

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION/DE NOVO FINDINGS

Local government:Monterey County
Local Decision:Resolution 02-212 (PLN000239) Approved with conditions May 28, 2002 by the Monterey County Board of Supervisors (See Exhibit E).
Appeal NumberA-3-MCO-02-058
Applicant.....Murray & Carol Smith
Appellants:.....Commissioners Sara Wan and John Woolley; Ken & Sharene Virnig, C/O Lombardo & Gilles, Attn: Todd Bessire; Janice M. O'Brien; Robert Berglass; Charles T. Olvis, and League of Women Voters of the Monterey Peninsula.
Project location.....3105 Seventeen Mile Drive, Pebble Beach (APN 008-012-007) (See Exhibits A, B, C) Del Monte Forest (Monterey County).
Project descriptionDemolition of existing, one-story residence and construction of a new two-story single family residence with attached three-car garage, new driveway, addition and replacement of perimeter grape stake fence, new 6 ft. entry gate with stone columns and associated grading.

	Existing	As Approved by MCO	Applicant's Proposed Revised Plan
Project Site	42,121 square feet	42,121 square feet	42,121 square feet
Building Coverage	2,250 square feet (5.3%)	4,568 square feet (10.8%)	3,616 square feet (8.6%)
Non-Structural Coverage	600 square feet (1.4%)	5,554 square feet (13%)	5,910 square feet (14%)
Total Lot Coverage	2,850 square feet (6.7%)	10,122 square feet (24%)	9,526 square feet (22.6%)

File documents.....County coastal permit file PLN000239; Monterey County Board of Supervisors Resolution # 02-212; Monterey County Local Coastal Program, including *Del Monte Forest Land Use Plan* and *Monterey County Coastal Implementation Plan*.

Staff recommendation ...Project raises a Substantial Issue; approval of *de novo* permit application



California Coastal Commission
May 08, 2003 Meeting in Monterey

Staff: SAM Approved by: **DSL**

with conditions.

Summary of Staff Recommendation

The project is located in the Del Monte Forest planning area of Monterey County (project vicinity and site location maps are shown in Exhibits A and B, respectively). The applicant proposes to demolish an existing 2,250 square foot, one-story single family home and to construct a 5,216 sf, two-story single family home, a 700 sf attached garage, a new driveway, a new 6 ft. entry gate, and to repair and replace a 4 to 6 ft. grape stake fence. The project proposes to increase site coverage from the existing 2,850 square feet (6.7% coverage) to approximately 9,526 square feet (22.6% coverage) on a lot that is entirely environmentally sensitive habitat in the form of remnant sand dunes.

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the coastal development permit be **approved with conditions** to mitigate the project’s impacts on sensitive coastal resources, described herein.

The LCP requires protection of environmentally sensitive habitat areas (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, as conditioned, is consistent with these requirements because it allows the owner to have an economic use of the site while minimizing disturbance to ESHA; because it decreases the amount of land disturbance and vegetation removal from the level of disturbance originally proposed; and because it protects the remainder of ESHA on site with a deed restriction.

The LCP 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 visually sensitive areas. While the proposed house is greater in height and thus more visually intrusive than the existing house, the proposed house can be found consistent with LCP visual policy 56 because the policy is vague and there are so many other houses of a similar nature in the area. Similarly, screening of the structure from public view with native vegetation cannot be done due to the low-growing nature of dune vegetation.

LCP Policy requires the preservation of historical cultural resources. While the house proposed for demolition provides an example of early Wrightian modern architecture, and is the only home of this type in the Pebble Beach area, an historian evaluated the house and determined that it is not of significant historical value. Thus, its demolition does not have a significant impact on historic resources.

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I. Staff Recommendation on Substantial Issue

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

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

"I move that the Commission determine that Appeal No A-3-MCO-02-058 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 **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION:

The Commission hereby finds that Appeal No. A-3-MCO-02-058 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. Staff Recommendation on De Novo Permit

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

"I move that the Commission approve Coastal Development Permit No. A-3-MCO-02-058 pursuant to the staff recommendation."

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by



affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

III. Conditions of Approval

A. Standard Conditions

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

B. Special Conditions

1. **Final Site Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of final site plans for the Executive Director's review and approval, which demonstrate the following:



- (a) Final site plan illustrating 1) the placement of the house at the 100-foot setback from the centerline of 17-Mile Drive; 2) the removal of the 780 square foot terrace area from the front of the house; 3) the removal of the guest parking/additional turn around area in the driveway, and 4) that the finished floor elevation of the new house is at 37.0 feet USGS elevation.
- (b) Final site plan demarcating the building envelope, to include the building footprint; courtyard; motor court; and all other areas covered by impervious surfaces (including the decomposed granite driveway), and the habitat restoration areas. Areas covered by impervious surfaces (house, driveway, patios, etc.) shall not exceed 18% (7,650 square feet) of the 42,121 square foot lot area. Any additional changes to the plans originally submitted shall require Executive Director review and approval or an amendment to this permit
- (c) Perimeter fencing only. Fencing shall be of an open design, i.e. split rail. Fencing along the front (17 Mile Drive) shall not exceed 6 feet in height; side and rear property line fencing shall not exceed 4 feet in height. Fencing shall be a minimum of 75% open. All existing grape stake fencing shall be removed.

2. Dune Habitat Restoration Landscaping Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for the Executive Director's review and approval, two sets of dune habitat restoration landscape plans for the entire lot outside of the building envelope as designated on the final site plans required by Special Condition #1. The restoration plan shall be prepared using California native dune plant species appropriate to the site. The plan shall include an analysis by a qualified expert that considers the specific condition of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals. At a minimum, the plan shall demonstrate that:

- (a) All vegetation planted on the site will consist of native dune plants,
- (b) All required plantings will be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan, and

The plans shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system (if any), topography of the developed site, and all other landscape features, and
- (b) A schedule for installation of plants within the first growing season after completion of construction.



Installation of all plants shall be completed prior to occupancy of the new home. Within 30 days of completion of the landscaping installation, the Permittee shall submit a letter from the project biologist indicating that plant installation has taken place in accord with the approved restoration plans and describing long-term maintenance requirements for the restoration. At a minimum, long-term maintenance requirements shall include site inspections by a qualified biologist annually, or more frequently, to identify and correct any restoration and maintenance issues.

Five years from the date of completion of the addition, the Permittee or successors in interest shall submit, for the review and approval of the Executive Director, a restoration monitoring report, prepared by a qualified specialist, that certifies the on-site restoration is in conformance with the approved plan along with photographic documentation of plant species and plant coverage.

If the restoration monitoring report or biologist's inspections indicate the landscaping is not in conformance with or has failed to meet the performance standards specified in the Dune Habitat Restoration Mitigation Plan approved pursuant to this permit, the Permittee or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Open Space Deed Restriction.

A. No development, as defined in Section 30106 of the Coastal Act, including improved pathways and garden accessories (i.e. pools, fountains, benches) shall occur in the protected area except for:

1. Necessary utility lines to serve the residence.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director reflecting the above restriction on development in open space. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit, and shall provide:

A. For the protection and enhancement of the natural habitat values on all portions of the site, except for the building envelope area (i.e. 18% of the lot), as shown in the final site plans required by Special Condition #1. The deed restriction shall include provisions to prohibit all development outside of the approved building envelope, including benches, walkways and patios; and requiring that the maximum aggregate lot coverage (which includes the building footprint, driveway and any other paved areas, decks and terraces) shall not exceed 18% of the lot area.



The only exception to the prohibition of development outside of the approved building envelope is for utilities necessary to serve the residential use. The deed restriction shall also include provisions to: prevent disturbance of native groundcover and wildlife; to provide for maintenance and restoration needs in accordance with the approved Dune Habitat Restoration Mitigation Plan (see above); to specify conditions under which non-native species may be removed, and to secure entry for monitoring of the restored area.

- B. For measures to implement the approved Dune Habitat Restoration Landscaping Plan prepared for the subject property as required by Special Condition #2.
 - C. For fencing restrictions to allow free passage of native wildlife, as required by Special Condition #4.
 - D. For a monitoring program as set forth in the approved mitigated negative declaration; and provide that, following construction, annual monitoring reports shall be submitted to the Executive Director and the City of Pacific Grove for review and approval for a period of five years.
4. **Fencing.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall satisfy the following requirements:
- A. Permanent fencing shall be limited in design to 25% closed and 75% open area (i.e. split rail fence) to allow free passage of sand, seeds and wildlife. Any changes in fence design or placement will require the Executive Director's review and approval, and may require an amendment to this permit. No permanent fencing other than that shown on approved final plans, as required by Special Condition #2, is authorized by this permit without Executive Director approval. All existing fencing shall be removed.
5. **Archaeological Mitigation.** Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.
6. **Environmental Monitoring During Construction.** Permittee shall employ an environmental monitor who is approved by the Executive Director and the County of Monterey's Planning Department to ensure compliance with all mitigation requirements during the construction phase. Evidence of compliance with this condition by the project monitor shall be submitted to the Executive Director each month while construction is proceeding and upon completion of construction.



7. **Utility Connections.** All utility connections shall remain underground. When installing any new utility connections, care shall be taken to minimize disturbance of the deed-restricted vegetation in accordance with Special Conditions 2 and 3.
8. **Incorporation of County Mitigation Requirements.** The Mitigations adopted by the Monterey County Board of Supervisors for this project are attached to this permit as Exhibit E (Pages 7-12). All conditions of the County permit imposed under an authority other than the Coastal Act remain in effect. Conditions 17, 18, 20, 21 25, 26, 29, 31-33 and 37 are hereby deleted and superceded by the Special Conditions of this permit.

Any revision or amendment of these adopted conditions and mitigation measures or the project plans as approved by the Coastal Commission shall not be effective until reviewed by the Executive Director for determination of materiality, and if found material, approved by the Commission as an amendment to this coastal development permit.

IV. Local Government Action

The Monterey County Planning Commission originally approved a proposal for demolition and reconstruction of a single-family home on this site on October 31, 2002. The project was then appealed to the Monterey County Board of Supervisors, and a slightly redesigned project was approved on May 28, 2002 (Resolution #02-212). The proposed project involves the demolition of an existing one-story 2,250 square foot single-family dwelling, and the construction of a two-story, 5,216 sf single-family dwelling. The project also includes an attached, 700 sf two-car garage, a new driveway and motor court, repair and replacement of a 4 to 6 ft. grape stake fence and a new 6 ft. tall entry gate.

County approval of the project includes adoption of a Mitigated Negative Declaration and Mitigation Monitoring Plan, and approval of a Coastal Administrative Permit and Design Approval (PLN000239), subject to 37 special conditions of approval. All permit findings and conditions are included in Exhibit E.

V. Summary of Appellants' Contentions

The appellants have appealed the final action taken by the Monterey County Board of Supervisors (Resolution 02-212), 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. Visual Resources
- c. Need for Comprehensive Environmental Review



d. Historic Resources

The complete text of the appellants' contentions can be found in Exhibit F.

VI. 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)(1) allows for appeals of any development located between the first public road and the sea.

VII. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The project consists of demolition of the existing one-story house and replacement with a larger two-story single family home, an attached two-car garage, a motor court, repair and replacement of a 4 to 6 foot grape stake fence, the addition of a 6-foot entry gate, and the addition of a guest parking/turnaround area and a 780 square foot terrace area at the front of the house. The existing, one-story, 2,250 square foot house and 600 square feet of paving are currently located on the front of the lot, close to Seventeen Mile Drive, almost directly across from the Bird Rock pull out, in the Del Monte Forest planning area of unincorporated Monterey County (See Exhibit B). As conditioned, the proposed two-story house and attached garage will have a footprint of 3,775 square feet, and the courtyard, driveway and auto court will cover roughly 3,875 square feet of the lot, for a total of 7,650 square feet or 18% lot coverage.

Seventeen Mile Drive is a highly visited scenic drive prized for its expansive views of the Pacific Ocean, that also provides fairly low cost visitor recreational opportunities. Surrounding land uses adjacent to the project area include single-family residential units to the north, east and south sides of 17-Mile Drive, a 20-acre dune restoration area located just to the north of the site, and open ocean to the west. The existing homes in this area consist of primarily one-story homes and some two-story homes.

The Spyglass Hill Golf Course is located slightly inland of the site, and the Cypress Point Golf Links is located roughly 2,000 feet to the south. Physically, the area is generally comprised of remnant sand



dunes, which change gradually into Monterey pine forest (See Exhibit J). The area is included in the Asilomar dune system, which stretches roughly 4 miles from Point Pinos in the north to Fan Shell Beach to the south, and has the same physical characteristics including the same types of rare vegetation and animal species.

B. Analysis of Appeal Issues

1. Environmentally Sensitive Habitat Resources

A. Appellant's Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit F for complete text of appellants' contentions):

- The project consists of new development in ESHA that is not dependent on the "resources therein".
- The project has not been sited and designed to prevent impacts to ESHA.
- A scenic and conservation easement is required over ESHA, and the County easement requirement does not include all ESHA on site.
- The County approval allows for non-native landscaping in ESHA.
- The project allows for a circuitous driveway rather than keeping access simple and direct.

B. Local Coastal Program Provisions

The appellants specifically reference the following Del Monte Forest Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies regarding environmentally sensitive habitat resources:

- *Policy 8 Environmentally sensitive habitat areas that are not designated as rehabilitation areas shall be protected against any significant disruption of habitat values. Within environmentally sensitive habitat areas, new land uses shall be limited to those that are dependent on the resources therein. Land uses immediately adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the resource; development shall be sited and designed to prevent impacts which would significantly degrade the protected habitat...*
- *Policy 13 The protection of environmentally sensitive habitats shall be provided through deed restrictions or permanent conservation or scenic easements granted to the Del Monte Forest Foundation. Where developments are proposed within or near areas containing environmentally sensitive habitat, such restrictions or easements shall be established through the development review process...*
- *Policy 14 Near environmentally sensitive habitat areas, the removal of indigenous vegetation*



and land disturbance (grading, excavation, paving, etc.) shall be restricted to the minimum amount necessary to accommodate development....

- ***Policy 15** The use of non-invasive plant species and appropriate native species shall be required in landscape materials used in projects, especially in developments adjoining environmentally sensitive habitat...*
- ***Policy 17** Prior to approval of development on existing legal lots of record, protection of rare, endangered, and sensitive native plant and animal habitats which potentially occur in the area shall be ensured by the following means:*
 - *A site survey shall be conducted by a qualified botanist (or biologist in the case of animal habitat) for the purpose of determining the presence of rare, endangered, or unique plants and developing appropriate mitigation. This survey should be conducted in April or May, as it must be designed to detect the presence of any of the habitats listed in Appendix A of this Plan.*
 - *Performance standards covering building locations, lot setbacks, roadway and driveway width, grading, and landscaping shall be established as a means of carrying out the recommendations of the site survey. The purpose of this is to isolate building sites from identified locations of rare or endangered plants or other environmentally sensitive habitat.*
 - *Scenic or conservation easements covering the environmentally sensitive habitat shall be dedicated to the Del Monte Forest Foundation as provided by policy 13 above.*
- ***Policy 18** Uses of the remnant native sand dune habitat shall be limited to low-intensity scientific, educational, or recreational activities dependent on the resource, except in Spanish Bay rehabilitation area, where policy 93 shall apply. Particular attention shall be given to protection of rare and endangered plants from trampling...*
- ***Section 20.147.040.B.3.b** Scenic or conservation easements covering the environmentally sensitive habitat shall be dedicated to the Del Monte Forest Foundation as provided by Development Standard #7 of this section (Ref. Policy #17 Del Monte Forest Area Land Use Plan. The easement may also be extended to cover the buffer area required in Section 20.147.040.B.1, upon recommendation in the biological survey prepared for the project pursuant to Section 20.147.040.A as needed to protect the habitat's long-term maintenance.*
- ***Policy 74** Environmentally sensitive habitat areas will remain undeveloped except for parking or similar access facilities. Access improvements shall be developed consistent with the site-specific recommendations of the LUP Access Maps (Appendix B)*

Also relevant is the LCP's definition of ESHA:

- *Environmentally sensitive habitat areas are those in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. These include rare,*



endangered, or threatened species and their habitats; other sensitive species and habitats such as species of restricted occurrence and unique or especially valuable examples of coastal habitats; riparian corridors; rocky intertidal areas; nearshore reefs; offshore rocks and islets; kelp beds; rookeries and haul-out sites; important roosting sites; and Areas of Special Biological Significance (ASBS).

- *In the Del Monte Forest Area, examples of terrestrial, aquatic, and riparian habitats which have been determined to be entirely or in part environmentally sensitive include: the rare Monterey cypress and endangered Gowen cypress forest communities, the endemic Monterey pine/Bishop pine association, remnants of the indigenous coastal sand dunes, riparian corridors, wetlands, and sites of rare and endangered plants and animals associated with these and other habitats. A complete listing is included as Appendix A of this Plan. The locations of these are shown in Figure 2.*

C. Local Government Action

Finding numbers 1 and 2 in the County's action (Resolution 02-212, Exhibit E) address environmentally sensitive habitat issues. Finding #1 (Exhibit E, Page 1) states that the project is consistent with the plans policies, requirements and standards of the LUP. Evidence listed here is the biological reports prepared by Jean Ferreira (August 15th and 22nd of 2000 and May 8, 2001, attached as Exhibit G).

Finding #2 (Exhibit E, Page 3) states that the project will not have significant adverse impacts on the environment, and that a Mitigated Negative Declaration was prepared and the project incorporates all mitigation measures noted therein. The finding also includes approval of a monitoring report. Evidence for this finding states that no facts or reasonable assumptions have been submitted that refute the conclusion of the biological report by Jean Ferreira.

In addition to the County's findings, conditions of approval are placed on the project to mitigate for potential impacts to environmentally sensitive habitat areas. Condition #1 requires a Mitigation Monitoring Agreement; #17 requires a conservation and scenic easement over the rear portion of the property, the proposed dune restoration area, the 100' setback from the centerline of Seventeen Mile Dr., and the 20' side yard setback areas. The easement may allow for "private recreational access and enjoyment" including the placement of a boardwalk and a bench in the environmentally sensitive habitat area. Condition #18 requires a reduction in size of the motorcourt by removing the 10' wide extra parking area at the side of the garage, Condition #20 requires restoration of 7,000 sf of the lot to provide habitat area for the Monterey spineflower, and #21 requires a restoration plan for the "propagation and introduction of the Monterey spineflower" to the restored areas. Other conditions the County placed on the project include a biological monitor prior to construction, a pre-construction training session about the sensitivity of the area, a long-term management plan for the habitat area, moving the structures 10 feet toward 17-Mile Dr., and for landscaping with low water use or native drought resistant plants.



D. Substantial Issue Analysis and Conclusion

1) The Project Site is ESHA

The project site is located within the Asilomar dune complex, on the east side of 17 Mile Drive in a fairly large sand dune system referred to as the Spyglass Hill sand dune area (See Exhibit G, Ferreira 2000). The Asilomar Dune complex is approximately 4 miles long and extends from Point Pinos on the north end, south to Fan Shell Beach (See Exhibit H). Asilomar and most of the Monterey area coastline is formed by Santa Lucia granodiorite. This dense, hard rock is comprised of large rectangular crystals of feldspar, quartz, and mica. It was exposed through massive uplifts and this movement caused it to crack. The cracks weaken the integrity of the rock, making it more vulnerable to erosion. During severe winter storms the sand is moved from the shoreline into the ocean where it forms sandbars just off shore. In spring, the gentler waves redeposit the sand onto the beach. In late spring, the winds blow the unusually pure, white quartz sand, farther inland where it is caught by plants in the foredunes.

The Asilomar Dune system, including the project site, is an environmentally sensitive habitat area for several reasons. First, coastal dunes are an extremely limited environmental resource of statewide significance. Oceanfront dunes provide unique, sensitive habitat values. Throughout its history, the Commission has placed a high priority on the protection and preservation of dune systems, including the Asilomar Dune system (Examples include Bonnano, Griggs & Miller 3-83-110; Page 3-96-102; Knight 3-99-071 Baldacci 3-01-013 and Child 3-02-023). The native landscape of the Asilomar Dunes comprises a community of coastal plants and associated animal life distinct from all other areas of California. For these reasons, this landscape is worthy of maximum protection and restoration.

Coastal dune ecosystems are threatened by the loss, fragmentation and disruption of habitat associated with development. For example, of the 27 dune fields in coastal California, the Monterey Bay dune system is one of the largest covering about 40 square miles. However, less than half of the dune field has survived urbanization, conversion to military or agricultural uses, sand mining, and shoreline erosion.

The Department of Fish and Game (DFG) has identified the Spyglass Hill area as a "significant natural area." Pursuant to a list of criteria including: 1) the occurrence of extremely rare species or natural communities and, 2) an ensemble of three or more rare species or natural communities within 500 meters of each other, this area has been mapped on the DFG Significant Natural Areas map for Monterey County. The Significant Natural Areas program was established to identify high-priority sites for the conservation of California's biological diversity and to inform decision makers about the importance of these sites. The programs goals include: 1) identifying the most significant natural areas in California; 2) ensuring the recognition of these areas; and 3) seeking the long-term perpetuation of these areas.

Coastal staff conducted a reconnaissance-level biological survey of the site on September 4, 2002. The plant community observed on-site can be classified as central dune scrub (Holland 1986), characterized by medium to low shrubs on exposed slopes of poor soil. Common plant species observed in the habitat include mock heather (*Ericameria ericoides*), beach sagewort (*Artemesia pycnocephala*), and beach primrose (*Camissonia cheiranthifolia*). Central dune scrub was identified as having "highest inventory priority" in 1986 by DFG. This plant community is limited in distribution throughout its range and is



considered rare.

One of the most critical functions of the dune system is its role as a habitat for a very unique flora and fauna. Species present in this habitat are specially adapted to the conditions and opportunities found in dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion and hosting rare fauna. However, as the natural dune system has been reduced and fragmented, the risk of extinction has increased for many of these species. Thus, each new impact within the dunes system has and will continue to contribute to the cumulative decline of these species.

A review of the California Natural Diversity Database (CNDDDB) to evaluate the special-status species that have been documented in the vicinity of the Smith Property was conducted by Coastal staff. A number of listed and declining sand endemic species have been observed near the site (Tables 1 and 2). This is an area rich in biodiversity and high in endemism and therefore, there are many special-status species that occur in the dune habitat.

Table 1. Special-Status Animal Species Known to Occur in the Spyglass Hill Area

Common Name	Scientific Name	Status
Black legless lizard	<i>Aniella pulchra nigra</i>	State Species of Special Concern
Smith's blue butterfly	<i>Euphilotes enoptes smithi</i>	Federal Endangered Species
Globose dune beetle	<i>Coelus globosus</i>	Federal Species of Special Concern

Table 2. Special Status Plant Species Known to Occur in Spyglass Hill Area

Common Name	Scientific Name	Status
Coastal dunes milk-vetch	<i>Astragalus tener</i> var. <i>titi</i>	State and Federal Endangered Species
Monterey spineflower	<i>Chorizanthe pungens</i> var. <i>pungens</i>	Federal Threatened Species
Menzies's wallflower	<i>Erysimum menziesii</i> ssp. <i>menziessii</i>	State and Federal Endangered Species
Sand gilia	<i>Gilia tenuiflora</i> ssp. <i>arenaria</i>	State Threatened and Federal Endangered Species



Beach layia	<i>Layia carnosa</i>	State and Federal Endangered Species
Tidestrom's lupine	<i>Lupinus tidestromii</i>	State and Federal Endangered Species
Monterey Indian paintbrush	<i>Castilleja latifolia</i>	CNPS List 4

According to surveys conducted on the property for special-status plant species on August 15 and 22, 2000, and May 8, 2001 (See Exhibit G, Ferreira 2000, 2001), the site is currently known to support at least one listed plant species, the federally listed Threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*). Monterey spineflower was listed by the US Fish and Wildlife Service in 1994 due to threats to its persistence from: industrial, residential and golf course development, recreational use, dune stabilization projects, agricultural conversion, and military activities (Federal Register 1994). This plant species is only found scattered on sandy soils along and adjacent to the coast of southern Santa Cruz County and northern Monterey Counties and inland to the coastal plain of Salinas Valley (Federal Register 1994).

Monterey spineflower is vulnerable to random fluctuations or variation (stochasticity) in annual weather patterns and other environmental factors (Federal Register 1994). This species is an annual plant and a portion of the seeds produced each year lay dormant in the upper layer of sand in what is referred to as the "seedbank." Only a small fraction of the seeds produced by a plant each year become seedlings, thus locations of individual plants vary from year to year. Due to this phenomena, it is critical that conservation efforts for the species focus on protecting the ecosystem within which the plant occurs rather than focusing on where a few individuals are observed in a given year. This approach will allow the species to shift in distribution over time, an inherent aspect of the species ecology.

The long term probability of the conservation of Monterey spineflower is dependent upon the protection of existing population sites, and the maintenance of ecological functions within these sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (i.e., dune dynamics) that maintain the openness of vegetative cover on which the species depends (Federal Register 2002). Fragmentation of habitat (e.g. through the construction of roads or certain types of fencing) must be minimized so that seed dispersal agents may move the seed (Federal Register 2002) and to facilitate pollinator activity as well. Therefore, it is important to preserve all areas that currently support the species since it has already undergone a reduction in the range which places great importance on the conservation of all known remaining sites (Federal Register 2002).

Since this population is the southern most occurrence of the species along the coast, the individuals may have genetic characteristics that have allowed them to survive under slightly different environmental conditions than the other populations. This potential uniqueness may be important for the long-term survival of the species (Federal Register 2002).



The surveys conducted by Elkhorn Native Plant Nursery did not reveal the presence of any other special-status plant species. However, due to the transient nature of some of these plant species, it is possible that they may exist in the seed bank on the site.

It is also noted that, the survey report prepared by Elkhorn Native Plant Nursery overlooked the presence of Monterey Indian paintbrush on the site. This species was observed on the site by consulting biologist, Jeff Norman (See Exhibit I), and coastal staff confirmed its presence. This species is identified on CNPS List 4, which is designated for species that are significant locally. The presence of this species is an indication of a plant community that is maintaining biological integrity.

Several animal species also have the potential to occur on the site including; Smith's blue butterfly (*Euphilotes enoptes smithi*), globose dune beetle (*Coelus globosus*) and black legless lizard (*Anniella pulchra nigra*). While these three species were discussed in the applicant's biological report, their potential occurrence was dismissed, inappropriately, without having conducted surveys.

Smith's blue butterfly is a federally-listed Endangered butterfly that once ranged along the coast from Monterey Bay south through Big Sur to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. They spend their entire lives in association with two buckwheat plants in the genus *Eriogonum*. Emerging in late summer and early autumn, the adults mate and lay eggs on the flowers of these host plants. The eggs hatch shortly thereafter and the larvae begin to feed on the flowers of the plant. Important habitat for the Smith's Blue is threatened by development and the invasion of non-native plants. Dune buckwheat (*Eriogonum parvifolium*), a Smith's blue butterfly host plant, has been documented on the project site.

The globose dune beetle, a federal species of special concern, is endemic to California's coastal dune system. These beetles are primarily subterranean, tunneling through sand underneath dune vegetation. The species is fairly widely distributed in spite of the fact that the adults lack functional wings, however, due to habitat losses, there is some concern about its continued existence. Therefore, this species requires careful monitoring. Although no globose dune beetles were observed on the property by Elkhorn Native Plant Nursery, surveys were not conducted for species and therefore it is not possible to rule out their potential presence.

The black legless lizard is a fossorial (burrowing) animal that typically inhabits sand or loose soil. This species is regarded as a Species of Special Concern by DFG because of habitat loss due to human impacts to coastal dune habitats (Jennings and Hayes 1994). The potential for this species to occur on the site was identified in the biological report prepared for the applicant (See Exhibit G, Ferreira 2000). Ms. Ferreira states "if the lizard is present on the site, they would likely be near the mature mock heather shrubs in the 'Habitat' area." However, knowledge of the longevity, movement, and microhabitats of these lizards is incomplete because studying them in their underground habitat is difficult. Recent studies have shown that the legless lizards can utilize many different microhabitats and may reside in the soil/sand at a maximum depth of 11.5 cm. Therefore, assumptions of species/habitat affinities stated in the biological report may not be based on current knowledge of the species ecology, and its potential presence cannot be dismissed.



In conclusion, based on the above evidence, including the location of the site within the significant and sensitive Asilomar dune ecosystem, the existing resources on site, biology reports prepared for the project site, and the fact that a rare plant community, a federally-listed threatened plant, and potentially several other sensitive species occur on the site, the Commission finds that the project site meets the definition of ESHA established in the LCP.

2) The Project is Inconsistent with LCP Protection Provisions

The LCP contains numerous policies designed to protect environmentally sensitive habitat areas such as the area's indigenous remnant coastal sand dunes. Policy 8 prevents disruption of ESHA and restricts development to that which is resource dependent, such as nature study, and LCP Policy 18 specifically limits use of remnant sand dune habitat to "low-intensity scientific, educational, or recreational activities dependent on the resource...". Additionally, Policies 13 and 17 require conservation easements over the sensitive habitat areas, and Policies 14 and 15 restrict removal of indigenous vegetation and the use of non-native plant species for landscaping. Policy 17 also provides for change in building design and location to avoid impacts to ESHA.

The project is inconsistent with LCP policies 8 and 18 because it involves residential development that is not resource dependent, nor a scientific, educational or recreational use, in remnant dune ESHA. As shown in project plans approved by Monterey County, the project involves the expansion of an existing house (through demolition and rebuild) into sensitive dune habitat (See Exhibit D, Page 1). The proposed development would increase coverage from approximately 6.8% of the lot (2850 sq. ft), to roughly 24% (10,122 sq ft). This approval allows an unnecessary increase in the building footprint for a residential (i.e. non resource dependent) use in ESHA. In addition to a significant increase in the house size, its design includes a large motor court in the rear of the house and longer driveway than currently exists. Also, the proposed 6-8 foot tall grape stake fence is not consistent with avoiding impacts to the dune habitat system because its closed design prohibits the free movement of sand and seeds required for a healthy dune system. Although site plans show an existing fence around the perimeter of the property (See Exhibit D), a staff site visit confirmed that the existing fence does not surround the property, leaving the dune habitat in the rear of the property easily accessible to animals and the dispersal of seeds.

The development is also inconsistent with LCP policies 13 and 17 because the proposed conservation easement area does not protect all ESHA on site outside of the building envelope. The issue of houses being proposed in this southernmost area of the Asilomar Dunes Complex is likely to continue to be of concern, making size and placement of structures and obtaining conservation easements and deed restrictions even more critical. The area contains twenty-two lots with existing houses, eleven of which have scenic and conservation easements or deed restrictions (See Exhibit M). The balance of the homes are pre Coastal Act, and because they older structures and generally smaller in size than newer development, it is likely that they will be sold in the foreseeable future to people who plan to demolish the existing house and rebuild. With the turnover of these older homes, the opportunity arises to protect sensitive dune habitat through minimization of lot coverage and placement of the remainder of the lot in a conservation easement or deed restriction.



Moreover, the project has not been designed and sited to avoid impacts to ESHA, inconsistent with LCP policies 17 and 8. For example, the construction of a larger house and driveway/motor court will result in the removal of ESHA; an impact that could be avoided by siting and designing the home to be similar in size and location to the existing home (see de novo findings for more detail). The project is similarly inconsistent with LCP policy 14 because the removal of indigenous vegetation and land disturbance has not been minimized. Finally, the project is inconsistent with Policy 15 because the local approval does not limit landscaping material to native plants. Thus, the project does not adequately protect the dune habitat resources along Seventeen Mile Drive in the Del Monte Forest, and raises a substantial issue regarding inconsistency with LCP policies 8,13, 14, 15, 17, and 18.

2. Visual Resources

A. Appellants' Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons:

- This project is disproportionate to the lot and the adjacent front line houses.
- This project will impact the viewshed of the Bird Rock viewing area and Spyglass Hill Road.
- The house location does not blend in with the dunes.

B. Local Coastal Program Provisions

The appellants specifically reference the following Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies regarding visual resources (See Exhibit F for complete text of appellants' contentions):

- *Policy 51 Areas within visually prominent settings identified on the LUP Visual Resources Map, when proposed for development, should be developed so that the lots and/or buildings are situated to allow the highest potential for screening from view the development and its access roads....*
- *Policy 55 Areas within the viewshed of scenic corridors identified on the LUP Visual Resources Map shall be zoned with a district, which requires adequate structural setbacks (generally a minimum of 50), the siting and design of structures to minimize the need for tree removal and alterations to natural landforms. New structures shall be designed to harmonize with the natural setting and not be visually intrusive.*
- *Policy 56 Design and siting of structures in scenic areas should not detract from scenic values of the forest, stream courses, ridgelines, or shoreline. Structures, including fences, shall be subordinate to and blended into the environment, using appropriate materials, which will achieve that effect. Where necessary, modifications shall be required for siting, structural*



design, shape, lighting, color, texture, building materials, access, and screening.

- *Policy 57 Structures in scenic areas shall utilize native vegetation and topography to provide screening from the viewing area. In such instances, the least visible portion of the property should be considered the most desirable building site location, subject to consistency with other siting criteria (e.g., proximity to environmentally sensitive habitat areas and safe access).*
- *Policy 58 Parking on the seaward side of 17-Mile Drive should be designed to minimize the visual impact of parked vehicles in the viewshed and disturbance to the habitat. The appropriate site specific access recommendations shall apply to this area.*
- *CIP Section 20.147.070.A. Public Viewshed Determination1 The project planner shall make an on-site investigation in order to determine whether the project is within the public viewshed or affects visual access from public viewing areas. Proposed buildings shall be accurately indicated as to dimensions, height and rooflines by poles with flags. The location of proposed access roads shall be accurately indicated by stakes with flags. Both poles and stakes shall remain in place for the duration of the project review and approval process. The project planner, at his/her discretion in the process of the on-site review, may record the proposed development photographically, and may require that the applicant superimpose on the photographs a representation of the proposed project. During the on-site investigation, the planner shall also review the project for conformance with the ordinance elements and shall determine development alternatives which would bring the project into full conformance with the ordinance.*
- *CIP Section 20.147.070.C. General Development Standards 1 Development, along with related access roads, within visually prominent settings as identified on Figure 2C "Visual Resources" in the Del Monte Forest Area Land Use Plan shall be sited on the least visible area of the lot, subject to consistency with other development standards of this implementation ordinance and as determined by staff field review of the proposed development on its' impact of visual sensitivity. Structures shall be screened from view using native vegetation and topography (Ref. Policy #50 Del Monte Forest Area Land Use Plan.)*
- *CIP Section 20.147.070.C. General Development Standards 3 Ridgeline development is prohibited... "Ridgeline Development" is development on the crest or side of a hill which creates a silhouette against the sky when viewed from a public viewing area. A Use Permit for such development may only be granted if the decision-making body is able to make findings that: 1)... 2)... or 3) development on the ridge will minimize grading, tree removal or otherwise better meet resource protection policies of the Del Monte Forest Area Land Use Plan or development standards of this ordinance...*

C. Local Government Action

The County's action (Resolution 02-212, Exhibit E) allows for the demolition of a single-story home and its replacement with a larger two-story home on Seventeen Mile Drive. Finding #1 (Exhibit E, Page 1) states that the project 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. There is no separate finding dealing with visual impacts of the development.

The project is conditioned to use unobtrusive lighting and control off-site glare, to get approval from the Planning and Building Inspection Department regarding the location, type and size of all antennas, satellite dishes and similar appurtenances, and to protect native trees located close to the construction site. Additionally, the project is conditioned to require landscaping, and to continuously maintain the plant material "in a litter-free, weed-free, healthy, growing condition."

D. Substantial Issue Analysis and Conclusion

The protection of visual resources in the Del Monte Forest planning area is of high concern. 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 those visible from Point Lobos State Park. The visual Policy Guidance Statement describes 17-Mile Drive as an important visitor destination and lists the objective of the Plan as the protection of the area's "magnificent scenic and visual resources." Also found in the Policy Guidance Statement are the guiding principles of avoiding incompatible development and to encourage improvements that complement the natural scenic assets. This statement explicitly states, "only compatible development along 17-Mile Drive should be allowed."

The appellants contend that the new house will have visual impacts, specifically that it will be too large for the lot; that it will impact public viewing areas such as the Bird Rock pull out and Spyglass Hill Rd.; and that the house location does not blend in with the dunes. Their concern is that this project will have impacts on the viewshed from the 17-Mile Drive scenic corridor.

The project does not block views to the shoreline from 17-Mile Drive, but will be quite visible on the landward side of the drive, and this is potentially inconsistent with Policy 56. However, due to the topography of the site and the low-growing dune vegetation, it would be nearly impossible to place a structure on the site that would be invisible or even substantially screened from 17-Mile Drive or the Bird Rock viewing area. The height of the proposed structure is 26 feet 10 inches, with a steep sloping roof, as opposed to the existing structure's one story and flat roofs with stepped increases to the full height (see Exhibit D for site elevations). The proposed fence is also inconsistent with this policy because its design will breakup the relatively expansive views along the shoreline and scenic corridor.

Additionally, the project is inconsistent with Policies 51 and 57 which require maximum screening with native vegetation and topography because the new house is unable to be adequately screened with native dune vegetation. Finally, the development will have ridgeline impacts because it will create a "silhouette against the sky when viewed from a public viewing area", which is prohibited by CIP Section 20.147.070.C.General Development Standards 3 (See Exhibit K).

While the project as proposed and conditioned by the County is inconsistent with LCP visual policies 56, 51, 57 and CIP Section 20.147.070.C, the inconsistencies do not rise to the level of substantial issue and thus the Commission finds that no substantial issue is raised with respect to visual issues. No substantial issue is raised with respect to LCP visual policies 51, 57 and CIP Section 20.147.070.C, because there is no other place on the lot to site the house so that it will be less visible. Also, the house will be screened



somewhat by existing trees, but native dune vegetation will not provide any screening of the structure because it is primarily close to the ground, and the County has approved a number of other homes in this area that also create ridgeline development as defined in CIP Section 20.147.070.C.General Development Standards 3.

3. Need for Comprehensive Review

A. Appellants' Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons:

- Lack of fair or impartial hearing.
- Findings not supported by the evidence.
- The decision was contrary to law.

The appellants do not specifically reference any LCP or LCIP policies with regard to the issue of comprehensive environmental review (See Exhibit F for complete text of appellants' contentions).

B. Local Coastal Program Provisions

The LCP contains the following relevant policies regulating the public hearing process and defining required findings for Coastal Administrative Permits:

- *CIP Section 20.84.030 Public Hearing Required Any action to approve or deny any application for a discretionary permit by an Appropriate Authority, including the Board of Supervisors, shall require that a public hearing be held and notice given pursuant to this Chapter.*
- *CIP Section 20.76.050.C In acting on a Coastal Administrative Permit, the Appropriate Authority shall make findings as necessary to support its decision on the permit. Such findings shall address, but not be limited to, consistency with the Monterey County Local Coastal Program, site suitability, environmental issues, public access pursuant to Section 20.70.050.B.3 of this Title, and Variances where applicable. The findings shall include a determination that the subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivisions, and any other applicable provisions of Title 20 and that all zoning violation abatement costs have been paid.*

C. Local Government Action

Appeal findings #10, 11, and 13 (Exhibit E, Page 5) state that public hearings were held on October 29, 2001 with the Planning Commission; October 31, 2001 with the Planning Commission; and May 21, 2002 with the Board of Supervisors. The County adopted the findings required by CIP Section



20.76.050.C as findings 1, 2 and 3 of the final Resolution 02-212 (See Exhibit E, Pages 1-3).

D. Substantial Issue Analysis and Conclusion

The County conducted public hearings in accordance with LCP requirements and adopted the findings called for by 20.76.050. Thus, the appellants' contentions regarding hearings and findings do not raise a substantial issue. The more general contentions regarding evidence and consistency with the law are addressed in the other sections of this report. These sections conclude that, based on the evidence, the County's action is indeed in conflict with the LCP, and therefore raises a substantial issue.

4. Historic Resources

A. Appellants' Contentions

The appellants contend that the project on appeal is inconsistent with the Certified LCP because it involves the removal of a historic resource.

The appellants do not specifically reference any LCP or LCIP policies (See Exhibit F for complete text of appellants' contentions).

B. Local Coastal Program Provisions

The Land Use Plan and Coastal Implementation Plan contain policies designed to protect archaeological and cultural resources:

- *Policy 63* When developments are permitted on parcels where archaeological or other cultural resource sites are located, project design shall be required which avoids impacts to such sites. Where the site has religious significance, emphasis should be placed on preserving the entire site; likewise, where the site is of known regional significance, consideration shall be given to nominating the site to the National Register and preserving it.
- *CIP Section 20.147.080.D General Development Standards 1* All development permitted on parcels containing archaeological or other sensitive cultural resources must design such development to avoid impacts to those sites. ... (Ref. Policy #63 Del Monte Forest Area Land Use Plan.)...

C. Local Government Action

Finding #1 in Resolution 02-212 (Exhibit E, Page 1) states that the project is consistent with the "plans, policies, requirements and standards of the Local Coastal Program (LCP)." Evidence for this finding cites an archaeological report prepared by Archaeological Consulting, and states that the report "found no evidence of cultural or historical resources". The County did not evaluate the architectural significance of the existing structure.

D. Substantial Issue Analysis and Conclusion



The archaeological report prepared by Archaeological Consulting on July 31, 2000 states that no evidence of historic cultural resources were found on the parcel. Project methodology consisted of a literature search of files of the Northwest Regional Information Center of the California Archaeological Inventory located at Sonoma State University and a search of Archaeological Consulting's personal files and maps. Field reconnaissance was also conducted on July 18, 2000. In addition, the California Inventory of Historical Resources, California Historical Landmarks, and the National Register of Historic Places were checked for cultural resources that might be present other than archaeological resources. None were discovered.

Although no archaeological resources have been identified on the site, the appellants contend that the existing home to be demolished may indeed have historic significance, based on its architectural type, that merits an evaluation under LCP Policy 63 and IP section 20.147.080.D. A letter submitted by a historian hired by an appellant describes the existing house on the site, constructed in 1952-1953, as a Usonian house. According to the historian, this type of architecture, termed modern, was developed by Frank Lloyd Wright in the 1930's as a means to provide affordable housing in America. Usonian houses are characterized by low or flat roofs, finishes using natural materials, carports and the lack of basements, along with a flow of internal spaces, and a brick utility core with a massive chimney stack. The existing house was not designed by Wright himself, but by one of his protégés, and is possibly the only example of a Wrightian Usonian house in Monterey County. The house in question, along with two others in the area, provide notable examples of modern architecture in close vicinity to the site (Pers. Comm. Kent Seavey 9/6/02).

Given the potential historic architectural design of the structure, a more in-depth review of its regional significance was performed by another historian, who concluded that the structure's architecture was not of significant historic value. Because the second review concluded that the existing structure is not a regionally significant historic resource, and it does not meet the National Register criterion of being older than fifty years and of exceptional importance, the LCP does not require the consideration of alternatives to protect the existing structure. Therefore, the Commission finds that the appeals raise no substantial issue with respect to protection of historic/cultural resources.

C. Substantial Issue Analysis- Conclusion

In conclusion, the appeal raises a substantial issue in terms of compliance with the LCP, with respect to environmentally sensitive habitat. The development approved by Monterey County, Board of Supervisors Resolution #02-212 does not conform to LCP policies protecting the natural resources of the project site as required by the Monterey County Certified Local Coastal Program.

D. De Novo Coastal Permit Findings

The County approval authorizes the demolition of an existing 2,250 square foot, one-story, single-family residence and replaces it with a 4,802 square foot, two-story single-family residence, courtyard, garage, and motor court. The applicant has revised the house design and floor plan to minimize coverage, but



there is still an ESHA issue for reasons discussed in the Substantial Issue portion above. As discussed in the Substantial Issue findings above, **directly incorporated into these *de novo* findings by reference**, as proposed this project is inconsistent with the Monterey County LCP and cannot be approved without conditions to mitigate impacts to sensitive coastal dune habitat.

First, as established in the above findings, the project is located on Seventeen Mile Drive, in the Asilomar dunes complex, an area of remnant sand dune habitat. The applicant proposes a non-resource dependent development in ESHA, and has not avoided and minimized damage to the remnant dune habitat. Nor does the project provide for the maximum amount of protection of remaining dune habitat on site through the use of conservation easements. Therefore, this development is inconsistent with LCP policies 8, 13 17, 14 and 18, which respectively require development in ESHA to be resource dependent and require resiting or redesign to prevent impacts to ESHA; to provide conservation easements over the ESHA on site; to restrict land disturbance (paving) and removal of indigenous vegetation near ESHA; and uses in remnant dunes to be of a scientific, educational or recreational nature.

1) Implementing Section 30010 of the Coastal Act

The entire area of the applicant's 42,121 square foot (.967 acre) parcel is an environmentally sensitive dune habitat. Other than the demolition, the proposed development includes a single-family dwelling, an attached garage, a driveway and motor court, new entry gates and fencing, and a courtyard. As conditioned, this project as revised by the applicant after County approval will result in a permanent loss of approximately 7,650 square feet (18%) of environmentally sensitive habitat.

Additional disruptions will result from residential development and subsequent use of the site, but these uses are generally amenable to native plant restoration and maintenance measures. Such activities may include: installation of a storm drain system, utility trenching and, over the long run, ordinary residential activities on the premises such as allowing pets and children in the habitat area. None of these development activities are of a type that is dependent on a location within the sensitive resource area, and it is reasonable to expect that these development activities, individually and collectively, will result in a significant disruption of the environmentally sensitive dune habitat area on site. Therefore, this project cannot be found consistent with Del Monte Forest LUP Policies 8 and 18.

However, as detailed in Finding 1 above, Del Monte Forest LUP Policies 8 and 18 must be applied in the context of the other Coastal Act requirements, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation." Thus, if strict interpretation of the restrictions in LUP Policies 8 and 18 would cause a taking of property the section must not be so applied and instead must be implemented in a manner that will avoid this result.

Once an applicant has obtained a final and authoritative decision from a public agency, and a taking claim is "ripe" for review, a court is in a position to determine whether the permit decision constitutes a taking. The court first must determine whether the permit decision constitutes a categorical or "per se"



taking under *Lucas v. South Carolina Coastal Council* (1992) 505 U. S. 1005. According to *Lucas*, if a permit decision denies all economically viable use of property by rendering it "valueless," the decision constitutes a taking unless the denial of all economic use was permitted by a "background principle" of state real property law. Background principles are those state law rules that inhere in the title to the property sought to be developed and that would preclude the proposed use, such as the common law nuisance doctrine.

Second, if the permit decision does not constitute a taking under *Lucas*, a court may consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in cases such as *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This inquiry generally requires an examination into factors such as the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations. The absence of reasonable, investment-backed expectations is a complete defense to a taking claim under the ad hoc inquiry (e.g., *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005, 1008-1009), in addition to any background principles of property law identified in *Lucas* that would allow prohibition of the proposed use.

Because permit decisions rarely render property "valueless," courts seldom find that permit decisions constitute takings under the *Lucas* criteria. For the reasons that follow, however, the Commission finds that there is sufficient evidence that a court might find that the denial of some non-resource dependent use on this property would constitute a taking under the ad hoc takings analysis, and that the Coastal Act, therefore, allows the approval of a non-resource dependent use.

In this situation, this section of the Asilomar dune complex has already been subdivided into residential lots, and has, over the years, been partially developed. Indeed, the project site is currently developed with a residence and driveway. Additionally, residences are located directly adjacent to the project site, and other residences are in the immediate vicinity. In view of the location of the applicant's parcel and, in particular, its lot size, the Commission is unaware of any use that would be both dependent on the environmentally significant resources of the site as otherwise required by LUP Policies 8 and 18 and capable of providing an economically viable use. The Commission is also unaware of any intent by any public agency to purchase this or other similarly situated and zoned lots in this section of the Asilomar dune complex.

Additionally, it has been determined that the applicants purchased the property with the reasonable expectation that residential use would be allowed on this property based on a number of factors, primarily because of the existence of a single-family dwelling on the site. Additionally, the parcel is designated for residential use in the County's zoning ordinance. Also, the parcel is located on 17-Mile Drive, among other residential properties that have been developed with houses of a similar size to that proposed in this application, and where public utility service is currently available. As noted above, a majority of parcels in this section of the Asilomar dune complex area are already developed, including this site, and have been for some time. As a further basis of an expectation of residential use, the County has approved a number of homes in this area.

Additionally, the current applicants note that no hazardous conditions exist on the site, that there are no



other potential clouds on legal title to the property and there is no evidence that residential use constitutes a nuisance.

After reviewing these factors (zoning, existence of similar homes approved by the County), the Commission finds that an applicant would have had reasonable basis for expecting that the County might approve a residential use of the property, subject to conditions that would mitigate the adverse impacts that likely would result from development in this sensitive resource area.

Finally, the applicants have submitted detailed information to demonstrate that their expectations were backed by substantial investments. The property was purchased for fair market value for residential property including a house in this area at the time of purchase. Since this purchase the property has generated no income in the form of rent, and has been taxed based on its current zoning designation as residential land. Accordingly, the Commission finds that the applicants had an investment-backed expectation that this property could be used for residential use, although the purchase price does not guarantee any particular size of development and is only one factor in the overall analysis.

In view of the findings that (1) none of the resource dependent uses provided for in LUP Policies 8 and 18 would provide an economic use, (2) residential use of the property would provide an economic use, and (3) the applicants had a reasonable investment backed expectation that such a properly mitigated residential use would be allowed on their property, there is a reasonable possibility that a court might determine that the final denial of a residential use based on the inconsistency of this use with LUP Policies 8 and 18 could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and the Constitutions of California and the United States, the Commission determines that implementation of LUP Policies 8 and 18 in a manner that would permanently prohibit residential use of the subject property is not authorized in this case.

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, and certified Local Coastal Programs, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications. Moreover, while the applicants in this instance may have reasonably anticipated that residential use of the subject property might be allowed, the Del Monte Forest Land Use Plan and Implementation Plan also provided notice that such residential use would be contingent on the implementation of mitigation measures necessary to minimize the impacts of development on environmentally sensitive habitat. Thus, the Commission must still comply with the requirements of LUP Policies 8 and 18 to the maximum extent feasible by protecting against the significant disruption of habitat values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property.

In the present situation, there are several conditions that the Commission can adopt that implement the Del Monte Forest Land Use Plan Policies 8 and 18 to the maximum extent feasible, while still allowing a reasonable size house on the property. As conditioned, 7,650 square feet (18%) of the 42,121 square foot parcel will be covered with building and paving. As a result, this area of dune habitat will be



permanently lost, and residential activities can be expected to disrupt an additional area in the immediate vicinity of the house. However, the extent of this disruption and land alteration can be mitigated to the maximum extent feasible by the implementation of appropriate conditions.

County conditions of approval 17, 18, 20, 21, 25, 26, 29, 31-33 and 37 were not adequate to sufficiently protect the site's sensitive habitat qualities and they were deleted. Therefore, several additional conditions are necessary to offset these direct and indirect project impacts as discussed in these findings. Most importantly, Special Condition No. 3 requires that the area of the property that will not be developed shall be preserved in open space subject to a deed restriction. This recorded restriction shall prohibit uses that are inconsistent with habitat restoration and preservation, and is needed to ensure that future owners are aware of the constraints associated with this site. Additionally, Special Condition No. 1 limits coverage of dune habitat and specifically forbids the building of the 780 square foot stone patio in front of the house, and the excess turnaround/guest parking area added to the driveway.

Because of this inconsistency with the LCP, the project must be conditioned to protect sensitive coastal resources. The project has been conditioned to reduce the size of the driveway and to remove the stone terrace, thereby reducing the amount of dune habitat that will be lost, and to protect the remaining dune habitat through restoration, limitation of fence design to that which is 75% open, and a deed restriction prohibiting further development in the protected areas. The project has also been conditioned to require the finished floor of the proposed house to be at 37.0 feet in elevation to reduce the amount of grading and landform alteration required for the development.

In addition to the fact that the site is comprised entirely of ESHA, it is also located in a highly visible area of a designated viewing corridor along 17-Mile Drive and in sight of the Bird Rock pullout. Thus, while any development on the site will result in visual impacts, the visual impacts are expected to be minimal due to the existing residential use of the area.

Strict adherence to the screening aspect of Policies 51 and 57 would conflict with ESHA policies because low-growing native dune plants aren't generally suitable for screening, the Del Monte Forest Land Use Plan states that the protection of natural resources takes precedence over other resource concerns. *Chapter 6* provides that proposals "must satisfy the natural resource protection policies" of the plan, and that "If land use and natural resource protection policies conflict, resource protection policies shall prevail" (Emphasis added). Thus, staff notes that the conditioned project could be accepted because the LCP prioritized the protection of natural resources because the new design has been reduced in size and coverage, and also provides for protection and enhancement of dune resources on the remainder of the site.

In this instance, the applicant proposes to build a house that is larger and more visually intrusive than the existing structure. The existing house is a good example of compliance with Policy 56 because it is a one story, sandy-colored structure, with a flat roof that is stepped up gradually to simulate the gradual slope of the dunes, and it appears subordinate to the dunes (See Exhibit K). However, the proposed house can also be found consistent with Policy 56 because of the subjective nature of the statement that structures must be "subordinate and blended into the environment", for which the LCP offers no specific criteria



(i.e. based on height, bulk, square footage of dune coverage, etc.). Given the fact that many of the homes in this 22-lot section of the Asilomar Dunes Complex, 13 of which front on 17-Mile Drive, are older homes, the lots are likely to "recycle" in the foreseeable future. With the turnover of these older homes, it is also likely that this policy and the issue of "subordinate to and blended into the environment" will be of greater importance as the smaller existing homes are demolished and larger homes are proposed in their stead. It would benefit the County to more clearly define designs that are "subordinate and blended into the environment" to give guidance to future applicants and to better preserve both the habitat and visual qualities of this area.

Conclusion

The project does not conform to LCP policies calling for the protection and maintenance of Environmentally Sensitive Habitat areas. Therefore, the project must be conditioned to remove the guest parking area and the terrace area in front, to restrict grading to that necessary to keep the finished floor elevation at 37.0 feet, to restore the balance of the lot to native dune vegetation and to place the remainder of the lot outside the building envelope in a deed restriction to mitigate impacts to the sensitive habitat.

E. California Environmental Quality Act (CEQA)

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

The environmental review of the project conducted by commission staff involved the evaluation of potential impacts to relevant coastal resource issues, including environmentally sensitive dune habitat, visual resources and archaeologically sensitive resources. This analysis is reflected in the findings that are incorporated into this CEQA finding.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions that implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.



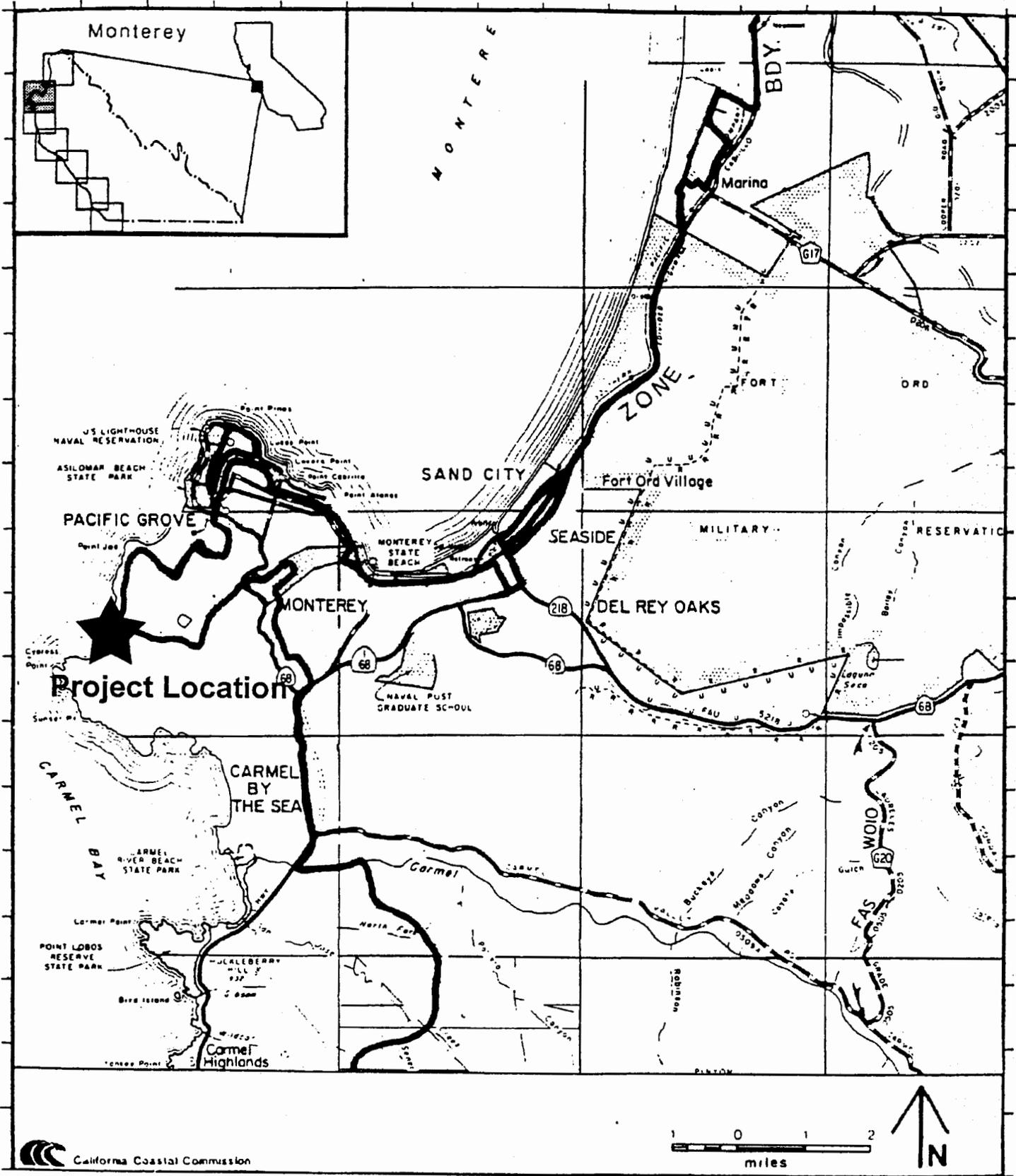
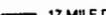


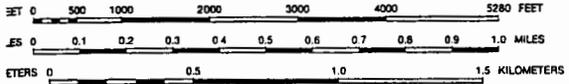
Exhibit A
 Location Map
 Smith Demo/Rebuild Appeal
 A-3-MCO-02-058

Carmel Monterey and Vicinity

LEGEND

-  FREEWAY
-  EXPRESSWAY
-  HIGHWAY
-  MAIN ROAD
-  17 MILE DRIVE
-  UNDER CONSTRUCTION
-  ONE-WAY STREET
-  OFFICIAL SCENIC HWY.
-  STATE HIGHWAY
-  COUNTY ROAD
-  BLOCK NUMBER
-  HOSPITAL (WITH EMERGENCY SERVICES)
-  PUBLIC SCHOOL
-  GOVT. CAMPGROUND
-  PICNIC AREA
-  PUBLIC BOAT LAUNCH

SCALE



1 INCH = 2200 FEET
ELEVATIONS ARE SHOWN IN FEET

CARTOGRAPHIC DEPARTMENT
COPYRIGHT 2000 BY

CALIFORNIA STATE AUTOMOBILE ASSOCIATION
150 VAN NESS AVENUE SAN FRANCISCO, CA 94102

6-00

Ocean

PROJECT
LOCATION

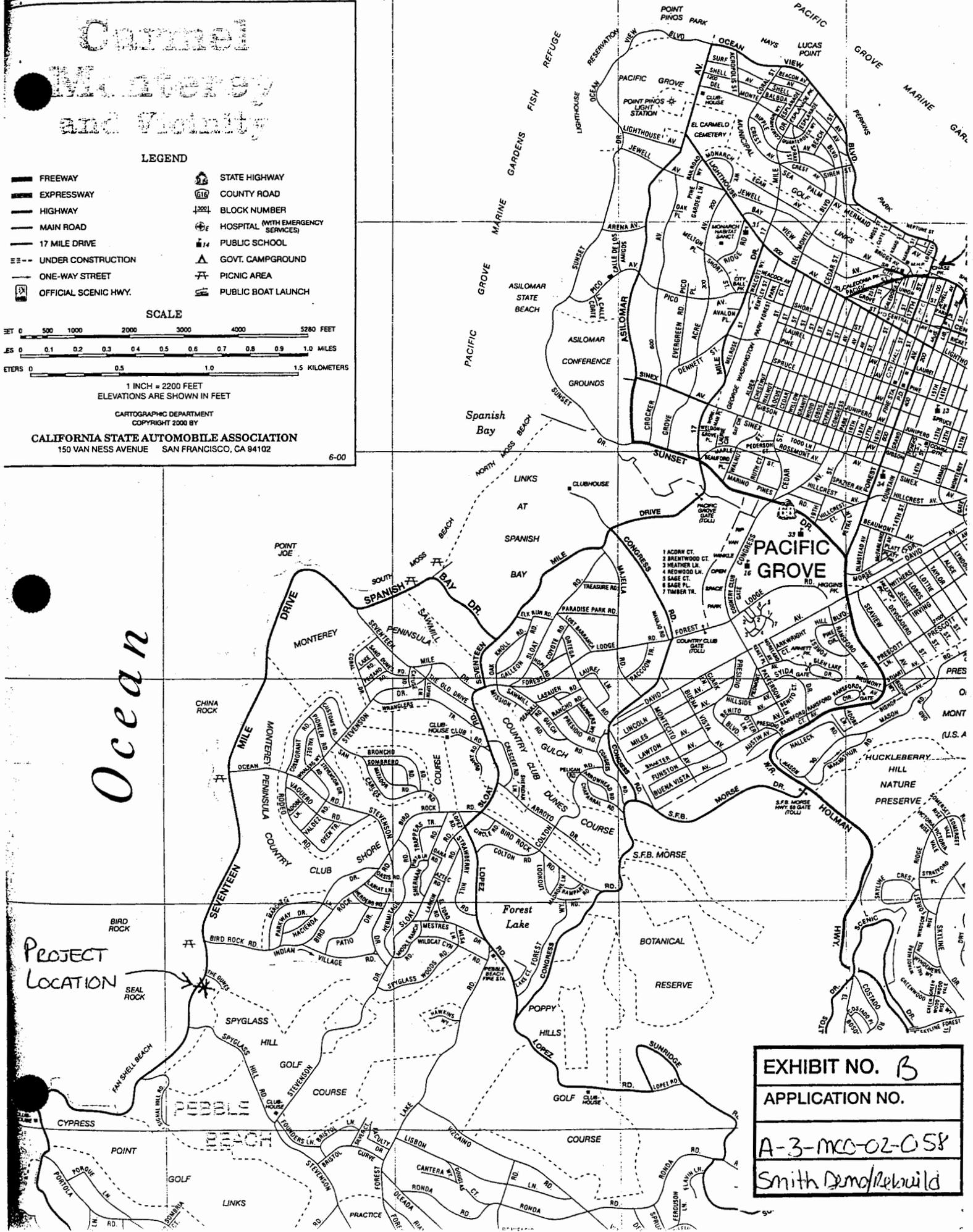


EXHIBIT NO. B
APPLICATION NO.
A-3-MCO-02-058
Smith Demol/Rebuild

TAX CODE AREA

151D

02

RYGLASS HILL
 GOLF COURSE

SILVER TRAIL

PARCEL 2
 VOL. X4 E.S. PAGE 101

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ALL DIMENSIONS AND HATCH PATTERNS ARE AS SHOWN UNLESS OTHERWISE SPECIFIED. DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. THE ARCHITECT'S OFFICE SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF THE DIMENSIONS AND HATCH PATTERNS. THE ARCHITECT'S OFFICE SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF THE DIMENSIONS AND HATCH PATTERNS.

PROJECT INFORMATION

- PROJECT DESCRIPTION: CONSTRUCTION OF TWO STRAY SWINE FEEDING RESIDENCE WITH ATTACHED 2 CAR GARAGE, BLENDSH (E) RESIDENCE
- PROJECT ADDRESS: 3105 SEVENTEEN MILE DRIVE, PEBBLE BEACH, CA 93950
- APN: 008-012-007
- LEGAL DESCRIPTION: BLOCK
- PROJECT COORDINANCE: 2 1992 UBC, UMC, UPC, WHILE 2M
- CONSTRUCTION TYPE: 1M - FIVE NON-RATED
- OCCUPANCY: R-3 / U-1
- ZONING: LOR 1.5 0 (C2)
- TREE REMOVAL: NONE
- MAX ALLOWABLE BUILDING HEIGHT: 30'
- TOPOGRAPHY: GENTLY SLOPING
- GRADING: APPROX. 450 C.F.S.
- TOTAL SITE AREA: 42,121 SF (1.87 AC)

PROPOSED LOT COVERAGE

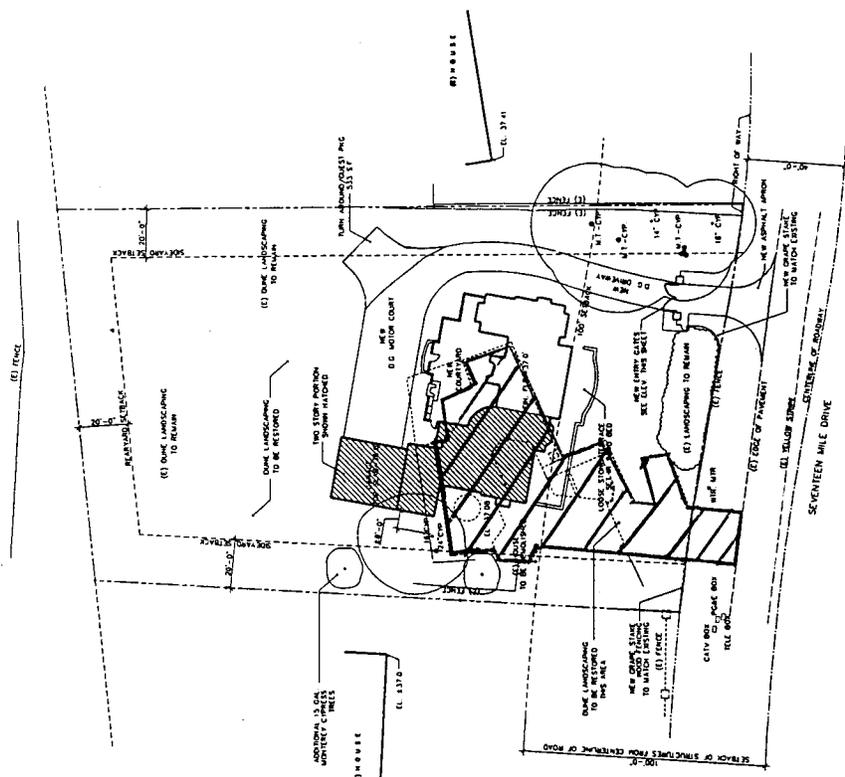
- BUILDING FOOTPRINT: 3,943 SF (92)
- MAX ALLOWABLE FOOTPRINT: 6,318 SF (153)

PROPOSED FLOOR AREA

- MAIN LEVEL: 3,243 SF
- UPPER LEVEL: 2,218 SF
- TOTAL LIVABLE AREA: 5,459 SF
- GARAGE: 700 SF
- PROJECT TOTAL: 6,159 SF

PROPOSED FLOOR AREA RATIO

- MAX ALLOWABLE F.A.R.: 6.159 SF (14.6%)
- MAX ALLOWABLE F.A.R.: 7.371 SF (17.5%)



APPROXIMATE AREA OF EXISTING DEVELOPMENT

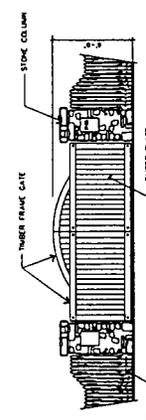


SITE PLAN

SCALE 1"=20'-0"

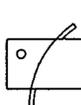
EROSION CONTROL RECOMMENDATIONS:

1. HILLS OF GRADING SHOULD BE CONFINED TO THOSE AREAS NECESSARY FOR THE SUBJECT PROJECT, I.E. AS MUCH OF THE VEGETATED LANDSCAPE NOT ASSOCIATED WITH THE PROPOSED CONSTRUCTION SHOULD BE LEFT AS UNDISTURBED AS POSSIBLE.
2. ALL EXPOSED SOIL SHOULD BE IMMEDIATELY COVERED WITH STRAW MATS, EROSION MATING, AND SODSPLICES HAND AT ALL TIMES DURING CONSTRUCTION.
3. CUT AND FILL MATERIALS SHOULD NOT BE STOCKPILED WHERE THEY MAY BE WASHED AWAY BY RAIN.
4. REVEGETATE AND PROTECT ALL DISTURBED SITE PRIOR TO COMPLETION OF THE ANY IMPORTED OR NATIVE MATERIALS REMAINING AFTER COMPLETION OF THE JOB SHOULD BE HAILED OFFSITE.
5. IRRIGATION ACTIVITIES AT THE SITE SHOULD ALWAYS BE DONE IN A CONTROLLED MANNER TO PREVENT OVERWATERING AND TO PREVENT IRRIGATION WATER FROM SEEPING INTO WALLS AND UNDER FOUNDATIONS. MEASURES SHOULD BE IMPLEMENTED TO CONTAIN IRRIGATION WATER AND PREVENT IT FROM SEEPING INTO WALLS AND UNDER FOUNDATIONS.
6. FOUNDATIONS SHOULD BE INSTALLED ON ALL ROOF DOMES WHICH CONNECT TO PERIMETER STORM DRAIN LINES.



ENTRY GATE

SCALE 1/4"=1'-0"



ARCHITECT
JAMES N. SMITH AIA
P.O. BOX 848
PACIFIC GROVE, CA 93950
TEL 831 888 8828
FAX 831 888 8538
E-MAIL

RESIDENCE FOR
MURRAY & CAROL SMITH
3105 SEVENTEEN MILE DR. PEBBLE BEACH, CA

○	EXISTING
○	PROPOSED
○	CONSTRUCTION
○	LANDSCAPING
○	EROSION CONTROL
○	UTILITY
○	BOUNDARY
○	ADJACENT
○	EXISTING
○	PROPOSED
○	CONSTRUCTION
○	LANDSCAPING
○	EROSION CONTROL
○	UTILITY
○	BOUNDARY
○	ADJACENT

SITE PLAN

A.I.O.

MONTEREY COUNTY

PLANNING & BUILDING INSPECTION DEPARTMENT

2620 1st AVENUE MARINA, CA 93933

(831) 883-7500 FAX: (831)384-3261



RECEIVED

JUL 19 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

July 17, 2002 / By Certified Mail

Rick Hyman, Deputy Chief Planner
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

**Re: Final Local Action Notice
Murray and Carol Smith
3105 Seventeen Mile Drive, Pebble Beach
APN 008-012-007-000
Permit # PLN 00 0239**

Dear Rick Hyman:

Enclosed is a copy of Resolution No. 02-212 before the Board of Supervisors in and for the County of Monterey, State of California, granting permit approval for the development project as detailed in the resolution. The action was taken by the Board on May 28, 2002.

The planner who was handling this project has left the Planning Department's employ, and I am the newly assigned planner for the project. I apologize that submittal of this notice to you has been delayed.

Sincerely,

Jack Nelson
Senior Planner
(831) 883-7522

Enclosure: Before the Board of Supervisors in and for the County of Monterey, State of California, Resolution No. 02-212

A-3-MCO-02-058
Smith Demo/Rebuild
Appeal

Exhibit E
pg. 1 of 12

Before the Board of Supervisors in and for the
County of Monterey, State of California

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JUL 19 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Resolution No. 02-212)
Adopt a Mitigated Negative Declaration and Mitigation)
Monitoring Plan and approve a Coastal Administrative)
Permit and Design Approval for **Murray and Carol Smith**)
(**PLN 000239**) to allow the demolition of an existing one-)
story single family dwelling and construction of a two-story)
single family dwelling with an attached three-car garage,)
new driveway (decomposed granite), addition and)
replacement of sections of the perimeter grape stake fence)
(4 to 6 feet in height), new 6 foot timber entry gate with)
stone columns and associated grading. The property is)
located at 3105 Seventeen Mile Drive (Assessor's Parcel)
Number 008-012-007-000), northeasterly of the)
intersection of Seventeen Mile Drive and Spyglass Hill)
Drive, Del Monte Forest Land Use Plan.)

**FINAL LOCAL
ACTION NOTICE**

REFERENCE # 3-MCO-02-359
APPEAL PERIOD 7/22-8/2/02

In the matter of the application of PLN 000239 (Murray and Carol Smith)

WHEREAS: The Monterey County Board of Supervisors pursuant to regulations established by local ordinance and state law, has considered, at public hearing, a Coastal Administrative Permit and Design Approval, located fronting on and easterly of Seventeen Mile Drive at 3105 Seventeen Mile Drive (Assessor's Parcel Number 008-012-007-000), Del Monte Forest Area, Coastal Zone

WHEREAS: Said proposal includes:

1. Adoption of a Mitigated Negative Declaration and Mitigation Monitoring Plan, and
2. Coastal Administrative Permit and Design Approval to allow the demolition of an existing one-story single family dwelling and construction of a two-story single family dwelling with an attached three-car garage, new driveway (decomposed granite), addition and replacement of sections of the perimeter grape stake fence (4 to 6 feet in height), new 6 foot timber entry gate with stone columns and associated grading.

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

1. **FINDING:** The subject Coastal Development Permit and Design Approval (PLN000239), as described in condition #1 and as conditioned, conforms with the plans, policies, requirements and standards of the Local Coastal Program (LCP). The LCP for this site consists of the Del Monte Forest Land Use Plan, Del Monte Forest Coastal Implementation Plan (Part 5), Part 6 of the Coastal Implementation Plan, and the Monterey County Zoning Ordinance (Title 20). The property is located at 3105 Seventeen Mile Drive, in the Del Monte Forest area of the Coastal Zone. The parcel is zoned "LDR/1.5-D (CZ)" (Low Density Residential, 1.5 Acres per Unit Design Control District). The site is physically suitable for the use proposed. The

3-MCO-02-058
Smith Demo/Rebuild
Appeal
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pg. 2 of 17
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06.2.02

project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights. No access is required as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated. The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of Title 20, and any zoning violation abatement costs have been paid.

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

- a) The certified Del Monte Forest Land Use Plan
- b) The certified Monterey County Coastal Implementation Plan regulations for Low Density Residential, 1.5 Acres per Unit or the "LDR/1.5-D (CZ)" District in the Coastal Zone, and
- c) Chapter 20.14 Monterey County Coastal Implementation Plan regulations for development in the Del Monte Forest 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 Cypress Fire Protection. There has been no indication from these agencies that the site is not suitable for the proposed development. Necessary public facilities are available to the project site. Staff verification of the Monterey County Planning and Building Inspection Department records indicated that no violations exist on subject property. The Initial Study demonstrates that no physical or environmental constraints exist that would indicate the site is not suitable for the proposed development. Each agency has recommended conditions for improvements.

EVIDENCE: The proposed Single Family Residential use is consistent with the development standards for Low Density Residential Development, pursuant to Title 20, Monterey County Coastal Implementation Plan (Part 1).

EVIDENCE: Written and verbal public testimony submitted at public hearings before the Planning Commission.

EVIDENCE: Archeological Report prepared by Archeological Consulting found no evidence of cultural or historical resources.

EVIDENCE: "Assessment of Potential Impacts on Sensitive Biological Features" prepared by Jean E. Ferreira, Elkhorn Native Plant Nursery.

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

EVIDENCE: The on-site inspection by the project planner on January 29, 2001 and March 28, 2001 to verify that the proposed project complies with the Del Monte Forest Area Coastal Implementation Plan (Part 5).

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

EVIDENCE: The project site is not identified as Environmentally Sensitive Habitat on Figure 2, Del Monte Forest Land Use Plan.

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Smith Demo/Rebuild

Appeal

Exhibit E

pg. 3 of 12

2. **FINDING:** The proposed project, including all permits and approvals, will not have significant adverse impacts on the environment. A Mitigated Negative Declaration has been prepared and is on file (File # PLN000239) in the Department of Planning and Building Inspection. All mitigation measures identified in the Initial Study and Mitigated Negative Declaration and all project changes required to avoid significant effects on the environment have been incorporated into the approved project or are made conditions of approval. A Program for Monitoring and/or Reporting on Conditions of Approval (hereafter "the Program") has been prepared pursuant to Public Resources Code 21081.6 and is made a condition of approval. The Program is attached hereto as Exhibit "C" and is incorporated herein by reference. Potential environmental effects have been studied, and there is no substantial evidence in the record, as a whole, that supports a fair argument that the project, as designed, may have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment and analysis of the County based upon the findings and conclusions drawn in the Initial Study and the testimony and information received, and scientific and factual data presented as evidence during the public review process. The Monterey County Planning and Building Inspection Department, located at 2620 1st Avenue, Marina, is the custodian of the documents and the materials that constitute the record of proceedings upon which the adoption of the Mitigated Negative Declaration is based.

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

EVIDENCE: 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 would not have significant environmental impacts. A Mitigated Negative Declaration was filed with the County Clerk on July 24, 2001. The following evidence has been received and considered: All comments on the Initial Study; evidence in the record that includes studies, data and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented 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. "Assessment of potential Impacts on Sensitive Biological Features" by Jean E. Ferreira, Botanist, Elkhorn Native Plan Nursery dated August 22, 2000 and Amendment (to allow a spring survey of the site) to the report dated June 12, 2001.
2. Preliminary Archaeological Reconnaissance of Assessor's Parcel Number 008-012-007 by Archaeological Consulting.

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

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Appeal

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

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

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

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

4. **FINDING:** Development of properties located in the Monterey Peninsula Water Management District ("District") depends in large part, on the availability of water pursuant to an allotment system established by the District based on a prorationing of the known water supply for each of the jurisdictions served by the California-American Water Service Company

EVIDENCE: Staff report, oral testimony at the hearing; administrative record.

5. **FINDING:** Based upon the District's water allotment system, the County of Monterey ("County") has established a system of priority distribution of water allocation for properties within its own jurisdiction. Current information available to the County indicates that the County's share of water under the District's allotment system, over which the County has no control, has been exhausted to the point that the County is unable to assure that property owners who do or have obtained development permits for their properties will be able to proceed with their development projects.

EVIDENCE: Staff report, oral testimony at the hearing; administrative record.

6. **FINDING:** In view of the preceding finding, and the fact that the present application for a permit otherwise meets all County requirements, the County approves the application subject to determination by the Monterey County Water Resources Agency, in the form of a water availability certification, that water is available for the project and the applicant's being able to obtain a water use permit from the District.

EVIDENCE: Staff report, oral testimony at the hearing; administrative record.

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Appeal
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7. **FINDING:** The project is appealable to the Board of Supervisors and the California Coastal Commission.
EVIDENCE: Sections 20.86.070 and 20.86.080 of the Monterey County Coastal Implementation Plan.

FINDINGS FOR APPEAL

8. **FINDING:** The property which is the subject of this appeal is located at 3105 Seventeen Mile Drive, in the Del Monte Forest area, in the County of Monterey ("the property").
EVIDENCE: Planning Commission Resolution No. 01066; Planning and Building Inspection Department File No. PLN000239; administrative record.
9. **FINDING:** Applicant filed with the County of Monterey an application for a Coastal Administrative Permit and Design Approval to allow demolition of an existing one-story single family dwelling and construction of a two-story single family dwelling with an attached three-car garage, new driveway (decomposed granite), addition and replacement of sections of the perimeter grape stake fence (4 to 6 feet in height), new 6 foot timber entry gate with stone columns and associated grading on the property.
EVIDENCE: Planning and Building Inspection Department File No. PLN00023; administrative record.
10. **FINDING:** Applicant's application for a Coastal Administrative permit and Design Approval came for consideration before the Planning Commission at a public hearing on October 29, 2001
EVIDENCE: Planning Commission Resolution No. 01066; Planning and Building Inspection Department File No. PLN000239.
11. **FINDING:** At the conclusion of the public hearing on October 31, 2001, the Planning Commission approved the application on the basis of the findings and evidence contained in Planning Commission Resolution No. 01066.
EVIDENCE: Planning Commission Resolution No. 01066; Planning and Building Inspection Department File No. PLN000239.
12. **FINDING:** Appellant timely filed an appeal from the Planning Commission alleging that (1) there was a lack of fair or impartial hearing; (2) the findings, conditions, or the decision of the Planning Commission were not supported by the evidence; and (3) that the decision was contrary to law.
EVIDENCE: Appellant's Notice of Appeal; files of Clerk of the Board of Supervisors.
13. **FINDING:** Pursuant to the provisions of the Monterey County Zoning Ordinance and other applicable laws and regulations, the Board, at a continued public hearing on May 21, 2002, heard and considered the appeal.
EVIDENCE: Minutes and other records of the Board of Supervisors' meeting of May 21, 2002; files of the Clerk of the Board of Supervisors and Planning and Building Inspection Department/Rebuild
Appeal

FINDING: Upon consideration of the documentary information in the files, the staff reports, the oral and written testimony and other evidence presented before the Planning Commission the Board Denied the appeal and finds as follows:

- A. There was a fair and impartial hearing on the permit application before the Planning Commission, and appellant has bailed to sustain its burden as to this contention.
- B. The findings, conditions, or decision of the Planning Commission are supported by the evidence and the same are hereby adopted and incorporated herein by reference.
- C. The Planning Commission decision is in accordance with and not contrary to law.

EVIDENCE: Oral testimony, staff reports, and documents in the administrative record.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors does hereby approve the Smith application (PLN 000239) subject to the following conditions:

1. The subject Coastal Administrative Permit and Design Approval would allow the demolition of an existing one-story single family dwelling and construction of a two-story single family dwelling with an attached three-car garage, new driveway (decomposed granite), addition and replacement of sections of the perimeter grape stake fence (4 to 6 feet in height), new 6 feet timber entry gate with stone columns and associated grading. The project is located at 3105 Seventeen Mile Drive (Assessor's Parcel Number 008-012-007-000), northeasterly of the intersection of Seventeen Mile Dr and Spyglass Hill Dr, Del Monte Forest Land Use Plan. The proposed project is in accordance with County ordinances and land use regulations, subject to the following terms and conditions. Neither the use nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. **(Planning and Building Inspection)**

Prior to the Issuance of Grading and Building Permits:

2. The applicant shall record a notice which states: "A permit (Resolution #01066) was approved by the Board of Supervisors for Assessor's Parcel Number 008-012-007-000 on May 21, 2002. The permit was granted subject to 37 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)**
3. The applicant shall enter into a Mitigation Monitoring Agreement with the Director of Planning and Building Inspection. **(Planning and Building Inspection)**

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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 on or before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning and Building Inspection Department)**
5. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. The applicant shall submit 3 copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The exterior lighting plan shall be subject to approval by the Director of Planning and Building Inspection, prior to the issuance of building permits. **(Planning and Building Inspection)**
6. 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)**
7. The applicant shall obtain a grading permit from the Building Inspection Division. **(Planning and Building Inspection)**
8. The roadway surface shall provide unobstructed access to conventional drive vehicles, including sedans and fire engines. Surfaces should be established in conformance with local ordinances, and be capable of supporting the imposed load of the apparatus. **(Cypress Fire Protection District, CDF)**
9. For residential driveways with turns 90 degrees and less, the minimum horizontal inside radius of curvature shall be 25 feet. For driveways with turns greater than 90 degrees, the horizontal inside radius of curvature shall be 28 feet. For all driveway turns, an additional surface of 4 feet shall be added. **(Cypress Fire Protection District, CDF)**
10. Gate entrances shall be at least the width of the traffic lane but in no case less than 12 feet wide. **(Cypress Fire Protection District, CDF)**
11. Where gates are to be locked, the Reviewing Authority having jurisdiction may require installation of a key box or other acceptable means to immediate access for emergency equipment. **(Cypress Fire Protection District, CDF)**
12. Unobstructed vertical clearance shall not be less than 15 feet for all access roads. **(Cypress Fire Protection District, CDF)**
13. The building(s) shall be fully protected with automatic fire sprinkler system(s). The following notation is required on the plans when a building permit is applied for: "The building shall be fully protected with an automatic fire sprinkler system. Installation, approval and maintenance shall be in compliance with applicable National Fire Protection Association and/or Uniform Building Code Standards, the editions of which shall be

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determined by the enforcing jurisdiction. Four(4) sets of plans for fire sprinkler systems must be submitted and approved prior to installation. Rough-in inspections must be completed prior to requesting a framing inspection (Garage Included)." (Cypress Fire Protection District, CDF)

14. A drainage plan shall be prepared by a registered civil engineer or architect to address on-site and off-site impacts, and necessary improvements shall be constructed in accordance with approved plans. (Water Resources Agency)
15. Prior to the issuance of a building permit, the applicant shall obtain from the Monterey County Water Resources Agency (MCWRA), proof of water availability on the property in the form of an approved Water Release Form. (Water Resources Agency)
16. The location, type and size of all antennas, satellite dishes, towers, and similar appurtenances shall be approved by the Director of Planning and Building Inspection. (Planning and Building Inspection)
17. A conservation and scenic easement shall be conveyed to the County over the rear portion of the property where dune habitat area exists, proposed dune restoration area, 100' setback from the centerline of Seventeen Mile Drive, and the 20' sideyard setbacks, excepting approved development. The easement may allow for private recreational access and enjoyment by the property owner including the placement of boardwalk and bench subject to the approval by a qualified biologist. Scenic and conservation deed to be submitted to and approved by the Director of Planning and Building Inspection.
18. Reduce the size of the motor court on southeast side by eliminating the extra ten feet of Decomposed Granite surfacing extending beyond the eastern edge of the garage. This will reduce the impacted habitat area by 200 ft², lowering the total impact area from 3,400 ft² to 3,200 ft². (MM1) (Planning and Building Inspection Department)
19. The seed from the Monterey spineflower plants that will be covered by the development footprint shall be collected by a qualified biologist at the correct time of year for mature seed and properly stored (in dry, cool and consistent temperature) for propagation or broadcast onto the restoration sites. Seed shall not be stored more than twelve months, due to the drop in viability. (MM5) (Planning and Building Inspection Department)
20. Potential loss of current and potential Monterey spineflower habitat shall be offset by creating spineflower habitat on 7,000 sq. ft. of restored or enhanced dunes. These restored dunes areas will include area on the rear slope of the parcel covered by iceplant, with the balance filled by the creation of a new dune habitat on the northwest corner of the lot in the front of the proposed residence. Removal of existing vegetation and restoration shall be in accordance with the recommendations of the Biological report, plans for such shall be subject to the approval of the Director of Planning and Building Inspection Department. (MM6) (Planning and Building Inspection Department)
21. A restoration plan for the propagation and introduction of the Monterey spineflower on the restored dune areas will be written and implemented by a qualified restoration botanist. The goal of the restoration plan shall be to create self-perpetuating pockets of Monterey spineflower in numerous locations on the restored habitat areas. The plan shall

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outline methods of propagation, planting, and monitoring. The monitoring period shall cover a minimum of 3 years from the date of first flowering of the Spineflower on the treatment area and will continue until the success criteria has been met. The criteria for determining the success of the introduction of spineflower will be the presence of at least two additional pockets of Monterey spineflower in the restored dune areas that have been self-perpetuating for at least three seasons, with numbers of individuals increasing or remaining stable during the monitoring period. **(MM7) (Planning and Building Inspection Department)**

22. A biological monitor shall inspect the site before construction, coordinate establishment of the construction boundary on the edge of habitat area, oversee protection fence construction, monitor grading and periodically check construction for consistency with these mitigation recommendations. This monitor shall be selected and under contract pursuant to the mitigation monitoring agreement prior to issuance of permits. **(MM8) (Planning and Building Inspection Department)**
23. During a pre-construction meeting with the architect or owner, construction manager, and sub-contractors, the biological monitor will make a presentation to the group on the sensitivity of the habitat and discuss protection measures for the habitat during the construction phase. All sub-contracts shall include a statement that the sub-contractor shall not disturb the habitat area by grading, parking, material storage, human traffic, or any other construction activity. **(MM9) (Planning and Building Inspection Department)**
24. A management plan to insure protection of the habitat area shall be prepared and implemented prior to issuance of building permits. This plan shall insure long-term health of the habitat area, including limitation of access to the area. **(MM10) (Planning and Building Inspection Department)**
25. The proposed structures shall be moved ten feet forward towards Seventeen Mile Drive, and the extra parking spot at the eastern end of the parcel shall be eliminated. This will eliminate construction impacts to the habitat area. **(MM11) (Planning and Building Inspection Department)**
26. If, during the course of construction, cultural, archaeological, historical or palentological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. **(Planning and Building Inspection Department)**
27. Native trees which are located close to the construction site shall be protected from inadvertent damage from construction equipment by wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees. Said protection shall be

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demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection Department)**

28. A deed restriction shall be recorded for the property stating that: "An Archaeological Report dated July 31, 2000, has been prepared on this property by Archaeological Consulting, and is on file in the Monterey County Planning and Building Inspection Department. The recommendations contained in said report shall be followed in all further development of this property." **(Planning and Building Inspection Department)**
29. A deed restriction shall be recorded for the property stating that: "an Assessment of Potential Impacts on Sensitive Biological Features" prepared by Jean E. Ferreira, Elkhorn Native Plant Nursery, dated August 22,, 2000 and an amendment dated June 12, 2001, has been prepared on this property, and is on file in the Monterey County Planning and Building Inspection Department. The recommendations contained in said report shall be followed in all further development of this property." **(Planning and Building Inspection Department)**

Prior to Final Building Inspection/Occupancy:

30. The applicant shall comply with Ordinance No. 3932 of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:
- a) All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
 - b) Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. **(Water Resources Agency & Planning and Building Inspection)**
31. The site shall be landscaped. At least three weeks prior to occupancy, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, specie, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department. **(Planning and Building Inspection Department)**
32. A landscaping plan shall include low water use or native drought resistant plants, low precipitation sprinkler heads (disperses less than 0.75 inches of water per hour at any pipe pressure), bubblers, drip irrigation and timing devices. The landscaping plans shall conform with Chapter 18.50, Residential, Commercial and Industrial Water Conservation Exhibits, found in Title 18 of the Monterey County Code. **(Planning and Building Inspection Department)**

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EXHIBIT E
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33. All cut and/or fill slopes exposed during the course of construction shall be covered, seeded with native grasses or otherwise treated to control erosion in coordination with the consulting biologist, subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection Department)**
34. The existing grade beyond the new edge of motor court shall be preserved to maintain grade in the preserved habitat prior to and during all stages of construction. **(MM2)**
(Planning and Building Inspection Department)
35. To minimize potential impacts on the habitat areas, all sand removed during grading must be moved, stored, and/or taken off site to the northwest side of the parcel. **(MM3)**
(Planning and Building Inspection Department)
36. The edge of construction corridor adjacent to the preserved habitat area must be kept under 3 foot width and fenced with a 5-foot construction fence. No material storage or construction traffic of any kind will be allowed on the preserved habitat area. **(MM4)**
(Planning and Building Inspection Department)
37. All landscaped areas and/or fences shall be continuously maintained by the applicant and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. **(Planning and Building Inspection Department)**

PASSED AND ADOPTED on this 28th day of May, 2002, upon motion of Supervisor Johnsen, seconded by Supervisor Calcagno, by the following vote, to-wit:

AYES: Supervisors Armenta, Pennycook, Calcagno and Johnsen

NOES: Supervisor Potter

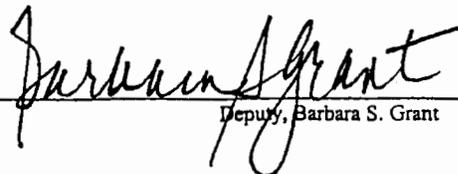
ABSENT: None

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 X of Minute Book 71, on May 28, 2002.

Dated: June 12, 2002

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

By


Deputy, Barbara S. Grant

cc: Planning & Building
S-7 3150.000

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Smith Demo/Rebuild
Appeal

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CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

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

Commissioner Sara J. Wan, Chair
California Coastal Commission
45 Fremont St., Ste. 2000
San Francisco, CA 94105
Commissioner John Woolley
California Coastal Commission
45 Fremont St., Ste. 2000
San Francisco, CA 94105 (415) 904-5200
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

Monterey County

2. Brief description of development being appealed:

Demolition of existing one-story residence and construction of a new two-story single family residence with attached three-car garage, new driveway, addition and replacement of perimeter grape stake fence (4 to 6 ft. in height, new 6 ft. timber entry gate with stone columns and associated grading.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

3105 Seventeen Mile Drive, Pebble Beach, Monterey County
APN 008-012-007-000

4. Description of decision being appealed:

- a. Approval; no special conditions:
b. Approval with special conditions: XX
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-02-058
DATE FILED: 8/1/02
DISTRICT: Central

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

A-3-MCO-02-058
Smith Demo/Rebuild
Appeal

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Attachment A

Reasons For Appeal of Murray and Carol Smith Permit PLN000239

The Monterey County Planning Commission approved a coastal development permit for Murray and Carol Smith to allow the demolition of an existing, 2,250 square foot, one-story single family dwelling and construction of a 4,802 square foot, two-story single family dwelling with an attached 900 square foot, three-car garage, new driveway (of decomposed granite), addition and replacement of sections of the perimeter grape stake fence (4 to 6 feet in height), new 6 foot timber entry gate with stone columns, and associated grading. Existing developed site coverage is 2,850 square feet, project approved by Monterey County will cover almost four times that amount (10,678 square feet). The property is located at 3105 Seventeen Mile Drive (Assessor's Parcel Number 008-012-007-000), northeasterly of the intersection of Seventeen Mile Drive and Spyglass Hill Drive, in the Del Monte Forest Land Use Plan area.

Development in ESHA. The entire site project site is comprised of remnant dune habitat, and so is considered environmentally sensitive habitat area (ESHA). The Del Monte Land Use Plan (LUP) Policy 8 states that new development within environmentally sensitive habitat areas shall be limited to uses "that are dependent on the resources therein", and that development adjacent to ESHA "shall be sited and designed to prevent impacts which would significantly degrade the protected habitat." This policy also requires ESHA to be "protected against any significant disruption of habitat values." Therefore approval of the proposed development, which will substantially increase impacts on ESHA because of increased site coverage is not in conformance with this LUP policy.

LUP Policies 13 and 17 provide for the protection of ESHA through required deed restrictions or permanent conservation easements. Although Condition of Approval #17 the County's permit requires a conservation easement, it does not include all areas of the site outside of the building and driveway footprints and thus does not adequately protect all ESHA on the site. CIP Section 20.147.040.B.3.b also requires scenic or conservation easements, specifically to "protect the habitat's long-term maintenance". Leaving areas of ESHA on the lot outside of the building and driveway footprints is inconsistent with this section of the CIP as well as Policies #13 and 17.

Additionally, LUP Policy 15 requires the use of "appropriate native species" in landscaping. Condition of Approval #32 of the County's permit requires a landscaping plan "including low water use or native drought resistant plants". This condition is not consistent with LUP Policy #15 because it does not restrict plantings specifically to the "appropriate native species", but leaves the option to plant non-native plants that are "low water use".

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PAGE 03

STATE OF CALIFORNIA - THE RESOURCE AGENCY

State Date, County

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4643



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APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

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

KEN and SHAREN VIRNIG c/o LOMBARDO & GILLES

Post Office Box 2119

Salinas CA 93902-2119

(831) 754-2444

Zip

Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

MONTEREY COUNTY

2. Brief description of development being appealed:

Demolition of historic resource and construction of single-family dwelling in remnant dune habitat

3. Development's location (street address, assessor's parcel number, cross street, etc.):

3105 Seventeen Mile Drive, Pebble Beach
APN 008-012-007-000

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: XX

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-02-058

DATE FILED: 8/1/02

DISTRICT: Central

A-3-MCO-02-058
Smith Demo/Rebuild
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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.)

As indicated in March 8, 2002, letter from Stephanie Matraw to Monterey County (See Exhibit "A"), the project does not conform to the following policies and sections of the Monterey County LCP: LUP Policy 8; LUP Policy 13; LUP Policy 15; LUP Policy 17; CIP Section 20.147.070.C; LUP Policy 58; CIP Section 20.147.070.C.2; Monterey County LCP Chapter 6.

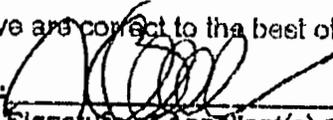
Also see policies set forth in neighbors' appeal to the Monterey County Board of Supervisors attached hereto as Exhibit "B."

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.

LOMBARDO & GILLES

By: 

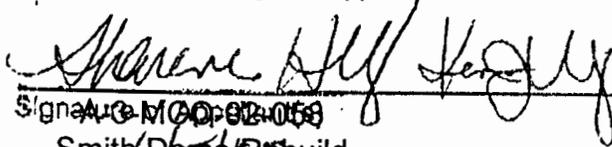
Signature of Appellant(s) or Authorized Agent TODD D. BESSERY

Date 6/7/2002

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

SECTION VI. Agent Authorization

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



Signature MCD-92-058

Smith/Demo/Rebuild

Date Appeal

Exhibit F
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CALIF COASTAL COMM

PAGE: 02

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CRAT DAVIS COUNTY

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 302
SANTA CRUZ, CA 95060
(408) 427-4863



March 8, 2002

Kris Berry
Monterey County Planning & Building Inspection
2620 First Ave.
Marina, CA 93933

Subject: Murray Smith PLN000238, comments to Board of Supervisors

Dear Kris,

We have received and reviewed the Staff Report for the Murray Smith proposal at 3105 Seventeen Mile Drive for the February 5, 2002 Board of Supervisors meeting. We understand that this item was continued at this meeting, and we would like to submit comments for the continued hearing.

As relayed by our September 5, 2001 letter, our main concern with respect to this project is the loss of environmentally sensitive habitat entailed by the current project design. Based on our analysis of the site thus far, it appears that the entire project site, other than the existing development footprint, should be considered sensitive dune habitat. LUP policy 8 states that new development within environmentally sensitive habitat areas (ESHA) shall be limited to uses "that are dependent on the resources therein." It appears that development is proposed for areas that currently support endangered plants, which would not be in conformance with this LUP policy. Additionally, it is likely that the entire area would support native dune plants if the development were removed, thus any development on this site would constitute development in ESHA.

A large portion of the habitat on site has been degraded by the existing residential development on the property, which consists of a one-story house, driveway and landscaping. To comply with LUP policies regarding development in ESHA, we suggest that any proposed development be located within the footprint of the existing development, and that no further disruption of dune habitat be allowed. Therefore, as currently designed and sited, the project is not consistent with the LUP.

In addition, to comply with the ESHA Policy Guidance Statement and policies 8 and 1E, we would also recommend: the restoration of habitat areas which have been degraded by non-native plants; that only native dune plants found in the area be used on the property; and that invasive plants be eradicated. In accordance with LUP policies 13 and 17, we suggest that the entire property be protected by a conservation easement with the exception of an approved building envelope. To accomplish this, an adequate habitat map would be required detailing which areas are to be restored and the exact location of the building envelope. All portions of the lot not included in the building envelope should be placed under conservation easement.

We recognize that protecting habitat on the site may conflict with other policies of the LUP, specifically those intended to address visual impacts. Coastal Implementation Plan Section 20.147.070.C.9 requires a minimum setback of 100 feet from the centerline of 17-Mile Drive, and Section 20.147.070.C.2 states that "All structures shall be subordinate to and blended into the environment, using appropriate construction and landscaping materials to achieve that

A-3-MCO-02-058
Smith Demo/Rebuild

Exhibit F
pg. 5 of 18

MAR-11-2002 MON 10:24 AM M J PLANNING CSTL

FAX NO. P' .84 3261

P. 03

03/09/2002 15:42 831-4274877

CALIF COASTAL COMM

PAGE: 03

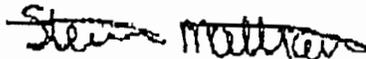
Kris Berry
Smith PLN000238 comments
March 8, 2002
Page 2

effect..." In addition, LUP Policy 58 states that "Where necessary, modification shall be required for siting, structural design, shape, lighting, color, texture, building materials, access and screening".

Chapter 6: Implementation and Administration of the Del Monte Forest Land Use Plan, under Development Permit Review, gives some guidance for handling policy conflicts. It states, "If land use and natural resource protection policies conflict, resource protection policies shall prevail." Thus, protection of visual resources on the site should be considered subordinate to protection of the site's dune habitat. Although requiring any new development on site to be located within the footprint of the existing development conflicts with LUP policies to protect visual resources, the new development should be designed to be "subordinate to and blended into the environment", and to conform to visual policies to the extent possible, thus, lessening any potential visual impacts. Thus, in addition to resiting, a redesign of the proposed house may be necessary to better conform to the LUP's visual policies.

In conclusion, we would recommend redesign of the project due to inconsistencies with the LUP's ESHA policies. It appears to be possible for these policies to be met through resiting and/or redesign of the proposed residence. We appreciate the opportunity to comment on this project at this stage, and we may have additional comments after further review.

Best regards,



Stephanie Matraw
Coastal Planner
Central Coast District Office

RECEIVED

DEC 5 2 15 PM '01

NANCY LOMBARDI
CLERK TO THE BOARD

DEPUTY



NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before 12-10-01

Date of decision: 10-31-01

1. Name: KEN and SHARENE VIRNIG c/o LOMBARDO & GILLES

Address: 318 Cayuga Street, Salinas CA 93901

Telephone: 831-754-2444

2. Indicate your interest in the decision by placing a check mark below:

Applicant _____

Neighbor XX

Other (please state) _____

3. If you are not the applicant, please give the applicant's name:

MURRAY SMITH

4. Fill in the file number of the application that is the subject of this appeal below:

	Type of Application	Area
a) Planning Commission: FC-	<u>PLN000239</u>	<u>Del Monte Forest</u>
b) Zoning Administrator: ZA-	_____	_____
c) Minor Subdivision: MS-	_____	_____
d) Administrative Permit: AP-	_____	_____

EXHIBIT "A"

Appellant appeals the October 31, 2001, decision of the Planning Commission to approve demolition of a historic structure and construction of a two-story single-family dwelling. This appeal is brought on the basis that (1) there was a lack of a fair and impartial hearing; (2) the findings and decision are not supported by the evidence; and (3) the decision is contrary to law.

I.

LACK OF FAIR OR IMPARTIAL HEARING

The Planning Commission provided the applicant, and their respective representatives in support of the project an unlimited period of time to speak before the Planning Commission. The applicants and their representatives, a neighbor, architect, biologist and family members were not limited to the amount of time for their testimony. The Planning Commission broke for lunch, and without warning to the opposition, after the Planning Commission returned from lunch, informed the opponents that they would be limited to three minutes per person.

The opponents' representatives had prepared their testimony based on an understanding that, since the applicants and proponents for the project were not limited to three minutes in time, they would be treated in a similar manner.

II.

FINDINGS NOT SUPPORTED BY THE EVIDENCE

The Commission's findings for approval are supported by neither the evidence presented at the hearing nor the evidence cited in the Resolution.

Finding No. 1: This finding inaccurately states that the project conforms to the plans, policies, requirements and standards of the Local Coastal Program. Attached hereto and incorporated herein is Exhibit "B," a binder with specific policies for which the project is not compatible, including the following:

C.I.P. Section 20147.070.C.1: The project is substantially larger, more visible and obstructs public views to the ocean.

C.I.P. Section 20147.070.C.2: The project does not blend with the environment like the surrounding homes. As indicated in Section 6 of Exhibit "B," modifications of the home are mandated by this section of the Monterey County LCP;

Del Monte Forest Land Use
Plan, Policy 51:

The project is located on a knoll within the property area most visible from Seventeen Mile Drive and importing fill material is proposed, rather than excavation, which increases the project's visibility from Seventeen Mile Drive, contrary to the mandate of this policy.

Del Monte Forest Land Use
Plan, Policy 56:

The project blocks views to the ocean from surrounding scenic areas, as depicted on photos in Section 8 of Exhibit "B," contrary to the mandates of this policy.

C.I.P. Section 20.147.070.A.1:

The project driveway circuitously winds its way around to the back half of the property and behind the proposed structure, rather than providing simple and direct access, as mandated by this section of the Coastal Implementation Plan. The existing access is "simple and direct."

Del Monte Forest Land Use
Plan, Policy 57:

The applicant removed trees in violation of the County Code prior to submitting an application for the demolition of the existing historic residence and prior to proposing the two-story structure. Said tree removal was in direct violation of the County Code (See Section 3 of the Exhibit "B") and the proposal is, therefore, in violation of Del Monte Forest Land Use Plan, Policy 57.

Del Monte Forest Land Use
Plan, Policy 18:

Although the applicant's biological consultant classified the property as remnant native sand dune habitat, the County findings failed to recognize that Policy 18 limits development within this type of habitat to "low intensity scientific, educational or recreational activities." In this regard, the only manner in which the applicant could demolish a structure and rebuild in compliance would be to build in the same footprint, without disturbing any of the remnant dune habitat.

Del Monte Forest Land Use
Plan, Policy 74:

As indicated in the above analysis, this property is a remnant dune, and the development must be limited to the existing developed areas.

Finding No. 2: This finding incorrectly suggests that adoption of a negative declaration is appropriate. As indicated in Sections 1, 3, 4, 5, 6 and 8 of Exhibit "B," the amount of public controversy, a proposal to demolish a historic structure, development within a remnant dune

habitat and conflicting expert testimony prohibits adoption of a negative declaration and mandates an environmental impact report.

Finding No. 4, Water Availability: As documented in Section 2 of Exhibit "B," the water allocation for this project is at issue and an appeal has been filed with the Monterey Peninsula Water Management District with respect to the applicant's representation of the existing number of fixture units legally installed. To date, there is no clear explanation or valid water release form filed with the County of Monterey.

III.

THE DECISION WAS CONTRARY TO LAW

On August 29, 2001, the Planning Department Zoning Enforcement Division was notified that trees from the Smith property were removed without the proper permits and that, pursuant to Monterey County Code Section 2.90.130, the County of Monterey may not process a permit or deem it complete until such time as the property is completely restored to its pre-violation state. The County overlooked the violation, deemed the application complete and held a hearing. (Please refer to the evidence provided in Section 4 of Exhibit "B.")

Adoption of a Negative Declaration is contrary to law. As indicated above, the potential adverse environmental impacts and public controversy require preparation of an Environmental Impact Report.

STATE OF CALIFORNIA - THE RESOURCES AGENCY

Gray Davis, Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4463



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

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

JANIE M. O'BRIEN
3137 17 MIKE DR.
BOX 1037 PEBBLE BEACH, CA.
93953 (831) 625-1386
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

MONTEREY COUNTY

2. Brief description of development being appealed:

DEMOLITION OF HISTORIC HOUSE & CONSTRUCTION
OF OVER-SIZED HOUSE IN REMNANT DUNE
HABITAT EXPRESSLY PROTECTED IN LCP.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

3107 17 MIKE DR. PEBBLE BEACH
APN 008-012-007-000

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: XX
- 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-02-058
DATE FILED: 8/1/02
DISTRICT: Central

RECEIVED

JUN 20 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA
A-3-MCO-02-058
Smith Demo/Rebuild
Appeal

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.)

THIS PROJECT IS IN VIOLATION OF POLICIES CONTAINED IN THE NATURAL & VISUAL RESOURCES ELEMENTS IN THE OPERATIVE MCP. THESE POLICIES HAVE BEEN IDENTIFIED IN A MARCH 2002 LETTER FROM THE COASTAL COMMISSION AND ALSO IN TESTIMONY OF THE MONTEREY PENINSULA LEAGUE OF WOMEN VOTERS. THIS PROJECT IS COMPLETELY DISPROPORTIONATE TO THE LOT AND THE ADJACENT FRONT HIVE HOUSES. IT WILL STAND OUT LIKE A LIGHTHOUSE & IMPACT THE VIEWSHED OF THE BIRD ROCK VIEWING AREA WHICH IS THE MOST HEAVILY VISITED TOURIST STOP ON THE DRIVE. IT WILL SET A PRECEDENT THAT WILL ENCOURAGE MIAMI BEACH STYLE DEVELOPMENT IN WHAT IS NOW A CHARMING HOW KEY COASTAL STRETCH. IT MUST NOT BE PERMITTED. THE EFFICACY OF ANY ENVIRONMENTAL PROTECTIVE DOCUMENT IS DETERMINED BY ITS IMPLEMENTATION. THE IMPLEMENTATION IS THE STRICT RESPONSIBILITY OF THE JUDICIAL BODY, I.E. THE COASTAL COMMISSION.

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.

Jamie M. O'Brien
Signature of Appellant(s) or Authorized Agent
Date 6/19/02

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)
Date _____

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.)

- 1) Please see EXHIBIT A - attached letter from your office, dated 3-8-2002
- 2) THE AREA IS A ENVIRONMENTALLY SENSITIVE HABITAT - ESHA
- 3) CURRENT PLANS ARE APPROX. 3000 SQ. FT BIGGER THAN THE HOME ON THE SITE - APPROX 2000 - AT 5000 SQ. FT. THAT IS 150% BIGGER
- 4) ALSO, CURRENT DRIVEWAY IS APPROX 20' x 30' = 600 SQ. FT. NEW DRIVEWAY, MOTOR COURT ETC IS 5000 SQ. FT.
- 5) AT LEAST 10,000+ SQ. FT. WILL BE ON DUNES HABITAT OR ABOUT 4-5 TIMES THE CURRENT HOME.
- 6) GASTVIEW FROM SPYGLASS HILL ROAD WILL BE DESTROYED
- 7) HOME LOCATION IS ON THE HIGHEST POINT OF THE PROPERTY, INSTEAD OF FOLLOWING LUP POLICIES OR BLENDING INTO THE ENVIRONMENT.

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.

Robert Berglass (ROBERT BERGLASS)

Signature of Appellant(s) or Authorized Agent

Date 6-20-2002

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

SECTION VI. Agent Authorization

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

Robert Berglass

Signature of Appellant(s)

Date 6-20-2002

A-3-MCO-02-058
Smith Demo/Rebuild
Appeal

Exhibit F
pg. 14 of 18

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 96040
(831) 427-4463



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED

Please review attached appeal information sheet prior to completing this form.

JUN 26 2002

SECTION I. Appellant(s):

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

Charles T. Olvis

1153 Spyglass Hill Rd

P.O. Box 1533

Pebble Beach, CA 93953

(831) 624-8154(h) 755-5216(wx)

Zip

Area Code Phone No:

SECTION II. Decision Being Appealed

1. Name of local/port government:

Monterey County

2. Brief description of development being appealed:

Demolition of existing residence and construction of single-family residence in remnant dune habitat.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

3105 Seventeen Mile Drive, Pebble Beach

APN 008-012-007-000

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: XXX

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-02-058

DATE FILED: 8/1/02

DISTRICT: Central

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

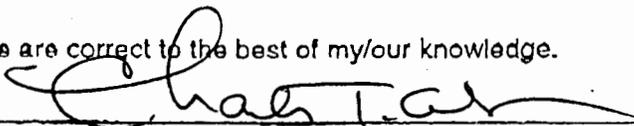
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

The project does not conform to the following policies and sections of the Monterey County LCP: LUP Policy 8; 13;15;17. It additionally does not conform CIP Section 20.147.070.C; C.2.; and Monterey County LCP Chapter 6. This appellant is particularly concerned with the expanded "footprint" of the new project. It appears that this project greatly exceeds the limits of the original project. It furthermore requires that a significant amount of fill be utilized to increase the height of the residence. With reference to LCP 20.147.070.C.2, the new project can not possibly blend into the environment when compared to present structure. This observation is relevant especially considering all the trees which have been removed by the present owner.

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.



Signature of Appellant(s) or Authorized Agent
Charles T. Olvis
Date 6/24/02

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)

Date A-3-MCO-02-058
Smith Demo/Rebuild
Appeal

CALIFORNIA COASTAL COMMISSION

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



JUN 27 2002

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

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

LEAGUE OF WOMEN VOTERS OF THE MONTEREY PENINSULA

P.O. Box 1995

MONTEREY CA 93942

(831) 648-8683

Zip

Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

MONTEREY COUNTY

2. Brief description of development being appealed:

DEMOLITION OF HISTORIC RESOURCE AND
CONSTRUCTION OF SINGLE FAMILY DWELLING
IN REMNANT DUNE HABITAT

3. Development's location (street address, assessor's parcel number, cross street, etc.):

3105 SEVENTEEN MILE DRIVE, PEBBLE BEACH
APN 008-012-007-000

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: XX
- 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-02-058

DATE FILED: 8/1/02

DISTRICT: Central

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.)

PROPOSED PROJECT IS IN CLEAR VIOLATION OF THE FOLLOWING POLICIES UNDER THE BSHA SECTION OF THE HCP: POLICIES 8, 14 AND 5.5:

THE SCENIC & VISUAL RESOURCES IN THE HCP STATE " IN ORDER TO PROTECT THE SCENIC AND VISUAL RESOURCES OF THE DEL MONTE FOREST, ONLY COMPATIBLE DEVELOPMENT ALONG THE 17 MINE DRIVE SHOULD BE ALLOWED.

IT IS INCUMBENT UPON THE COUNTY TO COMPLY WITH ITS OWN DOCUMENT. IT IS AS AN INVALUABLE OPPORTUNITY TO ADOPT EXPLICIT CRITERIA TO GOVERN FUTURE DEVELOPMENT IN THIS SENSITIVE COASTAL AREA.

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.

Barbara G. Bean, President LWVMP
Signature of Appellant(s) Or Authorized Agent

Date 6/26/02

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)

Date

RECEIVED

FEB 25 2002

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Elkhorn
Native Plant Nursery

**Assessment of Potential Impacts on
Sensitive Biological Features
at
3105 17 Mile Drive
Pebble Beach, CA 93950
APN 008-12-007**

Prepared For:

James Smith
Architect

Prepared By:

Jean E. Ferreira
Botanist
Elkhorn Native Plant Nursery

August 22, 2000

A-3-MCO-02-058
Smith Demo/Rebuild

Appeal

Exhibit **G**
pg. 1 of 13

Elkhorn Native Plant Nursery

Property & Project Background Information

On August 15 and 22, 2000, Jean Ferreira conducted a biological survey at 3105 17 Mile Drive, Pebble Beach, California. The entire parcel was surveyed in compliance with the permit process of Monterey County. The owners of the parcel are proposing to demolish the existing home and garage to construct a new single family residence with an attached 3-car garage with a second story. A new driveway will enter the west side of the parcel from 17 Mile Drive, swing around the south side of the new house, near the parcel boundary and meet the garage at the rear of the property. The parcel is # 008-12-007 and is 42,121 ft² (.967 ac). It is located on the eastside of 17 Mile Drive in the Spyglass Hill sand dune area, just south of Bird Rock.

Survey method

The survey was conducted by walking very slowly in a back and forth zigzag pattern, covering the entire parcel. The survey was conducted between 9:30am and 12:30pm on Tuesday, Aug 5, 2000. It was a sunny calm morning. Mapping was completed on Tuesday August 22, 2000 during the morning hours.

Findings

The parcel is located just across the 17 Mile Drive from the ocean edge, between Point Joe and Cypress Point. The area consists of a fairly large dune system referred to as the Spyglass Hill sand dunes. The study parcel was originally central dune scrub habitat, as were all adjacent properties. Homes have been developed in the immediate area on large parcels, typically about 1 acre in size.

A complete plant species list was created for the parcel (Table 1). Some animal species were observed on the site; however, the list in Table 2 contains species that are commonly expected to be in the mid-dunes of the Pebble Beach area.

The existing house and its immediate perimeter have been landscaped with non-native species for many years. Monterey Cypress, Monterey Pines, and Australian Tea Trees were planted on the north, west, and southern boundaries to provide screening. Iceplant and other succulents were planted in beds near the house and on the slope immediately below and behind the house. The landscaped area is presently of no significance biologically. It is mapped on Map 1 as 'Landscaping'. The areas outside of the landscaped area has native

Elkhorn Native Plant Nursery

Table 1. Plant Species List for the Smith Residence: 3105 17 Mile Drive, Pebble Beach, CA. Compiled on 15-Aug-00.

Family	Species	Common Name	Location on Site		
			Habitat Area	Deg. Habit.	Landscaping
Aizoaceae (Iceplant)	<i>Carpobrotus edulis</i> *	Iceplant	X	X	X
	<i>Drosanthemum floribundum</i> *	Rosea ice plant			X
Asteraceae (Sunflower)	<i>Ericameria ericoides</i>	Mock heather	X	X	X
	<i>Lessingia filanginifolia</i> var. <i>californica</i>	Beach aster	X		
	<i>Artemisia pycnocephala</i>	Beach sagewort	X	X	X
	<i>Gnaphalium stramineum</i>	Cudweed	X	X	X
	<i>Arctotis hybrid</i> *	African daisy			X
Boraginaceae (Borage)	<i>Crypthanta leiocarpa</i>	Popcorn flower	X	X	
Crassulaceae (Stonecrop)	<i>Dudleya caespitosa</i>	Sea lettuce	X		
	<i>Crassula argentea</i> *	Jade Plant			X
	<i>Sempervivum tectorum</i> *	Hens & Chicks			X
Cupressaceae (Cypress)	<i>Cupressus macrocarpa</i>	Monterey cypress		X	X
Cyperaceae (Sedge)	<i>Carex pansa</i>	Dune sedge		X	
Fabaceae (Pea)	<i>Lotus hoemannii</i> va. <i>orbicularis</i>	Woolly lotus	X		
	<i>Lupinus arboreus</i>	Bush lupine	X	X	
Liliaceae (Lily)	<i>Agave spp.</i> *	Agave		X	X
	<i>Agapanthus orientalis</i> *	Lily-of-the-nile			X
	<i>Kniphofia uvaria</i> *	Red hot poker			X
Myrtaceae (Myrtle)	<i>Leptospermum laevigatum</i> *	Australian tea Tree			X
Nyctaginaceae (Four O'Clock)	<i>Abronia latifolia</i>	Yellow sand verbena	X	X	
	<i>Abronia umbellata</i>	Pink sand verbena	X		
	<i>Sonchus oleraceus</i> *	Common sow thistle		X	
	<i>Coryza canadensis</i> *	Horseweed		X	X
Onagraceae (Evening Primrose)	<i>Camissonia cheiranthifolia</i>	Beach primrose	X	X	
Pittosporaceae	<i>Pittosporum undulatum</i> *	Victoria box		X	X
Polygonaceae (Buckwheat)	<i>Polygonum paronychia</i>	Dune knotweed	X		
	<i>Chorizanthe pungens</i> var. <i>pungens</i>	Monterey spineflower	X		
	<i>Eriogonum parvifolium</i>	Coast buckwheat	X	X	
Poaceae (Grass)	<i>Poa douglasii</i>	Dune bluegrass	X		
	<i>Festuca sp. (annual)</i> *	Fescue		X	X
	<i>Bromus diandrus</i>	Rippgut brome		X	X
	<i>Polypogon monspeliensis</i> *	Rabbitfoot grass		X	X
Scrophulariaceae (Figwort)	<i>Castilleja latifolia</i>	Monterey paintbrush	X		

* = Non-native species

List compiled by Jean Ferrara

Elkhorn Native Plant Nursery

Table 2. Potential Animal Species List for the Smith Residence: 3105 17 Mile Drive,
Pebble Beach, CA.

Family	Species	Common Name
Mammals		
Procyonidae	<i>Procyon lotor</i>	Raccoon
Mustelidae	<i>Mephitis mephitis</i>	Stripe Skunk
Canidae	<i>Canis latrans</i>	Coyote
	<i>Vulpes fulva</i>	Red Fox
Sciuridae	<i>Citellus beecheyi</i>	CA Ground Squirrel
Geomyidae	<i>Thomomys bottae</i>	Valley Pocket Gopher
Cricetidae (Mice)	<i>Peromyscus spp.</i>	Mice
	<i>Microtus californicus</i>	CA vole
Leporidae (Rabbit)	<i>Lepus californicus</i>	Blacktail Jackrabbit
	<i>Sylvilagus ssp.</i>	
Cervidae	<i>Odocoileus hemionus</i>	Black-tailed Deer
Birds		
Pelecanidae		
Recurvirostricae		
Laridae		
Accipitridae		
Falconidae		
Emberizidae		

List compiled by Jean Ferreira

Elkhorn Native Plant Nursery

central dune scrub habitat remaining, some in a natural state on the steepest part of the slope behind the existing house, and some in a degraded state, that is found on the flatter areas closer to the existing building. The degraded habitat areas have a mix of native and non-native species, with low diversity of native species and low coverage. It is shown on Map 1 as 'Degraded Habitat'. The habitat area on the slope at the rear of the lot is primarily native plant species with fairly good cover for the community. This area provides habitat for the native insect and animal life that is associated with the central dune scrub. It is delineated on Map 1 as 'Habitat' area.

Sensitive Plant Community

The central dune scrub community is listed by the California Department of Fish and Game as a sensitive habitat. This ranking does not give it legal status under the endangered species laws but draws attention to it as a threatened community. The main threats to this community have been urbanization, sand mining, and human recreational use. Numerous special status (rare, threatened, endangered) plants and animals are found in the community of central dune scrub in the Monterey Bay area. Table 3 lists the potential special status species found in this habitat. The survey conducted for this report targeted these species.

Sensitive Plant Species

Table 3 lists the potential sensitive plant species for the coastal dune areas on the Monterey Bay. Although the survey was conducted in August, which is late in the blooming season, due to my familiarity with these species and their microhabitats from past surveys of their known populations, the plants would be recognizable on the Smith parcel, if present.

One special status species was found on the Smith property: *Chorizanthe pungens* var. *pungens*, the Monterey spine flower. It occurs scattered through the upper habitat area, shown on Map 1. *C. pungens* var. *pungens* was listed by the federal government as a threatened species in 1994, due to a loss of habitat. Threatened species are defined as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

C. pungens var. *pungens* is a prostrate annual with light pink flowers with small hooked awns on the involucre that give the flowers a spiny feel. It is found only in the coastal dunes and coastal scrub of the Monterey Bay area. The *C. pungens* var. *pungens* is an annual plant, surviving from year to year by the

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Table 3. Potential Special Status Plants and Animals in Fore and Mid-Dune Systems of the Monterey Bay.

Species	Common Name	Listing		
		Fed	CA	CNPS
Plants				
<i>Arctostaphylos pumila</i>	Sandmat Manzanita	SC		1B
<i>Astragalus tener var. titi</i>	Coastal Dunes Milk-vetch	E	E	1B
<i>Chorizanthe pungens var. pungens</i>	Monterey Spineflower	T		1B
<i>Cupressus macrocarpa</i>	Monterey Cypress	SC		1B
<i>Erysimum ammophilium</i>	Coast Wallflower	SC		1B
<i>Erysimum menziesii var. menziesii</i>	Menzie's Wallflower	E	E	1B
<i>Erysimum menziesii var. yadonii</i>	Yadon's Wallflower	E	E	1B
<i>Gilia tenuiflora ssp. arenaria</i>	Sand Gilia	E	T	1B
<i>Layia carnosa</i>	Beach Layia	E	E	1B
<i>Lupinus tidestromii</i>	Tidestrom's Lupine	E	E	1B
<i>Potentilla hickmanii</i>	Hickman's Cinquefoil	E	E	1B
<i>Trifolium polyodon</i>	Pacific Grove Clover	SC	R	1B
Insects				
CDFG				
<i>Coelus globosus</i>	Globose Dune Beetle	SC		
<i>Euphilotes enoptes smithi</i>	Smith's Blue Butterfly	E		
Reptiles				
<i>Anniella pulchra nigra</i>	Black Legless Lizard	PE		SC
Birds				
<i>Charadrius alexandrinus nivosus</i>	Western Snowy Plover	T		SC

SC = Species of Concern

E = Endangered

R = Rare

T = Threatened

1B = Plants Rare, Threatened or Endangered in CA, CNPS ranking

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preservation of its seed bank in the upper layers of the sand. Locations of individual plants may vary slightly from year to year, requiring conservation efforts to focus on the habitat rather than individuals.

Although the native stands of Monterey Cypress are considered a special status species, all Monterey cypress on the Smith property have been planted and the parcel is north of the natural population of Monterey cypress in Pebble Beach.

Sensitive Animal Species

Four sensitive animal species are listed on Table 3, as potentially present in dune systems in the Monterey Bay area. None of the four were confirmed to be present on the Smith parcel.

The globose dune beetle is typically found within the top layer of sand at the base of native plants in the fore-dune. The beetle is typically associated with beach bur and sand verbena. The Smith site is mid-dune, with no beach bur. What sand verbena is present is small and scattered. Although not confirmed on the site, preservation of the 'Habitat' area, will preserve potential habitat for the globose dune beetle.

The Smith's Blue butterfly is found on fore and mid-dunes with populations of its host plants, the dune buckwheat and coast buckwheat. The Smith property has only a couple of individuals of the dune buckwheat present, not enough to attract the butterfly. Coast buckwheat is absent from the site. The individuals of the dune buckwheat are primarily in the 'Habitat' area. Again if this area is preserved, the buckwheats will be available for the butterflies.

The Black legless lizard is also found below the surface of the sand, typically in mid to rear-dune areas, in the mulch and under canopy of mature shrubs such as mock heather. The mid-dune vegetation on the Smith parcel is primarily composed of sub-shrubs and herbaceous plants, that do not provide the protection that legless lizards seek. If the lizard is present on the site, they would likely be near the mature mock heather shrubs in the 'Habitat' area.

The western snowy plover feeds and nests on fore-dunes and salt flats. The Smith parcel does not have the correct habitat to attract the plovers.

Potential Impacts

The footprint of the proposed development does not impact any visible Monterey spineflower from this spring's bloom, but as designed will cover

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potential habitat. Specifically, the driveway to the southwest of the house and the motor court area will cover approximately 2,600 ft². of sand dune habitat that is presently available for colonization by the Monterey spineflower. This area is presently in a degraded state, probably due to higher foot traffic than received on the hillside (above 32'). There are also large patches of ice plant within this area; habitat exists in the pocket between patches, a niche Monterey spineflower is very capable of colonizing. The western edge of the habitat area will also be eliminated under the present design. A slight reduction in size of the motor court could remedy this potential impact.

Mitigation Recommendations

1. Reduce size of motor court on southeast side by eliminating the semi-circle extension and pulling in the south corner 10 feet.
2. Do not change the grade beyond the new edge of motor court; Monterey spine flower is an annual plant, maintaining grade to preserve seed bank is critical.
3. All sand removed during grading must be moved, stored, and/or taken off site to the northwest side of the parcel.
4. Edge of construction corridor adjacent to the habitat area must be kept under 5 feet width and fenced with a 5-foot construction fence. No material storage or construction traffic of any kind will be allowed on the habitat area.
5. The permanent loss of approximately 2,600 ft². of potential Monterey spineflower habitat shall be offset by recreating spineflower habitat on 5,300 ft². of restored dunes. The restored dune habitat areas will be on the rear slope of the parcel presently covered by iceplant and by the creation of a new dune on the northwest corner of the lot. Habitat area on the rear slope shall be enhanced by killing ice plant within the area with herbicide and left to die in place. Manual removal will cause too much disturbance of the hillside. Thinning of the dead iceplant mats shall be considered to open up the sand surface. Planting of Monterey spineflower plugs or seed and monitoring the results shall be first outlined in a restoration plan and performed by a qualified restoration botanist under the approval of the USFWS. The new dune on the west side of the house will be planted with native dune species. Bare sand openings for native annuals to colonize will be designed into the dune planting and into the outlying landscape where possible.

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6. A biological monitor shall inspect site before construction, coordinate establishment of the construction boundary on edge of habitat area, oversee protection fence construction, monitor grading and periodically check construction for violations of these mitigation recommendations.
7. During a pre-construction meeting with the architect or owner, construction manager, and sub-contractors, the biological monitor will make a presentation to the group on the sensitivity of the habitat and discuss protection measures for the habitat during the construction phase. All sub-contracts shall include a statement that the sub-contractor shall not disturb the habitat area by grading, parking, material storage, human traffic, or any other construction activity.
8. A management goal for present and future property owners should be to protect the rear lot hillside and the new dune on the northwest corner of the parcel as 'Dune Habitat Area'. Foot traffic should be kept to a minimum in these fragile areas.

Mitigated Impacts

If the mitigation measures are implemented as outlined above, approximately a 2,600 ft². area of potential Monterey spineflower habitat will be permanently lost under the drive and motor court, and approximately 5,300 ft². of dunes on the hillside and the northwest corner of the parcel will be gradually returned to available habitat. If the globose dune beetle or legless lizard is present, their habitat will be protected during the construction phase. In my opinion these measure will reduce the impacts to insignificance.

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FEB 25 2002

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COASTAL COMMISSION
CENTRAL COAST AREA

Elkhorn
Native Plant Nursery

June 12, 2001

Amendment to:

Assessment of Potential Impacts on Sensitive Biological Features at 3105 17-Mile Drive, Pebble Beach, CA 93950, APN 008-12-007, Jean E. Ferreira, Elkhorn Native Plant Nursery, August 22, 2000.

Prepared for: James Smith, Architect
Prepared by: Jean Ferreira, Botanist, Elkhorn Native Plant Nursery

The initial biological survey was conducted and a report written in August of 2000. During that survey, only one special status species, *Chorizanthe pungens* var. *pungens*, the Monterey spineflower, was found on the project site. The plant locations were mapped, and potential impacts and mitigation recommendations were made in the report.

Since August 2000, the proposed development plan has been changed, moving the location of the house, garage and motor court back on the parcel approximately 20 feet. The driveway has been shortened and moved to the southern edge of the parcel. A new survey for the Monterey spineflower was conducted by Jean Ferreira, on May 8, 2001. The survey was to assess any impact of the plan changes and also to have on record a biotic survey of the parcel, completed during the peak of the spring season.

Findings

No additional sensitive plant or animal species were noted on the parcel during the second survey. The distribution of the Monterey spineflower shifted slightly on the site, as typical with annual plants. In May 2001, two individuals of the spineflower were growing in the 'degraded habitat' area on the proposed site of the motor court. The largest cluster of plants on the property were generally in the same location as last year, at the base of the hill, in the center of the parcel.

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The spineflower plants on the Smith parcel were healthy, robust, and supported a large number of flowers.

Potential Impacts

Originally, the proposed development was sited on developed, landscaped, and degraded habitat areas as mapped in the August 2000 biotic report. The new location will encroach into the mapped habitat area, approximately 800 ft². The new siting of the motor court covers the current location of a few individuals of spineflower. It also has the potential to negatively impact the largest cluster of spineflower plants on the site, due to the proximity to the plants, the slope, and the nature of shifting sand. Because annual plants such as the spineflower rely on their seed stored in the soil to create subsequent years population, the preservation of that seed bank in the top three inches of sand is critical for the continuation on the population.

Currently there is approximately 7,800 ft² of habitat, and 2,600 ft² of degraded habitat on the site. The proposed development will impact the following areas listed in Table A-1.

Table A-1. Habitat areas for the Smith Residence: 3105 17 Mile Dr, Pebble Beach, CA.

	Current Area	Area To Be Lost by Development	
		Original Siting	New Proposal
Habitat	7,800 sq. ft.	0	800 sq. ft.
Degraded Habitat	2,600 sq. ft.	2,600 sq. ft.	2,600 sq. ft.
Total	10,400 sq. ft.	2,600 sq. ft.	3,400 sq. ft.

Mitigation Recommendations

1. Reduce the size of the motor court on southeast side by eliminating the extra ten feet of D. G. surfacing extending beyond the eastern edge of the garage. This will reduce the impacted habitat area by 200 ft², lowering the total impacted area from 3,400 ft² to 3,200 ft².

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2. Do not change the grade beyond the new edge of motor court; Monterey spine flower is an annual plant, maintaining grade in the preserved habitat area (eastern slope of the parcel mapped as 'habitat') to preserve seed bank is critical.
3. All sand removed during grading must be moved, stored, and/or taken off site to the northwest side of the parcel.
4. Edge of construction corridor adjacent to the preserved habitat area must be kept under 3 foot width and fenced with a 5-foot construction fence. No material storage or construction traffic of any kind will be allowed on the preserved habitat area.
5. The seed from the Monterey spineflower plants that will be covered by the development footprint, shall be collected by a qualified biologist at the correct time of year for mature seed and properly stored (in dry, cool and consistent temperature) for propagation or broadcast onto the restoration sites. Seed shall not be stored more than twelve months, due to the drop in viability.
6. The permanent loss of approximately 3,200 ft² of current and potential Monterey spineflower habitat shall be offset by creating spineflower habitat on 7,000 ft² of restored or enhanced dunes (hereinafter referred to collectively as "restored dunes"). These restored dune areas will include area on the rear slope of the parcel presently covered by iceplant, with the balance filled by the creation of a new dune habitat on the northwest corner of the lot in the front of the home. Restored dune areas shall be enhanced by killing ice plant with herbicide and leaving it to die in place. Manual removal of iceplant will not be used on slopes because it will result in too much disturbance of the hillside. Thinning of the dead iceplant mats shall be considered to open up the sand surface. The restored dune areas will be planted with native dune species in addition to the spineflower. Bare sand openings for native annuals to colonize will be designed into the dune planting and into the outlying landscape where possible.
7. A restoration plan for the propagation and introduction of the Monterey spineflower on the restored dune areas will be written and implemented by a qualified restoration botanist. The goal of the restoration plan shall be to create self-perpetuating pockets of Monterey spineflower in numerous locations on the restored habitat areas. The plan shall outline methods of propagation, planting, monitoring. The monitoring period will cover a minimum

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of 3 years from the date of first flowering of the spineflower on the treatment area and will continue until the success criteria has been met. The criteria for determining the success of the introduction of spineflower will be the presence of at least two additional pockets of Monterey spineflower in the restored dune areas that have been self-perpetuating for at least three seasons, with numbers of individuals increasing or remaining stable during the monitoring period.

8. A biological monitor shall inspect site before construction, coordinate establishment of the construction boundary on edge of habitat area, oversee protection fence construction, monitor grading and periodically check construction for consistency with these mitigation recommendations.
9. During a pre-construction meeting with the architect or owner, construction manager, and sub-contractors, the biological monitor will make a presentation to the group on the sensitivity of the habitat and discuss protection measures for the habitat during the construction phase. All sub-contracts shall include a statement that the sub-contractor shall not disturb the habitat area by grading, parking, material storage, human traffic, or any other construction activity.
10. A management goal for present and future property owners should be to protect the rear lot hillside and the new habitat area on the northwest corner of the parcel as 'Dune Habitat Area'. Foot traffic should be kept to a single path in these fragile areas.

Mitigated Impacts

If the mitigation measures are implemented as outlined above, approximately a 3,200 ft² area of current and potential Monterey spineflower habitat will be permanently lost under the drive and motor court, and 7,000 ft² of dunes on the parcel will be gradually returned to available habitat. If the globose dune beetle or legless lizard is present, all but 600 ft² their habitat will be protected during the construction phase. In my opinion these measures will reduce the impacts on the site and to the area to insignificance.

As an alternative, the proposed structures could be shifted ten feet toward the 17-Mile Drive. This shift, in addition to the elimination of the extra parking place at the eastern end of the garage, would eliminate the impact to the habitat area. Project impact would be reduced to the loss of 2,600 ft² of degraded habitat, as addressed in the biological report of August 2000, and reduce the amount of land that must be restored as mitigation.

THOMAS K. MOSS
Coastal Biologist

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NATIVE LANDSCAPE RESTORATION PLAN

3129 17-Mile Drive, Pebble Beach, CA
A.P.N. 008-263-03

Prepared For

The Paul Davis Partnership
511 Hartnell Street
Monterey, CA 93940

August 29, 1991

248 Chestnut Street
Pacific Grove, CA 93950

(408) 373-8573

A-3-MCO-02-058
Smith Demo/Rebuild
Appeal

Exhibit *H*
pg. *1* of *3*

NATIVE LANDSCAPE RESTORATION PLAN

3129 17-Mile Drive, Pebble Beach, CA
A.P.N. 008-263-03

INTRODUCTION

BACKGROUND

This plan describes a program for the restoration and enhancement of the native plant community, or "native landscape," on the site. Specific procedures and standards are defined for restoring the vegetation.

Restoration of the native landscape is required as a condition of approval for the proposed development of a major addition to an existing residence on the site. In addition, a three year monitoring program is required to identify any follow-up maintenance needs and to ensure the success of the restoration project. Because of site condition and revegetation methodology, an extended period of monitoring totalling five years is recommended.

A botanical survey was prepared for the site in November 1978, and no rare or endangered plant species were recorded. However, because the survey was conducted at a time of year when the plant species of special concern are dormant and usually not visible, the validity of that survey is questionable. Therefore, in conjunction with the preparation of this landscape plan, the site was surveyed in July 1991 for the presence of any species of special concern. Five Tidestrom's lupines were located on the property to the east of the proposed building envelope. Protection measures are proposed in this plan for preventing damage during construction to this area and to other areas on the site that contain existing stands of native dune plants.

The total area of the property is 51,359 square feet. As a condition of approval of the residence addition, approximately 85 percent, or 43,655 square feet, of the property will require restoration.

REGIONAL SETTING

The property is located on coastal dunes near Fanshell Beach on the seaward extremity of the Monterey Peninsula. The dunes in this area form the southern boundary of the Asilomar Dunes Complex, which extends to the

north to Pt. Pinos, approximately four miles, forming a narrow, disjunct band of dunes.

In recent times, much of the original native flora and fauna of this relatively small and isolated dune system has been severely altered. Development of golf courses, hotels and resorts, and residences have directly impacted the dunes. Indirect impacts have resulted from the introduction of invasive, non-native (exotic) plants which have overrun and crowded out much of the remaining native flora.

By far, the most abundant and aggressive exotic plant in the Asilomar Dunes is the Hottentot fig ice plant. Originally from South Africa, ice plant has been used extensively in California as a bank stabilizer, particularly along state highways and on eroding coastal dunes. Ice plant has significantly degraded natural habitat values throughout the Asilomar Dunes.

The native landscape of the Asilomar Dunes is comprised of a community of coastal plants and associated animal life distinct from all other areas of California. For this reason, the natural landscape is worthy of preservation, maximum protection, and restoration where damaged or disturbed.

The California Coastal Commission considers the Asilomar Dunes to be an "environmentally sensitive habitat area", which is defined in the California Coastal Act of 1972, section 30107.5, as:

"... any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

Six plant and animal species of special concern to both state and federal wildlife agencies are present in the Asilomar Dunes. These species include the following:*

- Beach layia (Layia carnosa) FC2, SSC
- California black legless lizard (Anniella pulchra ssp. nigra) FC2, SSC
- Dune gilia (Gilia tenuifora ssp. arenaria)
- Menzies' wallflower (Erysimum menziesii ssp. menziesii) FC2, SE
- Sandmat manzanita (Arctostaphylos pumila) FC2, SSC
- Tidestrom's lupine (Lupinus tidestromii ssp. tidestromii) FC2, SE

* FC2 - Federal Candidate Category 2; SE - State Endangered; SSC - State Special Concern

Jeff Norman
Consulting Biologist
P.O. Box 15
Big Sur, CA 93920
(831) 667-0105
18 September 2001

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COASTAL COMMISSION
CENTRAL COAST AREA

Kristina Berry
Monterey County Planning and Building Inspection Department
P.O. Box 1208
Salinas, CA 93901

RE: Biotic resources/impacts, Smith property, Pebble Beach.

Dear Ms. Berry:

At the request of Mr. Ken Virnig, I am submitting to you the following comments regarding potential biological impacts of the Smith project.

1. Implementation of the proposed project may result in impacts to Smith's blue butterfly (*Euphilotes enoptes smithi*), a Federally-listed endangered insect. The Smith property supports a population of one of the butterfly's host food plants, seacliff buckwheat (*Eriogonum parvifolium*). Although the biotic reports prepared for the Smith project mention the presence of seacliff buckwheat plants (called both coast buckwheat and dune buckwheat therein), their location on-site is not made clear. I would disagree with the conclusion that there are insufficient buckwheat plants on the Smith property to support Smith's blue; since neighboring properties within the short flight distance of the butterfly have adequate buckwheat, the few buckwheat plants on the Smith property would help support a potential local population of Smith's blue. The biotic report should have described more carefully the location of the buckwheat plants in relationship to the project, and what specific impacts to these plants may occur. A consideration of source habitat for Smith's blue on adjoining properties should also have been included.

2. I question the adequacy of restoring remnant dune habitat as mitigation for biotic impacts on the Smith property. This property consists of environmentally sensitive habitat that is recognized in the Del Monte Forest Land Use Plan as remnant dunes. Avoidance of sensitive habitat, and restoration of the damage already done by Mr. Smith to the habitat, would be required to achieve consistency with LUP policy toward ESHAs. Specifically, the impacts to Monterey spine-flower (*Chorizanthe pungens* var. *pungens*), a Federally-listed threatened plant, would be better reduced by minimizing the driveway so that vehicle access is limited to the front of the residence. Thus the high habitat value of the dunes on the parcel, and their contribution to the biodiversity of the adjoining dune tracts, would be retained. Additional mitigation could be

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Smith Demo/Rebuild
1 Appeal

Exhibit I
pg. 1 of 2

derived by eradicating the iceplant on the property and replacing it with native dune species (including Monterey spine-flower), although this should not be the primary mitigation.

3. Because the project involves the taking of a Federally-listed plant (Monterey spine-flower) and the potential taking of a Federally-listed animal (Smith's blue butterfly), consultation with the U.S. Fish and Wildlife Service (FWS) should occur. FWS should be involved in the design of any mitigation measures involving Federally-listed species.

4. According to Mr. Virnig, the height of the proposed new Smith residence would be 28 feet. The greatly-expanded footprint would be built up toward the rear to attain this overall altitude; thus, the added height increase toward the rear of the footprint will be in excess of 28 feet. The mass and altitude of the new structure could shade much of the proposed dune restoration, resulting in failure to meet the stated success criteria for Monterey spine-flower mitigation. Structural shading could also substantially reduce habitat value in dune areas which would otherwise be unaffected by the project, causing additional impacts to Monterey spine-flower. If shading causes senescence or reduction of flowering of nearby buckwheat plants, an impact on Smith's blue butterfly may result.

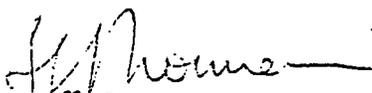
5. A substantial loss of dune habitat occurred when a row of conifers was cut down and chipped. The chipping waste was then spread over an area along the boundary with the Berglass property. According to Mr. Virnig, this occurred in late 1999 or early 2000, and without biological review. The biotic consequence of this action has been to create a thick mulch layer over the surface of the dune substrate, effectively destroying any dune vegetation which may have been present. The continued presence of this mulch layer is suppressing germination of any seeds which may be dormant in the substrate—any rare dune flora which may have been present has essentially been "put on ice." Such destruction of sensitive habitat prior to the performance of biological surveying is unfortunate indeed.

6. The biotic reports prepared for the Smith project should also discuss impacts to other rare plants, such as Monterey Indian paintbrush (*Castilleja latifolia*). This plant is present on the Smith property, yet is not mentioned in the impact/mitigation sections.

7. Suitable habitat is present on the Smith property for both the globose dune beetle (*Coelus globosus*), a Federal Special Concern species; and the black legless lizard (*Anniella pulchra nigra*), a California Special Concern species. However, biotic surveying for them was not conducted (or at least not described).

In particular, since I have found black legless lizards under boards in the Pebble Beach dunes, the categorization of the degraded areas as being unsuitable habitat is not supportable.

Sincerely,



Jeff Norman
A-3-MCO-02-058
Smith Demo/Rebuild
2 Appeal

Exhibit I
pg. 2 of 2

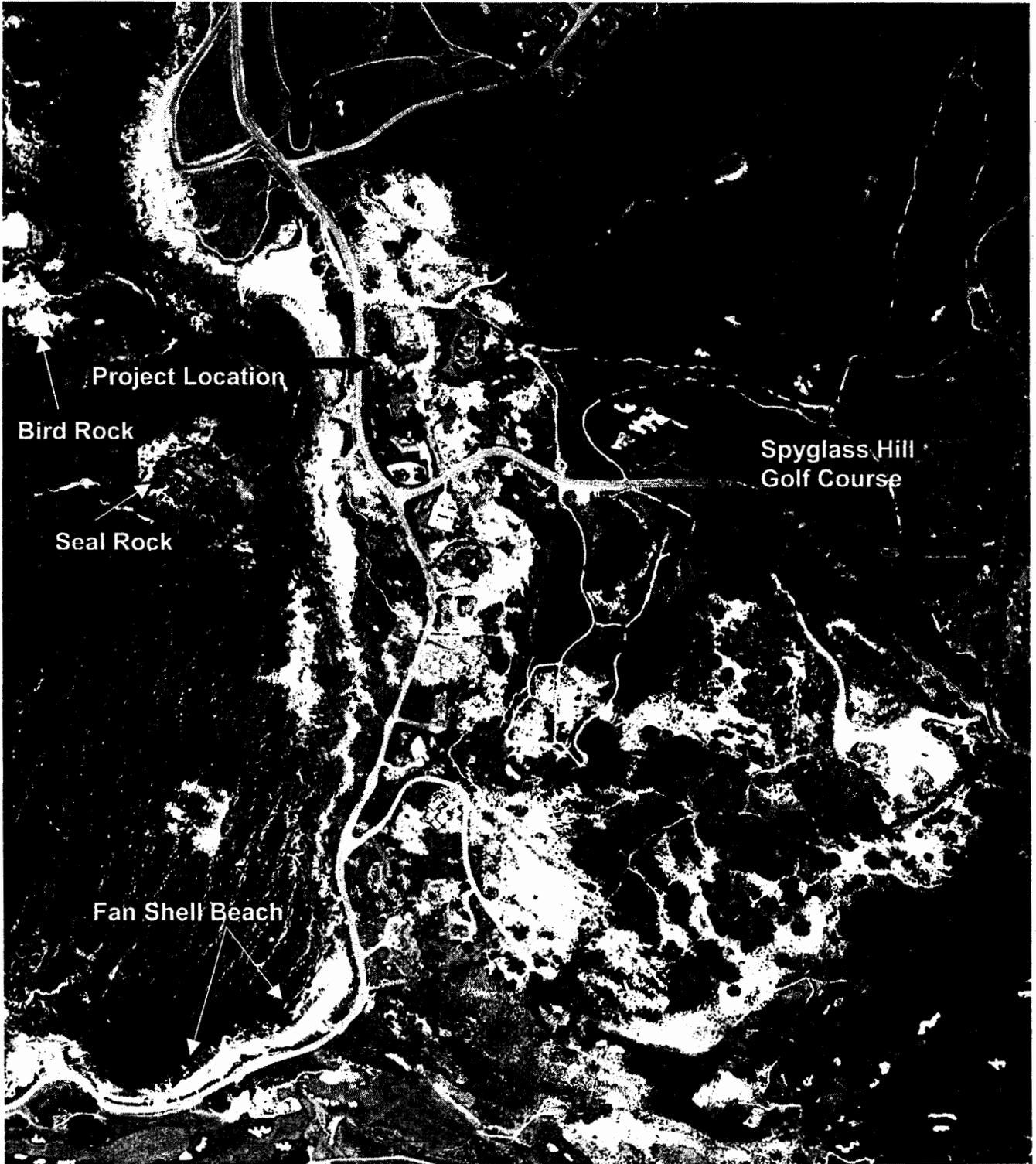


Exhibit J
2001 Aerial Photo
A-3-MCO-02-058
Smith Demo/Rebuild Appeal

View from corner of 17-Mile Drive and The Dunes.

Existing House

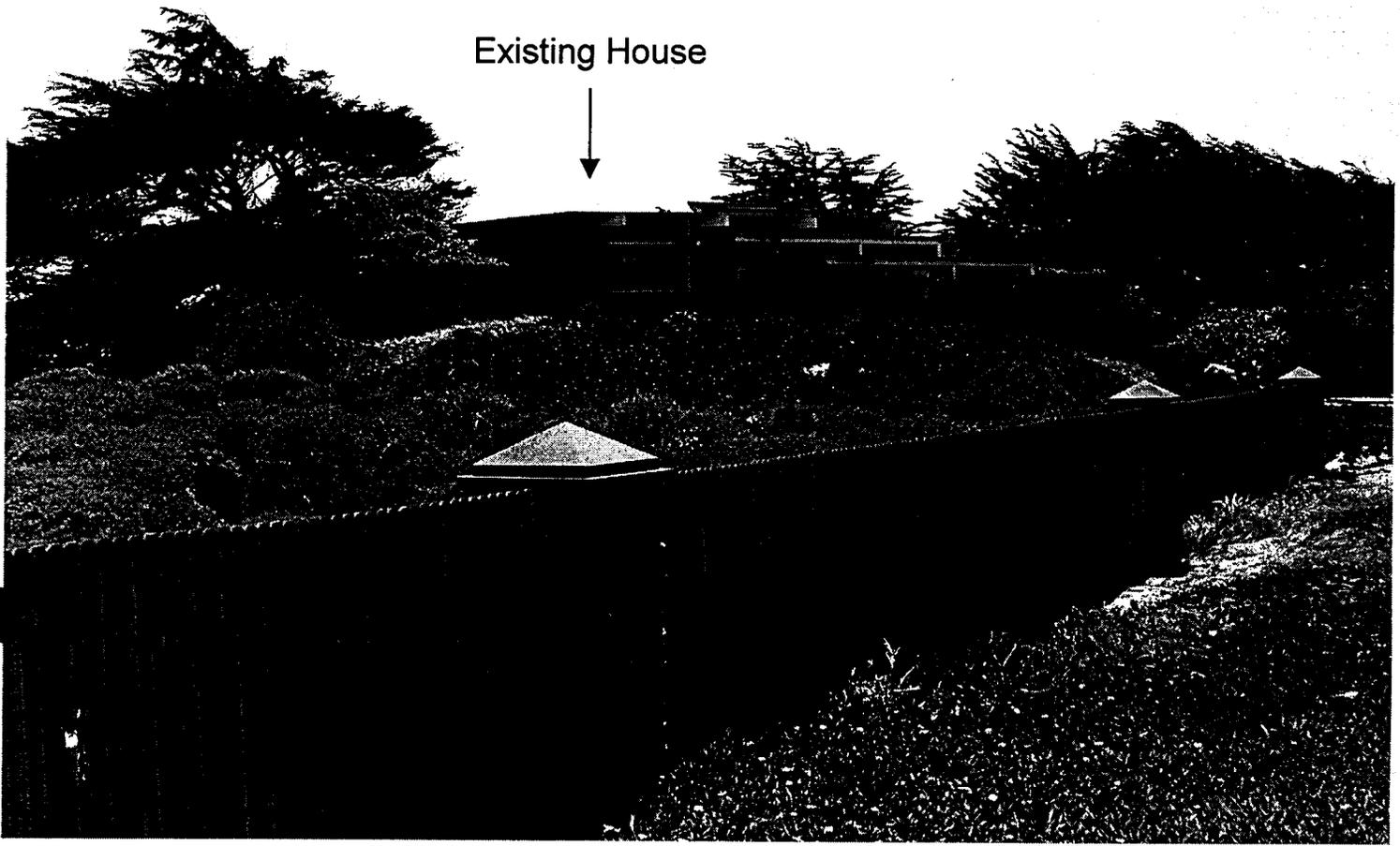


Exhibit K
Site Photos
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Exhibit K
Site Photos
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View from corner of 17-Mile Drive and The Dunes.

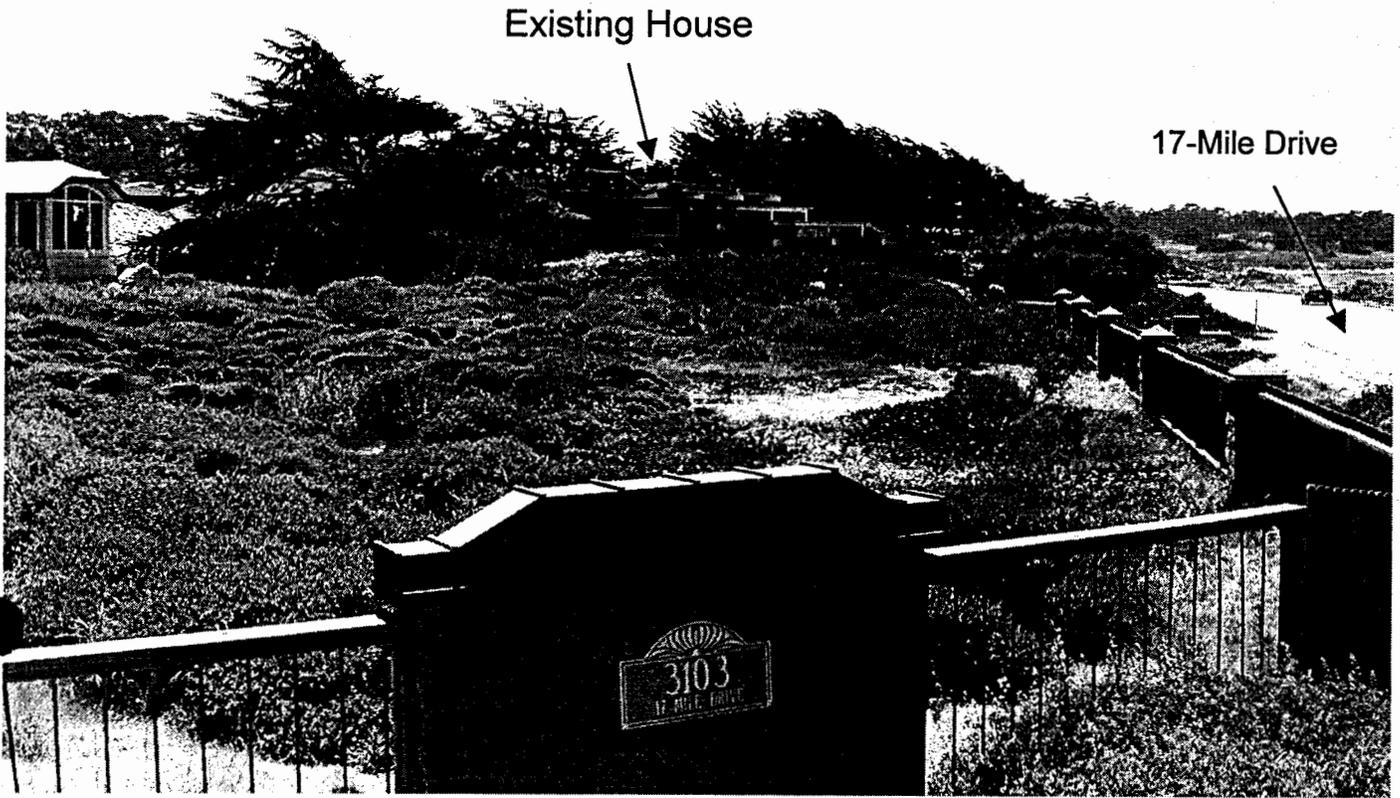


Exhibit K
Site Photos
Page 3 of 3
Smith Demo/Rebuild Appeal
A-3-MCO-02-058

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Sept. 28, 2002

SEP 30 2002

Agenda Item # W20a
Application # A-3-MCO-02-0
Janice M. O'Brien
Opposition

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
725 Front St. Ste. 300
Santa Cruz, Ca. 95060

Members of the Commission :

I am writing as a thirty year resident of the Del Monte Forest. My home is at 3137 17 Mile Drive, in close proximity to the proposed project. I am also representing Mrs. Betty Finlay, who lives on the corner of Spyglass Hill and the Drive.

This is an especially lovely stretch of the 17 Mile Drive as it approaches Cypress Point from the north and curves around Fan Shell Beach. The existing front line houses tend to be unobtrusive in design and in harmony with the dune habitat.

The proposed project is vastly out of proportion to the site and totally incompatible with the houses on either side. It will stand out like a lighthouse from the Bird Rock viewing area, one of the most popular on the Drive, in direct conflict with the LCP's requirement that the public view shed be protected.

The residents of this particular stretch are predominantly elderly and it is natural to assume that more houses will be coming on the market in the near future. Therefore, this is a critical opportunity to formulate policy which will set a precedent to assure the protection of the remnant dunes from the potential of Miami Beach style development. This is especially relevant at this time when the General Plan is in the process of being updated. It is inconceivable that County staff would support a Negative Declaration for a project in direct violation of the LCP which is unequivocal in its protection policies for this remnant dune area as environmentally sensitive habitat. This points up the obvious, that the most carefully crafted land use plan is only as effective as its implementation.

Having been privileged to live in this incredibly beautiful place, we want it to remain so for others to come. The community, as well as the applicant, will be best served by a design that respects this unique area.

We urge denial of this application.

Janice M. O'Brien
Janice M. O'Brien
Box 1037
Pebble Beach, Ca. 93953

A-3-MCO-02-058
Smith Demo/Rebuild
Appeal

Exhibit *L*
pg. 1 of 2

Against W20a
Application #A-3-MCO-02-058
Ted R. Hunter
Against

Ted R. Hunter
P.O. Box 1189
Pebble Beach, CA 93953
Ph. 831-624-3734 Fax 831-620-1525
e-mail huntertr@ix.netcom.com

SEPT. 27 2002

Deputy Director
California Coastal Commission Staff
725 Front St. #300
Santa Cruz, CA 95060

Subject: Request that proposed new home for Carol and Murry Smith
at 3150 - 17 Mile Dr. Pebble Beach be Prohibited

Dear Director,

Please consider the neighbors and the vote of the Del Monte Forest Land Use
Advisory Committee that denied the proposed new, large, nonconforming home
at 3150 - 17 Mile Dr., Pebble Beach, CA 93953.

The Coastal Commissioners vote to deny the construction of this home will be
greatly appreciated. A modified structure that is in keeping with other homes
in the area is required.

Thank you,


Ted R. Hunter

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CENTRAL COAST AREA

A-3-MCO-02-058
Smith Demo/Rebuild
Appeal

Exhibit L
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