

CALIFORNIA COASTAL COMMISSION

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**W8C**

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Commission Action:

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE DETERMINATION & COASTAL PERMIT

LOCAL GOVERNMENT: Monterey County
LOCAL DECISION: Approval with Conditions (see Exhibit 3)
APPEAL NUMBER: A-3-MCO-97-038
APPLICANT: **James Hill III** AGENT: Mark Blum
APPELLANTS: Commissioners Areias and Wan (see Exhibit 1)
PROJECT LOCATION: El Sur Ranch: fronting on, westerly & easterly of State Highway One from Andrew Molera State Park to (and including) Little Sur River Lagoon, Big Sur Coast, Monterey County APNs 159-011-11 et al (see Exhibit 2)
PROJECT DESCRIPTION: Lot line adjustments among 21 parcels (see Exhibit 4)
SUBSTANTIVE FILE DOCUMENTS: Monterey County Local Coastal Program (LCP) consisting of *Big Sur Coast Land Use Plan* and *Monterey County Coastal Implementation Plan*, County permit file #965100

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed. The record indicates that the County's permit issued last year for the lot line adjustments does not adequately address LCP policies regarding grazing, density, and public access (see Substantial Issue Analysis Findings). County attempts to address some of these policies by modifying the permit administratively still do not comply with Coastal Act and LCP policy and procedural requirements. This permit relates only to the lot line adjustment and is separate and independent of a County decision to purchase a conservation and scenic easement from the applicant.

Furthermore, staff recommends that, after a de novo hearing, the Commission **approve** a coastal permit conditioned to address the contended issues in the following ways (see De Novo Coastal Permit Findings):

1. Appellants' contention that the approved permit is inconsistent with LCP policies to encourage and preserve grazing is substantiated and can be corrected by approving a revised parcel map that the applicant wishes to record and by easing some of the restrictions on grazing contained in the County permit;
2. Appellants' contention that the approved permit does not adequately address potential density allowances is substantiated and can be corrected by approving a revised parcel map that the applicant wishes to record that provides for a reduction in number of parcels and extinguishes any extra density credits;
3. Appellants' contention that the approved permit is inconsistent with LCP policies to protect and provide access is substantiated and can be corrected by incorporating access-neutral language such as proposed by the applicant in a separate, voluntary scenic easement.

The recommended Commission action will result in a reduction of 14 of the Ranch's parcels into seven reconfigured parcels (see Exhibit 5 for resultant parcel configuration). This will conform the coastal permit with the applicant's desired outcome, as well as with the relevant LCP policies.

TABLE OF CONTENTS

I. APPELLANTS' CONTENTIONS.....	3
II. LOCAL GOVERNMENT ACTION.....	4
III. APPEAL PROCEDURES.....	4
IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.....	5
V. STAFF RECOMMENDATION ON COASTAL PERMIT.....	5
VI. RECOMMENDED CONDITIONS.....	5
A. STANDARD CONDITIONS.....	5
B. SPECIAL CONDITIONS.....	6
VII. RECOMMENDED FINDINGS AND DECLARATIONS.....	8
A. BACKGROUND.....	8
B. GRAZING.....	10
C. DENSITY.....	13
D. PUBLIC ACCESS.....	15
E. OTHER CONTENTIONS.....	18
F. COASTAL PERMIT FINDINGS ON OTHER ISSUES.....	19
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	19
EXHIBITS	
1. APPELLANTS' CONTENTIONS	
2. LOCATION MAP	
3. COUNTY PERMIT FINDINGS AND CONDITIONS	
4. PERMITTED PARCEL CONFIGURATION	
5. RECOMMENDED PARCEL CONFIGURATION	
6. RESULTANT LOT SIZES	
7. VOLUNTARY CONSERVATION AND SCENIC EASEMENT	

I. APPELLANTS' CONTENTIONS

A. There are two Commissioner appellants who contend in part (see Exhibit 1 for complete contentions):

1. With respect to grazing:

The LUP has policies against subdividing large grazing parcels (3.6.2.1, 3.6.2.5). Where a division is permitted, an agricultural viability report is required (County Code Section 20.145.070) as is a binding agreement for continued management of the entire property (3.6.2.5). The permit as approved by the County simply says that the property's use as a cattle ranch will continue, but contains no findings nor conditions regarding these policies. However, the permit shows that a large grazing parcel will be subdivided into smaller parcels. Smaller parcels could make it less economical to continue grazing if ownerships are fragmented. Also, as elaborated on below, the permit allows for no additional development on twelve of the parcels, which could restrict the ability to support continued grazing were new fences, barns, wells, etc. needed. Grazing is a principal use in the subject Watershed and Scenic Conservation District.

2. With respect to density:

The Big Sur Coast LUP has numerical and policy limitations on increased density. The permit does not discuss adequately density. Under the LCP various provisions taken together yield a parcel's density (e.g., zoning district minimum parcel sizes, slope-density formula, two TDC credits if in the viewshed). If each new parcel's maximum density were calculated, the total could be different than what is currently allowed. Appellant is aware that the permit is a way to facilitate purchase of a conservation and scenic easement which will restrict new development in the viewshed, but how the development potential may be altered by this permit is unclear.

3. With respect to public access:

The Big Sur Coast LUP indicates public access at Little Sur beach and elsewhere on the subject property. The County Local Coastal Program requires that access be dedicated as part of new development (Section 20.70.050B4). The Coastal [Act] also requires that access be addressed. The permit is inconsistent with the LCP and the Coastal Act because there is no access finding. Furthermore, the permit is conditioned as follows: "That no future development shall be allowed on the [12] Parcels" A through L. Since access may require some level of development (e.g., a new trail, restroom, etc.), this condition is inconsistent with the LCP and Coastal Act.

4. With respect to other issues:

Finding #1 says there are 21 legal parcels, but then only lists 13 assessor's parcel numbers and this discrepancy is not explained. Condition #3 requires Parcel "C" to be reconfigured, but there is no finding to explain why. Similarly, there is no finding supporting Condition #4, which only addresses water supply on three of the 21 lots. And, there is no discussion in the permit as to whether the new parcelization will affect access to each parcel (i.e., will new roads have to be constructed?)

B. Another appeal form from David Dilworth was received, but review of the County record revealed that he did not have standing because he did not participate in the local process, as the Coastal Act requires. Thus, his appeal is invalid and not considered in this report.

II. LOCAL GOVERNMENT ACTION

The Monterey County Minor Subdivision Committee approved a coastal permit for the proposed lot line adjustment project with 11 conditions on July 25, 1996 (see Exhibits 3 & 4). That decision was mailed to the Coastal Commission and others on April 24, 1997 in order to begin the appeal period. In the intervening period, some changes were made to the project which are discussed in the recommended findings below. In a related but independent action, the County agreed to purchase a conservation and scenic easement from the applicant over a portion of the land which is the subject of the lot line adjustment. That action is not contingent nor conditioned on the outcome of the coastal permit.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county (Coastal Act Section 30603(a)).

For projects not located between the sea and the first public road paralleling the sea, the grounds for an appeal shall be limited to an allegation that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(1)). For projects located between the sea and the first public road paralleling the sea, which is partially the case for this project, the grounds for appeal to the Coastal Commission can also include an allegation that the development does not conform to the public access and recreation policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, which is the case in this appeal, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local

government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal was filed, pursuant to Coastal Act Section 30603.

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

I move that the Commission determine that Appeal No. A-3-MCO-97-038 raises no substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

V. STAFF RECOMMENDATION ON COASTAL PERMIT

Staff recommends that the Commission adopt the following resolution to conditionally approve a coastal permit:

MOTION: Staff recommends a YES vote on the following motion:

I move approval of coastal development permit A-3-MCO-97-038 with the recommended conditions.

A majority of the Commissioners present is required to pass the motion.

RESOLUTION: Approval with Conditions:

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformance with the applicable provisions of certified Monterey County Local Coastal Program, is located (in part) between the nearest public road and the sea and is consistent with the California Coastal Act Chapter 3 public access and recreation policies, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

VI. RECOMMENDED CONDITIONS

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 this permit is reported to the Commission. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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. **Limits of this Approval:** Notwithstanding the original lot line adjustment plat submitted with the application to the County, this permit only authorizes the recombination and reconfiguration of 14 parcels of record. The seven resulting, authorized, reconfigured lots are (see Exhibit 5):

- 1: approximately 3255 acres (derived from APNs 418-021-018, 418-021-017, 418-021-027, 159-011-001, 159-011-003, 159-031-004 & 159-011-005);
- 2: approximately 260 acres (derived from APNs 418-021-017 & 418-021-018);
- 3: approximately 175 acres (derived from APNs 418-021-017, 418-021-026 & 418-021-027);
- 4: approximately 300 acres (derived from APNs 159-011-003, 159-011-004, 418-021-026 & 418-021-027);
- 5: approximately 205 acres (derived from APNs 159-011-003, 418-026 & 418-021-027);
- 6: approximately 170 acres (derived from APNs 159-001-003, 159-011-004 & 418-021-026);
- 7: approximately 1330 acres (derived from APNs 159-021-001 & 159-021-002).

No other development is allowed by this permit. Any future development is subject to a separate coastal permit that would be issued by Monterey County (or the California Coastal Commission, upon appeal or where the Commission retains jurisdiction).

2. **Recordation:** In order for this permit to be in effect, the applicant shall provide evidence that a Record of Survey showing new lot lines and their monumentation, consistent with Special Condition #1 above, has been recorded and filed with the Monterey County Surveyor, pursuant to the Surveyor's requirements.

3. **Flood Plain:** Areas subject to inundation by the 100-year flood, as shown on Federal Flood boundary Map by FEMA, shall be delineated on the Record of Survey. Applicant shall provide evidence to the Executive Director and to Monterey County Water Resources Agency that he has recorded a notice covering those adjusted parcels shown to contain portions of the 100-year flood plain stating that the property is located within or partially within a floodplain and may be subject to building and/or land use restrictions.

4. Future Development: Within one week after recording the Record of Survey, the applicant shall provide evidence to the Executive Director that the Conservation & Scenic Easement (see Exhibit 7) has been recorded that authorizes the following types of development:

- a. Projects of owner which consist of structures essential for ranching or similar agricultural uses, including, but not limited to, fencing, water and irrigation facilities essential for range or stock management in association with ranching and grazing of existing and historic grazing land,; private highway improvements or utilities coming within the exceptions contained in the Big Sur Coast Land Use Plan Sections 3.2.5.B,C.2, and D; and projects essential to the maintenance of, in their existing states, all existing private developments, structures and utilities, including, but not limited to, existing uninhabited buildings, fences, roads, bridges, and utilities;
- b. Maintenance or replacement of existing development, structures and utilities associated with ranching and grazing of existing or historic grazing land;
- c. Projects of the California State Department of Transportation which are essential to the maintenance of Highway One in its existing state as a rural, two-lane Scenic Highway;
- d. Projects of the Monterey County Department of Public Works which are essential to the maintenance of, in their existing states, existing county improvements, including existing roads, bridges, and utilities;
- e. Use of property for continued access to and in connection with the use and enjoyment of Point Sur Lighthouse State Park and relocation of the existing access route to the Point Sur Lighthouse to an alternate location approved by the California Department of Parks and Recreation;
- f. Removal of non-indigenous plant species;
- g. coastal-dependent uses allowed pursuant to the *Big Sur Coast Land Use Plan*.

5. Density: Within one week after recording the Record of Survey, the applicant must present evidence to the Executive Director that the Conservation & Scenic Easement (see Exhibit 7) has been recorded that accomplishes the following: that there is no greater potential residential development density compared to the maximum potential density that the LCP would currently allow in the area of the original 14 parcels which are the subject of this permit. This condition can be satisfied by the provision which extinguishes the right to receive bonus density credits for transfer of development out of the viewshed.

6. Grazing: Within one week after recording the Record of Survey, the applicant must present evidence to the Executive Director that the Conservation & Scenic Easement (see Exhibit 7) has been recorded which indicates that the Owner desires to preserve and conserve the existing state of use of the Property, including existing grazing use.

7. Public Access: Within one week after recording the Record of Survey, the applicant must present evidence to the Executive Director that the Conservation & Scenic Easement (see Exhibit 7) has been recorded which provides that nothing in the easement shall be construed in any

manner to abrogate or interfere with any rights of record or prescriptive rights (if any there be) and is otherwise access-neutral.

8. Procedures: Within one week after recording the Record of Survey, the applicant shall submit evidence to the Executive Director that the Conservation & Scenic Easement (see Exhibit 7) has been recorded with the provisions specified in the above conditions. Failure to do so will be a violation of the terms of this permit and, in addition to other remedies provided by law, may result in revocation of the permit. No changes in the easement shall be recorded until the Executive Director has determined that the change is consistent with the requirements of this permit or an amendment to this permit has been issued.

VII. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Background

1. Setting:

The subject site is the El Sur Ranch, one of the largest on the Big Sur Coast at over 7,100 acres encompassing up to 27 different parcels. Existing development on the Ranch consists of six residences and various accessory buildings. The ranch has historically been, and continues to be, used for grazing. It spans both sides of Highway One. The ocean side contains the scenic Little Sur River and Point Sur beaches. A substantial portion of the Ranch is within the critical viewshed of Highway One, where most new development is prohibited under the Local Coastal Program. The LCP allows transfer of development credits from otherwise buildable parcels within the critical viewshed, to suitable building sites outside of the viewshed.

2. Previous Permit Request:

The Ranch's owner applied for a coastal permit in late 1984 for a development agreement that would allow for a 100 unit inn complex, 41 residences, a 200 seat restaurant, and sewage treatment and water facilities. That permit application was denied by the Coastal Commission.

3. Subject Permit Request:

Pursuant to the Proposition 70 Big Sur Viewshed Acquisition Program, a governmental conservation policy, the Ranch owner offered to sell Monterey County a scenic and conservation easement over almost all of the property in the Highway One critical viewshed, covering 3,255 acres. A draft easement was submitted to the County in 1994. The purpose of the Easement is to preserve open space pursuant to established state and local policies for scenic enjoyment of the general public yielding significant public benefit. The Easement over the El Sur Ranch is an identified conservation project (See Exhibit 7 for final easement language about to be recorded.)

According to the applicant, Monterey County requested him to apply for a lot line adjustment permit which would conform the Ranch parcels' boundaries to the proposed easement boundaries. Thus, the purpose of the subject permit was to facilitate the easement project, but the two approvals are independent.

The applicant originally requested and received approval for a series of lot line adjustments that would result in parcel boundaries conforming to the primary ridgeline paralleling the coast, which for much of its length comprises the viewshed boundary line. Under these adjustments, the lot lines would be modified so 12 of 26 parcels would fall entirely seaward of this ridgeline viewshed boundary, while the remainder would be entirely outside of the Highway One viewshed. (No viewshed delineation was shown on the 27th parcel because it has building sites outside of the viewshed.) In order to accomplish this, 21 of the 27 lots comprising the ranch would have had their boundaries adjusted; 6 parcels, consisting of 1520 acres all outside of the Highway One viewshed were not affected (see Exhibit 4). The permit was conditioned so that it would not be effective until the conservation easement was recorded. However, the transaction to use Proposition 70 scenic protection bond money to purchase the easement was an independent matter from the permit decision, and was structured to occur even if the validity of the lot line adjustment were challenged (Board of Supervisors, December 3, 1996).

4. Subsequent Request:

Since the County's action approving the subject coastal permit on July 25, 1996, the applicant, based on discussions with County and Commission staff, agreed to combine the 12 proposed viewshed parcels into one. The applicant prepared a new Record of Survey affecting only 14 lots. As a result, the new Survey would reduce the number of affected lots from 14 existing parcels to 7 reconfigured parcels (see Exhibit 5). This action is reflected in a letter from the County Planning Director of April 22, 1997. The Director signed off this new parcelization along with changes to several conditions as being "in substantial conformance" with the issued county coastal permit. This sign-off was done administratively, without the permit being amended, as the LCP requires. Subsequently, the permit (as adopted on July 25, 1996 for the original lot line adjustment) was mailed out and the appeal period commenced. The permit was then appealed by Commissioners Areias and Wan, in part because the permit action of July 25, 1996 no longer matched the applicant's new proposal and the Director's sign-off (see Exhibit 1).

The following substantial issue analysis focuses on the conformance of the County's July 25, 1996 coastal permit with the requirements of the Monterey County Local Coastal Program. As will be discussed below, this permit presents substantial issues relating to the permit's conformance with the LCP requirements for findings and conditions concerning grazing, density and public access. Once the Commission determines that an appeal raises a substantial issue, it holds a de novo hearing and may directly issue a coastal permit subject to appropriate conditions. The merits of this development proposal and required conditions are discussed in the "De Novo Coastal Permit Findings" that follow each analysis of the substantial issue contentions.

The Commission also understands that the County, at the applicant's request, made administrative changes to the permit. The County allowed the applicant to record a different lot configuration than condition #1 of the permit specified. The County also waived at least parts of three other conditions. These changes, however, have not been adopted consistent with the procedures for amending a coastal permit established in the LCP and have not been formally forwarded to the Commission for review. Therefore, they can not affect the Commission's substantial issue determination.

The Commission notes the County's permit action was seemingly influenced by the argument that the County's authority over this proposed development was limited by the provisions of the Subdivision Map Act relating to lot line adjustments. This argument overlooks the separate statutory basis for

reviewing this project provided by the Coastal Act. Under Section 30106 of the Coastal Act the Commission, or the County in implementing the LCP, has permit authority over a "change in the density or intensity of use of land, including, but not limited to, a subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits." Given this authority, the Commission and County are required to review this development proposal and take necessary action to ensure that it will be consistent with the policies contained in the *Big Sur Coast Land Use Plan* and public access provisions of the Coastal Act.

Finally, the County issued a Combined Development Permit which includes authorization for a Major Lot Line Adjustment and also grants a coastal permit for this project. The Commission's substantial issue determination and subsequent approval of this coastal permit, subject to the conditions specified below, vacates and supersedes this County action at least to the extent that it approves issuance of a coastal permit (as provided in Section 20.82.080 of *Monterey County Coastal Implementation Plan*). As an exercise of its authority to issue a Major Lot Line Adjustment, the County may amend the, or issue a new, lot line permit, consistent with the terms of this coastal permit, before the project may proceed.

B. Grazing

Appellants' Contention

Appellants contend, in part:

The LUP has policies against subdividing large grazing parcels (3.6.2.1, 3.6.2.5). Where a division is permitted, an agricultural viability report is required (County Code Section 20.145.070) as is a binding agreement for continued management of the entire property (3.6.2.5). The permit as approved by the County simply says that the property's use as a cattle ranch will continue, but contains no findings nor conditions regarding these policies. However, the permit shows that a large grazing parcel will be subdivided into smaller parcels. Smaller parcels could make it less economical to continue grazing if ownerships are fragmented. Also, ... the permit allows for no additional development on twelve of the parcels, which could restrict the ability to support continued grazing were new fences, barns, wells, etc. needed. Grazing is a principal use in the subject Watershed and Scenic Conservation District.

Local Government Action:

The final permit approved by the Minor Subdivision Committee allows the reconfiguration of 21 parcels. A large 2531 acre parcel now used for grazing is shown divided into smaller parcels (see Exhibits 3 & 4). Condition # 8 of the permit says that no development is allowed over several of the proposed new parcels.

A subsequent administrative decision of the Planning Director allowed the applicant to record just one large parcel where 12 had been approved (see Exhibit 5).

Local Coastal Program Provisions

The certified, governing *Big Sur Coast Land Use Plan* provides:

Policy 3.2.5 B: Essential agricultural structures required by commercial ranching and agricultural operations that cannot be feasibly located outside the viewshed shall be permitted [in the critical viewshed] under careful design and siting controls. Examples include barns, fences, windmills, water pumps, water tanks, stockponds and corrals...

Policy 3.6.2.1: All contiguous grasslands of 320 acres or more and those traditionally used for grazing should be preserved for such use.

Policy 3.6.2.5: Subdivision of large ranching properties is generally discouraged. The configuration of new parcels created through land divisions shall be designed in such a way to protect existing or potential agricultural activities and grazing resources. In cases where large ranching properties must be divided to accomplish other policies of this Plan, a binding agreement for the continued management of the entire property shall be required.

Policy 5.3.1.2 Watershed and Scenic Conservation: Protection of watersheds, streams, plant communities, and scenic values is the primary objective. Principal uses in this [land use] category include agriculture/grazing and supporting ranch houses and related ranch buildings...

Policy 5.4.3H.4: Resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action.

Furthermore, the governing *Monterey County Coastal Implementation Plan* provides:

Section 20.145.070B1: An Agricultural Viability Report shall be required for subdivision of parcels which are 320 acres or more in size, and for subdivision of any size parcel under Williamson Act contract. It may also be required, at the discretion of the Director of Planning, for subdivisions of a lesser size and for other development proposals where agricultural viability is in question and could be a factor in the decision-making process.

Section 20.145.070C3: Parcels created through subdivision or lot line adjustments shall be configured so as to assure the continued viability of existing or potential agricultural and/or grazing activities on the parcel(s). Where continued agricultural viability may be adversely impacted by the proposed development, an agricultural viability report may be required to assess the impacts and to make recommendations for mitigation measures. (Ref. Policy 3.6.2.5)

Substantial Issue Analysis

The County permit, as issued, is deficient in addressing the cited grazing-related policies. The permit findings indicate that "historically, the property has been used as a cattle ranch; that use will remain." This statement is consistent with the intent of the cited land use plan policies. As noted by the appellants, however, Condition # 8 of the County permit could limit future development necessary to carry on grazing,. Although the "no development" provision was likely imposed because the subject property was mapped to be in the critical viewshed, the *Big Sur Coast Land Use Plan* allows exceptions for grazing facilities. Thus, the County's condition is overly restrictive. Since it is inconsistent with the LCP policy cited above, a substantial issue is raised.

Additionally, the County permit allows one large parcel now used for grazing to be divided into smaller parcels (see Exhibit 4). If individually sold, these smaller parcels could be less viable for continued grazing. Other parcels on the ranch, which is now run as one entity, are also reconfigured. No agricultural viability report was required, nor was any viability information included in the County permit file. The LCP, while discouraging such a reparcelization, would allow it, if measures are included to guarantee continued grazing. Since such measures were not so incorporated into the permit, a substantial issue is raised.

De Novo Coastal Permit Findings

In order to approve a coastal development permit that is consistent with the above-cited LCP provisions, it is necessary (1) to allow some additional development associated with grazing and (2) to have a binding agreement for continued grazing use over parcels divided from the large one or to not divide the large parcel into smaller ones. The applicant had voluntarily agreed to sell a conservation and scenic easement over the portion of the parcels in the viewshed, prior to applying for the permit. The easement language about to be recorded (see Exhibit 7) allows the following uses within the area subject to the easement:

Projects of owner which consist of structures essential for ranching or similar agricultural uses (including, but not limited to, fencing, water and irrigation facilities essential for range or stock management in association with ranching and grazing of existing and historic grazing land), private highway improvements or utilities coming within the exceptions contained in Land Use Plan Sections 3.2.5B, C.2, D, and projects essential to the maintenance of, in their existing states, all existing private developments, structures and utilities, including, but not limited to, existing uninhabited buildings, fences, roads, bridges, and utilities;

Maintenance or replacement of existing development, structures and utilities associated with ranching and grazing of existing or historic grazing land.

This language is consistent with the LCP and is appropriate to incorporate into the coastal permit.

This voluntary easement also provides that the property owner plans to continue the grazing use:

Owner desires to preserve and conserve for the public benefit the great natural scenic beauty and existing openness, natural condition, existing habitats, and existing state of use of Property.

Furthermore, the easement contains the following provisions to ensure that grazing continues to occur in a sound manner:

Where grazing is permitted by this Deed of Conservation and Scenic Easement, grazing must be conducted so as to preclude overgrazing resulting in soil erosion. Grazing shall be conclusively presumed to be consistent with this requirement if conducted in accordance with the "Guidelines for Residue Management on Annual Range" Leaflet 21327 of the Cooperative Extension of the Division of Agricultural Sciences, University of California, or subsequent or amended version of said Guidelines; provided, however, that deviation from the Guidelines in consideration of other factors shall not create any presumption of overgrazing.

More significantly, the applicant is now proposing to assemble one large parcel in the area where the original application showed twelve. This new parcel would be approximately 3,255 acres, greater in size than the largest existing parcel of 2,531 acres. The other six lots that would be created by the amended boundary reconfigurations would range in size from 175 to 1,330 acres. At the present time the existing parcels in this area range in size from 16.5 to 1615 acres. With the exception of one lot, the new lots that would result from the reconfiguration will be greater in size than the current ones. Even the lot that provides the exception, the Ranch's second largest lot at 1,615 acres, would remain at 1,330 acres, well above the 320 threshold for viable grazing parcels established in the LCP. Therefore, the proposed development, with the modification desired by the applicant will ensure that

parcels in this area remain large enough to sustain grazing uses consistent with the policies of the *Big Sur Coast Land Use Plan*.

To further provide that grazing use shall continue to be made of these parcels, the permit must be conditioned to allow the possibility of some grazing-related development on the subject parcel and to have any legal restrictions state that grazing is the intended continued use of the property. As so conditioned and as conditioned to permit the only the revised lot configuration, the coastal permit will be effectively consistent with the relevant local coastal program policies.

C. Density

Appellants' Contention:

The Big Sur Coast LUP has numerical and policy limitations on increased density. The permit does not discuss adequately density. Under the LCP various provisions taken together yield a parcel's density (e.g., zoning district minimum parcel sizes, slope-density formula, two TDC credits if in the viewshed). If each new parcel's maximum density were calculated, the total could be different than what is currently allowed. Appellant is aware that the permit is a way to facilitate purchase of a conservation and scenic easement which will restrict new development in the viewshed, but how the development potential may be altered by this permit is unclear.

Local Government Action:

The coastal permit allowed the reconfiguration of 21 legal lots (The other six lots comprising the Ranch were not adjusted). It also required that one proposed new parcel be reconfigured or eliminated (thus, possibly resulting in only 20 lots).

Condition # 8 of the permit required that no development occur on 12 of these lots. According to the applicant's map, these 12 lots would be entirely in the viewshed.

Permit findings indicate that, "a greater number of parcels than originally existed will not be created as a result of this lot line adjustment" and "that the proposed project will not have a significant environmental impact."

A subsequent administrative decision of the Planning Director allowed the applicant to record just one large parcel where 12 had been proposed and to make other changes. The result is a total of only 20 lots on the Ranch where there had been 27.

Local Coastal Program Provisions

The primary designation over the property is Watershed and Scenic Conservation, one unit per 40 acres. However, there are three moderating factors under the certified LCP that could result in a different maximum potential density. First, the LCP also has a slope-density formula whereby east of Highway One on slopes between 15% and 30% a maximum of only one unit per 80 acres is allowed and on land greater than 30% slope only one unit per 320 acres is allowed (LUP policy: 5.4.2.8). Second, many *Plan* policies have development restrictions which would render the maximum density inappropriate, including, for example, the agricultural/grazing policies cited in finding #2 above.

Furthermore, under the *Big Sur Coast Land Use Plan* a maximum of 100 new parcels throughout Big Sur can be created (LUP Table 1, p 85). Third, if parcels are entirely within the viewshed, but otherwise buildable, then two transferable density credits may be granted for each density unit that would otherwise be approved were the parcels not in the viewshed (Implementation Section 20.64.190.040.4).

With regard to new parcels, LUP policy 3.2.3A1 says "In order to avoid creating further commitment to development within the critical viewshed all new parcels must contain building sites outside the critical viewshed."

Section 19.02.150 of the Implementation Plan states:

A lot line adjustment which results in the relocation of the building area or has the potential to result in the creation of additional lots shall be considered major... A relocation which results in the creation of additional lots or parcels shall be treated as a subdivision.

Substantial Issue Analysis

The coastal permit issued by the County does not discuss density. It contains no calculation of what would be the maximum amount of potential units allowed on the subject 21 parcels, compared to what would be allowed after they are all reconfigured. Since they are of different sizes, would likely have different amounts of land in different slope categories, and may be eligible for transfer credits, the maximum density after the parcels are reconfigured could be different even though the number of parcels and total land area remain the same.

The County's permit findings do not address conformity with LUP policy 3.2.3A1. If new parcels are allowed in the viewshed, in seeming contradiction to this policy, the permit findings must substantiate the basis by which effective conformance with the LCP is achieved. For example, the County could find that the viewshed building sites are extinguished by purchase of a scenic easement and that residential development rights will be transferred to the applicant's parcels outside the viewshed based on an overall ranch plan. The permit does not allow development on 12 of the lots, but does not explain why and does not discuss the applicant's proposed viewshed boundary line. The permit does not specify if the applicant is allowed to transfer density credits from the 12 lots created to be entirely within the viewshed, which presumably would be allowed under the LCP, and hence does not calculate how many credits there would be. One possible scenario is that more density credits would be available under the approved configuration than under the current lot line pattern because of the bonus for transferring density out of the viewshed. For example, many parcels now straddle the represented viewshed line. Under the LCP, development would be allowed on the nonviewshed portion of the parcel. Under the permit, twelve reconfigured parcels totaling some 3255 acres are not allowed development. Under the LCP double density credit might be allowed for these newly configured parcels. This result would be contrary to the way in which the *Big Sur Coast Land Use Plan* policies regarding new residential density are meant to be applied. Under the *Land Use Plan's* many policies to protect scenic and grazing land and to prevent cumulative traffic and water use impacts a project with such possible outcomes would not be approved. Given the lack of necessary discussion in the findings and the potential for more density that has not been factored into the permit, a substantial issue is raised by the appellants' contention.

De Novo Coastal Permit Findings

In order to approve a coastal development permit involving a lot line adjustment, assurance must be given that the potential buildout remains the same or is reduced. Otherwise, the proposal needs to be analyzed for compliance with all LCP policies that address increased density.

In this situation, however, the applicant has indicated that he will record only one lot in the mapped viewshed area. He had previously voluntarily agreed to sell the County a scenic easement over this area, before applying for the lot line adjustment. No new residential development is to occur on this parcel. Additionally, the Easement about to be recorded (see Exhibit 7) states:

Transfer Development Credits and/or other development rights acquired from or with the Property are hereby extinguished and may not be sold or otherwise transferred to any other person, entity, or property.

This means that potentially up to 78 new units would no longer be allowed (3255/40 acres per unit assuming the slope was gentle enough on all of this property = 81 minus three existing homes = 78), nor would any bonus transfer credits. This would obviously be a positive result in terms of mitigating cumulative impacts, for example on traffic, given that Highway One along the Big Sur coast has very limited capacity. The density concerns discussed above would no longer be at issue. The Special Conditions assure that the applicant will implement this stated intent by recording a Record of Survey showing that the 3255 acre viewshed area will be one parcel and, further, that the Easement has been recorded extinguishing the development rights associated with this reconfigured parcel (see Exhibits 1 & 5). As conditioned, the proposed project is consistent with the applicable LCP policies.

D. Public Access

Appellants' Contention:

The Big Sur Coast LUP indicates public access at Little Sur beach and elsewhere on the subject property. The County Local Coastal Program requires that access be dedicated as part of new development (Section 20.70.050B4). The Coastal [Act] also requires that access be addressed. The permit is inconsistent with the LCP and the Coastal Act because there is no access finding. Furthermore, the permit is conditioned as follows: "That no future development shall be allowed on the [12] Parcels" A through L. Since access may require some level of development (e.g., a new trail, restore, etc.), this condition is inconsistent with the LCP and Coastal Act.

Local Government Action:

Coastal Act Section 30604(c) requires:

Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

However, the County made no findings with regard to public access.

Local Coastal Program Provisions

The LCP provides for access on the subject property in various locations. For the shoreline, *Big Sur Coast Land Use Plan* Figure 2 (and policy 6.1.5A1) show the Little Sur Beach as "Priority 1- major access areas." Table 2 states, "Improve Trails. Develop facilities out of view" and "Acquire as a State Park." The rest of the El Sur Ranch beaches are shown as "Priority 2 - other areas suitable for access" (figure 2 and policy 6.1.5A2). Table 2 states, in part, for these, "Obtain access to northern beach [at Point Sur]. Obtain vertical access to False Point Sur and beach. Develop trail near Swiss Canyon. Develop facilities in cypress grove. Improve parking...." Figure 3 Trails Plan also shows future public access extending inland on the Ranch along the Little Sur River.

Policy 6.1.4.1 states that "Major access areas, whether in public or private ownership, shall be permanently protected for long term public use...." Policy 6.1.5B2 requires dedications of access easements, excepting in certain cases (generally for the same circumstances and developments as specified in the Coastal Act). Easement procedures are detailed in Section 20.64.280 of the Implementation Plan. Before areas are open to the public, access management plans are required (policies 6.1.4.1, 6.1.4.7).

The LCP does not allow development in the critical viewshed, defined as the area visible to the public from Highway 1 and major public viewing areas (LUP policy 3.2.2.1). This prohibition would apply to parking lots and other substantial developments for the purpose of providing public access. However, very limited exceptions are allowed including Highway One safety and aesthetic improvements (which would include restrooms); support facilities at Little Sur River Mouth and Point Sur Lighthouse; and minimal public access improvements on the beach along shoreline lateral accessways, such as litter collection and rustic stairways.

Substantial Issue Analysis

The County permit is deficient because it did not address public access when it should have according to both the LCP and the Coastal Act. Although the project is categorized as a lot line adjustment, it could affect public access in two ways. First, as noted, County Condition #8 calls for no additional development on all the Ranch land seaward of Highway One. While beaches and trails exist, some additional level of development may be necessary or desirable to provide or enhance public access in the future. Although this land is generally considered to be in the critical viewshed, where most development is prohibited, it may be possible to site minor access facilities out of the viewshed. Also, as noted, there are limited exceptions in the LCP which could allow some facilities in the viewshed. The permit appears to preclude any access and is therefore overly limiting. Since the permit is thus inconsistent with the LCP, a substantial issue is raised.

Second, the absence of any mention in the permit of public access means it is not directive where it may need to be. As noted, the applicant has agreed to convey a voluntary conservation and scenic easement independent of the coastal permit. The language that was agreed upon by the parties (applicant and County) is essentially neutral on the subject of public access. However, these parties could agree to a modification of this document in the future in a manner which could affect public access. Without the permit providing any guidance, the result for public access could be contrary to LCP provisions, thus also giving rise to a substantial issue.

De Novo Coastal Permit Findings

In order to approve a coastal permit for a shoreline property, there must be an access finding, at a minimum. The subject property is located between the sea and the nearest public road. Almost the entire shoreline consists of sandy beaches, in part, from north to south: Little Sur Beach, Point Sur Beach, False Point Sur Beach. The property is posted against trespass. However, if there are any prescriptive rights they should not be precluded by this action. In this regard, the applicant had voluntarily agreed to donate a scenic easement over the portion of the parcel encompassing the critical viewshed, including the entire area seaward of Highway One, before applying for the permit. The Easement language about to be recorded (see Exhibit 7) contains the following:

Nothing in this Deed of Conservation and Scenic Easement is intended to or shall in any manner abrogate or interfere with any rights of record or prescriptive rights (if any there be) existing on the Property.

The Easement also allows for use of the property for continued access to and in connection with the use and enjoyment of Point Sur Lighthouse and relocation of the existing access route to the Point Sur Lighthouse to an alternate location approved by the property owner and the California Department of Parks and Recreation. Although the Lighthouse is on a separate State-owned parcel, a relocated access road would be on the Ranch property. Therefore, this provision is a desirable one, providing for the protection of the scenic, ecological and historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreational sites.

The LCP calls for public access. At a minimum lateral access easements or offers to dedicate such easements could be required over the entire beach areas of the subject property. The appropriate amount and location of trails to the beaches (as well as elsewhere on the property) would be determined through analysis of appropriateness pursuant to several criteria in the LCP. It appears that existing paths and natural conditions (e.g., sandy beach) would allow for access without the need for any new development. Were additional facilities deemed necessary or desirable, they would be permissible under the LCP if located out of sight of Highway One or in some instances within sight, if screened. The property owner would not be required to provide such facilities unless he or she is doing major development on the site.

For the subject permit, the LCP's listed exceptions to the requirement to provide access do not extend to lot line adjustments. However, considering Court cases that have been decided since LCP certification, an access dedication would not be required in this instance because the impacts on access due to the lot line adjustments are negligible, as conditioned. However, public access should not be precluded in the future if it is proposed or is necessary mitigation for future development impacts that create a nexus with respect to public access. The voluntary Easement provides:

Nothing in this Deed of Conservation and Scenic Easement shall be construed to restrict, require or authorize physical public access on or over the Property. The landowner reserves the right to deny or to permit public access, provided that any public access uses allowed shall be consistent with the Land Use Plan.

The Easement also refers to Monterey County's Resolution No. 87-151 which prohibits development except of those uses specified in the *Big Sur Coast Land Use Plan*. Taken together, this easement language is access-neutral; it neither provides for, nor precludes, public access. It allows the property owner or a subsequent owner to allow public access and construct access facilities consistent with the

Land Use Plan. Special Condition #7 requires the applicant to record the proposed easement, including language that would permit future access projects on the property, as a condition of this permit. As conditioned, the proposed project is consistent with the applicable LCP policies and Coastal Act Chapter 3 Public Access and Recreation policies.

E. Other Contentions

Appellant's Contention:

Finding #1 says there are 21 legal parcels, but then only lists 13 assessor's parcel numbers and this discrepancy is not explained. Condition #3 requires Parcel "C" to be reconfigured, but there is no finding to explain why. Similarly, there is no finding supporting Condition #4, which only addresses water supply on three of the 21 lots. And, there is no discussion in the permit as to whether the new parcelization will affect access to each parcel (i.e., will new roads have to be constructed?)

Local Government Action:

The noted local coastal permit conditions and findings are correctly characterized in the contention.

Local Coastal Program Provisions:

Section 19.02.205 of the *Coastal Implementation Plan* defines a "parcel." Various sections of the *Implementation Plan* (e.g., in the Subdivision Ordinance and Big Sur Coast part) address necessary infrastructure.

Substantial Issue Analysis:

The points raised by the appellants are inadequacies in the permit, but not of a substantial nature. The County record indicates that there are 21 parcels and the Commission is unaware of any information contradicting this assertion. Some assessors parcel numbers cover more than one legal lot.

Conditions # 3 and #4 are somewhat self-evident in addressing on-site sewage disposal and adequate water supply. Although they should be supported by findings, the absence of such justification does not give rise to a substantial issue.

Since the Commission is finding substantial issue on the other matters, these deficiencies can be addressed in the de novo coastal permit, if necessary. They are addressed by the new proposed and conditioned lot configuration which results in fewer, larger parcels, which should have adequate acreage for septic systems and wells (and no development over a large portion of the Ranch). The seven resultant reconfigured parcels all have access available from public roads (either Highway One or Old Coast Road) and any driveway extensions would be out of the viewshed. Thus, water, sewage disposal, and road access are not at issue at this time and would only be germane if there were future development proposals on any of the reconfigured lots.

F. Coastal Permit Findings On Other Issues

Floodplain: The proposed project includes lands in the 100-year floodplain of the Little Sur River. The LCP has policies that address mapping and recording notice of such hazards and the County permit imposed the necessary conditions (#5 and #7). Since the Coastal Permit is now being issued by the Coastal Commission, it is necessary to incorporate those conditions as well. As so conditioned (recommended de novo condition # 3), the proposed project is consistent with the LCP flood plain provisions.

Viewshed: The proposed project includes lands which are defined as the "critical viewshed." The LCP allows limited categories of development within this area. The issues of allowing grazing and public access structures are addressed in the previous findings. Other categories of development that the LCP dictates not be precluded are some coastal-dependent uses, county road improvements, and removal of non-native vegetation. The applicant has voluntarily agreed to sell a scenic easement that encompasses that portion of the Ranch in the Highway One viewshed. The easement language allows the following to occur within this scenic easement:

Projects of the California State Department of Transportation which are essential to the maintenance of Highway One in its existing state as a rural, two-lane Scenic Highway;

Projects of the Monterey County Department of Public Works which are essential to the maintenance of, in their existing states, existing County improvements, including existing roads, bridges and utilities;

Removal of invasive, nonindigenous plant species;

Projects of the Owner which consist of coastal dependent uses coming within the exceptions contained in Land Use Plan Sections 3.2.5.H.a., b., c. and d.

As conditioned to allow the possibility of these types of development occurring on the subject property within the viewshed, the coastal permit is consistent with the relevant local coastal program policies.

G. California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the proposed project may have on the environment. Therefore, the Commission finds that the proposed development can be found consistent with the requirements of CEQA.

Amplification of reasons for appeal of permit 965100 to Hill as being inconsistent with Monterey County Local Coastal Program (*Big Sur Coast Land Use Plan and Coastal Implementation Plan* -portions of County Code)

The permit, as written, is not consistent with the certified Big Sur Coast LUP. The LUP has policies against subdividing large grazing parcels (3.6.2.1, 3.6.2.5). Where a division is permitted, an agricultural viability report is required (County Code Section 20.145.070) as is a binding agreement for continued management of the entire property (3.6.2.5). The permit as approved by the County simply says that the property's use as a cattle ranch will continue, but contains no findings nor conditions regarding these policies. However, the permit shows that a large grazing parcel will be subdivided into smaller parcels. Smaller parcels could make it less economical to continue grazing if ownerships are fragmented. Also, as elaborated on below, the permit allows for no additional development on twelve of the parcels, which could restrict the ability to support continued grazing were new fences, barns, wells, etc. needed. Grazing is a principal use in the subject Watershed and Scenic Conservation District.

Appellant understands that there is a Conservation and Scenic Easement associated with the property which spells out how grazing is to continue, under what guidelines, and what facilities may be developed in the future to support grazing. Appellant also understands that the applicant may not actually record all of the approved parcels, keeping one large grazing parcel intact. Although the terms of the easement may be in line with the LUP, the easement provisions are not derived from the permit findings or conditions and could be changed without public review.

The Big Sur Coast LUP has numerical and policy limitations on increased density. The permit does not discuss adequately density. Under the LCP various provisions taken together yield a parcel's density (e.g., zoning district minimum parcel sizes, slope-density formula, two TDC credits if in the viewshed). If each new parcel's maximum density were calculated, the total could be different than what is currently allowed. Appellant is aware that the permit is a way to facilitate purchase of a conservation and scenic easement which will restrict new development in the viewshed, but how the development potential may be altered by this permit is unclear.

The Big Sur Coast LUP indicates public access at Little Sur beach and elsewhere on the subject property. The County Local Coastal Program requires that access be dedicated as part of new development (Section 20.70.050B4). The Coastal also requires that access be addressed. The permit is inconsistent with the LCP and the Coastal Act because there is no access finding. Furthermore, the permit is conditioned as follows: "That no future development shall be allowed on the [12] Parcels" A through L. Since access may require some level of development (e.g., a new trail, restroom, etc.), this condition is inconsistent with the LCP and Coastal Act.

Appellant understands that there is a Conservation and Scenic Easement associated with this property which spells out limitations on public access and that Commission's le...

EXHIBIT NO. 1

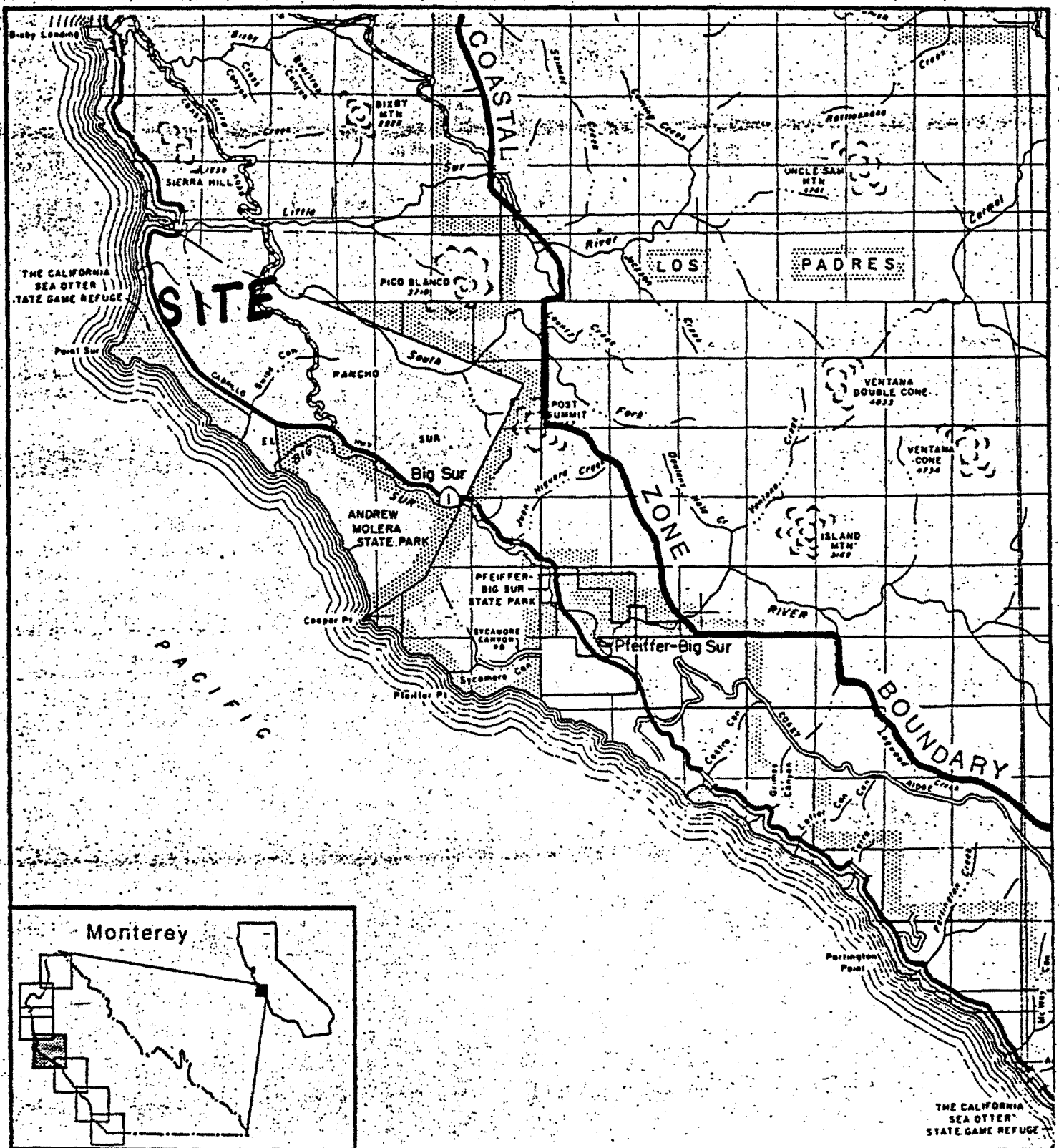
APPLICATION NO.

A-3-MCO-97-38/Hill

APPELLANTS' CONTENTIONS

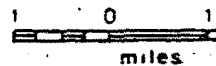
counsel has reviewed a draft of this easement. However, given the conditional language and the fact that the easement's provisions are not incorporated into the conditioned permit, the document could be recorded or changed in a manner that adversely impacts existing or planned access. Also, Condition #8 says that the legal wording need only be approved by County Counsel, whereas pursuant to Section 20.64.280A6 of the County Code and pursuant to the California Code of Regulations, the Coastal Commission's Executive Director must also have the opportunity to review and approve final easement documents.

The permit also includes some other items that need clarification. Finding #1 says there are 21 legal parcels, but then only lists 13 assessor's parcel numbers and this discrepancy is not explained. Condition #3 requires Parcel "C" to be reconfigured, but there is no finding to explain why. Similarly, there is no finding supporting Condition #4, which only addresses water supply on three of the 21 lots. And, there is no discussion in the permit as to whether the new parcelization will affect access to each parcel (i.e., will new roads have to be constructed?)



California Coastal Commission

LOCATION MAP



County of Monterey

St

EXHIBIT NO. 2

APPLICATION NO.

A-3-MCO-97-38 Hill

FINAL LOSS
ACTION NOTICE
MINOR SUBDIVISION COMMITTEE
COUNTY OF MONTEREY, STATE OF CALIFORNIA

REFERENCE # 3-MCO-97-40
APPEAL PERIOD 4/30-5/13/97

RESOLUTION NO. 96020

MINOR SUBDIVISION #965100

A.P. # 159-011-001-000M

In the matter of the request of
JAMES J. HILL, III (965100)

FINDINGS AND DECISIONS

for a Combined Development Permit pursuant to regulations established by local ordinance and state law, to allow a Coastal Development Permit and a Major Lot Line Adjustment, located on portions of the El Sur Rancho fronting on, westerly and easterly of State Highway One, Coastal Zone; came on regularly for hearing before the Minor Subdivision Committee on July 25, 1996.

Said Minor Subdivision Committee, having considered the application and the evidence presented relating thereto,

1. FINDING: The proposed Combined Development Permit consists of a Coastal Development Permit to allow a Major Lot Line Adjustment between twenty-one legal parcels of record. They are: 159-011-001-000; 159-011-003-000; 159-011-004-000; 159-011-005-000; 159-021-001-000; 159-021-002-000; 159-031-004-000, 418-021-017-000, 418-021-018-000; 418-021-021-000; 418-021-025-000; 418-021-026-000, 418-021-027-000. The parcels are located in the Big Sur Area, fronting on the east and west sides of State Highway One in the Coastal Zone. The parcels are zoned "WSC/40(CZ)", "OR (CZ)" & "RC (CZ)" or Watershed and Scenic Conservation, 40 Acres/Unit, Outdoor Recreation and Wetlands and Coastal Stand and Resource Conservation.

Presently, there are three homesteads, improved and unimproved access roads, an existing water tank, wells, springs and a communications relay site on one of the parcels. Historically, the property has been used as a cattle ranch; that use will remain. There is no new development proposed for the subject parcels. The proposed twenty-one lot major lot line adjustment would reconfigure the parcels and acreage as follows: Parcel A: 263 acres (A.P.N(s). 418-021-018-000 & 418-021-017-000), Parcel B: 272 acres (A.P.N. 418-021-018-000), Parcel C: 81 acres (A.P.N(s). 418-021-017-000 & 418-021-018-000) Parcel D: 372.5 acres (A.P.N(s). 418-021-018, 418-021-026-000 & 418-021-027-000), Parcel E: 353 acres (A.P.N(s). 159-011-001-000 & 159-011-003-000) Parcel F: 425 acres (A.P.N(s). 159-011-001-000; 159-011-003-000 & 159-011-005-000), Parcel G: 242 acres (A.P.N(s). 159-011-003-000 & 159-011-005-000), Parcel H: 177 acres (A.P.N(s). 159-011-003-000 & 159-011-005-000), Parcel I: 220 acres (A.P.N. 159-031-004-000), Parcel J: 207 acres (A.P.N 159-031-004-000), Parcel K: 202.5 acres (A.P.N(s). 159-011-003-000 & 159-011-004-000), Parcel L: 437 acres (A.P.N. 159-011-003-000), Parcel M: 188 acres (A.P.N(s). 159-011-003-000, 418-021-026-000 & 418-021-027-000), Parcel N: 198 acres (A.P.N(s). 159-011-003-000, 159-

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COASTAL COMMISSION

EXHIBIT NO. 3

APPLICATION NO.

A-3-MCO-97-38 Hill

COUNTY PERMIT

011-004-000, 418-021-026-000 & 418-021-025-000), Parcel O: 261 acres (A.P.N(s). 159-011-003-000, 159-011-004-000, 418-021-026-000 & 418-021-027-000), Parcel P: 141 acres (A.P.N(s). 418-021-017-000 & 418-021-027-000), Parcel R: 245 acres (A.P.N. 418-021-017-000), Parcel T: 360 acres (A.P.N. 418-021-021-000), Parcel U: 120 acres (A.P.N(s). 418-021-025-000 & 418-021-026-000), Parcel V: 160 acres (A.P.N. 418-021-025-000) & Parcel AA: 1,328 acres (A.P.N(s). 159-021-001-000 & 159-021-002-000), respectively.

EVIDENCE: The application and plans submitted for the lot line adjustment as found in File No. 965100 of the Monterey County Planning and Building Inspection Department.

EVIDENCE: The requirements for development in a Watershed and Scenic Conservation Zoning District as found in Chapter 20.17, Outdoor Recreation Zoning District as found in Chapter 20.38 and Resource Conservation as found in Chapter 20.36 of the Monterey County Coastal Implementation Plan.

2. **FINDING:** The major lot line adjustment is between twenty-one adjacent legal parcels of record.

EVIDENCE: As per grant deeds, legal documents and support materials contained in Minor Subdivision Committee File No. 965100.

3. **FINDING:** A greater number of parcels than originally existed will not be created as a result of the major lot line adjustment.

EVIDENCE: The application and plans submitted for the lot line adjustment as found in File No. 965100 of the Monterey County Planning and Building Inspection Department.

4. **FINDING:** The parcels resulting from the major lot line adjustment conform to the County Zoning and Building Ordinances.

EVIDENCE: Sections 20.17, 20.38, 20.36 and 20.145 of the Monterey County Coastal Implementation Plan.

5. **FINDING:** The proposed project will not have a significant environmental impact.

EVIDENCE: Sections 15061 (a) and 15325 of the Monterey County CEQA Guidelines categorically exempts the project from environmental review.

6. **FINDING:** The project, as described in the application and accompanying materials, and as conditioned, conforms with the plans, policies, requirements, and standards of the Monterey County Local Coastal Program.

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

- 1) The certified Big Sur Coast Land Use Plan,
- 2) The certified Monterey County Coastal Implementation Plan regulations for WSC (CZ), OR (CZ) and RC (CZ) Districts in the Coastal Zone and;
- 3) Chapter 20.145 of the Monterey County Coastal Implementation Plan regulations for development in the Big-Sur Coast Land Use Plan Area.

7. **FINDING:** The establishment, maintenance, or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

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

8. **FINDING:** The project, as approved by the Combined Development Permit, is appealable to the Board of Supervisors and the California Coastal Commission.

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

DECISION

THEREFORE, it is the decision of said Minor Subdivision Committee that said request for a Combined Development Permit is hereby approved as shown on the attached sketch, subject to the following conditions:

1. This permit is comprised of a Combined Development Permit consisting of a Coastal Development Permit to allow a Major Lot Line Adjustment between twenty-one legal parcels of record. They are: A: 263 acres (A.P.N{s}. 418-021-018-000 & 418-021-017-000), Parcel B: 272 acres (A.P.N. 418-021-018-000), Parcel C: 81 acres (A.P.N{s}. 418-021-017-000 & 418-021-018-000) Parcel D: 372.5 acres (A.P.N{s}. 418-021-018, 418-021-026-000 & 418-021-027-000), Parcel E: 353 acres (A.P.N{s}. 159-011-001-000 & 159-011-003-000) Parcel F: 425 acres (A.P.N{s}. 159-011-001-000; 159-011-003-000 & 159-011-005-000), Parcel G: 242 acres (A.P.N{s}. 159-011-003-000 & 159-011-005-000), Parcel H: 177 acres (A.P.N{s}. 159-011-003-000 & 159-011-005-000), Parcel I: 220 acres (A.P.N. 159-031-004-000), Parcel J: 207 acres (A.P.N 159-031-004-000), Parcel K: 202.5 acres (A.P.N{s}. 159-011-003-000 & 159-011-004-000), Parcel L: 437 acres (A.P.N. 159-011-003-000), Parcel M: 188 acres (A.P.N{s}. 159-011-003-000, 418-021-026-000 & 418-021-027-000), Parcel N: 198 acres (A.P.N{s}. 159-011-003-000, 159-011-004-000, 418-021-026-000 & 418-021-025-000), Parcel O: 261 acres (A.P.N{s}. 159-011-003-000, 159-011-004-000, 418-021-026-000 & 418-021-027-000), Parcel P: 141 acres (A.P.N{s}. 418-021-017-000 & 418-021-027-000), Parcel R: 245 acres (A.P.N. 418-021-017-000), Parcel T: 360 acres (A.P.N. 418-021-021-000), Parcel U: 120 acres (A.P.N{s}. 418-021-025-000 & 418-021-026-000), Parcel V: 160 acres (A.P.N. 418-021-025-000) & Parcel AA: 1,328 acres (A.P.N{s}. 159-021-001-000 & 159-021-002-000), in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms

and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. (Planning and Building Inspection Department)

2. File a Record of Survey showing new line and its monumentation as required by the office of the County Surveyor. (Department Public Works)
3. Prior to filing the Record of Survey, submit a revised map to the Division of Environmental Health for review and approval showing Parcel "C" having adequate area for on-site sewage disposal. If Parcel "C" can not be reconfigured or merged to meet Monterey County Code Chapter 15.20 standards, the lot will be reconfigured or merged with an existing lot meeting the requirements specified in Monterey County Code, Chapter 15.20. (Environmental Health Department)
4. That the applicant shall record a deed notification for designated lots "W", "Q" & "N" concurrently with the recording of the Record of Survey stating:

"That prior to the issuance of a building permit for residential development, the owner shall provide evidence that a water supply approved by the Monterey County Health Department is available for such development. The evidence shall be dependent on the type of water supply proposed:

- A. If the residential development will require the formation of a water system as defined in Title 22 California code of Regulations or as per Chapter 15.04 Monterey County Code, a water system permit shall first be obtained from the division of Environmental Health.
 - B. If the residential development will utilize individual wells, 1) the well shall be installed and, 2) proof of water quality, water quantity, and well logs shall be provided to the Director of Environmental Health as evidence that a water supply meeting all State and County regulations is available for the development." (Environmental Health Department)
5. Owner shall record a notice stating that the property is located within or partially within a floodplain and may be subject to building and/or land use restrictions. A copy of the recorded notice shall be provided to the County Water Resources Agency. (Water Resources Agency)
 6. Prior to the issuance of building permits, a drainage plan shall be prepared by a registered civil engineer to address on-site and off-site impacts, and necessary improvements shall be constructed in accordance with approved plans. (Water Resources Agency)
 7. Areas subject to inundation by the 100-year flood, as shown on Federal Flood Boundary Map by FEMA, shall be delineated on the Record of Survey. (Water Resources Agency)
 8. Concurrently with the filing of the Record of Survey, a conservation easement which the applicant has previously volunteered to dedicate for conservation purposes independent of this approval, shall be recorded with the Monterey County Recorder which states: That no future

development shall be allowed on the Parcels as follows: Parcel A: 263 acres (A.P.N{s}. 418-021-018-000 & 418-021-017-000), Parcel B: 272 acres (A.P.N. 418-021-018-000), Parcel C: 81 acres (A.P.N{s}. 418-021-017-000 & 418-021-018-000) Parcel D: 372.5 acres (A.P.N. 418-021-018-000 & 418-021-026-000), Parcel E: 353 acres (A.P.N{s}. 159-011-001-000 & 159-011-003-000) Parcel F: 425 acres (A.P.N{s}. 159-011-001-000; 159-011-003-000 & 159-011-005-000), Parcel G: 242 acres (A.P.N{s}. 159-011-003-000 & 159-011-005-000), Parcel H: 177 acres (A.P.N{s}. 159-011-003-000 & 159-011-005-000), Parcel I: 220 acres (A.P.N. 159-031-004-000), Parcel J: 207 acres (A.P.N 159-031-004-000), Parcel K: 202.5 acres (A.P.N{s}. 159-011-003-000 & 159-011-004-000), Parcel L: 437 acres (A.P.N. 159-011-003-000), subject to the approval of County Counsel. (Planning and Building Inspection Department)

9. That the lot line adjustment shall not be in effect until such time as the conservation easement is recorded. (Planning and Building Inspection Department)
10. The property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of this permit. The property owner will reimburse the County for any court costs and attorneys' fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said indemnification agreement shall be recorded upon demand of County Counsel or prior to filing a Record of Survey, whichever occurs first. (Planning and Building Inspection Department)
11. The applicant shall record a notice which states: "A permit (Resolution 96020) was approved by the Minor Subdivision Committee for Assessor's Parcel Numbers 159-011-001-000; 159-011-003-000; 159-011-004-000; 159-011-005-000; 159-021-001-000; 159-021-002-000; 159-031-004-000, 418-021-017-000, 418-021-018-000; 418-021-021-000; 418-021-025-000; 418-021-026-000, 418-021-027-000 on July 25, 1996. The permit was granted subject to 11 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to filing the Record of Survey. (Planning and Building Inspection Department)

PASSED AND ADOPTED THIS 25th day of July, 1996, by the following vote:

AYES: Chiulos, Dias, Hawkins, McPharlin, Naslund, Stewart

NOES: None

ABSENT: None



Nicholas Chiulos, Secretary

EXHIBIT 3 cont.

A-3-mcd-97-33

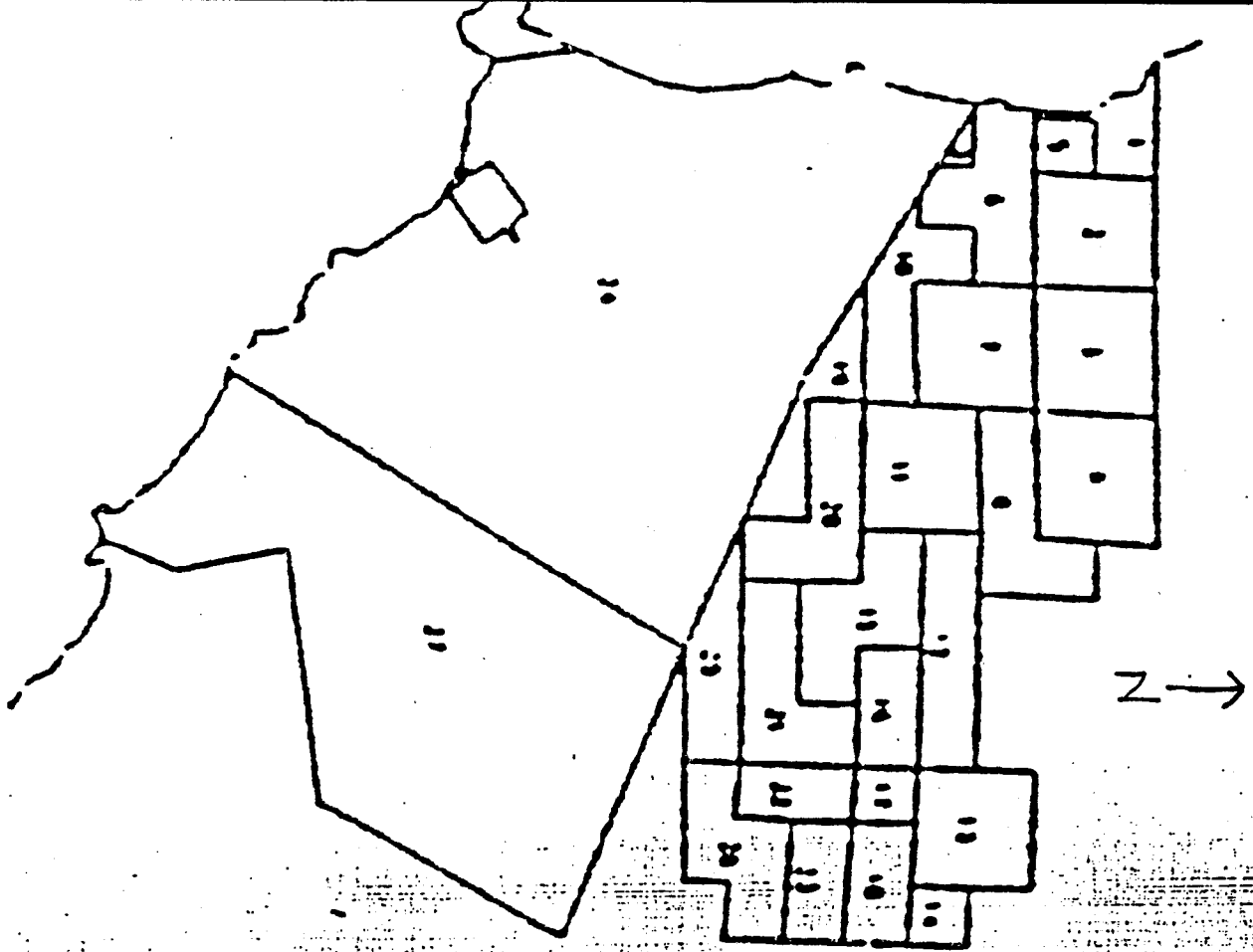
COPY OF THIS DECISION WAS MAILED TO APPLICANT ON: APR 24 1997

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE MAY 04 1997

UNLESS EXTENDED AS PROVIDED BY CHAPTER 19.09.035, TITLE 19 (SUBDIVISIONS), MONTEREY COUNTY CODE, THIS APPROVAL EXPIRES ON JUL 25 1998. EXTENSION REQUESTS MUST BE MADE IN WRITING 30 DAYS PRIOR TO THE AFOREMENTIONED EXPIRATION DATE.

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE BOARD OF SUPERVISORS. IT IS NOT APPEALABLE TO THE COASTAL COMMISSION.

EXISTING PARCEL CONFIGURATION



PERMITTED PARCEL RECONFIGURATION

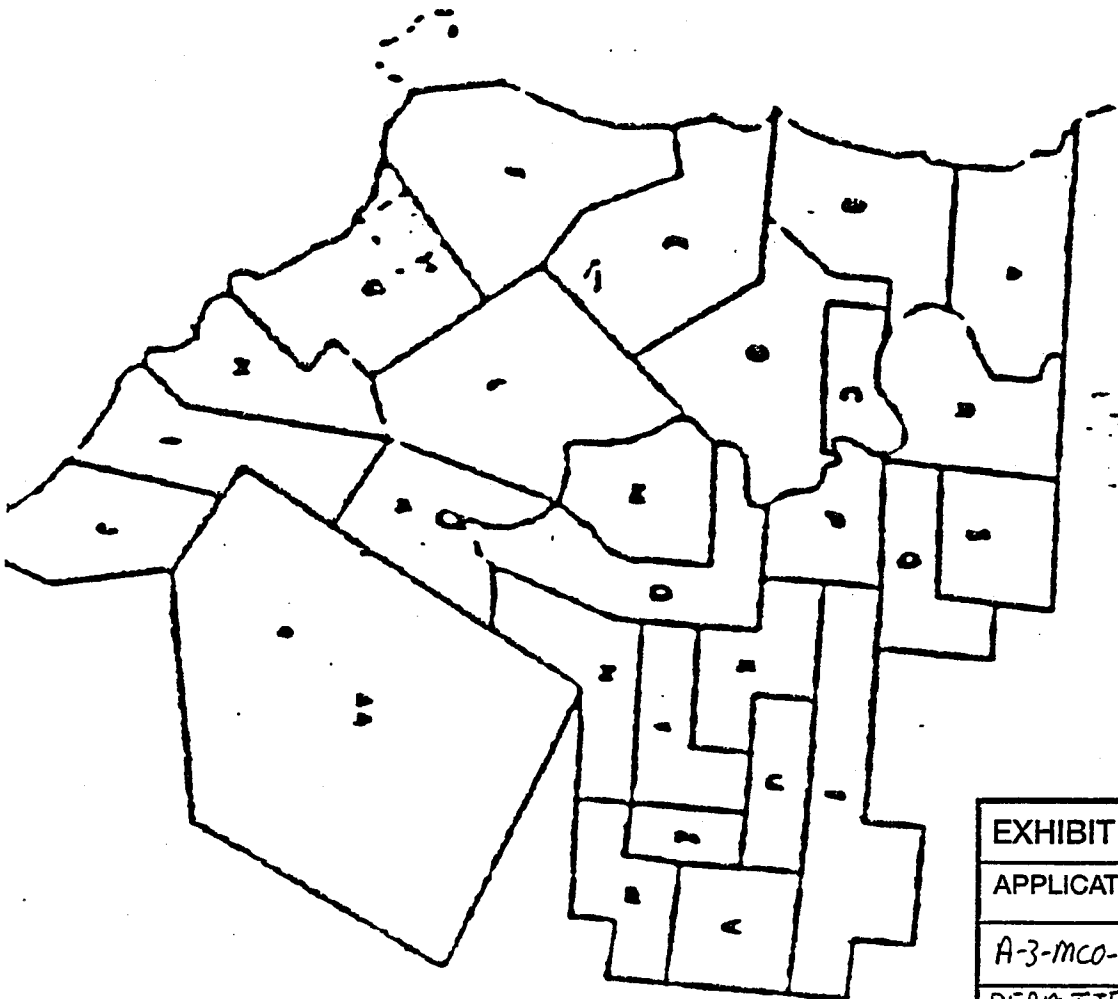
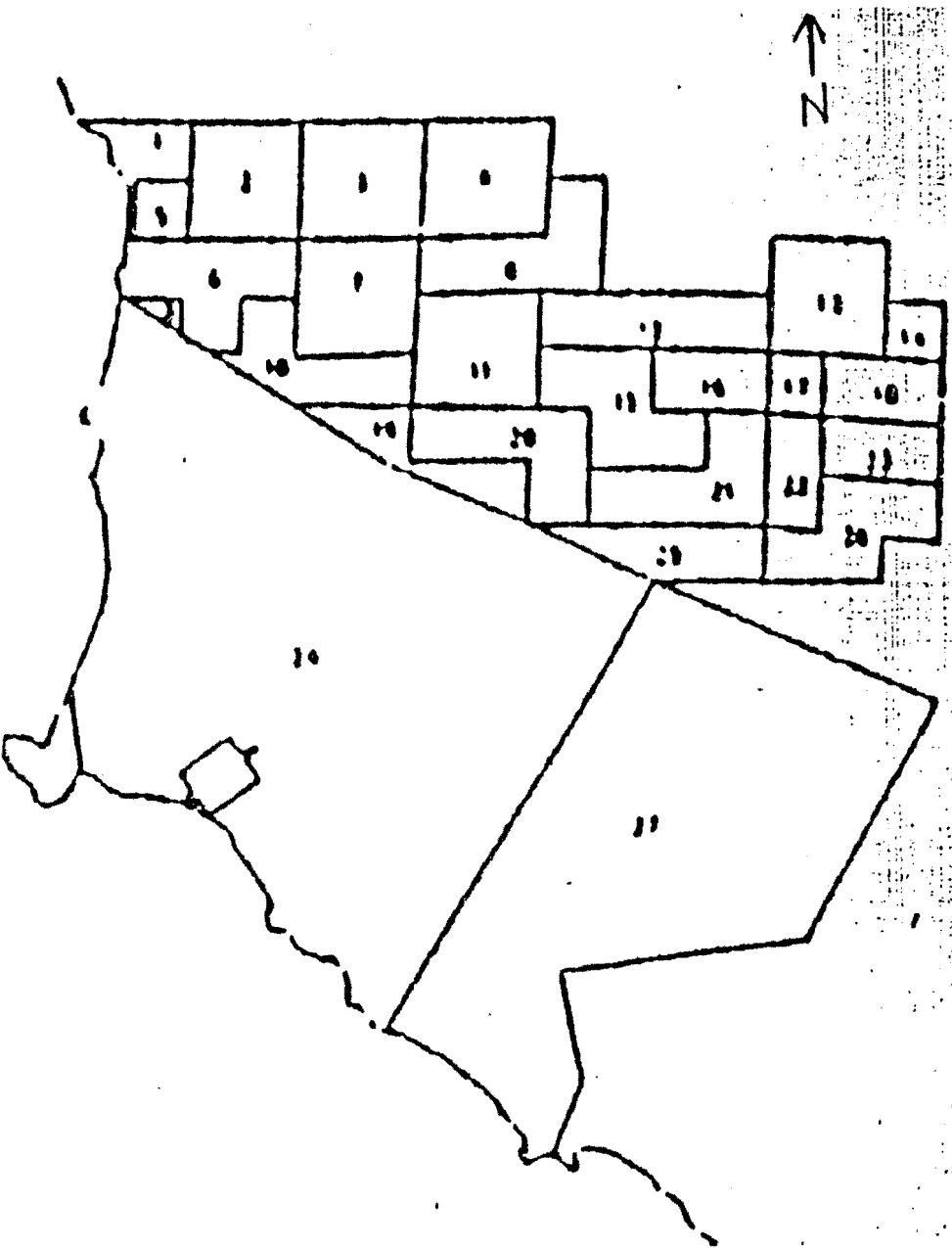
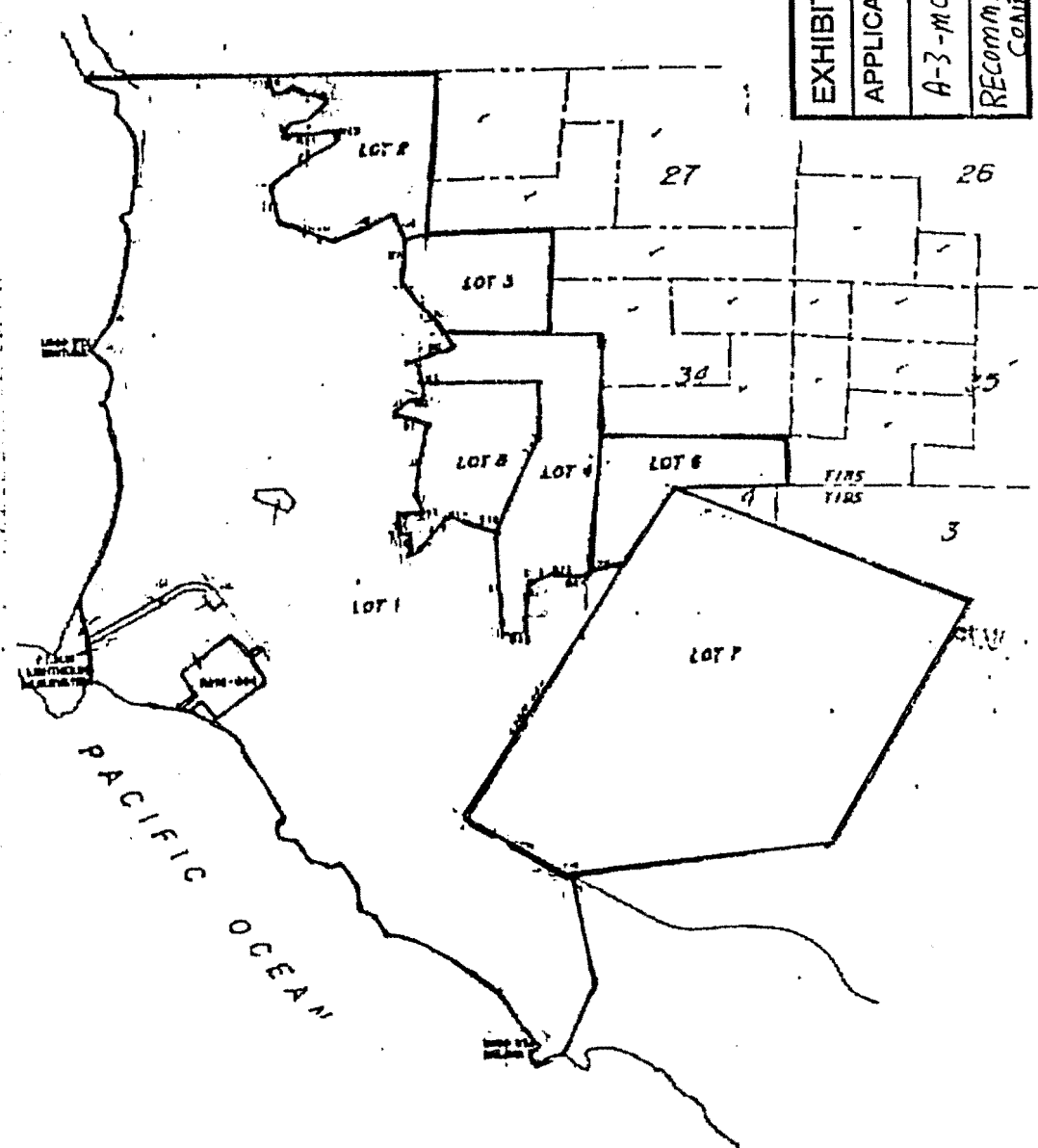


EXHIBIT NO. 4
APPLICATION NO.
A-3-MCO-97-38 Hill
PERMITTED PARCEL CONFIGURATION

EXHIBIT NO. 5
APPLICATION NO.
A-3-MCO-97-38 H11
RECOMMENDED PARCEL CONFIGURATION



EXISTING PARCEL CONFIGURATION



APPLICANT'S DESIRED PARCEL RECONFIGURATION &
RECOMMENDED PARCEL RECONFIGURATION (Condition #1)

COUNTY PERMIT

PARCELS BEFORE ADJUSTMENT		PARCELS AFTER ADJUSTMENT	
1	79 ac.	A	263 ac.
2	160 ac.	B	272 ac.
3	160 ac.	C	100 ac.
4	160 ac.	D	353.5 ac.
5	40 ac.	E	353 ac.
6	162.61 ac.	F	425 ac.
7	160 ac.	G	242 ac.
8	160 ac.	H	177 ac.
9	16.5 ac.	I	220 ac.
10	154.74 ac.	J	207 ac.
11	160 ac.	K	202.5 ac.
12	160 ac.	L	437 ac.
13	160 ac.	M	188 ac.
14	40 ac.	N	198 ac.
15	160 ac.	O	261 ac.
16	80 ac.	P	141 ac.
17	40 ac.	Q	160 ac.
18	80 ac.	R	245 ac.
19	108.17 ac.	S	160 ac.
20	160 ac.	T	360 ac.
21	160 ac.	U	120 ac.
22	80 ac.	V	160 ac.
23	80 ac.	W	160 ac.
24	2531 ac.	X	160 ac.
25	105.69 ac.	Y	160 ac.
26	160 ac.	Z	80 ac.
27	1615 ac.	AA	1328 ac.

APPLICANT'S DESIRED PROJECT & RECOMMENDED PROJECT

PARCELS BEFORE ADJUSTMENT		PARCELS AFTER ADJUSTMENT	
1	79 ac.	LOT 1	3255 ACRES +/-
2	160 ac.	LOT 2	260 ACRES +/-
3	160 ac.	LOT 3	175 ACRES +/-
4	160 ac.	LOT 4	300 ACRES +/-
5	40 ac.	LOT 5	200 ACRES +/-
6	162.61 ac.	LOT 6	170 ACRES +/-
7	160 ac.	LOT 7	1330 ACRES +/-
8	160 ac.		
9	16.5 ac.		
10	154.74 ac.		
11	160 ac.		
12	160 ac.		
13	160 ac.		
14	40 ac.		
15	160 ac.		
16	80 ac.		
17	40 ac.		
18	80 ac.		
19	108.17 ac.		
20	160 ac.		
21	160 ac.		
22	80 ac.		
23	80 ac.		
24	2531 ac.		
25	105.69 ac.		
26	160 ac.		
27	1615 ac.		

EXHIBIT NO. 6

APPLICATION NO.

A-3-mco-97-38 Hill

RESULTANT LOT SIZES

(Note: cross-outs are for Ranch parcels not affected)

Recording Requested for the
Public Benefit by, and
When Recorded, Mail to:

Clerk, Board of Supervisors
P.O. Box 1728
Salinas, CA 93902

THIS SPACE FOR RECORDER'S USE

DEED OF CONSERVATION AND SCENIC EASEMENT

This DEED OF CONSERVATION AND SCENIC EASEMENT is made this ____ day of _____, 19__, by JAMES J. HILL, III, a married man ("Grantor" or "Owner" herein), and by the County of Monterey, a body politic ("County" or "Grantee" herein) with reference to the following facts and circumstances:

A. Grantor is the owner in fee of that certain real property situated in Monterey County, California, more particularly described in Exhibit "A", attached hereto and made a part hereof ("the servient tenement"). County has purchased a Conservation and Scenic Easement over a portion of the servient tenement, said portion being more particularly described in Exhibit "B", attached hereto and made a part hereof ("the Property"). All of the Property is deemed to be within the critical viewshed as defined herein.

B. County acquired said Conservation and Scenic Easement for the public benefit with funds obtained pursuant to the California Wildlife, Coastal, and Park Land Conservation Act (Public Resources Code § 5900 et seq., "the Act"), as part of County's implementation of critical viewshed policies of the Big Sur Coast Land Use Plan ("the Plan"), for the purpose of maintaining the Property as scenic open space in perpetuity.

C. On March 17, 1987, County's Board of Supervisors resolved by Resolution No. 87-151 that all lands purchased with funds obtained pursuant to the Act, and all lands from which or in which interests are purchased with funds obtained pursuant to the Act, shall have permanent irrevocable open space or conservation easements, deed restrictions, and/or other appropriate instruments recorded against said lands containing the following restrictions:

"All lands purchased with [the Act] monies, and all lands from which, or in which, interests have been purchased with these monies, shall remain as scenic open space in perpetuity and shall not be developed in any manner by any person or entity, public or private; except for those uses specified in the current certified Big Sur Coast [Land Use Plan], and with the exception that this prohibition on development shall not apply to Cal Trans projects which are essential to maintain Highway One for its existing use as a rural, two-lane, Scenic Highway."

"All lands purchased with [the Act] monies, and all lands from which, or in which, interests have been purchased with these monies, and all such interests, shall not be transferred to the United States Government, or any agency, subdivision or representative thereof by the County of Monterey, its representative, its successors in interest or assigns, or by any other person or entity, public or private."

EXHIBIT NO. 7

APPLICATION NO.

A-3-MCO-97-38 Hill

EASEMENT

D. Owner desires to preserve and conserve for the public benefit the great natural scenic beauty and existing openness, natural condition, existing habitats, and existing state of use of the Property. Pursuant to critical viewshed and other appropriate policies of the Plan and objectives of the Act, Owner intends that the only public use of the Property authorized by this Deed of Conservation and Scenic Easement shall be to preserve the Property in its existing natural state in perpetuity for viewing from Highway One and other major public viewing areas specified in the Plan. Nothing in this Deed of Conservation and Scenic Easement shall be construed to restrict, require or authorize physical public access on or over the Property. The landowner reserves the right to deny or to permit public access, provided that any public access uses allowed shall be consistent with the Land Use Plan.

E. Pursuant to County Resolution No. 87-151 and expression of intent in the Act, Owner desires to ensure that the exceptional vistas of the Property as seen from Scenic Highway One along the Big Sur Coast will be preserved in a manner that ensures the continuation of existing state and local jurisdiction over the Big Sur area.

F. Owner intends that this Deed of Conservation and Scenic Easement is permanent and irrevocable and shall constitute enforceable restrictions.

G. Nothing in this Deed of Conservation and Scenic Easement is intended to or shall in any manner abrogate or interfere with any rights of record or prescriptive rights (if any there be) existing on the Property described in Exhibit "B", attached hereto.

NOW, THEREFORE, for a valuable consideration, receipt of which is hereby acknowledged, Grantor hereby grants, transfers and conveys, and County as Grantee hereby accepts from Grantor, a Deed of Conservation and Scenic Easement over the entire Property described in Exhibit B; and for himself, his heirs, assigns, and successors in interest, Grantor hereby covenants and agrees as set forth below:

A. COVENANTS

1. Except as provided for in paragraph 9, below, the Property shall remain as scenic open space in perpetuity and shall not be developed in any manner by any person or entity, public or private, with the sole exception that this prohibition on development shall not apply to the following specific exceptions expressly stated in this paragraph, which are:

a. Projects of the California State Department of Transportation which are essential to the maintenance of Highway One in its existing state as a rural, two-lane Scenic Highway.

b. Projects of the Monterey County Department of Public Works which are essential to the maintenance of, in their existing states, existing County improvements, including existing roads, bridges and utilities.

c. Projects of Owner which consist of structures essential for ranching or similar agricultural uses (including, but not limited to, fencing, water and irrigation facilities essential for range or stock management in association with ranching and grazing of existing or historic grazing land), private highway improvements or utilities coming within the exceptions contained in Land Use Plan Sections 3.2.5.B, C.2 and D, and projects essential to the maintenance of, in their existing states, all existing private developments, structures and utilities, including, but not limited to, existing uninhabited buildings, fences, roads, bridges and utilities.

d. Maintenance or replacement of existing development, structures and utilities associated with ranching and grazing of existing or historic grazing land.

e. Continuation of the uses of the Property associated with ranching and grazing of existing and historic grazing land; provided, however, that this subparagraph shall not be construed to permit any new development which is not expressly permitted in another subparagraph of Paragraph 1 of this Deed of Conservation and Scenic Easement. The uses for ranching and grazing permitted hereunder shall include the broadest scope and intensity thereof which has historically occurred; provided, however, that all grazing shall be practiced in a manner consistent with Paragraph 5 of this Deed of Conservation and Scenic Easement.

f. Maintenance of all other existing development, structures and utilities, including inhabitable buildings; replacement in the same location of existing buildings and structures, provided that no such replacement shall increase the internal floor area of a structure by more than 10%; underground replacement of existing development, structures and utilities; and relocation of existing aboveground development, structures and utilities and the maintenance thereof, provided the relocated facilities are located as close as possible to their original location and are less visually intrusive on the viewshed than the existing facilities, specifically including, but not limited to, relocation of the existing access route to the Lighthouse State Park to an alternate location approved by Owner and the California Department of Parks and Recreation; construction and maintenance of new electrical power and telecommunications lines necessary for extending service to unserved areas, provided said power lines shall be installed in a manner consistent with maintaining the Property as scenic open space and in a manner sensitive to the protection of existing habitats; new development, structures and utilities installed underground in a manner which does not result in any permanent adverse alteration of the existing appearance of the critical viewshed.

g. Demolition and removal of existing development, structures, or utilities.

h. Restoration and/or stabilization of eroded or similarly adversely impacted land; provided, however, that said restoration and/or stabilization shall be performed in the least visually intrusive manner (consistent with maintaining the Property as critical viewshed land) which will accomplish its purpose.

i. Removal of invasive, nonindigenous plant species; and/or revegetating with indigenous species.

j. Management of annual and perennial grasses in conjunction with grazing and in conformance with Paragraph 5 of this Deed of Conservation and Scenic Easement.

k. Fire management measures which are required to be performed by an agency with enforcement jurisdiction; or other fire management practices which are in conformance with the purposes and provisions of the other paragraphs/subparagraphs of this Deed of Conservation and Scenic Easement, including but not limited to fire trails, cleaning, burning, herbicide spraying, and mowing.

l. Use of the Property for continued access to and in connection with the use and enjoyment of those portions of any properties not subject to this Deed of Conservation and Scenic Easement, including but not limited to the Lighthouse State Park and the servient tenement, in a manner and to the extent which is consistent with the Land Use Plan.

m. Projects of the Owner which consist of coastal dependent uses coming within the exceptions contained in Land Use Plan Sections 3.2.5.H.a., b., c. and d.

2. Except for the exceptions expressly stated in Paragraphs A.1.a.-m. of this Deed of Conservation and Scenic Easement, new structures will not be placed or constructed upon the Property, nor shall uninhabitable buildings or structures be converted to inhabitable buildings or structures.

3. Except for the exceptions expressly stated in Paragraphs A.1.a.-m. of this Deed of Conservation and Scenic Easement, no use of the Property which will or does alter the landscape or other attractive scenic features of the Property shall be done or suffered. All other uses not constituting development as defined herein are expressly permitted hereunder.

4. Any development of the Property which may be permitted by Paragraphs A.1.a.-m. of this Deed of Conservation and Scenic Easement shall be subject to County's land use regulations and carried out in a manner sensitive to the use of the Property for preservation of scenic open space on the Property, and shall seek to minimize adverse impacts on these uses. Compliance with the applicable policies of the Land Use Plan, or any amendments thereto, shall be the test of compliance with this paragraph.

5. Where grazing is permitted by this Deed of Conservation and Scenic Easement, grazing must be conducted so as to preclude overgrazing resulting in soil erosion. Grazing shall be conclusively presumed to be consistent with this requirement if conducted in accordance with the "Guidelines for Residue Management on Annual Range", Leaflet 21327 of the Cooperative Extension of the Division of Agricultural Sciences, University of California, or subsequent or amended version of said Guidelines; provided, however, that deviation from the Guidelines in consideration of other factors shall not create any presumption of overgrazing.

6. The only public use of the Property authorized by this Deed of Conservation and Scenic Easement shall be to preserve the Property in its existing state in perpetuity, for viewing from Highway One and other major public viewing areas specifically named in Section 3.2.2.1 of the Land Use Plan. Nothing in this Deed of Conservation and Scenic Easement shall be construed to restrict, require or authorize physical public access on or over the Property. The landowner reserves the right to deny or to permit public access, provided that any public access uses allowed shall be consistent with the Land Use Plan.

7. Transfer Development Credits and/or other development rights acquired from or with the Property are hereby extinguished and may not be sold or otherwise transferred to any other person, entity or property.

8. The conservation and scenic easement acquired by the County in the Property shall not be sold or otherwise transferred to the United States Government, or any agency, subdivision or representative thereof.

9. If all or any portion of the Property upon which this Conservation and Scenic Easement has been imposed is sought to be condemned by governmental taking for public use, this Deed of Conservation and Scenic Easement shall terminate as of the time of the filing of any complaint in condemnation, but only as to the Property or any portion thereof or any right therein sought to be taken for public use, and the Owner shall be entitled to such compensation for the taking as the Owner would have been entitled to had the Property (or applicable portion thereof) not been burdened by this Deed of Conservation and Scenic Easement, subject to a credit in favor of the Condemnor for the allocable and adjusted amount of consideration paid to Owner by the County of Monterey for this Deed of Conservation and Scenic Easement over the Property or the portion thereof sought to be condemned. If less than all of the Property is sought to be condemned, then the percentage of the total consideration to be repaid shall be equivalent to the percentage which the area sought to be condemned comprises of the entire Property.

B. COVENANTS RUNNING WITH THE LAND

This Deed of Conservation and Scenic Easement shall run with and burden the Property, and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and

restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind and benefit the Owner and all of its heirs, successors in interest and assigns as owners of the Property.

C. ENFORCEMENT

Monterey County, Owner and/or any member of the public, or any group or organization thereof, may seek to enforce this Deed of Conservation and Scenic Easement.

D. SEVERABILITY

If any provision of this Deed of Conservation and Scenic Easement is held to be invalid or for any reason becomes unenforceable, no other provision shall thereby be affected or impaired.

E. DEFINITIONS

For the purposes of this Deed of Conservation and Scenic Easement the following definitions shall apply:

1. **Critical Viewshed** – shall mean those lands so designated in the Land Use Plan which are visible from Scenic Highway One and other major public viewing areas specifically named in Section 3.2.2.1. of the Land Use Plan. Critical Viewshed shall not include those views of Pico Blanco specified in Section 3.8.4.4. of the Land Use Plan.

2. **Big Sur Coast Land Use Plan – (the "Land Use Plan")** – shall mean, except as otherwise specified herein, the Big Sur Coast Land Use Plan as certified by the California Coastal Commission on April 10, 1986, not including any amendments adopted thereto.

3. **Development** – shall mean, on land, in or under water, the placement, construction or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; increase in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal of significant vegetation.

4. **Existing** – when applied to development(s) or other uses(s) shall mean, in existence as of the date this Deed of Conservation and Scenic Easement is executed by the Owner in fee of the Property.

5. **Interest acquired from, in or with the Property** – the following examples are included for clarification but not by way of limitation: Transfer Development Credits are an interest which may be split off and acquired from the Property, or they may be acquired along with the Property; Deed of Conservation and Scenic Easement is an interest remaining with and acquired in the Property. Interest acquired may include, but not by way of limitation, Transfer of Development Credit, development rights, conservation and scenic easement, leasehold, and other interests.

6. **Less visually intrusive** – shall be determined by the Director of Planning and Building Inspection for the County, acting in his official capacity. Any determination by the Director that new or proposed development is more visually intrusive than former development shall be subject to appeal to the Board of Supervisors of the County.

7. **Maintenance** – shall include repair and replacement, provided that the replacement shall be no more than 10% larger than the existing development at the effective date of this instrument; structures or utilities to be replaced shall be substantially the same as, and shall not be more visually intrusive on the Critical Viewshed than, the development, structure or utilities being replaced.

8. **Owner** – shall mean the owner in fee of the Property.

9. **The Property** – shall include, the real property described in Exhibit "B", and any interest(s) purchased therefrom, therein or therewith with funds obtained pursuant to the Act.

10. **Structure** – shall include, but is not limited to, any: building, road, trail, parking lot, sign, pipe, flume, conduit, siphon, aqueduct, fence, telephone line, cable television line, and electrical power transmission and distribution line.

11. **Utilities** – shall be limited to the following: electrical power lines, telecommunication lines and facilities, cable television lines and facilities, water systems and water system components, gas lines, sewerage and septic disposal lines and systems.