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Th16a

Filed:	3/29/2006
Commission approval:	11/16/2007
Staff:	Katie Morange
Staff report:	12/20/2007
Hearing date:	1/10/2008
Hearing item number:	Th16a

APPEAL STAFF REPORT - REVISED FINDINGS

Application number.....**A-3-MCO-06-018**

Applicant.....Steven Foster Trust (Mark Blum and Rick Zbur, Representatives)

Appellants.....Coastal Commissioners Mike Reilly and Mary Shallenberger

Local government.....Monterey County

Local decision.....Approval with conditions (Monterey County file number PLN040569).

Project location.....4855 Bixby Creek Road (Lot 7 of Rocky Creek Ranch, off of and southwesterly of Rocky Creek Road and Palo Colorado Road) in the Big Sur Coast area of Monterey County (APNs 418-132-005, 418-132-006, and 418-132-007).

Project description.....Construction of a new 3,975 square foot single-family residence and multiple accessory structures including a 3,200 square foot barn with solar panels, a 1,200 square foot studio ("Steven's studio"), a 1,150 square foot studio ("Gillian's studio"), a 425 square foot guesthouse, an 850 square foot caretaker's unit, a 225 square foot shed, and an 800 square foot garage; a swimming pool; five septic systems; a hookup to existing well; retaining walls; underground utilities, including an underground water tank; tree removal (14 coast live oaks, 4 canyon oaks, and one redwood); development within 100 feet of an environmentally sensitive habitat area (central maritime chaparral); and about 2,500 cubic yards grading (approximately 1,850 cubic yards of cut and 625 cubic yards of fill).

File Documents.....Monterey County Certified Local Coastal Program (LCP); Final Local Action Notice (FLAN) for Monterey County coastal development permit (CDP) PLN040569; Rocky Creek Ranch Lot Line Adjustment Draft Environmental Impact Report (April 1992); FLANs for Monterey County CDPs LL90032, LL90033, and LL88010 (Rothman).

Commissioners on prevailing side: Firestone, Blank, Burke, Clark, Gonzalez, Secord, Neely, Potter, Reilly, and Kruer

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Staff Note

On November 16, 2007, the Commission approved, with conditions, a coastal development permit for the project described above. The Commission adopted revised conditions at that time that provided for the siting of the development as proposed by the applicant, and found that the project would not result in a significant disruption of ESHA on the property. The findings have been revised to reflect this action. Deletions are shown with ~~strike-through~~, and additions with underlined text.

Staff Recommendation on Revised Findings

Staff recommends that the Commission adopt the following revised findings in support of its approval with conditions of a coastal development permit for the proposed development on November 16, 2007.

> **Motion.** I move that the Commission adopt the revised findings in support of the Commission's action on November 16, 2007 approving with conditions the development proposed under appeal number A-3-MCO-06-018 pursuant to the staff recommendation.
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> **Staff Recommendation of Adoption.** Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution, revised findings and conditions as set forth in this report. The motion requires a majority vote of the members from the prevailing side present at the November 16, 2007 hearing, with at least three of the prevailing members voting. Commissioners eligible to vote on the revised findings are Commissioners Firestone, Blank, Burke, Clark, Gonzalez, Secord, Neely, Potter, Reilly, and Kruer. If the motion fails, the revised findings are postponed to a later meeting.
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> **Resolution.** The Commission hereby adopts the findings and conditions 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 November 16, 2007 and accurately reflect reasons for it.

Staff Report Contents

Click on the link below to go to the exhibits.

III. List of Exhibits

Exhibit	Title
A	Regional Location Map
B	Project Site Plan and Vegetation Communities
C	Site Plan Details
D	~~ESHA Buffer and Allowable Development Envelope~~ Development Envelope of County Approved Project
E	Applicant Photos of Site from Bixby Bridge and Hurricane Point
F	Staff Photos of Site
G	Monterey County Final Local Action Notice (PLN040569)
H	Appeal of Commissioners Reilly and Shallenberger
I.a	Correspondence from Applicant's Biologist (August 8, 2006 and June 18, 2007)
I.b	Correspondence from Applicant's Biologist (July 30, 2007, July 27, 2007, and October 19, 2007)
J	Correspondence from Mr. Mike Vasey and Dr. Dean Taylor
K	Elkhorn Slough National Estuarine Research Reserve Coastal Training Program Proposed Definition of Maritime Chaparral, January 2005
L	Daily cloud frequency map (July 3 – September 20, 2000-2006)
M	Letter from the Carmel Fire Protection Associates, dated February 4, 2007
N	Monterey County Final Local Action Notice of the Rocky Creek Ranch Lot Line Adjustments (CDPs L90032, LL90033, and LL88010)
O	Correspondence from Applicant's Representative (Response to July 2007 Coastal Commission Staff Report, September 6, 2007 and Permit Precedent Analysis, October 19, 2007)
P	Commissioner Ex Parte Communications
P.1	Commissioner Ex Parte Communications (additional)
P.2	Commissioner Ex Parte Communications (additional)
Q	Correspondence from Dr. V. Thomas Parker and Mr. Eric Van Dyke
R	Coastal Commission staff memorandums (dated December 5, 2006 and May 7, 2007)
S	Correspondence from Applicant's Representative (Response to November 2007 Coastal Commission Staff Report, dated November 9, 2007)
S.1	Additional Correspondence from Applicant's Representatives (dated October 31, 2007, November 6, 2007, November 14, 2007, and November 15, 2007)
T	Resource Protection Plan

The Commission finds and declares as follows:

I. 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 Project Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Final Project Plans to the Executive Director for review and approval. The Final Project Plans shall be consistent with the following requirements:

   (a) Development Envelope. The Final Project Plans shall include a ~~revised~~ site plan that contains development within the allowable disturbance area as illustrated ~~in~~ on the Development Envelope for County Approved Project attached as Exhibit D. ~~(Development Envelope).~~ Development in this envelope may include all of the County-approved structures and must comply with all applicable setbacks and other Monterey County building code requirements. Existing clearings shall be used to the maximum

extent feasible in order to minimize tree removal. Unless authorized by the Commission through an amendment to this permit, development other than that shown on the approved Final Project Plans is prohibited, except for uses and development allowed pursuant to Special Conditions 2 and 4 of this permit. The Final Project Plans shall clearly identify and label the Development Envelope area in site plan view.

(b) 30-foot Fuel Modification Zone. Final Plans shall show a 30-foot wide Fuel Modification Zone around the outer edge of ~~the Development Envelope~~ each structure approved by the County as illustrated on attached Exhibit D, where fuel modification as necessary for fire safety may occur.

~~**(c) 100-Foot ESHA Buffer.** Final Plans shall show a 100-foot wide ESHA Buffer around the outer edge of the Development Envelope. No development may occur in the ESHA Buffer except for fuel modification in the Fuel Modification Zone, and invasive plant removal as described under Special Condition 4.~~

~~**(d)**~~ **(c) Exterior Design Elements**. All structures and other exterior elements, such as fencing, shall be subordinate to and blended into the environment. Fencing shall also be designed to allow for the passage of wildlife. All exterior finishes shall consist of muted, earthen tone colors and non-reflective materials to blend with the surrounding environment. Building walls shall be designed and surfaced to blend with the surroundings and to reduce their visual mass and minimize their visual prominence. Final plans shall include a color board and project elevations that identify the type and color of all finished materials.

~~**(e)**~~ **(d) Lighting.** 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. All light sources that could be visible in the critical viewshed are prohibited. Interior lighting shall be designed to limit illumination to the outside, and exterior lighting shall be limited to the minimum necessary to illuminate driveways, pathways, and entrances to structures in such a way as to ensure safety. The Permittee shall submit a lighting plan that shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. No lighting shall be located outside the Development Envelope provided for by Special Condition 1(a), except for limited, low-level lighting along the driveway as necessary to provide safe access and at the entrance (gate) for identification. The lighting plan shall be accompanied by evidence demonstrating such lighting to be consistent with all lighting requirements of this condition.

~~**(f)**~~ **(e) Landscaping.** The Permittee shall submit landscape and irrigation plans for the approved Development Envelope, prepared by a licensed professional ~~Landscape Architect~~, that identify all plant materials (size, species, and quantity), and proposed maintenance measures for all landscape areas. All plant materials shall be selected to be

complimentary with the mix of native habitats in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. The plan shall assure that no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California are used or allowed to persist on the site. The plan shall also ensure that no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government are used.

The Permittee shall undertake development in accordance with the approved Final Project Plans. Any proposed changes to the approved Final Project Plans shall be reported to the Executive Director. No changes to the approved Final Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. Habitat and Viewshed Protection Area. ~~In order to ensure long-term protection of central maritime chaparral and redwood forest habitat on the project site, as well as protection of the critical viewshed, a~~All portions of the property located outside the allowable Development Envelope ~~depicted by~~ shown on Exhibit D shall be designated for habitat and viewshed protection. No development (including removal of major vegetation) as defined in Section 30106 of the Coastal Act shall occur within this habitat and viewshed protection area, as described and depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, except for:

A. Invasive plant removal conducted in accordance with the Invasive Plant Removal Plan (see special condition 4) in the Fuel Modification Zone~~ESHA Buffer area~~ (see Special Conditions 1 and 4~~and Exhibit D~~).

B. Development and maintenance of a driveway within the existing driveway configuration.

C. Fuel modification within the Fuel Modification Zone (see Special Condition 1~~and Exhibit D~~) as necessary for fire safety, which does not constitute development as defined in Section 30106 of the Coastal Act.

D. Installation and maintenance of necessary utility connections. Septic system facilities shall be located within the authorized Development Envelope unless an alternative location is determined to be necessary by the County Environmental Health Division and authorized by the Executive Director.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE THIS PERMIT (NOI), the Permittee shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an exhibit to the NOI, two copies of a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described in Special Condition 1(a)~~,~~ and (b), ~~and (c)~~ and as depicted on Exhibit D.

3. Revised Forest Management Plan. Tree removal shall be avoided, and where unavoidable, limited as much as possible. If any trees are proposed for removal under the Final Project Plans required by Special Condition 1, that are not indicated in the "Forest Management Plan for Monterey County APN 418-132-007" (prepared by Staub Forestry and Environmental Consulting, dated November 2004), then PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a new forest management plan or amendment to the existing "Forest Management Plan for Monterey County APN 418-132-007" ~~(prepared by Staub Forestry and Environmental Consulting, dated November 2004)~~ to the Executive Director for review and approval. . The revised Forest Management Plan shall be prepared consistent with the requirements established by Sections 20.145.060.B and C of the LCP.

4. Invasive Plant Removal Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of an invasive plant removal plan, prepared by a qualified biologist, to the Executive Director for review and approval. The plan shall specify methods for removing, controlling, and preventing the introduction of invasive exotic plants on the property (such as French broom, gorse, cape ivy, pampas grass, kikuyu grass, acacia, etc.) within the Development Envelope and Fuel Modification Zone ~~ESHA Buffer areas (see Special Condition 1 and Exhibit D) for the life of the approved project.~~

5. Construction Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall identify all measures to be taken to protect surrounding habitats and water quality during construction. At a minimum, the Plan shall include:

   (a) Construction Fencing. The Construction Plan shall clearly delineate the location where all construction and grading activities will take place, including construction materials storage, stockpile, and staging areas, where all such areas shall be contained in the ~~approved~~Development Envelope, as shown on Exhibit D~~(Exhibit D)~~. Approved construction areas shall by delineated on-site by temporary construction fencing and markers. The construction zone fencing shall be maintained in good working order for the duration of the construction. No construction activities shall take place, and no equipment or material storage shall occur, outside of the established construction zone. CONSTRUCTION SHALL NOT COMMENCE UNTIL ALL CONSTRUCTION ZONE FENCING IS COMPLETELY INSTALLED AND OPERATIONAL.

   (b) Drainage, Erosion, and Sedimentation Control. No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Executive Director. The construction plan shall identify the type and location of all erosion control/water quality best management practices to be implemented during construction. Silt fences, or equivalent apparatus, shall be installed at the perimeter of the

construction zone to prevent construction-related runoff, sediment, and/or debris from entering into surrounding habitat areas and drainages. Provisions shall be made for stockpiling and covering any graded soils, equipment, and/or materials. The construction plan shall also include a wet weather contingency plan that clearly states what actions will be taken in the event of precipitation events to avoid impacts due to runoff emanating and/or discharging from the construction zone. ALL EROSION, SEDIMENT, AND OTHER WATER QUALITY CONTROLS SHALL BE IN PLACE PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AS WELL AS AT THE END OF EACH DAY DURING CONSTRUCTION.

(c) Good Housekeeping. The construction site shall maintain good construction site housekeeping controls and procedures, including: (1) Dry cleanup methods shall be used whenever possible. If water cleanup methods are necessary, all runoff shall be collected to settle out sediments and/or pollutants prior to discharge from the site. All dewatering operations shall include filtration mechanisms adequate to ensure water quality protection. (2) 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 shall not be allowed. In any event, such wash water shall not be allowed to enter any natural drainage or existing drain inlets. (3) Concrete rinsates shall be collected and properly disposed of off-site and they shall not be allowed to enter any natural drainage areas or existing drain inlets. and (4) Good construction housekeeping shall 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 soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; etc.).

(d) Work Schedule. All work shall take place during daylight hours with the following exception: any construction that occurs after sunset shall be limited to interior (of structures) work and shall be subject to the same lighting parameters as established for the completed structure by Special Condition 1.

All requirements of this condition above shall be enforceable components of this coastal development permit. All requirements of this condition shall be specified as plan notes on the Construction Plan, and the plan notes shall indicate that they shall apply for the duration of construction of the approved development. The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

6. Post Construction Drainage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**,** the Permittee shall submit to the Executive Director for review

and approval two copies of a drainage plan that identifies the specific type, design, and location of all drainage infrastructure and Best Management Practices (BMPs) necessary to ensure that post construction drainage from the project, including runoff from the roof and other impervious surfaces, does not result in erosion, sedimentation, or the degradation of coastal water quality and habitat areas outside of the Development Envelope area. The Permittee shall be responsible for implementing and maintaining the drainage facilities for the life of the project.

7. Assumption of Risk, Waiver of Liability, and Indemnity Agreement. The Permittee acknowledges and agrees, on behalf of himself and all successors and assigns: (i) that the site is subject to extreme hazards from wildfire and geologic instability; (ii) to assume the risks to the Permittee 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; (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; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowners.

8. Deed Restrictions. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded 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 (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and 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 Permittee's entire parcel. 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.

The Permittee shall also record separate deed restrictions for the following structures: ~~each~~ studio and barn (requiring compliance with Monterey County LCP ("LCP") Section 20.145.140.B.5.c); caretaker unit (requiring compliance with LCP Section 20.145.140.B.9.b); guesthouse (requiring compliance with LCP Section 20.145.140.B.9.d). ~~and barn (if these structures remain part of the revised development, or any similar development if allowed by the approved Final Plans) that prohibit habitation of these structures in accordance with the~~

~~Big Sur segment of the Monterey County LCP ("LCP"). (Sections 20.145.140.B.5.c, 20.145.140.B.4.b, and 20.145.140.B.4.d)~~

9. Resource Protection Plan. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Applicant shall submit for Executive Director review and approval a Resource Protection Plan, in substantially the same form as the Resource Protection Plan attached as Exhibit T. The Applicant shall undertake construction and use and maintenance of the property in accordance with the Resource Protection Plan. Any proposed changes to the approved Resource Protection Plan shall be reported to the Executive Director. No material changes to the Resource Protection Plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. ~~9.~~ County Conditions. All other conditions of Monterey County's local approval (Monterey County file number PLN040569, Planning Commission resolution number 06012) pursuant to an authority other than the Coastal Act continue to apply. The Permittee shall provide evidence of compliance with the County conditions to the Executive Director at the time period for compliance indicated by the condition. If the County no longer has authority to sign-off any of these conditions, review and approval by the Executive Director is required.

II. Coastal Development Permit Findings

A. Project Location, Background, and Description

The project site is located at 4855 Bixby Creek Road (APN 418-132-007) on the ridge that divides Rocky Creek from Palo Colorado Canyon in a 10-lot subdivision known as Rocky Creek Ranch on the Big Sur Coast area of Monterey County (see Exhibit A). The project also involves includes some water utility development on APNs 418-132-006 and 418-132-005, located adjacent to the subject parcel to the east.

Access to the project site is provided via Bixby Creek Road, a private road that extends to the site from Palo Colorado Road. The 78-acre parcel is undeveloped except for a temporary yurt structure and an existing access road that traverses through the northern portion of the site. The parcel is generally bordered by undeveloped land on all sides, although the parcel to the east contains a single family residence (located on another of the Rocky Creek Ranch sites). The project site ranges in elevation from 800 to approximately 1,400 feet, with existing slopes generally between 3% and 25%. The steepest slopes are located on the lower (southern) portions of the parcel where no development is proposed.

The proposed project involves construction of a new 3,975 square foot single-family residence and accessory structures (including a 3,200 square foot barn with solar panels, a 1,200 square

foot studio (referred to as "Steven's studio"), a 1,150 square foot studio (referred to as "Gillian's studio"), a 425 square foot guesthouse, an 850 square foot caretaker's unit, a 225 square foot shed, and an 800 square foot garage); a swimming pool; five septic systems; several retaining walls; tree removal (14 coast live oaks, 4 canyon oaks, and one redwood); and roughly 2,500 cubic yards of associated grading (approximately 1,850 cubic yards of cut and 625 cubic yards of fill) on approximately 10 to15 acres on the northern portion of the property (see Exhibits B and C). The project also involves a hookup to existing well on APN 418-132-005 and various underground utilities, including an underground water tank and pumping plant on APN 418-132-006.

Rocky Creek Ranch Lot Line Adjustment

The Applicant's lot (and the surrounding nine lots that together with the Applicant's lot make up the Rocky Creek Ranch subdivision), was recognized in 1992 when Monterey County approved three coastal development permits for three lot line adjustments (LLAs) that resulted in the current location and configuration of the subject parcel (County CDPs LL90032, LL90033, and LL88010 (Rothman), see Exhibit N). The 1992 CDPs established the current lot configuration, but it did not approve any subsequent development. In evaluating the 1992 CDP for LCP consistency, the County reviewed potential development envelopes for each of the ten lots as a means of ensuring that the resultant lots would not lead to resource damage should they be developed residentially. This analysis was not meant to be at a project review level, but rather was used at the gross scale screen necessary for reviewing the lot line adjustment. Ultimately, the County did not explicitly approve the development envelopes as part of the lot line adjustment CDP.[1] Rather, the County's 1992 approval placed off limit to development those areas where it was clear that future development would be obviously be visible within the Big Sur critical viewshed (and such area was restricted by a recorded scenic easement), and was clearly premised on subsequent individual coastal permit reviews, such as this, for ensuring that future development was appropriately sited and designed in light of resource constraints.[2]

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[1] Monterey County often explicitly approves specific building envelopes within new or adjusted parcels in conjunction with the approval of CDPs for subdivision or lot line adjustments as a means of ensuring protection of ESHA and visual resources, among other resources, if and when CDPs for development within the new lot configuration are subsequently pursued. In cases when explicit building envelopes are delineated as part of such an approval, CDP findings and conditions will typically explicitly state as much (examples include Monterey County CDPs PC96036 (Gorman), PLN980152 (Bradshaw), and PLN000260 (Mayr)). Conversely, in cases when building envelopes are not explicitly approved in conjunction with subdivision or lot line adjustment CDPs, the findings and conditions are either silent regarding potential future building envelopes or developable area, or they are clear that any envelopes considered are "potential," "proposed" or "theoretical" (examples include Monterey County CDPs PLN060189 (Burke) and PLN050722 (Doud)).

[2] The building envelopes used for purposes of the 1992 CDP analysis are not binding on Monterey County or the Coastal Commission in the evaluation of subsequent development proposals on the new or adjusted parcels. Thus, although the property boundaries at issue in this case were created by the 1992 LLA, and a building envelope was analyzed at a gross scale at that time, no specific areas of the property have been authorized for physical development by a coastal development permit. It is clear from the County's 1992 approval that subsequent individual and finer scale reviews would be necessary, including requirements for new staking and flagging (FEIR Viewshed Section), and for sensitive species surveys (FEIR Biotic Resources Section).

B. LCP Consistency Findings

1. Environmentally Sensitive Habitat Areas (ESHA)/Tree Removal

a. Applicable LCP Policies

The Big Sur Coast segment of the Monterey County LCP, including both LUP and IP components, strongly protects ESHA, and strictly limits tree removal. LCP policies state:

> ***Section 20.145.020.EE: ESHA Definition***
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> *Environmentally sensitive habitats are areas in which plant or animal life or their habitats are rare or particularly valuable because of their special nature or role in an ecosystem. Environmentally sensitive habitats are also areas susceptible to disturbance or degradation by human activities and developments. Examples are riparian corridors and Areas of Special Biological Significance identified by the State Water Resources Control Board; rare and endangered species habitat; all coastal wetlands and lagoons; all marine wildlife haul-out, breeding and nesting areas; education, research and wildlife reserves, including all tideland portions of the California Sea Otter State Fish and Game Refuge; nearshore reefs; tidepools; sea caves; islets and offshore rocks; kelp beds; indigenous dune plant habitats; Monarch butterfly mass overwintering sites; and wilderness and primitive areas. The California Coastal Act limits uses to those which are dependent on such resources; examples include nature education and research, hunting, fishing, and aquaculture. (Ref. LUP Section 3.3)*
>
> ***ESHA Policies***
>
> ***LUP 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.*
>
> ***LUP Policy 3.3.2.1.*** *Development, including vegetation removal, excavation, grading, filling, 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.*
>
> ***LUP Policy 3.3.2.2.*** *Where private or public development is proposed, in documented or expected locations of environmentally sensitive habitats, field surveys by qualified individuals or agencies shall be made in order to determine precise locations of the habitat and to recommend mitigating measures to ensure its protection.*

LUP Policy 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.*

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

LUP Policy 3.3.2.6. *To protect environmentally sensitive habitats and the high wildlife values associated with large areas of undisturbed habitat, the County shall retain significant and, where possible, continuous areas of undisturbed land in open space use. To this end, parcels of land in sensitive habitat areas shall be kept as large as possible, and if structures are permitted, they shall be clustered in the least environmentally sensitive areas.*

LUP Policy 3.3.2.7. *Land uses adjacent to environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent significant habitat impacts, and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the adjoining habitat.*

LUP Policy 3.3.2.8. *New development adjacent to environmentally sensitive habitat areas shall be allowed only at densities compatible with the protection and maintenance of the adjoining resources. New subdivisions shall be approved only where potential impacts to environmentally sensitive habitats from development of proposed parcels can be avoided.*

LUP Policy 3.3.2.9. *The County shall require the use of appropriate native species in proposed landscaping.*

LUP Policy 3.3.3.A.7. *Land uses in areas where natural grassland is found shall be compatible with the maintenance of the habitat. Development shall be sited and designed to avoid disturbance or destruction of grasslands. Compatible uses include managed grazing and low-intensity recreational and residential uses.*

LUP Policy 3.3.3.A.8. *Residential development shall be sited and designed to have minimum impacts on redwood trees from soil compaction and other disturbances to tree roots. With similar considerations, recreation should be encouraged as an appropriate use for redwood forests.*

LUP Policy 3.3.3.A.10. *Monterey County encourages residents and public agencies to undertake restoration of Big Sur's natural environment by removal of exotic plants such as Scotch and French Broom, Eucalyptus, Kikiyu grass, Vinca, Pampas grass, Gorse, and other non-native invasive species providing such removal does not increase potential erosion problems.*

IP Section 20.145.040.B.1. *All development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the environmentally sensitive habitat areas if it has been determined through the biological survey prepared for the project that the development's impact cannot be reduced to a level at which the long-term maintenance of the habitat is assured, (i.e. to an insignificant level). To approve any development within an environmentally sensitive habitat area, the decision making body must find that the disruption of such habitat caused by the development would not be significant. (Ref. Policy 3.3.2.1)*

IP Section 20.145.040.B.2. *Deed restrictions or conservation easement dedications over environmentally sensitive habitat areas shall be required as a condition of approval for any development proposed on parcels containing environmentally sensitive habitats. Where the proposed project is to occur on an already developed parcel, restrictions or easement dedications shall still be required. Easements and deed restrictions shall be required according to the provisions of Section 20.142.130. (Ref. Policy 3.3.2.3)*

IP Section 20.145.040.B.3. *Removal of indigenous vegetation and land disturbance, such as grading, excavation, paving, and fill, on parcels containing environmentally sensitive habitats shall be limited to that necessary for the structural improvements and driveway access. Modifications to the proposal shall be made for siting, location, design, bulk, vegetation removal, and grading where such modifications will reduce impacts to the habitat. (Ref. Policy 3.3.2.4)*

IP Section 20.145.040.B.4. *Development on parcels containing or within 100 feet of environmentally sensitive habitats, as identified on the current Big Sur Coast Environmentally Sensitive Habitat resource map, other resource information, or planner's on-site investigation, shall not be permitted to adversely impact the habitat's long-term maintenance, as determined through the biological survey prepared for the project. Proposals shall be modified for location, bulk, size, design, grading vegetation removal, and/or other methods where such modifications will reduce impacts to an insignificant level and assure the habitat's long-term maintenance. Also, the recommended mitigation measures of the biological survey will be considered and made conditions of project approval. (Ref. Policy 3.3.2.4, Policy 3.3.2.7)*

IP Section 20.145.040.B.5. *New land uses and new subdivisions on parcels within 100 feet of environmentally sensitive habitats, as identified on the current Big Sur Environmentally Sensitive Habitat resource map, other documented resource information, or through the biological survey process shall not be permitted where they*

will adversely impact the habitat's long term maintenance, either on a project or cumulative basis. As such, a project shall only be approved where sufficient conditions of approval are available, such as for siting, location, design, size, and design which will mitigate adverse impacts to and allow for the long-term maintenance of the habitat, as determined through the biological survey. Also, a project shall only be approved where the decision-making body makes a finding that the project will not set a precedent for continued land development which, on a cumulative basis, could degrade the habitat. (Ref. Policy 3.3.2.7 and 3.3.2.8)

IP Section 20.145.040.C.1.g. *Development and land use activities in areas of natural grassland shall not be permitted to adversely impact the long-term maintenance of the habitat, as determined through the biological survey prepared for the project. As such, allowable uses in natural grassland areas shall include managed grazing, low-intensity recreational, and residential uses. Conditions of approval shall be applied and development modified as necessary, including for design, siting, location, size, density, and intensity of use, to reduce impacts to and assure the long-term maintenance of the habitat. Conditions of approval shall include recommendations contained in the biological survey prepared for the project. (Ref. Policy 3.3.A.7)*

IP Section 20.145.040.C.1.h. *Residential development and recreational uses shall minimize impacts to redwood trees, as determined by the biological survey prepared for the project. Where development is to occur within or adjacent to, or has potential to impact, redwood forest or redwood trees, a biological survey shall be prepared the project in accordance with Section 20.145.040.A. The survey shall include an assessment of the impacts on the trees from soil compaction and other soil and root disturbances. Conditions of approval, and project modifications, shall be required as necessary to minimize impacts to redwood trees. (Ref. Policy 3.3.3.A.8)*

Tree Removal Policies

LUP Policy 3.5.2.2. *All cutting or removal of trees shall be in keeping with the broad resource protection objectives of this plan. Specific policies, criteria, and standards of other sections of this plan shall govern both commercial and non-commercial tree removal.*

LUP Policy 3.5.2.4. *Landmark trees of all species shall be protected in perpetuity as significant features of Big Sur's natural heritage. The California Department of Forestry, scientists from research institutions, and landowners should cooperate in the protection and enhancement of these resources and their supporting habitat. Landmark trees shall be defined as visually significant, historically significant, exemplary of its species, or more than 1000 years old.*

LUP Policy 3.3.3.A.10. *Monterey County encourages residents and public agencies to undertake restoration of Big Sur's natural environment by removal of exotic plants such*

as Scotch and French Broom, Eucalyptus, Kikiyu grass, Vinca, Pampas grass, Gorse, and other non-native invasive species providing such removal does not increase potential erosion problems.

IP Section 20.145.060.B.1. *A Forest Management Plan will be required for the following:*

a. tree removal requiring a Coastal Development Permit; and

b. tree removal, regardless of tree size, type, or amount, proposed as part of a development requiring a Coastal Development Permit.

IP Section 20.145.060.C.1. *An amended Forest Management Plan will be required when:*

a. a Forest Management Plan for the parcel has been previously approved by the Coastal Commission and/or the Monterey County Director of Planning; and

b. the proposed tree removal requiring a coastal development permit, or reviewed as part of a development requiring a coastal development permit, has not been shown in the previously approved Forest Management Plan.

IP Section 20.145.060.D.1. *Landmark trees of all species shall not be permitted to be removed. A landmark tree is one which is 24 inches or more in diameter when measured at breast height, or a tree which is visually significant, historically significant, exemplary of its species or more than 1,000 years old. An exception may be granted by the decision-making body for removal of a landmark tree within the public right-of-way or area to be purchased for the right-of-way where no feasible and prudent alternatives to such removal are available, subject to obtaining a coastal development permit.*

An exception may be granted by the decision-making body for removal of a tree that is 24 inches or greater in diameter (measured at breast height) and not also visually or historically significant, exemplary of its species or more than 1000 years old, provided that a finding may be made that no alternatives to development (such as resiting, relocation, or reduction in development area) exists whereby the tree removal can be avoided (Ref. Policy 3.5.2.4).

IP Section 20.145.060.D.2. *Removal of any trees which would result in the exposure of structures in the critical viewshed shall not be permitted, subject to the provisions of Section 20.145.030.A. A condition of project approval shall be that the applicant grant a scenic easement to the County over existing vegetated areas without which the approved development would be located in the critical viewshed. The easement shall be required in accordance with the provisions of Section 20.142.130.*

IP Section 20.145.060.D.3. *Removal of native trees shall be limited to that which is*

necessary for the proposed development and/or justified in the Forest Management Plan as being necessary to improve unhealthy forest conditions. Proposed development shall be modified for siting, location, size, bulk, and/or design where such modifications will result in less removal of healthy trees in a healthy forest condition or as otherwise meeting the objectives of the forest management plan.

***IP Section 20.145.060.D.4**. Removal of native trees other than directly necessary for the proposed development shall be limited to that required for the overall health and long-term maintenance of the forest, as verified in the Forest Management Plan.*

***IP Section 20.145.060.D.6.** Native trees to be removed which are 12 inches or more in diameter, when measured at breast height shall be replaced on the parcel. Replacement shall be at a rate of one tree of the same variety for each tree removed, except where demonstrated in the Forest Management Plan or Amended Plan that this would result in an overcrowded, unhealthy forest environment.*

b. ESHA Identification

To protect ESHA consistent with the LCP, ESHA within or adjacent to a development site must be accurately identified. As discussed below, the Big Sur LCP defines ESHA consistent with the Coastal Act, and defines maritime chaparral as a unique type of chaparral. It also identifies redwood forest as ESHA. In this case, the Commission finds that the chaparral vegetation on the property is central maritime chaparral, and that this maritime chaparral is ESHA. There is also redwood forest ESHA on the property.

The proposed development would be located in various areas of the parcel, and within several different plant communities. The Rocky Creek Ranch Biotic Assessment (prepared by The Habitat Restoration Group, November 14, 1991), the Rocky Creek Ranch Final Environmental Impact Report (Denise Duffy and Associates, adopted by Monterey County on October 29, 1992), the Foster property preliminary biological report (prepared by Jeff Norman, November 22, 2004), and subsequent field surveys (prepared by Jud Vandevere, March - July 2005, and September 2005) describe and document these plant communities, as generally depicted in Exhibit B. Exhibit D illustrates the most recent delineation of central maritime chaparral in the area of proposed development on the site as provided by the Applicant, based on consultation with the Commission's biologist about how to identify central maritime chaparral.

The 78-acre parcel, which ranges in elevation from 800 feet in the south to 1,400 feet in the north, contains a mix of largely undisturbed plant communities that include coastal sage scrub, northern coastal scrub, central maritime chaparral, redwood forest, mixed evergreen forest, and coast range grassland. The different vegetation types reflect changes in elevation, orientation and exposure, and soil types that occur on the property. Most of the parcel is situated on south facing slopes, with the northern portion of the property extending up to the ridgeline and back down the north/northeast facing slope of the ridge. The parcel also includes various disturbed bare soil areas that have been cleared as access roads, trails, and lookouts and do not support any

evident plant communities. Historical aerial photo review suggests that these areas were cleared prior to adoption of the Coastal Act, and have been continued to be used and cleared since that time.

The lower half of the parcel is comprised of coastal sage scrub habitat that transitions abruptly to central maritime chaparral approximately halfway up the property. At the crest of the ridge, central maritime chaparral transitions to a closed canopy mixed evergreen forest dominated by coast live oaks and containing other tree species such as coast redwoods and madrones. Understory vegetation includes a mix of species with central maritime chaparral plants in some areas. Also present within the mixed evergreen forest is an area of pure redwood forest, dominated by coast redwoods. Continuing northward, on the backside of the ridge crest, the vegetation transitions from a mixed evergreen forest to coast range grassland with a pocket of northern coastal scrub. Non-native species dominate the grassland, although some native bunch grasses exist in limited amounts.

Under the LCP, central maritime chaparral and redwood forest qualify as ESHA for the reasons described below.

Characterization of Central Maritime Chaparral

Maritime chaparral habitats occur from San Diego to Sonoma County. The characteristic features of these habitats are well-drained, nutrient poor (oligotrophic), somewhat to highly acidic soils within the coastal fog zone; a suite of evergreen sclerophyllous shrubs in mature stands (including *Actostaphylos* and *Ceanothus* species); and the presence of one or more "indicator" species, which are indicative of maritime chaparral habitats because their distribution is restricted to only those regions with the requisite climate and soil. The actual community composition of maritime chaparral changes with latitude, with southern, central, and northern maritime chaparrals all having distinct characteristics. Within a geographical region, community composition is also variable on a smaller spatial scale. These habitats or community types are rare, are generally defined by individual shrub species that are themselves rare, and often support rare herbaceous species.

A Manual of California Vegetation (John O. Sawyer and Todd Keeler-Wolf, 1995) is a vegetation classification system widely used by biologists and resource agencies, including the California Department of Fish and Game, U.S. Forest Service, National Park Service, U.S. Geological Survey, and the California Coastal Commission to consistently identify and classify plant communities. This system classifies vegetation into either a set of series, unique stands, or habitats. In the *Manual*, central maritime chaparral is described under the woollyleaf manzanita series. The *Manual* states that many areas of chaparral on the outer central coast and montane central coast ranges have concentrations of local ceanothus and manzanita species, and that such areas are often called central maritime chaparral. The *Manual* also states that, in the woollyleaf manzanita series, forms of woollyleaf manzanita (*Actostaphylos tomentosa)* are a common component along with familiar members of chaparral and coastal scrub. The series in the *Manual* are generally defined using the dominance rule; however, the *Manual* states that a few of

the series, such as woollyleaf manzanita, are defined in terms of characteristic species rather than the dominant ones.

Coastal Commission staff discussed the issue of plant species presence versus dominance with Dr. Todd Keeler-Wolf, Senior Vegetation Ecologist with the California Department of Fish and Game and co-author of the *Manual*.[3] Dr. Keeler-Wolf indicated that in areas where the geographic location, soils, and climate are appropriate, the mere presence of indicator species is sufficient to identify a community as central maritime chaparral. He reiterated that one or more *Arctostaphylos* or *Ceanothus* indicator species characterizes central maritime chaparral shrublands. Similarly, Odion and Tyler point out that in most cases, single or small groups of manzanitas or other maritime chaparral dependent species alone would indicate maritime chaparral because of the potential for the existence of a persistent soil seed bank.[4]

The definition of maritime chaparral continues to be refined and this process is reflected in the efforts of the Elkhorn Slough National Estuarine Research Reserve Coastal Training Program (CTP). The CTP held a maritime chaparral workshop in 2003 that gathered maritime chaparral experts and resulted in a proposed maritime chaparral definition (see Exhibit K).[5] The proposed definition emphasizes the definition defined by the *Manual* which states:

> *"forms of woolly leaf manzanita dominant or important shrub with one or more rare ceanothus or manzanita in canopy; black sage, California buckwheat, California coffeeberry, California sagebrush, chamise, coyote brush, poison oak, and/or toyon may be present. Emergent birch leaf mountain-mahogany, and/or coast live oak may be present. Shrubs < 3 m; canopy continuous. Ground layer sparse."*

The proposed definition from the CTP workshop updates the *Manual* by relating that "there are several areas of maritime chaparral not dominated or even partially occupied by woollyleaf manzanita." The proposed definition further refines the *Manual* maritime chaparral definition by combining previous definitions and adding the following:

- Chaparral on ancient sand deposits at Ft. Ord, Nipomo, Vandenberg, Morro Bay (Griffin 1978).

- Northern Maritime Chaparral, Central Maritime Chaparral, Southern Maritime Chaparral: "within the zone of summer fog incursion" (Holland 1986).

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[3] Dr. Todd Keeler-Wolf, personal communication with Dr. Jonna Engel, Ecologist, California Coastal Commission, November 29, 2006.

[4] Odion, D. and C. Tyler. 2002. Are long fire-free periods needed to maintain the endangered, fire-recruiting shrub *Arctostaphylos morroensis* (Ericaceae)? Conservation Ecology 6 (2): 4. [online] URL: http://www.consecol.org/vol6/iss2/art4/

[5] Hayes, G. Editor. 2003. The ecology and conservation of California's maritime chaparral: Proposed definition of maritime chaparral. Available on the Elkhorn Slough Coastal Training Program website: http://www.elkhornsloughctp.org/uploads/1154106543Proposed%20Definition%20of%20Maritime%20Chaparral.pdf Coastal Training Program, Elkhorn Slough National Estuarine Research Reserve.

- Ecologically, maritime chaparral is separated from interior chaparral by having greater exposure to summer fog, humidity, and mild temperatures moderating drought pressures and, potentially leading to adaptations to different disturbance regimes (less frequent fire).

- It is important to recognize that, imposing inappropriate disturbance regimes can result in maritime chaparral being replaced by other community types. Inappropriately frequent or out of season fire or some types of land clearing can convert maritime chaparral to grassland or species-poor coastal scrub (Stylinski and Allen 1999, Odion and Tyler 2002). Infrequent disturbance or invasion of non-native species can temporarily change maritime chaparral to woodland or coastal scrub communities, but in such cases, seed bank remains awaiting fire or clearing (Van Dyke and Holl 2001). Delineation of maritime chaparral, therefore, should include analysis of historical air photos to determine prior extent of the community.

Recently, on June 12, 2007, the CTP again gathered maritime chaparral experts for a workshop whose purpose was to review and update the definition of maritime chaparral and discuss methods for delineating maritime chaparral. Presentations by Dr. Keeler-Wolf, Dr. Julie Evens, (Vegetation Ecologist at the California Native Plant Society, presenting for Dr. John O. Sawyer, Humboldt State, co-author of the *Manual*), and Mr. Mike Vasey (University of California Santa Cruz and California State University San Francisco) all included definitions of maritime chaparral. Dr. Keeler-Wolf emphasized the importance of nutrient poor soils stating that "The key to the presence of chaparral in the maritime zone is oligotrophic soils." Dr. Keeler-Wolf also stated that species composition shifts from stand to stand, and maritime chaparral is a convenient name for many distinctive combinations of species; it is not "one thing." Dr. Evens (presenting for Dr. Sawyer) stated that maritime chaparral:

- contains plants adapted to areas with cool, foggy summers, unlike interior chaparral types (where summers are not moderated by fog);

- has nutrient-poor soils and occurs on windward uplands and coastal lowlands; and

- includes *Arctostaphylos* or *Ceanothus* species, including any narrow endemics considered rare and endangered. These species characterize the habitat and may or may not be dominant.

Finally, Mr. Vasey provided the following characteristics of maritime chaparral:

- It occurs on oligotrophic (nutrient-poor) soils (sandstones, shales, granites, dunes, serpentines, etc.).

- It is influenced (more or less) by coastal climate and particularly summer fog (coastal cloud) patterns.

- It reflects dynamic vegetation mosaics shaped over time by wildfire regimes.
- It occurs as "meta-populations" in evolutionary time.

In communication with Coastal Commission staff since the July 2007 CTP workshop, Mr. Vasey indicated that the general consensus among the scientific and regulatory workshop participants was that the classification of maritime chaparral should involve more than the an analysis of the distribution of *Arctostaphylos* species (including both *A. tomentosa* and *A. crustacea*). He reiterated the above-described characteristics of maritime chaparral, and added that maritime chaparral also involves numerous local endemic (i.e. geographically rare) species, the rate of turnover of which ranks with other diverse temperate ecosystems such as the Fynbos of South Africa and the Kwongan of southwestern Australia. He further stated that the emerging view of maritime chaparral, therefore, is that it is a sclerophyllous (hard-leaved) evergreen shrubland occupying oligotrophic soils in a zone of summer fog influence, and that it is characterized by numerous endemic species (such as *Ceanothus cuneatus* var. *rigidus*) and other more common species characteristic of vegetation with typically higher rainfall (such as coast huckleberry (*Vaccinium ovatum*) and chinquapin (*Chrysolepis chrysolepis*). He also notes that numerous rare manzanitas that are obligate seeders also occur in this ecosystem (e.g., *A. hookeri, A. pajaroensis, A. hooveri,* and many more), and oftentimes these manzanitas are joined by obligate sprouters, such as *A. tomentosa* and *A. crustacea,* which are more widespread but highly coastal in their distribution (thus convenient species to use as indicators of maritime chaparral in the broad sense).[6]

Coastal Commission staff also discussed the characterization and definition of maritime chaparral with Dr. Dean Taylor, Research Associate at the Jepson Herbarium, University of California, Berkeley. Dr. Taylor stated that in the United States, nomenclature of plant communities has by professional practice been an informal process, and that, by contrast, in Europe, phytosociology has a formal identification process for vegetation communities, and a formal code governing nomenclatural matters. He stated that the syntaxonomy of maritime chaparral has not been formally studied, hence arguments as to the identity of a particular stand of chaparral as either falling within or without such a category is subject to the vacillation of personal opinion. He noted that maritime chaparral is a type of vegetation comprising perhaps several dozens of undescribed associations of the *Adenostomo fasciculati-Rhamnetalia crocea*, and for present purposes, should minimally include three factors: 1) fog as an ecologically differential source of supplemental summer moisture in the dry season, 2) the presence of endemic shrubs (characterized by Dr. Grey Hayes of the CTP, see Exhibit K) of *Arctostaphylos* and *Ceanothus*, and c) edaphic control (whereby substratum limits biomass of a site, generally nutrient poor marine terraces or other azonally unique edaphic controls). Finally, he noted that generally, by standard professional practice, he would employ the similarity rule to define maritime chaparral, that is: a particular stand of vegetation that is similar to maritime chaparral

[6] Mr. Mike Vasey, letter to Dr. Jonna Engel, Ecologist, California Coastal Commission staff, August 16, 2007.

sensu (Griffin (1978)) falls within the definition.[7]

Central Maritime Chaparral on the Foster Property

The biotic assessment prepared in 1991 and the Draft EIR for the Rocky Creek Ranch lot line adjustment described the chaparral on the site as northern mixed chaparral and identified shaggy-barked manzanita (*Actostaphylos tomentosa*) as the dominant plant species in this community. This assessment also noted that Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), a Federal species of concern and California Native Plant Society watch list (List 4.2) species, and chamise (*Adenostoma fasciculatum*) were present in this community. The Final EIR clarified that the habitat was in fact central maritime chaparral, not northern mixed chaparral.

The preliminary biological report prepared for the proposed project (prepared by Jeff Norman, November 2004) described this plant community as central maritime chaparral, dominated by Eastwood's manzanita (*Arctostaphylos glandulosa*). This report also identified shaggy-barked manzanita (*A. tomentosa*), chamise (*Adenostoma fasciculatum*), warty-leaved ceanothus (*Ceanothus papillosus* var. *papillosus*), Monterey ceanothus (*C. cuneatus* var. *rigidus*), the rare small-leaved lomatium (*Lomatium parvifolium* var. *parvifolium*) (a California Native Plant Society watch list (List 4.2) species), coast silk-tassel (*Garrya elliptica*), poison oak (*Toxicodendron diversilobum*), and yerba santa (*Eriodictyon californicum*) within this vegetation community. Subsequent botanical surveys conducted on the site in 2005 by Jud Vandevere found these and other plant species characteristic of the woollyleaf manzanita (central maritime chaparral) vegetation series.

In addition, Dr. Taylor of the Jepson Herbarium conducted a botanical survey of the site in 1999 for PG&E, along their transmission line that traverses the Foster property generally from east to west. During that survey, he identified and collected specimens of *Arctostaphylos tomentosa* var. *crustacea*, *Arctostaphylos glandulosa*, Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus)* (CNPS List 4.2), *Cordylanthus rigidus* var. *littoralis* (CNPS List 1B.1), *Lomatium parvifolium* var. *parvifolium* (CNPS List 4.2), and various psammophytic herbs that he noted were consistent with maritime chaparral. He termed the habitat maritime chaparral at the time, and upon review of the more recent botanical surveys and reports prepared for the Foster project, reiterated that the chaparral on the site is very similar to maritime chaparral using the similarity rule described above, and it is not incorrect to term the vegetation as such.[8]

A Coastal Commission staff biologist, along with the Applicant's biologist and Mr. Mike Vasey, an expert on California chaparral, conducted a site visit in March 2007 and confirmed the presence of Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*) and at least two other maritime chaparral indicator species, golden chinquapin (*Chrysolepis chrysophylla*) and

[7] Dr. Dean Taylor, letter to Dr. Jonna Engel, Ecologist, California Coastal Commission staff, September 2007.

[8] Ibid.

huckleberry (*Vaccinium ovatum*).[9] In addition, chamise (*Adenostoma fasciculata*), California sagebrush (*Artemisia californica*), coffeeberry (*Rhamnus californica*), toyon (*Heteromeles arbutifollia*), black sage (*Salvia mellifera*), poison oak (*Toxicodendron diversilobum*), silk tassle (*Garrya elliptica*), and mountain mahogany (*Cercocarpus betuloides*) were observed on the site; these species are commonly associated with maritime chaparral. Mr. Vasey indicated that the huckleberry and Monterey ceanothus on the Foster property may represent individuals at the southernmost edge of their ranges. In discussions with Coastal Commission staff, Dr. Julie Evens, lead vegetation ecologist with the California Native Plant Society, confirmed that in the central coast region, huckleberry (*Vaccinium ovatum*) and golden chinquapin (*Chrysolepis chrysophylla*) are indicator species of *central* maritime chaparral. She indicated that while the range of this species may include inland sites in southern and northern California, it has preference for maritime habitats in the central coast.[10]

During the March 2007 site visit approximately 25 manzanita plants were examined and none were found to be shaggy-barked (woollyleaf) manzanita (*Actostaphylos tomentosa*). The majority of manzanitas observed on the Foster Property during the March 2007 site visit were *Arctostaphylos glandulosa ssp. glandulosa*, and some *A. glandulosa ssp. cushingiana* were observed as well. While both staff and the Applicant agree that the shaggy-barked manzanita may have been mischaracterized by previous biologists, it is also possible that it does exist on the site and was simply not observed during the 2007 site visit. In fact, during his 1999 botanical survey of the site, Dr. Taylor recorded the presence of *A. tomentosa* and collected a specimen.[11] A quantitative vegetation survey was not conducted on the March 2007 visit; it is possible that such a survey would reveal a number of shaggy-barked manzanita individuals on the Foster property. Without a formal, quantitative plant survey, it is not possible to say that the site does not support *A. tomentosa*.

Furthermore, in discussions with Coastal Commission staff, Dr. Evens of the California Native Plant Society indicated that both *Arctostaphylos glandulosa ssp. glandulosa* and *A. glandulosa ssp. cushingiana* should be considered components of central maritime chaparral.[12] Dr. Evens also indicated that within the *A. glandulosa* species group, *A. glandulosa ssp. crassifolia* is a

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[9] Golden Chinquapin can take on shrub-like or tree-like dimensions reaching heights of 10 to 130 feet. It occurs on coastal slopes and ridges of the Pacific Coast Ranges from Washington to San Luis Obispo (*Sawyer, John O.; Thornburgh, Dale A.; Griffin, James R. 1977. Mixed evergreen forest. In: Barbour, Michael G.; Major, Jack, eds. Terrestrial vegetation of California. New York: John Wiley and Sons: 359-381*). Golden Chinquapin prefers sandy and acidic soils and requires well-drained soils. It grows at lower elevations, from sea level to 1,500 m, rarely 2,000 m (*Keeler-Wolf, Todd. 1988. The role of Chrysolepis chrysophylla (Fagaceae) in the Pseudotsuga hardwood forest of the Klamath Mountains of California. Madrono, 35(4): 285-308.*). California Huckleberry occurs along the Pacific Coast from British Columbia to central California. It is a shrub that can reach 3 to 15 feet in height. It commonly forms dense thickets on open ridges in the fog belt of California (*U.S. Department of Agriculture, Forest Service. 1937. Range plant handbook. Washington, DC. p. 532*). Huckleberries (*Vaccinium ssp*.) require well-drained acidic soil conditions and thrive where the pH ranges from 4.3 to 5.2 (*Korcak, Ronald F. 1988. Nutrition of blueberry and other calcifuges. Horticultural Reviews, Vol. 10: 183-227*).

[10] Dr. Julie Evens, personal communication with Dr. Jonna Engel, Ecologist, California Coastal Commission staff, July 9, 2007

[11] Dr. Dean Taylor, letter to Dr. Jonna Engel, Ecologist, California Coastal Commission staff, September 2007.

[12] Ibid.

very clear-cut diagnostic indicator of southern maritime chaparral habitat. Mr. Vasey communicated a similar position to Coastal Commission staff in which he stated that the fact that the chaparral on the Foster site is dominated by *A. glandulosa*, which is a dominant component of interior chaparral in the Santa Lucia Mountains (of which the Foster property is on the western end), does not mean that it should not be characterized as maritime chaparral. He notes that in fact, there are numerous stands of maritime chaparral in Mendocino, Sonoma, and Marin Counties where *A. glandulosa* is a co-dominant and *A. glandulosa* is also a dominant element in maritime chaparral in southern San Diego County.[13]

In addition, although woollyleaf manzanita (*Actostaphylos tomentosa)* is considered one indicator of maritime chaparral, and hence the *Manual's* "woollyleaf manzanita" series, there are examples of maritime chaparral where *A. tomentosa* is rare or absent (notably Santa Barbara County's Burton Mesa where *A. purissima* and *A. rudis* are the dominant manzanitas).[14] According to Dr. Keeler-Wolf, it is somewhat difficult to identify central maritime chaparral because one of the main indicator groups, manzanitas, is comprised of obligate fire-sprouting species. In the absence of fire, these species may be outcompeted by other species. During this period, the density of indicator manzanitas may be low or even nonexistent, but their seeds continue to exist in a dormant state.[15] As such, it is generally recognized by biologists who study maritime chaparral that, with respect to the vegetation criteria, a chaparral stand that also meets the climate and soils criteria is maritime chaparral if it includes *A. tomentosa* or any of the other 20+ maritime chaparral indicator manzanita species, or *Ceanothus cuneatus* var. *rigidus* or other indicator ceanothus species.

Staff also confirmed that in addition to the presence of central maritime chaparral indicator species, the project site also has all the physical attributes required for central maritime chaparral (including soils and climate). Aerial photo analysis and a field survey confirmed the presence of nutrient-poor granitic soils which correspond to the distribution of chaparral on the site. With respect to climate in Big Sur, fog forms a layer anywhere between 100 to 1,000 meters (330-3,300 feet) thick.[16] The Foster site ranges in elevation between 400 and 1,400 feet. Perhaps more importantly than daily fog inundation, the Foster property is within a maritime climatic regime (relatively close to the ocean) that is cooler and more humid than interior regions where chaparral exists. Frequent fog incursion is not a criterion for maritime chaparral. Rather, it is occurrence within the zone of summer fog incursion that is determinant.[17] The CTP proposed definition refers to Holland's (1986) "within the zone of summer fog incursion" definition of maritime chaparral climate and goes on to state that "Ecologically, maritime chaparral is

[13] Mr. Mike Vasey, letter to Dr. Jonna Engel, Ecologist, California Coastal Commission staff, August 16, 2007.

[14] Dr. Eric Van Dyke, written communication with California Coastal Commission staff, August 29, 2006.

[15] Dr. Todd Keeler-Wolf, personal communication with Dr. Jonna Engel, Ecologist, California Coastal Commission staff, November 29, 2006.

[16] Henson, P. and Usner, D. 1993. The Natural History of Big Sur. Page 35. UC Press, Berkeley, CA.

[17] Holland, R.F. 1986. Preliminary description of the terrestrial natural communities of California. California Department of Fish and Game.

separated from interior chaparral by having greater exposure to summer fog, humidity, and mild temperatures moderating drought pressures and, potentially leading to adaptations to different disturbance regimes (less frequent fire)."

The Foster Property site does occur within the zone of summer fog incursion. As shown in Exhibit L, daily cloud frequency data collected each day at 10:30 a.m. from July 3 through September 30, 2000-2006 indicates that the Foster property was subject to fog inundation for approximately 35-38% of this time period at this time of day.[18] The presence of coast redwoods (*Sequoia sempervirens*) (discussed below) at the same and higher elevations than the chaparral on the property is indicative of a fog-influenced climate. Coast redwoods only occur in the zone of maritime influence along the Oregon and California coastline where they rely on winter rains and summer fog for year-round moisture. Coast redwoods cannot be found outside the influence of summer fog, except in rare cases where an alternate summer water source, such as a creek or spring, exists (this is not the case for the Foster property). Furthermore, Dr. Taylor notes that maritime chaparral is not necessarily confined to the immediate coast, but can be found many miles inland where the juxtaposition of terrain provides occasional access by marine air masses.[19] Stands of maritime chaparral in Monterey County exist up to 15 miles inland, in Toro Park and Pine Canyon and in the Prunedale area of North Monterey County,[20] evidence of the fact that maritime chaparral does not require immediate proximity to the coast.

Therefore, because the Foster property occurs within the geographic and elevational range of central maritime chaparral, contains the requisite soils, is close to the coast and subject to summer fog, and supports at least several observed central maritime chaparral indicator species (Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), golden chinquapin (*Chrysolepis chrysophylla*) and huckleberry (*Vaccinium ovatum*)) along with a host of other species commonly associated with maritime chaparral, the Commission concludes that the delineated chaparral on the site is central maritime chaparral.

Central Maritime Chaparral as ESHA

The Big Sur LCP (LUP Section 3.3) defines environmentally sensitive habitats as "areas in which plant or animal life or their habitats are rare or particularly valuable because of their special nature or role in an ecosystem. Environmentally sensitive habitats are also areas susceptible to disturbance or degradation by human activities and developments." Maritime chaparral is defined in the Big Sur LCP as "a unique type of chaparral found close to the coast within the summer fog zone climate and characterized by a high proportion of localized endemic plant species (after North County Environmentally Sensitive Habitat Areas Draft Background

[18] Or, on 35-38% of summer days, clouds (fog) were overhead at 10:30 a.m.

[19] Dr. Dean Taylor, letter to Dr. Jonna Engel, Ecologist, California Coastal Commission staff, September 2007.

[20] Draft map of the extent of maritime chaparral in Monterey Bay. June 30, 2005. Available on the Elkhorn Slough Coastal Training Program website at: http://www.elkhornsloughctp.org/uploads/1117230783distributionMapMonterey.jpg. Coastal Training Program, Elkhorn Slough National Estuarine Research Reserve.

Report)."

Central maritime chaparral generally meets the Big Sur LCP definition of ESHA for several reasons. First, maritime chaparral is increasingly recognized for the numbers of local endemics and species richness (high biodiversity) within it, making it a globally significant habitat type. Although many species of shrubs are common to most locations, local stands are usually distinguished by the presence of one to several endemic species of *Ceanothus* or *Arctostaphylos*. There are about 60 species of manzanita in the world. All of these species are found in California and most are found nowhere else. Within California, many are endemic to small geographic areas.

Secondly, this plant community performs the important ecosystem function of providing habitat for individual species, such as Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), small-leaved lomatium (*Lomatium parvifolium var. parvifolium*), and seaside bird's beak (*Cordylanthus rigidus* var. *littoralis*) (observed by Dr. Taylor on the site in 1999) that are themselves rare.

Lastly, central maritime chaparral is highly susceptible to disturbance and removal by human activities and development. This is evidenced by the fact that large areas of the central coast of California were covered with dense chaparral at the end of the nineteenth century.[21] Today, however, only small, isolated fragments of northern and central maritime chaparral plant communities can be found growing in oligotrophic, well-drained soils along ridgelines and on coastal terraces within the zone of summer coastal fog intrusion.[22] For these reasons, the California Department of Fish and Game's (DFG) Natural Diversity Database (CNDDB, 2007) lists woollyleaf manzanita chaparral, or central maritime chaparral, as a rare habitat type. It is also for these reasons that central maritime chaparral is considered a unique type of chaparral by the Big Sur LCP, and generally meets the ESHA definition in the LCP.[23] As detailed above, site-specific biologic review of the Applicant's site, including multiple vegetation surveys and site visits, strongly supports a determination that the chaparral present at the subject site is central maritime chaparral, and as a result ESHA per the LCP. The Commission finds that the central maritime chaparral on the site is ESHA (see Exhibits B and D).

Redwood Forest

The project site contains a patch of redwood forest, located between the proposed main house site and the caretaker unit site (as shown in Exhibit B). The Foster property preliminary biological report (prepared by Jeff Norman, November 22, 2004) describes this stand as

[21] Cooper, W.S. 1992. The broad-sclerophyll vegetation of California: an ecological study of the chaparral and its related communities. Carnegie Institution of Washington, Publication Number 319, Washington, D.C.

[22] Holland, R.F. 1986. Preliminary descriptions of the terrestrial natural communities of California. California Department of Fish and Game, Natural Heritage Division, Sacramento, CA.

[23] The Commission has a history of concern for central maritime chaparral, including determining that it is ESHA in specific cases (see also, Coastal Commission Adopted Findings for Monterey County LCP Amendment 1-07 (Measure A in the Del Monte Forest)).

dominated by coast redwood (*Sequoia sempervirens*), with tan oak (*Lithocarpus densiflorus*) also present. This vegetation community is listed as rare by DFG and is categorically defined as ESHA in the Big Sur LCP. The Commission finds that the redwood forest patch on the site is ESHA (see Exhibit B).

c. LCP Consistency Analysis

The proposed project locates multiple structures and other development within and immediately adjacent to central maritime chaparral ESHA on the site. Specifically, as shown in Exhibit D, the main residence, Steven's studio, the swimming pool, Gillian's studio, the garage, shed, and associated pathways and the driveway are either wholly or partly within, or immediately adjacent to this habitat. Some of this development is proposed in areas that have been previously cleared through both pre-Coastal Act clearing/grading and recent clearing (see Section 4 of this report, Violation). In addition, the County-approved project includes a condition that requires 30 feet of defensible space around each habitable structure, thus requiring even further incursion into (or incursion into where sited on the periphery) the ESHA.

The key ESHA policy in the Big Sur LUP states that all practical efforts must be made to maintain ESHA, and all development must to be subordinate to the protection of ESHA. In order to protect ESHA, the LCP requires significant and continuous areas of undisturbed land to be retained in open space, and stipulates that if any structures are allowed on any parcel of land in a sensitive habitat area, those structures must be clustered in the least environmentally sensitive habitat area (LUP Policy 3.3.2.6). Also, LUP Policy 3.3.2.7 requires land uses adjacent to ESHA to be compatible with the long-term maintenance of the resource, and IP Section 20.145.040.B.1 prohibits development in ESHA if the long-term maintenance of the habitat cannot be assured. New land uses are only considered compatible where they incorporate all site planning and design features needed to prevent significant habitat impacts, and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the adjoining habitat. Furthermore, LUP Policy 3.3.2.8 allows new development adjacent to ESHA only at densities compatible with the protection and maintenance of the adjoining resources.[24]

Site coverage associated with Steven's studio, the garage, and shed would occur wholly or partly within central maritime chaparral and would result in a permanent removal of ESHA. Although some of the area associated with these portions of the proposed project has been historically

[24] The ESHA definition in the Big Sur LCP also states that the California Coastal Act limits uses in ESHA to those which are dependent on such resources (e.g. nature education and research, hunting, fishing and aquaculture). However, the specific requirement of Coastal Act Section 30240 that limits development in ESHA to resource-dependent uses is not explicitly incorporated into the Big Sur LCP ESHA requirements. Since the Bolsa Chica case (71 Cal.App.4th 493), the Commission has strictly interpreted Section 30240 that only non-resource dependent development is allowed in ESHA. Although the development proposed in ESHA in this case is not resource-dependent, the LCP does not explicitly incorporate the prohibition of such development in ESHA in the LCP. ~~However, as detailed in this finding, this is of no consequence in this case, as the project does not otherwise meet the LCP's ESHA requirements that require the protection of ESHA~~.

cleared as roads, trails, and lookouts,[25] the proposed project would still result in direct removal of central maritime chaparral ESHA outside of the historically cleared areas (because the developments are both in the historically cleared areas and in the chaparral areas). In addition, these historically cleared roads still act as chaparral habitat given they share the same constituent habitat elements as the expressed chaparral areas that surround them, and they would likely return to chaparral in the absence of human disturbance.[26] The direct loss of ESHA associated with the proposed project ~~cannot be found consistent~~ raises questions with the LCP which requires all categories of land use to be subordinate to the protection of ESHA. Such coverage also ~~is directly in~~ potentially conflicts with LUP Policy 3.3.2.1 which prohibits development in ESHA if it results in any potential disruption of habitat value~~. Outright removal and permanent site coverage that forever precludes functioning habitat in the coverage area, as well as the fragmentation of the habitat due to the proposed development pattern, is a direct and significant disruption of habitat value. The project is also inconsistent with~~ and IP Section 20.145.040.B.1, which addresses ~~because it is impossible to assure~~ the long-term maintenance of habitat ~~that has been permanently removed and replaced with structural development~~.

In addition, new development located within and immediately adjacent to the central maritime chaparral c~~w~~ould introduce various disturbances and stresses ~~that would, in both the short and long terms, impact the long term sustainability of the habitat. Central maritime chaparral is a whole community that includes both plants and animals. Any development within or on the immediate periphery of this plant community and its seedbank cannot be found compatible with the long term maintenance of the habitat because it would introduce disturbances~~ in the form of noise, lights, pets, human foot traffic, landscaping irrigation, herbicides, pesticides, and invasive species, among other things, that by their very nature and proximity, c~~w~~ould degrade the ESHA. Domestic animals may hunt and disturb associated organisms (native pollinators, other insects, birds, coyotes, rabbits, rodents, etc.) that are dependent upon central maritime chaparral. In addition, maritime chaparral plants are fire ecology plants, and they create a seed bank that remains undisturbed until a fire occurs. Human and domestic animal disturbance can upset the seed bank and preclude the full re-establishment of maritime chaparral plant species after a fire.

With respect to the risk of fire specifically, fuel modification requirements approved by the County c~~w~~ould lead to additional impacts to ~~degradation of~~ the ESHA as well. Structures are proposed both in ESHA and immediately adjacent (0 feet) to ESHA. State law requires a 100-foot defensible space (30 feet of complete clearance, and 70 feet of thinning and other brush removal), and such defensible space requirements, if applied to the proposed development in the

[25] Historical aerial photo review suggests that these road, trail, and lookout areas were cleared prior to adoption of the Coastal Act, and have been continued to be used and cleared since that time. These historically cleared areas are distinguished from more recent clearing outside of these areas, where the more recent clearing was apparently for surveys and staking to support the current application, and where the areas of more recent clearing are not countenanced as "cleared" for the purposes of this analysis because they were cleared without benefit of coastal permits. Rather, these recent clearing areas are considered as central maritime chaparral, as this is what was removed and what is regenerating in naturally in such areas, and thus ESHA (see also Violation finding).

[26] As is occurring naturally in the areas recently cleared without coastal permits.

future, would necessitate additional incursion into ESHA. Even if all of the proposed structures were located just outside of the central maritime chaparral, state-mandated defensible space requirements would still result in removal ~~and degradation~~ of this habitat. ~~Given the high risk of fire in this area (see Section 2 of this report, Hazards), such impacts are reasonably foreseeable, and would significantly disrupt and degrade the resource inconsistent with the LCP. In fact,~~ However, the County approved-project only allows vegetation management for purposes of reducing fire risk up to 30 feet into the ESHA to address the fire official's requirements in this case. Combined with the direct loss of habitat due to the footprints of proposed development, this vegetation management would result in direct disturbance to approximately 18,000 square feet of central maritime chaparral (according to the Applicant's calculations).

With respect to redwood forest habitat on the site, the proposed project does not involve any direct removal of redwood trees or development within this habitat. LCP ESHA policies specific to redwood forest require residential development to be sited and designed to have minimum impacts on redwood trees from soil compaction and other disturbances to tree roots. As approved by the County, the proposed project is consistent with these LCP provisions.

In sum, the County-approved project represents a scattering of multiple permanent structures, access, and infrastructure in and immediately adjacent to undeveloped, sensitive central maritime chaparral ESHA ~~and therefore does not meet the LCP requirements to protect this ESHA and to cluster development in the least environmentally sensitive habitat area of a site~~. Because of the fire-dependent nature of central maritime chaparral, preservation and protection of large areas of the habitat are critical to its survival and persistence. Habitat fragmentation, as a result of scattered, unclustered development, is a primary threat to this rare vegetation community. In this case, the multiple structures are located primarily outside of or on the edges of the habitat, which will remain a relatively large and unfragmented area, and there is significantly reduced defensible space requirement to address potential fire risk. As conditioned to limit fire clearances to the 30 foot perimeter, and with the inclusion of the resource protection plan and preservation of remaining chaparral, the project will not result in a significant disruption of the central maritime chaparral ESHA, consistent with the Big Sur LCP.~~Not only would the project result in the direct removal of ESHA, but the County approval does not incorporate any buffers or setbacks in order to ensure long-term protection and maintenance of adjacent central maritime chaparral. As a result of these impacts, the proposed project cannot be found to be consistent with the LCP ESHA standards cited above. Avoidance and mitigation of such impacts are necessary to protect central maritime chaparral habitat consistent with LCP requirements~~.

~~d. Project Modifications to Result in an Approvable Project~~

~~In order to protect and maintain the central maritime chaparral on the subject parcel consistent with the LCP, all development must be relocated outside of the habitat. In addition, as detailed below, the habitat must be buffered from the impacts of any proposed development.~~

Buffers

~~A b~~Buffers are generally ~~is~~ necessary to limit human activity and disturbance in ~~the~~ chaparral ~~and allow the~~ habitats ~~to flourish~~. The ~~necessity~~ utility of a buffer is further described as follows:

- The edge of the delineated habitat reflects a moment in time and the interaction of the various characteristics that result in the presence of the habitat at that time. As discussed, seed banks may be dormant or existing vegetation patterns may be artifacts of prior disturbance patterns. Buffers allow for the maritime chaparral habitat edge to expand (ebb and flow), along the edge as a function of the factors that determine the presence of the ESHA, without being restricted or "hemmed in" by structures, paving, and other development

- Buffers protect against human and domestic animal disturbance. Human activity immediately adjacent to the habitat in the form of noise pollution, light pollution, foot traffic, landscaping, irrigation, herbicides, etc. disturbs the whole community, as described above. Buffers capture and absorb these and other impacts associated with development.

- Buffers are necessary to maintain dispersal ability of both plants and animals in the habitat. Development located at the edge of the habitat impinges upon the ability of seeds to establish (e.g., through increased shading, soil compaction, site coverage, and changes in localized wind patterns), and hinders the ability of animal species to travel in natural patterns.

- The stress introduced by development affects the natural behaviors of organisms that use maritime chaparral. Reproduction/mating, foraging and feeding, rearing and feeding young, predator/prey interactions are some of the behavioral aspects that may be negatively influenced by the stress of adjacent development.

- Buffers protect against invasive plant and animal species. Such invasive species arrive on car tires (both during and after construction), fill soils, and in myriad other ways throughout the life of the development.

- Buffers allow for a healthy and thriving "edge environment." Scientific evidence indicates that edge environments support extensive biodiversity (species richness), oftentimes higher than the biodiversity present in the two separate habitat types. Such biodiversity is known to facilitate resilience among species and communities, and buffers help maintain the dynamics between one habitat type and another.

- The buffer protects the development from fire. It is becoming more commonplace for fire management entities to practice preventative, controlled burns in order to facilitate the health of the plant community and diminish the likelihood of a catastrophic fire. Furthermore, from a habitat standpoint, maritime chaparral plants require very hot and fast fires (whether human-induced or natural) for seed release and regeneration. The

buffer allows for such a potential fire with lower level of danger to the development than would exist without it.

In sum, a buffer limits the development's adverse effects on the habitat being buffered, thereby ensuring protection of the ESHA against human disturbances and stresses, and creates space to allow continued functionality of the habitat community. It is generally recognized that buffers for maritime chaparral should be designed on a site-by-site basis.[27] Appropriate buffers depend on surrounding uses, the design of the buffers, the size of the maritime chaparral patch, the priority conservation values of the patch, topography, vegetation communities adjacent to the chaparral, and the layout of the surrounding matrix. Buffers also should be designed to allow prescribed fire as a long-term conservation management measure for maritime chaparral.[28]

The Commission often applies protective buffers to ESHAs, including wetlands, riparian areas, and specific terrestrial ESHAs. The particular size of a buffer will depend on the specific facts of a case and the relevant legal requirements, particularly the specific requirements of applicable LCPs. Some LCPs certified by the Commission require minimum 100-foot buffers for different types of ESHA, including chaparral habitats,[29] but others are more general. Over time, the Commission's (and other resource manager's) understanding of the functions and importance of buffers for protecting habitats has clearly evolved with new scientific information and as implementation experience has been gained. This has not always directly translated to LCP policies. Though, in fact, the general trend in LCP buffer standards has been that older LCPs tend to have more general and less restrictive requirements (smaller buffer dimensions), whereas more recently certified LCPs tend to have more specific and stricter requirements (larger buffer dimensions) and more detailed policies. And even the more recent LCP buffer policies tend to fall short of buffer distances oftentimes recommended in the scientific literature. In sum, evolving science and knowledge (including published and unpublished literature on the subject), clearly supports the need for and the value of buffers for protecting resources~~, such as the central maritime chaparral present on this site~~.

~~Although the Big Sur Area LCP does not contain specific buffer/setback distances for terrestrial habitat, it does include polices that establish a presumptive 100 foot zone adjacent to ESHA within which the potential impacts of development to the ESHA must be addressed:~~

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[27] Kelly, Patrick A. and John T. Rotenberry. 1993. Buffer zones for ecological reserves in California: Replacing guesswork with science. Interface between ecology and land development in California. J. E. Keeley (Editor). Southern California Academy of Sciences, Los Angeles, CA.

[28] Coastal Training Program. 2003. Questions and Answers on Maritime Chaparral. Published on the Elkhorn Slough National Estuarine Research Reserve website at: http://www.elkhornsloughctp.org/reference/subissue_detail.php?SUBISSUE_ID=1.

[29] The City of Malibu Local Coastal Program (adopted by the Coastal Commission on September 13, 2002) requires native vegetation buffer areas around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion, and all buffers are required to be a minimum of 100 feet in width (LUP Policy 3.23). The Malibu LCP also requires chaparral ESHA buffers to be of sufficient width to ensure that no fuel modification will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise this habitat (LUP Policy 3.27 and IP Section 4.6.1.F).

~~***IP Section 20.145.040.B.4.*** *Development on parcels containing or within 100 feet of environmentally sensitive habitats, …, shall not be permitted to adversely impact the habitat's long-term maintenance, as determined through the biological survey prepared for the project. Proposals shall be modified for location, bulk, size, design, grading vegetation removal, and/or other methods where such modifications will reduce impacts to an insignificant level and assure the habitat's long-term maintenance. …~~

~~***IP Section 20.145.040.B.5.*** *New land uses and new subdivisions on parcels within 100 feet of environmentally sensitive habitats,… shall not be permitted where they will adversely impact the habitat's long term maintenance, either on a project or cumulative basis. As such, a project shall only be approved where sufficient conditions of approval are available, such as for siting, location, design, size, and design which will mitigate adverse impacts to and allow for the long-term maintenance of the habitat …~~

~~The central maritime chaparral on the project site represents a pristine, undeveloped, unfragmented stand of this habitat type of approximately 40-45 acres of a larger stand of unknown size to the northwest and east. As such, a protective approach is appropriate to ensure that this pristine stand is not degraded or otherwise impacted. In the opinion of the Commission's staff ecologist, 100 feet is the minimum buffer distance that allows for such protection. This is based on staff review of the site characteristics, communication with maritime chaparral experts, and consideration of the body of scientific knowledge and similar chaparral setback requirements in other regions. In short, a 100-foot buffer between central maritime chaparral and any development on the site is appropriate to ensure protection and long-term maintenance of the habitat consistent with the LCP.~~

~~Another key element to the site specific design of appropriate habitat buffers is determining what, if any, uses or development activities can occur within the buffer area. In order to establish and maintain the important functions that buffers provide (described above), the conditions of this permit approval prohibit development within 100 feet of the central maritime chaparral habitat found on the site, with the exception of infrequent and as-necessary invasive plant species removal and~~ As described above, and in this case, the project will not result in a significant disruption of the central maritime chaparral ESHA and buffers from this resource are not required by this approval. A chaparral buffer of sorts will be created within the chaparral by the required 30 feet of defensible fire space clearance. Defensible space is a firebreak where vegetation must be either completely cleared, trimmed, or pruned (depending on site specific characteristics) around buildings and structures in any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered in flammable material, as required by the California Department of Forestry (CDF, or Cal-Fire).[30] The County approval required 30 feet of defensible space around each proposed structure, based on the fire department's (Carmel Fire Protection Associates) review and approval. Because of the presence of ESHA on the site and impacts associated with complete clearance of this vegetation, the fire

[30] Public Resources Code Section 4291.

department is instead allowing thinning and limbing of vegetation (6 feet up from the ground for all trees and 10 feet from chimneys), and through their approval have indicated that such activities are sufficient to satisfy the defensible space requirement. Although recent changes in the law (PRC 4291) expand the defensible space clearance requirement to 100 feet, the fire department's approval of a 30-foot fuel modification zone for the Foster project occurred prior to this change in the law, and they have since indicated that 30 feet of defensible space for this site remains allowable (see Exhibit M). The condition in the County's approval that requires a 30-foot wide zone has also been incorporated into the conditions of this permit (Special Condition 10~~9~~).

~~In this case, the trimming of understory vegetation and limbing of trees within the 30 feet of the 100-foot habitat buffer adjacent to proposed structures would not significantly interfere with the intended functions of the buffer because these activities involve only occasional human interference in this area. This infrequent vegetation trimming and removal would not diminish the buffer's ability to effectively protect and "cushion" the adjacent habitat from human disturbances because it only involves minimal vegetation removal, nor would it reduce its function as an area that supports the movement and dispersal of plants and animals associated with central maritime chaparral habitat on site. Once trees in this defensible space zone are limbed up to 6 feet (and within 10 feet of chimneys), as required by the fire department, it may be years before any such limbing is necessary again. Furthermore, since the entire habitat buffer is outside the central maritime chaparral habitat, these defensible space activities would not involve removal or disturbance of any central maritime chaparral plant species. Consistent with the approval of the fire officials, the remaining 70 feet between the end of the defensible space area and the start of the central maritime chaparral would remain undisturbed. The required 100-foot total setback between the edge of the central maritime chaparral and any development is approximated in Exhibit D. As shown, the resulting developable area of the site is approximately 2.5 acres, and more than provides for a reasonable use of the property by the Applicant.~~

~~Special Condition 1a requires all development to be sited outside the 100-foot buffer with the exception of a portion of the existing access road, as approximated in Exhibit D. The resulting approximately 2.5-acre (approximate) development envelope contains vegetation communities (namely, coast range grassland, mixed evergreen forest, and northern coastal scrub) that are not considered ESHA in this case, and that are appropriate for development within the framework of the LCP and the other significant constraints on this site. The development envelope allowed by Special Condition 1a is also outside the redwood forest ESHA described above, and would be consistent with the relevant specific redwood forest ESHA policies in the LCP that require minimum impacts from soil compaction and other disturbances to tree roots.~~

~~Siting of development outside of ESHA and outside of the ESHA buffer ensures consistency with LCP ESHA policies because it ensures that no direct removal of ESHA will occur, it ensures that development is adequately setback from ESHA areas to ensure that impacts from such allowed development do not disrupt or disturb ESHA, it represents clustering of development away from the most environmentally sensitive area of the site, and assures an~~

~~appropriate density of development on a site that contains ESHA.~~ With respect to other habitats on the site, the following applies. The LCP specifically allows for low-intensity residential use in natural grassland provided that the development is sited, designed, and sized to reduce impacts and ensure long-term maintenance of the habitat. Furthermore, development is allowed in the mixed evergreen habitat provided that removal of native trees is limited to that which is necessary for a proposed development and/or justified in the Forest Management Plan as being necessary to improve unhealthy forest conditions, as required by the forest resource protection provisions of the LCP. These provisions also prohibit removal of landmark trees (24 inches or more in diameter, visually or historically significant, exemplary of species, or more than 1,000 years old) of all species, and native trees to be removed over 12 inches in diameter shall be replaced at 1:1 ratio. As such, development is allowed in the grassland and mixed evergreen forest areas of the site, provided that tree removal is minimized. ~~To that end, existing clearings must be used to site development to the maximum extent feasible~~.

In addition, to ensure consistency with LCP provisions that require deed restrictions or conservation easements in ESHA, Special Condition 2 prohibits any development outside the development envelope and requires this area to be maintained as a habitat and viewshed protection area, and Special Condition 8 requires the applicant to record a deed restriction to memorialize this requirement. ~~As discussed below, limiting development to this envelope also helps to reduce significant wildfire risks to the development, which is also required by the LCP~~.

In addition, Special Condition 4 requires removal of exotic plants in the development envelope and fuel modification zone ~~100-foot habitat buffer as required by LUP Policy 3.3.3.A.10~~. The development envelope ~~and 100-foot buffer zone~~ should require minimal invasive species removal because of the relatively low presence of invasive exotics and because of the requirement to plant only non-invasive native plants in the development envelope (Special Condition 1e~~f~~). In the event that tree removal not already contemplated is necessary ~~under the revised project in the approved development envelope~~, Special Condition 3 requires a revised Forest Management Plan that details tree replacement, care, and protection, as required by the LCP. In order to minimize disturbance to ESHA and other native habitats during construction, Special Condition 5 requires specific measures to contain all construction activities in the approved development envelope and ensure that construction drainage does not impact surrounding habitat. Similarly, Special Condition 6 requires a post-construction drainage plan that protects adjacent habitats from degradation associated with site runoff for the life of the project.

Finally, Special Condition 9 requires a resource protection plan that augments other construction-related and design conditions to protect the chaparral. The plan includes measures that address lighting, site drainage, and landscaping, among other things, and it includes a prohibition against domestic cats and a provision to restore the existing PG&E access road on the property to native habitat.

f. ESHA Conclusion

The project, as conditioned, is consistent with the LCP because it avoids ~~removal and~~ significant disruption of central maritime chaparral and redwood forest ESHA habitats on the site ~~and clusters development away from the most environmentally sensitive area of the site~~. The project, as conditioned, also protects and enhances such habitats ~~through the use of a 100-foot buffer zone and~~ through implementation of invasive plant control measures, ~~and~~ minimizing the area of disturbance during construction activities, and restoration of an existing access road that traverses the southern portion of the property. A deed restriction is required assuring resource protection in perpetuity within the ESHA ~~and ESHA buffer areas~~. Only as conditioned will the project ensure the biological continuance of the central maritime chaparral and redwood forest habitats on the subject site, and it can be found consistent with the ESHA protection provisions of the LCP.

2. Hazards

A. Applicable LCP Policies

LUP Key Policy 3.7.1. *Land use and development shall be carefully regulated through the best available planning practices in order to minimize risk to life and property and damage the natural environment.*

LUP Policy 3.7.2.3. *All development shall be sited and designed to minimize risk from geologic, flood, or fire hazards to a level generally acceptable to the community. Areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development. For any development proposed in high hazard areas, and environmental or geotechnical report shall be required prior to County review of the project.*

LUP Policy 3.7.2.4. *In locations determined to have significant hazards, development permits should include a special condition requiring the owner to record a deed restriction describing the nature of the hazard(s), geotechnical and/or fire suppression mitigations and long-term maintenance requirements.*

LUP Policy 3.7.3.C.2. *New developments shall be avoided in extreme wildfire hazard areas as determined by site-specific assessment.*

LUP Policy 3.7.3.C.3. *New development proposals or development inducing projects which would not be served by adequate fire protection services, public or private roads, or water for fire suppression should be limited to a low-intensity commensurate with such increased risk.*

B. LCP Consistency Analysis

Fire is an integral part of the ecology of the Big Sur area, primarily because the scrub and chaparral vegetation that dominates the landscape is dependent on fire for survival. In

recognition of this, the hazards policies of the LCP require the protection of development from risks associated with wildfires. These policies are clear that new development should not be sited in areas of high fire hazard. The LUP also states that the siting and construction of new structures requires extreme care to avoid endangering the occupants and the broader community as well.

The Big Sur coast area is well known for its extreme fire hazard danger, and this site is no different in this respect. The project site is mapped in a Very High Fire Hazard severity zone by Cal Fire.[31] The majority of the subject parcel and the slopes of all adjacent parcels consist of dense scrub and chaparral vegetation. Much of this vegetation relies on fire for seed release, and the leaves and bark of scrub/chaparral plant species contain flammable resins that encourage combustion and burning. Ridge crests in Big Sur are particularly vulnerable to fire danger because fires tend to spread more rapidly uphill than downhill, and the steeper the slope, the more pronounced the effect. When a fire begins at the bottom of a slope, the fuels located uphill are preheated by the rising air, helping them to easily catch fire when they come in contact with flames. Fires that begin uphill may deposit burning material that rolls downward, allowing more fires to begin downhill.[32] In the steep terrain of Big Sur, fires tend to "run" very quickly uphill and are often impossible to stop. However, they slow at ridgecrests and move slowly down the other side.[33] Fire risk is also a function of the length of time between fires -- the longer the interval between fires, the greater the risk of a particularly intense and destructive fire because of the large amount of highly flammable dead vegetation.

As approved by the County, certain components of the proposed development (in particular, the main house, Steven's studio, Gillian's studio, garage, and shed) would be located on or just below the ridge, within or immediately adjacent to central maritime chaparral habitat (see Exhibits D and F). For the reasons just described, the proposed development would be particularly at risk of fire because of its location on a ridgecrest above an area dominated by scrub and chaparral vegetation. Commission staff observed evidence of fire on the root burls of several large, mature manzanitas near the proposed main house site, indicating that past fire(s) have occurred on the site and that some time has elapsed between the present and most recent fire. It appears from the scarred root burls and the age of the manzanitas that a fire occurred within the last 50 to 100 years. Subsequently, a significant amount of dead vegetation can be presumed to have built up on the property. For these reasons, the project site is particularly vulnerable to fire.

As previously discussed in the ESHA section of this report, the County acknowledged that the

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[31] California Department of Forestry and Fire Protection (Cal Fire). Fire and Resource Assessment Program (FRAP), Map of Proposed Fire Hazard Severity Zones in State Responsibility Area, Monterey County. January 2007. Available at: http://frap.cdf.ca.gov/webdata/maps/monterey/fhsz_map.27.jpg.

[32] National Interagency Fire Center. The Science of Wildland Fire. Available at: http://www.nifc.gov/preved/comm_guide/wildfire/fire_4.html. Accessed on October 24, 2007.

[33] Henson, P. and Usner, D. 1993. The Natural History of Big Sur. Page 237. UC Press, Berkeley, CA.

vegetation in this area is central maritime chaparral and ESHA.[34] Because of this, and because the applicants are proposing to locate new development within and immediately adjacent to the chaparral, the County (in coordination with the fire department) placed conditions on the project that require fire sprinkler systems in each building, specific fire-resistant roof materials for all buildings, and specific onsite fire water supply amounts tailored to the site (incorporated into this permit under Special Condition ~~9~~10). The County also placed a condition on the project to thin but not completely remove combustible vegetation within 30 feet of structures. ~~As discussed previously, this approach entails direct impacts to ESHA, and is not consistent with the LCP, particularly given the availability of alternatives to avoid such impacts.~~ In terms of hazards requirements, such fuel modification may minimize the risks to the proposed development in the event of a fire~~, but the LCP requires a more protective approach through avoidance of development altogether in high fire hazard areas~~. ~~LUP Policy 3.7.2.3 states that areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development, and LUP Policy 3.7.3.C.2 specifically states that new developments shall be avoided in extreme wildfire hazard areas. The presence of coastal scrub and central maritime chaparral vegetation covering the entire slope of the parcel, in conjunction with the orientation of proposed development within and immediately adjacent to these habitats on the ridge crest is inconsistent with these policies because it places development in an area of higher fire risk~~.

Although much, if not all, of this site is in a fire danger area, and strict hazard avoidance might argue for not allowing new development here, the Commission has not historically prohibited development in such cases in Big Sur. Rather, careful siting and design, and defensible space parameters, have been the typical tools applied. ~~In this case, an alternative building site exists on the property that is on the backside of the ridge crest and outside the fire-dependent chaparral habitat in an area dominated by open grassland. As discussed in the ESHA and visual resource findings of this report, the applicant is required to relocate all development to this approximately 2.5-acre development area for project consistency with the ESHA and critical viewshed provisions of the LCP. Locating the project in this area is also necessary for consistency with the hazards policies of the LCP. As discussed in the ESHA findings, this building envelope is located 100 feet from the edge of central maritime chaparral. In this case, the 100-foot ESHA buffer that allows for the CDF-required (in this case) 30-foot fuel modification zone nearest to the developable area and structures can effectively serve both the need to protect this habitat from the impacts of development, and the need to reduce the risks to the development from the fire hazards associated with chaparral, and within the Big Sur environment generally.~~ The Commission acknowledges that current law requires a 100 foot defensible space that, if implemented in this case, would result in activities, including the removal of vegetation, within the ~~entire~~ habitat area. ~~buffer. This would compromise the functions of the buffer.~~ In this case, though, the fire officials have approved a more limited defensible space requirement based on the circumstances of this case. Given that the existing state law requires significantly greater management measures, application of ESHA and hazard policies and buffer areas to future cases

[34] As discussed previously, the basis for determining that the chaparral on the site is maritime and thus ESHA has been refined through subsequent site evaluations pursuant to this Commission appeal.

may require increased physical buffers from ESHA to assure no significant impacts to the ESHA. In addition, because in this case the fire officials have authorized and the Applicant is proposing, a more limited fire management measure, the Commission is requiring that the Applicant clearly assume the risk of such development and waive any liability on the part of the Commission for approving such development. The special conditions also require that the approved development envelope (and thus areas not approved for development, including any future fire management measures beyond those specifically authorized) and the assumption of risk condition be recorded as a deed restriction to assure adequate notice to future property owners.

C. Conclusion

The proposed project locates the main house, Steven's studio, Gillian's studio, garage, shed, and pool within and immediately adjacent to highly flammable chaparral and scrub vegetation on the crest of a ridge.~~, contrary to LCP hazards policies that require that risks be minimized and that high hazard areas be avoided. In order for the project to be consistent with the LCP, Special Condition 1a of this permit requires that all development be re-sited within an approximately 2.5 acre development envelope on the backside of the ridge.~~ As conditioned to require the 30 foot fuel modification zone and assumption of risk, the project can be found consistent with LCP fire hazards provisions.

3. Visual Resources

A. Applicable LCP Policies

LUP Key Policy 3.2.1. *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.*

LUP Policy 3.2.2.1. *Critical viewshed: everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and the following specific locations Soberanes Point, Garrapata Beach, Abalone Cove Vista Point, Bixby Creek Turnout, Hurricane Point Overlook, upper Sycamore Canyon Road (Highway 1 to Pais Road), Pfeiffer Beach/Cooper Beach, and specific views from Old Coast Road as defined by policy 3.8.4.4.*

LUP Policy 3.2.3.A.2. *The best available planning techniques shall be used to permit*

development of parcels partially in the critical viewshed. These may include clustering of structures, sensitive site design, design control, transfer of development credits, and other techniques designed to allow development on such parcels outside the critical viewshed.

LUP Policy 3.2.3.A.3. *Where it is determined that an alternative building site on a parcel would result in conformance to the Key Policy, then the applicant will be required to modify his proposal accordingly. Similarly, changes in the design, height, or bulk of proposed structures will be required where this will result in an approvable project.*

LUP Policy 3.2.3.A.4. *New roads, grading or excavations will not be allowed to damage or intrude upon the critical viewshed. Such road construction or other work shall not commence until the entire project has completed the permit and appeal process. Grading or excavation shall include all alterations of natural landforms by earthmoving equipment. These restrictions shall not be interpreted as prohibiting restoration of severely eroded water course channels or gullying, provided a plan is submitted and approved prior to commencing work.*

LUP Policy 3.2.3.A.8. *Landowners will be encouraged to grant scenic easements to the County over portions of their land in the critical viewshed.*

LUP Policy 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.*

LUP Policy 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.*

LUP Policy 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.*

LUP Policy 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.*

IP Section 20.145.030.A.2.b. *Planning techniques, including clustering of structures,*

sensitive site design, design control, and/or transfer of development credits shall be utilized to permit development of parcels located partially within the critical viewshed where such development will not intrude on the critical viewshed. (Ref. LUP Policy 3.2.3.A.2)

IP Section 20.145.030.A.2.c. *Development proposals shall be modified for design, height, and/or bulk, or shall be re-sited, where such modifications will result in a project which does not intrude on the critical viewshed. (Ref. LUP Policy 3.2.3.A.3)*

IP Section 20.145.030.A.2.e. *Development of new roads, improvement to an existing road requiring more than 100 cubic yards of grading, or development of grading or excavations which require a coastal development permit, including all alterations of natural landforms by earth-moving equipment, will not be allowed to damage or intrude upon the critical viewshed. Such road construction or other work shall not commence until the entire project has completed the permit and appeal processes. These restrictions shall not be interpreted as prohibiting restoration of severely eroded water course channels or gullying, provided a plan is submitted and approved prior to commencing work. (Ref. LUP Policy 3.2.3.A.4)*

IP Section 20.145.030.A.2.g. *Landowners shall be required to grant scenic easements to the County over portions of their land in the critical viewshed, as a condition of permit approval. To this effect the owner or applicant shall submit a "Critical Viewshed Map" for the Planning Department's approval prior to the application being determined complete. The map shall delineate those portions of the parcel which are in the critical viewshed as defined in Section 20.145.020.V. The scenic easement over those areas shall be required as per Section 20.142.130. (Ref. LUP Policy 3.2.3.A.8)*

IP Section 20.145.030.A.2.h. *Landowners shall be required as a condition of project approval to grant scenic easements to the County over existing vegetated areas without which the proposed development would be located within the critical viewshed. The scenic easements shall be required in accordance with the provisions of Section 20.142.130.*

IP Section 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. LUP Policy 3.2.4.A.l)*

IP Section 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 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. (Ref. LUP Policies 3.2.4.A.2, 3.7.3.A.l, and 5.4.3.L.4.)

IP Section 20.145.030.C.2.c. *New development shall incorporate appropriate material, colors, or other techniques in order to blend with and be subordinate to its surrounding environment. Modifications shall be required for siting, structural design, size, shape, color, textures, building materials, access, and screening, where such modifications will provide for greater blending with the surrounding environment. (Ref. LUP Policy 3.2.4.A.3)*

IP Section 20.145.030.C.2.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. LUP Policy 3.2.4.A.5)*

a. LCP Consistency Analysis

The Big Sur LCP is highly protective of the critical viewshed, which includes everything within site of Highway 1 and major public viewing areas. The key visual resource policy in the Big Sur LUP recognizes the Big Sur coast's outstanding beauty and great benefit to the people of California and the nation and prohibits all development in the critical viewshed. Various other LCP provisions require, among other things, siting of development on the least visible portion of a site, clustering of structures when necessary to avoid intrusion in the critical viewshed, utilizing topography to screen structures from view, and recording scenic easements over all portions of private land in the critical viewshed.

The Applicant's parcel rises from Rocky Creek Canyon in the south and much of it is highly visible from Highway 1 and the world-famous vantage points of Hurricane Point and Bixby Bridge. As a result of the prominence of the parcel in the viewshed, a conservation and scenic easement was recorded for those portions of the property within the critical viewshed as a condition of approval for the Rocky Creek Ranch lot line adjustment in 1992 (Monterey County permits LL90032, LL90033, and LL88010). The easement prohibits structural development within the critical viewshed; however, it allows for a structure to be erected within the easement area provided that it can be "proven to be out of the critical viewshed and does not require significant vegetation removal increasing exposure to the critical viewshed." These terms reflect the fact that the boundary of the easement was an approximation of the portions of the site within the critical viewshed, and that project specific analyses would be required to ensure that future development would not extend within the viewshed.

As shown in Exhibit C, the proposed garage, shed, Steven's studio, half of Gillian's studio, the swimming pool, and pathways to the pool and Steven's studio are sited within the easement area and have the potential to be visible from Highway One and the Hurricane Point turnout. In addition, the primary residence, which is not within the previously established easement area, may be visible from Highway One as well as from the Hurricane Point and Bixby Bridge turnouts because of its location on the ridge crest (see Exhibit E). The County's approval relied

on existing trees and vegetation to ensure that these structures will not be visible in the critical viewshed, and includes a condition that requires maintenance and replanting of this vegetation as necessary if any part of the development becomes visible, and removal of visible structures if vegetation is not adequately maintained or replaced. A visual analysis of the project was completed by the County, including staking the proposed building envelopes, which concluded that the project would not be visible in the viewshed assuming the vegetation.

This approach ~~is inconsistent~~ raises questions with LCP requirements to site development on the portion of a parcel "least visible" from public viewpoints in order to absolutely guarantee no potential impacts to the critical viewshed. Commission staff have evaluated the potential visual impacts of the project, including from the site and from Highway 1. Although the County's condition may ensure that the structures are adequately screened during daytime hours (particularly because of distance between the development and vantage points and muted, non-reflective building materials and colors), the possibility exists that lights from the development may be visible at night through screening vegetation. The vegetation that the County relied on for screening of each of the structures consists of younger oaks and chaparral scrub, as shown in Exhibit F. The Applicant conducted a test of the visibility of lights at night and determined that no lights were visible from Hurricane Point or Bixby Bridge. However, this test simulated exterior lighting conditions with one 100-watt bulb approximating the lights that would be associated with the main house, Steven's studio, Gillian's studio, and garage, and four pathway lights on the driveway leading to the garage. This test did not take into account the full extent of interior lighting that could be visible through any number of windows on these structures, and it did not account for exterior lighting, including lighting of the pool area or other pathway areas. In addition, on visits to the site, staff was able to view Highway 1 and Hurricane Point through much of this vegetation, and therefore, it is reasonable to expect that lights from the development ~~would~~ may be visible from these vantage points (see Exhibit F). As a result, the development could result in scattered points of light or an overall glow though the vegetation that would impact the critical viewshed and be inconsistent with the LCP.

~~LUP Policy 3.2.3.A.3 requires that "where it is determined that an alternative building site on a parcel would result in conformance with the Key Policy, then the applicant will be required to modify his proposal accordingly." Similarly, LUP Policy 3.2.4.A.2 states that the "portion of a parcel **least visible from public viewpoints** (emphasis added) will be considered the appropriate site for the location of new structures." An approximately 2.5-acre alternative building site (described in the ESHA section of this report) exists on the parcel on the backside of the ridge that is not only outside areas of ESHA and ESHA buffer, and adequately set back from the more extreme fire hazard portions of the site (including steep slopes and ridges with chaparral), but is also completely outside the critical viewshed and existing scenic easement area, and includes ample area to develop. Use of this alternative building site would also allow for the clustering of structures, required by the LCP to avoid intrusion on the critical viewshed. Relocating development from the front of the ridge will also ensure that visual continuity of the ridgeline/skyline remains undisturbed, as required by LUP Policy 3.2.4.A.1.~~

~~Locating the proposed project in this alternative development area, as required by Special Condition 1a, ensures project consistency with the provisions of the LCP that prohibit any development that has any likelihood of visibility in the critical viewshed. Furthermore,~~ To address the potential for viewshed impacts, Special Conditions 1c~~d~~ and 1de ~~further~~ require design elements that are subordinate to and blended to the environment and a lighting plan that fully controls off-site illumination and glare. Such an approach is ~~the most~~ protective of the scenic beauty of Big Sur, and will ensure in perpetuity that the proposed development will not intrude into the viewshed.

b. Conclusion

The main house, the garage, shed, Steven's studio, Gillian's studio, the pool, pathways to the pool and Steven's studio, and associated lighting have the potential to intrude into the critical viewshed, particularly at night, contrary to LCP scenic and visual resource protection policies. Given the statewide and national importance of Big Sur's critical viewshed, ~~a conservative approach is warranted. Therefore,~~ the conditions of this permit require design elements that are subordinate to and blended to the environment and a lighting plan that fully controls off-site illumination and glare. ~~that the development be contained within an approximately 2.5-acre development envelope on the backside of the ridge outside of the critical viewshed and that the remainder of the site outside the allowable building envelope be maintained as a habitat protection and enhancement area (described in the ESHA section of this report) to preserve the scenic qualities and views of the site.~~ As conditioned, the project can be found consistent with the LCP's visual resource protection provisions.

4. Violation

In late 2004 and early 2005, approximately 1,600 square feet of central maritime chaparral was disturbed and removed on the site without permits, including without coastal permits. This vegetation removal, in the form of both manual removal/chipping and herbiciding, occurred at the sites of the proposed pool/patio, main house, Steven's studio, Gillian's studio, garage, shed, and garden area (see Exhibit C).[35] According to the Applicant, this vegetation was removed for the purpose of ground surveying and staking of proposed structures. Monterey County enforcement staff opened a code enforcement file (CE050029) regarding major vegetation removal, including removal of central maritime chaparral, identified by the County as ESHA. The Applicant prepared a restoration plan for the cleared habitat areas, but it was apparently not implemented. However, since the time of the unpermitted vegetation removal, some of the disturbed habitat area has begun to naturally revegetate by itself. The County ultimately determined that further restoration beyond that which was naturally occurring was not necessary. The code enforcement file was closed in December 2005 by the Planning and Building

[35] Note that this recent clearing must be understood as separate from historical clearing on the site. In terms of the latter, aerial photo review suggests that certain road, trail, and lookout areas were cleared prior to adoption of the Coastal Act, and have been continued to be used and cleared since that time. The recent unpermitted clearing was near these areas, but extended into central maritime chaparral adjacent to them.

Inspection Department Director. The Monterey County Planning Commission subsequently approved the project on February 22, 2006. Additional restoration of the areas subject to the violation was not included as part of the County approval because these areas were approved for new development as part of the County's action.

The County approval was appealed to the Coastal Commission on March 29, 2006, and Commission enforcement staff opened violation case number V-3-07-001 on January 8, 2007 in response to the unpermitted vegetation removal. The project, as detailed in this report, has been conditioned to relocate development from the areas of unpermitted vegetation removal because of LCP inconsistencies with ESHA, visual resources, and hazards policies. These areas have, or will, naturally revegetate over time, and additional conditions to ensure such revegetation do not appear warranted. Coastal Commission consideration of this application has been based on the certified Monterey County LCP. Review of this permit does not constitute a waiver of any legal action with regard to the violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

5. 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 effects which the activity may have on the environment. Beyond this, the Secretary of Resources has certified the Coastal Commission's review and analysis of land use proposals as being the functional equivalent of environmental review under CEQA.

Monterey County, as the lead agency under CEQA for this project, completed an initial study for the project on November 17, 2005 that concluded that, with the addition of mitigation measures, the project would not have significant environmental impacts. The County subsequently filed a Mitigated Negative Declaration for the project on December 1, 2005.

In the course of application review, several potential environmental impacts were identified and are discussed in the findings of this staff report, which are incorporated herein as set forth in full. ~~These include removal and disruption of ESHA, potential visual resource impacts, and placement of development in an area of high wildfire hazard.~~ Conditions of this permit reduce the potential for such impacts to an insignificant level. ~~Alternatives to the project that would locate development in areas of the site other than the area required by Special Condition 1 of this permit would be inconsistent with the Big Sur LCP ESHA, visual, and hazards policies. No other areas exist on the site that would be consistent with these policies because of the orientation of the parcel and prominence in the critical viewshed, the presence of steep slopes and sensitive habitat, and the existence of high fire danger on all other areas of the site.~~ The no-project alternative would not meet the objectives of the Applicant to develop a single family

residence on the site. All comments received by the Commission have been addressed. All preceding findings are incorporated herein by reference. Accordingly, the Commission finds that, as conditioned by this permit, the proposed project is the least environmentally damaging feasible alternative and will not have any significant adverse effects on the environment within the meaning of CEQA. The Commission also finds that the project will not result in cumulative impacts to the resources described above because, as designed and conditioned, the project's incremental effect is not considered to be cumulatively considerable as defined by CEQA.