 582
 ADOPTED BY: D. LISTER
 ASSISTANT CLERK
 K. HILLIS

PM 150582

EPD - Landscape Architecture
 34 Willow Street
 Salinas, CA 93901
 Phone: (831) 438-1400
 Fax: (831) 438-1401
 Web: www.epd.com

DATE: JULY 17, 2015
 SCALE: As Noted
 DRAWN BY: MCV

PROJECT TITLE:
 Sims Residence
 26401 Saddle Creek
 Carmel, CA 93822

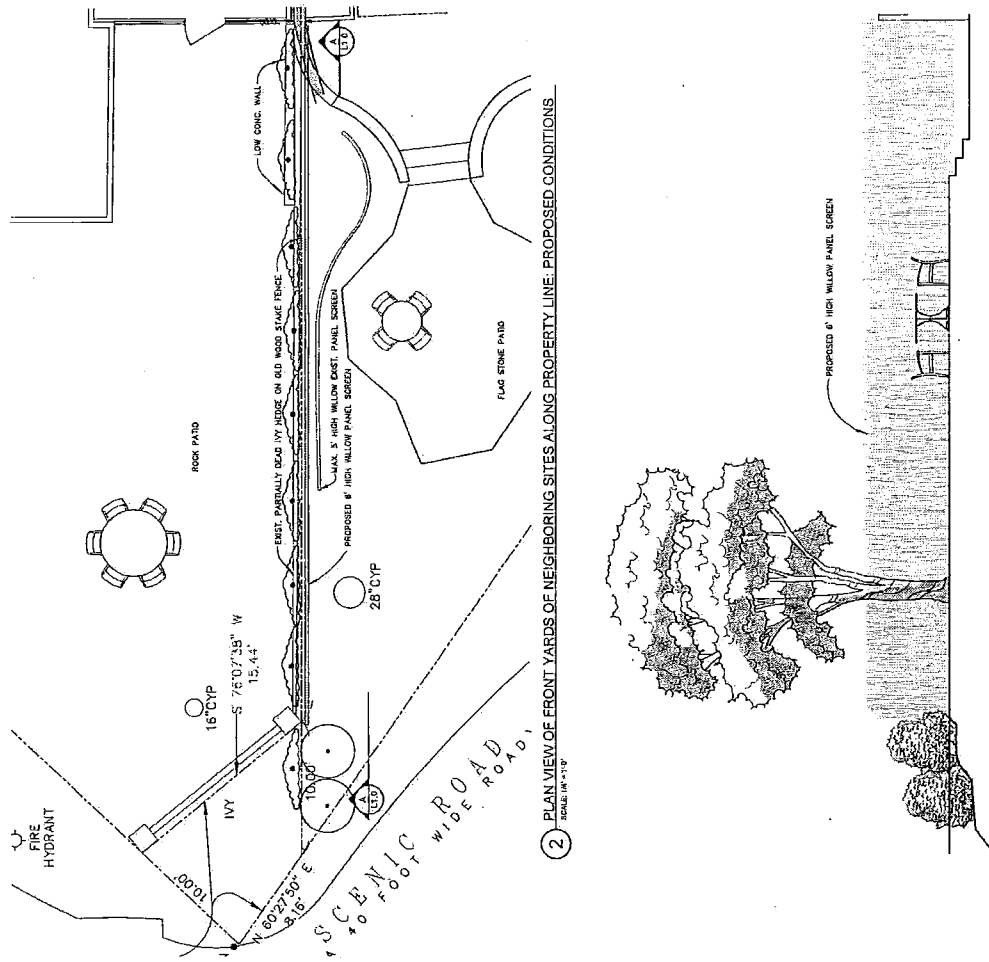
A.P.N.
 009-463-01A



SHEET TITLE:
 Plan View & Elevation
 of Proposed Willow
 Screen Front Yard
 JOB# 15015

SHEET #
 L2.0

APPROVED PURSUANT TO
 SOLUTION NO. PLANS 6582
 DIVISION NO. _____
 DATED BY: A. Lopez
ASISTANT PLANNING
12/11/15



NOTE:
 THIS DRAWING IS SUPERIMPOSED ON A BASE MAP THAT WAS ASSEMBLED PARTIALLY FROM A SURVEY TAKEN BY CENTRAL POINT SURVEYORS
 AND DEVELOPED WITH A SKETCH OF THE NEARBY BUILT SITE FEATURES ON THE NEIGHBORING PROPERTY. THESE ELEMENTS ARE SHOWN
 IN THEIR APPROX. LOCATION ONLY. NO FORMAL SURVEY WAS TAKEN.

PLN150582

