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Th10a

Staff Report Addendum

Date: July 10, 2007

To: Commissioners and Interested Parties

From: Steve Monowitz, District Manager
Katie Morange, Coastal Planner

Subject: Addendum to 6/27/07 Staff Report Prepared for the 7/12/07 Hearing (Agenda Item Th10a) Regarding the Foster project (Appeal No. A-3-MCO-06-018)

This addendum modifies the staff report dated 6/27/07 regarding the Foster project (Appeal No. A-3-MCO-06-018). Staff continues to recommend approval of the project subject to the following clarifications to the staff report. Deleted text is shown in ~~strikethrough~~ and new text is shown in underline.

I. Staff has revised Special Condition 1a on page 8 of the staff report, and corresponding finding on page 29, as shown below, in order to ensure that the recommended development envelope is accurately delineated:

(a) Development Envelope Restriction. The Final Project Plans shall include a revised site plan that contains development within the allowable disturbance area as ~~shown by~~ approximated in Exhibit D. The applicant, in consultation with Coastal Commission staff, shall refine and perfect the edge of the central maritime chaparral habitat on the subject parcel and the 200-foot buffer area illustrated in Exhibit D, based on an updated field survey performed by a qualified biologist acceptable to the Executive Director, prior to preparation and submittal of the formal legal description required by Special Condition 2 (described below). Development within the allowable disturbance area may include all of the County-approved structures as long as such development complies with all applicable setbacks and other Monterey County building code requirements. Development outside of the project footprint shown by the approved final plans is prohibited, except for uses allowed pursuant to Special Conditions 2 and 4 of this permit. The Final Project Plans shall clearly identify and label the development envelope area in site plan view.

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The restrictions against vegetation removal and trimming within the 100-foot habitat buffer are particularly important given California Department of Forestry (CDF) requirements for defensible space around buildings and structures in any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is

covered in flammable material.[1] Defensible space is a firebreak where vegetation must be either completely cleared, trimmed, or pruned depending on site specific characteristics. Although the County approval of the project required only 30 feet of defensible space around each proposed structure, based on CDF's approval of a fire protection plan involving the trimming of flammable vegetation within 30 feet of the proposed structures, recent changes in the law (PRC 4291) expand the defensible space clearance requirement to 100 feet.[2] Thus, despite CDF's prior approval, the potential remains that 100 feet or more of vegetation clearance may be required in the future, particularly in light of the extreme fire hazards present on the site. Furthermore, irrespective of CDF's review, the LCP prohibits the siting of development in high hazard areas and requires development to be sited in the least hazardous area of a site if one exists (as discussed in the Hazards findings of this report). Therefore, a 100-foot fuel modification zone is required for any development on the site to be consistent with state law and LCP hazards policies. Since vegetation clearing or trimming would interfere with the intended functions of the 100-foot habitat buffer (for the reasons as described above), all development must adhere to an additional 100-foot setback from the habitat buffer. The required 200-foot total setback between the edge of the maritime chaparral and any development is ~~depicted~~ approximated in Exhibit D, and provides for a reasonable use of the property by the applicant.

Special Condition 1a requires all development to be sited outside the 200-foot buffer with the exception of a portion of the existing access road, as ~~shown~~ approximated in Exhibit D. In light of subsequent field visits, the earlier delineated edge of the maritime chaparral (as shown in Exhibits B and D) will need to be revised and perfected prior to preparation of the formal legal description of the allowable development envelope. The resulting 3.3-acre (approximate) development envelope contains vegetation communities (namely, coast range grassland, mixed evergreen forest, and northern coastal scrub) that are not considered ESHA, and that are appropriate for development within the framework of the LCP. The development envelope required by Special Condition 1a is also outside the redwood forest ESHA described above, and would be consistent with the relevant redwood forest ESHA policies that require minimum impacts from soil compaction and other disturbances to tree roots.

II. In order to provide additional details regarding the lot line adjustment that resulted in the current location and configuration of the subject parcel, staff recommends that the following be added on page 13 of the staff report (under Section VIII.A).

The project site is located at 4855 Bixby Creek Road (APN 418-132-007) on the ridge

[1] Public Resources Code Section 4291.

[2] CDF's approval of 30 feet of vegetation trimming, rather than the current requirement for 100 feet of vegetation clearance, is based on the fact that the initial project application was reviewed by CDF prior to the adoption of the current 100-foot vegetation clearance requirement.

that divides Rocky Creek from Palo Colorado Canyon in a 10-lot subdivision known as Rocky Creek Ranch on the Big Sur Coast in Monterey County (see Exhibit A). The project also involves some development on APNs 418-132-006 and 418-132-005, located adjacent to the subject parcel to the east. In 1992, Monterey County approved a lot line adjustment for the Rocky Creek Ranch that resulted in the current location and configuration of the subject parcel (County permits LL90032, LL90033, and LL88010 (Rothman)). The Rocky Creek Ranch lot line adjustment approval included theoretical, potential building envelopes that were not approved along with the lot line adjustment but instead were utilized for the purpose of CEQA and LCP analysis and review. The EIR prepared for the lot line adjustment, which was approved by the County at the same time as the lot line adjustment, states that building envelopes were developed by the applicant at the request of the County to determine potential building sites within each of the lots. Monterey County, in their approval of subdivisions and lot line adjustments, oftentimes approves specific building envelopes within the new or adjusted parcels for the purposes, among others, of ensuring protection of ESHA and visual resources. When specific building envelopes are part of an approval for a subdivision or lot line adjustment, the findings and conditions explicitly state this fact.[3] Conversely, when the County does not approve specific building envelopes in conjunction with subdivision or lot line adjustment approvals, the findings and conditions are either silent on envelopes/developable area or they are clear that any envelopes are "potential," "proposed,"[4] or "theoretical." Potential or theoretical building envelopes identified by subdivision or lot line adjustment approvals, such as the Rocky Creek Ranch lot line adjustment, are in no way binding upon Monterey County or the Coastal Commission in the evaluation of subsequent development proposals on the new or adjusted parcels.

III. Supplement to ESHA findings on pages 22-25 of the staff report.

In order to provide the Commission with adequate information regarding central maritime chaparral on the site, the following additional details have been added to the ESHA de novo findings of the staff report.

Central Maritime Chaparral on the Foster Property

The biotic assessment prepared for the Rocky Creek Ranch lot line adjustment in 1991 described the chaparral on the site as northern mixed chaparral and identified shaggy-barked manzanita (*Actostaphylos tomentosa*) as the dominant plant species in this community. This assessment also noted that Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), a Federal species of concern and California Native Plant Society watch list (List 4) species, and chamise (*Adenostoma fasciculatum*) were present in this community. The preliminary biological report prepared for the proposed project (prepared by Jeff

[3] Examples include Monterey County coastal development permits PC96036 (Gorman), PLN980152 (Bradshaw), and PLN000260 (Mayr).

[4] Examples includes Monterey County coastal development permits PLN060189 (Burke) and PLN050722 (Doud).

Norman, November 2004) described this plant community as central maritime chaparral, dominated by Eastwood's manzanita (*Arctostaphylos glandulosa*). This report also identified shaggy-barked manzanita (*A. tomentosa*), chamise (*Adenostoma fasciculatum*), warty-leaved ceanothus (*Ceanothus papillosus* var. *papillosus*), the rare Monterey ceanothus (*C. cuneatus* var. *rigidus*), the rare small-leaved lomatium (*Lomatium parvifolium var. parvifolium*) (a California Native Plant Society watch list (List 4) species), coast silk-tassel (*Garrya elliptica*), poison oak (*Toxicodendron diversilobum*), and yerba santa (*Eriodictyon californicum*) within this vegetation community. Subsequent botanical surveys conducted on the site in 2005 by Jud Vandevere found these and other plant species characteristic of the woollyleaf manzanita (central maritime chaparral) vegetation series.

A Coastal Commission staff biologist, along with the applicant's biologist and Mr. Mike Vasey, a chaparral expert, conducted a site visit in March 2007 and confirmed the presence of Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*) and at least two other maritime chaparral indicator species, golden chinquapin (*Chrysolepis chrysophylla*) and huckleberry (*Vaccinium ovatum*). In addition, chamise (*Adenostoma fasciculata*), California sagebrush (*Artemisia californica*), coffeeberry (*Rhamnus californica*), toyon (*Heteromeles arbutifollia*), black sage (*Salvia mellifera*), poison oak (*Toxicodendron diversilobum*), silk tassle (*Garrya elliptica*), and mountain mahogany (*Cercocarpus betuloides*) were observed on the site; these species are commonly associated with maritime chaparral. In discussions with Coastal Commission staff, Julie Evens, lead vegetation ecologist with the California Native Plant Society, confirmed that in the central coast region, huckleberry (*Vaccinium ovatum*) is an indicator species of central maritime chaparral. She indicated that while the range of this species may include inland sites in southern and northern California, it has preference for maritime habitats in the central coast.[5]

During the March 2007 site visit approximately 25 manzanita plants were examined and none were found to be shaggy-barked (woollyleaf) manzanita (*Actostaphylos tomentosa*). The majority of manzanitas observed on the Foster Property during the March 2007 site visit were *Arctostaphylos glandulosa ssp. glandulosa*, and some *A. glandulosa ssp. cushingiana* were observed as well. While both staff and the applicant agree that the shaggy-barked manzanita *(A. tomentosa)* may have been mischaracterized by previous biologists, it is also possible that it does exist on the site and was simply not observed. A quantitative vegetation survey was not conducted on the March visit; it is possible that such a survey would reveal a number of shaggy-barked manzanita individuals on the Foster property. Without a formal, quantitative plant survey, it is not possible to say that the site does not support *A. tomentosa*. Furthermore, in discussions with Coastal Commission staff, Ms. Evens of the California Native Plant Society indicated that both *Arctostaphylos glandulosa ssp. glandulosa* and *A. glandulosa ssp. cushingiana* should be

[5] Julie Evens, personal communication with Dr. Jonna Engel, Ecologist, California Coastal Commission, July 9, 2007

considered components of central maritime chaparral.[6] Ms. Evens also indicated that within the *A. glandulosa* species group, *A. glandulosa ssp. crassifolia* is a very clear-cut diagnostic indicator of southern maritime chaparral habitat.

In addition, although woollyleaf manzanita (*Actostaphylos tomentosa)* is considered one indicator of maritime chaparral, and hence the *Manual's* "woollyleaf manzanita" series,~~. However,~~ there are examples of maritime chaparral where *A. tomentosa* is rare or absent (notably Santa Barbara County's Burton Mesa where *A. purissima* and *A. rudis* are the dominant manzanitas).[7] According to Dr. Keeler-Wolf, it is somewhat difficult to identify central maritime chaparral because one of the main indicator groups, manzanitas, is comprised of obligate fire-sprouting species. In the absence of fire, these species may be outcompeted by other species. During this period, the density of indicator manzanitas may be low or even nonexistent, but their seeds continue to exist in a dormant state.[8] As such, it is generally recognized by biologists who study maritime chaparral that a chaparral stand is maritime chaparral if it includes *A. tomentosa* or any of the other 20+ maritime chaparral indicator manzanita species, **or** *Ceanothus cuneatus* var. *rigidus* or other indicator ceanothus species.

Staff also confirmed that in addition to the presence of maritime chaparral indicator species, the project site also has all the physical attributes required for central maritime chaparral (including soils and climate). Aerial photo analysis and a field survey confirmed the presence of nutrient-poor granitic soils which correspond to the distribution of maritime chaparral on the site. With respect to climate in Big Sur, fog forms a layer anywhere between 100 to 1,000 meters (330-3,300 feet) thick.[9] The Foster site ranges in elevation between 400 and 1,400 feet. Perhaps more importantly than daily fog inundation, the Foster property ~~in~~ is within a maritime climatic regime that is cooler and more humid than interior regions where chaparral exists. Frequent fog incursion is not a criterion for maritime chaparral. Rather, it is occurrence within the zone of summer fog incursion that is determinant.[10] The CTP proposed definition refers to Holland's (1986) "within the zone of summer fog incursion" definition of maritime chaparral climate and goes on to state that "Ecologically, maritime chaparral is separated from interior chaparral by having greater exposure to summer fog, humidity, and mild temperatures moderating drought pressures and, potentially leading to adaptations to different disturbance regimes (less frequent fire)." The Foster Property site does occur within the zone of summer fog incursion. The presence of coast redwoods (*Sequoia sempervirens*) (discussed below) at the same and higher elevations than the maritime

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[6] Ibid.

[7] Dr. Eric Van Dyke, written communication with Coastal Commission staff, August 29, 2006.

[8] Dr. Todd Keeler-Wolf, personal communication with Dr. Jonna Engel, Ecologist, California Coastal Commission, November 29, 2006.

[9] Henson, P. and Usner, D. 1993. The Natural History of Big Sur. p. 35. UC Press, Berkeley, CA.

[10] Holland, R.F. 1986. Preliminary description of the terrestrial natural communities of California. California Department of Fish and Game.

chaparral on the property is indicative of a fog-influenced climate. Coast redwoods only occur in the zone of maritime influence along the Oregon and California coastline where they rely on winter rains and summer fog for year-round moisture. Coast redwoods cannot be found outside the influence of summer fog. Therefore, because the Foster property occurs within the geographic and elevational range of central maritime chaparral, contains the requisite soils, is close to the coast and subject to summer fog, and supports at least several observed central maritime chaparral indicator species (Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), golden chinquapin (*Chrysolepis chrysophylla*) and huckleberry (*Vaccinium ovatum*) along with a host of other species commonly associated with maritime chaparral, the Commission concludes that the chaparral on the site is central maritime chaparral.

Central Maritime Chaparral as ESHA

The Big Sur LCP (LUP Section 3.3) defines environmentally sensitive habitats as "areas in which plant or animal life or their habitats are rare or particularly valuable because of their special nature or role in an ecosystem. Environmentally sensitive habitats are also areas susceptible to disturbance or degradation by human activities and developments." Maritime chaparral is defined in the Big Sur LCP as "a unique type of chaparral found close to the coast within the summer fog zone climate and characterized by a high proportion of localized endemic plant species."

Central maritime chaparral is considered ESHA for several reasons. First, maritime chaparral is increasingly recognized for numbers of local endemics and species richness (high biodiversity), making it a globally significant habitat type. Although many species of shrubs are common to most locations, local stands are usually distinguished by the presence of one to several endemic species of *Ceanothus* or *Arctostaphylos*. There are about 60 species of manzanita in the world. All of these species are found in California and most are found nowhere else. Within California, many are endemic to small geographic areas. Secondly, this plant community performs the important ecosystem function of providing habitat for individual species, such as Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*) and small-leaved lomatium (*Lomatium parvifolium var. parvifolium*), that are themselves rare. Lastly, central maritime chaparral is highly susceptible to disturbance by human activities. This is evidenced by the fact that large areas of the central coast of California were covered with dense chaparral at the end of the nineteenth century.[11] Today, however, only small, isolated fragments of northern and central maritime chaparral plant communities can be found growing in oligotrophic, well-drained soils along ridgelines and on coastal terraces within the zone of summer coastal fog intrusion.[12] For these reasons, the California Department of Fish and Game's (DFG)

[11] Cooper, W.S. 1992. The broad-sclerophyll vegetation of California: an ecological study of the chaparral and its related communities. Carnegie Institution of Washington, Publication Number 319, Washington, D.C.

[12] Holland, R.F. 1986. Preliminary descriptions of the terrestrial natural communities of California. California Department of Fish and Game, Natural Heritage Division, Sacramento, CA.

Natural Diversity Database (CNDDB, 2007) lists woollyleaf manzanita chaparral, or central maritime chaparral, as a rare habitat type. It is also for these reasons that central maritime chaparral is considered ESHA under the Big Sur LCP.

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STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION AND DE NOVO HEARING

Application number.....**A-3-MCO-06-018**

Applicant.....Steven Foster, Trust; Mark Blum, Representative

Appellants.....Commissioner Mike Reilly and Commissioner Mary Shallenberger

Local government .....Monterey County

Local decision .....(PLN040569) Planning Commission Resolution 06012: approved with conditions on February 22, 2006 and received by Central Coast District office of Coastal Commission on March 15, 2006.

Project location .....4855 Bixby Creek Road (Lot 7 of Rocky Creek Ranch, off of and southwesterly of Rocky Creek Road and Palo Colorado Road), Big Sur Coast Planning Area, Monterey County (APNs 418-132-005, 418-132-006, and 418-132-007)

Project description.....Construction of a new 3,975 square foot single-family residence and accessory structures including a 3,200 square foot barn with solar panels, 1,200 square foot studio ("Steven's studio"), 1,150 square foot studio ("Gillian's studio"), 425 square foot guesthouse, 850 square foot caretaker's unit, 225 square foot shed, and 800 square foot garage; pool; septic system; hookup to existing well; retaining walls; underground utilities, including an underground water tank; tree removal (14 coast live oaks, 4 canyon oaks, and one redwood); development within 100 feet of environmentally sensitive habitat (maritime chaparral); and associated grading (approximately 1,850 cubic yards cut and 625 cubic yards fill).

File Documents.....Monterey County Certified Local Coastal Program (LCP); Final Local Action Notice (FLAN) for local permit PLN040569; Rocky Creek Ranch Lot Line Adjustment Draft Environmental Impact Report (April 1992); Final Local Action Notice (FLAN) and associated file for local permits LL90032, LL90033, and LL88010 (Rothman)

Staff Recommendation ..**Substantial Issue; Approval with Conditions**

California Coastal Commission
July 2007 Meeting in San Luis Obispo
Staff: K. Morange Approved by:

Summary of Staff Recommendation

On February 22, 2006, the Monterey County Planning Commission approved a Coastal Development Permit (CDP) for a new 3,975 square foot single-family residence and accessory structures including a 3,200 square foot barn with solar panels, 1,200 square foot studio ("Steven's studio"), 1,150 square foot studio ("Gillian's studio"), 425 square foot guesthouse, 850 square foot caretaker's unit, 225 square foot shed, and 800 square foot garage, and pool. The project also included a septic system, hookup to existing well, retaining walls, underground utilities, including an underground water tank, and tree removal (14 coast live oaks, 4 canyon oaks, and one redwood) on a 78-acre parcel in Rocky Creek Ranch, on the east side of Highway 1 in Big Sur, Monterey County.

An appeal submitted by Commissioners Reilly and Shallenberger raises issues concerning environmentally sensitive habitat areas (ESHA) and visual resources. Portions of the County-approved development are located in and immediately adjacent to central maritime chaparral and redwood forest, both considered ESHA under the certified Monterey County (Big Sur Area) Local Coastal Program (LCP). The County's approval involves direct removal and degradation of ESHA, inconsistent with LCP policies that prohibit development in ESHA if it results in any potential disruption of habitat value, and is inconsistent with LCP policies that require clustering of development in the least environmentally sensitive area of a site. The County approval also raises LCP consistency issues with respect to the long term protection, maintenance and health of adjacent ESHA because the project does not provide any protective buffers or setbacks between proposed development and maritime chaparral, and will require fuel modification disturbance in this habitat. Similarly, the project as approved by the County is not fully consistent with LCP policies that prohibit development in the critical viewshed because the same project elements within ESHA also have the potential to be visible from Highway 1 and other public vantage points. Staff therefore recommends that the Commission find that a **substantial issue** exists with respect to this project's conformance with the LCP and take jurisdiction over the coastal development permit for the project.

The majority of the 78-acre subject parcel contains steep slopes, ESHA, and is located in the critical viewshed, and is therefore inappropriate for development. However, the northernmost corner of the site (an area of approximately 3.3 acres) is on the backside of the ridge and completely outside the critical viewshed; contains vegetation communities that are not considered ESHA; is relatively flat; contains an existing access driveway; and is outside the area of high fire danger present on the front side of the ridge and ridgecrest. Big Sur LCP ESHA, visual resource, and hazards policies all require siting and clustering of development in the least sensitive area of a site if one exists. The County-approved development sites some project elements in this area (barn, guesthouse, and caretaker's unit), and ample area exists to add all of the remaining proposed structures. Staff therefore recommends that the Commission **approve with conditions** a CDP for the project that requires re-siting of development in this area. Such an approach is required by LCP development standards that call for the protection of ESHA, preservation of the critical viewshed, and minimization of wildfire risk. The recommended conditions also limit exterior lighting so that off-site glare is fully controlled; require removal of

invasive plant species and landscaping with non-invasive native plants; and protect sensitive plant communities and drainages from potentially harmful site runoff during construction and for the life of the project. Thus, only as conditioned can the project be found consistent with the LCP.

Staff Report Contents

Click on the link below to go to the exhibits.

List of Exhibits

Exhibit	Title
A	Regional Location Map
B	Project Site Plan and Vegetation Communities
C	Site Plan Details
D	ESHA Buffer, Fuel Modification Zone, and Allowable Development Envelope
E	Applicant Photos of Site from Bixby Bridge and Hurricane Point
F	Staff Photos of Site
G	Monterey County Final Local Action Notice
H	Appeal Document
I	Correspondence from Applicant's Biologist

I. Monterey County Action

On February 22, 2006, the Monterey County Planning Commission approved a Coastal Development Permit (CDP) for the proposed project subject to multiple conditions (Application # PLN040569, Resolution #06012). The County also approved a Mitigated Negative Declaration (of no significant environmental impacts) under the California Environmental Quality Act. The Planning Commission's approval was not appealed locally (i.e., to the Board of Supervisors). Notice of the Planning Commission's action on the CDP was received in the Coastal Commission's Central Coast District Office on March 15, 2006 (see Exhibit G). The Coastal Commission's ten-working day appeal period for this action began on March 16, 2006 and concluded at 5pm on March 29, 2006. One valid appeal (Exhibit H) (see below) was received during the appeal period.

II. 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 because multiple project elements are not principally-permitted uses in the Watershed and Scenic Conservation (WSC) zoning district. Specifically, the County's approval identified that the following project components are not principally permitted: caretaker's unit, tree removal (14 coast live oaks, 4 canyon oaks, and 1 redwood), and development within 100 feet of environmentally sensitive habitat (maritime chaparral).

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

III. Appellants' Contentions

The two Commissioner appellants contend that the County-approved project is inconsistent with LCP environmentally sensitive habitat area (ESHA), visual resource protection, and certain land use and development policies. In sum, the appeal contends that the project has not been sited and designed to avoid significant impacts to central maritime chaparral, considered ESHA by the LCP, and that the project does not adequately protect or limit the disturbance of maritime chaparral. The appeal also contends that the project is inconsistent with LCP requirements for visual resource protection because multiple proposed structures have the potential to be visible within the critical viewshed (i.e. from Highway 1 and major public viewing areas). Furthermore, the appeal contends that the barn and two proposed studios have not been conditioned as required by the LCP to ensure that they will not be used as dwelling units or living spaces. See Exhibit H for the complete appeal document.

IV. 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 appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

> ***MOTION:*** ***I move that the Commission determine that Appeal No. A-3-MCO-06-018 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 of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE: The Commission hereby finds that Appeal No. A-3-MCO-06-018 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.

V. Substantial Issue Findings and Declarations

The appeal raises a substantial issue because, as approved by the County, the project is inconsistent with provisions of the Big Sur LCP that require environmentally sensitive habitat areas (ESHA) to be maintained, restored, and enhanced, and all types of land use, both public and private, to be subordinate to the protection of these areas (LUP Key Policy 3.3.1, cited on page 14 of this report). The LCP also requires structures to be clustered in the least environmentally sensitive area of a parcel (LUP Policy 3.3.2.6, cited on page 15). The project site contains several vegetation communities, including maritime chaparral, a community considered ESHA by the Big Sur LCP. The County approval results in the siting of development both within and immediately adjacent to this habitat. Development within this habitat will result in the removal of ESHA, inconsistent with LUP Policies 3.3.1 and 3.3.2.6. The siting of additional development immediately adjacent to the maritime chaparral without any protective buffer or setbacks is also inconsistent with these policies, as it will adversely impact the long-term protection, health, and maintenance of this habitat. As a result, the County-approved project is inconsistent with the LCP because development has not been sited in the least environmentally sensitive area of the parcel, and the project will remove and degrade existing ESHA.

A substantial issue is also raised by the fact that the County-approved project may result in visual resource impacts; in particular, the project may extend development into the critical viewshed. The key visual resource policy in the Big Sur LUP prohibits all future public and private development visible from Highway 1 and major public viewing areas (the critical viewshed). This restriction applies to all structures, the construction of public and private roads, utilities, lighting, and grading. Policy 3.2.3.A.3, cited in page 31 of this report, requires that where an alternative building site is determined to be available on a parcel that would result in conformance with the key policy, the applicant is required to modify the project proposal. A previously recorded conservation and scenic easement burdens those portions of the parcel within the critical viewshed, and allows for development within the easement area provided that it can be proven to be out of the critical viewshed and does not require significant vegetation removal increasing exposure in the critical viewshed. The County-approval allows multiple project elements within this easement area, and relies on existing vegetation to screen the development. Such an approach is inconsistent with the LCP because the vegetation relied upon for screening may need to be removed or thinned at a later date, may not be dense enough to prevent the development from being visible, and will eventually die. Furthermore, alternative sites exist on the subject parcel that would better meet the key LUP policy.

Lastly, the appeal raises a substantial issue because the project is inconsistent with those provisions of the LCP that prohibit accessory structures to be inhabited or contain cooking or kitchen facilities, and require deed restrictions indicating this restriction (LUP Policy 5.4.3.J.2 and CIP Section 20.145.140.B.5.c). The County conditioned the project to require deed restrictions for the proposed guesthouse and caretaker's unit, but does not include a deed restriction requirement for either of the two studios or the barn. Given their sizes and plumbing,

these structures have the potential to be used as living spaces. As such, the County approval is inconsistent with LCP prohibitions against the use of these types of accessory structures as habitable structures.

The above issues are addressed in more detail in the de novo findings of this report.

VI. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

> ***MOTION*: I move that the Commission approve Coastal Development Permit No. A-3-MCO-06-018 pursuant to the staff recommendation.**

STAFF RECOMMENDATION OF APPROVAL: Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT: The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

VII. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the

date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. Final Project Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Final Project Plans to the Executive Director for review and approval. The Final Project Plans shall be consistent with the following requirements:

(a) Development Envelope Restriction. The Final Project Plans shall include a revised site plan that contains development within the allowable disturbance area as shown by Exhibit D. Development within the allowable disturbance area may include all of the County-approved structures as long as such development complies with all applicable setbacks and other Monterey County building code requirements. Development outside of the project footprint shown by the approved final plans is prohibited, except for uses allowed pursuant to Special Conditions 2 and 4 of this permit. The Final Project Plans shall clearly identify and label the development envelope area in site plan view.

(b) Exterior Design Elements. Site structures and other exterior elements, such as fencing, shall be subordinate to and blended into the environment, using appropriate materials which will achieve that effect. Fencing shall also be designed to allow for the passage of wildlife. All exterior finishes shall consist of muted, earthen tone colors and non-reflective materials to blend with the surrounding environment. Building walls shall be designed and surfaced to blend with the surroundings and to reduce their visual mass and minimize their visual prominence. Final plans shall include a color board and project elevations that identify the type and color of all finished materials.

(c) Lighting. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Exterior light sources that could be visible in the critical viewshed are prohibited. Exterior lighting shall be limited to that which is necessary to illuminate

driveways, pathways, and entrances to structures. The applicant shall submit an exterior lighting plan that shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. No lighting shall be located outside the development footprint allowed by Special Condition 1(a), except for limited, low-level lighting along the driveway as necessary to provide safe access and at the entrance (gate) for identification.

(d) Landscaping. The Permittee shall submit landscape and irrigation plans for the area within the allowable disturbance area pursuant to Special Condition 1(a). The plans shall be prepared by a licensed Landscape Architect and shall identify all plant materials (size, species, quantity) and proposed maintenance. All plant materials shall be selected to be complimentary with the mix of native habitats in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. The landscape plans shall also be designed to protect and enhance native plant communities on and adjacent to the site, and to provide a transitional buffer between native habitat areas and authorized development. All landscaped areas and fences on the project site shall be continuously maintained by the permittee; all plant material shall be continuously maintained in a litter-free, weed-free, and healthy growing condition. The planting of non-native invasive species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, is prohibited.

The Permittee shall undertake development in accordance with the approved Final Project Plans. Any proposed changes to the approved Final Project Plans shall be reported to the Executive Director. No changes to the approved Final Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. Habitat and Viewshed Protection Area. In order to ensure long-term protection of central maritime chaparral and redwood forest habitat on the project site, as well as protection of the critical viewshed, all portions of the property located outside the allowable building envelope generally depicted by Exhibit D shall be designated for habitat and viewshed protection. No development, as defined in Section 30106 of the Coastal Act shall occur within this habitat and viewshed protection area, as described and depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, except for:

A. Invasive plant removal conducted in accordance with the Invasive Plant Removal Plan in the 100 foot fuel modification buffer and 100 foot habitat buffer approved by Special Condition 4 of this permit.

B. Development and maintenance of the existing driveway.

C. Fuel modification within100 feet of the development envelope.

D. Installation and maintenance of necessary utility connections. Septic system facilities shall be located within the authorized development envelope unless an alternative location is determined to be necessary by the County Environmental Health Division.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE THIS PERMIT (NOI), the Applicant shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described in Special Condition 1(a) and depicted by Exhibit D of this permit.

3. Revised Forest Management Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a new forest management plan or amendment to the existing "Forest Management Plan for Monterey County APN 418-132-007" (prepared by Staub Forestry and Environmental Consulting, dated November 2004) to the Executive Director for review and approval if any trees are proposed for removal under the revised site plan required by Special Condition 1a. The revised Forest Management Plan shall be prepared consistent with the requirements established by CIP Sections 20.145.060.B and C of the LCP.

4. Invasive Plant Removal Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit an invasive plant removal plan, prepared by a qualified biologist, to the Executive Director for review and approval. The plan shall specify methods for removing, controlling, and preventing the introduction of invasive exotic plants as they appear on the property, such as French broom, gorse, cape ivy, pampas grass, kikuyu grass, acacias, etc. within the development envelope and 100-foot fuel modification zone and 100-foot habitat buffer for the life of the project.

5. Construction Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Construction Plan to the Executive Director for review and approval. The Construction Plan shall identify all measures to be taken to protect surrounding habitats and water quality during construction. At a minimum, the Plan shall include:

(a) Construction Fencing. The Construction Plan shall delineate the location of all construction and grading activities, including the storage, stockpile, and staging of construction materials, which shall be contained in the approved development envelope (as required by Special Condition 1a and as shown by Exhibit D) to the maximum degree feasible. Approved construction areas shall delineated on-site by temporary construction fencing and markers. The construction zone fencing shall be maintained in good working order for the duration of the construction. No construction activities shall take place, and no equipment or material storage shall occur, outside of the established construction zone. CONSTRUCTION SHALL NOT COMMENCE UNTIL ALL CONSTRUCTION ZONE FENCING IS COMPLETELY INSTALLED AND OPERATIONAL.

(b) Drainage, Erosion, and Sedimentation Control. No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Executive Director. The construction plan shall identify the type and location of all erosion control/water quality best management practices to be implemented during construction. Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction zone to prevent construction-related runoff, sediment, and/or debris from entering into surrounding habitat areas and drainages. Provisions shall be made for stockpiling and covering any graded soils, equipment, and/or materials. The construction plan shall also include a wet weather contingency plan that clearly states what actions will be taken in the event of precipitation events to avoid off-site impacts due to runoff emanating from the construction zone. ALL EROSION, SEDIMENT, AND OTHER WATER QUALITY CONTROLS SHALL BE IN PLACE PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AS WELL AS AT THE END OF EACH DAY DURING CONSTRUCTION.

(c) Good Housekeeping. The construction site shall maintain good construction site housekeeping controls and procedures, including: (1) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all dewatering operations shall include filtration mechanisms; (2) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage or existing drain inlet; (3) concrete rinsates shall be collected and properly disposed of off-site and they shall not be allowed to enter any natural drainage areas or existing drain inlet; and (4) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather.

(d) Work Schedule. All work shall take place during daylight hours with the following exception: any construction that occurs after sunset shall be limited to interior (of structures) work and shall be subject to the same lighting parameters as established for the completed structure by Special Condition 1c.

All requirements of this condition above shall be enforceable components of this coastal development permit. All requirements of this condition shall be specified as plan notes on the Construction Plan, and the plan notes shall indicate that they shall apply for the duration of construction of the approved development. The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved

Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

6. Post Construction Drainage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**,** the Permittees shall submit to the Executive Director for review and approval a drainage plan that identifies the specific type, design, and location of all drainage infrastructure and Best Management Practices (BMPs) necessary to ensure that post construction drainage from the project, including runoff from the roof and other impervious surfaces, does not result in erosion, sedimentation, or the degradation of coastal water quality. The Permittee shall be responsible for implementing and maintaining the drainage facilities for the life of the project.

7. Assumption of Risk, Waiver of Liability, and Indemnity Agreement. The Permittees acknowledge and agree, on behalf of themselves and all successors and assigns: (i) that the site is subject to hazards from wildfire and geologic instability; (ii) to assume the risks to the Permittees and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowners.

8. Deed Restrictions. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

The applicant shall also record separate deed restrictions for each of the two studios, caretaker unit, guesthouse, and barn (if these structures remain part of the revised

development) that prohibit habitation of these structures in accordance with the Big Sur LCP (CIP Sections 20.145.140.B.5.c, 20.145.140.B.4.b, and 20.145.140.B.4.d).

9. County Conditions. All other conditions of Monterey County's approval (PLN040569, resolution number 06012) pursuant to a planning authority in addition to or other than the Coastal Act continue to apply. The applicant shall provide evidence of compliance with the County conditions to the Executive Director at the time period for compliance indicated by the condition. In the event that the County no longer has authority to sign-off any of these conditions, review and approval by the Executive Director is required.

VIII. De Novo Findings and Declarations

A. Project Location, Background, and Description

The project site is located at 4855 Bixby Creek Road (APN 418-132-007) on the ridge that divides Rocky Creek from Palo Colorado Canyon in a 10-lot subdivision known as Rocky Creek Ranch on the Big Sur Coast in Monterey County (see Exhibit A). The project also involves some development on APNs 418-132-006 and 418-132-005, located adjacent to the subject parcel to the east. In 1992, Monterey County approved a lot line adjustment for the Rocky Creek Ranch that resulted in the current location and configuration of the subject parcel (County permits LL90032, LL90033, and LL88010 (Rothman)). The Rocky Creek Ranch lot line adjustment approval included theoretical, potential building envelopes that were not approved along with the lot line adjustment but instead were utilized for the purpose of CEQA and LCP analysis and review. The EIR prepared for the lot line adjustment, which was approved by the County at the same time as the lot line adjustment, states that building envelopes were developed by the applicant at the request of the County to determine potential building sites within each of the lots. Potential building envelopes identified by the lot line adjustment are in no way binding upon Monterey County or the Coastal Commission in the evaluation of subsequent development proposals on the adjusted parcels.

Access to the project site is provided via Bixby Creek Road, a private road that extends to the site from Palo Colorado Road. The 78-acre parcel is undeveloped except for a yurt structure and an existing access road that traverses through the northern portion of the site. The parcel is generally bordered by undeveloped land on all sides, and the parcel to the east contains a single family residence. The site ranges in elevation from 800 to approximately 1,400 feet, with existing slopes generally between 3% and 25%. The steepest slopes are located on the lower (southern) portions of the parcel where no development is proposed.

The proposed project involves construction of a new 3,975 square foot single-family residence and accessory structures including a 3,200 square foot barn with solar panels, 1,200 square foot studio (“Steven’s studio”), 1,150 square foot studio (“Gillian’s studio”), 425 square foot

guesthouse, 850 square foot caretaker's unit, 225 square foot shed, and 800 square foot garage; pool; five septic systems; retaining walls; tree removal (14 coast live oaks, 4 canyon oaks, and one redwood); and associated grading (approximately 1,850 cubic yards cut and 625 cubic yards fill) on approximately 10-15 acres on the northern portion of the property (see Exhibits B and C). The project also involves a hookup to existing well on APN 418-132-005 and various underground utilities, including an underground water tank and pumping plant on APN 418-132-006.

B. Coastal Development Permit Findings

1. Environmentally Sensitive Habitat Areas (ESHA)/Tree Removal

a. Relevant LCP Provisions

LUP 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.*

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

LUP Policy 3.3.2.2. *Where private or public development is proposed, in documented or expected locations of environmentally sensitive habitats, field surveys by qualified individuals or agencies shall be made in order to determine precise locations of the habitat and to recommend mitigating measures to ensure its protection.*

LUP Policy 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.*

LUP Policy 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.*

LUP Policy 3.3.2.6. *To protect environmentally sensitive habitats and the high wildlife values associated with large areas of undisturbed habitat, the County shall retain significant and, where possible, continuous areas of undisturbed land in open space use. To this end, parcels of land in sensitive habitat areas shall be kept as large as possible, and if structures are permitted, they shall be clustered in the least environmentally sensitive areas.*

LUP Policy 3.3.2.7. *Land uses adjacent to environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent significant habitat impacts, and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the adjoining habitat.*

LUP Policy 3.3.2.8. *New development adjacent to environmentally sensitive habitat areas shall be allowed only at densities compatible with the protection and maintenance of the adjoining resources. New subdivisions shall be approved only where potential impacts to environmentally sensitive habitats from development of proposed parcels can be avoided.*

LUP Policy 3.3.2.9. *The County shall require the use of appropriate native species in proposed landscaping.*

LUP Policy 3.3.3.A.7. *Land uses in areas where natural grassland is found shall be compatible with the maintenance of the habitat. Development shall be sited and designed to avoid disturbance or destruction of grasslands. Compatible uses include managed grazing and low-intensity recreational and residential uses.*

LUP Policy 3.3.3.A.8. *Residential development shall be sited and designed to have minimum impacts on redwood trees from soil compaction and other disturbances to tree roots. With similar considerations, recreation should be encouraged as an appropriate use for redwood forests.*

LUP Policy 3.3.3.A.10. *Monterey County encourages residents and public agencies to undertake restoration of Big Sur's natural environment by removal of exotic plants such as Scotch and French Broom, Eucalyptus, Kikiyu grass, Vinca, Pampas grass, Gorse, and other non-native invasive species providing such removal does not increase potential erosion problems.*

CIP Section 20.145.040.B.1. *All development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be prohibited in the environmentally sensitive habitat areas if it has been determined through the biological survey prepared for the project that the development's impact cannot be reduced to a level at which the long-term maintenance of the habitat is assured, (i.e. to an insignificant level). To approve any development within an environmentally sensitive*

habitat area, the decision making body must find that the disruption of such habitat caused by the development would not be significant. (Ref. Policy 3.3.2.1)

CIP Section 20.145.040.B.2. *Deed restrictions or conservation easement dedications over environmentally sensitive habitat areas shall be required as a condition of approval for any development proposed on parcels containing environmentally sensitive habitats. Where the proposed project is to occur on an already developed parcel, restrictions or easement dedications shall still be required. Easements and deed restrictions shall be required according to the provisions of Section 20.142.130. (Ref. Policy 3.3.2.3)*

CIP Section 20.145.040.B.3. *Removal of indigenous vegetation and land disturbance, such as grading, excavation, paving, and fill, on parcels containing environmentally sensitive habitats shall be limited to that necessary for the structural improvements and driveway access. Modifications to the proposal shall be made for siting, location, design, bulk, vegetation removal, and grading where such modifications will reduce impacts to the habitat. (Ref. Policy 3.3.2.4)*

CIP Section 20.145.040.B.4. *Development on parcels containing or within 100 feet of environmentally sensitive habitats, as identified on the current Big Sur Coast Environmentally Sensitive Habitat resource map, other resource information, or planner's on-site investigation, shall not be permitted to adversely impact the habitat's long-term maintenance, as determined through the biological survey prepared for the project. Proposals shall be modified for location, bulk, size, design, grading vegetation removal, and/or other methods where such modifications will reduce impacts to an insignificant level and assure the habitat's long-term maintenance. Also, the recommended mitigation measures of the biological survey will be considered and made conditions of project approval. (Ref. Policy 3.3.2.4, Policy 3.3.2.7)*

CIP Section 20.145.040.B.5. *New land uses and new subdivisions on parcels within 100 feet of environmentally sensitive habitats, as identified on the current Big Sur Environmentally Sensitive Habitat resource map, other documented resource information, or through the biological survey process shall not be permitted where they will adversely impact the habitat's long term maintenance, either on a project or cumulative basis. As such, a project shall only be approved where sufficient conditions of approval are available, such as for siting, location, design, size, and design which will mitigate adverse impacts to and allow for the long-term maintenance of the habitat, as determined through the biological survey. Also, a project shall only be approved where the decision-making body makes a finding that the project will not set a precedent for continued land development which, on a cumulative basis, could degrade the habitat. (Ref. Policy 3.3.2.7 and 3.3.2.8)*

CIP Section 20.145.040.C.1.g. *Development and land use activities in areas of natural grassland shall not be permitted to adversely impact the long-term maintenance of the habitat, as determined through the biological survey prepared for the project. As such,*

allowable uses in natural grassland areas shall include managed grazing, low-intensity recreational, and residential uses. Conditions of approval shall be applied and development modified as necessary, including for design, siting, location, size, density, and intensity of use, to reduce impacts to and assure the long-term maintenance of the habitat. Conditions of approval shall include recommendations contained in the biological survey prepared for the project. (Ref. Policy 3.3.A.7)

CIP Section 20.145.040.C.1.h. *Residential development and recreational uses shall minimize impacts to redwood trees, as determined by the biological survey prepared for the project. Where development is to occur within or adjacent to, or has potential to impact, redwood forest or redwood trees, a biological survey shall be prepared the project in accordance with Section 20.145.040.A. The survey shall include an assessment of the impacts on the trees from soil compaction and other soil and root disturbances. Conditions of approval, and project modifications, shall be required as necessary to minimize impacts to redwood trees. (Ref. Policy 3.3.3.A.8)*

Tree Removal

LUP Policy 3.5.2.2. *All cutting or removal of trees shall be in keeping with the broad resource protection objectives of this plan. Specific policies, criteria, and standards of other sections of this plan shall govern both commercial and non-commercial tree removal.*

LUP Policy 3.5.2.4. *Landmark trees of all species shall be protected in perpetuity as significant features of Big Sur's natural heritage. The California Department of Forestry, scientists from research institutions, and landowners should cooperate in the protection and enhancement of these resources and their supporting habitat. Landmark trees shall be defined as visually significant, historically significant, exemplary of its species, or more than 1000 years old.*

LUP Policy 3.3.3.A.10. *Monterey County encourages residents and public agencies to undertake restoration of Big Sur's natural environment by removal of exotic plants such as Scotch and French Broom, Eucalyptus, Kikiyu grass, Vinca, Pampas grass, Gorse, and other non-native invasive species providing such removal does not increase potential erosion problems.*

CIP Section 20.145.060.B.1. *A Forest Management Plan will be required for the following:*

a. tree removal requiring a Coastal Development Permit; and

b. tree removal, regardless of tree size, type, or amount, proposed as part of a development requiring a Coastal Development Permit.

CIP Section 20.145.060.C.1. *An amended Forest Management Plan will be required when:*

a. a Forest Management Plan for the parcel has been previously approved by the Coastal Commission and/or the Monterey County Director of Planning; and

b. the proposed tree removal requiring a coastal development permit, or reviewed as part of a development requiring a coastal development permit, has not been shown in the previously approved Forest Management Plan.

CIP Section 20.145.060.D.1. *Landmark trees of all species shall not be permitted to be removed. A landmark tree is one which is 24 inches or more in diameter when measured at breast height, or a tree which is visually significant, historically significant, exemplary of its species or more than 1,000 years old. An exception may be granted by the decision-making body for removal of a landmark tree within the public right-of-way or area to be purchased for the right-of-way where no feasible and prudent alternatives to such removal are available, subject to obtaining a coastal development permit.*

An exception may be granted by the decision-making body for removal of a tree that is 24 inches or greater in diameter (measured at breast height) and not also visually or historically significant, exemplary of its species or more than 1000 years old, provided that a finding may be made that no alternatives to development (such as resiting, relocation, or reduction in development area) exists whereby the tree removal can be avoided (Ref. Policy 3.5.2.4).

CIP Section 20.145.060.D.2. *Removal of any trees which would result in the exposure of structures in the critical viewshed shall not be permitted, subject to the provisions of Section 20.145.030.A. A condition of project approval shall be that the applicant grant a scenic easement to the County over existing vegetated areas without which the approved development would be located in the critical viewshed. The easement shall be required in accordance with the provisions of Section 20.142.130.*

CIP Section 20.145.060.D.3. *Removal of native trees shall be limited to that which is necessary for the proposed development and/or justified in the Forest Management Plan as being necessary to improve unhealthy forest conditions. Proposed development shall be modified for siting, location, size, bulk, and/or design where such modifications will result in less removal of healthy trees in a healthy forest condition or as otherwise meeting the objectives of the forest management plan.*

CIP Section 20.145.060.D.4. *Removal of native trees other than directly necessary for the proposed development shall be limited to that required for the overall health and long- term maintenance of the forest, as verified in the Forest Management Plan.*

CIP Section 20.145.060.D.6. *Native trees to be removed which are 12 inches or more in diameter, when measured at breast height shall be replaced on the parcel. Replacement*

shall be at a rate of one tree of the same variety for each tree removed, except where demonstrated in the Forest Management Plan or Amended Plan that this would result in an overcrowded, unhealthy forest environment.

b. ESHA Identification

An important step in the development review process is the accurate identification of ESHA within or adjacent to a development site. The proposed development would be located in various areas of the parcel, within several different plant communities. The Rocky Creek Ranch Biotic Assessment (prepared by The Habitat Restoration Group, November 14, 1991), the Foster property preliminary biological report (prepared by Jeff Norman, November 22, 2004), and subsequent field surveys (prepared by Jud Vandevere, March - July 2005, and September 2005) describe and document these plant communities, as shown in Exhibit B.

The 78-acre parcel, which ranges in elevation from 800 feet in the south to 1,400 feet in the north, contains a mix of largely undisturbed plant communities that include coastal sage scrub, northern coastal scrub, central maritime chaparral, redwood forest, mixed evergreen forest, and coast range grassland. The different vegetation types reflect changes in elevation, orientation and exposure, and soil types that occur on the property. Most of the parcel is situated on south facing slopes, with the northern portion of the property extending up to the ridgeline and back down the north/northeast facing slope of the ridge.

The lower half of the parcel is comprised of coastal sage scrub habitat which transitions abruptly to central maritime chaparral approximately halfway up the property. At the crest of the ridge, central maritime chaparral transitions to a closed canopy mixed evergreen forest dominated by coast live oaks and containing other tree species such as coast redwoods and madrones. Understory vegetation includes a mix of species with central maritime chaparral plants in some areas. Also present within the mixed evergreen forest is an area of pure redwood forest, dominated by coast redwoods. Continuing northward, on the backside of the ridge crest, the vegetation transitions from a mixed evergreen forest to coast range grassland with a pocket of northern coastal scrub. Non-native species dominate the grassland, although some native bunch grasses exist in limited amounts.

Under the LCP, central maritime chaparral and redwood forest qualify as ESHA for the reasons described below.

Characterization of Central Maritime Chaparral

Maritime chaparral habitats occur from San Diego to Sonoma County. The characteristic features of these habitats are well-drained, nutrient poor, somewhat to highly acidic soils within the coastal fog zone, a suite of evergreen sclerophyllous shrubs in mature stands (including *Actostaphylos* and *Ceanothus* species), and the presence of one or more “indicator” species, which are indicative of Maritime chaparral habitats because their distribution is restricted to only those regions with the requisite climate and soil. The actual community composition of maritime chaparral changes with latitude, with southern, central, and northern maritime chaparrals have

distinct characteristics. Within a geographical region, community composition is also variable on a smaller spatial scale. These habitats or community types are rare, are generally defined by individual shrub species that are themselves rare, and often support rare herbaceous species.

A Manual of California Vegetation (John O. Sawyer and Todd Keeler-Wolf, 1995) is a vegetation classification system widely used by biologists and resource agencies, including the California Department of Fish and Game, U.S. Forest Service, National Park Service, U.S. Geological Survey, and the California Coastal Commission to consistently identify and classify plant communities. This system classifies vegetation into either a set of series, unique stands, or habitats. In the *Manual*, central maritime chaparral is described under the woollyleaf manzanita series. The *Manual* states that many areas of chaparral on the outer central coast and montane central coast ranges have concentrations of local ceanothus and manzanita species, and that such areas are often called maritime chaparral. The *Manual* also states that, in the woollyleaf manzanita series, forms of woollyleaf manzanita (*Actostaphylos tomentosa)* are a common component along with familiar members of chaparral and coastal scrub. The series in the *Manual* are generally defined using the dominance rule; however, the *Manual* states that a few of the series, such as woollyleaf manzanita, are defined in terms of characteristic species rather than the dominant ones.

Coastal Commission staff discussed the issue of plant species presence versus dominance with Dr. Todd Keeler-Wolf, Senior Vegetation Ecologist with the California Department of Fish and Game and co-author of the *Manual*.[1] Dr. Keeler-Wolf said that in areas where the geographic location, soils, and climate are appropriate, the mere presence of indicator species is sufficient to identify a community as central maritime chaparral. He reiterated that one or more *Arctostaphylos* or *Ceanothus* indicator species characterizes central maritime chaparral shrublands. Similarly, Odion and Tyler point out that in most cases, single or small groups of manzanitas or other maritime chaparral dependent species alone would indicate maritime chaparral because of the potential for the existence of a persistent soil seed bank.[2]

The definition of maritime chaparral continues to be refined and this process is reflected in the efforts of the Elkhorn Slough National Estuarine Research Reserve Coastal Training Program (CTP). The CTP held a maritime chaparral workshop in 2003 that gathered maritime chaparral experts and resulted in a proposed maritime chaparral definition.[3] The proposed definition emphasizes the definition defined by the *Manual* which states:

> "forms of woolly leaf manzanita dominant or important shrub with one or more rare

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[1] Dr. Todd Keeler-Wolf, personal communication with Dr. Jonna Engel, Ecologist, California Coastal Commission, November 29, 2006.

[2] Odion, D. and C. Tyler. 2002. Are long fire-free periods needed to maintain the endangered, fire-recruiting shrub *Arctostaphylos morroensis* (Ericaceae)? Conservation Ecology 6 (2): 4. [online] URL: http://www.consecol.org/vol6/iss2/art4/

[3] Hayes, G. Editor. 2003. The ecology and conservation of California's maritime chaparral: Proposed definition of maritime chaparral. Coastal Training Program, Elkhorn Slough National Estuarine Research Reserve.

ceanothus or manzanita in canopy; black sage, California buckwheat, California coffeeberry, California sagebrush, chamise, coyote brush, poison oak, and/or toyon may be present. Emergent birch leaf mountain-mahogany, and/or coast live oak may be present. Shrubs < 3 m; canopy continuous. Ground layer sparse."

The proposed definition from the CTP workshop updates the *Manual* by relating that "there are several areas of maritime chaparral not dominated or even partially occupied by woollyleaf manzanita." The proposed definition further refines the *Manual* maritime chaparral definition by combining previous definitions and adding the following:

- Chaparral on ancient sand deposits at Ft. Ord, Nipomo, Vandenberg, Morro Bay (Griffin 1978).
- Northern Maritime Chaparral, Central Maritime Chaparral, Southern Maritime Chaparral: "within the zone of summer fog incursion" (Holland 1986).
- Ecologically, maritime chaparral is separated from interior chaparral by having greater exposure to summer fog, humidity, and mild temperatures moderating drought pressures and, potentially leading to adaptations to different disturbance regimes (less frequent fire).
- It is important to recognize that, imposing inappropriate disturbance regimes can result in maritime chaparral being replaced by other community types. Inappropriately frequent or out of season fire or some types of land clearing can convert maritime chaparral to grassland or species-poor coastal scrub (Stylinski & Allen 1999, Odion & Tyler 2002). Infrequent disturbance or invasion of non-native species can temporarily change maritime chaparral to woodland or coastal scrub communities, but in such cases, seed bank remains awaiting fire or clearing (Van Dyke & Holl 2001). Delineation of maritime chaparral, therefore, should include analysis of historical air photos to determine prior extent of the community.

Recently, in June 2007, the CTP again gathered maritime chaparral experts for a workshop whose purpose was to review and update the definition of maritime chaparral and discuss methods for delineating maritime chaparral. Presentations by Dr. Keeler-Wolf, Julie Evans, (Vegetation Ecologist at the California Native Plant Society, presenting for John O. Sawyer, Humboldt State, co-author of the *Manual*), and Mike Vasey (University of California Santa Cruz) all included definitions of maritime chaparral. Dr. Keeler-Wolf emphasized the importance of nutrient poor soils stating that "The key to the presence of chaparral in the maritime zone is oligotrophic soils." Dr. Keeler-Wolf also stated that species composition shifts from stand to stand, and maritime chaparral is a convenient name for many distinctive combinations of species; it is not "one thing." Julie Evans (presenting for John O. Sawyer) stated that maritime chaparral:

- contains plants adapted to areas with cool, foggy summers, unlike interior chaparral types

(where summers are not moderated by fog);

- has nutrient-poor soils and occurs on windward uplands and coastal lowlands; and
- includes *Arctostaphylos* or *Ceanothus* species, including any narrow endemics considered rare and endangered. These species characterize the habitat and may or may not be dominant.

Finally, Mike Vasey provided the following characteristics of maritime chaparral:

- It occurs on oligotrophic (nutrient-poor) soils (sandstones, shales, granites, dunes, serpentines, etc.).
- It is influenced (more or less) by coastal climate and particularly summer fog (coastal cloud) patterns.
- It reflects dynamic vegetation mosaics shaped over time by wildfire regimes.
- It occurs as "meta-populations" in evolutionary time.

Central Maritime Chaparral on the Foster Property

The biotic assessment prepared for the Rocky Creek Ranch lot line adjustment in 1991 described the chaparral on the site as northern mixed chaparral and identified shaggy-barked manzanita (*Actostaphylos tomentosa*) as the dominant plant species in this community. This assessment also noted that Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), a Federal species of concern and California Native Plant Society watch list (List 4) species, and chamise (*Adenostoma fasciculatum*) were present in this community. The preliminary biological report prepared for the proposed project (prepared by Jeff Norman, November 2004) described this plant community as central maritime chaparral, dominated by Eastwood's manzanita (*Arctostaphylos glandulosa*). This report also identified shaggy-barked manzanita (*A. tomentosa*), chamise (*Adenostoma fasciculatum*), warty-leaved ceanothus (*Ceanothus papillosus* var. *papillosus*), the rare Monterey ceanothus (*C. cuneatus* var. *rigidus*), coast silk-tassel (*Garrya elliptica*), poison oak (*Toxicodendron diversilobum*), and yerba santa (*Eriodictyon californicum*) within this vegetation community. Subsequent botanical surveys conducted on the site in 2005 by Jud Vandevere found these and other plant species characteristic of the woollyleaf manzanita (central maritime chaparral) vegetation series.

A Coastal Commission staff biologist, along with the applicant's biologist and Mr. Mike Vasey, a chaparral expert, conducted a site visit in March 2007 and confirmed the presence of Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*) and at least two other maritime chaparral indicator species, golden chinquapin (*Chrysolepis chrysophylla*) and huckleberry (*Vaccinium ovatum*). In addition, chamise (*Adenostoma fasciculata*), California sagebrush (*Artemisia californica*), coffeeberry (*Rhamnus californica*), toyon (*Heteromeles arbutifollia*), black sage (*Salvia mellifera*), poison oak (*Toxicodendron diversilobum*), silk tassle (*Garrya elliptica*), and

mountain mahogany (*Cercocarpus betuloides*) were observed on the site; these species are commonly associated with maritime chaparral. During the March 2007 site visit approximately 25 manzanita plants were examined and none were found to be shaggy-barked (woollyleaf) manzanita (*Actostaphylos tomentosa*). While both staff and the applicant agree that the shaggy-barked manzanita may have been mischaracterized by previous biologists, it is also possible that it does exist on the site and was simply not observed. A quantitative vegetation survey was not conducted on the March visit; it is possible that such a survey would reveal a number of shaggy-barked manzanita individuals on the Foster property. Woollyleaf manzanita (*Actostaphylos tomentosa)* is considered one indicator of maritime chaparral, and hence the *Manual's* "woollyleaf manzanita" series. However, there are examples of maritime chaparral where *A. tomentosa* is rare or absent (notably Santa Barbara County's Burton Mesa where *A. purissima* and *A. rudis* are the dominant manzanitas).[4] According to Dr. Keeler-Wolf, it is somewhat difficult to identify central maritime chaparral because one of the main indicator groups, manzanitas, is comprised of obligate fire-sprouting species. In the absence of fire, these species may be outcompeted by other species. During this period, the density of indicator manzanitas may be low or even nonexistent, but their seeds continue to exist in a dormant state.[5] As such, it is generally recognized by biologists who study maritime chaparral that a chaparral stand is maritime chaparral if it includes *A. tomentosa* or any of the other 20+ maritime chaparral indicator manzanita species, **or** *Ceanothus cuneatus* var. *rigidus* or other indicator ceanothus species.

Staff also confirmed that in addition to the presence of maritime chaparral indicator species, the project site also has all the physical attributes required for central maritime chaparral (including soils and climate). Aerial photo analysis and a field survey confirmed the presence of nutrient-poor granitic soils which correspond to the distribution of maritime chaparral on the site. With respect to climate in Big Sur, fog forms a layer anywhere between 100 to 1,000 meters (330-3,300 feet) thick.[6] The Foster site ranges in elevation between 400 and 1,400 feet. Perhaps more importantly than daily fog inundation, the Foster property in within a maritime climatic regime that is cooler and more humid than interior regions where chaparral exists. The presence of coast redwoods (*Sequoia sempervirens*) (discussed below) at the same and higher elevations than the maritime chaparral on the property is indicative of a fog-influenced climate. Coast redwoods only occur in the zone of maritime influence along the Oregon and California coastline where they rely on winter rains and summer fog for year-round moisture. Coast redwoods cannot be found outside the influence of summer fog. Therefore, because the Foster property occurs within the geographic and elevational range of central maritime chaparral, contains the requisite soils, is close to the coast and subject to summer fog, and supports at least several observed central maritime chaparral indicator species (Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), golden chinquapin (*Chrysolepis chrysophylla*) and huckleberry (*Vaccinium ovatum*) along with a

[4] Dr. Eric Van Dyke, written communication with Coastal Commission staff, August 29, 2006.

[5] Dr. Todd Keeler-Wolf, personal communication with Dr. Jonna Engel, Ecologist, California Coastal Commission, November 29, 2006.

[6] Henson, P. and Usner, D. 1993. The Natural History of Big Sur. p. 35. UC Press, Berkeley, CA.

host of other species commonly associated with maritime chaparral, the Commission concludes that the chaparral on the site is central maritime chaparral.

Central Maritime Chaparral as ESHA

The Big Sur LCP (LUP Section 3.3) defines environmentally sensitive habitats as "areas in which plant or animal life or their habitats are rare or particularly valuable because of their special nature or role in an ecosystem. Environmentally sensitive habitats are also areas susceptible to disturbance or degradation by human activities and developments." Maritime chaparral is defined in the Big Sur LCP as "a unique type of chaparral found close to the coast within the summer fog zone climate and characterized by a high proportion of localized endemic plant species."

Central maritime chaparral is considered ESHA for several reasons. First, maritime chaparral is increasingly recognized for numbers of local endemics and species richness (high biodiversity), making it a globally significant habitat type. Although many species of shrubs are common to most locations, local stands are usually distinguished by the presence of one to several endemic species of *Ceanothus* or *Arctostaphylos*. There are about 60 species of manzanita in the world. All of these species are found in California and most are found nowhere else. Within California, many are endemic to small geographic areas. Secondly, this plant community performs the important ecosystem function of providing habitat for individual species, such as Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), that are themselves rare. Lastly, central maritime chaparral is highly susceptible to disturbance by human activities. This is evidenced by the fact that large areas of the central coast of California were covered with dense chaparral at the end of the nineteenth century.[7] Today, however, only small, isolated fragments of northern and central maritime chaparral plant communities can be found growing in oligotrophic, well-drained soils along ridgelines and on coastal terraces within the zone of summer coastal fog intrusion.[8] For these reasons, the California Department of Fish and Game's (DFG) Natural Diversity Database (CNDDB, 2007) lists woollyleaf manzanita chaparral, or central maritime chaparral, as a rare habitat type. It is also for these reasons that central maritime chaparral is considered ESHA under the Big Sur LCP.

Redwood Forest

The project site contains a patch of redwood forest, located between the proposed main house site and the caretaker unit site (as shown in Exhibit B). The Foster property preliminary biological report (prepared by Jeff Norman, November 22, 2004) describes this stand as dominated by coast redwood (*Sequoia sempervirens*), with tan oak (*Lithocarpus densiflorus*) also present. This vegetation community is listed as rare by DFG and is considered ESHA in the Big Sur LCP.

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[7] Cooper, W.S. 1992. The broad-sclerophyll vegetation of California: an ecological study of the chaparral and its related communities. Carnegie Institution of Washington, Publication Number 319, Washington, D.C.

[8] Holland, R.F. 1986. Preliminary descriptions of the terrestrial natural communities of California. California Department of Fish and Game, Natural Heritage Division, Sacramento, CA.

c. LCP Consistency Analysis

The proposed project locates multiple structures and other development within and immediately adjacent to central maritime chaparral habitat on the site. Specifically, as shown in Exhibit B, the main residence, Steven's studio, pool, Gillian's studio, garage, shed, and associated pathways and driveway are either wholly or partly within, or immediately adjacent to this habitat. In addition, the County-approved project includes a condition that requires 30 feet of vegetation clearance around each habitable structure.

The key ESHA policy in the Big Sur LUP states that all practical efforts must be made to maintain ESHA, and all development must to be subordinate to the protection of ESHA. In order to protect ESHA, the LCP requires significant and continuous areas of undisturbed land to be retained in open space, and stipulates that if any structures are allowed on any parcel of land in a sensitive habitat area, those structures must be clustered in the least environmentally sensitive habitat area (LUP Policy 3.3.2.6). Also, LUP Policy 3.3.2.7 requires land uses adjacent to ESHA to be compatible with the long-term maintenance of the resource, and CIP Section 20.145.040.B.1 prohibits development in ESHA if the long-term maintenance of the habitat cannot be assured. New land uses are only considered compatible where they incorporate all site planning and design features needed to prevent significant habitat impacts, and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the adjoining habitat. Furthermore, LUP Policy 3.3.2.8 allows new development adjacent to ESHA only at densities compatible with the protection and maintenance of the adjoining resources.

Site coverage associated with the main residence, Steven's studio, pool, Gillian's studio, garage, and shed would occur wholly or partly within central maritime chaparral and represents a permanent removal of ESHA. Such site coverage cannot be found consistent with the key LCP policy which requires all categories of land use to be subordinate to the protection of ESHA. Furthermore, such coverage is directly in conflict with LUP Policy 3.3.2.1 which prohibits development in ESHA if it results in any potential disruption of habitat value. Outright removal and permanent site coverage that precludes any functioning habitat is a direct and significant disruption of habitat value. The project is also inconsistent with CIP Section 20.145.040.B.1 because it is impossible to assure the long-term maintenance of habitat that has been permanently removed and replaced with structural development.

In addition, new development located within and immediately adjacent to the maritime chaparral would introduce various disturbances and stresses that would, in both the short and long terms, impact the long term sustainability of the habitat. Maritime chaparral is a whole community that includes both plants and animals. Any development within or on the immediate periphery of this plant community and its seedbank cannot be found compatible with the long term maintenance of the habitat because it would introduce disturbances in the form of noise, lights, pets, human foot traffic, landscaping irrigation, herbicides, pesticides, and invasive species, among other things, that by their very nature and proximity, would degrade the ESHA. Domestic animals may hunt and disturb associated organisms (native pollinators, other insects, birds, coyotes,

rabbits, rodents, etc.) that are dependent upon maritime chaparral. In addition, maritime chaparral plants are fire ecology plants, and they create a seed bank that remains undisturbed until a fire occurs. Human and domestic animal disturbance can upset the seed bank and preclude the full re-establishment of maritime chaparral plant species after a fire.

With respect to redwood forest habitat on the site, the proposed project does not involve any direct removal of redwood trees or development within this habitat. LCP ESHA policies specific to redwood forest require residential development to be sited and designed to have minimum impacts on redwood trees from soil compaction and other disturbances to tree roots. As approved by the County, the proposed project is consistent with these LCP provisions.

The County-approved project represents a scattering of permanent structures, access, and infrastructure in and immediately adjacent to undeveloped, sensitive maritime chaparral habitat and therefore does not meet the LCP requirement to cluster development in the least environmentally sensitive habitat area of a site. Because of the fire-dependent nature of maritime chaparral, preservation and protection of large areas of the habitat are critical to its survival and persistence. Habitat fragmentation, as a result of scattered, unclustered development, is a primary threat to this rare vegetation community. Not only would the project result in the direct removal of ESHA, but the County approval does not incorporate any buffers or setbacks in order to ensure long-term protection and maintenance of adjacent maritime chaparral. As a result of these impacts, the proposed project cannot be found to be consistent with the LCP ESHA standards cited above. Avoidance and mitigation of such impacts are necessary to protect central maritime chaparral habitat consistent with LCP requirements.

d. Project Modifications to Result in an Approvable Project

In order to protect and maintain the central maritime chaparral on the subject parcel consistent with the LCP, all development must be relocated outside of the habitat, and the habitat must be buffered from the impacts of any proposed development. A buffer is necessary to limit human activity and disturbance in the chaparral and allow the habitat to flourish. The necessity of a buffer is further described as follows:

- Buffers protect against human and domestic animal disturbance. Human activity immediately adjacent to the habitat in the form of noise pollution, light pollution, foot traffic, landscaping, irrigation, herbicides, etc. disturbs the whole community, as described above. Buffers capture and absorb these and other impacts associated with development.

- Buffers are necessary to maintain dispersal ability of both plants and animals in the habitat. Development located at the edge of the habitat impinges upon the ability of seeds to establish (e.g., through increased shading, soil compaction, site coverage, and changes in localized wind patterns), and hinders the ability of animal species to travel in natural patterns.

- The stress introduced by development affects the natural behaviors of organisms that use maritime chaparral. Reproduction/mating, foraging and feeding, rearing and feeding young, predator/prey interactions are some of the behavioral aspects that may be negatively influenced by the stress of adjacent development.

- Buffers protect against invasive plant and animal species. Such invasive species arrive on car tires (both during and after construction), fill soils, and in myriad other ways throughout the life of the development.

- Buffers allow for a healthy and thriving "edge environment." Scientific evidence indicates that edge environments support extensive biodiversity (species richness), oftentimes higher than the biodiversity present in the two separate habitat types. Such biodiversity is known to facilitate resilience among species and communities, and buffers help maintain the dynamics between one habitat type and another.

- The buffer protects the development from fire. It is becoming more commonplace for fire management entities to practice preventative, controlled burns in order to facilitate the health of the plant community and diminish the likelihood of a catastrophic fire. Furthermore, from a habitat standpoint, maritime chaparral plants require very hot and fast fires (whether human-induced or natural) for seed release and regeneration. The buffer allows for such a fire without the level of danger to the development that would exist without it.

In sum, a buffer limits the development's encroachment into the natural habitat, thereby ensuring protection of the adjacent ESHA against human disturbances and stresses, and creates space to allow continued functionality of the habitat community. It is generally recognized that buffers for maritime chaparral should be designed on a site-by-site basis.[9] Appropriate buffers depend on surrounding use, the design of buffers, the size of the maritime chaparral patch, the priority conservation values of within the patch, and the layout of the surrounding matrix. Buffers should be designed to allow prescribed fire to be used for the long-term conservation of maritime chaparral.[10]

Although the Big Sur Area LCP does not contain specific buffer/setback distances for terrestrial habitat, various LCPs in California require minimum 100-foot buffers for different types of ESHA and the regulatory environment appears to be shifting to adapt to recent scientific information that supports the need for buffers and setbacks. The maritime chaparral on the project site represents a pristine, undeveloped, unfragmented stand of this habitat type. As such, a protective approach must be taken in order to ensure that this pristine stand is not degraded or

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[9] Kelly, Patrick A. and John T. Rotenberry. 1993. Buffer zones for ecological reserves in California: Replacing guesswork with science. Interface between ecology and land development in California. J. E. Keeley (Editor). Southern California Academy of Sciences, Los Angeles, CA.

[10] Coastal Training Program. 2003. Questions and Answers on Maritime Chaparral. Published on the Elkhorn Slough National Estuarine Research Reserve website (http://www.elkhornsloughctp.org/reference/subissue_detail.php?SUBISSUE_ID=1).

otherwise impacted, and 100 feet is the minimum distance that allows for such protection. Staff review of the site characteristics, communication with maritime chaparral experts, and consideration of the body of scientific knowledge and similar chaparral setback requirements in other regions led to the conclusion that a 100-foot buffer between maritime chaparral and any development on the site is appropriate to ensure protection and long-term maintenance of the habitat consistent with the LCP.

Another key element to the site specific design of appropriate habitat buffers is determining what, if any, uses or development activities can occur within the buffer area. In order to establish and maintain the important functions that buffers provide (described above), the conditions of this permit approval prohibit development, including vegetation removal, clearing, or trimming (with the exception of infrequent and as-necessary invasive plant species removal) within 100 feet of the maritime chaparral habitat found on the site. This is because regular vegetation trimming and removal, as well as other forms of development, would diminish the buffer's ability to effectively protect and "cushion" the adjacent habitat from human disturbances, and reduce its function as an area that supports the movement and dispersal of plants and animals associated with maritime chaparral habitat on site.

The restrictions against vegetation removal and trimming within the 100-foot habitat buffer are particularly important given California Department of Forestry (CDF) requirements for defensible space around buildings and structures in any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered in flammable material.[11] Defensible space is a firebreak where vegetation must be either completely cleared, trimmed, or pruned depending on site specific characteristics. Although the County approval of the project required only 30 feet of defensible space around each proposed structure, based on CDF's approval of a fire protection plan involving the trimming of flammable vegetation within 30 feet of the proposed structures, recent changes in the law (PRC 4291) expand the defensible space clearance requirement to 100 feet.[12] Thus, despite CDF's prior approval, the potential remains that 100 feet or more of vegetation clearance may be required in the future, particularly in light of the extreme fire hazards present on the site. Furthermore, irrespective of CDF's review, the LCP prohibits the siting of development in high hazard areas and requires development to be sited in the least hazardous area of a site if one exists (as discussed in the Hazards findings of this report). Therefore, a 100-foot fuel modification zone is required for any development on the site to be consistent with state law and LCP hazards policies. Since vegetation clearing or trimming would interfere with the intended functions of the 100-foot habitat buffer (for the reasons as described above), all development must adhere to an additional 100-foot setback from the habitat buffer. The required 200-foot total setback between the edge of the maritime chaparral and any development is depicted in Exhibit D, and provides for a reasonable use of the

[11] Public Resources Code Section 4291.

[12] CDF's approval of 30 feet of vegetation trimming, rather than the current requirement for 100 feet of vegetation clearance, is based on the fact that the initial project application was reviewed by CDF prior to the adoption of the current 100-foot vegetation clearance requirement.

property by the applicant.

Special Condition 1a requires all development to be sited outside the 200-foot buffer with the exception of a portion of the existing access road, as shown in Exhibit D. The resulting 3.3-acre (approximate) development envelope contains vegetation communities (namely, coast range grassland, mixed evergreen forest, and northern coastal scrub) that are not considered ESHA, and that are appropriate for development within the framework of the LCP. The development envelope required by Special Condition 1a is also outside the redwood forest ESHA described above, and would be consistent with the relevant redwood forest ESHA policies that require minimum impacts from soil compaction and other disturbances to tree roots.

Siting of development within this area ensures consistency with LCP ESHA policies because it represents clustering of development in the least environmentally sensitive area of the site and assures an appropriate density of development on a site that contains ESHA. The LCP specifically allows for low-intensity residential use in natural grassland provided that the development is sited, designed, and sized to reduce impacts and ensure long-term maintenance of the habitat. Furthermore, development is allowed in the mixed evergreen habitat provided that removal of native trees is limited to that which is necessary for a proposed development and/or justified in the Forest Management Plan as being necessary to improve unhealthy forest conditions, as required by the forest resource protection provisions of the LCP. These provisions also prohibit removal of landmark trees (24 inches or more in diameter, visually or historically significant, exemplary of species, or more than 1,000 years old) of all species, and native trees to be removed over 12 inches in diameter shall be replaced at 1:1 ratio. As such, development is allowed in the grassland and mixed evergreen forest areas of the site, provided that tree removal is minimized. To that end, existing clearings must be used to site development to the maximum extent feasible.

In addition, to ensure consistency with LCP provisions that require deed restrictions or conservation easements in ESHA, Special Condition 2 prohibits any development outside the development envelope and requires this area to be maintained as a habitat and viewshed protection area, and Special Condition 8 requires the applicant to record a deed restriction to memorialize this requirement. In addition, Special Condition 4 requires removal of exotic plants in the development envelope, 100-foot fuel modification buffer, and 100-foot habitat buffer as required by LUP Policy 3.3.3.A.10. The development envelope and 200-foot buffer zone should require minimal invasive species removal because of the relatively low presence of invasive exotics and because of the requirement to plant only non-invasive native plants in the development envelope (Special Condition 1d). In the event that tree removal is necessary under the revised project in the approved development envelope, Special Condition 3 requires a revised Forest Management Plan that details tree replacement, care, and protection, as required by the LCP. In order to minimize disturbance to ESHA and other native habitats during construction, Special Condition 5 requires specific measures to contain all construction activities in the approved development envelope and ensure that construction drainage does not impact surrounding habitat. Similarly, Special Condition 6 requires a post-construction drainage plan

that protects adjacent habitats from degradation associated with site runoff for the life of the project.

e. ESHA Conclusion

The project, as conditioned, is consistent with the LCP because it avoids removal and disruption of central maritime chaparral and redwood forest habitats on the site and clusters development in the least environmentally sensitive area of the site. The project, as conditioned, also protects and enhances surrounding habitat through the implementation of invasive plant control measures and minimizes the area of disturbance during construction activities. A deed restriction is required assuring resource protection in perpetuity within the project parcel. Only as conditioned will the project ensure the biological continuance of the central maritime chaparral and redwood forest habitats and be consistent with the ESHA protection provisions of the LCP.

2. Visual Resources

Relevant LCP Provisions

LUP Key Policy 3.2.1. *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.*

LUP Policy 3.2.2.1. *Critical viewshed: everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and the following specific locations Soberanes Point, Garrapata Beach, Abalone Cove Vista Point, Bixby Creek Turnout, Hurricane Point Overlook, upper Sycamore Canyon Road (Highway 1 to Pais Road), Pfeiffer Beach/Cooper Beach, and specific views from Old Coast Road as defined by policy 3.8.4.4.*

LUP Policy 3.2.3.A.2. *The best available planning techniques shall be used to permit development of parcels partially in the critical viewshed. These may include clustering of structures, sensitive site design, design control, transfer of development credits, and other techniques designed to allow development on such parcels outside the critical viewshed.*

LUP Policy 3.2.3.A.3. *Where it is determined that an alternative building site on a parcel would result in conformance to the Key Policy, then the applicant will be required to*

modify his proposal accordingly. Similarly, changes in the design, height, or bulk of proposed structures will be required where this will result in an approvable project.

LUP Policy 3.2.3.A.4. *New roads, grading or excavations will not be allowed to damage or intrude upon the critical viewshed. Such road construction or other work shall not commence until the entire project has completed the permit and appeal process. Grading or excavation shall include all alterations of natural landforms by earthmoving equipment. These restrictions shall not be interpreted as prohibiting restoration of severely eroded water course channels or gullying, provided a plan is submitted and approved prior to commencing work.*

LUP Policy 3.2.3.A.8. *Landowners will be encouraged to grant scenic easements to the County over portions of their land in the critical viewshed.*

LUP Policy 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.*

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

LUP Policy 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.*

LUP Policy 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.*

CIP Section 20.145.030.A.2.b. *Planning techniques, including clustering of structures, sensitive site design, design control, and/or transfer of development credits shall be utilized to permit development of parcels located partially within the critical viewshed where such development will not intrude on the critical viewshed. (Ref. LUP Policy 3.2.3.A.2)*

CIP Section 20.145.030.A.2.c. *Development proposals shall be modified for design, height, and/or bulk, or shall be re-sited, where such modifications will result in a project*

which does not intrude on the critical viewshed. (Ref. LUP Policy 3.2.3.A.3)

CIP Section 20.145.030.A.2.e. *Development of new roads, improvement to an existing road requiring more than 100 cubic yards of grading, or development of grading or excavations which require a coastal development permit, including all alterations of natural landforms by earth-moving equipment, will not be allowed to damage or intrude upon the critical viewshed. Such road construction or other work shall not commence until the entire project has completed the permit and appeal processes. These restrictions shall not be interpreted as prohibiting restoration of severely eroded water course channels or gullying, provided a plan is submitted and approved prior to commencing work. (Ref. LUP Policy 3.2.3.A.4)*

CIP Section 20.145.030.A.2.g. *Landowners shall be required to grant scenic easements to the County over portions of their land in the critical viewshed, as a condition of permit approval. To this effect the owner or applicant shall submit a "Critical Viewshed Map" for the Planning Department's approval prior to the application being determined complete. The map shall delineate those portions of the parcel which are in the critical viewshed as defined in Section 20.145.020.V. The scenic easement over those areas shall be required as per Section 20.142.130. (Ref. LUP Policy 3.2.3.A.8)*

CIP Section 20.145.030.A.2.h. *Landowners shall be required as a condition of project approval to grant scenic easements to the County over existing vegetated areas without which the proposed development would be located within the critical viewshed. The scenic easements shall be required in accordance with the provisions of Section 20.142.130.*

CIP Section 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. LUP Policy 3.2.4.A.l)*

CIP Section 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 or silhouetted ridges. Sites shall not leave excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover. (Ref. LUP Policies 3.2.4.A.2, 3.7.3.A.l, and 5.4.3.L.4.)

CIP Section 20.145.030.C.2.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 modifications will provide for greater blending with the surrounding environment. (Ref. LUP Policy 3.2.4.A.3)

CIP Section 20.145.030.C.2.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. LUP Policy 3.2.4.A.5)*

a. Consistency Analysis

The Big Sur LCP is highly protective of the critical viewshed, which includes everything within site of Highway 1 and major public viewing areas. The key visual resource policy in the Big Sur LUP recognizes the Big Sur coast's outstanding beauty and great benefit to the people of California and the nation and prohibits all development in the critical viewshed. Various other LCP provisions require, among other things, siting of development on the least visible portion of a site, clustering of structures when necessary to avoid intrusion in the critical viewshed, utilizing topography to screen structures from view, and recording scenic easements over all portions of private land in the critical viewshed.

The subject parcel rises from Rocky Creek Canyon in the south and is highly visible from Highway 1 and the world-famous vantage points of Hurricane Point and Bixby Bridge. As a result of the prominence of the parcel in the viewshed, a conservation and scenic easement was recorded for those portions of the property within the critical viewshed as a condition of approval for the Rocky Creek Ranch lot line adjustment in 1992 (Monterey County permits LL90032/33 and LL88010). The easement prohibits structural development within the critical viewshed; however, it allows for a structure to be erected within the easement area provided that it can be "proven to be out of the critical viewshed and does not require significant vegetation removal increasing exposure to the critical viewshed." These terms reflect the fact that the boundary of the easement was an approximation of the portions of the site within the critical viewshed, and that project specific analyses would be required to ensure that future development would not extend within the viewshed.

As approved by the County (and as shown in Exhibits C and D), the garage, shed, Steven's studio, half of Gillian's studio, the pool, and pathways to the pool and Steven's studio are sited within the easement area and have the potential to be visible from Highway One and the Hurricane Point turnout. In addition, the primary residence, which is not within the previously established easement area, may be visible from Highway One as well as the Hurricane Point and Bixby Bridge turnouts because of its location on the ridge crest (see Exhibit E). The County approval relies on existing trees and vegetation to ensure that these structures will not be visible in the critical viewshed, and includes a condition that requires maintenance and replanting of this vegetation as necessary if any part of the development becomes visible, and removal of visible structures if vegetation is not adequately maintained or replaced.

This approach is inconsistent with LCP requirements to site development on the portion of a

parcel "least visible" from public viewpoints in order to absolutely guarantee no potential impacts to the critical viewshed. And although such a condition may ensure that the structures are adequately screened during daytime hours (particularly because of distance between the development and vantage points and muted, non-reflective building materials and colors), the possibility exists that lights from the development may be visible at night through screening vegetation. The vegetation that the County relied on for screening of each of the structures consists of younger oaks and chaparral scrub, as shown in Exhibit F. The applicant conducted a test of the visibility of lights at night and determined that no lights were visible from Hurricane Point or Bixby Bridge. However, this test simulated exterior lighting conditions with one 100-watt bulb on each of the main house, Steven's studio, Gillian's studio, and garage, and four pathway lights on the driveway leading to the garage. This test did not take into account the full extent of interior lighting that could be visible through any number of windows on these structures, or lighting of the pool area or other pathway areas. Furthermore, on visits to the site, staff was able to view Highway 1 and Hurricane Point through much of this vegetation, and therefore, it is reasonable to expect that lights from the development would be visible from these vantage points (see Exhibit F). As a result, the development could result in scattered points of light or an overall glow though the vegetation that would impact the critical viewshed and be inconsistent with the LCP.

LUP Policy 3.2.3.A.3 requires that "where it is determined that an alternative building site on a parcel would result in conformance with the Key Policy, then the applicant will be required to modify his proposal accordingly." Similarly, LUP Policy 3.2.4.A.2 states that the "portion of a parcel **least visible from public viewpoints** (emphasis added) will be considered the appropriate site for the location of new structures." An approximately 3.3-acre alternative building site (described in the ESHA section of this report) exists on the parcel on the backside of the ridge that is not only outside areas of ESHA and an ESHA buffer, but is also completely outside the critical viewshed and existing scenic easement area, and includes ample area to develop. Use of this alternative building site would also allow for the clustering of structures, required by the LCP to avoid intrusion on the critical viewshed. Relocating development from the front of the ridge will also ensure that visual continuity of the ridgeline/skyline remains undisturbed, as required by LUP Policy 3.2.4.A.1.

Locating the proposed project in this alternative development area, as required by Special Condition 1a, ensures project consistency with the provisions of the LCP that prohibit any development that has any likelihood of visibility in the critical viewshed. Furthermore, Special Conditions 1b and 1c require design elements that are subordinate to and blended to the environment and a lighting plan that fully controls off-site illumination and glare. Such an approach is the most protective of the scenic beauty of Big Sur, and will ensure in perpetuity that the proposed development will not intrude into the viewshed.

b. Conclusion

The main house, the garage, shed, Steven's studio, Gillian's studio, the pool, pathways to the pool and Steven's studio, and associated lighting have the potential to intrude into the critical

viewshed, particularly at night, contrary to LCP scenic and visual resource protection policies. Therefore, the conditions of this permit require that the development be contained within a 3.3-acre development envelope on the backside of the ridge outside of the critical viewshed and that the remainder of the site outside the allowable building envelope be maintained as a habitat protection and enhancement area (described in the ESHA section of this report) to preserve the scenic qualities and views of the site. Only as conditioned is the project consistent with LCP visual resource protection provisions.

3. Hazards

Relevant LCP Provisions

LUP Key Policy 3.7.1. *Land use and development shall be carefully regulated through the best available planning practices in order to minimize risk to life and property and damage the natural environment.*

LUP Policy 3.7.2.3. *All development shall be sited and designed to minimize risk from geologic, flood, or fire hazards to a level generally acceptable to the community. Areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development. For any development proposed in high hazard areas, and environmental or geotechnical report shall be required prior to County review of the project.*

LUP Policy 3.7.2.4. *In locations determined to have significant hazards, development permits should include a special condition requiring the owner to record a deed restriction describing the nature of the hazard(s), geotechnical and/or fire suppression mitigations and long-term maintenance requirements.*

LUP Policy 3.7.3.C.2. *New developments shall be avoided in extreme wildfire hazard areas as determined by site-specific assessment.*

LUP Policy 3.7.3.C.3. *New development proposals or development inducing projects which would not be served by adequate fire protection services, public or private roads, or water for fire suppression should be limited to a low-intensity commensurate with such increased risk.*

Consistency Analysis

Fire is an integral part of the ecology of the Big Sur area, primarily because the scrub and chaparral vegetation that dominates the landscape is dependent on fire for survival. As such, the hazards policies of the LCP reflect the need to protect development from risks associated with wildfires. These policies are clear that new development should not be sited in areas of high fire hazard.

The majority of the subject parcel and the slopes of all adjacent parcels consist of dense scrub

and chaparral vegetation. Much of this vegetation relies on fire for seed release, and the leaves and bark of scrub/chaparral plant species contain flammable resins that encourage combustion and burning. Ridge crests in Big Sur are particularly vulnerable to fire danger because fires tend to spread more rapidly uphill than downhill, and the steeper the slope, the more pronounced the effect. In the steep terrain of Big Sur, fires tend to "run" very quickly uphill and are often impossible to stop. However, they slow at ridgecrests and move slowly down the other side.[13] The longer the interval between fires, the greater the risk of a particularly intense and destructive fire because of the large amount of highly flammable dead vegetation.

As approved by the County, certain aspects of the proposed development (in particular, the main house, Steven's studio, Gillian's studio, garage, and shed) would be located on or just below the ridge, within or immediately adjacent to maritime chaparral habitat (see Exhibit F). For the reasons just described, the proposed development would be particularly at risk of fire because of its location on a ridgecrest above an area dominated by scrub and chaparral vegetation. Staff observed evidence of fire on the root burls of several large, mature manzanitas near the proposed main house site, indicating that past fire(s) have occurred on the site and that some time has elapsed between the present and most recent fire; it appears from the scarred root burls and the age of the manzanitas that a fire occurred within the last 50-100 years. Subsequently, a significant amount of dead vegetation can be presumed built up on the property. For these reasons, the project site is particularly vulnerable to fire.

As previously discussed in the ESHA section of this report, the County acknowledged that the vegetation in this area is maritime chaparral and ESHA; as such, the County (in coordination with CDF) placed a condition on the project to thin (not completely remove) combustible vegetation within 30 feet of structures. Such fuel modification may minimize the risks to the proposed development in the event of a fire, but the LCP requires a more protective approach through avoidance of development altogether in high fire hazard areas. LUP Policy 3.7.2.3 states that areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development, and LUP Policy 3.7.3.C.2 specifically states that new developments shall be avoided in extreme wildfire hazard areas. The presence of coastal scrub and maritime chaparral vegetation covering the entire slope of the parcel, in conjunction with the orientation of proposed development within and immediately adjacent to these habitats on the ridge crest is inconsistent with these policies because it places development in immediate risk of fire.

In this case, an alternative building site exists on the property that is on the backside of the ridge crest and outside the fire-dependent chaparral habitat. As discussed in the ESHA and visual resource findings of this report, the applicant is required to relocate all development to this approximately 3.3-acre development area for project consistency with the ESHA and critical viewshed provisions of the LCP. Locating the project in this area is also necessary for consistency with the hazards policies of the LCP. As discussed in the ESHA findings, this building envelope is located 200 feet from the edge of maritime chaparral. Such a distance not

[13] Henson, P. and Usner, D. 1993. The Natural History of Big Sur. p. 237. UC Press, Berkeley, CA.

only protects this habitat from the impacts of development, but also protects the development from the fire hazards associated with chaparral.

Conclusion

The County-approved project locates the main house, Steven's studio, Gillian's studio, garage, shed, and pool within and immediately adjacent to highly flammable scrub and chaparral vegetation on the crest of a ridge, contrary to LCP hazards policies that prohibit new development in areas of high fire danger. In order for the project to be consistent with the LCP, Special Condition 1a of this permit requires that all development be re-sited within a 3.3-acre development envelope on the backside of the ridge. Only as conditioned is the project consistent with LCP hazards provisions.

4. Violation

In late 2004 and early 2005, approximately 1,600 square feet of central maritime chaparral was disturbed and removed on the site without permits. This vegetation removal, in the form of both manual removal/chipping and herbiciding, occurred at the sites of the proposed pool/patio, main house, Steven's studio, Gillian's studio, garage, shed, and garden area. According to the applicant, this vegetation was removed for the purpose of ground surveying and staking of proposed structures. Monterey County enforcement staff opened a code enforcement file (CE050029) regarding major vegetation removal including central maritime chaparral, an ESHA. The applicant prepared a restoration plan, but since the time of vegetation removal, some of the habitat has begun to naturally revegetate itself. The County determined that further restoration beyond what was naturally occurring was not necessary. The code enforcement file was closed in December 2005 by the Planning and Building Inspection Department Director. The Monterey County Planning Commission subsequently approved the project on February 22, 2006. Additional restoration of the areas subject to the violation was not included as part of the County approval because these areas were approved for development.

The County approval was appealed to the Coastal Commission on March 29, 2006, and Commission enforcement staff opened violation case #V-3-07-001 on January 8, 2007 in response to the unpermitted vegetation removal. The project, as detailed in this report, has been conditioned to relocate development from the areas of unpermitted vegetation removal because of LCP inconsistencies with ESHA, visual resources, and hazards policies. Coastal Commission consideration of this application has been based on the certified Monterey County LCP. Review of this permit does not constitute a waiver of any legal action with regard to the violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

5. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in

conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effects which the activity may have on the environment. Beyond this, the Secretary of Resources has certified the Coastal Commission's review and analysis of land use proposals as being the functional equivalent of environmental review under CEQA.

Monterey County is the lead agency for the project. On November 17, 2005, County staff completed an initial study for the project that concluded that, with the addition of mitigation measures, the project would not have significant environmental impacts. The County subsequently filed a Mitigated Negative Declaration for the project on December 1, 2005.

In the course of application review, several potential environmental impacts were identified and are discussed in the findings of this staff report, which are incorporated herein as set forth in full. These include removal and disruption of ESHA, potential visual resource impacts, and placement of development in an area of high wildfire hazard. Conditions of this permit reduce the potential for such impacts to an insignificant level. Alternatives to the project that would locate development in areas of the site other than the area required by Special Condition 1a of this permit would be inconsistent with the Big Sur LCP ESHA, visual, and hazards policies. No other areas exist on the site that would be consistent with these policies because of the orientation of the parcel and prominence in the critical viewshed, the presence of steep slopes and sensitive habitat, and the existence of high fire danger on all other areas of the site. The no-project alternative would not meet the objectives of the applicant to develop a single family residence on the site. Accordingly, the Commission finds that, as conditioned by this permit, the proposed project is the most feasible alternative and will not have any significant adverse effects on the environment within the meaning of CEQA. The Commission also finds that the project will not result in cumulative impacts to the resources described above because, as designed and conditioned, the project's incremental effect is not considered to be cumulatively considerable as defined by CEQA.