

**CALIFORNIA COASTAL COMMISSION**

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

**W14a****RECORD PACKET COPY**

Filed: 12/29/2003  
49th day: 2/16/04  
49-day waiver: 12/29/04  
Staff: CKC-SC  
Staff report prepared: 4/22/04  
Hearing date: 5/12/04

## **APPEAL STAFF REPORT**

### **SUBSTANTIAL ISSUE DETERMINATION**

**Appeal number**.....A-3-MCO-03-121

**Applicants**.....Lisa and Karl Kleissner

**Appellant**.....Dr. and Mrs. Robert Schapira

**Local government**.....Monterey County (PLN 020392)

**Local decision**.....Board of Supervisors Resolution 03-398, Approved with conditions (November 25, 2003), received December 12, 2003.

**Project location**.....35678 Highway 1 (southwest of Garrapata Creek Bridge), Big Sur Coast Planning Area, Monterey County.

**Project description**.....Construction of a new detached 1,380 square foot, 3-car garage, with a 420 square foot guesthouse and fencing along southern property line, and minor modification (new 140-foot long section) of an existing access road to reach the garage/guesthouse structure.

**File documents**.....Monterey County Certified Local Coastal Program; Big Sur Land Use Plan and Regulations for Development in Big Sur Planning Area; Monterey County Coastal Implementation Plan; Final Local Action Notice for local permit PLN020392.

**Staff recommendation** ...No Substantial Issue

**Summary:** The Monterey County Board of Supervisors approved a combined coastal development permit and design approval, allowing Karl and Lisa Kleissner to construct a new detached, one-story, 1,380 square foot 3-car garage with an attached, one-story, 420 square foot guesthouse, plus installation of a 5-foot tall wooden grape stake fence along the southern property line of their parcel located at 35678 Highway 1 in Big Sur (APN 243-231-013) in Monterey County. This approval allows development in the Rocky Point exception area of the Big Sur critical viewshed. The subject parcel has an existing single-family dwelling and access road that crosses two adjacent parcels to the north, which the Kleissner's also own. No additional development on these other two parcels is proposed by the current action.



**California Coastal Commission**  
**May 12, 2004 Meeting in San Rafael**

Staff: K.Cuffe Approved by: **DSL**

### **Appeal Contentions**

The appellants, Dr. and Mrs. Robert Schapira, property owners and residents of the parcel immediately to the south of the Kleissner site, appealed the County's approval to the Commission, on the grounds that the project does not conform to LCP requirements for protection of scenic resources, environmentally sensitive habitat areas, and archaeological resources, and is inconsistent with guesthouse standards identified in the County's Coastal Implementation Plan. The appellants contentions are more fully described in Section 2 of this report.

### **Big Sur Critical Viewshed - Rocky Point Exception Area**

The subject parcel is located between Highway One and the sea, within the Big Sur Critical viewshed, where the key scenic resource protection policy prohibits new development visible from Highway One. Critical viewshed policies require that enlargement of existing structures be designed so that they do not increase the visibility of the structure, require siting in the least visible portion of the site and require that ocean views from Highway 1 not be obscured by artificial berming/mounding or landscaping.

The parcel is also located within the Rocky Point exception area, where the LCP provides for exceptions to the key viewshed policy prohibiting development visible from Highway One. Policies governing development on vacant parcels in the Rocky Point exception area require guesthouses to be attached to the main dwelling except where siting elsewhere will better protect visual resources. Policies also recommend the use of roof and surface treatments; earthtone colors and materials to help visually blend structures with the surrounding environment; the use of berming and other measures designed to minimize views of structures without blocking ocean vistas seen from Highway One; and the dedication of scenic easements over the remaining undeveloped portion of the lot. These policies have been interpreted by the County to also apply to developed parcels in the Rocky Point exception area, provided that the portion of the parcel selected for additional development is the least visible from public viewpoints. This interpretation has been upheld in previous court cases.

The project, as approved by the County Board of Supervisors, includes locating the guesthouse and garage in an area that is already partially blocked by existing topography and landscaping, instead of closer to the existing house site, which is out near the end of the coastal bluff, where it would be fully exposed in the Critical Viewshed and so much more conspicuous. Thus the proposed detached guesthouse and garage is sited in the least visible portion of the site, and does serve to better protect visual resources. The project is also designed in a manner that will minimize visibility of the new structures by being dug into the ground and lowered in height so that the artificial berming and vegetation used to screen the development will not block ocean views from Highway 1. Therefore, with respect to the contentions raised by the appellant, the project does not raise a substantial issue with regards to protection of scenic resources and protection of the Big Sur Critical Viewshed.

The project will also use roof and surface treatments (wood and stone facia, redwood trim and vegetated/turf roof) to blend the visual appearance of these new structures with the surrounding



## **A-3-MCO-03-121 NSI**

Kleissner Garage & Guesthouse  
Page 3

environment. The project has also been designed to use berming along the east side of the garage and along portions of the north, south and west sides of the garage, and additional landscaping atop the berming and roof, and along the north side of the garage/guesthouse to minimize visibility of the structure from public views such as those from Garrapata Beach and Highway One to the north and the Hwy One Bridge over Garrapata Creek east of the site. With these design elements incorporated into the project, staff believes that the project does not raise a substantial issue with regard to LCP's Big Sur Critical Viewshed Rocky Point exception policies.

### **Scenic Easement**

A scenic easement, restricting use of the area from landscaping or development activity, was also required over the area of the rocky point seaward of the existing residence from the bluff edge to the ocean. This does not fully adhere to the LCP policy that encourages dedication of scenic easements over the undeveloped portion of the lot, but does serve to protect a portion of the parcel that is closest to the shoreline and so most visible within the critical viewshed. The remainder of the lot is very constrained by its shape, width, and exposure within the viewshed, so should be adequately protected by the strict application of existing viewshed policies which would not allow any more development on this site. Therefore, although a scenic easement over the entirety of the remainder of the property was not obtained, the project does not raise a substantial issue with regards to the provision of the easement.

### **Environmentally Sensitive Habitat Area**

A previous biological report, prepared by the biological consultants, Jud Vandever and Jeff Norman, for a project proposed by the previous property owner in 1997, stated that the subject parcel and an adjacent parcel to the north (APN 243-231-013 and -016) contained numerous dune buckwheat (*Eriogonum parvifolium*) plants, which is a known host plant for the endangered Smith's blue butterfly. Later correspondence from Jud Vandever, in September 2002, and April 2003, indicated that the buckwheat and other native plants on the site had been replaced by exotic, invasives (*Carpobrotus edulis*, otherwise known as Hottentot fig, or more commonly as iceplant), which had overgrown the native plants. The current property owners purchased the property in February of 2000, and later removed much of the iceplant on the parcel, and then restored the area with a mix of coastal-adapted native plants that included, among other things, plantings of dune buckwheat. Most recently, Mr Vandever submitted a letter to Commission staff, dated April 10, 2004, to clarify that "by 2000, a mattress formation of Hottentot fig, *Carpobrotus edulis*, had completely overwhelmed and eradicated 100% of the dune buckwheat identified in 1997 within the vicinity of the proposed garage and studio [guesthouse]." Therefore there were no buckwheat plants in the project area when the Kleissners conducted their restoration and revegetation of a portion of this and the adjacent parcel in September of 2000. Mr. Vandever's letter also indicates that in the 2002 survey conducted on site, no buckwheat plants were identified in or outside of the proposed project area.

The County's record indicates, that Smith's blue butterfly habitat on the project site was lost due to invasion of the iceplant, but that it has since been restored on the adjacent property, which does not



### **A-3-MCO-03-121 NSI**

Kleissner Garage & Guesthouse  
Page 4

include any development under the current permit. In additional discussions following the appeal of the project to the Commission, Mr. Vandevere clarified that during restoration efforts undertaken by the current property owners, dune buckwheat plants were replanted on the subject parcel north of the existing access road, but that no sensitive plant species occurred within the proposed building envelope (pers. comm. 4/8/04).

Along with their efforts to restore native vegetation to the site, the applicant has volunteered to grant a conservation easement to the County or a non-profit group to permanently protect "an appropriate portion of APN 243-231-013 equivalent to the net area of potential seacliff buckwheat (*Eriogonum parvifolium*) habitat impacted by the approved development, including but not limited to planting native species on the roof of the approved structure." The County formalized this offer by requiring a deed restriction as a condition of approval. Therefore, since the project will not impact any sensitive plant or animal species, and has actually been designed to incorporate additional buckwheat plantings, grant of conservation easement, continued revegetation efforts, and invasive weed control efforts, the project does not raise a substantial issue with regards to ESHA protection policies of the LCP.

#### **Archaeological Resource Protection**

The project site is also located in a highly sensitive archaeological area, and preliminary archaeological reports found that the parcel contains portions of an archaeological site (shell midden). While preliminary results from a single unit excavation test conducted in May 2003 concluded that the site is not unique and may be of limited significance, the project was conditioned to require a technical report be completed prior to issuance of any permits and an archaeological easement be placed on all significant archaeological sites as determined by the Final Technical Report prepared for the project. Additionally, the project was conditioned so that if the Final Technical Report determined there are significant archaeological resources to be protected on site, the applicant shall request a rezoning of the parcel to add an "HR" (Historical or Archaeological Resource) zoning district to the existing zoning district, prepare and implement a mitigation plan that includes preservation measures, and obtain amendments to the permit if the mitigation plan would require material changes in the project as currently approved by the County.

#### **Deed Restriction for Guesthouse Construction and Use**

And finally, the appellants contend that the project approved by the Board of Supervisors is inconsistent with guesthouse standards identified in the County's Coastal Implementation Plan. County standards identify the conditions and limited use restrictions allowed for guesthouses (e.g., permanent attached or detached structure with maximum of 425 square feet, shall contain no kitchen or cooking facilities, shall not be let or leased, etc.).

The Board of Supervisors' action did require the applicants to record a deed restriction clearly stating the regulations of the Coastal Implementation Plan applicable to use and construction of the guesthouse, as required by Section 20.64.020 (which have been included in this report as Exhibit K). With these



restrictions incorporated by deed restriction, the use and construction of the guesthouse will comply with the requirements of Section 20.64.020 as stated. Thus the appellants' contention with respect to use and construction of a guesthouse on site does not raise a substantial issue.

### **Conclusion**

Therefore, after review of the record, staff review has determined that the appeal contentions brought forth by the appellants do not rise to the level of a substantial issue requiring the Commission to take jurisdiction over the project. The applicants have proposed a modest project, generally consistent with the surrounding character of the Rocky Point – Big Sur Coast area, that has been sited and designed to minimize impacts to views within the Big Sur Critical Viewshed and Rocky Point Exception area. Staff thus recommends that the Commission find that no substantial issue exists with respect to this project's conformance with the certified Monterey County LCP and decline to take jurisdiction over the coastal development permit for the project.

## **Staff Report Contents**

1. Local Government Action .....	6
II. <u>Recommended Motion and Resolution</u> .....	7
III. <u>Appeal Procedures</u> .....	8
2. Appellant's Contentions .....	8
3. Scenic Resource Issues .....	9
4. Environmentally Sensitive Habitat Issues .....	16
5. Archaeological Resource Protection Issues .....	21
6. Guesthouse Requirements .....	26
7. Other Appeal Contentions .....	29
8. Exhibits	
Exhibit A: Regional Location Map	
Exhibit B: Project Vicinity Map	
Exhibit C: Assessor's Parcel Map	
Exhibit D: Aerial Photos of Garrapata Creek area showing Kleissner parcel	
Exhibit E: Staff Photos of Proposed Project	
Exhibit F: Board of Supervisors Final Local Action Notice approving Kleissner project	
Exhibit G: Appeal of Dr. and Mrs. Robert Schapira	
Exhibit H: Site Plans and Elevations	
Exhibit I: Biological Reports and Correspondence	
Exhibit J: Archaeological Reports and Correspondence	
Exhibit K: Regulations for Guesthouse	
Exhibit L: Applicant's Response to Appeal Contentions.	



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage

Page 6

### **1. Local Government Action**

Based on County records, the following is a timeline of the County's review and actions regarding the Kleissner project:

- On February 11, 2003, the applicants filed an application for a combined development permit and design approval (PLN020392) to construct a detached 3-car garage with a guesthouse and relocate the driveway at 35678 Highway One, near Garrapata Ridge Road, in Big Sur Coast Planning Area of Monterey County.
- On March 11, 2003, the Big Sur Land Use Advisory Committee voted 5-0 to recommend approval of the project.
- On July 18, 2003, an initial study and draft mitigated negative declaration was distributed, with comment period from July 21, 2003 to August 21, 2003.
- On August 28, 2003, the Zoning Administrator held a duly noticed public hearing and continued the project to schedule and conduct a site visit.
- On September 9, 2003, the Zoning Administrator held a duly noticed public hearing at the project site to review issues raised in the August 28 2003 hearing.
- On September 25, 2003, the Zoning Administrator held a duly noticed public hearing and continued the proposed project due to an appeal filed by neighboring property owners to address procedural issues (PLN030442).
- On September 30, 2003 the Zoning Administrator referred the project to the Planning Commission as the appropriate authority to hear the case.
- On October 8, 2003, the Planning Commission held a duly noticed public hearing on the project, and voted 9-0 to approve the project as presented by staff, approving Resolution 03065.
- On October 16, 2003 Dr. and Mrs. Robert Schapira filed an appeal of the Planning Commission's decision approving the project.
- On November 25, 2003 the Monterey County Board of Supervisors held a public hearing to consider the appeal of the Planning Commission's October 8, 2003 approval of the project, granted the appeal in part, and approved the project subject to multiple conditions (see Exhibit 1 for the County's staff report, findings and conditions on the project).
- Notice of the coastal development permit (CDP) was received in the Coastal Commission's Central Coast Office on December 12, 2003.
- On December 29, 2003, the Board of Supervisors' approval was appealed to the Coastal Commission by Dr. and Mrs. Robert Schapira on the basis that the project does not conform to



California Coastal Commission

## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage

Page 7

LCP requirements for protection of scenic resources, environmentally sensitive habitat areas, and archaeological resources, and is inconsistent with guesthouse standards identified in the County's Coastal Implementation Plan.

For clarification, it should be noted that the Coastal Commission had filed an earlier appeal of the Planning Commission's decision on the last day of the County appeal period, however, because the Planning Commission's decision was also appealed to the Board of Supervisors by the Schapiras, the Planning Commission's decision was no longer the Final Local Action for the project, so the Commission's appeal was deemed null and void.

In response to concerns voiced by the Coastal Commission, the applicants volunteered to modify their proposed project, prior to the hearing by the Board of Supervisors, in the following manner:

- They lowered the finished elevation of the entire structure 1.5 feet from elevation 50 to elevation 48.5 (which would be dug into the ground); and
- Lower the ridgeline of the guesthouse an additional 18 inches.
- And by redesigning the framing over the utility room in the garage to drop an additional 18 inches on the west side of the building.

With these modifications, and other clarifications and conditions made in response to Coastal Commission concerns regarding consistency with scenic resource protection policies, standards for guesthouses, ESHA protection policies, scenic easement requirements, and archaeological resource protection, which were incorporated into the Board of Supervisor's final local action on the project in response to the Schapira's appeal, the Coastal Commission did not submit a new appeal following the Boards approval of the project.

## **II. Recommended Motion and Resolution**

### **MOTION:**

*I move that the Commission determine that Appeal No. A-3-MCO-03-121 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

### **STAFF RECOMMENDATION:**

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

### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

*The Commission finds that Appeal No. A-3-MCO-03-121 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act*



California Coastal Commission



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage  
Page 8

*regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

### **III. Appeal Procedures**

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the sea and the first public road, within 300 feet of the inland extent of the beach, and within 300 feet of the top of the seaward face of the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. 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. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a de novo review of this case.

*The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.*

## **2. Appellant's Contentions**

The Appellant contends that the project is not consistent with the LCP requirements for protection of scenic resources, environmentally sensitive habitat areas, and archaeological resources, and is inconsistent with guesthouse standards identified in the County's Coastal Implementation Plan.

The appellants contend that the project conflicts with numerous policies in the LCP, including, without limitation, policies relating to:





## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage

Page 9

- Viewshed protection
- Development standards within critical viewshed exception areas
- Archaeological resource protection
- Biological resource protection
- Neighbor privacy and view policies
- Code violations requiring enforcement/remediation (for removal of vegetation)
- Not conditioned adequately with respect to scenic/conservation easements, deed restrictions and rezoning requirements
- CEQA review was inadequate
- Findings and decision not supported by evidence in the record
- Decision was contrary to law.

Please see Exhibit G for the Appellant's complete appeal document.

Please note that the appellants' appeal alleges inconsistencies with a large number of County policies. However, some of the references cited in the appeal are not LCP policies. As such, not all contentions referenced in the appellants appeal document are contained in the "applicable policies" sections of this staff report. The policies cited herein have been cited using the broadest possible construction of the Schapira's appeal so as to be as policy-inclusive as possible while not overly burdening the analysis with unnecessary detail. The complete Monterey County LCP is available for review at the Commission's Central Coast District office and is a substantive file document for these findings. In any case, the Schapira's LCP contentions are addressed in full in these findings.

### **3. Scenic Resource Issues**

The Appellant contends that the proposed project does not conform to LCP policies regarding scenic resource policies, viewshed protection, and development standards within critical viewshed exception areas. The appellants incorporate their earlier letters (dated October 16, 2003 and November 24, 2003 regarding their appeal of the Planning Commission's decision to the Board of Supervisors), by reference in their appeal to the Commission (see Exhibit G), which specifically cite Big Sur LUP Policies 3.2.4.1 and 3.2.4.2 for development outside of the Critical Viewshed, and Development Standards



California Coastal Commission

## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 10

20.145.030.C.2.a, 20.145.030.C.2.b; and 20.145.030.B.6.e. The appellants also refer to contentions raised by the Coastal Commission in its earlier appeal of the Planning Commission's approval of the project. As described in Section 1 above, the Coastal Commissions appeal was deemed null and void since it was not based on the County's final local action on the project. Nonetheless, the appellant has also raised these issues by reference to these earlier contentions, which, with regards to scenic resource protection policies, are generally as follows:

*The project, located between Highway One and the sea, will be visible from the Highway and has not been sited and designed to avoid and reduce impacts to the public viewshed as required by the LCP. Specifically, the new structure has not been sited on the portion of the parcel that is least visible from public viewpoints, in conflict with Policy 3.2.4.2 of the Big Sur Land Use Plan (LUP) and Section 20.145.030C.2.b of the Coastal Implementation Plan (CIP). Moreover, the construction of a garage and guesthouse within the public viewshed, on a site that supports an existing residence, is an avoidable impact that is inconsistent with Policy 3.2.4.1 of the Big Sur LUP as well as Section 23.145.030C.2.a. of the CIP, which prohibit structures that detract from the natural beauty of the undeveloped shoreline. Finally, it is not clear that all areas outside of the development will be placed within a scenic conservation easement, as required by CIP Section 20.145.030.B.6.e.*

### **Applicable Policies**

Monterey County is very involved in protecting visual resources along the Big Sur Coast, and especially protective of preserving the scenic resources within the Big Sur Critical Viewshed. The Big Sur Coast Planning Area Land Use Plan (LUP) Policy 3.2.2 defines the Critical Viewshed as everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and specific locations including, among others, Soberanes Point and Garrapata Beach, and the key scenic resource protection policy, LUP Policy 3.2.1, prohibits all future development visible within the Critical Viewshed. Exceptions to the key policy are provided for in certain specific cases, including vacant parcels in the Rocky Point Exception Area (LUP Policy 3.2.5.F). While the exception area policy refers specifically to vacant parcels, it has been interpreted by the County and the Court in the past to also apply to developed parcels in the Rocky Point exception area, provided that the portion of the parcel selected is the least visible from public viewpoints.

With regards to the Rocky Point Exception Area, LUP Policy 3.2.5.F states the following:

#### **3.2.5.F. Rocky Point Area Vacant Parcels**

*Existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point and from the southernmost developed parcel north of Abalone Cove to the northernmost developed parcel south of Garrapata Creek shall be permitted to be used for residential purposes subject to policies of Section 3.2.4 of this plan*



## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 11

[titled: Land Not in the Critical Viewshed] and the following standards.

*Additional standards shall include keeping driveways as narrow as possible, avoiding paving where practical and consolidation of driveways; the use of roof and surface treatments, colors and materials which will visibly blend with the surrounding environment; the use of berming and other measures designed to minimize views of structures without blocking ocean vistas seen from Highway 1; prohibiting the dumping of excavated materials over the coastal bluff, and additions, antennae, night flood lighting, or other improvements in view of Highway 1 without separate permit consideration; and dedication of scenic easement over undeveloped portion of lot. Guesthouses shall be attached to the main dwelling except where they can be sited to better implement these policies.*

The specific policies identified by the appellant include the following:

For land **not** in the Critical Viewshed:

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

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

Regulations for development not within the critical viewshed referred to by the appellant include:

*20.145.030.C.2.a. All structures, whether, residential, commercial, agricultural, or public, and access thereto, shall be designed and sited so as not to detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline. (Ref. Policy 3.2.4.A.1)*

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

*New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides silhouetted ridges. Sites shall not leave excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover. (Ref. Policy 3.2.4-A-2, 3.7.3.A.1 and 5.4.3.L.4)*



## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 12

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

Other relevant policies applicable to the contentions raised by the appellant, for land not in the Critical Viewshed include:

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

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

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

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

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

### **Conformance with Applicable Scenic Resource Protection Policies**

The proposed project will be visible from Highway One to the north and east of the property and from Garrapata Beach bluffs north of the property, and so is within the Big Sur Critical Viewshed. However, as indicated previously, the site is also located within the Rocky Point Exception area, where special policy allows for some development, subject to the policies of Big Sur LUP Section 3.2.4, and additional standards identified in Policy 3.2.5.F detailed above. These policies allow the project to be evaluated similar to those structures not located in the critical viewshed, but require that developments not detract from the natural beauty of the area, be located in the least visible portion of the parcel, use existing topography or trees to provide natural screening, be subordinate to the natural setting and blend in with the environment, and allow for the use of a moderate extension of vegetation screening. Sites are also required to avoid the construction of visible access roads, and new roads are required to be constructed



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage

Page 13

to minimum standards consistent with fire safety and emergency use, and provide adequate drainage and erosion control measures.

Staff have reviewed the County record, including staff reports for the Planning Commission, and Board of Supervisors hearings on the project, and have conducted several site visits to view the property and proposed development (most recently on April 1, 2003). Based on our site visit and evaluation of views from various points along Highway One and Garrapata Beach bluffs, we concur with the applicant and County planning staff that the proposed development approved by the Board of Supervisors is located in the least visible portion of the parcel. An existing 1,105 square foot residence (originally approved in the early days of the Coastal Commission under CDP P-73-393) is located out near the western end of the property on the flat coastal terrace in full public view. To require the guesthouse and garage to be attached to the main dwelling in this location would substantially increase the view of development, and require substantial screening that would look out of place this close to the blufftop. Instead, the project has been sited further landward to take advantage of existing topography, which helps to screen the development from the distance as well as areas closer to the site, and vegetative screening offered by a line of vegetation (cypress trees) located on the adjacent property to the north and the line of planted cypress trees located along the southern property boundary (see Exhibit D). While additional tree screening will be needed to screen the project from distant views from the north, the small amount of landscaping required can be considered a moderate extension of the existing forested areas on and adjacent to the site, and will blend in with existing cypress trees to the north (owned by the applicant) and south of the proposed structures, on and adjacent to the site. The Board's final local action has also been conditioned to require that the applicant's record a deed restriction prohibiting removal of the existing trees on the subject and adjacent parcels to the north (243-231-013, 243-231-015 and 243-231-016) that provide screening of the approved structure from major public viewing areas along Highway One, thus ensuring that the project will continue to be screened for the life of these trees, which, in this coastal bluff setting without artificial irrigation, can be expected to be a number of decades (even as much as 100 years or more).

The project design was also modified prior to being heard by the Board of Supervisors to lower the elevation of the structures by about 3 to 4 feet, which also greatly reduces the potential for the project to block ocean views from Highway One east of the site. This was accomplished by both lowering the base elevation of the structure 1.5 feet (digging it deeper into the ground) and by lowering the ridgeline elevation of the guesthouse, such that the proposed structures do not extend above any existing landforms, and so will not block any ocean views. Use of berming along the eastern side of the garage, and around portions of the north, south and western sides of the garage/guesthouse as proposed, also helps to minimize views of the structure without blocking ocean views from the east, along Highway One at Garrapata Bridge and south of the bridge. Additionally, with use of landscape planting atop the berm and installation of a turf roof (to include native plants appropriate to the site) atop the garage and guesthouse, vegetative screening along the northern side, and appropriate exterior materials (stone fascia, redwood doors and window casings, and non-reflective glass), the project has been designed to be subordinate and blend in with the environment. The gradual slope of the proposed berming, and the turf



California Coastal Commission

## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 14

roof will serve to hide the structure from views from the east, and, based on the appearance of the turf roof on the existing house, and the restoration planting success of the site currently, is expected to be quite successful in creating the appearance of the natural, surrounding coastal terrace. The project has also been conditioned so that new landscape screening will be maintained so that it does not block views of the ocean. The mitigation monitoring program, incorporated by Condition 3 of the Board of Supervisors decision, includes limiting the height of newly planted trees and shrubs "...so as not to block views any more than the proposed structure."

Additionally, in consideration of views from the neighboring property to the south, the project has been conditioned (Condition 18.d) so that the new proposed wood fence, to be located along the southern property boundary, not exceed the height of the existing split rail fence, consistent with Big Sur LUP Policy 3.2.4.2. As currently sited, the proposed development is located north and landward of nearly all windows on the neighboring residence, and as such should not block any ocean views. A row of existing cypress trees is also located along the south property boundary shared by the two parcels, and based on a visit to the site appears to block nearly all views between the two properties.

The appellants have suggested relocating the proposed garage/guesthouse approximately 80 feet to the east. However, such relocation would move the structure into an area where physical gaps between existing trees on site would actually make more of the structure visible from Highway One.

The original project heard by the Planning Commission also included relocating an existing access road, which currently crosses three parcels all owned by the current property owners, entirely onto the subject parcel, however, the applicants removed that aspect from the project before being heard by the Board of Supervisors in order to minimize impacts that might be caused by such a relocation. Instead, the applicants retained most of the existing alignment, adding only a 140-foot long, 15-foot wide extension of the access road southward to reach the new garage (which again would be screened to the north by new and existing landscaping). The County's approval also required turnouts approximately every 400 feet on the existing road to meet fire standards. The turnouts would also be screened by existing vegetation on site.

Big Sur Policy 3.2.5.F and CIP Section 20.145.030.D.6.e requires parcels in Rocky Point Exception Area to dedicate scenic easements over the undeveloped portions of the lot. In response to this requirement, the Board of Supervisors conditioned the project (Condition 6a) to require a scenic easement over the rocky point west of the existing residence from the bluff edge to the ocean. The County's rationale for requiring a scenic easement only over this portion of the parcel is described in Finding 9, based on responses to the appellant's contentions regarding appeal of the Planning Commission's earlier approval of the project. The County's rationale states that:

*... the purpose of the Coastal Act is to protect views of landforms and the coastline. The rocky point below the existing house is a significant landform that provides justification to require a scenic easement over this area (Condition 6a)...*



California Coastal Commission

## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 15

*...there are no qualifying factors to use to determine a clear nexus for what areas are, or are not, required to be protected. The project includes a condition that limit[s] landscaping in a manner that does not restrict views beyond that of the proposed structures. In addition, the proposed guesthouse and garage have been designed and sited to minimize their intrusion in the critical viewshed. Although there is justification to require a scenic easement of the rocky point below the existing hose, there is not justification to require any easement over the balance of the site.*

Big Sur LUP Policy 3.2.5.F and CIP Section 20.145.030.D.6.e indicate that scenic easements should be placed over the undeveloped portion of the parcels. While the County has not applied the scenic easement requirement as written in the LCP, the project has been designed and conditioned to protect views to and along the ocean in this very scenic coastal area, to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas. Additionally, with the biological restoration work conducted by the applicants (see Section 4 below), the visual quality of the area has also been enhanced by the removal of invasive iceplant that covered half the site, and restoration of native vegetation appropriate to this coastal terrace site.

Furthermore, the portion of the parcel to be covered by the scenic easement, located seaward of the existing house does serve to protect a portion of the parcel that is a significant landform within the critical viewshed closest to the shoreline, worthy of protection by scenic easement. The remainder of the lot is very constrained by its shape, width, and exposure within the viewshed, so will be adequately protected by the strict application of existing viewshed policies. Therefore, while not the preferred approach for ensuring that additional development will not occur within the viewshed, the project does not raise a substantial issue with regards to the provision of scenic easement.

### **Conclusion**

Based on our review and evaluation of the County's record, the project, as designed and conditioned by the Monterey County Board of Supervisors, has been:

- 1) Designed in a way that does not detract from the natural beauty of the undeveloped skylines ridgelines and shoreline of the area, consistent with Big Sur LUP Policy 3.2.4.A.1 and CIP Section 20.145.030.C.2.a;
- 2) Sited in the least visible portion of the site, consistent with Big Sur LUP policy 3.2.4.A.2 and CIP Section 20.145.030.C.2.b;
- 3) Located in an area where existing topography and trees provide natural screening, in order to minimize landform alteration and removal of healthy tree cover, consistent with CIP Section 20.145.030.C.2.b;
- 4) Designed to not be attached to the existing dwelling in order to better implement scenic resource protection policies, consistent with LUP Policy 3.2.5.F; and





## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 16

- 5) Designed using appropriate materials (redwood doors and window casings, wood and stone fascia, and non-reflective glass), and landscaping/berming to make it subordinate and blend with its environment, consistent with Big Sur LUP policies 3.2.4.A.3, 3.2.4.A.4, and 3.2.5.F.

The Board of Supervisors also incorporated mitigation measures to ensure that the project does not block ocean views seen from Highway 1, consistent with LUP Policy 3.2.5.F, and the project was redesigned to avoid construction of visible access roads and conditioned to develop drainage and erosion control plans to minimize the extent of environmental and engineering problems that might arise from road construction, consistent with CIP Section 20.145.030.B.6.e.

As such, the appeal of the Board of Supervisor's approval of the project does not raise a substantial issue with regards to scenic resource protection policies since the County has approved and conditioned the project consistent with the policies and regulations of the certified LCP. Additionally, while the LCP scenic easement requirement was not strictly applied consistent with the LCP policies, the appeal does not raise a substantial issue in this case, since the project has been designed and conditioned by the County to adequately protect scenic coastal resources.

### 4. Environmentally Sensitive Habitat Issues

Smith's Blue Butterfly is a federally endangered butterfly species, that historically ranged along the coast from Monterey Bay south through Big Sur to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. 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. Following several weeks of feeding and development, the larvae molt to a pupal stage, beginning a ten- month period of transformation. The following year, as the *Eriogonum* again flower, the new adults emerge.

Biological surveys conducted on the subject parcel in 1997 identified the presence of numerous dune buckwheat (*Eriogonum parvifolium*) plants within the area of the proposed development. A second survey in July 2000 found dune buckwheat on the parcel, but did not identify the presence of the endangered Smith's blue butterfly, nor identify where the buckwheat was located relative to the proposed project. While the dune buckwheat itself is not a listed species, it is one of only two *Eriogonum* species that serves as a host plant for the endangered Smith's blue butterfly, and so is considered an environmentally sensitive habitat. As described below, more recent correspondence from the biological consultant (dated April 3, 2003 and April 10, 2004) indicates that by 2000, all existing buckwheat plants in and around the project area were eradicated due to the invasion and growth of a dense mat of iceplant on the subject site, and as a result, no dune buckwheat plants are currently located in or outside of the footprint of the proposed project area.

The Appellants contend that the project does not conform to the standards set forth in the certified Monterey County LPC in terms of ESHA policies, asserting that the project will remove buckwheat



## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 17

plants, intensification of use on the site will disrupt habitat and the project has not been conditioned to permanently protect buckwheat or other ESHA on site. The appellants incorporate their earlier letters (dated October 16, 2003 and November 24, 2003 regarding their appeal of the Planning Commission's decision to the Board of Supervisors), by reference in their appeal to the Coastal Commission (see Exhibit G), which specifically cite Big Sur LUP Policies 3.3.1, 3.3.2.1, 3.3.2.3 and CIP Regulations for Development Sections 20.145.040, 20.145.040.B.1, and 20.145.040.B.2. The appellants also refer to contentions raised by the Coastal Commission in its earlier appeal of the Planning Commission's approval of the project. As described in Section 1 above, the Coastal Commissions appeal was deemed null and void since it was not based on the County's final local action on the project. Nonetheless, the appellant has also raised these issues by reference to these earlier contentions, which, with regards to ESHA protection policies, are generally as follows:

*... The [Planning Commission's] approval does not ... adequately establish the project's consistency with LCP Policies protecting Environmentally Sensitive Habitat Areas. Replacing [Smith's blue butterfly] habitat in a new location, rather than protecting and enhancing habitat where it naturally occurs, contradicts Key Policy 3.3.1 of the Big Sur LUP and CIP Section 20.145.040, requiring that all practical efforts be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The permanent loss of this habitat area, and the intensified use of the site that would result from the development, will disrupt the habitat values of the site, in conflict with LUP Policy 3.3.2.1 and CIP Section 20.145.040B.1. In addition, the project has not been conditioned to permanently conserve other areas of the site containing dune buckwheat or other sensitive habitats, as required by Big Sur Land Use Policy 3.3.2.3 and CIP Section 20.145.040B.2.*

### **Applicable ESHA Policies**

The specific policies identified by the appellant include the following:

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

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

*3.3.2.3. The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. Where development has already occurred in areas supporting*



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage  
Page 18

*sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.*

CIP Section 20.145.040 includes Environmentally Sensitive Habitat Development Standards, designed to allow of the preservation of Big Sur's environmentally sensitive habitats, which basically states that all practical efforts shall be made to maintain, restore and if possible enhance Big Sur's environmentally sensitive habitats, and that development should be subordinate to the protection of these critical areas. Section 20.145.040 includes Biological Survey Requirements, and General Development Standards, and Specific Development Standards for terrestrial and marine habitats.

CIP Sections 20.145.040.B.1 and 20.145.040.B.2 reference and basically reiterate the requirements of Big Sur LUP Policies 3.3.2.1 and 3.3.2.3, except that 20.145.040.B.2 notes that easements and deed restrictions shall be required for new development on parcels containing environmentally sensitive habitat areas, as well as on parcels where the proposed project to occur is on an already developed parcel.

### **Conformance with Applicable Policies**

A previous biological report, prepared in 1997 by the biological consultants, Jud Vandevere and Jeff Norman, for a project proposed by the previous property owner, identified that the subject parcel and an adjacent parcel to the north (APN 243-231-013 and -016) contained numerous dune buckwheat (*Eriogonum parvifolium*) plants, which, as described above, is a known host plant for the endangered Smith's blue butterfly, and so considered environmentally sensitive habitat. Based on a comparison of the maps included in the 1997 report (Exhibit I), with the location for the proposed guesthouse/garage, 111 plants were identified as having been located at that time in the vicinity of the currently proposed garage/guesthouse. Correspondence dated September 24, 2002, from Jud Vandevere to the Kleissners, who purchased the property in February of 2000, indicated that another survey of dune buckwheat on the property was conducted on July 26, 2000 (during what is considered to be the blue butterfly adult emergence period of mid-June to early September), however no Smith's blue butterflies were found. While the July 2000 survey found dune buckwheat on the parcel, it did not identify where the buckwheat was located relative to the proposed project. However, the same September 24, 2002 letter from Jud Vandevere did indicate that since the July 2000 survey, iceplant had been removed from the site, and dune buckwheat had been replanted by the current property owners.

While no mapping was included with the September 24, 2002 letter, more recent discussion with Mr. Vandevere indicated that following invasion of the site by iceplant, which overwhelmed and eradicated what dune buckwheat had previously been on site, the Kleissners replanted dune buckwheat on the subject parcel north of the existing access road and on the adjacent property to the north, which is also owned by the Kleissners (pers. comm. 4/8/04). The September 24, 2002 letter also stated that a survey of the proposed project area was conducted on September 17, 2002, and no buckwheat plants, or other



## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 19

rare of endangered plant or animal species were found on the subject parcel in or outside of the footprint for the proposed development.

Later correspondence from Jud Vandevere to the County planning staff, dated April 5, 2003, sent to clarify the chronology of biological conditions on the site, indicated that the original buckwheat and other native plants on the site, first identified in the 1997 survey, had been completely replaced by exotic, invasives (*Carpobrotus edulis*, otherwise known as Hottentot fig, or more commonly as iceplant), which had overgrown and "overwhelmed" the native plants. The current property owners later removed much of the iceplant on the parcel (sometime after the July 2000 survey), and then restored the area with a mix of coastal-adapted native plants that included, among other things, plantings of dune buckwheat, however none were located near the footprint of the planned development. The property owners conducted revegetation of the site in September 2000, according to landscape restoration guidelines prepared for the site by Thomas K. Moss (a qualified coastal biologist who has conducted numerous similar projects) who collected seeds from existing plants on site over a period of months. According to Mr. Vandevere, his efforts resulted in "a vast field of dune buckwheat, but not near the footprint of the proposed development."

Most recently, Mr Vandevere submitted a letter to Commission staff, dated April 10, 2004, to again clarify the chronology of events on the property. Mr. Vandevere states that "by 2000, a mattress formation of Hottentot fig, *Carpobrotus edulis*, had completely overwhelmed and eradicated 100% of the dune buckwheat identified in 1997 within the vicinity of the proposed garage and studio [guesthouse]." Therefore there were no buckwheat plants in the area when the Kleissners conducted their restoration and revegetation of the area in 2000. Mr. Vandevere's letter also reiterates that in the 2002 survey conducted on site, no buckwheat plants were identified in or outside of the proposed project area.

Based on this chronology, it has been confirmed that no dune buckwheat or other rare or endangered plants or animals exist in or around the area of proposed development. The biologist's April 5, 2003 letter indicated that recommendations made in the original 1997 biological report are still applicable to the site. These include replanting any dune buckwheat lost during construction activities on a 1:1 basis; replacing iceplant removed from the site with more aesthetically pleasing and erosion preventing dune buckwheat plants; and replacing any Monterey Indian paintbrush, *Castilleja latifolia*, plants lost by construction activities on a 2:1 basis well away from future disturbance. The letter also recommended that prior to construction, topsoil [removed from the construction area] be stored and used on the sod roofs of both structures, since there may be a significant seed bank [of native plants, including dune buckwheat] in the stored soil. The biologist's letter concluded that with implementation of these recommendations, no appreciable impact should occur as a result of the project.

Since the evidence shows that dune buckwheat plants were lost naturally, being overwhelmed by invasion of iceplant, the current property owners are not in violation of having removed sensitive habitat without a permit. The Monterey County Board of Supervisors final local action Finding 1(j) identified the chronology of biological information described above, noting that:



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage  
Page 20

*Based on reports from qualified biologists the integrity of the butterfly habitat (buckwheat) had been lost by the invasion of exotic iceplant. As such, abating the iceplant did not remove sensitive habitat; therefore no Coastal Development Permit was required. Removal of buckwheat plants is an allowed practice with proper replacement. Biologists have verified that the butterfly habitat in this area has been restored and no further mitigation is required.*

The finding goes on to state that the restored buckwheat plants are located on a neighboring parcel also owned by the Kleissners, but that no development is currently planned on that site, so no conservation easement is required for that area at this time as part of the project at hand. As of the date of this writing, no location map has been provided showing the location of the iceplant removal/revegetation and buckwheat restoration. However, as stated above, the project biologist has noted that with the implementation of biological recommendations no appreciable impact should occur as a result of the project. Although no numbers of new dune-buckwheat plants have been identified in the restoration area, the applicants have already conducted native plant restoration and revegetation of the subject parcel. The Board's final action conditions the project to require a conservation easement "...permanently protecting an appropriate portion of the subject parcel (APN 243-231-013) equivalent to the net area of potential buckwheat (*Eriogonum parvifolium*) habitat impacted by the approved development, including but not limited to planting native species on the roof of the approved structure." This would serve to protect dune buckwheat plants that may regenerate from the seedbank supply in the topsoil, now that the iceplant on the site has been removed, which will now help to restore and protect habitat that may support the Smith's blue butterfly, as well as other native plants and animals. The Board's action also conditions the project so that construction scheduling avoids the butterfly's flight season, implement temporary construction barriers and dust control measures.

### **Conclusion**

Based on the chronology of biological reports described above, the appellants' contention that the project will remove buckwheat plants is not supported by the evidence provided. While sensitive coastal plants, including dune buckwheat which serves as a host plant species for the endangered Smith's blue butterfly, have existed on site in the past (as recently as 1997), recent reports indicate that invasive, exotic iceplant overgrew the area so much so that no such dune buckwheat, and therefore no Smith's blue butterfly habitat currently exists in the project area.

The appellants contention that intensified use of the site will disrupt Smith's blue butterfly habitat is a conclusionary statement, not supported by any description of how such activities would disrupt the habitat. The current property owners of the property voluntarily conducted the removal of the invasive iceplant, and subsequently revegetated the area using a seed mix made up of seeds collected from native species already located on site. As the applicants have actively worked to revegetate the area, replanting dune buckwheat north of the existing access road and on their adjacent parcel, and have incorporated a sod roof into the design with additional buckwheat plantings, the development and intensified use of the site will not adversely affect butterfly habitat, but will actually add habitat. Such restoration activities are



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage  
Page 21

consistent with the Key ESHA protection policy 3.3.1, and will help with the long-term maintenance of the native plant habitat located on the subject parcel.

Thus the County's approval allowing development of the garage/guesthouse would not remove any existing sensitive habitat nor cause any significant disruption of habitat and so is consistent with Big Sur LUP policy 3.3.2.1. Condition 6c, requiring a conservation easement to permanently protect potential dune buckwheat plants on the site, including those that may grow on the sod roof of the new structures, is consistent with Big Sur LUP 3.3.2.3. The Board's final local action also includes a condition to protect native trees located close to the construction site from inadvertent damage from construction activities. As such, Commission staff finds that contrary to the appellants' contentions, the proposed project as approved and conditioned by the Board of Supervisors, is consistent with Big Sur LUP Policies 3.3.1, 3.3.2.1, 3.3.2.3 and CIP Regulations for Development Sections 20.145.040, 20.145.040.B.1, and 20.145.040.B.2, and so raises no substantial issue with regards to protection of environmentally sensitive habitat areas.

### **5. Archaeological Resource Protection Issues**

The Appellants contend that the project does not conform to the standards set for the in the certified Monterey County LPC regarding archaeological resource protection policies. The appellants incorporate their earlier letters (dated October 16, 2003 and November 24, 2003 regarding their appeal of the Planning Commission's decision to the Board of Supervisors), by reference in their appeal to the Commission (see Exhibit G), which specifically cite Big Sur LUP Policies 3.11.1 and 3.11.2 and CIP Regulations for Development Section 20.145.120. The appellants also refer to contentions raised by the Coastal Commission in its earlier appeal of the Planning Commission's approval of the project. As described in Section 1 above, the Coastal Commissions appeal was deemed null and void since it was not based on the County's final local action on the project. Nonetheless, the appellant has also raised these issues by reference to these earlier contentions, which, with regards to archaeological resource protection policies, are generally as follows:

*Archaeological surveys of the site indicate the presence of a cultural deposit within the project site. The results of laboratory testing, and a final technical analysis, have not yet been provided. Without these relevant details, the project cannot be found to be consistent with Big Sur LUP Sections 3.11.1 and 3.11.2, and CIP section 20.145.120, requiring new development to incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources.*

### **Applicable Policies**

The specific policies identified by the appellant include the following:

*3.11.1. Key Policy. Big Sur's archaeological resources, including those areas considered to be archaeologically sensitive but not yet surveyed and mapped, shall be maintained and protected*





## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 22

*for their scientific and cultural heritage values. New land uses and development, both public and private, should be considered compatible with this objective only where they incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources.*

### 3.11.2 General Policies.

- 1. All available measures, including purchase of archaeological easements, dedication to the County, tax relief, purchase of development rights, etc., shall be explored to avoid development on significant historic, paleontological, archaeological, and other classes of cultural sites.*
- 2. When developments are proposed for parcels where paleontological resources or archaeological or other cultural sites are located, project design shall be required which avoids or substantially minimizes impacts to such cultural sites. To this end, emphasis should be placed on preserving the entire site rather than on excavation of the resource, particularly where the site has potential religious significance.*
- 3. Because of the Coastal Zone's known abundance of paleontological resources and archaeological and other cultural sites, no sites or development shall be categorically exempt from environmental review in the Big Sur Local Coastal Plan.*
- 4. Whenever development is to occur in areas having a probability of containing archaeological sites, the Site Survey Office or a professional archaeologist shall be contacted to determine whether the property has received an archaeological survey. If not, such a survey shall be conducted to determine if an archaeological site exists.*
- 5. When sufficient planning flexibility does not permit avoiding construction on paleontological, archaeological or other types of cultural sites, adequate preservation measures shall be required. Mitigation shall be designed to accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.*
- 6. Off-road vehicle use, unauthorized collecting of artifacts, and other activities other than development which could destroy or damage paleontological, archaeological or cultural sites shall be prohibited.*

CIP Section 20.145.120 provides the development standards to assure the maintenance and protection of Big Sur's archaeological resources, and provides that development within 750 feet of a known archaeological resource, as identified through an archeological survey report, or as shown on County resource maps or other available information shall be required to obtain a Coastal Development Permit. CIP Section 20.145.120 also includes standards for requiring an archaeological survey report, guidelines for preparation of the report, requirements for environmental assessment of sites containing archaeological resources and development standards for parcels containing archaeological resources. Relevant development standards in 20.145.120.D are included here:





## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage

Page 23

*20.145.120.D.1. Development proposed on parcels with an identified archaeological site shall be designed and located so as to avoid development on or impacts to the site. Alternative siting or location, reduction of project size, and other techniques shall be utilized where resulting in reduced impact to or avoidance of the archaeological site (Ref Policy 3.11.2.2)*

*20.145.120.D.2. Development on parcels with an archaeological site, as identified through an archaeological report prepared for the site, shall be subject to the following conditions of approval to be completed prior to the issuance of building or grading permits:*

- a. The recommended mitigation measures contained in the archaeological survey report prepared for the site shall be made condition of approval.*
- b. The applicant shall request a rezoning of the parcel to add an "HR" (Historical or Archaeological Resources) zoning district to the existing zoning of the parcel. The rezoning shall not necessitate an amendment to the Land Use Plan or this ordinance.*
- c. The archaeological site shall be placed in an archaeological easement. The easement shall be required pursuant to Section 10.142.130. Prior to being accepted by the County the proposed easement shall be reviewed and verified as adequate to protect the resource by an archaeologist who has been selected from the county's list of archaeological consultants or who is a member of the Society of Professional Archaeologists*

*20.145.120.D.3. Where construction on or construction impacts of an identified archaeological or paleontological site cannot be avoided, as verified in the archaeological report prepared for the project, a mitigation plan shall be required for the project. Prior to the application being considered complete, the plan shall be required by, submitted to and approved by the county. The plan shall be prepared at the applicant's expense by a qualified archaeologist...*

*20.145.120.D.4. Were a mitigation plan has been prepared for a proposed development, a condition of project approval shall be that*

- a. The preservation measures be undertaken and completed prior to the issuance of building grading permits; or*
- b. Where appropriate, according to the recommendations contained in the mitigation plan, the preservation measures shall be undertaken concurrent with grading or other soil-disturbing activities and shall be undertaken in accordance with the mitigation plan, as a condition of the grading or building permit; and*
- c. The results of the preservation activities shall be compiled into a final report prepared by the archaeologist and submitted to the County prior to issuance of the building or grading permits....*



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage  
Page 24

### **Conformance with Applicable Policies**

According to archaeological reports included in the County record (by Archaeological Consulting, dated October 3, 1996, October 10, 2002 and June 5, 2003; Exhibit J), the project site and an adjacent parcel to the north (APNs 243-231-013 and 243-231-016) were evaluated for potential archaeological resources. The preliminary cultural resource reconnaissance study, conducted in September 1996, included a background records search and field reconnaissance survey of the project area. The October 3, 1996 report indicated that an archaeological site CA-MNT-98 was recorded as extending onto the project parcel. However, results of the field reconnaissance indicated that while some archaeological resources (dark grey soil and shell fragments) were found on the northern parcel, most of the project area did not contain surface evidence of potentially significant cultural resources. It was noted at the time, however, that cultural resources of the CA-MNT-98 site might extend onto the project area, but that much of the subject parcel was covered in iceplant (obscuring the soil surface).

A later resurvey of the project site on October 4, 2002 (see letter dated October 10, 2002) indicated that during the 1996 survey, dense iceplant precluded visibility on most of parcel 243-231-013, but that it had since been removed making the extent of the archaeological deposit in the project area apparent. The October 4 survey found that the dark midden soil containing copious shell fragments is found in the footprint of the proposed house and garage and in much of the new driveway alignment, and concluded that based on the extent of the archaeological midden and placement of the project on the site, impacts to the archaeological resource could not be avoided.

The consultants thus recommended that: 1) preliminary archaeological testing be conducted to determine the nature, extent and significance of the cultural deposit; 2) data be acquired to make such a determination, including excavating a single 1x1 meter test unit, obtaining at least 2 to 4 radiocarbon dates, and any other professional analyses required; 3) a preliminary archaeological report and mitigation plan be prepared; and 4) a final technical report be completed which includes the results of all analyses subsequent to excavation of the site for project construction.

A letter report dated June 5, 2003 from the archaeological consultant indicates that they did excavate a single 1x1 meter test unit of a portion of the archaeological site CA-MNT-98 in the guesthouse project impact area, and found that the archaeological midden on the site that contained numerous shell fragments, dominated by mussel (*Mytilus*) and abalone (*Haliotis*) shell. The archaeological consultant, at that time, also recommended that the guesthouse project should go forward as planned with a condition that a qualified archaeological monitor be present during construction activities that involve soil disturbance, and that work be halted if human remains or intact cultural features are discovered.

The archaeological consultants later prepared a final technical report (*Report on Archaeological Investigations for portions of CA-MNT-98B*, dated October 23, 2003) describing the results obtained from earlier archaeological tests that had been conducted in the vicinity of the proposed project area (in 1987 and 1991), and laboratory results from samples taken in the test unit on site in 2003, and radiocarbon dates from two shell fragments collected in 2003. Results of the archaeological investigations indicate that the archaeological deposit currently recorded as Ca-MNT-98 consists of two



## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 25

extremely different occupation areas, CA-MNT-98A the southernmost portion of the site, characterized by high percentage of abalone shell, and CA-MNT-98B, characterized primarily by mussel shell. The current project area is at the southern edge of CA-MNT-98B. The project area is located within the currently recognized ethnographic territory of the Costanoan (often called Ohlone) linguistic group, which used areas along the Monterey County coastline for hunting and gathering for subsistence. Based on radiocarbon dating and other studies, CA-MNT-98B was determined to be an example of a "late Period Coastal Shellfish Processing site" and is later described as:

*"...a Late Period resource exploitation area which was probably used on a seasonal basis. Principal activities included shellfish gathering and processing, along with some hunting and fishing... While the cultural deposit appears to be substantially intact, there is little information present; the type of site, defined as a coastal shellfish processing site, was probably used intermittently or seasonally and never served as a primary residential base."*

Discussion with Mary Doane, of Archaeological Consultants (pers. comm. 4/7/04), indicated that many of these sites exist along the Monterey Peninsula and the Big Sur coast, but as very few cultural artifacts were discovered (one chert flake scraper, a very small chert bladelet and a piece of granite with some red ochre staining), it was not identified as a significant archaeological site. Further discussion with Gary Brescinni (pers. comm. 4/8/04) indicated that the information available from the site was fairly limited, and that the midden deposit would be considered minimally significant since they had extracted all the archaeological information they could from it. The October 2003 report notes that the management report (identified by M. Doane as the June 5, 2003 letter report), containing project recommendations was previously submitted, and the final technical report made no further comment about additional recommendations or mitigation measures.

The Planning Commission's earlier decision on the Kleissner guesthouse/garage project apparently relied on the earliest archaeological report, finding that the archaeological site was of limited significance and so adequately mitigated by a condition requiring an archaeological monitor be present during excavation activities. The Board of Supervisors' final action on the project, however, acknowledges the October 2002 site visit and October 10, 2002 letter report and archaeological findings that the garage/guesthouse site contains cultural resources and recommended mitigation measures that included that additional testing should be completed. While the appellants contend that the Board's approval of the project prior to completion of the additional testing was inconsistent with the LCP, the archaeological testing was in fact completed and preliminary results identified in Finding 1(k)(3) of the Board's approval. The final reporting of laboratory results were completed prior to the Board's November 25<sup>th</sup> hearing, and did not change the management recommendations and mitigation measures identified in the June 5, 2003 letter report, which were incorporated into the Board's decision: Condition 19 requires that work be halted immediately within 50 meters of any archaeological, cultural, historical or paleontological resources are uncovered and Finding 1(k) notes that archaeological mitigation measures require a qualified archaeological monitor be present during construction activities.

The Board of Supervisors final local action Condition 6b also requires an archaeological easement for all significant archaeological sites, as determined by the final technical report prepared for the project. The



## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 26

October 23, 2003 report, which is considered to serve as the final technical report for the project, did not identify the midden as a significant archaeological site, and did not identify any other archaeologically significant sites within the project area, or that would be affected by project activities. However, the archaeological consultant, Gary Brescinni, did indicate that more significant archaeological sites might exist in the more northeastern portion of the property (north of the existing access road) where visual evaluation of the area identified a much greater density of shell material on the soil surface (pers. comm. 4/8/04)<sup>1</sup>. However, since the proposed project is not seen as impacting significant archaeological resource, recommendations have not been made to re-site or redesign the project to avoid the site, and all mitigation measures recommended by the consultant have been incorporated into the Board of Supervisors approval to protect any further cultural resources that may be found in the project area during project construction activities.

Furthermore, in response to the appellant's suggestion that the guesthouse/garage structure be relocated about 80 feet landward, the archaeological consultant evaluated the impact of such relocation and responded by letter dated September 10, 2003 (Exhibit J) that the proposed relocation would not alter the recommendations already incorporated into the Board's action, and went on to note that:

*...either way, the proposed structure will be within the midden area. Based on our test excavation, we believe that an archaeological monitor [to be present during construction-related activities that involve soil disturbance] will be all that is required with either of the two proposals."*

### **Conclusion**

Commission staff finds that contrary to the appellants' contentions, the proposed project as approved and conditioned by the Board of Supervisors, is consistent with Big Sur LUP Policies 3.11.1 and 3.11.2 and CIP Regulations for Development Section 20.145.120, and so raises no substantial issue with regards to protection of archaeological resources.

### **6. Guesthouse Requirements**

The Appellants contend that the project does not conform to the standards set for the in the certified Monterey County LPC regarding guesthouse construction and use. (The appellants do not further indicate why they make this contention; perhaps it is because guesthouse standards were not specifically included in the project description or the Planning Commission's earlier approval, which was appealed to the Board of Supervisors by the same appellants.) The appellants incorporate their earlier letters (dated October 16, 2003 and November 24, 2003 regarding their appeal of the Planning Commission's decision to the Board of Supervisors), by reference in their appeal to the Commission (see Exhibit G),

---

<sup>1</sup> The Final Technical Report did not identify any significant archaeological resources on site. If additional evaluation determines that there are significant archaeological resources to be protected on the property, Condition 7 requires that the applicant request a rezoning of the parcel (to add an "HR" Historic or Archaeological Resources zoning classification), prepare and implement a mitigation plan and obtain amendments if the mitigation plan would require material changes of the project as approved.



## Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage  
Page 27

which specifically cite CIP Regulations for Development Sections 20.145.140B.4.d.3 and 20.145.140.B.4.d.10. The appellants also refer to contentions raised by the Coastal Commission in its earlier appeal of the Planning Commission's approval of the project. As described in Section 1 above, the Coastal Commission's appeal was deemed null and void since it was based on the earlier Planning Commission's decision, which was not the County's final local action on the project, once it was appealed to the Board of Supervisors. The Commission did not appeal the Board of Supervisors' decision. Nonetheless, the appellant has also raised these issues by reference to these earlier contentions, which, with regards to archaeological resource protection policies, are generally as follows:

*Section 20.145.140B.4.d.3 of the CIP limits the construction of guesthouses to sites that can sustain the additional development in a manner that is consistent with the standards of the Big Sur Land Use Plan and the CIP. The proposed guesthouse is inconsistent with this standard due to the adverse impacts to scenic resources and LCP inconsistencies discussed above.*

*The County's approval of the project also conflicts with Section 20.145.140B.4.d.10, which requires a deed restriction prohibiting the rental of the guesthouse and the installation of cooking facilities. No such condition has been placed on the project.*

### **Applicable Policies**

The specific CIP regulations identified by the appellant include the following:

*20.145.140.B.4.d.3. Guesthouses shall be excluded from density requirements. However, review during the permit process, site characteristics shall be reviewed in order to determine that the site is both capable of sustaining the additional development and that the proposal is consistent with the policies of the Big Sur Coast Land Use Plan and the standards of this ordinance.*

*20.145.140.B.4.d.10. Prior to the issuance of permits for guesthouse construction or for use of an existing building as a guesthouse, the applicant shall record a deed restriction, pursuant to Section 20,142.130.B, stating the regulations applicable to the guesthouse, including that the guesthouse shall not be separately rented, let or leased from the main residence and may not have cooking or kitchen facilities, nor may it be subsequently divided from the main dwelling.*

Other relevant CIP regulations regarding guesthouse use and construction include the following:

*20.145.140.B.4.d.1. The guesthouse shall be a permanent attached or detached structure containing a living area without cooking or kitchen facilities, which is secondary and accessory to an existing main residence.*

*20.145.140.B.4.d.2. One guesthouse shall be allowed per parcel or per existing main residence.*

*20.145.140.B.4.d.4. Detached guesthouses shall be located in close proximity to the principal residence*



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage

Page 28

*20.145.140.B.4.d.5. Guesthouses shall be required to share the same utilities with the main residence except where prohibited by public health requirements.*

*20.145.140.B.4.d.6. The guesthouse shall contain no kitchen or cooking facilities, including microwave ovens and hot plates.*

*20.145.140.B.4.d.7. All facilities such as "wetbars" must be proportionate to the size and scope of the guesthouse. There may be a maximum of 6 feet of counter space, excluding counter space required for a bathroom and its attendant fixtures. There may be a maximum of 8 square feet of cabinet space, excluding clothes closets.*

*20.145.140.B.4.d.8. Guesthouses shall not exceed 425 square feet of interior area in size.*

*20.145.140.B.4.d.9. Guesthouses may not be separately rented, let or leased from the main residence.*

### **Conformance with Applicable Policies**

The appellants first raised these issues following the Planning Commission decision, which did not incorporate regulations for use and construction of the guesthouse. The findings of the Board of Supervisors final local action (Finding 9.g.1), however, did acknowledge that CIP requirements for guesthouse use had not been included in the list of conditions previously presented to the Planning Commission. Finding 9.g.1 then goes on to say that CIP Section 20.64.020.C.8 requires all applications for guesthouses to record a deed restriction, and conditioned the Board's approval to require that the applicant record a deed restriction stating the regulations applicable to guesthouse construction and use (Condition 5), consistent with CIP regulations Section 20.64.020 "Regulations for Guesthouses."

Regulations included in CIP Section 20.64.020 are basically similar to Section 20.145.140.B.4 of the Big Sur Regulations for Development cited above, except Section 20.64.020 lacks a regulation similar to CIP Section 20.145.140.B.4.d.3, which requires that "...site characteristics shall be reviewed in order to determine that the site is both capable of sustaining the additional development and that the proposal is consistent with the policies of the Big Sur Coast Land Use Plan and the standards of this ordinance." Coastal Commission staff reviewed the project plans and site characteristics and have determined, based on findings detailed above (which include evaluation of the project with regards to scenic, biological, and archaeological resource protection policies) that the site is both capable of sustaining the additional development and that the proposal is consistent with the policies of the Big Sur coast LUP and CIP regulations for development.

The guesthouse shown in the plans approved by the Board of Supervisors Resolution 03-398 is 420 square feet in size and does not contain a kitchen and thus conforms to the CIP Regulations for development Sections 20.145.140.B.4.d.1 through B.4.d.9 described above.



## **Appeal A-3-MCO-02-121 Staff Report**

Kleissner Guesthouse and Garage  
Page 29

### **Conclusion**

Commission staff finds that contrary to the appellants' contentions, the proposed project as approved and conditioned by the Board of Supervisors, is consistent with CIP Regulations for Development Sections 20.145.140B.4.d.3 and 20.145.140.B.4.d.10, and so raises no substantial issue with regards to regulations for guesthouse construction and use.

### **7. Other Appeal Contentions**

The appellants have made other contentions that have either been responded to in regards to specific resource issues analyzed above, or are not relevant to LCP requirements, and so do not raise a substantial issue with regards to the project. Our analysis above indicates that the Boards decision is consistent with the LCP policies. The Boards decision included findings that fully described the project and identify how the project met the requirements of the LCP. Commission staff believe the County's findings and decision are supported by evidence in the record, and that they did conduct a thorough CEQA review of the project. Therefore, these contentions do not raise a substantial issue with regards to LCP requirements.







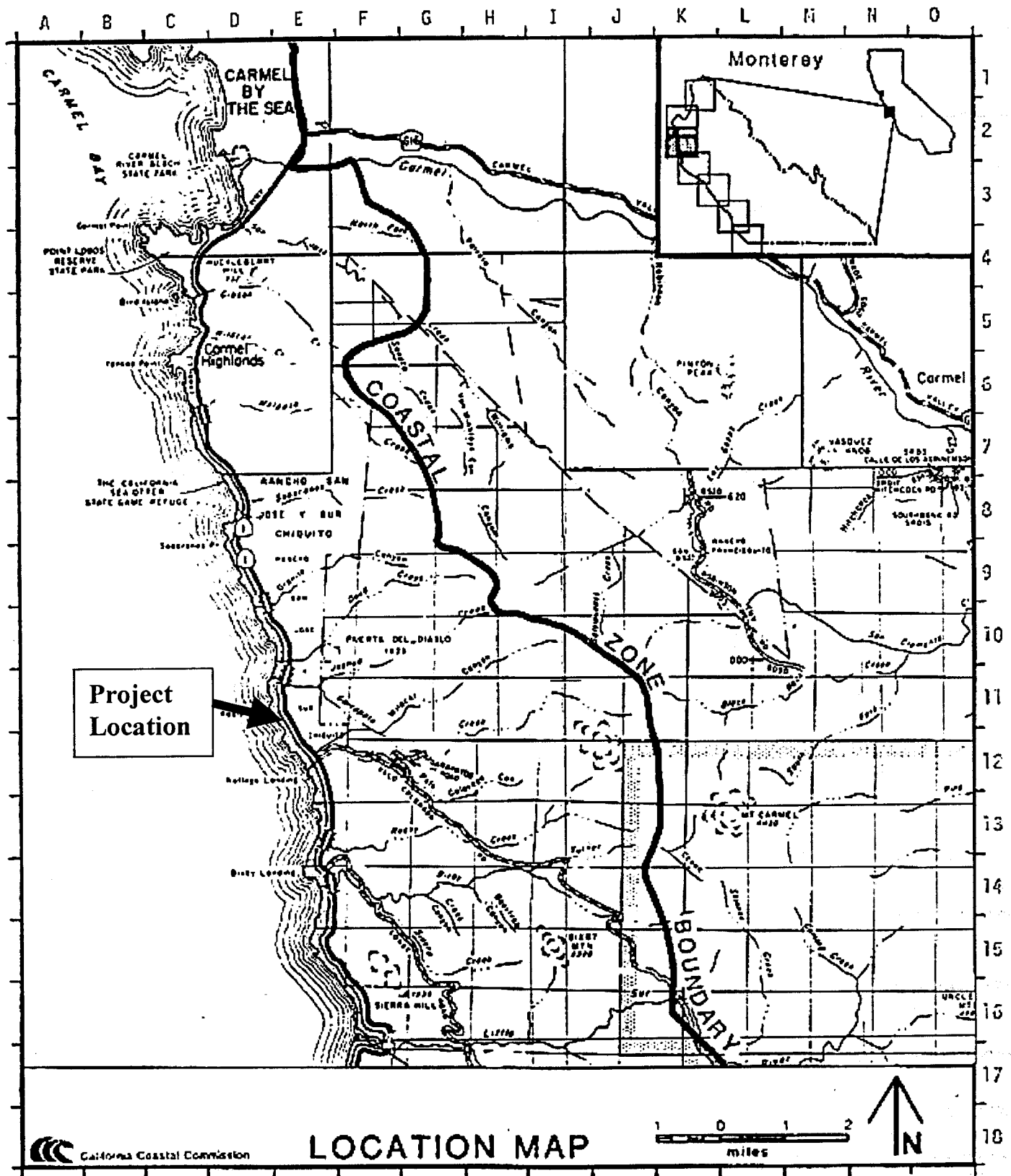
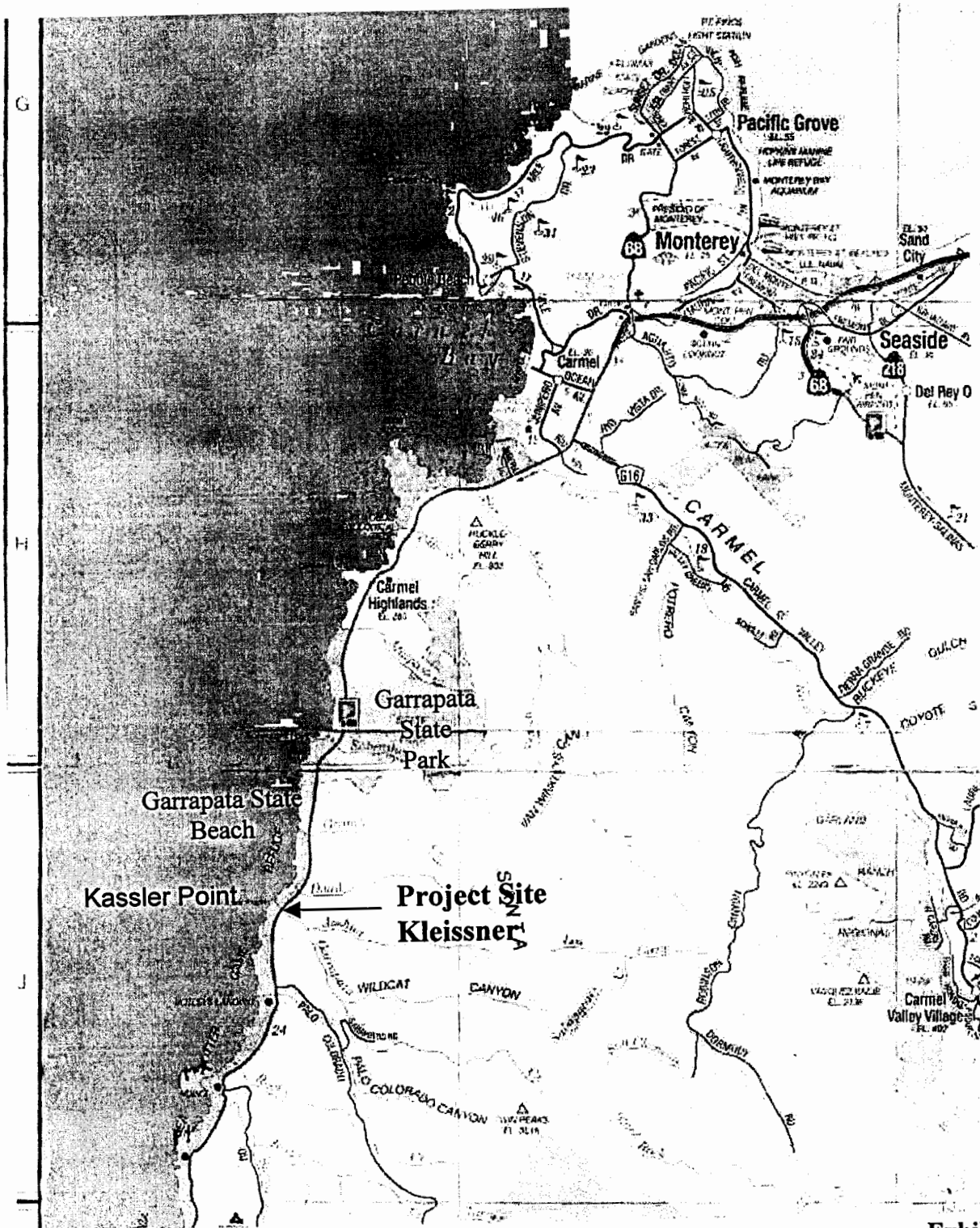


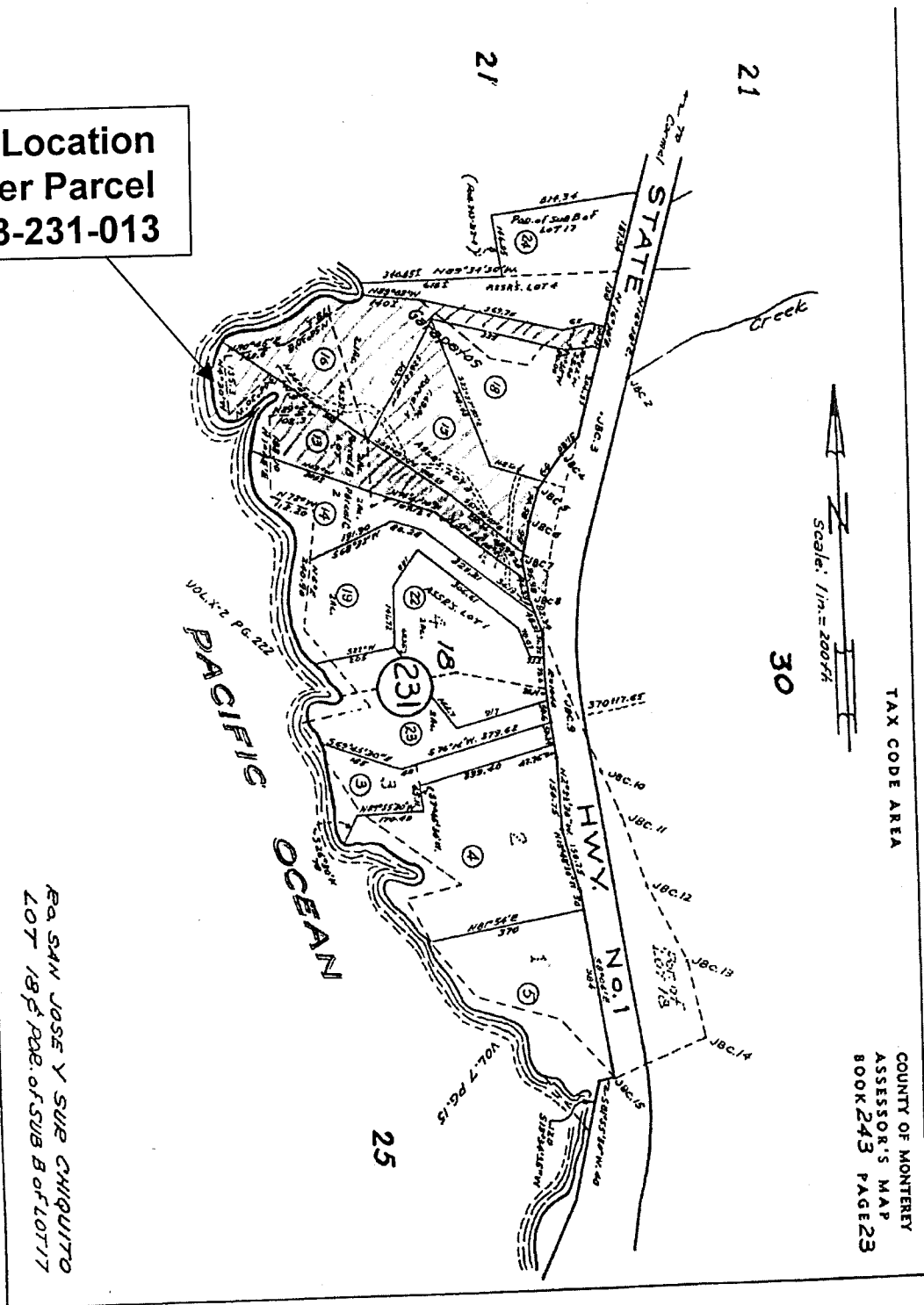
Exhibit A  
Regional Location Map

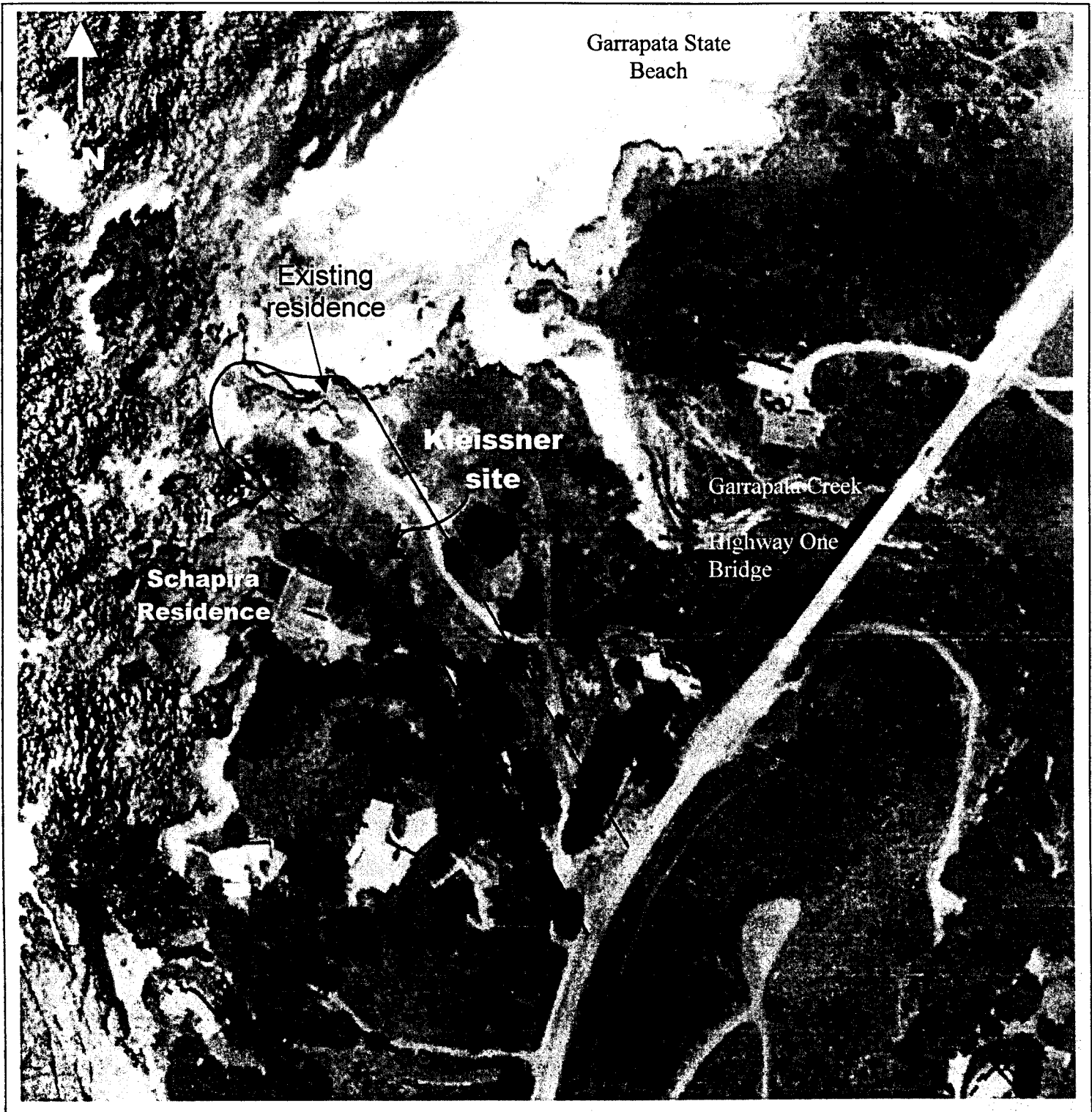


**Exhibit B**  
Vicinity Map  
Kleissner Property



Project Location  
Kleissner Parcel  
APN 243-231-013



**Exhibit D1**

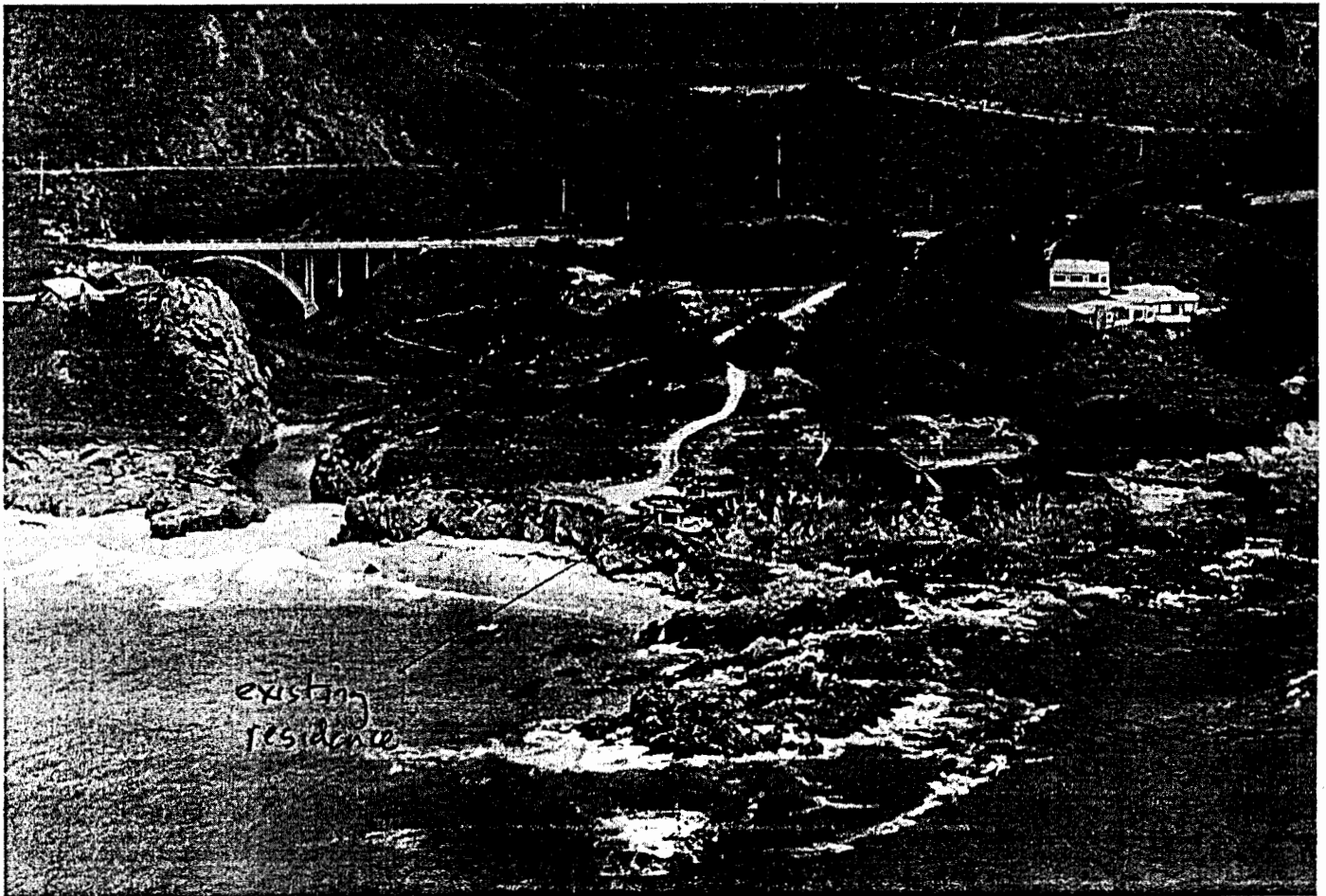
Aerial Photo of Garrapata Creek Area, showing Kleissner parcel with existing residence and Schapirar residence

A-3-MCO-03-121

Appeal of Kleissner Guesthouse/Garage



California Coastal Commission



**Exhibit D2**  
Oblique Aerial Photo of Garrapata Creek Area, showing Kleissner parcel with existing residence and Schapira residence

A-3-MCO-03-121  
Appeal of Kleissner Guesthouse/Garage





Photo 1.  
From Highway 1,  
north of Garrapata  
State Beach.

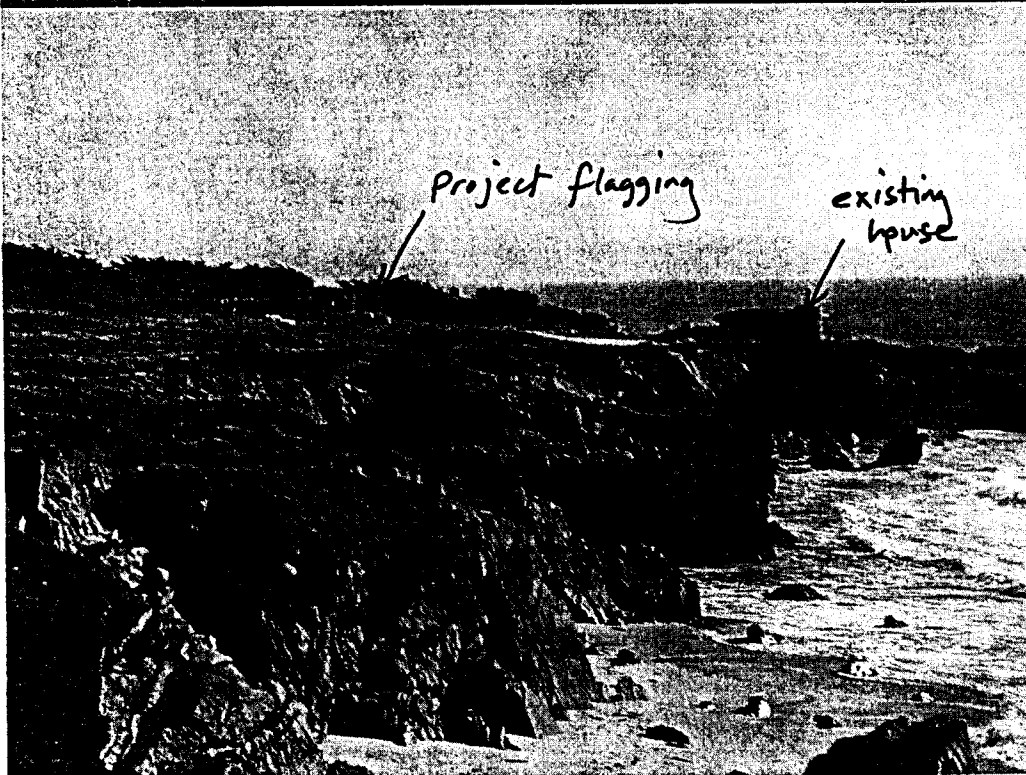


Photo 2.  
Existing House  
and project  
flagging from  
Garrapata Beach  
blufftop.

**Exhibit E 1**  
Staff Photos of Kleissner Site

A-3-MCO-03-121  
Appeal of Kleissner Guesthouse/Garage





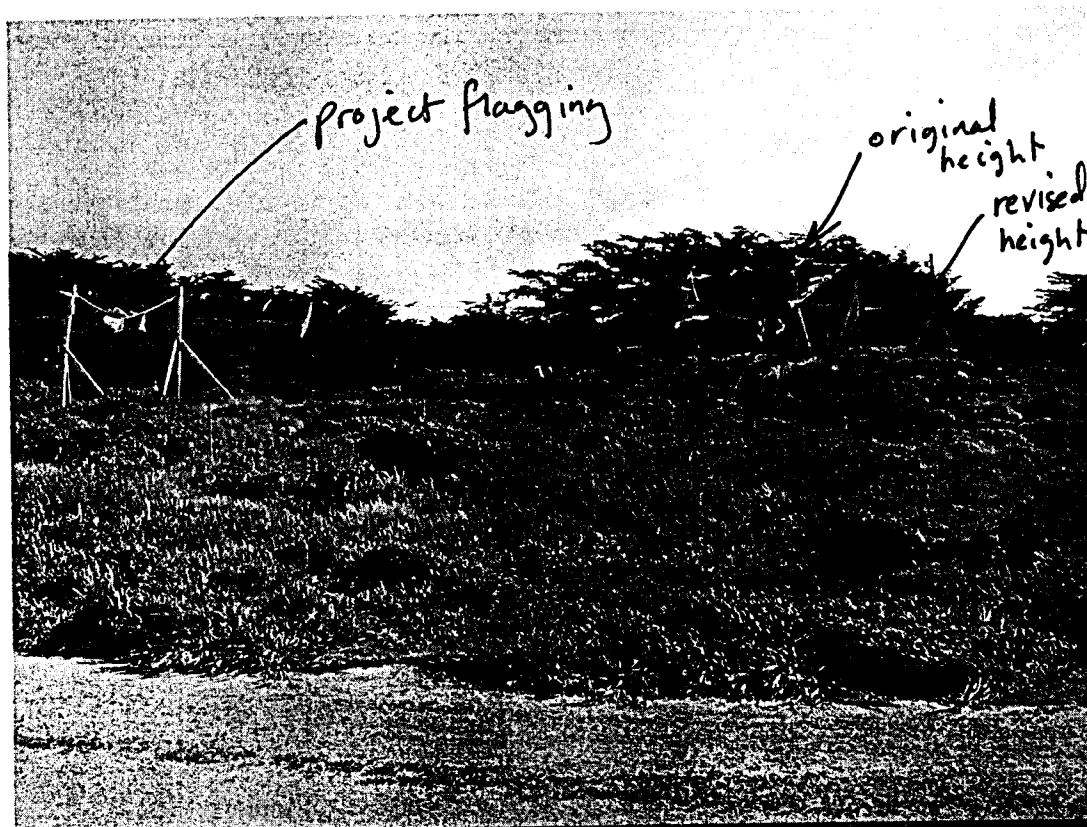


Photo 3.  
Project flagging  
showing revised  
height and cypress  
trees along south  
property line.

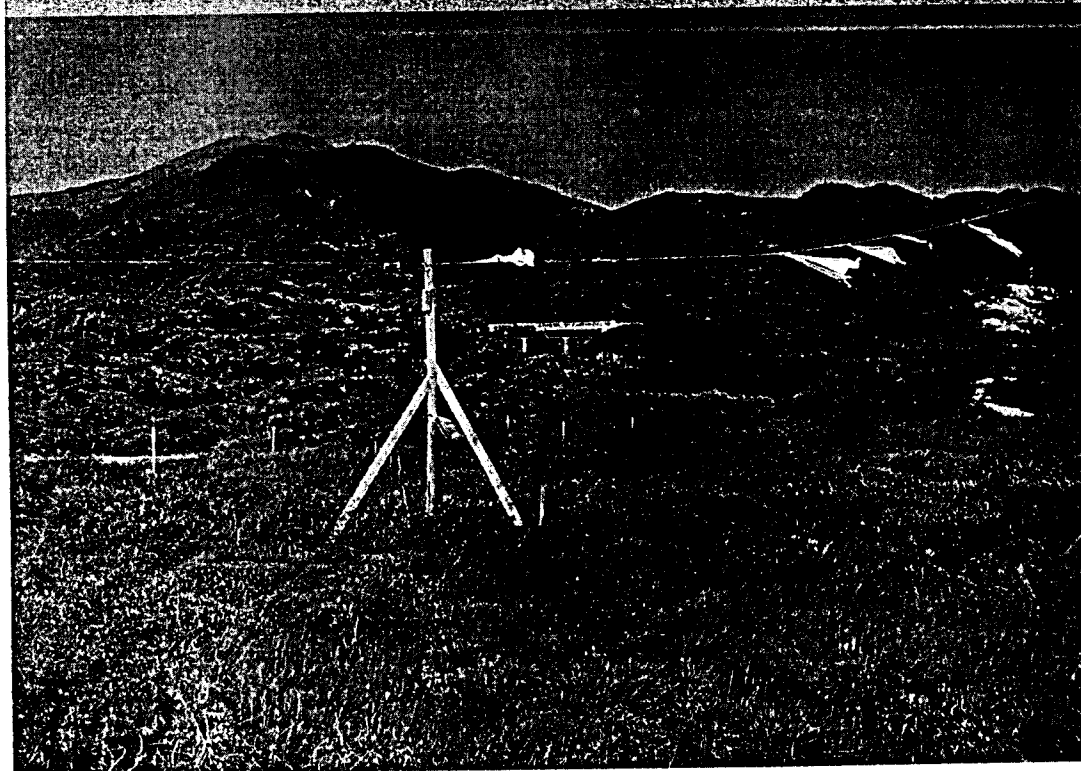


Photo 4.  
Flagging of project  
looking to  
Garrapata Creek  
and Highway One  
Bridge. Landscape  
berming proposed  
to screen project  
from bridge.

Exhibit E2

Staff Photos of Kleissner Site

A-3-MCO-03-121

Appeal of Kleissner Guesthouse/Garage



California Coastal Commission

Photo 5.  
Photo of site from  
Highway 1 Bridge  
at Garrapata Creek.



Photo 6.  
Zoom in from  
Highway 1, north  
of Garrapata State  
Beach. Most of  
proposed structure  
is screened by  
existing trees.



**Exhibit E3**  
Staff Photos of Kleissner Site





Photo 7.  
Existing Kleissner  
residence with sod  
roof.

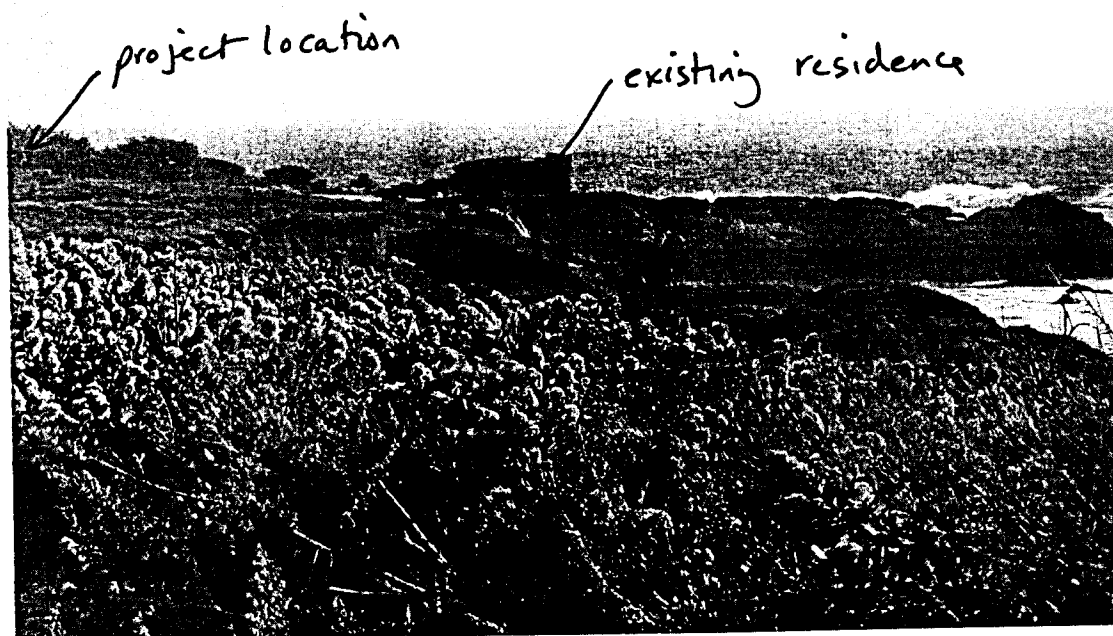


Photo 8.  
Photo of existing  
residence and  
project area from  
Garrapata Beach  
blufftop.

**Exhibit E4**  
Staff Photos of Kleissner Site

A-3-MCO-03-121  
Appeal of Kleissner Guesthouse/Garage

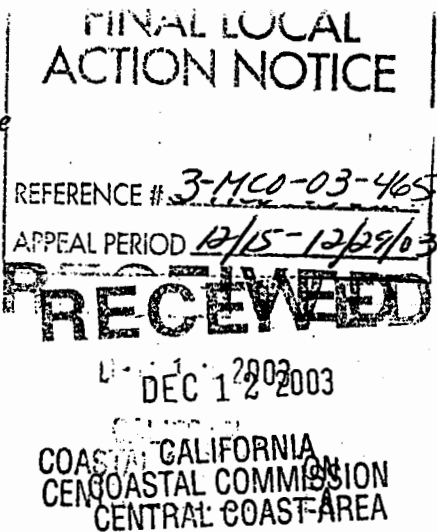


California Coastal Commission

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

**Resolution No. 03-398**

Approve a Combined Development Permit and Design Approval (PLN020392 – Karl and Lisa Kleissner) including: a Coastal Administrative Permit to allow construction of a new detached 1,380 square foot 3-car garage with an attached 420 square foot guesthouse plus installation of a 5-foot tall wooden grape stake fence along the southern property line; a Coastal Development Permit for development in the critical viewshed; a Coastal Development Permit for development on a parcel with a positive archaeological report. The property is located at 35678 Highway 1, Big Sur (APN; 243-231-013-000), southwest of the Garrapata Creek Bridge, coastal zone.



**WHEREAS:** On February 11, 2003, Karl & Lisa Kleissner filed an application for a Combined Development Permit and Design Approval (PLN020392) requesting to construct a detached 3-car garage with a guest house and re-locate the driveway 35678 Highway One near Garrapata Ridge Road, Monterey, Big Sur Land Use Plan (Assessor's Parcel Number: 243-231-013-000), Coastal Zone.

**WHEREAS:** On July 18, 2003, an initial study and draft mitigated negative declaration were distributed to responsible agencies and interested parties including the State Clearinghouse (SCH#: 2003071118) in accordance with the California Environmental Quality Act (CEQA). The comment period for this document was from July 21, 2003 to August 21, 2003.

**WHEREAS:** On March 11, 2003, the Big Sur Land Use Advisory Committee voted 5-0 to recommend approval of the proposed Combined Development Permit and Design Approval (PLN020392/Kleissner).

**WHEREAS:** On August 28, 2003, the Zoning Administrator held a duly noticed public hearing and continued the proposed project (PLN020392/Kleissner) in order to schedule a site visit.

**WHEREAS:** On September 9, 2003, the Zoning Administrator held a duly noticed public hearing at the project site to review issues raised in the August 28, 2003 hearing.

**WHEREAS:** On September 25, 2003, the Zoning Administrator held a duly noticed public hearing and continued the proposed project (PLN020392/Kleissner) due to an appeal filed by the neighboring property owners to address procedural issues (PLN030442).

**WHEREAS:** On September 30, 2003, the Zoning Administrator referred the proposed project (PLN020392/Kleissner) to the Planning Commission in accordance with Section 20.04.030.F of the Monterey County Coastal Implementation Plan (Part 1).

**WHEREAS:** On October 8, 2003, the Planning Commission held a duly noticed public hearing on the proposed project (PLN020392/Kleissner). The Commission voted 9-0 to approve the project as presented by staff (Resolution #: 03065).

**WHEREAS:** On October 16, 2003, Dr. and Mrs. Robert Schapira filed an appeal of the Planning Commission decision on PLN020392/Kleissner.

**WHEREAS:** On November 25, 2003, the Monterey County Board of Supervisors pursuant to regulations established by local ordinance and State law, has considered, at a public hearing, an application for a Combined Development Permit for a project located within a Rural Density Residential, 40 acres per unit, Design Overlay, maximum height 14 feet (RDR/40-D(14)CZ) zoning district in the Big Sur Land Use.

**NOW, THEREFORE,** having considered all the written and documentary information submitted, the staff reports, oral testimony, and other evidence presented before the Board of Supervisors, the Board of Supervisors now renders its decision granting the appeal in part and adopts findings in support of its decision as follows:

1. **FINDING – CONSISTENCY:** The Project, as conditioned, is consistent with applicable plans and policies, Big Sur Coast Land Use Plan, Coastal Implementation Plan (Part 3), and the Monterey County Zoning Ordinance (Title 20) which designates this area as appropriate for residential development.

**EVIDENCE:**

(a) **Site Description.** The subject lot (APN: 243-231-013-000) is 2.0 acres in size and the zoning designation requires a minimum of 40 acres for parcels in this district. The parcel is a legal lot of record with an existing single family home.

(b) **Land Use.** The parcel is zoned Rural Density Residential, 40 acres per unit, Design Control District, 14 Feet Height Limit, Coastal Zone [RDR/40-D(14)(CZ)].

(c) **Plan/Code Conformance.** The Planning and Building Inspection Department staff reviewed the project, as contained in the application and accompanying materials, for conformity with the:

(1) Big Sur Coast Land Use Plan

(2) Monterey County Coastal Implementation Plan - Part 3 (Chapter 20.145); and

(3) Monterey County Coastal Implementation Plan – Part 1 (Zoning Ordinance - Title 20).

- Sections 20.16.040 CIP lists guesthouses and garages as allowed uses in the RDR zoning district.

- Chapter 20.44 establishes design guidelines for projects located within the coastal zone.

- Chapter 20.58 provides regulations for parking.

- Chapter 20.64.020 establishes development standards for guesthouses.

With the recommended conditions, there would be no conflict or inconsistencies with the regulations of these plans or policies.

(d) **Permits.** The RDR zone allows guesthouses (Section 20.16.040.B CIP) and accessory structures/garages (Section 20.16.040.E CIP) with a Coastal Administrative Permit. The RDR zone authorizes the Planning Commission to consider Coastal Development Permits for development within the critical viewshed (Section 20.16.030.B CIP) and development with positive archaeological reports (Section 20.16.030.F CIP).

(e) **Development Standards.** As conditioned, the project meets all set back (50' front/6' sides/6' rear) and height (14) requirements for habitable accessory structures in the RDR zone. There are no trees located within the building area. A minimum of one covered and one uncovered parking space is required for the primary residence (Section 20.58.050.F CIP). This application includes a detached 3-car garage that will address an existing Code deficiency for this property.

(i) **Rocky Point Exemption.** Key Policy 3.2.1 of the Big Sur Land Use Plan (LUP) would prohibit development that is visible from Highway 1 (defined as critical viewshed). Section 3.2.5.F LUP provides an exemption to this policy for the "Rocky Point Area" that allows vacant parcels in the Rocky Point Area to develop under Policy 3.2.4, which applies to development not within the critical viewshed. Section 20.145.030.B.6 of the Coastal

Implementation Plan (CIP) establishes standards for development in the Rocky Point Area. The Board determines that development on non-vacant Rocky Point area parcels is also allowed under the same guidelines provided that the portion of the parcel selected is the least visible from public viewpoints. Section 20.145.030B.6.g CIP requires guesthouses to be attached to the main dwelling except where they can be sited better to conform with the Rocky Point development standards. The main dwelling is located in a location that is more visible than the proposed location. The guesthouse is attached to the garage, which is a required structure for houses approved under current regulations (Section 20.58.050.F CIP). The existing dwelling and proposed garage/guesthouse are visible from the north on Highway One at a distance. Existing land forms (topography and trees) around the proposed structure reduce its visibility from the distance and serve to screen the development from areas closer to the site. Although the structure could be located on other parts of the property, moving the proposed structure east would make it more visible from Garrapata Bridge. Therefore, the proposed site is the least visible location and provides reasonable area to install landscape that softens and compliments the design (wood, stone, turf roof). A detached garage was approved by the Coastal Commission on the neighboring lot (APN: 243-231-016-000), which is located further toward the ocean in the same view corridor as the proposed garage/guesthouse (permit expired). The proposed garage/guesthouse design blends with, and is subordinate to, existing topographic and landscape features (Policy 3.2.4.A.2 LUP/Section 20.145.030.C.2.b CIP). Exterior materials include wood siding and stone veneer that incorporated earth tone colors and a planted roof and surrounding landscaping using native plant species (Section 20.145.030.B.6.b CIP/Section 20.145.030.C.2.d CIP). This design is similar to the main house. The height of the proposed structures does not extend above any existing landforms so they do not block any ocean view (Section 20.145.030.B.6.c CIP). The proposed location provides adequate area to plant landscape that will screen the new structure (Policy 3.2.4.A.4 LUP). A mitigation measure has been included that limits height of newly planted trees and shrubs so as not to block views any more than the proposed structure. A condition is included that requires dedicating a scenic easement over the rocky point below the existing dwelling (Section 20.145.030.B.6.e).

(j) Environmentally Sensitive Habitat (ESHA). As conditioned, the proposed project is consistent with regulations for development adjacent to environmentally sensitive habitats (Section 20.145.040 CIP). The building site consists of coastal bluff scrub with a row of Monterey cypress along the south property line. The following biological assessments were prepared for the subject site in accordance with Section 20.145.040.A CIP:

(1) *February 3, 1997 report by Jud Vandevere and Associates for Dr. Robert Goodwin* (prior property owner). This report was prepared in response to an application by Dr. Robert Goodwin to build a new single family dwelling. The report identified that the subject property and an adjacent lot (APN: 243-231-013 and 016) contained numerous dune buckwheat (*Eriogonum parvifolium*), which is a known host plant for the endangered Smith's blue butterfly. The report determined that although removal of the buckwheat could create a significant impact, said impact could be mitigated through replanting the buckwheat at a 1:1 ratio.

(2) *September 24, 2002 letter by Jud Vandevere to Charly and Lisa Kleissner* (applicants). This letter provides a chronological assessment of Smith's blue butterflies and its host plant (dune buckwheat) relative to the subject site. It references a survey completed by LSA Associates in January 1989 and documents that during a July, 2000 field survey no Smith's blue butterflies were found. The letter indicates that the new owners (Kleissner's) removed exotic ice plant and restored the abatement area with a mix that included dune buckwheat. In September 2002, a survey revealed that no buckwheat plants are located within the area of the proposed garage/guesthouse.



(3) *April 5, 2003 letter by Jud Vandevere to Charly and Lisa Kleissner.* Follow up letter reports that following the 1997 survey, "the buckwheat and other native plants on the site were overwhelmed by an extremely thick growth of sea fig, *Carpobrotus chilensis*." Consequently, no buckwheat plants were found within the proposed building site. The April 2003 letter further states that following eradication of ice plant (sea fig), the current property owners seeded an area of the property with several native plant species including Dune Buckwheat, Lizard Tail, Beach Aster, Seaside Daisy, California Sagebrush, Mock Heather and Yarrow.

(4) *April 21, 2003 letter from Thomas K. Moss, Coastal Biologist to Lautaro Echiburu, Project Planner.* Verifies a Landscape Restoration seeding mix prepared for the property in August 2000.

Although buckwheat plants themselves are not protected, they provide habitat for an endangered species (Smith's blue butterfly). Based on reports from qualified biologists, the integrity of this butterfly habitat (buckwheat) had been lost by the invasion of exotic ice plant. As such, abating the ice plant did not remove sensitive habitat; therefore, no Coastal Development Permit was required. Removal of buckwheat plants is an allowed practice with proper replacement. Biologists have verified that the butterfly habitat in this area has been restored and no further mitigation is required. As conditioned, the proposed project would not pose a threat to any listed rare or sensitive plants communities. The field of buckwheat plants are located on a neighboring property. Although the applicant owns the adjacent lot, there is no development proposed on that property under this application. Therefore, the site does not require a conservation easement (20.145.040.B.2 CIP) to preserve these plants.

(k) Archaeology. County resource maps identify this area to be highly sensitive to archaeology finds. The following archaeological assessments were prepared for the subject site by *Archaeological Consulting* in accordance with Section 20.145.120.B CIP:

(1) *October 3, 1996.* Preliminary report of archaeological investigations for development of the subject site and site immediately north (APNs: 234-241-013 and 016-000) identified that the parcel contains a portion of an archeological site, but does not classify the site as a positive site.

(2) *October 10, 2002.* Follow up letter evaluating the building footprint for the proposed garage/guesthouse on APN 234-241-013-000. This report references a 1987 report for the southern portion of the site as well as a 1991 report for the northern portion of the site. Abatement of ice plant exposed archaeological midden (shells). Based on this finding, the report recommended further testing and a Final Technical Report.

(3) *June 5, 2003.* Preliminary results from a single unit excavation test performed on May 29, 2003 concluded that the site is of limited significance and is not unique. This report recommends allowing the garage/guesthouse project to move forward with recommended conditions that require monitoring during construction.

(4) *September 10, 2003.* A letter addressing a proposed relocation site determines that the potential impacts are the same and therefore, the recommendation in the June 5, 2003 report would remain the same for either location.

A mitigation measure requires that an archaeological monitor be present during excavation activities to ensure that no potential archaeological resources are impacted. A Final Technical Report must be completed prior to issuance of any permits. If this report determines that the site contains significant resources, additional mitigation will be required. If mitigation is required that substantially changes the project design then permit amendments will be required pursuant to County code. Conditions require dedicating an easement and changing the zone if there are significant archaeological findings (Section 20.145.120.D.2 CIP). As conditioned, the proposed project is consistent with regulations for development in archaeologically sensitive areas (Section 20.145.120 CIP).



(l) Geologic Hazards. The site is located in a hazardous geologic zone according to Resource Maps, of the Monterey County Big Sur Coast Land Use Plan. Technical reports have been provided by consulting geotechnical engineers and geologists with recommended conditions and modifications that provide additional assurances regarding project safety:

(1) Geological Update Report - Proposed Guest House and Garage. March, 2003 prepared by Geoconsultants, Inc.;

(2) Geotechnical Update - Proposed Guest House and Garage. March 7, 2003, prepared by Tharp & Associates.

The proposed project is consistent with policies of the Big Sur Coastal Implementation Plan dealing with development in hazardous areas (Section 20.145.080 CIP).

(m) Land Use Advisory Committee: The Big Sur Coast Land Use Advisory Committee voted 5-0 to recommend approval of the project as presented. LUAC meeting minutes dated March 11, 2003.

(n) Site Visits. Project planners conducted on-site inspections on October 14, 2002, January 23, 2003, September 9, 2003, and October 29, 2003 to verify that the project on the subject parcel conforms to the plans listed above.

(o) Field Trip. On September 9, 2003, staff along with the Monterey County Zoning Administrator conducted a field trip that visited the subject site. This field trip involved walking the site to review the staking to determine impacts to views from Highway One and the neighbor's property.

(p) Application. 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 Project File PLN020392. Staff notes are provided in Project File PLN020392.

2. **FINDING - NO VIOLATIONS:** The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning ordinance. No violations exist on the property, and all zoning violation abatement cost, if any, have been paid.

**EVIDENCE:**

(a) Staff reviewed Monterey County Planning and Building Inspection Department records and is not aware of any violations that exist on the subject property.

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

**EVIDENCE:**

(a) Agency Review. The project was reviewed by Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, Parks Department and CDF-Carmel Hills. The respective departments and agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood. The applicant has agreed to these conditions as evidenced by the application and accompanying materials.

(b) Professional Reports. Technical reports have been provided by consulting geotechnical engineers and geologists with recommended conditions and modifications that provide additional assurances regarding project safety. These reports are in Project File PLN020392.

4. **FINDING - SITE SUITABILITY:** The site is suitable for the use proposed.  
Kleissner Guesthouse and Garage

Exhibit F  
Pg 5 of 19

**EVIDENCE:**

(a) Agency Review. The project has been reviewed for suitability by Planning and Building Inspection, Public Works Department, Water Resources Agency, Environmental Health Division, Parks Department and CDF Carmel Hills Fire District. Recommended conditions have been incorporated.

(b) Professional Reports. Technical reports by outside archaeology, biology, geology and geotechnical consultants indicate that there are no physical or environmental constraints that would indicate the site is not suitable for the use proposed. Findings and recommendations from the reports prepared by these professionals have been incorporated into the analysis and conditions for restoration and impact mitigation. All technical reports are in Project File PLN020392.

(c) Site Inspection. Project planners conducted on-site inspections on October 14, 2002, January 23, 2003, September 9, 2003, and October 29, 2003. In addition, the Zoning Administrator conducted a field visit on September 9, 2003. The proposed improvements will not present an unsightly appearance, impair the desirability of residences in the same area, limit the opportunity to obtain the optimum use and value of land improvements or impair the desirability of living conditions of the same or adjacent area.

(d) Public Facilities. Necessary public facilities are available and will be provided. On January 28, 2003, the Garrapata Water Co., Inc. provided a that the site has an existing water service.

5. **FINDING - CEQA:** On the basis of the whole record before the Monterey County Board of Supervisors there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The mitigated negative declaration reflects the independent judgment and analysis of the County.

**EVIDENCE:**

(a) Initial Study. On July 7, 2003, Monterey County Planning and Building Inspection Department completed an Initial Study pursuant to CEQA. This Initial Study identified potentially significant impacts to aesthetics, archaeological, and biological resources. The applicant has agreed to proposed mitigation measures that reduce the effects to a point where clearly no significant impact would occur. The Initial Study is on file in the office of PB&I and is hereby incorporated by reference (PLN020392). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval.

(b) Mitigated Negative Declaration. A Mitigated Negative Declaration was filed with the County Clerk on July 18, 2003, noticed for public review, and circulated to the State Clearinghouse from July 21, 2003 to August 19, 2003 (SCH#: 2003071118). The evidence in the record includes studies, data, and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented or discussed during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data, and reports; application materials; and expert testimony. Among the studies, data, and reports analyzed as part of the environmental determination are the following:

(1) The application

(2) Biological Reports consisting of:

▪ "Biological Report by Jud Vandevere and Associates, February 3, 1997;

▪ Letter by Jud Vandevere dated September 24, 2002 addressing adequacy of the 1997 Biological Report;

▪ Letter by Jud Vandevere dated April 5, 2003 addressing dune buckwheat *Eriogonum parviflorum*,  
A-3-MCO-03-121

Kleissner Guesthouse and Garage

Exhibit F  
Pg 6 of 19

- Letter from Thomas K. Moss dated April 21, 2003 verifying Landscape Restoration seeding mix used on the property.
- (3) Geologic Reports consisting of:
  - *Geotechnical Update* by Tharp and Associates, Inc, March 7, 2003;
  - *Geological Update Report* by Geoconsultants, Inc., March 12, 2003;
- (4) Archaeological reports consisting of:
  - *Preliminary Cultural Resources Reconnaissance*. Archaeological Consulting, October 3, 1996;
  - Updated report for the 1996 reconnaissance. Archaeological Consulting, October 2002;
  - Letter by Archaeological Consulting regarding recommended mitigation measures. June 5, 2003.
  - Letter by Archaeological Consulting assessing impacts of neighbor proposed relocation. September 10, 2003.
- (5) Staff reports that reflect the County's independent judgment.
- (6) Information and testimony presented during public hearings.

These reports are on file in the offices of PBI (File Reference PLN020392) and are incorporated by reference herein.

(c) Based on evidence presented below and contained in the record as a whole to include the initial study, the following topics areas were found to have related potential significant environmental impacts that could be mitigated to a level of insignificance:

- (1) Biology. Adverse impacts to the Smith's Blue butterfly could occur through impacts to seacliff buckwheat. These impacts have been reduced to a less than significant level through the requirement of a project condition that requires construction scheduling to avoid the butterfly's flight season and the implementation of temporary construction barriers and dust control.
- (2) Aesthetic. Adverse impacts to the critical viewshed could occur if newly planted vegetation grew to a height that would block ocean views. This potential impact has been reduced to a less than significant level by requiring a height limit on new landscaping. Since the proposed project does not affect the rocky point below the existing house, this was not identified as a potential impact in the initial study. However, if the proposed garage/guesthouse was attached to the main dwelling, this could become a potential scenic resource issue. A condition requires the applicant to record a scenic easement over this area pursuant to Section 20.145.030.B.6 CIP.
- (3) Cultural. Key Policy 3.11.1 notes that new development should be considered compatible with objectives to protect archaeological resources where site planning and design avoid or mitigate potential impacts. Coastal properties are not exempt from environmental review given the abundance of archeological resources in these areas (Policy 3.11.2.3). When planning does not permit avoiding construction on a site, mitigation shall be designed in accordance with State guidelines (Policy 3.11.2.5 LUP). An archaeological report was prepared in accordance with Section 20.145.120.B CIP to address these policies. A qualified archaeologist has concluded through site reconnaissance that significant archeological resources in the development footprint are not readily apparent and given the review of soil samples and reports on adjacent parcels that there is a low probability of impacting significant archeological resources by construction of, or ongoing use of the project. As construction occurs there is the possibility that significant archeological resources may be discovered. In order to reduce the potential impact to a less than significant level, a mitigation measure has been imposed on the project to ensure that an archaeological monitor be present during

construction activities. If additional mitigation is required that substantially changes the project design subsequent to the results of monitoring, then permit amendments will be required pursuant to County code. Meanwhile, some preliminary field testing has taken place. Results of all laboratory processing and additional analyses will be presented in a Final Technical Report to be submitted prior to issuance of building permits. If this reports finds significant resources, then Section 20.145.120.D CIP requires 1) rezoning to add an "HR" (Historical or Archaeological Resources) zoning designation, and 2) placing the significant area in an archaeological easement. Conditions make the applicant aware of possible requirements for an easement and zone change if they become necessary. As mitigated and conditioned, the project is consistent with the policies and regulations for development within the Big Sur Coastal Plan..

(4) Other topic areas. As verified in the initial study all other topic areas were found to have less than or no significant impacts attributed to approval and implementation of the project

(d) Mitigation Plan. A Mitigation Monitoring and/or Reporting Plan has been prepared in accordance with Monterey County regulations and is designed to ensure compliance during project implementation. Applicant must enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan as a condition of project approval.

(e) Comments. A notice of Intent was filed that stated the starting and ending dates for the review period during which the lead agency will receive comments on the proposed mitigated negative declaration in accordance with Section 15072.f.2 of the California Environmental Quality Act (CEQA). A resident filed comments following the conclusion of the comment period, but prior to the hearing before the Planning Commission. These comments have been addressed and do not create a substantial change to the proposed mitigated negative declaration. Conditions of project approval have been added after circulation of the negative declaration which: 1) are required by Code; 2) do not create new significant environmental effects; and 3) are not necessary to mitigate an avoidable significant effect. This new information merely clarifies and amplifies the findings of the negative declaration (Section 15073.5 CEQA).

(f) Testimony. The Planning Commission considered public testimony and the initial study at a hearing on July 30, 2003. The Board of Supervisors considered public testimony and the initial study at a hearing on November 25, 2003.

(g) Determination. The decision-making body of the lead agency has considered the proposed mitigated negative declaration together with comments received during the public review process. The mitigated negative declaration reflects the lead agency's independent judgment and analysis that based on the whole record before it, there is no substantial evidence that the project will have a significant effect on the environment. After sufficiently considering all comments and testimony along with the technical reports and supporting project information, the Board of Supervisors adopted a mitigated negative declaration (Section 15074 CEQA).

6. **FINDING - FISH & GAME FEE:** For purposes of the Fish and Game Code, the project will not have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends.

**EVIDENCE:**

(a) De Minimus Finding. Staff analysis contained in the Initial Study and the record as a whole indicate the project could result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. The site supports suitable habitat for the Federally-listed endangered Smith's Blue butterfly. Runoff from the site will drain into the

A-3-MCO-03-121  
Kleissner Guesthouse and Garage

Exhibit F  
Pg 8 of 19

Pacific Ocean. Therefore, this project is not subject to a de minimus exemption and the applicant is required to pay the Fish and Game fee.

(b) Initial Study and Mitigated Negative Declaration contained in File No. PLN020392/Kleissner.

7. **FINDING - PUBLIC ACCESS:** The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project 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.

**EVIDENCE:**

(a) The Local Coastal Program does not describe the subject property as an area where access is required.

(b) The subject property is designated as Priority 2 for shoreline access as shown in Figure 2, the Shoreline Access Plan, of the Big Sur Coast Land Use Plan.

(c) Public access to Garrapata State Beach is available in the area through a designated access point and trail located directly north of the Garrapata Creek Bridge.

(d) Staff performed site visits on October 14, 2002, September 9, 2003 and October 29, 2003.

(e) Conditions require the applicant to place the rocky point below the house into a scenic easement in order to preserve the visual access of this area.

8. **FINDING - APPEAL:** An appeal of the October 8, 2003 action of the Planning Commission, approving the Kleissner Combined Development Permit (PLN020392) was timely filed on October 16, 2003 and was timely brought to public hearing before the Board of Supervisors on November 25, 2003.

**EVIDENCE:**

(a) The property that is the subject of this appeal is located at 35678 Highway One, Monterey, (Assessor's Parcel Number: 243-231-013-000 ) in the County of Monterey ("the property").

(b) Planning Commission Resolution No. 03065, Planning and Building Inspection Department File No. PLN020392, and the administrative record.

(c) Appellant filed an appeal from the decision of the Planning Commission on the grounds that (1) the findings, conditions, or the decision of the Planning Commission were not supported by the evidence; and (2) that the decision was contrary to law. Said appeal was filed with the Clerk of the Board of Supervisors within the time prescribed by Monterey County pursuant to Zoning Ordinance Chapter 21.80.

(d) Said appeal was determined to be complete.

(e) Planning Commission Resolution No. 03065; Planning and Building Inspection Department File No. PLN020392; and the administrative record.

(f) Minutes and other records of the Board of Supervisors' meetings of November 25, 2003, files of the Clerk of the Board of Supervisors and Planning and Building Inspection Department.

9. **FINDING -APPEAL:** Upon consideration of the documentary information in the files, the staff reports, the oral and written testimony and other evidence presented before the Board of Supervisors, the Board denies the appeal, based on the following responses to appellant's contentions:

**Overview of Appeal:**



Appellant appeals the October 8, 2003 decision of the Planning Commission to approve Karl and Lisa Kleissner's request to construct a detached garage/guesthouse at 35678 Highway 1, Big Sur southwest of the Garrapata Creek Bridge. This appeal is brought on the basis that the Planning Commission's decision was contrary to law, and that the Planning Commission's Findings and Decisions are not supported by the evidence (Resolution No. 03065) in that the project conflicts with numerous policies in the Local Coastal Program (LCP) including:

- a. View Policies/Rock Point Exemption Area
- b. Compliance with Staking and Flagging Criteria.
- c. Archaeological Resource Protection.
- d. Biological Resource Protection.
- e. Conditions do not include requirements for Scenic/Conservation Easements, Deed Restrictions, and Rezoning Requirements Protection.
- f. Inadequate CEQA review (Driveway/Access Design, Comments)

**EVIDENCE (RESPONSE):**

- (a) Contrary to Law. The appellants generally contend that the Planning Commission's decision was contrary to law.

The appeal neglects to identify specific reasons why the decision is contrary to law other than to note contentions that there are conflicts with numerous policies in the Big Sur Coast Land Use Plan. Policies of the Land Use Plan are subject to interpretation by the Planning Commission and ultimately the Board of Supervisors. The following discussion identifies the response for how the Board of Supervisors interprets these policies.

- (b) Findings and Decisions. The appellants generally contend that Planning Commission's Findings and Decision in Resolution 03065 are not supported by the evidence.

The Findings and Evidence for this project have been expanded to clarify and amplify the decision of the Planning Commission. Numerous technical reports support these findings and conclusions that clearly support consistency with County plans, codes and regulations and provide a clear basis for approval of the project.

- (c) Viewshed Protection/Rock Point Exemption Area. The appellants contend that the proposed structure blocks part of their view and request for the Kleissner's to re-locate the structure 80-100 feet east. They further contend that the applicant did not comply with staking and flagging criteria.

Section 20.145.030.C.2.b CIP allows for existing topography and landscape to screen new development. The proposed structure is located in a manner to avoid an opening between existing Monterey cypress trees along the property line between the appellant's and the applicant's properties. Although the primary view for the appellants is west over the ocean, the structure is located to maintain a line of sight through the opening in the trees. A wood fence is proposed to prevent intrusion of ice plant and dogs. Provided the new fence does not exceed the height of the existing split rail fence, no view impact would occur in this area (Condition 18d).

The site is located downhill from the highway on a bluff just south of Garrapata Creek. The proposed structure would be visible from public areas further away. Existing land forms (topography and trees) around the structure reduce its visibility from the distance and serve to screen the development from areas closer to the site. Although the structure could be located on other parts of the property, the proposed site is the least visible location and provides reasonable area to install landscape that softens and compliments the design (wood, stone, turf roof).

The proposed structure is sufficiently screened from public and private view using existing topography along with existing and proposed landscape (Section 20.145.030.C.2.b CIP). The intent of the Rocky Point exemption is to allow development of properties provided they consider public (critical viewshed) and private views and select the least visible location from a public viewpoint (Policy 3.2.4.A.2 LUP). The proposed structure is located on the least visible part of the property and is designed to reduce visual impacts of development (Section 20.145.030.B.6 CIP). Section 20.64.020.C.2 requires detached guesthouses to be located in close proximity to the primary residence. Moving the structure to the east would move it further away from the primary residence and reduce/eliminate the amount of property available to install screening landscape (Policy 3.2.4.A.4 LUP).

Landowners are encouraged to grant scenic easements to the County over portions of their land that is in the critical viewshed (Policy 3.2.3.A.9 LUP). The rocky point below the house is a significant landform that cannot be developed as a significant landform of the Big Sur Coast (Rocky Point). The Key Policy for scenic resources is to preserve scenic resources in perpetuity. Therefore, a condition is included for the landowner to dedicate a scenic easement over this area pursuant to Section 20.145.030.B.6.e CIP (Condition 6a).

(d) Compliance with Staking and Flagging Criteria: *The appellant contests that the applicant's multi-color flags do not comply with the County's staking and flagging criteria. The staking for the subject project consists of alternating orange, yellow, and white flags strung between wood poles.*

The Board of Supervisors adopted criteria for staking and flagging projects that is reviewed, interpreted and implemented by the Director of Planning and Building Inspection. Section 2 of the County-wide staking and flagging criteria describes the standards to be used for development in areas of visual sensitivity as follows: "Netting at least two feet wide of woven plastic snow fencing, or another equally suited material (in international orange, yellow, red, or other contrasting color) must be assembled to represent the proposed structure. Netting must be supported by stakes or support wires strong enough to accurately outline the entire building perimeter and height."

On September 8, 2003, the Director of Planning and Building Inspection provided the appellants with a letter determining that the applicant's use of alternating orange, yellow, and white flags strung between wood poles is consistent with the County's Staking and Flagging criteria. The staking and flagging used with this project was also accepted by Land Use Advisory Committee, Zoning Administrator, and Planning Commission. By recommending approval of the project, staff concludes that the applicant's format uses contrasting colors that provide a clear view of the proposed building height and outline, and that this method is consistent with the County's Staking and Flagging criteria.

(e) Archaeological Resource Protection. *The appellant contends that the project does not meet rezoning and deed restriction requirements. The appellant proposes to move the structure 80-100 feet east to avoid archaeological impacts.*

Archaeological Consulting has determined that both the applicant's and the appellant's proposal will result in the same potential impact on archaeological resources. Recommended conditions have been included as part of this project (Section 20.145.120.D.3 CIP). Although a determination of significance is pending with the Final Technical Report, the Board hereby adds two conditions that make the applicant aware of possible requirements for an easement and zone change if they become necessary (Condition 6b and 7).



A qualified archaeological consultant, Archaeological Consulting, completed various reports and letters for the subject site using records of past projects, site visits, and field tests. A site visit in 2002 resulted in a recommendation that the applicant perform some additional testing within the project area in order to determine the nature, extent, and significance of the archaeological midden on Parcel 13. The garage/guesthouse site contains copious shell fragments, bone fragments, fire affected rock, and flaked lithic materials on the surface. Based on these findings the report included recommendations to perform additional testing and complete a Mitigation Plan and Final Technical Report in accordance with Section 20.145.120.D.3 CIP.

A qualified archaeologist has concluded through site reconnaissance that significant archeological resources in the development footprint are not readily apparent and given the review of soil samples and reports on adjacent parcels that there is a low probability of impacting significant archeological resources by construction of, or ongoing use of the project. As construction occurs there is the possibility that significant archeological resources may be discovered. Based on the findings from the initial tests, the consultant determined that there is no reason to delay development of the proposed project and recommends a condition that an archaeologist be present on site during construction that involves soil disturbance (Condition 16). In addition, the applicant's original plan included a driveway realignment that they deleted from the project, which reduces disturbance of possible archaeological resources.

Mitigation measures require the consultant to complete and submit a Final Technical Report prior to issuance of permits. This Report may include additional mitigation such as an archaeological easement and zone change to identify and protect archaeological resources. Pursuant to Section 20.145.120.D.4 CIP, an easement and zone change is only required if an archaeological report determines the site is significant. Although such a determination is pending the outcome of the Final Technical Report, two conditions are hereby added that make the applicant aware of these requirements if they become necessary (Condition 6b and 7). If mitigation is required that substantially changes the project design, then permit amendments will be required pursuant to County code.

(f) Biological Resource Protection. *The appellant contends that the project does not meet conservation requirements for preservation of buckwheat plants.*

A biologist and ecologist reviewed the site and found that all potential impacts can be mitigated to a level of insignificance (Section 20.145.040.B.1 CIP). Their recommended conditions are included as part of this project in order to maintain a long-term maintenance of the buckwheat habitat.

One of the appeal attachments refers to removal of buckwheat plants that would require a Coastal Development Permit. This attachment references Section 20.145.060 CIP, which relates to forest resources and no trees have been, or are proposed to be, removed. Section 20.145.040 CIP does establish development standards for Environmentally Sensitive Habitat Areas (ESHA) depending on findings from a qualified biologist.

In 1997, a biology report identified a number of buckwheat plants on the subject site. A more current evaluation by the project biologist found no buckwheat plants within the proposed building site. Upon further investigation, staff determined that the site had been overgrown with ice plant. An ecologist, separate from the project biologist, verified a program for removing the invasive ice plant and restoring the site with native vegetation.

Removal of invasive weeds is encouraged and generally does not require a Coastal Development Permit unless it is located in areas with 30% slope or riparian corridors.

Reports from a biologist and ecologist determine that the proposed project will not adversely impact the buckwheat located in the area. The proposed structure includes a roof that uses soil from the restored property that will have a seed bank of native vegetation, including buckwheat plants. In addition, the project includes mitigation measures to protect the Smith's blue butterfly since buckwheat plants are located in the area.

(g) Conditions for Easements, Deed Restrictions, and Rezoning Requirements. *The appellants contend that the project did not include scenic/conservation easements, deed restrictions and rezoning as required by Code for guesthouses, viewshed, archaeological resources, and sensitive habitat.*

This project includes Coastal Development Permits to allow development of a guesthouse 1) within the critical viewshed and 2) with a positive archaeological report (Section 20.16.030 CIP).

(1) *Guest House.* Section 20.64.020.C.8 CIP requires all applications for a guesthouses to record a deed restriction. Although this requirement was not included in the list of conditions presented the Planning Commission, it is required by Code. In order to make the applicant aware of this Code requirement, Condition 5 is included that requires recording a deed restriction.

(2) *Viewshed.* The purpose of the Coastal Act is to protect views of landforms and the coastline. The rocky point below the existing house is a significant landform that provides justification to require a scenic easement over this area (Condition 6a).

Section 20.145.030.D.6.e CIP requires parcels in the Rocky Point Area to dedicate scenic easements over undeveloped portions of the lot. There are no qualifying factors to use to determine a clear nexus for what areas are, or are not, required to be protected. The project includes a condition that limit landscaping in a manner that does not restrict views beyond that of the proposed structures. In addition, the proposed guesthouse and garage have been designed and sited to minimize their intrusion in the critical viewshed. Although there is justification to require a scenic easement for the rocky point below the existing house, there is no justification to require any easement over the balance of the site.

(3) *Archaeology.* The applicant will be required to incorporate any recommendations from the Final Technical Report in to the project (including easements or rezoning as deemed necessary). Meanwhile, the project archaeologist finds no reason to delay the project and recommends a condition for a monitor to be on site during construction (Condition 17) based on current and past conditions.

There are existing homes and access roads on the subject site as well as the neighboring lot adjacent to the proposed location of the garage/guest house. Archaeological monitoring was performed during the development of these lots and no resources were discovered that required placing an easement over either property.

Some midden resources were found within the project site so additional testing was performed as required. Section 20.145.120.D CIP requires that a site with an archaeological site, as identified in a positive archaeological report; be 1) **Exhibit F**

add an "HR" (Historical or Archaeological Resources) zoning designation, and 2) placed in an archaeological easement. Results of all laboratory processing and additional analyses will be presented in a Final Technical Report to be submitted prior to issuance of building permits. As noted previously, staff has included two conditions that make the applicant aware of possible requirements for an easement and zone change if they become necessary (Condition 6b and 7).

(4) *Biology.* The project incorporates mitigation measures for the Smith's blue butterfly due to the close proximity to the buckwheat plants. In contrast to the appellants position, staff finds there is no nexus to require an easement over a neighboring property even though it is owned by the current owners of the subject site.

Section 20.145.040.B.2 CIP requires deed restrictions or conservation easement dedications as a condition of approval for any development proposed on parcels containing environmentally sensitive habitat. Staff visits to the site found that existing buckwheat plants are located on an adjacent property. No development is proposed within 100 feet of any existing buckwheat plants.

(h) Inadequate CEQA review. *The appellant contends that the project was approved with inadequate CEQA review, that staff did not use the Local Coastal Program (LCP) policies as the threshold of significance (critical viewshed, archaeology), and that the document does not evaluate the "whole" project (driveway design).*

Staff prepared and circulated a mitigated negative declaration. Qualified archaeologists, biologists and engineers have reviewed the project. The conditions recommended by these professionals have been included in the attached mitigation and/or conditions. Based on the technical reports, the proposed document concludes that conditions/mitigations reduce environmental impacts (archaeology, biology, scenic views) to a level of insignificance. The previous sections of this Exhibit discuss the LCP issues relative to scenic views, biology, and archaeology. The mitigation included to address potential impacts of the original driveway design are adequate to reduce potential impacts of retaining the current alignment incorporating several graded turnouts for fire access based on review of the analysis presented in the initial study.

Comments were received by the appellants following the conclusion of the comment period, but prior to the hearing before the Planning Commission. Although the comments are noted, a separate response to comments is not mandated with a mitigated negative declaration under CEQA. The Planning Commission and Board of Supervisors sufficiently considered all comments and adopted a mitigated negative declaration (Section 15074 CEQA).

A driveway design was proposed to align the access wholly onto the subject property. The applicants deleted this proposed driveway design and decided to retain the current alignment with the addition of turnouts every 400 feet +/- to meet fire standards. Retaining the current driveway design reduces the potential impacts from the proposed realignment, which supports the determination the potential impacts have been reduced to a level of insignificance and no further evaluation is required.

10. **FINDING – APPEALABILITY:** The project is appealable to the California Coastal Commission.

**EVIDENCE:**

(a) The project is located between the sea and the first through public road paralleling the sea (Highway One).

- (b) The project involves development that is permitted in the underlying zone as a conditional use (ESHA, Archaeology).
- (c) Section 20.86.080 of the Monterey County Coastal Implementation Plan (Part 1).

### **DECISION-PROJECT**

In view of the above findings and evidence, the Board of Supervisors hereby adopts the Mitigated Negative Declaration and Mitigation Monitoring Program, and grants the application for a Combined Development Permit (PLN020392/Kleissner), subject to the following conditions:

1. The subject Combined Development Permit consists of Coastal Administrative Permit to allow construction of a new detached 1,380 square foot 3-car garage for an existing house, a 420 square foot guesthouse attached to the garage and a grape stake fence along the south property line; a Coastal Development Permit for development in the Critical Viewshed; a Coastal Development Permit for development in a parcel with a positive archaeological report. The property is located at 35678 Highway 1 (Assessor's Parcel Number 243-231-013-000), southwest of the Garrapata Creek bridge adjacent to the Pacific Ocean, Big Sur Area, Coastal Zone. 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. If mitigation is required that substantially changes the project design, then permit amendments will be required pursuant to County code.
  - a. The applicant volunteered to and shall make the following minor modifications to the proposed structure within the previously approved footprint.
    - i. Lower the finished elevation of the entire structure from elevation 50 to elevation 48.5
    - ii. Lower the ridgeline of the guest house an additional 18-inches.
    - iii. Redesign framing over the utility room in the garage to drop an additional 18-inches on the west side of the building.

**(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 # \_\_\_\_\_) was approved by the Board of Supervisors for Assessor's Parcel Number Assessor's Parcel Number 243-231-013-000 on November 25, 2003. The permit was granted subject to 21 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 an agreement with the County to implement the Mitigation Monitoring and/or Reporting Plan in accordance with Section 21.08.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. The Mitigation Monitoring and/or Reporting Plan contained in the staff report as Exhibit E is hereby incorporated here **A-3-MC-03-121** reference. Compliance with **Exhibit E**

**Kleissner Guesthouse and Garage**

schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement. **(Planning and Building Inspection)**

4. Pursuant to the State Public Resources Code, State Fish and Game Code and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$1,275. This fee shall be paid within five days of project approval, before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning and Building Inspection, Fish and Game Code Section 711.4)**
5. The applicant shall record a deed restriction as a condition of project approval stating the regulations applicable to the Guesthouse (Section 20.64.020 Coastal Implementation Plan – Part 1). **(Planning and Building Inspection)**
6. The following easements shall be submitted to, and approved by, the Director of Planning and Building Inspection and accepted by the Board of Supervisors prior to issuance of grading and building permits:
  - a. Scenic Easement for the area consisting of the rocky point west of the existing residence from the bluff edge to the ocean. Said easement shall restrict use of the area from landscaping or development activity to the satisfaction of the Director of Planning and Building Inspection.
  - b. Archaeological Easement. All significant archaeological sites as determined by the Final Technical Report prepared for this project shall be placed into an easement pursuant to Section 20.64.280 of the Coastal Implementation Plan. Prior to being accepted by the County, the proposed easement area shall be reviewed and verified as adequate to protect the resource by a qualified archaeologist.
  - c. Conservation Easement. The applicant has volunteered to and shall grant a conservation easement to the County or a non-profit public benefit corporation whose primary purposes include the preservation of natural areas, permanently protecting an appropriate portion of APN 243-231-013-000 equivalent to the net area of potential seacliff buckwheat (*Eriogonum parvifolium*) habitat impacted by the approved development, including but not limited to planting native species on the roof of the approved structure. Prior to being accepted for recording by the County, the proposed easement area shall be reviewed and verified as adequate to protect the resource by a qualified biologist.
  - d. Deed Restriction. The applicant has volunteered to and shall record a deed restricting removal of existing trees (as of the date of the approval) on Monterey County Assessor's Parcel Numbers 243-231-013, 243-013-015, and 243-231-016 that provide screening of the approved structure from major public viewing areas along Highway One. Prior to being accepted for recording, the proposed deed restriction area shall be reviewed and verified as adequate to protect the resource by the Director of Planning and Building Inspection.**(Planning and Building Inspection)**
7. If the archaeological Final Technical Report determines there are significant archaeological resources to be protected on this property, then the applicant shall:
  - a. Request a rezoning of the parcel to add an "HR" (Historical or Archaeological Resource) zoning district to the existing zoning of the parcel;

- b. Prepare and implement a mitigation plan, acceptable to the Director of Planning and Building Inspection, which includes preservation measures in accordance with the guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission; and
- c. Obtain amendments to this permit if the mitigation plan would require material changes the project as approved herein.

**(Planning and Building Inspection)**

- 8. 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 three (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)**
- 9. 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 subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
- 10. 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)**
- 11. The applicant shall incorporate the recommendations from the Geological Update Report - Proposed Guest House and Garage", dated March, 2003 prepared by Geoconsultants, Inc. and the "Geotechnical Update - Proposed Guest House and Garage", dated March 7, 2003, prepared by Tharp & Associates, into the building permit plans. **(Planning and Building Inspection)**
- 12. 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 demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection)**
- 13. Prior to issuance of any grading or building permits, a road drainage and improvement plan shall be prepared by a registered civil engineer. **(Water Resources Agency)**
- 14. The existing driveway shall provide a turnout near the midpoint of the driveway. The turnout shall be a minimum of 12 feet wide and 30 feet long with a minimum of 25-foot taper at both ends. Prior to issuance of building permits, the applicant shall either demonstrate to the satisfaction of the Fire Department that an adequate turnout exists on the driveway or submit plans to the Fire Department for approval, showing the location and specifications of the proposed turnout. **(CDF Carmel Hills)**
- 15. This guesthouse with attached Group U occupancy requires an automatic fire sprinkler system due to the length of the driveway from fire department access. Fire sprinkler plans and specifications shall meet the provisions of NFPA 13-D (1999). At least four sets of plans and supporting documentation shall be submitted for review and approval prior to any work being done on the fire sprinkler system. **(CDF Carmel Hills)**



16. Sprinkler plans and documentation may be submitted directly to the plan reviewer (CDF Carmel Hills):

Carmel Fire Protection Associates  
P.O. Box 7168, Carmel-by-the-Sea  
California 93921

**Prior to Final Building Inspection/Occupancy:**

17. The applicant shall comply with Ordinance No. 3932, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:
- a) All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
  - b) Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. (Water Resources Agency & Planning and Building Inspection)
18. The site shall be landscaped and fenced as follows:
- a. At least three weeks prior to occupancy, three copies of a landscaping and fencing plan shall be submitted to the Director of Planning and Building Inspection for approval.
  - b. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal.
  - c. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan.
  - d. The proposed wood fence shall not exceed the height of the existing split rail fence.
  - e. 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)

**Continuous Permit Conditions:**

19. If during the course of construction activity on the subject property, cultural, archaeological, historical, paleontological 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)



20. All landscaped areas and replanted trees 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)**
21. 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)**

**PASSED AND ADOPTED** on this 25<sup>th</sup> day of November 2003, upon motion of Supervisor Potter, seconded by Supervisor Johnsen, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Lindley, Johnsen, Potter

NOES: None

ABSENT: None

I, Sally R. Reed, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 71, on November 25, 2003.

Dated: December 10, 2003

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

By

*Ann E. Anderson*  
Deputy

CHARLES R. KELLER  
RONALD F. SCHOLL  
THOMAS H. JAMISON  
LARRY E. HAYES  
MARK A. CAMERON  
JOHN S. BRIDGES  
DENNIS G. MCCARTHY  
JACQUELINE P. MCMANUS  
CHRISTOPHER E. PANETTA  
DAVID C. SWEIGERT  
VIRGINIA E. HOWARD  
DANIEL J. DE VRIES  
JENNIFER M. PAYLET  
SARA B. BOYNS  
H. DAVID HWANG  
JOELLA M. SZABO

OF COUNSEL

LEWIS L. FENTON

## FENTON & KELLER

A PROFESSIONAL CORPORATION

### ATTORNEYS AT LAW

2801 MONTEREY-SALINAS HIGHWAY

POST OFFICE BOX 791

MONTEREY, CALIFORNIA 93942-0791

TELEPHONE (831) 373-1241

FACSIMILE (831) 373-7219

SANTA CRUZ  
COUNTY OFFICE

FIRST NATIONAL BANK BUILDING  
655A MAIN STREET  
WATSONVILLE, CA 95076  
TELEPHONE (831) 761-2494  
FACSIMILE (831) 761-2135

FROM SALINAS

RECEIVED

DEC 24 2003

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

J.Bridges@FentonKeller.com  
ext. 238

December 23, 2003

JOHN S. BRIDGES

California Coastal Commission  
c/o Central Coast District Office  
Attn: Steve Monowitz  
725 Front Street Ste 300  
Santa Cruz, CA 95060

Re: Appeal of Kleissner Project  
Our File: 31703.28315

Dear Mr. Monowitz:

Enclosed please find an appeal from Monterey County's approval of a guest house/garage structure for Kleissner (County File PLN 020392). Although we understand the Coastal Commission has already appealed this project as it was approved by the Monterey County Planning Commission (reference Commission Appeal No. A-3-MCO-03-109), since the matter was reapproved by the Board of Supervisors on administrative appeal at the County level, the Coastal Commission's appeal may be deemed untimely. In any event, all of the issues raised in the Coastal Commission's appeal are expressly incorporated by reference as a part of the enclosed appeal by my client, Dr. Robert Schapira.

Please forward all correspondence regarding the processing of this appeal, including all staff reports, notices, and agendas to Dr. Schapira at his address noted on the appeal form.

Please call me immediately if there is anything further needed to perfect a timely filing of this appeal.

Very truly yours,

FENTON & KELLER  
A Professional Corporation

John S. Bridges

Enclosures

Cc: Dr. Robert Schapira (w/encs.)

Monterey County Board of Supervisors (w/encs.)

**A-3-MCO-03-121**  
**Kleissner Guesthouse and Garage**

H:\documents\lrg.5m9mwsj.doc

Exhibit 6  
Pg 1 of 9

CALIFORNIA COASTAL COMMISSION

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

RECEIVED



DEC 24 2003

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):

Dr. Robert Schapira Attorney: John Bridges/Fenton & Keller  
35700 Hwy 1 Box 791  
P.O. Box 22785 Monterey, CA 93942 (831) 373-1241  
Carmel, CA 93921 (831) 626-9082  
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:

Combined Development/Coastal Permits for  
1800 sq.ft. guesthouse/garage structure in  
critical viewshed, archaeological site, ESHA.  
(PLN 020392 - Kleissner)

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

35678 Hwy 1 - near Garrapata Creek  
RPN 243-231-013

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_  
b. Approval with special conditions: ☒ \_\_\_\_\_  
c. Denial: \_\_\_\_\_

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-03-121  
DATE FILED: 12/29/03  
DISTRICT: Central Coast

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)**

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

a. ☐ Planning Director/Zoning Administratorc. ☐ Planning Commissionb. ☒ City Council/Board of Supervisorsd. ☐ Other: \_\_\_\_\_6. Date of local government's decision: 11-25-037. Local government's file number: PLN 020342 Resolution 03-348**SECTION III Identification of Other Interested Persons**

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

a. Name and mailing address of permit applicant:

<u>Karl &amp; Lisa Kleissner</u>	<u>Karl &amp; Lisa Kleissner</u>
<u>35678 Hwy 1</u>	<u>P.O. Box 37</u>
<u>Monterey, CA</u>	<u>Los Gatos CA - 95031</u>

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

- (1) Monterey County Board of Supervisors
- (2) Kleissner Consultants:  
Mark Blum and  
Mary Ann Schickelanz  
c/o Kleissner @ above address
- (3) \_\_\_\_\_
- (4) see attached list

**SECTION IV. Reasons Supporting This Appeal**

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

**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 standards set forth in the certified Monterey County LCP in terms of Scenic Resource Policies

ESHA Policies

Archaeologic Resource Policies

Guest House standards

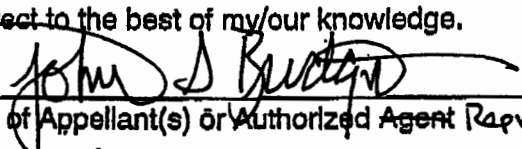
see attached letters dated October 16, 2003 and November 24, 2003 to the Monterey County Board of Supervisors (and attachments thereto).

see attached Coastal Commission Notification of Appeal dated November 6, 2003 (A-3-MCO-03-109)

**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 Representative

Date 12-23-03

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

**SECTION VI. Agent Authorization**

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

X (see attached signature)  
Signature of Appellant(s)

Date 12-23-03

A-3-MCO-03-121

Kleissner Guesthouse and Garage

Exhibit G  
Pg 4 of 9

CHARLES R. KELLER  
RONALD F. SCHOLL  
THOMAS H. JAMISON  
LARRY E. HAYES  
MARK A. CAMERON  
JOHN S. BRIDGES  
DENNIS G. MCCARTHY  
JACQUELINE F. MCMANUS  
CHRISTOPHER E. PANETTA  
DAVID C. SWEIGERT  
VIRGINIA E. HOWARD  
DANIEL J. DE VRIES  
JENNIFER M. PAVLET  
SARA B. BOYNS  
H. DAVID HWANG  
JOELLA M. SZABO

OF COUNSEL

LEWIS L. FENTON

## FENTON & KELLER

A PROFESSIONAL CORPORATION

### ATTORNEYS AT LAW

2801 MONTEREY-SALINAS HIGHWAY

POST OFFICE BOX 791

MONTEREY, CALIFORNIA 93942-0791

TELEPHONE (831) 373-1241

FACSIMILE (831) 373-7219

SANTA CRUZ  
COUNTY OFFICE

FIRST NATIONAL BANK BUILDING  
655A MAIN STREET  
WATSONVILLE, CA 95076  
TELEPHONE (831) 761-2494  
FACSIMILE (831) 761-2135

FROM SALINAS

TELEPHONE (831) 757-8937

October 16, 2003

JOHN S. BRIDGES

JBridges@FentonKeller.com  
ext. 238

### VIA HAND DELIVERY

Monterey County Board of Supervisors  
Attn: Clerk to the Board  
240 Church Street, Room 226  
Salinas, CA 93901

Re: Appeal from Planning Commission Approval of Kleissner Application  
(PLN 020392-Planning Commission Resolution No. 03065)  
Our File: 31703.28315

Dear Clerk and Board of Supervisors:

We represent Dr. and Mrs. Robert Schapira, neighbors to the immediate south of the Kleissners and appellants in this case. Please accept this letter and the attached materials as the Schapira's appeal from the Planning Commission's approval of the Kleissner project (PLN 020392-Planning Commission Resolution No. 03065). Please forward copies of all correspondence, reports, and other materials regarding this appeal to both the Schapiras and to my office.

The reasons for the appeal are that the project conflicts with numerous policies in the Local Coastal Program (including, without limitation, policies relating to viewshed protection, development standards within critical viewshed exception areas, archaeological resource protection, biological resource protection, neighbor privacy and view policies, code violations requiring enforcement/remediation); the conditions of project approval do not include numerous LCP requirements regarding scenic/conservation easements, deed restrictions, and rezoning requirements; the project was approved with inadequate CEQA review; the findings and decision are not supported by the evidence in the record; and the decision was contrary to law. More detailed discussion of the reasons for this appeal are attached (reference our October 6 and September 30 letters to the Planning Commission and attachments thereto).

**Kleissner Guesthouse and Garage**

Monterey County Board of Supervisors  
October 16, 2003  
Page Two

We have been advised by the Planning and Building Inspection Department that in accordance with section 20.86.030.D no appeal fee is required for this appeal.

The enclosed stamped addressed envelopes are based on the mailing list provided by the Planning and Building Inspection Department on October 13, 2003.

Please advise immediately if any additional information is required in order to perfect the filing of this appeal. Thank you.

Very truly yours,

FENTON & KELLER  
A Professional Corporation

*John S. Bridges* *kmc*  
John S. Bridges

JSB:kmc  
Enclosures

cc: Dr. & Mrs. Schapira (w/encs.)



CHARLES R. KELLER  
RONALD F. SCHOLL  
THOMAS H. JAMISON  
LARRY E. HAYES  
MARK A. CAMERON  
JOHN S. BRIDGES  
DENNIS G. MCCARTHY  
JACQUELINE P. MCMANUS  
CHRISTOPHER E. PANETTA  
DAVID C. SWEIGERT  
VIRGINIA E. HOWARD  
DANIEL J. DE VRIES  
JENNIFER M. PAVLET  
SARA B. BOYNS  
H. DAVID HWANG  
JOELLA M. SZABO

OF COUNSEL

LEWIS L. FENTON

## FENTON & KELLER

A PROFESSIONAL CORPORATION

### ATTORNEYS AT LAW

2801 MONTEREY-SALINAS HIGHWAY

POST OFFICE BOX 791

MONTEREY, CALIFORNIA 93942-0791

TELEPHONE (831) 373-1241

FACSIMILE (831) 373-7219

SANTA CRUZ  
COUNTY OFFICE

FIRST NATIONAL BANK BUILDING  
655A MAIN STREET  
WATSONVILLE, CA 95076  
TELEPHONE (831) 761-2494  
FACSIMILE (831) 761-2135

FROM SALINAS

TELEPHONE (831) 757-8937

November 24, 2003

JOHN S. BRIDGES

JBridges@FentonKeller.com  
ext. 238

### VIA HAND DELIVERY

Monterey County Board of Supervisors  
Attn: Clerk to the Board  
240 Church Street  
Salinas, CA 93901

Re: Appeal from Planning Commission Approval of Kleissner Application  
(PLN 020392 - Planning Commission Resolution No. 03065)  
Our File: 31703.28315

Dear Clerk and Board of Supervisors:

This letter is offered as a supplement to our October 16 appeal of the above referenced project which is scheduled for your consideration on November 25 at 11:00 a.m. This letter responds to the staff report you received on this item.

**1. The staff report does not address (or even mention) critical evidence of the Coastal Commission's November 6, 2003, appeal.** Attached and incorporated by reference herein is a copy of the Coastal Commission's November 6, 2003, appeal from the Planning Commission's decision. The Coastal Commission appeal reflects many of the same issues the Schapira's have raised. The Coastal Commission appeal asserts:

- Inconsistency with LCP Scenic Resource protections (Policy 3.2.4.1; Policy 3.2.4.2; § 20.145.030.C.2.a; § 20.145.030.C.2.b; § 20.145.030.B.6.e)
- Inconsistency with LCP standards for guest houses (§ 20.145.140.B.4.d.3; § 20.145.140.B.4.d.10)
- Inconsistency with LCP ESHA protections (Policy 3.3.1; Policy 3.3.2.1; Policy 3.3.2.3; § 20.145.040; § 20.145.040.B.1; § 20.145.040.B.2)

- Inconsistency with LCP Archaeological Resources protections (Policy 3.11.1; Policy 3.11.2; § 20.145.120)

**2. Staff report makes up new rules as it goes.** Under the guise of "interpretation" the staff report would rewrite the long-standing policy protections and development criteria of the Big Sur LUP. These interpretations are patently inconsistent with the language of the LCP and its long-standing application. For example, staff would justify the approval of this guesthouse on the basis that it would "avoid expanding the main house." This fictional justification does not exist in the LCP, there is no right to expand the main house, and there has been no application to do so. Staff interprets the LUP viewshed protections as relating to "direct line of sight between Highway 1 and the ocean" while all but ignoring the numerous other critical view impacts in this case from Garrapata Beach and the public access bluff top trails along Garrapata Beach (see attached photo Attachment 2<sup>1</sup>). This photo also shows that the project is obviously not located on the "least visible" part of the property. If, as the Schapiras have suggested, the project was relocated 100 feet to the east it would be far less visible from the beach or bluff trail. It should also be noted that the applicant's own architect admitted during a field trip with the Zoning Administrator that a more easterly location on the site would be less visible. In any event, the direct line of sight from Highway 1 is also impacted by the project (see Attachment 3<sup>1</sup>). Staff also "interprets" the LCP scenic easement requirements as only pertaining to "significant land forms" while the LCP makes no such distinction and says that the scenic easement shall be dedicated over all of the undeveloped portions of the lot.

**3. The staff report misrepresents the Schapira's appeal.** The staff report seems to go to great lengths to try and paint the Schapira's appeal as a private view complaint. Although the LCP does require consideration of private views that is not the primary basis for the Schapira's appeal. The staff knows this because it was explained to the Planning Commission during public testimony and it is noted in the letters attached to the appeal. Why the staff insists on unfairly mischaracterizing the appeal is a mystery. The Schapira's appeal is based on the project's many inconsistencies with the LCP with which the Coastal Commission agrees (again, see Attachment 1). The staff report also seeks to minimize and dismiss the Schapira's arguments by characterizing them as mere "general" contentions. In fact, the Schapira's appeal includes 12 pages of detailed objections with specific fact and legal citations including over two dozen references to specific LCP policies and development criteria.

**4. The staff report's casual approach to resource protection will set a dangerous precedent.** The staff recommendation to approve this project even before the final archaeological test results are in will invite future delay of

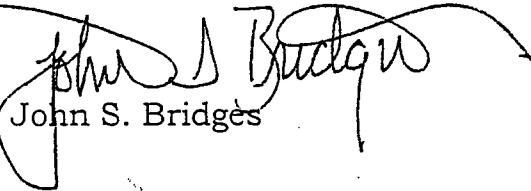
<sup>1</sup> These photos are also included in staff report Exhibit F.  
H:\Documents\kmc.55ecbf7.doc

such results. It is unprecedented, in our experience, for the staff to recommend approval of a project on the basis of incomplete data and then justify the action by adding a condition that says, in effect, depending on the outcome of the future test results you might have to amend your project and move your structure. This approach is also illegal under CEQA. The staff recommendation in this case would also tacitly approve the practice of pre-application illegal removal of ESHA from a proposed development site (which was done here). This will open the door for others to avoid ESHA constraints by simply eliminating the plants from their property before an application is filed. Moreover, because the removal of native vegetation in this case was done without the benefit of a Coastal Development Permit, it constitutes a violation of the County Code so Finding 2 cannot be made.

**5. Conclusion.** Based on the above, the many LCP inconsistencies and CEQA inadequacies cited in the appeal, and the issues raised in the Coastal Commission's appeal of this project, we urge the Board to uphold the Schapira's appeal and deny the project as proposed.

Very truly yours,

FENTON & KELLER  
A Professional Corporation



John S. Bridges

JSB:kmc  
Enclosures

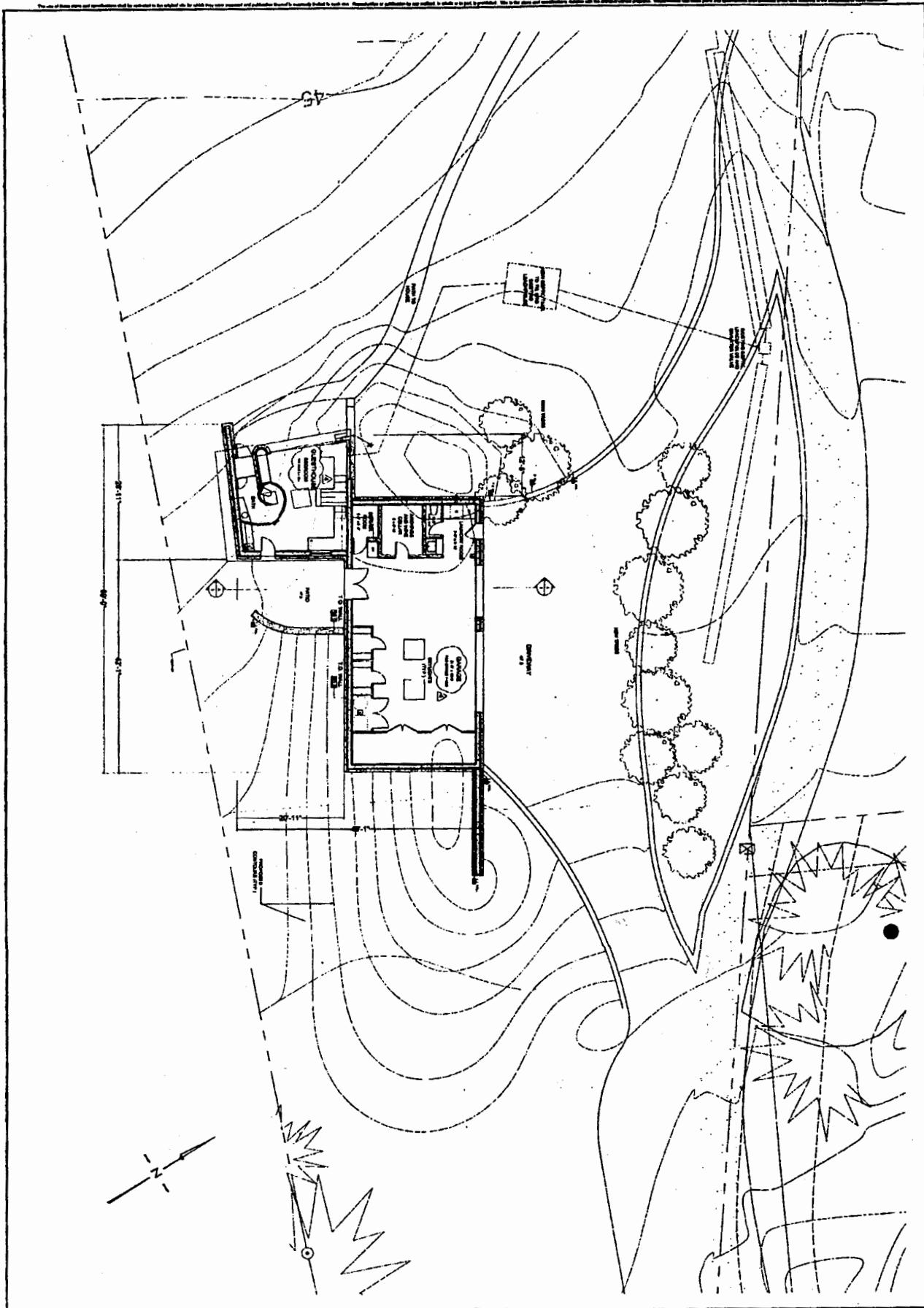
cc: Supervisor Dave Potter (via hand delivery, w/encs.)  
Supervisor Edith Johnsen (via hand delivery, w/encs.)  
Supervisor Fernando Armenta (via hand delivery, w/encs.)  
Supervisor Butch Lindley (via hand delivery, w/encs.)  
Supervisor Louis Calcagno (via hand delivery, w/encs.)  
Carl Holm, Senior Planner (via hand delivery, w/encs.)  
California Coastal Commission  
Attn: Steve Monowitz/Charles Lester (via facsimile, w/encs.)  
Dr. & Mrs. Schapira (via facsimile, w/o encs.)

**A-3-MCO-032121**

### Kleissner Guesthouse and Garage

# Fence

Exhibit Pg 1 of 5



2															

Cerver + Schickelanz Architects

P.O. BOX 3884 CARMEL, CALIFORNIA 93921 U.S.A.  
PHONE: 831.924.2344 FACSIMILE: 831.924.8366

Karl + Lisa Kleissner

Guest House and Garage  
Big Sur, California

A-3-MCO-03-121

Kleissner Guesthouse and Garage

Exhibit H  
Pg 2 of 5

East Elevation

Section A

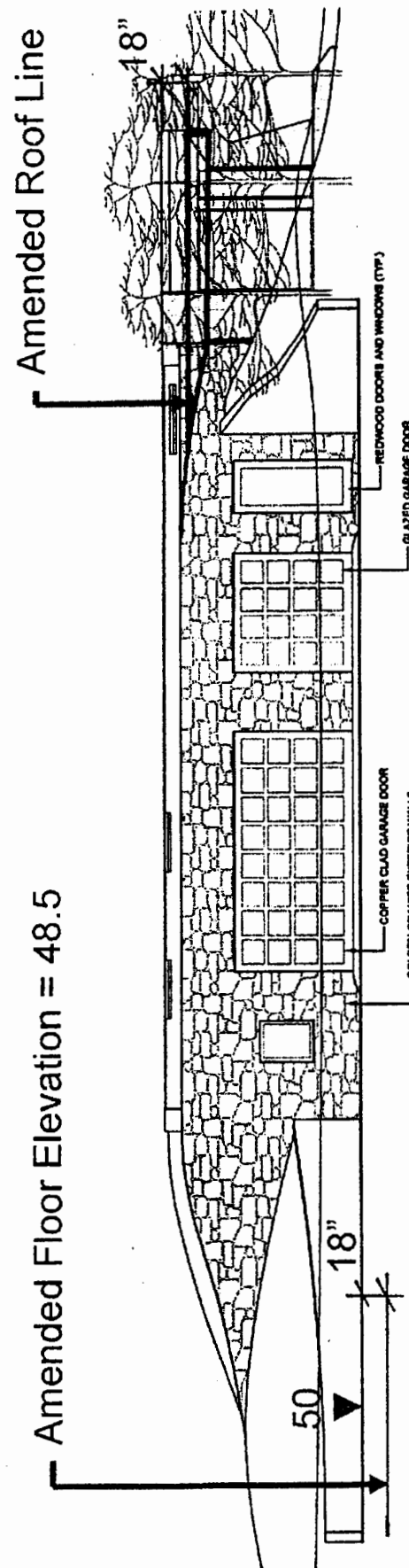
West Elevation

North Elevation

Section B

South Elevation





A-3-MCO-03-121  
Kleissner Guesthouse and Garage

Amended Elevation North

APN 243-231-016

Distant Viewshed Exposure

Critical Line of Sight

APN 243-231-015

CYP. TREE

15' DRI  
EASE

PAC BELL  
STAND

PAC BELL BOX

MU

APN 243-231-013

(E) DRIVEWAY

498.25

EXISTING SEPTIC  
LEACHFIELDS AND  
DIVERTER VALVE

S 54°03'20" E

PORE BOX

NEW TREES

NEW TREES

(N) DRIVEWAY

GARAGE

GUEST  
HOUSE

N 69°00' W

250±

PACBELL  
STAND

N 10°41'10" W

107.13

NEW FENCE

NEW FENCE

NEW FENCE

NEW FENCE

NEW FENCE

NEW FENCE

NEW FENCE

NEW FENCE

NEW FENCE

NEW FENCE

NEW FENCE

A-3-MCO-05-121

Kleissner Guesthouse and Garage

Exhibit #  
Pg 5 of 5

Site Plan Detail

**JUD VANDEVERE and ASSOCIATES  
BIOLOGICAL CONSULTANTS**

93 Via Ventura  
Monterey, CA 93940  
(408) 372-6001

**BIOLOGICAL REPORT**

**Dr. Robert Goodwin Property**

**On the south wave-cut terrace above the mouth of Garrapata Creek on the Big Sur  
Coast**

**APN 243-231-13\*  
243-231-16**

**Prepared for**

**John Mandurrango, Designer**

**S/W Corner of Lincoln & 7th Street.  
Carmel-by-the-Sea 93921**

**3 Feb 97**

Reference 6
Initial Study/Kleissner
PLN020392

**EXHIBIT "I"**

**A-3-MCO-03-121**

**Kleissner Guesthouse and Garage**

**Exhibit I**

**Page 1 of 14**

## BIOLOGICAL REPORT: GOODWIN, MOUTH OF GARRAPATA CREEK

This biological report will be concerned with the property's habitats, plants and animals of concern and their relationships, impacts and mitigations.

The field work was done by Jud Vandevere and Jeff Norman on 9 and 14 Jan 97.

The report preparation was requested by John Mandurrigo of Mandurrigo & Sullivan, S/W Corner of Lincoln & 7th Street, Carmel-by-the-Sea 93921 for Dr. Robert Goodwin, 30 La Salle Court, Piedmont 94611.

The location is west of Highway One, on the wave-cut terrace to the south of the mouth of Garrapata Creek on the Big Sur coast. The APN is 243-231-13 and 243-231-16.

**SUMMARY RESULTS:** The parcel supports populations of three plants of concern: Monterey Indian paintbrush, *Castilleja lanifolia*, and dune buckwheat, *Eriogonum parvifolium*, Monterey cypress, *Cupressus macrocarpa*, Monterey pine, *Pinus radiata* and a beach aster, *Corethrogyne*.

Although dune buckwheat is not a rare plant, it provides habitat for the federally listed as endangered Smith's blue butterfly, *Euphilotes enoptes smithi*.

The two dominant vegetation types are Coastal Bluff Scrub and Coastal Sage Scrub.

**Introduction:** This report describes the habitats, rare taxa, impacts and mitigations, and contains a plant checklist, and location, habitat and vegetation maps. The work was commissioned by John Mandurrigo for the owner, Dr. Robert Goodwin, and, because of the presence of sensitive plants, was requested by the Monterey County Planning Department.

**Regional Setting:** A home is planned for A.P.N. 243-231-13 which is two acres in size. Located on the north coast of Big Sur, with relatively pristine areas of Garrapata State Park immediately to the north.

**Local Vegetation:** The parcel was criss-crossed on foot, and all plant and animal species seen were noted. A careful census was made of dune buckwheat and Monterey Indian paintbrush, two taxa which might be affected by the project. Their distribution was plotted and mapped, as were the locations of Monterey cypress and other vegetation.

Characteristic of this part of the county are large areas of Coastal Sage Scrub near the ocean and Coast Range Grassland inland. On cliffs fronting the sea, is Coastal Bluff Scrub habitat. Other habitats are Chaparral which grows on the summits above Coast Range Grassland and Redwood Forests occurring in the canyons. Riparian habitat occupies Garrapata Creek bed and isolated areas where surface or subterranean waters are present.

Here, Coastal Sage Scrub, immediately back from the cliff, is the dominant plant community and covers roughly 98% of the parcel. Tridominant components are dune buckwheat, Hottentot fig (*Carpobrotus edulis*) and poison oak (*Toxicodendron diversilobum*). Three other species that provide significant cover are: sea fig, *Carpobrotus chilensis*, California sagebrush, *Artemisia californica* and lizard tail, *Eriophyllum staechadifolium*. A row of Monterey cypress were planted many years ago.

A-3-MCO-03-121

Kleissner Guesthouse and Garage

Exhibit I

Pg 2 of 14

On cliffs is Coastal Bluff Scrub, which is the remaining 2% of the parcel. Here, the dominant is sea fig. Other species occurring here are: sea lettuce, *Dudleya caespitosa*, bluff lettuce, *D. farinosa*, dune buckwheat, *Corethrogyne*, *Corethrogyne* sp., seaside daisy, *Erigeron glaucus*, and thrift, *Armeria maritima*.

**Rare and Endangered Species:** Monterey Indian paintbrush, *Castilleja latifolia*, is a CNPS "List 4", a watch list species, rare but not endangered. We found 38 plants on the parcel.

And on the lot we also counted 339 food plants of Smith's blue butterfly, dune buckwheat, *Eriogonum parvifolium*. Smith's blues were not seen on 9 and 14 Jan 97; however, previous research has shown the presence of this federally listed butterfly in this part of the coast. Therefore the buckwheats on this property may be utilized by the larva of this species for food.

Monterey cypress, *Cupressus macrocarpa*, only occurs naturally on the two headland points of Carmel Bay. In those two stands it is listed as endangered. One of the most widely planted of California trees, those at Carmel Bay are the only ones of concern. On this lot the trees were planted.

The beach aster on the parcel could be branching beach aster, *Corethrogyne leucophylla*, which is on CNPS List: 4. Its species cannot be determined until it is seen in bloom from July to October.

**Threatened Species:** No threatened plant or animal species or habitats occur on-site except Monterey pine, *Pinus radiata*, which does not occur naturally south of the Malpaso area in Monterey County. Where it does grow in its native stands it is listed as threatened. Monterey pines that are growing south of the Malpaso area in Monterey County have been planted.

#### **Impact Assessment and Mitigation Measures:**

**Impact 1.** Of the 339 buckwheats, 235 would appear to be within or close enough to the proposed footprint to be affected by the project. The 104 east of the planned house could also be disturbed by heavy equipment and the movement of dirt. A significant impact can be expected upon Smith's blue butterfly habitat.

**Mitigation 1.** Replanting could be required on a one-for-one basis for buckwheats lost during construction. After completion of work, nursery-obtained plants could be introduced well away from future disturbance. If sea fig is removed, replacement by more esthetically-pleasing and erosion preventing dune buckwheat would be an enhancement. Plantings should consist of groupings of ten, with eight arranged in a 12-foot-diameter circle and two in the center. The plantings should be kept weeded and watered until established.

**Impact 2.** None of the 38 paintbrushes are inside the proposed footprint, but all or some of them could be impacted by the construction of the proposed turnaround.

**Mitigation 2** To replace those lost by construction activities, nursery-procured plants could be planted, two-for-one, well away from future disturbance. They should be kept weeded and watered until established.

Impact 3. In July to October, a botanist should determine if the aster is branching beach aster, *Corethrogyne leucophylla*, and what number of these plants of concern if any will be impacted by the project.

Mitigation 3. To replace those lost by construction activities, nursery-procured plants could be planted, one-for-one, well away from future disturbance. They should be kept weeded and watered until established.

Impact 4. Bare, disturbed soil will be created which could become infested with weeds which could spread, impacting native plant communities.

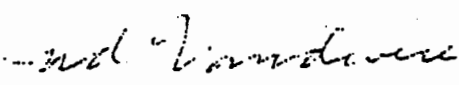
Mitigation 4. Weed abatement should be undertaken on completion of house and road construction, by landscaping with drought-tolerant site-specific natives or by weeding.

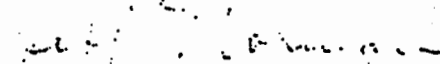
Impact 5. The entrance road has few places for storm runoff which causes erosion and siltation of native plants.

Mitigation 5. Frequent drainage outlets for runoff should be provided, particularly if the road is surfaced.

Heavy equipment operation outside the footprint could cause severe environmental disturbance to Smith's blue butterfly habitat. Excavated dirt should not be disposed of in the Coastal Bluff Scrub, intertidal and subtidal areas.

The Coastal Sage Scrub habitat should be maintained, with possible enhancement of dune buckwheat and seaside painted cup populations being the only change to the landscape. Excellent mitigation for this project would be in the maintenance of Coastal Sage Scrub. If the preceeding recommendations are implemented, no appreciable impact should occur as a result of this project and impacts upon the habitats will have been reduced to an acceptable level. The recommended planting, especially of dune buckwheat, will reduce erosion.

  
Jud Vandevere, Consulting Biologist  
29 Jan 97

  
Jeff Norman, Consulting Biologist  
29 Jan 97

A-3-MCO-03-121

Kleissner Guesthouse and Garage

KD Cura Corporation

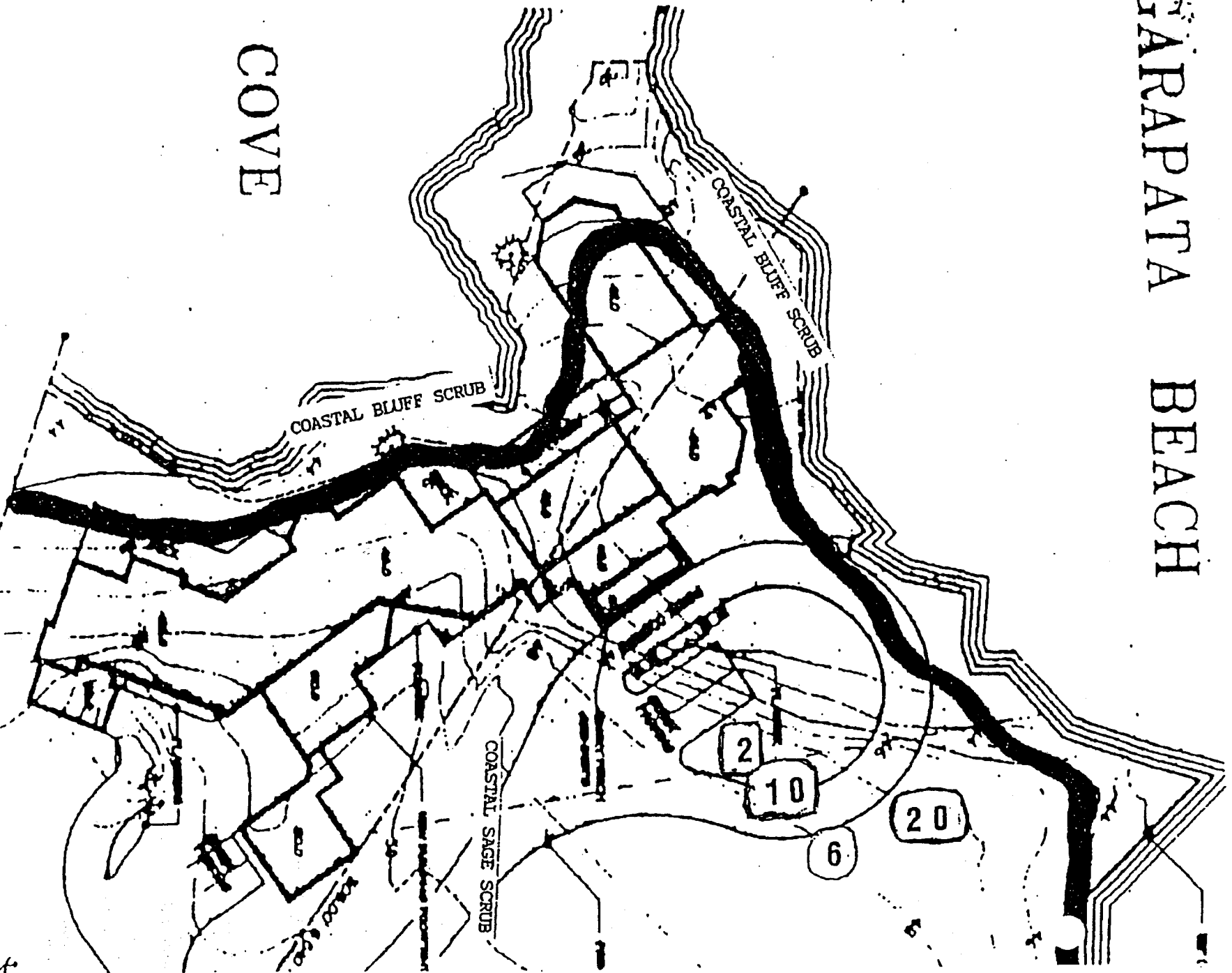
Exhibit I

Pg 4 of 14

HABITATS AND NUMBERS AND LOCATION OF MONTEREY INDIAN PAINTBRUSH

GARAPATA BEACH

COVE



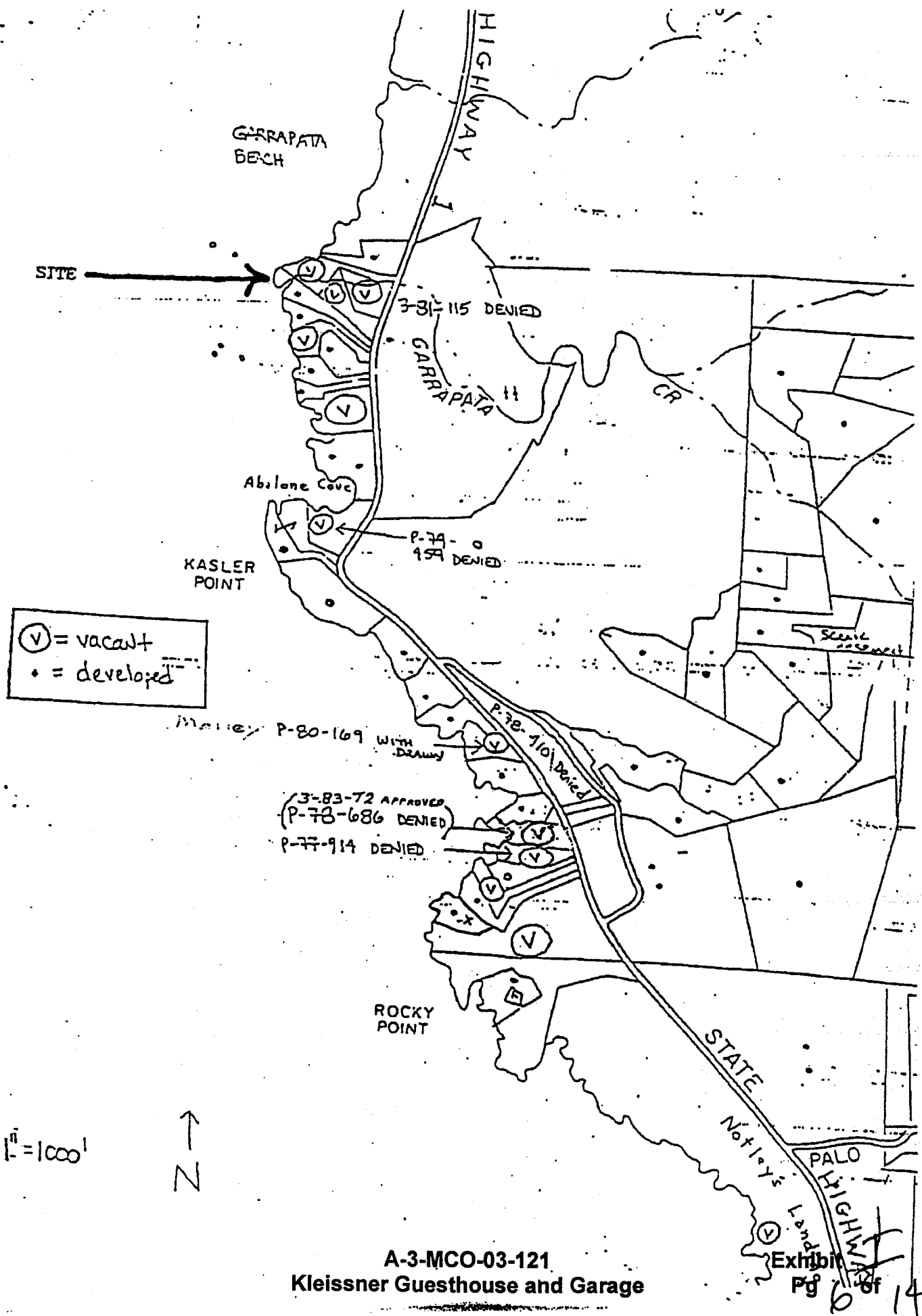
A-3-MCO-03-121

Kleissner Guesthouse and Garage

Exhibit I

Pg 5 of 14





## BIOLOGICAL REPORT: GOODWIN, GARRAPATA, NORTH BIG SUR COAST

### Trees:

*Cupressus macrocarpa*  
*Pinus radiata*

Monterey cypress  
Monterey pine

### Shrubs, Subshrubs and Woody Vines:

*Artemisia californica*  
*Baccharis pilularis*  
*Ericameria ericoides*  
*Eriophyllum staechadifolium*  
*Genista monspessulana*  
*L. chamissonis*  
*Lupinus arboreus*  
*Rhamnus californica*  
*Toxicodendron diversilobum*

coast sagebrush  
coyote brush  
mock heather  
lizard tail  
French broom  
silver beach lupine  
tree lupine  
California coffeeberry  
poison oak

### Herbaceous Species:

*Aloe arborescens*  
*Ambrosia chamissonis*  
*Armeria maritima*  
*Avena barbata*  
*Bromus diandrus*  
*Carpobrotus chilensis*  
*Castilleja latifolia*  
*Corethrogyne* sp. (if *leucophylla*,  
CNPS List 4)  
*Cortaderia jubata*  
*Daucus pusillus*  
*Dudleya caespitosa*  
*Dudleya farinosa*  
*Erigeron glaucus*  
*Eriogonum parvifolium*  
*Galium californicum*  
*Gnaphalium californicum*  
*Gnaphalium luteo-album*  
*Hirschfeldia incana*  
*Lotus scoparius* var. *perplexans*  
*Lupinus chamissonis*  
*Medicago polymorpha*  
*Pennisetum clandestinum*  
*Plantago coronopus*  
*Plantago lanceolata*  
*Sanicula crassicaulis*  
*Scrophularia californica*  
*Sonchus oleraceus*

tree aloe  
beach-bur  
sea pink  
slender wild oat  
ripgut grass  
sea fig  
Monterey Indian paintbrush  
California beach aster  
  
jubata grass  
rattlesnake weed  
sea lettuce  
bluff lettuce  
seaside daisy  
dune buckwheat (SBB food plant)  
California bedstraw  
California cudweed  
weedy cudweed  
summer mustard  
Hoover's lotus  
silver beach lupine  
bur-clover  
Kikuyu grass  
cut-leaved plantain  
English plantain  
gambleweed  
coast figwort  
common sow thistle

Jud Vandevere  
Biological Consulting  
93 Via Ventura  
Monterey, CA 93940  
831-372-6001  
24 Sep 02

Charly and Lisa Kleissner  
P. O. Box 37  
Los Gatos 95031

Re: Guesthouse, garage and adequacy of the 3 Feb 97 Biological Report,  
APN 243-231-013

Dear Lisa Kleissner:

Dated 30 Jan 89, LSA Associates submitted their *Survey for Smith's Blue Butterflies Along the Big Sur Coast, Monterey County, California* to U.S. Fish and Wildlife Service, Sacramento, Endangered Species Office. On 25 Jun 88, the butterfly census takers caught one male and four other Smith's Blue Butterflies in which the gender was not recorded, just south of Garrapata Creek on the east side of Highway One.

On 26 July 00, Lisa and I searched the dune buckwheat, *Eriogonum parvifolium*, on your property which is south of Garrapata Creek on the west side of Highway One. At Fort Ord, adult *Euphilotes e. s.* emerge from mid-June until early September. Although Lisa and I were searching during the emergence period, we saw no blues.

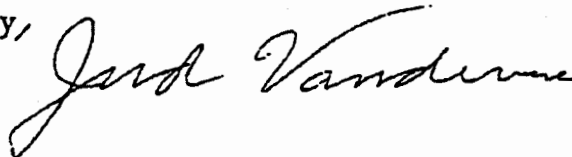
Since then you have removed exotic ice plant and have been very successful in replacing the *Carpobrotus* with a vast field of the food plant for Smith's Blues, dune buckwheat.

On 17 Sep 02, Lisa, Jay Auburn and I searched both in and outside the footprint for a proposed garage, guesthouse and a new/relocated driveway on your property. We could find no buckwheat, no seaside painted cup, *Castilleja latifolia*, no rare or endangered plants or animals in the area. You had planted a number of common, short-lived, tree lupines, *Lupinus arboreus* and some of them may be impacted by heavy equipment and storage of materials during construction, but after the completion of the project replacement lupines could be planted.

Upon completion of construction, disturbed soil should be planted with drought-tolerant, site-specific native flora and by weeding, so as to prevent exotic taxa from becoming established.

On 3 Feb 97, Jeff Norman and I prepared a Biological Report for APN: 243-231-013, for the then owner, Dr. Robert Goodwin. This report is still applicable. If the recommendations in the report and in this letter are implemented, no appreciable impact should occur as a result of the building of the garage, guesthouse and the new/relocated driveway.

Sincerely,



Reference 7
Initial Study/Kleissner
PLN020392

A-3-MCO-03-121  
Kleissner Guesthouse and Garage

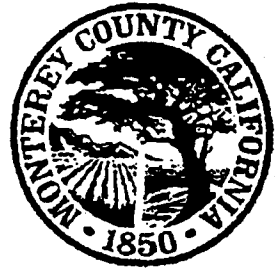
Exhibit *F*  
Pg 8 of 14

# MONTEREY COUNTY

PLANNING & BUILDING INSPECTION DEPARTMENT

2620 1st AVENUE MARINA, CA 93933

(831) 883-7530 FAX: (831) 384-3261



Jud Vandevere  
Biological Consultant  
93 Via Ventura  
Monterey, CA 93940

February 7, 2003

**SUBJECT: Studio, garage and adequacy of the Feb 3, 1997 Biological Report, APN#243-231-013-000 (Karl and Lisa Kleissner)**

Dear Mr. Vandevere:

The purpose of this letter is to request that you expand your September 24, 2002 letter validating the Biological Report prepared for this parcel dated February 3, 1997.

The 1997 Biological Report identified 220 dune buckwheat plants (*Erigonum parvifolium*) on the subject property. Of these, approximately, 111 plants were found in the vicinity of the proposed garage and studio. In fact, the largest population (42 plants) within the entire site was found in this location. In your 2002 letter, you state that there were no *E. parvifolium* plants in the project vicinity. However, you did not discuss the sharp decline in populations and plants from the previous survey. Given that the site has apparently not been disturbed since 1997, it is puzzling that now there are no plants on the project site at all. If such a decline was made due to natural causes, perhaps there is a significant seed bank to be found at the project site, which should be collected prior to construction. Please provide us with your biological evaluation of this drastic reduction of *E. parvifolium* plants on the site.

In addition, in paragraph 3 of your September 24, 2002 letter you state that a large area of exotic ice plant (*Carpobrotus*) had been replaced with dune buckwheat. Please provide us with the origin of these replacement plants.

This information is being requested in order to properly characterize the biological and environmental conditions on the site in the initial study that is being prepared for the project pursuant to CEQA. I thank you in advance for your attention to this request. If you have any questions, please contact me at your convenience.

Sincerely,

*Lautaro Echiburú*  
Lautaro Echiburú  
Associate Planner

cc: Charles and Lisa Kleissner  
Mary Anne Schicketanz  
File PLN020392

A-3-MCO-03-121  
Kleissner Guesthouse and Garage

Exhibit *F*  
Pg 9 of 14

**Jud Vandevere  
Biological Consultant**

93 Via Ventura  
Monterey, CA 93940

372-6001

5 Apr 03

Lautaro Echiburu  
Associate Planner  
Monterey County  
Planning & Building Inspection Department  
2620 1<sup>st</sup> Avenue  
Marina 93933

Subject: Studio, garage and adequacy of the Feb 3, 1997 Biological Report,  
APN#243-231-013-000 (Karl and Lisa Kleissner)

Dear Mr. Echiburu:

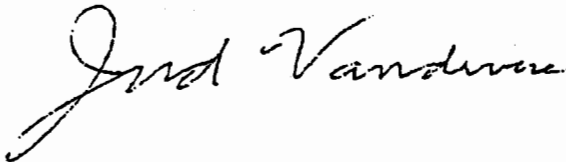
On 4 Apr 03, Mary Anne Schicketanz and I walked the footprint of the proposed studio and garage and failed to locate a single dune buckwheat, *Eriogonum parvifolium*, plant in the footprint.

Following the 1997 Biological Report the buckwheat and other native plants on site were overwhelmed by an extremely thick growth of sea fig, *Carpobrotus chilensis*. The Kleissners had all of the iceplant removed and a seed mix prepared by Tom Moss applied to the site. Moss obtained seeds from existing plants on site over a period of months. His efforts resulted in a vast field of the food plant for Smith's Blues, dune buckwheat, but not near the footprint for the planned studio and garage.

Prior to construction, the topsoil will be stored and used on the sod roofs of both structures. The nearby Kleissner's home has a sod roof planted with natives. There may be a significant seed bank in the stored soil.

On 3 Feb 97, Jeff Norman and I prepared a Biological Report for APN#243-231-013-000, for the then owner, Dr. Robert Goodwin. This report is still applicable. If the recommendations in the report and in this letter are implemented, no appreciable impact should occur as a result of the building of the garage, studio and the new / relocated driveway.

Sincerely,



Reference 8
Initial Study/Kleissner
PLNPLN020392

A-3-MCO-03-121  
Kleissner Guesthouse and Garage

Exhibit I  
Pg 10 of 14

**THOMAS K. MOSS**  
**Coastal Biologist**

April 21, 2003

Lautaro Echiburu, Associate Planner  
Monterey County Planning & Building Inspection Department  
2620 1<sup>st</sup> Avenue  
Marina, CA 93933

Project: Kleisner Garrapata Beach House  
APA 243-231-013

Dear Mr. Echiburu,

I have prepared this letter in response to a request from Carver & Schicketanz Architects to provide information concerning the seed mix that was used to revegetate the Kleisner property, west of Highway 1 at the south end of Garrapata Beach.

(Attached is a set of Landscape Restoration guidelines that I prepared for the property in August 2000. These guidelines were prepared at the request of the property owner, Lisa Kleisner, who had asked me to assist her in restoring the property's native landscape, which had been overrun by ice plant and other exotic plants. I recommended using hydromulch to stabilize and reestablish the native plant cover, since much of the property was devoid of vegetation (following removal of the ice plant). Included in the hydromulch were seeds of several native plant species that I collected on the property in August and September 2000, including Dune Buckwheat, Lizard Tail, Beach Aster, Seaside Daisy, California Sagebrush, Mock Heather, Coyote Brush and Yarrow. To provide immediate stabilization while the slower growing native species were growing in, some grass seed (Six-week Fescue) was included in the mix, as well. The area was temporarily irrigated, and a dense growth of grass and native plant seedlings appeared to become established during the ensuing rainy season.

If you need any further information, please feel free to call me at 649-2854 during the day.

Sincerely,



Reference 12
Initial Study/Kleissner
PLNPLN020392

508 Crocker Avenue  
Pacific Grove, CA 93950

A-3-MCO-03-121  
Kleissner Guesthouse and Garage

(831) 373-8575

Pg 11 of 14

**THOMAS K. MOSS**  
**Coastal Biologist**

**LANDSCAPE RESTORATION – KLEISNER BEACH RESIDENCE**

**1. Seed collection**

<u>Selected Species</u>	<u>Collecting Period</u>
Lizard tail	9-1 to 9-25
Seaside daisy	8-25 to 9-25
Sea lettuce	9-15 to 10-1
Beach aster	9-15 to 10-15
Dune buckwheat	9-15 to 10-1
Seaside painted brush	9-1 to 9-25
CA sagebrush	9-15 to 10-1
Mock heather	9-15 to 10-7
Sticky monkey flower	9-15 to 10-15
Coyote brush	9-15 to 10-1
Yarrow	9-1 to 9-25
Coffeeberry	9-1 to 9-15
CA lilac (cuttings)	10-1

**2. Exotic species eradication and control**

<u>Target species</u>	<u>Treatment Method</u>
Sow thistle	Hand remove plants prior to flowers forming. If flowers are present, remove plant, place in plastic bag (garbage bag) and dispose of off-site.
Pampas grass	Remove flower stalks, place in sealed plastic bags. Spray plant with Roundup. May require several treatments.
Kikuyu grass	Spray plant with Roundup. May require several treatments.
Mustard	Remove flowering plants. Spray young plants prior to formation of flowers in May.
Poison hemlock	Spray young plants prior to formation of flowers in May.
Sweet fennel	Spray young plants prior to formation of flowers in May.
French broom	Hand remove all plants.



## Ice plant

Bluff edge and cliff face: Pull out ice plant growing near existing native plants, creating a cleared 1-ft perimeter around each native plant. Spray all remaining ice plant with Roundup and retain in place.

### 3. Revegetation

#### a. Hydromulching – Two phases

Phase 1: Apply hydromulch for immediate dust control.

##### Specifications:

Fiber @ 1,000 lb/ac

Hydropost @ 800 lb/ac

Tacifier @ 100 lb/ac

Seed 10 lb/ac (Six week fescue)

Schedule: September 11-15

Phase 2: Apply hydromulch with native seed mix.

##### Specifications:

To be determined based on results of Phase 1.

Schedule: November 15 to December 1

#### b. Container plant installation

1. Augment areas where deficiencies in plant composition or numbers are evident.

Primary species: All listed species according to planting plan (pending receipt of site plan).

Schedule: January to March

2. Install native plants in near-house area..

Primary species: Seaside daisy, sea lettuce, buckwheat, CA lilac, lizard tail

Schedule: After construction work on exterior of residence is completed, preferably from January to March.

### 4. Monitoring

Schedule: Weekly for seed collection (Step 1).

Twice a week during exotic plant eradication (Step 2).

Daily during revegetation (Step 3).

### 5. Maintenance

Weed control: March to June

Plant augmentation: January to March

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
725 Front Street, Suite 300  
Santa Cruz, California 95060

Commission Appeal A-3-MCO-03-121  
(Kleissner Garage and Guesthouse Project)

Dear Ms. Kelly Cuffe:

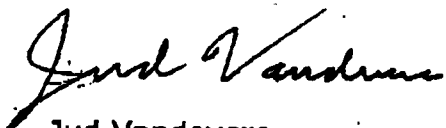
In our 1997 Biological Report Jeff Norman and I identified approximately 111 dune buckwheat, *Eriogonum parvifolium*, plants in the vicinity of the proposed garage and studio. By 2000, a mattress formation of Hottentot fig, *Carpobrotus edulis*, had completely overwhelmed and eradicated 100% of the dune buckwheat identified in 1997 within the vicinity of the proposed garage and studio.

Therefore, there was no opportunity for the removal of *E. parvifolium* during the removal of the *Carpobrotus* in 2000. On 17 Sep 2002, Lisa Kleissner, Jay Auburn and I searched both in and outside the footprint for a proposed garage, guesthouse and a new/relocated driveway.

Where approximately 111 buckwheat had been, we found none. In that same footprint we found no seaside painted cup, *Castilleja latifolia*, nor any other rare or endangered plants or animals.

Tom Moss's restoration plan for the bluff area, which differs from the footprint habitat for the garage and guesthouse, properly calls for protecting the sparse ice plant on the bluff where it is offering protection to native plants.

Kind regards,

 10 Apr 04

Jud Vandevere  
Biological Consulting  
372-6001  
jvan@mbay.net

# ARCHAEOLOGICAL CONSULTING

P.O. BOX 3377  
SALINAS, CA 93912  
(831) 422-4912  
FAX (831) 422-4913

October 10, 2002

Lisa Kleissner  
16897 Placer Oak Rd.  
Los Gatos, CA 95032

Re: AC 2440B; Guest house project on APN 243-231-13

Dear Mrs. Kleissner:

At the request of Jay Auburn of Carver and Schicketanz we have made a field reconnaissance on October 4 to assess the extent of archaeological site CA-MNT-98 relative to your proposed guest house project. At the time of our initial field reconnaissance of parcels 16 and 13 in 1996, we found that dense iceplant precluded soil visibility on most of parcel 13. Our report states that "a small amount of darker soil" was seen on the small knoll of that parcel. However the extent of the archaeological deposit on the parcel was not determined because the project at that time did not involve impacts to parcel 13.

Since that time the iceplant has been removed from both parcels and the extent of the archaeological deposit in the current project area is apparent. The dark midden soil containing copious shell fragments is found in the footprint of the proposed house and garage and in much of the new driveway alignment.

We have reviewed records of previous excavation within archaeological site CA-MNT-98 to determine the proximity of previous archaeological testing to the current project area. The southern portion of the site was tested in 1987 and the northern portion was tested in 1991 (Breschini and Haversat). Two distinct types of shell midden were found in these excavations. Although the northern test was conducted on APN 243-231-15, it was at some distance from the current project area in a portion of the site containing limited cultural materials.

Because of the extent of the archaeological midden on parcel 13 and the placement of the project on the site, impacts to the archaeological resource can not be avoided. The house and garage are sited in the area in which the midden is darkest and contains not only copious shell fragments but also bone fragments, fire-affected rock and flaked lithic materials on the surface. Neither of the previous excavations produced lithic artifacts and the test on parcel 15, on the eastern edge of the main midden, produced very sparse lithic debitage.

Based on our field observations and the results of previous archaeological studies we make the following recommendations for the portion of CA-MNT-98 in the project area:

Reference 3
Initial Study/Kleissner
PLN020392

Exhibit J

A-3-MCO-03-121

Kleissner Guesthouse and Garage

EXHIBIT Pg 14 of 19

1. Preliminary archaeological testing should be conducted to determine the nature, extent, and *significance* of the cultural deposit on the project parcel under the applicable provisions of the Public Resources Code. In making this determination, it will be necessary to address several very specific, basic research questions, including, but not limited to, the following:
  - A. What are the contents and function(s) of the site in the project area?
  - B. During which temporal period(s) was the site occupied?
  - C. What role(s) did the site play in the settlement and subsistence patterns of the region? Did this/these role(s) change through time?
2. In order to acquire the data necessary to make the above determination we recommend the following minimum steps be taken:
  - A. A single 1 x 1 meter test unit should be excavated using standard archaeological techniques<sup>1</sup>. The following studies should be conducted on suitable materials recovered:
    1. At least 2 to 4 radiocarbon dates shall be obtained;
    2. Any other professional analyses as required by the types and amounts of materials recovered; for instance, evaluation of lithic artifacts and debitage, evaluation of faunal remains, bead analysis, etc.
3. Following the test excavation, a *Preliminary Archaeological Report and Archaeological Mitigation Plan* should be prepared. This should evaluate the significance of the cultural resource on the project parcel and make appropriate mitigation recommendations. This report should be submitted to the lead agency for their use during project review.
4. A *Final Technical Report* which includes the results of all analyses subsequent to excavation should be completed within approximately one year of completion of the field work. This should be submitted to the lead agency and to the Regional Information Center at Sonoma State University.

---

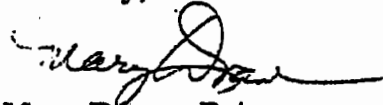
<sup>1</sup> The unit should be excavated in 10 cm vertical increments (where appropriate) with all materials (except bulk rock) being passed through 1/8 inch mesh screens and any materials remaining in the screens transported to the laboratory for wet screening, again using 1/8 inch mesh. Following sorting, the appropriate analyses (including faunal, shell, lithic, ground stone, etc.) should be completed, and radiocarbon and other appropriate dating techniques should be employed.

Because of the possibility of previously unidentified cultural resources being found during construction, we recommend that the following standard language, or the equivalent, be included in any permits issued within the project area:

- If significant archaeological features or human remains are accidentally discovered during construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.

If you should have any questions or concerns regarding this matter, please do not hesitate to contact our office.

Sincerely,



Mary Doane, B.A.

cc Carver and Schicketanz

## REFERENCES

- Breschini, G. S., T. Haversat, and R. P. Hampson  
1983 A Cultural Resources Overview of the Coast and Coast-Valley Study Areas [California]. Coyote Press, Salinas.
- Breschini, G. S. and T. Haversat  
1987 Preliminary Report of Archaeological Testing at CA-MNT-98, Garrapata Creek, South of Carmel Highlands, Monterey County, California. On file with the Regional Information Center, Sonoma State University, Rohnert Park.
- Breschini, G. S. and T. Haversat  
1991 Archaeological Evaluation of Portions of CA-MNT-98B, in the Garrapata Creek Area, South of Carmel, Monterey County, California. On file with the Regional Information Center, Sonoma State University, Rohnert Park.

# ARCHAEOLOGICAL CONSULTING

RECEIVED

APR 8 2004

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

P.O. BOX 3377  
SALINAS, CA 93912  
(831) 422-4912  
FAX (831) 422-4913

June 5, 2003  
AC 2440B

Lisa Kleissner  
c/o Jay Auburn  
Carver & Schicketanz Architects  
P.O. Box 2684  
Carmel, CA 93921

Re: APN 243-231-13 Guest House Project

Dear Mrs. Kleissner:

On May 29, 2003 we completed a single unit test excavation of the portion of archaeological site CA-MNT-98 in the guest house project impact area in order to satisfy the requirements of CEQA. Following the recommendations made in our project assessment of October 10, 2002, we hand excavated a 1 x 1 meter square unit in 10 centimeter increments to a depth of 70 centimeters (~28 inches). An additional 25 centimeters was augered from the SE corner of the unit floor.

The excavation found that the archaeological midden contained marine shell fragments dominated by *Mytilus* (mussel) and *Haliotis* (abalone). Other species did not appear statistically significant. The quantities of shell became sparse below 40 centimeters (~16 inches). The only other midden component noted in the field was lithic debitage, consisting of chert and obsidian flakes.

We have commenced the laboratory processing of the materials recovered in the excavation. Most of the materials have been washed but no sorting has yet been done. We will provide the results of further lab processing as well as the radiocarbon dates, obsidian sourcing and hydration and any other analyses in our Final Technical Report.

In view of our test excavation field results, we recommend that the guest house project should go forward as planned with the following condition:

- A qualified archaeological monitor should be present during construction activities that involve soil disturbance, such as grading, excavation for new foundations, septic lines, etc. If human remains or intact cultural features are discovered, work shall be halted within 50 meters (~150 feet) until the find can be evaluated and appropriate mitigation measures formulated and implemented.



Because of the possibility of unidentified (e.g., buried) cultural resources being found during construction, we recommend that the following standard language, or the equivalent, be included in any permits issued for the project area:

- If archaeological resources or human remains are accidentally discovered during construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.

If you should have any further questions in this matter, please do not hesitate to contact our office.

Sincerely,



Gary S. Breschini, Ph.D., RPA  
GSB/mkd

# ARCHAEOLOGICAL CONSULTING

P.O. BOX 3377  
SALINAS, CA 93912  
(831) 422-4912  
FAX (831) 422-4913

September 10, 2003  
AC 2440B

Mr. Mark Blum  
Horan, Lloyd et al.  
499 Van Buren St.  
Monterey, CA 93940

Dear Mr. Blum:

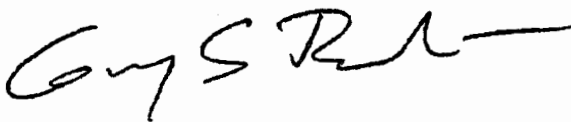
As you requested, we have examined the "Schapira Relocation Proposal" for the Kleissner project, located on APN 243-231-13.

Our firm conducted an archaeological test excavation within the project area, and we obtained the information necessary to guide the planning process (see our letter of June 5, 2003). We recommended that an archaeological monitor be present during any construction-related activities that involve soil disturbance.

The current relocation proposal will not alter our recommendation; either way, the proposed structure will be within the midden area. Based on our test excavation, we believe that an archaeological monitor will be all that is required with either of the two proposals.

If you have additional questions, please feel free to contact us at any time.

Sincerely,



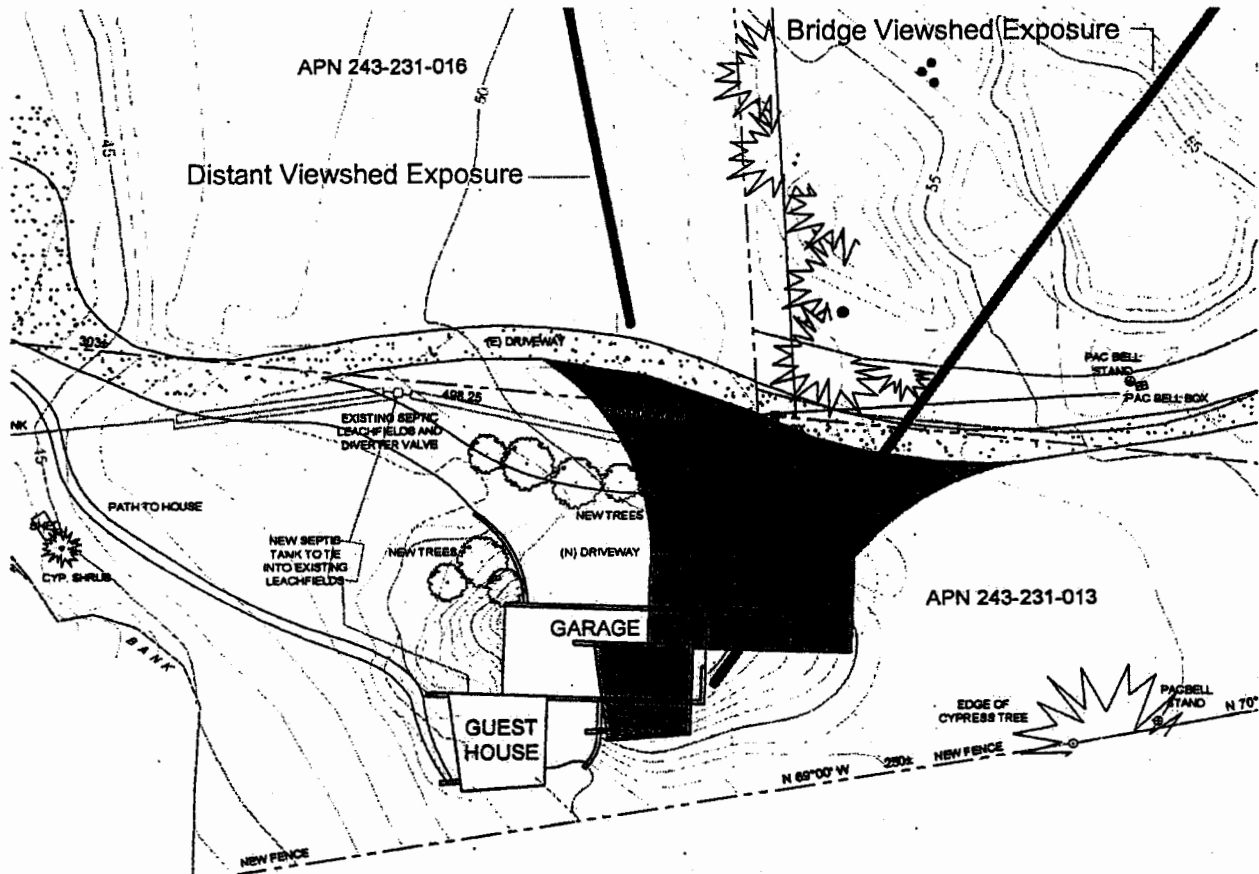
Gary S. Breschini, Ph.D., RPA

---

Expert Services in Cultural Resource Management

A-3-MCO-03-121  
Kleissner Guesthouse and Garage

EXHIBIT "0"  
Exhibit J  
Pg 7 of 19



## Schapira Relocation Proposal

# ARCHAEOLOGICAL CONSULTING

P.O. BOX 3377  
SALINAS, CA 93912  
(831) 422-4912

## REPORT ON ARCHAEOLOGICAL INVESTIGATIONS FOR PORTIONS OF CA-MNT-98B, SOUTH OF CARMEL, MONTEREY COUNTY, CALIFORNIA

by

Gary S. Breschini, Ph.D. RPA and Trudy Haversat, M.A. RPA

October 23, 2003

Copyright © 2003 by Archaeological Consulting

A-3-MCO-03-121  
Kleissner Guesthouse and Garage

Exhibit J  
Pg 9 of 19

## INTRODUCTION

This report details the methods utilized and summarizes the results obtained from a secondary archaeological test undertaken at archaeological site CA-MNT-98B, in the Garrapata Creek area, south of Carmel, Monterey County, California.

The Principal Investigators for the project were Gary S. Breschini, Ph.D. and Trudy Haversat, M.A. Field investigations were conducted by Archaeological Consulting during May of 2003.

This is the third test we have conducted in three different areas of this archaeological site. The first two projects have been previously reported, but selected results are also included in this report.

## PROJECT LOCATION AND SETTING

The current project parcel is located on the ocean side of Highway 1, just south of Garrapata Creek, south of Carmel, Monterey County, California. The Assessor's Parcel Numbers (APN) are 243-231-13 and -16, and the Universal Transverse Mercator Grid (UTMG) coordinates for the approximate center of the property are



Figure 1. Looking northwest across portions of CA-MNT-98B from the project area.

5.9729/40.3052 on the USGS 7.5 minute Soberanes Point Quadrangle (1956; photorevised 1983).

The proposed project is construction of a guest house, garage, and relocated driveway (Figure 4).

### Environmental Setting

CA-MNT-98B is situated on a coastal terrace overlooking Garrapata Creek to the north and the Pacific Ocean to the west. The elevation of the archaeological site is approximately 50-60 feet above mean sea level.

In prehistoric times CA-MNT-98 was situated at or near the ecotone between two primary vegetation communities: the coastal cypress and pine forest community, situated primarily to the north, and the coastal sagebrush community along the coast to the south (Küchler 1977). These two vegetation communities are described as follows:

#### **Coastal cypress and pine forest (*Cupressus*, *Pinus*)**

**Structure:** Fairly dense, needle-leaved evergreen forest, low and shrubby to medium tall, the height depending largely on the floristic composition and the soil.

**Dominants:** No species dominates throughout the area of this type. Some species strongly dominate, but always in very small areas [Küchler 1977:919].

#### **Coastal sagebrush (*Artemisia-Eriogonum-Salvia*)**

**Structure:** Moderately dense communities of drought-deciduous shrubs rarely more than 1.5 m tall. Forbs are numerous.

**Dominants:** California sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), white sage (*Salvia apiana*), black sage (*S. mellifera*) [Küchler 1977:929].

### **PROJECT BACKGROUND**

In September 1996, Archaeological Consulting conducted a Preliminary Cultural Resources Reconnaissance on Assessor's Parcels 243-231-16 and -13 (Runnings and Haversat 1996). Because visibility was poor, it was recommended that an archaeological monitor be present during any clearing and grading. Subsequently the proposed project changed and the vegetation (ice plant) was removed, improving surface visibility. A second visit to the property in 2002 determined that the proposed guest house, garage, and relocated driveway were within the site area, and recommended a secondary archaeological test to determine the nature, extent, and significance of the cultural deposit within the project area.

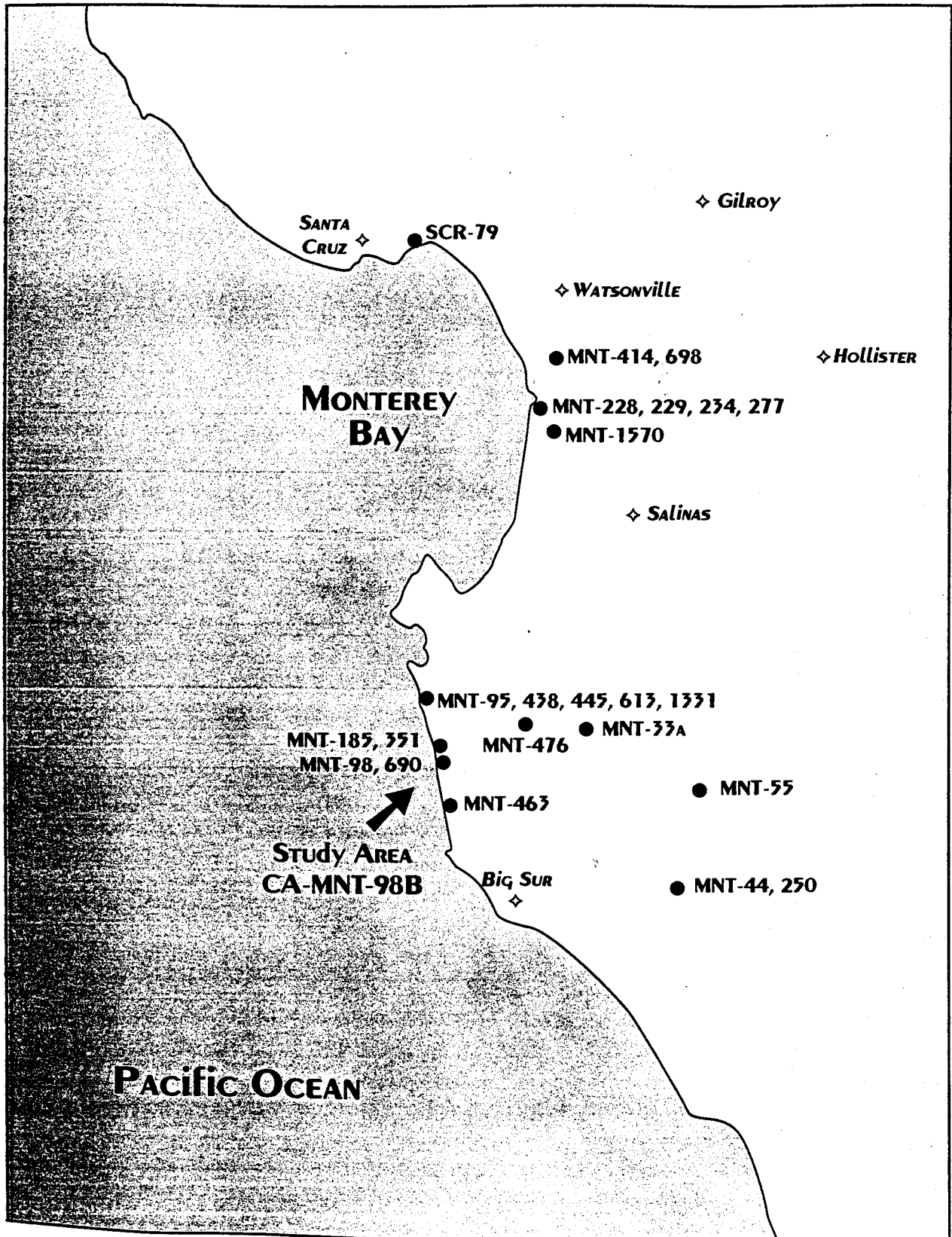


Figure 2. Selected Archaeological Sites in the Monterey Bay Region.



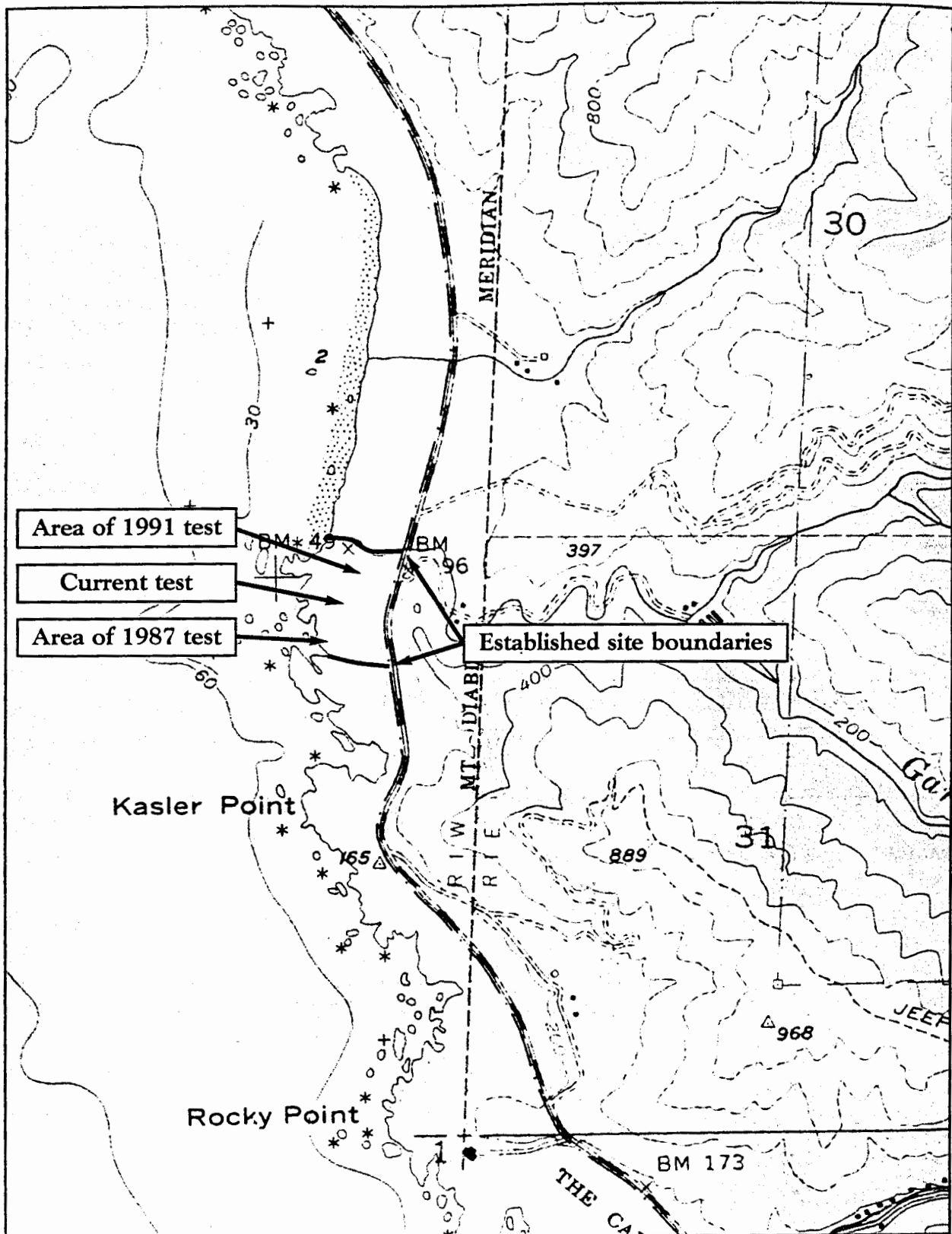


Figure 3. Archaeological Site CA-MNT-98.

This report presents the scientific results of the secondary archaeological test. The management report, containing our project recommendations, has already been submitted.

## ARCHAEOLOGICAL BACKGROUND

CA-MNT-98 was originally recorded on August 31, 1947 by Arnold Pilling. At that time the deposit was described as a "large occupation area at creek mouth." The original dimensions of the site were listed as 60 yards E-W and 65 yards N-S. Two bedrock mortars (BRMs) were noted on the form, one with ten holes and one with one. The single-hole BRM has not been relocated, and the ten-hole BRM is now sliding down the bank toward Garrapata Creek (this was first reported in the updated archaeological site record dated 7/18/79).

Pilling's boundaries did not include some of the outlying portions of the site, which have subsequently been identified. However, along the coast it is sometimes difficult to determine where one site ends and the next begins. As such, the boundaries of CA-MNT-98 are somewhat arbitrarily established (see our map dated 7/25/87). We used a drainage to separate CA-MNT-98 from CA-MNT-690 on the south. Garrapata Creek forms a natural boundary on the north, and we used Highway 1 as the boundary on the east, although the deposit does not necessarily extend that far.

Based on the results of the first two tests we conducted (1987 and 1991), it is clear that the archaeological deposit currently recorded as CA-MNT-98 consists of two extremely different prehistoric occupation areas. As such, we use CA-MNT-98A to refer to the southernmost portion of the site, where the deposit is characterized by an extremely high percentage of abalone shell, while we use CA-MNT-98B to refer to the larger, northern portion of the site, characterized primarily by mussel shell. The current project area is at the southern edge of CA-MNT-98B.

In prehistoric times, the archaeological site would have provided access to both the ocean and to a riparian corridor associated with Garrapata Creek. However, the prevailing winds would probably have limited occupation to the more favorable days and seasons of the year. Thus, while CA-MNT-98 was probably situated in a good location for resource exploitation, it probably was not as suitable for use as a more permanent village.

### 1987 Test

Two previous archaeological excavations have been conducted on CA-MNT-98. The first took place in 1987, and was reported by Breschini and Haversat (1991a). The area investigated was about 75 meters south of the location of the current study, on the southwest side of a cypress-covered knoll and very near the edge of the coastal terrace. It was determined that the archaeological deposit in the area tested in 1987

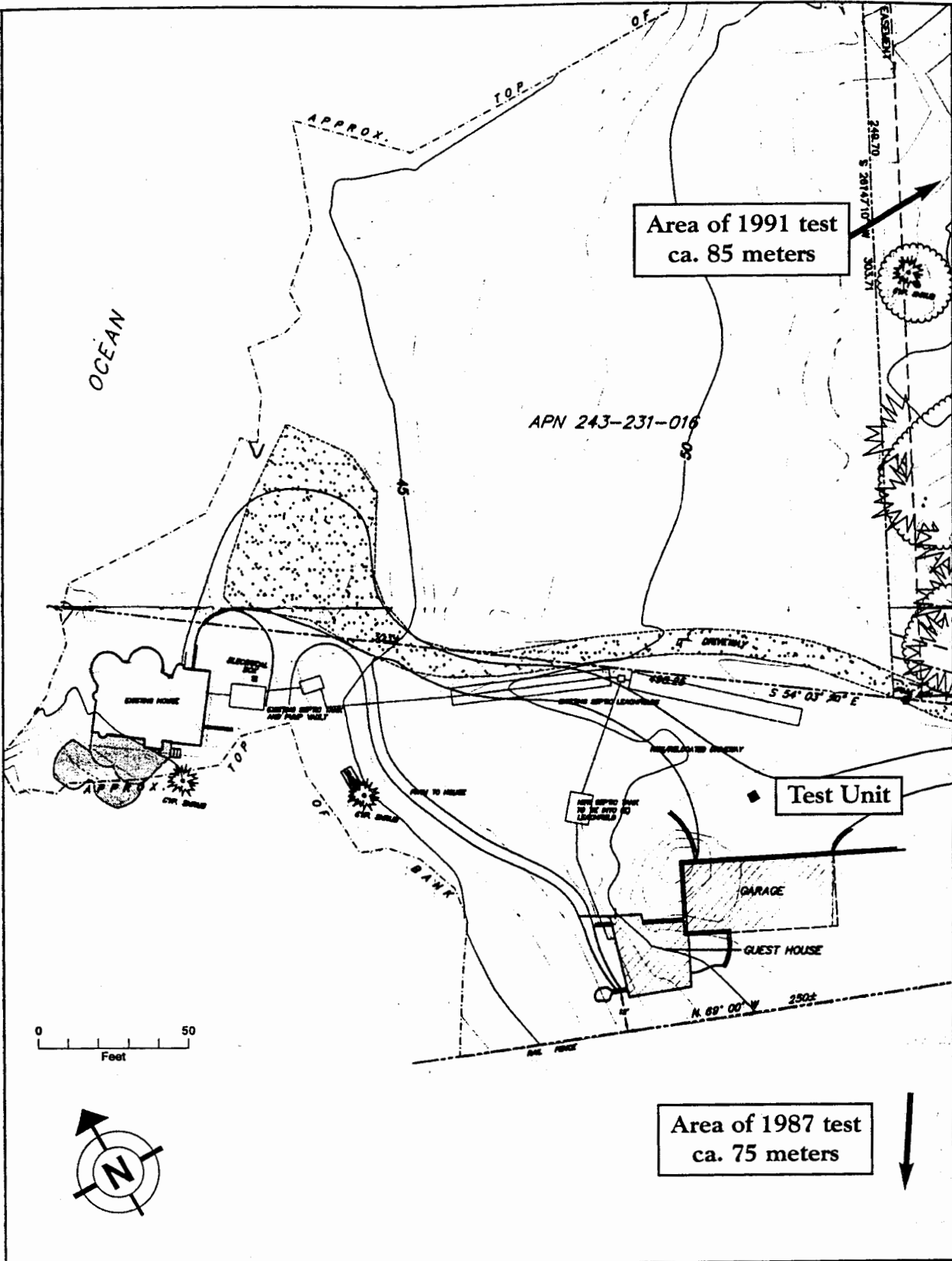


Figure 4. Project Area.

The two samples obtained during the current test fit quite well with the four previous samples from CA-MNT-98B.

Based on the six radiocarbon samples, CA-MNT-98B clearly contains a single cultural layer dating to the second half of the Late Period.

## INTERPRETATIONS AND CONCLUSIONS

### Site Function

CA-MNT-98B appears to have been a Late Period resource exploitation area which was probably used on a seasonal basis. Principal activities included shellfish gathering and processing, along with some hunting and fishing.

The site matches the characteristics postulated for a "Late Period Coastal Shellfish Processing" site (Breschini and Haversat 1991a). That report introduced the type (see Figure 11), and presented a detailed definition of one subtype, the "Abalone Processing" subtype. The data from the subsequent investigations CA-MNT-98B will assist in defining a second subtype, and thus will provide additional information on the range of variation within "Late Period Coastal Shellfish Processing" sites. When data from a sufficient number of sites have been accumulated, a similar paper will be prepared defining this second subtype.

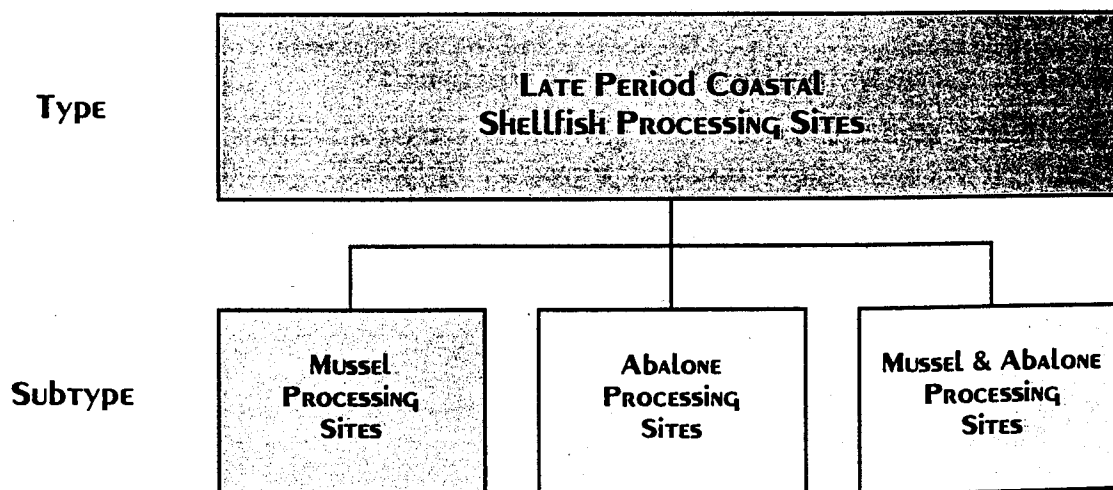


Figure 11. Postulated Subtypes of Late Period Coastal Shellfish Processing Sites (from Breschini and Haversat 1991a:31).

## Discussion

Based on the sample from the three limited tests, it would appear that there is a considerable degree of intrasite patterning at CA-MNT-98. As noted above, one area (designated CA-MNT-98A) was characterized almost entirely by abalone shell, and contained no vertebrate faunal remains. It is even possible that this area represents historical activity.

The second area, designated CA-MNT-98B and examined during the subsequent projects, was clearly prehistoric in nature. It was characterized primarily by mussel shell, and contained only moderate quantities of bone. Neither area, however, produced a significant number of artifacts in the limited investigations conducted, suggesting a low level of tool-producing activity. The primary tasks appear to have been cutting or scraping.

The apparent intrasite patterning may be a result of the way in which coastal archaeological sites have been recorded. Usually a series of small deposits will stretch along a length of the rocky shoreline, and these will be grouped or "lumped" for record-keeping purposes into conveniently handled arrangements. However, the groupings created by archaeologists do not necessarily have any relationship to the patterns established by the prehistoric inhabitants. It is likely that CA-MNT-98A and CA-MNT-98B are not functionally related.

CA-MNT-98B contains information pertaining to only one of the cultural periods recognized for the central and southern Monterey Bay areas (Early, Middle, and Late Period). While the cultural deposit appears to be substantially intact, there is little information present; the type of site, defined as a coastal shellfish processing site, was probably used intermittently or seasonally and never served as a primary residential base. Rather, the nature of the prehistoric activity was such that few artifacts were made or used at the site.

## Curation of the Collection

The cultural materials recovered during these investigations will be curated in the Monterey County Historical Society's archival vault, located at the Boronda Adobe History Center in Salinas.

# ARCHAEOLOGICAL CONSULTING

RECEIVED

APR 12 2004

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

P.O. BOX 3377  
SALINAS, CA 93912

(831) 422-4912

FAX (831) 422-4913

April 9, 2004  
AC 2440B

Kelly Cuffe  
Coastal Commission  
725 Front St., Suite 300  
Santa Cruz, CA 95060

Re: Kleissner Guest House Project, Archaeological site CA-MNT-98

Dear Ms. Cuffe:

This letter will serve to clarify our determination of significance for the portion of archaeological site CA-MNT-98 in the Kleissner guest house project impact area in order to satisfy the requirements of CEQA.

Following our test excavation, we determined that the portion of the archaeological site which we tested has limited potential for producing significant cultural materials or features. The CA-MNT-98 deposit in the project area is a shallow, single cultural layer containing remains related to shellfish processing which date to the second half of the Late Period of prehistoric occupation. These Late Period Coastal Shellfish Processing Sites produce few artifacts and have limited data recovery potential. Therefore the portion of the site subject to impacts with this project has been determined to be of minimal significance.

This determination should not be extrapolated to cover any other portion of the archaeological site. The cultural deposit in other areas as little as 50 yards distant might prove to be of greater significance than that in the current project area.

We continue to recommend that the guest house project should go forward as planned with the following condition:

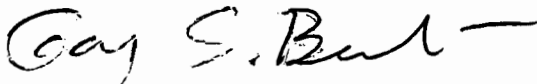
- A qualified archaeological monitor should be present during construction activities that involve soil disturbance, such as grading, excavation for new foundations, septic lines, etc. If human remains or intact cultural features are discovered, work shall be halted within 50 meters (~150 feet) until the find can be evaluated and appropriate mitigation measures formulated and implemented.

Because of the possibility of unidentified (e.g., buried) cultural resources being found during construction, we recommend that the following standard language, or the equivalent, be included in any permits issued for the project area:

- If archaeological resources or human remains are accidentally discovered during construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented.

If you should have any further questions in this matter, please do not hesitate to contact our office.

Sincerely,



Gary S. Breschini, Ph.D., *RPA*  
GSB/mkd

- F. Senior Citizen Units shall not be allowed in the Carmel and Big Sur Planning Areas due to the limited resources and infrastructure available in these two planning areas necessary to support the existing maximum potential development of the areas.

**20.64.020 REGULATIONS FOR GUESTHOUSES.**

- A. Purpose: The purpose of this Section is to establish the regulations, standards and circumstances under which sleeping facilities not integral to the main dwelling may be established. Such facilities are intended for limited sleeping and living purposes, but not for independent living purposes, permanent residential use, or rental purposes.
- B. Applicability: The provisions of this Section are applicable in all zoning districts which allow guesthouses.
- C. Regulations: The guesthouse shall be a permanent detached structure or an attached structure lacking internal circulation with the main residence. The guesthouse may include a living and sleeping area but shall be without kitchen or cooking facilities. The guesthouse shall be clearly subordinate and incidental to a main residence on the same building site.

A guesthouse shall be subject to the following standards:

1. Only one guesthouse shall be allowed per lot.
2. Detached guesthouses shall be located in close proximity to the principal residence.
3. Guesthouses shall share the same utilities with the main residence, unless prohibited by public health requirements.
4. The guesthouse shall contain no kitchen or cooking facilities, including but not limited to microwave ovens, hot plates, and toaster ovens.
5. There shall be a maximum of 6 linear feet of counter space, excluding counter space in a bathroom. There shall be a maximum of 8 square feet of cabinet space, excluding clothes closets.
6. Guesthouses shall not exceed 425 square feet of livable floor area.
7. Guesthouses shall not be separately rented, let or leased from the main residence whether compensation be direct or indirect.
8. Prior to the issuance of permits for guesthouse construction, or for use of an existing structure as a guesthouse, the applicant shall record a deed restriction stating the regulations applicable to the guest house, including that the guesthouse shall not be



separately rented, let or leased from the main residence and shall not have cooking or kitchen facilities.

9. Subsequent subdivisions which divide a main residence from a guesthouse shall not be permitted.
10. The guesthouse shall be designed in such a manner as to be visually consistent and compatible with the main residence on site and other residences in the area.
11. The guesthouse height shall not exceed 12 feet nor be more than 1 story. Additions to height and placement of guesthouses over a 1-story structure, such as a garage, may be considered by Coastal Development Permit (ZA) when intended to provide for architectural consistency and compatibility with the main residence.

#### **20.64.030 REGULATIONS FOR CARETAKER UNITS.**

- A. Purpose: The purpose of this Section is to establish the regulations, standards and circumstances under which a dwelling unit accessory to the main residence on a lot may be established for the purpose of providing continuous on- site care for persons and property.
- B. Applicability: The provisions of this Section are applicable in all zoning districts which allow single family residences.
- C. Regulations: Caretaker units may be allowed subject to a Coastal Administrative Permit in designated districts and subject in all cases to the following regulations:
  1. Only 1 caretaker unit per lot shall be allowed.
  2. The caretaker shall be employed principally on the lot for purposes of care and protection of persons, plants, animals, equipment, or other facilities on- site or on contiguous lots under the same ownership.
  3. The minimum lot size for establishment of a caretaker unit in areas not served by public sewers shall be two acres. The minimum lot size for establishment of a caretaker unit in the Carmel Planning Area shall be 40 acres.
  4. Caretaker units shall not be subject to density requirements of the zoning district in which the lot is located, except in North County. In North County, caretakers units shall not be permitted on lots less than 5 acres if located in an area not served by public sewer systems.
  5. The maximum floor area for a caretaker unit 850 square feet.

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

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

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

RECEIVED

APR 13 2004

JAMES J. COOK  
DENNIS M. LAW

April 12, 2004

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

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

Our File No. 3692.01

**VIA REGULAR MAIL**

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
725 Front Street, Suite 300  
Santa Cruz, California 95060

**Re: Commission Appeal A-3-MCO-03-121  
(Kleissner Garage and Guesthouse Project)**

Dear Ms. Cuffe:

This law firm represents Karl and Lisa Kleissner ("Applicant"). We have received and reviewed the appeal (the "Appeal") of Monterey County Board of Supervisor's Resolution Number 03-398 (the "Resolution") granting a Combined Coastal Development Permit and Design Approval including a Coastal Administrative Permit to allow construction of a new detached 1,380 square foot three car garage with an attached 420 square foot guesthouse plus installation of a five foot tall wooden grape stake fence along the southern property line; a Coastal Development Permit for development in the Critical Viewshed; a Coastal Development Permit for development on a parcel with a positive archaeological report (collectively referred to as the "Project"). A copy of the Resolution is attached hereto as Exhibit "A". A copy of the Staff Report for the Resolution is attached hereto as Exhibit "B".

The property is located at 35678 Highway One, Big Sur (APN: 243-231-013), southwest of Garrapata Creek Bridge (the "Property"). The location of the Project ("Project Site") is described on the map attached hereto as Exhibit "C".

**Background**

- On February 11, 2003 Applicant submitted an application for the Project with the County of Monterey ("County").
- On July 18, 2003, an initial study and draft mitigated negative declaration were distributed to responsible agencies and interested parties, including the State Clearinghouse (SCH #2003071118) in accordance with the California Environmental Quality Act ("CEQA").

499 VAN CUNNING STREET  
MONTEREY, CALIFORNIA 93940  
**A-3-MCO-03-121  
Kleissner Guesthouse and Garage**

**Exhibit L**  
**Pg 1 of 15**

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 2

- On March 11, 2003, the Big Sur Land Use Advisory Committee voted 5-0 to recommend approval of the Project.
- From August 28, 2003 to September 30, 2003 the Zoning Administrator continued review of the Project four times to address issues raised by Robert Shapira ("Appellant"). By the fourth continuance, the Zoning Administrator decided to forward the Project to the Planning Commission for their review.
- On October 8, 2003, the Planning Commission held a duly noticed public hearing on the Project. The Planning Commission voted 9-0 to approve the Project.
- On October 16, 2003 the Appellant filed an appeal of the Planning Commission's approval to the County Board of Supervisors.
- On November 25, 2003 the County Board of Supervisors unanimously denied the appeal and affirmed approval of the Project.
- On December 23, 2003 the Appellant filed an appeal of the County Board of Supervisor's decision to the California Coastal Commission ("Commission").

### **Response to Appeal**

For all the reasons more fully stated below, the Appeal fails to state any substantial issue with respect to the permissible grounds for appeal stated in Section 30603(b)(1).<sup>1</sup> However, if it is determined that the Appeal raises any substantial question, the Appeal should nonetheless be denied for each of the reasons more fully stated below.

Pursuant to Section 30625(b)(2), the Commission shall not hear an appeal if it determines "[w]ith respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603." (emphasis added).

The Project falls within the class of developments described in Section 30603(a) which may be appealed to the Commission. Pursuant to Section 30603(b)(1), the Project is appealable only on the ground that "development does not conform to the standards set forth in the certified coastal program or the public access policies set forth in the [California Coastal] Act."

#### **1. Alleged Inconsistencies with LCP Scenic Resource Policies:**

Big Sur Land Use Plan ("Big Sur LUP") Chapter 3.2 and the Big Sur portion of the Monterey County Coastal Implementation Plan ("Big Sur CIP") Chapter 20.145.030 contain regulations for the

---

<sup>1</sup> Unless otherwise stated, all statutory references are to the California Public Resources Code.

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 3

protection of Big Sur's scenic resources. For the convenience of the reviewer, the relevant LCP policies are attached hereto as Exhibit "D".

With regards to visual resource protection, the Appeal is entirely conclusory. The Appeal is nonspecific and lacks a discussion of any factual bases which raise a significant question. Consequently, the Appeal should be rejected for failure to satisfy Section 30625(b).

The Appeal generally provides:

Specifically, the new structure has not been sited on the portion of the parcel that is least visible from public viewpoints, in conflict with Policy 3.2.4.2 of the Big Sur Land Use Plan (LUP) and Section 20.145.030C.2.b of the Coastal Implementation Plan (CIP). Moreover, the construction of a garage and guesthouse within the public viewshed, on a site that supports an existing residence, is an avoidable impact that is inconsistent with Policy 3.2.4.1 of the Big Sur LUP as well as Section 23.145.030C.2.a. of the CIP, which prohibit structures that detract from the natural beauty of the undeveloped shoreline. Finally, it is not clear that all areas outside of the development will be placed within a scenic conservation easement, as required by CIP Section 20.145.030.B.6.e.

This aspect of the Appeal is based entirely on verbatim objections raised following the Monterey County Planning Commission's approval of this Project. These objections ignore the Applicant's voluntary modifications to the Project.

**A. ALLEGATION THAT THE PROJECT IS NOT SITED ON THE PORTION OF THE PARCEL THAT IS LEAST VISIBLE FROM PUBLIC VIEWPOINTS.**

The Appellant's unsupported allegation fails to raise any substantial question regarding how relocation of the Project Site will reduce the Project's impact on public and private viewing areas. The administrative record for this Project includes the unanimous conclusions of the Big Sur Land Use Advisory Committee, the County Planning Commission and the County Board of Supervisors that the Project Site as approved is the least visually intrusive location for the Project.

Big Sur LUP Policy 3.2.5.F permits construction of guesthouses within the Rocky Point Critical Viewshed Exception Area ("Exception Area") provided that such guesthouses conform with regulations for development outside of the Critical Viewshed which require structures be located to minimize visual intrusion on public and private viewing areas. See also Big Sur CIP Section 20.145.030.B.6. Big Sur LUP Policy 3.2.5.F also allows for the use of vegetative and topographic screening to minimize visual impacts provided such screening does not block views from Highway One. See also Big Sur CIP Section 20.145.030.B.6.c.

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 4

The Applicant's parcel presents a situation where it is not possible to site the Project to prevent visual impacts from both Highway One and other public and private viewpoints such as Garrapata Beach and the Appellant's residence without screening. The approved location of the Project represents a balance between several visually protected perspectives whereby:

- (1) No ocean views are blocked by the Project's proposed structure and vegetative screening; and
- (2) Proximate views are protected by existing vegetative and topographic screening; and
- (3) Distant views are protected by minor vegetative screening.

At its current location, the Project would be visible, at a distance, from Highway One north of the Project. However, at this location, existing natural landforms (topography and trees) already reduce the visibility of the Project from distant views and effectively screen it from other public areas closer to the Project Site such as Highway One at Garrapata Creek Bridge. See the annotated site plan detail attached hereto as Exhibit "E" and page 3 of the Resolution attached hereto as Exhibit "A". Importantly, no ocean views are blocked by the modified Project as approved by the Resolution, including views from Highway One, Garrapata Beach and the bluffs above it.

With the benefit of minor additional vegetative screening, the entirety of the Project will be screened from public and private vistas. While vegetative screening is allowed in the Exception Area, a mitigation measure is included in the Resolution that limits the height of newly planted trees and shrubs so as not to block views any more than the Project itself. See Page 3 of the Resolution attached hereto as Exhibit "A". An important aspect of the approved Project Site is its minimal impact on competing vistas and the ability to utilize existing vegetative and topographic screening to limit the Project's visual impact and thereby reduce the need for new vegetative screening.

With respect to visual impacts from the Appellant's home, the Project is more than twice the required setback of six feet. In fact, the bulk of the Project is an average of thirty feet from the Applicant's and Appellant's common property line. The approved Project Site avoids a gap between a row of Cypress trees which screen these properties from one another. The Applicant also took great care in designing the guesthouse in a way that no windows open towards the Appellant's residence, even though the Appellant cannot see the windows or structure due to the existing trees. The Project will use materials and building methods that in contrast to the Appellant's residence will blend in with the existing vegetation and terrain of the site.

In response to comments received from Coastal Commission Staff prior to adoption of the Resolution, the Applicant volunteered to incorporate the following design changes into the Resolution which is the subject of this Appeal:

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 5

- (a) Lower the finished elevation of the entire structure from elevation 50 to elevation 48.5.
- (b) Lower the ridgeline of the guesthouse an additional 18 inches.
- (c) Redesign framing over the utility room in the garage to drop an additional 18 inches on the west side of the building.

Following Applicant's design modifications, Monterey County Planning Department staff concluded (See page 3 of the Staff Report to the Resolution attached hereto as Exhibit "B") :

A row of trees along the south property line restricts views from the neighboring lot. The structure is located east of an opening in this line of trees where it will not affect any existing view of the neighbor. A solid wood fence would affect the neighbor's view through this opening, so staff has included a condition that the proposed fence not exceed the height of the existing split rail fence.

Although the Project could be physically located on other parts of the parcel, relocation of the Project would increase the Project's impact on public and private viewsheds. Moving the proposed structure further east, as requested by the Appellant, would make the entire Project visible from proximate views along Highway One at Garrapata Creek Bridge. See the map of the Schapira Relocation Proposal attached hereto as Exhibit "F". Relocating the Project to increase proximate visual impacts from Highway One would not conform to Big Sur LUP Policy 3.2.5.F. Moreover, due to the narrow physical characteristics of the Property, only the approved Project Site provides optimal areas to plant landscape that will screen the new structure from distant views along Highway One and ocean bluff tops.

In conclusion, the Appellant has failed to raise any significant question regarding the factual basis for the Big Sur Land Use Advisory Committee's, the County Planning Commission's and the County Board of Supervisor's determination that the Project is sited on the least visually intrusive portion of the Applicant's parcel. The Project aspects described above and supported by the Resolution demonstrate conformance with Big Sur LUP Policy 3.2.5.F requiring the Project to be sited in the least visually intrusive location from public and private vistas. The approved Project (which was selected as a result of consultations with County Coastal Planning Staff) blocks no ocean views from any perspective and optimizes the ability to screen the structure from Garrapata Beach and the ocean bluff top, while satisfying all other development standards.

**B. ALLEGATION THAT THE PROJECT IS AN AVOIDABLE IMPACT THAT IS INCONSISTENT WITH APPLICABLE LOCAL COASTAL REGULATIONS.**

The Appellant provides only a blanket statement that the construction of a garage and guesthouse within the public viewshed, on a site that supports an existing residence, is an avoidable impact that

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 6

is inconsistent with local coastal regulations which prohibit structures that detract from the natural beauty of the undeveloped shoreline. Appellant's conclusory statement is nonspecific and fails to factually identify how the Project is inconsistent with local coastal regulations.

Appellant's citation to broad and general visual resource protection policies raises no significant issue. Big Sur LUP Policy 3.2.5.F specifically acknowledges that guesthouses are an allowed use for parcels within the Exception Area of the Critical Viewshed. See also Big Sur CIP 20.145.030.B.6.g. These regulations provide, "[g]uest houses shall be attached to the main dwelling except where they can be sited to better implement these policies" (emphasis added). The garage which is attached to the guesthouse is a required structure for houses approved under current regulations. See Section 20.58.050.F of the Monterey County Coastal Implementation Plan. As mentioned above, logically and legally, specific regulations must control the interpretation of general resource protection policies.

Moreover, the extra covered garage space resolves an existing code deficiency for this property and prevents silhouetting and glare from cars parked adjacent to the Property's existing residence. See page 3 of the Resolution attached hereto as Exhibit "A". Currently, all the cars which would be parked in the Project's garage are parked on the driveway and silhouette views of the horizon and provide a source of glass and metallic glare.

C. ALLEGATION THAT THE PROJECT IS INCONSISTENT WITH POLICIES  
RELATED TO THE GRANT OF SCENIC EASEMENTS ON PROPERTY  
LOCATED WITHIN THE CRITICAL VIEWSHED

Big Sur LUP Policy 3.2.5.F provides that permit applicants developing within the Exception Area shall dedicate a scenic easement over the undeveloped portion of their parcel. See also Big Sur CIP Section 20.145.030.B.6.e.

Appellant requests the Commission to interpret the above described policies in a manner which would result in an unconstitutional taking of property. Big Sur LUP Policy 3.2.5.F and Big Sur CIP Section 20.145.030.B.6.e were ratified by the Commission seven years prior to the United States Supreme Court's decision in Dolan v. City of Tigard, (1994) 512 U.S. 374. In Dolan, the Court stated that permit exactions must demonstrate a "rough proportionality" to project impacts to withstand scrutiny under the Federal Constitution.

Dolan's "rough proportionality" standard precludes a strict interpretation of coastal plan regulations which condition development on the grant of scenic conservation easements over the remaining area of a parcel which is outside of proposed development. Blind application of such a policy disregards "rough proportionality" because it fails to take into consideration the actual impact of any project

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 7

on visual resources, the variation in size between individual parcels and the amount of undeveloped land which remains in the Critical Viewshed.

Pursuant to Dolan's rule of "rough proportionality", the Board of Supervisors in their denial of the Appellant's appeal determined that the rocky point below the existing house is the only significant landform on the Property that provides justification to require a scenic easement over the Applicant's parcel (See page 9 of the Staff Report to the Resolution attached hereto as Exhibit "B"):

Section 20.145.030.D.6.e. CIP requires parcels in the Rocky Point Area to dedicate scenic easements over undeveloped portions of the lot. There are no qualifying factors to use to determine a clear nexus for what areas are, or are not, required to be protected. The project includes a condition that limits landscaping in a manner that does not restrict views beyond that of the proposed structures. In addition, the proposed guesthouse and garage have been designed and sited to minimize their intrusion in the critical viewshed. Although there is justification to require a scenic easement for the rocky point below the existing house, there is no justification to require any easement over the balance of the site.

To satisfy local coastal regulations related to the dedication of a scenic easement, the Applicant accepted the condition that an easement be placed over the rocky point below the existing house as a condition of the Project's permit.

## **2. Alleged Inconsistencies with LCP Standards for Guesthouses in Big Sur:**

Big Sur LUP Chapter 5.4.3.J and Big Sur CIP Chapter 20.145.140.B.4.d contain regulations for construction of guesthouses in Big Sur. For the convenience of the reviewer, the relevant LCP policies are attached hereto as Exhibit "G".

With regards to policies related to guesthouse construction, the Appeal is entirely conclusory. The Appeal is nonspecific and lacks a discussion of any factual bases which raise a significant question. Consequently, the Appeal should be rejected for failure to satisfy Section 30625(b).

The Appeal generally provides:

Section 20.145.140B.4.d.3 of the CIP limits the construction of guesthouses to sites that can sustain the additional development in a manner that is consistent with the standards of the Big Sur Land Use Plan and the CIP. The proposed guesthouse is inconsistent with the standards due to the adverse impacts to scenic resources and LCP inconsistencies discussed above.



Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 8

The County's approval of the project also conflicts with Section 20.145.140B.4.d.10, which requires a deed restriction prohibiting the rental of the guesthouse and the installation of cooking facilities. No such condition has been placed on the project.

**A. ALLEGATION THAT THE PROJECT IS INCONSISTENT WITH LCP SCENIC RESOURCE REGULATIONS.**

The Appeal raises no substantial issue regarding the Project's compliance with local coastal regulations protecting scenic resources. The Project's impact on the Critical Viewshed is permitted by local coastal regulations which exempt development within the Exception Area from the Critical Viewshed's development prohibition and specifically allow for the construction of guesthouses.

As stated above, no substantial issue has been raised regarding the Project's compliance with regulations (1) requiring siting of the Project to minimize visual impacts from Highway One and other public and private viewing areas; (2) acknowledging that guesthouses are allowed uses within the Exception Area and (3) requiring the dedication of a scenic conservation easement over visually significant undeveloped portions of the parcel. Therefore, this allegation raises no significant issue for review by the Commission and should be dismissed.

**B. ALLEGATION THAT THE PROJECT IS INCONSISTENT WITH THE LCP FOR LACK OF ANY DEED RESTRICTION LIMITING USE OF THE PROJECT'S GUESTHOUSE.**

This aspect of the Appeal is based entirely on verbatim objections raised following the Monterey County Planning Commission's approval of this Project. These objections fail to account for the Applicant's voluntary modifications to the Project to address the Appellant's concerns.

The Board of Supervisor's approval of the Project includes an explicit condition that the Applicant record a deed restriction applying the regulations applicable to guesthouses as provided in Big Sur CIP Section 20.64.020. Note, Big Sur CIP Section 20.64.020 contains regulations identical to Big Sur CIP Section 20.145.140.B.4.d.10. Therefore, this allegation raises no significant issue for review by the Commission and should be dismissed. In this respect, the Appellant either ignored or failed to read the conditions imposed on the Project.

**3. Inconsistencies with LCP Environmentally Sensitive Habitat Area Protections:**

Big Sur LUP Chapter 3.3 and the Big Sur CIP Chapter 20.145.040 contain regulations for the protection of Big Sur's Environmentally Sensitive Habitat Areas ("ESHA"). For the convenience of the reviewer, the relevant LCP policies are attached hereto as Exhibit "H".

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 9

With regards to ESHA resource protection, the Appeal is entirely conclusory. The Appeal is nonspecific and lacks a discussion of any factual bases which raise a significant question. Consequently, the Appeal should be rejected for failure to satisfy Section 30625(b).

The Appeal generally provides:

The County's approval does not, however, adequately establish the project's consistency with LCP Policies protecting Environmentally Sensitive Habitat Areas. Replacing habitat in a new location, rather than protecting and enhancing habitat where it naturally occurs, contradicts Key Policy 3.3.1 of the Big Sur LUP and CIP Section 20.145.040, requiring that all practical effects be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The permanent loss of this habitat area, and the intensified use of the site that would result from the development, will disrupt the habitat values of the site, in conflict with LUP Policy 3.3.2.1 and CIP Section 20.145.040B.1. In addition, the project has not been conditioned to permanently conserve other areas of the site containing dune buckwheat or other sensitive habitats, as required by Big Sur Land Use Policy 3.3.2.3 and CIP Section 20.145.040B.2.

A. ALLEGATION THAT THE PROJECT RESULTS IN THE REPLACEMENT OF ESHA IN A NEW LOCATION.

Notwithstanding the Appellant's failure to raise a substantial question, the Appellant misconstrues the Project Site as ESHA and claims the Project will result in the replacement of ESHA in a new location. By misconstruing the Project Site as ESHA, the Appellant attempts to introduce mitigations related to impacts to ESHA such as the dedication of ESHA conservation easements.

The general concern and specific mitigations asserted by the Appellant have no bearing on the Project because it does not pose a significant impact to ESHA. The Project Site can not be characterized as ESHA because it does not serve as habitat for environmentally sensitive plant or wildlife. Big Sur LUP Policy 3.3 defines ESHA as "areas in which plant or animal life or their habitats are rare or particularly valuable because of their special nature or role in an ecosystem".

The Project Site no longer constitutes ESHA because of the eradication of dune buckwheat by the spread of ice plant, a natural process. The Appeal ignores the April 5, 2003 conclusions of Jud Vandevere, a biological consultant, that approximately 42 dune buckwheat which existed on the Project Site in 1997 were overwhelmed by an extremely thick growth of ice plant (*Carpobrotus chilensis*). See the collection of Mr. Vandevere's conclusions regarding the Property attached hereto as Exhibit "I". Descriptions of the Project Site made by Archaeological Consulting in 1996 corroborate Mr. Vandevere's conclusion that ice plant eradicated the dune buckwheat.

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 10

Archaeological Consulting's October 3, 1996 Preliminary Cultural Reconnaissance report for the Property states on page 1, "[a]pproximately half of the area was covered with dense iceplant, with extremely poor visibility." The relevant portion of this report is attached hereto as Exhibit "J".

The Project site could have been characterized as ESHA in 1997 when it still contained dune buckwheat. However, the growth of non-native ice plant between 1997 and 2000 completely overwhelmed the dune buckwheat. Local coastal regulations do not characterize lands that historically contained sensitive habitats but lost those habitats through natural processes as ESHA.

The Appeal fails to acknowledge that the Applicant, upon acquiring the Property in 2000 and out of a voluntary sense of environmental stewardship, removed the non-native iceplant and hired a biologist to salvage native seeds in the vicinity of the Project Site for planting elsewhere on the Property and an adjacent parcel owned by the Applicant. See Restoration Plan prepared by Thomas Moss attached hereto as Exhibit "K". The Applicant's efforts resulted in a vast field of dune buckwheat and other native plants. See the September 24, 2002 Biological Supplement by Jud Vandevere attached hereto as Exhibit "I". This voluntary act of environmental stewardship occurred months after the Applicant acquired the Property, prior to the conception of the Project and three years before an application for the Project was submitted. Note, the Applicant's restoration of native vegetation did not require a Coastal Development Permit and was, in fact, supported by the same local coastal policies which Appellant claims the Project violates (Big Sur LUP Policy 3.3.1). See page 8 of the Staff Report for the Resolution attached hereto as Exhibit "B".

The restoration of native vegetation was neither intended to nor required to mitigate dune buckwheat lost on the Property through natural processes. Linking two unrelated activities, the Applicant's voluntary restoration of native habitat in 2000 with a project proposed in 2003, in the manner proposed by Appellant, would unjustifiably penalize the Applicant for voluntary acts of environmentally responsible stewardship years before the conception of the Project. This result would create a disincentive for property owners to restore native vegetation and face future claims of "relocating" ESHA.

**B. ALLEGATION THAT THE PROJECT WILL DISRUPT THE HABITAT VALUE OF THE SITE.**

The Appellant fails to provide a factual bases how the Project as conditioned could disrupt the habitat value of the Property. Thus, the Appeal raises no substantial question in conflict with the Board of Supervisor's approval of the Project.

In contrast to the Appellant's conclusory and baseless allegations, the Applicant submitted a biological report, prepared by Jud Vandevere and Jeff Norman dated February 3, 1997 which

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 11

concluded that even when dune buckwheat existed on the Property, development of a much larger project as conditioned would not result in a significant impact on ESHA. See Exhibit "T" attached hereto. Note, the above described 1997 report was commissioned by prior owners of the Property in contemplation of a much larger project which never came to fruition.

Following, the natural eradication of dune buckwheat at the Project Site and the voluntary restoration of native vegetation, Mr. Vandevere visited the Property on three additional occasions (July 26, 2000, September 17, 2002 and April 4, 2003) to assess the biological impact of the current, smaller Project, and concluded that no appreciable impact should occur to native habitats as a result of the current Project, as conditioned. See Exhibit "T" attached hereto.

The only substantial concern related to ESHA is the protection of the area which was voluntarily restored by the Applicant ("Restoration Area"). The Restoration Area is outside of the Project Site. The only risk to the Restoration Area is from erosion and construction equipment. Mitigation Measure 2 addresses risks to the restored native vegetation by prohibiting construction during the Smith's Blue Butterfly flight season, protecting dune buckwheat with temporary fencing and controlling dust from construction.

Even assuming that the Project could impact ESHA, local coastal regulations do not prohibit development within ESHA. For example, Big Sur LUP Policy 3.3.2.3 acknowledges that developments may be approved within ESHA so long as the development is limited to that needed for the structural improvements themselves.

Big Sur LUP Policy 3.3.2.1 only prohibits the County from approving developments within ESHA which could result in a significant disruption of habitat values (emphasis added). See also Big Sur CIP Section 20.145.040.B.2. The Appellant fails to mention that these policies are only triggered when proposed development would result in a significant disruption of habitat values.

Based on the biological assessments of the project described above and the conditions imposed on the Project by the Board of Supervisors, there is no substantial concern that the Project could significantly disrupt ESHA.

C. ALLEGATION THAT THE PROJECT HAS NOT BEEN CONDITIONED TO PERMANENTLY CONSERVE ESHA ON THE PROJECT SITE.

The Appeal is based entirely on verbatim objections raised following the Monterey County Planning Commission's approval of this Project. These objections fail to account for the Applicant's voluntary modifications to the Project to address the Appellant's concerns. In this respect, the Appellant either

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 12

ignored or failed to read the conditions imposed on the Project. Moreover, Appellant's unsupported allegation assumes the Project as conditioned has the potential to impact ESHA.

Big Sur LUP Policy 3.3.2.3 and Big Sur CIP Section 20.145.040.B.2 provide, "[d]eed restrictions or conservation easement dedications over environmentally sensitive habitat areas shall be required as a condition of approval for any development proposed on parcels containing environmentally sensitive habitats." Similar to local coastal regulations requiring scenic conservation easements for development in the Critical Viewshed, these regulations must be interpreted consistent with the United States Supreme Court's 1994 "rough proportionality" requirement described in Dolan.

Dolan's "rough proportionality" standard precludes a strict interpretation of coastal plan regulations which condition development on the grant of conservation easements over all ESHA contained within the developed parcel. Blind application of such a policy disregards "rough proportionality" because it fails to take into consideration the actual impact of any project on ESHA resources, the variation in size of individual parcels and the amount of undeveloped land which remains in the ESHA.

Pursuant to Dolan's rule of "rough proportionality" and Big Sur LUP Policy 3.3.2.3 and Big Sur CIP Section 20.145.040.B.2, the Board of Supervisor's approval of the Project includes an explicit condition that the Applicant record a deed restriction as a condition of project approval which will encumber an area of dune buckwheat which is equivalent to the area of dune buckwheat which is potentially impacted by the Project. The terms of this deed restriction are contained in Condition 6(c) of the Resolution.

The inclusion of Condition 6(c) in the Resolution addresses any substantial questions raised by Appellants in regards to compliance with Big Sur LUP Policy 3.3.2.3 and Big Sur CIP Section 20.145.040.B.2.

#### **4. Inconsistencies with LCP Provisions Protecting Archaeological Resources:**

Big Sur LUP Chapter 3.11 and Big Sur CIP Chapter 20.145.120 contain regulations for the protection of Big Sur's archaeological resources. For the convenience of the reviewer, the relevant LCP policies are attached hereto as Exhibit "L".

With regards to the protection and recordation of archaeological resources, the Appeal is entirely conclusory. The Appeal is nonspecific and lacks a discussion of any factual bases which raise a significant question. Consequently, the Appeal should be rejected for failure to satisfy Section 30625(b).

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 13

The Appeal generally provides:

Archaeological surveys of the site indicate the presence of a cultural deposit within the project site. The results of laboratory testing, and a final technical analysis, have not yet been provided. Without these relevant details, the project cannot be found to be consistent with Big Sur LUP Sections 3.11.1 and 3.11.2 and CIP section 20.145.120, requiring new development to incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources.

The Appellant contends that the Project cannot be found to be consistent with local coastal regulations without the results of additional laboratory testing and a final technical analysis. The Appellant's contention, however, fails to describe how the results of additional laboratory testing and the completion of a final technical analysis are "necessary" and prevent a finding of project consistency with regulations protecting archaeological resources. Thus, the Appeal raises no substantial question capable of review by the Commission.

Gary S. Breschini, Ph.D., RPA and Trudy Haversat, M.A., RPA of Archaeological Consulting completed a field reconnaissance of the Property on October 4, 2002 to assess the extent of archaeological site CA-MNT-98 relative to the Project Site. See October 10, 2002 letter from Archaeological Consulting, attached hereto as Exhibit "M". Based on field observations and the results of previous archaeological studies, Archaeological Consulting recommended that a Preliminary Archaeological Report and Archaeological Mitigation Plan should be prepared for use during project review. Archaeological Consulting also recommended that a Final Technical Report, including the results of all analyses subsequent to excavation should be submitted to the County of Monterey and the Regional Information Center at Sonoma State University.

CA-MNT-98 was originally recorded on August 31, 1947 by Arnold Pilling. Archaeological Consulting made subsequent surveys of CA-MNT-98 in 1987, 1991, September 18, 1996, October 4, 2002 and May 29, 2003. The investigations made in 1987 and 1991 yielded radiocarbon laboratory dates on seven shell remnants. Each of the tested shell fragments returned consistent dates between AD 1400 to 1800.

A. ALLEGATION THAT THE PROJECT IS INCONSISTENT WITH LCP POLICIES WITHOUT COMPLETION OF FURTHER LABORATORY TESTING.

Given the prior testing of CA-MNT-98, Archaeological Consulting determined that a mitigation plan could be prepared for the Project following the May 29, 2003 reconnaissance which involved a 1 x 1 meter square excavation. The recommended mitigation plan included (1) the requirement that a qualified archaeological monitor be present during soil disturbing construction activities and (2) a

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 14

standard permit condition requiring that construction work halt if archaeological resources are discovered during construction.

Archaeological Consulting's actions were consistent with LCP policies related to the preparation of archeological reports for project review. Big Sur CIP Section 20.145.120.B.4 states:

The [archaeological] report shall be prepared according to the report standards of the Society of Professional Archaeologists and must include, at a minimum, a field survey by the archaeologist, survey of available State resource information at the Northwest Regional Information Center of the California Archaeological Inventory, description of the site's sensitivity and any identified archaeological resources, appropriate levels of development on the site and recommended mitigation measures. The report may be required to include additional information, according to the circumstances of the particular site.

Each of these elements was satisfied following the submission of the June 5, 2003 Preliminary Archaeological Reconnaissance and Mitigation Plan.

The Appellant has failed to describe how the results of further laboratory testing would raise a substantial issue regarding the archaeological mitigations imposed on the Project. Further laboratory data prior to Project review was not necessitated because of extensive prior investigations of the CA-MNT-98 in 1947, 1987, 1991, 1996, 2002 and 2003. Moreover, Appellant's contention is moot because Applicant hereby submits the results of all contemplated laboratory testing attached hereto as Exhibit "N". The results of the additional laboratory testing are entirely consistent with the seven prior tests conducted at CA-MNT-98. Thus, no change in the Project's approval or conditions is warranted.

Lastly, it should be mentioned that relocation of the Project Site will not reduce impacts to archaeological resources. See the September 10, 2003 letter from Archaeological Consulting attached hereto as Exhibit "O".

**B. ALLEGATION THAT THE PROJECT IS INCONSISTENT WITH LCP POLICIES WITHOUT THE SUBMISSION OF A FINAL TECHNICAL REPORT.**

Archaeological Consulting's recommendation to require the submission of a Final Technical Report after the completion of the Project is entirely consistent with Big Sur CIP Section 20.145.120.D.4.c which states:

the results of the preservation activities shall be compiled into a final report prepared by the archaeologist and submitted to the County prior to the issuance of building or grading permits. Two copies of the report shall be submitted.

Ms. Kelly Cuffe  
California Coastal Commission  
Central Coast Area Office  
April 12, 2004  
Page 15

---

The purpose of the Final Technical Report is to summarize all archaeological data collected at a Project Site in a formal report which is archived with the County and the Northwest Regional Information Center of the California Archaeological Inventory at Sonoma State University. The Final Technical Report is not the basis for project review. The archaeological report submitted by Archaeological Consulting for the Project and described in Big Sur CIP Section 20.145.120.B.4 is the basis for Project Review.

For reference, a draft copy of the Final Technical Report, described in Mitigation Measure 3 of the Permit, is attached hereto as Exhibit "N". As described above, the Final Technical Report can not be finalized for submission until grading at the Project Site has been completed and any additional archaeological data can be included in the Final Technical Report which will be submitted for archival.

If you would like to discuss any unresolved questions you may have or any substantial issues you feel were raised, please do not hesitate to contact me.

Yours truly,



Aengus L. Jeffers

ALJ:mb  
Enclosure