MONTEREY COUNTY BOARD OF SUPERVISORS

	4, 2011 CONSENT		AGENDA NO: 45				
SUBJECT:							
a. Accept an Irrevocable Offer to Dedicate a Vertical Public Access Easement, Recorded							
Instrument No. 40659, at Reel 2530 Pages 422-444, recorded on July 10, 1990 and							
executed by the State of California through its Director of General Services and the							
California Coastal Conservancy;							
b. Authorize the Chair of the Board of Supervisors to sign the Certificate of Acceptance; and							
c. Direct the Cle	rk of the Board to submit the signed Ce	rtificate of	Acceptance to the Country				
Recorder for f	iling/recordation.	runcaic or	Acceptance to the County				
	ss Easement– REF110014/State of Cali	fornia vyod	at of Highway 1 of				
Abalone Point north of	of Kasler Point Rig Sur Coast Land Use	Dian orga	st of riighway i at				
Abalone Point north of Kasler Point, Big Sur Coast Land Use Plan area)							
Project Location:	West of Highway 1 at Abalone Point	APN:	243-251-014-000				
	north of Kasler Point, Big Sur		2 13 231 014-000				
Planning Number:	REF110014	Name:	California Coastal				
			Conservancy/State of				
California							
Plan Area:	Big Sur Coast Land Use Plan	Flagged					
Zoning Designation: RDR/B-7 (CZ) and							
CEQA Action: Exempt, pursuant to Sections 15317, Staked: n/a							
	15325						
DEPARTMENT:	RMA – Planning Department						

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Accept an Irrevocable Offer to Dedicate a Vertical Public Access Easement, Recorded Instrument No. 40659, at Reel 2530 Pages 422-444, recorded on July 10, 1990 and executed by the State of California through its Director of General Services and the California Coastal Conservancy;
- b. Authorize the Chair of the Board of Supervisors to sign the Certificate of Acceptance; and
- c. Direct the Clerk of the Board to submit the signed Certificate of Acceptance to the County Recorder for filing/recordation.

SUMMARY:

In 1988, the Monterey County Planning Commission approved File Number PC-6365, a Coastal Development Permit to designate the Kasler Point Parcel as a donor site, creating two transferable development credits and retiring the parcel as a buildable parcel. Condition No. 3 required the State of California, through the California Coastal Conservancy, to record an irrevocable offer to dedicate (OTD) to the County of Monterey and/or a public agency or non-profit organization an easement in perpetuity for vertical public access. This OTD was recorded on July 10, 1990 and will expire on July 10, 2011 if not accepted by the County of Monterey and/or a public agency or non-profit organization. In this case, the California Coastal Conservancy owns the property. Under property law, if the fee title owner accepts the OTD, then the OTD easement merges with the underlying fee title and the easement becomes moot. No non-profit organizations have been identified to accept the access easement. Therefore, staff is requesting that the Monterey County Board of Supervisors accept the OTD.

DISCUSSION:

The subject parcel is located entirely within the critical viewshed of Highway 1; thus the parcel is considered environmentally inappropriate for development in accordance with the Big Sur

Coast Land Use Plan Policy 3.2.3.5. The California Coastal Conservancy requested to designate the parcel as a "donor site", pursuant to Monterey County Code Section 20.64.190, whereby a buildable viewshed lot is designated as a donor site to qualify for transferable development credits. In 1988, the Monterey County Planning Commission approved File Number PC-6365, a Coastal Development Permit to designate the Kasler Point Parcel as a donor site, creating two transferable development credits and retiring the parcel as a buildable parcel.

Historic public access appears to exist over the parcel as there is evidence of informal footpaths on the site. According to the Coastal Act, public access is required where access has been acquired through use. Because of the historic public access, a condition (Condition No. 3) was applied to the project to require the applicant to record an irrevocable offer to dedicate (OTD) to the County of Monterey and/or a public agency or non-profit organization acceptable to the Monterey County Board of Supervisors an easement in perpetuity for vertical public access. This OTD was recorded on July 10, 1990. The OTD is binding for 21 years—to expire on July 10, 2011 if not accepted by the County of Monterey and/or a public agency or non-profit organization. Standard procedure has been for the California Coastal Conservancy or a nonprofit organization to accept the OTD. In this case, the Conservancy owns the property. Under property law, if the fee title owner accepts the OTD, then the OTD easement merges with the underlying fee title and the easement becomes moot. Additionally, the Coastal Commission has not been able to identify a non-profit organization to accept the access easement. By accepting the OTD, the County of Monterey will be responsible for liability and claim for damage by reason of any injury to any person or persons or property of any kind connected with the use of this public access easement. However, that liability is considered to be minor because the property is not improved with formal trails, signage, or "invitation" for use. Government Code § 831.2 states that a public entity is not liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach. By accepting the OTD, the County is not obligated to "formally" open and improve the accessway for public use. Therefore, staff is requesting that the Monterey County Board of Supervisors accept the OTD.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel has approved the Certificate of Acceptance as to form.

FINANCING:

Funding for staff time associated with this project is included FY10-11 Final Budget for the RMA-Planning Department.

Prepared by:

Approved by:

Laura Lawrence, Planning Services Manager (831) 755-5148; lawrencel@co.monterey.ca.us

Mike Novo, Director of Planning

(831) 755-5192; novom@co.monterey.ca.us

This report was reviewed by Mike Novo, Director of Planning

cc:

Front Counter Copy; Board of Supervisors (14); County Counsel; Environmental Health Division; Public Works; Monterey County Water Resources Agency; California Coastal Commission; Mike Novo; Carl Holm; Laura Lawrence, Planning Services Manager; California Coastal Conservancy; Project File REF110014

Attachment No. 1: Board Order

- The following attachments are on file with the Clerk of the Board:

 Planning Commission Staff Report adopted on May 11, 1988

 Irrevocable Offer to Dedicate Public Access Easement

 - Certificate of Acceptance

Planning Commission Staff Report Adopted on May 11, 1988

Vertical Public Access Easement Kasler Point REF110014

Board of Supervisors May 24, 2011



PLANNING AND BUILDING INSPECTION DEPARTMENT REPORT TO THE MONTEREY COUNTY PLANNING COMMISSION

Item #:

Applicant: California Coastal Consv.

File #: PC-6365

Property Owner: State of California

Hearing Date: 5-11-88

Representative: Ralph Brown

Hearing Time: 10:20 a.m.

Proposed Use: Designation of the parcel as a donor site under

Monterey County Code Section

20.156 (Transfer

of Development Credits)

Permits Involved: Coastal Development Permit

Location: 2 acre parcel fronting on and west of Highway 1 at

Abalone Cove, north of Kasler Point, Big Sur Area (APN

243-251-14)

Coastal Zone: [X] Yes [] No

Applicable Plan: Big Sur Coast Land Use Plan

Zoning: WSC/40 (CZ)

Plan Designation: Watershed and Scenic Conservation

Advisory Committee: Highlands-Bixby

Lot Size: 2 acres

Environmental Status: Negative Declaration filed by staff

Discussion: The parcel is buildable, given zoning and building considerations. However, it is located entirely within the critical viewshed and is thus rendered unbuildable. parcels, transfer of development credits (TDC's) are available. Establishment of TDC's, through a coastal development permit, allows the viewshed parcel to be designated as a donor site. Two building credits may then be transferred to an non-viewshed receiver site, while the donor site is permanently retired as a building site. The Coastal Conservancy, at this time, has applied to designate the Kasler Point parcel as a donor site. A receiver site will be designated at a later date through the Coastal Development Permit process.

Recommendation (Findings & Conditions Attached): It is recommended that the Planning Commission: 1) adopt Negative Declaration; and 2) approve the Coastal Development Permit to establish the Kasler Point donor site subject to findings in Exhibit A and the conditions in Exhibit B.

Sewage Disposal: [] Septic System [X] Sewer N/A		
(Agency)		
Water Supply: [] Private Well [] Private System		
[] Public Utility [X] Name of System: N/A		
[] Estimated Consumption: N/A		
Archaeologic Sensitivity Zone: High		
Survey: [X]Yes [] No [] Waiver Library No.: 04.01.48		
Resources On Site: [X] Yes [] No		
Conclusion: Two archaeological sites were identified on the parcel. Conditions of approval have thus been recommended pursuant to Section 20.145.120.D.2.		
Geologic Hazard Zone: Stable		
Survey: [X] Yes [] No Library No.: 14.09.37		
Conclusion: The report indicated that the site was suitable for residential development in terms of geological conditions.		
Environmentally Sensitive Habitat: [] Yes [X] No		
Survey: [] Yes [X] No Library No.: N/A		
Conclusion: N/A		
Fire Hazard: [] Low [] Moderate [X] High [] Very High		
Fire District: Palo Colorado VFD		
Grading: [] Yes [X] No Cubic Yards: N/A		
Development on 30% Slopes: [] Yes [X] No		
Road Grades: N/A		
Tree Removal: Number: 0 Type:		
Forest Management Plan: [] Yes [X] No Library No.: N/A		
Miscellaneous Information: Reports were prepared in order to determine that the site is buildable except for the critical viewshed considerations.		

Robert Slimmon, Jr.
Director of Planning and Building Inspection
May 3, 1988

CC: Planning Commissioners; Efren Iglesia - County Counsel; Health Department; Public Works; Flood Control; Robert Slimmon, Jr.; Dale Ellis; Nick Chiulos; Bonnie Stibbe; Nikki Gross; Applicant; File

Attachments: [X] Yes [] No Exhibit A: Recommended Findings and Evidence; Exhibit B: Recommended Conditions; Exhibit C: Public Access; Exhibit D: Negative Declaration, Initial Study; Exhibit E: Location Map Report prepared by Bonnie Stibbe, Planner III

EXHIBIT "A" RECOMMENDED FINDINGS AND EVIDENCE

- 1. FINDING: Coastal Conservancy project (PC-6365) consists of a coastal development permit to designate the Kasler Point parcel (APN 243-251-14) as a "donor site" pursuant to Coastal Implementation Plan Section 20.156, thereby creating two transferable development credits and retiring the donor site as a buildable development credits and retiring the donor site as a buildable parcel. The parcel is located west of and fronting on Highway 1 at Abalone Cove, north of Kasler Point in Big Sur. project is appealable to the California Coastal Commission.
 - EVIDENCE: The project is described in the application and accompanying map contained in file number PC-6365.
- 2. FINDING: The Coastal Conservancy parcel is located entirely within the critical viewshed and is thus rendered unbuildable.
 - EVIDENCE: Staff made an on-site field inspection and determined that the entire parcel is visible from Highway 1 and is thus within the critical viewshed pursuant to Section 20.145.020.V of the Coastal Implementation Plan. Section 20.145.030 (Intent of Section) prohibits development within the critical viewshed; thus, the Kasler Point parcel is rendered unbuildable.
- 3. FINDING: The Coastal Conservancy parcel is appropriate for designation as a donor site pursuant to Coastal Implementation Plan Section 20.156, as it is: 1) a buildable parcel; and 2) a viewshed lot.
 - EVIDENCE: The parcel has been determined to be buildable. Adequacy of water and sewer has been verified by the Health Department. As well, a geologic report prepared by Earth Systems Consultants (August 1987) indicated that the "site can be easily developed for a single family residential structure". Finally an archaeological report by Archaeological Consulting (July, 1987) identified two archaeological sites but did not indicate would render that sites the the unbuildable. Rather, further survey work and mitigations would be required in the advent of development on the parcel.

The parcel has been determined to be a viewshed lot, as detailed in the second finding (see above).

4. FINDING: The project will not have adverse impacts on visual resources.

EVIDENCE: The result of the project will be to retire the subject lot as a building site by placing the entire lot into scenic easement, pursuant to Coastal Implementation Plan Section 20.156.040.5. No development will occur on the parcel other than what may be necessary for public access. Development credits will later be transferred to a non-viewshed parcel through the coastal development permit process.

5. FINDING: The project will not pose and/or experience significant adverse impacts from geologic, seismic, or fire hazards.

EVIDENCE: The site will be retired as a building site; thus, no impacts will be posed by seismic, geologic, or fire hazards. Conditions requiring deed restrictions regarding geologic and fire hazards, pursuant to Sections 20.145.080.A.2 and Section 20.145.080.C.1, are not required as the property is in public ownership.

6. FINDING: The project will not adversely impact archaeological resources.

EVIDENCE: The site is located in a "high archaeological sensitivity" zone according to County resource maps. An archaeological survey by Archaeological Consulting (July, 1987) identified archaeological sites and recommended that the sites be surveyed prior to any proposed As a result of the project, the development. parcel will be retired as a buildable lot. physical development will thus take place; consequently, the archaeological sites will not be impacted.

At a later date public access may be provided on the parcel subject to obtaining a coastal development permit. Provision of public access has potential to impact the archaeological sites. In order to assure that there are no significant impacts, a condition of approval requires that the sites be surveyed and mitigations implemented pursuant to Archaeological Consulting's recommendation.

Coastal Implementation Plan Section 20.145.120.D.2 provides mitigations which have been incorporated into the conditions of approval. As such, rezoning to include an "HR" (Historical Resources) district is required. Also the archaeological sites are to be placed in an easement as part of the required scenic easement. A condition to record a notice

regarding the archaeological report, pursuant to Section 20.140/080.L.10, is not required as the parcel is in public ownership.

- 7. FINDING: The project conforms to the public access requirements of the Coastal Implementation Plan.
 - EVIDENCE: The parcel was analyzed according to the public access requirements of the Coastal Implementation Plan. Staff determined that public access, in the form of an easement or an offer to dedicate, is required pursuant to Section 20.145.150.D.1.a and D.1.b. Prescriptive rights appear to exist over the parcel as there are trails currently reversing the parcel and the public was observed on the property. Public access is required where prescriptive rights are identified, according to the Coastal Act and Implementation Plan. As well, public access is required for bluff top access and for access to Abalone Cove.
- 8. FINDING: The project is consistent with the Big Sur Coast Land Use Plan, Coastal Implementation Plan, and California Coastal Act.
 - EVIDENCE: The project is consistent with all applicable policies of the Big Sur Coast Land Use Plan and with development regulations of the Coastal Implementation Plan, as detailed in the above findings.
- 9. FINDING: The project will not have significant adverse impacts on the environment.
 - EVIDENCE: As a result of the project, the parcel will be retired as a building site. Consequently, the Initial Study prepared for the project did not identify any significant environmental impacts and a Negative Declaration was filed on March 31, 1988.
- 10. FINDING: The establishment, maintenance, or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.
 - EVIDENCE: This is evidenced by the above findings and supporting evidence.

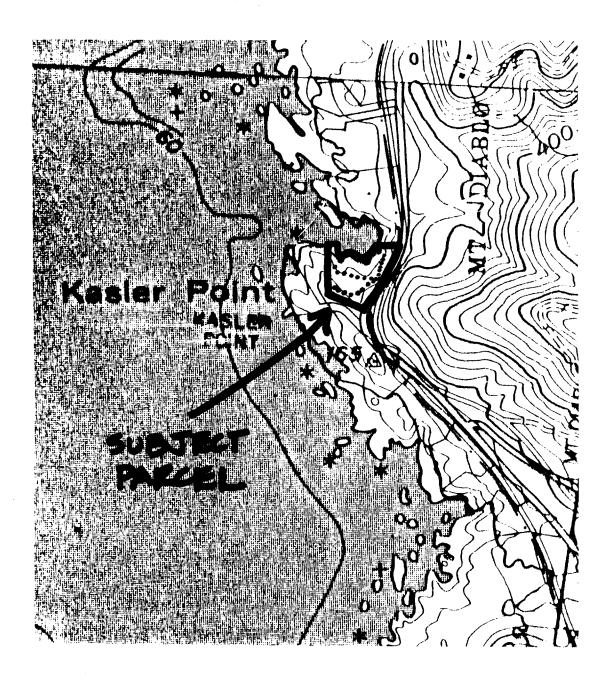
EXHIBIT "B" RECOMMENDED CONDITIONS

- 1. That the applicant record a scenic easement, as dedicated to the County of Monterey, over the entire parcel. form and content of the easement must be approved pursuant to Section 20.142.130 and utilize Appendix 10 of the Monterey County Coastal Implementation Plan. The easement must be recorded prior to the transfer of the first development credit (TDC) to a receiver site designated through the coastal development permit process or prior to the expiration of this coastal development permit, whichever occurs first. The easement shall provide that no structures will be placed or erected nor shall the grantor plant nor permit to be planted any vegetation upon said premises, except as may be permitted through a coastal development permit for the purposes of public access occurring within an overlying public access easement.
- That the applicant request a rezoning of the parcel to a 2. "WSC/40/HR (CZ)" (Watershed and Scenic Conservation; Historical or Archaeological Resources) zoning district, prior to the transfer of the first development credit (TDC) to a designated receiver site or prior to the expiration this coastal development permit, whichever occurs first. (A Big Sur Coast Land Use Plan or Coastal Implementation Plan amendment will not be required for reclassification.)
- 3. That the applicant record an irrevocable offer to dedicate an easement for vertical public access. The form and content of the easement must be approved pursuant to Section 20.142.130 and utilize Appendix 6 of the Monterey County Coastal Implementation Plan. The offer to dedicate must be recorded prior to the transfer of the first development credit (TDC) to a receiver site designated through the coastal development permit process, or prior to the expiration of this coastal development permit whichever Such easement encompassed by the offer to occurs first. dedicate shall be ten feet wide and shall extend: 1) from the edge of the Caltrans right-of-way at the southern end of the existing pull-out, extending west across the property generally along the alignment of the existing foot trail, to the seaward extremity of the parcel; 2) from a point at the eastern edge of the afore-mentioned trail, extending along the eastern edge of the property, to provide access from the trail to the Abalone Cove beach area below the Caltrans overlook; and, 3) from a point at the eastern edge of the afore-mentioned trail, extending along the bluff at the southern edge of the property to provide access to scenic overlook at the seaward extremity of the parcel. (See Exhibit C for general location.) shall provide that, prior to opening document improvement of the trail for public access, a qualified archaeologist (i.e. member of the Society of Professional

Archaeologists) shall be retained to determine: 1) the exact area extent of the on-site archaeological deposits; 2) the archaeological significance of the deposits; and; 3) necessary measures to mitigate any identified adverse impacts to the archaeological resources due to public access. The offer shall be recorded free of prior liens which the County of Monterey determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

4. That permit shall expire on May 11, 1990, unless the conditions of this permit approval have been met with this time period.

EXHIBIT C



DOTTED AREAS ACROSS SUBJECT PARCEL REPRESENT TRAIL LOCATIONS, FOR ILLUSTRATIVE PURPOSES ONLY.

·	NEGATIVE DECL	ARATION	APR 32 5M '88
			EDA TA MAGGINI Monteal Friedwity Cler
RESPONSIBLE AGENCY	DECISION MAKI	4G BODY	DEPUT'
COUNTY OF MONTEREY	Planning Co	mmission	DEFU!
PROJECT TITLE			
COASTAL CONSERVANCY			
ADDRESS	CITY	STATE	ZIP CODE
1330 Broadway, Ste. 110	Oakland,	California	94612
CONTACT PERSON	AREA CODE	PHONE .	- EXTENSION;
Bonnie Stibbe	408	422-9018	

THIS PROPOSED PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AS IT HAS BEEN FOUND:

- (a) That said project will not have the potential to significantly degrade the quality of the environment.
- (b) That said project will have no significant impact on long term environmental goals.
- (c) That said project will have no significant cumulative effect upon the environment.
- (d) That said project will not cause substantial adverse effects on human beings, either directly or indirectly.

PROJECT DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES

Coastal Development Permit to designate parcel as a "Donor Site" under the County Transfer of Development Credit (TDC) Program, thereby creating two transferable development credits. The donor site is a 2 acre parcel fronting on and west of Highway 1, at Abalone Cove, north of Kasler Pt.

(APN 243-251-14)

PROJECT LOCATION	TIME PERIOD PROVIDE	D FOR REVIEW	_
Big Sur	Begins: April 1, 1988	Fnds. May / 1988	
ADDRESS WHERE COP	Y OF APPLICATION AND INITIAL	STUDY IS AVAILABLE	-
☐ Monterey Count	y Public Works Dept.	☐ Parks & Recreation	Dept
☑ Monterey Count	y Planning Department	☐ LAFCO	
☐ Monterey Count	y Department of Building Insp	pection	
	/Courthouse, Salinas, CA. 93		
TO BE FILED WITH COUN	TY CLERK WHEN NO SIGNIFICANT EFFEC	T IS FOUND. April 1, 1988	_
		DATE FILED	-
		PC-6365	
		FILE REFERENCE #	-

ENVIRONMENTAL RECOMMENDATION AND INITIAL STUDY

MEETING: PLANNING COMMISSION	OF
PROJECT: CONSTAL CONSERVANCY	FILE NO. PC 6365
APPLICATION TYPE: COASTAL DEVELOPMENT PE	
LOCATION: 2 ACRE PARCEL FRONDING	DN AND WEST OF HWY. I
AT ABALONE COVE, NORTH OF	KASLER PT. (APN 243-251-14
PRESENT: WACANT & AC. PARCEL	
PROPOSED: CREATION OF TRANFER OF I	DELE WAR IT COME
DESIGNATION OF THE PARCEL	AS A "DONOR SITE"
RESULT, THE PARCEL WOULD A	
PLAN: BY SUR COAST LAND USE P	
PLAN	
DESIGNATION: WATERSHED SCENIC CONSERVATION	(20NMg: WSC/40((2))
PROJECT CONSISTENCY STATUS: X CONSISTENT	- INCONSISTENT
Rocky Point CBM+ 19 X BN 16 CBM+ 19 X CB	31
THE STAFF PLANNING COMMISSION	OTHER MAKES
THE FOLLOWING ENVIRONMENTAL RECOMMENDATION: FROM AN	I INITIAL STUDY (SEE REVERSE)
IT HAS BEEN DETERMINED THAT THIS PROJECT MAY,	
SIGNIFICANT IMPACT(S) UPON THE ENVIRONMENT AND IT IS	RECOMMENDED THAT A
NEGATIVE DECLARATION, O	R
NEGATIVE DECLARATION WI	TH MITIGATION MEASURES (attached),
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ENVIRONMENTAL IMPACT RE	PORT (EIR), BE PREPARED.
PREPARER Somie Stibbe TITLE P	4NUT 1 DATE 3/3/88
THE ENVIRONMENTAL SECTION OF THE COUNTY PLANNING DEPLOYED DATE AT THE TOP OF THIS PAGE BY CALLING HOR COLOR	NFORMATION PLEASE CONTACT
ING DATE AT THE TOP OF THIS PAGE BY CALLING 422-0018	THE PARTY OF THE PRESENT

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					40.	Irreversible commitment of land or irreplaceable resources?

NOTES: NO DEVELOPMENT IS PROPOSED AS A PART OF

