

Attachment D

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SAFECO #15-798

3-84-140

Recording Request by and
When Recorded Return to:
California Coastal Commission
631 Howard Street, Fourth Floor
San Francisco, California 94105
Attention: Legal Department

REEL 1779 PAGE 50
RECEIVED AT COUNTY OF
SAFECO TITLE INSURANCE COMPANY.

G 47897

OCT 19 9 10 AM '84

OFFICE OF RECORDER
COUNTY OF MONTEREY
SALINAS, CALIFORNIA

25

IRREVOCABLE OFFER TO DEDICATE OPEN-SPACE EASEMENT

AND

DECLARATIONS OF RESTRICTIONS

THIS IRREVOCABLE OFFER AND DEDICATION OF OPEN-SPACE EASEMENT AND
DECLARATIONS OF RESTRICTIONS (hereinafter "Offer") is made this
(1) September 21, 19 84, by (2) Edward Overton^{Messick} & Elizabeth
Burroughs Messick (hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain
real properties located in the County of (3) Monterey
State of California and described in the attached Exhibit A (hereinafter
referred to as the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone
as defined in Section 30103 of the California Public Resources Code (which
code is hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter
referred to as the "Act") creates the California Coastal Commission
(hereinafter referred to as the "Commission") and requires that any
development approved by the Commission must be consistent with the policies
of the Act set forth in Chapter 3 of Division 20 of the Public Resources
Code; and

IV. WHEREAS, Pursuant to the Act, Grantor applied to the Commission
for a permit to undertake development as defined in the Act within the

1 coastal zone of (4) Monterey County (hereinafter the
2 "Permit"); and

3 WHEREAS, a coastal development permit, No. (5) 3-84-140 was
4 granted on (6) August 22,, 19 84, by the Commission in
5 accordance with the provisions of the Staff Recommendations and Findings
6 (Exhibit E) attached hereto and hereby incorporated by reference, subject
7 to the following condition:(7)

8 Scenic Easement

9 PRIOR TO TRANSMITTAL OF PERMIT, permittee shall submit and record
10 an easement for the protection of the site's scenic,
11 archaeologic, and botanic resources covering those portions of
the subject site which are outside the areas permitted for
development by this permit.

12 This easement shall be granted to an appropriate public agency or
13 conservation foundation. Such easement shall be free of prior
14 liens or encumbrances, except for tax liens. Permittee shall
submit for Executive Director, Attorney General, and Grantee,
review and approval, the terms, parcel map, and proposed grantee
for the easement, prior to recording.

15 This easement shall include provisions to prohibit development;
16 to prevent disturbance of native groundcover and wildlife; to
17 prevent damage by livestock; to preclude disturbance of
18 archaeological materials except under the supervision of the
19 State Historic Preservation Office; to provide for maintenance
20 needs; and to specify conditions under which diseased or
dangerous vegetation may be removed and non-native species
controlled. A restriction allowing only those types of fencing
(such as split-rail or wire) which are open enough to allow free
passage of native wildlife shall be included in the terms of the
agreement.

21 WHEREAS, the Commission, acting on behalf of the People of the
22 State of California and pursuant to the Act, granted the Permit to the
23 Grantor upon condition (hereinafter the "Condition") requiring inter alia
24 that the Grantor record a deed restriction and irrevocable offer to
25 dedicate an open-space easement over the Property and agrees to restrict
26 development on and use of the Property so as to preserve the open-space and
27 scenic values present on the property and so as to prevent the adverse

1 direct and cumulative effects on coastal resources and public access to the
2 coast which could occur if the Property were not restricted in accordance
3 with this Offer; and

4 VII. WHEREAS, the Commission has placed the Condition on the permit
5 because a finding must be made under Public Resources Code Section 30604(a)
6 that the proposed development is in conformity with the provisions of
7 Chapter 3 of the Act and that in the absence of the protections provided by
8 the Condition said finding could not be made; and

9 VIII. WHEREAS, Grantor has elected to comply with the Condition
10 and execute this Offer so as to enable Grantor to undertake the development
11 authorized by the Permit; and

12 IX. WHEREAS, it is intended that this Offer is irrevocable and shall
13 constitute enforceable restrictions within the meaning of Article XIII,
14 Section 8 of the California Constitution and that said Offer when accepted
15 shall thereby qualify as an enforceable restriction under the provision of
16 the California Revenue and Taxation Code, Section 402.1;

17 NOW THEREFORE, in consideration of the above and the mutual
18 benefit and conditions set forth herein, the substantial public benefits
19 for the protection of coastal resources to be derived, the preservation of
20 the Property in open-space uses and the granting of the Permit to the owner
21 by the Commission, Grantor hereby irrevocably offers to dedicate to the
22 State of California, a political subdivision, the Big Sur Land Trust, or a
23 private association acceptable to the Executive Director of the Commission
24 (hereinafter, the "Grantee"), an open-space easement in gross and in
25 perpetuity for light, air, view, and for the preservation of scenic,
26 archaeologic and botanic resources, over that certain portion of the Property
27 specifically described in Exhibit B (hereinafter the Protected Land); and

1 This Offer and Declaration of Restrictions subjects the Property to
2 the following terms, conditions, and restrictions which shall be effective
3 from the time of recordation of this instrument.

4 1. USE OF PROPERTY. The use of the Protected Land shall be limited
5 to natural open space for habitat protection, private recreation, and
6 resource conservation uses.

7 No development as defined in Public Resources Code, Section 30106,
8 attached hereto as Exhibit C and incorporated herein by this reference,
9 including but not limited to, removal of trees and other major or native
10 vegetation, grading, paving, or installation of structures such as signs,
11 buildings, etc, shall occur or be allowed on the Protected Land with the
12 exception of the following subject to applicable governmental regulatory
13 requirements:

14 (a) the removal of hazardous substances or conditions or diseased
15 plants or trees.

16 (b) the removal of any vegetation which constitutes or contributes to
17 a fire hazard to residential use of neighboring properties, and which
18 vegetation lies within 100 feet of existing or permitted residential
19 development;

20 (c) the installation or repair of those types of fencing (such as split-
21 rail or wire) which are open enough to allow free passage of native wildlife.

22 (d) the excavation of archaeological materials under the supervision of
23 the State Historic Preservation Office.

24 2. RIGHT OF ENTRY. The Grantee of its agent may enter onto the Property
25 to ascertain whether the use restrictions set forth above are being observed,
26 at times reasonably acceptable to the Grantor.

27 3. BENEFIT AND BURDEN. This offer shall run with and burden the Property,
and all obligations, terms, conditions, and restrictions hereby imposed shall
be deemed to be covenants and restrictions running with the

1 land and shall be effective limitations on the use of the Property from the
2 date of recordation of this document and shall bind the Grantor and all
3 successors and assigns. This Offer shall benefit the State of California.

4 4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions
5 is held to be invalid or for any reason becomes unenforceable, no other
6 provision shall be thereby affected or impaired.

7 5. ENFORCEMENT. Any act or any conveyance, contract, or
8 authorization whether written or oral by the Grantor which uses or would
9 cause to be used or would permit use of the Protected Land contrary to the
10 terms of this Offer will be deemed a breach hereof. The Grantee may bring
11 any action in court necessary to enforce this Offer, including, but not
12 limited to, injunction to terminate a breaching activity and to force the
13 restoration of all damage done by such activity, or an action to enforce
14 the terms and provisions hereof by specific performance. It is understood
15 and agreed that the Grantee may pursue any appropriate legal and equitable
16 remedies. The Grantee shall have sole discretion to determine under what
17 circumstances an action to enforce the terms and conditions of this Offer
18 shall be brought in law or in equity. Any forbearance on the part of the
19 Grantee to enforce the terms and provisions hereof in the event of a breach
20 shall not be deemed a waiver of Grantee's rights regarding any subsequent
21 breach.

22 6. TAXES AND ASSESSMENTS. Grantor agrees to pay or cause to be paid
23 all real property taxes and assessments levied or assessed against the
24 Property.

25 7. MAINTENANCE. The Grantee shall not be obligated to maintain,
26 improve, or otherwise expend any funds in connection with the Property or
27 any interest or easement created by this Offer. All costs and expenses for

1 such maintenance, improvement use, or possession shall be borne by the
2 Grantor, except for costs incurred by grantee for monitoring compliance
3 with the terms of this easement.

4 8. LIABILITY AND INDEMNIFICATION. This conveyance is made and
5 accepted upon the express condition that the Grantee, its agencies,
6 departments, officers, agents, and employees are to be free from all
7 liability and claim for damage by reason of any injury to any person or
8 persons, including Grantor, or property of any kind whatsoever and to
9 whomsoever belonging, including Grantor, from any cause or causes
10 whatsoever, except matters arising out of the sole negligence of the
11 Grantee, while in, upon, or in any way connected with the Property, Grantor
12 hereby covenanting and agreeing to indemnify and hold harmless the Grantee,
13 its agencies, departments, officer, agent, and employees from all
14 liability, loss, cost, and obligations on account of or arising out of such
15 injuries or losses however occurring. The Grantee shall have not right of
16 control over, nor duties and responsibilities with respect to the Property
17 which would subject the Grantee to any liability occurring upon the land by
18 virtue of the fact that the right of the Grantee to enter the land is
19 strictly limited to preventing uses inconsistent with the interest granted
20 and does not include the right to enter the land for the purposes of
21 correcting any dangerous condition as defined by California Government Code
22 Section 830.

23 9. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions,
24 exceptions, obligations, and reservations contained in this Offer shall be
25 binding upon and inure to the benefit of the successors and assigns of both
26 the Grantor and the Grantee, whether voluntary or involuntary.

27 10. TERM. This irrevocable offer of dedication shall be binding upon

1 the owner and the heirs, assigns, or successors in interest to the Property
2 described above for a period of 21 years. Upon recordation of an
3 acceptance of this offer by the grantee in the form attached hereto as
4 Exhibit D, this offer and terms, conditions, and restrictions shall have
5 the effect of a grant of open-space and scenic easement in gross and
6 perpetuity for light, air, view and the preservation of scenic qualities
7 over the open-space area that shall run with the land and be binding on the
8 parties, heirs assigns, and successors.

9 Acceptance of the Offer is subject to a covenant which runs with the
10 land, providing that any offeree to accept the easement may not abandon it
11 but must instead offer the easement to other public agencies or private
12 associations acceptable to the Executive Director of the Commission for the
13 duration of the term of the original Offer to Dedicate.

14 Executed on this 21st day of September 1984 at Lahaina
15 Maui, Hawaii, ~~California~~. DATED: _____

16 Edward Overton Messick

Elizabeth Burroughs Messick

17 OWNER

Edward Overton Messick

17 OWNER

Elizabeth Burroughs Messick

19 TYPE OR PRINT NAME ABOVE

TYPE OR PRINT NAME ABOVE

20 (NOTARY ACKNOWLEDGMENT NEXT PAGE)

21 //

22 //

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24 //

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NOTE TO NOTARY PUBLIC:

If you are notarizing the signatures of anyone signing on behalf of a trust, corporation, partnership, etc., please use the correct notary jurat (acknowledgment) as explained in your Notary Law Book.

State of ~~California~~ HAWAII)
County of Maui) SS

On this 21st day of September, in the year 1984
before me Joanne M. Fukumoto, a Notary Public, personally
appeared Edward Overton & Elizabeth Burroughs Messick,
personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name is subscribed to this instrument,
and acknowledged that he/she/they executed it:

Joanne M. Fukumoto
NOTARY PUBLIC IN AND FOR SAID COUNTY AND
STATE

My commission expires: 7-28-85

This is to certify that the offer of dedication set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development No. 3-84-140 on August 22, 1984, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: October 15, 1984

Mary L. Hudson
Mary L. Hudson, Staff Counsel
California Coastal Commission

STATE OF California)

)ss

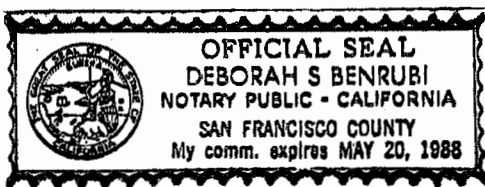
COUNTY OF San Francisco)

On October 15, 1984, before me Deborah S Benrubi, a Notary Public, personally appeared Mary L. Hudson, personally known to me to be (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as the Staff Counsel, and authorized representative of the

TITLE

California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

Witness my hand and official seal.



Deborah S Benrubi
Notary Public in and for said
County and State

EXHIBIT A

REEL 1779 PAGE 59

Property

PARCEL I

Lot Numbered 3, as said Lot is shown on that certain map entitled, Map of "Tract No. 588, Carmel Sur", filed in Volume 10 of Maps, "Cities and Towns", at page 6, Monterey County Records.

PARCEL II

A non-exclusive right of way for road and utility purposes over and across Aurora Del Mar as said road is shown and so designated on the map herein referred to.

EXHIBIT B
Protected Land

SCALE: 1" = 30'

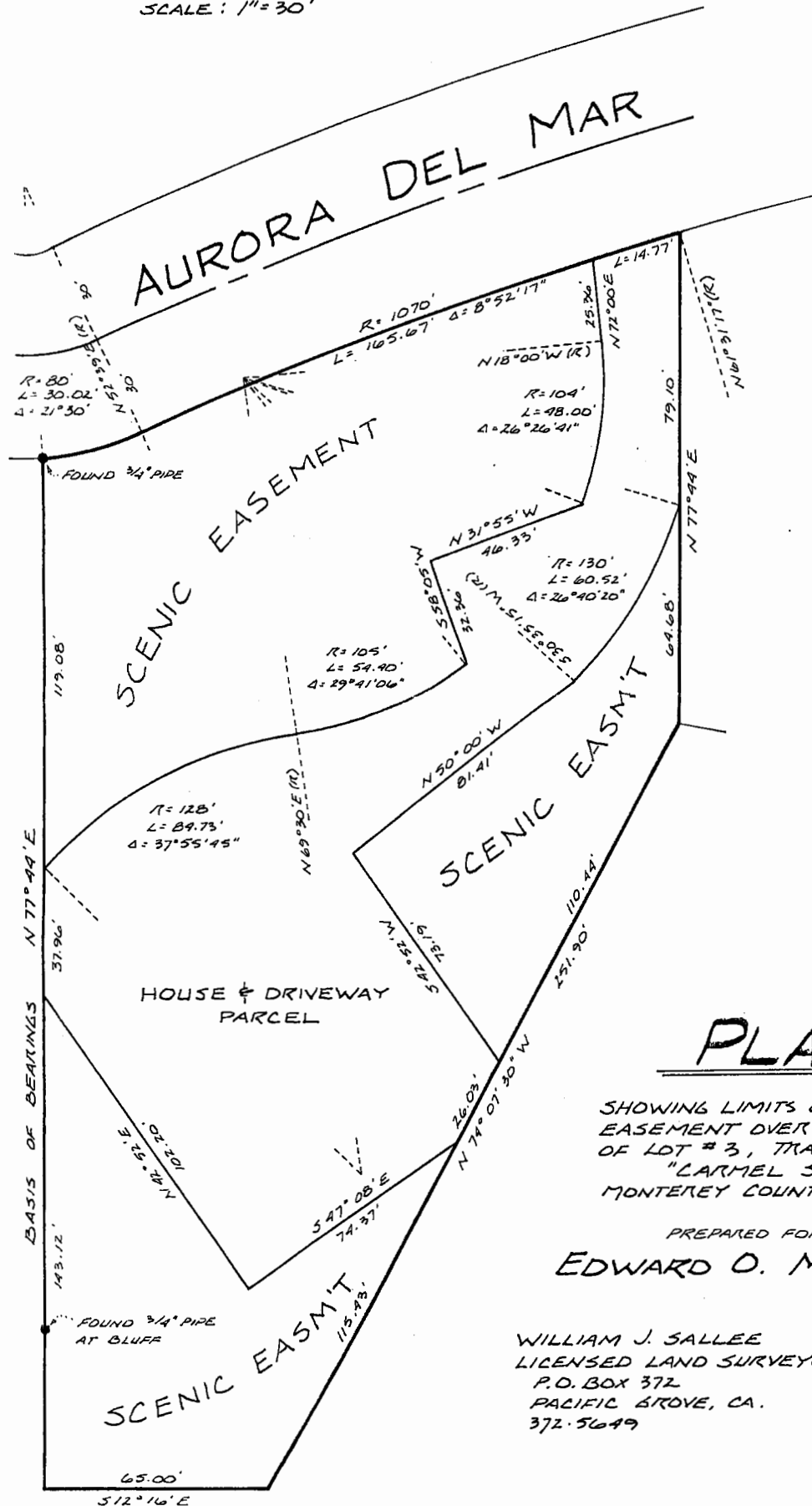


EXHIBIT B
Protected Land

REL 1779 PAGE 60

PLAT

SHOWING LIMITS OF SCENIC
EASEMENT OVER PORTIONS
OF LOT #3, TRACT #588
"CARMEI SUR"
MONTEREY COUNTY, CALIFORNIA

PREPARED FOR:

EDWARD O. MESSICK

WILLIAM J. SALLEE
LICENSED LAND SURVEYOR
P.O. BOX 372
PACIFIC GROVE, CA.
372-5649



REL 1779 PAGE 61

OCT. 1, 1984

Public Resources Code Section 30106

[30106. Development

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

EXHIBIT D

Recording Requested by and
When Recorded Mail To:
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

REEL 1779 PAGE 63

CERTIFICATE OF ACCEPTANCE

OFFER OF DEDICATION OF OPEN SPACE EASEMENT

This is to certify that _____ hereby accepts
the Offer to Dedicate Open Space Easement executed by _____
_____ on _____, 19____ and recorded on
_____, 19____ in Book _____, Page _____ of the Official Records in
the Office of the Recorder of _____ County.

Dated _____ By _____
For _____

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 19____, before the undersigned, a Notary Public in
and for the said State, personally appeared _____,
Title _____ known to me to be the _____
of the _____, who executed the within instrument and
acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

This is to certify that _____
is a public agency/private association acceptable to the Executive Director of
the _____ Commission, California
Coastal Commission to be Grantee under the above described Offer to Dedication.

Dated

Executive Director

Coastal Commission

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On _____, before the undersigned, a Notary Public in and for
said State, personally appeared _____

Name

Title

of the California Coastal Commission and known to me to be the person who
executed the within instrument on behalf of said Commission, and acknowledged to
me that such Commission executed the same.

Witness my hand and official seal.

Notary Public in and for said
County and State

EXHIBIT E

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT
701 OCEAN STREET, ROOM 310
SANTA CRUZ, CA 95060
(408) 426-7390 ATSS: 8-529-2304

FILED: 7/20/84
49th/180th DAY: 9/7/84
STAFF REPORT: 8/8/84
HEARING DATE: 8/22/84
STAFF: JC - (SC) cm
REEL 1779 PAGE 65
D4/192 8/2/84

STAFF REPORT: CONSENT CALENDAR

PROJECT DESCRIPTION

APPLICANT: Edward Messick

PERMIT NO: 3-84-140

PROJECT LOCATION: 30560 Aurora del Mar, Carmel Highlands area,
Monterey County, APN 243-331-03

PROJECT DESCRIPTION: Convert garage to bedroom, add new garage,
grading 219 cubic yards.

LOT AREA: 1.1 acres

ZONING: Residential

BLDG. COVERAGE: Existing: 3,671

APPROVED LAND USE

PLAN DESIGNATION: Rural

sq. ft. Proposed: 684 sq. ft.

Residential - 1 du/existing parcel

PAVEMENT COVERAGE: Existing:

5200 sq. ft., Reduce by 684 sq. ft. PROJECT DENSITY: 1 du/1.1 acre

LANDSCAPE COVERAGE: 500 sq. ft.

HEIGHT ABV. FIN. GRADE: 14 feet

Unimproved: 38,556 sq. ft.

LOCAL APPROVALS RECEIVED: Zoning 7/10/84 - Variance side yard setback
4/20/84; CEQA - Categorically Exempt: 15301; Class 1; Item e

PTT: 1

STAFF RECOMMENDATION

REEL 1779 PAGE 66

The Staff recommends that the Commission adopt the following Resolution:

Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

RECOMMENDED CONDITIONSStandard Conditions

See Exhibit A.

Special Conditions1. Scenic Easement

PRIOR TO TRANSMITTAL OF PERMIT, permittee shall submit and record an easement for the protection of the site's scenic, archaeologic, and botanic resources covering those portions of the subject site which are outside the areas permitted for development by this permit.

This easement shall be granted to an appropriate public agency or conservation foundation. Such easement shall be free of prior liens or encumbrances, except for tax liens. Permittee shall submit for Executive Director, Attorney General, and Grantee, review and approval, the terms, parcel map, and proposed grantee for the easement, prior to recording.

This easement shall include provisions to prohibit development; to prevent disturbance of native groundcover and wildlife; to prevent damage by livestock; to preclude disturbance of archaeologic materials except under the supervision of the State Historic Preservation Office; to provide for maintenance needs; and to specify conditions under which diseased or dangerous vegetation may be removed and non-native species controlled. A restriction allowing only those types of fencing (such as split-rail or wire) which are open enough to allow free passage of native wildlife shall be included in the terms of the agreement.

2. Any excavated materials shall be carefully removed so that spoils are neither placed within or allowed to slide into that area seaward of the upper edge of the bluff. Off site disposition of excavated spoils within the Coastal Zone, shall be subject to prior review and approval by the Executive Director.

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FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

1. This development has been completed without first obtaining a coastal permit. The applicant has signed a "Stipulation Concerning Application for Permit" agreeing that the granting of a coastal permit will not affect any present or prospective action for civil penalties arising from the alleged violation.
2. The site is located in the Otter Cove subdivision of Monterey County, south of Malpas Creek in the Big Sur segment Land Use Plan area. The house is west of Highway I and is visible to travellers as are many of the homes in this area where only a single row of parcels separate the Highway from the sea. Areas visible from Highway I are in the "critical viewshed" and are afforded special protection in the LUP for the Big Sur area.

The applicant proposes the conversion of an existing garage to quarters for his mother and the addition of a new garage. The converted garage has no kitchen facilities and is directly a part of the existing home. The garage addition is located on an existing paved parking area and requires minimal vegetation removal and grading. The addition will maintain the same roofline with minimal additional impacts on the visual resources of the area. The existing driveway will be recontoured.

Section 30251 of the Coastal Act requires:

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

3-84-140

Edward Messick

Page 4

The Big Sur Area LUP adopted by the Monterey County Board of Supervisors April, 1984 states in its Scenic Resource policies that development may not intrude into the critical viewshed. However, residential parcels in the critical viewshed in the Otter Cove Subdivision seaward of Highway I south of Malpaso Creek are an exception and shall be permitted to be used for residential purposes subject to standards to protect scenic resources.

Consistent with conditions for other development in this residential area and with Section 30251 of the Coastal Act, a scenic easement to prevent additional viewshed intrusion is required. A condition to manage disposition of spoils to prevent erodable materials from reaching coastal waters in accord with Section 30231 is also required.

Therefore, as conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act of 1976.

3. The Big Sur Coast Local Coastal Program Land Use Plan (LUP) was adopted by the Monterey County Board of Supervisors on April 10, 1984, but has not yet been resubmitted to the Commission. The applicant's proposal as conditioned appears consistent with the document's viewshed policies and with previous Commission actions.

Accordingly, as conditioned to provide for protection of scenic resources, the proposed development will not prejudice the ability of the local government to complete a Local Coastal Program in conformance with Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

EXHIBIT-A

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RECOMMENDED CONDITIONS

USE: IN PROPOSED PERMITS SUBJECT TO STANDARD CONDITIONS

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXHIBIT NO. A

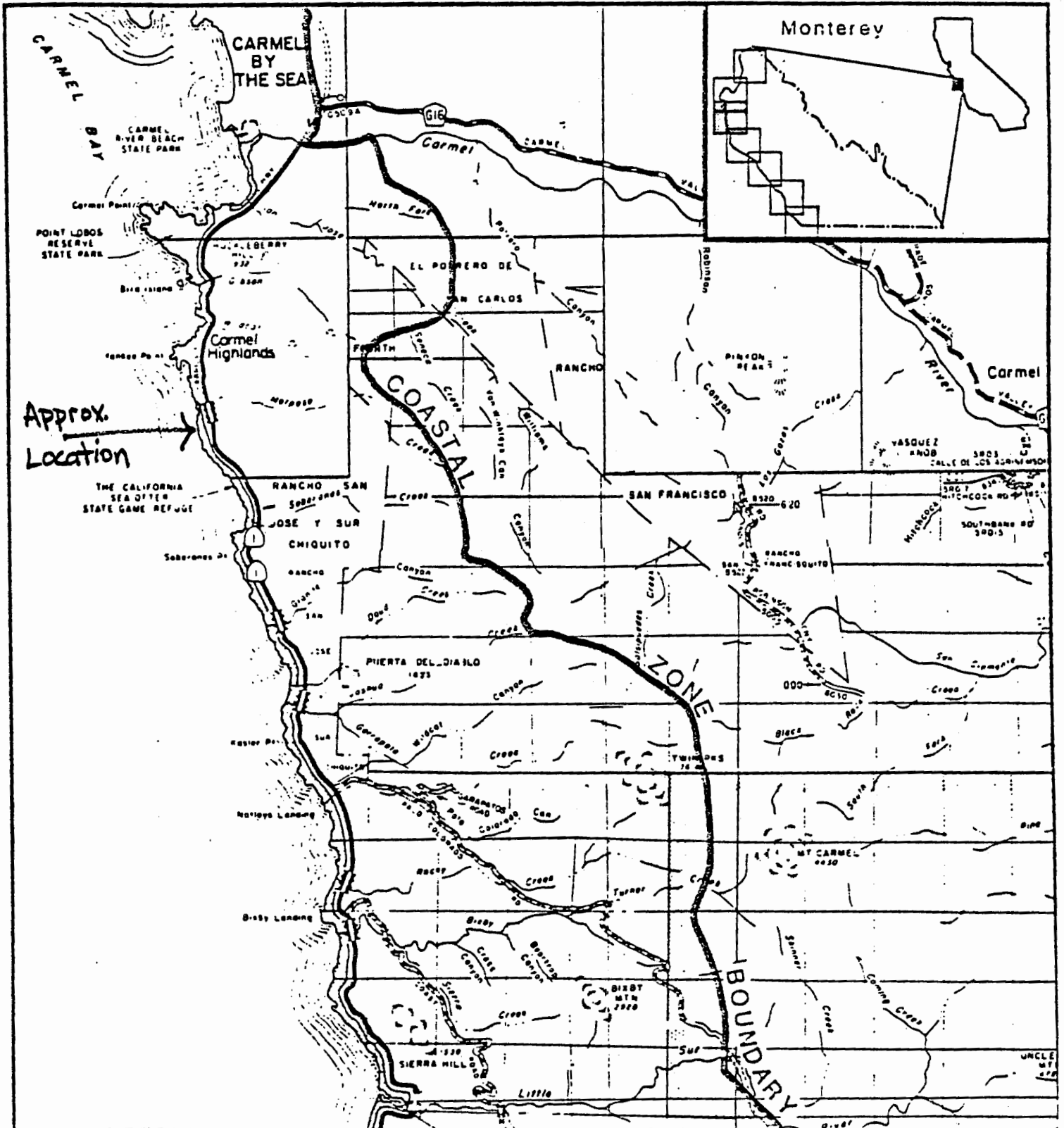
APPLICATION NO.

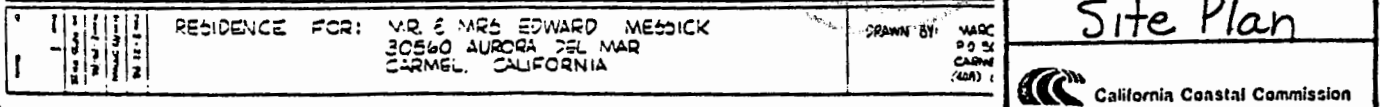
3-84-140

Standard Conditions



California Coastal Commission





END OF DOCUMENT

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