

# Attachment B

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# NOTICE OF APPEAL

Monterey County Code  
Title 19 (Subdivisions)  
Title 20 (Zoning)  
Title 21 (Zoning)

RECEIVED  
MONTEREY COUNTY

JAN 02 2025

H.D 9:10am

CLERK OF THE BOARD

DEPUTY

*Caithlyn Campos*

No appeal will be accepted until written notice of the decision has been given. If you wish to file an appeal, you must do so on or before January 2, 2025 (10 days after written notice of the decision has been mailed to the applicant).

Date of decision: 12/20/2024

1. Appellant Name: Rene Peinado

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

2. Indicate your interest in the decision by placing a check mark below:

Applicant X

Neighbor \_\_\_\_\_

Other (please state) \_\_\_\_\_

3. If you are not the applicant, please give the applicant's name:

4. Fill in the file number of the application that is the subject of this appeal below:

Type of Application

Area

a) Planning Commission: PLN 230127 10196 Oakwood Circle, Carmel, (APN: 416-542-011-000)

b) Zoning Administrator: PLN \_\_\_\_\_

c) Administrative Permit: PLN \_\_\_\_\_

## Notice of Appeal

5. What is the nature of your appeal?

a) Are you appealing the approval or denial of an application? Denial

- b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheet if necessary)

See attached.

6. Place a check mark beside the reason(s) for your appeal:

There was a lack of fair or impartial hearing X  
The findings or decision or conditions are not supported by the evidence X  
The decision was contrary to law X

7. Give a brief and specific statement in support of each of the reasons for your appeal checked above. The Board of Supervisors will not accept an application for an appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary)

See attached.

8. As part of the application approval or denial process, findings were made by the decision-making body (Planning Commission, Zoning Administrator, or Chief of Planning). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary)

See attached.

*197 pages*

9. You must pay the required filing fee of \$3,716.10 (make check payable to "County of Monterey") at the time you file your appeal. (Please note that appeals of projects in the Coastal Zone are not subject to the filing fee.)

Fee is being paid at the time of filing the appeal.

10. Your appeal is accepted when the Clerk to the Board accepts the appeal as complete and receives the required filing fee. Once the appeal has been accepted, the Clerk to the Board will set a date for the public hearing on the appeal before the Board of Supervisors.

**The appeal and applicable filing fee must be delivered to the Clerk to the Board by the deadline. A mailed copy of the appeal and filing fee will be accepted only if it is received by Clerk of the Board by the deadline. The appeal and applicable filing fee should be mailed to PO Box 1728, Salinas CA 93902. A facsimile copy of the appeal will be accepted only if the hard copy of the appeal and applicable filing fee are mailed and received by Clerk of the Board by the deadline.**

APPELLANT SIGNATURE

*[Handwritten signature]*  
*[Handwritten signature]*

Date:

*1.2.25*  
*1/2/25*

RECEIVED SIGNATURE

Date:

*1/2/2025*



# PATTERSON & O'NEILL, PC

235 Montgomery Street, Suite 950  
San Francisco, CA 94104  
Telephone: (415) 907-9110  
Facsimile: (415) 907-7704  
[www.pattersononeill.com](http://www.pattersononeill.com)

January 2, 2025

## VIA PERSONAL DELIVERY

Monterey County Board of Supervisors  
C/O Mr. Emmanuel H. Santos  
Clerk of the Board of Supervisors  
168 W. Alisal Street, 1<sup>st</sup> Floor (opt. 6)  
Salinas, CA 93901

Re: Land Use Appeal (Resolution No. 24-039)  
10196 Oakwood Circle (APN 416-542-011) - Application No. PLN230127

Dear Board of Supervisors:

Our office represents Rene Peinado ("Applicant") and Amy McDougall ("Owner") concerning their submittal of application No. PLN230127 ("Application") to redevelop 10196 Oakwood Circle. We submit the following additional information in support of this appeal of Planning Commission Resolution No. 24-039 denying the Application for a Combined Development Permit to construct a single-family home, accessory dwelling unit, and junior accessory dwelling unit.

Applicant appeals the denial of her Application on the following bases:

- 1) the decision was contrary to law and **could subject the County to attorney's fees and penalties at a minimum of \$50,000 per unit;**
- 2) the Planning Commission failed to conduct a fair and impartial hearing; and
- 3) the decision and its findings are not supported by the evidence.

### **1. The Planning Commission's Decision Was Contrary to the Law**

- a. The Planning Commission Improperly (1) Determined the Project Was Not Subject to the Builder's Remedy; and (2) Improperly Denied the Application Based on Inconsistency with Zoning and the General Plan, and Failed to Make the Necessary Health and Safety Findings Under the Builder's Remedy

This project is subject to Government Code § 65589.5(d), which is also known as the “Builder’s Remedy.” The County was notified prior to the December 11, 2024 Planning Commission hearing that it was required to comply with the Builder’s Remedy and treat the project as a Builder’s Remedy project. (**Exhibit A.**) However, the Planning Commission improperly determined that the County was not subject to the Builder’s Remedy and denied the project on an improper basis, and without making the required findings.

The Legislature has declared that affordable housing is “a priority of the highest order” and one of “vital statewide importance” that requires “the cooperation of all levels of government.” (Gov. Code § 65580.) Nonetheless, the County failed to prioritize and advance the affordable housing in the project as part of this Application.

In California, each city and county is required to plan for enough housing in its jurisdiction to meet its Regional Housing Needs Allocation, which is the jurisdiction’s share of the region’s housing needs. These planning documents are referred to as housing elements and the state law is referred to as the Housing Element Law. The Housing Accountability Act (“HAA”), is a section of the Housing Element Law, which provides an avenue for developers to provide desperately needed housing for very low, low-, or moderate-income households when a local government is not in substantial compliance with the Housing Element Law.

Since 1990, the Builder’s Remedy has been an attempt by the Legislature to incentivize local agencies to adopt timely and compliant housing elements. The Builder’s Remedy is part of the Housing Accountability Act. (Gov. Code § 65589.5(d)). When a local agency fails to adopt a housing element that substantially complies with state law, the Builder’s Remedy limits the agency’s ability to disapprove housing developments that include at least 20% lower-income housing, even if the development does not conform to the underlying zoning. Specifically, a local government cannot disapprove an affordable housing project *even if* the project is inconsistent with the jurisdiction’s zoning and general plan unless it makes written findings, supported by a preponderance of the evidence in the record, that the project, as proposed, would “have a specific, adverse impact upon the public health or safety, and there is ***no feasible method*** to satisfactorily mitigate or avoid the specific, adverse impact[.]” (Gov. Code § 65589.5(d)(2) [emph. add.].) A “specific, adverse impact” means a “significant, quantifiable, direct, and unavoidable impact,” which cannot be inconsistency with a zoning ordinance or general plan land use designation. (Gov. Code § 65589.5(j)(1)(A).)

The Application qualifies as an affordable housing project pursuant to the Builder’s Remedy because at least 20% of the total units in the project, more specifically the proposed JADU, will be rented to lower income households as defined in Health and Safety Code § 50079.5. (Gov. Code § 65589.5(h)(3).) Monterey County did *not* have a substantially compliant Sixth Cycle housing element certified by the state’s Department of Housing and Community Development when this Application was submitted and still does not have a substantially compliant housing element. Therefore, the County is subject to the Builder’s Remedy and cannot disapprove an affordable housing project unless it makes written findings, supported by a preponderance of the evidence in the record, that the project, as proposed, would “have a specific, adverse impact upon the public health or safety, and there is ***no feasible method*** to satisfactorily mitigate or avoid the specific, adverse impact[.]” (Gov. Code § 65589.5(d)(2) [emph. add.].) As the Applicant explained

in written comments submitted to the County prior to the December 11, 2024 hearing and in oral testimony at the hearing the Applicant's attorney explained that all identified potential health and safety impacts for the project can be fully mitigated.

The Planning Commission refused to recognize that the Application is subject to the Builder's Remedy and failed to make the required findings that the Application would have a specific, adverse impact upon public health or safety under Gov. Code § 65589.5(d)(2). It simply denied the Application outright based on improperly finding it was inconsistent with the 2010 Monterey County General Plan and other zoning documents. The Planning Commission found that the Application was "inconsistent with applicable design-related policies" of zoning and its General Plan and specific plans. The decision noted that the Application was inconsistent with the "architectural style," "neighborhood character," and "Carmel Valley's rural setting," which cannot be a basis for denying a Builder's Remedy Application as these are aesthetic concerns and the Planning Commission failed to identify any impact that the project would have on public health or safety.

Since the Planning Commission failed to make the necessary health and safety findings required for this Application as a Builder's Remedy project, it erred in denying the Application as a matter of law under Builder's Remedy and the Planning Commission's decision should be reversed by the Board of Supervisors. (Gov. Code § 65589.5(d)(2).)

- i) *Applicant was not Required to Declare the Project was Affordable under State Law at the time the Application Was Submitted*

The Planning Commission relied on a Planning Department letter that was sent to the Applicant immediately prior to the hearing, which made a number of inaccurate representations and provided no supporting legal authority. It was an error for the Planning Commission to rely on the letter, which contained numerous inaccurate statements of law.

The Planning Department's letter stated that the Builder's Remedy required the Applicant to declare that the project was an affordable housing project when it submitted the Application. No legal authority was cited for this proposition and, in fact, there is no legal requirement to do so under Government Code § 65589.5(h)(3) or state law. Moreover, as required by Government Code § 65940(a)(1), Monterey County has a checklist for what is required to be submitted for land use and development applications. (**Exhibit B.**) The checklist does not contain any requirements for identifying affordable housing units. The development application form submitted by the Applicant also did not ask for information about the number of affordable housing units in the project. (**Exhibit C.**) Once the Application was deemed complete, the Planning Department cannot require Applicant to submit additional information. (Gov. Code § 65944(a) ["After a public agency accepts an application as complete, the agency shall not subsequently request of an applicant any new or additional information which was not specified in the list prepared pursuant to Section 65940. The agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application."].)

The Planning Department asserted that adding an affordability component to the project was a "material change" that required the resubmittal of a new planning Application. Again, there

was no authority cited for this demand and the words “material change” do not appear in the Permit Streamlining Act, codified at Government Code § 65920 et seq., which governs how local agencies are required to process development applications. The section of the Permit Streamlining Act, which pertains to the vesting of preliminary applications, notes that “if the development proponent revises the project such that the number of residential units or square footage of construction changes by 20 percent or more . . . the housing development project shall not be deemed to have submitted a preliminary application[.]” (Gov. Code § 65941.1(c).) Although this section of the Permit Streamlining Act is not directly relevant to the Application, as the Applicant did not submit a preliminary application and Planning staff deemed the Application complete, it illustrates the types of “material changes” under state law that could require the resubmittal of a new Application, none of which are at issue with this Application.

Furthermore, Assembly Bill 1893 specifically states:

Notwithstanding subdivision (c) of Section 65941.1, for a housing development project deemed complete before January 1, 2025, the development proponent may choose to revise their application so that the project is a builder’s remedy project, without being required to resubmit a preliminary application, even if the revision results in the number of residential units or square footage of construction changing by 20 percent or more.

As the Applicant was completed in June 2024, the Planning Commission could not have required that the Applicant submit a new application to qualify as a Builder’s Remedy project.

ii) *Monterey County’s Inclusionary Housing Ordinance Does Not Apply to the Application*

The Planning Department’s last-minute letter also implied that the junior accessory dwelling unit, which is a state-designated affordable housing unit, and the project are subject to Monterey County’s inclusionary housing ordinance. This is incorrect. Monterey County’s inclusionary housing ordinance (MCO § 18.40.030, et seq.), provides additional requirements for certain types of projects with five or more units or lots. (*Id.* § 18.40.060(a) [“All residential development consisting of five (5) or more units or lots in the County shall provide inclusionary units on-site or off-site, except that a fee may be paid in-lieu of providing fractional units and in other circumstances specified in Section 18.40.090.”].) The Application is not subject to the County’s inclusionary housing ordinance because it proposes to construct three units: a single-family unit, an accessory dwelling unit, and a junior accessory dwelling unit.

Moreover, the requirements for lower income units under Government Code § 65589.5 and “low-income” units under the inclusionary housing ordinance are different. For example, under Government Code § 65589.5(h)(3), housing units targeted for lower income households must be rented at a cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size, while the County’s inclusionary housing requirement is one-twelfth of thirty (30) percent of sixty (60) percent of median income, adjusted for household size. The County cannot impose additional requirements on an affordable unit under the Builder’s

Remedy stricter than those required by state law, and whether the unit is compatible with the local inclusionary housing program is irrelevant.

b. The Application was Deemed Compliant as a Matter of Law on July 13, 2024

Even if the Builder's Remedy did not apply to this project, the project was deemed compliant by operation of law as of July 13, 2024 because the County failed to make a compliance determination within the required time period. (*See* Gov. Code § 65589.5(j)(2).) After the County determined that the Application was complete on June 14, 2024 (**Exhibit D**), it had 30 days to provide written documentation to the Applicant identifying how the project was "inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision[.]" (*Id.*) If a local agency fails to provide the required documentation within 30 days, "the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision." (Gov. Code § 65589.5(j)(2)(B).)

The County failed to inform the Applicant that the project was in compliance or out of compliance with the County's general plan, zoning, and subdivision standards and criteria within the 30-day period. Since the County did not provide a timely compliance determination for this project, it is deemed compliant as a matter of law and the Planning Commission did not have the ability to deny the Application on the basis that it did, and committed an error as a matter of law when it denied the project. Due to the County's failure to timely review the project, the County must treat the project as consistent, compliant, and in conformity with the applicable General Plan, and all programs, policies, ordinances, standards, requirements, or other similar provisions that apply to the Application.

c. The Planning Commission Violated the HAA by Applying Subjective Design Standards to the Application

As a housing development project consisting of three residential units, the project is subject to the protections of the HAA. (*See* Government Code § 65589.5(h)(2) [stating that projects with two or more units are protected by the HAA].) The HAA requires local agencies reviewing projects that are subject to the act to only impose "objective, quantifiable, written development standards, conditions, and policies" to the project. (Gov. Code § 65589.5(f)(1).) Moreover, "the development standards, conditions, and policies must be applied ***to facilitate and accommodate development at the density permitted on the site and proposed by the development.***" (*Id.* [emphasis added].)

Design guidelines that, on their face, require interpretation and subjective judgment are not objective requirements under the HAA. (Gov. Code § 66300(a)(7); *see also* *Calif. Renters Legal Advoc. & Educ. Fund, et al. v. City of San Mateo, et al.* (2021) 68 Cal.App.5th 820, 840-842.) An objective design standard "involves ***no personal or subjective judgment by a public official*** and is ***uniformly verifiable*** by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an Application." (Gov. Code § 66300(a)(7) [emphasis added].)

The Planning Commission decision rested heavily on improper subjective standards and

design requirements. The Resolution is replete with references to “architectural character” and “neighborhood compatibility,” which are undefined terms, and cannot be the basis of denying a housing development project. By failing to apply only objective, quantifiable design standards, the Planning Commission violated the HAA.

d. Consequences for Failure to Comply with the HAA

If the Board of Supervisors does not overturn Resolution No. 24-039 and upholds the denial, it would be a clear and bad-faith violation of the HAA, and the County could be subject to attorneys’ fees and minimum fines of \$50,000 per unit—totaling a minimum of \$150,000. Should the denial be upheld, Applicant intends to file a writ in Monterey County Superior Court and will seek all available remedies against the County.

e. The Planning Commission Incorrectly Determined that “Natural Grade” Means “Existing Grade” under Monterey County Code § 21.06.630

Monterey County Code § 21.06.630 defines the “Height of Structure” as “the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure[.]” (emphasis added). The Planning Commission, in this instance, determined that natural grade was akin to existing grade but did not provide any legal authority for this position beyond what appears to be deviating from the way this code has been interpreted for other projects because it did not like the outcome. Such an interpretation deviates from the plain language of the statute, runs contrary to how the term natural grade is used elsewhere in the state,<sup>1</sup> and is a departure from the way the County has historically interpreted Monterey County Code § 21.06.630.

Numerous examples have been located that demonstrate that the County has consistently interpreted Monterey County Code § 21.06.630 to refer to natural historic grade and not existing grade. For example, in December 2006, a staff report concerning a Monterey Planning Commission hearing for Planning File No. PLN040581 explicitly rejected that natural grade under § 21.06.630 means existing grade. It states: “Plans show an ‘existing’ grade from grading work that occurred from the existing residence. The height is based on the assumed natural grade and not the existing manmade grade.” (**Exhibit E.**) Similarly, in January 2007, the Monterey County Planning Commission authorized a variance for Planning File Number: PLN 060411 because the existing site, which had been graded to elevate the building pads, exceeded the height limitations when measured from the average natural grade. (*Id.*)

As another example, in 2004, the Monterey County Board of Supervisors approved development permit application PLN 010105 that proposed to construct a single-family residence on the Big Sur Coast. In approving the project, the Board of Supervisors decided that the height of

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<sup>1</sup> As examples, the City of Atherton Municipal Code defines “Natural Grade” as “the original condition of the ground surface as it existed prior to mechanical grading or disturbance.” (AMC § 17.42.030.). The City of Long Beach Municipal Code defines “Natural Grade” as “the surface of the ground prior to grading for development.” (LBMC § 21.15.1840.). The City of San Clemente Municipal code defines “Natural Grade” as “the ground surface unaltered by artificial means.” (SCMC § 15.36.060.)

the proposed home should be measured from the historic natural grade of the lot, even though the existing grade was lower due to excavation work completed by a previous owner. The permit was appealed to the California Coastal Commission who agreed that the Board of Supervisors had correctly applied Monterey County Code § 21.06.630 to mean the historic natural grade of the lot. (*Id.*) There are likely countless other examples that could be located that demonstrate the County does not use existing, mechanically altered grade in defining “natural grade.”

## **2. The Planning Commission Hearing was Not Fair or Impartial**

The Planning Commission’s December 11, 2024 hearing on the Application was a quasi-judicial proceeding, which are required to be fair and impartial. The Planning Commission’s December 11<sup>th</sup> hearing violated the Applicant’s due process rights by failing to provide adequate notice of the hearing and not permitting Applicant or their project team to provide a visual presentation in rebuttal to County staff’s misleading statements.

Quasi-judicial proceedings involve the application of established standards to individual facts to determine specific rights or to take specific actions under existing law. Land use permits like the December 11<sup>th</sup> hearing on the Application qualify as quasi-judicial proceedings. Quasi-judicial proceedings are subject to federal and state due process requirements, the fair hearing requirement of Code of Civil Procedure section 1094.5, and additional requirements applicable to particular hearings. Relying on these authorities, California courts have held that administrative hearings must be fair and that administrative decision makers must be impartial. Code of Civil Procedure § 1094.5(b) creates a statutory right to a fair hearing, which must be conducted before an impartial tribunal. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152.)

As a quasi-judicial proceeding, the County was required to afford the Applicant due process. Due process “unlike some technical rules, is not a technical conception with a fixed content unrelated to time, place and circumstances [citations omitted].” (*Mathews v. Eldridge* (1976) 424 US 319, 334). “It is flexible and calls for such procedural protections as the situation demands [citations omitted].” (*Id.*) California courts have focused on two factors for determining whether an applicant’s due process rights have been violated: (1) whether adequate notice of the hearing was provided; and (2) whether the government agency provided an opportunity to be heard before a fair and impartial hearing body. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.)

Adequate notice is an essential element of due process. Under general principles of due process, notice must be of a type reasonably calculated to give the person with the property interest knowledge of the proceedings. (2 Witkin, California Procedure, Jurisdiction Section 263 (5th ed. 2008). Similarly, the right to be heard before a fair and impartial hearing body is a “fundamental requisite of due process of law is the opportunity to be heard.” (*People v. Swink* (1984) 150 Cal.App.3d 1076, 1080.) The ability to bring evidence and to respond to evidence presented against oneself, the entitlement to adjudicators that are paying attention to the proceedings, and the provision of adequate notice are all features of this comprehensive right.

The Planning Commission refused to continue the hearing to a date that the Applicant was available after it unilaterally scheduled the hearing without properly consulting with the

Applicant's project team. The Planning Commission hearing was initially scheduled for August 28, 2024. The hearing was continued after the County determined that it had improperly noticed the hearing. The hearing was then unilaterally scheduled for September 25, 2024, without confirming that Applicant could attend. After the Applicant informed County staff that it could not attend a hearing on September 25, 2024, the hearing was continued to an indefinite date.

The project team met with Planning staff on November 7, 2024 to discuss, in part, issues raised in this Application and to discuss a six-month pause in rescheduling this hearing to further address staff's concerns. The project team left the meeting with the understanding that staff had agreed to this proposal. The project team sent a written confirmation to staff on November 8, 2024 for the proposed pause in rescheduling. (See **Exhibit K** to staff report.) The project team did not hear anything further from staff until, much to our surprise, we received notice on November 26, 2024 that the Application had again been scheduled (without our input) for a Planning Commission hearing on December 11, 2024 which the Applicant was not able to attend and her attorney was only able to attend via Zoom, which the Planning Commission had only permitted to allow audio, ruling out any visual aids that could be presented to the Planning Commission. As a result, the Applicant was not able to properly prepare or provide a response to staff's last-minute letter and rebuttal to staff's identification of alleged issues in the Application. This was particularly prejudicial because the revised staff report and proposed denial resolution contained new provisions that were not previously provided to the Applicant. As a result, the County violated Applicant's due process rights to participate in the decision concerning her Application because she did not have the ability to bring evidence and to respond to evidence regarding the Application, which is at the core of her due process rights.

### **3. The Planning Commission's Decision and Findings are Not Supported by the Evidence**

The Planning Commission's decision disregarded reports Applicant submitted by licensed land surveyors, arborists, and other professionals to come to its own conclusions that were not supported by Staff or evidence before the Planning Commission.

#### **a. Finding 1-2: The Planning Commission Determined that the Project was Inconsistent with Plans and Policies for Development Without Evidence**

Even if the Planning Commission could find that the project is inconsistent with local zoning and land use plans as a basis for denial, which it cannot as noted above, the Planning Commission's determination that a home designed to be sited within the tree line and made of modern materials that are resistant to fire in a high fire hazard zone is not suitable for development is without evidence. The lot is zoned MDR/5-D-S and is located in a custom home site, which has no restriction on design style. Moreover, the Planning Commission found that the project was inconsistent with the Carmel Valley Ranch Specific Plan due to its design and the materials proposed. The Carmel Valley Ranch Specific plan does not impose design restrictions, but merely contains design recommendations, which have not been required for recent home construction and exterior remodels. It defies logic that new construction would not utilize current materials designed to be more fire resistant in a high fire threat area.



The Planning Commission determined that the proposed brown, grey, and black colors were inconsistent with the design guidelines because the only allowable colors are earth and vegetation colors, such as “browns, siennas, beiges, and olive greens.” (See Finding 2(b)(3).) Not only is this not what the Carmel Valley Specific Plan requires, but there is also no evidence that the only structures in Carmel Valley are these colors. There are many properties that utilize alternative color schemes. The Planning Commission’s decision appears to rest on the opinions of Planning Staff based on a site inspection that was conducted without notice to Applicant. It does not appear that any comprehensive evaluation of building materials, colors, or other aspects was actually undertaken by the Planning Commission, and the Planning Commission’s decision was arbitrary and not supported by evidence, particularly when construction needs have changed as a result of natural conditions making wood construction not suitable in high fire threat areas.<sup>2</sup>

b. Finding 3: The Planning Commission Determined that the Applicant was a Risk to Health and Safety Without Evidence

Finding 3 states that the project “may under the circumstances of this particular case” be detrimental to health and safety. The use of the word “may” illustrates how weak and speculative the evidence supporting the denial was. The Applicant has secured all water necessary for the project and environmental services determined that the Application was complete, rescinding its prior incompleteness letter. The Planning Commission’s determination to the contrary is not based on any actual evidence.

Similarly, the decision references a private easement agreement with CalAm to claim that the project “may” have health and safety impacts. As the Applicant told the Planning Commission, CalAm has already agreed to modify the easement so it will not be implicated by the project. Even if that wasn’t the case, Monterey County does not have jurisdiction to interpret and enforce a private easement agreement. Furthermore, there was no evidence to suggest that the project would create a health and safety impact with the sewer easement. The entire analysis is purely speculation manufactured to provide an improper basis for denying the project.

Finally, the decision claims that there are geologic and seismic hazards even though the fault line was determined to be miles away from the project site, Applicant submitted a map of the fault signed by a licensed geologist, and numerous other homes have been constructed in the development without issue. The Applicant included a geotechnical report and was deemed complete in June without mention of any need for a new geological report. Several months later, after the case planner learned this application is subject to affordable housing and builders remedy processing, Planning Staff claimed an additional geological report is required. This action was unwarranted, illegal and intended to frustrate the project approval. The Planning Commission is prohibited by law to single out Builders Remedy projects by imposing environmental standards not placed upon similar projects. Over the last 15 years several new construction development approvals have been granted to permit applicants in the Carmel Valley Ranch Planned unit Development on the basis of the Certified Environmental Impact Report and subsequent revisions

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<sup>2</sup> The Carmel Valley Specific Plan states that “[e]fforts will be made to adapt and integrate man-made elements into the natural environment. Natural materials indigenous to the area: (i.e., wood, stone, adobe) will be used in the construction and enhancement of structures[.]” but there is no *requirement* that that only natural materials are used.

to the Carmel Valley Ranch Specific Plan without any requirement to supply additional geological reports beyond those filed.

The resolution implausibly states the construction excavation will present a geological hazard by making the hillside unstable. This statement is not supported by any competent review or analysis by a qualified geological engineer or structural engineer and should be disregarded. The Planning Department staff are not qualified to render an opinion on such matters, and these claims are rampant speculation that is belied by the fact that numerous neighboring homes in the development have been constructed on sloped lots.

The Planning Commission cannot require further geological reports for the Application after it is deemed complete and then claim that the lack of such reports means that there are health and safety impacts. The claim that the project site “may” have geological hazards is again speculation without evidence and is belied by the development that already exists in this community. The lot is zoned for residential development. To the extent that there are structural modifications that need to be made to the plan, that will happen when a structural plan is submitted for the project.

c. Finding 5: The Planning Commission Disregarded Applicant’s Arborist Report and Determined Without Credible Evidence that Trees on Adjacent Properties Would Require Removal

The Applicant submitted an arborist report that noted only three trees would have to be removed from the property because of the project construction. The Planning Commission ignored this report and determined, without evidence from a licensed arborist, that trees on neighboring properties, which Applicant has no ability to remove, would be subject to removal. As the Planning Commission found “Numerous other Coast live oak trees surround the subject property and are within a few feet of the property line, including one Coast live oak that nearly straddles the western property line.” The Planning Commission made this determination absent its own report from a licensed arborist report.

There was no evidence, expert or not, before the Planning Commission to suggest that trees on neighboring properties would have to be removed. The Planning Commission made its decision based on its determination that “as detailed in Finding No. 1, Evidence ‘m’, the prepared Arborist Report did not consider the project’s excavation, nearby trees, or the tree replanted in September 2024 (see Finding No. 4, Evidence ‘b’).” Each of these alleged shortcomings can easily be refuted. First, the Arborist Report *did* consider the impact of the project’s excavation on trees on the property. As noted in the Arborist Report, “[r]oots can be easily damaged by driving equipment over the root zone, storing materials, digging or excavating, excessive watering, or even excessively walking over the same area.” The Planning Commission just ignored this fact. Second, Finding No. 4(b) is concerned with a Tree Removal Permit issued in 2017 (TRM170241) for two dead Coast Live Oaks on the property, which required replacement trees and a letter from an arborist reporting on the health of the replacement trees. As the staff report acknowledges, the applicant is in compliance with this requirement and will have officially satisfied the requirement “upon submittal of a one-year follow-up letter confirming the trees are healthy.”

Planning staff does not have the expertise to make independent determinations about which trees would require removal. None of the Planning Commissioners are licensed arborists, no licensed arborist appeared before the Planning Commission on December 11, 2024 to refute the Arborist Report, and no evidence was submitted by public commenters that would under the conclusions in the Arborist Report. Instead, the Planning Commission, on its own initiative, ignored the evidence before it, and came to its desired conclusion.

Moreover, it would be legally impossible to remove trees on neighboring parcels without that property owner's consent. Even more troubling, the "findings" suggest that it would be required to re-plant trees removed on neighboring properties on the project's lot, which makes no sense. The Planning Commission's Finding No. 5 is, therefore, not supported by credible evidence and should be reversed.

#### **4. Conclusion**

For the reasons stated above, the Board of Supervisors should overturn the Planning Commission's denial of the project. The Board of Supervisors should be advised that Applicant intends to immediately serve deposition subpoenas on the case planner Fionna Jensen and Chief Planner Melanie Berreti, who are responsible for the project review and drafting of the Planning Commissions' resolution. The Board should exercise its authority to schedule this appeal hearing after completion of the depositions in order to have their sworn testimony presented as a part of this appeal.

Sincerely,

PATTERSON & O'NEILL, PC

A handwritten signature in cursive script that reads "Laura Strazzo". The ink is dark and the signature is fluid.

Laura Strazzo, Esq.

## **EXHIBIT A**

# PATTERSON & O'NEILL, PC

235 Montgomery Street, Suite 950  
San Francisco, CA 94104  
Telephone: (415) 907-9110  
Facsimile: (415) 907-7704  
[www.pattersononeill.com](http://www.pattersononeill.com)

December 5, 2024

## VIA EMAIL

Fionna Jensen  
Monterey County Planning Department  
1441 Schilling Place, 2nd Floor  
Salinas, CA 93907  
Email: [JensenF1@countyofmonterey.gov](mailto:JensenF1@countyofmonterey.gov)

Re: 10196 Oakwood Circle (APN 416-542-011)  
Application No. PLN230127  
Notice Pursuant to Government Code § 65589.5(d) ("Builder's Remedy")

Dear Ms. Jensen:

As you know, our office represents Rene Peinado and Amy McDougall, the developer and owner of 10196 Oakwood Circle. We wanted to again express our shock and disappointment that you have again unilaterally scheduled this project for a Planning Commission hearing without properly consulting with the project team on a date and after giving us the impression that you had agreed to our request for a short six-month pause in scheduling this project for a hearing. We intend to bring these actions up to the Planning Commission as we think it highlights the bias that has been applied to this project. Please be advised the developer has removed your posted hearing notice from the property.

Additionally, through this letter, we hereby give notice that PLN230127 qualifies as "Housing for very low, low-, or moderate-income households" pursuant to Government Code § 65589.5(h)(3) because at least 20% of the total units, more specifically the proposed JADU, shall be rented to lower income households as defined in Section 50079.5 of the Health and Safety Code.

As you also know, Monterey County does not have a substantially compliant sixth-cycle housing element. Therefore, Government Code section 65589.5(d) applies to this project, which states:

A local agency shall not disapprove a housing development project . . . for very low, low, or moderate-income households . . . or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households . . . including through the use of

design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

. . . The housing development project . . . as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low- and moderate-income households . . . [a]s used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety:

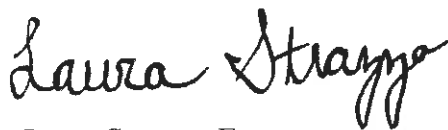
(A) Inconsistency with the zoning ordinance or general plan land use designation.

(3) The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households . . . .

The staff report submitted to the Planning Commission should be updated to note that this project is subject to Government Code section 65589.5(d) (“Builder’s Remedy”) and modified to remove all the references to inconsistencies with the General Plan and/or local zoning ordinances. We also intend to submit additional comments to the Planning Commission prior to the December 11 hearing.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Laura Strazzo". The signature is fluid and cursive, with the first name "Laura" and last name "Strazzo" clearly distinguishable.

Laura Strazzo, Esq.

CC:

Craig Spencer (spencerc@countyofmonterey.gov)

Melanie Beretti (BerettiM@countyofmonterey.gov)

Encls:

Ltr from HCD to Monterey County dated May 13, 2024

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



May 13, 2024

Sonia M. De La Rosa, County Administrative Officer  
County of Monterey  
168 West Alisal Street, 3rd Floor  
Salinas, CA 93901

Dear Sonia M. De La Rosa:

**RE: County of Monterey Failure to Submit a Timely 6<sup>th</sup> Cycle Housing Element  
Update – Letter of Inquiry**

The purpose of this letter is to inquire about the status of the County of Monterey's 6<sup>th</sup> cycle planning period housing element pursuant to Government Code section 65588, subdivision (e). The 6<sup>th</sup> cycle update was due December 15, 2023. As of the date of this letter, HCD has not received a draft housing element submittal from the County. Therefore, the County no longer complies with Housing Element Law (Article 10.6 (commencing with section 65580) of Chapter 3 of the Government Code). HCD is requesting the County provide a specific timeline for (1) submitting its draft housing element and (2) obtaining compliance with Housing Element Law no later than June 10, 2024.

**Rezoning Requirements**

In addition, pursuant to Government Code section 65588, subdivision (e)(4)(C)(i), any local government that fails to adopt a compliant housing element within 120 days of the statutory deadline must complete any rezoning needed to accommodate the jurisdiction's regional housing needs allocation (RHNA), including for lower-income households, within one year of the planning period. This 120-day period ended on April 13, 2024.

Please be aware, pursuant to Government Code section 65588, subdivision (e)(4)(C)(iii), a local government that fails to adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until any rezones necessary to accommodate a shortfall of sites pursuant to Government Code sections 65583, subdivision (c)(1)(A), and 65583.2, subdivision (c), are completed.

## **Consequences of Noncompliance**

Various consequences may apply if the County does not have a housing element in compliance with State Housing Element Law. First, noncompliance will result in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to, the following:

- Permanent Local Housing Allocation Program
- Local Housing Trust Fund Program
- Infill Infrastructure Grant Program
- SB 1 Caltrans Sustainable Communities Grants
- Affordable Housing and Sustainable Communities Program

Second, jurisdictions that do not meet their housing element requirements may face additional financial and legal ramifications. HCD may notify the California Office of the Attorney General, which may bring suit for violations of Housing Element Law. Further, state law provides for court-imposed penalties for persistent noncompliance, including financial penalties. For example, Government Code section 65585, subdivision (l)(1), establishes a minimum fine of \$10,000 per month, up to \$100,000 per month. If a jurisdiction remains noncompliant, a court can multiply those penalties by a factor of six. Other potential ramifications could include the loss of local land use authority to a court-appointed agent.

In addition to these legal remedies available in the courts, under the Housing Accountability Act, jurisdictions without a substantially compliant housing element cannot rely on inconsistency with zoning and general plan standards as a basis for denial of a housing project for very low-, low-, or moderate-income households. (Gov. Code, § 65589.5, subd. (d)(5))<sup>1</sup>

## **Conclusion**

HCD recognizes that, ultimately, state housing laws are effective only with the cooperation of local governments and understands staffing and resource constraints that may hinder efforts to gain compliance. However, housing elements are essential to developing a blueprint for growth and are a vital tool to address California's prolonged housing crisis. Accordingly, state law has established clear disincentives for local jurisdictions that fail to comply with State Housing Element Law. To meet the 6<sup>th</sup> cycle update requirements for a substantially compliant housing element, the County must submit a draft housing element to HCD for review, consider HCD's written findings, adopt the housing element, and submit it to HCD for review and certification. (Gov. Code, § 65585.)

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<sup>1</sup> For purposes of the Housing Accountability Act, housing for very low-, low-, or moderate-income households is defined as having at least 20 percent of units set aside for low-income residents or 100 percent of units set aside for middle-income residents. (Gov. Code § 65589.5, subd. (h)(3).)



Sonia M. De La Rosa, County Administrative Officer  
Page 3

HCD will consider any written response before taking further action authorized by Government Code section 65585, subdivision (j), including referral to the California Office of the Attorney General.

If you have any questions or would like to discuss the content of this letter, please contact Mary Milner of our staff at [mary.milner@hcd.ca.gov](mailto:mary.milner@hcd.ca.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read 'Melinda Coy', with a long, sweeping horizontal stroke extending to the right.

Melinda Coy  
Proactive Housing Accountability Chief  
Local Government Relations and Accountability

## **EXHIBIT B**

# COUNTY OF MONTEREY

## HOUSING AND COMMUNITY DEVELOPMENT

Planning – Building – Housing  
1441 Schilling Place, South 2nd Floor  
Salinas, California 93901-4527  
(831) 755-5025



### Application Checklist For Land Use and Development Applications

Project Name: \_\_\_\_\_ File Number: \_\_\_\_\_  
Planner Name: \_\_\_\_\_ Planner E mail: \_\_\_\_\_  
Phone: \_\_\_\_\_

The Planning Department is the lead agency to coordinate the processing of development applications through Monterey County land use agencies. The following is a checklist of materials, data and reports required for submittal of your development application. Please feel free to contact your assigned project planner at any point in the development process regarding questions you may have about your application.

**Please make an appointment with your assigned planner to submit application materials.**

**Your development project application will not be accepted for review unless all the items checked below (plans, materials, data, and reports, etc.) are included in the submittal package.**

#### **Permits:**

The following entitlements have been determined to be required for your project based on the description of your project submitted with the Application Request Form and associated materials:

Type of Permit(s):	
Project Description:	

#### **FILING FEES:**

The following filing fees have been calculated based on the entitlements required, and may be subject to change based upon final review of the application. **See attached "Estimate of Planning Permit Application Fees."**

Certain types of applications are subject to an hourly fee. Each Department has a set hourly rate that is charged for projects that are subject to hourly fees. For those applications, the amount of payment due with the application is a deposit with additional charges per hour for actual time spent on that application. **Application fees are due and payable with submission of the application materials.**

These costs are associated with your land use entitlement and do not include Building Services Department plan check or construction permit fees. In addition, costs may be applied as necessary to comply with regulations and fees of other county agencies, conditions of approval, mitigation measures, and necessary agreements.

### REQUIREMENTS FOR APPLICATION PACKETS

The items checked below are required for submission of the project application and must be collated and assembled into packets of information. All documents shall also be provided in an electronic format (.pdf). Plans shall be in a format so that they may be reproduced at 11x17 inches or greater.

### APPLICATION FORMS

**The following forms must be completed and signed by all interested parties. Copies shall be attached to your plans as part of your application.**

X	Development Project Application
	Coastal Development Permit supplemental application form. <i>(Coastal Zone Only)</i>

	Design Approval Request form with required materials.
<b>PLANS</b>	
<p>The following plans must be completed in full size (24" x 36") and folded into a size not to exceed 8½ by 14 inches. Each type of plan includes a list of the typical type of information required to be included on that plan. Those items that are checked must be included on the requested plan.</p> <p>The number of plans required to be submitted with the application is indicated in the left hand column. Initial sets of plans are needed for distribution to the land use agencies. Additional sets may be requested through the hearing process. If the items checked are not included, the application will be deemed incomplete and revised plans will be required.</p>	
X	<b>Site Plan</b> – A plan from a bird's-eye view showing structures, major vegetation, and topographical data of the subject property including the area <b>50 feet from the property line within adjacent properties</b> . The Site Plan shall include the following:
X	North arrow and scale
X	Location of project (vicinity map)
X	Location of all easements on the property, including but not limited to: public utility, rights-of-way, access, avigation, drainage, solar/wind, scenic, slope, archaeological, habitat, farmland, rangeland, or visual easements. At a minimum, consult the title report for your property for all easement encumbrances.
X	<p>Project Data Summary Table including but not limited to the following items:</p> <ul style="list-style-type: none"> <li>• Parcel Size</li> <li>• General Plan Land Use Designation</li> <li>• Zoning Designation</li> <li>• Lot Coverage (Required and Proposed) - calculations showing the percentage that the building footprint covers the parcel.</li> <li>• Floor Area Ratio (Required and Proposed) – calculation showing the percentage of floor area in relation to the size of the parcel.</li> <li>• Grading – estimated amount of cut and/or fill (cubic yards) including the amount of soil to be imported/exported. <i>See Grading/Slope Map.</i></li> <li>• Tree Removal (number and type of tree). <i>See Concept Landscape Plan below.</i></li> <li>• Impervious Coverage – two calculations showing: 1) the total amount of area (square feet) covered by structures and 2) the total amount of area (square feet) covered by impervious surfaces. <i>See Concept Landscape Plan below.</i></li> <li>• Required and Proposed Parking counts</li> </ul>
X	<p>Dimensions of the entire parcel.</p> <p>Contours – lines showing the slope of land</p> <p>The standard contour interval is 5-foot between elevation lines shown on the topographic map; however, 2-foot or other contour interval may be required by the project planner. <b>The contour interval to be shown on the plot plan for your project is        feet</b></p> <p>Establish the Average Natural Grade of the proposed building area.</p> <p>Illustrate required set backs and also dimension proposed setbacks:</p> <ul style="list-style-type: none"> <li>• From property lines to structures</li> <li>• From edge of easement/right-of-way to structures</li> <li>• From structure to structure (existing and proposed)</li> </ul> <p>Parking Summary for commercial projects including number of standard, compact, and disabled spaces and dimensions of parking spaces serving the project.</p> <p>Location of all parking and access areas serving the project.</p> <p>Interior roadways, driveways and circulation from the project parcel(s) to the fronting street (include dimensions).</p> <p>Locations of all streets, rights-of-way, and easements serving the project and/or held by the property owner.</p> <p>Location of all buildings and structures on the property including fences.</p> <p>Location of wells and septic system used in conjunction with the proposed project (existing and proposed).</p> <p>Name of water and sewer service providers serving the project.</p> <p>Delineate the extent of all wetlands, streams, creeks or any other body of water.</p> <p>Proposed landscaping and/or fuel modification areas.</p> <p><i>See Concept Landscape Plan section below</i></p> <p>Areas subject to inundation and/or 100-year flood levels.</p> <p>Indicate any known/identified environmentally sensitive habitat, archaeological resources, historical sites and any identified hazards (e.g. geological).</p>
	<b>Floor Plans</b> – A horizontal section to diagrammatically show the enclosing of walls in a building, its doors and windows, and the arrangement of internal spaces. The Floor Plans

	shall include the following:
	Internal layout of all proposed and existing structures. Show all interior and exterior walls of all proposed levels of each structure on the subject property.
	Room dimensions/sizes, proposed use of each space, entrances/exits, light wells/emergency access, stairways and ramps.
	Walls to be removed clearly distinguished from walls proposed to remain.
	Estimated percentage of walls being removed.
	Estimated value of the remodel.
	Note: If a remodel or addition is proposed for a building that does not have a fire sprinkler system, contact the fire agency to obtain an addition/remodel calculation form to determine if a fire sprinkler system is required for this project. Submit the completed addition/remodel calculation form with the application.
	<b>Elevations</b> – A drawing showing the vertical elements of a building as a direct projection to a vertical plane. The Elevations shall include the following:
	Elevation of each proposed building exterior when viewed from each side. If additions are proposed to an existing structure, existing and proposed portions of the structure shall be clearly illustrated.
	Types of materials and colors to be used
	All roof appurtenances
	Existing and proposed grade lines
	Elevation view with the height of structures from Average Natural Grade.
	Finished floor elevation(s).
	Photographs of existing structures.
	<b>Concept Landscape Plan</b> – site plan illustrating proposed exterior improvements for the subject property such as plants, irrigation, patios, fountains, barbeques, etc. The Concept Landscape Plan shall include the following:
	Illustration of the general extent of existing vegetation (e.g.: grasslands, brush, trees).
	Illustrated concept plans for improvements to the site and specifically areas disturbed by development. (e.g., native seed, turf, ornamental plants, native plants, fountain, pool, barbeque, fireplace, exterior lighting, etc.).
	Elevation view of proposed exterior improvements such as fireplaces, walls/fences, trellises, gazebos, etc.
	Project Data Table listing the following items: <ul style="list-style-type: none"> <li>Quantity of each plant species.</li> <li>Size of each plant species.</li> </ul>
	Irrigation Plan identifying the location and type of irrigation fixtures proposed and the following specifications: <ul style="list-style-type: none"> <li>Estimated annual water use.</li> <li>Temporary watering scheme for native plants; irrigation shall be removed once plants are established.</li> </ul>
	Illustration of Tree Removal including the species and diameter of all trees within the project area and whether the tree is proposed for removal. Include a table on the plan summarizing the size and type of each tree proposed for removal.
	Location and design of trash/recycling facilities
	Fuel Management Plan – Illustration of where/how vegetation (native and proposed) will be maintained between 30 feet and 100 feet from proposed structures. Identify the areas planned for: <ul style="list-style-type: none"> <li>Irrigated landscape (30 feet).</li> <li>Vegetation management (100 feet).</li> <li>Selective Pruning.</li> </ul> <i>Additional information is attached</i>
	<b>Fuel Management Plan</b> – Site plan illustrating how vegetation around proposed structures and roadways will be maintained to reduce fire fuel loads. The Fuel Management Plan shall include the following:
	Illustration of the general extent of natural vegetation to be retained. (e.g.: grasslands, brush, trees).
	“Green Zone” (0-30 feet) – Illustration on plans for maintaining vegetation (native and proposed) within 30 feet of all proposed structures/facilities.

<i>Coordinate with Landscape Plan</i>	
"Management Zone" (30+ feet). Illustration on plans showing maintenance of vegetation up to 100 feet from all proposed structures, or to the property line, whichever is closer. In very high fire hazard severity zones, greater distance may be required by the local Fire Authority.	
Tree Pruning/Removal – Illustration of the species and diameter of trees within the project area and whether the tree is proposed for removal and/or routine pruning.	
<i>Coordinate with Forest Management Plan</i>	
Emergency Vehicle Access. Illustrate emergency vehicle access route (driveway and/or roadway) including width, percentage of slope, and driving surface.	
<b>Grading/Slope Map</b> - site plan illustrating existing and proposed topographic contours. The Grading/Slope Map shall include the following:	
Highlighted or shaded areas with slopes equal to or greater than 25% in the inland areas and in the North County Coastal area (30% in all other areas of the Coastal Zone).	
<i>At a minimum, a Slope Map is required for all subdivision projects. The Map shall be the same scale as the preliminary subdivision map.</i>	
Slope/Density Calculation stating the maximum density allowed based on acreage of each of the following cross slopes of the subject parcel(s):	
<ul style="list-style-type: none"> <li>• 0-19.9% - 1 building site per 1 acre</li> <li>• 20-29.9% - 1 building site per 2 acres</li> <li>• 30+% - 0 building sites</li> <li>• For projects in the Big Sur Land Use Plan area east of State Highway 1, include the following categories: under 15%, over 30%.</li> </ul>	
<i>Required for all subdivision projects - the Map shall be the same scale as the preliminary subdivision map.</i>	
The areas of uncultivated land proposed for conversion to cultivated land on slopes greater than 25%.	
Illustration of location(s) of all proposed cut and fill including areas requiring over-excavation due to soil conditions.	
Section Views illustrating the maximum height of excavation and embankment.	
The amount (square feet) of land proposed for development where the slope is equal to or greater than 25% in the inland areas and in the North County Coastal area (30% in all other areas of the Coastal Zone).	
Erosion Control Plan. Type and duration of methods or materials used to retain sediment and/or debris within the development area. Identify development and design techniques for erosion control, slope stabilization, visual mitigation, drainage and construction techniques.	
Best Management Practices (BMP). Identification of all BMPs that will apply to the proposed project.	
<b>Drainage Plan</b> – When required by the Water Resources Agency, a drainage plan shall be submitted illustrating measures necessary to mitigate the impact of impervious surface stormwater runoff. The drainage plan shall include the following:	
Contour lines showing existing and proposed slopes. Identify all slopes that are 25 percent or greater.	
Indicate any known/identified environmentally sensitive habitat, archaeological resources, historical sites and any identified flood hazards and geologic hazards.	
Location of all existing and proposed well(s) and septic system(s).	
Location and extent of all water bodies including wetlands and streams.	
Delineation of the extent of all wetlands, streams, creeks or any other water body.	
If stormwater retention or detention facilities are required, the drainage plan shall identify the location and size of the proposed facilities. Supporting calculations shall be included with the drainage plan.	
<b>General Development Plan</b> – Long range plan combining illustrations (site plan, elevations, floor plans, sign program, etc.) and narrative (description of allowed uses, hours of operation, etc.) for non-residential projects with multiple uses and/or greater than 1.0 acre in size. The General Development Plan shall include the following:	
<i>Additional information is attached</i>	
Uses: list of all proposed uses to be allowed without further review, and uses to be disallowed within this project area.	
Operation: hours of operation and delivery.	
Employees: maximum number of employees anticipated.	
Parking: proposed parking and how it relates to County Codes and/or traffic engineer	

	estimate.
	Traffic: estimated number of trips to be generated by the project, and proposed improvements to accommodate the new trips.
	Site Development Standards: set backs, building heights, building materials/colors, etc.
	Signs: Either including a proposed sign program or note meeting the applicable Zoning Code (citing appropriate section).
	Landscaping Plan, including trash/recycling facilities. <i>See Concept Landscape Plan above</i>
	Exterior Lighting Plan coordinated with the Landscape Plan.
	Hazardous Material Questionnaire (Contact Environmental Health Division).
	<b>Subdivision Map</b> – Plan illustrating the initial design and improvement for the division of land (Monterey County Code sections 19.03.010, 19.04.010, and 19.05.035). The Subdivision Map shall include the following:
	Location of project (vicinity map).
	North arrow.
	Date of preparation/revision of the map.
	Names and addresses of subdivider and record owner in the lower right hand corner.
	Name and address of the person who prepared map in lower right hand corner.
	<p>Tentative Map and Tentative Parcel Map</p> <ul style="list-style-type: none"> <li>• All buildable parcels shall be illustrated using numbers.</li> <li>• All non-buildable parcels (e.g. roads, open space, etc) shall be illustrated using letter designations.</li> <li>• Placement and location of all existing streets, easements, rights-of-way on the land proposed to be subdivided, and those abutting said land.</li> <li>• Approximate alignment of the proposed streets within the subdivision and their connections with existing streets or methods of terminating proposed streets. Streets shall be illustrated with letter designations.</li> <li>• Proposed uses of all portions of the subdivision, including but not limited to building areas, open space, streets, etc.</li> <li>• All existing structures.</li> <li>• Method of water supply for the subdivision.</li> <li>• Method of wastewater/sewage disposal for the subdivision.</li> <li>• Street improvements, existing and proposed.</li> <li>• Drainage, existing and proposed.</li> <li>• Utilities, existing and proposed.</li> </ul>
	<p>Summary table, including:</p> <ul style="list-style-type: none"> <li>• Total land area proposed to be subdivided.</li> <li>• Number of buildable parcels.</li> <li>• Number of non-buildable parcels.</li> <li>• Size of parcels, calculated in acreage and square footage.</li> <li>• Proposed density.</li> <li>• Land use designation(s), existing and proposed.</li> <li>• Number of acres of open space in the subject subdivision, calculated in acres to the nearest one-half acre.</li> </ul>
	Aerial photo with an overlay of the proposed subdivision layout.
	Slope Density Analysis Map - Sufficient contours to indicate the elevations and the fall of the land adjacent to the surrounding area.
	<i>See Grading/Slope Map</i>
	Description of prior development activity on the site such as the removal of any vegetation, grading, etc., which may affect proposed subdivision.
	Any land fills within 2,000 feet of the proposed subdivision.
	Soil Test for agricultural conversion pursuant to Department of Toxic Substance Control standards (pesticides, nitrates, etc)
	Two (2) copies of the preliminary title report showing the legal owners at the time of submittal of the tentative map or vesting tentative map application.
	<b>Lot Line Adjustment Map</b> – Plan illustrating changing recorded parcel lines of existing parcels. The Lot Line Adjustment Map shall include the following:
	Location of project (vicinity map).
	North arrow.
	Date of preparation/revision of the map.

	Names and addresses of all record owners in the lower right hand corner.
	Name and address of the person who prepared map in lower right hand corner.
	<b>Preliminary Map.</b> <ul style="list-style-type: none"> <li>• All existing parcels.</li> <li>• Placement and location of all streets, easements, rights-of-way on the subject lands and those abutting said land.</li> <li>• Proposed uses of all portions of the project area, including but not limited to building areas, open space, streets, etc.</li> <li>• All existing structures.</li> <li>• Illustration of existing and proposed wastewater/sewage disposal and location.</li> <li>• Illustration of existing and proposed water supply and location, including fire hydrants.</li> <li>• Drainage, existing and proposed.</li> <li>• Utilities, existing and proposed.</li> </ul>
	Aerial photo with an overlay of the existing and proposed parcel lines.
	<b>Summary table, including:</b> <ul style="list-style-type: none"> <li>• Total number of parcels.</li> <li>• Size of each parcel before and after adjustment, calculated in acres and square footage.</li> <li>• Land use designation(s), existing and proposed.</li> </ul>
	Two (2) copies of the preliminary title report showing the legal owners at the time of submittal of the tentative map or vesting tentative map application.
	<b>Agricultural Buffer Plan</b> – Plan showing areas restricted from development that may impact neighboring agricultural operations. The Agricultural Buffer Plan shall include the following:
	Illustration of all property lines and uses within 300 feet of the project area.
	Existing and proposed land use designation(s) for the subject site, including existing land use designation(s) of adjacent surrounding properties.
	Illustration and dimension of areas restricted from development.
	Provide aerial map illustrating subject parcel and proposed buffer areas (to scale).
	Identification of significant land features (canyons, creeks, roads, etc).
	<b>Construction Management Plan</b> – A Plan (illustration and narrative) that describes how the site will be managed during construction to reduce potential impacts. The Construction Management Plan shall include the following:
	Names and contact information (primary and secondary) of parties responsible for project during construction.
	<b>Summary table including:</b> <ul style="list-style-type: none"> <li>• Types of construction vehicles and number of truck and/or vehicle trips/day.</li> <li>• Amount of grading per day (Air Quality Management District Standards).</li> <li>• Hours of operation.</li> <li>• Project scheduling (dates).</li> </ul>
	<b>Map illustrating:</b> <ul style="list-style-type: none"> <li>• Location of project (vicinity map).</li> <li>• Proposed route for hauling material.</li> <li>• Location of Sensitive Receptors (schools, hospitals, etc) along haul route.</li> <li>• Location of stockpiles and parking for construction vehicles.</li> <li>• Sensitive areas (tree protection zones, drainage, habitat, slopes, etc) where no parking, stockpiling, construction will occur.</li> </ul>
X	<b>Assessor's Parcel Map.</b> Attach to each set of plans one copy of the appropriate Assessor's Parcel Map page(s), with the subject parcel(s) highlighted.
X	<b>Reduced Set of Plans.</b> One set of plans reduced to 8½ x 11 or 11 x 17 inches so that reductions are clearly legible.
	<b>ADDITIONAL REQUIRED INFORMATION</b> Information checked below is required because of the type of application and policies affecting the subject property and/or project.
	<b>Staking and Flagging</b> – pursuant to the criteria adopted by the Board of Supervisors. <b>Proof (e.g. photos) of staking must be completed before the project will be accepted for submittal.</b> <i>Additional information is attached</i>
X	A copy of the Assessor's Parcel Map page(s) showing the parcel(s) on which development is proposed and parcels within 300 feet of the subject property. Please make a notation or



	highlight all the parcels on the map within 300 feet of the subject property.
X	A copy of the recorded Grant Deed that includes the legal description of subject property.
	<p>Homeowners Association.</p> <p>NOTICE: Parcels located within a subdivision governed by a Homeowners Association (HOA) may be required to undergo separate design review. The HOA enforces covenants, conditions and restrictions (CC&amp;Rs) specific to that area that may include conditions required as part of the original subdivision approval. Each applicant is responsible to obtain necessary approvals from the appropriate review body prior to obtaining a County permit.</p>
	<p><b>TECHNICAL REPORTS</b> – Provide one electronic version of each technical report checked below. Reports prepared by persons without proper certification or those not on our consultant list may not be accepted.</p> <p><i>Consultant lists are attached</i></p>
	<p><b>Geological Report</b></p> <p>A report prepared in conformance with California Division of Mines and Geology standards that addresses seismic hazards, faulting, slope stability, liquefaction potential and other geologic hazards and contains measures recommended by the geologist for any geologic hazards that are shown as a result of the report. The report shall be prepared by a California registered geologist. The geological report shall include the following:</p>
	List of all applicable County policies and regulations.
	<p>Information demonstrating how the proposed project is consistent with the applicable policies and regulations:</p> <ul style="list-style-type: none"> <li>• Monterey County Code – Section 20/21. XXX</li> <li>• XXXX Area/Land Use Plan</li> </ul>
	<p><b>Geotechnical Report</b></p> <p>A report that addresses slope stability and foundation design prepared by a California registered civil engineer or geological engineer. The geotechnical report shall include the following:</p>
	List of all applicable policies and regulations
	<p>Information demonstrating how the proposed project is consistent with the applicable policies and regulations:</p> <ul style="list-style-type: none"> <li>• Monterey County Code – Section 20/21. XXX</li> <li>• XXXX Area/Land Use Plan</li> </ul>
	<p><b>Adequate Water Supply System Assessment</b></p> <p>Information that addresses the conditions of the proposed water supply (e.g., quantity, quality, water rights, etc.). The information will be used in determining whether a project is complete by providing foundational information to include the following:</p>
	List of all applicable policies and regulations
	<p>Information demonstrating how the proposed project is consistent with the applicable policies and regulations:</p> <ul style="list-style-type: none"> <li>• General Plan Policy PS-3.1, PS-3.2, and PS-3.9</li> <li>• Monterey County Code – Section 19. XXX</li> <li>• Monterey County Code – Section 20/21. XXX</li> <li>• XXXX Area/Land Use Plan</li> </ul>
	<p>Please submit the following foundational information to the Environmental Health Bureau (EHB) for review:</p> <ol style="list-style-type: none"> <li>Water quality analysis; and</li> <li>Authorized production capacity of a facility operating pursuant to a permit from a regulatory agency, production capability, and any adverse effect on the economic extraction of water or other effect on wells in the immediate vicinity, including recovery rates; and</li> <li>Technical, managerial, and financial capability of the water purveyor or water system operator; and</li> <li>The source of the water supply and the nature of the right(s) to water from the source; and</li> <li>If applicable, a statement identifying all existing public water systems located within one mile and the feasibility of incorporating into the existing system or being owned, operated or managed by a satellite agency.</li> </ol> <p>OR</p> <ol style="list-style-type: none"> <li>'Can and Will Serve' letter documenting an existing water purveyor's ability to serve the project with an expiration date in place.</li> </ol>
	Items "a" through "f" are necessary to determine the site-specific adequacy of the proposed

water supply. In the event that, in the determination of the County, the foundational information provided in items “a” through “f” does not meet threshold standards, the County would not be able to support approval of the project and therefore does not recommend that the applicant pursue comprehensive analysis of hydrogeological conditions potentially impacted by the proposed project. If the information for “a” through “f” meets, in the determination of the County, the threshold standards, then a hydrogeological report, as detailed in the next section titled Hydrogeological Report, shall be prepared by a California licensed professional geologist.

If you wish to have a pre-application meeting to discuss water supply requirements for the proposed project you may do so by contacting the Environmental Health Bureau – *this will require a separate fee for service from EHB.*

#### **Hydrogeological Report**

A report which addresses the conditions of the proposed water supply (e.g. quantity, quality, water rights, etc.) and how geologic conditions, cumulative water demand, environmental impacts, and water projects may influence water supplies for domestic and environmental needs. Depending on the project, this report may be included in an EIR if an EIR is required.

The hydrogeological report shall include the following:

List of all applicable policies and regulations

Information demonstrating how the proposed project is consistent with the applicable policies and regulations:

- General Plan Policy PS-3.1, PS-3.2, and PS-3.9
- Monterey County Code – Section 19. XXX
- Monterey County Code – Section 20/21. XXX
- XXXX Area/Land Use Plan

As required by General Plan Policy PS-3.2, proof shall be submitted which demonstrates that the proposed development has a Long-Term Sustainable Water Supply and an Adequate Water Supply System.

For a project located in area with limited hydrogeologic information, as determined by the Monterey County Water Resources Agency (WRA):

Prepare a scope of work for a hydrogeologic investigation in consultation with the Water Resources Agency. A California licensed professional geologist shall analyze the items “a” through “g” listed below and prepare a report that includes a determination as to whether the project has a Long-Term Sustainable Water Supply. The report shall be submitted to the Planning Department, Water Resources Agency, and Environmental Health Bureau for review.

- a. Water quality analysis;
- b. Authorized production capacity of a facility operating pursuant to a permit from a regulatory agency, production capability, and any adverse effect on the economic extraction of water or other effect on wells in the immediate vicinity, including recovery rates;
- c. Technical, managerial, and financial capability of the water purveyor or water system operator;
- d. The source of the water supply and the nature of the right(s) to water from the source;
- e. Cumulative impacts of existing and projected future demand for water from the source, and the ability to reverse trends contributing to an overdraft condition or otherwise affecting supply; and
- f. Effects of additional extraction or diversion of water on the environment including on in-stream flows necessary to support riparian vegetation, wetlands, fish or other aquatic life, and the migration potential for steelhead, for the purpose of minimizing impacts on the environment and to those resources and species.
- g. Completion and operation of new projects, or implementation of best practices, to renew or sustain aquifer or basin functions.

The hauling of water shall be neither a factor nor a criterion for the proof of a long term sustainable water supply.

For a project located in an area with sufficient hydrogeologic information, as determined by the Monterey County Water Resources Agency:

A project-specific hydrogeologic investigation would not be necessary. The applicant shall submit a report that addresses items “a” through “g” listed above prepared by a qualified professional to the Planning Department, Water Resources Agency, and Environmental Health Bureau for review.

If you wish to have a pre-application meeting to determine if the project is located in an area with sufficient hydrogeologic information you may do so by contacting the Water Resources

Agency – this will require a separate fee for service from WRA.	
<b>Archaeological Report</b> A report identifying areas where sensitive resources are located and if any known resources are located within 750 feet of the proposed project. The archaeological report shall include the following:	
List of all applicable policies and regulations.	
Information demonstrating how the proposed project is consistent with the applicable policies and regulations: <ul style="list-style-type: none"> <li>• Monterey County Code – Section 20/21. XXX</li> <li>• XXXX Area/Land Use Plan</li> </ul>	
<b>Biotic Survey/Assessment</b> A report determining the presence of any rare and endangered species or habitat. Reports must be completed during the proper time(s) of year for species identified with potential presence on the site and shall include the following:	
Aerial map of the project site and surrounding area.	
Site/Aerial Map identifying extent of habitat types found on the subject property.	
List of species identified in the project vicinity as shown on relevant database (e.g. CNDDDB).	
Site Assessment conducted during appropriate time(s) of year for species identified on the CNDDDB as possibly present. Report on methods used to determine presence or lack thereof such as lack of presence of appropriate habitat/conditions.	
Recommendations to reduce impacts including possible design modifications.	
List of all applicable policies and regulations.	
Information demonstrating how the proposed project is consistent with the applicable policies and regulations: <ul style="list-style-type: none"> <li>• Monterey County Code – Section 20/21. XXX</li> <li>• XX XX Area/Land Use Plan</li> </ul>	
<b>Forest Management Plan/Tree Assessment/Tree Resource Analysis</b> An evaluation of how proposed development is designed in the most suitable location for long term maintenance of tree resources and to minimize tree removal. The forest management plan/tree assessment/tree resource analysis shall include the following:	
Aerial map of the project site and surrounding area identifying location of the subject tree(s) within that map.	
List of all applicable policies, regulations, findings.	
Information demonstrating how the proposed project is consistent with the applicable policies and regulations: <ul style="list-style-type: none"> <li>• Monterey County Code – Section 20/21. XXX</li> <li>• XXXX Area/Land Use Plan</li> </ul>	
Explanation of how the proposed tree removal relates to the forest and/or woodland of the project site as well as the surrounding area.	
Identification of any oak woodland that meets requirement of PRC 21083.	
Illustration of areas on the project site where replanting may occur and, if no replanting is possible, a location of where and how effective off-site replanting can be performed.	
Identification of surrounding forest continuity, prevailing sun/wind exposure to trees, and how the proposed project will affect these conditions.	
Identification of all trees greater than six inches in diameter on the site and identification of those proposed to be removed.	
Coordinate with Fuel Management Plan	
<b>Projects within the Del Monte Forest</b> Project within the Del Monte Forest shall contact the Del Monte Forest Conservancy for a determination on whether a Conservation and Scenic Easement dedication is required on the property. A one-time processing fee and monitoring fee for the easement will be assessed by the Del Monte Forest Conservancy to cover in perpetuity the Conservancy's ongoing monitoring activities. <i>Contact:</i>	
Vaughan Forestry C/O Cassady Bill Vaughan 6010 Highway 9, Suite #6 Felton, CA 95018 (831) 566-5955 <a href="mailto:billyv76@att.net">billyv76@att.net</a>	Del Monte Forest Conservancy 3101 Forest Lake Road, Suite #1 Pebble Beach, CA 93953 (831) 373-1274 <a href="mailto:dmfc@delmonteforestconservancy.org">dmfc@delmonteforestconservancy.org</a>

	<b>Traffic Report</b> A report which identifies traffic levels for existing conditions and with the proposed project. Contact Public Works for specific roadway segments and intersections to evaluate. Contact the project planner for a list of projects to consider for cumulative traffic conditions. The traffic report shall include the following information:
	Aerial map of the project site and surrounding area, identifying location of the subject roads/intersections within that map.
	List of all applicable policies and regulations.
	Number of trips generated by the project. Identify potential traffic impacts and safety issues, and the improvements to address those impacts and issues.
	Information demonstrating how the proposed project is consistent with the applicable policies and regulations: <ul style="list-style-type: none"> <li>• Monterey County Code – Section 20/21.XXX</li> <li>• XXXX Area/Land Use Plan</li> </ul>
	<b>OTHER ITEMS</b> - The following is a checklist of items required to/that provide added detail or justification for part of your request. <i>Additional information about these items is attached.</i>
	Supplemental application for 30% slope exception (25% in the Inland Areas and the North County Coastal Zone) <i>See Slope Map</i>
	Proof of Access – Verification shall be submitted documenting right of access and/or improvement to a private road from the subject property to a public road. Required for all subdivision applications.
	Development Evaluation System.
	Variance Justification Letter for three required findings.
	Land Disturbance Target (LDT) for North County Hydrogeological area.
	Coastal Access Plan – This is a plan illustrating proposed access to/along coastal areas as required by/in the Local Coastal Plan (LCP).
	Guesthouse - Development standards for guesthouses is attached and must be met.
	Accessory Dwelling Unit - Development standards for accessory dwelling units is attached.
	Copies of an Employee Housing Plan.
	Copies of a proposal to comply with the Inclusionary Housing Ordinance.
	Copies of surface mining reclamation plan.
	Other:
	<b>OTHER LAND USE DEPARTMENTS &amp; CONSULTING AGENCIES</b> The following is a checklist of items required from other County Land Use Departments and consulting agencies:
	<b>Fire protection agency serving this project:</b> Contact Name: Address: Phone:
	Turnouts: Identify proposed turnouts along driveways greater than 150 feet in length. Turnouts shall be provided at the midpoint and at intervals of 400 feet. If proposed driveway turnouts will not meet this standard, contact and meet with the appropriate fire agency prior to application submittal.
	Entry Gate: Illustrate the design and set back from the edge of right of way. No single-lane gate opening shall be less than 12 feet at the most narrow point and must be set back from a street access at least 30 feet. For commercial or subdivision gates, contact the fire agency for width requirements.
	Driveway/Road Grades: Illustrate that proposed grades along driveways/roads do not exceed 15%. If proposed grades will not meet this standard, contact and meet with the appropriate fire agency prior to application submittal.
	Driveway Location: Show any existing and proposed driveways from the project parcel to the fronting street.
	Driveway/Road Bridges or Culverts: Show any existing and proposed bridges on the driveway or roadway from the project parcel to the fronting street. Include a brief description of the bridge or culvert, including weight rating, type of structure, etc. The bridge or culvert must be designed to support the weight of a 22-ton vehicle.
	Turnaround: Illustrate adequate space for a fire engine to turn around at the end of the driveway. The turnaround must be designed to support the weight of a 22-ton vehicle.
	Fuel Management Plan: Provide a fuel management plan as described in the section titled "Landscape Plan."

	Water System for Fire Protection: Show existing water system improvements that will serve the project, such as public and private water sources, water mains, fire hydrants, fire pumps, etc.
	Residential Site Uses: Provide the following information regarding all existing and proposed buildings and facilities for the site: <ul style="list-style-type: none"> <li>• Occupancy classification of existing buildings</li> <li>• New occupancy classifications proposed for existing buildings;</li> <li>• Occupancy classification of proposed buildings.</li> </ul>
	Commercial Site Uses: Provide the following information regarding all existing and proposed buildings and facilities for the site: <ul style="list-style-type: none"> <li>• Occupancy classification of existing buildings</li> <li>• New occupancy classifications proposed for existing buildings;</li> <li>• Occupancy classification of proposed buildings.</li> <li>• Description of processes and activities proposed in the buildings and on the site.</li> </ul>
	Building Fire Protection Systems: Indicate existing and proposed fire protection systems in existing and proposed buildings. Such system would include fire sprinklers, fire alarm, etc.
	<b>HCD-Public Works</b> 1441 Schilling Place South 2 <sup>nd</sup> Floor, Salinas (831) 755-5025
	Address Request: Each parcel must have an assigned address prior to filing an application. Separate addresses are required for Accessory Dwelling Units, Second Residences, and Commercial Centers.
	Encroachment Permit. Any work within the public right-of-way will require authorization from the appropriate agency (Public Works, Caltrans)
	Parking Plan. A plan illustrating the proposed parking layout and circulation for the project. Dimension turning movements within the parking area.
	<b>Water Resources Agency</b> 893 Blanco Circle, Salinas, CA 93901 (831) 755-4860
	Drainage Control: Applications for most standard subdivisions and large commercial development should include the following information: <ul style="list-style-type: none"> <li>• A preliminary drainage analysis and a preliminary drainage plan prepared by a registered civil engineer addressing on-site and off-site impacts.</li> <li>• The preliminary drainage analysis shall include calculations certifying the proposed detention facilities are designed to limit the 100-year post-development runoff rate to the 10-year pre-development rate.</li> <li>• The preliminary drainage plan shall include the location of all detention facilities and other major drainage features such as catch basins and stormdrain lines.</li> </ul>
	Floodplain Regulations: Applicants proposing development within the FEMA-defined 100-year floodplain are encouraged to contact the Water Resources Agency prior to submitting an application.
	Watercourse and River Setback Requirements: Development is required to be setback 50-feet from the top of bank for watercourse and 200-feet from the top of bank for a river: <ul style="list-style-type: none"> <li>• A site plan showing the proposed development setback from the "top of bank", as defined in Monterey County Code Chapter 16.16. The top of bank shall be defined by a professional engineer or licensed land surveyor and shown on the site plan.</li> <li>• If the setback requirement cannot be met, the applicant shall prove to the satisfaction of the Water Resources Agency that the proposed development will be safe from flow-related erosion hazards and will not significantly reduce the capacity of the existing watercourse. The applicant shall submit a report, prepared by a registered civil engineer or licensed professional geologist, certifying the proposed development is compliant with Monterey County Code Chapter 16.16.</li> </ul>
	Development applications within the Monterey Peninsula Water Management District (MPWMD) should include an MPWMD Water Release Form and Water Permit Application.
	<b>Environmental Health Bureau (EHB)</b> 1270 Natividad Road, Salinas, CA 93906 (831) 755-4507
	For projects disposing sewage onsite, an Onsite Wastewater Treatment System (OWTS) design is required on plans for all existing and proposed systems. An informational handout titled "Siting an Onsite Sewage Disposal System" is attached to assist your design of a new OWTS system. If no records are available for your existing system, further investigation from a septic contractor may be required. If you wish to have a pre-application site visit with an Environmental Health Specialist you may do so by contacting EHB – this will require a separate fee for service from EHB.

	Application for an Onsite Wastewater Treatment System Permit (for the repair, demolition, or installation of a new onsite system) may be required.
	Percolation Test Report. Report on soil conditions related to ability for wastewater to percolate. Environmental Health (EHB) will determine if this is required and must be coordinated with EHB. <i>This may require a separate fee for service from EHB.</i>
	If a well is on the property the location shall be on the plans. Ensure the proper water system name is identified. Note: if this project creates a new water system with 5 or more connections, an additional discretionary permit is required.
	For projects served by a public/private sewer system and/or water system, provide the names of water system and/or the sewer system involved serving the property. Also, provide a Can and Will Serve Letter from applicable public/private water and/or wastewater provider/district. Letter shall include estimated remaining capacity including existing lots of record.
	Water Use-Nitrate Impact Questionnaire.
	<b>Parks Department</b> P.O. Box 5249, Salinas, CA 93915 (831) 755-4895
	Phase I Historical Assessment (consultant list attached)
	Phase II Historical Assessment (consultant list attached)
<b>OTHER REQUIREMENT(S) TO CONSIDER FOLLOWING PLANNING APPROVAL</b>	
	Building Permits. Technical plans are required to obtain permits to develop the project.
	Lighting Plan required prior to the issuance of building permits.
	Traffic Fees; Regional and local fees are assessed to new development.
	Quimby Act (Park In-Lieu) - Requirement to provide park lands or in-lieu fee as part of a proposed subdivision. <i>See Monterey County Code Section</i>
	Certificate of Compliance – Required as a condition for each Lot Line Adjustment (no fee except document recording fee).
	Notice of Determination. Applications not exempt from the California Environmental Quality Act will be required, as a condition of approval, to pay a Fish and Game fee. In addition, a County Recording fee will be charged.
	Payment of the Condition Compliance fee, as set forth in the fee schedule adopted by the Board of Supervisors, for the staff time required to satisfy conditions of approval. This fee shall be paid prior to clearing any conditions of approval.
	Mitigation Monitoring Agreement with a fee for monitoring mitigation measures.
	Notice of Permit Approval will need to be recorded.
	Indemnification Agreement will need to be recorded.
	Recording Fees. \$12.00 for the first page plus \$3.00 for each additional page.
	Final Map. Once conditions of the tentative map are cleared, a final map must be submitted for review and approval prior to acceptance by the Board of Supervisors. Once accepted by the Board, the final map must be recorded in order for the subdivision to be completed.
	Subdivision Agreement. Agreement to complete all required improvements for a subdivision to be completed prior to acceptance of a final map. Final Map. Once conditions of the tentative map are cleared, a final map must be submitted for review and approval prior to acceptance by the Board of Supervisors. Once accepted by the Board, the final map must be recorded in order for the subdivision to be completed.
<b>ADDITIONAL INFORMATION ON THE REVIEW AND APPEAL PROCESS FOR DEVELOPMENT PROJECT APPLICATIONS</b>	
	Fire Agency/District:
	Agricultural Commissioner
	Economic Development Department (Housing)
	Parks Department
	Sheriff's Office
	Local Agency Formation Commission (LAFCO)
	Assessor's Office
	Treasurer-Tax Collector
	Water Purveyor:
	Pajaro Valley Water Management Agency

	Monterey Peninsula Water Management District
	Transportation Agency of Monterey County (TAMC)
	California Coastal Commission (Santa Cruz Office)
	Caltrans (District 5)
	California Department of Fish and Game (Central Region)
	US Fish and Wildlife Service (Ventura Fish & Wildlife Office)
	City of:
	Other:
	Other:
<b>Complete/Incomplete</b> This checklist is to assist with preparing and submitting a complete package for review. Within 30 days of submittal, you will be notified if your application is complete. Your development project application will not be accepted for review unless all the applicable materials, data and reports accompany the application. <u>All project information/documents shall be submitted and/or re-submitted through the project planner not through the agency who may have asked for the information.</u> A new 30-day period begins upon submittal of new information. <i>Note: an application for a discretionary permit does not entitle or grant the land use for which the application has been made.</i>	
<b>Advisory Committee</b> Monterey County has appointed various advisory boards and Land Use Advisory Committees (LUACs) which may be required to comment and recommend on development project applications. Your application will be referred to the:	
	Land Use Advisory Committee (LUAC)
	Agricultural Advisory Committee (AAC)
	Historic Resources Review Board (HRRB)
	Airport Land Use Commission (ALUC)
<b>CEQA</b> As required by the California Environmental Quality Act of 1970, as amended, the information contained in the completed application will be evaluated by the county to determine if the proposed project may have significant impact upon the environment. One of the following determinations will be made: <ol style="list-style-type: none"> <li>The proposed project is "categorically exempt" -- no further environmental review is required.</li> <li>The proposed project will not have a significant effect on the environment or will not have a significant effect on the environment with mitigation, and a Negative Declaration or Mitigated Negative Declaration will be prepared.</li> <li>The proposed project may have a significant impact on the environment, and an Environmental Impact Report will be required to fully assess the potential environmental effects of the project.</li> </ol>	
<b>Hearing Date Set</b> After application review and environmental determination, an administrative meeting or public hearing will be scheduled before the appropriate hearing body or officer as required by either the Monterey County Zoning Ordinances or Monterey County Subdivision Ordinance. The applicant will be notified of the hearing date. The applicant or the applicant's designated representative should be present at the public hearing.	
<b>Posting Procedure</b> Approximately two weeks before the public hearing date, the applicant will receive by mail three notices of public hearing and an "affidavit of posting" form. The applicant shall post the three notices, on or near the project site in places visible and attainable to the public, at least ten days before the public hearing date. The Applicant must fill out the "affidavit of posting" form and return the form to the Monterey County RMA-Planning Department at least seven days before the public hearing. Failure to post these notices will result in continuance or denial of the development project application.	
<b>Decision</b> Approval or disapproval of a proposed development project application by the hearing body will be based upon all of the evidence before the hearing body including recommendations and comments from County staff, other public agencies, citizens who are present or who have sent correspondence, all other public testimony taken at the hearing, and documents presented. The hearing body can accept, reject, or modify any proposed findings or tentative conditions of approval at the time of the public hearing in an adopted resolution.	
<b>Appeal</b> Any decision may be appealed to the appropriate hearing body by anyone aggrieved within 10 calendar days after the date the resolution is mailed to the applicant. Projects in the Coastal Zone are subject to an additional appeal period consisting of 10 working days that begins the day after the	

Coastal Commission receives a Final Local Action Notice (FLAN) from the County.	
<b>Condition Compliance/Mitigation Monitoring.</b> The resolution for the project includes a matrix that specifies Conditions of Approval and/or Mitigation Measures that must be met prior to obtaining permits and at other stages of the development process.	
<b>Building Permits</b> Building Permits will not be issued, nor any use conducted, until all appeal periods have passed with no appeal being filed or final action is taken by the Board of Supervisors.	
<b>Reapplication for Denial</b> When a development project application is denied, no new project application for substantially the same use shall be considered for one year following such denial.	
Checklist given out by:	DATE:
Checklist received by:	DATE:

Revised 07/16/2021



## **EXHIBIT C**



**COUNTY OF MONTEREY**  
**HOUSING AND COMMUNITY DEVELOPMENT - PLANNING**  
 1441 SCHILLING PLACE SOUTH, 2ND FLOOR, SALINAS, CA 93901  
 OFFICE: 831.755.5025 FAX: 831.757.9516

**DEVELOPMENT PROJECT APPLICATION**

This application is for:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Combined Development Permit          | <input type="checkbox"/> Tentative Parcel Map [Minor Subdivision] |
| <input type="checkbox"/> Rezoning  | <input type="checkbox"/> Tentative Map [Standard Subdivision]     |
| <input type="checkbox"/> Administrative Permit [Coastal/Non-Coastal]     | <input type="checkbox"/> Vesting Tentative Map                    |
| <input type="checkbox"/> Use Permit                                      | <input type="checkbox"/> Preliminary Map                          |
| <input type="checkbox"/> Variance  | <input type="checkbox"/> Preliminary Project Review Map           |
| <input type="checkbox"/> Design Approval                                 | <input type="checkbox"/> Lot Line Adjustment                      |
| <input type="checkbox"/> General Development Plan                        | <input type="checkbox"/> Revised Final Map                        |
| <input type="checkbox"/> Coastal Development Permit                      | <input type="checkbox"/> Revised Parcel Map                       |
| <input type="checkbox"/> Modification of Conditions                      | <input type="checkbox"/> Amended Final Map                        |
| <input type="checkbox"/> Local Coastal Plan Amendment [L.U.P. or C.I.P.] | <input type="checkbox"/> Amended Parcel Map                       |
| <input type="checkbox"/> General Plan Amendment                          | <input type="checkbox"/> Subdivision Extension Request            |
| <input type="checkbox"/> Minor Amendment [Coastal/Non-Coastal]           | <input type="checkbox"/> Other _____                              |

1. Owner[s] Name: Amy McDougall  
 Address: 10196 OAKWOOD CIRCLE City: CARMEI State: CA  
 Telephone: 415-286-0100 Zip Code: 93927
2. Applicant's Name: Renee Pringale  
 Address: 10196 OAKWOOD CIRCLE City: Carmel State: CA  
 Telephone: 415-286-0100 Zip Code: 93927
3. Applicant's interest in property [Owner, Buyer, Representative, etc.]  
Husband
4. Property address and nearest cross street: 10196 OAKWOOD CIRCLE  
@ OAKSHIRE
5. Assessor's Parcel Number[s]: 410-542-011
6. Current Zoning: MD12
7. Property area [acres or square feet]: .081
8. Describe the proposed project: construct single family home + ADU  
on vacant lot. waiver of 25% slope restriction

N/A 9. **REZONING OR AMENDMENT ONLY:** The applicant wishes to amend Section \_\_\_\_\_ of the Monterey County Code, from a \_\_\_\_\_ Zoning District to a \_\_\_\_\_ Zoning District or some other classification.

N/A 10. **GENERAL PLAN AMENDMENT OR COASTAL PLAN AMENDMENT ONLY:** Describe the proposed amendment: \_\_\_\_\_

N/A 11. **SUBDIVISION INFORMATION ONLY:** Number of Lots: \_\_\_\_\_  
 Purpose of Subdivision: Sale: ☐ Lease: ☐ Financing: ☐ Other: ☐

12. **LOT LINE ADJUSTMENT INFORMATION ONLY:** What is the purpose of the adjustment: \_\_\_\_\_

WILL THE ADJUSTMENT RELOCATE THE BUILDING AREA? Yes ☐ No ☐

ADJUSTED PARCEL SIZE(S): \_\_\_\_\_

Owner's Signature \_\_\_\_\_ Owner's Signature \_\_\_\_\_

Owner's Name [Please Print] \_\_\_\_\_ Owner's Name [Please Print] \_\_\_\_\_

Assessor's Parcel Number \_\_\_\_\_ Assessor's Parcel Number \_\_\_\_\_

13. **VARIANCES ONLY:** Describe the proposed variance: If deemed required; to  
build structure to p/c similar to other nearby  
properties

14. If new or additional construction is proposed, complete the following information:

- A. Residential Development: Single Family Residence ☒ Other [how many total units] 2  
No. of covered parking spaces 4 No. of uncovered parking spaces 0 Lot Coverage 0.81  
B. Commercial or Industrial Development: No. of employees [include all shifts] \_\_\_\_\_  
No. of covered parking spaces \_\_\_\_\_ No. of uncovered parking spaces \_\_\_\_\_  
No. of Loading Spaces \_\_\_\_\_ Lot Coverage \_\_\_\_\_ %

15. Will grading or filling be required: Yes ☐ No ☒ Cubic Yards \_\_\_\_\_

16. Will the project require placement of structures, roads, grading cuts or fills on slopes of 30% or greater: Yes ☒ No ☐

17. Will any trees be removed: Yes ☒ No ☐ If yes, indicate the number, specie[s] and diameter: 3

Other vegetation to be removed: none

18. How will water be supplied: Individual Wells \_\_\_\_\_ Mutual System Carmel + water well

Name of Public or Private Water System: \_\_\_\_\_

19. How will sewage or other waste be disposed: underground sewer system (arterial pipe)

Name of Public or Private Sewer System: Carmel Valley Ranch / Municipal Water & S

20. Is this land currently in row crop production: Yes ☐ No ☒

21. Is this land used for grazing: Yes ☐ No ☒

22. Is this land under an Agricultural Preservation Contract: Yes ☐ No ☒ If yes, indicate the Contract No. \_\_\_\_\_

23. Is this proposed project located on a hazardous waste facility: Yes ☐ No ☒ [Government Code 65962.5]. [A list of hazardous waste sites is maintained by the Environmental Health Dept., Phone 831-755-4500.]

I/We state that as the owner[s] or agent for owner[s] for the development permit application. I/We have read the complete application and know the contents herein. I/We declare under penalty of perjury that the information contained in this application including the plans and documents submitted herewith are true and correct to the best of my/our knowledge. If the project is approved, I/We understand that we may be charged an additional fee for staff time required to satisfy conditions of approval.

Dated: 9.1.23 at Carmel Valley, California

I declare under penalty that I am authorized by the owner[s] of the described property to make this application.

Amy McDougall  
Owner's Name [Please Print or Type]

Rene Perinado  
Agent's Name [Please Print or Type]

[Signature]  
Owner's Signature


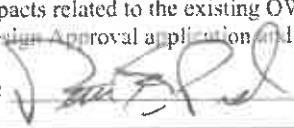
[Signature]  
Agent's Signature

Some application fees are charged on a deposit basis. Processing hours in excess of the deposit will be billed to the applicant at an hourly rate, prior to issuance of entitlements or permits. Processing hours less than the original fee will be refunded at the same rate after issuance of the entitlements or permits.

For Department Use Only

Plan Designation: \_\_\_\_\_ Area Plan: \_\_\_\_\_  
Legal Lot: \_\_\_\_\_ Zoning Violation Case No.: \_\_\_\_\_  
Property Owner Verified: Yes ☐ No ☐ Height: \_\_\_\_\_ Lot Coverage \_\_\_\_\_  
Setbacks: F \_\_\_\_\_ R \_\_\_\_\_ S \_\_\_\_\_ Special \_\_\_\_\_ OPL \_\_\_\_\_  
FAR \_\_\_\_\_ Fire Haz. \_\_\_\_\_ SRA \_\_\_\_\_ Flood \_\_\_\_\_  
Advisory Committee: \_\_\_\_\_  
Geo. Hazard Zones: \_\_\_\_\_ Arch. Sensitivity Zone: \_\_\_\_\_ ESH: \_\_\_\_\_  
Misc.: \_\_\_\_\_  
Application Given Out By: \_\_\_\_\_ Date: \_\_\_\_\_  
Application Received By: \_\_\_\_\_ Date: \_\_\_\_\_

FILE #: **PLN230127**

	<b>MONTEREY COUNTY</b> <b>RESOURCE MANAGEMENT AGENCY</b> LAND USE & COMMUNITY DEVELOPMENT   PUBLIC WORKS & FACILITIES   PARKS 1441 Schilling Place, South 2 <sup>nd</sup> Floor Salinas, California 93901-4527 (831) 755-4800 www.co.monterey.ca.us/rma	
	<b>INLAND DESIGN APPROVAL APPLICATION FORM</b>	
<b>ASSESSOR'S PARCEL NUMBER:</b> 416-542-011		
<b>PROJECT ADDRESS:</b> 10196 Oakwood Circle		
<b>PROPERTY OWNER:</b> Amy McDougall Address: 10196 Oakwood Circle City/State/Zip: Carmel Valley CA 93923 Telephone: 831-595-8556 Fax: _____ Email: amyemc@gmail.com		
<b>APPLICANT:</b> Address: 10196 Oakwood Circle City/State/Zip: Carmel Valley CA 93923 Telephone: 415-286-6100 Fax: _____ Email: 110pacific@gmail.com		
<b>AGENT:</b> n/a Address: _____ City/State/Zip: _____ Telephone: _____ Fax: _____ Email: _____		
Mail Notices to: <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Applicant <input type="checkbox"/> Agent (Check only one)		
<b>PROJECT DESCRIPTION:</b> (Attach Scope of Work) Construct single family home plus ADU on vacant lot. Building is primarily Type 1 construction - non combustible / fire resistant. Remove three trees		
<b>MATERIALS TO BE USED:</b> Architectural concrete, stone cladding, glass, steel framed roofs		
<b>COLORS TO BE USED:</b> Natural colors blending with woodland surroundings (see renderings)		
I acknowledge that I will need a building permit and must comply with the Monterey County Building Ordinance and that this approval is for design of the structures and compliance with zoning regulations only. For properties served by Onsite Wastewater Treatment System (OWTS), the Environmental Health Bureau (EHB) will not review this application but may need to require redesign of the project in the subsequent construction permit application to address impacts related to the existing OWTS or future standby area. A project redesign may require a subsequent Design Approval application and additional fees.		
<b>PROPERTY OWNER/AGENT SIGNATURE:</b> 		<b>DATE:</b> 7.31.23
<b>FOR DEPARTMENT USE ONLY</b>		
<b>ZONING:</b> _____ <b>ADVISORY COMMITTEE:</b> _____ <b>PLANNER:</b> _____ <b>WITHIN ARCH BUFFER ZONE?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <b>LEGAL LOT:</b> _____ <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>AREA PLAN:</b> _____ <b>RELATED PERMITS:</b> _____ <b>ON SEPTIC SYSTEM (OWTS)?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <b>DOES THIS CORRECT A VIOLATION?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO
<b>FINDINGS:</b> <input type="checkbox"/> The project is consistent with the 2010 General Plan, the applicable Area Plan, and meets the regulations in Title 21 (Zoning Ordinance-Inland); and <input type="checkbox"/> The design of the proposed project assures protection of the public viewshed, is consistent with neighborhood character, and assures visual integrity without imposing undue restrictions on private property because: _____		
<b>DECISION:</b> <input type="checkbox"/> OVER-THE-COUNTER <input type="checkbox"/> ADMINISTRATIVE <b>ACTION:</b> <input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED <b>CONDITIONS:</b> <input type="checkbox"/> ATTACHED <input type="checkbox"/> NONE <b>APPROVED BY:</b> _____ <b>DATE:</b> _____		
<b>COPY TO APPLICANT:</b> <input type="checkbox"/> IN PERSON <input type="checkbox"/> OR <input type="checkbox"/> MAILED <b>DATE:</b> _____		



**GENERAL PLAN POLICY CONSISTENCY CHECKLIST  
FOR DESIGN APPROVALS (Inland Only)**  
To be completed by Applicants

LAND USE DESIGNATION:	APN: 416-542-011	PLANNING NUMBER:
AREA PLAN: <input type="checkbox"/> Cachagua Area Plan <input checked="" type="checkbox"/> Carmel Valley Master Plan <input type="checkbox"/> Central Salinas Valley Area Plan <input type="checkbox"/> Fort Ord Master Plan <input type="checkbox"/> Greater Monterey Peninsula Area Plan <input type="checkbox"/> Greater Salinas Area Plan <input type="checkbox"/> North County Area Plan <input type="checkbox"/> South County Area Plan <input type="checkbox"/> Toro Area Plan <input type="checkbox"/> Agriculture & Winery Corridor Plan	PROJECT DESCRIPTION: Construct single family home plus ADU on vacant lot.	

Please answer each question based on the description of the project (see back of questionnaire for policy references)	
	The project is for: <input checked="" type="checkbox"/> Residential use <input type="checkbox"/> Commercial use <input type="checkbox"/> Agricultural use <input type="checkbox"/> Public or Quasi-Public use <input type="checkbox"/> Industrial use
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	The project proposes a cell-site, telecom (digital) communication facility/site?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	The project includes the construction of a new structure?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	The project includes the enlarging, altering, repairing, moving, improving, or removing of existing structures? If "yes", describe
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	The project includes demolition work? If "yes", describe
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project includes the use of roofing materials that are different in type and/or color from the original materials?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project includes replacement and/or repair of (50%) or more of the exterior walls of a structure?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project includes historical structure or a structure more than fifty (50) years old?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Project includes an accessory structure/s? If "yes", describe:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project includes the placement of a manufactured home, mobile home, modular or prefabricated unit? <input type="checkbox"/> Private property <input type="checkbox"/> Park installation (mobile home park)
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project includes retaining walls?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project involves new, change or modifications to existing utilities and/or power lines?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project is change or modification to an approved application.
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Does the project propose a lot line adjustment or subdivision?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Does the project include subdivision creating five or more lots, or new commercial/industrial use that creates intensity equal to or greater than five residences?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is the project located near an incorporated area (City)?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Is the project located within a Community Area or Rural Center?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is the project located within 1/4 mile of a public airport?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Is this the first residence on a property?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Does the project propose a secondary unit?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Would native vegetation be removed with this project?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Would proposed development occur within 100 feet a creek/drainage (including seasonal) or river?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Does the project propose any tree removal? If "yes" Type oak   Size 10"   Number 3
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project includes grading, dirt importation, dirt removal, and/or drainage changes.
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Would the project be connected to an existing well or private water system?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	The project includes constructing, enlarging, altering, repairing, moving, improving or removing a well.
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Project is associated with a new or improvements to a water system. water system   number of connections
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Does the project include a new individual or existing wastewater system (e.g. septic)?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	The project includes constructing, enlarging, altering, repairing, moving, improving or removing a septic tank/system?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Does the project propose development on slopes over 25%?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is the project 50 feet from a bluff?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project is located within 100 feet of seasonal or permanent drainage, lake, marsh, ocean, pond, slough, stream, wetlands. If "yes", describe
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Does the project include cultivation of land that is currently not cultivated?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Does the project propose non-agricultural uses adjacent to agricultural uses?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is the project located within the winery corridor?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Would any portion of the proposed development be visible from a public road, designated vista point, or public park? If yes, is it located on a slope or near the top of a hill? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Does the project propose or require affordable housing?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Does the project require a General Plan Amendment?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is the project located within a Special Treatment Area?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is the project located within a Study Area?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Project involves or includes an existing or proposed trail or easement.

I, the undersigned, have authority to submit application for a permit on the subject property. I have completed this questionnaire accurately based on the proposed project description. It is my interpretation that the project is consistent with the 2010 Monterey County General Plan. I understand that Monterey County may require project changes or some other permit/entitlement if the project is found to be inconsistent with any General Plan policy.

Signature

Date

Print Name: Rene Peinado

It is unlawful to alter the substance of any official form or document of Monterey County.

DA Request Form Inland Only Rev. 07/17/17

Staff Use Only		
BASED ON REVIEW OF THE PROJECT DESCRIPTION PROPOSED, THE PROJECT IS:	<input type="checkbox"/> CONSISTENT WITH THE 2010 MONTEREY COUNTY GENERAL PLAN <input type="checkbox"/> INCONSISTENT WITH THE 2010 MONTEREY COUNTY GENERAL PLAN	
NOTES / COMMENTS:		
PLANNER:	PLANNING TEAM:	DATE:

POLICY REFERENCE BASED ON TOPIC	
GENERAL PLAN AMENDMENT	LU-1.7, LU-2.18, LU-2.19, LU-2.21, LU-2.23, LU-2.24, LU-2.27, LU-2.29, LU-6.5, LU-9.6 thru LU-9.8, GS-1.11, CSV-1.4, PS-3.1, OS-5.20, OS-8.6.
WITHIN CITY SPHERE OF INFLUENCE OR MEMORANDUM OF UNDERSTANDING	LU-2.14 THRU LU-2.19, AG-1.12, GS-1.14
COMMUNITY AREAS	LU-1.8, LU-1.19, LU-2.3, LU-2.10 thru LU-2.12, LU-2.20 thru LU-2.27, LU-2.29, LU-9.5, C-1.1, OS-3.6, OS-5.17, OS-8.6, OS-9.2, OS-10.10, T-1.7, AWCP-3.4A, NC-1.5, GS-1.1, GS-1.13, AG-1.3, AG-1.4, PS-1.1, PS-1.2, PS-3.1, PS-4.13, PS-5.1, PS-8.2, PS-11.14, S-2.5, S-5.17, S-6.4, S-6.5.
RURAL CENTERS	LU-1.8, LU-1.19, LU-2.3, LU-2.11, LU-2.12, LU-2.26 thru LU-2.32, OS-5.17, OS-9.2, OS-10.10, T-1.7, T-1.8, AWCP-3.4A, NC-1.5, GS-1.13, AG-1.3, PS-1.1, PS-1.2, PS-3.1, PS-4.13, PS-5.1, PS-8.2, S-5.17, S-6.5.
SPECIAL TREATMENT AREAS	T-1.4, T-1.8, GS-1.1 thru GS-1.3, GS-1.10, GS-1.12, GMP-1.6 thru GMP-1.9, CSV-1.1, CSV-1.3, CSV-1.5 thru CSV-1.7, CV-1.22, CV-1.23, CV-1.25, CV-1.27, CACH-1.5.
STUDY AREAS	GS-1.7, GS-1.11, CSV-1.4, CV-1.26
WINERY CORRIDOR	AG-4.1 thru AG-4.5, AWCP
DEVELOPMENT OUTSIDE COMMUNITY AREAS OR RURAL CENTERS	LU-1.19, S-2.7, OS-3.6
DEVELOPMENT ON SLOPES OVER 25%	LU-9.5, OS-3.5, OS-3.6, OS-3.9, S-1.2, CV-2.9, CV-6.2, CV-6.4, CV-6.5, FOMP-A-6, GMP-4.1, GS-1.1, GS-3.1, NC-1.3, NC-3.9, NC-3.10, T-3.6
CONVERSION TO AGRICULTURE	OS-3.5, OS-5.22, AG-1.6, AG-1.7, AG-1.12, AG-2.9, AG-3.3, NC-3.10, NC-3.11, CV-6.2, CV-6.4.
ROUTINE AND ON-GOING AG ACTIVITIES	AG-3.1 thru AG-3.3
NON-AG ADJACENT TO AG USES	LU-1.5, LU-2.8, AG-1.2, AG-2.8, CV-6.1, GS-1.1, T-1.8
AGRICULTURE (F, PG, & RG)	LU-3.1, LU-3.2, 6.0 – AGRICULTURE ELEMENT
FARM WORKER HOUSING	AG-1.6
AG EMPLOYEE HOUSING	AG-1.7
AG SUPPORT FACILITIES	AG-2.1 thru AG-2.9
RURAL RESIDENTIAL (LDR, RDR, & RC)	LU-2.34 thru LU-2.37
URBAN RESIDENTIAL (HDR & MDR)	LU-2.33
COMMERCIAL (LC, HC, & VPO)	LU-4.1 thru LU-4.8, ED-2.3, ED-4.2
INDUSTRIAL (AI, LI, & HI)	LU-5.1 thru LU-5.9, ED-2.3, ED-4.2
PUBLIC / QUASI PUBLIC (POP)	LU-6.1 thru LU-6.5
AFFORDABLE HOUSING	LU-1.19, LU-2.11 thru LU-2.13, LU-2.23, LU-2.28, T-1.7, T-1.8, NC-1.5, GS-1.13, GMP-1.9, FOMP-H-1.1, FOMP-C.3, CV-1.6, CV-1.27
SECONDARY UNITS	LU-2.10, CV-1.6, GS-1.13, NC-1.5, T-1.7, PS-1.1
SUBDIVISION	LU-1.7, LU-9.3 thru LU-9.5, AG-1.3, NC-1.5, AWCP-3.5.A, T-1.5, T-1.7, GS-1.13, CV-1.6, CV-1.7, PS-1.1, PS-3.2, PS-3.9, PS-3.19, PS-4.9, PS-4.13, PS-11.10, S-1.7, S-2.7, S-4.10, S-4.27, S-6.7, OS-1.5, OS-1.10, OS-6.5, OS-7.5, OS-8.4.
LOT LINE ADJUSTMENT	LU-1.14 thru LU-1.16
OFF-SITE ADVERTISING	LU-1.10
EXTERIOR LIGHTING	LU-1.13
LANDSCAPING	OS-5.6, OS-5.14
TREE REMOVAL	OS-5.9, OS-5.10, OS-5.25, PS-12.10, CACH-3.4, CV-3.11, FOMP-C-1, FOMP-C-2.1 thru FOMP-C-2.5, GMP-3.3, GMP-3.5, GS-1.5, GS-1.8, GS-3.3, NC-3.4, T-3.7.
CIRCULATION (e.g. roads, transportation)	Chapter 2.0

## **EXHIBIT D**

# MONTEREY COUNTY

## HOUSING AND COMMUNITY DEVELOPMENT



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor  
Salinas, California 93901-4527

(831)755-4800  
[www.co.monterey.ca.us](http://www.co.monterey.ca.us)

June 14, 2024

VIA EMAIL

McDougal Amy E (Rene Peinado)  
10196 Oakwood Cir  
Carmel CA, 93923

**Subject: Application Status Update for PLN230127/McDougal - COMPLETE**

Dear Mr. Peinado,

Your application for the project described below has been reviewed by the County and has been deemed **complete**. Please note that this completeness determination does not mean that the application is consistent with application goals, policies, and text of the 2010 General Plan, Carmel Valley Master Plan, Carmel Valley Ranch Specific Plan, or Title 21 (Zoning Ordinance).

*Combined Development Permit consisting of: 1) Administrative Permit and Design Approval to allow construction of a 7,112 square foot single family dwelling with an attached 832 square foot garage and 2,347 square feet of covered patios and decks, an attached 1,600 square foot accessory dwelling unit, an attached 483 square foot junior accessory dwelling unit, and associated site improvements including the removal of 3 Coast live oak trees; and 2) a Use Permit to allow development on slopes in excess of 25%. This project involves a reduction of the required front, side, and rear setbacks from 5 feet to 0 feet without seeking a Variance. The property is located at 10196 Oakwood Circle, Carmel (Assessor's Parcel Number 416-542-011-000), Carmel Valley Master Plan.*

This project is scheduled for the June 17, 2024 Carmel Valley Land Use Advisory Committee meeting. Additionally, this project is tentatively scheduled for the Planning Commission hearing on August 28, 2024. You will receive confirmation regarding the Planning Commission hearing date via separate correspondence. In addition, notices that require posting at and near the site will also be forwarded via separate correspondence.

If you have any questions regarding PLN230127, please contact me at either (831)-796-6407 or [JensenF1@countyofmonterey.gov](mailto:JensenF1@countyofmonterey.gov)

Sincerely,

Fionna Jensen  
Senior Planner  
County of Monterey Housing and Community Development  
cc: HCD-Planning File No. PLN230127



## **EXHIBIT E**

# PATTERSON & O'NEILL, PC

235 Montgomery Street, Suite 950  
San Francisco, CA 94104  
Telephone: (415) 907-9110  
Facsimile: (415) 907-7704  
[www.pattersononeill.com](http://www.pattersononeill.com)

December 27, 2023

## **VIA EMAIL AND US MAIL**

Mr. Michael J. Whilden  
Deputy County Counsel  
Office of the County Counsel  
168 West Alisal Street, 3<sup>rd</sup> Floor  
Salinas, CA 93901  
Email: [WhildenM@co.monterey.ca.us](mailto:WhildenM@co.monterey.ca.us)

Re: 10196 Oakwood Circle, Carmel Valley, CA  
PLN 230127

Dear Mr. Whilden:

Our office represents Ms. Amy McDougall (property owner) and her husband Rene Peinado (the permit applicant) concerning permit application number PLN 230127 (the "Permit") for the real property located at 10196 Oakwood Circle, Carmel Valley, CA (the "Property"). The Permit is a housing development project to construct two housing units: a single-family home and a state-law accessory dwelling unit. It is therefore subject to the Permit Streamlining Act ("PSA") and the Housing Accountability Act ("HAA"). The County failed to timely issue a notice of completeness and therefore the Permit is deemed completed pursuant to Government Code § 65943(a) and the County must process the Permit pursuant to Government Code § 65589.5(j)(2)(A)(i).

I also write in response to your letter dated November 30, 2023 concerning Monterey County's calculation of height pursuant to Monterey County Code § 21.06.630. Contrary to your position, Monterey County has rejected the interpretation that natural grade means existing, mechanically altered grade as further outlined below. Rather, the Planning Commission, Board of Supervisors, and the Coastal Commission have all applied the term natural grade, as its plain meaning suggests, to mean the historic, natural condition of the grade prior to any mechanical grading or disturbance. To require otherwise violates state housing laws.

## Completeness Determination

State law requires that each county “compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project.” (Gov. Code § 65940(a)(1).) On July 31, 2023, my clients submitted the Permit to the County including everything included on the Minimum Plan Submittal Checklist.

The PSA sets strict timelines for local agencies to act on proposed development projects. Government Code § 65943(a) requires a lead agency to determine in writing whether the application is complete and inform the applicant within thirty days after any public agency has received an application. Section 65943(a) further states that if an agency fails to act within the PSA’s required time limits, “the application shall be deemed complete.” Thus, if the agency does not so inform the applicant within that 30-day period, the application will be “deemed complete,” even if the application is deficient. (Gov. Code § 65943; *see also Orsi v. City of Salinas* (1990) 219 Cal. App. 3d 1576.) The County failed to respond to the Permit within the 30-day period. Instead, the County issued an untimely notice on September 7, 2023 that purported the application was “incomplete.”<sup>1</sup> (Attachment 1.) Thus, because the City did not make a completeness determination by September 1, the project has been deemed complete as a matter of law.

Moreover, even if the September 7th “incomplete” determination was timely, it does not comply with Government Code § 65940(a)(1) or the County’s “Minimum Plan Check Submittal Checklist” because it requires my clients to make changes to their proposed project that my clients do not agree to make in order for the application to be “complete” in violation of state law. Therefore, the County is required to continue to process the application pursuant to Government Code § 65589.5(j)(2)(A)(i).

## Natural Grade

As you know, Monterey County Code § 21.06.630 defines the “Height of Structure” as “the vertical distance from the average level of the highest and lowest point of the **natural grade** of that portion of the building site covered by the structure, to the topmost point of the structure . . .” (emphasis added). Your letter argued that natural grade was akin to existing grade but does not provide any legal authority for this position beyond what appears to be your own interpretation of the text of the code. Such an interpretation deviates from the plain language of the statute, runs contrary to how the term natural grade is used elsewhere in the state<sup>2</sup>, and is a departure from the way Monterey County has historically interpreted § 21.06.630.

Numerous examples have been located that demonstrate that Monterey County has consistently interpreted § 21.06.630 to refer to natural historic grade and not existing grade. For example, in December 2006, a staff report concerning a Monterey Planning Commission hearing

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<sup>1</sup> Although the incomplete letter is dated September 6, 2023, it was not issued until September 7, 2023.

<sup>2</sup> As examples, the City of Atherton Municipal Code defines “Natural Grade” as “the original condition of the ground surface as it existed prior to mechanical grading or disturbance.” (AMC Section 17.42.030.). The City of Long Beach Municipal Code defines “Natural Grade” as “the surface of the ground prior to grading for development.” (LBMC Section 21.15.1840.). The City of San Clemente Municipal code defines “Natural Grade” as “the ground surface unaltered by artificial means.” (SCMC Section 15.36.060.)

for Planning File No. PLN040581 explicitly rejected that natural grade under § 21.06.630 means existing grade. It states: “Plans show an ‘existing’ grade from grading work that occurred from the existing residence. The height is based on the ***assumed natural grade*** and not the existing man-made grade.” (Attachment 2 [emphasis added].) Similarly, in January 2007, the Monterey County Planning Commission authorized a variance for Planning File Number: PLN 060411 because the existing site, which had been graded to elevate the building pads, exceeded the height limitations when measured from the average natural grade. (Attachment 3.)

As another example, in 2004, the Monterey County Board of Supervisors approved development permit application PLN 010105 that proposed to construct a single-family residence on the Big Sur Coast. In approving the project, the Board of Supervisors decided that the height of the proposed home should be measured from the historic natural grade of the lot, even though the existing grade was lower due to excavation work completed by a previous owner. The permit was appealed to the California Coastal Commission who agreed with that the Board of Supervisors had correctly applied § 21.06.630 to mean the historic natural grade of the lot. (Attachment 4.)

There are likely countless other examples that could be located that demonstrate the County does not use existing, mechanically altered grade. The County has for many months failed to provide any examples supporting an alternative interpretation of § 21.06.630. Your letter states that there are policy reasons for a height limitation in the code, including minimizing visual impacts. However, measuring grade from an existing, mechanically altered point also has the potential to allow homes to be built much higher than the natural grade if fill is added to raise the natural grade. This is why the County has rejected height measurements from existing, raised grade. (See Attachments 2 and 3.) Moreover, should the County depart from its historical interpretation of § 21.06.630, a Court is likely to find that the County acted in excess of its jurisdiction and abused its discretion. (CCP § 1094.5.)

Were the County to impose a new subjective height requirement on the Permit simply because it does not like the project, this would be a violation of the HAA. As a housing development project consisting of residential units, the Permit is subject to the protections of the HAA. (See Government Code § 65589.5(h)(2).) Therefore, the City can only impose “objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction’s share of the regional housing need . . . .” (Gov. Code § 65589.5(f)(1).) Design guidelines that, on their face, require interpretation and subjective judgment are not objective requirements under the HAA. (Gov. Code § 66300(a)(7); see also *Calif. Renters Legal Advoc. & Educ. Fund, et al. v. City of San Mateo, et al.* (2021) 68 Cal.App.5th 820, 840-842 [CRLA].) An objective design standard “involves no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.” (Gov. Code § 66300(a)(7).) In this case, changing the meaning of natural grade to existing grade would be a departure from the objective requirements of the Monterey County Code.

My clients conducted extensive research on the County Code and with their design and engineering team prior to finalizing the building plans and submitting them to the County. The

County's failure to timely process the Permit is causing substantial cost to my clients. Should my clients have to seek court intervention to uphold their rights, we will seek an award of attorney's fees and penalties. (Gov. Code § 65589.5(k)(1)(A)(ii).) I request that we quickly set up a call in early January to discuss this situation to see if the parties can resolve this impasse.

Sincerely,

PATTERSON & O'NEILL, PC

A handwritten signature in black ink that reads "Laura Strazzo". The signature is written in a cursive, flowing style.

Laura Strazzo, Esq.  
Attorneys for Amy McDougall and  
Rene Peinado

# Attachment 1

# MONTEREY COUNTY

## HOUSING AND COMMUNITY DEVELOPMENT

Erik Lundquist, AICP, Director



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor  
Salinas, California 93901-4527

(831)755-4800  
www.co.monterey.ca.us

September 6, 2023

VIA EMAIL

McDougal Amy E (Rene Peinado)  
10196 Oakwood Cir  
Carmel CA, 93923

**Subject: Application Status Update for PLN230127/MCDOUGAL - INCOMPLETE**

Dear Rene,

The project application PLN230127 as described below has been deemed **Incomplete** by HCD-Planning, Environmental Services, and Water Resources Agency. Please see the below and/or attached comments.

*Combined Development Permit to allow: 1) Administrative Permit and Design Approval to allow construction of an 10,325 square foot single family dwelling with 1,988 square feet of covered patios and decks and associated site improvements including removal of three (3) trees; 2) Administrative Permit and Design Approval to allow construction of an attached 1,200 square foot Accessory Dwelling Unit; 3) Variance to allow a reduction of setback; and 4) a Use Permit to allow development on slopes in excess of 25%. The property is located at 10196 Oakwood Circle, Carmel (Assessor's Parcel Number 416-542-011-000), Carmel Valley Master Plan.*

HCD-Planning:

1. Revised site plans shall include or address the following:

- a. Average natural grade calculated from existing topography. As currently designed, the average natural grade calculation is measures from the "natural landmass removed during Tract No. 1045, Oak shire Phase (II-III) Subdivision Development". Monterey County Code defines "Height of structure" as the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure. The proposed structure will cover the existing topography, not the topography prior to approval of the Oakshire Subdivision. Thus, the height of the structure shall be measured from the existing natural grade and conform to the maximum allowed height of 30 feet, as allowed per the Carmel Valley Specific Plan. As currently designed, a variance would be required to increase the allowable height of main structures. Staff support of variances are not guaranteed.
- b. Dimensions of the entire parcel.
- c. Parking counts (required vs. proposed).

- d. Location of all easements, including the surrounding “Common Area ‘A’”, which was placed into an easement.
- e. Updated project data to include the square footage for the garage, lot coverage, acreage of lot, total impervious and pervious coverage.
- f. Grading estimates (cut and fill), including the amount of soils to be imported or exported.
- g. Garage lots of the Oakshire subdivision were intended only for garages, not with second story habitable additions.
- h. Square footage of development on slopes in excess of 25%. Staff is researching “master” exception for development on slopes in excess of 30%.
- i. Compliance with required setbacks. Medium Density Residential zoning district requires the following: “In an approved planned unit development (PUD) where the dwelling unit and accessory structures are to be located on a lot in the development, no setbacks from the lot lines are required except as necessary to meet Building Code and Fire Code requirements, unless otherwise noted on the recorded final, parcel map or Sectional District Map”. The proposed project is located in a PUD and the associated final map indicates a setback of 5 feet on all sides. As currently designed, portions of the proposed residence and subterranean portions encroach into the required setbacks and in certain instances, past the property line. All structures (including subterranean portions) shall be setback according to the final map. At this time, absent additional information, a Variance would be required to allow encroachment of the single-family dwelling into the setbacks. Staff support of a variance is not guaranteed. Please note that staff is continuing to research the deck and exterior staircase setback encroachment question.
- j. Construction Management Plan: A Plan (illustration and narrative) that describes how the site will be managed during construction to reduce potential impacts. The Construction Management Plan shall include the following:
  - i. Names and contact information (primary and secondary) of parties responsible for project during construction.
  - ii. Summary table including:
    - 1. Types of construction vehicles and number of truck and/or vehicle trips/day.
    - 2. Amount of grading per day (see Air Quality Management District Standards).
    - 3. Hours of operation.
    - 4. Project scheduling (dates).
  - iii. Map illustrating:
    - 1. Location of project (vicinity map).
    - 2. Proposed route for hauling material.
    - 3. Location of Sensitive Receptors (schools, hospitals, etc) along haul route.
    - 4. Location of stockpiles and parking for construction vehicles.
    - 5. Sensitive areas (tree protection zones, drainage, habitat, slopes, etc.) where no parking, stockpiling, construction will occur.
    - 6. Erosion Control Plan



- k. Fuel Management Plan: Site plan illustrating how vegetation around proposed structures and roadways will be maintained to reduce fire fuel loads. The Fuel Management Plan shall include the following:
  - i. •Illustration of the general extent of natural vegetation to be retained. (e.g. grasslands, brush, trees).
  - ii. •“Green Zone” (0-30 feet) – Illustration on plans for maintaining vegetation (native and proposed) within 30 feet of all proposed structures/facilities.
  - iii. Coordinate with Landscape Plan
  - iv. “Management Zone” (30+ feet). Illustration on plans showing maintenance of vegetation up to 100 feet from all proposed structures, or to the property line, whichever is closer. In very high fire hazard severity zones, greater distance may be required by the local Fire Authority.
  - v. Tree Pruning/Removal – Illustration of the species and diameter of trees within the project area and whether the tree is proposed for removal and/or routine pruning.
  - vi. Coordinate with Forest Management Plan
  - vii. Emergency Vehicle Access. Illustrate emergency vehicle access route (driveway and/or roadway) including width, percentage of slope, and driving surface.
2. The proposed project is located within a Design Control zoning district, which regulates of the location, size, configuration, materials, and colors of structures. Additionally, Carmel Valley Master Plan policy CV-1.20 requires that “Development either be visually compatible with the character of the valley and immediate surrounding areas or shall enhance the quality of areas that have been degraded by existing development... and structures should be controlled in height and bulk in order to retain an appropriate scale.” As currently designed, the proposed residence is vastly larger than the average home in the Oakshire subdivision, which are approximately 2,000-4,000 square feet. The proposed residence is also 5 stories high, resulting in a vastly larger bulk and mass than neighboring residences. As currently designed, it is staff determination the proposed residence is not compatible with the surrounding neighborhood character and is not subordinate to the surrounding environment. Staff has yet to be informed that staking and flagging is available and until such time cannot make a visual impact determination.
3. Clarification on tree removal. On-site you had indicated removal of three trees. The prepared arborist report indicates removal of five trees, one of which is a landmark Oak. A Use Permit will be required. Required findings include: the tree removal is the minimum necessary and the removal will not involve a risk of adverse environment impacts.
4. Grant Deed (Assessors Office Document No. 2016028703).

Environmental Services: see attached.

Environmental Health Bureau: see attached.

Environmental Services and Environmental Health Bureau require additional information prior to deeming the project complete. Please review their attached comments. You may work directly

with the respective agency to address their comments. However, once plans have been revised and/or further documentation obtained, please resubmit the entire application packet (all materials addressing the incomplete comments), in electronic form, to your project planner for routing and formal completeness review. Please also include a letter indicating the reason for re-submittal (e.g. to satisfy these incomplete comments or due to change in scope). Once these documents are received, a new 30-day interdepartmental review process will begin, and you will be notified of the completeness status.

If you have any questions regarding PLN230127, please contact me at either (831)-796-6407 or [jensenf1@co.monterey.ca.us](mailto:jensenf1@co.monterey.ca.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'Fionna Jensen', written in a cursive style.

Fionna Jensen  
Senior Planner  
Housing and Community Development – Planning

cc: HCD-Planning File No. PLN230127

# Project Referral Sheet

Monterey County HCD Planning  
1441 Schilling Pl South 2nd Floor  
Salinas, CA 93901  
(831) 755-5025

**TO: FIRE DEPARTMENT  
HCD-ENGINEERING SERVICES  
PARKS DEPARTMENT**

**HEALTH DEPARTMENT  
HCD-ENVIRONMENTAL SERVICES  
OTHER: \_\_\_\_\_**

PLEASE SUBMIT YOUR COMMENTS FOR THIS APPLICATION BY: Monday, August 21, 2023

**Project Title:** MCDUGALL AMY E

**File Number:** PLN230127

**File Type:** PC

**Planner:** JENSEN

**Location:** 10196 OAKWOOD CIR CARMEL

**Assessor's No:** 416-542-011-000

**Project Description:**

Combined Development Permit to allow: 1) Administrative Permit and Design Approval to allow construction of an 10,325 square foot single family dwelling with 1,988 square feet of covered patios and decks and associated site improvements including removal of three (3) trees; 2) Administrative Permit and Design Approval to allow construction of an attached 1,200 square foot garage; 3) Variance to allow a reduction of setback; and 4) a Use Permit to allow development on slopes in excess of 25%. The property is located at 10196 Oakwood Circle, Carmel (Assessor's Parcel Number 416-542-011-000), Carmel Valley Master Plan.

**Status:** COMPLETE/INCOMPLETE (highlight/circle one)

**Recommended Conditions:**

The Environmental Health Bureau has reviewed the above referenced application and has considered the application incomplete. The following reports and/or information are needed prior to considering the application complete:

1. The site is proposed to be served by "underground sewer system lateral pipe" but no verification of available service has been provided. It is anticipated that service may be available from Carmel Area Wastewater District but verification will be required. Submit a Can and Will Serve letter demonstrating wastewater collection availability for the proposed project.
2. The application materials indicate that water service will be provided by "Calam + water well." Please submit verification of water availability for the proposed project. Proof of available water credits (e.g. Monterey Peninsula Water Management District Water Use Permit) or Can and Will Serve letter from California American Water will be required to consider the application complete.

**Signature:** Bryan Escamilla, EIT, REHS

**Date:** August 11, 2023

# Project Referral Sheet

Monterey County HCD Planning  
1441 Schilling Pl South 2nd Floor  
Salinas, CA 93901  
(831) 755-5025

**TO: FIRE DEPARTMENT  
HCD-ENGINEERING SERVICES  
PARKS DEPARTMENT**

**HEALTH DEPARTMENT  
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OTHER: \_\_\_\_\_**

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**Status:** COMPLETE/INCOMPLETE (highlight/circle one)

**Recommended Conditions:**

**Stormwater Control Plan (PRI)**

Prior to issuance of the permit, the applicant shall submit a stormwater control plan addressing the Post-Construction Requirements (PCRs) for Development Projects in the Central Coast Region. The stormwater control plan shall include the total square footage of new and/or replaced impervious area, and incorporate the measures identified on the completed *Site Design and Runoff Reduction Checklist*.

**Signature:** Katherine Day

**Date:** August 10, 2023

# Attachment 2

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting: December 13, 2006 Time: AM/PM</b>		<b>Agenda Item No.: 7</b>
<b>Project Description:</b> Consider recommended changes to a Combined Development Permit consisting of: Coastal Administrative Permit and Design Approval to demolish an existing 2,704 square foot single family residence and 426 square foot garage (3,130 square feet total), construct a new 5,167 square foot, 3-level single family residence with a 1,498 square foot subterranean garage, grading (400 cubic yards cut); Variance to reduce the front setback from 20 feet to 15 feet along Scenic Road; Variance to reduce the front setback from 20 feet to three feet along a private easement; Variance to increase height limit from 18 feet to 18.63 feet; and Coastal Development Permit to allow development within 750 feet of an archaeological site. The property is located at 26195 Scenic Road, Carmel (Assessor's Parcel Number 009-422-023-000), Coastal Zone.		
<b>Project Location:</b> 26195 Scenic Road, Carmel		<b>APN:</b> 009-422-023-000
<b>Planning File Number:</b> PLN040581		<b>Owner:</b> Nancy M. Moellentine <b>Applicants:</b> Lon & Morley Moellentine <b>Agent:</b> Lombardo & Gilles
<b>Plan Area:</b> Carmel Area Land Use Plan		<b>Flagged and staked:</b> Yes
<b>Zoning Designation :</b> "MDR/2-D (18) (CZ)" Medium Density Residential, 2 units per acre with Design Control, 18-Foot Height Limit (Coastal Zone)		
<b>CEQA Action:</b> Statutory Categorically Exempt per Section 15270(b)		
<b>Department:</b> RMA - Planning Department		

### RECOMMENDATION:

Staff recommends that the Planning Commission provide direction to the applicant to revise the design. If the applicant does not agree with the recommended changes, then staff recommends that the Planning Commission adopt a Resolution of Intent to deny the Combined Development Permit as proposed.

### PROJECT OVERVIEW:

Lon & Morley Moellentine, submitted an application to demolish an existing residence and constructing a new residence on a 7,175 square foot, corner, parcel. This project includes retaining walls (up to 19 feet tall) at or near every property line in order to create parking and living area below grade.

Scenic Drive, where the parcel is located, is identified as a scenic viewshed in the Carmel Area Land Use Plan (CLUP). Policies and development standards are established to keep the size and footprint of a house proportional to the size of the lot. For example, this parcel has a height restriction of 18 feet to help retain the scenic resources of this area.

Staff identified multiple areas where, depending on the interpretation of the Code, the project may or may not be consistent. Based on staff's interpretation, the project requires variances to reduce the front set back from Scenic Road, reduce the front set back from a private easement, and increase building height. However, an additional two variances would be required if the Commission agrees with the applicant that a retaining wall attached to the house is part of the structure for determining the average natural grade. Based on the applicants representation, variances could also be required for side and rear set backs, lot coverage, and/or floor area ratio. In addition, the project, as proposed, is inconsistent with the Visual Resources policies of the CLUP. Staff has determined that the structural design of this house containing three levels and a flat roof with massive columns is not a design that blends into the site and its surroundings and is visually massive with reduced set backs. Exhibit A provides a detailed analysis of each standard.

Each variance should be considered separately based on consideration of findings that the project is an authorized land use, special circumstances exist applicable to the subject property, and that the variances do not constitute the grant of a special privilege. If any finding cannot be made, then that variance cannot be approved. While staff found evidence to support reducing the set back along the easement, we found no unique conditions to support findings to approve other variances and the granting multiple variances as proposed would constitute a special privilege and establish precedence for future development in this area.

Staff recommended changes that could lead to a positive recommendation. However, the applicant requested to keep the original design and for staff to schedule a hearing as soon as possible. Revised plans were recently submitted on November 30, 2006. Staff finds that information provided in this new set of plans is inconsistent with other plans on file in the Planning Department.

**OTHER AGENCY INVOLVEMENT:**

- ✓ Cypress Fire Protection District
- ✓ Public Works Department
- ✓ Parks Department
- ✓ Environmental Health Division
- ✓ Water Resources Agency

The above checked agencies and departments have reviewed this project. The Parks Department deemed the project incomplete due to the height and scale of proposed structure negatively impacting the neighboring historic Kuster house (APN: 009-422-021-000). A historic assessment prepared in response determined that five of the seven aspects of integrity to the Kuster house will be retained. On April 3, 2006, the County's historical preservation staff, Meg Clovis, confirmed these findings however, recommended confirmation of a structural analysis that excavation of the subterranean garage would not affect the Kuster house. A structural analysis prepared by Haro, Kashunich & Associates, Inc. dated April 26, 2006, confirmed that the proposed development, including the retaining wall excavations, will not cause adverse structural affects to the Kuster property.

On May 2, 2005, the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) recommended denial (5 to 0 vote) based on inconsistency of Regulations for Development of the Visual Resources Development Standards (20.146.030 CIP).

---

Elizabeth A. Gonzales, Associate Planner  
(831) 755-5102, [gonzalesl@co.monterey.ca.us](mailto:gonzalesl@co.monterey.ca.us)  
December 1, 2006

This report was reviewed by Carl Holm, AICP, Acting Planning and Building Service Manager

Note: The decision on this project may be appealed to the Board of Supervisors and the California Coastal Commission.

cc: Planning Commission Members (10); County Counsel; Cypress Fire Protection District; Public Works Department; Parks Department; Environmental Health Division; Water Resources Agency; California Coastal Commission; Carl Holm, Acting Planning & Building Services Manager; Bob Schubert, Acting Planning and Building Services Manager; Elizabeth A. Gonzales, Planner; Carol Allen; Lon & Morley Moellentine, Applicants; Lombardo & Gilles, Agent; Dave Sweigert, Fenton & Keller; File PLN040581.

Attachments: Exhibit A-Project Data Sheet, Exhibit B-Detailed Discussion, Exhibit C-Staff letter dated June 14, 2006, Exhibit D-Site Plan, Floor Plan and Elevations



## **EXHIBIT B DISCUSSION**

### **I. INTRODUCTION**

#### **A. BACKGROUND**

An application to demolish an existing residence and develop a new residence was filed on April 11, 2005. Throughout this review process, a number of Code interpretations have been debated between staff and the project architect. The issues include set backs, lot coverage, floor area ratio, average natural grade (height) and visual design.

Each variance should be considered separately based on consideration of findings that the project is an authorized land use, special circumstances exist applicable to the subject property and that the variances do not constitute the grant of a special privilege. If any finding cannot be made, then that variance cannot be approved. While staff found a variance has been granted in the neighborhood for a reduced set back along the easement, none have been granted to reduce set backs along Scenic Road or to exceed the maximum height. Staff determined that there are no unique conditions to support findings to approve variances as proposed in this request. Granting multiple variances as proposed would constitute a special privilege and establish precedence for future development in this area.

The applicant met with County officials on April 10, 2006 to review the issues before going forward with processing the application to public hearing. Staff mailed a letter dated June 14, 2006, stating that although we could not support the project as proposed, we suggested modifications (e.g.; a variance along the easement) that staff could support. A memo from the applicant received on August 22, 2006, stated that the owner wants to keep the original design and would like to schedule the application for hearing as soon as possible.

Staff scheduled a hearing for December 13, 2006. Staff reports for this hearing are to be completed by November 30, 2006 and the applicant submitted revised plans on November 30, 2006. While the plans were meant to clarify issues raised by staff, information provided in this new set of plans is inconsistent with other plans on file in the Planning Department. For example, the side set back for the neighboring property is shown to be 2 feet 7 1/2 inches, but the approved plans on file for PLN980438 show the set back is 3 feet 6 inches. This is an important factor as is noted later in this report.

#### **B. PROJECT DESCRIPTION**

The applicant is requesting multiple entitlements consisting of:

- Coastal Administrative Permit and Design Approval to demolish an existing residence and construct a new 3-level residence including a subterranean garage/basement;
- Variances to reduce front set back requirements;
- Variance to exceed height limit; and
- Coastal Development Permit to allow development within 750 feet of an archaeological site.

### **C. SITE DESCRIPTION**

The subject site is 7,175 square feet in size and is an irregular-shaped parcel located at 26195 Scenic Road, Carmel Point. There is an existing 2,704 square foot single family residence with an attached 426 square foot garage.

A 12-foot wide, private road easement is located along the east side, with the property line located at the center of the easement. By definition, this creates two sides that are required to meet the front set back standards (*See Figure 1-Site Plan*). The property line intersecting with Scenic Road would be considered a side yard and the property line intersecting with the easement would be considered the rear yard.

The site slopes up from Scenic Road with an elevation of 95 feet at the low point and approximately 106 feet at the high point. This constitutes a change of eight feet over a distance of 100 feet. Zoning restricts the height of structures in this area to 18 feet in order to protect visual resources in this area.



## II. ANALYSIS

The applicant is seeking approval of five Variances. The applicant contends that the lot size and slope constitute special circumstances for the variance requests because it constrains full development of the parcel consistent with the size of other development in the area. Staff researched development in the immediate area and determined that the average size for a home in the neighborhood is 2,782 square feet and the proposed project is 5,167 square feet with 1,938 developed below grade. Staff also determined that although the lot is irregular in shape, set backs could allow for development of a residence reasonably consistent with the size of other residences in the area. The building area if all set backs were met is approximately 3,800 square feet.

For purposes of this analysis, staff has included a few definitions from the Zoning Code to keep in mind:

- Coverage: any area covered by a structure, structures or structure protrusions including decks twenty-four inches or more above grade but not including building eaves of thirty inches or less and similar non-usable areas, paved driveways, sidewalks, paths, patios and decks less than twenty-four inches above grade. (Section 20.06.250)
- Floor Area Ratio: the total combined gross floor area of all floors contained in all buildings on the building site as measured from the exterior face of the enclosing walls. Floor area shall include, but not be limited to all enclosed spaces within all buildings, finished basements, guesthouses, studios, garages and carports. Areas of enclosed floor space constructed and maintained entirely below ground, including garages, shall not be counted as floor area. (Section 20.06.564)
- Height of Structure: means the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure, but excluding certain features, as specified in Chapter 20.62 (Height and Setback Exceptions) of this Title". (Section 20.06.630)
- Setback: a minimum distance required by this Title to be maintained between structures or between structures and property lines. (Section 20.06.1020)
- Front Setback: a setback from the edge of a private or public road right-of-way or adopted Official Plan Line to the nearest point of a structure. (Section 20.06.1030)
- Structure: means anything constructed or erected, except fences under six feet in height, the use of which requires location on the ground or attachment to something having location on the ground, but not including any trailer or tent (Section 20.06.1200)

Staff concludes that there is no evidence that special circumstances exist applicable to the subject property depriving it of privileges enjoyed by similar properties and staff recommends denial of the variances.

### A. SETBACKS

The property fronts on Scenic Road, which constitutes a front property line. In addition, there is an existing 12-foot wide driveway easement encumbering the eastern six feet of the subject property (Moellentine) and six feet encumbering western six feet the neighboring property (McCallister, Parcel 011). Staff interprets that the subject property has two front set backs, the property line intersecting with Scenic Road would be considered a side yard, and the property line intersecting with the easement would be considered the rear yard.

Section 20.62.040.F, of Title 20 states, "In any district where 50% or more of the building sites on any one block or portion thereof in the same district have been improved with structures, the required front setback shall be of a depth equal to the average of the front setback of the improved building sites, to a maximum of that specified for the district in which such building site is located." There are three properties that utilize the easement for access to their property: Zaccaria (Parcel 012) does not utilize the driveway, the garage is located on Scenic Road.

- Pack/McCallister (Parcel 011) was approved with a minimum 3 feet 6 inches setback from edge of the right-of-way easement (9 feet 6 inches from property line).
- Zaccaria (Parcel 012) was approved with a minimum 11-foot set back from the edge of the easement (17 feet to property line).
- Meyer (Parcel 021) was approved with a minimum 16-foot set back from the edge of the easement (22 feet to property line).
- Moellentine (Parcel 023), subject parcel, has existing residence approved with a minimum 4 foot set back from the edge of the easement (9 feet to property line)

The County has determined that the applicant may utilize an average setback of 8.6 feet for the side where there is an easement under this exception.

The following is an analysis of each set back proposed for this project:

1. Front (Scenic Road). The required minimum set back from the edge of right of way of Scenic Road is 20 feet. Although the main and upper floors of the residence are set back 20-feet, the lower level encroaches into the front yard. In order to provide required light and ventilation for the lower level, the architect has included an egress tunnel and light-well that extend 10 feet into the front yard set back. Staff initially determined that the lower level (consisting of livable space) would be subject to the front set back requirement in part because Section 20.62.040.E states that "No interior area of a structure may extend into required front, side or rear setbacks, except for bay windows or cantilevered windows where there is no floor or storage area below the window". In addition, Section 20.62.040.K of the Zoning Code requires any accessory structure that is structurally attached to the main structure to be subject to the same setback requirements as the main structure. However, the former Assistant Director of Planning and Building Inspection determined that development, including living space, could extend into the required setback area provided it is entirely below grade (*also see Lot Coverage/FAR discussion in Sections "C and D" below*).

In addition, a terrace with pillars encroaches five feet, above grade, into this front yard area. Uncovered decks, porches, or stairways, fire escapes or landing places may extend into any required front or rear setback not exceeding six feet, and into any required side setback not exceeding three feet (Section 20.62.040.D Zoning Code); however this is a covered porch with a balcony above. Therefore, staff determined that this project requires a variance to reduce the front yard set back from Scenic Road from 20 feet to 15 feet.

Staff finds that there is no precedence along Scenic Road to support this variance and it is not found to deprive subject property of privileges enjoyed by other properties in the vicinity. In addition, the site is adequate in size and shape to support a reasonably sized residence consistent with the existing neighborhood. Therefore, staff recommends denial of a variance to reduce the front set back along Scenic Road and a 20 foot set back shall be required from the proposed terrace. Staff further recommends that the Planning Commission concur with the interpretation that structures located below grade (including

living space, light-wells, etc.) is not subject to set back requirements; and therefore, a variance is not required.

2. Front (Easement). Staff interprets that when an easement (public or private) provides access to multiple properties, it is a right-of-way that is subject to front yard set back requirements. The required minimum set back from the edge of the easement right of way is 20 feet. As designed, the residence would have less than a set back of 2-foot, 10-inches (8'-10" from the property line located at the center of the easement). In order to provide required light and ventilation for the lower level, the architect has included a light-well located 1-foot from the edge of the easement (7 feet from the property line). It is not clear on the plans, but it appears that the garage, which is below grade, would be located approximately 1-foot from the edge of the easement.

Analysis provided above shows that using the 50% rule (Section 20.62.040.F) would not support an exception to the proposed set back of 1-foot. However, that analysis also shows that precedence has been set that allows a reduction of the set back required for a minimum of 3 feet 6 inches measured to the edge of easement (9 feet 6 inches from the property line) for homes along this easement.

Staff finds that there is precedence along the easement to support a variance to reduce the set back to 3 feet six inches finding that it is similar to privileges enjoyed by other properties in the vicinity. The addition of a second front yard set back restricts development and the site is not adequate in size and shape to support a reasonably sized residence consistent with the existing neighborhood if the full 20-foot back is required. Therefore, staff recommends approval of a variance to reduce the front set back along the easement from 20 feet to 3 feet six inches from the easement (9 feet six inches from the property line). Again, staff recommends that the Planning Commission concur with the interpretation that structures located below grade (including living space, light-wells, etc.) is not subject to set back requirements; and therefore, a variance is not required.

3. Rear. With Scenic Road as the primary front property line, staff has determined the opposite side adjacent to the easement to be the rear of the property. The minimum rear yard set back is 10 feet.

The main/upper levels are set back 23 feet from the rear property line, and lower level (garage) is 20 feet. A retaining wall ranging from 15-19 feet tall would be constructed along the entire rear property in order to gain access to the lower level parking garage. This wall continues along the side yard and is attached to the house. Fences/walls over six feet in height are considered to be a structure.

Staff would consider a retaining wall to be an accessory structure. As noted earlier in this report, any accessory structure that is structurally attached to the main structure would be subject to the same setback requirements as the main structure. Although a variance would be required to reduce the rear set back from 10 feet to 0 feet if this is considered to be part of the main structure, the County has not subjected retaining walls located below grade to set back requirements. As such the retaining wall is not subject to a variance, but then also is not part of the main structure to be considered as part of the average natural grade (*see discussion of Height in Section "B" below*). Based on this interpretation, staff finds that the rear set back for this project is 20 feet as measured from the garage, which meets the 10-foot rear set back requirement.

4. Side. As noted above, a retaining wall would be constructed along the side yard from the rear property line to the corner of the garage. The same analysis would apply whereby the retaining wall is sub-grade; and therefore, not subject to a variance. Based on this interpretation, staff finds that the side set back for this project is five feet, which meets the 5-foot side set back requirement.

## **B. HEIGHT**

The site is located in a district where the height is limited to a maximum of 18 feet in order to protect visual resources. Height is determined using the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure. It excludes certain features specified in Chapter 20.62 (Height and Setback Exceptions). Plans show an “existing” grade from grading work that occurred from the existing residence. The height is based on the assumed natural grade and not the existing man-made grade.

As proposed, the plans show average natural grade based on the proposed retaining wall located on the rear/side property lines and a terrace column that extends five feet into the 20-foot required front set back (*see discussion in Section “A” above*). The highest corner of the retaining wall has a natural grade of 106.2 feet and the lowest point where the terrace is located is 97.5 feet. Based on their interpretation, the elevation of the average natural grade is 101.85 feet and the building has been designed to the maximum height allowed (18 feet).

As noted above, if the retaining wall is to be considered a structure for the purpose of determining average natural grade, then it would also be a structure subject to set back requirements. Based on past practice, staff determined that a retaining wall is an accessory structure that is not subject to set back requirements because its purpose is to establish a driveway for access to the garage. If the Commission agrees with the applicant’s average grade interpretation, then staff would find that variances are required for the rear and side set backs; however, staff could not support such variances. Furthermore, the lower grade point is based on a request for a front set back variance that if it is not approved (as recommended by staff) would require adjusting the height calculation as well.

Staff finds that the correct average natural grade would consist of a high point located at the rear of the garage (102 feet) and a low point being the lower terrace (approximately 98 feet), which results in an average natural grade of 100 feet. Such the maximum building height allowed would be for the roof to not exceed the 118-foot elevation. The roof height for this structure is shown on the plans to be at the 118.63-foot elevation, which requires a variance to increase the allowable height by 0.63 feet.

Staff finds that there is no precedence in this neighborhood to support even a minor variance such as this. As such, staff could not recommend a finding that holding to the height limit would deprive subject property of privileges enjoyed by other properties in the vicinity. In addition, the gentle slope of the site provides adequate space to provide a reasonably sized residence consistent with the existing neighborhood. Therefore, staff recommends denial of a variance to increase the allowable height and the height should be limited to the 18-foot limit. If the project is approved, then staff would recommend a standard condition that requires verifying grades and heights to assure the Code is met.

### **C. LOT COVERAGE/FLOOR AREA RATIO (FAR)**

This site is limited to a maximum lot coverage of 35%. Staff could argue that if the retaining wall is part of the structure, then all of the area between the wall and the garage would be part of the lot coverage calculation. The difference of interpretation would result in an addition 1,059 square feet of coverage creating a variation for calculating the allowable lot coverage between 33.6% and 48.3%.

If the retaining wall is used for determining building height then staff would find that the area between should be used for calculating lot coverage and a variance would be required. As noted above, staff determined that the retaining wall is an accessory structure; and therefore, not subject to set back requirements and we would make a similar finding that lot coverage would not require a variance. This supports staff's position relative to not using the retaining wall for defining average natural grade (height).

Staff finds that the retaining wall is not a structure for the purpose of analyzing lot coverage and the project lot coverage equates to 33.6%, which is within the allowable limit of 35%.

### **D. FLOOR AREA RATIO (FAR)**

This site is limited to a FAR of 45%. FAR is based on the total combined gross floor area of all floors contained in all buildings and floor area includes all enclosed spaces within all buildings.

The project has three levels totaling 5,167 square feet of living area:

- Lower level includes 1,938 square feet of living area plus 1,498 square feet of garage.
- Main level includes 2,180 square feet of living space.
- Upper level includes 1,049 square feet of living space.

Staff finds that the FAR is intended to show the ratio of living area, including finished basements. Based on this, the 1,938 square feet on the lower level would be part of this calculation and that would result in a FAR of 72%. However, the definition creates ambiguity by adding that "enclosed floor space constructed and maintained entirely below ground is not considered part of the floor area." Based on this exception, staff had determined that the entire lower level (including the living space) is not subject to the FAR calculation since it is all below grade (*as shown on Elevation and Section plans*). Without considering the lower level, the floor area used in calculating FAR (main and upper levels) totals 3,229 square feet. The maximum allowed is 45%, which equates to 3,229 square feet so the project meets this limit.

### **E. VISUAL DESIGN**

Staff would generally describe the proposed design as modern, Americanized, Mediterranean style of architecture. A type of modern design is reflected with a cube-type of design including use of a flat roof to help maximum building height. In order to obtain a 3-level design, the site would be graded so part of the structure is below grade. Mediterranean style has been widely used to include hard finish materials and the proposed house consists of a light colored stucco and limestone. There is an Americanized component includes cornices, korbels, and other minor techniques to add some interest to the structure. These techniques are not commonly found in a pure Mediterranean design because those structures are generally much smaller in scale.

Scenic Road is identified as "public viewshed" on Map A (General Viewshed) in the Carmel Area Land Use Plan. An architectural rendering shows the house as viewed from Scenic Drive to be massive and much larger than adjacent homes in the neighborhood.



As proposed, staff finds that the design is inconsistent with the Visual Resources policies of the Carmel Area Land Use Plan (CLUP) and Carmel Coastal Implementation Plan. Policy 2.2.2 Carmel Area Land Use Plan (CLUP) requires that all future development within the viewshed harmonize and be clearly subordinate to the natural scenic character of the area in order to protect the scenic resources of the Carmel area in perpetuity (Policy 2.2.3.1 CLUP). Policy 2.2.3.6 CLUP states that structures shall be subordinate to and blended into the environment, using appropriate materials to that effect. This is further defined by Policy 2.2.4.10.c that states the exterior of buildings must give the general appearance of natural materials (e.g., buildings should be of weathered wood or painted in "earth" tones).

Staff finds that the structural design of this house containing three levels and a flat roof with massive columns does not blend with the site and its surroundings. It visually intrudes into the viewshed in comparison to many other more subordinate designs available to the applicant. CLUP policies require the height and bulk of buildings to be modified as necessary to protect the viewshed. Large flat surfaces create a massive structure that is not consistent with the natural setting and scale of the surrounding homes that are also located within the public viewshed.

Proposed colors and materials consisting of limestone columns, mouldings, cast panels, trim and surrounds, pre-cast limestone ballisters, bronze exterior doors and windows, and stucco siding do not give the general appearance of natural Carmel area materials. In addition, the project includes variances to reduce set backs resulting in extending development to within five feet of Scenic Road and increase height. These conditions create a visual context of large size and scale that is visually intrusive as seen from Scenic Drive. In addition, the development reduces potential area (5 feet) for planting landscape that can sufficiently reduce the visual impact. As such, staff finds that the proposed project is not subordinate; and therefore, does not blend in with the neighborhood or surrounding environment.

Staff researched other houses (approximately 32) in the neighborhood that are north and south of the project and located within the public viewshed. We concluded that there were a few 2-story homes with flat surfaces and an older French-country style home. As designed, none of these homes seemed too big for the lot nor did they detract from the natural beauty of the scenic shoreline. Although there were some exceptions, the vast majorities of the structures surveyed are smaller in scale, have minimal frontages, have roof lines that are broken up and offset and are softer in appearance in comparison to the proposed project; and therefore, these houses better comply with the policies than the proposed project.

As proposed, staff finds that the project is inconsistent with visual resource policies of the CLUP and would recommend denial. Where necessary, modification of plans shall be required for siting, structural design, color, texture, building materials, access and screening. Staff has included some recommendations in accordance with this policy below.

## **F. ARCHAEOLOGICAL**

A Preliminary Archaeological Reconnaissance was prepared by Archaeological Consulting, on October, 2004. Staff spoke with Mary Doane of Archaeological Consulting on May 5, 2005. The report concludes that the project site is located within a portion of a known archaeological resource area. However, the site encompasses a large geographic area with cultural materials being widely and unevenly disseminated. In addition, numerous studies and test/collection have already occurred, and the likelihood is that additional testing/collection will merely add to the current body of knowledge. Therefore, both staff and Archaeological Consulting concur that the project site is located within a "non-unique" archaeological resource area pursuant to CEQA, and potential development impacts would be considered less than significant.

### III. RECOMMENDATION

Based on the findings of this report staff recommends that the Planning Commission direct the applicant to make the following modifications to the proposed project and return with revised plans for consideration:

- 1) Scenic Road Set Back. The set back from Scenic Road is critical to retain the visual integrity of this viewshed. Staff recommends that all living areas maintain the minimum front set back of 20 feet, including the living area located below grade. As a result, the light-well would be set back 10 feet allowing a more reasonable planting area to soften this elevation.
- 2) Easement Set Back. Staff finds that some set back from the easement should be granted. A 3-foot 6-inch set back would be consistent with the property located opposite the easement from the subject site. The edge of the light-well should be set back at least three feet to again allow reasonable planting area to soften this elevation.
- 3) Building Height. Once the design is revised to reflect set backs noted above, then the average natural grade should be re-calculated based on the main structure and not accessory structures like the retaining wall. In turn, the height should be revised so that it does not exceed 18 feet and meets all other development standards such as visual resource policies in the CLUP.
- 4) Design. The project can be designed to be more subordinate with the surrounding viewshed area (Policy 2.2.3.6). This could be achieved by breaking up the large surfaces, setting back the second story with intervening pitched roofs and offsetting design components. The project could also be lowered further into the site. Direct underground garage could be designed similar to many other homes in the area so that the retaining wall is not so severe along the rear and side property lines. Buildings should be of weathered wood or painted in earth tone colors or reflect the Carmel stone contained on many homes in the area (Policies 2.2.3.1 and 2.2.3). A concept landscape plan should be included to help illustrate the ability to soften the building lines. For example, vines planted on a trellis that is attached to the building would provide a color and texture that would be consistent with CLUP visual policies.

ALTERNATIVE: If the applicant does not agree to the proposed changes, staff recommends denial of the project as proposed finding that the project as proposed would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity. In addition, there are no unique conditions of the site that would prevent the applicant from meeting all development standards except the front yard set back along the private easement.

# Attachment 3

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> January 10, 2007 Time: 9:15 a.m.		<b>Agenda Item No.:</b> 1
<b>Project Description:</b> Combined Development Permit consisting of: 1) 73 Use Permits and Design Approvals to allow the development of 73 single family dwellings ranging in size between 1,298 square feet and 2,845 square feet and detached garages of approximately 441 square feet in a Historical Resources (HR) Review Zoning District. The project includes six floor plans and three different elevations for each floor plan for the single family dwellings and three elevation plans for the detached garages; 2) A Lot Line Adjustment in order to merge the southerly half of Lot 13 with Lot 14 of Block L; and 3) Variance to allow height determination from finished grade.		
<b>Project Location:</b> West side of Llano Avenue between Fifth Street to the North and Spreckels Boulevard to the South, Spreckels.		<b>APN(s):</b> 177-051-008-000 to 177-051-023-000; 177-054-014-000 to 177-054-026-000; 177-055-014-000 to 177-055-026-000 177-061-009-000; 177-061-011-000 to 177-061-026-000; and 177-064-010-000 to 177-064-025-000
<b>Planning File Number:</b> PLN060411		<b>Name:</b> Standard Pacific Corporation, Property Owner
<b>Plan Area:</b> Greater Salinas Area Plan		<b>Flagged and staked:</b> No
<b>Zoning Designation:</b> : “HDR/5.1-HR-D” [High Density Residential with a maximum gross density of 5.1 units per acre, Historical Resources Zoning District and Design Control Overlays].		
<b>CEQA Action:</b> Negative Declaration, Mitigated Negative Declaration and Categorically Exempt per Section 15303 (a) and 15305 (a)		
<b>Department:</b> RMA - Planning Department		

### RECOMMENDATION:

Staff recommends that the Planning Commission consider the previously adopted Mitigated Negative Declaration and Negative Declaration, the Addendum to the Mitigated Negative Declaration and Negative Declaration; approve the Combined Development Permit based on the Findings and Evidence (**Exhibit C**) and subject to the recommended Conditions (**Exhibit D**).

### PROJECT OVERVIEW:

See discussion in **Exhibit B** of December 13, 2006 staff report.

### SUMMARY:

On December 13, 2006, the Planning Commission continued the public hearing on the Standard Pacific project. The Planning Commission received staff's presentation and also received verbal and written comments from the public. The Planning Commission, on a vote of 10-0, adopted a "resolution of intent to approve the project", subject to an additional condition of approval and several modifications to the recommended conditions of approval. The Planning Commission also requested clarification on the Historic Resources Review Board's recommendation on the location of the privacy fences on those corner lots off of Nacional Avenue. The hearing was continued to January 10, 2007 in order to adopt a final resolution.

## **DISCUSSION ON PLANNING COMMISSION HEARING ON 12/13/2006:**

The Planning Commission adopted a “resolution of intent to approve the project” and continued the item to the January 10, 2007 Planning Commission Hearing for two reasons:

- 1) For staff to consult with the Historic Resources Review Board (HRRB) for specific reasoning of their recommendation regarding the fence location of the privacy fences, for those corner lots off of Nacional Avenue; and
- 2) In order to capture and make changes to the original staff report in relation to Findings and Conditions of Approval.

### HRRB Recommendation on Privacy Fence Location

The Planning Commission, at the December 13, 2006 hearing, asked staff to confirm why the HRRB made the above recommendation. Staff has corresponded with the Secretary to the HRRB and confirmed that the HRRB considered that the above lots had two front yards, since these are all corner lots.

Per *Policy 2 Fences, Walls, Site Features* of the Spreckels Design Guidelines, it states: “Traditional designs for fences and walls should be used to define, but not obscure, the street-front garden areas of residential buildings.” Under the same policy, Guideline S2.1 states: “New fences in front yards should not exceed four feet in height and should generally be constructed of wood slats in an open work pattern.” The HRRB, rather than requiring a four-foot fence on the second “front yard” (i.e. the side yard of the corner lots) and not allowing enough privacy on those lots, compromised with Standard Pacific by allowing the six-foot high privacy fences to be located on the rear corner of each single family dwelling.

Staff is recommending that the Planning Commission accept the recommendation of the HRRB in regards to the privacy fencing location on the those corner lots off of Nacional Avenue and approve Condition No. 18 (PDSP012) which states:

“The backyard/privacy six-foot fences on the following lots, shall be located on the respective corners of the single family dwelling of that lot as recommended by the HRRB:

Block K: Lot 1 and 20 (APNs 177-064-001 and 025)

Block L: Lot 1 and 20 (APNs 177-061-011 and 024)

Block M: Lot 1 and 20 (APNs 177-055-014 and 026)

Block N: Lot 1 and 20 (APNs 177-054-014 and 026)

Block O: Lot 1 and 20 (APNs 177-051-008 and 023)

Where fence placement creates a conflict with the window placement, the applicant shall be allowed to adjust accordingly to accommodate the change.”

## **DISCUSSION ON VARIANCE TO ALLOW HEIGHT DETERMINATION FROM FINISHED GRADE:**

Following the Planning Commission Hearing of December 13, 2006, staff learned that the height of the proposed structures had been proposed by the applicant from finished grade as opposed to average natural grade. Monterey County Code 21.06.630 defines *Height of Structure* as follows:

“Height of structure means the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure, but excluding certain features, as specified in Chapter 21.62 (Height and Setback Exceptions) of this Title.”

The site has been graded to elevate the building pads by approximately 2 feet in order to provide adequate drainage of the building sites. Spreckels Design Guidelines for *Residential Building Types Policy 1, Guidelines R1.8 and R2.7* requires that new roofs should match roof pitches and

materials of adjacent buildings and new porches to be typical or historical in scale and size to existing porches. To ensure compatibility with the existing structures, the design of the homes incorporate steep roof pitches, elevated foundations and porches to match the adjacent buildings in Spreckels. By incorporating the steep roof pitches, raised foundations and porches in Plans 4, 5 and 6 and steep roof pitches in all three elevations of the detached garages, the 35 foot height limitation for main structures and the 15 foot high limitation for non-habitable accessory structures is exceeded when measured from average natural grade. Therefore, staff is recommending the approval of a Variance to allow height determination from finished grade. Findings and evidence to support the variance have been incorporated as Findings 4, 5 and 6 in **Exhibit C**.

## **CHANGES TO CONDITIONS OF APPROVAL AND FINDINGS**

Per the Planning Commission's direction at the December 13, 2006 hearing, the following are the changes made to the Conditions of Approval. Also, staff has incorporated additional Conditions of Approval that relate to the Variance and incorporation of the project into the Spreckels Community Services District (CSD). Please note that the condition number is consistent with the December 13, 2006 staff report, unless otherwise noted as "New Condition":

- **Condition #1:** This condition has been revised to include Variance proposal.
- **Condition #2:** This condition has been revised to include the total number of Conditions of Approval and the timing of the condition has been revised by deleting the "prior to issuance of grading permits", since associated Grading Permit No.GP060232 has been approved and issued.
- **Condition #6, 7, 8, 25, 32 and 33:** The timing of these conditions has been revised. The original wording of these conditions involved "issuance of grading permits", which it is obsolete since the associated Grading Permit No.GP060232 has been approved and issued.
- **Condition #11:** This condition, in the December 13, 2006 staff report, has been deleted. This condition applies to tract maps on tract parcels that are situated in sloping lots. This proposed development is situated in flat terrain.
- **Condition #11:** This condition has been revised to exclude holidays from the hours of operation.
- **New Condition #19:** Condition 19 allows flexibility of plan and elevation changes on subject lots.
- **Condition #26:** The wording and timing of this condition has been revised in order to make more applicable to the subject project. The original wording of the condition stated: "Applicant shall bond and construct all infrastructure improvements in accordance with approved subdivision improvement plans." Since the applicant has already bonded the improvements through previously approved Grading Permit No. GP060232, the wording "and construct" has been deleted. The original timing of this condition has been revised from "prior to issuance of grading permits" to "prior to occupancy" since the associated Grading Permit No.GP060232 has been approved and issued.
- **Condition #27:** The timing of this condition has been revised. The original timing of this condition has been revised from "prior to issuance of grading permits" to "prior to occupancy" since the associated Grading Permit No.GP060232 has been approved and issued.
- **New Condition #28:** Condition 28 is for subdivision improvement/phasing plan.
- **Condition #29:** This condition, in the December 13, 2006 staff report, has been deleted.
- **Condition #34:** The wording of this condition has been revised (Well Information) based upon the information the WRA received regarding the *Spreckels Subdivision Due*

*Diligence Report* prepared by Schaaf & Wheeler dated 5/16/2006.

- **New Condition #35:** Condition 35 ensures that prior to issuance of any building permits, the applicant provides evidence that the Local Agency Formation Commission (LAFCO) has annexed into the Spreckels Community Services District. The Spreckels CSD is responsible for storm drains, sidewalks, alleys, park strips, lighting and garbage services.
- **New Condition #36:** Condition 36 requires that prior to issuance of any building permits, the applicant shall reduce the pitch of Garage Plan "A" in order to meet the maximum height allowed of 15 feet. Staff found that the currently, Garage Plan "A" is over height limit by 1 foot, 6 inches.
- **New Conditions 37, 38, and 39:** These conditions have been incorporated by the Environmental Health Division following information contained in the *Spreckels Subdivision Due Diligence Report* prepared by Schaaf & Wheeler dated 5/16/2006, which informs of a potential new off-site well to serve this project.

Staff made changes to Finding 10 (CEQA Finding) on the staff report to correspond with the recommendation of approval. Staff verbally stated this change at the December 13, 2006 Planning Commission Hearing. In addition, new evidence has been included under this finding, which relate to CEQA exemptions for single family dwellings and lot line adjustments. As referenced earlier, findings and evidence to support the variance have been incorporated as Findings 4, 5 and 6. The changes are included in **Exhibit C**.

#### **OTHER AGENCY INVOLVEMENT:**

Please see the December 13, 2006 staff report (**Exhibit B**).

Note: The decision on this project is appealable to the Board of Supervisors.

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Nadia Amador, Assistant Planner  
(831) 755-5114, amadorn@co.monterey.ca.us  
December 27, 2006

cc: Planning Commission Members (10); County Counsel; Salinas Rural Fire Protection District; Public Works Department; Parks Department; Environmental Health Division; Water Resources Agency; Sheriff's Office; Historic Resource Review Board; Spreckels Neighborhood Design Review Committee; Laura Lawrence, Planning & Building Services Manager; Nadia Amador, Planner; Carol Allen; Standard Pacific c/o Scott Hoffman, Applicant; File PLN060411.

Attachments: Exhibit C      Revised Findings and Evidence  
                  Exhibit D      Revised Recommended Conditions of Approval

This report was reviewed by Laura Lawrence, Planning and Building Services Manager.

## **EXHIBIT C**

### **RECOMMENDED FINDINGS AND EVIDENCE**

1. **FINDING: CONSISTENCY** – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, Greater Salinas Area Plan, Greater Salinas Area Plan Inventory and Analysis, and the Monterey County Zoning Ordinance (Title 21), which designates this area as appropriate for development.

- EVIDENCE:**
- (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.
  - (b) The properties are located on the West side of Llano Avenue between Fifth Street to the North and Spreckels Boulevard to the South in the town of Spreckels. (Assessor's Parcel Numbers Block 177-051-008-000 to 177-051-023-000; 177-054-014-000 to 177-054-026-000; 177-055-014-000 to 177-055-026-000; 177-061-009-000; 177-061-011-000 to 177-061-026-000; 177-064-010-000 to 177-064-025-000), Greater Salinas Area Plan. The parcels are zoned High Density Residential with a maximum gross density of 5.1 units per acre, Historical Resources Zoning District and Design Control Overlays "HDR/5.1-HR-D". The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 21, and is therefore suitable for the proposed development.
  - (c) Historic Resource or "HR" zoning regulations, Section 21.54 of the Monterey County Zoning Ordinance.
  - (d) Design Control or "D" zoning overlay requires the design review of structures to assure the protection of the public viewshed, neighborhood character, and the visual integrity of certain developments without imposing undue restrictions on private property. The project development is consistent with the neighborhood.
  - (e) The setbacks proposed are consistent with the "HDR" regulations and with the Height and Setback Exceptions, Section 21.62.040.J, which exempts corner-lots adjacent to key-lots from maintaining two front yard setbacks and the flexibility of deviating from the standard "HDR" 20 foot front-yard setback requirement to 10 foot setback from the edge of the road right-of-way. Exception 21.62.040.J makes the following lots and their proposed setbacks conforming:
    - Block K- Lot 1, holding a 16 foot setback from Nacional Avenue;
    - Block L- Lot 1, holding a 15 foot setback from First Street;
    - Block M- Lot 1, holding a 15 foot setback from Second Street;
    - Block N- Lot 20, holding a 15 foot setback from Fourth Street;
    - Block O- Lot 20, holding a 15 foot setback from Fifth Street.
  - (f) The project was reviewed by the Spreckels Neighborhood Design Review Committee on July 19, 2006. The committee unanimously approved the project with a vote of 5-0.



- (g) The project was referred to the Historical Resources Review Board for review. The Board resolved to approve the project on October 5, 2006, with several recommendations which have been incorporated as conditions of approval (Exhibit D of the December 13, 2006 Staff Report).
- (h) The project is consistent with the Spreckels Design Guidelines.
- (i) The project planner conducted an on-site inspection on September 6, 2006 and October 23, 2006 to verify that the project conforms to the plans listed above.
- (j) 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 PLN060411.

**2. FINDING: SITE SUITABILITY** – The site is physically suitable for the use proposed.

- EVIDENCE:**
- (a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Salinas Rural Fire Protection District, Parks, Public Works, Environmental Health Division, Water Resources Agency, the Sheriff's Office and the HRRB. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
  - (b) The Historical Resources Review Board (HRRB) unanimously recommended approval of the project at the meeting on October 5, 2006.
  - (c) County resources indicate that there are no physical or environmental constraints that would warrant that the site is not suitable for the use proposed use.
  - (d) The project planner conducted an on-site inspection on September 6, 2006 and October 23, 2006 to verify that the site is suitable for the proposed use.
  - (e) Materials in Project File PLN060411.

**3. FINDING: SUBDIVISION ORDINANCE (TITLE 19)- LOT LINE ADJUSTMENTS (CHAPTER 19.09)**- The lot line adjustment is between two (or more) existing adjacent parcels. A greater number of parcels than originally existed will not be created as a result of the lot line adjustment. The parcels resulting from the lot line adjustment conforms to County zoning and building ordinances.

- EVIDENCE:**
- (a) This Lot Line Adjustment is to merge the southerly half of Lot 13 with Lot 14 on Block L of the "Official Map of Spreckels, Volume 1, page 71". Per Section 19.09.005.B., lots may be consolidated (merge) through the lot line adjustment application process.
  - (b) This lot line adjustment (merger) will not create a greater number of parcels than originally exists. Two original lots are being consolidated into one resulting lot.
  - (c) The merger of the southerly half of Lot 13 with Lot 14 of Block L (Official Map of Spreckels, Volume 1, page 71) will bring the lots into conformance with to County zoning and building ordinances. Currently, Lot 13 does not meet minimum lot size standards as specified by the "HDR" zoning ordinance. By merging with Lot 14, this will create a conforming parcel for the purpose of residential development.

**4. FINDING: VARIANCE – (Special Circumstances)** – Because of special circumstances applicable to the subject property, including the size, shape, topography, location of the lot, or the surrounding area, the strict application of Section 21.06.630 of the Monterey County Code is found to deprive the subject property of privileges enjoyed by other property owners in the vicinity under an identical zoning classification.

**EVIDENCE:** (a) Monterey County Code 21.06.630 defines the height of a structure to mean the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure, but excluding certain features, as specified in Chapter 21.62 (Height and Setback Exceptions) of this Title. The project site has been graded to elevate the building pads to provide adequate drainage of the building sites away from existing development to the drainage facilities.

(b) The development is within a Historic Resources Review Zoning District. All development on the property is required to comply with Spreckels Design Guidelines (February 1999). The Spreckels Design Guidelines for Residential Building Types Policy 1 requires that designs for new buildings should maintain the design integrity and distinguishing features of the existing historic district and of existing historic buildings. Guideline R1.8 requires that new roofs should match roof pitches and materials of adjacent buildings. Guideline R2.7 requires that new porches are typical or historical in scale and size to existing porches. Entrances and porches are a primary focus of the historical buildings in Spreckels and give historic buildings their character. In order to comply with these design guidelines, the design of the homes has incorporated steep roof pitches, elevated foundations and porches to match the adjacent buildings in Spreckels. By incorporating the steep roof pitches, raised foundations and porches in Plans 4, 5 and 6 and steep roof pitches in all three elevations of the detached garages, the 35 foot height limitation for main structures and the 15 foot high limitations for non-habitable accessory structures is exceeded when measured from average natural grade.

(c) See Evidence in Finding 5.

(d) Materials in Project File PLN060411.

**5. FINDING: VARIANCE (Special Privileges)** – The variance to determine height from finished grade does not constitute a grant of privileges inconsistent with the limitations upon other property owners in the vicinity and zone in which such property is situated.

**EVIDENCE:** (a) To ensure that the construction of the proposed 73 units to be constructed on lots created by the original Map of Spreckels (1907) does not adversely affect the existing town, extensive grading was required to provide adequate slopes for infrastructure, including drainage. This required extensive fill on the project site. The fill operations caused the natural grade to be quite a bit below the finished house pads.

(b) No other variances to determine height from finished grade or to exceed height limitations within the town of Spreckels have been requested, granted or denied within the last 11 years. However, the

design of this project is based on keeping with the historic designs found in the town of Spreckels, a county-designated historic district. To ensure design compatibility, the project's uses were designed with raised foundations (30 inches) and steep roof pitches, typically 12:12. Along with a philosophy of ensuring compatibility with the town's architecture, many of the proposed units are two-story design. This combination of factors creates a tall house profile.

- (c) Monterey County Code Section 21.54.080.C states that existing designated structures in an "HR" combining overlay district are "not subject to the height and setback provisions of the district..." Existing structures within the town of Spreckels, in the same zoning district, are not subject to height limitations.
- (d) Materials in Project File PLN060411.
- (e) Monterey County Code Sections 21.06.630 (Definitions – Height of Structure), 21.08.020 (Combining Regulations), 21.08.060 (Sectional District Maps), Chapter 21.08 (Establishment and Designation of Zoning Districts), Chapter 21.10 (Regulations for "HDR" Districts), Chapter 21.54 (Regulations for "HR" Districts), and Section 21.64.270 (Regulations for Historic Resources).
- (f) Spreckels Design Guidelines, Monterey County Planning and Building Inspection Department, February 1999.
- (g) Greater Salinas Area Plan Policy 27.1.5 (GS).
- (h) Volume 1 of Maps of Cities and Towns, Page 71 Blocks A through O.
- (i) See Evidence in Finding 4.

**6. FINDING: VARIANCE (Authorized Use)** – The Variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.

**EVIDENCE:** The project for single family dwellings is an allowed use under the property's High Density Residential zoning designation.

**7. FINDING: HISTORIC RESOURCES - HISTORICAL DISTRICT-** The project, as conditioned, is consistent with the regulations for Historic Resources Zoning Districts, 21.54.060.E.2 of the Monterey County Zoning Ordinance (Title 21) conforms to the prescriptive standards and design guidelines for the district adopted by the Board of Supervisors, and does not adversely affect the character of the district.

**EVIDENCE:** (a) The proposed project meet the guidelines and intent of the Spreckels Design Guidelines, Monterey County Planning and Building Inspection Department dated February 1999.

- (b) According to the Spreckels Design Guidelines, Policy 3: *Parking and Service Areas*, the purpose of this section is to minimize the intrusion of parking which can disrupt the visual continuity of the streetscape and historic resources. The proposed project's design layout of the garages and accessibility to these minimize the intrusion of parking which can disrupt the visual continuity of the streetscape and historic resources.
- (c) Guideline S.3.1 of the Spreckels Design Guidelines reads, "Parking areas should be located behind buildings and accessible from public alleys whenever possible." The parking structures on this development are all

located behind the main structures and access to the parking structures have been proposed from the public alleys *when possible*.

- (d) Because of off-site improvements on Blocks M, N and O, the alleys will not be extended to Llano Avenue. Staff finds that the intent of the Spreckels Design Guidelines, Policy 3: *Parking and Service Areas* is achieved by this development to the best of its potential.
- (e) Spreckels Neighborhood Design Review Committee discussion during the public meeting held on July 19, 2006.
- (f) Historical Resources Review Board discussion during the public meetings held on August 3<sup>rd</sup>, September 7<sup>th</sup> and October 5<sup>th</sup>, 2006.
- (g) The project planner conducted an on-site inspection on September 6, 2006 and October 23, 2006, to verify that the project conforms to regulations cited above.
- (h) Materials in Planning File No. PLN060411.

**8. FINDING: HISTORIC RESOURCES - CONSTRUCTION** - The project, as conditioned, is consistent with the regulations for Historic Resources Zoning Districts, 21.54.060.E.3 of the Monterey County Zoning Ordinance (Title 21), and will neither adversely affect nor be incompatible with the use and exterior of existing designated historical resources, improvements, buildings, natural features, and structures on such site.

- EVIDENCE:**
- (a) Historic Resource or "HR" zoning regulations, Section 21.54 of the Monterey County Zoning Ordinance (Title 21).
  - (b) The project conforms to the Spreckels Design Guidelines, Monterey County Planning and Building Inspection Department dated February 1999.
  - (c) Spreckels Neighborhood Design Review Committee discussion during the public meeting held on July 19, 2006.
  - (d) Historical Resources Review Board discussion during the public meetings held on August 3<sup>rd</sup>, September 7<sup>th</sup> and October 5<sup>th</sup>, 2006.
  - (e) The project planner conducted an on-site inspection on September 6, 2006 and October 23, 2006 to verify that the project on the subject parcel conforms to regulations cited above.
  - (f) Materials in Planning File No. PLN060411.

**9. FINDING: HISTORIC RESOURCES - UNSAFE OR DANGEROUS CONDITION** The project, as conditioned, is consistent with the regulations for Historic Resources Zoning Districts, 21.54.060.E.4 of the Monterey County Zoning Ordinance (Title 21). The action proposed is not necessary to correct an unsafe or dangerous condition on the property and has not be ordered to be corrected pursuant to Section 18.25.160 of Monterey County Building Standards Code.

- EVIDENCE:**
- (a) Staff reviewed RMA- Monterey County Planning Department and Building Services Department records and is not aware of any unsafe or dangerous conditions that would require the condition to be corrected.
  - (b) The project planner conducted an on-site inspection on September 6, 2006 and October 23, 2006 to verify that the project on the subject parcel conforms to regulations cited above.
  - (c) Materials in Planning File No. PLN060411.
  - (d) See Finding No. 12.

**10. FINDING: CEQA (Exempt): - CEQA: -** Based on the whole of the record before the Monterey County Planning Commission, there are no changes to the project, as designed and conditioned, changes in circumstances, or new information that would result in new significant environmental effects or increase the severity of the effects

**EVIDENCE:** (a) No adverse environmental effects were identified during staff review of the development application during a site visit on September 6, 2006 and October 23, 2006.

(b) Mitigated Negative Declaration prepared for Grading Permit No. GP030078, circulated for public review from December 22, 2004 to January 11, 2005 and adopted by the Planning Commission on January 12, 2005

(c) Addendum to the Mitigated Negative Declaration, adopted by the Planning Commission on January 12, 2005, Pursuant to CEQA, Article 11 Section 15164 prepared for Grading Permit No. GP060232

(d) Parcel Legality Status File No. PD040208

(e) Negative Declaration prepared for Planning File No. PLN050287, circulated for public review from April 25, 2005 to May 25, 2005 and adopted by the Board of Supervisors on September 27, 2005.

(f) California Environmental Quality Act (CEQA) Guidelines Section 15303(a), categorically exempts one single family residence in a residential zone. The proposal involves a Combined Development Permit consisting of 73 Use Permits and Design Approvals for the construction 73 single family dwellings, each on its own individual legal lots of record.

(g) California Environmental Quality Act (CEQA) Guidelines Section 15305(a), categorically exempts minor lot line adjustments, side yard, and setback variances not resulting in the creation of any new parcels. The project includes a Lot Line Adjustment is to merge the southerly half of Lot 13 with Lot 14 on Block L of the "Official Map of Spreckels, Volume 1, page 71". Per Section 19.09.005.B., lots may be consolidated (merge) through the lot line adjustment application process. This lot line adjustment (merger) will not create a greater number of parcels than originally exists. Two original lots are being consolidated into one resulting lot.

(h) See preceding and following findings and supporting evidence.

**11. FINDING: NO VIOLATIONS -** The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property. Zoning violation abatement costs, if any, have been paid.

**EVIDENCE:** Staff reviewed Monterey County RMA - Planning Department and Building Services Department records and is not aware of any violations existing on subject property.

**12. 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:** Preceding findings and supporting evidence.

13. **FINDING:** **APPEALABILITY** - The decision on this project is appealable to the Board of Supervisors.

**EVIDENCE:** Section 21.80.040.D. of the Monterey County Zoning Ordinance (Title 21).

<p align="center"><b>EXHIBIT D</b></p> <p align="center"><b>Monterey County Resource Management Agency</b></p> <p align="center"><b>Planning Department</b></p> <p align="center"><b>Condition Compliance Plan</b></p>	<p><b>Project Name:</b> Standard Pacific Corporation</p> <p><b>File No:</b> PLN060411      <b>APNs:</b> 177-051-008-000 to 177-051-023-000; 177-054-014-000 to 177-054-026-000; 177-055-014-000 to 177-055-026-000 177-061-009-000; 177-061-011-000 to 177-061-026-000; and 177-064-010-000 to 177-064-025-000.</p> <p><b>Approved by:</b> Planning Commission      <b>Date:</b> January 10, 2007</p>
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*\*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><b>PD001 - SPECIFIC USES ONLY</b></p> <p>This Combined Development Permit (PLN060411) consists of : 1) 73 Use Permits and Design Approvals to allow the development of 73 single family dwellings ranging in size between 1,298 square feet and 2,845 square feet and detached garages of approximately 441 square feet in a Historical Resources (HR) Review Zoning District. The project includes six floor plans and three different elevations for each floor plan for the single family dwellings and three elevation plans for the detached garages; 2) A Lot Line Adjustment in order to merge the southerly half of Lot 13 with Lot 14 of Block L; and 3) Variance to allow height determination from finished grade. The properties are located on the west side of Llano Avenue between Fifth Street to the north and Spreckels Boulevard to the south, in the town of Spreckels (Assessor's Parcel Numbers 177-051-008-000 to 177-051-023-000; 177-054-014-000 to 177-054-026-</p>	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
		000;177-055-014-000 to 177-055-026-000; 177-061-009-000; 177-061-011-000 to 177-061-026-000; and 177-064-010-000 to 177-064-025-000), Greater Salinas Area 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. <b>(RMA - Planning Department)</b>				
2.		<b>PDSP001 - NOTICE-PERMIT APPROVAL (NON-STANDARD CONDITION)</b> The applicant shall record a notice which states: "A permit (Resolution _____) was approved by the Planning Commission for Assessor's Parcel Numbers 177-051-008-000 to 177-051-023-000; 177-054-014-000 to 177-054-026-000; 177-055-014-000 to 177-055-026-000; 177-061-009-000; 177-061-011-000 to 177-061-026-000; and 177-064-010-000 to 177-064-025-000 on	Proof of recordation of this notice shall be furnished to the RMA - Planning Department.	Owner/ Applicant	Prior to the issuance of building permits or commencement of	



<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
		January 10, 2007). The permit was granted subject to 39 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. <b>(RMA - Planning Department)</b>			use.	
3.		<b>PD003(A) – CULTURAL RESOURCES – NEGATIVE ARCHAEOLOGICAL REPORT</b> 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. <b>(RMA - Planning Department)</b>	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.		<b>PD004 - INDEMNIFICATION AGREEMENT</b> 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	Submit signed and notarized Indemnification Agreement to the Director of RMA – Planning Department for review and signature by the County.  Proof of recordation of the Indemnification Agreement, as outlined,	Owner/ Applicant	Upon demand of County Counsel or concur-	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
		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. <b>(RMA - Planning Department)</b>	shall be submitted to the RMA – Planning Department.		rent with the issuance of building permits, use of the property, filing of the final map, which ever occurs first and as applicable.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
5.		<b>PD007 - GRADING-WINTER RESTRICTION</b> No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of RMA - Building Services Department. (RMA – Planning Department and Building Services Department)	Obtain authorization from the Director of RMA - Building Services Department to conduct land clearing or grading between October 15 and April 15.	Owner/ Applicant	Ongoing	
6.		<b>PDSP002 - EROSION CONTROL PLAN AND SCHEDULE (NON-STANDARD CONDITION)</b> The approved development shall incorporate the recommendations of the Erosion Control Plan as reviewed by the Director of RMA – Planning and Director of Building Services. All cut and/or fill slopes exposed during the course of construction be covered, seeded, or otherwise treated to control erosion during the course of construction, subject to the approval of the Director of RMA - Planning and Director of RMA - Building Services. The improvement and grading plans shall include an implementation schedule of measures for the prevention and control of erosion, siltation and dust during and immediately following construction and until erosion control planting becomes established. This program shall be approved by the Director of RMA - Planning and Director of RMA - Building Services. (RMA - Planning Department and RMA - Building Services Department)	Evidence of compliance with the Erosion Control Plan shall be submitted to the RMA - Planning Department and the RMA - Building Services Department prior to issuance of building and grading permits.  Comply with the recommendations of the Erosion Control Plan during the course of construction until project completion as approved by the Director of RMA - Planning and Director of RMA - Building Services.	Owner/ Applicant  Owner/ Applicant	Prior to the issuance of building permits.  Ongoing	
7.		<b>PDSP003 – TREE AND ROOT PROTECTION (NON-STANDARD CONDITION)</b> Trees which are located close to the construction site(s) shall be protected from inadvertent damage from construction equipment by fencing off the canopy	Evidence of compliance with the Implementation Schedule shall be submitted to the RMA - Planning Department and the RMA - Building Services Department  Submit evidence of tree protection to the RMA - Planning Department for review and approval.	Owner/ Applicant  Owner/ Applicant	Prior to final building inspection.  Prior to the issuance of building permits.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
		diplines and/or critical root zones (whichever is greater) with protective materials, wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip-line of the retained trees. Said protection, approved by a certified arborist, shall be demonstrated prior to issuance of building permits subject to the approval of the RMA – Director of Planning. If there is any potential for damage, all work must stop in the area and a report, with mitigation measures, shall be submitted by a certified arborist. Should any additional trees not included in this permit be harmed, during grading or construction activities, in such a way where removal is required, the owner/applicant shall obtain required permits. (RMA - Planning Department)	Submit on-going evidence that tree protection measures are in place through out grading and construction phases. If damage is possible, submit an interim report prepared by a certified arborist.	Owner/ Applicant/ Arborist	During Construction	
			Submit photos of the trees on the property to the RMA – Planning Department after construction to document that tree protection has been successful or if follow-up remediation or additional permits are required.	Owner/ Applicant	Prior to final inspection	
8.		<b>PDSP004 – LIGHTING - STREET LIGHTS (NON-STANDARD CONDITION)</b> All street lights in the development shall be approved by the Director of the RMA - Planning Department. (RMA-Planning Department)	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.	Owner/ Applicant	Prior to the building permits for street lights.	
			The lighting shall be installed and maintained in accordance with the approved plan.	Owner/ Applicant	Ongoing	
9.		<b>PD014(A) – LIGHTING – EXTERIOR LIGHTING PLAN</b> All exterior lighting shall be unobtrusive, down-lit, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site	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.	Owner/ Applicant	Prior to the issuance of building	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
		glare is fully controlled. The applicant shall submit 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. <b>(RMA – Planning Department)</b>			permits.	
10.		<b>PD035 - UTILITIES - UNDERGROUND</b> All new utility and distribution lines shall be placed underground. <b>(RMA - Planning Department; Public Works)</b>	The lighting shall be installed and maintained in accordance with the approved plan.	Owner/ Applicant	Ongoing	
			Install and maintain utility and distribution lines underground.	Owner/ Applicant	Ongoing	
11.		<b>PDSP005- HOURS OF CONSTRUCTION ACTIVITY (NON-STANDARD CONDITION)</b> Hours of construction activity shall be limited to the hours of 8 a.m to 6 p.m., Monday through Friday and excluding holidays. <b>(RMA – Planning Department)</b>	Demonstrate compliance with the hours of operation to the Director of RMA – Planning Department.	Owner/ Applicant	Prior to use/ Ongoing	
12.		<b>PDSP006 – CERTIFICATES OF COMPLIANCE (LOT LINE ADJUSTMENT FOR MERGING OF THE SOUTHERLY HALF OF LOT 13 WITH LOT 14 ON BLOCK L) (NON-STANDARD CONDITION)</b> The applicant shall request an unconditional certificate of compliance and provide a Record of Survey Map for the newly configured parcel. <b>(RMA – Planning Department)</b>	The Surveyor shall prepare a legal description for the newly configured parcel and provide a Record of Survey Map. The legal descriptions shall be entitled “Exhibit A”. The Record of Survey Map shall be attached to the legal description as “Exhibit B” and shall be at the size of 8.5” x 11”. The legal description shall comply with the Monterey County Recorder’s	Owner/ Applicant/ Surveyor	Prior to issuance of the building permits for APN(s) 177-061-025 and 177-061-	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
			guidelines as to form and content. The Applicant shall submit, to the RMA - Planning Department, the legal description and Record of Survey Map with a check, payable to the <i>Monterey County Recorder</i> , for the appropriate fees to record the certificate.		026-000 (Block L, Southern half of Lot 13 & Lot 14).	
13.		<b>PDSP007-COLOR SCHEME AND LANGUAGE OF CC&amp;R'S- HISTORIC RESOURCES REVIEW BOARD (HRRB) (NON-STANDARD CONDITION)</b> Prior to issuance of building permits, the applicant shall present the language of the CC&R's to the RMA - Director of the Planning Department, addressing that the color scheme for the proposed development, will be compatible with the Spreckels Design Guidelines, the General Plan and Title 21 Zoning Ordinance, as recommended by the HRRB. ( <b>RMA – Planning Department</b> )	Submit to RMA - Planning Department for review and approval the language of the CC&R's addressing that the color scheme is compatible with the Spreckels Design Guidelines, the General Plan and Title 21, Zoning Ordinance.	Owner/ Applicant	Prior to Issuance of Building Permits/ Ongoing	
14.		<b>PDSP008-DOUBLE SIDED MULLION WINDOWS-HRRB (NON-STANDARD CONDITION)</b> Prior to issuance of building permits, the applicant shall present evidence that installation of the residential windows be as follows: Single hung and double-sided mullion windows with the upper half of the window be divided in grids and the bottom half of the window be without grids, as recommended by the HRRB. ( <b>RMA – Planning Department</b> )	Submit to RMA - Planning Department for review and approval the windows based on the recommendation of the HRRB.	Owner/ Applicant	Prior to Issuance of Building Permits/ Ongoing	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
15.		<p><b>PDSP009- SPRECKELS DESIGN GUIDELINES, POLICY 2, FENCES, WALLS, AND SITE FEATURES- HRRB (NON-STANDARD CONDITION)</b></p> <p>All fences, walls, and site features shall conform to the Spreckels Design Guidelines, as recommended by the HRRB. (RMA – Planning Department)</p>	Adhere to the Spreckels Design Guidelines.	Owner/ Applicant	Ongoing	
16.		<p><b>PDSP010- SPRECKELS DESIGN GUIDELINES, POLICY 2, FENCES, WALLS, AND SITE FEATURES- FRONT YARD FENCING- HRRB (NON-STANDARD CONDITION)</b></p> <p>All front yard fencing shall conform to the Spreckels Design Guidelines, Policy 2 Fences, Walls, and Site Features, Guideline S2.1 which reads, “New fences in front yards should not exceed four feet in height and should generally be constructed of wood slats in an open work pattern”, as recommended by the HRRB. The placement of front yard fencing shall be placed on the following selected lots:</p> <ol style="list-style-type: none"> <li>1. Block K: Lot 2, 4, 14, 16, and 20 (respective APNs: 177-064-011; 013; 019; 021; and 025.)</li> <li>2. Block L: Lot 1, 2, 6, 16, and 18 (respective APNs: 177-061-011; 012; 016; 020 and 022.)</li> <li>3. Block M: Lot 6, 16 (respective APNs: 177-055-019 and 022)</li> <li>4. Block N: Lot 2, 5, 13 and 19 (respective APNs: 177-054-015; 018; 019 and 025.)</li> <li>5. Block O: Lot 1, 4, 6, 8, 17 and 20 (respective APNs: 177-051-008; 011; 013; 015; 020 and 023.)</li> </ol> <p>Any change of selected lots may be approved, subject to</p>	Adhere to the Spreckels Design Guidelines and this specific condition. Prior to final inspection, installation of front yard fencing shall be in place as specified in this condition.	Owner/ Applicant	Prior to Final Inspection/ Ongoing	

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		the RMA-Director of Planning and the HRRB. (RMA – Planning Department)				
17.		<b>PDSP011- BACKYARD FENCING/PRIVACY FENCING FOR CORNER LOTS ON NACIONAL AVENUE-HRRB (NON-STANDARD CONDITION)</b> The backyard/privacy six-foot fences on the following lots, shall be located on the respective corners of the single family dwelling of that lot as recommended by the HRRB: Block K: Lot 1 and 20 (APNs 177-064-001 and 025) Block L: Lot 1 and 20 (APNs 177-061-011 and 024) Block M: Lot 1 and 20 (APNs 177-055-014 and 026) Block N: Lot 1 and 20 (APNs 177-054-014 and 026) Block O: Lot 1 and 20 (APNs 177-051-008 and 023) Where fence placement creates a conflict with the window placement, the applicant shall be allowed to adjust accordingly to accommodate the change. (RMA – Planning Department)	Submit to RMA - Planning Department site plans indicating conformity with this condition.	Owner/ Applicant	Prior to the issuance of building permits/ Ongoing	
18.		<b>PDSP012- PRESERVATION OF WALNUT TREES ALONG SPRECKELS BOULEVARD-HRRB (NON-STANDARD CONDITION)</b> Retain and preserve all walnut trees along Spreckels Boulevard as recommended by the HRRB. (RMA – Planning Department)	Adhere to condition.	Owner/ Applicant	Ongoing	



<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
19.		<b>PDSP013- PLAN AND ELEVATION LAYOUT FLEXIBILITY (NON-STANDARD CONDITION)</b> Applicant may change the currently designated plan layouts between two or more parcels, subject to the approval of the Director of Planning. <b>(RMA – Planning Department)</b>	Submit to RMA - Planning Department for review and approval any proposed housing type layout changes.	Owner/ Applicant	Ongoing	
20.		<b>EH6 - WATER SERVICE CAN/WILL SERVE</b> Provide to the Division of Environmental Health written certification, and any necessary certification from State agencies that Spreckels Water Company can and will supply sufficient water flow and pressure to comply with both Health and fire flow standards. <b>(Environmental Health)</b>	Submit written certification to the Division of Environmental Health for review and approval.	CA Licensed Engineer /Owner/ Applicant	Prior to issuance of building permits.	
21.		<b>EH24 - SEWER SERVICE CAN/WILL SERVE</b> Provide certification to the Division of Environmental Health that Cal-Am can and will provide sewer service for the proposed property/project. <b>(Environmental Health)</b>	Submit certification to Environmental Health for review and approval.	Owner/ Applicant	Prior to issuance of building permits.	
22.		<b>FIRE011 - ADDRESSES FOR BUILDINGS</b> 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	Applicant shall incorporate specification into design and enumerate as “Fire Dept. Notes” on plans.  Applicant shall schedule fire dept. clearance inspection	Applicant or owner  Applicant or owner	Prior to issuance of building permits.  Prior to final building inspection.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
		<p>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.</p> <p><b>(Salinas Rural Fire Protection District)</b></p>				
23.		<p><b>FIRE017 - DISPOSAL OF VEGETATION AND FUELS</b></p> <p>Disposal, including chipping, burying, or removal to a landfill site approved by the local jurisdiction, of vegetation and debris caused by site development and construction, road and driveway construction, and fuel modification shall be completed prior to final clearance of the related permit.</p> <p><b>(Salinas Rural Fire Protection District)</b></p>	Applicant shall schedule fire dept. clearance inspection	Applicant or owner	Prior to final building inspection.	
24.		<p><b>FIRE021 - FIRE PROTECTION EQUIPMENT &amp; SYSTEMS - FIRE SPRINKLER SYSTEM (STANDARD)</b></p> <p>The building(s) and attached garage(s) shall be fully protected with automatic fire sprinkler system(s).</p>	Applicant shall enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of building permits.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
		Installation shall be in accordance with the applicable NFPA standard. A minimum of four (4) sets of plans for fire sprinkler systems must be submitted by a California licensed C-16 contractor and approved prior to installation. This requirement is not intended to delay issuance of a building permit. A rough sprinkler inspection must be scheduled by the installing contractor and completed prior to requesting a framing inspection. <b>(Salinas Rural Fire Protection District)</b>	Applicant shall schedule fire dept. rough sprinkler inspection	Applicant or owner	Prior to framing inspection.	
			Applicant shall schedule fire dept. final sprinkler inspection	Applicant or owner	Prior to final building inspection.	
25.		<b>FIRE026 - ROOF CONSTRUCTION (STANDARD)</b> All new structures, and all existing structures receiving new roofing over 50 percent or more of the existing roof surface within a one-year period, shall require a minimum of ICBO Class B roof construction. <b>(Salinas Rural Fire Protection District)</b>	Applicant shall enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of building permits.	
26.		<b>PWSP001-SUBDIVISION IMPROVEMENTS (NON-STANDARD CONDITION)</b> Applicant shall bond all infrastructure improvements in accordance with the approved subdivision improvement plans, subject to the approval of the RMA-Public Works Department. Engineering plans shall include left turn channelization on Spreckels Boulevard at the Nacional and Hatton Avenue intersections, including a two way left turn lane between the two intersections. <b>(RMA - Public Works)</b>	Subdivider shall submit improvement plans prepared by his Engineer to DPW for approval. Improvements to be bonded prior to the issuance of building or grading permits.	Subdivider	Prior to issuance of building permits.	

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27.		<b>PWSP002- DEDICATION (NON-STANDARD CONDITION)</b> Applicant shall dedicate to County all required easements and/or rights-of-way. <b>(RMA – Public Works)</b>	Applicant's surveyor shall prepare description of area to be dedicated. DPW can prepare deed.	Owner/ Applicant/ Surveyor	Prior to occupancy.	
28.		<b>PWSP003 – SUBDIVISION IMPROVEMENTS/PHASING PLAN (NON-STANDARD CONDITION)</b> Applicant shall construct all improvements in accordance with the approved improvement plans and infrastructure improvement phasing plan subject to the approval of the Department of Public Works. <b>(RMA – Public Works)</b>	Applicant shall submit an infrastructure phasing plan for the approval of the Department of Public Works.	Owner/ Applicant	Prior to final building inspection.	
29.		<b>WR1 - DRAINAGE PLAN</b> The applicant shall provide the Water Resources Agency a drainage plan prepared by a registered civil engineer or architect addressing on-site and off-site impacts. Drainage improvements shall be constructed in accordance with plans approved by the Water Resources Agency. <b>(Water Resources Agency)</b>	Submit 3 copies of the engineered drainage plan to the Water Resources Agency for review and approval.	Owner/ Applicant/ Engineer	Prior to issuance of any grading or building permits.	
30.		<b>WRSP001 - COMPLETION CERTIFICATION</b> The applicant shall provide the Water Resources Agency certification from a registered civil engineer or licensed contractor that stormwater detention/retention facilities have been constructed in accordance with approved plans. <b>(Water Resources Agency)</b>	Submit a letter to the Water Resources Agency, prepared by a registered civil engineer or licensed contractor, certifying compliance with approved drainage plan.	Owner/ Applicant/ Engineer/ Contractor	Prior to issuance of any building permits.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
31.		<b>WR47 - WASTE MANAGEMENT PLAN</b> The applicant shall provide the Water Resources Agency a Construction Site Waste Management Plan prepared by a registered civil engineer that addresses the proper disposal of building materials and other construction site wastes including, but not limited to, discarded building materials, concrete truck washout, chemicals, litter and sanitary wastes. The Site Waste Management Plan must also address spill prevention, control and clean up of materials such as petroleum products, fertilizers, solvents, pesticides, paints and cleaners. ( <b>Water Resources Agency</b> )	Submit the plan to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to issuance of any grading or building permits.	
32.		<b>WRSP002- DRAINAGE &amp; FLOOD CONTROL SYSTEMS AGREEMENT (NON-STANDARD CONDITION)</b> If the homeowners' association, community services district, or other similar entity after notice and hearing fails to properly maintain, repair or operate the drainage and flood control facilities in the project, Monterey County Water Resources Agency shall be granted the right by the property owners to enter any and all portions of the property to perform repairs, maintenance or improvements necessary to properly operate the drainage and flood control facilities in the project. The County Water Resources Agency shall have the right to collect the cost for said repairs, maintenance or improvements from the property owners upon their property tax bills. A hearing shall be provided by the Board of Supervisors as to the appropriateness of the cost. Prior to the issuance of any building permits, a copy of a signed and notarized <i>Drainage and Flood Control Systems Agreement</i> shall be provided to the	Submit the signed and notarized original Agreement to the Water Resources Agency for review and approval prior to recordation.  (A copy of the County's standard agreement can be obtained at the Water Resources Agency.)	Owner/ Applicant	The agreement shall be recorded prior to issuance of any building permits.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
		Water Resources Agency for approval. ( <b>Water Resources Agency</b> )				
33.		<b>WRSP003- HOMEOWNERS ASSOCIATION CC&amp;R'S (NON-STANDARD CONDITION)</b> A homeowner's association, community services district, or other similar entity shall be formed for the maintenance of roads, drainage facilities, and open spaces. The Director of Public Works, the Director of Planning and Building Inspection, and the County Water Resources Agency shall approve documents for formation of association. The covenants, conditions and restrictions shall include provisions for a yearly report by a registered civil engineer and the monitoring of impacts of drainage and maintenance of drainage facilities. Report shall be submitted by August 15 and be approved by the County Water Resources Agency. ( <b>Water Resources Agency</b> )	Submit the CC&R's to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to issuance of building permits.	
34.		<b>WRSP004- WELL INFORMATION (NON-STANDARD CONDITION)</b> The applicant shall provide the Water Resources Agency information for any newly constructed well(s) to serve the project including a map showing the well location and any available well logs/e-logs. ( <b>Water Resources Agency</b> )	Submit all applicable well information to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to commencement of use.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
35.		<b>PDSP014-ANNEXATION REQUIRED (NON-STANDARD CONDITION)</b> The applicant shall provide evidence from the Local Agency Formation Commission (LAFCO) that the property has been annexed into the Spreckels Community Services District. (RMA-Planning Department and Public Works)	Submit evidence from LAFCO and the Spreckels CSD that the property has been annexed into the service area for Spreckels CSD to the RMA Director of Planning and Public Works for review and approval.	Owner/ Applicant	Prior to issuance of any building permits.	
36.		<b>PDSP015- ROOF PITCH ADJUSTMENT TO GARAGE PLAN "A" (NON-STANDARD CONDITION)</b> Prior to issuance of building permits for lots with a proposed Garage Plan "A", the applicant shall reduce the pitch of the roof on these garages to meet the maximum allowed height of 15 feet. The garage elevations, as well as all structure elevations, shall be reflected on the building plans at the time of building permit submittal. (RMA-Planning Department)	Incorporate elevation plans onto the building plans at the time of building permit submittal.	Owner/ Applicant	Prior to issuance of any building permits.	
37.		<b>EHSP001 - WATER SYSTEM IMPROVEMENTS (STATE PERMITTED SYSTEM) (NON-STANDARD CONDITION)</b> Design the water system improvements to meet the standards as found in Titles 17 and 22 of the California Code of Regulations and as found in the Residential Subdivision Water Supply Standards. ( <b>Environmental Health</b> )	Submit engineered plans for the water system improvements to the *Department of Health Services for review and approval. Submit evidence to the Director of Environmental Health that the proposed water system improvements have been approved by Department of Health Services prior final building inspections. (*The local office for Dept. of Health Services is located in Monterey at Ryan Ranch.)	CA Licensed Engineer /Owner/ Applicant	Prior to final building inspections.	

<b>Permit Cond. Number</b>	<b>Mitig. Number</b>	<b>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</b>	<b>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</b>	<b>Responsible Party for Compliance</b>	<b>Timing</b>	<b>Verification of Compliance (name/date)</b>
38.		<b>EHSP002 - FIRE FLOW STANDARDS (NON-STANDARD CONDITION)</b> Design the water system improvements to meet fire flow standards as required and approved by the local fire protection agency. ( <b>Environmental Health</b> )	Submit evidence to the Division of Environmental Health that the proposed water system improvements have been approved by the local fire protection agency.	CA Licensed Engineer /Owner/ Applicant	Prior to final building inspec- tions.	
39.		<b>EHSP003 - INSTALL/BOND WATER SYSTEM IMPROVEMENTS (NON-STANDARD CONDITION)</b> The developer shall install the water system improvements to and within the subdivision and any appurtenances needed or shall enter into a Subdivision Improvement Agreement with the County to install the water system water system improvements and provide security guaranteeing the performance of the Agreement. ( <b>Environmental Health</b> )	The developer shall install the water system improvements to and within the subdivision and any appurtenances needed or shall enter into a Subdivision Improvement Agreement with the County to install the water system improvements and provide security guaranteeing the performance of the Agreement.	CA Licensed Engineer /Owner/ Applicant	Prior to final building inspec- tions.	



# Attachment 4

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

**Th14a****RECORD PACKET COPY**

Filed: 2/18/2004  
49th day: Waived  
Staff: CKC/LO-SC  
Denovo Staff report: 11/18/2004  
Hearing date: 12/09/2004

**STAFF REPORT: APPEAL - DE NOVO PERMIT**

**Appeal number** ..... A-3-MCO-04-012, Laube & Engel Residence  
**Applicants** ..... Sheldon Laube & Nancy Engel  
**Appellants** ..... Dr. & Mrs. Hugh McAllister; & Commissioners Sara Wan and William Burke  
**Local government** ..... Monterey County  
**Local decision** ..... Approved with conditions, January 13, 2004  
**Project location** ..... 36240 Hwy. 1 (Kasler Point), approx. 0.5 mile south of Garrapata Creek, Big Sur Coast, Monterey County (APNs 243-251-012 & 243-251-013)  
**Project description** ..... Construct a 8,270 sq. ft. single family residence with an approx. 1,824 sq.ft. subterranean garage, including development within 100 feet of environmentally sensitive habitat (ESHA), approx. 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot line adjustment that will consolidate two adjacent two-acre parcels.  
**Local approval** ..... The Monterey County Board of Supervisors, upon appeal, approved a Combined Development Permit (including four Coastal Development Permit components), Resolution 03073 (PLN010105), for the project on January 13, 2004. Monterey County approval was appealed to Coastal Commission who found substantial issue at September, 2004 hearing.  
**File documents** ..... A-3-MCO-04-012 Adopted Substantial Issue staff report; Monterey County certified Local Coastal Program, including Big Sur Coast Land Use Plan; Final Local Action Notice 3-MCO-04-027; documents and materials from the local record provided by Monterey County on February 2, 2004; Coastal Development Permit No. A-174-77 (Sorensen), approved August 3, 1977, and appears to have expired August 3, 1979.  
**Staff recommendation** Approval with Conditions

**Staff Note:** The Substantial Issue hearing on the project was conducted on September 8, 2004, at which the Coastal Commission found that the County's approval of the project did raise a substantial issue with regards to protection of visual resources, environmentally sensitive habitat areas, geologic hazards and water resources. The Commission, therefore, took jurisdiction of the



**California Coastal Commission**  
**December 2004 Meeting**

Staff: K. Cuffe Approved by:

project, and continued the *de novo* hearing for a later date. The Commission is now hearing the project *de novo*.

**Summary of staff recommendation:** The Monterey County Board of Supervisors approved a 10,000 sf + house on the parcel that was subsequently appealed to the Coastal Commission on the grounds that the proposed development was not consistent with LCP policies designed to protect visual resources, environmentally sensitive habitat, geologic hazards, and water resources. The Commission found that the County's approval of the project did raise a substantial issue on these grounds, and took jurisdiction of the project *de novo*.

The subject Laube-Engel property includes two adjacent parcels (APNs 243-251-012 and 243-251-013) that are each two-acres in size, located between Highway One and the sea, approximately 10 miles south of Carmel, and one-half mile south of Garrapata Creek, on a granitic headland known as Kasler Point (see Exhibit 1 for project location and parcel maps; and Exhibit 2 for historic aerial photos of the site). The subject property is located adjacent to a 2-acre open space property, owned by the State Coastal Conservancy that has been put in scenic easement to protect seaward views from the Abalone Cove Vista Point. The northern Laube-Engel and Coastal Conservancy parcels are located within the Big Sur Critical Viewshed, which prohibits development visible from Highway One and major public viewing areas, including turnouts, beaches and other specific locations. The southern Laube-Engel parcel is in the Rocky Point Exception area, which allows for residential development on the site, based on development standards that, among other things, require measures to minimize views of structures without blocking ocean views from Highway One, require roadways in the viewshed to be as narrow as possible, avoid paving, and require dedication of scenic easements over the undeveloped portion of the parcel.

The project as approved by the County (Exhibit 3) was for a 8,270 square foot residential dwelling, with an approximately 1,824 sf subterranean garage (for a total of 10,094 square feet, based on plans dated December 2002), and included development within 100 feet of environmentally sensitive habitat, approximately 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot merger that will consolidate two (nominal) 2-acre parcels. The project approved by the County was appealed to the Commission on the grounds that it was not consistent with LCP policies, including visual resources, environmentally sensitive habitat, hazards, and water resources. After the project was found to raise a substantial issue because it would be visible from public viewpoints along Highway One, the applicants revised the design to relocate the house and lower the base elevation of the northern portion of the house. Following appeal of the project, the applicants modified the project and submitted new plans, dated revised July 8, 2004 (Exhibit 5), that show the residence has been relocated slightly north so that the northern portion of the residence would be located on the northern parcel, the base elevation of the northern portion of the house has been lowered so that it is not visible within the critical viewshed, and the size of the residence has been reduced from a total of 10,094 sf to 9,971 sf (a reduction of 123 sf). Residential site coverage would be 4,625 square feet, with 10,147 sf of permeable driveway and parking, and 948 sf of protected garden space.



As currently proposed, the house would be set against the nearly vertical, westerly-facing cut slope created by the previous owners who excavated the existing building pad down approximately 25 to 30 feet from the existing topography on the west side of the knoll at Kasler Point (see Exhibit photos 1 and 2, and Exhibit 5). In this location, the house is not visible from Highway One directly east of the site. However, based on field observations, a portion of the main part of the house is still visible from public viewpoints along Highway One and would block ocean views (Exhibit 6, photo 6), inconsistent with LCP policies. Therefore, the revised project designs (dated 7/8/04) do not meet the visual and scenic resource protection standards of the LCP, because, even though it is located within the Rocky Point Exception area, additional measures can be taken to reduce the size and/or height of the structure to minimize its visibility and avoid blocking ocean views from Highway One. Alternatives to reduce the size and height of the house include lowering the base floor elevation of the main part of the house, lowering the height of the 2<sup>nd</sup> floor peak elevation, or reducing the design to one story. Thus, to be consistent with LCP visual resource protection policies, permit conditions require the project be modified, so that no portion of the structure will be visible from public viewing areas (as defined in the local coastal program; e.g., pullout at Rocky Point and shoulder of Highway One roadway north of Garrapata State Beach), and in no case is greater than 14 feet above average natural grade. Revised project plans must be submitted for review and approval by the Executive Director, and the new design adequately flagged for confirmation in the field.

Because any development on the rest of the northern parcel would be visible from Highway One, no other buildable site exists. Thus to ensure that future development does not occur on the northern parcel inconsistent with LCP policies, the permit requires that the two parcels be merged into one, combined parcel, a scenic and conservation easement be placed over the remainder of the site not already covered by the existing accepted scenic and conservation easement. The easement shall prohibit further development of any structure or landscaping that would block ocean views, requires the existing roadway not be widened, and requires that suitable materials be used for the roadbed to ensure that the road blends into the surrounding environment.

With regards to environmentally sensitive habitat areas, the current project will impact environmentally sensitive habitat areas, including Smith's blue butterfly habitat through the removal of up to 120 seacliff buckwheat plants and approximately 5,573 sf of severely degraded coastal bluff scrub habitat due to permanent placement of the residence within this habitat area (see Exhibits 7 and 8). The project also has the potential to impact adjacent intertidal and marine habitats, sea otter foraging and pupping habitat, and bird nesting sites. Without adequate mitigation measures, the project as designed would be inconsistent with LCP policies that require protection of environmentally sensitive habitat areas. Therefore, the permit has been conditioned to protect remaining buckwheat plants from construction activities, and restore and enhance the remaining habitat by replanting seacliff buckwheat plants removed using a 3:1 ratio, according to a restoration plan to be reviewed and approved by the Executive Director, and scheduling any additional site grading to occur before and/or after the flight and breeding period of the butterfly. Conditions also require enhancing 5,573 sf of coastal bluff habitat by removal or exotic invasive plants and landscaping of the site using drought tolerant native plants appropriate to the site, as well as a scenic and conservation easement over the remainder of the site not already covered by



the existing accepted scenic and conservation easement, to protect all habitat outside of developed areas (Exhibit 9). The project has also been conditioned to protect potential bird nesting areas by either avoiding construction activities during the individual species' breeding period or by other mitigation measures identified after consultation with the CDFG and USFWS. With these conditions, the project will be consistent with LCP ESHA protection policies.

With regards to geological hazards, the Monterey County LCP Policy requires that geologic reports provide evidence that permitted development will not create geologic hazards or diminish the stability of the area, and would be designed with adequate setbacks to avoid the need for future seawalls over the life of the structure. The geologic and geotechnical reports and third-party review that have been prepared for this project have provided evidence that the site is suitable for development and that the development, as conditioned to incorporate geotechnical recommendations (Exhibit 10), will not create a geologic hazard or diminish the stability of the area. Furthermore, based on bluff recession and slope stability analyses, the recommended 50-year setback on the site is between 25 and 31 feet from the seaward coastal blufftop (Exhibit 11), depending on the location along the coastal bluff and the depth of overburden. Although some elements of the project, as approved by the County, were located seaward of these setback lines, the project has been redesigned to conform to these setbacks, by removing the septic holding tank from the edge of the bluff and relocating it within the motor court area, reducing the guest parking area and revising the family/living room terrace area. Thus, as revised, the geotechnical engineer has stated that project will avoid the need for seawalls during the economic lifespan of the structure, in conformance with LCP policies. To ensure that no future seawalls are constructed, the project has been conditioned to prohibit any future shoreline protection devices. Therefore the project, as recently revised and conditioned herein, is consistent with Monterey County LCP hazard policies.

With regards to water resources, new and additional information provided following the substantial issue determination have shown that the project has had an existing water hookup for over 20 years and can and will continue to be served by Garrapata Water Company. While the Garrapata Water Company ownership is in flux, a mutual water company is being formed to manage the resource. The County Department of Environmental Health (DEH) has indicated that such a management system would be helpful to protect the long-term viability of the system, and enable water treatment improvements to be implemented most effectively. However, while the transfer of the assets is expected to take place within the next six months, the actual timing of such events is indeterminate. Therefore, the project has been conditioned to require that an approved water treatment system be installed prior to occupancy. The project has also been conditioned to provide adequate drainage and erosion control measures to prevent erosion and sedimentation from construction activities and ongoing use of the site from entering the marine habitat. Thus, as conditioned, the project will have an adequate, safe and continuous supply of water, and will avoid adverse impacts on the marine water quality from erosion and sedimentation.

Public access to and along the shoreline is already provided on the northern portion of the property consistent with LCP policies and public access requirements of the Coastal Act.



Thus, the proposed project, as conditioned, addresses the previously identified substantial issues, and can now be found consistent with the LCP and the applicable access and recreation policies of the Coastal Act. Staff recommends **approval with conditions**.

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## XI. Exhibits:

- Exhibit 1 Project Vicinity and Location Maps
- Exhibit 2 Historic Aerial Photos of Site from 1972 to 2004
- Exhibit 3 Conditions from Monterey County Final Local Action Notice (PLN010105) and Approved Plans
- Exhibit 4 Site Plan showing existing Scenic & Conservation Easements (and which allows for public access on northern parcel)
- Exhibit 5 Revised Project Site Plans, dated July 8, 2004
- Exhibit 6 Site Photos
- Exhibit 7 Biological Map of Habitats
- Exhibit 8 Biological Map of Smith's blue butterfly Habitat
- Exhibit 9 Required New Scenic and Conservation Easement
- Exhibit 10 Geotechnical Recommendations from Revised Geotechnical Report, dated December 20, 2002 (for complete report, see file)
- Exhibit 11 Geotechnical Report Evaluating Slope Stability and Establishing Coastal Bluff Setbacks (with Coastal Bluff Setback Map)
- Exhibit 12 Previous Sorenson Permit (expired due to non-compliance with prior-to-issuance requirements)

## I. Procedural History

Prior to certification of the Monterey County LCP in 1988, the Coastal Commission granted an earlier permit for a single family dwelling on the same subject parcels in 1977 to the previous property owner, Sorenson (Permit # A-174-77, as shown in Exhibit 12). The Sorenson permit was for approval with conditions for a 3,950 sf, three-bedroom house on the site (designed as a rectangular structure that stepped into the hillside, with two stories and a basement level garage). The permit incorporated nine special conditions originally established by the Regional Commission, and three additional Conditions established by the State Coastal Commission on appeal. In particular, Regional Commission Special Condition #3 required that prior to commencement of grading or construction, permittee show that Parcels 243-251-012 and -013 had been consolidated and recorded as a single parcel of land, and Regional Commission Special Condition #4 required that construction not commence until an easement for protection of scenic and natural resources was granted to an appropriate public agency or conservation foundation. The easement, was to include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeologic and other scientific research purposes secured.

Sorenson did record the scenic and conservation easement as required on June 28, 1982. The scenic and conservation easement, which, among other things provided for protection of sensitive resources, visual resources and public access, was subsequently accepted by the State Coastal Conservancy on December 9,



1982 (and acceptance recorded May 11, 1983). By 1987 Sorenson had also excavated part of the western slope for a building pad (see photos in Exhibit 2), installed foundation footings, septic, utility lines, and graded an access driveway. Sorenson never completed any further development of the site, and the property was eventually sold to Laube/Engel, the current property owners. However, the two lots were never combined as required by the Commission's permit.

The County now has a certified LCP, and as such has the authority to regulate development in the coastal zone, with the Commission retaining appeal jurisdiction in the Big Sur Coast.

The Monterey County Board of Supervisors, upon appeal and *de novo* hearing, approved a Combined Development Permit (including four Coastal Development Permit components), Resolution 04028 (PLN010105) on September 8, 2004, allowing construction of a 8,270 square foot (sf) residential dwelling, with an approximately 1,824 sf subterranean garage, including development within 100 feet of environmentally sensitive habitat, approximately 1,750 cubic yards of cut and 736 cubic yards of fill, construction on slopes over 30 percent, and a lot line adjustment that will consolidate two adjacent two-acre parcels. As shown in Exhibit 3, the design approved by the County was to be located entirely on the southern parcel. The County findings recognized that the coastal Commission approved a permit for the site in 1977 and that the noted site work (e.g., excavation and grading of roadway and building pad, partial foundations, and septic system) was installed pursuant to that permit. The County findings also noted that the property was encumbered, subject to the scenic and conservation easement, and parcel merger required by the previous permit. Therefore the County approval was conditioned to require the two parcels be merged to form one parcel, and that a scenic and conservation easement be required over the entire parcel.

The County approval was subsequently appealed to the Coastal Commission on the grounds that the proposed development was not consistent with LCP policies designed to protect visual resources, environmentally sensitive habitat, geologic hazards, and water resources. The Commission heard the appeal on September 8, 2004, and took jurisdiction after finding that the County's approval of the project did raise a substantial issue on these grounds. The Commission is now hearing the permit application *de novo*. It should be noted that as a result of the appeal, the applicants have modified the project by relocating the proposed residence so that a portion of it now lies on the northern parcel, and reducing the size of the structure slightly, as detailed in the Project Description section below.

## **II. Staff Recommendation on De Novo Coastal Permit**

The staff recommends that the Commission, after public hearing **approve** the Laube-Engel coastal development permit with conditions.

**MOTION** : *I move that the Commission approve Coastal Development Permit No. A-3-MCO-04-012 pursuant to the staff recommendation.*





**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Monterey County Local Coastal Program and the Public Access and Recreation policies of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**III. Conditions of Approval****A. Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.



## B. Special Conditions

1. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of the following plans to the Executive Director of the Coastal Commission for review and approval and shall adequately flag the project for confirmation in the field that the modified design will not be visible from public viewpoints. The permittee shall undertake development in accordance with the final plans approved by the Executive Director pursuant to these special conditions.

a. **Revised Final Project Plans.** The final site plan (covering the entirety of both parcels that are to be merged into one) and elevations shall demonstrate the following:

1. The building plan (dated 11/16/04) has been further modified, so that no portion of the structure will be visible from public viewing areas, and in no case is greater than 14 feet above average natural grade.
2. The permitted residential structure shall be entirely within the final approved Residential Building Envelope, and all accessory structures (e.g., septic system, driveway, water tanks) and ground disturbance (other than landscaping) shall be limited to the area within the designated Disturbance Envelope. A schematic of the Residential Building and Disturbance Envelopes are shown on Exhibit 9, attached. The final Residential Building Envelope shall require review and approval by the Executive Director.
3. The driveway shall be no wider than the existing driveway between Highway One and the first drainage catch basin located south of the archaeological conservation easement area, and no wider than shown on plans dated 11/16/04 between said drainage catch basin and the motor court/guest parking area. The driveway surface shall use gravel aggregate or other materials that blend in with the surrounding environment.
4. The existing septic tanks located near the bluff top are to be removed and relocated outside of the coastal setback zone in the motor court area. The plan shall show the new tanks connected to use the existing leach lines located near Highway One, unless otherwise modified by direction of the Department of Environmental Health.
5. Any on-site water tanks, pipe lines, or fire hydrants required by the California Department of Forestry District shall be located outside of public viewing areas.

b. **Drainage Plans.** A drainage plan, prepared by a registered civil engineer addressing on-site and off-site impacts of site drainage shall show evidence of review and approval by the Monterey County Water Resources Agency. The drainage plan shall include dispersal of impervious surface stormwater runoff onto a non-erodible surface below the bluff, and incorporate and maintain grease and sediment traps in the drainage inlets to prevent sediment and pollutants from entering the adjacent marine habitat. Necessary improvements shall be constructed in accordance with approved plans. The plans shall also show evidence of review and approval by a qualified



biologist to assure that drainage does not impact the sensitive marine habitats below the construction area.

- c. **Grading and Erosion Control Plans.** A detailed grading and erosion control plan, with evidence of review and approval by a registered civil engineer and the Monterey County Planning and Building Inspection Department, showing that all existing foundation and talus slope materials not used for the current design will be removed and disposed of properly. The erosion control plan shall prevent new erosion from occurring as a consequence of the proposed project. and shall remediate existing eroded areas, consistent with the required landscape plan (see Special Condition 1.d below), including the currently eroded area northwest of the building site, identified by the consulting biologist, and the blufftop area surrounding the existing septic tanks, once the septic tanks have been removed. Stabilization of these areas shall be accomplished using non-structural methods (for example by re-grading, compaction, use of erosion control blankets, and revegetation).
- d. **Revegetation and Landscaping Plans.** A detailed landscaping and revegetation plan, along with written evidence that the plan has been reviewed and approved by a qualified consulting biologist approved by Monterey County Planning and Building Inspection Department. At a minimum, the plan shall specify procedures for erosion control and re-establishment of native plant cover; and proposed landscaping species. No interference with public views through the planting of trees or other landscaping shall be allowed. The landscaping plan shall provide for the removal of all non-native invasive plants, include only native, non-invasive, drought tolerant plants suitable to the area's Coastal Bluff Scrub and Northern Coastal Scrub habitats, and allow only drip irrigation for the first two years following installation to allow the native plants to become established on the site. Any other surface or subsurface irrigation measures shall not be allowed, and if found to exist on site shall be disconnected and capped. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall provide that landscaping shall be installed prior to occupancy. The landscape plan shall include alternative fuel modification standards that meet California Department of Forestry Fire District approval.

In order to mitigate potential adverse impacts to sensitive plants and habitats by the proposed project, the plan shall show:

- (i) An equivalent area (approximately 5,573 sf) of the building footprint and ancillary site coverage (e.g., "protected garden") for restoration of Coastal Bluff scrub habitat outside of the coastal bluff setback,
- (ii) Replacement seacliff buckwheat sites to fully implement the Biological Report/Revegetation Plan by Jeff Norman, November 30, 1999, updated December 14, 2002, by replacing all seacliff buckwheat plants ultimately removed by the project using a 3:1 replacement ratio, in areas landward of the coastal blufftop setback zone.



**2. Verification of Compliance with Project Plans.**

- a. UPON COMPLETION OF CONSTRUCTION AND PRIOR TO OCCUPANCY OF THE HOUSE, the permittee shall schedule Commission staff to inspect the site to confirm that the house has been built according to approved plans and that no portion of the house is visible from public viewing areas, as required in Special Condition 1.a.
- b. Any part of the development that is found to have been constructed not according to the approved plans shall be removed within 30 days of the discovery at the permittee's expense, and an additional site visit shall be scheduled for Coastal Commission staff to confirm that this action has been taken.
- c. PRIOR TO OCCUPANCY, the permittee shall provide for Executive Director review and approval verification from the Department of Environmental Health that the septic tanks have been removed and resited as required by Special Condition 1.a.4 of this permit. The permittee shall also provide verification from the geotechnical engineer and project biologist that the blufftop surrounding the old septic tanks has been restored as required by Special Condition 1.c.
- d. PRIOR TO OCCUPANCY the permittee shall provide evidence for Executive Director review and approval from the Geotechnical engineers that the project has been constructed according to the approved Geotechnical report and plans and conditions of this permit.
- e. PRIOR TO OCCUPANCY, the permittee shall provide evidence for Executive Director review and approval from a qualified biologist that the required revegetation mitigation has been installed.
- f. Landscaping, pursuant to the landscape and revegetation plan required in Special Condition 1.d shall be maintained as long as development approved by this permit remains on the site.

**3. Merging of two parcels into one single, combined parcel.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT applicant shall demonstrate that Parcels C and B, being a portion of Lot 20, Rancho San Jose y Sur Chiquito, otherwise known and described as Assessor's Parcels #243-251-012-000 and 243-251-013-000, have been merged and recorded as a single parcel of land. Documentation used to consolidate these two parcels shall be subject to Executive Director review and approval prior to recording.

**4. Scenic and Conservation Easement.**

- a. No development, as defined in Section 30106 of the Coastal Act, shall occur in the area on both parcels (to be merged) outside of the final approved Residential Building Envelope.
- b. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a scenic and conservation easement in a form and content acceptable to the Executive Director and the Director of the Monterey County Planning and Building Inspection Department, for the purposes of visual resource protection and habitat conservation. Such



easement shall be located on that portion of the combined parcel (created by combining the two subject parcels, Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000, as required in Condition 3 above) that is not already in the existing scenic and conservation easement accepted by the State Coastal Conservancy on March 11, 1983 (and recorded on May 11, 1983), and is outside of the final approved Residential Building Envelope. (A schematic representation of which is shown in Exhibit 9). The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this condition.

- c. The easement shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The easement shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.
5. **Geotechnical Review.** In order to assure that excavation, grading and construction activities are consistent with the Geotechnical Reports prepared by Vicki C. Odello C.E. November 21, 1999, and Haro Kasunich and Associates, dated January 3, 2004, November 8, 2004, and November 18, 2004, the applicant shall contract the services of a qualified geotechnical engineer to implement all of the geotechnical recommendations made therein, except that no seawalls or shoreline protective devices are allowed under this permit. In addition to implementation of geotechnical construction specifications described in said geotechnical reports, the contract will include regular consultation with the consulting biologist, archaeologist and contractor during construction to assure protection of biological and archaeological resources at the site. At least once a month, the geotechnical engineer shall conduct an inspection during construction to ensure effective implementation of geotechnical recommendations.
  6. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from ongoing coastal processes, including waves, tidal currents, storm waves, and flooding; or landslide, bluff retreat, erosion, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
  7. **No Future Bluff or Shoreline Protective Device.**
    - a. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-3-MCO-04-012



including, but not limited to, the residence, foundations, patio and deck areas, driveway, garage and guest parking area, retaining walls, and septic system, in the event that the development is threatened with damage or destruction from waves, tidal currents, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- b. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including, but not limited to the residence, foundations, patio and deck areas, driveway, garage and guest parking area, retaining walls, and septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

8. **Future Development.** This permit is only for the development described in Coastal Development Permit (CDP) No. A-3-MCO-04-012. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. A-3-MCO-04-012 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

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

10. **Protection of Sensitive Wildlife.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall contract a biological consultant to conduct site visits to monitor for the following



sensitive wildlife species, and take the necessary actions as described below. In order to avoid impacts to sensitive species listed below, grading, blasting and operation of heavy equipment shall be restricted to the period April 15 to May 1, unless authorized by the Executive Director. Verification of monitoring actions shall be provided in letter format to be submitted for Executive Director review and approval before commencing construction:

- a. **Smith's blue butterflies.** Grading, blasting, and operation of heavy equipment shall be prohibited during Smith's blue butterfly flight and breeding period (June thru September).
- b. **Southern Sea Otters.** Grading, blasting, and operation of heavy equipment shall be prohibited during southern sea otter pupping season, (December thru March).
- c. **Black Swifts.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct a site visit during the breeding season in early May to determine presence or absence of nesting black swifts. If no nesting is observed, grading, blasting and operation of heavy equipment may continue. A second survey should be conducted during the first week of June and if no nests are observed, these activities may continue. However, if nesting activity is detected during either survey, grading, blasting, and operation of heavy equipment shall be delayed until fledging occurs by August.
- d. **Brown Pelicans.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct visual surveys of the headland and offshore rocks in the vicinity of the project site during the breeding season (April to mid-September) to determine presence or absence of nesting brown pelicans. If no nesting pelicans are observed, grading, blasting and operation of heavy equipment may commence. However, if nesting activity is detected, grading, blasting, and operation of heavy equipment shall be delayed until mitigation measures, developed in consultation with CDFG and USFWS, and reviewed and approved by the Executive Director are implemented.
- e. **Cormorants.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct visual surveys of the headland and offshore rocks in the vicinity of the project site to determine presence or absence of nesting during the breeding season (March to mid-September) of Double-crested, Pelagic, or Brandt's Cormorants. If no nesting of these three cormorant species are observed, blasting, grading and operation of heavy equipment may commence. However, if nesting activity is detected, grading, blasting, and operation of heavy equipment shall be delayed until mitigation measures, developed in consultation with CDFG and USFWS, are implemented.

**11. Construction Operations Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall submit for Executive Director review and approval, a Construction Operations Plan that specifies measures to be implemented during construction to avoid impacts to sensitive habitat areas, visual resources, and water quality outside of the Disturbance Envelope. Following review



and approval of the plan by the Executive Director, permittee shall be responsible for implementing all elements of the approved plan. Such plan shall include the following:

- a. **Construction Area.** Plans shall identify the location of the entire construction area, including equipment storage, staging locations, and construction access routes. The construction area shall be limited to the minimum area needed to construct the project, and shall be delineated with temporary construction fencing. The construction area shall show that no construction materials, heavy equipment, construction activities or personnel will be allowed in environmentally sensitive habitat areas or within 25 feet of the coastal blufftop, other than to remove the existing septic tanks and to restore the blufftop.

Prior to any construction activity, the permittee shall install temporary construction fencing along the limits of the construction area to prevent construction activities from encroaching into adjacent terrestrial and marine habitat. The fencing shall be at least 3 feet in height, shall be securely staked and shall be maintained in good condition during the entire construction phase of the project. Native trees, particularly the cluster of Monterey Cypress trees located close to the construction site, shall be protected from inadvertent damage from construction equipment by wrapping the trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees.

- b. **Erosion Control Plan.** The plan shall identify all relevant best management practices (BMPs) to be implemented during construction to control erosion associated with construction activities. Erosion control plan shall also include provisions for stockpiling and covering of stored materials, temporary stormwater detention facilities, and shall prohibit grading and earthmoving during the rainy season (i.e., between October 15 and April 15) unless approved by the Executive Director. Erosion control plans shall contain provisions for specifically identifying and protecting adjacent marine habitat areas (with sandbag barriers, filter fabric fences, straw bale filters, etc.) from project-related runoff and sediment.

The Erosion Control Plan should make it clear that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff will be collected to settle out sediments prior to discharge from the site; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment should not be allowed; in any event, this wash water should not be allowed to enter storm drains or any natural drainage; (c) concrete rinsates, if any, should be collected and they should not be allowed into storm drains or natural drainage areas; (d) good construction housekeeping should be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of materials used in the treatment process and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather); (e) in order to protect the Southern Sea Otter and Black Swift and the invertebrates they feed upon within the subtidal habitat, no construction debris shall be allowed to enter the marine habitat; and finally (f) all





erosion and sediment controls should be in place prior to the commencement of grading and/or construction as well as at the end of each day.

- c. **Hazardous Material Storage.** Store petroleum products and other hazardous materials a distance of at least 20 meters (65 feet) from the coastal blufftop and construct a berm around the storage site sufficiently high to retain 1.5 times the amount of stored liquids. The fueling of all vehicles and construction equipment shall occur off site.
- d. **Spill Response Plan.** The Construction Operations Plan shall include a spill response plan or evidence that the applicant has contracted with a qualified local spill containment/cleanup contractor capable of responding to accidental releases of petroleum, concrete or other hazardous material.
- e. **Foreign Material Containment.** Measures shall be implemented to prevent foreign materials (e.g. construction scraps, wood preservatives, other chemicals, etc.) from entering the ocean adjacent to the site. A containment fence, netting, or functional equivalent shall be placed around all active portions of a construction site where wood scraps or other debris could enter the water. The containment fence and/or netting shall be cleared daily or as often as necessary to prevent accumulation of debris. Contractors shall insure that work crews are briefed on the importance of observing the appropriate precautions, implementing these measures, and reporting any accidental spills. Construction contracts shall contain penalty provisions, sufficient to provide for the retrieval and/or clean up of improperly contained foreign materials. No construction activities or material storage shall be allowed outside the defined Disturbance Envelope without prior Executive Director review and approval.
- f. **Procedures for Concrete Work.** All concrete work and concrete pours shall be conducted in a manner that avoids spills from entering the ocean adjacent to the project site. In each case involving concrete pours on site, a separate washout area shall be provided for the concrete trucks and/or tools. The washout area shall be designed and located so that there will be no chance of concrete slurry or contaminated water runoff entering the adjacent marine habitat, or into storm drains or gutters that empty discharge to the ocean.
- g. **Septic Relocation Plan.** A narrative shall be prepared describing how the tank and any piping will be removed and the area restored consistent with protecting natural resources and maintaining geologic stability.
- h. **Construction Cleanup.** Construction Operation Plans shall also show that within 30 days of conclusion of construction activities, all construction materials shall be removed.
- i. **Environmental and Condition Compliance Monitor.** Permittee shall employ an environmental monitor, with proven biological monitoring experience, who is approved by the Executive Director to ensure compliance with all mitigation requirements and resource protection measures during the life of the project construction and clean-up activities. The monitor shall be present for all phases of construction (including site preparation and fencing of sensitive habitat areas)



and shall have the authority to halt any action that might result in injury or mortality to southern sea otters, nesting bird species (black swift, cliff swallow, brown pelican, double-breasted cormorant, Pelagic cormorant, and Brandt's Cormorant) or other sensitive wildlife or habitat, and shall inform construction workers that construction vehicles and work activities shall avoid sensitive habitat areas outside of the defined project area. Monitor shall also have the authority to delay construction activities if southern sea otters or nesting bird species are observed during their respective breeding/nesting seasons within 500 feet of the Disturbance Envelope. The environmental monitor shall consult with CDFG and USFWS to develop and implement mitigation measures that should be taken if these species are found nesting on the project site (i.e., in sea caves, on bluff face, and on nearshore rocks).

## 12. Archaeological Mitigation.

- a. In order to assure that grading activities do not impact cultural or archaeological resources, the applicant shall contract with a qualified professional archaeologist to monitor all earth disturbance work within 3 feet of identified cultural and/or archaeological resources on the project site. The contract shall specify implementation of the Archaeologist Reconnaissance of Donald Sorenson Property, Big Sur, prepared by Archaeological Resource Service, February 8, 1977. In addition, the contract will require the contracted archaeologist to be involved in regular consultation with the contracted geotechnical engineer, biologist and contractor during construction to assure protection of biological and archaeological resources at the site.
- b. Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.

**13. Water Supply.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall provide evidence from Garrapata Water Company, or successor in interest for Executive Director review and approval, that serving the subject parcel with water for a single family dwelling will not result in the Company exceeding its permitted appropriation (currently 35 afy as allowed by State Water Resources Control Board Permit for Diversion and Use of Water Permit #21010).

**14. Water Treatment System.** PRIOR TO OCCUPANCY, the permittee shall provide verification from the Department of Environmental Health that the Garrapata Water Company or its successor in interest (e.g., a Garrapata Mutual Water Company) has installed an approved chlorination (or other approved) water treatment system on the existing Garrapata Creek water supply and that the water supply complies with state safe drinking water standards.



15. **Exterior Lighting.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit an exterior lighting plan which shall indicate the location, type and wattage of all light fixtures and include catalogue sheets for each fixture for the review and approval of the Executive Director. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Exterior light sources shall be prohibited if such light source would be directly visible from Highway 1 or other major public viewing area as defined in Section 20.145.020 V of the County Zoning Ordinance. Additionally, no such artificial lighting shall be directed onto environmentally sensitive habitats, including the shoreline and the adjacent sea within the Monterey Bay National Marine Sanctuary.
16. **Incorporation of County Conditions of Approval.** County conditions of approval pursuant to a planning authority in addition to or other than the Coastal Act continue to apply, provided that they are implemented in a manner consistent with these special conditions, namely County conditions #3, 4, 5, 8, 9, 10, 12, 13, 15, 25, and 26. All other conditions contained in County Resolution No 03073 are superceded by these Special Conditions.

## **IV. De novo Findings and Declarations**

The Commission found that the project approved by the County raised a substantial issue, and therefore has jurisdiction over the de novo coastal development permit (CDP) for the proposed project. The standard of review for this CDP determination is the County LCP policies, including the Big Sur LUP and the Coastal Implementation Plan, and the Public Access and Recreation policies of the Coastal Act. The Commission thus finds and declares as follows:

### **A. Project Description**

#### **1. Project Location**

The subject Laube-Engel property includes two adjacent parcels (APNs 243-251-012 and 243-251-013) that are each two-acres in size, located between Highway One and the sea, approximately 10 miles south of Carmel, and one-half mile south of Garrapata Creek, on a granitic headland known as Kasler Point (see Exhibit 1 and historic aerial photos of the site in Exhibit 2). The State Coastal Conservancy's two-acre open space property sits north of the Laube-Engel property, immediately south of Abalone Cove, and, as described in the visual resources section below, a scenic and conservation easement on the subject property protects seaward views from the Abalone Cove Vista Point along the Big Sur Coast Highway. As shown on Exhibit 1b, the southern Laube-Engel parcel (APN 243-251-012) contains a rocky shoreline, and is bounded on the southwest and west by the Pacific Ocean, along the northeast by the northern parcel, and along the east by Highway One. The northern Laube-Engel parcel is bounded on the north by the rocky shoreline within Abalone Cove, and to the east by the Conservancy parcel and Highway One.



The southern parcel contains an existing driveway that has been graded but remains otherwise unimproved except for a concrete gutter on the northern side of the roadway. The site also contains an excavated/graded building pad from work conducted by the previous property owner. The 1977 Sorenson staff report described Kasler Point, prior to grading and excavation, as a dome shaped, rocky headland jutting into the Pacific Ocean (see Exhibit 2, photos 1 and 2). However, as a result of excavation of the site and partial development by Sorenson, the site now consists of the nearly level building pad excavated down nearly 25-30 feet from the crest of the dome, and a westerly facing, nearly vertical excavated bluff, located about 70 to 100 feet inland of the coastal blufftop<sup>1</sup> (see Exhibit 2, photos 3 and 4).

Since construction of the approved Sorenson residence was never completed, other abandoned improvements related to earlier development efforts include reinforced concrete footings, drainage lines, inlets and culverts, water lines, underground utility trenches and a septic system. Additionally, the old building pad was constructed with a cut and fill grading operation, and fill material from the excavation appears to have been spread in the saddle, between Kasler Point and the excavated pad area, as well as on the edge of the slope northwest of the old building pad. Beneath the fill lies a thin layer of terrace deposit materials that include gravelly, silty and clayey sand, which lies atop dense granitic bedrock.

According to a geotechnical review conducted by Haro Kasunich (dated December 12, 2002), surface drainage currently runs down the driveway to an area just south of the graded pad. Two storm drains are located on the property to collect the runoff. One of the storm drains, located near the base of the driveway, collects stormwater runoff from the driveway drainage, the second, located on the north side of Kasler Point was probably designed to collect runoff from the previously approved entryway and yard area. Both stormwater culverts discharge onto granite bedrock.

## **2. Project Description**

The Laube-Engel project approved by the County (Exhibit 3) was for a 8,270 square foot residential dwelling, with an approximately 1,824 sf subterranean garage, for a total of 10,094 square feet (based on plans dated December 2002), located on the southern parcel. The County-approved project also included development within 100 feet of environmentally sensitive habitat, approximately 1,750 cubic yards of cut and 736 cubic yards of fill, development on slopes over 30 percent, and a lot merger that would consolidate the two two-acre parcels that make up this site.

As described above, the subject property was partially developed by previous owners (Sorenson). The current project uses generally the same access driveway and building site as that graded and excavated by the previous owner. However, following appeal of the project, the applicants modified the project design and placement of the residence, and submitted new plans, dated revised July 8, 2004 (Exhibit 5), that show the residence relocated slightly north of the County approved site, so that the northern portion

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<sup>1</sup> According to topographic contours shown on the site plan, the top elevation of the excavated bluff is about 90 feet and the base elevation is about 65 feet above mean sea level. The top of the coastal bluff seaward of the building pad is about 50 to 60 feet above mean sea level.



of the residence is now located on the northern parcel (somewhat similar to the first design submitted to the County). The residence has also been reduced from a total of 10,094 sf to 9,971 sf (a reduction of 123 sf). Residential site coverage would be 4,625 square feet, with 10,147 sf of permeable driveway and parking, and 948 sf of protected garden space.

Similar to the County-approved design, the revised July 8, 2004 residential design, which is now proposed for the *de novo* coastal development permit, includes a large two-story dwelling, with an additional underground basement that includes a two car garage, wine cellar, elevator, bathroom and mechanical room. The main portion of the house, located on the southern parcel, is still semi-elliptical in shape, however, the northern portion of the residence, made up of an additional elliptical-shaped section (which includes a home theater on the lower level, and bedroom, bath and laundry room on the upper level), is now located on the northern parcel. This northern portion of the house will require further excavation of the cut slope, but the base elevation has been lowered to minimize visibility of this portion of the structure.

The house has also been slightly rotated so that the long axis of the house is oriented more north/south, with the northern home theater portion of the residence set into the excavated bluff face, and the main portion of the house rotated out, away from the excavated bluff face. At this angle, the landward side of the house is separated from the excavated bluff face a distance of from 0 to 30 feet, and the protected garden, entryway and motor court are now located on the eastern side of the house, between the house and the bluff face. The approach to the underground garage is also located on the eastern side of the residence, between the excavated bluff, and a retaining wall that separates the motor court from the guest parking area west of the driveway turnaround. A stone terrace is located on the seaward side of the house at ground level outside of the living room/family room area, and two balconies are located along the seaward side of the upper level. A third upper level balcony is located at the northwest end of the house.

Because of its elliptical shape, the width of the house varies; however, as shown on the revised July 8, 2004 plans, the outboard (or seaward) edge of the house is located a maximum distance of approximately 65 feet from the base of the excavated bluff face. As a result, the outboard edge of the house is located approximately 25 feet from the top of the seaward coastal bluff in the area of the stone terrace outside the family room/living room area, approximately 35 feet from the top of the seaward coastal bluff in the area of the underground garage, and approximately 25 feet from the top of the seaward coastal bluff in the area established for guest parking.

The project also includes constructing retaining walls in several locations, including along the driveway (approximately 3-5 ft high), the base of the excavated bluff face (up to 12 foot high), and outboard of the turnaround and guest parking area (approximately 3 ft high).<sup>2</sup>

Aside from rotating and moving the residence northward, the revised July 8, 2004 design also differs from the design approved by the County in that a deck previously proposed seaward of the residence and

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<sup>2</sup> Retaining wall heights are approximate and are measured from elevations on revised plans dated July 8, 2004.



within 15 feet of the top of the seaward coastal bluff has been removed, the garage access and turnaround areas have been revised, and a guest parking area has been added south of the motor court area (see Exhibit 5).

The house will be constructed using concrete, glass and wood framing. Floors will consist of conventional concrete slabs, and the structure will use a pier and beam foundation system with footings that penetrate overlying fill and marine terrace deposits and are embedded at least 2 to 5 feet into the granite bedrock beneath the house footprint. Where native granite is not encountered at the slab sub-grade, concrete slabs would be constructed on compacted fill. According to the geotechnical review conducted by Haro Kasunich, excavations for the below grade garage and driveway entryway will require cuts of 8 to 16 feet. Plans approved by the County show the elevation of the garage and entry driveway at an elevation of 54 feet based on site and drainage plans dated November 4, 2002. The turnaround area south of the garage entryway is at elevation of about 64 feet.

The building will require additional grading for excavation of the basement, foundation and northern portion of the house, with 1,731 cubic yards of cut (445 cy for the residence, and 1,286 cy for the driveway and turnaround) and 419 cubic yards of fill (which is changed only slightly from the earlier design which required 1,750 cy of cut and 736 cy of fill).

While the site includes remains of the previous development, the Geotechnical review (submitted by Vicki Odello, C.E., dated December 2002) states that all improvements would be removed except for the driveway and septic leach fields. The 540-foot long driveway will be retained and surfaced with crushed granite. The existing septic system currently includes three side-by-side manhole covers, which service two existing septic holding tanks and a pump station, that are located in old compacted fill, very close to the coastal bluff top, southwest of the guest parking area. Previous plans considered relocating these facilities at least 15 feet from the coastal blufftop. However, the project design has since been modified so that the tanks will be removed from the blufftop, and a new septic tank will be located in the motor court area, at least 70 feet from the top of the coastal bluff. The septic system will still pump waste up to the existing leach fields that are located about 200 feet southeast of the house, and about 40 feet up-slope from the house site on the east side of the ridge. These leach fields were approved by the County and installed as part of the prior development permit (according to the Odello 2002 Geotechnical Report). The Garrapata Water Company will continue to provide water to the site through an existing water hookup.

## **B. Issues Identification and Analysis**

### **1. Visual Resources**

The project is located along the Big Sur Coast, which has specific policies for protecting the spectacular visual resources of this area of coast. The project approved by the County was found to raise a substantial issue because it was not designed to minimize visibility within the critical viewshed. The project design has since been revised based on plans dated July 8, 2004, but flagging of the new design



can still be seen from public viewing areas, and indicates that the proposed structure would block ocean views from these locations.

### **a. Applicable Policies**

The County's LCP is protective of visual resources within the Big Sur Critical Viewshed. The Big Sur Coast Planning Area Land Use Plan (LUP) Policy 3.2.2 defines the Critical Viewshed as everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and specific locations including, among others, Soberanes Point and Garrapata Beach.

Specifically, the Big Sur Coast Land Use Plan's Critical Viewshed Policy states:

***3.2.1 Key Policy - Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.***

Exceptions to Key Policy 3.2.1 are provided for in certain specific cases, including vacant parcels in the Rocky Point Area (LUP Policy 3.2.5.F). Big Sur Coast LUP Policy 3.2.5.F defines the Rocky Point exception area as follows (portions of policies below bolded for added emphasis):

***3.2.5.F Rocky Point Area Vacant Parcels. Existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point and from the southernmost developed parcel north of Abalone Cove to the northernmost developed parcel south of Garrapata Creek...***

At the time of LCP certification in 1988, the 1977 Sorenson permit had already been granted for development on the southern Kasler Point parcel, and a scenic and conservation easement had been obtained over much of the southern parcel and over the entire adjacent northern parcel, which precluded further development on the site. The southern parcel (APN 243-251-012) was, therefore, considered the northernmost developed parcel on Kasler Point, and thus within the Rocky Point exception area. Policy 3.2.5.F allows that parcels within the Rocky Point exception area be permitted to be used for residential development, subject to the policies of Section 3.2.4 of this plan and the following standards outlined in Section 3.2.5.F:

***... Additional standards shall include keeping driveways as narrow as possible, avoiding paving where practical and consolidation of driveways; the use of roof and surface treatments, colors and materials which will visibly blend with the surrounding environment; the use of berming***



*and other measures designed to minimize views of structures without blocking ocean vistas seen from Highway 1; prohibiting the dumping of excavated materials over the coastal bluff, and additions, antennae, night flood lighting, or other improvements in view of Highway 1 without separate permit consideration; and dedication of scenic easement over undeveloped portion of lot. Guesthouses shall be attached to the main dwelling except where they can be sited to better implement these policies.*

The referenced Big Sur LUP Section 3.2.4 contains the following applicable policies:

*3.2.4.A.1. So that the visual continuity may remain undisturbed, the design and siting of structures, whether residential, commercial, agricultural, or public, and access thereto, shall not detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline.*

*3.2.4.A.2. New applicants, when selecting a building site, must consider the visual effects upon public views as well as the views and privacy of neighbors. The portion of a parcel least visible from public viewpoints will be considered the appropriate site for the location of new structures. New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides or silhouetted ridges. Sites shall not leave excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover.*

*3.2.4.A.3. New development should be subordinate and blend with its environment, using materials or colors that will achieve that effect. Where necessary, appropriate modifications will be required for siting, structural design, size, shape, color, textures, building materials, access, and screening.*

*3.2.4.A.4. Landscape screening may be used wherever a moderate extension of native forested and chaparral areas is possible. Other screening must be of similar plant or tree species.*

*3.2.4.A.5. Sites for new structures shall be selected to avoid the construction of visible access roads and minimize the extent of environmental and engineering problems resulting from road construction.*

*3.2.4.A.6. New roads providing residential, recreational, or agricultural access will be considered only where it has been demonstrated that the use of existing roads is not feasible, or that permission for the use of an existing road is shown in writing to be unobtainable from neighboring property owners.*

*3.2.4.A.7. New roads shall avoid steep slopes and shall be located along the margins of forested areas, along natural land contours, or within existing vegetation. Road shall be aligned to minimize removal of native trees, and constructed to minimum standards consistent with the requirements of fire safety and emergency use. Drainage and erosion control measures must*





*be adequate to prevent erosion. During road construction, side-casting of earth materials shall not be permitted; all materials not used for on-site fill shall be removed from the area.*

Corresponding regulations from the Coastal Implementation Plan include:

*20.145.030.C.2.a. All structures, whether, residential, commercial, agricultural, or public, and access thereto, shall be designed and sited so as not to detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline. (Ref. Policy 3.2.4.A.1)*

*20.145.030.C.2.b. Buildings shall be located so as to minimize their visual impact upon public views as well as the views and privacy of neighbors. New structures shall be located on that portion of a parcel least visible from public viewpoints.*

*New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides silhouetted ridges. Sites shall not leave excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover. (Ref. Policy 3.2.4-A-2, 3.7.3.A.1 and 5.4.3.L.4)*

*20.145.030.B.6.e. New structures shall be sited so as to avoid the construction of visible access roads and minimize the extent of environmental and problems engineering resulting from road construction. (Ref. Policy 3.2.4.A.5)*

The Big Sur LUP also includes recommended action 3.2.6.3 that states:

*Where no other feasible mitigation measures for eliminating the adverse visual impacts of new development in the critical viewshed are available, the County may institute and utilize a Transfer of Development Credits (TDC) system that will permit development credits for a parcel determined to be developable except for the critical viewshed restrictions. Such credits may be transferred at the owner's option to a receiving parcel not in the viewshed and otherwise found to be suitable for an increased density of development. The use of transferred credits will be allowed as a conditional use under this Plan. However, the increase in residential density on the receiving parcel shall not exceed twice that which is specified by Section 5.4 of this Plan, except where: a) an environmental impact analysis reveals site suitability for more units; b) traffic impacts will be mitigated through reduction in the number of driveway encroachments onto Highway 1; and c) consistent with all other standards listed in this Plan.*

*Critical viewshed parcels protected under a TDC system shall be secured through enforceable restrictions (e.g., scenic easement dedication), subject to County Counsel review and approval of the applicable documents.*



## **b. Analysis of Consistency with Applicable LCP Policies**

The Big Sur Coast Land Use Plan (LUP) visual resource Key Policy section 3.2.1 generally prohibits new development in the Critical Viewshed, i.e., visible from Highway 1 and other defined public vantage points. The purpose of this LCP policy is to protect the Big Sur Coast's highly scenic views, enjoyed by millions of visitors per year, from the individual and cumulative impacts of development. Such protection is achieved, in part, by requiring that new projects be concealed from public view.

Based on the critical viewshed definition, if a structure is visible from Highway One and major public viewing areas including turnouts, it is by definition within the critical viewshed. The Big Sur Coast LUP does provide some exceptions to the strict application of Key Policy 3.2.1 in certain specific cases where vacant lots exist in certain partially-developed residential enclaves located in the Critical Viewshed--including the nearby Rocky Point area. As described above, the Rocky Point exception area is defined in LUP Policy 3.2.5.F as "existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point." Since development had been already been approved on APN 243-251-012 (the southern parcel of the subject site) prior to certification by the Commission, at the time of certification, it was understood that the southern parcel was located within the Rocky Point Exception area. However as the northern parcel was not to have any development on it, it was understood at the time of certification that this parcel was not part of the Rocky Point exception area.

While it can be argued that since the site was never actually developed in accordance with the permit granted by the Coastal Commission it could still be considered a vacant parcel (other than what structural ruins remain), staff involved in the creation of the Big Sur LUP concede that the southern parcel was considered at the time of certification to be part of the Rocky Point Exception area, therefore, the County used the correct standard of review when it approved the project. However, the project was subsequently appealed and the Commission found Substantial Issue because the house was still visible from Hwy 1 and was not consistent with the Rocky Point exception area requirements for minimizing visibility.

Although it is often incorrectly referred to as an "exemption area," location in the Rocky Point Exception area does not mean that "anything goes" or that the lot is somehow no longer in the Critical Viewshed. Instead, the Rocky Point Exception Area standards identified in LUP Policy 3.2.5.F allow residential use on existing lots in the Critical Viewshed if measures are incorporated to insure that visual impacts are minimized and do not block ocean vistas as seen from Highway 1 (LUP 3.2.5.F). The policies call for siting on the portion of the lot least visible from public viewpoints (LUP 3.2.4.A.2). Modifications for siting, design, size and access are required where needed to insure that new development be designed to blend in with, and be subordinate to, the natural environment (LUP 3.2.4.A.3). And dedication of a scenic easement over the undeveloped portion of the lot is required (LUP 3.2.5.F, and CIP Section 20.145.030.B).

As described above, and shown on plans dated revised July 8, 2004 (Exhibit 5), following appeal of the project to the Commission, the applicants revised the design and location of the structures in an attempt



to make the house less visible. Specific changes include moving the structure further northward so that the home theater portion of the residence is now located on the northern parcel, and lowering the base and roof elevation of the northern portion of the house so that it would not be seen from Highway One. According to the applicant's representative, the square footage of the house was also reduced approximately 123 sf (from 10,094 sf to 9,971 sf). After staking of the new design, Commission staff met with the architect and applicant's representative at the site to conduct a visual analysis of the new design (as represented by staking and flagging of outer walls and roofline). As a result of the site visit, staff determined that while the revised design is not visible from Highway One directly east of the site, due to existing topography, a portion of the house is still be visible from Highway 1, both north and south of the site, and as viewed from either direction, would block ocean views.<sup>3</sup> Photos of the current project are shown in Exhibit 6.

The parcel is zoned RDR/40(14) meaning that the height limit is restricted to 14 feet above average natural grade. The revised July 8, 2004 plans submitted by the applicants (Exhibit 5) show an approximate average natural grade at an elevation of about 76 feet. Sheet 1 of the plans show that this was calculated given a high point at natural grade of 87 feet, where the northern portion of the house would be set back into the excavated bluff, and a low point at natural grade of 65 feet, at the outboard edge of the first floor. If one were to imagine the natural average grade being a straight line between these points, the average elevation of that line would be at 76 feet, as calculated.

However, due to work accomplished by the previous owner, most of the hillside has already been excavated to create a fairly flat building site at an elevation of about 63 feet, so the existing topography is not actually a straight line between these points. Although the northern portion of the house will be set into the excavated bluff, at least 80% of the house would be located on the fairly flat area. Furthermore, as viewed from the west (or offshore), at a height above the existing grade of about 26 feet, the proposed structure appears to be very massive and to have nearly twice the allowable height limit set for this zoning district.

While, the maximum height of the structure was technically measured correctly, according to the definition given in the County LCP (in Section 20.06.630)<sup>4</sup>, it results in a structure that would be visible from public viewpoints inconsistent with LCP resource protection policies. That is, with a peak roof elevation of 90 feet, the structure extends beyond the existing topography and is visible from public view points, inconsistent with LCP visual resource protection policies. However, since the 14-foot height is a maximum, it may be reduced if required to meet other LCP requirements.

The LCP requires incorporating measures to insure that visual impacts are minimized and that new development does not block ocean vistas as seen from Highway 1 (LUP 3.2.5.F), siting new development on the portion of the lot least visible from public viewpoints (LUP 3.2.4.A.2), and

<sup>3</sup> Visual analysis was conducted using binoculars to locate the staking, and then viewing the site without binoculars to determine whether the project once identified would still be visible with unaided vision. After doing so, it was determined that flagging representing the proposed house was visible and would block ocean views from Highway One both north and south of the site.

<sup>4</sup> Height of structure means the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure, but excluding certain features, as specified in Chapter 20.62 (Height and Setback Exceptions) of this Title



modifications where necessary for siting, design, size and access where needed to insure that new development be designed to blend in with, and be subordinate to, the natural environment (LUP 3.2.4.A.3). Policies also require that development be designed to minimize alterations of the natural landform and not leave excavation scars (LUP3.2.4.A.2).

The previous property owners already accomplished major excavation of the site many years ago, and the proposed project has been sited in this same area since it is the portion of the parcel least visible from public viewpoints. While the project has been sited in this area to minimize the amount of additional excavation and landform alteration necessary, it does propose additional excavation for the northern portion of the house and a basement garage. Given the large landmass between Highway One and the building site, the fact that the building pad sits at least 25 to 30 feet below the top of the excavated bluff, and the fact that the project is planning further excavation for a lower level garage, it is not unreasonable to expect a structure could be sized and located so that it would not extend beyond the existing topography and block ocean views.

As currently designed (based on the revised July 8, 2004 plans), the project's size, height and visually prominent location (rotated out from the excavated bluff face) still prevent conformance with the LCP's visual resource protection policies for views seen from Highway 1. While large homes are often the preference of coastal property owners these days, policies of the Big Sur LUP require that the siting, size and design of homes be modified where necessary to minimize visibility in the critical viewshed. Zoning for the site also restricts the maximum height of main structures to be no more than 14 feet above average natural grade. While main structures in areas zoned RDR are allowed a maximum height of 30 feet, most of the residential parcels located between Garrapata Creek and Rocky Point were intentionally constrained with a maximum 14-foot height limit, specifically to protect visual resources along the coast.

The previously approved coastal permit (A-174-77 Sorensen) for a 3,950 sq.ft. residence demonstrates that it would be feasible to minimize visual impacts by building a smaller-sized structure that would not be seen at all from the public viewpoints. Furthermore, at 9,971 sf (7,990 sq.ft. single family dwelling + 1,981 sf garage/basement) the design is still more than twice the size of the previous permitted residence, and nearly 5 times the size of that given for the national average house size.<sup>5</sup> Since the proposed footprint of the proposed residence is already at 4,625 sf, even a one-story house with this site coverage would still provide a large home on the site.

Since it is feasible to reduce the height and/or size of the house so that it is not visible from Highway One, as required by the Rocky Point exception area development standards outlined in the Big Sur LUP Policy 3.2.5.F and the policies in the Big Sur LUP Section 3.2.4, the revised design is clearly not consistent with LCP standards for the Rocky Point exception area. Since the top of the structure is what is visible from the public viewpoints along Highway One, a reduction in the height of the structure is the most effective way to conform to LCP requirements. Therefore, Special Condition 1.a.1 requires the final plans be further modified so that no portion of the structure will be visible from public viewing

<sup>5</sup> Based on the National Association of Home Builders, the size of the average new house in the year 2003 was 2,230 square feet, compared with 1,500 square feet in 1970.



areas (as defined in the local coastal program; e.g., pullout at Rocky Point and Highway One roadway edge north of Garrapata State Beach), and in no case is greater than 14 feet above average natural grade. Additionally, to prevent lighting of the residence from adversely impacting views, the Special Condition 15 prohibits lighting that can be seen from Highway One and major public viewing areas, and does not allow lighting of the shoreline or adjacent sea.

Furthermore, the project proposes to continue use of the existing driveway developed by the previous owner. The driveway is located on the southern parcel and so is within the Rocky Point exception area. Rocky Point exception area development standards require keeping driveways as narrow as possible, avoiding paving where practical, and use of surface treatments, colors and materials which will visibly blend with the surrounding environment. For fire protection, CDF requires a minimum driveway width of 12 feet. The driveway has already been installed pursuant to the previous permit, and was required to be only 10 feet in width. However, in some places it is wider. Additionally, there is a 2 foot wide paved gutter along the side of the driveway. Given that the widest fire truck in Big Sur is 8 feet, the existing driveway in the viewshed is of adequate width for fire protection and should not be widened, as provided for in Special Condition # 1.a.3.

Development standards also require the dedication of scenic easements over the undeveloped portions of a lot. A scenic and conservation easement was granted over most of the northern parcel and portions of the southern parcel by the previous owner (Sorenson), and accepted by the State Coastal Conservancy on March 11, 1983 (and recorded on May 11, 1983), as shown on Exhibit 4. Among other things, the scenic and conservation easement, requires that visual access to the north parcel from Highway One be guaranteed, and prohibits any blockage of, or interference with, public views by the erection of any other types of structures or planting of trees within the scenic and conservation easement. However, the eastern end of the southern parcel, which provides ocean views visible from Highway 1, remains unprotected (see Exhibit 6). Additionally, based on past permit experience of other development the Big Sur Coast, further development, such as remodels and later additions, on existing residences in viewshed parcels have resulted in encroachment of the viewshed. Therefore, to ensure that future development or additions to the approved house will not be allowed to extend into the Critical Viewshed, the permit has been conditioned to require a new scenic and conservation easement be recorded over the remainder of the property not already protected by the existing easement, outside of the final approved Residential Building Envelope, which will allow for the proposed new development and the existing roadway (as further conditioned and approved by this permit) but which will prevent further intrusion into the airspace, and into the Critical Viewshed, beyond what is approved by this permit.

Additionally, because the recently complete Periodic Review found that excessive roadside clutter also adversely affects visual resources along the Big Sur Coast, the easement shall also prohibit landscaping and construction of gates, light posts, or any other structures in areas where they could block ocean views. And in order to maintain the rustic character of the area, consistent with LCP policies, the permit requires that the driveway remain as narrow as the existing roadway, and retain a gravel aggregate roadbed or use other suitable roadbed materials in order to minimize visibility and blend in with the surrounding environment.



Finally, the northern parcel is located in the Critical Viewshed, and outside of the Rocky Point exception area. Since there are no other buildable sites on the northern parcel where a residence could be constructed consistent with the Critical Viewshed policies, any further development on the northern parcel would be inconsistent with LCP policies and would have an adverse impact on visual resources. The Commission previously found that consolidation of the two subject parcels into one combined parcel would reduce the number of remaining vacant parcels within the Critical Viewshed, thereby easing cumulative problems that would result from further development on this site. While the previous owner never accomplished this task, the fact remains that the cumulative affects of further development on the site would have adverse impacts on the Big Sur critical viewshed. Furthermore, since the previous owners did not accomplish the parcel merger, they did not fully comply with the previous permit. The County approval also required that the two parcels be merged to one, combined parcel. Therefore the Commission has conditioned this permit to require a lot merger, prior to issuance of this permit, to ensure that the two subject parcels are consolidated into one parcel. No additional coastal development permit is necessary for this merger to be finalized, however, if this permit is not exercised, an enforcement action would be necessary to ensure that the two parcels were merged as required by the pervious permit.

### **c. Conclusion**

Since the project approved by the County was found to be visible from public viewpoints along Highway One, the applicants revised the design to relocate the house and lower the base elevation of the northern portion of the house. However, based on field observations, a portion of the main part of the house is still visible from public viewpoints along Highway One. It is, therefore, necessary to revise the design by reducing the size of the house, lowering the base floor and/or peak elevations, and/or redesigning the house to one level, in order to meet the visual requirements. Given that a smaller (but still relatively large), 3,950-sf home that would not be visible within the critical viewshed was previously approved on this site, there is no justification to approve a nearly 10,000 sf structure that does not meet the scenic resource protection policies when other measures can be taken to further minimize views of the structure as required by LCP policies.

Thus, as proposed, the revised project design (dated 7/8/04) does not comply with the visual and scenic resource protection standards of the LCP because additional measures can be taken to reduce the size and/or height of the structure in order to avoid blocking ocean views from Highway 1. Therefore, the permit conditions require the project be modified, so that no portion of the structure will be visible from public viewing areas (as defined in the local coastal program; e.g., pullout at Rocky Point and Highway One roadway edge north of Garrapata State Beach), and in no case exceed 14 feet above average natural grade. Alternatives that might accomplish these tasks include lowering the base floor elevation, lowering the height of the 2<sup>nd</sup> floor peak elevation, or reducing the design to one story. Revised project plans must be submitted for review and approval by the Executive Director, and the new design adequately flagged for confirmation in the field.

To ensure protection of scenic resources along the eastern portion of the property, which provides views of the ocean from Highway One, the permit has also been conditioned to require a scenic and conservation easement over the remainder of the site, outside the final approved Residential Building



Envelope that prevents further development of any structure or landscaping that would block ocean views, requires the existing roadway not be widened, and that suitable materials be used for the roadbed to ensure that the road blends into the surrounding environment. Finally, to reduce the potential for cumulative impacts from further development on the northern parcel, the project has been conditioned to require consolidation of the two subject parcels into one combined parcel, prior to issuance of the permit.

Thus, only as conditioned, does the Commission find that the project is consistent with the visual resource protection policies of the Monterey County LCP.

## **2. Environmentally Sensitive Habitat Areas**

The project has the potential to disrupt environmentally sensitive Smith's blue butterfly habitat by removal of seacliff buckwheat plants, which serve as the host plant species for all life stages of the butterfly.<sup>6</sup> The project also has the potential to disrupt environmentally sensitive coastal bluff scrub habitat, and rocky intertidal and marine habitats adjacent to the site as a result of construction activities and uncontrolled drainage on top of the coastal bluff. Additionally, since the site is located at the heart of the geographic range for the southern sea otter (*Enhydra lutris*), construction activities occurring during the sea otter breeding season, between December and March, could affect sea otter pupping if the disturbance causes adults to abandon their pups. Finally, construction activities have the potential to disrupt nesting birds if present.

### **a. Applicable Policies**

Relevant LCP policies include the following:

**3.3.1 Key Policy - All practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The development of all categories of land use, both public and private, should be subordinate to the protection of these critical areas.**

**3.3.2.1. Development, including vegetation removal, excavation, grading, filing, and the construction of roads and structures, shall not be permitted in the environmentally sensitive habitat areas if it results in any potential disruption of habitat value. To approve development within any of these habitats the County must find that disruption of a habitat caused by the development is not significant.**

**3.3.2.3. The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. Where development has already occurred in**

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<sup>6</sup> The site also contains two patches of Monterey cypresses, which have been determined not to serve as monarch butterfly over-wintering sites because the site, on top of the coastal headland, is unprotected from strong winds and the area lacks the necessary food source for the butterflies. Since the cypress trees will not be impacted by project activities, potential impacts to monarch butterflies are not further discussed in this report.



*areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.*

*3.3.2.4. For developments approved within environmentally sensitive habitats, the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) associated with the development shall be limited to that needed for the structural improvements themselves. The guiding philosophy shall be to **limit the area of disturbance**, to maximize the maintenance of the natural topography of the site, and to favor structural designs which achieve these goals.*

*3.3.3.B.1. Development on parcels adjacent to intertidal habitat areas should be sited and designed to prevent percolation of septic runoff and deposition of sediment.*

*3.3.3.B.4. Site design techniques intended to screen structures from view of Highway 1 shall not involve major land modification that may impact adjacent marine habitats.*

## **b. Analysis of Consistency with Applicable LCP Policies**

The LCP gives high priority to the protection of the Big Sur Coast's environmentally sensitive habitat areas (ESHAs). Section 3.3 of the Big Sur LUP identifies the following habitats, among others, as ESHA: rare and endangered species habitat; all marine wildlife haul-out, breeding and nesting areas; all wildlife reserves, including all tideland portions of the California Sea Otter State Fish and Game Refuge; nearshore reefs, tidepools, islets and offshore rocks; and seacaves

### **Smith's Blue Butterfly Habitat**

While seacliff buckwheat (*Eriogonum parvifolium*), itself, is not a listed species, it is one of only two *Eriogonum* species that serves as a host plant for the entire life cycle of the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithii*). Emerging in late summer and early autumn, adult Smith's blue butterflies mate and lay eggs on the flowers of these host plants. The eggs hatch shortly thereafter and the larvae begin to feed on the flowers of the plant. Following several weeks of feeding and development, the larvae molt to a pupal stage, beginning a ten-month period of transformation. The following year, as the *Eriogonum* again flower, the new adults emerge. Since the seacliff buckwheat is one of only 2 host plants for the endangered Smith's blue butterfly, which spends its entire life cycle associated with these plants, it is critical habitat for this rare and endangered species, and so is considered as environmentally sensitive habitat where it is located within the range of the Smith's Blue Butterfly. The Smith's blue butterfly have historically ranged along the coast, from Monterey Bay south through Big Sur, to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. The project site is located within the range of the federally endangered Smith's blue butterfly; thus the buckwheat on site is considered as environmentally sensitive habitat.

The Big Sur LUP key policy requires that **all practical efforts shall be made to maintain**, restore, and if possible, enhance Big Sur's environmentally sensitive habitats (LUP 3.3.1), and that **development**, including vegetation removal, excavation, grading, filing, and the construction of roads and structures,





shall not be permitted in the environmentally sensitive habitat areas if it results in any potential disruption of habitat value (LUP 3.3.2.1). Therefore, the project should make all practical efforts first to avoid development and activities that would impact environmentally sensitive habitat, not allow development in esha if it would result in a significant disruption of habitat, and where development is allowed, mitigate for unavoidable impacts that do not cause a significant disruption of habitat.

The first biological mapping conducted on the site was done in 1999 (Exhibit 7) and evaluated habitat areas that would be impacted by the very first project design which was sited across both the north and south parcels, somewhat similar to that currently proposed. Because there were earlier concerns about the visibility of the first design, the project was relocated entirely on the southern parcel and biological impacts reevaluated. While the County approved this revision, the Commission found that the project still raised a substantial issue with regards to environmentally sensitive habitat areas because it still had the potential to remove a significant number of seaciff buckwheat plants.

As described previously, following appeal of the County-approved design, the applicants have since revised their project plans again, once more moving the proposed design northward, so that the northern portion of the house would be located on the northern parcel. They also submitted other information not previously included in the project files, including an updated biological report dated December 14, 2002, with a map showing the distribution of seaciff buckwheat as mapped in September 2, 2000 (which updated and revised the mapping conducted in 1999 that was previously included in the Substantial Issue report). The December 2002 biological report, that describes the year 2000 mapping, and was used to evaluate the County-approved design, stated that approximately 121 seaciff buckwheat plants "are present within areas likely to be affected by the project," i.e., approximately 121 buckwheat plants are located within the existing driveway and building envelope, as shown on the plans. The report goes on to state "...although the subject properties support many more seaciff buckwheat plants (at least 834 which will not be affected by this project), the loss of about 121 plants will contribute to the overall decline of available habitat." The County approval thus required restoration of the property with replacement of seaciff buckwheat using a 3:1 replacement ratio.

While the 1999 biological map showed only patches of buckwheat found on the Southern parcel, the 2000 mapping shows plots of buckwheat observed on both the north and south parcels, with a total of approximately 1,026 plants (somewhat more than the 834 +121 plants mentioned in the 2002 report). A rough overlay of the current project design (dated July 8, 2004) atop the September 2000 biological mapping, conducted by Commission staff (Exhibit 8), shows that while approximately 915 buckwheat plants are located on the northern parcel in areas that are not proposed for development, approximately 111 (or about 10%) of the buckwheat plants are located in the building envelope on the southern parcel. However, most of the buckwheat patches within the building envelope are located outside of the proposed driveway and building footprint, with only about 8 plants actually located near the main residence, and about 20 plants located in the existing driveway. Other areas of buckwheat on the southern parcel are located on the slope north of the existing driveway, or along the southeastern side of the driveway, which in either case should not be impacted since the existing driveway location actually just skirts these areas and is not proposed for widening. Therefore a total of from 28 to 111 seaciff buckwheat plants could be impacted on the southern parcel by the current project.



While past surveys have not identified Smith's blue butterfly on the site<sup>7</sup>, according to the entomologist Dick Arnold, (who is an expert on Smith's blue butterfly, and is referred to by the project biologist as establishing the protocol for presence/absence surveys) it is possible that other confounding factors, beyond the actual butterfly absence, may be to blame (such as variable climatic conditions, or use of other areas of the property outside of the surveyed site; pers comm. 10/15/04). Mr. Arnold further stressed that because of the location of the site in the middle of the butterfly's range, and the close proximity of the site to historic butterfly sightings both north and south of the site (in Palo Corona Ranch, Garrapata State Beach, and further south), it should be presumed that Smith's blue butterfly would make use of the area under the right conditions, and thus the buckwheat plants should be considered as sensitive habitat and protected appropriately.

As described above, the majority of the buckwheat plants are located on the northern parcel, outside of the project site and beyond construction activities. While it appears, from the project overlay on the most recent biological mapping (dated September 2000, that the revised project may actually impact fewer plants than the 120 mapped previously (see Exhibit 8), project and associated construction activities occurring within the building envelope also have the potential to remove seacliff buckwheat and thus diminish potential Smith's blue butterfly habitat. However, further review of the project relative to the more recent mapping has also shown that the project has already been sited in a way that minimizes impacts to buckwheat plants, and the driveway can't be relocated to further avoid patches in the eastern end of the parcel because of an easement to the north and the property boundary on the south). Furthermore, since it has already been graded, continued use of the existing location of the

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<sup>7</sup> The project biologist also conducted surveys to determine presence or absence of the butterflies on the site during the flight season in two different years, June 16 through September 2, of 2000, and June 25 to August 25, 2003. Results of the 2000 butterfly surveys were described in the December 2002 biological report. Results of the 2003 butterfly surveys were described in a letter report dated September 1, 2003. According to the reports none of the surveys conducted in 2000 or 2003 observed any Smith's blue butterflies on the project site during the days when observations were made. The December 2002 biological report noted that "*despite the negative results of surveying conducted in 2000, Smith's blue butterfly may be currently using the extensive suitable habitat on the subject properties; if so, project implementation could result in taking of Smith's blue butterfly,*" and stated that "*because of the existence of historical records of Smith's blue butterfly from sites adjoining the subject property, and the length of time which [had] elapsed since the 2000 survey, ...an additional survey for Smith's blue butterfly be conducted during the flight season preceding the start of project activity... [using a protocol that indicates] weekly surveys through the blooming period of the buckwheat be conducted, with a minimum of 5 visits spaced at 7-10 day intervals. Or alternatively, the presence of Smith's blue may be assumed and project activity could commence (and impacts mitigated), according to the butterfly's assumed presence,*" and included recommended mitigation measures (fencing area to avoid contact with heavy equipment, signing the areas, watering areas of disturbed soil to keeping dust down, avoiding construction activities during the flight and breeding period of June-September, and replacing removed plants at a 3:1 replacement ratio). The report also stated that mitigations for Smith's blue butterfly be made in consultation with the Ventura field office of the USFWS.

As recommended, a second butterfly survey was conducted over 10 days between June 25th and August 25th, 2003, and again did not observe any Smith's blue butterflies on the project site. However, the 2003 letter report indicated that Smith's blue butterflies were found ½ mile north of the subject site in the Garrapata Creek watershed (on the one day that this control site was used) and at a second control site approximately 3 miles north of the site. According to an email response from the U.S. Fish & Wildlife Service (submitted by appellant McAllister), USFWS staff stated that "negative survey results from a single year are not conclusive, and it should not be concluded that the species does not use the site." The USFWS response indicates that they were not aware of the previous survey conducted in 2000; however their response indicates that a negative result obtained from a limited amount of observations can not be used to confirm that Smith's blue butterflies do not use the site. In fact the regional seacliff buckwheat distribution map shows that medium and high quality buckwheat stands extend from north of Garrapata State Beach to south of Notley's landing.



driveway better protects the existing resources and so is preferable over the additional biological impacts and landform alteration that relocation would require.

Thus, although the project will result in the loss of habitat through the removal of buckwheat plants, the removal is limited to that needed for structural improvements themselves. The project will also be required to protect remaining plants from construction activities, and restore and enhance the remaining habitat, outside of the coastal bluff setback zone (described in the Hazards section below), by replacing the plants removed using a 3:1 replacement ratio. Restoration shall be accomplished according to a restoration plan substantially in conformance with restoration described in the December 2002 biological report, to be reviewed and approved by the Executive Director, so that no significant disruption of habitat occurs as a result of the project. Additionally, to reduce impacts to larval and adult life stages of Smith's blue butterfly, site grading should be timed to occur before and/or after the flight and breeding period of the butterfly (June through September) and a biological monitor present during construction activities.

#### **Coastal Bluff Scrub Habitat**

The December 2002 biological report also identifies the entire house site as being located within the Coastal Bluff Scrub habitat (see Exhibit 7), which the California Department of Fish and Game considers to be a threatened plant community. Native plants in the coastal bluff plant community on site include sea lettuce (*Dudleya caespitosa*), bluff lettuce (*D. farinosa*), sea pink (*Armeria maritima*), California beach aster (*Lessingia filaginifolia* var. *californica*), Douglas iris (*Iris douglasiana*) and seaciff buckwheat (*Eriogonum parvifolium*). The coastal bluff scrub habitat has been heavily impacted by invasive exotic plants, with the dominant plant in the building envelope being Hottentot fig, or ice-plant (*Carpobrotus edulis*), an invasive plant species from South Africa, which occupies most of the coastal terrace seaward of the existing building site.

As shown in photos of the site (Exhibit 6), most of the building envelope where the project staking has been located has already been excavated to bare ground, and the habitat severely degraded by past actions of the previous owner, and the extent of invasive ice-plant. Therefore, project impacts to this habitat are expected to be minimal, and not expected to cause a significant disruption of the habitat. As described above, buckwheat plants impacted by the project will be replaced at a 3:1 replacement ratio. However, since invasive plants occupy much of the site, and have the potential to further encroach into areas that are disturbed by construction activities, the project has been conditioned to require the removal of invasive exotic plants and restoration of an area equivalent to the site coverage occupied by the house and protected garden (4625 sf + 948 sf = 5,573 sf) with landscaping that includes native plants appropriate to the coastal bluff habitat. Restoration shall be based on a landscape plan that has been reviewed and approved by the Executive Director. In order to ensure long-term maintenance of the restored habitat, the 5,573-sf restoration area shall only include restoration conducted outside of the blufftop setback zone. While additional efforts may be taken within the blufftop setback zone to remove non-native invasive species and provide landscaping using native, drought tolerant species, such areas shall not be considered as accomplishing the restoration requirement above.

Additionally, LUP policy 3.3.2.3 requires deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels



containing such habitats. Thus the project has been conditioned to require a scenic and conservation easement over the remainder of the parcel, outside of the final approved Residential Building Envelope, in order to protect the native coastal bluff scrub plant community, as identified in the September 2002 biological mapping.

### **Marine Habitats, Inter-tidal areas and Sea Otters**

The project also has the potential to disrupt sensitive marine habitats adjacent to the site. The 1999 Biological report indicates that the Kasler Point area, is located at the heart of the range of the Southern sea otter (*Enhydra lutris nereis*), which is listed as threatened under the Federal Endangered Species Act. The biological report indicates that construction activities occurring between December and March could affect sea otter pupping (by causing sea otters to abandon their pups if disturbed), and that additional project excavation material and stormwater runoff that entered the inter- and sub-tidal zones, would adversely impact nearshore invertebrate habitats used for foraging by the Southern sea otter. Since this population has undergone five successive years of population decline, such affects would be deleterious to this already threatened species. The permit has therefore been conditioned to prohibit excavation, blasting and operation of heavy equipment between the months of December through March to avoid disturbance of Southern sea otter pupping activity.

As noted above, the impervious surface area of the development is substantial, exceeding 15,000 sq. ft., and surface water runoff will be increased due to these impervious surfaces, which can cause increased erosion of the site and increased sediment input to the adjacent tidal and marine habitat. Concerns were also raised about the potential for water quality impacts from use of the existing septic tanks located on the bluff. However, following appeal of the project, the applicants have since revised the design and location of the septic system. As currently planned, the existing septic tank, located southwest of the guest parking area, and very near the bluff edge, will be abandoned and removed, and a new septic system installed in the motor court area, pending approval by the Division of Environmental Health. Since the geologic report indicates that cracks have developed between the existing septic tanks and the bluff, and further failure could occur, it is important to remove the septic tank before a more catastrophic failure is caused. Removal of the septic system from near the bluff, will serve to reduce water quality impacts that such a system, leaching into the thin layer of marine terrace deposits and fill over granitic bedrock, might have on adjacent inter-tidal areas, as well as the potential for catastrophic failure. However, removal activities very near the bluff edge may destabilize the bluff and cause additional sediment to enter the inter-tidal zone adjacent to the site. Thus the permit is conditioned to require removal of the existing septic tanks, in a manner that protects the marine habitat from erosion and sedimentation. A drainage and erosion control plan is also required to ensure that no adverse impacts occur to the intertidal and marine habitats adjacent to the property as a result of development of the site and removal of the septic tank. It may be necessary for such erosion control to include silt fencing around the perimeter of project activities, especially around the septic tank removal area, to ensure that no construction debris or sediment from construction activities enter the inter-tidal zone, impacting invertebrate marine organisms and reducing sea otter foraging habitat.

With mitigation measures to prohibit construction from December through March to avoid disturbance to sea otter pupping, removal of the abandoned septic tanks and relocation to the motor court area,



installation of protective fencing or other measures to ensure that construction debris does not enter adjacent tidal and marine habitats, and implementation of an approved drainage and erosion control plan, the project will protect sensitive marine habitat areas adjacent to the site, consistent with LCP policies.

### **Bird nesting sites**

The Big Sur LUP considers all wildlife nesting areas as environmentally sensitive habitat. According to the December 2002 biological report, the site provides potential nesting sites for several bird species.

A sea cave is present about 75 yards northwest of the project site, and construction activities (especially blasting of granitic bedrock for structural pier foundations, grading and operation of heavy equipment) could disrupt black swift nesting sites that may occur in the sea cave. Black swifts are listed by CDFG as a species of concern and are known to nest near waterfalls and in sea caves, with nesting activity occurring between May and August. Therefore, the project is conditioned to require a site visit during the breeding season in early May to determine presence or absence of nesting black swifts. If no nesting is observed, construction may commence. A second survey should be conducted during the first week of June, and if no nests are observed, construction activities may continue. However, if nesting activity is detected during either survey, construction shall be delayed until fledging occurs by August.

Potential cliff swallow nesting sites are present at the excavated bluff face on the inland side of the excavated building site. Blasting, grading and operation of heavy equipment can similarly impact cliff swallow nesting behavior and destroy nests if present.

The California brown pelican is state and federally listed as endangered. The December 2002 biological report indicates that the northernmost historical breeding colony, located on Bird Island at Point Lobos State Reserve, approximately 6.5 miles north of the site, was last used in 1966, and no successful breeding has occurred north of Point Conception in Santa Barbara County, since 1959. therefore, no pelicans are expected to be found nesting in the project vicinity. However, as the site is a rocky headland and includes numerous offshore rocks, should California Brown pelicans be nesting on or near the subject properties, blasting, heavy equipment operation, and construction activities could disrupt potential pelican breeding behavior. Therefore, the permit has been conditioned to require surveys of the subject properties for California Brown pelicans during the breeding season, and if found, to develop mitigation measures in consultation with CDFG and USFWS.

Similarly, several species of cormorants, including the Double-crested Cormorant (a CDFG-listed species of concern), the Pelagic Cormorant, and Brandt's Cormorant, may nest on the coastal bluff or nearshore rocks adjacent to the site. Therefore, the permit has been conditioned to require surveys of the subject properties for these three cormorant species during their respective breeding seasons, and if found, to develop mitigation measures in consultation with CDFG and USFWS.

With mitigation measures to conduct sea cave surveys in May and June to determine the presence or absence of black swift nesting activity and if present, to prohibit construction till fledging occurs by August; to conduct surveys for nesting activities of other bird species (including cliff swallows, California Brown pelican and several cormorant species) and if present develop mitigation measures in consultation with CDFG and USFWS, the project will protect sensitive wildlife nesting areas that may be on or adjacent to the site, consistent with LCP policies.



### **c. Conclusion**

Review of biological reports conducted for proposed development of the subject site indicate that the current project will impact environmentally sensitive habitat areas, including Smith's blue butterfly habitat through the removal of up to 120 seacliff buckwheat plants and approximately 5,573 sf of severely degraded coastal bluff scrub habitat due to location of the residence in this habitat area. The project also has the potential to impact adjacent intertidal and marine habitats, sea otter foraging and pupping habitat, and bird nesting sites. Without adequate mitigation measures, the project as designed would be inconsistent with LCP policies that require protection of environmentally sensitive habitat areas. Therefore, the permit has been conditioned to protect remaining buckwheat plants from construction activities, and restore and enhance the remaining habitat by replanting seacliff buckwheat plants removed using a 3:1 ratio, according to a restoration plan to be reviewed and approved by the Executive Director, and scheduling any additional site grading to occur before and/or after the flight and breeding period of the butterfly. Conditions also require enhancing 5,573 sf of coastal bluff habitat by removal of exotic invasive plants and landscaping of the site using drought tolerant native plants appropriate to the site, as well as a scenic and conservation easement over the remainder of the site not already in the accepted easement, and outside of the final approved Residential Building Envelope, to protect all habitat areas. The project has also been conditioned to protect potential bird nesting areas by either avoiding construction activities during the individual species' breeding period or by other mitigation measures identified after consultation with the CDFG and USFWS. With these conditions, the project will be consistent with LCP ESHA protection policies.

### **3. Hazards**

The Commission found that the project approved by the County raised a Substantial Issue with regards to geologic hazards because the applicants had not provided sufficient evidence that the site was suitable for development, that adequate setbacks had been established to avoid the need for seawalls, and that such development would not require shoreline protective devices over the life of the project. Following the substantial issue ruling, the applicants have since submitted additional information further describing the geologic and geotechnical conditions of the site.

Geologic stability of the site remains a concern since the site has experienced active shoreline erosion during the last El Nino event, surface cracks are apparent around the existing septic tanks located near the bluff top. Furthermore, potential septic, drainage and irrigation systems can saturate the bluff and further diminish the stability of the site. The property is also located in a very high fire hazard area.

#### **a. Applicable Policies**

*LUP 3.9.1.1. Blufftop setbacks shall be adequate to avoid the need for seawalls during the development's economic lifespan.*

*LUP 3.7.3.A.9. Any proposed development within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle from the toe of a cliff, whichever is greater, shall require the preparation of a geologic report prior to consideration of the proposed project. The report shall*



*demonstrate that (a) the area is stable for development; and (b) the development will not create a geologic hazard or diminish the stability of the area...*

*CIP 20.145.080.A.1.b.2. Geologic Hazards, Geologic Report Requirement: ...Regardless of a parcel's seismic hazard zone, a geologic report shall also be required for any development project located in the following areas...within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle above horizontal from the face of a cliff, whichever is greater...*

*CIP 20.145.080.A.2.h. Development Standards:...New development on bluffs subject to erosion, shall be set back sufficiently to avoid the need for seawalls during the development's economic lifespan. Such bluff setbacks shall be based on the predicted erosion rates identified in the required geologic report (Ref. Policy 3.9.1.1)*

## **b. Analysis of Consistency with Applicable LCP Policies**

The Monterey County LCP's Big Sur Coast policies require that blufftop setbacks "shall be adequate to avoid the need for seawalls during the development's economic lifespan" (LUP 3.9.1.1).<sup>8</sup> Also, the development must not create a geologic hazard or diminish the stability of the area (LUP 3.7.3.A.9). Coastal Implementation Plan (CIP), Part 3, Regulations for Development in Big Sur, includes Section 20.145.080.A.1.b.2, which requires that a geologic report be prepared for projects within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle above horizontal from the face of a cliff, whichever is greater.

Based on the revised July 8, 2004 site plans (Exhibit 5), the main structural elements of the project are located approximately 25 feet from the top of the coastal bluff face. Thus the project proposes development within 50 feet of the bluff face, and so geologic and geotechnical investigations are required to demonstrate that the site is suitable for development; and that the development will not create a geologic hazard or diminish the stability of the area. The reports also need to show that recommended bluff top setbacks are adequate to avoid the need for seawalls during the development's economic lifespan

Several geologic and geotechnical reports have been prepared for the various design iterations of this project, including a September 17, 1999 and updated January 3, 2003 geologic report prepared by Karl Vonder Linden, and the November 21, 1999 and updated December 20, 2002 geotechnical report prepared by Vicki Odello. As a consequence of the local government permitting process, third party review of these reports was also required, and was conducted by the geotechnical and environmental consulting firm Purcell, Rhoades and Associates (PRA), with letter reports prepared in May 28, 2002 and April 21, 2003.<sup>9</sup> Haro Kasunich and Associates (HKA) have also provided additional geotechnical

<sup>8</sup> While the Monterey County LCP does not define the "economic lifespan" of a structure, most other LCPs consider the economic lifespan of a structure to be between 50 and 75 years.

<sup>9</sup> Both of the updated geologic and geotechnical reports (Vonder Linden 2003 and Odello 2002) note that they were updated to respond to change in design relocating the house approximately 75 feet to the south of the original design reviewed, and that they were responding to issues raised by the first PRA third-party review.



review and analyses, with letter reports prepared in January 13, 2004, November 8, 2004, and November 18, 2004.

The Vonder Linden 2003 geologic report generally describes the project site as comprised of a layer of coastal marine terrace alluvium perched on granite bedrock. As described previously, substantial excavation of the landform had occurred as a result of the 1977 CDP originally granted for development of this site, and is still clearly evident. The Vonder Linden 2003 geologic report notes that widespread, surficial fill of native material excavated from the site caps the topography at and near the existing excavation, with a maximum thickness of about 5 feet, but notes that pier and grade-beam foundation can be used for construction of the house in order to transfer the load of the structure through the fill and entirely to the granitic bedrock. It also notes that the potential for earthquake-induced landsliding is extremely remote at the project site, since the area is underlain by undisturbed granitic bedrock that has withstood prior seismic shaking with no sign of landsliding.

The 2003 Vonder Linden geologic report also notes active sea cliff erosion, but did not identify predicted erosion rates, as required by Section 20.145.080.A.2.h. The report does note that "*significant coastal erosion*" had occurred along the southern part of the property, near the septic manholes, due to storm wave erosion at the base of the seacliff in November and December 2002, and suggests that shoreline protection may be necessary. In fact, the geological report states, "*in light of this erosion and slumping, it appears sensible to maintain at least a 15-foot coastal setback between the seacliff and any improvements along the southern part of the property. Another method to address this concern would be placement of rip-rap along the southern seacliff to prevent erosion.*" The Vonder Linden 2003 report did not include any information on erosion rates or slope stability analysis to confirm that the recommended 15-foot setback would be adequate to avoid the need for seawalls, as required by the LCP.

The Geotechnical Report, prepared by Vicki Odello, and dated December 20, 2002, also mentions shoreline erosion, and notes that septic holding tanks and pump station are situated close to the sea cliff, in old compacted fill, and that there is a crack in the ground adjacent to these tanks on the seacliff side, indicating potential future sliding and/or erosion could occur. The 2002 Odello geotechnical report goes on to note that "*the sea cliff on the south end of the site [where the septic tank is located] should be protected from further high surf erosion; otherwise there is a potential for future loss of land at the edge of the sea cliff. An earthquake or inclement weather as well as very high surf could promote sliding and/or erosion in the area of the crack in the ground near the sea cliff*" and later recommends that "*Seawall protection can be developed if this option is selected.*"

The Commission found that active shoreline erosion is an ongoing concern at the project site, and since both the Vonder Linden and Odello reports recommended seawall protection as one option for continued erosion, these geologic and geotechnical reports did not provide assurance that a 15-foot blufftop setback, as recommended and approved by the County, was adequate to avoid the need for seawalls during the development's economic lifespan, as required by the LCP. The Commission therefore found a substantial issue with regards to geologic hazards.





Following the Commission's finding of substantial issue, the applicants further redesigned the project and submitted new information and/or additional information, not previously provided to Commission staff, regarding bluff recession rates, shoreline erosion and slope stability of the site. A memorandum from Mark Foxx and John Kasunich of Haro, Kasunich and Associates (HKA), dated January 13, 2004, describes the additional third party review conducted by HKA of the previous geologic reports by Vonder Linden 2003, and geotechnical reports by Odello 11/99 and 12/02, as well as the Purcell, Rhodes and Associates (PRA) third-party reviews 5/02 and 4/03. The January 2004 HKA memorandum discussed six areas of concern that were raised by the previous PRA third-party reviews, which included faulting and seismicity, potential rockfall hazards from the cutslope (i.e., the excavated bluff), historic fill, groundwater-liquefaction hazards, drainage requirements, and coastal hazards.

With regards to faulting and seismicity, the HKA memo noted that although some geologists have mapped fault traces that appear to be part of the Palo Colorado Fault Zone crossing Kasler Point through or in very close proximity to the proposed Engel-Laube residence, a geologic reconnaissance of the coastal bluffs in the project area, provided no evidence of active or potentially active faulting within 200 feet of the proposed residence. It also noted that previous geotechnical report by Odello used current UBC seismic shaking design criteria in evaluating the project. Thus based on the geologic and geotechnical findings, the project should not experience any seismic landsliding, and, with the incorporation of geotechnical recommendations, will be designed to withstand seismic shaking.

With regards to potential rockfall hazards (posed by locating the house and main entrance beneath the excavated bluff face), the HKA memo noted that the cutslope, in general, appears to be stable, based on the fact that over the approximately 25 years since these cutslopes were graded, only small amounts of soil, over-burden, and bedrock fragments had fallen down and accumulated as talus against the slope and on the building pad. HKA also evaluated the fracture and jointing patterns in the cutslope bedrock, but did not find any significant adverse engineering conditions. The HKA memo noted that based on the historical stability of the cutslope and character of the earth and rock materials exposed in the excavated bluff face, further quantitative stability analysis was not necessary. They concurred with previous geotechnical recommendations that slough walls (or catchment areas) be incorporated as part of retaining walls located below the existing cutslope wherever improvements are proposed, and recommended that final grading plans be reviewed by both the project Engineering Geologist and Geotechnical Engineer. They also recommend that the grading plan include cleaning of the cut slope and removal of any loose earth materials. The permit has thus been conditioned accordingly, to ensure that the development will not create a geologic hazard or diminish the stability of the cutslope area.

With regards to historic fill concerns, the HKA memo states that removal of historic fill on the site is not necessary provided all foundation elements penetrate any fill found during construction and are embedded entirely into the granite bedrock, as previously recommended by the Vonder Linden and Odello reports.

With regards to concerns expressed about potential liquefaction hazards from groundwater seepage, the HKA memo notes that the liquefaction potential at the site is extremely low and liquefaction is not a significant hazard. They further note that groundwater found during previous septic investigations was



likely a thin layer of seepage that is sometimes found perched on top of the granite bedrock in locations similar to the subject property, but that no seepage was observed anywhere along the exposed granite bedrock/terrace deposit contact in the coastal bluff face within 200 feet of the proposed homesite, despite long duration intense rainfall during the month preceding an HKA site visit. However, since past permitting experience has shown that a project's septic, drainage, and irrigation systems can saturate unconsolidated marine terrace deposits and diminish the stability of coastal bluff slopes, the project has been conditioned to use only drip irrigation for the first two years following installation of landscaping, in order to allow native, drought tolerant plants to become established on the site. Furthermore, to reduce slope stability concerns regarding the septic system, the existing septic tanks will be removed from the bluff top, and a new septic tank located in the motor court area, with effluent pumped to existing leach lines located near Highway One and away from the coastal bluff.

With regards to potential drainage and erosion concerns, the HKA memo notes concurrence with the earlier PRA review recommendations that a drainage and erosion plan should be prepared for the project, and notes that this is commonly done during preparation of final construction plans and specifications.

Finally, with regards to Coastal Hazards, the January 2004 HKA memo notes that historical coastal bluff recession rates were calculated for the site, based on analysis of historic aerial photos of the site from 1942, 1978, 1986, and 2001. HKA measured a maximum coastal bluff recession rate of the upper bluff materials at the site of approximately 0.36 feet per year (noting that 22 feet of recession was measured in one area in the 60 years between 1942 and 2001). Calculated over the conventional economic lifespan of 50-years, this would result in bluff recession of 18 feet. HKA then applied a 1.4 factor of safety to the recession rate, to yield a minimum 25-foot setback from the present coastal bluff edge. The HKA memo further notes that they reviewed plans showing that exterior walls of the house and the driveway and parking areas are all set back a minimum of 25 feet from the existing coastal bluff edge, and concur with prior recommendations made by the geotechnical engineer that the proposed house be founded in the granitic bedrock beneath the more erodible upper bluff materials. Because parts of the house are located just landward of this minimum 25-foot setback, the HKA memo notes that any improvement such as landscaping within 25 feet of the existing coastal bluff edge should be considered sacrificial.

Since the January 2004 HKA memo and other geologic and geotechnical reports do not include any information on coastal bluff slope stability analysis, the applicants also requested HKA to conduct slope stability analyses for the current project site. Based on a letter report, dated November 8, 2004 (see Exhibit 11), HKA conducted a field investigation of the site on October 28, 2004, by excavating backhoe trenches on both the north (up-coast) and south (down-coast) side of Kasler Point, to determine the subsurface profile of the coastal bluff relative to the previous excavation and grading that had already occurred, and to determine the strength characteristics of the granitic fill, terrace deposit sub-soils and granitic base rock. Results of this trenching confirmed depth of fill of approximately 5 to 8 feet on both sides of the saddle at Kasler Point, with the toe of the fill thinnest atop a high granitic platform in the center of the saddle, and thickest on terrace deposit materials that lie atop the granite to the north and south of the saddle.



Results from the trenching were also used to compute slope stability along three profiles that extend across the bluff face and into the proposed development area on both the up-coast (Cross Section 2) and down-coast side of the point, (Cross Sections 1 and 3, as shown in Exhibit 11). Based on subsurface profiles established with the backhoe test pits and the laboratory results of the shear strength of the fill and terrace deposits above the granitic rock, it was determined that the existing geology of the site has high internal shear strength values and cohesion, which even if reduced by a third or a half, would mean the slope could hold a final upper bluff face gradient in 50 years of 1.5:1 (horizontal to vertical; or around 33 degrees) with a factor of safety of 3.8 to 11, well over the 1.0 factor of safety recommended by the Commission. As a result, using the estimated value of 18 feet of future bluff recession (based on aerial photo interpretation) and the 1.5:1 bluff face gradient for the future bluff profile where terrace deposits and old granitic fill exists, the recommended 50-year setback lines vary from 25 to 31 feet, depending on the location of the cross section and depth of overburden (i.e., 29.5 feet at Cross Section 1, near the guest parking area; 25 feet at Cross Section 2, near the family/living room area, and 31 feet at Cross Section 3, in the vicinity of the underground garage), as shown in Exhibit 11.

Based on the fact that the geologic stability analyses were just recently completed, the revised plans dated July 2004 include elements of the project (i.e., the septic tank, portions of the turn around/guest parking area and retaining wall, and a portion of the living room/family room terrace) that are located seaward of this recommended 50-year setback, as shown on Exhibit 11. However, as a result of these new geologic findings, the project architect has submitted revised plans (dated November 16, 2004) that show that the project design has been revised so that all elements of the project are now located landward of the 50-year setback (i.e., the entire design has been shifted about one to two feet landward to avoid extending beyond the 50-year setback lines). As a result of these geotechnical findings and design modifications, HKA has submitted a letter response (dated November 17, 2004) stating that the site is suitable for development and the development will not create a geologic hazard or diminish the stability of the area. The HKA letter also states that as the major structural elements of the residence have been located landward of the 50-year setback line, the project has been designed and located in a manner that will avoid the need for seawalls during the economic lifespan of the structure (which is generally considered to be 50 years).

With regards to fire hazards, the property is located in a very high fire hazard area. The Monterey County LCP has various provisions designed to address fire hazards. Some fire protection conditions imposed by the County pursuant to California Department of Forestry District (CDF) can and will continue to apply to the site (namely, conditions 5, 8, 9, 10, 12, 13.). However, County conditions # 6 and #7 can not be imposed as written because requirements for fire protection water supply systems and fire hydrants need review and approval by the Coastal Commission to ensure compliance with visual and habitat protection policies (see Special Condition # 1.a.5), as must requirements for fuel modification. Normally, CDF requires minimum 30-foot vegetation clearance setbacks. However, CDF allows exemptions to clearing requirements for: 1) habitat for endangered/threatened species, or any species that is a candidate for listing as an endangered or threatened species by state/federal government; 2) lands kept in a predominantly natural state as habitat for wildlife, plant or animal communities; 3) open space lands that are environmentally sensitive parklands; and 4) other lands having scenic values as declared



by the local agency, or by state or federal law.) Since the site contains sensitive habitat and has local and state acknowledged scenic values, alternate fuel modification standards may be imposed, as accommodated by Special Condition # 1.d.

### **c. Conclusion**

The Monterey County LCP Policy requires adequate setbacks to assure the development will not need shoreline protection during the life of the structure, and that geologic reports provide evidence that permitted development will not create geologic hazards or diminish the stability of the area. Since active shoreline erosion has been observed at the site, bluff recession and slope stability analyses were required to ensure that the project was designed with adequate setbacks to avoid the need for future seawalls over the life of the structure. Based on bluff recession and slope stability analyses, the recommended 50-year setback on the site is between 25 and 31 feet from the seaward coastal blufftop, depending on the location along the coastal bluff and the depth of overburden. The Commission's staff geologist has reviewed the above-cited reports and concurs that the 25-31 foot setback will be sufficient to assure stability of the development for its 50-year expected economic life without requiring the use of shoreline protective devices.

As a result of this new information, the project has been redesigned to conform to these setbacks, by removing the septic holding tank from the edge of the bluff and relocating it within the motor court area, reducing the guest parking area and revising the family/living room terrace area. Thus, as revised, the geotechnical engineer has stated that project will avoid the need for seawalls during the economic lifespan of the structure, in conformance with LCP policies. To ensure that removal of the septic tanks do not lead to further erosion of the blufftop, the permit has been conditioned to require compaction, erosion control and revegetation of the blufftop. Furthermore, the geologic and geotechnical reports and third-party review that have been prepared for this project have provided evidence that the site is suitable for development and that the development, as conditioned, will not create a geologic hazard or diminish the stability of the area. Finally, the permit includes provisions for Executive Director review and approval of plans showing on-site water supply system required by the California Department of Forestry. Therefore the project, as recently revised and conditioned herein, is consistent with Monterey County LCP hazard policies.

## **4. Water Resources**

The Commission found that the project approved by the County raised a Substantial Issue with regards to water resources because the applicants had not provided sufficient evidence to show that the project had an adequate, safe and continuous supply of water. Additionally, there were concerns that the Garrapata Water Company, which supplies water to this property, might be creating impacts to the creek, a listed steelhead stream, if it were drawing more water than it was permitted to use in order to serve additional residences.



## **a. Applicable Policies**

*LUP 3.4.2.2. The County will require adherence to the best watershed planning principles including: stream setbacks, stream flow maintenance, performance controls for development site features, maintenance of safe and good water quality, protection of natural vegetation along streams, and careful control of grading to avoid erosion and sedimentation (emphasis added).*

### *LUP 3.4.3.A Specific Policies*

#### *A. Water Supply and Use*

*1. Applicants for development of residential, commercial, and visitor-serving facilities must demonstrate by appropriate seasonal testing that there will be an adequate water supply for all beneficial uses and be of good quality and quantity (e.g. at least 1/2 gallon per minute per single family dwelling year round) from a surface or groundwater source, or from a community water system under permit from the County.*

*2. Development of water supplies, or intensification of use of existing supplies from springs, streams, wells, or community water systems shall be regulated by permit in accordance with Coastal Act requirements. These permits shall be in addition to any required permits from the County Health Department.*

*3. Applicants intending to utilize a water supply from a source not occurring on the parcel to be served, shall obtain any necessary rights or permits to appropriate the water from the State Division of Water Rights prior to receiving project approval from the County. The State is requested to notify the County of all applications for appropriate water rights. The County's policy shall be to protest such applications that conflict with the protection of beneficial uses of water including instream flow requirements. The County shall require riparian or groundwater users applying for development rights to perfect and record their rights to the water to minimize future conflicts. The County also encourages existing riparian users to perfect and record their water rights.*

*4. Interbasin transfer of water: No new water system and no expansion of existing water systems which transport water out of the watershed of any perennial stream shall be allowed. Undeveloped parcels outside of the watershed of origin shall not be allowed to utilize transported water. Permit applications shall demonstrate a suitable source of water not requiring establishment or expansion of, or intensification of use, of an interbasin water transfer system. Where no on-site surface water source exists, exceptions may be made on a case-by-case basis for the development of a primary residence on a vacant parcel served by a County-approved connection to an existing water system. Where -- if the total number of existing/potential vacant buildable residential parcels on such water system is more than four, such exceptions will be subject to a demonstration that:*

*a. no significant degradation of any of the Big Sur Coast's trout streams or other environmentally sensitive habitats will result, as demonstrated by an appropriate environmental assessment prepared in accordance with California Department of Fish and Game standards.*



*b. no increased water system pumping, transmission or storage capacity (other than fire reservoir capacity) will be required for the proposed development; and*

*c. such exception will not result in export of water beyond the Big Sur Coast or the authorized service area of the Carmel Riviera Mutual Water Company.*

*Water system development or expansions constructed or installed after December 31, 1976, without benefit of coastal development permit will not be considered as "existing".*

*5. Small public water systems and private water systems supplying more than one user shall conform to the California Health and Safety Code, California Administrative Code, and County Ordinance 2250 as administered by the County Health Department, consistent with other policies of this section.*

#### *Rivers and Streams -*

*LUP 3.4.3.B.1. The effects of all new development proposals or intensification of land use activities or water uses on the natural character and values of the Big Sur coast's rivers and streams will be specifically considered in all land use decisions. Subjects to be addressed in such evaluations include protection of scenic quality, water quantity and quality, wildlife and fish habitat, and recreational values. Land use proposals determined to pose significant impacts to the natural integrity of the stream must be modified accordingly. The County will request assistance from the Department of Fish and Game as a technical expert on wild life and fish habitat and mitigation measures.*

*LUP 3.4.3.B.33. Water quality, adequate year-round flows, and stream bed gravel conditions shall be protected in streams supporting rainbow and steelhead trout. These streams include: Garrapata Creek, Rocky Creek, Bixby Creek, Little Sur River, Big Sur River, Partington Creek, Anderson Creek, Hot Springs Creek, Vicente Creek, Big Creek, and Limekiln Creek.*

*LUP 3.3.3.B.1. Development on parcels adjacent to intertidal habitat areas should be sited and designed to prevent percolation of septic runoff and deposition of sediment.*

### **b. Analysis of Consistency with Applicable LCP Policies**

The Big Sur Coast LUP's Specific Policies for Water Supply and Use contain a series of requirements concerning provision of adequate and safe water supplies, as a prerequisite for residential development (LUP 3.4.3.A). The appeal raised questions about the project's compliance with these County standards.

According to the County's initial study, water will be supplied to the site by the Garrapata Water Company, which draws from a well near Garrapata Creek. According to State Water Resources Control Board (SWRCB) staff, the well draws from Garrapata Creek baseflow (pers. comm.. Kathy Mrowka SWRCB, 8/13/04). Since LUP policy 3.4.3.B.3 lists Garrapata Creek as a steelhead stream water resource protection policies require that the impact of all new development proposals on these streams must be considered (LUP 3.4.3.B.1).



Since there have been issues with the water company regarding ongoing ownership and water quality, there was concern that the Garrapata Water Company would not actually be able to serve the site. There were additional concerns raised that the Garrapata Water Company might be withdrawing more water than permitted under the State Water Resources Control Board Permit for Diversion and Use of Water. However, following the substantial issue hearing, additional information has been provided by both the applicants and the State Water Resources Control Board that further describes the water supply to be used on site.

The State Water Resources Board Division of Water Rights Permit for Diversion and Use of Water for the Garrapata Water Company (Permit 21010) notes that the water appropriated from the Garrapata Creek is limited to 35 acre feet per year and is intended to serve from 38 to 43 residential users.

Correspondence (dated September 26, 2004) provided by the Garrapata Water Company states that the water company is prepared to serve the subject property with water at any time. It also notes that the project site has an existing water supply hookup that was installed over 20 years ago and that the applicants have regularly paid their water bill to maintain their standing. The owners of the Garrapata Water Company (Barbara and Donald Layne) have also indicated that the Laube-Engel site is one of the 43 permitted connections, and that the property owners have used water over the years for irrigation of landscaping by means of overhead sprinklers (pers. comm., October 7, 2004).

The September 2004 letter also states that, based on water meter readings taken in June 2004 of 13.26 af, they were on target for water use under 35 acre feet per year, as allowed by the water diversion permit. They also noted that similar readings taken in June 2002 of 12.18 acre feet showed that water use over the first half of the year 2004 was only about one acre-foot more than that used over the same time period in 2002. According to Mr. Layne, high water use in 2003 was found to be a result of undetected leaks, which have since been repaired (pers. comm.). Records of water use submitted by the State Water Resources Control Board for the years 2000-2002, generally support the assertions made by the Garrapata Water Company, and show that the water company has generally stayed close to its allowed diversion of 35 afy (withdrawing approximately 36.29 af in yr 2000, 35.62 af in 2001 and 33.57 in 2002). Thus the project site can and will continue to be served by the Garrapata Water Company, and the project will not cause the company to increase water withdrawals from Garrapata Creek significantly beyond what is currently permitted, and so will not have any additional impacts on steelhead in Garrapata Creek.

With regards to ownership and water quality, state law also requires each water system to ensure that a continuous, adequate and safe supply of domestic water is supplied to all users at all times. On September 2002, the Garrapata Water Company was informed in written correspondence from the Monterey County Department of Environmental Health (DEH), that it was not in compliance with the California Surface Water Treatment Rule (SWTR), which requires water systems to provide adequate filtration and disinfection, and DEH required the Water Company to either develop a groundwater source that meets Title 22 quality and quantity requirements or provide treatment in conformance with the SWTR. Big Sur LUP Policy 3.4.3A.1 also requires an adequate water supply of good quality and



quantity (e.g. at least 1/2 gallon per minute per single family dwelling year round) from a surface or groundwater source, or from a community water system under permit from the County.

Based on recent discussions with staff from the Monterey County Division of Environmental Health, the Garrapata Water Company first indicated it would look into options for repair of the system, and so DEH did not recommend the County hold up the original permit. Since September of 2002: 1) the owners of the Garrapata Water Company sued the County over its requirements that the system be modified to meet state requirements; 2) the Court found against the owners, and told the owners to cease operation of the system; 3) the owners have, however, continued to operate the system even though the County is looking for a new receiver to own and operate the system; and 4) other current users are trying to find a way to operate the water supply system as a mutual water system (pers. comm.. Cheryl Sandovol, Monterey County DEH, 8/12/04).

An ongoing effort is underway to convert the Garrapata Water Company into a mutual water company, and according to Derinda Messinger, the attorney working with several of the existing homeowners in the area, currently 90% of the property owners have agreed to apply for the public utility transfer and are committed to meeting the requirements of Monterey County Health Department (pers. comm., 10/7/04; see also letter dated November 10, 2004). The County Department of Environmental Health has indicated that they are in support of the formation of a mutual water company. They have also indicated that, as proposed by the mutual water company formation committee, they would allow the mutual water group to put in a chlorination system prior to transfer of assets from the utility to the mutual water company, and complete the necessary tasks to bring the water system into full compliance with the California Surface Water Treatment Rule after the transfer is completed. With these efforts underway, the DEH has indicated that it expects that Garrapata Water Company will be able to come into full compliance in the near future.

To ensure that these water quality requirements are enacted, the permit has been conditioned to require that the mutual water company, or present owner if the mutual water company is not approved, submit County approval of a chlorination (or other approved) water treatment system and install the approved water treatment system on the existing Garrapata Creek water supply prior to occupancy.

The LUP Water Resource policies, in section 3.4.2.2, also require that erosion and sedimentation impacts be avoided. As cited above, the location and design of development on parcels adjacent to intertidal habitat areas is subject to LUP Policy 3.3.3.B.1. The purpose of this policy is to avoid septic system percolation and sedimentation impacts. As described above, in the Coastal Hazards section of this report, the proposed building site is located on fill and shallow coastal terrace colluvium over granite bedrock. Storm water runoff and septic system leachates from the development have the potential to adversely impact adjoining tidepools and rocky intertidal habitats that are part of the Monterey Bay National Marine Sanctuary.

As described above, the existing septic tanks are located within the 50-year coastal blufftop setback, and are actually very close to the top of the coastal bluff, which is susceptible to coastal bluff erosion. To avoid potential collapse of the septic tanks due to long-term bluff erosion or episodic failure of the





blufftop, the project has been revised to remove the existing septic tanks from the bluff top, relocate them to the motor court area, and pump effluent to the existing leach fields located close to Highway 1. Relocation of the septic tanks will reduce the potential for catastrophic failure of the bluff, and reduce the potential for leachate to enter the marine habitat. The project has been conditioned to provide protective measures to ensure that additional sediment and construction debris is not allowed to enter the marine environment during septic tank removal, and that the site is graded, compacted, and revegetated following removal of the septic tanks in order to minimize future erosion of the blufftop. And finally, the project has also been conditioned to require drainage and erosion control measures to prevent erosion and sedimentation from construction activities and ongoing use of the site to enter the marine habitat.

### **c. Conclusion**

New and additional information provided following the substantial issue determination have shown that the project has had an existing water hookup for over 20 years and can and will continue to be served by Garrapata Water Company. While the Garrapata Water Company ownership is in flux, and a mutual water company is being formed to manage the resource, the County Department of Environmental Health (DEH) has indicated that such a management system would be helpful to protect the long-term viability of the system, and enable water treatment improvements to be implemented most effectively. However, although the transfer of the assets is expected to take place within the next six months, the actual timing of such events is indeterminate. Therefore, the project has been conditioned to require that an approved water treatment system be installed prior to issuance of the permit

Furthermore, the project has been redesigned to remove the existing septic tanks from the blufftop and relocate them to the motor court area to avoid potential collapse and catastrophic failure of the existing septic system. The project has also been conditioned to provide adequate drainage and erosion control measures to prevent erosion and sedimentation from construction activities and ongoing use of the site from entering the marine habitat.

Thus, as conditioned, the Commission finds that the project will have an adequate, safe and continuous supply of water, the expansion of the proposed water source will not have cumulative adverse impacts on the condition of Garrapata Creek steelhead, and the project will avoid adverse impacts on the marine water quality from erosion and sedimentation.

## **6. Public Access and Recreation**

Since this project is located between the first public road and the sea, it has the potential to impact public access to the shoreline.

### **a. Applicable Policies**

For projects located between the first public road (Highway One) and the sea, Section 30604(c) of the Coastal Act requires an additional specific finding must be made that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located



between the nearest public road and the sea and thus, this additional finding must be made in a *de novo* review of this project.

***LUP Shoreline Access Policy 2:** Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where 1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; 2) adequate public access exists nearby, or; 3) agriculture would be adversely affected...*

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

***Section 30210:** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

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

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

## **b. Consistency with Applicable Policies**

The LUP policy requires that the maximum public access be provided to the shoreline and along the coast, except where it is inconsistent with public safety or adequate public access exists nearby. Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the first public road and the sea "shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3." The proposed project is located on Kasler Point, a rocky peninsula located just south of Abalone Cove, and so is located between the first public road (Highway One) and the sea.

The northern portion of Kasler Point is visible from the Highway One overlook at Abalone Cove, which together provide some of the most picturesque views of the shoreline along the Big Sur Coast. In addition to providing spectacular coastal viewing opportunities, Kasler Point, which is accessible via a well-trodden footpath from the highway to the seaward end of the Point, is also currently used for public recreation and rock fishing.

A scenic and conservation easement was granted by the previous owner (Sorenson), and accepted by the State Coastal Conservancy on March 11, 1983 (and recorded on May 11, 1983). Among other things, the scenic and conservation easement allows for controlled public access on portions of the northern and



southern parcels identified as conservation and scenic easement areas, and provides for a connection between these two areas via a 3-foot wide path across the southeastern boundary of the archaeological easement area, as shown on Exhibit 4. This easement, along with the adjacent open space property located immediately north of the Laube-Engel property, also owned by the State Coastal Conservancy, provides for public access opportunities to and along the shoreline on the subject parcels and on the adjacent Conservancy parcel. The project does not include any elements that would interfere with public access within the existing easement area.

### **C. Conclusion**

Public access is already provided on the northern portion of the property as a result of the accepted scenic and conservation easement held, for public benefit, by the State Coastal Conservancy. As this easement allows for access to and along the shoreline on the northern parcel, adequate public access exists, consistent LCP policies and public access requirements of the Coastal Act.

## **7. Archaeological Resources**

Mr. William Roop of Archaeological Resource Service conducted an archaeological reconnaissance for the previous owner on January 29, 1977. The archaeological survey identified a potentially significant cultural resource site on the northern parcel. The archaeological site is protected by the existing scenic and conservation easement recorded by the previous owner, and accepted by the State Coastal Conservancy (see Exhibit 4). Among other things, the scenic and conservation easement includes "...provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeologic and other scientific research purposes secured." The County conditioned its approval of the project to protect all archaeological resources on site. With the incorporation of the County's condition # 20 in this permit, as well as other County conditions that require consultation with an archaeological consultant during all construction and grading activities, the Commission finds that archaeological resources will be protected, consistent with LCP policies.

## **C. California Environmental Quality Act (CEQA)**

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

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are

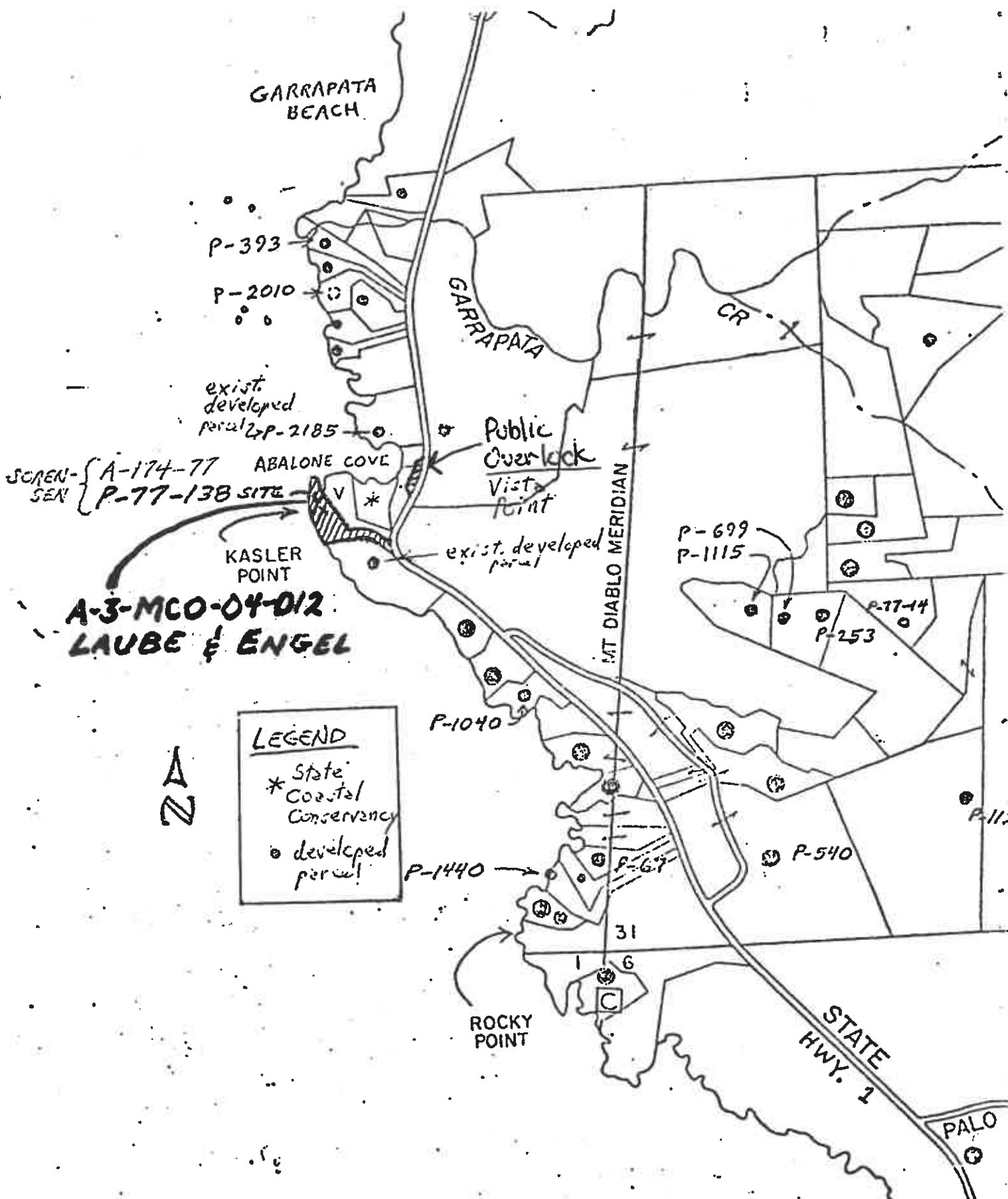


incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.









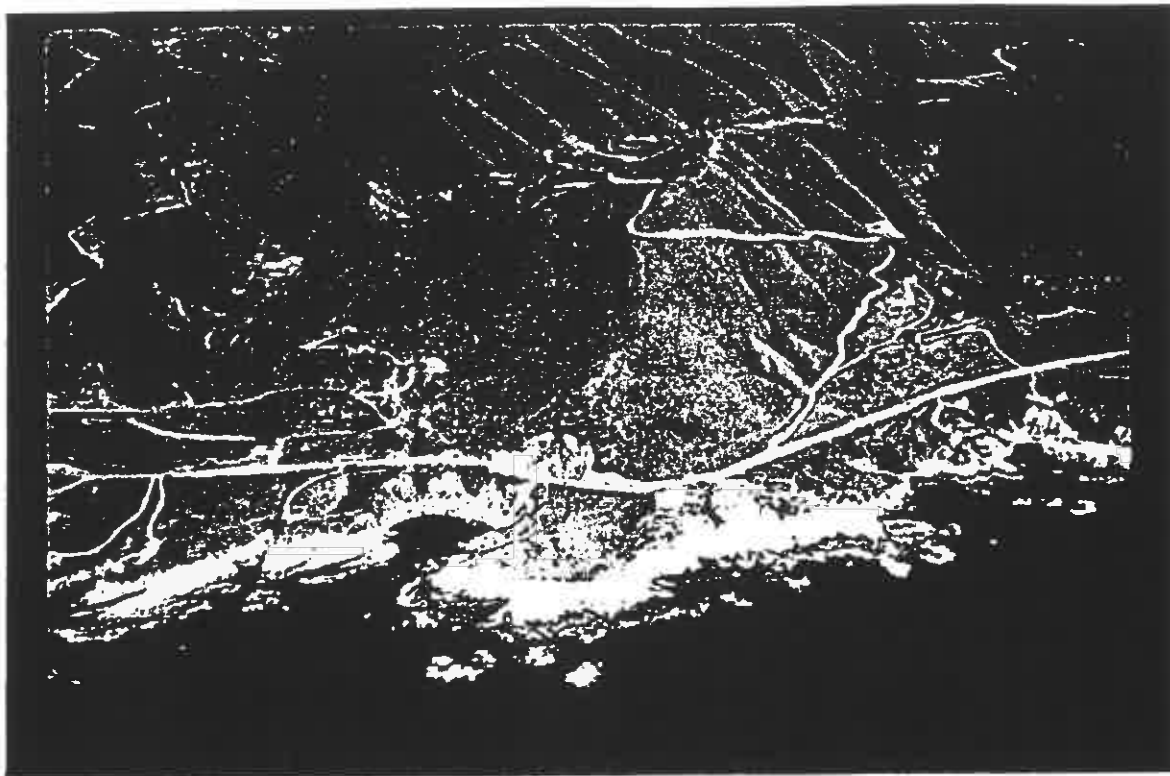


Photo 1.  
Photo of Kasler  
Point in 1972,  
prior to permit  
approval.  
(Photo from  
California Coastal  
Records Project;  
Photo #7223052)

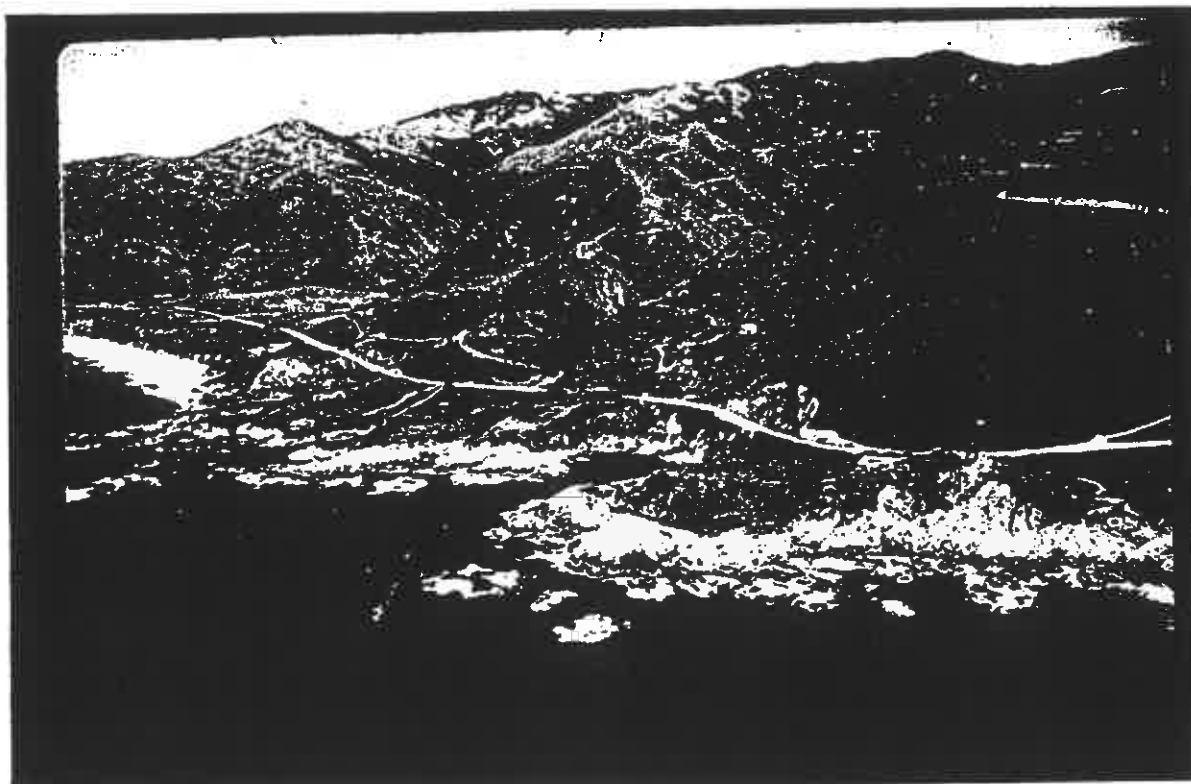


Photo 2.  
Photo of Kasler  
Point, April 30,  
1979, following  
approval of  
Sorenson permit,  
but prior to  
excavation of  
building pad and  
road construction.  
(Photo from  
California Coastal  
Records Project;  
Photo #7934027)





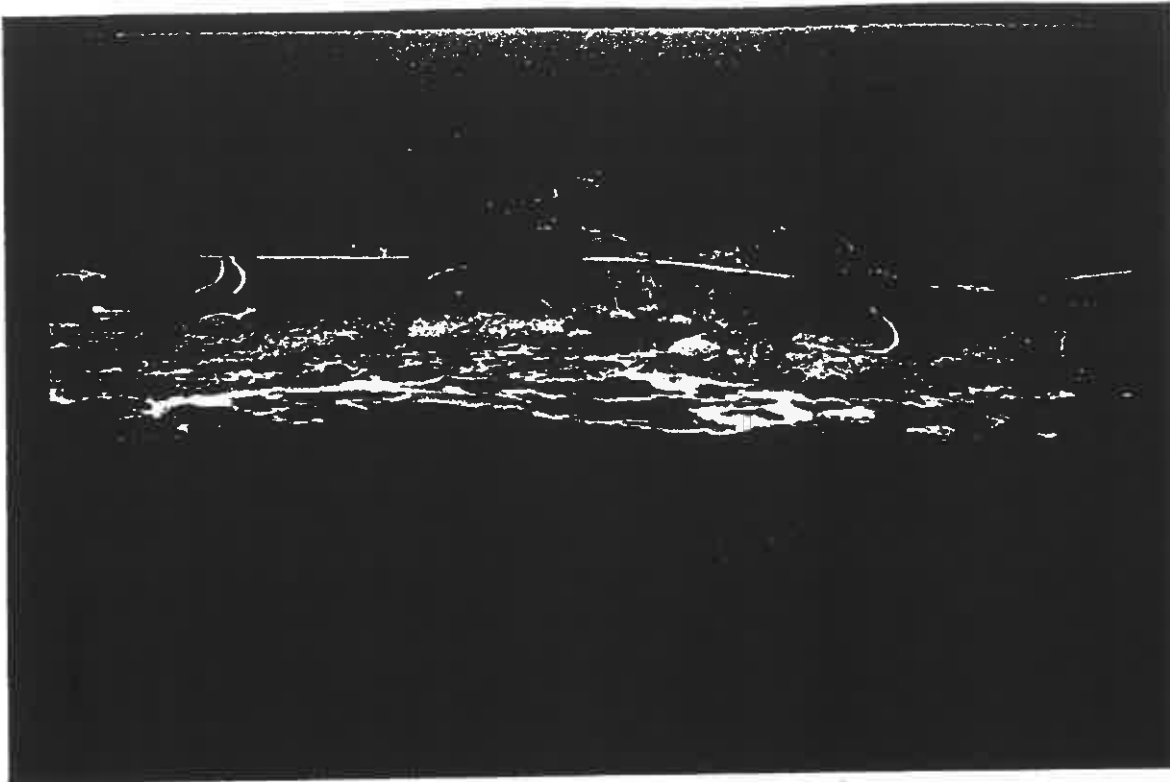


Photo 3.  
Photo of Kasler  
Point in June 1987,  
following  
excavation of  
building pad and  
road construction.  
(Photo from  
California Coastal  
Records Project;  
Photo #8710041)

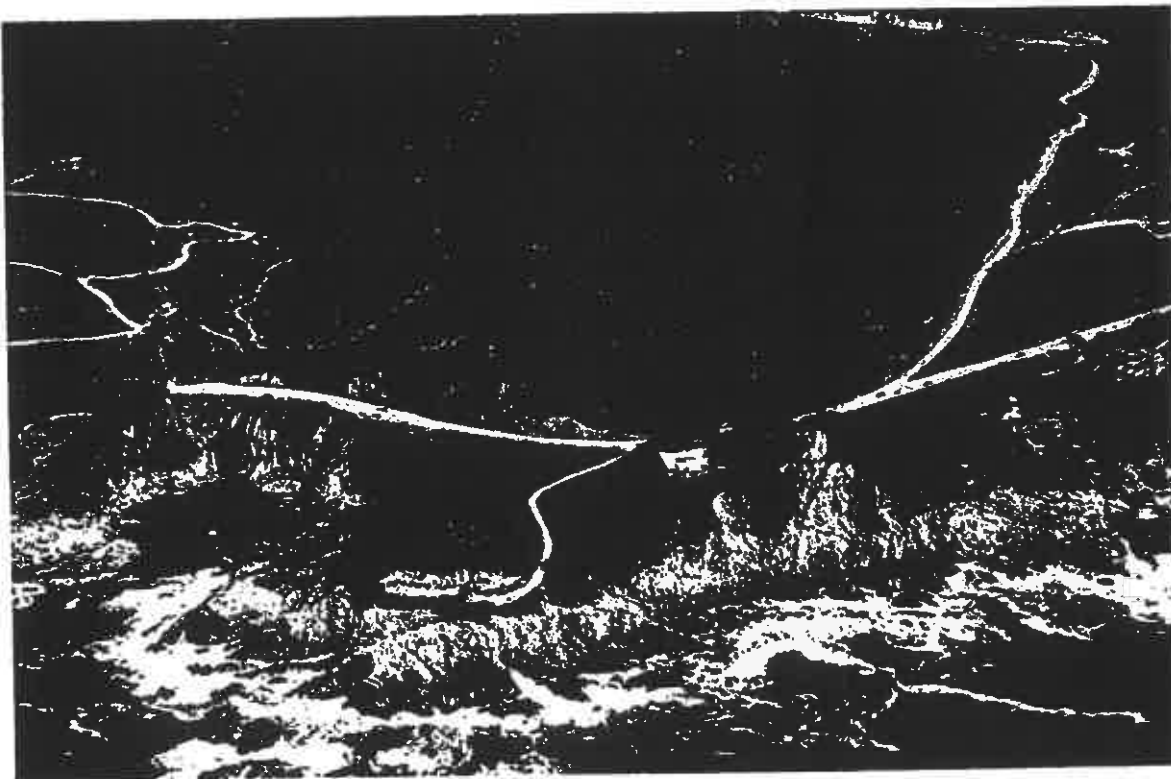


Photo 4.  
Photo of Kasler  
Point, October 11,  
2004, showing  
existing excavated  
building pad and  
access road.  
(Photo from  
California Coastal  
Records Project;  
Photo #200402398)

Exhibit 2 – pg 2 of 2  
Historic Aerial Photos of Kasler Point

A-3-MCO-04-012  
Laube-Engel Appeal



California Coastal Commission

EXHIBIT "A"

BEFORE THE BOARD OF SUPERVISORS IN AND FOR  
THE COUNTY OF MONTEREY, STATE OF CALIFORNIA

Resolution No. 04-028

Resolution (1) denying the appeal of the Dr. and  
Mrs. McAllister; (2) approving the Laube/Engel  
Combined Development Permit (Laube/Engel;  
PLN010105); and (3) adopting the  
Mitigated Negative Declaration and Mitigation  
Monitoring Program.

RECEIVED

FEB 02 2004

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

FINAL LOCAL  
ACTION NOTICE

REFERENCE # 3-MCO-04-028

APPEAL PERIOD 2/3-2/18/04

THIS MATTER came on for hearing before the Board of Supervisors of the County of Monterey ("Board") on January 13, 2004, pursuant to an appeal of Dr. and Mrs. McAllister from the decision of the County of Monterey Planning Commission (Resolution No. 03073) to approve the Laube/Engel (Laube/Engel; file no PLN010105) Combined Development Permit consisting of (1) a Coastal Development Permit for an approximately 8,270 square foot single family dwelling with an approximately 1,824 square foot subterranean garage with mechanical room; (2) a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat; (3) a Coastal Development Permit for approximately 1,750 cubic yards of cut and 736 cubic yard of fill that involves cutting into slopes over 30 percent; and (4) a Coastal Development Permit for a lot line adjustment that will consolidate two lots. The property is located at 36240 Hwy One, Big Sur (Assessor's Parcel Numbers 243-251-012 & 243-251-013), Kasler Point, one-half mile south of Garrapata Creek, in the Big Sur Coast Land Use Area Plan, Coastal Zone.

At the conclusion of the hearing *de novo*, the matter was submitted to the Board for a decision. Having considered all the written and documentary information in the administrative file, the staff reports, consultant reports, oral testimony, and other evidence presented, the Board now renders its decision denying the appeal and affirming the Planning Commission decision to approve the Laube/Engel Combined Development Permit. The Board further adopts findings and evidence in support of its decision as follows:

FINDINGS REGARDING APPROVAL OF THE PERMIT

1. **FINDING:** The project proposed in this application consists of a Combined Development Permit (PLN010105) for a lot line adjustment, development of an 8,270 square foot single family dwelling with an approximately 1,824 square foot subterranean garage, development within an environmentally sensitive habitat, and grading of approximately 1,750 cubic yards of cut and 736 cubic yards of fill, as described in condition #1 of Exhibit "C," and as conditioned, conforms with the plans, policies, requirements and standards of the following documents:
  - a) The certified Big Sur Coast Land Use Plan
  - b) The certified Monterey County Coastal Implementation Plan, Part 1, regulations for the "RDR/40 (14)" and "WSC/40" Coastal Zone Districts in the Coastal Zone, and
  - c) the Monterey County Coastal Implementation Plan, regulations for development in the Big Sur Coast Land Use Plan. (Chapter 20, Section 20.16.050 QQ and Section 20.17.050 JJ)
  - d) the Subdivision Ordinance (Title 19) and

Further, staff recognizes that a new property owner cannot be expected to accept a 25 year old design concept for the property. In its place, the current Applicants are proposing a design that better adjusts to the landscape contours at the building site. The Applicant is aware that the Planning Commission and Board of Supervisors' discretionary action as to whether the Applicants' proposed size of residence is appropriate to the building site under the CC certified 1986 Big Sur Land Use Policy 3.2.4. and Coastal Implementation Plan Section 20.145.030 C. 2. is still subject to a CC appeal under Section 20.86.080 A. 1. of Title 20:

*Approved projects between the sea and the first through public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*

*Staff response to the Appellants' contention that an EIR is required (Appellant Representative's October 23, 2003 letter): Refer to staff's response to the Appellants' item #3.*

IN VIEW OF THE ABOVE findings and evidence, the Board hereby:

1. denies the appeal of the McAllisters;
2. adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program;
3. approves the Laube/Engel Combined Development Permit (Laube/Engel; PLN010105) subject to the conditions of approval listed below:

#### CONDITIONS OF APPROVAL

1. This permit allows the construction of an approximately 8,270 sq. ft, 2-story, single family dwelling with an approximately 1,824 sq. ft. subterranean garage and mechanical room, resulting in an approximately 4,900 sq ft. construction "foot print," a proposed driveway turnaround and an existing approximately 400 foot access road. The permit also allows approximately 2,500 cu. yards of cut and fill (1,750 cubic yards of cut and 736 cubic yards of fill) that involves cutting into slopes over 30 percent within a specified area paralleling the eastern edge of the residence, and retaining walls at the cut. Further, the permit includes a lot line adjustment that will serve to consolidate two lots, Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000, at the subject site.

The proposed development is found to be 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 Planning and Building Inspection. 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. (Planning and Building Inspection Department)

#### Prior to the Issuance of Grading and Building Permits:

2. The applicant shall record a notice which states: "A permit (Resolution \_\_\_\_\_) was approved by the Board of Supervisors for Assessor's Parcel Numbers 243-251-012-000 and 243-251-013-000 on April 30, 2003. The permit was granted subject to 26 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning & Building Inspection)

3. A notice shall be recorded with the Monterey County Recorder which states: "The following reports have prepared for this parcel:

- Reynolds & Associates, Soil and Foundation Engineers, Surface & Subsurface Soil Conditions, 6/3/78
- Jeff Norman, Biologist Report/Revegetation Plan, 3/19/99, with response to peer review 9/16/02.
- Karl Vonder Linden, Engineering Geology and Mining Engineering, Geologic Report, 12/17/99, revised 1/3/03
- Vicki C. Odello, C.E., Geotechnical Report, 11/21/99, revised 12/20/02
- Archaeological Resource Service; Archaeological Reconnaissance of Donald Sorensen property, Big Sur, 2/8/77]

and are on record in the Monterey County Planning and Building Inspection Department file no. PLN010105. All development shall be in accordance with these reports." (Planning & Building Inspection)

4. A Grading Permit shall be required pursuant to the Monterey County Code relative to Grading, Chapter 16.08. Said permit shall be reviewed by the Director of Planning and Building Inspection in addition to the Department's Building Official for consistency with the mitigation measures required for development adjacent to an environmentally sensitive habitat. (Planning & Building Inspection)
5. For the purpose of signing and building numbering, California Department of Forestry Fire District shall require the following:
- a. All buildings shall be issued an address in accordance with Monterey County Ordinance No. 1241. Each occupancy, except accessory buildings, shall have its own address.
  - b. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance 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, and the address shall be visible and legible from the road on which the address is located. Size of letters, numbers and symbols for addresses shall be a minimum of 3 inch letter height, 3/8 inch stroke, contrasting with the background color of the sign. (CDF Fire District)
6. Emergency water standards required by the California Department of Forestry District are as follows:
- a. Approved fire protection water supply systems must be installed and made serviceable prior to the time of construction.
  - b. A minimum fire protection water supply of 3,000 gallons shall be provided regardless of parcel size. Minimum storage requirements for single family dwellings may be reduced to 2,000 gallons if an approved automatic fire sprinkler is required.
  - c. Fire hydrant: 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 nor more than 1,000 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 ½ inch National Hose outlet supplied by a minimum 4 inch main and riser. (CDF Fire District and Planning & Building Inspection)

7. California Department of Forestry Fire District requires fuel modification standards as follows: All parcels 1 acre and larger shall provide a minimum 30 foot setback for buildings and accessory buildings from all property lines and/or the center of the road. Where a 30 foot minimum setback cannot be reached, alternate fuel modification standards may be imposed by the local fire jurisdiction to provide the same practical effect. (CDF Fire District)
8. For fire protection equipment, the residence shall be fully protected with an automatic fire protection system. The following notation is required on the plans when a building permit is applied for:

"The building shall be fully protected with an automatic fire sprinkler system. Installation, approval and maintenance shall be in compliance with NFPA 13-D (1998). Four (4) sets of plans for fire sprinkler systems must be submitted and approved prior to installation. Rough-in inspections must be completed prior to requesting a framing inspection." (CDF Fire District)
9. Roof protection in a very high fire hazard area as defined by the California Department of Forestry and Fire Protection (CDF), roof construction shall be Class A, or as approved by the Reviewing Authority. This requirement shall apply to all new construction and existing roofs that are repaired or modified so as to affect 50% or more of the roof. Vegetation removal shall not be allowed as a means of removing the very high fire hazard area designation from an entire parcel. (CDF Fire District)
10. The applicant shall record a deed restriction which states: "The parcel is located in a very high fire hazard area and development may be subject to certain restrictions required as per Section 20.145.080 C.1.a.1 a) of the Coastal Implementation Plan and per the standards for development of residential property." (Planning & Building Inspection)
11. A drainage plan shall be prepared by a registered civil engineer or architect addressing on-site and off-site impacts, to include dispersal of impervious surface stormwater runoff onto a non-erodible surface below the bluff. Necessary improvements shall be constructed in accordance with approved plans. A certified biologist shall review the final drainage plan to assure that drainage does not impact the sensitive marine habitat below the construction area. (Water Resources Agency)
12. The location of all utilities, including the location, type and size of all antennas, satellite dishes, towers, water tank and similar appurtenances shall be approved by the Director of Planning and Building Inspection. All new utility and distribution lines shall be placed underground at locations also approved by the Director of Planning and Building Inspection in consultation with the project biologist and archaeologist. (Planning & Building Inspection; Public Works)
13. Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$1,275. This fee shall be paid on or before the filing of the Notice of Determination within five (5) days of project approval. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. (Planning & Building Inspection)

14. Native trees, particularly the cluster of Monterey Cypress trees located close to the construction site, shall be protected from inadvertent damage from construction equipment by wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees. Said protection shall be demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. (Planning & Building Inspection)
15. The applicant shall enter into an agreement with the County to implement the Mitigation Monitoring and/or Reporting Plan adopted for this project. (Planning & Building Inspection)
16. No exterior lighting shall be allowed as seen from Highway One. No flood lights or any sort of exterior lights shall be placed at the northern, western, and southern elevations of the building. No lights shall shine on the water, surrounding habitat, or other public viewing areas. The applicant shall submit 3 copies of a lighting plan which shall indicate the location, type, and wattage of all light fixtures to be assured that lighting will not create a glare that can be seen from Highway One. (Mitigation Measure 1: Planning & Building Inspection)
17. The present owners shall convey to the County a Scenic and Conservation Easement over the parcel created by combining two parcels, Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000, exclusive of building envelope. The Scenic and Conservation Easement shall specify those portions of the property where sensitive habitats exist and are not to be materially altered except for the removal of invasive, exotic plant species. Although included in the Scenic and Conservation Easement, archaeological sites are not to be identified in said easement though included in the area not to be materially altered. The easement boundary shall be adjusted to include as much of the archaeological site as possible, and to exclude the proposed driveway. The easement shall include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeological and other scientific research purposes secured. (Mitigation Measure 2: Planning & Building Inspection)
18. In order to mitigate potential adverse impacts to sensitive plants and habitats by the proposed project, the applicant shall contract the services of a qualified biologist to fully implement the Biological Report/Revegetation Plan prepared by Jeff Norman, November 30, 1999, with his updated survey dated December 15, 2001. Said contract shall specify the implementation methods, performance criteria, monitoring and reporting as described in the Biological Report/Revegetation Plan. The contract shall require the biologist to consult regularly with the geotechnical engineer, archaeologist and contractor to coordinate individual actions so that no conflicts arise to reduce the mitigation value of consultant measures related to each other. (Mitigation Measure 3: Planning & Building Inspection)

19. In order to protect the Southern Sea Otter and Black Swift and the invertebrates they feed upon within the subtidal habitat, no construction debris shall be allowed to enter the marine habitat, and no erosion shall be allowed to occur as a consequence of the proposed project in order to protect the subtidal and intertidal habitats of invertebrates upon which the Southern Sea Otter feed. The currently eroded area northwest of the building envelope, identified by the consulting biologist, shall be stabilized, the method to be determined by a certified geotechnical engineer and approved by the Director of Planning & Building Inspection. An erosion control plan shall be submitted, reviewed by a certified biologist together with the engineer and contractor, to assure that no debris enter the marine habitat. Any landscaping occurring at this eroded area shall include adequate erosion-control measures and selection of non-invasive plant species. (Mitigation Measure 4: Planning & Building Inspection)
20. In order to assure that grading activities do not impact cultural or archaeological resources, the applicant shall contract with a Registered Professional Archaeologist to monitor all earth disturbance work within 10 meters (3 feet) adjacent to identified cultural and/or archaeological resources on the project site. The contract shall specify implementation of the Archaeologist Reconnaissance of Donald Sorensen Property, Big Sur prepared by Archaeological Resource Service, February 8, 1977. In addition, the contract will require the contracted archaeologist to be involved in regular consultation with the contracted geotechnical engineer, biologist and contractor during construction to assure protection of biological and archaeological resources at the site. (Mitigation Measure 6: Planning & Building Inspection)
21. In order to assure that excavation, grading and construction activities are consistent with the Geotechnical Report prepared by Vicki C. Odello, the applicant shall contract the services of a qualified geotechnical engineer to fully implement the Geotechnical Report prepared by Vicki C. Odello, C.E., November 21, 1999. In addition to implementation of geotechnical construction specifications described in said Geotechnical Report, the contract will include regular consultation with the consulting biologist, archaeologist and contractor during construction to assure protection of biological and archaeological resources at the site. (Mitigation Measure 7: Planning & Building Inspection)
22. The applicant shall submit for the Director of Planning and Building Inspection's review and approval a detailed grading, landscaping and re-vegetation plan. The plans shall have been reviewed by a certified biologist verified in the form of a letter by said consulting biologist. At minimum, the plan shall specify procedures for erosion control and re-establishment of native plant cover; and proposed landscaping species. Any landscaping plans and irrigation within the building envelope shall be evaluated in terms of erosion control measures and compatibility with the native plant community in the area—the Coastal Bluff Scrub and Northern Coastal Scrub. No interference with public views through the planting of trees shall be allowed.

Three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department. (Mitigation Measure 5: Planning & Building Inspection)

Prior to Final Building Inspect. Occupancy:

23. For emergency access, the California Department of Forestry Fire District (Monterey—San Benito Ranger Unit, Battalion 1) requires the following:
- The surface of the driveways shall provide unobstructed access to conventional drive vehicles, including sedans and fire engines. Surfaces shall be capable of supporting the imposed load of fire apparatus.
  - The grade for all roads, streets, private lanes and driveways shall not exceed 15 percent. Where road grades exceed 8 percent, a minimum structural roadway surface thickness of 0.17 feet of asphaltic concrete on 0.34 feet of aggregate base shall be required.
  - For residential driveways with turns 90 degrees and less, the minimum horizontal inside radius of curvature shall be 25 feet. For driveways with turns greater than 90 degrees, the minimum horizontal inside radius of curvature shall be 28 feet. For all driveway turns, an additional surface of 4 feet shall be added.
  - Turnarounds shall be required on driveways and dead-end roads in excess of 150 feet of surface length. Required turnarounds on access roadways shall be located within 50 feet of the primary building. The minimum turning radius for a turnaround shall be 40 feet from the center line of the road. If a hammerhead/T is used, the top of the "T" shall be a minimum of 60 feet in length.
  - Driveways shall not be less than 12 feet wide unobstructed. All driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceed 800 feet, turnouts shall be provided at no greater than 400 foot intervals. Turnouts shall be a minimum of 12 feet wide and 30 feet long with a minimum 25 foot taper on each end.
  - Gate entrances shall be at least the width of the traffic lane but in no case less than 12 feet wide. 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 that road. Where gates are to be locked, the Reviewing Authority having jurisdiction may require installation of a key box or other acceptable means to immediate access for emergency equipment.
  - Unobstructed vertical clearance shall not be less than 15 feet for all access roads and driveways. (CDF Fire District and Planning & Building Inspection)
24. The existing septic tank must be destroyed under permit of the Division of Environmental Health and a new one installed in the location indicated on the approved plans. (Environmental Health)
25. The applicant shall comply with Ordinance No. 3932, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:
- All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
  - Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. (Water Resources Agency)



26. 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. (Planning and Building Inspection Department)

IN VIEW OF THE ABOVE findings and evidence and the findings of the Planning Commission, the Board hereby: (1) denies the appeal of Dr. and Mrs. McAllister; (2) affirms the Mitigated Negative Declaration prepared for the project; and (3) affirms the Planning Commission's decision (Resolution No. 03073) to approve the Laube/Engel (Laube/Engel; Planning and Building Inspection file no. PLN010105) Combined Development Permit consisting of the following:

- a. a Coastal Development Permit for an approximately 8,270 square foot single family dwelling with an approximately 1,824 square foot subterranean garage with mechanical room;
- b. a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat;
- c. a Coastal Development Permit for approximately 1,750 cubic yards of cut and 736 cubic yard of fill that involves cutting into slopes over 30 percent; and
- d. a Coastal Development Permit for a lot line adjustment that will consolidate two lots, subject to the conditions of approval from said Planning Commission resolution.

In addition, the Board adds the following Indemnification Agreement as a condition of the Laube/Engel Combined Development Permit, namely:

PASSED AND ADOPTED on this 13th day of January, 2004, upon motion of Supervisor Potter, seconded by Supervisor Johnsen, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Lindley, Johnsen, Potter

NOES: None

ABSENT: None

I, Sally R. Reed, 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 at page -- of Minute Book 72, on January 13, 2004.

Dated: January 23, 2004  
State of California.

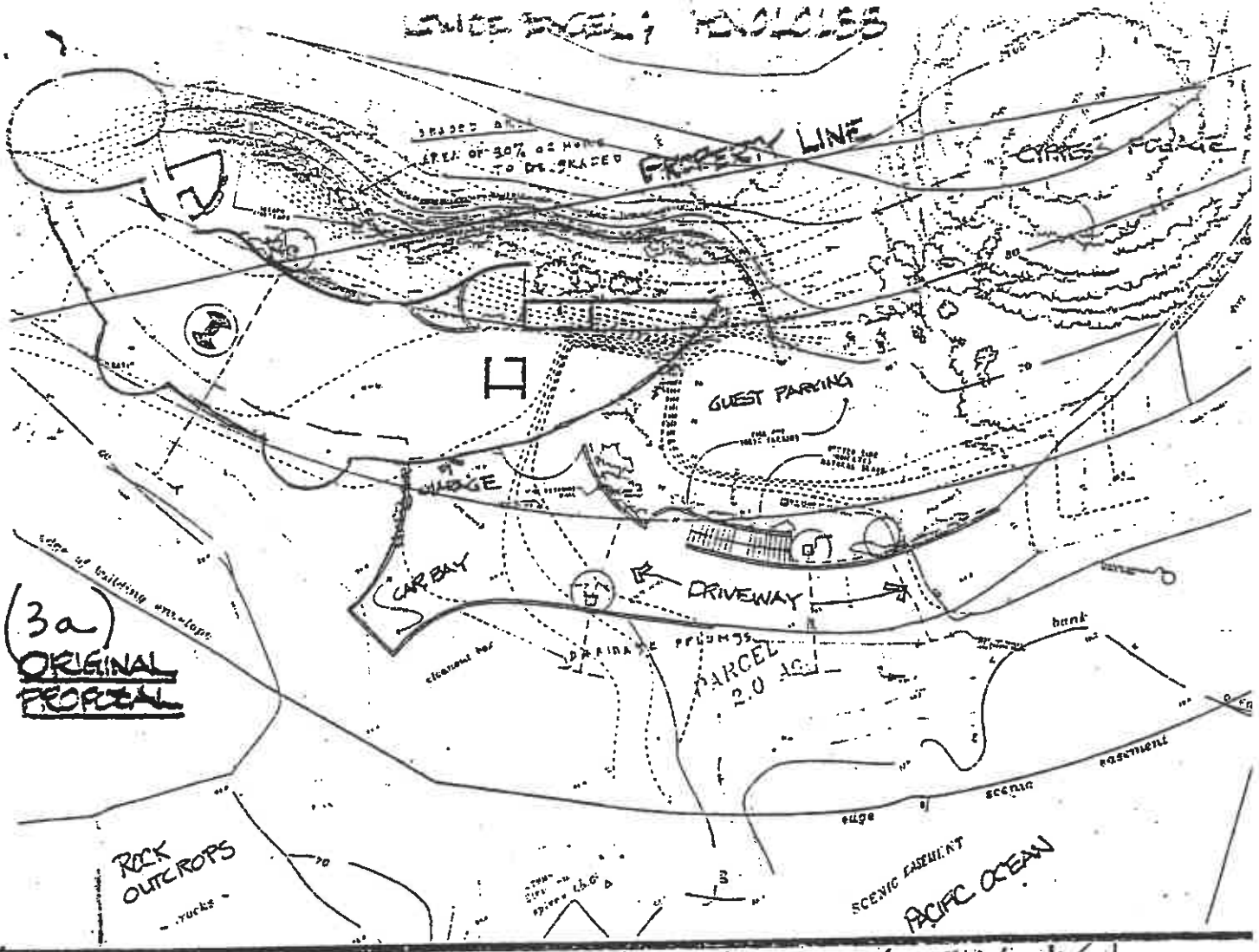
Sally R. Reed, Clerk of the Board of Supervisors, County of Monterey,

By

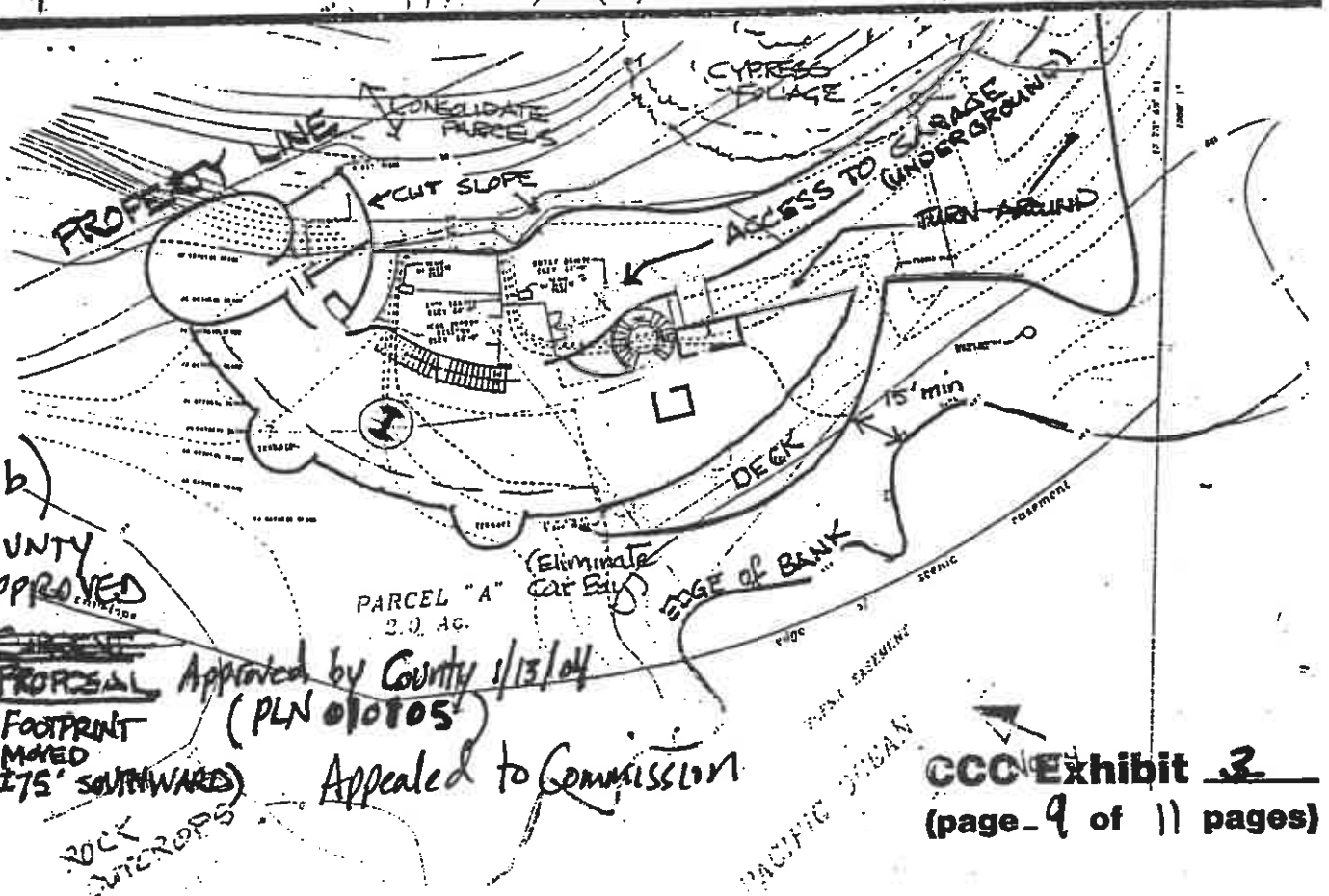
Ann D. Anderson  
Deputy

CCC Exhibit 3  
(page 8 of 11 pages)

SWICE FENCE; 12/01/55



(3a)  
ORIGINAL  
PROPOSAL

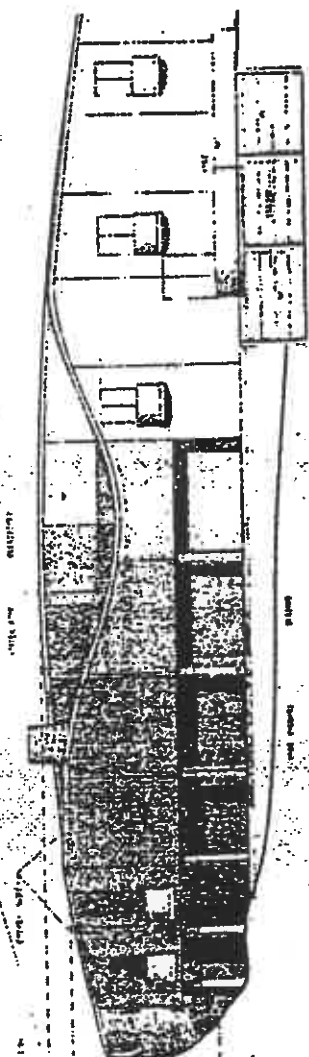


(3b)  
COUNTY  
APPROVED

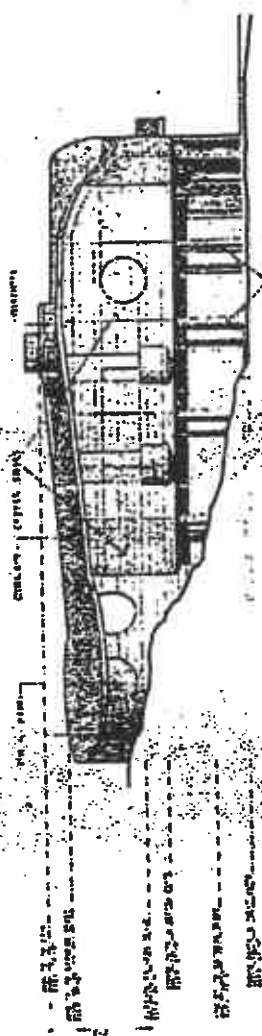
PROPOSAL  
(FOOTPRINT  
MOVED  
175' SOUTHWARD)

Approved by County 1/13/04  
(PLN 010105)

Appealed to Commission



**WEST ELEVATION**

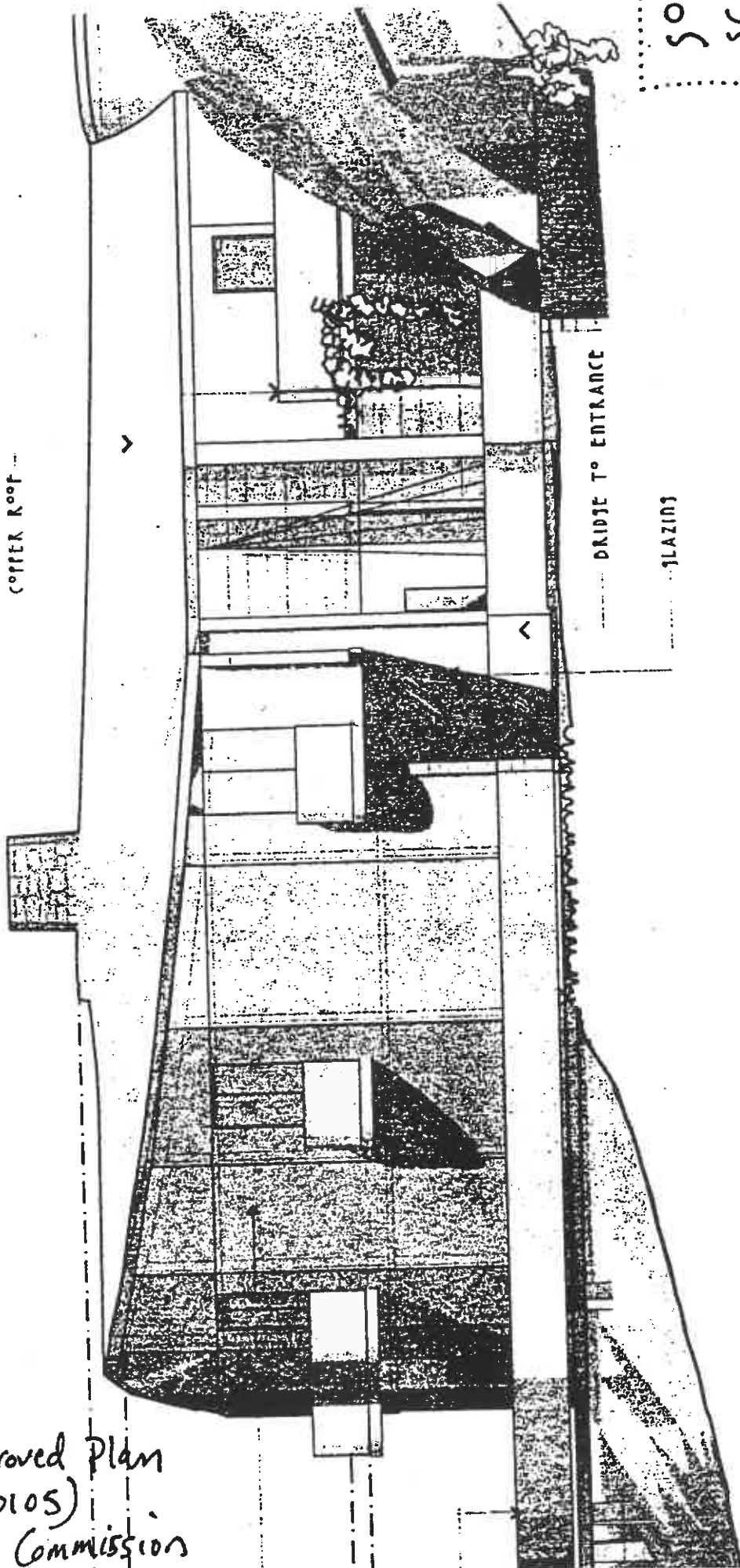


**NORTH ELEVATION**

County Approved Plans  
(PLN 010105)  
Appealed to Commission

County Approved Plan  
(PLN 010105)  
Submitted to Commission

GLASS GUARDRAIL  
COPPER ROOF



BRIDGE TO ENTRANCE

GLAZING

50  
50



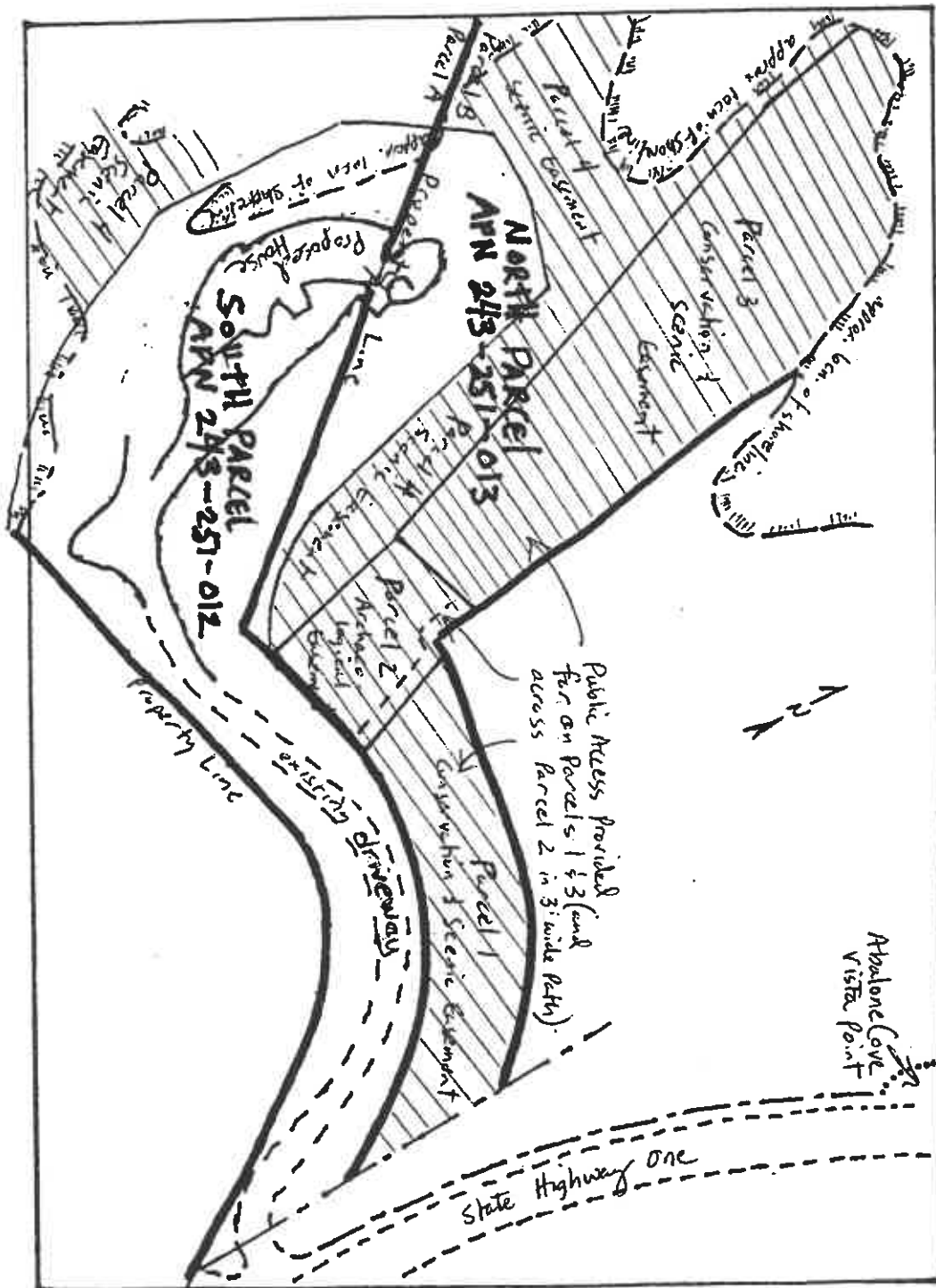
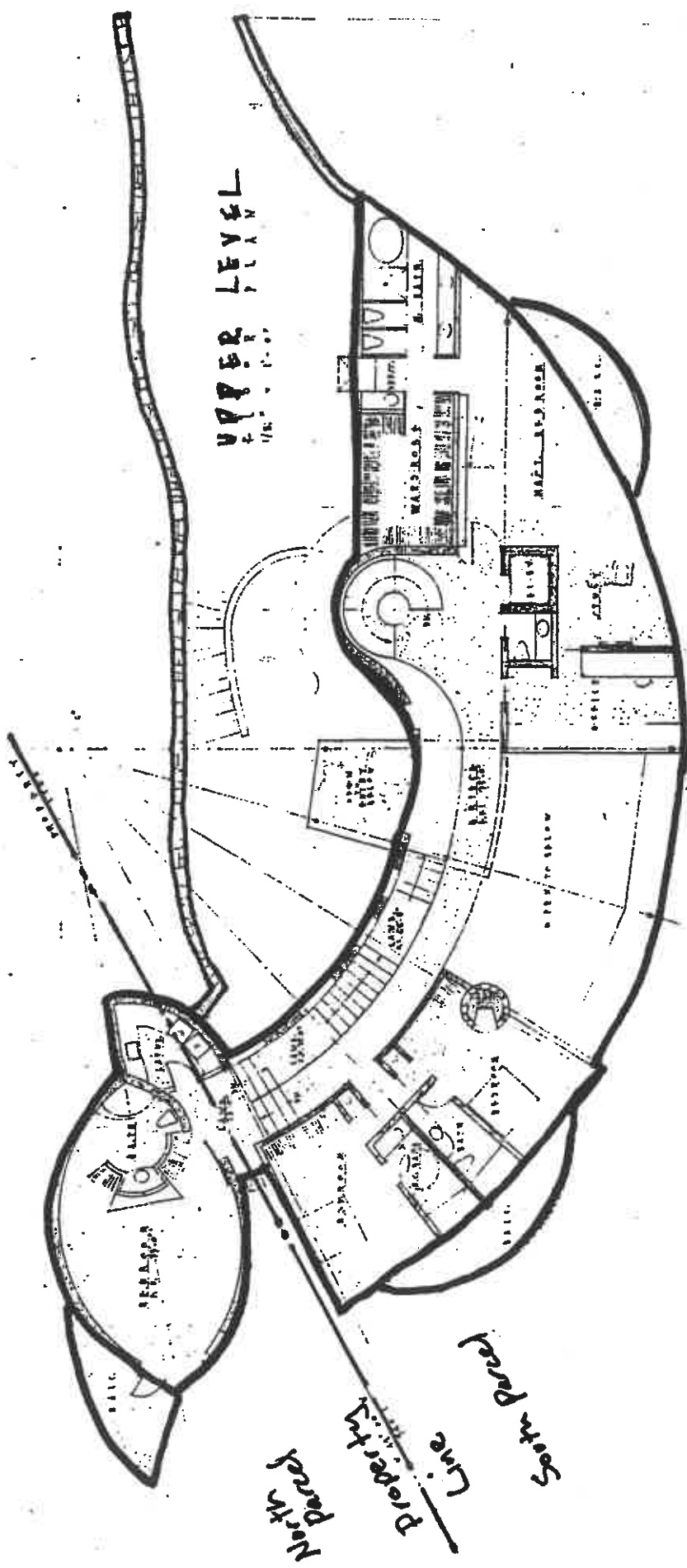


EXHIBIT NO. 4
APPLICATION NO. A-3-MCO-04-012
Schematic of Existing Scenic Conservation Easement
California Coastal Commission



LAUBE/ENGEL RESIDENCE  
KASLER POINT  
CARMEL  
CA  
ARCHITECT  
JULY 8, 2004

SITE & DRAINAGE PLAN  
JULY 8, 2004

REVISED JULY 8, 2004  
REVISED DEC 22, 2004  
REVISED BY S.S.

RECEIVED

AUG 03 2004

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Grading Estimate  
Cut Estimate 445 cy  
Residence 1286 cy  
Turnaround and Driveway 1731 cy  
Total

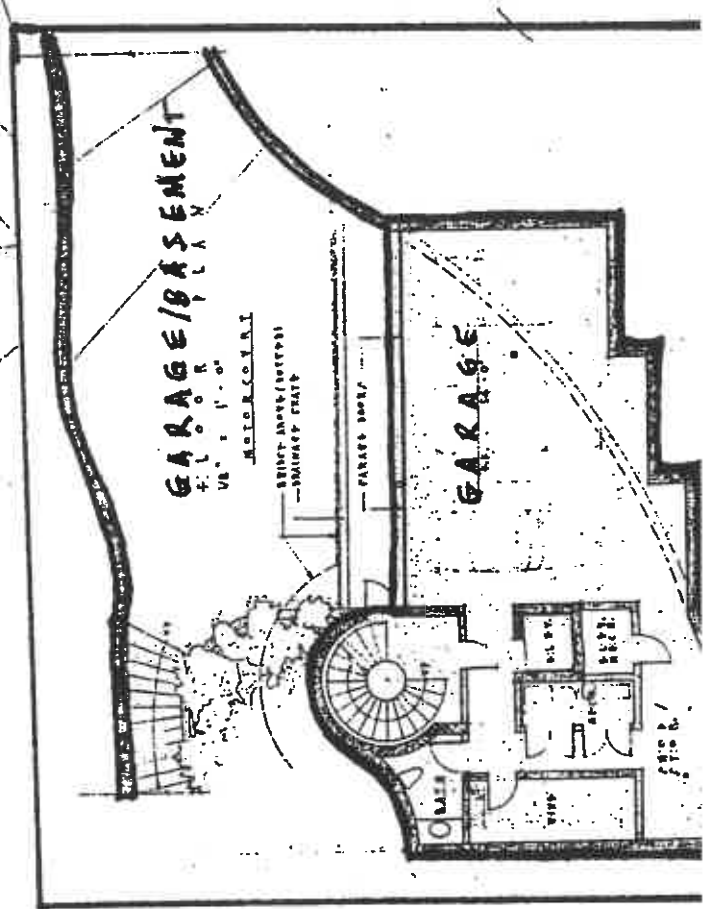
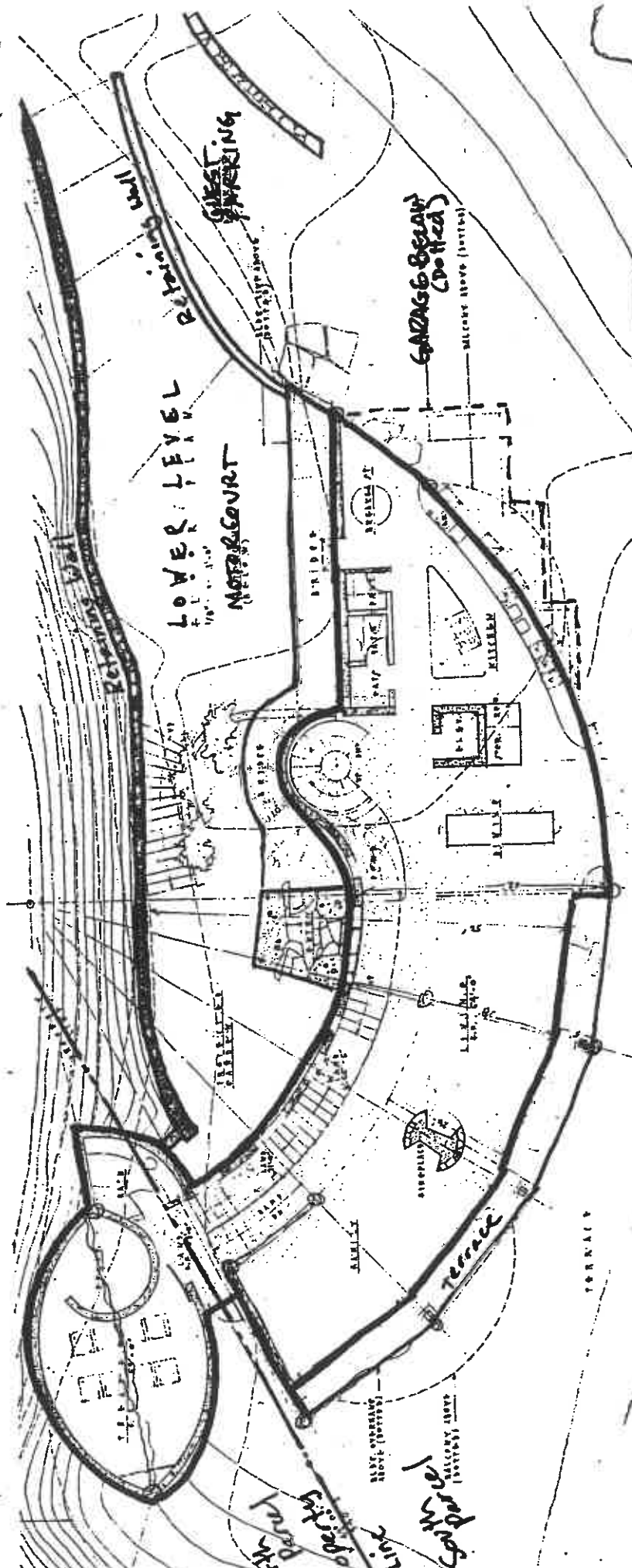
Fill Estimate  
Total fill to be distributed on site 419 cy

The resulting 1312 cubic yard difference is to be relocated to an approved location.

pg 1 of 4

EXHIBIT NO. 5
APPLICATION NO. A-3-1460-04-012
Revised Plans
Dated July 8, 2004
California Coastal Commission



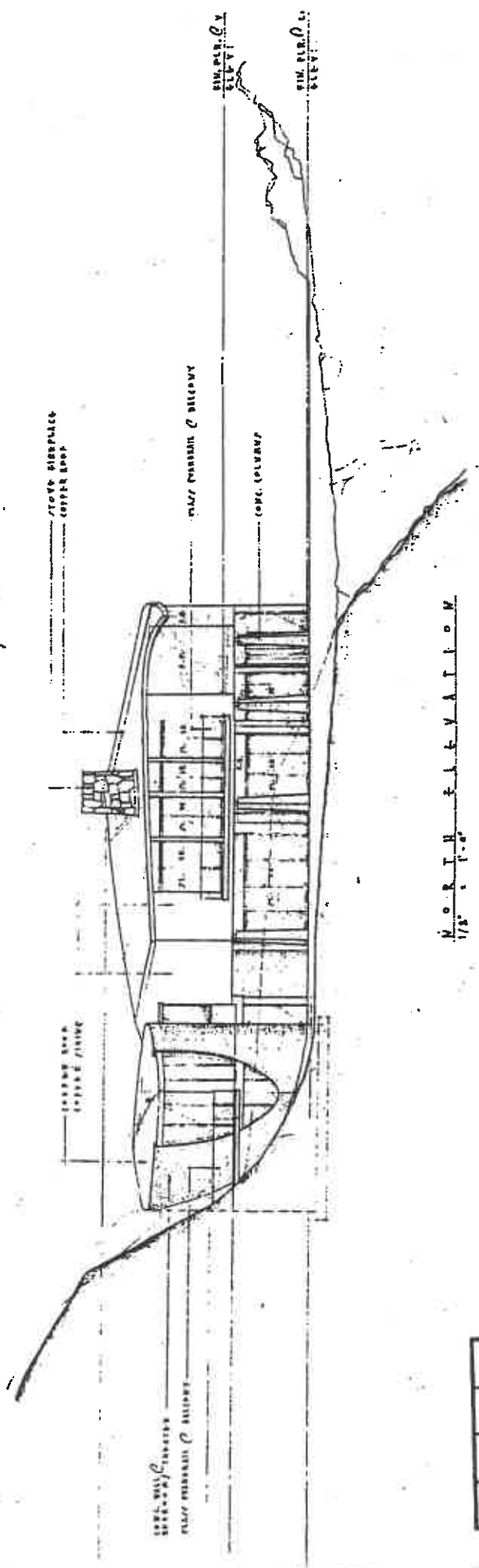


Square Footage	4310 sf
Lower Level	3680 sf
Upper Level	1981 sf
Proposed Garage/Basement	9971 sf
Total	
Total Coverage	4625 sf
Proposed Coverage Residence	10147 sf
Turnaround and Driveway	948 sf
Proposed Protected Garden	15720 sf
Total	

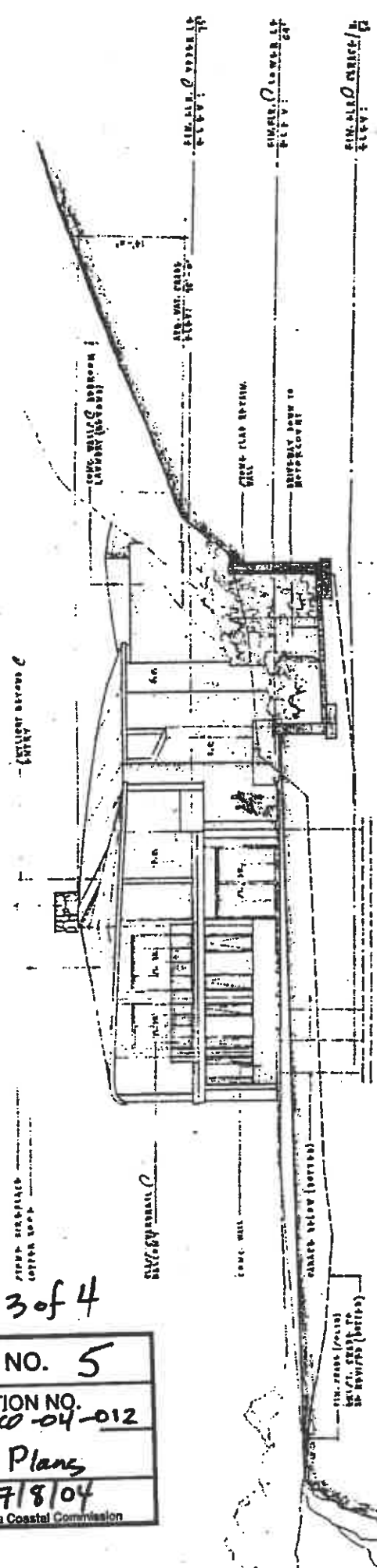
pg 2 of 6

EXHIBIT NO. 5
APPLICATION NO. A-3-MIO-04-01
Revised Plans Con
Dated 7/8/02
California Coastal Commission





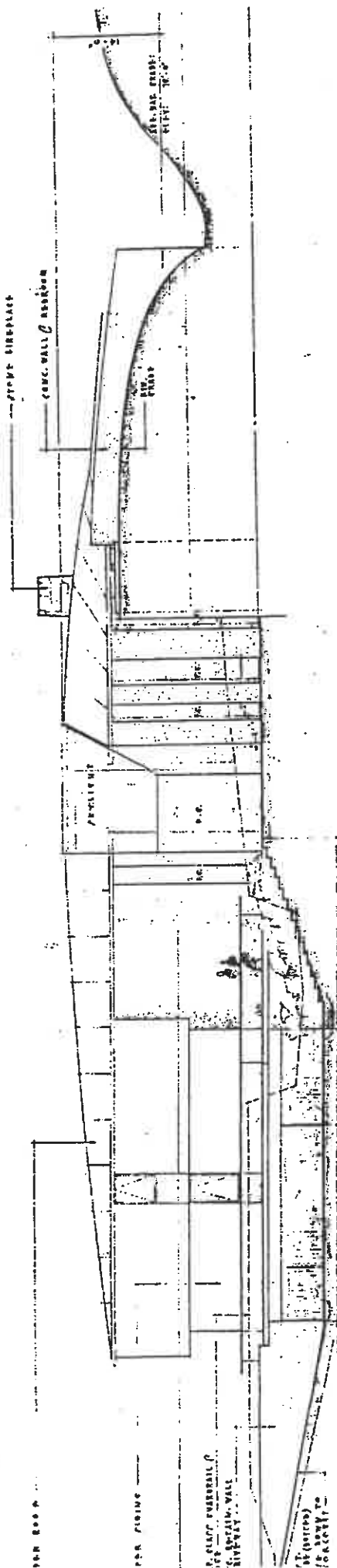
ELEVATION



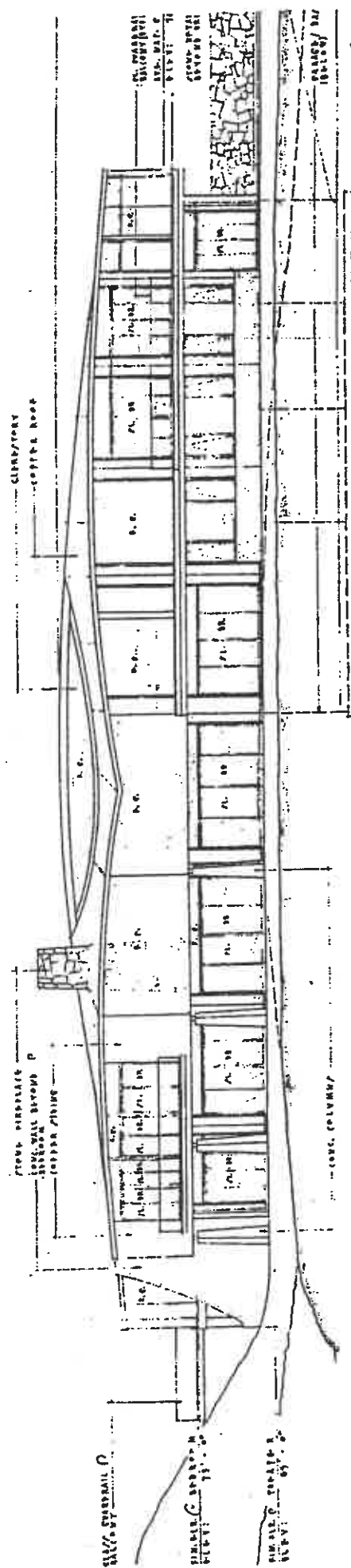
ELEVATION

Pg 3 of 4

EXHIBIT NO. 5
APPLICATION NO. A-3-MCO-04-012
Revised Plans
Dated 7/8/04
California Coastal Commission



1/8" = 1'-0"



1/8" = 1'-0"

Pg 4 of 4

EXHIBIT NO. 5  
 APPLICATION NO.  
 A-3-MC-04-012  
 Revised Plans  
 Dated 7/8/04  
 California Coastal Commission



Photo 1.  
Oblique aerial  
photo of Abalone  
Cove and Kasler  
Point, with access  
road and excavated  
building pad area.  
(Photo from  
California Coastal  
Records Project.)

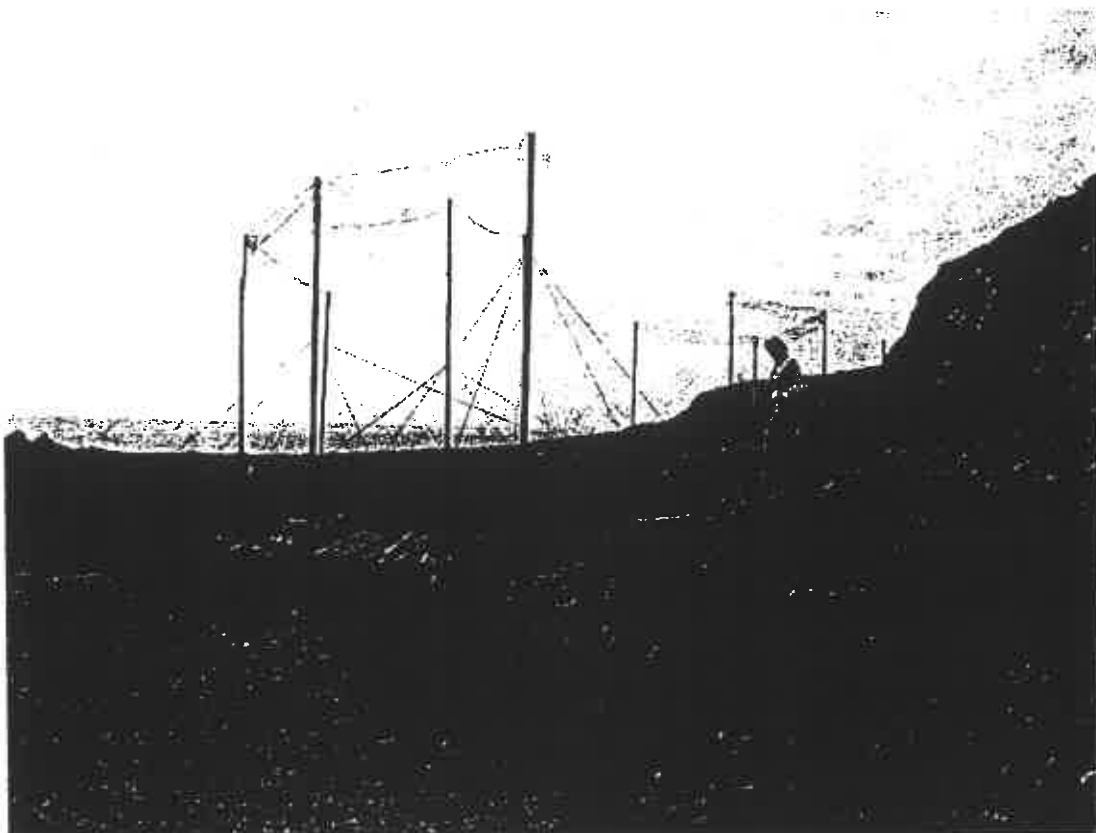


Photo 2.  
Project staking,  
looking north;  
theater/media area  
is staked at  
rightmost of photo  
(against bluff).  
Photo shows  
excavated building  
pad and cut face on  
right.

Exhibit 6 -- pg 1 of 4  
Site Photos



California Coastal Commission

A-3-MCO-04-012  
Laube-Engel Appeal

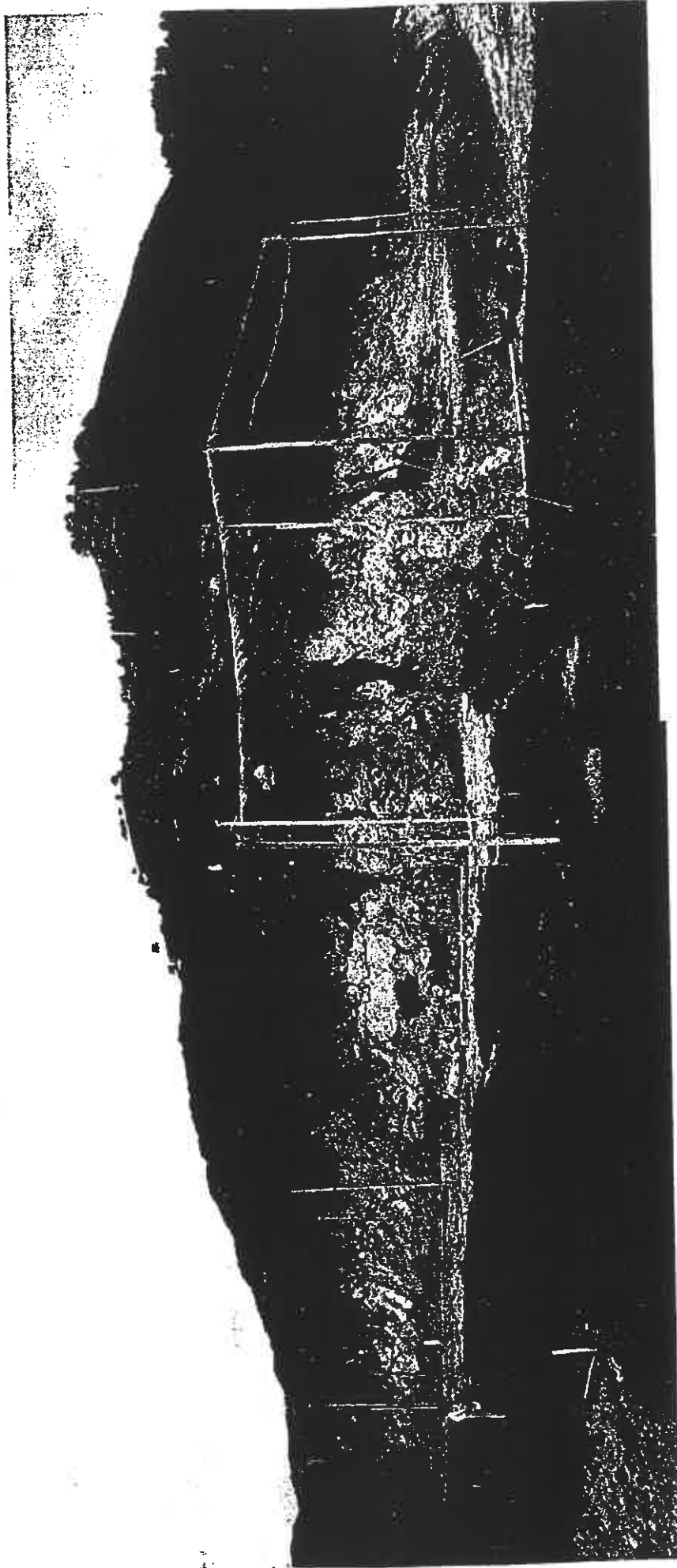


Photo 3.  
Project staking, looking east at cut face; theater/media area is shown  
staked on left side of photo. Photo shows excavated building pad and cut  
face, and access road on right.

Exhibit 6 - pg 2 of 4  
Site Photos

A-3-MCO-04-012  
Laube-Engel Appeal



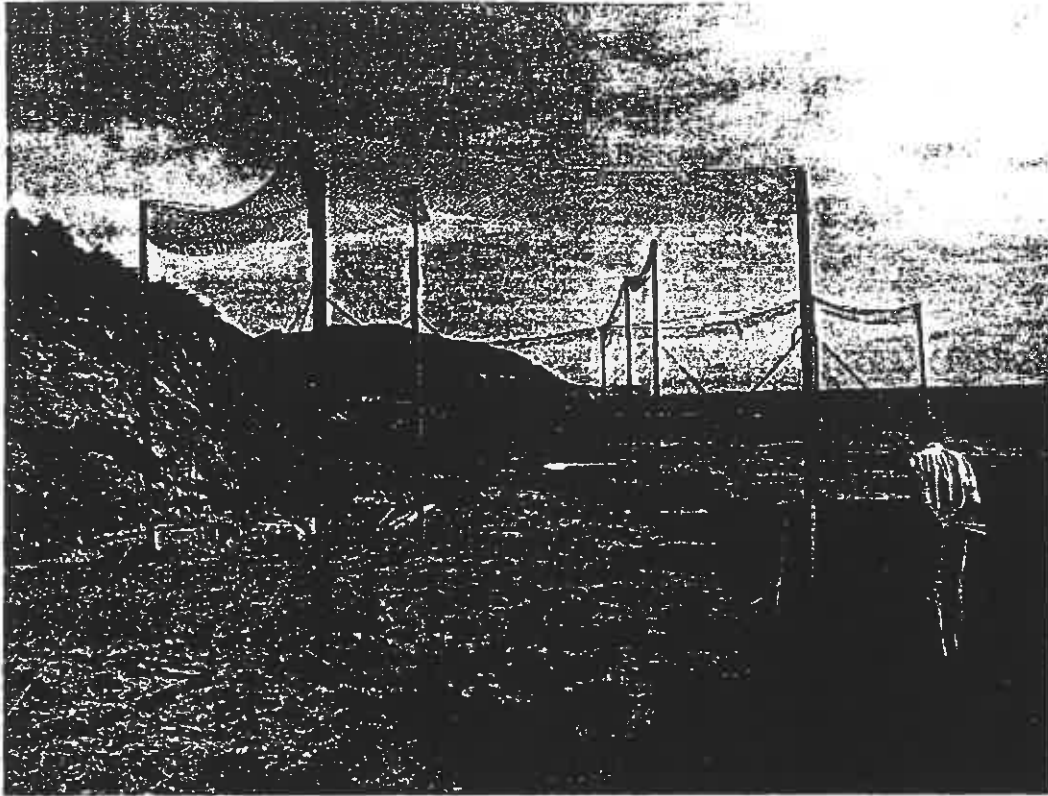


Photo 4.  
Project flagging  
looking south  
toward Rocky  
Point.

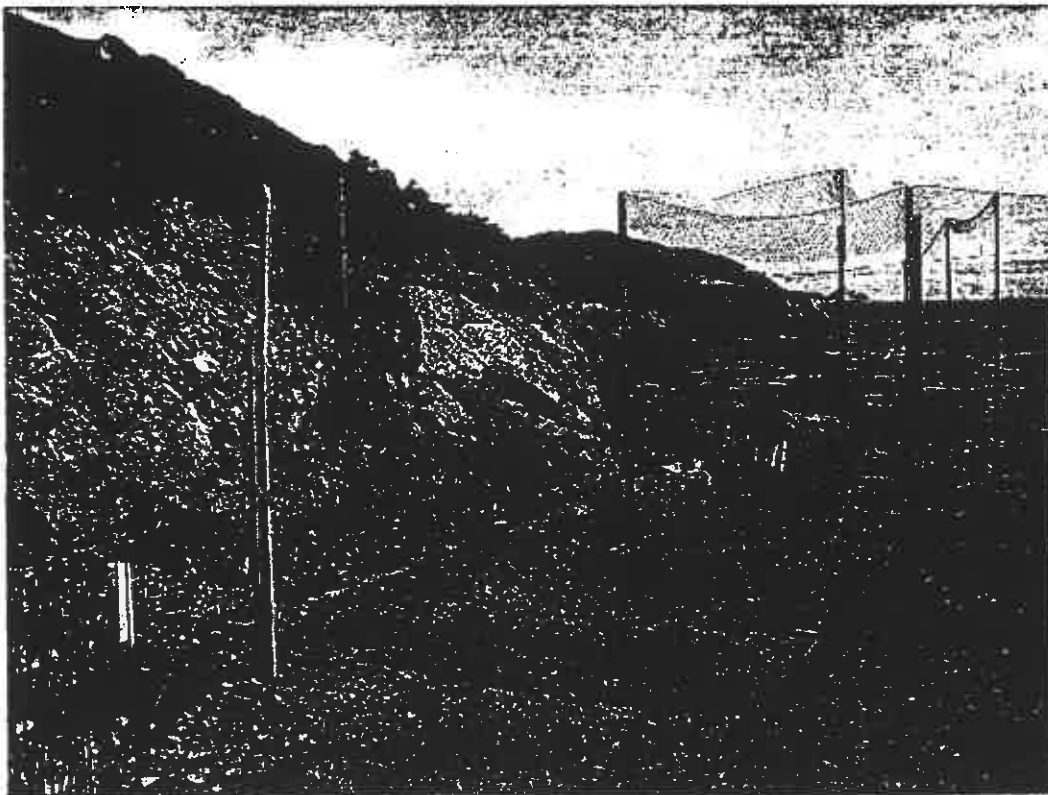


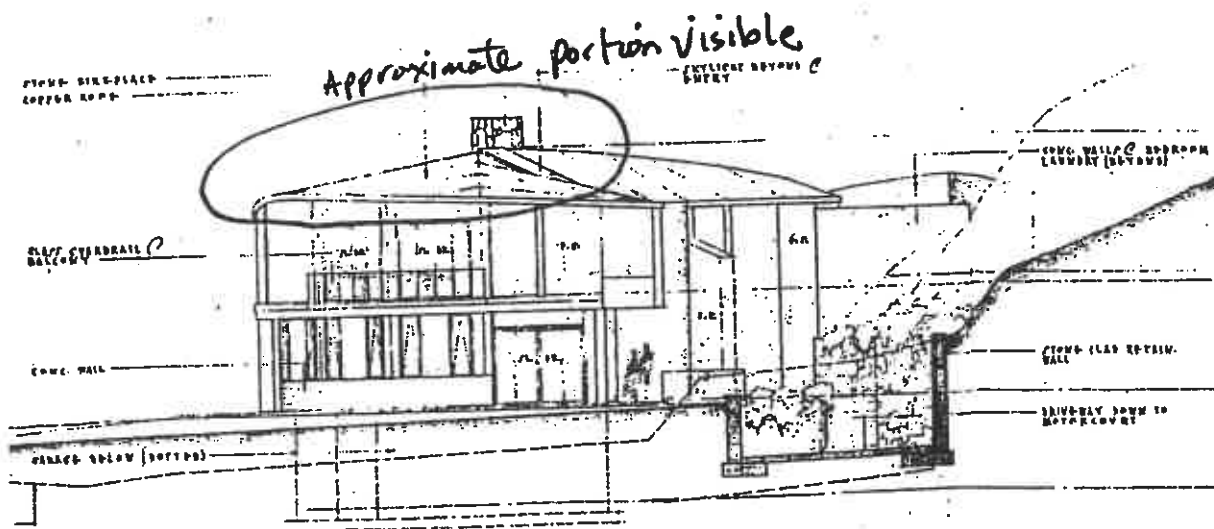
Photo 5.  
Flagging of project  
looking south, with  
remains of  
foundation work  
done by previous  
owner (Sorenson)  
in violation of  
earlier permit.

Exhibit 6 - pg 3 of 4  
Site Photos



California Coastal Commission

A-3-MCO-04-012  
Laube-Engel Appeal



Southern elevation of proposed project design showing approximate portion of house visible from Rocky Point turnout

1/8" = 1'-0" ELEVATION

Project Location

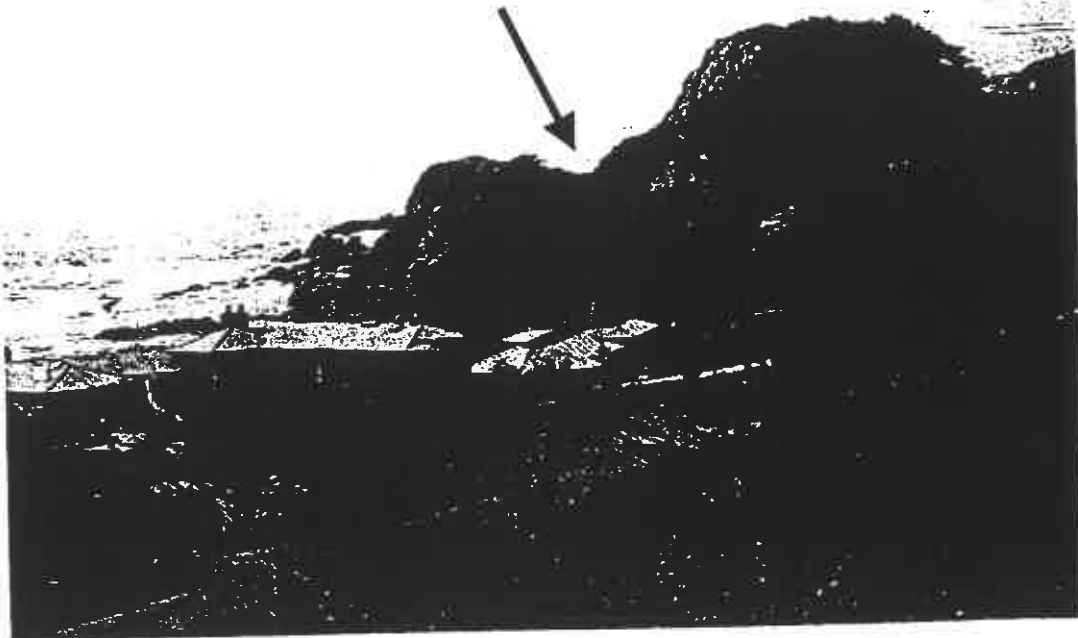
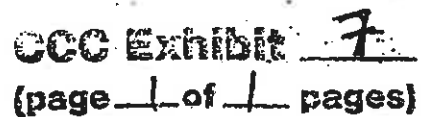


Photo 6. View from Rocky Point turnout along Highway One, from which project is partially visible.



Dated 1999



From Norman, 9/2/2000 Biological Map.  
in Biological Report Dated  
12/14/02

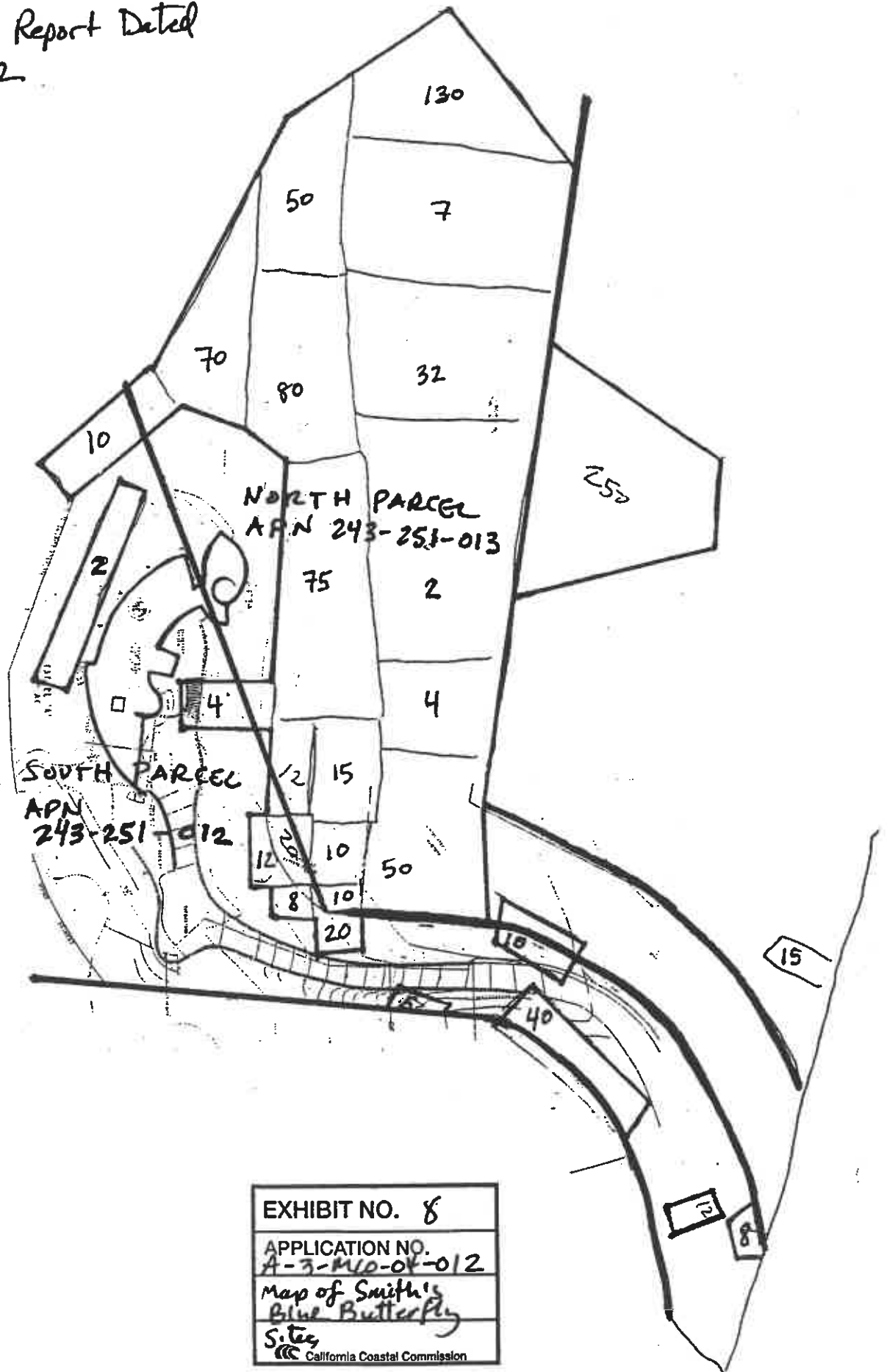


EXHIBIT NO. 8
APPLICATION NO. A-3-MC-04-012
Map of Smith's Blue Butterfly
Sites California Coastal Commission



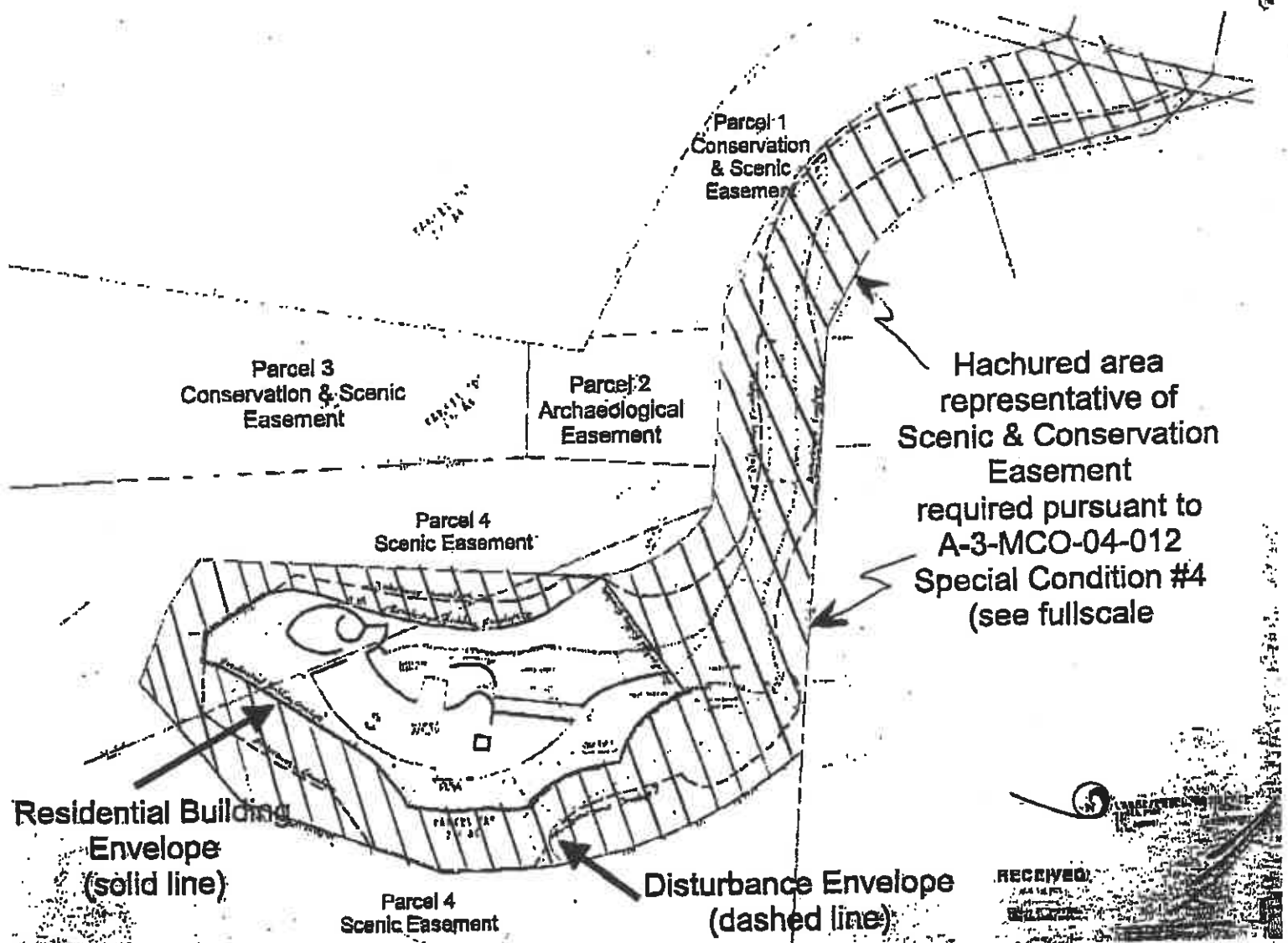


Exhibit 9- pg 1 of 1  
Scenic & Conservation Easement  
Required by Special Condition #4

A-3-MCO-04-012  
Laube-Engel Appeal



**Vicki C. Odello, C.E. 52601**

2830 Ribera Road  
Carmel, California 93923  
Phone/Fax (831) 624-1725

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It is my opinion the site and proposed development can be made compatible provided the following concerns are considered in design and construction.

1. The house should incorporate a pier and grade beam foundation system and/or footings that penetrate the fill and colluvium and embed in the granite bedrock throughout house footprint.
2. Where native granite is not encountered at slab sub-grade, structural slabs should be used to bridge over fill or soil.
3. Grading or improvements should not be positioned within 15 feet of the unprotected sea cliff on the south end of the site.
4. Where a structural fill wedge can not contain the outer edge of the turnaround (due to the 15-foot sea cliff set back) a retaining wall may be used.
5. The sea cliff on the south end of the site should be protected from further high surf erosion; otherwise there is a potential for future loss of land at the edge of the sea cliff. An earthquake or inclement weather as well as very high surf could promote sliding and/or erosion in the area of the crack in ground near the sea cliff.
6. Anticipate some corrosivity of salt sea spray on building materials.
7. Where new fill is to be placed over old compacted fill, the top 24 inches of the old fill should be recompact.
8. The manhole tanks should be relocated at least 15 feet away from the unprotected sea cliff on the south end of the site.
9. Proper drainage and erosion control should be implemented.
10. Retaining walls should retain vertical high cuts.
11. Glazing and house walls on the east side of the structure, adjacent to, and below cut slopes should be protected from potential rock topple impact.
12. Debris wall design could be incorporated into the driveway retaining walls as a vertical extension lip. Or, if risk is acceptable by the owner, the driveway or garden roof slabs, could be designed as a catchment area for small boulders. Alternatively, slope protection (i.e. netting) could be used.
13. Refer to the body of the report for specific design data.

# Vicki C. Odello, C.E. 52651

2830 Ribera Road  
Carmel, California 93923  
Phone/Fax (831) 624-1725

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This report describes my findings and presents geotechnical criteria for site grading, drainage control, foundations, retaining walls, and slabs-on-grades. Specific seismic U.B.C. criteria can be provided if necessary.

You may contact me for consulting during the design, review and construction phases of the project.

## Site Grading

1. If unusual or unforeseen soil conditions are found during construction, additional or revised recommendations may be required.
2. A compaction technician should be hired to test the degree of relative compaction at the base of fills and as it is being placed. Where referenced in this report, Percent Relative Compaction and Optimum Moisture Content shall be based on ASTM Test Designation D1557-78.
3. Fills may not be placed within 15 feet of the sea cliff on the south end of the site.
4. Fills may not be placed on ground steeper than 2:1 horizontal:vertical (50% gradient). Fills should be keyed and benched into firm bedrock in areas where local slope gradients exceed 5:1. The toe of the keyway must be laterally confined by at least 5 feet of near level firm native material. Subdrains will be required in areas where keyways or benches expose potential seepage zones.
5. The face of all permanent fill slopes should not be steeper than 2:1 (H:V) (50% gradient). To anticipate some erosion, there should be at least 4 feet of freeboard between the top of the cut face and any improvement or property line.
6. Cut slopes should be inclined no steeper than 2:1 (H:V), unless fractured granite is exposed. Cuts made in granite may be cut at 1:1 (H:V) for heights up to 20 feet.
7. Graded cut slopes, old and new, exposing fractured rock and colluvial boulders should be covered in wire net, or catchment areas and/or debris walls should be provided at the base of the slope. Criteria can be developed for these options as selected.
8. The on-site soils may be used as engineered fill. Materials used for engineered fill should be free of organic material, and contain no rocks or clods greater than 6 inches in diameter, with no more than 15% larger than 4 inches.
9. Areas to be graded should be cleared of all obstructions including loose fill, debris, trees not designated to remain, or other unsuitable material. Existing depressions or voids created during site clearing should be backfilled with engineered fill. Cleared areas should then be stripped of organic-laden topsoil

# Vicki C. Odello, C.E. 52651

2830 Ribera Road  
Carmel, California 93923  
Phone/Fax (831) 624-1725

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10. Areas to receive engineered fill should be scarified to a depth of 24 inches, moisture conditioned to over optimum, and compacted to at least 90% relative compaction. Portions of the site may need to be moisture conditioned to achieve a suitable moisture content at over optimum for compaction. These areas may then be brought to design grade with engineered fill.
11. Engineered fill should be placed in thin lifts not exceeding 6 inches in loose thickness, moisture conditioned to over optimum, and compacted to at least 90% relative compaction.
12. The subgrade and aggregate base sections below pavements should be compacted at to at least 95% relative compaction. The subgrade section should be compacted at over optimum moisture conditions.

## Drainage Control

13. Fill slopes may be planted with erosion resistant vegetation to reduce erosion.
14. Thorough control of runoff is essential to the performance of the homesite. Diligent maintenance of completed drainage improvements is required for the life of the improvements. The drainage improvements should be both durable and easily accessible for routine periodic maintenance.
15. Surface runoff and subsurface seepage from slopes above the house must be anticipated and intercepted. Berms or lined V-ditches may be constructed at the top of cut slopes to divert water around the development toward suitable exit area. To intercept subsurface seepage, French drains, at least 18 inches into granite rock, may be constructed just uphill from the development, slabs and pavements. Retaining wall backdrains may suffice.
16. Surface drainage should include provisions for positive slope gradients so that surface runoff is not permitted to pond adjacent to foundations, pavements, or other improvements. Surface drainage must be directed away from the building foundations, slabs and pavements.
17. Runoff from new improvements must not cause erosion.
18. The migration of water or spread of extensive root systems below foundations, slabs, or pavements may cause undesirable differential movements and subsequent damage to these structures. Landscaping should be planned accordingly.

## Foundations – Pier and Grade Beam

19. If unusual or unforeseen soil conditions are found during construction, additional or revised recommendations may be required.

**CCC Exhibit** 10  
(page 3 of 6 pages)

**Vicki C. Odello, C.E. 52651**

2830 Ribera Road  
Carmel, California 93923  
Phone/Fax (831) 624-1725

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20. Drilled piers should be at least 18 inches in diameter, penetrate fill, colluvium and topsoil, and embed at least 5 feet into granite bedrock on the ocean side of the building or 2 feet into bedrock on the cut side.
21. There should be a horizontal distance of 10 feet between the base of all foundation elements and the surface of the adjacent slope.
22. Alternatively, where granite bedrock is exposed at foundation grade (i.e., at the base of the cut), conventional footings (or deepened footings) may be used, unless specified by the structural engineer.
23. All foundation trenches located adjacent to other trenches or utility trenches should have their bearing surfaces founded below an imaginary 1:1 plane projected upward from the bottom edge of the adjacent footings or utility trench.
24. The base of foundation excavations must be thoroughly cleaned to obtain proper bearing capacity.
25. Foundations constructed in accordance with the above may be designed for an allowable end bearing capacity of 3500 psf in granite bedrock. Alternatively, a skin friction value of 800 psf may be used for that portion of the pier embedded in granite. These values may be increased by 1/3 to include short-term seismic and wind loads.
26. For passive lateral resistance of that portion of the pier embedded in granite rock, an equivalent fluid weight of 600 pcf may be assumed to act against two pier diameters.
27. Piers should be vertically reinforced their full length. The vertical reinforcement should be lapped and tied to the upper grade beam reinforcement. Actual reinforcement requirements should be determined by the structural designer.
28. Prior to placing concrete, the foundation excavations must be moisture conditioned.
29. Prior to placing steel the soil engineer should observe excavations.

Retaining Walls and Lateral Pressures

30. Glazing and house walls on the east side of the structure, adjacent to, and below cut slopes should be protected from rock topple impact.
31. Debris wall could be designed into the driveway retaining walls as a vertical extension lip.

# Vicki C. Odello, C.E. 52651

2830 Ribera Road  
Carmel, California 93923  
Phone/Fax (831) 624-1725

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32. Sea wall protection can be developed if this option is selected.
33. Retaining walls should be designed to resist both lateral backfill pressures and additional surcharge loads. Free-to-move (non-restrained) walls should be designed to resist a triangularly-distributed active-equivalent-fluid-weight of 30 pcf for level backfill, and 45 pcf for sloping backfills inclined up to 2:1.
34. Restrained walls with level backfills should be designed to resist a uniformly applied wall pressure of 22 H psf, where H is the height and 32 H psf for sloping backfills inclined up to 2:1.
35. Passive resistance of retaining walls may be taken up in that portion of the pier embedded in granite. Topsoil or other materials should be neglected when computing passive resistance. Refer to Section 24 for passive a resistance value.
36. If the length of the retaining wall is founded in compacted fill of similar thickness, then the foundation may be a spread footing using a bearing capacity of 1200 p.s.f. and a lateral passive resistance of 250 p.s.f. along the face of the footing.
37. The above lateral pressures assume that the walls are fully drained to prevent hydrostatic pressure behind the walls. Drainage materials behind the wall should consist of 3/4-inch drain rock wrapped in filter fabric or an approved equivalent. The drainage material should be at least 12 inches thick. The drain section should extend from the base of the wall to within 12 inches from the top of the backfill. A perforated pipe should be placed (holes down) about 4 inches above the bottom of the wall and be tied to a suitable drain outlet. Wall backdrains should be plugged at the surface with material to minimize infiltration of surface runoff into the backdrains.
38. Walls acting as interior house walls should be thoroughly waterproofed, especially at the cold joint.

## Slabs-on-Grade

39. All slabs can be expected to suffer some cracking and movement. However, appropriate drainage, thickened exterior edges, a well prepared, confined, dense subgrade (including pre-moistening prior to pouring concrete), adequately spaced joints, and good workmanship should minimize cracking and movement. Slab reinforcing should be designed in accordance with anticipated use.
40. In areas where floor wetness would be undesirable, a blanket of 4 inches of free-draining gravel should be placed beneath the floor slab to act as a capillary break. In order to minimize vapor transmission, an impermeable membrane should be placed over the gravel. The membrane should be covered with 2 inches of sand or

Vicki C. Odello, C.E. 52651

2830 Ribera Road  
Carmel, California 93923  
Phone/Fax (831) 624-1725

9

rounded gravel to protect it during construction. The sand or gravel should be lightly moistened just prior to placing the concrete to aid in curing the concrete.

41. Where slabs are supported by hard native granite conventional slabs are adequate.
42. Where slabs are to be incorporated into a pier and grade beam system and the slabs are situated over soil, fill (old or new) then the slabs should be designed by a structural engineer. The structural slabs would have to be designed to bridge over soil or fill from pier to pier.

If you have any questions, please call my office.



VCO/vco  
Copies: 4 to Addressee

Enclosures

CCC Exhibit 10  
(page 6 of 6 pages)

**HARO, KASUNICH AND ASSOCIATES, INC.**

CONSULTING GEOTECHNICAL &amp; COASTAL ENGINEERS

Project No. M8068  
8 November 2004**RECEIVED**

NOV 08 2004

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREADR. NANCY ENGEL  
MR. SHELDON LAUBE  
c/o Lombardo and Gilles  
P.O. Box 2119  
Salinas, California 93902

Attention: Miriam Schakat

Subject: Response to California Coastal Commissions Request  
For Additional Information Regarding Coastal Bluff  
Setback Conditions and Long Term Blufftop StabilityReference: Proposed Laube/Engel Residence  
APN 243-251-12  
Kasler Point, Highway One  
Monterey County, California

Dear Dr. Engel and Mr. Laube:

As authorized, we have evaluated the coastal bluff at the reference site in relation to the proposed development presented on the July 2004 Laube/Engle residence plans by G.K. Muenning, Architect. The purpose of our field evaluation and engineering analysis was to respond to the Coastal Commission's Santa Cruz's office request in their list of issues dated 8 October 2004 regarding setback requirements from the top of the coastal bluff, relative to long term bluff stability. Our field investigation was conducted on 28 October 2004 and consisted of backhoe test pits on the north and south side of Kasler Point to determine the subsurface profile of the coastal bluff relative to historic grading for the Sorenson building pad and to determine the strength characteristics of the granitic fill, terrace deposit subsoils and granitic regolith. Our subsurface investigation determined that a fill wedge approximately 5 to 8 feet deep encompassing both sides of the saddle at Kasler Point was constructed across the outboard edge of the Sorenson building pad in 1977. The toe of the fill wedge was situated on the lower elevations of a saddle atop a high granitic platform or on terrace deposit materials. Historic wave runup since 1977 has eroded the face of the coastal bluff and the base of the fill slope to its existing configuration. Very strong coastal storms occurred in 1978, 1983, 1986, 1998 and 2002. The boundaries of the coastal bluff today, relative to the original fill placement for the 1977 building site and the underlying regolith and terrace deposit materials appear to have stabilized. In January 2004 our firm evaluated

**CCC Exhibit**

(page 1 of 4 pages)



Dr. Nancy Engel  
Mr. Sheldon Laube  
Project No. M8068  
Kasler Point, Highway One  
8 November 2004  
Page 2

aerial photography of the reference property to determine average erosion rates of the coastal bluff. Man induced processes have impacted the site, therefore erosion rates vary throughout the property. Our memo dated 13 January 2004 presented the results of that evaluation and indicated that on average, the edge of the bluff has historically eroded at a rate of approximately 0.36 feet per year. Using this erosion rate, 18 feet of coastal bluff will recede in 50 years at the reference site. This future recession gradient projects near vertical to 1:1 (horizontal to vertical) bluff face gradients and has a factor of safety of 1.0. The existing configuration of the coastal bluff suggests that the erosion rates have probably stabilized to these average values.

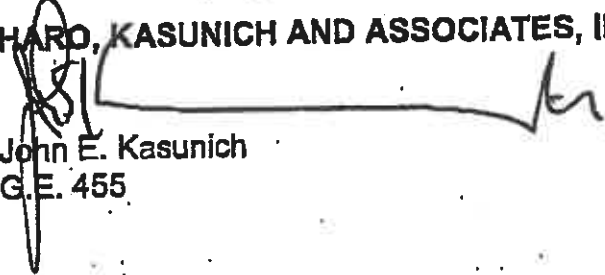
We constructed 2 additional geologic profiles across the bluff face and into the proposed development area. Using the results of our field profiling, the subsurface profiles established with the backhoe test pitting and the laboratory results of the fill and terrace deposit soil above the granitic rock, we projected coastal bluff profiles into the future 50 years. These profiles include the 18 feet of average erosion expected in the next 50 years and a geotechnical slope gradient that allows for a stable angle of repose. The projected stable angle of repose was based on existing gradients of the fill and native slopes which have been impacted by coastal erosion over time and the results of the soil strength testing. Direct shear tests were performed on granitic fill and regolith samples retrieved from the test pits. The results of these tests indicated high strength values for the internal angle of repose ( $\phi = 40^\circ$  to  $47^\circ$ ) and cohesion ( $c = 1600$  to  $1850$  psf) of the bluff materials which sit atop the granite bedrock platforms comprising the base of the coastal bluff. Reducing the test result values by a third to one half and performing limit equilibrium slope stability analysis on projected 1½:1 (horizontal to vertical) final upper bluff face gradients in 50 years resulted in Factors of Safety ranging from 3.8 to 11. Using 18 feet of future bluff recession and the 1½:1 bluff face gradient for the future bluff profile where terrace deposits and old granitic building fill exists, we positioned recommended setback lines along the bluff top. The recommended 50 year setback lines vary from 25 to 31 feet from the top of bank shown on the July 2004 plans. We have taken into account removal of the septic tank in defining the position of the recommended setback lines. Included with this letter report, are cross-sections showing the profiles generated during our field work and the projected coastal bluff profiles 50 years from now.

Dr. Nancy Engel  
Mr. Sheldon Laube  
Project No. M8068  
Kasler Point, Highway One  
8 November 2004  
Page 3

If you have any questions, please call our office.

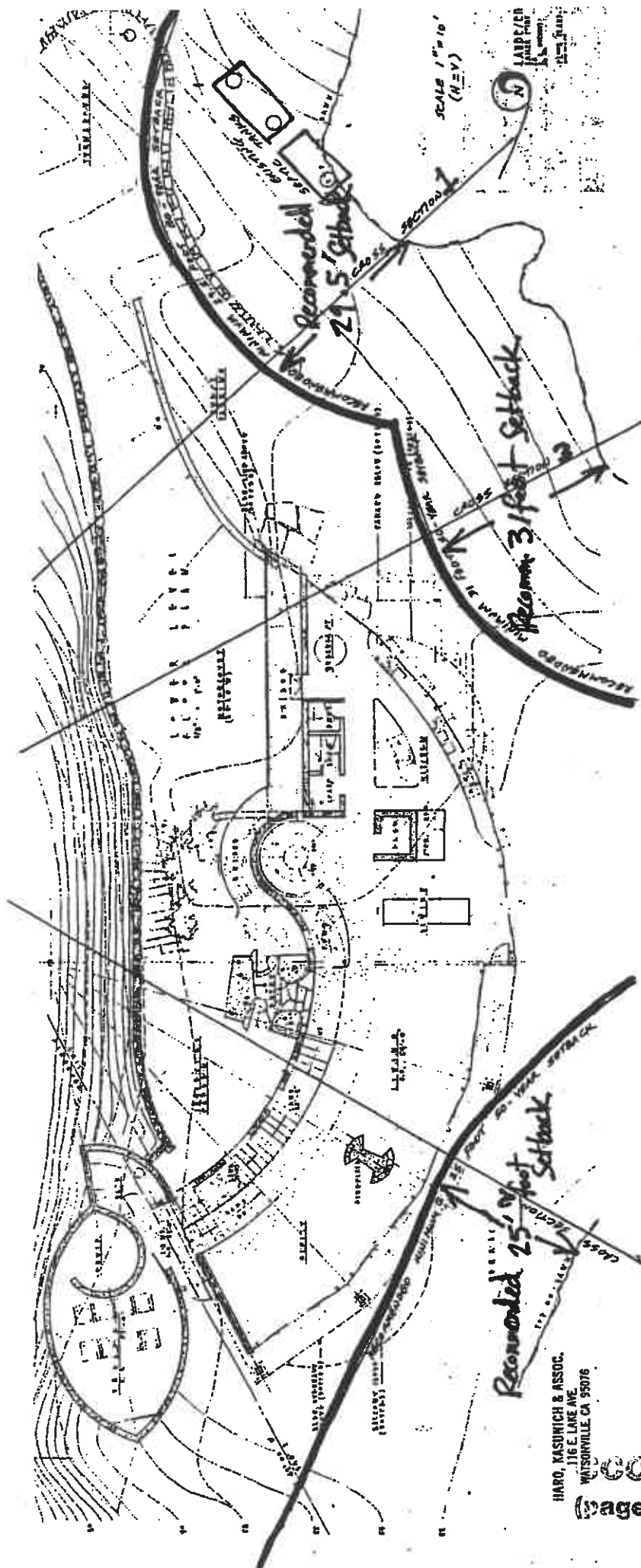
Very truly yours,

HARO, KASUNICH AND ASSOCIATES, INC.

  
John E. Kasunich  
G.E. 455

JEK/sq

Copies: 2 to Addressee  
1 to Kelly Cuffe, California Coastal Commission  
1 to Dr. Engel and Mr. Laube



CALIFORNIA COASTAL COMMISSION  
1540 Market Street, San Francisco 94102 - (415) 557-1001

STAFF RECOMMENDATION

Appeal No. 174-77  
(Sorensen)  
21st Day: 6/28/77  
42nd Day: 7/19/77

DECISION OF  
REGIONAL COMMISSION:

Permit approved with conditions by Central Coast  
Regional Commission

PERMIT  
APPLICANT:

Donald Sorensen

DEVELOPMENT  
LOCATION:

Kasler Point, seaward of Highway 1 on the Big Sur Coast,  
Monterey County (Exhibit 1)

DEVELOPMENT  
DESCRIPTION:

Single family dwelling with two car garage, entrance  
driveway, and utility trenching

PUBLIC HEARING:

Opened July 5, in Burlingame

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STAFF NOTE:

In the appeal summary presented to the Commission July 5, 1977 staff incorrectly described the proposed residence. The applicant prior to the appeal by the Sierra Club and in response to suggestions by Regional Commission staff had undertaken a substantial redesign of the project reducing the floor area from 4,900 sq. ft. to 4,300 sq. ft., stepping the structure into the hillside in two stories with a basement level garage, relocating the seaward-most edge of the house away from the bluff, increasing the parcel size from two to four acres, and reducing the size of the driveway from 12 to 10 feet in width. Staff inadvertently analyzed the first set of plans and apologizes to the applicant, appellant, and the Commission for this misunderstanding.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions. The Commission hereby grants a permit, subject to the conditions below, 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 Act, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act, and that the project site is located between the sea and the public road nearest the sea, but is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976.

CCC Exhibit 12

II. Conditions. The permit is subject to the following conditions:

1. Regional Commission Conditions. The applicant shall implement all conditions imposed by the Regional Commission as shown in Exhibit 2 except as they may be superceded by the conditions of this permit.
2. Landscaping. The applicant shall submit for the approval of the Executive Director of the Commission detailed irrigation and landscaping plans showing the stabilization and restoration of bluff areas proposed for such treatment in order to minimize erosion on this site.
3. Recording of Conditions. The applicant shall cause to be recorded with the County Recorder of the County of Monterey a document, the form and content of which have been approved by the Executive Director of the Commission, which will put any successor-in-interest on notice as to the conditions of this permit, as those conditions may be amended from time to time, so long as this permit is in effect.

III. Findings and Declarations

1. Project Description. The applicant proposes to construct a  $\pm 3,950$  sq. ft., three-bedroom residence on a four-acre parcel located on a rocky shelf seaward of Highway 1 on the Big Sur Coast of Monterey County. The proposed residence would be generally one story in height with two upper level bedrooms and a basement level garage (Exhibit 3). Construction of the residence would require the partial excavation of the hillside and placement of a retaining wall along the eastern side of the house and the construction of approximately 520 lineal feet of paved driveway ( $\pm 10,740$  sq. ft.) connecting to Highway 1. The applicant has submitted landscaping plans to restore vegetative cover on graded slopes and eroding areas.

2. Scenic Resources. The proposed project is located in Kasler Point, a dome shaped, rocky headland jutting into the Pacific Ocean that is an important component of the rugged and highly scenic landscape of the Big Sur Coast. The protection of this critically important land form seaward of Highway 1 and within the viewshed of the highway is an important objective in coastal planning for this area.

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas.

The project site, Parcels B and C (Exhibit 4) is partially visible from Highway 1 and a small portion of the roofline of the proposed residence would be instantaneously visible from the highway. The residence would not be visible from the public viewing area at Kasler Point located north of the proposed driveway (Exhibit 5). The driveway entrance and the driveway which cuts diagonally across a portion of the "dome shaped" land form would be partially visible from that point. The Commission found in previous appeals (Appeal No. 45-77, Isaac and Martin and Appeal No. 167-77B, Mooney) that single family developments, where sited and designed to protect the viewshed, were consistent with Section 30251 of the Act and the Commission finds here, in this case, where the applicant has combined two parcels into one (one of which is highly visible), sited the proposed residence on the parcel not visible from Highway 1.

public views thereby preserving the highly scenic values of the site and dedicated a comprehensive scenic easement over those portions visible from the public viewing area (Exhibit 5) that the development is consistent with Section 30251 of the Coastal Act.

3. Development Patterns. The subject four acre parcel is located in a partially developed residential enclave located between Rocky Point and Garrapata Creek within which 15 of the 23 shoreline parcels are developed or committed to development (Exhibit 6). The nearest development north of Garrapata Creek is Otter Cove subdivision, separated by a four mile stretch of open, undeveloped land. The nearest development to the south of Rocky Point, with the exception of a few unobtrusive houses, is Big Sur Village, a distance of ten miles, which is open and undeveloped. The subject parcels C and B are two of three undeveloped two-acre parcels located on Kasler Point (Exhibit 4).

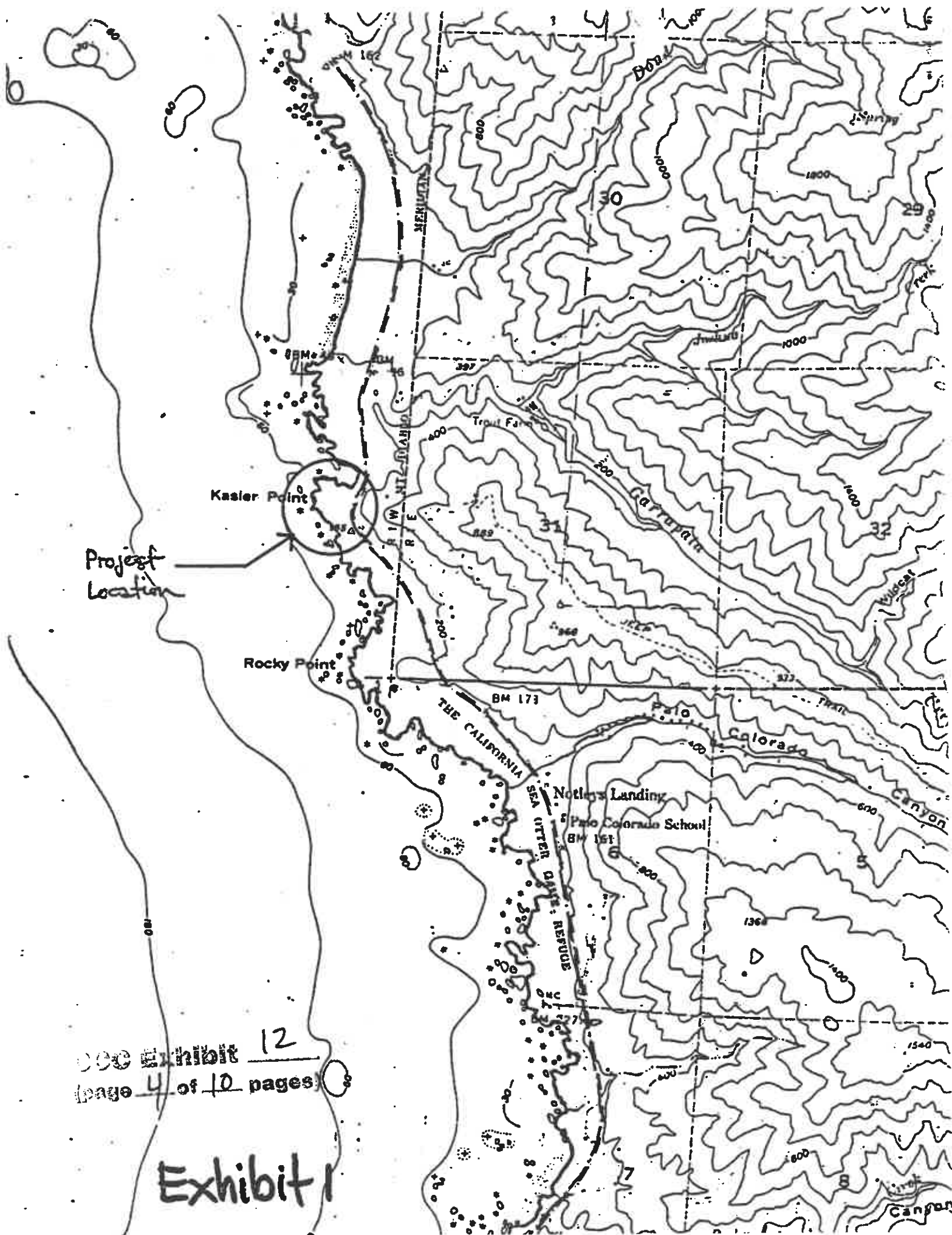
The cumulative effects of the development of every residential parcel presents problems with respect to the capacity of Highway 1. The subregional analysis of the Big Sur Coast (C.C.C. 2/7/77) found highway capacity to be constrained along a 30 mile section from Malpaso Creek, north of Garrapata Creek, to Big Sur Village. The analysis found that if recreational use were to increase (doubling over the next 20 years) with the priority of use given to recreational users, there would not be any remaining highway capacity to serve additional residential development.

The proposed project would consolidate two lots into one which would reduce the number of remaining vacant lots, thereby easing cumulative problems obviating the need to develop further planning options for these two parcels. The proposed consolidation would also set a precedent for development in the Big Sur Coast consistent with Section 30254 of the Coastal Act which states in part:

Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal-dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

4. Public Access and Recreation. In addition to providing viewing opportunities, Kasler Point is currently used for public recreation despite fencing and signs prohibiting trespassing. The northern portion of the Point, as visible from the public overlook area, is used for rock fishing and is accessible by a well-trodden footpath from the highway to the seaward end of the Point. The Commission finds that the project, as conditioned (Exhibit 5), also provides a substantial public access easement over the subject parcels, noting that recreational use of Kasler Point must be constrained to preserve fragile vegetation and archaeological resources, and to protect the public from dangerous cliffs. The proposed development, as conditioned, is consistent with Section 30211 of the Coastal Act.

5. Natural and Archaeological Resources. The existing vegetation on the project site is native species consisting of low shrubs and succulents specifically adapted to the coastal environment. The shoreline and offshore areas are rich in marine life. The ocean area off Kasler Point is included in the California Sea Otter State Fish and Game Refuge. An archaeological reconnaissance on January 29, 1977 by Mr. William Roop of Archaeological Resource Service revealed a potentially significant cultural resource site on Kasler Point. Construction of the proposed residence and driveway would not disturb the midden. The applicant has proposed to landscape using native plant materials in accord with conditions specified in Exhibit 2.





1. Compliance with Monterey County Special Permit PC-2687 (Resolution No. 76-616) shall be required, except where such compliance is precluded by the terms of this permit.

2. Permitted development shall be constructed in accordance with revised plans submitted July 22, 1977.

3. Prior to commencement of grading or construction, permittee shall demonstrate that Parcels C and B, being a portion of Lot 20, Rancho San Jose y Sur Chiquito, otherwise known and described as Assessor's Parcels #243-251-12 and #243-251-13, have been consolidated and recorded as a single parcel of land. Copy of document(s) showing such consolidation and recording shall be provided to Coastal Commission for affirmation.

4. Construction shall not commence until an easement for the protection of scenic and natural resources is effected on that portion of subject property lying within view of designated Kasler Point public vista area on State Highway Route 1, shown in Exhibit 5. The easement boundary shall be adjusted to include as much of the archaeological site as possible, and to exclude the proposed driveway. Such easement shall be granted to an appropriate public agency or conservation foundation, and shall include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeological and other scientific research purposes secured.

It is recognized that because of dangerous cliffs and fragile resources, unrestricted public access on easement would be contrary to public safety and resource protection needs. However, public access shall be allowed when and if a public agency is prepared to assume liability for such use, and to provide for management and supervision to the degree necessary to avoid damage to natural resources, to maintain privacy of permitted residence, and to prevent trespass on balance of parcel.

Visual access to the parcel from State Highway Route 1 shall be guaranteed; the terms of the agreement shall also preclude blockage of, or interference with public views through erection of any other types of structures or planting of trees.

The grantee for such easement and all provisions thereof, including designation of precise boundaries, shall be subject to advance written approval by the Executive Director of the Commission. The request for such approval shall be accompanied by parcel map showing location of easement boundary and existing fences.

5. A separate coastal development permit shall be required for any other future development activity within view of State Highway Route 1.

6. Should any sub-surface archaeological features (such as described in archaeological reconnaissance report of February 8, 1977, by William Roop) be unearthed during construction, work which could disturb the discovered evidence shall be temporarily suspended and the Coastal Commission office (408) 426-7390 contacted immediately. In such event, work in the discovery area shall be permitted to resume upon consent of either a Commission-authorized archaeologist or the Executive Director. Mitigation costs, if any, shall be negotiated by permittee and archaeologist, subject to approval by the Executive Director in event of disagreement.

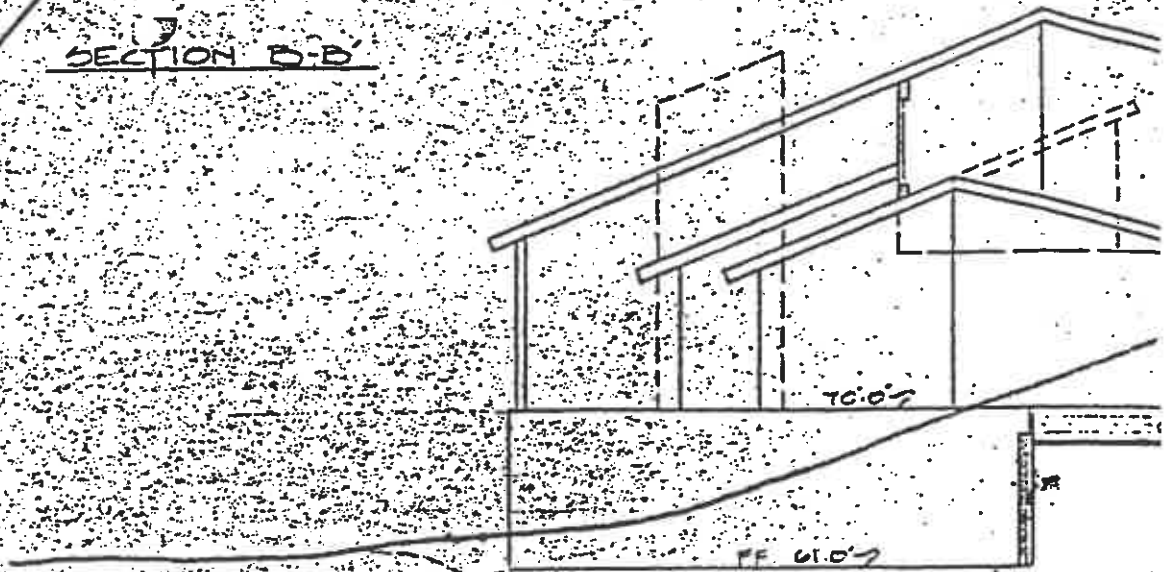


7. Prior to commencement of excavations, permittee shall submit for the Executive Director's review and approval a detailed grading, landscaping and revegetation plan. At a minimum, the plan shall specify procedures for erosion control and re-establishment of native plant cover; proposed landscaping species; and any provisions for vegetative screening around house. Natural vegetation shall not be disturbed except as necessary to complete the permitted development. Driveway design shall be adjusted to reflect conditions of Special Permit and to minimize impact on public views.

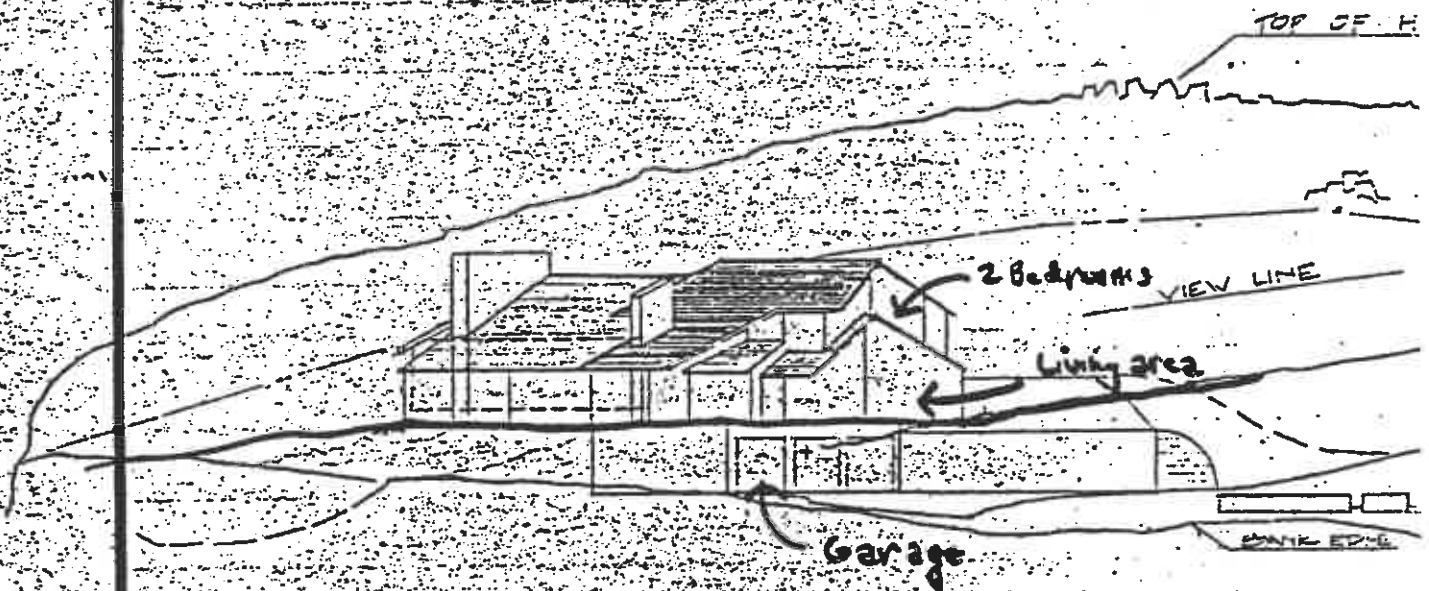
8. Excavated materials shall be carefully removed so that spoils are neither placed within or allowed to slide into that area seaward of permitted development.

9. Exterior landscape lighting which is visible from State Highway Route 1 shall not be permitted.

SECTION B-B



SECTION C-C



SECTION D-D

SCALE - 1" = 20'-0"

Exhibit 3

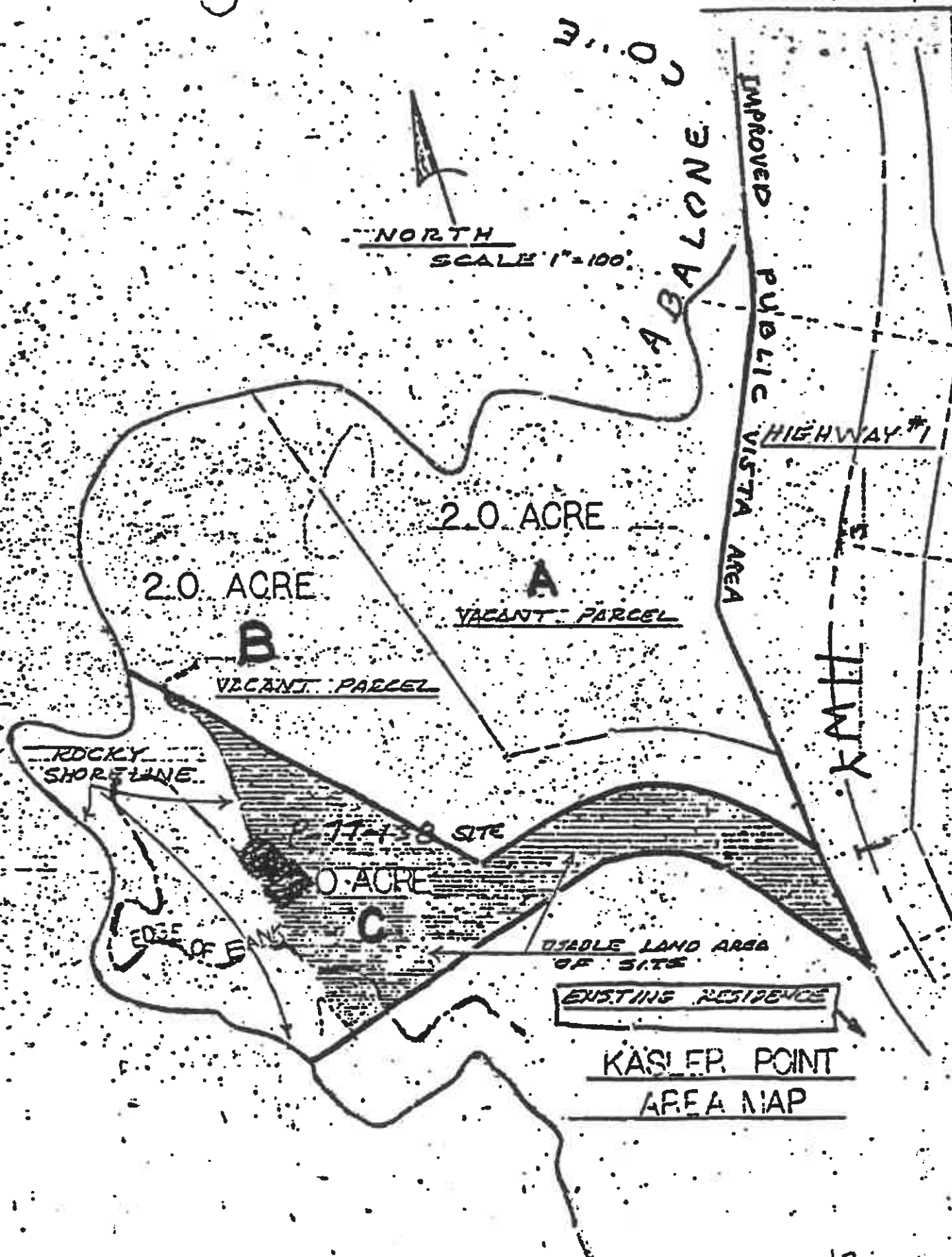
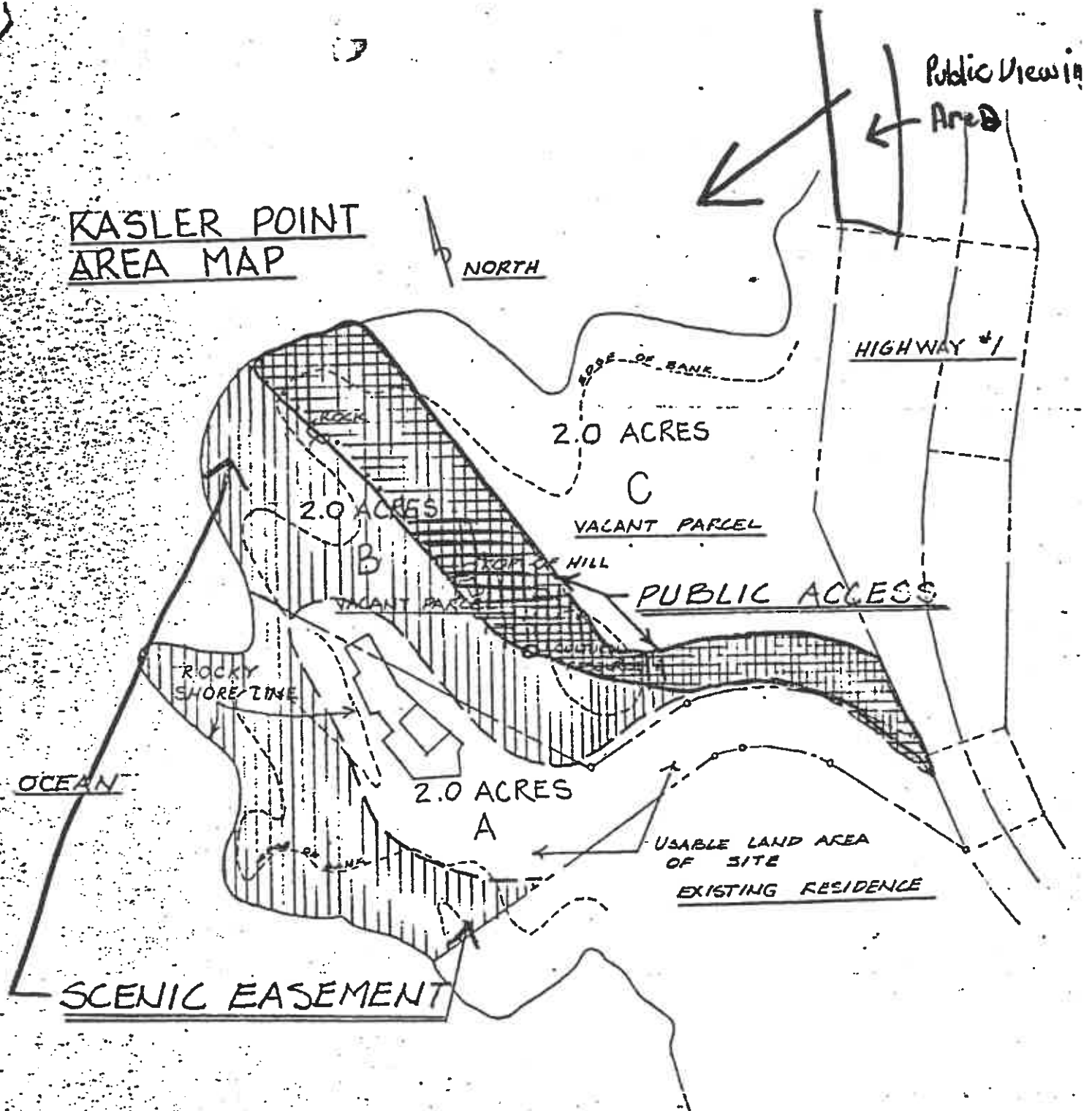


Exhibit 4

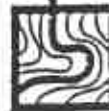
000 Exhibit 12  
(page 8 of 10 pages)

# KASLER POINT AREA MAP



## Exhibit 5

**Richard Murray Associates  
Landscape Architects  
and Urban Planners**



Post Office Box 5816  
Carmel, California 93921  
Phone (408) 624-5700

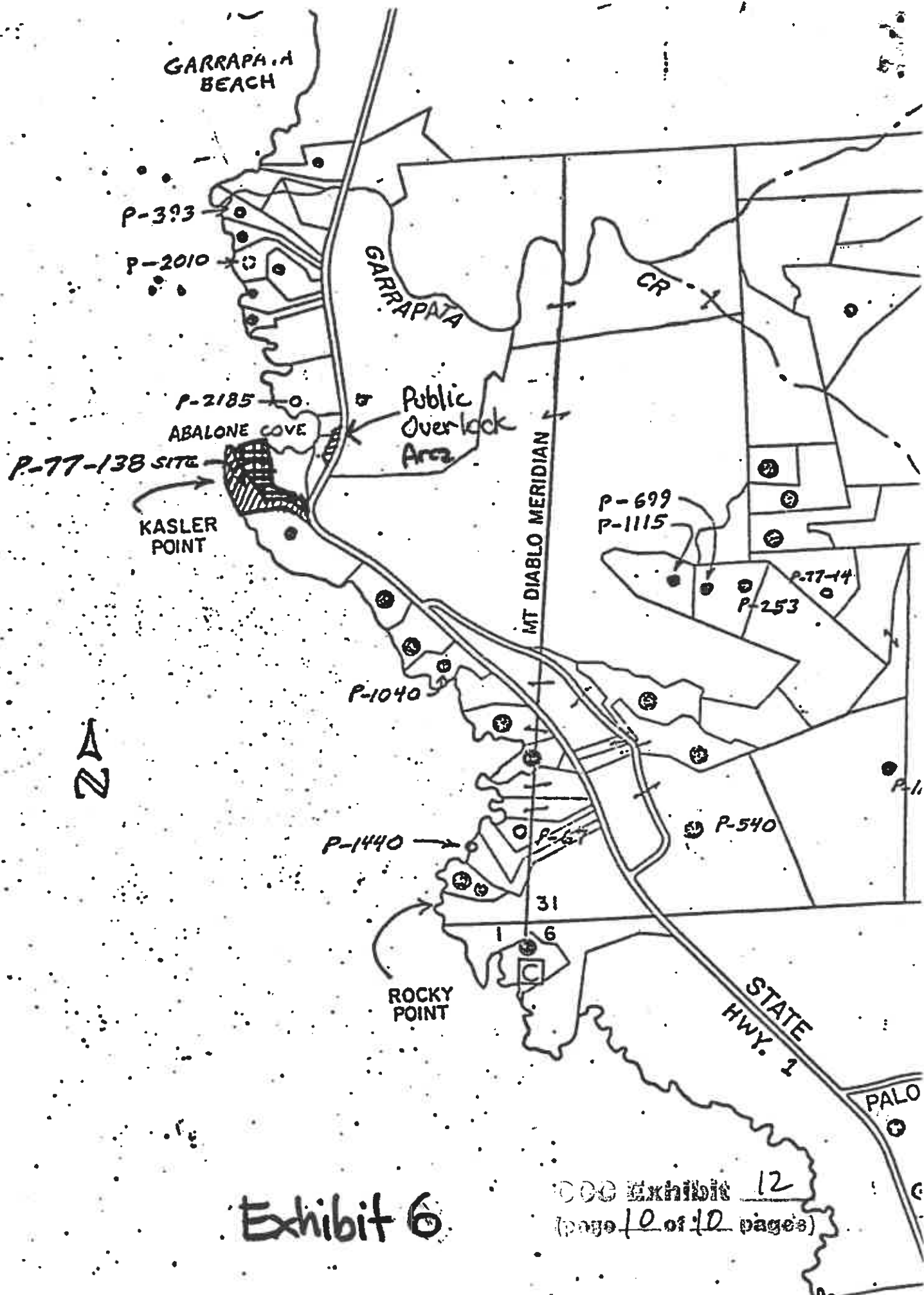


Exhibit 6

CCC Exhibit 12  
(page 10 of 10 pages)

# COUNTY OF MONTEREY

168 W. Alisal St, 1st Floor, Salinas, CA 93902



RECEIVED FROM

*Mcdougall, Amy E.*

Date: 01/02/2025

Receipt Number: COB-000568

UNIT: 8020 - Clerk of the Board APN: 230127

## RECEIPT OF PAYMENT

DESCRIPTION	UNIT PRICE	QTY.	TOTAL
Zoning Appeal	\$3,716.10	1	\$3,716.10

Cash Amount	\$0.00
Check Amount	\$3,716.10
Check/Mo Number	135

Amount Due \$3,716.10

Amount Paid \$3,716.10

Change \$0.00

Balance \$0.00

NOTES: