

**PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

RESOLUTION NO. 07039

A. P. # 243-262-003-000

FINDINGS AND DECISION

In the matter of the application of
Rocky Point Restaurant LLC (PLN050296)

WHEREAS: The Planning Commission, pursuant to regulations established by local ordinance and state law, has considered, at public hearing, a Combined Development Permit, to allow after-the-fact permits (Violation#: CE990087) consisting of: Coastal Administrative Permit for development of accessory structures appurtenant to the principal allowed use including construction of two concrete decks, one retaining wall, and a redwood deck and gazebo, installation of outdoor lighting along the coastal bluff, replacement of water tanks on neighboring property, and replacement/expansion of an existing restaurant sign; Coastal Development Permit for development within the critical viewshed; Coastal Development Permit for development on slopes of 30% or greater; Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat area (ESHA); and Design Approval. The project is located at 36700 Highway 1, Monterey, Big Sur Coast Land Use Plan, approximately 12 miles south of Carmel, Big Sur Coast Land Use Plan, and came on regularly for hearing before the Planning Commission on September 12, 2007.

WHEREAS: Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING – CONSISTENT WITH PLAN POLICIES:** The subject Combined Development Permit (PLN050296/Rocky Point Restaurant) conforms to the plans, polices, requirements and standards of the Big Sur Coast Land Use Plan and the Monterey County Coastal Implementation Plan, Part 3 (Chapter 20.145 MCC).

EVIDENCE:

- (a) **Land Use.** The subject restaurant is located on a site that is designated Visitor Serving Commercial, Design Control (VSC-D). Water tanks and access for the restaurant are located on a site owned by the County of Monterey that is designated Watershed and Scenic Conservation (WSC/40). The entire project is located in the coastal zone and is subject to policies and regulations of the Big Sur Land Use Plan and Coastal Implementation Plan.
- (b) **Zoning.** The subject site is located within the designated Visitor Serving Commercial VSC(CZ) and the designated Watershed and Scenic Conservation WSC/40-D(CZ) and the Design Control Zoning district in the Coastal Zone.
- (c) **Plan Conformance.** Planning staff reviewed the project, as contained in the application and accompanying materials, for conformity with:
 - 1) 1982 Monterey County General Plan, as amended.
 - 2) Big Sur Coast Land Use Plan (LUP)
 - 3) Chapter 20.145 (Part 3) of the Monterey County Coastal Implementation Plan (CIP)
 - 4) Chapter 20.17 of the Monterey County Zoning Ordinance relative to regulations for the Watershed and Scenic Conservation "WSC(40)" district in the coastal zone.

- 5) Chapter 20.22 of the Monterey County Zoning Ordinance relative to regulations for the Visitor Serving Commercial "VSC-D(CZ)".
- 6) Chapter 20.44 of the Monterey County Zoning Ordinance relative to Design Control Zoning District.
- 7) Chapter 20.64.230 MCC – Regulations for Development on Slopes in Excess of 30%.
- 8) Chapter 20.70 MCC – Coastal Development Permit.

The project, as conditioned, is consistent with applicable plans and policies of the Big Sur Land Use Plan (LUP), Coastal Implementation Plan, Part 3 (Chapter 20.145); Monterey County Subdivision Ordinance (Title 19), Monterey County Grading Ordinance (Title 16), and the Monterey County Zoning Ordinance (Title 20/Coastal Implementation Plan, Part 1) which designates this area as appropriate for visitor serving commercial.

- (d) Site Description. Rocky Point Restaurant LLC owns a 2.75-acre site (Assessor's Parcel Number 243-262-004-000) and has an existing restaurant and parking lot developed in the site. Monterey County owns an 8.87-acre site (Assessor's Parcel Number 243-262-003-000). County property has water storage tanks for the restaurant and overhead utility lines (poles). Access is provided off Highway 1 by a long narrow driveway into the restaurant parking lot.
- (e) Project Description. The proposed project (PLN050296/Rock Point Restaurant) consists of obtaining a Coastal Administrative Permit and Design Approval for as-built modifications to the existing restaurant, including the construction of two concrete decks and one retaining wall, construction of a redwood deck and gazebo, replacement of a water tanks, and replacement of an existing restaurant sign; a Coastal Development Permit for development within the critical viewshed; a Coastal Development Permit for development on slopes of 30% or greater; and a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat area (ESHA).
- (f) Visual Resources. The subject site is located within the critical viewshed, which is defined as everything within sight of Highway 1 and major public viewing areas. However, Policy 3.2.5.A identifies the Rocky Point Restaurant as a Rural Service Center, which is subject to careful siting and design controls provided in Policy 5.4.3 LUP. *See Finding #5*.
- (g) Archaeology. As conditioned, the project is consistent with policies of the Big Sur Coastal Implementation Plan dealing with development in archaeologically sensitive areas (Section 20.145.120 BS CIP). County resource maps identify the area to be highly sensitive to archaeology finds. An archaeological survey was conducted within the subject parcel in 1987. This survey did not yield any cultural properties. The study concluded that the restaurant property does not contain evidence of potentially significant archaeological resources. In addition, no unidentified cultural resources were known to be impacted during construction or installation of the as-built restaurant modifications and no additional disturbance is proposed (Section 20.145.120.B.5 CIP).
- (h) Environmentally Sensitive Habitat. The project site consists of coastal sage scrub that has been disturbed through fire and other development. Mitigation measure 7 requires restoration of areas equal to or greater than the disturbed area. This would include removing invasive plant species within the project area. As conditioned, the proposed project is consistent with policies of the Big Sur Coastal Implementation Plan dealing with environmentally sensitive habitats (Section 20.145.040 CIP).
- (i) Development on Slopes over 30%. The proposed project includes development on slopes over 30% for which no alternative to avoid the slope exists and which also better meets the goals and policies of the Big Sur Coastal Land Use Plan. Development on slopes in excess of 30% requires a Coastal Development Permit (Section 20.64.230.C.1 CIP) in order to evaluate the best location for development given the site constraints. The Planning Commission has determined that no

feasible alternative exists that would avoid the development on 30% slope and that the project design meets the goals and policies on the Land Use Plan by reducing potential hazards (Section 20.64.230.E CIP).

- (j) Violation. The subject property has an open Code Enforcement case (CE990087) for work completed without proper permits. Zoning violation abatement costs were paid with the application. Conditions are proposed to address the violations and bring the property into compliance. The violations can be cleared once the applicable conditions have been met.
- (k) LUAC. On January 10, 2006, the Big Sur Coastal Land Use Advisory Committee voted 5-0-1 to recommend approval of the proposed project. The committee expressed concern for visual impact, exterior lighting, soil stability, and exotic plants, but generally found that the applicant met all requirements. Standard conditions are included that address these concerns.
- (l) Site Visit. Project planners conducted multiple on-site inspections to verify that the subject project conforms to the plans and reports listed above.
- (m) Application. The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN050296/Rocky Point Restaurant. The text, policies, and regulations in the above documents have been evaluated during the course of the review of the applications. No conflicts were found to exist. No communications were received during the course of review of the project to indicate that there is any inconsistency with the text, policies, and regulations in these documents.

2. **FINDING – SITE SUITABILITY:** The site is adequate for the as-built restaurant modifications.

EVIDENCE:

- (a) Agency Review. The project has been reviewed for suitability by staff from Planning and Building Inspection Department, Monterey County Water Resources Agency, Monterey County Public Works Department, Environmental Health Division, Fire Department, and the Parks Department. There has been no indication from these agencies that the site is not suitable for the proposed development. Recommended conditions have been incorporated.
- (b) Sewage Disposal. The project would not result in an increase in population, structures or housing. Therefore, the project would not require sewage disposal.
- (c) Water Supply. As per communication with the Environmental Health Division the as-built restaurant modifications would not require an amended water system permit. Therefore, adequate water supply facilities exist or are readily available to the site. Appropriate recommendations for the project are contained in File No. PLN050296.
- (d) Professional Reports. Technical reports by outside geotechnical, biological, and cultural consultants indicate that there are no physical or environmental constraints that would indicate the site is not suitable for the use proposed. Findings and recommendations from the reports prepared by these professionals have been incorporated into the analysis and conditions. All technical reports are in Project File PLN050296.
- (e) Traffic. The project would not impact local traffic, emergency access, or parking, nor would it impact any air traffic patterns or conflict with adopted transportation policies, plans, or programs (Policy 5.4.3.E.9 LUP).
- (f) Staff site visit and project photos.
- (g) Project File. The application, plans, photographs and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in the project file (PLN050296/Rocky Point Restaurant).

3. **FINDING - HEALTH AND SAFETY:** The establishment, maintenance or operation of the project applied for will not under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE:

- (a) Agency Review. The project was reviewed by Planning and Building Inspection Department, Monterey County Water Resources Agency, Monterey County Public Works Department, Environmental Health Division, Fire Department, and the Parks Department. The respective departments and agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood. The applicant has agreed to these conditions as evidenced by the application and accompanying materials.
- (b) Professional Reports. Recommended conditions and modifications from consulting geotechnical consultants provide additional assurances regarding project safety. These technical reports are in Project File PLN050296.
- (c) Preceding findings and supporting evidence.

4. **FINDING - PUBLIC ACCESS:** The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated.

EVIDENCE:

- (a) The subject property is not described as an area where the Local Coastal Program requires public access (Figure 2 in the Big Sur Coast Land Use Plan).
- (b) There has been historic public use of the driveway access and parking lot for the Rocky Point Restaurant providing public access to the coastline.
- (c) The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (Section 20.144.150 CIP). No additional access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.144.150.B of the Monterey County Coastal Implementation Plan, can be demonstrated.

5. **FINDING - VISUAL RESOURCES:** The project as proposed, conditioned, and mitigated is consistent with policies of the Big Sur Coast Land Use Plan dealing with visual resources and will have no significant impact on the public viewshed.

EVIDENCE:

- (a) The subject parcel is visible from Highway 1 and is therefore located in the critical viewshed as defined by Big Sur Coast Land Use Plan (LUP) Policy 3.2.2. Policy 3.2.5.A LUP creates an exception for Rural Service Centers and identifies the Rocky Point Restaurant as one of these centers. Rural Service Centers are subject to careful design and siting controls provided in Policy 5.4.3.E LUP.
- (b) Although the Rocky Point Restaurant is located outside of the Rural Community Center, it is considered a conforming use under the Big Sur Land Use Plan (Policy 5.4.3.E.1 LUP). Commercial uses such as this may expand secondary uses provided such expansion is small in scale

and clearly subordinate and incidental to the primary use (Policy 5.4.3.E.7 LUP). The project includes after-the-fact permits for a deck/patio area to serve restaurant customers outside.

- (c) Replacement of water tanks and construction of a lower retaining wall and patio deck are not visible from Highway 1; and therefore, are consistent with the BSC LUP Policy 3.2.3.A.7. However, the gazebo and juniper hedge (planted adjacent to the deck) extend 6-8 feet into the critical viewshed (BSC LUP Policy 3.2.3.A.7). Conditions require reducing the hedge to the height of the deck railing, and impact from the gazebo becomes less than significant once that occurs.
- (d) Back lighting using flood lights along the bluff edge create a glare toward the Highway. A letter received from a long-time employee of the restaurant suggests that the flood lighting along the bluffs was installed in 1949, which makes them a legal-nonconforming use. Structural maintenance is allowed provided the work does not exceed 50% of the appraised value within any one year, and any work beyond that threshold would require a Coastal Development Permit. The proposed improvements were initiated as repair to storm damage and as such would not trigger the requirement for a Coastal Development Permit or the removal of the lights at this time. As such, they would remain legal non-conforming and would have to be removed if there are significant changes to the site/structures/use.
- (e) The project will include removal of non-native and invasive species (ice plant) that would be replaced with native species that blend into the surroundings (Policy 3.2.3.A.2 LUP). Condition 13 requires replacement of an area equal to or greater than the patio impact area and for this restoration to occur along the edges of the ice plant for the greatest positive impact.
- (f) The Rocky Point Restaurant sign, located on Highway 1 north of the restaurant driveway, was modified to include a rock pillar frame. The addition of the stone pillar frame increases the sign's visibility from Highway 1. This expansion creates a larger obstruction of coastal views as well as views of traffic from the south on Highway 1. Sign modifications are inconsistent with Policies 5.4.3.E.9 and 3.2.3.A.7 LUP, so a revised design was submitted in April 2007. The revised sign is the same size as the original sign and meets the LUP policy.
- (g) Mitigation measures included in the Initial Study, addressing the gazebo, cypress hedge, and restaurant sign, would reduce impacts on the critical viewshed. As conditioned, the project is consistent with polices of the Big Sur Coastal Implementation Plan (CIP) dealing with the critical viewshed from Highway 1 (Section 20.145.030 BS CIP).
- (h) Staff site visit and project photos.
- (i) Application plans and materials located in project file number PLN050296.

6. **FINDING - CEQA:** On the basis of the whole record before the Monterey County Board of Supervisors, there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The mitigated negative declaration reflects the independent judgment and analysis of the County.

EVIDENCE:

- (a) Initial Study. On May 19, 2006, Monterey County Planning and Building Inspection Department completed an Initial Study pursuant to the California Environmental Quality Act (CEQA). This Initial Study identified potentially significant impacts to aesthetics, biological resources, and geology and soils. Site investigations and technical reports determined that there are clearly no significant impacts that would occur as a result of the proposed project. The Initial Study is on file in the office of Resource Management Agency (RMA) and is hereby incorporated by reference (PLN050296).

(b) Mitigated Negative Declaration. A Mitigated Negative Declaration was filed with the County Clerk on December 28, 2006, noticed for public review, and circulated to the State Clearinghouse (SCH #: 2006121117) from December 29, 2006 to January 29, 2007. The evidence in the record includes studies, data, and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data, and reports; application materials; and expert testimony. Among the studies, data, and reports analyzed as part of the environmental determination are the following:

- (1) The application.
- (2) Biological Assessment for the Cell Tower Project at the Rocky Point Restaurant. Dennis Duffy & Associates. March 29, 2004.
- (3) Biological Report to Review Plants and Conditions at Rocky Point Restaurant. Vern Yadon. March 21, 2007.
- (4) Cultural Resources Study of the Proposed AT&T Project Site No. 9600016009A – Rocky Point Restaurant. Prepared for ATC Associates, Inc. Prepared by Historic Resource Associates. October 2003.
- (5) Geological Report, Rocky Point Restaurant ATT Telecommunications Facility. Cleary Consultants, Inc. March 31, 2004.
- (6) Preliminary Geologic Report for a proposed addition to the Rocky Point Restaurant and construction of additional parking. Foxx, Nielson, and Associates. July 18, 1989.
- (7) Hydrologic Study of Potential Water-Use Intensification by Rocky Point Restaurant, Central Coast, Monterey County, California. Prepared by Nicholas M. Johnson, Consulting Hydrogeologist, California Registered Geologist. July 1989.

These reports are on file in the offices of the Planning Department (File Reference PLN050296) and are incorporated by reference herein.

(c) Comments. Comments received during the review period or at the hearing before the Planning Commission have been considered as part of the proposed project. To date, comments were received from the Monterey Bay Unified Air Pollution Control District (APCD) and the California Department of Fish and Game (DFG). The comments made some technical corrections, but no substantive issues were raised. The Planning Commission considered public testimony and the initial study at a hearing on March 28, 2007.

(d) Clarification. Mitigation measures were included for aesthetic resources, biological resources, and geology and soil resources to address potential impacts. Based on new information received, staff recommends including the following addendum to the Mitigated Negative Declaration:

- (1) *Biological Report*. At the hearing on March 28, 2007, the applicant submitted a new biological report that makes argument that there is no ESHA within 100 feet of the patio addition because the Coast buckwheat plant in the area had no evidence of the Smith's blue butterfly being present and that other plant species prevent adequate spread of the buckwheat to create an environment that would attract the butterfly. Interpretation of LUP policy is that the presence of this buckwheat plant makes it ESHA since the plant is host for an endangered species. Without protection of some sort, the habitat could continually be removed without review or replacement. The replacement ratio for the area impacted to the area to be restored with native vegetation to be 1:1 (Condition 13). For better application, the restoration shall occur along the edges of the ice plant to prevent further advancement away from the development.
- (2) *Monument Sign*. The monument sign was replaced with a sign of the same size; however, stone pillars and a wood trellis were added. The Initial Study determined that this addition impacted the critical viewshed of Big Sur and Mitigation Measure 3 required the

removal of the added features. At one of the meetings with the applicant, they submitted a revised sign plan that removes the trellis and reduces the stone pillars to a maximum 3 feet tall. This change mitigates the potential aesthetic impact by design and Condition 10 has been revised to incorporate the modified design as part of the project.

- (3) *Hedge*. Due to potential aesthetic impacts, Mitigation Measure 2 required removing the cypress hedge along the south end of the deck (Condition 9). Reducing the hedge to the height of the deck railing would not impact the ocean view from Highway 1. Condition 9 has been clarified to allow reducing the height and not just removing the plants.
- (4) *Gazebo*. Mitigation Measure 1 requires removal of the gazebo from on top of the deck since it extends into the ocean view. Once the hedge was trimmed, a new site visit re-evaluated the potential visual impact of the gazebo without the hedge extending above the deck. As a result, the MND has been clarified that aesthetic impacts from the open-design of the gazebo would be less than significant once the hedge is reduced; and therefore, Mitigation Measure 1 is not required. Lighting of this area remains a concern and is addressed in Condition 7.

Based on new information, the MND circulated December 2006 is hereby revised whereas Mitigation Measures 1, 3 and 6 would be deleted and Mitigation measure 2 would be amended.

- (e) The Mitigated Negative Declaration was revised on September 4, 2007 based on new information that clarifies, amplifies, or makes insignificant modifications to the negative declaration. Re-circulation of the revised document was not required pursuant to Section 15073.5 of the CEQA Guidelines. Mitigation measures were replaced with equal or more effective measures.

7. **FINDING - FISH & GAME FEE**: For purposes of the Fish and Game Code, the project may have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends.

EVIDENCE:

- (a) Staff analysis contained in the Initial Study and the record as a whole indicate the project could result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game (DFG) regulations. The site supports coastal sage habitat, which contains dune buckwheat (*E. parvifolium*), a host plant for the federally Endangered Smith's blue butterfly.
- (b) State Department of Fish and Game will review the Mitigated Negative Declaration to comment and recommend necessary conditions to protect biological resources in this area. Therefore, staff recommends that the project will be required to pay the State fee of \$2,500 plus a \$50 processing fee to the County Clerk.
- (c) Initial Study and Mitigated Negative Declaration contained in File No. PLN050296/Rocky Point Restaurant.

8. **FINDING - APPEALABILITY**: The project is appealable to the Board of Supervisors and California Coastal Commission.

EVIDENCE:

- (a) Section 19.01.040 of the Monterey County Coastal Zone Subdivision Ordinance (Title 19).
- (b) Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan (Part 1). The project requires a Coastal Development Permit making it subject to appeal by the California Coastal Commission. It is also located between the ocean and the first public road.

DECISION

THEREFORE, it is the decision of the Planning Commission of the County of Monterey to adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) and approve the Combined Development Permit as shown on the attached sketch and subject to the attached conditions.

PASSED AND ADOPTED this 12th day of **September, 2007**, by the following vote:

AYES: Errea, Brown, Isakson, Padilla, Ottone, Rochester, Diehl, Sanchez, Salazar, Vandevere
NOES: None
ABSENT: None



MIKE NOVO, SECRETARY

A COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON SEP 18 2007

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE SEP 28 2007

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Salinas.

2. This permit expires two years after the above date of granting thereof unless construction or use is started within this period.

**Monterey County Planning and Building Inspection
Condition Compliance and/or Mitigation Monitoring
Reporting Plan**

Project Name: ROCKY POINT RESTAURANT

File No: PLN050296

APNs: 243-262-004-000

Approval by: Planning Commission

Date: September 12, 2007

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
1		<p>PD001 - SPECIFIC USES ONLY This Combined Development Permit (PLN050296/Rocky Point Restaurant) to allow after-the-fact permits (Violation#: CE990087) consists of: Coastal Administrative Permit to for development of accessory structures appurtenant to the principal allowed use including construction of two concrete decks, one retaining wall, and a redwood deck and gazebo, replacement of existing water tanks on County property (assessor's parcel number 243-262-003-000), and replacement of an existing restaurant sign; Coastal Development Permit for development within the critical viewshed; Coastal Development Permit for development on slopes of 30% or greater; Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat area (ESHA); and Design Approval. The property is located at 36700 Highway 1, Monterey (Assessor's Parcel Number 243-262-004-000), Big Sur Coast Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. 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 the RMA - Planning Department. 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 Department)</p>	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated	

2		<p>PD002 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution 07039) was approved by the <i>Planning Commission</i> for Assessor's Parcel Number 243-262-004-000 on <i>September 12, 2007</i>. The permit was granted subject to 20 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)</p>	Proof of recordation of this notice shall be furnished to the RMA - Planning Department.	Owner/ Applicant	Prior to the issuance of grading and building permits or commencement of use.	
3		<p>PD003(A) – CULTURAL RESOURCES – NEGATIVE ARCHAEOLOGICAL REPORT If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (RMA - Planning Department)</p>	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.	Owner/ Applicant/ Archaeologist	Ongoing	

4		<p>PD004 - INDEMNIFICATION AGREEMENT</p> <p>The property owner agrees as a condition and in consideration of the 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. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his 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 the property, filing of the final map, 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 Department)</p>	<p>Submit signed and notarized Indemnification Agreement to the Director of RMA – Planning Department for review and signature by the County.</p> <p>Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA – Planning Department.</p>	Owner/ Applicant	Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable	
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5		<p>PD005 - FISH AND GAME FEE-NEG DEC/EIR Pursuant to the State Public Resources Code § 753.5, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee, to be collected by the County, within five (5) working days of project approval. This fee shall be paid before the Notice of Determination is filed. If the fee is not paid within five (5) working days, the project shall not be operative, vested or final until the filing fees are paid. (RMA - Planning Department)</p>	<p>The applicant shall submit a check, payable to the <i>County of Monterey</i>, to the Director of the RMA - Planning Department.</p>	Owner/ Applicant	Within 5 working days of project approval.	
			<p>If the fee is not paid within five (5) working days, the applicant shall submit a check, payable to the <i>County of Monterey</i>, to the Director of the RMA - Planning Department.</p>	Owner/ Applicant	Prior to the recordation of the final map, the start of use or the issuance of building or grading permits	
6		<p>PD006 - MITIGATION MONITORING PROGRAM The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring and/or Reporting Plan in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement. (RMA - Planning Department)</p>	<p>1) Enter into agreement with the County to implement a Mitigation Monitoring Program.</p>	Owner/ Applicant	Within 60 days after project approval or prior to the issuance of grading and building permits, whichever occurs first.	
			<p>2) Fees shall be submitted at the time the property owner submits the signed mitigation monitoring agreement</p>			
7		<p>PD014(C) – LIGHTING – EXTERIOR LIGHTING PLAN (BIG SUR) All exterior lighting shall be unobtrusive, down-lit, compatible with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Exterior lights shall have recessed lighting elements. Exterior light sources that would be directly visible from critical viewshed viewing areas, as defined in Section 20.145.020.V, are prohibited.</p>	<p>Submit three copies of the lighting plans to the RMA - Planning Department for review and approval. Approved lighting plans shall be incorporated into final building plans.</p>	Owner/ Applicant	Prior to the issuance of building permits.	

		The applicant shall submit three (3) copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The lighting shall comply with the requirements of the California Energy Code set forth in California Code of Regulations, Title 24, Part 6. The exterior lighting plan shall be subject to approval by the Director of the RMA - Planning Department, prior to the issuance of building permits. (RMA – Planning Department)	The lighting shall be installed and maintained in accordance with the approved plan.	Owner/ Applicant	Ongoing	
8		PD016 – NOTICE OF REPORTS Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: " <i>Reports prepared for this parcel include:</i> <ul style="list-style-type: none"> ▪ <i>Cultural Resources Study prepared by Historic Resource Associates dated October 2003,</i> ▪ <i>Preliminary Geologic Report prepared by Foxx, Nielson, and Associates dated July 18, 1989,</i> ▪ <i>Geological Report prepared by Cleary Consultants, Inc. dated March 31, 2004,</i> ▪ <i>Hydrologic Study of Potential Water-Use Intensification prepared by Nicholas M. Johnson dated July 1989; and</i> ▪ <i>Biological Assessment prepared by Dennis Duffy & Associates dated March 29, 2004, and Biological Report by Vern Yadon, dated March 21, 2007.</i> <i>All reports are on record in the Monterey County Planning Department Library. All development shall be in accordance with these reports"</i> (RMA – Planning Department)	Proof of recordation of this notice shall be furnished to the RMA – Planning Department.	Owner/ Applicant	Prior to the issuance of grading and building permits.	
9	2	PDSP002 - HEDGE. The applicant shall reduce the height of the juniper hedge adjacent the gazebo to a level that is equal to or less than the height of the deck railing so as to not intrude upon the critical viewshed. Landscaping in this location shall not exceed the height of adjacent redwood deck railings (approximately 36 inches). (RMA – Planning Department)	Applicant shall provide the Director of Planning and Building Inspection with proof that the landscape adjacent the gazebo- is reduced to a height that does not exceed the deck railing <i>Also See Conditions 12 and 14</i>	Owner / Applicant	Prior to violation clearance and final clearance of building permits	

10		PDSP003 - SIGN. The applicant shall remove the stone pillar and trellis frame from the restaurant sign. Stone accent may be allowed to maximum height of 36-inches as illustrated in the plan dated April 2007, submitted with this application. (RMA – Planning Department)	Applicant shall provide the Director of Planning and Building Inspection with proof that the restaurant sign has been removed or modified in accordance with the approved plan.	Owner / Applicant	Prior to violation clearance and issuance of permits	
11	4	PDSP004 – LANDSCAPE SCREENING. Landscaping Plans shall be prepared by a qualified Landscape Architect which attempts to screen and blend the water tanks into the surrounding areas while preserving existing viewsheds. Landscaping shall consist of drought-tolerant native species. (RMA – Planning Department)	Submit landscape plan to the Department of Planning and Building Inspection for approval. <i>Also See Conditions 10 and 14</i>	Owner / Applicant with guidance by a certified arborist or Landscape specialist.	Prior to issuance of building permit.	
12	5	PDSP005 – WATER TANK COLOR The applicant shall paint the water tanks a non-reflective earth tone similar to the surrounding vegetation to reduce the visual contrast. (RMA – Planning Department)	Applicant shall provide the Director of Planning and Building Inspection with proof that the painted water tanks. <i>Also See Condition 12</i>	Owner / Applicant	Prior to violation clearance and issuance of permits	
13	7	PDSP007 - REVEGETATION The applicant shall remove all non-native, invasive plant species and revegetated with native vegetation, including dune buckwheat on the hillside adjacent to the restaurant and in the area surrounding the concrete patios, retaining wall, and redwood deck. An area of not less than a 1:1 ratio with the amount of area impacted by the construction shall be successfully abated and revegetated. Revegetation shall be focused along the edges of ice plant in order to retard its advance down the bluff toward the coastline. (RMA – Planning Department)	Applicant shall provide the Director of Planning and Building Inspection with proof that the site has been revegetated. <i>Also See Condition 10</i>	Owner / Applicant Qualified Biologist	Prior to violation clearance and issuance of permits Annually for two years following planting.	
			Submit a report by a qualified biologist evaluating the success of revegetated areas and recommend any modifications necessary to achieve success criteria equal to a 1:1 ratio for the area impacted by construction. If the success criteria is not met, the monitoring timing shall start over for areas that are re-planted.			

14	8	<p>PDSP007 - INSPECTION.</p> <p>The non-permitted structures shall be inspected by a qualified engineer to ensure that they have been designed and constructed according to the Monterey County Building Code and Uniform Building Code requirements. Should building code violations be found, the engineer would provide recommendations to reduce impacts that shall be implemented by the applicant. Suitable measures could include: reinforcing the structures, and/or removing and rebuilding the structures. (RMA – Planning Department and Building Department)</p>	<p>Applicant shall provide the Director of Planning and Building Inspection with proof that the site has been inspected.</p>	<p>Owner / Applicant</p>	<p>Prior to violation clearance and issuance of permits</p>	
15	9	<p>PDSP007 -GEOTECHNICAL.</p> <p>A registered civil or geotechnical engineer shall inspect all non-permitted structures built to analyze liquefaction potential, landslide potential, erosion potential, and any other geologic related hazards. Should potential hazards be found, the registered civil or geotechnical engineer would provide recommendations to reduce impacts that shall be implemented by the applicant. Suitable measures could include: specialized design of foundations by a structural engineer; removal or treatment of liquefiable soils to reduce the potential for liquefaction; drainage to lower the groundwater table to below the level of liquefiable soils, in-situ compaction of soils; or other alterations to the ground characteristics. (RMA – Planning Department and Building Department)</p>	<p>Applicant shall provide the Director of Planning and Building Inspection with proof that the site has been inspected.</p>	<p>Owner / Applicant</p>	<p>Prior to violation clearance and issuance of permits</p>	
16		<p>PDSP008 – UTILITY EASEMENT</p> <p>The property owner shall obtain an easement with the County of Monterey for the water tanks and associated water lines. (RMA – Planning Department, Environmental Health, and Public Works Department)</p>	<p>Proof of recording this easement shall be furnished to the RMA - Planning Department.</p>	<p>Owner / Applicant</p>	<p>Prior to violation clearance</p>	

FIRE PROTECTION

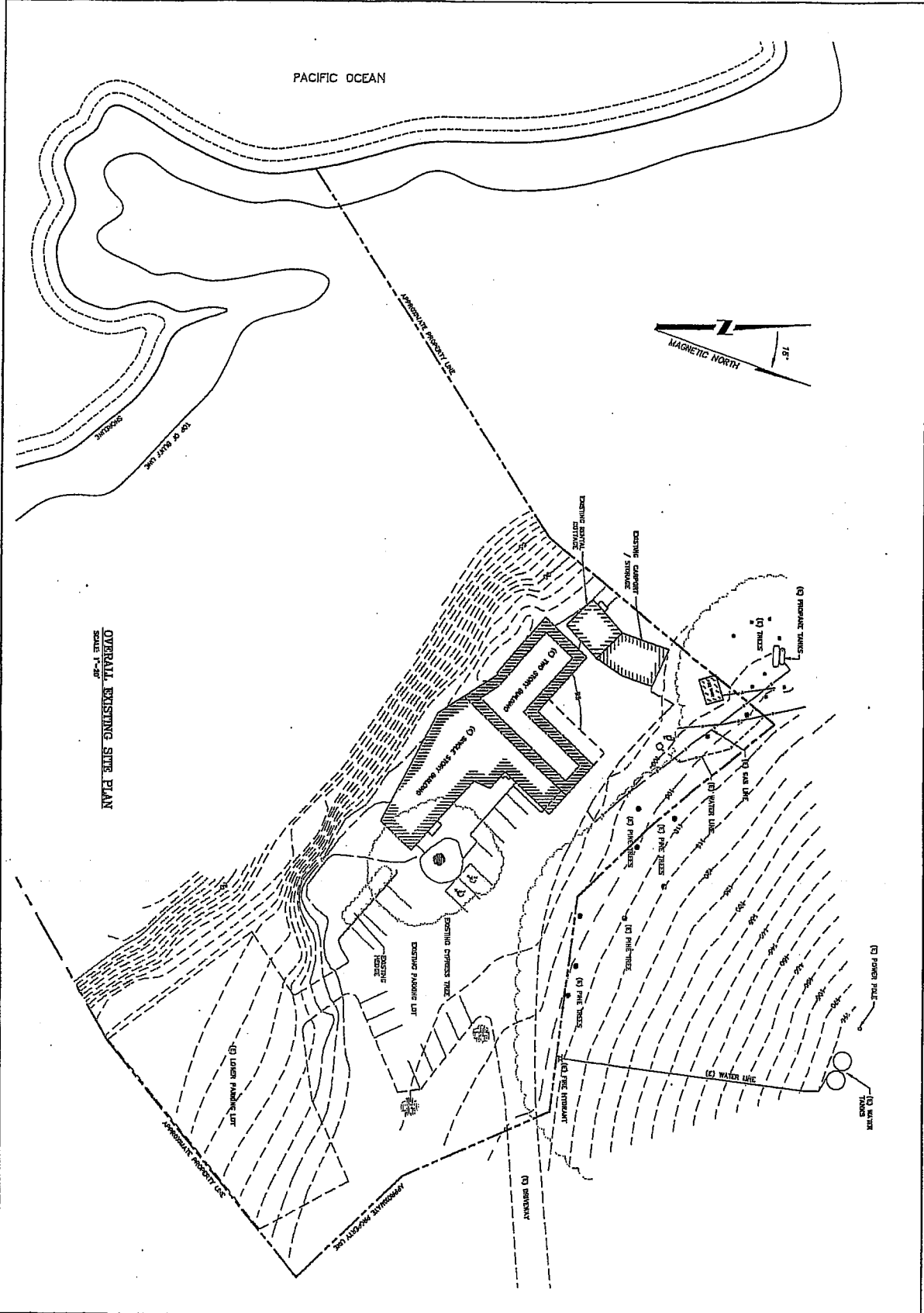
17		<p>FIRE008 - GATES All gates providing access from a road to a driveway shall be located at least 30 feet from the roadway and shall open to allow a vehicle to stop without obstructing traffic on the road. Gate entrances shall be at least the width of the traffic lane but in no case less than 12 feet wide. Where a one-way road with a single traffic lane provides access to a gated entrance, a 40-foot turning radius shall be used. Where gates are to be locked, the installation of a key box or other acceptable means for immediate access by emergency equipment may be required. CDFFP-Coastal.</p>	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of grading and/or building permit.	
			Applicant shall schedule fire dept. clearance inspection	Applicant or owner	Prior to final building inspection.	
18		<p>FIRE011 - ADDRESSES FOR BUILDINGS All buildings shall be issued an address in accordance with Monterey County Ordinance No. 1241. Each occupancy, except accessory buildings, shall have its own permanently posted address. When multiple occupancies exist within a single building, each individual occupancy shall be separately identified by its own address. Letters, numbers and symbols for addresses shall be a minimum of 4-inch height, 1/2-inch stroke, contrasting with the background color of the sign, and shall be Arabic. The sign and numbers shall be reflective and made of a noncombustible material. Address signs shall be placed at each driveway entrance and at each driveway split. Address signs shall be and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter. Address signs along one-way roads shall be visible from both directions of travel. Where multiple addresses are required at a single driveway, they shall be mounted on a single sign. Where a roadway provides access solely to a single commercial occupancy, the address sign shall be placed at the nearest road intersection providing access to that site. Permanent address numbers shall be posted prior to requesting final clearance. CDFFP-Coastal.</p>	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of building permit.	
			Applicant shall schedule fire dept. clearance inspection	Applicant or owner	Prior to final building inspection.	

19	<p>FIRE015 - FIRE HYDRANTS/FIRE VALVES A fire hydrant or fire valve is required. The hydrant or fire valve shall be 18 inches above grade, 8 feet from flammable vegetation, no closer than 4 feet nor further than 12 feet from a roadway, and in a location where fire apparatus using it will not block the roadway. The hydrant serving any building shall be not less than 50 feet and not more than 1000 feet by road from the building it is to serve. Minimum hydrant standards shall include a brass head and valve with at least one 2 1/2 inch National Hose outlet supplied by a minimum 4 inch main and riser. More restrictive hydrant requirements may be applied by the Reviewing Authority. Each hydrant/valve shall be identified with a reflectorized blue marker, with minimum dimensions of 3 inches, located on the driveway address sign, non-combustible post or fire hydrant riser. If used, the post shall be within 3 feet of the hydrant/valve, with the blue marker not less than 3 feet or greater than 5 feet above the ground, visible from the driveway. On paved roads or driveways, reflectorized blue markers shall be permitted to be installed in accordance with the State Fire Marshal's Guidelines for Fire Hydrant Markings Along State Highways and Freeways, May 1988. CDFFP-Coastal.</p>	<p>Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.</p>	Applicant or owner	Prior to issuance of grading and/or building permit.	
		<p>Applicant shall schedule fire dept. clearance inspection</p>	Applicant or owner	Prior to final building inspection	

ENVIRONMENTAL HEALTH

20	<p>EHSP01 – WATER SUPPLY The California Uniform Retail Food Facilities Law (CURFFL) Article 8, Section 114095 requires that all food facilities have a adequate, protected, pressurized, potable supply of water. The water supply shall be from a water system approved by the health officer and or the state department. The water supply shall conform with all pertinent regulation set forth in the California Safe Drinking Water Act, Title 22. (Environmental Health)</p>	<p>Contact the Environmental Health Division (EHD) for specific requirements regarding the appropriate water quantity issues</p>	Applicant or owner	On-going	
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END OF CONDITIONS



OVERALL EXISTING SITE PLAN
SCALE: 1" = 20'

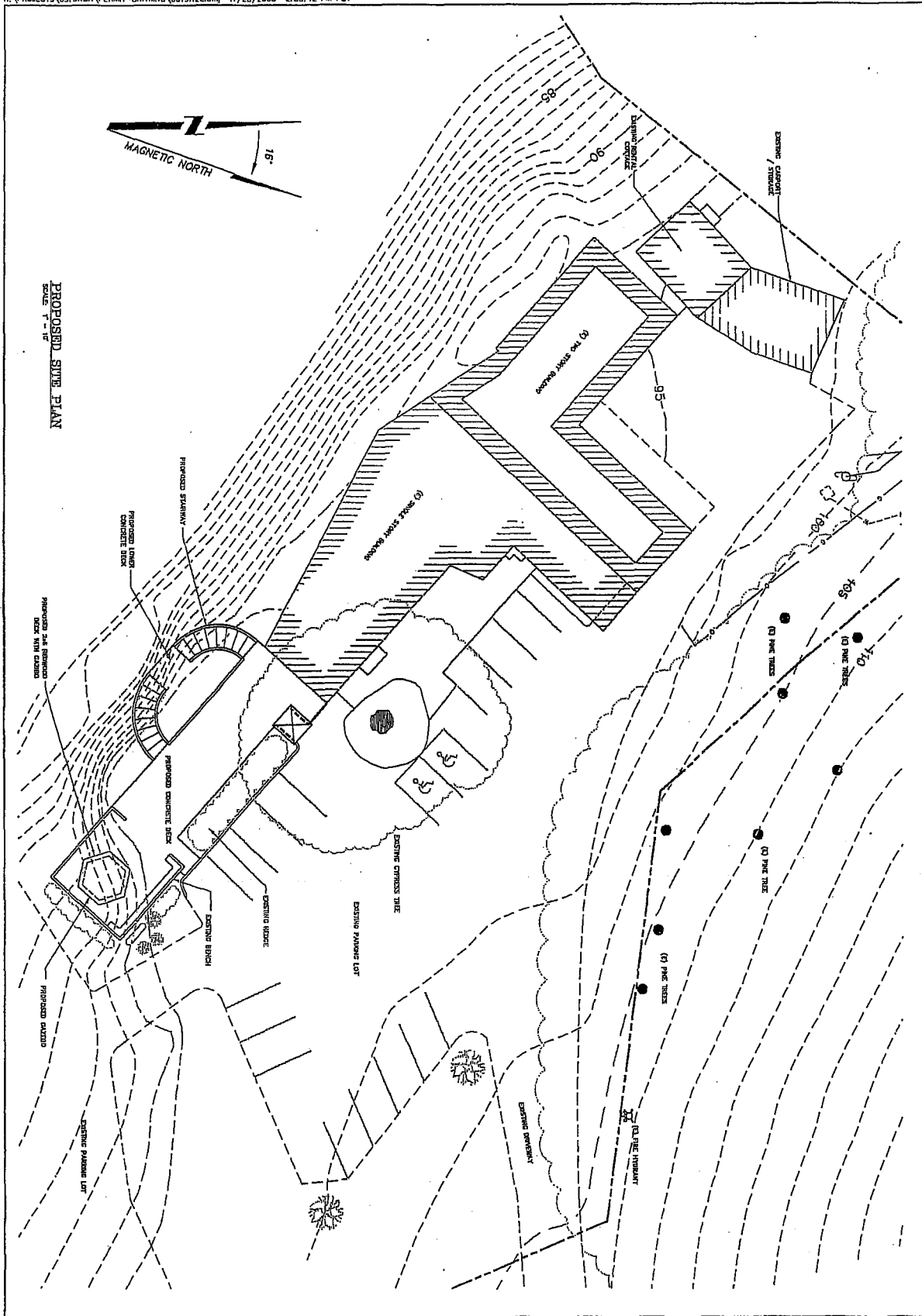
SHEET
OF 1 SHEET
DRAWING NUMBER
A-1

ROCKY POINT RESTAURANT
10 MILES SO. OF CARMEL
MONTEREY COUNTY - CALIFORNIA
SCALE: 1" = 20'
FEBRUARY 2005

REVISIONS			
NO.	DATE	DESCRIPTION	BY
1	01-28-05	COUNTY COMMENTS	PGH

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CIVIL ENGINEERING & LAND SURVEYING
1355 WILLOW WAY, SUITE 105
CONCORD, CA 94520
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FAX: (925) 674-1314



PROPOSED SITE PLAN
SCALE: 1" = 10'

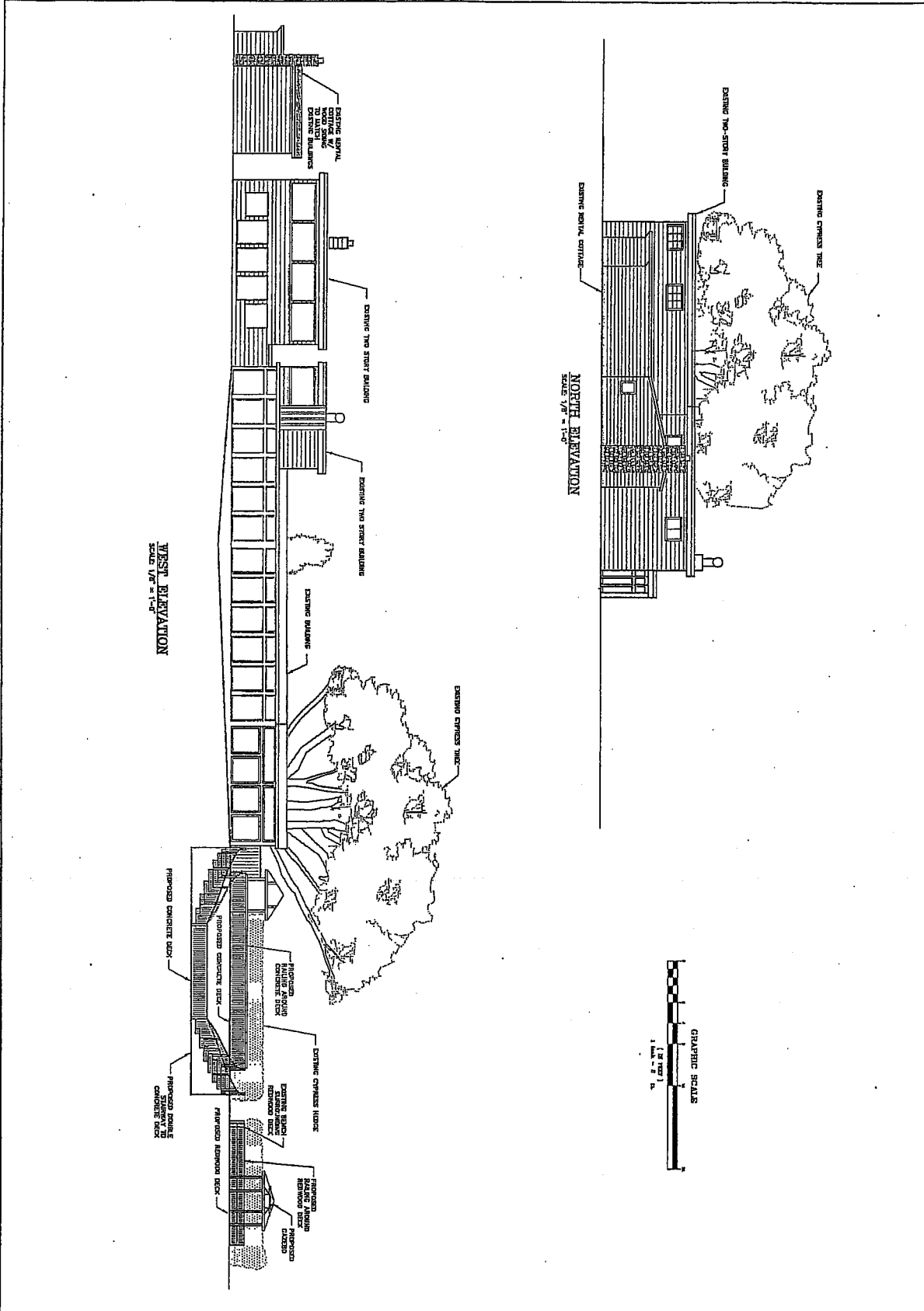
SHEET:
OF 6 SHEETS
REVISIONS:
DATE: 11-28-05
NO. DATE
A-2

ROCKY POINT RESTAURANT
10 MILES SO. OF CARMEL
MONTEREY COUNTY - CALIFORNIA
SCALE: 1" = 30'
FEBRUARY 2005

REVISIONS			
NO.	DATE	DESCRIPTION	BY
1	11-28-05	COUNTY COMMENTS	PCJ

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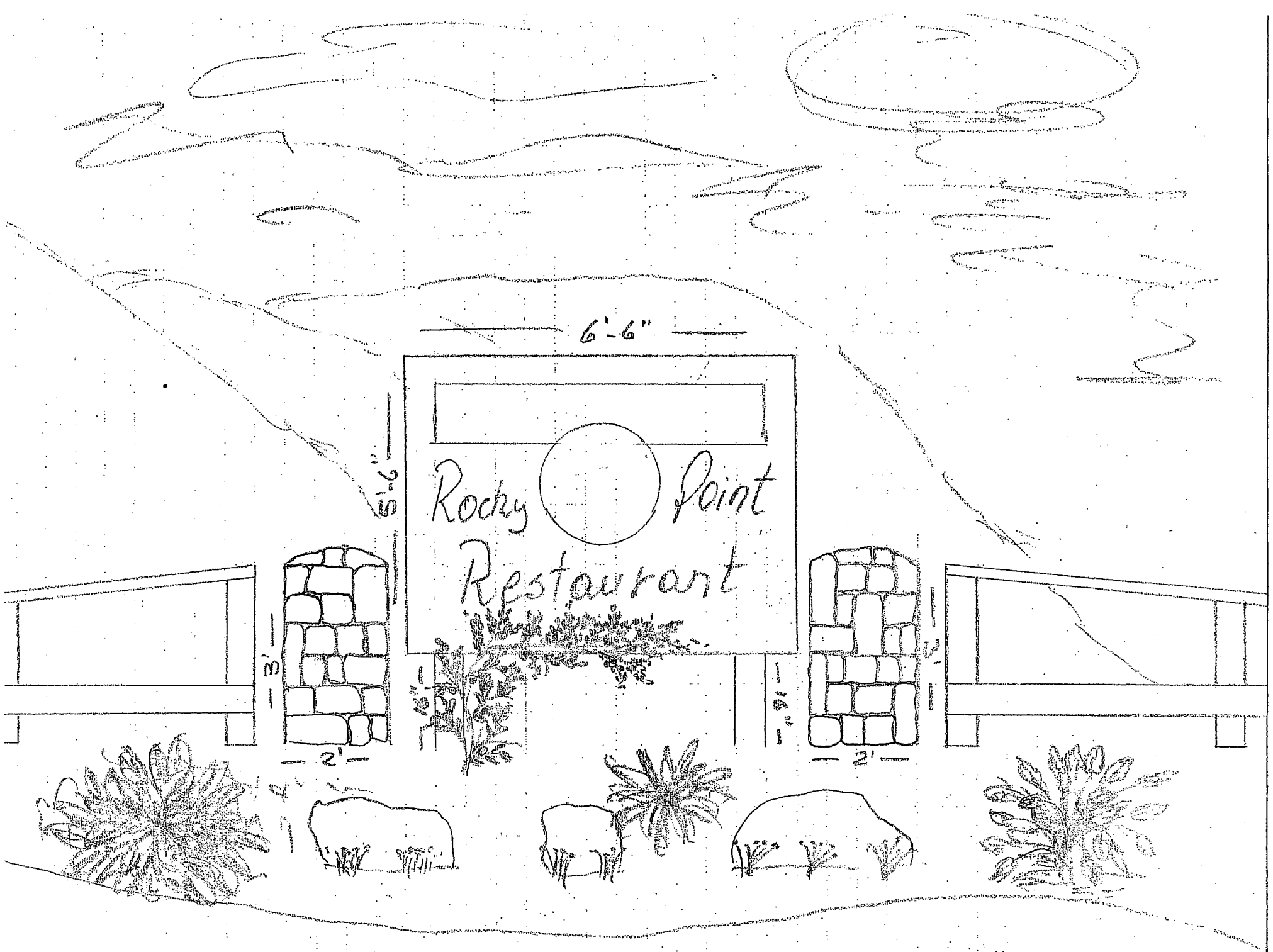
SHEET 1
OF 1 SHEET
DRAWING: 0319A4
REVISED: A-4
DATE: 11/30/05

ROCKY POINT RESTAURANT
10 MILES SO. OF CARMEL
MONTEREY COUNTY - CALIFORNIA
SCALE: 1/8" = 1'-0" FEBRUARY 2005

REVISIONS			
NO.	DATE	DESCRIPTION	BY
1	11-20-05	COUNTY COMMENTS	PCN

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CONCORD, CA 94520
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FAX: (925) 674-1314



6'-6"

2'-9"

Rocky Point
Restaurant

3'

2'

6'-9"

6'-9"

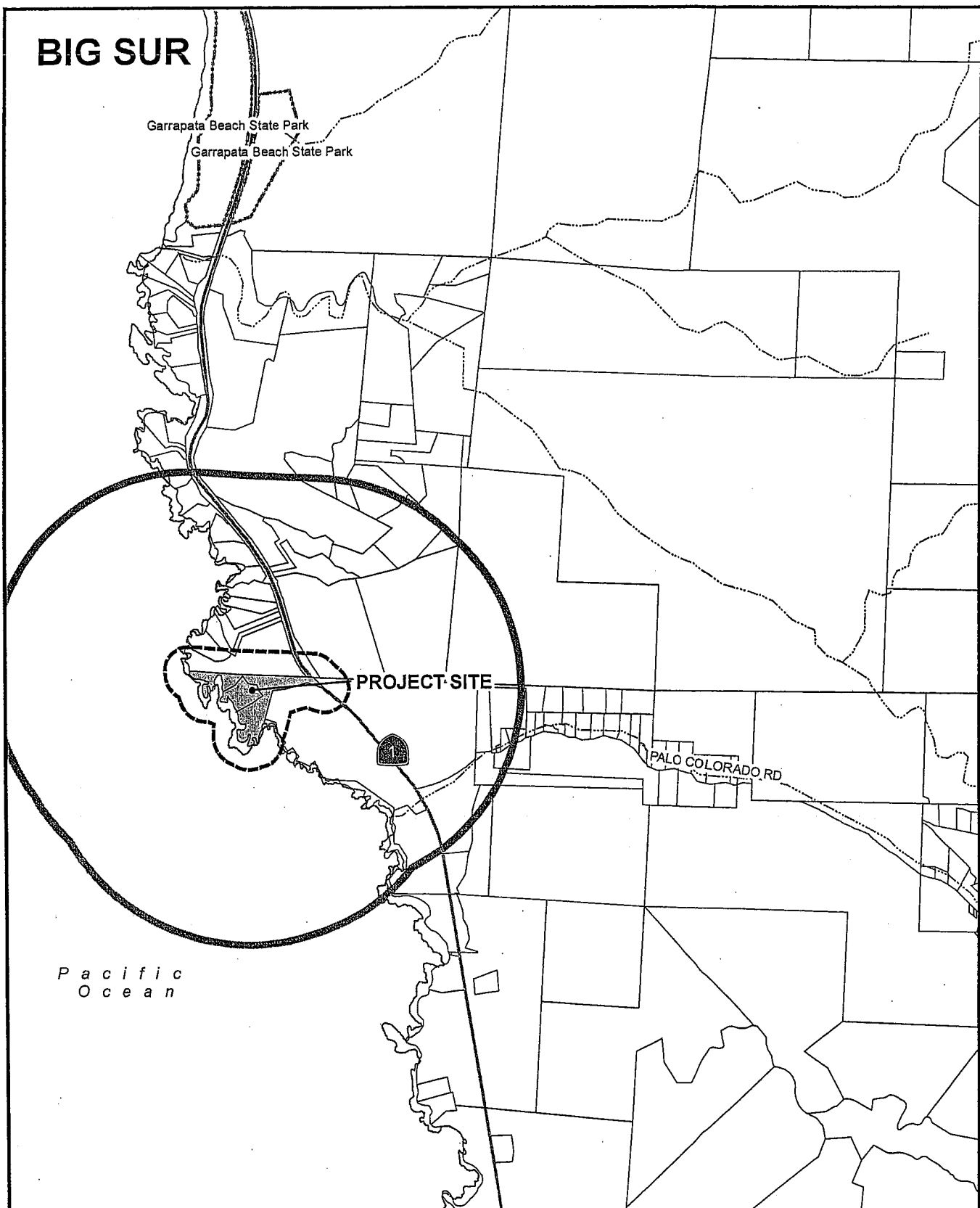
2'

3'

APR 11 1957

BIG SUR

Garrapata Beach State Park
Garrapata Beach State Park



Pacific
Ocean

PROJECT-SITE

PALO COLORADO RD

APPLICANT: ROCKY POINT RESTAURANT LLC

APN: 243-262-003-000 & 243-262-004-000

FILE # PLN050296



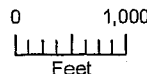
300' Limit



2500' Limit



City Limits



PLANNER: HOLM