

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION/ DE NOVO FINDINGS

Local government.....Monterey County
Local Decision.....Resolution 01035, Approved with conditions (see Exhibit D)
Appeal NumberA-3-MCO-01-071
Applicant.....Sea Rock L.L.C.
AgentJed Butler
AppellantsCommissioners Sara Wan and John Woolley
Project location.....105 Highway 1, west of Highway 1, Carmel Highlands, Monterey, APN# 241-111-001, Carmel Area of Monterey County (see Exhibits A, B and C).
Project descriptionAn underground tunnel from a basement boiler room of an existing house to provide private beach access; construct and repair stone retaining walls; 193 cubic yards of grading to excavate tunnel; and an exception to 30% slope limit for tunnel exit and to construct a retaining wall. (See Exhibit D).
File documents.....County coastal permit file PLN990459, including *Carmel Area Land Use Plan* and *Monterey County Coastal Implementation Plan* (Title 20 of County Code).
Staff recommendation ...Project raises a Substantial Issue; denial of *de novo* permit application.

Summary of Staff Recommendation:

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the subsequent permit be **denied** for the project as described herein.

The applicant proposes to drill and/or blast a private access tunnel through a fractured, granitic coastal bluff to reach the small, private pocket beach at the bottom of the bluff. Rock excavated from the tunnel will be used to construct and repair stone retaining walls on the property. The project is not consistent with the Monterey County Local Coastal Program, which does not allow new development to



California Coastal Commission
March 2002 Meeting in Monterey

Staff: SAM Approved by: 

unnaturally alter the shoreline without a need to protect existing development from shoreline hazards, and which prohibits the creation of new hazards.

As designed, the project also does not provide adequate protection of adjacent environmentally sensitive habitat areas. Because of these fundamental LCP inconsistencies, staff recommends denial of the project in a *de novo* hearing.

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I. Local Government Action

Monterey County Planning Commission, in Resolution 01035, approved a coastal development permit on APN 241-111-01 for an underground tunnel from the basement boiler room of an existing house to provide private beach access; the construction of two new retaining walls and repair of existing retaining walls using rock excavated from the tunnel; and 193 cubic yards of grading to excavate the tunnel. The action also included a variance to allow an exception to the 30% slope limit for construction of the tunnel exit and to reconstruct a retaining wall (See Exhibit D for details).

II. Summary of Appellants' Contentions

The appellants, Commissioners Wan and Woolley, have appealed the final action taken by Monterey County Planning Commission (Resolution 01035), on the basis that approval of the project is inconsistent with policies of the Monterey County Local Coastal Program with respect to geologic hazards, environmentally sensitive habitat, and landform alteration. The complete text of the appellants' contentions can be found in Exhibit F.

III. Standard of Review for Appeals

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the first public road and the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to approve a coastal development permit for the project. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the first public road and the sea, which is the case with this project.



IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a "NO" vote on the following motion:

"I move that the Commission determine that Appeal No. A-3-MCO-01-071 raises **no** substantial issue with respect to the grounds on which the appeal has been filed."

A majority of the Commissioners present is required to pass the motion, failure of the motion, as recommended by staff will result in Commission jurisdiction over the project and adoption of the following findings.

RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-MCO-01-071 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

V. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **deny** the Searock L.L.C. coastal development permit.

MOTION: Staff recommends a "No" vote on the following motion:

"I move that the Commission **APPROVE** coastal development permit A-3-MCO-01-071, as submitted.

A majority of the Commissioners present is required to pass the motion. A no vote will result in the adoption of the following resolution and findings:

RESOLUTION :

The Commission hereby **denies** a permit for the proposed development as conditioned below, on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit will not comply with the California Environmental Quality Act (CEQA) because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.



VI. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The project site is the historically significant James House, located at 105 Highway 1, westerly of Highway 1, Carmel Highlands, in Monterey County just south of Point Lobos State Reserve, APN 241-111-001 (see Exhibits A, B and C). This parcel is located in an area designated for Low-Density Residential use. The areas immediately surrounding this parcel are the California Sea Otter State Game Refuge and Pacific Ocean to the west, and other residential uses to the north, east and south.

As approved by the County, the proposed project includes excavation and construction of an underground tunnel to provide private beach access from the basement boiler room of an existing house, construction of two new retaining walls, repair of existing retaining walls, 193 cubic yards of grading to excavate the tunnel and an exception to 30% slope limit for tunnel exit and to reconstruct a retaining wall. The stairway would be tunneled through the fractured, granitic bedrock of the cliff upon which the house sits. The lower end of the tunnel would be an opening in the cliff face, on the beach, constructed to look like a sea cave.

Material excavated from the tunnel would be used to construct two new retaining walls and to repair existing walls located on the property. Excavated rock and rubble would be transported from the work area to the top of the cliff with a bucket and cable system. (See Exhibit E, Page 2)

The tunnel would have electric lights, with the light at the bottom of the tunnel being placed 10 feet in from the entrance to prevent light from reaching the beach area. The lower door would be placed approximately six feet back from the entrance to the tunnel so it is not readily visible from the beach and/or ocean.

Commission staff, the staff geologist, conducted a field visit to the site July 16, 2001, to observe the granitic bedrock of the bluff and the existing access stairway (See Exhibit G, Page 2). The stairway, which pre-dates the Coastal Act, is not visible from Highway 1, or from the pulloff located immediately south of the property, however, it is visible from the ocean. The stairs were being used to provide access to the small, private, pocket beach, but currently do not reach the beach and provide private visual access only. In the past, the stairway has provided physical access all the way to the beach, and it is typically damaged or washed away during winter storms. According to the applicant, it has been rebuilt in the past numerous times. The only other access to this beach is from the ocean side.



B. Analysis of Appeal Issues

1. Geologic Hazards

A. Appellant's Contentions

Appellants Wan and Woolley contend in part that:

This project is development in a high geologic hazard area, and therefore needs to be carefully regulated to minimize the risk to property and damage to the natural environment. In particular, this area should be considered unsuitable for the proposed development because it is located in a high hazard area due to the highly fractured granitic bedrock through which the tunnel would be constructed. The project would cause significant damage to the natural environment.

The project... consists of construction that may alter natural shoreline processes, specifically erosion, and it is not required for the protection of the existing residence. It is likely that the rate of erosion would increase due to wave impact and storm surge once an opening is made in the cliff face, potentially creating the need for future shoreline protection.

Although a geotechnical report was prepared, it does not adequately describe the geologic conditions of the bluff, such as presence, number and extent of fractures. It does not state what the impact of construction activity will be on the stability of the site and adjacent areas. Evaluation of the structural integrity of the bedrock with respect to its highly fractured nature is important in this instance, as the construction activity could increase the geologic instability of the bedrock, and severely impact the stability of the bluff. The geologic report also does not address the potential future erodibility of the opening of the sea cave, which would be located in an area susceptible to strong storm surges and increased rates of erosion.

...Construction of the tunnel and cave entrance is not essential to protect the existing residential development, and may even require additional shoreline alteration to protect both cave and residence in the future....

Although the project is designed to prevent the deposition of sediment during the construction process, there are no mitigations included to prevent deposition of sediment in the future. An unstable bluff would increase the possibility of sediment deposition, as well as increased erosion rates experienced at the mouth of the new sea cave.



B. Local Coastal Program Provisions

The following policies of the Carmel Area Land Use Plan address geologic hazards and landform alteration:

LUP Policy 2.7.3.1. All development shall be sited and designed to minimize risk from geologic, flood, or fire hazards. Areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development...

LUP Policy 2.7.2 Land uses and development in areas of high geologic, flood, and fire hazard shall be carefully regulated through the best available planning practices in order to minimize risks to life and property and damage to the natural environment

LUP Policy 2.7.4.10. Revetments, groins, seawalls, or retaining walls, and other such construction that alters natural shoreline processes shall be permitted only where required for the protection of existing development...

LUP Policy 2.7.4.7.a., c. and e. Where soils and geologic reports are required, they should include a description and analysis of the following items:

For development proposed in all areas

- a. geologic conditions, including soil, sediment, and rock types and characteristics, in addition to structural features, such as bedding, joints and faults;*
- c. impact of construction activity on the stability of the site and adjacent area;*
- e. potential erodibility of site and mitigating measures to be used to minimize erosion problems during and after construction (i.e., landscaping and drainage design);"*

LUP Policy 2.7.3.4. In locations determined to have significant hazards, development permits shall include a special condition requiring the owner to record a deed restriction describing the nature of the hazard(s), geotechnical, and/or fire suppression mitigations and, where appropriate, long-term maintenance requirements.

LUP Policy 2.2.3.7 Structures shall be located and designed to minimize tree removal and grading for the building site and access road. Where earth movement would result in extensive slope disturbance or scarring visible from public viewing points and corridors, such activity will not be allowed. Extensive landform alteration shall not be permitted.

C. Local Government Action

The County's action (Resolution 01035, Exhibit D) allows a coastal development permit for an underground tunnel from the basement boiler room of an existing house to provide private beach access on APN 241-111-01, construction of two new retaining walls and repair of existing retaining walls using



rock excavated from the tunnel, 193 cubic yards of grading to excavate tunnel; and a variance to allow an exception to 30% slope limit for tunnel exit and to reconstruct a retaining wall. Conditions of Approval required, among other things, that the applicant obtain a grading permit and approval of the design of lower tunnel entrance from the Director of Planning and Building Inspection. The applicant was also required by the County to implement the recommendations of the Erosion Control Plan and Geotechnical & Geological Engineering Report prepared by Grice Engineering, to abandon the currently used access trail/stairway and to monitor vibration from drilling.

D. Substantial Issue Analysis and Conclusion

To be in compliance with its Local Coastal Program, the County must find the project consistent with the above cited land use policies. As discussed below, these policies generally do not allow development in a high hazard area, particularly if the development involves extensive landform alteration, is not required to protect existing development, and does not minimize geologic risk. Therefore, the project raises a substantial issue with respect to LCP compliance.

First, the Monterey County LCP requires applicants to avoid geologically unstable areas. This parcel is located within an area designated as seismic zone VI, a high seismic geologic hazard area. However, Policy 2.7.3.1 states that "...Areas of a parcel which are subject to high hazard(s) shall generally be considered **unsuitable for development**..." (Emphasis added). Because the project area is designated as a high hazard area, and the development has not been sited to minimize risk from geologic hazards, it conflicts with LUP policy 2.7.3.1 and raises a substantial issue with respect to avoiding geologically unstable areas.

Second, and related, the proposed tunnel project conflicts with LUP policy 2.7.4.10, which states that "Revetments, groins, seawalls, or retaining walls, and other such construction that alters natural shoreline processes shall be permitted only where required for the protection of existing development...". In other words, the only suitable development in a high hazard zone is that specifically for the purpose of protecting existing development. The proposed tunnel is not essential to protect the existing house, so there is no justifiable rationale for significantly altering shoreline processes in this location. Furthermore, opening the face of the bluff has the potential to create an otherwise unnecessary need for shoreline protection in the future. Thus, this contention raises a substantial issue with respect to alteration of shoreline processes unnecessary to protect existing development.

Indeed, the project effectively creates a sea cave, in direct antithesis to the Commission's typical approach to managing shoreline erosion hazards along the coastline. For example, it is well established that sea caves tend to be the focus of increased coastal erosion. For this reason, they are typically of great concern when evaluating the stability of a coastal bluff. Historically, the Commission has approved a number of permits for sea cave fills throughout the state. The Central Coast area has seen numerous requests for seacave fills in Santa Cruz County (ref. CDP nos. 3-82-155/Pino; 3-90-112-G/Landess, 3-95-044-G/Lewis; and 3-97-034-DM/Smith), and one emergency permit was issued by Monterey County (3-MCO-98-133/Saunders) for seacave filling in the Yankee Point area, roughly a mile south of this project site. Additionally, applications for seacave filling have been approved for northern San Diego



County, including the Cities of Solana Beach and Encinitas (ref. CDP nos. 6-98-29/Bennett; 6-98-25/Stroben; 6-97-1646/Lingenfelder; 6-96-102/Solana Beach & Tennis Club; 6-93-181/Steinberg; and 6-92-212/Wood). Although these permits were granted for filling of sea caves in a variety of geologic formations, it has been generally recognized by the Commission that sea caves lead to instability of coastal bluffs. Thus, the project not only is not designed to protect a structure from erosion, it likely aggravates erosion risks.

Third, the LCP requires applicants to minimize geologic risk through LUP Policy 2.7.2, which establishes that development in areas of high geologic hazard shall be carefully regulated to "...minimize risks to life and property and damage to the natural environment". The County, to comply with section 20.146.80.B.1.b.2 of the County Code, did require the preparation of a Geotechnical Report. However, this proposal involves development with great potential to further decrease stability of the site, which is located in a high geologic hazard area. Creating a tunnel through granitic bedrock, the properties of which are not entirely known, cannot increase the stability of the site. Furthermore, this project creates an opening at the base of a bluff where none currently exists, and any opening at the base of a bluff will likely accelerate erosion.

The Geotechnical & Geological Engineering Report prepared for the site by Grice Engineering, Inc. in 1999 describes the site as containing granitic bedrock. Granite is typically quite resistant to erosive forces, however fractured granite erodes easily, and any opening will tend to focus erosive forces. This report does not provide enough information to determine the amount of fracturing within the cliff or the impact construction activity will have on the stability of the site and adjacent areas. The report also fails to address mitigation measures to minimize erosion problems at the mouth of the sea cave after construction, as required by LUP policy 2.7.4.7.a, c, and e, above. The project also increases the likelihood of greater erosion rates at the opening of the tunnel due to wave action, especially during winter storms. Areas where a naturally occurring sea cave has compromised the stability of the bluff typically erode at a faster rate than bluffs that have not been compromised. The proposed tunnel mouth would function like a natural sea cave, and indeed, the applicant intends to camouflage the tunnel mouth to resemble a natural sea cave.

The County also neglected to require the applicant to address potential future consequences of this development, such as failure of the coastal bluff. For example, given the unknown geologic stability of the bluff, and the presence of visibly large fractures, it is conceivable that during the tunneling process, or even years afterward, a portion of the bluff could collapse due to the combination of existing geologic stresses and stresses resulting from development. Page 1 of Exhibit G¹ is a photo taken from the ocean which shows a large fracture extending from the base of the bluff all the way to the top. This fracture is located in the same general area as the proposed tunnel. The geotechnical report never mentions this substantial fracture, nor does it address the potential for failure of the entire southern portion of the bluff that could be caused by drilling and blasting in the vicinity of this weak spot.

In addition, the geotechnical report provides a geophysical study that indicates that the upper portion of

¹ Makinson, Randell (1998); Greene & Greene: the Passion and the Legacy; Gibbs-Smith, Salt Lake City, UT.



the bluff has a much lower seismic velocity than is typical of solid, intact granite. This likely indicates that this rock is either highly weathered or highly fractured, or both. The Commission's staff geologist has reviewed the applicant's geotechnical information and visited the site, and he concludes that the bluff is highly fractured in places. Therefore, this project raises a substantial issue with respect to LUP policy 2.7.2, which requires minimization of geologic risk.

Fourth, another LUP policy, 2.7.3.4, requires a deed restriction stating the nature of the property's hazards and the appropriate long-term maintenance requirements. This should have been included in the County's findings or as a Condition of Approval, as required by this policy. As contended by the appellants, such "long-term maintenance requirements would be especially helpful in the event that increased rates of erosion did occur at the mouth of the new sea cave."

Finally, the Monterey County LCP also does allow projects to extensively alter landforms. Again, LUP Policy 2.7.2 requires projects in areas of high geologic hazard to be "carefully regulated through the best available planning practices in order to minimize . . . damage to the natural environment."² Clearly drilling and/or blasting a tunnel through the face of a shoreline cliff generates extensive landform alteration by creating a structurally weaker bluff than the one that currently exists. Additionally, creation of this landform alteration has the potential to generate further alteration of the structural landform of the coastline through potential failure of the bluff, as described below. Because the fundamental purpose of this project is to create landform alteration, and because it is not necessary to the protection of any existing development, it is inconsistent with LUP policy 2.7.2. Thus, this contention raises a substantial issue with respect to landform alteration.

Overall, the applicant has not adequately examined all possibilities for erosion and failure of the bluff, and is not in compliance with LUP policies prohibiting landform alteration and requiring avoidance of and minimization of geologic hazards. Therefore, as approved by Monterey County, the project is inconsistent with the above-referenced geologic hazard and landform alteration policies of the Monterey County LCP, and raises a substantial issue with respect to geologic hazards.

2. Environmentally Sensitive Habitat Areas

A. Appellant's Contentions

Appellants Wan and Woolley contend in part that:

The proposed tunnel has not been proven to be compatible with the long-term maintenance of the resource. Increased erosion or failure of the bluff could substantially impact the offshore kelp beds and haul-out sites, which are considered by the LCP as environmentally sensitive habitat. Development of an access tunnel through the coastal bluff is not consistent with LCP policies that deal with environmentally sensitive habitats. This project, being the first of its kind in the

² Although more aptly applied in a visual resource protection context, Carmel Area LUP Policy 2.2.3.7 also clearly states that "...Extensive landform alteration shall not be permitted."



Carmel Area, may also establish a precedent for other similar projects, which raises some concern about potential cumulative effects to environmentally sensitive habitats.

B. Local Coastal Program Provisions

The LCP defines environmentally sensitive habitats as "... areas in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem" in the overview section, 2.3.1.

Examples of environmentally sensitive habitat areas listed in the Overview section 2.3.1 of the LCP, include all rocky intertidal areas, kelp beds, rookeries and haul-out sites, important roosting sites, offshore rocks, bluffs, and cliffs, and Areas of Special Biological Significance (ASBS). The project site includes all of these sensitive areas with the exception of the ASBS, which consists of the marine waters surrounding Point Lobos Reserve, located to the north of the site, immediately adjacent to it. Furthermore, the site is located within the boundaries of the California Sea Otter State Game Refuge.

The following policies of the Carmel Area Land Use Plan address environmentally sensitive habitat areas:

LUP Policy 2.3.3.2. *Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.*

LUP Policy 2.3.4.4. Wetlands and Marine Habitats *Alteration of the shoreline, including diking, dredging and filling, shall not be permitted except where demonstrated as essential for protection of existing residential development or necessary public facilities...*

LUP Policy 2.3.4.9. Wetland and Marine Habitats *Development on parcels adjacent to intertidal habitat should be sited and designed to prevent... deposition of sediment.*

C. Local Government Action

The County's action (Resolution 01035, Exhibit D) allows a coastal development permit for an underground tunnel from the basement boiler room of an existing house to provide private beach access on APN 241-111-01, construction of two new retaining walls and repair of existing retaining walls using rock excavated from the tunnel, 193 cubic yards of grading to excavate tunnel; and a variance to allow an exception to 30% slope limit for tunnel exit and to reconstruct a retaining wall. Among other things, the conditions of approval required that development be in accordance with the Biological Report, prepared by Jeff Norman. Additional mitigations included that the applicant restrict drilling operations to the months of May through November to avoid disturbance of Southern sea otters, provide for the presence of black swifts, Yadon's rein-orchid, Pacific Grove clover and breeding harbor seals, protect Monterey pines on site, and monitor noise levels.



D. Substantial Issue Analysis and Conclusion

Consistency with the above cited land use policies is necessary for the County's approval of this project. These policies clearly require that non-resource dependent development, such as the proposed tunnel, must avoid environmentally sensitive habitat areas. Any development adjacent to environmentally sensitive habitat areas must also be compatible with the protection and long-term maintenance of these areas. The possible impacts to ESHA are broken down into two main categories: construction-related and long-term impacts.

Jeff Norman's Biological Report, dated 11/17/1999, indicates that the project site supports examples of Monterey Pine and that the "nearshore marine environment is inhabited by the Southern sea otter." It also states that swift nesting sites are present in a sea cave 50 yards west of the project site, and describes a marine mammal haul-out site, intertidal zone, and Monterey Pine habitat, but it does not mention the presence of offshore kelp beds.

The project was conditioned to restrict drilling and/or blasting to the months of May through November to lessen the potential for construction noise to impact the Southern sea otter pupping activity. Conditions of Approval also included a provision to use "noise-muffling features" such as a blanket at the cliff face, which also is intended to mitigate for harbor seals, if present. Other construction mitigation measures include pre-construction surveys to determine the presence of black swifts, breeding and/or pupping harbor seals, Yadon's rein-orchid, and Pacific Grove Clover, with corresponding delays in construction or fencing of areas if said species are found.

While the County has accounted for construction noise, as well as the possibility that protected plants and animals may be found at the site, the mitigations do not address other potential construction impacts. The presence of people and machinery on the beach every day for six months, or failure of the rock removal system resulting in rocks and or drilling liquid falling to the beach, could have significant impacts. These possibilities were not addressed by either the Biological Report or the County.

The County also failed to require the applicant to address potential future impacts of construction to the natural environment. As described above, possible failure of the bluff due to existing geologic stresses and those caused by drilling/blasting the tunnel, would be likely to impact rocky intertidal habitat and offshore kelp beds by covering them with debris.

Potential collapse of the bluff conflicts with LUP policy 2.3.4.9 Wetlands and Marine Habitats, which requires development adjacent to intertidal habitat to be designed to prevent deposition of sediment. In addition, as discussed previously, there are no long-term maintenance measures included in the County's findings or conditions to lessen the future erodibility of the site. These oversights could present a substantial issue with respect to LUP policy 2.3.3.2, which requires the development to be compatible with the long-term maintenance of the resource.

Another potential long-term impact to ESHA is the possibility that this alteration of the shoreline, through increased erosion of the mouth of the tunnel or collapse of the bluff, will create the need for future shoreline alteration to protect the existing residence. LUP policy 2.3.4.4 is closely related to



geologic hazard policy 2.7.4.10 in that they both limit the alteration of the shoreline to instances where it is essential to protect existing development, however Policy 2.3.4.4 concerns physical alteration of the shoreline, rather than shoreline processes.

The creation of a tunnel in a coastal bluff where there currently is not necessary to protect the existing development, and may even disrupt the shoreline processes enough to necessitate future shoreline alteration. Therefore, this project raises a substantial issue with respect to limiting physical alteration of the shoreline.

This is also the first project of its kind proposed in the Carmel Area, and all of Monterey County. Therefore, the possibility exists for this project to set a precedent and create the potential for cumulative impacts, conflicting with LUP policy 2.3.3.2 which requires that new development "not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource."

While it is not likely that the majority of Monterey County's coastal residents will propose similar projects, the potential for numerous similar projects does exist, which raises concern about the likelihood for cumulative impacts to environmentally sensitive habitat. In any event, the proposed tunnel is not consistent with the long-term maintenance required by LUP policy 2.3.3.2 and therefore raises a substantial issue with respect to long-term maintenance of the resource.

The short-term construction impacts of the tunnel, and the setting of precedence may not provide the strongest basis for a substantial issue argument. However, the LCP requires development adjacent to ESHA to be consistent with long-term maintenance of the resource. The fact that the County approved non-resource dependent development in an area adjacent to five different types of ESHA without fully considering all of its potential long-term impacts to ESHA does provide that basis. Because the County did not require or have enough information about potential long-term impacts to make a good judgment regarding this project, a substantial issue is raised with regard to long-term protection of coastal resources.

C. De Novo Coastal Permit Findings

The applicant, Searock L.L.C., proposes to drill and/or blast a tunnel through a coastal bluff to provide access to a private pocket beach and to use the rock excavated from the tunneling process to build and repair retaining walls on the property. As discussed in the Substantial Issue findings above, directly incorporated into these *de novo* findings by reference, this project is fundamentally inconsistent with the Monterey County LCP and cannot be approved.

As established in the above findings, the project is located on a coastal bluff, an area of high geologic hazard. The applicant has not demonstrated that the tunnel can be drilled into the fractured bedrock without further compromising the structural integrity of the bluff and increasing the risk from geologic hazard. While additional geologic testing may fulfill the requirements of LCP policies 2.7.4.7.a, c, and e, it is not likely to guarantee that the project will contribute to the stability of the existing bluff. Therefore, the fundamental aspects of this development are inconsistent with LCP policies 2.7.2 and 2.7.3.1, which



require development to minimize geologic risks and do not generally allow development in areas subject to high hazards, and consequently must be denied.

Additionally, and more fundamentally, the above findings also show that the project conflicts with LCP policies 2.7.4.10 and 2.3.4.4, which regulate development that alters shoreline processes and development that physically alters the shoreline respectively. Both of these policies state that such development shall only be permitted where it is necessary to protect existing development. It has been determined that the creation of a sea cave where there was previously a solid coastal bluff alters both the physical properties of the shoreline and its processes, and that providing private beach access is not necessary to protect the existing development. Furthermore, such shoreline alteration conflicts with LUP policy 2.7.2 which requires that projects be well-regulated to minimize damage to the natural environment. Clearly a project with no necessary shoreline protection function, in a high hazard area, requiring extensive landform alteration, is not consistent with the fundamental principles embodied in the geologic hazards policies of the LCP. Overall, this project is not in conformance with LCP policies 2.7.4.10, 2.7.2 and 2.3.4.4 pertaining to geologic hazard and protection of the natural environment, and therefore must be denied.

With respect to ESHA, the above findings establish that the tunnel site is adjacent to many different types of environmentally sensitive habitat areas; rocky intertidal habitat, rookeries, roosting and haul-out sites, and kelp beds, as well as the California Sea Otter State Game Refuge and nearby Areas of Special Biological Importance. This project has the potential, through catastrophic failure of the bluff, to create significant impacts to these areas. The nature of this project is inconsistent with LCP policies 2.3.3.2, which requires development to be compatible with the long-term maintenance of the resource, and 2.3.4.9, which requires development to prevent deposition of sediment, and therefore must be denied.

Alternatives

There are potentially other alternatives to drilling and/or blasting an access tunnel into bluff, such as an access stairway. According to the applicant, the existing path and stairs pre-date the Coastal Act, and have been rebuilt in the past on an annual basis without coastal development permits. If this avenue is used to provide future access to the beach, it could possibly be done without the amount of habitat and geologic disturbance expected from the proposed tunnel.³ As such, any development to provide beach access on site should be located in the previously disturbed areas of the existing walkway. Additionally, a stairway designed to be removable from the area susceptible to storm surge is preferable, as this would prevent additional disturbance to the slope and nearshore habitat due to stairway reconstruction. It would also avoid the episodic damage to the stairs and potential for debris to enter the marine environment. Removal of invasive vegetation from the general area of the existing access pathway should also be addressed in future beach access development proposals.

³ Whether or not such a proposal requires a coastal development permit would need to be evaluated by the County pursuant to the certified Monterey County LCP.



Conclusion

This analysis has revealed fundamental inconsistencies with Monterey County LCP, as well as significant issues that were not satisfactorily addressed by the County analysis. The project as presented does not adequately address the major policy issues of maintenance of geologic stability, development in hazardous areas, development adjacent to ESHA, and landform alteration. Therefore, because the proposed tunnel project does not avoid development in a high geologic hazard area, is shoreline alteration not necessary to protect the existing residence, and will have impacts on adjacent ESHA, it is inconsistent with LCP policies designed to protect the resources found at the project site, and must be denied.

D. Public Access and Recreation Findings

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of chapter 3 of the Coastal Act. The project is located seaward of the first public through road, which in this area is State Highway 1. Sections 30210-14 of the Coastal Act provide for maximizing public access to the coast. In accordance with other Coastal Act policies, Section 30223 requires that upland areas necessary to support coastal recreation uses shall be reserved for such uses where feasible. Section 30212 also requires that public access from the nearest public roadway to the shoreline be provided for all new development projects except where adequate access exists nearby.

The project does not affect any existing public access in the Carmel Area. The site is located roughly 1,500 feet from the southern portion of the Point Lobos Reserve State Park and 1.5 miles to Monastery Beach and the Carmel River State Beach. Additionally, there is a visual access point adjoining the property on the southern side, which consists of a pull-off-parking area next to Highway 1. Therefore, the project is consistent with public access and recreational policies of the Coastal Act.

E. California Environmental Quality Act (CEQA)

The County determined that this permit was exempt from CEQA review. However, this report has identified and discussed certain additional potential adverse impacts (geologic hazard and ESHA issues) not fully addressed by the local government. The project as presented does not address these impacts. As designed and sited, the project would not be the least environmentally damaging feasible project that could occur on the site. Therefore, as there are additional feasible mitigation measures that would lessen any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA), this application must be denied. This finding incorporates all of the previous findings in this recommendation.



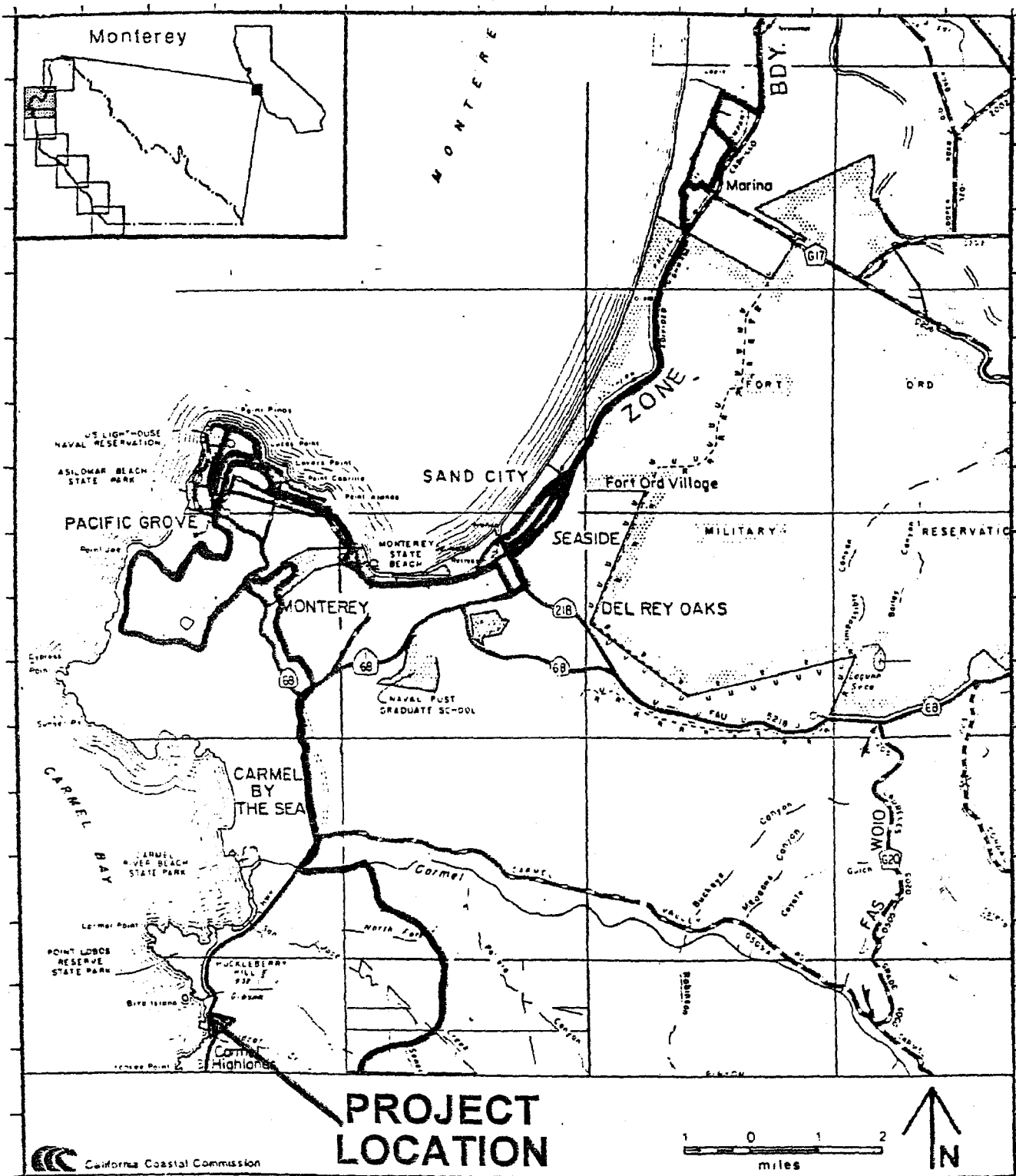


Exhibit A
Regional Location Map
A-3-MCO-01-071
James House Tunnel

Pacific

Carmel

CARMEL-BY-THE-SEA

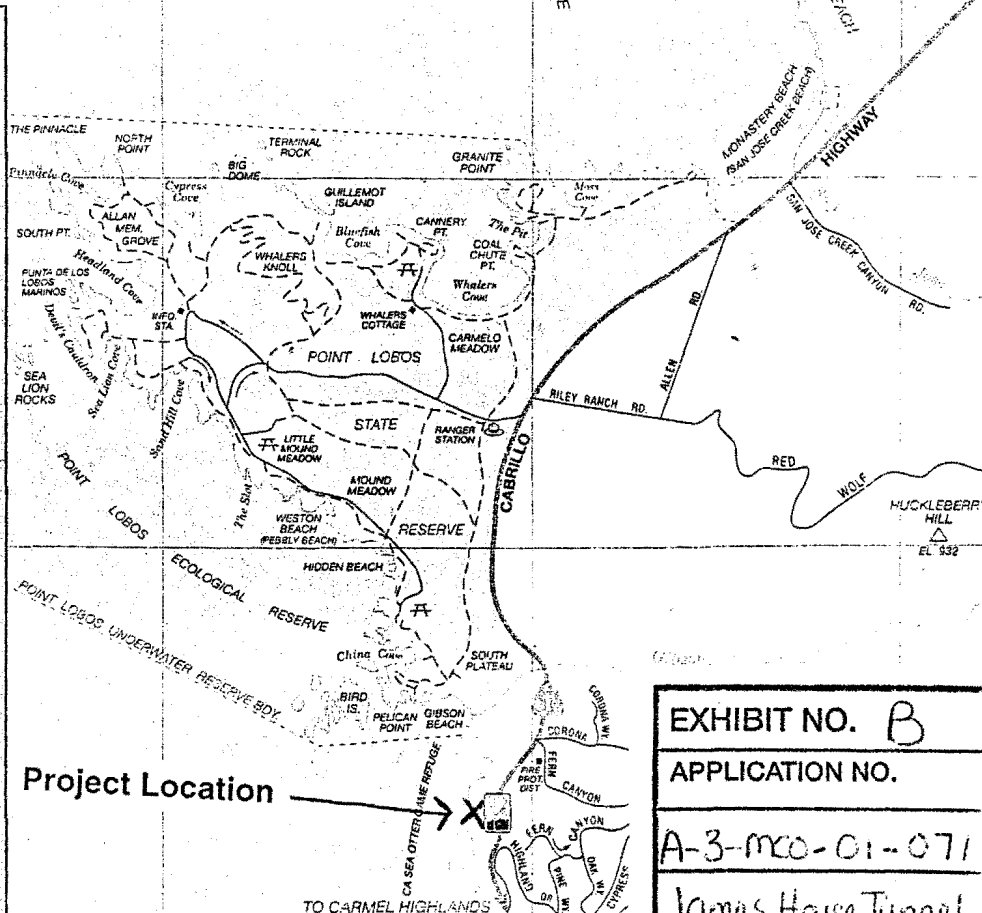
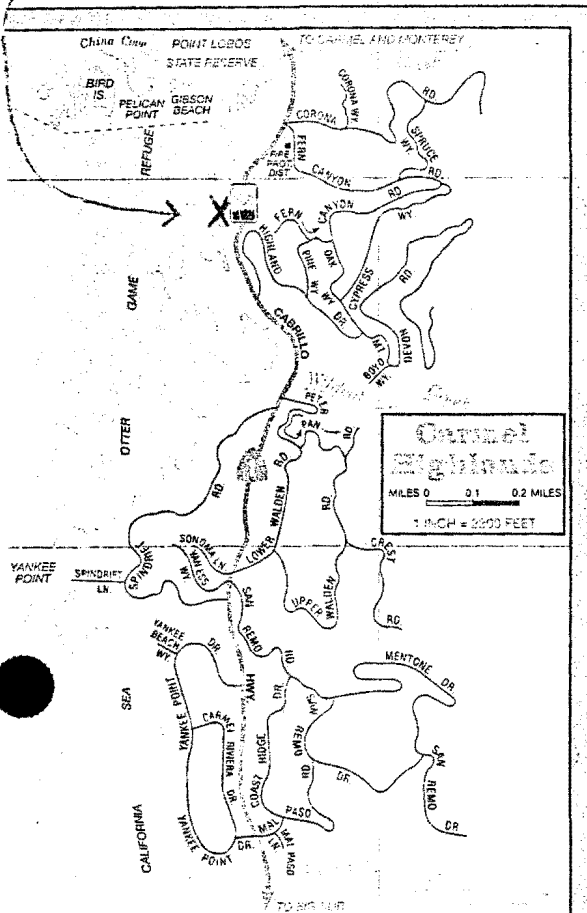
BAY

ECOLOGICAL

Bay

Project Location

FOR CONTINUATION OF STREETS SEE MAIN MAP AT RIGHT



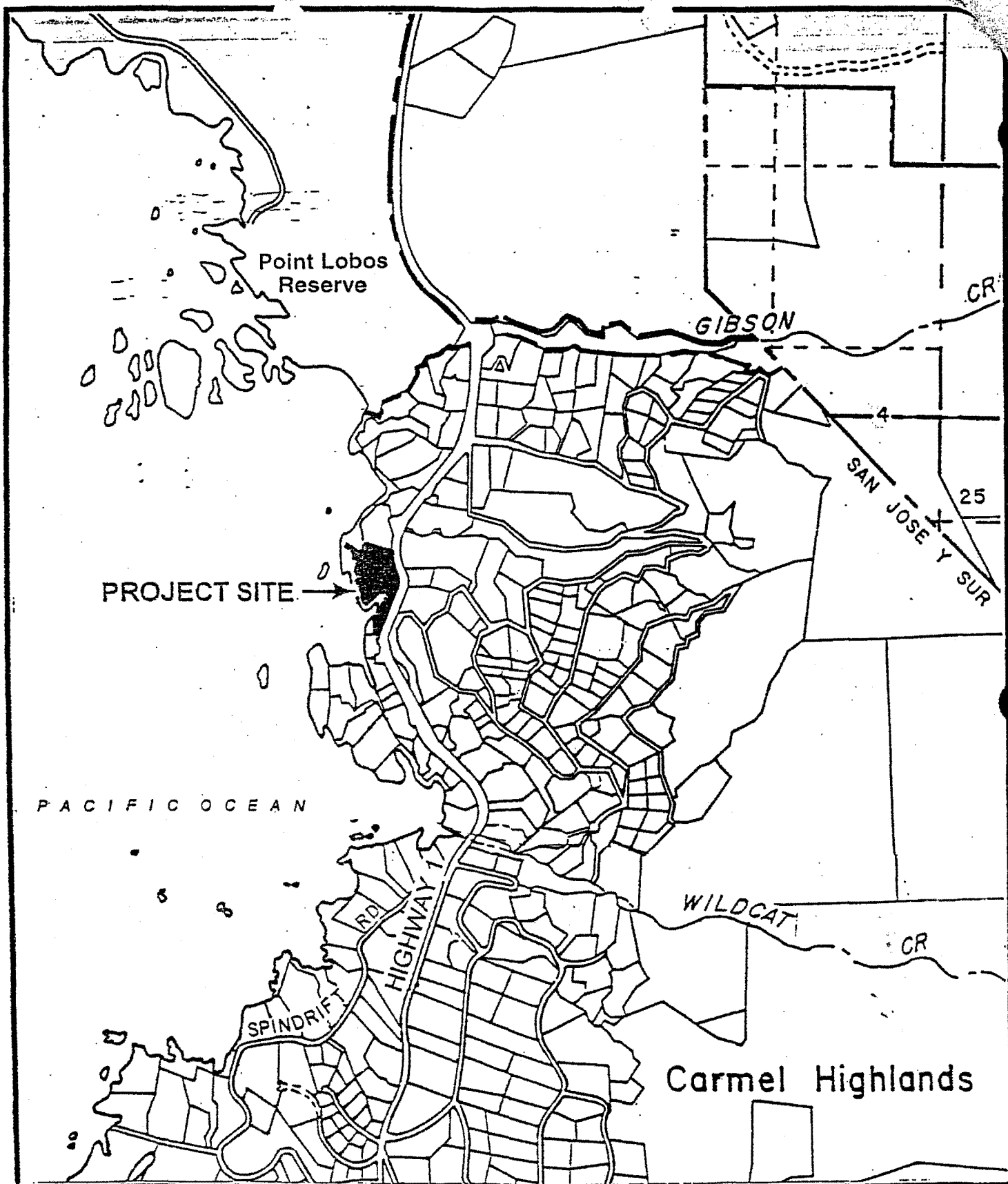
Project Location

EXHIBIT NO. B

APPLICATION NO.

A-3-mco-01-071

James Hove Tunnel



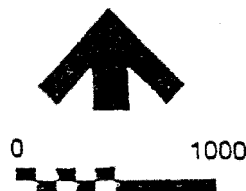
APPLICANT: SEA ROCK

APN: 241-111-001-000

FILE# 990459

300' LIMIT: -----

2,500' LIMIT: -----



A-3-MCO-01-071 FEET

James House Tunnel

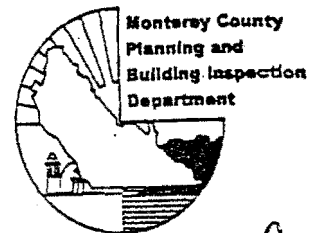
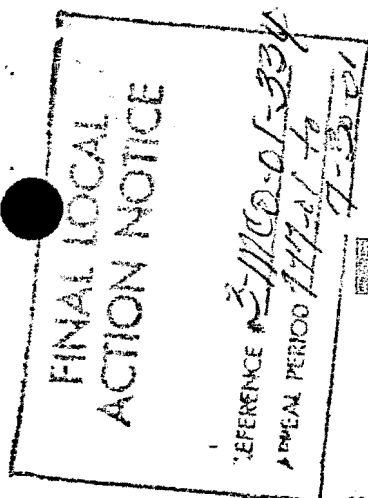


Exhibit C

1 of 1



PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA

7/17/01 to 7/30/01

CKC

RECEIVED

JUL 16 2001

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RESOLUTION NO. 01035

A.P. # 241-111-001-000

FINDINGS AND DECISION

In the matter of the application of
Sea Rock LLC (PLN990459)

for a Coastal Development Permit in accordance with Title 20.1 (Monterey County Coastal Implementation Plan Ordinances) Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow an underground tunnel from existing house's basement boiler room to provide beach access, exception to 30% slope limit for tunnel exit and to reconstruct a retaining wall, excavated rock to be used to construct two new retaining walls and repair existing retaining walls; grading (193 cubic yards) to excavate tunnel; located at 105 Highway One, west of Highway One, Carmel Area, Coastal Zone, came on regularly for hearing before the Planning Commission on June 27, 2001.

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

FINDING

1. **FINDING:** The subject Coastal Development Permit and Design Approval (PLN990459), as described in condition #1 and as conditioned, conforms with the plans, policies, requirements and standards of the Local Coastal Program (LCP). The LCP for this site consists of the Carmel Area Land Use Plan, Carmel Area Coastal Implementation Plan (Part 4), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20). The property is located at 105 Highway One in the Carmel area of the Coastal Zone. The parcel is zoned LDR/1 (CZ) or Low Density Residential, 1 unit/acre. The site is physically suitable for the use proposed. The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights. No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated. The subject property complies with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of Title 20, and any zoning violation abatement costs have been paid.

EVIDENCE: The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for conformity with:

- The certified Carmel Area Land Use Plan
- The certified Monterey County Coastal Implementation Plan regulations for Low Density Residential or the "LDR (CZ)" District in the Coastal Zone, and
- Chapter 20.146, Monterey County Coastal Implementation Plan regulations for development in the Carmel Area Land Use Plan.

EVIDENCE: The proposed development has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Division, Parks and Recreation Department, and Carmel Highlands

Fire Protection District. There has been no indication from these agencies that the site is not suitable for the proposed development. Necessary public facilities are available to the project site. Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no violations exist on subject property. The Initial Study demonstrates that no physical or environmental constraints exist that would indicate the site is not suitable for the proposed development. Each agency has recommended conditions for improvements.

EVIDENCE: Design Approval request form, with recommendation for approval of the project by the Carmel Highlands Land Use Advisory Committee on 3/20/00, by a vote of 3 to 2, 0 abstain.

EVIDENCE: The proposed use is consistent with the development standards for development on slopes in excess of 30%, pursuant to Title 20, Monterey County Coastal Implementation Plan (Part 1).

EVIDENCE: The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in the project file.

EVIDENCE: The on-site inspection by the project planner on 8/18/00 to verify that the proposed project complies with the Carmel Area Local Coastal Program.

EVIDENCE: Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no violations exist on subject property.

EVIDENCE: The subject property is not described as an area where the Local Coastal Program requires access. The Carmel Area Land Use Plan Public Access map shows the subject property being inappropriate for public beach access; the closest public beach access to the subject site is approximately 300 yards north at Point Lobos.

EVIDENCE: Consistency analysis prepared by County staff and attached to the June 27, 2001 Planning Commission staff report as Exhibit "J."

2. **FINDING:** The proposed project, including all permits and approvals, will not have significant adverse impacts on the environment. A Mitigated Negative Declaration has been prepared and is on file (File PLN990459) in the Department of Planning and Building Inspection. All mitigation measures identified in the Initial Study and Mitigated Negative Declaration and all project changes required to avoid significant effects on the environment have been incorporated into the approved project or are made conditions of approval. A Program for Monitoring and/or Reporting on Conditions of Approval (hereafter "the Program") has been prepared pursuant to Public Resources Code 21081.6 and is made a condition of approval. The Program is attached hereto and is incorporated herein by reference. Potential environmental effects have been studied, and there is no substantial evidence in the record, as a whole, that supports a fair argument that the project, as designed, may have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County based upon the findings and conclusions drawn in the Initial Study and the testimony and information received, and scientific and factual data presented as evidence during the public review process. The Monterey County Planning and Building Inspection Department, located at 240 Church Street, Room 116, Salinas is the custodian of the documents and the materials that constitute the record of proceedings upon which the adoption of the Mitigated Negative Declaration is based.

EVIDENCE: County staff prepared an Initial Study for the project in compliance with the California Environmental Quality Act (CEQA) and its Guidelines. The Initial Study provides substantial evidence that the project, with the addition of mitigation measures, would not have significant environmental impacts. A Mitigated Negative Declaration was filed with

the County Clerk on 4/06/01 and noticed for public review. All comments received on the Initial Study have been considered as well as all evidence in the record, which includes studies, data, and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented or discussed during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data, and reports; application materials; and expert testimony. Among the studies, data, and reports analyzed as part of the environmental determination are the following:

- a. Jeff Norman, consulting biologist, Biological Report, November 5, 1999
- b. Grice Engineering & Geology Inc., Geotechnical and Geological Engineering Report, December 1999
- c. Archaeological Resource Management, Archaeological Review Letter, November 22, 1999

EVIDENCE: The Program for Monitoring and/or Reporting on Conditions of Approval, prepared and required pursuant to Section 21081.6 of the Public Resources Code, is made a condition of approval and is designed to ensure compliance during project implementation.

EVIDENCE: No facts, reasonable assumptions predicated on facts, testimony supported by adequate factual foundation, or expert opinion supported by facts, have been submitted that refute the conclusions reached by these studies, data and reports. Nothing in the record alters the environmental determination, as presented by staff, based on investigation and the independent assessment of those studies, data and reports.

EVIDENCE: Studies, data and reports prepared by staff from various County departments including Planning and Building Inspection, Public Works, Environmental Health and Monterey County Water Resources Agency support the adoption of the Mitigation Negative Declaration for the project.

EVIDENCE: File and application materials; Initial Study with mitigation measures; and Negative Declaration contained in the project file.

3. **FINDING:** The establishment, maintenance, or operation of the use or structure 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 of such proposed use, or be detrimental or injurious to property and improvement in the neighborhood, or to the general welfare of the County.

EVIDENCE: The project as described in the application and accompanying materials was reviewed by the Department of Planning and Building Inspection, Environmental Health Division, Public Works Department, the applicable Fire Department, and the Water Resources Agency. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the County in general.

EVIDENCE: File and application materials, Initial Study with mitigation measures, and Negative Declaration contained in the project file.

4. **FINDING:** For purposes of the Fish and Game Code, the project will have a potential for adverse impact on fish and wildlife resources upon which the wildlife depends.

EVIDENCE: Staff analysis contained in the Initial Study and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. The Initial Study identifies potential impacts to biological resources.

5. **FINDING:** The recommended condition regarding lighting has been applied to ensure that the character of the neighborhood is preserved, protected and enhanced.

EVIDENCE: Section 20.146.030, Subsection C.1.d of the adopted and certified Monterey Coastal Implementation Plan.

6. **FINDING:** The request for the proposed development to be located on slopes over 30% is consistent with policies of the Carmel Local Coastal Program since no other alternative exists which would allow development to occur on slopes of less than 30 percent.

EVIDENCE: Access to the cove can only be accommodated by development on slopes greater than 30% due to the topography of the site. Steep cliffs that rise to the house site surround the cove. No alternatives exist that could avoid access across slopes greater than 30 percent.

7. **FINDING:** The project as proposed is consistent with policies of the Carmel Local Coastal Program dealing with visual resources and will have no significant impact on the public viewshed. The proposed project was evaluated in terms of the impact upon the public viewshed from Highway One and public roads. The project is not located in the public viewshed as defined in Section 20.146.020.Z of the Monterey County Coastal Implementation Plan, Part 4.

EVIDENCE: The on-site investigation by the project planner, pursuant to Section 20.146.030.A of the Monterey County Coastal Implementation Plan, Part 4.

8. **FINDING:** The proposed project is consistent with policies of the Carmel Area Local Coastal Program dealing with development adjacent to environmentally sensitive habitats. The Biological Report prepared for the site by Jeff Norman states no significant negative impact will result from this development. Mitigation measures contained in the report include surveys to check for the presence of sensitive animal species prior to construction and restoration of degraded sites. Conditions have been added that requires the applicant to comply with the mitigation's contained in the Biological Report.

EVIDENCE: The Biological Report dated November 5, 1999, prepared for the site by Jeff Norman pursuant to requirements of the Carmel Area Local Coastal Program. Conditions 12, 13, 14, 15, and 20.

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

EVIDENCE: Sections 20.86.070 and 20.86.080 of the Monterey County Coastal Implementation Plan.

DECISION

THEREFORE, it is the decision of the Planning Commission of the County of Monterey that the Mitigated Negative Declaration and Program for Monitoring and/or Reporting on Conditions of Approval be adopted and said application for a Coastal Development Permit be granted as shown on the attached sketch and subject to the following conditions:

1. The subject Coastal Development Permit is to construct an underground tunnel access from residence's basement boiler room to provide private beach access; exception to 30% slope limit for tunnel exit; reconstruction of a retaining wall; construction of two new retaining walls and repair existing retaining walls; grading (193 cubic yards) to excavate tunnel. The project is located at 105 Highway One (Assessor's Parcel Number 241-111-001-000), in the Carmel Highlands Area. The proposed project is in accordance with County ordinances and land use regulations, subject to the following terms and conditions. Neither the use 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)**

Prior to the Issuance of Grading and Building Permits

2. 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 that 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 thereafter be responsible to defend, indemnify or hold the County harmless. **(Planning and Building Inspection)**
3. The applicant shall record a notice which states: "A permit (Resolution 01035) was approved by the Planning Commission for Assessor's Parcel Number 241-111-001-000 on June 27, 2001. The permit was granted subject to 28 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 the notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. **(Planning and Building Inspection)**
4. 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 within five days of project approval, before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operated or vested or final until the filing fees are paid. **(Planning and Building Inspection Department)**
5. The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring and Reporting Plan in accordance with Section 21080.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. **(Planning and Building Inspection Department)**
6. A Grading Permit shall be required pursuant to the Monterey County Code relative to Grading, Chapter 16.08. **(Planning and Building Inspection Department)**
7. A scenic easement be conveyed to the County over those portions of the property where the slope exceeds 30 percent. Scenic easement deed to be submitted to and approved by Director of Planning and Building Inspection.

Inspection. (Planning and Building Inspection Department)

8. Prior to issuance of building or grading permits, a (notice/deed restriction) shall be recorded with the Monterey County Recorder which states: "A Geotechnical and Geological Engineering Report has been prepared for this parcel by Grice Engineering and Geology, Inc., dated December, 1999, and is on record in the Monterey County Planning and Building Inspection Department. A Biological Report has been prepared for this parcel by Jeff Norman, dated November 5, 1999, and is on record in the Monterey County Planning and Building Inspection Department. An Archaeological Report has been prepared for this parcel by Archaeological Resource Management, dated November 22, 1999, and is on record in the Monterey County Planning and Building Inspection Department. All development shall be in accordance with these reports." **(Planning and Building Inspection Department)**
9. The design of the lower tunnel entrance be approved by the Director of Planning and Building Inspection. **(Planning and Building Inspection Department)**
10. All 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. The applicant shall submit 3 copies of a lighting plan as part of final project design plans, which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The lighting plan shall be subject to approval by the Director of Planning and Building Inspection, prior to the issuance of grading permits. **(Planning and Building Inspection)**
11. The applicant shall ensure that the trunks of Monterey pines on site are not injured. This can be accomplished by padding the trunks with a protective material for any trees located near construction activities. No excavated material shall be allowed to permanently remain on the soil surface beneath the driplines of the pines. **(Planning and Building Inspection) (MM#1)**
12. The initial drilling and rock breaking associated with the project shall occur between the months of May and November (inclusive) to avoid disturbance of pupping activity of the Southern sea otter. A qualified biologist shall perform a site visit prior to the commencement of the project (which should occur no earlier than May 15), to determine if sea otters with pups are present nearby. If out-of-season otters with pups are nearby and, in the opinion of the qualified biologist, project construction could disturb the animals, construction shall cease until the animals have relocated, or a noise-muffling feature shall be installed and utilized if approved by the biologist. Such a measure would involve a noise-absorbing barrier or blanket at the cliff face to deaden noise until excavation has proceeded internally to the degree that the rock provides sufficient natural muffling. This measure also provides effective mitigation for harbor seals that may be present. **(Planning and Building Inspection) (MM#2)**
13. The site shall be visited prior to commencement of construction, and in early May if construction continues into May, by a qualified biologist to determine the presence or absence of black swifts. A sea cave located 50 yards west of the project site shall also be surveyed. Should nesting activity be detected, construction shall be delayed until fledging occurs in August. If no black swifts are seen during the survey, construction could commence. A second field visit shall occur a month later, with continuation of construction dependent upon a second negative finding for black swift. **(Planning and Building Inspection) (MM#5)**
14. As part of the site visits required in the previous measures, the biologist shall also survey the entire project site, paying close attention to the ravine and proposed staging area at the top of the ravine, for Yadon's rein-orchid and Pacific Grove clover. If either of these species are found in the areas to be

disturbed by the project, specimens or communities shall be fenced off and protected during construction. If fencing is not feasible, the construction plan shall be modified to avoid impacts to these plant species. **(Planning and Building Inspection) (MM#6)**

15. As part of the pre-construction and May site visits, the potential rookery sites for harbor seals in the immediate area of the proposed tunnel shall be checked for mother and pups. If breeding of harbor seals has been found that the biologist concludes would be compromised by the project, then project commencement will be delayed until the pups are weaned (three weeks after birth) and the biologist visits the site and notifies the County in writing that construction can resume. **(Planning and Building Inspection) (MM#7)**
16. The Geotechnical and Geological Engineering Report prepared by Grice Engineering and Geology, Inc. (December 9, 1999) contains specific recommendations for development that will ensure that construction of the tunnel will not result in adverse impacts, and that appropriate engineering methods are employed for construction of the tunnel. All recommendations of the geotechnical report addressing stability, shoring, stairwell shape and other details shall be adhered to. Doing so will reduce any potential geologic impacts to a level of insignificance. **(Planning and Building Inspection) (MM#10)**
17. All recommendations contained within the Erosion Control Plan prepared by Grice Engineering shall be implemented as proposed. In addition, all rock or fill material temporarily stored and used for retaining walls elsewhere on the property shall be appropriately covered and located to avoid erosion or siltation into the property's natural drainageways, all of which drain to the ocean. **(Planning and Building Inspection) (MM#11)**
18. The applicant shall comply with Ordinance No. 3932 of the Monterey County Water Resources Agency pertaining to mandatory conservation regulations. The regulations for new construction shall require, but are not limited to:
 - a) 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 10 feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
 - b) Landscape or restoration 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)**.

Prior to Final Building Inspection/Occupancy:

19. Prior to final inspection, the geologic consultant shall provide certification that all development has been in accordance with the geologic report. **(Planning and Building Inspection)**
20. To protect the waters of the Monterey Bay National Marine Sanctuary (and associated Southern sea otter food resources), no construction debris or fresh water shall be allowed to enter the marine habitat, and no erosion (as explained in Mitigation Measure #9) may be allowed to occur as a consequence of the project. One hundred percent of excavated material shall be removed via a dust-tight bucket (as proposed). To prevent inundation of the temporary outside sump, its contents shall be pumped out and removed during the highest tides. The sump lining material shall be portable to be easily and quickly transported up the beach during high tides. This measure also provides effective mitigation for harbor seals, if present. **(Planning and Building Inspection) (MM#3)**

21. Following completion of the project, the beach staging area shall contain no remnants or signs of construction activity, and shall reflect its existing natural state. **(Planning and Building Inspection)** (MM#4)
22. Erosion control measures (including netting, mulching and revegetation with native plants) shall be undertaken as part of any temporary trail improvement activity. No dirt or other excavated material shall be allowed to move downslope, to avoid impacts to the intertidal zone. Pampas grass shall be eradicated from the area of the access trail. Other weeds shall be controlled in the project area by hand pulling or mechanical means, and should not be allowed to become established in areas where the soil surface has been disturbed due to the project. If mulching is to be employed for soil stabilization, landscaping, restoration or other purposes, it shall be sterile material free from weed seeds. **(Planning and Building Inspection)** (MM#8)
23. Following completion of the project, the temporary access trail shall be abandoned with erosion control measures in place, revegetated with native plants, and all wooden stairs, walkways and bridges shall be removed from the ravine to discourage continued or unauthorized access through the ravine. **(Planning and Building Inspection)** (MM#9)
24. At applicant's expense, vibration and noise monitors will be set up at the foundation/basement of the James House and within the ravine prior to commencement of work. An initial test shot shall be conducted to measure for vibration and sound. As construction progresses within the tunnel, each shot shall be monitored, with monitoring results provided to the Planning Department every 2 weeks. All shot programming shall be conducted by a licensed professional in the field. All vibration shall be kept within accepted standards and velocities to avoid any damage to the James House or other structures. **(Planning and Building Inspection)** (MM#12)
25. Site preparation and construction activities shall comply with Monterey County's noise requirements, per Monterey County Code, Chapter 10.60. **(Environmental Health)**

Continuous Permit Conditions:

26. The applicant and construction contractor shall implement the following "Best Available Control Practices" per MBUAPCD standards:
 - a. All unpaved construction areas shall be sprinkled with water (at least twice per day in dry weather) during grading activities.
 - b. Apply non-toxic tackifier, or other suitable cover (such as jute netting, erosion control fabric, mulch, etc.) to exposed areas immediately after cut and fill operations are complete.
 - c. Trucks hauling dirt and debris must be covered.
 - d. Immediately sweep up spilled dirt or debris onto paved surfaces.
 - e. Cover on-site stockpiles of excavated materials.
 - f. Vacuum (e.g. road sweeper/vacuum) construction-related soils on public roads whenever soils are visible.
 - g. No more than 2.2 acres per day of grading activities shall be allowed. **(Planning and Building Inspection)**
27. If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface) work shall be halted immediately within 50 meters (150 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County Planning and Building Inspection 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. **(Planning and Building Inspection)**

28. The project applicants, licensed professionals and responsible parties shall abide by all State and federal laws pertaining to the use, transport, and storage of explosives. **(Planning and Building Inspection)**

PASSED AND ADOPTED this 27th day of June, 2001, by the following vote:

AYES: Errea, Sanchez, Hawkins, Parsons, Brennan, Pitt-Derdivanis, Hernandez, Lacy, Wilmot
NOES: None
ABSENT: None
ABSTAIN: Diehl


DALE ELLIS, SECRETARY

Copy of this decision mailed to applicant on JUL - 6 2001

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE JUL 16 2001

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

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

NOTES

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

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

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

2. The construction or use authorized by this permit must start within two years of the date of approval of this permit unless extended by the Director of Planning and Building Inspection pursuant to Section 20.140.100 of the Coastal Implementation Plan.

**Monterey County Planning & Building Inspection
Program for Monitoring or Reporting* on
Mitigation Measures**

Project Name: Sea Rock LLC
File No: PLN 990459 APN: 241-111-001
Approval by: Planning Commission Date: June 27, 2001

LEGEND

PBI	Planning & Building Inspection	WRA	Water Resources Agency	EH	Environmental Health	AG	Ag Commissioner
FD	Fire District	PW	Public Works	RA	Redevelopment Agency	PD	Parks Department
CC	County Counsel	MMR	Mitigation Monitoring Reporting Team	CE	Code Enforcement	Other	State which agency

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

Mit. Mon. No.	Final Signoff Date	Mitigation Measures		Orig. Dept. or Agency	Schedule (Prior to/Continuous) (Report due?) Fill in timeframe		Person/Agency responsible for Inspection/Monitoring/Review 1) What is to be reviewed 2) Who is the preparer
			Condition of Approval				
1		The applicant shall ensure that the trunks of Monterey pines on site are not injured. This can be accomplished by padding the trunks with a protective material for any trees located near construction activities. No excavated material shall be allowed to permanently remain on the soil surface beneath the driplines of the pines.	Condition of Approval	PBI	Prior to construction		PBI 1) Applicant shall photograph protected trees for County review prior to construction. Excavated material check done prior to final by PBI staff. 2) Applicant.
2		The initial drilling and rock breaking associated with the project shall occur between the months of May and November (inclusive) to avoid disturbance of pupping activity of the Southern sea otter. A qualified biologist shall perform a site visit prior to the commencement of the project (which should occur no earlier than May 15), to determine if sea otters with pups are present nearby. If out-of-season otters with pups are nearby and, in the opinion of the qualified biologist, project construction could disturb the animals, construction shall cease until the animals have relocated, or a noise-muffling feature shall be installed and utilized if approved by the biologist. Such a measure would involve a noise-absorbing barrier or blanket at the cliff face to deaden noise until excavation has proceeded internally to the degree that the rock provides sufficient natural muffling. This measure also provides effective mitigation for harbor seals that may be present.	Condition of Approval	PBI	Prior to construction	Y	PBI 1) Biologist's report. 2) Applicant's biologist
3		To protect the waters of the Monterey Bay National Marine Sanctuary (and associated Southern sea otter food resources), no construction debris or fresh water shall be allowed to enter the marine habitat, and no erosion (as explained in Mitigation Measure #9) may be allowed to occur as a consequence of the project. One hundred percent of excavated material shall be removed via a dust-tight bucket (as proposed). To prevent inundation of the temporary outside sump, its contents shall be pumped out and removed during the highest tides. The sump lining material shall be portable to be easily and quickly transported up the beach during high tides. This measure also provides effective mitigation for harbor seals, if present.	Condition of Approval	PBI	During construction	Y	PBI 1) Applicant shall photograph construction debris containment measures for County review prior to construction 2) Applicant

James House Tunnel

A-3-MCO-01-071

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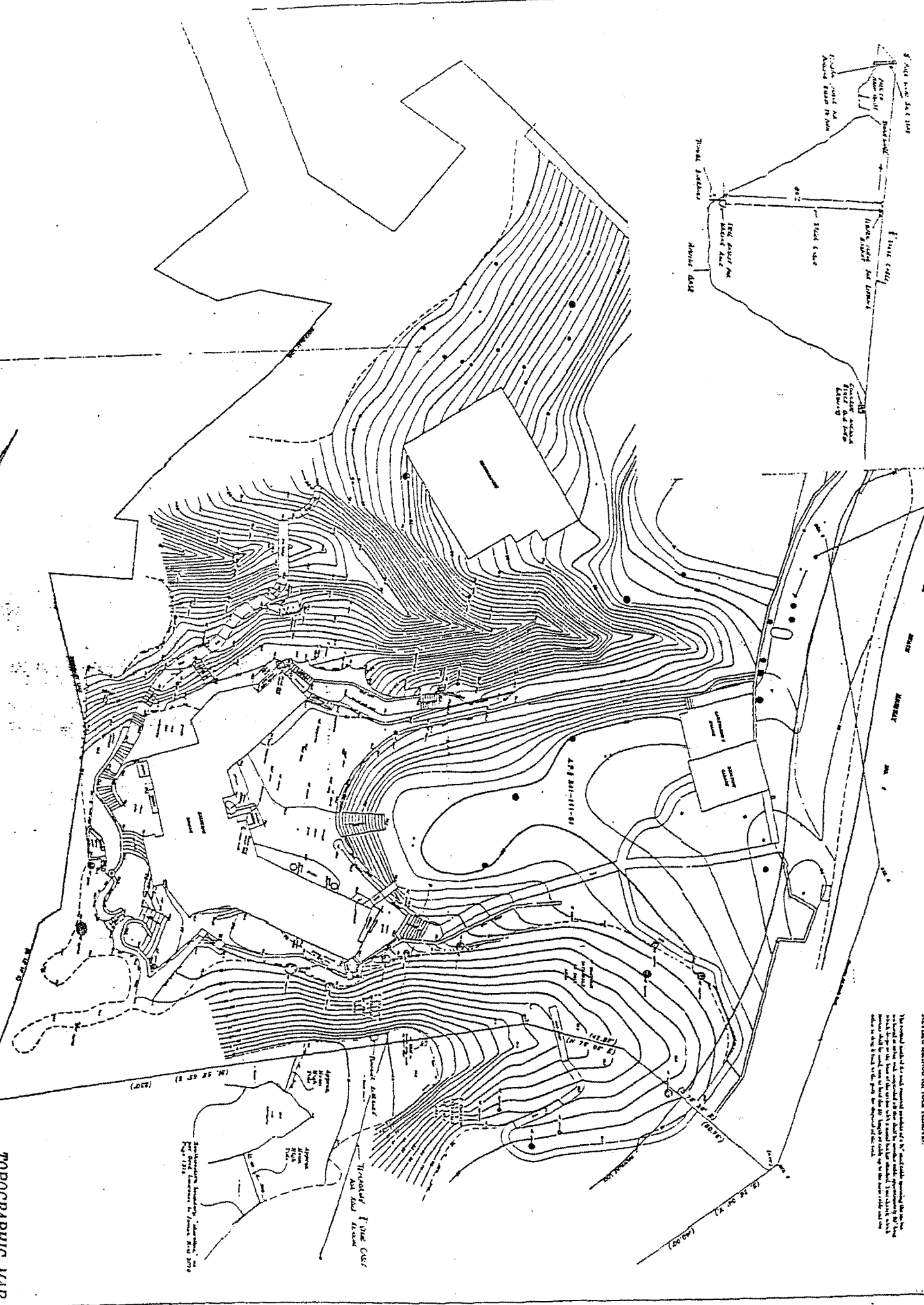
Exhibit D

4		Following completion of the project, the beach staging area shall contain no remnants or signs of construction activity, and shall reflect its existing natural state.	<i>Condition of Approval</i>	PBI	At project completion/prior to final inspection		PBI 1) Applicant shall photograph beach area following construction for County review. 2) Applicant
5		The site shall be visited prior to commencement of construction, and in early May if construction continues into May, by a qualified biologist to determine the presence or absence of black swifts. A sea cave located 50 yards west of the project site shall also be surveyed. Should nesting activity be detected, construction shall be delayed until fledging occurs in August. If no black swifts are seen during the survey, construction could commence. A second field visit shall occur a month later, with continuation of construction dependent upon a second negative finding for black swift.	<i>Condition of Approval</i>	PBI	Prior to construction	Y	PBI 1) Project site. 2) Applicant's biologist
6		As part of the site visits required in the previous measures, the biologist shall also survey the entire project site, paying close attention to the ravine and proposed staging area at the top of the ravine, for Yadon's rein-orchid and Pacific Grove clover. If either of these species are found in the areas to be disturbed by the project, specimens or communities shall be fenced off and protected during construction. If fencing is not feasible, the construction plan shall be modified to avoid impacts to these plant species.	<i>Condition of Approval</i>	PBI	Prior to construction	Y	PBI 1) Biologist's written report. 2) Applicant's biologist
7		As part of the preconstruction and May site visits, the potential rookery sites for harbor seals in the immediate area of the proposed tunnel shall be checked for mother and pups. If breeding of harbor seals has been found that the biologist concludes would be compromised by the project, then project commencement will be delayed until the pups are weaned (three weeks after birth) and the biologist visits the site and notifies the County in writing that construction can resume.	<i>Condition of Approval</i>	PBI	Prior to construction	Y	PBI 1) Biologist's written report. 2) Applicant's biologist
8		Erosion control measures (including netting, mulching and revegetation with native plants) shall be undertaken as part of any temporary trail improvement activity. No dirt or other excavated material shall be allowed to move downslope, to avoid impacts to the intertidal zone. Pampas grass shall be eradicated from the area of the access trail. Other weeds should be controlled in the project area by hand pulling or mechanical means, and should not be allowed to become established in areas where the soil surface has been disturbed due to the project. If mulching is to be employed for soil stabilization, landscaping, restoration or other purposes, it shall be sterile material free from weed seeds.	<i>Condition of Approval</i>	PBI	During construction		PBI 1) Applicant shall photograph erosion measures for County review. Grading inspector will field verify. 2) Applicant
9		Following completion of the project, the temporary access trail shall be abandoned with erosion control measures in place, revegetated with native plants, and all wooden stairs, walkways and bridges shall be removed from the ravine to discourage continued or unauthorized access through the ravine.	<i>Condition of Approval</i>	PBI	Within 30 days of revegetation and removal of construction equip.		PBI 1) Applicant shall photograph erosion control measures for County review. Grading inspector will field verify. 2) Applicant
10		The Geotechnical and Geological Engineering Report prepared by Grice Engineering and Geology, Inc. (December 9, 1999) contains specific recommendations for development that will ensure that construction of the tunnel will not result in adverse impacts, and that appropriate engineering methods are employed for construction of the tunnel. All recommendations of the	<i>Condition of Approval</i>	PBI	Prior to construction, the recommendations must be included on the plans.		PBI 1) Construction site. 2) Applicant

		geotechnical report addressing stability, shoring, stairwell shape and other details shall be adhered to. Doing so will reduce any potential geologic impacts to a level of insignificance.			During Construction		
11		All recommendations contained within the Erosion Control Plan prepared by Grice Engineering shall be implemented as proposed. In addition, all rock or fill material temporarily stored and used for retaining walls elsewhere on the property shall be appropriately covered and located to avoid erosion or siltation into the property's natural drainageways, all of which drain to the ocean.	<i>Condition of Approval</i>	PBI	Prior to construction, the recommendations must be included on the plans. During Construction		PBI 1) Project site. Grading inspector will field verify. 2) Applicant
12		At applicant's expense, vibration and noise monitors will be set up at the foundation/basement of the James House and within the ravine prior to commencement of work. An initial test shot shall be conducted to measure for vibration and sound. As construction progresses within the tunnel, each shot shall be monitored, with monitoring results provided to the planning department every 2 weeks. All shot programming shall be conducted by a licensed professional in the field. All vibration shall be kept within accepted standards and velocities to avoid any damage to the James House or other structures.	<i>Condition of Approval</i>	PBI	During construction— every two weeks	Y	PBI 1) Blasting noise and vibration test results 2) Applicant shall submit every two weeks.

Revised method for rock removal.

The revised method of rock removal is a method of removing the rock from the face of the tunnel by using a small rock removal machine which is operated by a small engine. The machine is used to remove the rock from the face of the tunnel by using a small engine. The machine is used to remove the rock from the face of the tunnel by using a small engine.



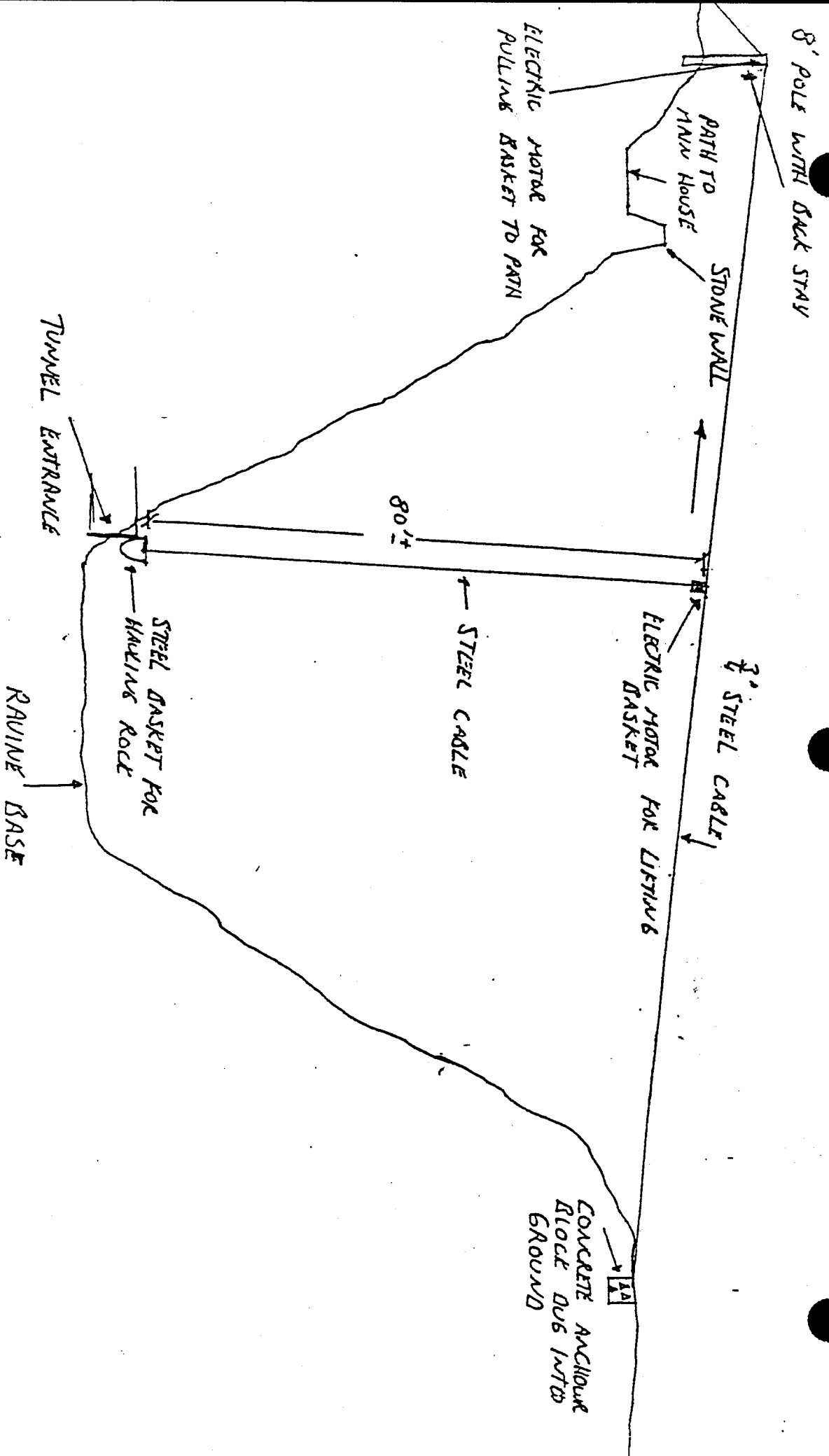
A-3-MGO-01-071
James House Tunnel

REVISIONS:
2-1-50: and remaining to replace in work.

NOTES:
1. The map is a reproduction of the original map.
2. The map is a reproduction of the original map.
3. The map is a reproduction of the original map.

Exhibit
1045

TOPOGRAPHIC MAP
A-3-MGO-01-071
James House Tunnel



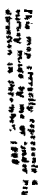


Exhibit E
3 of 5



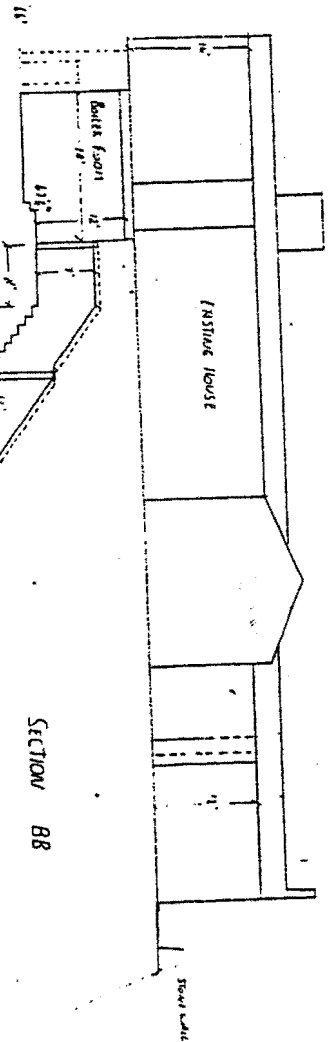
NOTES:
1. Starvation deaths to account for
2. No boundary work done of this time
3. No house features shown due to
4. Not all house features shown due to
5. referential details and irregular angles

Project

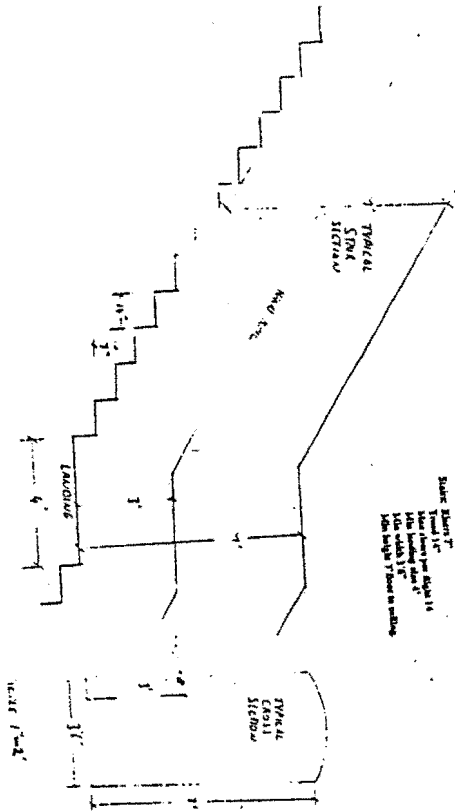
Proposed internal staircase
No 10, Highway 1, 4th and Highway
Parcel # 241 811 001
Issued by Joel Buhler
31 Dec 1999
Drawing # 7113

ТОПОГРАФИИ

JOE RITCHIE
SEAROCK
JAN B HAGEMAYER
Carmel Calif
Seeds 1 - 18 - W O 4007



Stair **Blower 7"**
Tread 14"
Rise above nosing 16
Nosing height 4"
Nose width 3 1/8"
Nose depth 7" Does no railing

[illegible]

Drawn by Ted Rutherford
12 Dec 1999
Drawing # 102

Attachment A Reasons for This Appeal

The Monterey County Planning Commission approved Resolution #01035 for a Coastal Development Permit to Sea Rock LLC., to allow an underground tunnel to be drilled and/or blasted through fractured granitic bedrock beneath an existing house in Carmel Highlands. The tunnel would provide private beach access from the basement boiler room to a rocky pocket beach, which has been otherwise historically accessible by an exterior stairway. The permit also provides a waiver of the policy prohibiting development on slopes in excess of 30% for the tunnel exit, and use of excavated material from the tunnel (193 cubic yards) to construct two new retaining walls and reconstruct and repair existing retaining walls.

The County's findings fail to show that the project conforms to geologic hazard, environmentally sensitive habitat and visual policies of the County's Local Coastal Program (LCP), specifically the Carmel Area Land Use Policies numbered 2.7.2., 2.7.3.1., 2.7.4.10., 2.7.4.7.a., 2.7.4.7.c., 2.7.4.7.e., 2.7.3.4., 2.3.1., 2.3.3.2., Wetlands and Marine Habitats policy # 2.3.4.4. and 2.3.4.9., and visual policy #2.2.3.7.

Geologic Hazards

2.7.2. "Land uses and development in areas of high geologic, flood, and fire hazard shall be carefully regulated through the best available planning practices in order to minimize risks to life and property and damage to the natural environment."

2.7.3.1. "All development shall be sited and designed to minimize risk from geologic, flood, or fire hazards. Areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development..."

This project is development in a high geologic hazard area, and therefore needs to be carefully regulated to minimize the risk to property and damage to the natural environment. In particular, this area should be considered unsuitable for the proposed development because it is located in a high hazard area due to the highly fractured granitic bedrock through which the tunnel would be constructed. The project would cause significant damage to the natural environment.

2.7.4.10 "Revetments, groins, seawalls, or retaining walls, and other such construction that alters natural shoreline processes shall be permitted only where required for the protection of existing development..."

The project is not consistent with this policy because it consists of construction that may alter natural shoreline processes, specifically erosion, and it is not required for the protection of the existing residence. It is likely that the rate of erosion would increase due to wave impact and storm surge once an opening is made in the cliff face, potentially creating the need for future shoreline protection.

2.7.4.7.a, c. and e. "Where soils and geologic reports are required, they should include a description and analysis of the following items:

For development proposed in all areas

- a. geologic conditions, including soil, sediment, and rock types and characteristics, in addition to structural features, such as bedding, joints and faults;*
- c. impact of construction activity on the stability of the site and adjacent area;*
- e. potential erodibility of site and mitigating measures to be used to minimize erosion problems during and after construction (i.e., landscaping and drainage design);"*

The project is not consistent with the above policies. Although a geotechnical report was prepared, it does not adequately describe the geologic conditions of the bluff, such as presence, number and extent of fractures. It does not state what the impact of construction activity will be on the stability of the site and adjacent areas. Evaluation of the structural integrity of the bedrock with respect to its highly fractured nature is important in this instance, as the construction activity could increase the geologic instability of the bedrock, and severely impact the stability of the bluff. The geologic report also does not address the potential future erodibility of the opening of the sea cave, which would be located in an area susceptible to strong storm surges and increased rates of erosion.

2.7.3.4. "In locations determined to have significant hazards, development permits shall include a special condition requiring the owner to record a deed restriction describing the nature of the hazard(s), geotechnical, and/or fire suppression mitigations and, where appropriate, long-term maintenance requirements."

The project is not consistent with this policy because there is no such permit condition contained within the final local Resolution. Long-term maintenance requirements would be especially helpful in the event that increased rates of erosion did occur at the mouth of the new sea cave.

Environmentally Sensitive Habitat

Section 2.3.1. of the Carmel Area Land Use Plan (LUP) gives an overview describing environmentally sensitive areas that exist in the Carmel Area. The LUP lists rocky intertidal areas, kelp beds, rookeries and haul-out sites, and important roosting sites as ESHA. Each of these four types of ESHA is found immediately adjacent to the proposed development site. Additionally, the site is located within the boundaries of the California Sea Otter State Game Refuge.

2.3.3.2. "Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts and where they do not establish a precedent

for continued land development which, on a cumulative basis, could degrade the resource."

This project is not in compliance with this policy as it has not been proven to be compatible with the long-term maintenance of the resource. Increased erosion or failure of the bluff could substantially impact the offshore kelp beds and haul-out sites. This project, being the first of its kind in the Carmel Area, may also establish a precedent for other similar projects, which raises some concern about potential cumulative effects to environmentally sensitive habitats.

2.3.4.4. Wetlands and Marine Habitats "Alteration of the shoreline, including diking, dredging, and filling, shall not be permitted except where demonstrated as essential for protection of existing residential development or necessary public facilities..."

The project is not consistent with this policy because construction of the cave entrance in the ravine only slightly above the intertidal zone would be considered shoreline alteration. Construction of the tunnel and cave entrance is not essential to protect the existing residential development, and may even require additional shoreline alteration to protect both cave and residence in the future.

2.3.4.9. Wetlands and Marine Habitats "Development on parcels adjacent to intertidal habitat should be sited and designed to prevent ... deposition of sediment."

This project is not in compliance with this policy due to the existence of the increased possibility for erosion, or deposition of sediment. Although the project is designed to prevent the deposition of sediment during the construction process, there are no mitigations included to prevent deposition of sediment in the future. An unstable bluff would increase the possibility of sediment deposition, as well as increased erosion rates experienced at the mouth of the new sea cave.

Visual

2.2.3.7 "Structures shall be located and designed to minimize tree removal and grading for the building site and access road. Where earth movement would result in extensive slope disturbance or scarring visible from public viewing points and corridors, such activity will not be allowed. Extensive landform alteration shall not be permitted."

The project is not consistent with this policy because drilling and/or blasting an access tunnel through the cliff to the beach below creates extensive landform alteration.

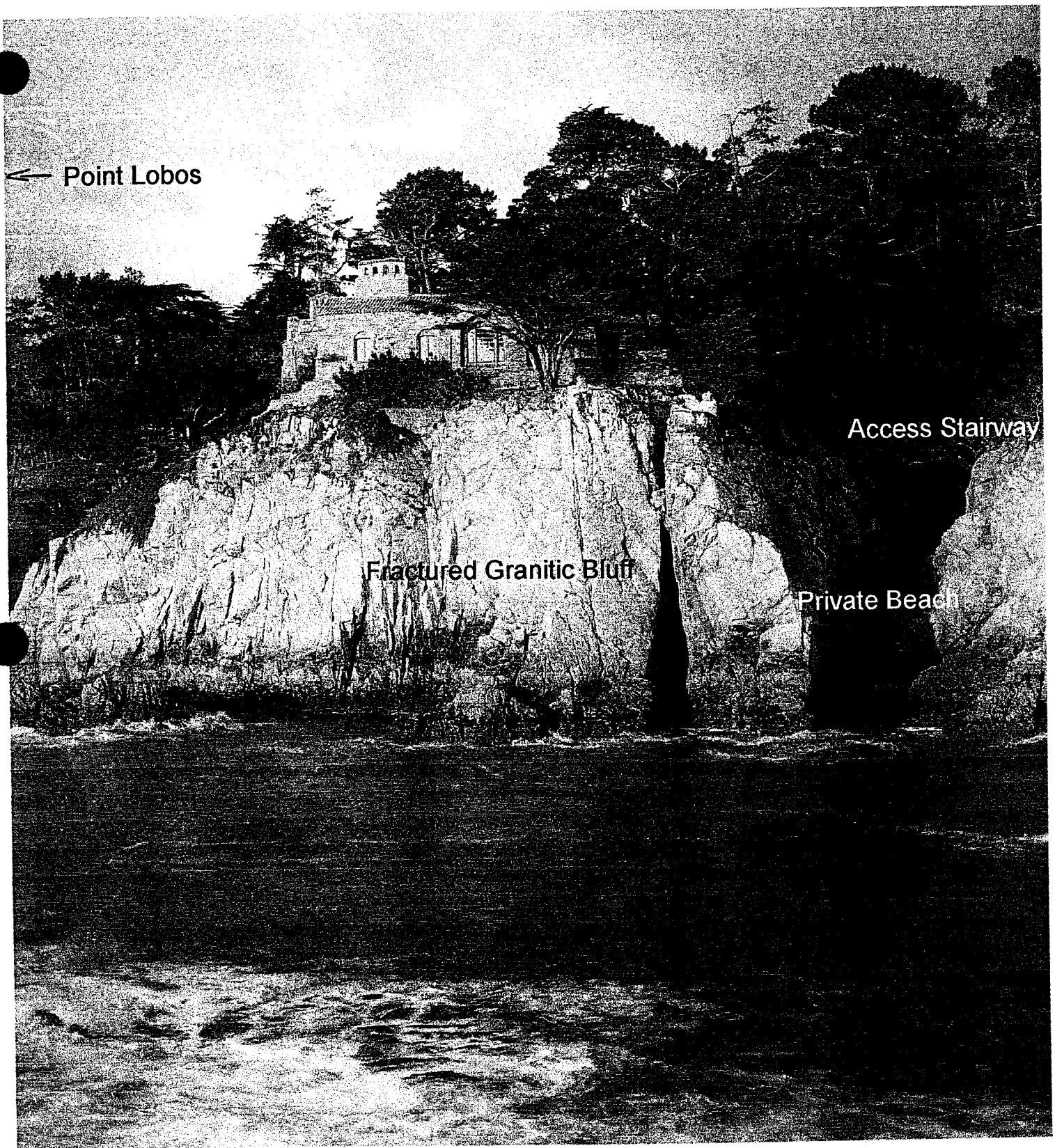
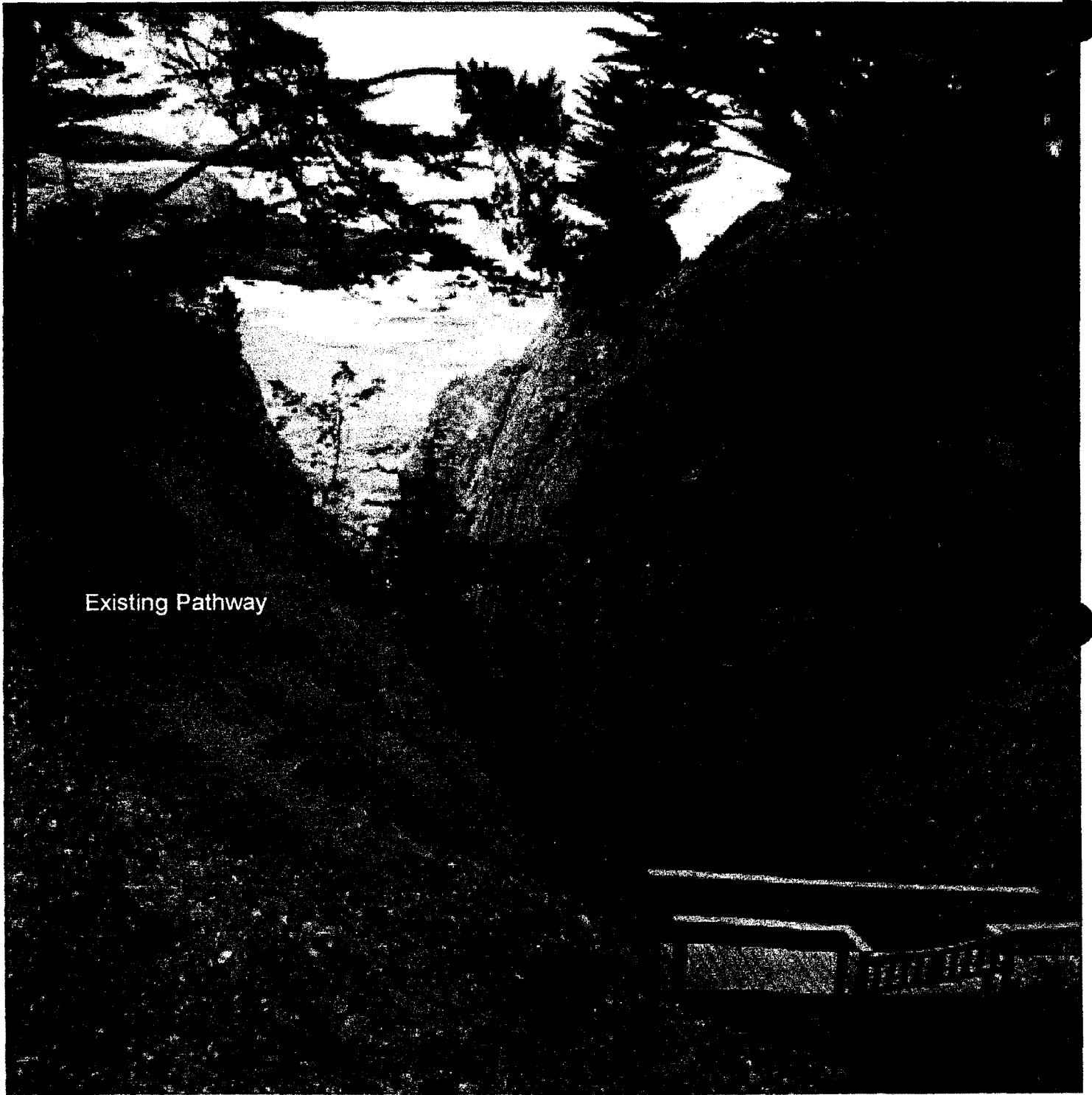


Exhibit G (pg 1 of 2)
Photo of James House from the Ocean.
A-3-MCO-01-071
James House Tunnel
Source: Makinson, Randell (1988);
Greene & Greene: the Passion and the Legacy;
Gibbs-Smith, Salt Lake City, UT.



Existing Pathway

Exhibit G (pg 2 of 2)
Project Photographs
A-3-MCO-01-071
James House Tunnel