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Staff report prepared by:	Katie Morange
Staff report approved by:	Dan Carl
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APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal numberA-3-MCO-07-004, Burke Lot Line Adjustment

Applicant.....Timothy and Dana Burke

AppellantsCommissioners Sara Wan and Meg Caldwell

Local governmentMonterey County

Local decisionApproved by the Monterey County on December 14, 2006 (Monterey County Coastal Development Permit (CDP) Application Number PLN060189).

Project locationThree undeveloped parcels (APNs 418-011-041, 418-011-042, and 418-011-043) accessed via private road from Palo Colorado Road, south of Twin Peaks and immediately west of the Ventana Wilderness of the Los Padres National Forest, Big Sur, Monterey County.

Project description.....Lot line adjustment to reconfigure three undeveloped parcels to result in three lots measuring 6.69 acres, 7.58 acres and 39.92 acres.

File documents.....Administrative record for Monterey County CDP Number PLN060189; Correspondence Submitted by the Applicant; Monterey County certified Local Coastal Program (LCP), including Big Sur Coast Land Use Plan (LUP) and Coastal Implementation Plan (IP).

Staff recommendation ...**Substantial Issue Exists; Deny Coastal Development Permit**

A. Staff Recommendation

1. Summary of Staff Recommendation

On December 14, 2006, the Monterey County Minor Subdivision Committee approved a CDP for a lot line adjustment among three undeveloped parcels resulting in three reconfigured parcels remaining at the existing sizes of 6.69 acres, 7.58 acres and 39.92 acres. The parcels are located immediately west of the Ventana Wilderness area of the Los Padres National Forest and south of Twin Peaks in northern Big Sur. The Appellants contend that the lot line adjustment would convert currently unbuildable parcels to buildable parcels and result in the creation of parcels that do not meet the minimum density standard, thereby placing greater demands on limited water supplies and contribute to cumulative adverse impacts



on traffic and circulation, subsequently adversely affecting public access and recreation along the Big Sur coast. **Staff recommends that the Commission find that the appeal raises a substantial issue and take jurisdiction over the CDP for the project.**

The primary land use planning objective for Big Sur, as stated in the Big Sur Land Use Plan, is to minimize development of the Big Sur coast in order to preserve it as a scenic rural area. The LUP acknowledges that certain areas of Big Sur are not suitable for full development because of the potential for resource degradation, and in order to guide and determine where future land use development should occur, one of the LUP's development policies (Policy 5.4.2.5) characterizes what constitutes a buildable parcel. Under this policy, parcels are considered buildable parcels provided that all resource protection policies can be fully satisfied, there are adequate building areas of less than 30% cross slope, and they are not merged by other provisions of the LCP.

The LUP contains a policy that encourages lot line adjustments when no new developable lots are created and when plan policies are better met through the adjustment. In other words, a lot line adjustment must not take unbuildable parcels and make them buildable, and the new lot configuration must improve the potential development's consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP's strong policy to minimize development in Big Sur. The three existing Burke parcels contain numerous constraints that would preclude them from being deemed buildable under the LCP's guidelines, including 30% or greater average slopes, sensitive riparian corridor habitat, and substandard sizes relative to minimum parcel size requirements. The proposed lot line adjustment also does not include any elements that would allow for plan policies to be better met beyond what exists under the current parcel configuration. Although the lot line adjustment could result in shorter access roads and greater clustering of development than if the parcels were developed in their current configuration (assuming each of the parcels can be approved for development through the use of waivers and policy exceptions), all development would still be inconsistent with slope policies, etc. The lot line adjustment does not offer anything additional to ensure that plan policies are better met, such as a reduction in potential overall development density, retirement of development credit elsewhere, or protective easements.

The LCP envisions lot line adjustments as a useful tool for existing buildable parcels (i.e., those parcels with suitable building, septic, and access road area under 30% slopes, outside the critical viewshed, outside of ESHA, and consistent with all other LCP requirements) if an adjustment would improve the resource setting and thereby further the intent of the LCP to protect coastal resources and public access and recreation. There is no evidence in the LCP that lot line adjustments and resubdivisions were meant to be a means solely to achieve a more marketable parcel configuration, regardless of existing constraints. In fact, the LCP is designed to "substantially curtail" new residential development that could be facilitated through subdivisions or other land intensification mechanisms, such as lot line adjustments.

Since the purpose of the proposed lot line adjustment is to transform nonresidential lots into buildable residential lots, it is not a proper use of the LUP's lot line adjustment tool and it is inconsistent with the



LCP's policies designed to minimize residential development. It would undermine the (already very low) residential buildout assumptions upon which the Big Sur Coast Area LUP was founded. **Accordingly, staff recommends denial of the proposed lot line adjustment.** The motions and resolution on the substantial issue determination and CDP application follow.

2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. I move that the Commission determine that Appeal Number A-3-MCO-07-004 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of Substantial Issue. Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-MCO-07-004 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program.

3. Staff Recommendation on CDP Application

Staff recommends that the Commission, after public hearing, **deny** the CDP for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number A-3-MCO-07-004 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **NO** vote. Failure of this motion will result in denial of the coastal development permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Coastal Development Permit. The Commission hereby denies the coastal development permit on the grounds that the development will not conform with the policies of the Monterey County Local Coastal Program. Approval of the coastal development permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.



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C. Exhibits

Exhibit A: Monterey County Final Local Action Notice (Resolution No. 06030)

Exhibit B: Appeal from Commissioners Wan and Caldwell

Exhibit C: Project Location

Exhibit D: Proposed Lot Line Adjustment

Exhibit E: Figure 1 of the Big Sur Coast Land Use Plan

Exhibit F: Slope Density Map of Existing Burke Parcels

Exhibit G: Applicant’s Response to Appeal (including August 20, 2007 Biological Assessment)

B.Findings and Declarations

The Commission finds and declares as follows:

1. Project Location and Description

The project site is located immediately west of the Ventana Wilderness area of the Los Padres National Forest and south of Twin Peaks in the northern Big Sur area (Exhibit C). Access to the site is provided via a private, unpaved access road (the “Zufich” road, as referred to by local residents) that extends to the site from Palo Colorado Road, and continues on toward Twin Peaks. The three existing parcels (APNs 418-011-041, 418-011-042, and 418-011-043, also known as Lots 17, 18, and 1, respectively) are undeveloped except for several footpaths on Lot 17 and an old springbox on Lot 18. The three parcels cover mountainous terrain and range in elevation from approximately 2,250 to 3,000 feet.

The County approval adjusts these three parcels, resulting in three reconfigured parcels remaining at the existing sizes of 6.69, 7.58 and 39.92 acres, as shown in Exhibit D.



2. Monterey County CDP Approval

On December 14, 2006, the Monterey County Minor Subdivision Committee approved the proposed project subject to multiple conditions (see Exhibit A for the County's staff report, findings and conditions on the project). The Minor Subdivision Committee's approval was not appealed locally (i.e., to the Board of Supervisors). Notice of the Minor Subdivision Committee's action on the coastal development permit (CDP) was received in the Commission's Central Coast District Office on January 17, 2007. The Commission's ten-working day appeal period for this action began on January 18, 2007 and concluded at 5pm on January 31, 2007. One valid appeal (see below) was received during the appeal period.

3. Appeal Procedures

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

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

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

4. Summary of Appeal Contentions

The two Commissioner Appellants contend that the lot line adjustment would result in the creation of



parcels that do not meet the 40-acre minimum density standard and convert currently unbuildable parcels to buildable parcels, inconsistent with LCP provisions that do not support such a conversion. The Appellants also contend that the increase in development density facilitated by the lot line adjustment will place greater demands on limited water supplies and contribute to cumulative adverse impacts on traffic and circulation, subsequently adversely affecting public access and recreation along the Big Sur coast. See Exhibit B for the Appellants' complete appeal document.

5. Substantial Issue Determination

Monterey County's approval of the Burke lot line adjustment has been appealed to the Coastal Commission on the basis that: (1) none of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements; (2) the adjustment will increase the density of residential development beyond that which is allowed by the LCP; and (3) the increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur coast. Project location and plans are attached as Exhibits C and D. The County's Final Local Action Notice (FLAN), approving the project (Minor Subdivision Committee Resolution Number 06030), is attached to the report as Exhibit A. The submitted reasons for appeal are attached to this report as Exhibit B.

The Commission finds that the appeal raises a substantial issue regarding the project's conformance to the Monterey County certified LCP.

First, the project area is governed by the Big Sur LCP and is within the LCP's Watershed and Scenic Conservation (WSC) land use designation and zoning district. Sections 20.17.060.B, 20.145.140.A.6, and 20.145.140.A.7 of the LCP's Coastal Implementation Plan (IP) establish a 40-acre minimum parcel size for such areas. In this case, there is no way the density standard of 40-acre minimum parcel size could be met, since a minimum of 120 acres is necessary to have three conforming lots. With a combined total area for the three lots (which currently measure 6.69, 7.58 and 39.92 acres each) of 54.19 acres, conformance with the 40-acre minimum required by IP sections 20.17.060.B, 20.145.140.A.6, and 20.145.140.A.7 can not be accomplished by this lot line adjustment because it results in establishing three lots that are non-conforming with regards to minimum lot size. This raises a substantial issue.

Second, LUP Policy 5.4.2.8 and IP Section 20.145.140.A.7 prescribe that for steep parcels (those with a slope of more than 30%) that are designated WSC, the maximum allowable density for development is 1 unit/320 acres. The lot line adjustment approved by the County thus raises a substantial issue of consistency with the minimum lot size requirements, as well as with Big Sur IP Section 20.145.140.A.1,¹ because the project would adjust and facilitate development of three substandard parcels.

Finally, a substantial issue is also raised by the fact that the existing parcels are not considered buildable by LCP standards, creating a conflict with Big Sur LUP Policy 5.4.3.H.4 which states that "lot line

¹ Section 20.145.140.A.1 of the IP requires the development to conform and be consistent with the development standards of the IP.



adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action” (emphasis added). In other words, Policy 5.4.3.H.4 encourages reconfiguration of buildable parcels so that coastal resources can be better protected, and discourages adjustments that convert unbuildable parcels into buildable parcels. LUP Policy 5.4.2.5 and IP Section 20.145.140.A.15 state that existing parcels of record are considered buildable when there is adequate building area on less than 30% slopes and all other resource protection policies and standards can be fully met. The three Burke parcels consist largely of 30% slopes or greater and contain a riparian corridor (an environmentally sensitive habitat area) raising LCP conflicts for development of residences, septic systems, and access roads, and rendering them unbuildable under these LCP standards. As such, the County approval raises a substantial issue of consistency with Policy 5.4.3.H.4 because it converts what are unbuildable sub-standard parcels into potentially buildable parcels, and sets a precedent that would have significant adverse cumulative impacts on the coastal resources of Big Sur (for example, through increased traffic on Highway 1 during peak visitor times, impacting coastal access and recreation) that do not advance the policies and intent of the Big Sur LCP.

6. Coastal Development Permit Determination

The standard of review for this application is the Monterey County certified LCP. All Substantial Issue Determination findings above are incorporated herein by reference.

A. Relevant LCP Provisions

The LCP contains numerous references to and provisions for residential compatibility with sensitive coastal resources in Big Sur. The LCP also includes provisions that identify when a parcel is considered buildable in the context of parcel creation and adjustment.

LUP Policy 5.4.2.1. All development and use of the land whether public or private shall conform to all applicable policies of this plan and shall meet the same resource protection standards.

LUP Policy 5.4.2.5. Existing parcels of record are considered buildable parcels and are suitable for development of uses consistent with the plan map provided all resource protection policies can be fully satisfied, there is adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan.

LUP Policy 5.4.3.H.4. Resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action.

LUP Policy 5.4.2.8. It is the policy of Monterey County that lands in excess of thirty percent cross slope, located east of Highway 1, shall not be developed. Those portions of a parcel in this area that have a cross slope of thirty percent or more shall receive a density of one dwelling unit (d.u.) for 320 acres.

The calculation of residential development potential on property east of Highway 1 will be based on the following slope density formula:



<u>CROSS SLOPE</u>	<u>DWELLING UNIT/ACRE</u>
<i>Under - 15%</i>	<i>1 - 40</i>
<i>15 - 30%</i>	<i>1 - 80</i>
<i>Over - 30%</i>	<i>1 - 320</i>

LUP Policy 3.3.3.A.4 - Setbacks of 150' on each side of the streambank shall be required for all streams to protect riparian plant communities unless a narrower corridor can be demonstrated to be sufficient to protect existing vegetation and provide for restoration of previously disturbed vegetation.

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

LUP Policy 3.2.3.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.

Monterey County Code Section 19.09.025 Action on the lot line adjustment.

- A. Upon completion of the environmental documents, or finding that the proposed adjustment is exempt from CEQA the Director of Planning and Building Inspection shall set the matter before the appropriate decision making body which shall approve, disapprove, or conditionally approve the lot line adjustment in conformance with standards set forth in the Subdivision Map Act and this Chapter.
- B. A lot line adjustment application may be granted based upon the following findings:
1. That the lot line adjustment is between two (or more) existing adjacent parcels.
 2. A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.
 3. The parcels resulting from the lot line adjustment conform to County zoning and building ordinances.



IP Section 20.145.140.A.1. All development and land use, whether public or private, shall conform to and be consistent with the policies of the Big Sur Coast Land Use Plan and with the development standards of this ordinance. (Ref. Policy 5.4.2.1)

IP Section 20.145.140.A.4. Development shall not be located on slopes of 30% or greater. The Director of Planning may grant a waiver to the standard upon applicant request and explanation of the request justification if: a. there is no alternative which would allow development to occur on slopes of less than 30%; or, b. the proposed development better achieves the resource protection objectives and policies of the Big Sur Coast Land Use Plan and development standards of this ordinance.

IP Section 20.145.140.A.5. Development of a parcel shall be limited to density, land use, and site development standards specific to that parcel's land use designation, as shown in Attachment 3.

IP Section 20.145.140.A.6. East of Highway 1, residential development in "RDR" (Rural Density Residential) and "WSC" (Watershed and Scenic Conservation) zoning districts shall be allowed at maximum densities established according to the following steps:

- a. The maximum density is established by the zoning district in which the parcel lies, e.g., "Watershed and Scenic Conservation/40 (CZ)" provides a 40 acre minimum building site.
- b. The maximum density is established according to the slope density analysis required for the project according to Section 20.145.140.A.7.
- c. The development standards of this ordinance and the policies of the Big Sur Coast Land Use Plan are applied to the parcel. Any policy or standard resulting in a decrease in density are then tabulated and subtracted from the maximum density allowed under the slope density formula.
- d. Whichever of the two resulting densities, from the slope formula and from zoning, the lesser is then established as the maximum allowable density for the parcel. (Ref. Policy 5.4.2.8)

IP Section 20.145.140.A.7. A slope density analysis shall be required for applications for residential development beyond the first residential unit on parcels which are east of Highway 1 and in a "WSC" (Watershed and scenic Conservation) or "RDR" (Rural Density Residential) zoning district. The analysis shall be required and submitted to the County prior to the application being considered complete. The slope density analysis shall include the following elements:

- a. topographic map of the entire parcel at an appropriate scale and contour interval of 40 feet or less ;
- b. table showing the calculation of average cross slope as per Sec. 19.08.030 and 20.145.020.W;



- c. *the resulting maximum allowable number of dwelling units using the following slope density formula:*

<u>Existing Slope</u>	<u>Maximum Allowable Density</u>
Under 15%	1 unit/40 acres
15 - 30%	1 unit/80 acres
Over 30%	1 unit/320 acres

(Ref. Policy 5.4.2.8)

IP Section 20.145.140.A.13. *On-site septic or other waste disposal systems shall not be permitted on slopes exceeding 30%. One acre shall be considered to be the minimum area for development of a septic system.*

IP Section 20.145.140.A.15. *Existing parcels of record are considered to be buildable parcels suitable for development of uses consistent with the provisions of the ordinance and land use plan, provided that: a) all resource protection policies of the land use plan and standards of the ordinance can be met; b) there is adequate building area on less than 30% slopes; and, c) that all other provisions of the Coastal Implementation Plan can be fully met. (Ref. LUP Policy 5.4.2.5)*

B. Big Sur Parcelization

Most of the original parcels in Big Sur were created under the original Township and Range survey system, under which the lands of Monterey County not within recognized Mexican-era land grants were divided into square-mile blocks termed “townships.” Each township was further divided into 36 square sections of 640 acres each. Settlers were given the opportunity to homestead and eventually patent a quarter-section, amounting to 160 acres, as sufficient to maintain a farmstead. Some quarter sections were further divided into quarters (a sixteenth section, a quarter of a square mile), i.e. 40-acre lots. The smallest unit of survey was the “U.S. Lot” comprising 10 acres. These U.S. Lots could be aggregated under a single deed to define a particular homestead claim. Hundreds of homesteads were attempted in Big Sur’s pioneer days, and dozens of successfully-patented homesteads remain to this day.

Review of the parcelization of Big Sur finds that certain anomalies exist in the pattern of square sections of lots. When the townships westerly of the Mount Diablo Meridian were first surveyed, some of the U.S. lots within Township 18 North, Range 1 East (in which the Burke parcels are located) turned out to have irregular shapes. Specifically, a sliver of land remained between Sections 1 and 2. This appears to have resulted from the desire to have a rectilinear land survey system, with future homestead parcels having consistent shapes and dimensions. Of course, the problem in drawing north-south section lines along the presumed lines of longitude is that the lines of longitude are not in fact exactly parallel but gently curved along the Earth’s surface. So, Commission staff’s research shows that some small “make-up” lots were inserted to keep the principal tiers of townships and sections regularly-shaped and parallel. These lots are identified in Exhibit E. The Burke Lot 17 appears to be one of the original 40-acre lots (although it measures just under 40 acres at 39.92 acres), and Lots 18 and 1 (6.60 acres and 7.58 acres, respectively) are two of these remnant “make-up” lots that lie on the border of Sections 1 and 2.



C. LCP Framework

The Big Sur Coast LUP is premised on preservation of the area's natural and scenic qualities, and repeatedly demonstrates a strong policy objective to strictly limit new development of the area. The LUP's basic objective for land use and development (Section 2.2.4) states:

The County's primary land use planning objective is to minimize development of the Big Sur coast in order to preserve the coast as a scenic rural area where residents' individual lifestyles can flourish, traditional ranching uses can continue, and the public can come to enjoy nature and find refuge from the pace of urban life.

The County's basic policy is that future land use development on the Big Sur coast shall be extremely limited, in keeping with the larger goal of preserving the Coast as a natural scenic area. In all cases, new land uses must remain subordinate to the character and grandeur of the Big Sur coast. All proposed uses, whether public or private, must meet the same exacting environmental standards and must not degrade the Big Sur landscape.

The LUP describes that the majority of residential development in Big Sur is located in a number of residential areas (designated Rural Residential) that have generally been developed to a level where the natural environment is perceived to have been significantly altered, and where residential development is very apparent on the land. These areas include Otter Cove, Garrapata Ridge/Rocky Point, Garrapata and Palo Colorado Canyon, Bixby Canyon, Pfeiffer Ridge, Sycamore Canyon, Coastlands, Partington Ridge, and Buck Creek to Lime Creek. The LUP states that the size and density of these residential areas varies, but in all cases, they are more densely developed than surrounding lands. They contain a number of subdivided and residentially-zoned lots in close proximity, yet do not contain resources or land use activities which generate significant employment services for the public. The Big Sur Coast LUP acknowledges that while these areas would continue to be developed, full buildout of all other existing parcels raises inconsistencies with the rural, scenic character of Big Sur and that certain parcels are not suitable for development. Section 5.1.1 of the LUP states:

While there are historic expectations that buildout of these areas [the identified Rural Residential areas] would proceed, a number of areas are not suitable for full development of all existing parcels because of conflicts with the broad objectives of this plan – particularly the protection of water and scenic resources or limited capacity of local roads.

Big Sur Coast LUP Section 5.3.3 goes on to state:

The plan is flexible concerning the siting of new development, allowing a range of land use proposals to be made at any particular location. Yet the plan's resource protection standards, and slope and road requirements, are stringent, ultimately causing new development to be sited on the most physically suitable locations and limiting buildout to a level that can be accommodated on those sites that can meet all of the plan's requirements.

The development of all parcels in Big Sur, regardless of their physical suitability or buildability, would result in significant cumulative impacts to the area's natural and scenic resources as well as place



additional burden on existing residents. State Highway 1, for example, is already frequently at capacity and operates at the worst level of service (LOS F) during the peak summer period, and can not be widened to accommodate more residential traffic. An increase in the projected residential buildout would also cumulatively exacerbate impacts to water supplies, sensitive habitats, and the area's other natural and limited manmade features beyond the area's capacity to sustain such development. In general, an increase in residential development potential (beyond that which is contemplated by the LCP) could alter the unique character of Big Sur that makes it such a popular destination for coastal access and recreation.

Accordingly, the LUP's Key Policy 5.4.1 for development states that "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 order to guide and determine where future land use development should occur, one of the LUP's development policies (Policy 5.4.2.5) characterizes what constitutes a buildable parcel. Under this policy, parcels are considered buildable parcels provided that "all resource protection policies can be fully satisfied, there are adequate building areas of less than 30% cross slope, and they are not merged by provisions elsewhere in this plan." A sampling of the resource protection policies of the LUP includes the prohibition against development in the critical viewshed, prohibition against development on 30% slopes, and protection of ESHA (including a 150-foot stream setback requirement).

In addition, the LCP prescribes maximum allowable densities for parcels east of Highway 1 based on slopes in order to protect against excessive development in steep mountainous terrain. IP Section 20.145.140.A.6 requires a 40-acre minimum parcel size in the WSC designation (or, in other words, a maximum of 1 residential unit per 40 acres), assuming a site of less than 15% average slope. Under the slope density analysis also required in that section of the IP and LUP Policy 5.4.2.8, the minimum parcel size for areas with slopes that average 30% or more is 320 acres (1 unit per 320 acres). Thus, a minimum of 40 acres is required for parcels that average less than 15% slopes and a minimum of 320 acres is required for steep parcels that average 30% or greater slopes, and the creation of parcels that do not meet these criteria is inconsistent with the LCP.

In general, the Big Sur LUP's resource protection policies are borne out of the basic goal of the LUP:

To preserve for posterity the incomparable beauty of the Big Sur country, its special cultural and natural resources, its landforms and seascapes and inspirational vistas. To this end, all development must harmonize with and be subordinate to the wild and natural character of the land.

Despite the LUP's resource protection goals, objectives, and policies and the basic premise of minimal development, the LCP includes various waivers and exceptions to its resource protection policies. These waiver and exception allowances include exceptions to 30% slope restrictions, riparian setback requirements, and other development restrictions. It is understood that these waiver and exception allowances were built into the LCP because it was acknowledged that some departure from the resource protection policies was necessary to allow for a limited level of development on a number of existing



legal parcels. Although these exceptions to the resource protection policies exist in the LCP, they are discretionary, and may only be employed when no alternatives exist (to development on 30% slopes, for example) and when some level of development must be granted to allow reasonable economic use of a property consistent with the prohibition against the governmental taking of private property without just compensation. Any deviation from the LCP's resource protection policies requires careful consideration since, as discussed above, the Big Sur Coast LCP is premised on minimal development and protection of the area's natural and scenic qualities, and maximum protection of public access to and along the Big Sur shoreline.

There are some circumstances in which the Big Sur LUP encourages lot line adjustments. Policy 5.4.3.H.4 states that "resubdivisions and lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action." For this policy to apply, however, the lot line adjustment must not result in the creation of new developable parcels, and the new configuration must improve the potential development's consistency with the LUP. This emphasis on only encouraging lot line adjustments when they would facilitate less and more sensitive development is consistent with the LCP's strong policy to minimize development in Big Sur, and is supported by LUP Section 5.2 which states:

A major challenge of this plan is to find a way to substantially curtail further commitment to residential development resulting from subdivision or other land use intensification while also assisting landowners in achieving the most sensitive possible development of existing parcels.

Thus, the LCP is designed to curtail the manipulation of parcels that would facilitate further residential development. Instead, it appears that subdivisions and lot line adjustments were seen as tools for protecting the public interest, by allowing shifts in the location of buildable density to better comply with the LUP's resource protection policies and/or to simply correct property line mistakes or adjust poorly-shaped parcels or acreages for logistical purposes.

The LCP envisions lot line adjustments as useful for existing buildable parcels (i.e., those parcels with suitable building, septic, and access road area under 30% slopes, outside the critical viewshed, outside of ESHA, and consistent with all other LCP requirements) if an adjustment would improve the resource setting and thereby further the intent of the LCP to protect coastal resources and public access and recreation. By correcting obsolete or unhelpful property lines, lot line adjustments have the potential to be used as a tool for protecting coastal resources. There is no evidence in the LCP that lot line adjustments and resubdivisions were meant to be a means solely to achieve a more marketable parcel configuration, regardless of existing constraints. In fact, the LCP is designed to "substantially curtail" new residential development that could be facilitated through subdivisions or other land intensification mechanisms, such as lot line adjustments.

D. LCP Consistency Analysis

The three existing undeveloped Burke parcels that are the subject of the County-approved lot line adjustment contain a variety of resource constraints that make them unbuildable under Policy 5.4.2.5. First, the majority of all three parcels contain slopes greater than 30%, as shown in Exhibit F. LUP



Policy 5.4.2.5 and IP Sections 20.145.140.A.15 require adequate building area (for all development) on less than 30% slopes in order for a parcel to be considered buildable, and IP Section 20.145.140.A.4 prohibits development on slopes of 30% or greater. While there may be enough area under 30% slopes for a small residence on each of the existing parcels, there would be no way to develop access roads to those residences, without slope waivers, because of the prevalence of steep slopes. Furthermore, the LCP prohibits onsite septic systems or other waste disposal systems on slopes exceeding 30% and requires a minimum one-acre area on less than 30% slopes for development of a septic system (CIP Section 20.145.140.A.13). A septic system(s) would be necessary for these parcels, given that a sewer system does not exist for Big Sur. As shown in Exhibit F, no one-acre areas on less than 30% slopes exist on any of the three existing parcels.

Even if the small pockets of relatively flat area could be accessed on Lots 1 and 18 without the use of slope waivers and even if one-acre areas on less than 30% slopes existed on each of the parcels, development of residences would be precluded by their proximity to the north fork of Rocky Creek. LUP Policy 3.3.3.A.4 requires 150-foot setbacks from all streams, and much of the area under 30% slopes on Lot 18 lies within 150 feet from Rocky Creek, and the area of Lot 1 that would be closest to an access road from the other commonly-owned parcels would also be within 150 feet of Rocky Creek.

In addition, access roads to Lots 1 and 18 would have to traverse steep slopes that could be visible from Highway 1 and/or other public viewing areas (possibly from trails in the Los Padres National Forest), and they would therefore be subject to the critical viewshed policies of the LCP. (This would require field verification, but appears to be the case based on aerial photograph and map review.). The LCP prohibits all new development in the critical viewshed (LUP Policies 3.2.1 and 3.2.3.A.4).

In sum, the three existing parcels would not meet the Policy 5.4.2.5 definition of buildable parcels because all resource protection policies of the LUP (including prohibition of development on slopes greater than 30%) cannot be met on them. As described above, it is possible that the parcels could be developed with allowed uses through the discretionary granting of slope waivers and other exceptions, if some level of development must be granted to allow reasonable economic use of the properties. Also as discussed above, such granting of waivers and exceptions on these properties would require careful consideration, and the merits of any project(s) on these properties would need to be weighed against the LCP's resource protection policies and the basic LCP premise of extremely minimal development in Big Sur. As part of that consideration, the parcels' land use designation and the LUP priorities for that designation would need to be evaluated and weighed. These three parcels are designated Watershed and Scenic Conservation (WSC), the LUP's primary objective of which is protection of watersheds, streams, plant communities and scenic values. The principal uses in the proposed WSC LUP land use designation include agriculture/grazing and supporting ranch houses and related ranch buildings. Residential use is a secondary, conditional use in this land use designation. Unlike the Rural Residential land use designation, described above, residential use of WSC land was deemed of secondary importance to protection of the natural environment.

The proposed lot line adjustment would reconfigure these three lots to facilitate the development of Lots 1 and 18, which are currently exceedingly constrained, as described above. While lot line adjustments



are encouraged under some circumstances, this lot line adjustment does not meet the standard in Policy 5.4.3.H.4 because it attempts to create new buildable parcels. Not only would the lot line adjustment make currently unbuildable parcels more buildable, it would also facilitate the development of lots that are substandard as to minimum parcel size. The zoning for the Burke parcels (WSC/40) requires the parcels to be a minimum of 40 acres. The parcels, due to the prevalence of 30% slopes or greater, are also subject to additional density requirements. Namely, LUP Policy 5.4.2.8 and CIP Section 20.145.140.A.7 prescribe that for parcels with an average slope of 30% or greater, the allowable density is 1 unit per 320 acres. These minimum parcel sizes were determined to be the appropriate sizes for WSC lands, given the prevalence of difficult terrain and the LCP's primary objectives for this zoning district, described above. The County-approved lot line adjustment does not correct existing substandard parcel size deficiencies, and it reconfigures sub-standard parcels to facilitate their development, thus encouraging the development of parcels that are a fraction of the required minimum size. Such development is inconsistent with the minimum lot size requirements of the LCP that are designed to ensure that new development occurs only on lots of sufficient size in order to protect the area's natural and scenic resources.

Furthermore, with respect to the developability and the substandard sizes of the existing parcels, it does not appear that the applicant's two small easterly parcels (Lots 1 and 18) were meant as homestead sites. Instead, as discussed under the "Big Sur Parcelization" section above, they are artifacts of an early-day land survey process that produced leftover odd fragments of land. Their purpose was not for settlement, but to keep the survey lines straight. At the time of their creation, there could not have been any reasonable expectation that either of the Applicants' very steep, brush-covered, extremely-remote "sliver" parcels would match the homestead ideal of a freestanding, self sufficient residential ownership. By the standards of County zoning in effect for many decades, as well as the more recent California Subdivision Map Act and the certified Monterey County LCP, these lots are substandard.²

Recognition of the Applicants' existing "sliver" parcels as developable and fully eligible for ordinary residential construction would intensify the incentive to develop other substandard lots, the amount of which is unknown but potentially substantial.³ Each vacant parcel cumulatively adds to Big Sur's potential total residential buildout. The LCP stresses minimal development in Big Sur because full buildout of all lots will place an untenable stress on the area's high quality natural and scenic resources, public access to the coast, as well as unfairly burden owners of existing developed properties with added congestion and diminished water supplies, among other things. Highway 1, for example, is already frequently at capacity, and can not be widened to accommodate more visitor-serving let alone residential traffic.

² Nonetheless, each of these lots has been treated as a separate legal parcel. These findings do not dispute such claim of separate standing.

³ The Big Sur Coast Area has more than 300 residences on existing, developed parcels. In addition, there are possibly an equal or greater number of vacant parcels. The total parcel count is indeterminate. The main reason for this is that from time to time more parcels are identified and submitted to the County for Certificates of Compliance (COCs). Essentially, the County may issue a COC for the purposes of recognizing a particular, separate parcel of land that was legally-created under whatever parcelization rules were in existence at the time.



The County-approved lot line adjustment also does not include any elements that would allow for plan policies to be better met (another requirement of Policy 5.4.3.H.4) beyond what exists under the current parcel configuration. Although the lot line adjustment could result in shorter access roads and greater clustering of residential development than if the parcels were each residentially developed in their current configuration (assuming each of the parcels can be approved for development through the use of waivers and policy exceptions), all development would still be inconsistent with slope policies, etc. The County-approved lot line adjustment does not offer anything additional to ensure that plan policies are better met, such as reduction in overall development density, retirement of development credit elsewhere, or protective easements.

Since the purpose of the proposed lot line adjustment is to transform nonresidential lots into buildable residential lots, it is not a proper use of the LUP's lot line adjustment tool and it is inconsistent with the LCP's policies designed to minimize residential development. It would undermine the (already very low) residential buildout assumptions upon which the Big Sur Coast Area LUP was founded. As stated in Section 5.2 of the LUP, "Continued residential development and subdivision for residential purposes is a trend at odds with the preservation of the coast's natural, scenic, and rural character." Therefore, the lot line adjustment cannot be found consistent with the LCP and must be denied.

E. Conclusion

The County-approved lot line adjustment is inconsistent with the Big Sur Coast LUP's basic premise of extremely limited development. In addition, the proposed project would facilitate the development of significantly substandard parcels, inconsistent with LCP policies designed to minimize residential development where such development is inconsistent with protection of coastal resources. While lot line adjustments are encouraged under one provision of the LUP, this lot line adjustment does not meet the standards for when a lot line adjustment should be encouraged, as it is designed to facilitate development of undevelopable lots and plan policies are not better met by this action. Therefore, the proposed lot line adjustment is denied, and the parcels remain as currently configured, subject to all applicable LCP policies.

7. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Section 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:

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.*

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.*



Public Resources Code (CEQA) Section 21080.5(d)(2)(A). *Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.*

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 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above LCP conformity findings are incorporated herein in their entirety by reference. 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. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Monterey County, the lead agency for the project, determined that there is no substantial evidence that the project may have a significant effect on the environment, and therefore issued a categorical exemption for the project. On appeal, the Commission finds that denial, for the reasons stated in the findings in this report, 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.



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JAN 17 2007

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



PLANNING DEPARTMENT, Mike Novo, Interim Director

168 W. Alisal St., 2nd Floor
Salinas, CA 93901

(831) 755-5025
FAX (831) 757-9516

Date: January 12, 2007
To: California Coastal Commission, Central Coast District Office
Applicant/Representative: Sam Bose
Other Interested Parties: Peter MacLaggan (incorrect)
From: Monterey County Planning and Building Inspection Department
Subject: Final Local Action on Coastal Permit
Application PLN060189

FINAL LOCAL ACTION NOTICE

REFERENCE # 3-MCO-07-024
APPEAL PERIOD 1/18/07-1/31/07

Please note the following **Final Monterey County Action** for the following coastal development permit type:

- ☒ CDP/CAP ☐ CDP Amendment ☐ Extension ☐ Emergency CDP
☐ Exemption ☐ Exclusion ☐ Other: _____
☒ All local appeals processes have been exhausted for this matter
☐ The project includes an amendment to the LCP

Project Information

Application #: PLN060189
Project Applicant: Timothy & Dana Burke
Applicant's Rep: Arden Handshy
P.O. 51758
Pacific Grove, CA 93950
Project Location: On Palo Colorado Road, South of Twin Peaks, Big Sur area
Project Description: COASTAL DEVELOPMENT PERMIT TO ALLOW A LOT LINE ADJUSTMENT THAT WOULD RECONFIGURE THREE EXISTING VACANT LOTS RESULTING IN TWO OF THE SMALLER LOTS BEING MOVED FROM THE EASTERLY LOCATION TO THE WESTERLY LOCATION FOR THE PURPOSES OF BETTER ACCESS. THE RESULTING LOT SIZES WOULD REMAIN AT EXISTING SIZES TO INCLUDE 39.92, 6.60 AND 7.56 ACRES (ASSESSOR'S PARCEL NUMBERS 418-011-041-000, 418-011-043-000, 418-011-042-000). THE PROJECT IS LOCATED ON PALO COLORADO ROAD, SOUTH OF TWIN PEAKS, BIG SUR AREA, COASTAL ZONE.

Final Action Information

Final Action Date:
Final Action: ☒ Approved w/conditions ☐ Approved w/o conditions ☐ Denied
Final Action Body: ☐ Zoning Administrator ☐ Planning Commission ☒ Minor Subdivision Committee

MCO

Reference #:

FLAN received:

Appeal period:

Final Local Action Notice Attachments Included

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
Adopted Staff Report	✓		
Adopted Findings	✓		
Adopted Conditions	✓		
Site Plans	✓		
Elevations	✓		
Location/Vicinity Map	✓		
Additional Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
CEQA Document(s)			
Geotechnical Report(s)			
Biotic Report(s)			
Forest Management Plan(s)			
Other _____			
Other _____			

Coastal Commission Appeal Information

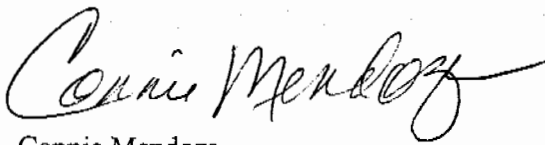
Monterey County has determined that this Final Local Action is:

- ☐ **NOT APPEALABLE** to the California Coastal Commission. The Final Monterey County Action is now effective.
- ☒ **APPEALABLE** to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Monterey County Action. The Final Monterey County Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast District Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

CCC Exhibit A
(page 2 of 13 pages)

Submitted by

Signature:



Name: Connie Mendoza

Title: Land Use Technician

Phone/Fax: (831) 755-5184 fax (831) 757-9516

email: mendozac@co.monterey.ca.us

Planner: David Lutes

Title: Senior Planner

Phone/Fax: 831-755-5304 / 831-757-9516 (fax)

Email: lutesd@co.monterey.ca.us

MINOR SUBDIVISION COMMITTEE
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RECEIVED

JAN 17 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RESOLUTION NO. 06030

A.P. #: 418-011-041-000;
418-011-042-000; and
418-011-043-000

FINDINGS AND DECISION

In the matter of the application of
Timothy and Dana Burke (PLN060189)

for a Coastal Development Permit in accordance with Title 20 (Monterey County Coastal Implementation Plan Ordinances) Chapter 20.140 (Coastal Development Permits) of the Monterey County Code, to allow a lot line adjustment between three contiguous legal lots of record, resulting in 3 reconfigured parcels remaining at existing sizes to include: Parcel "A" (6.60 acres), Parcel "B" (7.58 acres), and Parcel "C" (39.92 acres). No existing development occurs on the property except for an access road off Palo Colorado Canyon Road that reaches the northeast corner of the proposed Parcel "A" through mountainous terrain. The project is located on Palo Colorado Road, south of Twin Peaks, west of the Los Padres National Forest, in the Big Sur Coast Area, Coastal Zone, and came on regularly for hearing before the Minor Subdivision Committee on December 14, 2006.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING: CONSISTENCY** – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, Big Sur Coast Land Use Plan, Title 20 Monterey County Codes, Monterey County Coastal Implementation Plan - Part 3 (Chapter 20.145), and Monterey County Code Title 19, Subdivision Ordinance which designates this area as appropriate for development.

EVIDENCE: (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

(b) The property is located off of Palo Colorado Road, south of Twin Peaks, west of the Ventanna Wilderness in the Los Padres National Forest (418-011-041-000; 418-011-042-000; 418-011-043-000, between parcels in Section 2, Township 18 South, Range 1 East), in the Big Sur Coast Area of the Coastal Zone. The parcels are designated as in a Watershed and Scenic Conservation area allowing for 40 acre minimum parcel sizes (WSC/40 [CZ]). The subject properties contain development constraints such as the prevalence of 30% slopes and environmentally-sensitive habitats, as well as non-conforming parcel sizes in an area requiring 40 acre minimum parcel sizes. The legal status of the parcels as lots of record require that the lot line adjustment result in a reconfiguration of the parcels to minimize the potential impacts of these development constraints such that future development will be achieved with minimal adverse effect and will be subordinate to the resources of the particular site and area, pursuant to the states purposes of Section 20.17.010 of Title 20, the Coastal Zoning Ordinance. As a lot line adjustment, the resulting parcels are made more compatible with, and do not obstruct, the objectives and policies of the WSC zoning, the Big Sur Coast Land Use Plan and Coastal

Implementation Plan, as required by Government Code Section 66412 (d) of the Subdivision Map Act.

- (c) The project was not referred to the Big Sur Land Use Advisory Committee (LUAC) for review. Based on the current review guidelines adopted by the Monterey County Board of Supervisors (Resolution No. 04-236), this application did not warrant referral to the LUAC for the following reasons: the project is exempt from CEQA review per Section 15305 and implementation of the project will not require the issuance of a Variance.
- (d) The application, plans, and related support materials submitted by the project applicant to the RMA- Planning Department for the proposed development found in Project File PLN060189.

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

- EVIDENCE:**
- (a) The project has been reviewed for site suitability by the following departments and agencies: California Coastal Commission, RMA-Planning Department, California Department of Forestry, Big Sur Coast Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.
 - (d) Materials in Project File PLN060189.

3. FINDING: CEQA (Exempt): – The project is categorically exempt from environmental review.

- EVIDENCE:**
- (a) Section 15305(a) (Class 5) of the CEQA Guidelines (minor lot line adjustments not resulting in the creation of any new parcel) categorically exempts the proposed development from environmental review.
 - (b) The lot line adjustment is intended to move the 6.60 acre and 7.58 acre parcels closer to the existing access road at the northwest portion of the properties such that all 3 proposed building sites can be relatively clustered and the driveways can be much shorter from the existing access road, resulting in less grading, and thereby less impact to the land.
 - (c) Potential adverse environmental effects were identified during staff review of the lot line adjustment application such as the prevalence of 30% slopes and environmentally sensitive habitats. The tentatively proposed building sites remove future development from Oak Woodland and Canyon Riparian habitat as reported by consulting ecologist, Nicole Nedeff in a letter dated August 20, 2006, after conducting a preliminary site assessment on August 19th, 2006 pursuant to RMA - Planning Department requirements for biology reports. Her report shall be identified as a note on the recorded Record of Survey, as required in Condition 3 of this Minor Subdivision Committee Resolution.
 - (d) In a letter dated July 31, 2006, consulting geotechnical engineer, Lawrence E. Grice, states that in general he finds the proposed lot line adjustment will provide suitable areas for installation of septic leachfields within the new boundary of the parcels.
 - (e) Based on available information, there is no reasonable possibility that the proposed lot line adjustment will have a significant effect on the environment due to unusual circumstances, but future development proposals shall require additional discretionary review. It is considered that the proposed lot line adjustment will serve to help mitigate future potential environmental effects on the environment.
 - (e) See preceding and following findings and supporting evidence.
 - (f) Materials in project file PLN060189.

4. FINDING: SUBDIVISION ORDINANCE (TITLE 19) LOT LINE ADJUSTMENTS (CHAPTER 19.09) The Burke Lot Line Adjustment (PLN060189) is consistent with the requirements as specified within Title 19.

EVIDENCE: (a) The lot line adjustment is between three contiguous legal lots of record:

- Parcel 17, Assessor's Parcel Number 413-011-041-000, as established by Certificate of Compliance, recorded Document G 22368 (39.92 acres);
 - Parcel 18, Assessor's Parcel Number 413-011-042-000, as established by Certificate of Compliance, recorded Document G 22367 (6.60 acres);
 - Lot 1, Assessor's Parcel Number 418-011-043-000, as established by Certificate of Compliance, recorded Document G 22370 (7.58 acres).
- (b) A greater number of parcels than originally existed will not be created as a result of the lot line adjustment.
- (c) The two smaller parcels are being moved from the easterly location to the northwesterly location for the purposes of better access, with the resulting parcel adjustments remaining at existing sizes.
- (d) Upon approval of the lot line adjustment, Parcel "A," Parcel "B," and Parcel "C" will remain non-conforming as to designated 40 acre parcel sizes, but shall further the WSC purpose to subordinate future proposed development to the resources of the particular site and area, mainly the watershed, plant, streams and riparian corridors found at the site.
- (e) The Lot Line Adjustment Map contains all items required for processing including slope contours, trails, and general locations of future building areas and roadways.
- (f) A Condition of Approval has been incorporated requiring the applicant to record a Record of Survey as approved.

5. FINDING: PUBLIC ACCESS – The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4). No access is required as part of the project 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.

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

(b) The subject property is not indicated as part of any designated trails or shoreline access as specified in Policy 6.1.6 and Figure 2, Shoreline Access Plan of the Big Sur Coast Land Use Plan. The trails eastward off Palo Colorado Canyon Road are "inappropriate for access or suitability not yet determined."

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

6. FINDING: NO VIOLATIONS – The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property. Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Staff reviewed RMA- Planning Department and RMA-Building Services records and is not aware of any violations existing on subject property.

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

EVIDENCE: Preceding findings and supporting evidence.

8. **FINDING: APPEALABILITY** – The decision on this project is appealable to the Board of Supervisors and the California Coastal Commission.

EVIDENCE: (a) Section 20.86.030 and 20.86.080 of the Monterey County Zoning Ordinance.

DECISION

It is the decision of said Minor Subdivision Committee that said request for a Coastal Development Permit be approved as shown on the attached sketch, subject to the attached conditions.

PASSED AND ADOPTED this 14th day of December 2006, by the following vote.

AYES: Moss, Main, Hori, Treffry, Vandevere

NOES: None

ABSENT: Burgess, McPharlin



Jeff Main, Secretary Pro Tem

COPY OF THIS DECISION MAILED TO APPLICANT ON JAN - 3 2007

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE JAN 13 2007

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

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

**Monterey County RMA-Planning Department
Condition Compliance and/or Mitigation Monitoring
Reporting Plan**

Project Name: BURKE, Timothy and Dana
File No: PLN060189
APNs: 418-011-041-000, 418-011-042-000, 418-011-043-000
Approved by: MINOR SUBDIVISION COMMITTEE
Date: DECEMBER 14, 2006

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

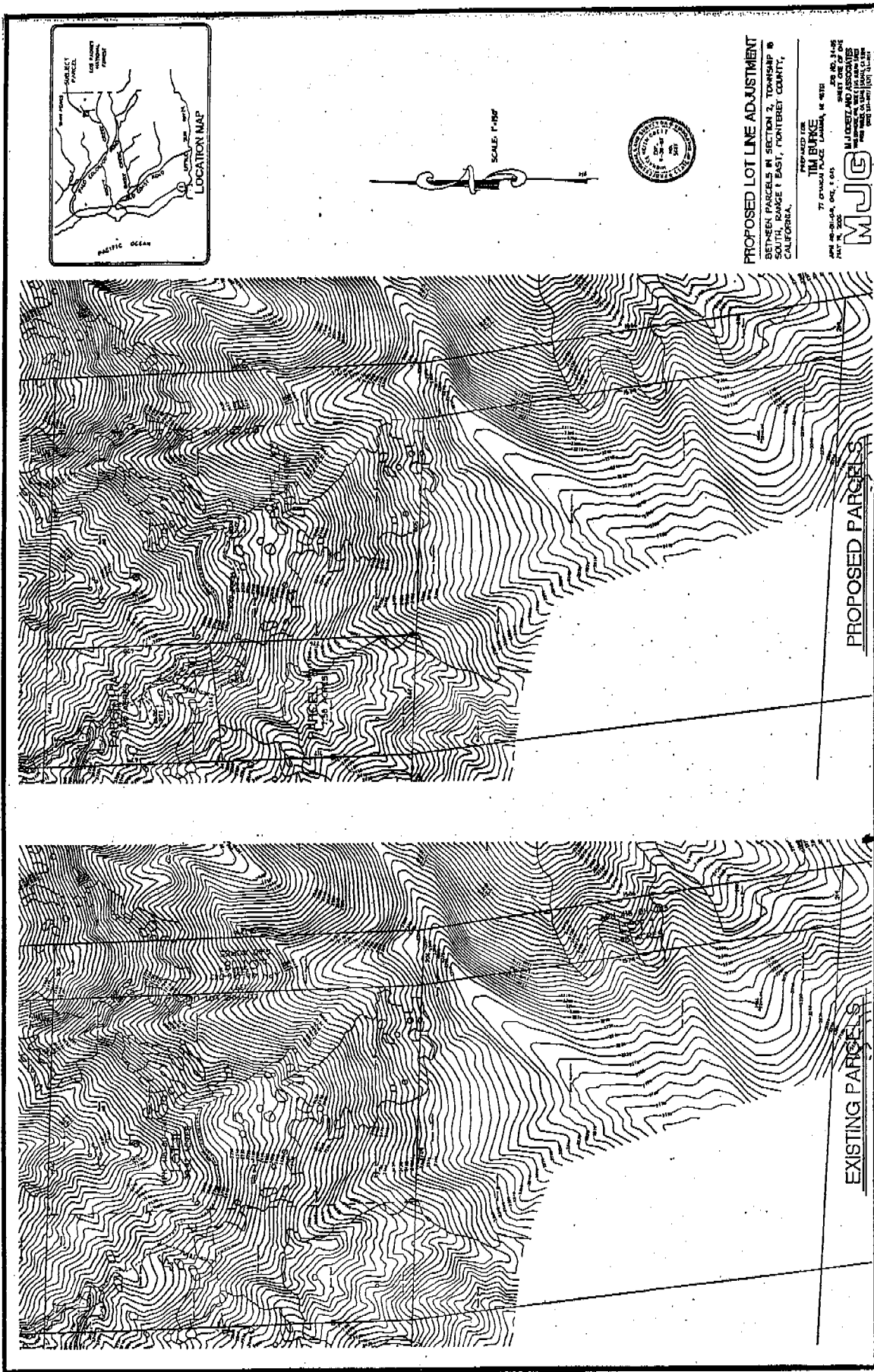
Permit Cond. Number	Mitig. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Ongoing Monitoring of Compliance (name /date)
1.		PBD029 - SPECIFIC USES ONLY This Coastal Development Permit (PLN060189/Burke) allows a lot line adjustment that would reconfigure three (3) existing vacant parcels, resulting in two of the smaller parcels being moved from the easterly location to the westerly location for the purposes of better access. The resulting parcel sizes would remain at existing sizes to include 39.92, 6.60 and 7.56 acres (Assessor's Parcel Numbers 418-011-041-000, 418-011-043-000, 418-011-042-000). The project is located on Palo Colorado Road, south of Twin Peaks, west of the Los Padres National Forest, in the Big Sur Coast Area, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated

Permit Cond. Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verifi- cation of Comp- liance (name /date)
<p align="center">RESOURCES MANAGEMENT AGENCY PLANNING DEPARTMENT CONDITIONS OF APPROVAL</p>					
2.	<p>PBD025 - NOTICE-PERMIT APPROVAL</p> <p>The applicant shall record a notice which states: "A permit (Resolution 060189) was approved by the Minor Subdivision Committee for Assessor's Parcel Numbers 418-011-041-000, 418-011-042-000, 418-011-043-000 on December 14, 2006. The permit was granted subject to <u>5</u> conditions of approval which run with the land. A copy of the permit is on file with the RMA-Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA-Planning Department prior to issuance of building permits or commencement of the use.</p> <p align="right">(RMA - Planning Department)</p>	Proof of recordation of this notice shall be furnished to the RMA-Planning Department.	Owner/ Applicant	Prior to Recordation of Record of Survey	

Permit Condi- Number	Min- Number	Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Prior to recording of Record of Survey	Verifi- cation of Com- pliance (name /date)
3.		PD015 - NOTE ON MAP-STUDIES A note shall be placed on the Record of Survey map or a separate sheet to be recorded with the Record of Survey map stating that: "A letter report dated August 20, 2006, has been prepared on this property by consulting biologist, Nicole Nedeff, and is on file in the Monterey County RMA - Planning Department. The recommendations contained in said report shall be followed in all further development of this property; namely, that detailed assessments should be included as a component of future development plan on any of the proposed parcels under consideration in the proposed lot line adjustment." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor. (RMA - Planning Department)	Final recorded Record of Survey map with notes shall be submitted to the RMA - Planning Department and Public Works for review and approval.	Owner/ Applicant	Prior to recording of Record of Survey	
PUBLIC WORKS DEPARTMENT CONDITIONS OF APPROVAL						
4.		PW0034 - LOT LINE ADJUSTMENT Obtain a survey of the new line and have the line monumented. (Public Works)	Owner shall have a surveyor monument the new lines. Evidence of completion of monumentation shall be submitted to DPW for review and approval.	Owner/ Applicant/ Surveyor		

Permit Cond. Number	Mon. Number	Conditions of Approval and/or Mitigation Measures and Responsible Entity's Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name /date)
5.		PW0035 – RECORD OF SURVEY File a Record of Survey showing the new line and its monumentation. (Public Works)	Owner's Surveyor to prepare record of survey and submit to DPW for review and approval.	Owner/ Surveyor	Prior to Recordation of Record of Survey	

END OF CONDITIONS



PLN0600189

CALIFORNIA COASTAL COMMISSION

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

**COMMISSION NOTIFICATION OF APPEAL**

DATE: February 1, 2007

TO: Mike Novo, Interim Director
County of Monterey, Planning Department
168 West Alisal St., 2nd Flr.
Salinas, CA 93901

FROM: Steve Monowitz, District Manager

RE: Commission Appeal No. A-3-MCO-07-004

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: PLN060189

Applicant(s): Timothy & Dana Burke

Description: Lot line adjustment between three contiguous legal lots of record, resulting in three reconfigured parcels remaining at existing sizes of 6.60, 7.58 and 39.92 acres.

Location: Palo Colorado Rd. (South of Twin Peaks and west of Ventana Wilderness in the Los Padres National Forest), Big Sur (Monterey County) (APN(s) 418-011-041, 418-011-042, 418-011-043)

Local Decision: Approved w/ Conditions

Appellant(s): California Coastal Commission, Attn: Commissioner Meg Caldwell; Commissioner Sara J. Wan

Date Appeal Filed: 1/31/2007

The Commission appeal number assigned to this appeal is A-3-MCO-07-004. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of Monterey's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Katie Morange at the Central Coast District office.

cc: Timothy & Dana Burke
Arden Handshy
David Lutes, MCO Plng. Dept.

CCC Exhibit B
(page 1 of 7 pages)

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

SECTION I. Appellant(s):

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

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

SECTION II. Decision Being Appealed

1. Name of local/port government:
Monterey County

2. Brief description of development being appealed:
PLN060189 - Lot line adjustment between three contiguous legal lots of record, resulting in three reconfigured parcels remaining at existing sizes (6.60, 7.58, and 39.92 acres).

3. Development's location (street address, assessor's parcel number, cross street, etc.):
APNs 418-011-041, 418-011-042, and 418-011-043, located off Palo Colorado Road, south of Twin Peaks and west of the Ventana Wilderness in the Los Padres National Forest, in the Big Sur Area of Monterey County.

4. Description of decision being appealed:

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-07-004
DATE FILED: 1/31/07
DISTRICT: Central Coast District

RECEIVED

JAN 31 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

CCC Exhibit B
(page 2 of 7 pages)

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

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

a. ☐ Planning Director/Zoning
Administrator

c. ☐ Planning Commission

b. ☐ City Council/Board of
Supervisors

d. ☒ Other: Minor Subdivision Cmte.

6. Date of local government's decision: December 14, 2006

7. Local government's file number: PLN060189 (Resolution No. 06030)

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Timothy and Dana Burke
77 Omaikai Place
Lahaina, HI 96761

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

(1) David Lutes
Monterey County Planning & Building Inspection
168 West Alisal Street, 2nd Floor, Salinas, CA 93902

(2) Arden Handshy (Representative)
P.O. Box 51758
Pacific Grove, CA 93950

(3) _____

SECTION IV. Reasons Supporting This Appeal

See attached "Reasons for Appeal"

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

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

See Attached.

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

SECTION V. Certification

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

Signed: Meg Caldwell
Appellant or Agent

Date: January 31, 2007

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

Signed: _____

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

See Attached.

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: January 31, 2007

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

Signed: _____

Date: _____

(Document2)

**Reasons for Appeal of Monterey County Coastal Development Permit PLN060189
(Burke Lot Line Adjustment)**

Monterey County Coastal Development Permit PLN060189 authorizes a lot line adjustment among three parcels off Palo Colorado Road, south of Twin Peaks and west of the Ventana Wilderness in the Los Padres National Forest, in the Big Sur Area of Monterey County. The approval allows a lot line adjustment between three contiguous legal lots of record, resulting in three reconfigured parcels remaining at existing sizes (6.60, 7.58, and 39.92 acres). The County's approval of the project is inconsistent with the Monterey County certified Local Coastal Program for the following reasons:

1. None of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements.

The project area is within the LCP's Rural Density Residential (RDR) land use designation and Watershed and Scenic Conservation (WSC) zoning district. Sections 20.17.060.B and 20.145.140.A.8 of the LCP's Coastal Implementation Plan (CIP) establish a forty acre minimum parcel size for such areas. In this case, the proposed lots are inconsistent with these LCP density standards (120 acres is necessary to have three buildable lots; the lots proposed for adjustment total only 54.1 acres). Conformance with the 40-acre density standard could be achieved by merging the three parcels into one legally conforming parcel, as provided for by the Big Sur LUP Policy 5.4.3.G,¹ provided there is substantial evidence demonstrating that there is at least one currently buildable lot.

2. The adjustment will increase the density of residential development beyond that which is allowed by the LCP.

CIP Section 20.145.140.A.5 states that development of a parcel shall be limited to density, land use, and site development standards specific to that parcel's land use designation. Furthermore, CIP Section 20.145.140.A.15 states that existing parcels of record are considered to be buildable provided that: a) all resource protection policies of the land use plan and standards of the ordinance can be met; b) there is adequate building area on less than 30% slopes; and, c) that all other provisions of the Coastal Implementation Plan can be fully met (Ref. LUP Policy 5.4.2.5). Pursuant to these standards, the buildability of the existing parcels is called into question. The County approval does not provide evidence as to the extent of the site area with 30% slopes or greater, however it appears as though the existing parcels consist largely of 30% slopes or greater. As such, these parcels would not be considered buildable pursuant to CIP Section 20.145.140.A.4. Furthermore, the existing parcels would not meet the on-site wastewater treatment standards established by CIP Section 20.145.140.A.13 which prohibit onsite septic systems on slopes exceeding 30%. In addition, the County's approval of the lot line adjustment does not contain evidence of an adequate water supply

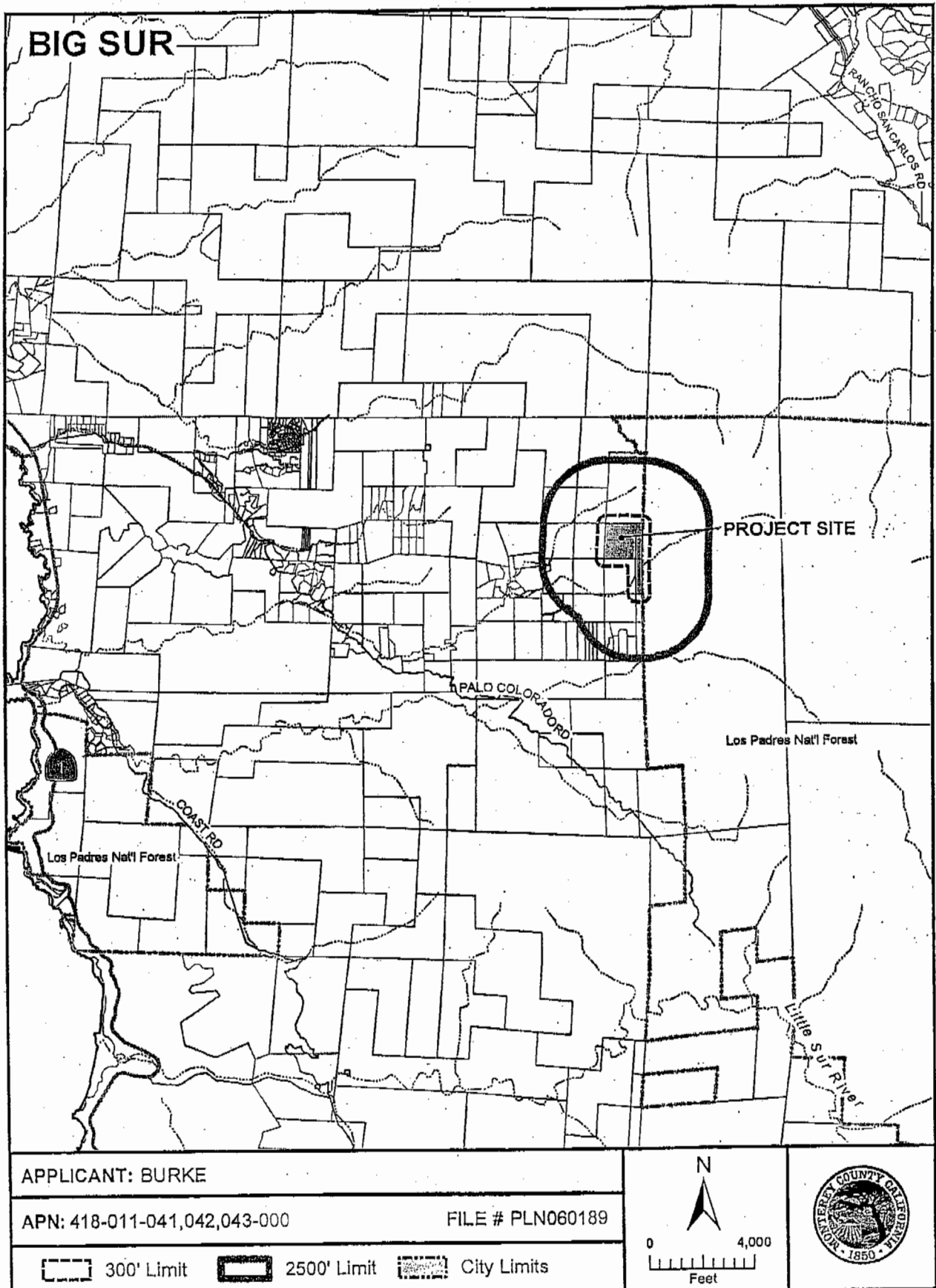
¹ Big Sur LUP Policy 5.4.3.G – Specific Policies for Rural Residential land uses – Reconstitution of parcels or mergers may be required for any area of the coast where past land divisions have resulted in parcels being unusable under current standards or where cumulative impacts on coastal resources require limitations on further development. Parcel mergers shall be based on the following criteria: a) the minimum buildable parcel shall be one acre; b) each parcel must contain a suitable septic and drainfield location on slopes less than 30%, and must be able to meet regional Water Quality and County stream setback and septic system requirements; and c) each parcel must conform to all Plan policies for residential development on existing parcels.

to support future residential development, and thereby does not address the requirements of Big Sur LUP Policy 3.4.2.3, which limits development to prevent overuse of limited water supplies, protect the public's health and safety, and preserve the natural value of streams and watersheds.

In summary, the increase in residential development enabled by the adjustment conflicts with Big Sur LUP Policy 5.4.3.H.4, which states that "lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action (emphasis added)." The County approved lot line adjustment is inconsistent with Policy 5.4.3.H.4 because it converts sub-standard parcels that appear to not be developable with residential uses into buildable parcels, and sets a precedent that would have significant adverse cumulative impacts on coastal resources that run contrary to LCP policies, as discussed further below.

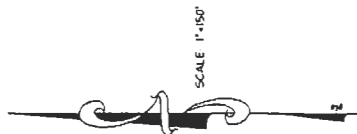
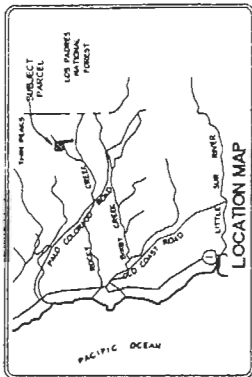
3. The increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur coast.

The reconfiguration of sub-standard parcels that cannot safely accommodate residential development into new buildable parcels would cumulatively increase the level of residential development in Big Sur well beyond that which is anticipated and allowed by the LCP. This will result in increased traffic on Highway One, which currently operates at the worst level of service (LOS F) at peak times, and would thereby interfere with the public's ability to access and recreate on the Big Sur Coast. Such an increase in residential development will also place greater demands on limited water supplies, which would, in turn, adversely impact riparian habitats. Furthermore, increases in residential development potential (over and above that already contemplated in the LCP) throughout the planning area could alter the unique character of Big Sur that makes it such a popular destination for coastal access and recreation. Because of these cumulative impacts, the lot line adjustment is inconsistent with Big Sur LUP Policy 5.4.3.G.3, as well as with Coastal Act Sections 30211 and 30213.



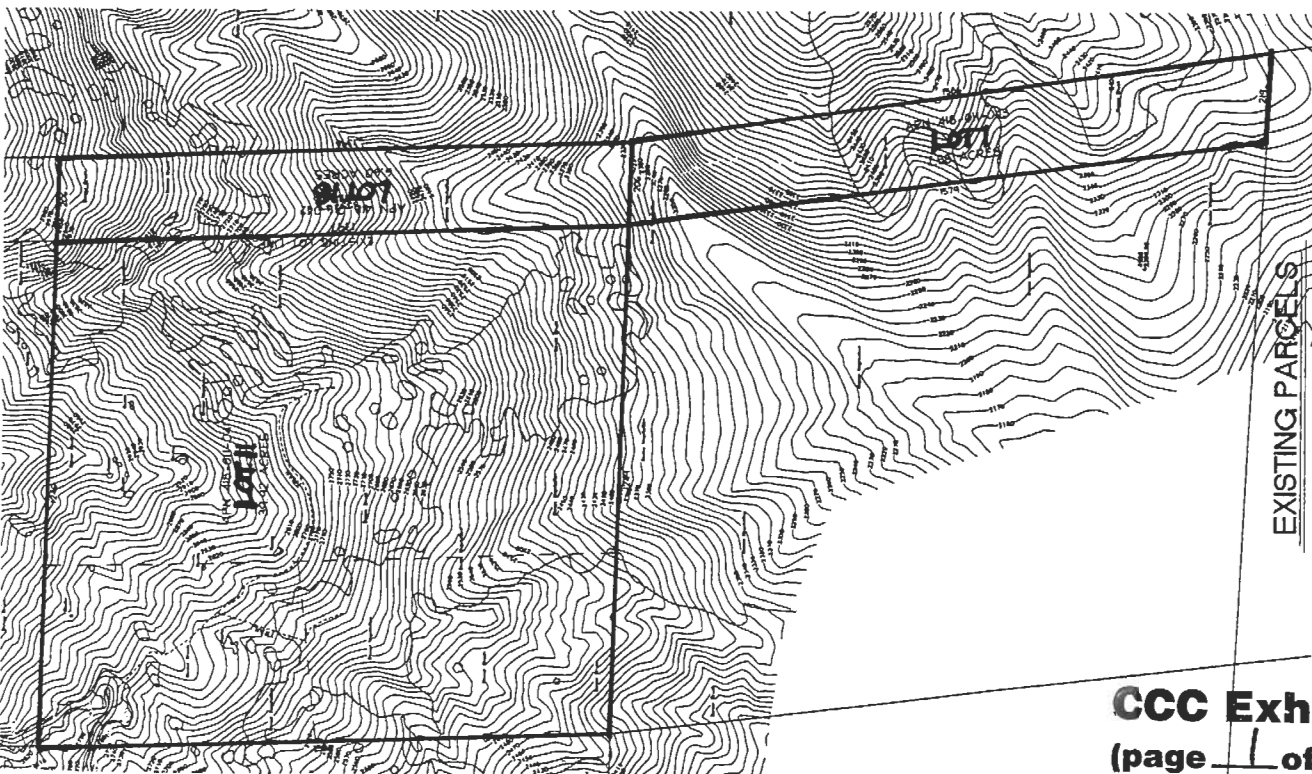
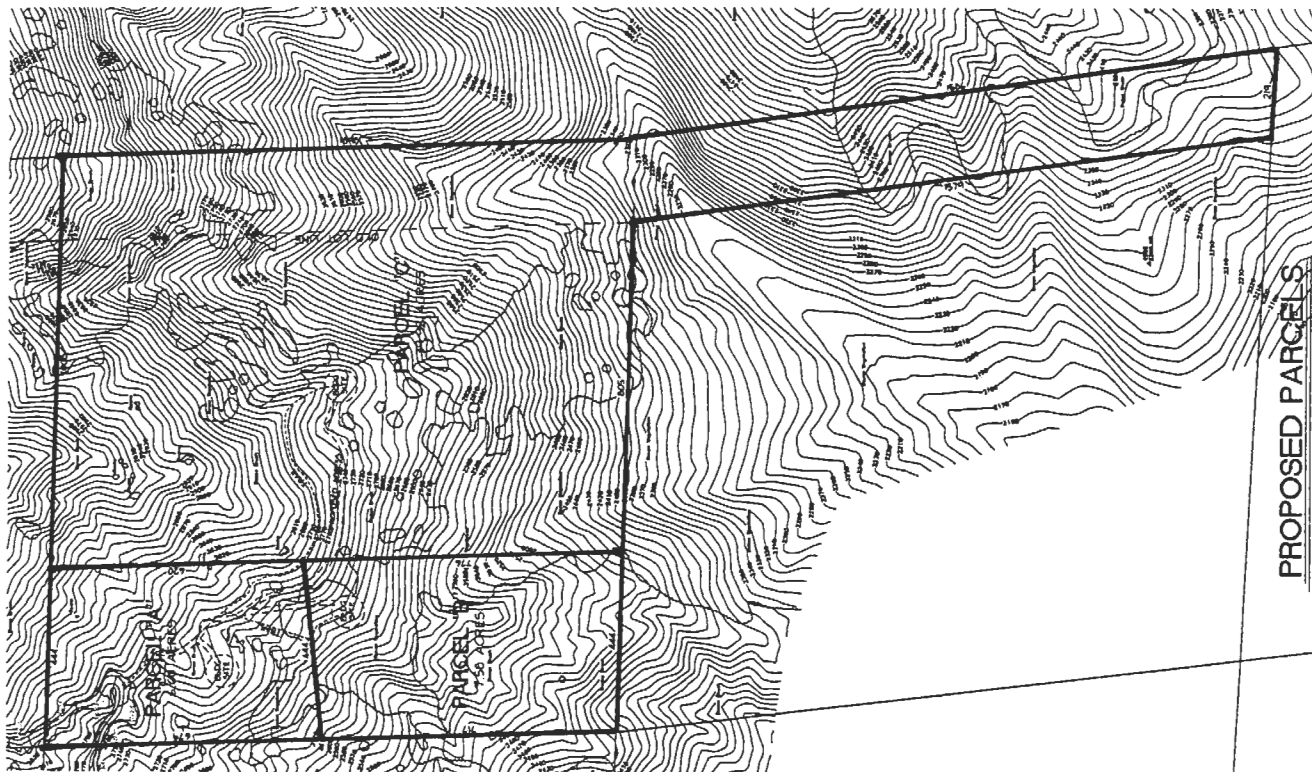
Source: Monterey County Resource Management Agency, Dec. 2006

PLANNER: BONEKEMPER



PROPOSED LOT LINE ADJUSTMENT
 BETWEEN PARCELS IN SECTION 2, TOWNSHIP 16
 SOUTH, RANGE 1 EAST, MONTEREY COUNTY,
 CALIFORNIA.

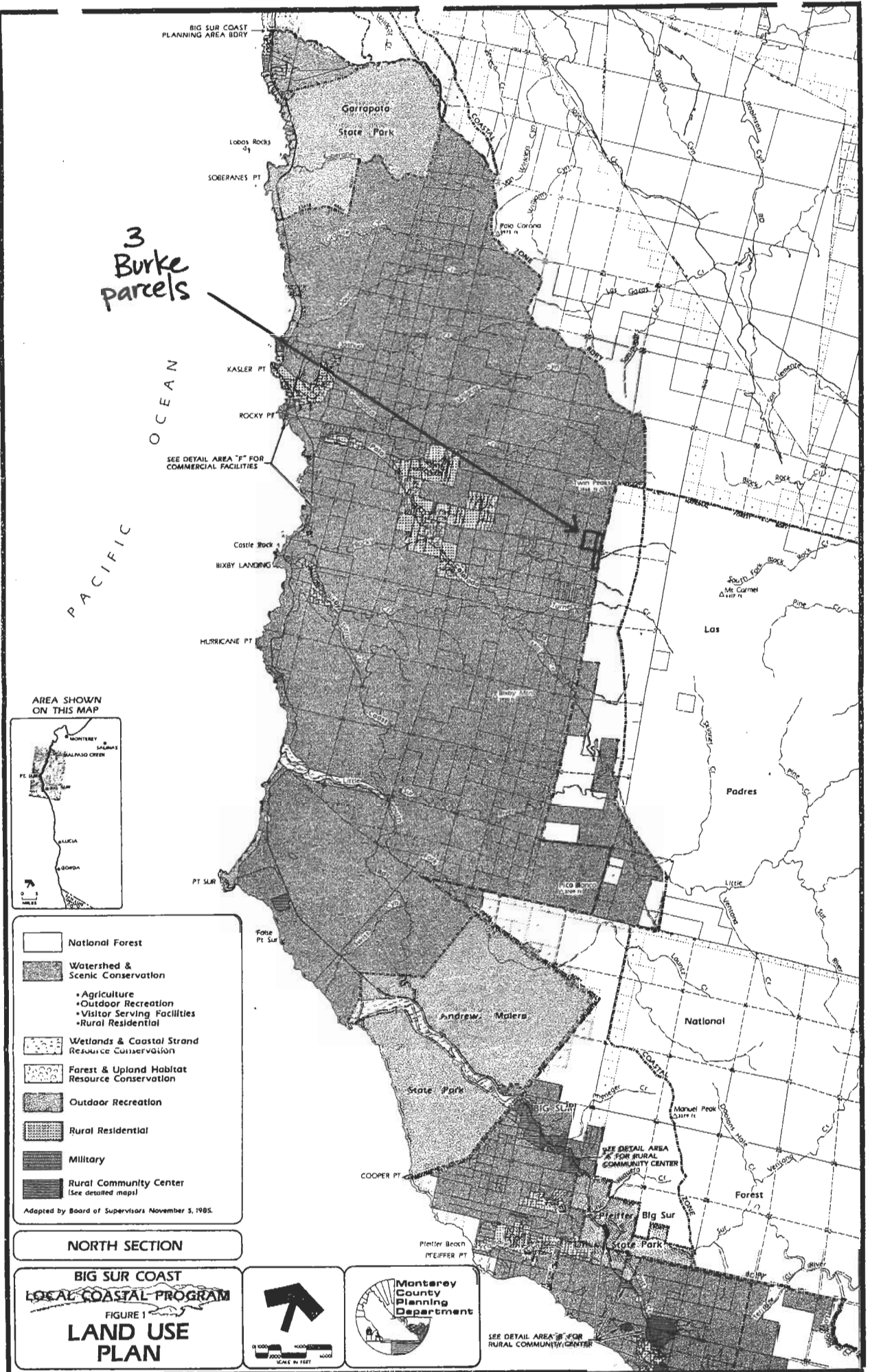
PREPARED FOR
TIM BURKE
 71 OTTAWA PLACE LAMONA, CA 95741
 APRIL 2004
 MAY 18, 2004
 SHEET ONE OF ONE
MJG
 M.J. O'NEILL AND ASSOCIATES
 1000 COMSTOCK AVE. SUITE 100
 SAN JOSE, CA 95128
 (408) 237-9477 FAX (408) 237-1100



PROPOSED PARCELS

EXISTING PARCELS

PLN 0000189



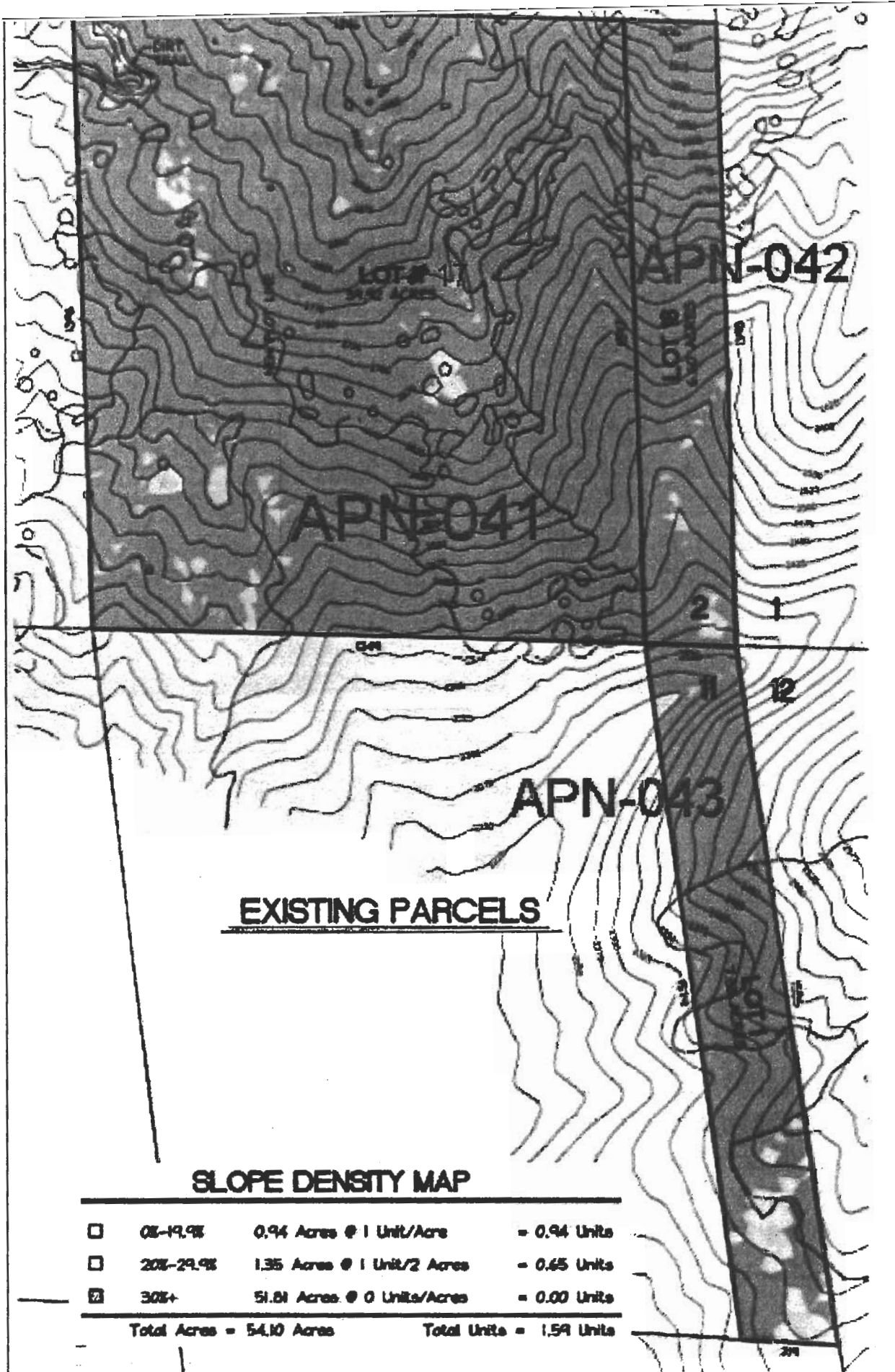


Figure 2 - Slope Density Map of existing Burke Assessor's Parcels.
Prepared from aerial survey by M.J. Goetz and Associates, Licensed Surveyor.

ARDEN HANDSHY**P.O. BOX 51758 PACIFIC GROVE CA 93950****LAND USE FACILITATOR****(831) 649-6420 FAX: 649-1338****e-mail: arden@handshy.com**

April 2, 2007

To: California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Attention: Katie Morange
Sent via email: kmorange@coastal.ca.gov

From: Arden Handshy, representing Tim and Dana Burke

Re: APPLICANT RESPONSE TO CCC APPEAL NO. A-3-MCO-07-004 (BURKE)

The purpose of this letter is to respond to the "*Reasons for Appeal*" given by the CCC, and to more fully explain the circumstances of the lot line adjustment that was approved by Monterey County. It is hoped that this dialog will continue in meetings with CCC staff, and result in withdrawal of the appeal.

PROJECT DESCRIPTION:

Tim and Dana Burke have owned these three parcels since 1983, and plan to sell two lots and keep the third for a retirement home. The only access to the property is over an unpaved private and gated road that crosses the northwest corner of the 40 acre parcel, and continues up toward Twin Peaks, providing access to at least three parcels that have received development permits from Monterey County since 1996. This area is more than four miles east of Highway 1.

The Burke property contains several fresh water springs, and viable building sites for residential development. Geotechnical/civil engineer Lawrence Grice has visited the site and found soil conditions suitable for septic systems and road construction, as long as prudent engineering and erosion control design is followed. Consulting Ecologist Nicole Nedeff has visited the site and provided an August 20, 2006 report, and a follow-up letter dated March 30, 2007. She concludes that the existing parcel configuration could support development, but that the proposed configuration would reduce impacts.

Regardless whether boundaries are adjusted, access driveways must traverse slopes greater than 30%. However, the driveways will be shorter and thus less impactful after the lot line adjustment approved by Monterey County. The Burkes have chosen to make this adjustment prior to selling the two smaller parcels, thereby ensuring that all development will occur near the existing access road and further away from Los Padres National Forest. It is anticipated that as a condition of the future Coastal Development Permits that will enable residential development, a conservation easement will be required that will provide a permanent buffer between the clustered development, Los Padres National Forest and Rocky Creek.

APPLICANT RESPONSE TO APPEAL:**RECEIVED**

AUG 29 2007

CCC Exhibit G
(page 1 of 28 pages)

CCC Appeal, Reason #1: *"None of the new lots created by the lot line adjustment conform to LCP minimum parcel size requirements."*

Response to #1: The three parcels are legal, non-conforming as to size, per the Big Sur LCP, as certified in 1986/87. (The largest is a nominal 40 acre parcel, being only 0.08 acre under.) The legality of the parcels was determined by Monterey County, and Unconditional Certificates of Compliance were issued for each in 1982.

There are many examples of lot line adjustments approved by Monterey County between parcels that are not consistent as to minimum parcel size, where findings were made that the resultant building sites will better meet resource protection requirements. Such findings and evidence are presented in County Resolution No. 06030, approving the Burke lot line adjustment.

The Appeal cites CIP Section **20.145.140.A.8** (re: 40 acre zoning) but that section is for parcels west of Highway 1. The subject parcel is over four miles east of Hwy.1. The correct reference is **20.145.140.A.6**.

The Appeal cites LUP Policy **5.4.3.G** (re: merger of parcels) and provides a footnote quoting a portion thereof, **5.4.3.G.3**, without identifying the quote as a subsection. Section **5.4.3.G** is entitled "Rural Residential" and includes a variety of policies that discuss the clustering of residential units, limiting rural residential areas to residential uses, and targeting Garrapatos Redwoods for merger. Consideration of the quoted Policy **5.4.3.G.3** leads one to conclude that merger should be recommended for extreme cases, such as Garrapatos Redwoods (subdivided into tiny parcels long ago), and reconstitution for less impactful situations.

Considering the phrase "Reconstitution of parcels or mergers may be required" it is understood that reconstitution is a less restrictive option than merger. The dictionary tells us that reconstitute means to reconstruct, to reassemble, to constitute again. Constitute means to set up, to establish, to form. That is exactly what a lot line adjustment does, it reconstructs the boundaries. This policy was designed by the authors of the Big Sur LCP to suggest either reconstitution (lot line adjustment) or merger as available, but not required, options, depending on the particular circumstances. The three criteria listed in the final sentence of **5.4.3.G.3** refer to mergers, not reconstitution of parcels, and the following Policy **5.4.3.G.4** specifically tie those criteria, as "merger provisions", to Garrapatos Redwoods.

CCC Appeal, Reason #2: *"The adjustment will increase the density of residential development beyond that which is allowed by the LCP"*

Response to #2: The density allowed is one unit per 40 acres, but LUP Policy **5.4.2.5** allows development of smaller existing parcels of record as long as resource protection policies can be met. The Burke proposal computes to one unit per 18 acres. This is ample room for resource protection by use of avoidance and mitigation. Many smaller Big Sur parcels are routinely approved for development. With the proposed lot line adjustment, all development will be clustered close to the existing access road and relocated further from the Los Padres National Forest.

The appeal correctly cites CIP Section **20.145.140.A.5** (re: density, land use, and site development standards being limited to land use designation.) That CIP section concludes with a reference to "Attachment 3" in which it is stated that, in a WSC zoning district, the site development standard is "1 acre minimum with clustering"

The Appeal calls into question the buildability of the existing parcels based on the prevalence of slopes greater than 30%, and the provisions of CIP Section **20.145.140.A.4**. That section actually *allows* development on 30% slopes if there is no alternative, with the granting of a waiver by the Director of Planning. CIP Section **20.145.140.A.13** is cited in the Appeal as a prohibition of septic systems on slopes greater than 30%. Where there is no alternative, septic systems can be designed for 30% slopes (or with a less than 50 foot setback from 30% slope) with a variance application to and approval by the Monterey County Division of Environmental Health (EH), in addition to the slope waiver from the Planning Department.

The Burke application included a slope map that clearly shows that the preponderance of the property is over 30% slope, but that there are areas of less than 30% on each parcel, existing and proposed. A slope waiver will be required for road access to building sites, as allowed by LUP Policy **5.4.3.K.2.e**, with or without the lot line adjustment, but there will be available land less than 30% for structures and septic systems.

The Appeal states that the County approval does not contain evidence of an adequate water supply, and cites LUP Policy **3.4.2.3** "*which limits development to prevent overuse of limited water supplies.*" Policy **3.4.2.3** actually says: "Where watersheds are affected or are threatened by overuse of the water supply..." There is no evidence that the Rocky Creek watershed is so affected or threatened. The subject property has several springs on it, indicating ample ground water which will be developed to supply each parcel. With or without a lot line adjustment, such water supply will have to be demonstrated to the satisfaction of EH at the time of a Coastal Development permit for development of each of the three parcels.

In a summary to *Reason #2*, the Appeal claims that the County-approved lot line adjustment enables an increase in residential development that conflicts with LUP Policy **5.4.3.H.4** because it converts sub-standard parcels into buildable parcels.

LUP Section **5.4.3.H** is entitled "Residential Subdivision" and **5.4.3.H.4** describes an alternative to subdivision (the policy begins: "Resubdivision and lot line adjustments are encouraged...") which is preferable to the creation of new lots, when policies are thereby better met.

The Burke proposal does not create new developable lots. There are 3 lots before and 3 lots after adjustment. With or without lot line adjustment, development will be a challenge, as it is with most Big Sur parcels. With or without lot line adjustment, there are available building sites, septic sites, and water supply, and access driveways will have to traverse 30% slopes. The primary difference is that driveways will be shorter after the lot line adjustment.

CCC Appeal, Reason #3: "*The increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur Coast.*"

Response to #3: The development of the three Burke parcels was anticipated by the LCP. Even if it had not been, the impact on Highway 1 traffic is less than significant, the impact on coastal access even less, and the impact on water supplies non-existent.

The Appeal states that the development of the Burke parcels "*would cumulatively increase the level of residential development in Big Sur well beyond that which is anticipated and allowed by the LCP.*" In fact, the Monterey County Planning Commission adopted the LUP in February, 1981. County planners included consideration of LUP policies when they issued Unconditional Certificates of Compliance in May, 1982. The certificates say: "The County of Monterey 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 of local ordinances enacted pursuant thereto..." and the three lots constitute separate legal parcels.

The recordation of the three certificates of compliance provided constructive knowledge of the existence of, and availability for development of, the Burke parcels prior to certification of the LCP by the CCC.

The Appeal claims that increased residential development (presumably two residences) will increase traffic on Highway 1, which "*currently operates at the worst level of service (LOS F) at peak times*" It is not clear what portion of Highway 1 is referred to, but it should be noted that traffic from the Burke property would be expected to have impacts primarily on only the northernmost ten miles of the Big Sur coast portion of Highway 1. It should also be noted that residents, as opposed to visitors, learn to avoid Highway 1 at peak times.

The Big Sur LUP states in **Section 4.1** that recreation traffic comprises 95% of all summer traffic on Highway 1, and that "efforts to reduce highway congestion by limiting land use development within Big Sur itself can have only marginal effects." In this context, two residences more or less is a considerably less than significant impact. The situation today can be assumed to even more extreme, with a greater percentage of visitor to resident traffic and a number of parcels having been acquired by public agencies.

As to cumulative impacts on water supplies, it has been stated above that the 54 acre Burke property contains ample water reserves to develop 3 lots without adverse impacts, either internally or externally.

The Appeal discussion of *Reason #3* concludes by stating that the lot line adjustment is inconsistent with LUP Policy **5.4.3.G.3** and Coastal Act Sections **30211** and **30213**. As discussed above, **5.4.3.G.3** actually implies that lot line adjustments may be a preferred option for development. The two Coastal Act sections are not applicable as they deal with public access to the sea and low cost visitor and recreational facilities, respectively.

CONCLUSION:

After reviewing other lot line adjustments appealed by the CCC and noting the similar wording to the Burke appeal, it appears that CCC staff may have thought the Burke project had similar

deficiencies. However, there are substantive differences that support the Monterey County approval of Burke: Unlike the other appeals, the Burke property is not on the coast, is not between the first public road and the sea, but is in fact over four miles east of Highway 1, in an area inaccessible to the public. There are no Burke parcels which are too small to develop; the smallest is 6.60 acres, the largest nearly 40 acres. There are no identified environmentally sensitive habitats on the existing parcels (Redwood Forest and Canyon Riparian) that cannot be avoided or mitigated. The necessity of development on slopes greater than 30% is the single unavoidable factor common to existing and proposed configurations. LCP policies discussed above provide procedures that allow development on slopes greater than 30% where there is no alternative or where other policies are better served. **LUP Section 3.3** even permits roads in environmentally sensitive habitats where there is no alternative access, and as long as no significant adverse impacts will result.

Approval of this lot line adjustment provides an opportunity to minimize future impacts of the inevitable development of these three parcels, by ensuring that all three building sites will be clustered near the existing access road, and internal driveways will be as short as possible. If this lot line adjustment is disallowed, the Burkes will sell the two smaller parcels and grant road and utility easements over the larger parcel. Then the new owners will be forced to develop parcels in the current configuration.

I look forward to discussing this project with you further. Thank you,



Arden Handshy

Attached: Nikki Nedeff 3/30/2007 Memo

c/c: Tim and Dana Burke
John Briscoe
Nikki Nedeff

MEMO

TO: Arden Handsby
FROM: Nikki Nedeff
DATE: March 30, 2007
SUBJECT: BURKE Lot Line Adjustment, APN 418-011-041, 042, 043

Tim and Dana Burke have proposed a lot line adjustment to reconfigure their three lots in the Upper Rocky Creek watershed. The acreage for each lot will remain the same when reconfigured. The purpose of the Lot Line Adjustment is to facilitate access and shorten the distance that driveways will have to traverse across slopes that in some places are in excess of 30%.

On August 19, 2006, I conducted a preliminary site assessment and prepared a letter report (dated August 20, 2006) that describes general habitat features on the Burke property. No special status plant or wildlife species were observed on the Burke property during the preliminary site inspection.

As noted in my August 20, 2006 report, the Burke property supports a mosaic of coastal and inland natural communities typical of Pacific slope watersheds. The patchwork of habitat types reveals significant microclimatic variability over relatively short geographic distances due to soil differences, moisture retention, slope steepness, aspect, and the inland extension of marine influences.

As presently configured, each of the Assessor's Parcels owned by the Burkes could support development sites on gentle terrain with slopes less than 20%. However, the construction of driveway access to reach these more gently sloped house sites would involve very long traverses across slopes that are 30% and greater. To reach a potential development envelope on the "flag pole" lot would also require crossing a perennial tributary of Rocky Creek and working through Redwood Forest habitat on the north-facing side of Long Ridge. With appropriate engineering, erosion control and restoration, reaching developable areas on the currently configured lots is technically feasible, although impacts to natural resources would be significantly reduced if the proposed lot line adjustment is finalized.

The environmental impacts to habitat resources on the Burke property would be greatly reduced with the proposed lot line adjustment. The reconfigured parcels cluster tentative development sites according to the placement of buildable locations on more gently sloped sites. The construction of driveway access from each proposed lot would still involve traversing across slopes 30% and greater, however the distance from each of the proposed building locations to the shared route that cuts across the northwest corner of proposed Parcel A would involve far less environmental impact.



BIOLOGICAL ASSESSMENT

BURKE PROPERTY - ROCKY CREEK

APN 418-011-041, 042 and 043

Prepared for:
Tim and Dana Burke
77 Omaikai Place
Lahaina, HA 96761

Prepared by:

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August 20, 2007

RECEIVED

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PROJECT PROFILE

DATE: August 20, 2007

PREPARED BY: Nicole Nedeff

SITE NAME: Burke

APN: 418-011-041, 39.92 acres, U.S. Lot 17, Section 2. Referenced in report as APN-041.
418-011-042, 6.60 acres, U.S. Lot 18, Section 2. Referenced in report as APN-042.
418-011-043, 7.58 acres, U.S. Lot 1, Section 11. Referenced in report as APN-043.

PHYSICAL ADDRESS: Upper Rocky Creek Watershed, south of Twin Peaks

ACREAGE: Total acreage in project area = 54.1 acres

USGS QUAD: Mt. Carmel 7.5'. T18S, R1E, SE1/4 of the SE1/4, Section 2, and a portion of the NE1/4 of the NE1/4 Section 11.

OWNER: Tim and Dana Burke, 77 Omaikai Place, Lahaina, HA 96761.

OWNER REPRESENTATIVE: Arden Handshy, Land Use Facilitator, P.O. Box 51758, Pacific Grove, CA 93950. 831/649-6420.

MONTEREY COUNTY PLANNING AREA: Big Sur LUP. Lot Line Adjustment application approved by Monterey County Minor Subdivision Committee on December 14, 2006, PLN: 060189.

ZONING/PRESENT LAND USE: WSC/40 (CZ) = Watershed and Scenic Conservation Residential, with a maximum gross density of one unit per 40 acres, within the Coastal Zone. The site occurs in the Big Sur Land Use Plan Area in the mountainous upper drainage of Rocky Creek. Similar rural residential parcels are in the vicinity.

SITE LOCATION: The Burke property is located in the Rocky Creek watershed approximately 4.5 miles inland from Highway 1. The property is accessed from Palo Colorado Road and a gated private road that veers northward from the local landmark called "The Hoist". The property abuts the western boundary of the Ventana Wilderness in the Los Padres National Forest.

PROJECT DESCRIPTION: Coastal Development Permit for Lot Line Adjustment to reconfigure exiting parcels to facilitate access and reduce environmental impacts associated with building access roads. Biological Assessment pertains to overall habitat conditions on existing lots of record and proposed reconfigured parcels.

SITE VISITS: August 20, 2006, May 12, 2007, July 30, 2007.

HABITAT IN PROJECT AREA: Mixed Evergreen Forest, Oak Woodland, Canyon Riparian, Chaparral.

SIGNIFICANT BIOLOGICAL ATTRIBUTES:

- ✓ Riparian habitat along primary tributaries to Rocky Creek

BIOLOGICAL ASSESSMENT APN 418 - 011- 041, 042, 043

EXECUTIVE SUMMARY

Tim and Dana Burke have proposed a lot line adjustment to reconfigure their three lots in the Upper Rocky Creek Watershed. The number of legal lots will be the same and the acreage for each lot will remain unchanged when reconfigured. The purpose of the Lot Line Adjustment is to cluster developable areas and shorten the distance that access roads will have to traverse across slopes that are in excess of 30%.

On August 20, 2006, I prepared a letter report describing general habitat features on the Burke property in the vicinity of feasible building areas on the three reconfigured parcels. No special status plants, wildlife or natural communities were observed in the vicinity of clustered development sites during the preliminary site inspection. It was noted that Canyon Riparian, Oak Woodland, Mixed Evergreen Forest and indicators of moist soil conditions (willows, big-leaved maples and sycamores) occur on the Burke property.

On May 12, 2007 and July 30, 2007, I conducted more extensive field work and visited each of the existing lots of record to assess environmental conditions in feasible building areas. The proposed roadway connecting the "flag-pole" lots (APN-042 and APN-043) to the main access road was also inspected. In addition, the proposed project was evaluated for potential impacts to natural resources that exist in the project site, and in the Upper Rocky Creek Watershed.

The existing Assessor's Parcels support:

- APN-041 - 39.92 acres, square parcel closest to existing road access. Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral, and disjunct indicators of moist soils: sparse willows near road, sycamores near building site "B", chain fern stand.
- APN-042- 6.6 acres, narrow northeastern parcel adjacent to Ventana Wilderness, Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral.
- APN-043- 7.58 acres, narrow southeastern parcel adjacent to Ventana Wilderness. Canyon Riparian, Mixed Evergreen Forest, Oak Woodland, Chaparral, primary tributary to Rocky Creek (Rocky Creek is known for the presence of steelhead in the South/Central California Ecologically Significant Unit - ESU).

No occurrences of plants or wildlife species protected under either the federal or California Endangered Species Acts were documented in the project area. However, all three existing parcels support Canyon Riparian habitat in narrow, steep canyons. A primary tributary to Rocky Creek crosses the northern edge of APN-043. Rocky Creek is known to sustain the federally threatened steelhead in its lower reaches. Potential habitat exists in Canyon Riparian areas on APN-042 and APN-043 for a number of sensitive species, including California spotted owl, Coast Range newt and foothill yellow-legged frog.

No occurrences of special status plants listed by the California Native Plant Society or the Los Padres National Forest, Monterey District were documented on the Burke property.

Based on field reconnaissance and analysis of maps and aerial photography, it is my determination that the potential development of each of the existing Assessor's Parcels is possible. With appropriate engineering, erosion control and restoration, reaching developable areas on the existing lots is feasible, however road construction impacts to natural resources would be significantly reduced if the proposed Lot Line Adjustment is finalized.

If suggestions to minimize potential biological impacts are incorporated into future development plans, reconfiguring the existing Assessor's Parcels according to the proposed Lot Line Adjustment will not significantly affect biological resources in the Upper Rocky Creek Watershed of the Big Sur Planning Area. The reconfigured parcels will require less road construction for access and will not be adjacent to sensitive riparian habitat or the edge of the Ventana Wilderness.

This Biological Assessment pertains to habitat conditions on the existing Assessor's Parcels and on the reconfigured lots under consideration in the proposed Lot Line Adjustment. Specific and focused biological assessments should be completed and mitigation measures recommended if infrastructure and construction is proposed pursuant to Combined Development Permit applications for road and residential development on any of the individual parcels in the project area.

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The Monterey County Minor Subdivision Committee approved the Coastal Development Permit to implement the Burke Lot Line Adjustment on December 14, 2006, PLN 060189.

## I. SURVEY METHODS

Local maps, written references, Internet-based searches and consultations with knowledgeable individuals were used during the preparation of this Biological Assessment. In addition, maps and aerial photographs were provided by Land Use Facilitator Arden Handschy.

Botanical and habitat surveys were conducted in August 2006, May 2007 and July 2007. Prior to on-site field visits, the California Department of Fish and Game Natural Diversity Data Base (CNDDDB) maps and computer print-outs for the vicinity of the Burke property (Soberanes Point, Mt. Carmel, Big Sur and Pt. Sur USGS 7.5' quadrangles) were consulted. Appendix A lists the CNDDDB species that were considered during site visits to the Burke property. In addition, because the project area abuts the Los Padres National Forest, lists of sensitive species found on the Monterey Ranger District of the Los Padres National Forest were also reviewed and potential occurrences of noted species listed in Appendix B were considered during surveys on the Burke property.

CNDDDB maps for the Mt. Carmel quadrangle display no specific records or element occurrences of sensitive species recorded in the vicinity of the Burke property. Most of the species listed in Appendix A and Appendix B do not have potential habitat on the Burke parcels.

No sensitive or special status plants or animals were observed on the Burke property during on-the-ground field surveys, however the property supports "Canyon" Riparian habitat. This natural community is a local phase of Riparian habitat, which is considered an Environmentally Sensitive Habitat Area (ESHA) in the Monterey County Big Sur Land Use Plan, Local Coastal Program. Potential habitat exists in appropriate Canyon Riparian communities on APN-042 and APN-043 for a number of sensitive species, including Coast Range newt and foothill yellow-legged frog. Potential habitat exists in heavily forested areas in the general region for California spotted owl.

Policies pertaining to Riparian habitat are detailed in chapter 3.3.3, page 20 of the 1985 LUP and Section 20.145.040.C.1 (Specific Development Standards, Terrestrial Plant, Riparian and Wildlife Habitats), in the 1988 Coastal Implementation Plan.

A complete list of species observed on the Burke property is included in Appendix C.

Common names for plant species are used throughout the text.

## II. SITE DESCRIPTION and EXISTING CONDITIONS

Assessor's Parcel Numbers for existing lots of record:

418-011-041, 39.92 acres. Referenced in this report as APN-041.

418-011-042, 6.60 acres. Referenced in this report as APN-042.

418-011-043, 7.58 acres. Referenced in this report as APN-043.

The Burke property is located approximately 4.5 miles inland from Highway 1 in the upper portion of the Rocky Creek Watershed. The three Assessor's Parcels owned by Tim and Dana Burke are situated between the prominent geographic features of Twin Peaks and Long Ridge, and are adjacent to large, rural, residential properties developed in similar terrain. Two of the existing Burke parcels (APN 042 and APN-043) are immediately adjacent to the northwestern border of the Ventana Wilderness in the Los Padres National Forest. Figure 1 is a general regional map depicting the Burke project area.

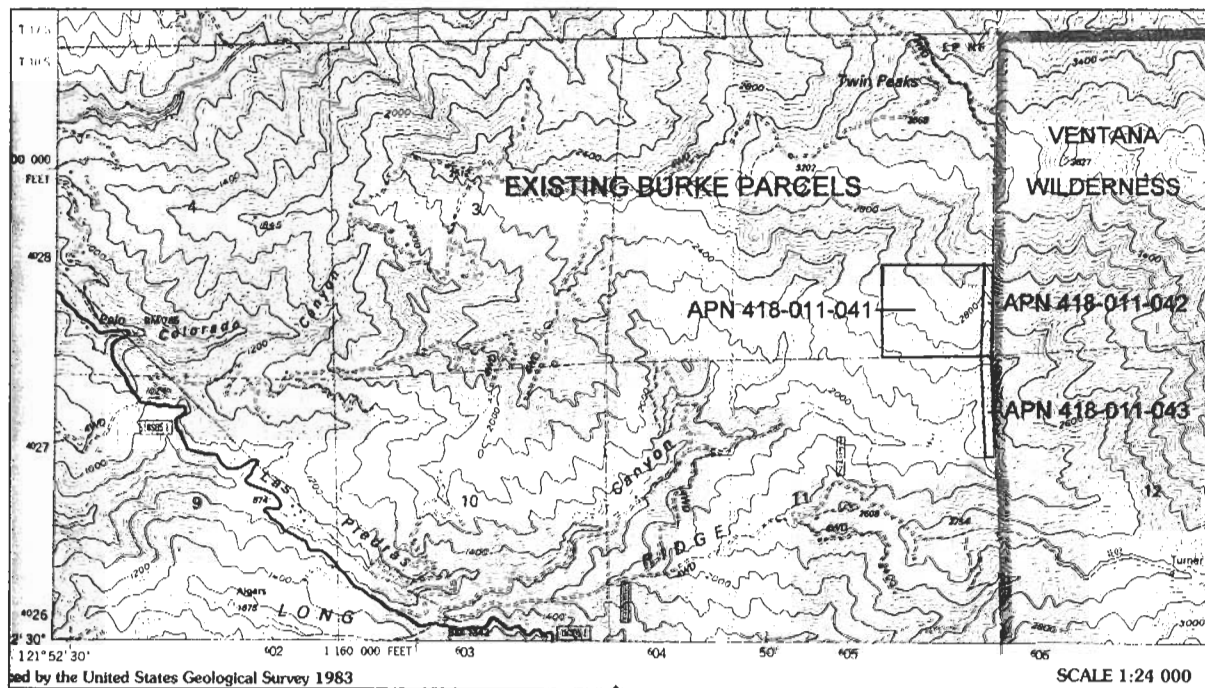


Figure 1 - A portion of the USGS Mt. Carmel 7.5' quadrangle with the existing Burke parcels outlined. Highway 1 is approximately 1.5 miles to the left of the western edge of the map.

The majority of the Burke property is positioned on steep slopes that face west, south and east. Most of the Burke property has slopes in excess of 30%. The topography levels out to more gentle slopes along the southerly extensions of several short ridges and towards the canyon bottom along a principal tributary to Rocky Creek. A slope density map based on an aerial survey is presented in Figure 2.

The northern edge of APN-043 crosses a primary tributary to Rocky Creek (the North Fork of Rocky Creek), while APN-041 and APN-042 are situated at higher elevations on the lower flanks of Twin Peaks. Elevations range from a low of 2250' at the stream crossing on APN-043, to approximately 3030' at the highest location on APN-041.

The vehicular approach to the Burke property is located at the western edge of APN-041 along a private dirt road that is accessed through a locked gate at the Hoist along Palo Colorado Road, approximately three miles inland from Highway 1. This road is referred to by locals as the "Zufich" Road in the vicinity of the Burke property.

The three existing Burke parcels are completely undeveloped, except for an old springbox located in the southerly portion of APN-042. Several footpaths have been created in APN-041 to facilitate access to the eastern portion of the property.

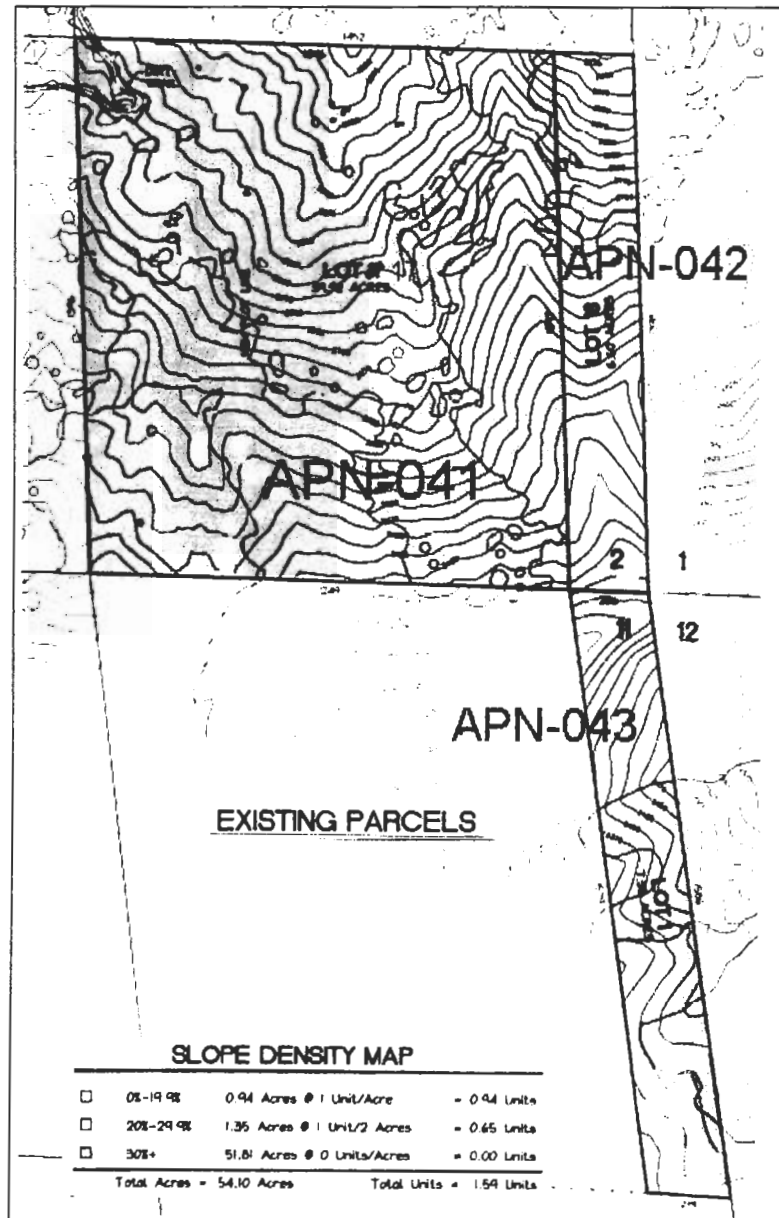


Figure 2 - Slope Density Map of existing Burke Assessor's Parcels.  
Prepared from aerial survey by M.J. Goetz and Associates, Licensed Surveyor.

## A. GENERAL HABITAT

The Burke property supports a classic mosaic of natural communities and plant associations typical of Pacific slope watersheds in central California. The Upper Rocky Creek Watershed below Twin Peaks is in a transitional area where inland conditions predominate and marine influence in the form of cooling fog penetrates only rarely. The patchwork of habitat types reveals significant microclimatic variability over relatively short geographic distances due to soil differences, slope steepness, aspect, and moisture.

The underlying bedrock geology is composed of granitic rock types that weather to coarse soils of varying depth. Large boulders outcrop in scattered locations on the Burke property and create unusual and interesting landforms. Sunny, exposed, generally south and west-facing slopes are mantled with dense chamise-dominated Chaparral, with patches of Oak Woodland tucked into pockets of deeper soils and folds of narrow canyons. The drainage bottoms in APN-042 and APN-043 support linear Canyon Riparian communities that snake their way along increasingly steep gradients towards watershed divides. Small areas of north-facing slopes on APN-042 and APN-043, and several of the canyons with seasonal streams tend to be vegetated with stands of Mixed Evergreen Forest vegetation.



Vegetation classifications utilized in the September 2003 publication "List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database" (CA Dept. of Fish and Game) are noted in the descriptive sections below.

Figure 3 - Granitic boulder outcrop on APN-041.

**1. Chaparral:** DFG Chamise Chaparral Shrubland Alliance, *Adenostoma fasciculatum* 37.101.00, with occasional Associations featuring co-dominant Eastwood's manzanita, 37.101.07 *Adenostoma Fasciculatum* - *Arctostaphylos glandulosa*. Eastwood's manzanita has gone through a recent taxonomic revision and the previous taxon description for the subspecies found on the Burke property, *Arctostaphylos glandulosa* ssp. *zacaensis* (Matthews 1997 and 2006) has been reclassified as *A. glandulosa* ssp. *leucophylla* (Vasey and Parker, March 2007).

On the hottest, driest slopes that are often the poorest in term of soil development, shrub-dominated Chaparral vegetation is characterized by a predominance of chamise. Chamise is the signature plant of Chaparral habitat on the Burke property and other attendant species tend to be widely separated in this natural community. Chamise Chaparral is one of the most common natural communities in California, covering approximately 6 million acres in the state.



In Chaparral on the Burke property, yerba santa occurs in small patches along the access road, while Eastwood's manzanita, black sage, deerweed, toyon and golden fleece can be found scattered in the shrub matrix dominated by chamise. Occasional stands of Eastwood's manzanita create bright green patches in otherwise nearly pure chamise. A few specimens of buck brush, coffeeberry and redberry were seen and small groves of Coast live oak were noted in areas of deeper soil.



Figure 4 - Chamise-dominated Chaparral with scattered stands of coast live oak and Eastwood's manzanita. Black sage in the foreground. View is looking west across the middle of existing APN-041 along route of proposed driveway. Note vehicles parked along "Zufich" access road in top right of photograph - this is the approximate location of where the driveway entrance would be placed to access all three Monterey County-approved building areas in the lot line adjustment (currently existing APN-041). Chamise Chaparral is the dominant plant community throughout the developable areas on the lots proposed under the Lot Line Adjustment. Building site A is marked by a white PVC pole immediately above the boulder outcrop left of center.

**2. Coast Live Oak Woodland:** DFG Coast Live Oak Forest and Woodland Alliance, *Quercus agrifolia* 71.060.00, with Associations of Central Coast Live Oak Forest 71.060.21 and Coast Live Oak - Canyon Live Oak Woodland, *Quercus agrifolia* - *Q. chrysolepis* (no DFG code).

Discontinuous patches of Oak Woodland and Forest are found in pockets of deeper soils and along seasonal drainages where soil moisture tends to persist. Coast live oak is the dominant

oak species on the Burke property. Canyon live oak, a species indicative of higher elevation and more inland environments, also occurs on the Burke property and black oaks were observed near the Rocky Creek tributary on APN-043. Canyon live oak was seen growing adjacent to coast live oak in mixed populations in some locations, which is an interesting sign marking the transition zone between coastal and inland climates. Several large, stately madrone and a few California bay trees were also observed in association with oak-dominated woodland/forest vegetation on the Burke property.



Figure 5 - Mosaic of Chaparral and Coast Live Oak Woodland. View is towards the east across the northern portion of existing APN-041. Note boulder outcrops on the steep hillslope. This photograph depicts the very steep terrain upslope of Monterey County-approved building areas and road alignment proposed under the Lot Line Adjustment.

**3. Mixed Evergreen Forest:** DFG Mixed Oak Woodland and Forest Alliance, 71.100.00, is the most inclusive classification category for this highly variable natural community. Stands of single species trees (oaks, tanbark oaks, bays, madrones) are intermixed with individuals of all species in a changeable mosaic that reflects microclimate and soil differences.

The only significant north and northwest-facing hillslopes on the Burke property occur on APN-042 and APN-043 flanking the narrow drainages of Rocky Creek tributaries. These aspects support restricted stands of Mixed Evergreen Forest vegetation. Forested hill-slopes on north-facing aspects of the Burke property and similar sites in typical central coast watersheds are

generally damper, more shaded and vegetated with a variety of tree species, including tanbark oak, coast live oak, canyon live oak, madrone, California bay and a variety of shrubs, ferns and herbaceous species in the shaded understory. It appears that the pathogen responsible for Sudden Oak Death, *Phytophthora ramorum*, has infected many tanbark oak trees in Mixed Evergreen Forest habitat in the Rocky Creek Watershed. Fuel loads are extremely high, since many tanbarks display dead foliage or have already died from the disease.

Understory vegetation in Mixed Evergreen Forest communities can be quite variable, with poison oak, straggly gooseberry, coffeeberry, sword fern, western bracken and California blackberry intermixed with shade-tolerant wildflowers and native grasses. Potential habitat occurs in the forest habitat on the Burke property for the California spotted owl (*Strix occidentalis occidentalis*, a California Species of Concern and Forest Service Sensitive Species).

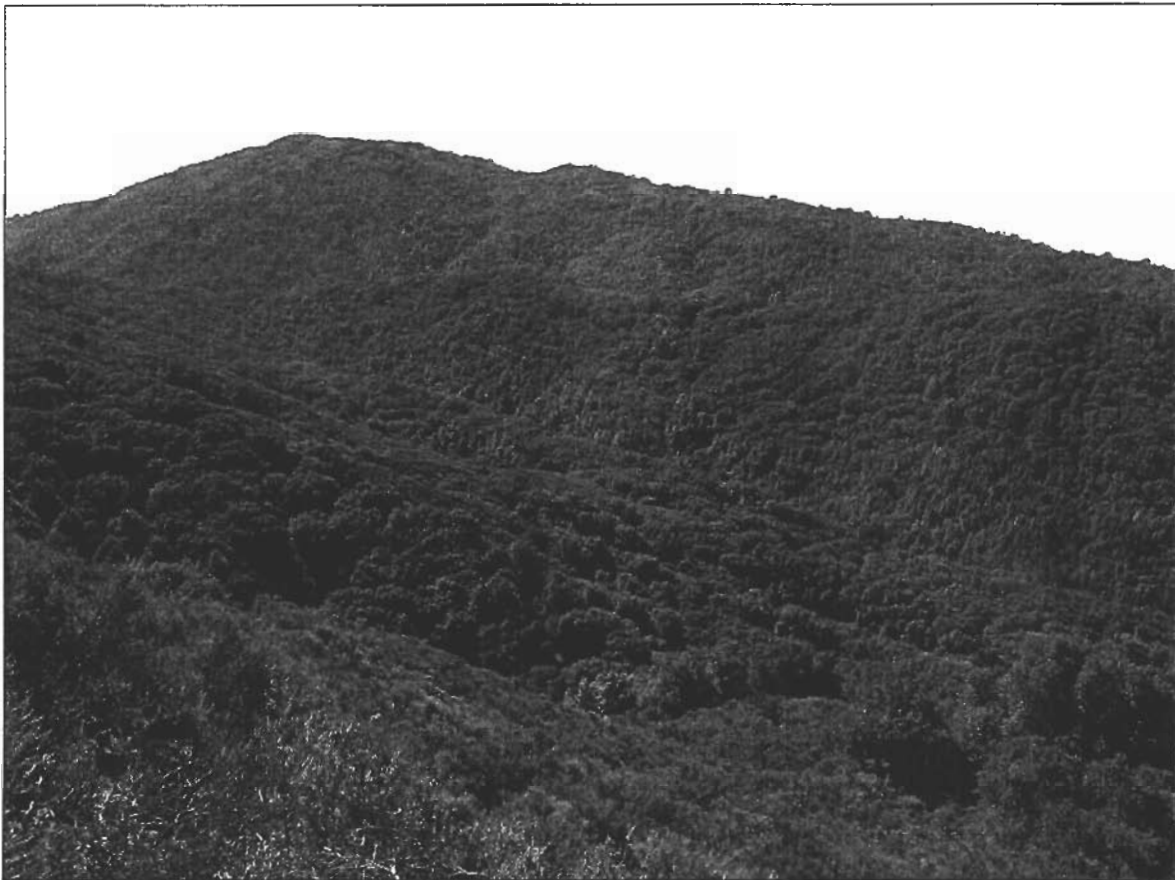


Figure 6 - Looking southeast across Burke property towards dense Mixed Evergreen Forest on north-facing slopes of the Ventana Wilderness, Devil's Peak, Skinner Ridge and Long Ridge. Foreground of Chaparral and middle ground vegetated mostly with Coast Live Oak Woodland.

**4. Canyon Riparian Habitat:** The 2003 DFG List of California Terrestrial Natural Communities includes Riparian and Bottomland Habitat, 60.000.00, and an Association for Central Coast Arroyo Willow Riparian, *Salix lasiolepis*, \*61.201.01 (the \* indicates this is a rare community). White Alder Forest and Woodland, *Alnus rhombifolia*, 61.420.00, is also

referenced. Riparian habitat is considered Environmentally Sensitive Habitat Area (ESHA) in the Big Sur LUP.

Stands of arroyo willow and white alder that are typically associated with Riparian habitat do not occur on the Burke property, however individuals of each of these species are found in areas of damp soil (e.g., willow seedlings along the Zufich road) and in the narrow canyon riparian corridors, where these trees are associated with other indicator species like big-leaved maple, sycamore, chain fern and elk clover. Riparian plants are scattered along the drainage bottoms in widely separated locations and floristic changes occur within relatively short distances. As elevations increase, the number of obligate and facultative wetland or riparian species along the seasonal creeks lowers as the number of upland taxa increases. Eventually, Riparian habitat found in the damp canyons gives way to communities of Chaparral, Oak Woodland or Mixed Evergreen Forest at the higher elevations.

There does not appear to be a DFG Vegetation Classification that adequately characterizes the highly variable Riparian vegetation found on the Burke property, or in other Central Coast watersheds where narrow canyons gain elevation dramatically along steep gradients. At any single location along the longitudinal profile of these steep drainages, the species composition of the vegetation can be described in a specific and definitive way. Generally, "stands" of vegetation (where collections of a single species of plant can be found) do not occur with any regularity and species composition along the drainages changes very quickly. Species composition reveals differences in moisture availability, amount of sunlight received and width of the riparian recruitment zone. Riparian indicators can be intermixed with plants more typical of xeric habitats, depending on amount and seasonality of streamflow and the width of the "floodplain" available for plant colonization.

Canyon Riparian habitat on the Burke property is restricted to the narrow canyon bottoms in APN-042 and APN-043, and at the eastern edge of APN-041. The moisture dependent vegetation is densest and most diverse along the portion of the drainage at the northern edge of APN-043, where less than 0.5 cfs (cubic feet per second) of streamflow was observed on May 12, 2007. Slopes in the drainage bottom are relatively level at this particular location and the composition and structure of the riparian habitat reflects this accommodating plant environment. Riparian habitat on APN-043 includes black oak, white alder, big-leaved maple, sycamore, leather root, elk clover, thimbleberry and madrone. The side tributary that snakes upstream onto APN-041 and APN-042 becomes increasingly steep, however short reaches support dense stands of chain fern and occasional sycamore. To illustrate the complexity of environmental conditions in APN-042, at one point along the drainage, yucca, an indicator of dry rocky conditions, was growing within a short, damp section of the creek covered with mugwort and chain fern.

The upper reaches of steelhead spawning (*Onchorhynchus mykiss*, listed as federally threatened) are not known in the Rocky Creek Watershed, however it is doubtful that the North Fork of Rocky Creek maintains perennial flow through the Burke property. It is possible that there are reaches of the narrow side canyons where moisture remains all year long in pockets and short reaches where groundwater is forced to the surface over shallow bedrock.

Potential habitat occurs in the wettest riparian areas on the Burke property for foothill yellow-legged frog (*Rana boylei*) and Coast Range newt (*Taricha torosa torosa*).



Figure 7 - North Fork Rocky Creek in APN-043, looking downstream. Thimbleberry on left bank and large woody debris in streambed.

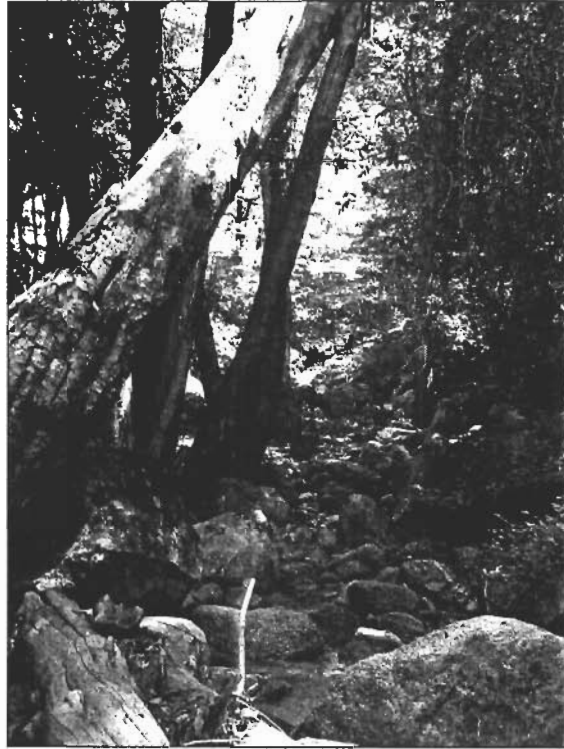


Figure 8 - North Fork Rocky Creek in APN-043, looking upstream.

### III. POTENTIAL DEVELOPMENT OF EXISTING ASSESSOR'S PARCELS

Figure 9 depicts potential road alignments to possible building areas on existing Assessor's Parcels on the Burke property, which are referenced as APN-041, APN-042 and APN-043 in this report. The potential road alignments and each of the possible building areas were field surveyed on May 12, 2007 and July 30, 2007. Note that APN-041 has three possible building areas identified as A, B and C; each of these generally corresponds to building areas on reconfigured lots, as approved by Monterey County in December 2006. There is one additional building area on the southern edge of existing APN-043, however this site was not field checked as it must be accessed from an illegal road constructed on to the Burke's land from the adjoining private Kitaji property. The southern portion of APN-043 is not shown on Figure 9.

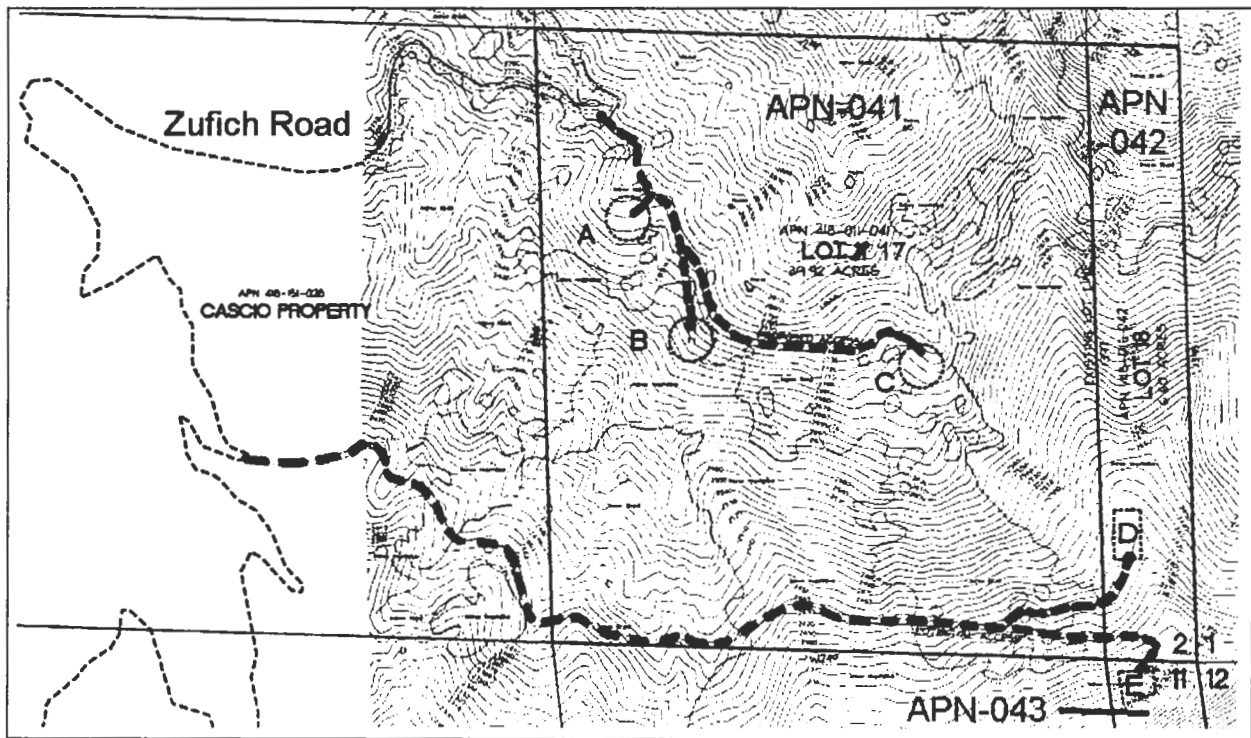


Figure 9 - Map of potential road alignments and building areas, July 2007. Possible building areas on APN-041, which would be located on three reconfigured parcels approved by Monterey County, are labeled A, B and C. Alternative building areas located on the existing "flag-pole" parcels APN-042 and APN-043 are noted as D and E. The potential lower road alignment is the dashed dark green line and the upper road alignment is the dashed red line.

#### A. CONDITIONS AT POTENTIAL BUILDING SITES

1. **APN-041:** the large, 39.92-acre square parcel. There are at least three possible building areas on APN-041 and each of these has been placed into reconfigured lots approved by the Monterey County Minor Subdivision Committee. Building areas "A" and "C" are in chamise-



dominated Chaparral habitat, with occasional black sage, Eastwood manzanita, deerweed and toyon. The shrub canopy is too dense to support a significant understory. A large boulder outcropping occurs in "A".

The possible building area at site "B" straddles the margin of Coast Live Oak Woodland and Chaparral natural communities. The Oak Woodland has deep leaf litter with a very sparse understory. An interesting collection of sycamores occurs under the canopy near this location. About 20 sycamore trees were noted, each between 2" and 10" DBH (diameter at breast height, 5' above ground surface). The presence of the moisture-dependent sycamores indicates relatively shallow soil moisture in this area. No other moisture-dependent vegetation was observed - no spring, wetland or riparian plants were seen in what is otherwise a typical upland Oak Woodland setting at the lower margin of building area "B". The sycamores are an anomaly at this site and likely reflect some sort of past growing environment that is no longer operative at this location. The sycamores are probably being sustained today by shallow groundwater conditions, however the attendant environment that promoted the original propagation or sprouting of the sycamores is no longer in place. Environmental conditions that favor the development of Coast Live Oak Woodland habitat currently prevail at this site. Sycamores were not observed under the canopy of other Oak Woodland areas on other portions of the Burke property, except along narrow drainages where Canyon Riparian habitat was present.

**2. APN-042:** narrow northeastern parcel adjacent to the Ventana Wilderness. The possible building area "D" is near the confluence of two small side canyons that each support sparse and discontinuous Canyon Riparian vegetation. Locating structures at this site may require slope waivers to build on slopes greater than 30%, and will require building within the 150' setback from Canyon Riparian ESHA. A water source could easily be developed from an old, existing springbox upstream in the westerly canyon.

The building location at "D" is situated in Coast Live Oak Woodland near sparse Canyon Riparian habitat that is confined to the narrow canyon bottom. The westerly drainage supports a small stand of chain fern, with mugwort, western bracken and stinging nettle under an open canopy dominated by coast live oak. Two straggly sycamores struggle for light from the drainage bottom. This possible development area is within 175-feet of the Ventana Wilderness.

**3. APN-043:** narrow southeastern parcel adjacent to the Ventana Wilderness. The possible building area "E" is above the North Fork Rocky Creek, where the photographs in Figures 7 and 8 were taken. This site is situated on the steep slope (over 30%) above the canyon bottom and just within the 150 lineal-foot setback from ESHA. The overstory is composed of coast live oak, with California bay and black oak occurring on lower slopes closer to the stream. The very open understory has widely scattered poison oak, native western ryegrass, and non-native annual grasses. A few notable populations of the beautiful elongate rein-orchid also occur under the oak canopy in this general vicinity.

Developing the suggested building area "E" on APN-043 would avoid a problematic stream crossing over the primary tributary of Rocky Creek and a difficult traverse across extremely steep terrain on the south side of the stream channel. Good possible building areas occur in the southerly portion of APN-043, however unless access can be obtained from the illegal road crossing the neighboring Kitaji parcel, road construction to the very south of APN-043 on the Burke property would be prohibitive because of topographic difficulty. Site "E" is within approximately 175-feet of the border of the Los Padres National Forest and the Ventana Wilderness.

## B. CONDITIONS ALONG ROAD ALIGNMENTS

There are two suggested road alignments to access possible building areas on the existing Burke parcels (see Figure 9).

**1. Lower Route:** Access to APN-042 (building site "D") and APN-043 (building site "E") would be across neighboring private land and the southern portion of APN-041. The tentative alignment for the lower route would depart from the private "Zufich" road and cross the intervening Cascio property to the southwestern corner of the Burke property in APN-041. This route involves securing an access easement from Mr. Cascio, who has agreed to this proposal. The suggested route crosses open slopes vegetated with dense Chaparral, as well as several pockets of Coast Live Oak Woodland and small stands of Mixed Evergreen Forest (with coast live oak, bay, sycamore and big-leaved maple in small, narrow drainages on the Cascio property). The tentative alignment has been designed to minimize disturbance to Oak Woodland habitat by situating the roadway in Chaparral as much as possible.

This roadway would traverse approximately 2400-feet across slopes in excess of 30% for most of its route to provide access to building areas on APN-042 and APN-043. The proposed route aims for areas of more gradual terrain in the southwestern portion of APN-041, however the majority of this route will occur on slopes of 30% and greater. The access across the Cascio property would take advantage of existing trails and clearings.

Of note are several small patches of chain fern that appear in one location on APN-041 below the understory of Oak Woodland habitat. This species is typically considered an indicator of extremely high soil moisture levels, and in fact requires abundant moisture to persist. No other wetland or riparian indicators are present with the chain ferns, which appear as discrete and isolated patches mid-slope under the oak canopy. It is possible that these chain ferns are somehow connected to the subsurface hydrology that sustains the small stand of sycamores farther upslope near building area "B".



**2. Upper Route:** The tentative 1050-foot alignment for the upper route would depart from the private "Zufich" road at the northwestern corner of the Burke property on APN-041. The road alignment to the three building sites on APN-041 is entirely in Chaparral habitat, with a spur driveway to site "B".

Across from the point at which the proposed upper roadway would depart from the "Zufich" road is a spring area where several small arroyo willow saplings and patches of mosses indicate damp soil conditions. The individual willow plants do not constitute a "stand" at this location, however the presence of these phreatophytes is indicative of wetland-like conditions. Clearly the site supports high soil moisture levels.

Figure 10 - Arroyo willows in damp soils along "Zufich" road in the northwestern corner of APN-041.



## C. POTENTIAL IMPACTS OF DEVELOPING EXISTING PARCELS

Tim and Dana Burke own three lots that have challenging slope constraints, however each parcel has adequate building areas that could be accessed with carefully engineered roadways. Water sources exist at several locations where springs and surface drainage could be tapped. At the present time, no specific construction plans have been prepared for either the existing parcels, or the reconfigured parcels in the Monterey County-approved Lot Line Adjustment. Tentative building areas and road alignments have been identified on the existing parcels and also on the reconfigured lots, although the implementation of any proposed project will require specific Coastal Development Permit applications with additional focused biological survey.

**1. Biological Impacts:** The primary potential biological impacts associated with developing the Burke lots (either the existing Assessor's Parcels or the reconfigured lots) will result from the required removal of vegetation and soil disturbance related to construction of roads and structures. Removal or modification of additional vegetation will likely ensue for fire clearance and landscaping. The removal and/or modification of vegetation for road development and building sites will eliminate Chaparral habitat and a minor amount of Oak Woodland in all parcels. Development of building site "D" on APN-042 will require construction well within the 150-foot ESHA setbacks for Canyon Riparian habitat, however sensitive Canyon Riparian habitat can be avoided at this site. Potential impacts may result for Canyon Riparian-associated species like Coast Range newt and yellow-legged frog. No other special status species would likely be impacted.

Developing road access to APN-042 and APN-043 will involve an easement across adjoining private land and approximately 2400-feet of new road construction across steep terrain. Developing road access to buildable areas on APN-041 will involve between 600-feet and 1050-feet of new road construction, depending on where development is situated. The preferred building site identified by the Burke family is site "C", which would require 1050-feet of new road construction. New road construction to "D" and "E" would occur in Mixed Evergreen Forest, Oak Woodland and Chaparral communities, while the road to "A", "B" and "C" would be entirely in Chaparral.

Ecological impacts may result from potential erosion following vegetation removal and the creation of bare soil conditions, as well as erosion and sedimentation associated with increased runoff from impervious surfaces. Soils on the Burke property are primarily derived from granitic bedrock and tend to be coarse and highly erosive. Sediment delivery to Rocky Creek tributaries could impact the steelhead fishery downstream in the mainstem of Rocky Creek.

**2. Wilderness Impacts:** The development of APN-042 and APN-043 will require locating structures within a couple hundred feet, or less, of the boundary of the Ventana Wilderness in the Los Padres National Forest. Private land uses so close to designated wilderness could compromise the wilderness values sustained in the Ventana backcountry, where opportunities for solitude and quiet recreation are preserved. The biotic refuge provided by untrammelled wilderness could be affected by having developed home sites so close to the wilderness boundary, which should be buffered from rural residential development to the maximum extent possible.

**3. Cumulative Impacts:**

a. Habitat Value: Development of the Burke parcels, whether the existing configuration or the County-approved lot line adjustment, will result in the ongoing fragmentation of natural communities and wildlife habitat. Habitat fragmentation will continue as the pattern of rural residential development proceeds in Pacific slope watersheds like the upper Rocky Creek

drainage, where extensive tracts of undeveloped wildlife habitat are undergoing persistent and incremental change. With the introduction of roads, structures, pets, livestock and horticultural vegetation, pressure on native species of plants and wildlife increases. The impact of potential development in areas particularly close to the boundary of the Ventana Wilderness diminishes the effectiveness of the wilderness boundary as a line where human-induced alterations to the environment should be minimized.

b. Water Resources: Potential biological impacts associated with the development of domestic water sources could occur in localized riparian or wetland-type habitat around springs and in areas of shallow groundwater. The diversion of spring, surface and groundwater could reduce the local availability of water for wildlife and moisture-dependent plants, particularly during dry seasons and periods of drought. Long-term soil water depletion in wetland or riparian habitat results in the conversion of these natural communities to more xeric associations typically found in upland locations.

The incremental reduction of regional watershed drainage resulting from the development of water sources for the three parcels on the Burke property is expected to be minimal - this is important for the upstream inflow provided for steelhead and other aquatic organisms that occur in downstream reaches of the Rocky Creek watershed. The Rocky Creek drainage basin is not identified as a Water Resource Study Area in the Big Sur LUP.

c. Visual Impacts: Although not addressed in this Biological Assessment, there will be visual impacts associated with the development of roads and structures on the prominent mid-slope landscape in the project area. The open nature of the chaparral habitat provides little screening of building areas and the steepness of the slopes will likely result in road cut and fill scars that will take time to revegetate. Developing the existing Burke parcels will result in the creation of two parallel road scars across the flank of Twin Peaks.

#### IV. POTENTIAL DEVELOPMENT OF PARCELS RECONFIGURED BY COUNTY-APPROVED LOT LINE ADJUSTMENT

The actual administrative process of approving the Lot Line Adjustment proposed by Tim and Dana Burke technically has no biological, wilderness or cumulative impacts, however the realignment of the Burke lots will reconfigure the parcels in such a way as to facilitate clustering all development areas on the existing 39.92-acre APN-041. Individual Combined Development Permits and project-specific Biological Assessments will be required for any proposed infrastructure or building development on any portion of either the existing or reconfigured parcels on the property.

Potential environmental impacts associated with developing the reconfigured lots will result in less road construction across steep slopes and no construction in Canyon Riparian ESHA or near the Ventana Wilderness. Reconfiguring the parcels will also eliminate the need for constructing the lower access road, which includes crossing neighboring private land.

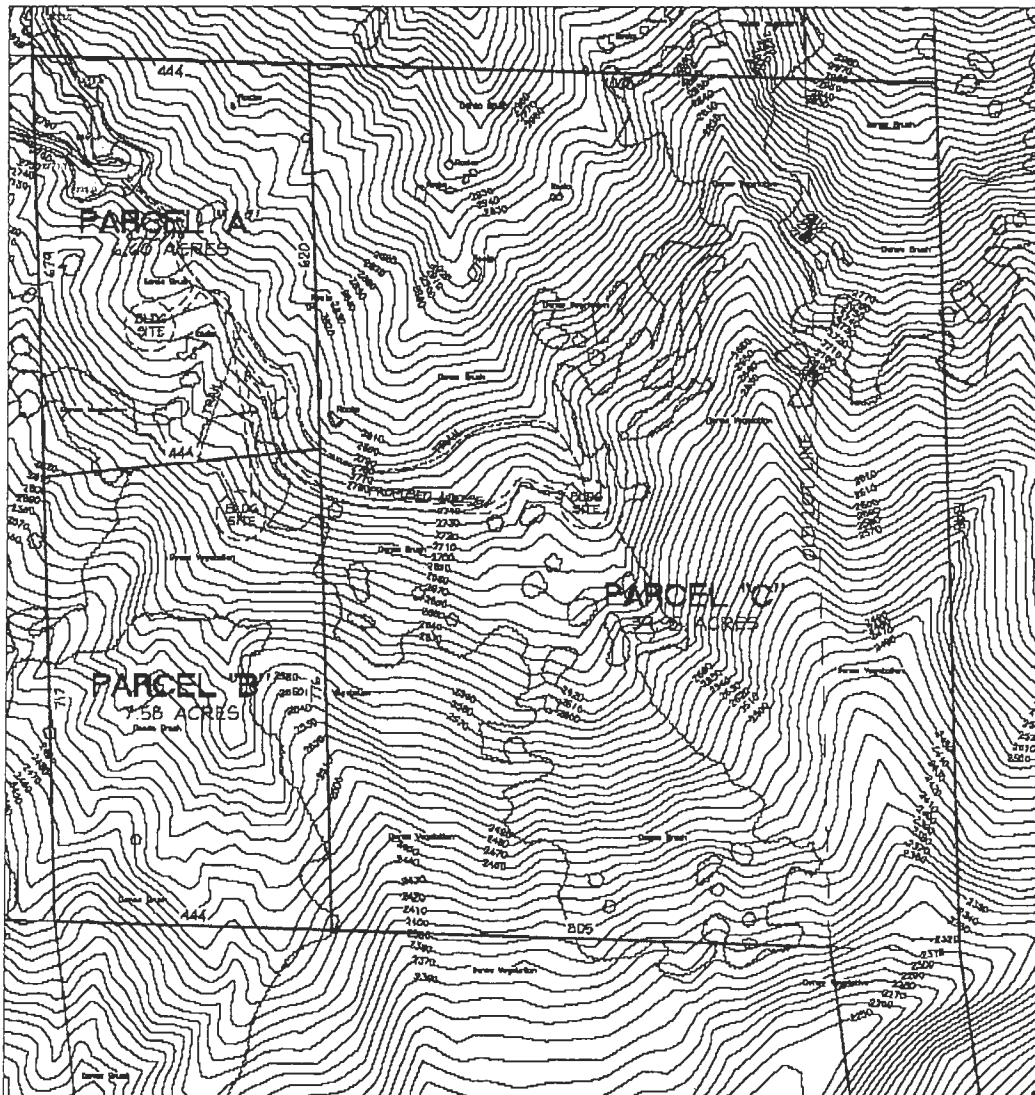


Figure 11 - Map of parcel configuration approved by Monterey County lot line adjustment, File No. PLN 060189.

## A. BUILDING SITES

Tentative building sites have been identified in each of the Monterey County-approved reconfigured lots. Parcel A has a building site centered near a boulder outcrop surrounded by chamise-dominated Chaparral. Parcel B has a proposed building site at a location that straddles Chaparral and Oak Woodland habitat, with an unusual stand of light-starved sycamore growing under the oak canopy. Parcel C has a building site entirely surrounded by Chaparral.

Developing these three clustered building sites would eliminate construction within Canyon Riparian ESHA on APN-042 and at the edge of the 150-foot buffer for APN-043. In addition, pursuing development on the reconfigured parcels would move the building areas on APN-042 and APN-043 westward well away from the Ventana Wilderness.

## B. ROADS

The development of the three proposed building sites on lots reconfigured under the Monterey County-approved lot line adjustment would entirely eliminate the need to construct a new "lower" road across the southern margin of the Burke property. This "lower" road alignment crosses pockets of Mixed Evergreen Forest on the neighboring Cascio property, small areas of Oak Woodland and large expanses of Chaparral on slopes in excess of 30% for most of its 2400-foot traverse.

As proposed under the lot line adjustment, the "upper" road would provide access to each of the tentative building sites. This route would be constructed from the Zufich Road for approximately 1050 feet across open slopes of Chaparral to the Burke's preferred building site at location "C". A short driveway spur would connect building site B, which is located in both Chaparral and Oak Woodland habitat.

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Although development of the existing Assessor's Parcels 418-011-041, 042 and 043 is feasible, the reduction of road construction and the placement of clustered building sites away from wilderness and ESHA through lot line adjustment is recommended.

Approving the Lot Line Adjustment previously endorsed by Monterey County will result in the elimination of: 2400 feet of new road construction, development within ESHA set-backs, building sites adjacent to the Ventana Wilderness, impacts to oak woodland habitat at sites "D" and "E".

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Appendices A-C are available
for review upon request at the
Central Coast District Office
of the Coastal Commission.