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APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal number..... A-3-MCO-04-012, Laube & Engel Residence

Applicants..... Sheldon Laube & Nancy Engel

Appellants..... Dr. & Mrs Hugh McAllister; and Commissioners Sara Wan and William Burke

Local government..... Monterey County

Local decision..... Approved with conditions, January 13, 2004

Project location..... 36240 Hwy.1 (Kasler Point), approx. 0.5 mile south of Garrapata Creek, Big Sur Coast, Monterey County (APNs 243-251-012 & 243-251-013).

Project description..... Construct a 8,270 sq.ft. single family residence with an approx. 1,824 sq.ft. subterranean garage, including development within 100 feet of environmentally sensitive habitat (ESHA), approx. 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot line adjustment that will consolidate two (nominal) 2-acre parcels.

Local approval..... The Monterey County Board of Supervisors, upon appeal, approved a Combined Development Permit (including four Coastal Development Permit components), Resolution 03073 (PLN010105), for the project on January 13, 2004.

File documents..... Monterey County certified Local Coastal Program, including Big Sur Coast Land Use Plan; Final Local Action Notice 3-MCO-04-027; documents and materials from the local record provided by Monterey County on February 2, 2004; Coastal Development Permit no. A-174-77 (Sorensen), approved August 3, 1977, and appears to have expired August 3, 1979.

Staff recommendation ...Substantial Issue Exists

Summary of staff recommendation: The Monterey County approval that is the subject of this appeal is for a 8,270 square foot residential dwelling, with an approximately 1,824 sf subterranean garage. The project includes development within 100 feet of environmentally sensitive habitat, approximately 1,750 cubic yards of cut and 736 cubic yards of fill, slopes over 30 percent, and a lot merger that will consolidate two (nominal) 2-acre parcels. The project is located on the coast along the northern portion of the Big Sur Coast, on a granitic headland, known as Kasler Point. The subject property is located



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September 8, 2004 Meeting in Eureka

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

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adjacent to a 2-acre open space property, owned by the State Coastal Conservancy that has been put in scenic easement to protect seaward views from the Abalone Cove Vista Point, one-half mile south of Garrapata Creek on the Big Sur Coast Highway.

Appeals, submitted by Commissioners Wan and Burke and Dr. and Mrs. Hugh McAllister, raises issues with regards to development within the critical viewshed, and development in the Rocky Point critical viewshed exception area. The McAllister appeal also raises issues regarding demonstration of visual impacts, development in hazardous areas, protection of environmentally sensitive habitat (coastal scrub and marine and rocky near-shore), as well as procedural issues regarding the County's processing of a project when an existing Coastal Commission permit was in force.

The project raises critical and substantial issues with respect to conformance with LCP policies that protect visual and scenic resources, environmentally sensitive habitat areas, coastal hazards and water quality policies. Due to these issues, staff recommends that the Commission find **a substantial issue** with respect to the grounds in which the appeal has been filed and take jurisdiction over the coastal development permit for this project.

First, the project approved by the County, located between Highway One and the sea, will be visible from the Highway and has not been sited and designed to minimize impacts to the viewshed as required by the LCP. The County's findings acknowledge that the proposed house is visible from Highway One, but the County's final action does not require any design modifications to reduce the size or height of the structure in order to minimize views of it as required by the LCP. Given that a previous 3,950 sf home was approved on this site that would not be visible within the critical viewshed, there is no justification to approve a larger, over 10,000 sf structure that does not meet the scenic resource protection policies when other measures can be taken to further minimize views of the structure as required by LCP policies. Therefore, the project as approved **raises a substantial issue with regards to scenic resources.**

Second, the biological survey conducted for the project in 1999 states that approximately 120 seacliff buckwheat plants (out of 130 total) would be removed by the project. The Big Sur LUP describes rare and endangered species habitats as environmentally sensitive habitat areas. Seacliff buckwheat (*Eriogonum parvifolium*) is one of only 2 host plants for the endangered Smith's blue butterfly, which spends its entire life cycle associated with these plants, and so as a critical habitat for this rare and endangered species, is considered environmentally sensitive habitat. While the County required replacement of the seacliff buckwheat plants at a 3:1 replacement ratio, it did not require that the development avoid these sensitive habitat areas, as required by the County's LCP ESHA policies. Since the County's approval allows for removal and mitigation of this sensitive habitat, rather than avoidance through redesign or reduction of structural footprint, the County's action **raises a substantial issue with regards to protection of environmentally sensitive habitat.**

Third, while the geological report recommends that structures be located at least 15 feet from the blufftop neither the geologic report nor the geotechnical report includes any assessment of slope stability or evidence or rationale to ensure that a 15-foot setback would be adequate to avoid the need for



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seawalls during the development's lifespan. In fact, both the geological and geotechnical reports infer that shoreline protection measures may be needed along the southwestern shoreline in the future. Monterey County LCP Policy requires adequate setbacks to assure the development will not need shoreline protection during the life of the structure, and that geologic reports provide evidence that permitted development will not create geologic hazards or diminish the stability of the area. Onsite drainage also may increase erosion and decrease geological stability of the site. Thus, the project as approved by the County **raises a substantial issue with regards to Geologic hazards.**

Fourth, according to the County's approval, water will be supplied to the site by the Garrapata Water Company, which draws from Garrapata Creek baseflow. The LUP lists Garrapata Creek as a steelhead stream and water resource protection policies require that the impacts of all new development proposals on these streams be considered; however, the County's action does not include any discussion of this requirement. As the proposed development would cumulatively add to the amount of water diverted from the Garrapata basin, such evaluation is necessary to ensure that no significant impacts to the natural integrity of the stream will result from the approved development. Furthermore, the Garrapata Water Company is out of compliance with State safe water drinking standards, and may already be drawing more water than they have been allocated. After being informed by the county that the water system would have to be modified to come into compliance with State safe drinking requirements, 1) the owners of the Garrapata Water Company sued the County over its requirements that the system be modified to meet state requirements; 2) the Court found against the owners, who were forced to abandon the system; 3) the owners have continued to operate the system even though the County is looking for a new receiver to own and operate the system; and 4) other current users are trying to find a way to operate the water supply system as a mutual water system. Since these facts raise concerns that project may not actually have an adequate, safe and continuous supply of water, and the expansion of the proposed water source may have cumulative adverse impacts on the condition of Garrapata Creek steelhead, approval of the project **raises a substantial issue with regards to water supply and protection of water resources.**

Finally, the proposed building site is on shallow coastal terrace colluvium over granite bedrock. Storm water runoff and septic system leachates from the development have the potential to adversely impact adjoining tidepools and rocky intertidal habitats that are part of the Monterey Bay National Marine Sanctuary. While some risk reduction may be achieved through relocation of the septic system farther away from the bluff edge and use of a pump, the County failed to require that alternative designs be considered that would reduce the potential for sediments and septic system leachate, through reduced project sizing. Thus, the project **raises a substantial issue with regards to LCP water resource and water quality protection policies.**



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1. Appeal of Monterey County Decision

A. Local Government Action

On January 13, 2004, the Monterey County Board of Supervisors, upon appeal and *de novo* hearing, approved a Combined Development Permit (including four Coastal Development Permit components), Resolution 04028 (PLN010105), for the project, which allowed construction of a 8,270 square foot (sf) residential dwelling, with an approximately 1,824 sf subterranean garage, including development within 100 feet of environmentally sensitive habitat, approximately 1,750 cubic yards of cut and 736 cubic yards of fill, construction on slopes over 30 percent, and a lot line adjustment that will consolidate two (nominal) 2-acre parcels. See Exhibits 1 for location maps, and Exhibit 2 for project site plans. A copy of the County approval is attached as Exhibit 3.

Notice of the Monterey County Board of Supervisor's action on the CDP was received in the Commission's Central Coast District Office on February 2, 2004. The Coastal Commission's ten-working day appeal period for this action began on February 3, 2004 and concluded at 5:00 P.M. on February 18, 2004. Two valid appeals were received by the Central Coast District Office during this appeal period from: 1) Commissioners Wan and Burke and 2) Dr. and Mrs. Hugh McAllister. The reasons for the appeal submitted by Commissioners Burke and Wan are attached to this report as Exhibit 4. And, the reasons for the appeal submitted by Dr. & Mrs. Hugh McAllister are attached to this report as Exhibit 5.

B. Summary of Appellants' Contentions

The project has been appealed to the Coastal Commission on the basis that it is inconsistent with a substantial number of different policies and implementing ordinances of the Monterey County Local Coastal Program (LCP). In particular, the following LCP conflicts and issues are highlighted in the appeals received:

- 1) Scenic views - Both appeals raise the issue of scenic view protection. The appeals contend that the project is inconsistent with applicable standard of review for evaluation visual impacts and appropriate requirements, that the project is not in an exception area, and that the project inconsistent with standard of review used by County. The McAllister appeal also raises the issue that the applicant's visual representation of the project failed to conform to the LCP requirement for demonstration of visual impacts.
- 2) Hazard avoidance - The McAllister appeal raises the issue of conformance with LCP policies for development in hazardous areas.
- 3) Environmentally sensitive habitat areas - The McAllister appeal raises the issue of conformance with LCP policies for protecting environmentally sensitive habitat areas.



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- 4) Water quality protection - The McAllister appeal also raises the issue of conformance with LCP policies for protecting water resources.
- 5) Procedural questions - The County's approval of this application presents a number of unresolved jurisdictional and procedural issues. These issues include, but are not limited to, the following:
 - a) The Coastal Commission appeal notes that the County action references the Coastal Commission's earlier permit for a home on this site and the need to amend that permit. Specifically, the State Coastal Commission, upon appeal from the Regional Coastal Commission, granted Coastal Development Permit no. A-174-77 for a 3,950 square foot residence to Donald Sorensen on August 3, 1977. Permittee accepted the permit, recorded a scenic easement and commenced grading, installed water connections, constructed a driveway and commenced construction of the residence (which has not proceeded beyond the foundation). However, the permit also required merger of the two lots comprising the site prior to construction, but it appears that this was never accomplished by the permittee. Thus any work done on the project was in violation of the conditions of the permit and cannot be used to assert that the permit was exercised. The County was originally advised that the Coastal Commission would be the appropriate venue for consideration of amended plans. The applicants nonetheless pursued a separate CDP application for a significantly different project with the County for this site. Thus, a question is raised as to the proper procedure that the Coastal Commission should follow in considering this item.
 - b) As pointed out by Appellant McAllister, the current plans approved by the County would not be consistent with the CDP issued by the Coastal Commission and would violate the terms of approval that were adopted in 1977.
 - c) Appellant McAllister asserts that there are pending grading and construction violations that, under the County's LCP procedural rules, should have precluded action on the application.

C. Appeal Procedures

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



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The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to approve the project. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a *de novo* review in this case.

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

2. Staff Recommendation on Substantial Issue

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

MOTION: *I move that the Commission determine that Appeal No. A-3-MCO-04-012 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF 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 by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE: The Commission hereby finds that Appeal No. A-3-MCO-04-012 presents a **substantial issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.



3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location

The subject property includes two parcels (APNs 243-251-012 and 243-251-013) that are each 2 acres in size and are located between Highway One and the sea, approximately 10 miles south of Carmel, and one-half mile south of Garrapata Creek, on a granitic headland known as Kasler Point (see Exhibit 1 and site photos shown in Exhibit 6). The State Coastal Conservancy's 2-acre open space property sits north of the subject property, immediately south of Abalone Cove, and protects seaward views from the Abalone Cove Vista Point along the Big Sur Coast Highway. As shown on the location a map, the southern parcel (APN 243-251-012) contains a rocky shoreline bounded on the southwest and west by the Pacific Ocean, along the northeast by the northern parcel, and along the east by Highway One. The northern parcel is bounded on the north by the rocky shoreline within Abalone Cove, and to the east by the Conservancy parcel and Highway One.

The site contains an existing graded (unpaved) access driveway, concrete gutter and excavated/graded building pad from work conducted in violation of the terms of the previous coastal development permit issued to Sorenson in 1977. The 1977 Sorenson staff report described Kasler Point, prior to grading, as a dome shaped, rocky headland jutting into the Pacific Ocean. However, the site has since been excavated to create a building pad for the residential development, with a nearly vertical westerly facing wall about 70 to 100 feet from the blufftop (top elevation of cut face about 90 feet), and a fairly level base at an elevation of about 65 feet. Construction of the approved dwelling was never completed however, and other abandoned improvements related to earlier development efforts include reinforced concrete footings, drain lines, inlets and culverts, water lines and underground utility trenches and a septic system. Additionally, the old building pad was constructed with a cut and fill grading operation. Historic fill material appears to have been spread in the saddle, between Kasler Point and the excavated pad area, as well as on the edge of the slope northwest of the old building pad. The area is underlain by dense granitic bedrock overlain with terrace deposit materials that include gravelly, silty and clayey sand.

According to the geotechnical review conducted by Haro Kasunich, surface drainage currently runs down the driveway to an area just south of the graded pad. Two storm drains are located on the property to collect the runoff. One of the storm drains is located to collect stormwater runoff from the driveway drainage, the second, located on the north side of Kasler Point was probably designed to collect runoff from the entryway and yard area. Both stormwater culverts discharge onto granite bedrock.

B. Project Description

The project approved by the County is for development of an 8,270 sf single family dwelling with an approximately 1,824 sf subterranean garage (which includes a wine cellar, elevator, bathroom, and mechanical room) for a total 10,094 sf residence; grading of approximately 1,750 cubic yards of cut and



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736 cubic yards of fill that involves cutting into slopes over 30 percent; development within 100 feet of an environmentally sensitive habitat; and a lot line adjustment that consolidates the two lots (APNs 243-251-012 and 243-251-013) into one lot.

As described above, the subject property was partially developed by previous owners (Sorenson). The proposed project intends to use generally the same access driveway and building site as that graded by the previous owner. The design approved by the County includes a large two-story dwelling, with additional lower level basement that includes the attached garage, wine cellar, bathroom, and mechanical room, and driveway with garage entrance and turnaround area (site plans are shown in Exhibit 2).

In plan view, the proposed house is somewhat semi-circular in shape, with an oval shaped theater/media room along the northern end. While originally proposed with the driveway and garage along the west side of the structure, the approved plan shows the house tucked in close to the nearly vertical cut face (fractured granite bedrock, with cut face inclined at about ½:1 to 1:1) and the driveway and underground garage are located along the east, or landward side of the structure. Catchment/retaining walls of up to about 20 feet high are proposed to accommodate the driveway, basement garage and north wing of the house. As designed, the house would extend about 80 to 90 feet out from the cut face. A turnaround is located to the south of the homesite, and a deck is shown along the southwest side of the house, within 15 feet of the top of the seacliff. As shown on the topographic map, the top of the bluff is about 50 to 60 feet above mean sea level. The northern segment of the house (the oval theater/media room) would be located adjacent to the northern parcel, and require further excavation of the cut slope, which would reduce how far the structure extends out onto the terrace, and reduce visibility of that portion of the structure. The design would use the existing 540-foot long access driveway, to be surfaced with crushed granite.

The house will be constructed using concrete, glass and wood framing. Floors will consist of conventional concrete slabs, and the structure will use a pier and beam foundation system with footings that penetrate overlying fill and colluvium and are embedded at least 2 to 5 feet into the granite bedrock beneath the house footprint. Where native granite is not encountered at the slab sub-grade, concrete slabs would be constructed on compacted fill.

According to the geotechnical review conducted by Haro Kasunich, excavations for the below grade garage and driveway entryway will require cuts of 8 to 16 feet. Plans approved by the County show the elevation of the garage and entry driveway at an elevation of 54 feet based on site and drainage plans dated November 4, 2002. The turnaround area south of the garage entryway is at elevation 64.

The building will require additional grading for excavation of the basement and foundations, with 1,750 cubic yards of cut and 736 cubic yards of fill.

Currently, three side-by-side manhole covers, which service the existing septic holding tanks and a pump station, are located in old compacted fill, close to the seacliff. Geotechnical recommendations have been made that these facilities be relocated at least 15 feet from the seacliff, or shoreline protection would be necessary to protect them from future sliding and/or erosion. According to the revised Geotechnical



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Report, submitted by Vicki Odello, C.E., dated December 2002, a pump-up septic system and leach fields have already been approved by the County and have already been installed as part of the prior development permit. The leach fields are located about 200 feet southeast of the house, and about 40 feet up-slope from the house site on the east side of the ridge.

According to the Geotechnical review, although the site includes remains of the previous development, all improvements would be removed except for the driveway and leach fields.

C. Procedural Issues

With regards to the procedural issues, the Coastal Commission granted an earlier permit for a single family dwelling in 1977 to Sorenson (Permit # A-174-77). The permit was for approval with conditions for a 3,950 sf, three-bedroom house on the site (designed as a rectangular structure that stepped into the hillside, with two stories and a basement level garage). The permit incorporated nine special conditions originally established by the Regional Commission, and three additional Conditions established by the State Coastal Commission. In particular, Regional Commission Special Condition #3 required that prior to commencement of grading or construction, permittee show that Parcels 243-251-012 and -013 had been consolidated and recorded as a single parcel of land, and Regional Commission Special Condition #4 required that construction not commence until an easement for protection of scenic and natural resources was granted to an appropriate public agency or conservation foundation. The easement, was to include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeologic and other scientific research purposes secured.

During review of this current proposal, Commission staff recommended to the County staff that the applicants request for a new residence should be considered an amendment to the original 1977 Sorenson CCC permit, based on staff's belief that the original permittee had exercised the permit, as evidenced by partial development on site. (The previous applicant had recorded a scenic easement and excavated part of the western slope for a building pad, installed foundation footings, septic, utility lines, and graded an access driveway). However, it has since been determined that Sorenson never combined the two lots as required by the Commission's permit, and so the work done was in violation of permit conditions. Sorenson never completed any further development of the site. Work done in violation of permit conditions is illegal and cannot be used to assert that the permit has been exercised. Since no extension of the 1977 permit occurred (or was requested) the Sorenson CDP appears to have expired in 1979. Eventually, the property was sold to Laube/Engel, the current property owners; whose application for development in the same general building site is the subject of this appeal.

After discussions with Commission staff Counsel, it has been determined that, since the prior to construction conditions of the Coastal Commission permit were never fulfilled, the development that was conducted on the subject property was performed in violation of permit conditions and in violation of the California Coastal Act. Since Commission approval of the Sorenson project was granted for a



period of two years, and permit conditions were never fully complied with during that time, the permit appears to have expired, and the development on the site is a violation. The County now has a certified LCP, and as such has been granted the authority to regulate development in the coastal zone, with the Commission retaining appeal jurisdiction in the Big Sur Coast. Thus the Commission finds that the County was correct to have processed a coastal development permit application for the project. As a result of carrying out their permit authority, the County has approved a project, which has been appealed to the Commission.

D. Substantial Issue Evaluation

The Appellant's, Commissioners Wan and Burke, and Big Sur Coast resident Dr. and Mrs. Hugh McAllister, have appealed the final action taken by Monterey County, on the basis that approval of the project is inconsistent with policies and ordinances of the Monterey County certified Local Coastal Program. Having resolved the procedural issues raised by the appeal above, the remaining appeal contentions fall generally into four areas: 1) visual and scenic resources; 2) hazards; 3) environmentally sensitive habitat areas; and 4) water quality. As described below, several of these concerns raise a substantial issue with respect to the project's conformance with the Monterey County LCP.

1. Visual Resources

The appellants' contend that, as approved by the County, the project is inconsistent with applicable scenic view protection policies, and that the County used the incorrect standard of review for evaluating impacts in the critical viewshed.

a. Applicable Policies

The County's LCP is protective of visual resources within the Big Sur Critical Viewshed

Specifically, the Big Sur Coast Land Use Plan's Critical Viewshed Policy states:

3.2.1 Key Policy - Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.



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The Big Sur Coast Planning Area Land Use Plan (LUP) Policy 3.2.2 defines the Critical Viewshed as everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and specific locations including, among others, Soberanes Point and Garrapata Beach.

Exceptions to Key Policy 3.2.1 are provided for in certain specific cases, including vacant parcels in the Rocky Point Area (LUP Policy 3.2.5.F). Big Sur Coast LUP Policy 3.2.5.F defines the Rocky Point exception area as follows:

3.2.5.F Rocky Point Area Vacant Parcels. *Existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point and from the southernmost developed parcel north of Abalone Cove to the northernmost developed parcel south of Garrapata Creek...*

At the time of LCP certification, the Sorenson permit had been granted for development, on the southern parcel with a scenic conservation easement over the remainder and the entire northern parcel. Thus parcel 243-251-012 was considered the northernmost developed parcel on Kasler Point, and thus within the Rocky Point exception area. Policy 3.2.5.F allows that parcels within the Rocky Point exception area be permitted to be used for residential development, subject to the policies of Section 3.2.4 of this plan [titled: Land Not in the Critical Viewshed] and the following standards outlined in 3.2.5.F:

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

Section 3.2.4 contains the following policies for land not in the Critical viewshed:

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

3.2.4.A.2. *New applicants, when selecting a building site, must consider the visual effects upon public views as well as the views and privacy of neighbors. The portion of a parcel least visible from public viewpoints will be considered the appropriate site for the location of new structures. New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides or silhouetted ridges. Sites shall not leave*



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excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover.

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

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

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

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

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

Regulations for development not within the critical viewshed include:

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

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

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



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

The Big Sur LUP also includes recommended action 3.2.6.3. that state that

Where no other feasible mitigation measures for eliminating the adverse visual impacts of new development in the critical viewshed are available, the County may institute and utilize a Transfer of Development Credits (TDC) system that will permit development credits for a parcel determined to be developable except for the critical viewshed restrictions. Such credits may be transferred at the owner's option to a receiving parcel not in the viewshed and otherwise found to be suitable for an increased density of development. The use of transferred credits will be allowed as a conditional use under this Plan. However, the increase in residential density on the receiving parcel shall not exceed twice that which is specified by Section 5.4 of this Plan, except where: a) an environmental impact analysis reveals site suitability for more units; b) traffic impacts will be mitigated through reduction in the number of driveway encroachments onto Highway 1; and c) consistent with all other standards listed in this Plan.

Critical viewshed parcels protected under a TDC system shall be secured through enforceable restrictions (e.g., scenic easement dedication), subject to County Counsel review and approval of the applicable documents.

b. Analysis of Consistency with Applicable LCP Policies

The Big Sur Coast Land Use Plan (LUP) visual resource Key Policy section 3.2.1 generally prohibits new development in the Critical Viewshed, i.e., visible from Highway 1 and other defined public vantage points. The purpose of this LCP policy is to protect the Big Sur Coast's highly scenic views, enjoyed by millions of visitors per year, from the individual and cumulative impacts of development. Such protection is achieved, in part, by requiring that new projects be concealed from public view. However, as approved by the County, this project, located between Highway 1 and the sea, will be visible from the Highway and has not been sited and designed to avoid impacts to the Critical Viewshed as required by the LCP.

As acknowledged by the County findings, the proposed house will be visible from Highway 1. The findings incorrectly state that the project is not located within the Critical Viewshed, however if it is visible from Highway One and major public viewing areas including turnouts, it is by definition within the critical viewshed.

The Big Sur Coast LUP provides some exceptions to the strict application of Key Policy 3.2.1 in certain specific cases where vacant lots exist in certain partially-developed residential enclaves located in the Critical Viewshed--including the nearby Rocky Point area. As described above, the Rocky Point exception area is defined in LUP Policy 3.2.5.F as "existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential



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parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point.” Since development had been already been approved on APN 243-251-012 (the southern parcel of the subject site) prior to certification by the Commission, it was understood that this parcel was located in the Rocky Point Exception area. However as the northern parcel was not to have any development on it, it was understood that this parcel was not part of the Rocky Point exception area.

While it can be argued that since the site was never actually developed in accordance with the permit granted by the Coastal Commission it could still be considered a vacant parcel (other than what structural ruins remain), staff involved in the creation of the Big Sur LUP concede that the southern parcel was considered at the time of certification to be part of the Rocky Point Exception area, therefore, the County used the correct standard of review when it evaluated the project in regards to the Rocky Point exception area, which requires the County to apply policies for land not in the critical viewshed when evaluating residential development.

However, it is important to note that LUP Policy 3.2.5.F also provides specific requirements for development in the Rocky Point Exception area. Although it is often incorrectly referred to as an “exemption area,” location in a residential “exception area” does not mean that “anything goes” or that the lot is somehow no longer in the Critical Viewshed. Instead, the exception area standards allow residential use on existing lots in the Critical Viewshed if measures are incorporated to insure that visual impacts are minimized and do not block ocean vistas as seen from Highway 1 (LUP 3.2.5.F). The policies call for siting on the portion of the lot least visible from public viewpoints (LUP 3.2.4.A.2). Modifications for siting, design, size and access are required where needed to insure that new development be designed to blend in with, and be subordinate to, the natural environment (LUP 3.2.4.A.3). And dedication of a scenic easement over the undeveloped portion of the lot is required (LUP 3.2.5.F, and CIP Section 20.145.030.B).

In this case, the 10,000+ sf structure (8,270 sq.ft. single family dwelling + 1,824 sf garage/wine cellar/bath/mechanical room) is far too large to blend in with, and be subordinate to, the natural environment. As noted by appellant McAllister, the location on the property is not “the least visible” location on the property, because alternatives are available for minimizing impacts on Highway 1 views, including a substantial reduction in size, and alternative orientation or siting on the lots so that no portion of the structure would be visible from public viewing areas. Given the large landmass between Highway One and the excavated building pad, the 25 foot high cut slope that has already been excavated at the site, and the fact that the project is already planning further excavation for a lower level garage, it is not unreasonable to expect a structure could be sized and located so that it would not extend beyond the ridgeline and into the critical viewshed. The previous coastal permit (A-174-77 Sorensen) for a 3,950 sq.ft. residence demonstrates that it would be feasible to minimize visual impacts, to the point where a smaller-sized structure would not be seen at all. But, as currently designed, the project’s size, height and visually prominent location prevent conformance with the LCP’s visual resource protection policies for views seen from Highway 1. Therefore, the project clearly is not consistent with LCP standards for the Rocky Point exception area.



c. Conclusion

The project approved by the County, located between Highway One and the sea, will be visible from the Highway and has not been sited and designed to minimize impacts to the viewshed as required by the LCP. The County's findings acknowledge that the proposed house is visible from Highway One, but the County's final action does not require any design modifications to reduce the size or height of the structure in order to minimize views of it as required by the LCP. Given that a large, 3,950-sf home was approved on this site that would not be visible within the critical viewshed, there is no justification to approve an even larger, nearly 10,000 sf structure that does not meet the scenic resource protection policies when other measures can be taken to further minimize views of the structure as required by LCP policies.

In this case, it is demonstrably feasible to conceal even a large home from Critical Viewshed vantage points. The County applied 26 conditions of approval, but these will not result in the modifications needed to conform with LUP policies. (County Findings and Conditions of Approval attached as Exhibit 3.)

Thus, as proposed, the project does not meet the visual and scenic resource protection standards of the LCP because additional measures can be taken to minimize the structure and to make the development subordinate to, and blend with, the rural character of the area, therefore, the project as approved **raises a substantial issue with regards to scenic resources.**

2. Environmentally Sensitive Habitat Areas

The McAllister appeal raises the issue of conformance with the LCP's policies for protecting environmentally sensitive habitat areas. The project's Biological Assessment report notes the presence of a plant species—seacliff buckwheat (*Eriogonum parvifolium*) — that is a host plant for the Federally-endangered Smith's blue butterfly and is an indicator for environmentally sensitive habitat, and notes that the project has the potential to disrupt environmentally sensitive Smith's blue butterfly habitat and rocky intertidal and nearshore habitats adjacent to the site.

The Smith's Blue Butterfly (*Euphilotes enoptes smithii*) is a federally endangered butterfly species, that historically ranged along the coast from Monterey Bay south through Big Sur to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. They spend their entire lives in association with two buckwheat plants in the genus *Eriogonum*, one of which is *Eriogonum parvifolium*. Emerging in late summer and early autumn, the adults mate and lay eggs on the flowers of these host plants. The eggs hatch shortly thereafter and the larvae begin to feed on the flowers of the plant. Following several weeks of feeding and development, the larvae molt to a pupal stage, beginning a ten-month period of transformation. The following year, as the *Eriogonum* again flower, the new adults emerge.

While seacliff buckwheat itself is not a listed species, it is one of only two *Eriogonum* species that serves as a host plant for the endangered Smith's blue butterfly, and so is considered an environmentally



sensitive habitat when it is located within the range of Smith 's Blue Butterfly. Biological surveys conducted on the subject parcel in 1999 identified the presence of numerous seaciff buckwheat plants within areas of the site that would be affected by the proposed development, and indicated that approximately 120 plants (out of a total of 130 plants) would be removed.

The 1999 Biological report also indicates that the Kasler Point area, where the project site is located, is located at the heart of the range of the Southern sea otter (*Enhydra lutris nereis*), which is listed as threatened under the Federal Endangered Species Act. The biological report indicates that construction activities occurring between December and March could affect sea otter pupping (by casuing sea otters to abandon their pups if disturbed), and additional project excavation material and stormwater runoff may enter the inter- and sub-tidal zones, which would adversely impact nearshore invertebrate habitats used for foraging by the Southern sea otter. Since this population has undergone five successive years of population decline, such affects would be deleterious to this already threatened species.

a. Applicable Policies

Relevant LCP policies include the following:

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

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

3.3.2.3. The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.

3.3.2.4. For developments approved within environmentally sensitive habitats, the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) associated with the development shall be limited to that needed for the structural improvements themselves. The guiding philosophy shall be to limit the area of disturbance, to maximize the maintenance of the natural topography of the site, and to favor structural designs which achieve these goals.

3.3.3.B.1. Development on parcels adjacent to intertidal habitat areas should be sited and designed to prevent percolation of septic runoff and deposition of sediment.



3.3.3.B.4. Site design techniques intended to screen structures from view of Highway 1 shall not involve major land modification that may impact adjacent marine habitats.

b. Analysis of Consistency with Applicable LCP Policies

The LCP gives high priority to the protection of the Big Sur Coast's environmentally sensitive habitat areas (ESHAs). When developments must occur within ESHAs, LUP Policy 3.3.2.4 calls for limiting the removal of indigenous vegetation and favors those designs that minimize land disturbance. And, siting and design of development on parcels adjacent to intertidal habitat areas is subject to LUP Policy 3.3.3.B.1, regarding septic system percolation and sedimentation impacts.

As described above, a biological survey of the site was conducted in 1999 and identified potential impacts of the project and mitigation measures. The report indicated that approximately 120 seac cliff buckwheat plants (out of 130 total) would be removed by the project, and recommended they be replanted at a 3:1 replacement ratio. Although no overlay of the project design on the biological mapping was developed and submitted by the applicant, an eyeball comparison of the biological map included in the 1999 report (Exhibit 7), and the site plan for development approved by the County (Exhibit 2b), conducted by staff concludes that at least three different groupings of seac cliff buckwheat would be removed due to various project elements (i.e., 30 plants are located in or adjacent to the proposed driveway, a larger patch of 75 plants would be destroyed by the driveway and turnaround, and perhaps the southern end of the house, and a small patch of 4 plants would be taken out by the house itself).

The Big Sur LUP includes rare and endangered species habitats as environmentally sensitive habitat areas. As described above, seac cliff buckwheat (*Eriogonum parvifolium*) is one of only 2 host plants for the endangered Smith's blue butterfly, which spends its entire life cycle associated with these plants, and so as a critical habitat for this rare and endangered species, is considered as environmentally sensitive habitat.

The project biologist conducted additional surveys, based on Fish and Game protocol, to determine presence or absence of the butterflies on the site, but did not observe any Smith's blue butterflies during ten days of observations conducted between June 25 and August 25, 2003. However, the same survey identified that Smith's blue butterflies were found ½ mile north of the subject site in the Garrapata Creek watershed (on the one day that this control site was used) and at a second control site 3 miles north of the site. According to an email response from the U.S. Fish & Wildlife Service (submitted by appellant McAllister), negative survey results from a single year are not conclusive, and it should not be concluded that the species does not use the site.

The County's approval of the project identified policies for development adjacent to ESHA, but not within ESHA, as it should have, given that it noted the project would remove 120 seac cliff buckwheat plants. Removal of this number of plants could greatly reduce the habitat available to this sensitive species, especially since much of the site is dominated by invasive, non-native iceplant (*Carpobrotus edulis*). While the County required replacement of the seac cliff buckwheat plants at a 3:1 replacement ratio, it did not require that the design be minimized to avoid removal of these sensitive habitat areas,



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although the house was relocated from its original proposed location in an attempt to reduce visibility (the house was moved south from its original layout to move it off the northern parcel completely). But no efforts were made to reduce the footprint of the project to avoid impacts to the seacliff buckwheat plants that make up the Smith's Blue Butterfly habitat.

LUP policy 3.3.2.3 requires deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. The County did condition the permit to require a scenic and conservation easement "over the entire newly created parcel [i.e., the merged parcel], exclusive of the immediate building envelope and driveway, in order to protect the native coastal bluff scrub plant community and habitats for the Smith's blue butterfly and Monarch butterflies." While the County's action does not specifically identify the seacliff buckwheat as environmentally sensitive habitat, application of this requirement by the County infers that coastal bluff scrub, seacliff buckwheat (which is the sole plant on the subject site that serves as habitat for the Smith's blue butterfly) and Monarch butterfly habitat¹ is considered, and protected as ESHA. Since the County's approval allows for removal and mitigation of this sensitive habitat, rather than avoidance through redesign or reduction of structural footprint, the County's action **raises a substantial issue with regards to protection of environmentally sensitive habitat.**

The project also has the potential to disrupt sensitive marine habitats adjacent to the site. As noted above, the impervious surface area of the development is substantial, exceeding 10,000 sq. ft., and surface water runoff will be increased from these impervious surfaces. The County approval also requires the existing septic tank, located very near the bluff edge, to be destroyed and a new one installed in the location indicated on plans to be approved by the Division of Environmental Health – however, that new location is not currently shown on any site plans and so cannot be evaluated. Removal of the septic system from near the bluff, as required by the County permit, will serve to reduce water quality impacts that such a system, leaching into the thin layer of marine terrace deposits and fill over granitic bedrock, might have on adjacent inter-tidal areas. However, removal activities very near the bluff edge may destabilize the bluff and cause additional sediment to enter the inter-tidal zone adjacent to the site. Since the geologic report indicates that cracks have developed between the tanks and the bluff and further failure could occur, it is important to remove the septic tank before a more catastrophic failure is caused. The County permit is conditioned (#19) to require that no construction debris be allowed to enter the marine habitat, and no erosion shall be allowed to occur as a consequence of the proposed project, and to require an erosion control plan, which should adequately ensure that no adverse impacts occur from the project. It may be necessary for such erosion control to include silt fencing around the perimeter of project activities, especially around the septic tank removal area, to ensure that sediment

¹ The site also includes Monterey cypress north of the driveway, which will not be impacted by development. The County has, nonetheless, required they be protected during construction. While the 1999 biological report conducted for the project indicates that Monarch butterflies may utilize eucalypts and conifers (including Monterey cypress and Monterey Pines) as winter roosting sites, a later follow-up letter report by the same consultant (dated September 21, 2003) indicates that the cypress on the subject parcel do not provide over-wintering habitat for Monarch butterflies because: 1) the stature of the trees on site is insufficient to support mass over-wintering of the butterfly; 2) the cypress trees are fully exposed to storm winds from the south/southwest, and prevailing winds from the north,, and 3) there is not adequate food source on the property (i.e., there are very few seasonal nectar sources near the property, which are necessary for nourishment).



from this activity, as well as other construction activities do not enter the inter-tidal zone, impacting invertebrate marine organisms and reducing sea otter foraging habitat. While additional mitigation measures could be employed to reduce the amount of site coverage and amount of excavation that would be necessary for the project, the County's approved condition for requiring erosion control should serve to protect the inter-tidal habitat from sedimentation caused by the project

c. Conclusion

The County's approval of a 10,000+ sf house is inconsistent with protection of environmentally sensitive habitat policies because the LCP requires that projects avoid significant disruption of habitat, be designed, sited and sized to minimize habitat impacts. The County's approval of the project allows development, including vegetation removal, excavation, grading, filing, and the construction of roads and structures, in environmentally sensitive (Smith's blue butterfly) habitat, which, since it is one of only two host plants that the endangered Smith's blue butterfly needs for all stages of its life, would result in the disruption of habitat value on the site. The project would remove 120 of the total 130 plants mapped on site, thus removing 92 percent of the existing habitat. While the project is required to remove invasive exotic plants and replant seacliff buckwheat using a 3:1 ratio, which will serve to restore and enhance habitat for the Smith's blue butterfly, the County did not require any modifications to the footprint or site coverage in order to limit the area of disturbance, or require a different structural design to better achieve the goal of the key policy to **maintain**, restore, and if possible, enhance Big Sur's environmentally sensitive habitats, and to ensure that development remains subordinate to the protection of these critical areas. Thus, the project is not consistent with LCP ESHA protection policies, and so **raises a substantial issue with regard to protection of ESHA.**

3. Hazards

The McAllister appeal raises the issue of conformance with the LCP's policies for development in hazardous areas. The project, as approved by the County, allows a 15-foot setback from the seacliff blufftop, but does not provide any evidence that such a narrow setback is adequate to avoid the need for seawalls during the development's lifespan, which is especially of concern since the site has experienced active shoreline erosion during the last El Nino event, and cracks are apparent around the existing septic tanks located near the blufftop. Also, the project's septic, drainage, and irrigation systems can saturate the bluff and diminish the stability of the site.

a. Applicable Policies

LUP 3.9.1.1. Blufftop setbacks shall be adequate to avoid the need for seawalls during the development's economic lifespan.

LUP 3.7.3.A.9. Any proposed development within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle from the toe of a cliff, whichever is greater, shall require the preparation of a geologic report prior to consideration of the proposed project. The report shall



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demonstrate that (a) the area is stable for development; and (b) the development will not create a geologic hazard or diminish the stability of the area..

b. Analysis of Consistency with Applicable LCP Policies

The Monterey County LCP's Big Sur Coast policies require that blufftop setbacks "shall be adequate to avoid the need for seawalls during the development's economic lifespan"² (LUP 3.9.1.1). Also, the development must not create a geologic hazard or diminish the stability of the area (LUP 3.7.3.A.9). Coastal Implementation Plan (CIP), Part 3, Regulations for Development in Big Sur, includes Section 20.14.080.A.1.b.2, which requires that a geologic report be prepared for projects within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle above horizontal from the face of a cliff, whichever is greater.

As the project includes development within 50 feet of the bluff face, geologic and geotechnical investigations were prepared for this site. These reports confirm that the site comprises a layer of coastal terrace alluvium perched on granite bedrock. Substantial excavation of the landform has occurred in violation of the 1977 CDP originally granted for development of this site, and is still clearly evident. The geologic report notes active sea cliff erosion, however the report does not identify predicted erosion rates, as required by Section 20.145.080.A.2.h. The report does note that "significant coastal erosion" had occurred along the southern part of the property, near the septic manholes, due to storm wave erosion at the base of the seacliff in November and December 2002. While the overall erosion rate may not be great, unanticipated events can and will occur. A future El Niño season, for example, may produce an accelerated erosion episode. One way to reduce the risk of such failure is to maximize the distance from the bluff edge. However, due to the need to accommodate the project's great bulk, applicant's house extends closer to the bluff edge than would a more modestly-scaled design on the same site.

And while the geological report recommends that structures be located at least 15 feet from the blufftop neither the geologic report nor the geotechnical report includes any assessment of slope stability or evidence or rationale to ensure that the setback would be adequate to avoid the need for seawalls during the development's lifespan. In fact, the geological report states, "in light of this erosion and slumping, it appears sensible to maintain at least a 15-foot coastal setback between the seacliff and any improvements along the southern part of the property. Another method to address this concern would be placement of rip-rap along the southern seacliff to prevent erosion." Finding 3 of the County's approval states that these reports "provide recommended conditions and mitigation measures that provide additional assurances regarding project safety," however they do not actually indicate that the site will not need shoreline protection during the economic lifespan of the project. Rather, the Geotechnical Report, dated December 20, 2000, notes that "the sea cliff on the south end of the site should be protected from further high surf erosion; otherwise there is a potential for future loss of land at the edge of the sea cliff. An earthquake or inclement weather as well as very high surf could promote sliding

² While the Monterey County LCP does not define the "economic lifespan" of a structure, most other LCPs consider the economic lifespan of a structure to be between 50 and 75 years.



and/or erosion in the area of the crack in the ground near the sea cliff" and later recommends that "Seawall protection can be developed if this option is selected." By noting active shoreline erosion is an ongoing concern, and recommending seawall protection as one option for continued erosion, the reports do not provide assurance that the blufftop setback is adequate to avoid the need for seawalls during the development's economic lifespan, and so the County's approval **raises a substantial issue with regards to Geologic Hazards.**

Also, as experience has shown, a project's septic, drainage, and irrigation systems can saturate the bluff and diminish the stability of the site. Appellant McAllister submitted a letter excerpt from a Registered Engineering Geologist that states: "...the project has numerous significant adverse environmental impacts related to geology and soils hazards, hydrology and water quality that require the preparation of an Environmental Impact Report." But, this recommendation was not accepted and the County's approval did not require applicant to reduce the excessive area of impervious surface as a means of reducing saturation, runoff and erosion impacts (i.e., through reduced roof, driveway and patio coverage). While the County approval requires the septic system be relocated, the new site has not been identified on plan maps, and so cannot be evaluated to ensure that the development will not create a geologic hazard or diminish the stability of the area.

In summary, if the proposed house is sited too close to the seaward edge of the coastal bluff, then the project could be threatened with collapse, and may require construction of a seawall or other shoreline protective devices after the project is built, which would be inconsistent with LCP policies. Imprudent handling of on-site drainage issues can further aggravate natural shoreline erosion process. However, available mitigation measures, such as the reduction of structural mass in order to reduce impervious roof area and requiring a greater setback from the bluff have not been employed.

c. Conclusion

Monterey County LCP Policy requires adequate setbacks to assure the development will not need shoreline protection during the life of the structure, and that geologic reports provide evidence that permitted development will not create geologic hazards or diminish the stability of the area. Since active shoreline erosion has been observed at the site, no slope stability analysis or any other evidence has been provided to show that a 15 foot setback is adequate to assure that the development will not need shoreline protection, in fact shoreline protection is actually recommended by both the geologic report and geotechnical reports, and onsite drainage may increase erosion and decrease geological stability of the site, the project is not consistent with LUP policies regarding geologic hazards. Thus, the project as approved by the County **raises a substantial issue with regards to Geologic hazards.**

4. Water Resources

The McAllister appeal also raises the issue of conformance with the LCP's policies for protecting water resources.



a. Applicable Policies

*LUP 3.4.2.2. The County will require adherence to the best watershed planning principles including: stream setbacks, stream flow maintenance, performance controls for development site features, **maintenance of safe and good water quality**, protection of natural vegetation along streams, and careful control of grading to avoid erosion and sedimentation (emphasis added).*

LUP 3.4.3.A Specific Policies

A. Water Supply and Use

*1. Applicants for development of residential, commercial, and visitor-serving facilities must demonstrate by appropriate seasonal testing that there will be an adequate water supply for all beneficial uses and be of good quality and quantity (e.g. at least 1/2 gallon per minute per single family dwelling year round) from a surface or groundwater source, **or from a community water system under permit from the County.***

*2. Development of water supplies, **or intensification of use of existing supplies from springs, streams, wells, or community water systems** shall be regulated by permit in accordance with Coastal Act requirements. These permits shall be in addition to any required permits from the County Health Department.*

3. Applicants intending to utilize a water supply from a source not occurring on the parcel to be served, shall obtain any necessary rights or permits to appropriate the water from the State Division of Water Rights prior to receiving project approval from the County. The State is requested to notify the County of all applications for appropriate water rights. The County's policy shall be to protest such applications that conflict with the protection of beneficial uses of water including instream flow requirements. The County shall require riparian or groundwater users applying for development rights to perfect and record their rights to the water to minimize future conflicts. The County also encourages existing riparian users to perfect and record their water rights.

4. Interbasin transfer of water: No new water system and no expansion of existing water systems which transport water out of the watershed of any perennial stream shall be allowed. Undeveloped parcels outside of the watershed of origin shall not be allowed to utilize transported water. Permit applications shall demonstrate a suitable source of water not requiring establishment or expansion of, or intensification of use, of an interbasin water transfer system. Where no on-site surface water source exists, exceptions may be made on a case-by-case basis for the development of a primary residence on a vacant parcel served by a County-approved connection to an existing water system. Where -- if the total number of existing/potential vacant buildable residential parcels on such water system is more than four, such exceptions will be subject to a demonstration that:

a. no significant degradation of any of the Big Sur Coast's trout streams or other environmentally sensitive habitats will result, as demonstrated by an appropriate environmental assessment prepared in accordance with California Department of Fish and Game standards.



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b. no increased water system pumping, transmission or storage capacity (other than fire reservoir capacity) will be required for the proposed development; and

c. such exception will not result in export of water beyond the Big Sur Coast or the authorized service area of the Carmel Riviera Mutual Water Company. or less and as authorized in the Big Sur River Protected Waterway Management Plan.

Water system development or expansions constructed or installed after December 31, 1976, without benefit of coastal development permit will not be considered as "existing".

5. Small public water systems and private water systems supplying more than one user shall conform to the California Health and Safety Code, California Administrative Code, and County Ordinance 2250 as administered by the County Health Department, consistent with other policies of this section.

Rivers and Streams -

LUP 3.4.3.B.1. The effects of all new development proposals or intensification of land use activities or water uses on the natural character and values of the Big Sur coast's rivers and streams will be specifically considered in all land use decisions. Subjects to be addressed in such evaluations include protection of scenic quality, water quantity and quality, wildlife and fish habitat, and recreational values. Land use proposals determined to pose significant impacts to the natural integrity of the stream must be modified accordingly. The County will request assistance from the Department of Fish and Game as a technical expert on wild life and fish habitat and mitigation measures.

LUP 3.4.3.B.33. Water quality, adequate year-round flows, and stream bed gravel conditions shall be protected in streams supporting rainbow and steelhead trout. These streams include: Garrapata Creek, Rocky Creek, Bixby Creek, Little Sur River, Big Sur River, Partington Creek, Anderson Creek, Hot Springs Creek, Vicente Creek, Big Creek, and Limekiln Creek.

b. Analysis of Consistency with Applicable LCP Policies

The Big Sur Coast LUP's Specific Policies for Water Supply and Use contain a series of requirements concerning provision of adequate and safe water supplies, as a prerequisite for residential development (LUP 3.4.3.A). The appellant questions the project's compliance with these County standards.

According to the County's approval, water will be supplied to the site by the Garrapata Water Company, which draws from a well near Garrapata Creek. According to State Water Resources Control Board (SWRCB) staff, the well has been found to draw from Garrapata Creek baseflow (pers. comm.. Kathy Mrowka SWRCB, 8/13/04). Since LUP policy 3.4.3.B.3 lists Garrapata Creek as a steelhead stream water resource protection policies require that the impact of all new development proposals on these streams must be considered (LUP 3.4.3.B.1); however, the County's action does not include any discussion of this requirement. As the proposed development would cumulatively add to the amount of water diverted from the Garrapata basin, such evaluation is necessary to ensure that no significant impacts to the natural integrity of the stream will result from the approved development.



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State law also requires each water system to ensure that a continuous, adequate and safe supply of domestic water is supplied to all users at all times. On September 2002, the Garrapata Water Company was informed in written correspondence, that it was not in compliance with the California Surface Water Treatment Rule (SWTR), which requires water systems to provide adequate filtration and disinfection, and required the Water Company to either develop a groundwater source that meets Title 22 quality and quantity requirements or provide treatment in conformance with the SWTR. Big Sur LUP Policy 3.4.3A.1 also requires an adequate water supply of good quality and quantity (e.g. at least 1/2 gallon per minute per single family dwelling year round) from a surface or groundwater source, or from a community water system under permit from the County.

Based on recent discussions with staff from the Monterey County Division of Environmental Health (DEH), the Garrapata Water Company first indicated it would look into options for repair of the system, and so did not recommend the County hold up the original permit. As a result, Finding 1 of the County's Action states that the Garrapata Water Company is required to comply with State safe drinking water standards by providing adequate filtration and disinfection, and puts the Company on notice to explore costs and option to improve the system. Since September of 2002: 1) the owners of the Garrapata Water Company sued the County over its requirements that the system be modified to meet state requirements; 2) the Court found against the owners, and told the owners to cease operation of the system; 3) the owners have, however, continued to operate the system even though the County is looking for a new receiver to own and operate the system; and 4) other current users are trying to find a way to operate the water supply system as a mutual water system³ (pers. comm.. Cheryl Sandoval, Monterey County DEH, 8/12/04). Thus, the system remains out of compliance with safe water drinking standards and DEH staff indicated that the Garrapata Water Company might be pumping more than their allocated water rights. Since the well is considered to pump from the underflow of the Garrapata Creek, such overdrafting might be impacting stream flows, which would be inconsistent with LCP requirements.

SWRCB staff have confirmed that a case has been filed against the Garrapata Water Company, though could not evaluate whether water rights were being violated without looking further into the files, which would not be able to occur before this item is heard by the Commission. Commission staff will continue to work with SWRCB staff to determine the status of pumping from the creek, but at the present time, with what information is known, it appears that the Garrapata Water Company may not be able to supply a continuous, adequate and safe supply of domestic water to the project and thus the County's approval of the project, which relies on water from the Garrapata Water company, is inconsistent with LCP policies.

Thus, since the project may not actually have an adequate, safe and continuous supply of water, and the expansion of the proposed water source may have cumulative adverse impacts on the condition of Garrapata Creek steelhead, approval of the project **raises a substantial issue with regards to water supply and protection of water resources.**

³ According to county DEH staff, the last report in 2002 showed that 38 existing connections and 43 permitted connections.



The LUP Water Resource policies, in section 3.4.2.2, also require that erosion and sedimentation impacts be avoided. As cited above, the location and design of development on parcels adjacent to intertidal habitat areas is subject to LUP Policy 3.3.3.B.1. The purpose of this policy is to avoid septic system percolation and sedimentation impacts. The proposed building site is on shallow coastal terrace colluvium over granite bedrock. Storm water runoff and septic system leachates from the development have the potential to adversely impact adjoining tidepools and rocky intertidal habitats that are part of the Monterey Bay National Marine Sanctuary.

While some risk reduction may be achieved through relocation of the septic system farther away from the bluff edge and use of a pump, the county failed to require that alternative designs be considered that would reduce the potential for sediments and septic system leachate, through reduced project sizing. Thus, the project **raises a substantial issue with regards to LCP water resource and water quality protection policies.**

c. Conclusion

The County approval fails to adequately protect Garrapata Creek, a listed steelhead stream, from overdrafting since it did not apply requirements to evaluate the impact that this new development proposal would have on Garrapata Creek. As the proposed development would cumulatively add to the amount of water diverted from the Garrapata basin, such evaluation is necessary to ensure that no significant impacts to the natural integrity of the stream will result from the approved development.

Furthermore, the Garrapata Water Company is out of compliance with State safe water drinking standards, and may already be drawing more water than they have been allocated. Facts described above regarding operation of the Garrapata Water Company raise concerns that project may not actually have an adequate, safe and continuous supply of water, and the expansion of the proposed water source may have cumulative adverse impacts on the condition of Garrapata Creek steelhead, thus approval of the project **raises a substantial issue with regards to water supply and protection of water resources.**

Finally, the County failed to require that alternative designs be considered that would reduce the potential for sediments and septic system leachate, through reduced project sizing. Thus, the project **raises a substantial issue with regards to LCP water resource and water quality protection policies.**



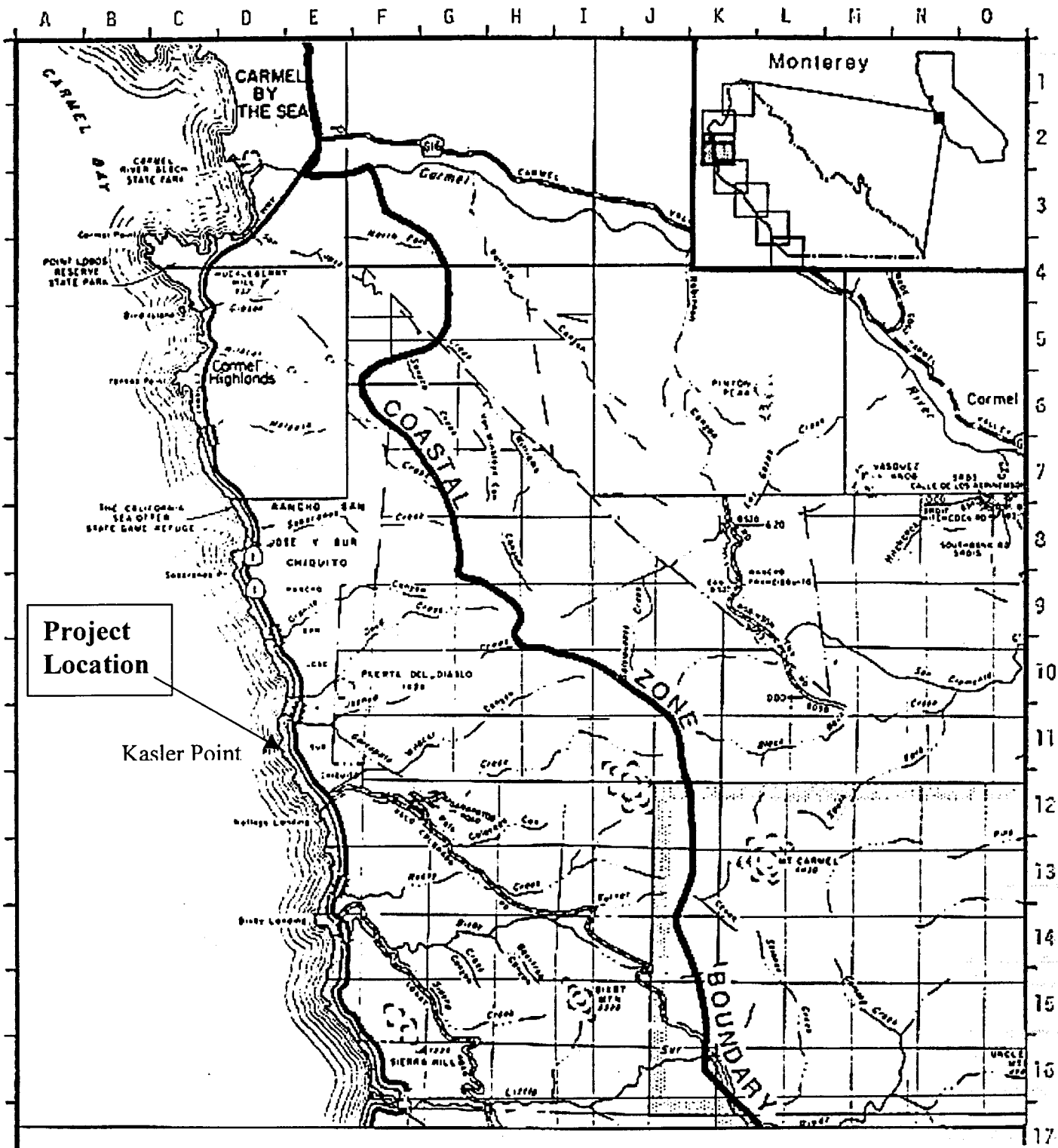
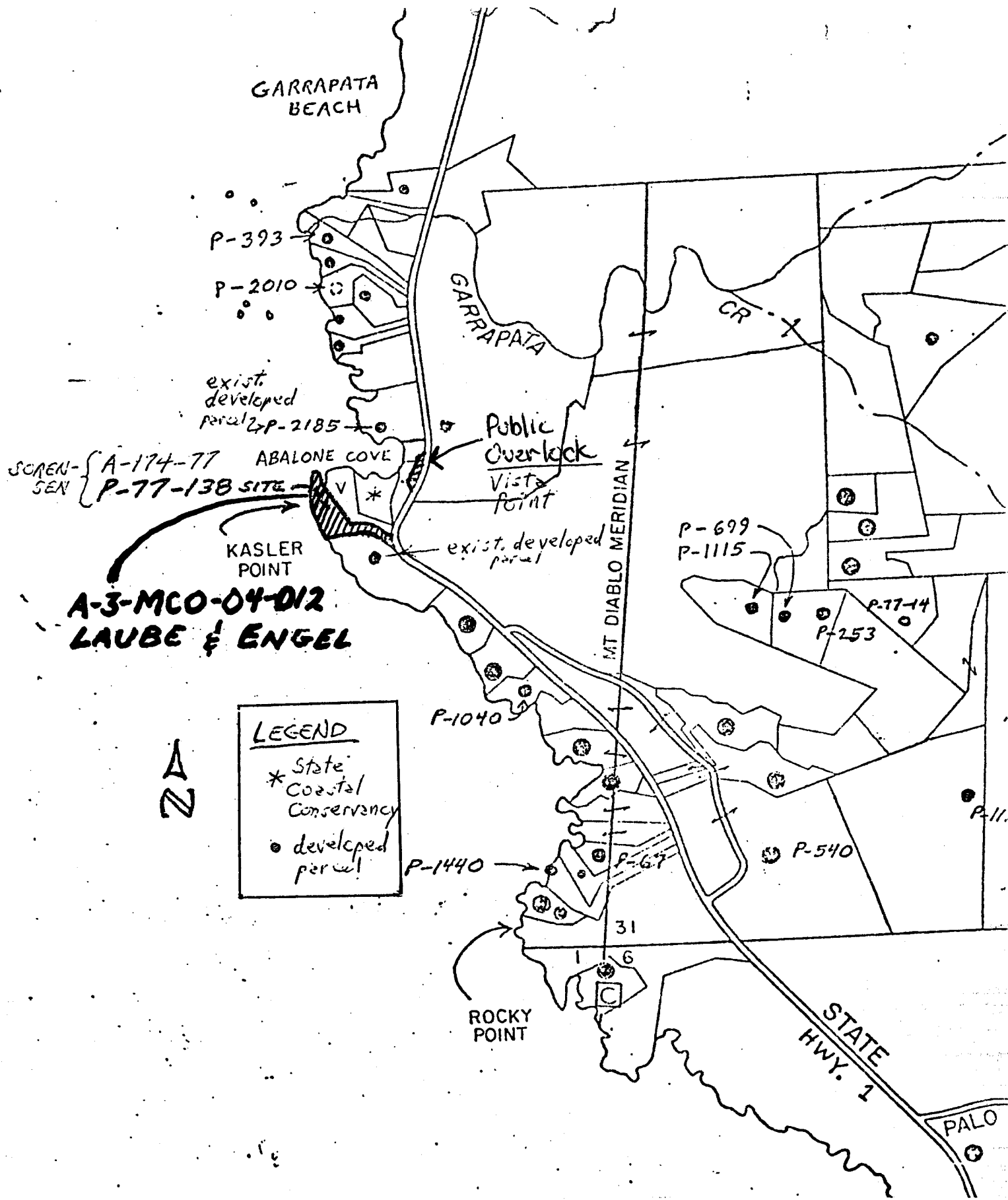
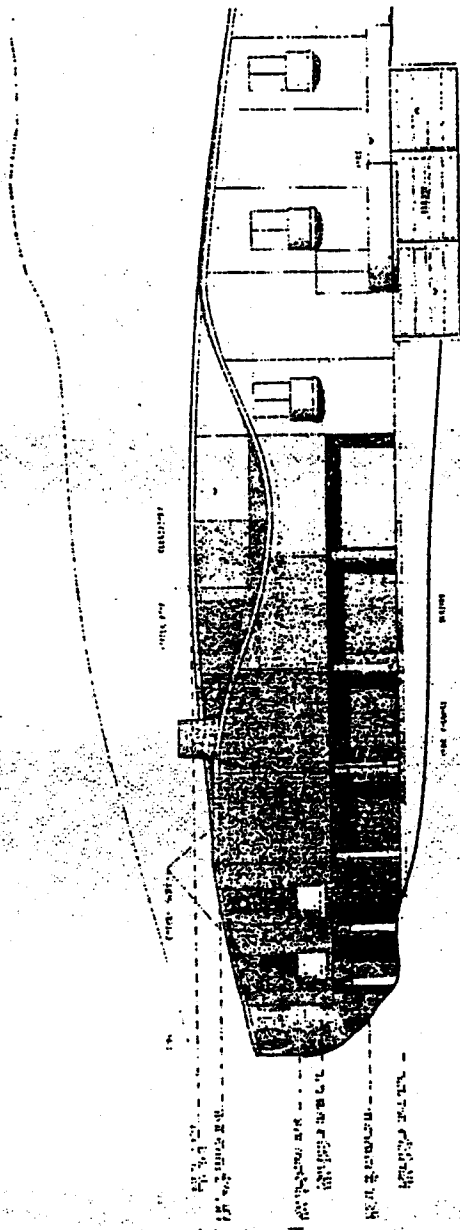


Exhibit 1 – pg 1 of 2
 Regional Location Map
 Laube & Engle
 A-3-MCO-04-012

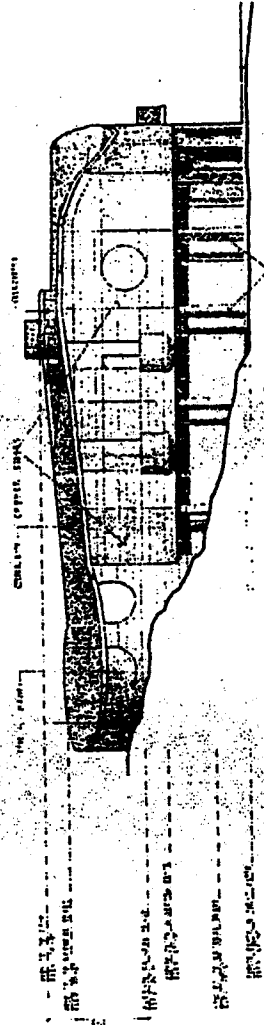






WEST ELEVATION

SCALE: 1/8" = 1'-0"



NORTH ELEVATION

SCALE: 1/8" = 1'-0"

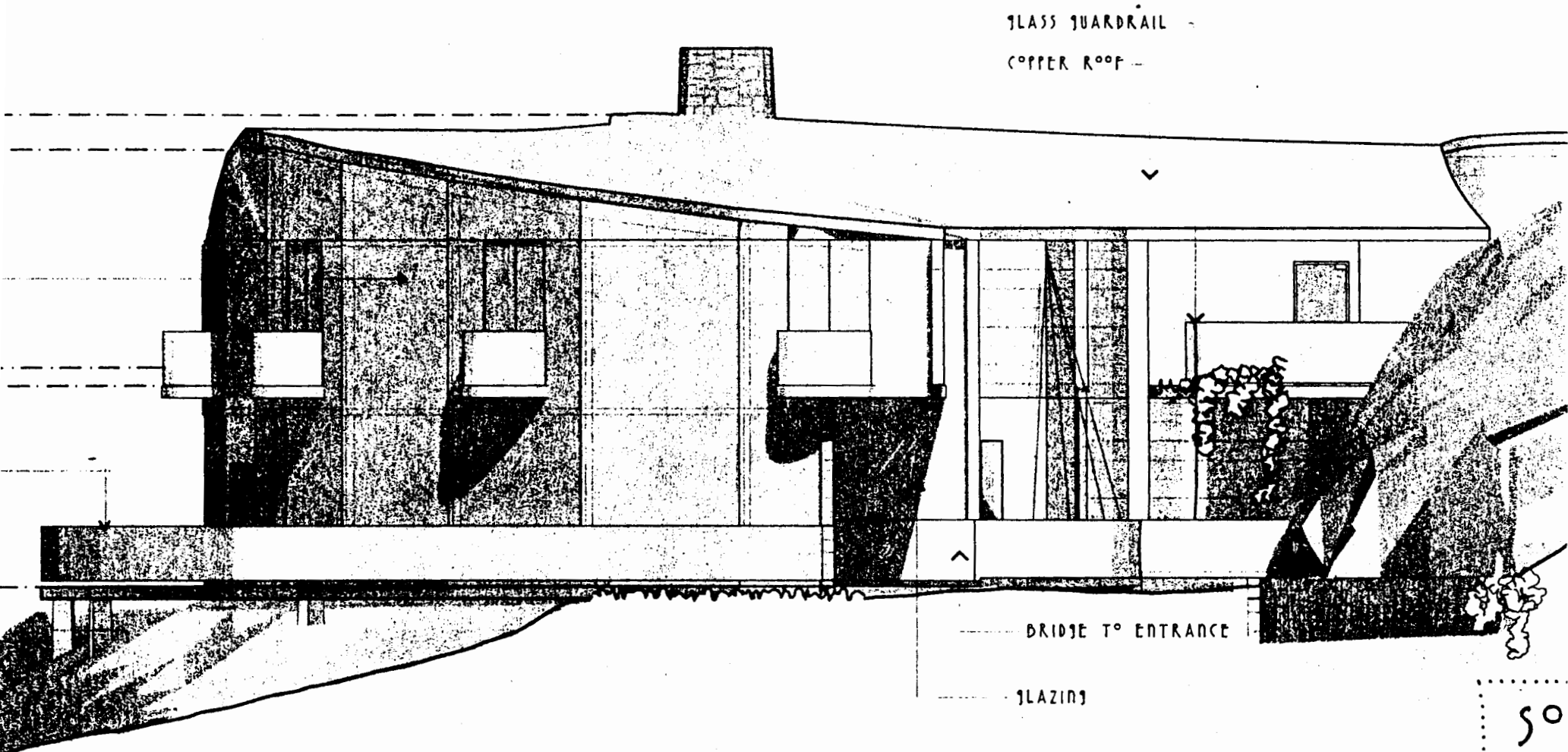


EXHIBIT "A"

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

Resolution No. 04-028

Resolution (1) denying the appeal of the Dr. and
Mrs. McAllister; (2) approving the Laube/Engel
Combined Development Permit (Laube/Engel;
PLN010105); and (3) adopting the
Mitigated Negative Declaration and Mitigation
Monitoring Program.

RECEIVED

FEB 02 2004

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-MCO-04-027

APPEAL PERIOD 2/3-2/18/04

THIS MATTER came on for hearing before the Board of Supervisors of the County of Monterey ("Board") on January 13, 2004, pursuant to an appeal of Dr. and Mrs. McAllister from the decision of the County of Monterey Planning Commission (Resolution No. 03073) to approve the Laube/Engel (Laube/Engel; file no PLN010105) Combined Development Permit consisting of (1) a Coastal Development Permit for an approximately 8,270 square foot single family dwelling with an approximately 1,824 square foot subterranean garage with mechanical room; (2) a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat; (3) a Coastal Development Permit for approximately 1,750 cubic yards of cut and 736 cubic yard of fill that involves cutting into slopes over 30 percent; and (4) a Coastal Development Permit for a lot line adjustment that will consolidate two lots. The property is located at 36240 Hwy One, Big Sur (Assessor's Parcel Numbers 243-251-012 & 243-251-013), Kasler Point, one-half mile south of Garrapata Creek, in the Big Sur Coast Land Use Area Plan, Coastal Zone.

At the conclusion of the hearing *de novo*, the matter was submitted to the Board for a decision. Having considered all the written and documentary information in the administrative file, the staff reports, consultant reports, oral testimony, and other evidence presented, the Board now renders its decision denying the appeal and affirming the Planning Commission decision to approve the Laube/Engel Combined Development Permit. The Board further adopts findings and evidence in support of its decision as follows:

FINDINGS REGARDING APPROVAL OF THE PERMIT

1. **FINDING:** The project proposed in this application consists of a Combined Development Permit (PLN010105) for a lot line adjustment, development of an 8,270 square foot single family dwelling with an approximately 1,824 square foot subterranean garage, development within an environmentally sensitive habitat, and grading of approximately 1,750 cubic yards of cut and 736 cubic yards of fill, as described in condition #1 of Exhibit "C," and as conditioned, conforms with the plans, policies, requirements and standards of the following documents:
 - a) The certified Big Sur Coast Land Use Plan
 - b) The certified Monterey County Coastal Implementation Plan, Part 1, regulations for the "RDR/40 (14)" and "WSC/40" Coastal Zone Districts in the Coastal Zone, and
 - c) the Monterey County Coastal Implementation Plan, regulations for development in the Big Sur Coast Land Use Plan. (Chapter 20, Section 20.16.050 QQ and Section 20.17.050 JJ)
 - d) the Subdivision Ordinance (Title 19) and

the Monterey County Zoning Ordinance (Title 20), with regards to lot line adjustments.

ENCE: The project, a single family home with septic system, is an allowed use with a Coastal Administrative Permit based on Chapter 20.16 of the Coastal Implementation Plan, development in Rural Density Residential Zoning District. Actual development will be solely on the parcel zoned Rural Density Residential (APN 243-251-012) that is designated in the Big Sur Coast Land Use Plan as a "Rocky Point Parcel" exempt from the "Critical Viewshed" policies. The use is conditional because of the following:

- the proposed excavation of slopes exceeding 30% based on Section 20.64.230 E. 2 of Title 20, is justified in order to minimize views of the proposed building from the public viewshed as viewed from Highway One.
- the proposed lot line adjustment to combine 2 parcels based on Section 20.16.050 QQ of Title 20 in order to eliminate any further building sites on the properties that would be in the critical viewshed.
- The development is within a 100 feet of an environmentally sensitive habitat based on Section 20.145.040 of the Big Sur Coastal Implementation Plan.

EVIDENCE: Planning and Building Inspection Department staff have reviewed the project as contained in the application and accompanying materials and have determined that the project is consistent with the above listed plans and is appropriate for residential development in an area designated for Rural Density Residential (RDR/40-14) and Watershed Scenic Conservation ("WSC/40"), and is in conformity with the following development standards:

Development standards for projects within the Big Sur viewshed:

- Big Sur Coast Land Use Plan: Chapter 3.2, Scenic Resources (with special attention in distinguishing between policies for development of land within the critical viewshed, Section 3.2.3, versus development of land not in the critical viewshed, Section 3.2.4. The project is identified as a "Rocky Point Area Vacant Parcel" with description found in Section 3.2.5, F. "Exception to the Key Policy.")
- Big Sur Coastal Implementation Plan, Part 3: Section 20.145.030, with special attention to Section 20.145.030. B. 6., "Rocky Point Area Parcels.

Development standards for development adjacent to environmentally sensitive habitats:

- Monterey County General Plan: Chapter I, Goals 7 and 9 with attending Objectives and Policies.
- Big Sur Coast Land Use Plan: Chapter 3.3, Environmentally Sensitive Habitats with special attention to Sections 3.3.2., Policies 1 through 7 and 9; Section 3.3.3., A., Specific Policy for Terrestrial Plants, and Section 3.3 3, B., Policies 1 and 4, Specific Policies for Marine Habitats.
- Big Sur Coastal Implementation Plan, Part 3: Section 20.145.040, A., "Biological Survey Requirement;" Section 120.145.040 B., items 1 through 4, and 9, "General Development Standards;" Section 120.145.040 C. 2, items a through d and g, "Marine Habitats."
- Big Sur Coastal Implementation Plan, Part 6, Appendix 2b, Big Sur Resource Maps.

Development standards for development within 50 feet of the face of a cliff or bluff or within the area of a 20 degree angle above horizontal from the face of a cliff.

- Big Sur Coast Land Use Plan: Chapter 3.7, Key Policy 3.7.1 and General Policies 3.7.2, with special attention to Specific Policy 3.7.2 A., "Geologic Hazards," and 3.7.3 C. "Fire Hazard."
- Big Sur Coastal Implementation Plan, Part 3: Section 20.145.080 A b 2 and A i, "Geologic Report Requirement."

Development standards for development in an area with high archaeological resources:

- Big Sur Coastal Implementation Plan, Part 6, Appendix 2b, "Big Sur Resource Maps."
- Big Sur Coast Land Use Plan: Chapter 3.11, with special attention to General Policies 3.11.2, items 1 through 6.
- Big Sur Coastal Implementation Plan, Part 3: Section 20.145.120, "Archaeological Resources Development Standards," with special attention to Section 20.145.120 B., "Archaeological Survey Report Requirement," and Section 20.145.120 D., "Development Standards."

EVIDENCE: Necessary public facilities are available to the project site.

- a) Water is to be supplied by the Garrapata Water Company, Inc. that is required to comply with the State of California, Department of Health Services for drinking water standards by providing adequate filtration and disinfection. The Company is on notice to explore costs and options to improve the system.
- b) PG&E service is available to the site from a Highway One utility easement. All public utilities serving the site are required to be placed underground to avoid any adverse visual impact within the Big Sur Critical Viewshed.

EVIDENCE: The parcels are zoned Rural Density Residential ("RDR/40 (14)") and Watershed and Scenic Conservation ("WSC/40") that allow for single family dwellings with required setbacks, building site coverage and height limits. Special height limits of 14 feet are placed on dwellings located within the Rocky Point Vacant Parcels area. The Project Review Sheet, Attachment A indicates the building to be 14 feet from the *average natural grade* in relation to the elevations of the original westward sloping hill that has already been partially cut for a building pad at the proposed building site.

2. FINDING: The proposed project is consistent with policies of the Big Sur Coastal Implementation Plan dealing with development adjacent to environmentally sensitive habitats. The Biological Report prepared for the site by consulting biologist, Jeff Norman states no significant negative impact will result from this development, with the recommended mitigation measures. The mitigation measures contained in the report include replacing an estimated 120 specimens of seacliff buckwheat at a 3:1 ratio at selected sites presently overrun with exotics, and the removal of those exotic plants (Hottentot fig and Cape ivy). Related conditions/mitigations have been added which includes requiring the applicant to comply with the mitigations contained in the Biological Report.

EVIDENCE: The Biological Report dated March 19, 1999, prepared for the site by consulting biologist Jeff Norman pursuant to requirements, of the Big Sur Coastal Implementation Plan, Part 3: Section 20.145.040, A., "Biological Survey Requirement;" Section 20.145.040 B., items 1 through 4, and 9, "General Development Standards;" Section 20.145.040 C. 2, items a through d and g, "Marine Habitats." Jeff Norman conducted an updated Smith's blue butterfly survey between the dates of June 25 and August 25, 2003--generally considered the butterfly's flight season--in order to meet State

Department of Fish and Game protocol for determining the existence of a potential Environmentally Sensitive Habitat.

EVIDENCE: The Biological Report dated September 1, 2003 following Department Fish and Game protocol for the Smith's blue butterfly and seacliff buckwheat survey.

EVIDENCE: The Biological Report dated September 21, 2003 reporting on the suitability of Monarch butterfly overwintering habitat, Laube-Engel property.

EVIDENCE: The project mitigations include a Scenic and Conservation Easement over the entire, newly created parcel exclusive of the immediate building envelope and driveway in order to protect the native coastal bluff scrub plant community and habitats for the Smith's blue butterfly and Monarch butterflies. The areas under easement shall be granted to an appropriate public agency or conservation foundation to prevent disturbance of the native plant community.

EVIDENCE: Geotechnical reports (Odello, 11/21/99, revised 12/20/02) specify that stormwater runoff and subsurface seepage be diverted toward drainage inlets with grease traps easily accessible and maintainable, and directed toward an existing storm drain outlet at a historic discharge point so as to minimize disturbance to nearshore marine habitat for sea otters that feed on invertebrates in the area.

EVIDENCE: A mitigation to protect the nearshore marine environment is the placement of septic leach fields 40 feet up-slope that will receive effluent pumped up from septic holding tanks at the project site.

EVIDENCE: The project is similar in character with other residential development along the rocky coast line in the area except for being at a lower elevation and more abutting with the shoreline and marine habitats. Mitigations to reduce the significance of adverse environmental impacts on said habitats are as follows:

- only between the months of April and November (inclusive) shall excavation, blasting, and operation of heavy equipment associated with this project be allowed to avoid disturbance of sea otter pupping activity.
- the plan to stabilize the slopes, especially at the currently eroded area northwest of the building envelope, shall be subject to an ongoing monitoring program every 4 months for 3 years to be sure that measures are taken to prevent construction debris and erosion material from entering the subtidal and intertidal marine habitats.
- Erosion resistant vegetation placed on fill slopes and drainage improvements, including the intercepted surface runoff and subsurface seepage from slopes above the proposed residence, shall be constructed so as not to allow storm water run-off and erosion to adversely impact biological habitats, and especially the subtidal and intertidal marine habitat below the construction site.
- No part of the construction will be less than 15 feet from the bank edge of the shoreline at the site pursuant to the recommendation of the geotechnical engineer (Odello, 12/20/02)

EVIDENCE: Coastal Implementation Plan, Part 6, Appendix 2b.

3. FINDING: The project, as conditioned, is consistent with applicable plans and policies for development within 50 feet of the face of a cliff or bluff and within the area of a 20 degree angle above horizontal from the face of a cliff as found in the Big Sur Coast Land Use Plan; the Big Sur Coastal Implementation Plan, Part 3 and Part 6, and Title 20, Part 1, Zoning Ordinance.

EVIDENCE: Technical reports have been provided by the following soils, geology and geotechnical consultants to address the potential geologic hazards at the site:

- Rey & Associates, Soil and Foundation Engineers, Surface & Subsurface Soil Conditions, 6/3/78
- Karl Vonder Linden, Engineering Geology and Mining Engineering, Geologic Report, 12/17/99, revised 1/3/03
- Vicki C. Odello, C.E., Geotechnical Report, 11/21/99, revised 12/20/02, and response to Purcell, Rhoades & Associates peer review, 2003.
- Haro, Kasunich & Associates Project Review and Site Inspection for the Proposed Onsite Drainage Improvements, dated December 27, 2002.

The reports provide recommended conditions and mitigation measures that provide additional assurances regarding project safety. The Karl Vonder Linden report states the building site location is not in a geologic "high risk" area apart from the natural wave action, rain and surface runoff. The Vicki Odello report provides geotechnical specifications for foundation stability and stormwater runoff. These reports are found in the project file (PLN010105) and as attachments to the Initial Study prepared for the project.

EVIDENCE: The above reports are consistent with policies of the Big Sur Area Land Use Plan dealing with development in hazardous areas. The geologic report prepared for the site by Karl Vonder Linden is consistent with "Guidelines for Geologic/Seismic Reports" of the California Divisions of Mines and Geology. The report concludes that the proposed project can proceed with conditions.

EVIDENCE: Existing drainage patterns have the potential to be significantly altered. Although the Geotechnical Report provides specifications for a drainage plan to avoid erosion and siltation problems, the County's Water Resources Agency is requiring assurance that a drainage plan be prepared by a registered civil engineer or architect addressing on-site and off-site impacts, to include dispersal of impervious surface stormwater runoff onto a non-erodible surface below the bluff. The Agency shall require necessary improvements be constructed in accordance with approved plans. This condition of project approval must be submitted to the Agency before issuance of any grading or building permits.

EVIDENCE: Geotechnical reports (Odello, 11/21/99, revised 12/20/02; Haro, Kasunich & Associates, Inc., 12/27/2002) specify that stormwater runoff and subsurface seepage be diverted and toward drainage inlets with grease traps easily accessible and maintainable, and directed toward an existing storm drain outlet at a historic discharge point so as to minimize disturbance to nearshore marine habitat for sea otters that feed on invertebrates in the area. The Planning & Building Inspection Department is recommending that a biologist review the final drainage plan to assure that drainage does not impact the sensitive marine habitat below the construction area, and therefore further requires a certified biologist to approve and monitor the drainage plan's impact on said habitat. The contracted biologist shall be a part of a team that reviews the drainage plan along with the engineer and contractor before issuance of any grading and building permits.

EVIDENCE: Coastal Implementation Plan, Part 6, Appendix 2b.

4. FINDING: The request for the proposed development to cut into 30 percent slopes is consistent with Section 20.64.230 E. 1 of Part 1 of the Coastal Implementation Plan since no other alternative exists which would allow development to occur on slopes of less than 30 percent.

EVIDENCE: The cut better achieves the public viewshed policies and objectives of the Big Sur Area Land Use Plan Chapter 3.2, Scenic Resources, Section 3.2.4. The project is

located on a site identified as a "Rocky Point Area Vacant Parcel" with description found in Section 3.2.5, F. "Exception to the Key Policy."

EVIDENCE: The grading cut better achieves the public viewshed standards of the Big Sur Coastal Implementation Plan, Part 3, Section 20.145.030, with special attention to Section 20.145.030. B. 6. 2 b.: "Buildings shall be located so as to minimize their visual impact upon public views as well as views and privacy of neighbors..." The scarring of the hillside left by a previously abandoned project is unfortunate, but is not visible from Highway One vantage points. None of the proposed building will be placed *on* 30% slopes. The development on 30% slopes refers to the excavation *into* an already cut granite faced bluff in order to minimize the impact on the public viewshed and the privacy of the nearest neighbor. Therefore, the proposed project is taking advantage of the existing cut at the site to better fit the proposed structure into the hillside to minimize impacts to the public and private views.

EVIDENCE: The applicant has moved the proposed residence southerly and into existing 30% slopes on the western slope of the hill in order to

- enlarge the existing building pad at the northern portion of the building, thereby keeping the building back at a minimum of 15 feet from the southern bank of the shoreline as recommended by the geotechnical engineer (Odello, 12/20/02).
- remove the north elevation of the building from silhouetting against the ocean from a northern turnout off Highway One.

5. FINDING: The project as proposed is consistent with policies of the Big Sur Area Land Use Plan dealing with visual resources and will have no significant impact on the public viewshed as conditioned.

EVIDENCE: As a Rocky Point vacant parcel, the proposed project was evaluated in terms of the impact upon the public viewshed. a) The project will not result in ridgeline development. b) The project is in the non-critical viewshed as defined in the Big Sur Coast Land Use Plan, Chapter 3.2, Scenic Resources for parcels in a "Rocky Point Area Vacant Parcel" with description found in Section 3.2.5, F. "Exception to the Key Policy." Also, the development standards for Rocky Point Area Parcels can be found in the Big Sur Coastal Implementation Plan, Part 3: Section 20.145.030, with special attention to Section 20.145.030. B. 6.

EVIDENCE: During review of the proposed structure, the proposed building location was revised in order to relocate the structure outside of the critical viewshed as seen from a Highway One turnout north of the site where it would have silhouetted against the ocean. The building foot print was moved southerly, off Assessor Parcel 243-251-013 zoned "*Watershed and Scenic Conservation*," to Assessor Parcel 243-251-012 zoned "*Rural Density Residential*" in order to move the structure to the northernmost Rocky Point residential parcel.

EVIDENCE: Staff evaluated the project based especially on Section 3.2.4 of the Big Sur Coast Land Use Plan and Section 20.145.030. B. 6 of the Big Sur Coastal Implementation Plan, Part 3. Even though a Rocky Point parcel is excepted from critical viewshed policies, Section 20.145.030 B.6. f. requires that the development be subject to the following development standards:

"...development shall be modified as necessary for design, bulk, color, size, setbacks, materials, location, height, siting, or other methods in order to reduce the visual impact of the development. As well, regulations of the zoning district in which the parcel is located may be modified as necessary in order to reduce visual impacts of development...."

EVIDENCE: The proposal takes advantage of the existing topography to site the building envelope behind a hill so as to be screened from Highway One and the Abalone Cove vista point that overlooks the subject properties. The existing driveway, surfaced with crushed granite, will be seen from Highway One and the vista point. A corner of the proposed residence will be visible from two locations: (1) at the driveway entrance to the site and (2) at a turnout about a quarter to a half mile south of the project as seen from State designated Scenic Highway One. This visual impact is considered less than significant because the views are less than a second from passing cars, and barely visible with the naked eye at the second turnout, evidenced by the project planner's visit to the site upon the applicant's flagging of the height and breadth of the proposed structure.

EVIDENCE: The structure is completely out of view from the adjacent Abalone Cove vista point of Highway One that is considered the most critical public vantage point of the project.

EVIDENCE: The Big Sur Land Use Advisory Committee ("LUAC") voted on May 27th to approve the project by a vote of 5 - 0 and 1 abstention with the recommended conditions that there be no outside flood lights and that the invasive ice plant be removed and the native plants restored to the site. Upon review of revised plans that relocated the structure, the Big Sur LUAC recommended approval by a vote of 5-0 with 2 absent with the recommendations that the building wall should be of stone where visible from Highway One. Mitigations have been placed on the building materials such as non-reflective windows, no outdoor lighting (pursuant to Section 20.145.030 A. b), and walls at the south elevation be a stone façade to harmonize with the adjacent rocky outcrops.

EVIDENCE: Project planner conducted an on-site inspection on three occasions pursuant to Section 20.145.030, B. 6. of the Monterey County Coastal Implementation Plan to verify that the project on the subject parcel conforms to the Big Sur Land Use Plan, Section 3.2.3, development in the critical viewshed as well as Section 3.2.4, development excepted from critical viewshed standards for development. The project is not located within the Critical Viewshed.

EVIDENCE: Special attention was given to the **Big Sur Coastal Implementation Plan, Section 20.145.030 B. 6.** e that requires development be subject to the following development standards:

e. "...scenic easements shall be dedicated over undeveloped portion of lot..."

Given the limited options at the site for protection of the environmentally sensitive habitat and locations outside of the public viewshed, the Combined Development Permit for the project includes a lot line adjustment to consolidate the two parcels and place a Scenic and Conservation Easement over the entire, newly created parcel exclusive of the immediate building envelope and driveway.

6. FINDING: Project as sited and proposed does not interfere with any form of historic public use or trust rights as found in Section 20.70.050 B 4 of the Coastal Implementation Plan, Part I, and there is no access required to accommodate the proposed use as evidenced in proposed plans.

EVIDENCE: The subject property is not described as an area where the Local Coastal Program requires access given the dedicated access sites nearby and the existing vista point overlooking the site on Highway One. The Big Sur Coast Land Use Plan (Table 2, "Site Specific Recommendations for Shoreline Access," item 3) references the dedicated lateral access at nearby Abalone Cove Overlook, but cautions that access to

sensitive marine habitat should be limited. Because the Highway One Vista Point is about 70 feet or more above the rocky shoreline, overlooking the environmentally sensitive intertidal and subtidal shore line of Kasler Point and Oyster Cove, public access to the shore line is not practical and should be avoided. The vista point overlooking the site provides adequate public *visual access* to the subject property, Kasler Point, the inlet directly below, and the distant Pacific Ocean.

EVIDENCE: As required for a formerly approved California Coastal Commission permit A 174-77, the Conservation and Scenic Easement boundary shall be adjusted to include as much of the archaeological site as possible. Such easement is needed to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeologic and other scientific research purposed secured.

The California Coastal Commission permit A 174-77 recognized that because of dangerous cliffs and fragile resources, unrestricted public access on easement would be contrary to public safety and resource protection needs. However, the applicant is encouraged to pursue a public agency prepared to assume liability for public access and to provide for management and supervision to the degree necessary to avoid damage to natural resources, to maintain privacy of permitted residence, and to prevent trespass on balance of parcel.

7. FINDING: Staff conducted an independent review of the project prior to receiving a copy of a previously approved 1977 California Coastal Commission ("CCC") permit (Permit A 174-77) for the same subject. CCC staff considers the Laube/Engel proposal an amendment to the original CCC approved permit under their purview because physical development under the previous permit occurred, although eventually abandoned. Nonetheless, CCC staff requires the County to determine what appropriate local discretionary approvals are needed.

EVIDENCE: Staff finds the County review of the parcel consistent with the CCC review in terms of the same general site layout (building location, driveway, sewage disposal) and conveyances (Scenic Conservation Easement and consolidation of the two parcels). Only at issue are the new design, size, and site location proposed within the originally approved building envelope.

EVIDENCE: The CCC permit requires consolidation of the two parcels into one which would reduce the number of remaining vacant parcels in the Rocky Point area, thereby easing cumulative problems of finding options to place structures outside of the public viewshed.

EVIDENCE: The CCC permit requires a Conservation and Scenic Easement be placed around the building envelope, exclusive of the driveway, to protect the natural resources on site (see evidence provided under Finding 1 above). The CCC recommended that the easement be granted to an appropriate public agency or conservation foundation, and shall include, among other things, provisions to prevent disturbance of native plants and wildlife, to specify conditions under which non-native species may be controlled, and to allow entry for archaeologic and other scientific research purposes.

EVIDENCE: The CCC permit recognizes that the recreational use of Kasler Point must be constrained to preserve fragile vegetation and archaeologic resources, and to protect the public from dangerous cliffs. The Abalone Cove overlook area does provide the public with dramatic viewing areas that will not be blocked by the proposed residence.

8. FINDING: The subject property is in compliance with all rules and regulations pertaining to the use of the property; no violations exist on the property and all zoning abatement costs, if any have been paid.

EVIDENCE: Staff reviewed Monterey County Planning and Building Inspection Department records and verified that no violations exist on subject property.

9. FINDING: The site is suitable for the use proposed.

EVIDENCE: Staff conducted three on-site visits and finds the site suitable for this use as long as mitigations are placed on the project and the development is monitored over a three year period to ensure that development does not have a significant impact on the sensitive environmental habitats found at the site.

EVIDENCE: The project has been reviewed for suitability by the Planning & Building Inspection Department, the California Department of Forestry Big Sur Fire District, the Environmental Health Division, the Public Works Department, the Water Resources Agency, the Big Sur Land Use Advisory Committee, the State Department of Fish and Game, and the California Coastal Commission. Conditions placed on the project by these agencies have been incorporated into the conditions found in Exhibit "D"

EVIDENCE: The following consultant reports were conducted for the project upon which to evaluate the project to assure that the proposal would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County by investigating soil conditions, geologic hazards, biologic and archaeologic/ cultural findings at the subject site:

- Reynolds & Associates, Soil and Foundation Engineers, Surface & Subsurface Soil Conditions, 6/3/78
- Jeff Norman, Biologist Report/Revegetation Plan, 3/19/99, with response to peer review 9/16/02, and an updated protocol survey of the Smith's blue butterfly and seacliff buckwheat, 9/1/03, plus a response to peer review of the Suitability of Monarch butterfly overwintering habitat, 9/21/03.
- Karl Vonder Linden, Engineering Geology and Mining Engineering, Geologic Report, 12/17/99, revised 1/3/03
- Vicki C. Odello, C.E., Geotechnical Report, 11/21/99, revised 12/20/02, and response to Purcell, Rhoades & Associates peer review, 2003.
- Haro, Kasunich & Associates Project Review and Site Inspection for the Proposed Onsite Drainage Improvements, dated December 27, 2002.
- Archaeological Resource Service; Archaeological Reconnaissance of Donald Sorensen property, Big Sur, 2/8/77]

The reports indicate that there are no physical or environmental constraints such as geologic or seismic hazard areas, environmentally sensitive habitats or similar areas that would indicate the site is not suitable for the use proposed when subject to mitigation measures. County staff concurs with the consultants that the environmental constraints can be mitigated to protect the rare and endangered flora and fauna on the site and the adjacent subtidal and intertidal marine habitats. Recommended conditions placed on the project by these consultants have been incorporated into the conditions found in Exhibit "D" for this project.

10. FINDING: The project is consistent with Section 20.145.050 of the Coastal Implementation Plan dealing with Water Resources. The proposed project was evaluated in terms of the intensification of use in a Watershed Conservation area. It was determined that there would be no "substantial water use intensification" as the consolidation of the parcels would not increase the number of households (Section 20.145.050 B.) nor would the water source be transported from another watershed (Section 20.145.050 A).

EVIDENCE: Water is to be supplied by the Garrapata Water Company, Inc. that is required to comply with the State of California, Department of Health Services for drinking water standards by providing adequate filtration and disinfection. The Company is on notice to explore costs and options to improve the system. Environmental Health Division staff states in an e-mail dated 9/26/03 of their intention not to hold up the project because of the current disagreement about the water quality.

EVIDENCE: The Combined Development Permit includes a lot line adjustment to merge 2 existing parcels, thereby eliminating the potential for a second residence on the subject properties.

11. FINDING: The project as proposed is consistent with policies of the Big Sur Coast Area Coastal Implementation Plan dealing with development in archaeologically sensitive areas. The report states that there are identifiable archaeological resources located on site.

EVIDENCE: Archaeological report prepared by Archaeological Resource Service contained in the project file. A mitigation measure has been added to require that work be stopped in the event that any archaeological resources are found on site.

EVIDENCE: A condition requires that a Conservation and Scenic Easement shall be placed over the site that includes the cultural resource found at the site. The easement is to be granted to an appropriate public agency or conservation foundation, and shall include, among other things, to allow entry for archaeological and other scientific research purposes

12. FINDING: The proposed lot line adjustment will not create any new parcels, but will consolidate two legal lots into one parcel that remains non-conforming as to size in an area designated for 40 acre minimum density.

EVIDENCE: The site plans showing two separate legal lots of record (Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000)

EVIDENCE: 1964 Assessor's Records.

EVIDENCE: The proposal by the applicant, as represented by their agent, to include a lot line adjustment as part of a Combined Development Permit that will serve to consolidate the two lots in order to provide a building site that is outside the public viewshed and reduces the impact on sensitive environmental habitats.

13. FINDING: The parcels resulting from the lot line adjustment conform to the County Zoning and Building Ordinances for parcels identified as "Rocky Point Vacant Parcels."

EVIDENCE: The proposed lot line adjustment will result in a 4 acre parcel that does not conform with the designated minimum 40 acre density for parcels within the "RDR/40-(14)" Zoning District. Nonetheless, the consolidation of the parcels better meets the goals, policies and objectives of the Monterey County General Plan, the Big Sur Area Land Use Plan, and the Big Sur Coastal Implementation Plan by consolidating the two legal lots of record in order to prevent further development in an area with limited options for further development outside the critical viewshed and in a highly sensitive biological habitat and archaeological resource area.

EVIDENCE: The proposed lot line adjustment will better meet the following development standards:

Development standards for development adjacent environmentally sensitive habitats:

- Monterey County General Plan: Chapter I, Goals 7 and 9 with attending Objectives and Policies.
- Big Sur Coast Land Use Plan: Chapter 3.3, Environmentally Sensitive Habitats with special attention to Sections 3.3.2., Policies 1 through 7 and 9; Section 3.3.3., A., Specific Policy for Terrestrial Plants, and Section 3.3.3., B., Policies 1 and 4, Specific Policies for Marine Habitats.
- Big Sur Coastal Implementation Plan, Part 3: Section 120.145.040 B., items 1 through 4, and 9, "General Development Standards;" Section 120.145.040 C. 2, items a through d and g, "Marine Habitats."
- Big Sur Coastal Implementation Plan, Part 6, Appendix 2b, Big Sur Resource Maps.

Development standards for development in an area with high archaeological resources:

- Big Sur Coastal Implementation Plan, Part 6, Appendix 2b, "Big Sur Resource Maps."
- Big Sur Coast Land Use Plan: Chapter 3.11, with special attention to General Policies 3.11.2, items 1 through 6.
- Big Sur Coastal Implementation Plan, Part 3: Section 20.145.120, "Archaeological Resources Development Standards."

EVIDENCE: The application and plans for a lot line adjustment found in Lot Line Adjustment File No. PLN010105.

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

EVIDENCE: The project was reviewed by the Planning & Building Inspection Department, the California Department of Forestry Big Sur Fire District, the Environmental Health Department, the Public Works Department, the Water Resources Agency, the Big Sur Land Use Advisory Committee, the State Department of Fish and Game, and the California Coastal Commission. The respective departments/agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood (Exhibit "D").

EVIDENCE: The project site is found to be in a very high fire hazard area that shall require recorded noticing and compliance with the California Department of Forestry Fire Prevention ("CDF") conditions of approval for emergency access, an emergency water supply, proper signing for property identification, setbacks from flammable vegetation, indoor sprinkler system, and fire retardant roofing. The location of a water tank and the materials used for road surfacing required by the CDF shall require joint approval of the Planning & Building Inspection Department to be assured consistency with the Local Coastal Plan policies of development within the public viewshed.

EVIDENCE: Necessary public facilities are available and will be provided, particularly when the Fire District conditions of approval for emergency access to the site are implemented (see file no. PLN010105).

15. FINDING: There is no substantial evidence in the record as a whole before the Planning Commission that supports a fair argument that the proposed project as designed, conditioned and mitigated, will have significant adverse effects on the environment. The mitigated negative declaration reflects the independent judgment of the Monterey County Planning and Building Department.

EVIDENCE: The Monterey County Planning and Building Inspection Department prepared an Initial Study pursuant to CEQA. The Initial Study identified several potentially significant effects, but the applicant has agreed to proposed mitigation measures that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. The project file is in the office of the Planning & Building Inspection Department (file no. PLN010105). All project mitigations required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval (Exhibit "D").

EVIDENCE: The mitigation measures recommended to mitigate potentially significant impacts to the aesthetic, biological, and cultural resources on the site require a team or collaborative approach to the project represented by the geotechnical engineer, contractor, biologist and archaeologist. Contracts between the applicant and each of the respective consultants require consultation with the other consultants such that they coordinate individual actions so that no conflicts arise to reduce the mitigation value of consultant measures related to each other.

EVIDENCE: A Mitigation Monitoring and Reporting Plan (Exhibit "D") has been prepared in accordance with Monterey County regulations that are designed to ensure compliance during project implementation, and the applicant shall enter into an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan" prior to issuance of any grading or building permits (Exhibit "D")

EVIDENCE: Technical Reports have been prepared (listed under Evidence for Finding 9 above) as part of the environmental determination and recommendations have been incorporated into the project or made conditions of approval.

EVIDENCE: Given that the proposed development includes two separate parcels (Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000), the Combined Development Permit for the project includes a lot line adjustment to consolidate the two parcels and place a Scenic and Conservation Easement over the entire, newly created parcel exclusive of the immediate building envelope given that there is no other feasible site on the two subject parcels that would be better screened visually from Highway One. The Scenic and Conservation Easement shall specify those portions of the property where sensitive habitats exist and are not to be materially altered except for the removal of invasive, exotic plant species. Although included in the Scenic and Conservation Easement, archaeological sites are not to be identified in said easement though included in the area not to be materially altered. Consistent with the original California Coastal Commission permit approval for the same site, such easement shall be granted to an appropriate public agency or conservation foundation, and shall include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeological and other scientific research purposed secured.

16. **FINDING:** The project is appealable to the Board of Supervisors and California Coastal Commission.

EVIDENCE: Section 20.86.080.A.3 of the Monterey County Coastal Implementation Plan, Part 1 (Title 20) and Section 19.01.050 of the Monterey County Coastal Zone Subdivision Ordinance (Title 19).

FINDINGS FOR DENIAL OF THE APPEAL

17. **FINDING:** On November 17, 2003, Dr. and Mrs. McAllister timely filed an appeal from the October 29, 2003 decision of the Planning Commission approving a Combined Development Permit consisting of a Coastal Development Permit for an approximately 8,270 square foot single family dwelling with an approximately 1,824 square foot subterranean garage with mechanical room; Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat; Coastal Development Permit for approximately 1,750 cubic yards of cut and 736 cubic yard of fill that involves cutting into slopes over 30 percent; and a Coastal Development Permit for a lot line adjustment that will consolidate two lots. The property is located at 36240 Hwy One, Big Sur (Assessor's Parcel Numbers 243-251-012 & 243-251-013), Kasler Point, one-half mile south of Garrapata Creek, Coastal Zone.

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

EVIDENCE: The Board of Supervisors denies the appeal of the McAllisters based on the following responses to each of Appellants' contentions:

Summary of Appellant Statements as Represented by John Bridges, Attorney

1. **Appellant contention:** The Project conflicts with site specific Coastal Commission directives provided in the original 1977 permit for the property.

Staff Response: As was stated in the Planning Commission Staff Report Discussion (see Exhibit "D"), Coastal Commission ("CC") staff considers the current proposal an *amendment request* to the original Coastal Commission approved 1977 Coastal Development Permit (Sorenson, #174-77). CC staff considers the current County permit still under CC purview because under the 1977 CC permit, physical development occurred, including the grading for the building pad and driveway, placement of underground septic tanks, and portions of a foundation that was later abandoned. Nonetheless, CC staff relies on the County to determine what, if any, local discretionary approval is needed. Because of the time that has transpired since the 1977 CC permit, County staff has been pursuing the Laube/Engel ("Applicant") proposal as a new Coastal Combined Development Permit, for there is a new owner submitting a new design, location and size of residence, to be looked at with a full review of the environmental impacts.

The County's independent review does overlap the findings of the 1977 CC permit and will result in essentially the same general site layout (building location within the existing graded building pad, utilizing the same driveway and sewage disposal area) and conveyances (consolidation of the two parcels and placement of a Scenic Conservation Easement). CC staff has suggested that local review emphasize *design*

review, which is a major discretionary issue addressed by the McAllisters ("Appellant") in this appeal.

The 1977 CC permit approved a more traditional, squared residence, +/- 4,300 square feet, stepped into the hillside in two stories above a subterranean or basement level garage (garage square footage unknown). The current Applicant's proposal is also two stories, approximately 8,270 square feet, also stepped into the already cut hillside and with a basement level garage, wine cellar and mechanical room +/- 1,824 square feet. But the Applicant's proposal is in a crescent or semi-circular shape with the flatter or inland elevation stepped into the hillside further than the 1977 CC permit. (See comparisons of the structure attached to this Staff Analysis, Exhibit "B"). Since the initial Applicant design proposal, the proposed structure has been moved approximately 75' southward in order to remove the structure from the Critical Viewshed as seen from a Highway 1 turnout to the north of the site. Moving the structure southward has resulted in a corner view of the structure as seen from a Highway 1 turnout south of the site. But the revised location further removes the structure from Abalone Cove and the seaward rocky outcrops on a "Rocky Point Area Vacant Parcel," defined as

Existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point and from the southernmost developed parcel north of Abalone Cove to the northernmost developed parcel south of Garrapata Creek shall be permitted to be used for residential purposes subject to policies of Section 3.2.4 of this plan [Big Sur Coast Land Use Plan] and the following standards. [i.e., keeping driveways as narrow as possible, avoiding paving where practical...; the use of roof and surface treatments, colors and materials which will visibly blend with the surrounding environment; the use of berming and other measures designed to minimize views of structures without blocking ocean vistas seen from Highway 1; ...and dedication of scenic easement over undeveloped portion of lot.] [Big Sur Coast Land Use Plan, Section 3.2.5 F., *Exceptions to the Key Policy*]

The Big Sur Land Use Advisory Committee recommended approval of the project (5 ayes, 0 noes, 2 absent) with the conditions that (1) the building should be stone or so textured as to harmonize with the surrounding rock outcrops. This recommendation, along with requiring (2) non-reflective windows and (3) no outside lighting, would serve to *minimize* the view of the south elevation of the residence as viewed against the rocky outcrops at the site. These recommendations were approved by the Planning Commission as mitigations to address the visual impact of the residence in the Big Sur Critical Viewshed.

2. **Appellant contention:** The project conflicts with numerous policies in the Local Coastal Program including, without limitation, policies relating to viewshed protection.

Staff response: A major contention by the Appellant is that the structure could be swung further into the cut hillside in order to be taken fully out of the Big Sur Critical Viewshed. To do so would require cutting further into the existing cut slope and impinging on a clump of native Monterey Cypress adjacent to the hill and driveway entrance. Also, it would require the driveway entrance now proposed between the cut hillside and house to be replaced to the seaward side of the residence, closer to the rocky outcrops as was found in both the CC permitted design and the Applicant's original design.

The Appella so argues that the residence could simply be made smaller as was the directive of the original, 1977 CC permit, and thereby taken completely out of the Big Sur Critical Viewshed, based on the following development standards for development not within the Critical Viewshed:

- a. All structures...shall be designed and sited so as not to detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline.
- b. ...New structures shall be located on that portion of a parcel least visible from public viewpoints.
- c. New development shall incorporate appropriate material, colors, or other techniques in order to blend with and be subordinate to its surrounding environment. Modifications shall be required for siting, structural design, size, shape, color, textures, building materials, access, and screening, where such modification will provide for greater blending with the surrounding environment. [Section 20.145.030 C. 2 of the Big Sur Coastal Implementation Plan]

The Applicant considers that they have adequately modified the structure so as to be least visible from public viewpoints. The applicant values the unique, crescent shaped design of a well-established local architect that has designed many Big Sur residences to fit-in with the coastal landscape.

While staff can appreciate both sides of this argument--and is not in a position to re-design the proposed residence--staff considers the re-siting of the project an improvement from the original location, serving to (1) reduce the length of driveway access; (2) move the driveway turnaround and parking area further away from the seaward rocky outcrops; (3) remove the visible silhouette of the structure from the outermost rocky shoreline as seen from a Highway 1 turnout north of the project; (4) fit better into the hillside contours (unlike the 1977 CC permitted rectangular structure); and (5) further remove the structure from the major Highway 1 Vista Point overlooking Abalone Cove, thereby further diminishing any secondary, reflective glare that might emanate from behind the hill that screens the residence from said Vista Point. While a corner of the residence will be visible from a Highway 1 turnout south of the project, it is perceived from this latter vantage point as more associated with the existing, more visible, neighboring Rocky Point residences to the south. For staff, most important is to be assured that the structure is *completely removed* from the dramatic, natural view overlooking Abalone Cove as seen from Highway 1.



View from Abalone Cove Vista Point toward building site behind the distant hill

Plant contention: In light of the substantial evidence in the record and disagreement among experts regarding significant environmental effects, an EIR is required.

Staff response: As stated in the October 29th Planning Commission Staff Report discussion (attached as Exhibit "D"), County staff requested the applicant provide site specific geology, archaeology, and biology reports in addition to providing information on soil conditions and geotechnical requirements for the proposed residence itself. Six consultant reports, with 5 additional reports to address building site relocation and peer review, provide recommendations that are included as conditions of project approval:

- Reynolds & Associates, Soil and Foundation Engineers, Surface & Subsurface Soil Conditions, 6/3/78
- Jeff Norman, Biologist Report/Revegetation Plan, 3/19/99, with response to peer review, 9/16/02, an updated Smith's blue butterfly and seacliff buckwheat survey, 9/1/03, and further response to peer review regarding Monarch butterfly overwintering habitat, 9/21/03.
- Karl Vonder Linden, Engineering Geology and Mining Engineering, Geologic Report, 12/17/99, revised 1/3/03
- Vicki C. Odello, C.E., Geotechnical Report, 11/21/99, revised 12/20/02, with response to peer review, 2003
- Haro, Kasunich & Associates, Project Review and Site Inspection for the Proposed Onsite Drainage Improvements, 12/27/02.
- Archaeological Resource Service; Archaeological Reconnaissance of Donald Sorensen property, Big Sur, 2/8/77

Based on these consultant reports, various recommendations have been made to protect from development significant environmental resources found at the site:

- The entire area *outside* of the building envelope is recommended for placement in a Scenic Conservation Easement to protect the natural resources at the site.
- The estimated 120 specimens of seacliff buckwheat *within* the building envelope are recommended to be replaced at a ratio of 3:1 (360 nursery-obtained specimens) at selected sites presently overrun with exotics (Norman, 1999).
- A mitigation to protect the nearshore marine environment is the placement of septic leach fields (already installed from an earlier permit) 40 feet up-slope from the project in the general area shown in the photograph. The leach fields will receive effluent pumped up from septic holding tanks at the project site.
- Surface runoff from the building area and driveway as well as subsurface seepage shall be diverted toward drainage inlets with grease traps easily accessible and maintainable, and directed toward an existing storm drain outlet at a historic discharge point so as not to allow erosion to occur at or below the coastal bluff (Haro, Kasunich & Assoc., 12/27/02).
- To avoid erosion and slumping, a minimum 15-foot coastal set-back between the seacliff and any improvements along the southern part of the property is recommended by both the geologist and geotechnical engineer (Linden and Odello).

Applicants' Rebuttals to Appellants' Peer Review(found also in the October 29, 2003 Planning Commission Staff Report discussion, Exhibit "D." Full text of Applicants' biologic, geologic, and geotechnical consultant responses to Appellants' peer review is found in Exhibit "C."):

Biological Assessment: Of concern for the consulting biologist, Jeff Norman, are the comments of peer reviewer, Biotic Resources Group. At issue is the construction impact to the seacliff buckwheat plants at the construction site, considered habitat to the Smith's blue butterfly. While the recommended mitigation for removal of the plant is to plant the buckwheat plants at a 3:1 location at other locations

now invaded by non-native exotics (Hottentot fig and Cape ivy), consultant biologist Jeff Norman updated his Smith's blue butterfly survey following the State Department of Fish and Game ("Fish and Game") protocol. Mr. Norman's ten days of surveys conducted between June 25th and August 25th of 2003 is generally considered the butterfly's flight season. He found no evidence of the butterfly or its larvae at the site during this period. Accordingly, the building envelope itself is not considered an environmentally sensitive habitat requiring a "Habitat Restoration Plan" pursuant to a Fish and Game permit.

Regards the *potential* for the Monarch butterfly to utilize Monterey cypress for an overwintering site, Mr. Norman states that the habitat is not used for breeding, and that there is no butterfly larval food plants present at the site. Nonetheless, the Monterey cypresses are to be protected within a Scenic Easement and with the proposed driveway access circumventing the cypress trees. The Monterey cypress along with Monterey Indian paint brush plants are to be preserved during construction by protective fencing. (See attached Exhibit "C")

Geologic assessment: Purcell, Rhoades & Associates, geology peer reviewer, raise concerns about the geology and geotechnical reports prepared for the project. Their peer review include the following concerns:

- the result of the recent sea cliff failure on the south side of the site;
- the presence of undocumented fill;
- a buried and non-engineered topsoil layer (the project consultant did not provide subsurface core soil samples nor bulk samples for laboratory tests to evaluate relative density and quantifiable evaluation of relative compaction);
- the unknown amount of grading that might be needed to remove the fill, which also may entail the possible removal of vegetation that serves to stabilize the soil within the cliff face;
- the under-estimated seismic hazards and potential for liquefaction at the site;
- the proposed increase in impermeable surface that will result in increased drainage runoff at this site; and
- the adequacy of the proposed sanitary system for the size dwelling proposed and the impact of the septic system on the presence of groundwater at the site.

The Applicant's geologic consultant, Karl Vonder Linden, provided a revised geologic report on January 3, 2003 to address the relocation of the building plus respond to the Purcell, Rhodes & Associates, Inc. peer review, and provides the following findings (taken verbatim, with minimal paraphrasing and the italicizing of important points):

- The subject property is within a zone of relatively low, historical seismic activity;
- No historic earthquake or positive proof of Quaternary movement can be documented for the Palo Colorado Fault;
- No earthquake-induced features caused by lurching, settlement, liquefaction etc. were identified within or near the subject property;
- The building site and surrounding area are mantled by a moderately thick (a few inches to about ten feet) cover of colluvium and slope wash. These materials consists of granitic boulders and cobbles in a dark brown granular soil matrix;
- The fill at the site is native material of on-site origin and was generated during the earlier excavation and grading. No record of fill emplacement and compaction exists in available records of the property, but the distribution of the fill suggests it was spread as spoil from the 1970s grading;
- The fill is fairly widespread, but the maximum thickness encountered is five feet. Settlement of the soils would not be a problem because the soil is very coarse and relatively thin. *Thin fill*

such as found here need not be removed, as a drilled-pier, grade-beam foundation can be utilized that will transfer the load of the structure through the fill and entirely to the granitic bedrock.

- No indication of groundwater was observed on the property. Septic tank drilling detected the water table at a depth of 24 feet. Liquefaction of sediments and soils would not be a problem because of the relatively deep groundwater table, coarseness of the soil cover, and the character of the bedrock.
- No surface rupture or displacement related to active faulting are anticipated for this site or the immediate surrounding area as no faults, active or inactive, were identified within or near the property. No areas of "high risk" were identified at or near the proposed building site. Therefore, no building restrictions or use-limitations are recommended.
- The potential for earthquake-induced landsliding is extremely remote at and around the project site. The undisturbed coastal promontory is underlain by granitic bedrock that has withstood prior seismic shaking with no sign of landsliding.
- Non-seismic slumping of seaciff due to basal erosion from storm waves has been observed along the southern part of the property. *In light of this erosion and slumping it appears sensible to maintain at least a 15-foot coastal set-back between the seaciff and any improvements along the southern part of the property. Another method to address this concern would be placement of rip-rap along the southern seaciff to prevent erosion.* (See Exhibit "C" for the full report).

The applicant's Geotechnical Engineer, Vicki C. Odello, C.E., also responded to third part review of her geotechnical report in response to the Purcell, Rhoades & Associates peer review (excerpts taken verbatim or paraphrased with the italicizing of important points):

- Without having been to the site, as PRA appears to have not, suggesting areas that require further study could be folly;
- Upon a recent visit to the site the undocumented fill is actually better described as a thin veneer of spoils that spill over the slope, reaching about 8 feet down the cliff extending a few feet laterally. The fill seems to be side cast material from a manhole excavation. The fill is not an 8-foot thick fill wedge (as may have been envisioned based on my earlier description).
- The fill as described above is minor. Therefore, the reference and concern for "undocumented fill," "grading violation," "extensive grading to remove fill" and "re-landscaping damaged areas" is mute. Also, more damage would be incurred should the fill be removed as it is well vegetated with iceplant.
- It is not necessary to assess the kinematic stability of the bedrock nor assess the joints and fractures to verify no adverse orientation is present. In this case, visual confirmation and deductive reasoning is adequate. The cut has experienced over 20 winters and a few earthquakes. The existing topple from the cut slope is "fist-sized" rock. *A wall is more effective to help accommodate the rock topple rather than individual rock bolts or flexible netting because of the smaller size rock topple. Put in a wall and drainage.*
- It is recommended to pier through the colluvium into the granite for structural support to mitigate against potential (albeit low potential) movement/differential settlement between colluvium and granite.
- It is clear, without subsurface exploration (since the soil and rock profile can be observed in the cut slope and coastal bluff at the site) there is not granular soil at the site that would deem a liquefaction study necessary. The soils at the site contain fine material (silt/clay), gravel and sand. *Therefore, the related concern of lurching is mute and a liquefaction study is not necessary at the site.*
- Based on my recent site visit, there is not a major fill necessary for removal. Removal of the side cast fill may cause unnecessary erosion protection repair.

- *The geotechnical concerns at the site are not significant, but are rather typical concerns for this type of site that can be conventionally accommodated. (See Exhibit "C" for Odello's full report).*

According to peer reviewer Purcell, Rhoades & Associates, their concerns must be addressed *prior* to any CEQA review, and an Environmental Impact Report prepared and circulated to address these potential significant impacts. Given the above responses to the Purcell, Rhoades & Associates concerns by Linden and Odello, staff does not find justification for a revised and re-circulated Initial Study, or the need for an Environmental Impact Report to address significant environmental impacts. While it is true that the original Initial Study overlooked the potential significant visual impact of the proposed structure in the Big Sur Critical Viewshed when designed to overlap the adjacent WSC parcel, the construction site has been moved 75' southward so as to minimize the visual impact as seen from a Highway 1 turnout to the north of the parcel. Mitigations placed on the project to *minimize* the visual impact from a Highway 1 turnout to the south of the parcel (i.e., textured was to blend with rocky outcrops; no outdoor lighting, non-reflective windows) have since been placed on the project subject to discretionary review.

4. Appellant contention: Pending violations on the project site exist and must be fully investigated and remedied prior to project approval.

Staff response: Staff finds that no violation has been recorded for the property under County jurisdiction. Any violation associated with the property would be related to the original, abandoned, 1977 CC permit. CC staff has been notified so as to recommend any remedial actions required at the site to correct a purported violation. At the receipt of this report, CC staff is expected to respond to the proposal during the appeal period.

5. Appellant's contention: The findings and decision of the Planning Commission are not supported by the evidence in the record.

Staff Response to Appellants' criticism of the proposed size of the structure that is not in keeping with the 1977 CC permit directives at the site (Appellant Representative's October 23, 2003 letter): The Appellant cites the CC decision to reduce the house size as a fundamental part of the original, 1977 CC approval. (See the staff response under Appellant's Contention item #1, above). In an e-mail to County staff dated October 10, 2002, CC staff stated the following:

What we will need from the County in order to process an amendment request is evidence that all local discretionary approvals are needed. To date, it has been our understanding that the local review would take the form of a Design Review.

Rightly or wrongly, County staff made the decision to require a Coastal Combined Development Permit because of the 25 year time period that has transpired since the 1977 CC permit, and the fact that there is a new owner submitting a new design, location and size of residence that needs to be looked at with a full review of the environmental impacts. Given the very sensitive environmental issues at this very unique site, this discretionary exercise has proven invaluable. For example, evidence the F&W requirement for a follow-up, protocol survey to determine whether the proposed building site at the same general location as the 1977 CC permitted building site, would be *within* an Environmentally Sensitive Habitat (Smith's Blue Butterfly), or within a 100 feet of an Environmentally Sensitive Habitat. This distinction was required in order to determine whether any construction at the site would require a State Fish & Game "Habitat Restoration Plan" because of a potential "take" of an endangered species—the Smith's Blue Butterfly. Thus, current biologic, geologic and geotechnical surveys of the property served to update possible environmental changes that could occur at the site after a 25 year period since the original 1977 CC permit approval.

Further, staff recognizes that a new property owner cannot be expected to accept a 25 year old design concept for the property. In its place, the current Applicants are proposing a design that better adjusts to the landscape contours at the building site. The Applicant is aware that the Planning Commission and Board of Supervisors' discretionary action as to whether the Applicants' proposed size of residence is appropriate to the building site under the CC certified 1986 Big Sur Land Use Policy 3.2.4. and Coastal Implementation Plan Section 20.145.030 C. 2. is still subject to a CC appeal under Section 20.86.080 A. 1. of Title 20:

Approved projects between the sea and the first through public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

Staff response to the Appellants' contention that an EIR is required (Appellant Representative's October 23, 2003 letter): Refer to staff's response to the Appellants' item #3.

IN VIEW OF THE ABOVE findings and evidence, the Board hereby:

1. denies the appeal of the McAllisters;
2. adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program;
3. approves the Laube/Engel Combined Development Permit (Laube/Engel; PLN010105) subject to the conditions of approval listed below:

CONDITIONS OF APPROVAL

1. This permit allows the construction of an approximately 8,270 sq. ft, 2-story, single family dwelling with an approximately 1,824 sq. ft. subterranean garage and mechanical room, resulting in an approximately 4,900 sq ft. construction "foot print," a proposed driveway turnaround and an existing approximately 400 foot access road. The permit also allows approximately 2,500 cu. yards of cut and fill (1,750 cubic yards of cut and 736 cubic yards of fill) that involves cutting into slopes over 30 percent within a specified area paralleling the eastern edge of the residence, and retaining walls at the cut. Further, the permit includes a lot line adjustment that will serve to consolidate two lots, Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000, at the subject site.

The proposed development is found to be in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. (Planning and Building Inspection Department)

Prior to the Issuance of Grading and Building Permits:

2. The applicant shall record a notice which states: "A permit (Resolution _____) was approved by the Board of Supervisors for Assessor's Parcel Numbers 243-251-012-000 and 243-251-013-000 on April 30, 2003. The permit was granted subject to 26 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning & Building Inspection)

3. A notice shall be recorded with the Monterey County Recorder which states: "The following reports have prepared for this parcel:

- Reynolds & Associates, Soil and Foundation Engineers, Surface & Subsurface Soil Conditions, 6/3/78
- Jeff Norman, Biologist Report/Revegetation Plan, 3/19/99, with response to peer review 9/16/02.
- Karl Vonder Linden, Engineering Geology and Mining Engineering, Geologic Report, 12/17/99, revised 1/3/03
- Vicki C. Odello, C.E., Geotechnical Report, 11/21/99, revised 12/20/02
- Archaeological Resource Service; Archaeological Reconnaissance of Donald Sorensen property, Big Sur, 2/8/77]

and are on record in the Monterey County Planning and Building Inspection Department file no. PLN010105. All development shall be in accordance with these reports." (**Planning & Building Inspection**)

4. A Grading Permit shall be required pursuant to the Monterey County Code relative to Grading, Chapter 16.08. Said permit shall be reviewed by the Director of Planning and Building Inspection in addition to the Department's Building Official for consistency with the mitigation measures required for development adjacent to an environmentally sensitive habitat. (**Planning & Building Inspection**)

5. For the purpose of signing and building numbering, California Department of Forestry Fire District shall require the following:

- a. All buildings shall be issued an address in accordance with Monterey County Ordinance No. 1241. Each occupancy, except accessory buildings, shall have its own address.
- b. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter, and the address shall be visible and legible from the road on which the address is located. Size of letters, numbers and symbols for addresses shall be a minimum of 3 inch letter height, 3/8 inch stroke, contrasting with the background color of the sign. (**CDF Fire District**)

6. Emergency water standards required by the California Department of Forestry District are as follows:

- a. Approved fire protection water supply systems must be installed and made serviceable prior to the time of construction.
- b. A minimum fire protection water supply of 3,000 gallons shall be provided regardless of parcel size. Minimum storage requirements for single family dwellings may be reduced to 2,000 gallons if an approved automatic fire sprinkler is required.
- c. Fire hydrant: The hydrant or fire valve shall be 18 inches above grade, 8 feet from flammable vegetation, no closer than 4 feet nor further than 12 feet from a roadway, and in a location where fire apparatus using it will not block the roadway. The hydrant serving any building shall be not less than 50 feet nor more than 1,000 feet by road from the building it is to serve. Minimum hydrant standards shall include a brass head and valve with at least one 2 1/2 inch National Hose outlet supplied by a minimum 4 inch main and riser. (**CDF Fire District and Planning & Building Inspection**)

7. California Department of Forestry Fire District requires fuel modification standards as follows: All parcels 1 acre and larger shall provide a minimum 30 foot setback for buildings and accessory buildings from all property lines and/or the center of the road. Where a 30 foot minimum setback cannot be reached, alternate fuel modification standards may be imposed by the local fire jurisdiction to provide the same practical effect. **(CDF Fire District)**
8. For fire protection equipment, the residence shall be fully protected with an automatic fire protection system. The following notation is required on the plans when a building permit is applied for:

"The building shall be fully protected with an automatic fire sprinkler system. Installation, approval and maintenance shall be in compliance with NFPA 13-D (1998). Four (4) sets of plans for fire sprinkler systems must be submitted and approved prior to installation. Rough-in inspections must be completed prior to requesting a framing inspection." **(CDF Fire District)**
9. Roof protection in a very high fire hazard area as defined by the California Department of Forestry and Fire Protection (CDF), roof construction shall be Class A, or as approved by the Reviewing Authority. This requirement shall apply to all new construction and existing roofs that are repaired or modified so as to affect 50% or more of the roof. Vegetation removal shall not be allowed as a means of removing the very high fire hazard area designation from an entire parcel. **(CDF Fire District)**
10. The applicant shall record a deed restriction which states: "The parcel is located in a very high fire hazard area and development may be subject to certain restrictions required as per Section 20.145.080 C.I.a.1 a) of the Coastal Implementation Plan and per the standards for development of residential property." **(Planning & Building Inspection)**
11. A drainage plan shall be prepared by a registered civil engineer or architect addressing on-site and off-site impacts, to include dispersal of impervious surface stormwater runoff onto a non-erodible surface below the bluff. Necessary improvements shall be constructed in accordance with approved plans. A certified biologist shall review the final drainage plan to assure that drainage does not impact the sensitive marine habitat below the construction area. **(Water Resources Agency)**
12. The location of all utilities, including the location, type and size of all antennas, satellite dishes, towers, water tank and similar appurtenances shall be approved by the Director of Planning and Building Inspection. All new utility and distribution lines shall be placed underground at locations also approved by the Director of Planning and Building Inspection in consultation with the project biologist and archaeologist. **(Planning & Building Inspection; Public Works)**
13. Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$1,275. This fee shall be paid on or before the filing of the Notice of Determination within five (5) days of project approval. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid. **(Planning & Building Inspection)**

14. Native trees, particularly the cluster of Monterey Cypress trees located close to the construction site, shall be protected from inadvertent damage from construction equipment by wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees. Said protection shall be demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. **(Planning & Building Inspection)**
15. The applicant shall enter into an agreement with the County to implement the Mitigation Monitoring and/or Reporting Plan adopted for this project. **(Planning & Building Inspection)**
16. No exterior lighting shall be allowed as seen from Highway One. No flood lights or any sort of exterior lights shall be placed at the northern, western, and southern elevations of the building. No lights shall shine on the water, surrounding habitat, or other public viewing areas. The applicant shall submit 3 copies of a lighting plan which shall indicate the location, type, and wattage of all light fixtures to be assured that lighting will not create a glare that can be seen from Highway One. **(Mitigation Measure 1: Planning & Building Inspection)**
17. The present owners shall convey to the County a Scenic and Conservation Easement over the parcel created by combining two parcels, Assessor Parcel Numbers 243-251-012-000 and 243-251-013-000, exclusive of building envelope. The Scenic and Conservation Easement shall specify those portions of the property where sensitive habitats exist and are not to be materially altered except for the removal of invasive, exotic plant species. Although included in the Scenic and Conservation Easement, archaeological sites are not to be identified in said easement though included in the area not to be materially altered. The easement boundary shall be adjusted to include as much of the archaeological site as possible, and to exclude the proposed driveway. The easement shall include provisions to prevent disturbance of native plants and wildlife; to exclude damage by livestock; to provide for maintenance needs; and to specify conditions under which non-native plant species may be controlled, public access allowed, unsafe activity prevented, and entry for archaeological and other scientific research purposes secured. **(Mitigation Measure 2: Planning & Building Inspection)**
18. In order to mitigate potential adverse impacts to sensitive plants and habitats by the proposed project, the applicant shall contract the services of a qualified biologist to fully implement the Biological Report/Revegetation Plan prepared by Jeff Norman, November 30, 1999, with his updated survey dated December 15, 2001. Said contract shall specify the implementation methods, performance criteria, monitoring and reporting as described in the Biological Report/Revegetation Plan. The contract shall require the biologist to consult regularly with the geotechnical engineer, archaeologist and contractor to coordinate individual actions so that no conflicts arise to reduce the mitigation value of consultant measures related to each other. **(Mitigation Measure 3: Planning & Building Inspection)**

19. In order to protect the Southern Sea Otter and Black Swift and the invertebrates they feed upon within the subtidal habitat, no construction debris shall be allowed to enter the marine habitat, and no erosion shall be allowed to occur as a consequence of the proposed project in order to protect the subtidal and intertidal habitats of invertebrates upon which the Southern Sea Otter feed. The currently eroded area northwest of the building envelope, identified by the consulting biologist, shall be stabilized, the method to be determined by a certified geotechnical engineer and approved by the Director of Planning & Building Inspection. An erosion control plan shall be submitted, reviewed by a certified biologist together with the engineer and contractor, to assure that no debris enter the marine habitat. Any landscaping occurring at this eroded area shall include adequate erosion-control measures and selection of non-invasive plant species. **(Mitigation Measure 4: Planning & Building Inspection)**
20. In order to assure that grading activities do not impact cultural or archaeological resources, the applicant shall contract with a Registered Professional Archaeologist to monitor all earth disturbance work within 10 meters (3 feet) adjacent to identified cultural and/or archaeological resources on the project site. The contract shall specify implementation of the Archaeologist Reconnaissance of Donald Sorensen Property, Big Sur prepared by Archaeological Resource Service, February 8, 1977. In addition, the contract will require the contracted archaeologist to be involved in regular consultation with the contracted geotechnical engineer, biologist and contractor during construction to assure protection of biological and archaeological resources at the site. **(Mitigation Measure 6: Planning & Building Inspection)**
21. In order to assure that excavation, grading and construction activities are consistent with the Geotechnical Report prepared by Vicki C. Odello, the applicant shall contract the services of a qualified geotechnical engineer to fully implement the Geotechnical Report prepared by Vicki C. Odello, C.E., November 21, 1999. In addition to implementation of geotechnical construction specifications described in said Geotechnical Report, the contract will include regular consultation with the consulting biologist, archaeologist and contractor during construction to assure protection of biological and archaeological resources at the site. **(Mitigation Measure 7: Planning & Building Inspection)**
22. The applicant shall submit for the Director of Planning and Building Inspection's review and approval a detailed grading, landscaping and re-vegetation plan. The plans shall have been reviewed by a certified biologist verified in the form of a letter by said consulting biologist. At minimum, the plan shall specify procedures for erosion control and re-establishment of native plant cover; and proposed landscaping species. Any landscaping plans and irrigation within the building envelope shall be evaluated in terms of erosion control measures and compatibility with the native plant community in the area—the Coastal Bluff Scrub and Northern Coastal Scrub. No interference with public views through the planting of trees shall be allowed.

Three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department. **(Mitigation Measure 5: Planning & Building Inspection)**

Prior to Final Building Inspection. Occupancy:

23. For emergency access, the California Department of Forestry Fire District (Monterey—San Benito Ranger Unit, Battalion 1) requires the following:
- The surface of the driveways shall provide unobstructed access to conventional drive vehicles, including sedans and fire engines. Surfaces shall be capable of supporting the imposed load of fire apparatus.
 - The grade for all roads, streets, private lanes and driveways shall not exceed 15 percent. Where road grades exceed 8 percent, a minimum structural roadway surface thickness of 0.17 feet of asphaltic concrete on 0.34 feet of aggregate base shall be required.
 - For residential driveways with turns 90 degrees and less, the minimum horizontal inside radius of curvature shall be 25 feet. For driveways with turns greater than 90 degrees, the minimum horizontal inside radius of curvature shall be 28 feet. For all driveway turns, an additional surface of 4 feet shall be added.
 - Turnarounds shall be required on driveways and dead-end roads in excess of 150 feet of surface length. Required turnarounds on access roadways shall be located within 50 feet of the primary building. The minimum turning radius for a turnaround shall be 40 feet from the center line of the road. If a hammerhead/T is used, the top of the "T" shall be a minimum of 60 feet in length.
 - Driveways shall not be less than 12 feet wide unobstructed. All driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceed 800 feet, turnouts shall be provided at no greater than 400 foot intervals. Turnouts shall be a minimum of 12 feet wide and 30 feet long with a minimum 25 foot taper on each end.
 - Gate entrances shall be at least the width of the traffic lane but in no case less than 12 feet wide. All gates providing access from a road to a driveway shall be located at least 30 feet from the roadway and shall open to allow a vehicle to stop without obstructing traffic on that road. Where gates are to be locked, the Reviewing Authority having jurisdiction may require installation of a key box or other acceptable means to immediate access for emergency equipment.
 - Unobstructed vertical clearance shall not be less than 15 feet for all access roads and driveways. (CDF Fire District and Planning & Building Inspection)
24. The existing septic tank must be destroyed under permit of the Division of Environmental Health and a new one installed in the location indicated on the approved plans. (Environmental Health)
25. The applicant shall comply with Ordinance No. 3932, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:
- All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
 - Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. (Water Resources Agency)

26. The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. (Planning and Building Inspection Department)

IN VIEW OF THE ABOVE findings and evidence and the findings of the Planning Commission, the Board hereby: (1) denies the appeal of Dr. and Mrs. McAllister; (2) affirms the Mitigated Negative Declaration prepared for the project; and (3) affirms the Planning Commission's decision (**Resolution No. 03073**) to approve the Laube/Engel (**Laube/Engel; Planning and Building Inspection file no. PLN010105**) Combined Development Permit consisting of the following:

- a. a Coastal Development Permit for an approximately 8,270 square foot single family dwelling with an approximately 1,824 square foot subterranean garage with mechanical room;
- b. a Coastal Development Permit for development within 100 feet of an environmentally sensitive habitat;
- c. a Coastal Development Permit for approximately 1,750 cubic yards of cut and 736 cubic yard of fill that involves cutting into slopes over 30 percent; and
- d. a Coastal Development Permit for a lot line adjustment that will consolidate two lots, subject to the conditions of approval from said Planning Commission resolution.

In addition, the Board adds the following Indemnification Agreement as a condition of the Laube/Engel Combined Development Permit, namely:

PASSED AND ADOPTED on this 13th day of January, 2004, upon motion of Supervisor Potter, seconded by Supervisor Johnsen, by the following vote, to-wit:

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

NOES: None

ABSENT: None

I, Sally R. Reed, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 72, on January 13, 2004.

Dated: January 23, 2004
State of California.

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

By Ann D. Anderson
Deputy

CCC Exhibit 3
(page 26 of 26 pages)

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s):

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

Commissioner William A. Burke, Vice Chair
45 Fremont Street, Suite 2000
San Francisco, CA 94105
(415) 904-5200

Commissioner Sara J. Wan
45 Fremont Street, Suite 2000
San Francisco, CA 94105
(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:
Monterey County

2. Brief description of development being appealed:

Construction of an approximately 8,270 sq.ft. single family dwelling with an 1,824 sq.ft. subterranean garage with mechanical room located within 100 feet of an environmentally sensitive habitat area; 4,000 cubic yards of cut and fill that involves cutting into slopes over 30% and allow a lot line adjustment that will serve to merge two parcels.

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

36240 Highway 1, Kasler Point, one-half mile south of Garrapata Creek, Big Sur, Monterey County APN 243-251-012 & 243-251-013.

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
b. Approval with special conditions: XX
c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-04-012

DATE FILED: February 18, 2004

DISTRICT: Central

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COASTAL COMMISSION
CENTRAL COAST AREA

CCC Exhibit

4

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: Minor Subdiv. Comm.

6. Date of local government's decision: January 13, 2004

7. Local government's file number: PLN010105; Resolution No. 03073

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:

Sheldon Laube & Nancy Engel

36240 Highway 1

Monterey, CA 93940

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

(1) Jeff Main, Planner, Monterey County Planning & Building Dept.

2620 First Avenue

Marina, CA 93933

(2) John S. Bridges, Fenton & Keller

P.O. Box 791

Monterey, CA 93942-0791

(3) Dr. & Mrs. Hugh McAllister

36654 Highway 1

Monterey, CA 93940

(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.

Reasons for Appeal of Monterey County Coastal Development Permit PLN010105

Monterey County's approval of a coastal development permit to allow the construction of an 8,270 square foot single family residence with an approximately 1,824 square foot garage and associated grading on APNs 243-251-012 and 243-251-013 in Big Sur, is inconsistent with the Monterey County certified Local Coastal Program's Scenic Resource Protection provisions for the following reasons:

The project, located between Highway One and the sea, will be visible from the Highway and has not been sited and designed to minimize impacts to the viewshed as required by the LCP.

The County uses the wrong standard of review in admitting that the proposed house will be visible from Highway One, but then saying that the LCP allows for it. The County says that the site is in the Rocky Point exemption area and therefore Policy 3.2.5.F applies. However, the Rocky Point exemption area is defined as follows: "Existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point and from the southernmost developed parcel north of Abalone Cove to the northernmost developed parcel south of Garrapata Creek." The subject site is located north of the northernmost developed residential parcel on Kasler Point and south of the southernmost developed parcel north of Abalone Cove and therefore lies outside of and between the two segments of exempt Rocky Point parcels.

Thus, the proper standard of review is *Big Sur Coast Land Use Plan*:

3.2.1 Key Policy

Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.

and associated *Big Sur Coast Land Use Plan* policies 3.2.3.2, 3.2.3.3, 3.2.3.4, etc. The County findings acknowledge that the proposed house is visible from Highway One, and therefore, it is inconsistent with these policies.

Given that a previous home was approved on this site that meets this policy, there is no justification to approve a larger home that does not meet this policy. Furthermore, the LCP's remedies for situations where a house cannot be hidden are TDCs or public acquisition, not "mitigation" of impacts.

Even were, just for argument's sake, Policy 3.2.5.F to be the governing policy, the proposed project would not be consistent with its requirement to utilize "other measures designed to minimize views of structures."

We are appealing this project based on the County's action on the coastal permit indicating that it is appealable to the Coastal Commission. We note, however, that the County action references the Coastal Commission's earlier permit for a home on this site and the need to amend that permit. Thus, an issue is raised as to the proper procedure that the Coastal Commission should follow in considering this item.

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.

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.

Signed: W. A. Bunk
Appellant or Agent

Date: 2-14-04

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document 2)

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.

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.

Signed: *Laura J. Weir*
Appellant or Agent

Date: 2/18/04

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

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

OF COUNSEL

LEWIS L. FENTON

FENTON & KELLER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2801 MONTEREY-SALINAS HIGHWAY

POST OFFICE BOX 791

MONTEREY, CALIFORNIA 93942-0791

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FACSIMILE (831) 373-7219

SANTA CRUZ
COUNTY OFFICE

FIRST NATIONAL BANK BUILDING
655A MAIN STREET
WATSONVILLE, CA 95076
TELEPHONE (831) 761-2494
FACSIMILE (831) 761-2125

FROM SALINAS

TELEPHONE (831) 757-8937

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

J.Bridges@FentonKeller.com
ext. 238

February 13, 2004

JOHN S. BRIDGES

California Coastal Commission
Attn: Executive Director
c/o Charles Lester
725 Front Street, Suite 300
Santa Cruz, CA 95060

VIA HAND DELIVERY

Re: Monterey County Approval of Laube/Engel Application (PLN 010105)
Our File: 31485.28022

Dear Commission:

Enclosed is our client's appeal from the Monterey County Board of Supervisors purported approval of the above referenced project. We understand that the Coastal Commission has received a purported Final Local Agency Action Notice from Monterey County regarding the above referenced project (your file 3-MCO-04-027). Because the Board of Supervisors' January 13 action on the project was in conflict with applicable law, including, without limitation, the provisions of Title 20 of the Coastal Implementation Plan and Chapter 20.90, and because section 20.90.010 provides that if a permit is issued in conflict with the provisions of Title 20 it is null and void, it is our position that the County's January 13 action cannot be considered "final" for purposes of triggering the Coastal Commission appeal period pursuant to Coastal Commission Regulation section 13110. For your information, we will be filing a concurrent action in Monterey County Superior Court to address this issue as well as other infirmities of the County's action. In the interim, in order to protect our client's rights in the event that the Commission or the Superior Court should determine the County's action was "final" notwithstanding the mandate of section 20.90.010, we are filing this appeal in accordance with Subchapter 2 of the Coastal Commission Regulations. By filing this appeal, appellants do not waive any right to contest the legal adequacy and/or finality of the County's action on the project or the legitimacy of the County's ostensible notice of final action.

Very truly yours,

FENTON & KELLER
A Professional Corporation

John S. Bridges

Enclosures

cc: Dr. Chip McAllister (w/encs.)
H:\documents\kmc.0k0nws8.doc

CCC Exhibit 5
(page 1 of 13 pages)

CALIFORNIA COASTAL COMMISSION

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

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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):

Dr. and Mrs. Hugh "Chip" McAllister	John S. Bridges (Attorney Represented)
36654 Highway 1, Coast Route	Box 791
Monterey, CA 93940	Monterey, CA 93942
831-620-0856	831-373-1241
Zip	Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

Monterey County

2. Brief description of development being appealed:

CDP for 8,270 sq.ft. house + 1,824 sq.ft. garage/mechanical room +
development near ESHA + 2,486 cu yds grading + cut into 30% slopes
+ Lot Line Adjustment.

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

36240 Highway One, Big Sur, CA APN 243-251-012,013
Kasler Point - 1/2 mile south of Barrapata Creek

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
b. Approval with special conditions: 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: _____
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 Administratorc. ☐ Planning Commissionb. ☒ City Council/Board of Supervisorsd. ☐ Other: _____6. Date of local government's decision: January 13, 20047. Local government's file number: PLN 010105**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:

Laube/Engel
36240 Hwy 1
Monterey CA 93940

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

- (1) see attached
- (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.

01/21/2004 18:28

8313737219

FENTON AND KELLER

PAGE 04

Dec-23-03 08:48am From-

T-412 P.007/007 F-100

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 materialsLetters dated: 11-14-031-6-041-8-04materials presented to B of S: 1-13-04and summary of grounds for appealThe development does not conform to the standards
set forth in the certified local coastal program.

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.

John S. Bridges
Signature of Appellant(s) or Authorized Agent Representative

Date 1-23-04

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

SECTION VI. Agent Authorization

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

X Hugh H. McAllister, Jr., M.D.
Signature of Appellant(s)

Date 21 Jan 04

SUMMARY

Top 10 Grounds for Appeal

- Pending grading and construction violations preclude action on application
- LCP viewshed policies/standards violated
- LCP viewshed exception area policies/standards violated
- LCP height limit/development standards violated
- LCP biologic and ESHA policies/standards violated
- LCP hazardous areas policies/standards violated
- LCP water resources policies/standards violated
- Legally deficient environmental review - EIR required
- Prior coastal permit limits (letter and spirit) violated
- Local approval based on false and misleading materials submitted by applicant

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

OF COUNSEL

LEWIS L. FENTON

FENTON & KELLER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
2801 MONTEREY-SALINAS HIGHWAY
POST OFFICE BOX 791
MONTEREY, CALIFORNIA 93942-0791
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SANTA CRUZ
COUNTY OFFICE

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

FROM SALINAS

TELEPHONE (831) 757-8937

January 8, 2004

JOHN S. BRIDGES

JBridges@FentonKeller.com
ext. 238

VIA FACSIMILE AND U.S. MAIL

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

Re: Appeal from Planning Commission Approval of Laube/Engel
Application (PLN 010105 - Planning Commission Resolution No.
03073) - January 13, 2004, Agenda Item S-8
Our File: 31485.28022

Dear Clerk and Board of Supervisors:

This letter is submitted as a supplement to our November 14, 2003, appeal of the above referenced project in order to comment on the staff report (a copy of which we just received today) for your January 13 hearing.

1. The staff report completely ignores the gross misrepresentation made to the Planning Commission by the applicant's representatives during the Planning Commission hearing with regard to the project alternative submitted by Rob Carver. This misrepresentation should not be allowed by the County and the Planning Commission's approval, which was based upon this false evidence, cannot stand.

2. Since a reduction in the size of the house to 4,300 square feet was a "fundamental part" of the earlier Coastal Commission approval, it is beyond comprehension how the staff can conclude that the proposed 10,000+ square foot structure conforms with this directive.

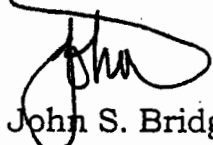
3. Staff's justifications for allowing the project's avoidable impact on the critical viewshed are a) that the "applicant considers" their design to be in the least visible location (of course they do); and b) that the design is an improvement over the original proposal. Neither of these is a legitimate basis for finding consistency with the critical viewshed policies of the Big Sur LUP.

4. The applicant's consultants' rebuttal to conflicting expert opinions regarding significant environmental impacts is not a legitimate basis for dispensing with the legal requirement of an EIR. Indeed, under the holding of City of Carmel-by-the-Sea v. Board of Supervisors, the fact of disagreement among the experts in this case necessitates an EIR particularly where, as here, the issues in contention are so significant and so many. It is ironic that the staff even acknowledges that this project involves "very sensitive environmental issues at this very unique site."

5. The staff's cursory treatment and dismissal of the existing permit violations on the property cannot be sanctioned. Under LCP section 20.90.100, where the county has knowledge of violation of a discretionary permit, the county "shall" cause to be issued a notice of intention to record a notice of violation. Moreover, section 20.90.120 prohibits the county from approving permits or other entitlements where there is an outstanding violation involving property which is the subject of a pending application. Finally, section 20.90.130 mandates that before an application can be processed the violation must be remedied, restoration implemented, with monitoring agreements in place. The county cannot simply ignore the fact of the existing permit violations on the grounds that no notice of violation has yet been "recorded" by the county (which is the basis for staff's recommendation) and thus punt the issue to the Coastal Commission.

Very truly yours,

FENTON & KELLER
A Professional Corporation



John S. Bridges

JSB:kmc

cc: Dr. & Mrs. McAllister
California Coastal Commission
Attn: Charles Lester/Rick Hyman/Sherif Traylor
Supervisor Fernando Armenta
Supervisor Louis Calcagno
Supervisor Dave Potter
Supervisor Edith Johnsen
Supervisor Butch Lindley
Sally Reed
Charles McKee
David Lutes
Rob Carver

CCC Exhibit 5
(page 7 of 13 pages)



Carver + Schicketanz Architects

P.O. BOX 2684 CARMEL, CALIFORNIA 93921, U.S.A.

T: 831.624.2304 F: 624.0364 CARVERSCHICKETANZ.COM

January 6, 2004

Louis R. Calcagno
PO Box 787
Castroville, Ca 95012

Re: Appeal of Laube/Engel Project at Kessler Point (PLN 010105)

Dear Supervisor Calcagno:

On October 21, your Planning Commission and I were the victims of the most outrageous deception that I have ever witnessed in the over 20 years I have been practicing architecture in Monterey County. This letter is offered in response to statements made and exhibits presented during administrative proceedings on the Laube/Engle project and in conjunction with ongoing proceedings on administrative appeal.

The Planning Commission and their staff were duped by the Laube / Engle's project team of attorneys Todd Bessire from Tony Lombardo's office, permit processor Arden Handshy, and architects Tim Bratten and Mickey Muennig. Some or all of these people conspired to produce a presentation that is a calculated lie and they had the unmitigated gall to put my name on their exhibit. Their "photo-realistic rendering" is very persuasive, but also a blatant and irrefutable deception.


The enclosed Aerial Photo, when viewed together with the enclosed Laube / Engle's photo exhibits which were presented by them at the Planning Commission hearing, demonstrates the dishonesty of what the applicant's team was purporting to be the absolute failure of what they call the "Rob Carver Proposal". By overlaying the "Opponent's Design" and the "Proposed Design" you can clearly see that their depiction of the "Opponent's Design" does not rotate the house at all (we proposed a 55 foot rotation) and they try to make you believe the "Opponent's Design" is more visible by stretching their house about THREE HUNDRED AND FIFTY FEET ONTO THE NEIGHBORS PARCEL !!! When you look at the Aerial and compare their house, the neighbors houses and the granite face you will see what I mean. It is unbelievable. In fact NONE of the house would be visible from Highway One under my suggested solution. My suggested solution was done in good faith and as an example of the ease with which the applicants can hide an enormous house because they have a parcel with topography that would allow them to be completely out of the Viewshed. One wonders why they go to such great lengths to avoid taking advantage of this.

Unfortunately I was not able to attend the Planning Commission hearing where this occurred, in order to correct the record at that time, but have reviewed the audio tapes and I have enclosed copies of their exhibits. I find their farcical representation of my suggested and workable solution to be a potentially libelous attack on my professional reputation, and may choose to pursue that matter through litigation against the applicants and their entire project team.

Having been caught perpetrating this fraud (or at best - demonstrating gross negligence), I hope the applicants, their architects, and their attorneys have undermined their own credibility rather than damaging mine.

I strongly urge the Board to deny this proposal and require that the applicant redesign the project which could easily conform to the Viewshed policies of the Land Use Plan.

Sincerely,


Robert Carver

GRANITE FACE MISREPRESENTED AS BEING BEHIND THE
LAUBE/ENGLE BUILDING SITE

LAUBE/ENGLE BUILDING SITE

MISREPRESENTATION OF LOCATION OF
"ROB CARVER PROPOSAL"

HOUSE MISREPRESENTED AS BEING
ADJACENT TO BUILDING SITE

11/13/03

FILE COPY

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

OF COUNSEL

LEWIS L. FENTON

FENTON & KELLER

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FROM SALINAS

TELEPHONE (831) 757-8937

RECEIVED

FEB 18 2004

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

November 14, 2003

JOHN S. BRIDGES

JBridges@FentonKeller.com
ext. 238

VIA HAND DELIVERY

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

Re: Appeal from Planning Commission Approval of Laube/Engel Application
(PLN 010105 - Planning Commission Resolution No. 03073)
Our File: 31485.28022

Dear Clerk and Board of Supervisors:

We represent Dr. & Mrs. Hugh McAllister, neighbors to the south of the Laube/Engel property and appellants in this case. Please accept this letter and the attached materials as the McAllister's appeal from the Planning Commission's approval of the Laube/Engel project (PLN 010105 - Planning Commission Resolution No. 03073). Please forward copies of all correspondence, reports, hearing notices, and other materials regarding this appeal to both the McAllisters and to my office.

The reasons for the appeal are summarized as follows: the project conflicts with site specific Coastal Commission directives provided in the original 1977 permit for the property; the project conflicts with numerous policies in the Local Coastal Program including, without limitation, policies relating to viewshed protection; in light of the substantial evidence in the record and disagreement among experts regarding significant environmental effects of the project an EIR is required; pending violations on the project site exist and must be fully investigated and remedied prior to project approval; the findings and decision of the Planning Commission are not supported by the evidence in the record; the Planning Commission's decision was based on incomplete and misleading information provided by the Laube's representatives; and the decision was contrary to law. A more detailed discussion of the reasons for this appeal are attached as Exhibit A Packet (reference our October 24, 2003, October 23, 2003, and April 25, 2003, letters to the Planning Commission and attachments thereto).

I wish to highlight in this letter three particular reasons for the appeal that arose out of the October 29, 2003, Planning Commission hearing.

H:\documents\kmc.0iozet6.doc

5
Exhibit
Page 10 of 13 pages

First, the McAllisters have been completely candid with the Laube/Engels and planning staff throughout this process about what their issues are regarding the project. In fact, the McAllisters were so intent on ensuring compliance with the LCP that they hired an architect, Rob Carver, to suggest LCP compliant alternatives for the applicant to consider.

The McAllister's attempt to be constructive and cooperative was turned against them at the Planning Commission meeting. The applicant's testimony to the Planning Commission suggested that the McAllisters were only motivated by impacts the project would have on their private view. Not true. Dr. McAllister serves on the National Council for the World Wildlife Fund and is the chairman of the World Wildlife Fund's Marine Leadership Committee. The Marine Leadership Committee is very active locally in protecting and expanding the status of the Monterey Bay Sanctuary. The McAllisters have consistently asserted that their issues are about protection of the Big Sur coastline, its viewshed, and compliance with the certified LCP. This was specifically stated to the applicant's representative in an e-mail dated June 10, 2002 (Exhibit B). The applicant presented only a portion of this e-mail to the Planning Commission and led the Planning Commission to believe that the McAllisters had only asked that public view impacts be minimized. Again, not true. Minimizing impacts is not the only standard in the LCP. The LCP mandates that before surface treatments to a building be considered to minimize visibility a new building must first be located on the "least visible" portion of a property. This project is not located on the least visible portion (reference the attached October 24 expert opinion from California Land Planning).

Further evidence of the McAllister's genuine concern for the public interest (as opposed to their private view) is the fact that in response to the applicant's original design the McAllisters advocated that the building be moved to the south, away from the northerly parcel, in order to eliminate the public view impact from Highway 1 to the north. Of course, moving the house further to the south moved it closer and thus made it more visible from the McAllister's property. Indeed, had the applicants moved the building to the south as suggested, the McAllister's concern about public view impacts would have been addressed. But, in the course of redesigning, the applicant chose to also swing the building out to the west, precariously close to the edge of the bluff, in order to maximize the applicant's views. It is this swing out to the west that has resulted in the new public viewshed impact from the south. In an attempt to remedy this new problem the McAllister's architect again suggested LCP compliant alternatives including a proposal that the building be rotated to the east, back away from the bluff edge, approximately 25-55 feet.

Second, this proposal to rotate the building back from the bluff edge was a primary focus of the applicant's testimony to the Planning Commission (as opposed to presenting the project they were proposing). In effect, the applicants used this sleight of hand to deflect the Planning Commission's attention from the Laube/Engel design to the conceptual alternative suggested by Mr. Carver. The applicant's representative then presented deceptive pictures to the Planning Commission purporting to show that Mr. Carver's alternative would have an even greater impact on the public view.

Attached as Exhibit C Packet are the original 4-21-03 letter from Rob Carver proposing the easterly rotation alternative and the pictures presented by the applicant to the Planning Commission. A close look at the applicant's photo exhibit purporting to represent the Carver proposal reveals that they overstated the visibility of the Carver alternative by superimposing the house on the south side of the intervening hillside (see topo map showing; note hillside at 165') when in reality the Laube/Engel property is north of that hill. In short, the applicant moved the mountain. The truth is that the intervening hill screens the Carver alternative from the Highway 1 turnout.

It is also important to note that the Carver concept was submitted as just one example of a possible alternative location that could meet the "least visible" criteria of the LCP. Another alternative that could meet that criteria would be the development of a smaller structure (akin to that previously approved by the Coastal Commission) or some combination of the two (e.g., a smaller structure and moved away from the bluff edge). The bottom line is that it is not the McAllister's job (nor the County's for that matter) to redesign the project for the applicant. The applicant's design is inconsistent with the LCP and therefore must (and can) be redesigned to be consistent with the LCP.

Finally, the Planning Commission misapplied CEQA and the case law cited to them in our October 23 letter (pgs. 3 and 4; City of Carmel by the Sea v. Board of Supervisors (1986) 183 Cal.App.3d 229 at 244-245). As noted in that holding, whenever it can be fairly argued on the basis of substantial evidence that a project may have a significant environmental effect an EIR must be prepared. As you know, the fair argument standard is a low legal threshold. As the court noted, even the perception of substantial evidence triggers an EIR. Moreover, if there is a disagreement between experts over the significance of an effect on the environment, then, even in marginal cases, the agency must treat the effect as significant and prepare an EIR. In this case the record is overflowing with substantial evidence in the form of expert testimony regarding significant environmental impacts and this is therefore not a "marginal" case. But even if it was marginal, the fact of disagreement among the experts requires an EIR. As the record stands, the County cannot legally approve the proposed project on the basis of the existing CEQA documentation.

The Coastal Commission, the LUAC, and even the Planning Commission have all expressed concern about the size of this house and its incompatibility with the Big Sur area (one Planning Commissioner described it as deplorable). The Coastal Commission opted to do something about it by conditioning its earlier approval of a project on this property to limit the size of the house to 3,950 square feet. The LUAC and the Planning Commission opted instead to simply note their concern on the record but then vote to approve the project. We can understand how the LUAC and the Planning Commission may have been sympathetic to the applicants based on the amount of time they have been in the system. However, the delay in this case has been of the applicant's own making by continually ignoring the critical viewshed rules. Such circumstances do not provide a legally defensible basis for approving a project that so patently conflicts with the LCP and CEQA. Also, the misrepresentation tactic used by the applicant in this case is inexcusable and must be rejected by the County.

Monterey County Board of Supervisors
November 14, 2003
Page Four

We urge the Board to deny the project as proposed and direct the applicants to redesign the project to comply with the LCP, CEQA, and the Coastal Commission directives.

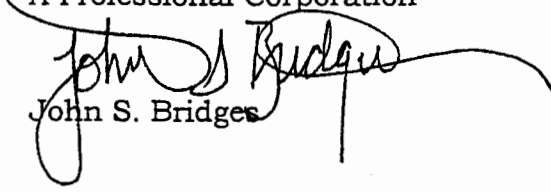
The enclosed stamped addressed envelopes are based on the mailing list provided by the Planning and Building Inspection Department on November 12, 2003.

Staff has confirmed no appeal fee is required in this case per section 20.86.030.D.

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

Very truly yours,

FENTON & KELLER
A Professional Corporation


John S. Bridges

JSB:kmc
Enclosures

cc: Dr. & Mrs. McAllister (w/encs.)
California Coastal Commission
Attn: Charles Lester/Rick Hyman (w/encs.)
Planning Commission (w/Exhibit C Packet only)
Supervisor Dave Potter (w/Exhibit C Packet only)
Sally Reed (w/Exhibit C Packet only)
Charles McKee (w/Exhibit C Packet only)
Scott Hennessy (w/Exhibit C Packet only)
Jeff Main (w/Exhibit C Packet only)
David Lutes (w/Exhibit C Packet only)



Photo 1.
Oblique aerial
photo of Abalone
Cove and Kasler
Point, with access
road and excavated
building pad area.
(Photo from
California Coastal
Records Project.)



Photo 2.
Oblique aerial
photo dated 1972
of Abalone Cove
and Kasler Point
(prior to
excavation). Photo
from Calif. Coastal
Records Project

Exhibit 6 - pg / of 6
Site Photos



California Coastal Commission

A-3-MCO-04-012
Laube-Engel Appeal

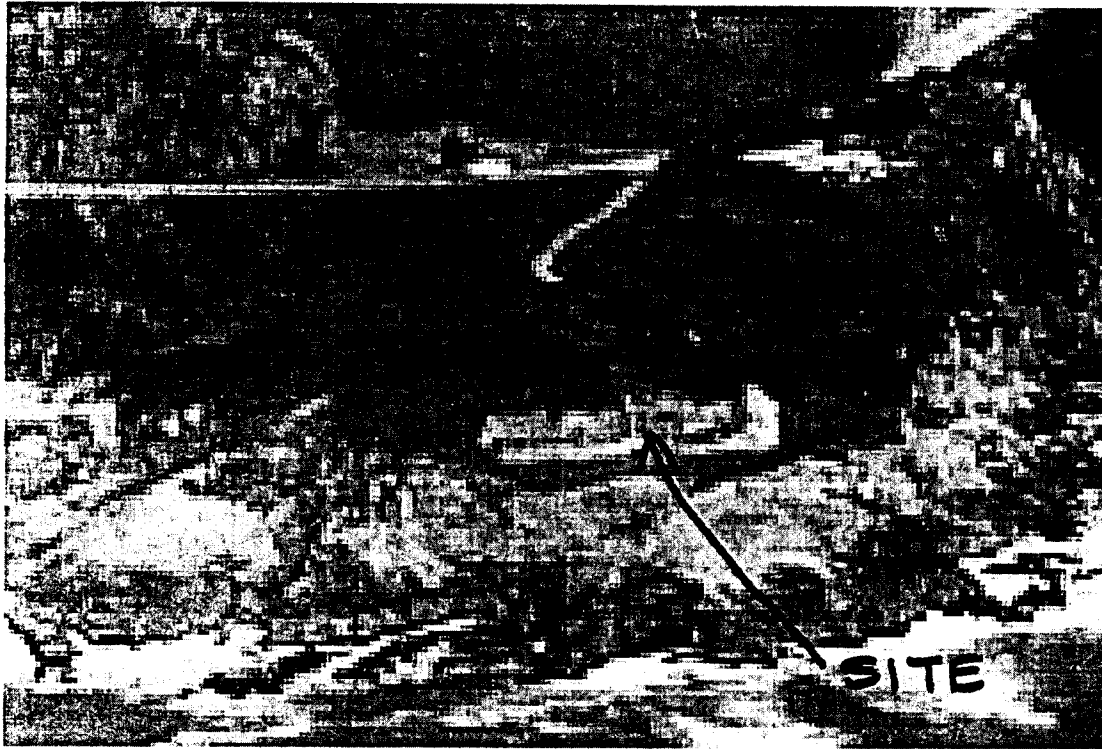


Photo 3.
Zoom in of 19xx
aerial photo of
Kasler Point,
showing access
road and excavated
building pad.
(Photo from
California Coastal
Records Project.)

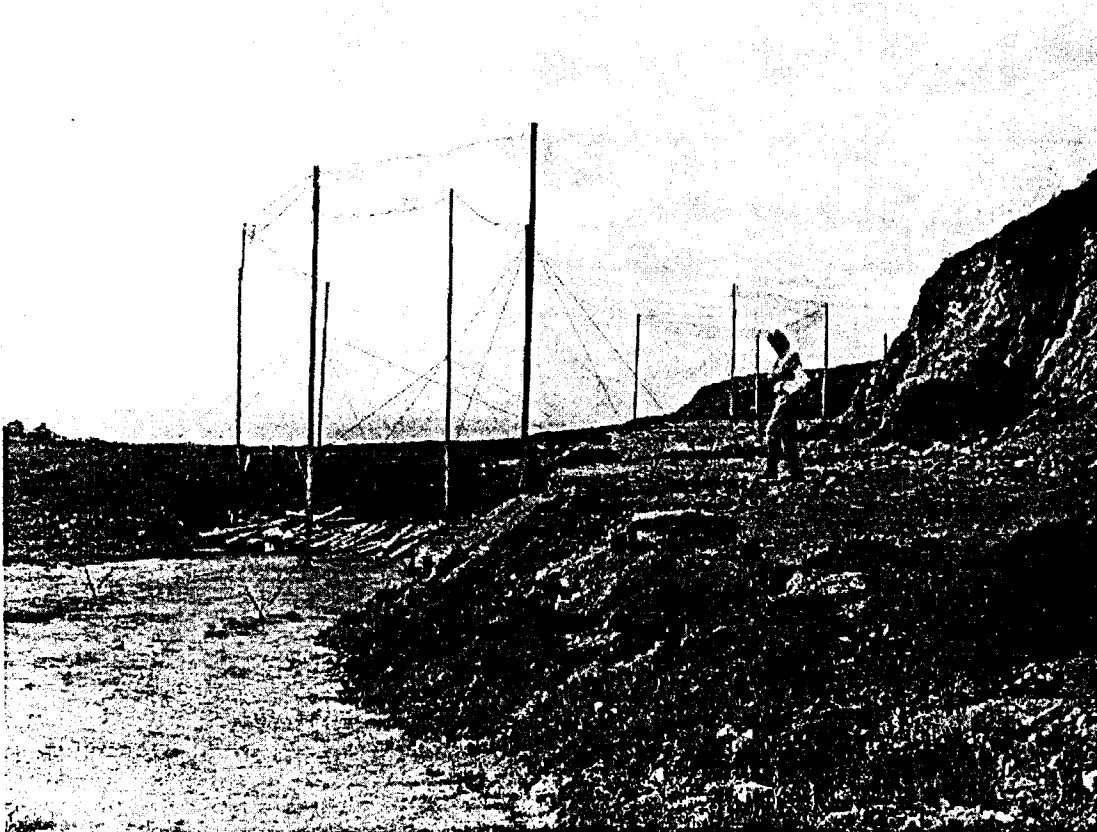


Photo 4.
Project staking,
looking north;
theater/media area
is staked at
rightmost of photo.
Photo shows
excavated building
pad and cut face on
right.

Exhibit 6 - pg 2 of 6
Site Photos



California Coastal Commission

A-3-MCO-04-012
Laube-Engel Appeal

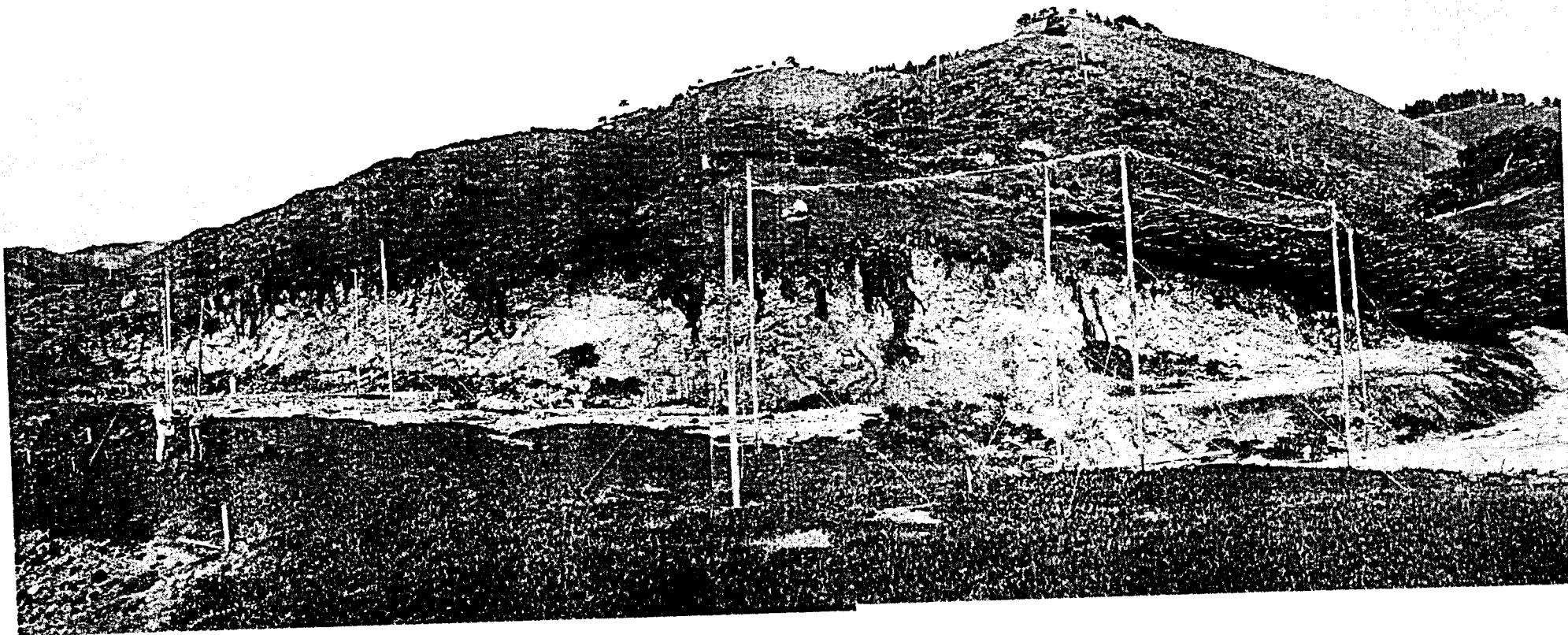


Photo 5.
Project staking, looking east at cut face; theater/media area is shown
staked on left side of photo. Photo shows excavated building pad and cut
face, and access road on right.

Exhibit 6 – pg 3 of 6
Site Photos

A-3-MCO-04-012
Laube-Engel Appeal



California Coastal Commission

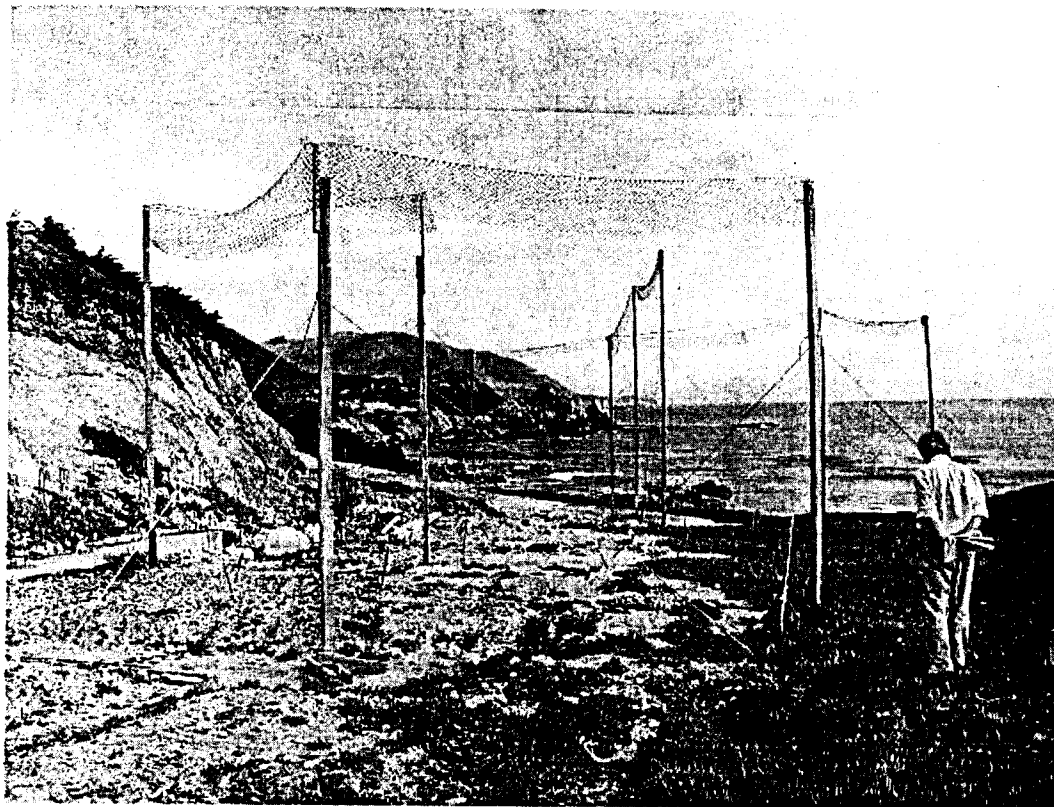


Photo 6.
Project flagging
looking south
toward Rocky
Point.



Photo 7.
Flagging of project
looking south, with
remains of
foundation work
done by previous
owner (Sorenson)
in violation of
earlier permit.

Exhibit 6 – pg 4 of 6
Site Photos

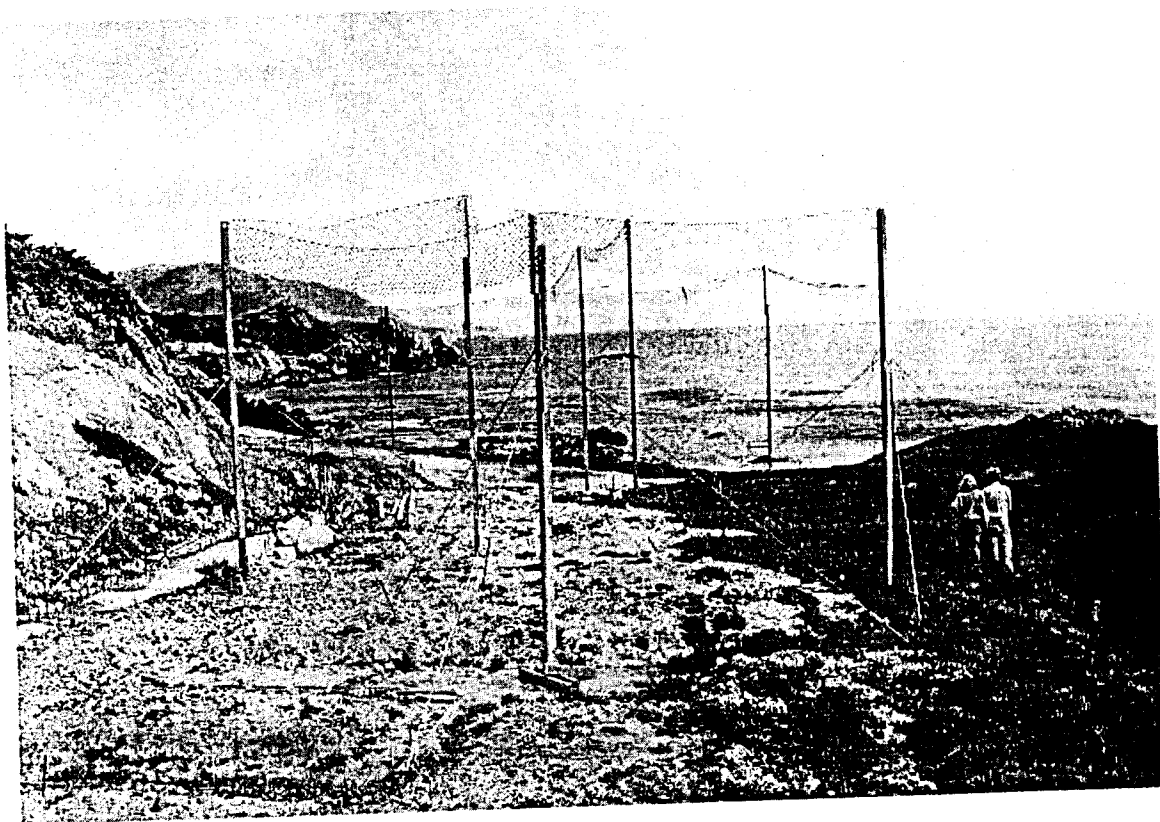


Photo 8.
Photo of project
flagging looking
south to Rocky
Point.

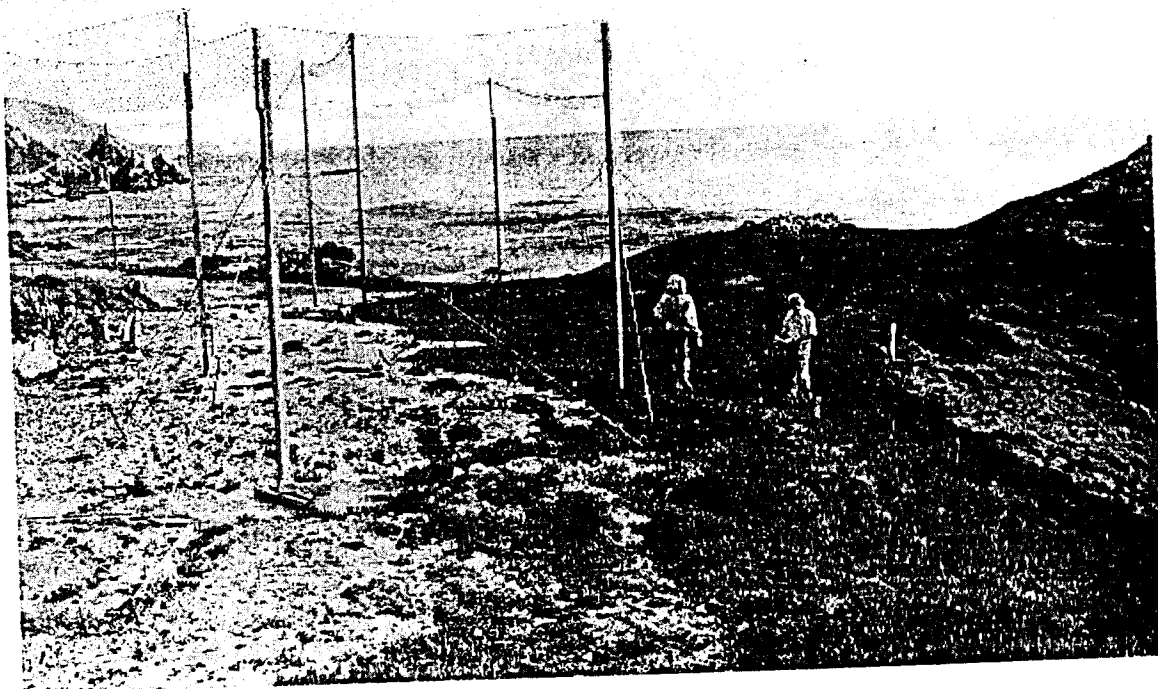


Photo 9.
Project staking,
showing distance
to top of bluff (at
stake on right).

Exhibit 6 - pg 5 of 6
Site Photos

Photo 10.
View of Rocky
Point, showing
location of turnout.

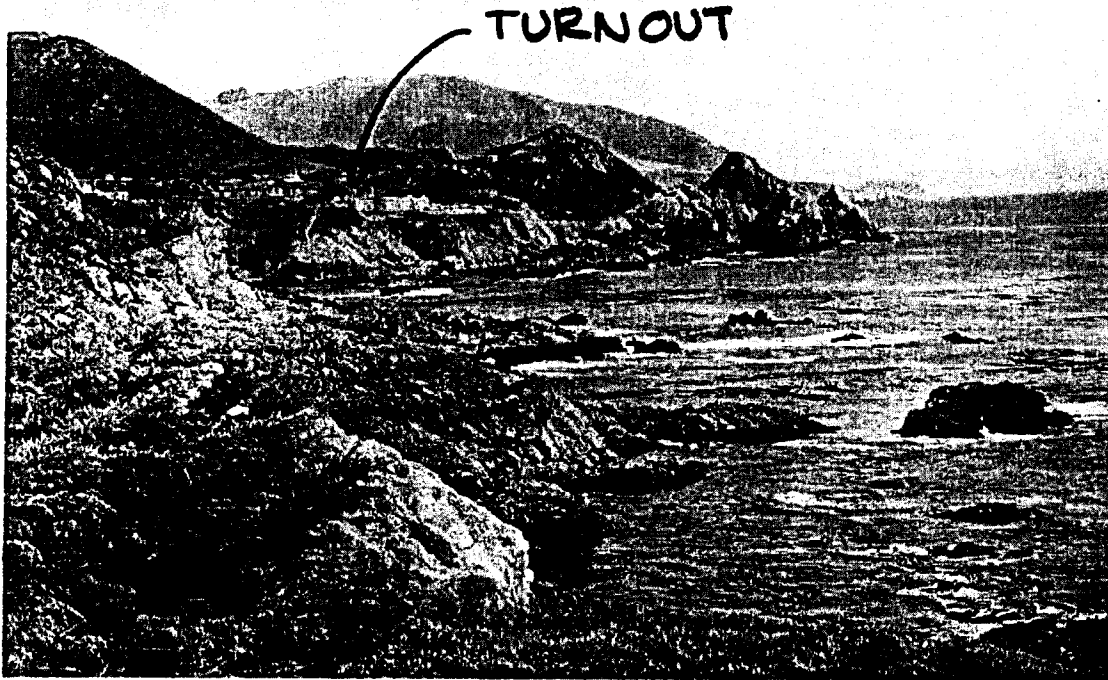


Photo 11.
Photo of Kasler
Point showing
flagging of
structure as viewed
from Rocky Point
turnout.



Exhibit 6 - pg 6 of 6
Site Photos

