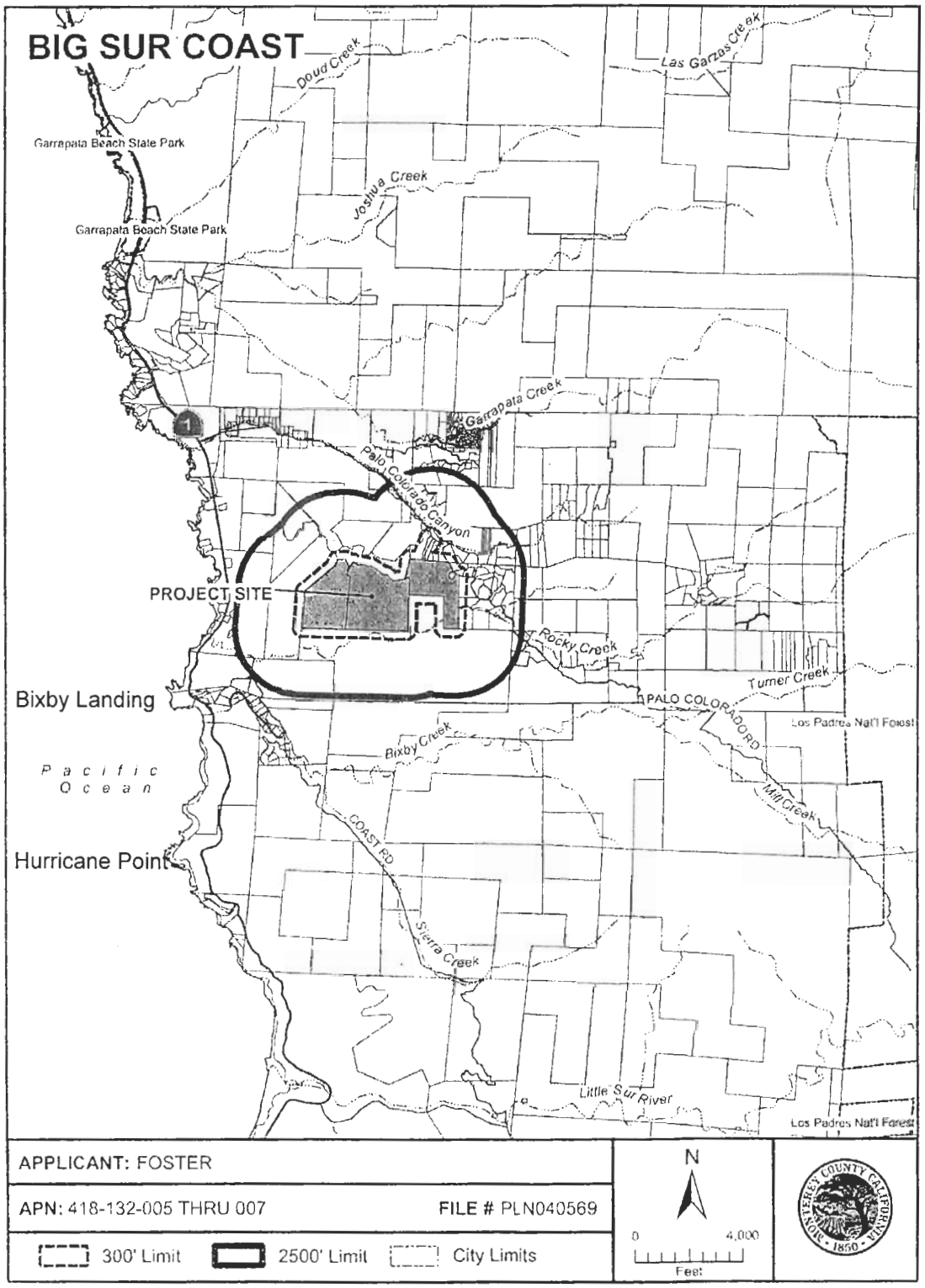
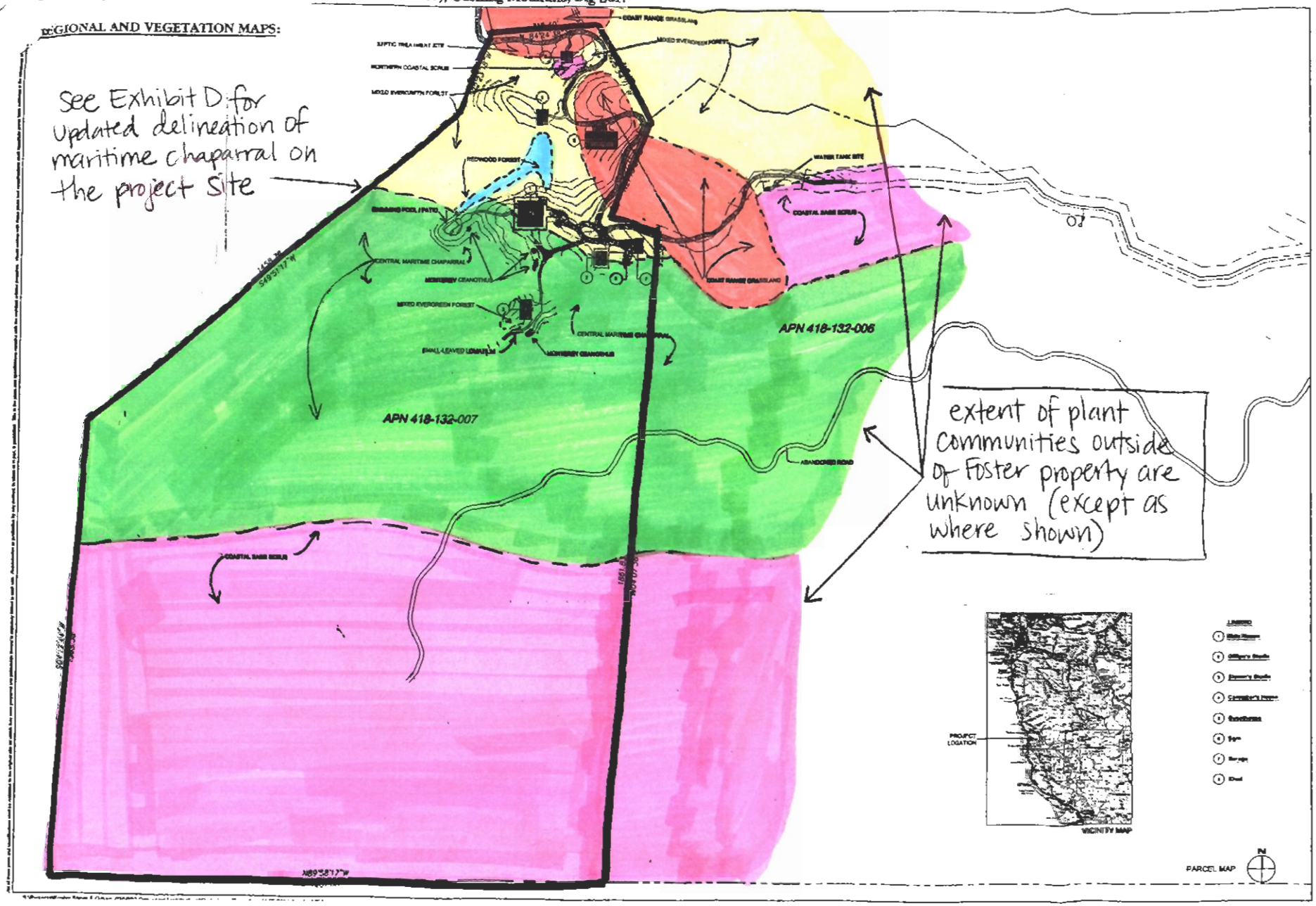


Source: Monterey County Planning and Building Inspection Department

Exhibit A
Regional Location Map

Preliminary Biological Report: Foster property (APN 418-132-007), Cushing Mountain, Big Sur.

REGIONAL AND VEGETATION MAPS:



Legend

- central maritime chaparral
- coastal sage scrub/northern coastal scrub
- coast range grassland
- mixed evergreen forest
- redwood forest
- Foster property

Project Site Plan and Vegetation Communities

CCC Exhibit B

(page 1 of 1 pages)

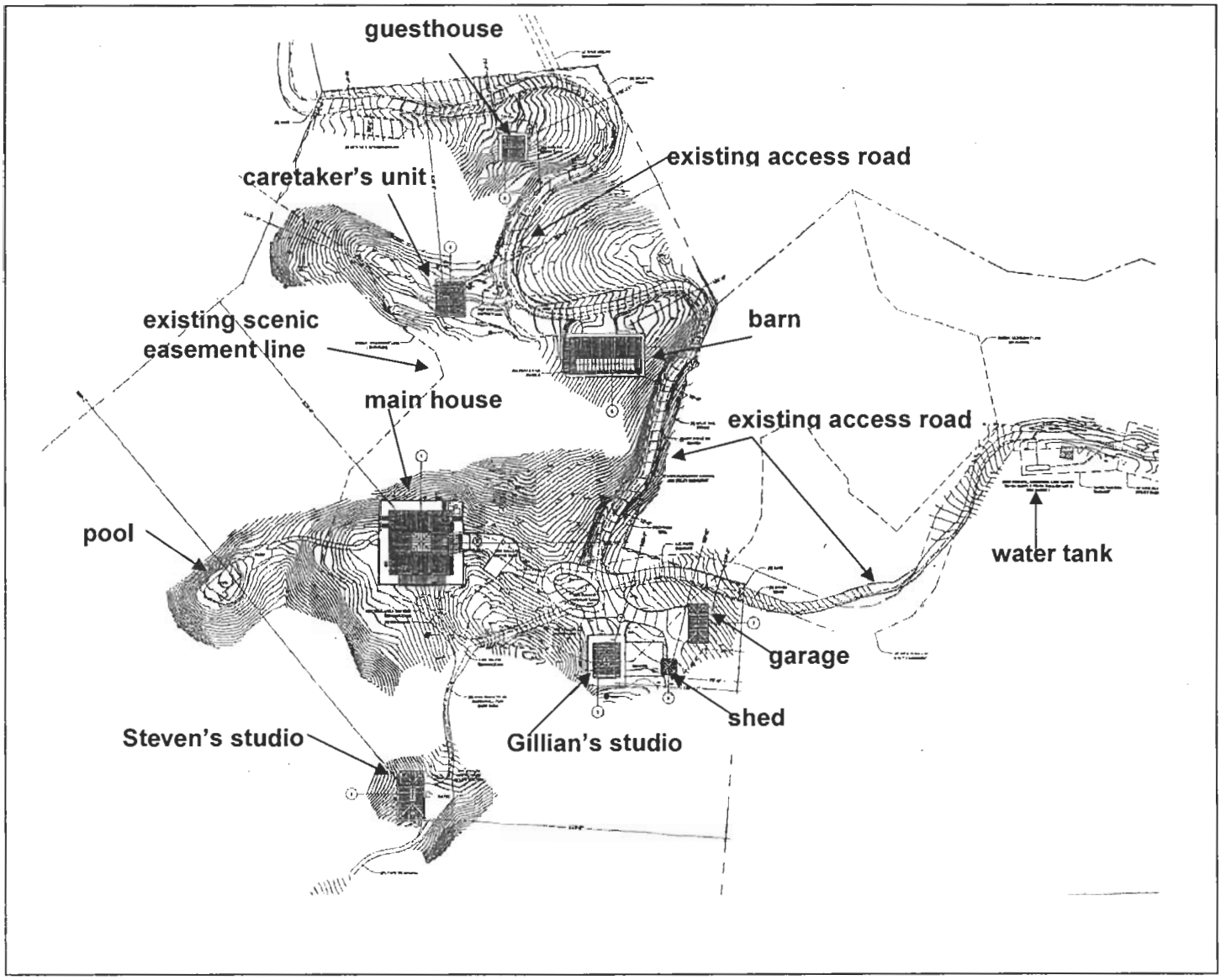
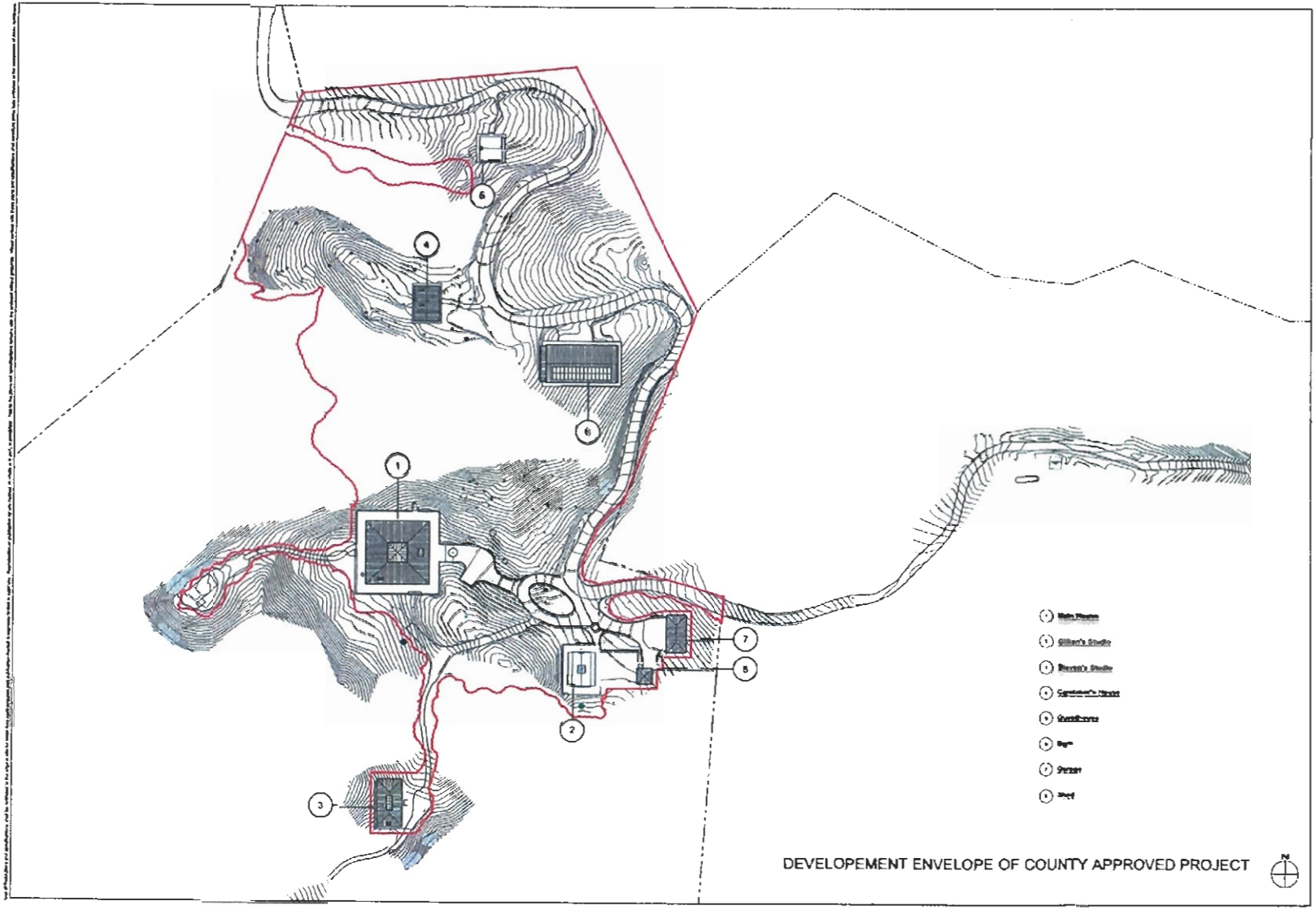
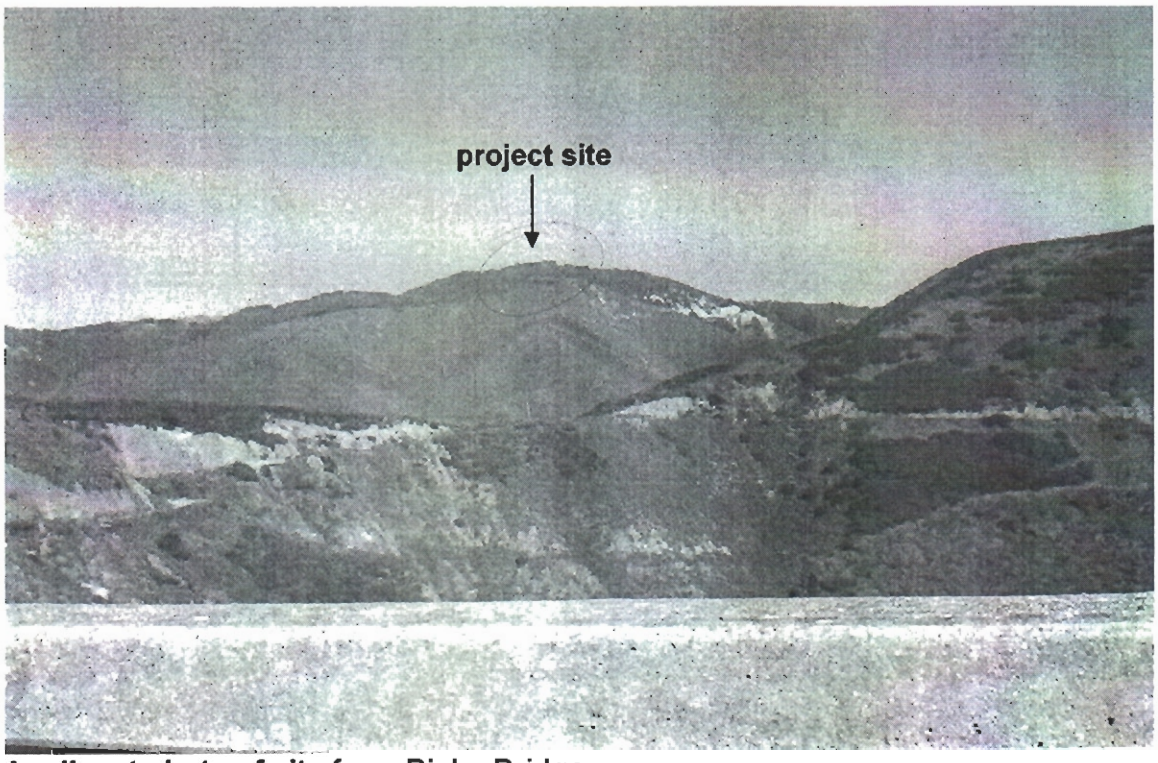


Exhibit C
Site Plan Details

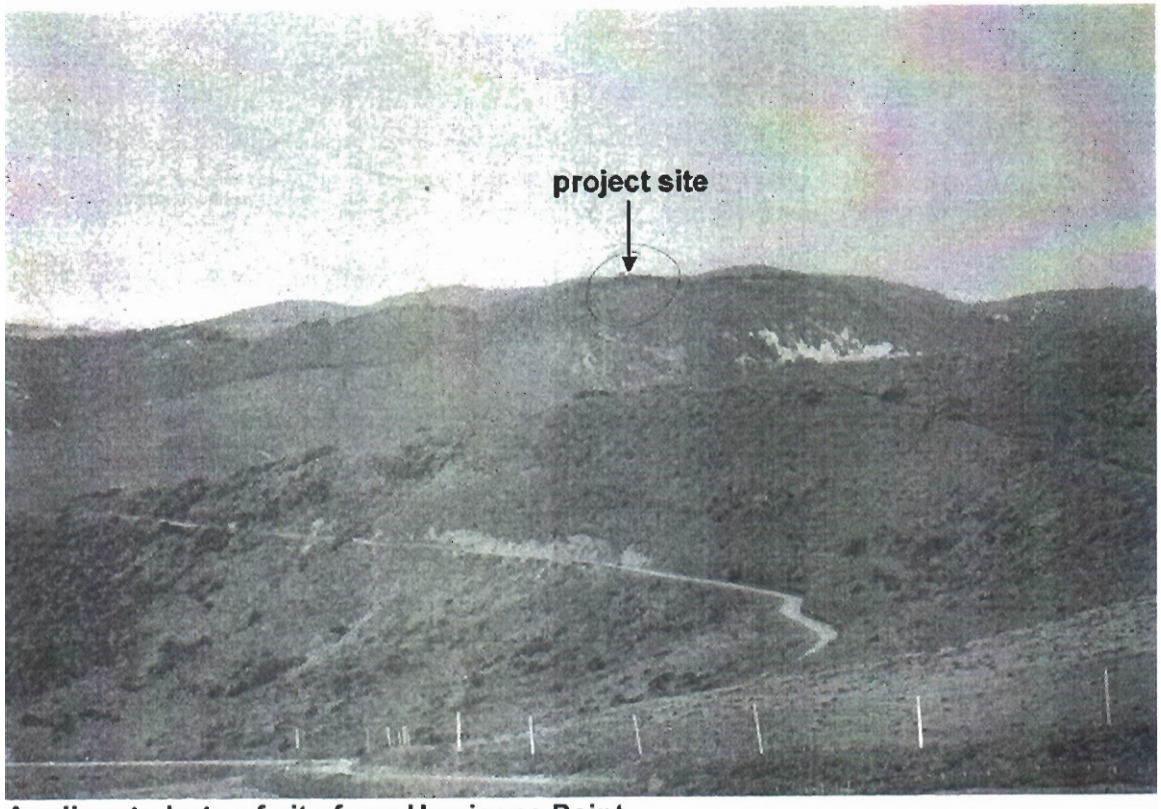


THESE MATERIALS HAVE BEEN PROVIDED TO THE COASTAL COMMISSION STAFF

CCC Exhibit D
(page 1 of 1 pages)



Applicant photo of site from Bixby Bridge

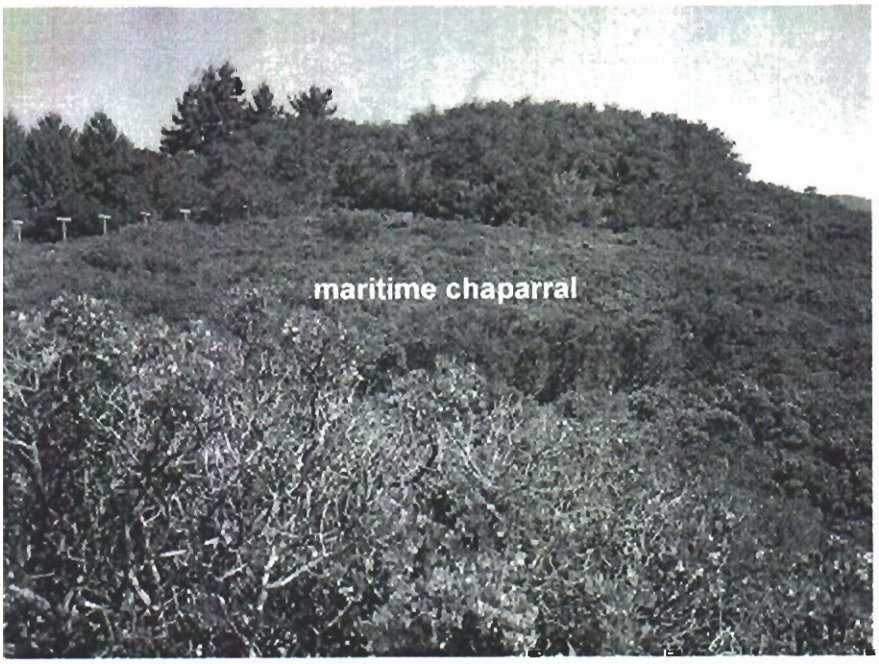


Applicant photo of site from Hurricane Point

Exhibit E
Applicant Photos of Site from Bixby Bridge and Hurricane Point

Main house site

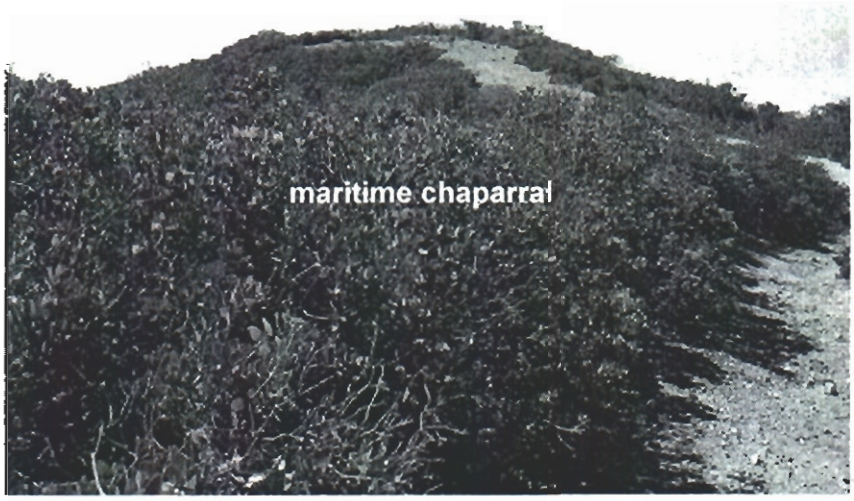
Main house site



View east from pool site to main house site

Exhibit F
Staff Photos of Site

A-3-MCO-06-018
Foster



View west down path to pool site

View south from main house site to Steven's studio site

Gillian's studio site

Barn site

Caretaker's unit site

Guesthouse site

Existing access road along northern corner of property.

Backside of ridge (outside of maritime chaparral and viewshed)

Exhibit F
Staff Photos of Site
Page 4 of 4

PLANNING COMMISSION
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RECEIVED
MAR 15 2006
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

FINAL LOCAL
ACTION NOTICE
REFERENCE # 3-MCO-06-094
APPEAL PERIOD 3/16-3/29/06

RESOLUTION NO. 06012

A.P. #418-132-007-000
418-132-006-000
418-132-005-000

FINDINGS AND DECISION

In the matter of the application of
STEVEN FOSTER TR (PLN040569)

for a Coastal Development Permit in accordance with Title 20.1 (Monterey County Coastal Implementation Plan Ordinances) Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow a new 3,975 square foot single family residence and accessory structures including a 3,200 square foot barn with solar panels; 225 square foot shed; and 800 square foot garage; 1,200 square foot studio; 1150 square foot studio; septic system; pool and well; 2) a Coastal Administrative Permit to allow a 425 square foot guesthouse; 3) a Coastal Development Permit to allow a 850 square foot caretaker's unit; 4) a Coastal Development Permit to allow tree removal (14 coast live oaks; 4 canyon oak and 1 redwood); 5) Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat (maritime chaparral); Design Approval and associated grading (approximately 1,850 cubic yards cut/625 cubic yards fill), retaining walls, underground utilities, underground water tank on lot 6 (Assessor's Parcel Number 418-132-006-000) , and hook up to existing well on Lot 5 (Assessor's Parcel Number 418-132-005-000). The property is located at 4855 Bixby Creek Road (Lot 7), Carmel (Assessor's Parcel Number 418-132-007-000), of Rocky Creek Ranch, off of and southwesterly of Rocky Creek Road and Palo Colorado Road, Big Sur Coast Land Use Plan, Coastal Zone.

Said Planning Commission, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING – CONSISTENCY:** The subject Coastal Development Permit (PLN040569/Foster) has been processed in accordance with all applicable requirements.
EVIDENCE:
(a) On November 17, 2004, Steven and Gillian Foster filed an application for a Combined Development Permit requesting entitlements to construct a single family house, two detached studios, a detached garage, barn, a caretaker's unit and a guest house on an existing 78-acre parcel. The application was deemed complete on April 26, 2005.

(b) The project site, owned by Steven and Gillian Foster, is located at 4855 Bixby Creek Road (Assessor's Parcel Number 418-132-007-000), Big Sur, Coastal Zone, in the County of Monterey (the property).

(c) LUAC. On December 14, 2005 the Big Sur Land Use Advisory Committee recommended approval of the project by a vote of 7-0 with no conditions.

(d) CEQA. Although a single family residence is categorically exempt from review, the County determined that there are unusual circumstances that warranted further review. An Initial Study was prepared, which determined that no significant impacts would result from this project with implementation of mitigation measures. See **Finding 10**.

(e) Planning Commission. On January 25, 2006, the Monterey County Planning Commission considered findings, evidence, and conditions for approving a Coastal Development Permit (PLN040569/Foster) in the Big Sur Coastal Land Use Plan area.

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

EVIDENCE:

(a) Land Use. Steven and Gillian Foster own a 78-acre parcel that is located approximately 10 miles south of Carmel on Bixby Creek Road, a private road off of Palo Colorado Road approximately 2.5 miles inland from Highway 1. The text and policies of the Big Sur Coast Land Use Plan and the Monterey County General Plan have been evaluated during the course of the review of this application. No conflict or inconsistencies with the text or the policies were found to exist. No testimony, either written or oral, was received during the course of public hearing to indicate that there is any inconsistency with the Big Sur Coast Land Use Plan or the Monterey County General Plan.

(b) Zoning. The site is zoned Watershed Scenic Conservation with a 40 acre minimum lot size with a Design Control Overlay, Coastal Zone [WSC/40-D(CZ)].

(c) Permits. The project generally involves an application for permits to develop a 3,975 square foot single family home with a detached garage, two detached art stuios (approximately 1,200 square feet each), a 850 square foot caretaker unit, a 425 square foot guest house, and a detached barn. Grading involves 1,850 cubic yards of cut and 625 cubic yards of fill. Nineteen trees will be removed. Entitlements for the proposed project include:

- Coastal Administrative Permit to allow new single family residence.
- Coastal Administrative Permit to allow a guest house.
- Coastal Development Permit to allow a caretaker unit.
- Coastal Development Permit to remove 18 oak trees and 1 redwood tree.
- Design Approval.

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

(1) 1982 Monterey County General Plan, as amended.

(2) Big Sur Coast Land Use Plan

CCC Exhibit 6
(page 2 **of** 40 **pages)**

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

(4) Monterey County Coastal Implementation Plan – Part 1 (Zoning Ordinance - Title 20), which establishes regulations for:

- Watershed Scenic Conservation (Chapter 20.17).
- Design Control (Chapter 20.44).
- Guesthouses(Chapter 20.64.020)
- Caretaker Units (Chapter 20.64.030)
- Development in Environmentally Sensitive Habitat (Chapter 20.66.020).

(e) Development Standards. Review of the site plans indicate that the proposed structures comply with required setback, height, distance between buildings and site coverage requirements. Maximum building site coverage for the WSC zone is 10% and the proposed project has a coverage of 0.35% (11,825 square feet).

(f) Scenic Resources. The proposed building sites would not be located within a "critical viewshed" in that they are sited outside areas visible from Highway One through topography or screening by existing vegetation. Two structures, which are located in a recorded conservation and scenic easement area, could be visible from Highway One if existing vegetation is removed. The easement allows structures to be erected in the easement area provided the structure is located outside the critical viewshed and does not require significant vegetation removal that would increase exposure to the critical viewshed. The proposed structures are not sited on open hillsides or silhouetted ridges and would not visually impinge upon adjacent neighbor's views. Mitigation measures that require tree protection, lighting plans and use of non-reflective windows and surfaces will mitigate the impact to a less than significant level. In addition, if trees screening the studio were to be removed or destroyed, and could not be replace within six months, then a mitigation measure requires removal of the structure. The project as designed, mitigated or conditioned would not result in critical viewshed or other visual/aesthetic impacts and would be consistent with the Visual Resources policies of the BSC LUP. The area adjacent to the proposed building area has an existing conservation easement (20.145.040.B.2 CIP) to preserve the habitat and scenic qualities of the area. No new easement is required.

(g) Design. The proposed structures have been sited and designed, including building materials and colors, so as no to detract from the natural beauty of the undeveloped skyline and ridgeline (Section 20.145.030.C.2a CIP) or impact the views and privacy of neighbors (Section 20.145.030.C.2b CIP), and are located where existing trees provide natural screening (Section 20.145.030.C.2b CIP).

(h) Environmentally Sensitive Habitat (ESHA). As conditioned, the proposed project is consistent with regulations for development adjacent to environmentally sensitive habitats (Section 20.145.040 CIP). Although a small amount of central maritime chaparral, an environmentally sensitive habitat area (ESHA), has been and will be removed for development, this removal and siting of new development adjacent to this EHSA would not result in a significant disruption of habitat nor would it adversely impact the habitat's long-term maintenance (Section 20.145.040.B.5 CIP) based on the biologist's review. With implementation of a revegetation mitigation, the project would not contribute considerably to cumulative impacts to

central maritime chaparral ESHA. The following biological assessments were prepared for the subject site in accordance with Section 20.145.040.A CIP:

1. Jeff Norman. November 22, 2004. "Preliminary Biological Report: Foster Property (APN 418-132-007), Cushing Mountain, Big Sur."
2. Jud Vandevere.
   a. March 9, 2005. Letter to Monterey County Planning and Building Inspection Department regarding "Performance Criteria and Cost Estimate for Restoration; Foster Project-File No.: PLN040569 (APN 418-132-007-000).
   b. March 22, 2005. Letter to Monterey County Planning and Building Inspection Department regarding "Foster Project-File No.: PLN040569 (APN 418-132-007-000).
   c. May 1, 2005, June 22, 2005 and July 22, 2005. Letters to Monterey County Planning and Building Inspection Department regarding plant census; Foster Project-File No.: PLN040569 (APN 418-132-007-000) for April, May, and July, respectively.
   d. July 25, 2005. Letter to Monterey County Planning and Building Inspection Department regarding "Foster Project-File No.: PLN040569 (APN 418-132-007-000) Restoration Plan."
   e. September 29, 2005. Letter to Monterey County Planning and Building Inspection Department regarding "Foster Project-File No.: PLN040569 (APN 418-132-007-000) Habitat Impacts."

(i) Land Use Advisory Committee: The Big Sur Coast Land Use Advisory Committee voted 7-0 to recommend approval of the project. LUAC meeting minutes dated _December 14, 2004 (**Exhibit D**).

(j) Site Visits. County staff conducted on-site inspections to review that the subject parcel conforms to the plans listed above.

(k) Application. The application, plans, and support materials submitted by the project applicant to the Monterey County Planning and Building Inspection Department for the proposed development, found in Project File PLN040569.

3. **FINDING – SITE SUITABILITY**: The site is physically suitable for the proposed use.

EVIDENCE:

(a) Site Inspection. The project planner conducted an on-site inspection to assess work completed prior to issuance of a permit and remaining work to be completed.

(b) Agency Review. The project has been reviewed by the Monterey County Planning and Building Inspection Department, Water Resources Agency, Public Works Department, Parks Department, and Environmental Health Department. The project has also been reviewed by California Department of Forestry (CDF), and the Department of Fish and Game and Coastal Commission as part of the public environmental review process. There has been no indication from these agencies that the site is not suitable. Conditions recommended by these agencies have been incorporated to the project conditions.

(c) Professional Reports. Reports by an archaeologist, biologist (see Finding 10 for list of biological reports) a geologist and a geotechnical engineer indicate that there are no physical or environmental constraints that would indicate the site is not suitable for the proposed use:

- Archaeological Consulting. August 3, 2004. "Preliminary Archaeological Reconnaissance for Proposed Development Areas of APN 418-132-007, Near Big Sur, Monterey County, California."
- Geoconsultants, Inc.
  1. October 20, 2004. "Geologic Reconnaissance and Update Report, Foster Residence APN: 418-132-007, Rocky Creek Ranch, Big Sur, Monterey County, California."
  2. September 28, 2005. Letter to Carver + Schickentaz Architects regarding "Geologic Reconnaissance and Update Report Foster Residence, Lot 7."
- Grice Engineering, Inc. October 2004. "Geotechnical Soils-Foundation & Geoseismic Report for the proposed Foster Residence, 4855 Bixby Creek Road, Carmel, California, APN 418-132-007."

4. **FINDING – CARETAKER UNIT.** As designed and conditioned, the proposed caretaker unit meets the requirements of the Zoning Ordinance as outlined in Section 20.64.30.

EVIDENCE:

(a) The site plan and floor plan show consistency with Section 20.64.030.

(b) The project is consistent with Section 20.145.140.B.4.b.2 of the Big Sur Coastal Implementation Plan in that is meets the criteria for allowing a caretaker unit stated therein. This conclusion is based on a letter submitted by the applicant as part of the project application stating that the large amount of onsite facilities and equipment need ongoing maintenance for the benefit of the applicants who reside in Los Angeles and will periodically visit, and that the access road and large site will need constant maintenance with regards to landscape/weed control and roadway maintenance during the winter.

(c) The project is consistent with Section 20.145.140.B.4.b.10 of the Big Sur Coastal Implementation Plan in that is meets the criteria for allowing a caretaker unit stated therein. Approving this caretaker unit will represent the 23rd caretaker unit approved since adoption of the Big Sur Land Use Plan which does not exceed the 50 unit limit contained in the plan.

(d) A condition of project approval will require a deed restriction stating the requirements of this section.

5. **FINDING – GUESTHOUSE.** As designed and conditioned, the proposed guest house meets the requirements of the Zoning Ordinance as outlined in Section 20.64.020.

EVIDENCE:

(a) The site plan and floor plan show consistency with Section 20.64.020.

(b) A condition of project approval will require a deed restriction stating the requirements of this section.

6. **FINDING - TREE REMOVAL.** The proposed project minimizes tree removal in accordance with the applicable goals and policies of the Big Sur Coast Land Use Plan and Coastal Implementation Plan (Part 3).

EVIDENCE:

(a) The project will result in removal of 18 existing oak trees and one small redwood tree. All trees are under 12 inches in diameter in size except for 2 oak trees which

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are under 24 inches in diameter. None of the trees to be removed are landmark trees, and removal would not result in exposure of structures in the critical viewshed.

(b) A Forest Management Plan has been prepared in accordance with Zoning Ordinance requirements (section 20.145.060.B). Tree replacement for trees 12 inches in diameter or larger is proposed at a 2:1 ratio that exceeds County requirements for replacement on a 1:1 basis.

(c) Forest Management Plan by Staub Forestry and Environmental Consulting, dated November 2004. Report is in Project File PLN020561.

7. **FINDING - PUBLIC ACCESS.** The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). The proposed project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 and Section 20.145.150 of the Big Sur Coastal Land Use Plan and Coastal Implementation Plan.

EVIDENCE:

(a) The subject property is not described as an area where the Local Coastal Program requires access.

(b) The subject property is not indicated as part of any designated trails or shoreline access as shown in Figure 2, the Shoreline Access Map, of the Big Sur Coast Land Use Plan.

(c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.

(d) Staff site visits.

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

EVIDENCE:

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

(b) Professional Reports. Recommended conditions and modifications from consulting geotechnical consultants provide additional assurances regarding project safety. These technical reports are in Project File PLN050569.

(c) Preceding findings and supporting evidence.

9. **VIOLATION**: The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision and any other applicable provisions of the County's zoning ordinance. As a result of the vegetation removal Monterey County staff

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opened a code enforcement file (CE050029) in early 2005 and required restoration. A restoration plan was prepared, but since some of the area has begun to naturally revegetate itself, further restoration beyond what was naturally occurring was not deemed necessary by the applicant's consulting biologist. The code enforcement file was closed in December 2005 by the Planning and Building Inspection Department Director.

EVIDENCE:

(a) Staff verified that the subject property is in compliance with all rules and regulations pertaining to the use of the property, that no violations exist on the property and that all zoning abatement costs, if any have been paid.

10. **FINDING – CEQA/MITIGATED NEGATIVE DECLARATION**: On the basis of the whole record before the Planning Commission there is no substantial evidence that the proposed project as designed, conditioned and mitigated, will have a significant effect on the environment. The mitigated negative declaration reflects the independent judgment and analysis of the County.

EVIDENCE:

(a) Initial Study. As part Monterey County Planning and Building Inspection Department's permit process, staff prepared an Initial Study pursuant to CEQA. The Initial Study identified potentially significant effects related to aesthetics, biological resources and geology and soils, but applicant has agreed to proposed mitigation measures that avoid the effects or mitigate the effects to a point where clearly no significant effects would occur. The Initial Study is on file in the office of PB&I and is hereby incorporated by reference. (PLN040569/Foster). All project changes required to avoid significant effects on the environment have been incorporated into the project and/or are made conditions of approval.

(b) Mitigated Negative Declaration. On November 29, 2005, County staff completed an Initial Study for the project (PLN040569/Foster) in compliance with the California Environmental Quality Act (CEQA) and its Guidelines. The Initial Study provides substantial evidence that the project, with the addition of Mitigation Measures, would not have significant environmental impacts. A Mitigated Negative Declaration was filed with the County Clerk on December 1, 2005, noticed for public review, and circulated to the State Clearinghouse and other agencies for public review from December 1 to December 30, 2005. The evidence in the record includes studies, data, and reports supporting the Initial Study; additional documentation requested by staff in support of the Initial Study findings; information presented or discussed during public hearings; staff reports that reflect the County's independent judgment and analysis regarding the above referenced studies, data, and reports; application materials; and expert testimony. Among the studies, data, and reports analyzed as part of the environmental determination are the following:

3. Archaeological Consulting. August 3, 2004. "Preliminary Archaeological Reconnaissance for Proposed Development Areas of APN 418-132-007, Near Big Sur, Monterey County, California."
4. Jeff Norman. November 22, 2004. "Preliminary Biological Report: Foster Property (APN 418-132-007), Cushing Mountain, Big Sur."
5. Jud Vandevere.
   a. March 9, 2005. Letter to Monterey County Planning and Building Inspection Department regarding "Performance Criteria and Cost

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Estimate for Restoration; Foster Project-File No.: PLN040569 (APN 418-132-007-000).

b. March 22, 2005. Letter to Monterey County Planning and Building Inspection Department regarding "Foster Project-File No.: PLN040569 (APN 418-132-007-000).

c. May 1, 2005, June 22, 2005 and July 22, 2005. Letters to Monterey County Planning and Building Inspection Department regarding plant census; Foster Project-File No.: PLN040569 (APN 418-132-007-000) for April, May, and July, respectively.

d. July 25, 2005. Letter to Monterey County Planning and Building Inspection Department regarding "Foster Project-File No.: PLN040569 (APN 418-132-007-000) Restoration Plan."

e. September 29, 2005. Letter to Monterey County Planning and Building Inspection Department regarding "Foster Project-File No.: PLN040569 (APN 418-132-007-000) Habitat Impacts."

6. Staub Forestry and Environmental Consulting. November 2004. "Forest Management Plan for Monterey County APN: 418-132-007-000."

7. Geoconsultants, Inc.

a. October 20, 2004. "Geologic Reconnaissance and Update Report, Foster Residence APN: 418-132-007, Rocky Creek Ranch, Big Sur, Monterey County, California."

b. September 28, 2005. Letter to Carver + Schickentaz Architects regarding "Geologic Reconnaissance and Update Report Foster Residence, Lot 7."

8. Grice Engineering, Inc. October 2004. "Geotechnical Soils-Foundation & Geoseismic Report for the proposed Foster Residence, 4855 Bixby Creek Road, Carmel, California, APN 418-132-007."

9. Denise Duffy & Associates. Undated. "Final EIR for the Rock Creek Ranch Lot Line Adjustment."

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

(d) Comments. Comments received during the review period or at the hearing before the Planning Commission have been considered as part of the proposed project. Two letters of comment (**Exhibit H**) were received during the public review period. Consideration of these comments includes minor project clarifications as presented below and supporting review in **Exhibit A**. One letter from the applicant's representative includes 17 specific comments regarding project clarifications, a previous code enforcement file, aesthetics mitigation measures, vegetation removal and regrowth, and cumulative impacts to central maritime chaparral, an ESHA. Regarding project clarifications, minor corrections and clarifications are provided below (#1, 3, 4, 8 and 16). Upon review, other suggestions regarding mapping and wording do not appear

CCC Exhibit 5 (page 8 of 40 pages)

necessary (#5, 6). The comments regarding mitigation measures to protect existing trees suggest removal of language with regards to tree management (#7). Staff has included landscape management requirements for those areas within the critical viewshed and scenic easement (currently screened from view) to ensure that existing tree cover remains intact and that proposed structures do not become exposed in order to make a finding of consistency with Big Sur Coast LUP policies and CIP regulations. Thus, the recommended changes are not warranted. The comments related to code violation wording request that the Initial Study be changed to indicate that mostly poison oak chaparral was removed, that no plant roots were removed, and that the amount of removal was less than identified (#9, 10, 11, 12). There is no evidence to support these changes based on information contained in the project biological studies. Comments regarding cumulative impacts request changes to the policy consistency review and cumulative impacts and mitigation measures (#13, 14, 15, 17). The cumulative review includes other projects and habitat loss throughout the County, and the conclusion is consistent with the County's approach on other projects. The mitigation measure for revegetation includes standard language with regards to replanting ratios and performance criteria. Thus, staff concludes that the Initial Study as written is legally adequate and accurately represents the facts related to this project. The Planning Commission considered public testimony on the initial study at a hearing on January 25, 2006.

(e) Minor corrections and clarifications in the Initial Study are made as follows:

(1) Page 1: Add to Assessor's Parcel Number List: 418-032-005 (well site).

(2) Page 2: Clarify second paragraph regarding code violation to indicate that County staff <u>opened</u> ~~issued~~ a code ~~enforcement~~ violation <u>file</u> (CE050029).

(3) Page 2: Correct and clarify number and type of tree removal in section B of the Project Description as follows, which as corrected in the Project Description does not change the impact analysis: fourteen (14) coast live oak trees, four (4) canyon live trees and one (1) redwood tree.

(4) Page 4: Revise the second sentence of the first full paragraph to indicate that the existing facility includes a well and <u>two</u> water storage tanks of <u>5,000</u> and 39,000 gallons.

(5) Page 16: The second sentence of section 1(c) should be corrected to read: "The proposed buildings would <u>not</u> visually impinge upon adjacent neighbor's vies or privacy…."

CCC Exhibit 5
(page 9 of 40 pages)

(5) Page 21: Revise the first sentence under section 4(b) to indicate that poison oak chaparral also is a vegetation community found on the site.

(6) Page 37: Revise Monitoring Action #7C to indicate implementation timing as prior to final inspection.

(f) Determination. After sufficiently considering all comments and testimony along with the technical reports and supporting project information, the Planning Commission adopted a mitigated negative declaration (Section 15074 CEQA).

(1) No adverse environmental effects were identified during staff review of the development application during site visits. On the basis of the whole record before it, the Planning Commission finds that there is no substantial evidence that the project will have a significant effect on the environment. The Planning Commission determines that although the project could have significant impacts, mitigation can reduce these potential impacts to a level of less than significance.

(2) The Planning Commission determined that changes to Mitigation Measure #1 concerning screening to avoid impacts to the critical viewshed provides mitigation value that is equal to or reduces impacts to a greater degree than the Mitigation Measure #1 that was originally circulated with the Initial Study. The revised mitigation measure removes the requirement for a specific screening plan and requires a specific performance standard that no visual development intrusion into the critical viewshed can occur and similarly requires that if intrusion occurs screening must be installed or development shall be removed.

(3) The mitigated negative declaration reflects the County's independent judgment and analysis.

(4) There are no unusual circumstances related to the project or property that would require additional review.

(5) The mitigated negative declaration, initial study, supporting studies and other environmental documents can be found in Project File PLN040569 at the Monterey County Planning and Building Inspection Department, 168 W. Alisal Street, Second Floor, Salinas, CA 93901.

11. **FINDING - FISH & GAME FEE**: For purposes of the Fish and Game Code, the project will have a significant adverse impact on the fish and wildlife resources upon which the wildlife depends.

EVIDENCE:

(a) De Minimus Finding. The site includes rare plant communities that qualify as resources listed A-G listed above as reviewed and agreed by the State Department of Fish and Game and the U.S. Department of Fish and Wildlife. Biological assessments determine that potential impacts can be mitigated. Therefore, the project is not De Minimus and is subject to the required fee.

(b) Initial Study and Negative Declaration contained in File No. PLN040569/Foster.

12. **FINDING –APPEAL**: The decision on this project may be appealed to the Board of Supervisors and the California Coastal Commission.
EVIDENCE:
(a) Board of Supervisors. Section 20.86.030 of the Monterey County Zoning Ordinance.
(b) Coastal Commission. Section 20.86.080.A of the Monterey County Zoning Ordinance.

DECISION

THEREFORE, it is the decision of the Planning Commission of the County of Monterey to adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) and approve the Combined Development Permit as shown on the attached sketch and subject to the attached conditions.

PASSED AND ADOPTED this 22nd day of February 2006, by the following vote:

AYES: Errea, Diehl, Sanchez, Salazar, Rochester, Wilmot
NOES: None
ABSENT: None
ABSTAIN: Brown, Isakson, Padilla, Vandevere

DALE ELLIS, SECRETARY

COPY OF THIS DECISION MAILED TO APPLICANT ON MAR 0 2 2006

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE MAR 1 2 2006

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of

Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

   Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

   Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Salinas.

2. This permit expires two years after the above date of granting thereof unless construction or use if started within this period.

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Exhibit C Monterey County Planning and Building Inspection Condition Compliance and/or Mitigation Monitoring Reporting Plan	**Project Name:** *Foster Single Family Home and Caretaker Unit* *File No*: PLN040569 *APNs:* 418-132-007-000 (project site), 418-132-005-000 (well site), 418-132-006-000 (water storage site), 418-132-003-000 (utility easement site), *Approval by:* *Planning Commission* *Date:* *February 22, 2006*

Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.

Permit Cond Number	*Mitig. Number*	*Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department*	*Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.*	*Responsible Party for Compliance*	*Timing*	*Verification of Compliance (name/date)*
1		SPECIFIC USES ONLY *Combined Development Permit (PLN040569/Foster) consisting of: a Coastal Administrative Permit for a new 3,975 square foot single family residence, a 3,200 square foot barn with solar panels, a 1,200 square foot studio, a 1,150 square foot studio, a 800 square foot garage, a 225 square foot shed, and associated grading (approximately 1,850 cubic yards cut/625 cubic yards fill), retaining walls, septic system, pool, underground utilities, underground water tank on Lot 6 (Assessor's Parcel Number 418-132-006-00), and hook up to existing water system located on Lot 5 (Assessor's Parcel Number 418-132-005-000); a Coastal Administrative Permit to allow a 425 square foot guest house; a Coastal Development Permit to allow a 850 square foot caretaker's unit; a Coastal Development Permit to remove eighteen (18) oak trees and one (1) redwood tree; and Design Approval.*	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated	

CCC Exhibit 5 (page 13 of 40 pages)

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		The property is located at 4855 Bixby Creek Road (Assessor's Parcel Number 418-132-007-000 (project site), 418-132-005-000 (well site), 418-132-006-000 (water storage site), 418-132-003-000), Big Sur, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities.				
2		**NOTICE-PERMIT APPROVAL** The applicant shall record a notice which states: "A permit (Resolution 06012) was approved by the Planning Commission for Assessor's Parcel Number 419-213-013-000 on June 9, 2004. The permit was granted subject to 43 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use.	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant PBI	Prior to Issuance of grading and building permits or start of use	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
3		**FISH AND GAME FEE-NEG DEC** Pursuant to the State Public Resources Code, State Fish and Game Code, and California Code of Regulations, the applicant shall pay a fee, to be collected by the County, within five (5) calendar days of project approval – prior to filling of the Notice of Determination. This fee shall be paid on or before the filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first. The project shall not be operative, vested or final until the filing fees are paid.	Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to the recordation of the tentative map, the commencement of the use, or the issuance of building and/or grading permits, whichever occurs first.	Owner/ Applicant PBI	Prior to Issuance of Grading and/or Building Permits	
4		**MITIGATION MONITORING PROGRAM** The applicant shall enter into an agreement with the County to implement a Mitigation Monitoring and/or Reporting Plan in accordance with Section 21081.6 of the California Public Resources Code and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations. Compliance with the fee schedule adopted by the Board of Supervisors for mitigation monitoring shall be required and payment made to the County of Monterey at the time the property owner submits the signed mitigation monitoring agreement.	1) Enter into agreement with the County to implement a Mitigation Monitoring Program. 2) Fees shall be submitted at the time the property owner submits the signed mitigation monitoring agreement.	Owner/ Applicant PBI	Prior to issuance of grading and building permits.	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
5		**NOTICE OF REPORT** Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "Biological Assessments have been prepared for this parcel by Jeff Norman, dated November 2004 and Jud Vandevere, dated March 9, March 22, May 1, July 25, and September 25, 2005, are on record in the Monterey County Planning and Building Inspection Department Library No. 040054. All development shall be in accordance with this report."	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant PBI	Prior to issuance of grading and building permits	
6		**LIGHTING PLANS (BIG SUR)** All exterior lighting shall be unobtrusive, compatible 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 would be directly visible from critical viewshed viewing areas, as defined in Section 20.145.020, are prohibited. The applicant shall submit three (3) copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The exterior lighting plan shall be subject to approval by the Director of Planning and Building Inspection, prior to the issuance of building permits.	The applicant shall submit 3 copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The exterior lighting plan shall be subject to approval by the Director of Planning and Building Inspection. The applicant shall present a nighttime light analysis of the completed project and demonstrate consistency with the condition performance criteria in the condition.	Owner/ Applicant PBI	Prior to Issuance of Grading and/or Building Permits Within 1 year after comple-tion	
7		**PBD042 – GRADING PERMITS REQUIRED** A grading permit is required for new private single family access driveways greater than fifty (50) feet in total length that require 100 cubic yards or more of earthwork. An over the counter (OTC) grading permit may be issued for new private single family access driveways greater than fifty (50) feet in total length that require less than 100 cubic yards of earthwork.. **(Planning and Building Inspection)**	If applicable, apply and receive the appropriate grading permit from Monterey County Planning and Building Inspection.	Engineer/ Owner/ Applicant	Prior to Issuance of Grading or Building Permits	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
8		**PBD011 - EROSION CONTROL PLAN AND SCHEDULE** The approved development shall incorporate the recommendations of the Erosion Control Plan as reviewed by the Soils Conservation Service and the Director of Planning and Building Inspection. All cut and/or fill slopes exposed during the course of construction be covered, seeded, or otherwise treated to control erosion during the course of construction, subject to the approval of the Director of Planning and Building Inspection. The improvement and grading plans shall include an implementation schedule of measures for the prevention and control of erosion, siltation and dust during and immediately following construction and until erosion control planting becomes established. This program shall be approved by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**	1) Evidence of compliance with the Erosion Control Plan shall be submitted to PBI prior to issuance of building and grading permits.	Owner/ Applicant	Prior to Issuance of Grading and Building Permits	
9		**PBD014 - GRADING-WINTER RESTRICTION** No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**	None	Owner/ Applicant	Ongoing	
10		**PBD034 - UTILITIES - UNDERGROUND** All new utility and distribution lines shall be placed underground. **(Planning and Building Inspection; Public Works)**	None	Applicant/ Owner	Ongoing	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
11		**PBD026 – NOTICE OF REPORT (GEOTECHNICAL)** Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Geotechnical Investigation has been prepared for this parcel by Grice Engineering and Geology, Inc., dated October 2004 and geological investigations have been prepared by Geoconsultants, dated October 2004 and September 2005, are on record in the Monterey County Planning and Building Inspection Department Library No. 040573. All proposed development shall be in accordance with this report unless amended." **(Planning and Building Inspection)**	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to issuance of grading and building permits	
12		**PBD032(A) - TREE PROTECTION** Trees which are located close to the construction site(s) shall be protected from inadvertent damage from construction equipment by wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees. Said protection shall be demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection)**	Submit evidence of tree protection to PBI for review and approval.	Owner/ Applicant	Prior to issuance of grading and building permits	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
13		**PBD032(B) – TREE AND ROOT PROTECTION** Trees which are located close to the construction site(s) shall be protected from inadvertent damage from construction equipment by fencing off the canopy driplines and/or critical root zones (whichever is greater) with protective materials, wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip-line of the retained trees. Said protection shall be demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. **(Planning and Building Inspection)**	Submit evidence of tree protection to PBI for review and approval.	Owner/ Applicant	Prior to Issuance of Grading and/or Building Permits	
14		**TREE REPLACEMENT** If screening vegetation were to be destroyed by natural causes, form and height should be replicated. **(Planning and Building Inspection)**	Applicant shall include measure in the Long-Term Landscape Maintenance Plan required in Condition #18.	Owner / Applicant	Prior to tree removal or issuance of permits	
15		**GUESHOUSE – DEED RESTRICTIONS** The applicant shall record a deed restrict stating the regulations applicable to the guesthouse, including that the guesthouse shall not be separately rented, let or leased from the main residence and shall not have cooking or kitchen facilities. **(Planning and Building Inspection)**	Applicant shall submit a draft deed restriction to the Director of Planning and Building Inspection for review and approval and submit proof of the final recorded deed.	Owner / Applicant	Prior to final inspection of the guest-house	
16		**CARETAKER UNIT – DEED RESTRICTIONS** The applicant shall record a deed restrict stating the regulations applicable to the caretaker's, including that the caretaker unit shall not be rented to anyone other than the caretaker. **(Planning and Building Inspection)**	Applicant shall submit a draft deed restriction to the Director of Planning and Building Inspection for review and approval and submit proof of the final recorded deed.	Owner / Applicant	Prior to final inspection of the guest-house	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
17		**PBD030 - STOP WORK - RESOURCES FOUND** If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. **(Planning and Building Inspection)**	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County Planning and Building Inspection Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.	Owner/ Applicant/ Archaeo-logist	Ongoing	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
18	1	**VISUAL SCREENING** The applicant shall maintain appropriate landscape screening that demonstrates in an ongoing manner that the approved buildings #3 (Steven's Studio), #2 (Jillian's Studio), & #8 (Shed) are not visible in the critical viewshed consistent with County regulations during all times. If landscape screening is not replaced within 6 months of the determination by the applicant and/or the public as verified by the Director that buildings have become visible, then the visible buildings shall be immediately removed. If the Director determines that compliance with this condition has not occurred in a timely or substantive manner, then the Director shall set a public hearing before the Planning Commission to consider revocation pursuant to Section 20.82.060 of Title 20, Zoning Code. These condition requirements shall be incorporated into the landscape plan per Condition #42.	At least every five years the applicant shall provide photographic evidence with avidavit that the subject buildings are not visible in the critical viewshed consistent with County regulations verified and approved by the Director of Planning and Building Inspection.	Applicant / Owner	Ongoing	
19	2	**COLORS** The final Elevation Plans shall include, but not be limited to: ▪ Use of natural materials with non-reflective finishes shall and muted colors be used in the building exteriors. ▪ Use of non-reflective glass windows on the main house and accessory studio structures' west elevations that are oriented toward Highway 1. **(Planning and Building Inspection)**	The specified measures shall be shown on final Elevation Plans with review and approval by the Director of Planning and Building Inspection Department.	Owner/ Applicant	Prior to issuance of Building Permit	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
20	3	**LIGHT AND GLARE** In order to reduce potential visual impacts from glare or lighting, the applicant shall submit lighting and elevation plans for review and approval by the Director of Planning and Building Inspection. **(Planning and Building Inspection)**	Submit a Lighting Plan that includes, but not be limited to: - Low intensity lighting with 90-degree cut-off shields for all exterior light fixtures. - Limit all light sources to the building site (house, driveway). - Prohibit lighting within the critical viewshed area or directed toward the critical viewshed or the sky. Landscaping that screens lighting sources from view from Hwy 1 while maintaining security needs.	Owner/ Applicant	Prior to issuance of any building permit	
21	4	**NESTING BIRDS** Require that a pre-construction survey for special-status nesting avian species (and other species protected under the Migratory Bird Act) be conducted by a qualified biologist at least 30 days prior to tree removal or initiation of construction activities that occur during the nesting/breeding season of native bird species (typically February through August). If nesting birds are not found, no further action would be necessary. If a bird were found, construction within 100 feet of the nest site should be postponed until after the bird has fledged, or an appropriate construction buffer has been established in consultation with the California Department of Fish and Game. **(Planning and Building Inspection)**	The applicant shall provide the Director of Planning and Building Inspection with a copy of the results of the pre-construction survey.	Owner/ Applicant PBI	Between March 1 and July 31 (annually) and prior to issuance of building permit during this period	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
22	5	**TREE REMOVAL** Require tree replacement in the amount and as specified in the project Forest Management Plan (FMP) and protection of retained trees and implementation of other measures specified in the FMP (Staub, November 2004). Record a notice which states: "A Forest Management Plan has been prepared for this parcel by (Staub Forestry & Environmental Consulting, November 2004) and is on record in the Monterey County Planning & Building Inspection Department (File PLN040569). All tree removal on the parcel must be approved by the Director of Planning." The notice must be recorded prior to issuance or building or grading permits. Amend the FMP to include the following biological recommendations:	Measure shall be recorded as deed restriction. Prior to issuance of building permits, a final FMP and evidence of recordation of the required deed restriction shall be provided to the Director of Planning and Building Inspection for review and approval.	Applicant/ Owner	Prior to issuance of building permit	
		▪ Implement tree replacement program for removed trees with a diameter of 10" or greater. ▪ Use only onsite acorns to propagate revegetation material, and transplant removed saplings. ▪ Include the areas around the proposed barn and guest house in the FMP revegetation sites. ▪ Prohibit use of exotic, invasive species, except for sterile grasses. Prohibit landscaping under existing oak trees that would require dry season irrigation in order to avoid oak-root fungus. These requirements shall be incorporated into the landscape plan per Condition #42.**(Planning and Building Inspection)**				

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
23	6	**SLOPE STABILITY** Require the foundation footings for Steven's Studio to bear on competent bedrock materials for adequate support as recommended in the geologic report (Geoconsultants, Inc., October 20, 2004). **(Planning and Building Inspection)**	Measure shall be included on project plans.	Owner / Applicant	Prior to issuance of building permits	
24	7	**CENTRAL MARITIME CHAPARRAL REVEGETATION** In order to replace the loss of sensitive Central Maritime Chaparral (per impacts identified in the initial study), the applicant shall implement Restoration Plan PLN050158 and replace the total area of habitat impacted by this activity as well as the proposed development (residence, caretaker unit, utilities, infrastructure, water tanks, road improvements, fuel modification, landscaping, pool area etc.) at a 1:1 ratio (plant ratio to be determined by a biologist) with a 100% success criterion. If the applicant can demonstrate to the Director's satisfaction that the impact to pool area occurred prior to adoption of the Big Sur Land Use Plan then this area shall be subtracted from the impact area to be mitigated as described in the initial study. In consultation with a qualified biologist, cuttings shall be taken of these taxa by a qualified restoration consultant, in a timely fashion to allow outplanting in the late fall or early winter. Cuttings shall be made from a variety of on-site stock plants to promote genetic diversity. These requirements shall be incorporated into the landscape plan per Condition #42. **(Planning and Building Inspection)**	The applicant shall provide the Director of Planning and Building Inspection with a copy of a signed contract/agreement between the applicant and a qualified biologist to carry out this mitigation measure. The applicant shall provide a Central Maritime Chaparral Restoration Plan in accordance with this mitigation measure prepared by a qualified biologist for review and approval of the Director of Planning and Building Inspection. Said restoration plan shall be coordinated with landscape plan for the project in order to avoid further, indirect impacts. The applicant shall provide the Director of Planning and Building Inspection written certification by a qualified biologist that all required replacement planting and transplanting has been successfully completed and that no additional mitigation is required.	Applicant/ Owner	Prior to issuance of permits Within 5 years of permit approval. May be extended per Director's approval	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
			Annually for a period of five years following completion, the applicant shall report in writing to the Director of Planning and Building Inspection on the status of restoration. The reports shall be prepared by a qualified biologist and shall include performance measures and corrective measures as needed. Planting shall be sufficient to replace impacted habitat area(s) at a 1:1 ratio with a 100% success criterion. Failure to meet this success standard in any given year shall require immediate replacement planting and shall extend the monitoring period for an additional year.		Prior to final inspection Ongoing	
		WATER RESOURCES AGENCY				
25		WR0002 - STORMWATER CONTROL The applicant shall provide the Water Resources Agency a drainage plan prepared by a registered civil engineer or architect addressing on-site and off-site impacts. Stormwater runoff from impervious surfaces shall be dispersed at multiple points, away from and below any septic leach fields, over the least steep available slopes, with erosion control at outlets. Drainage improvements shall be constructed in accordance with plans approved by the Water Resources Agency. **(Water Resources Agency)**	Submit 3 copies of the engineered drainage plan to the Water Resources Agency for review and approval.	Owner/ Applicant/ Engineer	Prior to issuance of any grading or building permits	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
26		**WR45 - WELL INFORMATION** The applicant shall provide the Water Resources Agency information on the well to serve the project including a map showing the well location and any available well logs/e-logs. **(Water Resources Agency)**	Submit all applicable well information to the Water Resources Agency for review and approval.	Owner/ Applicant	Prior to issuance of any grading or building permits	
27		**WR040 - WATER CONSERVATION MEASURES** The applicant shall comply with Ordinance No. 3932, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to: a. All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system. b. Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. **(Water Resources Agency)**	Compliance to be verified by building inspector at final inspection.	Owner/ Applicant	Prior to final building inspect-ion/ occupancy	
MONTEREY COUNTY HEALTH DEPARTMENT, DIVISION OF ENVIRONMENTAL HEALTH						
28		**EH1 - WATER SYSTEM PERMIT** Obtain a new or amended water system permit from the Division of Environmental Health. **(Environmental Health)**	Submit necessary application, reports and testing results to EH for review and approval.	CA Licensed Engineer /Owner/ Applicant	Prior to issuance of grading/ building permits	

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Permit Cond Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
29		**EH9 - NEW WELL PUMP TESTS** All new or rehabilitated wells to be added to the potable water distribution system shall first undergo a minimum of a 72-hour continuous pump test to determine the yield of the well. Unless otherwise approved by the Director of Environmental Health, the yield of the well shall be calculated by multiplying the 24-hour specific capacity by the available drawdown. If the apparent transmissivity decreases between the first 24 hours of the test and the end of the test, the 24-hour specific capacity shall be adjusted by multiplying the ratio of late-time transmissivity to early-time transmissivity. For the purposes of this condition, available drawdown is defined as two-thirds of the vertical distance from the static water level to the lowest perforations of the well. The pump tests shall be made no earlier than June 1 of each year and no later than the first significant rainfall event of the wet season. The pump test results shall be presented in a form for direct comparison to the criteria set forth in this condition. A representative of the Division of Environmental Health shall witness the pump tests. The applicant shall pay all associated fees to the Division of Environmental Health. **(Environmental Health)**	Submit a report to EH for review and approval	CA Licensed Engineer /Owner/ Applicant	Prior to the issuance of a building permit	
30		**EH – NON-STANDARND ENGINEERED WASTEWATER DISPOSAL PLANS** Submit a detailed, engineered wastewater disposal system design to the Director of Environmental Health for review and approval meeting the regulations found in Chapter 15.20 of the Monterey County Code, and Prohibitions of the Basin Plan, RWQCB. **(Environmental Health)**	Provide two copies of the detailed septic design to the Division of Environmental Health for review and approval.	CA Licensed Engineer /Owner/ Applicant	Prior to the issuance of a building permit.	

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Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
31		**EH – NON-STANDARND WELL WATER QUALITY** The applicant shall record a deed notification with the Monterey County Recorder for parcels: APN 418-132-005-000, APN 418-132-006-000 and APN 418-132-007-000. The deed notification shall state that "The well water does not meet the secondary standards as required by Chapter 15.04 of the Monterey County Code; the water exceeds the maximum contaminate level (MCL) for Iron and Manganese and may require treatment". **(Environmental Health)**	Submit proposed wording to be recorded to the Division of Environmental Health, Monterey County Health Department, DEH, MCHD for review and approval. Upon approval, record the Deed Notifications and provide a copy of each to the DEH, MCHD.	Owner/ Applicant	Prior to the issuance of a building permit.	
		CDF/CARMEL FIRE PROTECTION ASSOCIATES				
32		**FIRE PROTECTION EQUIPMENT & SYSTEMS - FIRE SPRINKLER SYSTEM (STANDARD)** All buildings shall be fully protected with automatic fire sprinkler system(s) due to the distance from the public road and substandard access. Installation shall be in accordance with the applicable NFPA standard. A minimum of four (4) sets of plans for fire sprinkler systems must be submitted by a California licensed C-16 contractor and approved prior to installation. This requirement is not intended to delay issuance of a building permit. A rough sprinkler inspection must be scheduled by the installing contractor and completed prior to requesting a framing inspection. **(CDF/Carmel Fire Protection Associates)**	Applicant shall enumerate as "Fire Dept. Notes" on plans. Applicant shall submit fire sprinkler plans and specifications directly to the Carmel Fire Protection Associates, Bos 7168, Carmel-by-the-Sea, CA 93921 for review and approval. Applicant shall provide proof of approval to the Monterey County Director of Planning and Building Inspection Department for review and approval. Applicant shall schedule fire dept. rough sprinkler inspection. Applicant shall schedule fire dept. final sprinkler inspection.	Applicant or owner Applicant or owner; CDF Applicant or owner; CDF	Prior to issuance of building permit. Prior to framing inspection Prior to final building inspection	

CCC Exhibit 5 (page 28 of 40 pages)

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
33		**FIRE WATER SUPPLY** Water supply shall be as follows: Main residential complex 10,000 gallons storage water Guest House 5,000 gallons storage water Caretaker's Unit 5,000 gallons storage water Water supply may be by tank or by alternate means such as a water supply system meeting these requirements. **(CDF/Carmel Fire Protection Associates)**				
34		**FIRE007 - DRIVEWAYS** Driveways shall not be less than 12 feet wide unobstructed, with an unobstructed vertical clearance of not less than 15 feet. The grade for all driveways shall not exceed 15 percent. Where the grade exceeds 8 percent, a minimum structural roadway surface of 0.17 feet of asphaltic concrete on 0.34 feet of aggregate base shall be required. The driveway surface shall be capable of supporting the imposed load of fire apparatus (22 tons), and be accessible by conventional-drive vehicles, including sedans. For driveways with turns 90 degrees and less, the minimum horizontal inside radius of curvature shall be 25 feet. For driveways with turns greater than 90 degrees, the minimum horizontal inside radius curvature shall be 28 feet. For all driveway turns, an additional surface of 4 feet shall be added. All driveways exceeding 150 feet in length, but less than 800 feet in length, shall provide a turnout near the midpoint of the driveway. Where the driveway exceeds 800 feet, turnouts shall be provided at no greater than 400-foot intervals. Turnouts shall be a minimum of 12 feet wide and 30 feet long with a	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans. Applicant shall schedule fire dept. clearance inspection.	Applicant or owner Applicant or owner	Prior to issuance of grading and/or building permit. Prior to final building inspection.	

CCC Exhibit 5 (page 29 of 42 pages)

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		minimum of 25-foot taper at both ends. Turnarounds shall be required on driveways in excess of 150 feet of surface length and shall long with a minimum 25-foot taper at both ends. Turnarounds shall be required on driveways in excess of 150 feet of surface length and shall be located within 50 feet of the primary building. The minimum turning radius for a turnaround shall be 40 feet from the center line of the driveway. If a hammerhead/T is used, the top of the "T" shall be a minimum of 60 feet in length. **(CDF/Carmel Fire Protection Associates)**				
35		**FIRE011 - ADDRESSES FOR BUILDINGS** All buildings shall be issued an address in accordance with Monterey County Ordinance No. 1241. Each occupancy, except accessory buildings, shall have its own permanently posted address. When multiple occupancies exist within a single building, each individual occupancy shall be separately identified by its own address. Letters, numbers and symbols for addresses shall be a minimum of 4-inch height, 1/2-inch stroke, contrasting with the background color of the sign, and shall be Arabic. The sign and numbers shall be reflective and made of a noncombustible material. Address signs shall be placed at each driveway entrance and at each driveway split. Address signs shall be and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter. Address signs along one-way roads shall be visible from both directions of travel. Where multiple addresses are required at a single driveway, they shall be mounted on a single sign. Where a roadway provides access solely to a single commercial occupancy, the address sign shall be placed	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of building permit.	

CCC Exhibit 6 (page 30 of 40 pages)

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		at the nearest road intersection providing access to that site. Permanent address numbers shall be posted prior to requesting final clearance. **(CDF/Carmel Fire Protection Associates)**				
36		**FIRE014 - EMERGENCY WATER STANDARDS - FIRE PROTECTION WATER SUPPLY - (SINGLE PARCEL)** For development of structures totaling less than 3,000 square feet on a single parcel, the minimum fire protection water supply shall be 4,900 gallons. For development of structures totaling 3,000 square feet or more on a single parcel, the minimum fire protection water supply shall be 9,800 gallons. For development of structures totaling more than 10,000 square feet on a single parcel, the reviewing authority may require additional fire protection water supply. Other water supply alternatives, including ISO Rural Class 8 mobile water systems, may be permitted by the fire authority to provide for the same practical effect. The quantity of water required by this condition shall be in addition to the domestic demand and shall be permanently and immediately available. **(CDF/Carmel Fire Protection Associates)**	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans. Applicant shall schedule fire dept. clearance inspection	Applicant or owner	Prior to issuance of grading and/or building permit. Prior to final building inspection	
37		**FIRE015 - FIRE HYDRANTS/FIRE VALVES** A fire hydrant or fire valve is required. The hydrant or fire valve shall be 18 inches above grade, 8 feet from flammable vegetation, no closer than 4 feet nor further than 12 feet from a roadway, and in a location where fire apparatus using it will not block the roadway. The hydrant serving any building shall be not less than 50 feet and not more than 1000 feet by road from the building it is to serve. Minimum hydrant standards shall include a brass head and valve with at least one 2	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of grading and/or building permit.	

CCC Exhibit 6 **(page** 31 **of** 40 **pages)**

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
CCC Exhibit G (page 32 of 42 pages)		1/2 inch National Hose outlet supplied by a minimum 4 inch main and riser. More restrictive hydrant requirements may be applied by the Reviewing Authority. Each hydrant/valve shall be identified with a reflectorized blue marker, with minimum dimensions of 3 inches, located on the driveway address sign, non-combustible post or fire hydrant riser. If used, the post shall be within 3 feet of the hydrant/valve, with the blue marker not less than 3 feet or greater than 5 feet above the ground, visible from the driveway. On paved roads or driveways, reflectorized blue markers shall be permitted to be installed in accordance with the State Fire Marshal's Guidelines for Fire Hydrant Markings Along State Highways and Freeways, May 1988. **(CDF/Carmel Fire Protection Associates)**	Applicant shall schedule fire dept. clearance inspection		Prior to final building inspection	
38		**FIRE016 - SETBACKS** All parcels 1 acre and larger shall provide a minimum 30-foot setback for new buildings and accessory buildings from all property lines and/or the center of the road. For parcels less than 1 acre, alternate fuel modification standards or other requirements may be imposed by the local fire jurisdiction to provide the same practical effect. **(CDF/Carmel Fire Protection Associates)**	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans. Applicant shall schedule fire dept. clearance inspection.	Applicant or owner Applicant or owner	Prior to issuance of grading and/or building permit. Prior to final building inspection.	
39		**FIRE019 - DEFENSIBLE SPACE REQUIREMENTS - (STANDARD)** Remove or thin, as approved by CDF, combustible vegetation from within a minimum of 30 feet of structures. Limb trees 6 feet up from ground. Remove limbs within 10 feet of chimneys. Require use of non-combustible siding where vegetation may be thinned within 30 feet of a structure. Additional and/or alternate fire protection or firebreaks approved by the	Applicant shall incorporate specification into design and enumerate as "Fire Dept. Notes" on plans. Applicant shall prepare vegetation thinning plan as set forth in Condition #18 and forward to CDF/Carmel Fire Protection Associates for review and	Applicant or owner Applicant or owner	Prior to issuance of grading and/or building permit. Prior to final building inspection	

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		fire authority may be required to provide reasonable fire safety. Environmentally sensitive areas may require alternative fire protection, to be determined by Reviewing Authority and the Director of Planning and Building Inspection. **(CDF/Carmel Fire Protection Associates)**	approval. Applicant shall schedule fire dept. clearance inspection.			
40		**FIRE021 - FIRE PROTECTION EQUIPMENT & SYSTEMS - FIRE SPRINKLER SYSTEM (STANDARD)** The building(s) and attached garage(s) shall be fully protected with automatic fire sprinkler system(s). Installation shall be in accordance with the applicable NFPA standard. A minimum of four (4) sets of plans for fire sprinkler systems must be submitted by a California licensed C-16 contractor and approved prior to installation. This requirement is not intended to delay issuance of a building permit. A rough sprinkler inspection must be scheduled by the installing contractor and completed prior to requesting a framing inspection. **(CDF/Carmel Fire Protection Associates)**	Applicant shall enumerate as "Fire Dept. Notes" on plans. Applicant shall schedule fire dept. rough sprinkler inspection Applicant shall schedule fire dept. final sprinkler inspection	Applicant or owner Applicant or owner Applicant or owner	Prior to issuance of building permit. Prior to framing inspection Prior to final building inspection	
41		**FIRE027 - ROOF CONSTRUCTION - (VERY HIGH HAZARD SEVERITY ZONE)** All new structures, and all existing structures receiving new roofing over 50 percent or more of the existing roof surface within a one-year period, shall require a minimum of ICBO Class A roof construction. **(CDF/Carmel Fire Protection Associates)**	Applicant shall enumerate as "Fire Dept. Notes" on plans.	Applicant or owner	Prior to issuance of building permit.	
42		**LANDSCAPE PLAN AND MAINTENANCE (SINGLE FAMILY DWELLING ONLY) – Non Standard** The site shall be landscaped. At least 60 days prior to occupancy, three (3) copies of a landscaping plan shall be submitted to the Director of Planning and Building	Submit landscape plans and contractor's estimate to PBI for review and approval.	Owner/ Applicant/ Contractor	At least 60 days prior to final inspect-ion or occu-pancy	

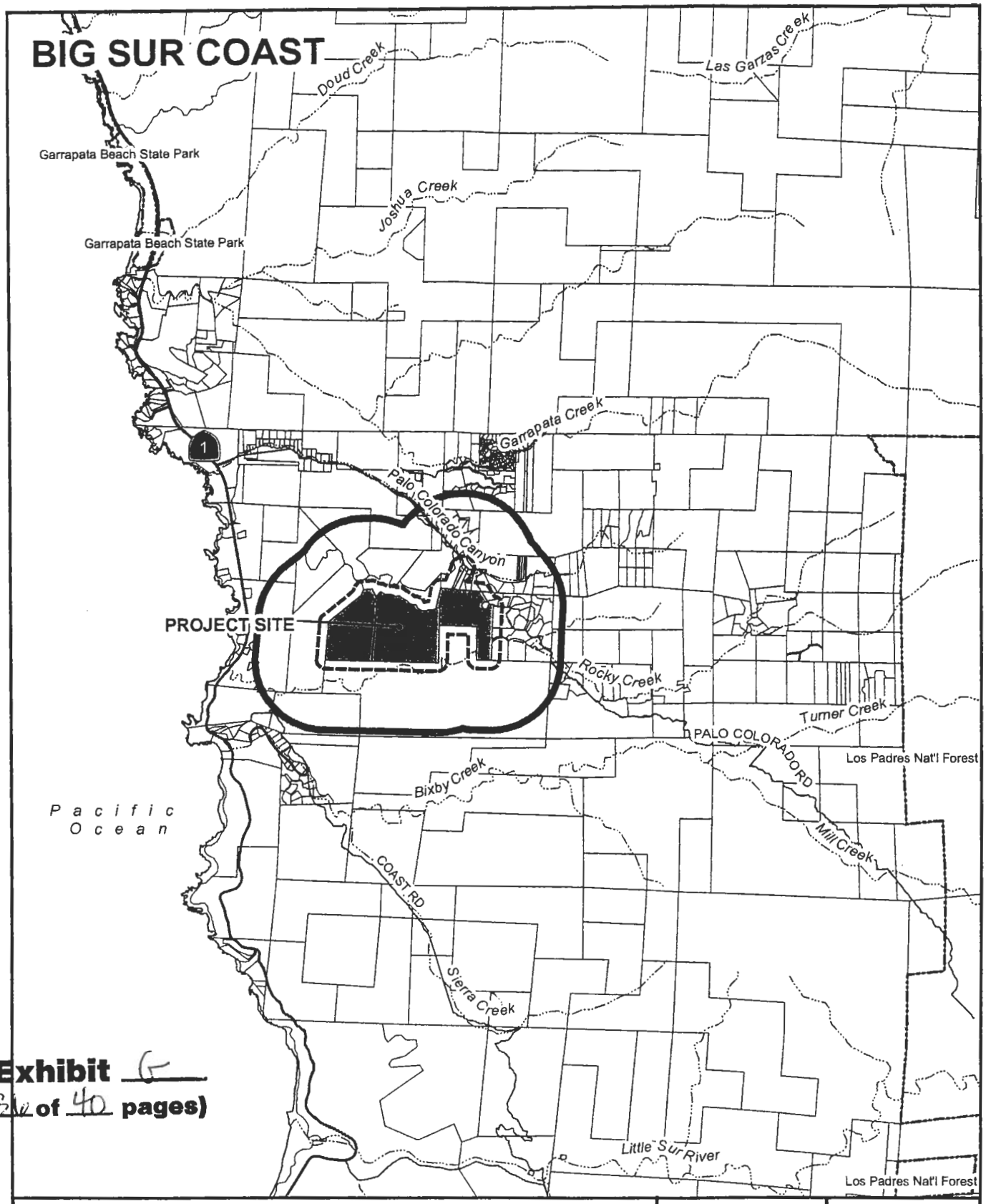
CCC Exhibit 5 (page 33 of 40 pages)

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		Inspection for approval. The landscape Plan shall incorporate screening and maintenance requirements contained in Condition #18 and incorporate the Maritime Chaparral Replacement Plan addressed in Condition #24 and the Tree Replacement requirements addressed in Condition #22. In addition, the plan shall include tree and shrub screening for the guesthouse in manner that reasonably reduces impacts to neighbor views consistent with Section 20.145.030.C.2.b of the Big Sur Coastal Implementation Plan subject to approval as outlined below. A landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed or a certificate of deposit or other form of surety made payable to Monterey County for that cost estimate shall be submitted to the Monterey County Planning and Building Inspection Department. All landscaped areas and fences shall be continuously maintained by the applicant; all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. **(Planning and Building Inspection)**	All landscaped areas and fences shall be continuously maintained by the applicant consistent with all other related conditions to include Conditions 18,22 and 24; all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition.	Owner/ Applicant	On-going	
43		The applicant shall develop a traffic management plan (TMP) to address the offsite hauling of graded material so that it does not impact peak time traffic for school children or commuters on Palo Colorado Road and Highway 1. The TMP is to be approved by the Department of Public Works and the	Require submission and approval of the Traffic Plan by the Public Works Department prior to issuance of grading or building permit	Applicant/ Owner		

CCC Exhibit 5 **(page** 34 **of** 40 **pages)**

Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
		recommendations of the TMP are to be followed during the hauling operations.				

CCC Exhibit 6
(page 35 of 40 pages)



CCC Exhibit G
(page 36 **of** 40 **pages)**

APPLICANT: FOSTER

APN: 418-132-005 THRU 007 **FILE #** PLN040569

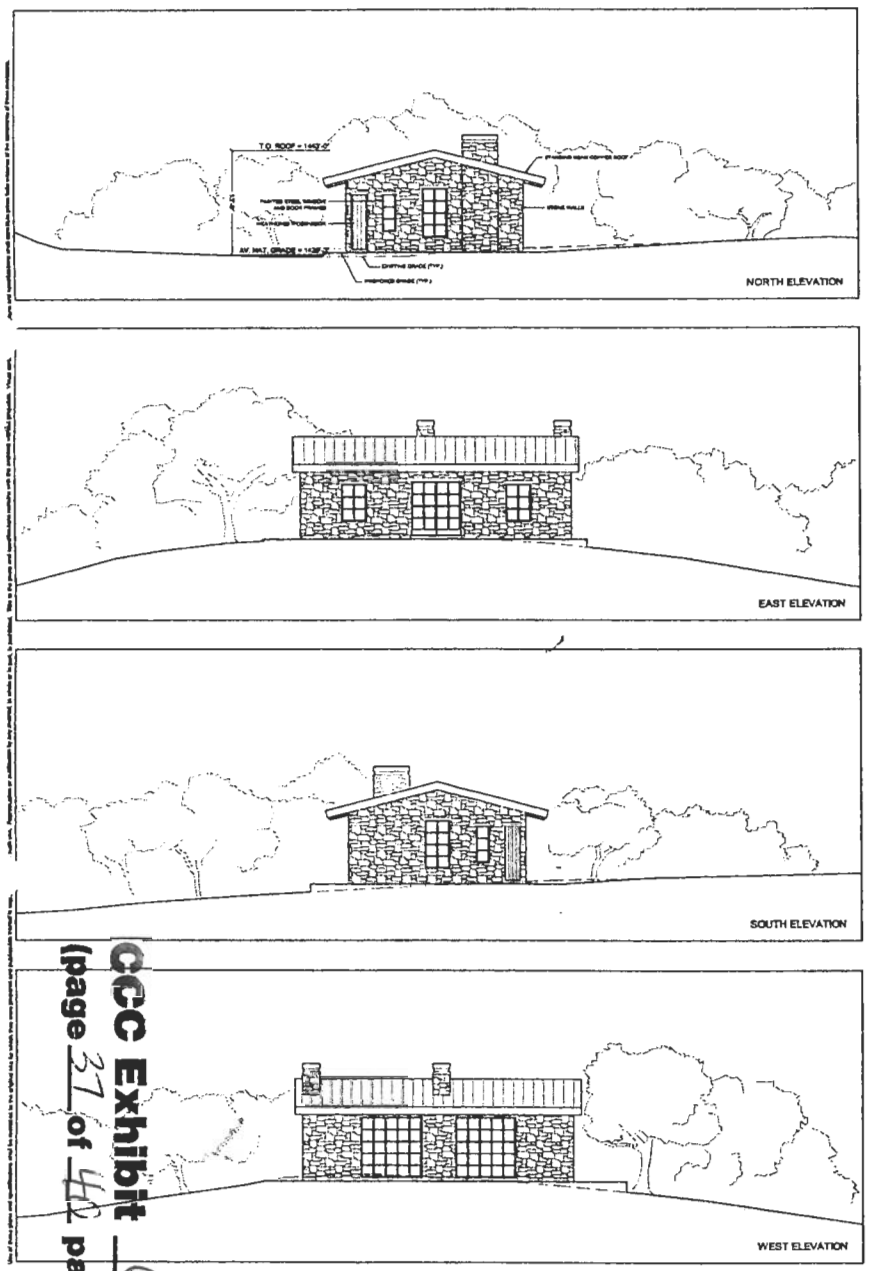
300' Limit 2500' Limit City Limits

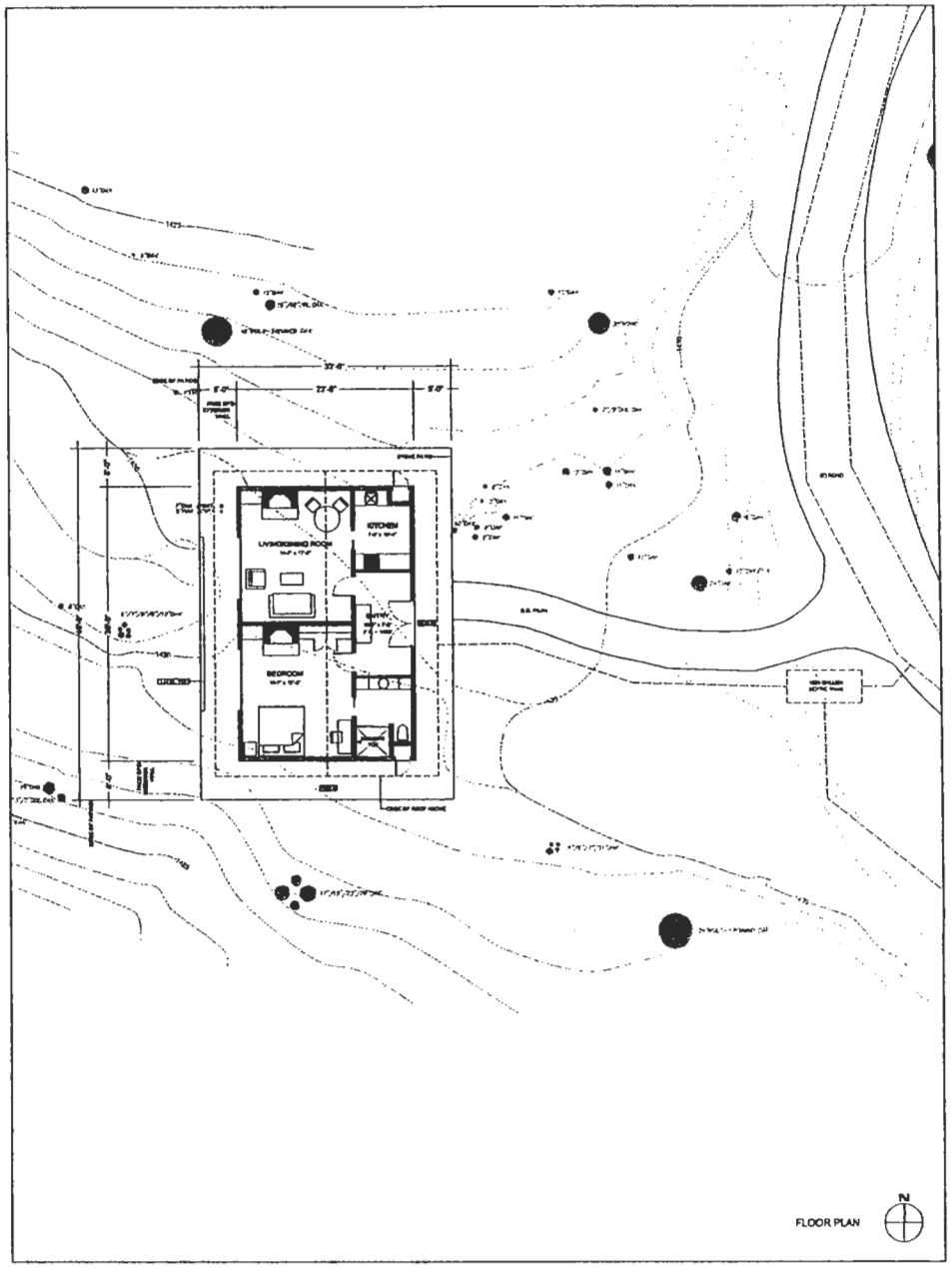
N

0 4,000
Feet

MONTEREY COUNTY CALIFORNIA 1850

PLANNER:





FOSTER RESIDENCE
3888 BIXBY CREEK ROAD, CARMEL, CA 93923

Carver + Schicketanz Architects
P.O. BOX 2084 CARMEL, CALIFORNIA 93921 U.S.A.
PHONE: 831.624.2304 FACSIMILE: 831.624.0304
WWW . CARVERSCHICKETANZ . COM

Date: 11-23-2004
Scale: 1/8" = 1'0"
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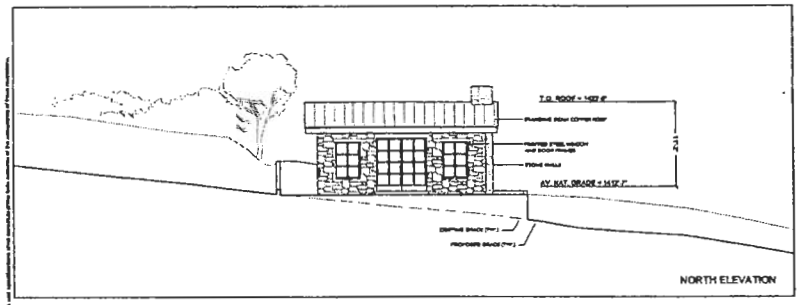
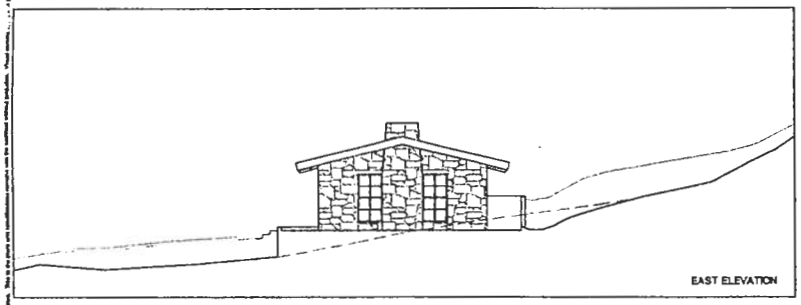
Title: CARETAKER'S FLOOR PLAN ELEVATIONS
Sheet: 9

CCC Exhibit 6
(page 37 of 40 pages)



NORTH ELEVATION



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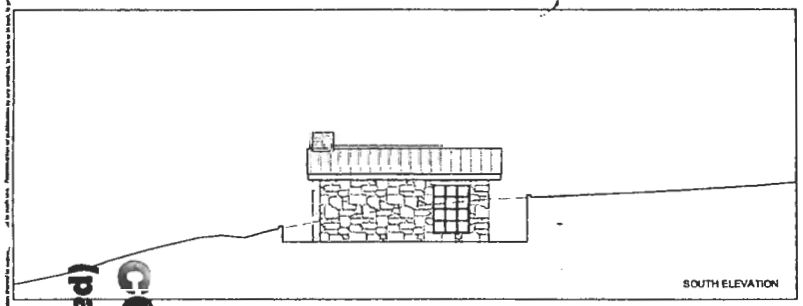
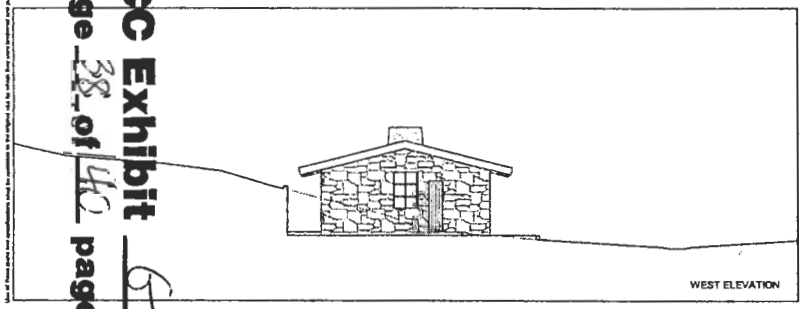


SOUTH ELEVATION



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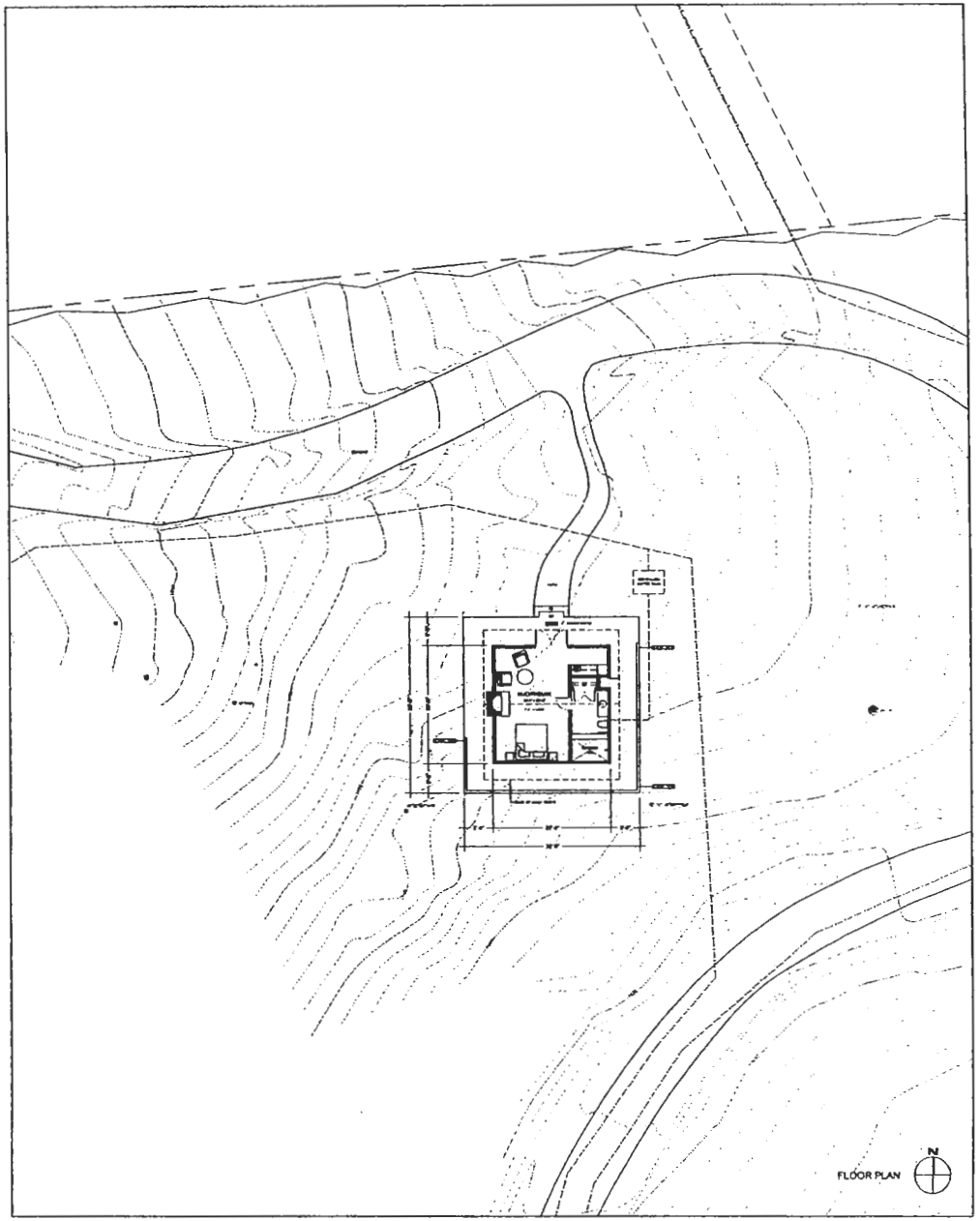

FLOOR PLAN

Carver + Schicketanz Architects
P.O. BOX 2884 CARMEL, CALIFORNIA 93921 U.S.A.
PHONE: 831.624.2304 FACSIMILE: 831.624.0364
WWW.CARVERSCHICKETANZ.COM

FOSTER RESIDENCE
3888 BIXBY CREEK ROAD, CARMEL, CA 93923

Date: 11-23-2004
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Title: GUESTHOUSE FLOOR PLAN ELEVATIONS
Sheet: 10

CCC Exhibit 6
(page 38 of 40 pages)

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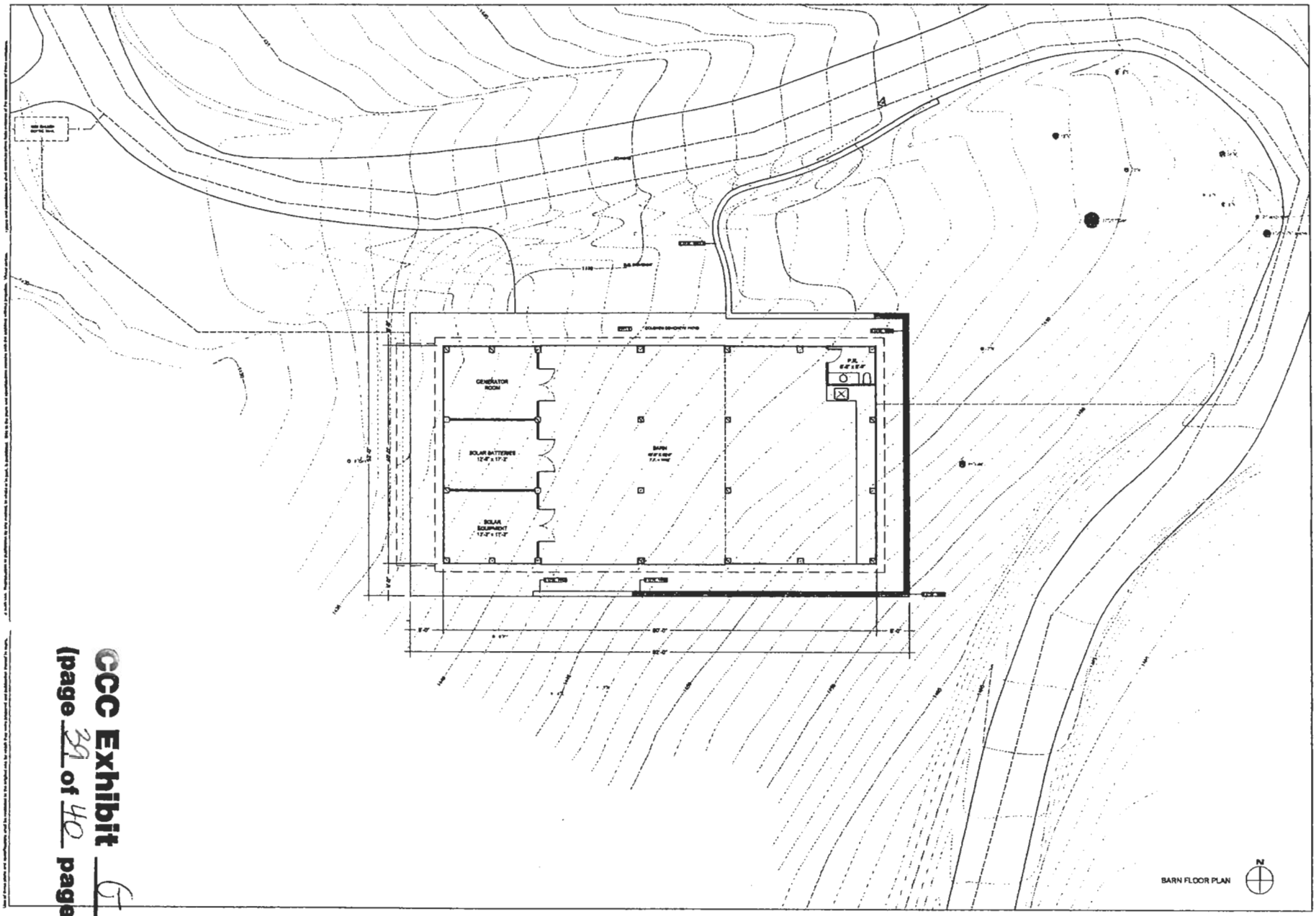

FOSTER RESIDENCE
3986 BUSBY CREEK ROAD, CARMEL, CA 93923

Carver + Schicketanz Architects
P.O. BOX 2884 CARMEL, CALIFORNIA 93921 U.S.A.
PHONE: 831.624.2304 FACSIMILE: 831.624.0384
WWW . CARVERSCHICKETANZ . COM

Date: 11-23-2004
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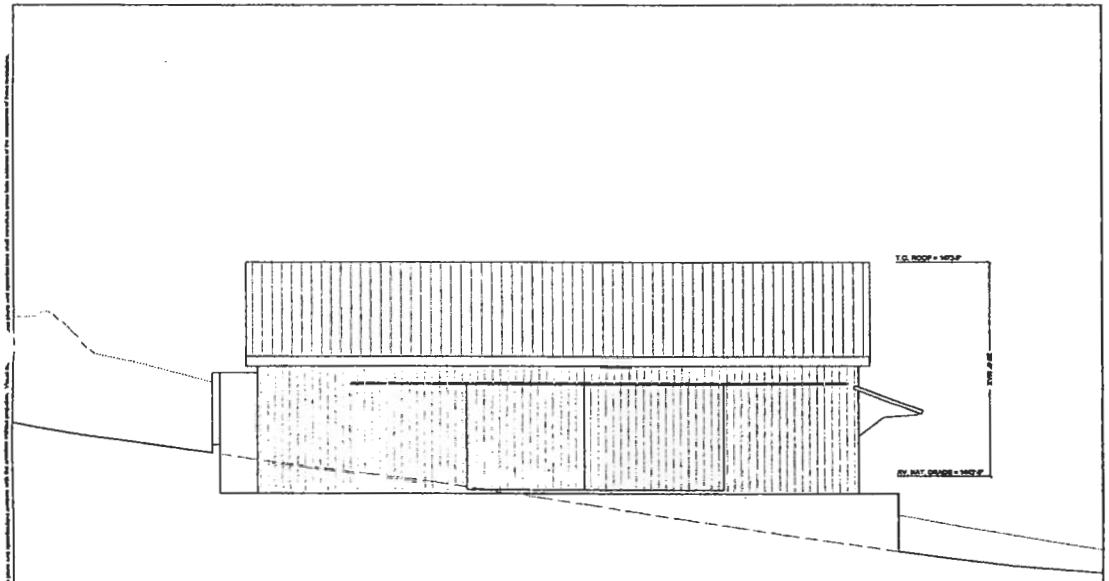
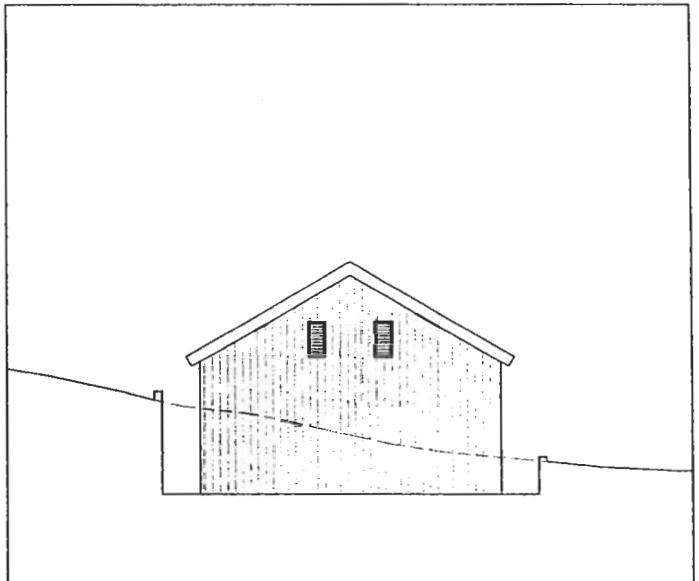
Title: BARN FLOOR PLAN
Sheet: 11

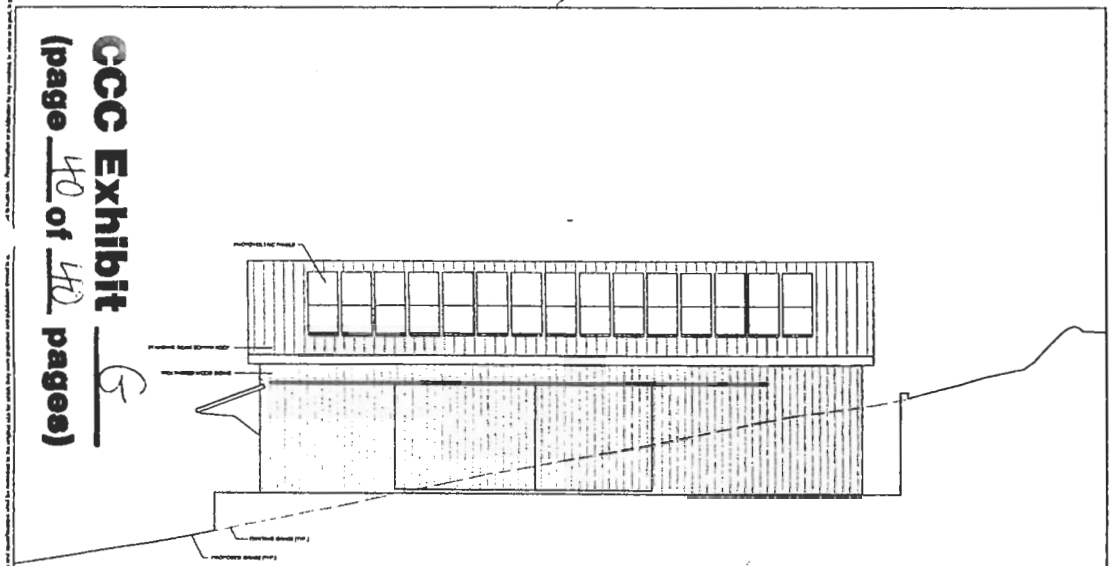
CCC Exhibit 6
(page 39 of 40 pages)



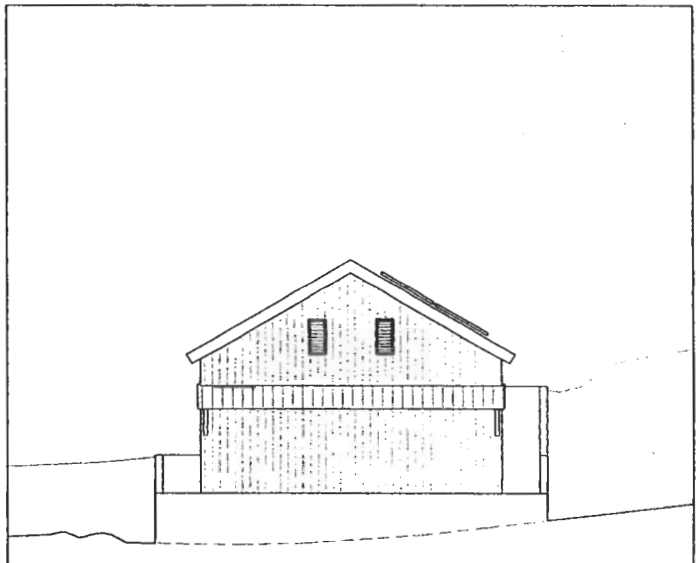
NORTH ELEVATION



EAST ELEVATION



SOUTH ELEVATION



WEST ELEVATION

CCC Exhibit 5
(page 40 of 42 pages)

FOSTER RESIDENCE
3658 BOBBY CREEK ROAD, CARMEL, CA. 93923

Carver + Schickelanz Architects
P.O. BOX 2884 CARMEL, CALIFORNIA 93921 U.S.A.
PHONE: 831.624.2304 FACSIMILE: 831.624.0334
WWW. CARVERSCHICKELANZ. COM

Date: 11-23-2004
Scale: 1/8"=1'0"
Drawn: ES
Job: 0304
Title: BARN ELEVATIONS
Sheet: 12

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

RECEIVED
MAR 2 9 2006
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s):

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

Commissioner Reilly	Commissioner Shallenberger
California Coastal Commission	California Coastal Commission
45 Fremont Street, Suite 2000	45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219	San Francisco, CA 94105-2219
(415) 904-5200	(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:
Monterey County

2. Brief description of development being appealed:
PLN040569 – 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; 800 square foot garage; septic system; pool and well; tree removal (14 coast live oaks, 4 canyon oaks, and one redwood); development within 100 feet of environmentally sensitive habitat (maritime chaparral); associated grading (approximately 1,850 cubic yards cut and 625 cubic yards fill).

3. Development's location (street address, assessor's parcel number, cross street, etc.:
APN 418-132-005, located at 4855 Bixby Creek Road, Rocky Creek Ranch, Big Sur, Monterey County.

4. Description of decision being appealed:

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

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

CCC Exhibit A
(page 1 of 8 pages)

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-06-018
DATE FILED: 3/29/06
DISTRICT: Central Coast

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

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

a. ___ Planning Director/Zoning Administrator

b. ___ City Council/Board of

c. _x_ Planning Commission

d. ___ Other

6. Date of local government's decision: February 22, 2006

7. Local government's file number: PLN040569 (Resolution No. 06012)

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:
Mr. Steven Foster
13977 Aubrey Road
Beverly Hills, CA 90210

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

(1) Jeff Main
Monterey County Planning & Building Inspection
168 W. Alisal St., 2nd Floor, Salinas, CA 93902

(2) Mr. Mark Blum (applicant's rep)
P.O. Box 3350
Monterey, CA 93942

(3) Ms. Mary Anne Schicketanz
Carver & Schicketanz Architects
P.O. Box 2684
Carmel, CA 93921

SECTION IV. Reasons Supporting This Appeal

See attached "Reasons for Appeal"

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

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

See attached Reasons for Appeal

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

SECTION V. Certification

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

Signed: Mary Schallenberger
Appellant or Agent

Date: March 29, 2006

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

Signed: _____

Date: _____

(Document2)

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

See attached Reasons for Appeal

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

SECTION V. Certification

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

Signed: Marie Reilly
Appellant or Agent

Date: March 29, 2006

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

Signed: _____

Date: _____

(Document2)

Reasons for Appeal of Monterey County Coastal Development Permit PLN040569 (Foster SFD and Accessory Structures, Big Sur)

Monterey County Coastal Development Permit PLN040569 authorizes the 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; 800 square foot garage; septic system; pool and well; tree removal (14 coast live oaks, 4 canyon oaks, and one redwood); development within 100 feet of environmentally sensitive habitat (maritime chaparral); associated grading (approximately 1,850 cubic yards cut and 625 cubic yards fill) at 4855 Bixby Creek Road, of Rocky Creek Ranch, Big Sur.

The locally approved project is inconsistent with the Monterey County certified Local Coastal Program (LCP) for the following reasons:

1. **The project is inconsistent with LCP ESHA policies protecting central maritime chaparral habitat.**

The project site includes the following vegetation communities: central maritime chaparral, coastal sage scrub, northern coastal scrub, redwood forest, mixed evergreen forest, and coast range grassland. Central maritime chaparral is considered an environmentally sensitive habitat area (ESHA) in the Big Sur Land Use Plan (LUP). Maritime chaparral is defined in Chapter 20.145 of the County Code (Regulations in the Big Sur Area) 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." This habitat type is also recognized as a sensitive habitat in the California Department of Fish and Game's (CDFG) California Natural Diversity Database (CNDDB).

The key ESHA policy in the Big Sur LUP requires that all practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The key policy also states that all categories of land use, both public and private, should be subordinate to the protection of these critical areas. LUP Policy #4 states that for developments approved in ESHA, 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 that achieve these goals. LCP policies also require structures to be clustered in the least environmentally sensitive areas (LUP Policy #6). Furthermore, LUP policy #8 states that new development adjacent to ESHA shall only be at densities compatible with the protection and maintenance of the adjoining resources.

The County approved project is inconsistent with these LCP ESHA policies because it does not protect the maritime chaparral habitat on the site. Approximately 1,600 square feet of central maritime chaparral was removed without permits during staking of the proposed structures, and the County permit authorizes the removal of an additional 1,200 square feet of central maritime chaparral at the pool and Steven's studio locations. Additional loss of maritime chaparral habitat is posed by the construction of other proposed structures, including the main house, Gillian's studio, the garage, and shed, and the vegetation clearance necessary to protect these structures from fire. As a result, the project is inconsistent with LCP policies that limit the disturbance of ESHA (LUP Policy #4) and require clustering of development in the least sensitive areas (LUP Policy #6).

The extent of ESHA disturbance associated with the project is further inconsistent with the Big Sur LUP Key policy requiring new land uses to be subordinate to, and protect, environmentally sensitive habitat areas. Finally, the density of the proposed development, which includes eight structures and a pool scattered throughout the native landscape, does not protect or maintain the sites natural resources, and is therefore inconsistent with Big Sur LUP ESHA Policy #8.

2. The project is inconsistent with LCP policies protecting the critical viewshed in Big Sur.

The project site is located in a highly scenic area of Big Sur, and its southern and western slopes are visible from Highway 1 and the Hurricane Point and Bixby Bridge turnouts. 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. 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.

As a result of the highly visible nature of the subject parcel, a conservation and scenic easement was recorded for those portions of the parcel within the critical viewshed as a condition of approval of the Rocky Creek Ranch lot line adjustment in 1991. The easement prohibits structural development within the critical viewshed; however, it would allow 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 were 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.

In this case, the visual impacts of the proposed project have not been adequately evaluated to ensure that the development will not extend within the critical viewshed. As approved by the County, 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. The project's reliance upon existing vegetation to screen the development does not ensure compliance with Big Sur scenic resource policies, because such vegetation may need to be removed or thinned to accommodate the development and address fire hazards, may not be dense enough to prevent the development from being visible, and will eventually die.

As a result, the County approved project may be inconsistent with the Big Sur key policy that prohibits new development within the critical viewshed, as well as with Policy 3.2.3.A.3 that requires the resiting of development to prevent intrusions within the critical viewshed. A more detailed visual assessment of the proposed development is necessary to address the project's consistency with these standards.

3. The project is inconsistent with LCP land use and development standards.

The Big Sur LUP and zoning allow for accessory structures such as artist's studios. The proposed project includes the following accessory structures: 1,200 square foot artist studio with plumbing, 1,150 square foot artist studio with plumbing, and 3,200 square foot barn with a bathroom. Given their sizes and plumbing, these accessory structures have the potential to be used as living spaces. To address this situation, Code Section 20.145.140.B.5.c requires:

> *Where the design of the accessory structure does not preclude use of the structure as a dwelling unit or living space, a condition of project approval shall be that the applicant record a deed restriction, prior to issuance of building permits, stating the applicable regulations, including that the structure may not be inhabited nor contain cooking or kitchen facilities. (Ref. Policy 5.4.3.J.2)*

However, the County approval does not contain such a condition and is therefore inconsistent with LCP Policy 5.4.3.J.2 and Ordinance 20.145.140.B.5.c.

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COASTAL COMMISSION
CENTRAL COAST AREA

August 8, 2006

Mark Blum
Horan, Lloyd, Karachale, Dyer, Schwartz, Law & Cook
P. O. Box 3350
Monterey, CA 93942

Subject: Characterization of Chaparral at Foster Project Site

Dear Mark,

This letter report provides a discussion of the distinguishing characteristics of maritime chaparral in the central coast region, specifically the area south of the Monterey Peninsula, and a comparison of the characteristics of the vegetation of the immediate vicinity of the site where the Foster residence and associated buildings are proposed to be built with the consensus definition of maritime chaparral.

The description of what seems to be the consensus view of the ecological and vegetational definition of maritime chaparral is based upon review of some of the scientific literature, study of information downloaded from the Elkhorn Slough Reserve Coastal Training Program (CTP) internet website, and telephone discussion with Mr. Grey Hayes (of CTP) about the Proposed Definition of Maritime Chaparral that is found at that site. The information about the characteristics of the Foster site that is available to me at present includes reports by Jeff Norman and Jud Vandevere, the map provided by Carter & Schicketanz (based upon Mr. Vandevere's field work), and telephone discussion with Mr. Vandevere. He also provided a brief summary of vegetation observations that he has made at a number of sites in the region south of the Monterey peninsula, which provide a context for application of the definition of chaparral types.

Essentially, the central question is whether the chaparral where structures are sited on the Foster parcel is either maritime chaparral, or any other uncommon vegetation type that is rare or unique and would therefore fit the Coastal Act definition of environmentally sensitive habitat area. On the one hand, the species and genera that comprise California chaparral vegetation are generally believed to have evolved in place within the California floristic province, therefore both the species and the vegetation type are of very great antiquity. (Example: there are about 60 species of *Arctostaphylos* [manzanita], 56 of which are native to California.) On the other hand, Hanes (1977) states that chaparral is the most extensive vegetation type in California (presumably in areal coverage), therefore it is clearly important for any subtype of chaparral, in order to be regarded as a rare type meriting protection under the Coastal Act, to be relatively clearly delimited in species composition or ecologically, or both, so that the definition does not end up including so much of the area of existing chaparral that recognition as ESHA becomes illogical.

Throughout this report, I occasionally use the common name manzanita for the genus *Arctostaphylos* as a whole. However, for the individual taxa, I use only scientific names, because there is confusion among different sources of information in the equivalence of common and scientific names. For example, *A. glandulosa* is widely known as Eastwood's manzanita (justly honoring Alice Eastwood, one of the most important botanists in the history of California, and the discoverer or describer of many special-status taxa). However, the California Native Plant Society (CNPS) Inventory (CNPS, 2001) and CNDDB use that common name for *A. tomentosa* ssp. *eastwoodiana*, a special-status taxon from Santa Barbara County. *Arctostaphylos tomentosa* (various subspecies) are collectively referred to as either shaggy-barked or woolly-leaved manzanita.

16173 Lancaster Place, Truckee, CA 96161 Telephone: 530.582.6812 Fax: 530.582.5882 [illegible]info@ecosynthesis.com

Endemic species are those that have distribution limited to a particular region of interest. Thus, as noted above, a great number of California chaparral species are endemic to California itself. California endemics may have geographic ranges of millions of acres and populations ranging probably up into the billions. In this report, I use the terms "narrow endemics" (noun) or narrowly endemic (adjective) to apply to species or varieties (taxa; or, if singular, taxon) that have distribution limited to small areas within California, specifically to the Monterey or central coast area. Some of these narrow endemics are CNPS List 1 species, and/or are listed as rare, threatened, or endangered by CDFG or by U. S. Fish and Wildlife Service, and are collectively referred to as special-status species. Others of the narrow endemics are CNPS List 4 plants (a watch list of plants of limited distribution that are presently regarded as having low vulnerability or susceptibility to threat).

General References on Classification and Vegetation

Holland (1986) describes Northern Maritime Chaparral as dominated (50 percent or more of canopy coverage) by *Arctostaphylos tomentosa* ssp. *tomentosa*, with at least one other narrowly distributed manzanita species. It is my understanding that the Holland system of plant community characterization was created for the California Department of Fish and Game (CDFG) Natural Heritage Program and has since been replaced by the various revisions of the California Natural Diversity Data Base (CNDDB) community classification system.

CNDDB (2003) uses the terms alliance and association for the two lowest (narrowest) levels of vegetation definition. This reference categorizes maritime chaparral as an association under the alliance "*Arctostaphylos tomentosa* ssp. *tomentosa* chaparral," which in turn is found under the general habitat type "chaparral with *Arctostaphylos* as principal indicator." The CNDDB alliances and associations are very numerous and are very closely defined by dominant species. For example, there is a specific alliance for *Arctostaphylos glandulosa* chaparral, with four associations (same rank as "Northern Maritime Chaparral"), each dominated by one or another subspecies of *A. glandulosa*. Despite the great number of finely circumscribed associations, the hierarchical nature of the CNDDB system is ideally suited to accommodating that whole range of variation in vegetation that is observed in the field: by merely stepping up to the next rank (alliance), a category is found that will accommodate intermediate or patchy vegetation.

Sawyer and Keeler-Wolf (1995) cites the Holland maritime chaparral types in one place only, under *Arctostaphylos tomentosa* ssp. *tomentosa* chaparral.

Hanes (1995, in Barbour and Major, *Terrestrial Vegetation of California*) does not use the term maritime chaparral. I have re-read this chapter since our telephone calls and did not find the term either in this chapter or in the general index of the book.

Keeley and Keeley (1988, in Barbour and Billings, *North American Terrestrial Vegetation*) also do not use the term, but note that certain endemic species of *Arctostaphylos* and *Ceanothus* occur on particular substrates within marine influence.

Finally, the Proposed Definition of Maritime Chaparral found on the Elkhorn Slough National Estuarine Research Reserve – Coastal Training Program (CTP) website (CTP, 2003; attached to the end of the pdf file of this letter report) states that many areas of maritime chaparral are dominated by *A. tomentosa* but that others are not, and provides a list of 24 *Arctostaphylos* and *Ceanothus* species or varieties (which I refer to below as indicator species) that may be dominant in vegetation that would be recognized by the Proposed Definition as maritime chaparral. In our telephone conversation, Mr. Grey Hayes of the

CTP indicated that the Proposed Definition incorporated the views of several (likely all) of the academic experts who are active in chaparral ecology; the names that he mentioned were all ones that I recognized as co-authors of recent papers on the subject. I asked Mr. Hayes specifically about *A. glandulosa*, which is common in some patches near the proposed structures on the Foster site, and he stated that the experts all felt that this species is definitely not indicative of maritime chaparral, but instead of the more inland type of coastal chaparral that is outside the maritime climatic influence. He also indicated that one or more of the species on the list should be a substantial component of the vegetation, not merely one to several scattered individuals, to determine a vegetation type as maritime chaparral.

Other Scientific Literature About Chaparral

The total body of scientific literature on California chaparral is enormous, and I did not carry out a comprehensive search of all of it for this initial review. Of the 10-15 papers about chaparral vegetation ecology that I examined, only a few use the term maritime chaparral; most authors of studies of ecological questions instead just describe the vegetation by location, structure, and species composition.

The seminal paper on the subject and this vegetation type is Griffin (1978); as far as I could determine from my review, this paper is probably the origin of the term maritime chaparral. Some of Griffin's study sites were revisited and studied by Dyke et al. (2001), providing a very useful picture of successional changes that occurred over about 20 years.

One of Griffin's main points was to distinguish chaparral types that have very limited geographic extent and are dominated by one or another narrowly endemic *Arctostaphylos* species or variety. He carefully points out that, since the objective of the study was to describe stands containing or dominated by narrow endemics, use of his descriptions of associations for regional vegetation classification is not appropriate. He provides the following ecological definition:

> "Maritime chaparral consists of variable sclerophyll shrub communities within a scrub-live oak forest region that is best developed on sandy soils within the summer fog zone. This chaparral is frequently dominated by forms of *Arctostaphylos tomentosa* plus one or more of four endemic manzanita taxa. *Adenostoma fasciculatum* [chamise] is a common sub-dominant."

Several points are notable about this definition. One is that the definition is fundamentally ecological, based upon vegetation structure (sclerophyll, or tough-leaved, shrubs), substrate, and microclimate. With regard to species composition, all of the sources that define maritime chaparral on the basis of dominance by *A. tomentosa* derive this idea directly or indirectly from Griffin. In the definition and throughout the paper, Griffin emphasizes that the unique character of maritime chaparral derives from its providing occupied or potential habitat for narrowly endemic species, and that the vegetation type that he recognized as maritime chaparral has very limited geographic occurrence, hence the importance of its protection.

Providing a perspecitive from a more distant geographic area, D'Antonio et al. (1993) referred to the vegetation of their study site in northern Santa Barbara County as maritime chaparral; it was dominated by *Adenostoma fasciculatum* and *Arctostaphylos purissima* (a Proposed Definition indicator species). To the extent that they use the term maritime chaparral at all (instead of merely characterizing the dominant species), other papers from studies in the same region follow the same principle: maritime

chaparral in that area is co-dominated by *A. purissima* or other even more narrowly distributed manzanita species.

Van Dyke, Holl, and Griffin (2001), in the resampling of as many of Griffin's original study sites as was feasible, adhered to the usage established by Griffin in 1978: dominance by *A. tomentosa* and/or narrowly endemic species such as *A. pajaroensis*, *A. hookeri*, or others (not including, of course, *A. glandulosa* which is exceptionally widespread in geographic distribution). The same comments apply to Van Dyke and Holl (2001).

The most comprehensive recent study of the nature and occurrence of maritime chaparral in the central coast area is Van Dyke and Holl (2003). The geographic scope of this study extended from southern Santa Cruz County to the Palo Corona region, thus ending somewhere north of the Foster site. Within this area, using a combination of aerial imagery and limited ground verification, they mapped over 15,000 acres of maritime chaparral and an additional 2,000 acres of non-maritime chaparral that provided habitat for narrowly endemic chaparral species. The report includes one statement that is particularly relevant to the present project, and which I quote in its entirety:

> "Chaparral in the Toro Park/Pine Canyon area is dominated by *Adenostoma fasciculatum* [chamise], but includes scattered individuals and moderate-density stands of *Arctostaphylos tomentosa* and *A. montereyensis*. Although not true maritime chaparral, this habitat type was digitized and incorporated in our survey because of the presence of *A. montereyensis* and other maritime chaparral-associated endemic species, including scattered *Ceanothus cuneatus* var. *rigidus* and occasional *Ericameria fasciculata*."

This statement indicates that the authors do not regard areas that have scattered individuals and moderate density stands of *A. tomentosa* as maritime chaparral, and that they implicitly link conservation importance of such non-maritime chaparral to presence of narrowly endemic taxa.

Vegetation of Other Sites

Jud Vandevere was kind enough to provide for me a summary of the vegetation notes that he has from a partial list of his many site surveys in the area south of the Carmel River, which, for want of a better term, I refer to below as the Point Lobos to Palo Colorado region (project region). We hoped that this might provide some indication of where maritime chaparral does and does not occur in this central coast area, or whether it is readily recognized when it does occur.

My preconceived hypothesis (that elevation or proximity to the coastline might correlate reasonably closely with occurrence of maritime chaparral, as a consequence of the importance of fog and moderate temperatures) was quite well supported by his notes and verbal comments, but with a few relevant nuances. It does seem that the community is relatively clearly discriminated from other types of chaparral, and that maritime chaparral is much more consistently found in the region relatively close to the Monterey area, and/or at lower elevations which are subject to more fog. For example, all four sites he has sampled on Point Lobos Ridge supported easily recognized maritime chaparral, with a dominant, co-dominant, or at least substantial component of one or more of the indicator species.

The general conclusion that I can derive from the several sites described by Mr. Vandevere in the project region is that the occurrence of maritime chaparral is very distinct (when it occurs) but is highly patchy. It is not necessarily limited to the immediate coastal area, but occurs, in at least one site, at an elevation of 1,200 feet. However, the notes from that site show co-dominance by *A. tomentosa* ssp. *bracteosa* and

A. edmundsii, both of which are regarded as maritime chaparral indicators by the Proposed Definition. Thus, it seems an easy call that this is maritime chaparral.

In the San Francisco Bay area, fog intrudes because rising interior air (over the hot Central Valley) sucks in a lot of air from relatively far off shore, where fog is formed by condensation over cold water. However, the areas in the central coast that are subject to the most frequent fog are located where deep (colder) water is present close to the coastline, most notably Monterey Bay and Carmel Valley. The stretch of coastline extending south to Point Sur adjoins a wide area of shallow continental shelf, so it is not surprising that this area supports much less maritime chaparral than does the immediate Monterey region.

This is supported by Mr. Vandevere's study site notes: the only one that was very far south and still exhibited clear maritime chaparral was in the Garrapata-Doud Creek area (maritime chaparral dominated by *A. tomentosa* ssp. *bracteosa* and *A. edmundsii*). Regarding this site, he specifically remarked that "these two species occur along the lowest part of the road on the Doud Ranch, down to Highway One. At 1,200 ft., chaparral is dominated by *Adenostoma fasciculatum* with *A. g.* [*Arctostaphylos glandulosa*]." Thus, the sole available example in the project region of an elevational transect suggests that maritime chaparral occurs at low elevation near the ocean (as befits the term maritime), and that there is a complete transition to non-maritime chamise-*A. glandulosa* chaparral at higher elevation. Lying at over 1,400 ft, the Foster residence site is situated above the transition that Mr. Vandevere found on the Doud Ranch.

Description of the Foster Site

My understanding of the vegetation of the Foster Residence Site is based upon the reports by Jeff Norman and Jud Vandevere and the site map showing vegetation mapping and occurrences of individual *Arctostaphylos* plants in the immediate vicinity of the proposed structures. When the potential for direct impacts on a special-status species is at issue, the exact location of a particular plant within or outside a building envelope is important. However, in making a determination of the vegetation type of the area where a building project is located, occurrences of plants that are nearby enough that an observer studying the building footprints sees them are certainly relevant. Thus, even though only one *A. tomentosa* plant and no *Ceanothus cuneatus* var. *rigidus* plants are located within building (or construction-related) impact footprints, it is my understanding that scattered additional *A. tomentosa* and four *C. c.* var. *rigidus* are present in the overall area within which the several buildings are proposed, and I considered them in my determination of the vegetation type. To my knowledge, there is information available only for this small upper part of the 78-acre Foster parcel.

Based on my review of relevant agency and scientific literature and the available information for the project site, the chaparral vegetation of the portion of the Foster site where building is proposed would fall under one or another of the following types (names, with one exception, from CNDDB, 2003):

- Chamise-Eastwood Manzanita (*A. glandulosa*) Chaparral;
- Eastwood Manzanita (*A. glandulosa*) Chaparral or Eastwood Manzanita-Interior Live Oak; or
- Poison Oak Chaparral.

In CNDDB (2003), Poison Oak Scrub is an association under Chaparral with Red Shank (*Adenostoma sparsifolium*) as principal indicator. I am not able to judge at present whether this ecological affiliation pertains perfectly to the Foster site, since *Adenostoma sparsifolium* is not recorded in the species lists

from the site. Therefore, I would incline to use the old Holland term Poison Oak Chaparral, which seems eminently applicable to a portion of the Foster site as it is described in the reports and our phone conversations.

Characterization of the chaparral under the Sawyer and Keeler-Wolf (1995) system would be the same, except that they do not recognize poison-oak dominated vegetation as its own series, but instead categorize it into the community types identified by other woody species. In the present case, based upon Mr. Vandevere's field data, this would be Chamise Series or Interior Live Oak – Shrub Series. Although I agree with the ecological principle that poison oak dominance is often, probably usually, an indicator of early seral-stage ecological succession, many of the other vegetation series recognized by Sawyer and Keeler-Wolf are also transitional, so it seems incorrect not to recognize patches of vegetation that are overwhelmingly composed of poison oak for exactly what they are.

The sources I examined were unanimous in considering that dominance by *A. tomentosa*, or by one or more narrow endemics, including the long list of *Arctostaphylos* and *Ceanothus* species found in the Proposed Definition, is necessary to determine a vegetation type as maritime chaparral. At the Foster site, *A. tomentosa* is present only as scattered individuals, never even as a "moderate density stand" (terminology of Van Dyke and Holl, 2003). Even with the occurrence of moderate density stands of *A. tomentosa*, the vegetation was not considered to be maritime chaparral by those eminent authors.

Instead, the manzanita component at the Foster building sites, to the extent that manzanita of any species is an important element in the canopy, is almost all *A. glandulosa*. According to Keeley and Keeley (1988) and Stuart and Sawyer (2001), *A. glandulosa* has a wider geographic range than any other species of manzanita that occurs in chaparral of the California Coast Ranges, and is specifically absent from most areas along the immediate coast. As noted above, the experts who developed the CTP's Proposed Definition considered that *A. glandulosa* should not be included in the list of species that are indicators of maritime chaparral.

Thus, notwithstanding the presence of a few individuals of one of the Monterey-region endemics (*Ceanothus cuneatus* var. *rigidus*) in the general building area, the majority of information from the scientific literature, and information pertaining to the Foster site specifically, seem clearly to indicate that the chaparral habitat at the building sites is not maritime chaparral.

Although I do not represent this letter report as providing a comprehensive review of all potential biological issues relating to the proposed Foster project, and, to the best of my knowledge, there is no field information available from any source that might bear upon the presence or absence of maritime chaparral in the non-impact portions of the 78-acre site, my analysis of available scientific and site-specific information suggests that the proposed building project is not situated within maritime chaparral vegetation.

Sincerely,

[hard copy signed]

Adrian Juncosa, Ph.D.
Senior Ecologist

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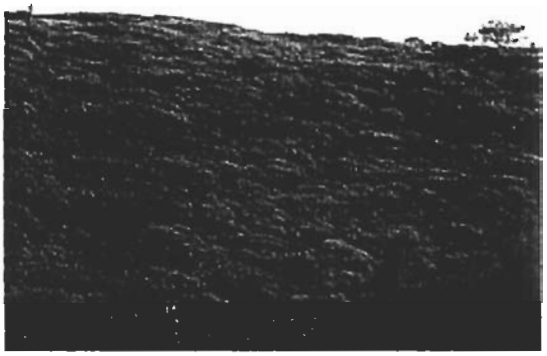
The Ecology and Conservation of California's Maritime Chaparral

Proposed Definition of Maritime Chaparral



The "Woolly leaf manzanita series" as described by Sawyer and Keeler-Wolf (Sawyer & Keeler-Wolf 1995), best describes many areas of maritime chaparral:

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

However, there are several areas of maritime chaparral not dominated or even partially occupied by woolly leaf manzanita. The following manzanita species dominate large areas of maritime chaparral and qualify for designation as unique series in future updated versions of the Sawyer and Keeler-Wolf text:

- Arctostaphylos andersonii
- A. canescens
- A. crustacea
- A. edmundsii
- A. glutinosa
- A. hookeri hearstiorum
- A. hookeri hookeri
- A. montaraensis

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(page 8 of 22 pages)

- A. montereyensis
- A. morroensis
- A. nummularia sensitiva
- A. ohlone pro. sp.
- A. pajaroensis
- A. pumila
- A. purissima
- A. silvicola
- A. tomentosa (all subspecies and forms)
- Ceanothus cuneatus var. rigidus
- Ceanothus hearstiorum
- Ceanothus maritimus
- Ceanothus cuneatus var. fascicularis
- Ceanothus gloriosus var. gloriosus
- Ceanothus gloriosus var. exaltatus
- Ceanothus gloriosus var. porrectus

This new description combines, among other things, the following previous definitions:

Chaparral on ancient sand deposits at Ft. Ord, Nipomo, Vandenberg, Morro Bay (Griffin 1978).

Northern Maritime Chaparral, Central Maritime Chaparral, Southern Maritime Chaparral: Òwithin the zone of summer fog incursionÓ (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.

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If you would like to dispute or clarify this definition, please contact Grey Hayes at grey@elkhornslough.org or (831) 728-2822. Grey also appreciates hearing who has found this definition valuable: a quick email to him stating how this definition was helpful would very valuable.

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Mark Blum
Horan, Lloyd, Karachale, Dyer, Schwartz, Law & Cook
P. O. Box 3350
Monterey, CA 93942

Subject: **Foster Project Vegetation and Impact Evaluation**

Dear Mark,

This letter provides additional detail on subjects that have been raised in the time period since my original letter report dated August 8, 2006. The present letter incorporates additional scientific literature review; observations made during site visits to the Foster parcel on January 23 and March 16, 2007 (the latter including Mary Cain, Jonna Engel, Grey Hayes, Katie Morange, Steve Monowitz, and Mike Vasey); and other communications with scientific experts. I also address issues in addition to the designation of vegetation type that are pertinent to the potential that the project could have any environmental effects.

I comment on four main subject areas, which can be summarized by the following statements:

- Maritime chaparral as currently defined does not occur on the Foster parcel.
- In the project vicinity, thinning of chaparral canopy for fire protection does not have substantial adverse impacts on the habitat's long-term sustainability or function.
- In this particular project setting, applicable scientific information does not support the necessity of a buffer zone setback to protect the chaparral habitat functions and values.
- The project as a whole will not have any significant adverse environmental impacts.

CHAPARRAL VEGETATION ON THE FOSTER PARCEL

Two related factors are identified as distinguishing maritime chaparral: frequent incursion of summertime fog, and vegetation. (see, for one example, the proposed definition from the Elkhorn Slough Research Reserve Coastal Training Program [CTP], available from their web site; CTP, 2003, provided previously as an attachment to the August 8, 2006, letter). Soils have sometimes been mentioned as being important, but it is my understanding from scientific literature and personal observation that maritime chaparral in the Monterey Bay area and elsewhere occurs on diverse substrates including sandstone, shale, and decomposed granite. Although loamy soils generally tend to support grassland and/or oak woodland, it seems that any rocky or coarse-grained soil is potentially suitable to support maritime or non-maritime chaparral.

16173 Lancaster Place, Truckee, CA 96161 Telephone: 530.582.6812 Fax: 530.582.5882 E-mail: info@ecosynthesis.com

Climate

In the central coast area, the most frequent incursions of fog occur, unsurprisingly, either where deeper (cooler) sea water lies close to the shore (e.g., the surroundings, including hills, around Monterey Bay and San Francisco Bay), or where low elevation land, canyons, or valleys allow fog to flow inland. We observed exactly this common pattern during the March 16 site visit: the lowest elevations near the coast line (below about 200-300 feet elevation above sea level), and the major canyons such as Palo Colorado canyon, were covered in fog nearly for the entire day, while the sun shone without pause throughout the day at elevations higher than a few hundred feet.

Anecdotal reports from residents of the higher elevations in the general area between Carmel and Big Sur corroborate that this is the typical climatic pattern in the area: the ridge tops (e.g. Rocky Ridge) are relatively fog-free, whereas the low seaward slopes and the canyons are foggy. In the Coast Ranges of California, fog in the form of low clouds that impinge upon hillsides or ridgetops does occasionally occur, but much less frequently than does the low valley fog.

Accordingly, both the climate-science references that I could find, and the limited direct observations that we have from the vicinity of the site, indicate that the Foster parcel does not experience the climatic conditions that are stated as characterizing maritime chaparral. Based upon the applicable climate science, upon scientific references that describe maritime chaparral (see citations both in this letter and the previous one), and upon available empirical observations, the climate of the site indicates that any chaparral present would be properly determined as non-maritime.

Vegetation

ONLY NON-MARITIME MANZANITA IS PRESENT

Many sources point to the occurrence of certain species and subspecies of manzanita (*Arctostaphylos*) as indicators of maritime climatic conditions (for example: Griffin, 1978; CTP, 2003). From the time of origination of the term "maritime chaparral" by Griffin, and in the current Department of Fish and Game list of communities recognized in the California Natural Diversity Data Base (DFG, 2003) and Sawyer and Keeler-Wolf (1995), maritime chaparral has been considered to be a vegetation type in which *Arctostaphylos tomentosa* is dominant or important. Other recent sources identify, in addition to *A. tomentosa*, several other narrowly distributed species and subspecies of the genus (referred to below as proposed indicator species) that are important, characteristic, or dominant within maritime chaparral (see lists in CTP and NatureServe, 2006).

However, one of the most important results of the March 16 site visit is the confirmation by Mr. Vasey, with corroborating observations made by Coastal Commission staff, of my conclusion that neither *A. tomentosa* nor any other of these proposed indicator manzanita taxa occurs within the Foster parcel. Mr. Vasey is an expert on the taxonomy of *Arctostaphylos* and was invited to participate in the site visit by Coastal Commission staff. Although biology reports on the parcel by Jeff Norman and Jud Vandevere state

that *A. tomentosa* is present, we (myself and all others present on site on March 16, 2007) closely examined the specific plant that had been identified as *A. tomentosa*, and found that it was in fact *A. glandulosa* instead. With the aid of a 20x hand lens that I had brought, I, Mr. Vasey, and Dr. Engel (and others, too, I believe) were all able to observe numerous stomates on both surfaces of the leaves of this and other manzanita plants on the site; this is the character that distinguishes *A. glandulosa* from *A. tomentosa.* Many hundreds of manzanita plants were inspected during our collective site visit on March 16, and all belonged to *A. glandulosa* (either to ssp. *glandulosa* or to plants that are presently characterized in the Jepson Manual as ssp. *glandulosa* forma *cushingiana*, soon to be elevated to ssp. *cushingiana*). Mr. Vasey stated during the field trip and confirmed later by e-mail that, based on his observation and to the best of his knowledge, there is no *A. tomentosa* on the Foster site. He is very knowledgeable in manzanita identification, and is preparing the taxonomic revision of *Arctostaphylos* with J. Keeley and J. Sawyer for the new edition of the Jepson Manual.

We examined hundreds of manzanita plants throughout the Foster site, and at no time during the site visit did anyone produce a plant that would be identified as any species of *Arctostaphylos* other than *A. glandulosa* under either under any published treatment of the genus, or under the draft revision by Mr. Vasey et al. Given the number of observers, the intensive level of survey effort in and near the proposed building areas during this and my previous visit (in January), the very large number of plants examined, the extent of our observations throughout the site, and the interest of all those who participated in the March 16 site visit in being sure of the manzanita identifications, the only reasonable conclusion is that *A. tomentosa* does not occur on the site. There is no concrete evidence of which I am aware that suggests that *A. tomentosa* or any other proposed indicator species of manzanita is present on the Foster parcel.

The taxa (species and subspecies) of manzanitas are notoriously difficult to identify, and our experience on the Foster site itself shows that misidentifications, even by field biologists with significant experience in the central coast region, occasionally occur. Therefore, it is my opinion that any representation regarding the presence of *A. tomentosa* or other limited-range manzanita taxon in the general region of the project should not be relied upon for any scientific or regulatory purpose without the opportunity to examine the growing plant material or a voucher specimen deposited in a publicly accessible herbarium with a high-quality dissecting microscope. It was my examination, with such a microscope, of the plant that had previously been misidentified as *A. tomentosa* that contributed to the careful reassessment of the manzanitas present on the site that occurred on March 16. I would also add that not only Mr. Vasey, but even those who were new to the observation of difficult-to-observe plant leaf characters, were able to confirm in the field, using a hand lens with higher than normal magnification, that my identification of the plant as *A. glandulosa* was correct.

The presence of widespread (inland and coastal) species such as chamise (*Adenostoma fasciculatum*) or *Arctostaphylos glandulosa* does not disqualify an area from being potentially maritime chaparral. However, in a site where the vegetation is dominated by *Arctostaphylos*, occurring in a region where maritime-indicator *Arctostaphylos* taxa (or at

least, one taxon) are present in other sites at lower elevations, but not a single plant of any of the indicator *Arctostaphylos* taxa is present on the site in question, there is no reasonable scientific conclusion other than that the ecological indications of the dominant vegetation are non-maritime.

Based upon my review of herbarium specimens, Jud Vandevere's unpublished site survey reports from a variety of sites in the region, and published sources (Wells, 2000), *A. tomentosa* is definitely present at low elevations along Highway 1 between Carmel and Big Sur. Eric Van Dyke has stated that there is a gradual replacement of *A. tomentosa* by *A. glandulosa* as one moves inland from Highway 1 in this region. The considerable amount of cumulative field study, including the March 16 site visit, supports the conclusion that *Arctostaphylos tomentosa* definitely does not occur within the Foster parcel, where the lower elevations (700 to 1,100 feet) support a chaparral community that is completely devoid of *Arctostaphylos*. (It is black sage, poison oak, chamise, and some coyote bush and California sagebrush.) From the elevation where *Arctostaphylos* begins to appear again, it is all *A. glandulosa* (one subspecies or another). There is no specimen or other verifiable source affirming the presence of *A. tomentosa* or any of the other proposed maritime indicator species of manzanita above the lower elevational limit of the Foster parcel (about 700 feet). Thus, all of the empirical data available, corroborated by the observations of all of the scientists who were present with Mr. Vasey on March 16, indicate that there is no *A. tomentosa* present on the Foster parcel and that the manzanita vegetation is indicative of non-maritime conditions.

HETEROFACIAL LEAVES

With regard to the *A. glandulosa* plants present on the Foster site, Mr. Vasey has raised an additional point regarding the relative numbers of stomates on the two surfaces of the leaves. The typical plant leaf has stomates (tiny gas-exchange pores that can open and close in response to water stress) on only the lower surface. However, many plants deviate from this typical pattern. In the genus *Arctostaphylos*, leaves are described as either iso-facial (=unifacial; having stomates on both sides) or bifacial (stomates on one surface; hence, the two surfaces different, or having two faces). The term "heterofacial" refers to leaves which are morphologically isofacial, but have fewer stomates on one of the surfaces, thus, intermediate in a sense between the two other conditions.

If I understand correctly, Mr. Vasey and Dr. Engel state or imply that the occurrence of heterofacial leaves in one (or more?) of the *A. glandulosa* plants found on the Foster parcel is indicative of maritime conditions at the site. Although I do not in the least dispute Mr. Vasey's statement that certain other taxa with maritime distributions have heterofacial or bifacial leaves, there are also at least 10 other *Arctostaphylos* species that are either proposed maritime indicator species or have low-elevation coastal geographic ranges that have fully unifacial leaves (according to available references). Thus, the correlation between maritime habitat and bifacial/heterofacial leaves is simply not sufficiently scientifically supported to say that the latter indicates the former.

More importantly, the fact that the Foster site, and a huge area of the Coastal Zone generally, experiences higher humidity than regions further inland is not in dispute. What matters is whether this difference is enough to call it maritime vs. non-maritime, and whether that labeling is consistent with considering the scrub habitat on the site as an ESHA that meets the applicable Coastal Act criteria, in particular of rarity. In this regard, it is significant to note that the "Central Maritime Chaparral" listed in the most current published version of the CNDDB natural communities list (DFG, 2003), and identified by means of an asterisk as a rare community type, is a sub-type of woolly manzanita (*A. tomentosa*) chaparral; no sub-types of Eastwood's manzanita (*A. glandulosa*) chaparral are identified by that source as rare plant communities.

MONTEREY CEANOTHUS

Biology reports about the Foster site state that Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*) is present on the site, and we confirmed this fact during the March 16 site visit. We did not count plants, but saw about 10-15 plants of this taxon. It might be suggested that the presence of these several individuals is sufficient to contradict the clear ecological indication of the manzanita taxa that the site is not maritime chaparral. (Conversely, it would be my opinion that the ecologically correct interpretation of the list of indicator species in the CTP proposed definition is that, if manzanitas are absent or at least not dominant - as for example shortly after a fire - then it is correct to rely on an interpretation based upon the *Ceanothus* species.) In a region where *A. tomentosa* is unequivocally present at low elevations, it makes no ecological sense that it would not be present in manzanita-dominated vegetation where the physical conditions were those of maritime chaparral. In every area of vegetation classification and description in which I have worked, if the dominant species indicate one ecological judgment, but the indication from a single uncommon taxon is different, the scientifically correct judgment is the one based upon the long-term dominant species. Applied to the present case, this would mean that the correct identification of the vegetation, under the applicable CNDDB list (cited in the August 2006 letter) is Eastwood's manzanita [*Arctostaphylos glandulosa*] chaparral, a non-maritime type, which is not regarded by the CNDDB as a rare plant community type.

Although the question and answer document about maritime chaparral available from the CTP indicates that the presence of a few individuals of an indicator species could carry the same weight as dominance, this principle cannot properly be extended to all species. Although it is true that, in habitats that include *Ceanothus* species (both chaparral and forest), those species are more abundant shortly after a fire, the density of shrubs that regenerate by seed (including *Ceanothus*) returns to close to the pre-fire density within about five years. (Keeley, et al., 2006). Dr. Engel (and others of us who were present on March 16) note that evidence of fire was observed, in the vicinity of the proposed building sites, but she suggests that the time since the last fire at exactly this location has been very long. I would incline toward an opposite viewpoint, namely, that the fact that evidence of fire was easily observable indicates that the duration since that fire has not been a particularly long interval. Thus, the canopy composition that one

observes today on the Foster site is in fact exactly, or is a close approximation of, the long-term stable vegetation composition of the site's climax community. *Ceanothus cuneatus* var. *rigidus* is a very minor component of this vegetation, and cannot be relied upon to characterize the community as maritime chaparral when the indications from *Arctostaphylos*, which is the long-term dominant genus, are exactly the opposite.

This would be a useful place to correct a misstatement in the written record about this project site, pertaining to the rarity of *C. cuneatus* var. *rigidus*. It is ***not*** a rare species. It is a California Native Plant Society (CNPS) List 4 plant (plants of limited distribution). The current extension designation (4.2) denotes that the CNPS considers subjectively that between 20 and 80 percent of the populations of the plant might be at risk of loss to one or another threat category. I would imagine that even the 20 percent is higher than the reality, because I am not aware of populations of the taxon being extirpated by any type of threat (e.g., development); probably not even a few individuals lost without an equal or greater number replaced as mitigation.

It is probably appropriate to quote from the CNPS Inventory text pertaining to List 4: "The 554 plants in this category are of limited distribution or [are] infrequent throughout a broader area in California, and their vulnerability or susceptibility to threat appears relatively low at this time. **While we cannot call these plants "rare" from a statewide perspective,** [emphasis added] they are uncommon enough that their status should be monitored regularly. Very few of the plants constituting List 4 meet the definitions of Sec. 1901, Chapter 10 ... or Secs. 2062 and 2067 of the California Fish and Game Code [thus, are not rare, threatened, or endangered]. ..." The text continues regarding consideration in CEQA documentation, specifically in several exceptional circumstances that do not apply in the present case. Thus, statements that *C. c.* var. *rigidus* is rare, or that its rarity should be considered in evaluating whether ESHA occurs on the Foster site, are incorrect in the context of the actual language from the CNPS Inventory regarding what the designation of List 4 plants signifies.

It is incomplete to quote only the "fairly endangered" words without also including CNPS's own statements that they do not consider List 4 plants to be rare, threatened or endangered; merely having limited geographic distributions (exactly how limited is not defined). *Ceanothus c.* var. *rigidus* is also on the Sacramento U. S. Fish and Wildlife Service list of "species of concern." This is an informal designation, not recognized federally by the U. S. Fish and Wildlife Service (not all offices have such lists at all). These species are not rare, threatened, endangered, or candidate for any of these listings.

In fact, *C. cuneatus* var. *rigidus* is not uncommon throughout most of its range, which extends from Santa Cruz to San Luis Obispo County, and up to about 1,800 feet elevation. There is good reason why CNPS does not regard it as a List 1 or 2 plant (rare in California). Although Mr. Vasey made the statement that he thought that the Foster site might be one of the most southerly populations of the taxon, this is not correct according to CNPS, which states that its distribution extends at least to the boundary between Monterey and San Luis Obispo Counties, some 50 or more miles further south.

In my own personal experience, I have seen *C. c.* var. *rigidus* only on soils derived from granite or coarse sandstone, and I suspect that, although the taxon occurs within the coastal zone (as do a very large number of unremarkable species), the substrate may be a more important determinant of habitat suitability than the occurrence of truly maritime conditions (frequent summertime fog occurring on the microsite). However, I have not verified this suggestion by means of comprehensive herbarium or field study.

OTHER SPECIES PRESENT

It has been suggested informally by Mr. Vasey, but not by any published source of which I am aware, that *Vaccinium ovatum* and *Chrysophyllum chrysophylla* (specifically var. *minor*) are species that are indicative of maritime chaparral. Based upon the whole geographic ranges of these two taxa, I would respectfully disagree on this particular point. These species have very extensive inland ranges and, in my opinion, cannot properly be considered to be indicative of maritime conditions. The former ranges up to elevations over 2,500 feet, and inland to the San Gabriel/San Bernardino Mountains of southern California, as well as to El Cajon Mtn., about 30 miles inland in San Diego County. To the north, the range of *V. ovatum* goes inland to Trinity National Forest; the limit could be as much as 100 miles inland, two major mountain ridges inland from the coast, according to Stuart and Sawyer (2001).

Chrysophyllum chrysophylla var. *minor* ranges throughout the coast ranges up to 6,000 feet elevation, including on the transmontane (inland) sides of the coastal mountain ranges (e.g., in Lake County, no part of which extends to the coastal zone).

It is just not correct, in the context of the whole picture of the ranges of these two taxa, to represent them as being indicative of maritime chaparral; in fact, they're not primarily chaparral species at all. The distribution of *V. ovatum*, at least in central and southern California, is quite definitely associated with soil chemistry that results from granitic and some sandstone parent materials; this is a much better correlation than with maritime climatic influence. Similarly, I suspect, for *Ceanothus cuneatus* var. *rigidus*: it is the soil, rather than the climate, of the Foster parcel that provides suitable conditions for the plant.

In conclusion, considering the whole range of applicable science that is available from the published literature and observations of the site, neither the climate nor the vegetation of the Foster parcel fits the definition(s) of maritime chaparral that are currently proposed.

FUEL MANAGEMENT

Regardless of the vegetation label that is applied to the manzanita-dominated chaparral on the Foster site, construction of the main house, Gillian's studio, caretaker's house, guesthouse, and barn would not result in the removal or type-conversion of any of this habitat. However, for fire protection, there would need to be some thinning of the fuel load within 30 feet of the nearest structures. Construction of Steven's studio would

result in some removal of manzanita-dominated chaparral, and construction of the garage and shed would result in removal of poison-oak chaparral in which manzanita occurs as a small number of scattered individuals.

The effects of vegetation modification for fire protection in forest and shrublands in California were studied by Merriam et al. (2006). In essence, they found that the traditional fire breaks in the form of clearing to the mineral soil, whether done with machinery or by hand with shovels and picks, has significant deleterious effects and can result in substantial invasion of formerly native vegetation by non-native species. However, they also indicate that thinning of the woody fuel load without soil disturbance has few to no adverse impacts from the perspective of invasion by non-natives (which was the topic of importance to these studies). That is, if executed correctly, the vegetation after treatment can be exactly the same as before, no native species removed and no non-natives now present, except that the amount of flammable fuel is lower. I have confirmed this inference by means of e-mail communications with two of the co-authors of the Merriam study and by direct observation of thinned manzanita-dominated chaparral in the Foster project vicinity.

In fact, statements from the literature strongly indicate that some thinning of the dense manzanita canopy is in fact beneficial to the habitat in providing some new opportunity for native species that are suppressed by the canopy to germinate and reproduce. For example, Van Dyke et al. (2001) state: "Loss of species diversity caused by shading is associated with canopy height...the introduction of prescribed burning, or perhaps mechanical disturbance [thinning?] with smoke or charate treatment, may be necessary to open the canopy, facilitate seedling establishment, and slow the advance of oaks." Elsewhere: "Land managers should consider the reintroduction of wildfire, *or practices that mimic the effects of fire*, to assure the long-term survival of maritime chaparral vegetation communities." [Emphasis mine.] These statements provide unequivocal support for the biodiversity benefits of opening the chaparral canopy (whether maritime or not), if accomplished without the drastic soil disturbance that can result in invasion by non-natives.

We all observed exactly this process at the Hain property nearby, where fuel thinning has been carried out almost exactly as proposed for the Foster project. It was first brought to our collective attention by Grey Hayes, pointing out plants of the native chaparral species *Lotus scoparius*, which is entirely absent or extremely rare on the Foster parcel, but is now growing in the small canopy gaps created by the thinning on the Hain site.

In essence, thinning provides some of the ecological benefits of a fire. For the record, Dr. Keeley and others have presented data suggesting that the fire regime throughout the chaparral of the Coast Ranges – not just in maritime chaparral - is one of much longer return intervals than is widely believed, and that proposal to renew seed banks by means of prescribed fire is more likely to have deleterious than beneficial effects (Syphard et al., 2006). In the event of a natural fire, the thinned vegetation will certainly burn, but at temperatures that are sufficiently low that nearby structures will not be consumed.

During our site visit on March 16, I did not observe any non-native species within the minor disturbances within the *Arctostaphylos glandulosa* chaparral, and I did not observe any within the fuel treatment area at the nearby Hain property, which the access road passes through. Mr. Vasey states that he cannot recall seeing non-natives in these specific places either, although neither of us can supply written field notes to that effect.

In summary, there is no basis in the scientific literature nor in any of the field observations made on site to suggest that there would be any significant adverse impact on the chaparral habitat from the type of fuel reduction that is being proposed. When this subject was raised, Mr. Vasey made a statement on the site essentially to the effect that (paraphrasing according to my best recollection) this chaparral "is not going anywhere," that is, will remain essentially as it is today, indefinitely, even with the fuel thinning. Accordingly, the thinning treatment will not substantially reduce the long-term viability of the habitat to remain in a condition that retains all of the present ecological functions. With no invasion by non-native species, it is reasonable to conclude that the essential functions of the habitat would not be significantly impaired, and in fact would be benefited by the treatment. Finally, with the proposed chipping of a portion of the trimmed material, the soil surface would not be substantially more vulnerable to erosion than it is today.

Even though the applicable scientific context (published literature, informal comments and e-mails from knowledgeable experts, and empirical observations from the site) entirely supports the conclusion that there is no adverse impact, it is useful also to consider that this thinning is proposed to occur in only a minute proportion of the chaparral habitat on the site. For the main house and Gillian's studio, this would be 2,166 square feet (0.05 acre), which is calculated by Carver + Schicketanz Architects to be 0.14 percent of the total chaparral on site. (I think this proportion is higher than the reality; 0.07 to 0.10 percent seems more likely to me if one considers the whole area of non-manzanita chaparral further down slope, remote from the entire proposed building area.) For Steven's studio, the garage, and shed, the combined area of direct impact (on mostly non-manzanita dominated chaparral) and fuel thinning is 0.88 percent. In my lengthy experience with environmental review, including several projects within the Coastal Zone, this small of a percentage of impact (about one percent) would not be considered to be a significant adverse impact, even if some specific negative ecological impact could be identified (which is not the case with the Foster project).

BUFFER ZONE

It is conventional, in specific types of ecological settings, to allow for a buffer zone or setback between habitat areas and developed areas when projects are constructed. In the most typical example, where wetlands or other water bodies (including briefly seasonal tributaries) are present, the specific indirect impacts are known, and the ways in which the buffer zone works to protect the habitat can be identified. For example, surface runoff from impervious areas such as pavement, or disturbed/compacted soil surfaces can contain pollutants such as hydrocarbons or elevated fine sediment levels. If such

runoff flows over a vegetated buffer zone where it can infiltrate and the vegetation and duff can immobilize the pollutants, then water quality is thereby protected. Depending upon the topography and nature of the soils and vegetation, this process may require a buffer zone of up to 100 feet. In my own project-related experience, I have once suggested a much wider buffer zone for water quality protection, at a site where very steep slopes and relatively non-pervious soil profiles suggested that it was appropriate.

However, as suggested by the CTP, the width and nature of buffer zones should be based upon some scientific assessment of the actual impacts and potential to reduce them by other means than mere separation in distance. For example, for certain types of habitats where bright direct lighting might justifiably be considered to have a negative impact on species that are known to breed there, 50 or even 100 feet of distance might not be nearly as useful in mitigating the impact, as would be a reorientation of lighting, or placement of physical screening (vegetation or otherwise) to provide shading. (This is example is to illustrate a principle; for the Foster project, there is no outside lighting proposed on the side of the structures toward the habitat with which we are concerned.)

As briefly explained below, it is my considered opinion that there are no indirect impacts from the placement of the structures proposed on the Foster site that require a buffer zone for mitigation.

Firstly, I am not aware of any native vertebrate wildlife that is characteristic of chaparral that would be deterred from passing through, foraging within, or even reproducing within, a 100 foot wide area adjacent to a structure. Such species as deer, coyote, rodents, and small birds use habitat immediately adjacent to structures without hesitation. Although I live in non-chaparral habitat, we regularly have all of the groups of mammals noted above coming within a few feet of the house, and native ground-nesting birds nesting within 10-20 feet of the house. I am not aware of any scientific reason to suppose that the vertebrates that presently use the low shrubby habitat on the Foster parcel will cease to do so in the 30-foot wide area required by CDF to be thinned around the future structures, or in any larger area proposed by staff.

Secondly, the possibility that the structures might have an adverse impact upon pollinators has been raised in a meeting with Commission staff on January 24, 2007. Again, I am not aware of any scientific evidence or line of reasoning that supports this contention for the specific circumstances of the proposed project. Manzanitas are pollinated by hummingbirds, small native bees, and probably by some other small insects as well. Ceanothus are pollinated by very tiny bees, wasps, and flies; perhaps also by some diurnal moths or small butterflies. Not one of these groups is deterred in the slightest way by the presence of structures or human beings. Hummingbirds are quite pugnacious and fearless birds, fully aware that no building or slow-moving animal such as a human poses any threat; they immediately accept and begin to visit feeders hung on porches and houses. Similarly with small insects: they ignore one's presence until one is virtually within arm's reach. Again, in my own case, I observe a huge variety of insect pollinators (easily 15-20 families in at least four orders) foraging in the native plantings right up to the edge of my deck; the plants set abundant seed every year.

Finally, another type of indirect effect that can adversely affect native habitat is the application of irrigation and/or gardening chemicals (pesticides or fertilizers) to landscaping. However, there is no landscaping proposed for this project, so there is no such impact in the case of the Foster project.

In summary, there is no reason that is applicable to the present project that supports the necessity of a 100-foot buffer zone around the structures, or alternatively between the outer extent of the thinned area and the chaparral, to protect the ecological function of the chaparral habitat (whatever its designation).

The nature and severity of edge effects, where they occur at all, is greatly determined by the relative proportions of the areas of undisturbed habitat and developed areas. Where the developed areas occupy most, or at least a large proportion, of the landscape area and the habitats are reduced to gerrymandered islands and corridors, the edge effects are greater. Where nearly the entire landscape will remain, in perpetuity, as undisturbed habitat, and the developed areas are the small islands, the edge effects tend to be minimal, if present at all. Thus, the scientific literature from pervasively developed landscapes in southern California, pertaining to the effects of the development on nearby chaparral habitat, are not relevant to the present project and cannot properly be cited as justifying the need for a buffer zone.

OVERALL ENVIRONMENTAL EFFECTS

I would like to close with a few comments pertaining to the specific project design and landscape-scale view of the project and its region. I know this was not one of my assigned topics, but it should be considered by the Coastal Commission in evaluating the appeal.

In my opinion, the proposed project is exactly the sort of development that should be encouraged in the coastal zone: moderate-sized structures carefully placed in areas of long-standing existing disturbance, with no surrounding ecologically barren "no-man's land" and no inappropriate non-native landscaping. It is not the type of massive mountain top villa with a wide completely cleared surrounding area, as one often sees imposed heavily upon chaparral landscapes in Los Angeles and San Diego counties. The regional site planning and architectural ethic in the Carmel/Big Sur region is a quite different, and I think appropriate one for the ecosystem, and it is a planning and development approach that should be encouraged.

In Rocky Ridge particularly, the maximum potential area that might be affected by development is a cluster of relatively small building areas, surrounded by an extremely large area that will remain undeveloped forever. This is exactly what scientists and applied ecologists have been striving for decades to get accepted as the appropriate way to allow for virtually no-impact development with preservation of large unbroken expanses of native habitat.

I hope that these comments and citations help achieve a scientifically based evaluation of the project appeal. Please do not hesitate to contact me if you have any additional questions or needs for information.

Sincerely,

Adrian Juncosa

Adrian M. Juncosa, Ph.D.
Senior Ecologist

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July 30, 2007

Mark Blum
Horan, Lloyd, Karachale, Dyer, Schwartz, Law & Cook, Inc.
P. O. Box 3350
Monterey, CA 93942-3350

Subject: Foster Parcel Additional Chaparral Mapping

Dear Mark,

On June 30, 2007, I conducted field work on the Foster parcel in order to review the mapping of chaparral boundaries in portions of the site north of the previously completed vegetation mapping. I focused especially on areas that had not been closely studied in the past, due to the fact that no buildings were proposed at those locations.

This field work was directed only toward the areas described below. For other areas, the vegetation mapping retains the boundaries depicted on previously submitted mapping, which, it is my understanding, were determined by conventional land surveying. These previously determined boundaries are believed by me and, so far as I know, by all others who have reviewed them, to be accurate.

Specifically, I provided digital information on the following areas to Carver + Schicketanz Architects for input into an updated map:

- the boundary of chaparral, extending generally north and northwest from the termination of the existing boundary mapping near the proposed main residence;
- an area of substantially shrubby (chaparral) vegetation in the area between the existing yurt structure and the northern property boundary; and
- a patch of chaparral vegetation just north of the main access drive.

I also provided hand-drawn boundaries of grassland and woodland in the same general portion of the site. Methodology for determining these boundaries is described below.

VEGETATION DETERMINATIONS

I determined chaparral vegetation boundaries on the basis of the principles expressed in the staff report dated June 27, 2007, and addendum dated July 12, 2007, as best as I am able to understand their contents. In the present letter and in the mapping exercise, I do not state or imply my agreement with this methodology which, for example, states that huckleberry (Vaccinium ovatum) is an indicator of maritime chaparral, and that mere presence of certain species is sufficient to identify an area as maritime chaparral. (Available scientific information indicates that maritime chaparral does not occur on the Foster par-

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cel.) However, I applied the staff report view of chaparral in order to provide a basis for project designers to ascertain the implications of the staff report planning recommendations with respect to potential development sites within the Foster parcel.

VEGETATION TYPES SHOWN ON THE REVISED MAP

With that background, the following summary descriptions pertain to the vegetation labeling in the areas of the site where I provided information for the revised (July 11) biological map of the site:

"Chaparral" refers to areas with sclerophyllous shrubby vegetation, including dominance or presence of one or more of the following species: manzanita (*Arctostaphylos glandulosa*), huckleberry (*Vaccinium ovatum*), and/or golden chinquapin (*Chrysolepis chrysophylla* var. *minor*). California coffeeberry (*Rhamnus californica*), chamise (*Adenostoma fasciculatum*), coyote brush (*Baccaharis pilularis*), poison oak (*Toxicodendron diversilobum*), and/or toyon (*Heteromeles arbutifolia*) may be present. Emergent coast live oak (*Quercus agrifolia*) may be present.

"Woodland" supports a predominant woody canopy of plants of tree-like stature (generally taller than 10 feet with one to few main stems), and has no shrub layer or only a sparse, patchy shrub layer."Woodland" areas on this map have a tree canopy that is mostly dominated by coast live oak and/or coast redwood (*Sequoia sempervirens*), with other tree species such as tan oak (*Lithocarpus densiflorus*) occurring occasionally.

"Grassland" refers to vegetation that is predominantly grasses, mostly with little or no woody biomass as a proportion of areal coverage of the vegetation. In places, areas labeled grassland support scattered colonization by, or widely separated individuals of, large herbs or non-sclerophyllous shrubs or woodland or chaparral species.

"Coastal scrub" is vegetation with a much lower stature and sparser canopy of woody plants than in chaparral; it is generally easy to walk through (but for the challenge of avoiding the poison oak plants). Common, important, and/or dominant plants in the coastal scrub mapped here include, roughly in order of subjectively estimated numerical dominance, black sage (*Salvia mellifera*), poison oak, coyote bush, and California sagebrush (*Artemisia californica*).

FIELD AND OFFICE METHODOLOGY

In the field, I recorded geographic positioning system (GPS) waypoints using a Garmin GPSMap CSx60 handheld GPS unit. I recorded waypoints at the outer limits of chaparral and at parcel boundary points; the latter, so that the position of the overall GPS graphic file could be registered to the existing project AutoCAD data base. Waypoints were exported as a .dxf file, which was supplied to Carter + Schicketanz Architects for import into the project digital files.

In the course of recording GPS waypoints along the boundary, and in moving through a substantial amount of chaparral generally to the south of the proposed building sites, I checked off each manzanita plant that I passed within arm's reach, and, using a 20x hand lens, determined what species each plant belonged to. Although this did not represent a series of parallel transects in a pre-determined orientation, I examined plants on both ridges and slopes, and on various aspects, so I think it is a useful addition to the project biological record. This amounted to 261 plants of *Arctostaphylos*, and every one of them was A. *glandulosa*, either ssp. *glandulosa* or ssp. *cushingiana*. I did not encounter any plant of A. *tomentosa* or any other species of the genus.

Some woodland boundaries had previously been determined, surveyed, and mapped. I attempted to extend these boundaries to areas where mapping had not previously been completed. The mapping of woodland and grassland boundaries that I provided was prepared by inspection of aerial photography provided by Carver + Schicketanz and available on Google Earth. These grassland and woodland boundaries were not surveyed, nor were they determined in the field using the GPS methodology that was applied to the specific chaparral boundaries.

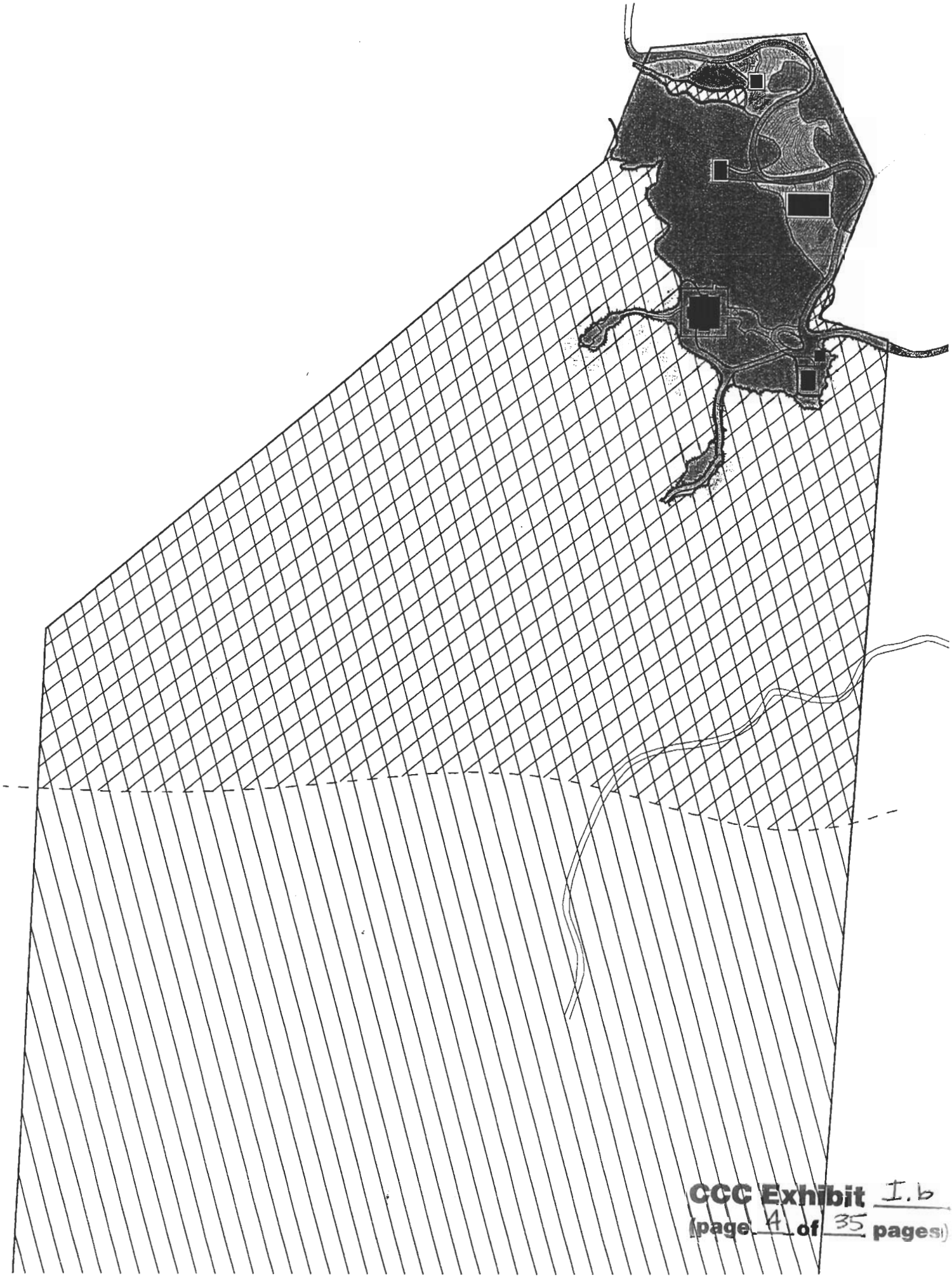
The area of continuous *Arctostaphylos glandulosa* and A. *glandulosa*/chamise chaparral vegetation that lies generally to the south of the proposed structures transitions into coastal scrub at some distance (which I estimate to be some number of hundreds of feet) to the south of the proposed structures. To the best of my knowledge, no one has attempted to determine the exact location of the boundary (or even the zone of ecotonal transition) between these two vegetation types. As far as I know, it is not relevant to the regulatory project review, and I made no attempt to determine or map this boundary.

I have examined the revised site map produced by Carter + Schicketanz, and affirm that it accurately represents the results of my additional study of chaparral occurrence on the Foster parcel.

Sincerely,

Adrian M. Juncosa, Ph.D.

Senior Ecologist



CCC Exhibit I.b
(page 4 of 35 pages)

CHAPARRAL

COASTAL SCRUB (BLACK SAGE)

WOODLANDS

GRASSLANDS

EXISTING ROADS / PREVIOUSLY DISTURBED AREAS (PRE-COASTAL ACT)

PROPOSED STRUCTURES

Note:
Mapping of chaparral shown here does not represent central maritime chaparral which is not present on the site. Please see accompanying letter describing field methodology for details.

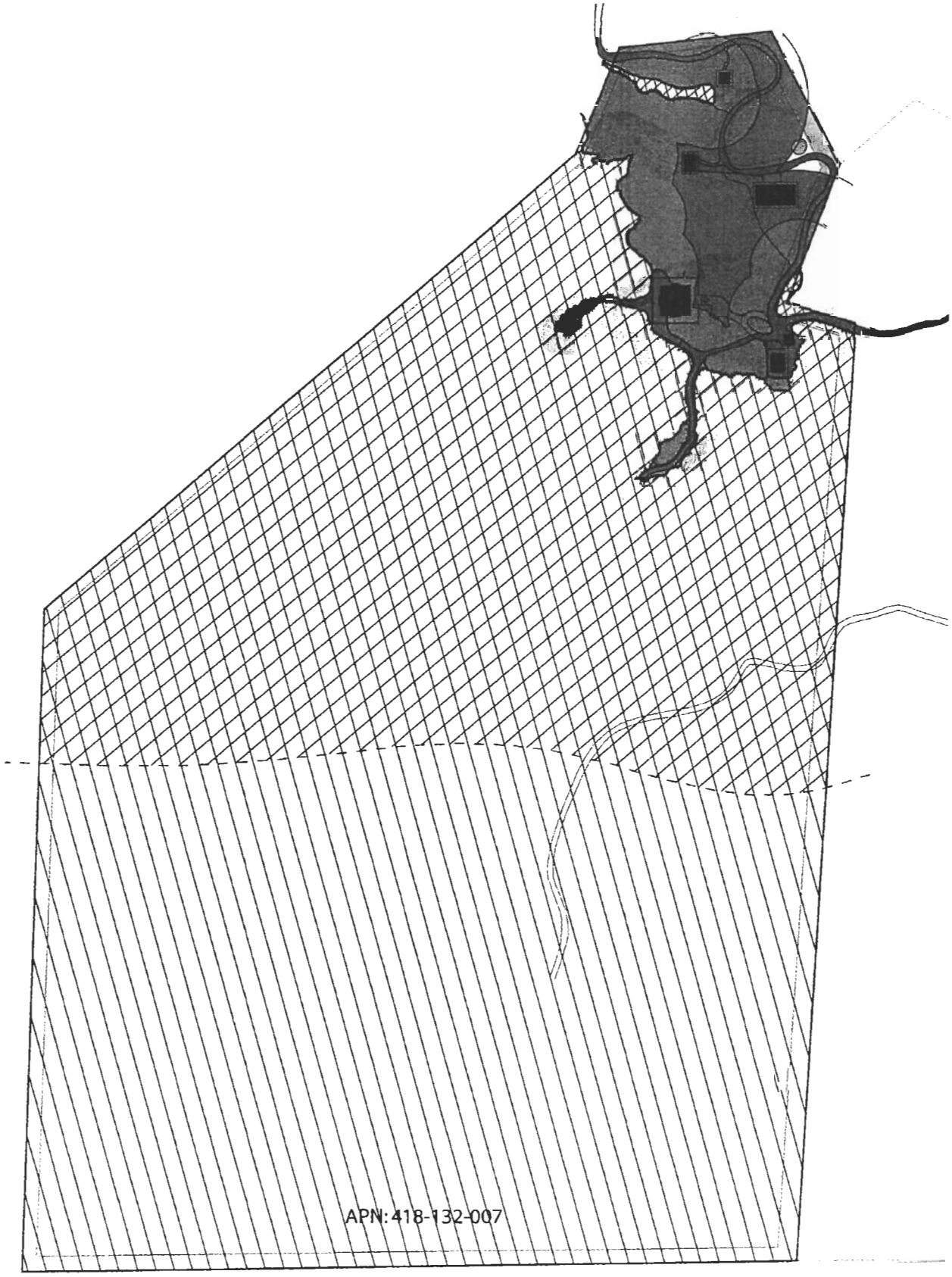
Chaparral boundaries north of main residence and entrance road based upon GPS waypoints.

Woodland and grassland boundaries in same area derived from survey by Rasmussen Land Surveying on June 8, 1988, and inspection of aerial photographs.

No other vegetation boundaries were reviewed.

The exact location of the vegetation boundary between chaparral and coastal scrub (dotted line) is undetermined.

Adrian Juncosa, biologist, Adrian Juncosa Date 30 July 2007



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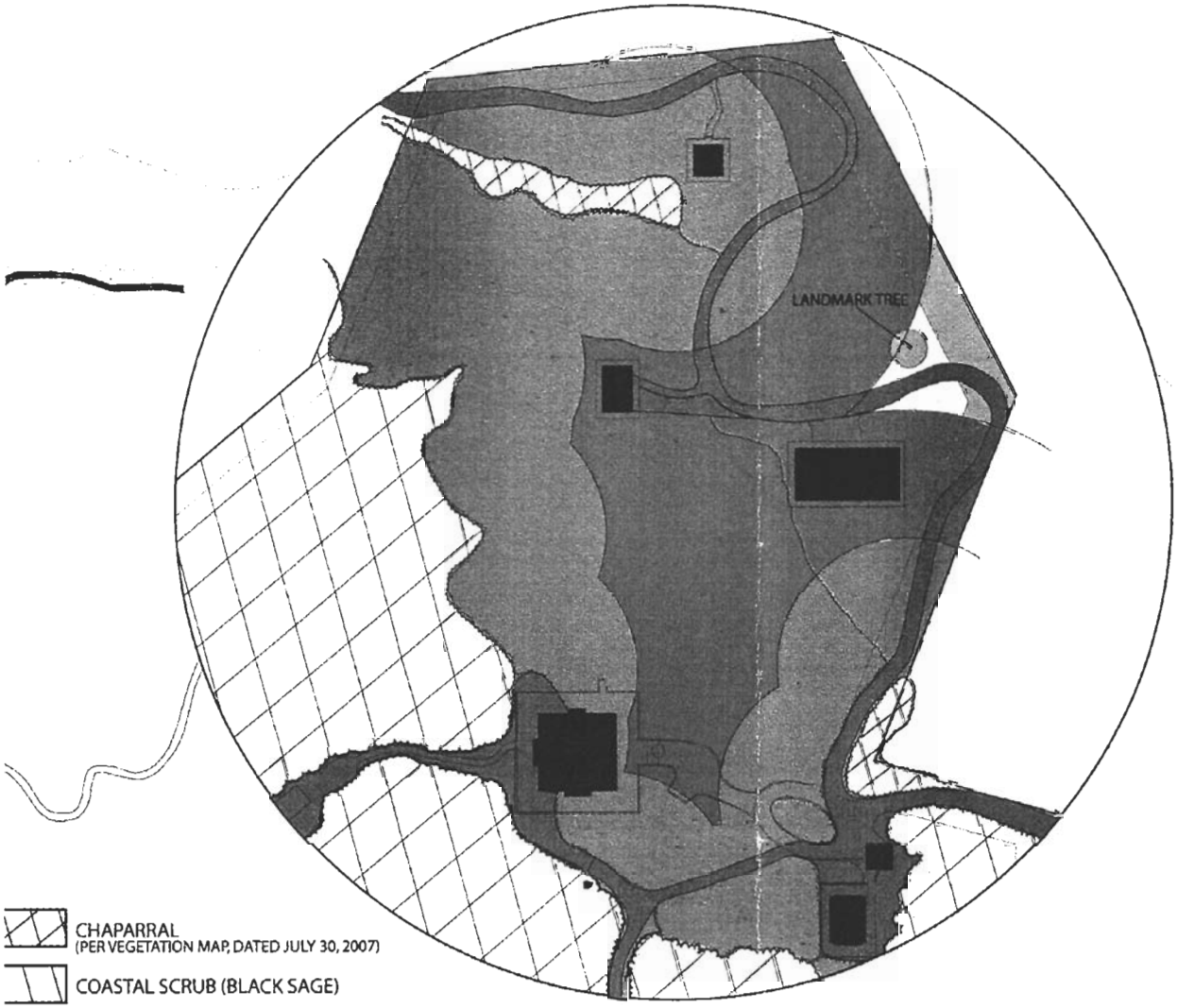

CHAPARRAL
(PER VEGETATION MAP, DATED JULY 30, 2007)

COASTAL SCRUB (BLACK SAGE)

100' CHAPARRAL BUFFER

100' FUEL MODIFICATION ZONE

30' ZONING SETBACK

EXISTING ROADS / PREVIOUSLY DISTURBED AREAS (PRE-COASTAL ACT)

ALLOWABLE DEVELOPMENT ENVELOPE
NOTE: NORTHERN TRIANGLE = 1,035 S.F.
SOUTHERN TRIANGLE = 1,295 S.F.

PROPOSED STRUCTURES
(APPROVED PLN: 040569)

CCC Exhibit I.b
(page 7 of 35 pages)

Carver + Schicketanz
ARCHITECTS · PLANNERS · INTERIOR DESIGNERS

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PHONE 831.624.2304 · FACSIMILE 624.0364
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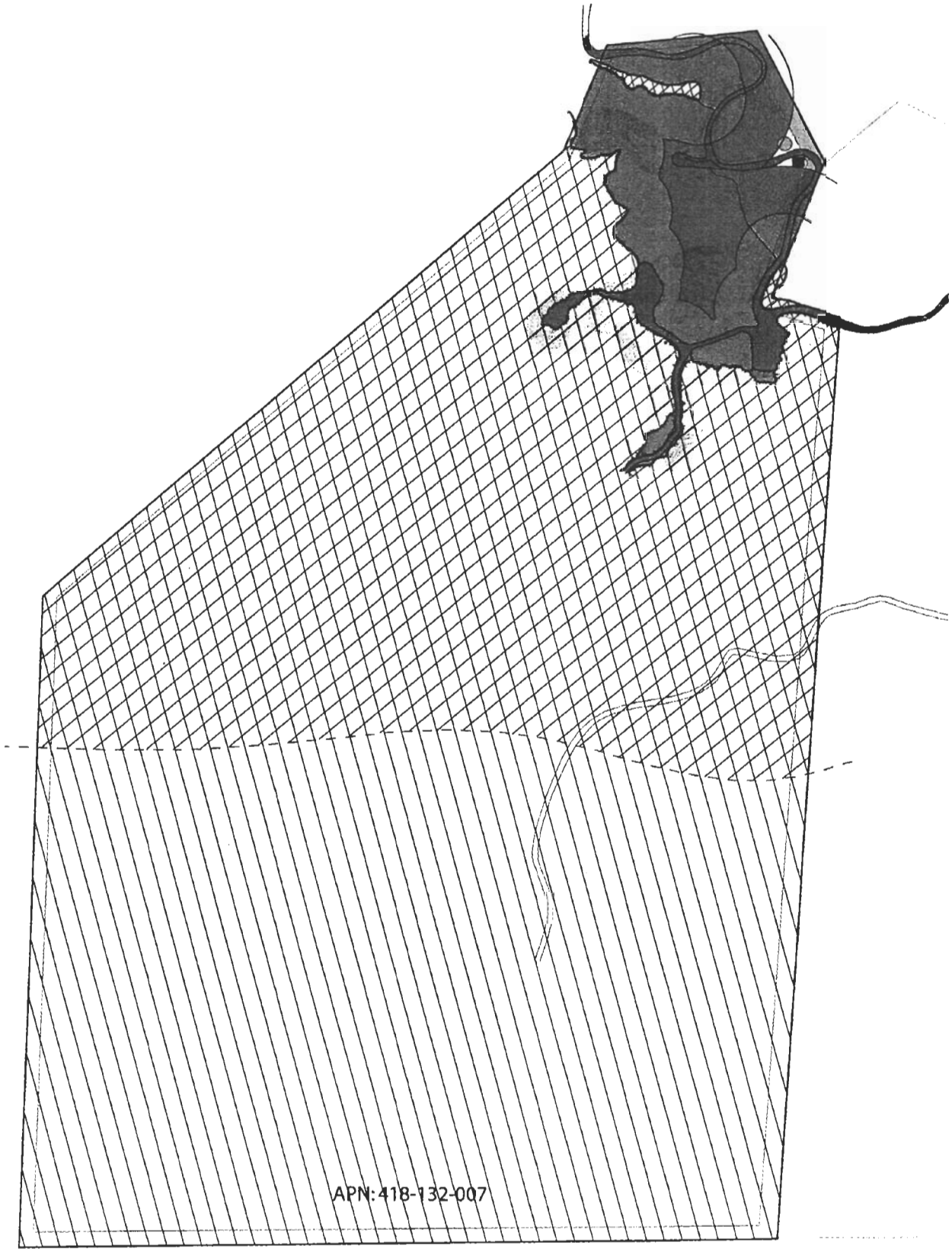

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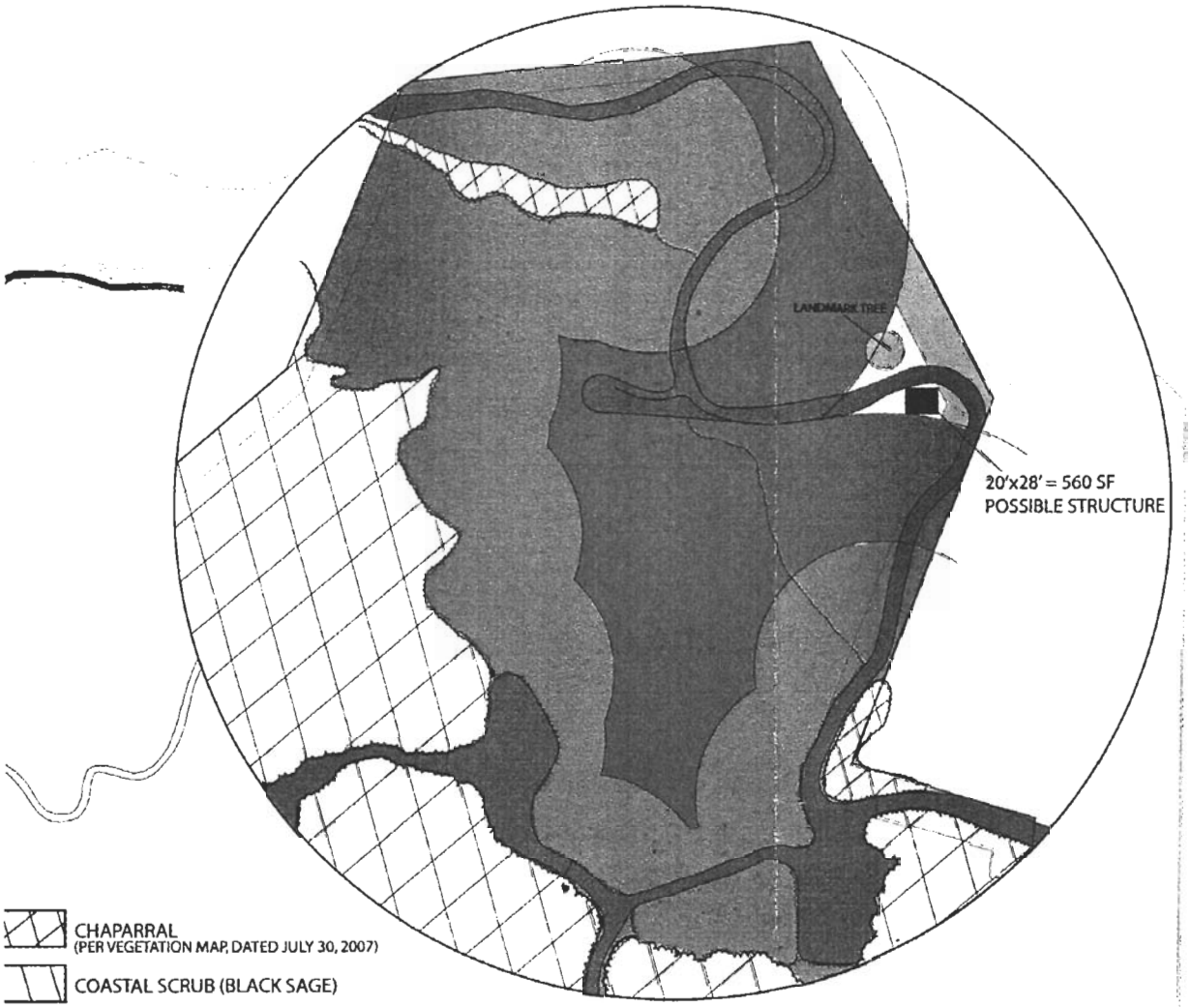

CHAPARRAL
(PER VEGETATION MAP, DATED JULY 30, 2007)

COASTAL SCRUB (BLACK SAGE)

100' CHAPARRAL BUFFER

100' FUEL MODIFICATION ZONE

30' ZONING SETBACK

EXISTING ROADS / PREVIOUSLY DISTURBED AREAS (PRE-COASTAL ACT)

ALLOWABLE DEVELOPMENT ENVELOPE
NOTE: NORTHERN TRIANGLE = 1,035 S.F.
SOUTHERN TRIANGLE = 1,295 S.F.

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July 27, 2007

Mark Blum
Horan, Lloyd, Karachale, Dyer, Schwartz, Law & Cook
P. O. Box 3350
Monterey, CA 93942-3350

Subject: Supplement to Comments on Foster Residence Appeal

Dear Mark,

I have reviewed the staff report and addendum for the anticipated Coastal Commission hearing of the appeal of this project approval, done additional site study and research, and communicated with experts in vegetation description. The comments below supplement my earlier submittals pertaining to the project. Under separate cover, I am providing a description of the field methodology that I used to examine vegetation in portions of the site that had not been previously studied closely, the results of which are documented in a map prepared by Carver + Schicketanz Architects based on my data and checked by me for accuracy.

Because this letter merely supplements my earlier submittals, I do not reiterate all of their contents. I provide detailed explanation and scientific background for the following statements, which summarize the main areas in which the staff report and/or addendum are in error in respects that have not already been thoroughly addressed in my previous letter reports:

- **Maritime chaparral does not occur on the site.** The chaparral vegetation that is found on the Foster parcel most closely matches a lower montane chaparral type.
- **Species that are represented in the staff report to be indicators of maritime chaparral do not indicate maritime conditions or sites.** These species frequently occur at high elevations and as much as 32 miles inland. The staff report also identifies eight other species that are present as being "associated with maritime chaparral." In reality, the distributions of these additional species are primarily concentrated in non-maritime locations and are generally regarded as indicating non-maritime vegetation.
- **No manzanita species other than *Arctostaphylos glandulosa*, a non-maritime species, occurs on the site.** Hundreds of manzanita plants on the site were examined by myself and the biologists chosen by staff, in an attempt to find any species other than glandulosa. None of us could find any other manzanita species on the Foster parcel.
- **The setbacks recommended by staff are not necessary in order to protect the functions and long-term sustainability of the chaparral habitat.** The publication cited by staff in support of the recommendations does not recommend a setback distance, but provides procedures for making such determinations. These procedures were not followed by staff. Had these procedures been applied, I believe that there would not have been a recommendation for a 200-foot total building setback.

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CHARACTERIZATION OF CHAPARRAL VEGETATION

Non-occurrence of maritime Arctostaphylos species

No maritime species or subspecies of manzanita is present on the Foster parcel. The original (and, as the facts indicate, incorrect) characterization of the chaparral vegetation on the Foster parcel as maritime was based upon the belief that woolly-leaved (=shaggy-barked) manzanita (*Arctostaphylos tomentosa*) was present on the site (Norman, 2004). Indeed, according to both currently published definitions of maritime chaparral, this species would not only need to be present, but would need to be dominant in order to make the finding that vegetation is maritime chaparral (Holland, 1986; Sawyer and Keeler-Wolf, 1995). Woolly-leaved manzanita is not even present on the site; therefore it is not dominant either.

The staff report and addendum both suggest the possibility that *A. tomentosa* might be present, but somehow was not observed. (This letter mostly uses the scientific names for manzanitas for efficiency and to ensure that there is no confusion about what plant I am referring to.) The staff report addendum states that approximately 25 manzanita plants were examined during the March 16, 2007, site visit. This is not accurate. In reality, several hundred plants were examined, many of them by the expedient technique of gently squeezing the branch tips to determine whether they were sticky, which, at the site in question, and with other taxonomic characters that are shared by every manzanita plant on the site, definitively determines that a plant is *A. glandulosa* ssp. *glandulosa*. The leaves of plants whose branch tips were not sticky were then examined for stomates on both sides. Such plants are *A. glandulosa* ssp. *cushingiana*. This technique was suggested by Grey Hayes of the Coastal Training Program, one of the three biologists (not counting myself) with advanced degrees and extensive field experience in coastal areas who were invited by staff to participate in the site visit. Of the hundreds of plants that were examined by one means or another on March 16, 2007, throughout the manzanita chaparral on the Foster site, not a single plant turned out to be *A. tomentosa* (stomates on only one side).

On a subsequent site visit (June 30, 2007) to extend the existing chaparral boundary mapping, I continued the examination of manzanita plants along habitat edges, along long-standing footpaths through the habitat, and along several transects directly through the middle of the vegetation. Once again, every single plant was *A. glandulosa*; my tally of manzanita plants examined on that occasion - during which most of my time was devoted to other primary field work purposes - was 261. I think the number of field-biologist hours directed toward identifying the manzanita species on the Foster parcel, and the extent of that field work both in the immediate vicinity of proposed structures and throughout other habitat areas, is more than adequate to reach the conclusion that neither *A. tomentosa*, nor any other manzanita taxon other than the two subspecies of *glandulosa* that are now confirmed, occurs on the parcel.

Non-Maritime Chaparral on Site

The published description of vegetation stands that are most similar to the chaparral found on the Foster parcel include Eastwood manzanita (CNDDB, 2003; Evens et al., 2006), Eastwood manzanita (*Arctostaphylos glandulosa*)-chamise (CNDDB, 2003), and chamise-Eastwood manzanita (Borchert et

al., 2004; Evens et al., 2006). Borchert et al. classify this vegetation as montane[1], not maritime, and describe it as extending downward in elevation to about 2,000 feet - only a few hundred feet higher than the Foster site. Their study was primarily focused upon the southern part of the Los Padres National Forest, and I imagine would have extended the elevational range of these vegetation types downward if the northern extremity of the Santa Lucia range had been fully examined. Conrad (1987) describes the ecological range of A. *glandulosa* as follows: "Common shrub, 300 to 1800 m (1,000-6,000 ft); chaparral, mixed conifer to ponderosa and Jeffrey pines; coast ranges, to Cuyamaca Mountains, San Diego County, north to Oregon. In a Marin County study area, Evens et al. (2006) described A. *glandulosa* and chamise/A. *glandulosa* chaparral communities as having elevational ranges of about 800 feet to 2,300 feet on "mid slope to ridgetop." They describe the global range of these chaparral types as extending from the Coast Ranges to the montane zones of the Transverse Ranges (e.g., San Gabriel Range), and Peninisular Ranges (mountains east of San Diego).

With regard to the non-maritime status of A. *glandulosa* ssp. *glandulosa*, the Jepson Manual (Hickman, 1993) gives an elevation range of about 1,000 to 6,250 feet (higher than the elevation of Lake Tahoe!). This range includes just the uppermost few hundred feet of the Foster parcel, which extends from about 700 feet to 1,500 feet. Exactly as published references would indicate, I have only observed A. *glandulosa* on the site from about 1,100 feet to about 1,485 feet. The known range of A. *glandulosa* is clearly indicative of a plant with a vast non-maritime geographic range. Records with location data in the data base of the Consortium of California Herbaria extend throughout the Coast Ranges to about 30 miles inland from the ocean (Consortium, 2007). Specimens have been collected at elevations at or lower than the Foster parcel both near the coast and far away (20 miles); the range of A. *glandulosa* does not "dip" to lower elevations in areas that are in closest proximity to the ocean. It merely extends down to the elevation range of the Foster parcel, whether near the ocean or far from it.

Michael Vasey, who was the Commission staff's hand-picked manzanita expert to attend the site visit in March, has prepared a list of 50 species and subspecies of *Arctostaphylos* (over half of the taxa in the entire genus) which he states occur within maritime chaparral. Notably, even in this exceptionally inclusive list, he does not include either A. *glandulosa* ssp. *glandulosa* or ssp. *cushingiana*. In light of the high elevation range of all subspecies of A. *glandulosa* (except ssp. *crassifolia* discussed below), the descriptions in many published sources of vegetation that includes the types found on the Foster site, and the conclusions of manzanita experts who study manzanita, hold maritime chaparral in high regard, and favor the widest possible expansion of its definition, the characterization of the chaparral on the Foster site as maritime is unsupportable and does not represent the consensus of vegetation and manzanita experts.

On the contrary, a substantial body of scientific information indicates that the ecological range of A. *glandulosa* and mixed A. *glandulosa*-chamise chaparrals is simply montane or lower-montane. Although those montane settings extend, on the map, to locations close to the ocean, they are simply not maritime chaparral, and have never been described as maritime chaparral in any scientific publication of which I am aware.

1 "Montane" refers to highland habitat zones up to the tree line.

The staff report is misleading in even mentioning the completely irrelevant subspecies A. *glandulosa* ssp. *crassifolia*. This taxon, which is restricted to the very far southern coast of California (San Diego County and Baja California), does have a low-elevation distribution, but even this subspecies, which has the lowest elevation range of any subspecies of *glandulosa*, may not be a maritime indicator, only a possible maritime associate in a portion of its range.

If the staff report is to consider subspecific taxa other than those that occur on the Foster site as relevant to the affinities of the vegetation, it should also note that there are hundreds of records of *Ceanothus cuneatus* var. *cuneatus* extending not only to 6,200 feet on the eastern side of the Sierra Nevada, but even far into the state of Nevada. The range of *Chrysolepis chrysophylla* var. *chrysophylla* extends to 5,000 feet and well into the Sierra Nevada. I do not think it contributes to informed regulatory decision-making to allude to plant taxa whose closest occurrence to the site under discussion is at least 360 miles away.

Proposed Maritime Manzanita Vegetation Types (Not Occurring on the Foster Site)

The two published definitions of maritime chaparral vegetation (Holland, 1986; Sawyer and Keeler-Wolf, 1995) require dominance by A. *tomentosa*. The definition that was once tentatively proposed by the Coastal Training Program mentions about 25 possible indicator species of *Arctostaphylos* and *Ceanothus* that dominate (not "are present within") maritime chaparral (CTP, 2003). At the recent chaparral workshop (June 2007), a list of 11 (12?) candidate maritime manzanita alliances (not including A. *glandulosa*) was presented by Julie Evens and John Sawyer, plus 4 alliances whose status is tentatively uncertain (but which Prof. Sawyer later indicated should not be considered to be within maritime chaparral; Sawyer, 2007). At the same workshop, Mr. Vasey distributed a list of 50 manzanita species and subspecies (not including any subspecies of A. *glandulosa* except ssp. *crassifolia*) that he represents as occurring within maritime chaparral (plus additional ones from "island chaparral").

Thus, the history of radically differing views of how many and which plants might be indicative of maritime chaparral is admittedly a little bewildering and clearly demonstrates a lack of scientific consensus to this day, evidently even among co-authors. Moreover, the types of soils (examples: nutrient poor granitic- and sandstone-origin soils) that are said to support maritime chaparral also range clear across California through the Great Basin and the Rocky Mountains all the way to the Great Plains, and there is as yet no quantitative basis for discriminating where the maritime climatic zone ends (in terms of plant-ecological effects). Thus, we are left without a defensible basis, for the purpose of making regulatory decisions, for replacing the existing published definitions of maritime chaparral with one or another proposed definition that has not yet been reviewed by the scientific community.

As to plant biogeographic facts that pertain to proposed "but yet to be adopted" definitions of maritime chaparral vegetation types, I agree with the comment that there are maritime chaparral vegetation types that are dominated by manzanita species other than A. *tomentosa*. This has been recognized from the beginning (Griffin, 1978). Nine of the most recently proposed 11 alliances are characterized by manzanita taxa (species and subspecies) that have ranges that are restricted to immediate coastal areas within elevations that are consistent with the likely extent of the frequent summer fog zone. These would seem to constitute a group of manzanita alliances that are very likely to constitute scientific consensus regard-

ing maritime chaparral in central and southern California. However, not one of these manzanita species occurs at all on the Foster site, even as a single individual. I and others including John Sawyer certainly do not agree that the list of possible maritime alliances should be expanded beyond the list of 11 candidate alliances (which does not include A. *glandulosa* ssp. *glandulosa* and ssp. *cushingiana*; Sawyer, 2007). As far as I can tell, to the extent that any scientific consensus can be identified, it would be that the type of chaparral vegetation that occurs on the Foster site is not maritime.

Geographic Distribution of Purported Indicator Species Other than Manzanita

The word "indicator" is defined as "...an organism or ecological community so strictly associated with particular environmental conditions that its presence is indicative of the existence of these conditions" (Merriam-Webster, 1996). Regardless of what definition one might use for the term "maritime," I would suggest that, for the purposes of the present discussion, it would have some relationship, if not by definition then at least by coincidence, with proximity to the ocean in terms of vertical and horizontal distance. Accordingly, one reasonable way in which to evaluate the degree to which a particular plant species might be, or not be, an indicator of maritime conditions is to consider its geographic and ecological range, specifically the maximum elevation and maximum distance from the ocean at which the plant is known to grow, and the plant communities in which it is known to grow. If a plant grows at a relatively high elevation, or in hilly areas at a distance of more than a few miles from the ocean, or is commonly found in plant communities such as inland coniferous forest types, it is not "...so strictly associated with [maritime] conditions..." that is presence can be relied upon to indicate a maritime plant community, and is not an "indicator" of maritime vegetation. There is no altitudinal threshold that is universally accepted as defining the cutoff of maritime conditions (discussed below in more detail), but I think that information about the geographic distribution of the plants that have been referred to in the staff report, the addendum, and in my own writings pertaining to the Foster project will shed light upon the vegetation determination.

To that end, I have researched the actual geographic distributions of all of the species that are mentioned by Commission staff as possible maritime indicators, most particularly golden chinquapin (*Chrysolepis chrysophylla* var. *minor*), huckleberry (*Vaccinium ovatum*), and Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*). I also researched the ranges of the eight species that are mentioned later in the staff report addendum as being "associated" with maritime chaparral (although the addendum does not state explicitly whether any chaparral area where these species occur may be, is likely to be, or is definitely maritime chaparral).

The geographic ranges of these eleven species plus A. *glandulosa* are provided in Table 1 (based mostly upon data from Consortium, 2007, and Hickman, 1993). In brief, neither the dominant species on the Foster sites, nor the supposed indicator species, nor the "associated" species, are indicative of maritime habitats, and in fact most of them occur only rarely in maritime chaparral. With respect to maritime ecological conditions, ***not one of the species that occurs on the Foster site meets the definition of an indicator*** (provided above).

Table 1. Geographic distributions and ecological ranges of some plant species discussed in the text. Information was obtained primarily from Hickman (1993) and the Consortium of California Herbaria (Consortium, 2007), supplemented by other scientific publications cited in the text and by details from personal observation.

Plant Species	Elevation Range (feet)	Maximum Distance From Ocean (miles)	Comments
Dominant or common in Foster chapparal			
Eastwood's manzanita *Arctostaphylos glandulosa* var. *glandulosa* and *cushingiana*	1,000-6,250	30	Elevation range is from Hickman (1993) and Conrad (1987); a few specimens from slighly lower elevations exist.
Chamise *Adenostoma fasciculatum*	up to 5,250	130	Most widespread of all chaparral species.
Poison oak *Toxicodendron diversilobum*	up to 5,400	120	Widespread in Sierra Nevada.
Coffeeberry *Rhamnus californica*	up to 6,550	150	Numerous records in Sierra Nevada.
Yerba santa *Eriodictyon californicum*	200-6,250	160	Numerous records in Sierra Nevada.
Purported maritime indicators (present on site as few individuals)			
Monterey ceanothus *Ceanothus cuneatus* var. *rigidus*	up to 3,500 (6,500)	12 (150)	Specimen in UC Davis herbarium is marked 1,800 ft; higher elevation is a specimen annotated var. *rigidus* from Sequoia National Park.
Golden chinquapin *Chrysolepis chrysophylla* var. *minor*	up to 5,900	32	Multiple sites in 4,000+ foot mountains on Sonoma/Lake County boundary.
Huckleberry *Vaccinium ovatum*	up to 3,280	24	Occurs in mountains (but not near coast) in San Diego County
Other "associated species"			
Toyon *Heteromeles arbutifolia*	up to 4,250	120	Widespread in many habitat types well into the Sierra Nevada.
Silk tassel *Garrya elliptica*	up to 2,600	130	Occurs in foothill pine woodland and chaparral in Sierra Nevada foothills.
Mountain mahogany *Cercocarpus betuloides* var. *betuloides*	8,200	>150	Range extends to Alpine County and Arizona (!).

Huckleberry provides a good example of a species that is incorrectly represented as indicative of maritime chaparral. The actual herbarium records, which are always biased toward more easily accessed areas (that is, against steep and roadless lower montane habitats), discount any validity of reliance upon huckleberry as a maritime indicator. In reality, the *majority* of collection localities of this species that are logged into the Consortium data base from south of San Francisco are from elevations higher than 1,000 ft, up to 3,281 feet (this 24 miles inland). This particular record, from San Diego County, poses the question of why, if huckleberry is a maritime indicator, it does not occur at any site in that entire county at lower elevations, such as with *Arctostaphylos glandulosa* ssp. *crassifolia*, a purported maritime indicator from the same area? The answer is simple and direct: huckleberry is not a maritime indicator; it simply has a range that includes low elevation coastal areas, and does not "indicate" the occurrence of maritime conditions at all, even though there are some easily accessible areas where it has been collected in maritime vegetation.

Golden chinquapin (specifically the lower elevation variety *minor*) is also a montane, not a maritime, plant. There are several collection localities for this species and variety in the 4,000-foot mountains near the Sonoma/Lake County line (over 30 miles inland). In principle, the same is true of Monterey ceanothus, although its range does not extend quite as far inland (about 12 miles) or as far up in elevation (only to 3,500 feet; Consortium, 2007). (However, there is a specimen from the surprising location of 6,500 feet in Sequoia National Park, specifically ascribed by an annotator to var. *rigidus*, which means that it has been examined by a *Ceanothus* expert and found to belong to that variety, our supposed maritime indicator.) Notably, Griffin (1978), who originated the discussion of maritime chaparral, specifically states that Monterey ceanothus occurs in typical (non-maritime) chaparral as well as in maritime (that is, its presence in not indicative of the plant community that he considered to constitute maritime chaparral).

Unless the concept of "maritime" is to be extended 30+ miles inland, and up to the summits of 4,000-foot-high peaks, I think that these species must be rejected as maritime indicators and described properly as what they are: equally adapted to montane and maritime conditions, but not providing any concrete indication as to which ecological zone a patch of vegetation belongs. This is the only interpretation that is in accordance with the actual objective facts of plant distributions, and with published descriptions of vegetation that is similar to that of the Foster site (Borchert et al., 2004; CNDDB, 2003; and others). I have yet to see any scientifically satisfactory explanation of why vegetation that is fundamentally inland and lower-montane should be re-characterized as maritime vegetation for the sole reason that the site where it occurs is located within the coastal zone.

The staff report addendum dated July 12, 2007, cites a long list of species that are found on the project site (some of them, not even within hundreds of feet of the County-approved building sites), and states that "...these species are commonly associated with maritime chaparral." This is a completely misleading statement, because these species are ***primarily associated with plant communities other than maritime chaparral*** (see Table 1). Collectively, the list of species claimed to be either maritime indicators or associated with maritime chaparral are significant elements in at least 149 non-maritime natural communities recognized by the CNDDB (2003). As shown in Table 1, the "associated" species have very wide ecological amplitudes that are not in the least bit indicative of maritime conditions or of maritime chaparral.

The staff comments with regard to fire cycle are not relevant to the Foster site, where the last fire occurred about 60 years ago (data from anecdotal reports and increment core of the largest uncharred redwood tree trunk on the site). This is perfectly well within the long-term normal range of fire return intervals for the area in question. Most significantly, virtually the entire biomass of the chaparral vegetation is composed of chamise and *A. glandulosa*, which sprout from burls after fires; seeds of chamise also germinate in great numbers after fire. Thus, the hypothesis that some unknown maritime-indicative vegetation has been replaced or outcompeted by non-fire-adapted species is entirely negated by the actual, undisputed composition of the vegetation.

Soils and Climate

The staff report addendum also argues, incorrectly in my view, that the soils and climate of the Foster site are indicative of maritime chaparral. Nutrient-poor granitic soils often support both maritime and non-maritime chaparral (including that of the Foster site), as well as a huge variety of other plant communities in California. Many other types of soils also support both maritime and non-maritime chaparral, including sandstone, shale, and chalk. Nutrient poor granitic soils occur all the way across most of the state of California, including the desert (Joshua Tree National Park) and high mountains (e.g., summit of Mt. Whitney). Thus, although difficult soil conditions may be a pre-requisite for long-term dominance of any type of chaparral, they provide absolutely no indicator means for differentiating between maritime and non-maritime types of chaparral and are not relevant to the discussion of this point.

The staff report addendum makes the statement that "the Foster property is within a maritime climatic regime that is cooler and more humid than interior regions where chaparral exists" but provides no substantiation or reference. Absent actual quantitative climatic data recorded on the site and at a suitable range of the unspecified interior regions (which should include elevations similar to, higher than, and lower than, the Foster parcel), I do not think this statement should be made except as a hypothesis for testing, and certainly should not be accepted without question as being relevant to the review of the Foster project appeal.

The discussion of the climatic criterion for maritime chaparral that is provided in the staff report and addendum seems more confusing to me than is the scientific record, which unequivocally indicates that ***frequent*** incursion of summertime fog at the site itself (not merely in the "zone") is a physical ecological requirement of maritime chaparral. Holland (1986) simply quoted from Griffin (1978) in describing the physical site requirements as "within the zone of summer fog incursion." What did Griffin, and therefore Holland, mean by that terminology? Griffin worked in what is probably the foggiest region south of the San Francisco Bay, namely, the Monterey Bay region (as stated in the title of his paper, see References). When we consider that the highest elevation and least fog-affected of his study sites (within Toro Park) was at an elevation of 1,015 feet, that most of his study areas were at much lower elevations in this famously foggy region, and that he identified some of his vegetation sampling in the Toro Park study area (750-1,015 feet) as non-maritime chaparral, it is unequivocally clear that the intent of this descriptive term (zone of summer fog) for maritime chaparral refers to areas that are subject to very frequent sum-

mer fog indeed. For example, the only study area for which he was able to provide quantitative data had an average of more than 18 days per month of fog for the months June-September, with a mean daily duration of 12 hours per day. Relatively high frequency of such climate is necessary in order for the plant communities to exhibit the ecological adaptations or biogeographic limitations that are described for maritime chaparral.

I am not aware of any basis in the refereed scientific literature for expansion of the climatic definition (frequent summer fog) and elevational range of maritime chaparral outside the range where this habitat type was defined by Griffin. Maritime chaparral certainly occurs further north and south than the Monterey Bay region which Griffin studied, but there is no scientific basis to expand the definition inland and upward to include geographic areas that are not in fact maritime and do not experience the remarkably distinct physical and plant-ecological conditions that Griffin identified.

What would be the regulatory consequence of taking the completely unjustified leap to define all chaparral within the undefined "zone of summer fog" as maritime? The addendum does not provide us any means of deciding where that zone ends, except for the statement that fog may form a layer up to 3,300 feet thick in the Big Sur area.

Essentially the entirety of the coastal zone as defined by the Coastal Act falls within this 3,300 foot elevational cutoff, not to mention millions of additional acres of the state that lie further inland than the coastal zone. We have seen above that the distributions of plant species that are alleged by staff to be maritime indicators extend all the way through the coastal zone and very far out the inland side of it. Thus, if we are to accept the criteria that are alleged by the staff report and addendum to define maritime chaparral, the conclusion that all chaparral within the area of jurisdiction of the Commission is maritime becomes inevitable. This result cannot rationally be reconciled with the classification of maritime chaparral as a rare or unique habitat type, which is required for it to merit designation as an ESHA; this point is discussed in additional numerical detail below.

Additional factual errors are present in the addendum within the discussion of coast redwood. The addendum makes the incorrect and unsubstantiated statement that redwood "cannot be found outside the influence of summer fog." If I understand correctly, the point would be that, having said so, staff represents that the presence of redwood can now be used as an indicator of summer fog. This is not so, despite the fact that most (not all) of the distribution of redwood does lie within the influence of high humidity close to the coast. However, as noted by Stuart and Sawyer (2001): "Redwood is thought of as a fog-belt species, but it can occur inland (e.g., in Napa and Del Norte Counties) on sites ***with sufficient summer soil moisture.***" (Emphasis added: given the proper soil conditions, summer fog is not necessary.) Zinke (1995) notes a native occurrence of redwood vegetation about 20 miles inland on Los Gatos Creek. And once again, reference to the Consortium data base shows records that contradict the statement in the staff report addendum: one collection site for coast redwood is on Little Uvas Creek, on the inland side of the Santa Cruz Mtns. above Morgan Hill. Another record of coast redwood growing without maintenance in a completely natural habitat setting (but hypothesized possibly to have been planted or to have escaped from cultivation nearby) is from the San Bernardino Mtns. I am unaware of any of the three sites noted above being known for their summer fog occurrence or influence. Thus, the

actual scientific facts do not support a statement or representation that the presence of redwood proves or indicates the occurrence of summer fog.

Although coast redwood does occur on the Foster parcel, the subtype of redwood forest or woodland to which it belongs on this site (redwood-tanoak) is the one that is identified by the Forest Service report on redwood vegetation of the northern Santa Lucia range as "...the most widespread and xeric type" (Borchert et al., 2004). Accordingly, it is scientifically incorrect to ascribe any particular significance to its presence as a definitive indication of the extent of the summer fog zone (either frequent or occasional).

Finally, I hope that it is a misprint in the addendum to state that "...the Commission concludes that the chaparral on the site is central maritime chaparral" and that this statement represents only the conclusion of staff, based upon insufficient botanical information (supplemented above) and what seems to me to be unscientific reasoning. I am confident that the full Commission, having a more complete picture of the actual geographic and ecological ranges of the plants that dominate or are present in trace numbers on the Foster site, will arrive at the correct conclusion that the vegetation is not maritime chaparral, but instead conforms to non-maritime types as described in a variety of different sources (Borchert et al., 2004; CNDDB, 2003; Holland, 1986; Sawyer and Keeler-Wolf, 1995; to name just a few).

Notwithstanding my conclusion that the chaparral habitat on the Foster site is non-maritime, I agree with the principles that guided the original and present project design: avoidance of the overwhelming majority of the chaparral habitat (under the present project, the entirety of the manzanita-dominated chaparral), and preservation of this habitat by conservation and/or scenic easements. The Foster project, whether viewed as proposed or as revised, is a perfect example of an excellent level of protection of chaparral habitat. It preserves in perpetuity over 99 percent of the chaparral on the site, regardless of whether one considers it to be maritime or non-maritime; ESHA or not ESHA.

ESHA DESIGNATION

As noted above, the criteria that are used in the staff report and addendum to determine that the chaparral found on the Foster parcel is maritime chaparral also apply to essentially all of the chaparral that occurs within the zone of jurisdiction of the Coastal Act. This would automatically make maritime chaparral not a particularly rare habitat type, and would seem to negate its designation as an environmentally sensitive habitat area (ESHA). The strip of land from roughly San Francisco to the southern state border, 25 miles wide (inland range limits of several of the purported maritime indicators used by staff to determine the Foster chaparral as maritime) would lie almost entirely within the alleged "summer fog zone" extending up to 3,300 feet in elevation. This is an area of 6.4 million acres. Certainly, only a portion of this supports chaparral (one might estimate conservatively, only 1/5, or about 1.3 million acres), but all of that would be maritime under the definition relied upon by the staff report and addendum. Eric Van Dyke estimates that there are some 30,000 to 60,000 acres of maritime chaparral habitat, narrowly defined (statement made at the June 2007 chaparral workshop). Even an area of this size seems rather large for a generalized habitat type to be

considered ESHA. If we also include the wider definition suggested by the staff report and addendum, we would easily have 10 to 20 times that area. It would be unprecedented and scientifically unsupportable to consider a habitat type that has an area larger than six of the United States to be a rare habitat type per se. A determination of this nature certainly should not be made as part of a single-family residence appeal, but rather at a regulatory level and should properly involve oversight of scientific regulatory bodies such as Department of Fish and Game.

Therefore, it seems clear that the maritime chaparral that was envisioned by the Big Sur LCP is a habitat type whose distribution is much more limited than the staff report criteria would indicate; presumably the preparers of the LCP had in mind the definition of Central Maritime Chaparral that existed at the time: dominated by woolly-leaved manzanita (*A. tomentosa*), with one or more other rare manzanitas also present. Neither of these circumstances occur in any vegetation at the Foster parcel. It makes scientific sense that some of the individual subtypes of maritime chaparral of properly defined maritime chaparral (Van Dyke's cumulative 30,000 to 60,000 acres) might be rare enough per se to merit ESHA designation. However, as explained above, none of those types occur on the Foster site. To properly satisfy the principles and procedures of the Coastal Act and implementing regulations, the specific vegetation composition of proposed maritime and/or ESHA definitions must be identified and justified individually by scientific references in the LCPs (e.g., chaparrals that are dominated by *A. tomentosa*, *A. morroensis*, *A. pumila*, *A. rudis*, and so on, to name a few examples).

The staff report addendum continues to repeat the erroneous statement, which we have endeavored unsuccessfully to correct in the past, that CNPS List 4 species are rare. I quote again from the CNPS Inventory (2001) in describing List 4 plant species: "***...we cannot call these plants 'rare'...***" (emphasis added; full text provided in my letter report of June 18, 2007).

Nor are List 4 plants always particularly local endemics, either. The Consortium data base shows that *Ceanothus cuneatus* var. *rigidus* occurs all the way from Point Arena (Mendocino County) to Santa Barbara County (and also up to 3,500 feet, well above the frequent summertime fog zone). *Lomatium parvifolium* ranges from near Gilroy (Santa Clara Co.) down to the Santa Ynez Mtns. (Santa Barbara Co.). These are not "endemic to small geographic areas" as implied by the staff report addendum. In a wider sense, it provides some perspective to note that about 1,400 of the 5,800 plant species that occur in California are endemic to the state (Hickman, 1993), so the occurrence of one or more strictly California species is insufficient by itself to make a habitat area remarkable, rare, or special.

Thus, the vegetation type to which the chaparral of the Foster site belongs (*A. glandulosa*/chamise) is a very widespread type, not rare or unique per se, and, according to the statements of CNPS and data in the scientific literature, none of the species that occur within it are either rare or highly restricted in geographic range. The Foster chaparral fails to meet the requisite criterion for ESHA designation in the respects of rarity or special values. The ecological values that it affords are also characteristic of all of the other widespread chaparral types of the coastal zone, hence "common," not "special" would be the correct terminology.

In addition, the staff report and addendum are in error in finding that the chaparral on the site is "highly susceptible to disturbance by human activities." On the contrary, as the staff report itself notes, some areas of chaparral (specifically, poison oak chaparral) were cut essentially to the ground and further temporarily suppressed by standard commercial herbicide to permit land surveying for architectural design, yet they have already recovered to essentially the same vegetation character as before, according to the succession of monitoring reports by Jud Vandevere. The widespread fire-adapted chaparrals (including, but not limited to, *A. glandulosa*-dominated chaparral, such as occurs on the Foster site) are exceptionally disturbance-*resistant*: whether cut to the ground or burned entirely to a crisp, they sprout back to restore the prior canopy within a matter of a few years (Keeley, et al., 2006). In fact, these types of chaparral are only eliminated or converted to another vegetation type under the most severe and total removal of not only the vegetation but also the entire upper part of the soil profile, down to bare unweathered rock, or by constant vehicle or livestock traffic sustained over a period of decades. (The latter is the case for the long-standing pre-Coastal Act disturbed areas within the Foster parcel and elsewhere throughout the immediate vicinity.)

Thus, the chaparral vegetation of the Foster site fails to meet either of the fundamental criteria that are required for an area to be determined as an ESHA. These remarks are not at all intended to question the determination of the Big Sur LCP that woolly-leaved manzanita chaparral is an ESHA; I have not considered that question and do not attempt to address it in the present letter report, which focuses solely on the chaparral of the Foster parcel.

BUFFER ZONES

One final subject area merits additional discussion at this time: the staff recommendation of a total of 200 feet of separation between structures and the boundary(ies) of any chaparral vegetation on the Foster parcel, which does not meet the definition of the woolly-leaved manzanita chaparral that is considered to be ESHA under the Big Sur LCP. As explained in my letter report of June 18, 2007, there are no objectively valid or site-specific scientifically supported grounds for the 200-foot setback recommendation. In order for this recommendation to be applied, according to Kelly and Rotenberry (1993), there must first be an identification of specific indirect impacts that can reasonably be anticipated to affect the long-term sustainability of the chaparral habitat in the absence of a 200-foot separation between structures and chaparral, and it would be necessary to show that the hypothetical impacts would be eliminated by the 200-foot setback.

In part, the staff report addendum recommends that structures be set back 100 feet to allow for fuel management for fire protection to occur entirely outside the chaparral vegetation. (The other 100 feet of the setback recommendation are discussed below.) If I understand correctly, this part of the recommendation is based upon a belief that the thinning would somehow result in a significant adverse impact to the chaparral on the Foster parcel. However, the staff report does not provide any scientific support for this hypothesis.

Actual evidence of the impacts of the proposed thinning on chaparral are available simply by observation, on the portion of a neighboring parcel that is visible from the Foster access road, of exactly the same type of thinning. As I have explained previously, thinning of woody fuel for fire protection pur-

poses has been carried out since 1999 on the nearby Hain parcel, in vegetation that is similar to that of the manzanita-dominated chaparral on the Foster site. As I and the staff's chosen team of botanists observed, not only are there no perceptible adverse impacts on the vegetation (no colonization by non-native weedy species, no erosion), in fact there are some benefits that were observable and brought to our collective attention by Grey Hayes during the March site visit: short-lived native California species that are excluded from dense, undisturbed chaparral have germinated and are reproducing within the thinned area (but not elsewhere). Thus, according to available factual information derived from the Hain site and from the evidence of what resulted from prior cutting of poison oak chaparral on the Foster site, the fuel management itself does not have any significant adverse impact on the chaparral, and will not only allow for, but will enhance, the long-term sustainability of the habitat.

Where there is empirical evidence to indicate the positive effects of thinning and an absence of evidence supporting a hypothesis of negative impacts, it is incorrect to find that there is any significant adverse impact that can reasonably be anticipated and which would support the requirement of a 100-foot setback to allow for fire protection. Thus, allowing for 100 feet of separation between structures and the chaparral vegetation is not necessary to protect the habitat, as long as the fuel management is carried out by trimming of live and dead standing biomass, and does not involve drastic soil disturbance such as mechanized or hand-effected uprooting of whole plants.[2] Specification of how the fuel management should be implemented can be precisely laid out in a condition to the residential development. Such a condition specifying and limiting the nature of fire-protection thinning, similar to that which has been applied to the Hain parcel, is sufficient to adequately protect the long-term maintenance of the habitat that is adjacent to the structures on the Foster site (whatever its designation).

The staff report cites a publication by Kelly and Rotenberry (1993) in support of the recommendation of an additional undisturbed 100 foot buffer zone for ecological protection of the chaparral habitat beyond the limit of any fuel management zone. Needless to say, it would appear that a finding that the chaparral is not maritime (which is the correct finding, as explained above) obviates the necessity to evaluate the recommended buffer distance, but, for completeness, it is appropriate to expand upon it here.

First and foremost, the Kelly and Rotenberry paper is directed toward the circumstances in extensively urbanized areas (their specific example is the Motte reserve in Riverside County), with an isolated reserve surrounded on all sides by totally urbanized areas. In such a setting, the process of penetration of the impacts of urbanization into undeveloped habitat occurs in quite a different manner and to a much greater extent than in the opposite situation, which is the case at the Foster parcel. Here, the habitat is extensively undeveloped (and will remain so due to identification of critical viewshed, steep slopes, and recorded scenic and conservation easements), and the maximum potentially developed area is very small. Even cumulatively, considering all of the parcels involved in the Rocky Creek lot line adjustment, the total maximum potential development remains a tiny island surrounded by an ocean of protected habitat. The simplest way to summarize the difference is provided by the "relative edge" concept of Kelly and Rotenberry, which is an index of the amount of perimeter (which adjoins development) per unit area of reserve habitat, expressed in meters (m) per hectare (ha). A 70-acre (28.3-ha) area of chaparral with a 600-foot (183-m) boundary adjoining development has a relative edge of 6.5. The same chaparral

2 It is noted that the fire authority has exercised its statutory authority to specify a 30-foot fuel modification zone for this parcel, not a 100-foot zone.

area totally surrounded by development has a minimum relative edge of 66.6; much greater if the hypothetical reserve is not exactly circular. These figures are roughly representative of the situation of the chaparral on the Foster site with the proposed project (r.e. of 6.5) and with urbanization surrounding it (r.e. of 66.6 or more). Thus, every ecological effect is ten or more times greater in the urbanized setting in comparison with the actual situation that we are evaluating. This fundamental aspect of the Kelly and Rotenberry paper seems to have been ignored by staff.

With respect to determining buffer zones, Kelly and Rotenberry suggest that, firstly, the external forces or processes that are likely to have a negative impact on the protected community must be identified. The staff report does not do this. Nearly all of the generalized impacts mentioned in the staff report do not pertain to the proposed Foster project; that is, on the sides of structures toward the chaparral, there is no exterior lighting, no landscaping (irrigation, fertilizer, pesticides), and so on. There would be human foot traffic around the structures, and on existing footpaths, but the staff report does not provide any indication of specific species or ecological processes that would be affected by it. On the contrary, there is ample evidence that such foot traffic does not have any significant adverse impact on chaparral species, habitat, or processes. Moreover, this is not a reserve site adjoining hundreds of homes, with heavy recreational use; it is a single family residential development, which will experience very light human use in comparison with the settings of a large multi-parcel development project where the level of impacts on nearby habitat might be high enough to have potentially significant indirect habitat impacts.

It is possible that domestic pets might accompany the residents or their guests. To begin with, the staff report fails to identify any specific sensitive species or processes in the chaparral of the Foster site that would be affected by pets. Moreover, although unrestricted dogs and cats range great distances (in the case of the latter, up to one mile according to Kelly), the effects of domestic pets are drastically constrained by the presence of native top predators such as coyotes and mountain lions, which are present in the project vicinity. (I have confirmed the presence of the former; the latter is anecdotal.) In order to ensure that the hypothetical potential effects of domestic pets do not penetrate into the chaparral, it is not necessary to allow a 100- or 200-foot distance between structures and the edge of chaparral habitat, but only to allow the native predator population to do the job for us. The staff report and addendum fail to specify how a distance of 100 or 200 feet would mitigate this particular hypothetical impact.

The subsequent steps in the determination of buffer zone width and character that are specified by Kelly and Rotenberry include determination of the extent to which the external effects penetrate the boundary (how permeable it is), and what distance is necessary, or what specific modifications of the boundary or buffer zone can be made, to ensure that the penetration of outside influences does not significantly degrade the specific species and/or processes that were identified within the "preserve." In the present case, the staff report has not even identified the specific impacts, therefore it is not possible to continue with the approach suggested by Kelly and Rotenberry.

In conclusion, the available facts about the Foster site itself and the species that occur within it support the following conclusions:

- The chaparral habitat on the site is not maritime chaparral.
- The chaparral habitat on the site does not constitute ESHA.

- The values of the chaparral habitat on the site are adequately protected by the proposed project design, which avoids the removal of any manzanita-dominated chaparral and does not have any adverse impacts (even from fire protection measures) on it.
- Hand-thinning of woody fuel for fire protection purposes, even if applied within the extremely small proportion of the chaparral habitat where it is proposed (zone 30 feet wide as proposed by California Department of Forestry), will not have any significant adverse impacts on the habitat, and will not diminish the long-term sustainability of the habitat.
- For the specific circumstances of the Foster project, there is no need for a buffer zone to protect the values of the chaparral habitat.

Therefore, the available scientific literature and facts observed on the Foster site support the denial of the appeal and the implementation of the project as proposed and approved by Monterey County or, at the very least, approval of the project as revised by the applicant after receiving notice of the appeal. Both the proposed/approved project and the revised project proposal would not have any significant impact on the chaparral (whatever its designation), and both would preserve in perpetuity the long-term functions of the chaparral habitat on the site.

Sincerely,

Adrian M. Juncosa, Ph.D.

Senior Ecologist

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October 19, 2007

Dan Carl and Katie Morange
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Subject: **Steven and Gillian Foster Residence: Resource Protection Plan**

Dear Mr. Carl and Ms. Morange,

The enclosed plan provides written follow-up to our discussion in your offices about available methods that may provide additional protection of resources on the project site referenced above, so that staff can support a recommendation of approval of the project with modification offered by the owners (if this modification would result in a recommendation for approval).

Please do not hesitate to contact me if you have any questions or suggested changes to the plan.

Sincerely,

Adrian Juncosa

Adrian M. Juncosa, Ph.D.
Senior Ecologist

cc: Jonna Engel, Ph.D.

[illegible] Foster Place, Truckee, CA 96161 • Telephone: 530.582.5812 • Fax: 530.582.5882 • www.ecosynthesis.com

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STEVEN AND GILLIAN FOSTER RESIDENCE

RESOURCE PROTECTION PLAN

Prepared by Adrian Juncosa, Ph.D.

October 18, 2007

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Introduction

For the reasons described in our correspondence dated September 6, 2007, we continue to believe that the published scientific literature and facts of plant distributions indicate that the chaparral on the Foster site is not Central Maritime Chaparral, and therefore not ESHA. However, in response to discussions with CCC Staff, we have prepared the present Resource Protection Plan, which is intended to protect on-site chaparral habitat values, even though we do not believe chaparral on the Foster site constitutes Central Maritime Chaparral.

We believe that, with the implementation of this Resource Protection Plan, the construction and use of the residence and associated structures as described and located in the modified Approved Project would not result in any significant disruption or threat to long-term sustainability of the chaparral that exists on the Foster site, whether considered to be ESHA or not.[1] Moreover, with the implementation of this Resource Protection Plan, we do not believe that any buffer would be required to protect the chaparral that exists on the Foster property.

Potential Impacts and Resource Protection Measures

As for any project, impacts are properly separated into "construction" and "operational" impacts (impacts that result from the use and maintenance of the project elements over the long term).

DURING-CONSTRUCTION IMPACTS

- In the event that construction equipment were to stray outside the construction area, or if materials laydown areas were located outside the construction area, vegetation and/or soils could be damaged.

Recommended resource protection measure: Install orange plastic exclusion fencing just outside chaparral and maintain it in place throughout exterior construction.

- In the event of precipitation during construction, sediment could potentially be generated at disturbed soil surfaces and be carried from disturbed soil surfaces in work areas into downslope habitat areas. This is typically considered to be an adverse impact, although this is not so clear in the present specific ecological circumstances. Nevertheless, it is an alteration of existing conditions that can easily be prevented.

Recommended resource protection measure: Install a sediment barrier such as straw wattles or silt fencing just outside chaparral and maintain it in place throughout exterior construction.

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[1] I understand that Mr. Foster is prepared to modify the project so that his proposed studio is moved slightly so as not to be located in on-site chaparral, if doing so would result in a recommendation for approval of the project.

CCC Exhibit I.b
(page 28 of 35 pages)

- Nighttime construction, if any, requires bright lights that are difficult to shield effectively, with potential adverse impacts on habitat.

Recommended resource protection measure: This potential impact would be avoided by restricting exterior construction to daylight hours (no earlier than sunrise and no later than sunset, thus a shifting time period throughout the year, but certainly adequate for typical construction scheduling).

POST-CONSTRUCTION IMPACTS

Structures themselves are quite inert objects, not greatly unlike the small rock outcrops that are a typical feature of chaparral habitat throughout California. Once in place, the buildings themselves have very limited and specific effects, which are readily minimized or avoided by project design. It is other human actions in the immediate vicinity that might have impacts to plant communities that are significant if not mitigated (see below).

- Impervious roof surfaces concentrate rainwater runoff, which in areas with erodible soils could increase sediment generation and delivery to off-site habitats. This is a very limited potential impact in the present case, because the chaparral soils are very rocky and not particularly erodible.

Recommended resource protection measure: Water will be collected by roof gutters and a drainage design plan will provide that this water will be conducted to the north and east, away from chaparral habitat and the steeper slopes, to the extent feasible. There, it may be collected in a rainwater basin for use and/or discharged onto stable surfaces for infiltration into the groundwater.

- Although lighting does not penetrate very far into dense vegetation such as chaparral, staff have suggested that there is a potential habitat impact from this source.

Recommended resource protection measure: No exterior lighting will be installed on sides of buildings that face directly toward the chaparral except the minimum required by building code (specifically, one light at the door of the main house, shielded so as not to shine directly into chaparral vegetation, plus very low-wattage riser lights in the steps).

- The most significant potential impacts of a project design with structures less than 100 feet from the chaparral pertain to landscaping: installation of non-native plantings, irrigation, and application of horticultural chemicals (insecticides, herbicides, fungicides, and processed fertilizers).

Recommended resource protection measures, applicable to the exterior areas within a 100 foot distance of on-site chaparral:

(These measures would not apply to areas further away from chaparral, so that the present and future owners can have a vegetable garden, which requires non-native species and irrigation)

- No plantings shall be allowed other than species native to California that are ecologically appropriate to the physical conditions of the site (soils and climate; specifically, not depending for their survival upon irrigation water to be applied during summer).

- No permanent irrigation system shall be installed (hand irrigation of native plantings is permitted to enhance establishment).

- No insecticides, herbicides, fungicides, and processed fertilizers shall be applied. Use of compost as a soil amendment at planting sites is permitted. Use of pheromone traps or other products for control of non-native insect species is permitted; these are highly species-specific means of insect control with zero or insignificant effects on non-target species.

▪ Domestic pets have potentially significant adverse ecological effects in many habitat settings. While no protected animal species are present on the Foster site, cats are identified as predators of small native vertebrates such as birds and rodents near residences. Although scientific research and abundant anecdotal evidence shows that coyotes are extremely effective predators on cats (also foxes, small dogs, and rodents). Where coyotes are present and pervasively active, as in the case of the Foster site (to which I can attest from personal observation of sign and the animals themselves), the potential of significant cat impacts on wildlife is low. Nevertheless, the Fosters have indicated acceptance of a condition prohibiting the keeping of domestic cats.

Recommended resource protection measure: No domestic cats shall be kept on site by owners of the property.

▪ Fire protection/fuel management

Recommended resource protection measure: The primary fire protection methodology for the Foster project will be wise choice of materials, in accordance with the requirements of the fire authority and imposed as conditions of approval to maximize the structures' survivability in the event of a fire (which can probably be expected to occur on a natural return interval of some 50-150 years). Also, fuel loads will be managed within a 30 foot distance of structures by removal of all dead woody material and some of the living canopy.

Evidence from the nearby Hain parcel (portion that is observable from the access road to Foster) is that the proposed degree and method of fuel management for fire protection does not have significant adverse impacts. On the contrary, there are some beneficial ones, specifically, allowing for germination and growth of some short-lived native chaparral species that are suppressed by dense canopy; the resultant addition to local plant biodiversity in turn supports other parts of the ecological web that are otherwise not present or poorly supported by existing undisturbed habitat. For example, the observed portion of the Hain fuel-management area supports the leguminous species *Lotus scoparius* (deer weed), which provides a food source for small solitary native bees that almost certainly pollinate, and probably depend upon, this or similar species. Deer

weed is not present (or at least is extremely rare) within undisturbed chamise-manzanita vegetation in the immediate project region.

Notwithstanding the lack of evidence of significant adverse impact, the Fosters have indicated an interest in including in the approval of the Approved (or Revised) Project a commitment to implement habitat restoration on an existing PGE road in the lower part of the parcel. This restoration would be implemented in the most environmentally sensitive and effective fashion possible as described below. Although some of the elements described are innovative and not specifically demonstrated in the field on any restoration project of which I have written information, there is ample scientific basis in the literature to support this conceptual approach. Restoration action steps are described generally in the chronological order in which they would be implemented.

1. Collect seeds from chaparral and coastal scrub species that occur in habitat on site, including dominant and other common species. Depending on species, scarify, or stratify, or otherwise pretreat, or not, as indicated by scientific and/or plant propagation literature.
2. Obtain woody material from site clearing and fuel management (amount as yet uncertain; material from nearby parcels also acceptable if available and needed). Burn this material either on site (if dooryard burn permits are available in the project area; and in this case according to exact requirements of such permits) or off-site in accordance with applicable agency requirements. Preserve ash and charcoal.
3. Gently scarify surface of road to be reclaimed, leaving surface irregularities primarily oriented parallel to topographic contours.
4. Mix seeds and ash and distribute evenly over/within roughened reclamation surface. Incorporation of small quantities of compost is optional.
5. Appropriateness of surface stabilization (e.g., by means of tackifier or a very thin application of native mulch or hydromulch plus tackifier) is yet to be determined. Natural post-fire germination is enhanced partially by high light levels, so the substantial mulch applications that might be recommended in other situations may not be advisable.

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October 22, 2007

Dan Carl and Katie Morange
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Subject: Steven and Gillian Foster Residence:
Comments to Supplement Resource Protection Plan

Dear Mr. Carl and Ms. Morange,

The Resource Protection Plan (the"Plan") for the project referenced above, which was submitted to you last week, itemizes impacts that could reasonably be anticipated to result from construction and use of the Foster residence project, and recommends measures that can be taken to ensure that these impacts are avoided or reduced to insignificant levels. This letter supplements the Plan with some additional discussion of the ways in which the project will not result in significant impacts and is consistent with all applicable resource protection standards.

As noted in the Plan, I do not believe that the siting of the buildings themselves within 100 feet of the edge of the chaparral vegetation will result in any significant disruption or threat to the long-term sustainability of the plant community. This letter provides additional background information on this subject, both during construction and afterward throughout occupation and use of the residence.

Chaparral generally, and specifically chaparral vegetation that is dominated by resprouting species (ones that characteristically replace themselves by sprouting from a woody stem base after a fire), is one of the types of vegetation that is most resistant to adverse impacts from nearby excavation and construction.

In other vegetation types, where root systems are located predominantly near the surface and spread great distances beyond the plant canopies (example: certain types of deciduous forest vegetation), significant construction impacts can result if important roots are not located by careful exploration and avoided by excavation. Although arborists typically regard that trees are not significantly damaged by excavation on one side (contrasted with the cutting of root systems on two or more sides), nevertheless, there are situations in which special measures must be applied in order to avoid significant impacts on woody plants (specifically trees) from excavation for the installation of building foundations.

The situation for chaparral vegetation, and specifically the type of chaparral vegetation that occurs on the Foster site, is very nearly the exact opposite. The chaparral on the Foster site is dominated by Eastwood's manzanita (*Arctostaphylos glandulosa*), or in some portions co-dominated by chamise (*Adenostoma fasciculatum*) and *A. glandulosa*. Both of these dominant species are ones that

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resprout after fire. Keeley and Keeley (1988) state that "Sprouting shrub species tend to have more deeply penetrating roots than nonsprouting species" and that "Fine roots (defined as <0.25 cm in diameter) tend to be concentrated below the canopy" (see also Cooper, 1922, and Hellmers et al., 1955 for a diagram). For these reasons, the impacts of excavation for building construction are less for the type of vegetation that occurs on the Foster site than they are for nearly any other type of woody vegetation. The lack of significant effects on manzanita plants from nearby excavation and placement of impervious surfaces can readily be seen by driving through areas where these species occur and stopping to examine some of the roadside plants. For one relatively local example, sites along Highway 68 in the vicinity of the Monterey airport support highly vigorous plants of *Arctostaphylos hookeri* and *A. tomentosa* immediately adjacent to the highway, including occurrences where new roads and parking lots have recently been built just on the other side of the plants.

I cannot emphasize strongly enough how resistant manzanita species generally are to quite drastic physical effects such as cutting off the entire canopy or heavy grading of the entire soil profile. In the former case, the plants rapidly resprout and grow vigorously, more or less analogously to the circumstances following a stand-replacing fire. This can be seen, for example, on the Hain property not far from the Foster site, where the *A. glandulosa* plants that can be seen from the road are resprouting and growing vigorously within the fuel management zone.

In the latter case, manzanita is often the first, or even the only, plant group to establish itself and grow vigorously in massively altered soil landscapes. For example, in the area along Interstate 80 just east of Sacramento, most of the huge roadcuts in weathered rock are exclusively dominated by (some vegetated only by) the local manzanita species *A. viscida*. I am sure there are additional similar examples throughout the central Coastal Zone.

Combining the empirical observations noted above with the scientific sources which state that significant portions of the root systems of the predominant chaparral vegetation elements on the Foster site are unlikely to extend laterally into the areas where construction of project elements is currently proposed, I conclude that this construction will not result in any substantial disruption of the chaparral vegetation.

As noted in the Plan, enhanced runoff from roof drainage will not result in any adverse impact in the case of the Foster project, because the roof runoff is designed to be collected (per County requirements) and discharged in the other direction, away from the chaparral and the steep slopes on which it grows.

In summary, the siting of the buildings themselves close to chaparral vegetation will not result in any reasonably anticipated significant adverse impacts on the plant community, and there is ample objective observation and scientific references to support this contention. Except as noted and discussed in the Plan, I am not aware of any empirical evidence or scientific literature that supports a finding to the contrary.

With respect to the use of the buildings by the owners and their family, the Plan discusses potential landscaping- and lighting- related effects, which were always minimized by the project design and will be specifically addressed by means of the measures recommended in the Plan.

One result of construction of the project will obviously be the presence of human beings in the immediate vicinity of the chaparral vegetation. This is not discussed in the Plan, because I do not

believe that any significant effects would result from it, and because any insignificant effects would not be eliminated by changing the building locations: the owners and their family and guests would still walk to the edge of the chaparral and look out over the ocean, as these are the most scenic spots and ones that should naturally be available for such a low impact use.

An important characteristic of the chaparral on the Foster site is the very high density of the woody vegetation; it is very difficult to walk or see through in many places. (This contrasts greatly with the conditions in open coastal sage scrub [e.g., black sage scrub, which occurs many hundreds of feet lower within the parcel].) It has uniformly been my personal experience in a lifetime of field exploration in chaparral, that neither pollinators nor other wildlife species are significantly disturbed by occasional human passage. I and other bird-watchers can attest to the frustration one experiences on hearing small chaparral birds such as Bewick's wren and verdin active only a few feet away within the vegetation, but which neither fly in alarm (allowing for a glimpse and identification) nor cease their normal activity. At best one gets a brief alarm call. I have often stood in coastal chaparral and watched pollinators busily foraging in trailside species such as chamise, ceanothus, blue-curls (*Trichostema lanatum*), sage (*Salvia*) species, and manzanita, seemingly unaware of or completely unconcerned by human presence.

Although I cannot cite specific scientific literature in support of these statements, this is hardly surprising: funding agencies are generally reluctant to support research on the exceptionally minute effects of low-frequency human activity, and scientists are not likely to expend precious research time on this subject. I hasten to add that there has been some study of effects of dense surrounding development on small islands of isolated plant communities, but, as explained in my letter of July 27, 2007 (pages 13-14) this is an entirely different ecological circumstance to that of the Foster project.

It is reasonable to suggest that there is always some extremely minor level of impact from human presence, however, attainment of zero impact is not the standard that applies, nor is it necessary in order to ensure long-term sustainability of the chaparral, nor is it feasible to achieve for essentially any project within the Coastal Zone. I am absolutely confident that the construction and use of the Foster residence project will not result in any significant disruption or threat to long-term sustainability of chaparral or other plant communities that occur on the parcel.

It is also appropriate to compare the degree of potential effects of human presence from a project such as is proposed by the Fosters to those which might reasonably be expected to result from typical agricultural use such as low-intensity cattle or horse grazing. This is a comparison that is quite appropriate to consider, because occasional grazing is sometimes suggested or even required for the purpose of maintaining certain types of herbaceous plant communities, both within and outside the Coastal Zone.

One one hand, there are some species of native California birds that nest on the ground within the types of grasslands for which vegetation-maintenance grazing is sometimes proposed (to cite two examples, horned lark and western meadowlark), and these species are flushed from their nest sites or may even have the nests trampled and destroyed by randomly grazing cattle. On the other hand, there are different bird species that are attracted by the presence of cattle and forage on insects disturbed by the larger animals; this itself is an impact on the pattern of landscape use by avifauna that could be construed to be slightly detrimental to non-cattle-adapted species.

Nevertheless, we understand that very low levels of impact, such as the examples provided in the previous paragraph, are acceptable within the applicable resource protection standards. By the same token, I think that the level of plant community impact that can reasonably be anticipated to result from construction and use of the Foster residence project, and in particular with the implementation of the Plan, is sufficiently low that the standards of no substantial disruption and no threat to long-term sustainability will be achieved.

I hope that this provides a useful addition to the project file, and encourage you to contact me by telephone or e-mail if you have any questions at all.

Sincerely,

Adrian Juncosa

Adrian Juncosa, Ph.D.
Senior Ecologist

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SAN FRANCISCO STATE UNIVERSITY

Department of Biology
San Francisco State University
1600 Holloway Avenue
San Francisco, California 94132

Tel: 415/338-1549
FAX: 415/338-2295

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August 16, 2007

Jonna D. Engel, Ph.D.
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001-2801

Subject: Comment on Central Maritime Chaparral determination for Foster Property

Dear Dr. Engel:

I have reviewed the July 10, 2007 Staff Report Addendum and letters of June 18, July 10, and August 6, 2007 by Dr. Juncosa. I would like to make a few comments to hopefully clarify my perspective on the status of chaparral that occurs on the Foster property.

First, I think it is important to note that this issue arises at a time when the classification of maritime chaparral is undergoing revision based upon a recent public workshop held at the Elkhorn Slough NERR site (entitled "Defining and Delineating Maritime Chaparral on California's Central Coast") on June 12, 2007 as part of the Coastal Training Program. As part of that review, one of the key changes in our understanding about maritime chaparral along the central California coast relates to new revisions of the *Arctostaphylos tomentosa* (wooly-leaf Manzanita) complex. I am attaching page proofs for an accepted paper (Parker et al 2007) in the journal *Madroño* that will be published this year reflecting the new treatment of this group (refer particularly to pp. 150-153). You'll note that *A. tomentosa* is being split into two species: *A. tomentosa* and *A. crustacea.* The new classification will incorporate this new information and it will supercede many of the points raised by Dr. Juncosa based upon the former classification. Dr. Juncosa participated in the workshop (not the field trip) so he is aware of these changes.

I think it is fair to say that the general consensus among the scientific and regulatory workshop participants was that the classification of maritime chaparral should involve more than the distribution of *Arctostaphylos* species (including both *A. tomentosa* and *A. crustacea*). Maritime chaparral contains numerous local endemic (i.e. geographically rare) species and its rate of species turnover ranks with other diverse temperate ecosystems such as the Fynbos of South Africa and the Kwongan of southwestern Australia (Keeley 1992). Maritime chaparral occurs in isolated, nutrient-poor (oligotrophic) soils along the coast in habitat mosaics generally dominated by forest, coastal scrub, and grassland which occur in more favorable soil environments. It is clearly influenced by summer coastal cloud stratus (fog) which hypothetically improves the water balance of this vegetation compared to interior chaparral (Fischer in review, Vasey unpublished data). Finally, it is also impacted by periodic fires, like all chaparral vegetation, but these fires probably occur at longer fire-free intervals than interior chaparral (Greenlee and Langenheim 1990, Odion and Tyler 2002). Compared to the distribution of chaparral as a whole, maritime chaparral occupies a fraction (less than 5%) of this interior area (Keeley and Davis 2007). So, while Dr. Juncosa is correct that chaparral is a widespread vegetation type in

California, this is certainly not true for the limited stands of maritime chaparral that occur along California's central coast.

The emerging view of maritime chaparral, therefore, is that it is a sclerophyllous (hard-leaved) evergreen shrubland occupying oligotrophic soils in a zone of summer fog influence. It is characterized by numerous endemic species (such as *Ceanothus cuneatus* var. *rigidus*) and other more common species characteristic of vegetation with typically higher rainfall (such as coast huckleberry *Vaccinium ovatum* and chinquapin *Chrysolepis chrysolepsis*). Numerous rare manzanitas that are obligate seeders also occur in this ecosystem (e.g. *A. hookeri*, *A. pajaroensis*, *A. hooveri*, and many more). Oftentimes, these manzanitas are joined by obligate sprouters, such as *A. tomentosa* and *A. crustacea*, which are more widespread but highly coastal in their distribution (thus convenient species to use as indicators of maritime chaparral in the broad sense).

This raises the second point which has more specifically to do with the Foster property and the chaparral that occurs on this property. As Dr. Juncosa points out, we did not identify any manzanitas on the Foster property that fit the description either of *A. tomentosa* or *A. crustacea* during our site visit in March 2007; however, both of these taxa are known to occur in the nearby vicinity (lower in elevation along the highway). It is quite easy to confuse *A. crustacea* with *A. glandulosa*. They are both burl formers (sprouters) and their leaves are generally glabrous (not hairy). Consequently, it is easy to see how previous botanical consultants might have identified "wooly leaf manzanita" on the site, especially given its location within a few kilometers of the coast. However, the fact that this site is dominated by *A. glandulosa*, which is a dominant component of interior chaparral in the Santa Lucia Mountains, does not mean that this site shouldn't be classified as maritime chaparral. In fact, there are numerous stands of maritime chaparral in Mendocino, Sonoma, and Marin counties where *A. glandulosa* is a co-dominant and *A. glandulosa* is also a dominant element in maritime chaparral in southern San Diego County (as *A. glandulosa* subsp. *crassifolia*). As pointed out in the staff report, although not hosting "wooly leaf manzanita", the site does support a population of the maritime chaparral endemic *Ceanothus cuneatus* var. *rigidus* (recognized as an ESHA taxon), does have vegetation typical of fog-influenced environments (such as coast redwoods, coast huckleberry, and chinquapin), is far more maritime in its setting and species composition than chaparral that occurs in more interior localities.

Consequently, I support staff's determination that this does represent maritime chaparral, and my interpretation of the findings emerging out of the recent maritime chaparral workshop is that these characteristics will be consistent with the new classification when it is formalized.

I appreciate the opportunity to comment on this matter. In my view, this particular stand of maritime chaparral presents a good example of "exceptions making the rule". The fact that the dominant manzanita at this site is *A. glandulosa*, and not *A. crustacea* as one might expect, doesn't take away from the fact that there are numerous other geographic and floristic features at this site that clearly put it more into the maritime designation than interior. In my opinion, it is worthy of protection under the ESHA guidelines.

Sincerely,

Michael C. Vasey
Lecturer and Ph.D. Student, Department of Environmental Studies, U.C. Santa Cruz
mvasey@sfsu.edu
650 255-5763

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MADROÑO, Vol. 54, No. 2, pp. 148–155, 2007

TAXONOMIC REVISIONS IN THE GENUS *ARCTOSTAPHYLOS* (ERICACEAE)

V. THOMAS PARKER[1], MICHAEL C. VASEY[1,2], AND JON E. KEELEY[3,4,5]
[1]Department of Biology, San Francisco State University, San Francisco, CA 94132
parker@sfsu.edu
[2]Department of Environmental Studies, University of California, Santa Cruz,
1156 High Street, Santa Cruz, CA 95064
[3]U.S. Geological Survey, Western Ecological Research Center,
Sequoia-Kings Canyon Field Station, Three Rivers, CA 93271
[4]Rancho Santa Ana Botanic Garden, Claremont, CA 91711
[5]Department of Ecology and Evolutionary Biology, University of California,
Los Angeles, CA 90095

ABSTRACT

Changes are made in the nomenclature of species and subspecies in the genus *Arctostaphylos* (Ericaceae). In this study, the focus is on species found in the coast ranges of California. Changes are made in *A. nortensis* from the area around the Oregon border with California, in the *A. nevadensis* complex in the North Coast Ranges, in the *A. nummularia* complex of the north to central coast, in the *A. tomentosa* complex of the central coast to the Channel Islands, and in the *A. hookeri* and *A. pilosula* complex of the central coast. Also discussed are other changes presented elsewhere that will affect the *Arctostaphylos* treatment in the next edition of the Jepson Manual.

Key Words: *Arctostaphylos*, California, Ericaceae, new combinations.

The genus *Arctostaphylos* represents a quintessentially Californian complex of species that have radiated into a large number of soil types, climates, and plant communities. Philip V. Wells conducted the last major revisions of this genus (1968, 1987, 1988a, 1992, 1993, 2000). Wells developed a vision for the genus that included his typological view of taxa that idealized certain characteristics and overlooked important intra- and inter-population variation such as many bract or nascent inflorescence traits (Wells 1993, 2000). He proposed that a leafy-bracted, resprouting tetraploid complex was the core ancestral group (Wells 1987). For the last several decades we have also taken a systematic interest in this genus (most recently, Keeley and Massihi 1994; Keeley et al. 1997a, b; Markos et al. 1999; Vasey and Parker 1999; Hileman et al. 2001; Parker and Vasey 2004; Boykin et al. 2005; Keeley et al. 2007). These studies have led to a somewhat different view of *Arctostaphylos*, and based on our experience with the group, we propose a number of changes to the current treatment (Wells 1993, 2000) and provide our rationale for these changes.

ARCTOSTAPHYLOS NORTENSIS

After examining specimens in herbaria, plus our own collections from the type locality, we were somewhat confused about the status of widespread populations of an *Arctostaphylos* taxon similar to *A. nortensis* (Wells) Wells but not quite matching the description. These populations were considered as either *A. nortensis* or hybrids referred to by Gottlieb (1968). Our specimens had the general pubescence and inflorescence characters we expected, but also contained glandular hairs. Following pressing and drying, these glandular hairs were somewhat cryptic in some of our collections. While not mentioned in the original description (Wells 1988b), later in his treatments of the genus Wells (1993, 2000) insists that this species has no glandular hairs on any organ. This led us to review the type specimen (*P. V. Wells and W. Knight 8186*, CAS). Here we found numerous glandular hairs, generally longer than most of the pubescence, somewhat different from those on our specimens, which were often shorter than the longest hairs. Nonetheless, we were impressed that the type contained the glandulosity we were seeing in the field. Consequently, we amend the description of *A. nortensis* to include presence of glandular hairs on the branchlets, and often on the petioles and edges of younger leaves. With this amendment, the "rare" status of *A. nortensis* needs to be re-evaluated because of the extensive stands of this taxon present in northern Del Norte County, California, and southern Oregon as well. At the same time, the difference in the type of glandularity among the type specimen, our collections, and Wells' descriptions (Wells 1993, 2000) suggests more research is required for a clearer understanding of this taxon. For example, cuttings from shrubs of the same area

CCC Exhibit J
(page 4 of 15 pages)

as the type now growing in the Regional Parks Botanical Garden are non-glandular (Stephen Edwards, personal communication). Here we modify Wells' description to match his type specimen.

Arctostaphylos nortensis (P. V. Wells) P. V. Wells, emend. V. T. Parker, M. C. Vasey, J. E. Keeley, description to include usually with glandular hairs.—*Arctostaphylos columbiana* Piper subsp. *nortensis* P. V. Wells, Four Seasons 8(1): 50, 1988. *Arctostaphylos nortensis* (P. V. Wells) P. V. Wells, Four Seasons 9(2): 56. 1992. Type: USA, California, Del Norte Co., Gasquet Toll Road, near Gasquet on serpentinite, *Wells and Knight 8186* (isotype CAS).

Arctostaphylos nummularia Complex

As part of a molecular phylogeny of *Arctostaphylos* (Boykin et al. 2005; Wahlert 2005), *A. nummularia* A. Gray breaks into two groups, one from Mendocino County and northern Sonoma County and one from Marin County and Santa Cruz County. The southern populations, originally named *A. sensitiva* Jeps. (Jepson 1922), were transferred to a variety of *A. nummularia* by McMinn (1939). Further complicating this was Wells' (1989) separation of related populations in the north as *A. mendocinoensis* Wells. What has struck us about published descriptions of these plants is the failure to recognize a significant morphological distinction between the northern and southern populations, specifically a strikingly different bark characteristic. The Mendocino and northern Sonoma County populations have persistent bark, which on small plants retains a slightly red color, but as the plants age, the bark becomes grey and rough or shaggy. The plants in Marin and Santa Cruz counties retain the red, smooth bark throughout their lifespan, as is the case with the majority of *Arctostaphylos* species. McMinn (1939) noted that his conception of *A. nummularia* (which included *A. sensitiva* as a variety) included plants with exfoliating grey-brown or smooth reddish bark. Somehow, knowledge of this variation was lost in later treatments.

Morphologically, a gradual cline exists in characteristics between what Wells (1989) has named *A. mendocinoensis* and other collections of *A. nummularia* in Mendocino County, while southern populations from Marin and Santa Cruz Counties generally differ in characteristics from the Mendocino and Sonoma populations, such as the number of inflorescence branches. Both McMinn (1939) and Wells (1968 in Table 1) noted that the southern populations were generally more robust and less variable than those in the north. *Arctostaphylos mendocinoensis* is a diminutive, relatively prostrate shrub in harsh podsol soils in the pygmy forest which grades imperceptibly into upright shrubs (*A. nummularia*) in adjacent forest and maritime chaparral. As a consequence of the cline between *A. nummularia* and *A. mendocinoensis*, we propose submerging *A. mendocinoensis* as a subspecies of *A. nummularia*. *Arctostaphylos sensitiva* is an important member of maritime chaparral in southern Marin and the central to southern Santa Cruz Mountains, and because of the morphological and molecular disjunction between the northern and southern populations, we propose resurrecting *A. sensitiva* as a species inhabiting the southern region.

Arctostaphylos nummularia A. Gray subsp. **mendocinoensis** (P. V. Wells) V. T. Parker, M. C. Vasey, J. E. Keeley comb. nov.—*Arctostaphylos mendocinoensis* P. V. Wells, Four Seasons 8(3): 30. 1989. Type, USA, California, Mendocino Co., *P. V. Wells, I. Knight, W. Knight 11189* (holotype CAS).

The Arctostaphylos hookeri Complex

Taxonomic confusion has occurred among various clusters of species of *Arctostaphylos* that exhibit simple, elliptic, green leaves. Characters that separate them, such as fruit or nascent inflorescences, were not emphasized early in the taxonomy of *Arctostaphylos*. Wells (1968, 1993, 2000) took 5 of these simple green-leaved taxa and submerged them as subspecies of *A. hookeri* G. Don. *Arctostaphylos hookeri* was one of the earliest named manzanitas (by George Don in 1834), a distinctive endemic of stabilized dunes and upland sandstone habitats in the Monterey area, an area collected by early explorers in the 1800's. The next taxon named from Wells' *A. hookeri* complex was *A. montana* Eastw. (Eastwood 1897), a Marin County serpentine endemic. McMinn (1939) considered this to be a northern population of *A. pungens* and submerged it into *A. pungens*. He mentioned that, without inflorescences, some of the smaller specimens of *A. montana* are difficult to separate from the more erect forms of *A. hookeri* (McMinn 1939). Munz (1958) resurrected *A. montana* as a variety of *A. pungens*. Eastwood (1905) also named *A. franciscana* Eastw., an endemic shrub formerly abundant in serpentine areas in San Francisco. This species suffered a relatively similar fate as did Eastwood's *A. montana* Eastw. because McMinn (1939) submerged it into *A. hookeri*, and later Munz (1958) resurrected it as a subspecies of *A. hookeri*. *Arctostaphylos hearstiorum* Hoover & Roof was first described by Hoover and Roof (1966) and is known only from coastal grasslands of the Hearst Ranch near San Simeon. Finally, a remaining individual of a formerly more

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extensive population from serpentine areas of San Francisco found by Peter Raven was named *A. hookeri* subsp. *ravenii* (Wells) by Wells (1968). The range of natural variability of this taxon is unknown.

In one of his first revisions of the genus, Wells (1968) lumped the three serpentine endemic taxa from the northern San Francisco Peninsula and southern Marin with the two taxa from the Monterey and San Simeon area, creating his *Arctostaphylos hookeri* complex. *Arctostaphylos hookeri* subsp. *montana* (Eastw.) Wells and *A. hookeri* subsp. *ravenii* are both tetraploid, serpentine endemic species. While some similarities exist, they differ from *A. hookeri* subsp. *hookeri* in a number of characters, but principally with regard to the nascent inflorescences and fruit. Morphologically similar to the two serpentine endemics is the diploid, *A. hookeri* subsp. *franciscana* (Eastw.) Munz, also a serpentine endemic, but extirpated in the wild. *Arctostaphylos hookeri* subsp. *hookeri* is a diploid endemic to the Monterey region and is found on sandy or clay soils. *Arctostaphylos hookeri* subsp. *hearstiorum* (Hoover & Roof) Wells is a diminutive taxon, similar in structures to *A. hookeri* subsp. *hookeri*, but much smaller; the plant is also completely prostrate, and is found in grazed grassland areas on mostly clay soils.

Markos et al. (1999) examined this group using molecular markers, principally from the nuclear ribosomal ITS region. The result was that the three northern taxa, *A. hookeri* subsp. *montana*, *A. hookeri* subsp. *franciscana*, and *A. hookeri* subsp. *ravenii*, were not closely related to the two more southerly distributed subspecies, *A. hookeri* subsp. *hookeri* and *A. hookeri* subsp. *hearstiorum*. These results have been substantiated in later work with more species (Boykin et al. 2005; Wahlert 2005), and supports separation of the northern taxa from *A. hookeri*. As a result, we propose to resurrect *A. franciscana* and *A. montana* at species rank and to make a new combination for subsp. *ravenii*. We provide the following treatment and key to this revised complex:

Arctostaphylos montana Eastw. subsp. **ravenii** (P. V. Wells) V. T. Parker, M. C. Vasey, J. E. Keeley, comb. nov.—*Arctostaphylos hookeri* subsp. *ravenii* P. V. Wells, Madroño 19: 200, 1968. Type: USA, California, San Francisco Co., on serpentinite in the Presidio, *P. V. Wells 2767* (holotype UC).

Key for the former *Arctostaphylos hookeri* complex:

1. Immature inflorescence inconspicuous, small, often dark raceme (rarely with one branch), leaves shiny green, elliptic to diamond-shaped (*A. hookeri*)
   2. Plants generally erect shrubs (>0.5 m in height), leaves narrowly to broadly elliptic, 2–3 cm L, 1–1.5 cm W . . . . . *A. hookeri* subsp. *hookeri*
   2′ Plants strongly prostrate shrubs (<0.25 m in height), leaves), narrowly elliptic to diamond-shaped, quite small (0.8–1.2 cm L; 0.4–0.7 cm W) . . . . . *A. hookeri* subsp. *hearstiorum*
1′ Immature inflorescence prominent and conspicuous, congested umble or panicle usually with several branches, leaves dull green, obovate to round-elliptic
   3. Fruits generally 6–8 mm wide, habit variable (may be erect), leaves not orbicular
      4. Leaves round-elliptic, 1–2.5 cm L, 1–2 cm W, young twigs white tomentose . . . . . *A. montana* subsp. *montana*
      4′ Leaves narrow elliptic, 1.5–2 cm L, 0.5–1 cm W, young branchlets gray tomentose. . . . . *A. franciscana*
   3′ Fruits generally 4–5 mm wide, plants always prostrate, leaves orbicular, 1–2 cm L, 1–1.5 cm W . . . . . *A. montana* subsp. *ravenii*

The Arctostaphylos tomentosa Complex

Wells' (1987) vision that the *Arctostaphylos tomentosa* (Pursh) Lindl. complex is the core ancestral group of taxa in *Arctostaphylos* is based on several characters relatively atypical in the genus, such as bifacial leaves, leafy bracts, shreddy persistent bark, and resprouting ability, which are mostly shared among outgroup sister genera in the subfamily Arbutoideae (e.g., *Arbutus*, *Comorostaphylis*, *Xylococcus*, *Ornithostaphylos*, and *Arctous*), and consequently these characters are hypothetically basal within *Arctostaphylos*. However, whereas bifacial leaves and resprouting ability are shared among these other closely related genera, they are in general characterized by scaley bracts (not leafy) and at least three genera have members with smooth bark rather than persistent shreddy bark (i.e., *Arbutus*, *Ornithostaphylos*, and *Arctous*). Further, *A. tomentosa* taxa are all tetraploid in a genus dominated by diploid species and a more parsimonious hypothesis is that they are derivative rather than ancestral, even though containing a cluster of potentially ancestral characters. These taxa have probably resulted from hybridization between more basal diploid species. One model is that they are allopolyploids that originated from crosses similar to the documented origin of *A. mewukka* Merriam (Schierenbeck et al. 1992).

In our view, Wells also did not adequately consider the pattern and range of variation within this complex. He weighted very heavily the presence of a basal burl and bifacial leaves with few or no stomata on the upper surface, traits that are found in all taxa within the complex. But, he did not give adequate weight to the fact that different subspecies vary markedly with

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respect to bark characteristics of the older stems: some have grey shreddy bark and others have smooth red bark. In addition, his typological concept of this complex also did not adequately appreciate the extent of population variation in other characteristics; for example, he asserted that leafy bracts associated with the nascent inflorescences were similar throughout the complex. Our studies fail to support Wells' view as we have observed that bract characteristics, although commonly consistent across populations of other species in the genus, exhibit extraordinary variation within these tetraploid species. Our studies reveal that those subspecies with red, smooth bark tend to have most, but not all, populations displaying smaller scale-like bracts, while those with shreddy bark tend to have most populations with leafy bracts. These inconsistencies have provided considerable confusion in the field for identifying these taxa.

We propose that dividing Wells' *A. tomentosa* complex into two species complexes, one group of taxa with grey, shreddy bark and another with red, smooth bark, yields a taxonomy that reflects population patterns with geographic continuity suggestive of more logical phylogenetic relationships. The gray, shreddy bark taxa comprise one cluster that is restricted to the Monterey region and sparingly down the coast to San Luis Obispo County. The red, smooth barked taxa form another group that dominates the Santa Cruz Mountains, ridges of the east side of San Francisco Bay, inland to Mt. Diablo, south into the Gabilan Mountains, and north to southern Napa County. The latter complex is also distributed in isolated populations from Monterey to Santa Barbara Counties, and on the Channel Islands.

Based on the type specimen, the name *A. tomentosa* (Pursh) Lindl. (Pursh 1814; Lindley 1836) rightly belongs to the grey, shreddy bark group in this complex. Young twigs on *A. tomentosa* are short hairy, with similar hair on the lower surface of the leaves, often thinning with age. On subsp. *bracteosa* (DC.) Adams, twigs are also short hairy, and differ from subsp. *tomentosa* by also having long gland-tipped bristles, sparsely so on the lower surface of the leaves. Another population of a member of the *A. tomentosa* complex can be found in Monterey County, subsp. *hebeclada*, originally considered by DeCandolle (1839) as a variety of *Andromeda bracteosa* (treated here as subsp. *bracteosa*); these populations were treated at a level below subspecies by Wells. Eastwood (1934) classified it as a variety of *Arctostaphylos bracteosa*, while later McMinn (1939) named it a variety of *A. tomentosa*. Although distinctively glabrous on its lower leaf surfaces and lacking glandular bristles, this taxon was submerged in the Jepson treatment by Wells (1993). Twigs are sparsely short hairy. Aside from its gray, shreddy bark, it is very similar to *A. crustacea* ssp. *rosei*. Separating the *A. tomentosa* and *A. crustacea* complexes provides the opportunity to effectively distinguish between these two taxa. Populations of subsp. *tomentosa*, subsp. *bracteosa*, and subsp. *hebeclada* are all restricted to Monterey County, from Fort Ord to Carmel Valley, with subsp. *tomentosa* sparingly found farther south down the coast. The final member of the *A. tomentosa* complex is subsp. *daciticola* P.V. Wells, only found near Morro Bay on the volcanic peaks inland a few kilometers. Twigs are short hairy but also have longer non-glandular, white bristles. Lower leaf surface is tomentose to smooth with age.

Arctostaphylos tomentosa (Pursh) Lindl. subsp. **hebeclada** (DC.) V. T. Parker, M. C. Vasey and J. E. Keeley, comb. nov.—*Andromeda bracteosa* DC. var. *hebeclada* DC., Prodr. 7(2): 607, 1839. *Arctostaphylos bracteosa* DC. var. *hebeclada* (DC.) Eastw. Leafl. W. Bot. 1:122. 1934. *Arctostaphylos tomentosa* (Pursh) Lindl. var. *hebeclada* (DC.) J. E. Adams ex McMinn. Man. Calif. Shrubs, 412. 1939. Type: USA, "Nova California", *Douglas 1524* (G-DC).

The red, smooth bark group includes two taxa named in the same early publication by Eastwood (1933), *A. crustacea* Eastw. and *A. rosei* Eastw. We have chosen the former taxon because of its priority within the publication. *Arctostaphylos crustacea* also has a wider distribution; Eastwood's description was originally based on specimens from the San Francisco area, Moraga Ridge and Grizzly Peak in the eastern side of the San Francisco Bay, and various places in the Santa Cruz Mountains. Twigs on this taxon are short hairy with long bristles, sometimes with glands on the bristles. The lower leaf surface is sparsely hairy but thins with age. This subspecies is distributed from southern Napa County, the hills on the east side of SF Bay over to Mt. Diablo and south to the Gabilan Mountains. It is also found throughout the Santa Cruz Mountains south to Monterey. Isolated populations range near the coast to the Channel Islands. Subspecies *rosei* differs by having twigs that are short hairy while leaf surfaces are smooth and glabrous. Flower pedicels and ovary are tomentose. Several small populations of this taxon occur along the Big Sur coast, however, the type locality is from the dunes of western San Francisco, now reduced to two known individuals.

An additional member of this complex is subsp. *crinita*. Some taxonomic confusion has existed with the name of this taxon. McMinn (1939) used this name based on Adams' dissertation, but later Adams (1940) called it *Arctostaphylos crustacea* var. *tomentosiformis*. Wells

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(1968) originally followed Adams and used the subspecific name *tomentosiformis*, but in a later treatment (Wells 1987), following clarification by Gankin (1971), Wells switched to *A. tomentosa* subsp. *crinita*. This taxon is quite similar to *A. crustacea*, except that it is densely hairy on the lower surface of the leaves, and even sometimes is hairy on the upper surface as well. Its distribution is primarily in the southern Santa Cruz Mountains.

Three subspecies are found in southern California. Narrowly restricted to the Purissima Hills north of Lompoc in Santa Barbara County is subsp. *eastwoodiana*, associated with an outlying population of *Pinus muricata*. While the twigs on this plant are sparsely short hairy, leaf blades are smooth and glabrous, as is the pedicel and ovary. Although morphologically similar to subspecies *rosei*, in subsp. *eastwoodiana* the ovary is glabrous, while tomentose in subsp. *rosei*. Generally restricted to Santa Rosa and Santa Cruz islands is subsp. *insulicola*, although some individuals have been found in the southern Santa Cruz Mountains as well. Twigs are generally short hairy and leaves sparsely tomentose on the lower surface. Subspecies *subcordata* is another taxon restricted to Santa Cruz and Santa Rosa Islands. Twigs petioles, rachises and bracts are densely glandular hairy, often with longer glandular hairs.

Resurrecting *A. crustacea* requires a change in the names of many of the subspecific taxa, and here we provide an accounting of those taxa separated into *A. crustacea*, as well as a key to distinguish among the subspecies of both *A. tomentosa* and *A. crustacea*.

Arctostaphylos crustacea Eastw. subsp. **crinita** V. T. Parker, M. C. Vasey and J. E. Keeley, comb. nov.—*Arctostaphylos tomentosa* (Pursh) Lindl. var. *crinita* Adams ex McMinn, Man. Calif. Shrubs, 412, 1939. *Arctostaphylos crustacea* Eastw. var. *tomentosiformis* J. E. Adams, J. Elisha Mitchell Sci. Soc. 56: 54. 1940. *Arctostaphylos tomentosa* (Pursh) Lindl. var. *tomentosiformis* (J. E. Adams) Munz, Aliso 4: 95. 1958. *Arctostaphylos tomentosa* (Pursh) Lindl. subsp. *tomentosiformis* (J. E. Adams) P. V. Wells, Madroño 19: 198. 1968. *Arctostaphylos tomentosa* (Pursh) Lindl. subsp. *crinita* (J. E. Adams) Gankin, Madroño 21: 148. 1971.—Type: USA, California, Santa Cruz Co., Bonny Doon Ridge, head of Liddell Creek, *J. E. Adams 928* (holotype UC).

Arctostaphylos crustacea Eastw. subsp. **eastwoodiana** (P. V. Wells) V. T. Parker, M. C. Vasey and J. E. Keeley, comb. nov.—*Arctostaphylos tomentosa* (Pursh) Lindl. subsp. *eastwoodiana* P. V. Wells, Madroño 19:197. 1968.—Type: USA, California, Santa Barbara Co., on diatomite, summit of La Purissima Ridge, *P. V. Wells 610672* (holotype UC).

Arctostaphylos crustacea Eastw. subsp. **insulicola** (P. V. Wells) V. T. Parker, M. C. Vasey and J. E. Keeley, comb. nov.—*Arctostaphylos tomentosa* (Pursh) Lindl. subsp. *insulicola* P.V. Wells, Madroño 19:197. 1968.—Type: USA, California, basaltic rocks above Pelican Bay, Santa Cruz Island, *P. V. Wells and J. B. Roof 5467*, (holotype UC).

Arctostaphylos crustacea Eastw. subsp. **rosei** (Eastw.) V. T. Parker, M. C.Vasey and J. E. Keeley, comb. nov.—*Arctostaphylos rosei* Eastw., Leafl. W. Bot. 1:77. 1933. *Arctostaphylos tomentosa* (Pursh) Lindl. subsp. *rosei* (Eastw.) P. V. Wells, Madroño 19: 198. 1968.—Type: USA, California, San Francisco Co., on the hills bordering Lake Merced, *L. S. Rose 33037* (holotype CAS).

Arctostaphylos crustacea Eastw. subsp. **subcordata** (Eastw.) V. T. Parker, M. C.Vasey and J. E. Keeley, comb. nov.—*Arctostaphylos subcordata* Eastwood, Leafl. W. Bot. 1:61, 1933. *Arctostaphylos tomentosa* (Pursh) Lindl. subsp. *subcordata* (Eastw.) P. V.Wells, Madroño 19: 198. 1968.—Type: USA, California, Santa Barbara Co., Santa Cruz Island, *J. T. Howell 6335* (holotype CAS).

KEY FOR THE *ARCTOSTAPHYLOS TOMENTOSA*/*A. CRUSTACEA* COMPLEX OF ERECT PLANTS WITH PROMINENT BURLS, BEARING STOMATA ONLY ON THE LOWER SURFACE OF THE LEAVES:

1. Lower stems grey, shreddy barked
   2. Twigs densely short pubescent with long glandular bristles . . . . . *A. tomentosa* subsp. *bracteosa*
   2′ Twigs densely pubscent but lacking long bristles with glands
      3. Twigs with long bristles above a short pubescence . . . . . *A. tomentosa* subsp. *daciticola*
      3′ Twigs lacking long bristles above short, dense pubescence
         4. Lower leaf surfaces densely pubescent . . . . . *A. tomentosa* subsp. *tomentosa*
         4′ Lower leaf surfaces glabrous or sparsely pubescent . . . . . *A. tomentosa* subsp. *hebeclada*
1′ Lower stems smooth, reddish barked
   5. Twigs with dense short pubescence and long glandular bristles . . . . . *A. crustacea* subsp. *subcordata*
   5′ Twigs with dense short pubescence but generally lacking long glandular bristles
      6. Twigs with long, non-glandular bristles above a short pubescence
         7. Lower leaf surfaces glabrous or sparsely pubescent . . . . . *A. crustacea* subsp. *crustacea*

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7′ Lower leaf surfaces densely pubescent, sometimes less so on upper side . . . . . *A. crustacea* subsp. *crinita*

6′ Twigs with dense short pubescence, lacking long bristles

8. Lower surface of leaves glabrous

9. Pedicels and ovary short hairy . . . . . *A. crustacea* subsp. *rosei*

9′ Pedicels and ovary glabrous . . . . . *A. crustacea* subsp. *eastwoodiana*

8′ Lower surface of leaves persistently short hairy . . . . . *A. crustacea* subsp. *insulicola*

Other Considerations of the Current Jepson Manual Treatment

Further changes expected in the upcoming Jepson treatment include the following observations: Revision of the *A. glandulosa* subspecies (Keeley et al. 2007); range extension and addition of two burl-forming subspecies of *A. parryana* (Keeley et al. 1997b); removal of *A. peninsularis* Wells (from the state and inclusion of *A. rainbowensis* Keeley and Massihi [1994]); inclusion of *A. gabilanensis* (Parker and Vasey 2004), a new species from the southern Santa Cruz Mountains and a new subspecies of *A. patula* from the Sierra Nevada (Vasey and Parker in review). We also propose 3 additional revisions that follow.

When Wells (1968) published a new subspecies of *A. pilosula* Jeps., viz. *A. pilosula* subsp. *pismoensis* Wells, his description of *A. pilosula* subsp. *pismoensis* was of plants with leaves greener and more elliptic than those of the nominate subspecies from the type locality. Later, Knight (1989) changed the status and name of *A. pilosula* subsp. *pismoensis* to *A. wellsii* Knight. In Knight's article, he asserted that *A. wellsii* differs from *A. pilosula* in 17 morphological features that he listed. We examined the types of both *A. pilosula* (*A. E. Wieslander 552*, holotype UC) and A. *pilosula* subsp. *pismoensis* (*P. V. Wells 23*, holotype UC; cited as the type for *A. wellsii* in Knight [1989]), as well as a number of additional collections from the Atascadero region, Pozo Summit, Pismo Beach area, and sites inland. Patterns of variation and similarity among these collections calls into question the distinction between these taxa. A major problem is that most of the characters listed by Knight (1989) for *A. wellsii* actually better describe the type specimen for *A. pilosula*, specifically, twig, rachis and petiole hispidity, bract shape, density of ciliate hairs on bracts, and other characters. Other characters listed by Knight (1989) are quite variable among all populations, sometimes even within individuals, such as whether the filaments are glabrous or hairy at the base. In short, the characters used by Knight (1989) to segregate out *A. wellsii* do not differentiate collections from the type of *A. pilosula*. There are morphological trends, such as individuals with ovate to oblong-ovate leaves and much more glaucous hue being found at Pozo Summit, but on the whole, we find it difficult to separate these two taxa.

When the range of *A. pilosula* and *A. wellsii* as a whole is considered, plants in the northern part of the range at lower elevations (e.g., Atascadero to Santa Margarita) as well as in the southern part of the distribution (e.g., Price Canyon, areas around Huasna Road and Lopez Road) are essentially identical in morphology. Most individuals at Pozo Summit do appear to have rounder, whiter leaves, suggesting introgression with *A. glauca*, but numerous collections from either side of the summit demonstrate a mosaic of combinations, including individuals that would key out to *A. wellsii*. Strikingly, many collections at UC and JEPS from the Pozo Mountain region of *A. pilosula* are annotated by Knight with statements such as 'not typical for *A. pilosula*', and in those collections the leaves are more elliptic and greener than he perhaps was expecting for the location. Accordingly, we are submerging *A. pilosula* ssp. *pismoensis* and *A. wellsii* into *A. pilosula*.

Gankin and Hildreth (1988) published a new taxon from high elevation sites in the North Coast Ranges called *Arctostaphylos knightii* Gankin & Hildreth, a plant very similar to *A. nevadensis* except that it possessed burls and could resprout after fire. Wells (1988) transferred this taxon to subspecific status within *A. nevadensis*, but with his later treatments (Wells 1993, 2000) submerged it into *A. nevadensis*, considering it a hybrid. The considerable range of this taxon, and its large populations in some areas requires reconsideration. On the serpentinized peridotite areas at the California-Oregon border that were burned in the Biscuit Fire in 2002, for example, an extensive population of *A. nevadensis* subsp. *knightii* is resprouting and reestablishing its population. This population was throughout the areas we visited in Del Norte County, which makes it difficult to imagine this as an occasional hybrid between two parents, one of which does not occur at that elevation. Consequently, we recognize this subspecies as a valid entity as a subspecies of *Arctostaphylos nevadensis*.

Another entity deserving more attention is *Arctostaphylos pacifica* Roof, a burl-sprouting prostrate plant found on San Bruno Mountain in San Mateo County described by Roof (1962). This plant has been relegated to hybrid status by Wells (1993, 2000) within his treatment of *A. uva-ursi*. The problem with that hypothesis is that the presence of one parent on San Bruno Mountain, *A. glandulosa*, cannot be confirmed. We have

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collected specimens from all the large burl-formers on San Bruno Mountain, and they represent good examples of *Arctostaphylos crustacea* subsp. *crustacea*, (with some glandulosity on several individuals). Among our collections, only two individuals of *A. crustacea* have any stomata on the upper surface and the density is considerably less than that of the lower surface. *Arctostaphylos pacifica*, however, is isofacial in stomatal density, as well as having a burl and a unique leaf condition (serrulate margins) among mature leaves; these characters do not support a hybrid origin for *A. pacifica* between *A. uva-ursi* and another San Bruno Mountain manzanita unless the characters are transgressive. Determining the chromosomal count of this taxon would be an initial first step toward understanding its relationships. However, given its distinct suite of characters and the unlikely assumption that it is a local hybrid (between parents currently in the vicinity), we resurrect this taxon as a valid species.

Other studies are ongoing for this complex genus and additional changes might be expected in the future. A number of plants have disappeared in more recent treatments, for example, because they have been considered hybrids, generally without any evidence being provided. Most of these we think deserve more investigation, such as a plant described by Howell (1945) as *Arctostaphylos cushingiana* Eastw. forma *repens* J. T. Howell. In Howell's article, he describes the near prostrate habit of this plant being *A. cushingiana* selected by ecological conditions of the habitat and even specifically dismisses the possibility of hybridization. Later, in a table of chromosome counts in the genus, Wells (1968) classified forma *repens* as a hybrid form indicating his interpretation that Howell bases his name on hybrid individuals. In his later treatments, he includes *A.* × *repens* within his treatment of *A. uva-ursi*, in contrast to Howell's interpretation (e.g., Wells 2000) of forma *repens* being derivative of *A. cushingiana* (*A. glandulosa* subsp. *cushingiana*). What strikes us as most incredible about the taxonomic shuffling of Howell's forma *repens*, is that Wells (1968) provides a diploid chromosome count for it, even though he describes it as of hybrid origin from two tetraploid parents; we know of no reasonable genetic process by which this could happen. We are in the process of re-examining the ploidy level of this entity. If it is in fact a diploid, then it could well represent a distinct entity worthy of taxonomic recognition.

Other complexes require additional attention in the future. Two obvious ones are the *A. uva-ursi* complex and the *A. manzanita* complex. Recent work suggests that many of the characters in *A. uva-ursi* are variable and not taxonomically informative (Rosatti 1987), and some molecular work indicates the close relationship among the various populations (Wahlert 2005). Its widespread distribution and patterns of morphology and ploidy levels suggest an interesting history that deserves more attention. Similarly, the *A. manzanita* complex is widespread and variable within California. Any new treatment of these complexes will require a better understanding of evolutionary relationships among their taxa and the role of hybridization in their origin.

ACKNOWLEDGMENTS

We would like to acknowledge the help of many students and colleagues during the past decade or more for facilitating our understanding this difficult group of plants. For this work in particular, we thank John Strother, Stephen Edwards, and an anonymous reviewer.

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(page 11 of 15 pages)

UNIVERSITY OF CALIFORNIA AT BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

JEPSON HERBARIUM
BERKELEY, CALIFORNIA 94720

RECEIVED
OCT 0 5 2007
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Jonna D. Engel, Ph.D.
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001-2801

RE: Maritime Chaparral and the "Foster Property"

In response to your query about my report of the rare plant *Cordylanthus rigidus* ssp. *littoralis* from the Foster property. Upon discussion, you forwarded me a variety of documents relating to this site, and this letter will provide my simple view on the matter of maritime chaparral.

The term maritime chaparral was coined by Jim Griffin to distinguish one type of chaparral vegetation among our many many types. As you will find by perusal of Griffin (1978), I conducted the data analysis for Jim's paper, but did not participate in data collection [and specifically note p. 79 therein].

Additionally, in 1999, I conducted a botanical survey which included a portion of the subject property, a survey of the PG&E Laurelles-Otter 60kV transmission line. so I am familiar with the site in question. I documented several rare plants on the site, and these were reported publicly to the California Department of Fish & Game Natural Diversity Data Base, and were vouchered by specimens deposited in our herbarium, specifically:

JEPS96825 – *Ceanothus cuneatus* ssp. *rigidus* - CNPS List 4
JEPS101520 - *Cordylanthus rigidus* ssp. *littoralis* – a formally listed species
JEPS96828 - *Lomatium parvifolium* var. *parvifolium* – CNPS List 4

these records have been publicly available via the Consortium of California Herbaria website for many years now.

In the United States, nomenclature of plant communities has by professional practice been an informal process. By contrast, in Europe, phytosociology has a formal identification process for vegetation communities, and a formal code governing nomenclatural matters. The syntaxonomy of maritime chaparral has not been formally studied, hence arguments as to the identity of a particular stand of chaparral as either falling within or without such a category is subject to the vacillation of personal opinion. Maritime chaparral is a type of vegetation comprising perhaps several dozens of undescribed associations of the Adenostomo fasciculati-Rhamnetalia crocea (Rivas-Martinez 1997), and for present purposes, should include minimally three factors: a) fog as a ecologically differential source of supplemental summer moisture in the dry season, b) presence of endemic shrubs (characterized by Dr. Grey Hayes list) of *Arctostaphylos*

and *Ceanothus*, and c) edaphic control (whereby substratum limits biomass of a site, generally nutrient poor marine terraces or other azonally unique edaphic controls. A fourth component of my definition could include a variety of herbaceous plants characteristic of maritime chaparral, but the floristic attributes of this vegetation have not been studied and therefore can not be presently specified.

Generally, by standard professional practice, I (and I would venture many other American plant ecologists) would employ the similarity rule to define maritime chaparral, that is: a particular stand of vegetation that is similar to maritime chaparral sensu Griffin (1978) falls within the definition. Accordingly, in 1999, I termed the vegetation whence I collected the above cited specimens "maritime chaparral" and I characterized the habitat as

> "sand substrate, in low maritime chaparral with low Arctostaphylos tomentosa, A. glandulosa, Ceanothus papillosus and dwarf (3-5 m tall maximum) Sequoia sempervirens"

Upon reflection, and in consideration of your question, I reiterate that it is my opinion that the subject site is very similar to maritime chaparral sensu Griffin, and hence it remains my opinion it is not incorrect to term that vegetation as such.

As I read over the supporting documents, I can comment on the following:

a) there seems to be some discrepancy as to the identify of manzanitas on the property: I collected *Arctostaphylos tomentosa* (Pursh) Lindley ssp. *crustacea* (Eastw.) P. Wells there, the specimen is JEPS96827. I also recorded in my notes that *A. glandulosa* ssp. *glandulosa* and *Arctostaphylos glandulosa* subsp. *zacaensis* were present in the general region (the latter as I recall several miles further inland on White Rock Ridge).

b) the presence of psammophytic herbs on the site is an indication of habitat consistent with maritime chaparral, some relevant species I observed there are: *Helianthemum scoparium* Nutt., *Camissonia hirtella* (E. Greene) Raven, *Chorizanthe staticoides* Benth., *Calyptridium monandrum* Nutt., *Mimulus rattanii* A. Gray var. *rattanii* in this regard.

c) the site had marine terrace sand deposits, although minor in extent, and elsewhere in the Monterey Bay region these are typical of and in fact central to maritime chaparral habitat.

d) *Ceanthus rigidus* is a characteristic endemic of maritime chaparral, and is present on the that ridge.

d) in my opinion, maritime chaparral is not confined to the immediate coast, but can be found many miles inland where the juxtaposition of terrain provides occasional access by marine air masses. Specifically an example I cite is *Arctostaphylos gabilanensis* V.T. Parker & M.C. Vasey (2004), a new species which a colleague and I recently discovered growing on Fremont Peak and vicinity, quite inland. *Arctostaphylos gabilanensis* is closely related to a grade of coastal manzanitas collectively termed the A. andersonii complex, which is generally taken to include *A. pajaroensis, A. andersonii, A montaraensis* and others, all of which are characteristic maritime chaparral components. For this reason, it is my opinion that the chaparral of the crest of the Gabilan Range in

interior Monterey county must be included in the within the definition of maritime chaparral because the presence of such a narrow endemic species of *Arctostaphylos gabilanensis* is ecologically dependent on the supplemental water contributed by fog.

Summarizing, in 1999 I concluded that maritime chaparral was present on that ridge, and that remains my conclusion, even more reinforced by the volume of discussion given this particular property.

Sincerely,

Jepson Herbarium

Literature:

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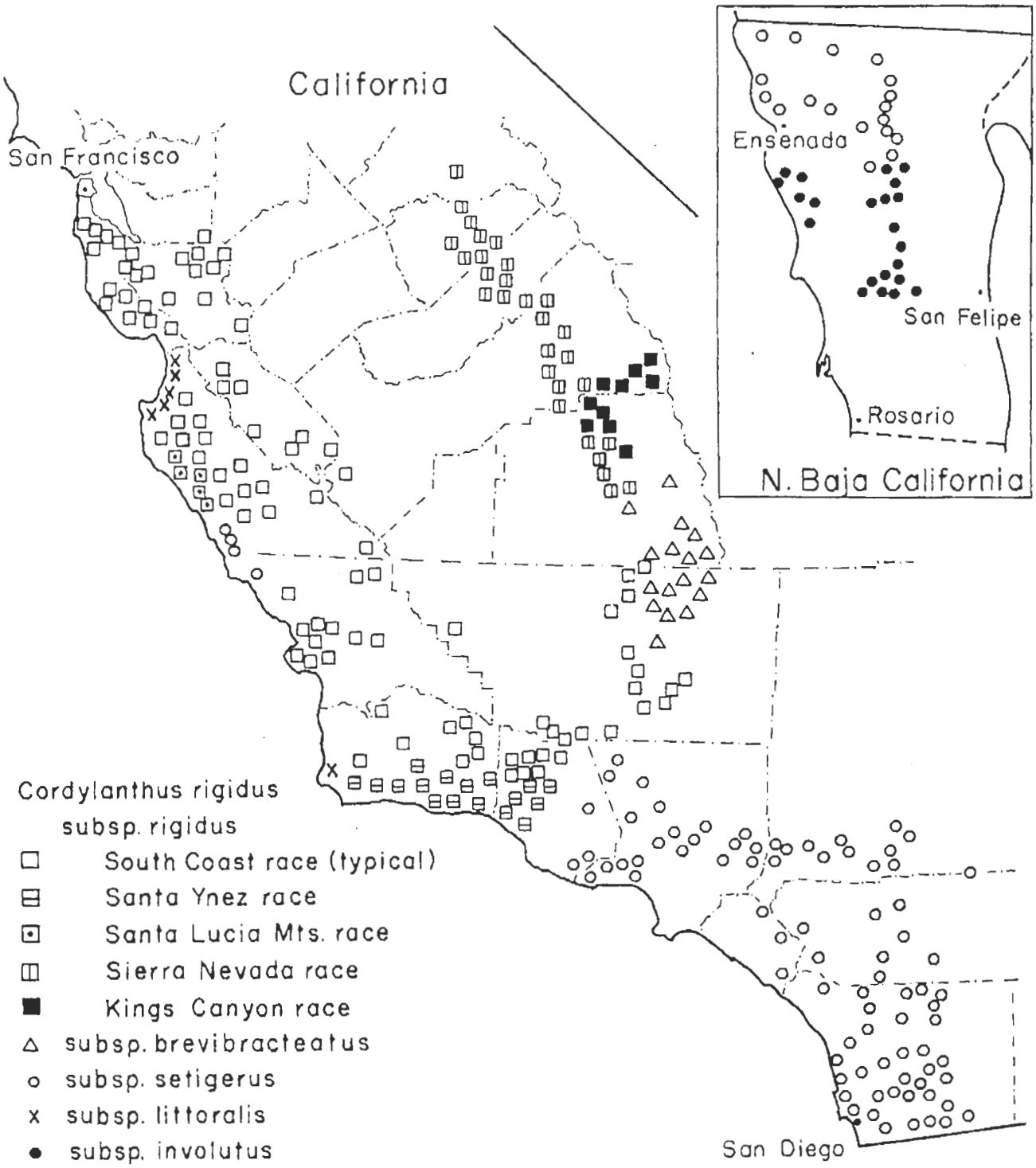

FIG. 17. Distribution of *Cordylanthus rigidus*. Intergrading forms that occur between all juxtaposed races/subspecies are assigned to their closest morphological form.

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The Ecology and Conservation of California's Maritime Chaparral

Proposed Definition of Maritime Chaparral

The "Woolly leaf manzanita series" as described by Sawyer and Keeler-Wolf (Sawyer & Keeler-Wolf 1995), best describes many areas of maritime chaparral:

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

However, there are several areas of maritime chaparral not dominated or even partially occupied by woolly leaf manzanita. The following manzanita species dominate large areas of maritime chaparral and qualify for designation as unique series in future updated versions of the Sawyer and Keeler-Wolf text:

- Arctostaphylos andersonii
- A. canescens
- A. crustacea
- A. edmundsii
- A. glutinosa
- A. hookeri hearstiorum
- A. hookeri hookeri
- A. montaraensis

- A. montereyensis
- A. morroensis
- A. nummularia sensitiva
- A. ohlone pro. sp.
- A. pajaroensis
- A. pumila
- A. purissima
- A. silvicola
- A. tomentosa (all subspecies and forms)
- Ceanothus cuneatus var. rigidus
- Ceanothus hearstiorum
- Ceanothus maritimus
- Ceanothus cuneatus var. fascicularis
- Ceanothus gloriosus var. gloriosus
- Ceanothus gloriosus var. exaltatus
- Ceanothus gloriosus var. porrectus

This new description combines, among other things, the following previous definitions:

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.

References

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Odion, D., and C. Tyler. 2002. Are long fire-free periods needed to maintain the endangered, fire-recruiting shrub *Arctostaphylos morroensis* (Ericaceae)? Conservation Ecology.

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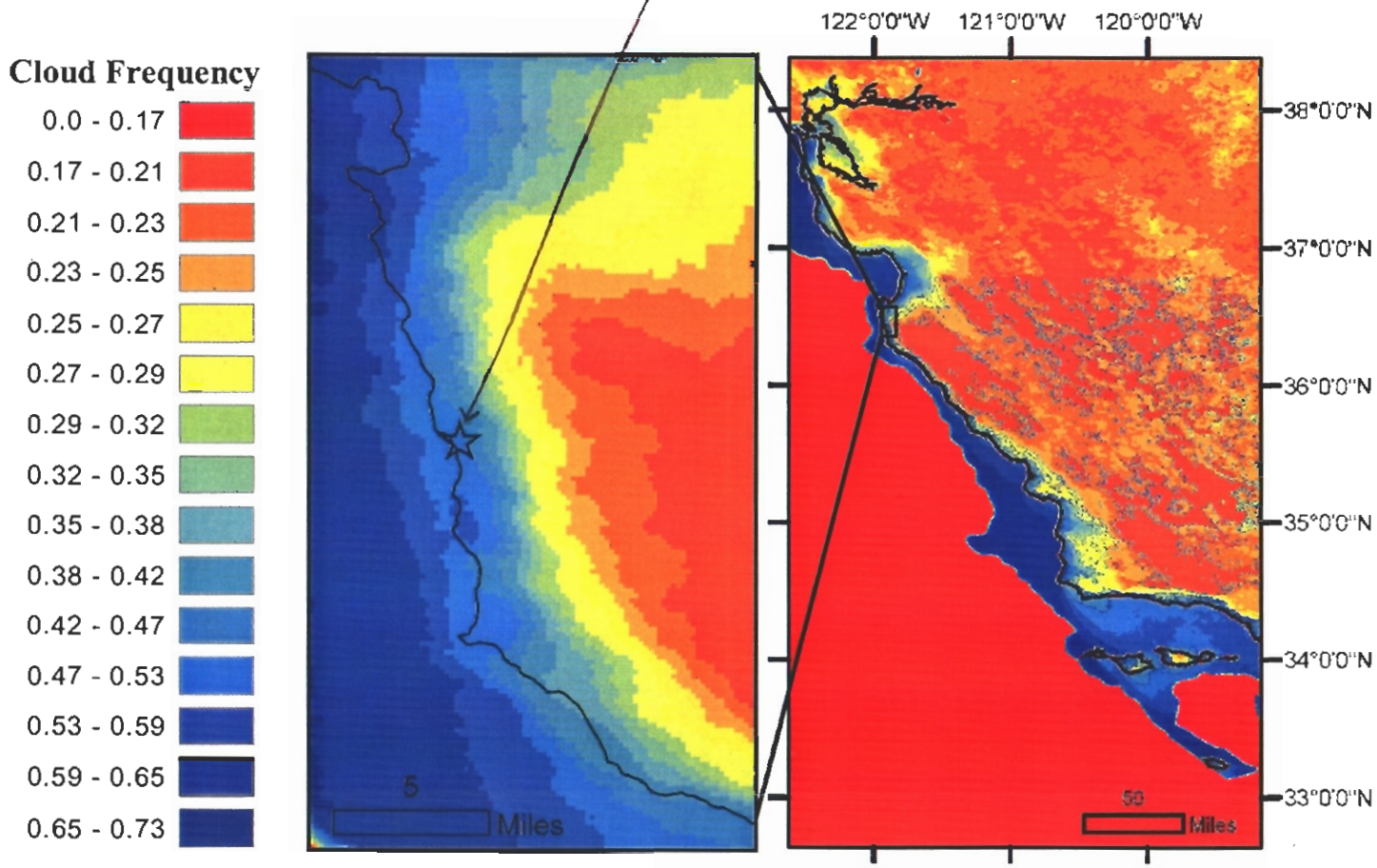
Stylinski, C. D., and E. B. Allen. 1999. Lack of native species recovery following severe exotic disturbance in southern Californian shrublands. Journal of Applied Ecology 36:544-554.

Van Dyke, E., and K. D. Holl. 2001. Maritime chaparral community transition in the absence of fire. Madroño 48:221-229.

If you would like to dispute or clarify this definition, please contact Grey Hayes. Grey also appreciates hearing who has found this definition valuable: a quick email to him stating how this definition was helpful would very valuable.

(see page 2 of 2 for precise location of Foster property)



Map of summer (July 3-Sep. 30) 2000-2006 daily cloud frequency at 10:30AM PST, as determined by MODIS (Terra satellite) daily reflectance data. The star represents the intersection of Palo Colorado Rd. and Hwy 1. Cloud frequency above the star is 0.487. Frequency on the coast immediately west of the star is 0.506.

Source: Park Williams, University of California Santa Barbara Geography Department, September 13, 2007

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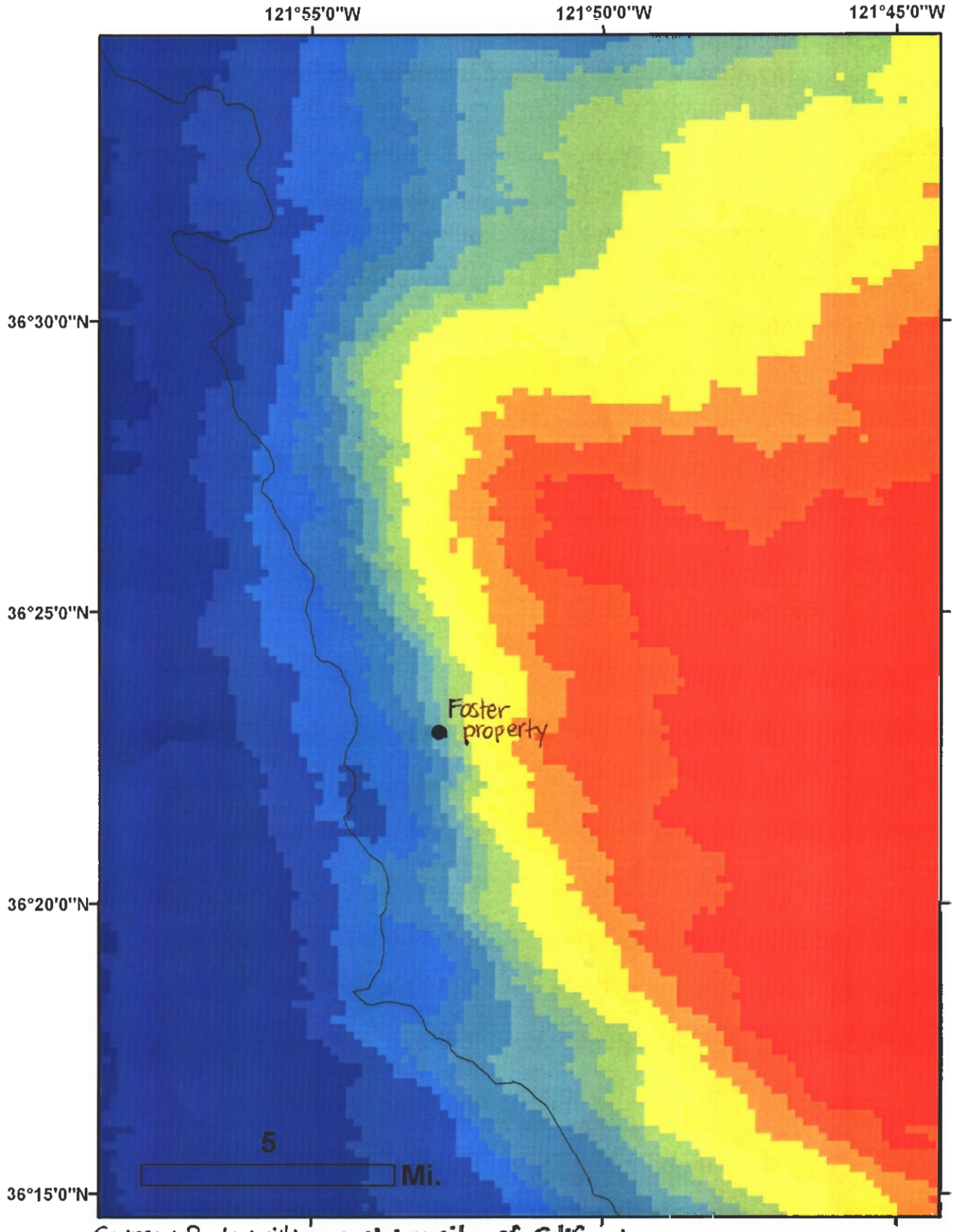

Source: Park Williams, University of California Santa Barbara, Geography Department, September 13, 2007

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(page 2 of 2 pages)

CARMEL FIRE PROTECTION ASSOCIATES

Post Office Box 7168, Carmel-by-the-Sea, California 93921 USA
Telephone (831) 624-8303 ~ Fax (831) 624-7739 ~ www.carmelfire.com

PLAN CHECK LIST

RECEIVED

JUN 25 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

JOB NUMBER: 104241

JOB NAME: Foster Residence

LOCATION: 4855 Bixby Creek Road

AHJ: CDF BSR

COUNTY #: PLN 04 0569

APN: 418 132 007 000

This plan review is for plans submitted for consideration and approval of a vegetation thinning plan. Planset reviewed is dated 01/18/07.

The plans submitted are APPROVED as submitted. Please see comments and conditions below.

(1) The fire authority has reviewed and approved the vegetation thinning plan for the structures identified as Main House, Gillian's Studio and Steven's Studio.

(2) The fire authority has reviewed and approved the tree limbing plan for the structures identified as Main House, Gillian's Studio and Steven's Studio.

(3) Adherence to this plan will satisfy Monterey County Planning conditions #39 and #39 of PLN 04 0569.

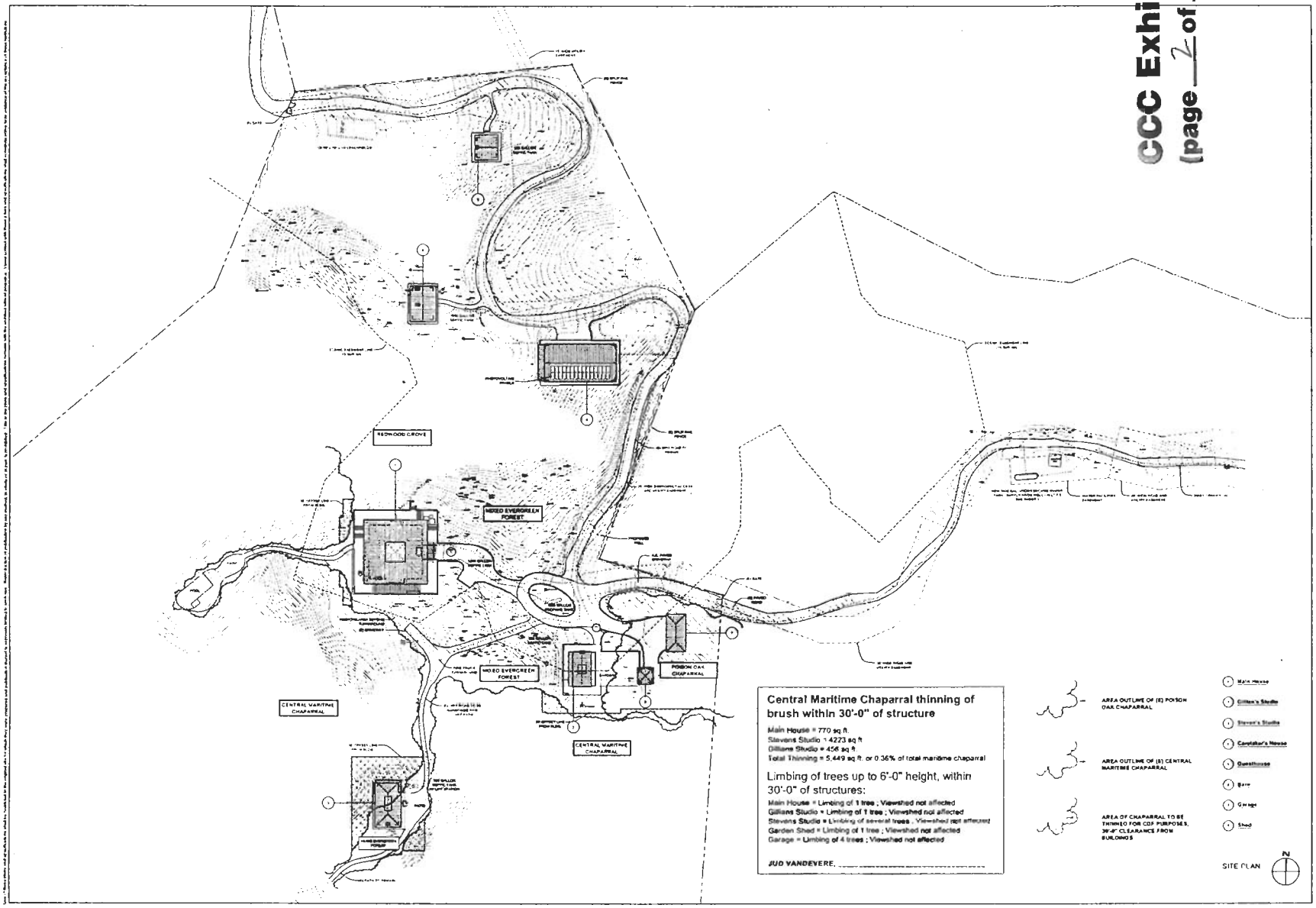
END OF PLAN REVIEW

CCC Exhibit M
(page 1 **of** 2 **pages)**

BY: _____

DATE: 02/04/07

CCC Exhibit M
(page 2 of 2 pages)



Central Maritime Chaparral thinning of brush within 30'-0" of structure

Main House = 770 sq.ft.
Stevens Studio = 4223 sq.ft.
Gillians Studio = 456 sq.ft.
Total Thinning = 5,449 sq.ft. or 0.36% of total maritime chaparral

Limbing of trees up to 6'-0" height, within 30'-0" of structures:

Main House = Limbing of 1 tree ; Viewshed not affected
Gillians Studio = Limbing of 1 tree ; Viewshed not affected
Stevens Studio = Limbing of several trees ; Viewshed not affected
Garden Shed = Limbing of 1 tree ; Viewshed not affected
Garage = Limbing of 4 trees ; Viewshed not affected

JUD VANDEVERE, _____

REVISIONS: BY:

FOSTER RESIDENCE
4855 BIXBY CREEK ROAD, CARMEL, CA 93923

Carver + Schicketanz Architects
P O BOX 2684 CARMEL CALIFORNIA 93921 USA
PHONE 831 624 2304 FACSIMILE 831 624 0344
WWW CARVERSCHICKETANZ COM

Date 10-24-2005
Scale 1"=50'
Drawn KS
Job 0304
File SITE PLAN VEGETATION THINNING
Sheet B-2

EXHIBIT "C"

CC-40 ✓
JC ✓

FINAL LOCAL ACTION NOTICE
REFERENCE # 3-MCO-93-21
APPEAL PERIOD 2/8-2/23/93

MINOR SUBDIVISION COMMITTEE
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RESOLUTION NO. 92-67

MINOR SUBDIVISION NOS. LL90032
LL90033
LL88010

A.P.# 418-081-13/14/15/17
418-131-30/31
418-011-01/40

FINDINGS AND DECISION

In the matter of the request of Marshal Rothman (LL90032, LL90033, LL88010))

for Certification of an Environmental Impact Report and three Combined Development Permits pursuant to regulations established by local ordinance and state law, to allow three Major Lot Line Adjustments; three Coastal Development Permits; located on Lots 11, 12 and 13, portion of Sections 4, 5, 6, 8, and 9, Range 1 East, Palo Colorado Area, fronting on and southerly of Palo Colorado Road, Coastal Zone, came on regularly for hearing before the Minor Subdivision Committee on October 29, 1992.

Said Minor Subdivision Committee, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. FINDING: The decision to prepare this Environmental Impact Report was based upon an authorization by the applicant.
   EVIDENCE: Letter from applicant dated September 12, 1990 contained in the original file (LL 88-10).

2. FINDING: A Notice of Preparation of the Environmental Impact Report was sent to:
   (a) the State Clearinghouse; and
   (b) each trustee agency;
   The Notice of Preparation describes the project, the location and the general impact sufficiently to permit a response.
   EVIDENCE: EIR file No. 90-07.

3. FINDING: Prior to completing the draft EIR, the staff and the EIR consultant hired by the County contacted interested agencies, individuals, and jurisdictions to secure their input. These are listed in the EIR. The responses are also set forth in the EIR and are supported by empirical data, scientific authorities, and explanatory information which crystallizes issues and affords a basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.
   EVIDENCE: EIR File No. 90-07.

4. FINDING: A Notice of Completion of the draft EIR was filed with the California Secretary for Resources and the County Clerk on April 10, 1992, briefly describing the project and its location and indicating that the draft EIR was available, where it was available and how long it was available for review, together with a deadline for review.
   EVIDENCE: EIR File No. 90-07.

5. EVIDENCE: Public notice of the availability of the draft EIR was provided by mailing notice on April 10, 1992 to:
   (a) organizations and individuals who previously requested such notice;
   (b) Applicant/Property Owner
   (c) publication in a newspaper of general circulation in the affected area.

6. FINDING: Copies of the draft EIR were sent to the following for review for a 30 day review period:
   (a) State Clearinghouse for state agencies review with a 45 day review period;
   (b) local libraries;
   (c) County and local agency offices;
   (d) citizen organizations and interested individuals.

   EVIDENCE: EIR File 90-07

7. FINDING: The County staff reviewed the comments on the draft EIR.

   EVIDENCE: EIR File No. 90-07 which contains correspondence among the consultant, planning staff, and other agencies as found in EIR; correspondence received from agencies together with written responses in the final EIR.

8. FINDING: The County through contract with the EIR consultant prepared a final EIR consisting of:
   (1) the draft EIR;
   (2) comments received on the draft EIR beginning on page 5 of the EIR;
   (3) a list of persons, organizations, and public agencies commenting on the draft EIR;
   (4) the responses of the County as lead agency to significant environmental points, and to review and consultation process, as set forth on page 5 of the EIR.

   EVIDENCE: EIR File No. 90-07.

9. FINDING: The EIR focuses on the significant effects of the project on the environment. The scope of discussion of the significant effects is in proportion to the severity and probability of occurrence.

   EVIDENCE: Scope of Work contained in EIR File No. 90-07

   EVIDENCE: The Scope of Work was distributed to Trustee Agencies, individuals and organizations for input and comment during the EIR process.

10. FINDING: Notice of the October 29, 1992 meeting, at which the Minor Subdivision Committee was to recommend certification of the EIR, was given by mail to:
   (1) the applicant; and
   (2) organizations who previously requested such notice.

   Notice was also given by the following procedures:
   (1) publication in a newspaper of general circulation in the affected area;
   (2) posting on and off the project site by Planning and Building Inspection Department staff for at least 10 days prior to the hearing;
   (3) mailing to all property owners within a 300 foot radius of the property as shown on the latest equalized assessment roll.

   EVIDENCE: EIR File No. 90-07.

11. FINDING: That the three stage lot line adjustment is between 10 existing adjacent parcels.
EVIDENCE: The parcels have been determined to be legal lots of record through certificates of compliance and staff determination.
EVIDENCE: Only lots with common lot lines will be adjusted as shown by the maps contained in the separate files LL 88-10; LL 90-32; and LL90-33.

12. FINDING: A greater number of parcels than originally existed will not be created as a result of the lot line adjustments.
EVIDENCE: Ten lots of record exist prior to the adjustment and ten lots will exist after the lot lines are adjusted by the three step process.
EVIDENCE: Certificates of Compliance contained in the original file.
EVIDENCE: Maps showing the proposed adjustments contained in File No.'s LL 88-10; LL 90-32; and LL90-33.

13. FINDING: The parcels resulting from the lot line adjustments conform to County Land Use, Zoning and Building Ordinances.
EVIDENCE: The configuration of the resulting lots have been evaluated against the policies of the Big Sur Land Use Plan and Part 3 of the Coastal Implementation Plan "Regulations for Development in the Big Sur Coast Land Use Plan".
EVIDENCE: Consistency analysis beginning at page 111 of the EIR.
EVIDENCE: Staff review of the project against the Local Coastal Program.
EVIDENCE: Conditions of approval have been suggested to insure consistency with the County Land Use, Zoning and Building Ordinances.

14. FINDING: For purposes of the Fish and Game code, the project will have a potential for adverse impact on fish and wildlife resources upon which the wildlife depends.
EVIDENCE: Analysis contained in the Environmental Impact Report prepared for this project and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. Pages 161 through 176 of the Environmental Impact Report discusses and identifies potential impacts to wildlife.

15. FINDING: The project, as approved by the Coastal Development Permit, is appealable to the Board of Supervisors and to the California Coastal Commission.
EVIDENCE: Section 20.140.080 G and J of the Monterey County Coastal Implementation Plan.

DECISION

THEREFORE, it is the decision of said Minor Subdivision Committee that the Environmental Impact Report be certified and that said Combined Development Permits be approved as shown on the attached sketch, subject to the following conditions:

1. Obtain a survey of the new lines and have the lines monumented. (Public Works)

2. File a Record of Survey showing new lines and their monumentation. (Public Works)

3. After filing of the Record of Survey, the owner shall have deeds prepared and recorded reflecting the lot line adjustment. (Public Works)

4. The applicant shall pay his proportinate share of left turn channelization on Highway One at Palo Colorado Road. (Public Works)

5. Prior to the recordation of the Record of Survey, a Property Owners Association shall be formed in order to comply with the mitigations suggested in the EIR. The covenant, conditions, and restrictions (C,C & Rs) shall give notice of all of the mitigation measures deemed appropriate for the proposed development, by the Planning Department, Public Works Department, Health Department, Water Resources Agency, and the Department of Forestry. The C,C & Rs shall also include the requirements for the monitoring program. (Planning and Building Inspection)

6. Prior to recordation of the Record of Survey, the applicant shall agree in writing to construct a road which meets the standards set forth by the California Department of Forestry. Said road shall obtain the required County permits and be constructed prior to construction of the first house on any of the ten lots. This condition is consistent with the Big Sur Coast Land Use Plan policy 5.4.3.k.3 and the regulations set forth by the California Department of Forestry (California Department of Forestry/Planning and Building Inspection)

7. The owner shall grant a Scenic Easement to the County over those portions of the property within the Critical Viewshed and over existing vegetated areas without which future development of the theoretical building envelopes would be located within critical viewshed. Said area shall be defined by a licensed registered surveyor and shall be subject to the approval by the Director of Planning and Building Inspection. This requirement is consistent with the Monterey County Coastal Implementation Plan Section 20.145.030 subdivision A (g and h). (Planning and Building Inspection)

8. Prior to the recordation of the Record of Survey the owner shall request a rezoning of the portion of lot 1 containing the archaeological site. This condition is consistent with Monterey County Implementation Plan Section 20.145.120 subdivision D (2b). (Planning and Building Inspection)

9. Prior to the recordation of the Record of Survey the archaeological site shall be placed in an archaeological easement. Prior to being accepted by the County, the proposed easement area shall be reviewed and verified as adequate to protect the resource by an archaeologist who has been selected from the County's list of archaeological consultants or who is a member of the Society of Professional Archaeologists. This condition is consistent with Monterey County Coastal Implementation Plan Section 20.145.120 subdivision D (2c). (Planning and Building Inspection)

10. The property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of this permit. The property owner will reimburse the County for any court costs and attorneys' fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said indemnification agreement shall be recorded upon demand of County

Counsel or prior to the issuance of building permits or use of the property, whichever occurs first. (Planning and Building Inspection)

11. Pursuant to the State Public Resources Code and the State Fish and Game Code, the applicant shall pay a fee to be collected by the County of Monterey for the amount of $875. This fee shall be paid prior to filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to recording of a Record of Survey. (Planning and Building Inspection)

12. Prior to the recording of the Record of Survey a notice shall be recorded with the Monterey County Recorder which states: An Environmental Impact Report has been prepared for each of the parcels by Denise Duffy and Associates and is on record in the Monterey County Planning Library No. EIR 90-07.

13. That the applicant shall record a notice which states: "A permit (Resolution #92-67) was approved by the Monterey County Minor Subdivision Committee for all 10 parcels. The permit was granted subject to 15 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection)

14. Prior to the recordation of the record of survey, the applicant shall provide an analysis that demonstrates that water can be provided to each parcel, that does not conflict with the policy in the Big Sur Coastal Plan regarding the inter-basin transfer of water. (Water Resources Agency & Health Department)

15. Conditions 5 through 14 shall be complied with prior to submittal of the Record of Survey package to the Monterey County Public Works Department. (Planning and Building Inspection)

PASSED AND ADOPTED this 29th day of October, 1992, by the following vote:

Ayes: McKenna, McPharlin, Messenger, Maslund, Stewart, Walker
Noes: Orrett
Absent: Brandau

Kathryn M. McKenna
KATHRYN M. MCKENNA, SECRETARY

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON NOV 06 1992 .

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE NOV 16 1992 .

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (408) 479-3511 OR AT 640 CAPITOLA ROAD, SANTA CRUZ, CA.

THIS PERMIT EXPIRES TWO YEARS AFTER THE ABOVE DATE OF GRANTING THEREOF.

633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Tel: +213.485.1234 Fax: +213.891.8763
www.lw.com

LATHAM&WATKINS LLP

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September 6, 2007

VIA FEDERAL EXPRESS

Chair Kruer and Honorable Commissioners
California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Ms. Katie Morange
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Re: Appeal No. A-3-MCO-06-018 (Steven and Gillian Foster Property, Lot 7, Rocky Creek Ranch, Big Sur, Monterey County)

Dear Chair Kruer, Honorable Commissioners and Ms. Katie Morange:

We are writing on behalf of our clients, Mr. and Mrs. Steven Foster (the "Fosters"), in response to the June 27, 2007 Staff Report, as modified by the July 10, 2007 Addendum (collectively, the "Staff Report"), for the appeal of the above-referenced Coastal Development Permit (the "CDP") for a single family residence on a 77.1-acre parcel in an existing subdivision known as Rocky Creek Ranch approximately 12 miles south of Carmel and 2 ½ miles inland and eastward of Highway One in Monterey County (the "County"). The Fosters appreciate the hard work of the Staff in analyzing the issues involved in the appeal. Since the Coastal Commission (the "Commission") appealed the County's approval, the Fosters have worked with the Staff to provide the Commission with additional information and analysis in an effort to address the issues raised in the appeal.

Despite these efforts at resolution, the Staff Report improperly recommends both that the abundant chaparral on the property be designated ESHA and that an unprecedented 200-foot buffer be imposed – neither of which are supported by the LCP or scientific evidence. The effect of Staff's recommendations is to limit any residential development of the Fosters' 77.1 acre parcel to one, approximately 560 square foot building envelope, which would constitute a multi-million dollar taking. The Fosters are therefore requesting certain significant modifications to Staff's recommendation, as described further below.

These materials have been provided to the Coastal Commission Staff

* STAFF NOTE: According to the Applicant, all exhibits were submitted to each Commissioner. Exhibits are available for review in the Central Coast District office.

Requested Modifications to Staff Report

The Fosters support the Staff Report recommendation to affirm the County's approval, subject to three significant modifications set forth in the more detailed Response to the Staff Report, attached hereto.

1. The Fosters request that the Commission not adopt the Staff's recommendation to designate the chaparral on the property as ESHA under the Monterey County (Big Sur area) Local Coastal Program (the "LCP") based on the purported presence of central maritime chaparral ("CMC"), which in fact is not present on-site. The Fosters therefore respectfully request that the Coastal Commission approve the residence in the location approved by the County (the "Approved Project") rather than in the location recommended by the Staff Report, which would limit development to an approximately 560 square foot building footprint, effecting a multi-million dollar taking by precluding all reasonable development of the site.

2. If the Commission designates the chaparral on the site as CMC and, therefore, ESHA[1], the Fosters request that the Commission (i) approve the Approved Project, which would require the removal of less than 1,200 square feet of manzanita chaparral[2]; (ii) not adopt the Staff's recommendation to impose an unprecedented 200-foot buffer between development and CMC, as the proposed buffer is not supported by substantive evidence, conflicts with abundant permit precedent, and would preclude all reasonable development of the site, resulting in a taking; (iii) find that the Approved Project is consistent with the LCP's ESHA policies, which the Commission has previously found to permit removal of CMC in much greater quantities than would be removed by the Approved Project; and (iv) find that approval of the Approved Project is necessary to avoid a taking because the Staff recommendation essentially prohibits any reasonable development.

3. The Fosters request that the Commission not adopt Staff's recommendation that the Approved Project be found inconsistent with the LCP's viewshed policies since the Approved Project is not within the critical viewshed or visible from public viewpoints.

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1 The Fosters strongly disagree that there is any basis in the record to designate the chaparral on the property as CMC, and therefore as ESHA, based on the arguments contained herein and in the attached Response to the Staff Report, and do not waive their rights to challenge such a designation if adopted by the Commission.

2 The Approved Project would remove an additional 5,319 square feet of Poison Oak chaparral.

Project Description and Background

Mr. Foster, and his wife, Gillian, are seeking a CDP to build a home for their family on areas of long-standing (pre-Coastal Act) grading and disturbance comprising only 0.27% (approximately ¼ of one acre) of their 77.1-acre parcel. The building envelope for the main residence is within, but reduced in size from, the envelope analyzed in an Environmental Impact Report ("EIR") certified by the County in 1992 in connection with the approval of a lot line adjustment for the Rocky Creek Ranch subdivision. Coastal Commission staff reviewed and commented on that EIR, including the building envelope for this property, without objection and no appeal was filed. Since the Fosters purchased the property in 2003, it has been their goal to design a home that would be harmonious with the landscape and highly protective of the environment. Throughout the design and approval process, the Fosters have worked with the County, Coastal Commission Staff, respected Staff biologists, and various other architectural, technical, and environmental consultants to design a project that would be consistent with the Coastal Act, the conditions of the County's prior lot line adjustment approvals, the policies of other state and federal agencies, and the permanent conservation and scenic easement recorded against the property.

The Approved Project includes a 3,975 square foot home with a detached garage, two detached art studios (approximately 1,200 square feet each) for Steven and Gillian, an 850 square foot caretaker unit, a 425 square foot guesthouse, and a detached barn. All development would be clustered almost entirely in the northern portion of the site on areas that have been continuously graded to maintain access roads on the property. All structures would be shielded from public viewpoints and sensitively sited to require the removal of only 1,171 square feet of manzanita chaparral (that does not qualify as CMC under any generally accepted definition). The property would be powered entirely by off-grid solar energy.

Since receiving the Notice of Appeal, the Fosters' representatives have worked closely with the Staff to respond to inquiries, conducted multiple site visits with Staff, provided four biological reports by a respected botanist regarding the sensitive habitat issues raised in the Staff Report, and commissioned additional site-specific viewshed studies, including an unprecedented nighttime study with faux structural facades. Below is a summary of the Fosters' responses to the issues raised in the Staff Report, which are set forth in more detail in the Response to Staff Report attached hereto.

Summary Response to Staff Report

- **The Chaparral on-site is Not ESHA Because it Does Not Qualify as CMC Under Any Generally Accepted Definition.** The implicit definition of CMC contained in the Staff Report: (i) is a radical extension of the generally accepted definition and is inconsistent with published, scientific references uniformly recognized by state and federal resource agencies; (ii) has apparently never been applied by the Commission or the County to permit approvals under the Monterey County LCP; (iii) is not based upon scientific consensus respecting possible future CMC definitions; and (iv) if adopted by the Commission, could render ESHA approximately 1.3 million acres of plant communities in the Coast Ranges. Over the last several years and as recently as

last year after this appeal was filed, where chaparral has qualified as CMC under the LCP, it has contained the manzanita species identified as *Arctostaphylos tomentosa*, which the two published definitions of CMC require to be either a dominant or at least an important species in the vegetation.

The Staff concedes that the chaparral on the Fosters' property does not contain any *Arctostaphylos tomentosa*. In fact, the property contains no manzanita species, except for *Arctostaphylos glandulosa*, which is the most widely distributed manzanita species in the Coastal Ranges, is not primarily associated with CMC, and is not identified as a rare plant community in the most current published version of the California Natural Diversity Database ("CNDDB") natural communities list. Furthermore, despite radically differing views in the scientific community regarding how many and which plants might be indicative of CMC where, as is the case here, *Arctostaphylos tomentosa* is not present, Staff relies upon portions of proposed formulations of a future definition to conclude that CMC and ESHA can be defined by the presence of only *Ceanothus cuneatus* var. *rigidus* – which does occur in limited numbers on the Foster property – even though the California Native Plant Society does not even identify it as a rare species.

- **Even if the Chaparral On-Site is Found to be CMC ESHA[3], the Approved Project is Consistent with All ESHA Policies and Regulations of the Monterey County LCP.** The LCP allows development within ESHA where, as here, biological reports conclude that the development does not result in significant habitat disruption. Even if the chaparral on the Fosters' property were ESHA, which it is not, the Approved Project would require the removal of only approximately 1,171 square feet of manzanita chaparral and, as conditioned by the County, would replace all of the chaparral removed on the property on a 1:1 basis. Three separate botanists have concluded that this de minimis amount of removal would not significantly impact habitat values. Indeed this amount is 11 times less than the amount of chaparral impact concluded by the 1992 EIR for the lot line adjustment to be less than significant and 110 times less than the amount of chaparral removal permitted for a residence under the LCP in 2002. Nevertheless, the Staff Report ignores the plain meaning of the LCP's ESHA policies and instead recommends that the Commission interpret the LCP to prohibit any development, even where impacts are insignificant. The Commission lacks the authority, however, to ignore the plain language in the LCP. Moreover, Staff's recommendation is inconsistent with numerous past permit approvals under the LCP, including one reviewed by Staff after this appeal, where similar or significantly greater disturbance of CMC was found to be consistent with the LCP's ESHA policies.

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3 Again, the Fosters strongly disagree that there is any basis in the record to designate the chaparral on the property as CMC, and therefore as ESHA, based on the arguments contained herein and in the attached Response to the Staff Report, and do not waive their rights to challenge such a designation if adopted by the Commission.

- **Even if the Chaparral On-Site is Found to be CMC ESHA[3], a 200-Foot Buffer is Unprecedented and Not Supported by Substantial Evidence.** Neither Staff's recommendation for a 100-foot ESHA buffer nor its recommendation for a 100-foot fuel modification zone ("FMZ") buffer outside of the ESHA buffer are supported by either state law or the LCP. The LCP does not specify an ESHA buffer requirement, the Staff Report provides no scientific support for the need for a 100-foot buffer on this property, and prior permits for residential development near purported CMC under the LCP have imposed either no ESHA buffer or a buffer that is coterminous with the 30-foot FMZ buffer. Moreover, the Staff Report provides nothing more than conclusory statements to support its recommendation that the LCP's hazards policies mandate a 100-foot FMZ buffer, as opposed to the 30-foot FMZ required by the County, consistent with state law FMZ requirements and as recommended by the local fire authority.

  The Staff Report also provides inadequate evidence to support its recommendation that the FMZ buffer be located outside of any required ESHA buffer. In particular, Staff presents inadequate evidence that vegetative thinning required to provide the FMZ buffer either would have any adverse impact on the long term maintenance of the chaparral or that it would be substantial enough to be characterized as "development" under the LCP. Conversely, based on the biological reports prepared for the property, peer-reviewed scientific sources that identify potential beneficial impacts of thinning on chaparral, and the observations of the Staff's consulting botanist, the minimal vegetative thinning that would be required for this property is in actuality likely to be beneficial to the long-term maintenance of the chaparral and other native plants on-site.

  Finally, even if the recommended buffers were reduced to one 100-foot buffer, the placement of the main residence would be unreasonable and would conflict with policies of the LCP concerning private views. *See* LCP § 3.2.4.A.2.

- **An ESHA Designation and a 200-Foot Buffer Would Result in a Multi-Million Dollar Taking.** When the Fosters purchased the property in 2003 for approximately $2.5 million dollars, it was reasonable for them to expect that they could build a home within the building envelope analyzed by the County in connection with the approval of the 1992 lot line adjustment. Since that time, the Fosters have incurred at least $1.5 million in carrying costs, infrastructure costs to maintain existing roads, and other costs as part of the entitlement process. However, after applying the Staff's recommended 200-foot buffer and zoning setbacks, and accounting for an existing road that bisects the remaining portion of the property, the Fosters would be left with only approximately 1,295 square feet, which can accommodate at most a 560 square foot building footprint for a habitable structure, of which 200 square feet would be occupied by a required garage. This is not a reasonable level of development under the Coastal Act, nor is it permitted under the Rocky Creek Ranch CC&Rs, which prohibit construction of a main residence that is less than 1,500 square feet. Such a

result would effectively render the site entirely unbuildable, therefore denying the Fosters their reasonable investment-backed expectations.

- **Staff's Recommendation Regarding Critical Viewshed is Not Supported by The Evidence.** As part of the County's lot line adjustment approval that created the Fosters' lot, the County found the building envelope (within which the Fosters' main residence would be located) to be consistent with the LCP critical viewshed policies after full analysis in an EIR. Although the Staff concedes that the Approved Project would not be visible during the day under existing conditions, and although the Fosters provided substantial evidence through a highly sophisticated nighttime lighting study that none of the structures would be visible at night, the Staff Report nevertheless recommends limiting all development to one 1,295 square foot footprint in a portion of the site with no coastal views, which would allow only a 560 square foot footprint for structural development, based on the hypothetical possibility that at some point in the future, the residence might become visible from public vantage points. This recommendation is inconsistent with the LCP, which requires that critical viewshed determinations be made according to "existing conditions". Moreover, the Approved Project already is subject to two very restrictive County conditions – one requiring that any structure be removed if it somehow were to become visible due to disappearing vegetation that is not replaced, and one requiring the submittal of photographic evidence of ongoing maintenance of the critical viewshed every 5 years.

Based on the foregoing and our more detailed Response to the Staff Report, attached hereto, the Fosters respectfully request that the Commission approve the CDP, subject to their requested modifications. We look forward to discussing the project with Commission Staff at our meeting next week in hopes that we can come to agreement on a revised Staff recommendation prior to the Coastal Commission's meeting in November. Please feel free to contact me at (213) 485-1234 if you have any questions regarding this matter.

Sincerely,

Rick Zbur
of LATHAM & WATKINS LLP

cc: Mr. Steven Foster
Mark Blum, Esq.

RESPONSE TO STAFF REPORT
APPEAL NO. A-3-MCO-06-018
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1. The Commission Should Not Designate Chaparral on the Site as ESHA Because It Does Not Qualify as Central Maritime Chaparral Under Any Generally Accepted Definition

a. The Site Does Not Contain Any of the Indicator Species Required Under Any Generally Accepted Definition of CMC

b. The Site Does Not Contain any *Arctostaphylos tomentosa*

c. No Manzanita Species Other than *Arctostaphylos glandulosa* is Present On-Site

d. Species Purported by Staff to be "Indicators" of CMC Do Not Indicate Maritime Conditions or Sites

e. The Physical Characteristics of the Site, as Described in the Staff Report, are Not Indicative of CMC

f. The Expanded Staff Definition of CMC is so Broad as to Result in CMC No Longer Qualifying as ESHA

g. The Definition of CMC Implied by Staff is Broader than any Definition Previously Applied Under the LCP

These materials have been provided to the Coastal Commission Staff

2. **Even if the Chaparral On-Site is Found to be CMC ESHA, the Approved Project is Fully Consistent with All ESHA Policies and Regulations of the Monterey County LCP**

   a. The Approved Project's Removal of An Insignificant Amount of Manzanita Chaparral Does Not Significantly Disrupt Habitat Values.

   b. Past Permit Precedents Demonstrate That Similar or Greater Disturbance of CMC ESHA Has Been Found to be Consistent with the Monterey County LCP

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3. **Even if the Chaparral is Found to be ESHA, the Commission Should not Adopt the 200-Foot Total Buffer Recommended in the Staff Report**

   a. Staff's Recommended 100-Foot Habitat Buffer is Unwarranted and Not Supported by Substantial Evidence

   b. The Commission Lacks Authority to Impose a 100-Foot FMZ Buffer

      (1) The 30-Foot FMZ Buffer Approved by the County is Consistent with State Law FMZ Requirements

      (2) The 30-Foot FMZ Buffer Approved by the County is Consistent with the LCP's ESHA and Hazard Policies

      (3) The 30-Foot FMZ Buffer Approved by the County is Consistent with the Permit Precedent under the LCP

      (4) The Commission Lacks the Authority to Prohibit Thinning of Vegetation Within the Purported ESHA Buffer Because it Does Not Constitute "Development" Under the LCP

   c. Adoption of the Staff's Recommended ESHA Designation and a 200-Foot Total Buffer Would Effectively Result in a Taking

These materials have been provided to the Coastal Commission Staff

CCC Exhibit O
(page 8 of 39 pages)

RESPONSE TO STAFF REPORT

September 6, 2007

RE: Appeal No. A-3-MCO-06-018

I. OVERVIEW

This is a Response to the Staff Report dated June 27, 2007, and Addendum dated July 10, 2007, respecting Appeal No. A-3-MCO-06-018 (Steven and Gillian Foster) (the "Appeal"). The Appeal concerns a combined development permit ("CDP") approved by the County of Monterey (the "County") on February 22, 2006, for a single-family residence on Lot 7 of the Rocky Creek Ranch subdivision (the "Approved Project" or the "County Approval"). The Fosters' lot is in the Palo Colorado Area approximately 12 miles south of Carmel and 2-1/2 miles inland and eastward of Highway 1. The Big Sur LUP designates the Palo Colorado area as appropriate for residential development. The zoning for the property is Watershed Scenic Conservation with a 40-acre minimum lot size with a Design Control Overlay, Coastal Zone [WSC/40-D(CZ)].

The Fosters are seeking a CDP to create a home for their family with coastal views on approximately ¼ of one acre of their 77.1-acre parcel, which would coexist with and be sensitive to its surrounding environment. The Approved Project consists of a 3,975 square foot single-family home and accessory structures including a 3,200 square foot barn with solar panels; 225 square foot shed; 800 square foot garage; 1,200 square foot studio ("Steven's Studio"); 1,150 square foot studio ("Gillian's Studio"); septic system; pool and well; 425 square foot guesthouse; 850 square foot caretaker's unit; retaining walls; underground utilities; underground water tank; tree removal (14 coast live oaks, 4 canyon oak, 1 redwood); and associated grading (1,850 cubic yards of cut and 625 cubic yards of fill).

The Fosters' lot was created by a lot line adjustment that the County approved in 1992 (the "1992 LLA" or "Rocky Creek Ranch lot line adjustment"). As part of the approval process, an environmental impact report ("EIR") was prepared and certified which, among other things, determined that the chaparral on the Fosters' lot was neither central maritime chaparral ("CMC") nor any other form of environmentally sensitive habitat ("ESHA"). The Coastal Commission Staff (the "Staff") reviewed and commented upon the EIR, including the conclusions regarding the Fosters' building envelope, without objection, and no appeal was filed.

Since purchasing the parcel in 2003, the Fosters have worked with the County and Commission Staff, as well as respected Staff biologists, the local fire authority, and various other architectural, technical, and environmental consultants to carefully site the residential structures within areas of long-standing (pre-California Coastal Act) existing disturbance, which include graded roads, trails, paths, parking areas, and pads. The Fosters also have made every effort to design a project that would be consistent with the property's rural surroundings and with the policies of the Monterey County (Big Sur area) Local Coastal Program ("LCP"), the Monterey County Coastal Implementation Plan ("CIP"), the California Coastal Act (the "Coastal Act"), the conditions of the approved 1992 LLA, as well as the policies of other state and federal agencies. The proposed structures have been sited and designed, including building materials and colors, so as not to detract from the natural beauty of the undeveloped skyline and ridgeline or impact

These materials have been provided to the Coastal Commission Staff

CCC Exhibit O
(page 9 of 39 pages)

the views or privacy of neighbors, and are located where existing trees and vegetation provide natural screening. The Fosters also are proposing an environmentally-sensitive project that would be entirely powered by off-grid solar energy.

The maximum building site coverage for the WSC zone is 10%. The residential structures and uses on the Fosters' lot would be clustered on approximately ¼ of 1 acre of this 77.1 acre lot—less than one-third (⅓) of one percent of the total lot. *See* Constraints Map, attached hereto as Exhibit B. The home would be located almost entirely in the northern portion of the site, with access from Highway 1, following portions of an existing access road. The majority of the lot is subject to a permanent conservation easement, which prohibits structures within the critical viewshed that was recorded in 1993 as a condition of approval of the boundary line adjustment on the Rocky Creek Ranch.

Following three years of comprehensive site planning and environmental review, on February 22, 2006, the County approved the Fosters' residence. Two Coastal Commissioners then appealed the County's approval, citing concerns relating to the project's consistency with the LCP's policies regarding ESHA, fire hazards, and critical viewshed. Since then, the Fosters have provided the Staff voluminous additional analysis, including four additional biological letter reports prepared by Dr. Adrian Juncosa, a Senior Ecologist with Ecosynthesis Scientific and Regulatory Services, Inc.,[1] detailing why the chaparral on the Fosters' lot is not sensitive habitat. The Fosters also authorized additional site visits by Staff biologists and consulting botanists to allow further analysis of the chaparral on-site and commissioned two studies to address the critical viewshed concerns raised by Staff.

Notwithstanding the additional analysis provided by the Fosters, the Staff scheduled the substantial issue determination and de novo review of the project for a single hearing on July 12, 2007, and recommended that the chaparral on the Fosters' parcel be designated CMC, and therefore ESHA, under the LCP. Based on this recommended ESHA designation, the Staff is recommending that no development be permitted within the purported CMC and that a 100-foot setback be imposed from the edge of the purported CMC. The Staff also recommends a 100-foot fuel modification zone ("FMZ") buffer between the CMC setback and any development on the site.

If applied to the Fosters' lot, the Staff's recommended ESHA designation and 200-foot total setback would cause a multi-million dollar taking by precluding all reasonable development of the site. After applying the recommended buffer and zoning setbacks, and accounting for an existing road that bisects the remaining portion of the property, the Fosters would be left with only approximately 560 square feet of buildable area for a habitable structure, of which 200 square feet would be occupied by a required garage. This is not a reasonable level of development under the Coastal Act, nor is it permitted under the Rocky Creek Ranch CC&Rs, incorporated as part of the 1992 lot line adjustment, which prohibit construction of a main residence that is less than 1,500 square feet. Such a result would effectively render the site entirely unbuildable, therefore denying the Fosters their reasonable investment-backed

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[1] Dr. Juncosa holds a Bachelor of Arts in Biology from Harvard University and a Ph.D. in Botany from Duke University.

These materials have been provided to the Coastal Commission Staff

CCC Exhibit O
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expectations. Approval of the Approved Project is therefore necessary to avoid a taking, as the Staff's recommendation would essentially prohibit any reasonable development. As described above, the unreasonable amount of development envelope that would otherwise result compels this result.

Consequently, at the July 12 hearing, the Fosters elected to exercise their one-time right, pursuant to Section 13073(a) of the Coastal Commission's Regulations, to postpone to a subsequent meeting the Coastal Commission's review of the Appeal in order to allow additional time to work with the Staff to further analyze and address these issues.

II. STANDARD OF REVIEW ON APPEAL

On appeal, if a substantial issue is raised, then the Commission shall review the application under a *de novo* standard to determine the project's conformity with the certified Local Coastal Program and, if applicable, the public access and public recreation provisions of the Coastal Act. The LCP for this project includes the Big Sur Area Land Use Plan ("LUP") and the implementing ordinance for the area, the Big Sur Coastal Implementation Plan.

III. SUMMARY OF ISSUES

Four general issues are set forth in the Staff Report:

1. Whether the chaparral on the site may be classified as central maritime chaparral;

2. If the chaparral on the site qualifies as central maritime chaparral, whether the Approved Project nevertheless is consistent with the LCP policies on ESHA;

3. Whether the Approved Project is consistent with LCP policies on viewshed; and

4. Whether the Approved Project is consistent with LCP policies on fire hazards.

IV. ENTITLEMENT HISTORY

As explained below, the County previously determined in 1992, when it approved a boundary adjustment that created the Fosters' lot, that the building envelope within which the Fosters' home is now proposed is neither within ESHA nor the critical viewshed. The Coastal Commission Staff reviewed and commented on the EIR, including the conclusions regarding the Fosters' building envelope, but did not object to either of these findings and did not appeal the approval. The County's 2006 approval of a CDP for the Fosters' home is entirely consistent with the County's 1992 LLA approval.

B. The County's 1992 Approval of Lot 7 in Rocky Creek Ranch Contemplated the Foster's Proposed Building Envelope

The building envelope within which the Fosters now are proposing to construct their main residence is the same building envelope the County determined in 1992 to be consistent with the LCP's ESHA and viewshed policies – a determination which the Coastal Commission did not challenge. The present lot configurations within the Rocky Creek Ranch subdivision

These materials have been provided to the Coastal Commission Staff

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were created by a lot line adjustment of pre-existing lots in 1992. *See* Monterey County Minor Subdivision Committee Resolution No. 92-67 approving the LLA, attached hereto as Exhibit D. As part of the approval process, building envelopes were proposed for each lot and, for certain lots, specific locations were identified for the main residence. The Fosters' lot, which was identified as Lot 7, included a proposed location for the main residence that was analyzed in the FEIR as part of the environmental review conducted during the LLA process pursuant to the LCP.

The FEIR included specific recommendations with respect to the suitability of the building envelopes for each lot in accordance with the LCP and CIP section 20.145.040.A.4.g. For example, for Lot 5, the FEIR concluded, "Assuming worst case potential development, approximately 43,640 square feet of mixed chaparral could be potentially impacted within this envelope. This is not considered to be a significant impact due to the abundance of this habitat type found on the property...." *See* The Habitat Restoration Group Rocky Creek Ranch Biotic Assessment, November 14, 1991, attached hereto as Exhibit C, at 24.

For the Fosters' Lot 7, the FEIR provided as follows:

> Impact. Approximately 12,978 square feet of habitat would be potentially impacted by the development proposed in the site plan. Most of the development for the main house would occur in mixed chaparral habitat, much of which has already been disturbed by previous brush clearing. . . .

Id.

Based on an extensive biological report and other evidence, the FEIR concluded that future development within the context of the development envelopes is consistent with the ESHA policies of the LCP.[2] The FEIR determined that the chaparral on Lot 7 was not CMC or

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[2] According to the section of the Rocky Creek Ranch Final EIR evaluating Environmentally Sensitive Habitats, the biotic resources on the Rocky Creek Ranch parcels were studied in depth though reconnaissance-level biotic assessments, including several biological surveys studies (by botanist Scott Hall, botanist Bruce Cowen, and others). With regard to potential environmentally sensitive habitat areas, the FEIR contained a segment that "summarizes a reconnaissance-level biotic assessment of the project site and proposed lot line adjustment." FEIR at 154. In addition, previous studies conducted for the site were reviewed. *Id.* The FEIR concluded that the "potential impacts associated with potential future residential development on each lot is mitigated to a less than significant level." *Id.* at 118 (citing LUP Policy 3.3.2.A.1). The FEIR found the previously disturbed areas, the goal of precluding development at even higher elevations, and the existing road network, as providing "a strong argument that development should be allowed here [in the proposed building envelopes studied by the FEIR]." FEIR at 119.

The FEIR concluded that based on the LUP and CIP applicable provisions, "it is appropriate to conclude that the proposed building envelopes are developable and, therefore, [to] conclude that the proposed lot line adjustment is consistent with Policy 3.2.3.A.1." FEIR at 113

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ESHA. It is also notable that the FEIR recommendations, incorporated as conditions of approval on the LLA configuring Lot 7, included no setbacks from the chaparral. To the contrary, development was specifically directed to the previously disturbed chaparral areas. This recommendation necessarily placed future development adjacent to the chaparral and accordingly did not specify any setback from the chaparral. Any such setback from the chaparral (as Staff now proposes) would defeat the purpose of siting development within previously disturbed areas, the very foundation upon which the Rocky Creek Ranch parcels, including Lot 7, were reconfigured.

The County considered the FEIR's conclusions regarding what is now the Fosters' lot, and made findings that future development within the building envelope for each lot would be consistent with the LCP and CIP. Specifically, the County found that no significant adverse impacts to the critical viewshed or to environmentally sensitive habitat areas would result from development within the studied building envelopes. Based on these findings, the County approved the LLA establishing the present boundaries of the Fosters' Lot 7.

As part of the public process associated with the FEIR, Coastal Commission Staff commented in writing on the draft EIR, but did not object to the conclusions regarding Lot 7. The Coastal Commission also had jurisdiction to appeal the County's Approval of Rocky Creek Ranch LLA, but chose not to appeal after reviewing and commenting in writing on the EIR. The County approval of the LLA and the configuration of the Fosters' Lot 7 therefore became final.

The deliberation that went into the approval for the LLA balanced a variety of environmental, preservation and land use needs with oversight from a wide range of federal, state, and local governmental agencies and interested parties, including the Commission. The FEIR neither ignored concerns regarding sensitive habitat nor remained silent on the possibility that future development could result in impacts to the critical viewshed. The FEIR detailed the ways in which potential lots had building envelopes of adequate size, topography, and character to provide sufficient area for future development that would preclude impacts to ESHA and the critical viewshed. In full view of these considerations, the County concluded that future development on what is now the Fosters' lot would be consistent with the LCP, a decision which the Commission did not challenge.

The main residence of the Approved Project fits within the same development envelope already considered by the County and by Commission Staff, which is outside of the scenic easement.[3] Specifically, at the time of the LLA approval, the westernmost possible building site

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(New parcels must contain building sites outside the critical viewshed). The basis for the FEIR conclusions was that "given applicable policies of the LUP and CIP to restrict the potential impacts of future development and the geotechnical, biotic and resource assessment discussions presented in this EIR the proposed building envelopes are considered developable." *Id.*

[3] As mentioned above, the analysis in the FEIR proposed a particular location for the main residence. To further avoid potential viewshed impacts, however, the Fosters elected to relocate the main residence slightly by moving it approximately 30 feet to the east within the specified

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(the site of the proposed main residence) was closely studied, and a scenic easement line was established. Anything east of the line was considered buildable area, and anything west of the line was placed into permanent scenic easement. The scenic easement specifically allows development as long as it can be proven that it is not visible from public viewing areas. Since the LLA approval, the Fosters have made minor modifications to relocate the main residence to further avoid impacts to chaparral on-site, but there have otherwise been no substantial changes to the conditions on the Fosters' lot that would support finding that the main residence is inconsistent with the LCP's ESHA and viewshed policies. Similarly, the location of the accessory structures on the Fosters' lot is consistent with the requirements of the scenic easement imposed as part of the LLA approval. The Approved Project is therefore consistent with the County's LLA approval.

C. The Fosters' Purchase of Lot 7 was In Reliance on the Analyzed Building Envelope

Based on the County's 1992 LLA approval, the Commission's tacit acceptance of the findings underlying that approval, and the issuance of development permits by the County and the Commission for homes on neighboring parcels covered by the same FEIR, the Fosters acquired the property with the reasonable investment-backed expectation that they could construct a home similar to that now proposed. In particular, in 2003, the Fosters purchased Lot 7 under the following circumstances:

- Lot 7 had been recently reconfigured by the Rocky Creek Ranch Lot Line Adjustment with a Coastal Development Permit based on a full EIR.
- The EIR determined that the chaparral on Lot 7 was neither maritime chaparral nor ESHA. The chaparral was specifically identified as mixed chaparral.[4]
- The certified FEIR recommended as mitigation of potential environmental impacts on Lot 7 that "the disturbed chaparral area to the west would be the preferred location for development." The Building Envelope is in this historically disturbed area.
- The Coastal Commission Staff had specifically reviewed and commented upon the FEIR and the Lot 7 Building Envelope without objection, and no appeal was filed by the Commission.
- Another Rocky Creek Ranch lot had already received a Coastal Development Permit and developed on the adjacent Lot 5.[5]

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building envelope. In so doing, the Fosters significantly reduced views of the ocean from the residence and significantly reduced impacts to the chaparral.

[4] The FEIR erroneously refers to some of the chaparral on the Fosters' lot as *Arctostaphylos tomentosa*.

[5] In 1998, the owner of neighboring parcel, Lot 5 of Rocky Creek Ranch, John Hain, sought a Combined Development Permit to allow the construction of a single family dwelling, detached garage, guest house, and other accompanying development. The Hain Project was approved by County of Monterey Resolution No. 970278, incorporated by reference herein. According to County records, on August 12, 1998, the County provided written notice to the California Coastal Commission of the hearing on the Hain application then pending approval. The notice explicitly referenced the location of the project "on Lot 5, Rocky Creek Ranch,

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- The majority of Lot 7 had already been placed in a permanent scenic easement pursuant to the conditions of the 1992 Lot Line Adjustment.
- Lot 7 was marketed as an "ocean view' lot (*see* Exhibit D) and the Fosters paid a price commensurate with the reasonable expectation of being able to build an ocean view residence in the Building Envelope, as the owners of the adjoining Lot 5 had done in the same chaparral habitat.

D. The County's 2006 Approval of the Foster Project is Consistent with the Building Envelope Analyzed under the 1992 Lot Line Adjustment

On February 22, 2006, the County of Monterey ("County") adopted Resolution No. 06012 with findings that the Fosters' Approved Project (PLN040569) was processed and approved in accordance with all applicable requirements. *See* Monterey County Final Local Action Notice, attached to the Staff Report as Exhibit G; County File No. PLN040569 is incorporated by reference herein. The building envelope of the Approved Project is generally consistent with the building envelope analyzed in connection with the 1992 LLA approval.

The Combined Development Permit, as approved by the County, consists of:

1. Coastal Administrative Permit to allow a new 3,975 square foot single family residence and accessory structures including a 3,200 square foot barn with solar panels; 225 square foot shed; and 800 square foot garage; 1,200 square foot studio; 1150 square foot studio; septic system; pool and well;

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southerly of Palo Colorado Road, Big Sur Area of the Coastal Zone," and included the proposed findings, evidence, and conditions in an attachment provided to the Commission. In the biological report that was prepared in connection with the 1992 LLA approvals, it was estimated that future development on Lot 5 could at worst case scenario impact "43,640 square feet of mixed chaparral[.]" Exhibit E, at 12-13. By contrast, impacts to mixed chaparral on Lot 7 (the Fosters' lot) were only estimated at worst case scenario to amount to 12,978 square feet. As part of its application in 1997, the Hains retained a coauthor of the Rocky Creek Ranch FEIR's biotic assessment to evaluate the Hain property. In a letter report dated December 9, 1997, the botanist concluded that "[t]he new location [for the Lot 5 building envelope for the Hain property] has been shifted to the southeast of the old one into an area that is more sparsely vegetated with northern mixed chaparral." As noted herein and acknowledged in the Staff Report, no *Arctostaphylos tomentosa* has been identified on the Fosters' lot; the one plant that had previously been misidentified as this species was examined by the Fosters' botanist, Commission staff, Staff's invited botanist (Michael Vasey, who is an expert in manzanita identification), and others, and was determined to be *Arctostaphylos glandulosa* instead. However, in its resolution approving the Hain project, the County found the Project to be consistent with all applicable LCP policies and regulations, notwithstanding the impacts to vegetation that is almost identical to the manzanita-based chaparral on the Fosters' parcel.

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2. Coastal Administrative Permit to allow a 425 square foot guesthouse;

3. Coastal Development Permit to allow a 850 square foot caretaker's unit;

4. Coastal Development Permit to allow tree removal;

5. Coastal Development Permit to allow development within 100 feet of environmentally sensitive habitat,[6] Design Approval and associated grading (approximately 1,850 cubic yards cut/526 cubic yards fill), retaining walls, underground utilities, underground water tank on Lot 6 (APN 418-132-006-000), and hook up to existing well on Lot 5 (APN 418-132-005-000).

V. ANALYSIS

A. ISSUE 1: ESHA

The Staff's recommendations concerning ESHA, which depend solely upon the opinion of a staff biologist, who is not a botanist, contradict both the published science and unpublished scientific consensus and, if adopted, the recommended ESHA designation would effect a multi-million dollar taking of the Fosters' property by restricting the development of the site to one 560-square foot footprint, which would have to then include a 200 square foot garage, denying the Fosters their reasonable investment-backed expectations. The Staff recommendations would further effectively amend LCP policies through novel reinterpretation and expansion, without complying with required LCP amendment procedures. Specifically, Staff's recommendations would:

1. Broadly re-define and vastly expand what constitutes maritime chaparral EHSA at a Staff level, without any support in the published scientific authorities relied upon by sister state agencies, and without scientific consensus;

2. Define the thinning of chaparral vegetation for fuel modification as "development", contrary to Monterey County Coastal Implementation Plan Part 3, Chapter 20.145, section 20.145.020.X.8, and require an environmental buffer between the chaparral vegetation and the fuel modification zones on the unsupported assumption that the existence of 100 feet of thinned chaparral would have an unmitigable adverse effect on adjoining chaparral; and

3. Ignore the actual thirty foot (30') fuel modification requirements of the fire authority and the County permit limiting fuel management to thirty feet (30') of vegetative thinning, and assume a fictional one hundred feet (100') of vegetative thinning, thus artificially magnifying the potential for impacts.

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[6] As explained below, the description of the chaparral as CMC was based on an erroneous classification of the manzanita species, which Staff acknowledges.

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1. **The Commission Should Not Designate Chaparral on the Site as ESHA Because It Does Not Qualify as Central Maritime Chaparral Under Any Generally Accepted Definition**

a. The Site Does Not Contain Any of the Indicator Species Required Under Any Generally Accepted Definition of CMC

Chaparral has traditionally been considered maritime chaparral if it is dominated by woolly-leaved manzanita (*Arctostaphylos tomentosa*) ***and*** contains one or more other rare manzanitas. The two published definitions of maritime chaparral vegetation are consistent with this definition. *See* Dr. Juncosa's Letter Report dated July 27, 2007, attached hereto as Exhibit Q, at 4 ("The two published definitions of maritime chaparral vegetation (Holland, 1986; Sawyer and Keeler-Wolf, 1995) require dominance by *A. tomentosa*.").

At present, vegetation scientists are working to revise the published definition of CMC to include, in addition to *Arctostaphylos tomentosa*, several other species and subspecies of the genus (also referred to as proposed indicator species) that are important, characteristic, or dominant within CMC. The revised definition will be published in the second edition of the Manual of California Vegetation (Sawyer, Keeler-Wolf, and Evens) which is not yet available, even in draft form. However, there is as yet no consensus as to which species are and are not indicative of maritime chaparral. For example, the definition proposed by the Coastal Training Program ("CTP") mentions about 25 possible indicator species of *Arctostaphylos* and *Ceanothus* that dominate CMC; none include *A. glandulosa*. *Id.* At a chaparral workshop in June 2007, however, a list of between 11 and 12 candidate maritime manzanita alliances was presented, plus 4 alliances whose status is uncertain. *Id.* At the same workshop, Michael Vasey, the Commission's hand-picked manzanita expert who attended the Foster site visit in March, distributed a list of 50 species and subspecies of *Arctostaphylos* (over half of the taxa in the entire genus) which he states occur within maritime chaparral; not one of these taxa occur on the Foster parcel. Even in this exceptionally inclusive list, he does not include either *A. glandulosa* ssp. *Glandulosa* or ssp. *Cushingiana*. *Id.*

The radically differing views of how many and which plants might be indicative of CMC clearly demonstrate a lack of scientific consensus beyond the published definitions. Rather than rely upon the published definitions of CMC, which are based upon a classification system that has historically been and continues to be used by state and federal resource agencies and biologists to characterize different types of chaparral, the Staff Report relies upon portions of several proposed formulations of a possible future definition without any defensible basis. However, as explained below, to the extent that any scientific consensus can be identified, the type of chaparral vegetation that occurs on the Foster site is not maritime. Indeed, the only biological report concluding the presence of central maritime chaparral (excepting those based on the mistaken identification of Wollyleaf manzanita on-site) is that of staff biologist Dr. Jonna Engel, who is not a botanist.[7]

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[7] The minimal amount of potentially impacted chaparral on the Fosters' property is so highly degraded that it likely does not qualify as ESHA in the first instance. The chaparral

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b. The Site Does not Contain any *Arctostaphylos tomentosa*

Staff does not dispute that no *A. tomentosa* has been identified on the Fosters' parcel. There was an error in a 2004 biological report for Lot 7 (Norman 2004, County File No. PLN040569) which was repeated in subsequent reports prepared at the County level (e.g., Vandevere September 29, 2005, County File No. PLN040569), as well as in the County approval, which made findings that despite this (erroneous) ESHA designation, the development would not adversely affect the habitat and would assure its long-term maintenance consistent with the LCP. The erroneous identification was later corrected through laboratory analysis with reference to the published scientific references accepted by the California Department of Fish and Game. *See* Dr. Juncosa's Letter Reports Dated June 18, July 27, and July 30, 2007, attached hereto as Exhibits P, Q, and R, respectively. Staff acknowledges this error and has witnessed through an on-site survey that the plant previously misidentified as *A. tomentosa* is actually the non-special status, non-maritime, and very widely distributed *A. glandulosa.*

The Staff Report statement that the CMC indicator species *A. tomentosa* may be present, though somehow not observed, is improper speculation, contradicted by the surveys conducted by the Commission's staff biologist and Staff Consulting Botanists.[8] To adopt this Staff premise would be to compel the Fosters to prove a negative. Not only is this scientifically impossible, it is also inconsistent with the LCP standard for ESHA determination. *See* CIP Section 20.145.040, *et. seq.*

It is undisputed that no woolly-leaved manzanita has been identified on the Fosters' parcel. According to historically accepted classification systems, this species would not only need to be present, but would need to be dominant or at least important in order to make the finding that the vegetation is CMC.

c. No Manzanita Species Other Than *Arctostaphylos glandulosa* is Present On-Site

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where development would occur on the Fosters' lot does not support a canopy indicative of healthy maritime chaparral vegetation. Instead, the chaparral is located within long-standing pre-Coastal act disturbed areas. As the EIR observed "[m]ost of the development for the main house [on Lot 7] would occur in mixed chaparral habitat, much of which has already been disturbed by previous brush clearing. . . ." FEIR at Appendix D (The Habitat Restoration Group Biological Analysis at 24-25).

Moreover, since the grading and removal of vegetation from the Fosters' lot that created the existing roads, trails, paths, and parking areas occurred prior to the enactment of the Coastal Act, the Fosters have a vested right to continue to grade and maintain these disturbed areas. Coastal Act section 30608 provides that "[n]o person who has obtained a vested right in a development prior to the effective date of this division . . . shall be required to secure approval for the development pursuant to this division." Pub. Res. Code § 30608.

[8] The Fosters authorized field trips by the staff biologist and botanists selected by staff ("Staff Consulting Botanists"), including Gray Hayes and Mike Vasey.

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Arctostaphylos glandulosa is the only manzanita species present on Lot 7. *See* Dr. Juncosa's Letter Reports, attached hereto as Exhibits O-R. Several hundred manzanita plants were examined by Dr. Juncosa and two botanists enlisted by Staff to visit the site, however, only *Arctostaphylos glandulosa*, a non-maritime form of manzanita, was observed. *See* Exhibit Q at 5.

Neither Holland (1986) nor Sawyer and Keeler-Wolf (1995), nor any other published vegetation descriptions, describe chaparral dominated by *A. glandulosa* or *A. glandulosa* and chamise (types which occur on the Foster parcel) as maritime. Also, the CTP's *proposed* definition of CMC does not include *A. glandulosa* in the list of species that are indicators of maritime chaparral. Exhibit O at 5. Staff nonetheless has proceeded to classify the plant community on the Fosters' property as central maritime chaparral ESHA based on a non-peer reviewed, unpublished, expanded description of CMC. However, this conclusion is not supported by scientific literature or the facts.

d. Species Purported By Staff to Be "Indicators" Of CMC Do Not Indicate Maritime Conditions or Sites

The Staff Report cites a long list of species that are found on the project site and states that "... these species are commonly associated with maritime chaparral." *See* Staff Report at 22; *see also* Addendum at 4. Specifically, the Staff Report relies on observations made during a March 2007 site visit, which "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*)." *Id.*

However, as Dr. Juncosa has noted, "This is a completely misleading statement, because these species are ***primarily associated with plant communities other than maritime chaparral.***" Exhibit Q at 6, Table 1. The Staff Report cites no published authority or evidence of scientific consensus to support this newly advanced definition of CMC, which is inconsistent with the standard, peer-reviewed published reference materials recognized by state and federal resource agencies. As explained by Dr. Juncosa in letter reports attached to the Staff Report as Exhibits C-F, to the extent that consensus can be discerned among experts as to which species or varieties are likely to fall within the definition of CMC, that consensus would exclude the vegetation that occurs on the Foster site. *See, e.g.*, Exhibit O at 2. Moreover, "these species [cited by the Staff Report] are primarily associated with plant communities other than maritime chaparral." Exhibit Q at 6, Table 1, and Exhibit P at 2-8.

e. The Physical Characteristics of the Site, as Described in the Staff Report, are not Indicative of CMC

The Staff Report asserts that soils and climate of the Foster site are indicative of CMC. *See* Staff Report at 23; Addendum at 5 ("[I]n addition to the presence of maritime chaparral indicator species, the project site also has all the physical attributes required for [CMC] (including soils and climate)"). The Addendum goes even further, stating that a site which "occur[s] within the zone of summer fog incursion" is indicative of CMC climate, and represents, with insufficient scientific support, that this zone extends upward to an elevation of

3,300 feet. *Id.* However, the support provided in the Staff Report for designation of CMC on this basis is scant. *See* Exhibit Q at 8 ("[D]ifficult soil conditions...provide absolutely no indicator means for differentiating between maritime and non-maritime types of chaparral and are not relevant to the discussion of this point."). Absent actual quantitative climactic data, which does not exist for the site, the Staff's conclusory allegations are without substantiation or reference.

Furthermore, the Staff's reasoning in characterizing CMC on the Fosters' lot based upon its physical characteristics appears to be seriously flawed. Dr. Juncosa observes that "[e]ssentially the entirety of the coastal zone as defined by the Coastal Act falls within this 3,300 foot elevational cutoff, not to mention millions of additional acres of the state that lie further inland than the coastal zone." Exhibit Q at 9. If one accepts the criteria that are posited by the Staff as indicative of CMC, the conclusion that all chaparral within the Coastal Zone is maritime is inevitable. *Id.*

f. <u>The Expanded Staff Definition of CMC Is So Broad as to Result in CMC No Longer Qualifying as ESHA</u>

The characterization of the chaparral on the Fosters' lot cannot be rationally reconciled with the Staff's classification of CMC as a rare or unique habitat, which is required for it to merit designation as an ESHA.

The LCP defines ESHA as follows:

> Environmentally sensitive habitats are 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.

Big Sur Area LUP § 3.3.

The Staff Report asserts that the presence of "Central maritime chaparral is considered ESHA" and that "local stands are usually distinguished by the presence of one to several endemic species of *Ceanothus* or *Arctostaphylos*." Staff Report at 24.

The *Arctostaphylos glandulosa* manzanita on the Foster site fails this definition on all counts: (a) Staff has not disputed Dr. Juncosa's report that the manzanita species on the Foster site is the most widely distributed species of manzanita in the California Coast Ranges (citing Keeley and Keely (1988) and Stuart and Sawyer (2001)), ergo, it is not a rare habitat; (b) Staff offers no evidence that *Arctostaphylos glandulosa* manzanita has a special nature or role; and (c) Dr. Juncosa reports he is unaware of any scientific evidence or line of reasoning to support the Staff hypothesis that native vertebrate wildlife or insect pollinators will be adversely affected by the proximity of development to the chaparral. *See* Exhibit P at 9-11. Dr. Juncosa further concludes that the chaparral on the Approved Project site and the adjoining lots has not been adversely impacted by recent human activities and developments other than by pre-Coastal Act

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disturbances that guided the site design.[9] Exhibit E at 12-13. Accordingly, this plant community may not be brought within the LCP definition of ESHA.

Nor does the presence of *Ceanothus cuneatus* var. *rigidus* within chaparral qualify as ESHA within the meaning of the LCP. "It is ***not*** a rare species." Exhibit P at 6 (emphasis in original). As Dr. Juncosa explains, this conclusion is bolstered by the California Native Plant Society's ("CNPS") ranking system, which consists of four "lists" that categorize degrees of concern. "*C. cuneatus* var. *rigidus* is not uncommon throughout most of its range...[t]here is good reason why CNPS does not regard it as a List 1 or 2 plant (rare in California)." *Id.* Rather, it is a List 4 plant, which is defined as follows, "While we cannot call these plants "rare" from a statewide perspective, they are uncommon enough that their status should be monitored regularly. Very few of the plants constituting List 4 meet the definitions of Sec. 1901, Chapter 10...or Secs. 2062 and 2067 of the California Fish and Game Code [thus, are not rare, threatened, or endangered]...." *Id.*

Dr. Juncosa has estimated that Staff's proposed expansion of the maritime chaparral definition to include chaparral up to an elevation of 3,300 feet would encompass approximately ***1.3 million acres*** of chaparral within the Coast Ranges. *See* Exhibit Q at 10. As Dr. Juncosa notes,

> It would be unprecedented and scientifically unsupportable to consider a habitat type with an area larger than six of the United States to be a rare habitat type per se. A determination of this nature certainly should not be made as part of a single-family residence appeal, but rather at a regulatory level and should properly involve oversight of scientific regulatory bodies such as the Department of Fish and Game.

Id. at 11.

Moreover, using general ESHA policies to expand the definition of CMC in the manner suggested by Staff's recommendation amounts to a de facto amendment to the LCP without undertaking the formal LCP amendment process provided for in the Coastal Act. *See* Coastal Act § 30514; Coastal Commission Regulations, Article 15. Moreover, the analysis in the Staff Report in support of the proposed definition is based almost entirely on reports from the Staff's biologist, and does not include the biological data and analysis that typically would be prepared and thoroughly reviewed and commented on over multiple public hearings as part of an LCP amendment process.

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[9] Indeed, these widespread fire-adapted chaparrals (including the *Arctostaphylos gladulosa*-dominated chaparral) are exceptionally disturbance-resistant. Exhibit R at 12. As demonstrated by the plain language of Section 3.3, the intent of the LCP's mapping of ESHA was to include habitats that are undisturbed by development and that are "areas susceptible to disturbance or degradation by human activities and developments." However, these qualities do not occur within the chaparral on the Fosters' property.

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At the time of adoption of the Big Sur LCP, the accepted definition of CMC was unequivocally restricted to vegetation in which woolly-leaved manzanita is dominant or important. It was this geographically highly restricted plant community that was determined to be ESHA, not the greatly expanded maritime chaparral concept that is now proposed by Staff without peer review. Changing this definition to the extent that is proposed should only occur within the context of amendment of the LCP, not on a project-specific basis.

g. The Definition of CMC Implied by Staff is Broader than any Definition Previously Applied Under the LCP

Adoption of the Staff's definitional interpretations regarding CMC on the Foster site would also be inconsistent with the prior permit approvals involving CMC under the Monterey County LCP. Recent County approvals of permit applications containing ESHA designations rely on the presence of *Arctostaphylos tomentosa* in characterizing vegetation as CMC. For example, in the Biological Reports relied upon by the County in its approval of a project involving the removal of 129,476 square feet of chaparral, the "[p]redominant vegetation type" on the site was identified as Maritime Chaparral, with 50% identified as shaggy-barked manzanita or *Arctostaphylos tomentosa* in the initial report and 30% identified as *Arctostaphylos tomentosa* in a revised report. *See* Biological Reports Prepared for Betsy and Philip Bliss dated June 1998 and July 1999, attached hereto as Exhibit G; *see also* County Final Local Action Notice PLN030333 (Cochran) and Maritime Chaparral Restoration Plan, attached hereto as Exhibit H, at 2 ("The maritime chaparral presently found at the upper western end of the Cochran property is dominated by the *Arctostaphylos tomentosa*....").

Similarly, of the County approvals appealed by the Commission, those which include a discussion of CMC as ESHA are consistent in relying upon definitions of CMC which include *Arctostaphylos tomentosa*. *See, e.g., id.* at 10 ("The maritime chaparral on the parcel is comprised of shaggy barked Manzanita (*Arctostaphylos tomentosa*)"). In March 2002, the Commission allowed a CDP to be granted for the Bliss parcel, allowing a single-family residence development within undisputed CMC, which was marked by *Arctostaphylos tomentosa*. *See, e.g.*, Final Local Action Notice PLN980149 (Bliss) and Settlement Agreement between the California Coastal Commission, Betsy Bliss, and the County of Monterey relating to PLN980149. Again, this project involved the removal of 129,476 square feet of chaparral.

For the reasons set forth above, the Staff's recommended definition of CMC is inconsistent with the permit precedent for residential development under the LCP.

2. **Even the Chaparral is Found to be CMC ESHA, the Approved Project is Fully Consistent with All ESHA Policies And Regulations of the Certified Monterey County LCP**

As explained below, even assuming that the chaparral on-site is found to be maritime and located within 100 feet of the proposed structures (an unsupportable assumption for all the reasons set forth herein), the Approved Project, sited in and along historically disturbed regions of the property, *see* the Approved Project Site Plan, attached hereto as Exhibit A, is consistent with the controlling LCP policies on ESHA requiring that the Approved Project avoid any "significant" adverse, including cumulative, impacts to the purported ESHA and be "compatible

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with the long term maintenance of the resource." *See* Big Sur Coastal Implementation Plan ("CIP") §§ 20.145.040; 20.145.040.B.5; LCP § 3.3.2.7.

a. The Approved Project's Removal of An Insignificant Amount of Manzanita Chaparral Does Not Significantly Disrupt Habitat Values

The LCP specifically provides for development within ESHA where, as here, biological reports conclude that significant impacts are avoided. LUP Section 3.3.2.1 provides:

> To approve development within any of these habitats the County must find that disruption of a habitat caused by the development is not significant.

The Staff argues that the Approved Project is inconsistent with this provision of the LCP because, as set forth in the Staff Report, "[o]utright removal and permanent site coverage that precludes any functioning habitat is a direct and significant disruption of habitat value." Staff Report at 25. However, taking the position that any disturbance, however de minimus, results in a significant disruption of ESHA habitat is illogical and inconsistent with the plain meaning of the LCP.

When interpreting a statute, one must first consider its plain meaning. The Supreme Court makes clear that the "role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning. If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs." *Hunt v. Superior Court*, 21 Cal. 4th 984, 1000 (1999) (internal citations omitted). When unambiguous language is used by the Legislature, it is a court's best indicator of legislative intent, and further construction is neither necessary nor permitted. *California Teachers Assn. v. Governing Bd. Of Rialto Unified School Dist.*, 14 Cal. 4th 627, 632 (1997) ("'[The] first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning.'").

The language of Section 3.3.2.1 clearly and unequivocally specifies that development is allowed within ESHA so long as it does not cause significant disruption to the habitat values deserving of protection. While the Staff may believe that this provision should be interpreted to render any and all disturbances inviolate, a desire for this result cannot create law where it does not exist. Had the drafters of the LCP – or the Commission, which certified it – intended to eliminate the potential for all development in ESHA, they presumably would have said so. Instead, the LCP's plain language that "[d]evelopment, including vegetation removal, excavation, grading, filing, and the construction of roads and structures, shall not be permitted in the [ESHA] if it results in any potential disruption of habitat value" highlights a concern that development within ESHA be carefully sited, but in no way constitutes a commitment to render any and all disturbances inviolate, as the Staff's interpretation would suggest. The terms of the LCP are plain and unambiguous – development that does not result in a significant disruption of ESHA is permitted – any other reading eviscerates the LCP's intent.

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As explained by several botanists who have visited the site, the de minimus removal of approximately 1,171 square feet of manzanita chaparral[10] and the siting of the Fosters' residence would not result in a significant disruption of habitat. In a Habitat Impacts Analysis memorandum prepared for the site in September 2005, well-established biologist and botanist Jud Vandevere, who has conducted over five site visits and surveys of Lot 7 and has been surveying the Monterey coast for many years, reported that the impacts to the chaparral on the site were "not significant." September 29, 2005 Report of Jud Vandevere, attached hereto as Exhibit I, at 2. In a Preliminary Biological Report prepared for the site in November 2004, the Fosters' Consulting Biologist Jeff Norman, also a botanist, reached the same conclusion. November 22, 2004 Preliminary Biological Report of Jeff Norman, attached hereto as Exhibit J, at 1. In his letter reports dated June 18, 2007, and July 27, 2007, Dr. Juncosa reaches the same conclusion as Vandevere and Norman. *See, e.g.,* Exhibit Q at 9 ("In my lengthy experience with environmental review, including several projects within the Coastal Zone, this small of a percentage of impact (about one percent) would not be considered to be a significant adverse impact, even if some specific negative ecological impact could be identified (which is not the case with the Foster project).").

Even if the chaparral on the site were considered ESHA, which we believe is incorrect based on a lack of established scientific criteria for the Staff's finding of CMC in these areas, the Approved Project is consistent with the LCP's ESHA policies.

b. Past Permit Precedents Demonstrate That Similar or Greater Disturbance of CMC ESHA Has Been Found to be Consistent with the Monterey County LCP

Overwhelmingly, the County has approved – and the Commission has upheld or not appealed – development within and adjacent to undisputed CMC ESHA based on a finding of a lack of any significant impact to chaparral and an assurance of the long-term maintenance of the habitat. For example, in April 2006, the County approved a CDP for residential development within undisputed CMC habitat. *See* Exhibit A-1 to Monterey County Planning Commission Staff Report PLN050360 at 1, attached hereto as Exhibit K. As approved, the Casanova project involved the removal of approximately 2,100 square feet of CMC and allows for permanent impacts to approximately 1,600 square feet of CMC. In sum, the Casanova project entails permanent impacts to approximately 3,700 square feet, or .09 acre, of the 8.3 acres of CMC identified on the Casanova's 16-acre site. The County's approval, which occurred ***after*** the Commission appealed the Foster project, was not appealed by the Commission.

Similarly, in a matter appealed by the Commission, the Commission has also considered development within and adjacent to ESHA to be consistent with the LCP. *See* Permit Precedent Summary, attached hereto as Exhibit E. For example, in 2002, the Commission appealed the County's decision to approve a CDP allowing for development involving non-resource development in ESHA. The Commission issued a finding of no substantial issue on appeal based, in part, on a determination that the impacts to the habitat were less than significant. *See*

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[10] The Approved Project would remove an additional 5,319 square feet of Poison Oak chaparral.

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Coastal Commission Staff Report filed October 16, 2006, A-3-MCO-02-083 (Kleissner). Also in 2002, the Commission allowed a CDP to be granted for the Bliss parcel, development of which will cause impacts to approximately 150,700 square feet of undisputed CMC, including the removal of up to 129,476 square feet of undisputed CMC.

These permitting precedents, combined with the substantial biological and scientific authorities that support them, the presently accepted definitions of CMC, and the policies, as applied and interpreted regarding building adjacent to maritime chaparral, demonstrate that the Approved Project will have no adverse impact on the alleged manzanita chaparral community and conforms to the LCP.

c. The Approved Project Will Replace the De Minimis Amount of Impacted Chaparral Habitat and Assure its Long-Term Maintenance

The irrationality of the Staff's unfounded interpretation of the LCP's ESHA provisions, which provides that any disturbances, however de minimis, results in a significant disruption of ESHA habitat, is further underscored by the County's imposition of a mitigation measure for the Approved Project requiring the implementation of a CMC Restoration Plan that would replace the total area of habit impacted by the development at a 1:1 ratio with a 100 % success criterion. *See* County Approval, Mitigation Number 7.

The Approved Project only removes 1,171 square feet of manzanita chaparral and, as conditioned, replaces all of it. The Approved Project therefore fits within the Commission and County's prior approvals regarding development within ESHA and supports a finding that impacts on the chaparral are less than significant due to the extensive mitigation measures imposed by the County. "Mitigation measures contained in this report will reduce the impacts of the project to insignificant levels that will sustain the long-term biotic resources of the property." *See* Report of Jeff Norman, November 22, 2004, found in County Permit File No. PLN040569.

d. The 30-Foot Fuel Management Zone Will Not Significantly Disrupt Chaparral Habitat Values

The 30-Foot FMZ buffer approved by the County for the Approved Project would not significantly disrupt chaparral habitat values. The buffer would require, for fire protection, thinning of the vegetation within 30 feet of the structures. As explained in Dr. Juncosa's letter dated June 18, 2007, observations of the effects of thinning on the adjoining parcel, together with the applicable scientific context, including published literature, informal comments and emails from knowledgeable experts, unanimously supports the conclusion that there is no adverse impact to habitat values. In fact, statements from the relevant scientific literature strongly indicate that some thinning of the dense manzanita canopy is in fact beneficial to the habitat. *See* Exhibit P ("not only were there no perceptible adverse impacts on the vegetation (no colonization by non-native weedy species, no erosion), in fact there are some benefits...."); *see also* Exhibit R at 13. Specifically, cutting and thinning of the chaparral was observed by Staff Consulting Botanist, Grey Hayes, to have allowed for germination and reproduction of short-lived native California species not found in the undisturbed chaparral. *See id.* Biological reports regarding the site, adjacent parcel thinning effects, and the scientific consensus regarding

beneficial impacts of thinning on central maritime chaparral all indicate that thinning is not adverse to the long term maintenance of the chaparral on site and may be beneficial. *See* Exhibit P at 7-9, and Exhibit Q at 12-15.

The Staff Report also neglects to note that the thinning is proposed to occur in only a minute proportion of the chaparral habitat on the site. As noted above, expert biologists and botanists have confirmed that this small percentage of combined impact (approximately one percent) does not constitute a significant adverse impact, even if some specific negative ecological impact could be identified (which is not the case with the Foster project).

3. Even if the Chaparral is Found to be ESHA, the Commission Should not Adopt the 200-Foot Total Buffer Recommended in the Staff Report

Staff has proposed a 200-foot buffer/setback zone between any development and the chaparral on-site. This recommendation:

- Is improperly premised on the assumed presence of maritime chaparral;
- Is premised on a fictional 100-foot fuel modification zone instead of the 30-foot fuel modification zone actually required by the County and the Fire Authority;
- Is unsupported by any valid science;
- Is founded on novel LCP interpretations and contradicts other LCP Policies;
- Contradicts all relevant precedents;
- Would prohibit all of the structures in the Approved Project; and
- Would deny all reasonable development and frustrate the Fosters' reasonable, investment-backed expectations.

a. Staff's Recommended 100-Foot Habitat Buffer is Unwarranted and Not Supported by Substantial Evidence

The Staff Report recommends a 100-foot buffer between the purported manzanita chaparral on the Fosters' lot and any development on the site. Staff Report at 27-28. As support for this, the Staff Report states that "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." Staff Report at 27. However, the Monterey County LCP does not require a 100-foot buffer and Staff provides inadequate evidence to support the imposition of a 100-foot buffer in this case. Indeed, the LCP does not contain any specific buffer/setback distances for terrestrial habitat.

Substantial evidence exists in the record to support that the 30-foot buffer imposed by the local fire authority is equally protective. As Dr. Juncosa explains, the Staff Report does not provide any justification for a 100-foot buffer zone to protect the values of the chaparral habitat. Exhibit Q at 14 ("[T]he external forces or processes that are likely to have a negative impact on the protected community must be identified. The staff report does not do this."). The-30 foot buffer proposed by the local fire authority, if applied within the extremely small proportion of the chaparral habitat where it is proposed, would be sufficient to protect the chaparral, as it

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would not have any significant adverse impacts on the habitat and would not diminish the long-term sustainability of the habitat. *Id.* at 10 ("I am not aware of any scientific reason to suppose that the vertebrates that presently use the low shrubby habitat on the Foster parcel will cease to do so in the 30-foot side area required by CDF to be thinned around the future structures…."). In sum, "there is no reason that is applicable to the present project that supports the necessity of a 100-foot buffer zone around the structures, or alternatively between the outer extent of the thinned area and the chaparral, to protect the ecological function of the chaparral habitat (whatever its designation)." *Id.* at 11.

b. The Commission Lacks Authority to Impose a 100-Foot FMZ Buffer

Contrary to the Staff Report's conclusory assertions, the recommended 100-foot buffer is unsupported by the law or the Commission's permit precedent.

(1) The 30-Foot FMZ Buffer Approved by the County is Consistent with State Law FMZ Requirements

As a condition of approval, the County required "use of non-combustible siding where vegetation may be thinned within 30 feet of a structure. Additional and/or alternate fire protection or firebreaks approved by the fire authority may be required to provide reasonable fire safety." Exhibit E at 44. On February 4, 2007, the fire authority reviewed and approved the vegetation thinning plan for the Fosters' lot. *See* Exhibit L. Contrary to the fire authority's approval of a 30-foot buffer, however, the Staff recommends that a 100-foot buffer be imposed in order for the Fosters' site to be consistent with state law. *See* Staff Report at 28.

The Staff Report's statement that the fire authority's recommendations were made prior to a "change" in state law is based on a misreading of the existing law. Section 4291 of the Public Resources Code governs defensible space for all homes in wildland areas in the State of California and requires any person who owns or controls a building in, upon, or adjoining forest-covered lands to maintain a firebreak of a specified width around a building by removing flammable growth therefrom. Specifically, Section 4291(a) provides:

> A person that owns…a building or structure in, upon, or adjoining any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered with flammable material, shall at all times...[m]aintain around and adjacent to the building or structure a firebreak made by removing and clearing away, *for a distance of not less than 30 feet on each side of the building or structure or to the property line*, whichever is nearer, all flammable vegetation or other combustible growth. This subdivision does not apply to single specimens of trees or other vegetation that is well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to any building or structure.

Pub. Res. Code § 4291(a).

In 2004, Section 4291 was amended to provide that a 100-foot firebreak around structures may be necessary in certain instances, *subject to* the discretion of the local fire authority. Section 4291(b) provides:

> Maintain around and adjacent to the building or structure additional fire protection or firebreak made by removing all brush, flammable vegetation, or combustible growth that is located within 100 feet from the building or structure or to the property line or at a greater distance *if required by state law, or local ordinance, rule, or regulation....* This subdivision does not apply to single specimens of trees or other vegetation that is well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a dwelling or structure.

Pub. Res. Code § 4291(b).

The current law, therefore, continues to require that owners and occupants maintain a 30 foot firebreak around structures. Although a recent amendment made additional provision to allow for greater protection in certain instances, the statute explicitly mandates that decision-making regarding the exact parameters of fuel modification zones be left to the discretion of the local fire authority. Moreover, the statute explicitly exempts vegetation from 100-foot fuel clearance requirements where it is "well-pruned to effectively manage fuels." *Id.*

In the present circumstance, the fire authority made its determination with respect to the Approved Project and specifically approved plans for the thinning of vegetation within 30 feet of occupied structures. *See* Exhibit L. The County's approval defers, as it must, to the authority of the local fire agency and incorporates those requirements as conditions of approval. *See* Exhibit G to the Staff Report. Current state law does not require anything more.

(2) The 30-Foot Fuel Modification Zone Approved by the County is Consistent with the LCP's ESHA and Hazard Policies

The Staff Report further asserts that the LCP's ESHA and Hazards Policies compel a 200-foot buffer between the Approved Project structures and the chaparral on-site. Staff Report at 28 ("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...").

Other than this conclusory statement, however, the Staff offers no significant evidence to support a finding that the local fire authority's approval of a 30-foot buffer is insufficient to minimize risk from fire. In addition, the Staff's conclusion is inconsistent with the Staff's official assessments of the LCP policies in the Periodic Review of the LCP, incorporated by reference herein.

The LCP merely requires that "[a]ll development [] be sited and designed to minimize risk from...fire hazards to a level generally acceptable to the community." LCP Policy 3.7.2.3.

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As discussed below, because a 30-foot buffer is what the County and Commission have typically required of other CDPs in the area, this level of buffer has proven generally acceptable to the community for fire protection.

In the Periodic Review of the LCP, which the Coastal Commission Staff conducted in 2003 and 2004, the Staff noted that the LCP does not set buffers from CMC/ESHA. However, the LCP provisions commented on by the Staff in the Periodic Review have not been amended. In other words, the LCP provisions that currently govern the review of the Foster project do not set buffers for development. Until amendments are made to the LCP policies and regulations, and to scientifically accepted (i.e., consensus) definitions of what constitutes central maritime chaparral, individual property owners cannot be burdened with vague, changing rules and regulations that are not yet in existence. This is particularly true here, where all the findings, evidence and reports on appeal conclude: 1) the chaparral is non-maritime chaparral; and 2) the development as proposed/approved will have a less than significant adverse impact on the manzanita chaparral and assures the long-term maintenance of the chaparral.

(3) The 30-Foot FMZ Buffer Approved by the County is Consistent with Permit Precedent under the LCP

The 30-foot buffer is also consistent with the fuel modification zones imposed on prior residential developments approved under the LCP. Attached as Exhibit E is a summary of fourteen recent permits for coastal development within or within 100 feet of undisputed maritime chaparral. The permit approvals are instructive in many ways:

- Nearly all were appealable and reviewed by Commission staff;
- In most cases the Commission chose not to appeal or allowed significant CMC removal;
- Many required neither any fuel modification zone nor any environmental buffer;
- Those with FMZs were typically 30-foot FMZs with thinning of chaparral vegetation; and
- The thinning of chaparral vegetation was not considered development as defined in the LCP or Coastal Act.

Given that in other permitting situations documented herein imposition of a FMZ buffer has been based on the requirements of the local fire authority, imposing a 100-foot FMZ buffer for the Approved Project would be wholly arbitrary.

(4) The Commission Lacks the Authority to Prohibit Thinning of Vegetation Within the Purported ESHA Buffer Because it Does Not Constitute "Development" Under the LCP

The Staff Report states that an additional 100-foot setback from the habitat buffer is also necessary to prohibit "development, including vegetation removal, clearing, or trimming," which Staff believes "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 an dispersal of plants and animals associated with maritime chaparral habitat on site." Staff Report at 28.

However, the Staff Report does not, and presumably cannot, offer any viable legal or scientific basis for its position that the amount of vegetative thinning proposed to be undertaken as fuel modification in connection with the Approved Project constitutes "development" under the LCP. The LCP defines "development" in pertinent part to include:

> 8. removal or harvesting of major vegetation including land clearing pursuant to Chapter 16.12 and removal of natural vegetation specified in the applicable ordinances as requiring a coastal development permit . . .

Coastal Implementation Plan § 20.06.310.8.

Vegetation removal, clearing, or trimming that is necessary for fuel protection requirements does not constitute "removal or harvesting of major vegetation", as it must to constitute "development" under the LCP, because it is not detrimental to the long-term maintenance of the native plant communities and will not lead to the intrusion of non-native invasives. *See* Exhibit P at 8.

To the contrary, all of the submitted biological reports regarding the site, observation of adjacent lot thinning effects, and the majority of scientific literature on the subject strongly indicate that thinning is not harmful and is actually likely beneficial to the long term maintenance of the chaparral and other native plants on site. *See, e.g., id.* ("[S]ome thinning of the dense manzanita canopy is in fact beneficial to the habitat in providing some new opportunity for native species that are suppressed by the canopy to germinate and reproduce."). As summarized in Dr. Juncosa's July 27, 2007 letter report, "there are no objectively valid or site-specific scientifically supported grounds for the 200-foot setback recommendation." Indeed, the Staff Report does not provide any such support.

Moreover, adopting the Staff's recommendation would require the Commission to depart radically from well-established permit precedent under the LCP. As discussed above, the County has consistently approved CDPs that include, as a condition of approval, a 30-foot FMZ buffer. *See, e.g.,* Wright Project Approval, PLN020506 (approved by the County in December 2004, no appeal by the Commission). Several of these approvals included an ESHA designation on-site (where habitat conditions differed from those on the Foster site), and have not imposed the 100-foot habitat buffer suggested by Staff in addition to the 30-foot FMZ. *See, e.g.,* Wright Project Approval, PLN020506 (approving a CDP within 100 feet of ESHA/undisputed CMC without requiring any habitat buffer, and imposing as a condition of approval a 30 foot FMZ buffer); Casanova Project Approval, PLN050360, (approved with no appeal by the Commission on April 26, 2006 – two months following the Fosters' appeal – the CDP allows for the removal of 2,100 square feet of CMC and allows permanent impacts to 1,600 square feet of CMC with no 100-foot fuel buffer or any ESHA buffer zone).

Finally, even if the recommended buffers were reduced to one 100 foot buffer, the placement of the main residence would be unreasonable. If it were possible to develop

within the "allowable development envelope," as proposed by the Staff and as shown on Exhibit D to the Staff Report, it would violate LCP policies concerning private views, *see* LCP § 3.2.4.A.2, because the structures could only be located along an emergency access road accessible to all of the Rocky Creek Ranch lots, within view of the portion of Rocky Creek Road used for access by neighboring Lots 9 and 10, and in view of neighboring building sites on Lots 1, 2, and 8.

The Approved Project does not warrant departure from these established approvals. Rather than extend the FMZ buffer to an unprecedented 100 feet, the Commission should adopt the 30-foot buffer imposed by the local fire authority, which is more than adequate. For all of the foregoing reasons, the Commission should not make a finding, which it must if it accepts the Staff's recommended buffers, that thinning of the chaparral vegetation required by the fire authority for the project constitutes "development" under the LCP.

c. Adoption of the Staff's Recommended ESHA Designation and 200-Foot Total Buffer Would Effectively Result in a Taking

The application of the 200-foot buffer between the chaparral on the Fosters' lot precludes the ability to site any of the habitable structures in the Approved Project anywhere on the property. The result is a taking. The Constraints Map, attached hereto as Exhibit B, illustrates the effect of the 200-foot buffer. After applying the 200-foot buffer and zoning setbacks, the allowable building envelope is less than 2,400 sq. ft. of the 77.1 acre lot. However, the envelope is bisected by an existing road into two small triangles. The northern triangle of 1,035 square feet is constrained by a Landmark tree and undevelopable. The southern triangle is approximately 1,295 square feet. Sheet 2 of the Constraints Map illustrates that the most that can feasibly be built within the allowable development envelope is one structure on a 20'x28' or 560 square foot building footprint.

However, the Monterey County Zoning Code requires that at least one covered parking space must be provided on the site. CIP § 20.58.050 ("In all residential developments, at least 1 covered parking space for each dwelling unit shall be provided."). In order to comply with the Zoning Code, the Fosters would be required to deduct 200 square feet from the available footprint to construct a covered garage. This is not a reasonable level of development under the Coastal Act, nor is it permitted under the Rocky Creek Ranch CC&Rs, which prohibit construction of a main residence that is less than 1,500 square feet. Adoption of these recommendations would therefore constitute a multi-million dollar taking under California law.[11]

It was reasonable under the circumstances existing at the time of the Fosters' purchase in 2003 that the Fosters could expect to build within the Building Envelope evaluated for the purpose of creating Lot 7 in 1992. The Fosters paid $2.5 million for the subject property – approximately $32,425 per acre. This price represented a significant premium based on the

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[11] *See, e.g., Penn Central Transportation Co. v. New York City*, 98 S.Ct. 2646 (1978); *Reehard v. Lee County* (11th Circ. 1992) 968 F.2d. 1131, 1136.

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ability to site a residence with coastal views.[12] Since that time, the Fosters have incurred approximately $1.5 million in carrying costs, infrastructure costs to maintain existing roads, and other costs as part of the entitlement process.

It was therefore reasonable for the Fosters to expect at the time of acquisition that they could build a home to permit them to live on the property with Coastal views. Residential uses are permitted on the property. The LCP and Zoning Code contemplate a minimum lot size of 40 acres. The adjacent parcels include residential uses and, as mentioned above, the County had recently approved homes on neighboring properties. Because neither the County nor the Coastal Commission had previously prohibited any residential uses on portions of neighboring or nearby parcels that contained chaparral, including chaparral found to be CMC (conditions on these parcels differ from those on the Foster property), the Fosters had no reason to believe that the chaparral, which comprises most of the usable portions of the property, would be characterized as ESHA, and even if it were characterized as ESHA, would constrain development on the site. Similarly, because a 30-foot FMZ buffer had been incorporated as a condition of approval on the previous County approval, the 100-foot buffer now suggested by the Staff Report was entirely unforeseeable.

Instead of a privately situated, alternative solar energy powered, main house with a view of the ocean from a building envelope specifically reviewed, commented upon as analyzed in the EIR, and unchallenged by the Commission, the location of which was the justification for the Fosters' payment of a significant purchase price of the lot, Staff's proposed constraints would not permit the construction of even the most modest single-family residence on Lot 7 at any location. Staff's expansive re-interpretations of the definition of maritime chaparral and the rules applicable to it would effectively render the entire lot unbuildable.

For all of the foregoing reasons, approval of the Approved Project is necessary to avoid a taking. The unreasonable amount of development envelope that would otherwise result compels this result.

B. ISSUE 2: VIEWSHED

1. The Approved Project is Consistent with the LCP's Policies on Critical Viewshed

The Staff Report states that the main house, the garage, shed, both studios, 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 policies." Staff Report at 35. However, the Staff Report offers no evidence to support these conclusory and speculative statements. The Staff's application of the critical viewshed policies also is not authorized under the LCP, which requires that critical viewshed determinations be

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[12] For example, a comparison of single-family residences sold in the same vicinity as the Fosters' lot, none of which include ocean views, demonstrates a dramatic drop in price compared to that paid by the Fosters for their land. Of the homes over 1,000 square feet, none sold for higher than $1,200,000 (and that price in particular was for a 2,200 square foot house featuring four bedrooms and three bathrooms).

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made according to "existing conditions". In as much as the Approved Project is conclusively not within the critical viewshed under existing conditions, and is in fact conditioned to require demolition of any structures that may intrude into the critical viewshed in the future, the Approved Project is fully consistent with critical viewshed regulations set forth under the LCP.

The LCP requires only that "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." The Fosters' residence is entirely consistent with this policy. All of the structures in the Approved Project are out of view from Highway One, are not on open hillsides or silhouetted ridges, and do not visually impinge on adjacent neighbors' views.

The Fosters had presumed that the viewshed issues presented in the Staff Report had been resolved by the additional information and studies provided by the Fosters at the Staff's request. Following the appeal, two exhaustive studies, including an unprecedented nighttime study with lighting placed in the windows of temporary faux building facades confirmed that the residential development will not have any impact on the viewshed. *See* Exhibits M (Denise Duffy & Associates View Analysis, March 29, 2006) and N (Carver & Schicketanz Supplementary View Analysis). Since that material was delivered to Staff over a year ago, Staff has not raised any new concerns or communicated with the Fosters regarding any ongoing concerns regarding the critical viewshed generally or the use of existing vegetation to screen some of the Approved Project.

The Staff Report also cites to the LCP for the policy that the "portion of a parcel least visible from public viewpoints will be considered the appropriate site for the location of new structures." Staff Report at 35; LCP § 3.4.A.2. The Approved Project, however, is simply *not* visible, and Staff's suggestion that there is somehow a less-visible location than that is both unnecessary and illogical. As evidenced by the Fosters' initial comprehensive site-specific studies, which resulted in findings of no visibility, as well as the additional, unprecedented nighttime studies conducted at the request of Staff, the Approved Project is sited entirely outside of the critical viewshed.

Staff's concerns also appear to be based on speculation concerning what may happen in the future at the site. However, that is not the standard required by the LCP. In identifying whether a proposed project would intrude on the critical viewshed, the project must be examined against existing conditions. *See, e.g.*, LCP § 3.2.3. The Staff's recommendation that the Approved Project be re-sited in order to address a set of hypothetical future conditions regarding visibility is therefore inappropriate. As measured against the correct standard, the Approved Project is not visible under existing conditions, including screening vegetation and the distance of the structures from Highway 1 and public viewpoints, and therefore fully complies with the critical viewshed policies of the LCP.

As explained above, the Fosters purchased their lot with the understanding that critical viewshed issues with respect to the building site had been adequately addressed, given that the majority of the parcel had been placed in permanent scenic conservation easement and the building envelope had been found consistent with the LCP critical viewshed policies after

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analysis in an EIR. In addition, the Fosters were careful to site the proposed project structures in full compliance with the critical viewshed policies. The Approved Project also protects the neighboring lot views and privacy by avoiding building in the area within the neighbor's viewshed as required by the LCP. Conversely, Staff recommends (despite the lack of adequate buildable area resulting from Staff's recommendations, which Staff fails to acknowledge) placing residential structures within the immediate viewshed of the neighboring lots, which blatantly disregards these policies and violates a private covenant with the Fosters' neighbors, the Hellges. In order to assure their main residence would be fully compliant with the critical viewshed policies, the Fosters did not site it all the way to the western edge of the building envelope. To that end, the Approved Project sites the main residence substantially east of the western edge. Further, as explained in the County's resolution approving the project, "[t]he proposed structures are not sited on open hillsides or silhouetted ridges and would not visually impinge upon adjacent neighbor's views." Finding 2(f), Resolution No. 06012 at 3.

Section 3.4.A.2 goes on to state, in a portion of the text not quoted in the Staff Report, "[n]ew structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides or silhouetted ridges." The Fosters' use of existing vegetation to screen certain portions of the Approved Project, therefore, is exactly the type of location contemplated by this policy.

Although not mandated by the LCP, given that the proposed residence is sited entirely outside of the viewshed, the Fosters nonetheless have agreed to a County condition that requires them or any successive owner to *demolish* any structure that becomes visible at any time in the event that vegetative screening somehow disappears and is not replaced within a preset period of time. An additional County condition of approval requires the submittal of photographic evidence of the ongoing maintenance of the critical viewshed every five years, despite the fact that the LCP does not mandate this requirement. These existing County conditions of approval guarantee the ongoing efficacy of the viewshed mitigation requirements, as reflected in the County's findings and evidence:

> "Mitigation measures that require tree protection, lighting plans and use of non-reflective windows and surfaces will mitigate the impact to a less than significant level. In addition, if trees screening the studio were to be removed or destroyed and could not be replaced within six months, then a mitigation measure requires removal of the structure. The project as designed, mitigated or conditioned would not result in critical viewshed or other visual/aesthetic impacts and would be consistent with the Visual Resources policies of the BSC LUP."

Exhibit G to Staff Report, Finding 2(f), Resolution No. 06012 at 3; *see also* County Condition #s 6, 18, and 42.

These materials have been provided to the Coastal Commission Staff

CCC Exhibit O
(page 34 of 39 pages)

VI. REQUESTED FACTUAL CORRECTIONS

A correction is warranted on the Notice of Appeal at Page 1, paragraph 4, which states that an "additional" 1,200 square feet of maritime chaparral is proposed to be removed on top of 1,600 square feet purportedly previously removed. There is no double removal. As stated in Finding # 9 of the County Resolution (Exhibit G to Staff Report), the code enforcement file (opened in early 2005 in connection with poison oak chaparral cutting associated with staking and surveying the project) was closed in December 2005, after the vegetation began to "naturally revegetate itself," such that it was determined that "further restoration beyond what was naturally occurring was not deemed necessary." Finding # 9, Resolution. The substantial re-sprouting of such vegetation in the area also was noted by Commission staff and the Staff Consulting Botanists during their visit to the site on March 16, 2007. In fact, the area has revegetated to such a degree that it is imperative that impacts of the proposed development not be misinterpreted or overstated given evidence of healthy regrowth and restoration of the cut plants.

VII. CONCLUSION

For the foregoing reasons, the appeal of the Approved Project should be denied, and the Fosters respectfully request that the Commission adopt the Staff Report's recommendation for approval, subject to the requested modifications to the recommended Special Conditions attached hereto as Attachment 1.

These materials have been provided to the Coastal Commission Staff

List of Attachments and Exhibits

Attachment 1 – Requested Modifications to Staff's Recommended Conditions

Exhibit A	Approved Project Site Plan
Exhibit B	Constraints Map ESHA Buffer, Fuel Modification Zone, and Allowable Development Envelope, if Staffs' recommendations are adopted
Exhibit C	The Habitat Restoration Group Rocky Creek Ranch Biotic Assessment, November 14, 1991
Exhibit D	1992 Lot Line Adjustment Resolution
Exhibit E	Permit Precedent Summary
Exhibit F	Monterey County Final Local Action Notice
Exhibit G	Biological Reports Prepared for Betsy and Philip Bliss dated June 1998 and July 1999
Exhibit H	County Final Local Action Notice PLN030333 (Cochran) and Maritime Chaparral Restoration Plan
Exhibit I	September 29, 2005 Report of Dr. Jud Vandevere
Exhibit J	November 2004 Preliminary Biological Report of Jeff Norman
Exhibit K	Exhibit A-1 to Monterey County Planning Commission Staff Report PLN050360 (Casanova)
Exhibit L	Carmel Fire Protection Associates Plan Check List, February 4, 2007 and Thinning Map, Carver & Schicketanz, January 18, 2007
Exhibit M	Denise Duffy & Associates View Analysis, March 29, 2006
Exhibit N	Carver & Schicketanz Supplementary View Analysis
Exhibit O	Dr. Juncosa Letter Report August 2, 2006
Exhibit P	Dr. Juncosa Letter Report June 18, 2007
Exhibit Q	Dr. Juncosa Letter Report July 27, 2007
Exhibit R	Dr. Juncosa Letter Report July 30, 2007 and Map Exhibit
Exhibit S	Rocky Creek Ranch Advertisement

633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Tel: +213.485.1234 Fax: +213.891.8763
www.lw.com

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Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

October 19, 2007

VIA FEDERAL EXPRESS AND EMAIL

Katie Morange
California Coastal Commission
Central Coast District
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Re: Appeal No. A-3-MCO-06-018 (Steven and Gillian Foster Property, Lot 7, Rocky Creek Ranch, Big Sur, Monterey County); Permit Precedent Analysis

Dear Ms. Morange:

We write on behalf of our clients, Mr. and Mrs. Steven Foster, to thank you for the productive meeting on October 8, 2007, at which we discussed the California Coastal Commission Staff's recommendations in its Staff Report for the Coastal Commission's appeal of the above-referenced Coastal Development Permit (the "CDP") for a single family residence on a 77.1-acre parcel in an existing subdivision known as Rocky Creek Ranch approximately 12 miles south of Carmel and 2 ½ miles inland and eastward of Highway One in Monterey County. As we explained during the meeting and for the reasons set forth in our September 6, 2007, Response to Staff Report, we continue to believe that the chaparral on the Foster's property is not central maritime chaparral, and therefore not environmentally sensitive habitat ("ESHA") under the Monterey County (Big Sur area) Local Coastal Program (the "LCP").

Although the parties disagree about whether the chaparral is ESHA, we agreed at the October 8 meeting that we would provide you with additional information to assist in Staff's evaluation of the project as proposed with the potential relocation of Steven's Studio (which is partially located in chaparral). While we continue to maintain that the chaparral on the Foster's property is not central maritime chaparral, as we discussed with Staff, we are providing the following information to aid in your further evaluation of the project: (1) a Resource Protection Plan for the Foster's property prepared by Dr. Adrian Juncosa, dated October 18, 2007 , which is enclosed with this letter, that provides measures to protect the on-site chaparral habitat values; and (2) a comparison of Staff's 100-foot fuel modification zone ("FMZ") and 100-foot ESHA buffer recommendation with a broad range of precedent of single family homes in Monterey County that have been approved for development within, or within 100 feet of, ESHA and without an FMZ or ESHA buffer. We believe that this Resource Protection Plan demonstrates that the development and use of the residential structures proposed on the Fosters' property can

These materials have been provided to the Coastal Commission Staff

- Segel (PLN020561; approved June 9, 2004). The Segels sought a CDP for additions to their existing 780 square foot home (including adding 1,705 square feet to the existing home and construction of a new carport) and construction of a new 841 square foot caretaker's unit and carport within ESHA habitat on their 39.53 acre parcel. The project, as approved by the County, would directly impact 650 square feet of central maritime chaparral. The Coastal Commission Staff did not comment on the project, and the Commission did not appeal the County's approval.

- Wright (PLN020506; approved October 28, 2004). Ms. Wright sought a CDP to allow an existing un-permitted 1,344 square foot single family residence with a deck, driveway, and new carport within 100 feet of ESHA. The existing grading resulted in approximately 20,150 square feet of land disturbance, including removal of up to 8,000 square feet of central maritime chaparral. The proposed new development resulted in approximately 5,700 square feet of additional land disturbance, including removal of up to 1,600 additional square feet of central maritime chaparral. The Coastal Commission Staff reviewed the project but did not comment on the project, and the Commission did not appeal the County's approval.

- Esalen Institute (PLN010501; approved November 12, 2003). The Esalen Institute sought a CDP for a rehabilitation and restoration plan for the Institute's south coast property to include the construction of two structures (approximately 1,310 square feet of additional building coverage, in the context of approximately 14,810 square feet total proposed building coverage, existing and new) and additional parking areas within 100 feet of ESHA (seacliff buckwheat). The Commission appealed the County's decision, but later withdrew the appeal after the applicant subsequently recorded an Offer to Dedicate a lateral public access easement that would allow public access and passive recreational use on the parcel.

- Hain (PLN970278; approved August 19, 1998). On a parcel adjacent to the Foster parcel, Mr. Hain sought a CDP for construction of a 5,398 square foot, split level, single family home with a detached garage and guesthouse within 100 feet of ordinary mixed chaparral and northern mixed chaparral designated as ESHA. The Coastal Commission Staff did not comment on the project, and the Commission did not appeal the County's approval.

- Keig (PLN040023; approved September 13, 2006). Mr. Keig sought a CDP to construct a 2,754 square foot single family residence and attached 1,632 square foot garage within 100 feet of seacliff buckwheat, plants that support the rare and endangered Smith's blue butterfly and constitute ESHA on his 6.1 acre property. The Coastal Commission Staff provided comments during the approval process via email regarding the ESHA impacts, but the project was approved as proposed. The Commission did not appeal the County's approval.

- Laube/Engel (PLN010105; approved October 29, 2003). Mr. Laube and Ms. Engel sought a CDP for development of an 8,270 square foot single family residence with an approximately 1,824 square foot subterranean garage within 100 feet of an seacliff buckwheat designated as ESHA. The County resolution approving the project notes that the Staff considered the project an amendment to a Commission-approved permit that was previously approved under their purview. The Commission did not appeal the County's approval.

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Overview of Monterey County and Coastal Commission Precedent Regarding FMZs

The County required as a condition of approval a 30-foot FMZ in a few of the projects summarized above (Laube/Engel, Wright, Hain, Casanova, and Kay). In only one instance, KF Terra LP, did the County require a FMZ greater that 30 feet in the final approval. The sole comments from Staff on FMZ were made during the approval process at the County for the Bliss project. As previously stated, the County originally imposed a 100-foot FMZ on the project. Staff commented that, while the central maritime chaparral surrounding the site was highly flammable, the County needed to balance fire protection and habitat protection when setting FMZ, and that the County must ensure that FMZ does not result in an "unnecessary loss of native plant habitat." The final approval, as agreed to in a settlement between the Commission and the Bliss family, did not include a FMZ.

We appreciate the opportunity to provide this information to help Staff complete additional review of the Foster's project. As we discussed at the October 8 meeting, the Fosters would be happy to provide additional information to assist Staff in its evaluation. As we also discussed, the Fosters would be prepared to relocate Steven's Studio so that it is not partially located in chaparral, if doing so would allow the Coastal Commission Staff to recommend approval of the remainder of the project as proposed, and conditioned on compliance with the proposed Resource Protection Plan, attached hereto. We look forward to continuing to work with the Staff in an effort to reach agreement on a mutually agreeable project, which is consistent with Coastal Act and LCP policies. Please contact me at (213) 485-1234 if you have any questions regarding this matter.

Sincerely,

Rick Zbur
of LATHAM & WATKINS LLP

cc: Mr. and Mrs. Foster
Mark Blum, Esq.
Dan Carl

Katie Morange

-----Original Message-----
From: Steve Monowitz
Sent: Tuesday, August 07, 2007 10:20 AM
To: Katie Morange
Cc: Charles Lester; Jonna Engel
Subject: FW: Commissioner Clark Ex Parte
Importance: High

Please include as exhibit to Foster staff report.

-----Original Message-----
From: Vanessa Miller
Sent: Tuesday, August 07, 2007 8:27 AM
To: Teresa Henry; Alison Dettmer; Deborah Lee; Lee McEachern; Steve Monowitz
Cc: Jeff Staben
Subject: FW: Commissioner Clark Ex Parte
Importance: High

-----Original Message-----
From: Larry Clark [mailto:forelc@cox.net]
Sent: Monday, August 06, 2007 9:44 AM
To: Vanessa Miller
Subject: Fw: Commissioner Clark Ex Parte
Importance: High

Commissioner Clark Ex Parte:

Date: Thursday 07/02/07
Location: Manhattan Beach
Parties: Susan McCabe
Subject: Various

Summary of Ms McCabe's inputs to me were:

1. AVP Pro Volleyball Hermosa Beach revised findings (WED, Item 20A):

- We are in agreement with the revised findings. We feel they accurately reflect the commission's decision.

2. **Poseidon Resources Request for CCC Determination on Application Completeness (WED, Item 4A)**

- reached agreement with staff and the application has been deemed complete and have withdrawn the hearing request.

CCC Exhibit P
(page 1 **of** 6 **pages)**

3. Appeal of City of Carlsbad permit for construction of a single-family home on a blufftop in City of Carlsbad (Riley THURS, Item 7A)

- In agreement with the staff rec. with the exception of Condition #1 which would require the building and deck stringlines to be drawn to the nearest corners of the respective house and deck.
- The staff stringline would require a structural redesign of the house.
- The lot is more constrained than others along the bluff and acknowledged by staff as the street configuration causes the lot to be concave on the street side and the bluff erosion caused it to be concave on the ocean side.
- The City's stringline policy allows the stringline to be drawn at the proposed location.
- We have identified two examples where the City has drawn precisely the same stringline in the same area, which permits were not appealed by the CCC.
- The proposed stringline would allow the house to be more aligned with adjoining houses in a more southerly beach facing direction.
- This would not be precedential as asserted by staff as this is the last vacant lot along the bluff.
- The applicant also requests that he be allowed to build a staircase to the 20' contour line (Exhibit 7) as all other houses along the bluff have stairways to the beach.

4. Appeal of Monterey County permit for construction of a single-family home on a 77-acre parcel in Big Sur (Foster). Will be heard in September.

- The Fosters are proposing to construct se veral buildings (home, barn, etc.) clustered on existing previously legally graded roads and pads or a 77 acre property in Big Sur.
- CCC appealed (no other opposition) and are asserting that most of the site is central maritime chaparral (CMC) protected as ESHA in the LCP.
- Staff rec. would require a 200-foot buffer (100' fuel mod. plus 100' addtl. buffer) from alleged CMC resulting in only a less than 3,000 sf building envelope in the least desirable area of the property and which would require removal of a landmark tree.
- Our biologist, in consultation and site visits with other CMC experts, has determined that there is no CMC on site according to the NPS current definition and a new expanded definition that is in the process of peer review.
- Coastal staff agrees but says it might be there anyway.
- We have identified numerous examples of projects where CCC has either approved or not appealed projects that contain removal of undisputed CMC and have provided no buffers in Mry. Co.
- In addition, even if the CCC believes the vegetation is CMC, the brush thinning requirement from the FD is 30', not 100'.
- Our biologist has done an exhaustive search of scientific literature on impacts of fire mgt. in CMC and determined that not only is it not impactful

CCC Exhibit P
(page 2 of 6 pages)

but is actually beneficial to the habitat.

- Lastly, staff has asserted that even though the applicant's exhaustive view studies demonstrate no structures can be seen from Hwy. 1 and they have deed restricted the property to require removal of any structure if it ever becomes visible, the buildings may be visible anyway in order to justify their rec. to move the buildings.
- We are preparing a written response to the staff rec. which will be sent to the Commission in the near future.

Larry Clark
Calif Coastal Commissioner
06 August 07

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Date and time of communication: 7.2.07 11:45 AM

Location of communication: SLO COUNTY GOV. CENTER
(If communication was sent by mail or facsimile, indicate the means of transmission.) TELEPHONE

Identity of person(s) initiating communication: SUSAN McCABE & M. SCHICKETANZ architect

Identity of person(s) receiving communication: COMMISSIONER ACHADJIAN

Name or description of project: TH 10A FOSTER PERMIT

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

PROJECT DISCRIPTION 3,975 SQ. FT. RESIDENCE
ISSUES CONCERNING ENV. SENSITIVE HABITAT AREAS
DOES NOT AGREE WITH STAFF FINDINGS ABOUT MARITIME CHAPARRAL PRESENCE
ISSUES CONCERNING BUFFERS OR SETBACKS BETWEEN THE PROPOSED RESIDENCE
AND MARITIME CHAPARRAL / also VIEWSHED CONCERNS
DUE TO NEW FINDINGS AND/OR INFORMATION REQUEST TO
CONTINUE HEARING

7-2-07
Date

Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, **complete** this form, provide the information **orally** on the record of the proceeding **and** provide the Executive Director with a copy of any written material that was part of the communication.

CCC Exhibit P APPENDIX 2
(page 4 **of** 6 **pages)**

CCC Exhibit P
(page 5 of 6 pages)

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.) 7/6/07 – Conference Call

Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.) Eureka, CA - 1:00 p.m.

Person(s) initiating communication: Steven McCabe/Mary Kane

Person(s) receiving communication: Bonnie Neely

Name or description of project: Foster, Big Sur

Detailed substantive description of content of communication: (If communication included written material, attach a copy of the complete text of the written material.)

78 acre parcel in Big Sur. Discussed the project history, the issues regarding maritime chaparral, the site visit which included staff and additional biologists who observed 250 plants. Concerned with staff's determination that there is ESHA o the site.

7/6/07
Date

Bonnie Neely
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

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2007/JUL/06/FRI 03:28 PM HUMBOLDT CO. ADMIN FAX NO. /07 445 /499 P. 000

Hayes, Kathy

From: Neely, Bonnie
Sent: Friday, July 06, 2007 2:34 PM
To: Hayes, Kathy
Subject: Exparte

Susan McCabe, Tony Wells
Item 11a – Wednesday

Concerned about one condition in the staff report restricting the number of days a person or entity can stay in the hotel during a one year period.

Susan McCabe
Mary Kane
Foster Thursday, 10A

78 acre parcel in Big Sur. Discussed the project history, the issues regarding maritime chaparral, the site visit which included staff and additional biologists who observed 250 plants. Concerned with staff's determination that there is ESHA on the site.

Susan McCabe
Nancy Lucast
Shea/Perkins

Reviewed history of project. Was advised that the Applicant withdrew the implementation plan. Applicants would like to postpone the suggested modifications matter until the October Commission meeting and have the 6 month re-submittal waived.

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CCC Exhibit 1
(page 6 of 6 pages)

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name of project:	**Steven and Gillian Foster Residence;**
Date and time:	**October 31, 2007; 11:00 a.m.**
Location of communication:	**Pescadero, CA**
Type of communication:	**face-to-face meeting**
Person initiating communication:	**Steven and Gillian Foster, Applicants** **Susan McCabe, McCabe & Company** **Rick Zbur, Latham & Watkins**

Detailed substantive description of content of communication:

Steven and Gillian Foster, Susan McCabe and Rick Zbur gave me a briefing on the Fosters' proposed single-family home. The applicants discussed the contents of the briefing package that they informed me has been provided to Commission staff and is in the Commission record for this matter. The applicants covered the issues contained in the briefing package, including:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

11/6/07
Date

Commissioner Blank

CCC Exhibit P.1
(page 1 of 5 pages)

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FRIDAY, ITEM 11A

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project , LPC, etc:	Steven and Gillian Foster Residence; County of Monterey
Date and time of receipt of communication:	November 8, 2007; 10:00 a.m.
Location of communication:	La Jolla
Type of communication (letter, facsimile, etc.):	face-to-face meeting
Person(s) receiving communication:	Brooks Firestone and Dan Secord
Person(s) initiating communication:	Steven and Gillian Foster, Applicants Susan McCabe, McCabe & Company Rick Zbur, Latham & Watkins

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Steven and Gillian Foster, Susan McCabe and Rick Zbur gave me a briefing on the Fosters' proposed single-family home. The applicants discussed the contents of the briefing package that they informed me has been provided to Commission staff and is in the Commission record for this matter. The applicants covered the issues contained in the briefing package, including:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

11/12/07
Date

Commissioner Signature

CCC Exhibit P.1
(page 2 of 5 pages)

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project , LPC, etc: Steven and Gillian Foster Residence; County of Monterey

Date and time of receipt of communication: November 9, 2007; 10:00 AM

Location of communication: Phone call

Type of communication (letter, facsimile, etc.): Phone call

Person(s) initiating communication: Susan McCabe

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Susan McCabe gave me a briefing on the Fosters' proposed single-family home. The applicants discussed the contents of the briefing package that they informed me has been provided to Commission staff and is in the Commission record for this matter. Susan covered the issues contained in the briefing package, including:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

11-9-07
Date

B. Neely
Commissioner Neely

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FRIDAY, ITEM 11A

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project , LPC, etc: Steven and Gillian Foster Residence; County of Monterey

Date and time of receipt of communication: November 8, 2007; 10:00 a.m.

Location of communication: La Jolla

Type of communication (letter, facsimile, etc.): face-to-face meeting

Person(s) receiving communication: PAT Kruer [redacted]

Person(s) initiating communication: Steven and Gillian Foster, Applicants
Susan McCabe, McCabe & Company
Rick Zbur, Latham & Watkins

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Steven and Gillian Foster, Susan McCabe and Rick Zbur gave me a briefing on the Fosters' proposed single-family home. The applicants discussed the contents of the briefing package that they informed me has been provided to Commission staff and is in the Commission record for this matter. The applicants covered the issues contained in the briefing package, including:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

11/12/07
Date

CCC EXHIBIT P. 1
PAGE 4 OF 5

Commissioner Signature

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FRIDAY, ITEM 11A

FORM FOR DISCLOSURE OF
EX PARTE COMMUNICATIONS

Name or description of project , LPC, etc: Steven and Gillian Foster Residence; County of Monterey

Date and time of receipt of communication: November 7, 2007; 10:00 a.m.

Location of communication: SB County Administration Building

Type of communication (letter, facsimile, etc.): face-to-face meeting

Person(s) receiving communication: Brooks Firestone and Dan Secord

Person(s) initiating communication: Steven and Gillian Foster, Applicants
Susan McCabe, McCabe & Company
Rick Zbur, Latham & Watkins

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Steven and Gillian Foster, Susan McCabe and Rick Zbur gave me a briefing on the Fosters' proposed single-family home. The applicants discussed the contents of the briefing package that they informed me has been provided to Commission staff and is in the Commission record for this matter. The applicants covered the issues contained in the briefing package, including:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

Dan Secord, M.D.

Date

Commissioner Signature

CCC EXHIBIT P. 1
PAGE 5 OF 5

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FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: November 8, 2007
(For messages sent to a Commissionerby mail of facsimile or received as a telephone or other message, date, time of receipt should be indicated.)

Location of communication: San Diego City Hall

Person (s) initiating communication: Susan McCabe, Cliff Williams, Rick Zabur

Person (s) receiving communication: Alonso Gonzalez for Commissioner Ben Hueso

Name or description of project: Foster, F.11.a

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Applicant contends that vegetation on the property is misrepresented by Coastal staff as Coastal Chaparral, without the presence of an indicator species. Without the indicator species the vegetation should not be categorized as ESHA.

11/13/07
Date

Signature of Commissioner

If the communication was provided at the same to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the Commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commisioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

CCC Exhibit P.2
(page ____ of ____ pages)

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NOV 27 2007
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

FRIDAY, ITEM 11A

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project , LPC, etc: Steven and Gillian Foster Residence; County of Monterey

Date and time of receipt of communication: November 7, 2007; 10:00 a.m.

Location of communication: SB County Administration Building

Type of communication (letter, facsimile, etc.): face-to-face meeting

Person(s) receiving communication: Brooks Firestone and Dan Secord

Person(s) initiating communication: Steven and Gillian Foster, Applicants
Susan McCabe, McCabe & Company
Rick Zbur, Latham & Watkins

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Steven and Gillian Foster, Susan McCabe and Rick Zbur gave me a briefing on the Fosters' proposed single-family home. The applicants discussed the contents of the briefing package that they informed me has been provided to Commission staff and is in the Commission record for this matter. The applicants covered the issues contained in the briefing package, including:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

11-10-07
Date

Commissioner Signature

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CENTRAL COAST AREA

FRIDAY, ITEM 11A

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

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Susan McCabe, McCabe & Company
Rick Zbur, Latham & Watkins

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Steven and Gillian Foster, Susan McCabe and Rick Zbur gave me a briefing on the Fosters' proposed single-family home. The applicants discussed the contents of the briefing package that they informed me has been provided to Commission staff and is in the Commission record for this matter. The applicants covered the issues contained in the briefing package, including:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

11-12-07
Date

Commissioner Signature

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FRIDAY, ITEM 11A

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project , LPC, etc: Steven and Gillian Foster Residence; County of Monterey

Date and time of receipt of communication: November 9, 2007; 2:00 PM.

Location of communication: Phone Call

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CENTRAL COAST AREA

Type of communication (letter, facsimile, etc.): Phone call

Person(s) receiving communication: Mike Reilly

Person(s) initiating communication: Susan McCabe

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Steven and Gillian Foster, Susan McCabe and Rick Zbur gave me a briefing on the Fosters' proposed single-family home. The applicants discussed the contents of the briefing package that they informed me has been provided to Commission staff and is in the Commission record for this matter. The applicants covered the issues contained in the briefing package, including:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

Nov 16, 2007
Date

Mike Reilly
Commissioner Signature

CCC Exhibit 12
(page ___ of ___ pages)

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FRIDAY, ITEM 11A

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project , LPC, etc: Steven and Gillian Foster Residence; County of Monterey

Date and time of receipt of communication: 11/14/07 10 PM

Location of communication: San Diego Sheraton

Type of communication (letter, facsimile, etc.): Mtg.

Person(s) receiving communication: Larry Clark

Person(s) initiating communication: Steven & Gillian Foster
Susan McCabe

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

I received a briefing on the Fosters' proposed single-family home. Discussed were the contents of the briefing package that I was informed has been provided to Commission staff and is in the Commission record for this matter. The issues covered were:

- Overview of the project;
- The project is the most environmentally sensitive alternative;
- There is no published peer reviewed authority that would define plants on the property as central maritime chaparral;
- The chaparral on their property is not ESHA;
- Adopting the Staff's recommendations would result in a multi-million dollar taking;
- The proposed Resource Protection Plan fully protects "non-rare" chaparral on the property;
- Viewshed studies show that the project as proposed is not visible from public viewpoints;
- The applicants' request that the Commission approve the project as proposed without the recommended ESHA designation, 100-foot chaparral and FMZ buffer, and viewshed relocation.

11-16-07
Date

Larry Clark
Commissioner Signature

CCC Exhibit P.2
(page ___ of ___ pages)

San Francisco
State University

Department of Biology
San Francisco State University
1600 Holloway Avenue
San Francisco, California 94132

Tel: 415/338-1549
FAX: 415/338-2295

30 October 2007

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Jonna D. Engel, Ecologist
California Coastal Commission
South Central Coast Area
89 South California St., Suite 2000
Ventura, CA 93001

Dear Dr. Engel:

I have reviewed the staff determination (December 5, 2006) and addendum (May 7, 2007) regarding the Foster property project.

Determining boundaries of vegetation types within a life form, one type of chaparral versus another, can be difficult, especially when the underlying physical processes shift in a gradient fashion. With regard to this site, the issue seems to be whether the particular combination of species found at the site is maritime chaparral or not. In particular, one argument seems to be that *Arctostaphylos glandulosa* subsp. *glandulosa* and *A. glandulosa* subsp. *cushingiana* also occur at the site and that their presence suggests non-maritime conditions, and that the other indicator species of maritime conditions, *Ceanothus cuneatus* var. *rigidus*, *Vaccinium ovatum* and *Chrysolepis chrysophylla*, are insufficient.

I have not visited the site and I am therefore not certain of the specific conditions of the location, but given the list of species, I would conclude this is a maritime chaparral location. Fog levels and influences vary among seasons and conditions, and maritime species also vary in their tolerances. The presences of *Ceanothus cuneatus* var. *rigidus*, a plant completely restricted to maritime conditions, is sufficient to indicate that this is a variant of maritime chaparral.

Arctostaphylos glandulosa subsp. *glandulosa* and *A. glandulosa* subsp. *cushingiana* certainly occur under a variety of conditions, but they are species that also occur within maritime conditions. For example, along the coast north of San Mateo County, these two taxa are dominants of the most extreme maritime conditions, co-occurring with other manzanitas and *Ceanothus* species restricted globally to foggy conditions. I just completed a report, for example, for Point Reyes National Seashore (Status and management recommendations for *Arctostaphylos virgata* [Marin Manzanita] in Point Reyes National Seashore). On Point Reyes peninsula, *Arctostaphylos glandulosa* subsp. *cushingiana* dominates the maritime chaparral along with *A. virgata*, *A. uva-ursi* and *A.* x *repens*. Maritime *Ceanothus* species are also present, specifically *Ceanothus thyrsiflorus*, *C. gloriosus* var. *gloriosus*, and *C. gloriosus* var. *porrectus*. Nearby on Bolinas Ridge, on the ocean-facing side of the ridge, *Arctostaphylos glandulosa* subsp. *glandulosa* dominates along with *A. virgata*, *A. sensitiva*, *C. gloriosus* var. *exaltatus* and *C. masonii*. All of the species listed, except for the two *A. glandulosa* subspecies and *A. uva-ursi*, are globally restricted to foggy maritime conditions, and within coastal California, *A uva-ursi* is an indicator of maritime conditions, found only at the extreme coast. Farther south in San Mateo County, other sets of *Arctostaphylos* or *Ceanothus* species indicate maritime conditions. What is also striking about all these sites is the additional presence of *Vaccinium ovatum* and *Chrysolepis chrysophylla* included within

the open chaparral areas. Outside of maritime conditions, these taxa appear to be restricted to shadier forested sites. Only under maritime conditions have I seen them as co-dominants in chaparral.

I'm more familiar with these locations than the Big Sur coastal areas. However, in Carmel Valley, I have been taken to sites on one property in which *A. tomentosa* subspecies dominated one ridge closest to the ocean, while they were replaced by *A. glandulosa* subspecies on the next ridge, even though both sites were well within the fog zone. This simply means that *A. tomentosa* or *A. crustacea* subspecies are more limited in their distribution and are more sensitive to either drought or temperature than are *A. glandulosa* subspecies, not that *A. glandulosa* subspecies fail to occur under maritime conditions.

In summary, the combination of *Ceanothus cuneatus* var. *rigidus*, along with *Vaccinium ovatum* and *Chrysolepis chrysophylla* within the chaparral are strong indicators of maritime chaparral. The first species is globally restricted to maritime conditions, while the other two are found in open chaparral only under maritime conditions along the coast. The presence of *A. glandulosa* subspecies do not invalidate that conclusion, as they are also common within maritime conditions.

By way of context, I have conducted ecological research within chaparral for the last 3 decades, and am an author of the treatment of *Arctostaphylos* for the Flora of North America and the 2nd edition of the Jepson Manual.

Best regards,

V Thomas Parker

V. Thomas Parker
Professor of Biology
Department of Biology
San Francisco State University

November 1, 2007

Jonna D. Engel, Ph.D.
California Coastal Commission
89 South California St., Suite 200
Ventura, CA 93001

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NOV 07 2007
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Jonna,

Because of my continuing research interest in the distribution of maritime chaparral habitat in the central coast area, I have followed the application and appeal of the proposed Foster project (A-3-MCO-06-018) with great interest.

I have also followed, with similar interest, the efforts of the ESNERR Coastal Training Program to reach consensus among experts on a definition of maritime chaparral habitat and the initiation of regional maritime chaparral delineation.

I am familiar with the vegetation on Rocky Ridge / Cushing Mountain through historical and contemporary chaparral mapping activities as well as through targeted species surveys (*Piperia yadonii*, present on the ridge northwest of the Foster site, and *Arctostaphylos edmundsii*, restricted to the ridge's lower slopes). The relatively continuous chaparral stand that I mapped, including portions of Foster property, comprises a gradient ranging from the immediate coast where *Arctostaphylos tomentosa* dominates (and the subspecies *A. tomentosa rosei*, as well as *A. edmundsii*, are present) to the higher ridgeline where *A. glandulosa* (and the subspecies *A. glandulosa cushingiana*) dominate. Similar within-stand gradients are present in chaparral stands farther north in the Point Lobos uplands.

Species composition (notably the dominant *Arctostaphylos* and *Ceanothus* shrub species) varies considerably from stand to stand as well as within maritime chaparral stands. Nevertheless, particular climatic and edaphic preferences--and therefore the presence of specific indicator species--characterize the maritime chaparral habitat type. In the vicinity of the Foster site, the presence of *Ceanothus cuneatus* var. *rigidus* (Monterey Ceanothus), *Vaccinium ovatum* (California Huckleberry), *Chrysolepis chrysophylla* (Golden Chinquapin) and, of course, *Sequoia sempervirens* (Coast Redwood) constitute such indicator species.

In summary, I concur with California Coastal Commission staff's determination that central maritime chaparral habitat is present within the proposed project area and urge the Commission to observe the Coastal Act's ESHA protections on this site.

Sincerely,

Eric Van Dyke
Geographical Ecologist
Elkhorn Slough National Estuarine Research Reserve
1700 Elkhorn Road, Watsonville, CA 95076

SAN FRANCISCO STATE UNIVERSITY

Department of Biology
San Francisco State University
1600 Holloway Avenue
San Francisco, California 94132

Tel: 415/338-1549
FAX: 415/338-2295

To: Jonna Engel, California Coastal Commision Scientist

From: V. Thomas Parker, Professor of Biology V. Thomas Parker

Re: Adrian Juncosa letter of 14 November 2007

The Juncosa letter requests some additional information, makes incredulous assertions and contains erroneous information concerning the response to my earlier letter. Specifically, Juncosa lacks information on the sites containing *A. tomentosa* subspecies and *A. glandulosa* in the Carmel Valley, asserts that *Ceanothus cuneatus* var. *rigidus* is not a maritime species, and misconstrues information provided to support his position. I would like to clarify the actual circumstances:

1. The location in the Carmel Valley containing *A. tomentosa* subspecies on one ridge and *A. glandulosa* subspecies on the next are within the Rancho San Carlos development. The ridges are below 80 m in elevation (260 ft) and are found between 3.25 and 5.4 km from the mouth of the Carmel River (2.1-3.4 mi). This part of the beginning of the Carmel Valley is well within the fog zone. The fact that there is a compositional transition here does not reflect a shift from maritime to interior environmental conditions, especially considering the ridges are only around a mile apart and the ridges are low in elevation.

2. Juncosa's assertion that *Ceanothus cuneatus* var. *rigidus* is not a maritime species, his assertion of its elevational and geographic distribution are all completely erroneous. The geographic distribution of this plant is limited to the Monterey area and northern Santa Lucia Range, with a disjunction to the coastal boundary of San Luis Obispo and Santa Barbara Counties. This is clearly stated in the description of subspecies of *Ceanothus cuneatus* by Dieter Wilken in *Ceanothus* (Fross, David and Dieter Wilken. 2006. *Ceanothus*. Timber Press; Portland, Oregon). On p. 174 of this book, Wilken states: "This form is restricted to low elevations in the foothills of the northern Santa Lucia Range and elevated marine terraces near Monterey, CA, but it also occurs locally in San Luis Obispo County and northwestern Santa Barbara County." To assert that this is a wide-ranging and common plant is simply a misunderstanding the ecology and distribution of this plant. Wilken frankly states on p. 174: "*Ceanothus cuneatus* vars. *fascicularis* and *rigidus* should be considered of special conservation concern because of their limited distribution and habitat loss."

Secondly, Juncosa uses data from the Consortium of California Herbarium interface to propose that *Ceanothus cuneatus* var. *rigidus* has a significantly higher elevational distribution than it actually has. A comment first on using these data. These reflect data entered without any quality control. To use the data, you must actually examine the specimen or at least read the herbarium label and check for comments or annotations. Juncosa claims that there are collections occurring at 1800 ft or higher in this set of data. In fact, for all credulous collections, the elevations listed that belong to this taxon are between 3-441 m (9-1446 ft), the vast majority being below 700 ft elevation. Using the consortium data requires some expertise. Two collections are listed above 1800 ft but these are not even *C. cuneatus* var. *rigidus*, which he would have known had he examined the labels. For example, his assertion that the plant occurs at 3500 ft is based on specimen UC1071300, but had he looked at the label, he would have seen that first it has been annotated as not being *Ceanothus cuneatus* var. *rigidus*, and second, that the elevation was mis-entered into

the webpage. The specimen is from Camp Hill near Pismo Beach, and all hills around Camp Hill fall under 220 m or roughly 700 ft and are within a kilometer of the ocean. The 6500 ft elevation specimen (UC1397126) is similarly an error on Juncosa's part; again, had he looked at the herbarium label, he would have seen that the collection is from the Sierra Nevada and has been annotated as not being *C. c. rigidus*.

In summary, *Ceanothus cuneatus* var. *rigidus* is a maritime species, restricted to the maritime zone, of limited distribution, and of conservation concern. The arguments in Juncosa's letter are all based on errows, erroneous data or misinterpretation.

Juncosa states that *Arctostaphylos glandulosa* subsps. *glandulosa* and *cushingiana* are characteristically species of inland, non-maritime chaparral. However, they are also characteristically species of maritime chaparral in most of California, including other subsp. that are maritime endemics (e.g., subsp. *crassifolia*; Keeley, J. E., M. C. Vasey and V. T. Parker. 2007. Subspecific variation in the widespread burl-forming *Arctostaphylos glandulosa*. Madroño 51 (1): 42-62.), which I indicated in my last letter. Juncosa can not eliminate the coastal maritime distributions of these taxa because they also have interior distributions. They do not support his arguments.

Finally, Juncosa asserts that unless a species is a site dominant or co-dominant, it does not permit a classification shift. Juncosa is misusing community concepts in this case, an area in which I am an expert (e.g., Parker, V. T. 2004. Community of the individual: implications for the community concept. Oikos 104: 27-34.; Parker, V. T. 2001. Conceptual problems and scale limitations of defining ecological communities: A critique of the CI concept (Community of Individuals). Perspectives in Plant Ecology, Evolution, and Systematics 4, 80-96.). The use of the term "indicator" is exactly that, a species occurring at a site can indicate special conditions, regardless of the density of the taxon. The presence of *Ceanothus cuneatus* var. *rigidus* indicates maritime conditions at this site, as do the presence of redwoods and other taxa. A plant does not have to be a dominant or co-dominant to be an indicator species; many indicator species are rare and never abundant.

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

MEMORANDUM

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Katie Morange
Analyst

SUBJECT: Proposed Foster Residence Chaparral Plant Community Determination

DATE: December 5, 2006

Documents reviewed:

California Natural Diversity Database. 2006. California Department of Fish and Game. http://www.dfg.ca.gov/bdb/html/cnddb.html.

California Native Plant Society. 2001. Inventory of rare and endangered plants of California. David P. Tibor, Convening editor. CNPS, Sacramento, CA.

Griffin, JR. 1978. Maritime chaparral and endemic shrubs of the Monterey Bay region, California. Madrono, Vol. 25 (2) pp. 65-112.

Haley, V., B. Mori, K. Lyons & J. Gilchrist (Habitat Restoration Group). 1991. Rocky Creek Ranch EIR Biotic Assessment. Prepared for Denise Duffy and Associates.

Hayes, G. Editor. 2003. Conservation and ecology of California's maritime chaparral: workshop follow-up questions and answers. Coastal Training Program; Elkhorn Slough National Estuarine Research Reserve.

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

Juncosa, A. Aug. 8, 2006. Letter to Mark Blum, Horan, Lloyd, Karachale, Dyer, Schwartz, Law & Cook from Adrian Juncosa, Senior Ecologist, Ecosynthesis. Subject: Characterization of Chaparral at Foster Property Site.

Monterey County. November 17, 2005. Initial Study Mitigated Negative Declaration. File # PLN040569

Norman, Jeff. November 22, 2004 Preliminary Biological Report: Foster property (APN 418-132-007), Cushing Mountain, Big Sur.

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/

Sawyer, J. & T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society.

Sawyer, J. Dec. 14, 2004. Email to Grey Hayes describing most recent maritime chaparral definition.

Vandevere, Jud. Biological Consulting. March 9, 2005a. Letter to Eric Lee, Monterey County Planning and Building Inspection Department. Re: Foster Project-File No.: PLN040569 (APN 418-132-007-000). Performance criteria and cost estimate for restoration.

Vandevere, Jud. March 22, 2005b. Letter to Eric Lee, Monterey County Planning and Building Inspection Department. Re: Foster Project-File No.: PLN040569 (APN 418-132-007-000). March Census.

Vandevere, Jud. May 1, 2005c. Letter to Eric Lee, Monterey County Planning and Building Inspection Department. Re: Foster Project-File No.: PLN040569 (APN 418-132-007-000). April Census.

Vandevere, Jud. June 22, 2005d. Letter to Eric Lee, Monterey County Planning and Building Inspection Department. Re: Foster Project-File No.: PLN040569 (APN 418-132-007-000). May Census.

Vandevere, Jud. July 22, 2005e. Letter to Jeff Main, Monterey County Planning and Building Inspection Department. Re: Foster Project-File No.: PLN040569 (APN 418-132-007-000). July Census.

Vandevere, Jud. July 25, 2005f. Letter to Jeff Main, Monterey County Planning and Building Inspection Department. Re: Foster Project-File No.: PLN040569 (APN 418-132-007-000). Restoration Plan.

Vandevere, Jud. September 29, 2005g. Letter to Stephanie Strelow, Monterey County Planning and Building Inspection Department. Re: Foster Project-File No.: PLN040569 (APN 418-132-007-000). Habitat Impacts.

Van Dyke, E. & K. Holl. April 26, 2003. Mapping the Distribution of Maritime Chaparral Species in the Monterey Bay Area. Prepared for the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office

Van Dyke, E., K.D. Holl, & J.R. Griffin. 2001. Maritime chaparral community transition in the absence of fire. Madrono, Vol. 48 (4) pp. 221-229.

Van Dyke, E. Aug. 29, 2006. Maritime Chaparral South of the Monterey Peninsula. (Memo describing Big Sur maritime chaparral written for the California Coastal Commission)

Van Dyke, E. October 30, 2006. Email from Erik Van Dyke to Adrian Juncosa . CC: Grey Hayes, John Dixon, Katie Morange.

The Foster Property is a 78-acre parcel located in Section 8, T18S R1E on Cushing Mountain, which is the ridge dividing Rocky Creek from Palo Colorado Creek (Norman 2004). The elevation at the site ranges from 800 to approximately 1400 feet. The Foster development proposal includes various structures covering 7,400 square feet, a swimming pool and patio, gardens, roads, pathways, utility lines, septic system and a significant amount of excavation. In addition, the California Department of Forestry requires 100-foot fuel clearings around all structures. Such fuel modification is also "development" under the Coastal Act.

The vegetation at the Foster site is comprised of redwood and mixed evergreen forest adjacent to or interdigitated with scrub vegetation and grassland. The scrub vegetation has been variously described. The environmental impact report described the site as "northern mixed chaparral" (HRC 1991) and identified shaggy-barked manzanita (*Actostaphylos tomentosa*) as the dominant plant species in this community. The EIR also noted that Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*) and chamise (*Adenostoma fasciculatum*) were present in this community. In a later preliminary biology report (Norman 2004), the predominant vegetation was described as "central maritime chaparral, "...dominated by Eastwood's manzanita (*Arctostaphylos glandulosa*); also present is 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*)." Norman estimated that 5000 square feet of maritime chaparral had been removed from the proposed development footprint prior to his survey by cutting and herbeciding. A series of additional botanical surveys were conducted in 2005 by Jud Vandevere. Vandevere (2005a) listed the following species as resprouting and growing on the Foster property: *Adenostoma fasciculatum*; *Arctostaphylos tomentosa ssp. tomentosa*, *Arctosaphylos glandulosa var. cushingiana*, *Artemisia californica*, *Baccharis pilularis ssp. consanquinea*, *Eriodictyon californicum*, *Garrya elliptica*, *Lupinus chamissonis*, *Rhanmus californica*, *Salvia mellifera*, and *Toxicodendron diversilobum*. In later surveys, Vandevere (2005 b-e) also documents the presence of *Ceanothus cuneatus* var. *rigidus* within the development footprint. Ten of these species are characteristic of the woollyleafed manzanita vegetation series (Sawyer and Keeler-Wolf 1995). Woollyleaf manzanita chaparral, or central maritime chaparral, is listed as a rare habitat type in the California Department of Fish and Game's Natural Diversity Database (CNDDB, 2006).

There appears to be consensus that various species that are characteristic of central maritime chaparral, including shaggy-bark mazanita (*Arctostaphylos tomentosa*) and Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*), occur within the development footprint at the Foster site. Nevertheless, there is some disagreement as to whether the scrub vegetation on the site is properly classified as central maritime chaparral.

Griffin (1978) described maritime chaparral as consisting "of variable sclerophyll shrub communities within a scrub-live oak forest region that is best developed on sandy soils within the summer fog zone. This chaparral is frequently dominated by forms of *Arctostaphylos tomentosa* plus one or more of four endemic manzanita taxa. *Adenostoma fasciculatum* is a common sub-dominant."

Holland (1986) characterizes central maritime chaparral as shrubland dominated by forms of *Arctostaphylos tomentosa* plus one or more other narrowly distributed manzanita. It is found on well-drained soils between Santa Cruz and Santa Barbara counties within the zone of summer coastal fog intrusion.

Sawyer and Keeler-Wolf (1995) describe central maritime chaparral under the woollyleaf manzanita series; "Many areas of chaparral on the [outer central coast] and [montane central coast] ranges have concentrations of local ceanothus and manzanita species. Such areas are often called maritime chaparral. In this series, forms of woollyleaf manzanita are a common component along with familiar members of chaparral and coastal scrub." In an email sent to Dr. Grey Hayes on December 12, 2004, Dr. John Sawyer writes that maritime chaparral was "unsatisfactorily" described as part of the woollyleaf manzanita (*Arctostaphylos tomentosa*) series in the first edition (1995) of the "Manual of California Vegetation". The characterization problems he lists are that while *Arctostaphylos tomentosa*, and its many forms, do dominate many stands of maritime chaparral, other stands are dominated by other shrub species; not all stands of the *A. tomentosa* are included in the range of maritime chaparral, and stands of other shrubland types are present along the coast.

The California Native Plant Society (2001) defines maritime chaparral as stands characterized by one or more *Arctostaphylos* or *Ceanothos* species, including narrow endemics that are considered rare and endangered. In a document prepared for the U.S. Fish and Wildlife Service on the distribution of maritime chaparral species in the Monterey Bay Area, Dr. Eric Van Dyke and Dr. Karen Holl write that "Central maritime chaparral is dominated by *Arctostaphylos* species, typically one or more varieties of *A. tomentosa* in combination with one or more local endemic *Arctostaphylos* species." Although on a landscape scale central maritime chaparral is typically dominated by *Arctostaphylos* species, at an individual site different percent covers of the various chaparral species will occur depending on the local fire and disturbance history (Van Dyke, personal communication, Friday, Dec. 1, 2006). For instance, following disturbance, the expectation is that herbaceous species such as poison oak will be favored. Under more stable successional conditions, schelophyll shrubs such as manzantia and ceanothus species will thrive. In the absence of fire, fire-germinating species such as manzanita and ceanothus are expected to dominate. However, as

these shrubs senesce, they are unable to replace themselves and non-fire dependent species will succeed to dominance.

Van Dyke (Aug. 29, 2006) lists the following maritime chaparral habitat characteristics: 1. coastal climate characterized by summer drought moderated by frequent summer fog; 2. nutrient poor, somewhat to highly acidic, well-drained soils; 3. dense or closed canopy dominated by evergreen sclerophyllous shrubs (most often *Arctostaphylos* species; and, 4. the presence (not necessarily dominance) of one or more "indicator" species, which are indicative because their distribution is restricted to only those regions with the requisite climate and soil. He concludes: "If a chaparral stand includes *Arctostaphylos tomentosa* or any of the other 20+ maritime chaparral "indicator" manzanitas or other indicator species, it's maritime chaparral."

Juncosa (2006) recognizes the presence of such central maritime chaparral indicator species as shaggy-barked mazanita and Monterey ceanothus at the Foster site, but argues that the vegetation should not be characterized as central maritime chaparral because these maritime indicator species do not dominate the chaparral community in the vicinity of the proposed development. I discussed the issue of presence versus dominance with Dr. Todd-Keeler-Wolf, Senior Vegetation Ecologist with the California Department of Fish and Game (personal communication Wednesday, Nov. 29, 2006). Dr. Keeler-Wolf said 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. In the revised Manual of California Vegetation, soon to be published, the maritime chaparral definition will be updated and eleven different maritime chaparral alliances will be described. It is sometimes difficult to accurately identify central maritime chaparral because one of the main indicator groups, manzanitas, is comprised of obligate fire sprouting species. In the absence of fire (which has been suppressed along the California coast for the past 50 plus years), these species may be out-competed by other species. During this period, the density of plants may be low, but their seeds continue to exist in a dormant state. For this reason, "dominance" determinations, which do not consider the seed bank, are problematic because once a fire rolls through, the manzanita may sprout in large numbers. This understanding is echoed by Dr. Van Dyke in his email to Adrian Juncosa (Oct. 30, 2006) where he states that, "The presence (not dominance) of forms of *Arctostaphylos tomentosa*, as well as the presence of other species such as *Ceanothus cuneatus var. rigidus*, remains the best indicator we've got; it accurately encompasses the occurrences and species that we recognize as central and (most of) northern maritime chaparral (although not, it's important to note, southern maritime chaparral in San Diego county). But it's also important to reiterate that such a definition must be based on "presence" and "importance" of *A. tomentosa* across an occurrence, not dominance." Similarly, Odion and Tyler (2002) 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."

The Foster Property occurs within the geographic and elevational range of central maritime chaparral, it is close to the coast and subject to summer fog, and supports two central maritime chaparral indicator species; shaggy-barked manzanita (*Arctostaphylos tomentosa* ssp. *tomentosa*) and Monterey ceanothus (*Ceanothus cuneatus* var. *rigidus*) along with a host of species commonly associated with maritime chaparral. Therefore, I conclude that the areas of scrub habitat on the Foster site are central maritime chaparral, a habitat type recognized as rare by the California Department of Fish and Game. The central maritime chaparral at the Foster site meets the definition of Environmentally Sensitive Habitat Area under the Coastal Act and the Big Sur LCP because it is rare, it performs the important ecosystem function of providing habitat for individual species, such as Monterey ceanothus, that are themselves rare, and it is easily disturbed by human activities, such as vegetation clearing.

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

MEMORANDUM

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Katie Morange
Coastal Analyst

SUBJECT: Foster Property Site Visit, March 16, 2007

DATE: May 7, 2007

On March 16, 2007, Adrian Juncosa, EcoSynthesis; Jay Auburn, Carver and Schicketanz Architects; and Mary Cain, Horan Lloyd Law Firm, representing their clients, the Foster's, met myself; Mike Vasey, San Francisco State University; Dr. Grey Hayes, Elkhorn Slough National Estuarine Research Reserve Coastal Training Program; Steve Monowitz, California Coastal Commission; and Katie Morange, California Coastal Commission at the Foster property for a site visit. Mr. Juncosa led the group on a tour of the Foster property focusing on plant communities in the proposed building site locations. Mr. Vasey provided maritime chaparral plant community knowledge and taxonomic expertise for identifying chaparral plant species.

The primary purpose of our visit was to examine the physical and biological characteristics of the Foster site chaparral community to determine if it met the definition of central maritime chaparral. In my December 5, 2006 "Proposed Foster Residence Chaparral Plant Community Determination" memo, I discussed the attributes of central maritime chaparral in detail. I reviewed the ongoing discussion taking place over the last decade where the issue of presence versus dominance of maritime chaparral indicator species has been a central concern. I concluded, after literature review and discussions with botanical experts, that presence of indicator species within a chaparral community with the concomitant physical attributes of geographic location, climate, and soils, is a valid diagnostic for making a central maritime chaparral community determination[1, 2, 3, 4, 5, 6, 7].

[1] Griffin, JR. 1978. Maritime chaparral and endemic shrubs of the Monterey Bay region, California. Madrono, Vol. 25 (2): 65-112.
[2] Holland, R.F. 1986. Preliminary description of the terrestrial natural communities of California. California Department of Fish and Game.
[3] Sawyer, J. & T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society.
[4] Hayes, G. Editor. 2003. Conservation and ecology of California's maritime chaparral: workshop follow-up questions and answers. Coastal Training Program; Elkhorn Slough National Estuarine Research Reserve.

The Foster property is a 78-acre parcel located in Section 8, T18S R1E on Cushing Mountain, which is the ridge dividing Rocky Creek from Palo Colorado Creek in Big Sur, along the central California coast. The property is near the top of the ridge; the elevation at the site ranges from 800 to approximately 1400 feet; and is oriented west/south-west facing the Pacific Ocean.

The Foster site has all the physical attributes required for central maritime chaparral. The site occurs within the geographic and elevational range of central maritime chaparral and is characterized by a maritime climate due to its location and orientation. The day we visited the Foster property the coast was enveloped in fog but it did not extend up to the Foster property. And while fog may only sit on the property a fraction of the time that it blankets the coast, the property is influenced by a maritime climatic regime. Evidence of this includes the presence of redwoods which do not grow outside fog zones and the presence of three central maritime chaparral indicator species discussed below. Finally, the soil on the property is principally a well-drained granitic soil that is acidic and sandy in character.

In several biological reports prepared for the property, the shaggy-barked manzanita (*Arctostaphylos tomentosa ssp. tomentosa*), a central coast endemic and central maritime chaparral indicator species, was identified. However, we did not observe this species on our site visit. Rather, the majority of manzanitas identified on the site were *Arctostaphylos glandulosa ssp. glandulosa* and there were also occasional *A. glandulosa ssp. cushingiana*. Mr. Vasey, who is a manzanita specialist, observed that the distribution of leaf stomata[8] (a diagnostic character for identifying manzanita species) was "heterofacial"[9,10], which is not typical of *A. glandulosa*. Ecologically, manzanita species exhibiting bifacial/heterofacial leaf stomata, are restricted to the cooler, mild climate of the coastal fog belt[11]. The heterofacial condition in *A. glandulosa* tends to be associated with coastal populations, as also observed for *A. glandulosa ssp. crassifolia* in San Diego.

While we did not find the shaggy-barked manzanita during our site visit, we did observe several other central maritime chaparral indicator species. Monterey Ceanothus

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[5] 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/

[6] Dr. Todd Keeler-Wolf, personal communication, Wednesday, Nov. 29, 2006.

[7] Dr. Eric Van Dyke, personal communication, Friday, Dec. 1, 2006.

[8] Stomata are pores in the leaf surface that can open or close to allow the passage of air and water.

[9] "Heterofacial" is a condition between bifacial (stomata on underside of leaf) and isofacial (stomata on both sides of leaf). In heterofacial plants, there are more stomata on the lower leaf surface than on the upper leaf surface.

[10] Boykin, L.M., M.C. Vasey, V.T. Parker, & R. Patterson. 2005. Two lineages of *Arctostaphylos* (Ericaceae) identified using the internal transcribed spacer (TS) region of the nuclear genome. Madrono, Vol. 52 (3) 139-147.

[11] Wells. P.V. 1992. Subgenera and sections of *Arctostaphylos*. The Four Seasons, Vol. 9: 64-69.

(*Ceanothus cuneatus* var. *rigidus*), a rare endemic plant, is one of the central maritime chaparral shrubs on the property[12]. The California Native Plant Society places Monterey Ceanothus in cateogy "4.2," which means that it has a limited distribution and is fairly endangered in California. Monterey Ceanothus does not dominate the chaparral community on the Foster property; however, we noted on the order of 10 to 15 individuals. Had we performed a quantitative survey, we probably would have identified significantly more individuals. Monterey Ceanothus is a robust fire follower and as time between fires increases, the successional pattern is for manzantia and chamise, both in high densities on the Foster property, to increase in number while ceanothus decreases. We noted fire evidence on the root burls of several manzanita near the proposed main house site, however, no fire history for the site has been documented. A long time has likely passed between the present and the most recent fire.

In addition, the chaparral community on the property also supports two other central maritime chaparral indicator species; Golden Chinquapin (*Chrysolepis chrysophylla*) and Huckleberry (*Vaccinium ovatum*). Golden Chinquapin can take on shrub-like or tree-like dimensions reaching heights of 10 to 130 feet. It occurs on coastal slopes and ridges of the Pacific Coast Ranges from Washington to San Luis Obispo[13]. Golden Chinquapin prefers sandy and acidic soils and requires well-drained soils. It grows at lower elevations, from sea level to 1,500 m, rarely 2,000 m[14]. California Huckleberry occurs along the Pacific Coast from British Columbia to central California. It is a shrub that can reach 3 to 15 feet in height. It commonly forms dense thickets on open ridges in the fog belt of California[15]. Huckleberries (*Vacccinium ssp.*) require well-drained acidic soil conditions and thrive where the pH ranges from 4.3 to 5.2[16]. Mr. Vasey thinks that the California Huckleberry and Monterey Ceanothus on the Foster Property may represent individuals at the southernmost edge of their ranges.

The Foster property occurs within the geographic and elevational range of central maritime chaparral, it is adjacent to the coast and influenced by a maritime climatic regime, and it has well-drained, sandy, acidic soils. In addition, the chaparral community supports at least three central maritime chaparral indicator species; Monterey Ceanothus (*Ceanothus cuneatus* var. *rigidus*), Golden Chinquapin (*Chrysolepis chrysophylla),* and Huckleberry (*Vaccinium ovatum)* along with a host of species commonly associated with central maritime chaparral. Therefore, I conclude,

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[12] California Native Plant Society (CNPS). 2007. Inventory of Rare and Endangered Plants (online edition, v7-07a). California Native Plant Society. Sacramento, CA. Accessed on May 1, 2007 from http://cnps.web.aplus.net/cgi-bin/inv/inventory.cgi.

[13] Sawyer, John O.; Thornburgh, Dale A.; Griffin, James R. 1977. Mixed evergreen forest. In: Barbour, Michael G.; Major, Jack, eds. Terrestrial vegetation of California. New York: John Wiley and Sons: 359-381.

[14] Keeler-Wolf, Todd. 1988. The role of *Chrysolepis chrysophylla* (Fagaceae) in the Pseudotsuga hardwood forest of the Klamath Mountains of California. Madrono, 35(4): 285-308.

[15] U.S. Department of Agriculture, Forest Service. 1937. Range plant handbook. Washington, DC. 532 p.

[16] Korcak, Ronald F. 1988. Nutrition of blueberry and other calcifuges. Horticultural Reviews, Vol. 10: 183-227.

as I did in my December 5, 2006 memo, that the areas of scrub habitat on the Foster site are central maritime chaparral, a habitat type listed as rare in the California Department of Fish and Game's Natural Diversity Database[17]. The central maritime chaparral at the Foster site meets the definition of Environmentally Sensitive Habitat Area under the Coastal Act and the Big Sur LCP because it is rare, it performs the important ecosystem function of providing habitat for individual species, such as Monterey Ceanothus, that are themselves rare, and it is easily disturbed by human activities, such as vegetation clearing.

[17] California Natural Diversity Database. 2007. California Department of Fish and Game. http://www.dfg.ca.gov/bdb/html/cnddb.html.

633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Tel: +213.485.1234 Fax: +213.891.8763
www.lw.com

LATHAM&WATKINS LLP

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November 9, 2007

VIA FEDERAL EXPRESS

Chairman Kruer and Honorable Commissioners
California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Agenda Item F11a

Re: Appeal No. A-3-MCO-06-018 (Steven and Gillian Foster Property, Lot 7, Rocky Creek Ranch, Big Sur, Monterey County)

Dear Chairman Kruer and Honorable Commissioners:

We are writing on behalf of our clients, Mr. and Mrs. Steven Foster (the "Fosters"), in response to the November 1, 2007 Staff Report (the "Staff Report"), for the appeal of the above-referenced Coastal Development Permit (the "CDP") for an off-grid, solar-powered single family residence with coastal views on a 78-acre parcel in an existing subdivision known as Rocky Creek Ranch approximately 12 miles south of Carmel and 2 ½ miles inland and eastward of Highway One in Monterey County (the "County"). The Fosters appreciate the hard work of the Coastal Commission Staff in analyzing the issues involved in the appeal.

Since the Coastal Commission (the "Commission") appealed the County's approval, the Fosters have worked with the Staff to provide the Commission with additional information and analysis and to propose project modifications in an effort to address the issues raised in the appeal and by the Staff. As part of the Fosters attempt to try to reach a resolution with Staff that addressed the issued raised in this Appeal and by Staff, the Foster also proposed as part of the negotiations a "Revised Project," despite their belief that that the County-approved project (the "Approved Project") is consistent with LCP policies and should be adopted as approved. The Revised Project eliminated the approved Steven's Studio and shed, and relocated the garage outside the chaparral. Unfortunately, the discussions did not result in a compromise. This is evidenced by the fact that Staff failed to even mention the Revised Project in the Staff Report. In addition, despite the efforts at resolution, the Staff did not, in the Staff Report, alter their recommendations that the chaparral on the property be designated ESHA and an unprecedented 100-foot buffer be imposed. The Fosters' continue to maintain that the Approved Project is consistent with LCP policies, is environmentally superior to the Staff's recommendation, and should be adopted as approved.

These materials have been provided to the Coastal Commission Staff

* STAFF NOTE: According to the Applicant, this response to the staff report and all exhibits were submitted to each Commissioner. Exhibits are available for review in the Central Coast District office.

CCC Exhibit 5 (page 1 of 5 pages)

The Staff Report improperly recommends both that the chaparral on the property be designated central maritime chaparral ("CMC") and therefore ESHA and that an unprecedented 100-foot buffer be imposed – neither of which are supported by the LCP, the published and currently applicable adopted scientific authority, or any scientific consensus. Staff's recommendations would limit any residential development to a 0.4 acre development envelope, comprising ½% of the Fosters' 78 acre parcel, which would accommodate only a fragment of the Foster's proposed residence; would substantially and unreasonably impair the value and use of the Fosters' property; and would interfere with their reasonable investment-based expectations based upon a Monterey County 1992 lot line adjustment that established the development envelope on which the Fosters' propose to build their home and the property's zoning that allows 10% site coverage. The effect of Staff's recommendations is an effective denial of the project and would therefore be a multi-million dollar taking.

The Fosters are therefore requesting certain significant modifications to Staff's recommendation, as set forth in the attached, more detailed Response to the Staff Report and Requested Modifications to the Proposed Conditions.

1. The Fosters request that the Commission not adopt the Staff's recommendation to designate the chaparral on the property as ESHA under the Monterey County (Big Sur area) Local Coastal Program (the "LCP") based on the purported presence of CMC.

2. The Fosters request that the Commission: (i) approve the Approved Project in the locations approved by the County; (ii) not adopt the Staff's recommendation to impose an unprecedented 100-foot buffer between development and chaparral, as the proposed buffer is not supported by substantive evidence, conflicts with abundant permit precedent, and would preclude all reasonable development of the site, resulting in a taking; and (iii) find that the Approved Project, including negligible fuel modification within small portions of chaparral, is consistent with the LCP's ESHA and Hazards policies, which historically have been interpreted to permit fuel modification within chaparral.

3. The Fosters request that the Commission not adopt Staff's recommendation and find that the Approved Project in the locations approved by the County is consistent with the LCP's viewshed policies since the Approved Project is not within the critical viewshed or visible from public viewpoints based upon uncontroverted viewshed analyses provided to the Commission.

The Fosters are seeking approval for an environmentally sensitive home for their family with coastal views. The Approved Project would be entirely powered by off-grid solar energy, and the Fosters' architect specializes in all green specifications, including Forest Stewardship Council certified lumber and low volatile organic compound paints, and would apply LEED principals to the project. The Approved Project includes a 3,975 square foot home with a detached garage, two detached art studios (approximately 1,200 square feet each) for Steven and Gillian, an 850 square foot caretaker unit, a 425 square foot guesthouse, and a detached barn. All development would be clustered almost entirely in the northern portion of the site on areas of

long-standing (pre-Coastal Act) grading and disturbance comprising only 0.27% (approximately ¼ of one acre) of the property. The structures would be located in the most environmentally sensitive location on the property—development would be sensitively sited outside of redwood stands, minimize tree removal, require minimal grading and landform alteration, and require the removal of only 1,171 square feet of manzanita chaparral (that does not qualify as CMC under any generally accepted definition).

The Staff Report fails to consider the abundant analysis provided by the Fosters' consulting botanist, Dr. Adrian Juncosa, in any part of its discussion regarding CMC and the LCP's ESHA policies, or the Fosters' proposed Resource Protection Plan that would protect and enhance the chaparral on-site and serve as the functional equivalent of, and therefore avoid, the need for a habitat buffer. The Staff Report also ignores evidence that the recommended Allowable Development Envelope requires relocation of much of the Approved Project from the most environmentally sensitive location for development to locations that require significant grading and other landform alternation, significant tree removal (including redwoods contrary to LCP ESHA policies), and placement of structures within the private viewshed, also in violation of the LCP.

The Fosters therefore disagree with the Staff Report recommendations for the following reasons:

1. **The Chaparral On-Site is Not ESHA Because it Does Not Qualify as CMC ESHA Under Any Generally Accepted Definition.** The Staff Report improperly recommends that the chaparral on the Fosters' site be designated central maritime chaparral and therefore ESHA. The published vegetation classification authorities all require Arctostaphylos tomentosa to be either a dominant or at least an important species in the vegetation in order for chaparral to be designated CMC. The Foster site does not contain any Arctostaphylos tomentosa. As a result, according to the current published authority, the chaparral is not maritime and not ESHA. The type of chaparral vegetation found on the site is clearly defined as a non-maritime type in the current State vegetation classification system. In fact, not one plant or species on-site is listed as rare by the relevant classification authority. Instead of analyzing the chaparral on-site according to published authority, however, the Staff improperly relies upon unpublished workshop materials, internet websites, and personal communications between Staff and biologists to unilaterally redefine what constitutes CMC to include the chaparral on the Fosters' site. The resulting definition is controverted by actual plant distribution records available through the University of California at Berkeley and, if applied, would make CMC so abundant in the Coast Ranges that it would no longer merit protection as ESHA. Such a result would preclude the Commission from protecting chaparral community types that are in fact rare under broadly accepted classification principles. In addition, the recharacterization of currently non-protected chaparral as ESHA would also make completion of the California Coastal Trail in the Big Sur area impossible, an unacceptable consequence that would drastically interfere with State-mandated obligations to provide a system of public accessways to, and along, the State's coastline.

2. **The Project is Consistent with the LCP's ESHA and Hazard Policies.** The LCP requires that development not significantly disrupt ESHA habitat values. The Approved

Project requires de minimis removal of chaparral and would involve limited fuel modification within chaparral, and would include a Resource Protection Plan that would both protect the existing chaparral on-site and restore additional chaparral to the site. The Approved Project, therefore, would not significantly impact habitat values and would be consistent with past permit approvals under the LCP, including one reviewed by Staff after this appeal, where substantial disturbance of CMC and fuel modification within ESHA was found to be consistent with the LCP's ESHA policies.

3. **The 100-Foot Setback is Unwarranted and Unprecedented Under the LCP.** The LCP does not require any buffer from CMC, and the Staff Report provides no scientific support for Staff's recommended buffer on the property. Numerous prior permits for residential development adjacent to CMC on other properties under the LCP required no ESHA buffer. To the contrary, evidence has been submitted demonstrating that the non-protected chaparral on-site is hardy and that, unlike some other plant communities, a physical buffer is not necessary to protect it. While the Fosters maintain that the chaparral on their property is not CMC, and therefore is not ESHA, they have proposed a Resource Protection Plan that would protect, restore, and enhance non-protected chaparral on the property.

4. **The Proposed Residence is Consistent with the LCP's Viewshed Policies.** Staff improperly recommends that all development be constrained to a portion of the site that will require more landform alteration, be visible to neighbors in violation of LCP viewshed policies, and not accommodate all proposed development, based on the hypothetical possibility that structures, which are not visible from public vantage points under existing conditions, might become visible at some point in the future. All of the County-approved development, however, is either presumptively outside of the "critical viewshed," as defined by the LCP, from public or private vantage points, or has been proven to be outside of the critical viewshed through viewshed studies that provide overwhelming evidence to support the finding that all proposed structures are not visible under existing conditions either during the day or night. The County imposed conditions requiring ongoing maintenance of viewshed protection and demolition of any structures that become visible are sufficient would ensure compliance with LCP viewshed policies.

5. **Adopting the Staff's Recommendations Would Result in a Multi-Million Dollar Taking.** The Fosters purchased the property in reliance on a County approved building envelope (and regulations that allow building site coverage of just under 7.8 acres) and an EIR, which was reviewed by Coastal Commission Staff and concluded there was no CMC on the property. The certified FEIR specifically recommends building on the previously disturbed chaparral locations of the Foster site where the original project was proposed, finding these locations to be the environmentally superior alternative. The Approved Project is the most environmentally sensitive alternative for development on the property, siting most of the development within areas of pre-Coastal Act disturbance and locating the main residence in the building envelope specifically analyzed by Monterey County and reviewed by Coastal Commission Staff in 1992. The Staff's recommended buffer and prohibition on fuel modifications within the chaparral, however, would relocate much of the development to previously undisturbed locations on the site, preclude development in any portion of the property with an ocean view, and significantly diminish the buildable area on the property to less than 1%

of the site, and remove the house from the building envelope established for the property in 1992. It was reasonable for the Fosters to expect when they acquired the property that they could build their proposed home and ancillary structures within the building envelope established for the property, for which they paid a premium. Staff's recommendations substantially and unreasonably impairs the value and use of the Fosters' property, interferes with their reasonable investment-backed expectations, and constitutes a multi-million dollar taking.

Based on the foregoing and our more detailed Response to the Staff Report and Requested Modifications to the Proposed Conditions, attached hereto, the Fosters respectfully request that the Commission approve the CDP at its meeting on November 16. Please feel free to contact me at (213) 485-1234 if you have any questions regarding this matter.

Sincerely,

Rick Zbur
of LATHAM & WATKINS LLP

Attachments:
Requested Modifications to the Proposed Conditions
Response to Staff Report

cc: Chair Kruer and Honorable Commissioners
Mr. Dan Carl
Ms. Katie Morange
Mr. Steven Foster
Mark Blum, Esq.

STEVEN AND GILLIAN FOSTER PROPERTY

California Coastal Commission

APPEAL NO. A-3-MCO-06-018

October 31, 2007

Briefing Materials

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CENTRAL COAST AREA

*STAFF NOTE: According to the Applicant, this was submitted to each Commissioner. Exhibits to this submittal are available for review in the Central Coast District office.

CCC Exhibit S.1
(page 1 **of** 29 **pages)**

THESE MATERIALS HAVE BEEN SUPPLIED TO THE CALIFORNIA COASTAL COMMISSION STAFF

EXECUTIVE SUMMARY

Steven and Gillian Foster (the "Fosters") are seeking a Coastal Development Permit ("CDP") to create a home for their family with coastal views on approximately ¼ of one acre of their 77.1-acre parcel in the County of Monterey.

On February 22, 2006, the County approved the Fosters' home (the "Approved Project"). Two Coastal Commissioners then appealed the County's approval, citing concerns relating to the project's consistency with the Monterey County (Big Sur area) Local Coastal Program ("LCP") policies regarding environmentally sensitive habitat ("ESHA"), fire hazards, and critical viewshed. The Coastal Commission Staff (the "Commission Staff" or the "Staff") then improperly recommended both that the chaparral on the property be designated as central maritime chaparral ("CMC") and therefore ESHA, and that an unprecedented 200-setback (100-foot habitat buffer and 100-foot fuel modification zone ("FMZ")) be imposed – neither of which, as summarized below, are supported by the LCP or scientific evidence. Although the Staff has not issue an addendum to its Staff Report, we understand from conversations with Staff that it now intends to reduce its recommended setback to 100 feet (inclusive of a 30-foot FMZ). This setback, however, also is neither supported by permit precedent under the LCP nor necessary to protect the chaparral on-site. Staff also improperly recommends relocation of residential structures, which would not be visible under existing conditions, based on an incorrect application of the LCP's viewshed policies. While the Fosters dispute the ESHA recommendation made by Staff, they have nonetheless submitted a revised project, relocating two structures and eliminating one structure entirely to avoid any removal of manzanita chaparral (the "Revised Project").

The Fosters disagree with the Staff Report recommendations for the following reasons:

1. **The Chaparral On-Site Does Not Constitute ESHA Because it Does Not Qualify as CMC ESHA Under Any Generally Accepted Definition.** The chaparral on the Fosters' property does not contain any *Arctostaphylos tomentosa*, which the two published definitions of CMC require to be either a dominant or at least an important species in the vegetation. In fact, the only manzanita species that is demonstrated to be present on-site is *Arctostaphylos glandulosa*, which is the most widely distributed manzanita species in the Coast Ranges and is not indicative of CMC under any generally accepted definitions.

2. **The Project is Consistent with the LCP's ESHA Policies and LCP Regulations.** The project, as revised, would not remove any manzanita chaparral[1] and would include a Resource Protection Plan that would both

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1 The Fosters strongly disagree that there is any basis in the record to designate the chaparral on the property as CMC, and therefore as ESHA, based on the arguments contained herein and in previous correspondence with the Coastal Commission and Staff, and do not waive their rights to challenge such a designation if adopted by the Commission.

THESE MATERIALS HAVE BEEN SUPPLIED TO THE CALIFORNIA COASTAL COMMISSION STAFF

protect the chaparral on-site and restore additional chaparral to the site. The Revised Project, therefore, would not significantly impact habitat values and would be consistent with past permit approvals under the LCP, including one reviewed by Staff after this appeal, where significantly greater disturbance of CMC was found to be consistent with the LCP's ESHA policies.

3. **The 100-Foot Setback is Unwarranted and Unprecedented Under the LCP.** The LCP does not specify any CMC buffer requirement, and the Staff Report provides no scientific support for a 100-foot setback on this property. Evidence has been submitted demonstrating that the chaparral on-site is hardy and that, unlike other plant communities, a physical buffer is not necessary to protect it. While the Fosters maintain that the chaparral on their property is not CMC, and therefore is not ESHA, the Fosters have proposed a Resource Protection Plan that would protect, restore, and enhance chaparral on the property. Prior permits for residential development near undisputed CMC on other properties under the LCP have imposed either no ESHA buffer or a buffer that is coterminous with a 30-foot FMZ.

4. **Accepting the Staff's Recommendations Would Result in a Multi-Million Dollar Taking.** The Staff's original recommendation for a 200-foot setback and the Staff's anticipated revised recommendation to impose a 100-foot setback, would both relocate the house to a site with no ocean views and significantly diminish what can be built on the lot. Imposition of the 200-foot setback would effectively preclude the Fosters from building anywhere on the property. Imposition of a 100-foot setback requires the relocation of the main residence outside the building envelope established by the 1992 LLA and to an area without a view, for which the Fosters paid a premium. In addition, the resulting decrease in the size of the building envelope will prevent the Fosters from building their entire project. Imposition of either setback substantially and unreasonably impairs the value and use of the Fosters' property, interferes with their reasonable investment-backed expectations, and constitutes a taking.

5. **The Proposed Residence is Consistent with the LCP's Viewshed Policies.** View studies have demonstrated that the proposed structures would not be visible under existing conditions either during the day or night. Nevertheless, the Staff Report recommends relocation of development to a portion of the site with no ocean view, where not all of the structures can be accommodated, and in view of the neighboring properties in violation of LCP policies. The County has already imposed conditions requiring ongoing maintenance of viewshed protection and demolition of any structures that become visible.

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STEVEN AND GILLIAN FOSTER PROPERTY

California Coastal Commission

APPEAL NO. A-3-MCO-06-018

November 6, 2007

Briefing Materials

* STAFF NOTE: According to the Applicant, this was submitted to each Commissioner. Exhibits to this submittal are available for review in the Central Coast District office.

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EXECUTIVE SUMMARY

Steven and Gillian Foster (the "Fosters") are seeking a Coastal Development Permit ("CDP") to create an environmentally sensitive, solar powered off-gird home for their family with coastal views on approximately ¼ of one acre of their 77.96-acre parcel in the County of Monterey. *See* Exhibit M (providing a thorough chronology for the project) The location of the proposed development is consistent with the building envelope that the County specifically analyzed for the site in connection with approval of a 1992 lot line adjustment (the "LLA").

On February 22, 2006, the County approved the Fosters' home (the "Approved Project"). *See* Exhibit C (Site Plan for the County-Approved Project). Two Coastal Commissioners then appealed the County's approval, citing concerns relating to the project's consistency with the Monterey County (Big Sur area) Local Coastal Program ("LCP") policies regarding environmentally sensitive habitat ("ESHA"), fire hazards, and critical viewshed. The Coastal Commission Staff (the "Commission Staff" or the "Staff") then improperly recommended both that the manzanita chaparral on the property be designated as central maritime chaparral ("CMC") and therefore ESHA, and that an unprecedented 100-foot buffer (inclusive of a 30-foot fuel modification zone ("FMZ"))[1] be imposed between the manzanita chaparral and the development, neither of which, as summarized below, are consistent with the LCP or scientific evidence. The recommended setback also is not consistent with permit precedent under the LCP nor is it necessary to protect the non-protected chaparral on-site. Staff also improperly recommends the relocation of residential structures, which would not be visible under existing conditions, based on an incorrect application of the LCP's viewshed policies. While the Fosters dispute Staff's recommendations, they have nonetheless submitted a revised project, relocating one structure and eliminating two structures entirely to avoid removing any manzanita chaparral, and address viewshed concerns, as depicted on Exhibit B (the "Revised Project"), and have proposed implementation of a Resource Protection Plan to protect, preserve, and enhance the non-protected chaparral on-site.

The Fosters disagree with the Staff Report recommendations for the following reasons:

1. **The Chaparral On-Site is Not ESHA Because it Does Not Qualify as CMC ESHA Under Any Generally Accepted Definition.** The Staff Report recommends the chaparral on the Fosters' site be designated ESHA based entirely upon the purported presence of CMC. The published vegetation classification authorities all require *Arctostaphylos tomentosa* to be either a dominant or at least an important species in the vegetation in order for chaparral to be designated CMC. The Foster site does not contain any *Arctostaphylos tomentosa*. As a result, according to the current published

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[1] Originally, Staff recommended a 200-foot setback consisting of both a 100-foot habitat buffer and a 100-foot FMZ. The very fact that Staff has modified their original recommendation of a 200-foot total setback distance to 100 feet, without any explanation or consideration of the scientific basis for a buffer requirement at all, underscores the lack of such scientific basis supporting its recommendations regarding the Foster project and the chaparral vegetation on the site.

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authority, the chaparral is not maritime and not ESHA. The type of chaparral vegetation found on the site is clearly defined as a non-maritime type in the current State vegetation classification system. In fact, not one plant or species on-site is listed as rare by the relevant classification authority. Instead of analyzing the chaparral on-site according to published authority, however, the Staff improperly relies upon unpublished workshop materials,[2] internet websites, and personal communications between Staff and biologists to unilaterally redefine what constitutes CMC to include the chaparral on the Fosters' site. The resulting definition is controverted by actual plant distribution records available through the University of California at Berkeley and, if applied, would make CMC so abundant in the Coast Ranges that it would no longer merit protection as ESHA. Such a result would preclude the Commission from protecting chaparral community types that are in fact rare under broadly accepted classification principles.

2. **The Project is Consistent with the LCP's ESHA Policies and LCP Regulations.** The LCP requires that development not significantly disrupt ESHA habitat values. The Revised Project would not remove any manzanita chaparral[3] would involve limited fuel modification (*see* attached Exhibit Q) within chaparral, and would include a Resource Protection Plan that would both protect the existing chaparral on-site and restore additional chaparral to the site. The Revised Project, therefore, would not significantly impact habitat values and would be consistent with past permit approvals under the LCP, including one reviewed by Staff after this appeal, where substantial disturbance of CMC and fuel modification within ESHA was found to be consistent with the LCP's ESHA policies.

3. **The 100-Foot Setback is Unwarranted and Unprecedented Under the LCP.** The LCP does not require any buffer from CMC, and the Staff Report provides no scientific support for Staff's recommended buffer on the property. Numerous prior permits for residential development adjacent to CMC on other properties under the LCP required no ESHA buffer. To the contrary, evidence has been submitted demonstrating that the non-protected chaparral on-site is hardy and that, unlike some other plant communities, a physical buffer is not necessary to protect it. While the Fosters maintain that the chaparral on their property is not CMC, and therefore is not ESHA, they have proposed a Resource Protection Plan that would protect, restore, and enhance non-protected chaparral on the property.

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2 In addition to being non-peer-reviewed, unpublished sources of authority, the Staff Report gives the misleading impression that scientific consensus exists to support its definition of CMC, which (as demonstrated by conflicting quotes provided to the Fosters by some of the same experts cited in the Staff Report) is clearly not the case.

3 The Fosters strongly disagree that there is any basis in the record to designate the chaparral on the property as CMC, and therefore ESHA, based on the arguments contained herein and in previous correspondence with the Coastal Commission and Staff, and do not waive their rights to challenge such a designation if adopted by the Commission.

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Policies. All of the County-approved development is outside of the "critical viewshed," as defined by the LCP, from public or private vantage points. View studies have provided overwhelming evidence to support the finding that all proposed structures are not visible under existing conditions either during the day or night. Nevertheless, Staff recommends that all development on the Foster site be constrained to a portion of the site that will require more landform alteration, be visible to neighbors in violation of LCP viewshed policies, and not accommodate all proposed development. While the Fosters dispute the Staff's conclusion, the Revised Project would eliminate two structures that Staff was concerned about and relocate one additional structure. For that remaining structure, the County imposed conditions requiring ongoing maintenance of viewshed protection and demolition of any structures that become visible are sufficient would ensure compliance with LCP viewshed policies.

5. **Adopting the Staff's Recommendations Would Result in a Multi-Million Dollar Taking.** The Fosters purchased the property in reliance on a County approved building envelope (and regulations that allow building site coverage of 7.79 acres) and an EIR, which was reviewed by Coastal Commission Staff and concluded there was no CMC on the property. The certified FEIR specifically recommends building on the previously disturbed chaparral locations of the Foster site where the original project was proposed, finding these locations to be the environmentally superior alternative. Nevertheless, the Fosters have proposed the Revised Project to address issues raised in the appeal and by Staff. The Revised Project is the most environmentally sensitive alternative for development on the property, siting most of the development within areas of pre-Coastal Act disturbance and locating the main residence in the building envelope specifically analyzed by Monterey County and reviewed by Coastal Commission Staff in 1992. The Staff's recommended buffer and prohibition on fuel modifications within the chaparral, however, would relocate much of the development to previously undisturbed locations on the site, preclude development in any portion of the property with an ocean view, and significantly diminish the buildable area on the property to less than 1% of the site, and remove the house from the building envelope established for the property in 1992. It was reasonable for the Fosters to expect when they acquired the property that they could build their proposed home and ancillary structures within the building envelope established for the property, for which they paid a premium. Staff's recommendations substantially and unreasonably impairs the value and use of the Fosters' property, interferes with their reasonable investment-backed expectations, and constitutes a multi-million dollar taking.

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PROJECT DESCRIPTION

The Fosters' 77.96-acre parcel is located in an existing subdivision known as Rocky Creek Ranch approximately 12 miles south of Carmel and 2 ½ miles inland and eastward of Highway One in Monterey County. *See* Exhibit A (project location maps). The property is in the Palo Colorado Area, which the Big Sur Land Use Plan designates as appropriate for residential development. The zoning for the property is Watershed Scenic Conservation with a 40-acre minimum lot size with a Design Control Overlay, Coastal Zone ("WSC"/40-D(CZ)). While the WSC zone permits a maximum building site coverage of 10%, the residential structures and uses on the Fosters' lot would be clustered in areas of long-standing (pre-Coastal Act) grading and disturbance comprising only approximately ¼ of 1 acre (or approximately 0.27%). *See* Exhibits F, G (identifying the areas of long-standing (pre-Coastal Act) grading in the context of the Revised Project).

The residential development would be clustered almost entirely in the northern portion of the site, with access from Highway 1, following portions of an existing access road. The majority of the lot is subject to a permanent conservation easement, which prohibits structures within the critical viewshed and was recorded in 1993 as a condition of approval by the Monterey County Planning Commission for the Rocky Creek Ranch subdivision (the "1992 LLA" or "Rocky Creek Ranch lot line adjustment").

The Approved Project includes a 3,975 square foot single-family home and accessory structures including a 3,200 square foot barn with solar panels; 225 square foot shed; 800 square foot garage; 1,200 square foot studio ("Steven's Studio"); 1,150 square foot studio ("Gillian's Studio"); septic system; pool and well; 425 square foot guesthouse; 850 square foot caretaker's unit; retaining walls; underground utilities; underground water tank; tree removal (14 coast live oaks, 4 canyon oak, 1 redwood); and associated grading (1,850 cubic yards of cut and 625 cubic yards of fill). *See* Exhibit C (the Approved Project).

In response to issues raised in the appeal and by Staff, the Fosters are now proposing a Revised Project that eliminates Steven's Studio and the shed, and relocates the garage, so that no non-protected chaparral is removed. *See* Exhibit B (the Revised Project Site Plan).

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THE REVISED PROJECT IS THE MOST ENVIRONMENTALLY SENSITIVE ALTERNATIVE

The Fosters have designed the Revised Project to be the most environmentally sensitive alternative for development on their property:

- Solar Powered. The Revised Project would be entirely powered by off-grid solar energy housed in the proposed barn.

- Green Specifications. The Fosters' architect specializes in all green specifications, including Forest Stewardship Council certified lumber and low volatile organic compound paints, and would apply LEED principals to the project.

- Minimal Tree and Vegetation Removal. The Revised Project requires minimal tree removal and no manzanita chaparral removal.

- Sensitively Sited. The proposed structures are clustered on areas of long-standing (pre-Coastal Act) existing disturbance, which include graded roads, trails, paths, parking areas, and pads. *See* Exhibits F, G (identifying the areas of long-standing (pre-Coastal Act) grading in the context of the Revised Project).

- Resource Protection Plan. The Fosters have proposed a Resource Protection Plan, prepared by Dr. Juncosa, recommending additional protection measures for the vegetation on-site. *See* Exhibit K (the Resource Protection Plan).

- Minimal Grading. The development is sited in areas that require minimal land form alteration and would require little grading.

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THE STAFF REPORT CONTAINS NUMEROUS DEFICIENCIES AND OMISSIONS

The Staff Report contains numerous deficiencies and omissions and provides inadequate support for its findings:

- The Staff fail to consider the Fosters' project revisions that eliminate all removal of chaparral. *See* Exhibit B (the Revised Project Site Plan).

- The Staff did not evaluate the Fosters' proposed Resource Protection Plan (the "Plan") as an alternative to its unprecedented 100-foot buffer recommendation. The Plan proposes comprehensive measures to ensure the protection of the non-protected chaparral during construction and occupation, and would serve as the functional equivalent of and therefore avoid the need for a habitat buffer if any such buffer were specified by the LCP or otherwise required. *See* Exhibit K (the Resource Protection Plan).

- The Allowable Development Envelope recommended by Staff fails to account for numerous development constraints that would be applied to the site, including required building setbacks, a road easement, redwood trees, 30% slopes, and LCP private viewshed restrictions. As shown on Exhibit D (the Revised Project Site Plan With Constraints), after accounting for these constraints the Allowable Development Envelope consists of approximately 0.4 acres.

- The Allowable Building Envelope also requires relocation of much of the Revised Project from the most environmentally sensitive alternative for development to locations that require significant grading and other landform alternation, significant tree removal (including redwoods contrary to LCP ESHA policies), and placement of structures within the private viewshed.

- The Staff Report does not apply the current published definition of CMC in characterizing the chaparral on the Fosters' lot. Instead, it relies upon unpublished workshop materials, internet websites, and personal communications between Staff and biologists to unilaterally redefine what constitutes CMC to include the chaparral on the Fosters' site.

- The Staff Report provides no evidence to support its claims that CMC, as broadly re-defined by Staff, is either "rare or particularly valuable because of [its] special nature or role in an ecosystem."

- The Staff Report disregards the recommendation of the local fire authority that permitted the 30-foot FMZ within the chaparral. The Staff also ignore evidence that fuel modification in chaparral supports its long-term maintenance.

- The Staff Report ignores the evidence provided by the Fosters that the County's stringent conditions of approval ensure compliance with the LCP's viewshed policies.

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THE CHAPARRAL ON-SITE IS NOT CENTRAL MARITIME CHAPARRAL AND THEREFORE, IS NOT ESHA

The Chaparral On-Site Does Not Qualify as CMC ESHA Under Any Generally Accepted Definition of CMC.

Chaparral is considered and defined as CMC if it is dominated by woolly-leaved manzanita (*Arctostaphylos tomentosa*) and contains one or more other rare manzanitas, according to current published, scientifically accepted definitions of CMC. The *Manual of California Vegetation* requires dominance by *Arctostaphylos tomentosa*. No *Arctostaphylos tomentosa* has been accurately identified on the Fosters' parcel. According to historically accepted classification systems, this species would not only need to be present, but would need to be dominant in order to make the finding that the vegetation is CMC.

The only manzanita species present on the Fosters' parcel is *Arctostaphylos glandulosa*. No published vegetation descriptions describe chaparral that is dominated by *Arctostaphylos glandulosa*, or *Arctostaphylos glandulosa* and chamise (types which occur on the Foster parcel), as maritime. The manzanita chaparral on-site is non-protected chaparral.

There are no CMC Indicator Species in the Non-Protected Chaparral On-Site.

The Staff Report cites a long list of species that *are* found on the Fosters' site and states that these species are commonly associated with CMC. However, the Staff Report does not (and cannot) cite to any published authority or evidence of scientific consensus to support its misinterpretation that these species are *indicative* of CMC. As botanist Adrian Juncosa demonstrates with plant distribution data supported by scientific citations, "these species are primarily associated with plant communities other than [CMC]." The Staff Report therefore sets forth an expanded definition of CMC that is inconsistent with the standard, peer-reviewed published reference materials recognized by state and federal resource agencies.

The Physical Conditions On-Site Are Not Indicative of CMC.

The Staff's ESHA determination for the Foster site is also based on an assertion that the physical conditions of the Foster site, i.e., soils and climate, are indicative of CMC. However, low-nutrient soils similar to those on the Foster property occur very widely throughout the western United States, in extensive exposures all the way to the Rocky Mountains. Staff also misrepresents satellite reflectance data as demonstrating frequent occurrence of fog at the site, thus arriving at a conclusion that is the opposite of actual observation in the vicinity of the site. Moreover, if one accepts the criteria that are posited by the Staff as indicative of CMC, e.g., all sites with low-nutrient soils within the zone of any occasional summer fog incursion, the conclusion that nearly all chaparral within the Coastal Zone is CMC is inevitable.

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The Staff Report's Definition of CMC is Broader than any Definition Previously Applied Under the LCP.

Recent County approvals involving ESHA designations for manzanita chaparral rely on the presence of *Arctostaphylos tomentosa* in characterizing vegetation as CMC. The implied, expanded definition advanced in the Staff Report – defining maritime chaparral that is dominated by *Arctostaphylos glandulosa*, or *Arctostaphylos glandulosa* and chamise (types which occur on the Foster parcel), as CMC – has not been previously applied in prior County permit approvals that were appealed by the Commission.

The Expanded Staff Definition of CMC is so Broad That CMC No Longer Qualifies as ESHA Under the LCP.

The non-protected chaparral on the Fosters' site is dominated by *Arctostaphylos glandulosa,* which is the most widely distributed species of manzanita in the California Coast Ranges. Application of Staff's expanded definition would encompass up to ***1.3 million acres*** of currently non-protected chaparral to be designated as CMC within the Coast Ranges.[4] Staff's recommendation renders CMC so abundant that it could not be rationally reconciled with the Staff's classification of CMC as a rare or unique habitat, which is required for it to merit designation as an ESHA. CMC in the Coast Ranges would no longer merit ESHA protection, and the Commission would be precluded from protecting rare, sensitive, CMC, i.e., CMC dominated by *Arctostaphylos tomentosa.*

The Definition of CMC Would Amount to a De Facto Amendment to the LCP.

The Staff Report's analysis in support of the expanded definition of CMC does not include the data and analysis that typically would be prepared and thoroughly reviewed and commented on over multiple public hearings as part of an LCP amendment process. At the time of adoption of the LCP, the accepted definition of CMC was unequivocally restricted to vegetation in which *Arctostaphylos tomentosa* is dominant or important. Changing this definition to the extent that is proposed should only occur within the context of amendment of the LCP, not on a project-specific basis. Moreover, impacts of the expanded definition are broader than Monterey County; the new definition of CMC – applied to the Foster project – essentially changes the definition of CMC for the entire California Coastal Zone.

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4 The actual acreage would depend on the resolution of the various ambiguities in the Staff's definition.

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NO SETBACK IS NECESSARY TO PROTECT THE MANZANITA CHAPARRAL

Staff's recommended 100-foot buffer between any development and the manzanita chaparral on-site is unfounded and unwarranted for the following reasons:

- The on-site chaparral is not CMC and is not ESHA.
- The LCP policies do not require terrestrial habitat buffers; as acknowledged by Staff, "the Big Sur Area LCP does not contain specific buffer/setback distances" for habitat. *See* Staff Report at 35.
- The County does not impose habitat buffers for residential development adjacent to chaparral.
- The chaparral on the Fosters' property is not habitat for any protected species.
- The Coastal Commission has not imposed a habitat buffer in any of the past permit precedents cited by the Applicant in which Monterey County has approved development in or adjacent to chaparral. *See* Exhibit L (summarizing permit precedent permitting development in, adjacent to, and within 100-feet of ESHA without a required habitat buffer).
- The Resource Protection Plan provides strong protection for the chaparral on the property. *See* Exhibit K.
- Fuel modification is not harmful to chaparral, and has consistently been allowed in past permits approved under the LCP.

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THE PROPOSED RESOURCE PROTECTION PLAN WOULD PROTECT THE CHAPARRAL ON THE PROPERTY

The Resource Protection Plan proposes numerous comprehensive measures to ensure the protection of the non-protected chaparral and would serve as the functional equivalent of, and therefore avoid the need for, a physical habitat buffer, including:

- Native Planting. No plantings shall be allowed within a 100-feet of on-site chaparral other than species native to California that are ecologically appropriate to the physical conditions of the site.

- Chemicals. No insecticides, herbicides, fungicides, and fertilizers shall be applied to the exterior areas within 100-feet of on-site chaparral.

- Irrigation. No permanent irrigation system shall be installed within 100-feet of on-site chaparral.

- Invasive Plants. Removal of invasive plants shall be required.

- Construction Barriers. A sediment barrier shall be installed just outside chaparral and maintained in place throughout exterior construction to minimize adverse impacts caused by precipitation during construction.

- Construction Fences. Orange plastic exclusion fencing shall be installed just outside chaparral and maintained in place throughout exterior construction.

- Stormwater. Water shall be collected by roof gutters conducted away from chaparral habitat and the steeper slopes, to the extent feasible, where it may be collected in a rainwater basin for use and/or discharged onto stable surfaces for infiltration into the groundwater.

- Cats. No domestic cats shall be kept on-site to eliminate potentially significant adverse ecological effects.

- Lighting. No exterior lighting shall be installed on sides of buildings that face directly toward the chaparral except that minimum required by building code.

- Restoration. Voluntary restoration of chaparral on certain existing roads without easement rights.

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THE REVISED PROJECT IS CONSISTENT WITH LCP VIEWSHED POLICIES

- The Structures Are Outside the Critical Viewshed. The EIR for the 1992 LLA confirmed that the building envelope for the main residence is outside critical viewshed. Two exhaustive site-specific viewshed studies (including an unprecedented nighttime study) also each confirm that the residential development will not have any impact on the viewshed. Consistent with all applicable policies and regulations, the structures are out of view from Highway One, are not on open hillsides or silhouetted on ridges, are located where existing topography or trees provide natural screening, and do not visually impinge on adjacent neighbors' views.

- Staff's Recommendation Is Based On Speculative Concerns Over Future Viewshed Issues. The Staff Report's viewshed recommendations are based solely on the speculation that portions of the project "may be" visible in the future, and that certain buildings have the "potential" to intrude into the critical viewshed at some indeterminate future time. Such analysis is inconsistent with the standard for review under Section 3.2.3. of the LCP, which requires "an objective determination" that the proposed development *is* visible based on existing conditions.

- The Staff's Concerns About Future Viewshed Impacts are Unnecessary Given Existing Constraints. The site is subject to a scenic easement, which requires that no structures will be placed or erected in the area burdened by the easement, except structures that can be proven to be out of the critical viewshed and do not require significant vegetation removal that would increase exposure to the critical viewshed.

- The Staff Report's Recommendation is Inconsistent with the LCP. None of the buildings proposed to be erected on the Fosters' lot are in the critical viewshed. The Revised Project is wholly consistent with the LCP, because all development would be outside of view from Highway One, avoid hillsides and ridges, and would be located where existing topography or trees provide natural screening.

- The Staff's Recommendation Violates LCP Privacy Policies. Section 3.2.4.A.2 of the LCP requires that, when selecting a building site, the privacy of neighbors must be taken into consideration. The Staff Report's recommendation that the structures be sited along an emergency access road that is accessible by all the residents of Rocky Creek Ranch, directly contradicts this policy.

- Staff's Recommendation Violates an Existing Covenant Between the Fosters and The Owners of a Neighboring Lot. The Staff's recommendation would also place residential structures on the Fosters' lot within the immediate view of neighboring lots. Such a result would violate a private covenant between the Fosters and their neighbors.

- County Imposed Conditions Provide Additional Protection. The County imposed conditions requiring ongoing maintenance of viewshed protection and demolition of any structures that become visible are sufficient would ensure compliance with LCP viewshed policies.

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STAFF'S RECOMMENDATIONS WOULD RESULT IN A MULTI-MILLION DOLLAR TAKING

The Staff's recommendations result in a multi-million dollar taking by precluding all reasonable development of the site:

- As part of the 1992 LLA, the County conducted a site-specific analysis for the proposed building envelope on the Fosters' property, which included a design for the main residence.
- The LLA-approved building envelope provides for an ocean view.
- The EIR for the LLA concluded that there was no central maritime chaparral or other ESHA on the property.
- Coastal Commission Staff reviewed and commented upon the EIR, including the conclusions regarding the Fosters' building envelope, without objection, and no appeal was filed.
- The Approved Project's and the Revised Project's building envelopes are consistent with the LLA.
- It was reasonable for the Fosters to expect when they acquired the property that they could build their main residence within the building envelope established and marketed for the property.
- Staff's recommendations and the site constraints limit development to 0.4 acres of the 77.96 acre lot, eliminating all reasonable use of the property and interfering with the Fosters' reasonable investment-backed expectations.

To explain more fully, a taking results when property regulation "goes too far."[5] Even if a regulation causes a less-than-total deprivation of economically beneficial use of property, a taking will result to the extent the regulation interferes with the distinct and reasonable investment-backed expectations of the property owner.[6]

The 100-foot setback from the edge of the chaparral would result in a taking by unreasonably impairing the Fosters' value and use of the property.[7] The imposition of the 100-foot setback would require the relocation of the main residence outside the building envelope established by the 1992 LLA. The limited area where development would be permitted is in the only location on the Fosters' property without a view of the Pacific Ocean. The limited building envelope, substantially

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5 *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); *see also Lingle v. Chevron USA*, 544 U.S. 528, 536 (2005).

6 *See Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978); *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001).

7 *See Lingle v. Chevron USA*, 544 U.S. 528, 539 (2005); *Pruneyard Shopping Center v. Robbins*, 447 U.S. 74, 83 (1980).

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In addition, the development would be situated within view of a portion of Rocky Creek Road that is used as access by neighboring Lots 1, 2, 8, 9, and 10, and along an emergency access road accessible to all of the Rocky Creek Ranch lots. Some structures would also be located within view of the building sites on Lots 1 and 8, further decreasing the Fosters' privacy and in violation of the view protection provisions of the Big Sur LUP.

It was reasonable for the Fosters to expect when they acquired the property that they could build their home and all accessory structures within the building envelope established by the 1992 LLA. The EIR certified by the County in connection with the Rocky Creek Ranch lot line adjustment certified, among other things, that the chaparral on the Fosters' lot was neither CMC nor any other form of ESHA. The Staff reviewed and commented on that EIR, including the building envelope for the Fosters' property, without objection, and no appeal was filed. The LCP also allowed a maximum building site coverage of 10%, which would allow a building envelope of up to 7.79 acres. It was unforeseeable at the time of acquisition that the Commission might unilaterally re-define what constitutes CMC and then impose an unprecedented 100-foot habitat buffer not supported by any policy or regulation in the LCP. The Fosters paid a premium for the lot based on the ocean view. The recommended setback substantially and unreasonably impairs the value and use of the Fosters' property, interferes with their reasonable investment-backed expectations, and constitutes a taking.

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EXHIBIT LIST

A. Project Location Maps

B. Revised Project Site Plan

C. County Approved Project Site Plan

D. Revised Project Site Plan With Constraints

E. Revised Project Site Plan with Constraints on Full Size Parcel Map

F. Revised Project Site Plan Showing Pre-Coastal Act Disturbed Areas

G. Revised Project Site Plan Showing Pre-Coastal Act Disturbed Areas on Full Size Parcel Map

H. Photographs Showing Proposed Development Sites/Disturbed Areas

I. 1992 Building Envelope with Constraints

J. Photographs Showing Ocean View from 1992 LLA Building Envelope, the Revised Project, and the Allowable Building Area

K. Resource Protection Plan

L. Permit Precedent Summary

M. Chronology

N. Additional Issue Analysis: The Revised Project is Consistent with the LCP's ESHA Policies

O. Scenic Easement; Viewshed Analysis

P. Drawings of Main House

Q. Revised Site Plan Showing 30' FMZ

633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Tel: +213.485.1234 Fax: +213.891.8763
www.lw.com

LATHAM&WATKINS LLP

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November 14, 2007

VIA MESSENGER

Chairman Kruer and Honorable Commissioners
California Coastal Commission
North Central Coast District
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Appeal No. A-3-MCO-06-018 (Steven and Gillian Foster Property, Lot 7, Rocky Creek Ranch, Big Sur, Monterey County)

Dear Chairman Kruer and Honorable Commissioners:

We are writing on behalf of our clients, Mr. and Mrs. Steven Foster (the "Fosters") to supplement our Response to Staff Report dated November 9, 2007, with the following documents:

1. Letter from Lawrence Lyonhardt of Sotheby's International Reality dated November 10, 2007, which supports the Fosters' assertion that adoption of the Staff's recommendations would result in a multi-million dollar taking. As set forth in Mr. Lyonhardt's letter, the market value of the property, if improved subject to the Staff's recommendations, would be significantly degraded to between $2,000,000 and $2,500,000, less than the Fosters' purchase price for the property.[1]

2. Letter from Ben J. Heinrich of Coldwell Banker Residential Brokerage dated November 14, 2007, which supports the Fosters' assertion that adoption of the Staff's recommendations would result in a taking. As set forth in Mr. Heinrich's letter, the market value of the property, if improved subject to the Staff's recommendations, would be significantly degraded.

3. Letter from Dr. Adrian Juncosa of EcoSynthesis dated November 14, 2007, responding to V. Thomas Parker's letter dated October 30, 2007, and Eric Van Dyke's letter dated November 1, 2007. This letter supports the Fosters'

[1] As explained in the Fosters' Response to Staff Report dated September 6, 2007, the Fosters purchased the property for approximately $2,500,000 in 2003. Since 2003, the Fosters have incurred in excess of $1,500,000 in carrying costs, infrastructure costs to maintain existing roads, and other costs as part of the entitlement process.

These materials have been provided to the Coastal Commission Staff

*STAFF NOTE: According to the Applicant, this was submitted to each Commissioner. Exhibits to this submittal are available for review in the Central Coast District office.

assertion that the chaparral on their property is not ESHA because it is not central maritime chaparral.

4. Memorandum from Tony Bomkamp of Glenn Lukos Associates dated November 11, 2007, responding to V. Thomas Parker's letter dated October 30, 2007, in support of the Fosters' assertion that the chaparral on their property is not ESHA because it is not central maritime chaparral.

5. Supplemental List of File Documents referenced in Section V of the Response to Staff Report dated November 9, 2007, which the Fosters request be incorporated into the Administrative Record.

We look forward to presenting the Fosters' application to the Coastal Commission at its November 16 meeting. Please feel free to contact me at (213) 485-1234 with any questions.

Sincerely,

Rick Zbur /dg

Rick Zbur
of LATHAM & WATKINS LLP

Attachments:

Exhibit 1	Letter from Lawrence Lyonhardt dated November 10, 2007
Exhibit 2	Letter from Ben J. Heinrich dated November 14, 2007
Exhibit 3	Letter from Dr. Adrian Juncosa dated November 14, 2007
Exhibit 4	Memorandum from Tony Bomkamp dated November 11, 2007
Exhibit 5	Supplemental List of File Documents

cc: Mr. Dan Carl
Ms. Katie Morange
Mr. Steven Foster
Mark Blum, Esq.

Eco Synthesis
SCIENTIFIC & REGULATORY SERVICES, INC.

November 15, 2007

Dan Carl and Katie Morange
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Subject: Steven and Gillian Foster Residence: Parker Memorandum

Dear Mr. Carl and Ms. Morange,

This letter provides some clarification and additional comment pertaining to an undated memorandum from Dr. Thomas Parker, received today.

The additional information provided by Dr. Parker for the Rancho San Carlos location in Carmel Valley is useful; my comment on it would have been different had this been stated before. It would be even more illuminating for future consideration to have additional detail about the vegetation composition of the stands provided to the authors of the upcoming second edition of the *Manual of California Vegetation* for their use in reviewing or revising the categorization and definition of maritime chaparral communities.

In a succession of e-mails from early July through September 2007, I have requested suggestions from Mike Vasey, Julie Evens, Todd Keeler-Wolf, and John Sawyer regarding, among other things, occurrences of field sites where chaparral co-dominated by *A. glandulosa* occurs at low elevation in close proximity to the ocean. The only useful direction I received in this regard was from Mr. Vasey, who mentioned occurrence of vegetation with co-dominance of *A. glandulosa* on Point Reyes. None of these individuals, nor other sources of information which I was able to obtain otherwise, directed me to sites in the central coast area; regrettably, Dr. Parker was not among those I consulted for suggestions. More information on the details of the vegetation composition of the *A. glandulosa* ridge in Rancho San Carlos would be useful to the authors of the *Manual* in finalizing their definition of chaparral types.

With respect to elevational data for *Ceanothus cuneatus* var. *rigidus*, the record for an elevation of 1,800 feet is not merely based on Consortium data, but is from a specimen label at the herbarium of University of California at Davis (as noted in my letter of July 27, 2007). Dr. Parker's comments about the specimens to which he refers may be correct; not being at the herbaria in question at this time, I can neither concur nor dispute his other comments. However, I do know from my own collecting and floristics experience over many years, that determining ecological affinities from the preponderance of specimens in numbers is not always accurate. It is often the case that numerous herbarium sheets of a particular taxon are repeatedly obtained from the same or nearby easily accessible sites, skewing the apparent ecological disposition of the plant.

Nevertheless, I agree with Dr. Parker that a comprehensive review of all available herbarium specimens, whether represented in Consortium data base or not, would have been desirable, and that many specimens of *C. cuneatus* have been annotated from one variety to another. My cursory review of some specimens seemed to me to indicate that annotations are sometimes not consistent in terms of the appearance of the plants, and many are not in keeping with the present taxonomy of the species as published in the current Jepson Manual (Hickman, 1993). Perhaps incorrectly, I did not regard that the present project required a re-examination of all of the specimens of *C. cuneatus* or of the taxonomy of the species, and did not attempt to do this. This would be a relatively high level of effort to be expected for what should be a relatively straightforward environmental review of a single family residence where there is no alleged direct impact or indirect impact on any plant of *Ceanothus cuneatus*.

My comments about the significance of dominance in making the determination of maritime vs. non-maritime chaparral were not intended to address any scientific discussion of indicator species, and certainly are not intended to disagree with Dr. Parker's publications on the topic. Instead, they are based upon, and referenced to, the citations provided. These include the original article of Griffin, the *Manual*, and the assessment of Van Dyke and Holl (2003), who determined that areas with sites with "scattered *Ceanothus cuneatus* var. *rigidus*" are not true maritime chaparral. Most particularly, the *Manual* and the CNDDB communities list, upon which California agencies rely for the purposes of vegetation classification and regulation, are based upon dominant and important canopy constituents, so this is the approach that should be followed in regulatory decisions, unless and until a future edition of the Manual defines some community types on the basis of trace vegetation elements, as suggested by Dr. Parker's comments and publications.

Regarding the conservation status of *C. cuneatus* var. *rigidus*, I defer (as do regulatory agencies generally) to the judgments of the California Native Plant Society, which are based upon the consensus of their in-house and commenting botanists; they do not find the taxon to be rare. Should CNPS change that determination in a future revision of the Inventory, then I would agree that the regulatory approach to the plant should also change. Whether one considers a geographic range from Monterey to Santa Barbara County to be wide-ranging or not is a subjective judgment of degree that does not alter whether it is appropriate to rely upon the CNPS judgment that the taxon is not rare.

Most importantly, the Foster project will not have any identified adverse impact on individuals or long-term sustainability of *C. c.* var. *rigidus* on the site. So far as I am aware, neither Staff, nor Dr. Parker, nor other commenters has ever provided any concrete reason to find otherwise. On the contrary, proposed fuel management within chaparral can provide benefits for the species. Specifically, and based upon the existing scientific literature, thinning of the canopy of common species will open up gaps that constitute potential sites for new recruitment of individuals. This is potentially important to the long-term sustainability of *C. c.* var. *rigidus* on the site, because close examination shows that a few dead individuals are discernible within the dense chaparral canopy (not within approved building sites or fuel modification zones) along with the small number of live ones. Available literature tends to indicate that germination of ceanothus plants generally is low in the absence of fire. However, it is not zero; therefore, providing new potential recruitment sites is more of a benefit, rather than a harm, to the taxon. This general principle is supported by

the statements of Van Dyke et al. (2001; quoted in my letter of June 18, 2007) and on the website of the Chaparral Institute (http://www. californiachaparral.com/).

Flushes of germination of many (most or all?) ceanothus species occur after fires. The project will not impede this natural process, and will not place building footprints on any of the areas that, on the basis of present distribution of live and dead *C. cuneatus* var. *rigidus* plants, appear to be most suitable for colonization by the taxon after a fire. Thus, regardless of the geographic range or conservation status of var. rigidus, neither it nor the plant community in which it grows will be significantly adversely affected by the approved Foster project. Notably, not one of the scientists consulted by Staff has offered any recommendation for a buffer zone nor any statement that supports Staff's arguments in support of one, nor any explanation of how the minimal portion of the fuel modification zone that would extend into the outer fringe of the chaparral would substantially disrupt the plant community over which there is a difference of labeling opinion. With respect to the actual regulatory decision at issue, the opinions of Dr. Parker and other scientists do not provide justification not to allow the Foster project to be implemented as approved by the County.

While we are collectively taking the time to expand on the written record regarding details of plant distribution and ecology, it is certainly also appropriate to provide some additional information pertaining to the occurrence of two species that are suggested as possible maritime indicators. Dr. Parker states in his letter dated 30 October 2007, referring to *Chrysolepis chrysophylla* var. *minor* and *Vaccinium ovatum*, that "Outside of maritime conditions, these taxa appear to be restricted to shadier forested sites." I believe that this statement is not accurate for either species, and provide here specific documentation, from factual publicly available records, that it is definitely not true for the latter. The Consortium of California Herbaria data base includes eleven records of collections of Vaccinium ovatum from San Diego County for which geographic coordinates (latitude and longitude) are provided. From this information, the locations of the collection sites can be found and aerial photograph images of the vegetation can be viewed and printed on Google Earth. There are seven different sites ranging in elevation from approximately 1,980 to 3,280 feet in the mountains east of San Diego. Admittedly, I have not examined these specimens directly, but the identifications to *V. ovatum* are corroborated at least indirectly by Munz (1974), which further states that the species occurs up to 3,500 feet on El Cajon Mtn. (my recollection; library not with me at this moment). This independent source of confirmation justifies a relatively high degree of confidence in the geographic localization of at least some (if not all) of the sites as well.

A table of the occurrences for which geographic coordinates are available in the San Diego Co. area, and prints of Google Earth imagery, accompany this letter. The table summarizes the appearance of the vegetation as judged from the Google Earth imagery; all but two of the sites are in open, usually rocky, chaparral vegetation. Interpretation of vegetation physiognomy from Google Earth imagery in exactly this fashion is widely used in contemporary vegetation mapping and in fact was a methodology recommended and illustrated by Todd Keeler-Wolf at the June 12, 2007, chaparral workshop.

This analysis, not relying solely upon Consortium data but corroborated by other sources, shows that *V. ovatum* is not "restricted to shadier forest locations" outside the maritime zone. Thus, this species should not be considered to be reliably indicative of maritime conditions, even when it is found in shrubland.

Sincerely,

Adrian Juncosa, Ph.D.
Senior Ecologist

References Cited

Munz, P. A. 1974. *A Flora of Southern California.* University of California Press, Berkeley, California.

Van Dyke, E., and K. Holl. 2003. Mapping the Distribution of Maritime Chaparral Species in the Monterey Bay Area. Report prepared for the U. S. Fish and Wildlife Service, Ventura Office, and available on line at http://www.elkhornsloughctp.org/reference/.

Van Dyke, E., K .D. Holl, and J. R. Griffin. 2001. Maritime chaparral community transition in the absence of fire. *Madroño* 48:221-229.

Accession ID	Determination	Collector	Collection Date	Collection Number	County	Locality	Coordinates	Elevation in meters	Comments
SD113722	Vaccinium ovatum	Darley F. Howe	Mar 14, 1954	2344	San Diego	Peak just south of Wohlford Dam.	33.160N, 117.004W	613 (GE)	rocky chapparal
SD118363	Vaccinium ovatum	Duffie Clemons	Feb 23, 1985	908	San Diego	At base of granite boulder near summit of Bottle Peak. Valley Center Quad	33.159N, 117.006W (240 yds WSW of SD113722)	643	rocky chapparal
SD134288	Vaccinium ovatum	R. Mitchel Beauchamp	Mar 06, 1971	1719	San Diego	SE of Barona Valley, shady area on N side of peak	32.920N, 116.83W	750	possibly forest
SD43978	Vaccinium ovatum	E. Norland	Apr 30, 1950	None	San Diego	Bottle Peak, near Escondido.	33.160N, 117.004W (same as SD113722)	613 (GE)	rocky chapparal
SD54842	Vaccinium ovatum	Frank F. Gander	Oct 22, 1963	None	San Diego	On Lizard Rock Trail from Big Boulder Ranch, north slope of El Cajon Mountain.	32.916N, 116.933W	1000	open chapparal
SD58953	Vaccinium ovatum	E. Norland	May 24, 1964	None	San Diego	North end of El Cajon Mountain, northeast of Barona Mission.	32.925N, 116.833W	750	rocky chapparal
UC1298081	Vaccinium ovatum	E. Norland	May 24 1964		San Diego	ne of; n end of El Cajon Mt. | Barona Mission | El Cajon Mt. |	32.917N, 116.833W	750	rocky chapparal
UC1593843	Vaccinium ovatum	R. Mitchel Beauchamp	Mar 6 1971	1719	San Diego	SE of Barona Valley	32.916N, 116.833W	750	rocky chapparal
UCR44760	Vaccinium ovatum	Elisabeth Norland	Apr 30 1950	s.n.	San Diego	Peninsular Range | Bottle Peak, near Escondido	33.160N, 117.003W (100 yds E of SD113722)	594 (GE)	rocky chapparal
UCR73641	Vaccinium ovatum	R. M. Beauchamp	Mar 06 1971	1719	San Diego	Peninsular Range | SE of Barona Valley	32.925N, 116.833W (same as UC1593843)	750	rocky chapparal
UCR73641	Vaccinium ovatum	Jeri Hirshberg	Apr 24 1992	170	San Diego	Peninsular Range | c. 0.5 mile south of Hwy 67, on Poway/Ramona city boundary	33.010N, 116.950W	542(GE)	possibly forest

Mr. Carl and Ms. Morange
November 15, 2007
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CCC Exhibit S.1
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Mr. Carl and Ms. Morange
November 15, 2007
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Eco Synthesis

SCIENTIFIC & REGULATORY SERVICES, INC.

STEVEN AND GILLIAN FOSTER RESIDENCE

RESOURCE PROTECTION PLAN

Prepared by Adrian Juncosa, Ph.D.

November 9, 2007

CCC Exhibit T
(page 1 **of** 5 **pages)**

16175 Lancaster Place, Truckee CA 96161 • Telephone: 530 582 6812 • Fax: 530 582 5882 • www.ecosynthesis.com

Introduction

For the reasons described in our correspondence dated September 6, 2007, we continue to believe that the published scientific literature and facts of plant distributions indicate that the chaparral on the Foster site is not Central Maritime Chaparral, and therefore not ESHA. However, in response to discussions with CCC Staff, we have prepared the present Resource Protection Plan, which is intended to protect on-site chaparral habitat values, even though we do not believe chaparral on the Foster site constitutes Central Maritime Chaparral.

We believe that, with the implementation of this Resource Protection Plan, the construction and use of the residence and associated structures as described and located in the modified Approved Project would not result in any significant disruption or threat to long-term sustainability of the chaparral that exists on the Foster site, whether considered to be ESHA or not.[1] Moreover, with the implementation of this Resource Protection Plan, we do not believe that any buffer would be required to protect the chaparral that exists on the Foster property.

Potential Impacts and Resource Protection Measures

As for any project, impacts are properly separated into "construction" and "operational" impacts (impacts that result from the use and maintenance of the project elements over the long term).

DURING-CONSTRUCTION IMPACTS

- In the event that construction equipment were to stray outside the construction area, or if materials laydown areas were located outside the construction area, vegetation and/or soils could be damaged.

Recommended resource protection measure: Install orange plastic exclusion fencing just outside chaparral and maintain it in place throughout exterior construction.

- In the event of precipitation during construction, sediment could potentially be generated at disturbed soil surfaces and be carried from disturbed soil surfaces in work areas into downslope habitat areas. This is typically considered to be an adverse impact, although this is not so clear in the present specific ecological circumstances. Nevertheless, it is an alteration of existing conditions that can easily be prevented.

Recommended resource protection measure: Install a sediment barrier such as straw wattles or silt fencing just outside chaparral and maintain it in place throughout exterior construction.

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[1] I understand that Mr. Foster is prepared to modify the project so that his proposed studio is moved slightly so as not to be located in on-site chaparral, if doing so would result in a recommendation for approval of the project.

- Nighttime construction, if any, requires bright lights that are difficult to shield effectively, with potential adverse impacts on habitat.

Recommended resource protection measure: This potential impact would be avoided by restricting exterior construction to daylight hours (no earlier than sunrise and no later than sunset, thus a shifting time period throughout the year, but certainly adequate for typical construction scheduling).

POST-CONSTRUCTION IMPACTS

Structures themselves are quite inert objects, not greatly unlike the small rock outcrops that are a typical feature of chaparral habitat throughout California. Once in place, the buildings themselves have very limited and specific effects, which are readily minimized or avoided by project design. It is other human actions in the immediate vicinity that might have impacts to plant communities that are significant if not mitigated (see below).

- Impervious roof surfaces concentrate rainwater runoff, which in areas with erodible soils could increase sediment generation and delivery to off-site habitats. This is a very limited potential impact in the present case, because the chaparral soils are very rocky and not particularly erodible.

Recommended resource protection measure: Water will be collected by roof gutters and a drainage design plan will provide that this water will be conducted to the north and east, away from chaparral habitat and the steeper slopes, to the extent feasible. There, it may be collected in a rainwater basin for use and/or discharged onto stable surfaces for infiltration into the groundwater.

- Although lighting does not penetrate very far into dense vegetation such as chaparral, staff have suggested that there is a potential habitat impact from this source.

Recommended resource protection measure: No exterior lighting will be installed on sides of buildings that face directly toward the chaparral except the minimum required by building code (specifically, one light at the door of the main house, shielded so as not to shine directly into chaparral vegetation, plus very low-wattage riser lights in the steps).

- The most significant potential impacts of a project design with structures less than 100 feet from the chaparral pertain to landscaping: installation of non-native plantings, irrigation, and application of horticultural chemicals (insecticides, herbicides, fungicides, and processed fertilizers).

Recommended resource protection measures, applicable to the exterior areas within a 100 foot distance of on-site chaparral:

(These measures would not apply to areas further away from chaparral, so that the present and future owners can have a vegetable garden, which requires non-native species and irrigation)

- No plantings shall be allowed other than species native to California that are ecologically appropriate to the physical conditions of the site (soils and climate; specifically, not depending for their survival upon irrigation water to be applied during summer).

- No permanent irrigation system shall be installed (hand irrigation of native plantings is permitted to enhance establishment).

- No insecticides, herbicides, fungicides, or processed chemical fertilizers shall be applied within manzanita chaparral or in the 100 foot zone adjacent to it, with one exception: application of glyphosate herbicide in strict accordance with manufacturer's handling and application directions, and for the sole purpose of initial eradication of poison oak in the areas of building construction and equipment/materials staging for construction. Use of compost as a soil amendment at planting sites is permitted. Use of pheromone traps or other products for control of non-native insect species is permitted; these are highly species-specific means of insect control with zero or insignificant effects on non-target species.

▪ Domestic pets have potentially significant adverse ecological effects in many habitat settings. While no protected animal species are present on the Foster site, cats are identified as predators of small native vertebrates such as birds and rodents near residences. Although scientific research and abundant anecdotal evidence shows that coyotes are extremely effective predators on cats (also foxes, small dogs, and rodents). Where coyotes are present and pervasively active, as in the case of the Foster site (to which I can attest from personal observation of sign and the animals themselves), the potential of significant cat impacts on wildlife is low. Nevertheless, the Fosters have indicated acceptance of a condition prohibiting the keeping of domestic cats.

Recommended resource protection measure: No domestic cats shall be kept on site by owners of the property.

▪ Fire protection/fuel management

Recommended resource protection measure: The primary fire protection methodology for the Foster project will be wise choice of materials, in accordance with the requirements of the fire authority and imposed as conditions of approval to maximize the structures' survivability in the event of a fire (which can probably be expected to occur on a natural return interval of some 50-150 years). Also, fuel loads will be managed within a 30 foot distance of structures by removal of all dead woody material and some of the living canopy.

Evidence from the nearby Hain parcel (portion that is observable from the access road to Foster) is that the proposed degree and method of fuel management for fire protection does not have significant adverse impacts. On the contrary, there are some beneficial ones, specifically, allowing for germination and growth of some short-lived native chaparral species that are suppressed by dense canopy; the resultant addition to local plant biodiversity in turn supports other parts of the ecological web that are otherwise

not present or poorly supported by existing undisturbed habitat. For example, the observed portion of the Hain fuel-management area supports the leguminous species *Lotus scoparius* (deer weed), which provides a food source for small solitary native bees that almost certainly pollinate, and probably depend upon, this or similar species. Deer weed is not present (or at least is extremely rare) within undisturbed chamise-manzanita vegetation in the immediate project region.

Notwithstanding the lack of evidence of significant adverse impact, the Fosters have indicated an interest in including in the approval of the Approved (or Revised) Project a commitment to implement habitat restoration on an existing PGE road in the lower part of the parcel. This restoration would be implemented in the most environmentally sensitive and effective fashion possible as described below. Although some of the elements described are innovative and not specifically demonstrated in the field on any restoration project of which I have written information, there is ample scientific basis in the literature to support this conceptual approach. Restoration action steps are described generally in the chronological order in which they would be implemented.

1. Collect seeds from chaparral and coastal scrub species that occur in habitat on site, including dominant and other common species. Depending on species, scarify, or stratify, or otherwise pretreat, or not, as indicated by scientific and/or plant propagation literature.
2. Obtain woody material from site clearing and fuel management (amount as yet uncertain; material from nearby parcels also acceptable if available and needed). Burn this material either on site (if dooryard burn permits are available in the project area; and in this case according to exact requirements of such permits) or off-site in accordance with applicable agency requirements. Preserve ash and charcoal.
3. Gently scarify surface of road to be reclaimed, leaving surface irregularities primarily oriented parallel to topographic contours.
4. Mix seeds and ash and distribute evenly over/within roughened reclamation surface. Incorporation of small quantities of compost is optional.
5. Appropriateness of surface stabilization (e.g., by means of tackifier or a very thin application of native mulch or hydromulch plus tackifier) is yet to be determined. Natural post-fire germination is enhanced partially by high light levels, so the substantial mulch applications that might be recommended in other situations may not be advisable.