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Prepared October 30, 2008 (for November 12, 2008 hearing)

To: Commissioners and Interested Persons

From: Dan Carl, District Manager
Katie Morange, Coastal Planner

Subject: **Monterey County LCP Major Amendment Number 2-07 Part 2 (Doud Property Rezone)** Proposed major amendment to the Monterey County certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's November 12, 2008 meeting to take place at the City Council Chambers at 333 W. Ocean Boulevard in Long Beach.

Summary

Monterey County (County) is proposing to amend its certified Local Coastal Program (LCP) Land Use Plan (LUP) and Implementation Plan (IP) to redesignate a 2.5-acre portion of a larger 552.5-acre parcel from Outdoor Recreation (OR) ("OR") to Watershed and Scenic Conservation (WSC/40) ("WSC"). The 2.5-acres is the only portion of the overall property that is located seaward of Highway 1; the rest of the property consists of 550 acres that extends inland and is currently designated WSC/40. The redesignation would change the allowed range of uses on the 2.5-acre portion of the site, and would allow the potential for additional types of higher intensity development than the existing OR designation. Probably the most notable distinction between the existing LUP/IP land use designation and that proposed is that the proposed WSC designation allows for residential development as a principally permitted use while the OR designation does not.

The legal lot status of the 2.5-acre property proposed for redesignation is the subject of ongoing disagreement. The County issued an unconditional certificate of compliance (COC) in 1998 recognizing the 2.5 acres as a legal lot. Commission staff became aware of the COC in 2005, and have advised the property owners and the County since that time that an unconditional COC is not appropriate in this case because, under the Subdivision Map Act and the LCP, Highway 1 cannot serve to create a separate legal lot, which was the basis of the County's COC issuance. Commission staff have provided the County with information on this point, including evidence showing that the County's COC appears to have been premised on incorrect information and is contrary to County Counsel opinions on issuing COCs in such circumstances; and California Attorney General opinions and relevant secondary legal authorities also indicating that a COC was not appropriate in this case. Based on this information, Commission staff has asked the County to both reevaluate their issuance of the COC and to require that a coastal development permit (CDP) application be processed for the subdivision of the 2.5 acres. The County has indicated they do not intend to reevaluate their COC or require a CDP, and have declined to enforce the Coastal Act's permit requirements in this case. Because the County has thus declined to pursue enforcement in this matter, Commission staff is actively pursuing an enforcement action at this time. In sum, staff believes that the COC is inappropriate, and that the creation of a 2.5-acre lot cannot be accomplished absent a CDP to recognize it as a separate lot. As a result, the 2.5-acre property in question must be

considered to be part of one larger legal lot, and not a separate legal lot. Although staff would prefer to resolve the COC issues prior to having the Commission consider the LCP amendment, the amendment's action deadline requires a Commission action at the November hearing, and the matter cannot be deferred past then.[1]

The 2.5 acres in question are located immediately south of Garrapata State Park, between Highway 1 and the Pacific Ocean in the northern portion of the Big Sur coast area of Monterey County. The Big Sur coast is world famous for its dramatic scenic shoreline vistas and landscapes, and this portion of northern Big Sur in particular provides sweeping undeveloped views of the Santa Lucia Mountains, coastal bluffs, rocky coastline, beaches, and the ocean from Highway 1 and Garrapata State Park. The undeveloped 2.5-acre site is located immediately adjacent to the State Park and Highway 1 on the ocean side of the highway and thus is highly visible from both of these vantages; in fact, because of a lack of fencing and development on the site, it is visually indistinguishable from the rest of the Park landscape.

Both the Coastal Act and LUP require protection of scenic resources and public views along the coast, and require development in highly scenic areas such as this to be subordinate to its setting. In particular, the LUP prohibits new development in the LCP-identified "critical viewshed," which is defined as all areas visible from Highway 1 and major public viewing areas (such as parks, trails, and lookouts). This unprecedented level of protection is due to the unique qualities of the Big Sur viewshed and its state and national importance. The proposed LCP amendment conflicts with the scenic resource and public view provisions of both the Coastal Act and LUP because it would allow for more intensive development, including potential residential development, in an area that is arguably one of the most significant scenic resources of public importance in the state. Thus, the WSC designation is not appropriate for this location.

In addition, the site contains a network of low intensity trails that connect to both Garrapata State Park and a segment of the California Coastal Trail. The Coastal Act requires that recreational access opportunities be maximized along the coast; protects existing public access; protects existing park and recreation areas against inappropriate adjacent development; reserves appropriate upland areas for recreational use; and gives priority for such sites to recreational use over residential use. The LUP builds upon these Coastal Act policies and requires major access areas, whether in public or private ownership, to be permanently protected for long-term public use. Redesignation of the 2.5-acre site from OR to WSC, including introducing residential development as a principally permitted use, conflicts with these public access and recreation policies. Higher intensity development such as that facilitated by the proposed amendment would be expected to degrade the adjacent State Park, including its visual continuity and use value. Potential residential development that would be facilitated by the proposed LCP amendment would also alter or possibly preclude continued use of the trails on this site by the public, thereby reducing access to Garrapata State Park and along the Coastal Trail. Although the site is

[1] To avoid having any lot legality questions undermine or affect the Commission's deliberations on the LCP amendment request, staff asked the County to withdraw the LCP amendment so it could be resubmitted after the COC issues were resolved, but the County declined, indicating that the COC issues were not relevant to the Commission's deliberations on the LCP amendment. Although staff does not agree with the County on this point, the deadline for action on the LCP amendment is November 14, 2008, and thus the matter must be agendized for Commission consideration at the November hearing. The enforcement process is proceeding independent of this LCP amendment on a parallel track (see Exhibit G).

privately owned, the trails on the site have a long-established history of use by the public, and such trail use is precisely the type of low intensity use envisioned and encouraged by the LCP's existing OR designation. The proposed LCP amendment conflicts with the Coastal Act and LUP because it would allow development incompatible with identified trail use, and may preclude such trail use entirely, including in relation to its importance to the connection to both Garrapata State Park and the California Coastal Trail, and because it would degrade the value of the existing State Park overall.

The 2.5-acre site also contains and is adjacent to significant habitat resources, including several that constitute environmentally sensitive habitat areas (ESHAs) under both the Coastal Act and the LCP. These habitats include coastal bluff scrub (listed as a threatened plant community by the California Department of Fish and Game), nearshore, intertidal, and marine habitats of the Monterey Bay National Marine Sanctuary, and Garrapata Creek, a spawning ground for the federally-endangered South-Central California Coast Steelhead trout. Most of the site is completely ESHA. The Coastal Act allows only resource dependent use and development in ESHA, and only when such use/development adequately protects habitat. Further, the Act requires development adjacent to ESHA to avoid significant ESHA disruption. Similar LUP policies prohibit development in ESHA if it results in any potential disruption of habitat value. The residential use that would be allowed under the proposed designation is not a resource dependent use and cannot be found consistent with the Coastal Act. Residential use, such as that facilitated by the proposed redesignation, would introduce permanent, fixed development and activity that would involve removal and adverse effects on onsite and adjacent ESHA, inconsistent with the Coastal Act and LUP. Such higher intensity development facilitated by the redesignation to WSC would also introduce new impermeable surfaces and pollutant sources that could increase runoff and pollutants to both the Monterey Bay National Marine Sanctuary and Garrapata Creek, adversely impacting these sensitive resources.

The 2.5-acre site is also located in a high geologic and fire hazard area, as well as an area of high archaeological/cultural resource sensitivity. The proposed redesignation increases the possibility of conflicts with Coastal Act policies that require new development to minimize risks to life and property in high geologic and fire hazard areas and to assure stability and structural integrity while avoiding landform alteration, as well as with LUP hazards policies that require avoidance of development in areas of high fire, erosion, and geologic hazards. It also appears that there is not an appropriate or adequate water supply to serve development of the site, and the redesignation would also increase the likelihood that archaeological and cultural resources on the site would be disturbed and impacted, raising consistency issues with both the Coastal Act and LUP.

In sum, the proposed LUP amendment is inconsistent with multiple policies of the Coastal Act because it would allow for new higher-intensity development that would be in direct conflict with: the required protection of the world-famous Big Sur coast viewshed, including in relation to the immediately adjacent Garrapata State Park; historical public access trails with connectivity to the Park and a segment of the California Coastal Trail; on- and off-site ESHA, including in relation to potential water supply; life, property, and natural landforms in a bluff area subject to multiple natural hazards; and potentially significant archaeological/cultural resources. Redesignating the 2.5 acres from OR to WSC would lead to an increased possibility that the high quality coastal resources that exist on the site, including their relation to the surrounding natural environment, would be diminished, and would conflict with

fundamental Coastal Act requirements. The proposed IP amendment mirrors the proposed LUP amendment, and would lead to the same type of LUP inconsistencies as the noted Coastal Act inconsistencies. In addition, even if the 2.5 acres were a separate legal lot, the redesignation to WSC is still inconsistent with the Coastal Act and LUP for the same reasons articulated above; reasons which are only magnified if it were a separate legal lot because any development could only be accomplished on the 2.5 acres as opposed to looking for alternatives that could avoid coastal resource impacts by making use of a portion of the inland 550 acres. The existing OR designation for the 2.5 acres is far more appropriate and protective of known coastal resources values than is the WSC designation proposed, and reflects the LCP distinction between the appropriate uses and development of the larger inland portion of the property as compared to the much smaller seaward piece.

When the Commission denies a project or a rezoning, the question sometimes arises whether the Commission's action constitutes a "taking" of private property without just compensation. In such a circumstance, the Commission must evaluate whether its action might constitute a taking because Coastal Act Section 30100 prohibits the Commission from taking private property. The denial of the proposed rezoning would not constitute a taking because such a taking claim is not "ripe" because it is simply a zoning designation request, and it is not actually a request to develop the property in question. Courts have generally held that government has to have made a "final and authoritative" decision about the use of the property in question before a takings claim is appropriately considered. In this case, the decision is simply that the property should not be redesignated to allow more intense development than is allowed under the current LCP due to the potential resource impacts associated with such more intensive development. Such a decision is not the same as saying the property cannot be developed. In conclusion, the proposed LUP land use designation change cannot be found consistent with the Coastal Act, and the proposed IP land use designation change cannot be found consistent with and adequate to carry out the LUP. **Therefore, staff recommends that the Commission deny the proposed amendment** (see the motions and resolutions necessary to implement this recommendation on page 5).

Staff Report Contents

Exhibit E: Parcel Map
Exhibit F: Correspondence Received
Exhibit G: Commission Staff Recent Correspondence with Monterey County
Exhibit H: Commissioner Ex Parte Disclosures

I. Staff Recommendation – Motions and Resolutions

Staff recommends that the Commission, after public hearing, deny the proposed amendment. The Commission needs to vote on two motions in order to act on this recommendation, one for the LUP changes proposed and one for the IP changes proposed.[2]

A. Denial of Land Use Plan Major Amendment Number 2-07 Part 2

LUP amendments may only be certified by an affirmative vote of a majority of the appointed Commissioners or alternates. In other words, at least seven "yes" votes out of the twelve appointed Commissioners/alternates are required to certify an LUP amendment, regardless of how many Commissioners/alternates are present at the time of the vote.

Staff recommends a NO vote on the motion below.

If the motion is rejected, the LUP portion of the amendment will be denied certification as submitted, and the Commission will adopt the following resolution and the findings in this staff report. If the motion is passed, the LUP portion of the amendment will be certified as submitted, and staff will prepare revised findings for the Commission to consider in support of that certification action.

Motion 1 of 2. I move that the Commission **certify** Part 2 of Major Amendment Number 2-07 to the Monterey County Local Coastal Program Land Use Plan as submitted by Monterey County.

Resolution to Deny. The Commission hereby **denies** certification of Part 2 of Major Amendment Number 2-07 to the Monterey County Local Coastal Program Land Use Plan as submitted by Monterey County and adopts the findings set forth in this staff report on the grounds that, as submitted, the Land Use Plan amendment will not meet the requirements of and be in conformance with the policies of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act.

B. Denial of Implementation Plan Major Amendment Number 2-07 Part 2

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion 2 of 2. I move that the Commission **reject** Part 2 of Major Amendment Number 2-07 to the Monterey County Local Coastal Program Implementation Plan as submitted by Monterey

[2] Note that the motions and resolutions refers to "Part 2 of Major Amendment Number 2-07." The reason for this is that this amendment request is part 2 of a three part LCP amendment submitted by the County.

County.

Resolution to Deny. The Commission hereby **denies** certification of Part 2 of Major Amendment Number 2-07 to the Monterey County Local Coastal Program Implementation Plan as submitted by Monterey County and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan.

II. Findings and Declarations

The Commission finds and declares as follows:

A. Property History

The Doud family historically owned thousands of acres of land in northern Big Sur, dating back to the late 1800s. In the mid-1970s, the State of California initiated eminent domain proceedings to acquire thousands of acres in northern Big Sur, including property owned by various members of the Doud family, for the creation of Garrapata State Park. Land totaling 122.5 acres between Highway 1 and the Pacific Ocean north of Garrapata Creek and an 8.5-acre piece of land located immediately east of Highway 1, both owned by John Francis Doud, were among the properties in the proceedings. The eminent domain action became the subject of a legal dispute between John Edward Doud and Mary Doud Detels (heirs and co-trustees of the John Francis Doud and Bernice Doud Trust of 1976) and the State that was not settled until December 1988. During the period of the legal dispute, Monterey County prepared, processed, and adopted and received Coastal Commission certification of the Big Sur Coast LCP (LUP certified April 10, 1986 and IP certified December 10, 1987). According to the County (see Exhibit C), the LCP presumed that these properties would be acquired by State Parks and, as such, they were designated and zoned Outdoor Recreation (OR). However, the settlement agreement between the Douds and the State included removing a 2.5-acre piece at the southern end of the property west of the highway to be retained by siblings John Edward Doud and Mary Doud Detels. The remaining 120 acres to the north and the 8.5 acres to the east became part of Garrapata State Park, and the 2.5-acre piece is the subject of this LCP amendment request.

In 1998, John Edward Doud and Mary Doud Detels obtained unconditional certificates of compliance (COCs)[3] from Monterey County for 11 parcels located on the east side of Highway 1, as well as for the

[3] The Subdivision Map Act provides for the approval of conditional and unconditional Certificates of Compliance (COCs) (Government Code Section 66499.35). Unconditional COCs are granted to confirm the legality of an existing parcel that was created consistent with the rules for land divisions in effect at the time the parcel was created. A conditional COC is granted to legalize a parcel that was *not* created pursuant to the rules in place at the time of its creation. From a land use standpoint, unconditional COCs do not create new parcels; they are simply a procedure for recognizing an existing, legal parcel. Conditional COCs do, however, create new parcels at the time they are awarded and may be conditioned to bring these parcels into conformity with current land use regulations regarding subdivisions (Subdivision Map Act Section 66499.35(b)). The creation of new parcels constitutes development under the Coastal Act (Public Resources Code Section 30106) and must also therefore be found consistent with the policies and implementing ordinances of the LCP by obtaining a coastal development permit (CDP) (Monterey County Title 20 lists "land divisions" as non-exempt development requiring a CDP in all zoning districts).

2.5-acre "parcel" on the west side of the highway, totaling approximately 2,700 acres, for a total of 12 unconditional COCs. The COC for the 2.5-acre property was issued on the basis of a finding that it became a separate legal lot when the State purchased a portion of the overall property for the creation of Highway 1 in the 1920s. Coastal Commission staff first learned of the County's COC for the 2.5-acre site when the County began considering the proposed LCP amendment in 2004.[4] In discussions with the County thereafter Commission staff has consistently raised questions regarding the correctness of the County's basis for an unconditional COC for this site based on the provisions of Subdivision Map Act (SMA) Section 66424, pursuant to which distinct parcels cannot be considered to exist solely by virtue of separation by roads, streets, utility easement, or railroad rights-of-way. This interpretation of the SMA is supported by California State Attorney General opinions[5] and by relevant secondary legal authorities[6] as well as by the Monterey County LCP,[7] and staff has consistently informed the County and the property owners in this respect, and consistently indicated that the 2.5 acres should not be considered a separate legal lot.

Most recently, in a letter sent October 8, 2008 to Mike Novo, Monterey County Planning Director, Commission staff reiterated concerns about the legality of the parcel and staff's opinion that unless and until a CDP is granted for the division of land that the COC purported to legitimize, the land in question is not a separate legal parcel (see Exhibit G).[8] Instead, it is the Commission's understanding that the 2.5-acre piece is part of APN 243-211-024, a 550-acre parcel to the east of Highway 1 that is contiguous with the 2.5-acre piece (see Exhibit E). The 550-acre inland portion of the parcel historically contained a residence, barn, and has been used for grazing.

Ownership of the 12 purported parcels, for which unconditional COCs were issued in 1998, changed in 2005. At that time, siblings John Edward Doud and Mary Doud Detels, successor trustees of the John Francis Doud and Bernice Doud Trust of 1976, divided the parcels amongst themselves. John Doud received the northern five parcels to the east of Highway 1 (APNs 417-011-018, 417-011-016, 417-021-002, 243-211-022, and 243-211-023) and Mary Detels received the southern six parcels to the east of Highway 1 (APNs 417-021-040, 417-021-039, 417-021-038 (2 lots), 417-021-031, and 243-211-024). John Doud obtained the 2.5-acre piece (given an APN of 243-212-016) immediately to the west of and

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4 The Monterey County LCP does not require public notification of the issuance of unconditional COCs, and, as such, Coastal Commission staff had no knowledge of the 12 unconditional COCs in this case at the time of issuance. In the Periodic Review of the LCP (draft dated December 2003), Commission staff identified this lack of noticing and indicated that independent verification is needed to ensure that the COC determination process is adequately protecting coastal resources in conformance with Coastal Act requirements. The Periodic Review recommended that the LCP be updated to require Coastal Commission review during the parcel legality status determination application process. The Periodic Review recommendations have not yet been adopted by the Commission.

5 54 Ops. Cal. AG 213 (1971) and 56 Ops. Cal. AG 105 (1973)

6 Curtin & Merritt, *Cal. SMA* (CEB) sec. 2.10 and 9 Miller & Starr, *Cal. Real Estate 3d*, "Subdivisions," sec. 25.15

7 Big Sur Coast LUP glossary (definition of 'existing parcel') and Big Sur Coast IP Section 20.145.020.II

8 In that letter, Commission staff also provided information indicating that the State obtained the property for the highway in easement rather than fee grant. Although Commission staff does not believe that the easement versus fee distinction is relevant, and that neither grant can create a legal lot under the SMA or the LCP, the County has indicated that such a distinction is important to their review of COCs (including a County Counsel opinion indicating that a Highway easement does not create a distinct parcel). The evidence brought to the County's attention included evidence indicating that it appeared that the property owners representative in the 1998 COC proceedings had represented the grant as a fee grant when in fact that was not accurate; yet another reason suggesting that the County's COC determination should be revisited.

connected across the highway to the 550-acre parcel (APN 243-211-024) owned by Mary Detels, all of which Commission staff understands to be one single parcel. In other words, it is understood that the "parcel" in question consists of two separate owners (John Doud owns the 2.5 acres seaward of Highway 1 and Mary Detels owns the 550 acres inland of Highway 1), and that the 552.5 acres is all part of APN 243-211-024. The 2.5 acres in question is not a legal lot, but rather it is part of the larger property extending inland that is held in common ownership.

B. Proposed LCP Amendment

Proposed Amendment

The County proposes to amend the LCP's Big Sur Coast Land Use Plan (LUP) to redesignate the 2.5-acre portion of the larger property from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC). The amendment also proposes to amend the LCP's Implementation Plan (IP) applicable to the Big Sur Coast (Section 20.08.060, Title 20, Sheet 20-22) to rezone the same 2.5 acres from Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC/40). The subject 2.5-acre piece of the larger 552.5-acre parcel is the only portion of the parcel that is located seaward of Highway 1; the rest of the parcel consists of 550 acres inland of the Highway that is currently designated WSC. The 2.5 acres is located immediately south of California Department of Parks and Recreation's (DPR's) Garrapata State Park unit, and immediately adjacent to Highway 1 between the Highway and the Pacific Ocean in the Big Sur planning area of Monterey County (see Exhibit A for location map and Exhibit D for site photos). See Exhibit B for the proposed amendment and Exhibit C for the Monterey County Board of Supervisors' staff report and resolution in support of the amendment.

Amendment Procedural History

The County approved the proposed LCP amendment on November 14, 2006, and the amendment package (along with two other unrelated amendment components) was received by the Central Coast District office of the Coastal Commission on June 20, 2007. The amendment application was subsequently filed on August 16, 2007, and the 90-day deadline for Commission action was November 14, 2007. At the October 2007 Commission hearing, the Commission granted a one-year time extension, and the Commission is now required to act on the proposed amendment no later than November 14, 2008. If the Commission does not act by that time, then the amendment is deemed approved and is certified as part of the LCP.

Commission staff evaluated the proposed amendment, and subsequently set it for a June 13, 2008 hearing. A staff report and recommendation was distributed in advance of the hearing. At that time, the property owner and the County requested that the matter be postponed to allow them further time to respond to the staff report, and the matter was postponed. It was ultimately scheduled for an August 7, 2008 hearing, and again a staff report was distributed. On July 25, 2008, the property owners' representative submitted additional information in response to the staff report and recommendation, primarily with respect to the COC and takings issues (see Exhibit F), and Commission staff postponed the hearing to be able to review and respond to that information. On October 8, 2008, Commission staff subsequently requested that the County withdraw the LCP amendment to allow adequate time to first

resolve the underlying COC issues, particularly in light of the new evidence indicating that COC issuance did not appear warranted even under the County's previously articulated methodology (see Exhibit G). Commission staff believed that it was best to separate the COC and LCP amendment issues as much as possible as a matter of good public policy and planning so as to avoid having any lot legality questions interfere with the Commission's deliberations on the proposed LCP amendment. The County refused, indicating that the COC issues were not relevant to the Commission's deliberations on the LCP amendment.

Effect of Proposed Amendment

The LUP describes the OR land use designation that currently applies to the 2.5 acres as allowing for low intensity recreational and educational uses that are compatible with the natural resources of the area and that require a minimum level of development and minimal alteration of the natural environment to serve basic user needs. The designation principally allows for low-intensity trails, picnic areas, walk-in tent camping, and supporting facilities for these uses. Secondary and conditional uses allowed (i.e., not principally permitted) include minimal support housing and maintenance facilities for the principally permitted uses, and moderate intensity recreational uses (defined as tent platforms, cabins, RV campgrounds, parks, stables, bicycle paths, restrooms, and interpretive centers). The identified secondary and conditional uses are only allowed in undeveloped park units if it is infeasible to locate them in existing developed park areas, and only if complete conformance with Big Sur viewshed policies can be achieved. The corresponding IP Open Space Recreation (OR) designation that currently applies to the property mirrors the allowed uses in the LUP, and refines the various principal uses (such as grazing, water systems, athletic fields) and conditional uses allowed (such as public utilities, hostels, wireless communications facilities).

In terms of the proposed land use designation for the 2.5 acres, the principal uses in the proposed WSC LUP land use designation include agriculture/grazing and supporting ranch houses and related ranch buildings. The LUP describes the primary objective of the WSC designation as protection of watersheds, streams, plant communities and scenic values. Secondary, conditional uses are described by the LUP as rustic inn or lodging units, hostels, forestry, mineral extraction, aquaculture, rural residential and employee housing. The IP's list of permitted and conditional WSC uses reflect a different emphasis than does the LUP. The proposed WSC/40 zoning principally allows single family dwellings, second residential units (not exceeding the zoning density of the property), and guesthouses, and conditionally allows additional residential units up to a maximum of four (again, not exceeding the zoning density of the property), public and quasi-public uses (such as churches, cemeteries, and schools) and caretaker units.

Except for existing trails across the property, the 2.5-acre site is currently undeveloped, and lies between Garrapata State Park to the north, and the well known Big Sur "Stone House" to the south. The proposed redesignation/rezoning from OR to WSC would change the allowed range of uses on the site as described above, including adding a range of higher intensity uses and development than are allowed under the existing OR designation. Most notably, and critical for consideration of this proposed LCP amendment, the current OR designation does not allow for residential development, while the proposed WSC designation does.

Procedure/Standard of Review for LCP Amendments

The standard of review for the proposed modification to the County's LUP is consistency with Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Coastal Act Section 30001.5. The standard of review for the proposed modification to the County's IP is that it must be consistent with and adequate to carry out the policies of the LUP. In general, Coastal Act policies set broad statewide direction that is generally refined by local government LUP policies giving local guidance as to the kinds, locations, and intensities of coastal development. IP standards then typically further refine LUP policies to provide further guidance, oftentimes on a parcel by parcel level. Because this is both an LUP and IP amendment, the standard of review for the LUP amendment is the Coastal Act and the standard of review for the IP amendment is the certified LUP.

C. Analysis of Proposed LUP Amendment

In order to approve an LUP amendment, it must be consistent with and adequate to carry out the Coastal Act to the extent necessary to achieve the basic state goals specified in Coastal Act Section 30001.5.

Applicable Coastal Act Policies

Basic Coastal Zone Goals

Pursuant to Coastal Act Section 30512.2, LUP conformance is measured against the requirements of Chapter 3 of the Coastal Act only to the extent necessary to achieve the basic state coastal zone goals specified in Coastal Act Section 30001.5, which states:

> ***Section 30001.5.*** *The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:*
>
> *(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.*
>
> *(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.*
>
> *(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.*
>
> *(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.*
>
> *(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.*

Thus, overall state coastal zone goals include the goal of protecting, maintaining and restoring the overall quality of the coastal zone environment and its resources, and the goal of assuring orderly and

balanced use and conservation of such resources (Sections 30001.5(a) and 30001.5(b)). These goals are reflected in and apply to each of the following Chapter 3 policies listed below. In addition, the Section 30001.5(c) goal to maximize public recreational access opportunities consistent with resource protection and constitutional rights applies directly to the public access and recreation policies identified below. Thus, although not re-cited with respect to each listed issue area below (to avoid unnecessary repetition), these coastal zone goals are applicable to each of the issues areas and Chapter 3 policies identified below in that same manner.

Public Views

Protection of visual resources is a fundamental Coastal Act policy. Significantly, Coastal Act Section 30001(b) notes that permanent protection of scenic resources is a paramount concern, and Section 30251 requires new development in highly scenic areas to be subordinate to the character of the area:

> ***Section 30001(b).*** *The Legislature hereby finds and declares that the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.*
>
> ***Section 30251.*** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The parcel is directly adjacent to DPR's Garrapata State Park unit, and thus Section 30240(b) comes into play with respect to the relation of this site to Garrapata State Park public views. Section 30240(b) states:

> ***Section 30240(b).*** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Finally, the Big Sur coast is an extremely popular visitor destination, including primarily for its incredible scenery, and the Section 30253 is also applicable to public view protection. Section 30253(5) states:

> ***Section 30253.*** *New development shall:*
>
> *(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

Public Access and Recreation

Protection of public access and recreation opportunities is also a fundamental Coastal Act policy. The Act speaks to the need to maximize public access to and along the coast, and prohibits development from interfering with the public's right of access the sea. The Act also protects recreational opportunities and land suitable for recreational use.

> ***Section 30210.*** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*
>
> ***Section 30211****. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*
>
> ***Section 30221.*** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*
>
> ***Section 30222.*** *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*
>
> ***Section 30223.*** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Finally, Sections 30240(b) and 30253(5), cited above, are also relevant policies in terms of public access and recreation because they require new development to protect park and recreation areas, like adjacent Garrapata State Park, and to protect the Big Sur coast as a popular visitor destination.

Habitat/ESHA

The Coastal Act is very protective of habitat, including environmentally sensitive habitat areas (ESHA). The Coastal Act references general habitat protection in the provisions of Section 30250(a) with respect to coastal resources in general as follows:

> ***Section 30250.*** *(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located ... where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

With respect to ESHA, the Coastal Act defines ESHA as follows:

> ***Section 30107.5.*** *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in*

an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Non-resource dependent development within ESHAs is prohibited, and adjacent development must be sited and designed so as to maintain the productivity of these natural systems. In particular, Coastal Act Section 30240 states:

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

Section 30240(b). *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The Coastal Act also includes specific protective policies for marine and aquatic environments. Coastal Act Sections 30230 and 30231 provide:

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

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

Concentration of Development/Public Services

General development siting and public service issues are mainly the purview of Coastal Act Sections 30250 and 30254:

Section 30250.

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only

where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30254. *New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route l in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

Coastal Hazards

Coastal Act Section 30235 addresses the use of shoreline protective devices:

30235. *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.*

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures in the future. Section 30253 provides, in applicable part:

Section 30253. *New development shall:*

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Archaeological Resources

Coastal Act Section 30244 addresses archaeological resources:

> ***Section 30244.*** *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

In general, the Coastal Act establishes clear parameters and priorities for the location, intensity, type, and design of new development in the coastal zone as a means of protecting, and enhancing where feasible, coastal zone resources. These parameters and priorities emanate from both specific Coastal Act policies and requirements, as well as the overlap and interplay between them. At a broad scale and fundamentally, Section 30250(a) requires that most new development be concentrated in and around existing developed areas with adequate development capacities to serve new development. The Coastal Act also establishes a set of priority uses that operate within the locational and resource constraints for new coastal development. The Coastal Act also requires that public recreational uses take precedence over private residential and general industrial or commercial development, but not at the expense of agriculture or coastal-dependent industry (Section 30222).

Within that broader framework, the Coastal Act also provides specific prescriptions for specific resource types. For example, public views are protected as a resource of public importance, and new development in highly scenic areas like the Big Sur coast must be subordinate to the setting. Public recreational access opportunities are to be maximized, and popular visitor destination points and appropriate upland areas are protected for recreational use. Coastal waters, streams, wetlands, and other wet resources are explicitly to be maintained and enhanced, including through specific siting and design requirements. Likewise, the ESHA protective policies of the Act strictly limit development within ESHA and require that adjacent development not disrupt these resources.

Overall, these Coastal Act requirements reflect and implement the fundamental goals of the Coastal Act to protect, maintain, and if feasible restore coastal resources, including specifically public recreational access resources, including by limiting new development to existing developed areas able to accommodate it, and protecting more rural areas (including viewshed, public recreational, ESHA, and agricultural areas) from inappropriate development. All of these fundamental Coastal Act tenets are raised by this proposed amendment.

Consistency Analysis

Public Views

The 2.5-acre site is located in northern Big Sur between Highway 1 and the Pacific Ocean, just north of Garrapata Creek and immediately south of Garrapata State Park. The site is located on a coastal terrace that consists of low-lying coastal bluff scrub habitat. The site slopes gently towards the ocean and is highly visible from both Highway 1 and Garrapata State Park (see Exhibit D). The site contains no structures, only trails. The only significant structural development in the immediate vicinity consists of the aforementioned and well-known Stone House residence on the adjacent parcel to the south. The next closest structural development in the viewshed is found further south of the Stone House in the Kasler Point/Rocky Point area.

Thus, the property is located in a mostly undeveloped portion of the Big Sur coast on the sensitive ocean

side of Highway 1. The Stone House, constructed prior to the adoption of the LCP, is a landmark of sorts; for vehicles traveling south on Highway 1, it is the first prominent structure in the viewshed after leaving the Otter Cove residential subdivision just south of Malpaso Creek and the Carmel Highlands and "entering" Big Sur. The California Department of Fish and Game (CDFG) Marine Pollution Studies Lab is located in the stretch between the Otter Cove subdivision and the Stone House; however, this Lab is well screened and situated mostly out of view. With the exception of the CDFG lab, between the Otter Cove area and the Stone House, southbound Highway 1 travelers experience sweeping undeveloped vistas of the Santa Lucia Mountains rising sharply to the east, and the dramatic coastal bluffs, rocky coastline, and Pacific Ocean to the west. This view is essentially the same for northbound Highway 1 travelers, albeit in the reverse with the vista of the site and the southern end of Garrapata State Park opening up after passing Rocky Point and Kasler Point. This stretch of coastline has been widely photographed and exemplifies the classic Big Sur viewscape. The 2.5-acre site is contiguous with the southern edge of the State Park and, because of the absence of fencing and development, it is visually indistinguishable from the park and blends into the overall rugged landscape, both from vistas inside the park and those from Highway 1. See location map (Exhibit A) and photos (Exhibit D).

In sum, the property is located in precisely the type of visual resource area requiring maximum protection under the Coastal Act. The Big Sur coast is understood within this viewshed context more generally, and the property in question is within one of those critically important segments of Big Sur that demand thoughtful consideration in this regard. Given the importance of the Big Sur viewshed and the Commission's long history protecting it, it is imperative to carefully consider any land use designation change that could allow increased structural development in such a highly scenic area of Big Sur.

Development allowed under the existing OR designation is generally limited to low intensity structures that are accessory to a park use; however, these low intensity uses are encouraged in developed park areas and allowed in undeveloped park areas only where it is infeasible to locate them in existing developed park areas and only where strict conformance to viewshed policies can be achieved. The redesignation of the parcel from OR to WSC would change the land use focus from low intensity, primarily recreational land uses to higher intensity land uses, including introducing the possibility of residential development as a principal permitted use on the 2.5-acre site.

The entirety of the 2.5 acres is visible from Highway 1 and Garrapata State Park and is part of a mostly undeveloped landscape that includes mountains, coastal terrace, rocky coastline, beach, and ocean. The only portion of the 2.5 acres that might possibly be outside of the Highway 1 viewshed is a small area on the southwesterly edge of the site, but even that area would still be visible from Garrapata State Park. The remainder of the parcel (i.e., the 550 acres on the inland side of Highway 1) that is already zoned WSC contains areas that are located outside the public viewshed.

The redesignation of the 2.5 acres raises conflicts with Coastal Act Sections 30251, 30240(b), and 30253(5) because it would provide for more intensive development in an area that is arguably one of the most significant scenic resources of public importance in the state. This area of the Big Sur coast is world-renowned for its dramatic scenic vistas and landscapes that epitomize the view qualities that the Coastal Act protects. The Coastal Act requires permitted development to protect views to and along the

ocean and scenic coastal areas, and also requires new development in highly scenic areas to be subordinate to the character of its setting, protect adjacent Park viewsheds, and the important visitor destination that is the Big Sur coast. The proposed redesignation of this portion of the parcel to WSC increases the possibility that development would be located on the seaward side of Highway 1 on the 2.5-acre piece of the larger parcel. Of course some amount of additional development could be confined on the inland side of the larger parcel if it were inappropriately proposed on the seaward side of the parcel, but the proposed designation increases the possibility for viewshed conflicts on the seaward side It is unlikely that any residential development that would be facilitated by the land use designation change would be subordinate to the setting because of the prominence of the site in the public viewshed, the high quality of views of and across the site, and the site's integral role in the larger undeveloped landscape. Instead, residential development of this site would create an intrusion into the public viewshed that would degrade the scenic quality of the area.

Clearly, the proposed LUP change reduces view protection as compared to the existing LUP. The proposed LUP change is inconsistent with the above-cited Coastal Act public view policies, and fails to achieve the above-cited basic state coastal zone goals for such public view resources.

Public Access and Recreation

Although in private ownership, the site provides public access to Garrapata State Park along an unmarked trail network extending from the Stone House property through to Garrapata Beach. The trails also connect to others in Garrapata State Park, including a segment of the California Coastal Trail which extends approximately one mile north into the park from the northerly edge of the site. As noted above, the 2.5-acre site is not fenced or otherwise distinguishable from the park to the north. The trail on the property was part of the Old Coast Road which extended from east of the current Highway 1 alignment, across the 2.5-acre site (in the current trail alignment), and over Garrapata Creek via a bridge that no longer exists. Prescriptive public access rights may exist over this trail, although no official case has been established to date.[9]

The Coastal Act protects existing public access, requires that recreational access opportunities along the coast be maximized, reserves appropriate upland areas for recreational use, and gives priority for such sites for recreational use over residential use. Redesignation of the site from OR to WSC, including potentially allowing residential development, would conflict with these public access policies of the Coastal Act. Under the Coastal Act (and the existing LCP), the priority for this site is recreational, not residential. Residential development, such as that allowed under the proposed WSC designation, could alter or possibly preclude continued use of the trail by the public, thereby reducing access to Garrapata State Park and along the Coastal Trail. Although the site is privately owned, the trails on the site have a long-established history of use by the public, and such trail use is precisely the type of low intensity use envisioned and encouraged by the LCP's existing OR designation. The fact that the 2.5-acre site is designated OR is appropriate given the presence of trails on the site, its location on the sensitive seaward side of Highway 1, and its adjacency to State Park. The two separate LCP designations on the overall parcel (WSC for the 550 acres inland of the Highway, and OR for the 2.5-acre portion seaward of the Highway) lend added emphasis to LCP objectives for lands on the seaward versus inland sides of

[9] Only a court of law can establish an implied dedication/prescriptive right, and there is not one established at this site.

Highway 1 (e.g., directing any structural development to inland, non-visible portions of the property and retaining the oceanfront land for recreational use). The proposed redesignation of this portion of the parcel to WSC increases the possibility that inappropriate development would be located on the seaward side of the parcel. Such proposed development could, of course, be confined on the inland side of the larger parcel through a development application process, but the proposed designation increases the possibility for public recreational access conflicts on the seaward side. In sum, the difference in LCP designations for the larger inland portion of the property (WSC) versus the 2.5-acre seaward portion (OR) directly and appropriately reflects the LCP distinction between these two portions of the property.

Because of the connection to both Garrapata State Park and to a segment of the Coastal Trail, any hindrance or closure of trails on the site could conflict with the Coastal Act. It is clear that the subject site is used by the public as an indistinguishable component of the Coastal Trail and trails through Garrapata State Park, that the Coastal Act (and current LCP) priority for this site is recreational, and that the proposed change only increases the potential for public access degradation and conflict as compared to the existing LCP. The Coastal Act also allows oceanfront land suitable for recreational use such as the subject site to be used for other purposes if there are adequate recreational opportunities elsewhere in the area; that is not the case in Big Sur. Although a state park exists north of site, the Big Sur coast receives millions of visitors every year, and the demand for recreational and access opportunities here is high, if not insatiable.

The proposed LUP amendment conflicts with the Coastal Act because it would provide for potential development incompatible with identified trail use, and may preclude such trail use entirely, including in relation to its importance to the connection to both Garrapata State Park and the California Coastal Trail, and because it would degrade the value of the existing State Park overall. For these reasons, the proposed LUP amendment is inconsistent with the above-cited Coastal Act public access and recreation policies, and fails to achieve the above-cited basic state coastal zone goals relative to public recreational access.

Environmentally Sensitive Habitat Areas

The 2.5-acre site includes significant habitats, including multiple environmentally sensitive habitats (ESHAs) protected under the Coastal Act. The primary habitat on the property is coastal bluff scrub, listed as a threatened plant community by CDFG. The coastal bluff scrub on the site supports sea lettuce (*Dudleya caespitosa*), bluff lettuce (*D. farinosa*), sea pink (*Armeria maritima*), California beach aster (*Lessingia filaginifolia* var. *californica*), Douglas iris (*Iris douglasiana*), and seacliff buckwheat (*Eriogonum parvifolium*). Seacliff buckwheat is the host plant for the federally-endangered Smith's blue butterfly, and can be ESHA in and of itself. Smith's blue butterfly have historically ranged along the coast, from Monterey Bay south through Big Sur, to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. The 2.5-acre property is located within the range of the Smith's blue butterfly. The site may also support nesting birds, such as the black swift (a CDFG-listed species of concern), cliff swallows, and several species of cormorants, including the double-crested cormorant (a CDFG-listed species of concern). The site is also immediately adjacent to nearshore, intertidal, and marine ESHA of the Monterey Bay National Marine Sanctuary that supports the federally-threatened southern sea otter (*Enhydra lutris nereis*) and other protected species. The site is also adjacent to Garrapata Creek which supports the federally-endangered

South-Central California Coast Steelhead trout (*Oncorhynchus mykiss irideus*). Monterey County, in their resolution of intent to adopt the LCP amendment, found all of the above habitats to be ESHA. In sum, the undisturbed (except for the trail network described above) site is covered with rare and especially valuable species, and most of the site is ESHA as defined by the Coastal Act.

The Coastal Act only allows resource dependent use and development in ESHA, and only when such use/development adequately protects habitat. Further, the Act requires development adjacent to ESHA to avoid significant ESHA disruption. A redesignation of the 2.5-acre seaward side of the larger parcel that would potentially allow residential use would conflict with the Coastal Act because residential use is not resource dependent. It is likely that the 550 aces of the parcel located on the inland side of the highway (that is already zoned WSC) contains areas that are not considered ESHA and would be more appropriate for the types of non-resource dependent development, including residential, that is allowed under the WSC zoning.[10] Furthermore, the site is immediately adjacent to a State Park and a National Marine Sanctuary, both of which have been designated as such for their high habitat and ecosystem values. Residential development of the 2.5 acres seaward of the highway could conflict with the Coastal Act requirement with respect to adjacency impacts and the need to be compatible with the continuance of those habitat areas. Residential use, facilitated by the redesignation, would introduce permanent, fixed development and activity that could adversely affect adjacent ESHA, inconsistent with the Coastal Act. Residential development facilitated by the redesignation to WSC would also introduce new impermeable surfaces that could increase runoff and pollutants to both the Monterey Bay National Marine Sanctuary and Garrapata Creek, adversely impacting these resources.[11]

The existing OR designation better protects onsite and adjacent ESHA because it allows only low intensity recreational and educational uses that are compatible with the natural resources of the area. Again, the inland 550-acre portion of the site would appear better suited from an ESHA standpoint for the more intensive types of development allowed under the WSC designation. For these reasons, the proposed LUP change is inconsistent with the above-cited Coastal Act habitat/ESHA policies, and fails to achieve the above-cited basic state coastal zone goals relative to such habitats.

Concentration of Development

The Big Sur coast is a classic example of an area to which the concentration of development standards of the Coastal Act are directed. This area is almost entirely rural and undeveloped, and of extremely high resource value, as described in the preceding findings. Protecting this resource value is clearly important not only to residents of Big Sur and Monterey County, but also to the people of the state and nation given its prominence and importance in that regard. Towards this end, the Coastal Act directs that development, other than visitor serving development, be avoided in this area as much as possible so as

[10] Although some areas inland of the Highway have been found to constitute ESHA in some Big Sur cases, there have been many cases where the inland sites were not all ESHA. Given the large amount of acreage and the Commission's experience in siting development inland of the Highway, it is likely that non-ESHA areas suitable for LCP-consistent development otherwise are available on the inland portion of the property.

[11] Runoff from residential development of the site would be expected to contain typical urban runoff pollutants, including oil, grease, heavy metals, fertilizers, pesticides, herbicides, and animal waste.

to maintain its rural nature and significant resources, including its world famous views. The Big Sur Coast LCP policies and provisions are clearly premised on this goal.

The proposed redesignation is contrary to these fundamental Coastal Act and LCP development concentration goals, as it would provide for higher intensity use and development on the 2.5 acres, including potential residential development as a principally permitted use when it is currently not allowed. The site is not in or in close proximity to an existing developed area, and thus the Coastal Act allows isolated visitor serving facilities (e.g, of the type contemplated by the existing OR designation) but directs that intensive development (i.e., residential, commercial, or industrial) be directed elsewhere. If such intensive development is contemplated here under the Coastal Act's concentration of development standards, there must be adequate public services (see finding that follows) and significant coastal resource impacts must be avoided. The proposed redesignation of this portion of the parcel to WSC increases the possibility that such intensive development would be located on the seaward side of the parcel. Such proposed development could, of course, be located on the inland side of the larger parcel through a development application process to avoid the significant coastal resource impacts that would be associated with such intensive development on the seaward side (as discussed in the preceding and following findings), but the proposed designation increases the possibility of such intensive development on the seaward side. Such higher intensity uses are inappropriate for this sensitive site, and would increase the potential for coastal resource degradation. The existing LUP designation is clearly more protective than that proposed, and the proposed LUP change fails to achieve the above-cited basic state coastal zone goals relative to concentration of development and cannot be found consistent with the above-cited Coastal Act concentration of development policies.

Public Services

Water supply to the 2.5-acre site has been the subject of some ongoing debate. The Garrapata Water Company (GWC) supplies water to users in the vicinity of Garrapata Creek, and in 2001 and 2002, GWC indicated that the only property in their service area north of Garrapata Creek was the Stone House property. However, in 2006, GWC determined that the site was indeed in their service area. GWC's State Water Resources Control Board (SWRCB) water rights permit (Permit 21010) notes that the water appropriated from Garrapata Creek is limited to 35 acre feet per year (afy) and is intended to serve from 38 to 43 residential users. According to SWRCB, GWC has exceeded the 35 afy amount authorized by Permit 21010 every year except 2002, and SWRCB recently initiated formal enforcement action against GWC with regard to their continued excess unauthorized diversion of water from Garrapata Creek in violation of the permit, including because of the adverse effect of these excess withdrawals on Garrapata Creek habitat resources.[12]

Development of residential use on the site, which would be facilitated by a redesignation to WSC, may require an expansion of the GWC service area, and would require either a new connection to the GWC

[12] SWRCB Administrative Civil Liability Complaint, June 10, 2008. SWRCB indicates that "GWC's continued unauthorized diversions have reduced the amount of water available for the southern steelhead trout fishery and other riparian habitat. While adverse impacts of unauthorized water diversions on the steelhead trout fishery have not been quantified for this case, unauthorized diversions of water have been shown to contribute to the cumulative impact of reducing habitat for steelhead trout. The State of California lists the southern steelhead as a species of special concern and the National Marine Fisheries Service, on August 18, 1997, listed the steelhead trout as threatened under the Federal Endangered Species Act. As of the date of this Complaint, Permittee has failed to take corrective actions."

system or construction of an onsite well. Because the GWC system regularly exceeds their Garrapata Creek allocation (resulting in an active SWRCB formal enforcement action designed in part to eliminate such excess diversions), and because the system already includes several undeveloped lots that would cause further strain on the system if developed, it is likely the GWC would not have enough water to serve new connections. Thus, potential inclusion into the system does not guarantee an adequate, safe and continuous supply of water to the site. In addition, if GWC water proved infeasible, as is likely, other problems exist with developing and using a private well on the 2.5 acres. The well would likely draw from the Garrapata Creek underflow because of the parcel's proximity to the creek, and additional water withdrawals could adversely impact the creek, a known Steelhead spawning creek (as discussed above). This raises public services and ESHA issues under the Coastal Act including because the Act protects the biological productivity and quality of Garrapata Creek by preventing the depletion of groundwater supplies and interference with surface water flows. The remaining 550 acres of the parcel on the inland side of the highway likely either has a well or wells or, if not, because of sheer size and land area, has a greater potential for a well that would not impact Garrapata or other creeks.[13] The proposed redesignation of this portion of the parcel to WSC increases the possibility that inappropriate well development would be located on the seaward side of the parcel. Such proposed development could, of course, be confined on the inland side of the larger parcel through a development application process, but the proposed designation increases the possibility for water supply impacts of the type identified above on the seaward side.

Coastal Act Section 30250(a) requires new residential development to be located in areas within or in close proximity to existing developed areas able to accommodate it, or where such areas are not able to accommodate it, in other areas with adequate public services. Redesignation of the site to allow potential residential development when it appears that adequate water will not be available to serve the site conflicts with Section 30250(a). The proposed LUP change is inconsistent with the above-cited Coastal Act public services policies, and fails to achieve the above-cited basic state coastal zone goals relative to such public services.

Coastal Hazards

The 2.5-acre portion of the parcel on the seaward side of the highway site is located in a high hazard area in terms of seismic hazards, bluff erosion, and fire hazards. The Palo Colorado Fault Zone runs within the vicinity of the site, resulting in potential fault rupture risks. The site is also subject to coastal erosion due to its location on an exposed coastal bluff. In addition, the site is located in a very high fire hazard area, like most of Big Sur. Facilitating residential development, as the proposed LUP change would, in a high hazard area such as this would lead to both potential geologic and fire risks. Such proposed development could, of course, be confined on the inland side of the larger parcel through a development application process,[14] but the proposed designation increases the possibility for coastal

[13] Many Big Sur developments are served by such wells, and many of the historic ranches had multiple wells. It is not clear from the current record to what extent the inland 550-acre portion of the property includes such wells. However, given the large amount of acreage and the Commission's experience in reviewing such development inland of the Highway, it is likely that wells could be utilized on the inland portion of the property.

[14] It is not clear from the record to what degree the inland 550 acres is constrained by coastal hazards. One would expect that some of the hazards would be similar, and some different. At a minimum, though, coastal bluff erosion due to proximity to the Pacific Ocean could be avoided in the inland side of the Highway.

hazard conflicts on seaward side. Clearly, the proposed LUP change increases the possibility of conflicts with Coastal Act Section 30253 which requires new development to minimize risks to life and property in high geologic and fire hazard areas and assure stability and structural integrity. The proposed LUP change is inconsistent with the above-cited Coastal Act coastal hazard policies, and fails to achieve the above-cited basic state coastal zone goals relative to such hazards.

Archaeological Resources

Finally, a California Historical Resources Information System record search prepared for the 2.5-acre site indicates that the site is adjacent to numerous recorded Native American and historic-period archaeological resources. A high likelihood exists that unrecorded cultural resources exist on the site, particularly because of its proximity to Garrapata Creek and the ocean. Flat or relatively flat locations such as this adjacent to freshwater sources and the ocean (particularly where anadromous fish spawn) are known to have supported Native American fishing, hunting, and other activities. A likelihood exists that sensitive archaeological resources are located on the inland portion of the property as well, but because of the large amount of available land, and its location further from the ocean with steeper slopes, less potential exists for the same level of impact as on the smaller seaward side. Although the Coastal Act does not prohibit development in areas of high archaeological sensitivity, Section 30244 requires reasonable protection of those resources from adverse impacts of development. Redesignation to allow consideration of higher intensity uses and development, including permanent, fixed residential use, increases the likelihood that archaeological resources on the site would be disturbed and impacted. Such proposed development could, of course, be confined on the inland side of the larger parcel through a development application process,[15] but the proposed designation increases the possibility for archaeological conflicts on seaward side. Clearly, the existing LUP designation better protects any such resources that may be located on the site than would that proposed. The proposed LUP change is inconsistent with the above-cited Coastal Act archaeological resource policies, and fails to achieve the above-cited basic state coastal zone goals relative to such resources.

Conclusion

The Commission must determine whether the proposed LUP land use designation change is consistent with Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Coastal Act Section 30001.5. In this case, the proposed LUP amendment is inconsistent with the policy requirements of the Coastal Act Chapter 3 and fails to achieve the state coastal zone goals of Coastal Act Section 30001.5, including because it would increase the possibility of inappropriate and higher intensity development on a site that is a critical component of the world-famous Big Sur coast viewshed and the Big Sur coast as a visitor destination; contains historical public access trails with connectivity to a state park and a segment of the Coastal Trail; is comprised almost entirely of ESHA; would not concentrate development where it can be accommodated without significantly impacting coastal resources; is not clear if adequate water supply is available to serve such use; is subject to multiple natural hazards; and is likely to contain significant archaeological and paleontological resources. Protecting the public viewshed in highly scenic areas, maximizing public recreational access

[15] It is not clear from the record to what degree the inland 550 acres contains archaeological resources.

opportunities, and protecting habitats and ESHA are core Coastal Act goals and requirements. Redesignating this site from OR to WSC would lead to an increased possibility that the high quality resources that exist on the site would be diminished, and would conflict with fundamental Coastal Act requirements. The 2.5-acre site is part of a larger 550-acre parcel on the inland side of Highway 1 that is already zoned WSC and that includes ample land area that could accommodate the types of higher-intensity development allowed under that zoning without the above-described resource impacts. As such, it is inappropriate to redesignate the 2.5 acres seaward of Highway 1 because it potentially makes available the most sensitive piece of the parcel for an increased intensity of development and reduces the likelihood that development would be sited on the larger portion of the parcel, thereby increasing the possibility for resource conflicts where they are least appropriate. Even if the 2.5-acre piece were a separate legal lot, the redesignation to WSC is still inconsistent with the Coastal Act policies as discussed above because potential development under the WSC designation would be more likely directed to the 2.5 acres[16] as opposed to looking for alternatives that could avoid viewshed, public access, ESHA, hazards, and archaeological impacts by making use of a portion of the inland 550 acres. In conclusion, the proposed land use designation change cannot be found consistent with Chapter 3 of the Coastal Act, it fails to achieve the Coastal Act's basic state coastal zone goals, and it is denied.

D. Analysis of Proposed IP Amendment

In order to approve an IP amendment, it must be consistent with and adequate to carry out the certified LUP. In this case, the LCP's Big Sur Coast segment LUP is applicable. Overall, these LUP requirements reflect and implement similar fundamental goals of the Coastal Act. Applicable LUP policies include:

Public Views

The LUP states that the issue of visual resource protection is probably the most significant and important component to protecting the Big Sur coast, and notes that a major premise of the LUP is to ensure preservation and enhancement of the coast's scenic beauty and natural appearance. LUP policies that address the protection of public views and visual resources include:

> ***Key Policy 3.2.1.*** *Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of this plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.*
>
> ***Policy 3.2.2.1.*** *Critical viewshed: everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and the following specific locations Soberanes Point,*

[16] Presuming that the lot was not aggregated with other surrounding lots (including with respect to common ownership patterns) for purposes of development review, including potential takings issues.

Garrapata Beach, Abalone Cove Vista Point, Bixby Creek Turnout, Hurricane Point Overlook, upper Sycamore Canyon Road (Highway 1 to Pais Road), Pfeiffer Beach/Cooper Beach, and specific views from Old Coast Road as defined by Policy 3.8.4.4.

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

Policy 3.2.3.A.5. *Where it is determined that a proposed development cannot be resited, redesigned, or in any other way made to conform to the basic critical viewshed policy, then the site shall be considered environmentally inappropriate for development.*

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

Public Access and Recreation

The LUP also provides a high level of protection for shoreline access and recreational opportunities on the Big Sur Coast. Applicable policies include:

Key Policy 6.1.3. *The rights of access to the shoreline, public lands, and along the coast, and opportunities for recreational hiking access, shall be protected, encouraged and enhanced. Yet because preservation of the natural environment is the highest priority, all future access must be consistent with this objective. Care must be taken that while providing public access, the beauty of the coast, its tranquility and the health of its environment are not marred by public overuse or carelessness. The protection of visual access should be emphasized throughout Big Sur as an appropriate response to the needs of recreationists. Visual access shall be maintained by directing all future development out of the viewshed. The protection of private property rights must always be of concern.*

Policy 6.1.4.1. *Overall, the best locations for public access to the shoreline, public lands and along the coast are already in use or have been used in the past. Major access areas, whether in public or private ownership, shall be permanently protected for long term public use. These should be improved and managed properly by designated public or private agencies; furthermore, the County will require the preparation and implementation of access management plans for all accessways on the property or within the Park unit before new locations are opened on any particular ownership. Such access management plans shall address intensity of use, parking, protection of fragile coastal resources, maintenance, etc.*

Policy 6.1.4.4. *Visual access should be protected for long term public use. The development of scenic viewpoints in conjunction with accessways or where physical access is not appropriate is encouraged.*

Policy 6.1.4.5. *Bluff top and lateral access is appropriate in many areas along the coast. These opportunities shall be protected for long term public use, subject to adequate management programs, the development of which is an implementation activity.*

Policy 6.1.4.6. *Trails should be located in areas able to sustain public use without damage to natural resources or other conflicts. Therefore, new and existing trails should be sited or rerouted to avoid safety hazards, sensitive habitats, and incompatible land uses.*

Policy 6.1.5.G.1. *New development shall not encroach on well-established accessways nor preclude future provision of access.*

Habitat/ESHA

The LUP also protects habitats, including ESHA. Applicable policies include:

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

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

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

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

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

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

which, on a cumulative basis, could degrade the adjoining habitat.

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

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

Concentration of Development/Public Services

The LUP also fundamentally seeks to limit inappropriate future development in light of the significance of the resources and their sensitivity to additional development incursion. Low intensity development that preserves Big Sur resource values, and enhances the public's ability to enjoy the coastline are encouraged. The lack of significant public services is also acknowledged, including the effect of on-site service systems on natural resources and the coastline as a whole. Applicable policies include:

Key Policy 5.4.1. *Future land use development on the Big Sur coast should be extremely limited, in keeping with the larger goal of preserving the coast as a scenic natural area. In all cases, new land uses must remain subordinate to the character and grandeur of the Big Sur country. All proposed uses, whether public or private, must meet the same exacting environmental standards and must contribute to the preservation of Big Sur's scenery.*

Policy 5.4.2.6. *Many types of land use found in other locations in the County are inappropriate to the Big Sur coast and are in conflict with the rural environment, the protection of natural resources, and the general peace of the area and are not therefore provided for in the plan. Among these uses are intensive recreational activities such as tennis, golf, cinemas, mechanized recreation, boating facilities, industrial development, manufacturing other than cottage industry or art production, on-shore or off-shore energy facilities, large scale mineral extraction or mining, oil extraction, commercial timber harvesting, and any non-coastally dependent industries.*

Policy 5.4.3.C.1. *Development of recreation and visitor-serving facilities at locations suitable for such use is preferred over other types of development in Big Sur because of Big Sur's national significance as a recreation area.*

Policy 5.4.3.C.3. *The Soberanes Point, Garrapata Beach, and the Little Sur River areas should be planned for low-intensity, day-use recreational development with minimal provision of facilities. The scenic and natural resources of these areas should be preserved in a natural state.*

Policy 5.4.3.C.6. *Undeveloped areas in Big Sur shall be preserved for low intensity recreational use such as hiking and camping and nature study. Only minimal alterations of Big Sur's existing natural environment and recreational character shall be allowed. Development of low intensity recreation uses and visitor-serving facilities are encouraged on the larger properties where this will assist in providing economic uses of the land and in meeting Coastal Act objectives for*

public recreation.

Key Policy 3.4.1. *The protection and maintenance of Big Sur's water resources is a basic prerequisite to the protection of all other natural systems. Therefore, water resources will be considered carefully in all planning decisions and approvals. In particular, the County shall insure that adequate water is retained in the stream system to provide for the maintenance of the natural community of fish, wildlife, and vegetation during the driest expected year.*

Policy 3.4.2.3. *Where watersheds are affected or are threatened by overuse of the water supply, the County will use its land use regulatory authority to limit development in order to protect the public health and welfare and to protect the natural values of the stream and its watershed.*

Policy 3.4.3.A.1. *Applicants for development of residential, commercial, and visitor-serving facilities must demonstrate by appropriate seasonal testing that there will be an adequate water supply for all beneficial uses and be of good quality and quantity (e.g. at least 1/2 gallon per minute per single family dwelling year round) from a surface or groundwater source, or from a community water system under permit from the County.*

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

Policy 3.4.3.B.3. *Water quality, adequate year-round flows, and stream bed gravel conditions shall be protected in streams supporting rainbow and steelhead trout. These streams include: Garrapata Creek, Rocky Creek, Bixby Creek, Little Sur River, Big Sur River, Partington Creek, Anderson Creek, Hot Springs Creek, Vicente Creek, Big Creek, and Limekiln Creek.*

Coastal Hazards

The LUP also reflects the Coastal Act's coastal hazard avoidance theme. Applicable policies include:

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

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

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

Archaeological Resources

Finally, the LUP also protects archaeological resources. The LUP's key policy to this effect states:

> ***Key Policy 3.11.1.*** *Big Sur's archaeological resources, including those areas considered to be archaeologically sensitive but not yet surveyed and mapped, shall be maintained and protected for their scientific and cultural heritage values. New land uses and development, both public and private, should be considered compatible with this objective only where they incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources.*

Thus, the LUP contains policies that mirror the policies of the Coastal Act with respect to public views, public recreational access, habitat/ESHA, concentration of development, public services, hazards, and archaeological resources. In sum, the Big Sur LUP reflects and implements the Coastal Act objectives and requirements described above, further refining these in relation to the Big Sur context. For the most part, and particularly as it relates to the Big Sur critical viewshed policies that require development to be located out of view of Highway 1 and all other public vantage points, these policies provide an enhanced level of protection for the resources discussed in the LUP consistency findings above.

Consistency Analysis

The proposed IP amendment mirrors the proposed LUP amendment, and would lead to the same type of LUP inconsistencies as the Coastal Act inconsistencies identified in the preceding finding. If anything, the proposed IP amendment's inconsistencies are only intensified relative to the LUP inconsistencies already detailed above given the level of resource protection required by the Big Sur LUP. Nowhere is this perhaps more apparent than with respect to public views and the Big Sur LUP's critical viewshed policies as they apply to this site. The scenic resources of the Big Sur coast are provided one of the highest levels of LUP protection as compared to any other region in the state. Because of the statewide and nationwide importance of the Big Sur viewshed, the Commission, in certification of the Big Sur Coast LUP, established highly protective visual resource policies that prohibit all public and private development in the critical viewshed (defined as everything within view of Highway 1 and major public viewing areas). The 2.5-acre site is located entirely in the LCP-defined critical viewshed. The proposed IP change to allow an increased intensity of development, including residential development, for a prominent site in the critical viewshed cannot be found consistent with the LUP prohibitions against development in the critical viewshed. Of course some amount of development could be confined on the inland side of the larger parcel[17] if it were inappropriately proposed on seaward side of the parcel, but the proposed designation increases the possibility for viewshed conflicts on seaward side. Even if the 2.5 acres were a separate legal lot, the redesignation to WSC is still inconsistent with the LUP because

[17] The remainder of the parcel (i.e., the 550 acres on the inland side of Highway 1) contains areas that are located outside the critical viewshed.

potential development would be more likely directed to the 2.5 acres[18] as opposed to looking for alternatives that could avoid viewshed impacts by making use of a portion of the inland 550 acres located outside of the viewshed. It is clear that the existing IP designation is more protective of Big Sur coast resources than would be the proposed IP designation, and that the proposed IP designation is inconsistent with and inadequate to carry out the LUP, including for similar reasons as those identified in the LUP consistency findings above.

In addition, the proposed Watershed and Scenic Conservation (WSC/40) IP designation is not appropriate for the Outdoor Recreation (OR) LUP designation.[19] Applying the WSC IP designation to a site designated OR would conflict with the allowed and prohibited uses in the OR designation, and would create a disjointed, illogical, and internally inconsistent planning framework for the site in relation to the LUP – and the LCP as a whole.

Redesignating this site from OR to WSC/40 in the IP would lead to an increased possibility that the high quality resources that exist on the site would be diminished, and would conflict with fundamental LUP requirements. The proposed change would allow for an increased intensity of use and development, including allowing for residential use and development, at a site where such increased intensity would be inappropriate under the LUP, particularly given the significance of the viewshed, recreational access, and habitat resources associated with the site. In conclusion, the proposed IP amendment cannot be found consistent with and adequate to carry out the LUP and is denied.

E. Denial of LCP Amendment Not a Taking

When the Commission denies a project or LCP amendment, a question may arise whether the denial results in an unconstitutional "taking" of property without payment of just compensation. The owner of the affected property, in a July 25, 2008 letter to the Commission, raises an argument that denial of the County's LCP amendment would constitute a taking (see Exhibit F). Coastal Act Section 30010 addresses takings and states as follows:[20]

> *The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

Permit is defined in Section 30110 of the Coastal Act as follows:

---

[18] Presuming that the lot was not aggregated with other surrounding lots (including with respect to common ownership patterns) for purposes of development review, including potential takings issues.

[19] Because the proposed LUP amendment must be denied, the proposed IP amendment is evaluated against the existing LUP.

[20] Monterey County's Coastal Implementation Plan contains Section 20.02.040 that corresponds to the Coastal Act section 30010, and states, in relevant part, "This Title is not intended and shall not be construed as authorizing the County of Monterey, through the Board of Supervisors, Planning Commission, Zoning Administrator, Minor Subdivision Committee, Subdivision Committee or Director of Planning and Building Inspection, acting pursuant to this Title, to exercise its power to grant or deny a permit in a manner which will take or damage private property for public use without the payment of just compensation therefore."

"Permit" means any license, certificate, approval, or other entitlement for use granted or denied by any public agency which is subject to the provisions of this division.

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Coastal Act imposes on the Commission the duty to assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project with the assurance that its actions are consistent with Section 30010. The Commission has the authority, under Section 30010, to approve some level of development otherwise inconsistent with Coastal Act policies in order to avoid a "taking."

In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, its denial of the LCP amendment would constitute a taking. The Commission finds that its denial of the zoning change does not create a ripe takings claim.

General Takings Principles

The Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation."[21] Article 1, section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation…has first been paid to, or into court for, the owner."

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393. Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (see *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523). First, there are the cases in which government authorizes a physical occupation of property (see, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419). Second, there are the cases in which government merely regulates the use of property (*Yee, supra*, 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program (a "regulatory taking") rather than a physical appropriation (e.g., *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18). The Commission's actions here would be evaluated under the standards for a regulatory taking.

Under the U.S. Constitution a "takings" claim must be "ripe" in order for it to be properly presented for consideration. To be "ripe" a taking claim must be based on a "final determination" by a governmental body of the uses to be allowed on a particular parcel of land. (*Palazzolo v. Rhode Island, supra,* 533 U.S. 606 [claim was ripe where proposal to fill wetlands was not accepted and did not qualify for special exception for 'compelling public purpose']; *Agins v. Tiburon* (1980) 447 U.S. 255, 260 ["[b]ecause the appellants have not submitted a plan for development of their property as the ordinances permit, there is as yet no concrete controversy regarding the application of the specific zoning provisions"]). The takings claimant must show that government has made a "final and authoritative" decision about the use of the property. (e.g., *Williamson County Regional Planning Com. v. Hamilton Bank* (1985) 473 U.S.

[21] The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

172; *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348.) Premature adjudication of a takings claim is highly disfavored, and the Supreme Court's cases "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it" (*MacDonald*, 477 U.S. at p. 351). For example, in both *Williamson* and *MacDonald* the Supreme Court required the submission and *resubmission* of applications for development projects or variances before a takings claim would be ripe for adjudication.

Before a Landowner May Establish a Taking, Commission Must Have Made a Final Determination Concerning the Use to Which the Property May Be Put

Following the U.S. Supreme Court precedent described above, California courts have stated the same prerequisites in order to establish a ripe takings claim: "(1) a rejected development plan and (2) a denial of a variance." (*Kinzli v. City of Santa Cruz* (9th Cir. 1987) 818 F.2d 1449, 1454, *amended*, 830 F.2d 968 [claim not ripe because property owner did not apply for a development permit prior to filing suit]; *Long Beach Equities, Inc. v. County of Ventura* (1991) 231 Cal.App.3d. 1016, 1032 [claim not ripe because developer did not seek annexation or variances, and, after rezoning to open space, did not apply for permits: "The developer must establish that it has submitted at least one meaningful application for a development project which has been thoroughly rejected, and that it has prosecuted at least one meaningful application for a zoning variance, or something similar, which has been finally denied."]; *Toigo v. Town of Ross* (1998) 70 Cal.App. 4th 309, 324 [takings claim rejected as unripe where plaintiff failed to apply for approval of lower density project than one for which application originally denied].)

The Commission employs this same test in reviewing takings claims presented to it under § 30010.

Under California law a claim of a "taking" based on a zoning decision or action on a rezoning request is not ripe in the absence of an application for approval of specific development proposal. (See e.g. *Shea Homes, Ltd. Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1267 and *County of Alameda v. Superior Court* (2005) 133 Cal.App.4th 558 [landowners' claims that amended county area plan that reserved land for agricultural and open space was a taking was not ripe because landowners had not submitted development proposal and because of "the flexibility afforded the County [by a "takings override" provision] to avoid any potentially unconstitutional application of [applicable development restrictions]."])

Reviewing courts have applied the ripeness test to claims for compensation for a "taking" on the basis of regulatory actions taken by the Commission. More specific to the instant matter, courts have also rejected takings claims made against the Commission in certification of LCPs as unripe. (*Sierra Club v. California Coastal Com'n (County of Mendocino, RPI)* (1993) 12 Cal.App.4th 602, 618-619 [discussing the County's desire to make anticipatory takings balance in certification of LUP's ESHA policies, the court rejected these concerns as unripe: "Further defeating the County's construction, section 30010 speaks of permit-stage actions, not LUP or LCP approvals. This is consonant with the judicial view that takings decisions must await as- applied challenges and are usually not ripe until the permit stage."]; *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523, 546-547 [property groups unsuccessfully challenged LCP amendment passed by initiative claiming that amended LCP was a taking "as applied" and on its face: "[A]ppellants' claim that Measure A was

unconstitutional "as applied" to their properties does not present a concrete controversy ripe for adjudication because they have not submitted a subdivision plan or applied for a permit or variance from the local authority which has been conclusively denied (or in this instance subjected to the easement requirement) and, as in the case of the Monterey County LCP, Measure A provided for a takings override: "The County has the flexibility to avoid potentially unconstitutional application of easement requirements, should these requirements "go too far" as specifically applied to a particular parcel of property."]) Here, the landowners have not submitted a single project proposal, much less a resubmission or request for a variance; therefore, the Commission has had no opportunity to make any final determination about what use could be made of the land.

Conclusion

For all of the above reasons, the Commission concludes that its denial does not constitute a taking because the claim is not ripe, and, therefore, the Commission's action is consistent with Coastal Act Section 30010.

F. California Environmental Quality Act (CEQA)

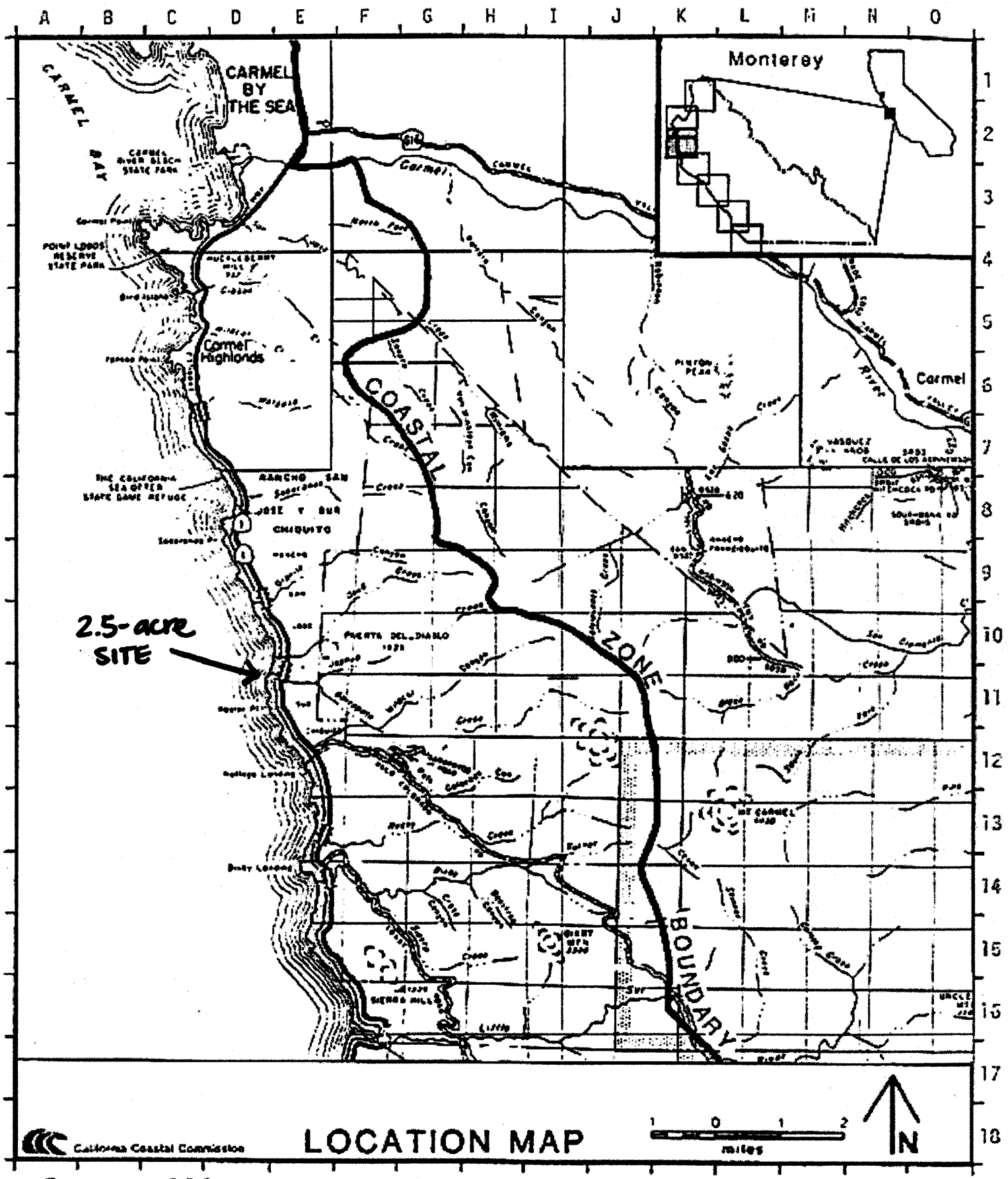
Public Resources Code (CEQA) Sections 21080.9 and 21080(b)(5), and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

> ***Public Resources Code (CEQA) Section 21080.9.*** *Local coastal programs or long-range land use development; university or governmental activities and approvals; application of division. [Relevant Portion.]…certification of a local coastal program…by the…Commission…shall be subject to the requirements of this division.*
>
> ***Public Resources Code (CEQA) Section 21080(b)(5).*** *Division Application and Nonapplication. …(b) This division does not apply to any of the following activities: …(5) Projects which a public agency rejects or disapproves.*
>
> ***CEQA Guidelines (14 CCR) Section 15042.*** *Authority to Disapprove Projects. [Relevant Portion.] A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*
>
> ***CEQA Guidelines (14 CCR) Section 15270(a).*** *Projects Which are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 21080.9 of CEQA provides that actions to certify LCPs (and LCP amendments) are subject to CEQA. This staff report has discussed the relevant Coastal Act and LUP conformity issues with the proposal. All above Coastal Act and LUP conformity findings are incorporated herein in their entirety by reference. All public comments received to date have been addressed in the findings above. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if

necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.



County of Monterey

Sheet 3 of 7

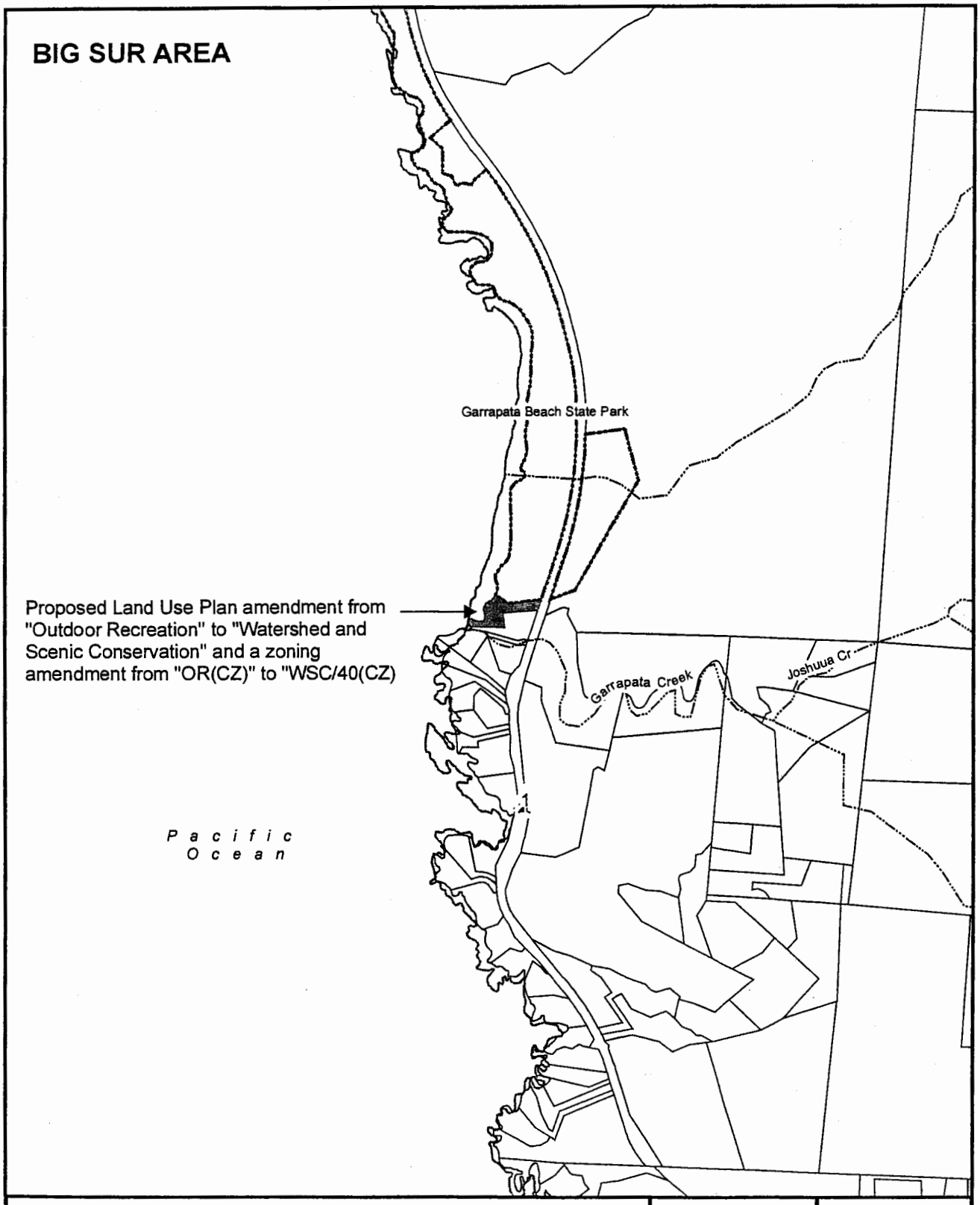
CCC Exhibit A

(page 1 of 1 pages)

SECTION 2
Adopted Amendment(s)

Amend the Big Sur Coast Land Use Plan (LUP) from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC).

Amend Sheet 20-22 of Section 20.08.060 of Title 20 of the Monterey County Code (Monterey County Coastal Implementation Plan) to rezone a 2.5-acre parcel located North of Garrapata Creek, south of Garrapata State Park, between Highway 1 and the Pacific Ocean, Big Sur Area (APN: 243-212-016-000), from Open Space Recreation (OR) to Watershed and Scenic Conservation WSC/40. A copy of the amended Zoning Map is attached.



CCC Exhibit B
(page 2 of 2 pages)

MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING: November 14, 2006; 1:30 PM	**AGENDA NO.:**
SUBJECT: (Continued from November 7, 2006) Consider the following actions: 1. ADOPT a Resolution of Intent to amend the land use designation in the Big Sur Land Use Plan from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC) and amend Sheet 20-22 of Section 20.08.060 of Title 20 of the Monterey County Code (Monterey County Coastal Implementation Plan) from Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC/40) on a 2.5-acre vacant parcel. 2. DIRECT staff to submit the proposed amendment to the California Coastal Commission for certification.	
PROJECT LOCATION: North of Garrapata Creek, south of Garrapata State Park, between Highway 1 and the Pacific Ocean	**APN**: 243-212-016-000
PLANNING NUMBER: PD040368	**NAME**: County of Monterey
PLAN AREA: Big Sur Coast LUP	**FLAGGED AND STAKED:** N/A
ZONING DESIGNATION: OR(CZ), Open Space Recreation (Coastal Zone)	
CEQA ACTION: N/A	
DEPARTMENT: Resource Management Agency, Planning Department	

RECOMMENDATION: Staff recommends that the Board of Supervisors:

1. ADOPT a Resolution of Intent (**Exhibit B**) to amend the land use designation and zoning on a 2.5-acre, vacant parcel from OR to WSC (PD040368/Doud) as described above.
2. DIRECT staff to submit the proposed amendment to the California Coastal Commission for certification together with materials for review of the amendment by the Coastal Commission.

SUMMARY: Mr. John Doud owns a 2.5-acre flag lot located north of Garrapata Creek, south of Garrapata State Park, between Highway 1 and the Pacific Ocean, Big Sur Area, Coastal Zone. The current action before the Board is to consider removing the Outdoor Recreation (OR) land use designation and Open Space Recreation (OR) zoning and apply a new land use designation and zoning of Watershed and Scenic Conservation (WSC). Based on technical studies and analyses in the environmental assessment and related evidence that supports the attached findings, staff finds that the proposed land use change and rezoning are consistent with and similar to surrounding, privately owned, legal lots and would not result in environmental impacts at this time. Research of County records indicates that this property would have been designated WSC under the Big Sur Land Use Plan if State Parks had not begun eminent domain proceedings to take the property from the Doud family to use as part of Garapatta State Beach. Staff finds that the proposed land use amendment meets the criteria required for reclassification to the "WSC" designation.

DISCUSSION: An amendment to the LCP requires review by the Planning Commission, Board of Supervisors and Coastal Commission. On June 8, 2005, the Planning Commission recommended approval of the land use designation and zoning amendment to the Land Use Plan and Coastal Implementation Plan. The Planning Commission voted to approve the

reclassification based on facts indicating that this property would have been designated as WSC if it had not been anticipated to be part of the Garapatta State Beach property. Once the Board has adopted the resolution of intent, the proposed land use designation and zoning amendment must be submitted to the Coastal Commission for certification and returned to the Board for formal adoption before the land use designation and zoning change can be effective.

OTHER AGENCY INVOLVEMENT: All of the land use departments have reviewed the proposed amendment.

FINANCING: There is no financial impact on the General Fund. Applicable fees have been collected as required for this application.

Prepared by:

Carl P. Holm, AICP, Acting Planning Manager
(831) 755-5103; holmcp@co.monterey.ca.us
Dated: November 3, 2006

Approved By:

Mike Novo, Interim Director
Planning Department

Reviewed By: Wendy Strimling, Deputy County Counsel

cc: Board of Supervisors (5); County Counsel; California Coastal Commission; Alana Knaster, Mike Novo, Jeff Main; Carl Holm; Linda Rotharmel; Applicant/Owner (J. Doud); Project File

Attachments:

Exhibit A	Discussion of Proposed Land Use Designation Change and Rezone
Exhibit B	Resolution of Intent to Amend LCP and County Code
	1 Draft Ordinance Amending Section 20.08.060 MCC
	1A Map Amendment, Sheet 20-22
Exhibit C	Planning Commission Resolution
Exhibit D	Environmental Analysis

EXHIBIT A
STAFF REPORT

DISCUSSION

PD040368/Doud
Board of Supervisors
November 14, 2006

EXHIBIT A
DISCUSSION OF PROPOSED LAND USE DESIGNATION CHANGE AND REZONE
PD040368/Doud
November 14, 2006

A. INTRODUCTION

Background
The California Coastal Commission (CCC) certified the Monterey County Big Sur Coast Land Use Plan (BSC LUP) on April 10, 1986 and the Coastal Implementation Plan (CIP) on December 10, 1987. Taken together, these documents constitute the County's Local Coastal Program (LCP) for the Big Sur Area in accordance with State law. This certification enables the County to consider and issue permits for projects located in the coastal zone that are consistent with the certified LCP. Amendments to a certified LCP must be reviewed and certified by the CCC before they may take effect. Since its initial certification, the BSC LUP has been amended once on January 9, 1996.

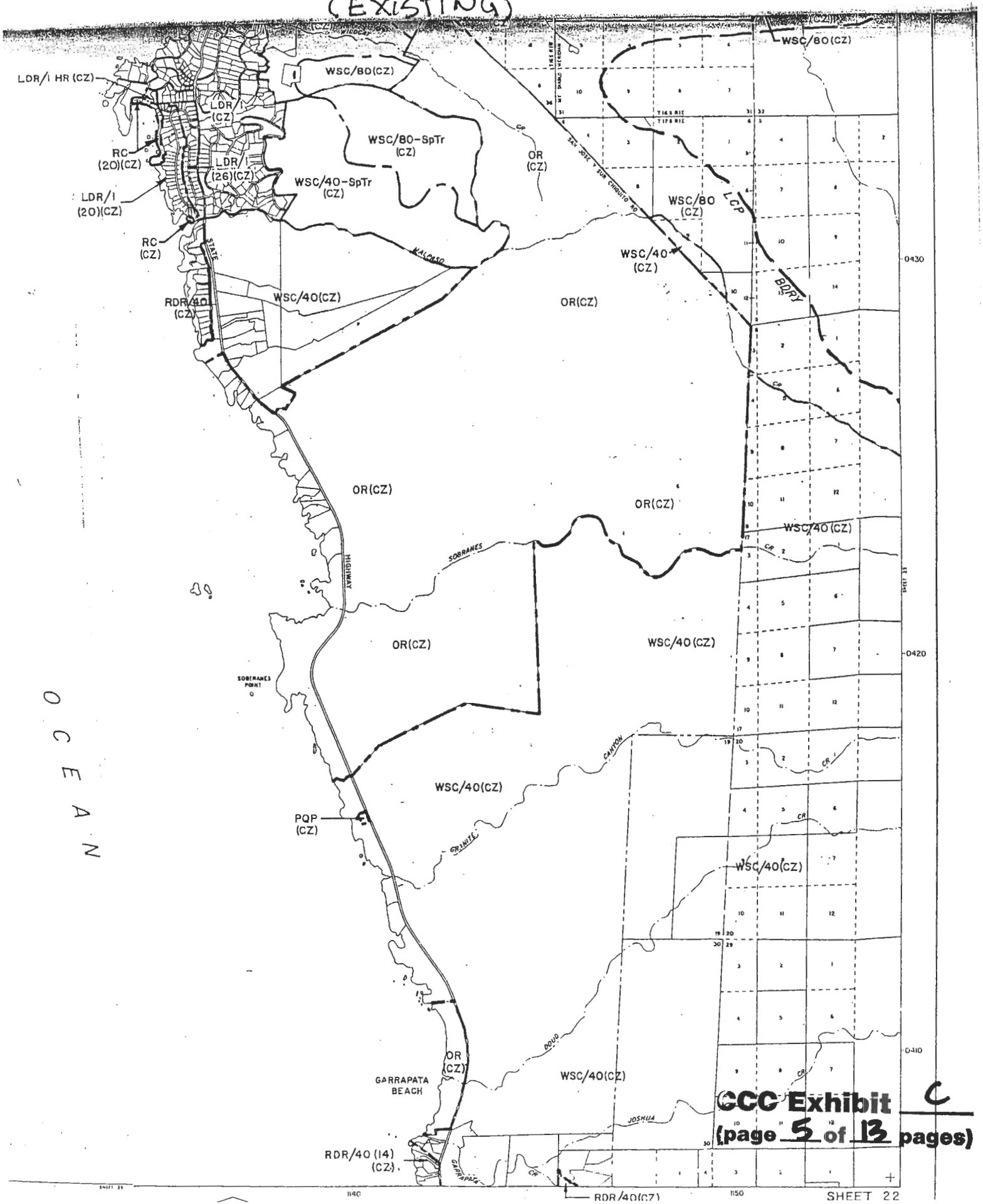
In the mid-1970s, California State Parks initiated eminent domain proceedings to acquire properties owned by the Doud Family Trust between Highway 1 and the ocean north of Garrapata Creek. This eminent domain action became the subject of legal dispute between the Doud family and the State that was not settled until December 1988. Meanwhile, all of the parcels remained under the ownership of the Doud family.

During the period of the legal dispute, the County had prepared, processed, adopted and received Coastal Commission certification of the Big Sur Coast Local Coastal Program. This Program presumed that all of Garrapata Beach would be acquired by State Parks so all of the land in question was designated as Outdoor Recreation (OR) and zoned Open Space Recreation (OR). However, settlement of the dispute included removing a 2.5 acre parcel closest to Garrapata Creek. This parcel was retained by the Doud family separate from what State Parks acquired as Garrapata State Beach.

At the request of the Doud family, the County began processing an amendment to the LCP to change the land use designation and zoning based on the fact that the property had, in fact, remained in private ownership. On July 28, 2004, the Planning Commission adopted a resolution brought forth by County of Monterey to amend the land use designation in the Big Sur Land Use Plan (LUP) from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC) and the zoning in the Coastal Implementation Plan (CIP) from Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC/40).

The land use designation change and rezone would allow the construction of a single family dwelling and related structures as a principal use upon obtaining Coastal Development Permit. In contrast, the current OR land use designation and zoning allows minor structures in support of recreational uses as a principal use. The land use designation change and rezone would be a potential intensification of use and may result in physical impacts related to scenic resources,

ZONING MAP (EXISTING)



CCC Exhibit C
(page 5 of 13 pages)

environmentally sensitive habitats, water resources, hazardous areas, archaeological resources, and public access.

Project Description
Monterey County, on behalf of the property owner Mr. John Doud, is processing an application to change the land use designation and zoning of a 2.5-acre flag lot, located north of Garrapata Creek and south of Garrapata State Park, between Highway 1 and the Pacific Ocean from OR to WSC. On June 8, 2005, the Planning Commission recommended approval of the land use designation amendment to the Land Use Plan and zoning reclassification amending the Coastal Implementation Plan. The Planning Commission voted to approve the reclassification based on facts indicating that this property would have been designated as WSC if it had not been anticipated to be part of the Garapatta State Beach property.

The result of the change in the land use designation and zoning on the Doud parcel would be the potential for low intensity development, including the construction of a single family residence, on a constrained site.

B. PROJECT ANALYSIS

Land Use and Density
The site's land use designation is currently Outdoor Recreation (OR) and zoning is currently Open Space Recreation (OR). Under this land use designation and zoning, development of the Doud property is limited to low intensity recreational and educational uses such as trails, picnic areas, walk-in camping, tent camping where the campsites are separated from one another, and supporting facilities. With a land use designation and zoning of Watershed and Scenic Conservation (WSC and WSC/40), low intensity development, including the construction of a single family residence and related structures, would be permitted. The proposed land use designation change and rezone would not result in development at this time. Should development be proposed in the future, consistency with the LUP density designation would be required.

LCP Amendment
This project involves a request to change a 2.5-acre vacant parcel land use designation in the Big Sur Land Use Plan (LUP) from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC) and the zoning in the Coastal Implementation Plan (CIP) from Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC/40).

Pursuant to Appendix 13 of the Coastal Implementation Plan, a rezoning cannot become effective until after the following process:

- If the Board of Supervisors wishes to approve the proposed rezoning, the Board approves a Resolution of Intent to Adopt and submits the amendment proposal to the Coastal Commission.
- If the Coastal Commission suggests modifications to the Board-approved amendment, the Board of Supervisors shall consider such modifications at a noticed public hearing. The

Board may accept, reject, or suggest alternative language to the Commission's suggested modifications.

- If the modifications are accepted by the Board, the Coastal Commission acknowledges and accepts the Board of Supervisors action, thereby certifying the amendments. If alternative language is suggested by the Board, the Coastal Commission may either accept the language as fulfilling the intent of the suggested modifications, or may not, in which case a new amendment request may be submitted to the Coastal Commission.
- After Coastal Commission certification, the Board of Supervisors must hold a noticed public hearing acknowledging receipt and formally adopting the certified amendment.
- Certified amendments do not become effective until formal adoption by the Board of Supervisors.

CEQA

Staff initially prepared a Mitigated Negative Declaration (MND) for the proposed amendment, and the Planning Commission recommended adoption of the MND. However, staff subsequently determined that, pursuant to Public Resources Code 21080.5, a separate CEQA document is not required because Coastal Commission review of a LCP amendment is the functional equivalent of full CEQA review when the environmental information required by the Coastal Commission is provided.

In considering the land use designation change and rezone, the California Coastal Commission (CCC) requires information on the effects of these changes on coastal resources and other Local Coastal Program (LCP) provisions. An environmental analysis was prepared to provide an assessment of coastal issues requested by the CCC. The report includes a Coastal Act consistency analysis and a discussion of the potential impacts to scenic resources, environmentally sensitive habitats, water resources, hazardous areas, archaeological resources, and public access as a result of the change in land use designation and zoning.

The following findings on potential impacts to scenic resources, environmentally sensitive habitats, water resources, hazardous areas (including geologic and fire hazards), archaeological resources, and public access issues are summarized below:

- Scenic Resources: The proposed land use designation change and rezone are consistent with policies of the Big Sur Coast Land Use Plan dealing with scenic resources and will have no significant impact on the critical viewshed. The majority of Doud property is located within the critical viewshed as defined by the Big Sur Coast LUP. However, no development is proposed at this time that would impact visual resources. Future development permitted under the WSC land use and zoning designation would require a coastal development permit as well as compliance with applicable LUP scenic resource policies, CIP standards, and conditions developed through the coastal development permit process. Future development permitted under the WSC land use and zoning designation would require environmental review in compliance with the California Environmental Quality Act (CEQA).

- Environmentally Sensitive Habitat: The proposed land use designation change and rezone is consistent with policies of the Big Sur Coast Land Use Plan dealing with environmentally sensitive habitat areas and will have no significant impact on biological resources. The Doud property is located along the Big Sur coast, which supports many environmentally sensitive habitats. The Doud property contains several environmentally sensitive habitats, as defined by the Big Sur Coast Land Use Plan. However, no development is proposed at this time that would impact environmentally sensitive habitats. Future development permitted under the WSC land use designation and zoning would require a coastal development permit as well as compliance with applicable LUP policies regarding protection of ESHA, wetlands, riparian corridors, and rare and endangered species. Future development permitted under the WSC land use and zoning designation would require environmental review in compliance with the California Environmental Quality Act (CEQA).

- Water Resources: The proposed land use designation change and rezone are consistent with policies of the Big Sur Coast Land Use Plan dealing with water resources and will have no significant impact. Water supply to the Doud property has not yet been established. However, no development is proposed at this time that would require adequate and safe water supplies. Future development permitted under the WSC land use designation and zoning would require a coastal development permit as well as compliance with applicable LUP water resource policies (Section 3.4), CIP Water Resources Development Standards (Section 20.145.050), and proof of an adequate, safe and continuous supply of water to the subject property Future development permitted under the WSC land use and zoning designation would require environmental review in compliance with the California Environmental Quality Act (CEQA).

- Hazardous Areas: The proposed land use designation change and rezone are consistent with policies of the Big Sur Coast Land Use Plan dealing with hazardous areas and will have no significant impact to people or structures. The Doud property is subject severe erosion and fire hazards. In addition, the Palo Colorado fault runs through the vicinity of the Doud property and may present seismic-related hazards. However, no development is proposed at this time that would expose people or structures to a variety of hazards. Future development permitted under the WSC land use designation and zoning designation would require a coastal development permit as well as compliance with applicable LUP hazardous area policies (Section 3.7) and CIP Hazardous Area Development Standards (Section 20.145.070). Future development permitted under the WSC land use and zoning designation would require environmental review in compliance with the California Environmental Quality Act (CEQA).

- Archaeological Resources: The proposed land use designation change and rezone are consistent with policies of the Big Sur Coast Land Use Plan dealing with archaeological resources and will have no significant impact. There is a high likelihood that unrecorded Native American cultural resources exist on the Doud property. However, no development is proposed at this time that would impact archaeological resources. Future development permitted under the WSC land use designation and zoning would require a

coastal development permit as well as compliance with applicable LUP archaeological resource policies (Section 3.11) and CIP Archaeological Resource Development Standards (Section 20.145.120). Future development permitted under the WSC land use and zoning designation would require environmental review in compliance with the California Environmental Quality Act (CEQA).

- Public Access: The proposed land use designation change and rezone are in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and do not interfere with any form of historic public use or trust rights (see CIP Section 20.70.050.B.4). No access is required as part of the land use designation change and rezone, as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c of the Monterey County Coastal Implementation Plan, can be demonstrated. The Doud property provides public access to Garrapata Beach along an unmarked trail network extending from the Stone House/Fisch property (located immediately south of the subject site) to Garrapata Beach. However, no development is proposed at this time that would reduce public access to this trail network and therefore reduce access to Garrapata Beach. Future development permitted under the WSC land use designation and zoning would require a coastal development permit as well as compliance with applicable LUP public access policies (Section 6), CIP Public Access Development Standards (Section 20.145.150), and public access and recreation policies of Chapter 3 of the California Coastal Act. Future development permitted under the WSC land use and zoning designation would require environmental review in compliance with the California Environmental Quality Act (CEQA).

The report concludes that, as an LCP amendment without a physical project, the Doud parcel land use designation change and rezone would not result in direct physical impacts at this time. However, the effect of the Doud parcel land use designation change and rezone would be the potential for low intensity development, including the construction of a single family dwelling, on a constrained site. This could impact scenic resources, environmentally sensitive habitats, water resources, hazardous areas (including geologic and fire hazards), archaeological resources, and public access; however, the Douds have made no specific development proposal. Therefore, a specific assessment of whether such development would have significant environmental impacts and whether such impacts could be mitigated is not possible at this time and would be merely speculative. Any future development on the site would require environmental review in compliance with CEQA.

LUAC

The proposed land use designation change and rezone was reviewed by the Big Sur Land Use Advisory Committee (LUAC) on October 12, 2004. This LUAC recommended approval of the project by a 5-0 vote. The LUAC did not recommend project conditions.

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No.: 06-334

Resolution of Intent by the Monterey County Board of Supervisors: Amend the land use designation in the Big Sur Land Use Plan (LUP) from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC) and amend a portion of the Monterey County Coastal Implementation Plan by Amending Sheet 20-22 of Section 21.08.060 of Title 20 of the Monterey County Code to apply the Watershed and Scenic Conservation [WSC/40(CZ)] zoning to a 2.5-acre flag lot located north of Garrapata Creek, South of Garrapata State Park, between Highway 1 and the Pacific Ocean (APN: 243-212-016-000), Big Sur Area.

An amendment to the Big Sur Land Use Plan (LUP) land use designation from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC) and an amendment to the Monterey County Coastal Implementation Plan to amend Sheet 20-22 of the Monterey County Zoning Maps (Coastal Implementation Plan) to rezone a 2.5-acre flag lot located north of Garrapata Creek, South of Garrapata State Park, between Highway 1 and the Pacific Ocean (APN: 243-212-016-000) came on for a public hearing before the Board of Supervisors on November 14, 2006. The Board of Supervisors hereby resolves as follows with reference to the following facts:

RECITALS

1. Section 65300 et seq. of the California Government Code requires each county to adopt a comprehensive, long-term General Plan for the physical development of each county.

2. On September 30, 1982, the Board of Supervisors of the County of Monterey ("County") adopted a county-wide General Plan ("General Plan") pursuant to California Planning, Zoning and Development law.

3. Section 30500 of the Public Resources Code requires each County and City to prepare a Local Coastal Program for that portion of the coastal zone within its jurisdiction.

4. On November 5, 1985, the Board of Supervisors adopted the Big Sur Coast Land Use Plan ("Land Use Plan") as part of the Local Coastal Program in the Coastal Zone pursuant the California Coastal Act.

5. On April 10, 1986 the California Coastal Commission acknowledged certification of the Big Sur Coast Land Use Plan ("Land Use Plan") as part of Monterey County's Local Coastal Program.

6. On December 10, 1987, the Coastal Implementation Plan (CIP) was certified by the California Coastal Commission. The CIP includes Part 1 (Zoning Ordinance, Title 20), Part 2 (Regulations for Development in the North County Land Use Plan, Chapter 20.144), Part 3 (Regulations for Development in the Big Sur Coast Land Use Plan, Chapter 20.145), Part 4 (Regulations for Development in the Carmel Area Land Use Plan, Chapter 20.146), Part 5 (Regulations for Development in the Del Monte Forest Land Use Plan, Chapter 20.147), and Part 6 (Appendices-Applicable County Ordinances).

7. On January 5, 1988, Monterey County Board of Supervisors adopted the Local Coastal Program consistent with Section 30512.1 of the Public Resources Code.

8. Pursuant to Section 30514 of the Public Resources Code and the County Coastal Implementation Plan, the County may amend the Local Coastal Program if the County follows certain procedures and the Coastal Commission certifies the amendment. A maximum of three amendments to the Local Coastal Program may be submitted in one calendar year. This would be part of the first amendment to the Local Coastal Program submitted to the Coastal Commission in 2007.

9. On June 8, 2005, the Planning Commission recommended approval of the amendment to the Land Use Plan and Coastal Implementation Plan. The Planning Commission voted to approve the reclassification based on facts indicating that this property would have been designated as WSC if it had not been anticipated to be part of the Garapatta State Beach property. Once the Board has adopted a Resolution of Intent, the proposed amendment must be submitted to the Coastal Commission for certification and returned to the Board for formal adoption before the change in land use designation and rezoning can be effective.

10. Section 20.08.060 of the Coastal Implementation Plan-Part 1 (CIP) references sectional district maps that show the Zoning Plan. Sheet 20-22 of the Monterey County Zoning Map Index provides a graphic representation of the zoning designations in this planning area. The proposed amendment would amend Sheet 20-22 of Section 20.08.060 of the Monterey County Zoning Code.

11. Pursuant to Government Code Section 65850 et seq., the County Planning Commission must hold a noticed public hearing and make a written recommendation to the Board of Supervisors on proposed land use designations and zoning amendments. A hearing was held before the Planning Commission on June 8, 2005, and the Planning Commission recommended approval of the amendment to the Land Use Plan and Coastal Implementation Plan. The Planning

Commission written recommendation (Resolution 05025) was provided to the Board as part of the staff report.

12. The Board finds that the amendment to change the land use designation in the Big Sur Land Use Plan (LUP) from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC) and amend Sheet 20-22 of Section 20.08.060 of Title 20 of the Monterey County Code (Monterey County Coastal Implementation Plan) from Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC/40) on a 2.5-acre vacant parcel is consistent with the Local Coastal Program (LCP) provisions and requirements for removal of the OR designation.

13. All policies of the General Plan and the Local Coastal Program have been reviewed to ensure that the proposed amendments maintain the compatibility and internal consistency of the General Plan and the Local Coastal Program. The Board of Supervisors find that:
    a. The rezoning would be compatible with surrounding privately owned designations and densities. No development is proposed at this time.
    b. Any future development on the site would require compliance with applicable LCP policies, CIP standards, Coastal Act provisions, and conditions developed through coastal development permit and CEQA processes.

14. An environmental analysis has been prepared for the proposed land use designation change and rezone at the request of the CCC. The report concluded that, as an LCP amendment without a physical project, the Doud parcel land use designation change and rezone would not result in direct physical impacts at this time.

15. On November 7 and 14, 2006, the Monterey County Board of Supervisors held a duly noticed public hearing to consider and approve a Resolution of Intent to adopt proposed amendment to the land use designation and zoning in the LCP. At least 10 days before the first public hearing date, notices of the hearing before the Board of Supervisors were published in both the Monterey County Herald and were also posted on and near the property and mailed to property owners within 300 feet of the subject property.

DECISION

The Board of Supervisors of the County of Monterey, State of California, hereby resolves as follows:

1. Subject to certification by the Coastal Commission and having considered the environmental assessment, the Board of Supervisors intends to:
    a. Amend the Big Sur Land Use Plan land use designation on the 2.5 acre flag lot located north of Garrapata Creek, south of Garrapata State Park, between Highway 1 and the Pacific Ocean (APN: 243-212-016-000/Doud)

from Outdoor Recreation (OR) to Watershed and Scenic Conservation (WSC); and

b. Adopt an ordinance (attached hereto as Attachment 1) amending Sheet 20-22 of the Sectional District (Zoning) Maps of Section 20.08.060 of Title 20 (zoning) of the Monterey County Code and the Coastal Implementation Plan. Said ordinance reclassifies a 2.5 acre flag lot located north of Garrapata Creek, south of Garrapata State Park, between Highway 1 and the Pacific Ocean (APN: 243-212-016-000/Doud) from Open Space Recreation, Coastal Zone [OR(CZ)] to Watershed and Scenic Conservation, Coastal Zone [WSC/40(CZ)].

2. This amendment is intended to be carried out in a manner fully in conformity with the California Coastal Act and the County's Local Coastal Program.

3. This resolution is submitted with materials sufficient for a thorough and complete review by the Coastal Commission.

4. Staff is directed to submit this proposed amendment of the Local Coastal Program to the Coastal Commission for certification, together with materials for review of the amendment by the Coastal Commission.

5. This amendment will not take effect until after certification by the Coastal Commission and subsequent formal adoption by the Board of Supervisors.

PASSED AND ADOPTED on this 14th day of November 2006, upon motion of Supervisor Potter, seconded by Supervisor Lindley, by the following vote, to-wit:

AYES:	Supervisors Armenta, Calcagno, Lindley, Potter, and Smith
NOES:	None
ABSENT:	None

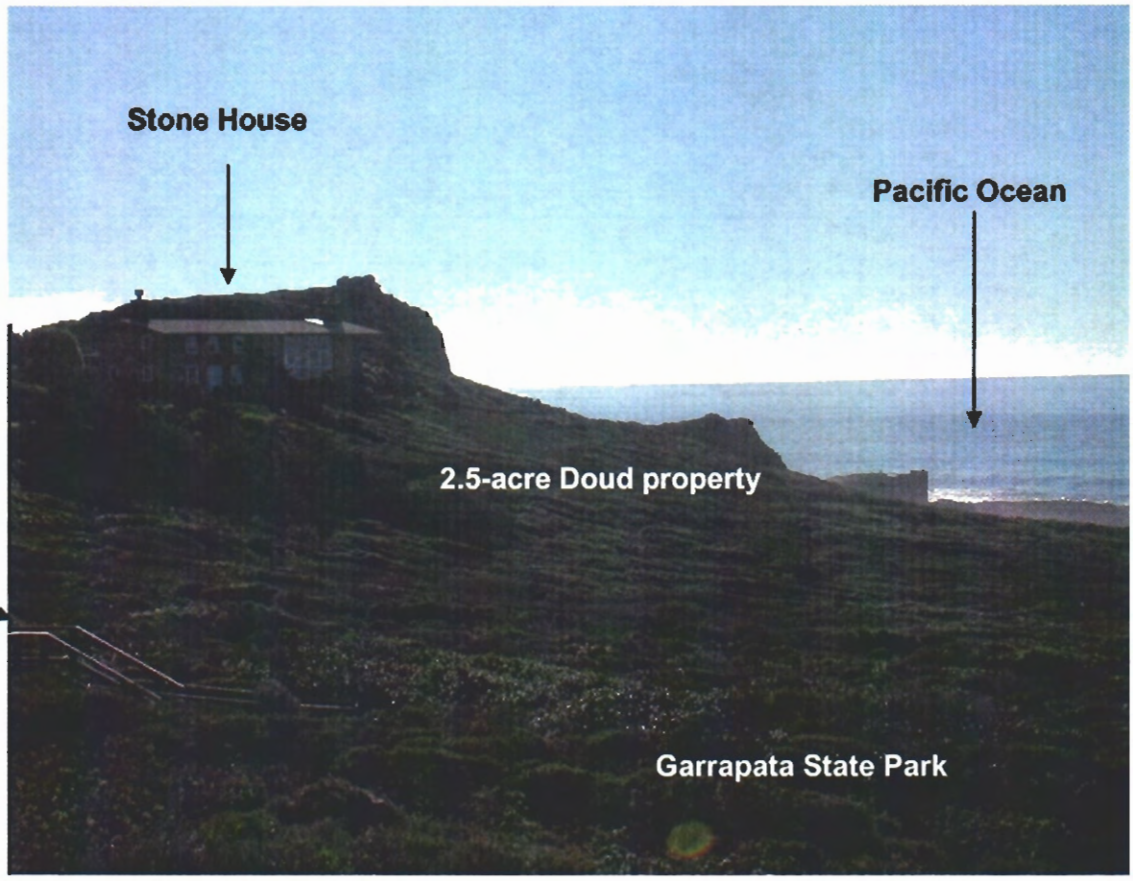
I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 73, on November 14, 2006.

Dated: November 17, 2006

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey and State of California.

By _____
Darlene Drain, Deputy

CCC Exhibit C
(page 13 of 13 pages)



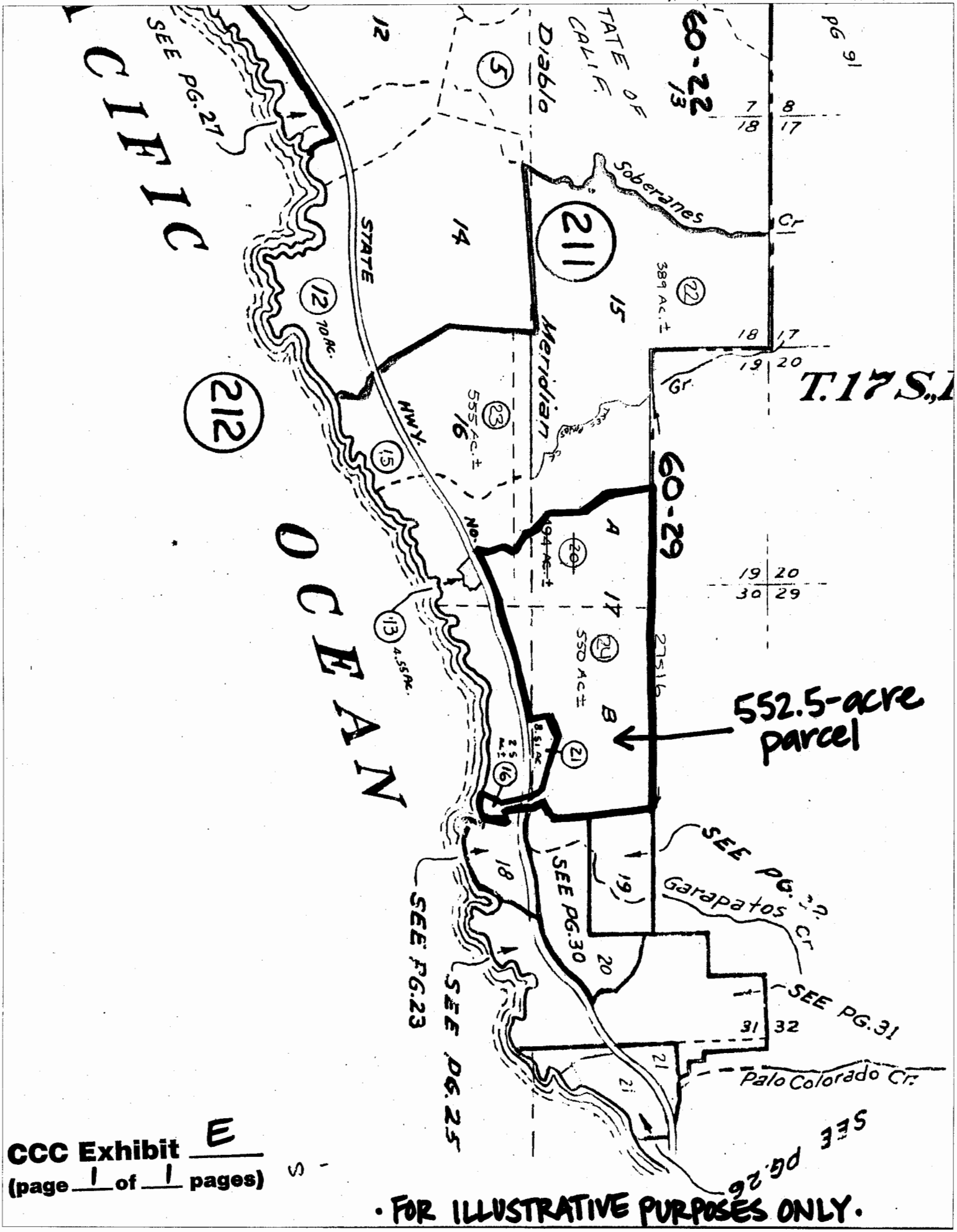
Views south of 2.5-acre Doud site

CCC Exhibit D
(page 1 of 2 pages)

View southwest across 2.5-acre Doud site (Garrapata State Park in foreground)

Oblique aerial photo of site (Source: California Coastal Records Project, 200402393)

CCC Exhibit D
(page 2 of 2 pages)



CCC Exhibit E
(page 1 of 1 pages)

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October 3, 2008

Chairman Patrick Kruer and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 200
San Francisco, CA 91405

Re: **Monterey County LCP Amendment No. MCO-2-07 Part II**
Supplemental Information

Dear Commissioners:

I previously sent to you a submission on behalf of my clients, John and Jane Doud, under cover of July 25, 2008 regarding the above matter. A copy is enclosed for your convenience. One of the key issues presented in this case is whether the Coastal Commission has jurisdiction over the issuance of an Unconditional Certificate of Compliance determining the existence of a legal parcel. In the Doud case, the County of Monterey issued and recorded an Unconditional Certificate of Compliance for the subject parcel in 1998. Our position is that the Coastal Commission has no jurisdiction over the issuance of such a certificate. In further support of that position, I offer herewith a copy of a written opinion dated September 23, 1980 issued by Dennis M. Eagan, Deputy Attorney of the California Attorney General's office. The opinion clearly supports the conclusion that the Douds parcel is a separate legal parcel supported by the Unconditional Certificate of Compliance issued by the County of Monterey over which the Coastal Commission has no jurisdiction.

Thank you for your consideration of this additional information.

Sincerely,

Michael D. Cling

MDC/mmb
cc: John and Jane Doud
Katie Morange, Coastal Commission Staff
Edgar Washburn, Attorney at Law
Dan Carl, California Coastal Commission
Charles Lester, California Coastal Commission
John Bower, California Coastal Commission
Jamee Jordan Patterson, California Attorney General

6000 State Building
San Francisco CA 94102

Steven Maki
Central Coast Regional Commission
701 Ocean Street, Room 310
Santa Cruz, California 95060

September 23, 1980

Certificates of Compliance

Section 66499.35 of the Government Code provides for issuance by local governments of "certificates of compliance" regarding land divisions. You have asked whether a land division concerning which a certificate of compliance has issued also requires a coastal permit.

Our answer depends on the subdivision of section 66499.35 under which the certificate was issued. A coastal permit is required in all cases if the certificate was issued under subdivision (b) of section 66499.35. A coastal permit would be required with regard to a subdivision (a) certificate only if (1) the land division occurred after the effective date of Proposition 20, and (2) no coastal permit has previously issued for the land division. Where a coastal permit is required, staff analysis would proceed under section 30250(a) of the Coastal Act, just as with any other proposed land division in the coastal zone.

Our conclusion derives from the differing nature of certificates issued under subdivision (a) of section 66499.35, as opposed to those issued under subdivision (b). Subdivision (a) provides for the issuance of a certificate when the owner of a lot that was legally created under the Subdivision Map Act or a local ordinance enacted pursuant to it desires documentary proof from the local government that he has, and has always had, a legal lot. No land division is accomplished by such a certificate; there is merely a confirmation that a legal land division has occurred at some time in the past. Only if a coastal permit was required at that earlier time (post-Proposition 20) and none was ever obtained would a coastal permit be required.

With a subdivision (b) certificate, however, the local government is acting with reference to a lot that was

created illegally, without benefit of government review and approval that was required at the time of creation. In such instances, the local government is empowered to impose conditions on a certificate of compliance, if it chooses to issue one. Under subdivision (b), a certificate of compliance creates for the first time with the issuance of the certificate a legal land division. Because a legal lot is created at a time when the Coastal Act requirement of a permit for land divisions is in full force and effect, a coastal permit is required for the land division.

DENNIS M. EAGAN
Deputy Attorney General

DME:ow

cc: Richard Jacobs
Paul Cahill

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July 25, 2008

Chairman Patrick Kruer and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 200
San Francisco, CA 91405

Re: **Monterey County LCP Amendment No. MCO-2-07 Part II**
Date: August 7, 2008 - Agenda Item No. 27(a) - Doud

Dear Chair Kruer and Members of the Commission:

This response to the staff recommendation is made on behalf of John and Jane Doud, the owners of the 2.5 acre parcel which is the subject of the proposed LCP amendment by the County of Monterey. The essence of the LCP amendment is to correct a longstanding impropriety and provide the proper land use designation/zoning for the subject property (Watershed Scenic Conservation - WSC) which is consistent with the fact that it is in private ownership and consistent with the same zoning designation applied to the surrounding properties in private ownership. Presently, the property is designated OR (Open Space Recreation) which was originally applied to the parcel in contemplation of it being part of the Garrapata Beach portion of the Doud Ranch to be acquired by the State as an addition to Garrapata State Park. Ultimately, the 2.5 acre parcel was retained by the Doud family, but the OR zoning designation was never corrected until this LCP amendment was initiated by the County of Monterey. Of primary significance is the fact that in the eminent domain proceedings by which the State acquired Garrapata Beach from the Doud family, the settlement contemplated that the retention of the 2.5 acre parcel by the Doud family, with the ability to build a residence thereon, was in lieu of additional monetary compensation for the Garrapata Beach portion of the property.

While the Board of Supervisors of the County of Monterey unanimously approved the LCP amendment, the Coastal Commission staff recommends denial. Accompanying this letter is a package of exhibits which are referred to herein for purposes of rebutting that recommendation.

The staff recommendation of denial rests on two central points which are discussed, and refuted, below.

THE 2.5. ACRE PARCEL IS A SEPARATE LEGAL PARCEL

The County of Monterey issued an Unconditional Certificate of Compliance (COC) for the subject 2.5 acre parcel on April 15, 1998, the same being recorded on April 16, 1998 with the Monterey County Recorder as Document No. 9822948 (**Exhibit 1**). The materials submitted to Monterey County in support of the Certificate of Compliance (**Exhibit 2**) established the chain of title which resulted in the creation of the 2.5 acre as a separate legal parcel. The documentation demonstrates the acquisition of the Doud Ranch by Francis Doud in 1891, the separation of the portion of the ranch west of Highway 1 by a Grant Deed to the State of California for State Highway 1 in 1929 and 1931, and the final isolation of the 2.5 acre parcel by the State's condemnation of all of the property west of Highway 1, save the 2.5 acre parcel, effective December 28, 1988.

The essence of the Certificate of Compliance is to establish that the subject parcel exists as a separate legal parcel. It is a ministerial determination of the legal status of a parcel. It is not in any sense a discretionary approval of a development. The Certificate provides as follows:

> "The County of Monterey Planning and Building Inspection department has determined that the herein described real property complies with the applicable provisions of the Subdivision Map Act of the State of California and other applicable laws of the State of California with respect to subdivisions and complies with the provisions with local ordinances enacted pursuant thereto accordingly, said property hereinafter constitutes a separate legal parcel in compliance with the State Subdivision Map Act and local ordinance. (Title 19, Subdivisions)" (**Exhibit 1**)

The authority for the County to issue a COC emanates from the Subdivision Map Act and specifically Government Code Section 66499.35(a) **(Exhibit 3).** Therein, the Local Agency administering the subdivision law is authorized to determine whether a parcel of real property complies with the provisions of the Subdivision Map Act and, if that is the case, the agency is mandated ("shall cause a Certificate of Compliance to be filed for record") to issue and record a Certificate of Compliance. No public hearing nor notice to the public is required, other than the recording of the Certificate. Recordation of an instrument imparts constructive notice of its content, the equivalent of actual knowledge, with the knowledge of its contents conclusively presumed (Anderson v. Willson (1920) 48 C.A. 289, 293; Alhambra Redevelopment Agency v. Transamerica Financial Services (1989) 212 C.A. 3d 1370, 1377.)

Noteworthy is the fact that the Subdivision Map Act (Government Code Section 66499.37) provides for a 90 day Statute of Limitations to review, set aside, void or annul any action of a local agency under the Subdivision Map Act. No such action was ever brought regarding the COC.

The Monterey County Subdivision Ordinance is codified in Title 19 which parallels the provisions found in the statewide Subdivision Map Act. Section 19.14.050 establishes the criteria for issuance of an Unconditional Certificate of Compliance (**Exhibit 4**). Section

19.14.050 A.1.a. provides that a parcel which is 2.5 acres or greater and was conveyed by a separate document as a separate parcel on or before March 7, 1972 qualifies for an Unconditional Certificate of Compliance. Section 19.14.050 A.3. establishes a conclusive presumption of lawful creation under Government Code Section 66412.6 for such a lawfully created parcel. Government Code Section 66412.6(a) provides as follows:

> "(a). For purposes of this division or of a local ordinance enacted pursuant thereto, any parcel created prior to March 4, 1972, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels."

The facts regarding the creation of the 2.5 acre parcel clearly warranted the issuance of a Certificate of Compliance.

Under Title 19, an administrative appeal to the Board of Supervisors of the decision to issue the Certificate of Compliance was available to any aggrieved party, subject to the requirement that the appeal be taken within ten days of the decision. (Section 19.16.005 and Section 19.16.025) (**Exhibit 5**) No such appeal was ever taken by anyone.

As noted in the application for the COC, at that time the owner of the subject property was Mary Detels and her brother, John Edward Doud, Successor Trustees of the John Francis Doud and Bernice Doud Trust of 1976 (**Exhibit 2**). Subsequent to the issuance of the COC for the subject parcel and various other certificates on the balance of the Doud Ranch, John Edward Doud and his sister, Mary Detels, agreed to a distribution of the trust assets. They distributed the Doud Ranch parcels based upon their arms length, negotiated agreement as evidenced from the fact that it was necessary for John Doud to file an action in Monterey County to compel distribution pursuant to the Settlement Agreement. (See Monterey County Case No. M72165, John Doud v. Mary Madeline Doud Detels. (**Exhibit 6**) Ultimately, the case was resolved and the ranch distributed by Grant Deeds recorded with the Monterey County Recorder on March 10, 2005 as Document Nos. 023197 and 023198. (**Exhibit 7**). Included in the distribution to John Doud was the subject 2.5 acre parcel. The portion of the Doud Ranch east of Highway 1 across from the 2.5 acre parcel was distributed to Mary Detels. This settlement of the trust estate and distribution of the subject parcels in 2005 was done in good faith reliance upon the longstanding and uncontested Certificates of Compliance issued on the Doud Ranch, including the subject parcel.

The Coastal Commission staff questions the determination that the grant to the State of fee title to the Highway 1 alignment in 1929 and 1931 effectively established the land west of Highway 1 as a separate legal parcel. See Coastal Commission Staff Report, page 5, footnote 2. That footnote clearly demonstrates that, at the latest, Coastal Commission staff became aware of the issuance of the COC in 2004. (See also letter of March 9, 2005 from Rick Hyman to Carl

Holm and Jeff Main of the Monterey County Planning and Building Inspection Department (**Exhibit 8**).[1]

Clearly, the County of Monterey had the legal authority to determine the separate legal parcel status of the 2.5 acre parcel, and did so. No challenge was made to that decision, either administratively or judicially. For a COC issued in 1998, of which the Coastal Commission then had constructive knowledge by virtue of the recordation of the COC, and clearly had actual knowledge as early as 2004, all applicable Statutes of Limitation have long since expired to challenge the validity of the COC. [2]

Further, the issuance of an Unconditional Certificate of Compliance is not a "development" requiring a Coastal Development Permit within the meaning of Public Resources Code Sections 30106 and 30600(a) (**Exhibit 9**). Of significance is Monterey County's Coastal Implementation Ordinance, Title 20 (reviewed and approved by the Coastal Commission), Section 20.06.310(4) (**Exhibit 10**). In defining "development" which requires a Coastal Permit, a "change in the density or intensity of use of land" includes Conditional Certificates of Compliance, but not Unconditional COCs. Obviously, the omission of Unconditional COCs amply demonstrates that no Coastal Development Permit is required for such. Accordingly, the Coastal Commission has no jurisdiction, appellate or otherwise, to review the Certificate of Compliance in question.

In conclusion, the status of the 2.5 acre parcel as a separate legal parcel is a long established fact, fully relied upon by John Edward Doud, and beyond contest not only from a legal and factual standpoint, but also procedurally under any applicable Statute of Limitations.

DENIAL OF THE LCP AMENDMENT AND REZONING WOULD CONSTITUTE A COMPLETE TAKING OF PRIVATE PROPERTY

The record before the Coastal Commission consisting of various Monterey County staff reports and resolutions (**Exhibit 11**), the Coastal Commission staff report, excerpted materials from the eminent domain case by which the State of California acquired the Doud property west of Highway 1 encompassing Garrapata Beach, except for the 2.5 acre parcel (**Exhibit 12**), amply demonstrate the history of how the 2.5 acre parcel became burdened with the "Open Space" zoning. While Open Space zoning is appropriate for publicly owned land, it is completely

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[1] The authorities cited in Footnote 2 deal with language added to the Subdivision Map Act, Government Code Section 66424 by Statutes of 1971, Chapter 1446 ("property shall be considered as contiguous units, even if it is separated by roads, streets, utility easements or railroad rights of way...") Neither of the Attorney General opinions referenced in Footnote 2 address the situation at hand, i.e. the creation of a separate legal parcel by the physical separation of a parcel by the grant of a fee interest to the State for, and the subsequent construction of, a State highway. In any event, the legal separation of the land westward of Highway 1 some 40 years earlier than 1971 was determined by Monterey County to have legally separated the portion of the Doud Ranch west of Highway 1 from that portion east of Highway 1.

[2] The staff indicates that it opened a violation file in 2005 pertaining to the County's issuance of the COC. No Notice of Violation has ever been provided to the property owner and, no action or proceeding has ever been advanced regarding any such claim of violation.

inappropriate for land held in private ownership in most, if not all cases, because it effectively prohibits any investment backed expectations for economic use of the property.

In short, the OR zoning was placed on the property in contemplation of the entirety of the portion of the Doud Ranch west of Highway 1 being acquired by the State of California as an addition to Garrapata State Park. When the case was settled and the Douds were left with the 2.5 acre parcel, the settlement documents (**Exhibit 12**) clearly reflect the contemplation that the Douds would retain their private property rights on that parcel, including the opportunity to develop a residence on that parcel. The settlement further provided the Douds an easement for septic tank purposes over the portion of the property acquired by the State as necessary to build a residence on the 2.5 acre parcel. Most importantly, the elimination of the 2.5 acre parcel at the end of the negotiations between the Douds and the State was intended to make up the difference in the amount of money the Douds should receive for the condemnation of their property and the amount of money that the State had available to pay for it. In other words, it was part of the compensation for the State condemnation that the Douds would have the ability to apply for the building of at least one single family home on the parcel. By refusing to acknowledge that fact, the Coastal Commission would deprive the Douds of the compensation they were intended to receive by reason of the condemnation of the Garrapata Beach portion of the Doud Ranch.

In spite of the fact that the Douds retained ownership of the 2.5 acre parcel, the OR Zoning was never changed on the property until the process which is currently before the Coastal Commission was initiated. Simply put, Mr. Doud seeks to have his property enjoy the same private property land use designation enjoyed by all surrounding private properties, i.e. Watershed Scenic Conservation (WSC) (**Exhibit 13**)

A review of the Coastal Implementation Plan, Title 20, Chapter 20.38 (**Exhibit 14**) reveals that, under the OR Zoning, Mr. Doud would not be allowed any economic, beneficial or productive options for use of his property. Without any opportunity to apply for a Coastal Development Permit to allow a single family residence on the parcel, maintaining the OR zoning effectively requires the land to be left substantially in its natural state. This is precisely the situation addressed by the United States Supreme Court in Lucas v. South Carolina Coastal Counsel (1992) 505 US 1003. Therein, the court held that the State regulations which denied Lucas the opportunity to develop his lots as single family residences were a taking which compelled just compensation to the property owner under the Fifth Amendment of the U.S. Constitution:

> "[R]egulations that leave the owner of land without economically beneficial or productive options for its use--typically, as here, by requiring land to be left substantially in its natural state--carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm." Lucas, supra, p. 1018

There are various assertions in the staff report that certain LCP policies warrant denial of the rezoning. Included in the list are assertions of inconsistency with policies pertaining to

ESHA, critical viewshed, geologic, fire hazard, public services[3] and archaeological/cultural resources. This amounts to prejudgment of a development project which has not even been designed or submitted for a Coastal Development Permit. The policies referred to by staff are designed to regulate development and mitigate its impacts, not deny any economic use whatever. Denial of a private property zoning designation which would allow the property owner to submit a Coastal Development Permit application for a SFR forecloses any opportunity to have a proposal measured against such policies. That is just the sort of regulatory "taking" addressed in Lucas; and the staff suggestion that the parcel could be used for park or recreational uses, or trails, patently offers no economic opportunity which would eliminate the taking in this case.

Approving the LCP amendment to a WSC Zone on the Doud parcel does not foreclose the application of any of the LCP policies referred to by staff. Any application for a residence on the parcel will be subject to obtaining a Coastal Development Permit under Monterey County Certified Local Coastal Plan; and any such permit would be appealable to the Coastal Commission for its review. All of the LCP policies would be dealt with and applied in the course of that process. The current LCP amendment simply allows the Douds access to that process.

CONCLUSION

For the reasons set forth above, the Douds request that the Coastal Commission approve the LCP amendment as submitted and approved by the County of Monterey. The proposed motions for approval are enclosed in this submittal.

Sincerely,

Michael D. Cling,
Attorney at Law

cc: John and Jane Doud
Katie Morange, Coastal Commission Staff
Edgar Washburn

[3] The staff acknowledges that the parcel is within the Garrapata Water Company service area, but questions the ability of the GWC to provide adequate water for a residence on the subject property. Proving adequacy of water supply is likewise a matter to be addressed when an application is made for a Coastal Development Permit for a residence on the subject parcel.

* Exhibits to letter on file and available by request at the Central Coast District Office of the Coastal Commission

July 28, 2008

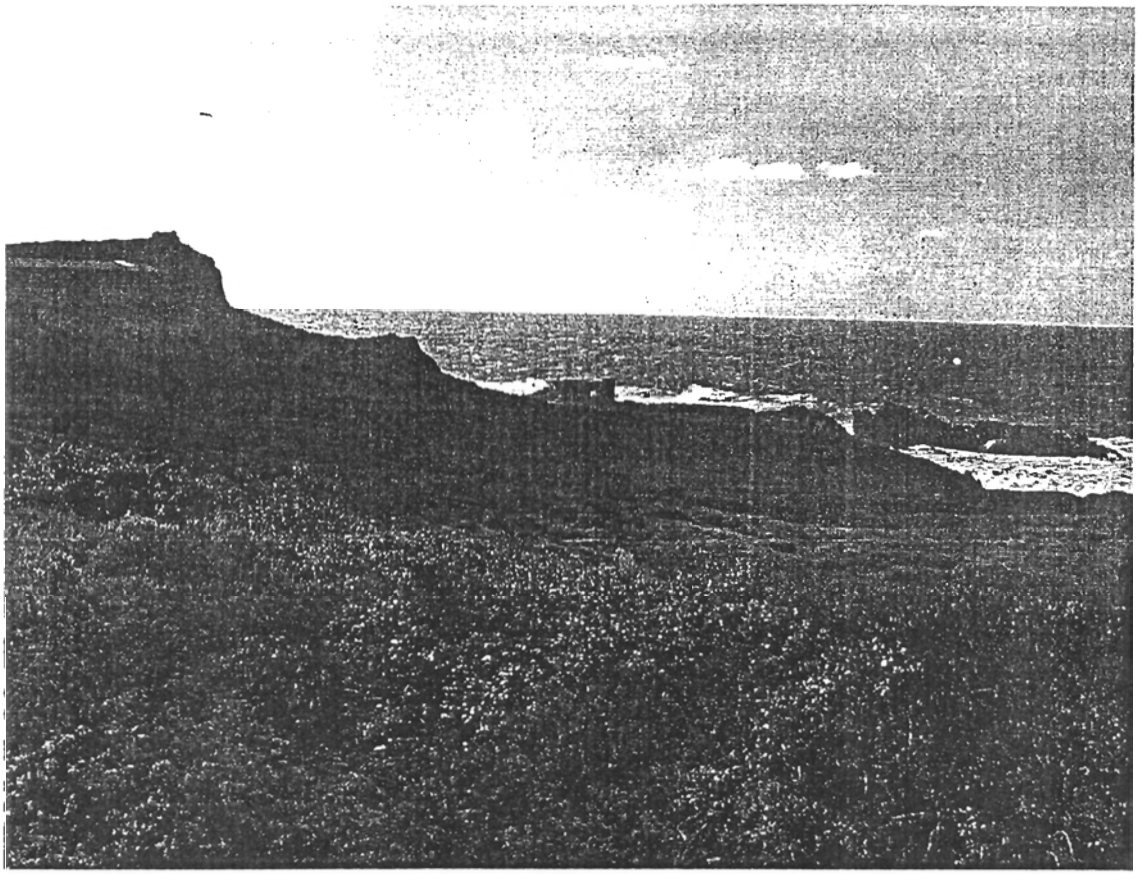
I would like to correct an error in an exhibit to be presented at the August 7th meeting in Oceanside. It concerns the Doud Rezoning LCP AMENDMENT NO. MCO-MAJ-2-07 Part 2.

CCC Exhibit D, page 2 of 2 pages designates John Edward Doud as the owner of the 550 acre parcel. He is not the owner of this parcel 243-211-024. Mary Madeleine Detels is the owner of this parcel

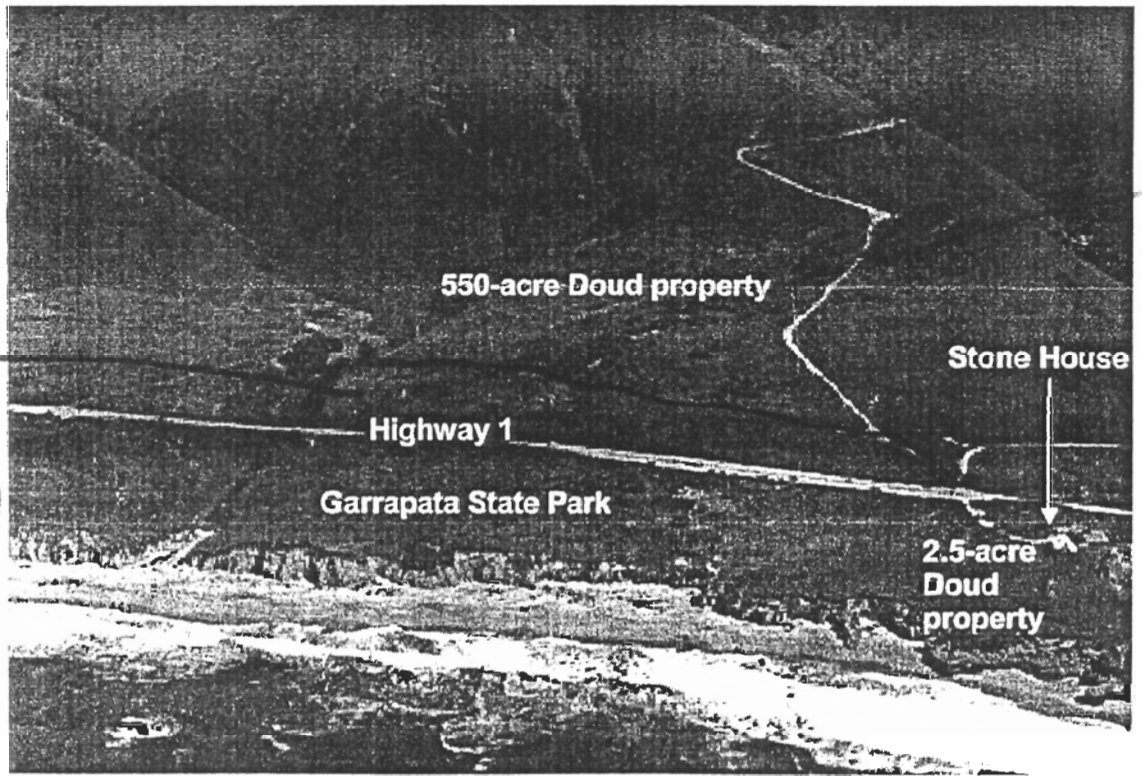
243-211-024.

Mary Madeleine Detels

Mary Madeleine Detels



View southwest across 2.5-acre Doud site (Garrapata State Park in foreground)



Oblique aerial photo of site (Source: California Coastal Records Project, 200402393)

CCC Exhibit F
(page 11 of 11 pages)

CCC Exhibit D
(page 2 of 2 pages)

STATE OF CALIFORNIA—THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

October 8, 2008

VIA U.S. MAIL & FACSIMILE (831) 757-9516

Mike Novo, Planning Director
Monterey County Planning Department
168 West Alisal Street, 2nd Floor
Salinas, CA 93901

Re: 1) Certificate of Compliance, issued on April 15, 1998, Monterey County Recorder Document 9822948, Recorded April 16, 1998
CC File Number: CC970015
Property Owner: Mary Detels and John Doud
2) Monterey County LCP Amendment No. MCO-MAJ-2-07 Part 2
PD040368/Doud

Dear Mr. Novo:

As you are aware, the Coastal Commission ("Commission") is currently considering Monterey County's proposal to modify the land use designation and zoning of 2.5-acres of land near Garrapata State Park (Monterey County Local Coastal Program (LCP) amendment number MCO-MAJ-2-07 Part 2). As you are also aware, we do not believe that the 2.5-acre property in question is a separate legal parcel.[1] In reviewing the materials provided to the Commission by the counsel for John Doud, Mr. Michael D. Cling, in regard to the above-referenced LCP Amendment, it has

[1] In correspondence with County staff as early as January 2005 (when we first became aware of the Unconditional Certificate of Compliance ("CoC") issued by the County for the 2.5 acre property), Commission staff informed County staff that the CoC raised issues under the LCP and the Coastal Act, and that Commission staff had concerns regarding lot legality. (January 25, 2005 email correspondence from Rick Hyman, then Deputy Chief Planner for the Coastal Commission's Central Coast District Office, to Carl Holm and Jeff Main of the Monterey County Planning and Building Inspection Department.) Commission staff stated that it appeared that the CoC was approved and issued by the County based upon an argument that the 2.5 acres was separated from the inland Doud property holding by virtue of the bisecting highway. Commission staff went on to state that the Subdivision Map Act and the County's LCP clearly state that a bisecting road (such as Highway One in this case) does not result in two separate legal parcels, and the fact that no CDP was approved and issued to create a 2.5 acre parcel means the division of land that the CoC purported to legitimize is not in compliance with all applicable governmental approval requirements. Commission staff's subsequent March 9, 2005 letter, which was also copied to Michael Cling, the Doud's attorney, reiterated these concerns and issues, and concluded that "it is the Commission staff's opinion that unless and until a coastal permit is granted for the division of land that the County's unconditional certificate of compliance purported to legitimize, the land in question is not a separate parcel as detailed in our January 25, 2005 email to you." (March 9, 2005 letter from Mr. Hyman to Carl Holm and Jeff Main.)

come to staff's attention that the above-referenced Unconditional Certificate of Compliance ("CoC"), as well as two other CoCs (for lots 9 and 11), were issued in reliance upon a representation by the landowners that the larger parcels were "divided by conveyance of two Grant Deeds[2] to the State of California for State Highway 1 on May 31, 1929 and January 2, 1931." (*See the September 9, 1997 letter from Todd D. Bessire, attorney for Mary Detels, p. 5, attached hereto as Exhibit 1.)* The staff report prepared for the Monterey County Planning Commission for the above-referenced LCPA includes, at Exhibit "A", the Project Discussion, which states, "[s]ince the State acquired the property for the road (versus an easement), the portion of land west of Highway One became a separate legal parcel." *(Attached hereto as Exhibit 2.)*

If the basis for the decision to issue the CoCs was the State's ownership of a fee interest in the corridor in which State Highway 1 is located,[3] such a basis is clearly erroneous and this CoC should not be considered to have been validly approved for purposes of determining the applicability of the LCP's requirement of a coastal development permit ("CDP") for a division of land.[4] The two deeds Mr. Bessire referenced in and attached to his letter are not entitled "Grant Deeds." The May 31, 1929, deed is entitled "Deed-State Highway." *(Attached hereto as Exhibit 3.)* The January 2, 1931, deed is also entitled "Deed-State Highway." *(Attached hereto as Exhibit 4.)*

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2 Under California law it is well-settled that a "Grant Deed" is presumed to convey a fee title interest in the property described therein. (*Munger v. Moore* (1970) 11 Cal.App.3d 1, 9; 3 Miller & Starr, *California Real Estate* (3d ed. 2000) Deeds, § 8.4, pp. 13-14; 26 Cal. Jur. 3d, Deeds, § 16, p. 340.)

3 In opinions to the Director of Planning dated December 27, 1983 (Ulman) and January 21, 1986, (Brown and Robinson) the Monterey County Counsel has opined that parcels separated or divided by a state highway that is held by the state in fee are not "contiguous" to one another for purposes of Government Code § 66424 of the Subdivision Map Act (SMA), and, for this reason, qualify for an unconditional CoC. In those same opinions County Counsel opines that parcels separated or divided by a highway held only as an easement would be "contiguous" for purposes of SMA § 66424 and thus would not qualify for an unconditional CoC. See also Monterey County LCP, at section 20.145.020.II, which defines the term "Existing Parcel" and states in relevant part that "Parcels crossed by public road or highway rights-of-way will not be considered to have been "subdivided" by such a road or highway." While we do not agree that under the language of SMA § 66424 and LCP § 20.145.020.II the nature of the ownership interest in which a road or highway is held is determinative of whether parcels separated by such a feature are "contiguous" to one another, we agree with the County Counsel's conclusion that where the road or highway is held as an easement contiguity is not affected.

However we do not agree with the Office of County Counsel's opinion, as set forth in its aforementioned 1986 memorandum, that the failure of the Legislature to employ the term "highway" in SMA § 66424 means that parcels separated or divided by a "highway" can be considered to be noncontiguous. See the above-quoted section 20.145.020.II of the LCP, which *does* employ the term "highway." Moreover it is well settled under California law that the term "road," as used in § 66424, is a generic term that includes within its scope a "highway." *Fishcher v. County of Shasta* (1956) 46 Cal.2d 771.

4 Pursuant to SMA § 66499.35, an application for a certificate of compliance for a land division that does not qualify for an unconditional certificate should result in the issuance of a Conditional Certificate of Compliance. See also Monterey Co. LCP § 19.14.045.B.4 ("If the County determines that the parcel in question does not meet the requirements [for a determination of parcel legality], the County shall issue a Conditional Certificate of Compliance ... .") Under § 20.06.310.4(d) of the LCP, the term "development," which defines activities for which a CDP is required, includes a "conditional certification of compliance."

Moreover, regardless of the title of the subject deeds, their express language makes it indisputably clear that the deeds conveyed to the State for highway purposes not a fee interest but rather an easement. The language of both deeds states that the owners (Edward Doud and Annie Doud, "the Douds") are conveying "a right of way" for the road "upon, over and across" their land. The 1931 deed also provides a grant by the Douds to the State of the right to remove any trees within the right of way. If this was a fee grant, the State would not need to be given this permission.

Former Political Code section 2631, the law in effect at the time these deeds were executed and recorded, provided "By taking or accepting land for a highway, the public acquire only the right of way, and the incidents necessary to enjoying and maintaining the same, subject to the regulations in this and the Civil Code provided." Again, this supports the conclusion that these deeds conveyed only an easement over the Douds' property.

We have confirmed with the Department of Transportation ("Caltrans") that it is their opinion that two deeds conveyed easements rather than fee title for highway purposes. After reviewing the two deeds referenced above, counsel for Caltrans, Frank D. Valentini, in a written memorandum to the Commission, concludes that "the State's interest in the right of way between Garrapata State Park and Garrapata Creek on Highway 1 is an easement for a highway right of way." Mr. Valentini points out that in "1933 the Legislature authorized the Department of Public Works [predecessor to Caltrans] the right to acquire property in fee for the purpose of a highway right of way. Prior to 1933, the State was not authorized to acquire property in fee for the purposes of a highway right of way. (See Streets and Highways Code section 104 (formerly Political Code section 363u)."

In the Title Report prepared for the State of California on February 27, 1989, the date that the Final Order of Condemnation for the State Park land was recorded, the attached deeds are referred to as easements.

Neither the conveyance of deeds for the State Highway 1 right of way nor the condemnation action for Garrapata State Park caused the 2.5 acre site to become noncontiguous with, or legally separated from, the eastern portion of the Doud property. This 2.5 acre site does not meet the requirements for issuance of an Unconditional Certificate of Compliance as set forth in section 19.14.050.4.a and d, respectively, of the Monterey County LCP: 1) its creation was solely the result of a right-of-way dividing parcels, and 2) it was not created or separately conveyed prior to March 7, 1972.

Section 20.06.310 of Title 20, the Coastal Zoning Ordinance of Monterey County (a component of the Monterey County LCP) provides that "Development means, on land, ... 4. Change in the density or intensity of use of land, including but not limited to: ... d) conditional certificates of compliance pursuant to the Subdivision Map Act ... ." This language mirrors the language of section 30106 of the Coastal Act and the Commission's administrative interpretation thereof.[5] Pursuant to Coastal Act section 30600, any person wishing to perform or undertake development in the coastal zone is required to obtain a CDP authorizing such development before such development takes place. Monterey County's LCP, at section 20.70.025, requires a CDP for all

[5] All Coastal Act references are to the California Public Resources Code.

development except development exempted by section 20.70.120, and the instant case does not fall into a listed exemption. A division of land in the coastal zone legitimized by a conditional CoC is "development" requiring a CDP, and divisions of land created without benefit of a CDP are a violation of the Coastal Act and the County's LCP.

Coastal Act section 30810(a) states that if the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Commission without first securing a permit, or may be inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person to cease and desist. Coastal Act section 30809 states that the Executive Director of the Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Pursuant to Coastal Act section 30810(a), the Commission may issue a cease and desist order to enforce any requirements of a certified local coastal program if any of several elements is met.

Section 30810(a) states:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

Based upon the concerns stated herein regarding the legality of the lot at issue, which encompasses the land being proposed for redesignation under LCP Amendment No. MCO-2-07 Part 2, we have two requests to make of the County.

First, we request that the County withdraw the pending LCP Amendment until the County makes a decision with regard to the validity of the subject Unconditional Certificate of Compliance. Should it agree to do so, the County should inform us of its intent to withdraw the pending LCPA by October 15, 2008 and should withdraw the pending LCPA no later than October 22, 2008. Absent amendment withdrawal, the deadline for Commission action on the LCP amendment is the Commission's upcoming November hearing in San Diego, and we do not want lot legality questions to undermine or affect the Commission's deliberations on the amendment request.

Second, if, as we believe we have demonstrated, this site did not qualify for an unconditional CoC, the County should make a determination to that effect,[6] and, on the basis thereof, require the property owners to submit an application for a CDP. This action should also be taken by no later than October 22.

If the County declines to act in the above-described matter by October 22, 2008, pursuant to Coastal Act sections 30809 and/or 30810, the Commission will assume primary responsibility for taking enforcement action to compel compliance with the permit requirements of section 30600 of the Coastal Act. We believe it to be in all parties best interests to separate the CoC issues as much as possible from the LCP amendment issues, and we believe it to be appropriate for the County to reassess its prior CoC action in this regard, including with respect to the information presented in this letter. We recognize that such reassessment may take time, and it is clear that only LCP amendment withdrawal will be able to provide for that time at this point. We look forward to working with you to resolve these CoC and LCP amendment issues in the near future.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

DAN CARL, CENTRAL COAST DISTRICT MANAGER, for
Charles Lester
Senior Deputy Director

cc: John Doud and Jane Devine Doud
Michael Cling, attorney for Jane and John Doud
Mary Detels
Wendy S. Strimling, Monterey County Deputy County Counsel

[6] Subject to the presence of circumstances giving rise to the bar of estoppel, which we do not believe to exist with respect to this matter, a governmental body has inherent authority to rescind a regulatory approval that was granted on the basis of, or in reliance upon, an erroneous understanding of exigent circumstances. *Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770.

CC 970013

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File No. 00349.000

September 9, 1997

Ms. Ann Towner
Monterey County Planning
and Building Inspection Department
P. O. Box 1208
Salinas, CA 93902

Re: Detels' Certificates of Compliance

Dear Ann:

Mary Detels has requested this law firm to obtain Certificates of Compliance from the County for the 12 lots located within the Doud Ranch. Mary Detels and her brother, John Edward Doud, are successor trustees of the John Francis Doud and Bernice Doud Trust of 1976. (See Declaration attached as Exhibit A.)

The following evidence supports issuance of Unconditional Certificates of Compliance for 12 individual lots.

LOT 1 (417-011-018)

Lot 1 was conveyed to Francis Doud by assignment of Federal Patent No. 101.898 on November 9, 1891. (Exhibit B.)

The Subdivision Map Act states that parcels created prior to 1972 shall be conclusively presumed to have been lawfully created if they were created in accordance with the laws in effect at the time of their creation. (Gov. Code § 66412.6(a).) Because the 1891 patent pre-dates the first subdivision ordinance adopted by Monterey County in 1930, Lot 1 complied with the local ordinances then in effect and is therefore entitled to an Unconditional Certificate of Compliance.

LOT 2 (APN 417-011-016)

Lot 2 was created by a federal patent prior to adoption of the first Monterey County Subdivision Ordinance and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 2 was conveyed to Guillermo Dias on June 13, 1891. (Exhibit C.) Guillermo Dias conveyed the property to Manuel Cantua by Grant Deed on April 29, 1889 (Exhibit D), who on that same date granted the property to Thomas Doud. (Exhibit E.)

LOT 3 (APN 417-021-002)

Lot 3 was created by a federal patent prior to adoption of the first Monterey County Subdivision Ordinance and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 3 was conveyed to Marcelino Escobar by federal patent on December 29, 1890 (Exhibit F) who conveyed the property by Grant Deed to Francis Doud on July 3, 1889. (Exhibit G.)

LOT 4 (APN 417-021-040)

Lot 4 was created by a federal patent prior to adoption of the first Monterey County Subdivision Ordinance and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 4 was conveyed by a federal patent to Jesus Romero on April 3, 1929. (Exhibit H.) Jesus Romero conveyed the property to John Francis Doud by Grant Deed on December 5, 1947. (Exhibit I.)

LOT 5 (APN 417-021-039)

Lot 5 was created by a federal patent prior to adoption of the first Monterey County Subdivision Ordinance and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 5 was conveyed to Jesus Romero by a federal patent on January 4, 1898. (Exhibit J-1.) Jesus Romero conveyed this property with Lot 4 to John Francis Doud on December 5, 1947 by Grant Deed. (Exhibit I.)

Because Lots 4 and 5 were legally created as separate lots and Monterey County has not adopted a merger ordinance, both lots retain their status as separate legal lots of record, even though sold to John Doud under a single grant. Further, because the size of both lots exceed the 40 acre minimum lot size prescribed by the WSC/40 (CZ) designation applied to the property, the County would not have authority to merge the two lots even with a merger ordinance.

LOT 6 (APN 417-021-038)

Lot 6 was created by federal patent prior to adoption of the first Monterey County Subdivision Ordinance and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 6 was conveyed to Elizabeth Emeline Davis by federal patent on May 13, 1891. (Exhibit K.) Elizabeth Emeline Davis conveyed the property to Virginia L. Davis by Grant Deed on August 1, 1889 (Exhibit L), who conveyed the property to Francis Doud by Grant Deed on June 2, 1891. (Exhibit M.)

LOT 7 (APN 417-021-038)

Lot 7 was created by federal patent prior to adoption of the first Monterey County Subdivision Ordinance and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 7 was conveyed to Edward Doud by federal patent on September 28, 1894. (Exhibit N.)

LOT 8 (APN 417-021-031)

Lot 8 was created by federal patent prior to adoption of the first Monterey County Subdivision Ordinance and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 8 was conveyed to Eugene Richter by federal patent on August 2, 1895. (Exhibit O.) Eugene Richter conveyed the property to Mrs. Mungo McHolme on October 31, 1904 (Exhibit P), which was passed through her estate to Sara Cannon Lind on November 13, 1905 (Exhibit Q), who then conveyed the property to Edward Doud by Grant Deed on February 18, 1911. (Exhibit R.)

LOT 9 (PORTION OF APN 243-211-020)

Lot 9 was created by Grant Deed prior to the adoption of the first Monterey County Subdivision Ordinance, and subsequently divided by (1) conveyance to the State of California for the purpose of operating State Highway 1, and (2) through judgment of condemnation by the State of California, and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 9 was initially conveyed by Grant Deed from Carmelo Land and Coal Company to Francis Doud on February 25, 1891 (Exhibit S) was subsequently divided by conveyance of two Grant Deeds to the State of California for State Highway 1 on May 31, 1929 and January 2, 1931. (Exhibits T-1 and T-2.)

In People v. Thompson, the California Supreme Court held that a parcel should be considered severed by grant of a state highway right-of-way where contiguity is severed. (California v. Thompson (1954) 43 Cal.2d 13, 24-25 [271 P.2d 507].) The court stated that

factors to be considered in determining contiguity should include:

1. Loss of control over the fee title; and

2. Free passage between all portions of the property.

Here, the property owner granted the state a fee title for the purposes of constructing State Highway 1, which completely severed the eastern and western portions of this property. Clearly, free passage from one portion of the property to the other was, and remains, curtailed for all practical purposes by a state highway. Therefore, conveying a fee interest to the state for the purpose of constructing Highway 1, subdivided Lot 9 in a manner consistent with law.

Lot 9 was further subdivided through condemnation of a portion of the property by the State of California for the purpose of creating a state park. (Said portion is described as "parcel 3" of Exhibit W and shown on the accompanying map as A.P.N. 243-211-21.) Government Code sections 66426.5 and 66428(a)(2) remove land conveyances to government agencies from compliance with the provisions of the Subdivision Map Act. Therefore, the state conveyance further subdivided this property, consistent with the Map Act.

Since Lot 9 was originally created prior to the first Monterey County Subdivision Ordinance, legally subdivided by conveyance of Highway 1, and reduced in size by condemnation by the State, Lot 9 is entitled to an Unconditional Certificate of Compliance.

LOT 10 (A PORTION OF APN 243-211-020)

Lot 10 was created by conveyance of a Grant Deed prior to adoption of the first Monterey County Subdivision Ordinance and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 10 was conveyed to Thomas Doud by Grant Deed from the Carmelo Land and Coal Company on March 10, 1890. (Exhibit U.)

LOT 11 (A PORTION OF APN 243-211-020)

Lot 11 was created by Grant Deed prior to adoption of the first Monterey County Subdivision Ordinance and subsequently divided by conveyance for State Highway 1 and is therefore entitled to an Unconditional Certificate of Compliance.

Lot 11 was initially conveyed by Grant Deed from the Carmelo Land and Coal Company to Francis Doud on August 31, 1889 (Exhibit V) and was subsequently subdivided through conveyance of a Grant Deed to the State of California for State Highway 1 on January 2, 1931. (Exhibit T-2.)

Consistent with the analysis for Lot 9 as it pertains to subdivision of property through conveyance of a highway parcel, Lot 11 is entitled to an Unconditional Certificate of Compliance.

LOT 12 (APN 243-212-016)

Lot 12 is a portion of property created by Grant Deed prior to adoption of the first Monterey County Subdivision Ordinance, further subdivided by Grant Deed to the state for highway purposes, and finally severed therefrom through judgment of condemnation by the State of California for state park purposes, and is therefore entitled to an Unconditional Certificate of Compliance.

The western portion of the property was conveyed by Grant Deed from Carmelo Land and Coal Company to Francis Doud on February 25, 1891 (Exhibit S), further subdivided by Grant Deed to the State of California for State Highway 1 on May 31, 1929 and January 2, 1931 (Exhibits T-1 and T-2), and was further subdivided by final order of condemnation by the State of California (Exhibit W) on December 28, 1988.

Consistent with the above analysis regarding state acquisition of property by grants for highway purposes and condemnation for the purpose of creating state parks, Lot 12 is entitled to an Unconditional Certificate of Compliance.

CONCLUSION

The Doud Ranch contains 12 legal lots of record and therefore entitled to 12 unconditional Certificates of Compliance. We will provide typed legal descriptions of those parcels where the grant deed or patent language is difficult to read and for the remnant parcel (Lot 12) when the County is prepared to record the Certificates.

Please do not hesitate to call if you have any questions.

Sincerely,

Todd D. Bessire

TDB:vff:med

Enclosures

EXHIBIT "A"
PROJECT DISCUSSION
PD040368/Doud
June 8, 2005

Legal counsel for Ms. Carol Fisch, neighboring property owner, has submitted comments in opposition to the proposed zone change for the Planning Commission to consider (**Exhibit D**). In summary, there are two main points of contention:

1. Intent of Zoning. The opponents disagree that the parcel would have been designated WSC had this issue been addressed when the parcel was created. Applying the WSC designation would violate LUP policies by creating a parcel that cannot be developed.

STAFF RESPONSE: Although the County would not have created a lot smaller than 40 acres in size, the subject 2.5-acre parcel is a legal lot of record created through a series of actions by State agencies (Caltrans, State Parks). The subject lot was originally part of a larger parcel (owned by the Doud family) that was split off when Highway One was created. Since the State acquired the property for the road (versus an easement), the portion of land west of Highway One became a separate legal parcel. Later the State took action to acquire the land west of Highway One, but as part of a settlement agreement with the Doud family this 2.5 acres was split off and retained by the Douds.

In general, private properties existing when the Big Sur LUP was adopted were designated WSC/40 regardless of their size. The OR designation was applied only to properties where there was current or planned recreational uses. The larger Doud parcel located east of Highway One was designated WSC/40, but the portion west of the Highway was designated OR with the expectation that the State was acquiring the entire stretch of land for a park. No other private properties were designated OR, except where they had existing private recreational uses.

2. CEQA Review. The opponents contend that an EIR is required for the proposed zone change because possible development of the site would require an EIR and that analysis cannot be deferred. Garrapata Beach is also considered critical viewshed under the Land Use Plan making the site undevelopable. The unresolved water issues require and EIR.

STAFF RESPONSE: Staff agrees that there are environmental issues that would need to be addressed if the site were to be developed. Although staff finds that developing the site either under OR or WSC could potentially rise to a level of requiring preparation of an EIR if the proposed development does not adequately address site conditions relative to LUP policies. There is equally the potential that development under either designation could be designed to minimize impacts so that potential impacts could be mitigated to a less than significant level. Such determination is dependant on the intensity of development proposed and mitigation would depend on specific impacts related to a specific development.

The most recent letter from the Garrapata Water Company indicates there would be a potential for the subject site to obtain a water connection. Regardless of the zoning designation, no development can take place until the applicant shows proof of water. Once proof of water can be established, there would be no significant impact.

Development within the Critical viewshed is not prohibited, but is allowed subject to obtaining a Coastal Development Permit. Although the County would not create a parcel wholly within the critical viewshed, existing parcels have been permitted limited development under the WSC designation. Based on County practice of interpreting the LUP policies and the avenue to obtain a use permit to develop in the viewshed, staff determined that this zone change is not a significant impact warranting preparation of an EIR.

A similar response would apply to prescriptive public access rights across the Doud parcel. An email letter from Mr. Colin Gallagher was submitted that identified potential prescriptive rights for public access across the subject parcel. There is no evidence that changing the land use designation would affect any such access rights. Any future development under OR or WSC would equally be required to demonstrate that no prescriptive rights are being affected.

CONCLUSIONS:

Based on the information available, staff finds that the County would have designated the site WSC when the LCP was prepared had State Parks not been taking action to acquire the property. The Planning Commission verified this position on July 28, 2004 as part of the discussions for adopting a resolution of intent to direct staff to process this amendment.

Staff concludes that the proposed zone change by itself has no impacts that would require mitigation. Staff recommends that the Planning Commission recommend that the Board of Supervisors adopt a Negative Declaration. If the Commission were to agree with one or both of the opponents arguments, then an alternative would be to process this change as part of the current Local Coastal Program (LCP) update. An EIR is not prepared for an LCP update because certification of the LCP is the functional equivalent to preparing an EIR. However, an environmental analysis will be prepared as part of that action.

VOL. 198 O.R. 449

filed on January 31, 1907, in the office of the County Recorder of the County of Monterey, State of California, and now on file and of record in said office in Map Book One, Cities and Towns, at page 12 therein.

AND, One Hundred Sixty-one and 34/100 ($161.34) Dollars, money on deposit in the Bank of Pacific Grove, at Pacific Grove, California.

The entire amount of the separate property is hereby distributed:

One-third (1/3) thereof to the above named Eber L. Gilbert, husband of the decedent.

One-third (1/3) thereof to the above named Esther Gilbert, adult ' the decedent.

one-third (1/3) thereof to the above named June Gilbert, adult ' the decedent.

ollowing is a particular description of said residue of the said roperty referred to in this decree and of which distribution is i as aforesaid; The sum of One Thousand Two Hundred Twenty-five ($1,225.88) Dollars, lawful money of the United States, on the Bank of Italy at Monterey, California.

HWY

All property not now known or discovered, or not herein set forth, in which the said decedent or said estate may have, or may hereafter acquire, any interest, is hereby distributed as follows:

Community property, if any, to the above named husband of decedent, Eber L. Gilbert; all separate property of the decedent, one-third (1/3) thereof to the above named husband of decedent, Eber L. Gilbert; one third (1/3) thereof to the above named daughter Esther L.Gilbert; one-third (1/3) thereof to the above named daughter, June Gilbert.

Done in open Court, this 2nd day of August, 1929.

H. C. JORDEN

Judge of the SuperiorCourt.

The foregoing instrument is a correct copy of the original on file in my office.
Dated August 3rd, 1929.

T. F. JOY

Clerk of the Superior Court in and for the County of Monterey, State of California.

By...Pauline J. Holm...Deputy. (COURT SEAL)

Recorded at the request of John H. Thomsen, Aug. 5, 1929 at 10 Min. past 9 A.M...M.B...57255

DEED--STATE HIGHWAY.

KNOW ALL MEN BY THESE PRESENTS: We, Edward Doud and Annie Doud [illegible] and wife, respectively, Grantors, of the County of Monterey, State of

CCC Exh G
(page 13 of [illegible] ge
22

EXHIBIT 3

California, owners of the hereinafter described lands, for and in consideration of Ten Dollars ($10.00), in hand paid by the State of California, or on its behalf, the receipt whereof is hereby acknowledged, and the benefits to accrue to them by reason of the location and establishment of the State Highway upon, over and across the 1.15 acre tract hereinafter described, do hereby signify their approval of and consent to the location, establishment and construction of said State Highway over and along said 1.15 acre tract, and do by these presents hereby convey, quitclaim and dedicate to the State of California, grantee, but without any warranty of title, the right of way for road and bridge purposes only, for said State Highway upon, over and across their said land, hereinafter described, lying and being in the County of Monterey, State of California, and particularly described as follows, to-wit:

A part of Rancho San Jose Y Sur Chiquito in Monterey County, more particularly described in the deed from Francis Doud Sr. to Edward Doud, dated February 19, 1908 and recorded in Volume 117 of Deeds, at page 145, Records of Monterey County.

Said State Highway right of way hereby quitclaimed conveyed and dedicated is more particularly described as follows:

All of that part of the property of the undersigned as described in the above mentioned deed, lying within a strip of land 80 feet wide and 40 feet on each side of the following described center line: Beginning at a point known as Engineer's Station 380+00 on the center line survey for the State Highway, District V, Route 56, Section C, Monterey County, which said point of beginning bears S. 81° 27' 25" E., 429.81 feet from a post marked ED and W.P.I., set at Station 76 on the Official Survey of Rancho San Jose Y Sur Chiquito; running thence along the above mentioned center line survey, N. 16° 33' E., 254.38 feet; thence along a curve to the left with a radius of 2000 feet through an angle of 10° 59' 30" a distance of 383.68 feet; thence N. 5° 33' 30" E., 111.94 feet to Station 387+50 of the above mentioned center line survey.

It is understood and agreed that this deed covers only that part of and interest in the above described lands which the undersigned possess.

This deed is made and accepted upon the following conditions subsequent to-wit:

That said 1.15 acre tract of land shall be used for highway, road and/or bridge purposes only.

In the event said grantee shall cease to use said 1.15 acre tract of land for the purposes above specified, or shall abandon said 1.15 acre tract, or shall use it for other purposes than above specified, said 1.15 acre tract shall revert to the grantors, their heirs and assigns, each of whom respectively shall have the right of immediate re-entry upon said premises in the event of any such breach or abandonment.

Said right of way above described contains 1.15 acres more or less.

And we, the said grantors, do hereby waive all claim for any and all damages or compensation for and on account of the location, establishment and construction of said State Highway; and do grant to grantee the right to remove any and all trees, growths, and roadbuilding material within said right of way, and the right to use the same in such manner as the said grantee may deem proper, needful or necessary in the construction, reconstruction and/or maintenance of said State Highway and/or any road or highway constructed, or to be constructed, by, for or under the direction or control of the State of California.

IN WITNESS WHEREOF, we have set out hands and seals this 31st day of May, 1929.

EDWARD DOUD

ANNIE DOUD.

STATE OF CALIFORNIA
COUNTY OF MONTEREY (SS.

On this 31st day of May, in the year One Thousand Nine Hundred and Twenty-nine, before me, J. A. Bardin, a Notary Public in and for the County of Monterey, personally appeared Edward Doud and Annie Doud, husband and wife, respectively, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in the County of Monterey, the day and year in this certificate first above written.

J. A. BARDIN

Notary Public in and for the County of Monterey, State of California.

(NOTARIAL SEAL)

I hereby consent to the grant of the within right of way for state highway and agree to the construction and maintenance of said state highway over on and across the within described property.

Signed, sealed and delivered in the presence of Ellard W. Curson as subscribing witness.

A. M. ALLEN

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO (SS.

On this Tenth day of June in the year one thousand nine hundred and twenty-nine, before me, E. P. Howes, a Notary Public in and for the County of San Luis Obispo, residing therein, duly commissioned and sworn, personally appeared Ellard W. Curson known to me to be the

persons whose name is subscribed to the within instrument as a witness thereto, who, being by me duly sworn, deposed and said: that he resides in San Luis Obispo, County of San Luis Obispo, State of California; that he was present and saw A. M. Allan (personally known to him to be the person described in, and who executed the said within instrument as party thereto), sign, seal and deliver the same; that the said A. M. Allan, duly acknowledged in the presence of said affiant, that he executed the same and that he, the said affiant, thereupon, did at the request of said A. M. Allan subscribed his name as a witness thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the County of San Luis Obispo, the day and year in this certificate first above written.

E. P. ROGERS
Notary Public in and for the County of
San Luis Obispo, State of California.

(NOTARIAL SEAL)

CERTIFICATE OF ACCEPTANCE (Civil Code 1158)

THIS IS TO CERTIFY, That the Department of Public Works of the State of California, hereby consents to the execution of this Deed and accepts the property described therein on behalf of the State of California.

IN WITNESS WHEREOF, I have hereunto set my hand at San Luis Obispo, California, this 11th day of July, 1939.

E. B. HEEK
Director of Public Works.
BY..L. H. GIBSON
District Engineer.

Recorded at the request of Monterey County Title & Abstract Company, Aug. 3, 1939 at 39 min. past 9 A.M...M.B..37259

ASSIGNMENT OF
NOTICE OF DEFAULT AND ELECTION TO SELL
UNDER DEED OF TRUST.

Trustee's Sale No._____
Loan No. 2004 T 94.

WHEREAS, the undersigned, as Beneficiary under that certain Deed of Trust dated July 5th, 1927, executed by M. P. MCGUIRE and CECILIA M. MCGUIRE to M. T. DE HEMMETT and M. C. DE VOE, as Trustees, and recorded August 2, 1927 in Vol. 121, pg. 101 of Official Records of the County of Monterey, State of California, caused to be recorded, on March 20,1939 in Vol.

to me to be the persons whose name_ are subscribed to the within instrument, and they duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the said County of San Luis Obispo, the day and year in this certificate first above written.

LYMAN BREWER
Notary Public in and for said County of
San Luis Obispo, State of California.
(NOTARIAL SEAL)

HWY

America National Trust & Savings Association,
....M.B....80982.

DISTRICT COUNTY ROUTE SECTION
V. Mon. 56 G & H
Sta. 380463 V-Mon-56-G to
Sta. 107463 V-Mon-56-H, Rt. & Lt.
Owner: Edward Doud et al.

DEED--STATE HIGHWAY.

KNOW ALL MEN BY THESE PRESENTS: WE, Edward Doud and Annie Doud, husband and wife respectively, Grantors of the County of Monterey, State of California, owners of the hereinafter described lands, for and in consideration of Ten dollars ($10.00), in hand paid by the State of California, or on its behalf, the receipt whereof is hereby acknowledged, and the benefits to accrue to us by reason of the location and establishment of the State highway upon, over and across said lands, we do hereby signify our approval of and consent to the location, establishment and construction of said State highway and we do, by these presents hereby grant, convey and dedicate to the State of California, grantee, the right of way and incidents thereto for said State highway upon, over and across our said lands, hereinafter described, lying and being in the County of Monterey, State of California, and particularly described as follows, to wit: Those parcels of land situate in the Rancho San Jose Y Sur Chiquito, as conveyed to Edward Doud by that deed dated February 19, 1908, recorded in Book of Deeds No. 117, page 145, and that deed dated November 27, 1911, recorded in Book of Deeds No. 122, page 341, Records of Monterey County.

The grantors neither warrant or guarantee that they are at the date hereof, the owners of the fee simple title to the real property traversed by said right of way.

CCC Exhibit G
(page 17 of 22 pages)

EXHIBIT 4

See State Highway Map Book Sheet 10.

Said State highway right of way hereby granted, conveyed and dedicated is more particularly described as follows, to-wit: All that portion of the above described property included within a strip of land 80 feet wide and lying 40 feet on both sides of the following described center line:-

Beginning at Engineer's Station 380400.00, V-Mon-56-C, on the Department of Public Works' centerline survey for the State Highway, Road V-Mon-56-C; thence, from the said point of beginning, along the said centerline survey, N. 16° 38' E., 63.19 feet, more or less, to an intersection with the southerly boundary line of the property described in the first above mentioned deed, said intersection bears N. 89° 34' 30" W., 387.73 feet, more or less, from a 4" x 4" post set for the corner common to sections 25 and 36, Township 17 South, Range 1 West, and Sections 30 and 31, Township 17 S., Range1 East, M.D.B. & M., said post being marked "E.D." on the north, "2" on the west, and "S" on the south; thence, continuing along the said centerline survey N. 16° 38' E., 141.54 feet more or less to Engineer's Equation Station 382404.73, Road V-Mon-56-C = 0400.00 on the Department of Public Works' centerline survey for the State Highway, Road V-Mon-56-H; thence, along the last mentioned survey line N. 16° 38' E., 631.33 feet; thence, along a curve to the left, with a radius of 4100 feet, through an angle of 54° 15' 30", a distance of 3882.64 feet; thence N. 37° 37' 30" W., 711.40 feet; thence, along a curve to the right with a radius of 3200 feet, through an angle of 23° 52' 30", a distance of 1333.43 feet to Engineer's Equation Station 65458.80 E.C.= 64433.68 P.O.T.; thence, continuing along the said centerline survey N. 13° 45' W. 32.72 feet; thence, along a curve to the left with a radius of 4000 feet, through an angle of 10° 53' 30", a distance of 760.38 feet; thence, N. 24° 38' 30" W. 3486.88 feet, more or less, to an intersection with the northerly boundary line of the property described in the second above mentioned deed, said intersection bears S. 71° 57' E., 61.32 feet, more or less, from a 4" x 4" post marked "ED-16" and also bears N. 71° 57' W. 201.98 feet from a 4" x 4" post marked "ED-15", said posts being set for corners on said northerly boundary line; thence, continuing along the said centerline survey, N. 24° 38' 30" W., 836.34 feet, more or less, to Engineer's Station 110400.00 P.O.T. Excepting therefrom the rights of way of any existing public roads.

It is understood and agreed that the State has the right to extend slopes of cuts and fills, where necessary to permit the construction of a

standard 40 foot roadbed, and to build and maintain culverts and ditches beyond the limits of the above described right of way.

Said right of way above described consists 18.00 acres more or less.

And we the said grantors, do hereby waive all claim for any and all damages or compensation for and on account of the location, establishment and construction of said State highways; and do grant to grantee the right to remove any and all trees, growths, and roadbuilding material within said right of way, and the right to use the same in such manner as the said grantee may deem proper, needful or necessary in the construction, reconstruction and/or maintenance of said State highway and/or any road or highway constructed, or to be constructed, by, for or under the direction or control of the State of California.

IN WITNESS WHEREOF, we have set our hands and seal_ this 2nd day of January, 1931.

Signed, sealed and delivered in the presence of

As subscribing witnesses.

EDWARD DOUD (SEAL)

ANNIE DOUD (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

ACKNOWLEDGMENT OF GRANTORS.

STATE OF CALIFORNIA (SS.
COUNTY OF MONTEREY

On this 2nd day of January, in the year one thousand nine hundred and thirty-one, before me, J. T. Harrington, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Edward Doud and Annie Doud, his wife, known to me to be the persons described in and whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my official seal, at my office in the said County of Monterey, State of California, the day and year in this certificate first above written.

J. T. HARRINGTON
Notary Public in and for the County of Monterey, State of California.

(NOTARIAL SEAL)

My commission expires March 11, 1931.

CCC Exhibit G
(page 19 of 22 pages)

CERTIFICATE OF ACCEPTANCE (Civil Code 1158)

THIS IS TO CERTIFY, That the Department of Public Works of the State of California hereby consents to the execution of this Deed and accepts the property described therein on behalf of the State of California.

IN WITNESS WHEREOF, I have hereunto set my hand at San Luis Obispo California, this 25th day of August, 1931.

WALTER E. GARRISON
Director of Department of Public Works.

BY L. H. GIBSON
District Engineer.

Recorded at the request of L. H. Gibson, August 27, 1931 at 9 min. past 9 A.M....M.B....780983.

E.H.K.

THIS INDENTURE, made the 8th. day of August, A.D. one thousand nine hundred and thirty-one, between FRANK COSMOS, a single man, the party of the first part, and FREDA HOLT, the party of the second part,

W I T N E S S E T H:

That the said party of the first part, in consideration of the sum of TEN DOLLARS, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does, by these presents, grant, bargain, and sell unto the said party of the second part, and to her heirs and assigns forever, all that certain lot, piece, or parcel of land situate in the Town of Castroville, County of Monterey, State of California, and bounded and described as follows, to-wit:

Lot Seven (7), Block Forty-seven (47), as said lot and block are laid down and designated upon that certain map entitled "Map of the Town of Castroville, Monterey County, the property of Juan B. Castro, et als., June 1867, compiled from Surveys made by S. W. Smith, County Surveyor, Feb., 1866, Julius K. Smith, C.E., July, 1863, and John H. Gerber, County Surveyor Apr., 1867, by S. W.Smith, Surveyor, Civil Engineer and Draughtsman", filed on September 2nd, 1867 in the office of the County Recorder of the County of Monterey, State of California, and now on file and of record in said office in Map Book One, Cities and Towns, at Page 11 thereof, with the improvements thereon.

TOGETHER with the tenements, hereditaments and appurtenances thereunto

CCC Exhibit 6
(page 20 of 22 pages)

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415)904-5260, FAX (415) 904-5400

SENT VIA FAX & REGULAR MAIL

October 23, 2008

Carl Holm, Assistant Planning Director
Monterey County
168 West Alisal Street, Second Floor
Salinas, CA 93901

Subject: Unpermitted subdivision
Property Location: Assessor's Parcel Number 243-212-016, Big Sur, Monterey County

Dear Mr. Holm,

I write this letter to confirm statements you made in conversations you had with Dan Carl, District Manager of the Commission's Central Coast District Office on October 14 and 15, 2008. As you know, Charles Lester, Deputy Director, sent the enclosed letter dated October 8, 2008, to Mike Novo, County Planning Director, concerning an unpermitted subdivision of property owned by Mr. John Edward Doud and Ms. Mary Detels, creating a purported lot that has been designated Assessor's Parcel Number (APN) 243-212-016 by the County ("Site"), the issuance of an Unconditional Certificate of Compliance ("UCOC") by the County, and Monterey County Local Coastal Program ("LCP") Amendment number MCO-MAJ-2-07 Part 2.

In the October 8, 2008 letter the Commission staff asked that: (1) the County withdraw the pending LCP Amendment number MCO-MAJ-2-07, until the County makes a decision with regard to the validity of the subject UCOC, and if the County decides to do so, that the County inform the Commission staff of its intent by October 15, 2008, and withdraw the pending LCP amendment by October 22, 2008; and (2) if the County believes that the Commission has demonstrated that the Site did not qualify for an UCOC, that the County make a determination to that effect, and on the basis thereof, require the property owners to submit an application, by October 22, 2008, for a coastal development permit ("CDP") to provide after-the-fact approval of the land division. We also stated that if the County declines to act on the withdrawal and have the property owners submit a CDP application by October 22, 2008, that pursuant to sections 30809 and 30810 of the Coastal Act, the Commission will assume primary responsibility for taking enforcement action to compel compliance with permit requirements of section 30600 of the Coastal Act and the County's LCP.

On October 14 and 15, 2008, Dan Carl spoke with you regarding this situation. On behalf of the County, you stated that the County: (1) is not going to make a determination that the Site did not qualify for a UCOC; (2) is not going to require the property owners to submit a CDP application; and (3) declines to take enforcement action. In addition, you indicated that the County would not withdraw LCP Amendment number MCO-MAJ-2-07. Finally, it is now October 23, 2008, and we have heard nothing more from the County. As a result, Commission

staff will assume primary responsibility for taking enforcement action to compel compliance with permit requirements of section 30600 of the Coastal Act.

If you have any questions concerning this letter, please contact me in writing at the address included with this letter, or by telephone, at 415-904-5290.

Sincerely,

Nancy L. Cave

Nancy L. Cave
Northern California Enforcement
Program Supervisor

Enclosure (Commission letter to Mike Novo dated October 18, 2008)

Cc: John Doud and Jane Devine Doud
Michael Cling, attorney for Jane and John Dowd
Mary Detels
Mike Novo, Monterey County Planning Director
Dan Carl, Central Coast District Manager, Coastal Commission

THURSDAY, ITEM 27A

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:
Monterey County LCP Amendment No. MCO-MAJ-2-07 Part 2 (Doud rezoning, Big Sur). LCP amendment to modify the land use designation and zoning of a 2.5-acre parcel (from Outdoor Recreation (OR)/Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC)/Watershed and Scenic Conservation (WSC/40)) located north of Garrapata Creek, south of Garrapata State Park, and west of Highway 1 in the Big Sur area of Monterey County.

Date and time of receipt of communication:
July 28, 2008 @ 11am

Location of communication:
La Jolla, CA

Type of communication:
In person meeting

Person(s) in attendance at time of communication:
Susan McCabe

Person(s) receiving communication:
Pat Kruer

Detailed substantive description of the content of communication:
(Attach a copy of the complete text of any written material received.)
I received a briefing from Susan McCabe in which she informed me that the property owner (Doud) objects to staff's recommendation of denial of the LCPA. She explained that the parcel now being changed from Outdoor Recreation to Watershed and Scenic Conservation was part of an eminent domain case with the State of California in the 1980s. All of the surrounding property became part of the State Park, while this property remained in private ownership. The 2.5 acre subject parcel was anticipated to be developed w/ a single family home as part of the consideration for what the State paid for the rest of the property. With the staff recommendation of denial, the applicant believes the zone change would result in a complete taking of property. Staff contends that the property is ESHA and has other constraints and therefore no building should be allowed on site. Ms. McCabe explained that those issues would be addressed during a subsequent CDP process, which would be appealable to the CCC.

Date: 7/29/08

by Patrick Kruer

FORM FOR DISCLOSURE OF EX-PARTE COMMUNICATIONS

Name or description of the project::	Big Sur LCP Amendment- Doud
Time/Date of communication:	7/28/08
Location of communication:	22350 Carbon Mesa Rd, Malibu
Person(s) initiating communication:	Susan Jordan
Person(s) receiving communication:	Sara Wan
Type of communication:	phone call

Said she was opposed to the project. Did not see the basis for approval. Land has been zoned OS for a long time and the only reason would be to allow development. Such development would be totally inconsistent with the view protections the public had worked so hard to obtain. In addition, there are also serious ESHA issues involved.

Date: 7/28/08

Sara J Wan

Commissioner's Signature

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AUG 19 2008
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

THURSDAY, ITEM 27A

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:
Monterey County LCP Amendment No. MCO-MAJ-2-07 Part 2 (Doud rezoning, Big Sur). LCP amendment to modify the land use designation and zoning of a 2.5-acre parcel (from Outdoor Recreation (OR)/Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC)/Watershed and Scenic Conservation (WSC/40)) located north of Garrapata Creek, south of Garrapata State Park, and west of Highway 1 in the Big Sur area of Monterey County.

Date and time of receipt of communication:
July 28, 2008 @ 2pm

Location of communication:
San Diego, CA

Type of communication:
In person meeting

Person(s) in attendance at time of communication:
Susan McCabe

Person(s) receiving communication:
Alonso Gonzalez

Detailed substantive description of the content of communication:
(Attach a copy of the complete text of any written material received.)
I received a briefing from Susan McCabe in which she informed me that the property owner (Doud) objects to staff's recommendation of denial of the LCPA. She explained that the parcel now being changed from Outdoor Recreation to Watershed and Scenic Conservation was part of an eminent domain case with the State of California in the 1980s. All of the surrounding property became part of the State Park, while this property remained in private ownership. The 2.5 acre subject parcel was anticipated to be developed w/ a single family home as part of the consideration for what the State paid for the rest of the property. With the staff recommendation of denial, the applicant believes the zone change would result in a complete taking of property. Staff contends that the property is ESHA and has other constraints and therefore no building should be allowed on site. Ms. McCabe explained that those issues would be addressed during a subsequent CDP process, which would be appealable to the CCC.

Date:

Signature of Commissioner:

THURSDAY, ITEM 27A

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:
Monterey County LCP Amendment No. MCO-MAJ-2-07 Part 2 (Doud rezoning, Big Sur). LCP amendment to modify the land use designation and zoning of a 2.5-acre parcel (from Outdoor Recreation (OR)/Open Space Recreation (OR) to Watershed and Scenic Conservation (WSC)/Watershed and Scenic Conservation (WSC/40)) located north of Garrapata Creek, south of Garrapata State Park, and west of Highway 1 in the Big Sur area of Monterey County.

Date and time of receipt of communication:
July 29, 2008 @ 5:30pm

Location of communication:
Santa Rosa, CA

Type of communication:
In person meeting

Person(s) in attendance at time of communication:
Susan McCabe

Person(s) receiving communication:
Mike Reilly

Detailed substantive description of the content of communication:
(Attach a copy of the complete text of any written material received.)
I received a briefing from Susan McCabe in which she informed me that the property owner (Doud) objects to staff's recommendation of denial of the LCPA. She explained that the parcel now being changed from Outdoor Recreation to Watershed and Scenic Conservation was part of an eminent domain case with the State of California in the 1980s. All of the surrounding property became part of the State Park, while this property remained in private ownership. The 2.5 acre subject parcel was anticipated to be developed w/ a single family home as part of the consideration for what the State paid for the rest of the property. With the staff recommendation of denial, the applicant believes the zone change would result in a complete taking of property. Staff contends that the property is ESHA and has other constraints and therefore no building should be allowed on site. Ms. McCabe explained that those issues would be addressed during a subsequent CDP process, which would be appealable to the CCC.

Date: Aug 2, 2008

Signature of Commissioner: Mike Reilly

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:	Monterey County LCP Amendment No. MCO-MAJ-2-07 Part 2 (Doud rezoning, Big Sur).
Date/time of receipt of communication:	July 25, 2008; 10:00 am
Location of communication:	Palo Alto
Type of communication:	In person
Person(s) initiating communication:	Susan McCabe

Detailed substantive description of content of communication:
The property owner (Doud) objects to staff's recommendation of denial of the LCPA.

The parcel being changed from Outdoor Recreation to Watershed and Scenic Conservation was part of an eminent domain case with the State of California in the 1980s. All of the surrounding property became part of the State Park, while this property remained in private ownership.

The 2.5 acre subject parcel was anticipated to be developed w/ a single family home as part of the consideration for what the State paid for the rest of the property.

With the staff recommendation of denial, the applicant believes the zone change would result in a complete taking of property. Staff contends that the property is ESHA and has other constraints and therefore no building should be allowed on site. Those issues would be addressed during a subsequent CDP process, which would be appealable to the CCC.

7/29/08
Date

Signature of Commissioner