

## CALIFORNIA COASTAL COMMISSION

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Filed: March 15, 2004  
Staff: AGD-SF  
Staff Report: April 22, 2004  
Hearing Date: May 12, 2004  
Commission Action:

**APPEAL STAFF REPORT  
SUBSTANTIAL ISSUE DETERMINATION  
AND DE NOVO REVIEW**

**APPEAL NO.:** A-2-SMC-04-005

**APPLICANT:** Pescadero Conservation Alliance

**LOCAL GOVERNMENT:** San Mateo County

**LOCAL DECISION:** Approval with Conditions

**PROJECT LOCATION:** 12-acre portion of an approximately 120-acre parcel within Butano State Park, at 5601 Gazos Creek Road in the unincorporated Pescadero area of San Mateo County, APN 089-180-130

**PROJECT DESCRIPTION:**

1. Operation of a year-round field research station for youth and adult environmental training and education programs at the existing Gazos Mountain Camp with the following use:
  - a. Day use of up to 63 people (staff and visitors), with a restriction of no more than 40 visitor vehicles allowed on the camp property at one time,
  - b. Overnight accommodations in cabins for up to 24 people,
  - c. Up to four resident staff;
2. Installation of a groundwater well 150 feet from Gazos Creek;
3. Renovation of cabins, lodge, and other buildings;
4. Conversion of a bathroom into a wet laboratory;
5. Conversion of existing cabins 14-16 into a Geographic Information System lab and library;
6. Installation of a 10,000-gallon water tank, a 6" fire water supply line and fire hydrants; and
7. Widening turnouts on internal access road.

**APPELLANTS:** Center for Biological Diversity, Coastside Habitat Coalition, Committee for Green Foothills, and Jim Rourke.

SUBSTANTIVE FILE      See Appendix A  
DOCUMENTS:

STAFF

RECOMMENDATION:      Substantial Issue Exists; Denial

Appendix A: Substantive File Documents

Exhibits

- 1      Regional Location Map
- 2      Habitat Map
- 3      Site Plan
- 4      Figure from Habitat Management Guidelines for Gazos Mtn. Camp, Showing Location of Mature 2<sup>nd</sup>-growth and Old Growth Stands
- 5      Habitat Management Guidelines for Gazos Mtn. Camp, Showing Marbled Murrelet Occupied Stand Buffer
- 6      San Mateo County's Conditions of Approval
- 7      Appeals filed by Center for Biological Diversity, Coastside Habitat Coalition, Committee for Green Foothills, and Jim Rourke

EXECUTIVE SUMMARY

The subject property was transferred to the California Department of Parks and Recreation after being purchased by a partnership between Sempervirens Fund, Incorporated and the Apex Houston Trustee Council (distributing oil spill mitigation funds) for the purpose of protecting the marbled murrelet nesting habitat in the old growth trees on the subject property. The subject property meets the definition of sensitive habitats presented in the LUP as a result of the presence of 1) nesting habitat for the marbled murrelet, an endangered seabird that nests in old-growth trees on the subject property, 2) several headwater streams of Gazos Creek, a large pond and freshwater marsh and 3) the presence of habitats for species protected by the federal and state endangered species acts: the marbled murrelet, San Francisco garter snake, California red-legged frog, coho salmon and steelhead trout.

The development is inconsistent with LUP Policy 7.3, which addresses development in and adjacent to sensitive habitats, since the proposed development would 1) have significant adverse impacts, including take of the San Francisco garter snake, California red-legged frog and the marbled murrelet, 2) degrade the sensitive habitats and 3) not be compatible with the maintenance of biologic productivity of the habitats. The development is also inconsistent with LUP Policy 7.5, since the applicant has not demonstrated that there will be no significant adverse impact on sensitive habitats. Due to the high sensitivity of the resources at and in the vicinity of the subject property and since vehicular traffic on Gazos Creek Road will likely result in take of species protected by the state and federal endangered species acts, it is unlikely that mitigation can be provided to reduce adverse impacts on sensitive habitats to less than significant levels. The development is also inconsistent with LCP Policy 1.8 regarding locating new development, since the amount of use of the subject property exceeds that allowable under the LCP and there

are alternative locations for the development that would have less adverse impacts on coastal resources.

## **SUMMARY OF STAFF RECOMMENDATION**

### **SUBSTANTIAL ISSUE**

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

San Mateo County ("the County") approved with conditions a coastal development permit (Exhibit 6) for the following development on a 12-acre portion of an approximately 120-acre parcel:

1. Operation of a year-round field research station for youth and adult environmental training and education programs at the existing Gazos Mountain Camp with the following use:
  - a. Day use of up to 63 people (staff and visitors), with a restriction of no more than 40 visitor vehicles allowed on the camp property at one time,
  - b. Overnight accommodations in cabins for up to 24 people,
  - c. Up to four resident staff;
2. Installation of a groundwater well 150 feet from Gazos Creek;
3. Renovation of cabins, lodge, and other buildings;
4. Conversion of a bathroom into a wet laboratory;
5. Conversion of existing cabins 14-16 into a Geographic Information System lab and library;
6. Installation of two 5,000 gallon water tanks, a 6" fire water supply line and fire hydrants; and
7. Widening turnouts on access road.

The appellants contend that the approved project is not consistent with the resources policies of the County's certified Local Coastal Program ("LCP") regarding sensitive habitat and locating new development (Exhibit 7).

Commission staff analysis indicates that the appeals raise significant questions regarding whether the development approved by the County is consistent with the County's LCP. Commission staff recommends that the Commission find that the project, as approved by the County, raises a substantial issue with regard to conformance of the approved development with the sensitive habitat and locating new development policies of the County's LCP.

The Motion to adopt the Staff Recommendation of Substantial Issue is found in Section 1.0.

### **COASTAL PERMIT APPLICATION: DENIAL**

The staff recommends that the Commission deny the coastal development permit for the proposed project on the basis that would result in significant adverse impacts to sensitive habitat, in conflict with the resources policies of the County's certified LCP regarding sensitive habitat

and locating and planning new development. In addition, the proposed development would not comply with the requirements of the California Environmental Quality Act because there are feasible mitigation measures and project alternatives that would substantially lessen the adverse impacts of the development on the environment.

The Motion to adopt the Staff Recommendation of Denial is found in Section 3.0.

## **PART 1 – SUBSTANTIAL ISSUE**

### **1.0 STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE**

Pursuant to Section 30603(b) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeals have been filed. The proper motion is:

#### **Motion**

*I move that the Commission determine that Appeal No. A-2-SMC-04-005 raises NO substantial issue as to conformity with the certified Local Coastal Program with respect to the grounds on which an appeal has been filed pursuant to Section 30603 of the Coastal Act.*

#### **Staff Recommendation of Substantial Issue**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

#### **Resolution of Substantial Issue**

The Commission hereby finds that Appeal No. A-2-SMC-04-005 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### **2.0 FINDING AND DECLARATIONS**

The Commission hereby finds and declares:

#### **2.1 Local Government Action**

On October 3, 2002, the Pescadero Conservation Alliance (PCA) submitted an application for coastal development and use permits for the subject project. The County planning staff determined that the application was incomplete.

On June 5, 2002, the County planning staff sent PCA a letter to reiterate and clarify issues discussed at a meeting on May 21, 2002, including (1) the determination that the previous use permit governing the past summer camp use was no longer valid and could not be used to cover PCA's ongoing or proposed operations, (2) the determination that the Environmental Health Division has indicated that the camp's existing spring-fed water supply is not an adequate potable source, (3) the determination that the existing septic drainfield had not been deemed adequate to serve any use of the property, and (4) discussion of unpermitted activities (mostly camping) by PCA at the subject property.

The PCA responded in a letter dated October 28, 2002, proposing interim uses of the camp, including lectures with up to 40 people and 20 cars, school classes of 20-40 children and work parties with 5-15 people. According to County Planner China Osborn, the County subsequently issued certificates of exemption from the requirement for a CDP for interim use of the camp by the Pescadero Conservation Alliance (PCA).

On September 10, 2003, the County Planning and Building Division considered the original permit application and continued the hearing until September 24, 2003, in order to allow PCA and the Committee for Green Foothills to work together to revise the conditions of approval.

On September 24, 2003, the County approved coastal development permit PLN2002-00606 to allow the Pescadero Conservation Alliance to operate a year-round field research station for youth and adult environmental training and education programs at the existing Gazos Mountain Camp, to install a new well, and make minor improvements to existing camp structures. This approval included additional conditions of approval addressing issues raised by the San Mateo County Fire Department and revisions to the conditions considered at the September 10, 2003 hearing.

On October 14, 2003, the Center for Biological Diversity and the Coastside Habitat Coalition filed an application for appeal to the Board of Supervisors of the Planning Commission's approval of the project on September 24, 2003.

On February 24, 2004, the County Board of Supervisors considered the appeal, submitted by the Center for Biological Diversity and the Coastside Habitat Coalition, of the Planning Commission's decision to approve a Use Permit and Coastal Development Permit. The Board of Supervisors denied the appeal and upheld the Planning Commission's decision to approve a Use Permit and CDP (Exhibit 7).

## **2.2 Filing of Appeal**

The Commission received the Notice of Final Action for the County's approval of the subject development on March 1, 2004 (Exhibit 6). In accordance with the Commission's regulations, the 10-working-day appeal period ran from March 2 through March 15, 2004 (14 CCR Section

13110). On March 15, 2004, the following groups and individual appealed the County of San Mateo's decision to approve the project:

1. Center for Biological Diversity,
2. Coastside Habitat Coalition,
3. Committee for Green Foothills, and
4. Jim Rourke.

These four appellants timely submitted their appeals (Exhibit 7) to the Commission office within 10 working days of receipt by the Commission of the Notice of Final Local Action.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeal on the above-described decision was filed on March 15, 2004 and the 49<sup>th</sup> day was on May 3, 2004. The only Commission meetings within the 49-day period were on April 14, 15 and 16, 2004. On March 17, 2004, the applicants waived their right to a hearing within 49 days of the date the appeal was filed, obviating the need to hold a hearing on the appeal during the April meeting.

In accordance with Section 13112 of Title 14 of the California Code of Regulations, on March 10, 2004, staff requested all relevant documents and materials regarding the subject approval from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. The Commission received the local record from the County on March 19, 2004.

Please refer to Exhibit 7 for the full text of the appeals. The appellants' contentions that raise a substantial issue with respect to conformance of the project with the policies of the San Mateo County certified LCP are summarized in the section of these findings entitled, "Allegations that Raise Substantial Issue".

### **2.3 Appeal Process**

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments that constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county.

The subject development for the Gazos Mountain Camp, which was approved by the County of San Mateo, is appealable to the California Coastal Commission for two independent reasons. First the approved development is appealable based on Coastal Act Section 30603(a)(2), since the development is located within 100 feet of a wetland and stream (as defined in Section 13577 of the Commission's regulations.) The Post-LCP Certification Commission Jurisdiction Map (USGS 7.5 minute quadrangle series, map 67, Franklin Point) shows the branches of Gazos Creek located on the subject property and the area within 100 feet of these streams as being within the Commission's appeal jurisdiction. In addition, although a formal wetland delineation was not conducted, the Biotic Resources Group and Dana Bland & Associates, the principal investigators for the Biological Impact Form prepared for the subject development, concluded that the freshwater marsh habitat within the open water and along the margins of the 7.4 acre-foot<sup>1</sup> pond likely meet the County LCP definition of wetlands. This pond is located within 20-30 feet of the internal access road for the subject development.

The development approved by the County is also subject to appeal to the Commission based on Coastal Act Section 30603(a)(4)), since it is not a principal permitted use within the Timberland Preserve Zone-Coastal Zone District (TPZ-CZ) in which the project is sited. The County's zoning ordinance (Chapter 34, beginning with Section 6700) fails to explicitly designate the principally permitted use for the TPZ-CZ zoning district for purposes of determining whether development approved by the County can be appealed to the Commission. In fact, Chapter 34 of the zoning ordinance also does not enumerate principally permitted uses for purposes of determining whether a use permit is required; instead Section 6710.1 of the zoning code defines compatible uses in the TPZ-CZ district, in part, as "any use which does not significantly detract from the use of the property for, or inhibit growing and harvesting timber." The complete definition of compatible use is as follows:

*"Compatible use" is any use which does not significantly detract from the use of the property for, or inhibit growing and harvesting timber, and shall include, but not be limited to, the following unless in a specific instance such a use would be contrary to the preceding definition of compatible use..."*

The list of compatible uses includes outdoor education activities or development, residential housing and scientific/technical research and test facilities (subject to certain restrictions). The approved development can be described as being outdoor education activities or development, residential housing and scientific/technical research and test facilities. However, the approved development may not meet the definition of "compatible use" since it can be argued that the approved development will significantly detract from the use of the property for, or inhibit growing and harvesting timber. Since the determination regarding whether a use is compatible is discretionary and, since the use of the property as a field research station for youth and adult environmental training and education programs is not classified as the principally permitted use within this zoning district for purposes of appeal, the development is subject to appeal to the Commission based on Section 30603(a)(4) of the Coastal Act. This determination that the development is not the principally permitted use is consistent with the County's determination that a use permit was required for the subject development.

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<sup>1</sup> An acre-foot is the volume of water necessary to cover one acre to a depth of one foot.



If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible 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 the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it is determined that the project raises no substantial issue, the Commission will conduct a full de novo public hearing on the merits of the project at the same or subsequent hearing. If the Commission conducts a de novo hearing on the appeal, the applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program.

## **2.4 Project Location and Site Description**

The subject property (APN 089-180-130) is an approximately 120 acre-parcel<sup>2</sup> within Butano State Park, which is owned by the California Department of Parks and Recreation (Exhibits 1 and 4). The development proposed by the applicants is located in an approximately 12-acre portion of the parcel. The subject property is located at the end of the paved section of Gazos Creek Road in the central Santa Cruz Mountains, in the unincorporated Pescadero area of San Mateo County, approximately 4.5 miles from the ocean. The Land Use Plan (LUP) designation for the site is Timber Production and the zoning designation is TPZ-CA.

The subject property is located in the upper portion of the Gazos Creek watershed; three headwater streams forming Gazos Creek are located on the subject property (Exhibit 4). The Gazos Creek watershed is a predominately forested, 7,000-acre watershed, which contains the southernmost breeding population of the marbled murrelet, a bird which is state listed as "endangered" and federally listed as "threatened".

The access into the approved research facility is via an existing paved access road connected with Gazos Creek Road (Exhibit 3). In the southern portion of the property, this access road is located approximately parallel to the north fork of Gazos Creek and is located adjacent to (within 20-30 feet) of the pond on the property. The access road crosses the south fork of Gazos creek with an existing concrete bridge and continues to the north and west, with a loop around the existing cabins and camp facilities.

In the northern portion of the site, approximately 5 acres of the property are currently developed with approximately 15,000 square feet of structures, which consist of 21 small cabins, 3 central bathrooms, a lodge-kitchen building, a storage building and 2 meeting classroom buildings. There is also a small amphitheater with a fire ring, and a small picnic area adjacent to the lodge.

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<sup>2</sup> There is some uncertainty regarding the size of the subject parcel; the parcel may be only 111 acres in size, instead of 120 acres. According to John Wade of PCA, the subject lot consists of three "quarter sections" of land, which typically is equivalent to 120 acres; however, in the vicinity of the subject property, the quarter sections are less than 40 acres and the actual size of the lot may be 111 acres.



A 7.4 acre-foot pond, which was constructed in the mid-1800's, is located in the southwest portion of the property (Exhibit 2). The eastern portion (approximately ¼ of the pond) of the pond has concrete sides and was used as a recreational feature by previous owners. The consulting biologist classified the remainder of the pond as an open water wetland. There is a band of freshwater marsh vegetation on the western edge of the pond. South of the pond is an area described as the lower field, which supports non-native grassland. Between the pond and the camp buildings is South Gazos Creek. To the southwest of the lodge building is an area of turf, which had previously been irrigated.

The vegetation on the 12-acre camp area within the approximately 120-acre subject parcel is predominately second-growth forest (Exhibit 2). However, within this 120-acre subject property are two areas of older forest that are in close proximity to the location of the approved development on the 12-acre camp area (Exhibits 4 and 5). One is an approximately 10-acre area of old-growth forest, which is inhabited by the marbled murrelet, on the opposite side of Gazos Creek, across from the lower field area and pond. The majority of the access road is located within 350 feet of the occupied stand and the closest distance between the access road and the old-growth forest is approximately 150 feet. Cabin 22, which the applicant proposes to use as year-round housing for up to four staff, after replacing the roof, is located approximately 350 feet from the old-growth forest. A 20-acre stand of older, second-growth with occasional potential nest sites for marbled murrelets is located approximately 300 feet to the east of the closest portion of the approved development.

Timber operations, including logging and sawmills, were present at the subject property from 1871 until the middle of the twentieth century. In 1964, the County granted an use permit to Charles A. Taylor to operate a summer camp with accommodations for about 200 people (youth and staff). In 1986 the Agape Christian Team bought the property and operated the camp facility as a religious retreat to 1990. In 1992, the Pacific Cultural Foundation (PCF) bought the property and continued to operate the camp as a religious retreat.<sup>3</sup>

In 1997, Sempervirens Fund, Incorporated, a nonprofit corporation, purchased the property for future transfer to California State Parks. The Sempervirens Fund's purchase of this property was subsequently supported with funds from settlement of state and federal litigation concerning the 1986 Apex Houston Oil Spill, which spilled an estimated 25,800 gallons of crude oil offshore of Marin, San Francisco, San Mateo, Santa Cruz, and Monterey Counties. This oil spill is estimated to have killed 12 marbled murrelets. On April 24, 1998, the Apex Houston Trustee Council, the interagency committee entrusted with the authority to approve expenditures from the settlement of the litigation regarding the oil spill<sup>4</sup>, adopted a resolution entitled, "Resolution Supporting Acquisition of Marbled Murrelet Nesting Habitat in the Gazos Creek Watershed". This resolution was signed by members of the Council from the following agencies: the U.S. Fish and

<sup>3</sup> The information provided in this paragraph on the history of use of the subject property is based upon the County's staff report for the approved development and materials submitted by PCA as part of their application.

<sup>4</sup> The Apex Houston Trustee Council was entrusted with the authority to approve expenditures from the California Habitat Acquisition Trust under the consent decree in cases C89-0246-WHO and C89-0250-WHO, *United States of America v. Apex Oil Company* and *State of California v. Apex Oil Company*, in the United States District Court, Northern District of California, executed on June 3, 1998,

Wildlife Service, the California Department of Fish and Game and the National Oceanic and Atmospheric Administration. Through this resolution, the Apex Houston Trustee Council approved the Department of Fish and Game's recommendation that \$500,000 be transferred to the Sempervirens Fund to complete the purchase of lands containing residual old growth habitat in the Gazos Creek watershed.

A Habitat Acquisition Agreement between the Sempervirens Fund and the Apex Houston Trustee Council, executed in June 1998, included the following recitals:

*There has been found to be substantial marbled murrelet activity, including behavior indicating probable nesting, in the Gazos Creek Watershed.*

*Sempervirens shall utilize \$500,000 of such funds for the purpose of the acquisition of land in the Gazos Creek Watershed ("Watershed") between Butano and Big Basin State Parks where potential nesting habitat is present and where marbled murrelets have exhibited "occupied behavior" as defined by the Pacific Seabird Group "Marbled Murrelet Survey Protocol" (1998).*

*It is the intent of the parties to this Agreement that the lands acquired by Sempervirens Fund in the Watershed under this Agreement, will become part of Butano State Park, and will be administered by the CDPR.*

In 2001, the subject property was transferred from the Sempervirens Fund to the California Department of Parks and Recreation.

A Lease Agreement, dated May 22, 2000, between the Sempervirens Fund and PCA granted PCA a lease of the property for one year, commencing on June 1, 2000. This lease describes the use of the premises authorized by the lease as an "environmental education and ecological restoration and research facility and a Youth-At-Risk program". This authorization to use the subject property is conditioned by the requirement that PCA obtain all necessary approvals and permits and that PCA comply with all present laws and regulations with respect to its use of the property.

A letter dated November 28, 2001 from Ronald Schafer, District Superintendent of the Bay Area District of the California Department of Parks and Recreation, to PCA states:

*In accordance with your request of May 22, 2001, this letter is to accept your request for renewal of the lease on the former "Mountain Camp" on Gazos Creek. In the meeting you presented information regarding the rehabilitation requirements as listed in Exhibit 1 of the Addendum to Lease. As you have completed these requirements the lease is now renewed effective June 1, 2001 for a term of 5 years ending on May 31, 2006.*

The rehabilitation requirements included removing all tennis and basketball courts, a rifle range and any other "playing field type" areas, removal and disposal of cement from the north end of the pond, and development of an appropriate water source. Since the fall of 1998, PCA held over 200 work days with over 300 volunteers to demolish three illegal structures (with a

demolition permit from the County), and removed over 550 cubic yards of debris and over 400 tons of asphalt from tennis and basketball courts. At the request of the Planning Department, PCA terminated overnight use of the camp by volunteers in June 2002. Events at the site have been scaled back to a minimum pending the outcome of the permit process.

## **2.5 Project Description**

The development approved by the County consists of the following:

1. Operation of a year-round field research station for youth and adult environmental training and education programs at the existing Gazos Mountain Camp with the following use:
  - a. Day use of up to 63 people (staff and visitors), with a restriction of no more than 40 visitor vehicles allowed on the camp property at one time,
  - b. Overnight accommodations in cabins for up to 24 people,
  - c. Up to four resident staff;
2. Installation of a groundwater well 150 feet from Gazos Creek;
3. Renovation of cabins, lodge, and other buildings;
4. Conversion of a bathroom into a wet laboratory; and
5. Conversion of existing cabins 14-16 into a Geographic Information System lab and library.

However, the County conditioned its approval of the development on the implementation of requirements for fire safety, which add additional development that was not identified, described and evaluated in the County's approval (Exhibit 6). In a letter dated April 9, 2004, the San Mateo County Fire Department sent a letter to the Commission describing the fire department's requirements for the subject development. In this letter, the fire department stated that it would not require any widening or construction of additional turnouts on Gazos Creek Road, but would require the following:

1. four turnouts on the access road to the camp,
2. fuel modification involving the removal of ground and ladder fuels and limbs to 10 feet from the ground within 30 feet of all buildings,
3. dedicated source of 10,000 gallons of water for fire protection,
4. two fire hydrants,
5. pipes to connect the water tanks to the hydrants, and
6. replacement of the bridge over Gazos Creek, if it cannot be certified by a licensed civil or structural engineer to support a live load of 25 tons.

Since this development listed above is required to be undertaken as a condition of approval of the County's coastal development permit, the Commission considers it as part of the approved development on appeal to the Commission.

The development approved by the County includes a change in use of the property from seasonal use as a youth camp and religious retreat center, to a year-round field research station. The approved development also includes additional new development, including the conversion of existing buildings to a wet laboratory, Geographic Information System lab and library,

installation of water tanks with a 10,000-gallon capacity, water supply pipes, road improvements and renovations to structures. The County health department determined that PCA was not allowed to use water sources, which consisted of a well located on an adjacent parcel and surface diversion from Gazos Creek, that were used by prior occupants of the subject property. Therefore, the applicant needs to install a groundwater well as a source of water for the development at the subject property.

The appellants contend that the County should have considered a proposal for installation of 4.5 miles of underground telephone wire along Cloverdale Road and Gazos Creek Road, to the subject property, as part of the project description for the CDP application approved by the County. On March 1, 2004, the Commission received a Notice of Intent to Adopt Negative Declaration from the San Mateo County's Planning Division for a proposal by SBC Communications for telephone service extension along Cloverdale Road and Gazos Creek Road in Pescadero. This document discussed the lack of telephone service on Gazos Creek Road and identified the Gazos Camp as one of the facilities that would benefit from the extension of phone services to the end of Gazos Creek Road. John Wade of PCA confirmed that PCA had submitted an application to SBC for extension of phone service to the subject property several years prior to the County's action on the CDP and that it was coincidence that SBC filed the application for the phone line extension soon after the County approved the CDP for development that is the subject of this appeal. The appellants claim that this telephone service extension is growth-inducing and that the lack of inclusion of this development in the project description of PCA's application for a CDP constituted piecemealing of the project.

In a letter dated April 10, 2004, John Wade of the Pescadero Conservation Alliance informed SBC Communications, "Because of the high cost, permit complexities and environmental issues, the Pescadero Conservation Alliance requests that SBC terminate our request for service and stop all work on the project." On April 19, 2004, SBC Communications subsequently withdrew its application for a CDP and other authorizations from the County for installation of underground telephone wire along Cloverdale Road and Gazos Creek Road.

## **2.6 Substantial Issue Analysis**

Section 30603(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

The contentions raised in the appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP.

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With 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.*

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the County presents a substantial issue.

**The Commission finds that the appeal raises a substantial issue with respect to conformance of the approved project with policies of the San Mateo County certified LCP regarding environmentally sensitive habitat areas and locating new development.**

## **2.6.1 Sensitive Habitat**

### ***Appellants' Contentions***

The appellants assert that the subject development is inconsistent with San Mateo County LUP Policies 7.1, 7.2, 7.3, and 7.5, which address sensitive habitats. These policies are presented below. The appellants' assertions of the lack of consistency of the approved development with these LUP policies include those presented below.

Allegations by Committee for Green Foothills include the following:

*We do not believe the conditions of approval adequately ensure protection of CRLFs or*

*amphibians such as newts through establishment of buffer zones, protective fencing, or other specific measures to prevent road mortality or other incidental harm to these species. Condition 21 requires consultation on measures to protect frogs from increased traffic on the access road with the County Planning Division and US Fish and Wildlife Service, but not CA Fish and Game or the property owner, CA State Parks.*

**USE OF THE MOUNTAIN CAMP SITE THROUGHOUT THE RAINY WINTER SEASON WILL EXACERBATE SEDIMENTATION OF GAZOS CREEK AND COULD HAVE DELETERIOUS EFFECTS ON AQUATIC SPECIES...** *Allowing winter use of this facility will increase the disturbance to the shoulders of the road, and will potentially increase sedimentation of the creek, with associated impacts to the salmonids and other aquatic species that are present in the creek and its riparian areas. Foot traffic at the Mountain Camp during the wet season could also have similar impacts. Winter operations will impact amphibian species, as documented in the letter dated February 24, 2004 from the Center for Biological Diversity.*

**CLEANUP OF THE SITE AS REQUIRED BY THE LEASE AGREEMENT WITH STATE PARKS, THE CLEAN WATER ACT, RCRA, AND THE LCP HAVE NOT BEEN MET. THE PROJECT DOES NOT COMPLY WITH LCP POLICY 7.5. B. REGARDING RESTORATION OF DAMAGED HABITATS.**

*The unremediated rifle range on the site poses a significant ongoing threat to groups of children and adults on site and to the stream, as the area is littered with spent shell casings and bullet fragments. See letter from the Center for Biological Diversity, dated February 24, 2004. LCP Policy 7.5 a. requires an applicant to demonstrate that there will be no significant impact on sensitive habitats, and if there is an impact, to mitigate the impact, and monitor the effectiveness of the mitigation measures. Policy 7.5 b. requires, where applicable, as a condition of permit approval, the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.*

*The presence of both steelhead trout and coho salmon in Gazos Creek make cleanup of the old rifle range contamination on this property a high priority. Indeed, two of the three year "classes" of Coho in Gazos Creek have been extirpated, and the third year "class" has very few individuals remaining. It is entirely possible that lead poisoning leaching from bullets embedded in the creek bank, target log, area, and riparian areas could be having an impact on the federally protected Coho and steelhead. Condition 39, which was added to the CDP by the Board of Supervisors, appears to shift the responsibility for cleanup from the Pescadero Conservation Alliance to State Parks, and merely requires the PCA to "cooperate" in the cleanup rather than develop a plan and implement it. Lack of clear responsibility in the Coastal Development Permit could lead to delay or inaction on this cleanup, given the Planning Administrator's statement.*

**OBLIGATIONS FOR HABITAT PROTECTION/ RESTORATION AS REQUIRED BY LCP POLICY 7.5 AND THE LEASE AGREEMENT WITH STATE PARKS HAVE NOT BEEN MET.** *Paragraph 9 of the First Addendum to the Lease states in relevant part: "9. Habitat Protection. LESSEE understands and acknowledges that the Leased Premises*

*comprise an ecologically sensitive area. Without limitation to its other obligations, LESSEE agrees that it shall comply in all respects with the recommendations set forth in the Reports by Steve Singer, D.W. Alley and Associates, and John Bulger, copies of which are attached as Exhibit II."*

*The referenced May, 1999 Report by D.W. Alley and Associates, Item 5, states in relevant part: "Remove non-native fishes from the Gazos Mountain Camp pond as soon as possible. This may be done by draining the pond during the post metamorphosis period for California red-legged frog." The Alley report goes on to state that Fisheries Biologist Dr. Jerry Smith "has also captured green sunfish from Gazos Creek that undoubtedly escaped from the pond. These are voracious, exotic predators that probably consume most, if not all, of the California red-legged frog tadpoles that are produced in the pond. They will also prey upon salmonids in the stream when they escape from the pond during high flow years."*

*The report goes on to state that a survey by Bulger, Seymour and Westphal dip-netted the pond on June 25, 1998 and found no CRLF tadpoles or any other amphibian tadpoles in the pond, but there were abundant small sunfish. A night survey by Bulger, Seymour and Westphal provided sightings of 13 CRLFs, 9 of which were captured. None were judged of sufficient size and age to be reproductively active.*

*PCA attempted to drain the pond in late summer of 2000, but the effort was stopped by CA Fish and Game due to several concerns. PCA has not yet developed a plan that has been approved by the responsible agencies, including CA State Parks. In the meantime, the lack of adequate precautions over the past three winters has undoubtedly allowed the predatory fish to continue to escape into Gazos Creek. At the time CA Fish and Game made a field trip to the site, as described in their letter of January 13, 2004, the required screening at the outlet of the pond to prevent escape of sunfish and largemouth bass was broken. CA Fish and Game's letter makes the assumption that the screen was replaced. When the site was visited by Brendan Cummings of the Center for Biological Diversity and a local resident, Jim Rourke, later in January, Mr. Rourke observed that the screen was in place, but water from the pond was flowing under and around the screen. Thus even this relatively simple protective measure is not being adequately carried out. The presence of exotic and voracious predatory species (sunfish, large mouth bass) in Gazos Creek as the result of inaction to remove them from the pond, and inadequate screening at the outlet pose an immediate and ongoing threat to the steelhead trout and coho salmon. Condition 12 requires the applicant to repair the filter screen, but there is no requirement for ongoing maintenance of this screen, or to specifically ensure that the predatory fish do not escape.*

Allegations by the Center for Biological Diversity include the following:

*We believe the Project will likely have significant adverse effects on several sensitive species such as the California red-legged frog, San Francisco garter snake and the marbled murrelet. The proposed mitigations do not render these impacts less than significant.*

*...impacts to the snake, as well as the frog, from the Project extend well beyond the Project site. Both of these species are documented at the lower end of the watershed. The increased*



*road traffic on Gazos Creek Rd. is virtually certain to eventually result in some level of mortality to these species.*

*The status of the species on site is sufficiently uncertain to trigger the need for further analysis.*

*DFD recognized this likely impact and suggested specific mitigation measures for the species (relocation of the access road) The failure to incorporate this recommendation leaves likely significant impacts to the frog unmitigated...*

*With regard to the marbled murrelet, the mitigations proposed for the Project are insufficient to reduce the impacts below significance. The murrelet management guidelines accompanying the Negative Declaration contain numerous recommendations to reduce impacts...Unfortunately, very few of these recommendations are actually made binding conditions for the Project. As such, the impacts to the species are not mitigated below significance.*

*Neither the Vegetation and Wildlife section of the MND nor the Biological Report contains an adequate summary of all special status species that may occur in the area...candidate species and species proposed for listing under the federal ESA and "Fully Protected" under California law (e.g. San Francisco garter snake), as well as numerous state species of special concern (e.g. foothill yellow-legged frog, various bat species) were omitted...It is inappropriate and violates CEQA to simply ignore these species in the preparation of a CEQA document. An EIR must be prepared that fully discloses and analyzes the impacts to all species, including all special status species, that will be impacted by the project. At a minimum, the EIR must include the results of a California Natural Diversity Database (CNDDDB) search for all sensitive species known to occur in the area, and focused surveys for all such species.*

*Complete biological surveys must be conducted, including protocol-level surveys for all species that may occur in the project area and for which a U.S. Fish and Wildlife or California Department of Fish and Game survey protocol exists.*

*Even if the species (SF garter snake) does not occur on the project site itself (impossible to determine given the absence of surveys) the substantial increase of traffic on Gazos Creek Road poses a significant risk to this species if it occurs anywhere between the project site and Highway 1.*

*The EIR should also discuss whether the proposed project would result in any night lighting, which can adversely impact many species in a variety of ways. The MND does not disclose whether the propose project would involve any such lighting.*

*An EIR must be prepared that analyzes a full range of alternatives to the proposed project. The MND fails to discuss any alternatives, such as a no-action alternative, or using a less environmentally sensitive location for the project area...Given the sites significant ecological importance to several rare species, alternatives such as full restoration must be considered.*

### ***Applicable LCP Policies***

#### ***7.1      Definition of Sensitive Habitats***

*Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.*

*Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.*

#### ***7.2      Designation of Sensitive Habitats***

*Designate sensitive habitats as including, but not limited to, those shown on the Sensitive Habitats Map for the Coastal Zone.*

#### ***7.3      Protection of Sensitive Habitats***

- a.      Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.*
- b.      Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats. [Emphasis added.]*

#### ***7.5      Permit Conditions***

- a.      As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures. [Emphasis added.]*

- b. When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible. [Emphasis added.]

### ***Discussion***

The Commission finds that the appeals raise a substantial issue regarding conformity of the project approved by the County with LUP Policies 7.1, 7.2, 7.3, and 7.5, which address sensitive habitats, based on the following:

1. The significance of the coastal resources affected by the decision;
2. The precedential value of the local government's decision for future interpretation of its LCP;
3. Whether the appeal raises only local issues, or those of regional or statewide significance; and
4. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP.

These factors in support of the determination that the appeal raises substantial issues of conformity of the approved project with the sensitive habitat policies of the LUP are described in more detail in the following paragraphs.

### **Significance of Coastal Resources**

The subject property is designated sensitive habitat, in accordance with Section 7.2 of the LUP, since the Sensitive Habitat Map, South Coast (dated December 14, 1978) for the San Mateo County LCP shows primary and secondary riparian habitat associated with Gazos Creek as being located on the subject property. The subject property also meets the definition of sensitive habitats, as presented in Policy 7.1 of the LUP, as a result of the presence of several headwater streams of Gazos Creek a 7.4 acre-foot pond and associated freshwater marsh wetland and the presence of individuals or habitat for the following protected species on the subject property:

- Marbled murrelet (State listed as Endangered and Federally listed as Threatened),
- San Francisco garter snake (State and Federally listed as Endangered),
- Coho Salmon (State listed as Endangered and Federally listed as Threatened), and
- Steelhead trout (Federally listed as Threatened).
- California Red-legged Frog (Federally listed as Threatened),

The subject property also meets the definition of sensitive habitat set forth in Policy 7.1 of the LUP, since the approximately 120-acre subject property contains nesting habitat for the marbled murrelet, an endangered seabird.

The coastal resources at the subject property are also significant since the site contributes toward providing a link and potential wildlife migration corridor between other protected lands within Butano State Park and Big Basin Redwoods State Park.

Precedent, Regional and Statewide Significance

The presence of this sensitive habitat, including areas that have been designated as critical habitat for species protected by state and federal endangered species acts, causes the development approved by the County to raise issues of regional and statewide significance and sets an important precedent for the local government's decision for future interpretation of its LCP regarding protecting these state and federally listed species.

Factual and Legal Support for Consistency Determination

The Commission finds that there is insufficient support for the County's findings that the project is consistent with LUP Policies 7.3 and 7.5, which address protection of sensitive habitats, permit conditions and restoration requirements.

*LUP Policy 7.3*

- a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.
- b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats. [Emphasis added.]

*LUP Policy 7.5*

- a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures. [Emphasis added.]

In particular, the County does not adequately support its finding of consistency with Policy 7.3 of the LCP for 1) the use of the internal access road, which is located in close proximity to the pond and may cause take of California red-legged frogs and other protected species, 2) increased traffic on Gazos Creek Road, adjacent to the development area, and potential impacts on protected species documented to be in the vicinity of the road, including the California red-legged frog, San Francisco garter snake and marbled murrelet, and 3) noise and visual disturbances, control of food and garbage and potential vehicular traffic impacts to the marbled murrelets.

*Demonstration of No Significant Impact*

The administrative record includes evidence that the approved development will result in significant adverse impacts to sensitive habitat, including take of California red-legged frogs (Federally listed as Threatened) and San Francisco garter snakes (State and Federally listed as

Endangered). As such, a substantial issue exists concerning the degree of factual support for the County's determination that the approved development is consistent with LUP Policy 7.3.

LUP Policy 7.5(a) requires the applicant to demonstrate that there will be no significant impact on sensitive habitats. The local record does not sufficiently demonstrate that there would be no significant impacts on sensitive habitats, including the habitats of the protected species on the subject property. The technical information that the County reviewed in making the determination that the development was consistent with the LUP did not include recent focused surveys for all sensitive species, including all special status species known to occur in the area, as shown in the California Natural Diversity Database. The information on which the County relied to make its consistency determination also did not include sufficient information on candidate species and species proposed for listing for under the federal Endangered Species Act and state species of special concern. Recent protocol-level surveys for all sensitive species that may occur in the project area should have been conducted for all species for which a U.S. Fish and Wildlife or California Department of Fish and Game survey protocol exists. Therefore, the County did not have sufficient information on all special status species in order to determine that the project would be consistent with Policies 7.3 and 7.5 of the LUP, which protect sensitive habitat.

The County also did not provide sufficient factual support for its determination that development required by conditions of approval for fire safety purposes was consistent with Policies 7.3 and 7.5 of the LUP. Conditions regarding compliance with fire protection measures were added to the County's permit within days of the public hearing on the County's action on the permit. These conditions required road improvements, potential bridge replacement or repair, installation of water tanks, fire hydrants and water supply pipes, and removal of vegetation for fuel modification purposes. These aspects of the development were not addressed in the Negative Declaration approved by the County. The location and amount of development required to satisfy these conditions were unknown at the time of the County's approval; therefore, the County did not adequately identify, evaluate and require mitigation for potential adverse impacts to coastal resources resulting from the approved development.

### *Mitigation*

The Commission finds that a substantial issue is raised by the appellants contentions that the County lacked sufficient factual and legal support for its determination that the approved development is consistent with the requirements of LUP Policies 7.3 and 7.5, requiring implementation of adequate mitigation measures and a program of monitoring and evaluating the effectiveness of mitigation measures. Although the Department of Fish and Game recommended that the access road be relocated away from the pond in order to avoid potential take of the California red-legged frog and the San Francisco garter snake, the County only required that the applicant prepare a plan for relocation of the existing access road within five years from the date of the County's approval of the CDP. With regard to the marbled murrelet, only some of the mitigation measures recommended by Steven Singer were made binding on the applicant through conditions of approval. In addition, the identified mitigation measures do not ensure that the adverse impacts to the protected species on the subject property are mitigated below a level of significance.

### *Restoration Requirement*

LUP Policy 7.5(b) states, in part, "require as a condition of approval the restoration of damaged habitat(s), when in the judgment of the Planning Director restoration is partially or wholly feasible." The appellants contend that the County should have required restoration of the rifle range area as a condition of approval, since the lead contamination from the rifle range may adversely impact the coho salmon and steelhead trout in Gazos Creek. In condition 39 of the County's approval of the project, the County required that "the Pescadero Conservation Alliance shall cooperate with California State Parks in any initiative to remove lead contamination from their leased area." This condition of approval does not oblige PCA to conduct restoration of the habitat damaged by the rifle range, which is required by LUP Policy 7.5, if restoration is determined to be partially or wholly feasible. The County did not demonstrate how the approved project was consistent with LUP Policy 7.5 and that restoration of the rifle range area, or other damaged habitats on the property, was not required on the basis of being partially or wholly feasible.

### *Conclusion*

For all of the above-stated reasons, the Commission finds that the appellants' contentions regarding sensitive habitat raise a substantial issue of conformity of the approved project with Policies 7.3 and 7.5 of the LUP, which address sensitive habitat protection.

## **2.6.2 Locating and Planning New Development**

### *Appellants' Contentions*

The appellants assert that the subject development is inconsistent with San Mateo County LUP Policy 1.8, which addresses locating and planning new development. This policy is presented below. In the summary of the reasons for the appeal, the appellants made the following assertions regarding consistency of the approved project with the policies of the LCP that address locating new development:

***INCONSISTENCY WITH LCP POLICY 1.8.*** *The density limitations for non-agricultural, non-residential land uses in the rural coastal zone are determined by LCP Policy 1.8 and Table 5. These limitations are to ensure that non-agricultural uses do not individually or cumulatively adversely affect coastal resources. The proposal includes three categories of use: (1) Day use of up to 63 people (staff and visitors) (2) overnight accommodations in cabins for between 16 and 24 people, and (3) up to four resident staff.*

*The limits on numbers of users allowable in Table 5 are not additive; i.e., if 63 people are on site during the day, those 63 people have used up the allowable density limits for that day. Condition 5 is unclear as to whether it would allow BOTH a maximum of 63 people per day AND an additional 16-23 people to stay overnight.*

*Additionally, the proposed allowance of up to four full time resident staff (per page 11 of the*



*February 9, 2004 Staff Report) is inconsistent with Policy 1.8 (3) (a) which only allows "a residential dwelling unit associated with a visitor-serving facility that is occupied by the facility owner or operator." The project's proposed allowance of four full time resident staff on site is inconsistent with the above-cited Policy 1.8 (3) (a). The density bonus provision inappropriately being cited was created specifically for such uses as a bed and breakfast facility, or a small country inn. At the PCA facility, it is proposed that in addition to an on-site manager, there will be up to three additional resident staff associated with the field research program, the laboratory facility, etc. For each resident staff, as well as the on-site manager, members of that person's family could presumably be accommodated as well, which would mean between 12 and 16 people residing on-site, assuming four people per family. While one residential dwelling unit for an on-site manager/operator would be allowable under LCP Policy 1.8 (3) (a), dwelling units for the additional three resident staff would not.*

*Notwithstanding the lack of consistency with the LCP's density limitations enumerated above, the dedication of this State Park unit to exclusive use by a single, albeit well-intentioned, organization without provision for general public access, raises issues of inconsistency with the LCP's density bonus for visitor-serving, commercial recreation, and public recreation uses. Policy 1.8 a. (3). limits the allowable density bonus to "visitor-serving, commercial recreation, and public recreation" uses as defined in LCP Policies 11.1, 11.2, and 11.3. LCP Policies 11.1 and 11.2 require facilities to be "exclusively available to the general public". LCP Policy 11.3 allows the bonus for public recreation facilities such as public beaches, parks, recreation areas, natural preserves, wild areas, and trails, etc. The County's approval of the project did not include any requirement as a condition of approval for general public use of the developed area. The facility lies beyond a locked gate and "No Trespassing" signs; the general public is thus excluded from access to this State Park unit.*

*Several of the conditions of approval to reduce risk of hazards could create impacts which are not adequately described or evaluated, and are left to future decisions by county staff or other agencies.*

*One example, of unknown impacts is CDF's requirement of maintaining a fuelbreak or firebreak of a minimum of 30 feet and potentially up to 100 feet around the perimeter of all structures could result in the removal of important environmentally sensitive habitat areas (ESHA). New water storage requirements for fire protection of a minimum of 10,000 gallons as specified in Condition 49 appear to be contradicted by Condition 50. There is no analysis of the location of the new storage tanks or evaluation of the impacts of construction of new distribution/supply lines. The minimum of 10,000 gallons specified in Condition 49 appears to be inadequate for protection of so many highly flammable wooden structures in the middle of a redwood forest.*

*A second example of unquantified impacts of permit conditions is Condition 38, which leaves to the future the consideration of impacts from road access widening, road turnouts, bridge replacement, etc. and states that a separate Planning permit and process shall be required. To defer until the future some components of the project would impermissibly segment consideration of its impacts.*



### ***Applicable LCP Policies***

1.7 *Designation of Rural Areas*

*Designate as rural those lands shown outside the urban/rural boundary on the Local Coastal Program Land Use Maps, in effect on March 25, 1986, that were designated Agriculture, General Open Space, Timber Preserve, or Public Recreation on that date.*

1.8 *Land Uses and Development Densities in Rural Areas*

a. *Allow new development (as defined in Section 30106 of the California Coastal Act of 1976) in rural areas only if it is demonstrated that it will not: (1) have significant adverse impacts, either individually or cumulatively, on coastal resources and (2) diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural production.*

b. *Permit in rural areas land uses designated on the Local Coastal Program Land Use Plan Maps, and conditional uses up to the densities specified in Tables 1.2 and 1.3.*

c. (1) *Require Density Credits for Non-Agricultural Uses*

*Require density credits for all new or expanded non-agricultural land uses in rural areas, including all residential uses, except affordable housing (to the extent provided in Local Coastal Program Policy 3.23) and farm labor housing, as defined in Local Coastal Program Policy 3.28, mining in accordance with General Plan Policies 3.11 and 3.12, and solid waste facilities under the policies in General Plan Chapter 13. The existence and number of density credits on a parcel shall be determined by applying Table 1.3.*

*Expanded or additional non-agricultural uses shall only be permitted on a parcel when there are enough density credits available to that parcel to meet the density credit requirements of this policy for both (a) existing uses, and (b) any expanded or additional uses, and only where such development meets all other applicable policies of the Local Coastal Program.*

(2) *Amount of Development Allowed for Non-Agricultural Uses, Except Visitor-Serving, Commercial Recreation, and Public Recreation Uses*

*For new or expanded non-agricultural uses, except visitor-serving, commercial recreation, and public recreation uses, one density credit shall be required for each 315 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year. This requirement*

*applies to water use by or resulting from the non-agricultural use, including landscaping, swimming pools and all other appurtenant uses.*

(a) Residential Uses

*For new or expanded residential uses, a single-family dwelling unit shall be deemed to use 315 gallons of water per day during the two months of highest water use in a year (including landscaping, swimming pools and all other appurtenant uses).*

(b) Non-Agricultural Uses Except Visitor-Serving, Commercial Recreation, and Public Recreation Uses

*For non-agricultural uses, except visitor-serving, commercial recreation, and public recreation uses, the amount of development allowed for each density credit in accordance with the requirements of this policy shall be the amount stated in Table 1.5 in the column headed "Number of Measuring Units Per Density Credit Based on Peak Daily Water Use With Conservation Fixtures."*

(3) Amount of Development Allowed for Visitor-Serving, Commercial Recreation, and Public Recreation Uses

*For new or expanded visitor-serving, commercial recreation, and public recreation uses, one density credit shall be required for the first 945 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year. One additional density credit shall be required for each 630 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year.*

*This requirement applies to water use by or resulting from the visitor-serving, commercial recreation, and public recreation use, including landscaping, swimming pools and all other appurtenant uses. The 945-gallon water use allowance for one density credit may be applied one time only on a parcel.*

*For visitor-serving, commercial recreation, and public recreation uses, the amount of development allowed for each density credit in accordance with the requirements of this policy shall be:*

- (a) *For one density credit or the first density credit when multiple density credits are available, either 1 1/2 times the amount stated in Table 1.5 in the column headed "Number of Measuring Units Per Density Credit Based on Peak Daily Water Use With Conservation Fixtures," or the amount stated in that column and a residential dwelling unit associated with a visitor-serving facility that is occupied by the facility owner or operator.*

- (b) For each additional density credit, the amount stated in Table 1.5 in the column headed "Number of Measuring Units Per Density Credit Based on Peak Daily Water Use With Conservation Fixtures."*
- d. For the purpose of this policy, "visitor-serving, commercial recreation, and public recreation uses" shall be only those lands and facilities listed in LCP Policies 11.1, 11.2 and 11.3, and only if those lands and facilities specifically enhance public opportunities for coastal recreation.*
- e. As an interim limit, no more than 600 visitor-serving lodging units may be approved in the rural Coastal Zone, as specified by LCP Policy 1.23.*

### **Discussion**

The Commission finds that the appeals raise a substantial issue regarding conformity of the project approved by the County with LUP Policy 1.8, which addresses new development, based on the following:

1. The extent and scope of the development as approved or denied by the local government;
2. The significance of the coastal resources affected by the decision;
3. The precedential value of the local government's decision for future interpretation of its LCP;
4. Whether the appeal raises only local issues, or those of regional or statewide significance; and
5. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP.

These factors in support of the determination that the appeal raises substantial issues of conformity of the approved project with the Policy 1.8 of the LUP are described in more detail in the following paragraphs.

#### Extent and Scope of Development

The extent and scope of the development raises a substantial issue since the County's approval includes authorization for up to 40 vehicles at a time to park on the site, and allows year-round use of the camp for up to 63 people for day use and overnight accommodations for up to 24 people, with up to four resident staff. The County determined that the development qualified for a density bonus under LUP Policy 1.8(c)(3)(a), on the basis of the development being a public recreation facility. The applicant chose to use the density bonus to authorize the year-round occupancy by up to four staff members, in addition to the use for day and residential programs approved by the County. However, as discussed further in Section 4.1.2 of these findings, the Commission finds that the approved development is not a public recreation facility and that the amount of development approved by the County exceeds that allowed under Policy 1.8 of the LUP.

### Significance of Coastal Resources

The coastal resources affected by the County's approval of the development are significant, since the property is sensitive habitat, as defined by Policy 7.1 of the LUP, as a result of the presence of the following areas:

1. Areas in which animals or their habitats are either rare or especially valuable,
2. Wetlands, including riparian corridors, a pond and a freshwater marsh, and
3. Breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding.

The coastal resources at the subject property are also significant since the site contributes toward providing a link and potential wildlife migration corridor between other protected lands within Butano State Park and Big Basin Redwoods State Park.

### Precedent, Regional and Statewide Significance

The presence of this sensitive habitat, including areas that have been designated as critical habitat for species protected by state and federal endangered species acts, causes the development approved by the County to raise issues of regional and statewide significance and sets an important precedent for the local government's decision for future interpretation of its LCP regarding protecting these state and federally listed species. Further, the County's approval of the development in a rural area that does not have public services such as water, sewer, electricity and telephone lines sets a precedent for future interpretation of the LCP for development within rural areas. The LCP provides specific policies, including Policy 1.18 of the LUP, to limit development in rural areas in order to discourage urban sprawl, enhance the natural environment, maximize the efficiency of public facilities, services, and utilities, minimize energy consumption and revitalize existing developed areas.

### Factual and Legal Support for Consistency Determination

The Commission finds that a substantial issue exists concerning the degree of factual and legal support for the County's findings that the project is consistent with LUP Policy 1.8, which addresses locating and planning new development. The County does not demonstrate how the proposed development is a public recreation facility and that it qualifies for the density credit bonus for public recreation facilities provided under LUP Policy 1.8(c)(3)(a).

In addition, the County does not provide sufficient factual support for the finding of consistency with the requirement of Policy 1.8(a) of the LUP that new development be allowed in rural areas only if it is demonstrated that it will not have significant adverse impacts, either individually or cumulatively, on coastal resources. As discussed in Section 2.6.1 of these findings, the County lacked sufficient factual and legal support for its finding of consistency with the LCP provisions on sensitive habitats. This lack of analysis is inconsistent with Policy 1.8(a) of the LUP, which allows new development in rural areas only if it is demonstrated that it will not have significant adverse impacts, either individually, or cumulatively, on coastal resources.

In addition, condition number nine of the County's approval of the development proposed by PCA required, within five years of the date of the County's approval, that PCA develop a master plan for the field research station to address proposed habitat restoration and maintenance plans (including the pond), expansion plans, and relocation of the existing access, including a removal/revegetation plan for the old access road. This deferral to five years in the future for the

implementation of mitigation to reduce the adverse impacts of the development is inconsistent with Policy 1.8(a) of the LUP, which allows development in rural areas only if it is demonstrated that it will not have significant adverse impacts, either individually or cumulatively, on coastal resources.

### **Conclusion**

For all of the above-stated reasons, the Commission finds that the appellants' contentions regarding locating new development raise a substantial issue of conformity of the approved project with the new development policies of the certified LCP.

#### **2.6.4 Substantial Issue Conclusion**

The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to conformance of the approved development with policies of the San Mateo County certified LCP that address sensitive habitat and locating new development.

## **PART 2 - DE NOVO ACTION ON APPEAL**

### **PROCEDURE**

Unless the Commission finds that a locally approved coastal development permit raises No Substantial Issue with respect to the policies of the certified LCP, the Commission must consider the merits of the proposed project de novo. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application.

## **3.0 STAFF RECOMMENDATION**

### **MOTION**

*I move that the Commission approve Coastal Development Permit Application No. A-2-SMC-04-005 for the development proposed by the applicant.*

### **STAFF RECOMMENDATION OF DENIAL**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **RESOLUTION TO DENY THE PERMIT**

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform to the policies of the County of San Mateo certified Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

## 4.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

### INCORPORATION OF SUBSTANTIAL ISSUE FINDINGS

The Commission hereby incorporates by reference the Substantial Issue Findings above as if set forth in full.

#### 4.1 Consistency with LCP

##### 4.1.1 Sensitive Habitat

##### *Applicable LCP Policies*

##### 7.1 Definition of Sensitive Habitats

*Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.*

*Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.*

##### 7.2 Designation of Sensitive Habitats

*Designate sensitive habitats as including, but not limited to, those shown on the Sensitive Habitats Map for the Coastal Zone.*

##### 7.3 Protection of Sensitive Habitats

- a. *Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.*
- b. *Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.*  
[Emphasis added.]

## 7.5 Permit Conditions

- a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.
- b. When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible. [Emphasis added.]

## **Discussion**

As discussed in the findings for the substantial issue analysis, the subject property is designated sensitive habitat, in accordance with Policy 7.2 of the LUP, since the Sensitive Habitat Map, South Coast (dated December 14, 1978) for the San Mateo County LCP shows primary and secondary riparian habitat associated with Gazos Creek as being located on the subject property. The subject property also meets the definition of sensitive habitats presented in Policy 7.1 of the LUP as a result of the presence of 1) nesting habitat for the marbled murrelet, an endangered seabird that nests in old-growth trees on the subject property, 2) several headwater streams of Gazos Creek, a large pond and freshwater marsh and 3) the presence of habitats for species protected by the federal and state endangered species acts: the marbled murrelet, San Francisco garter snake, California red-legged frog, coho salmon and steelhead trout.

As discussed in more detail in the following sections of these findings, the Commission finds that the project is inconsistent with LUP Policy 7.3, which addresses development in and adjacent to sensitive habitats, since the proposed development would 1) have significant adverse impacts, including take of the San Francisco garter snake, California red-legged frog and the marbled murrelet, 2) degrade the sensitive habitats and 3) not be compatible with the maintenance of biologic productivity of the habitats. The development is also inconsistent with LUP Policy 7.5, since the applicant has not demonstrated that there will be no significant adverse impact on sensitive habitats.



## **Marbled Murrelets**

### **Background**

The Marbled Murrelet is a seabird that nests in old-growth coniferous forests and feeds by diving for small fish in near-shore waters. It is protected under the California Endangered Species Act as an endangered species and under the Federal Endangered Species Act as a threatened species. On the subject parcel, to the west of the project area, immediately across Gazos Creek, there is a 10-acre residual stand of old-growth forest, which is known to be used by marbled murrelets as a breeding area. Murrelets have also been observed displaying "occupied behavior" in the lower field, located between the internal access road and the main branch of Gazos Creek on the subject property. Also on the subject parcel, to the east of the project area, is a 20-acre stand of older second growth trees that has been described as having potential nest trees for murrelets.

The Recovery Plan for the Marbled Murrelet in Washington, Oregon and California, prepared by the U.S. Fish and Wildlife Service and dated September 1997, states the following:

*The Santa Cruz Mountains Zone extends south from the mouth of San Francisco Bay to Point Sur, Monterey County...The southernmost population of marbled murrelets in the North America occurs in this Zone. This population is important to maintaining a well-distributed marbled murrelet population in the three-state area. Because this population is small and isolated from other marbled murrelet populations, it is considered to be especially vulnerable. (p. 130)*

*Specific nesting habitat requirements and life-history strategy, a low reproductive rate, a low current breeding success and recruitment rate (based on juvenile: adult ratios) are likely to yield a decreasing population, which cannot easily recover should numbers be further depleted. (p. 8)*

*Because low productivity or breeding success appears to be a substantial problem, minimizing disturbance and reducing predation at nest sites is also an important first step in the recovery process. (p. 138)*

*Maintaining buffers around occupied habitat will mediate the effects of edge by helping to reduce environmental changes within the stand, reduce loss of habitat from windthrow and fire, reduce fragmentation levels, increase the amount of interior forest available, and potentially help reduce predation at the nest. To have the greatest benefits, buffer widths should be a minimum of 300-600 feet... (p. 140)*

*Disturbances near marbled murrelet nest sites that flush incubating or brooding adults from the nest site may expose adults and young to increased predation or accidental loss of eggs or nestlings by falling or being knocked out of nests. Human activities near nesting areas that result in an increase in the number of predators also could lead to a greater likelihood of nest predation. (p. 158-159)*

In order to protect the marbled murrelet breeding habitat on the subject property, using funds provided by the Sempervirens Fund and the Apex Houston Trustee Council (distributing mitigation funds from a 1986 oil spill), the property was transferred to State Parks, as described in the following excerpts from a State of California News Release announcing the property acquisition<sup>5</sup>:

*The California Department of Fish and Game's (DFG) Office of Spill Prevention and Response (OSPR), in its capacity as lead State agency for the Apex Houston Trustee Council (AHTC), has crafted a partnership between the non-profit Sempervirens Fund and the AHTC to acquire habitat in the Santa Cruz Mountains for the marbled murrelet, a threatened species of seabird that nests in old growth forests.*

*The coastal old growth forest nesting habits of the marbled murrelet, whose breeding plumage matches the bark of the ancient trees, are considered unique among seabirds. The Santa Cruz Mountains population of marbled murrelets is estimated at less than 1,000 individuals, and is separated by a lack of suitable nesting habitat from the northern California population that nests in Humboldt and Del Norte Counties.*

*\$560,000 of the settlement has been transferred to the Sempervirens Fund, for the purchase and monitoring of 111 acres of valuable redwood forest wildlife habitat between Big Basin Redwoods and Butano State Parks, in the Gazos Creek Watershed of southern San Mateo County. Total cost of the property is \$1.45 million. Following the purchase, Sempervirens will transfer the lands to State Parks, to advance the protection and management of the Gazos Creek Watershed and further the connection between Big Basin State Park and Butano State Park.*

*Gazos Mountain Camp, as it is called, is primarily second-growth forest, but contains numerous residual old-growth Douglas fir and Redwood trees that provide nesting habitat for the marbled murrelet, a State- and Federally-listed species. The property, an important, newly-discovered breeding area of the marbled murrelet, will be incorporated into Butano State Park, which is a known murrelet nesting area. An additional benefit to wildlife on this land is the confluence of two main branches of Gazos Creek, which is a sensitive habitat for native coho salmon. [Emphasis added.]*

In 1999, the Sempervirens Fund and the Apex Houston Trustee Council funded Steven Singer to prepare a report entitled, "Marbled Murrelet Habitat Management Guidelines for the Gazos Mountain Camp Property, San Mateo County, CA". This report includes the following descriptions of the marbled murrelet habitat on the subject property:

*The property is known to be used as a breeding area for Marbled Murrelet as evidenced by the presence of regular and consistent occupied behaviors detected from the meadow/playfield area since 1996 when it was first surveyed (Singer and Hamer, 1998).*

*Murrelets are believed to be nesting in the 10 acre residual stand which is adjacent to the meadow/playfield where occupied behaviors are regularly observed. These observations*

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<sup>5</sup> As shown on April 15, 2004 at 10:48 AM at <http://www.darcnw.noaa.gov/apexhous.htm>.

*have included murrelets frequently flying below canopy into or out of this stand and a rare type of occupied behavior called the jet sound.*

*The 20-acre stand should be considered as marginal breeding habitat at best...This stand is best considered as future habitat with only a small likelihood that it might currently support one or two nesting pairs of murrelets.*

*Other areas of property important for murrelets include the meadow/playfield area over which murrelets regularly circle and vocalize during the breeding season, and the stream corridor on the west edge of the property which may be used as a murrelet flyway – although this has not been demonstrated.*

These descriptions of the marbled murrelets' use of the subject property as a breeding area confirm the designation of the property as sensitive habitat, which is subject to the protections provided under Policies 7.3 and 7.5 of the LUP.

Singer's report discusses the problems with developing adequate mitigation measures to protect the marbled murrelet, as follows: "Unfortunately, there is little scientific data to support specific mitigation provisions or set-back distances, although it is clear that buffers or other mitigation measures are necessary." Therefore, although Singer provides many mitigation measures that could be implemented to reduce the impacts to the marbled murrelet from activities on the site, there is insufficient data to support the determination that these mitigation measures will adequately protect the murrelets. As discussed below in more detail, since Singer's report was prepared in 1999, there is new information on marbled murrelets in the Santa Cruz Mountains that demonstrates that this population is becoming increasingly endangered and that the activities proposed by PCA are likely to contribute to this population decline.

#### Impacts on Marbled Murrelet from Increased Nest Predation

The proposed project would have significant adverse impacts on sensitive habitat areas from human activities on the subject property through the attraction of jays and ravens, which prey on marbled murrelet eggs and hatchlings. Singer's report on marbled murrelets on the subject property includes the following description of the connection between human activities and an increase in nest predation of marbled murrelet chicks and eggs:

*An indirect adverse impact associated with human activities is an increase in the risk of nest predation. Human watchers of a nest, if not careful, may inadvertently disclose the location of the nest to avian or ground predators. Prolonged human presence in an area, and the associated food scraps and garbage, may draw increased numbers of murrelet predators (especially jays and ravens) to the general area, thereby increasing the risk of nest predation. Predation is a major cause of nest failure throughout the species' range (Nelson, 1997). Camping or picnicking, unless associated with exceptional garbage control, are often associated with this kind of impact.*

Further documentation of the impacts of human activities that attract and support jay and raven populations, which feed on marbled murrelet eggs and hatchlings is provided in a document

entitled, "The Marbled Murrelet Restoration and Corvid Management Project (draft)". This document was prepared on January 9, 2003 by Steve Hampton of the California Department of Fish and Game, as a proposal for mitigation of impacts to the marbled murrelet from the Command oil spill. This report includes the following:

*The Marbled Murrelet population of the Santa Cruz Mountains is small, isolated and declining. At present, their rate of reproduction is insufficient to sustain the population.*

*In the Santa Cruz Mountains, nesting is largely limited to five adjacent watersheds: Pescadero Creek, Butano Creek, Gazos Creek, Waddell Creek, and Scott Creek. The nesting area thus encompasses approximately 15 miles from north to south and 10 miles from east to west.*

*Several studies suggest that the Santa Cruz Mountain population is declining. The longest available data set, audio/visual detections from Redwood Meadow near Big Basin State Park headquarters, suggests a continuous and pronounced decline in the number of nesting birds in that area. Formerly the site of the greatest detections, the current surveys report only a small fraction of the numbers recorded in the early 1990s.*

*The reason for the current decline is thought to be low reproductive success. Recent studies of the Santa Cruz Mountain population suggest that reproductive success has fallen to near zero...this fecundity rate implies that the Santa Cruz Mountain population, without immigration from other populations, will be extirpated within 25 years.*

*Nest predation is thought to be one of the primary causes behind the lack of reproduction of the Santa Cruz Mountains Marbled Murrelets...corvids (i.e., ravens and jays) are some of the primary nest predators of murrelets.*

*It is suspected that the recent increase in ravens, especially around campgrounds within the parks where murrelets nest, is a significant reason for the decline in the murrelet population.*

*Recent surveys have suggested that corvid density is especially elevated in campgrounds. This finding comes as no surprise, as these species readily scavenge human garbage, discarded food, and spilled food around picnic tables and other outdoor locations. (Liebezeit and George 2002).*

*Corvid predation of Marbled Murrelet chicks and eggs around the campgrounds in the Santa Cruz Mountains is known to occur and has been witnessed on several occasions (D. Suddjian, pers. Comm.) [Emphasis added.]*

The Recovery Plan prepared by U.S. Fish and Wildlife Service includes the following statements relevant to the issue of nest predation by jays and ravens (corvids):

*Marbled murrelets lay only one egg on the limb of a large conifer tree and probably nest only once a year (Desanto and Nelson 1995).*

*Increased human activities in forests, such as picnic grounds, can attract corvids and thus increase the chances of predation (Singer et al. 1991, Marzluff and Balda 1992). More importantly, these activities can increase survival of corvids and result in potentially higher populations of corvids. (p. 54)*

*Low productivity has important biological implications because it leads to low recruitment that eventually results in population declines. Thus, reduced productivity and recruitment are strong indicators of the poor condition of this species, and provide additional concern beyond observed or expected population declines for the long-term viability of populations. (p. 55)*

As described above, marbled murrelets are known to be nesting in a 10-acre stand of old growth trees on the subject property. The proposed project is located in close proximity to breeding habitat in the old growth forest directly to the west of the project area. The majority of the internal access road is located within 350 feet of the old growth stand; the shortest distance between the access road and the old growth trees is approximately 150 feet. Cabin 22, which the applicant proposes to use as year-round housing for up to four staff, after replacing the roof, is located approximately 350 feet from the old-growth forest. The proposed project is also located in close proximity to the lower field area, where the murrelets have been regularly observed demonstrating occupied behavior.

Predation of marbled murrelet eggs and chicks by jays and ravens is known to occur and has been identified as a significant cause of the recent decline of marbled murrelet nest success. Jays and ravens are known to be attracted to areas with human activity, including nest observation and areas with food and garbage.

The proposed development would result in substantial year-round human activity, including youth programs of up to 63 day users and up to four resident staff, in areas adjacent to the known marbled murrelet habitat. These activities in close proximity to murrelet nesting habitat will likely result in increased predation and reduced reproductive success. As such, the Commission finds that the proposed development would significantly adversely impact the marbled murrelet, in conflict with Policy 7.3 of the LUP, which prohibits any land use or development that would have a significant adverse impact on sensitive habitat areas and requires that development in areas adjacent to sensitive habitats be sited and designed to prevent impacts that could significantly degrade the sensitive habitats.

The proposed development is also inconsistent with LUP Policy 7.5, since the applicant has not demonstrated that there will be no significant adverse impact on the sensitive habitats on the subject property used by the marbled murrelets from the proposed development. In contrast, there is evidence that there will be significant adverse impacts from increased nest predation of the marbled murrelets by jays and ravens, which are attracted to human activity and food and garbage.

### Impacts on Marbled Murrelets from Noise and Visual Disturbances

As discussed in more detail below, noise and visual disturbances from the proposed development pose significant adverse impacts to marbled murrelets, especially during the breeding season, which occurs from March through September. Noise is a disturbance factor that is difficult to mitigate in a natural setting. Noise level is a function of the level at the source, the distance from the source and the intervening materials that absorb or reflect sound energy. The U.S. Fish and Wildlife Service commonly recommends that received sound levels be no greater than 60 dB to avoid disturbing sensitive wildlife.<sup>6</sup> Visual disturbances, including light pollution and human presence close to nesting sites, can also be a serious threat to wildlife.

Singer's report includes the following discussion of indirect impacts to successful breeding by murrelets:

*More subtle human activities that can interfere with nesting success are human presence too close to an active nest and/or excessive noise (Hamer and Nelson, 1998; Long and Ralph, 1998; Nelson, 1997). These activities can cause an adult to flush from the nest or cause a feeding visit to be aborted.*

Various known and potential habitats on the subject property that are used by marbled murrelets are shown on Figures 1 and 2 of Singer's report (Exhibits 4 and 5); Exhibit 5 also shows the location of the occupied stand buffer, which Singer recommends be the area within 100 meters (328 feet) from the murrelet nesting area. The majority of the access road is shown on Exhibit 5 as being located within the occupied stand buffer. The old growth grove, which is known to be used as a breeding area by the marbled murrelets, is shown as being located approximately 150 feet from the closest location of the access road (where the bridge crosses the South Fork of Gazos Creek). Cabin 22, which the applicant proposes to use as housing for up to four year-round staff, after replacing the roof, is shown as being located approximately 350 feet from the old-growth forest, just outside of the occupied stand buffer shown on Exhibit 5.

In his 1999 report, Singer recommended a 100 meter (328 ft.) buffer width from the breeding area, which is close to the minimal buffer size of 300-600 feet recommended by the Recovery Plan prepared by the U.S. Fish and Wildlife Service. The Recovery Plan includes the following statements regarding disturbance effects on marbled murrelets:

*Noises associated with a variety of human activities could disturb nesting murrelets and may cause take...*

*Due to the significant lack of disturbance-related information on marbled murrelets, it should be assumed that any amount of disturbance would result in negative impacts...*

Singer's report includes the following information regarding the width of noise buffer zones for marbled murrelets:

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<sup>6</sup> Personal communication, Kurt Roblek, USFWS, Carlsbad, CA, December 3, 2003, as told to Commission staff biologist, John Dixon.



*Long and Ralph (1998) cite several cases where the width of the noise buffer zone used was 0.25 miles, although there was no data to support this width. Recent research by Hamer and Nelson (1998) suggests that for some common artificial noises in forested environments a smaller buffer may be adequate. Their preliminary results show that the majority of noise was reduced to near ambient conditions in 50 m for autos, 75 m for trucks, 75 m for chainsaws, and 150 m for shotgun discharge.*

The closest location of the internal access road, at approximately 150 feet from the murrelet breeding area, is close to the distance at which this study indicates noise from autos is reduced to near ambient conditions. However, the applicant has stated that it is likely that buses will use the internal access road, since school groups are proposed to use the site and carpooling has been encouraged to reduce likelihood of roadkill, especially of sensitive species such as the California red-legged frog and the San Francisco garter snake. If these buses or other large vehicles using diesel engines generate noises similar to those made by the trucks in the noise study referenced above, the internal access road is not located sufficiently distant from the murrelet breeding site (75 meters, according to the Hamer and Nelson study) in order for the sound of the engine to attenuate to ambient levels at the murrelet breeding site. Therefore, the proposed location of the internal access road is likely to cause sounds beyond ambient conditions, which will constitute disturbances to the murrelets nesting in the adjacent old-growth stand of trees. As noted in the excerpt from the Recovery Plan, which is cited above, "Due to the significant lack of disturbance-related information on marbled murrelets, it should be assumed that any amount of disturbance would result in negative impacts". Therefore, noises from vehicles on the access road are presumed to result in negative impacts, which are inconsistent with Policy 7.3 of the LUP, which prohibits any land use or development that would have significant adverse impact on sensitive habitat areas and requires development in areas adjacent to sensitive habitats be sited and designed to prevent impacts that could significantly degrade the sensitive habitats.

The applicant prepared a "Gazos Creek Mt. Camp Sound Measurements Report", based on measurements of sounds (hammers, gas-powered generators, chain saw and car horn) made at Cabin 1, which the report estimates is located 0.3 miles or 1,628 feet from the murrelet nesting habitat. This report concludes:

*Range of ambient sound levels measured at Marbled Murrelet habitat while noise sources were active at Mt. Camp and with out such noise sources was the same 50 to 79 dB or 29 dB. Thus the Marbled Murrelet habitat spot where the measurements were made is beyond the Critical Distance of the (sic) any of the noise sources the camp will be using for upcoming construction.*

This report defines the Critical Distance as the distance from the source of a sound at which the measured sound level does not decrease due to ambient sound levels. The conclusion of this report that the marbled murrelet breeding habitat is beyond the critical distance of "any of the noise sources the camp will be using for upcoming construction" is an over-generalization, since it makes a conclusion regarding noises at the project area, which is approximately 12 acres in size, based on measurements from one location (Cabin 1), 0.3 miles from the breeding habitat. Note also that this sound report does not address the sounds likely to be made from the proposed use of the property, but instead makes a conclusion on the noises from construction at the



property. The closest structure to the old-growth trees that provide nesting habitat for murrelets is Cabin 22, proposed for use as staff lodging, which is located approximately 450 feet closer to the nesting habitat than Cabin 1, which was used as the source of sounds during the testing. Although informative about attenuation of sounds at a distance of approximately 1,600 feet from the breeding habitat, the study does not address sounds from locations closer to the breeding habitat, such as vehicle traffic on the internal access road (located 150 feet from the breeding habitat, at its closest point) or from Cabin 22, (located approximately 350 feet from the old-growth forest). The construction of compacted gravel turnouts on the access road and potential replacement of the bridge over South Gazos Creek would be additional sources of noise in close proximity to the murrelets' nesting habitat.

Since the applicant has not demonstrated that there will be no significant adverse impact on the sensitive habitats on the subject property used by the marbled murrelets from the noise and visual disturbances caused by the proposed development, the proposed development is also inconsistent with LUP Policy 7.5. LUP Policy 7.5 states:

- a. *As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.*
- b. *When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.*

The applicant, PCA, has not demonstrated that there will be no significant impact on sensitive habitats from noise or visual disturbances. The applicant did provide a report (Singer, 1999) that provides some mitigation measures to protect the marbled murrelet from noise or visual disturbances. However, Steven Singer, the author of this report, acknowledged that there is insufficient scientific documentation to support the use of specific mitigation measures to prevent adverse impacts to the marbled murrelet from noise and visual disturbances. In addition, the Recovery Plan for the Marbled Murrelet, prepared by the U.S. Fish and Wildlife Service, states that "Due to the significant lack of disturbance-related information on marbled murrelets, it should be assumed that any amount of disturbance would result in negative impacts". Further, since the preparation of Singer's report in 1999, new information is available, which demonstrates that the marbled murrelets are becoming increasingly endangered and that the proposed development is likely to contribute to this trend. Moreover, the report provides conclusions about noises at the project area based on measurements from a location that is further from the habitat than some of the proposed development. Therefore, the Commission cannot find that the proposed development is consistent with LUP Policy 7.5, since the applicant has not demonstrated that there will be no significant adverse impact on sensitive habitats from

noise or visual disturbances. Additionally, mitigation measures have not been provided to adequately protect the marbled murrelet consistent with the sensitive habitat policies of the LUP, especially Policy 7.3.

The applicant, PCA, proposes year-round use of the site, which will result in vehicular traffic on the access road and other sources of sounds at the facility during the murrelet breeding season, which extends from March 24th through September 15th. Such year-round use of the subject property constitutes significant disturbances to the murrelets during the breeding season, inconsistent with Policy 7.3 of the LUP.

Policy 7.3(a) of the LUP "prohibit(s) any land use or development which would have significant adverse impact on sensitive habitat areas". Human activities near marbled murrelet nesting sites that generate excessive noise have been documented as interfering with nesting success (as discussed above); therefore, the proposed development that will result in such activities is inconsistent with Policy 7.3(b) of the LUP, which requires that "all uses shall be compatible with the maintenance of biologic productivity of the habitats."

#### Impacts on Marbled Murrelets from Traffic

In addition to the significant adverse impacts to the marbled murrelets from noise and visual disturbance from vehicular use of the access road, vehicles may directly impact the marbled murrelet. The Recovery Plan prepared by the U.S. Fish and Wildlife Service states:

*Adult mortality in the terrestrial environment has been documented to occur from interactions with vehicles (Sprot 1928, Balmer 1935, S.K. Nelson, pers. comm., 1996) and power lines (Young 1931; S.K. Nelson, pers. comm., 1996). Although adult mortality is difficult to document in the terrestrial environment because of the secretive nature of the species, if this mortality is high, it could have a significant affect on population viability.*

Independent of the significant adverse noise and visual impacts, the proposed development will result in vehicles traveling on Gazos Creek Road and the internal access road, which may cause direct take of the marbled murrelet from interactions with vehicles, as described in the Recovery Plan prepared by the U.S. Fish and Wildlife Service. The proposed development includes use of the subject property by up to four time resident staff and up to 63 people for day programs. The applicant has estimated that, with carpooling encouraged, the proposed development will result in up to 50 round trips per day.

The internal access road is located within 20-30 feet of the field where the murrelets have regularly been observed circling and vocalizing and flying below canopy during the breeding season. The majority of this access road is located within 300 feet of the murrelet nesting area. The proximity of the access road to the field and old growth stand of trees used as breeding habitat by the marbled murrelet raises concerns regarding potential take of murrelets from traffic on the access road.

The Gazos Creek stream corridor has also been identified by Steven Singer as a potential murrelet flyway. The subject property is located approximately 4.5 miles from the ocean, where

the marbled murrelets feed. According to the Recovery Plan prepared by the U.S. Fish and Wildlife Service, the murrelet parents make a daily average of four round trip flights to the ocean and back to the nesting site to feed the nestling. Gazos Creek Road is located directly adjacent to the bank of Gazos Creek and crosses over Gazos Creek at the southwest corner of the property. If the murrelets are using the creek as a flyway, it is likely that they will fly above Gazos Creek Road, utilizing the break in the tree canopy made by Gazos Creek Road. Therefore, vehicles traveling on Gazos Creek Road to the subject property for the proposed development could potentially collide with murrelets using Gazos Creek as a flyway, causing take of the murrelets.

Therefore, vehicular traffic from the proposed development may result in murrelet mortality, which is inconsistent with LUP policy 7.3, which protects sensitive habitat and requires that all uses in areas adjacent to sensitive habitats be compatible with the maintenance of biologic productivity of habitats.

Vehicular traffic from the proposed development is also inconsistent with LUP Policy 7.5, since the applicant has not demonstrated that 1) there will be no significant adverse impact to the marbled murrelets from the traffic associated with the proposed development and 2) adequate mitigation to protect the marbled murrelet from traffic has been provided. Adequate mitigation for the proposed development at the subject property may not exist, since any traffic on Gazos Creek Road, which is located adjacent to Gazos Creek, described as a potential murrelet flyway, may result in take of the murrelet.

#### Conclusion Regarding Marbled Murrelets

As discussed above, the proposed development is inconsistent with LUP Policy 7.3, as a result of significant adverse impacts from increased nest predation, noise and visual disturbances and traffic on Gazos Creek Road and the internal access road. LUP Policy 7.3 requires that all uses in areas adjacent to sensitive habitats be compatible with the maintenance of biologic productivity of the habitats. These significant adverse impacts from the proposed development are not compatible with the maintenance of biologic productivity of sensitive habitats, since the direct and indirect impacts from the proposed project are likely to cause take of the marbled murrelet, which is an endangered species under the California Endangered Species Act. The proposed development is also inconsistent with LUP Policy 7.5 since the applicant has not demonstrated that there will be 1) no significant impact to the marbled murrelets from the development and 2) adequate mitigation to protect the marbled murrelet. Adequate mitigation for the proposed development at the subject property may not exist, since any traffic on Gazos Creek Road, which is located adjacent to Gazos Creek, described as a potential murrelet flyway, may result in take of the murrelet. As discussed above, the marbled murrelet population in the Santa Cruz Mountains area is calculated as being likely to be extirpated within the next 25 years, unless measures are taken to stop the decline in this population.

#### San Francisco Garter Snakes and California Red-Legged Frogs

In a letter, dated January 13, 2004, the Department of Fish and Game provided the following analysis and conclusions regarding San Francisco garter snakes and California red-legged frogs

*The camp is located in a redwood/mixed evergreen forest adjacent to Gazos Creek. There is limited grassland present although the ridgetops in the area support scattered chaparral communities. A large pond, originally used as a log pond, is located at the southwesterly end of the property. These conditions provide marginal habitat for San Francisco garter snakes and a somewhat better environment for California red-legged frogs. Although neither species has been confirmed on site, suitable habitat is present for both and the property is located between documented populations of both animals. In the case of the San Francisco garter snakes, documentation would be very difficult as any snakes on-site are likely to be migrating through, rather than resident.*

*The entrance road to the camp passes immediately adjacent to a large pond which could provide habitat for San Francisco garter snakes (listed as endangered by State and Federal governments and as "Fully Protected" under State law) and California red-legged frogs (listed as threatened under Federal law). **Renewed use of this road could cause take of individuals of one or both of these species.** (Emphasis added.)*

*The specific concern at hand is that all traffic entering the camp must traverse an existing road that passes directly beside the pond. In doing so, there is a possibility that either of the species noted could be struck and killed. We recommend that mitigation measures be adopted to reduce or eliminate this risk. In this case, **our recommendation is to relocate the road so that it does not pass beside the pond. During our site visit, we found two viable options are available for alternative routes, both of which would result in substantially less chance of a take than with the current configuration.** (Emphasis added.)*

Vehicular use of the access road has been identified as potentially causing take of San Francisco garter snakes and California red-legged frogs and thus constitutes a significant adverse impact to sensitive habitat.

The applicant has stated that the use of the access road will not result in take of the protected species, since the pond is currently inhabited with invasive fish that prey on California red-legged frogs so that these frogs have not been observed near the pond in the past few years. PCA's lease with State Parks requires that PCA remove the invasive fish from the pond. PCA attempted to drain the pond to remove the invasive fish, but was stopped due to concerns from the Department of Fish and Game. In correspondence to Commission staff on April 20, 2004, John Wade included comments from Jerry Smith, which included the following:

*At the present time the risk to frogs is small because the pond is not a suitable habitat because of the predatory fish. No frogs were seen on 2 night surveys last October, although 2 were seen during a night survey several years ago. The paradox is that there is only a significant risk to individual frogs if the fish are removed and the pond becomes a valuable habitat for red-legged frogs. At the present time red-legged frogs are extremely scarce on Gazos Creek, apparently because of a lack of suitable breeding habitat. Breeding may be in the stream after winter flows decline (a gravid frog was found last week upstream of Cloverdale Road)...The existing pond offers the opportunity to provide that safe breeding habitat which will support hundreds of frogs in the 1-2 miles up and downstream of the pond.*

At this point, it is unknown when the invasive fish in the pond will be removed, thus making the 7.4 acre-foot pond be what Jerry Smith describes as a "safe breeding habitat which will support hundreds of frogs in the 1-2 miles up and downstream of the pond." PCA was required by State Parks to remove the predatory invasive fish from the pond as a condition of their lease; however, this action has not yet been taken, since PCA has not prepared a plan for removal of the fish that has been approved by all necessary governmental agencies. California red-legged frogs have not been identified on the site in several years, although they are recognized to be likely to return to the site in large numbers once the invasive fish are removed from the pond on the site. The Department of Fish and Game has stated that, although the San Francisco garter snakes have not been documented on the subject property, suitable habitat is present for the snakes and the property is located between documented populations of the snakes. The Department of Fish and Game also noted that, in the case of the San Francisco garter snakes, documentation would be very difficult as any snakes on-site are likely to be migrating through, rather than resident. With full knowledge of the current situation and the proposed development, the Department of Fish and Game concluded, "Renewed use of this road could cause take of individuals of one or both of these species." Therefore, the Commission finds that the proposed development is inconsistent with Policy 7.3 of the LUP.

The proposed development is also inconsistent with LUP Policy 7.5 since the applicant has not demonstrated that the proposed development will have no significant adverse impact on sensitive habitats, including those habitats used by the California red-legged frog and the San Francisco garter snake. The development is also inconsistent with LUP Policy 7.5 since adequate mitigation to protect the California red-legged frog and the San Francisco garter snake may not exist, since any traffic on Gazos Creek Road, is likely to result in take of these protected species, which are documented as being present at other locations adjacent to Gazos Creek Road.

As discussed in more detail in Section 4.1.2 of these findings, there are alternative locations for the proposed project that would lessen and avoid these significant environmental impacts. As such, the proposed development would not be sited or designed to prevent impacts that could significantly degrade sensitive habitats, which is in conflict with the requirements of LUP Policy 7.3(b). The Department of Fish and Game identified two options for alternative locations for the access road that would result in substantially less chance of a take of the San Francisco garter snakes and California red-legged frogs.

In correspondence to Commission staff on April 20, 2004, John Wade of PCA described one potential location for relocating the access road. Mr. Wade stated, "The purpose in moving the road access would be to minimize possible impacts on red-legged frogs that might move into the pond after it is restored and the predatory fish eliminated. It might also benefit the San Francisco Garter Snake, if they are in the area at all." Mr. Wade provided the following list of alternatives to relocating the existing access road:

- (1) Limit use of the road by the pond to daylight hours since frogs are primarily nocturnal. Create a night-time parking area just inside the gate for late arrivers. This works for groups and buses during the day and would mainly effect late arrivals for overnight use.*
- (2) Arrange a walking escort to check the road for wildlife once a group has arrived at the entry.*

- (3) *Create frog/snake underpasses under the existing road, with guide walls to direct them to the passages. DFG doesn't think much of these, but some of the appellants like them (CBD & Cattermole). The passages may need some screening to keep predators such as skunks and raccoons out of them. The topography is pretty awkward for passages due to the upslope from the pond. They would also require substantial grading or modification of the existing road to accomplish unless we installed many small passages rather than a few large ones.*
- (4) *Drain the pond since it is an unnatural feature in the park and leave it drained, or tear down the dam and restore the area to native vegetation. This way it doesn't act as a predatory fish feeding trap for frogs, and doesn't commit State Parks to frog-farming permanently. It may fit better with the State Parks resources code. It eliminates a source for fire protection water and an interesting ecological feature. It may create conflicts with DFG, FWS, NFMS and others.*
- (5) *Accept that there might be the loss of an occasional frog due to vehicles, but the net gain for the red-legged frog from a restored pond with good protected habitat would outweigh the losses.*
- (6) *Hold the pond issue in abeyance until the agencies all agree on a course of action for restoration of the pond and protection of the resources. At that time, PCA will work with them to implement the pond plan. I believe State Parks would prefer this alternative. If the field research station is operational, PCA would monitor the pond habitat and impacts before and after restoration or modification.*

Alternatives 1 through 4 in the above list may provide mitigation to reduce the likelihood of a take of the California red-legged frog or San Francisco garter snake from vehicular traffic on the access road. However, vehicular use of the access road also raises issues regarding impacts to the marbled murrelet, as discussed in Section 4.1.1 of these findings, which would not be adequately addressed through implementation of the measures described in alternatives 1 through 4, listed above. In addition, enforcement of alternatives 1 and 2 would be difficult, which raises questions about the efficacy of these measures to avoid impacts to the protected species, especially since take of a protected species is a significant adverse impact. Alternative 5 is not acceptable since a take of a species protected by the California or federal Endangered Species Acts constitutes a significant adverse impact on a sensitive habitat area, which is prohibited by LUP Policy 7.3. Alternative 6 basically proposes to implement condition nine of the County's approval of the CDP for the subject development, which gives the applicant five years to develop a plan on the relocation of the access road, while authorizing the development to proceed in the meantime. This alternative is also not consistent with the LCP, since it allows development, including vehicular use of the access road, for five years before implementing the mitigation (relocation of the access road) required to avoid significant adverse impacts on sensitive habitat from vehicular use of the access road.

#### Conclusion Regarding California Red-Legged Frogs and San Francisco Garter Snakes

Since the proposed development has been determined to likely result in the take of San Francisco garter snakes and California red-legged frogs, which are species protected under the state and federal endangered species acts, the development is inconsistent with Policy 7.3 of the LUP, which prohibits any land use or development which would have a significant adverse impact on



sensitive habitat areas and requires that development adjacent to sensitive habitats 1) be sited and designed to prevent impacts that could significantly degrade the sensitive habitat and 2) be compatible with the maintenance of biologic productivity of the habitats. The proposed development is also inconsistent with LUP Policy 7.5, since the applicant 1) has not demonstrated that the proposed development will have no significant impact on sensitive habitats, including those habitats used by the marbled murrelet, California red-legged frog and the San Francisco garter snake and 2) has not provided adequate mitigation to protect resources and comply with LUP Policy 7.3. Adequate mitigation for the proposed development at the subject property may not exist, since any traffic on Gazos Creek Road, is likely to result in take of the marbled murrelet, California red-legged frog and the San Francisco garter snake.

### **Conclusion**

For all of the above-stated reasons, the Commission finds that the proposed development is inconsistent with Policies 7.3 and 7.5 of the LUP, which address the protection of sensitive habitat areas.

#### **4.1.2 Locating and Planning New Development**

##### ***Applicable LCP Policies***

##### **1.7 Designation of Rural Areas**

*Designate as rural those lands shown outside the urban/rural boundary on the Local Coastal Program Land Use Maps, in effect on March 25, 1986, that were designated Agriculture, General Open Space, Timber Preserve, or Public Recreation on that date.*

##### **1.8 Land Uses and Development Densities in Rural Areas**

a. *Allow new development (as defined in Section 30106 of the California Coastal Act of 1976) in rural areas only if it is demonstrated that it will not: (1) have significant adverse impacts, either individually or cumulatively, on coastal resources and (2) diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural production.*

b. *Permit in rural areas land uses designated on the Local Coastal Program Land Use Plan Maps, and conditional uses up to the densities specified in Tables 1.2 and 1.3.*

##### **c. (1) Require Density Credits for Non-Agricultural Uses**

*Require density credits for all new or expanded non-agricultural land uses in rural areas, including all residential uses, except affordable housing (to the extent provided in Local Coastal Program Policy 3.23) and farm labor housing, as defined in Local Coastal Program Policy 3.28, mining in accordance with General Plan Policies 3.11 and 3.12, and solid waste facilities under the policies in General Plan Chapter 13. The existence and*



*number of density credits on a parcel shall be determined by applying Table 1.3.*

*Expanded or additional non-agricultural uses shall only be permitted on a parcel when there are enough density credits available to that parcel to meet the density credit requirements of this policy for both (a) existing uses, and (b) any expanded or additional uses, and only where such development meets all other applicable policies of the Local Coastal Program.*

(2) *Amount of Development Allowed for Non-Agricultural Uses, Except Visitor-Serving, Commercial Recreation, and Public Recreation Uses*

*For new or expanded non-agricultural uses, except visitor-serving, commercial recreation, and public recreation uses, one density credit shall be required for each 315 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year. This requirement applies to water use by or resulting from the non-agricultural use, including landscaping, swimming pools and all other appurtenant uses.*

(a) *Residential Uses*

*For new or expanded residential uses, a single-family dwelling unit shall be deemed to use 315 gallons of water per day during the two months of highest water use in a year (including landscaping, swimming pools and all other appurtenant uses).*

(b) *Non-Agricultural Uses Except Visitor-Serving, Commercial Recreation, and Public Recreation Uses*

*For non-agricultural uses, except visitor-serving, commercial recreation, and public recreation uses, the amount of development allowed for each density credit in accordance with the requirements of this policy shall be the amount stated in Table 1.5 in the column headed "Number of Measuring Units Per Density Credit Based on Peak Daily Water Use With Conservation Fixtures."*

(3) *Amount of Development Allowed for Visitor-Serving, Commercial Recreation, and Public Recreation Uses*

*For new or expanded visitor-serving, commercial recreation, and public recreation uses, one density credit shall be required for the first 945 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year. One additional density credit shall be required for each 630 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year.*

*This requirement applies to water use by or resulting from the visitor-serving, commercial recreation, and public recreation use, including landscaping, swimming pools and all other appurtenant uses. The 945-gallon water use allowance for one density credit may be applied one time only on a parcel.*

*For visitor-serving, commercial recreation, and public recreation uses, the amount of development allowed for each density credit in accordance with the requirements of this policy shall be:*

- (a) For one density credit or the first density credit when multiple density credits are available, either 1 1/2 times the amount stated in Table 1.5 in the column headed "Number of Measuring Units Per Density Credit Based on Peak Daily Water Use With Conservation Fixtures," or the amount stated in that column and a residential dwelling unit associated with a visitor-serving facility that is occupied by the facility owner or operator.*
- (b) For each additional density credit, the amount stated in Table 1.5 in the column headed "Number of Measuring Units Per Density Credit Based on Peak Daily Water Use With Conservation Fixtures."*
- d. For the purpose of this policy, "visitor-serving, commercial recreation, and public recreation uses" shall be only those lands and facilities listed in LCP Policies 11.1, 11.2 and 11.3, and only if those lands and facilities specifically enhance public opportunities for coastal recreation.*
- e. As an interim limit, no more than 600 visitor-serving lodging units may be approved in the rural Coastal Zone, as specified by LCP Policy 1.23.*

### **GROWTH MANAGEMENT**

#### **1.18 Location of New Development**

- a. Direct new development to existing urban areas and rural service centers in order to: (1) discourage urban sprawl, (2) maximize the efficiency of public facilities, services, and utilities, (3) minimize energy consumption, (4) encourage the orderly formation and development of local governmental agencies, (5) protect and enhance the natural environment, and (6) revitalize existing developed areas.*
- b. Concentrate new development in urban areas and rural service centers by requiring the "infilling" of existing residential subdivisions and commercial areas.*
- c. Allow some future growth to develop at relatively high densities for affordable housing in areas where public facilities and services are or will be adequate and where coastal resources will not be endangered.*

- d. *Require the development of urban areas on lands designated as agriculture and sensitive habitats in conformance with Agriculture and Sensitive Habitats Component policies.*

### ***Discussion***

The subject property is located in a rural area that does not have public services, such as water, sewer, electricity and telephone lines. As discussed previously in these findings, the site is sensitive habitat, as defined by Policy 7.1 of the LUP, since it provides habitat for species protected under the state and federal endangered species acts, including the marbled murrelet, San Francisco garter snake, California red-legged frog, coho salmon and steelhead trout. The site is also sensitive habitat as defined by Policy 7.1 of the LUP, since it contains headwater streams of Gazos Creek and a pond with a band of freshwater marsh and also provides breeding and nesting habitat for the marbled murrelet, a seabird. The subject property is also designated as sensitive habitat, pursuant to Policy 7.3 of the LUP, as a result of primary and secondary riparian habitat being shown on the Sensitive Habitats Map of the LCP as being on the subject property.

The property was transferred to State Parks by the Sempervirens Fund and the Apex Houston Trustee Council, who formed a partnership to protect the old-growth trees on the subject property, which are used by marbled murrelets as nesting habitat.

Policy 1.8(a) of the LUP states "Allow new development (as defined in Section 30106 of the California Coastal Act of 1976) in rural areas only if it is demonstrated that it will not: (1) have significant adverse impacts, either individually or cumulatively, on coastal resources and (2) diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural production."

The proposed development is inconsistent with Policy 1.8(a) of the LUP, since the development will have significant adverse impacts, both individually and cumulatively, on coastal resources, as discussed in Section 4.1.1 of these findings regarding the impacts of the proposed development on sensitive habitats. Since the proposed development is located in a rural area and the development will have significant adverse impacts on sensitive habitats, which are a coastal resource protected under the LCP and Coastal Act, the development is prohibited by Policy 1.8(a) of the LUP.

Policy 1.18(a) of the LUP requires the following:

*Direct new development to existing urban areas and rural service centers in order to: (1) discourage urban sprawl, (2) maximize the efficiency of public facilities, services, and utilities, (3) minimize energy consumption, (4) encourage the orderly formation and development of local governmental agencies, (5) protect and enhance the natural environment, and (6) revitalize existing developed areas.*

The proposed development is inconsistent with Policy 1.18(a) of the LUP, since it proposes to locate development in a rural area, instead of concentrating development in existing urban areas

and rural service centers. Locating the development at the proposed location conflicts with Policy 1.18(a), which requires new development to be directed to existing urban areas and rural service centers in order to protect and enhance the natural environment.

In correspondence to Commission staff, dated April 9, 2004, John Wade of PCA stated, "There is no known equivalent existing site or facility available close to the areas of interest and work." In a letter dated April 16, 2004, Jim Rourke, one of the appellants of the proposed development, provided a list of the following locations on the San Mateo Coast that can be or have been used as outdoor education locations:

1. Elkus Ranch –U.C. Extension, located on Purissima Road, near Half Moon Bay
2. Sheriff's Honor Camp – located in Pescadero Creek County Park (currently unoccupied)
3. Girl Scout Camp – Santa Clara Council – Butano Creek
4. Redwood Glen Baptist Camp – Wurr Road, Loma Mar
5. Jones Gulch Camp – San Francisco YMCA, Loma Mar – houses 500 people
6. Boysville – located on State Route 84, San Gregorio
7. YMCA – Metro America – Butano State Park area
8. Pigeon Point Lighthouse – Pigeon Point, Pescadero
9. Venture Retreat – Eden West Road, Pescadero

Mr. Rourke also provided a list of available meeting places in the vicinity of Pescadero, in addition to the facilities listed above:

1. Pescadero Native Sons Hall, Pescadero
2. I.D.E.S. Hall, Pescadero
3. Protestant Church Hall, Pescadero
4. Russell Administration Center, North Street, Pescadero
5. Multipurpose Room, Pescadero Elementary School, North Street, Pescadero
6. Gymnasium, Pescadero High School, Pescadero
7. Costanoa Resort Meeting Facility, State Route One, near Ano Nuevo
8. La Honda Fire Brigade Meeting Room – La Honda
9. Loma Mar Fire Department Meeting Room – Loma Mar

Mr. Rourke states that "the alternative locations are not situated in our most sensitive habitat areas" and "The Mountain Camp, located 5.5 miles up Gazos Creek Road from Highway One, is the least accessible of any of the potential meeting locations on the rural coastside, except perhaps the Sheriff's Honor Camp.

Use of existing facilities, such as those listed above, as an alternative to the proposed development would prevent significant adverse impacts to sensitive habitat at the subject property. PCA has not demonstrated that it would be infeasible to use one of these alternative locations listed above, or other sites in San Mateo County. Therefore, the Commission finds that there are alternative locations for the proposed development that would have less adverse impacts on coastal resources.

Although PCA already has a lease for the subject property, PCA could obtain authorization to use another area of a State Park, or other land in the Coastal Zone. PCA could also lease land outside of the Coastal Zone.

The proposed development is also inconsistent with Policies 1.8(c) and (d), since the amount of development exceeds the number of density credits allocated to the development under the LCP. Policies 1.8(c) and (d) state:

c. (1) Require Density Credits for Non-Agricultural Uses

*Require density credits for all new or expanded non-agricultural land uses in rural areas, including all residential uses, except affordable housing (to the extent provided in Local Coastal Program Policy 3.23) and farm labor housing, as defined in Local Coastal Program Policy 3.28, mining in accordance with General Plan Policies 3.11 and 3.12, and solid waste facilities under the policies in General Plan Chapter 13. The existence and number of density credits on a parcel shall be determined by applying Table 1.3.*

*Expanded or additional non-agricultural uses shall only be permitted on a parcel when there are enough density credits available to that parcel to meet the density credit requirements of this policy for both (a) existing uses, and (b) any expanded or additional uses, and only where such development meets all other applicable policies of the Local Coastal Program.*

(2) Amount of Development Allowed for Non-Agricultural Uses, Except Visitor-Serving, Commercial Recreation, and Public Recreation Uses

*For new or expanded non-agricultural uses, except visitor-serving, commercial recreation, and public recreation uses, one density credit shall be required for each 315 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year. This requirement applies to water use by or resulting from the non-agricultural use, including landscaping, swimming pools and all other appurtenant uses.*

(3) Amount of Development Allowed for Visitor-Serving, Commercial Recreation, and Public Recreation Uses

*For new or expanded visitor-serving, commercial recreation, and public recreation uses, one density credit shall be required for the first 945 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year. One additional density credit shall be required for each 630 gallons, or fraction thereof, of average daily water use during the two months of highest water use in a year.*

*For visitor-serving, commercial recreation, and public recreation uses, the amount of development allowed for each density credit in accordance with the requirements of this policy shall be:*

- (a) *For one density credit or the first density credit when multiple density credits are available, either 1 1/2 times the amount stated in Table*

*1.5 in the column headed "Number of Measuring Units Per Density Credit Based on Peak Daily Water Use With Conservation Fixtures," or the amount stated in that column and a residential dwelling unit associated with a visitor-serving facility that is occupied by the facility owner or operator.*

*(b) For each additional density credit, the amount stated in Table 1.5 in the column headed "Number of Measuring Units Per Density Credit Based on Peak Daily Water Use With Conservation Fixtures."*

*d. For the purpose of this policy, "visitor-serving, commercial recreation, and public recreation uses" shall be only those lands and facilities listed in LCP Policies 11.1, 11.2 and 11.3, and only if those lands and facilities specifically enhance public opportunities for coastal recreation.*

Policy 1.8(c) requires the use of density credits for all new or expanded non-agricultural land uses in rural areas. Policy 1.8(c)(3)(a) allows for a density credit bonus for visitor-serving, commercial recreation and public recreation uses. PCA has stated that the proposed development is a visitor serving facility and the County found that the proposed developed is a public recreation facility. Policy 1.8(d) defines the terms "visitor-serving, commercial recreation, and public recreation uses" based on LCP Policies 11.1, 11.2 and 11.3, as follows:

*11.1      Definition of Visitor-Serving Facilities*

*Define visitor-serving facilities as public and private developments that are exclusively available to the general public and provide necessary, basic visitor support services such as lodging, food, water, restroom and automobile services. Visitor-serving facilities include, but are not limited to, hotels, motels, hostels, campgrounds, group camps, grocery stores, food concessionaires, auto serving stations, public drinking water, restrooms, public parking for coastal recreation or access, restaurants, and country inns no more than two stories in height.*

*11.2      Definition of Commercial Recreation Facilities*

*Define commercial recreation facilities as developments serving primarily a recreation function which are operated by private business for profit and are exclusively available to the general public. Commercial recreation facilities include, but are not limited to, beaches, stables, golf courses, specialty stores and sporting equipment sales and rentals.*

*11.3      Definition of Public Recreation Facilities*

*Define public recreation facilities as lands and facilities serving primarily a recreation function which are operated by public agencies or other non-profit organizations. Public recreation facilities include, but are not limited to, public beaches, parks, recreation areas, natural preserves, wild areas and trails.*

The Commission finds that the proposed development is not a visitor-serving facility, commercial recreation facility, nor a public recreation facility, as defined in the LUP. The development is not exclusively available to the general public, since the public is only allowed on the site by invitation. The proposed development does not serve primarily a recreation function, since the applicant is applying to use the property for environmental education, research and restoration. As described in more detail in Section 4.1.1 of these findings, the subject property was purchased by a partnership between the Sempervirens Fund and the Apex Houston Trustee Council for the protection of the old growth trees that provide nesting habitat for marbled murrelets and was subsequently transferred to the California Department of Parks and Recreation, which designated the property as a State Park. California Public Resources Code Section 5019.53 provides the following description of areas classified as state parks:

*State parks consist of relatively spacious areas of outstanding scenic or natural character, oftentimes also containing significant historical, archaeological, ecological, geological, or other similar values. The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples of ecological regions of California...*

In contrast, Section 5019.56 of the California Public Resources Code states the following about areas classified as state recreation units:

*State recreation units consist of areas selected, developed, and operated to provide outdoor recreational opportunities....State recreation areas, consisting of areas selected and developed to provide multiple recreational opportunities to meet other than purely local needs...shall be selected for their having terrain capable of withstanding extensive human impact and for their proximity to large population centers, major routes of travel, or proven recreational resources such as manmade or natural bodies of water.*

The fact that the California Department of Parks and Recreation classified the subject property as a state park, and not a state recreation area, is further support that the subject property is not a public recreation facility. Since the development proposed by PCA is not for a visitor-serving, commercial recreation or public recreation use, the development is not eligible for a density credit bonus, as provided for in Policy 1.8(c)(3)(a) of the LUP. Therefore, the amount of day, evening and resident staff use of the subject property exceeds that allowable under the LCP.

### **Conclusion**

For all of the above-stated reasons, the Commission finds that the proposed development is inconsistent with Policies 1.8 and 1.18 of the LUP, which address locating development and growth management.

## **4.2 California Environmental Quality Act (CEQA)**

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of



the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission incorporates its findings on LCP policies at this point as if set forth in full. For the reasons described in the Commission findings above, the Commission finds that there are feasible mitigation measures and alternatives that would substantially lessen the significant adverse impacts of the development on the environment. The proposed development is located on public land, leased by the applicants from the California Department of Parks and Recreation. Feasible alternatives to the proposed development include obtaining authorization from State Parks to perform the development at a different location where the development would not have significant adverse impacts to sensitive habitats, and/or collaborating with other organizations to use existing facilities without significant adverse impacts to sensitive habitat. The Commission thus finds that the proposed project cannot be found to be consistent with the requirements of the Coastal Act and does not conform to the requirements of CEQA.

## **Appendix A**

### **Substantive File Documents**

Apex Houston Natural Resources Trustee Council. April 24, 1998. Resolution Supporting Acquisition of Marbled Murrelet Nesting Habitat in the Gazos Creek Watershed.

Center for Biological Diversity. September 24, 2003. Letter from Brendan Cummings and Kyle Kreischer to the San Mateo County Planning Division regarding Comments on the Mitigated Negative Declaration.

Center for Biological Diversity. October 14, 2003. Letter from Brendan Cummings and George Cattermole to the San Mateo County Board of Supervisors regarding appeal of Planning Commission's Approval of Mitigated Negative Declaration.

Marc Colbert, San Mateo County Fire. April 9, 2004. Letter to California Coastal Commission.

Hampton, Steve, California Department of Fish and Game. January 9, 2003. The Marbled Murrelet Restoration and Corvid Management Project (draft).

Houston, David. 2000. Gazos Creek Mt. Camp Sound Measurements Report.

San Mateo County, Environmental Services Agency. February 9, 2004. Staff Report on Consideration of Appeal of the Planning Commission's Decision to Approve a Use Permit and a Coastal Development Permit for the Pescadero Conservation Alliance, PLN 2002-00606.

Sempervirens Fund, Incorporated and the Apex Houston Trustee Council. June 3, 1998. Habitat Acquisition Agreement.

Singer, Steven. May 1999 Marbled Murrelet Habitat Management Guidelines for the Gazos Mountain Camp Property, San Mateo County, CA. Prepared for the Sempervirens Fund and the Apex Houston Trustee Council.

Smith, Jerry J. January 26, 2004. 2003 Waddell, Gazos and Pescadero Creeks Red-Legged Frog Studies Progress Report (Coastal Studies).

U.S. Fish and Wildlife Service. September 1997. The Recovery Plan for the Marbled Murrelet in Washington, Oregon and California.

Wade, John. November 7, 2003. Letter to Brendan Cummings, including attachment, "Summary of Issues".

Wade, John. April 9, 2004. Email to Abe Doherty entitled, "Re: Appeal A-2-SMC-04-005."

Wade, John. April 9, 2004. Email to Abe Doherty entitled, "CDF Requirements."

Wade, John. April 20, 2004. Email to Abe Doherty entitled, "FYI, more frog info."

Wade, John. April 20, 2004. Email to Abe Doherty entitled, "Pond and Road issues at Field Research Station."

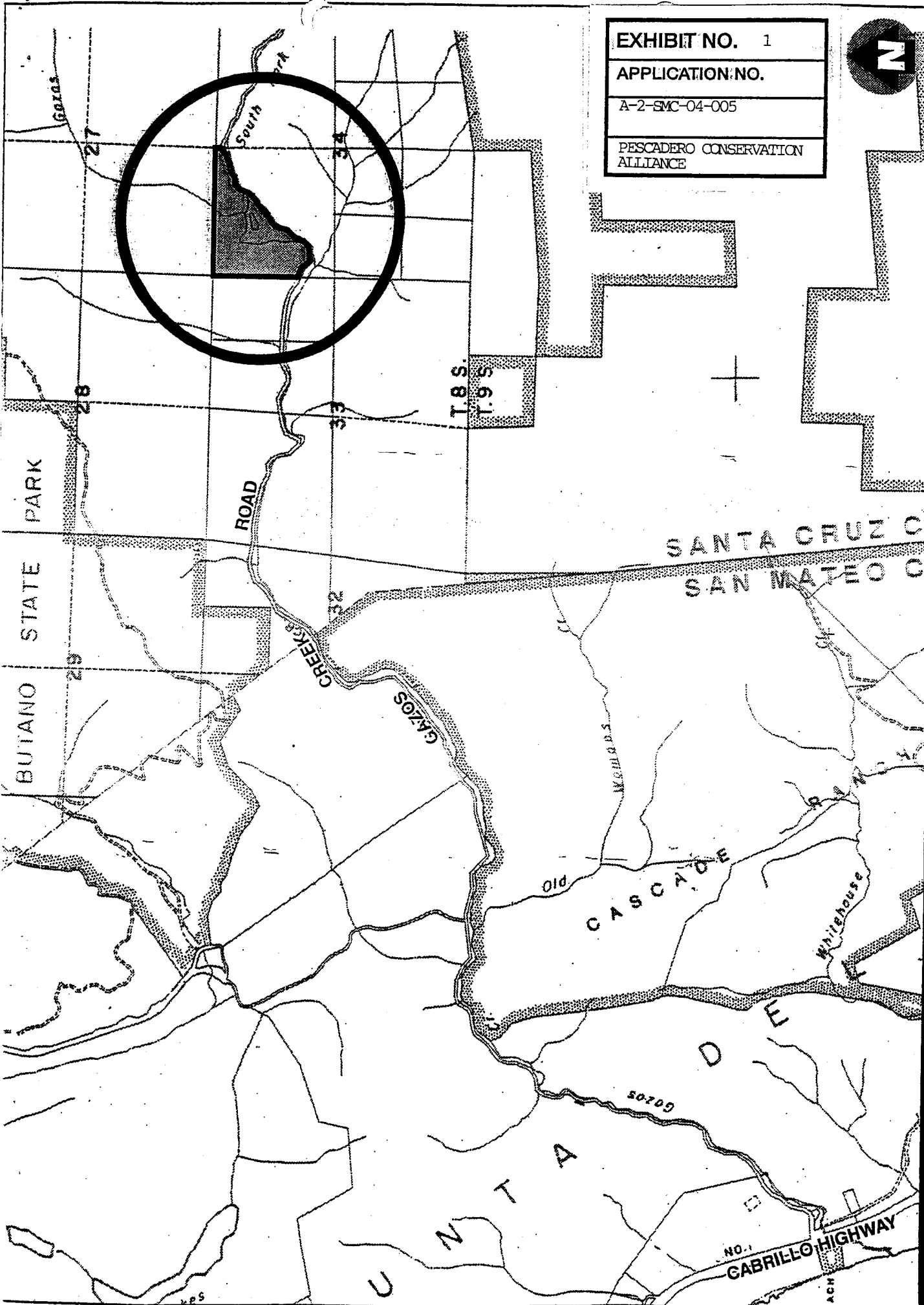
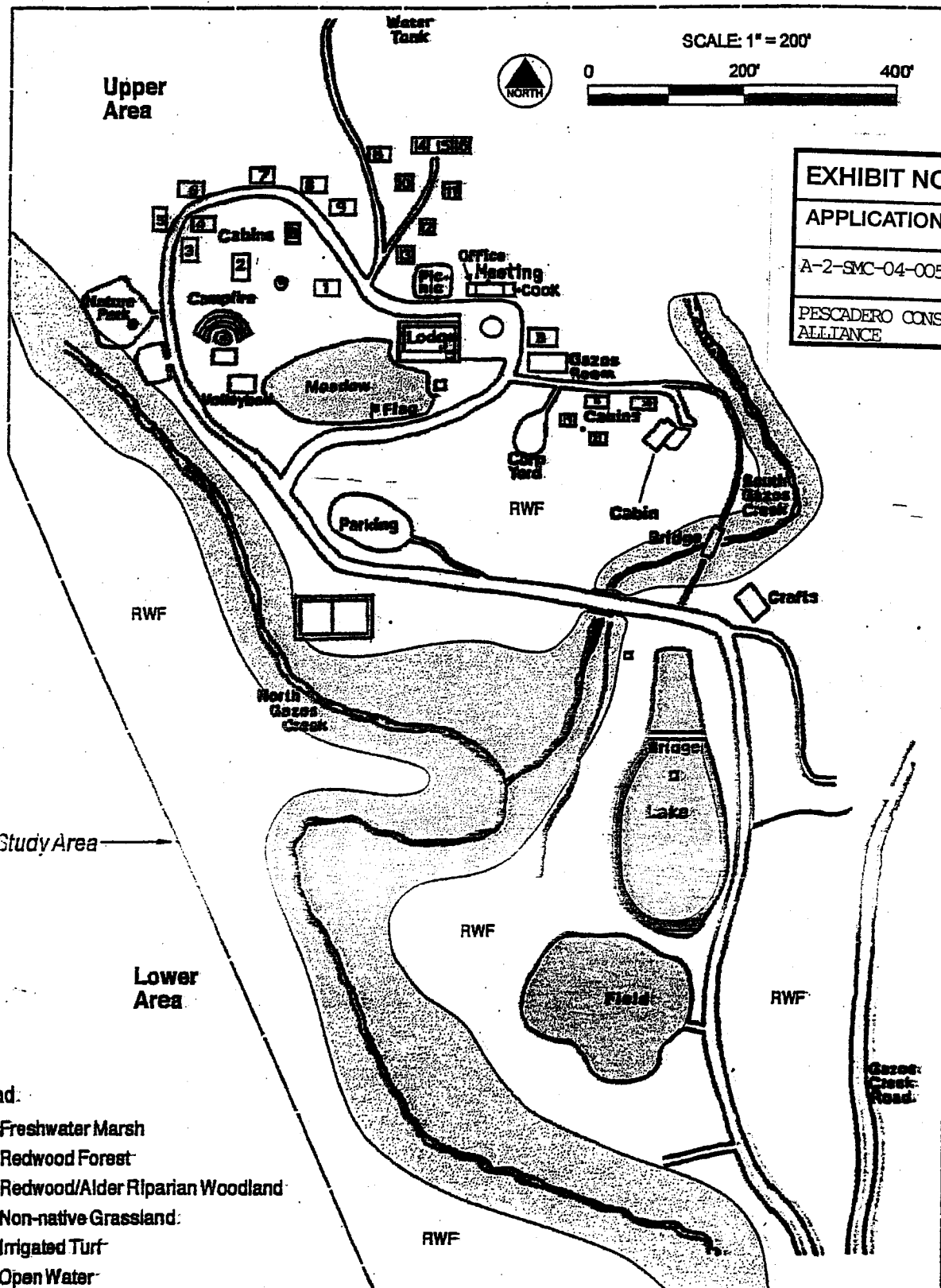


EXHIBIT NO.	1
APPLICATION NO.	
A-2-SMC-04-005	
PESCADERO CONSERVATION ALLIANCE	





# **Biotic Resources Group**

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Field Research Station at Gazos Creek  
**Habitat Map**

**Figure 2**  
10/02  
370-01

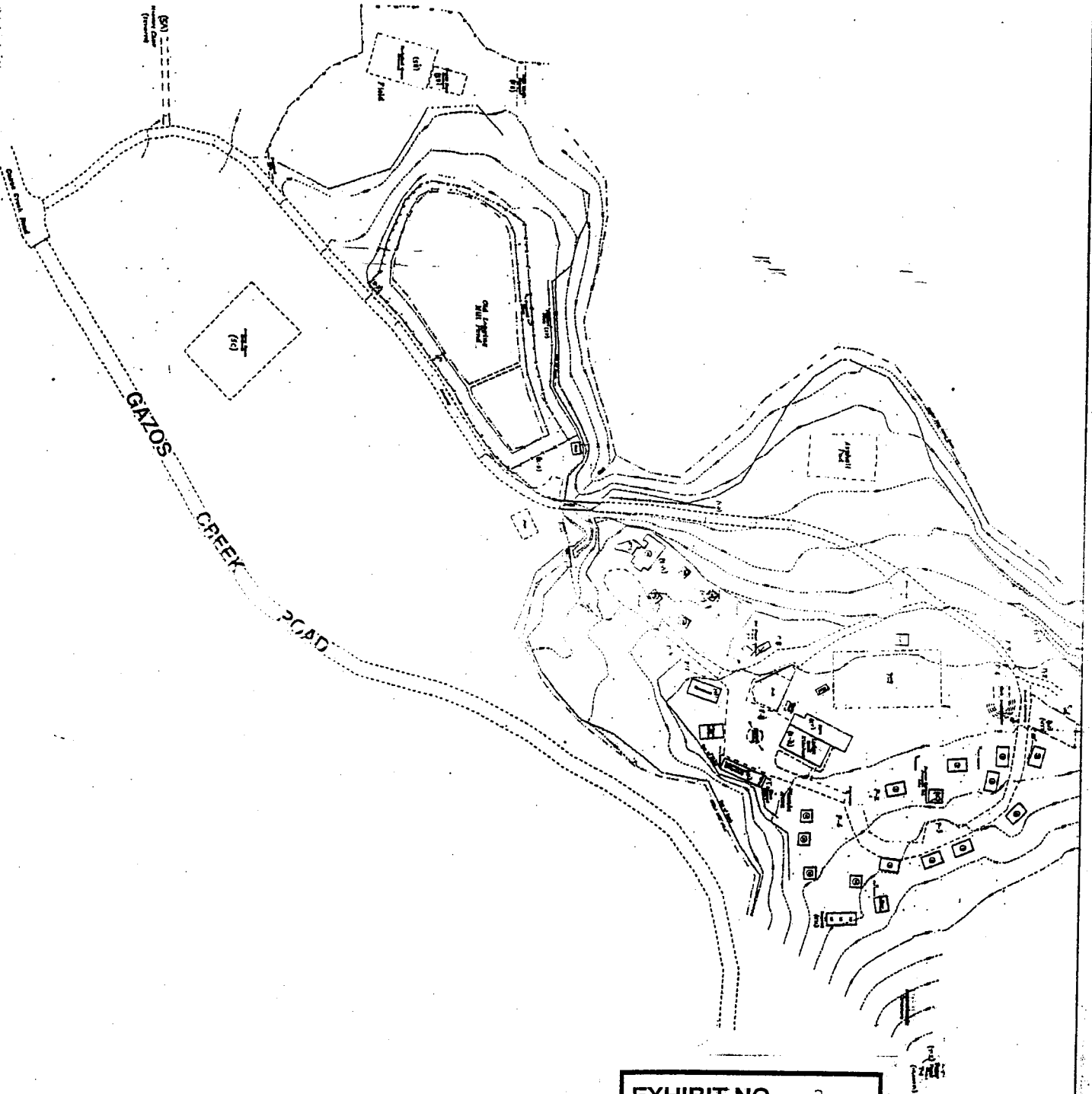


EXHIBIT NO. 3

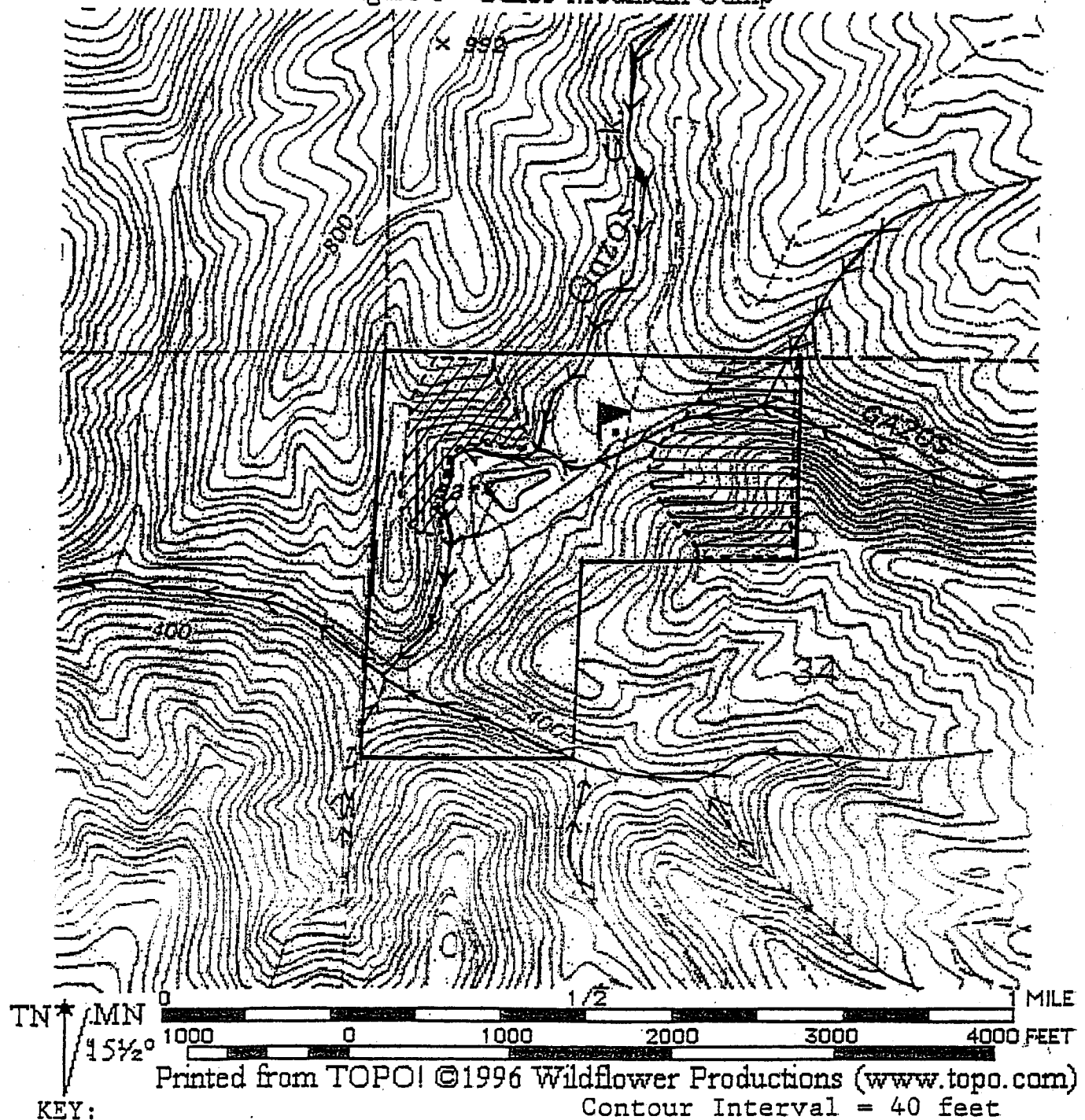
APPLICATION NO.

A-2-MC-04-005

PFSCADERO CONSERVATION  
ALLIANCE



Figure 1 - Gazos Mountain Camp



KEY:



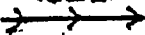

-  = Mature 2nd-growth stand
-  = Occupied stand (old-growth)
-  = Stream
-  = Camp buildings

EXHIBIT NO. 4
APPLICATION NO.
A-2-SMC-04-005
PESCADERO CONSERVATION ALLIANCE

FIGURE 2 - FACILITIES OF GAZOS MTN. CAMP

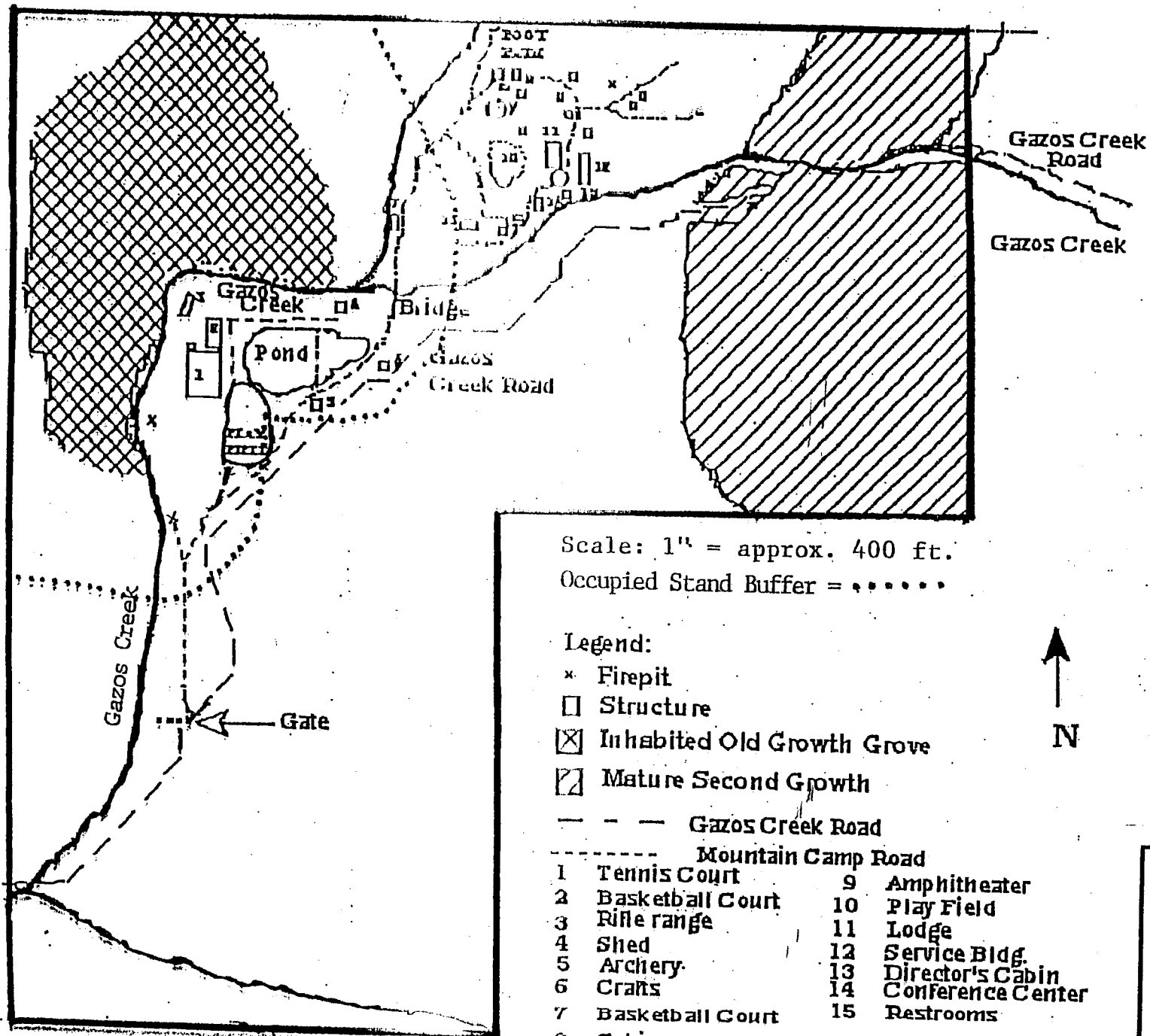


EXHIBIT NO. 5
APPLICATION NO.
A-2-SMC-04-005
PISCADERO CONSERVATION ALLIANCE







**ENVIRONMENTAL  
SERVICES  
AGENCY**

Agricultural  
Commissioner/ Sealer of  
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

**Commissioners:**

David Bomberger

William Wong

Bill Kennedy

Ralph Nobles

Jon Silver

February 24, 2004

Center for Biological Diversity  
Attn: Brendan Cummings  
Staff Attorney  
P.O. Box 493  
Idyllwild, CA 92549

Please reply to:

China Osborn  
(650)599-7217

EXHIBIT NO. 6

APPLICATION NO.

A-2-SMC-04-005

PESCADERO CONSERVATION  
ALLIANCE (Page 1 of 16)

**Notice of Final Local Decision**

**Subject: County File Number PLN2002-00606**

**Location: 5601 Gazos Creek Road, Pescadero**

On February 24, 2004 San Mateo County Board of Supervisors considered your appeal of the Planning Commission's decision to approve a Use Permit and Coastal Development Permit, to allow the Pescadero Conservation Alliance to operate a year-round field research station for youth and adult environmental training and education programs at the existing Gazos Mountain Camp, to install a new well, and make minor improvements to existing camp structures.

Based on the information provided by staff and evidence presented at the hearing, the Board of Supervisors denied the appeal and upheld the Planning Commission's decision to approve a Use Permit and Coastal Development Permit, made the findings and adopted conditions of approval as attached.

This permit approval is appealable to the California Coastal Commission. Any aggrieved person who has exhausted local appeals may appeal this decision to the California Coastal Commission within 10 working days following the Coastal Commission's receipt of this notice. Please contact the Coastal Commission's North Central Coast District Office at (415) 904-5260 for further information concerning the Commission's appeal process. The County and Coastal Commission appeal periods run consecutively, not concurrently, and

**PLANNING COMMISSION**

455 County Center, 2<sup>nd</sup> Floor • Redwood City, CA 94063 • Phone (650) 363-4161 • FAX (650) 363-4849

Pescadero Conservation Alliance  
February 24, 2004  
Page 2

together total approximately one month. A project is considered approved when these appeal periods have expired and no appeals have been filed.

Sincerely,



Kan Dee Rud  
Planning Commission Secretary  
bosdec0225o\_krpca

cc: Ashnita Narayan, Agenda Coordinator  
Pete Bentley, Public Works  
Jim Eggemeyer, Planning Department  
Bill Cameron, Building Department  
Pescadero Conservation Alliance  
California Parks Department  
California Coastal Commission  
Meg Delano, PMAC  
Other Interested Parties

County of San Mateo  
Environmental Services Agency  
Planning and Building Division

**FINDINGS AND CONDITIONS OF APPROVAL**

Permit or Project File Number: PLN-2002-00606

Hearing Date: February 24, 2004

Prepared By: China Osborn

Adopted By: Board of Supervisors

**FINDINGS**

Regarding the Negative Declaration, Found:

1. That there is no evidence contained in the Initial Study circulated for public review to support the mandatory finding of significance contained in Section V.1 of the Initial Study, that the indication that there was such a potential was a clerical error, and that such finding is corrected to indicate be "no" instead of "yes."
2. That the Negative Declaration is complete, correct and adequate and prepared in accordance with the California Environmental Quality Act and applicable State and County guidelines.
3. That, on the basis of the Initial Study as corrected, comments received hereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the project if subject to mitigation measures contained in the Negative Declaration, will have a significant impact on the environment.
4. That the Negative Declaration reflects the independent judgment of San Mateo County.
5. That the mitigation measures identified in the Negative Declaration, agreed to by the applicant, placed as conditions on the project, and identified as part of this public hearing, have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with California Public Resources Code Section 21081.6.

For the Coastal Development Permit, Found:

6. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.
7. That the project conforms to the specific findings required by the policies of the San Mateo County Local Coastal Program, particularly those findings relating to public recreation facilities and improvements to existing structures.

Regarding the Use Permit, Found:

8. That the establishment, maintenance, and/or conducting of the use will not, under the circumstances of the particular case, result in a significant adverse impact to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in said neighborhood.

CONDITIONS OF APPROVAL

CONDITIONS FOLLOW FOUR (4) CATEGORIES:

- I. CONDITION PRIOR TO ISSUANCE OF BUILDING PERMITS
- II. CONDITION PRIOR TO OCCUPANCY AND OPERATIONS
- III. CONDITIONS FOR OPERATIONS
- IV. FUTURE CONDITIONS

Planning Division

1. This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Board of Supervisors on February 24, 2004. Minor revisions or modifications to the project may be approved by the Planning Director if they are consistent with the intent of and in substantial conformance with this approval.
2. The CDP is valid for one year, from the date of this approval. If all applicable building permits have not been issued by that date, this permit shall expire. Any request to extend the length of this permit must be received in writing with payment of all applicable fees no later than 30 days prior to expiration of the permit. (III)

3. The use permit shall be valid for five years from the date of this approval. The applicant shall apply for renewal of the use permit and pay applicable renewal fees at least six months prior to the permit's expiration. The Planning Commission shall be the approving authority for the use permit renewal. The use permit shall undergo an administrative review, with the payment of applicable fees, in two years, starting from the date of this approval. The administrative review shall include a review of environmental conditions then existing at the camp to determine any changes that lead staff to conclusions different from those reached in the certified initial study and negative declaration. If such environmental changes are noted, staff shall report them to the Planning Commission for evaluation and direction. (III)
4. This use permit allows the Pescadero Conservation Alliance to operate a field research station at the existing Gazos Mountain Camp facility. At all times, the applicant must comply with the conditions of this approval. This use permit allows use of the camp only for scientific and environmental research, educational programs, and environmental preservation and restoration activities. Any use of this property by other organizations or individuals is subject to the same conditions under this use permit, unless otherwise approved by the Planning Division. Any use or change in use not listed in this permit will require approval by the Planning Division and any appropriate permits as required by law. (III)
5. The camp may be used for day use and overnight programs. No more than 63 daytime users are permitted at the facility at any one moment in time. This includes daytime and overnight program participants, students, teachers, researchers and staff that may accompany a group using the facility. Overnight programs may accommodate a maximum of 24 overnight guests, depending on the cabin accommodations and use of private bathrooms. The PCA shall adhere to the following chart when determining the maximum number of overnight guests permitted: (III)

Guests with Private Baths	Guests Using Common Baths	Total Number of Guests
0	24	24
1	23	24
2	22	24
3	21	24
4	19	23
5	17	22

	6	16	22	
	8	13	21	
	10	10	20	
	12	7	19	
	14	4	18	
	16	0	16	

6. During the marbled murrelet nesting season, from March 15 to September 15, school or other large group activities (more than 24 people) shall limit their use of the camp to the daytime hours of 9:30 am to 2:30 pm.
7. Any complaints regarding non-compliance with these conditions of approval, received by the Planning Division, shall be conveyed to the applicant immediately and remedied as soon as possible to the satisfaction of the Planning Division. If the applicant should receive any complaints directly, it shall be the responsibility of the applicant to notify the Planning Division that a complaint has been received and the applicant shall immediately rectify the situation causing concern. It shall be the responsibility of Planning Division staff to keep a record of all complaints received in the Division's computer system, under the applicable case number, for review during the scheduled administrative review and subsequent renewals for the project. (III)
8. Any changes to the proposed use or intensity of use of the camp, including construction of new structures, that cannot otherwise be approved by the Planning Director will require a use permit amendment, a CDP, and possibly a timberland preserve zone permit. If a timberland preserve zone permit is required, the applicant will also be required to submit a timberland management plan in accordance with Section 6976 of the County Zoning Regulations. (IV)
9. Prior to application for a use permit renewal, five years from the date of this approval, the applicant shall develop a master plan for the field research station that will address proposed habitat restoration and maintenance plans (including the pond), expansion plans, and relocation of the existing access, including a removal/revegetation plan for the old road access. This shall be a comprehensive plan, including both short-term (1-5 years) and long-term (6 or more years) projects and goals. This plan shall be prepared in conjunction with



California Department of Fish and Game, National Marine Fisheries and any other interested agencies to ensure sensitive habitats and endangered species are protected. This plan shall be submitted to the Planning Division at the time of application for a use permit renewal and shall be reviewed by the Planning Commission at the public hearing for the renewal. (IV)

10. The applicant shall apply for and be issued building permits for: (1) conversion of one bathroom to a wet lab, (2) conversion of one cabin to a bathroom, (3) kitchen improvements to the lodge kitchen, and (4) any necessary repairs to the staff cabin. If the applicant should need to complete any other repairs or remodels, the applicant should contact the Building Inspection Section to determine if any additional building permits are required. Also, the applicant shall ensure that all work done by the previous owners, without permits, has been demolished or legalized with the appropriate building permits through the Building Inspection Section. (I)
11. This permit allows for the removal of three trees. (II)
12. Prior to issuance of any building permits, the applicant shall repair the filter screen on the pond to the satisfaction of the California Department of Fish and Game. The applicant shall submit proof that the screen has been repaired to the Planning Division for review, such as a photograph or a letter from Fish and Game staff stating they are satisfied this condition has been met. (I)
13. Prior to the issuance of any building permits, the applicant shall submit to the Planning Division for review and approval a Stormwater Management Plan, which shows how the transport and discharge of pollutants and soil sediment erosion from the project site will be minimized. The goal is to prevent soil sediment and other pollutants from entering local drainage systems and water bodies, and protect all exposed earth surfaces from erosive forces. Said plans shall clearly delineate the types of measures to be used, the location of where the measures will be placed as well as a sectional drawing showing how the measures shall be installed. All erosion control devices shall be installed on-site, prior to any grading activities on site. Said plan shall adhere to the San Mateo Countywide Stormwater Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:
  - a. Stabilizing all denuded areas and maintaining erosion control measures continuously between October 15 and April 15.

- b. Removing spoils promptly, and avoiding stockpiling of fill materials when rain is forecast. If rain threatens, stockpiled soils and other materials shall be covered with a tarp or other waterproof material.
- c. Storing, handling, and disposing of construction materials and wastes so as to avoid their entry to a local storm drain system or water body.
- d. Avoiding cleaning, fueling or maintaining vehicles on-site, except in an area designated to contain and treat runoff.

The approved erosion control and stormwater control plans shall be implemented prior to the issuance of a building permit. The consulting civil engineer shall confirm that erosion control measures are in place and shall monitor them in the event of a storm. (I)

- 14. The applicant shall submit a plan for employment of Best Management Practices (BMP) to control sediment and erosion during the construction process and over the term of this permit. Said plan shall include all applicable practices located in the San Mateo County Stormwater Pollution Prevention Program (STOPPP) brochures for earth moving activities, roadwork and paving, heavy equipment operation, landscaping, and fresh concrete or mortar application. Said plan shall be submitted to the Planning Director for review and approval, prior to the issuance of a building permit. (I and III)
- 15. The applicant shall submit to the Planning Division for review and approval a permanent stormwater control plan, showing how, after construction, water flow will be diverted and filtered to prevent flooding and over-saturation of soils with water. (I and III)
- 16. Prior to occupancy of the camp the applicant shall develop a plan for draining the pond. This plan shall be prepared in conjunction with and approved by relevant State and Federal agencies prior to beginning any proposed pond restoration work. The applicant shall submit a copy of the pond drainage plan accompanied by certification of applicable agency approvals to the Planning Division for review. (I and II)
- 17. The Gazos Mountain Camp pond and surrounding vegetation within 20 feet of the water's edge and the area adjacent to the pond identified as the "Lower Meadow" shall be off limits to park visitors by construction of a perimeter fence. The fence shall be installed prior to opening of camp operations and shall be constructed of sufficiently coarse mesh to allow frogs to pass through but prevent visitor access to the pond. Explanatory signs would facilitate visitor cooperation. Construction of any trails within 20 feet of the water's edge or access trails to the pond is prohibited. (II)

18. Prior to completion of well, any existing surface water diversions from the creek occurring from April 1 to December 1 shall be phased out. The need for a water source shall be satisfied from well pumping that is sufficiently deep or distant from the creek so as not to reduce stream flow during these months. A minimum stream flow shall be established for the remainder of the year, below which no diversion may occur. No dam will be constructed to allow surface diversion. (II)
19. Prior to beginning of camp operations, the applicant shall develop a water monitoring program. This monitoring program shall be developed to track any changes in creek flows, water quality of the creek and water usage at the camp. The plan shall be a 5-year monitoring plan for the purposes of determining any potential impacts to Gazos Creek resulting either from the well or leachfield used by the camp facility. The applicant shall develop an appropriate monitoring plan, in conjunction with the California Department of Fish and Game and National Marine Fisheries Service. This plan shall be submitted to the Planning Division for review and approval prior to implementation. Additionally, the applicant shall be responsible for ensuring that all monitoring reports are submitted to the Planning Division and other interested agencies in a timely fashion. This condition will be reviewed at the time of the use permit renewal in five years to determine if further monitoring is required. (II)
20. The applicant shall maintain a healthy, ecologically functioning riparian (streamside) corridor that extends horizontally out from each stream bank a distance that includes the 100-year floodplain or 100 feet, whichever is the greatest, as detailed in the May 1999 report by Don Alley. No new developments or improvements shall be permitted in this riparian corridor. Standing or downed trees within the corridor shall not be removed. Retain riparian trees where they fall, cutting them only when they jeopardize or interfere with existing facilities and roads. Woody debris in the stream channel shall not be removed without consultation and approval from a fishery biologist with experience working in small, central California coast salmonid streams and the California Department of Fish and Game. Additionally, the Planning Division shall be contacted prior to removal of any debris, and additional permits may be required by the Division. (III)
21. The County Planning Division and U.S. Fish and Wildlife Service shall be consulted on measures to protect frogs from increased traffic on any portion of the road within 300 feet of the pond prior to start of operations. No new roads shall be constructed within 100 feet of the stream bank (bank full flow margin); all new road and trail construction shall require issuance of applicable permits from the San Mateo County Planning and Building Division and shall require adequate erosion control measures are installed as prescribed by a

certified erosion control specialist. When road maintenance within 50 feet of the Creek or repair of road or trail crossings of the creek is required, the immediate area of the work shall be surveyed for California red-legged frog. If this species is detected, the U.S. Fish and Wildlife Service shall be consulted. The Service may require that these frogs be captured and temporarily removed from the habitat until the work is completed. (III)

22. No fishing is allowed in Gazos Creek, its tributaries or the Mountain Camp pond. The applicant is responsible for informing its visitors of the no fishing ban. (III)
23. No pets are allowed on the property. (III)
24. The applicant shall remove non-native fishes from the Gazos Mountain Camp pond upon approval by County Planning Division, California Department of Fish and Game, NOAA Fisheries, and the U.S. Fish and Wildlife Service, and prior to the start of operations. (III)
25. A bullfrog management plan shall be developed in consultation with The County Planning Division, California Department of Fish and Game, NOAA Fisheries, and the U.S. Fish and Wildlife Service. If bullfrogs appear in the pond, the plan shall be implemented prior to start of operations. (III)
26. Swimming in the stream is not permitted. Wading is limited to authorized scientific projects. (III)
27. No logging or tree cutting other than hazardous tree removal is allowed. Removal of hazardous trees greater than 32 inches d.b.h. is not permitted unless approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Game. (III)
28. No production of protracted noises greater than the ambient level in the occupied marbled murrelet stand during the breeding season is allowed. Specifically prohibited are firearm discharges and fireworks displays. All noisy construction or demolition work shall only be allowed to occur during the non-breeding season. (III)
29. Tightly sealed garbage containers are required within 25 feet of every picnic table to encourage proper garbage disposal by camp visitors. Picnic sites shall not be located in the buffer zone of any stream, pond, wetland, or other sensitive habitat as defined by the County's LCP policies. (III)
30. The use of an amplified P.A. system anywhere within the camp facility is prohibited. (III)

31. The applicant shall allow the California Department of Fish and Game murrelet monitoring program to continue and will not interfere with its operation. (III)
32. The marbled murrelet occupied stand shall be closed to all visitor use during the breeding season and the area should be kept in a completely natural, undeveloped state with no construction of any type. No trails, roads, or utility lines should be constructed within it. (III)
33. The meadow shall be a day use area only with no picnicking. To avoid having people present when murrelets are flying over the meadow/playfield, it will be open to limited public uses only from 8:30 a.m. to 5:00 p.m. during the murrelet breeding season. Use will be restricted to passive forms of recreation that do not create excessive noise. (III)
34. All school-sponsored groups shall be required to arrive by school bus or carpool. All other program participants shall be encouraged by the applicant to carpool, whenever possible. (III)
35. No more than 40 visitor vehicles (excluding only resident staff) shall be allowed on the camp property at one time. All designated parking areas shall be clearly marked, and all parking shall occur in designated parking areas. No parking by field research station employees, researchers, volunteers, or program participants shall be allowed outside of PCA's leased area or on Gazos Creek Road. (III)
36. The applicant shall remove all stored debris, supplies and materials from the "asphalt pad" area (formerly a basketball court) located near Gazos Creek prior to the issuance of any new building, plumbing, mechanical or electrical permits. The applicant shall also indicate either how and where the materials are to be disposed of, or to what new location on the subject property they are to be relocated, for the review and approval of the Planning Director. (I)
37. Any new utilities required as part of this use permit shall be installed underground from the closest existing utility pole. No new poles shall be installed. (II)
38. Any additional development not reviewed and approved as part of this permitting and public hearing process, e.g. road access widening, road turnouts, bridge replacement, if required as conditioned, shall require a separate Planning permit and process prior to installation and construction. (IV)

39. The Pescadero Conservation Alliance shall cooperate with California State Parks in any initiative to remove lead contamination from their leased area.
40. Prior to occupancy of the camp, the applicant shall remove the remaining basketball court.
41. The applicant shall submit to the Planning Division a plan to provide amphibian/reptile passages from the pond area, under the existing road providing access to the PCA Field Research Station from Gazos Creek Road. This plan shall be approved by the Planning Division and installed prior to occupancy of the camp.

Environmental Health Division

42. The applicant shall obtain a well permit for the construction of the water well at least 30 days prior to occupancy of the camp. Subject well shall meet quality and quantity standards. (II)
43. Prior to issuance of the building permit, the applicant shall submit detailed kitchen plans for review and approval. (I)
44. The applicant shall submit the health review fee of \$191.00. (I)
45. The applicant shall submit a water test of the existing septic system. (I)
46. The applicant shall submit a revised site plan to include the location of the septic drainfields. (I)
47. Prior to issuance of any building permits or environmental health permits, the applicant shall provide to the Department of Environmental Health an inventory of all reagents proposed for storage in the wetlab that shall be updated as changes occur. (I)
48. The sink in the wetlab shall not drain to the septic system. The applicant shall show on the proposed building plans for the wetlab, a holding tank that receives all effluent from the wetlab. The applicant shall also provide the Department of Environmental Health and the Planning Division a waste removal plan outlining how and at what interval the holding tank will be emptied. (II and III)

California Department of Forestry

49. The applicant shall install a minimum 10,000-gallon water storage tank on the property for

purposes of fire protection. The applicant shall work with the Fire Marshal to determine the appropriate location and size of the water storage tank. (II)

50. Prior to commencement of operations at the Gazos Mountain Camp, the applicant shall comply with the following conditions of approval:
  - a. San Mateo County Fire Department shall establish a fire flow for this camp based on size and number of structures on the plan. A fire flow must be available as specified by additional project conditions to the project site.
  - b. Installation of an automatic fire sprinkler system is required in a structure when the remodel or addition results in the structure exceeding 50% in valuation and the resulting structure is over 1,000 square feet.
  - c. An approved automatic fire extinguishing system shall be installed for the protection of commercial-type cooking equipment and associated hood and duct systems as outlined in Section 1006 of the Uniform Fire Code. At the building permit phase, the applicant shall submit plans for required hood, duct, and commercial cooking operations to the San Mateo County Building Inspection Section for review and approval by the San Mateo County Fire Department.
  - d. Portable fire extinguishers with a minimum rating of 2A-10BC shall be required to be placed throughout the project. A site visit with County Fire and Gazos Mountain Camp staff will determine placement.
  - e. Prior to the issuance of a building permit, a site plan showing all required components of the water system shall be submitted with the building plans to the San Mateo County Building Inspection Section for review and approval by the San Mateo County Fire Department. The applicant shall show all components of the fire protection water system including: tank type, size, location, elevation, water source, required pumps (with specifications), electrical service, hydrant location(s), and a general piping layout with pipe type, size, fittings and valves indicated. The approved plan shall be installed and inspected by the Building Inspection Section and County Fire Department.
  - f. Prior to issuance of a building permit, and based on the building plans submitted to the San Mateo County Building Inspection Section, the County Fire Department will determine the minimum gallons of fire protection water that will be required. Domestic water storage is in addition to the fire requirement. Plans showing the



tank(s) type, size, location and elevation are to be submitted to the San Mateo County Fire Department for review and approval.

- g. The water storage tank(s) shall be located to provide gravity flow to a standpipe/hydrant, or an approved pump/pressure system shall be provided to produce a minimum of 20 pounds per square inch (psi) residual pressure. At the building permit phase, plans and specifications shall be submitted to the San Mateo County Building Inspection Section for review and approval by the San Mateo County Fire Department.
- h. An iron standpipe/hydrant with at least one 2-1/2" National Hose Thread outlet is required. The valve shall be mounted not less than two feet above ground level and within 5 feet of the main access road or driveway, and not less than 50 feet nor more than 150 feet from any portion of any building. A site visit by County Fire prior to the building permit phase is required to determine the most suitable fire hydrant locations.
- i. Smoke detectors are required to be installed in accordance with Section 310.9 of the Uniform Building Code. This includes the requirement for hard-wired, interconnected detectors equipped with battery backup and placement in each sleeping room in addition to the corridors and on each level of all habitable structures.
- j. The camp shall have a street address clearly posted with minimum 4-inch letters having good contrast against their background. All out buildings and cabins shall be clearly identified and numbered for emergency response.
- k. The applicant is responsible for general fire safety and includes at a minimum:
  - (1) Any chimney or woodstove outlet shall have installed onto the opening thereof an approved, (galvanized), spark arrestor of a mesh with an opening no larger than 1/2 inch in size, or an approved spark arresting device.
  - (2) Maintain around and adjacent to such buildings or structures a fuelbreak/firebreak made by removing and cleaning away flammable vegetation for a distance of not less than 30 feet and up to 100 feet around the perimeter of all structures or to the property line, if the property line is less than 30 feet from any structure. This is not a requirement or an authorization for the removal of live trees. Remove flammable portion of any tree that extends within 10 feet of

the outlet of any chimney or stovepipe, or within 5 feet of any portion of any building or structures.

- (3) Remove dead or dying portion of any tree that extends over the roofline of any structure. A site visit by County Fire is required to assist in determining the amount of vegetation management necessary for fire safety.

- l. Access roads shall conform to the California Fire Code and standards of the San Mateo County Fire Department. Existing roads will be assessed by County Fire to determine suitability for fire department apparatus. The assessment will include, width, grade, centerline turning radius, base materials and clearance, both overhead and to the side(s). Approved turnouts may be required for existing roads that are less than 20 feet in width. The location of turnouts shall be approved by County Fire. A site visit by County Fire is required to determine compliance with this condition.
- m. At time of application for a building permit, a registered civil or structural engineer shall certify the rated capacity of the main access bridge into the camp. This bridge must be rated to support a minimum dynamic load of 25 tons. The maximum rated bridge weight shall be posted at each end of the bridge; the lettering shall be a minimum of 4 inches in height with a minimum stroke of 1/2 inch. Letters should be white in color with a dark background for good contrast at night. Turnouts are required at each end of one-lane bridges.
- n. All dead-end roadways shall be terminated by a turnaround, or bulb of not less than 80 feet in diameter. Other provisions for the turning around of fire apparatus shall be approved by County Fire on a case-by-case basis.
- o. All propane storage tanks shall be located with respect to buildings or adjoining property lines. The placement and orientation of tanks shall be so that the ends of the tank do not point in the direction of surrounding structures. Minimum setback distances from property lines or structures will be determined by the size of tank(s) that are being installed. Less than 125 gal. - 5 Feet, 125 gal. to less than 500 gal. - 10 feet, 500 gal. to less than 2,000 gal. - 25 feet, 2,000 gal. or more - 50 feet. The minimum distance a LPG tank may be installed from a flammable liquids fuel tank is 20 feet.
- p. At time of application for a building permit, installation of a Knox Box or Knox Padlock is required on the main gate. Any locked buildings on the compound shall also require a Knox Box to allow emergency access. For a Knox Box application or

Pescadero Conservation Alliance  
February 24, 2004  
Page 16

**RECEIVED**

MAR 01 2004

CALIFORNIA  
COASTAL COMMISSION

further information, please contact County Fire at 650/573-3846.

## CALIFORNIA COASTAL COMMISSION

5 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2218  
VOICE AND TDD (415) 804-5300

CORRECTED  
COPY



# APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

## SECTION I. Appellant(s)

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

Committee for Green Foothills c/o Lennie Roberts

339 La Cuesta

Portola Valley, CA 94028 (650) 854-0449

Zip

Area Code

Phone No.

## SECTION II. Decision Being Appealed

1. Name of local/port government:

San Mateo County

2. Brief description of development being appealed:

CDP and Use Permit for a year-round field

research station with associated new infrastructure  
at the existing Gazos Mountain Camp.

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

5601 Gazos Creek Road, Pescadero

APN 089-180-130

4. Description of decision being appealed:

a. Approval; no special conditions: \_\_\_\_\_

b. Approval with special condition: X

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:

A2-SMC-D4-005

DATE FILED:

March 15, 2004

DISTRICT:

North Central Coast Dist.

EXHIBIT NO. 7

APPLICATION NO.

A-2-SMC-04-005

PESCADERO CONSERVATION  
ALLIANCE (Page 1 of 62)

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

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

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

6. Date of local government's decision: February 29, 2004

7. Local government's file number (if any): PLN 2002 - 00606

**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:

Pescadero Conservation Alliance  
P.O. Box 873  
Pescadero, CA 94060

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

- (1) See - County File
- (2)
- (3)
- (4)

**SECTION IV. Reasons Supporting This Appeal**

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

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

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

( Please see attached pages )

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

**SECTION V. Certification**

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

Lennin T. Roberts  
Signature of Appellant(s) or Authorized Agent

Date: March 12, 2004

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

**Section VI. Agent Authorization**

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

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

CORRECTED COPY

**APPEAL BY COMMITTEE FOR GREEN FOOTHILLS  
 PLN 2002-00606, 5601 Gazos Creek Road, Pescadero, San Mateo County  
 PESCADERO CONSERVATION ALLIANCE, APPLICANT  
 CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, OWNER**

**BASIS FOR APPEAL**

We are fully supportive of the purpose, mission and programs of the Pescadero Conservation Alliance (PCA). We do not question the need for the PCA's research, education, and restoration programs on the San Mateo County coastside, and the benefits they provide. However, these programs do not need to be based at this remote site, in the heart of a State Park unit that was purchased for protection of its public trust resources, and where basic services such as telephone and electricity are not currently available and will potentially need to be extended to serve this proposed year-round use.

The project, as approved by San Mateo County, is inconsistent with LCP and Coastal Act Policies regarding allowable uses in the TPZ-CZ zoning district, limitations on Density of Development/Intensity of Use, protection of Environmentally Sensitive Habitat Areas (ESHA), and avoidance of Hazards. The full extent of the project has not been evaluated. The project is potentially growth-inducing, as it will likely require the extension of both telephone and electrical service, which will facilitate the extension of these services to even more remote lands behind locked gates up Gazos Creek, and the South Fork (Bear Creek). There are less environmentally damaging alternative locations for the PCA's programs than this site.

Although this site was historically used for a summer youth camp, the project would entail renovation and upgrading of cabins, lodge, and other buildings including replacement of all electrical systems, including energy source, heating systems, re-roofing and renovation of buildings, repair-restore kitchen and bathroom facilities, a new groundwater well, storage tank(s), and associated water system, (see rehabilitation requirements in Exhibit 1 of Lease with State Parks), possible new/upgraded septic system, extension of telephone lines, possible extension of electrical service lines, possible widening of access road and replacement of bridge, potential turnouts on Gazos Creek Road (as conditions of approval or potential future projects). The project, as approved, also would extend the season of use to year-round whereas the historic use was for the summer months only.

**THE PROPOSED PROJECT HAS NOT BEEN ANALYZED FOR CONSISTENCY WITH THE LAND USE PLAN DESIGNATION AS TIMBER PRODUCTION AND TIMBERLAND PRESERVE ZONE-COASTAL ZONE (TPZ-CZ) ZONING.** The purpose of the TPZ Zoning District is to protect commercially productive timberlands. This property was included within the TPZ because of its extensive stands of redwoods and Douglas fir, including significant stands of old-growth redwoods. Given the major investment of private and public funds to acquire and protect these lands for their ecological and natural resource values, as a State Park, the purpose and use of the property has changed. There will be no commercial harvesting of timber, now or in the future. The proposed use is fundamentally incompatible with the definition of "compatible use" in the TPZ-CZ, which is defined as, "any use which does not significantly detract from the use of the property for or inhibit growing and harvesting timber." We believe an LCP Amendment to re-designate the subject lands as Public Recreation would be necessary in order to approve this proposed use and the development necessary to accommodate it.



**INCONSISTENCY WITH LCP POLICY 1.8.** The density limitations for non-agricultural, non-residential land uses in the rural coastal zone are determined by LCP Policy 1.8 and Table 5. These limitations are to ensure that non-agricultural uses do not individually or cumulatively adversely affect coastal resources. The proposal includes three categories of use: (1) Day use of up to 63 people (staff and visitors) (2) overnight accommodations in cabins for between 16 and 24 people, and (3) up to four resident staff.

The limits on numbers of users allowable in Table 5 are not additive; i.e., if 63 people are on site during the day, those 63 people have used up the allowable density limits for that day. Condition 5 is unclear as to whether it would allow BOTH a maximum of 63 people per day AND an additional 16-23 people to stay overnight.

Additionally, the proposed allowance of up to four full time resident staff (per page 11 of the February 9, 2004 Staff Report) is inconsistent with Policy 1.8 (3) (a) which only allows "a residential dwelling unit associated with a visitor-serving facility that is occupied by the facility owner or operator." The project's proposed allowance of four full time resident staff on site is inconsistent with the above-cited Policy 1.8 (3) (a). The density bonus provision inappropriately being cited was created specifically for such uses as a bed and breakfast facility, or a small country inn. At the PCA facility, it is proposed that in addition to an on-site manager, there will be up to three additional resident staff associated with the field research program, the laboratory facility, etc. For each resident staff, as well as the on-site manager, members of that person's family could presumably be accommodated as well, which would mean between 12 and 16 people residing on-site, assuming four people per family. While one residential dwelling unit for an on-site manager/operator would be allowable under LCP Policy 1.8 (3) (a), dwelling units for the additional three resident staff would not.

Notwithstanding the lack of consistency with the LCP's density limitations enumerated above, the dedication of this State Park unit to exclusive use by a single, albeit well-intentioned, organization without provision for general public access, raises issues of inconsistency with the LCP's density bonus for visitor-serving, commercial recreation, and public recreation uses. Policy 1.8 a. (3). limits the allowable density bonus to "visitor-serving, commercial recreation, and public recreation" uses as defined in LCP Policies 11.1, 11.2, and 11.3. LCP Policies 11.1 and 11.2 require facilities to be "exclusively available to the general public". LCP Policy 11.3 allows the bonus for public recreation facilities such as public beaches, parks, recreation areas, natural preserves, wild areas, and trails, etc. The County's approval of the project did not include any requirement as a condition of approval for general public use of the developed area. The facility lies beyond a locked gate and "No Trespassing" signs; the general public is thus excluded from access to this State Park unit.

**INCONSISTENCY WITH HAZARDS POLICIES 9.4, 9.5 AND 9.6.** LCP Hazards Policies 9.4, 9.5, and 9.6 require residential development in high risk areas to be reviewed and conditioned to insure that building materials, access, brush clearings, and water storage capacity are adequate for fire flow and fire protection purposes.

The proposed project is located at the end of a 5.6 mile long substandard county road, Gazos Creek Road. There is only one ingress/egress route to the camp facilities. The on-site access road is also substandard. There is a single lane bridge that must be crossed to access the developed portion of the site. The project, as proposed, will allow 4 resident staff, and their families, plus up to 63 day users and up to 24 people overnight in small cabins located in the middle of a redwood forest. The property and surrounding forest lands are designated as a "High Fire Risk" Area. In the event of an emergency such as wildfire, earthquake, medical emergency, etc., fire and other emergency equipment

would have a major challenge to access the property and to pass vehicles that would be attempting to leave the Mountain Camp area. Condition 46.1. states that prior to commencement of operations, County Fire will assess existing roads for suitability for fire equipment access, and that approved turnouts may be required for existing roads that are less than 20 feet in width. Most, if not all, of Gazos Creek Road and the on-site access road do not meet this standard. The requirement to construct new turnouts for adequate emergency and fire access along the length of Gazos Creek Road, could have impacts to Gazos Creek and its riparian corridor.

Several of the conditions of approval to reduce risk of hazards could create impacts which are not adequately described or evaluated, and are left to future decisions by county staff or other agencies.

One example, of unknown impacts is CDF's requirement of maintaining a fuelbreak or firebreak of a minimum of 30 feet and potentially up to 100 feet around the perimeter of all structures could result in the removal of important environmentally sensitive habitat areas (ESHA). New water storage requirements for fire protection of a minimum of 10,000 gallons as specified in Condition 49 appear to be contradicted by Condition 50. There is no analysis of the location of the new storage tanks or evaluation of the impacts of construction of new distribution/supply lines. The minimum of 10,000 gallons specified in Condition 49 appears to be inadequate for protection of so many highly flammable wooden structures in the middle of a redwood forest.

A second example of unquantified impacts of permit conditions is Condition 38, which leaves to the future the consideration of impacts from road access widening, road turnouts, bridge replacement, etc. and states that a separate Planning permit and process shall be required. To defer until the future some components of the project would impermissibly segment consideration of its impacts.

**INCONSISTENCY WITH LCP AND COASTAL ACT SENSITIVE HABITAT POLICIES PROTECTING ENVIRONMENTALLY SENSITIVE HABITAT AREAS.** The LCP Sensitive Habitats Component, and specifically Policies 7.1, 7.2, 7.3, and 7.5 require the protection of environmentally sensitive habitat areas, and require as a condition of approval the restoration of damaged habitats as well. This project site is located in the heart of the most pristine and environmentally sensitive coastal watershed in San Mateo County. There are at least four federally and/or state protected species that are well documented on the site (steelhead trout, coho salmon, marbled murrelet, and California red-legged frog). Historically and as recently as 1998, California red-legged frogs (CRLF) were found on-site. As soon as the removal of exotic predatory fish in the pond is accomplished, the frogs would presumably become re-established. The pond is potential habitat for the San Francisco garter snake (SFGS) as well, as documented in the January 13, 2004 comment letter by CA Fish and Game. We do not believe the conditions of approval adequately ensure protection of CRLFs or amphibians such as newts through establishment of buffer zones, protective fencing, or other specific measures to prevent road mortality or other incidental harm to these species. Condition 21 requires consultation on measures to protect frogs from increased traffic on the access road with the County Planning Division and US Fish and Wildlife Service, but not CA Fish and Game or the property owner, CA State Parks.

**USE OF THE MOUNTAIN CAMP SITE THROUGHOUT THE RAINY WINTER SEASON WILL EXACERBATE SEDIMENTATION OF GAZOS CREEK AND COULD HAVE DELETERIOUS EFFECTS ON AQUATIC SPECIES.** Gazos Creek Road is a narrow, substandard county road. The publicly maintained section of the

road ends at the Mountain Camp. The northern side of the road has areas of high landslide susceptibility, as identified in the County's Geologic Hazards Map, and the road has substandard and difficult to maintain drainage facilities. On the creek side, severe bank erosion has occurred in several places, undermining the road and necessitating the installation of a flatbed railroad-car type bridge in one location. When large vehicles meet, in many areas they must go off the pavement to pass. Allowing winter use of this facility will increase the disturbance to the shoulders of the road, and will potentially increase sedimentation of the creek, with associated impacts to the salmonids and other aquatic species that are present in the creek and its riparian areas. Foot traffic at the Mountain Camp during the wet season could also have similar impacts. Winter operations will impact amphibian species, as documented in the letter dated February 24, 2004 from the Center for Biological Diversity.

**CLEANUP OF THE SITE AS REQUIRED BY THE LEASE AGREEMENT WITH STATE PARKS, THE CLEAN WATER ACT, RCRA, AND THE LCP HAVE NOT BEEN MET. THE PROJECT DOES NOT COMPLY WITH LCP POLICY 7.5. B. REGARDING RESTORATION OF DAMAGED HABITATS.**

Exhibit I of the First Addendum to the Lease Agreement dated May 22, 2000, states in relevant part: "A. Recreational Areas: Remove all tennis and basketball courts, rifle range, and any 'playing field type' areas and appropriately dispose of material." "B. Cemented Areas: Remove and dispose of cement from the north end of the pond." These conditions of the lease have not been complied with.

The unremediated rifle range on the site poses a significant ongoing threat to groups of children and adults on site and to the stream, as the area is littered with spent shell casings and bullet fragments. See letter from the Center for Biological Diversity, dated February 24, 2004. LCP Policy 7.5 a. requires an applicant to demonstrate that there will be no significant impact on sensitive habitats, and if there is an impact, to mitigate the impact, and monitor the effectiveness of the mitigation measures. Policy 7.5 b. requires, where applicable, as a condition of permit approval, the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.

The Planning Administrator in this case made an interesting statement to the Planning Commission in which he acknowledged the problem of the rifle range and stated that he believed it was State Parks problem, and further stated, "I don't have any problem with it getting cleaned up, but one of the things in my business is, you know, it seems often that everyone would like us to be responsible for every problem in the world, there are some that are not our responsibility, and I don't see that that one ties into this simply because, when Chuck Taylor ran this there was a rifle range like every Boy Scout ...camp in the country has....but I don't see what it has to do with the current permit unless its something that they are actively pursuing now." The presence of both steelhead trout and coho salmon in Gazos Creek make cleanup of the old rifle range contamination on this property a high priority. Indeed, two of the three year "classes" of Coho in Gazos Creek have been extirpated, and the third year "class" has very few individuals remaining. It is entirely possible that lead poisoning leaching from bullets embedded in the creek bank, target log, area, and riparian areas could be having an impact on the federally protected Coho and steelhead. Condition 39, which was added to the CDP by the Board of Supervisors, appears to shift the responsibility for cleanup from the Pescadero Conservation Alliance to State Parks, and merely requires the PCA to "cooperate" in the cleanup rather than develop a plan and implement it. Lack of clear responsibility in the Coastal Development Permit could lead to delay or inaction on this cleanup, given the Planning Administrator's statement.

**OBLIGATIONS FOR HABITAT PROTECTION/ RESTORATION AS REQUIRED BY LCP POLICY 7.5 AND THE LEASE AGREEMENT WITH STATE PARKS HAVE NOT BEEN MET.** Paragraph 9 of the First Addendum to the Lease states in relevant part: "9. Habitat Protection. LESSEE understands and acknowledges that the Leased Premises comprise an ecologically sensitive area. Without limitation to its other obligations, LESSEE agrees that it shall comply in all respects with the recommendations set forth in the Reports by Steve Singer, D.W. Alley and Associates, and John Bulger, copies of which are attached as Exhibit II."

The referenced May, 1999 Report by D.W. Alley and Associates, Item 5, states in relevant part: "Remove non-native fishes from the Gazos Mountain Camp pond as soon as possible. This may be done by draining the pond during the post metamorphosis period for California red-legged frog." The Alley report goes on to state that Fisheries Biologist Dr. Jerry Smith "has also captured green sunfish from Gazos Creek that undoubtedly escaped from the pond. These are voracious, exotic predators that probably consume most, if not all, of the California red-legged frog tadpoles that are produced in the pond. They will also prey upon salmonids in the stream when they escape from the pond during high flow years."

The report goes on to state that a survey by Bulger, Seymour and Westphal dip-netted the pond on June 25, 1998 and found no CRLF tadpoles or any other amphibian tadpoles in the pond, but there were abundant small sunfish. A night survey by Bulger, Seymour and Westphal provided sightings of 13 CRLFs, 9 of which were captured. None were judged of sufficient size and age to be reproductively active.

PCA attempted to drain the pond in late summer of 2000, but the effort was stopped by CA Fish and Game due to several concerns. PCA has not yet developed a plan that has been approved by the responsible agencies, including CA State Parks. In the meantime, the lack of adequate precautions over the past three winters has undoubtedly allowed the predatory fish to continue to escape into Gazos Creek. At the time CA Fish and Game made a field trip to the site, as described in their letter of January 13, 2004, the required screening at the outlet of the pond to prevent escape of sunfish and largemouth bass was broken. CA Fish and Game's letter makes the assumption that the screen was replaced. When the site was visited by Brendan Cummings of the Center for Biological Diversity and a local resident, Jim Rourke, later in January, Mr. Rourke observed that the screen was in place, but water from the pond was flowing under and around the screen. Thus even this relatively simple protective measure is not being adequately carried out. The presence of exotic and voracious predatory species (sunfish, large mouth bass) in Gazos Creek as the result of inaction to remove them from the pond, and inadequate screening at the outlet pose an immediate and ongoing threat to the steelhead trout and coho salmon. Condition 12 requires the applicant to repair the filter screen, but there is no requirement for ongoing maintenance of this screen, or to specifically ensure that the predatory fish do not escape.

**THE PROJECT DESCRIPTION IS INCOMPLETE. CUMULATIVE IMPACTS FROM ANCILLARY PROJECTS ASSOCIATED WITH THIS PROPOSAL HAVE NOT BEEN EVALUATED.** A Negative Declaration dated February 25, 2004 has been circulated for a 4.5 mile extension of telephone service along Gazos Creek Road (3.5 miles) and the southern end of Cloverdale Road (1 mile) to serve this project. There are no other potential customers along the 4.5 miles of this new line, since nearly all the adjacent properties are either owned by Peninsula Open Space Trust or State Parks; the one privately held property is Money's Mushrooms, which already has electrical and telephone service from Highway One. The documents submitted by Pacific Bell (now

SBC) in November, 2002, included the following statement on the cover page of the plans: *"This project is a line extension which will serve the Pescadero Conservation Alliance's Research Facility including their proposed computer lab and coastal mapping center."*

The consideration of the CDP for the Pescadero Conservation Alliance should include evaluation of any utility services such as telephone and electricity that are reasonably foreseen as part of the project. Beyond the limits of the telephone line extension project, to the PCA site, there are numerous developed and undeveloped parcels up Gazos Creek Road and Barranca Knolls Drive. There are additional cumulative effects of these extensions beyond the PCA site that were not evaluated in the environmental document or under the CDP for the Pescadero Conservation Alliance project, despite the fact that the county had the plans for the telephone line extension at the same time they were reviewing the PCA permit. Trenching for installation of this phone line on the subject property to connect to the service line at the end of Gazos Creek Road will also have potential impacts that haven't been analyzed as part of the project.

RECEIVED

MAR 15 2004

CALIFORNIA  
COASTAL COMMISSION

## TELECOPY COVER SHEET

DATE: March 14, 2004

TO: Chris Kern +  
Abe Doherty

FAX #: 415-909-5400

FROM: Lennie Roberts

FAX #: 650-854-8134  
PHONE # 650-854-0449 or  
650-854-5016

TOTAL NUMBER OF PAGES:  
(including cover page)

10

COMMENTS: Here is a Corrected Copy of  
our Appeal\* of the Pescadero Conservation  
Alliance project.  
Am mailing the hard copy as well.  
(did not mail the hard copy of my 3/14  
fax to you).

Lennie

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION,  
PLEASE CALL: 650-854-0449

\* on behalf of Committee for Green Footfalls



## CALIFORNIA COASTAL COMMISSION

5 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
DICE AND TDD (415) 984-3200



# APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

RECEIVED  
MAR 15 2004

SECTION I. Appellant(s)

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

JIM ROURKE

P.O. Box 222

PESCARO CALIF

(650) 879-0368

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

SAN MATEO COUNTY

2. Brief description of development being appealed:

PLN 2002-00606 PESCARO CONSERVATION  
ALLIANCE / CALIF. DEPARTMENT OF PARKS & RECREATION

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

5601 GAZOS CREEK ROAD

4. Description of decision being appealed:

a. Approval; no special conditions:

b. Approval with special condition:

Decision By San Mateo Board of Supervisors

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-2-SME-04-005

DATE FILED:

March 15, 2004

DISTRICT:

North Central Coast Dist.



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

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

a. ☐ Planning Director/Zoning Administrator

c. ☐ Planning Commission

b. ☒ ~~City Council~~/Board of Supervisors

d. ☐ Other

6. Date of local government's decision:

FEB 24, 2004

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

PLN 2002-00606

**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:

PESCARO CONSERVATION ALLIANCE (PCA) 5601 GAROS @ 6514 RD. PESCARO, CA

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

(1) ROBERT ZATKIN, 140 SPRINGDALE WAY, REDWOOD CITY, CA  
94062

(2)

(3)

(4)

**SECTION IV. Reasons Supporting This Appeal**

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

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

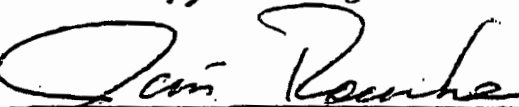
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHED "REASONS FOR APPEAL"

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

Date:

3-14-2004

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

**Section VI. Agent Authorization**

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

\_\_\_\_\_  
Signature of Appellant(s)

Date: \_\_\_\_\_

3-14-2004

## " REASONS FOR THIS APPEAL "

I HAVE LIVED IN PESCADERO FOR A VERY LONG TIME. I HAVE DONATED 5 YEARS OF MY TIME VOLUNTEERING WITH COASTAL WATERSHED COUNCIL <sup>(CWC)</sup> IN THE GAZOS CREEK WATERSHED. WHEN SEMPERVIRENS PURCHASED THE "GAZOS MOUNTAIN CAMP" PROPERTY WITH THE ASSISTANCE OF THE "APEX HOUSTON TRUSTEE COUNCIL" FUNDS IN THE AMOUNT OF \$500,000<sup>00</sup>, THE COASTAL WATERSHED COUNCIL'S VOLUNTEERS WERE VERY PLEASED THAT THE INTENTION OF SEMPERVIRENS WAS TO TRANSFER THIS PROPERTY TO CALIFORNIA DEPARTMENT OF PARKS AND RECREATION TO BE OPENED AS A PART OF BUTANO STATE PARK. (SEE MAY OF 1999 REPORT BY STEVE SINGER PAGE 1.)

LATER IT WAS LEARNED THAT A CONFIDENTIAL LEASE AGREEMENT WAS ENTERED INTO BETWEEN SEMPERVIRENS FUND AND PESCADERO CONSERVATION ALLIANCE DATED 22 MAY, 2000. (COPY ATTACHED MARKED ATTACHMENT "E") IN REVIEWING THE LEASE AGREEMENT AND ITS FIRST ADDENDUM TO THE LEASE, IT IS NOTED THAT "IN CONSIDERATION OF LESSEE'S (PCA) AGREEMENT TO

3-14-2004

PERFORM THE VARIOUS TASKS REQUIRED HEREIN,  
THERE IS NO RENT TO BE PAID BY LESSEE  
UNDER THIS LEASE. " THE VARIOUS TASKS  
REQUIRED TO BE PERFORMED IS OUTLINED IN  
EXHIBIT 1 - REHABILITATION REQUIREMENTS.

AS OUTLINED IN PARAGRAPH A, AMONG OTHER  
REQUIREMENTS IS "REMOVE, RIFLE RANGE --  
AND APPROPRIATELY DISPOSE OF MATERIAL."

THE MORE OF THE LEASE THAT YOU READ,  
THE MORE THAT YOU CAN SEE THAT THE  
REQUIREMENTS ARE NOT MET, YET, IN  
A LETTER DATED NOV 28, 2001 WRITTEN TO  
PCA BY STATE PARKS, THE WRITER STATES  
"IN THE MEETING YOU PRESENTED INFORMATION  
REGARDING THE REHABILITATION REQUIREMENTS  
AS LISTED IN EXHIBIT 1 OF THE ADDENDUM TO  
LEASE. AS YOU HAVE COMPLETED THESE REQUIREMENTS  
THE LEASE IS NOW RENEWED EFFECTIVE JUNE 1 2001  
FOR A TERM OF 5 YEARS ENDING ON MAY  
31, 2006." THE FACTS ARE THAT A  
GOOD PORTION OF THE REQUIREMENTS ARE NOT  
MET.

I CAN SAY THAT A LARGE NUMBER OF  
PEOPLE I HAVE TALKED TO AGREE WITH  
THE "ALLEGED" PURPOSE, OR STATED MISSION

3-14-2004

OF THE PCA. HOWEVER THERE ARE MANY OTHER PLACES IN THE PESCADERO AREA THAT ALREADY HAVE "OUTDOOR EDUCATION" PROGRAMS, BUILDINGS, FACILITIES AND ARE NOT BEING COMPLETELY USED, THAT PCA CAN PARTNER WITH AND NOT SIGNIFICANTLY IMPACT THE LAST REMAINING, ALMOST, PRISTINE HEAVILY WOODED AREA, THE MOUNTAIN CAMP.

EVERYONE AGREES THIS IS A WONDERFUL PLACE, BUT NOT ONE FOR A YEAR ROUND, HEAVILY USED CAMP. THIS WAS PURCHASED TO BE PRESERVED NOT EXPLOITED.

PROPER GROUNDS FOR AN APPEAL ARE AS FOLLOWS BUT ARE NOT LIMITED TO :

LCP POLICY

7.1 DEFINES THE MOUNTAIN CAMP PROPERTY

TO INCLUDE SENSITIVE HABITATS, AND THAT

LCP POLICY 7.2 INCLUDES SENSITIVE HABITAT

MAP, AND THAT 7.3 PROHIBITS LAND

USE OR DEVELOPMENT WHICH WOULD HAVE

SIGNIFICANT ADVERSE IMPACT ON SENSITIVE

HABITAT AREAS. 7.3 INCLUDES BOTH A & B.

THERE IS ALSO UNDER 7.5 A COMPONENT OF

RESTORATION AS A CONDITION OF APPROVAL. NOTE :

IN MY WORK WITH CWC I AM AWARE

OF COLTO SALMON — STEELHEAD TROUT AND

3-14-2004

THE CALIFORNIA RSN LOGGED LOG. I HAVE  
ALSO WORKED WITH SUE'S SINGLES AND I AM  
AWARE OF THE MARBLES MURDER WHICH  
LOCATES IN THIS AREA. ONLY ON CWC  
HAD A ~~PICNIC~~ PICNIC AT THIS MOUNTAIN  
CAMP. WHEN I WAS THERE SMALL CHILDREN  
CAME AND SHOWED ME WHAT THEY HAD  
FOUND WHICH WAS SHELL CASINGS (BULLET)  
AND ONE SMALL CHILD WAS ROLLING IN HER  
HANDS A COUPLE OF GREY COLORED ITEMS,  
I ASKED TO SEE THEM SHE GAVE THEM TO  
ME I SAW THAT THEY APPEARED TO BE LEAD  
BULLETS, HER HANDS WERE DARK WITH SHE HAD  
BEEN RUBBING THE LEAD BULLETS. I WASHED  
OFF THE DARK MARKS AND ASKED THAT SHE  
NOT PLAY WITH THE LEAD.

Policy 7.5 (B) RESTORATION OF DAMAGED HABITATS.  
AS MENTIONED ABOVE THE RIFLE RANGE WAS  
TO BE "CLEANED UP & MATERIALS APPROPRIATELY  
DISPOSED OF" I QUESTION WHETHER  
CLEAN UP & DISPOSED MANIFESTS ARE? WHO  
PROVIDED OVERSIGHT? FURTHER FACT THAT  
THE "LEAD LADON" LOG IS STILL AT THE  
EDGE OF THE CREEK, WHEN STATE PARKS

3-14-2004

LETTER DATED NOV 28, 2001 STATES "AS YOU HAVE COMPLETED THESE REQUIREMENTS (EXHIBIT 1) THE LEASE IS NOW RENEWED . . . ."

IN THE REPORT STEVE SINGER (1999) PAGE 3 DOCUMENTS THAT THE RIFLE RANGE EXTENDS BEYOND THE YEARS OF CITUCK NAYLOR TO THE TIME WHEN SEMPRARIUS PURCHASED THE PROPERTY. I FOUND CASINGS INDICATING THAT IN ADDITION TO .22 CAL. THERE WAS LOCATED 9mm AND WHAT LOOKS LIKE AK 47 STEEL CASINGS TO BE ON SITE. THE ABOVE INDICATES THAT THE MOUNTAIN CAMP IS INCONSISTENT WITH SENSITIVE HABITAT POLICIES.

THE ABOVE ALSO INDICATES THAT THE CLEAN UP, STATED AS HAVING BEEN DONE IN THE NOV 28, 2001 LETTER TO PCA, HAS NOT BEEN DONE TO DATE, AND IS THEREFORE NOT TRUTHFUL.

SAN MATEO COUNTY PLANNING STAFF WAS AWARE OF THIS AND THE PLANNING COMMISSION CONVERSATION IN THE PARTIAL TRANSCRIPTION ON HEARING DATE OF SEPT 10, 2003 ACKNOWLEDGED THESE FACTS BY COMMISSIONER BAUMBACHER IN HIS COMMENT. (SEE ENCLOSED EXHIBIT F)



Page 6

3-14-2004

IT SHOULD ALSO BE NOTED THAT INCREASED TRAFFIC WOULD ACCELERATE THE INCIDENTS OF ROAD KILL'S ABOVE THAT OF PRESENT. I FOUND MANY DEAD NEWTS AND REMOVED OTHERS CROSSING THE ROAD SLOWLY. THE DEAD NEWTS WERE FOUND ON GAZOS CREEK ROAD AND ON THE INTERSTATE MT CAMP ROAD.

THE APPLICANT PCA HAD NOT MET ITS OBLIGATIONS UNDER THE LEASE IT HAS SIGNED IN 2000. THE PCA HAS NOT EVEN DONE THE SIMPLE REPAIRS AS OUTLINED IN THE SINGLE REPORT AS SUPPLEMENTED BY THE DW. AUBRY REPORT - I.E. DRAINING OF THE POND ON SITE REMEMBER: THE DATES OF THE REPORTS & LEASE AGREEMENT.

I ALSO INCORPORATE BY REFERENCE COMMENTS FROM CENTER FOR BIOLOGICAL DIVERSITY DATED SEPT 24, 2003 AND COMMENTS FROM GEOLOGIST ROBERT ZATKIN IN LETTER DATED SEPT 9, 2003 TO SMC PLANNING COMMISSION.



# RECEIVED

MAR 15 2004

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE OF CALIFORNIA - THE RESOURCES AGENCY

## CALIFORNIA COASTAL COMMISSION

45 FIRMONT STREET, SUITE 200  
SAN FRANCISCO, CA 94104-2118  
VOICE AND TDD (415) 994-8550

CALIFORNIA  
COASTAL COMMISSION



### APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

#### SECTION I. Appellant(s)

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

The Center for Biological Diversity

P.O. Box 493

Idyllwild, CA

92549

( 909 )

659-6053

Zip

Area Code

Phone No.

#### SECTION II. Decision Being Appealed

1. Name of local/port government:

County of San Mateo - Board of Supervisors

2. Brief description of development being appealed:

Operation of a year-round field research station at Gazos Mountain Camp, installation of new well, improvements to existing structures

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

5601 Gazos Creek Road, Pescadero, CA 94060

4. Description of decision being appealed:

a. Approval; no special conditions:

b. Approval with special condition: Board of Supervisors' approval with 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:

42-SMC-04-005

DATE FILED:

March 15, 2004

DISTRICT:

North Central Coast District

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

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

a. ☐ Planning Director/Zoning  
Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of  
Supervisors

d. ☐ Other

6. Date of local government's decision: February 24, 2004

7. Local government's file number (if any): County File Number PLN2002-00606

**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:

John Wade - Pescadero Conservation Alliance

P.O. Box 873

Pescadero, CA 94060

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

(1) Brandon Cummings - The Center for Biological Diversity

P.O. Box 493

Idyllwild, CA 92549

(2) George Cattermole - Coastside Habitat Coalition

P.O. Box 48

San Gregorio, CA 94074

(3) Robert Zatkun

140 Springdale Way

Redwood City, CA 94062

(4) \_\_\_\_\_

**SECTION IV. Reasons Supporting This Appeal**

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





# Center for Biological Diversity

*protecting and restoring natural ecosystems and imperiled species through  
science, education, policy and environmental law*

March 15, 2004

**Appeal of the County of San Mateo's Approval of a Use Permit and Coastal Development for the Gazos Mountain Camp (PLN 2002-00606).**

## **REASONS FOR APPEAL**

The Center for Biological Diversity ("the Center") appeals the San Mateo County Board of Supervisors' decision to approve a Use Permit and Coastal Development for the Field Research Station at Gazos Mountain Camp (PLN 2002-00606). The Center has standing to pursue this appeal by virtue of having previously commented to the planning commission on the Mitigated Negative Declaration ("MND") for the project, appealed the planning commission's recommendation of approval of the project, and commented on the staff recommendation to deny the appeal contained in the February 9, 2004 memo from the County's Director of Environmental Services.

None of the concerns or comments raised in our prior letters or appeal have been adequately addressed by the Board in its approval of the project. As such, we attach and incorporate by reference into this appeal the arguments and grounds for appeal contained in our letters of September 24, 2003 and February 24, 2004.

Subsequent to the Board's approval of the project on February 24, 2004, a Negative Declaration dated February 25, 2004 was released for a proposed 4.5 mile extension of telephone service along Gazos Creek and Cloverdale Roads to serve this project. We believe the County's failure to disclose this related aspect of the project prior to approving the Use Permit on February 24, 2004 constitutes an illegal segmenting of the project in violation of the California Environmental Quality Act, Public Resources Code §§ 2100 et seq. ("CEQA").

Additionally, we are aware that the Committee for Green Foothills and the Coastside Habitat Coalition have separately appealed this project. We agree with the points raised in those appeals and join in them and incorporate by reference the arguments made therein. In particular, we believe that the significant likely and potential impacts of the project violate Section 7.3 of the San Mateo County Local Coastal Plan which prohibits any land use developments that would have significant adverse impacts on sensitive habitat areas. Given that the project is situated in the habitat of at least five federally listed threatened or endangered species, and includes areas that have been officially designated as critical habitat, we believe the property fits the definition of a "sensitive habitat area" as defined in Section 7.1. As described in detail in our letters of September 24, 2003 and February 24, 2004, the increased traffic and other impacts of the project constitute significant effects which trigger the requirement to prepare an Environmental Impact Report as well as violating Section 7.3.

For the reasons above, and those in the attached and referenced letters and appeals, we believe the Coastal Commission should grant our appeal and overturn the approval of the project.

**Tucson • Phoenix • Silver City • Idyllwild • San Diego • Berkeley • Sitka**

**Brendan Cummings, Staff Attorney  
PO Box 493 • Idyllwild, CA • 92549**

**T: (909) 659-6053 x. 301 • F: (909) 659-2484 • bcummings@biologicaldiversity.org**



# Center for Biological Diversity

*protecting and restoring natural ecosystems and imperiled species through  
science, education, policy and environmental law*

VIA FACSIMILE

February 24, 2004

Board of Supervisors  
San Mateo County  
Facsimile: 650-363-4849  
Attn: China Osborn

**RE: Comments on the Appeal of the Planning Commission's Decision to Approve a Use Permit and Coastal Development for the Gazos Mountain Camp (PLN 2002-00606).**

The Center for Biological Diversity ("the Center") submits these comments regarding the Board's hearing of our appeal of the Planning Commission's decision to approve a Use Permit and Coastal Development for the Gazos Mountain Camp (PLN 2002-00606). Due to a scheduling conflict, we will be unable to attend the February 24, 2004 Public Hearing on the Appeal.

Since the filing of our comment letter and subsequent appeal, I have had the opportunity to meet with the Project proponent, John Wade, as well as with several local residents who have voiced opposition to the Project. Additionally, on January 29, 2004 I was able to visit the site with Mr. Wade. I have also reviewed the staff recommendation to deny the appeal contained in the February 9, 2004 memo from the County's Director of Environmental Services as well as a January 13, 2004 letter from the Department of Fish and Game ("DFG") regarding the Project. In light of the information gleaned from these meetings and documents, we offer the following additional comments.

As we previously stated, we support environmental education and research activities such as those proposed to be carried out by the Pescadero Conservation Alliance at the Gazos Mountain Camp site. Ultimately, with sufficient mitigations in place, and adequate environmental review, we might also be able to actually support using the State Park lands at Gazos Mountain Camp for such purposes. However, we continue to have concerns that the Project as proposed presents the potential of significant adverse effects on sensitive wildlife species in the area. As such, we still believe that the County cannot lawfully approve the project absent the preparation of an Environmental Impact Report ("EIR") and/or the requirement of sufficient additional mitigations such that any potential impacts to sensitive resources are fully mitigated.

**A. The Need for the Preparation of an EIR for the Project**

Approving the Project as proposed through a mitigated negative declaration would be a violation of the California Environmental Quality Act, Public Resources Code §§ 2100 et seq. ("CEQA"). Where a fair argument can be made that a proposed project may have a significant impact on the environment,

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the lead agency must prepare an EIR. Stated another way, if there is any substantial evidence in the record before the agency that the project may have a significant effect on the environment, an EIR must be prepared. Pub. Res. Code § 21080; CEQA Guidelines ("Guidelines") §15070; see also Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California (1993), 6 Cal. 4<sup>th</sup> 1112,1123, Friends of "B" Street v. City of Hayward (1<sup>st</sup> Dist. 1980), 106 Cal. App. 3d 988, 1000-3, Sundstrom v. County of Mendocino. (1<sup>st</sup> Dist. 1988), 202 Cal. App. 3d 296, 304-10, San Bernardino Valley Audubon Society v. Metropolitan Water District (1999) 71 Cal. App. 4<sup>th</sup> 392, 389. Whether the lead agency finds evidence of a possible significant impact unpersuasive or whether there is also evidence in the record indicating that a significant impact to the environment will not occur is immaterial; the presence of conflicting evidence triggers the need to prepare a full EIR. See, e.g. Gentry v. City of Murrieta (4<sup>th</sup> Dist. 1995) 36 Cal. App. 4<sup>th</sup> 1359, 1400. Moreover, the Guidelines set forth circumstances in which the preparation of an EIR is mandatory, including where the project will impact a threatened, endangered, or rare species. Guidelines §15065.

As we described in our September 24, 2003 comment letter, we believe the Project will likely have significant adverse effects on several sensitive species such as the California red-legged frog, San Francisco garter snake and the marbled murrelet. The proposed mitigations do not render these impacts less than significant.

The February 9, 2004 memo recommending denial of our appeal fails to rebut any of these concerns. For example, the memo states that the San Francisco garter snake was not addressed in the Negative Declaration because it was not found on the project site and because there was "no evidence" of suitable habitat for the species. Memo at 7. This is directly contradicted by the DFG letter which, in discussing the snake and the red-legged frog, states that "suitable habitat is present for both and the property is located between documented populations of both animals. In the case of the San Francisco garter snake, documentation would be very difficult as any snakes on-site are likely to be migrating through, rather than resident." Memo at 143. The Negative Declaration's failure to address the Project's impacts on the San Francisco garter snake render any reliance on the document unlawful. Moreover, as we noted in our September 24, 2003 comment letter, impacts to the snake, as well as the frog, from the Project extend well beyond the Project site. Both of these species are documented at the lower end of the watershed. The increased road traffic on Gazos Creek Rd. is virtually certain to eventually result in some level of mortality to these species. Such impacts require the preparation of an EIR.

The potential and likely impacts of the Project on the California red-legged frog also are sufficient to trigger the preparation of an EIR. As with the San Francisco garter snake, the failure to address or mitigate for the likely effects of the increased road traffic on Gazos Creek Road on the frog renders the Negative Declaration deficient. Additionally, the status of the species on site is sufficiently uncertain to trigger the need for further analysis. As quoted above, DFG believes that suitable habitat for the species exists on site. Memo at 143. Documents included with the Negative Declaration state that the species actually occurs on site. For example, Attachment E refers to a 1998 survey finding frogs in the pond on site: "Bulger judged that the Creek did not offer conducive breeding habitat but was undoubtedly inhabited by California red-legged frog because they inhabited the adjacent pond." Memo at 136. Similarly, the Negative Declaration states "The pond on the project site is a breeding-ground for the California Red-legged Frog (Federally listed as Threatened)." Memo at 98. Finally, the Biological Impact Form states "this frog does occur at the camp pond and likely breeds there (Bulger et. al 1998)." Memo at 118. However, the Project proponent now states that surveys have shown no red-legged frogs actually occur on the Project site. Assuming this is correct, it begs the question of what happened to



them? If California red-legged frogs were documented in the pond in 1998 prior to the Pescadero Conservation Alliance's taking over the Camp, and vanished sometime thereafter, this does little to generate confidence that actual operation of the Camp by PCA will not have any significant effects on the species. The presence of non-native fish in the pond likely has a detrimental effect on the frog, but presumably these fish were in the pond in 1998 when the frog occupied the pond, so they are unlikely to be the sole cause of the species' disappearance from the Project site. Or conversely, if the fish were not in the pond in 1998, but only became established after PCA leased the property, again, this does not speak well of PCA's stewardship of the frog.

Regardless of the specifics of the California red-legged frog's recent disappearance from the pond, the fact remains that the species is still present in the watershed and under favorable conditions may recolonize the pond. Any additional traffic adjacent to the pond will therefore likely have a significant detrimental impact on the species, triggering the need for an EIR.

DFG recognized this likely impact and suggested specific mitigation measures for the species (as well as for the San Francisco garter snake). DFG stated: "The specific concern at hand is that all traffic entering the camp must traverse an existing road that passes directly beside the pond. In doing so, there is a possibility that either of the species noted could be struck and killed. We recommend that mitigation measures be adopted to reduce or eliminate this risk. In this case, our recommendation is to relocate the road so that it does not pass beside the pond." Memo at 144. The failure to incorporate this recommendation, leaves likely significant impacts to the frog unmitigated, triggering the need for an EIR.

With regard to the marbled murrelet, the mitigations proposed for the Project are insufficient to reduce the impacts below significance. The murrelet management guidelines accompanying the Negative Declaration contain numerous recommendations to reduce impacts. Memo at 120-130. Unfortunately, very few of these recommendations are actually made binding conditions for the Project. As such, the impacts to the species are not mitigated below significance.

In sum, for at least the three federally listed species discussed above, the Project is likely to have significant adverse effects. These effects are not sufficiently mitigated to obviate the need for an EIR. The comment letter from DFG recommending relocation of the access road to avoid impacts to the frog and snake, is sufficient in and of itself to constitute a "fair argument" that significant effects "may" occur. Pub. Res. Code § 21080. An EIR must be prepared.

#### B. Comments Based on Observations made on the Site Visit

A site visit to the Gazos Mountain Camp revealed several issues not addressed in the Negative Declaration. The pond on the Project site contains a large population of newts (*Taricha spp.*) It appears that both rough-skinned and Coast Range newts occur on the Project site and surrounding areas. Of particular concern is the high level of road mortality these species face both on the Project site itself and on Gazos Creek Rd. While driving up Gazos Creek Rd. to the Camp, I observed at least six freshly killed newts. Only one other vehicle was observed on the road. More surprising was that an additional six newts were observed dead on the road on the Project site behind the locked gate. At least four of these appeared to have been run over that morning. Additionally, a Pacific tree frog was also observed crushed on the road adjacent to the pond on the Project site. Two vehicles apparently associated with road surveying were parked at the Camp. If two vehicles on a single pass by the pond are responsible

for killing at least four newts and one frog, the proposal to allow forty vehicles per day to use the camp facility could lead to quite high levels of newt and frog mortality. If a single vehicle kills an average of two newts per pass by the pond, a round trip by forty vehicles per day would result in approximately 160 road-killed newts per day. Repeated through a season, this would likely have significant population level effects on these species. Such an extrapolation is not unreasonable, as I personally observed several dozen newts on the road between the gate and the cabin area of the Camp and an unobservant driver could easily run over a half dozen or more in a single pass. No analysis of this likely impact or potential for mitigation is included in the Negative Declaration. A seasonal road closure during the season and conditions when newts are likely to be active should have been considered. Such management techniques are used by the East Bay Regional Parks District to protect newts in Tilden Regional Park in Berkeley. There is no reason similar conditions should not be imposed here.

An additional area of concern not addressed in the Negative Declaration is the abandoned shooting range on the Project site. This area is littered with spent shell casings and bullet fragments. This site is likely polluting the adjacent creek which is home to threatened salmon and steelhead as well as the frog. Moreover, the large quantities of lead on site is a potential health hazard for visitors to the Camp, particularly children. Numerous courts in recent years have found the owners or operators of current and abandoned shooting ranges to be in violation of the Clean Water Act and/or the Resource Conservation and Recovery Act. See e.g. Connecticut Coastal Fishermen's Association v Remington Arms, 989 F.2d 1305 (2<sup>nd</sup> Cir. 1993); Long Island SoundKeeper v New York Athletic Club, 94 Civ 0436 (2004). It is hard to comprehend how or why the County, State Parks or PCA would propose a kids camp on an area that likely qualifies as a toxic site without any analysis of the risks or a plan for eventual clean up. This issue alone should trigger a more thorough environmental review than that contained in the Negative Declaration.

### C. Suggested Additional Mitigations

While the Center believes that as a legal matter, CEQA clearly dictates that an EIR must be prepared for this Project, as a practical matter, if certain additional mitigation measures were adopted we would drop further opposition to the Project. Suggested additional measures follow.

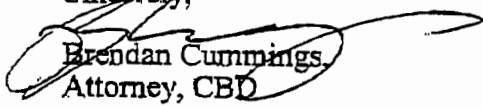
1. Prohibit school or other group activities at the Camp during the murrelet nesting season. The marbled murrelet is susceptible to disturbance from noise as well as by increased predation from human facilitated corvid populations. No matter what other mitigations are in place, school or other large groups are inherently noisy and likely to disrupt the nearby murrelet nest. Similarly, large groups are more likely to leave food scraps that attract corvids such as jays to the Camp. Researchers or individual college students could use the facilities during these times.
2. Fence the meadow and prohibit entry. This would further protect the murrelet from disruptive activity. Additionally, this would better keep visitors away from the contaminated former shooting range until a clean up plan is implemented.
3. Remove the remaining basketball court. A basketball was sighted on the court during the site visit, indicating currently use by Camp staff or visitors. This likely a source of loud noise on the Project site. Similarly, a volleyball net was installed, again a source of loud group activity likely disruptive to the murrelet.

4. Prohibit private vehicle use beyond the Gate at Gazos Creek Road until and unless the road is relocated away from the pond or amphibian and reptile fencing and passageways are installed on the road adjacent to the pond. The current location of the road guarantees high levels of road kill of newts and other species such as the red-legged frog and San Francisco garter snake even under light traffic conditions. The significantly increased use of the road from an operational camp would create unacceptable levels of road kill. Successful amphibian and reptile passages have been installed in Massachusetts adjacent to spotted salamander ponds and in several places in Europe. Installation of such facilities along the pond would greatly mitigate the likely adverse effects of the Project. Such an effort would also serve as a useful demonstration project to be replicated elsewhere in the region. Relocating the road would achieve similar results but with likely impacts elsewhere on the Project site.

If PCA would agree to the above additional conditions, or if the County were to impose such restrictions, notwithstanding the fact that we believe an EIR is legally required for issuance of the use permit, the Center would drop further opposition to the Project.

Thank you for the opportunity to comment. If you have any questions or wish to discuss this matter, please contact me at 909-659-6053. Thank you for your concern.

Sincerely,

  
Brendan Cummings  
Attorney, CBD



CALIFORNIA AND PACIFIC OFFICE

*protecting endangered species and wild places through  
science, education, policy, and environmental law*

VIA FACSIMILE AND CERTIFIED MAIL

September 24, 2003

San Mateo County Planning Division  
455 County Center  
Second Floor  
Redwood City, CA 94063  
Telephone: 650-363-1859  
Facsimile: 650-599-1721

Re: Comments on the Mitigated Negative Declaration for the Field Research Station at Gazos Mountain Camp (PLN 2002-00606)

Dear Commissioners Bomberger, Kennedy, Nobles, Silver, and Wong:

The Center for Biological Diversity ("the Center") is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats in the Western Hemisphere through science, policy, and environmental law. The Center has over 7500 members throughout California and the western United States, including in San Mateo County. The Center submits the following comments on the Mitigated Negative Declaration ("MND") for the Field Research Station at Gazos Mountain Camp (PLN 2002-00606).

As an initial matter, the Center obviously supports environmental education activities such as those carried out by the Pescadero Conservation Alliance and proposed for the Gazos Mountain Camp. Ultimately, we might also be able to support using the State Park lands at Gazos Mountain Camp for such purposes. However, given the extreme local and regional significance of Gazos Creek and its watershed for imperiled species such as the coho salmon and marbled murrelet, we believe that no such uses should be, or can legally be authorized in the Gazos Mountain Camp site absent a full environmental review including the preparation of an Environmental Impact Report ("EIR"). Approving the project as proposed through a mitigated

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negative declaration would be a blatant violation of the California Environmental Quality Act, Public Resources Code §§ 2100 et seq. ("CEQA"). As described below, the proposed project will have a number of significant impacts to environmental resources including threatened, endangered, and sensitive species, air quality, and water quality. If the County wishes to proceed with processing of the application for the proposed project, the County must clearly prepare a full EIR under CEQA for the proposed project.

## **I. The County Must Prepare an EIR on the Impacts of the Proposed Field Research Station and any Accompanying Activities**

### **A. Standard for the Preparation of an EIR**

Where a fair argument can be made that a proposed project may have a significant impact on the environment, the lead agency must prepare an EIR. Stated another way, if there is any substantial evidence in the record before the agency that the project may have a significant effect on the environment, an EIR must be prepared. Pub. Res. Code § 21080; CEQA Guidelines ("Guidelines") §15070; see also Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California (1993), 6 Cal. 4<sup>th</sup> 1112, 1123 ("Laurel Heights II"), Friends of "B" Street v. City of Hayward (1<sup>st</sup> Dist. 1980), 106 Cal. App. 3d 988, 1000-3, Sundstrom v. County of Mendocino, (1<sup>st</sup> Dist. 1988), 202 Cal. App. 3d 296, 304-10, San Bernardino Valley Audubon Society v. Metropolitan Water District (1999) 71 Cal. App. 4<sup>th</sup> 392, 389. Whether the lead agency finds evidence of a possible significant impact unpersuasive or whether there is also evidence in the record indicating that a significant impact to the environment will not occur is immaterial; the presence of conflicting evidence triggers the need to prepare a full EIR. See, e.g. Gentry v. City of Murrieta (4<sup>th</sup> Dist. 1995) 36 Cal. App. 4<sup>th</sup> 1359, 1400. Moreover, the Guidelines set forth four circumstances in which the preparation of an EIR is mandatory, including where the project will impact a threatened, endangered, or rare species, or where the project will have "cumulatively considerable" impacts. Guidelines §15065.

The MND alone contains information indicating that an EIR must be prepared for the project. The County must prepare a full EIR before approving the Field Research Station at Gazos Mountain Camp. The major impacts include but are not limited to impacts to threatened, endangered, and sensitive species, creek flows, water quality and groundwater supply, and scenic and aesthetics uses. These impacts are described in more detail below.

### **B. Likely Impacts Require the Preparation of an EIR**

#### **1. Impacts to Threatened, Endangered, and Sensitive Species Will Be Significant**

Our primary concern regarding the project involves its impacts to threatened, endangered, and sensitive species. These impacts alone are sufficient to trigger the need to prepare an EIR. Guidelines §15065. One need look no further than page 11 of the MNG where the "yes" box is

September 24, 2003

San Mateo County Planning Commission

Page 2 of 10

checked for a mandatory finding of significance based on the project's potential to adversely affect wildlife species. Yet, on the same page, the MND incongruously concludes that the project "will not" have any significant effects. This finding cannot and will not withstand legal scrutiny.

The lead agency must address the whole of the action for which it is issuing the permit. Guidelines § 15063. In this instance, an EIR must be prepared to address the impacts to threatened, endangered, and sensitive species from both construction and operation of the project. The proposed project calls for the construction, operation, and maintenance of a field research station at Gazos Mountain Camp that will encompass approximately 12 acres and result in the disruption of, and significant impacts to, several species, their habitats, and the surrounding environment. The County is required to analyze all aspects of these project effects.

While at least four federally listed species (red-legged frog, marbled murrelet, coho salmon, steelhead) occur on the site, for at least two of these species, coho salmon and marbled murrelet, populations in Gazos Creek are at or near the southern limit of the species' range and are of heightened conservation concern.

Gazos Creek, including the portions running through the project area, has been federally designated critical habitat for coho salmon. Populations of coho south of San Francisco Bay are extremely limited and in a precarious state. See 61 Fed. Reg. 56138 (final ESA listing rule for Central California Coast Evolutionarily Significant Unit (ESU) of Coho Salmon). The Gazos Creek population is likely the only viable population of coho in San Mateo County and one of only a handful of coho runs south of the San Francisco Bay. *Id.* Protection and restoration of the Gazos Creek population is essential to the recovery of Central California Coast ESA. *Id.* While protection of any individual or population of a threatened or endangered species is of utmost importance, where as here, the impacted population is likely the last viable population in the entire county and one of less than half a dozen such populations south of the Bay, any projects potentially impacting the species should be subject to close scrutiny. An EIR must be prepared.

The MND and accompanying documents are replete with acknowledgements of the likely impacts to the coho. Operation and maintenance of the field research station and the project area as a year-round camp will undoubtedly lead to significant impacts on the Creek as well as to the coho within it. Increased vehicular traffic on the access road crosses the Creek in two separate places and will unquestionably lead to increased sediment deposition in the Creek. Such an increase in sediment will negatively affect anadromous species like coho salmon by increasing turbidity, potentially resulting in a loss of habitat. Secondly, the proposed project includes the installation of a new well for groundwater pumping. However, the MND provides no scientific analysis of how the proposed 150-foot setback requirement will ensure that the new well will avoid reducing stream flows in Gazos Creek. Reduced stream flows also negatively affect anadromous species like coho. In order to avoid significant impacts on the coho and other species, the County must, as part of a full EIR, hire a qualified hydrologist to determine what setback requirement is necessary to avoid alteration of the stream flow regime in Gazos Creek.



The mitigation measures contained in the MND do not provide any assurance that the impacts on the coho will not be significant. In fact, certain mitigation measures could very well increase the possibility of such impacts. For instance, proposed mitigation measure No. 9 states: "Swimming in the stream channel should not be promoted. Where popular swimming holes exist, implement appropriate erosion control and revegetation measures to protect water quality and riparian vegetation." MND at 5. A more effective (and less destructive) mitigation measure might be: "Prohibit swimming in the stream channel." In any case, a full EIR must be prepared and provide much stronger mitigation measures for surface water disruptions like accelerated erosion and increased sedimentation than those contained in the MND.

The increased vehicle traffic, increased foot traffic in and near the creek, the presence of potentially harmful chemicals in the "wet laboratory" are just a few among many likely impacts to the coho salmon that flow from the project. Each individually, and certainly cumulatively, trigger the requirements of preparing an EIR for the project.

Each of the above described actual and potential impacts to coho salmon, also apply to the federally listed steelhead. While steelhead are somewhat more abundant than coho in streams south of San Francisco Bay, the species has suffered major declines. The population in Gazos Creek remains one of the most viable for restoration and recovery of this species in San Mateo County. Impacts to steelhead from the project are sufficient to require preparation of a full EIR.

As with the coho, populations of the marbled murrelet south of San Francisco Bay are in a much more precarious state than the threatened populations north of the Bay. Very little undisturbed habitat for the species remains. Nesting murrelets are susceptible to disturbance from various types of human activities. See 57 Fed. Reg. 45328 (final ESA rule listing the marbled murrelet as threatened). A particular threat to the species is increased nest predation caused by increased corvid populations attracted to an area by human food and garbage. *Id.* The project is likely to greatly exacerbate this threat. The very presence of the murrelet on the project site is sufficient under the CEQA guidelines and governing caselaw to trigger the EIR requirement. The County cannot ignore this and approve the project with a MND.

The entire project area is also within federally designated California Red-legged frog critical habitat. Rather than explaining how the project will avoid adversely modifying this habitat, the MND instead seems to casually admit that the project, as proposed, is likely to do just that. In its discussion of mitigation measures the MND provides that "no new roads should be constructed within 100 feet of the streambank," and that when road maintenance occurs within 50 feet of the creek, the immediate area is to be surveyed for the species. MND at 5. However, decidedly more deleterious impacts to the species and its critical habitat would likely come from the increased use of the access road running adjacent to the creek and a pond in which the species is known to breed. This road will provide the sole access to the proposed field

station, with an estimated 50 additional vehicular round trips per day. The MND offers no proposed mitigation for the impacts such an increase will have on the species.

The Biological Report itself finds, without further explanation, that although portions of the road may be within the movement range of the California Red-legged frog, somehow the increased use of the road is not expected to significantly impact the species. Surely the increased direct mortality through crushing of individuals as a result of increased vehicle traffic alone must be considered a significant impact and analyzed in a full EIR.

In addition to its acknowledged or necessarily implied impacts to these four listed species, the MND is inadequate under CEQA for its failure to address impacts to other special status species. First, neither the Vegetation and Wildlife section of the MND nor the Biological Report contains an adequate summary of all special status species that may occur in the area. The MND states that the pond on the project site provides breeding habitat for the California Red-legged frog (federally threatened) and habitat for the southwestern pond turtle (federal and state species of concern), as well that two forks of the Gazos Creek running through the project site contain coho salmon (state endangered, federally threatened) and steelhead (federally threatened) and finally that a known breeding site for marbled murrelet (federally threatened) also exists in the southern half of the camp property. Other categories of special status species, however, including candidate species and species proposed for listing under the federal ESA and "Fully Protected" under California law (e.g. San Francisco garter snake), as well as numerous state species of special concern (e.g. foothill yellow-legged frog, various bat species) were omitted. A candidate designation is intended to alert project applicants and regulatory agencies to the plight of these species so that they can be given special consideration during project approvals and their decline towards threatened or endangered status can be halted. It is inappropriate and violates CEQA to simply ignore these species in the preparation of a CEQA document. An EIR must be prepared that fully discloses and analyzes the impacts to all species, including all special status species, that will be impacted by the project. At a minimum, the EIR must include the results of a California Natural Diversity Database (CNDDB) search for all sensitive species known to occur in the area, and focused surveys for all such species.

Complete biological surveys must be conducted, including protocol-level surveys for all species that may occur in the project area and for which a U.S. Fish and Wildlife or California Department of Fish and Game survey protocol exists. While the MND states that each of the four above listed species are known to exist within the project area, only a single "survey" on September 4, 2004 is mentioned in the Biological Impact Form. The MND fails to mention of any other specific surveys (much less the required protocol level surveys), or explain why such surveys were unnecessary.

The MND's failure to address impacts to the San Francisco garter snake are a significant oversight. The project site is within the known range of this highly imperiled state and federally listed species. Even if the species does not occur on the project site itself (impossible to determine given the absence of surveys) the substantial increase of traffic on Gazos Creek Road



posses a significant risk to this species if it occurs anywhere between the project site and Highway 1. Due to their propensity to bask on roads, snakes are particularly prone to road mortality (and illegal collection when on roads). This likely impact to the San Francisco garter snake is completely ignored in the MND. However, even if it were addressed, the issue itself is sufficient to trigger the EIR requirement.

The County and Applicant should also be aware that any adverse impact to the California red-legged frog, coho salmon, steelhead, marbled murrelet, or San Francisco garter snake constitutes "take" under the federal ESA and carries significant civil and criminal penalties. The ESA prohibits any "person" from "taking" threatened and endangered species. 16 U.S.C. § 1538, 50 C.F.R. § 17.31. The definition of "take", found at 16 U.S.C. § 1532(19), states,

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The term "person" is defined in the ESA to include "any officer, employee, agent, department, or instrumentality...of any State, municipality, or political subdivision of a State...(or) any State, municipality, or political subdivision of a State..." 16 U.S.C. § 1532(13). Numerous cases have confirmed that entities such as the San Mateo County are responsible and liable for violations of the ESA, including Sierra Club v. Yeutter, 926 F.2d 429, 43-39 (5<sup>th</sup> Cir. 1991), Defenders of Wildlife v. EPA, 882 F.2d 1294, 1301 (8<sup>th</sup> Cir. 1989), Palila v. Hawaii Department of Land and Natural Resources, 639 F.2d 495, 497-98 (9<sup>th</sup> Cir. 1981), and Loggerhead Turtle, et al. v County Council of Volusia County, Florida (11<sup>th</sup> Cir. 1998). In another relevant case, the Court ruled "the statute not only prohibits the acts of those parties that directly exact the taking, but also bans those acts of a third party that bring about the acts exacting a taking. We believe that...a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA" Strahan v. Cox, et al. 127 F.3d 155 (1<sup>st</sup> Cir. 1997). The coho salmon is also protected under the California Endangered Species Act which contains similar prohibitions on "take." Prior to the County approving the proposed project, and/or the Applicant proceeding with activities which adversely impact the species, appropriate permits from FWS and DFG must be acquired or the County and the Applicant will be liable for violations of the ESA and CESA. Of course, the very fact that such take authorizations are necessary is further evidence that the project triggers the requirement to prepare a full EIR.

The EIR should also discuss whether the proposed project would result in any night lighting, which can adversely impact many species in a variety of ways. The MND does not disclose whether the proposed project would involve any such lighting.

The MND has also failed to address fire risk from the vehicular traffic or activities related to and planned for the field research station. High levels of traffic, particularly two-way traffic, greatly increase the chances that dry grass adjacent to the road will catch fire from the vehicles. An EIR must conduct a full analysis of fire risk, because human induced fire may have

a significant impact on the operation of the species present. The EIR must also propose mitigation to reduce this fire risk.

The MND failed to adequately discuss the impacts of the project on the above species and their habitats. These impacts are indisputably significant and the County must therefore address them in an EIR in accordance with Guidelines § 15070.

## **2. Impacts to Surface Water and Groundwater Will Be Significant**

The MND contains inadequate information to fully assess impacts to streams and riparian vegetation, surface water quality, and groundwater. The EIR does not disclose the type and volume of vehicles that will use the access road. Without this information, it is impossible to assess whether or not road and culvert construction will be needed at the identified creek crossings. An EIR must be completed which discloses this information. It violates CEQA for the MND to fail to disclose information needed for an assessment of this issue and then claim, due to the lack of information, that the impact is not significant.

The MND also fails to disclose groundwater depth and water quality within the project area. MND at 8. Without this information, it is impossible to fully assess the likely impact from the relocation and installation of the proposed well on the area's surface water or groundwater resources. The County provides no evidence of how a minimum 150-foot setback requirement will avoid alteration of stream flows in Gazos Creek, relying only on the opinion of "unnamed staff." Once again, it violates CEQA for the MND to claim an impact is not significant without fully evaluating that impact. As part of a full EIR, the County should hire a qualified hydrologist to determine a safe setback distance for the proposed well relocation.

The MND also fails to provide a description of how the waste created by camp activities at the proposed field research station will be disposed of and how this will impact water quality. An EIR should describe the project's septic system and drain field plans in detail, and describe how impacts to surface water will be avoided, especially given its proximity to Gazos Creek. The MND's current description of waste disposal is inadequate. It is not possible to conclude that there will be no significant impacts to water quality based on the existing discussion.

Even in the absence of the federally listed species present, the proposed project's impacts to the surface water and groundwater in and around the project area appear to be significant and clearly require the preparation of a full EIR. The MND provides no discussion of how the project's unavoidable degradation of the area's water quality will be addressed. The MND provides no explanation of how the proposed project will address the substantial decrease in water quality that will occur as a result of project operation, maintenance, improvements and increased vehicular traffic. Such activities will undoubtedly increase sedimentation levels and may affect stream flows in the Creek, thereby causing significant impacts to all wildlife that depend on the waterway's current water quality status.

The use of the waterways and riparian areas by various species, including Pacific giant salamander, Pacific treefrog, Coast Range newt, western aquatic garter snake, Wilson's warbler, black phoebe, deer, and others was ignored in the MND. The proposed project will likely reduce the value of the nearby waterways to these wildlife species. The MND fails to describe or analyze the existing riparian vegetation, its value to wildlife, and what the proposed project's impacts will be on this vegetation. The EIR should disclose the area's water quality level to determine impacts of project operation and maintenance on these and other species. The direct, indirect, and cumulative impacts to wildlife of the project must be disclosed, analyzed, avoided, minimized, and mitigated. The direct and in particular the cumulative impacts of the project on wildlife will be significant.

For the above stated reasons, the MND has not adequately described, analyzed, avoided, minimized, or mitigated the effects of the proposed project on the project area's surface water or groundwater as required by CEQA.

### **3. The MND Contains No Mitigation and Monitoring Program or Other Enforcement Mechanism for Prescribed Mitigation Measures**

While the MND (erroneously) claims that all impacts have been reduced to a level of insignificance due to the incorporation of mitigation measures, the MND contains no mitigation and monitoring program (MMP) or other enforcement mechanism for the mitigation measures that were prescribed. An EIR must be prepared that contains a MMP covering all of the mitigation measures.

### **4. Significant Impacts Will Flow From the Proposed Project's Incompatibility With Surrounding Land Uses**

The MND does not adequately mitigate the significant impacts that will flow from the project's incompatibility with surrounding land uses. Both the project area and the surrounding land provide habitat for threatened, endangered and sensitive species. Specific conflicts including impacts to species and impacts to water quantity and quality are described in more detail above. The incompatibility is in itself a significant impact that must be analyzed in an EIR.

The proposed project will also have significant aesthetic impacts on the surrounding environment resulting from the presence and increased traffic of vehicles traveling to and from the project area. The Center does not feel the MND's suggested mitigation for these impacts does enough to temper their significance. The document provides no analysis of how allowing no more than 40 visitor vehicle's (excluding resident staff) on the camp property at a time, year-round, will somehow mitigate the impact of increased vehicular traffic and presence on the aesthetic and other resources. The MND proposes no other adequate methods for how it will mitigate this significant impact. Secondly, a "Staff" opinion on the ability of the existing road to handle this increase is completely unacceptable. See MND at 8. Instead, the County must

provide an actual discussion of both the road's current condition and its ability to withstand the estimated increased usage within a full EIR

#### **5. An EIR Must Explore Alternatives to the Proposed Project**

An EIR must be prepared that analyzes a full range of alternatives to the proposed project. The MND fails to discuss any alternatives, such as a no-action alternative, or using a less environmentally sensitive location for the project area. A full range of alternatives must be discussed, with a focus on reducing the project's significant impacts. Significantly, the Gazos Mountain Camp was recently acquired and transferred to State Parks for conservation purposes. Even if the proposed action could be considered a continuation of existing uses (which it cannot), alternatives to such uses must be considered. Given the site's significant ecological importance to several rare species, alternatives such as full restoration must be considered. A full EIR is the appropriate forum for such an analysis.

#### **Conclusion**


In conclusion, the Center objects to the approval of the proposed Field Research Station at Gazos Mountain Camp. The project should be denied because the approval is unlawful without preparation of an EIR as required by CEQA. In particular, the conclusion of the MND that there will be no significant impacts to threatened, endangered, or sensitive species or to water quality is completely unfounded.

The Center requests to be added to the mailing list for all future notices and correspondence regarding this project, and to be notified as soon as the County has made a determination whether to approve the proposed project based on the MND. The Center believes that an EIR is clearly necessary in this situation, and will likely seek judicial review of a decision to approve the proposed project without additional environmental review.

Again, as stated above, we are not necessarily ultimately opposed to the proposed Field Research Station at Gazos Mountain Camp. However, given the extreme importance of the project site to regionally significant populations of coho salmon and marbled murrelet, as well as important populations of red-legged frogs and steelhead, we firmly believe that no projects approvals should occur absent a full review of likely and potential impacts through the preparation of an EIR.

If you have any questions regarding these comments, please do not hesitate to contact Brendan Cummings or Kyle Kreischer at (909) 659-6053. Thank you for consideration of these comments.

Sincerely,



Brendan Cummings  
Attorney

Kyle C. Kreischer  
Legal Fellow



## CALIFORNIA COASTAL COMMISSION

REMONTE STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
AND TDD (415) 904-9200

RECEIVED



MAR 16 2004

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENTCALIFORNIA  
COASTAL COMMISSION

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

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

COASTSIDE HABITAT COALITION

PO BOX 71

SAN GREGORIO

CA 94074 (650) 726-9590

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

SAN MATEO COUNTY

2. Brief description of development being appealed:

DEVELOPMENT OF CAZOS CREEK MT. CAMP

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

5801 Cazos Creek Road Pescadero

APN(S) 089-180-130, 089-180-140

4. Description of decision being appealed:

a. Approval; no special conditions:

b. Approval with special condition:

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:

DATE FILED:

DISTRICT:

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

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

a. ☐ Planning Director/Zoning Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of Supervisors

d. ☐ Other

6. Date of local government's decision:

MARCH 1 2004

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

PLN 2002-00606

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:

5601 GAZOS CREEK RD PESCADERO

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

(1) JIM ROURKE

(2) CENTER FOR BIOLOGICAL DIVERSITY

(3) COMMITTEE FOR GREEN FOOTHILLS

(4)

SECTION IV. Reasons Supporting This Appeal

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



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

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

Please see attached

**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.

*A. Cattermole*

Signature of Appellant(s) or Authorized Agent

Date:

March 14, 2004

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date:

COASTSIDE HABITAT COALITION'S REASONS FOR APPEALING THE  
COUNTY OF SAN MATEO'S APPROVAL OF THE PROPOSAL BY THE  
PESCADERO CONSERVATION ALLIANCE TO DEVELOP THE UPPER  
GAZOS CREEK WATERSHED ON CALIFORNIA STATE PARKS  
PROPERTY (PLN 2002-00606)

To: California Coastal Commission

Re: Use Permit and Coastal Development Permit for development at  
Gazos Mountain Camp, including installation of a new well

From: Dr. George Cattermole  
Director, Coastside Habitat Coalition

STANDING

The Coastside Habitat Coalition is dedicated to protecting endangered and threatened species and their habitat. Believing that environmentalism needs to start in one's own backyard, CHC focuses on species located in the greater San Francisco Bay Area including: San Francisco Garter Snake, California Red-Legged Frog, Steelhead Trout and Coho Salmon. CHC's work focuses on: (1) identifying the biological processes critical to establishing self-sustaining populations of imperiled species and their habitat; (2) identifying the threats to the survival of these species; and (3) developing and implementing policies and activities which will ensure both their recovery and a secure future. These have included utilizing music, art, and dissemination of information to educate the community on the importance of biodiversity and the needs of its resident endangered species; coalition-building; public demonstrations and political actions; and, when necessary, litigation to advocate for and protect the rights of species by preventing the harm and destruction of them and their habitat. CHC believes that it must act as an agent for its adopted species, representing and advocating for them in political, legal, economic and scientific forums.

REASONS FOR APPEAL

CHC shares and strongly supports the educational and environmental goals of the Pescadero Conservation Alliance(PCA). Unfortunately PCA's choice of the Gazos Mountain Camp as a site for their programs and activities is totally at odds with these goals. The proposed development would be larger than the town of San Gregorio. Maintaining the infrastructure and housing and accommodating the numbers of people proposed cannot but have an significant adverse affect on the endangered species and their habitat. Traffic, water use, waste disposal, erosion by vehicular and foot traffic and the inevitable "wear and tear" visitors bring with them will inevitably damage species. (See, for example the studies of the effects traffic can have on amphibians cited in the *Proposed Designation of Critical habitat for the California Red-Legged Frog*, p. 54893). Ironically, one of PCA's primary objectives is to restore habitat and eliminate invasive species, but PCA apparently fails to understand that of all species, the most dangerous and damaging is the human.

The proposal by PCA to renovate and operated a camp year-round near the headwaters of Gazos Creek clearly violates Section 7.3 of the San Mateo County Local Coastal Plan which prohibits any land use or development which would have significant adverse impacts on sensitive habitats. The town they wish to operate would be on top of and adjacent to habitat for at least five State and Federally listed species on the brink of extinction: San Francisco Garter Snake, California Red-Legged Frog, Coho Salmon , Steelhead Trout and the Marbled Murrelet.

Gazos Mountain Camp (GMC) is located in the middle of the confluence of the three headwater streams forming Gazos Creek which drains an entire, relatively pristine watershed. **The restrictions on development there should be even more stringent than those in place at the Ano Nuevo State Reserve.** At Ano Nuevo, park staff are always present, volunteers are trained and carefully supervised by Park Staff, there is not overnight camping. I have spoken with several rangers, including Gary Strachen, who complain of the difficulty of managing the territory to which they are now assigned. Parks' staff also appear to be unaware of its responsibilities at GMC, there appears to be no formal, written record of Parks' responsibilities in relation to PCA's activities at GMC, and there is good reason to believe that present Park staff will not be able to properly supervise the proposed activities.

As evidence that the project will violate the San Mateo Local Plan, the California Environmental Quality Act and the Endangered Species Act, CHC incorporates in this appeal the "Comments on the Appeal of the Planning Commission's Decision to Approve a Use Permit and Coastal Development for the Gazos Mountain Camp (PLN 2002-00606) submitted

to the San Mateo County Board of Supervisor's on February 24, 2004 by Brendan Cummings, Staff Attorney for the Center for Biological Diversity (Attachment A) and Robert Zarkin's letter of September 9, 2003 to the members of the San Mateo Planning Commission (Attachment B).

#### ADDITIONAL COMMENTS ON THE THREATS POSED BY THE PROJECT TO THE MARBLED MURRELET

PCA includes in its application a report "MARBLED MURRELET HABITAT MANAGEMENT GUIDELINES FOR THE GAZOS MOUNTAIN CAMP PROPERTY, SAN MATEO COUNTY, CA." by Steven Singer M.S, which was prepared for the Sempervirens Fund, on May, 1999. Singer acknowledges that Murrelet habitat is next to and above areas that will be electrically illuminated at night by a generator, occupied by up to 90 people 'passively' recreating and operating cars, busses and trucks. Singer also notes that "...the stream corridor on the west edge of the property which may be used as a murrelet flyway" is also possible property "important" for the species. Singer does not address the fact that increased vehicular and foot traffic projected by PCA will travel along and through this corridor and may have an adverse effect on the species.

Singer also notes that predation by jays and ravens is a "major cause of nest failure throughout the species' range", and then proceeds to bend over backwards mitigating the probable adverse effects of a camp, invoking the argument that what was there before was worse than the project he is justifying with his restrictions. Singer is here arguing that the previous development was worse for the species than the new development he is addressing. But that is not the important question: going from worse to bad is not as good for the species as going from worst to best. Singer's mitigation scheme repeatedly violates the Precautionary Principle which is fundamental in guiding responsible management of protected species habitat:

Should there be doubt about whether an activity raises threats of irreversible harm to the environment, preventive precautionary measures (moratorium, prohibition, laboratory tests) should be taken even if the causal link between the activity and the possible harm has not been proven or the causal link is weak. The loss of a species is irreversible.

The Commission should note that PCA's project does not conform with Singer's "mitigation component" #7 which states that "Effective enforcement of park rules and these habitat management guidelines should occur on site through the regular presence of ranger staff on the property and his concluding recommendations: "Regardless of the use

or uses of the property, it is recommended that Gazos Mountain Camp be part of a state park operation with direct oversight by park staff, and not be leased out by the Sempervirens Fund to a commercial, for-profit operator for use as a camp or lodging facility." Park personnel informed me that they have no knowledge of Singer's "habitat management guidelines". Moreover, although PCA is a nonprofit corporation, it is nevertheless a commercial enterprise in that it will be charging user fees and there will be a need to raise funds for the project to meet staff salaries, etc., a situation that could result in pressures to implement more intensive development in order to meet costs. (See "Preliminary Proposal for utilizing the Gazos Mountain Camp as an Environmental Education Facility") (Attachment C)

Finally, CHC finds it unbelievable that a species scientist would permit mountain biking in an area as fragile and biologically diverse as the Gazos headwaters. It appears that Mr. Singer is looking only up into the trees and not aware that mountain bikes cause erosion and kill San Francisco Garter Snakes which often bask on trails.

#### ADDITIONAL COMMENTS ON THE WATER SOURCE AND USAGE FOR THE PROJECT

The project does not have a proven water source, and there is not adequate evidence that should a water source be developed, it will not have an adverse effect on the watershed. Mr. Wade, public relations officer for PCA testified to the Commission that the development's expected water use would be a fraction of the total amount of water in the watershed. This statement reflects either ignorance or willful deception. To begin with, the projected number of visitors and length of stays will require far more than one density credit's worth of water. More importantly, there is much less water at the top of a watershed - springs and small streams feed into the main creek all along its flow - and removing water from the "veins" of the upper watershed is very different from removing it from the main artery downstream.

#### CONCLUSION


Applicants want to run year-round a small town in the middle of one of the most sensitive and biologically rare and rich habitats in the state. The goals of environmental education and habitat restoration are worthy goals, but the siting of the physical plant to accomplish these goals is at odds with achieving them. Samples can be taken to labs located in

Pescadero. Students need not overnight on the site - there are many nearby facilities where they could stay. Vehicular and foot traffic, water and septic use, noise, trash: all must remain minimal.

Applicants have succeeded in gathering many supporters, each of whom represents their own interests, but none of whom has apparently considered the cumulative adverse effects of the elephant they are putting into the living room of a unique and wonderful community of endangered wildlife.

The biological treasures present at the proposed site are more valuable than the paintings of Rembrandt or Monet. And just as fragile. Any exploration, education, study, or "enjoyment" of these species should respect the fragile web of life they share, and take place under supervision at least as strict as that found in a museum of fine art.

Sincerely,

  
George Cattermole  
Director, Coastside Habitat Coalition



# Center for Biological Diversity

*protecting and restoring natural ecosystems and imperiled species through  
science, education, policy and environmental law*

VIA FACSIMILE

February 24, 2004

Board of Supervisors  
San Mateo County  
Facsimile: 650-363-4849  
Attn: China Osborn

**RE: Comments on the Appeal of the Planning Commission's Decision to Approve a Use Permit and Coastal Development for the Gazos Mountain Camp (PLN 2002-00606).**

The Center for Biological Diversity ("the Center") submits these comments regarding the Board's hearing of our appeal of the Planning Commission's decision to approve a Use Permit and Coastal Development for the Gazos Mountain Camp (PLN 2002-00606). Due to a scheduling conflict, we will be unable to attend the February 24, 2004 Public Hearing on the Appeal.

Since the filing of our comment letter and subsequent appeal, I have had the opportunity to meet with the Project proponent, John Wade, as well as with several local residents who have voiced opposition to the Project. Additionally, on January 29, 2004 I was able to visit the site with Mr. Wade. I have also reviewed the staff recommendation to deny the appeal contained in the February 9, 2004 memo from the County's Director of Environmental Services as well as a January 13, 2004 letter from the Department of Fish and Game ("DFG") regarding the Project. In light of the information gleaned from these meetings and documents, we offer the following additional comments.

As we previously stated, we support environmental education and research activities such as those proposed to be carried out by the Pescadero Conservation Alliance at the Gazos Mountain Camp site. Ultimately, with sufficient mitigations in place, and adequate environmental review, we might also be able to actually support using the State Park lands at Gazos Mountain Camp for such purposes. However, we continue to have concerns that the Project as proposed presents the potential of significant adverse effects on sensitive wildlife species in the area. As such, we still believe that the County cannot lawfully approve the project absent the preparation of an Environmental Impact Report ("EIR") and/or the requirement of sufficient additional mitigations such that any potential impacts to sensitive resources are fully mitigated.

**A. The Need for the Preparation of an EIR for the Project**

Approving the Project as proposed through a mitigated negative declaration would be a violation of the California Environmental Quality Act, Public Resources Code §§ 2100 et seq. ("CEQA"). Where a fair argument can be made that a proposed project may have a significant impact on the environment,

**Tucson : Phoenix : Silver City : Idyllwild : San Diego : Berkeley : Sitka**

Brendan Cummings, Staff Attorney  
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the lead agency must prepare an EIR. Stated another way, if there is any substantial evidence in the record before the agency that the project may have a significant effect on the environment, an EIR must be prepared. Pub. Res. Code § 21080; CEQA Guidelines ("Guidelines") §15070; see also Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California (1993), 6 Cal. 4<sup>th</sup> 1112, 1123, Friends of "B" Street v. City of Hayward (1<sup>st</sup> Dist. 1980), 106 Cal. App. 3d 988, 1000-3, Sundstrom v. County of Mendocino, (1<sup>st</sup> Dist. 1988), 202 Cal. App. 3d 296, 304-10, San Bernardino Valley Audubon Society v. Metropolitan Water District (1999) 71 Cal. App. 4<sup>th</sup> 392, 389. Whether the lead agency finds evidence of a possible significant impact unpersuasive or whether there is also evidence in the record indicating that a significant impact to the environment will not occur is immaterial; the presence of conflicting evidence triggers the need to prepare a full EIR. See, e.g. Gentry v. City of Murrieta (4<sup>th</sup> Dist. 1995) 36 Cal. App. 4<sup>th</sup> 1359, 1400. Moreover, the Guidelines set forth circumstances in which the preparation of an EIR is mandatory, including where the project will impact a threatened, endangered, or rare species. Guidelines §15065.

As we described in our September 24, 2003 comment letter, we believe the Project will likely have significant adverse effects on several sensitive species such as the California red-legged frog, San Francisco garter snake and the marbled murrelet. The proposed mitigations do not render these impacts less than significant.

The February 9, 2004 memo recommending denial of our appeal fails to rebut any of these concerns. For example, the memo states that the San Francisco garter snake was not addressed in the Negative Declaration because it was not found on the project site and because there was "no evidence" of suitable habitat for the species. Memo at 7. This is directly contradicted by the DFG letter which, in discussing the snake and the red-legged frog, states that "suitable habitat is present for both and the property is located between documented populations of both animals. In the case of the San Francisco garter snake, documentation would be very difficult as any snakes on-site are likely to be migrating through, rather than resident." Memo at 143. The Negative Declaration's failure to address the Project's impacts on the San Francisco garter snake render any reliance on the document unlawful. Moreover, as we noted in our September 24, 2003 comment letter, impacts to the snake, as well as the frog, from the Project extend well beyond the Project site. Both of these species are documented at the lower end of the watershed. The increased road traffic on Gazos Creek Rd. is virtually certain to eventually result in some level of mortality to these species. Such impacts require the preparation of an EIR.

The potential and likely impacts of the Project on the California red-legged frog also are sufficient to trigger the preparation of an EIR. As with the San Francisco garter snake, the failure to address or mitigate for the likely effects of the increased road traffic on Gazos Creek Road on the frog renders the Negative Declaration deficient. Additionally, the status of the species on site is sufficiently uncertain to trigger the need for further analysis. As quoted above, DFG believes that suitable habitat for the species exists on site. Memo at 143. Documents included with the Negative Declaration state that the species actually occurs on site. For example, Attachment E refers to a 1998 survey finding frogs in the pond on site: "Bulger judged that the Creek did not offer conducive breeding habitat but was undoubtedly inhabited by California red-legged frog because they inhabited the adjacent pond." Memo at 136. Similarly, the Negative Declaration states "The pond on the project site is a breeding-ground for the California Red-legged Frog (Federally listed as Threatened)." Memo at 98. Finally, the Biological Impact Form states "this frog does occur at the camp pond and likely breeds there (Bulger et. al 1998)." Memo at 118. However, the Project proponent now states that surveys have shown no red-legged frogs actually occur on the Project site. Assuming this is correct, it begs the question of what happened to



them? If California red-legged frogs were documented in the pond in 1998 prior to the Pescadero Conservation Alliance's taking over the Camp, and vanished sometime thereafter, this does little to generate confidence that actual operation of the Camp by PCA will not have any significant effects on the species. The presence of non-native fish in the pond likely has a detrimental effect on the frog, but presumably these fish were in the pond in 1998 when the frog occupied the pond, so they are unlikely to be the sole cause of the species' disappearance from the Project site. Or conversely, if the fish were not in the pond in 1998, but only became established after PCA leased the property, again, this does not speak well of PCA's stewardship of the frog.

Regardless of the specifics of the California red-legged frog's recent disappearance from the pond, the fact remains that the species is still present in the watershed and under favorable conditions may recolonize the pond. Any additional traffic adjacent to the pond will therefore likely have a significant detrimental impact on the species, triggering the need for an EIR.

DFG recognized this likely impact and suggested specific mitigation measures for the species (as well as for the San Francisco garter snake). DFG stated: "The specific concern at hand is that all traffic entering the camp must traverse an existing road that passes directly beside the pond. In doing so, there is a possibility that either of the species noted could be struck and killed. We recommend that mitigation measures be adopted to reduce or eliminate this risk. In this case, our recommendation is to relocate the road so that it does not pass beside the pond." Memo at 144. The failure to incorporate this recommendation, leaves likely significant impacts to the frog unmitigated, triggering the need for an EIR.

With regard to the marbled murrelet, the mitigations proposed for the Project are insufficient to reduce the impacts below significance. The murrelet management guidelines accompanying the Negative Declaration contain numerous recommendations to reduce impacts. Memo at 120-130. Unfortunately, very few of these recommendations are actually made binding conditions for the Project. As such, the impacts to the species are not mitigated below significance.

In sum, for at least the three federally listed species discussed above, the Project is likely to have significant adverse effects. These effects are not sufficiently mitigated to obviate the need for an EIR. The comment letter from DFG recommending relocation of the access road to avoid impacts to the frog and snake, is sufficient in and of itself to constitute a "fair argument" that significant effects "may" occur. Pub. Res. Code § 21080. An EIR must be prepared.

#### B. Comments Based on Observations made on the Site Visit

A site visit to the Gazos Mountain Camp revealed several issues not addressed in the Negative Declaration. The pond on the Project site contains a large population of newts (*Taricha spp.*) It appears that both rough-skinned and Coast Range newts occur on the Project site and surrounding areas. Of particular concern is the high level of road mortality these species face both on the Project site itself and on Gazos Creek Rd. While driving up Gazos Creek Rd. to the Camp, I observed at least six freshly killed newts. Only one other vehicle was observed on the road. More surprising was that an additional six newts were observed dead on the road on the Project site behind the locked gate. At least four of these appeared to have been run over that morning. Additionally, a Pacific tree frog was also observed crushed on the road adjacent to the pond on the Project site. Two vehicles apparently associated with road surveying were parked at the Camp. If two vehicles on a single pass by the pond are responsible

for killing at least four newts and one frog, the proposal to allow forty vehicles per day to use the camp facility could lead to quite high levels of newt and frog mortality. If a single vehicle kills an average of two newts per pass by the pond, a round trip by forty vehicles per day would result in approximately 160 road-killed newts per day. Repeated through a season, this would likely have significant population level effects on these species. Such an extrapolation is not unreasonable, as I personally observed several dozen newts on the road between the gate and the cabin area of the Camp and an unobservant driver could easily run over a half dozen or more in a single pass. No analysis of this likely impact or potential for mitigation is included in the Negative Declaration. A seasonal road closure during the season and conditions when newts are likely to be active should have been considered. Such management techniques are used by the East Bay Regional Parks District to protect newts in Tilden Regional Park in Berkeley. There is no reason similar conditions should not be imposed here.

An additional area of concern not addressed in the Negative Declaration is the abandoned shooting range on the Project site. This area is littered with spent shell casings and bullet fragments. This site is likely polluting the adjacent creek which is home to threatened salmon and steelhead as well as the frog. Moreover, the large quantities of lead on site is a potential health hazard for visitors to the Camp, particularly children. Numerous courts in recent years have found the owners or operators of current and abandoned shooting ranges to be in violation of the Clean Water Act and/or the Resource Conservation and Recovery Act. See e.g. Connecticut Coastal Fishermen's Association v Remington Arms, 989 F.2d 1305 (2<sup>nd</sup> Cir. 1993); Long Island SoundKeeper v New York Athletic Club, 94 Civ 0436 (2004). It is hard to comprehend how or why the County, State Parks or PCA would propose a kids camp on an area that likely qualifies as a toxic site without any analysis of the risks or a plan for eventual clean up. This issue alone should trigger a more thorough environmental review than that contained in the Negative Declaration.

#### C. Suggested Additional Mitigations

While the Center believes that as a legal matter, CEQA clearly dictates that an EIR must be prepared for this Project, as a practical matter, if certain additional mitigation measures were adopted we would drop further opposition to the Project. Suggested additional measures follow.

1. Prohibit school or other group activities at the Camp during the murrelet nesting season. The marbled murrelet is susceptible to disturbance from noise as well as by increased predation from human facilitated corvid populations. No matter what other mitigations are in place, school or other large groups are inherently noisy and likely to disrupt the nearby murrelet nest. Similarly, large groups are more likely to leave food scraps that attract corvids such as jays to the Camp. Researchers or individual college students could use the facilities during these times.
2. Fence the meadow and prohibit entry. This would further protect the murrelet from disruptive activity. Additionally, this would better keep visitors away from the contaminated former shooting range until a clean up plan is implemented.
3. Remove the remaining basketball court. A basketball was sighted on the court during the site visit, indicating currently use by Camp staff or visitors. This likely a source of loud noise on the Project site. Similarly, a volleyball net was installed, again a source of loud group activity likely disruptive to the murrelet.

4. Prohibit private vehicle use beyond the Gate at Gazos Creek Road until and unless the road is relocated away from the pond or amphibian and reptile fencing and passageways are installed on the road adjacent to the pond. The current location of the road guarantees high levels of road kill of newts and other species such as the red-legged frog and San Francisco garter snake even under light traffic conditions. The significantly increased use of the road from an operational camp would create unacceptable levels of road kill. Successful amphibian and reptile passages have been installed in Massachusetts adjacent to spotted salamander ponds and in several places in Europe. Installation of such facilities along the pond would greatly mitigate the likely adverse effects of the Project. Such an effort would also serve as a useful demonstration project to be replicated elsewhere in the region. Relocating the road would achieve similar results but with likely impacts elsewhere on the Project site.

If PCA would agree to the above additional conditions, or if the County were to impose such restrictions, notwithstanding the fact that we believe an EIR is legally required for issuance of the use permit, the Center would drop further opposition to the Project.

Thank you for the opportunity to comment. If you have any questions or wish to discuss this matter, please contact me at 909-659-6053. Thank you for your concern.

Sincerely,

Brendan Cummings,  
Attorney, CBD

Robert Zatzkin

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September 9, 2003

Planning Commission  
San Mateo County  
455 County Center, 2<sup>nd</sup> floor  
Redwood City, CA 94063

Members of the Planning Commission:

This letter and attachment concern a Use Permit and Coastal Development Permit to allow the Pescadero Conservation Alliance to operate a year-round Field Research Station at the existing Gazos Mountain Camp located in the Gazos Creek watershed of coastal San Mateo County.

During the past several years I have had many discussions concerning the proposed project with senior staff of San Mateo County government—including Dean Peterson, Director of Environmental Health; Terry Burnes, Planning Administrator; and, Jim Eggemyer, Development Review Services Manager. In spite of my expressed interest in the proposed project, I did not receive a copy of the Negative Declaration for the proposed project, and therefore was not able to respond during the review period of July 1, 2003 to July 30, 2003. The omission of mailing me a copy of the Negative Declaration demonstrates less than adequate performance by staff of the Building and Planning Division. This omission likely resulted in increased time and cost for processing the application as most of my concerns are founded in the Negative Declaration—concerns that may have been allayed at this point in the permitting process.

Following is a synopsis of my concerns and recommendations for addressing these concerns. The specifics are contained in the attached document.

o **The Gazos Creek supports species listed under State of California and federal Endangered Species Act**

It is clear that the California Department of Fish and Game, and by association and vested responsibility, NOAA Fisheries (formerly the National Marine Fisheries Service) have a high level of concern for the coho salmon population in the Gazos Creek watershed. As such, all land use practices in the watershed must be considered and regulated in the context of the overriding legal mandate for the coho salmon, steelhead rainbow trout, and other public trust biotic resources of concern know to, or suspected to, inhabit the watershed. The mandate is for the highest standard of due diligence by San Mateo County in the review and preparation of documents for consideration of the subject use permit for the Mountain Camp. As the following comments demonstrate, the San Mateo County Planning Division has fallen significantly short of this mandate. Numerous issues concerning the use permit have either not been adequately analyzed, or ignored.

o **Groundwater extractions and the potential for affects on the flow the north and south forks of Gazos Creek**

A review of the current geologic literature indicates requiring a minimum of 150 feet of separation between the Gazos Creek and the groundwater well location, as recommended by staff of the Planning and Building Division, may not, or will not, preclude the extraction of groundwater from having an impact on the live stream of the north and south forks of Gazos

Creek. Assuming the Santa Margarita Sandstone, a geologic formation that likely contains groundwater in economically extractable quantities, is the target formation for construction of the proposed groundwater well, the flow regime in Gazos Creek may be affected. Effects may include reducing the amount of flow in the Creek; therefore, the installation of a groundwater well in the Santa Margarita Sandstone at the site requires instrumented high-volume pumping of the proposed groundwater well and the collection of data in Gazos Creek and the well.

- **Septic System Drain Field**

The site contains one septic system drain field located beneath the Meadow located in the northeastern portion of the site. The receiving location(s) of effluent from the septic system must be determined given the level of regulatory concern for aquatic species known to exist in the Gazos Creek watershed; the proximity of the Mountain Camp to the north and south forks of Gazos Creek; the proposed number of users of the Camp; and, the plan to construct a wet chemistry lab which apparently will discharge to the septic system. The chemical composition, potential toxicities and synergisms of effluent to biota must be determined in order to ensure that effluent from the septic system will not harm species known to inhabit the channel network.

- **Wet Laboratory**

The use permit documents reference the conversion of an existing bathroom at the Mountain Camp to a wet laboratory. A schematic of the wet laboratory contained in the documents includes designation of a fume hood, which implies the use of chemicals that may be adverse to human health. Further, the presence of a fume hood implies an exhaust stream to the atmosphere containing such chemicals. In addition, the schematic delineates an Eye Wash Station—again an indication of the intended use of chemicals that are adverse to human health—and a sink. Clearly, the intent in converting an existing bathroom to a wet laboratory is to perform wet chemistry analysis. As such, the following issues, and other issues not yet posited, must be answered before the subject permits are issued:

- What is the means for transporting and handling analytical chemicals to and on the site?
- What analytical chemicals may be adverse to human health and the environment?
- What are the specific types of chemicals; quantities; molarity, pH and other relevant parameters of chemicals; the specific uses of chemicals; the potential hazardous chemicals and synergisms obtained through mixing chemicals; composition of the effluent stream from the wet laboratory to the septic system and drain field; exhaust gas composition, and potential hazard of such gas to human health and the environment, from the fume hood exhaust vent.
- What is the contingency plan for facilitating an emergency response in the event of a chemical spill and accidents that may endanger human health and the environment?

- **California Red-Legged Frog**

The California red-legged frog (*Rana aurora draytonii*) inhabits, and likely breeds within, the pond located at the Mountain Camp as acknowledged in the Notice of Intent to Adopt, Negative Declaration. This species is listed as threatened under the federal Endangered Species Act, and is designated a California Species of Special Concern. Further, the Notice states that portions of the road system in the Mountain Camp are in close proximity to the pond. In spite of these conditions, the report by the staff of the Planning and Building Division for the subject permits does not contain any conditions that preclude vehicle traffic near the pond—traffic that may result in mortality to the California red-legged frog. As such,

as a condition of permitting the roads proximal to the pond must be decommissioned and no vehicular traffic, including motor vehicles and non-motor vehicles such as bikes, be permitted within a specific distance from the pond. A qualified biologist with expertise in the life history and behavior of the California red-legged frog should determine the distance for vehicle exclusion.

o **Surface Processes and Transport of Sediment into the Channel Network**

The documents concerning the proposed use permits contain no discussion of the potential for sediment entrainment and transport into the channel network of Gazos Creek due to changes in surface processes attendant with the proposed use of the Mountain Camp. Given the anadromous species of concern that inhabit the channel network of Gazos Creek, an increase in sediment transport to the channel network is highly undesirable. Such transport may impede the ability of anadromous fish to attain reproductive potential due to increased turbidity, and possible loss of redd habitat, due to increased sedimentation. As such, a program of analysis and monitoring of surface processes for sediment transport to the channel network must be required as a condition of permitting.

These issues, and possibly other issue yet to be realized, must be addressed before considering issuing the subject permits. Given the science-based nature of issue definition and assessment it is imperative that the Planning Commission not certify the subject Negative Declaration and remand the proposed project back to the Planning and Building Division and direct staff to execute a focused Environmental Impact Report (EIR). The scope, breadth, and depth of the EIR must be sufficient to address the issues I have raised and any other issues yet stated; and should be determined in part through a public scoping hearing.

Sincerely,

Robert Zatzkin  
Geologist

September 9, 2003

Comments from Robert Zatzkin<sup>1</sup> concerning:

Consideration of a Use Permit and Coastal Development Permit  
by Pescadero Conservation Alliance  
for Gazos Mountain Camp, Gazos Creek watershed

**Gazos Creek is a watershed of significant concern known to support species listed under mandate of the State of California and federal Government**

Coho salmon (*Oncorhynchus kisutch*) and steelhead rainbow trout (*Onchorhynchus mykiss*) are known to populate the Gazos Creek watershed. The coho salmon south of San Francisco Bay (Central Coast Evolutionary Significant Unit (ESU)) is listed as threatened under the federal Endangered Species Act, and endangered under the California Endangered Species Act. The steelhead rainbow trout is listed as threatened under the federal Endangered Species Act.

The existence of coho salmon in Gazos Creek is of special concern as the population is believed to be the last remaining native population in San Mateo County. Further, the State of California Department of Fish and Game has designated Gazos Creek one of nine watersheds south of San Francisco Bay slated for reintroduction of native-brood stock coho salmon, or enhancement of coho salmon habitat in an effort to increase population size and stability<sup>2</sup>. Furthermore, associated species of concern may exist in the Gazos Creek watershed<sup>3</sup> based on known associations in the Scott Creek and Waddell Creek watersheds of Santa Cruz County.

The associated species of concern and their listing status are:

Species	Listing
Tidewater goby ( <i>Eucyclogobius newberryi</i> )	Endangered federal Endangered Species Act
California red-legged frog ( <i>Rana aurora draytonii</i> )	Threatened federal Endangered Species Act California Species of Special Concern
Foothill yellow-legged frog ( <i>Rana Boylei</i> )	California Species of Special Concern
San Francisco garter snake ( <i>Thamnophis sirtalis tetrataenia</i> )	Endangered federal Endangered Species Act Threatened California Endangered Species Act
Southwestern pond turtle ( <i>Clammys marmorata pallida</i> )	Federal category 2 candidate for listing federal Endangered Species Act California Species of Special concern

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<sup>2</sup> Draft—Strategic Plan for Restoration of the Endangered Coho Salmon South of San Francisco Bay  
Department of Fish and Game, Resource Agency, State of California  
September 1998

<sup>3</sup> Ibid.



In addition, the California Department of Fish and Game Recovery Strategy for California coho salmon<sup>4</sup> states:

"The San Mateo Coastal HU (*hydrologic unit*)... is near the southern end of the coho salmon range and has been significantly impacted by water diversion, urbanization, road building, riparian development, land use practices, and fire suppression. This HU includes the San Gregorio Creek, Pescadero Creek, and Ano Nuevo (Gazos Creek) HSAs (*hydrologic subareas*)."

and

"Implement the projects recommended as high priority for coho salmon in the Gazos Creek watershed restoration plan."

It is clear that the California Department of Fish and Game, and by association and vested responsibility, NOAA Fisheries (formerly the National Marine Fisheries Service) have a high level of concern for the coho salmon population in the Gazos Creek watershed. As such, all land use practices in the watershed must be considered and regulated in the context of the current and overriding legal mandate for the coho salmon, steelhead rainbow trout, and other public trust resources of concern know to, or suspected to, inhabit the watershed. The mandate is for the highest standard of due diligence by San Mateo County in the review and preparation of documents for consideration of the subject use permit for the Mountain Camp. As the following comments demonstrate, the San Mateo County Planning Division has fallen significantly short of this mandate. Numerous issues concerning the use permit have either not been adequately analyzed, or ignored.

#### **Groundwater extractions and the potential for affects on the flow the north and south forks of Gazos Creek**

The Initial Study Pursuant to CEQA<sup>5</sup> for the Mountain Camp contains the following statement:

#### **J. Affect a natural drainage channel or streambed, or watercourse?**

**Yes, Significant, Unless Mitigated.** The camp currently obtains water from an existing well. That well, however, as it was recently discovered from a property survey, is not on the project parcel. Therefore, the applicant is proposing to relocate the existing well to the northeast corner of the property. One biologist consulted in this project determined that installation of the well could divert water from Gazos Creek if it were located too close to the creek or not drilled to a distance deep enough to avoid affecting the established minimum stream flow. In order to ensure that the installation of the new well has not effect on the creek, the proposed well shall be located a minimum of 150 ft. from Gazos Creek (three times the distance required by the County department of

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<sup>4</sup> Recovery Strategy for California Coho Salmon (*Onchorynchus kisuthch*), Report to the California Fish and Game Commission  
California Department of Fish and Game  
The Resources Agency  
State of California  
August 2003

<sup>5</sup> Initial Study Pursuant to CEQA, Project Narrative and Answers to Questions for the Negative Declaration—File Number: PLN 2002-00606, Field Research Station at Gazos Mountain Camp undated



Environmental Health). If the well is located an adequate distance from the creek, staff finds no reason to believe that the installation of the well will have a detrimental affect on the course or stream flow of Gazos Creek.

This statement concerning the location of the proposed groundwater well at the site is inaccurate and insufficient. A review of the current geologic literature indicates requiring a minimum of 150 feet of separation between the Gazos Creek and the groundwater well location may not, or will not, preclude the extraction of groundwater from having an impact on the live stream of Gazos Creek. Comparison of the proposed location for the groundwater well as delineated on a map given to me by staff of the Planning and Building Division with the current United States Geologic Map for San Mateo County<sup>6</sup> infers the proposed groundwater may extract water from the Santa Margarita Sandstone which outcrops within and adjacent to the eastern side Mountain Camp site. The description for the Santa Margarita Sandstone<sup>7</sup> infers that the sandstone may contain and transmit water in quantities sufficient for groundwater extraction. Conversely, the description for the Santa Cruz Mudstone<sup>8</sup>, which underlies most of the western side of the site, infers the mudstone may not contain and transmit water in quantities sufficient for groundwater extraction. Assuming the Santa Margarita Sandstone is the target formation for the proposed groundwater well, and the sandstone does contain and transmit water, it is important to note that the north and south fork channels of Gazos Creek trends perpendicular to, and may be in hydraulic continuity, with the Santa Margarita Sandstone. The map on the following page shows the relationship of these geologic units, the north, and south fork channels of Gazos Creek, and the area of the Mountain Camp. I was not able to obtain a map from staff of the Planning and Building Division that delineated the well location in relationship to the area beyond the area containing the infrastructure of the Mountain Camp.

Groundwater extractions from the Santa Margarita Sandstone may affect the flow regime in Gazos Creek as reduced quantity of flow in the Creek; therefore, the installation of a groundwater well in the Santa Margarita Sandstone at the site requires instrumented high-volume pumping of the well after the well is completed. Instrumentation must include continuous measurement of the flow in Gazos Creek at the proper locations before, during, and after high-volume pumping of the proposed groundwater well. Furthermore, data may be collected in the pumping well to obtain data that can be analyzed to determine aquifer characteristics. The

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<sup>6</sup> Geology of the Onshore Part of San Mateo County, California: Derived from the Digital Database of Open-File 98-137

By E.E. Brabb, R.W. Graymer, and D.L. Jones

<sup>7</sup> Santa Margarita Sandstone (upper Miocene)--Light-gray to grayish orange to white, friable, very fine- to very coarse-grained arkosic sandstone. Fine-grained sandstone commonly contains glauconite. A quartz and feldspar pebble conglomerate crops out locally at the base of section. Santa Margarita Sandstone is as thick as 60 m.

from pamphlet derived from digital OF98-137

U.S. Geological Survey

Geology of the Onshore Part of San Mateo County, California: A Digital Database

By E.E. Brabb, R.W. Graymer, and D.L. Jones

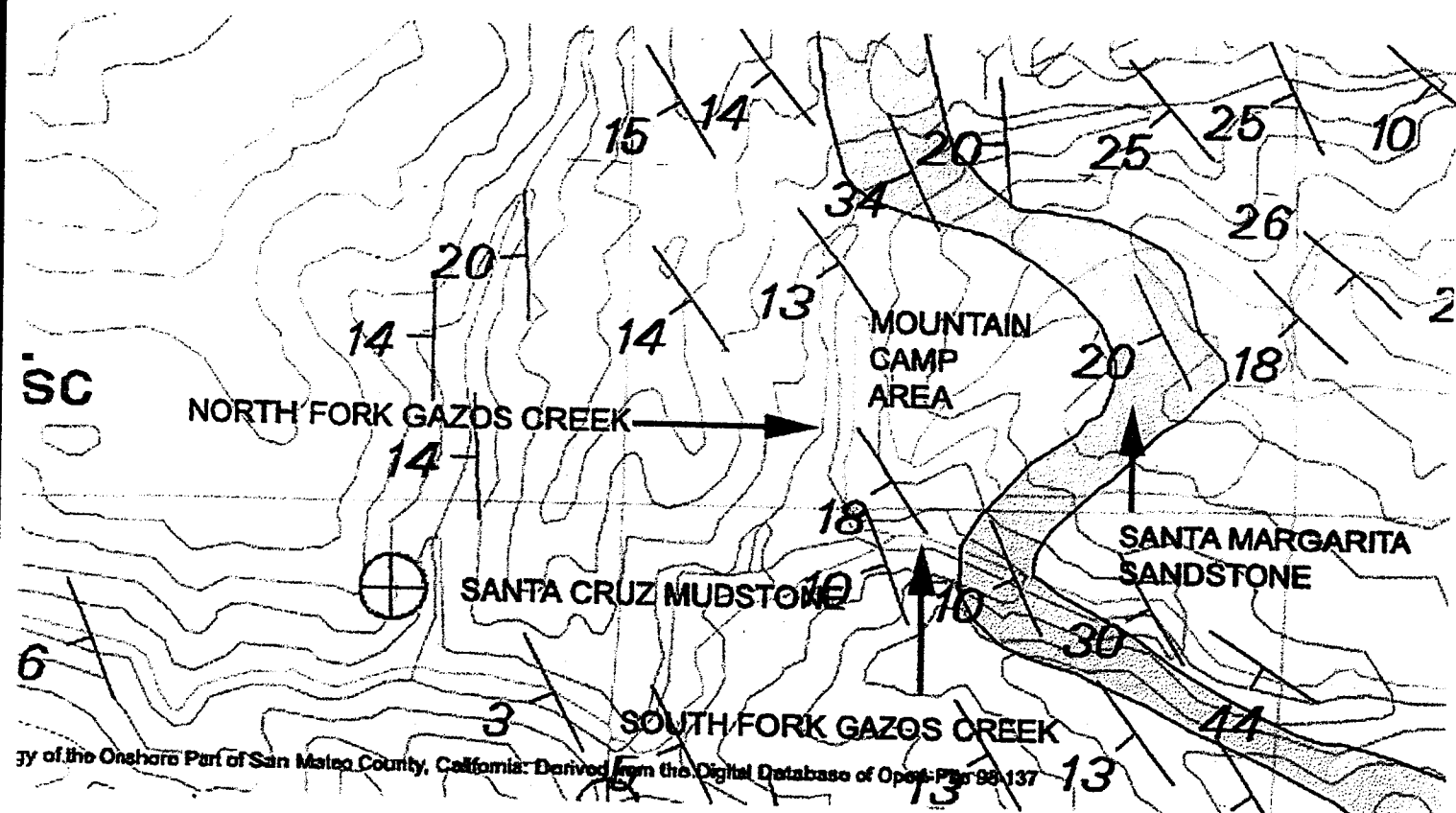
<sup>8</sup> Santa Cruz Mudstone (upper Miocene)--Brown and gray to light gray, buff, and light-yellow siliceous mudstone with nonsiliceous mudstone and siltstone and minor amounts of sandstone. Santa Cruz Mudstone is more than 1000 m thick subsurface west of the San Gregorio fault

from pamphlet derived from digital OF98-137

U.S. Geological Survey

Geology of the Onshore Part of San Mateo County, California: A Digital Database

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length of high-volume pumping may equal, or exceed, the 72-hour pumping test executed in the Ohlone Valley of the Whitehouse Creek watershed located immediately south of the Gazos Creek watershed. The design, instrumentation, execution, data collection and interpretation, and reporting for a test pumpage must be conducted by a State of California Certified Hydrogeologist with a history of performing such tests in watersheds that support salmonid fish species of concern including coho salmon and steelhead trout.

### **Septic System Drain Field**

According to Dean Peterson, Director of Environmental Health for San Mateo County, the site contains one septic system drain field located beneath the Meadow located in the northeastern portion of the site. It is assumed that all toilets, sinks, showers and other infrastructure that drain wastewater, drain to the septic system drain field beneath the Meadow. Mr. Peterson indicated that the County does not have in place, nor require, an applicant to determine if the drain field effluent is entering a channel network. Given the aforementioned level of concern for the biota of the Gazos Creek watershed by State of California and federal agency scientist, the location of the septic system raises concern that the effluent from the septic system drain field may enter the channel network of Gazos Creek. As such, the chemical composition, potential toxicities and synergisms of the septic system drain field effluent to biota must be determined in order to ensure that such effluent will not harm species known to inhabit the channel network. Furthermore, following determination a continual program of effluent monitoring must be established and maintained to assure that effluent is not entering the channel network in the future.

### **Wet Laboratory**

The use permit documents reference the conversion of an existing bathroom at the Mountain Camp to a wet laboratory. The term wet is assumed to mean the use of chemicals required to perform wet chemical analysis—that is the use and combining of analytical grade chemicals and the assumed disposal of a waste stream of such chemicals inherent in performing wet chemistry. The inferred use of the wet laboratory is evident on the following page, which contains information supplied to the Planning Division by the Pescadero Conservation Alliance. Note the schematic contained in this information includes designation of a fume hood, which implies the use of chemicals that may be adverse to human health if inhaled. Further, the presence of a fume hood implies an exhaust stream to the atmosphere containing such chemicals. In addition, the schematic delineates an Eye Wash Station—again an indication of the intended use of chemicals that are adverse to human health—and a sink. Clearly, the intent in converting an existing bathroom to a wet laboratory is to perform wet chemistry analysis. Yet, the documentation produced by the Planning Division for the subject use permit fails to acknowledge the link between a stated conversion of an existing bathroom to a wet laboratory and the following issues:

- o Transport and use on site of analytical chemicals.
- o Use on site of analytical chemicals that may be adverse to human health as evident from the submitted schematic that delineates a fume hood, Eye Wash Station, and sink.
- o Specific types of chemicals; quantities; molarity, pH and other relevant parameters of chemicals; the specific uses of chemicals; the potential hazardous chemicals and synergisms obtained through mixing chemicals; composition of the effluent stream from the wet laboratory to the septic system and drain field; exhaust gas composition, and potential hazard of such gas to human health and the environment, from the fume hood exhaust vent.
- o Contingency plans for facilitating an emergency response in the event of a chemical spill and accidents that may endanger human health and the environment.

Given the level of concern for species of concern that are known to, or suspected to, inhabit the Gazos Creek watershed, it is a unique omission by the Planning and Building Division to not address these issues concerning the presence of a wet laboratory. The most important issue in this list is the potential release of chemicals toxic to aquatic life as effluent from the septic drain field, or accidental release with resultant flow into the channel network.

### **California Red-Legged Frog**

The presence of the California red-legged frog in the pond located at the Mountain Camp was acknowledged in the Notice of Intent to Adopt, Negative Declaration. On page 12 of the Biological Impact Form it is stated:

"California red-legged frogs may use this portion of Gazos Creek as summer habitat, but it does not have good quality breeding habitat: however, this frog does occur at the camp pond and likely breeds there (Buleger et. al 1998)."

On page 5 of the Biological Impact Form it is stated:

"Access to the field station will be along an existing pave driveway (accessed from Gazos Creek Road). This road parallels the north fork of Gazos Creek and crosses the south fork of Gazos Creek (with an existing concrete bridge)... A portion of the road also lies immediately adjacent to the existing pond."

"Portions of the road may also be within the movement range of the California red-legged frog, a federally listed animal species."

The California red-legged frog is present at the Mountain Camp, likely breeds in the pond, and a "portion of the road lies immediately adjacent to the existing pond". As such, a condition of permitting must be that the road is decommissioned and that no vehicular traffic, including motor vehicles and non-motor vehicles such as bikes, be permitted within a specific distance from the pond. A qualified biologist with expertise in the life history and behavior of the California red-legged frog must make the determination of the proper distance for vehicle exclusion.

### **Surface Processes and Transport of Sediment into the Channel Network**

The documents prepared by the Planning and Building Division concerning the proposed use permit contains no discussion of the potential for sediment entrainment and transport into the channel network of Gazos Creek due to changes in surface processes concomitant with the proposed use of the Mountain Camp. The land upon which the Camp exists has not recently been subjected to a relatively high density of human occupation and use, such as that proposed for the subject permit. As such, existing surface processes may transport relatively small quantities of sediment into the channel network under seasonal rainfall and dry season conditions. With the advent of the proposed density and use, surface processes may be altered as a consequence of alteration of soils and organic material on surfaces that drain to the channel network, and the surfaces within the Mountain Camp area. Furthermore, increased human occupancy may result in "founder" trails be established due to pervasive unintended traffic patterns in the Mountain Camp area which produce pathways for sediment transport into the channel network.

Given the aquatic species of concern that inhabit the channel network of Gazos Creek, an increase in sediment transport to the channel network is highly undesirable. Such transport may impede the ability of anadromous fish to attain reproductive potential with increased turbidity, and possible loss of redd habitat, due to increased sedimentation. As such, increased sedimentation to the channel network from the Mountain Camp should not occur and program of

analysis and monitoring of surface processes—in particular sediment transport—must be required as a condition of permitting.

Prior to issuing a use permit the 12-acres encompassing the infrastructure of the Mountain Camp, and areas of intended and anticipated human use outside the 12-acres, should be analyzed by a State of California registered geologist, preferably with certification in hydrogeology, with specialization and experience in surface processes. The analysis should include, but not be limited to, delineation of soil types within and outside the 12-acres of infrastructure, mapping of surface topography to determine preferential pathways for sediment transport to the channel network at present and under anticipated changes in land use. Furthermore, surface reconnaissance by such qualified geologist should be performed several times a year during the rainfall and dry seasons to determine if land use patterns are resulting in the development of pathways, which result in sediment transport to the channel network.

**Preliminary Proposal**  
for utilizing the  
**Gazos Creek Mountain Camp**  
as an  
**Environmental Education Facility.**

Submitted by South Coast Resident, Bert McKee

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## Introduction

Because of its preliminary nature, this proposal lacks certain elements such as a detailed workplan, budget justification and description of the capabilities of a designated fiscal agent. These can be developed later if the Board of the Sempervirens Fund indicates an interest in the project. It was developed with four basic principles in mind:

- Preservation of the Local Ecosystem
- Consistency with the Principles of the Sempervirens Fund
- Relevance to Community Needs
- Responsible Fiscal Management

Several program concepts are presented that seem to be consistent with these principles, although it will require further study and discussion to be sure that specific program ideas are appropriate. These program concepts include:

- Youth Stewardship Programs
- Outdoor Education Curriculum Adaptable to the Needs of Individual Groups
- Programs in Deep Ecology
- A Regional Resource Management Institute
- Educational Eco-Tours
- Research Projects

The three and a half year budget is based on an inspection of the facility and discussions with Randy Bennett who was responsible for maintenance under the original owner. The writer also drew on his experience managing a local retreat center and working with a local non-profit developing government and privately funded youth programs.

Fiscal 98-99	<\$10,000>
Fiscal 99-00	<\$376,500>
Fiscal 00-01	<\$750>
Fiscal 01-02	\$46,450

These balances suggest an initial three year startup cost of \$340,800.