

CALIFORNIA COASTAL COMMISSION

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REVISED STAFF RECOMMENDATION**ON CONSISTENCY DETERMINATION**

Consistency Determination No.	CD-083-05
Staff:	MPD-SF
File Date:	7/11/2005
60th Day:	9/9/2005
75th Day:	9/24/2005
Extended to:	3/10/2006
Commission Meeting:	2/9/2006

FEDERAL AGENCY: **U.S. Forest Service**

PROJECT
LOCATION:

Brazil Ranch, Los Padres National Forest, Big Sur, Monterey County (Exhibits 1-3)

PROJECT
DESCRIPTION:

General Consistency Determination for Forest Service activities at Brazil Ranch

SUBSTANTIVE FILE
DOCUMENTS:

See page 22.

EXECUTIVE SUMMARY

The U.S. Forest Service originally submitted a general consistency determination for authorization of special use activities at the Brazil Ranch, south of Bixby Creek in Big Sur, Monterey County. The originally-proposed general consistency determination was intended to apply to scheduled special events, which the Forest Service described as “small-scale,” and “limited” in order to help generate fees for maintaining the ranch, but which also raised a number of concerns expressed by community members and Commissioners at the Commission’s September 14, 2005, meeting. The concerns included the type, amount, and intensity of special events, the lack of an overall planning context and potential incompatibility with the underlying zoning designation (Watershed and Scenic Conservation (WSC)), traffic,

parking, visual, and public access concerns, cultural, archaeological and invasive species issues, affordability and the need for low-cost recreation, and finally, fairness and equity concerns, including competition with area commercial interests and the fact that private interests holding similar events would need to apply to the County for coastal development permits.

In response to these concerns, the Forest Service held a number of meetings with community members and has significantly revised its proposal (Exhibit 4) to provide a broader context, to reduce the types and intensities of the special events, to be compatible with the project site's underlying land use designation based on the certified LCP for Big Sur, and to include not just special events but the complete range of activities at the ranch. The Forest Service states that it has responded to public and Commissioner recommendations by making changes to the original project description, most notably: (a) maintaining historic grazing activities as the principal use of the ranch, consistent with resource protection and other specific management and research objectives; (b) limiting special events to conservation forums related to environmental conservation, stewardship and sustainability; (c) eliminating weddings, family retreats or meetings unrelated to conservation forums; (d) providing for an appropriate level of environmental analysis (including the opportunity for public involvement) where appropriate; and (e) limiting interim activities to the following uses (and with a cumulative total of no more than 70 visitors at the ranch at one time):

- *A one year temporary grazing permit.*
- *Regularly scheduled guided hikes for the public beginning spring 2006.*
- *Conservation forums.*
- *Public agency meetings.*
- *Permits for filming in cooperation with the Monterey County Film Commission, such as for still photography in and around existing buildings.*

The Forest Service has further committed to continue to coordinate with the Commission, Monterey County, and area residents, including monitoring and annual reporting, a re-review in five years, and, where appropriate for individual activities, submittal of future consistency or negative determinations for specific activities.

The revised proposal addresses all the coastal resources issues raised by the original proposal, with the exception of the need for immediate unguided public access opportunities on the ranch, the need for focused planning for the coastal terrace, and the need to consider camping (and/or hostel) use in any long term plan. For the September 2005 Commission meeting, the Commission staff had recommended two additional conditions to what the Forest Service had previously agreed to, which would have consisted of: (1) an interim parking plan for general public access to the coastal terrace west of Highway 1 (Exhibits 10-12) (which, after conducting a field trip the staff recognized could not be implemented immediately, but would need at least a short term planning process); and (2) parking and hiking to be provided on the inland portion of the Ranch, where a trailhead could be provided enabling supervised but unguided public access from the established parking arena to the summit of Sierra Hill via the existing unpaved road

along the eastern boundary of the ranch (Exhibits 5-8), and which the Commission staff had recommended to be implemented as early as March 2006 (i.e., when the road is passable and after the rainy season).

The Forest Service had tentatively agreed to these recommendations; however upon further coordination and community input, the Forest Service has not included them in its revised proposal. Instead, the access proposal is to immediately commence a longer term planning process for access, with an expressed goal of completing the plan by the end of 2006, and in the interim, limit immediate access to “regularly scheduled guided hikes for the public beginning spring 2006.” For this interim period, the Forest Service intends to experiment “with a variety of hiking routes and parking areas that will be helpful in developing long-range plans”; however this would not include unguided public access.

Although it notes that the Forest Service has reduced the intensity of special events, and thus that the activities’ effects on traffic and access would be correspondingly reduced, the Commission is nevertheless concerned that in deferring implementation of general, including “unguided,” public access amenities to a future date and review process, this access package is not consistent with the requirements of Section 30213 of the Coastal Act that “Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided,” and of Section 30210 that maximum public access and recreation be provided. Essentially, until such time as the Forest Service implements its future trail and public access planning and development, the general public is being deprived of use of the ranch, in a manner inconsistent these policies. The Commission is therefore conditioning its concurrence on: (a) inclusion of the previously-recommended additional access conditions (i.e., a greater level of specificity regarding future coastal terrace access planning, and immediately available access from the back of the ranch during the non-rainy season); (b) consideration of camping (and/or a hostel) as a potential future use for planning purposes; and (c) a clarification of the relationship of specific proposal in this consistency determination to the overall framework contained in the Forest Service’s Land Management Plan.

In support of the first (i.e., the “coastal terrace”) access condition, the Coastal Conservancy recently noted that, prior to the property’s transfer to the Forest Service, the Trust for Public Land required recordation of an agreement requiring that:

(1) The real property shall be used for the purposes of public access, open space preservation and resource protection; and no use of the real property that is inconsistent with these purposes shall be permitted. Specifically, and without limiting the generality of the foregoing, public access shall be permitted on the informal trail now existing on the property that extends along the coastal blufftop, and from State Highway One to the coastal blufftop trail, or on such alternative courses as may be developed by OFFEROR or its successor(s) to provide substantially equivalent access to and along the coast, consistent with the protection of natural resources and public safety.

With the above Forest Service commitments including guided hiking opportunities for the general public, combined with the 3 conditions, the proposed project would be consistent with the public access and recreation policies (Sections 30210-30223) of the Coastal Act.

By limiting activities to existing structures, roads, and trails, the project is consistent with the marine resource, water quality, and environmentally sensitive habitat policies (Sections 30230, 30231, and 30240) of the of the Coastal Act.

The Forest Service's revised proposal conforms with the intended resource and agricultural protection policies as provided in the County's Local Coastal Program for Big Sur, and, as modified, would be consistent with the agricultural protection requirements of Sections 30241 and 30242 of the Coastal Act.

The Commission notes that as provided in 15 CFR § 930.4(b), should the Forest Service not agree with the Commission's conditions of concurrence, then all parties shall treat this conditional concurrence as an objection.

STAFF SUMMARY AND RECOMMENDATION

I. Staff Note/Procedures. The Forest Service has submitted a general consistency determination for its activities at the Brazil Ranch. The Forest Service is seeking Commission concurrence with general types of activities rather than a specific project. The Forest Service has made this consistency determination pursuant to Section 930.36(c) of the federal regulations implementing the Coastal Zone Management Act (15 C.F.R. Section 930.36[c]), which provides:

(c) General consistency determinations. In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (see §930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

A Commission concurrence with this consistency determination will allow the Forest Service to conduct its activities at the ranch within the limits described herein consistent with this consistency determination without any further review by the Commission. The Forest Service states that the proposal:

...includes a commitment for continued coordination with the Coastal Commission, Monterey County, and area residents for activities at the Brazil Ranch, including:

- 1. Opportunities to monitor the effects of projects authorized by this general consistency determination,*
- 2. Annual reporting of activities conducted pursuant to this general consistency determination,*
- 3. A complete review in five years allowing the Commission to review the general consistency determination to determine if conditions have changed and to allow for an extension of this determination, and*
- 4. Where applicable, submittal of future consistency or negative determinations for specific activities.*

II. Project Description. The Forest Service's original general consistency determination was for a categories of activities at the Brazil Ranch, including small-scale commercial activities intended to help fund maintenance of the ranch. As noted on page 2, the Forest Service has significantly revised the project to provide a broader context, to reduce the types and intensities of the special events, to be compatible with the project site's underlying land use designation based on the certified LCP for Big Sur, and to include not just special events but the complete range of activities at the ranch. The Forest Service describes the revised proposal as follows:

REVISED PROJECT DESCRIPTION

1. Stewardship

All activities will be managed to protect watersheds, scenic values, streams, plant communities, wildlife habitat, the marine environment, and cultural resources.

2. Agriculture and Grazing

In recognition of the certified Monterey County Local Coastal Program (LCP), (including the Big Sur Coast Land Use Plan, Protected Waterways Plans for the Big Sur and Little Sur Rivers, and development standards contained in the applicable implementing ordinances), and the classification of the Brazil Ranch as Watershed and Scenic Conservation, opportunities will be sought to maintain historic grazing activities as the principal use of the ranch. These uses will be consistent with resource protection and other specific management and research objectives. Specific management objectives include fire hazard reduction, exotic species eradication, and visual resource enhancement.

3. Recreation Access

Managed public access for hiking and community activities will be provided, consistent with resource protection, public safety, and the concerns of adjacent landowners.

4. Conservation Forums

Conservation forums on issues related to environmental conservation, stewardship and sustainability may take place in cooperation with the Big Sur Environmental Institute. These activities may occur while grazing remains the principal use of the ranch.

5. Public Agency Access

Managed public agency access for meetings will be authorized.

6. Research

Research opportunities will be provided to understand resources and sustainable management of the Big Sur environment.

7. Special use authorizations.

Permits for filming in cooperation with the Monterey County Film Commission will be considered on an individual basis. Weddings, family retreats, or meetings unrelated to Conservation Forums will not be authorized.

8. Facility Management

No new facility development, alteration of the size of any existing structure, or change to the physical appearance of any existing structure is proposed. Activities such as maintenance of existing facilities, building code compliance (e.g. to meet health and safety requirements) and interior modifications of some existing buildings (e.g. to improve public access, provide accessibility for persons with disabilities, or to meet health and safety standards) may occur. Any proposals will be evaluated in a manner similar to that afforded activities on private lands (i.e. Monterey County planning checklists will be used for guidance).

III. Background/History. Before it came into federal ownership, the Brazil Ranch was historically privately owned and used for a wide variety of special events in addition to ongoing ranch activities. The Forest Service states:

The Brazil Ranch is located immediately south of the Bixby Creek Bridge, approximately 12 miles south of Carmel. (See Location Map[Exhibits 1-3].) The ranch is bifurcated on the west by California Highway 1 and by the Old Coast Highway on the east. The ranch, with the historic Bixby Bridge in the foreground and Hurricane Point in the background, is arguably one of the most photographed locations of Big Sur. None of the existing ranch buildings are visible from these viewpoints.

The lands comprising today's Brazil Ranch were homesteaded in the mid-1800s. In time, several of these early homesteads were sold to the John Brazil family, who eventually gained title to nine original homestead lots comprising 1,200 acres and known collectively as the Brazil Ranch. During this time, the ranch was actively managed for cattle and horses. A dairy also operated until 1898. The lands were later sold to Allen Funt, of Candid Camera fame. During his quarter-century of ownership, Mr. Funt constructed all of the existing buildings and operated a horse and cattle business on the property. The buildings are clustered in a central core area and include three residences, two barns, corrals and several small horse shelters. During this time, the Brazil Ranch was frequented by Allen Funt and his guests, as well as commercial horse and cattle operators, hay trucks, and horse and cattle trailers. The property was later sold by the Funt Estate to a real estate developer who had learned that the original homesteads remained recorded as nine separate tax lots that could allow for residential development. Brazil Ranch was purchased by the conservation community and public funding in 2002 to protect scenic and other natural resource values, and provide for public use. Management responsibility was transferred to Los Padres National Forest.

The California Coastal Commission has certified a Monterey County Local Coastal Program (LCP). The Monterey County LCP classified the Brazil Ranch under the Watershed and Scenic Conservation land use category. Under this classification, protection of watersheds, streams, plant communities, and scenic values is the primary objective. Principal uses in this category include agriculture/grazing and supporting ranch houses and related ranch buildings. The Watershed and Scenic Conservation category also allows for secondary uses, including recreational and educational activities that are compatible with the natural resources of the area. Facilities may include interpretive centers, rustic inn or lodging units, on-site dining, hostels, and campgrounds. On privately held lands, these secondary uses are subject approval through a county conditional use planning process and may also receive California Coastal Commission review. In the interest of conformance with the Monterey County LCP to the maximum extent practicable, the Forest Service will evaluate activities at the Brazil Ranch in a manner similar to that afforded activities on private lands through the appropriate environmental analysis process prescribed under the federal National Environmental Protection Act (NEPA) and Forest Service regulations. Additionally, because the Brazil Ranch is now in public ownership as national forest system lands, the ranch is eligible to be reclassified into the National Forest category under the Monterey County LCP. However, in response to recommendations by community members, [the Forest Service does] ... not plan to seek this redesignation for the Brazil Ranch.

IV. Forest Service Planning Background. The project is related to two other recently submitted (and concurred with) Forest Service Plans for Los Padres National Forest. The first was an update of an original 1988 management plan. On June 7, 1988, the Commission concurred with the U.S. Forest Service's consistency determination (CD-18-88) for its Management Plan for the Los Padres National Forest. In that decision, following typical

Commission review of federal agency management plans, which are to some degree a conceptual (i.e., “phased”) review, the Commission identified future projects that might arise from the plan that would trigger further Commission federal consistency review, as summarized below:

The management plan covered a five to ten year period, identifying long-range goals and objectives for the Los Padres National Forest. The plan also evaluated federal and private activities within the Forest for consistency with the plan's goals and objectives. The management plan included provisions for monitoring its effectiveness. Although the Commission found that the overall management plan was consistent to the maximum extent practicable with the CCMP, it found that specific projects not clearly spelled out in the general plan that might directly affect the coastal zone would need to be submitted to the Commission for further consistency review.

A significant issue raised by the plan was its provision for limestone mining within Big Sur, Monterey County. Specifically, the plan considered and allowed Granite Rock Company to mine its claims on Pico Blanco. Since the plan did not include details of the proposed mining operation, the Commission reviewed this activity in terms of its land-use implications. The Commission found that that activity has the potential to adversely affect access, recreation, visual, and habitat resources of the coastal zone and these effects had the potential to be inconsistent with the CCMP. Despite the potential inconsistencies, the Commission found in part, that the plan was consistent to the maximum extent practicable with the CCMP, because existing federal law prevented the plan's provisions for limestone mining from being fully consistent with the CCMP.

In addition, the Commission found that the proposed mining would require Forest Service approval of a Plan of Operation and that that approval would trigger a consistency certification. Finally, the Commission found that the proposed mining would also require a coastal development permit. The Commission also evaluated the Forest Management Plan's effect on scenic and visual resources, recreation and access, environmentally significant habitat areas, and agriculture. Although the plan provided for the protection and enhancement of these resources, the Commission identified several projects that could adversely affect the coastal zone. Since those projects would require additional consistency review, the Commission found that the plan was consistent to the maximum extent practicable with the CCMP.

The Commission staff has also recently concurred with two Forest Service negative determinations, one for inland oil and gas leasing, and the second for an updated overall management plan. In ND-58-05, the Commission staff agreed that the continuation of certain oil and gas leases in Los Padres National Forest, located in inland areas ranging from 25 to 40 miles inland of the coastal zone, in Santa Barbara, Ventura, and Los Angeles Counties, would not affect the coastal zone and that the activities were similar to those authorized in the original management plan (CD-18-88). The Commission staff noted that the leases in question were located: (1) outside Big Sur where the Commission previously raised concerns (and in fact

would not be in Monterey County at all); (2) far inland; (3) in areas of existing oil and gas development; (4) where downstream drainage would stop at inland dams and therefore do not have the potential to affect the coastal zone; and (5) for most (92%) of the leased areas (52,000 acres) would contain “No Surface Occupancy” restrictions, and for the remaining 8%, any subsequent development ultimately proposed would trigger: (a) environmental restrictions and procedures to assure that any wetlands, riparian or environmentally sensitive habitat resources in the affected areas would be protected (including the application of Best Management Practices); and (b) further Forest Service review and NEPA analysis. Also, the Commission retains the ability to review activities if they would affect the coastal zone. The Forest Service had removed from the areas originally being considered for leasing those portions of the National Forest that were near (and therefore where drilling could have had the potential to affect) the coastal zone.

In concurring with ND-081-05, the Commission staff agreed that the recently-updated Los Padres National Forest Land Management Plan (LMP) for the Big Sur Coast was “the same as or similar to”¹ the originally-concurred-with plan (CD-18-88). This recent (September 2005) plan established long range direction for 10 to 15 years, specified standards and practices necessary to achieve that direction, and specified evaluation and monitoring requirements to ensure that the direction is being carried out effectively. As with the other plans mentioned above, the review was based on part on the continued coordination and agreement that individual activities may be subject to federal consistency review.

The LMP designated the Brazil Ranch under the ““Back Country Motorized Use Restricted,” category and included the following text:

The Brazil Ranch will be a place for conference and educational opportunities focused on environmental conservation, stewardship and sustainability. Managed public access and recreational opportunities will be provided. Traditional land uses and resource conservation activities can be showcased and studied. Other small-scale special-uses may be authorized.(Page 44 of Part 2)

In submitting the aforementioned consistency determination, the Forest Service pledged that, due to its greater level of specificity and potential for effects on coastal resources, one of the more specific proposals necessitating a consistency determination and a public hearing was the subject Brazil Ranch plan. The forestwide plan noted “... the LMP does not make project-level decisions about roads, campgrounds, or other facilities and activities...” In concurring with ND-081-05, the Commission endorsed this approach of addressing the Brazil Ranch in a separate consistency determination, the matter that is now the subject of this report. This was implicitly acknowledged in the Forest Service’s cover letter of January 20, 2006 as follows, “I believe management of the Brazil Ranch will benefit from an additional California Coastal Commission general consistency determination review specific to the Brazil Ranch.”:

¹ One of the available tests for qualifying for a negative determination, as provided in 15 CFR §930.35, is if the activity is “the same as or is similar to activities for which consistency determinations have been prepared in the past.”

V. Federal Agency's Consistency Determination. The Forest Service has determined the activities described in the general consistency determination to be consistent to the maximum extent practicable with the California Coastal Management Program.

VI. Applicable Legal Authorities. The federal consistency regulations (15 CFR § 930.4) provide for conditional concurrences, as follows:

(a) Federal agencies, ... should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under Subpart C ... would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable Subpart . . . ; and

(2) The Federal agency (for Subpart C) ... shall modify the applicable plan [or] project proposal, ... pursuant to the State agency's conditions. The Federal agency ... shall immediately notify the State agency if the State agency's conditions are not acceptable; and

...

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable Subpart.

VII. Staff Recommendation. The staff recommends that the Commission adopt the following motion:

MOTION:

I move that the Commission conditionally concur with general consistency determination CD-083-05 that the activities described in the general consistency determination, as conditioned, would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).

STAFF RECOMMENDATION:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in an agreement with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

RESOLUTION TO CONDITIONALLY CONCUR WITH CONSISTENCY DETERMINATION:

The Commission hereby **conditionally concurs** with general consistency determination CD-083-05 by the U.S. Forest Service on the grounds that the project would be fully consistent, and thus consistent to the maximum extent practicable, with the enforceable policies of the CCMP, provided the Forest Service agrees to modify the project consistent with the conditions specified below, as provided for in 15 CFR §930.4.

Conditions:

1. Interim Parking Plan for Coastal Terrace Access. Commencing immediately, the Forest Service will begin planning efforts with the goal of providing an interim parking and public access plan, which shall be submitted to the Commission for its review and concurrence, providing for suitable areas for parking, for general public access to the coastal terrace west of Highway 1, including Hurricane Point, 365 days a year, dawn to dusk. The interim parking and public access plan should be implemented prior to June 1, 2006.

Both the interim and long range access plans should reflect the appropriate policies and standards for such public access planning, including those contained in the certified Monterey County Local Coastal Program (LCP). Applicable LCP sections include, but are not limited to, the Big Sur Coast Land Use Plan, and implementing county ordinances (in particular, County Code Section 20.145.150.A.5, which lists the required access management plan elements).

These near-term public access opportunities represent only an interim step. Long range public access planning will proceed in the context of developing an overall land use and resource management plan for the Brazil Ranch, that provides for maximum public access and recreational use, coastal resource protection, and scenic landscape preservation in a manner consistent with California Coastal Act and Local Coastal Program policies.

2. Frequency of Hiking Opportunities to be Provided on the Inland Portion of the Ranch. The Forest Service will provide, commencing immediately (or as soon as practicable but no later than March 25, 2006), the opportunity for supervised but unguided hikes from the established parking area adjacent to Old Coast Road (Exhibits 5 & 6), to and along the ridgeline of Sierra Hill (including benchmark "Heath" and the highest summits, shown as elevations 1527 and 1545 on the USGS quadrangle map (Exhibit 13)), via the existing unpaved ranch road running southeasterly from Brazil Ranch headquarters. The access will be available at least two days per week (including Saturdays/Sundays), during periods that Old Coast Rd. is passable. Parking at the established area adjacent to the Old Coast Road, on/adjacent to the

ranch, will be made available to the public. (See Exhibits 5-8 for inland parking and trail locations.) The Forest Service will prepare a plan for Executive Director review and concurrence addressing how the availability of the access will be publicized.

3. Camping/Hostel Planning. For its long term planning process the Forest Service will consider camping and/or a hostel as potential uses at the ranch.

4. Relationship to Land Management Plan. To the extent that the Forest Service interprets its September 2005 Land Management Plan (LMP) for Los Padres National Forest in a manner inconsistent with the subject proposal, including as modified in the above conditions, it shall modify the LMP to eliminate any such inconsistency (e.g., any LMP restriction on motorized use for the general public shall not preclude on-site parking lots and motorized access to them at the Brazil Ranch.)

VIII. Findings and Declarations:

The Commission finds and declares as follows:

A. Public Access and Recreation. Sections 30210-30212 of the Coastal Act provide for maximum public access to the shoreline, consistent with, among other things, public safety needs and fragile habitat protection. These sections provide, in relevant part, that:

Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access , which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a). Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected.

In addition, Section 30213 indicates a preference for low-cost visitor facilities; Section 30213 provides:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Sections 30221 and 30223 further specify a preference for use of oceanfront and upland areas for recreational uses, and Section 30214 of the Coastal Act specifies that access shall be managed in a manner reflecting an appropriate and resource-protective balancing of various, sometimes competing, factors. These sections provide:

Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30214. (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

...

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

The Forest Service notes that the Big Sur Coast LUP (part of the certified Monterey County LCP) provides:

Section 6.1.3 Public Access Policy

The rights of access to the shoreline, public lands, and along the coast, and opportunities for recreational hiking access, shall be protected, encouraged and enhanced.

Section 5.3.1.2 and Section 5.4.3.D-9 Land Use Category Watershed and Scenic Conservation stipulates that adequate public access shall be provided to recreational areas located within W&SC land use category.

Section 3.3.2.5 Public access in areas of environmentally sensitive habitats shall be limited to low-intensity recreational, scientific, or educational uses. Access shall generally be controlled and confined to the designated trails and paths. No access shall be approved which results in significant disruption of the habitat.

*Section 6.1.5.B
Dedication of access easements will be required in all locations fronting the shoreline as a condition of new development.*

*Section 6.1.4.9
Seek to ensure rights of residents and property owners are not jeopardized by unmanaged, inappropriate or irresponsible public access.*

Section 20.145.140 of the Monterey Coastal Implementation Plan, Land Use Development Standards, defines “intensive recreational activities” to include tennis, golf, cinemas, mechanized recreation, and boating facilities.

The Forest Service recognizes that one of its highest management priorities is provision of public access; however, it also recognizes the potential competing needs of resource protection, public safety, and the concerns of adjacent landowners, as discussed in the above Coastal Act and LCP policies. The Forest Service intends to continue its practice of providing for guided hikes on the ranch; however, for unguided public access, the Forest Services is proposing to defer provision of general public access amenities to a future date and pending the results of a planning and review process. The Forest Service states:

Managed public access for hiking and community activities will be provided, consistent with resource protection, public safety, and the concerns of adjacent landowners.

More specifically, the Forest Service states:

Managed public access will be provided consistent with (1) grazing as the principal use of the ranch, (2) public safety, (3) the protection of public rights, (4) the protection of private property rights, and (5) the protection of natural resources areas from overuse.

Public access along State Highway One and the Old Coast Highway [sic] will not be impinged. Public access to the Brazil Ranch will be managed to allow for public enjoyment while ensuring resources and adjacent private property rights are protected. Parking will primarily occur in designated parking areas not visible from State Highway One. Potential affects [sic] to traffic on Highway One as a result of this proposal will be evaluated, and recommendations made to overcome or mitigate any

identified conflicts. Opportunities to offer non-motorized trail access will be detailed in an environmental analysis, including public involvement and coordination with the California Coastal Commission and the County of Monterey. Restrictive language in the deed for portions of the Brazil Ranch requires (a) public access and recreation, (b) wildlife habitat and resources protection, and (c) maintenance of open space.

No public facilities (buildings) are proposed. New trails may be proposed as part of the environmental assessment for recreation access, and will include appropriate mitigations against coastal impacts. Existing facilities will be managed to ensure (a) coastal resources are protected, (b) any development as defined by a change in the density or intensity of use of lands will occur only for recreation and conservation forum purposes, (c) potential adverse impacts on habitats and agricultural activities will be avoided, (d) water resources will be protected, and (e) recreational uses will be characterized by low intensity use (e.g. no visitor center, major campground, or other intensive recreational activities are proposed).

Low intensity public uses will assist in providing economic uses of the land and in meeting Coastal Act objectives for public recreation. Public access will be regulated by time, place and manner. This will provide for public enjoyment while ensuring resources and adjacent private property rights are protected. Opportunities to offer non-motorized trail access will be detailed in the environmental assessment for public access, including public involvement and coordination with the California Coastal Commission and the County of Monterey. Public access to the Old Coast Highway[sic] and to State Highway One will not be restricted. Speed limits for roads interior to the Brazil Ranch have been established to ensure public and wildlife safety, and avoid the potential for vehicle affects [sic], such as noise, from reaching adjacent properties. The speed limit is 5 MPH near buildings and 25 MPH on all other paved roads. Parking will occur in designated parking areas within the ranch and not visible from State Highway One.

The Forest Service describes its interim planning process for potentially providing for future unguided public access as follows:

While preparation of long-term management plans and environmental assessments are underway, limited activities may be authorized on an interim basis following an appropriate level of environmental analysis. Information collected during the monitoring of these activities will be used in the development of the long-term management strategy. For example, ... [the Forest Service has] or will authorize the following activities, limited to a cumulative total of no more than 70 visitors at the ranch at one time:

- a. A one year temporary grazing permit*
- b. Regularly scheduled guided hikes for the public beginning spring 2006.*
- c. Conservation forums.*
- d. Public agency meetings.*

e. Permits for filming in cooperation with the Monterey county Film Commission, such as for still photography in and around existing buildings.

Recreation

While grazing remains the principal use of the ranch, the Brazil Ranch may also provide managed public access for hiking and community activities consistent with resource protection, public safety, and concerns of adjacent landowners. Ensure that concerns related to access routes, parking, shuttles, simultaneous visitor activities, visual resources, sound, lighting, safety, emergency procedures, supervision, trespass onto adjacent properties, and privacy of adjacent landowners are addressed. Evaluate opportunities for public recreation access to include:

- Non-motorized trail access to the Brazil Ranch.*
- Guided and unguided hiking opportunities.*
- Facilities available for community activities.*
- Free access and fee-based public access alternatives .*
- Maximum persons at one time limitations will be based on the results of the environmental assessment process.*

Note: Intensive visitor-serving recreation facilities and activities (such as visitor centers or campgrounds) will not be considered.

In the interim, the Forest Service proposes:

Interim Activity: *Regularly scheduled guided hikes will be allowed on existing interior ranch roads (similar to Pt. Sur Lighthouse). Managed parking will not occur along Highway 1. This interim period will allow for experimenting with a variety of hiking routes and parking areas that will be helpful in developing long-range plans. A cumulative maximum of 70 persons at one time at the ranch will be allowed.*

The timetable for the longer term access plan is that it would commence immediately and hopefully be completed by the end of 2006. The timetable for the interim period would be that it would commence in March 2006 and continue until an Environmental Assessment is completed.

The Commission agrees that the nature and scale of the activities proposed are limited sufficiently in scope as to not cause significant impacts on existing public access and recreation. Most importantly, the types, number and intensity of special events have been significantly reduced, which will minimize impacts to Highway 1. Thus, impacts to existing public access and recreation, for which use of Highway 1 is critical, will be minimized. Events will be limited to 70 persons at one time at the ranch, (with an annual allowance of up to four

activities of up to 150 persons at one time). Monitoring will also occur, with annual reports being provided to the Commission concerning any potential impacts to public access. Finally, the project is authorized for five years only.

Apart from assuring no adverse impacts to existing public access and recreation, the Coastal Act also requires the provision of maximum public access, consistent with public safety and the protection of public rights, rights of private property owners, and natural resource areas from overuse. In addition, the Coastal Act also requires that lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.

The revised proposal addresses all the coastal resources issues raised by the original proposal, with the exception of the need for immediate unguided public access opportunities on the ranch, the need for a greater level of focus on planning for coastal terrace access, and the need to consider camping (and possibly hostel) uses in any long term plan. For the September 2005 Commission meeting, the Commission staff had recommended two conditions: (1) an interim parking plan for general public access to the coastal terrace west of Highway 1 (which, after conducting a field trip the staff recognized could not be implemented immediately, but would need at least a short term planning process) (Exhibits 10-12); and (2) parking and hiking to be provided on the inland portion of the Ranch, where a trailhead could be provided enabling supervised but unguided public access from the established parking arena to the summit of Sierra Hill via the existing unpaved road along the eastern boundary of the ranch, and which the Commission staff recommended to be implemented as early as March 2006 (i.e., when the road is passable and after the most intense part of the rainy season) (Exhibits 5-8).

The new September 2005 Land Management Plan for Los Padres National Forest designates the Brazil Ranch as "Back Country Motorized Use Restricted." This category is defined to mean no motorized use for the general public, but motorized use by forest service employees and special use authorization holders. This designation also allows for new roads for such purposes. Discussions with the Forest Service indicated that such a designation could be interpreted to prohibit on-site automobile access by visitors. While it is certainly not the intent of the Commission to suggest that the public should be able to drive through the Ranch, driving to and parking in a screened location on-site is a likely necessity in order to protect the Highway One viewshed. This appears to meet the intent of the Back County designation and the Forest Service should commit to its acceptance of this interpretation.

Although it notes that the Forest Service has reduced the intensity of special events, and thus that the activities' effects on traffic and access would be correspondingly reduced, the Commission is nevertheless concerned that in deferring implementation of general (including "unguided") public access amenities to a future date and review process, this balancing has been incomplete and ignores the requirements of Section 30213 of the Coastal Act that "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided," and of Section 30210 that maximum public access and recreation be provided. Essentially, until such time as the Forest Service implements its future trail and public access planning and development, the general public is being deprived of use of the ranch, in a manner inconsistent with these policies. In previous negotiations with the Commission staff,

the Forest Service had initially responded to Commission access concerns by tentatively agreeing, at least in spirit, to some immediate access, and both a short term interim, and a long term, public access program. However upon further coordination and community input, the Forest Service's revised proposal has neither included immediate access previously identified, nor specified that coastal terrace access will be given special consideration. The Commission believes the Forest Service needs to commit to these specific measures at this time, in addition to its agreed-upon commitments for interim and long-term public access planning processes.

With the above Forest Service commitments including guided hiking opportunities for the general public, combined with the four conditions contained on pages 11-12 to provide for a specific focus in interim access plan for the coastal terrace access west of Highway 1 (Exhibits 10-12), for immediate access on the inland portion of the Ranch (see Exhibits 5-8 for parking and trail locations), for consideration of camping and/or hostel as potential future uses for planning purposes, and for a clarification of the relationship of specific proposal in this consistency determination to the overall framework contained in the forestwide Land Management Plan, the proposed project would be consistent with the public access and recreation policies (Sections 30210-30223) of the Coastal Act.

The provision of interim public access is an important component of the Forest Service's proposal supporting a finding of consistency with the public access policies of the Coastal Act. However, additional clarification and refinement is needed with respect to both the proposed access to the terrace, and the inland access. In particular, every effort should be made to provide interim public access parking at an inland location on the Ranch, out of the public viewshed. In addition, other trail alignments to provide access to and along the Sierra Hill ridgeline should be considered. Also, unless there is some overriding concern with the protection of sensitive coastal resources, such as environmentally sensitive habitat, access to the ridgeline should be provided year-round. Conditions 1-4 are necessary to assure maximum consistency with the public access requirements of the Coastal Act.

In support of the first (i.e., the "coastal terrace") access condition, the Coastal Conservancy recently noted that, prior to the property's transfer to the Forest Service, the Trust for Public Land required recordation of an agreement requiring that:

The real property shall be used for the purposes of public access, open space preservation and resource protection; and no use of the real property that is inconsistent with these purposes shall be permitted. Specifically, and without limiting the generality of the foregoing, public access shall be permitted on the informal trail now existing on the property that extends along the coastal blufftop, and from State Highway One to the coastal blufftop trail, or on such alternative courses as may be developed by OFFEROR or its successor(s) to provide substantially equivalent access to and along the coast, consistent with the protection of natural resources and public safety.

Finally, with respect to future planning for long term public access on the Ranch, the Commission anticipates that this planning will include an evaluation of not only trail access opportunities for the entire Ranch, but also other opportunities and/or support facilities such as picnicking sites, restroom facilities, interpretive signage, etc. Since all reasonable alignments for the California Coastal Trail (CCT) run through at least some part of the Ranch, such long term planning should identify the appropriate CCT linkages to adjacent public rights of way, to the north and to the south of the Ranch.

In addition, the Commission staff had previously requested that the Forest Service evaluate the feasibility and desirability of providing low intensity recreational camping at the Brazil Ranch. The Forest Service's revised proposal now states: "Intensive visitor-serving recreation facilities and activities (such as visitor centers or campgrounds) will not be considered." The Commission believes it should be considered and not automatically precluded from consideration; the long term plan should be allowed to evaluate and properly determine whether camping could be accommodated consistent with resource protection needs. Similarly, the potential for a hostel should also be evaluated, since this is an allowable secondary use under the LCP, and no other hostel facility exists or is planned for the entire Big Sur Coast.

The Commission acknowledges the importance of comprehensive planning for longterm public access to the Ranch, including the importance of including various stakeholders in the process. It is important, though, that the starting point for such planning be a framework that presumes the provision of maximum public access, subject to the regulation of the time, manner and location of such public access to protect other coastal resources, public safety, and the privacy of adjacent property owners. Thus, comprehensive planning should result in the implementation of maximum and optimum public access opportunities on these newly acquired public lands. Significantly, the Forest Service has stated that the prior Forest Service designation of the site as an "administrative site" that does not provide for general public use will have no bearing on the public access planning for the site. The Commission concludes that, if modified in accordance with the Commission's conditional concurrence, the proposed project would be consistent with the public access and recreation policies (Sections 30210-30223) of the Coastal Act.

B. Marine Resources and Environmentally Sensitive Habitat. The marine resource and environmentally sensitive habitat policies of the Coastal Act provide:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

As noted above, one of the Forest Service's missions is the protection of marine resources and sensitive habitat. The Forest Service states:

Activities at the ranch will be managed to avoid any adverse affect on marine resources. This will include management of activities within the watershed that may affect marine resources. Where appropriate, marine resources will be maintained, enhanced, or restored.

Activities will be managed to avoid septic runoff and deposition of sediment. Alteration of the shoreline will not be permitted. No recreation development or activities will be allowed near tidepools. No structures within the State Highway One viewshed are proposed. The coastline will remain undeveloped.

*Environmentally sensitive habitats shall be identified and all practical efforts will be made to maintain, restore, and if possible, enhance environmentally sensitive habitats. A resources inventory that will include identification of sensitive habitats has been initiated. A small area of coast buckwheat (*Eriogonum latifolium*), a known food for the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), has been identified and made off-limits to activities by fencing. Similar protection measure will be implemented if and when additional environmentally sensitive habitats are identified. Activities will be monitored to prevent irreversible or irretrievable commitment of resources.*

The activities authorized under this general consistency determination would be conducted in existing developed areas of the ranch (including existing ranch roads and paths) and would not affect marine resources or environmentally sensitive habitat. No new buildings or grading are proposed, and sensitive habitat will be fenced and off-limits. In addition, as discussed above

the general consistency determination includes provisions for reporting to the Executive Director activities authorized under this consistency determination prior to authorization of the project. Therefore, the Director can assure that the project remains consistent with this general consistency determination and monitor the effects of projects authorized by this process. Also, the general consistency determination is only valid for five years. This provision will prevent the general consistency determination from having long-term effects and will allow the Commission to review the general consistency determination at the end of five years to determine if conditions have changed. With these considerations, with respect to marine resources, water quality, and environmentally sensitive habitat concerns, the activities would be consistent with the requirements of Sections 30230, 30231, and 30240 to maintain, protect, and restore, where feasible, marine resources and environmentally sensitive habitat.

C. Visual Resources. Section 30251 of the Coastal Act requires that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

State Highway Route 1, which runs through the entire seaward portion of the Ranch for a distance of 2.1 miles, is designated both as a State Scenic Highway and a National Scenic Byway. Caltrans has worked to protect this iconic segment of the Big Sur Coast Highway through a variety of measures, including preservation of the historic rockwork and the great single-arch bridge across Bixby Creek. Caltrans maintains the paved viewpoints at the north abutment of Bixby Bridge and at Hurricane Point; these are the main vantage points for the public enjoyment of the Brazil Ranch landscape. In partnership with the County, Coastal Commission, the Forest Service and many other agencies, Caltrans recently completed the Coast Highway Management Plan—a primary purpose of which is to protect the highly scenic character of this nationally-significant route. In addition, protection of the critical viewshed of the Big Sur Coast is a central policy and requirement of the Monterey County LCP.

As discussed, no new buildings are proposed by the Forest Service, and parking for proposed events would occur in existing parking areas outside of the critical viewshed. However, ongoing negotiations with the Forest Service may result in establishing interim parking in the critical viewshed for public access to the Coastal Terrace. Condition 1 requires the Forest Service to establish that other parking options to support this access, outside of the critical viewshed, are not feasible, before any parking would be allowed in the viewshed. Thus, interim parking may not be established in the viewshed. If such parking were shown to be necessary, it would be temporary, until such time as the Forest Service Public Access planning was completed, which should allow for the establishment of permanent public access parking for

the Ranch outside of the viewshed. Thus, the viewshed impacts contemplated by the current proposal, while hopefully avoided entirely pursuant to Condition 1, would be nonetheless temporary. If modified in accordance with the Commission's conditional concurrence, the proposed project would be consistent with Section 30251 of the Coastal Act.

D. Agriculture and LCP Consistency. Sections 30241 and 30242 of the Coastal Act provides for the protection of agricultural lands, including maintaining the maximum amount of agricultural lands in production. When the Brazil Ranch was in private ownership, its land use designation under the Big Sur Coast Land Use Plan (a portion of the segmented Monterey County Local Coastal Program) was established as Watershed & Scenic Conservation (WSC-40). This land use designation requires protection of watersheds, streams, plant communities, and scenic values as the primary objective, and provides for “principal uses” to include agriculture/grazing and related ranch buildings. The Forest Service notes:

The California Coastal Commission has certified a Monterey County Local Coastal Program (LCP). The Monterey County LCP classified the Brazil Ranch under the Watershed and Scenic Conservation land use category. Under this classification, protection of watersheds, streams, plant communities, and scenic values is the primary objective. Principal uses in this category include agriculture/grazing and supporting ranch houses and related ranch buildings. The Watershed and Scenic Conservation category also allows for secondary uses, including recreational and educational activities that are compatible with the natural resources of the area. Facilities may include interpretive centers, rustic inn or lodging units, on-site dining, hostels, and campgrounds. On privately held lands, these secondary uses are subject approval through a county conditional use planning process and may also receive California Coastal Commission review. In the interest of conformance with the Monterey County LCP to the maximum extent practicable, the Forest Service will evaluate activities at the Brazil Ranch in a manner similar to that afforded activities on private lands through the appropriate environmental analysis process prescribed under the federal National Environmental Protection Act (NEPA) and Forest Service regulations. Additionally, because the Brazil Ranch is now in public ownership as national forest system lands, the ranch is eligible to be reclassified into the National Forest category under the Monterey County LCP. However, in response to recommendations by community members, ...[the Forest Service does] not plan to seek this redesignation for the Brazil Ranch.

The Commission finds that the Forest Service’s revised proposal conforms with the intended land uses based on the County’s Local Coastal Program, and, as modified, would be consistent with the agricultural protection requirements of Sections 30241 and 30242 of the Coastal Act.

IX. SUBSTANTIVE FILE DOCUMENTS:

1. Navy General Consistency Determinations CD-12-93, CD-70-98, and CD-93-93.
2. Forest Service Consistency Determination CD-18-88 and Negative Determinations ND-58-05 and ND-081-05.

3. Big Sur Coast Land Use Plan and Zoning/Implementation portions of certified Local Coastal Program for Monterey County.
4. First American Title Document: 2001100493, Recorded Irrevocable Offer to Dedicate Title in Fee, Made by the Trust for Public Land, Recorded in Monterey County
11/29/01