

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

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STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local government:Monterey County

Local Decision:Resolution 02-336 (PLN010280) Approved with conditions September 24, 2002 by the Monterey County Board of Supervisors (See Exhibit C).

Appeal NumberA-3-MCO-02-083

Applicant.....Karl & Lisa Kleissner

Appellants:.....HOPE- Helping Our Peninsula's Environment.

Project location.....East of Highway 1 @ Garrapatta Canyon (approx. Post Mile 63 of Hwy. 1), Big Sur Planning Area (Monterey County) APN(s) 417-021-035 and 417-021-038 (See Exhibits A & B).

Project descriptionRoad repairs and improvements including placement of graded material, retaining structures, culvers energy dissipaters, creek crossings, and underground utility lines. Also after-the-fact improvements to existing access roads (approx. 2.5 miles in length) consisting of grading, removal of debris, road widening and embankments, multiple culverts and energy dissipaters, retaining walls, a gabion basket drainage crossing; underground utility lines and related work adjacent to Joshua Creek; improvements to the upper access road consisting of short-term erosion control measures, a Soldier Beam retaining wall, five culverts, four Hilfiker retaining walls, and concrete paving of two steep areas.

File documents.....County coastal permit file PLN010280; Monterey County Board of Supervisors Resolution # 02-236; Monterey County Local Coastal Program, including *Big Sur Land Use Plan* and *Monterey County Coastal Implementation Plan*.

Staff recommendation ...Project raises No Substantial Issue.



**California Coastal Commission
December 12, 2002 Meeting in San Francisco**

Staff: SAM Approved by: *[Signature]*

Summary of Staff Recommendation:

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. Staff has determined that the project approved by Resolution # 02-336 (PLN010280), which includes 23 special conditions established by the Monterey County Board of Supervisors, generally conforms to the standards set forth in the Monterey County Certified Local Coastal Program, which includes the Big Sur Land Use Plan, the Coastal Implementation Plan Part 3 – Regulations for Development in the Big Sur Land Use Plan Area, and Title 20 (Zoning Ordinance).

The project is located in the Big Sur planning area of Monterey County (Project vicinity and site location maps are shown in Exhibits A and B, respectively). The County's Action allows for an after the fact coastal development permit for grading, retaining structures, road widening, underground utility lines and concrete paving of two areas of an existing access road. Work was originally begun without a coastal development permit in response to 1998 el niño storms, which rendered the upper road impassable due to a landslide. The project includes development within 100 feet of environmentally sensitive habitat, including Joshua Creek and associated riparian vegetation, and development on slopes greater than 30%, some of which is located within the critical viewshed of Highway One.

The County prepared on site mitigation for project impacts, and a mitigation monitoring plan agreement is required as a condition of approval. Required mitigations include: planting of manzanita plants and eradication of invasive species; protection of Redwood tree root systems; replacement of riparian vegetation on a 1:1 basis with a 100% success criterion; completion of road improvements in accordance with the Watershed Management Plan and hydrology and drainage reports; removal of water tanks to minimize surface water diversion, and to plant 1,126 seacliff buckwheat plants and to retain a qualified biologist to identify and mark all sensitive plants to be avoided during construction.

Following County approval, Resolution # 02-336 was subsequently appealed to the Coastal Commission by HOPE- Helping Our Peninsula's Environment on October 15, 2002. The appellant contends, among other things, that (1) the project has damaged ESHA; (2) that the roadway has been expanded; (3) the process was unfair, and (4) that no certified engineering geology report was prepared for this project.

The LCP requires protection of ESHA, among other ways, by prohibiting non-resource dependent development in ESHA, limiting the amount of vegetation and land that can be disturbed, and requiring deed restrictions or permanent conservation easements over ESHA. The project is, for the most part, consistent with these requirements because all ESHA areas have been placed in a conservation easement, and development adjacent to ESHA is consistent with its long-term viability because it reduces the likelihood of catastrophic road failure in the future that could impact both ESHA areas and adjacent areas. Although the project includes non-resource development in ESHA and allows for a large amounts of grading, the project includes mitigation in the form of restoration of disturbed ESHA, state-of-the-art erosion control methods and a requirement to continue work in accordance with a Watershed Management Plan, hydrology and drainage plans will help prevent further impacts to ESHA.

The LCP also requires protection of visual resources by requiring new development to minimize



alteration to natural landforms and to be subordinate to and harmonize with the natural setting. The LCP also protects visual resources by requiring structures to be sited and designed to blend in with the natural setting, and for screening of new development in the critical viewshed on the eastern side of Highway 1. This project is consistent with these requirements because the majority of the roadway is not greater in width than what existed previously, thus improvements have not required a substantial amount of landform alteration. Additionally, areas that have been widened are not visible from Highway One, are not in the critical viewshed, and are proposed for native plant restoration. The option of relocating the roads onto another area of the properties would include substantial adverse impacts to the viewshed and not be the most protective of natural resources. With respect to the rural character and general peace of the Big Sur area, the project is consistent because it remains an unpaved, one-lane access road and has incorporated restoration measures and erosion measures to reduce sedimentation in the future.

The appellant also contends that the County process was unfair and that the required geotechnical report was not prepared. The LCP does not contain any specific policies regarding the mailing of staff reports for Board hearings, although proper noticing of hearings is required. The appellant was noticed prior to the Board of Supervisors hearing via mail, and the notice was posted in the newspaper and at the site as well. The appellant was in attendance at that hearing, at which he requested a continuance that was denied. Additionally, Geoconsultants Inc. prepared the required geotechnical report, dated November 5, 2001, and it was attached to the Initial Study, circulated in June and July of 2002.

As discussed in the substantial issue section of this report, the approved project is generally consistent with applicable regulations for development as established by the Monterey County Local Coastal Plan (LCP). With regard to the issues raised by the appeal, the evidence in the record shows that they were satisfactorily addressed by the County. Therefore the appellant's contentions raise no substantial issue with respect to policies of the LCP.

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I. Local Government Action

The Monterey County Board of Supervisors approved an after the fact permit for roadway improvements on the Doud (APN 417-021-038) and Kleissner (APN 417-021-035) parcels on September 24, 2002 (Resolution #02-336). The proposed project involves an undetermined amount of grading, placement of retaining structures and culverts, in addition to creek crossings, road widening, and paving of two steep areas. The project also includes work within 100 feet of environmentally sensitive habitat areas and on slopes in excess of 30%.

County approval of the project includes adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program, and approval of a Combined Coastal Development Permit, subject to 23 special conditions of approval. All permit findings and conditions are included in Exhibit C.

II. Summary of Appellant's Contentions

Originally, this project was appealed by two Coastal Commissioners in addition to HOPE- Help Our Peninsula's Environment. Subsequent to a site visit by Staff and further analysis of the issues initially raised in the Commission appeal, the Commissioner's appeals were withdrawn on 11/18/02. The remaining appellant, HOPE, has appealed the final action taken by the Monterey County Board of



Supervisors (Resolution 02-336), asserting that approval of the project is inconsistent with policies of the Monterey County Local Coastal Plan in the following areas:

- a. Environmentally Sensitive Habitat Areas (ESHA)
- b. Roadway Expansion/Hazards
- c. Unfair Board of Supervisors process

The complete text of the appellant's contentions can be found in Exhibit D.

III. Standard of Review for Appeals

The grounds for appeal to the California Coastal Commission under section 30603 of the California Coastal Act are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act if the project is located between the first public road and the sea. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. This project is appealable because Section 30603(a)(4) allows for appeals of any development approved by a coastal county that is not designated as the principle permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

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

I move that the Commission determine that Appeal No. A-3-MCO-02-083 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.



RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-3-MCO-02-083 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The permit granted by the County is for after-the-fact improvements to roughly 2.5 miles of an existing access road consisting of an undetermined amount of grading, removal of debris flow material, road widening and embankments, multiple culverts and dissipaters, retaining walls (using concrete, geotextile reinforced soil, wood and several Hilfiker walls), a gabion basket drainage crossing, work adjacent to Joshua Creek, short-term erosion control measures, a Soldier Beam retaining wall, five (5) 12" culverts, and concrete paving of two steep areas.

The majority of both the upper and lower roads that are the subject of this permit were, constructed in the 1920's and 30's, and currently pass through the Doud property and end on the Kleissner property. The upper road leads to two existing residences and an abandoned residence located on what is now Fish and Game property. The lower road was previously used to access a sawmill (no longer operating) and a residence that burned completely in 1997. The site on which the burned house sat is being considered for a potential residential purpose in the future.

The project is located in the Big Sur planning area roughly 2 miles south of Garrapatta State Park and just inland of Kasler Point (See Exhibits A & B). The access road is on the eastern side of Highway One, roughly at Post Mile 63, and partially within the critical viewshed (See Exhibit G). The road forks into two roads roughly ½ mile inland from Highway One, and extend roughly a mile and a half inland total (See Exhibits E and F).

Steep slopes such as those present on the properties characterize the majority of the Big Sur area, which is full of canyons containing small streams flowing into the nearby ocean. In this instance, the properties through which the roads run contain maritime chaparral, coastal scrub, and Redwood forest, and the stream at the base of the slopes, Joshua Creek, supports Steelhead trout and California red legged frogs. Surrounding land uses adjacent to the project area include large open space rangeland with small pockets of residential use.

Status of the Roads

Although the access roads were originally constructed in the 1920's and 30's, there was some concern



that the road improvements should be evaluated as a new road under the LCP. Staff initially raised this concern because the potential change in status of the road and its identifying characteristics has the potential to impact the sensitive visual resources as well as the community character of Big Sur. Changing an existing dirt track road into a wider, smoother, paved road that can accommodate a broader variety of vehicles has the potential to increase access to previously inaccessible lots and to increase the amount of traffic and visual impacts. Roads changed in such significant ways should be considered new roads and evaluated under the relevant LCP policies.

However, this is not the case with the Kleissner roads, which clearly are existing roads. Exhibit E shows that the roads existed in 1993 well before the Kleissners purchased the property, and Exhibit F shows the roads subsequent to the improvements. The current road is within the alignment of the existing road, it has not been paved or substantially widened, it remains a one-lane road, and it still presents difficulties for vehicles with a low clearance. Therefore, the policies of the LCP pertaining to new roads do not apply to this project.

B. Analysis of Appeal Issues

1. Environmentally Sensitive Habitat Resources

A. Appellant's Contentions

The appellant contends in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit D for complete text of appellant's contentions):

- ESHA damage is prohibited.
- Significant ESHA damage has occurred because of this project.

B. Local Coastal Program Provisions

The appellant specifically cites the following Big Sur Land Use Plan (LUP) policies:

- *Policy 5.4.3.K.2. New private roads shall meet the following criteria, in addition to meeting all other resource protection policies of this Plan:*
 - c) *A qualified biologist shall certify that any environmentally sensitive habitats present will not be harmed.*
- *Policy 3.3.2.1 Development, including vegetation removal, excavation, grading, filing [sic], and the construction of roads and structures, shall not be permitted in the environmentally sensitive habitat areas if it results in any potential disruption of habitat value. To approve development within any of these habitats the County must find that disruption of a habitat caused by the development is not significant.*



C. Local Government Action

Finding numbers 4, 5, and 6 in the County's action (Resolution 02-336, Exhibit C) address environmentally sensitive habitat issues. Finding #4 (Exhibit C, Page 4) states that the project conforms to the Development Standards for ESHA in the Coastal Implementation Plan. Evidence listed here consists of the biological report prepared by Jeff Norman dated November 3, 2001 and the Initial Study with mitigation measures and the Mitigation Monitoring Plan. The project was conditioned (Conditions 17-23, Exhibit C, Pages 15-18) to restore impacted maritime chaparral and remove invasive species; to protect Redwood trees; to restore impacted riparian vegetation; to prevent erosive material from entering Joshua Creek; to minimize surface water diversion from Joshua Creek; to mitigate for impacts to coast buckwheat plants by planting a total of 1,126 seacliff buckwheat plants; and to retain a biologist to identify all sensitive plants to avoid adverse impacts during construction.

Second, Finding #5 of the Final Resolution 02-336 (Exhibit C, Page 4) states that the project conforms to LUP policy 3.3.2.1 and CIP Section 20.145.040.B.1, which prohibit development in ESHA if the impacts of development cannot be reduced to a level of insignificance. Evidence cites the Initial Study for the project, which identified adequate mitigation measures to reduce adverse impacts to a less than significant level and to ensure long-term maintenance of the habitat. The project has been conditioned to include these mitigation measures (Conditions 17-23).

Lastly, the County's action also finds that the project is in compliance with LUP Policy 3.3.2.3 and CIP Section 20.145.040.B.2 with respect to conservation easements that are required over ESHA areas (Exhibit C, Page 4, Finding #6). Evidence for this finding states that the property owners have signed a conservation easement with Santa Lucia Conservancy over the majority of the parcel, including all ESHA on the property. Additionally, Condition of Approval #6 (Exhibit C, Page 14) requires proof of the easement's recordation, and requires a conservation easement over additional sensitive areas as identified in the 2001 biology report. Deeds must be approved prior to final inspection.

D. Substantial Issue Analysis and Conclusion

The project site is located within the Big Sur Planning area, on the eastern side of Highway One near Kasler Point (See Exhibits A & B). This is an area of sparse development and steep slopes that drop dramatically into small streams (See Exhibit G). It is the nature of the slopes to erode periodically and deposit gravelly sediment into the streams, making for excellent Steelhead trout spawning habitat such as Joshua Creek, which runs along the bottom of Garrapatta Canyon along the properties and out to the ocean. The Doud property, through which the majority of the roads run, gradually changes from primarily coastal scrub and maritime chaparral near Highway 1 to lush Redwood forests and riparian vegetation further inland and at the base of the slopes.

The appellant contends that LUP Policy 5.4.3.K.2.C requires a qualified biologist to certify that any ESHA present will not be harmed. While this is an important policy to protect ESHA, it does not apply to this project because the project is not considered a new road but rather improvements to an existing road (See discussion of road status in Finding A). Additionally, as stated in the County's findings, a biology report was prepared for the site by Jeff Norman, who suggests mitigation measures to reduce



impacts below the level of significance, that were then adopted by the County. Therefore, no substantial issue is raised with respect to this policy because the policy does not apply to this project, and even if it did, biological impacts have been adequately mitigated.

The appellant also contends that LUP Policy 3.3.2.1 prohibits development in ESHA that results in any potential disruption of habitat value. Although the County describes all work as being "within 100 feet of ESHA", not within ESHA itself, and states that the project is consistent with this policy, the Initial Study for this project outlines some biological impacts to ESHA. Sensitive habitats on the site identified by the biological report (Jeff Norman, dated November 3, 2001) include central maritime chaparral, Redwood forest, riparian vegetation and coastal terrace prairie. The report also noted the existence of several special status species on site, such as: Smith's blue butterfly; southern steelhead trout, California red legged frogs, foothill yellow legged frog and the black swift. The Initial Study states that adverse impacts to these species and habitats could occur through removal of sensitive plants to install culverts and energy dissipaters; because of the location of staging areas; through installation of stream bank stabilization structures, and through siltation caused by road grading without adequate erosion control measures.

Although the project has many potential negative impacts on ESHA, the project also includes mitigation measures to lessen those impacts. The project has been conditioned to restore maritime chaparral removed for a portion of the construction staging area, to protect Redwood tree roots and to avoid the accumulation of sediment at their bases; to restore riparian vegetation on a 1:1 basis with a 100% success criterion; to avoid sedimentation by completing road improvements in accordance with the Watershed Management Plan and hydrology and drainage reports, and to plant a total of 1,126 seacliff buckwheat plants in coastal sage scrub habitat areas where impacts have occurred. While the project may not be entirely in compliance with Policy 3.3.2.1, its impacts have been adequately mitigated, and the net effect of the project will be to prevent further impact to ESHA in the form of sedimentation and to remove invasive vegetation to improve the quality of ESHA areas elsewhere on the properties. As such, the Commission finds that no substantial issue is raised with respect to the contention of impacts resulting from development in ESHA.

Most development resulting from this project is adjacent to ESHA, in which case, the applicable policy is 3.3.2.7. This policy requires development adjacent to ESHA to be compatible with the long-term maintenance of the resource, and requires new land uses to incorporate planning and design features to prevent habitat impacts. Although this is not a new land use, the road improvements were planned and designed to incorporate the best available technology to prevent erosion of the road and slopes, thus preventing further siltation of Joshua Creek. Additionally, the County has conditioned development on this site to minimize impacts to ESHA and to complete road improvements following the recommendations of the Watershed Management Plan and hydrology and drainage reports to further lessen potential impacts to ESHA.

In conclusion, based on the above evidence, including the status of the roads as existing rather than new and that impacts from development in ESHA have been adequately mitigated, the Commission finds that although the project involves a minimal amount of development in ESHA, the project as conditioned is



consistent with LCP policies with respect to ESHA and do not raise a substantial issue.

2. Roadway Expansion/Hazards

A. Appellant's Contentions

The appellant contends in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit D for complete text of appellant's contentions):

- This project allows for expansion of a roadway by 2-3 times the original width in places.
- The expanded roadway is on nearly vertical slopes.

B. Local Coastal Program Provisions

The appellant specifically references the following Land Use Plan (LUP) policy regarding new roads (See Exhibit D for complete text of appellant's contentions):

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

C. Local Government Action

The County's action (Resolution 02-336, Exhibit C) allows numerous improvements to existing roads. Finding #1 (Exhibit C, Page 2) states that the project, as conditioned, is consistent with the plans policies, requirements and standards of the LCP. Evidence for this finding states that Planning and Building Inspection staff reviewed the project for conformity with the LCP, that the County planner conducted numerous site visits, and lists the various consultants' reports prepared for the project.

Additionally, Finding #3 (Exhibit C, Page 3) states that the project is consistent with the LCP's visual policies. Evidence for this finding states that pursuant to site visits, County staff determined that development that could have impacted the critical viewshed, such as the staging area for construction equipment, was not visible from Highway One. Even though the disturbed areas are not visible from Highway 1, the project was conditioned (Condition #17, Exhibit C, Page 15) to restore these areas for the benefit of habitat restoration, which also results in mitigation for any possible visual impacts.

The County does not make any findings specific to development on steep slopes, however, Finding #8 (Exhibit C, Page 5) states that the project is consistent with the LCP with respect to the use of best watershed management purposes. Evidence to support this finding states that best management practices used include erosion control measures, energy dissipaters at culvert outfalls and slope revegetation in conjunction with a monitoring plan to evaluate the performance of these measures as required by the



conditions of approval.

D. Substantial Issue Analysis and Conclusion

The protection of visual resources in the Big Sur planning area is of primary concern, in addition to the reduction in hazards, especially from erosion on the area's characteristic steep slopes. There are numerous LCP policies designed to protect visual resources in this planning area, especially along scenic corridors and other sensitive visual areas, such as along scenic Highway One. Similarly, the LCP contains policies designed to avoid and reduce geologic hazards.

The appellant contends that the project expanded the roadway to 2-3 times the original width in some areas. Coastal Commission Staff conducted a site visit on November 1, 2002 to determine the extent of road widening that had occurred and found that it would be nearly impossible to widen the road to such an extent and not have a major impact. For the majority of the road alignment, the single-lane roadbed clings to the edge of the slope and abuts solid rock on the inside. Widening such a road would entail a substantial amount of work not only to the rock where it abuts the road, but also to the slope above it to ensure its stability. The sides of the roads and the slopes were not modified in this way, and the road remains a single-lane road.

The appellant may be referring to one area located fairly close to Highway One that was used for an equipment staging area. This area has been widened to accommodate equipment, however this area is also slated for maritime chaparral restoration. Additionally, the LCP contains no policy specifically prohibiting widening, thus, because the road has not been widened to 2-3 times its original width, this contention raises no substantial issue with respect to the certified LCP.

Additionally, the appellant contends that the roadway is located almost entirely on nearly vertical slopes, which is in excess of the maximum 30% slope work allowed by the LCP, and he specifically cites LUP Policy 3.2.4.A.7- which is a visual policy pertaining to new roads. While the road is located on slopes in excess of 30%, it is an existing road. Even if an alternative route with slopes less than 30% were available on the property, making improvements to this existing road is a far superior option (with respect to protection of natural and visual resources) to constructing a new road on lesser slopes, which would involve substantial amounts of grading and an even greater potential for impacts to habitat and visual resources due to erosion hazard. Because this visual policy is relevant to new roads only, it does not apply to this project, which consists of improvements to an existing road, and it presents no substantial issue.

3. Unfair Local Process

A. Appellant's Contentions

The appellant contends in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit D for complete text of appellant's contentions):

- Lack of fair or impartial hearing.



- No geology report prepared for project.

B. Local Coastal Program Provisions

The appellant specifically references the following LCP policy with respect to hazards:

- *Policy 3.7.3.A.8 Structures and roads in areas subject to landsliding are prohibited [sic](unless) a certified engineering geology report indicates mitigations exist to minimize risk to life and property. Mitigation measures shall not include massive grading or excavation or the construction of protective devices that would substantially alter natural landforms.*

C. Local Government Action

County Finding #1 (Exhibit C, Page 2) states that the project, as conditioned, is consistent with the plans policies, requirements and standards of the LCP. Evidence supporting this finding lists the various consultants' reports prepared for the project, including the Geological and Geotechnical Review and Reconnaissance report prepared by Geoconsultants, Inc. and dated November, 2001. Evidence for Finding #10 regarding the Mitigated Negative Declaration (Exhibit C, Pages 5-6) also notes the submittal of the November, 2001 geotechnical report as part of the Initial Study.

The County makes no finding with respect to mailing of the Board of Supervisors staff report, as there are no applicable LCP policies regarding the mailing of staff reports.

D. Substantial Issue Analysis and Conclusion

The Initial Study circulated by the County in June and July of 2002 contains a copy of the geotechnical report attached to the Initial Study as Exhibit "C". Additionally, the geotechnical report does discuss mitigations to minimize risks to life and property, and states that they are incorporated into the existing improvements and those planned for the future. The Initial Study, under Section 6: Geology and Soils includes a mitigation measure to prevent erosive material from entering Joshua Creek by following recommendations from the Watershed Management Plan and the hydrology and drainage reports. These mitigation measures include placement of additional culverts, retaining walls and erosion control measures such as Best Management Practices. Thus, the Commission finds that the appellant's contention that the project is inconsistent with Policy 3.7.3.A.8 because the proper reports were not submitted does not raise a substantial issue.

With respect to the issue of the appellant not receiving the staff report in a timely fashion, the appellant asked for and was mailed a staff report in advance of the hearing, in addition to being properly noticed by mail, site postings and a newspaper notice. Additionally, the appellant does not contend that he was not noticed properly, and he had the foresight to ask for a continuance prior to the scheduled hearing. The fact that he did not receive the Staff Report far enough in advance to review the report did not preclude him from attending the Board of Supervisors public hearing for this project, at which time he again requested a continuance and was denied. Therefore, he was noticed properly and given an opportunity to voice his opinion at the Board of Supervisors hearing, and the Commission finds that no substantial issue is raised with respect to conformance with noticing procedures.

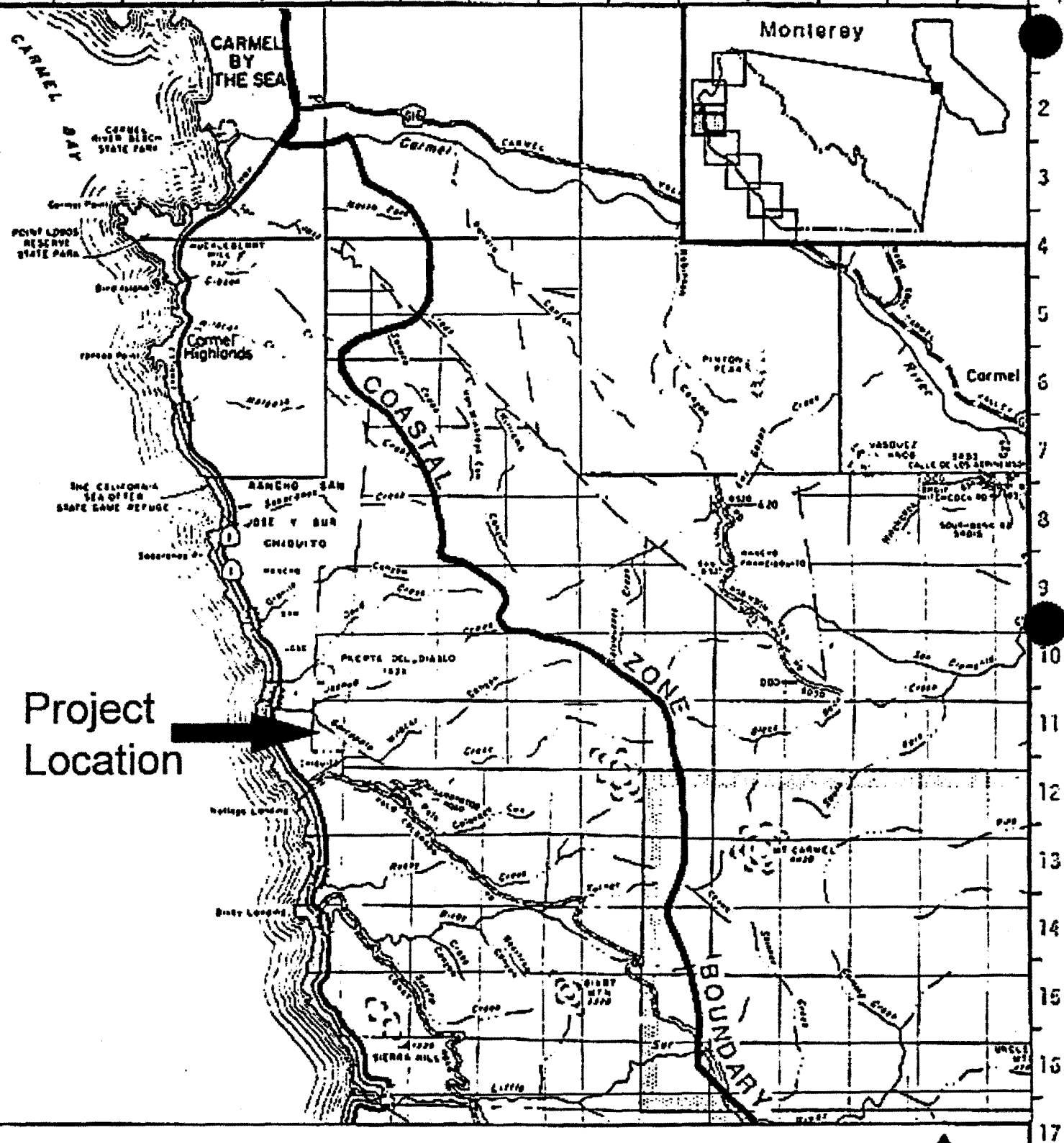


C. Substantial Issue Analysis- Conclusion

In conclusion, the appeal raises no substantial issue in terms of compliance with the LCP, with respect to environmentally sensitive habitat, visual issues, or hazard policies. Therefore, as approved and conditioned by Monterey County, Board of Supervisors Resolution #02-336 conforms to LCP policies and protects the scenic and natural resources of the Big Sur area as required by the Monterey County Certified Local Coastal Program.



A B C D E F G H I J K L M N O



Project
Location

California Coastal Commission

LOCATION MAP

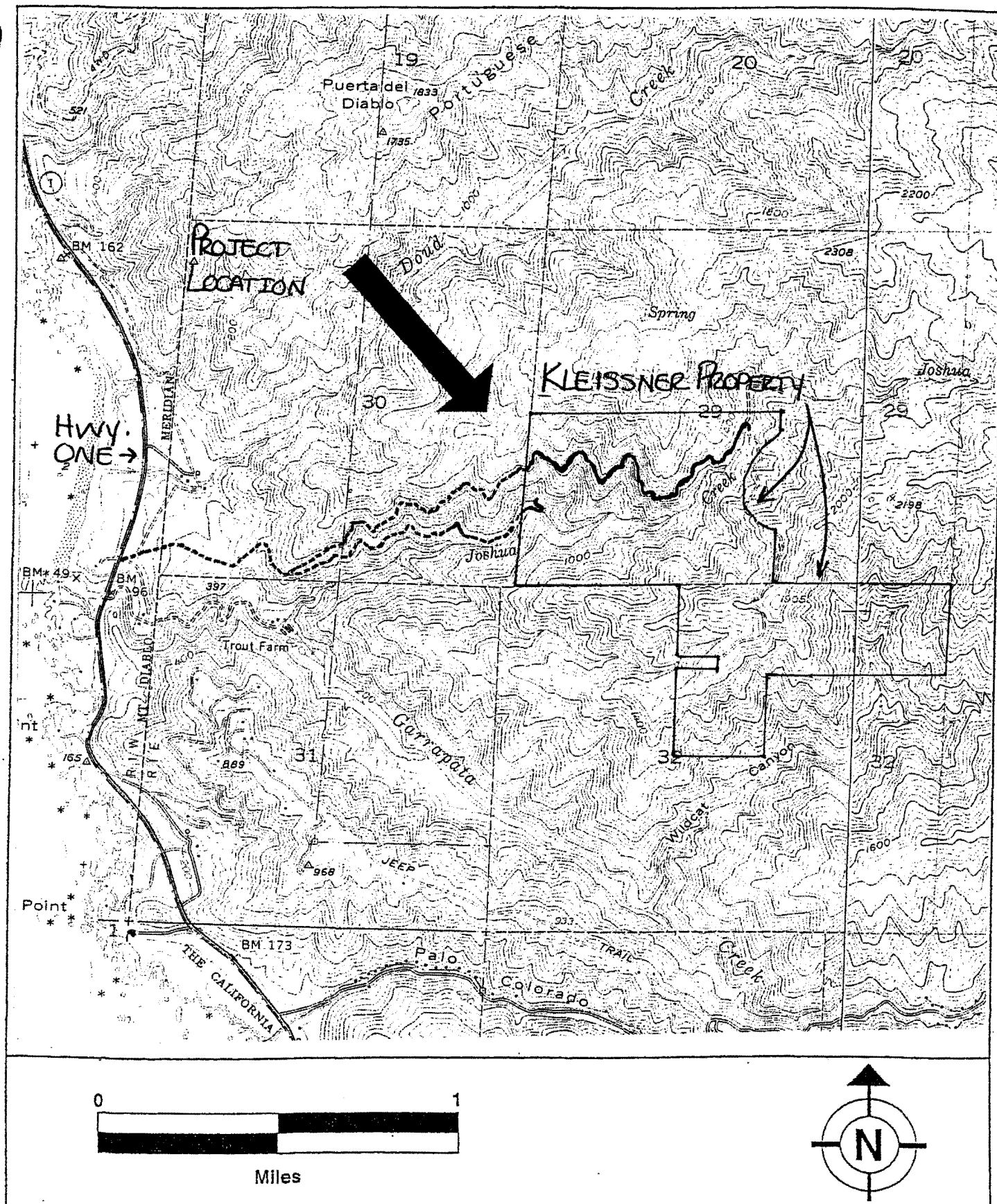
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County of Monterey

Exhibit A
Regional Location Map
Kleissner Road
A-3-MCO-02-083

Sheet 3 of 7



Map 1. Project Location.

A-3-MCO-02-083
Kleissner Road Appeal

Exhibit B
pg. 1 of 1

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

Resolution No. 02-336 --

Adopt a Mitigated Negative Declaration; Adopt a Mitigation Monitoring and Reporting Program; and approve a Combined Development Permit (PLN010280 Kleissner) for development on Assessor's Parcel Numbers 417-021-035-000 and 417-021-038-000 consisting of: a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat, a Coastal Development Permit for development on slopes greater than 30%, and a Coastal Development Permit for placement of graded material, retaining structures, culverts, energy dissipaters, creek crossings, etc., and underground utility lines. These permits apply as appropriate to the following improvements to include: a) after the fact improvements to existing access roads (approximately 2.5 miles in length) consisting of an undetermined amount of grading, removal of debris flow material, road widening and embankments, multiple culverts and energy dissipaters, retaining walls (one concrete wall, a geotextile reinforced soil wall, a wood wall and several Hilfiker walls), a gabion basket drainage crossing; underground utility lines and related work adjacent to Joshua Creek; b) new improvements to the upper access road consisting of short-term erosion control measures, a Soldier Beam retaining wall, five (5) 12" culverts, four (4) Hilfiker retaining walls, and concrete paving of two steep areas, and related grading. The property is located east of Highway 1 at Garrapata Canyon (approx. Post Mile 63 of Highway 1) between Joshua Creek and the southern portion of the Doud Creek drainage, Big Sur area, Coastal Zone

**FINAL LOCAL
ACTION NOTICE**

REFERENCE # 3-MCO-02-490
APPEAL PERIOD 10/3-10/17/02

RECEIVED

OCT 02 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

In the matter of the application of PLN 010280 (Kleissner)

WHEREAS: The Monterey County Board of Supervisors pursuant to regulations established by local ordinance and state law, has considered, at public hearing, an application for a Combined Development Permit (Kleissner/PLN010280) to Adopt a Mitigated Negative Declaration; Adopt a Mitigation Monitoring and Reporting Program; and approve a Combined Development Permit (PLN010280, Kleissner) for development on Assessor's Parcel Numbers 417-021-035-000 and 417-021-038-000 consisting of: a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat, a Coastal Development Permit for development on slopes greater than 30%, and a Coastal Development Permit for placement of graded material, retaining structures, culverts, energy dissipaters, creek crossings, etc., and underground utility lines. These permits apply as appropriate to the following improvements to include: a) after the fact improvements to existing access roads (approximately 2.5 miles in length) consisting of an undetermined amount of grading, removal of debris flow material, road widening and embankments, multiple culverts and energy dissipaters, retaining walls (one concrete wall, a geotextile reinforced soil wall, a wood wall and several Hilfiker walls), a gabion basket drainage crossing; underground utility lines and related

work adjacent to Joshua Creek; b) new improvements to the upper access road consisting of short-term erosion control measures, a Soldier Beam retaining wall, five (5) 12" culverts, four (4) Hilfiker retaining walls, and concrete paving of two steep areas, and related grading. The property is located east of Highway 1 at Garrapata Canyon (approx. Post Mile 63 of Highway 1) between Joshua Creek and the southern portion of the Doud Creek drainage, Big Sur area, Coastal Zone.

NOW, THEREFORE, the Board of Supervisors finds as follows:

- 1. FINDING:** The project proposed in this application consists of a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat, a Coastal Development Permit for development on slopes greater than 30%, and a Coastal Development Permit for placement of graded material, retaining structures, culverts, energy dissipaters, creek crossings, etc., and underground utility lines (PLN010280), as described in condition #1 of the attached Exhibit "C," and as conditioned, conforms with the plans, policies, requirements and standards of the Monterey County Big Sur Coast Land Use Plan, Monterey County Coastal Implementation Plan (Part 3), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20), which together comprise the Local Coastal Program for the project site. The properties are located at Garrapata Canyon in the Big Sur area, Coastal Zone. (Assessor's Parcel Numbers 417-021-035-000 and 417-021-038-000). The site is located East of Highway 1 between Joshua Creek and the southern portion of the Doud Creek drainage. The parcels are zoned WSC/40-D (CZ) or Watershed and Scenic Conservation Residential, Coastal Zone, 40 acres per unit Design Control District. The subject properties are in compliance with all rules and regulations pertaining to zoning uses, and any other applicable provisions of Title 20, and any zoning violation abatement costs have been paid.

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

- a) The certified Big Sur Coast Land Use Plan
- b) The certified Monterey County Coastal Implementation Plan regulations for the "WSC (CZ)" Districts in the Coastal Zone, and
- c) Chapter 20.145, Monterey County Coastal Implementation Plan regulations for development in the Big Sur Coast Land Use Plan.

EVIDENCE: The proposed development has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Division, Parks and Recreation Department, and California Department of Forestry and Fire Protection (Carmel). There has been no indication from these agencies that the site is not suitable for the proposed development. The Initial Study demonstrates that no physical or environmental constraints exist that would indicate the site is not suitable for the proposed development. Where applicable, each agency has recommended conditions of approval.

EVIDENCE: The project planner conducted site visits in November, 2001 and April, 2002 to verify that the proposed project complies with the Monterey County Coastal Implementation Plan (Part 3).

EVIDENCE: Results from a preliminary archaeological reconnaissance prepared by Archaeological Consulting, dated August 17, 2001 indicated that there is no evidence of potentially significant prehistoric or historic cultural resources. The report further concluded that the work completed on the road has not resulted in impacts to significant archaeological resources.

EVIDENCE: A biological report prepared by Jeff Norman, Consulting Biologist, dated November 3, 2001.

EVIDENCE: Geological and Geotechnical Review and Reconnaissance report prepared by Geoconsultants, Inc., dated November, 2001.

EVIDENCE: Hydrology and Drainage report prepared by Ifland Engineers, Inc., dated October, 2001.

EVIDENCE: Watershed Management Plan prepared by Ifland Engineers, Inc., dated October, 2001.

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

2. **FINDING:** The project is in conformance with public access requirements of the Coastal Act and the Big Sur Coast Land Use Plan Section 20.145.150. The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights.

EVIDENCE: The property is located east of Highway 1 and is not identified in the Big Sur Coast Land Use Plan Shoreline Access Plan as a Public Access location. The property does not front the shoreline and is not located in an area where public access exists and does not constitute an accessway over which the public may have prescriptive rights.

3. **FINDING:** The project is consistent with Section 20.145.030 of the Coastal Implementation Plan dealing with Visual Resources.

EVIDENCE: The project planner conducted site visits in October, 2001 and January, 2002 to verify the proposed consistency with development standards in the critical viewshed as set forth in the Coastal Implementation Plan (Part 3). Section 20.145.030.A.2.e prohibits development of new roads, including improvements on existing roads, when the development damages or intrudes upon the critical viewshed. The project does not include the construction of new structures. Development occurred that could have impacted the critical viewshed, such as parking and storage areas. Staff site visits to the project site verified that these areas are not visible from Highway 1. Condition of approval 17 has been added to the project requiring restoration of these areas.

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

4. **FINDING:** The proposed project conforms to the Development Standards for Environmentally Sensitive Habitats of the Coastal Implementation Plan.
- EVIDENCE:** The biological report and initial study prepared for the project identified potential adverse impacts to species of special concern and environmentally sensitive habitats. Potential adverse impacts were identified for the endangered Smith's Blue Butterfly (*Euphilotes enoptes smithi*) and its host plant seacliff buckwheat (*Eriogonum parvifolium*), the federal threatened California Red Legged Frog and associated Environmentally Sensitive Habitat Areas (ESHA). Appropriate mitigation measures were imposed on the project and included as conditions of approval 17-23 to bring the potential adverse impacts to a less than significant level.
- EVIDENCE:** File and application materials, Initial Study with mitigation measures, Mitigation Monitoring Program, and Negative Declaration contained in the project file.
5. **FINDING:** The proposed project conforms to LUP policy 3.3.2.1 and CIP section 20.145.040.B.1 dealing with development in environmentally sensitive habitat areas.
- EVIDENCE:** LUP policy 3.3.2.1 and CIP section 20.145.040.B.1 prohibit development in environmentally sensitive habitat areas if the development's impact cannot be reduced to a level at which the long-term maintenance of the habitat is assured. The Initial Study for the project identified adequate mitigation measures that would reduce adverse impacts from the project to a less than significant level and ensure the long-term maintenance of the habitat. These mitigation measures have been required as conditions of approval 17-23. Consequently, impacts from the project will not affect the long-term maintenance of the habitat, consistent with the aforementioned policies.
- EVIDENCE:** File and application materials, Initial Study with mitigation measures, Mitigation Monitoring Program, and Negative Declaration contained in the project file.
6. **FINDING:** The proposed project conforms to LUP policy 3.3.2.3 and CIP section 20.145.040.B.2 related to conservation easements in environmentally sensitive habitat areas.
- EVIDENCE:** LUP policy 3.3.2.3 and CIP section 20.145.040.B.2 require conservation easement dedications over environmentally sensitive habitat areas for any development on parcels that contain these areas. Policy 3.3.2.3 encourages property owners to voluntarily dedicate conservation easements where development has already occurred. The applicant has voluntarily signed a deed of conservation and scenic easement with the Santa Lucia Conservancy over the majority of the parcel including all portions that contain environmentally sensitive habitat areas. Condition of approval #6 requires proof of recordation of said easement and includes alternative language to comply with this requirement if the voluntary easement deed does not occur. Therefore, the project is

consistent with LCP policies that require conservation easements over environmentally sensitive habitat areas.

7. FINDING: The project is consistent with Section 20.145.050 of the Coastal Implementation Plan dealing with Water Resources.

EVIDENCE: The proposed improvements were reviewed by the Monterey County Water Resources Agency and the Monterey County Health Department, Environmental Health Division. Where appropriate, these agencies have recommended conditions of approval to bring the project in compliance with County ordinances that protect water resources.

EVIDENCE: Initial Study and Negative Declaration contained in the project file.

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

8. FINDING: The project is consistent with LUP policy 3.4.2.2 related to use of best watershed management practices.

EVIDENCE: Best management practices for the project include implementation of erosion control measures, energy dissipaters at the outfalls of culverts and slope revegetation in conjunction with a monitoring plan to evaluate the performance of these measures as required by the conditions of approval.

EVIDENCE: Mitigation measures applied to the project to ensure the long-term maintenance of watershed resources – see Finding #7, conditions 17-23. Application, plans, and support materials, submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development.

9. FINDING: The project is consistent with LUP policy 3.4.2.3 regarding the use of riparian water supply.

EVIDENCE: Three water tanks exist on the property. Water for the tanks comes from intakes located in Joshua Creek and a spring above the tanks. Current use of the water is limited to road maintenance activities. Consistent with LUP policy 3.4.2.3, a condition of approval (condition #21) has been added to the project requiring the removal of the water tanks and supply system, in consultation with the Department of Fish and Game upon completion of road work. In the interim, the applicant must install float shut-off valves in the tanks to avoid potential dewatering of the Creek and spring.

10. FINDING: The proposed project, including all permits and approvals, will not have any significant adverse impacts on the environment and a Mitigated Negative Declaration has been adopted. Potential environmental effects have been studied and there is no substantial evidence in the record, as a whole, that supports a fair argument that the project, as designed and mitigated, may cause a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County based upon the findings and conclusions drawn in the Initial Study and in

consideration of testimony and information received, and scientific and factual data presented in evidence during the public review process. Mitigation measures identified in the Initial Study have been incorporated into the project, and agreed to by the applicant, to reduce any impact to an insignificant level. All applicable mitigation measures are included in the conditions of approval, which are hereby adopted as a mitigation monitoring and reporting program.

Studies, data, and reports prepared by staff from various County departments, including Planning and Building Inspection, Public Works, Environmental Health, and the Water Resources Agency, support the adoption of a Negative Declaration for the project. The custodian of the documents and materials that constitute the record of proceedings upon which the adoption of the Negative Declaration is based is the Monterey County Planning and Building Inspection Department, 2620 1st Avenue, Marina. No facts, reasonable assumptions predicated on facts, testimony supported by adequate factual foundation, or expert opinions supported by facts have been submitted that refute the conclusions reached by these studies, data, and reports. Nothing in the record alters the environmental determination, as presented by staff, based on investigation and the independent assessment of those studies, data, and reports.

EVIDENCE: County staff prepared an Initial Study for the project in compliance with the California Environmental Quality Act (CEQA), and its Guidelines. The Initial Study provided substantial evidence that the project, with the addition of mitigation measures, would not have significant adverse environmental impacts. A Negative Declaration was filed with the County Clerk on June 04, 2002 and noticed for public review. All comments received on the Initial Study have been considered as well as all evidence in the record, which includes studies, data, and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented or discussed during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data, and reports; application materials; and expert testimony. Among the studies, data, and reports analyzed as part of the environmental determination are the following:

- 1) Preliminary archaeological reconnaissance prepared by Archaeological Consulting, dated August 17, 2001.
- 2) Biological report prepared by Jeff Norman, Consulting Biologist, dated November 3, 2001.
- 3) Geological and Geotechnical Review and Reconnaissance report prepared by Geoconsultants, Inc., dated November, 2001.
- 4) Hydrology and Drainage report prepared by Ifland Engineers, Inc., dated October, 2001.
- 5) Watershed Management Plan prepared by Ifland Engineers, Inc., dated October, 2001.

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

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

EVIDENCE: Staff analysis contained in the Initial Study and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. Implementation of the project will potentially affect the plant Seacliff Buckwheat (*Eriogonum parvifolium*), host plant for the endangered species Smith's Blue Butterfly (*Euphilotes enoptes smithi*), the threatened California Red Legged Frog (*Rana aurora draytonii*), and habitat for the Federally-listed threatened fish, southern steelhead (*Oncorhynchus mykiss irideus*) in addition to other ESHAs present on the project site.

EVIDENCE: The applicant shall pay the Environmental Document Fee, pursuant to Fish and Game Code Section 753.5.

EVIDENCE: Initial Study and Negative Declaration contained in the project file.

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

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

13. FINDING: The project is appealable to the California Coastal Commission.

EVIDENCE: Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan (Part 1).

FINDING FOR THE APPEAL

14. FINDING: An appeal of the July 10, 2002 action of the Planning Commission adopting a Mitigated Negative Declaration; adopting a Mitigation Monitoring and Reporting Program; and approving a Combined Development Permit (PLN010280, Kleissner) for development on Assessor's Parcel Numbers 417-021-035-000 and 417-021-038-000 consisting of: a Coastal Development Permit

for development within 100 feet of an environmentally sensitive habitat, a Coastal Development Permit for development on slopes greater than 30%, and a Coastal Development Permit for placement of graded material, retaining structures, culverts, energy dissipaters, creek crossings, etc., and underground utility lines. These permits apply as appropriate to the following improvements to include: a) after the fact improvements to existing access roads (approximately 2.5 miles in length) consisting of an undetermined amount of grading, removal of debris flow material, road widening and embankments, multiple culverts and energy dissipaters, retaining walls (one concrete wall, a geotextile reinforced soil wall, a wood wall and several Hilfiker walls), a gabion basket drainage crossing; underground utility lines and related work adjacent to Joshua Creek; b) new improvements to the upper access road consisting of short-term erosion control measures, a Soldier Beam retaining wall, five (5) 12" culverts, four (4) Hilfiker retaining walls, and concrete paving of two steep areas, and related grading. The appeal was timely filed on July 25, 2002.

EVIDENCE: Said appeal has been filed with the Clerk of the Board of Supervisors within the time prescribed by Monterey County pursuant to Zoning Ordinance Chapter 20.86;

EVIDENCE: Said appeal has been determined to be complete;

EVIDENCE: Letter of response to the appeal dated September 20, 2002 by Mark Blum and contained in the project file.

EVIDENCE: The Board of Supervisors has reviewed, evaluated, and considered the appeal and responds as follows:

Contention 1

The appellant contends that because the project had directly impacted sensitive habitats and protected species, an EIR should be prepared and mandatory findings of significance be made.

Staff Response

Through the CEQA review process, all impacts from road construction were identified and documented in an Initial Study. CEQA guidelines section 15064 states: "If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR." In this case, following preparation of the Initial Study, staff determined that although the proposed project could have a significant adverse impact on the environment, mitigation measures can be applied to the project that would bring those potential adverse impacts to a less than significant level. The most important areas addressed in the Initial Study were impacts to biological resources and hydrology and water quality. Potential biological impacts included direct loss of seac cliff buckwheat plants, a host plant for the endangered Smith's Blue Butterfly, and impacts to critical habitat for the southern steelhead, a Federally-listed threatened fish. Potential impacts to hydrology and water quality included increased sediment loads on Joshua and Garrapata creeks by failure to control sediments from the road and alteration of natural drainage courses by installation of culverts. In consultation with state and federal agencies, mitigation measures such as replacement planting of lost vegetation, installation of energy dissipaters and erosion control devices in addition to a comprehensive monitoring plan, were developed to reduce these potential impacts to a less than significant level. The main goal of these measures was to mitigate for direct loss of vegetation and to provide adequate erosion control

in the context of ensuring the long-term maintenance of the surrounding sensitive resources consistent with the goals and policies of the Big Sur Coast Land Use Plan and the regulations of the Implementation Plan. Consequently, a Mitigated Negative Declaration was prepared. The appellant did not present any significant evidence based on fact that shows any new impacts not previously identified, or that mitigation measures are not adequate to reduce identified impacts below a level of significance. Furthermore, State and Federal agencies have reviewed the Mitigated Negative Declaration and staff has not received any indication from these agencies that the Mitigated Negative Declaration is inadequate.

Contention 2

The 2.5 miles of road was widened, in some places doubled in width.

Staff Response

Prior to the road being reopened and improvements made, the entire length of both upper and lower roads was single-lane. Photographic evidence exists on file that numerous large trucks and cars were able to travel these one-lane roads prior to 1998 when the roads were blocked by landslides. Currently, the roads are still one lane. Staff has verified on-site that in spite of some evident minor widening approximately 1-2 feet on average, partly for safety reasons and fire access requirements, partly to utilize landslide material on site, the road is essentially wide enough only for single lane traffic.

Contention 3

The project requires numerous permits from other state and federal agencies.

Staff Response

This approval is for activities performed under the County's permit authority and includes all required County permits. Enforcement of other agencies regulations is outside the County's authority and responsibility. The applicant has been encouraged to obtain all other related permits and authorizations from agencies with jurisdiction for the project site. There is evidence in the record that other agencies with regulatory authority over the project have contacted the applicant regarding permit requirements. Staff also has knowledge that approval from one of these agencies, the California Regional Water Quality Control Board, has been obtained in the form of a Storm Water Pollution Prevention Plan (SWPPP).

Contention 4

The appellant contends that after the fact permits are wrong and unanticipated by County and State regulations.

Staff Response

Section 20.90.120 states in part (emphasis added):

After recordation of a Notice of Violation by the enforcing officer, all departments, commissions, and public employees shall refuse to issue permits or licenses or entitlements involving the property except those necessary to abate the violation of this Title or the remaining portions of the Monterey County Coastal Implementation Plan, if such are obtainable, or those cleared pursuant to plan for

restoration approved by the Director of Planning and Building Inspection,
pursuant to Section 20.90.130.

In this case, the permits considered under this application are indeed the ones necessary to abate the violations that occurred on the subject properties. Furthermore, the outcome of processing these permits will be to achieve consistency with the Big Sur Coast Land Use Plan policies aimed at protecting environmentally sensitive habitat areas and ensuring the long-term maintenance of sensitive resources.

Contention 5

The appellant contends that Finding 11 should include potential impacts to steelhead.

Staff Response

Potential impacts to steelhead occur through impacts to their habitat in the form of increased sediment and reduced stream flow. These impacts were adequately identified and addressed in the Initial Study and included in the evidence for Finding 11 under "other ESHAs present on the project site". However, staff has modified the language of the evidence to specifically include habitat for the southern steelhead.

Contention 6

The appellant contends that Finding 10 is false because no mitigation is included for the potential impacts to the California Red-Legged Frog or the Foothill Yellow-Legged Frog.

Staff Response

The biologist has stated that "the area supports apparently suitable habitat" for these species. However, no potential adverse impacts were identified for these species by the biologist. Condition of Approval 20 requires that the applicant perform a focused survey for California Red-Legged Frog and Foothill Yellow-Legged Frog. Language has been added to condition 20 requiring consultation with appropriate state and federal agencies.

Contention 7

The appellant contends that Findings 4, 5, and 6 are false because the project irreversibly destroyed ESHA.

Staff Response

The policies and regulations of the Big Sur Coast Land Use Plan and Implementation Plan prohibit development in environmentally sensitive habitat areas (ESHA) if the development's impact cannot be reduced to a level at which the long-term maintenance of the habitat is assured. Based on the facts and record as a whole, staff concluded that although impacts to ESHA had occurred, mitigation measures could be applied to the project in order to bring those impacts to a less than significant level. The purpose of the mitigation measures identified for the project is to ensure the long-term maintenance of Joshua creek and associated watershed as well as to restore impacted resources. Finding 6 refers to the recordation of a conservation easement over ESHA. The owners have recorded a conservation easement over most portions of their property, including areas not identified as ESHA. Consequently, the project is consistent

with the policies and regulations related to the protection of ESHA addressed by the subject findings. The appellant has not presented any evidence based on fact to show that Findings 4, 5, and 6 are false.

Contention 8

The appellant contends that Finding 9 and its mitigation fail to address creek drying this year or this month.

Staff Response

There is no evidence based on fact that Joshua creek is in imminent danger of drying due to water use by the project. The concern addressed by Finding 9 and its associated condition of approval (Condition 21) address extraction and diversion of water from Joshua creek consistent with the long-term maintenance of the resource.

Contention 9

The appellant contends that the applicants have not apologized for their unpermitted activities.

Staff Response

Comment noted.

Contention 10

The appellant noted that the Big Sur Land Use Advisory Committee voted on the project the day prior to the Planning Commission hearing.

Staff Response

The LUAC requested that a site visit be scheduled prior to making a recommendation. Due to scheduling conflicts and in order to accommodate the majority of LUAC members, the site visit was scheduled the day prior to the Planning Commission hearing. The vote and the minutes of the LUAC meeting are contained in the project file and are included in the staff report as Exhibit "H".

RECOMMENDED CONDITIONS OF PROJECT APPROVAL

1. The subject Combined Development Permit includes Assessor's Parcel Numbers 417-021-035-000, and 417-021-038-000 and consists of: a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat, a Coastal Development Permit for development on slopes greater than 30%, and a Coastal Development Permit for placement of graded material, retaining structures, culverts, energy dissipaters, creek crossings, etc., and underground utility lines. These permits apply as appropriate to the following improvements to include: a) after the fact improvements to lower and upper access roads (approximately 2.5 miles in length) consisting of an undetermined amount of grading, removal of vegetation for a parking area, removal of vegetation and grading of an area for equipment and container storage, removal of debris flow material, road widening and embankments, installation of multiple storm drains and fifty four (54) culverts ranging from 12 to 48 inches in diameter, installation of fifteen (15) culvert extensions on the hillside below the roads with energy dissipaters, twenty-seven (27) retaining walls (one concrete wall, a geotextile reinforced soil wall, a wood wall and 24 Hilfiker walls), a gabion basket drainage crossing; seven (7) hydrants; underground communication lines (pull boxes) and related work adjacent to Joshua Creek. ; b) new improvements to the upper access road consisting of short-term erosion control measures, a Soldier Beam retaining wall (already installed under an emergency permit), five (5) culverts ranging from 12 to 24 inches in diameter (one 24" culvert already installed under an emergency permit), four (4) Hilfiker retaining walls, where the upper road crosses Joshua Creek construction of a flat car bridge, a Hilfiker wall, a retaining wall and concrete paving of the steep areas before and after the bridge, and related grading (approximately 125 cubic yards of cut, 40 cubic yards of fill). The project is located at Garrapata Canyon (approx. Post Mile 63 of Highway 1) Big Sur area. The project is 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)**

Prior to issuance of Building and/or Grading Permits:

2. At least ninety (90) days prior to expiration of the culvert evaluation plan required by condition No. 20, the applicant shall submit to the Director of Planning and Building Inspection Department for approval and subsequently record as a notice, a comprehensive maintenance plan for the upper and lower roads to be implemented by the applicant in perpetuity. Upon review, changes to the plan by the Director shall be supported by a report from a civil engineer employed by the County or on the County's list of approved consultants. The plan shall be prepared by a registered civil engineer and shall contain, at a minimum, a detailed maintenance schedule, activities, methodology, and a monitoring and reporting program consistent with the approved permit and related conditions of approval. The maintenance plan shall address extraordinary storm events, and what required actions could be anticipated for 50 and 100 year

storm events. Where appropriate, the contents of an existing approved Storm Water Pollution Prevention Plan (SWPPP) may be acceptable as partial fulfillment of this condition. The applicant shall implement the maintenance plan in perpetuity to ensure that the adopted mitigation measures related to the maintenance plan are effective and successful. Failure by the applicant to implement the maintenance plan as approved shall be a violation of this permit, provided however, that failure to implement based on regulatory constraints beyond the applicant's control shall not be a violation of this permit. The County may pursue all remedies afforded under County regulations to ensure implementation of the maintenance plan if the applicant fails to implement the maintenance plan as approved. **(Planning and Building Inspection)**

3. The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. **(Planning and Building Inspection)**
4. Pursuant to the State Public Resources Code, State Fish and Game Code and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$1,275. **This fee shall be paid within five days of project approval**, before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning and Building Inspection)**
5. The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring Plan. The Plan shall be submitted to the Director of Planning and Building Inspection Department for approval prior to issuance of building and/or building permits. **(Planning and Building Inspection)**

6. Proof of recordation of a voluntary conservation and scenic easement that meets the requirements of the Big Sur Coast Land Use Plan for development in environmentally sensitive habitat areas shall be provided to the Director of Planning and Building Inspection Department. Alternatively, a conservation easement shall be conveyed to the County over those portions of the property where sensitive habitat areas have been identified as shown on the plans included in the November 3, 2001 biological report by Jeff Norman, consulting biologist. Conservation easement deed to be submitted to and approved by Director of Planning and Building Inspection prior to final inspection **(Planning and Building Inspection)**
7. The applicant shall record a notice which states: "The following reports have been prepared for the upper and lower access road for this property: Preliminary archaeological reconnaissance prepared by Archaeological Consulting, dated August 17, 2001; Biological report prepared by Jeff Norman, Consulting Biologist, dated November 3, 2001; Geological and Geotechnical Review and Reconnaissance report prepared by Geoconsultants, Inc., dated November, 2001; Hydrology and Drainage report prepared by Ifland Engineers, Inc., dated October, 2001; Watershed Management Plan prepared by Ifland Engineers, Inc., dated October, 2001. These reports are on file in the Monterey County Planning and Building Inspection Department. The recommendations contained in said reports shall be followed in all further development of the access roads to this property." **(Planning and Building Inspection)**
8. The applicant shall record a notice that states: "A permit (Resolution _____) was approved by the Planning Commission for Assessor's Parcel Numbers on July 10th, 2002). The permit was granted subject to 23 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits, or commencement of the use. **(Planning and Building Inspection)**
9. Prior to issuance of any grading or building permits for the road, a road drainage and improvement plan shall be prepared by a registered civil engineer. **(Water Resources Agency)**
10. Prior to issuance of any grading and/or building permits for the bridge, a registered civil engineer shall prepare a plan for the construction of the approaches and abutments to show that they are protected from erosion by flows exceeding the capacity of the normal channel (overbank flow). The approach and abutment fill material shall be properly compacted, and protected with armor, if necessary, to resist flow erosion. Plans shall identify subsurface material under the abutments and the approaches, and how any fill material will be keyed into the subsurface. The bridge shall be designed and properly anchored to withstand overtopping and debris loads. Plans shall be approved before the issuance of any grading/building permits. **(Water Resources Agency)**
11. All structures accessed from this road shall have permanently posted addresses. **(Fire District)**

12. Ordinance 3600 requirements for fire department access roads apply, with the following exceptions:
 - a. The upper road is acceptable as is from the Highway One access gate to the fish and Game turnoff. Turnouts to be provided as determined by the site visit on February 5, 2002.
 - b. The upper road past the Fish and Game turnoff to be finished to match the completed portion of the upper road. If the road surface deteriorates due to weather after 24 months, a retroactive requirement for pavement shall be required. **(Fire District)**
13. All residences served by this access road shall be equipped with automatic fire sprinkler systems meeting the requirements of NFPA 13-D, including retrofit of all existing residences. **(Fire District)**
14. No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
15. The use of native species consistent with and found in the project area shall be required in all restoration plans. **(Planning and Building Inspection)**
16. In order to control erosion on the exposed surface of the road that leads from the sawmill to the burnt house site, prior to final inspection the applicant shall re-vegetate this portion of road as well as the house pad. Re-vegetation shall be maintained until any future discretionary permits dictate otherwise. Additional erosion control measures to complement re-vegetation may be used. Ongoing implementation of this condition shall not have any effect on whatever legal status the access road and house pad may have as of the date of project approval. **(Planning and Building Inspection)**

Conditions from the Mitigated Negative Declaration

17. **Mitigation Measure 1 (Biological Resources)** In order to mitigate for impacts that occurred to Central Maritime Chaparral to a less than significant level, the applicant shall, in consultation with a qualified biologist, restore the areas at trench swales and utility boxes located between points 0 and 6, and at the parking area identified as point 3 shown on the "As-Built Drawing for access Road for Parcel APN: 417-021-035" (Exhibit "J", Project Plans). Restoration shall include planting of 47 Little Sur manzanita plants and as many mock heather and Monterey manzanita plants as recommended by the biologist, in addition to eradication of exotic invasive species such as Kikuyu grass and Bermuda buttercup. Plants for the restoration shall be obtained from cuttings of other plants from the site as indicated in the November 3, 2001 biology report by Jeff Norman.

MONITORING ACTIONS: Prior to final inspection, the applicant shall submit a report prepared by the qualified biologist to the Director of Planning and Building Inspection Department, certifying that all planting has been made consistent with the recommendations of the qualified biologist and in accordance with the guidelines in the November 3, 2001 biology report by Jeff Norman. Every four months, for a period of five years, the applicant shall report in writing to the Director of Planning and Building

Inspection Department on the status of the restoration. The reports shall be prepared by a qualified biologist and shall include performance measures and corrective measures as needed. Planting shall be sufficient to replace lost vegetation (1:1 ratio) with a 100% success criterion. Failure to meet the success standard in any given year shall require immediate replacement planting and shall extend the monitoring period for an additional year.

18. **Mitigation Measure 2 (Biological Resources)** In order to minimize potential adverse impacts to Redwood trees, all activities along the lower road shall avoid severing major roots of redwoods. No excavated or otherwise disturbed soil shall be allowed to accumulate beneath the canopies of these trees.

MONITORING ACTION: The applicant shall include a section in the report required under Mitigation Measure 1 addressing the condition of this mitigation measure.

19. **Mitigation Measure 3 (Biological Resources)** In order to mitigate for loss of riparian vegetation associated with the construction of the gabion wall, placement of riprap, and installation of French drains, the applicant shall, in consultation with a qualified biologist, replant the affected area in accordance with the recommendations contained in the biology report by Jeff Norman dated November 3, 2001. Planting shall be sufficient to replace lost vegetation (1:1 ratio) with a 100% success criterion. Failure to meet the success standard in any given year shall require immediate replacement planting and shall extend the monitoring period for an additional year.

MONITORING ACTION: The applicant shall include the progress of this mitigation measure in the report to be submitted every four months per Mitigation Measure 1.

20. **Mitigation Measure 4 (Biological Resources, Geology and soils, Hydrology and Water Resources)** In order to prevent erosive material from the road entering Joshua Creek, the applicant shall, in consultation with the National Marine Fisheries Service and the Garrapata Creek Watershed Council, complete road improvements following the recommendations of the Watershed Management Plan, the Hydrology and Drainage Report, and related plans prepared by Ifland Engineers (See Exhibits D and E of the Initial Study). These recommendations include keeping the existing gabion basket wall on Joshua Creek, additional culverts (5), retaining walls and erosion control measures such as Best Management Practices (BMPs) and outlet protection measures. In addition, the applicant shall, in consultation with the appropriate state and federal agencies, implement and follow all recommendations by consulting biologist Jeff Norman in his November 3, 2001 Biological Report. The results and biologist recommendations following Red-Legged frog and Foothill Yellow-Legged frog surveys shall be submitted to the Department of Fish and Game and Director of Planning and Building Inspection Department for comment and approval.

MONITORING ACTIONS: Prior to the issuance of building or grading permits, the applicant shall submit a culvert evaluation plan prepared by a qualified civil engineer or hydrologist to the Director of Planning and Building Inspection Department for approval. The plan shall be reviewed by the California Regional Water Quality Control Board, National Marine Fisheries Service, and Garrapata Creek Watershed Council and must include performance standards and variables to be monitored in addition to sediment capturing devices such as water course screens. Beginning on May 1, 2003 and until the

end of the revegetation reporting period indicated in Mitigation Measure 1, the applicant shall submit yearly reports prepared by a qualified civil engineer or hydrologist to be approved by the Director of Planning and Building Inspection Department to evaluate the performance of the road improvements as they relate to the watershed. The reports shall also be submitted to the California Regional Water Quality Control Board, California Department of Fish and Game, National Marine Fisheries Service, and Garrapata Creek Watershed Council for comment. Each report shall include a pre-winter assessment of the site and a post winter evaluation of the installed components. The reports shall specifically address culvert adequacy and energy dissipater performance. Evidence of significant hillside erosion at culvert outlets and energy dissipaters shall require corrective measures as recommended by the civil engineer. These measures shall be implemented on a schedule submitted by the civil engineer. Failure to implement subsequent recommended measures shall constitute a violation of project conditions. Concurrently, the biologist shall review sediment loading and sediment impacts on steelhead habitat with related measures to be implemented as necessary consistent with the requirements for subsequent measures outlined above.

21. **Mitigation Measure 5 (Biological Resources, Hydrology and Water Resources)** In order to minimize impacts to Joshua Creek from surface water diversion, upon completion of the road improvements, in consultation with the Department of fish and Game, the applicant shall remove the water tanks located on the lower road near the sawmill. Until removed, the applicant shall install float shut-off valves in the water tanks to prevent unnecessary bypassing of water between the intakes and the tanks.

MONITORING ACTION: Prior to construction, the applicant shall provide evidence to the Director of Planning and Building Inspection Department that float shut-off valves have been installed in the water tanks. Prior to final inspection, the applicant shall provide the Director of Planning and Building Inspection Department, proof that consultation with the Department of Fish and Game has occurred regarding tank removal and that the water tanks have been removed from the site.

22. **Mitigation Measure 6 (Biological Resources)** In order to mitigate for potential adverse impacts to the Federally-listed Smith's blue butterfly and its host plant seacliff buckwheat from road opening activities, the applicant shall, in consultation with a qualified biologist and per the recommendations of the November 3, 2001 report by consulting biologist Jeff Norman, plant a total of 1,126 seacliff buckwheat plants. Planting shall be limited to Coastal Sage Scrub habitat where impact has occurred and where necessary to stabilize erosive conditions. All planted areas shall be monitored for exotic invasive plants as described in the biological report; when encountered, exotic plants shall be eradicated.

MONITORING ACTION: Progress of revegetation and exotic invasive plant control shall be included in a report prepared by a qualified biologist and will be subject to a 70% success criterion, or 788 seacliff buckwheat plant specimens at the end of the five-year monitoring period. Failure to meet the success criterion for seacliff buckwheat in any given year shall require immediate replanting of lost plants and will extend the monitoring period for an additional year. Reporting and monitoring required under this action may be combined with the report required under mitigation measure 1.

23. **Mitigation Measure 7 (Biological Resources)** In order to avoid adverse impacts to sensitive plants such as seaciff buckwheat, the applicant shall retain a qualified biologist to identify and mark all sensitive plants to be avoided during construction. If avoidance is not possible, replacement planting shall be implemented per mitigation measure 5 and its monitoring action.

MONITORING ACTION: Prior to construction, the applicant shall provide the Director of Planning and Building Inspection Department for approval, a copy of the contract with a qualified biologist to carry out this mitigation measure. Prior to final inspection, the applicant shall submit to the Director of Planning and Building Inspection Department written certification by the qualified biologist that construction activities were carried out in accordance with this mitigation measure and that any required replacement planting has been done or that no additional mitigation measures are required.

PASSED AND ADOPTED this 24th day of September, 2002, upon motion of Supervisor Johnsen, seconded by Supervisor Calcagno, and carried by the following vote, to-wit:

AYES: Supervisors Armenta, Pennycook, Calcagno, Johnsen and Potter.

NOES: None.

ABSENT: None.

I, SALLY R. REED, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 71 on September 24, 2002.

DATED: September 24, 2002

SALLY R. REED, Clerk of the Board
of Supervisors, County of Monterey, State of
California

By: 

Deputy

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
5 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(31) 427-4863



COMMISSION NOTIFICATION OF APPEAL

DATE: October 18, 2002

TO: Lautaro Echiburu, Planner
County of Monterey, Planning Department
2620 First Avenue
Marina, CA 93933

FROM: Diane Landry, Acting District Manager

RE: Commission Appeal No. A-3-MCO-02-083

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Section 30602 or 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: PLN010280

Applicant(s): Karl & Lisa Kleissner

Description: Development within 100 feet of an environmentally sensitive habitat, on slopes greater than 30% and placement of graded material, retaining structures, culverts energy dissipaters, creek crossings, etc., and underground utility lines including: After the fact improvements to existing access roads (approx. 2.5 miles in length) consisting of an undetermined amount of grading, removal of debris flow material, road widening and embankments, multiple culverts and energy dissipaters, retaining walls (one concrete wall, a geotextile reinforced soil wall, a wood wall and several Hilfiker walls), a gabion basket drainage crossing; underground utility lines and related work adjacent to Joshua Creek; new improvements to the upper access road consisting of short-term erosion control measures, a Soldier Beam retaining wall, five 12:1 culverts, four Hilfiker retaining walls, and concrete paving of steep areas, and related grading.

Location: East Of Highway 1 @ Garrapatta Canyon (approx. Post Mile 63 of Hwy. 1), Big Sur (Monterey County) (APN(s) 417-021-035, 417-021-038)

Local Decision: Approved w/ Conditions

Appellant(s): H O P E - Helping Our Peninsula's Environment, Attn: David Dilworth;
California Coastal Commission, Attn: Commissioner Sara Wan;
Commissioner John Woolley

Date Appeal Filed: 10/16/2002

Commission Notification Of Appeal
A-3-MCO-02-083, Kleissner
October 18, 2002
Page 2

The Commission appeal number assigned to this appeal is A-3-MCO-02-083. The Commission hearing date has been tentatively set for November 5-8, 2002 in San Diego. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Monterey's consideration of this coastal development permit must be delivered to the Central Coast Area office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Stephanie Matraw at the Central Coast Area office.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

25 FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

(408) 427-4863

HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTPlease Review Attached Appeal Information Sheet Prior To Completing
This Form.SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

HOPE-Helping Our Peninsula's Environment
Box 1495
Carmel 93921 (831) 624-6500
Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government:Monterey County2. Brief description of development being
appealed:

Two and one half miles of road widening
without a permit dumped tons of silt in Joshua
+ Garraota Creeks smothering steelhead habitat.

3. Development's location (street address, assessor's parcel
no., cross street, etc.):

APNs - 417-021-035-000 (Garraota Creek)
417-021-038-000 (Joshua Creek)

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: ☒ _____

c. Denial: _____

Note: For jurisdictions with a total LCP, denial
decisions by a local government cannot be appealed unless
the development is a major energy or public works project.
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-3-MCO-02-083DATE FILED: 10/16/02DISTRICT: Central

H5: 4/88

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OCT 15 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA
A-3-MCO-02-083 Kleissner Road Appeal
Exhibit D
Pg. 3 of 11

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☐ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☒ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: Sept 24, 2002

7. Local government's file number (if any): _____

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) National Marine Fisheries Service, Tom Gaffney
Santa Maria, CA

(2) Carmel River Steelhead Association, Robert Zampatti
P.O. Box 1183
Monterey, CA 93940

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

A-3-MCO-02-083
Kleissner Road Appeal

Exhibit D
pg. 4 of 11

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

(Please see attached pages)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

D. Dilworth
Signature of Appellant(s) or
Authorized Agent

Date _____

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)
A-3-MCO-02-083
Date Kreissner Road Appeal

Exhibit D
pg. 5 of 11

Big Sur: Kleissner LCP Appeal by HOPE

Introduction

The Kleissner project, approved after-the-fact by Monterey County, still fails to conform to many clear standards set forth in the certified Local Coastal Program regarding roads, steep slopes, erosion and ESHA protection.

Basic Report Absent

- Big Sur Coast Land Use Plan Policy 3.7.3.A.8 "Structures and roads in areas subject to landsliding are prohibited [unless] a certified engineering geology report indicates mitigations exist to minimize risk to life and property."

There is no certified engineering geology report, let alone any mitigations. NMFS and the Steelhead Association do suggest mitigations of retiring 2.5 miles of roads which threaten important steelhead streams and outcropping remaining roads.

Roadway Expansion

The project expanded the roadway - in some places 2-3 times the original width.

The 2.5 miles of expanded roadway is almost entirely on nearly vertical slopes, which is many times greater than the maximum 30% allowed by the LCP which are there to minimize and avoid impacts on "unstable soils on steep slopes." (See LCP Policy 3.2.4 A. 7 - "New roads shall avoid steep slopes." and "side casting of earth materials shall not be permitted."

While road maintenance without widening was allowable without a permit, widening the roadway was not. The County Planner admitted that if the applicant had applied for a permit they probably wouldn't have received one.

ESHA Damage Prohibited

- Big Sur Coast Land Use Plan Policy 5.4.3. K.2.c) "*A qualified biologist shall certify that any environmentally sensitive habitats present will not be harmed.*"

Not only is there no "no-harm" certification, the biology report found hundreds of Coast Buckwheat plants were destroyed.

Significant ESHA Damage

- Big Sur Coast Land Use Plan Policy 3.3.2 "*Development ... shall not be permitted in [ESHA] if it results in any potential disruption of habitat value.*"

Process Unfair

Monterey County claims to have sent the staff report to me on Sept 18th for a Hearing on Sept 24th.

When the staff report had not arrived by Monday Sept 23 I wrote and asked for a continuance.

The packet arrived the afternoon before the Board meeting - too late for me to even open it, let alone analyze it.

Thomas S. Gaffney
Santa Maria Field Office
NMFS-OLE

September 23, 2002

Dear Monterey County Board of Supervisors,

Thank you for providing the National Marine Fisheries Service (NMFS) the opportunity to comment on the Combined Development Permit and Coastal Development Permit for Assessor's Parcel Numbers (APN's) 417-021-035-000 and 417-021-038-000. It is my understanding that these APN's are for the Doud and Kleissner properties off of Highway 1 near Garrapata Beach.

On November 15, 2001, Hydro-geomorphologist Brian Cluer of the NMFS - Habitat Conservation Division (HCD), Fisheries Biologist John McKeon of the NMFS - Protected Resources Division, and I participated in an on the ground reconnaissance of the roads on the Doud and Kleissner properties and of lower Joshua Creek and its confluence with Garrapata Creek. During the visit we toured the reconstructed portions of the upper road and the lower road, as well as the unreconstructed road extending from the upper road to the lower road. This unreconstructed road follows Joshua Creek closely. We also toured portions of lower Joshua Creek and lower Garrapata Creek. The following comments contain excerpts from a Memorandum of that site visit.

The upper reconstructed road.

The road system has had a dramatic impact on Joshua Creek, contributing large amounts of fine material, mostly in the form of sands to the creek systems. Joshua Creek above the road system showed a significantly lower degree of sedimentation. The entire length of Joshua Creek below the crossing of the upper road has been inundated with sediments far in excess of the carrying capacity of the stream, as is evidenced by the formation of terraces of sediment deposits above most constriction points in the stream channel. The source of the terrace deposits is, to the greatest extent, from the unraveling of and failure of the road system prior to its reconstruction.

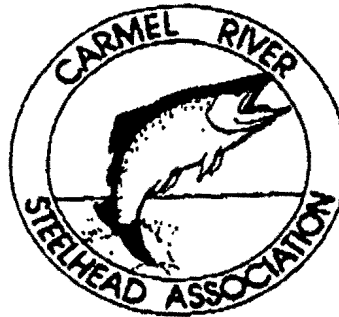
The reconstruction of the upper road likely caused a temporary increase in the amount of sedimentation of Joshua Creek because construction was implemented without an adequate erosion control plan. It appears many of the out falls of the installed culverts did not have adequate energy dissipaters to prevent erosion from road runoff concentrated into gullies by the interception of sheet runoff. On November 15, 2001 cones of accumulation of new sediments were observed on the lower road, despite the limited amount of rainfall for the season (1 -2 inches as of November 15th). This is indicative of the substantial erosion that is occurring in the gullies formed below newly installed culverts. Replacement culverts in natural drainages do not appear to be causing added erosion, as the drainages have previously eroded down to competent bedrock materials.

Mitigation Measure 4

- 1) How will the consultation between the applicant, the NMFS, and the Garrapata Creek Watershed Council be carried out? What is the course of action that will be taken if the 3 parties involved in this consultation disagree about which actions are necessary to implement in order to prevent erosive material from the roads entering Joshua Creek?
- 2) How will the biologist review sediment loading and related impacts to steelhead habitat in Joshua Creek?

Sincerely,

Thomas S. Gaffney
Special Agent
NMFS Office for Law Enforcement



CARMEL RIVER STEELHEAD ASSOCIATION
P O BOX 1183
MONTEREY, CA. 93940

September 3, 2002

Mr. David Potter, Chair
Monterey County Board of Supervisors
1200 Aguajito
Monterey, CA 93940

Dear Supervisor Potter,

Re: Kleissner Appeal

The subject of this letter is the damage done the steelhead habitat by the Kleissner's. Our concern is for the 2 1/2 miles of unpermitted bulldozing which pushed tons of dirt and debris into Garrapata and Joshua Creeks. All of that disturbed material has been or will soon end up in the creeks damaging the rare spawning grounds and suffocating the imperiled West Coast Steelhead, *Oncorhynchus Mykiss*. Because of the deep cuts into the cliffs along the road it is certain that future erosion will significantly increase.

We cannot overstate the importance of protecting steelhead in general and the importance of steelhead in Garrapata Creek in particular. Recovery from the current dire situation depends on prompt action.

In order to prevent a recurrence of these harmful activities that is imperative that the County put grading contractors and bulldozer/owner/operators on notice that they place their licenses in jeopardy by failing to obtain proper permits prior to beginning work. The County has been successful in enforcing permit requirement on other building trades. There is no reason to believe that the same could not be accomplished when it comes to grading permits. The County must take action to revoke the licenses of grading contractors and bulldozer/owner/operators who have violated ordinances and any other related laws.

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Kleissner Road Appeal
Exhibit D pg 10 of 11
Exhibit pg. of
624-650

While restoration activity subsequent to the improper bulldozing may help somewhat, we feel that the only acceptable mitigation for grading without permits is for the County to retire at least 2 1/2 miles of road that still threaten important steelhead streams. We believe that the parties involved, the owner, the grading contractor, and the County share responsibility for the damage done. Any cost should be shared by the three parties.

Finally, we find it outrageous and unacceptable that the County would approve an after the fact permit for the damage caused. Any approval should be limited to the restoration work alone. This matter requires a no nonsense response.

Sincerely,


Robert Zampatti, Secretary

cc. U. S. Senator Barbara Boxer

Supervisors, Monterey County

Patrick Rutten, Supervisor, Protected Resources Division, NMFS

Rod Mc Innis, Regional Administrator, NMFS

Ken Ecklund, President, Garrapata Creek Watershed Council

P.01

13:39

Sep 20 '02

A-3-MCO-02-083
Kleissner Road Appeal

Fax: 408-822-2288

ROY THOMAS DDS

Exhibit D pg. 11 of 11

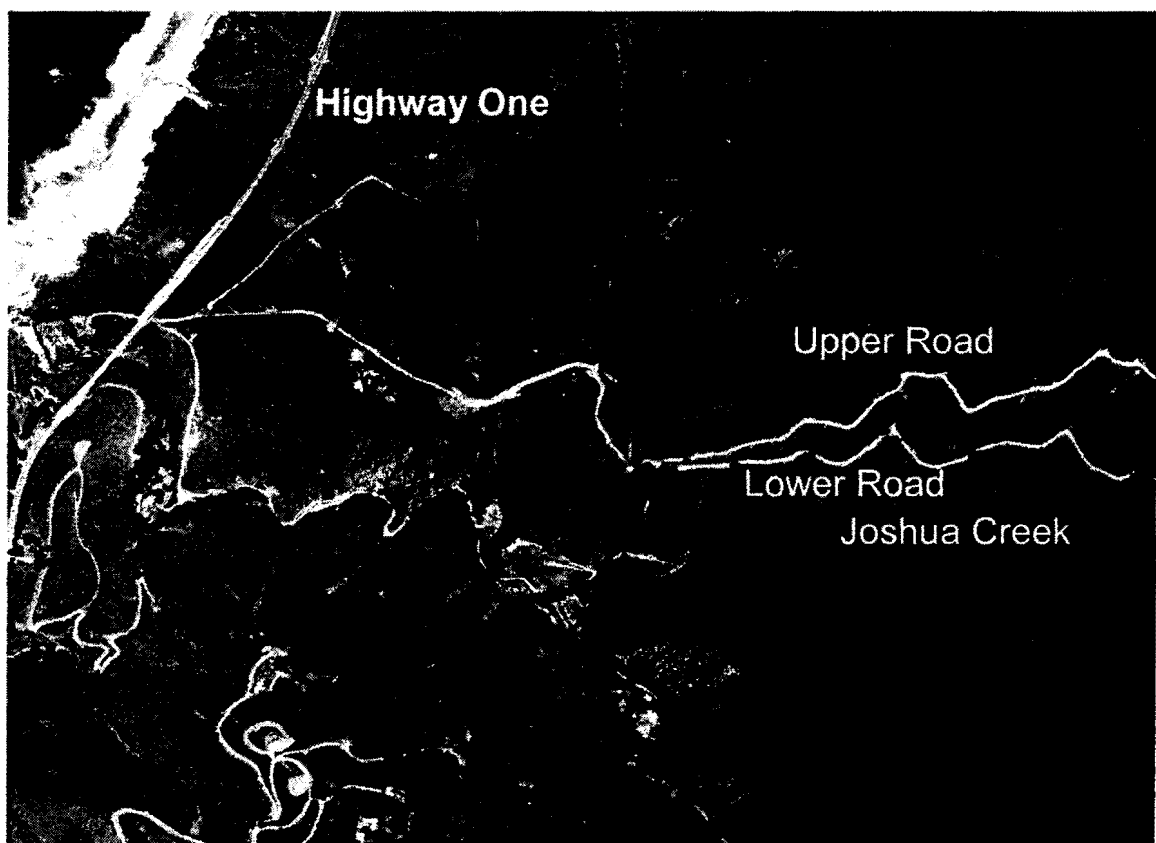
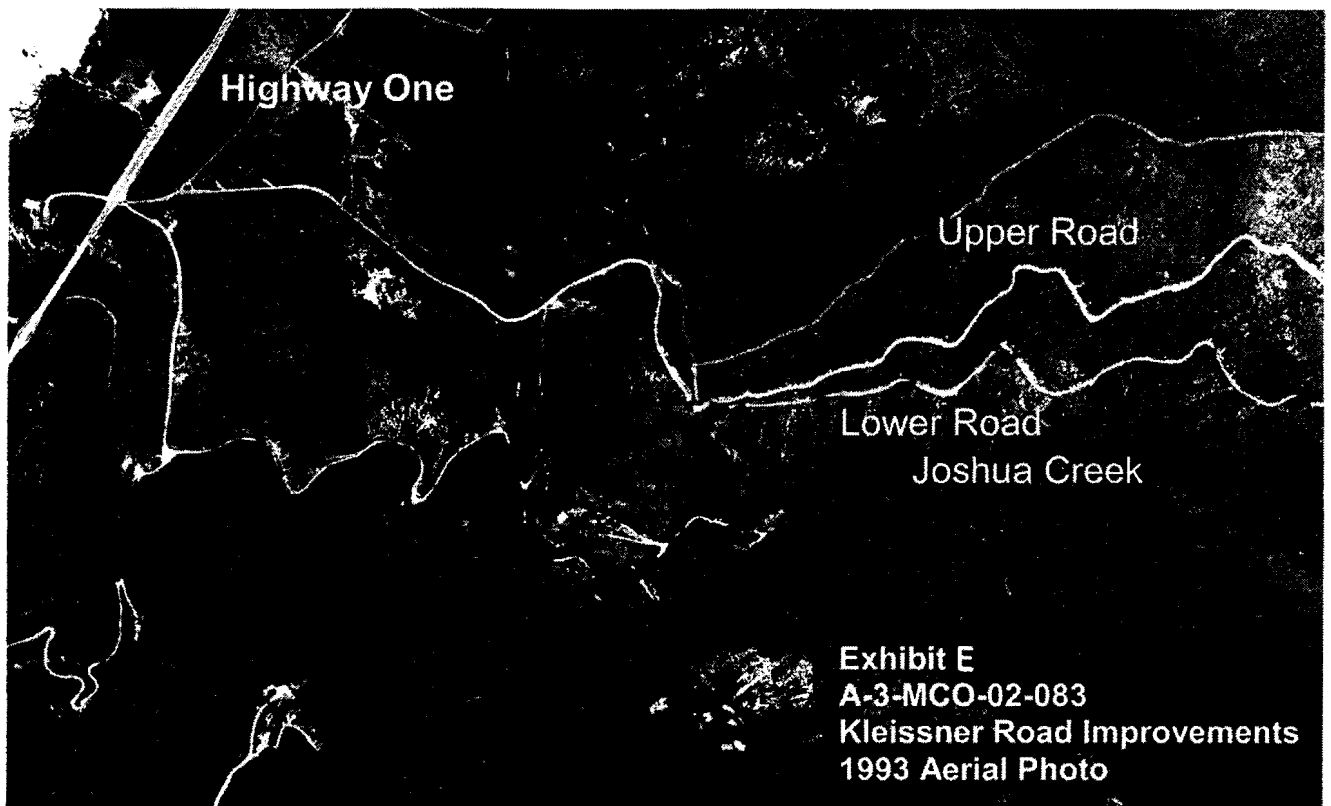


Exhibit F
A-3-MCO-02-083
Kleissner Road Improvements
2001 Aerial Photo

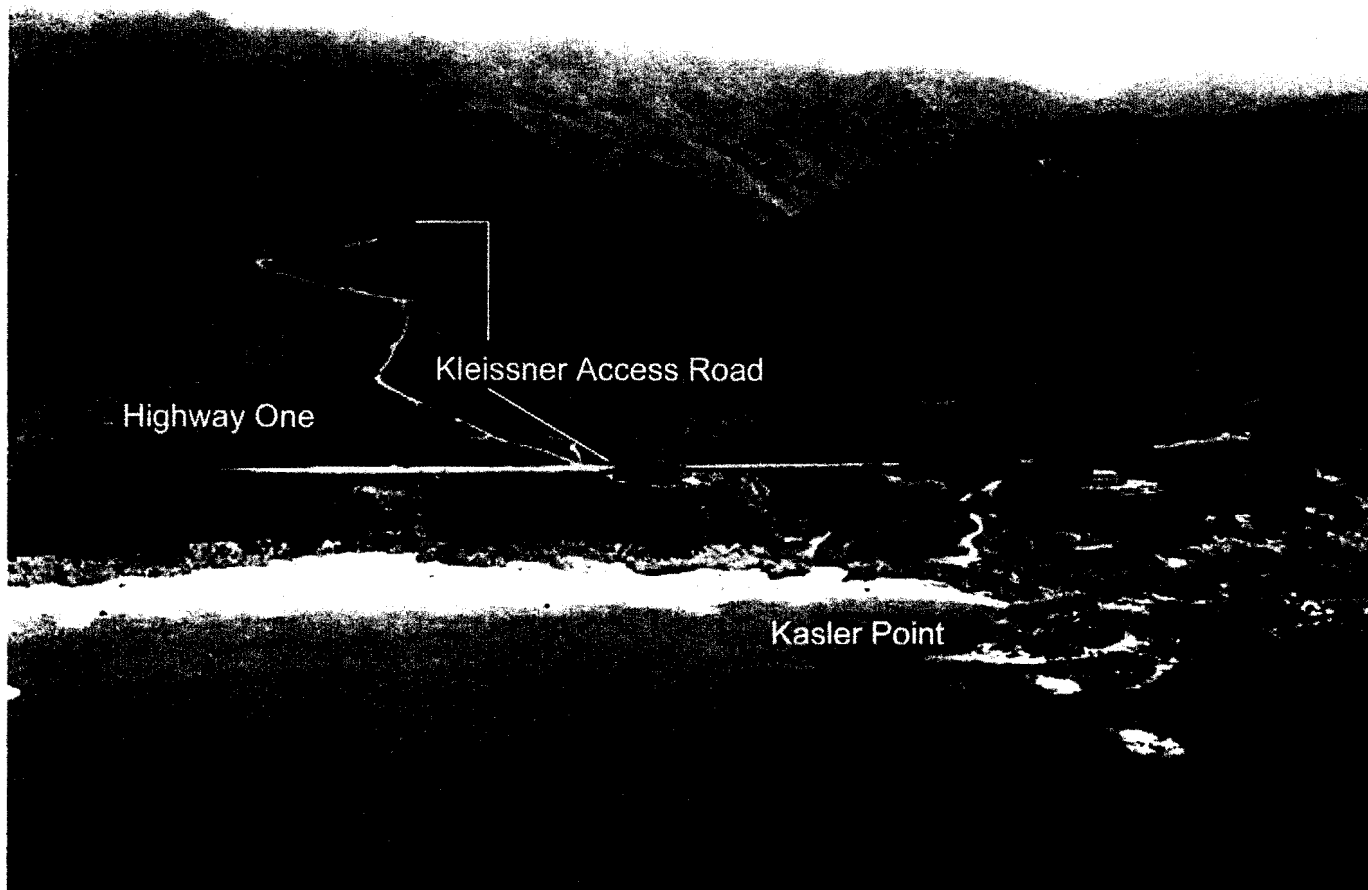


Exhibit G
A-3-MCO-02-083
Kleissner Road Improvements
Aerial Photo from Ocean

LAW OFFICES OF
HORAN, LLOYD, KARACHALE, DYER, SCHWARTZ,
LAW & COOK
INCORPORATED

P.O. BOX 3350, MONTEREY, CALIFORNIA 93942-3350

LAURENCE P. HORAN
FRANCIS P. LLOYD
ANTHONY T. KARACHALE
STEPHEN W. DYER
GARY D. SCHWARTZ
MARK A. BLUM
MARK A. O'CONNOR
ROBERT E. ARNOLD III
ELIZABETH C. GIANOLA
AENGUS L. JEFFERS
MOLLY STEELE
ERICA L. SEEMAN

JAMES J. COOK
DENNIS M. LAW

VIA HAND DELIVERY

November 5, 2002

TELEPHONE: (831) 373-4131
FROM SALINAS: (831) 757-4131
FACSIMILE: (831) 373-8302
blum@horanlegal.com

OUR FILE NO. 3692.02

Stephanie Mattraw
California Coastal Commission
Central Coast Area Office
725 Front Street, Suite 300
Santa Cruz, California 95060

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NOV 05 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: Appeal No. A-3-MCO02-083; Kleissner

Dear Ms. Mattraw:

This law firm represents Karl and Lisa Kleissner, the permittees under PLN010280 (the "Permit"). We urge the Executive Director to recommend to the Commission that no substantial issue exists with respect to the grounds on which the above appeal has been filed pursuant to Public Resources Code section 30603.

The bases upon which we conclude that neither of the individuals appeals raise any substantial issues are addressed separately below for each appeal. Moreover, this letter follows the numbering and format of the appeals.

HISTORY AND REPAIR

Construction of the road system began in the 1920s or 1930s. The lower road has historically provided access to a sawmill and a house which burned to the ground in 1997. A single family residence located approximately 3 miles from Highway 1 at the top of the property was built with County permits in 1968 and is accessed through the upper road and through the lower road beyond the sawmill. In early 1998, following a series of "El Niño" storms, both the upper and lower access roads were heavily damaged. The rains caused severe landslides which ultimately blocked the roads impeding access to the property and the uses thereon. Shortly after purchasing the property in 2000, the applicants consulted with Monterey County grading inspectors and before commencing repair work to the lower and upper roads. Work on the road system continued until February, 2001, when County staff determined that the extent of development on the roads had exceeded normal repair and

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MONTEREY, CALIFORNIA 93940

Kleissner Road Appeal

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APPLICANT'S RESPONSE TO APPEAL

Stephanie Mattraw
California Coastal Commission
Central Coast Area Office
November 5, 2002
Page 2

maintenance activities and issued a stop work order. The applicants immediately ceased specified work until the appropriate Coastal Development Permits were obtained. In November 2001, the applicants were authorized by the Planning and Building Inspection Department to carry out a permit-exempt winterization plan to minimize impacts from erosion during the 2001-2002 rainy season. In addition, the Planning and Building Inspection Department approved an emergency Permit in January 2002 to complete the construction of a soldier beam retaining wall at the location of the largest landslide, and other protective measures such as Hilfiker retaining walls, culvert outlet controls, and erosion control measures. These activities were authorized to minimize impacts to Joshua Creek from sediments originating from existing storm damage and unfinished road improvements.

COMMISSIONER APPEAL OF KLEISSNER PERMIT PLN010280

1. New Road Policies

The subject project is not a "new road" within the meaning of the certified local program. Accordingly, the policies governing new roads do not apply, and appellants' contentions of inconsistency with these policies governing new roads raise no substantial issue.

The basic premise of this appeal argument, and indeed the entire commissioner appeal, is that the road system which is the subject of the approved project is "so fundamentally different than the previous jeep road that existed on the property, (it is wider, paved, a slightly different alignment, and can accommodate vehicles that could not have used the existing road) it must conform to LCP 'new road' policies." This contention is based on erroneous factual assumptions as more fully described below.

Considerable evidence exists as to the previous width of the road. This evidence includes: aerial photos with USGS map overlay (see **Exhibit "A"**); written testimony (see letters attached hereto as **Exhibits "B-1" and "B-2"**); the existence of several residences and the on-site operation of a commercial logging and sawmill operation (Coastal Commission Planner's site visit on November 1, 2002); photographs of wide wheel-base commercial vehicles and low-clearance passenger vehicles which were abandoned on the site prior to the 1998 El Niño event which resulted in the closure of the roads, prior to acquisition of the dominant tenement by the permittee (see **Exhibits "C-1" through "C-4"**); Resolution 02-336 (**Exhibit "D"**), County staff response to appeal Contention 2; and the July 8, 1935 easement agreement for the construction of a road wide enough for the ready and convenient passage of motor vehicles. (See **Exhibits "H-1" and "H-2"**.)

The subject road system was constructed commencing in the 1920's or early 1930's. (See **Exhibit "B-2"**, **Exhibit "D"**, pg. 3.) The road system has historically provided access to several

Stephanie Mattraw
California Coastal Commission
Central Coast Area Office
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residential compounds, including one now owned by the California Department of Fish and Game, a commercial sawmill operation and automotive and equipment repair and dumping uses. (See **Exhibit "D"**, Exhibits "**C-1**" through "**C-4**" and Exhibits "**E-1**" through "**E-3**".)

USGS maps distinguish between jeep trails, 4 wheel-drive roads and unimproved rural roads. The subject roads are identified as unimproved rural roads on the latest edition (1983) USGS Map. (**Exhibit "F"**.) The 1935 recorded easement for the section of road crossing neighboring lands specifically contemplated and provided that, "said road shall be so constructed and maintained as to permit the ready and convenient passage of motor vehicles along said rights of way." (See July 8, 1935 deed which is attached hereto as **Exhibit "H-1"** (the "1935 Agreement").) The 1935 Agreement describes the insured road easement as appurtenant to the subject parcel, APN 417-021-035, as well as others. (See Preliminary Report attached hereto as **Exhibit "H-2"**.) For all practical purposes, the road system has always been, and remains, a one-lane access. (See **Exhibit "D"**, Resolution 02-336, pg. 18.) As you observed on November 1, passage of two vehicles side by side is not possible except at a few discrete turnout areas.

Contrary to the assertion in Appeal Paragraph 1, the road alignment has not been shifted. (See map/photo **Exhibit "A"**.) Nor can the roads, as alleged, accommodate vehicles that could not have used the roads existing prior to the repair. (Refer again to Exhibits "**C-1**" through "**C-4**", photographs of vehicles in place and Resolution 02-336, pg. 18.) Nor have the roads been paved, as alleged. You observed this fact during your visit on November 1, 2002.

Thus, upon investigation by you and Mr. Otter, and review of the evidence provided herewith, it is clear that this Permit is for the restoration of an existing roads and environmental restoration, including implementation of sediment and erosion control measures.

As evidenced by the findings and evidence in Resolution 02-336, the road and environmental restoration efforts comprising this project could not be accomplished without certain necessary engineering practices that qualify as "development" within the meaning of the LUP, and are therefore characterized as improvements. All such improvements are incidental to the repair of the roads and the restoration of the environment. Inasmuch as this is not a "new road", Big Sur Area Land Use Plan Policies 3.2.4.A.6, 3.2.4.A.7, 3.2.4.A.2, and 3.2.4.A.3 are not applicable. Even if those policies applied, however, the subject project is consistent therewith for the reasons described below.

Policy 3.2.4.A.6

Photographs of the road system following the 1998 landsliding activity demonstrate that "use of the existing road was not feasible". (See Exhibits "**G-1**" through "**G-3**".)

The repair of the existing roads is also consistent with new road Policy 3.2.4.A.7, because the repair of an existing road cannot avoid the slopes on which it was originally cut, and from which alignment it has not varied. Contrary to the assertion in the appeal, no side casting has occurred or is permitted. Material which is present on the steep slopes is landslide material from naturally occurring storm events. Moreover, in an effort to avoid trucking landslide material off the road surfaces via State Highway One, the Permit authorizes disposal of the landslide material on the existing roadbed by incorporating it over the length of the existing road surfaces. This is accomplished in part by the use of Hilfiker walls. Inasmuch as the Hilfiker walls are necessarily placed on the outside edge of the existing roadbed, they cannot result in a widening of the road, except incrementally as a geometric factor of increasing the roadbed height. The added benefit of these Hilfiker walls is that they preserve the edge of the roadway and protect against natural sloughing onto the slopes. The requirement in new road Policy 3.2.4.A.7 to remove all material not used for on-site fill from the area, although not applicable to existing roads, is satisfied by the Permit, which authorizes the incorporation of all such material for on-site fill on the roadbed, as described above.

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would not be inconsistent with these policies if they did apply. The roads are essential for basic residential access to the several existing residential structures it serves, and no reasonable alternative access exists or can be developed. (Policy 5.4.3.K.1(b).) There is no existing road which provides a superior alternative to the repair of these roads. (Policy 5.4.3.K.1(c).)

Policy 5.4.3.K.2(d)

The approved mitigation measures do not include "massive grading or excavation or the construction of protective devices that would substantially alter natural landforms." (Exhibit "D", pgs 3-4.) As noted, the Hilfiker walls were set on the edge of the existing roadbed and backed with fill from the landslide debris. The soldier beam wall which was built on the existing roadbed at the location of the largest landslide is free-standing and did not result in any alteration of any landform. (Policy 5.4.3.K.2(d).)

Policy 5.4.3.K.1(e)

Even if this were a new road, it is consistent with Policy 5.4.3.K.1(e), because no feasible alternative route exists. The proposed design of the repair project is wholly consistent with the overall resource protective objections of this plan, inasmuch as it is primarily a restoration project with numerous mitigations designed to reduce potential impacts to a level of insignificance, and to prevent and control erosion and sedimentation which would otherwise occur from an existing road system that qualifies as an existing legal use under the certified local program.

Policy 5.4.3.K.3

The appeal urges that the project may be inconsistent with policies regarding road widths (5.4.3.K.3) without any explanation or factual support for this contention. However, the subject policy applies only to new roads, and thus not to this project. As noted above, the road capacity has not been expanded. (See also Exhibit "D", page 18, staff response to Contention 2.)

Policy 3.2.3.A.4

It is similarly alleged that the project is inconsistent with Policy 3.2.3.A.4, precluding new roads from damaging or intruding upon the critical viewshed. As noted, this project does not involve a new road, but restoration of an existing legal road, small portions of which may already exist within the critical viewshed. The evidence in support of Finding 3 of Resolution 02-336 is that, "Development occurred that could have impacted the critical viewshed, such as parking and storage areas. Staff site visits to the project site verified that these areas are not visible from Highway One."

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2. ESHA Policies

This portion of the appeal alleges that the approved development "will significantly disrupt sensitive habitats . . . and substantially [sic] natural streams." It is further alleged that "the effects of this development and the intensification of land use it facilitates will adversely affect the natural character and biological values of the area's streams and terrestrial habitats." Accordingly, the project is alleged to be inconsistent with each of the policies discussed below.

As a general matter, it must be noted that the approved activity neither results in nor facilitates any intensification of land use. The only activities authorized by the County approval are the repair of the road system to its previous condition and environmental protection measures designed to reduce sediment and erosion and to mitigate any potential biological impacts to below a level of significance. Implementing these restoration activities consistent with applicable policies of the LUP necessarily results in some incidental "development" under the LUP (e.g., embankments, culverts and energy dissipaters, debris removal, retaining walls, a gabion basket, short-term erosion control measures and Hilfiker walls). However, there is no increase in capacity of the road to serve additional development. Use of the property was more intense in the past, including full-time residential occupancy of several residential enclaves, commercial logging and mill operations, vehicle repair, and commercial dumping.

Furthermore, the assertion of inconsistencies with environmentally sensitive habitat policies is refuted by the findings and evidence supporting the County approval (see Permit Finding Nos. 4, 5, 6 and 14), adoption of the mitigated declaration, and the issuance of a 1603 Streambed Alteration Permit by the California Department of Fish and Game, as more specifically described below.

Policy 3.3.2.1

This policy specifically provides that the construction of roads shall not be permitted in environmentally sensitive habitat areas (ESHA) if it results in any potential disruption of habitat values. In this case, the County has permitted only activities reasonably required for repair of an existing road system, restoration of ESHA and required mitigation. The Board of Supervisors has made findings that any disruption of habitat is not significant. Indeed, the Board of Supervisors Chairman Dave Potter was careful to state in his comments that this project would result in a net benefit to the environment. (See Board of Supervisors recorded transcript in File PLN010280.)

Policy 3.3.2.4

This policy requires that development within ESHA limit removal of indigenous vegetation and land disturbance to that needed for the structural improvements themselves. The evidence supporting the County finding of consistency with this policy (Finding No. 4) is uncontroverted.

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Policy 3.3.2.7

This policy pertains to land uses, rather than structures. The only use here at issue is the continued legal use of this roadway for access to existing residential parcels. No new land uses are proposed, and this policy is therefore inapplicable.

Policy 3.3.3.A.3

Consistent with this policy, all permitted activity adjacent to stream courses has been conditioned (Condition Nos. 2, 5, 9-10 and 19-21) "to minimize erosion, runoff, and water pollution."

Policy 3.3.3.A.4

This policy requiring stream setbacks is not applicable to maintenance of existing roadways.

Policy 3.3.3.A.5

This policy requiring the siting of access routes to avoid significant impacts to riparian corridors is not applicable to the maintenance, repair or improvement of existing roadways.

Policy 3.4.2.2

This policy requires adherence to the best watershed planning principles. Appellants offer no evidence of any failure to require such conditions. Condition No. 20 implements recommended mitigation measure 4. Specifically, "In order to prevent erosive material from the road entering Joshua Creek, the applicant shall, in consultation with the National Marine Fisheries Service and the Garrapatta Creek Watershed Council, complete road improvements following the recommendations of the Watershed Management Plan, the Hydrology and Drainage Report, and related plans prepared by Ifland Engineers. These recommendations include keeping the existing gabion basket wall on Joshua Creek, additional culverts (5), retaining walls and erosion control measures such as Best Management Practices (BMPs) and outlet protection measures." (Emphasis added.) Accordingly, Policy 3.4.2.2 is fully satisfied.

Policy 3.4.3.B.1

This water resource policy concerning rivers and streams requires that the effects of all new development proposals or intensifications of land use activities or water uses specifically be considered in all land use decisions. This project does not propose new development, intensification of land use activities, or water uses, and this policy is thus inapplicable. Nevertheless, Monterey

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County did consider potential effects on rivers and streams in full satisfaction of this policy. (See Exhibit "D", Resolution 02-336, pgs 5, 7, 8, 13, 16, Findings 7 through 11, and Conditions of Approval 2, 5, 9 - 10, 19-21.)

Policy 3.4.3.B.3

This policy requires protection of water quality, adequate year-round flows, and streambed gravel conditions within creeks including Garrapatta Creek, to which Joshua Creek is a tributary. The consistency of the approval with this policy is demonstrated by the same factors described above in respect of Policy 3.4.3.B.1.

3. Consistency with Community Character/Visual Protection

There is a general contention that the road has the potential to affect the unique character of the Big Sur area by "introducing roads and encouraging residential estates in inaccessible areas, that are incompatible with the rustic, natural character of Big Sur."

This concern is misplaced as applied to the existing road system which is the subject of this Permit. The road system is not being "introduced", but repaired. The road system already serves residential development which would be deprived of any opportunity for vehicular access if the subject road repair is not authorized. Nor is there any assertion or evidence that the existing residential development is incompatible with the rustic, natural character of Big Sur.

Policy 5.4.2.6

It is specifically contended that the approved development is inconsistent with development policy 5.4.2.6, which provides that, "In general any land use or development of a character, scale or activity level inconsistent with the goal of preserving the coast's natural, undeveloped beauty and tranquility will not be permitted." The approved development is incidental to the repair of an existing road system and restoration designed to protect the environment, and in particular the Joshua Creek watershed. Nothing about such development is inconsistent with preserving the coast's natural beauty and tranquility. There will be no change in the character of the road system. The only change in the look of the road system is to eliminate the degraded appearance which has resulted from deferred maintenance and landsliding. No new access is created to any potential building sites that did not already exist.

Policies 3.10.1 and 3.10.2.1

The contention is made that the project is inconsistent with Historic Resource Policy 3.10.1. That policy provides in pertinent part that, "It is the policy of County to protect, maintain, and where

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feasible, enhance and restore the cultural heritage of the County and its man-made resources and traditions. New development shall, where appropriate, protect significant historic buildings, landmarks, and districts" Results from a preliminary archaeological reconnaissance prepared by Archaeological Consulting, dated August 17, 2001 indicated that there is no evidence of potentially significant prehistoric or historic cultural resources. Accordingly, the project raises no potential issues of consistency with key Policy 3.10.1. For the same reason, the contention in the appeal that the project does not protect the unique characteristics of the district as required by Policy 3.10.2.1, is without basis. The report further concluded that the work already completed on the road system has not resulted in impacts to significant archaeological resources.

4. Policies Regarding Hazardous Areas

Policy 3.7.1

The appeal suggests that the project is hazardous as a result of location near an active fault. There is no evidence in the record of the proceedings below, or in the technical reports on file with the County of Monterey, that any landsliding or other road failure has occurred as a result of faulting or seismic activity. To the contrary, all of the available evidence suggests that landsliding and slope failure affecting the roads resulted from a combination of deferred maintenance, drainage design or system failure, and soil saturation. (PLN010280.) The project has been specifically designed and engineered to remedy these problems and reduce the risks associated therewith. (See Finding No. 12 and Condition Nos. 1-2, 9-10, and 12-13.) Accordingly, the project, as conditioned, is consistent with key Policy 3.7.1 that "development shall be carefully regulated through the best available planning practices in order to minimize the risk to life and property and damage [to] the natural environment."

Policy 3.2.1.3

This policy requires that development be sited and designed to minimize risk from geologic, flood, or fire hazards to a level generally acceptable to the community. Again, there is no indication whatsoever that the slope failures on the existing roadbed are due to geologic factors. Moreover, the siting of the development was established in the 1920s. As reflected by **Exhibit "A"**, there has been no realignment of the road. The incidental "development" in connection with restoration of the roadway could not be sited anywhere other than along the existing roadbed alignment.

Policy 3.7.2.4

This policy provides that in locations determined to have significant hazards, development permits should include a special condition requiring a deed restriction describing the nature of the hazards, mitigation measures and long-term maintenance requirements. This policy is not applicable

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inasmuch as this location was not "determined to have significant hazards" by Monterey County. The evidence in support of Finding No. 1 states that, "The proposed development has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Environmental Health Division, Parks and Recreation Department, and California Department of Forestry and Fire Protection (Carmel). There has been no indication from these agencies that the site is not suitable for the proposed development. The initial study demonstrates that no physical or environmental constraints exist that would indicate that the site is not suitable for the proposed development. Finding No. 12 establishes that the Fire Department has recommended conditions 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. This Finding further recites that the Carmel California Department of Forestry has reviewed the proposed project and has determined the project is in compliance with fire safety regulations as noted in the project plans.

Where applicable, each agency has recommended conditions of approval. Notwithstanding the inapplicability of Policy 3.7.2.4, conditions of approval were imposed by project Condition Nos. 7 and 8 requiring the recordation of notices concerning the availability of all reports prepared for the project, the requirement that all mitigations recommended therein be followed in connection with further development, and that a copy of the Permit, subject to 23 conditions of approval, is available for inspection.

Condition No. 2 requires the permittee to submit a comprehensive maintenance plan prepared by a registered civil engineer for maintenance of the lower and upper roads in perpetuity. The plan shall contain at a minimum, a detailed maintenance schedule, activities, methodology, and a monitoring and reporting program consistent with the approved Permit and related conditions of approval.

These findings and conditions implement the intent of Policy 3.7.2.4 despite its inapplicability to this project.

Policies 3.7.3.A.7 and 3.7.3.A.8

This policy requires that all structures should be designed and constructed to satisfy specific seismic criteria. A Geological and Geotechnical Review and Reconnaissance report was prepared by Geoconsultants, Inc., dated November, 2001. (Finding No. 1.) Such report was evaluated in the initial study prepared for this project in compliance with CEQA. (Finding No. 10.)

Condition No. 9 requires that prior to the issuance of any grading or building permits for the road, a road drainage and improvement plan shall be prepared by a registered civil engineer. Condition No. 10 requires that prior to the issuance of any grading and/or building permits for the

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bridge, a registered civil engineer shall prepare a plan for the construction of the approaches and abutment to assure that they are properly designed and constructed. These conditions assure compliance with Policies 3.7.3.A.7 and 3.7.3.A.8.

Policies 3.7.3.A.10 and 5.4.3.K-2

Policy 3.7.3.A.10 requires that new road shall be constructed in accordance with the criteria set forth in Section 5.4.3.K-2. This policy applies only to new roads, and not the subject project. Nevertheless, the requirements of the policy are satisfied. Policy 5.4.3.K-2 similarly applies only to "new" private roads, to which the following sub-policy criteria are applied:

a) This policy states that new roads shall be able to accommodate emergency vehicles. Finding No. 12 establishes that the Fire Department has recommended conditions 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. This Finding further recites that the Carmel California Department of Forestry has reviewed the proposed project and has determined the project is in compliance with fire safety regulations as noted in the project plans.

b) This policy requires appropriate planting of exposed slopes and submittal of detailed drainage and erosion control plans as condition of approval for the issuance of a Permit for new roads. Notwithstanding the fact that this is not a new road, biological, drainage, and erosion control plans and reports were submitted and reviewed, and the recommendations of those plans and reports for planting and detailed drainage and erosion control plans were incorporated as conditions of approval, as reflected in Finding Nos. 4 - 10, and 14.

c) The requirement that a qualified biologist certify that any environmentally sensitive habitats present will not be harmed by a new road, although not applicable, was satisfied by the submission of the biological report prepared by Jeff Norman, consulting biologist, dated November 3, 2001. Moreover, in response to the appeal which was filed with the Monterey County Planning Commission, planning staff added, and the Board of Supervisors approved, condition of approval No. 20, requiring that the applicant perform a focused study for California Red-legged Frog and Foothill Yellow-legged Frog. Language was also added to Condition No. 20 requiring consultation with appropriate state and federal agencies and specifying submittal of survey reports for the above mentioned species, notwithstanding that no potential adverse impacts were identified for these species by the biologist. (Staff Report pgs. 8 and 19.) Additionally, planning staff concluded that although impacts to ESHA had occurred, mitigation measures applied to the project would bring those impacts to a less than significant level. (Staff Report, pgs. 8 and 19.)

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d) This policy requires a qualified engineer to certify the potential erosion impacts from new road construction shall be adequately mitigated. While this is not a new road to which the policy is applicable, the County engineers certified consistency with this requirement (Finding No. 1) and the project was conditioned to incorporate mitigation developed by project engineers. (Finding Nos. 8, 10 and 12.) Condition No. 2 specifically meets the requirements of this policy despite its inapplicability to the existing road.

e) This policy states that new roads shall not be allowed across slopes of 30% or greater unless: (1) no feasible alternative exists; (2) the proposed design of the road on balance better achieves the overall resource protection objectives of the LUP. Even if this were a new road subject to this policy, no feasible alternative exists. Moreover, the proposed repairs, improvements and mitigations incorporated in the Permit are all designed to achieve the overall resource protection objections of the LUP.

APPEAL BY HOPE

The issues raised in the appeal by HOPE were, with the exception noted, also raised in the appeal by Commissioners Wan and Woolley. Accordingly, the responses above also respond to the appeal by HOPE. These responses are summarized below.

Reporting Requirements

Policy 3.7.3.A.8

This policy requires that all structures should be designed and constructed to satisfy specific seismic criteria. A geological and geotechnical review and reconnaissance report was prepared by Geoconsultants, Inc., dated November, 2001. (Finding No. 1.) Such report was evaluated in the initial study prepared for this project in compliance with CEQA. (Finding No. 10.)

Finding No. 12 establishes that the Fire Department has recommended conditions 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. This Finding further recites that the Carmel California Department of Forestry has reviewed the proposed project and has determined the project is in compliance with fire safety regulations as noted in the project plans.

Condition No. 2 requires the permittee to submit a comprehensive maintenance plan prepared by a registered civil engineer for maintenance of the lower and upper roads in perpetuity. The plan shall contain at a minimum, a detailed maintenance schedule, activities, methodology, and a monitoring and reporting program consistent with the approved Permit and related conditions of approval.

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Condition No. 9 requires that prior to the issuance of any grading or building permits for the road, a road drainage and improvement plan shall be prepared by a registered civil engineer. Condition No. 10 requires that prior to the issuance of any grading and/or building permits for the bridge, a registered civil engineer shall prepare a plan for the construction of the approaches and abutment to show that they are properly designed and constructed. These conditions collectively assure compliance with Policy 3.7.3.A.7 and 3.7.3.A.8.

Purported Roadway Expansion

The renewed assertion that the project expanded the existing roadbed up to two to three times the original width is factually inaccurate. Refer to **Exhibit "A"**, **Exhibits "C-1" through "C-4"**, **Exhibit "D"** (staff response to appeal contention 2), **Exhibit "F"**, and **Exhibit "H-1"**.

ESHA Policies

Policy 3.2.4.A.7, is a new road policy, not applicable to this project.

Policies 5.4.3.K.1 and 2

Similarly, all policies under LUP sections 5.4.3.K.1 and .2 are inapplicable, as they expressly apply only to new private roads. Moreover, the approved repair and implementation of the existing road would not be inconsistent with these policies if they did apply. The road is essential for basic residential access to the several existing residential structures it serves, and no reasonable alternative access exists or can be developed. (Policy 5.4.3.K.1(b).) There is no existing road which provides a superior alternative to the repair of this road. (Policy 5.4.3.K.1(c).)

Policy 3.3.2.1

This policy requires that "to approve development within [ESHA] the County must find that disruption of a habitat caused by the development is not significant." Monterey County did make findings in compliance with the policy. (Findings No. 4 - 10, Finding No. 14 (staff response to contentions 5 - 8.)) The Board of Supervisors adopted findings and evidence that, "Based on the facts and record as a whole, staff concluded that although impacts to ESHA had occurred, mitigation measures could be applied to the project in order to bring these impacts to less than significant level." Such finding is fully consistent with Policy 3.3.2.1 and supported by all of the evidence in the record of the proceeding below.

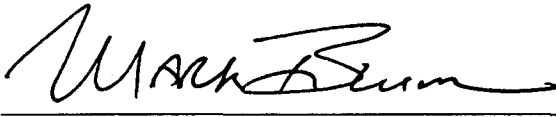
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Contentions Regarding Process

These contentions (not presented in the appeal by Commissioners Wan and Woolley) do not purport to raise issues of inconsistency with the certified local program or the public access policies set forth in the Coastal Act and are not grounds for appeal. (Public Resources Code §30603(b)(1).) As evidenced by the recorded transcript of the proceedings below, the appellant HOPE was represented in person by its authorized representative David Dilworth at each of the public hearings held on this project before the Planning Commission and the Board of Supervisors.

Respectfully submitted,

HORAN, LLOYD, KARACHALE, DYER,
SCHWARTZ, LAW & COOK, INC.

By: 
Mark A. Blum, Attorneys for Permittees
Karl and Lisa Kleissner

MAB:mh

Enclosures: Exhibits "A" to "F"

cc: Mr. & Mrs. Karl Kleissner
Mary Ann Schicketanz.