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Filed:	2/18/2004
49th day:	Waived
Staff:	CKC/LO-SC
Denovo Staff report:	11/18/2004
Approved with Conditions:	12/09/2004
Revised Findings Staff report:	**2/1/05**
Revised Findings Hearing date:	**2/16/05**

STAFF REPORT: APPEAL – REVISED FINDINGS

Appeal number..... **A-3-MCO-04-012, Laube & Engel Residence**

Applicants.....Sheldon Laube & Nancy Engel

Appellants.....Dr. & Mrs. Hugh McAllister; & Commissioners Sara Wan and William Burke

Local government.....Monterey County

Local decision.....Approved with conditions, January 13, 2004

Project location.....36240 Hwy. 1 (Kasler Point), approx. 0.5 mile south of Garrapata Creek, Big Sur Coast, Monterey County (APNs 243-251-012 & 243-251-013)

Project description.....Construct a 8,270 sq. ft. single family residence with an approx. 1,824 sq.ft. subterranean garage, including development within 100 feet of environmentally sensitive habitat (ESHA), approx. 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot line adjustment that will consolidate two adjacent two-acre parcels.

Local approval.....The Monterey County Board of Supervisors, upon appeal, approved a Combined Development Permit (including four Coastal Development Permit components), Resolution 03073 (PLN010105), for the project on January 13, 2004. Monterey County approval was appealed to Coastal Commission who found substantial issue at September, 2004 hearing.

File documents.....A-3-MCO-04-012 Adopted Substantial Issue staff report; Monterey County certified Local Coastal Program, including Big Sur Coast Land Use Plan; Final Local Action Notice 3-MCO-04-027; documents and materials from the local record provided by Monterey County on February 2, 2004; Coastal Development Permit No. A-174-77 (Sorensen), approved August 3, 1977.

Staff recommendation ...Approval

Commissioners Eligible to Vote: Iseman, Kruer, Neely, Peters, Potter, Reilly, Secord, Shallenberger, and Caldwell.

Summary: On December 9, 2004 the Commission approved the project pursuant to the staff recommendation with one change to Special Condition #1. The Commission deleted a requirement that the revised plans show that the house would not be visible from public viewing areas. Revisions to the Conditions and Findings to reflect this Commission action are on pages 5 and 6 (Special Condition #1), and pages 18 – 27 of the findings. Additions are shown with **bolded underline**, and deletions with ~~strikethrough~~.

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XI. Exhibits:

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

I. Procedural History

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

Sorenson did record the scenic and conservation easement as required on June 28, 1982. The scenic and conservation easement, which, among other things provided for protection of sensitive resources, visual resources and public access, was subsequently accepted by the State Costal Conservancy on December 9, 1982 (and acceptance recorded May 11, 1983). By 1987 Sorenson had also excavated part of the

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

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

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

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

II. Staff Recommendation on Revised Findings

Staff recommends that the Commission adopt the following revised findings in support of its conditional approval of a coastal development permit for the proposed development on October 14, 2004.

Motion. I move that the Commission adopt the revised findings in support of the Commission's action on December 9, 2004 approving the development with conditions proposed under appeal number A-3-MCO-04-012 pursuant to the staff recommendation.

Staff Recommendation of Adoption. Staff recommends a **YES** vote. Passage of this motion will result in adoption of the revised findings as set forth in this report. The motion requires a

majority vote of the members from the prevailing side present at the December 9, 2004 hearing, with at least three of the prevailing members voting. Commissioners eligible to vote on the revised findings are Commissioners Iseman, Kruer, Neely, Peters, Potter, Reilly, Secord, Shallenberger and Caldwell. If the motion fails, the revised findings are postponed to a later meeting.

Resolution. The Commission hereby adopts the findings set forth below for approval with conditions of a coastal development permit for the proposed development on the grounds that the findings support the Commission's decision made on December 9, 2004 and accurately reflect reasons for it.

III. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

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

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

1. The building plan (dated 11/16/04) has been further modified~~, so that no portion of the structure will be visible from public viewing areas, and in no case is greater than~~ **to indicate that no portion of the structure shall exceed** 14 feet above average natural grade.

2. The permitted residential structure shall be entirely within the final approved Residential Building Envelope, and all accessory structures (e.g., septic system, driveway, water tanks) and ground disturbance (other than landscaping) shall be limited to the area within the designated Disturbance Envelope. A schematic of the Residential Building and Disturbance Envelopes are shown on Exhibit 9, attached. The final Residential Building Envelope shall require review and approval by the Executive Director.

3. The driveway shall be no wider than the existing driveway between Highway One and the first drainage catch basin located south of the archaeological conservation easement area, and no wider than shown on plans dated 11/16/04 between said drainage catch basin and the motor court/guest parking area. The driveway surface shall use gravel aggregate or other materials that blend in with the surrounding environment.

4. The existing septic tanks located near the bluff top are to be removed and relocated landward of the coastal setback zone in the motor court area. The plan shall show the new tanks connected to use the existing leach lines located near Highway One, unless otherwise modified by direction of the Department of Environmental Health.

5. Any on-site water tanks, pipe lines, or fire hydrants required by the California Department of Forestry District shall be located outside of public viewing areas.

b. **Drainage Plans.** A drainage plan, prepared by a registered civil engineer addressing on-site and off-site impacts of site drainage shall show evidence of review and approval by the Monterey County Water Resources Agency. The drainage plan shall include dispersal of impervious surface stormwater runoff onto a non-erodible surface below the bluff, and incorporate and maintain grease and sediment traps in the drainage inlets to prevent sediment and pollutants from entering the adjacent marine habitat. Necessary improvements shall be constructed in accordance with approved plans. The plans shall also show evidence of review and approval by a qualified biologist to assure that drainage does not impact the sensitive marine habitats below the construction area.

c. **Grading and Erosion Control Plans.** A detailed grading and erosion control plan, with evidence of review and approval by a registered civil engineer and the Monterey County Planning and Building Inspection Department, showing that all existing foundation and talus slope materials not used for the current design will be removed and disposed of properly. The erosion control plan shall prevent new erosion from occurring as a consequence of the proposed project. and shall remediate existing eroded areas, consistent with the required landscape plan

(see Special Condition 1.d below), including the currently eroded area northwest of the building site, identified by the consulting biologist, and the blufftop area surrounding the existing septic tanks, once the septic tanks have been removed. Stabilization of these areas shall be accomplished using non-structural methods (for example by re-grading, compaction, use of erosion control blankets, and revegetation).

d. **Revegetation and Landscaping Plans.** A detailed landscaping and revegetation plan, along with written evidence that the plan has been reviewed and approved by a qualified consulting biologist approved by Monterey County Planning and Building Inspection Department. At a minimum, the plan shall specify procedures for erosion control and re-establishment of native plant cover; and proposed landscaping species. No interference with public views through the planting of trees or other landscaping shall be allowed. The landscaping plan shall provide for the removal of all non-native invasive plants, include only native, non-invasive, drought tolerant plants suitable to the area's Coastal Bluff Scrub and Northern Coastal Scrub habitats, and allow only drip irrigation for the first two years following installation to allow the native plants to become established on the site. Any other surface or subsurface irrigation measures shall not be allowed, and if found to exist on site shall be disconnected and capped. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall provide that landscaping shall be installed prior to occupancy. The landscape plan shall include alternative fuel modification standards that meet California Department of Forestry Fire District approval.

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

(i) An equivalent area (approximately 5,573 sf) of the building footprint and ancillary site coverage (e.g., "protected garden") for restoration of Coastal Bluff scrub habitat outside of the coastal bluff setback,

(ii) Replacement seacliff buckwheat sites to fully implement the Biological Report/Revegetation Plan by Jeff Norman, November 30, 1999, updated December 14, 2002, by replacing all seacliff buckwheat plants ultimately removed by the project using a 3:1 replacement ratio, in areas landward of the coastal blufftop setback zone.

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

a. UPON COMPLETION OF CONSTRUCTION AND PRIOR TO OCCUPANCY OF THE HOUSE, the permittee shall schedule Commission staff to inspect the site to confirm that the house has been built according to approved plans and that no portion of the house is visible from public viewing areas, as required in Special Condition 1.a.

b. Any part of the development that is found to have been constructed not according to the approved plans shall be removed within 30 days of the discovery at the permittee's expense, and an

additional site visit shall be scheduled for Coastal Commission staff to confirm that this action has been taken.

c. PRIOR TO OCCUPANCY, the permittee shall provide for Executive Director review and approval verification from the Department of Environmental Health that the septic tanks have been removed and resited as required by Special Condition 1.a.4 of this permit. The permittee shall also provide verification from the geotechnical engineer and project biologist that the blufftop surrounding the old septic tanks has been restored as required by Special Condition 1.c.

d. PRIOR TO OCCUPANCY the permittee shall provide evidence for Executive Director review and approval from the Geotechnical engineers that the project has been constructed according to the approved Geotechnical report and plans and conditions of this permit.

e. PRIOR TO OCCUPANCY, the permittee shall provide evidence for Executive Director review and approval from a qualified biologist that the required revegetation mitigation has been installed.

f. Landscaping, pursuant to the landscape and revegetation plan required in Special Condition 1.d shall be maintained as long as development approved by this permit remains on the site.

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

4. **Scenic and Conservation Easement.**

a. No development, as defined in Section 30106 of the Coastal Act, shall occur in the area on both parcels (to be merged) outside of the final approved Residential Building Envelope, other than the access road/driveway, guest parking and turn-around areas, retaining walls, and drainage improvements, all as shown on the approved plans required in Special Condition 1a and 1b; grading and erosion control activities in conformance with the grading and erosion control plans required by Special Condition 1c; landscaping and restoration activities in conformance with the approved landscape and revegetation plans required by Special Condition 1d; and ongoing maintenance and repair of such development.

b. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a scenic and conservation easement in a form and content acceptable to the Executive Director and the Director of the Monterey County Planning and Building Inspection Department, for the purposes of visual resource protection and habitat conservation. Such easement shall be located on that portion of the combined parcel (created by combining the two subject parcels, Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000, as required in

Condition 3 above) that is not already in the existing scenic and conservation easement accepted by the State Coastal Conservancy on March 11, 1983 (and recorded on May 11, 1983), and is outside of the final approved Residential Building Envelope. (A schematic representation of which is shown in Exhibit 9). The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this condition.

c. The easement shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The easement shall run with the land in favor of the People of the State of California, binding all successors and assignees, in perpetuity.

5. **Geotechnical Review.** In order to assure that excavation, grading and construction activities are consistent with the Geotechnical Reports prepared by Vicki C. Odello C.E. November 21, 1999, and Haro Kasunich and Associates, dated January 3, 2004, November 8, 2004, and November 18, 2004, the applicant shall contract the services of a qualified geotechnical engineer to implement all of the geotechnical recommendations made therein, except that no seawalls or shoreline protective devices are allowed under this permit. In addition to implementation of geotechnical construction specifications described in said geotechnical reports, the contract will include regular consultation with the consulting biologist, archaeologist and contractor during construction to assure protection of biological and archaeological resources at the site. At least once a month, the geotechnical engineer shall conduct an inspection during construction to ensure effective implementation of geotechnical recommendations.

6. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from ongoing coastal processes, including waves, tidal currents, storm waves, and flooding; or landslide, bluff retreat, erosion, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

7. **No Future Bluff or Shoreline Protective Device.**

a. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-3-MCO-04-012 including, but not limited to, the residence, foundations, patio and deck areas, driveway, garage and guest parking area, retaining walls, and septic system, in the event that the development is

threatened with damage or destruction from waves, tidal currents, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

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

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

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

10. **Protection of Sensitive Wildlife.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, permittee shall contract a biological consultant to conduct site visits to monitor for the following sensitive wildlife species, and take the necessary actions as described below. In order to avoid impacts to sensitive species listed below, grading, blasting and operation of heavy equipment shall

be restricted to the period April 15 to May 1, unless authorized by the Executive Director. Verification of monitoring actions shall be provided in letter format to be submitted for Executive Director review and approval before commencing construction:

a. **Smith's blue butterflies.** Grading, blasting, and operation of heavy equipment shall be prohibited during Smith's blue butterfly flight and breeding period (June thru September).

b. **Southern Sea Otters.** Grading, blasting, and operation of heavy equipment shall be prohibited during southern sea otter pupping season, (December thru March).

c. **Black Swifts.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct a site visit during the breeding season in early May to determine presence or absence of nesting black swifts. If no nesting is observed, grading, blasting and operation of heavy equipment may continue. A second survey should be conducted during the first week of June and if no nests are observed, these activities may continue. However, if nesting activity is detected during either survey, grading, blasting, and operation of heavy equipment shall be delayed until fledging occurs by August.

d. **Brown Pelicans.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct visual surveys of the headland and offshore rocks in the vicinity of the project site during the breeding season (April to mid-September) to determine presence or absence of nesting brown pelicans. If no nesting pelicans are observed, grading, blasting and operation of heavy equipment may ~~commence~~ **continue**. However, if nesting activity is detected, grading, blasting, and operation of heavy equipment shall be delayed until mitigation measures, developed in consultation with CDFG and USFWS, and reviewed and approved by the Executive Director are implemented.

e. **Cormorants.** A qualified biologist or environmental monitor (as described in Condition 11.i below) shall conduct visual surveys of the headland and offshore rocks in the vicinity of the project site to determine presence or absence of nesting during the breeding season (March to mid-September) of Double-crested, Pelagic, or Brandt's Cormorants. If no nesting of these three cormorant species are observed, blasting, grading and operation of heavy equipment may ~~commence~~ **continue**. However, if nesting activity is detected, grading, blasting, and operation of heavy equipment shall be delayed until mitigation measures, developed in consultation with CDFG and USFWS, and reviewed and approved by the Executive Director are implemented.

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

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

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

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

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

c. **Hazardous Material Storage.** Store petroleum products and other hazardous materials a distance of at least 20 meters (65 feet) from the coastal blufftop and construct a berm around the storage site sufficiently high to retain 1.5 times the amount of stored liquids. The fueling of all vehicles and construction equipment shall occur off site.

d. **Spill Response Plan.** The Construction Operations Plan shall include a spill response plan or evidence that the applicant has contracted with a qualified local spill containment/cleanup contractor capable of responding to accidental releases of petroleum, concrete or other hazardous material.

e. **Foreign Material Containment.** Measures shall be implemented to prevent foreign materials (e.g. construction scraps, wood preservatives, other chemicals, etc.) from entering the ocean adjacent to the site. A containment fence, netting, or functional equivalent shall be placed around all active portions of a construction site where wood scraps or other debris could enter the water. The containment fence and/or netting shall be cleared daily or as often as necessary to prevent accumulation of debris. Contractors shall insure that work crews are briefed on the importance of observing the appropriate precautions, implementing these measures, and reporting any accidental spills. Construction contracts shall contain penalty provisions, sufficient to provide for the retrieval and/or clean up of improperly contained foreign materials. No construction activities or material storage shall be allowed outside the defined Disturbance Envelope without prior Executive Director review and approval.

f. **Procedures for Concrete Work.** All concrete work and concrete pours shall be conducted in a manner that avoids spills from entering the ocean adjacent to the project site. In each case involving concrete pours on site, a separate washout area shall be provided for the concrete trucks and/or tools. The washout area shall be designed and located so that there will be no chance of concrete slurry or contaminated water runoff entering the adjacent marine habitat, or into storm drains or gutters that empty discharge to the ocean.

g. **Septic Relocation Plan.** A narrative shall be prepared describing how the tank and any piping will be removed and the area restored consistent with protecting natural resources and maintaining geologic stability.

h. **Construction Cleanup.** Construction Operation Plans shall also show that within 30 days of conclusion of construction activities, all construction materials shall be removed.

i. **Environmental and Condition Compliance Monitor.** Permittee shall employ an environmental monitor, with proven biological monitoring experience, who is approved by the Executive Director to ensure compliance with all mitigation requirements and resource protection measures during the life of the project construction and clean-up activities. The monitor shall be present for all phases of construction (including site preparation and fencing of sensitive habitat areas) and shall have the authority to halt any action that might result in injury or mortality to southern sea otters, nesting bird species (black swift, cliff swallow, brown pelican, double-breasted cormorant, Pelagic cormorant, and Brandt's Cormorant) or other sensitive wildlife or habitat, and

shall inform construction workers that construction vehicles and work activities shall avoid sensitive habitat areas outside of the defined project area. Monitor shall also have the authority to delay construction activities if southern sea otters or nesting bird species are observed during their respective breeding/nesting seasons within 500 feet of the Disturbance Envelope. The environmental monitor shall consult with CDFG and USFWS to develop and implement mitigation measures that should be taken if these species are found nesting on the project site (i.e., in sea caves, on bluff face, and on nearshore rocks).

12. Archaeological Mitigation.

a. In order to assure that grading activities do not impact cultural or archaeological resources, the applicant shall contract with a qualified professional archaeologist to monitor all earth disturbance work within 3 feet of identified cultural and/or archaeological resources on the project site. The contract shall specify implementation of the Archaeologist Reconnaissance of Donald Sorenson Property, Big Sur, prepared by Archaeological Resource Service, February 8, 1977. In addition, the contract will require the contracted archaeologist to be involved in regular consultation with the contracted geotechnical engineer, biologist and contractor during construction to assure protection of biological and archaeological resources at the site.

b. Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.

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

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

15. Exterior Lighting. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit an exterior lighting plan which shall indicate the location, type and wattage of all

light fixtures and include catalogue sheets for each fixture for the review and approval of the Executive Director. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Exterior light sources shall be prohibited if such light source would be directly visible from Highway 1 or other major public viewing area as defined in Section 20.145.020 V of the County Zoning Ordinance. Additionally, no such artificial lighting shall be directed onto environmentally sensitive habitats, including the shoreline and the adjacent sea within the Monterey Bay National Marine Sanctuary.

16. **Incorporation of County Conditions of Approval.** County conditions of approval pursuant to a planning authority in addition to or other than the Coastal Act continue to apply, provided that they are implemented in a manner consistent with these special conditions, namely County conditions #3, 4, 5, 8, 9, 10, 12, 13, 15, 25, and 26. All other conditions contained in County Resolution No. 03073 are superceded by these Special Conditions.

IV. De novo Findings and Declarations

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

A. Project Description

1. Project Location

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

The southern parcel contains an existing driveway that has been graded but remains otherwise unimproved except for a concrete gutter on the northern side of the roadway. The site also contains an

excavated/graded building pad from work conducted by the previous property owner. The 1977 Sorenson staff report described Kasler Point, prior to grading and excavation, as a dome shaped, rocky headland jutting into the Pacific Ocean (see Exhibit 2, photos 1 and 2). However, as a result of excavation of the site and partial development by Sorenson, the site now consists of the nearly level building pad excavated down nearly 25-30 feet from the crest of the dome, and a westerly facing, nearly vertical excavated bluff, located about 70 to 100 feet inland of the coastal blufftop[1] (see Exhibit 2, photos 3 and 4).

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

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

2. Project Description

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

As described above, the subject property was partially developed by previous owners (Sorenson). The current project uses generally the same access driveway and building site as that graded and excavated by the previous owner. However, following appeal of the project, the applicants modified the project design and placement of the residence, and submitted new plans, dated revised July 8, 2004 (Exhibit 5), that show the residence relocated slightly north of the County approved site, so that the northern portion of the residence is now located on the northern parcel (somewhat similar to the first design submitted to the County). The residence has also been reduced from a total of 10,094 sf to 9,971 sf (a reduction of

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

123 sf). Residential site coverage would be 4,625 square feet, with 10,147 sf of permeable driveway and parking, and 948 sf of protected garden space.

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

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

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

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

Aside from rotating and moving the residence northward, the revised July 8, 2004 design also differs from the design approved by the County in that a deck previously proposed seaward of the residence and within 15 feet of the top of the seaward coastal bluff has been removed, the garage access and

[2] Retaining wall heights are approximate and are measured from elevations on revised plans dated July 8, 2004.

turnaround areas have been revised, and a guest parking area has been added south of the motor court area (see Exhibit 5).

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

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

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

B. Issues Identification and Analysis

1. Visual Resources

The project is located along the Big Sur Coast, which has specific policies for protecting the spectacular visual resources of this area of coast. The project approved by the County was found to raise a substantial issue because it was not designed to minimize visibility within the critical viewshed. The project design has since been revised based on plans dated July 8, 2004~~, but flagging of the new design can still be seen from public viewing areas, and indicates that the proposed structure would block ocean views from these locations~~.

a. Applicable Policies

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

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

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

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

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

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

> *... Additional standards shall include* ***keeping driveways as narrow as possible, avoiding paving where practical*** *and consolidation of driveways; the use of roof and surface treatments, colors and materials which will visibly blend with the surrounding environment;* ***the use of berming and other measures designed to minimize views of structures without blocking ocean vistas seen from Highway 1****; prohibiting the dumping of excavated materials over the coastal bluff, and additions, antennae, night flood lighting, or other improvements in view of Highway 1*

without separate permit consideration; and ***dedication of scenic easement over undeveloped portion of lot.*** *Guesthouses shall be attached to the main dwelling except where they can be sited to better implement these policies.*

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

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

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

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

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

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

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

3.2.4.A.7. New roads shall avoid steep slopes and shall be located along the margins of forested areas, along natural land contours, or within existing vegetation. ***Road shall be*** *aligned to minimize removal of native trees, and* ***constructed to minimum standards consistent with the requirements of fire safety and emergency use. Drainage and erosion control measures must be adequate to prevent erosion.*** *During road construction, side-casting of earth materials shall not be permitted; all materials not used for on-site fill shall be removed from the area.*

Corresponding regulations from the Coastal Implementation Plan include:

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

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

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

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

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

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

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

b. Analysis of Consistency with Applicable LCP Policies

The Big Sur Coast Land Use Plan (LUP) visual resource Key Policy section 3.2.1 generally prohibits new development in the Critical Viewshed, i.e., visible from Highway 1 and other defined public vantage points. The purpose of this LCP policy is to protect the Big Sur Coast's highly scenic views,

enjoyed by millions of visitors per year, from the individual and cumulative impacts of development. Such protection is achieved, in part, by requiring that new projects be concealed from public view.

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

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

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

As described above, and shown on plans dated revised July 8, 2004 (Exhibit 5), following appeal of the project to the Commission, the applicants revised the design and location of the structures in an attempt to make the house less visible. Specific changes include moving the structure further northward so that the home theater portion of the residence is now located on the northern parcel, and lowering the base and roof elevation of the northern portion of the house so that it would not be seen from Highway One. According to the applicant's representative, the square footage of the house was also reduced

approximately 123 sf (from 10,094 sf to 9,971 sf). After staking of the new design, Commission staff met with the architect and applicant's representative at the site to conduct a visual analysis of the new design (as represented by staking and flagging of outer walls and roofline). As a result of the site visit, staff determined that while the revised design is not visible from Highway One directly east of the site, due to existing topography, a portion of the house is still be visible from Highway 1, both north and south of the site, and as viewed from either direction, would block ocean views.[3] Photos of the current project are shown in Exhibit 6.

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

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

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

The LCP requires incorporating measures to insure that visual impacts are minimized and that new development does not block ocean vistas as seen from Highway 1 (LUP 3.2.5.F), siting new development on the portion of the lot least visible from public viewpoints (LUP 3.2.4.A.2), and modifications where necessary for siting, design, size and access where needed to insure that new development be designed to blend in with, and be subordinate to, the natural environment (LUP 3.2.4.A.3). Policies also require that development be designed to minimize alterations of the natural landform and not leave excavation scars (LUP3.2.4.A.2).

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

[4] Height of structure means the vertical distance from the average level of the highest and lowest point of the natural grade of that portion of the building site covered by the structure, to the topmost point of the structure, but excluding certain fea-tures, as specified in Chapter 20.62 (Height and Setback Excep-tions) of this Title

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

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

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

Nonetheless, the visual impacts of the proposed siting and design are minimal. ~~Since it is feasible to reduce the height and/or size of the house so that it is not visible from Highway One, as required by the Rocky Point exception area development standards outlined in the Big Sur LUP Policy 3.2.5.F and the policies in the Big Sur LUP Section 3.2.4, the revised design is clearly not consistent with LCP standards for the Rocky Point exception area.~~ **Although** ~~Since~~ the top of the structure is what is visible from the public viewpoints along Highway One, **this visibility is not significant.** ~~a reduction in the height of the structure is the most effective way to conform to LCP requirements. Therefore, Special Condition 1.a.1 requires the final plans be further modified so that no portion of the structure will be visible from public viewing areas (as defined in the local coastal program; e.g., pullout at Rocky Point and Highway One roadway edge north of Garrapata State Beach), and in no case is greater than 14 feet above average natural grade. Additionally,~~ **To** ~~to~~ prevent lighting of the residence from adversely impacting views, the

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

Special Condition 15 prohibits lighting that can be seen from Highway One and major public viewing areas, and does not allow lighting of the shoreline or adjacent sea.

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

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

Additionally, because the recently complete Periodic Review found that excessive roadside clutter also adversely affects visual resources along the Big Sur Coast, the permit has been further conditioned to prohibit landscaping that would block ocean views. And in order to maintain the rustic character of the area, consistent with LCP policies, the permit requires that the driveway remain as narrow as the existing roadway, and retain a gravel aggregate roadbed or use other suitable roadbed materials in order to minimize visibility and blend in with the surrounding environment.

Finally, the northern parcel is located in the Critical Viewshed, and outside of the Rocky Point exception area. Since there are no other buildable sites on the northern parcel where a residence could be constructed consistent with the Critical Viewshed policies, any further development on the northern parcel would be inconsistent with LCP policies and would have an adverse impact on visual resources. The Commission previously found that consolidation of the two subject parcels into one combined

parcel would reduce the number of remaining vacant parcels within the Critical Viewshed, thereby easing cumulative problems that would result from further development on this site. While the previous owner never accomplished this task, the fact remains that the cumulative affects of further development on the site would have adverse impacts on the Big Sur critical viewshed. Furthermore, since the previous owners did not accomplish the parcel merger, they did not fully comply with the previous permit. The County approval also required that the two parcels be merged to one, combined parcel. Therefore the Commission has conditioned this permit to require a lot merger, prior to issuance of this permit, to ensure that the two subject parcels are consolidated into one parcel. No additional coastal development permit is necessary for this merger to be finalized, however, if this permit is not exercised, an enforcement action would be necessary to ensure that the two parcels were merged as required by the pervious permit.

c. Conclusion

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

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

To ensure protection of scenic resources along the eastern portion of the property, which provides views of the ocean from Highway One, the permit has also been conditioned to require a scenic and conservation easement over the remainder of the site, outside the final approved Residential Building Envelope. The permit has also been conditioned to prohibit any future additional development on site or landscaping that would block ocean views, and requires the existing roadway not be widened, and that suitable materials be used for the roadbed to ensure that the road blends into the surrounding environment. Finally, to reduce the potential for cumulative impacts from further development on the

northern parcel, the project has been conditioned to require consolidation of the two subject parcels into one combined parcel, prior to issuance of the permit.

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

2. Environmentally Sensitive Habitat Areas

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

a. Applicable Policies

Relevant LCP policies include the following:

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

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

*3.3.2.3. **The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats.** Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.*

3.3.2.4. For developments approved within environmentally sensitive habitats, the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) associated with

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

the development shall be limited to that needed for the structural improvements themselves. The guiding philosophy shall be to ***limit the area of disturbance****, to maximize the maintenance of the natural topography of the site, and to favor structural designs which achieve these goals.*

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

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

b. Analysis of Consistency with Applicable LCP Policies

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

Smith's Blue Butterfly Habitat

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

The Big Sur LUP key policy requires that **all practical efforts shall be made to maintain**, restore, and if possible, enhance Big Sur's environmentally sensitive habitats (LUP 3.3.1), and that **development**, including vegetation removal, excavation, grading, filing, and the construction of roads and structures, **shall not be permitted** in the environmentally sensitive habitat areas **if it results in any potential disruption of habitat value** (LUP 3.3.2.1). Therefore, the project should make all practical efforts first to avoid development and activities that would impact environmentally sensitive habitat, not allow development in esha if it would result in a significant disruption of habitat, and where development is allowed, mitigate for unavoidable impacts that do not cause a significant disruption of habitat.

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

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

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

While past surveys have not identified Smith's blue butterfly on the site[7], according to the entomologist Dick Arnold, (who is an expert on Smith's blue butterfly, and is referred to by the project biologist as

[7] The project biologist also conducted surveys to determine presence or absence of the butterflies on the site during the flight season in two different years, June 16 through September 2, of 2000, and June 25 to August 25, 2003. Results of the 2000 butterfly surveys were described in the December 2002 biological report. Results of the 2003 butterfly surveys were described in a letter report dated

establishing the protocol for presence/absence surveys) it is possible that other confounding factors, beyond the actual butterfly absence, may be to blame (such as variable climatic conditions, or use of other areas of the property outside of the surveyed site; pers comm. 10/15/04). Mr. Arnold further stressed that because of the location of the site in the middle of the butterfly's range, and the close proximity of the site to historic butterfly sightings both north and south of the site (in Palo Corona Ranch, Garrapata State Beach, and further south), it should be presumed that Smith's blue butterfly would make use of the area under the right conditions, and thus the buckwheat plants should be considered as sensitive habitat and protected appropriately.

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

Thus, although the project will result in the loss of habitat through the removal of buckwheat plants, the removal is limited to that needed for structural improvements themselves. The project will also be required to protect remaining plants from construction activities, and restore and enhance the remaining habitat, outside of the coastal bluff setback zone (described in the Hazards section below), by replacing

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

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

the plants removed using a 3:1 replacement ratio. Restoration shall be accomplished according to a restoration plan substantially in conformance with restoration described in the December 2002 biological report, to be reviewed and approved by the Executive Director, so that no significant disruption of habitat occurs as a result of the project. Additionally, to reduce impacts to larval and adult life stages of Smith's blue butterfly, site grading should be timed to occur before and/or after the flight and breeding period of the butterfly (June through September) and a biological monitor present during construction activities.

Coastal Bluff Scrub Habitat

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

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

Additionally, LUP policy 3.3.2.3 requires deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. Thus the project has been conditioned to require a scenic and conservation easement over the remainder of the parcel, outside of the final approved Residential Building Envelope, in order to protect the native coastal bluff scrub plant community, as identified in the September 2002 biological mapping.

Marine Habitats, Inter-tidal areas and Sea Otters

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

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

With mitigation measures to prohibit construction from December through March to avoid disturbance to sea otter pupping, removal of the abandoned septic tanks and relocation to the motor court area, installation of protective fencing or other measures to ensure that construction debris does not enter adjacent tidal and marine habitats, and implementation of an approved drainage and erosion control plan, the project will protect sensitive marine habitat areas adjacent to the site, consistent with LCP policies.

Bird nesting sites

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

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

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

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

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

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

c. Conclusion

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

3. Hazards

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

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

a. Applicable Policies

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

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

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

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

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

b. Analysis of Consistency with Applicable LCP Policies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Conclusion

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

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

4. Water Resources

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

a. Applicable Policies

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

LUP 3.4.3.A Specific Policies

A. Water Supply and Use

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

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

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

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

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

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

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

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

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

Rivers and Streams -

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

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

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

b. Analysis of Consistency with Applicable LCP Policies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Conclusion

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

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

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

6. Public Access and Recreation

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

a. Applicable Policies

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

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

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

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

> ***Section 30210:*** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
>
> ***Section 30211****: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*
>
> ***Section 30212(a):*** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

b. Consistency with Applicable Policies

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

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

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

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

c. Conclusion

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

7. Archaeological Resources

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

C. California Environmental Quality Act (CEQA)

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

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

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

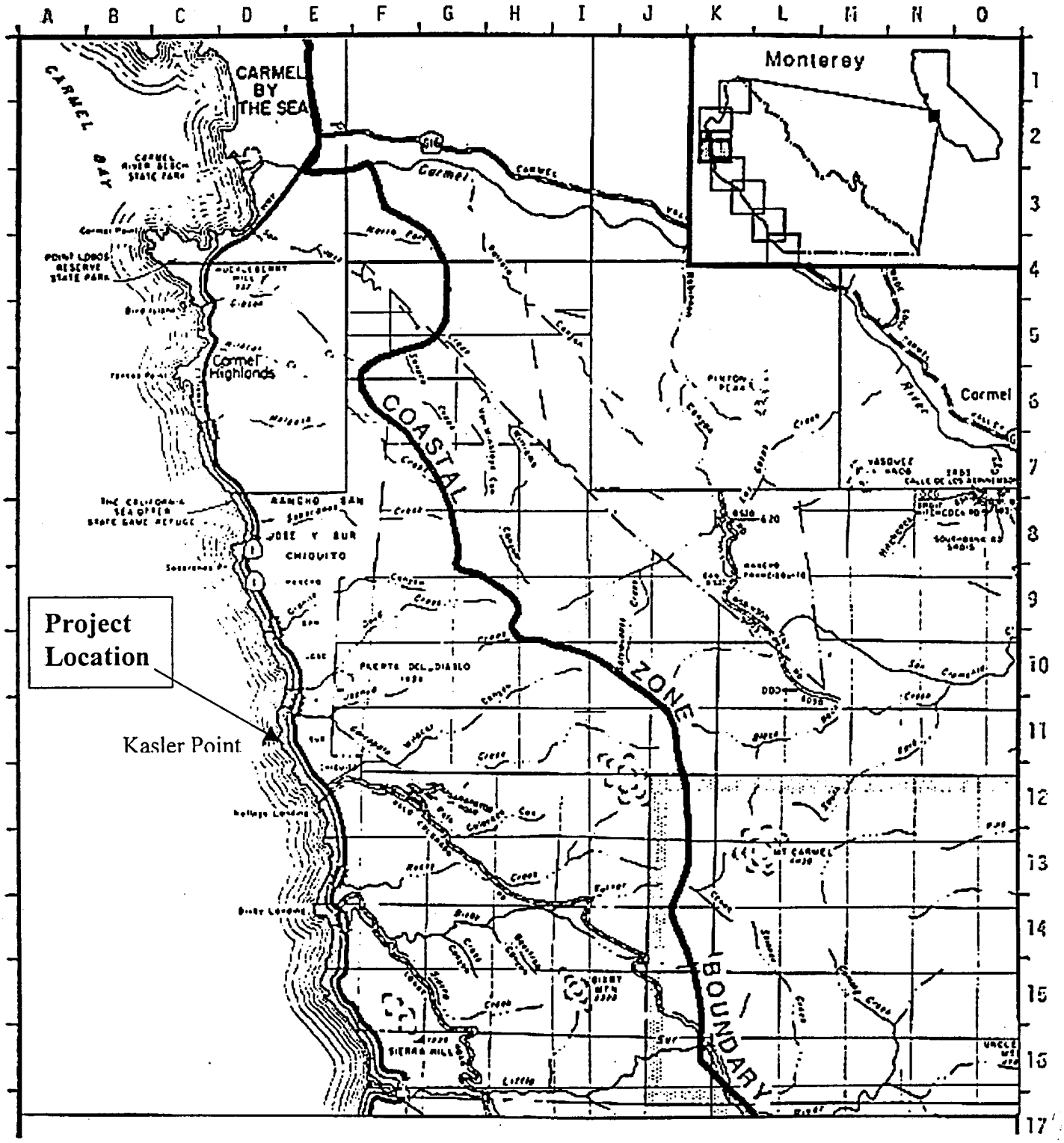
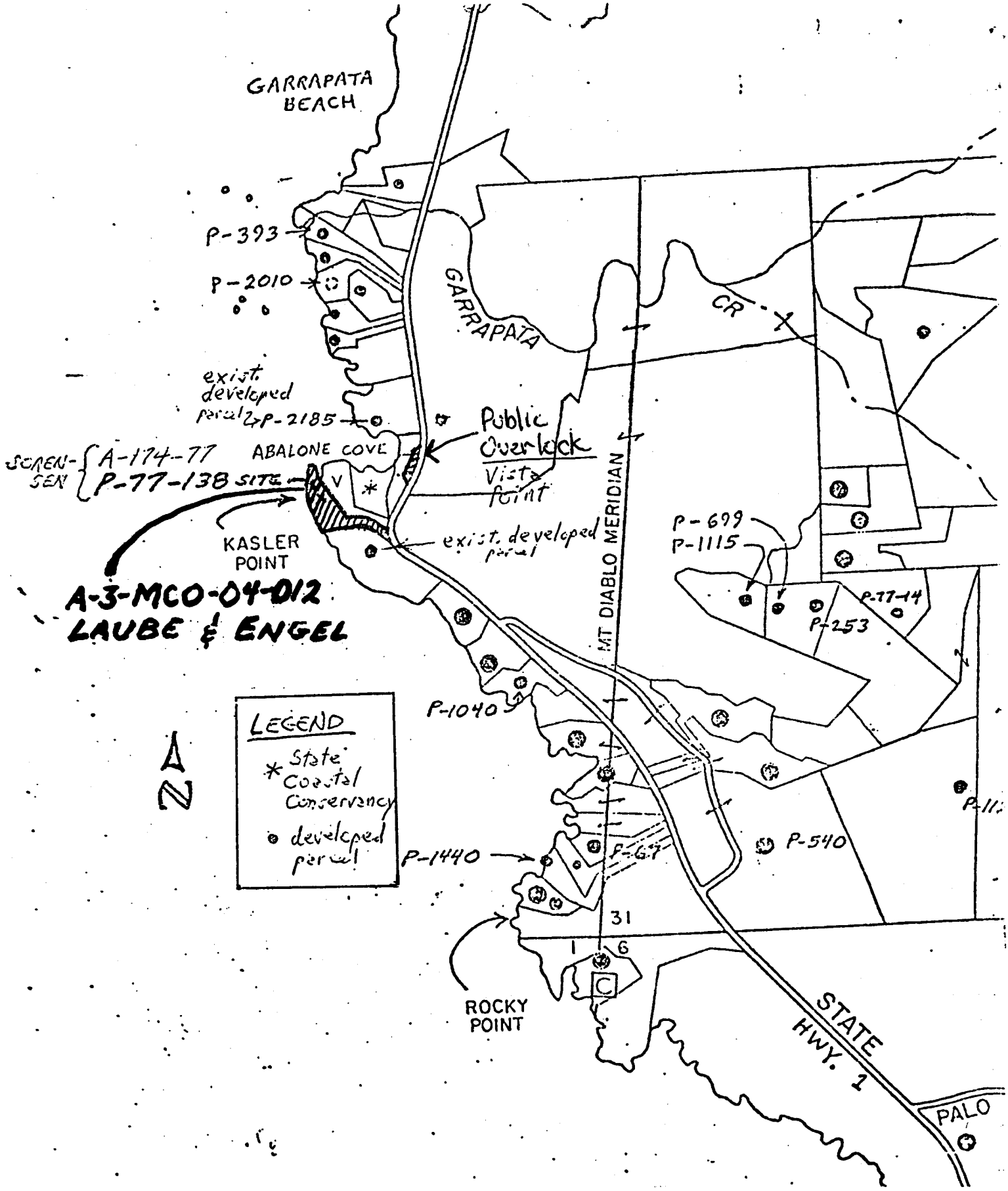


Exhibit 1 – pg 1 of 2
Regional Location Map
Laube & Engle
A-3-MCO-04-012



CCC Exhibit 1
(page 2 of 2 pages)

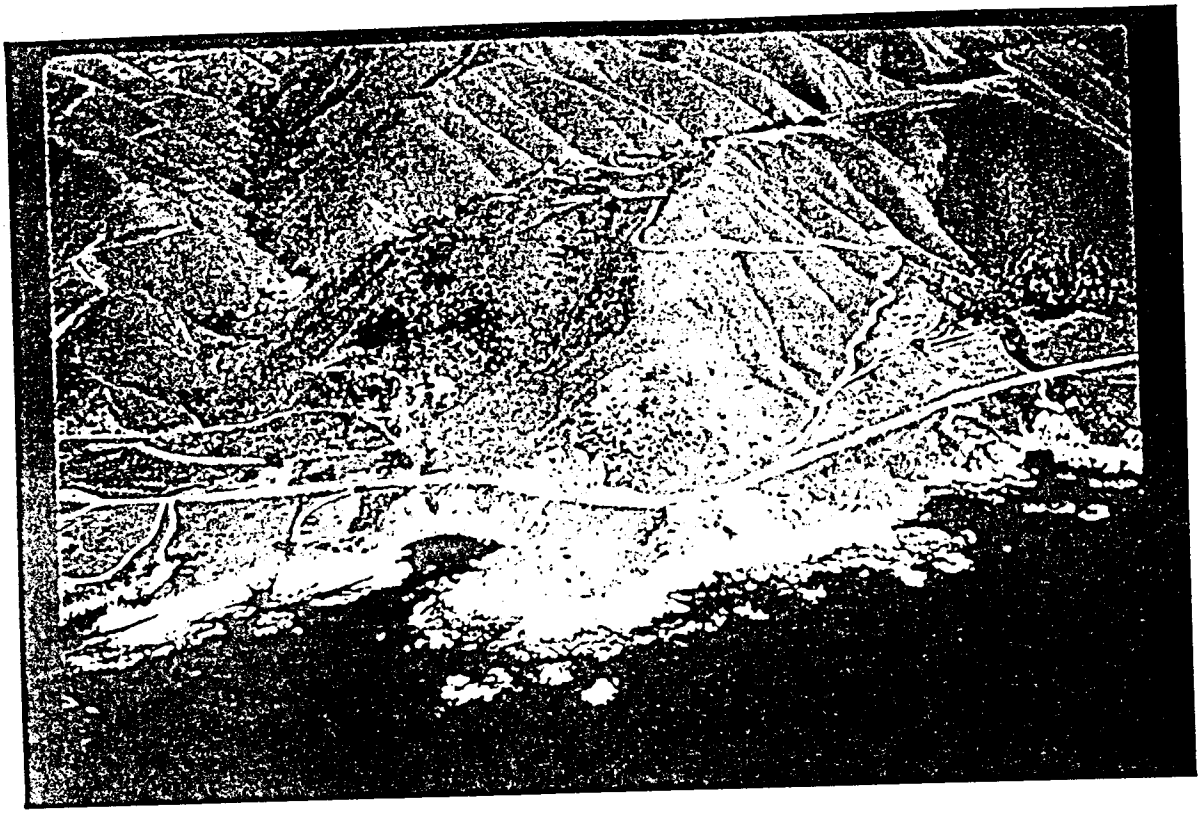


Photo 1.
Photo of Kasler Point in 1972, prior to permit approval.
(Photo from California Coastal Records Project; Photo #7223052)

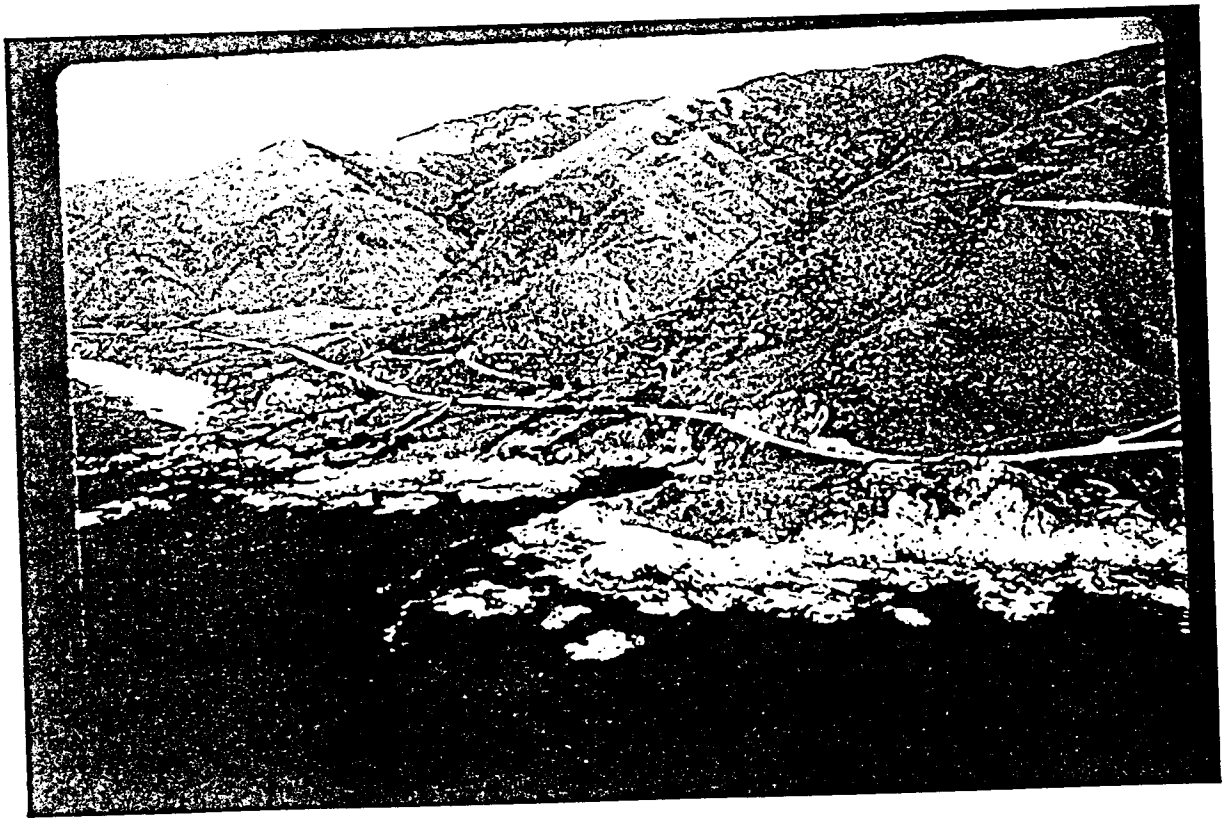


Photo 2.
Photo of Kasler Point, April 30, 1979, following approval of Sorenson permit, but prior to excavation of building pad and road construction.
(Photo from California Coasta Records Project; Photo #7934027)

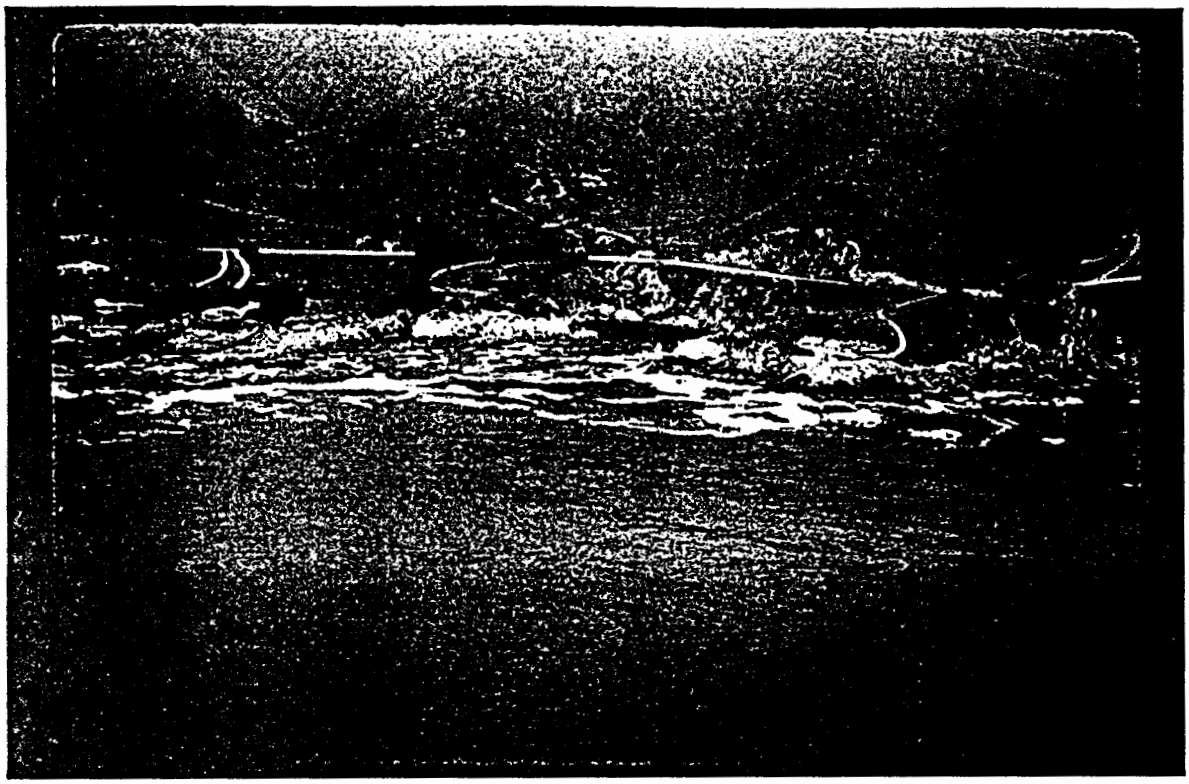


Photo 3.
Photo of Kasler Point in June 1987, following excavation of building pad and road construction. (Photo from California Coastal Records Project; Photo #8710041)

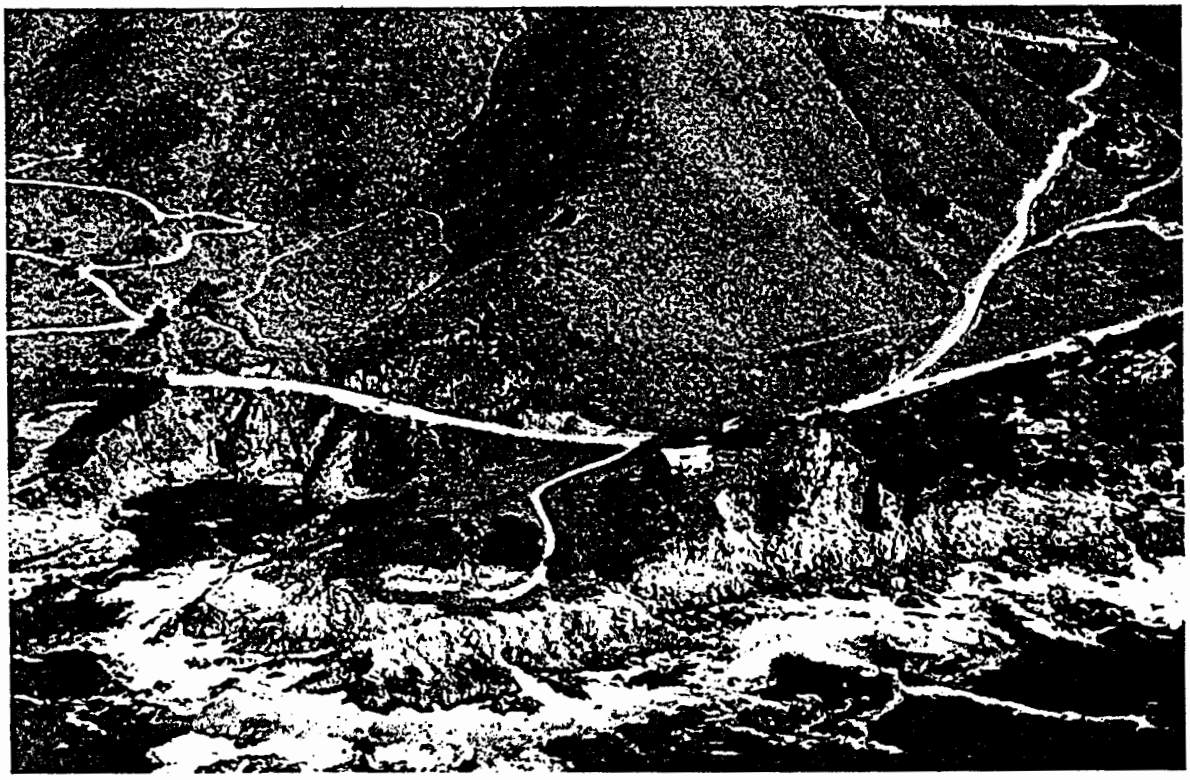


Photo 4.
Photo of Kasler Point, October 11, 2004, showing existing excavated building pad and access road. (Photo from California Coastal Records Project; Photo #200402398)

EXHIBIT "A"

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

Resolution No. 04-028
Resolution (1) denying the appeal of the Dr. and Mrs. McAllister; (2) approving the Laube/Engel Combined Development Permit (**Laube/Engel; PLN010105**); and (3) adopting the Mitigated Negative Declaration and Mitigation Monitoring Program.

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

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

FINDINGS REGARDING APPROVAL OF THE PERMIT

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

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

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

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

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

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

CONDITIONS OF APPROVAL

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

   The proposed development is found to be in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. (Planning and Building Inspection Department)

Prior to the Issuance of Grading and Building Permits:

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

3. A notice shall be recorded with the Monterey County Recorder which states: "The following reports have prepared for this parcel:
    - Reynolds & Associates, Soil and Foundation Engineers, Surface & Suburface Soil Conditions, 6/3/78
    - Jeff Norman, Biologist Report/Revegetation Plan, 3/19/99, with response to peer review 9/16/02.
    - Karl Vonder Linden, Engineering Geology and Mining Engineering, Geologic Report, 12/17/99, revised 1/3/03
    - Vicki C. Odello, C.E., Geotechnical Report, 11/21/99, revised 12/20/02
    - Archaeological Resource Service; Archaeological Reconnaissance of Donald Sorensen property, Big Sur, 2/8/77]

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

4. A Grading Permit shall be required pursuant to the Monterey County Code relative to Grading, Chapter 16.08. Said permit shall be reviewed by the Director of Planning and Building Inspection in addition to the Department's Building Official for consistency with the mitigation measures required for development adjacent to an environmentally sensitive habitat. **(Planning & Building Inspection)**

5. For the purpose of signing and building numbering, California Department of Forestry Fire District shall require the following:
    a. All buildings shall be issued an address in accordance with Monterey County Ordinance No. 1241. Each occupancy, except accessory buildings, shall have its own address.
    b. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter, and the address shall be visible and legible from the road on which the address is located. Size of letters, numbers and symbols for addresses shall be a minimum of 3 inch letter height, 3/8 inch stroke, contrasting with the background color of the sign. **(CDF Fire District)**

6. Emergency water standards required by the California Department of Forestry District are as follows:
    a. Approved fire protection water supply systems must be installed and made serviceable prior to the time of construction.
    b. A minimum fire protection water supply of 3,000 gallons shall be provided regardless of parcel size. Minimum storage requirements for single family dwellings may be reduced to 2,000 gallons if an approved automatic fire sprinkler is required.
    c. Fire hydrant: The hydrant or fire valve shall be 18 inches above grade, 8 feet from flammable vegetation, no closer than 4 feet nor further than 12 feet from a roadway, and in a location where fire apparatus using it will not block the roadway. The hydrant serving any building shall be not less than 50 feet nor more than 1,000 feet by road from the building it is to serve. Minimum hydrant standards shall include a brass head and valve with at least one 2 ½ inch National Hose outlet supplied by a minimum 4 inch main and riser. **(CDF Fire District and Planning & Building Inspection)**

7. California Department Forestry Fire District requires fuel mo. cation standards as follows: All parcels 1 acre and larger shall provide a minimum 30 foot setback for buildings and accessory buildings from all property lines and/or the center of the road. Where a 30 foot minimum setback cannot be reached, alternate fuel modification standards may be imposed by the local fire jurisdiction to provide the same practical effect. **(CDF Fire District)**

8. For fire protection equipment, the residence shall be fully protected with an automatic fire protection system. The following notation is required on the plans when a building permit is applied for:

   "The building shall be fully protected with an automatic fire sprinkler system. Installation, approval and maintenance shall be in compliance with NFPA 13-D (1998). Four (4) sets of plans for fire sprinkler systems must be submitted and approved prior to installation. Rough-in inspections must be completed prior to requesting a framing inspection." (CDF Fire District)

9. Roof protection in a very high fire hazard area as defined by the California Department of Forestry and Fire Protection (CDF), roof construction shall be Class A, or as approved by the Reviewing Authority. This requirement shall apply to all new construction and existing roofs that are repaired or modified so as to affect 50% or more of the roof. Vegetation removal shall not be allowed as a means of removing the very high fire hazard area designation from an entire parcel. **(CDF Fire District)**

10. The applicant shall record a deed restriction which states: "The parcel is located in a very high fire hazard area and development may be subject to certain restrictions required as per Section 20.145.080 C.1.a.1 a) of the Coastal Implementation Plan and per the standards for development of residential property." **(Planning & Building Inspection)**

11. A drainage plan shall be prepared by a registered civil engineer or architect addressing on-site and off-site impacts, to include dispersal of impervious surface stormwater runoff onto a non-erodible surface below the bluff. Necessary improvements shall be constructed in accordance with approved plans. A certified biologist shall review the final drainage plan to assure that drainage does not impact the sensitive marine habitat below the construction area. **(Water Resources Agency)**

12. The location of all utilities, including the location, type and size of all antennas, satellite dishes, towers, water tank and similar appurtenances shall be approved by the Director of Planning and Building Inspection. All new utility and distribution lines shall be placed underground at locations also approved by the Director of Planning and Building Inspection in consultation with the project biologist and archaeologist. **(Planning & Building Inspection; Public Works)**

13. Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of **$1,275**. This fee shall be paid on or before the filing of the Notice of Determination within five (5) days of project approval. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning & Building Inspection)**

CCC Exhibit 3
(page 4 of 11 pages)

14. Native trees, particularly t. .luster of Monterey Cypress trees locat ose to the construction site, shall be protected from inadvertent damage from construction equipment by wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees. Said protection shall be demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. **(Planning & Building Inspection)**

15 The applicant shall enter into an agreement with the County to implement the Mitigation Monitoring and/or Reporting Plan adopted for this project. **(Planning & Building Inspection)**

16. No exterior lighting shall be allowed as seen from Highway One. No flood lights or any sort of exterior lights shall be placed at the northern, western, and southern elevations of the building. No lights shall shine on the water, surrounding habitat, or other public viewing areas. The applicant shall submit 3 copies of a lighting plan which shall indicate the location, type, and wattage of all light fixtures to be assured that lighting will not create a glare that can be seen from Highway One. **(Mitigation Measure 1: Planning & Building Inspection)**

17. The present owners shall convey to the County a Scenic and Conservation Easement over the parcel created by combining two parcels, Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000, exclusive of building envelope. The Scenic and Conservation Easement shall specify those portions of the property where sensitive habitats exist and are not to be materially altered except for the removal of invasive, exotic plant species. Although included in the Scenic and Conservation Easement, archaeological sites are not to be identified in said easement though included in the area not to be materially altered. The easement boundary shall be adjusted to include as much of the archaeolgic site as possible, and to exclude the proposed driveway. The easement shall include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeologic and other scientific research purposes secured. **(Mitigation Measure 2: Planning & Building Inspection)**

18. In order to mitigate potential adverse impacts to sensitive plants and habitats by the proposed project, the applicant shall contract the services of a qualified biologist to fully implement the Biological Report/Revegetation Plan prepared by Jeff Norman, November 30, 1999, with his updated survey dated December 15, 2001. Said contract shall specify the implementation methods, performance criteria, monitoring and reporting as described in the Biological Report/Revegetation Plan. The contract shall require the biologist to consult regularly with the geotechnical engineer, archaeologist and contractor to coordinate individual actions so that no conflicts arise to reduce the mitigation value of consultant measures related to each other. **(Mitigation Measure 3: Planning & Building Inspection)**

19. In order to protect the Southern Sea Otter and Black Swift and the invertebrates they feed upon within the subtidal habitat, no construction debris shall be allowed to enter the marine habitat, and no erosion shall be allowed to occur as a consequence of the proposed project in order to protect the subtidal and intertidal habitats of invertebrates upon which the Southern Sea Otter feed. The currently eroded area northwest of the building envelope, identified by the consulting biologist, shall be stabilized, the method to be determined by a certified geotechnical engineer and approved by the Director of Planning & Building Inspection. An erosion control plan shall be submitted, reviewed by a certified biologist together with the engineer and contractor, to assure that no debris enter the marine habitat. Any landscaping occurring at this eroded area shall include adequate erosion-control measures and selection of non-invasive plant species. **(Mitigation Measure 4: Planning & Building Inspection)**

20. In order to assure that grading activities do not impact cultural or archaeological resources, the applicant shall contract with a Registered Professional Archaeologist to monitor all earth disturbance work within 10 meters (3 feet) adjacent to identified cultural and/or archaeological resources on the project site. The contract shall specify implementation of the Archaeologist Reconnaissance of Donald Sorensen Property, Big Sur prepared by Archaeological Resource Service, February 8, 1977. In addition, the contract will require the contracted archaeologist to be involved in regular consultation with the contracted geotechnical engineer, biologist and contractor during construction to assure protection of biological and archaeological resources at the site. **(Mitigation Measure 6: Planning & Building Inspection)**

21. In order to assure that excavation, grading and construction activities are consistent with the Geotechnical Report prepared by Vicki C. Odello, the applicant shall contract the services of a qualified geotechnical engineer to fully implement the Geotechnical Report prepared by Vicki C. Odello, C.E., November 21, 1999. In addition to implementation of geotechnical construction specifications described in said Geotechnical Report, the contract will include regular consultation with the consulting biologist, archaeologist and contractor during construction to assure protection of biological and archaeological resources at the site. **(Mitigation Measure 7: Planning & Building Inspection)**

22. The applicant shall submit for the Director of Planning and Building Inspection's review and approval a detailed grading, landscaping and re-vegetation plan. The plans shall have been reviewed by a certified biologist verified in the form of a letter by said consulting biologist. At minimum, the plan shall specify procedures for erosion control and re-establishment of native plant cover; and proposed landscaping species. Any landscaping plans and irrigation within the building envelope shall be evaluated in terms of erosion control measures and compatibility with the native plant community in the area—the Coastal Bluff Scrub and Northern Coastal Scrub. No interference with public views through the planting of trees shall be allowed.

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

Prior to Final Building Inspect. Occupancy:

23. For emergency access, the California Department of Forestry Fire District (Monterey—San Benito Ranger Unit, Battalion 1) requires the following:
    a. The surface of the driveways shall provide unobstructed access to conventional drive vehicles, including sedans and fire engines. Surfaces shall be capable of supporting the imposed load of fire apparatus.
    b. The grade for all roads, streets, private lanes and driveways shall not exceed 15 percent. Where road grades exceed 8 percent, a minimum structural roadway surface thickness of 0.17 feet of asphaltic concrete on 0.34 feet of aggregate base shall be required.
    c. For residential driveways with turns 90 degrees and less, the minimum horizontal inside radius of curvature shall be 25 feet. For driveways with turns greater than 90 degrees, the minimum horizontal inside radius of curvature shall be 28 feet. For all driveway turns, an additional surface of 4 feet shall be added.
    d. Turnarounds shall be required on driveways and dead-end roads in excess of 150 feet of surface length. Required turnarounds on access roadways shall be located within 50 feet of the primary building. The minimum turning radius for a turnaround shall be 40 feet from the center line of the road. If a hammerhead/T is used, the top of the "T" shall be a minimum of 60 feet in length.
    e. Driveways shall not be less than 12 feet wide unobstructed. All driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceed 800 feet, turnouts shall be provided at no greater than 400 foot intervals. Turnouts shall be a minimum of 12 feet wide and 30 feet long with a minimum 25 foot taper on each end.
    f. Gate entrances shall be at least the width of the traffic lane but in no case less than 12 feet wide. All gates providing access from a road to a driveway shall be located at least 30 feet from the roadway and shall open to allow a vehicle to stop without obstructing traffic on that road. Where gates are to be locked, the Reviewing Authority having jurisdiction may require installation of a key box or other acceptable means to immediate access for emergency equipment.
    g. Unobstructed vertical clearance shall not be less than 15 feet for all access roads and driveways. **(CDF Fire District and Planning & Building Inspection)**

24. The existing septic tank must be destroyed under permit of the Division of Environmental Health and a new one installed in the location indicated on the approved plans. **(Environmental Health)**

25. The applicant shall comply with Ordinance No. 3932, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:
    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 ten 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 plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. **(Water Resources Agency)**

26. The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees form any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. **(Planning and Building Inspection Department)**

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

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

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

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

AYES: Supervisors Armenta, Calcagno, Lindley, Johnsen, Potter
NOES: None
ABSENT: None

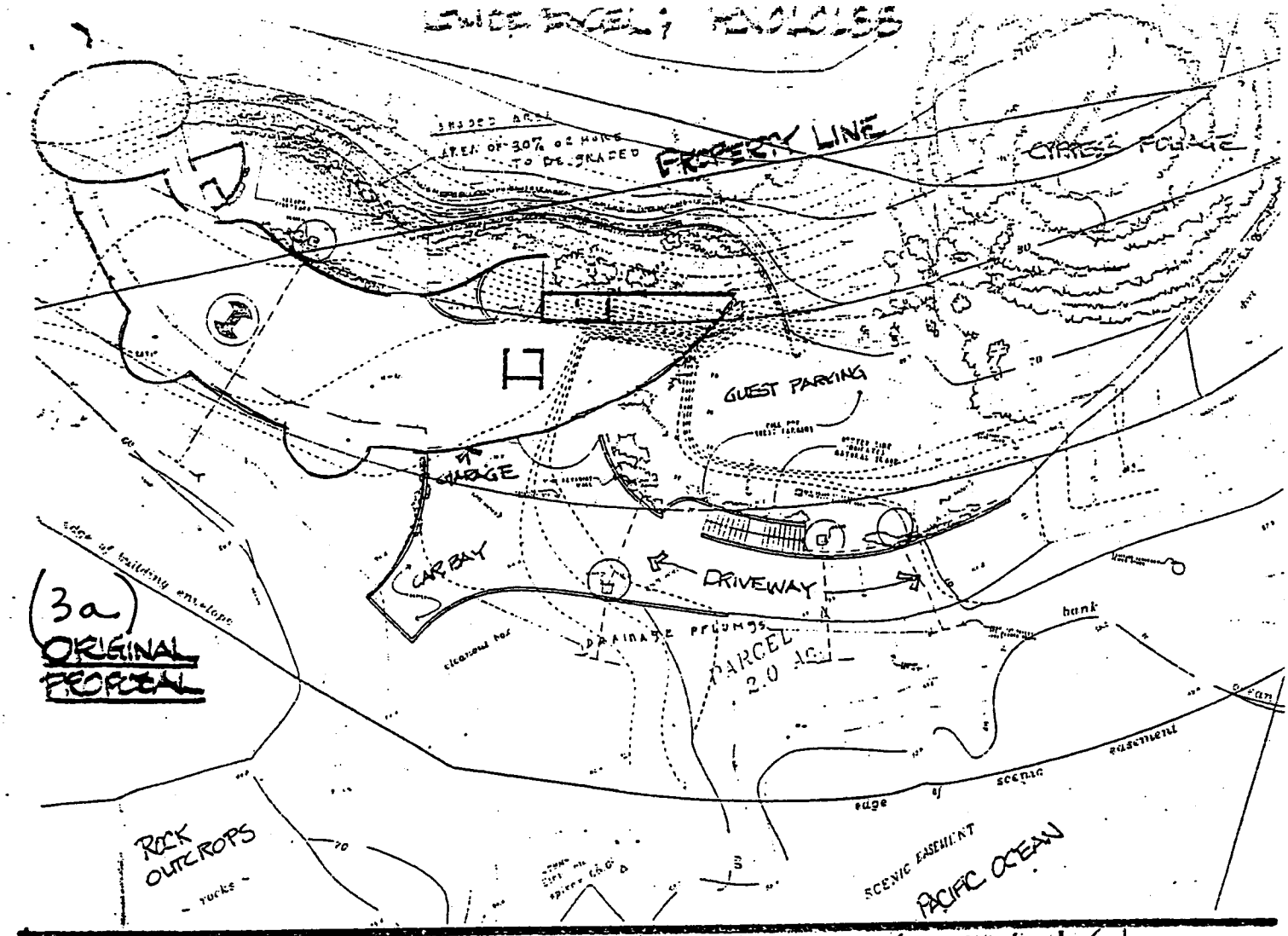
I, Sally R. Reed, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 72, on January 13, 2004.

Dated: January 23, 2004
State of California.

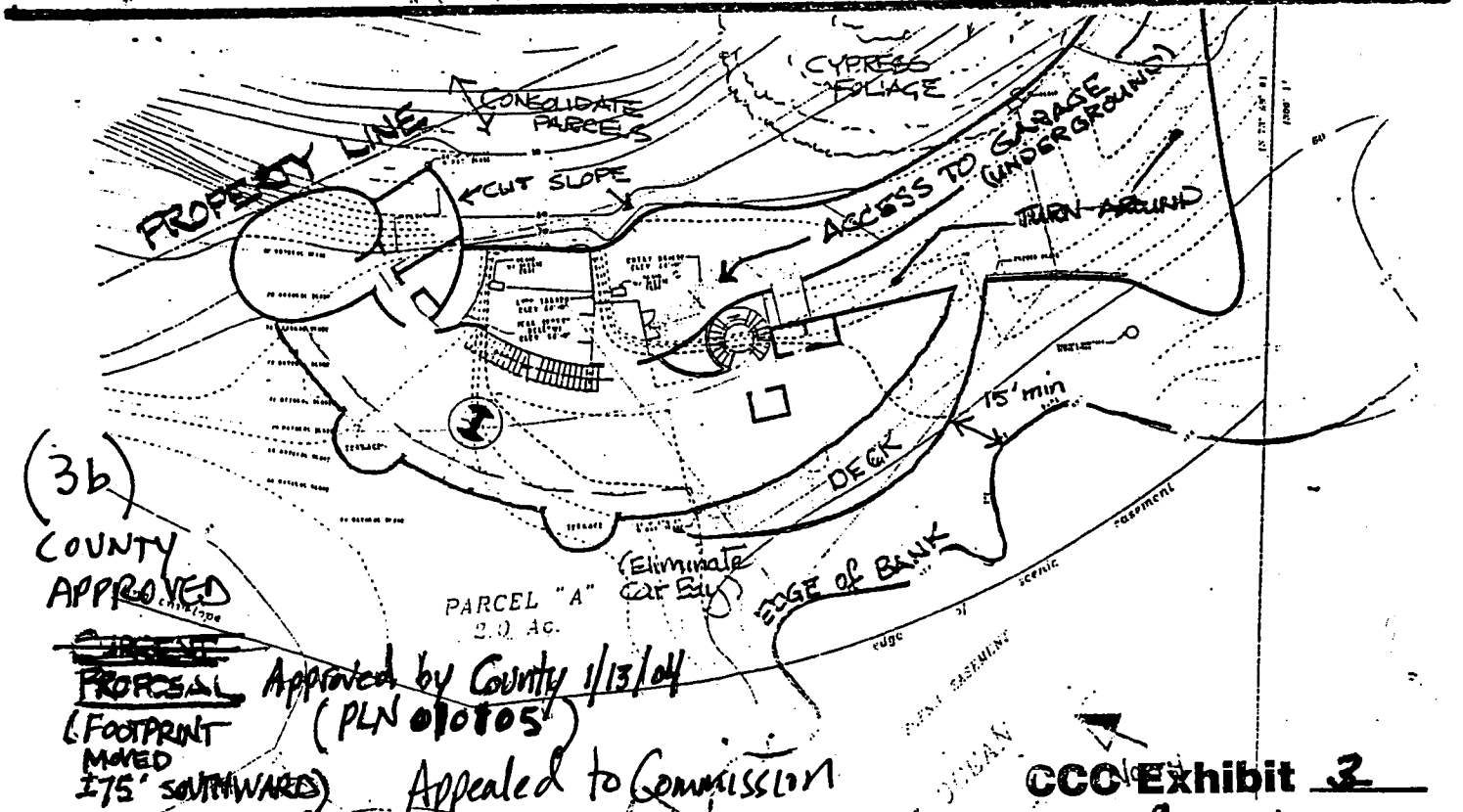
Sally R. Reed, Clerk of the Board of Supervisors, County of Monterey,

By Ann D. Anderson
Deputy

CCC Exhibit 3
(page 8 of 11 pages)



(3a) ORIGINAL PROPOSAL

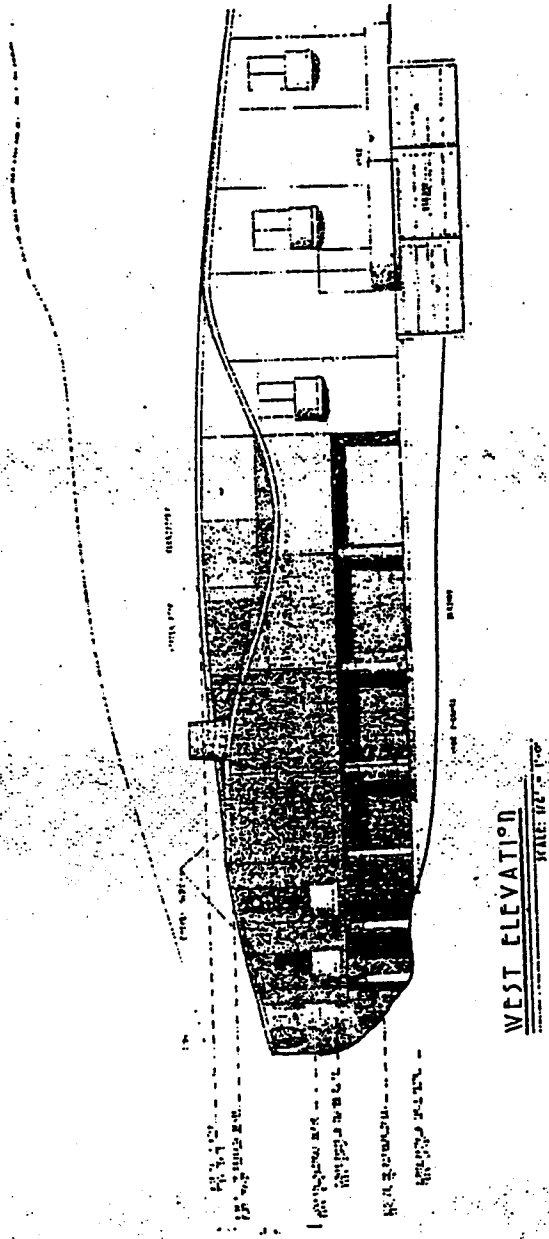


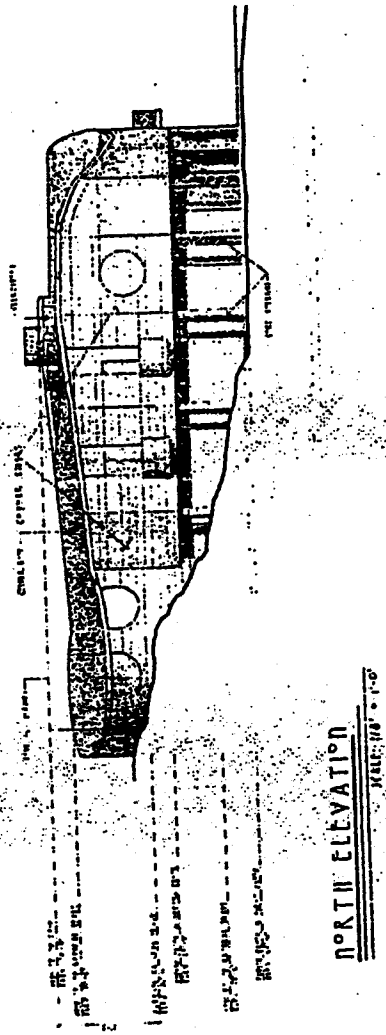
(3b) COUNTY APPROVED ~~PROPOSAL~~ PROPOSAL (FOOTPRINT MOVED 175' SOUTHWARD)

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

Appealed to Commission

CCC Exhibit 3 (page 9 of 11 pages)

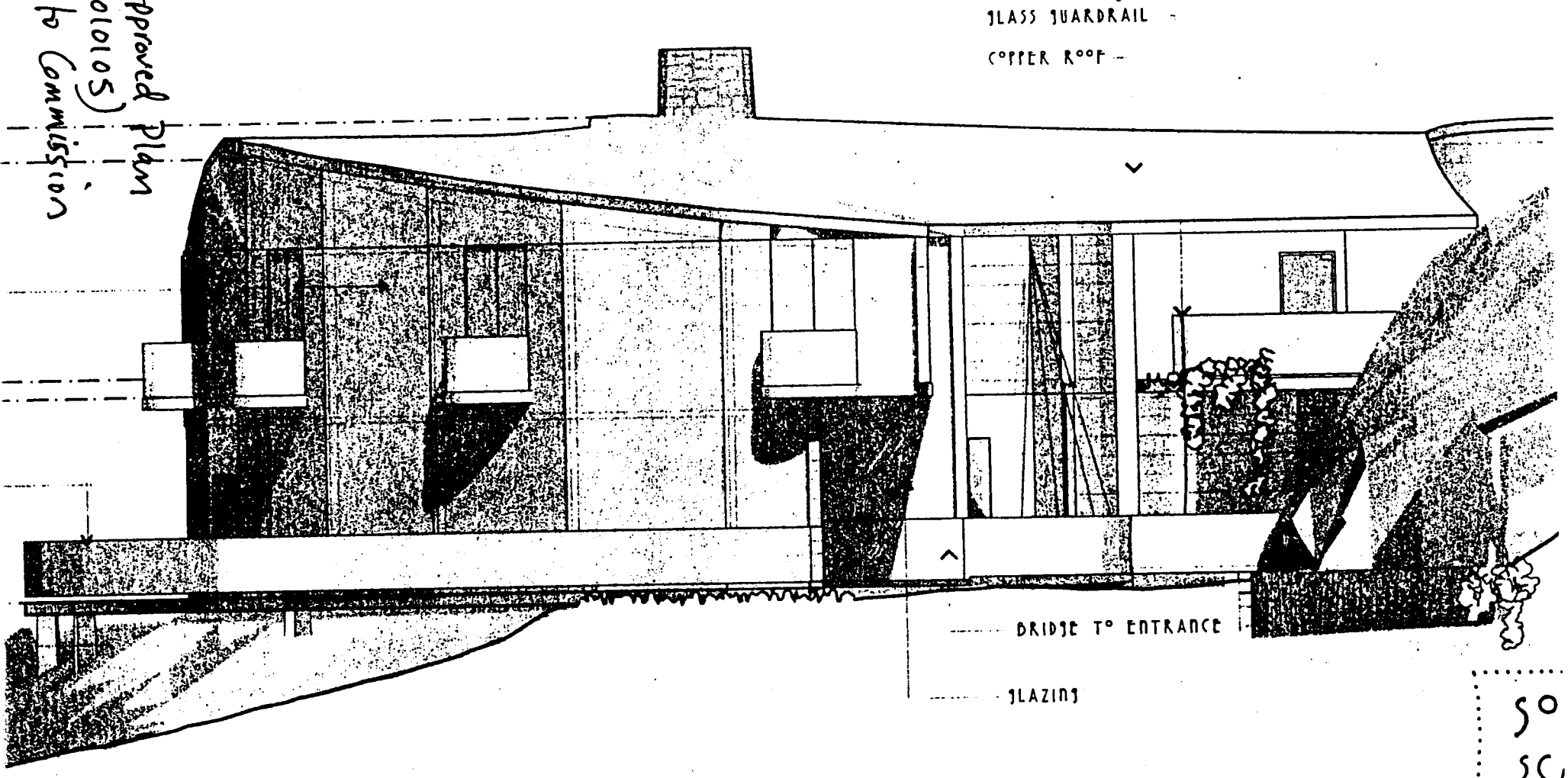




County Approved Plans
(PLN 010105)
Appealed to Commission

CCC Exhibit 3
(page 10 of 11 pages)

County Approved Plan
(PLN 010105)
Appealed to Commission



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SC

CCC Exhibit 3
(page 1 of 1 pages)

[PARTIAL SOUTH ELEVATION]

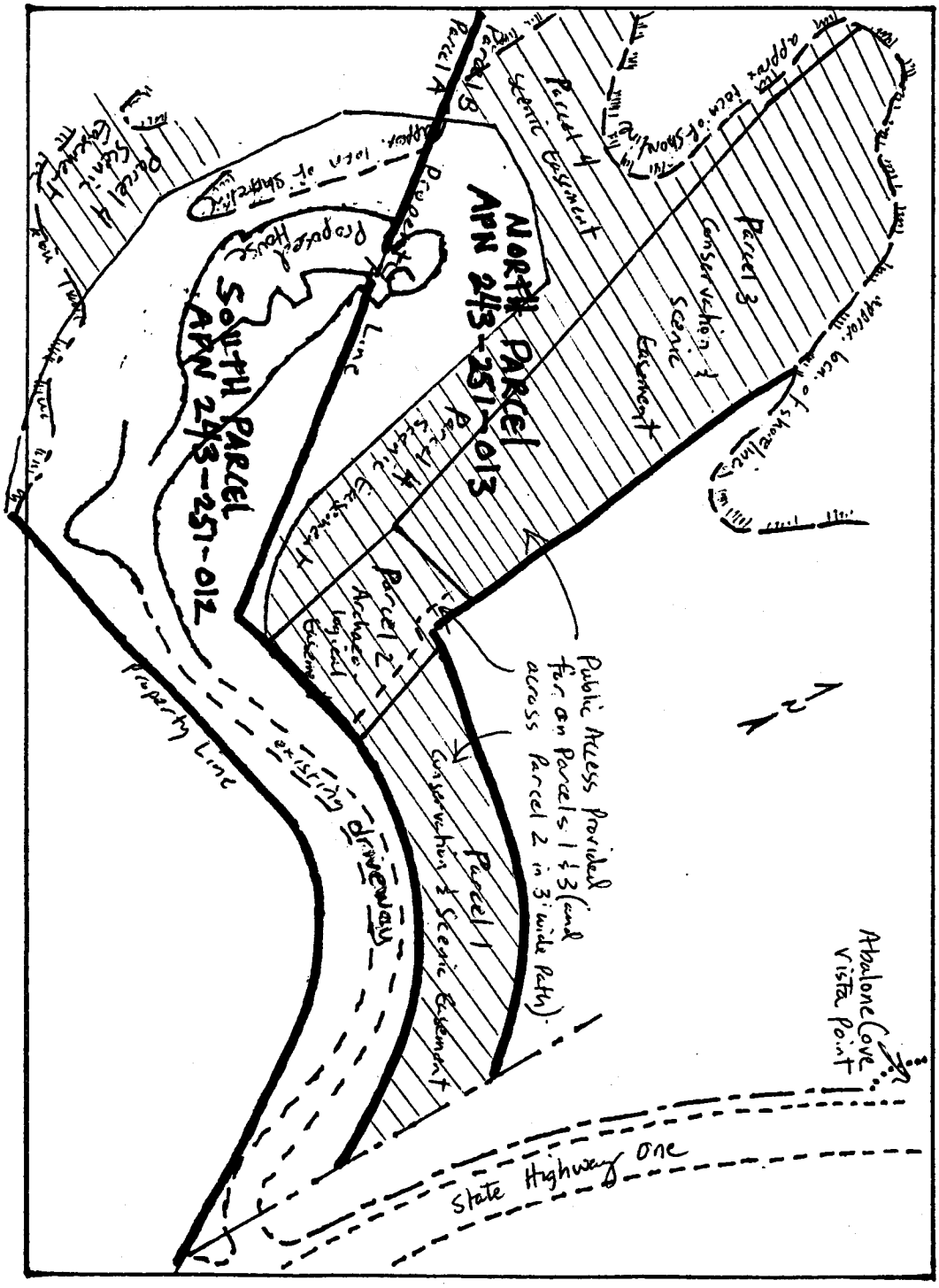
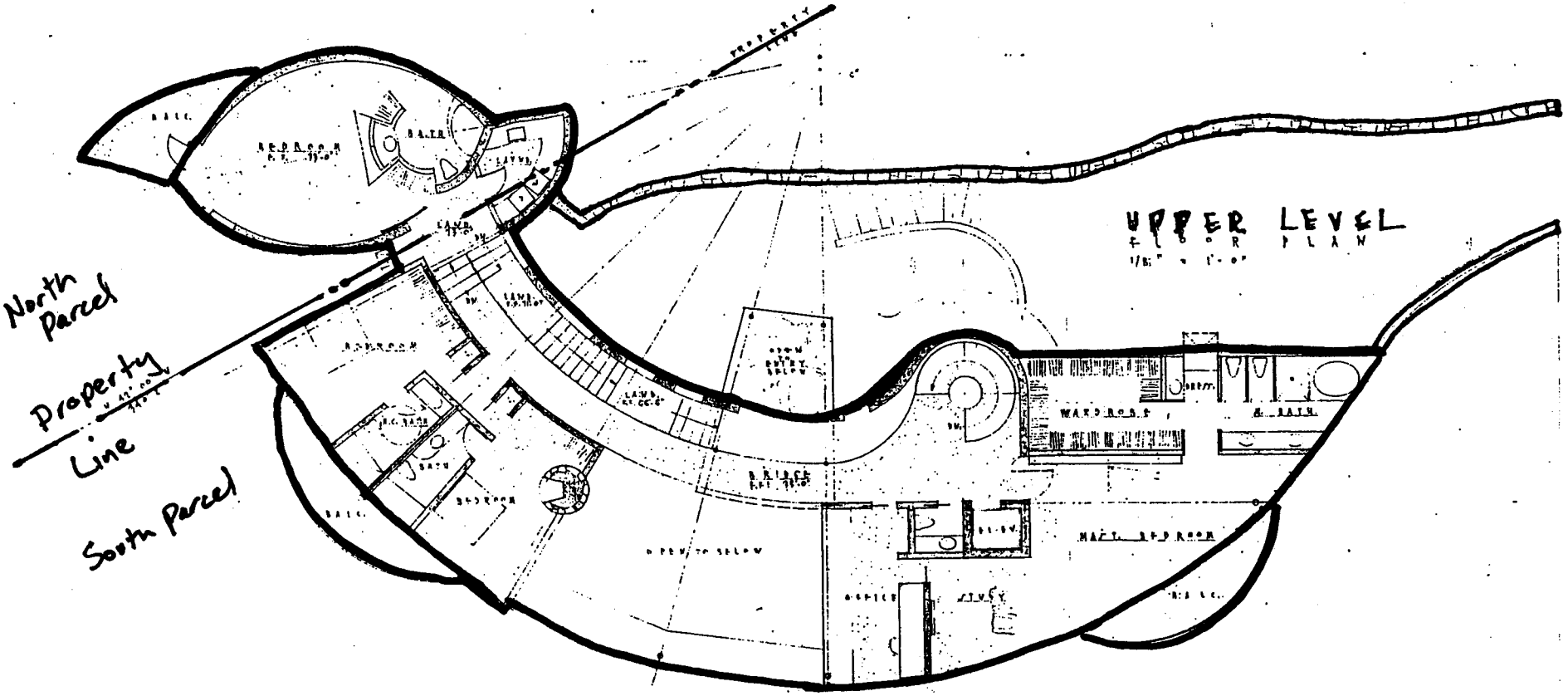


EXHIBIT NO. 4

APPLICATION NO. A-3-MCO-04-012

Schematic of Existing Scenic & Conservation Easements

California Coastal Commission



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

Fill Estimate	
Total fill to be distributed on site	**419 cy**

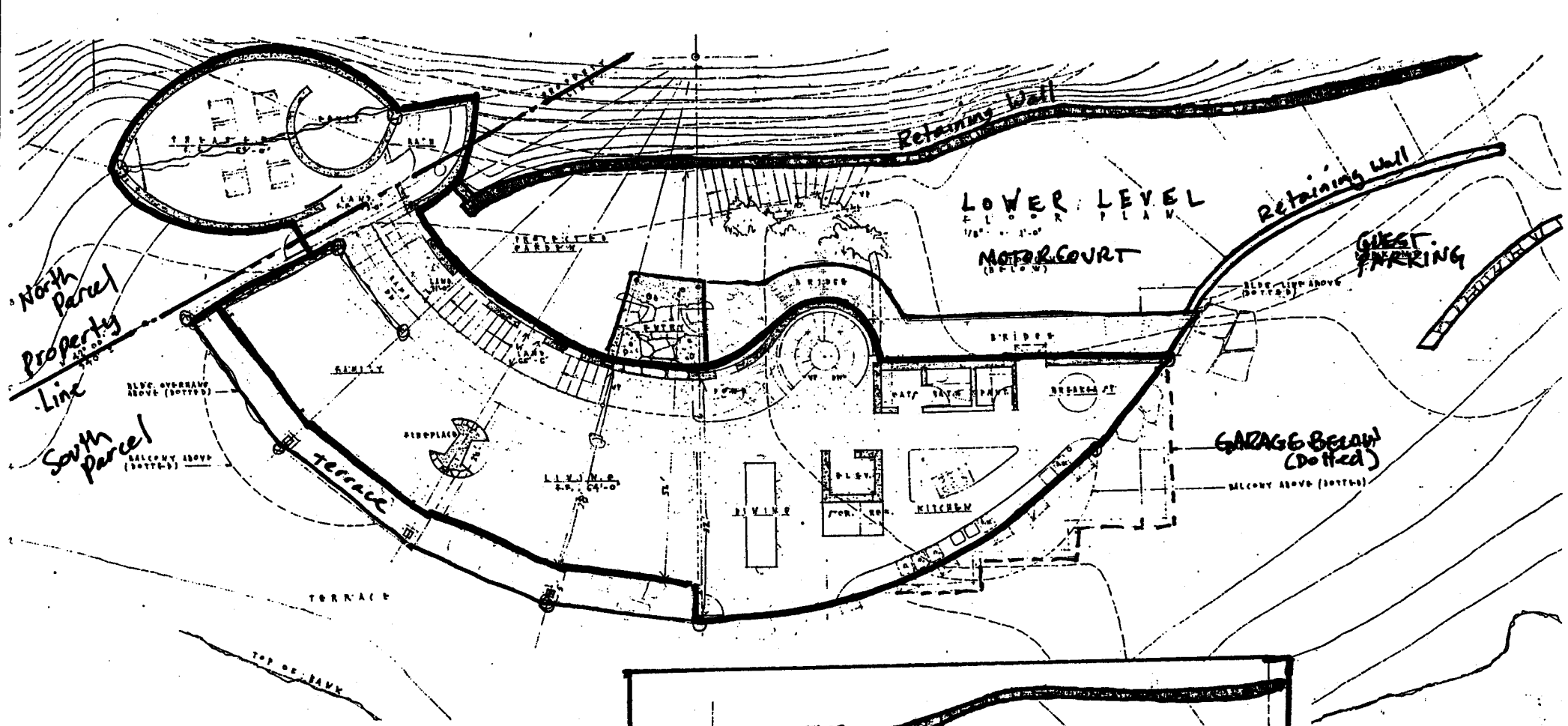
The resulting 1312 cubic yard difference is to be relocated to an approved location.

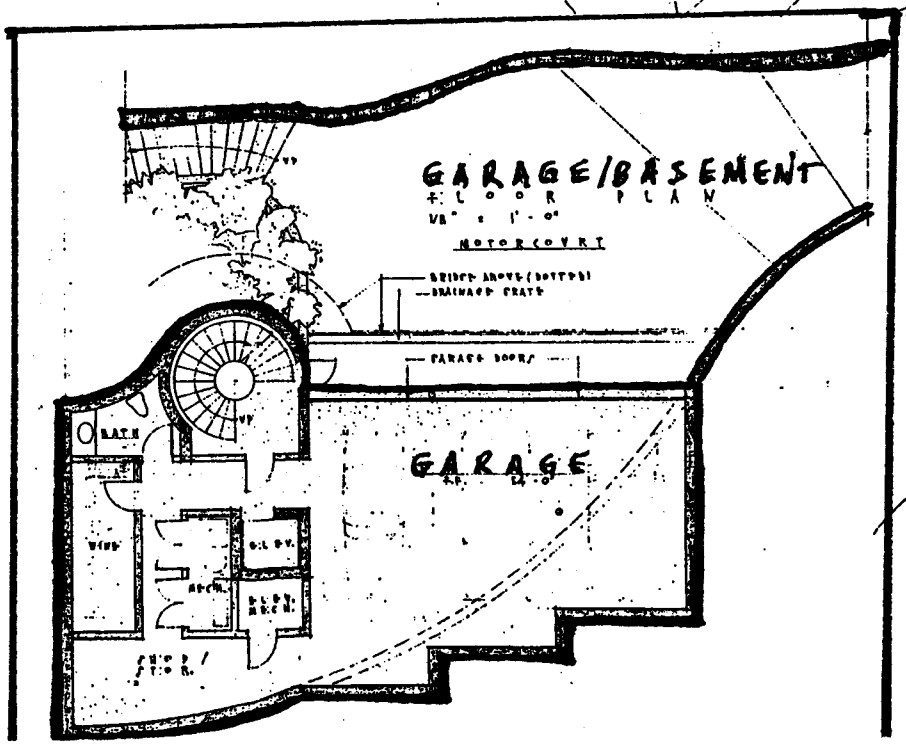
LAUBE/ENGEL RESIDENCE
KASLER POINT CARMEL, CA
J. K. MUENNIG ARCHITECT CA
SITE & DRAINAGE PLAN
REVISED JULY 6, 2004
REVISED DEC. 17, 2001
REVISED BY D.K.

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

pg 1 of 4

RECEIVED
AUG 0 2 2004
CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA



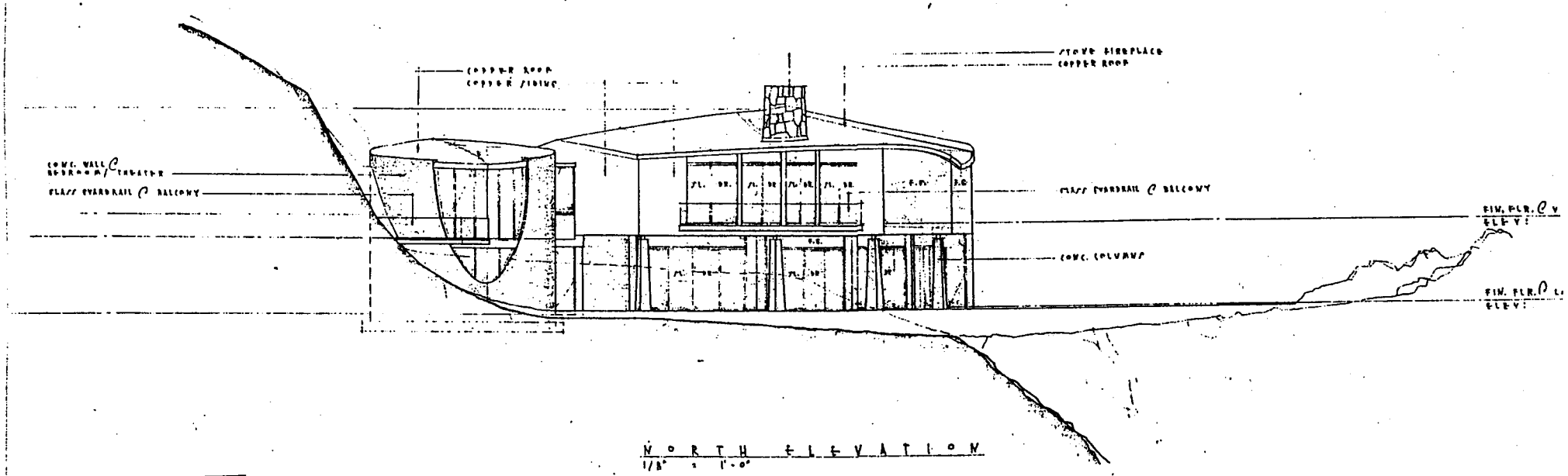


Square Footage	
Lower Level	4310 sf
Upper Level	3680 sf
Proposed Garage/Basement	1981 sf
Total	**9971 sf**

Total Coverage	
Proposed Coverage Residence	4625 sf
Turnaround and Driveway	10147 sf
Proposed Protected Garden	948 sf
Total	**15720 sf**

EXHIBIT NO. 5
APPLICATION NO. A-3-MCO-04-012
Revised Plans Cont'd
Date 7/8/04
California Coastal Commission

pg 2 of 4



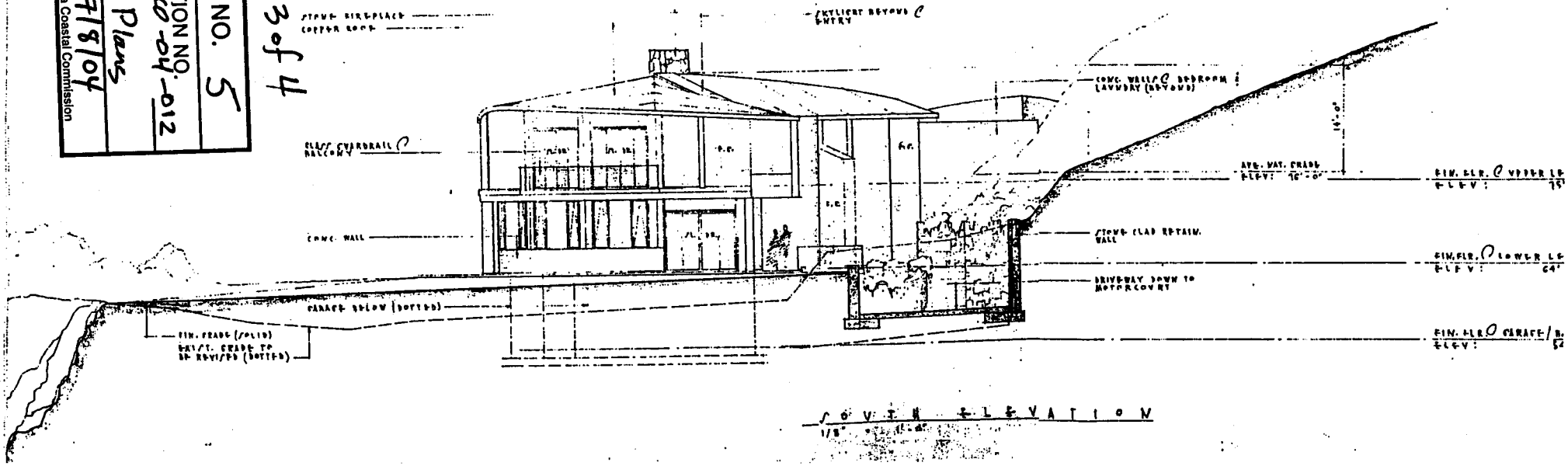
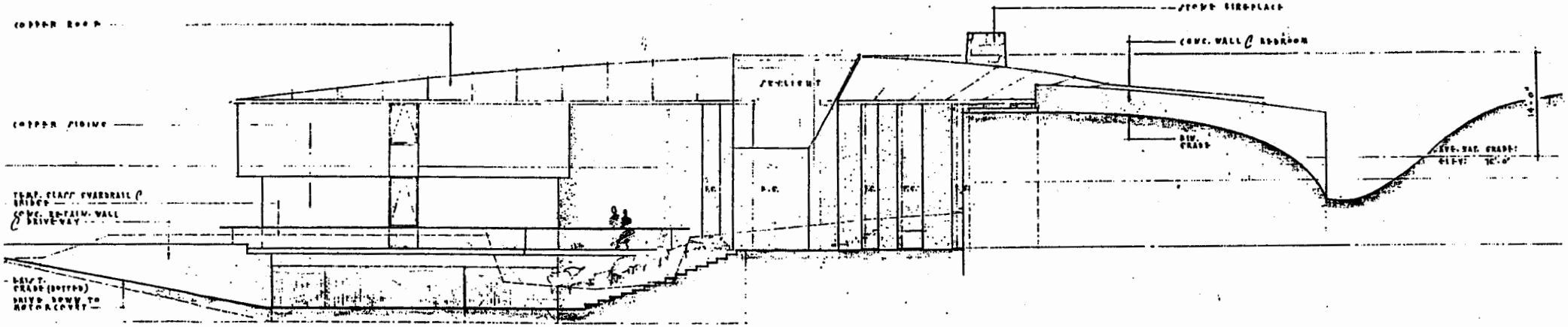
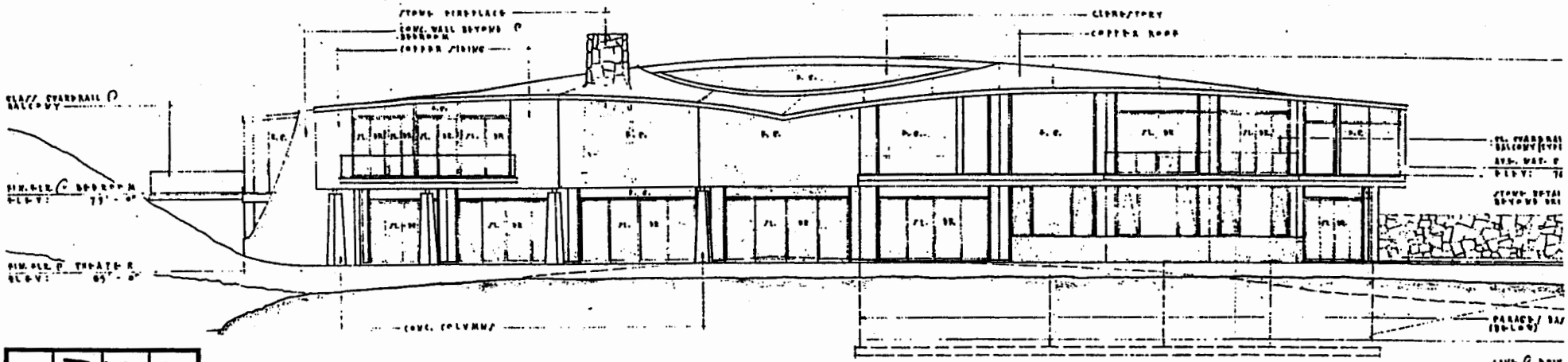


EXHIBIT NO. 5
APPLICATION NO. A-3-MCO-04-012
Revised Plans
Detail 7/8/04
California Coastal Commission

Pg 3 of 4



EAST ELEVATION
1/8" = 1'-0"



WEST ELEVATION
1/8" = 1'-0"

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

Pg 4 of 4

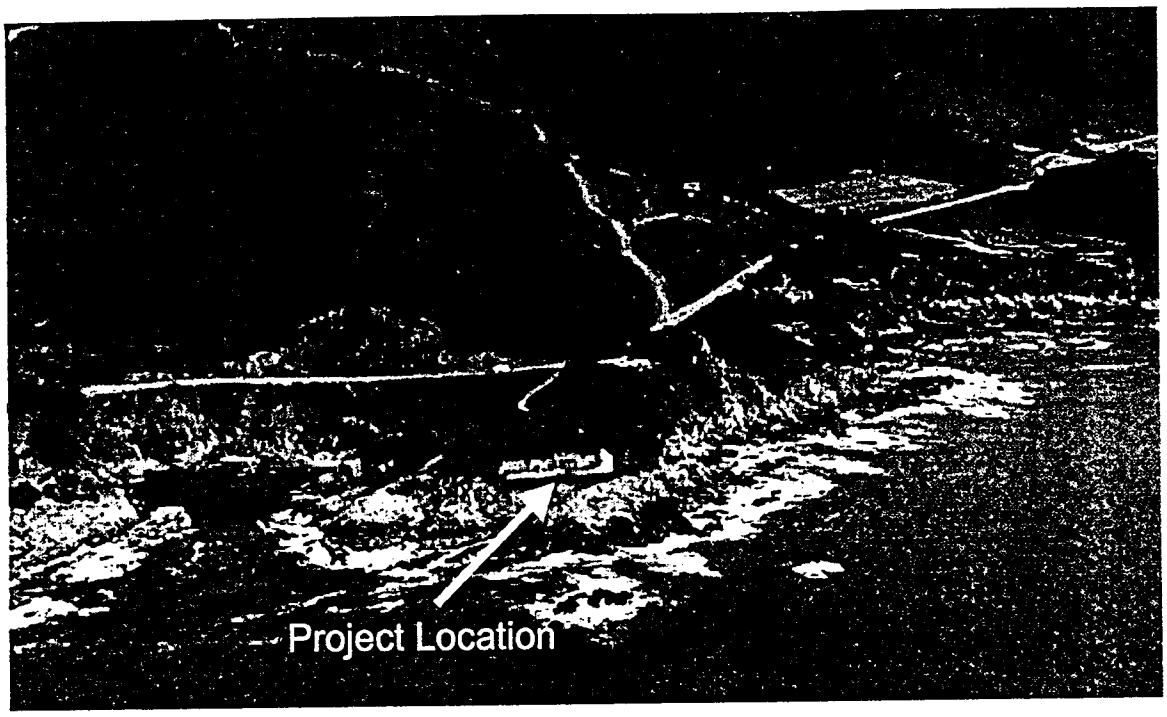


Photo 1.
Oblique aerial photo of Abalone Cove and Kasler Point, with access road and excavated building pad area. (Photo from California Coastal Records Project.)

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

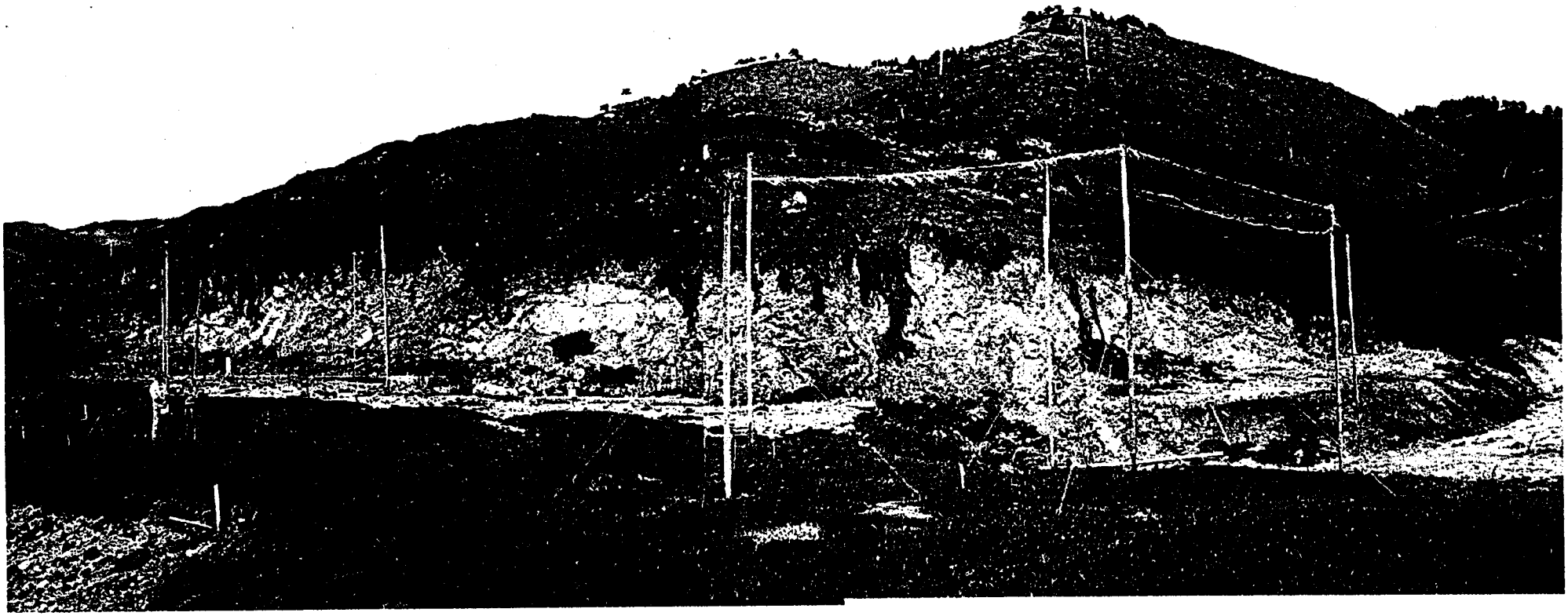


Photo 3.
Project staking, looking east at cut face; theater/media area is shown staked on left side of photo. Photo shows excavated building pad and cut face, and access road on right.

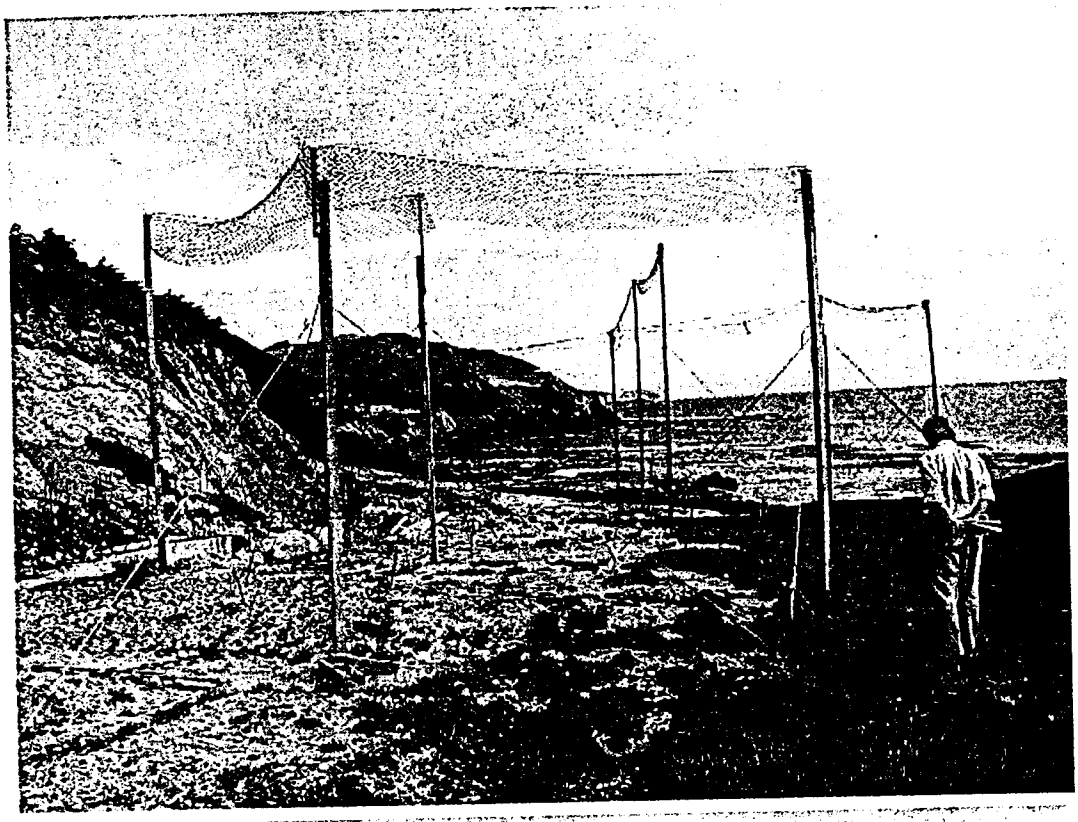


Photo 4.
Project flagging looking south toward Rocky Point.

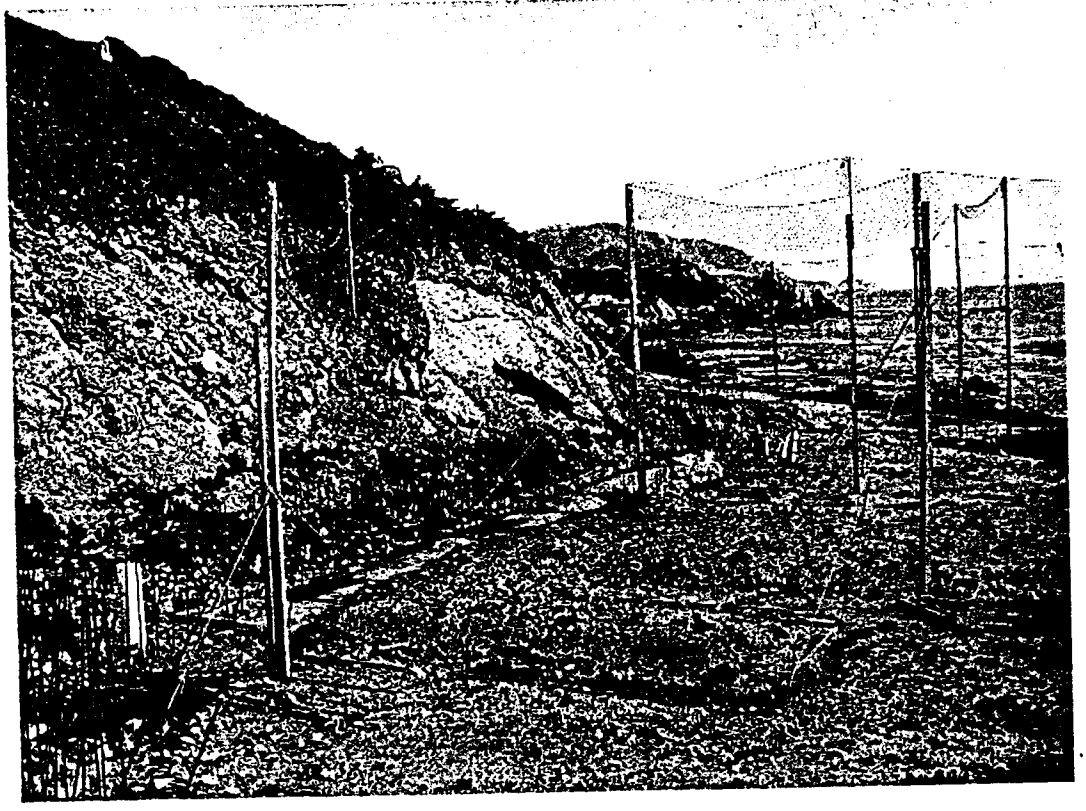
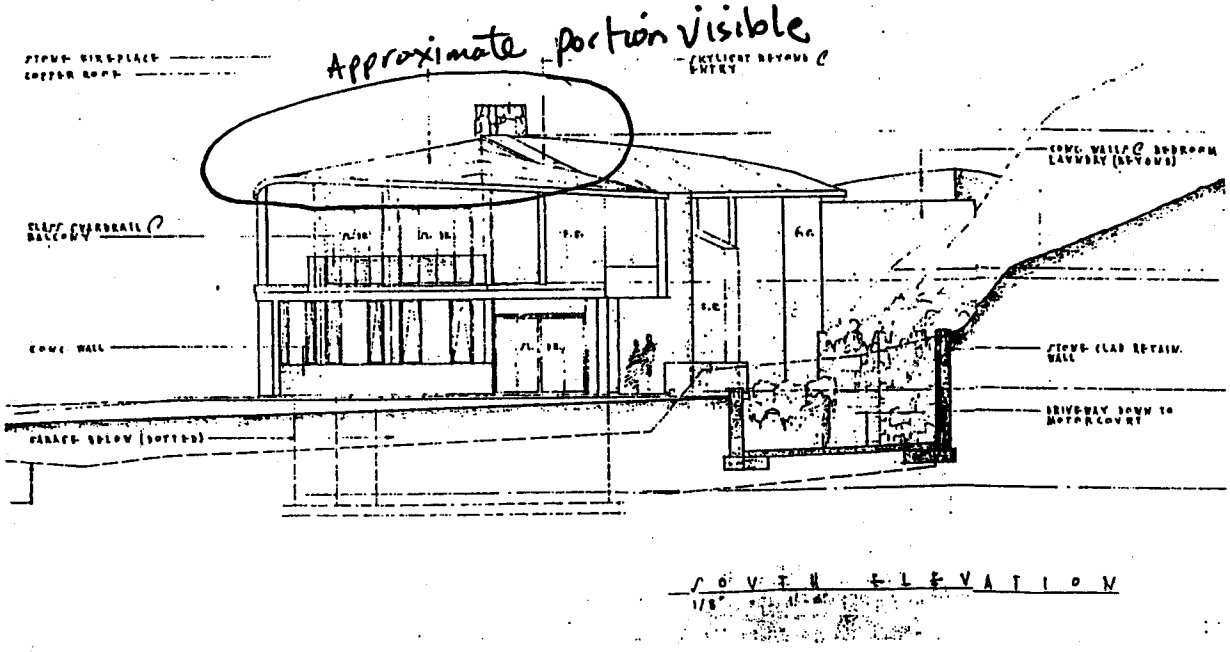


Photo 5.
Flagging of project looking south, with remains of foundation work done by previous owner (Sorenson) in violation of earlier permit.



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

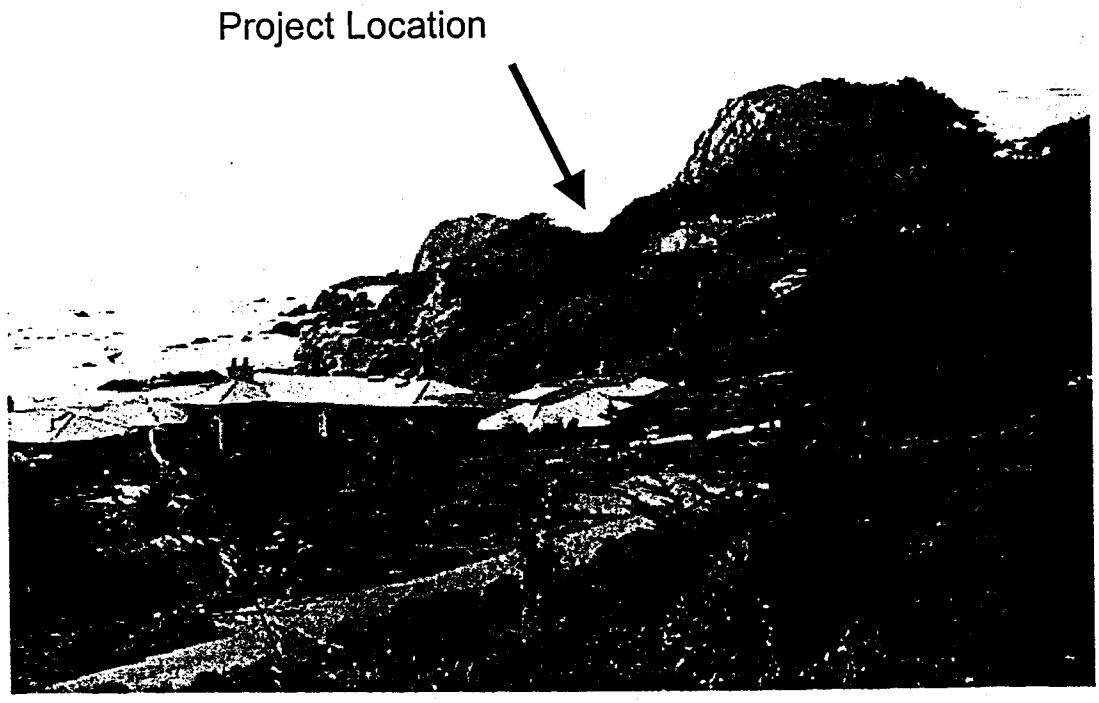


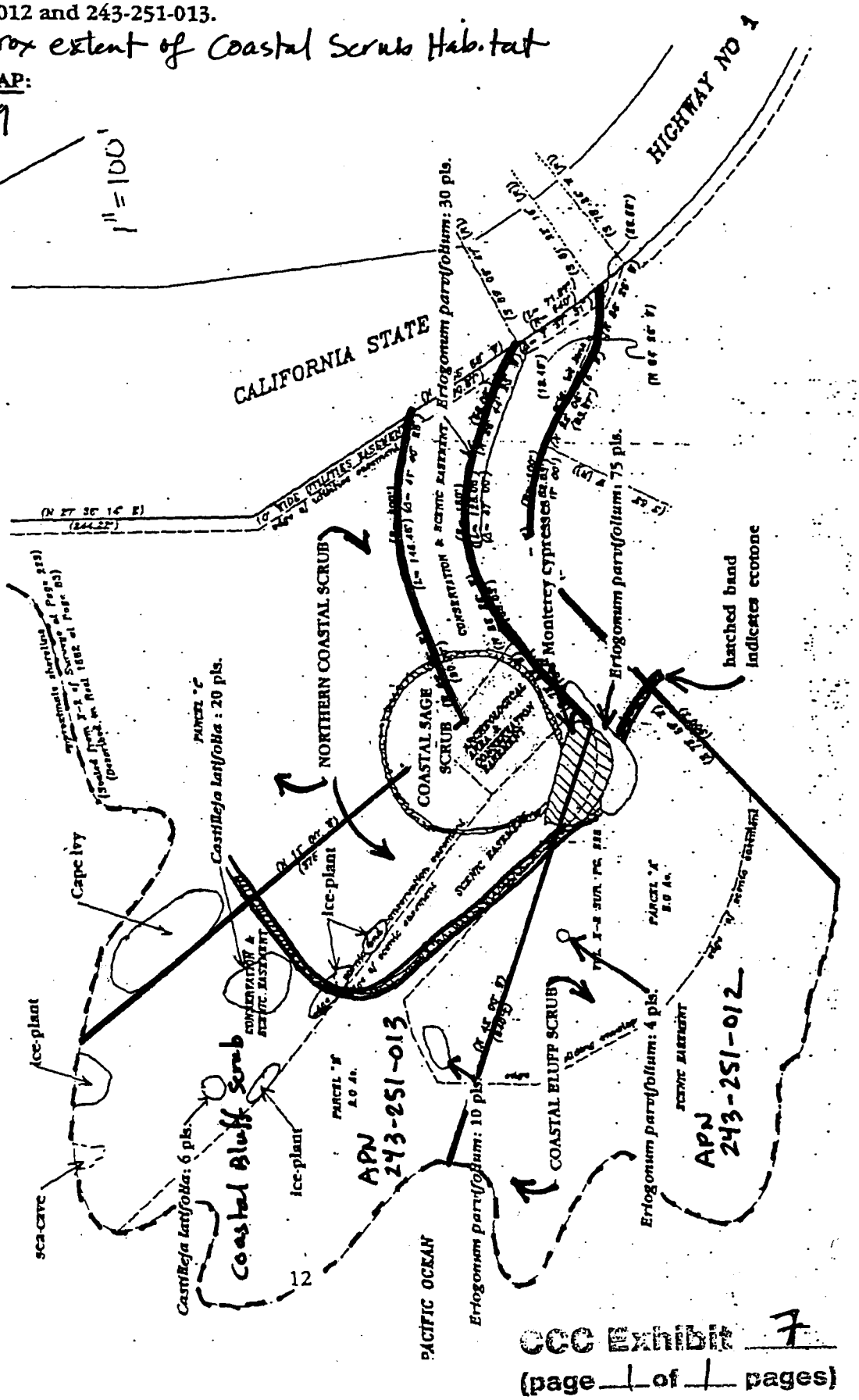
Photo 6.
View from Rocky Point turnout along Highway One , from which project is partially visible.

Biological Report/Revegetation Plan: Engel/Laube properties, Kasler Pt., Big Sur.
APNs 243-251-012 and 243-251-013.

Shows Approx extent of Coastal Scrub Habitat

BOTANICAL MAP:

Dated 1999



CCC Exhibit 7
(page 1 of 1 pages)

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

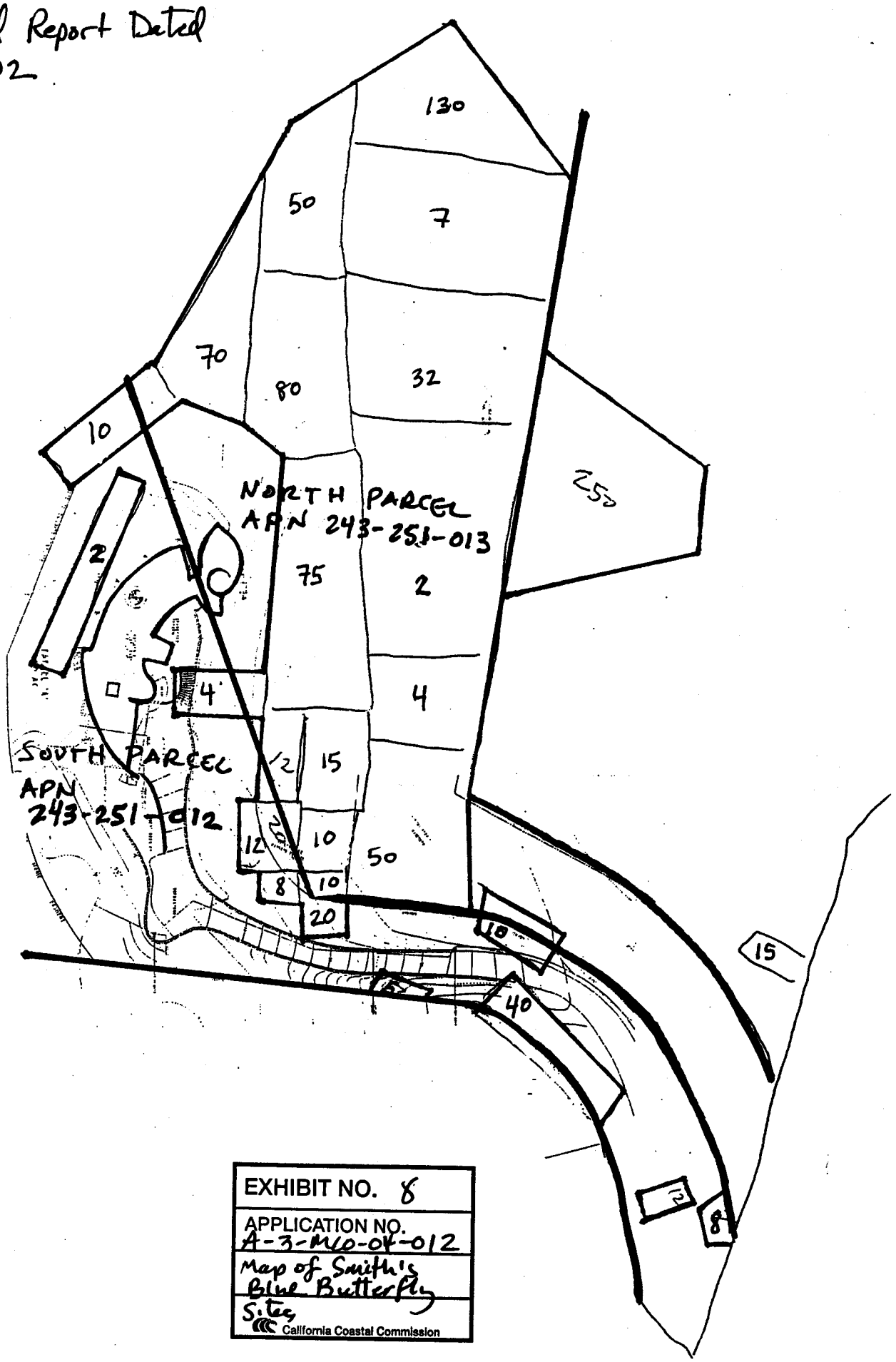


EXHIBIT NO. 8
APPLICATION NO. A-3-MCO-04-012
Map of Smith's Blue Butterfly Sites
California Coastal Commission

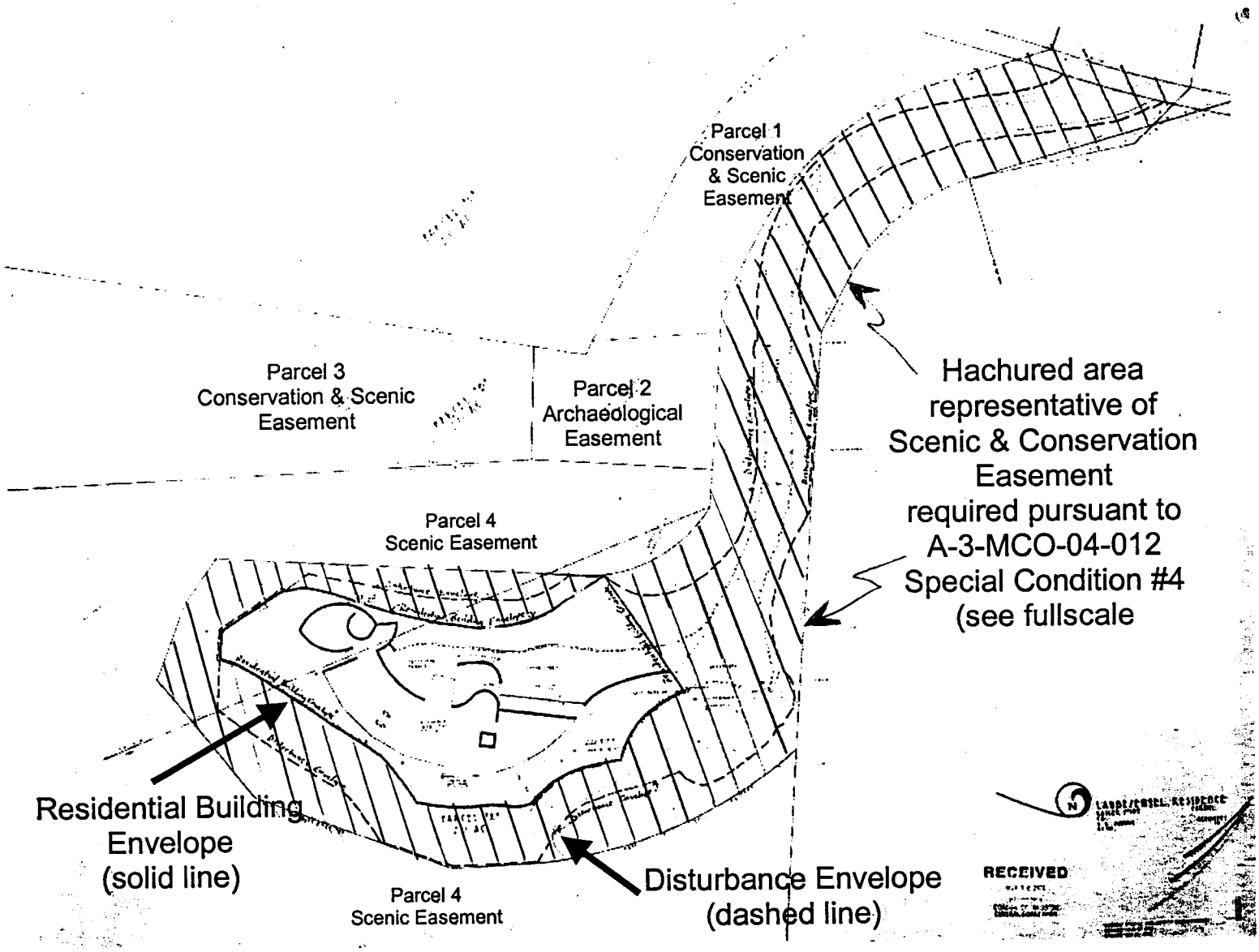


Exhibit 9– pg 1 of 1
Scenic & Conservation Easement
Required by Special Condition #4

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

Vicki C. Odello, C.E. 52651
2830 Ribera Road
Carmel, California 93923
Phone/Fax (831) 624-1725

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

1. The house should incorporate a pier and grade beam foundation system and/or footings that penetrate the fill and colluvium and embed in the granite bedrock throughout house footprint.

2. Where native granite is not encountered at slab sub-grade, structural slabs should be used to bridge over fill or soil.

3. Grading or improvements should not be positioned within 15 feet of the unprotected sea cliff on the south end of the site.

4. Where a structural fill wedge can not contain the outer edge of the turnaround (due to the 15-foot sea cliff set back) a retaining wall may be used.

5. The sea cliff on the south end of the site should be protected from further high surf erosion; otherwise there is a potential for future loss of land at the edge of the sea cliff. An earthquake or inclement whether as well as very high surf could promote sliding and/or erosion in the area of the crack in ground near the sea cliff.

6. Anticipate some corrosivity of salt sea spray on building materials.

7. Where new fill is to be placed over old compacted fill, the top 24 inches of the old fill should be recompacted.

8. The manhole tanks should be relocated at least 15 feet away from the unprotected sea cliff on the south end of the site.

9. Proper drainage and erosion control should be implemented.

10. Retaining walls should retain vertical high cuts.

11. Glazing and house walls on the east side of the structure, adjacent to, and below cut slopes should be protected from potential rock topple impact.

12. Debris wall design could be incorporated into the driveway retaining walls as a vertical extension lip. Or, if risk is acceptable by the owner, the driveway or garden roof slabs, could be designed as a catchment area for small boulders. Alternatively, slope protection (i.e. netting) could be used.

13. Refer to the body of the report for specific design data.

Vicki C. Odello, C.E. 52651
2830 Ribera Road
Carmel, California 93923
Phone/Fax (831) 624-1725

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

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

Site Grading

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

2. A compaction technician should be hired to test the degree of relative compaction at the base of fills and as it is being placed. Where referenced in this report, Percent Relative Compaction and Optimum Moisture Content shall be based on ASTM Test Designation D1557-78.

3. Fills may not be placed within 15 feet of the sea cliff on the south end of the site.

4. Fills may not be placed on ground steeper than 2:1 horizontal:vertical (50% gradient). Fills should be keyed and benched into firm bedrock in areas where local slope gradients exceed 5:1. The toe of the keyway must be laterally confined by at least 5 feet of near level firm native material. Subdrains will be required in areas where keyways or benches expose potential seepage zones.

5. The face of all permanent fill slopes should not be steeper than 2:1 (H:V) (50% gradient). To anticipate some erosion, there should be at least 4 feet of freeboard between the top of the cut face and any improvement or property line.

6. Cut slopes should be inclined no steeper than 2:1 (H:V), unless fractured granite is exposed. Cuts made in granite may be cut at 1:1 (H:V) for heights up to 20 feet.

7. Graded cut slopes, old and new, exposing fractured rock and colluvial boulders should be covered in wire net, or catchment areas and/or debris walls should be provided at the base of the slope. Criteria can be developed for these options as selected.

8. The on-site soils may be used as engineered fill. Materials used for engineered fill should be free of organic material, and contain no rocks or clods greater than 6 inches in diameter, with no more than 15% larger than 4 inches.

9. Areas to be graded should be cleared of all obstructions including loose fill, debris, trees not designated to remain, or other unsuitable material. Existing depressions or voids created during site clearing should be backfilled with engineered fill. Cleared areas should then be stripped of organic-laden topsoil

Vicki C. Odello, C.E. 52651
2830 Ribera Road
Carmel, California 93923
Phone/Fax (831) 624-1725

10. Areas to receive engineered fill should be scarified to a depth of 24 inches, moisture conditioned to over optimum, and compacted to at least 90% relative compaction. Portions of the site may need to be moisture conditioned to achieve a suitable moisture content at over optimum for compaction. These areas may then be brought to design grade with engineered fill.

11. Engineered fill should be placed in thin lifts not exceeding 6 inches in loose thickness, moisture conditioned to over optimum, and compacted to at least 90% relative compaction.

12. The subgrade and aggregate base sections below pavements should be compacted at to at least 95% relative compaction. The subgrade section should be compacted at over optimum moisture conditions.

Drainage Control

13. Fill slopes may be planted with erosion resistant vegetation to reduce erosion.

14. Thorough control of runoff is essential to the performance of the homesite. Diligent maintenance of completed drainage improvements is required for the life of the improvements. The drainage improvements should be both durable and easily accessible for routine periodic maintenance.

15. Surface runoff and subsurface seepage from slopes above the house must be anticipated and intercepted. Berms or lined V-ditches may be constructed at the top of cut slopes to divert water around the development toward suitable exit area. To intercept subsurface seepage, French drains, at least 18 inches into granite rock, may be constructed just uphill from the development, slabs and pavements. Retaining wall backdrains may suffice.

16. Surface drainage should include provisions for positive slope gradients so that surface runoff is not permitted to pond adjacent to foundations, pavements, or other improvements. Surface drainage must be directed away from the building foundations, slabs and pavements.

17. Runoff from new improvements must not cause erosion.

18. The migration of water or spread of extensive root systems below foundations, slabs, or pavements may cause undesirable differential movements and subsequent damage to these structures. Landscaping should be planned accordingly.

Foundations – Pier and Grade Beam

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

Vicki C. Odello, C.E. 52651
2830 Ribera Road
Carmel, California 93923
Phone/Fax (831) 624-1725

20. Drilled piers should be at lest 18 inches in diameter, penetrate fill, colluvium and topsoil, and embed at least 5 feet into granite bedrock on the ocean side of the building or 2 feet into bedrock on the cut side.

21. There should be a horizontal distance of 10 feet between the base of all foundation elements and the surface of the adjacent slope.

22. Alternatively, where granite bedrock is exposed at foundation grade (i.e., at the base of the cut), conventional footings (or deepened footings) may be used, unless specified by the structural engineer.

23. All foundation trenches located adjacent to other trenches or utility trenches should have their bearing surfaces founded below an imaginary 1:1 plane projected upward from the bottom edge of the adjacent footings or utility trench.

24. The base of foundation excavations must be thoroughly cleaned to obtain proper bearing capacity.

25. Foundations constructed in accordance with the above may be designed for an allowable end bearing capacity of 3500 psf in granite bedrock. Alternatively, a skin friction value of 800 psf may be used for that portion of the pier embedded in granite. These values may be increased by 1/3 to include short-term seismic and wind loads.

26. For passive lateral resistance of that portion of the pier embedded in granite rock, an equivalent fluid weight of 600 pcf may be assumed to act against two pier diameters.

27. Piers should be vertically reinforced their full length. The vertical reinforcement should be lapped and tied to the upper grade beam reinforcement. Actual reinforcement requirements should be determined by the structural designer.

28. Prior to placing concrete, the foundation excavations must be moisture conditioned.

29. Prior to placing steel the soil engineer should observe excavations.

Retaining Walls and Lateral Pressures

30. Glazing and house walls on the east side of the structure, adjacent to, and below cut slopes should be protected from rock topple impact.

31. Debris wall could be designed into the driveway retaining walls as a vertical extension lip.

Vicki C. Odello, C.E. 52651
2830 Ribera Road
Carmel, California 93923
Phone/Fax (831) 624-1725

32. Sea wall protection can be developed if this option is selected.

33. Retaining walls should be designed to resist both lateral backfill pressures and additional surcharge loads. Free-to-move (non-restrained) walls should be designed to resist a triangularly-distributed active-equivalent-fluid-weight of 30 pcf for level backfill, and 45 pcf for sloping backfills inclined up to 2:1.

34. Restrained walls with level backfills should be designed to resist a uniformly applied wall pressure of 22 H psf, where H is the height and 32 H psf for sloping backfills inclined up to 2:1.

35. Passive resistance of retaining walls may be taken up in that portion of the pier embedded in granite. Topsoil or other materials should be neglected when computing passive resistance. Refer to Section 24 for passive a resistance value.

36. If the length of the retaining wall is founded in compacted fill of similar thickness, then the foundation may be a spread footing using a bearing capacity of 1200 p.s.f. and a lateral passive resistance of 250 p.s.f. along the face of the footing.

37. The above lateral pressures assume that the walls are fully drained to prevent hydrostatic pressure behind the walls. Drainage materials behind the wall should consist of 3/4-inch drain rock wrapped in filter fabric or an approved equivalent. The drainage material should be at least 12 inches thick. The drain section should extend from the base of the wall to within 12 inches from the top of the backfill. A perforated pipe should be placed (holes down) about 4 inches above the bottom of the wall and be tied to a suitable drain outlet. Wall backdrains should be plugged at the surface with material to minimize infiltration of surface runoff into the backdrains.

38. Walls acting as interior house walls should be thoroughly waterproofed, especially at the cold joint.

Slabs-on-Grade

39. All slabs can be expected to suffer some cracking and movement. However, appropriate drainage, thickened exterior edges, a well prepared, confined, dense subgrade (Including pre-moistening prior to pouring concrete), adequately spaced joints, and good workmanship should minimize cracking and movement. Slab reinforcing should be designed in accordance with anticipated use.

40. In areas where floor wetness would be undesirable, a blanket of 4 inches of free-draining gravel should be placed beneath the floor slab to act as a capillary break. In order to minimize vapor transmission, an impermeable membrane should be placed over the gravel. The membrane should be covered with 2 inches of sand or

Vicki C. Odello, C.E. 52651
2830 Ribera Road
Carmel, California 93923
Phone/Fax (831) 624-1725

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

41. Where slabs are supported by hard native granite conventional slabs are adequate.

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

If you have any questions, please call my office.

Very truly yours,

VCO/vco
Copies: 4 to Addressee

Enclosures

CCC Exhibit 10
(page 6 of 6 pages)

HARO, KASUNICH AND ASSOCIATES, INC.

CONSULTING GEOTECHNICAL & COASTAL ENGINEERS

Project No. M8068
8 November 2004

DR. NANCY ENGEL
MR. SHELDON LAUBE
c/o Lombardo and Gilles
P.O. Box 2119
Salinas, California 93902

Attention: Miriam Schakat

Subject: Response to California Coastal Commissions Request For Additional Information Regarding Coastal Bluff Setback Conditions and Long Term Blufftop Stability

Reference: Proposed Laube/Engel Residence
APN 243-251-12
Kasler Point, Highway One
Monterey County, California

Dear Dr. Engel and Mr. Laube:

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

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

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

If you have any questions, please call our office.

Very truly yours,

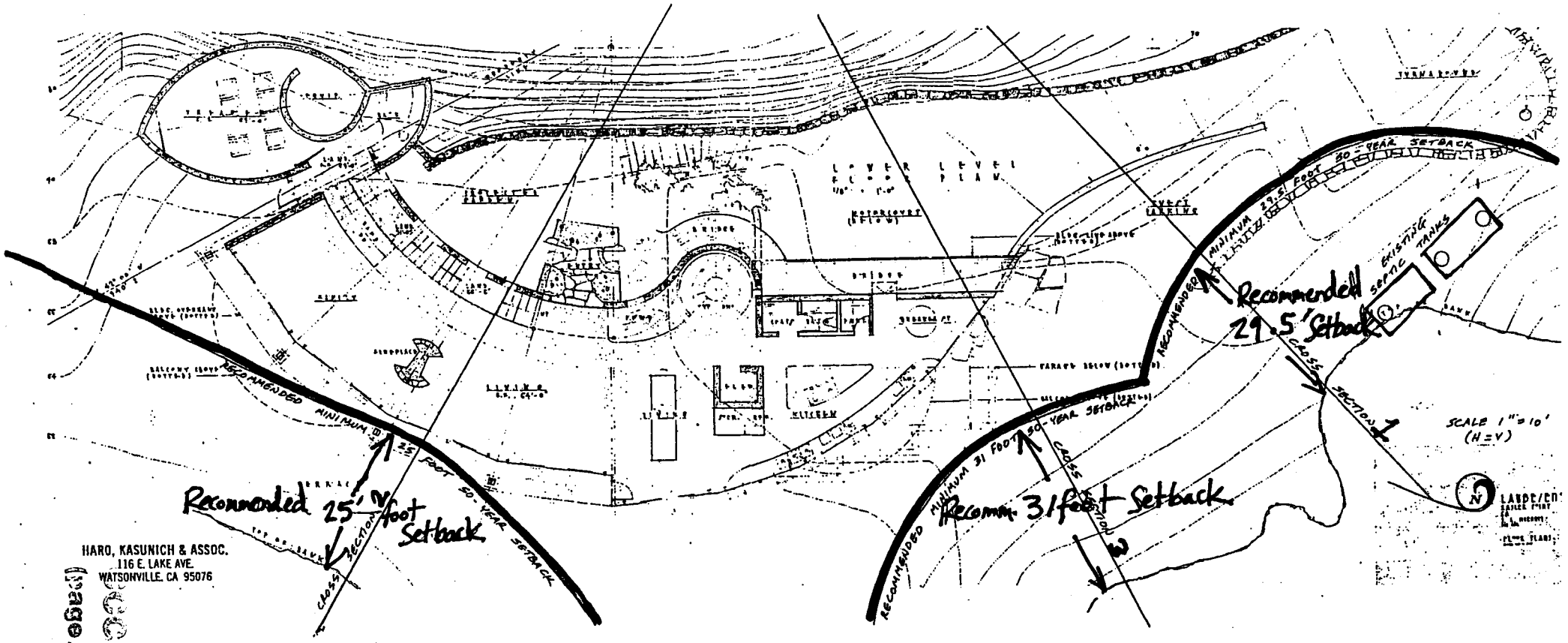
HARO, KASUNICH AND ASSOCIATES, INC.

John E. Kasunich
G.E. 455

JEK/sq

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

CCC Exhibit 11
(page 3 of 4 pages)



HARO, KASUNICH & ASSOC.
116 E. LAKE AVE.
WATSONVILLE, CA 95076

Exhibit 11
(page 4 of 4 pages)

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

STAFF RECOMMENDATION

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

DECISION OF REGIONAL COMMISSION: Permit approved with conditions by Central Coast Regional Commission

PERMIT APPLICANT: Donald Sorensen

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

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

PUBLIC HEARING: Opened July 5, in Burlingame

STAFF NOTE:

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

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

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

CCC Exhibit 12
(page 1 of 10 pages)

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

1. Regional Commission Conditions. The applicant shall implement all conditions imposed by the Regional Commission as shown in Exhibit 2 except as they may be superceded by the conditions of this permit.

2. Landscaping. The applicant shall submit for the approval of the Executive Director of the Commission detailed irrigation and landscaping plans showing the stabilization and restoration of bluff areas proposed for such treatment in order to minimize erosion on this site.

3. Recording of Conditions. The applicant shall cause to be recorded with the County Recorder of the County of Monterey a document, the form and content of which have been approved by the Executive Director of the Commission, which will put any successor-in-interest on notice as to the conditions of this permit, as those conditions may be amended from time to time, so long as this permit is in effect.

III. Findings and Declarations

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

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

Section 30251 of the Coastal Act states that:

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

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

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

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

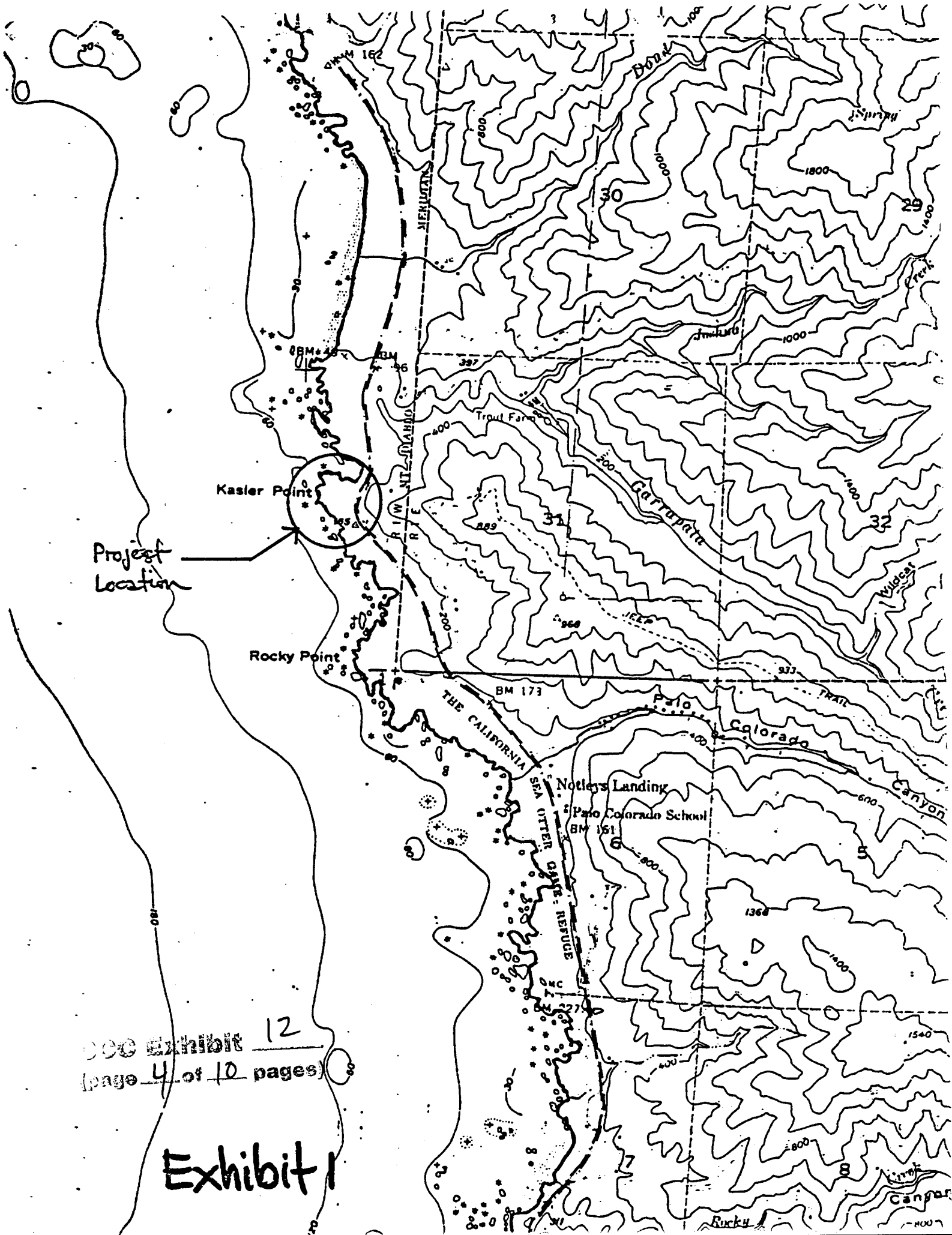
The cumulative effects of the development of every residential parcel presents problems with respect to the capacity of Highway 1. The subregional analysis of the Big Sur Coast (C.C.C. 2/7/77) found highway capacity to be constrained along a 30 mile section from Malpaso Creek, north of Garrapata Creek, to Big Sur Village. The analysis found that if recreational use were to increase (doubling over the next 20 years) with the priority of use given to recreational users, there would not be any remaining highway capacity to serve additional residential development.

The proposed project would consolidate two lots into one which would reduce the number of remaining vacant lots, thereby easing cumulative problems obviating the need to develop further planning options for these two parcels. The proposed consolidation would also set a precedent for development in the Big Sur Coast consistent with Section 30254 of the Coastal Act which states in part:

> Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal-dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

4. Public Access and Recreation. In addition to providing viewing opportunities, Kasler Point is currently used for public recreation despite fencing and signs prohibiting trespassing. The northern portion of the Point, as visible from the public overlook area, is used for rock fishing and is accessible by a well-trodden footpath from the highway to the seaward end of the Point. The Commission finds that the project, as conditioned (Exhibit 5), also provides a substantial public access easement over the subject parcels, noting that recreational use of Kasler Point must be constrained to preserve fragile vegetation and archaeologic resources, and to protect the public from dangerous cliffs. The proposed development, as conditioned, is consistent with Section 30211 of the Coastal Act.

5. Natural and Archaeological Resources. The existing vegetation on the project site is native species consisting of low shrubs and succulents specifically adapted to the coastal environment. The shoreline and offshore areas are rich in marine life. The ocean area off Kasler Point is included in the California Sea Otter State Fish and Game Refuge. An archaeological reconnaissance on January 29, 1977 by Mr. William Roop of Archaeological Resource Service revealed a potentially significant cultural resource site on Kasler Point. Construction of the proposed residence and driveway would not disturb the midden. The applicant has proposed to landscape using native plant materials in accord with conditions specified in Exhibit 2.



DOC Exhibit 12
(page 4 of 10 pages)

1. Compliance with Monterey County Special Permit PC-2687 (Resolution No. 76-616) shall be required, except where such compliance is precluded by the terms of this permit.

2. Permitted development shall be constructed in accordance with revised plans submitted July 22, 1977.

3. Prior to commencement of grading or construction, permittee shall demonstrate that Parcels C and B, being a portion of Lot 20, Rancho San Jose y Sur Chiquito, otherwise known and described as Assessor's Parcels #243-251-12 and #243-251-13, have been consolidated and recorded as a single parcel of land. Copy of document(s) showing such consolidation and recording shall be provided to Coastal Commission for affirmation.

4. Construction shall not commence until an easement for the protection of scenic and natural resources is effected on that portion of subject property lying within view of designated Kasler Point public vista area on State Highway Route 1, shown in Exhibit 5. The easement boundary shall be adjusted to include as much of the archaeologic site as possible, and to exclude the proposed driveway. Such easement shall be granted to an appropriate public agency or conservation foundation, and shall include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeologic and other scientific research purposes secured.

It is recognized that because of dangerous cliffs and fragile resources, unrestricted public access on easement would be contrary to public safety and resource protection needs. However, public access shall be allowed when and if a public agency is prepared to assume liability for such use, and to provide for management and supervision to the degree necessary to avoid damage to natural resources, to maintain privacy of permitted residence, and to prevent trespass on balance of parcel.

Visual access to the parcel from State Highway Route 1 shall be guaranteed; the terms of the agreement shall also preclude blockage of, or interference with public views through erection of any other types of structures or planting of trees.

The grantee for such easement and all provisions thereof, including designation of precise boundaries, shall be subject to advance written approval by the Executive Director of the Commission. The request for such approval shall be accompanied by parcel map showing location of easement boundary and existing fences.

5. A separate coastal development permit shall be required for any other future development activity within view of State Highway Route 1.

6. Should any sub-surface archaeologic features (such as described in archaeologic reconnaissance report of February 8, 1977, by William Roop) be unearthed during construction, work which could disturb the discovered evidence shall be temporarily suspended and the Coastal Commission office (408) 426-7390 contacted immediately. In such event, work in the discovery area shall be permitted to resume upon consent of either a Commission-authorized archaeologist or the Executive Director. Mitigation costs, if any, shall be negotiated by permittee and archaeologist, subject to approval by the Executive Director in event of disagreement.

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(page 5 of 10 pages)

Exhibit 2

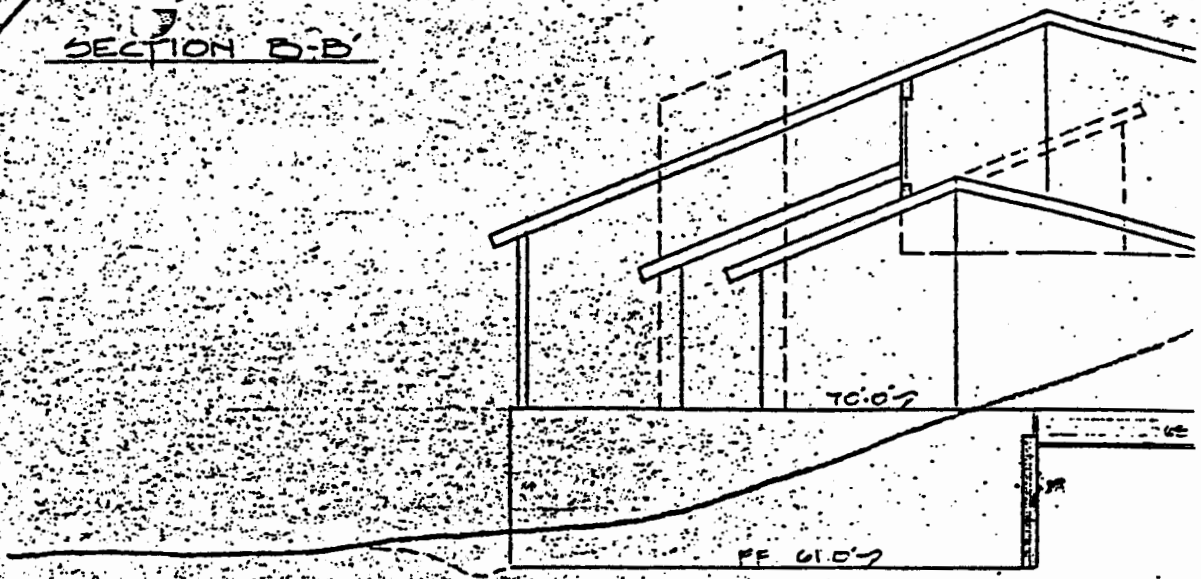
7. Prior to commencement of excavations, permittee shall submit for the Executive Director's review and approval a detailed grading, landscaping and revegetation plan. At a minimum, the plan shall specify procedures for erosion control and re-establishment of native plant cover; proposed landscaping species; and any provisions for vegetative screening around house. Natural vegetation shall not be disturbed except as necessary to complete the permitted development. Driveway design shall be adjusted to reflect conditions of Special Permit and to minimize impact on public views.

8. Excavated materials shall be carefully removed so that spoils are neither placed within or allowed to slide into that area seaward of permitted development.

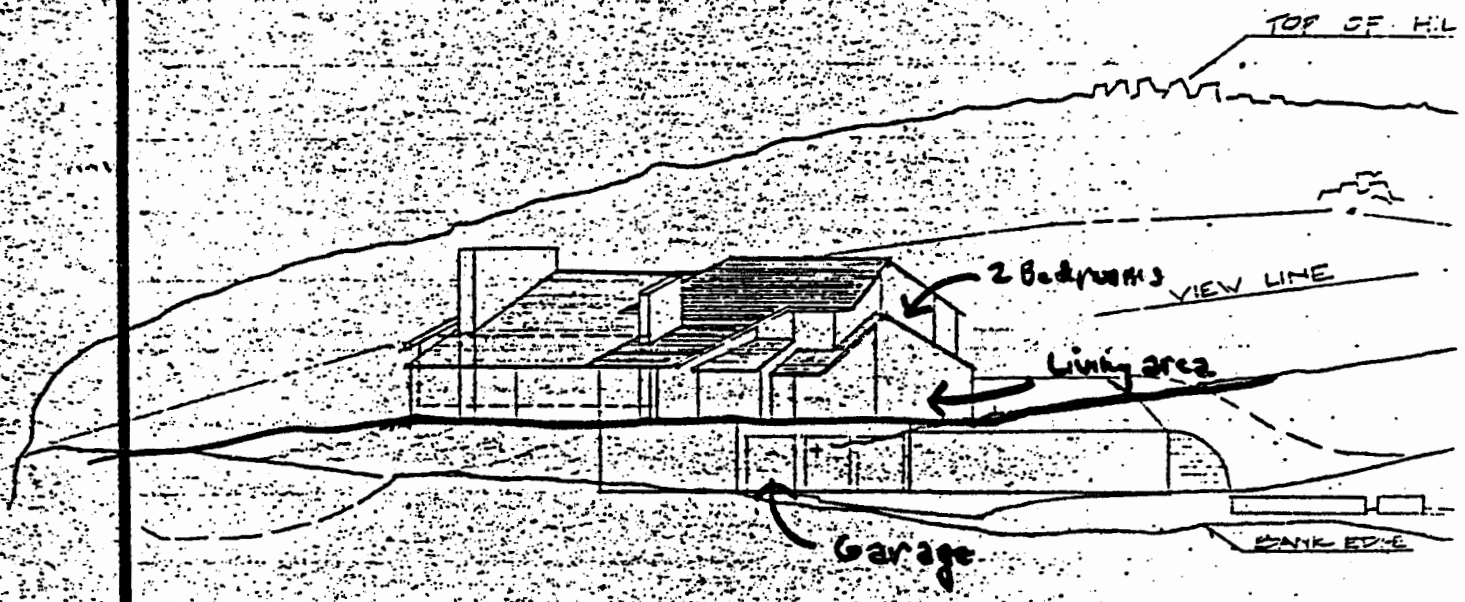
9. Exterior landscape lighting which is visible from State Highway Route 1 shall not be permitted.

Exhibit 2 (cont.)

SECTION B-B'



SECTION C-C'



SECTION D-D

SCALE 1/4"=20'-0"

Exhibit 3

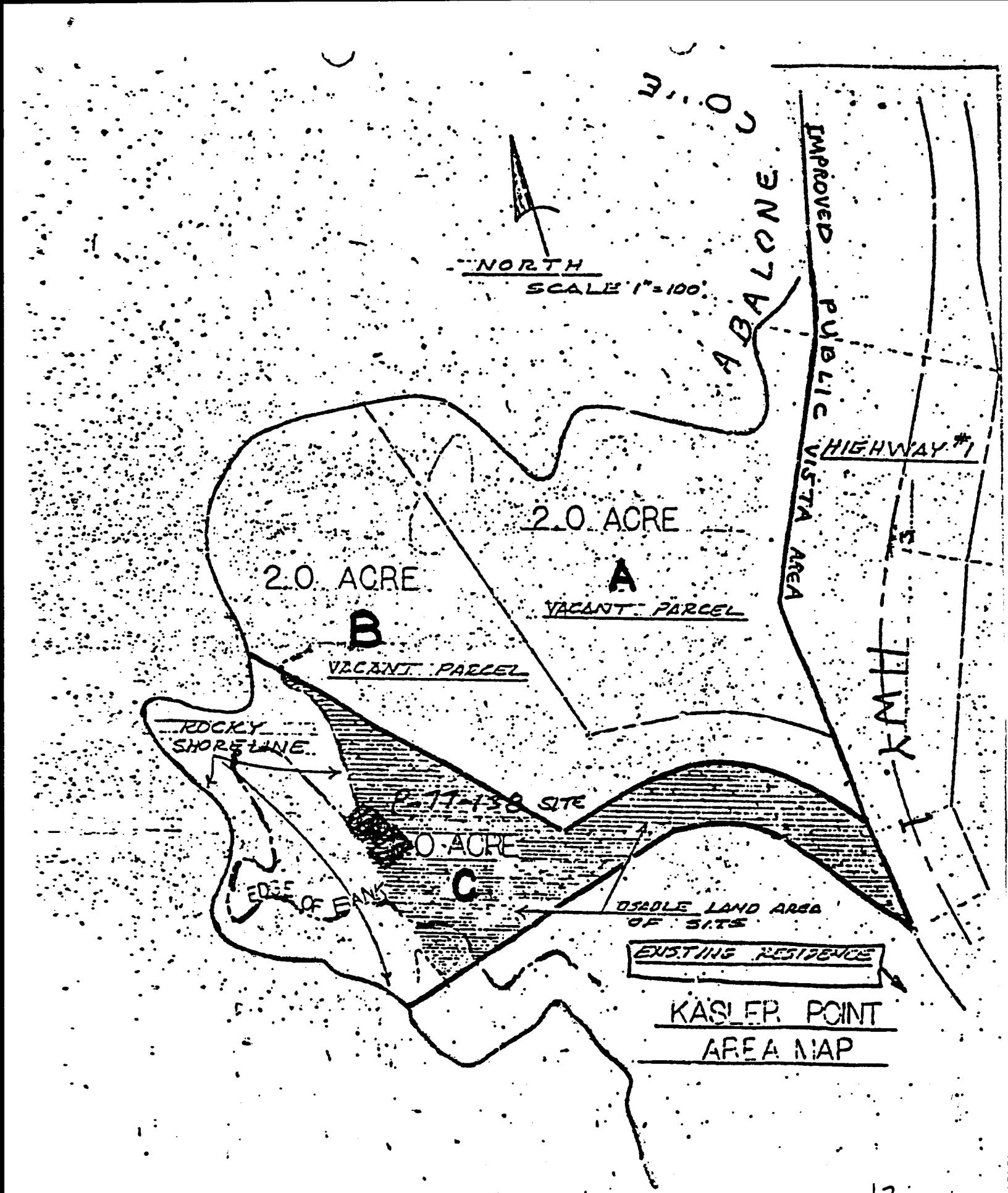


Exhibit 4

CCC Exhibit 12
(page 8 of 10 pages)

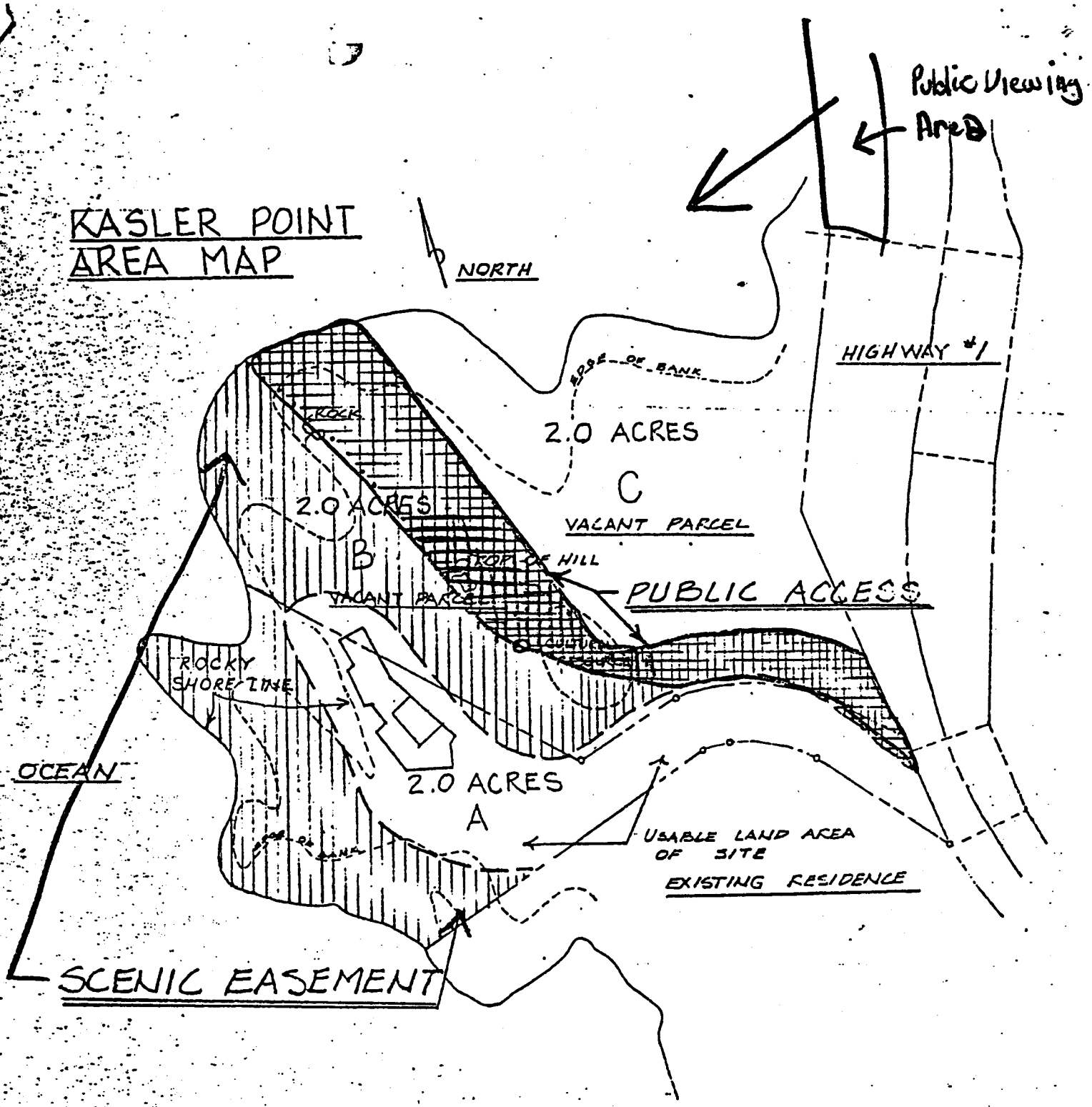


Exhibit 5

Richard Murray Associates
Landscape Architects
and Urban Planners

Post Office Box 5816
Carmel, California 93921
Phone (408) 624-5700

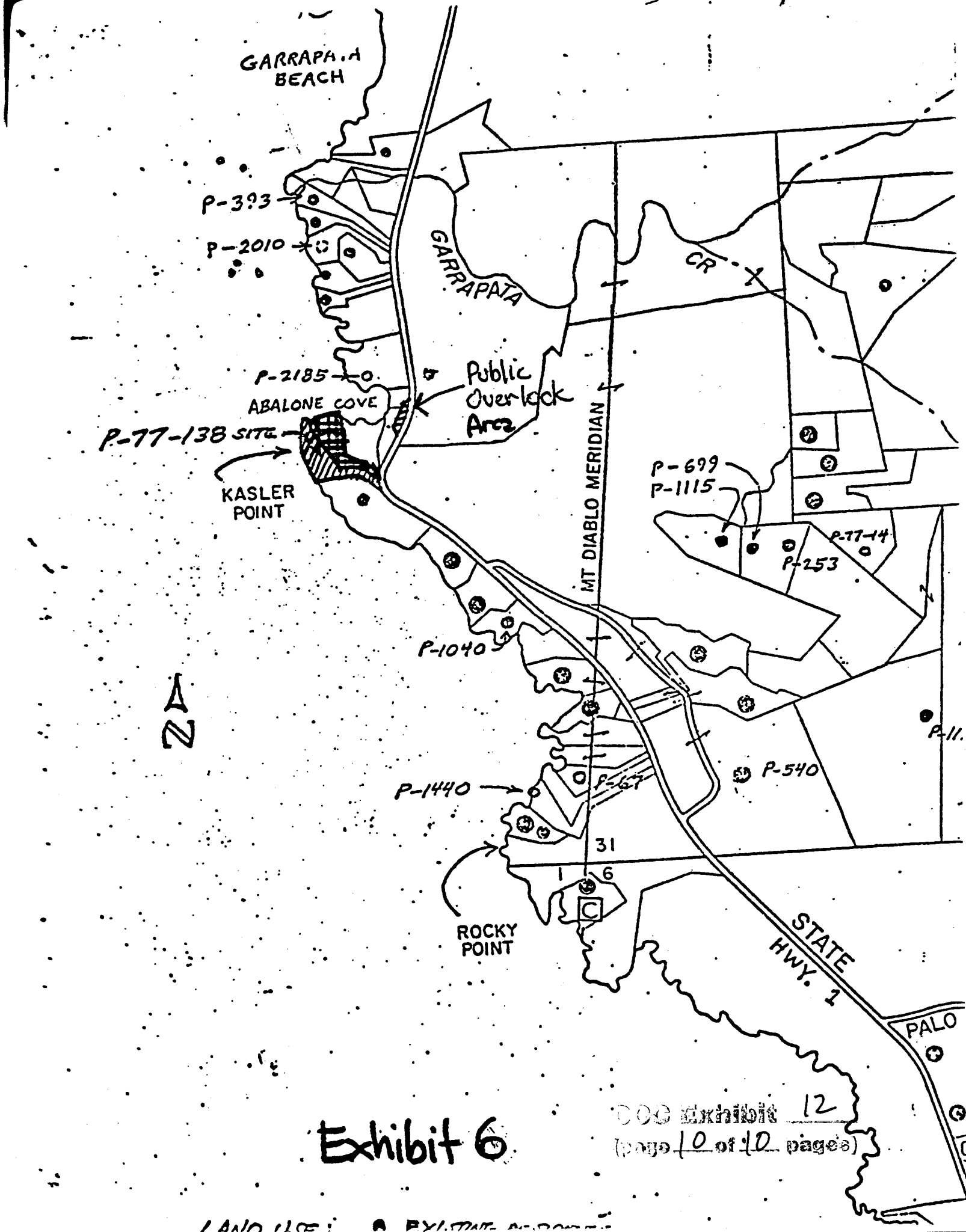


Exhibit 6

CCC Exhibit 12
(page 10 of 10 pages)