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Staff:	Joe Otts
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Hearing Date:	6/12/2015

APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal Number:	A-3-MCO-15-0023
Applicant:	Vincent Cisar
Appellant:	Carmel Riviera Mutual Water Company
Local Decision:	Approved by the Monterey County Zoning Administrator on February 12, 2015 (County application number PLN140469).
Project Location:	30 Mentone Drive, unincorporated Carmel, Monterey County (APN 243-201-013-000).
Project Description:	Construction of a well to provide water for residential landscaping irrigation.
Staff Recommendation:	Substantial Issue Exists; Denial

SUMMARY OF STAFF RECOMMENDATION

The Monterey County Zoning Administrator approved a Coastal Development Permit (CDP) to allow the construction of an irrigation well on an 11.46-acre parcel developed with a single family residence in the unincorporated Carmel area of Monterey County. The Carmel Riviera Mutual Water Company, which provides potable water to the site, appealed the County's action on the grounds that the approval is inconsistent with numerous policies and standards in the County's certified Local Coastal Program (LCP), including those related to improper noticing,

water supply and intensification of water use, environmentally sensitive habitat areas (ESHA), erosion and geologic hazards, and public health and safety. The Appellant also contends that there are existing violations on the property related to tree removal and the planting of unpermitted nonnative non-drought-tolerant vegetation on the site.

Staff recommends that the Commission take two actions. First, the Commission should find that the County's approval of the project raises a substantial issue on the grounds that the project does not conform to the LCP's water supply resource, sensitive habitat, and geologic policies and standards. Second, the Commission should deny the project because the project is inconsistent with the LCP's policies and standards designed to promote the prudent use of water resources and is also inconsistent with the LCP's ESHA protection requirements.

On the substantial issue portion of this appeal, a substantial issue is raised in terms of compliance with the County's required procedures for public noticing. The County's action raises substantial LCP water supply resource issues because the approved project does not include a hydrological analysis, and also because the County did not condition the project to require drought-tolerant landscaping, as required by the LCP. On the contrary, the approved project is intended to provide irrigation for an extensive lawn area and other nonnative plants that require abundant water, all during an extended period of significant drought. The County's action raises substantial LCP sensitive habitat issues because the new and expanded leach fields are located within ESHA, and the biological analysis on which the approval is conditioned did not address the potential impacts of the operation of the well on adjacent ESHA. The County's action raises substantial LCP geologic issues because the project site is located in an area of known geologic hazards and a geologic report should have been prepared for the project.

On the de novo portion of the appeal, the project is inconsistent with LCP policies and standards that protect water supply because it does not address the critical need for careful and conservative planning regarding water resources, does not demonstrate that it will not adversely affect the natural water supply during this extended period of drought, would allow for the proliferation of a water system within the service boundary of an existing water purveyor, and because it is intended to provide water for non-drought-tolerant landscaping. The project is inconsistent with the LCP's ESHA protection policies and standards because the proposed site plans for the project also show new and expanded leach field areas and an associated pipeline located directly within coastal sage scrub ESHA.

In sum, staff recommends that the Commission find that the appeal raises a substantial issue, and then deny the CDP for the project. The motions and resolutions to implement these recommendations are found on page 4.

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EXHIBITS

- Exhibit 1: Regional Location Maps
- Exhibit 2: Aerial Photography of Project Site
- Exhibit 3: Well Site Plans
- Exhibit 4: County’s Final Local Action Notice and Staff Report
- Exhibit 5: Appeal Text
- Exhibit 6: Applicable Implementation Plan Sections
- Exhibit 7: Affidavit of Public Hearing Notices and Posting Information
- Exhibit 8: Applicant’s Photos of Posting Notices
- Exhibit 9: Appellant’s Photo of “Private Road – No Trespassing” Sign
- Exhibit 10: Appellant’s Photos of Landslide and Associated Map
- Exhibit 11: Agreement to Implement a Mitigation and Monitoring and/or Reporting Plan
- Exhibit 12: USFWS Habitat Conservation Plan
- Exhibit 13: USFWS Incidental Take Permit
- Exhibit 14: Executive Order B-29-15
- Exhibit 15: Deed Restriction
- Exhibit 16: Statement Regarding Tree Removal
- Exhibit 17: Correspondence

I. MOTIONS AND RESOLUTIONS

A. Substantial Issue Determination

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 CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in a de novo hearing on the CDP 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 affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-MCO-15-0023 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-3-MCO-15-0023 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 and/or the public access and recreation policies of the Coastal Act.*

B. CDP Determination

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-MCO-15-0023 for the development proposed by the applicant.*

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-MCO-15-0023 on the grounds that the development will not be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT LOCATION AND DESCRIPTION

The County-approved project is located at 30 Mentone Drive, in unincorporated Carmel (APN 243-201-013-000). The 11.46-acre property is designated in the Monterey County LCP as “Watershed and Scenic Conservation/40 acres per unit, Special Treatment Overlay, Coastal Zone” (WSC/11.46-SpTr (CZ)).¹ The property is located on a ridge in a rural setting, and is slightly east and inland of other residential development in the area. The north end of the ridge slopes down to a seasonal drainage corridor that leads directly to the Pacific Ocean and the Monterey Bay National Marine Sanctuary (Sanctuary). The south end of the ridge is part of the Malpas Creek Watershed, which also drains to the Sanctuary.

The approved well would be situated on a pre-disturbed concrete area of the driveway, within the developed area of the 11.46 acre property. The developed area includes the existing residence, driveway and turnaround area. The approved well is intended to provide irrigation water² for the residence’s landscaping, which consists of sod and other nonnative exotic plants that surround the developed portion of the property. The remaining acreage of the property consists of native coastal sage scrub vegetation. The entire portion of the property located outside of the developed area is deed restricted in perpetuity as a Low-Effect Habitat Conservation Plan (HCP) area, consistent with protections for the federally endangered Smith’s Blue Butterfly. The County and the U.S. Fish and Wildlife Service (USFWS) required this restriction as mitigation for the impacts caused to the butterfly habitat during construction of the single-family residence. See Exhibit 1 for location maps and Exhibit 2 for photos of the project site. See Exhibit 3 for the location of the approved well.

B. MONTEREY COUNTY APPROVAL

On February 12, 2015, the Zoning Administrator approved CDP PLN140469. The County’s appeal period ended March 19, 2015, with no appeal received. Notice of the County’s action on the CDP was received in the Coastal Commission’s Central Coast District Office on March 24, 2015. See Exhibit 4 for the County’s Final Local Action Notice. The Coastal Commission’s ten-working day appeal period for this action began on March 25, 2015 and concluded at 5 p.m. on April 8, 2015. One appeal (see Exhibit 5) was received during the appeal period.

C. APPEAL PROCEDURES

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (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

¹ While the Monterey County Final Local Action Notice lists the correct zoning designation for the subject parcel, the County’s “Development Project Application” incorrectly lists the zoning designation as “WSC/40-SPTR (CZ).” The Commission approved Monterey County LCP Amendment Number 1-12 Part 2 (MCO-1-12 Part 2) in May 2012, which changed the subject parcel’s zoning from WSC/40-SPTR (CZ) to WSC/11.46-SPTR (CZ).

² The Applicant’s residence is already served by and receives water from the Appellant, i.e. the Carmel Riviera Mutual Water Company.

mean high tide line 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, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it involves development that is not a principally permitted use in the LCP's Watershed and Scenic Conservation land use designation.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the de novo portion of the 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 considers the CDP de novo and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, 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. However, this project is not located between the nearest public road and the sea, and thus this additional finding would not need to be made if the Commission approves the project following a de novo hearing.

Typically, the only persons qualified to testify before the Commission on the substantial issue question are the Applicants (or their representatives), persons who made their views known before the local government (or their representatives), and the local government.³ Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

D. STANDING OF APPELLANT

California Code of Regulations (CCR), Title 14, Section 13111 states that a local government's decision on a CDP can be appealed by an aggrieved person who has exhausted all local appeals. Coastal Act section 30801 defines an "aggrieved" person as "any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns **or who for good cause was unable to do either**" (emphasis added). CCR Section 13573.a.3 states that exhaustion of local appeals is not required when "an appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article."

The Appellant did not testify at the local hearing or otherwise make its views known to the local government before the County approved the development. However, the Appellant contends that

³ The Appellant in this case, however, does not meet these requirements, but is still authorized to appeal based on the findings in Sections D-F below.

it was not properly noticed of the development at the local level, though it should have been, and in fact this appears to be the case (see discussion discussed in Section F.2 below). Thus, due to the lack of adequate noticing, the Appellant had good cause to have not made its views known to the local government and is an aggrieved party. In addition, because of those noticing deficiencies, it is not required to have exhausted local appeals and therefore has standing to appeal the approved development to the Commission.

E. SUMMARY OF APPEAL CONTENTIONS

The Appellant contends that the County-approved project raises LCP conformance issues and questions with respect to: 1) improper noticing of the proposed project at the local level; 2) water supply and intensification of water use; 3) development within 100 feet of an environmentally sensitive habitat area (ESHA); 4) lack of evaluation of erosion and geologic hazards; 5) risk to public health and safety and 6) existing violations on the Applicant's property. See Exhibit 5 for the full appeal text.

F. SUBSTANTIAL ISSUE DETERMINATION

1. Substantial Issue Background

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5

In this case, for the reasons discussed further below, the Commission determines that the development as approved by the County presents a substantial issue.

2. Substantial Issue Analysis

Improper Noticing of County Action

The Appellant contends that it was not given proper notice of the approved project, as required by the LCP. The Appellant cites Implementation Plan (IP) Section 20.84.040.A.2, which requires mailing of notice to local agencies "expected to provide" water services "to the project," and whose services may be affected by the development (see Exhibit 6 for the referenced IP sections). In this case, however, the approved project is an irrigation well, for which the Appellant (the Carmel Riviera Mutual Water Company) will not be expected to provide water

service. Thus, the appeal does not raise a substantial issue with respect to IP Section 20.84.040.A.2.

The Appellant also cites IP Section 20.84.040.A.3, which requires the County to mail public hearing notices to all owners and legal residents of “real property” within 300 feet of the real property where the project is sited. While the Appellant owns wells and other water facilities on property located within 300 feet of the Applicant’s property, these facilities are located on easements of real property owned by others, i.e. the Appellant does not own any real property within 300 feet of the Applicant’s property. Thus, the appeal does not raise a substantial issue with respect to IP Section 20.84.040.A.2.

The Appellant further cites IP Section 20.84.040.A.4, which describes proper procedures for the posting of public hearing notices and requires that three different notices be posted “on and near” the subject property while being “accessible and visible to the public.” The County’s “Affidavit of Posting Information” (Exhibit 7) reveals that all three notices were posted on the Applicant’s property in the following locations: “on red door of pump house,” “on pillar of gate entrance,” and “on side of house near garage.”⁴

There are only three residential properties on Mentone Drive, and the Applicant’s property boundary is at the end of Mentone Drive.⁵ The driveway that leads to the Applicant’s residence is at least 400 feet long. The beginning of the driveway is demarcated with pillars and a gate. The pump house is located on the Applicant’s property, along Mentone Drive, and less than 100 feet before the pillars and the gate. At the time the public hearing notices were posted on the Applicant’s property, a “Private Road – No Trespassing” sign was located along Mentone Drive before the pump house.⁶ This sign would discourage the public from traversing farther along Mentone Drive, meaning that the sign on the pump house would not be located in an area “accessible and visible to the public.” The same is true for the notice posted on a pillar of the gate entrance. The third notice was posted on the side of the house more than 400 feet from the pillars and gate. Thus, this notice was inaccessible and out of sight for any member of the general public who did not venture through the Applicant’s private gates and traverse more than 400 feet up the Applicant’s driveway to reach the Applicant’s residence (see Exhibit 8 for photos of the notices, the pump house, the pillars and gate; see Exhibit 9 for a photo of the “Private Road – No Trespassing” sign).

Given all the above, none of the three notices were “accessible and visible to the public.” Thus, the County’s required procedures for public noticing were not followed, and there was inadequate public notice regarding the project. Thus, this contention raises a substantial issue with respect to the noticing requirements of IP Section 20.84.040.A.4. And given the lack of proper noticing, the Appellant is an aggrieved party and need not have exhausted its local appeals and therefore has standing to appeal.

⁴ Photographs submitted by the Applicant reveal that the postings were each roughly equivalent in size to 8.5” x 11” sheets of paper (Exhibit 8).

⁵ The Applicant’s representative has stated that Mentone Drive is a private road.

⁶ Since the appeal was filed, the “Private Road – No Trespassing” sign has been removed.

Water Supply and Intensification of Water Use

The Appellant contends that the project is inconsistent with LCP policies and IP Sections related to water supply and intensification of water use. The Appellant claims that the Applicant's project would jeopardize its wells and compromise its ability to provide appropriate services to its customers. The Appellant further claims that this compromising of its wells would be detrimental to the health and safety of those residents who depend on the Appellant to provide them water, both for domestic use and in case of fire emergency.

The Appellant cites Carmel Area Land Use Plan (LUP) Policy 2.4.4.A.2, which states that the Applicant “**must demonstrate** that the proposed new water use or intensification will not adversely affect... the supply available to meet the minimum needs of existing users during the driest year” (emphasis added). The Appellant also broadly cites Monterey County Coastal IP Section 20.146.050 (see Exhibit 6), the intent of which is to provide proper development standards in order to protect water and marine resources. Section 20.146.050.A.1 states, “A hydrologic report shall be required for **any** development which involves intensification of water use” (emphasis added) and then provides an extensive list of details that such a hydrological report must include. Section 20.146.050.E.1.a addresses specific development standards regarding water availability and states “new development shall be approved **only where it can be demonstrated** by the applicant that adequate water is available from a water utility or community system or an acceptable surface water diversion, spring, or well” (emphasis added). Moreover, Section 20.146.050.E.1.d states “water conservation devices shall be required in conjunction with new development. Drought-tolerant landscaping is required where appropriate.” The Appellant further cites LUP Policy 2.4.4.A.6 (cited below), which states that “water conservation devices shall be required in conjunction with new development” and that “drought tolerant landscaping should be required where appropriate.”

The approved project does not include a hydrological analysis, as required by IP Section 20.146.050.A.1 for any development that involves intensification of water use. The Applicant contends that the proposed project does not represent an intensification of use because the Applicant has already been irrigating his lawn and other landscaping with water obtained from the Carmel Riviera Mutual Water Company.⁷⁸ However, the County's approval does not include any information on the depth of the approved well or the amount of water the well would produce on a daily basis to provide irrigation for lawns and ornamental landscaping. The lack of a hydrological analysis means it is not possible to evaluate whether the approved project will have adverse effects on the minimum water supply needs of existing users or the underlying water resource supply in general during the driest year,⁹ inconsistent with LUP Policy 2.4.4.A.2 and IP Section 20.146.050.E.1.a. Further, the County did not condition the project to require drought-tolerant landscaping, as required by IP Section 20.146.050.E.1 and LUP Policy

⁷ The Carmel Riviera Mutual Water Company implemented a tiered water rate structure for its customers to promote water conservation during this period of severe drought, and explained its rationale in a letter to its customers. Any water use over 500 gallons per day per residence is subject to a higher water rate. It appears that the Applicant may be attempting to avoid this higher water rate by installing a well on his property to provide substantial water for irrigation purposes.

⁸ The Applicant's hydrogeologist acknowledges that no hydrogeologic report has been completed for the well, and also states that although there is no site specific evidence suggesting that the approved well would be hydrogeologically connected to the Appellant's well (which might result in impacts to that well), that the only way to determine “well interference” would be to install the approved well and then conduct pump testing and well monitoring (see Exhibit 17).

⁹ The past three years of drought have constituted the driest three-year period in California since such records have been kept.

2.4.4.A.6. On the contrary, the approved project is intended to provide irrigation for an extensive lawn area and other nonnative plants that require abundant water, all during an extended period of significant drought.

Due to the project's apparent and above delineated inconsistencies with Carmel Area LUP Policies 2.4.4.A.2 and 2.4.4.A.6 and IP Section 20.146.050, the County's approval raises a substantial LCP conformance issue with respect to water supply and intensification of water use.

Environmentally Sensitive Habitat Area (ESHA)

The Appellant contends that the County's approval of the project did not properly address impacts to ESHA, specifically those impacts regarding new and expanded leach fields and associated pipelines that are shown in the well plan/siting map (Exhibit 3).

The Appellant cites Carmel Area LUP Section 2.3 et seq. (cited below), which describes ESHA resources in the area and requires their protection.¹⁰ This section defines ESHA, describes its significance generally and its significance within the Carmel Area LUP, and requires appropriate ESHA protection for proposed development projects. The Appellant specifically cites project inconsistencies with LUP Policy 2.3.3.1, which states that development in ESHA shall be avoided, and further states that only resource-dependent uses shall be allowed in ESHA. The Appellant also cites LUP Policy 2.3.3.2, which requires that development that is proposed adjacent to ESHA shall protect and maintain the ESHA resource. This policy also states that projects should incorporate all necessary planning and design features as consistent with this objective, and it further encourages setting a precedent whereby a continued trend of the proposed development will not degrade, on a cumulative basis, the ESHA resource. The Appellant continues by citing Policy 2.3.3.6, which requires deed restrictions or dedication of permanent conservation easements on parcels that contain ESHA. Finally, the Appellant cites Policy 2.3.3.7, which promotes a proper review process for development within or adjacent to ESHA such that approved projects are restricted from removing indigenous vegetation or causing other land disturbances except for that which is needed for structural improvements only.

In this case, the ESHA on the property is coastal sage scrub, specifically Seacliff buckwheat, which is habitat for the federally endangered Smith's Blue Butterfly. The County's approval finds that the well would be located in the Applicant's driveway adjacent to ESHA but not within ESHA. However, the approved project grants a CDP for development "in general conformance with the attached sketch." Two sketches are attached to the County's approval – a well plan and a well siting map (see Exhibit 3). Both of these sketches contain a description for expanded and new leach fields and an associated pipeline that are sited entirely *within* ESHA, i.e. within coastal sage scrub that is habitat for the endangered Smith's Blue Butterfly.¹¹

¹⁰ The Appellant also cites Coastal Act Section 30240, which, among other things, provides that ESHA be protected from any significant disruption of habitat values. However, the standard of review for the appealed project is consistency with the certified Monterey County LCP and not the Coastal Act.

¹¹ The leach fields are not mentioned in the County's project description or otherwise in the County's findings. Commission staff asked County staff to clarify whether the leach fields were included in the approved project. County staff stated that the leach fields were not included in the approval. However, the referenced sketches clearly show new and expanded leach fields within ESHA and the County's approval clearly references these sketches in its approval. Thus, it appears that the leach fields are included in the County's approval of the project.

The well itself would be located within the paved driveway on the project site, within 100 feet of ESHA. In reviewing the permit application, County staff determined that a potential existed for biological impacts from the development. Accordingly, the County required a Biological Resource Analysis by an independent consultant. The subsequently conducted analysis (Exhibit 4), however, narrowly addressed only the *construction* of the well. The analysis did not discuss the potential impacts on adjacent ESHA due to the *subsequent use* of the well, nor did it discuss the expanded leach fields and associated pipeline that would be located within ESHA. The County, in its approval, also did not evaluate the land disturbance that would result from installation of new and expanded leach fields and the associated pipeline, nor the potential impacts to ESHA from the well itself.

Given that the new and expanded leach fields are located within ESHA, and the fact that the biological analysis on which the approval is conditioned did not address the potential impacts of the operation of the well on adjacent ESHA, the County's approval presents substantial LCP inconsistency issues with regards to LUP Policies 2.3.3.1, 2.3.3.2, 2.3.3.6, and 2.3.3.7 designed to protect and maintain ESHA.

Erosion Control and Geologic Impacts

The Appellant contends the County failed to analyze the potential erosion and geologic-related impacts of the project, citing IP Sections 20.146.050E.4 and 20.146.080 (see Exhibit 6). Section 20.146.050.E.4 pertains to erosion and sedimentation control and details when an erosion control plan is required and what it should entail, further specifying that it must be conducted by a registered civil engineer or soils engineer and reviewed by proper authorities within the County prior to the application being determined complete. Section 20.146.050.E.4.a states, "an erosion control plan shall be required for the following types of development:... 2. Any development with the potential to create significant erosion or drainage impacts..." Section 20.146.080 details the requirements for geologic hazards reporting, stating that "regardless of a parcel's seismic hazard zone, a geologic report shall also be required for **any** development project located in the following areas:... 6) in any area of **known or suspected** geologic hazards" (emphasis added).

The Appellant states that a landslide occurred on the Applicant's property in the past, which damaged the Appellant's water system facilities immediately adjacent to and below the Applicant's property. In follow-up communications, the Appellant has offered photographic evidence of this landslide and associated damage to its water system facilities, which occurred in 1998, along with a map clearly depicting the extent of the landslide and which water system facilities were damaged (Exhibit 10). This landslide area is located near an approved leach field in the western part of the property. Thus, the project site is located in an area of known geologic hazards and a geologic report should have been prepared for the project, as required by IP Section 20.146.080. No geologic report is on file for the project. Additionally, given that the approved leach field in the area of the landslide would have the potential to create erosion or drainage impacts, the project should have included an erosion control plan as required by IP Section 20.146.050.E.4. However, no erosion control plan is on file for the project.

For the reasons outlined above, the County's approval of the project raises a substantial LCP conformance issue with respect to potential geologic impacts and erosion control.

CEQA

The Appellant contends that the County may have inappropriately granted a CEQA Categorical Exemption for the project. However, the only appropriate grounds for an appeal to the California Coastal Commission are issues related to the project's consistency with the certified LCP and, if applicable, the Coastal Act's public access policies. Thus, any CEQA contentions are not appropriate grounds for determining whether this appeal raises an issue of substantial conformance with the County's LCP.

Condition 8

Monterey County IP Section 20.70.050.B (Exhibit 6) states, in relevant part: "In order to grant any Coastal Development Permit, the findings of the Appropriate Authority shall be: 1) The establishment, maintenance, or operation of the use or structure applied for will not... be detrimental to health, safety,... and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvement in the neighborhood... 2) The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of this Title..."

The Appellant contends that the Applicant cannot meet condition 8 of the permit (see Exhibit 4), which requires the Applicant to obtain a backflow device from the appropriate public water purveyor (in this case, the Appellant) prior to bringing the irrigation well on line, in accordance with the requirements of the Monterey County Environmental Health Bureau.¹² The Appellant states that providing such a device to the Applicant, however, would compromise the Appellant's ability to serve its customers, both in terms of water quantity and quality. Thus, the Appellant has stated that it intends to refuse to supply a backflow device for the approved well. Thus, at this time, it appears that this condition cannot be met.

Violations

The Appellant also contends that there are existing violations on the Applicant's property. The Appellant notes that the Applicant's property is subject to Condition 27 of a 2003¹³ Mitigation Monitoring and/or Reporting Program (Program) (Exhibit 11), which stipulates that non-native vegetation is prohibited on the property. The Program is in place (and was adopted in perpetuity, i.e. the requirements of Condition 27 run with the land) pursuant to the Low-Effect Habitat Conservation Plan (HCP) (Exhibit 12) that applies to the property and is intended to protect the Smith's Blue Butterfly (a federally listed endangered species). The Applicant for the 2003 conditionally approved CDP that allowed the development of the single family residence on the subject property was required to submit to the County a landscape plan prepared by a certified biologist and consistent with the requirements of Condition 27. Commission staff requested, but has not received, a copy of this landscape plan from the County. Upon reviewing aerial photography of the property it appears that the vegetation adjacent to the residence is non-native in character, i.e. the vegetation consists of large areas of green lawn (Exhibit 2). Thus, given the above, the nonnative vegetation appears to be unpermitted.

¹² A backflow device prevents contaminated water from being drawn back into a water system from a source (e.g. a lawn-watering device).

¹³ Condition 27 was included in the County's approval of a CDP for the residence in 2003. The County required the recordation of a deed restriction to include all conditions/mitigation measures of that approval.

The Appellant also contends that trees were removed from the Applicant's property, violating an existing deed restriction on the property. The deed restriction pertains to the portion of the property outside of the developed area. The restriction is also in place pursuant to the Low-Effect Habitat Conservation Plan (HCP), and it prohibits, among other things, "destruction or removal of vegetation including, but not limited to, brushing, clearing, crushing, mowing, grubbing, disking or grading, except in accordance with the HCP." The Appellant presented a signed statement (Exhibit 16) from a witness claiming to have seen trees felled on a portion of the Applicant's property that is encumbered by the deed restriction. The Appellant presented this statement after the County's CDP approval.

Regardless of whether these allegations are true and demonstrate potential violations of a County permit, they do not demonstrate that the new permit approved by the County in this action does not conform with the certified LCP. For that reason, these contentions do not raise a substantial issue of LCP conformity.

3. Substantial Issue Conclusion

The County-approved project raises substantial LCP conformance issues in terms of improper noticing of County action, water supply and intensification of water use, ESHA impacts, and geologic impacts. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the certified Monterey County LCP, and takes jurisdiction over the CDP application for the proposed project.

G. COASTAL DEVELOPMENT PERMIT DETERMINATION

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

1. Project Site Background

In 2004, Charles and Rebecca Olson (Olson's), then the owners of the subject parcel at 30 Mentone Drive, were granted a Coastal Development Permit by the County of Monterey for, among others things, construction of a single family residence and development within 100 feet of environmentally sensitive habitat area (ESHA).¹⁴ During the County's review of that project, the County determined that the project could have a significant effect on the environment, specifically the habitat of the Smith's Blue Butterfly. Accordingly, the Olson's applied for, and received, an Incidental Take Permit (ITP) (Exhibit 13) from the U.S. Fish and Wildlife Service (USFWS). The ITP was issued subject to compliance with a Low-Effect Habitat Conservation Plan (HCP) (Exhibit 12) for the Smith's Blue Butterfly that was developed for the property. Accordingly, USFWS required that the Olson's record a deed restriction to ensure that all undeveloped areas of the property would be preserved in perpetuity. The USFWS also required that the Olson's sign an "Agreement to Implement a Mitigation Monitoring and/or Reporting Plan" (Exhibit 11), which applied to the entirety of the subject property and was intended to monitor compliance with the HCP. Both signed agreements include binding restrictions, running in perpetuity with the land. The County subsequently approved the residential development CDP,

¹⁴ The County's approval of PLN0010448 also resolved an existing violation on the site, i.e. the unpermitted removal of Seacliff buckwheat, which is exclusive habitat for the Smith's Blue Butterfly.

which was conditioned to adhere to USFWS's requirements, and was also conditioned to require drought-tolerant native or low-water-use plants and a low precipitation irrigation system. Finally, the project was conditioned to require recordation of a notice stating that "The permit was granted subject to 33 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department".

Although the existing HCP that applies to the property as well as the conditions of County CDP PLN0010448 that run with the land provide context in this case, the Commission's analysis of the proposed development is solely based on its consistency with currently applicable Monterey LCP policies and standards.

2. Water Supply Resources

Applicable Policies

The Policies of the Monterey County Carmel Area LUP and the associated IP standards provide for the protection of watersheds and water supply, require water conservation and drought tolerant landscaping, and restrict the installation of new water systems for development that is already served by a public, private, or mutual water system:

Carmel Area LUP Water and Marine Resources Overview Section 2.4.1 (in relevant part):

The Carmel coast's major streams are the Carmel River, San Jose Creek, Gibson Creek, Wildcat Creek, and Malpaso Creek. With the exception of the Carmel River, these streams are small, but all directly support riparian wildlife and plant communities. Because many of the streams are small, development of residences, agriculture, and public or private recreation and visitor-serving facilities can place excessive demands on the water available in some watersheds. When overuse is allowed, through unwise approvals of development or use applications, degradation of the natural environment results with loss of plant, wildlife, and fish habitats. Eventually, people dependent on the adequate supply of quality water will suffer too as private and community water systems fail. The drought of 1976-78 emphasized the critical need for a careful and conservative approach to planning and to recognize that drought year flows are the controlling factor for all human and natural uses.

Carmel Area LUP Policy 2.4.4.A.2:

As part of the permit process, the applicant must also demonstrate that the proposed new water use or use intensification will not adversely affect both the natural supply necessary to maintain the environment, including wildlife, fish, and plant communities, and the supply available to meet the minimum needs of existing users during the driest year. At the County's discretion, the applicant may be required to support his application through certification by a consultant deemed qualified by the County to make such determinations. The County will request that the Department of Fish and Game provide a written recommendation on each application.

Carmel Area LUP Policy 2.4.4.A.6:

Water conservation devices shall be required in conjunction with new development. Drought tolerant landscaping should be required where appropriate. Construction of roads and driveways with pervious surfaces shall be encouraged where appropriate.

Carmel Area LUP Section 4.5:

The capabilities and constraints of the various areas of the Carmel area to support various types and densities of land uses are reflected in the land use map. Land uses have been designated based on an evaluation of existing uses, appropriate levels of use to protect coastal resources, and levels of development that can be accommodated by public works systems such as water supplies and coastal access roads. Final determinations of densities and land use locations will be made during the project review process.

Land uses recommended for the Carmel area are listed below. These reflect both existing and traditional land uses and the priorities of the Coastal Act...

F. Watershed and Scenic Conservation

Protection of the watershed, streams, plant communities, and scenic values is the primary objective. This land use category applies to the upland and mountainous areas east of Highway 1. This is a multiple-use category in which several types of low-intensity uses are appropriate. These include: ranching and grazing of animals, recreational uses permitted in the Undeveloped and Scenic Outdoor Recreation category, rural residences, and related employee housing. Except where otherwise indicated in the text, a density of 1 unit per 40 acres is required for new subdivisions below 1000-foot elevation, while for areas above 1000-foot elevation, a density of 1 unit per 80- acres is required.

Monterey County Coastal Implementation Plan Section 20.17.040 (Principle Uses Allowed, Coastal Administrative Permit Required in Each Case.):

- J. Water system facilities including wells and storage tanks serving 14 or fewer service connections, pursuant to Title 15.04 Monterey County Code, and replacement of water tanks and wells where no increase in service connections is created. The screening of any tanks and associated structures shall be approved by the Director of Planning and Building Inspection.*

Monterey County Code Section 15.04.006 (Findings.):

- a. Every citizen of Monterey County has the right to pure and safe drinking water.*
- b. This Chapter is intended to ensure that the water delivered by domestic public water systems of Monterey County shall be pure, wholesome, and potable at all times. The provisions of this Chapter provide the means to accomplish this objective.*
- e. **It is the policy of Monterey County to reduce the proliferation of water systems.** The provisions of this Chapter provide the means to accomplish this objective by requiring the consolidation and incorporation of proposed and existing water systems when feasible.*
- f. **Proliferation of water systems results from fragmentation of existing water systems. It is the intent of Monterey County to prevent construction of new systems within the***

service boundaries of existing water systems, analogous to the anti-paralleling rules of the Public Utilities Commission.

- g. *It is the intent of Monterey County to implement the goal of the County General Plan Policy which is to promote adequate water service for all County needs and to achieve a sustained level of adequate water services. The provisions of this Chapter provide the means to accomplish this objective by implementing Section 53.1.1 through 53.1.5, inclusive, of said Policy which states in part as follows:*
 2. *The County shall not allow water consuming development in areas which do not have proven adequate water supplies.*
 3. *New development shall be required to connect to existing water service providers which are public utilities, where feasible.*
 4. ***Proliferation of wells, service residential, commercial, and industrial uses, into common water tables shall be discouraged.*** [emphasis added]

Monterey County Code Section 15.04.050 (Permit – Issuance or denial.):

- a. *Director's Investigation. Upon receipt of an application and all supporting documents filed pursuant to this Chapter, the Director shall make a thorough investigation of the proposed or existing system and all other circumstances and conditions which he or she deems material...*
5. ***No domestic water system shall be issued a permit if water service for each connection or all connections of a proposed water system is available from a public, private, or mutual water system thereby eliminating the necessity of formation of an additional water system.*** Availability shall be determined, on a case by case basis, in consideration of the following: willingness of the water system to provide service, reasonable economic standard, long term viability, and a determination that the water system will have an adequate source and supply of water. A determination by the Director pursuant to this Section, shall be subject to the appeal process below at Section 15.04.180. (Authority: California Health and Safety Code Section 116540.) [emphasis added]

Monterey County Code Section 20.146.050:

The intent of this section is to protect the water quality of the Carmel area's coastal streams, Point Lobos and Carmel Bay areas of Special Biological Significance. Instream flows shall be protected in order to maintain the natural plant, fish and wildlife communities. To fulfill this goal, the County will require adherence to the principles which insure the best watershed protection including: adequate setbacks from streams, stream setbacks, stream flow maintenance, performance controls for development site features, maintenance of water quality, protection of natural vegetation along streams and control of grading to minimize erosion and sedimentation.

The effects of all new development proposals or intensification of land use activities or water uses on the natural character and values of the Carmel area coasts and streams will be specifically considered in all land use decisions. Subjects to be addressed in such evaluations

include protection of water quantity and quality, wildlife and fish habitat, and recreational and scenic values. (Ref. Policy 2.4.3.1 Water and Marine Resources).

20.146.050.E.1.a New development shall be approved only where it can be demonstrated by the applicant that adequate water is available from a water utility or community system or an acceptable surface water diversion, spring, or well. (Ref. Policy 2.4.4.A.1 Water Availability).

20.146.050.E.1.d. Water conservation devices shall be required in conjunction with new development. Drought-tolerant landscaping is required where appropriate (Re. Policy 2.4.4.A.6 Water Availability).

Analysis

The proposed project is for the installation of a well to provide irrigation water for landscaping, including extensive areas of lawn. As discussed above, the Carmel Riviera Mutual Water Company currently provides water service for the property. See Exhibit 1 for location maps. See Exhibit 2 for aerial photos of the project site. See Exhibit 3 for the proposed well site plan/map.

The Applicant's property lies within the Watershed and Scenic Conservation land use category in Monterey County, within which the primary objective is the "protection of watersheds, streams, and plant communities," according to Carmel Area LUP Section 4.5.F. More specifically, the subject property lies within the Malpas Creek watershed, which Carmel Area LUP Section 2.4.1 states supports "riparian wildlife and plant communities." This section further states that, even in normal years, Malpas Creek is a small stream, and imprudent overdevelopment leading to excessive overdrafting of the available water resources in such small watersheds, as are common in Monterey County, can lead to "loss of plant, wildlife, and fish habitats." Additionally, it states "people dependent on the adequate supply of quality water will suffer too as private and community water systems fail." This LUP section continues by calling attention to droughts as "controlling factor[s] for all human and natural uses," highlighting the 1976-78 drought as an example to buttress the critical need for "careful and conservative" planning regarding water resources. LUP Policy 2.4.4.A.2 requires that the Applicant demonstrate that an adequate water supply exists to support the proposed development, in light of protection of wildlife and plant resources and the minimum needs of existing users during the driest year. Moreover, LUP Policy 2.4.4.A.6 and IP Section 20.146.050.E.1.d require drought-tolerant landscaping "where appropriate" and water conservation devices in conjunction with the proposed development.

The entirety of the State is currently in a severe, extended drought. The current drought surpasses the 1976-1978 drought in terms of dryness; indeed, the period from 2012-2014 is the driest three year span in the State's recorded history.¹⁵ Due to these severe drought conditions, Governor Brown on January 17, 2014 proclaimed a State of Emergency throughout the State. On April 25, 2014, the Governor proclaimed a Continued State of Emergency. Then, on April 1, 2015, the Governor issued Executive Order B-29-15 (see Exhibit 14), which mandates restrictions to achieve a 25% reduction in potable urban water usage. This Executive Order also calls for the

¹⁵ See California Department of Water Resources (February 2015). *California's most significant droughts: Comparing historical and recent conditions*. Retrieved from <http://www.water.ca.gov/waterconditions/publications.cfm>

replacement of lawns and ornamental turf with drought-tolerant landscaping, increased water efficiency standards for new and existing landscapes through more efficient irrigation systems, and by limiting the portions of landscapes that are covered in turf.

The proposed project is intended to provide irrigation water for landscaping that requires substantial amounts of water, including an extensive lawn area and other ornamental plants, during a period of extended drought. The proposed project is inconsistent with LUP Section 2.4.1 because it does not address the critical need for careful and conservative planning regarding water resources. The proposed project is also inconsistent with LUP Policy 2.4.4.A.2 and IP Section 20.146.050.E.1.a because the Applicant has not demonstrated that the proposed water use will not adversely affect the natural water supply during this period of extended drought or that there is an adequate water supply available for his proposed use. Not only has the Applicant not met his burden, the Appellant, the water agency responsible for providing water to this part of the County, has asserted that the proposed well will, in fact, adversely affect the quantity and quality of water available in this service area. The proposed project is also inconsistent with LUP Section 2.4.4.A.6 and IP Section 20.146.050.E.1.d because it is intended to provide irrigation for lawns and other non-drought-tolerant plant species, which depend on irrigation systems that do not conserve water.

Further, IP Section 20.17.040 lists permitted uses for the Watershed and Scenic Conservation land use category. Among the permitted uses listed is “J. Water system facilities including wells and storage tanks servicing 14 or fewer service connections, pursuant to Title 15.04, Monterey County Code and replacement of water tanks and wells where no increase in service connections is created.” Although water systems are allowed in this land use category, they must still meet applicable requirements to be approved. One such requirement is Chapter 15.04¹⁶, which provides clarification for the wells and storage tanks that are permitted. It refers solely to drinking water wells – no mention is made of irrigation wells, such as the proposed well. Moreover, Section 15.04.006.e states that, even for drinking water wells, it is the policy of Monterey County “to reduce the proliferation of water systems.” Code Section 15.04.006.f expresses the County’s intent “to prevent construction of new systems within the service boundaries of existing water systems.” More definitively, Section 15.04.050 states, “no domestic water system shall be issued a permit if water service for each connection or all connections of a proposed water system is available from a public, private, or mutual water system thereby eliminating the necessity of formation of an additional water system.” As noted above, the residence on the site is currently served by the Carmel Riviera Mutual Water system. The proposed project would allow for the proliferation of a water system within the service boundary of an existing water purveyor. Thus, the proposed project is inconsistent with Code Sections 15.04.050 and 15.04.006, which are incorporated into the County’s LCP.

Water Supply Resources Conclusion

The proposal for the irrigation well is inconsistent with LCP policies and standards designed to promote the prudent use of water resources on which both wildlife and existing users rely for their most basic needs, giving particular consideration to the period of drought which the State is

¹⁶ Title 15 is incorporated into the LCP by reference in IP Section 20.96.010, which states, “The provisions of the following Titles and Chapters of the Monterey County Code as may be amended from time to time, copies of which are on file as required by law, are adopted and incorporated into this title by reference,” and specifically lists Chapter 15.04.

currently in. The proposed project is inconsistent with the LCP because it does not address the critical need for careful and conservative planning regarding water resources, does not demonstrate that it will not adversely affect the natural water supply during this extended period of drought, would allow for the proliferation of a water system within the service boundary of an existing water purveyor, and because it is intended to provide water for non-drought-tolerant landscaping. For all of the above reasons, the proposed project must be denied.

3. Environmentally Sensitive Habitat Area (ESHA)

Applicable Policies

The LCP requires that land uses adjacent to ESHA, such as coastal sage scrub that provides habitat for the federally endangered Smith's Blue Butterfly, be compatible with the long-term maintenance of the resource, and also restricts the removal of indigenous vegetation to that needed for the structural improvements themselves. Specifically:

Carmel Area LUP ESHA Overview Section 2.3.1 (in relevant part):

Environmentally sensitive habitat areas are areas in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. These include rare, endangered, or threatened species and their habitats...

The Carmel Coastal Segment supports a variety of rare, endangered, or sensitive terrestrial species and habitats: riparian corridors,... significant stands of Monterey pine,... and dwarf coastal chaparral. These environmentally sensitive habitats should be protected for a variety of reasons: their high scientific and educational values, their scenic values, their high wildlife values, and/or their importance in watershed protection...

Carmel Area LUP Policy 2.3.2 (in relevant part):

The environmentally sensitive habitats of the Carmel Coastal Segment are unique, limited and fragile resources of statewide significance, important to the enrichment of present and future generations of County residents and visitors; accordingly, they shall be protected, maintained and, where possible, enhanced and restored. All categories of land use, both public and private shall be subordinate to the protection of these critical areas... Rare and Endangered Species are those identified as rare, endangered and/or threatened by the ... United States Department of Interior Fish and Wildlife Service...

Carmel Area LUP Policy 2.3.3.1 (in relevant part):

Development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be avoided in critical and sensitive habitat areas, riparian corridors, wetlands, sites of known rare and endangered species of plants and animals, rookeries and major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as critical. Resource-dependent uses, including nature education and research, hunting, fishing, and aquaculture, shall be allowed within environmentally sensitive habitats and only if such uses will not cause significant disruption of habitat values.

Only small-scale development necessary to support the resource-dependent uses may be located in sensitive habitat areas if they cannot feasibly be located elsewhere...

Carmel Area LUP Policy 2.3.3.2:

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

Carmel Area LUP Policy 2.3.3.4:

To protect environmentally sensitive habitats and the high wildlife values associated with large areas of undisturbed habitat, the County shall retain significant and, where possible, contiguous areas of undisturbed land in open space use. To this end, parcels of land totally within sensitive habitat areas shall not be further subdivided. On parcels adjacent to sensitive habitats, or containing sensitive habitats as part of their acreage, development shall be clustered to avoid habitat impacts.

Carmel Area LUP Policy 2.3.3.6:

The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitat areas where development is proposed on parcels containing such habitats. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.

Carmel Area LUP Policy 2.3.3.7:

Where development is permitted in or adjacent to environmentally sensitive habitat areas, the County, through the development review process, shall restrict the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) to that needed for the structural improvements themselves.

Carmel Area LUP Policy 2.3.3.8:

The County shall require the use of appropriate native species in proposed landscaping.

Monterey County Coastal Implementation Plan Section 20.17.010:

The purpose of this chapter is to provide a district to allow development in the more remote or mountainous areas in the Coastal Zone while protecting the significant and substantial resources of those areas. Of specific concern are the highly sensitive resources inherent in such areas such as viewshed, watershed, plant and wildlife habitat, streams and riparian corridors. The purpose of this chapter is to be carried out by allowing only such

development that can be achieved without adverse effect and which will be subordinate to the resources of the particular site and area.

Analysis

Monterey County LUP Section 2.3.1 defines ESHA as “areas in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem.” Such plant life, it continues, includes dwarf coastal chaparral (aka coastal sage scrub). One component plant of this coastal scrub is Seacliff buckwheat, which supports the federally endangered Smith’s Blue Butterfly. LUP Policy 2.3.2 requires that ESHA that provides habitat for rare and endangered species as identified by the U.S. Fish and Wildlife Service (USFWS) be protected and where possible enhanced and restored. Seacliff buckwheat and the Smith’s Blue Butterfly are both found on the Applicant’s property. LUP Policy 2.3.3.2 requires that projects adjacent to ESHA “be compatible with the long-term maintenance of the resource.” LUP Policy 2.3.3.6 requires deed restrictions of permanent conservation easements in ESHA where development is proposed on a parcel containing ESHA. LUP Policy 2.3.3.7 requires the County to “restrict the removal of indigenous vegetation... to that needed for the structural improvements themselves.” LUP Policy 2.3.3.8 requires the use of appropriate native species in landscaping. And IP Section 20.17.010, citing specific concern for “highly sensitive resources inherent in [the Coastal Zone] such as viewshed, watershed, plant and wildlife habitat, streams and riparian corridors,” states that “only such development that can be achieved without adverse effect and which will be **subordinate to the resources of the particular site and area**” (emphasis added) shall be allowed.

The proposed project is for a well to provide water for landscaping purposes (i.e. for extensive lawn areas and other ornamental non-native vegetation). A previous County CDP¹⁷ provided for development of the house on the property. The approval of the residence was subject to a Habitat Conservation Plan (HCP) by the US Fish and Wildlife Service (USFWS) (Exhibit 12), which required, among other things, “restoration of disturbed areas on site to create/enhance coastal sage scrub habitat” and “eradication of various invasive plants.”¹⁸ Per the requirements of the HCP, a deed restriction was recorded against the property to ensure that all undeveloped areas of the property would be preserved in perpetuity for habitat protection. The County’s approval of the house included a condition that required ongoing compliance with the HCP for the property. To provide consistency with LCP Policies 2.3.3.2 and 2.3.3.7, the County’s approval of the house included Condition 27, which required that “to avoid unnecessary impacts to native vegetation, where possible native vegetation on the property, in areas not needed for structures, parking, and hardscape, shall be left intact... Any areas disturbed by construction shall be re-vegetated with native vegetation, as well as any other appropriate and necessary erosion control measures.” Thus, per the County’s approval of the residence and per the requirements of the HCP, all undeveloped areas on the property are required to be maintained as coastal sage scrub ESHA. The County required that all of the conditions affecting CDP PLN010448 be recorded

¹⁷ PLN010448, as amended by PLN030087.

¹⁸ The “Findings and Recommendations on Issuance of Incidental Take Permit” (Exhibit 13), which accompanied the Incidental Take Permit and associated Habitat Conservation Plan, provides clarification on why the USFWS restricted non-native vegetation throughout the property. The document states, “Exotic plants may invade the impact area disturbed by grading and in time, encroach further into coastal scrub habitat in the conservation area adjacent to the impact area... Because exotic plants are known to compete with and displace Seacliff buckwheat, such encroachment would likely degrade the habitat for the Smith’s blue butterfly.”

against the property to run with the land (Exhibit 15). Thus, all the conditions of County CDP PLN010448 and the requirements of the HCP are applicable to the Applicant.

The proposed project is for a well to be located in the Applicant's driveway to provide water for the landscaping of nonnative and non-drought-tolerant vegetation on the site, including an extensive lawn area. The proposed site plans for the project also show new and expanded leach field areas and an associated pipeline¹⁹ located directly within coastal sage scrub ESHA (Exhibit 4). The approved leach fields and pipeline are inconsistent with LUP Policy 2.3.3.1, which requires that new development shall avoid critical habitat areas. For this reason, the proposed project must be denied.

4. Other Issues

Typically, the proposed project would need to be evaluated for consistency with the LCP's policies and standards related to geologic hazards and drainage and erosion. However, because the project is being denied based on issues related to water resources and ESHA, these issues will not be evaluated in this de novo review.

5. CDP Determination Conclusion

The Commission hereby denies CDP A-3-MCO-15-0023 for the proposed development of a well and associated leach fields because the project is not consistent with the Monterey County Carmel Area Plan certified -LCP policies and standards with respect to water resources and ESHA. Thus, the Commission denies the proposed project as it is inconsistent with the LCP.

H. VIOLATIONS

The LCP identifies the project site as being located within ESHA due to the presence of the endangered Smith's Blue Butterfly, which inhabits the coastal sage scrub on the property. As discussed above, in the "Substantial Issue Determination" and De Novo "Water Supply Resources" and "ESHA" sections of this staff report, unpermitted development consisting of the planting of lawns and ornamental plants in areas required to be maintained as coastal sage scrub ESHA has taken place on the subject property. In addition, there is evidence of unpermitted tree removal (Monterey pines) on the site. The subject tree removal and planting of lawns and ornamentals occurred within a deed-restricted area subject to a Habitat Conservation Plan required by the US Fish and Wildlife Service. The Applicant may apply to the County for a CDP to resolve these violations. The deed restriction is a requirement of CDP No. PLN010448 (as amended by CDP PLN030087), issued by the County of Monterey, and requires that "The encumbered acreage shall not be utilized in any manner inconsistent with the conservation of the natural flora and fauna contained thereon." Thus, the subject unpermitted development activities are also a potential violation of the terms and conditions of a previously issued CDP.

The above described violations are not addressed in, and will not be resolved by, the Commission's action on this item. This matter has been referred to the Commission's

¹⁹ The Applicant has stated that he does not intend to move forward with the leach fields. However, the proposed project plans include new and expanded leach fields and associated piping, as well as the proposed well.

Enforcement Division for investigation and possible action pursuant to Chapter 9 of the Coastal Act and Monterey County's LCP.

Although development has taken place prior to the Commission's consideration of this Appeal and de novo permit, consideration by the Commission has been based solely upon Monterey County's LCP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development undertaken on the subject site without a coastal permit.

I. CEQA

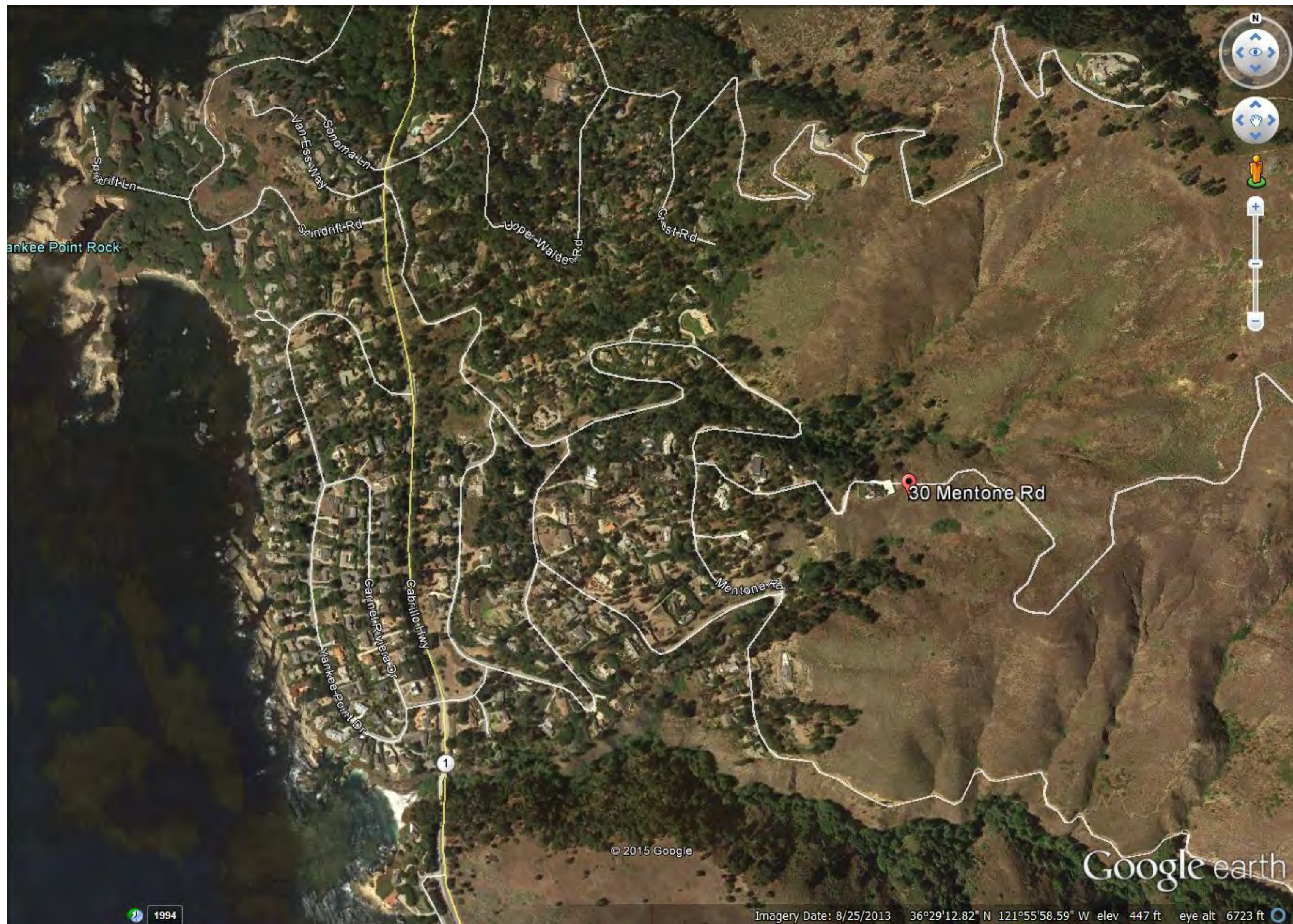
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Monterey County, acting as lead agency, found the proposed project exempt from CEQA pursuant to Section 15303 (Class 3) of the CEQA Guidelines. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This report has discussed the relevant coastal resource issues with the proposal. All public comments received to date have been addressed in the findings above. All above 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.

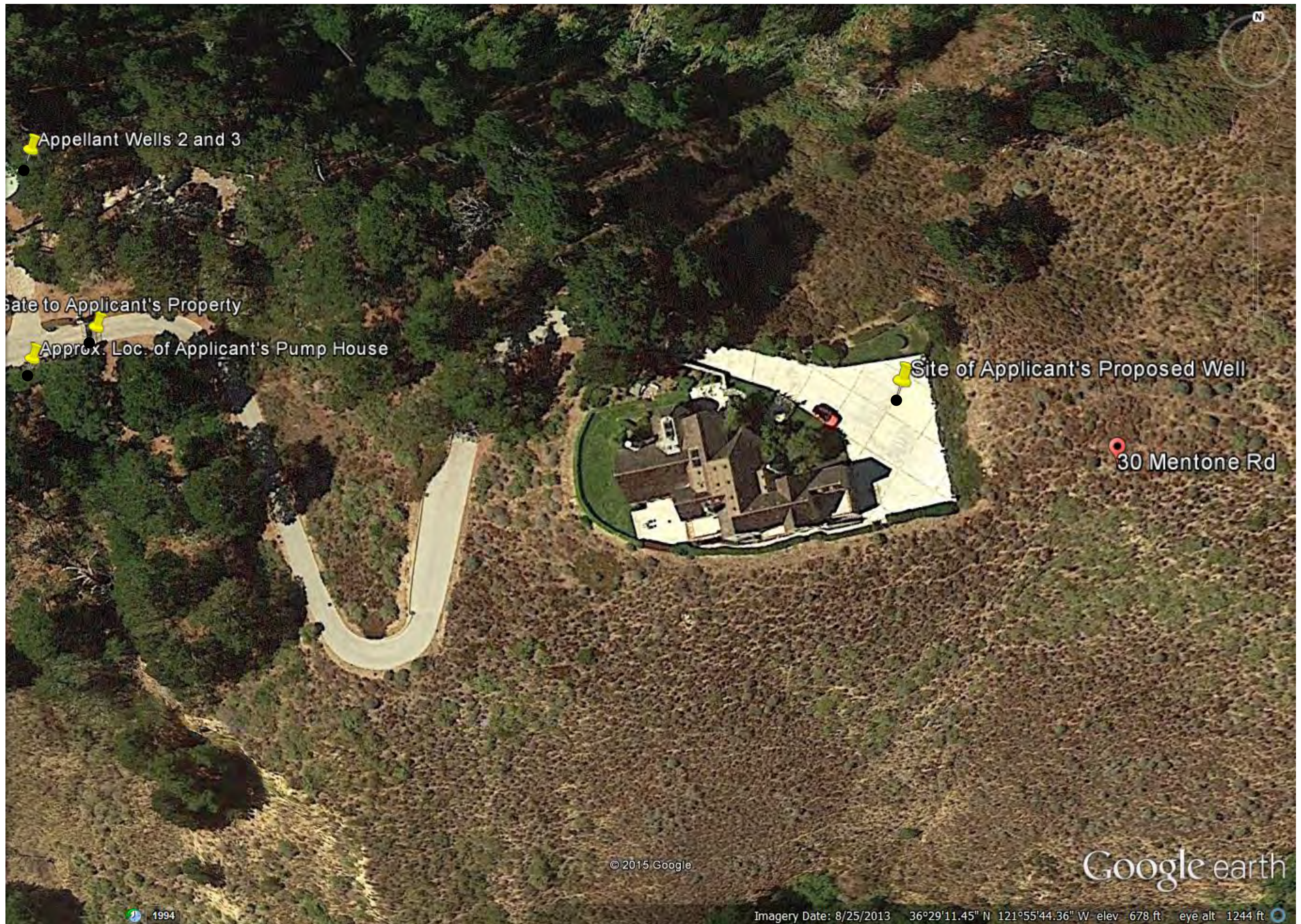
Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project was approved as proposed. Accordingly, the Commission's denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

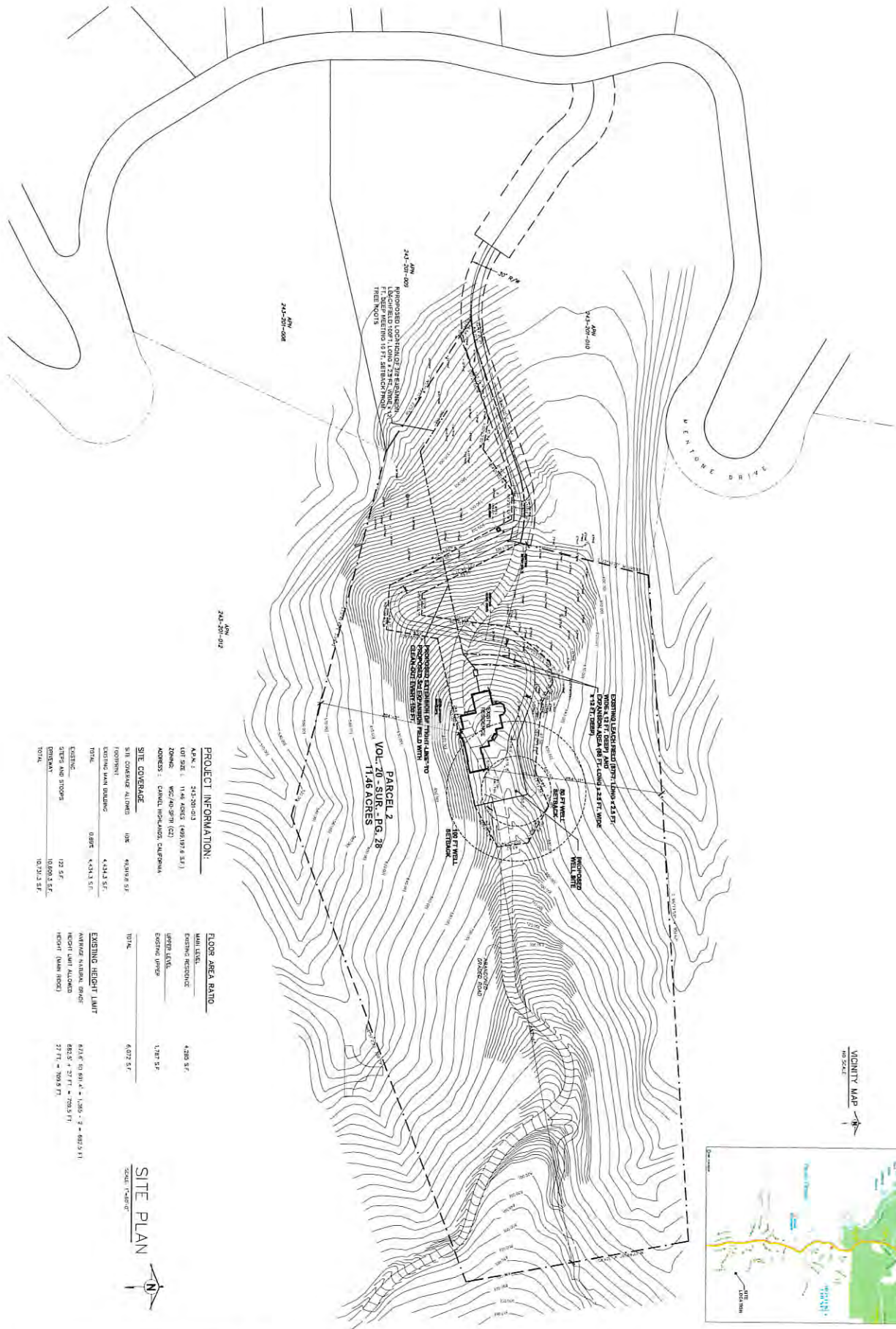
APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

1. Final Local Action Notice for Monterey County CDP for PLN010448 (Coastal Commission reference number 3-MCO-03-026).
2. Final Local Action Notice for Monterey County Minor and Trivial CDP Amendment for PLN030087 (Coastal Commission reference number 3-MCO-03-200).









PROJECT INFORMATION:

NAME	245-201-013
LOT SIZE	11.46 ACRES (498,171 S.F.)
ZONING	WC (W-27) (CZ)
ADDRESS	CARMEL HIGHLANDS, CALIFORNIA

SITE COVERAGE

EXISTING	0.0%
IMPROVEMENT	4.4%
TOTAL	4.4%

EXISTING AREA RATIO

EXISTING	0.0%
IMPROVEMENT	4.4%
TOTAL	4.4%

EXISTING HEIGHT LIMIT

EXISTING	0.0%
IMPROVEMENT	4.4%
TOTAL	4.4%

FLOOR AREA RATIO

EXISTING	0.0%
IMPROVEMENT	4.4%
TOTAL	4.4%

EXISTING HEIGHT LIMIT

EXISTING	0.0%
IMPROVEMENT	4.4%
TOTAL	4.4%



VICINITY MAP
NO SCALE



STORER WELL
30 MENTONE DRIVE
CARMEL HIGHLANDS, CA 93923

MANDURRAGO & ASSOCIATES
RESIDENTIAL DESIGN
161 CANTER ROW, SUITE B-9
MANTON, CA 93950
PHONE: 831-426-0000
FAX: 831-426-0001

Drawn By: MANDURRAGO
Drawing Date: 9-22-14
Project Number: 14-0114

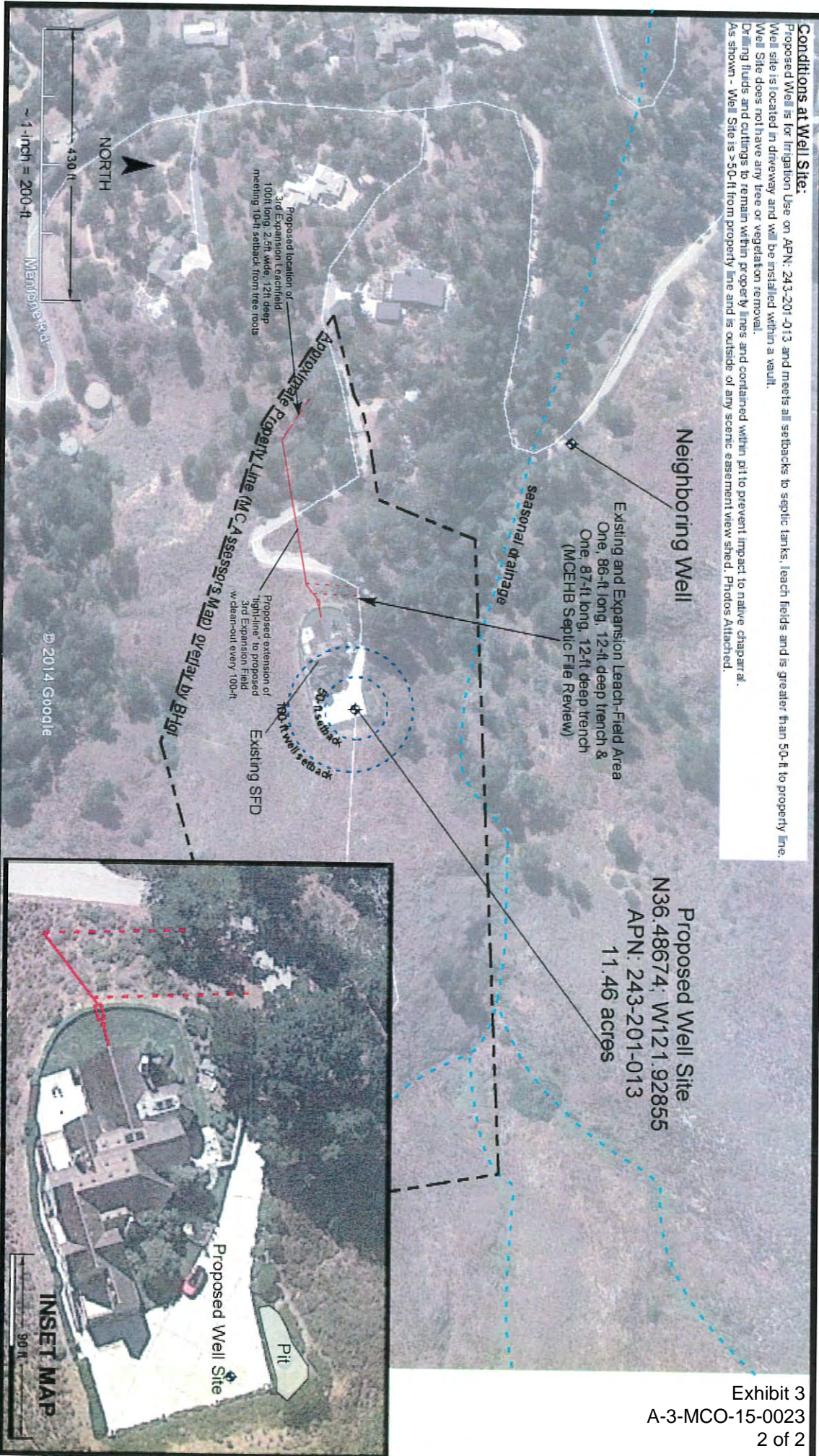
APN: 245-201-013

Scale: 1"=100'

Sheet Number: **A1**

Conditions at Well Site:

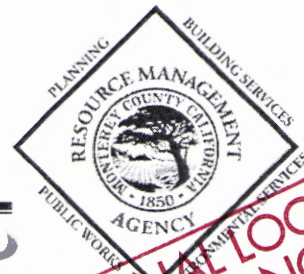
Proposed Well is for Irrigation Use on APN: 243-201-013 and meets all setbacks to septic tanks, leach fields and is greater than 50-ft to property line. Well site is located in driveway and will be installed within a vault. Well Site does not have any tree or vegetation removal. Drilling fluids and cuttings to remain within property lines and contained within pit to prevent impact to native chaparral. As shown - Well Site is >50-ft from property line and is outside of any scenic easement view shed. Photos Attached.



MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Acting Director

Michael A. Rodriguez, C.B.O., Chief Building Official
Michael Novo, AICP, Director of Planning
Robert K. Murdoch, P.E., Director of Public Works



168 W. Alisal Street, 2nd Floor
Salinas, CA 93901
<http://www.co.monterey.ca.us/rma>

RECEIVED

MAR 24 2015

CALIFORNIA
COASTAL COMMISSION

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-MCO-15-0285
APPEAL PERIOD 3/20/15 - 4/8/15

FINAL LOCAL ACTION NOTICE

Date: March 20, 2015
To: California Coastal Commission, Central Coast District Office
Applicant/Representative: Vincent Cisar, Applicant; Jim Storer, Representative
From: Monterey County Resource Management Agency Planning Department
Subject: Final Local Action on Coastal Permit Application PLN140469

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

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

Project Information

Resolution #: 15-012
Project Applicant: Vincent Cisar, 30 Mentone Dr., Carmel, CA, 93923
Applicant's Rep: Jim Storer, 30 Mentone Dr., Carmel, CA, 93923
Project Location: 30 Mentone Dr, Carmel; Assessor's Parcel Number: 243-201-013-000
Project Description: Combined Development Permit consisting of: 1) Coastal Administrative Permit to allow the construction of an irrigation well; and 2) Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.

Final Action Information

Final Action Date: February 12, 2015 **Local Appeal Period Ends:** March 19, 2015 * :
Final Action: ☒ Approved w/conditions ☐ Approved w/o conditions ☐ Denied
Final Action Body: ☒ Zoning Administrator ☐ Planning Commission ☐ Board of Supervisors ☐ Dir. of Planning

For Coastal Commission Use Only

MCO

Reference #:

FLAN received:

Appeal period:

Exhibit 4
A-3-MCO-15-0023
1 of 34

Final Local Action Notice Attachments Included

Required Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
Staff Report		02/09/2015	
Adopted Findings	X		
Adopted Conditions	X		
Site Plans	X		
Elevations	X		
Location/Vicinity Map		02/09/2015	
Additional Materials Supporting the Final Action	Enclosed	Previously Sent (date)	Notes/Comments
Archaeological Report		01/05/2015	
Biological Report		01/05/2015	
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.

Submitted by

Signature: 
Name: Steve Mason
Title: Associate Planner
Phone/Fax: 831-755-5228/831-757-9516
email: masons@co.monterey.ca.us

**Before the Zoning Administrator in and for the
County of Monterey, State of California**

In the matter of the application of:

CISAR (PLN140469)

RESOLUTION NO. 15-012

Resolution by the Monterey County Zoning
Administrator:

- 1) Finding the project exempt from CEQA pursuant to Section 15303 (Class 3) of the CEQA Guidelines; and
- 2) Approving a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow the construction of an irrigation well; and 2) a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.

[PLN140469, Cisar, 30 Mentone Drive, Carmel, Carmel Area Land Use Plan (APN: 243-201-013-000)]

The Cisar application (PLN140469) had a public hearing before the Monterey County Zoning Administrator on February 12, 2015. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Zoning Administrator finds and decides as follows:

FINDINGS

1. **FINDING:** **PROJECT DESCRIPTION** – The proposed project is a Combined Development Permit consisting of: 1) Coastal Administrative Permit to allow the construction of an irrigation well; and 2) Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.

 EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140469.

2. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

 EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
 - the 1982 Monterey County General Plan;
 - Carmel Area Land Use Plan;
 - Monterey County Coastal Implementation Plan Part 4;
 - Monterey County Zoning Ordinance (Title 20);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 at 30 Mentone Drive, Carmel (Assessor's Parcel Number 243-201-013-000), Carmel Area Land Use Plan. The parcel is

zoned “WSC/11.46 (CZ)” [Watershed and Scenic Conservation/11.46 acres per unit (Coastal Zone)], which allows water system facilities including wells and storage tanks serving 14 or fewer service connections with an approved Coastal Administrative Permit. Therefore, the project is a conditional land use for this site.

- c) The project site is located within 100 feet of a field-identified environmentally sensitive habitat (ESHA). Accordingly, a Coastal Development Permit is required as a part of the project entitlements. The ESHA in question is native coastal scrub which borders the existing previously-developed area. The coastal scrub area has been recognized as potential habitat for the Federally-listed “endangered” Smith’s blue butterfly. According to the Biological Survey which has been written for the project (Attached as “**EXHIBIT C**” to the February 12, 2015 Staff Report): “The proposed well site and retention pit locations had been disturbed and impacted years ago with the installation of the residential structure in 2003.” The report also notes: “No adverse or incidental impacts from the proposed well installation should occur within any of the habitat zones, off-site areas, or to the wildlife, if control measures are put in place and maintained.” A Condition of Approval has been attached to the project which mandates that the applicant sign, notarize and record a notice which states that the control measures outlined within the Biological Report must be observed.
- d) The project planner conducted a site inspection on July 2, 2014, to verify that the project on the subject parcel conforms to the plans listed above.
- e) The project was not referred to the Carmel/Carmel Highlands Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did not warrant referral to the LUAC.
- f) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140469.

3. **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: RMA- Planning, Carmel Highlands/Cypress Fire Protection District, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, 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.
 - b) Staff identified potential impacts to Biological and Archaeological Resources. The following reports have been prepared:
 - “Jim Storer Residence: Biological Resource Analysis for Proposed Well Site, APN 243-201-013, Carmel Highlands, CA” (LIB140453) prepared by Fred Ballerini, Pacific Grove, CA, August 8, 2014.
 - “Archaeological Survey – APN 243-201-013, Carmel Highlands”

The above-mentioned technical reports indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff has independently reviewed these reports and concurs with their conclusions.

- c) Staff conducted a site inspection on July 2, 2014, to verify that the site is suitable for this use.
- d) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN140469.

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

- EVIDENCE:**
- a) The project was reviewed by the RMA - Planning, Carmel Highlands/Cypress Fire Protection District, Public Works, Environmental Health Bureau, and Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - b) Staff conducted a site inspection on July 2, 2014, to verify that the site is suitable for this use.
 - c) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN140469.

5. **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.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is not aware of any violations existing on subject property.
 - b) Staff conducted a site inspection on July 2, 2014, and researched County records to assess if any violation exists on the subject property.
 - c) There are no known violations on the subject parcel.
 - d) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN140469.

6. **FINDING:** **CEQA (Exempt):** - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section

15303, Class 3, categorically exempts the construction of new, small facilities or structures.

- b) No adverse environmental effects were identified during staff review of the development application during a site visit on July 2, 2014.
- c) None of the exceptions under CEQA Guidelines Section 15300.2 apply to this project. The project does not involve a designated historical resource, a hazardous waste site, development located near or within view of a scenic highway, unusual circumstances that would result in a significant effect or development that would result in a cumulative significant impact.
- d) Staff conducted a site inspection on July 2, 2014, to verify that the site is suitable for this use.
- e) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140469.

7. **FINDING:** **ESHA** – The subject project avoids impact on environmentally sensitive habitat areas in accordance with the applicable goals and policies of the applicable area plan and zoning codes.

- EVIDENCE:**
- a) The project includes application for development within 100 feet of environmentally sensitive habitat areas (ESHA). In accordance with the applicable policies of the Monterey County Zoning Ordinance (Title 20), a Coastal Development Permit is required and the criteria to grant said permit have been met
 - b) See “Finding 2/Evidence “B”, above.
 - c) The project planner conducted a site inspection on July 2, 2014, to verify ESHA locations and potential project impacts to ESHA.
 - d) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN140469.

8. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors and the California Coastal Commission.

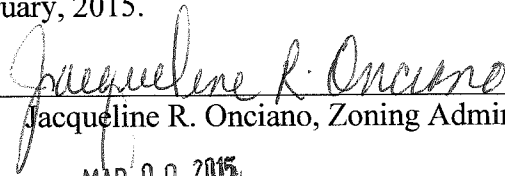
- EVIDENCE:**
- a) Section 20.86.030.A of the Monterey County Zoning Ordinance (Board of Supervisors).
 - b) Section 20.86.080.A.3 of the Monterey County Zoning Ordinance (Coastal Commission).

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Zoning Administrator does hereby:

- 1) Find the project exempt from CEQA pursuant to Section 15303 (Class 3) of the CEQA Guidelines; and
- 2) Approve a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow the construction of an irrigation well; and 2) a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat in general conformance with the attached sketch and subject to the attached conditions, all being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED this 12th day of February, 2015.


Jacqueline R. Onciano, Zoning Administrator

COPY OF THIS DECISION MAILED TO APPLICANT ON **MAR 09 2015**

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 TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE **MAR 19 2015**

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE FINAL LOCAL ACTION NOTICE (FLAN) STATING THE DECISION BY THE FINAL DECISION MAKING BODY, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

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

NOTES

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

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

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

2. This permit expires 3 years after the above date of granting thereof unless construction or use is started within this period.

Monterey County RMA Planning

Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN140469

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Combined Development Permit (PLN140469) allows:

1) a Coastal Administrative Permit to allow the construction of an irrigation well; and 2) a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.

The property is located at 30 Mentone Drive, Carmel (Assessor's Parcel Number 243-201-013-000), Carmel Area Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall record a Permit Approval Notice. This notice shall state:

"A Combined Development Permit (Resolution Number 15-012) was approved by the Zoning Administrator for Assessor's Parcel Number 243-201-013-000 on February 12, 2015. The permit was granted subject to eight (8) conditions of approval which run with the land. A copy of the permit is on file with Monterey County RMA - Planning."

Proof of recordation of this notice shall be furnished to the Director of RMA - Planning prior to issuance of building permits or commencement of the use. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of a water well construction permit, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning.

3. PD003(A) - CULTURAL RESOURCES NEGATIVE ARCHAEOLOGICAL REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. Monterey County RMA - Planning and a qualified archaeologist (i.e., an archaeologist registered with the Register of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for recovery.
(RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to this condition on an on-going basis.

Prior to the issuance of grading or building permits and/or prior to the recordation of the final/parcel map, whichever occurs first, the Owner/Applicant shall include requirements of this condition as a note on all grading and building plans. The note shall state "Stop work within 50 meters (165 feet) of uncovered resource and contact Monterey County RMA - Planning and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered."

When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.

4. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of a water well construction permit, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to RMA-Planning .

5. PD016 - NOTICE OF REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states:
"A Biological Resource Analysis (Library No. LIB140453), was prepared by Fred Ballerini on August 8, 2014, and is on file in Monterey County RMA - Planning. All development shall be in accordance with this report."
(RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of a water well construction permit, the Owner/Applicant shall submit proof of recordation of this notice to RMA - Planning.

Prior to occupancy, the Owner/Applicant shall submit proof, for review and approval, that all development has been implemented in accordance with the report to the RMA - Planning.

6. PD032(A) - PERMIT EXPIRATION

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The permit shall be granted for a time period of three (3) years, to expire on February 12, 2018, unless use of the property or actual construction has begun within this period. (RMA-Planning)

Compliance or Monitoring Action to be Performed: Prior to the expiration date stated in the condition, the Owner/Applicant shall obtain a water well construction permit and commence the authorized use to the satisfaction of the RMA-Director of Planning. Any request for extension must be received by RMA-Planning at least 30 days prior to the expiration date.

7. EHSP001 WELL CONSTRUCTION PERMIT

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: Pursuant to Monterey County Code Chapter 15.08, Water Wells, obtain a water well construction permit from the Environmental Health Bureau and construct the well.

Compliance or Monitoring Action to be Performed: A CA licensed well drilling contractor shall obtain a water well construction permit from the Environmental Health Bureau.
Complete well construction according to the well permit.
Submit the Well Completion Report to the Environmental Health Bureau.

8. EHSP003 CROSS CONNECTION PROTECTION

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: Environmental Health Bureau requires that a single back flow device be installed at the meter connection from the public water purveyor (Carmel Riviera Service Area) to the property.

Compliance or Monitoring Action to be Performed: Prior to bringing the irrigation well on line, submit evidence of installation of back flow device Carmel Riviera and to EHB for review and approval.

Proposed view is for irrigation. Use on APNs 24-5-201-01-3 and meets all setbacks to septic tanks, leach fields and is greater than 50-ft to property line. Well site is located in driveway and will be installed within a vault. Well Site does not have any tree or vegetation removal. Drilling fluids and cuttings to remain within property lines and contained within pit to prevent impact to native channel. As shown - Well Site is >50-ft from property line and is outside of any scenic easement view shed. Photos Attached.

Existing and Expansion Leach-Field Area
One, 86-ft long, 12-ft deep trench &
One, 87-ft long, 12-ft deep trench
(MCEHB Septic File Review)

Seasonal drainage

Proposed location of —
3rd Expansion Leachfield
100ft long 2.5ft wide, 12ft deep
meeting 10-ft setback from tree roots

Proposed extension of
"light-line" to proposed
3rd Expansion Field
to clean-out every 100-ft

NORTH

430 ft

1 inch = 200 ft

Digitized by Google

Proposed Well Site
N36.48674; W121.92855
APN: 243-201-013
11.46 acres

INSET MAP

Proposed Well Site

BIERMAN
Hydrogeo
logic
A Professional Company

Hydrogeologic Consulting & Water Resource Management

WELL SITING MAP
APN: 243-201-013-000
Monterey County, California

FIGURE

By: Ab. June 2, 2014
StreetFigures/WelShingMap

MONTEREY COUNTY ZONING ADMINISTRATOR

Meeting: February 12, 2015	Agenda Item No.: 6
Project Description: Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow the construction of an irrigation well; and 2) a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.	
Project Location: 30 Mentone Drive, Carmel	APN: 243-201-013-000
Planning File Number: PLN140469	Owner/Applicant: Vincent S Cisar TR Agent: Jim Storer
Planning Area: Carmel Area Land Use Plan	Flagged and staked: No
Zoning Designation: "WSC/11.46 (CZ)" [Watershed and Scenic Conservation/11.46 acres per unit (Coastal Zone)]	
CEQA Action: Categorically Exempt per Section 15303 (Class 3) of the CEQA Guidelines	
Department: RMA-Planning	

RECOMMENDATION:

Staff recommends that the Zoning Administrator adopt a resolution (**Exhibit B**) to:

- 1) Find the project exempt from CEQA pursuant to Section 15303 (Class 3) of the CEQA Guidelines; and
- 2) Approve the Combined Development Permit (PLN140469), based on the findings and evidence and subject to the conditions of approval (**Exhibit B**).

PROJECT OVERVIEW:

The applicant requests the installation of a non-potable irrigation well.

OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this project:

- RMA-Public Works Department
- RMA-Environmental Services
- √ Environmental Health Bureau
- Water Resources Agency
- Carmel Highlands/Cypress Fire Protection District
- California Coastal Commission

Agencies that submitted comments are noted with a check mark ("√"). Conditions recommended by the Environmental Health Bureau have been incorporated into the Condition Compliance Plan attached to the draft resolution (**Exhibit B**).

The project was not referred to a Land Use Advisory Committee as it does not meet any of the criteria for said referral, pursuant to Board Resolution 08-338.

Note: The decision on this project is appealable to the Board of Supervisors and Coastal Commission.

Steve Mason, Associate Planner
(831) 755-5228, masons@co.monterey.ca.us
February 4, 2015

cc: Front Counter Copy; Zoning Administrator; Carmel Highlands/Cypress Fire Protection District; RMA-Public Works Department; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; Luke Connolly, RMA Services Manager; Steve Mason, Project Planner; Vincent S Cisar TR , Owner, Owner; Jim Storer, Agent; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); Planning File PLN140469

Attachments: Exhibit A Project Discussion
 Exhibit B Draft Resolution, including:
 • Conditions of Approval
 • Site Plan
 • Vicinity Map
 Exhibit C Biological Resource Analysis


This report was reviewed by Luke Connolly, Planning Services Manager. 

EXHIBIT A DISCUSSION

Project Description and Background

The Carmel Highlands Mutual Water System, in which the project is located, has imposed water rations and is limiting all connections to 500 gallons per day. The well proposed would be non-potable and limited to landscaping irrigation uses only. The well site would be placed at a previously-disturbed area at the periphery of the existing driveway/parking area.

Project Issues

The project site is located within 100 feet of a field-identified environmentally sensitive habitat (ESHA). Accordingly, a Coastal Development Permit is required as a part of the project entitlements. The ESHA in question is native coastal scrub, which borders the existing previously-developed area. Coastal scrub has been recognized as potential habitat for the Federally-listed "endangered" Smith's blue butterfly. According to the Biological Survey which has been written for the project (Attached as "**EXHIBIT C**" to the February 12, 2015 Staff Report): "The proposed well site and retention pit locations had been disturbed and impacted years ago with the installation of the residential structure in 2003." The report also notes: "No adverse or incidental impacts from the proposed well installation should occur within any of the habitat zones, off-site areas, or to the wildlife, if control measures are put in place and maintained." A Condition of Approval has been attached to the project requires that the applicant sign, notarize and record a notice stating that the control measures outlined within the Biological Report must be observed.

Environmental Review

California Environmental Quality Act (CEQA) Guidelines Section 15303, Class 3, categorically exempts the construction of new, small facilities or structures.

Recommendation

Staff recommends "approval" of the project as proposed.

**EXHIBIT B
DRAFT RESOLUTION**

**Before the Zoning Administrator in and for the
County of Monterey, State of California**

In the matter of the application of:

CISAR (PLN140469)

RESOLUTION NO. ----

Resolution by the Monterey County Hearing Body:

- 1) Finding the project exempt from CEQA pursuant to Section 15303 (Class 3) of the CEQA Guidelines; and
- 2) Approving a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow the construction of an irrigation well; and 2) a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.

[PLN140469, Cisar, 30 Mentone Drive, Carmel, Carmel Area Land Use Plan (APN: 243-201-013-000)]

The Cisar application (PLN140469) had a public hearing before the Monterey County Zoning Administrator on February 12, 2015. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Zoning Administrator finds and decides as follows:

FINDINGS

- 1. FINDING: PROJECT DESCRIPTION** – The proposed project is a Combined Development Permit consisting of: 1) Coastal Administrative Permit to allow the construction of an irrigation well; and 2) Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.

EVIDENCE: The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140469.
- 2. FINDING: CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

EVIDENCE: a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:

 - the 1982 Monterey County General Plan;
 - Carmel Area Land Use Plan;
 - Monterey County Coastal Implementation Plan Part 4;
 - Monterey County Zoning Ordinance (Title 20);

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 at 30 Mentone Drive, Carmel (Assessor's Parcel Number 243-201-013-000), Carmel Area Land Use Plan. The parcel is zoned "WSC/11.46 (CZ)" [Watershed and Scenic Conservation/11.46 acres per unit (Coastal Zone)], which allows water system facilities including wells and storage tanks serving 14 or fewer service connections with an approved Coastal Administrative Permit. Therefore, the project is a conditional land use for this site.
- c) The project site is located within 100 feet of a field-identified environmentally sensitive habitat (ESHA). Accordingly, a Coastal Development Permit is required as a part of the project entitlements. The ESHA in question is native coastal scrub which borders the existing previously-developed area. The coastal scrub area has been recognized as potential habitat for the Federally-listed "endangered" Smith's blue butterfly. According to the Biological Survey which has been written for the project (Attached as "**EXHIBIT C**" to the February 12, 2015 Staff Report): "The proposed well site and retention pit locations had been disturbed and impacted years ago with the installation of the residential structure in 2003." The report also notes: "No adverse or incidental impacts from the proposed well installation should occur within any of the habitat zones, off-site areas, or to the wildlife, if control measures are put in place and maintained." A Condition of Approval has been attached to the project which mandates that the applicant sign, notarize and record a notice which states that the control measures outlined within the Biological Report must be observed.
- d) The project planner conducted a site inspection on July 2, 2014, to verify that the project on the subject parcel conforms to the plans listed above.
- e) The project was not referred to the Carmel/Carmel Highlands Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did not warrant referral to the LUAC.
- f) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140469.

3. **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: RMA- Planning, Carmel Highlands/Cypress Fire Protection District, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, 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.
 - b) Staff identified potential impacts to Biological and Archaeological Resources. The following reports have been prepared:
 - "Jim Storer Residence: Biological Resource Analysis for Proposed

Well Site, APN 243-201-013, Carmel Highlands, CA”
(LIB140453) prepared by Fred Ballerini, Pacific Grove, CA,
August 8, 2014.

- “Archaeological Survey – APN 243-201-013, Carmel Highlands”
(LIB140452) prepared by Gary S. Breschini, Ph.D., Salinas, CA,
June 10, 2014.

The above-mentioned technical reports indicated that there are no physical or environmental constraints that would indicate that the site is not suitable for the use proposed. County staff has independently reviewed these reports and concurs with their conclusions.

- c) Staff conducted a site inspection on July 2, 2014, to verify that the site is suitable for this use.
- d) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN140469.

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

- EVIDENCE:**
- a) The project was reviewed by the RMA - Planning, Carmel Highlands/Cypress Fire Protection District, Public Works, Environmental Health Bureau, and Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - b) Staff conducted a site inspection on July 2, 2014, to verify that the site is suitable for this use.
 - c) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN140469.

5. **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.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is not aware of any violations existing on subject property.
 - b) Staff conducted a site inspection on July 2, 2014, and researched County records to assess if any violation exists on the subject property.
 - c) There are no known violations on the subject parcel.
 - d) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN140469.

6. **FINDING:** **CEQA (Exempt):** - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.
- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15303, Class 3, categorically exempts the construction of new, small facilities or structures.
 - b) No adverse environmental effects were identified during staff review of the development application during a site visit on July 2, 2014.
 - c) None of the exceptions under CEQA Guidelines Section 15300.2 apply to this project. The project does not involve a designated historical resource, a hazardous waste site, development located near or within view of a scenic highway, unusual circumstances that would result in a significant effect or development that would result in a cumulative significant impact.
 - d) Staff conducted a site inspection on July 2, 2014, to verify that the site is suitable for this use.
 - e) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN140469.
7. **FINDING:** **ESHA** – The subject project avoids impact on environmentally sensitive habitat areas in accordance with the applicable goals and policies of the applicable area plan and zoning codes.
- EVIDENCE:**
- a) The project includes application for development within 100 feet of environmentally sensitive habitat areas (ESHA). In accordance with the applicable policies of the Monterey County Zoning Ordinance (Title 20), a Coastal Development Permit is required and the criteria to grant said permit have been met
 - b) See “Finding 2/Evidence “B”, above.
 - c) The project planner conducted a site inspection on July 2, 2014, to verify ESHA locations and potential project impacts to ESHA.
 - d) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN140469.
8. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors and the California Coastal Commission.
- EVIDENCE:**
- a) Section 20.86.030.A of the Monterey County Zoning Ordinance (Board of Supervisors).
 - b) Section 20.86.080.A.3 of the Monterey County Zoning Ordinance (Coastal Commission).

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Zoning Administrator does hereby:

- 1) Find the project exempt from CEQA pursuant to Section 15303 (Class 3) of the CEQA Guidelines; and

- 2) Approve a Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow the construction of an irrigation well; and 2) a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat in general conformance with the attached sketch and subject to the attached conditions, all being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED this 12th day of February, 2015.

Jacqueline Onciano, Zoning Administrator

COPY OF THIS DECISION MAILED TO APPLICANT ON DATE

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 TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE [DATE]

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE FINAL LOCAL ACTION NOTICE (FLAN) STATING THE DECISION BY THE FINAL DECISION MAKING BODY, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

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

NOTES

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

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

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

2. This permit expires 3 years after the above date of granting thereof unless construction or use is started within this period.

Form Rev. 5-14-2014

Monterey County RMA Planning

DRAFT Conditions of Approval/Implementation Plan/Mitigation Monitoring and Reporting Plan

PLN140469

1. PD001 - SPECIFIC USES ONLY

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: This Combined Development Permit (PLN140469) allows:

1) a Coastal Administrative Permit to allow the construction of an irrigation well; and 2) a Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.

The property is located at 30 Mentone Drive, Carmel (Assessor's Parcel Number 243-201-013-000), Carmel Area Land Use Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of RMA - Planning. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled. (RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The applicant shall record a Permit Approval Notice. This notice shall state:

"A Combined Development Permit (Resolution Number ***) was approved by the Zoning Administrator for Assessor's Parcel Number 243-201-013-000 on February 12, 2015. The permit was granted subject to eight (8) conditions of approval which run with the land. A copy of the permit is on file with Monterey County RMA - Planning."

Proof of recordation of this notice shall be furnished to the Director of RMA - Planning prior to issuance of building permits or commencement of the use. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of a water well construction permit, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning.

3. PD003(A) - CULTURAL RESOURCES NEGATIVE ARCHAEOLOGICAL REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. Monterey County RMA - Planning and a qualified archaeologist (i.e., an archaeologist registered with the Register of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for recovery.
(RMA - Planning)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to this condition on an on-going basis.

Prior to the issuance of grading or building permits and/or prior to the recordation of the final/parcel map, whichever occurs first, the Owner/Applicant shall include requirements of this condition as a note on all grading and building plans. The note shall state "Stop work within 50 meters (165 feet) of uncovered resource and contact Monterey County RMA - Planning and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered."

When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.

4. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his/her/its obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, recordation of the certificates of compliance whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of a water well construction permit, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to RMA-Planning .

5. PD016 - NOTICE OF REPORT

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states:
"A Biological Resource Analysis (Library No. LIB140453), was prepared by Fred Ballerini on August 8, 2014, and is on file in Monterey County RMA - Planning. All development shall be in accordance with this report."
(RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the issuance of a water well construction permit, the Owner/Applicant shall submit proof of recordation of this notice to RMA - Planning.

Prior to occupancy, the Owner/Applicant shall submit proof, for review and approval, that all development has been implemented in accordance with the report to the RMA - Planning.

6. PD032(A) - PERMIT EXPIRATION

Responsible Department: RMA-Planning

Condition/Mitigation Monitoring Measure: The permit shall be granted for a time period of three (3) years, to expire on February 12, 2018, unless use of the property or actual construction has begun within this period. (RMA-Planning)

Compliance or Monitoring Action to be Performed: Prior to the expiration date stated in the condition, the Owner/Applicant shall obtain a water well construction permit and commence the authorized use to the satisfaction of the RMA-Director of Planning. Any request for extension must be received by RMA-Planning at least 30 days prior to the expiration date.

7. EHSP001 WELL CONSTRUCTION PERMIT

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: Pursuant to Monterey County Code Chapter 15.08, Water Wells, obtain a water well construction permit from the Environmental Health Bureau and construct the well.

Compliance or Monitoring Action to be Performed: A CA licensed well drilling contractor shall obtain a water well construction permit from the Environmental Health Bureau.
Complete well construction according to the well permit.
Submit the Well Completion Report to the Environmental Health Bureau.

8. EHSP003 CROSS CONNECTION PROTECTION

Responsible Department: Health Department

Condition/Mitigation Monitoring Measure: Environmental Health Bureau requires that a single back flow device be installed at the meter connection from the public water purveyor (Carmel Riviera Service Area) to the property.

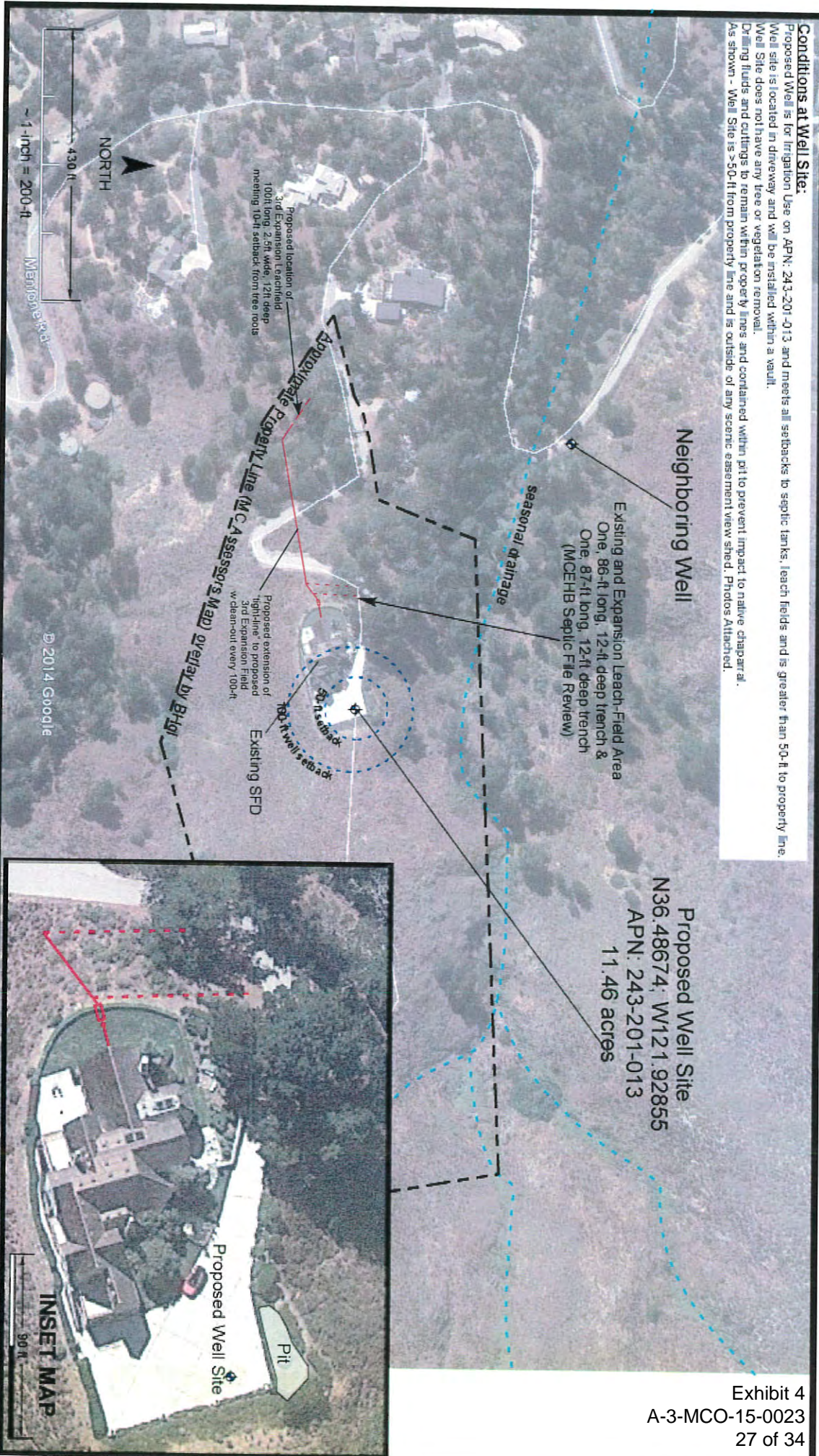
Compliance or Monitoring Action to be Performed: Prior to bringing the irrigation well on line, submit evidence of installation of back flow device Carmel Riviera and to EHB for review and approval.



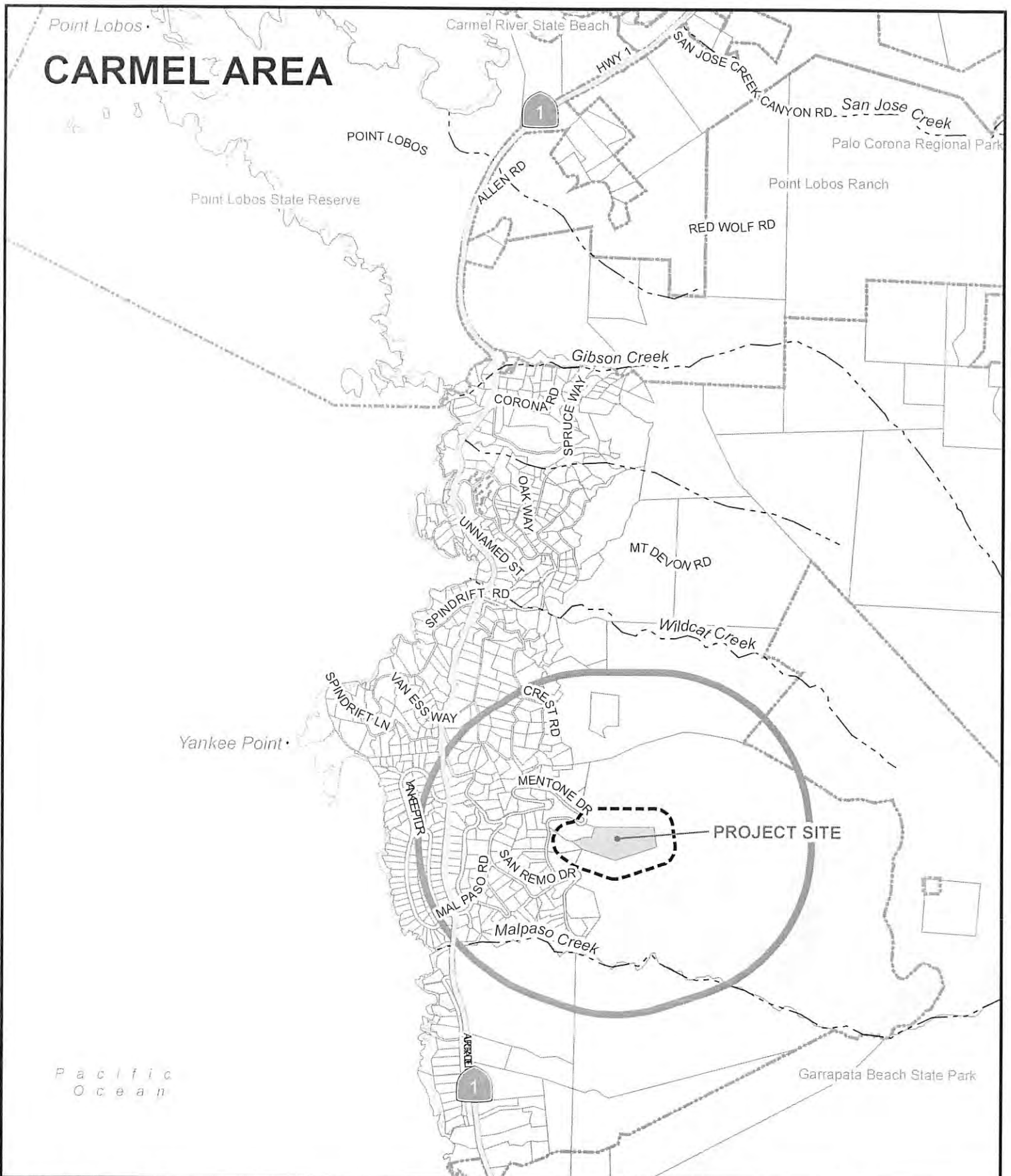
Exhibit 4
A-3-MCO-15-0023
26 of 34

Conditions at Well Site:

Proposed Well is for Irrigation Use on APN: 243-201-013 and meets all setbacks to septic tanks, leach fields and is greater than 50-ft to property line. Well site is located in driveway and will be installed within a vault. Well Site does not have any tree or vegetation removal. Drilling fluids and cuttings to remain within property lines and contained within pit to prevent impact to native chaparral. As shown - Well Site is >50-ft from property line and is outside of any scenic easement view shed. Photos Attached.



CARMEL AREA



APPLICANT: CISAR

APN: 243-201-013-000

FILE # PLN140469

2500' Limit 300' Limit ~~~~ Water

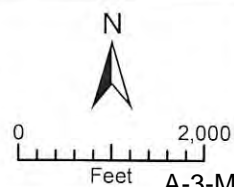


EXHIBIT 4

A-3-MCO-15-0023

28 of 34
PLANNER: MASON

EXHIBIT C

Biological Resource Analysis



Fred Ballerini
Biological and Horticultural Services

August 8, 2014

To: Aaron Bierman
Hydrogeologic
Consulting Hydrogeologist
831.334.2237

RE: Jim Storer Residence; Biological Resource Analysis for Proposed Well Site
APN 243-201-013
Carmel Highlands, CA

Dear Aaron,

Per your request for biological consultation, on July 16 and August 8, 2014, I conducted a biological resource site analysis of the proposed well site for the Jim Storer property.

The analysis included a general survey of the well site including plant and wildlife surveys. The proposed well drilling access and well location were analyzed for impacts to existing resources on site.

Please contact me with any questions or comments. Thank you.

Sincerely,

Fred Ballerini

1. Objective

This biological resource assessment has been prepared to provide information regarding existing habitats, plant and wildlife species, and potential impacts to biological resources resulting from the proposed well drilling activities found on a residential parcel located at 30 Mentone in Carmel Highlands (APN 243-201-013).

2. Existing Conditions

The proposed well location is situated on a knoll within a pre-disturbed concrete driveway on a developed residential parcel. The residential parcel is 11.5-acres, of which 10.2 acres are established as a protected habitat area (HCP) in perpetuity. This protected area was legally enacted in 2003 as a Low-Effect Habitat Conservation Plan for the Smith's Blue Butterfly (*Euphilotes enoptes smithii*) as mitigation for the impacts caused to the butterfly habitat from the development of a single-family residence.

Landscaped grounds surround immediate vicinity of the residence. Outside of the small landscape buffer around the residence, the native coastal scrub habitat surrounds the property uphill to the east, and downhill to the north, west and south. Large quantities of seacliff buckwheat (*Eriogonum parvifolium*) plants are thriving on the west, south, and east sloped areas within the coastal scrub habitat.

The proposed well site and retention pit locations had been disturbed and impacted years ago with the installation of the residential structure in 2003. The well site is located on a knoll sloping upward to the east and downward to the north, south, and west. Downslope north of the well site is a seasonal drainage corridor which leads directly to the Pacific Ocean approximately 0.6 miles to the west. The south slope is part of a watershed feeding Malpas Creek which also flows directly to the Monterey Bay Marine Sanctuary. The soils are granitic-based.

The access road leading to the well site is paved and no restrictions occur that would impede drilling equipment.

3. Plant and Wildlife Species

The existing vegetation within the impact area of the proposed well consists of landscaped sod and other landscaped plant material in the location of the retention pit. A concrete driveway exists within the zone of the well-head. Outside of the manicured landscaped grounds, approximately 20' from the proposed well location, native coastal scrub exists surrounding the residential envelope on all sides. The dominant plant within this plant community is the seacliff buckwheat (*Eriogonum parvifolium*), one of two host food-plants for the Federally-listed endangered Smith's blue butterfly. Other native coastal scrub constituents are found within the habitat community on the property, including poison oak (*Toxicodendron diversilobum*), bush lupine (*Lupinus arboreus*), California blackberry (*Rubus ursinus*), yarrow (*Achillea millefolium*), lizard tail (*Eriophyllum staechadifolium*), coyote brush (*Baccharis pilularis*), deerweed (*Lotus scoparius*) and others.

The wildlife species analysis included surveys for nesting occurrences and any special-status wildlife species occurring within the vicinity of the United States Geological Survey Soberanes 7.5' quadrangle, none were observed. Observed bird species near the site included western scrub jay (*Aphelocoma californica*), turkey vulture (*Cathartes aura*), dark-eyed junco (*Junco hyemalis*), California towhee (*Melospiza crissalis*), and Townsend's warbler (*Setophaga townsendii*). A butterfly survey was not conducted as it is the wrong time of year to survey for the Smith's blue butterfly and

also they are already documented as occurring on site, therefore it is presumed the butterfly is still present.

4. Special-Status Species

The Federally-listed endangered Smith's blue butterfly is documented as occurring within the subject parcel, and although the habitat for the butterfly does not exist within the direct proposed impact areas for the well development, potential impacts could occur if well development impacts were to expand into the HCP areas. Adult butterflies emerge in August and September to mate and lay eggs, therefore it will be critical that well-drilling impacts are restricted to the residential envelope. Protocols are outlined in the next section to restrict access and eliminate potential for impacts to the HCP areas.

The California Natural Diversity Data Base (CNDDB) maintained by the State of California Department of Fish and Game (DFG) reports several other special-status native plant and wildlife species occurring within the vicinity of the property within the Soberanes Quadrangle, however I found no evidence of any other listed native plant or wildlife species located within the proposed impact zone. No adverse or incidental impacts from the proposed well installation should occur within any of the habitat zones, off-site areas, or to the wildlife if control measures are put in place and maintained. The proposed well location lies within the 100' setback from the edge of natural vegetation designated as environmentally sensitive habitat (Smith's blue butterfly habitat), though this area should not be impacted from the well installation.

5. Potential Impacts and Recommendations

The potential impacts to significant biological resources on and surrounding the well plot were evaluated based on the field investigations and conversations with project team members.

Implementation of recommendations presented in this document will ensure that the proposed well development will have no adverse impact on site conditions. By implementing the below listed recommendations, the project is not expected to disturb or have any substantial adverse effect on any wildlife species, federally protected species, or habitat existing off site.

A. The Federally-listed endangered Smith's blue butterfly is documented as occurring on the subject parcel in within the HCP areas. In order to avoid potential impacts to adult butterflies and disrupt mating behavior, it is recommended to avoid drilling activities during the months of August and September. Well installation should occur in the 10-month window from Oct through July.

B. In order to protect and retain off-site habitat values, the well drilling process should be carried out with the following work schedule:

1. Instruct all staff on the sensitive nature of the HCP site to ensure no personnel impacts these areas with inadvertent activities or staging equipment.
2. Install erosion & sediment control devices around perimeter of impact areas.
3. Mobilize drilling and excavation equipment into project location.
4. Excavate retention pit within the residential landscaped area. All stockpiled excavated materials to remain within residential area (outside of the HCP areas) and covered (tarps, mulching, wattles, etc) to prevent any off-site migration of materials.
5. Develop staged retention pit with excavated earthen berm and use of sterile rice straw wattles and bales. Use of sterile rice straw and rice straw wattles will reduce the risk of importing invasive grass seed.
6. Drill well and deposit well spoils (approximately 7 to 8 cubic yards) into staged retention pit.

7. ALL SPOILS AND FLUIDS ARE TO REMAIN ON SITE WITHIN THE RESIDENTIAL ENVELOPE AND NOT ALLOWED TO DISCHARGE OFF THE PARCEL INTO THE HCP AREAS.
8. Spoils and fluids are required to be exported to a receiver site upon completion of drilling activities.
9. Dismantle retention pit, remove straw, wattles, and filter fabric (or silt fencing). All exposed soils should be mulched with the sterile rice straw or wood mulch at a minimum 2" depth and replanted with site appropriate drought tolerant landscape species.

Well Site Photographic Documentation**Aug 8, 2014**

Proposed well site and retention pit area, facing East direction. Retention pit to be located in bare-soil area on the left of the image (previously a landscaped sod area). Well-head to be located just left of the parked truck within the concrete driveway. Eastern HCP area shown beyond the driveway uphill from the parcel.



Proposed well site location within paved driveway, facing East direction. HCP areas lie beyond the landscaped zone shown above the retaining wall.



END

Jacqueline M. Zischke, Attorney at Law
A Professional Corporation
PO Box 1115
Salinas, California 93902

P: 831/761-8714
F: 1-888-385-9198
jzischkelaw@charter.net

April 7, 2015

(VIA HAND DELIVERY)

California Coastal Commission
Central Coast District Office
725 Front St #300,
Santa Cruz, CA 95060

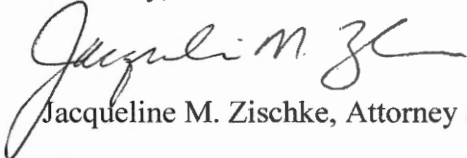
RECEIVED
APR - 7 2015
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Appeal of Combined Development Permit (Vincent C. Cisar; PLN140469, 3-MCO-15-0285)

Dear California Coastal Commission;

Attached is an appeal by the Carmel Riviera Mutual Water Company appealing the above referenced County of Monterey approval of a combined development permit for the construction of an irrigation well, and for development within 100 feet of environmentally sensitive habitat. (Resolution No. 15-012, PLN140469).

Sincerely,



Jacqueline M. Zischke, Attorney at Law

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Carmel Riviera Mutual Water Company

Mailing Address: c/o Jacqueline Zischke, Esq. PO Box 1115

City: Salinas

Zip Code: 93902

Phone: 831-761-8714

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Monterey

2. Brief description of development being appealed:

This appeal challenges the County of Monterey's approval of an application filed by Vincent S. Cisar Tr. for a combined development permit for the construction of an irrigation well, and for development within 100 feet of environmentally sensitive habitat, Resolution No.15-012. (PLN140469) 3-MCO-15-0285

3. Development's location (street address, assessor's parcel no., cross street, etc.):

30 Mentone Drive, Carmel APN 243-201-013

4. Description of decision being appealed (check one.):

- ☒ Approval; no special conditions
☐ Approval with special conditions:
☐ Denial

RECEIVED**APR 07 2015****CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA**

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-15-0023

DATE FILED: April 7, 2015

DISTRICT: Central

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

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

- ☒ Planning Director/Zoning Administrator
- ☐ City Council/Board of Supervisors
- ☐ Planning Commission
- ☐ Other

6. Date of local government's decision: February 12, 2015

7. Local government's file number (if any): PLN140469

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:

Vincent Cisar, Trustee, 30 Mentone Drive, Carmel CA 93923

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

(1) See Attached List. The attached list comprises the County's notification list for the project. This list also includes a list of property owners located within 300 feet of Applicant's property which were not notified of the County's proceedings and hearing on this matter.

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE 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.
- 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.)
- This 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.

See Attachment A.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**SECTION V. Certification**

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

Richard Cain, Chairman
Signature of Appellant(s) or Authorized Agent
Date: April 6, 2015

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize Jacqueline M. Zischke Attorney at Law
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Richard Cain, Chairman
Signature of Appellant(s) Richard Cain, Chairman
Richard Cain for Carmel Riviera Mutual Water Company
Date: April 6, 2015

Attachment A

NOTICE OF APPEAL

By this appeal Carmel Riviera Mutual Water Company challenges the County of Monterey's approval through its Zoning Administrator ("County") on February 12, 2015 approving the application of Vincent Cisar Trust (Applicant) for a Combined Development Permit for an irrigation well, and development within 100 feet of environmentally sensitive habitat. (PLN140469)

As detailed below, the County's approval denied Carmel Riviera Mutual Water Company a fair and impartial hearing due to the County's failure to provide public notice as required by law. Further, the County's approval is contrary to law violating many of the policies and regulations under the County's Local Coastal Program, Carmel Area Land Use Plan and its Coastal Implementation Plan, and the Coastal Act. The County's approval of the Applicant's proposed irrigation well, if allowed to proceed, will have a significant adverse impact on Carmel Riviera Mutual Water Company's wells and water system facilities and jeopardize Carmel Riviera's ability to serve its existing customers within its service area.

The administrative record reveals that the Applicant misrepresented that the water provider for the property was "Carmel Highlands Mutual Water System", and the Applicant also fraudulently stated that the Applicant was subject to rationing requirements necessitating the need for the Applicant's proposed well. Appellant Carmel Riviera Mutual Water Company is the water provider for the project site and to approximately 177 property owners in the community. Contrary to the Applicant's assertions, the Carmel Riviera Mutual Water Company has not imposed water rationing requirements on its customers. Rather, Carmel Riviera Mutual Water Company has a tiered rate structure, which is intended to promote conservation. Such tiered rates are especially important in these times of drought.

Denial of a Fair and Impartial Hearing. Carmel Riviera Mutual Water Company was denied a fair and impartial hearing. The County failed to provide public notice to Carmel Riviera Mutual Water Company as required by law. (Monterey County Code Section 20.84.040. As such, Carmel Riviera Mutual Water Company was deprived the opportunity to participate in the County proceedings on this project.

The County failed to comply with the requirements of Monterey County Code Section 20.84.040A.2, which required mailed notice of the February 12, 2015 Zoning Administrator hearing to Carmel Riviera Mutual Water Company. The Carmel Riviera Mutual Water Company provides water service to the Applicant's property. The Carmel Riviera's water service to the Applicant's property, as well as all other properties in the Carmel Riviera Mutual

Water Company service area will be significantly and adversely affected by the Applicant's proposed irrigation well.

The County also failed to mail notice of the Zoning Administrator hearing to all owners within 300 feet of the Applicant project site in violation of County Code Section 20.84.040.A.3. The County failed to mail notice to Carmel Riviera Mutual Water Company who owns wells and other water system facilities on property located adjacent to Applicant's property. The County also failed to mail notice to a number of additional property owners whose water service will be jeopardized by the proposed project. The County's proof of mailing reveals that the attached properties located within 300 feet of the Applicant property were not provided with notice. (See Attachment A-1)

The Applicant failed to post notice of the Zoning Administrator hearing in violation of Section 20.84.040A.4. The Applicant failed to clearly post notice at three different public places on and near the Applicant property. None of the three notices posted by the Applicant were either accessible or visible to the public. As shown by the Applicant affidavit of posting, each of the notices posted were located on private property inaccessible to the public. Each of the notices were posted in areas that could only be accessed by private roads, in areas marked by no trespassing signs.

Carmel Riviera Mutual Water Company was therefore denied the right of a local appeal because local notice and hearing procedures for the development did not comply with the provisions of 14 Cal. Code Regs. Sections 13560-13573. Carmel Riviera Mutual Water Company sought to appeal with the County of Monterey immediately upon learning about the County's approval. (See attached.)

The findings, decision and conditions are not supported by the evidence, and are contrary to law. Carmel Riviera Mutual Water Company challenges each of the Zoning Administrator findings and conclusions on the grounds that they are contrary to law, and unsupported by substantial evidence. The County failed to conduct any analysis of the project's impacts to Carmel Riviera's water system wells, which are located in very close proximity to the proposed irrigation well. The proposed irrigation well will interfere with Carmel Riviera Water Company's well production and system operations, affecting its potable water service to its customers. Therefore, the proposed project will have a significant adverse impact to public health and safety. The proposed project's interference with the existing water supply needs of Carmel Riviera's customers will not only negatively affect the domestic water supply needs of Carmel Riviera's customers, but also jeopardize the communities' fire emergency water supply.

Finding No. 1 includes a project description determination, which is inadequate. The project description contained in Finding No. 1 inaccurately describes the project as involving the proposed irrigation well, and development located within 100 feet of environmentally sensitive habitat ("ESHA"). This project description fails to include the Applicant's proposed expansion

of a leach field , which is located within ESHA. This aspect of the Applicant's proposed development is nowhere included in the County's project description and is hidden in a figure within the Bierman Hydrogeologic study. The County failed to analyze the impacts of this extended leach line located *within* ESHA. The County's failure to accurately describe the proposed project denied the public a fair and impartial hearing, violates CEQA Guidelines Sections 15124 and 15378, and violates Carmel Area Land Use Policies 2.3.3.1, 2.3.3.2, 2.3.3.6, and 2.3.3.7, as well as Section 30240 of the California Coastal Act.

Finding No. 2 incorrectly concludes that the Project complies with applicable policies and ordinances under the County General Plan, Land Use Plan and Coastal Implementation Plan.

The proposed project is inconsistent with Carmel Area Land Use Plan Policies 2.4.4.A.2, and 2.4.4.A.6. The Applicant failed to demonstrate the "water supply available to meet the minimum needs of existing users during the driest year" as required by Section 2.4.4.A.2. Instead, the Applicant misrepresented the mutual water system serving the community as the "Carmel Highlands Mutual Water System", and also misrepresented that Applicant was subject to rationing requirements by Applicant's water service provider. The Carmel Riviera Mutual Water Company, which supplies water to the project site and to approximately 177 property owners in the community, has not imposed water rationing requirements on its customers. Rather, Carmel Riviera Mutual Water Company has a tiered rate structure, which is intended to promote conservation. Such tiered rates are especially important in these times of drought. The applicant's proposed irrigation well will adversely impact Carmel Riviera's water supply in these times of drought. The applicant failed to demonstrate, and the County failed to analyze the minimum needs of its existing users during this drought. Instead, the County's approval, if allowed to proceed, would provide a means for the Applicant to avoid conservation and threaten the water supply needs of Carmel Riviera's customers. The County's approval also violates Policy 2.4.4.A.6 of the Carmel Area Land Use Plan and Section 20.146.050 of the Coastal Implementation Plan by promoting water waste during this time of drought, and ignoring the needs for drought-tolerant landscaping.

Finding No. 3 concludes that the site is physically suitable for the use proposed. This finding is again both factually and legally inaccurate. The proposed irrigation well is sited just above Carmel Riviera's wells and water system facilities. The proposed irrigation well threatens Carmel Riviera's ability to provide water service to not only the Applicant property, but also to all customers in Carmel Riviera's service area. The Applicant's property is also not suitable for the additional leach lines proposed to be developed in ESHA.

Finding No. 4 concludes that the project will not be detrimental to the health and safety of persons either residing or working in the neighborhood. To the contrary, the proposed irrigation well poses an immediate threat to the health and safety of persons who obtain their water supply from the Carmel Riviera Mutual Water Company. The system operations of the Carmel Riviera Mutual Water Company are sited in close proximity to the applicant's proposed irrigation well,

and diversions from the proposed irrigation well will have a deleterious effect on Carmel Riviera's pumping from the wells within its water system.

Finding No. 5 concludes that no violations exist on the property, which is incorrect. The proposed well site and pit are located in a disturbed area on the site, which was previously disturbed as a result of the development of the residence on the site. County conditions of approval for the development of the residence on the site required any areas disturbed by such construction that were not used for structures, parking and hardscape to be re-vegetated with native vegetation.

Condition 27 of the County's prior approval of the residence on the project site states:

To avoid unnecessary impacts to native vegetation, where possible, native vegetation on the property in areas not needed for structures, parking and hardscape, shall be left intact. Prior to occupancy, a landscape plan consistent with the Monterey County regulations shall be submitted to and approved by the Director of Planning & Building Inspection. Any areas disturbed by construction shall be re-vegetated with native vegetation, as well as any other appropriate and necessary erosion control measures.

The Applicant's failure to re-vegetate this disturbed area constitutes a violation on the property. Moreover, the County's approval of the proposed irrigation well and "pit" violate the County's Condition 27 in approving the residential development on the property. As stated in the Agreement to Implement a Mitigation Monitoring and Reporting Plan recorded on the property on October 4, 2004, such conditions are binding on the owner and successors in interest. Thus, the Applicant is required to comply with these conditions.

Moreover, Applicant has recently removed a number of large trees on Applicant's property, which is nowhere described in the project description, nor in the County's analysis. Appellants are unable to locate any tree removal permits approved by the County for this tree removal. Therefore, violations do exist on Applicant's property, and applicant's unauthorized tree removal violates Sections 20.146.060 of the Coastal Implementation Plan for the Carmel Area Land Use Plan.

Findings No. 6 concludes that the project is categorically exempt from CEQA. Again, the evidence reveals that the proposed project will result in significant adverse impacts to biological resources, and to public health and safety. The proposed irrigation well jeopardizes the capacity of the Carmel Riviera water system, such that the water company may not be able to serve its customers, and meet fire emergency supply needs. Moreover, the "pit" proposed by Applicant is located directly uphill of the water system facilities. As shown by the map prepared by Bierman Hydrogeologic submitted by the Applicant to the County, the natural drainage shows that debris from the pit will drain and clog the seasonable drainage, and directly impact Carmel Riviera's existing wells. The Bierman report fails to identify the gravity of these impacts by only showing one of Carmel Riviera's wells in this area. Carmel Riviera owns two other wells and also has its

treatment facility between the Applicant property and the further well illustrated on the Bierman map. The Applicant's omission of this information is misleading, and attempts to circumvent CEQA review of the project. An EIR is required for this project, which must properly analyze the deleterious effects the proposed irrigation well on Carmel Riviera Mutual Water Company's water system facilities, and corresponding impacts to public health and safety. In addition to these CEQA violations, the proposed project violates Section 20.146.050. In particular the proposed "pit", will violate Section 21.146.050(E)(2) which prohibits all dumping of spoils into drainage courses.

In addition to the County's failure to analyze hydrologic related impacts, the County also failed to assess geologic related impacts. The project site is known to have geologic concerns. A landslide occurred on Applicant's property years ago, which destroyed Carmel Riviera water system facilities. The County must prepare and EIR, which fully analyze the geologic impacts of drilling a well on the Applicant property and Applicant's proposed leach lines in such close proximity to Carmel Riviera's wells under CEQA. The Applicant's proposes to develop a leach line expansion, which will destabilize the ground directly above Carmel Riviera's water system facilities. The proposed project violates Section 20.146.050, including but not limited to 20.146.050E.3 and E.4, and Section 20.146.080.

Finding No. 7 concludes that the subject project avoids ESHA habitat, which is incorrect. One of the project maps contained within the Bierman report submitted by the Applicant reveals a proposed expansion of a leach field located within ESHA. The County failed to include this proposed leach field in the project description in violation of CEQA. This proposed development will result in significant adverse impacts to ESHA, which must be analyzed under CEQA. Moreover, the proposed development in ESHA violates Section 20.146.040 and 20.146.110 of the Coastal Implementation Plan, Carmel Area Land Use Policies 2.3.3.1, 2.3.3.2, 2.3.3.6, and 2.3.3.7, as well as Section 30240 of the California Coastal Act. This proposed leach field is also proposed in a designated open space area, in violation of a deed restriction encumbering the project site.

Condition No. 8 approved by the County is unsupported and infeasible. Condition No. 8 requires the Applicant to secure a backflow device from Carmel Riviera Mutual Water Company. Carmel Riviera cannot support any backflow device, or any other proposal which jeopardizes the Carmel Riviera water system. The proposed irrigation well compromises Carmel Riviera's available water supply in both quantity and quality. The County's approval contains no conditions that require the Applicant to conduct any water quality testing of the irrigation well. The County also failed to impose any conditions requiring monitoring and testing of Applicant's well and backflow device. Carmel Riviera will not allow any potential contamination of its system to occur.

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APR 07 2015

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

List of Interested Parties

ATTACHMENT B

Rosen Marc/ Rose Honore
13 Mentone Dr.
Carmel, CA 93923

Alvord Ashely/Alvord John
19 Mentone Dr.
Carmel, CA 93923

Clarke Julian Daniel / Boles Anna
3 Mentone Dr.
Carmel, CA 93923

Williams
18 Mentone Dr.
Carmel, CA 93923

Cohen Richard/ Mc Cool Jan
12 Mentone Dr.
Carmel, CA 93923

McGrath Maureen / Gibbons Maureen
6047 Ponca Ct.
San Diego, CA 92120

Lewis Theodore / Lewis Ann
15 Mentone Dr.
Carmel, CA 93923

Sierra Asset Servicing LLC
30772 San Remo Rd
Carmel, CA 93923

Carmel Riviera Mutual Water Company
PO Box 22288
Carmel, CA 93922

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

Mal Paso-Mentone-San Remo
Mutual Land
Owners Assn Inc
14 Mentone Rd
Carmel, CA 93923

Kraft Gregory J. & Teresa L
25 Mentone Rd.
Carmel, CA 93923

Cisar Vincent S TR
30 Mentone Dr
Carmel, CA 93923

Risko Henry Richard &
Shelley Thompson Risko
20 Mentone Dr.
Carmel, CA 93923

Dennis Steven J &
Sona M
24 Mentone Rd
Carmel, CA 93923

Keig Daniel J.
200 Crest Rd
Carmel, CA 93923

Monterey County Land Watch
Attn: Amy White
150 Cayuga # 11
Salinas, CA 93901

Law Office of Michael Stamp
Attn: Molly Erickson
479 Pacific Street, Suite 1
Monterey, CA 93940

243-191-040-000
MAL PASO-MENTONE-SAN REMO
MUTUAL LAND
OWNERS ASSN INC
14 MENTONE RD
CARMEL CA 93923-9741

243-201-009-000
KRAFT GREGORY J & TERESA L
KRAFT TRS
25 MENTONE RD
CARMEL CA 93923-9761

243-201-013-000
CISAR VINCENT S TR
30 MENTONE DR
CARMEL CA 93923

243-193-031-000
20 MENTONE DR
CARMEL CA 93923

243-201-010-000
28 MENTONE DR
CARMEL CA 93923

243-193-031-000
RISKO HENRY RICHARD &
SHELLEY THOMPSON RISKO TRS
20 MENTONE RD
CARMEL CA 93923-9761

243-201-010-000
BUSSINGER ROBERT E TR
28 MENTONE DR
CARMEL CA 93923-9761

243-201-008-000
24 MENTONE DR
CARMEL CA 93923

243-201-013-000
30 MENTONE DR
CARMEL CA 93923

243-201-008-000
DENNIS STEVEN J & SONA M TRS
24 MENTONE RD
CARMEL CA 93923-9741

243-201-012-000
KEIG DANIEL J TR
200 CREST RD
CARMEL CA 93923-9744

243-201-009-000
25 MENTONE DR
CARMEL CA 93923

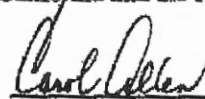
PLN140469
300 FOOT LABELS

AFFIDAVIT OF MAILING FOR PUBLIC HEARING NOTICES

On *January 21, 2015* true copy of the following document: *PLN140469 - Cisar* to the interested parties to said action by the following means:

- [**] (BY MAIL) By placing a true copy thereof, enclosed in a sealed envelope, for collection and mailing on that date following ordinary business practices, in the United States Mail at the Resource Management Agency Planning Department, 168 W. Alisal Street, 2nd Floor, Salinas, California, addressed as shown below. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing.
- [X] (BY EMAIL) By causing a true copy thereof, to be sent via electronic mail or via website link.
- [] (BY CUSTOMER PICK-UP) By causing a true copy thereof, enclosed in a sealed envelope, to be hand-delivered.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on *January 21, 2015* at *Salinas, California*.


Signature

Margaret Robbins MM Robbins@comcast.net	Hugh Rutt hughrutt@aol.com
Carl Pelkey carlp@ausonito.com	Christine Williams cvalanduse@gmail.com
Sarah Hausserman (PC ONLY) chomense@yahoo.com	Sara Rubin sara@mcweekly.com
Gillian Taylor gtaylor13@gmail.com	Office@mscbctc.com
Margie Kay MARGIE17K@aol.com	drnelson@aol.com
Michael Weaver michaelrweaver@mac.com	United Brotherhood of Carpenters and Joiners of America ehipolito@ncrc.org
John Farrow jfarrow@mrwofficeassociates.com	Janet Brennan janetb@montereybay.com
Law Offices of Michael Stamp Erickson@stamplaw.us	Monterey County Land Watch awhite@mclo.org
**COASTAL PROJECTS ONLY CA Coastal Commission Central Coast District Office 725 Front Street, Suite 300 Santa Cruz CA 95060	**See Attached List

Revised July 8, 2014

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Notice of Appeal filed
with
County of Monterey

ATTACHMENT



NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

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MONTEREY COUNTY

2015 APR -6 PM 5: 02

CLERK OF THE BOARD

DA DEPUTY
Received

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before 3/19/15 days after written notice of the decision has been mailed to the applicant).

Date of decision 3/19/15

1. Please give the following information:

- a) Your name Carmel Riviera Mutual Water Company c/o Jacqueline Zischke Esq.
b) Address PO Box 1115 City Salinas Zip 93902
c) Phone Number 831-761-8714

2. Indicate your interest in the decision by checking the appropriate box:

- ☐ Applicant
☐ Neighbor
☒ Other (please state) Owner and water service provider whose ability to provide water service will be significantly affected by the project.

3. If you are not the applicant, please give the applicant's name:

Vincent S. Cisar

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

5.

File Number	Type of Application	Area
-------------	---------------------	------

- a) Planning Commission: _____
b) Zoning Administrator: PL N140469 Combined Development Permit Carmel
c) Subdivision Committee: _____
d) Administrative Permit: _____

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APR 07 2015

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Exhibit 5
A-3-MCO-15-0023
16 of 25

Jacqueline M. Zischke, Attorney at Law
A Professional Corporation
PO Box 1115
Salinas, California 93902

P: 831/761-8714
F: 1-888-385-9198
jzischkelaw@charter.net

April 6, 2015

Clerk of the Board of Supervisors
County of Monterey,
168 West Alisal St.
1st Floor
Salinas CA 93901

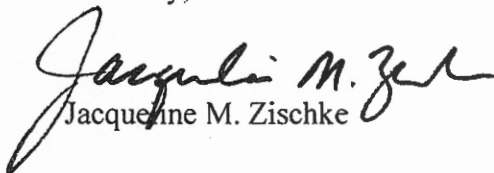
Re: Combined Development Permit PLN140469. (Vincent S. Cisar Tr.)

Dear Clerk of the Board of Supervisors,

Attached is an appeal on the Zoning Administrator's approval of PLN140469 dated February 12, 2015.

We request that the Board set a public hearing on this appeal sometime after April 16th, 2015 due to conflicts in the schedule of the Appellant.

Sincerely,


Jacqueline M. Zischke

cc:

Zoning Administrator, Jacqueline R. Onciano
County of Monterey,
168 West Alisal St.
2nd Floor
Salinas CA 93901



NOTICE OF APPEAL

Monterey County Code

Title 19 (Subdivisions)

Title 20 (Zoning)

Title 21 (Zoning)

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before ____ (10 days after written notice of the decision has been mailed to the applicant).*

Date of decision ____.*

1. Please give the following information:

- a) Your name Carmel Riviera Mutual Water Company c/o Jacqueline Zischke Esq.
- b) Address PO Box 1115 City Salinas Zip 93902
- c) Phone Number 831-761-8714

2. Indicate your interest in the decision by checking the appropriate box:

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- ☐ Neighbor
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3. If you are not the applicant, please give the applicant's name:

Vincent S. Cisar

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

- 5.
- | | File Number | Type of Application | Area |
|---------------------------|------------------|------------------------------------|---------------|
| a) Planning Commission: | | | |
| b) Zoning Administrator: | <u>PLN140469</u> | <u>Combined Development Permit</u> | <u>Carmel</u> |
| c) Subdivision Committee: | | | |
| d) Administrative Permit: | | | |

5. What is the nature of your appeal?

- a) Are you appealing the approval ☒ or the denial ☐ of an application? (Check appropriate box)
- b) If you are appealing one or more conditions of approval, list the condition number and state the condition(s) you are appealing. (Attach extra sheets if necessary).
See attached

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for your appeal:

- ☒ There was a lack of fair or impartial hearing; or
- ☒ The findings or decision or conditions are not supported by the evidence; or
- ☒ The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will not accept an application for appeal that is stated in generalities, legal or otherwise. If you are appealing specific conditions, you must list the number of each condition and the basis for your appeal. (Attach extra sheets if necessary).

See attached

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning and Building Inspection). In order to file a valid appeal, you must give specific reasons why you disagree with the findings made. (Attach extra sheets if necessary).

See attached

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning Department will provide you with a mailing list.

9. Your appeal is accepted when the Clerk to the Board's Office accepts the appeal as complete on its face, receives the filing fee \$_____ and stamped addressed envelopes.

APPELLANT SIGNATURE

Richard Cain, Chairman

DATE April 6, 2015

ACCEPTED _____

(Clerk to the Board)

DATE _____

Attachment A

NOTICE OF APPEAL

By this appeal Carmel Riviera Mutual Water Company challenges the Zoning Administrator's action on February 12, 2015 approving the application of Vincent Cisar Trust (Applicant) for a Combined Development Permit for an irrigation well, and development within 100 feet of environmentally sensitive habitat. (PLN140469)

The County's approval of the Applicant's proposed irrigation well, if allowed to proceed, will have a significant adverse impact on Carmel Riviera Mutual Water Company's wells and water system facilities and jeopardize Carmel Riviera's ability to serve its existing customers within its service area.

The administrative record reveals that the Applicant misrepresented that the water provider for the property was "Carmel Highlands Mutual Water System", and the Applicant also fraudulently stated that the Applicant was subject to rationing requirements necessitating the need for the Applicant's proposed well. Appellant Carmel Riviera Mutual Water Company is the water provider for the project site and to approximately 177 property owners in the community. Contrary to the Applicant's assertions, the Carmel Riviera Mutual Water Company has not imposed water rationing requirements on its customers. Rather, Carmel Riviera Mutual Water Company has a tiered rate structure, which is intended to promote conservation. Such tiered rates are especially important in these times of drought.

Denial of a Fair and Impartial Hearing. Carmel Riviera Mutual Water Company was denied a fair and impartial hearing. The County failed to provide public notice as required by Monterey County Code Section 20.84.040. As such, Carmel Riviera Mutual Water Company was deprived the opportunity to participate in the County proceedings on this project.

The County failed to comply with the requirements of Monterey County Code Section 20.84.040A.2, which required mailed notice of the February 12, 2015 Zoning Administrator hearing to Carmel Riviera Mutual Water Company. The Carmel Riviera Mutual Water Company provides water service to the Applicant's property. The Carmel Riviera's water service to the Applicant's property, as well as all other properties in the Carmel Riviera Mutual Water Company service area will be significantly and adversely affected by the Applicant's proposed irrigation well.

The County also failed to mail notice of the Zoning Administrator hearing to all owners within 300 feet of the Applicant project site in violation of County Code Section 20.84.040.A.3. The County failed to mail notice to Carmel Riviera Mutual Water Company who owns wells and other water system facilities on property located adjacent to Applicant's property. The County

also failed to mail notice to a number of additional property owners whose water service will be jeopardized by the proposed project. The County's proof of mailing reveals that the attached properties located within 300 feet of the Applicant property were not provided with notice. (See Attachment A-1)

The Applicant failed to post notice of the Zoning Administrator hearing in violation of Section 20.84.040A.4. The Applicant failed to clearly post notice at three different public places on and near the Applicant property. None of the three notices posted by the Applicant were either accessible or visible to the public. As shown by the Applicant affidavit of posting, each of the notices posted were located on private property inaccessible to the public. Each of the notices were posted in areas that could only be accessed by private roads, in areas marked by no trespassing signs.

The findings, decision and conditions are not supported by the evidence, and are contrary to law. Carmel Riviera Mutual Water Company challenges each of the Zoning Administrator findings and conclusions on the grounds that they are contrary to law, and unsupported by substantial evidence. The County failed to conduct any analysis of the project's impacts to Carmel Riviera's water system wells, which are located in very close proximity to the proposed irrigation well. The proposed irrigation well will interfere with Carmel Riviera Water Company's well production and system operations, affecting its potable water service to its customers. Therefore, the proposed project will have a significant adverse impact to public health and safety. The proposed project's interference with the existing water supply needs of Carmel Riviera's customers will not only negatively affect the domestic water supply needs of Carmel Riviera's customers, but also jeopardize the communities' fire emergency water supply.

Finding No. 1 includes a project description determination, which is inadequate. The project description contained in Finding No. 1 inaccurately describes the project as involving the proposed irrigation well, and development located within 100 feet of environmentally sensitive habitat ("ESHA"). This project description fails to include the Applicant's proposed expansion of a leach field, which is located within ESHA. This aspect of the Applicant's proposed development is nowhere included in the County's project description and is hidden in a figure within the Bierman Hydrogeologic study. The County failed to analyze the impacts of this extended leach line located *within* ESHA. The County's failure to accurately describe the proposed project denied the public a fair and impartial hearing, violates CEQA Guidelines Sections 15124 and 15378, and violates Carmel Area Land Use Policies 2.3.3.1, 2.3.3.2, 2.3.3.6, and 2.3.3.7, as well as Section 30240 of the California Coastal Act.

Finding No. 2 incorrectly concludes that the Project complies with applicable policies and ordinances under the County General Plan, Land Use Plan and Coastal Implementation Plan.

The proposed project is inconsistent with Carmel Area Land Use Plan Policies 2.4.4.A.2, and 2.4.4.A.6. The Applicant failed to demonstrate the "water supply available to meet the minimum

needs of existing users during the driest year” as required by Section 2.4.4.A.2. Instead, the Applicant misrepresented the mutual water system serving the community as the “Carmel Highlands Mutual Water System”, and also misrepresented that Applicant was subject to rationing requirements by Applicant’s water service provider. The Carmel Riviera Mutual Water Company, which supplies water to the project site and to approximately 177 property owners in the community, has not imposed water rationing requirements on its customers. Rather, Carmel Riviera Mutual Water Company has a tiered rate structure, which is intended to promote conservation. Such tiered rates are especially important in these times of drought. The applicant’s proposed irrigation well will adversely impact Carmel Riviera’s water supply in these times of drought. The applicant failed to demonstrate, and the County failed to analyze the minimum needs of its existing users during this drought. Instead, the County’s approval, if allowed to proceed, would provide a means for the Applicant to avoid conservation and threaten the water supply needs of Carmel Riviera’s customers. The County’s approval also violates Policy 2.4.4.A.6 of the Carmel Area Land Use Plan and Section 20.146.050 of the Coastal Implementation Plan by promoting water waste during this time of drought, and ignoring the needs for drought-tolerant landscaping.

Finding No. 3 concludes that the site is physically suitable for the use proposed. This finding is again both factually and legally inaccurate. The proposed irrigation well is sited just above Carmel Riviera’s wells and water system facilities. The proposed irrigation well threatens Carmel Riviera’s ability to provide water service to not only the Applicant property, but also to all customers in Carmel Riviera’s service area. The Applicant’s property is also not suitable for the additional leach lines proposed to be developed in ESHA.

Finding No. 4 concludes that the project will not be detrimental to the health and safety of persons either residing or working in the neighborhood. To the contrary, the proposed irrigation well poses an immediate threat to the health and safety of persons who obtain their water supply from the Carmel Riviera Mutual Water Company. The system operations of the Carmel Riviera Mutual Water Company are sited in close proximity to the applicant’s proposed irrigation well, and diversions from the proposed irrigation well will have a deleterious effect on Carmel Riviera’s pumping from the wells within its water system.

Finding No. 5 concludes that no violations exist on the property, which is incorrect. The proposed well site and pit are located in a disturbed area on the site, which was previously disturbed as a result of the development of the residence on the site. County conditions of approval for the development of the residence on the site required any areas disturbed by such construction that were not used for structures, parking and hardscape to be re-vegetated with native vegetation.

Condition 27 of the County’s prior approval of the residence on the project site states:

To avoid unnecessary impacts to native vegetation, where possible, native vegetation on the property in areas not needed for structures, parking and hardscape, shall be left intact. Prior to occupancy, a landscape plan consistent with the Monterey County regulations shall be submitted to and approved by the Director of Planning & Building Inspection. Any areas disturbed by construction shall be re-vegetated with native vegetation, as well as any other appropriate and necessary erosion control measures.

The Applicant's failure to re-vegetate this disturbed area constitutes a violation on the property. Moreover, the County's approval of the proposed irrigation well and "pit" violate the County's Condition 27 in approving the residential development on the property. As stated in the Agreement to Implement a Mitigation Monitoring and Reporting Plan recorded on the property on October 4, 2004, such conditions are binding on the owner and successors in interest. Thus, the Applicant is required to comply with these conditions.

Moreover, Applicant has recently removed a number of large trees on Applicant's property, which is nowhere described in the project description, nor in the County's analysis. Appellants are unable to locate any tree removal permits approved by the County for this tree removal. Therefore, violations do exist on Applicant's property, and applicant's unauthorized tree removal violates Sections 20.146.060 of the Coastal Implementation Plan for the Carmel Area Land Use Plan.

Findings No. 6 concludes that the project is categorically exempt from CEQA. Again, the evidence reveals that the proposed project will result in significant adverse impacts to biological resources, and to public health and safety. The proposed irrigation well jeopardizes the capacity of the Carmel Riviera water system, such that the water company may not be able to serve its customers, and meet fire emergency supply needs. Moreover, the "pit" proposed by Applicant is located directly uphill of the water system facilities. As shown by the map prepared by Bierman Hydrogeologic submitted by the Applicant to the County, the natural drainage shows that debris from the pit will drain and clog the seasonable drainage, and directly impact Carmel Riviera's existing wells. The Bierman report fails to identify the gravity of these impacts by only showing one of Carmel Riviera's wells in this area. Carmel Riviera owns two other wells and also has its treatment facility between the Applicant property and the further well illustrated on the Bierman map. The Applicant's omission of this information is misleading, and attempts to circumvent CEQA review of the project. An EIR is required for this project, which must properly analyze the deleterious effects the proposed irrigation well on Carmel Riviera Mutual Water Company's water system facilities, and corresponding impacts to public health and safety. In addition to these CEQA violations, the proposed project violates Section 20.146.050. In particular the proposed "pit", will violate Section 21.146.050(E)(2) which prohibits all dumping of spoils into drainage courses.

In addition to the County's failure to analyze hydrologic related impacts, the County also failed to assess geologic related impacts. The project site is known to have geologic concerns. A

landslide occurred on Applicant's property years ago, which destroyed Carmel Riviera water system facilities. The County must prepare and EIR, which fully analyze the geologic impacts of drilling a well on the Applicant property and Applicant's proposed leach lines in such close proximity to Carmel Riviera's wells under CEQA. The Applicant's proposes to develop a leach line expansion, which will destabilize the ground directly above Carmel Riviera's water system facilities. The proposed project violates Section 20.146.050, including but not limited to 20.146.050E.3 and E.4, and Section 20.146.080.

Finding No. 7 concludes that the subject project avoids ESHA habitat, which is incorrect. One of the project maps contained within the Bierman report submitted by the Applicant reveals a proposed expansion of a leach field located within ESHA. The County failed to include this proposed leach field in the project description in violation of CEQA. This proposed development will result in significant adverse impacts to ESHA, which must be analyzed under CEQA. Moreover, the proposed development in ESHA violates Section 20.146.040 and 20.146.110 of the Coastal Implementation Plan, Carmel Area Land Use Policies 2.3.3.1, 2.3.3.2, 2.3.3.6, and 2.3.3.7, as well as Section 30240 of the California Coastal Act. This proposed leach field is also proposed in a designated open space area, in violation of a deed restriction encumbering the project site. (See Deed Restriction Revised recorded February 17, 2004 at Document No. 2004014096 attached as Exhibit A-2)

Condition No. 8 approved by the County is unsupported and infeasible. Condition No. 8 requires the Applicant to secure a backflow device from Carmel Riviera Mutual Water Company. Carmel Riviera cannot support any backflow device, or any other proposal which jeopardizes the Carmel Riviera water system. The proposed irrigation well compromises Carmel Riviera's available water supply in both quantity and quality. The County's approval contains no conditions that require the Applicant to conduct any water quality testing of the irrigation well. The County also failed to impose any conditions requiring monitoring and testing of Applicant's well and backflow device. Carmel Riviera will not allow any potential contamination of its system to occur.

Property Owners within 300 feet of Applicant property not provided with public notice of February 12, 2015 meeting.

243-193-028	Rosen Marc/Rosen Honore	13 Mentone Dr.
243-193-003	Alvord Ashely/Alvord John	19 Mentone Dr.
243-193-002	Williams 2002 Trust	18 Mentone Dr.
243-193-026	Cohen Richard/Mc Cool Jan	12 Mentone Dr.
243-193-027	Clarke Julian Daniel/Boles Anna	3 Mentone Dr.
243-193-012	Mc Grath Maureen/Gibbons Maureen	Mentone Dr.
243-193-013	Lewis Theodore/Lewis Ann	15 Mentone Dr.
243-194-024	30772 San Remo Rd	Sierra Asset Servicing LLC
	Carmel Riviera Mutual Water Company	PO Box 22288, Carmel CA 93922

EXHIBIT A-1

Applicable Implementation Plan Section

1. Improper Noticing of County Action

Carmel Area IP Section 20.84.040.A.2.

Notice of the public hearing shall be mailed or delivered at least 10 days prior to the public hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.

Carmel Area IP Section 20.84.040.A.3.

Notice of public hearing shall be mailed or delivered at least 10 days prior to the public hearing to all owners and legal residents of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the public hearing, and all persons who have requested, in writing, notices relating to coastal permits, the Coastal Commission, and interested public agencies. For development on parcels in excess of 100 acres where development is proposed on a small portion of the parcel and notice to property owners and legal residents within 300 feet from all property boundaries is determined to be unreasonable by the Director of Planning and Building Inspection, notice shall be provided to property owners and legal residents within 300 feet of the development envelope and to properties in the vicinity of the development which the Director of Planning and Building Inspection determines to be affected by the development. Addresses shall be used from the last equalized assessment roll.

Carmel Area IP Section 20.84.040.A.4.

At least 3 public hearing notices shall be clearly posted at 3 different public places on and near the subject property. The notices shall be accessible and visible to the public. At least ten days prior to the first scheduled public hearing the applicant shall post or cause to be posted in conspicuous places on and off-site three notices of public hearing as provided by the Planning and Building Inspection Department. An affidavit of posting will be provided to the applicant by the Planning and Building Inspection Department. The applicant shall complete and return the affidavit to the Department at the time posting is accomplished. The affidavit shall serve as evidence of posting. Failure to post or to provide evidence of posting shall constitute grounds for suspension or continuance of the permit process.

2. Water Supply and Intensification of Water Use

Carmel Area LUP Section 2.4.4.A.2.

As part of the permit process, the applicant must also demonstrate that the proposed new water use or use intensification will not adversely affect both the natural supply necessary to maintain the environment, including wildlife, fish, and plant communities, and the supply available to meet the minimum needs of existing users during the driest year. At the County's

discretion, the applicant may be required to support his application through certification by a consultant deemed qualified by the County to make such determinations. The County will request that the Department of Fish and Game provide a written recommendation on each application.

Carmel Area LUP Section 2.4.4.A.6.

Water conservation devices shall be required in conjunction with new development. Drought tolerant landscaping should be required where appropriate. Construction of roads and driveways with pervious surfaces shall be encouraged where appropriate.

Monterey County IP Section 20.146.050

The intent of this section is to protect the water quality of the Carmel area's coastal streams, Point Lobos and Carmel Bay areas of Special Biological Significance. Instream flows shall be protected in order to maintain the natural plant, fish and wildlife communities. To fulfill this goal, the County will require adherence to the principles which insure the best watershed protection including: adequate setbacks from streams, stream setbacks, stream flow maintenance, performance controls for development site features, maintenance of water quality, protection of natural vegetation along streams and control of grading to minimize erosion and sedimentation.

The effects of all new development proposals or intensification of land use activities or water uses on the natural character and values of the Carmel area coasts and streams will be specifically considered in all land use decisions. Subjects to be addressed in such evaluations include protection of water quantity and quality, wildlife and fish habitat, and recreational and scenic values. (Ref. Policy 2.4.3.1 Water and Marine Resources).

Monterey County IP Section 20.146.050.A.1

A hydrologic report shall be required for any development which involves intensification of water use. Applicants are required to submit a hydrologic report certifying such impacts as: sustained yield of the water source to serve new development outside of existing water utility service areas and/or that the proposed new water use or use intensification will not adversely affect either the natural supply necessary to maintain the environment, including wildlife, fish and plant communities or the supply available to existing users during the driest year (Ref. Policy 2.4.4.A.1 & 2 Water Availability).

This report must be prepared by a qualified registered hydrologist. Contents of the report must indicate:

- a) location map;*
- b) to-scale plot plan showing the entire parcel and proposed and existing structures, roads, land use, landscaping, wells and water lines and hydrologic and drainage features;*
- c) description of how water is currently supplied and how it will be supplied to the proposed development;*
- d) expected yield of the water source to serve the proposed development;*

- e) *assessment of existing and proposed water usage, including water usage for landscaped and other vegetated areas;*
- f) *description of hydrologic setting and features on the parcel and in the area and for areas presently cultivated or proposed for cultivation;*
- g) *description of investigation methods – including review of well logs, on-site and off-site testing and contacts with Health Department and Flood Control District staff;*
- h) *description of other development activity in the area, both proposed and under construction;*
- i) *assessment of the individual and cumulative impacts of the proposed development on the quantity and quality of the groundwater table and local aquifer;*
- j) *any modifications, additions or mitigations necessary for the proposed development to achieve adequate water supply for the project. If an adequate amount of water cannot be supplied, this must also be stated.*
- k) *assessment of the proposed development's individual and cumulative impact on the aquifers; safe long-term yield level, saltwater intrusion and long-term maintenance of local water supplies;*
- l) *demonstration that the new water use or use intensification will not adversely affect either the natural supply necessary to maintain the environment, including wildlife, fish and plant communities or the supply available to existing users during the driest year,*
- m) *description and assessment of project alternatives including reduced density, if needed to mitigate the proposed development's adverse impacts as identified above and;*
- n) *recommendations for water conservation measures, addressing siting, construction and landscaping and including' retention of water on-site to maximize groundwater recharge and reclamation of water.*

Monterey County IP Section 20.146.050.E.1.a

New development shall be approved only where it can be demonstrated by the applicant that adequate water is available from a water utility or community system or an acceptable surface water diversion, spring, or well. (Ref. Policy 2.4.4.A.1 Water Availability).

Monterey County IP Section 20.146.050.E.1.d.

Water conservation devices shall be required in conjunction with new development. Drought –tolerant landscaping is required where appropriate (Re. Policy 2.4.4.A.6 Water Availability).

3. Environmentally Sensitive Habitat Area (ESHA)

Carmel Area LUP Section 2.3.1 (in relevant part):

Environmentally sensitive habitat areas are areas in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem. These include rare, endangered, or threatened species and their habitats...

The Carmel Coastal Segment supports a variety of rare, endangered, or sensitive terrestrial species and habitats: riparian corridors, ... significant stands of Monterey pine, ... and dwarf coastal chaparral. These environmentally sensitive habitats should be protected for a variety of reasons: their high scientific and educational values, their scenic values, their high wildlife values, and/or their importance in watershed protection...

Carmel Area LUP Section 2.3.3.1 (in relevant part):

Development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall be avoided in critical and sensitive habitat areas, riparian corridors, wetlands, sites of known rare and endangered species of plants and animals, rookeries and major roosting and haul-out sites, and other wildlife breeding or nursery areas identified as critical. Resource-dependent uses, including nature education and research, hunting, fishing, and aquaculture, shall be allowed within environmentally sensitive habitats and only if such uses will not cause significant disruption of habitat values. Only small-scale development necessary to support the resource-dependent uses may be located in sensitive habitat areas if they cannot feasibly be located elsewhere...

Carmel Area LUP Section 2.3.3.2 (in relevant part):

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

Carmel Area LUP Section 2.3.3.6

The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitat areas where development is proposed on parcels containing such habitats. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.

Carmel Area LUP Section 2.3.3.7

Where development is permitted in or adjacent to environmentally sensitive habitat areas, the County, through the development review process, shall restrict the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) to that needed for the structural improvements themselves.

4. Erosion Control and Geologic Impacts

Monterey County IP Section 20.146.050.E.4:

- a. *An erosion control plan shall be required for the following types of development:*
 1. *diking, dredging, filling and construction activities within shoreline, estuary and wetland areas;*
 2. *Any devilmment with the potential to create significant erosion or drainage impacts and;*
 3. *any development located in "MDR" (Medium Density Residential) or "VSC" , (Visitor-Serving Commercial)*
- b. *The Erosion Control Plan shall be required, submitted and approved by the Planning Department prior to the application being determined complete.*
- c. *The Erosion Control Plan shall be prepared by a registered civil engineer or soils engineer, at the applicants1 expense. A minimum of 5 copies shall be submitted.*
- d. *The Erosion Control Plan shall be reviewed by the Planning Department, Building Inspection Director, Soil Conservation Service, Monterey County Resource Conservation District and other departments or agencies appropriate for the specific project. A copy of the submitted plan shall be sent to each reviewing agency by the Planning Department with comments requested from the specific agencies by a specified date. After comments have been received, the Planning Department, may require that the plan be revised to include additional information or assessment as deemed necessary by the reviewing agencies. A third party review, by a civil engineer or soils engineer and at the applicants expense, may also be required. All departmental review, plan revisions and third party review must be complete before the plan may be approved by the Director of Planning.*
- e. *The Erosion Control Plan shall contain, at a minimum, the following elements:*
 1. *location map;*
 2. *to-scale plot plan, showing the entire parcel and existing and proposed structures, roads, fencing, vegetation removal, landscaping, livestock areas and drainage and hydrologic features;*
 3. *map showing contours and areas of the parcel with slopes of 0%-10%; 10%-25% and over 25%;*
 4. *map showing soil types and erosion potential hazards according to soil type;*
 5. *to-scale grading plan delineating existing contours, proposed finished contours, proposed finished contours, areas of cut and fill, areas of vegetation clearance and disturbance during construction and crosssections, with the plan being of sufficient scale and contour interval to clearly delineate the proposed grading;*
 6. *description and assessment of potential erosion and drainage impacts from the proposed development with a depiction on a map where appropriate;*
 7. *detailed plans of all surface and subsurface drainage devices, dams, channels and other drainage devices to be constructed as a part of the proposed development, Include measures to retain stormwater runoff resulting from a 20-year recurrence interval storm. All proposed measures must be consistent with the resource protection standards of this ordinance and the Carmel Area Land Use Plan and with the provisions of the Erosion Control Ordinance (Monterey County Code Chapter 16.12);*
 8. *detailed plans of all erosion control devices and measures to be implemented as part of the development, including landscaping and revegetation of bare ground resulting from the proposed development and measures to assure that the plantings will maintain a continuous vegetative cover throughout the year;*
 9. *an assessment of the amount of land disturbance (or bare ground) created or reduced as a result of the proposed development.*

10. In addition to the requirements contained in the Erosion Control ordinance, the following criteria must also be followed in the Carmel Area:

- a. All grading requiring a County permit which occurs on slopes steeper than 15 percent shall be restricted to the dry season of the year (Ref. Policy 2.4.4.C.1 Erosion and Sedimentation Control).*
- b. For necessary grading operations, the smallest practical area of land shall be exposed at any one time during development, and the length of exposure shall be kept to the shortest practicable amount of time (Ref. Policy 2.4.4.C.2 Erosion and Sedimentation Control).*
- c. Sediment basins (e.g., debris basins, desilting basins, or silt traps) shall be installed in conjunction with the initial grading operations and maintained through the development process to remove sediment and runoff waters. All sediment shall be retained on-site (Ref. Policy 2.4.4. C. 3 Erosion and Sedimentation Control).*
- d. The native vegetation cover, temporary vegetation, seeding, mulching, or other suitable stabilization methods shall be used to protect soils subject to erosion that have been disturbed during grading or development. All cut and fill slopes shall be stabilized as soon as possible with planting of native annual grasses and shrubs, appropriate non-native plants, or with approved landscaping practices (Ref. Policy 2.4.4.C.4 Erosion and Sedimentation Control).*
- e. on-site drainage devices shall be designed to accommodate increased runoff resulting from site modification. Where determined appropriate by County departments such as Health, Building Inspection or Flood Control, on-site retention of stormwater is required (Ref. Policy 2.4.4.C.5 Erosion and Sedimentation Control).*

Monterey County IP Section 20.146.080 (in relevant part):

B. Geologic Hazards

1. Geologic Report Requirement

- b. Regardless of a parcel's seismic hazard zone, a geologic report shall also be required for any development project located in the following areas:*
 - 6) in any area of known or suspected geologic hazards.*

5. Condition 8

Monterey County IP Section 20.70.050.B (in relevant part):

In order to grant any Coastal Development Permit, the findings of the Appropriate Authority shall be:

- 1) The establishment, maintenance, or operation of the use or structure applied for will not, under the circumstances of the particular case, be detrimental to 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 improvement in the neighborhood, or to the general welfare of the County.

- 2) The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of this Title and any zoning violation abatement costs have been paid*

to access the environmental documents related to a project, go to the Quick Link "Citizen Access - Look up Permits On-line" at <https://acaslc.accela.com/monterey/default.aspx>

Monterey County offices will be closed February 16, 2015 in observance of President's Day,

**MONTEREY COUNTY**

RESOURCE MANAGEMENT AGENCY - PLANNING
168 West Alisal Street, 2nd Floor, Salinas, CA 93901
(831) 757-5025; Fax (831) 757-9516

Affidavit of Posting Information

Date: January 28, 2015

PROJECT FILE NUMBER: PLN140469

PROJECT TITLE: CISAR VINCENT S TR

PROJECT LOCATION: 30 MENTONE DRIVE CARMEL

Dear Applicant:

THREE NOTICES MUST BE POSTED ON OR BEFORE MONDAY, FEBRUARY 2, 2015 BY 5:00 P.M.

A public hearing on the above referenced project has been scheduled for Thursday, February 12, 2015 at 10:20 a.m. before the Zoning Administrator. The meeting will be held in the Monterey County Board of Supervisors' Chambers, which is located in the Monterey County Government Center at 168 West Alisal Street, at Capitol Street in Salinas. It is recommended that you or a representative appear at the meeting.

Please post three of the attached "Notice of Public Hearing" forms. These notices must be posted on and near the project site in places that they may be read by the public. These notices must be posted on or before Monday, February 12, 2015 by 5:00 p.m. Please remove the public notices after the public hearing process.

Below is an "Affidavit of Posting" which must be filled out and returned to the Planning Department on or before Friday, February 6, 2015. A FAXed copy is acceptable. Our FAX number is (831) 757-9516. You can also email the completed form to: allenc@ca.monterey.ca.us. A copy of this form is enclosed for your records.

If you do not post the three "Notice of Public Hearing" forms and return the completed "Affidavit of Posting" form by the specified dates, your application may be continued or denied.

**Affidavit of Posting for Zoning Administrator
(PLN140469; Cisar)**

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE THREE NOTICES OF PUBLIC HEARING FORMS WERE POSTED BY ME ON 2/2/2015 AT THE LOCATIONS DESCRIBED BELOW.

(Date)

1. On Red door of pumphouse
2. On pillar of gate entrance
3. On side of house near garage

Applicant's Signature: [Signature]

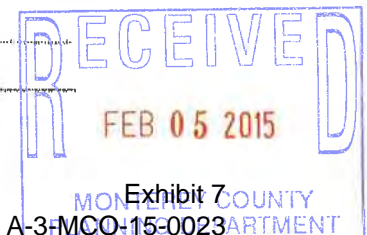


Exhibit 7

MONTEREY COUNTY
A-3-MCO-15-0023ARTMENT

Name (print)

Jim Storer

Address:

30 Mentone Dr

City/Zip:

Carmel 93923

Telephone:

831 624 3121

Executed At:

Sheraton Tokalounge 2/4/15

Please return to Carol Allen, Monterey County Planning Department, 168 W. Alisal Street, 2nd Floor, Salinas, CA 93901;
831.755.5178 or FAX 831.757.9516 or via email allen@co.monterey.ca.us.

I have pictures of the parties that
show where they are posted and the date
and time if you want to see them.



Notice of Public Hearing

Monterey County Zoning Administrator

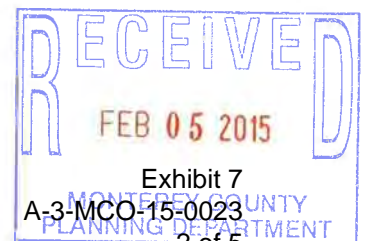
NOTICE IS HEREBY GIVEN that the Monterey County Zoning Administrator, State of California will hold a Public Hearing to consider the project described below. The hearing will be held on **Thursday, February 12, 2015** at the hour of **10:20 a.m.** in the Monterey County Board of Supervisors Chambers, County Government Center, 168 West Alisal St, Salinas, California, at which time and place any and all interested persons may appear and be heard thereon.

Owner:	CISAR VINCENT S TR
Project File No:	PLN140469
Project Location:	30 Mentone Dr, Carmel
Assessor's Parcel No:	243-201-013-000
Permit Type:	Combined Development Permit
Planning Area:	Carmel LUP
Environmental Status:	Categorical Exemption
Project Description:	Combined Development Permit consisting of: 1) Coastal Administrative Permit to allow the construction of an irrigation well; and 2) Coastal Development Permit for development within 100 feet of environmentally sensitive habitat.

IF YOU CHALLENGE THIS MATTER IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS PUBLIC NOTICE OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE APPROPRIATE AUTHORITY AT OR BEFORE THE PUBLIC HEARING

FOR ADDITIONAL INFORMATION CONTACT:

Steve Mason, Project Planner
Monterey County Resource Management Agency-Planning Department
168 West Alisal St, 2nd Floor, Salinas CA, 93901
831-755-5228 or mason@co.monterey.ca.us



Notice of Public Hearing

Monterey County Zoning Administrator

NOTICE IS HEREBY GIVEN that the Monterey County Zoning Administrator, State of California will hold a Public Hearing to consider the project described below. The hearing will be held on **Thursday, February 12, 2015** at the hour of **10:20 a.m.** in the Monterey County Board of Supervisors Chambers, County Government Center, 168 West Alisal St, Salinas, California, at which time and place any and all interested persons may appear and be heard thereon.

Owner:	CISAR VINCENT S TR
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FOR ADDITIONAL INFORMATION CONTACT:

Steve Mason, Project Planner
Monterey County Resource Management Agency-Planning Department
168 West Alisal St, 2nd Floor, Salinas CA, 93901
831-755-5228 or masons@co.monterey.ca.us

AFFIDAVIT OF MAILING FOR PUBLIC HEARING NOTICES

On **January 21, 2015** true copy of the following document: **PLN140469 - Cisar** to the interested parties to said action by the following means:

- [**]** **(BY MAIL)** By placing a true copy thereof, enclosed in a sealed envelope, for collection and mailing on that date following ordinary business practices, in the United States Mail at the Resource Management Agency Planning Department, 168 W. Alisal Street, 2nd Floor, Salinas, California, addressed as shown below. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service, and in the ordinary course of business, correspondence would be deposited with the United States Postal Service the same day it was placed for collection and processing.
- [X]** **(BY EMAIL)** By causing a true copy thereof, to be sent via electronic mail or via website link.
- []** **(BY CUSTOMER PICK-UP)** By causing a true copy thereof, enclosed in a sealed enveloped, to be hand-delivered.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 21, 2015** at Salinas, California.


Signature

Margaret Robbins MM_Robbins@comcast.net	Hugh Rutt hughrutt@aol.com
Carl Pelkey carl@ausonio.com	Christine Williams cvalanduse@gmail.com
Sarah Hausserman (PC ONLY) chomeuse@yahoo.com	Sara Rubin sara@mcweekly.com
Gillian Taylor gtaylor13@gmail.com	Office@mscbetc.com
Margie Kay MARGIE17K@aol.com	drnnelson@aol.com
Michael Weaver michaelrweaver@mac.com	United Brotherhood of Carpenters and Joiners of America ehipolito@nccrc.org
John Farrow jfarrow@mrwolfeassociates.com	Janet Brennan janetb@montereybay.com
Law Offices of Michael Stamp Erickson@stamlaw.us	Monterey County Land Watch awhite@mclw.org
**COASTAL PROJECTS ONLY CA Coastal Commission Central Coast District Office 725 Front Street, Suite 300 Santa Cruz CA 95060	**See Attached List

Revised July 8, 2014

243-191-040-000
MAL PASO-MENTONE-SAN REMO
MUTUAL LAND
WNERS ASSN INC
+ MENTONE RD
CARMEL CA 93923-9741

243-193-031-000
RISKO HENRY RICHARD &
SHELLEY THOMPSON RISKO TRS
20 MENTONE RD
CARMEL CA 93923-9761

243-201-008-000
DENNIS STEVEN J & SONA M TRS
24 MENTONE RD
CARMEL CA 93923-9741

243-201-009-000
KRAFT GREGORY J & TERESA L
KRAFT TRS
25 MENTONE RD
CARMEL CA 93923-9761

243-201-010-000
BUSSINGER ROBERT E TR
28 MENTONE DR
CARMEL CA 93923-9761

243-201-012-000
KEIG DANIEL J TR
200 CREST RD
CARMEL CA 93923-9744

243-201-013-000
CISAR VINCENT S TR
30 MENTONE DR
CARMEL CA 93923

243-193-031-000
20 MENTONE DR
CARMEL CA 93923

243-201-008-000
24 MENTONE DR
CARMEL CA 93923

243-201-009-000
25 MENTONE DR
CARMEL CA 93923

243-201-010-000
28 MENTONE DR
CARMEL CA 93923

243-201-013-000
30 MENTONE DR
CARMEL CA 93923

PLN140469
300 FOOT LABELS



Exhibit 8
A-3-MCO-15-0023
1 of 8



Exhibit 8
A-3-MCO-15-0023
2 of 8



Exhibit 8
A-3-MCO-15-0023
3 of 8

Monterey County Zoning Administrator

Owner:	Chickadee Forest & EIR
Project Title/No:	PS-10000000
Project Location:	30 Wilshire Blvd., Los Angeles
Owner's Parent Co:	(405) 291-4100 ext. 200
Project Type:	Commercial Development/Project
Planning Area:	Central City
Environmental Status:	Designated Environment
Project Description:	Construction of a new office building consisting of 100,000 sq. ft.

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Exhibit 8
A-3-MCO-15-0023
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Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

RLETICIA
10/04/2004
14:15 55

Recording Requested by and
When Recorded, Mail to:
Monterey County Planning and
Building Inspection Department
P.O. Box 1208
Salinas, CA 93902

DOCUMENT: 2004106097



Titles: 1/ Pages: 10

Fees	35.00
Taxes	
Other	2.00
AMT PAID	\$37.00

Space above for Recorder's Use

**AGREEMENT TO
IMPLEMENT A MITIGATION MONITORING and/or REPORTING PLAN**

IN ACCORDANCE with Section 21081.6 of the California Public Resources Code, and Section 15097 of Title 14, Chapter 3 of the California Code of Regulations, this Agreement is made by and between the County of Monterey, a political subdivision of the State of California (herein, "COUNTY"), and REBECCA D. COSTA AND CHARLES R. OLSON (herein "OWNER"), upon the following facts and circumstances:

A. **OWNER** is the owner of certain real property located at Mentone Drive, Carmel, more particularly described in "Exhibit 1", attached hereto and incorporated herein by reference.

B. On 01/08/2003, pursuant to County Resolution No. 03002, subject to the conditions listed therein, the County Planning Commission adopted a Mitigated Negative Declaration, approving a Combined Development Permit, File No. PLN010448, and adopted a Mitigation Monitoring and/or Reporting Plan (hereafter "the Plan"). The Plan is attached hereto as Exhibit 2 and incorporated herein by reference. Resolution No. 03002 is on file in the Department of Planning and Building Inspection.

C. As required by the California Environmental Quality Act, the Owner agrees to implement a Mitigation Monitoring and/or Reporting Plan.

NOW, THEREFORE, in consideration of the Countys above-referenced ADOPTION OF A MITIGATED NEGATIVE DECLARATION and approval of a Combined Development Permit, File No. PLN010448, OWNER agrees as follows:

1. Mitigation Monitoring and/or Reporting Plan. OWNER hereby agrees to implement the Plan attached hereto as Exhibit 2.

1.01 Cost of Monitoring and/or Reporting. At OWNERS sole cost and expense, OWNER shall be responsible for the monitoring and/or reporting as may be required by the Plan.

1.02 Alternative Mitigation Measure(s). If, for any reason, any mitigation measure specified in the Plan cannot be implemented due to factors beyond the control of the Owner and/or County, the Director of the County Department of Planning and Building Inspection may, after good faith negotiation with OWNER, recommend substitution of another mitigation measure at a noticed public hearing before the decision-making body which originally approved the Permit herein.

2. Binding Effect. This Agreement shall be construed as a covenant running with the land and shall bind and benefit COUNTY, its successors and assigns, and OWNER and its successors in interest.

3. Specific Performance. The parties acknowledge that the obligations of OWNER under this AGREEMENT are unique and that, in the event of a breach of this AGREEMENT by Owner, the remedy of damages or any other remedy may be inadequate to fulfill the purpose of this AGREEMENT. Therefore, the parties agree that in addition to any other remedies available to COUNTY, COUNTY shall be entitled to the remedy of specific performance.

4. Severability. In the event any provision of this Agreement is found to be invalid or unenforceable, such determination shall not affect the validity and enforceability of any other provision of this AGREEMENT.

5. Interpretation. It is agreed by the parties that this AGREEMENT has been arrived at through negotiation and neither party is to be deemed the party which prepared this Agreement for the purposes of California Civil Code Section 1654.

6. Amendments. This AGREEMENT may be amended only by a written document signed by the parties.

7. Recordation. Upon execution of this Agreement, the parties shall cause recordation thereof with the Monterey County Records Office.

8. Mitigation Monitoring Fee. Upon execution of this Agreement, the OWNER shall pay the requisite \$840 mitigation monitoring fee, pursuant to the Board adopted fee schedule.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set out opposite their respective signatures.

OWNER(s)

DATED: 03-12-03
03-10-03

Thane Olson
Thane Olson
NAME OF OWNER

DATED: 03-12-03

Charles R. Olson
NAME OF OWNER

STATE OF CALIFORNIA)
COUNTY OF MONTEREY) Contra Costa

On March 12, 2003 before me Carol Diane Stepanovich,
Notary Public, personally appeared Charles R. Olson and Rebecca D. Costa,
personally known to me (or proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in hi/her/their authorized
capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Carol Diane Stepanovich

(Seal)



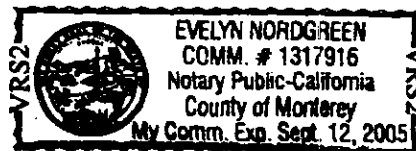
(This Page for County Use Only)

STATE OF CALIFORNIA)
COUNTY OF MONTEREY)

On March 31, 2003 before me, Evelyn Nordgreen,
Notary Public, personally appeared Dale Ellis,
personally known to me (or proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Evelyn Nordgreen (Seal)



COUNTY OF MONTEREY

Dated: 3/31/03

By Dale Ellis
Dale Ellis, Chief of Development Service
Zoning Administrator

Approved as to Form:
County Counsel

By: [Signature]
Deputy County Counsel

Exhibit 1

REEL 3396 PAGE 256

PARCEL 1

PARCEL 2 AS SHOWN ON THAT RECORD OF SURVEY FILED MAY 20, 1956 IN VOLUME 20 OF SURVEYS PAGE 20 IN THE OFFICIAL RECORDS MONTEREY COUNTY CALIFORNIA.

PARCEL 2

A NON-EXCLUSIVE EASEMENT FOR ROAD AND UTILITIES OVER PARCEL 3 AND 4 AS SHOWN AND DESIGNATED ON THAT PARCEL MAP FILED DECEMBER 21, 1993 IN VOLUME 19 OF PARCEL MAPS PAGE 55 OFFICIAL RECORDS MONTEREY COUNTY CALIFORNIA.

END OF DOCUMENT

Exhibit 2

Monterey County Planning & Building Inspection Program for Monitoring or Reporting* on Conditions of Approval

Project Name: <u>OLSON</u>	
File No: <u>PLAN010448</u>	APNs: <u>243-201-013-000</u>
Approval by: <u>Planning Commission</u>	Date: <u>January 8, 2003</u>

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

Cond. Num.	Mitigation Measure Number, Category, Text, Impact Addressed and Responsible Land Use Department	Monitoring Actions to be performed or documented including performance measures if applicable	Responsible Party	Monitoring Schedule (Timing)	Verification of Completed or Ongoing Mitigation or of Non-Compliance	Action to Achieve Compliance
24	<p>Mitigation Measure 1 - (Air Quality) To maintain air quality level, that are safe to sensitive receptors, such as nearby residential uses, the owners, through their agents, shall specify (as notes on the project plans) the implementation of the following dust control measures during grading and construction activities for the proposed project. The measures shall be implemented to adequately control dust:</p> <p>The following measures shall be implemented at all construction sites to ensure that construction activities create minimum adverse air quality impacts:</p> <ol style="list-style-type: none"> 1. Post the project at two locations with a publicly visible sign during construction operations that specifies the telephone number(s) and person(s) to contact (contractor and/or owner) for complaints and/or injuries stemming from dust generation and other air quality problems resulting from project construction. 2. Pave, apply water at least two times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites. 3. Apply non-toxic tackifier, or other suitable cover (such as jute netting, erosion control fabric, mulch, etc.), to exposed areas immediately after cut and-fill operations are complete. 4. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard. 5. Sweep daily (with water sweepers) all paved access roads, parking areas 	<p>Prior to issuance of grading and building permits, the owners shall provide the Director of Planning and Building Inspection with a copy of the notice and a map of the posting locations, pursuant to item 1 of Mitigation Measure 1.</p> <p>Prior to issuance of building permits, the owners shall provide the Director of Planning and Building Inspection written certification regarding how items 2-7 of Mitigation Measure 1 will be implemented during construction (implementation details and schedule may be included as a note on the plans instead of written certification).</p> <p>During construction, the contractor shall keep a daily log of each activity performed during construction including date and photographs, as necessary. Monthly reports shall be submitted to the owners, who will then forward a copy to the Monterey County Planning and Building Inspection Department. Failure to submit a report with 5 working days of the end of each monthly period shall cause all work to be stopped until the report is received and accepted as adequate by the Director of Planning and Building Inspection.</p>	<p>Owners</p>	<p>Prior to issuance of grading and building permits</p>	<p>Prior to issuance of grading and building permits</p>	<p>Monthly during construction</p>

Cond. Num.	Mitigation Measure Number, Category, Text, Impact Addressed and Responsible Land Use Department	Monitoring Actions to be performed or documented including performance measures if applicable	Responsible Party	Monitoring Schedule (Timing)	Verification of Completion of Draping Mitigation or of Non-Compliance	Action to Achieve Compliance
	<p>and staging areas at construction sites.</p> <p>6. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.</p> <p>7. Cover on-site stockpiles of excavated materials.</p> <p>(Planning and Building Inspection)</p>	<p>Prior to final inspection, provide written certification from the contractor certifying compliance with and successful implementation of the requirements of Mitigation Measure 1 over the entire construction phase to the Monterey County Planning and Building Inspection Department.</p>	Owner/ Contractor	Prior to final inspection		
25	<p>MNM2 - (Biological Resources) To verify successful ongoing compliance with the HCP to the County, copies of all reports required by the HCP, as well as all pertinent correspondence to and from the US Fish & Wildlife Service (USFWS) with regard to ongoing compliance with the HCP (or lack thereof), shall be submitted simultaneously to the Director of Planning and Building Inspection when submitted to or received from USFWS. Compliance with the HCP shall be considered as compliance with CEQA requirements for all areas within the conservation easement.</p> <p>(Planning and Building Inspection)</p>	<p>Throughout the duration of the HCP, the owners shall submit copies of all reports required by the HCP, as well as all pertinent correspondence to and from the US Fish & Wildlife Service (USFWS) with regard to ongoing compliance with the HCP (or lack thereof). These reports and correspondence shall be submitted simultaneously to the Director of Planning and Building Inspection when submitted to or received from USFWS. Upon the receipt of said documentation, the Mitigation Monitoring Team shall make a note to the project file of the owner's ongoing compliance with Mitigation Measure 2. Failure to submit a report or correspondence to or from the USFWS within 5 working days of the owner's receipt or submittal of said documentation shall cause the project to be in noncompliance with the Mitigation Monitoring Program.</p>	Owner/ Consulting Biologist	Throughout the duration of the HCP		
26	<p>MNM3 - (Biological Resources) To ensure protection of all areas of the conservation easement adjacent to the building site, prior to the commencement of construction activities, temporary fencing shall be installed along the boundary of the construction site. Soil compaction, parking of vehicles or heavy equipment, stockpiling of construction materials, and/or dumping of materials shall not be allowed within the protected zone. The fencing shall remain in place during the entire construction period.</p> <p>(Planning and Building Inspection)</p>	<p>A qualified biologist or Qualified Professional Forester (QPF) shall conduct a site inspection prior to construction and at least monthly during construction to verify that temporary fencing is installed along the boundary of the construction site as that soil compaction, parking of vehicles or heavy equipment, stockpiling of construction materials, and/or dumping of materials does not occur within the protected zone. Following each inspection, written verification from a qualified biologist or QPF shall be submitted to the Monterey County Planning and Building Inspection Department by the owners on a monthly basis during construction and within 5 working days of said regularly scheduled site inspection. Failure to submit a report within 5 working days of the end of each monthly period shall cause all work to be stopped until the report is received and accepted as adequate by the Director of Planning and Building Inspection.</p>	Owner/ Consulting Biologist or Qualified Professional Forester	Monthly during construction		
27	<p>MNM4 - (Biological Resources) To avoid unnecessary impacts to native vegetation, where possible, native vegetation on the property, in areas not needed for structures, parking, and landscape, shall be left intact. Prior to occupancy, a landscape plan consistent with the Monterey County regulations shall be submitted to and approved by the Director of Planning & Building Inspection. Any areas disturbed by construction shall be revegetated with native vegetation, as well as any other appropriate and necessary erosion control measures.</p>	<p>Prior to occupancy, the owners shall submit a statement from the consulting QPF certifying that above listed mitigations have been properly implemented as necessary and appropriate throughout the construction phase.</p>	Owner/ Consulting Biologist	Upon submittal of landscaping plan		

Cond. Num.	Mitigation Measure Number, Category, Text, Impact Addressed and Responsible Land Use Department	Monitoring Actions to be performed or documented including performance measures (if applicable)	Responsible Party	Monitoring Schedule (Timing)	Verification of Completed or Ongoing Mitigation or of Non-Compliance	Action to Achieve Compliance
28	<p>(Planning and Building Inspection)</p> <p>MM6 - (Biological Resources) To ensure adequate protections for native Monterey pines:</p> <p>A. Where a Tree Removal Permit (i.e., Coastal Development Permit) is required, trees proposed for removal shall be conspicuously marked by flagging or paint. A site plan showing the location of each tree to be removed shall accompany the application. Proposed removal of native trees shall be the minimum necessary for the proposed development. Removal not necessary for the proposed development will be limited to that required for the overall health and long-term maintenance of the forest, as verified by a QPF.</p> <p>B. Retained trees located close to the construction site shall be protected from inadvertent damage by construction equipment through wrapping of trunks with protective materials, bridging or lashing under major roots where exposed in the foundation or utility trenches, and other measures appropriate and necessary to protect the well-being of the retained trees. All trees other than those approved for removal shall be retained and maintained in good condition. Trimming, where not injurious to the health of the tree(s), may be performed whenever necessary in the judgment of the owner, particularly to reduce hazards to person safety and fire hazards.</p> <p>C. No additional trees, beyond those trees designated for removal on the approved site plan, shall be removed without additional Tree Removal Permits (i.e., Coastal Development Permits), unless a tree removal Permit waiver is acquired from the Monterey County Planning and Building Inspection Department for disease, hazards, or other reasons as verified by a Qualified Professional Forester. Due to expected inputs of pine pitch canker over the next number of years, no live Monterey pine tree of any size shall be cut or removed, unless a QPF's report confirms that it is a hazard, should be removed to decrease potential for disease or pest problems, or should be thinned to promote growth of neighboring trees.</p>	<p>Prior to the issuance of grading and building permits, a QPF shall mark all trees designated for removal. The QPF shall identify on a site plan and specify the final number of trees that are actually to be removed. A qualified biologist or QPF shall conduct site inspections to verify that all trees located close to the construction zone are retained and maintained in good condition throughout the construction phase with appropriate measures taken as necessary to ensure that trees that are not permitted for removal are in fact retained in healthy and viable conditions, free from damage.</p>	<p>Owner/ Qualified Professional Forester and/or Consulting Biologist</p>	<p>Prior to issuance of grading and building permits and throughout construction phase</p>		
29	<p>(Planning and Building Inspection)</p> <p>MM6 - (Biological Resources) Due to their great habitat value to a variety of wildlife (particularly nesting sites for birds), large dead trees beyond the project site shall be retained. Small trees (less than 12" in diameter at breast height) or dead trees may be thinned in densely forested areas, especially as needed to reduce unstable fuel accumulation adjacent to existing occupied buildings, in order to reduce fire hazard. Such thinning shall be verified by</p>	<p>The consulting biologist or QPF shall visit the site at least monthly during construction to verify that the trees continue to be retained and maintained in good condition. Written verification, as well as photographic evidence for the first and last reports, from the consulting biologist or QPF shall be submitted to the Monterey County Planning and Building Inspection Department on a monthly basis during construction and within 5 working days of said regularly scheduled site inspection. Failure to submit a report with 5 working days of the end of each monthly period shall cause all work to be stopped until the report is received and accepted as adequate by the Director of Planning and Building Inspection</p>	<p>Owner/ Qualified Professional Forester and/or Consulting Biologist</p>	<p>Monthly during construction</p>		

Cond. Num.	Mitigation Measure Number, Category, Text, Impact Addressed and Responsible Land Use Department	Monitoring Actions to be performed or documented including performance measures if applicable	Responsible Party	Monitoring Schedule (Timing)	Verification of Completed or Ongoing Mitigation or of Non-Compliance	Action to Achieve Compliance
30	<p>(Planning & Building Inspection)</p> <p>MM7 - (Biological Resources) To ensure adequate protections for native Monterey pines, in addition to any measures required by the local fire district or California Department of Forestry fire authorities, the owner shall:</p> <ol style="list-style-type: none"> 1) maintain a spark arrester screen atop each chimney 2) maintain spark arresters on all gasoline-powered equipment used on-site 3) establish a "greenbelt" by keeping vegetation in a green, growing condition to a distance of at least 50 feet around the house; and 4) if consistent with the HCP, "break-up and clear away any dense accumulations of dead or dry underbrush or plant litter, especially near the trunks of trees and around the greenbelt. Brush and other undergrowth, if removed, shall be cleared using methods that do not materially disturb the ground surface. Hand grubbing, crawling and moving will normally be the methods of choice where consistent with the HCP. Fire and herbicides shall not be used for brush clearing unless approved by the USFWS as in accordance with the HCP, and subject to the limitations listed in the Camel Land Use Plan and Coastal Implementation Plan <p>(Planning & Building Inspection)</p>	<p>Prior to occupancy, the owners shall submit a statement from the consulting QP to the Director of Planning & Building Inspection certifying that the requirements of Mitigation Measure 7 have been properly implemented as necessary and appropriate throughout the construction phase.</p>	Owner/ Qualified Professional Forester	Prior to occupancy		
31	<p>(Planning & Building Inspection)</p> <p>MM8 - (Geology and Soils) In order to avoid the unnecessary use of limited ground water resources, as well as to prevent root disease and otherwise maintain favorable conditions for the native forest, the parcel will not be irrigated except within the developed areas, in accordance with the landscaping plan. Care shall be exercised to avoid over-watering around trees.</p>	<p>The consulting biologist contracted to verify the owners' ongoing compliance with the HCP, shall in all reports required as part of the HCP, specifically note the health of the stand of Monterey pines on the subject parcel, in order to demonstrate ongoing compliance with Mitigation Measure 8, or lack thereof.</p>	Owner/ Consulting Biologist	In all reports required as part of the HCP		
32	<p>(Planning & Building Inspection)</p> <p>MM9 - (Geology and Soils) In order to reduce seismic-related impacts to less than significant levels, the applicant shall follow the recommendations made by the consulting geologist, as contained in the Supplemental Geologic Analysis (reference #15), and as paraphrased below:</p> <ol style="list-style-type: none"> 1 The project shall incorporate a structural mat type foundation. The foundation design shall withstand offsets of up to 3 inches vertically and 6 inches horizontally. The peak horizontal acceleration that should be used on the subject site for specific evaluation or structural design is 1.0g. Project engineers may use an effective peak acceleration (EPA) of 0.80g for site-specific evaluation or structural design if they consider it a more appropriate design parameter. Predicted acceleration 	<p>Prior to the issuance of grading and building permits, the consulting geologist, geotechnical engineer, and structural engineer shall all certify by way of a wet-seal stamped letter to the Director of Planning and Building Inspection, that the above listed recommendations have been followed throughout the project's design phase and incorporated into the project as appropriate. In addition, prior to the issuance of grading and/or building permits, a revised drainage plan shall be submitted demonstrating compliance with recommendation #4 of Mitigation Measure 9.</p>	Owner/ Consulting Geologist, Geotechnical Engineer, and Structural Engineer	Prior to issuance of grading and building permits		

Cond. Num.	Mitigation Measure Number, Category, Text, Impact Addressed and Responsible Land Use Department	Monitoring Actions to be performed or documented including performance measures if applicable	Responsible Party	Monitoring Schedule (Timing)	Verification of Completed or Ongoing Mitigation or of Non-Compliance	Action to Achieve Compliance
11	<p>corresponds to Modified Metcalf Intensities of up to VIII.</p> <p>2. The Supplemental Geologic Analysis prepared by Rogers E. Johnson & Associates must be provided to the project geotechnical (soils) engineer and structural engineer.</p> <p>3. The project geotechnical engineer must quantitatively evaluate the stability of the steep slopes immediately adjacent to the proposed homestead.</p> <p>4. The proposed rip-rap outlet northwest of the proposed residence and above the proposed driveway is geologically unsuitable. The drain outlet shall be moved to the outboard edge of the proposed driveway and a long the center line of the spur ridge.</p> <p>5. The geotechnical report for the site and all new civil engineering and architectural plans pertaining to the proposed development shall be provided to the consulting geologist, Rogers E. Johnson & Associates, for review and recommendations. Subsequent recommendations from the consulting geologist shall be submitted to the Director of Planning and Building Inspection and subject to the Director's approval prior to their implementation or incorporation into the project.</p> <p>6. Any changes to the proposed building envelope must be evaluated by the consulting geologist, Rogers E. Johnson & Associates, for review and recommendations. Subsequent recommendations from the consulting geologist shall be submitted to the Director of Planning and Building Inspection and subject to the Director's approval prior to their implementation or incorporation into the project.</p> <p>(Planning & Building Inspection)</p> <p>MM110 - In order to control noise levels, construction activities shall be restricted between the hours of 7:00 a.m. and 6:00 p.m.</p> <p>(Planning & Building Inspection)</p>	<p>Prior to the issuance of grading and building permits, the project engineer/contractor shall submit a copy of the grading and building plans to the Monterey County Planning and Building Inspection Department to verify that the this language is included in the grading and building permits. The contractor shall keep a daily log of start times and quitting times, which shall be included in the monthly reports submitted to Monterey County Planning and Building Inspection Department. Failure to submit a report with 5 working days of the end of each monthly period shall cause all work to be stopped until the report is received and accepted as adequate by the Director of Planning and Building Inspection.</p>	Owner/ Contractor or Project Engineer	Prior to issuance of grading and building permits and in monthly reports		<p>END OF DOCUMENT</p>

Anthony L. Lombardo
Jeffery R. Gilles
Derinda L. Messenger
Timothy J. Minor
James W. Sullivan
Jacqui M. Zischke
Todd D. Bessire
Steven D. Penrose
Jason S. Retterer
E. Soren Diaz
Aaron P. Johnson
Sheri L. Damon
Virginia A. Hines
Patrick S.M. Casey
Paul W. Moncrief

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Of Counsel



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(MONTEREY) 888-757-2444
(FAX) 831-754-2011
(EMAIL) lomgil.com

File No. 00140.004

September 18, 2001

National Fish and Wildlife Foundation
28 Second Street, 6th Floor
San Francisco CA 94105

RE: Wildcat Line HCP (USFWS Permit TE040317-0)

Dear Sir:

Our firm represents Wildcat Line Limited Partnership, which owns an 11.5-acre parcel in Carmel Highlands, which is located in unincorporated Monterey County on the east side of Highway One. Wildcat Line applied to the United States Fish & Wildlife Service (USFWS) for an incidental take permit (#TE040317-0), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The ten-year incidental take permit for Wildcat Line would authorize the "take" of the Smith's Blue Butterfly resulting from the removal of an estimated 5,000 seacliff buckwheat plants on 0.89 acres of the 11.5 acre parcel. As mitigation for these impacts, our client has agreed to restore one acre of habitat and to permanently encumber over approximately ten acres of the parcel that will contain approximately seven acres of coastal sage scrub habitat for the Smith's blue butterfly (six acres existing and one acre restored) pursuant to a recorded deed restriction ("Preserve Area").

The Low-Effect Wildcat Line Habitat Conservation Plan for the Smith's blue butterfly, dated February, 2001 ("HCP"), contains a long-term management component that requires the management and protection of habitat for the Smith's blue butterfly within the Preserve Area onsite in perpetuity. Pursuant to our discussions with USFWS, our client proposes to provide NFWF with a contribution to the Smith's blue butterfly conservation fund in an amount estimated to be sufficient for long term management responsibilities for the Preserve Area pursuant to the following terms:

1. Wildcat Line agrees to donate to the National Fish and Wildlife Foundation (NFWF) an amount of \$10,945.00 which, at 5.4% (ten-year treasury rate) will yield \$18,519.00 at the end of the ten-year permit term. At 5.4%, \$18,519.00 will yield \$1,000.00/year, as may be adjusted per the CPI-U for inflation, to cover long term management activities in perpetuity on the Wildcat Line property. Wildcat Line also agrees to pay NFWF an initial administrative overhead

reimbursement of \$547.25 (Jason should adjust if overall amount changed due to inflation adjustment), which is equal to five percent (5%) of this donated amount.

2. At the direction of the USFWS, NFWF will place the donation from Wildcat Line in a restricted, non-wasting, interest bearing account in the name of the Smith's blue butterfly conservation fund established with the USFWS. The distinct account will be marked for the Wildcat Line Property Project (Permit #TE040317-0) and will be administered for the long-term management of the Preserve Area on the Wildcat Line property (APN 243-201-013). The donated amount will be disbursed by NFWF as directed by the USFWS and in accordance with the terms of the negotiated agreement between NFWF and the USFWS on the Smith's blue butterfly conservation fund.

3. ~~Disbursements from the restricted account for the Wildcat Line Property Project should~~ begin upon expiration of the incidental take permit. The permit term is currently ten years, but the Service may determine that the permit may be terminated earlier if the success criteria as defined in the HCP are met prior to the expiration of the ten-year term. If the Service makes this determination, the permit holder will review the donated amount at that time and provide an additional sum to NFWF for inclusion in the earmarked account as necessary to yield the \$1,000.00 annual payment, as adjusted for inflation.

4. The donation must be administered according to the terms of the HCP.

5. The funds placed in the Wildcat Line Property Project restricted account may be disbursed annually, following the expiration of the permit, in the amount of up to \$1,000.00, as may be adjusted for inflation per the CPI-U, as hereby requested by the permittee for use in Service-approved management activities. At the request of the permittee and the Service, prior to the expiration of the permit, the funds in the Wildcat Line Property Project may be transferred to a third party approved by the Service.

6. The amount of the donation was estimated based on the following habitat monitoring and management activities and will be disbursed only for these or other activities as recommended by the USFWS to maintain coastal sage scrub habitat for Smith's blue butterfly within the Preserve Area:

a. Site monitoring and reporting, which includes a brief report submitted to the USFWS every three years (after permit expiration), by a qualified biologist describing the following:

- 1) Status of compliance with the terms of the deed restriction on the protected property.

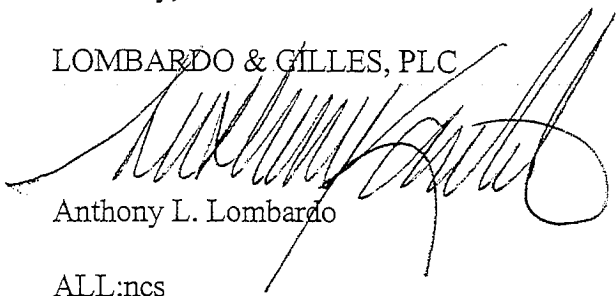
- 2) General site conditions as they relate to maintenance of suitability of the site to support a viable population of Smith's Blue Butterfly.
- 3) Estimate of the cover of seacliff buckwheat (*Eriogonum parvifolium*).
- 4) Factors that negatively affect the site, including an estimate of cover by non-native plant species.
- 5) A description of activities taken to correct factors that may negatively affect the site, such as the removal of non-native plants.
- 6) ~~Observations of Smith's Blue Butterfly at the site.~~

b. Control of non-native vegetation to less than two percent (2%) cover within the Preserve Area and any corrective measures that may be necessary as determined by a qualified biologist.

Please let me know if you have any questions or require any additional information as part of your evaluation of this request.

Sincerely,

LOMBARDO & GILLES, PLC



Anthony L. Lombardo

ALL:ncs

cc: Mr. Dan Keig
Ms. Diane Pratt
Ms. Heather Hollis

SMITH'S BLUE BUTTERFLY CONSERVATION FUND (2001-0432)

Letter of Agreement
Between
U.S. Fish and Wildlife Service
and the
National Fish and Wildlife Foundation

This instrument memorializes the Agreement between the U.S. Fish and Wildlife Service (Service) and the National Fish and Wildlife Foundation (Foundation) to establish a Smith's Blue Butterfly Fund (Fund), NFWF Proj # 2001-0432.

Section 1: PURPOSES AND OBJECTIVES. This Letter of Agreement is entered into between the Service and the Foundation for the purposes of creating a Fund for the conservation and recovery of the Smith's blue butterfly (*Euphilotes enoptes smithi*) and enhancement, restoration, and acquisition of the habitat on which it depends in Monterey County, California. The Foundation will manage the Fund for these purposes at the direction of the Service. The Parties will carry out their respective obligations and responsibilities under this agreement pursuant to applicable federal laws.

The primary purpose for the establishment of this Fund is to provide an avenue for receipt of private or public funds to be used exclusively for conservation and recovery of the Smith's blue butterfly and the habitat on which it depends. This Agreement is not to be considered a substitute for continued Federal and State support. Rather, the role of the Fund is to expand upon existing and on-going efforts, and to facilitate the efforts of private individuals, corporations and other parties interested in supporting, or obligated to support, the butterfly conservation effort in Monterey County, California.

Section 2: AUTHORITY. This Agreement is entered into under the authority of the Fish and Wildlife Coordination Act (Act), 16 U. S. C. 661, *et seq.*, as amended. The Act authorizes the Service, in pertinent part, to "provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat. . .and in carrying out other measures necessary to effectuate the purposes of [the Act]."

This Agreement also is entered into under the authority of the Fish & Wildlife Act of 1956 (the 1956 Act), 16 U.S.C. 742a-j. Section 742f(b) of the 1956 Act authorizes the Secretary to accept gifts and bequests for the benefit of programs administered by the Service. The donations may be made subject to conditions the Secretary deems "to be in accordance with law and compatible with the purpose for which acceptance is sought." In addition, under the Endangered Species Act of 1973, 87 Stat. 884, as amended, 16 U.S.C. 1531 *et seq.*, the Service is responsible for the listing of endangered and threatened species and the recovery of listed wildlife, and for cooperating with State and Federal agencies to achieve recovery of listed species.

The Foundation is a private, not-for-profit conservation organization established by an Act of Congress (P.L. 98-244, as amended, 16 U.S.C. 3701 *et seq.*) to encourage, accept, and administer

private gifts for the benefit of, or in connection with, the activities and services of the U.S. Fish and Wildlife Service, and to undertake and conduct such activities as will further the conservation and management of the fish, wildlife and plant resources of the United States for the present and future generations of Americans.

Section 3: TERMS OF AGREEMENT. This Agreement shall become effective upon being executed by the parties. This Agreement shall remain in effect, except as modified or terminated in Section 6 hereof, for twenty (20) years, at which point the Agreement may be renewed, modified, or terminated according to the interests of the parties herein.

Section 4: SPECIFIC OBLIGATIONS OF THE PARTIES.

4.1 Service Obligations - Working cooperatively through its Program experts, the Service will:

4.1.1. Appoint an individual, the Project Officer, who will represent the Service in carrying out its obligations on projects that are funded under this Agreement.

4.1.2. Make recommendations to the Foundation regarding the wise use of monies contributed to this Fund for the conservation of Smith's blue butterfly and its habitats. The Service will work with state and county agencies, as appropriate, in making these determinations.

4.1.3. On a periodic basis but at least annually, recommend appropriate projects, in consultation with the appropriate state and local agencies, for funding by the Fund that meet the purpose of this Agreement. In recommending projects to be funded by the Foundation, the Service will ensure the project proposal includes a complete description of the proposed project, the anticipated benefits to the Smith's blue butterfly, and a complete budget.

4.1.4. Coordinate with the Foundation in responding to and referring individuals, corporations, and other interested parties wishing to donate to Smith's blue butterfly conservation to contribute monies to this Fund. Any such coordination requested by the Foundation will be conducted in accordance with the Department's Donation Activity Guidelines, as promulgated on May 21, 1996, and as subsequently may be revised. The guidelines direct, *inter alia*, the Service to ensure that donations are not accepted from prohibited sources. When contributions are made to the Fund by a third party as a result of consultation with the Service, the Service, or the third party with the concurrence of the Service, will prepare a written statement for the Foundation articulating clearly the purpose(s) for which the donation is being made. When the Service requests disbursements from the Fund for projects being conducted by the Service, it will do so in writing. Such requests will include a clear statement of the purpose(s) for which payment needs to be made and will be accompanied by original invoices and/or proof of completion of work, to the extent practicable.

4.1.5. When conducting fish, wildlife, plant educational/outreach activities, provide information on the Fund in its public wildlife education efforts to the general public, as appropriate.

4.2 Foundation Obligations - The Foundation will:

4.2.1. Establish a restricted account for the Fund in accordance with Foundation fiscal policy and be responsible and accountable for the management and administration of the Fund. When appropriate, the Foundation will create separate sub-accounts for distinct projects or purposes as may be identified in written donation statements or set forth in legal documentation by a court of competent jurisdiction.

4.2.2. Provide such matching funds as may be requested by the Service, and approved by the Foundation's Board of Directors, to leverage donations to the Fund.

4.2.3. Make disbursements of funds from the Fund pursuant to Section 4.1.2 hereof, or for sub-accounts established for a particular management project, pursuant to the specified instructions of a donee, when approved by the Service.

4.2.4. Appoint an individual, the Project Officer, who will represent the Foundation in carrying out its obligations under the Agreement.

4.2.5. As may be provided in the terms of specified donations, transfer funds from a specified sub-account to a third party as may be approved by the Service.

Section 5. FINANCIAL ADMINISTRATION. The Foundation will have primary responsibility for administering the Fund.

5.1. Contributions to the Fund will be held in an interest-bearing, federally-insured dedicated account until the appropriate time for expenditure, as determined by the Service.

5.2. All funds held in the account shall be invested in such a manner to ensure a balance between immediate liquidity and investment potential. When deemed necessary or appropriate by the parties, the Foundation will consult with the Service regarding the availability and liquidity of funds placed in the Fund account. All interest and earnings accruing to the Fund will be reinvested in the segregated account and used for the purposes specified this agreement.

5.3. The Foundation shall receive, at the time funds are contributed to the Fund, an initial administrative overhead reimbursement equal to, and not to exceed, five percent (5%) of the amount contributed. The uses of these funds include expenses for day to day management of the Fund, initial bank charges for establishment of the Fund, and administrative charges for the first year, and for personnel time for tracking, managing, and making disbursements from the Fund.

5.4. The Foundation will be reimbursed for all other reasonable and actual expenses incurred in connection with the satisfaction of its obligations under this Agreement provided, however, that such expenses must be approved in advance in writing as reasonable by the Service. Any bank charges for the Fund after the first year may be paid from interest collected on the Trust.

5.5 Disbursements from the Fund will be made pursuant to this Agreement. As such, the Foundation will disperse funds from the restricted account directly to the vendor or recipient recommended by the Service. For all payments made by the Foundation to third party vendors, no privity of contract will exist between the Service and said vendors.

5.6 The Foundation will furnish an annual report to the Service detailing all income, disbursements, administrative fees, interest earnings, and account balances for all projects funded under this Agreement.

Section 6. AMENDMENT AND TERMINATION. Amendments to this Agreement may be proposed by either party in writing and will become effective upon being reduced to a written instrument and being signed by the duly authorized representative of both parties.

This Agreement may be terminated by any party at any time after its effective date by providing written notice to the other party at least 60 days in advance of the proposed termination. If the agreement is terminated, the Foundation shall immediately transfer any and all monies in the Conservation Fund to a restricted account specified by the Service which is dedicated to the conservation of the Smith's blue butterfly and its habitats in the Monterey County, California. If no such restricted account exists, the Foundation will transfer the remaining monies to another entity that the Foundation and the Service consider capable of fulfilling the purposes of the Agreement. Upon request, the Service will consult with the Foundation in the selection of such entity.

Section 7. DISPUTE RESOLUTION: The parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The parties will exert their best efforts to resolve disputes at the lowest organizational level before elevating the dispute to the appropriate officials within their respective organizations.

Section 8. NOTICES AND PROJECT OFFICERS. For the purpose of this Agreement, the following individuals shall be the Project Officers for this Agreement. Notices to be given hereunder shall be made in writing and may be given by delivering the same in person, by mail, or by telecopy (facsimile). Notices shall be effective only if and when received at the address of the party to be notified.

If to the Service:

Diane K. Noda, Field Supervisor
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003
805-644-1766, Fax 512-490-0974
Diane_Noda@fws.gov

If to the Foundation:

Whitney Tilt, Director of Conservation
National Fish and Wildlife Foundation
1120 Connecticut Ave., NW, Suite 900
Washington, D.C. 20036
202-857-0166, Fax 202-857-0162
tilt@nfwf.org

Section 9. STANDARD PROVISIONS:

9.1. Non-Discrimination: In the performance of obligations and responsibilities under this Agreement, the parties will not discriminate against any person because of race, color, national origin, handicap, religion, or gender.

9.2. Consistency with Public Laws: Nothing herein contained shall be deemed to be inconsistent with or contrary to the purpose of or intent of any Act of Congress affecting or relating to this Agreement.

9.3. Appropriations (Anti-Deficiency Act, 31 U.S.C. 1341): This Agreement does not obligate the Service to provide appropriated funds for projects undertaken pursuant to the Agreement. Nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress, allocated for the purposes of this Agreement for such fiscal year, or other obligation for the expenditure of money in excess of such appropriations.

9.4. Officials Not To Benefit: No member of or delegate to Congress or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefit that may arise from this Agreement, unless the share or part is for the general benefit of a corporation or company.

9.5. Lobbying Prohibition: The parties will abide by the provisions of 18 U.S.C. 1913 (Lobbying with Appropriated Moneys), which states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation: but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member, or to the Congress itself, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

9.6. Advertisements, Promotions and Endorsements: The Foundation or any individual or entity with whom the Foundation conducts business for the specific purpose of carrying out the responsibilities and obligations under this Agreement shall not publicize, or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies Governmental, Departmental, bureau or Government employee endorsement of a product, service, or position which the Foundation, individual, or entity represents. No release of information relating to this Agreement may state or imply that the Government approves of the Foundation's, individual's, or entity's work product or services, or considers the Foundation's, individual's, or entity's work product or services to be superior to other products or services. The Foundation will ensure that all information, if any, submitted for publication or other public releases of information regarding this project shall carry the following disclaimer:


The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies or opinions of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.

9.7. Liability Provision: Each party shall be fully responsible for the acts and omissions of its representatives, agents employees, contractors and subcontractors connected with the performance of this Agreement.

Please indicate your acceptance of the terms of this Agreement as outlined herein by signing two originals of this letter and returning one to the Foundation.

AGREED AND ACCEPTED AS OF THE DATES HEREOF

U.S. Fish and Wildlife Service

By: 
Diane Noda

Title: Acting Field Supervisor, Ventura Field Office

Date: 9/22/01

National Fish and Wildlife Foundation

By: 
Whitney Tilt

Title: Director of Conservation

Date: 11 Sept. 2001

Low-Effect Habitat Conservation Plan
for the Smith's Blue Butterfly,
Wildcat Line Property, Carmel Highlands, Monterey County, California

Prepared for:
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and

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February 2001

EXECUTIVE SUMMARY

Wildcat Line, a California limited partnership, has applied for a permit pursuant to section 10 (a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884) (Act), as amended from the U.S. Fish and Wildlife Service (USFWS) for the incidental take of the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*). The potential taking would occur incidental to development of one single-family residence within the 11.46-acre parcel (APN 243-201-013) owned by the Wildcat Line limited partnership and located in Carmel Highlands (Monterey County), CA. This 11.46-acre parcel was formerly part of a 466-acre parcel, known as the Sawyer property, of which 439 acres is now protected from development due to policies of the Carmel Area Land Use Plan, topography that is too steep to build on (i.e., $\geq 30\%$ slopes), and the efforts of Mr. Dan Keig.

The proposed development area measures 1.56 acres, which includes the 1.37 acre building footprint and 0.19 acres of drainage and erosion control improvements. Development of this portion of the project site will result in the loss of 0.80 acres of coastal sage scrub habitat, which support an estimated 4,923 individuals of seacliff buckwheat (*Eriogonum parvifolium*), the foodplant for the Smith's blue butterfly. Adults of the Smith's blue were most recently observed at the project site during a status survey for the butterfly that conducted in July 1999.

As a result of these anticipated impacts, Wildcat Line has applied for a section 10 (a)(1)(B) permit and proposes to implement this HCP as described herein, which provides measures for minimizing and mitigating adverse effects on the Smith's blue butterfly. Wildcat Line is requesting the section 10 (a)(1)(B) permit be issued for a period of 10 years.

This HCP summarizes the project and identifies the responsibilities of the USFWS, Wildcat Line and its successors and assigns. The biological goals of the HCP are:

- a) to replace the 0.80 acres of impacted coastal sage scrub habitat with 0.97 acres of restored coastal sage scrub habitat elsewhere on the project site;
- b) to replace the impacted seacliff buckwheat plants providing foraging habitat for the Smith's Blue at a 1:1 replacement ratio in the restored coastal sage scrub habitat and by supplementing low density portions of the site with additional buckwheat plants; and
- c) to permanently protect 9.86 acres (including 6.22 acres of existing coastal sage scrub, 0.97 acres of restored coastal sage scrub, and 2.68 acres of closed cone coniferous forest and riparian habitat) of the 11.46-acre project site via a recorded deed restriction.

This HCP also describes measures that will be implemented by Wildcat Line to minimize and mitigate the impacts of the project to the Smith's blue butterfly and its habitat and to further the conservation of this species. These measures include:

- a) dust control during grading and construction;
- b) fencing during grading and construction activities to protect the butterfly's habitat;
- c) restoration of disturbed areas on site to create/enhance coastal sage scrub habitat;
- d) propagation and outplanting of *E. parvifolium*;
- e) eradication of various invasive plants;

- f) placement of a deed restriction on 9.86 acres of habitat at the site; and
- g) post-construction monitoring for a period of at least five years, or longer until habitat restoration goals are satisfactorily achieved.

The net effect of these measures is that 0.97 acres of coastal sage scrub habitat will be restored to benefit the endangered butterfly and a total of about 9.86 acres will be protected in perpetuity. The HCP also describes measures to ensure that the elements of the HCP are implemented in a timely manner. Funding sources for implementation of the HCP, actions to be taken for changed circumstances and unforeseen events, alternatives to the proposed, and other measures required by the USFWS are also discussed.

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2. Portion of Soberanes Point USGS topographic map illustrating project site boundaries.
3. Vegetation map for the project site.
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5. Site plan and impact areas.
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1.0 INTRODUCTION

This Low-effect Habitat Conservation Plan (HCP) for the proposed development of a single-family residence on the Wildcat Line property in Carmel Highlands, Monterey County, California, has been prepared pursuant to the requirements of Section 10(a) of the Federal Endangered Species Act (ESA). The HCP is intended to provide the basis for issuance of a Section 10(a)(1)(B) permit to the Wildcat Line limited partnership, to authorize incidental take (see Section 6.0) of Smith's blue butterfly (*Euphilotes enoptes smithi*), a Federally-listed endangered species, that could potentially result from development of the proposed project. The U.S. Fish and Wildlife Service (herein referred to as the Service) has concluded that the site provides potential habitat for this species. Wildcat Line requests a permit for 10 years commencing on the date of permit approval.

This HCP provides an assessment of the existing habitat on the site relative to the Smith's blue butterfly, evaluates the effects of the proposed development on this species, and presents a mitigation plan to offset habitat losses and/or direct harm to this species that could result from development of a single family residence on the property. The biological goals of this HCP are:

- a) to replace 0.80 acres of coastal sage scrub habitat impacted by the project with 0.97 acres of restored coastal sage scrub habitat;
- b) to replace the impacted seacliff buckwheat plants providing foraging habitat for the Smith's Blue at a 1:1 replacement ratio in the restored coastal sage scrub habitat and by supplementing low density portions of the site with additional buckwheat plants; and
- c) to protect 9.86 acres of the 11.46-acre site in perpetuity through a deed restriction, including 6.22 acres of existing coastal sage scrub habitat as well as the restored acreage.

1.1 Project Location

The 11.46-acre Wildcat Line site is located in Carmel Highlands, a community located along the Pacific Coast that lies approximately four miles south of Carmel in Monterey County (Figure 1). Specifically, the project site is located southeast of Yankee Point, off Mentone Drive. The project parcel (APN 243-201-011) is located within the Soberanes Point 7.5" U.S. Geological Survey (USGS) topographic quadrangle, in Township 17 S. and Range 1 W of the Mt. Diablo Meridian. No section numbers are identified in this portion of the topographic quadrangle. Figure 2, which is adapted from the Soberanes Point USGS topo map, illustrates the location of the project site. The parcel is owned by Wildcat Line, a California limited partnership. Mr. Dan Keig, of Carmel Highlands, is the managing partner of this partnership.

1.2 Project Site

The project site consists of an east-west trending finger ridge and steep side slopes. Spring-fed, intermittent drainages occur in the adjacent canyons immediately north and south of the finger ridge. The site is undeveloped except for a dirt road that traverses the full length of the finger ridge. Elevation at the site ranges from about 550 to 875 feet.

Three native plant communities are evident at the site, including coastal sage scrub, closed-cone coniferous forest, and riparian woodland. A fourth plant community consists of disturbed areas at the site, such as the existing access road and several locations where invasive exotic plants are dominant. Figure 3 is a vegetation map of the parcel that was prepared as part of a botanical report for the site by Jeff Norman in 1996 (Norman 1996) and verified during 1999 (Norman 1999). Adjacent developed properties include water tanks for the local water district and private residences. Steeper slopes and elevations above the site are undeveloped. Approximately 7.8 acres, or 68% of the 11.46 acre-parcel, are slopes that are equal to or greater than (\geq) 30% (Figure 4).

2.0 PROJECT DESCRIPTION

The project site measures 11.46 acres in size. Even though the property has not been sold to a buyer, inherent characteristics of the site limit where a residence and associated improvements to the property can be located. Thus, for the purposes of the take permit, the locations of a building envelope and associated drainage and erosion control improvements and the leach field are illustrated in Figure 5 as the site plan and impact areas.

Wildcat Line proposes to grade the upper portions of the higher elevations of the finger ridge to provide an area suitable for construction of one single-family residence. Other proposed improvements to the site include, landscaping, an all-weather driveway, a picnic area, and new water tank and associated access road, a septic leach field, drainage and erosion control improvements, and a footpath. The areas that would be graded for construction and where drainage improvements for erosion control would be installed are collectively referred to as the "building footprint" or "impact area" and are illustrated in Figure 5. All of the aforementioned site improvements will occur within the impact area. In addition, landscaping within the impact area and fire clearance activity, if any, will be done in a manner that does not require any vegetation clearing outside of the impact area. Thus, all activities that would require alteration or removal of vegetation are expected to occur within the boundaries of the impact area.

The existing dirt road, which provides access to the parcel and traverses the finger ridge, will be improved in the western portion of the site by, realigning it to reduce the grade to 15% or less, and installing a 12-foot wide all-weather surface. Curbs and gutters will be installed to prevent erosion due to runoff from the access road. Additional drainage for surface runoff from the impact area and erosion controls will be installed around the periphery but within the boundaries of the impact area, as appropriate, to minimize potential erosion within the protected habitat portions of the property. Utilities for the residence will be laid in underground trenches beneath the new roadbed. Between the new residence and water tank, the road will be used for tank access and will be only 10 feet wide. A footpath, measuring 4 foot wide will be situated between the picnic area and southeastern border along an old fire road. An in-ground septic system will provide sewer service, with a leach field, occupying approximately 0.06 acres, located in the southwestern portion of the parcel. The leach field will be located in the understory of the closed-cone coniferous forest and will be sited to minimize removal of any Monterey Pines. Pipes from the residence to the leach field will be buried in the driveway.

The project also includes future maintenance and repair of drainage and erosion control facilities, potential fire clearance activity, and potential slope repair due to erosion damage. Regarding fire clearance activity, the building footprint has been designed such that, with reasonable placement, size and building materials for the structure, the homeowner should be able to get insurance without further vegetation clearance beyond that provided for in the HCP. Although it is anticipated that these activities will be confined to the identified impact area, this HCP provides a mitigation and monitoring mechanism for future impacts specific to these activities, as described in Sections 7 and 8.

Although a specific landscape plan has yet to be prepared, all landscaping will be restricted to the impact area. If any trees are planted, only native species will be used.

Furthermore, they will be located within the impact area to prevent shading of protected habitat portions of the property.

Altogether, these activities will disturb approximately 1.56 acres at the site, including 0.80 acres of buckwheat-dominated coastal sage scrub habitat. Approximately 4,923 individual plants of *Eriogonum parvifolium*, considered to be suitable habitat for the Smith's blue, grow within the impact area. A portion of the dirt road will be restored as coastal sage scrub habitat.

Several measures will be employed before, during, and after construction activities to minimize any adverse impacts to the Smith's blue butterfly and its habitat at the project site. Each of the following measures is discussed in greater detail in Section 7.0 Minimization and Mitigation Measures.

- 1) Temporary fencing will be erected to limit where grading equipment can move on the site, before any grading activities occur;
- 2) Appropriate dust control measures, such as periodically wetting down the graded areas, will be used as necessary during grading of the areas for building footprints and in other portions of the impact area during construction, landscaping, or any other activities than generate dust;
- 3) Hottentot fig, ripgut brome, French broom, and other invasive plants will be removed throughout the entire 11.46-acre parcel;
- 4) Appropriate weed control measures will be employed to prevent establishment of weeds or other invasives at the leach field;
- 5) Seeding, propagation and outplanting of buckwheat plants to restore habitat for the Smith's blue butterfly; and
- 6) Establishment of a deed restriction on 9.86 acres of the project site to protect all habitats, including 6.22 acres of existing coastal sage scrub and 0.97 acres of restored coastal sage scrub habitat, in perpetuity.

2.1 Project History

The 11.46-acre parcel owned by Wildcat Line was formerly part of the 466-acre Sawyer property. In the Carmel Area Land Use Plan (Monterey County 1988), which was prepared in accordance with the California Coastal Act, the Sawyer property was assigned a special density zoning in order to maximize available recreational opportunities (pp. 71 & 72). A maximum of 16 dwelling units would have been permitted, in exchange for the clustering of these units on the lower (westerly) 30 acres of the 466-acre property to ensure that houses and roads will be outside of the public view shed (Carmel Area Land Use Plan, Section 4.4.3.F.5.).

Mr. Dan Keig purchased the Sawyer property from a Texas Savings and Loan in 1991. Monterey County approved a minor subdivision of the property, which consisted of four parcels and a "remainder parcel" of 450 acres, for a total of five parcels.

The "remainder parcel" of approximately 450 acres was then subjected to a lot-line adjustment, which reduced it in size to the current 11.46 acres and retained the development potential (one dwelling unit). The other 439 acres were added to Mr. Keig's adjacent ranch and designated as watershed and scenic conservation in the Carmel Area Land Use Plan and zoned

"WSC/199" or one residential unit per 199-acre lot. According to the "WSC/199" designation, Mr. Keig's approximately 600-acre ranch, adjacent to the 11.46-acre parcel, could accommodate a maximum of three 199-acre residential lots. In addition, Mr. Keig's ranch is subject to the strict coastal view shed requirements of the Carmel Area Land Use Plan and the Monterey County Coastal Implementation Plan. Specifically, Section 20.146.030 provides that no development shall be located on slopes of 30 percent or greater unless extenuating circumstances are present. The County is also required to impose a condition of development approval that all areas of slopes greater than 30% be encumbered by a scenic easement pursuant to Section 20.146.120.A.6 of the Coastal Implementation Plan. The primary objective of the WSC designation is the protection of the watershed, streams, plant communities, and scenic values (Monterey County 1988, p. 84). An estimated 15-20% of the adjacent 439 acres supports the coastal sage scrub habitat and *Eriogonum parvifolium* foodplant of the Smith's blue butterfly, which is assumed to occur there due to its proximity to other known locations. Furthermore, the adjacent remainder parcel is characterized by slopes greater than 30 percent, rendering much of this property undevelopable pursuant to land use policies of the Carmel Area Land Use Plan and the Monterey County Coastal Implementation Plan. Existing development restrictions ensure that a substantial portion of the remainder parcel will remain undeveloped and available as habitat for the Smith's blue butterfly.

The formal habitat conservation planning process for the 11.46-acre site began in the spring of 1996. Mr. Dan Keig met with Dr. Richard Arnold, an entomologist familiar with the Smith's blue, at the site on April 5th, 1996.

As a result of this meeting, Dr. Arnold and Mr. Keig invited Ms. Catherine A. McCalvin, wildlife biologist from the Ventura office of the Service, to a meeting at the site on April 18th. Upon touring the site and learning more about the proposed project, Ms. McCalvin recommended that Mr. Keig apply for a section 10(a)(1)(B) incidental take permit, pursuant to provisions of the Endangered Species Act. This recommendation was based on the likelihood that take of Smith's blue butterfly could occur through the loss of its foodplants growing within that portion of the property proposed for development. However the Service acknowledged that the potential take would be limited and that abundant potential habitat would remain in undeveloped portions of the property. Thus a low effect HCP was considered the appropriate instrument for securing the 10(a) permit.

2.2 Permit Holder/Permit Boundary

Dan Keig, doing business as Wildcat Line, will be the holder of the section 10(a) permit. Mr. Keig can be contacted via mail at 200 Crest Road, Carmel Highlands, CA 93923, or via telephone at (831) 642-3223, or via fax at (831) 642-3005. Additional contact persons will be reported to the USFWS as necessary. In the event of sale of the property, the permittee would need to meet the regulations as defined in the 50 CFR section 13.25 (64 FR 32711, June 17, 1999, as amended 64 FR 52676, Sept. 30, 1999). Transfer of the permit shall be governed by the Service's regulations in force at the time.

The permit boundaries are the same as the boundaries of the 11.46-acre parcel. These boundaries are illustrated in Figure 5.

3.0 LEGAL REQUIREMENTS

3.1 Federal Endangered Species Act

The United States Congress passed the Endangered Species Act (ESA) to protect plants, invertebrates, fish, and other wildlife species from extinction. As a fundamental element of this protection, Section 9 of the ESA specifically prohibits the take of any fish or wildlife species listed under the ESA as endangered, unless such take is otherwise specifically authorized by the Service. Under Federal regulation, take of fish or wildlife species listed as threatened is also prohibited unless otherwise authorized. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is further defined to mean an act which actually kills or injures wildlife; such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding or sheltering (50 CFR 17.3).

In the 1982 amendments to the ESA, Congress established a provision in Section 10 (a) (1) (B) that allows for the incidental take of endangered and threatened species of wildlife by non-Federal entities. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. The 10(a)(1)(B) provisions establish a mechanism for authorizing incidental take of Federally-listed species. However, in order to receive an incidental take permit, the permit applicant must submit a Habitat Conservation Plan (HCP) which describes, among other things, the effects of the taking and the measures the applicant will implement to mitigate for these effects.

The Service has established a special category of low-effect HCPs for projects involving minor or negligible impacts on Federally-listed, proposed, or candidate species and their habitats covered under the HCP; and minor or negligible effects on other environmental values or resources (USFWS and NMFS 1996). Low-effect HCPs and their associated incidental take permits are expected to have a minor or negligible effect, individually and cumulatively, on the species covered in the HCP. The determination of whether a HCP qualifies for the low-effect category must be made prior to implementation of the associated mitigation plan. This category is intended for projects with inherently low impacts, not for projects with significant potential impacts that are subsequently reduced through mitigation programs.

3.2 National Environmental Policy Act

The National Environmental Policy Act of 1969, as amended, requires that Federal agencies analyze and disclose the environmental impacts of their proposed actions, and include public participation in the planning and implementation of their actions. Issuance of an incidental take permit by the Service is a Federal action subject to NEPA compliance. Although Section 10 and NEPA requirements overlap considerably, the scope of NEPA also considers the impacts of the action on non-biological resources such as water quality, air quality, and cultural resources. Depending on the scope and impact of the HCP, NEPA requirements can be satisfied by one of the following documents or actions: (1) categorical exclusion; (2) an Environmental

Assessment (EA); or (3) an Environmental Impact Statement (EIS). Low-effect HCPs and their associated incidental take permits are considered categorical exclusions under NEPA, as provided by the Department of Interior Manual 516DM2, Appendix 1, and 516DM6, Appendix 1.

4.0 BIOLOGY

The following section describes the existing biotic resource conditions on the Wildcat Line project site, including an assessment of any additional special-status plant and animal species beyond the focus of this HCP.

4.1 Vegetation and Wildlife

The majority of the site supports a coastal sage scrub plant community, which extends over approximately 7.02 acres (Table 1) of the 11.46-acre parcel, as illustrated in Figure 3. This acreage equates to about 61% of the entire parcel. Indicator plant taxa for this community observed at the parcel include: coyote brush (*Baccharis pilularis*), Carmel ceanothus (*Ceanothus griseus*), golden yarrow (*Eriophyllum confertiflorum*), pine bush (*Ericameria pinifolia*), California sagebrush (*Artemisia californica*), silver bush lupine (*Lupinus albifrons* var. *douglasii*), and sticky monkeyflower (*Mimulus aurantiacus*).

The foodplant for the Smith's blue, seacliff buckwheat (*Eriogonum parvifolium*), is a member of this plant community. As illustrated in Figure 6, Norman (1999) mapped the density of seacliff buckwheat plants throughout the entire 11.46-acre parcel using five density categories:

- A: 31-40 plants/100 ft.²;
- B: 21-30 plants/100 ft.²;
- C: 11-20 plants/100 ft.²;
- D: 1-10 plants/100 ft.²; and
- E: <1 plant/100 ft.².

Table 1 provides a breakdown of all buckwheat density classes for the entire property, as well as breakdowns for the proposed impact area, plus protected habitat areas lying north and south of the impact area. An estimate of the number of buckwheat plants resident in every polygon, as illustrated in Figure 6, was calculated by multiplying the area of each polygon by the median value of buckwheat density for that polygon, i.e., 35.5 plants for polygons of category A, 25.5 plants for polygons of category B, etc. The total population of seacliff buckwheat growing on the entire 11.46-acre parcel consists of an estimated 40,560 individuals, which equates to an average buckwheat density throughout the entire parcel of 8.1 plants/100 ft.².

Approximately 2.93 acres (26%) of the site is characterized by Closed-cone Coniferous forest (Figure 3), which is indicated by the presence of Monterey pine (*Pinus radiata*). Norman (1999) tallied 262 individuals of Monterey pine, including 81 whose DBH < 1 inch, 56 whose DBH was between 1 and 12 inches, and 125 whose DBH was > 12 inches. Understory plants observed at the site include California bedstraw (*Galium californicum*), Pacific pea (*Lathyrus vestitus* ssp. *puberulus*), California blackberry (*Rubus ursinus*), gambleweed (*Sanicula crassicaulis*), and hedge nettle (*Stachys bullata*).

Riparian woodland plant community is found on only 0.41 acres (3.6%) at the site, where it is limited to the intermittent drainages that bracket the main finger ridge (Figure 3). Indicator plant taxa observed at the project site included: arroyo willow (*Salix lasiolepis*), western lady

Table 1. Acreage estimates for the five buckwheat density classes for the project impact area, as well as areas outside (north and south) of the impact area.

Density Class	Impact Area	North of Impact	South of Impact	Site Totals
A	0.128	0.006	0.278	0.412
B	0.206	0.009	0.565	0.780
C	0.326	0.145	2.432	2.903
D	0.170	0.550	1.264	1.984
E	0.731	3.610	1.040	5.381
Totals	1.561	4.320	5.579	11.46

fern (*Athyrium filix-femina*), thimbleberry (*Rubus parviflorus*), western water hemlock (*Cicuta douglasii*), hoary nettle (*Urtica dioica* ssp. *holosericea*), and common monkey flower (*Mimulus guttatus*).

The only federal or state recognized sensitive species present on the site is the federally-listed, endangered Smith's blue butterfly. In addition, the Smith's Blue is known from several nearby locations, namely about 0.25 mi. to the northwest (Kellner 1989), south (Arnold 1986; Kellner 1989), and east of the site (Arnold 1991a).

Botanical surveys of the site, conducted by Monterey County botanist, Jeff Norman, did not yield any federal or state-listed plant species. Norman observed one range-limited plant, Lewis' clarkia (*Clarkia lewisii*) growing atop the finger ridge, in association with the coastal sage scrub plant community. This species is recognized by the California Native Plant Society as a List 4 taxon. Plant species on the CNPS List 4 are those with limited distribution, and the CNPS considers this category as a "watch list" (California Native Plant Society 1994).

Monterey pine is included on the CNPS List 1B, which consists of plants that are rare, threatened or endangered in California and elsewhere (California Native Plant Society 1994). Trees at the project site appear to generally be mature and healthy. During his November 1999 botanical survey, Norman (1999) found 262 Monterey pine trees growing at the project site.

Although the site is undeveloped, a few non-native, invasive plants have become established there, including Hottentot (also known as ice plant) fig (*Carpobrotis edulis*), French broom (*Genista monspessulana*), ripgut brome (*Bromus diandrus*). In addition, an aggressive native plant, lemonade bush (*Rhus integrifolia*), is also present at the site. Collectively, these plants pose a threat to the foodplant of the Smith's blue, seacliff buckwheat (*Eriogonum parvifolium*). Stands of Hottentot fig presently cover approximately 0.27 acres (2.4%) at the project site, while the other invasive plants are more widely distributed at the site. Collectively, the total cover of all invasive plants is estimated to be 0.5 acres (4.4%).

4.2 Covered Species: Smith's Blue Butterfly

The species addressed in this HCP and covered by the HCP's associated Section 10(a) (1) (B) permit (hereinafter referred to as covered species) is one Federally-listed species, the Smith's blue butterfly, that is known to occur on the site and for which suitable habitat exists on the site,

and will be directly affected by the project. A discussion of the biology of this species and its actual or potential occurrence on the project site follows.

4.2.1. Conservation Status

The Smith's blue butterfly is a federally-listed endangered species. Throughout most of its range, the primary threat to the butterfly is urbanization. In a few instances, other types of land uses, such as overgrazing, and development in park lands, have also threatened the butterfly. For these reasons, the butterfly was recognized as an endangered species by the U.S. Fish & Wildlife Service (1976) in 1976. Critical habitat was proposed (U.S. Fish & Wildlife Service (1976) but never finalized. A recovery plan was published by the U.S. Fish & Wildlife Service (1984).

The State of California does not recognize insects as endangered or threatened species. The International Union for the Conservation of Nature (1996) recognizes the Smith's blue as endangered.

4.2.2. Description and Taxonomy

The Smith's blue is a small lycaenid butterfly (Insecta: Lepidoptera: Lycaenidae), whose adult wingspan measures about one inch. Larvae are slug-shaped and vary in color from cream to pale yellow or rose, to match the buckwheat flowerheads on which they feed.

Smith's blue butterfly was originally described in the genus *Philotes* by Mattoni (1954), and referred to as *Philotes enoptes smithi*. Shields (1975) realigned several genera of blues, resulting in the placement of the species *enoptes* in the genus *Shijimiaeoides*. Thus, the scientific name of the Smith's blue, when it was first recognized as an endangered species (U.S. Fish & Wildlife Service 1976), was *Shijimiaeoides enoptes smithi*. Mattoni (1977) subsequently made a number of nomenclatural rearrangements in several genera of the blue butterfly tribe Scolititandini, which resulted in the placement of *enoptes* in the genus *Euphilotes*. Today, the Smith's blue is now known scientifically by the name, *Euphilotes enoptes smithi*; however, all of these names may be encountered in the literature.

Smith's blue is one of eight described subspecies of *Euphilotes enoptes*, which ranges from throughout California and Nevada (Langston 1969; Miller and Brown 1981; Pratt and Emmel 1998). All of the subspecies of *E. enoptes* are closely associated with their larval (i.e., caterpillar) and adult foodplants, different species of buckwheat (*Eriogonum*: Polygonaceae). Generally, each subspecies is restricted to one or a few closely-related species of *Eriogonum*.

Populations of the Smith's blue butterfly can be distinguished from other infraspecific taxa of *Euphilotes enoptes* by the following morphological characters:

- 1) the wide marginal band on the dorsal forewings of males;
- 2) the faint terminal line on the underside of both wings;
- 3) the prominent checkering of the forewing fringe on both dorsal and ventral facies; and
- 4) a light underside with large, prominent macules.

Color illustrations of the adult and larval stages are presented in Arnold (1983a). Other illustrations of the adult butterfly can be found in Arnold (1983b), U.S. Fish & Wildlife Service (1984), Howe (1975), Scott (1986), Steinhardt (1990), Lowe *et al.* (1990), and Thelander (1994).

Mattoni (1954) described *Euphilotes enoptes smithi* from specimens that he and Claude Smith collected at Burns Creek, near California State Highway 1, in Monterey County in 1948. Two colonies, in the vicinity of Big Sur, were known at the time of its description. Langston (1963, 1965) noted the occurrence of several additional colonies, in particular, the sand dune inhabiting populations that occur north of Ft. Ord. More recently, additional populations have been found on dunes south of Ft. Ord (Arnold 1983b and 1986), along the Big Sur coastline (Arnold 1986 and 1994; Kellner 1989; Norman 1994), in the Carmel Valley at Garland Ranch Regional Park (Walsh 1975; Arnold 1991a), and in the Santa Lucia Mountains at Rancho San Carlos (Arnold 1991b). Other inland populations have been reported from Laureles Grade, Paraiso Springs, Cone Peak, and the Hastings Reservation operated by the University of California (Arnold 1983a; U.S. Fish & Wildlife Service 1984).

4.2.3. Distribution and Habitats

Between Monterey and southern Santa Cruz County, *smithi* is found on coastal sand dunes in association with Coast Buckwheat (*Eriogonum latifolium*), although recent studies by Pratt and Emmel (1998) suggest that these populations should be referred to as *E. enoptes arenicola*. From the southern portion of Fort Ord to Monterey, there are several sand dune-inhabiting populations that occur in association with seacliff (also commonly known as dune) buckwheat (*Eriogonum parvifolium*). South of Monterey, almost to the San Luis Obispo County line, *smithi* is found at several dozen locations in the Santa Lucia Mountains and along the immediate coastline, where there is coastal sage scrub or cliff chaparral habitat and *E. parvifolium*. Similarly, inland populations of the butterfly, such as those occurring in the Carmel River Valley, are primarily associated with coastal sage scrub and cliff chaparral habitats, and feed on *E. parvifolium*. At some interior locations, adults of the Smith's blue have also been observed nectaring on naked buckwheat (*E. nudum*), but it is not known if larvae feed on this buckwheat (Arnold 1991b).

4.2.4. Natural History

Smith's blue butterfly is univoltine, i.e., it has only one generation per year. Adult emergence and seasonal activity is synchronized with the blooming period of the particular buckwheat used at a given site. At a particular location, adults are active for about four to eight weeks, but the adult activity period and duration can vary dramatically from year-to-year and from one location to another.

Individual adult males and females live approximately one week, and both sexes spend the majority of their time on *Eriogonum* flowerheads (Arnold 1983a, 1983b, and 1986). There they perch, bask (i.e., thermoregulate), forage for nectar, search for mates, copulate, and lay their eggs. Females lay single eggs on the buckwheat flowers. Larvae hatch in about one week and begin feeding in the buckwheat flowerheads. Young larvae feed on the pollen and developing flower parts, while older larvae feed on the seeds. Older larvae are tended by ants, which may

provide some protection from parasites and predators. Upon maturing in about one month, the larvae pupate in the flowerheads or in the leaf litter and sand at the base of the buckwheat plant. Pupae that form in the flowerheads later drop to the ground.

Dispersal data from capture-recapture studies (Arnold 1983b and 1986) indicate that most adults are quite sedentary, with home ranges no more than a few acres. However, a small percentage of adults disperse farther and exhibited home ranges between 20-30 acres (Arnold 1986).

All populations of the three buckwheat foodplants, within the range of the Smith's blue, are not always used by the butterfly at a particular point in time. Lycaenids that feed on *Eriogonum* flowers favor mature, robust individuals of the perennial buckwheat plants because they produce more flowers (Arnold 1983a and 1983b; Arnold and Goins 1987; Arnold 1990). Thus, buckwheat stands that consist of younger or older, senescent individuals, which produce fewer flowers, may not be visited by the butterfly until these plants mature or are augmented by robust, flowering specimens.

Among butterflies, it is somewhat unusual for both the adult and larval stages to feed only on one plant, and, in particular, only on just the flowers. Most butterflies feed as caterpillars on one or a few closely-related plants, and then as adults obtain nectar from flowers that are generally unrelated to what the caterpillars fed on. Because of the Smith's blue's dual dependency on the flowers of its buckwheat foodplants, it is more susceptible to habitat degradation. Although it is more extinction prone because of its total dependence upon the flowers of buckwheat plants, conservation efforts are greatly simplified because resource managers only need worry about a single plant rather than several plants to maintain this endangered butterfly.

4.2.5. Occurrence at the Project Site and Vicinity

Adults of the endangered Smith's Blue butterfly were first observed at the 11.46-acre project site in Carmel Highlands in 1992 by biologists from Thomas Reid Associates (California Natural Diversity Data Base 2000). On July 13, 1999, Richard A. Arnold and Jeff Norman also observed numerous adults of the endangered butterfly at the site. Smith's Blues were observed in several different portions of the project site in association with mature specimens of *E. parvifolium*. Due to the abundance of *E. parvifolium* in association with the coastal sage scrub habitat at the site and the proximity of nearby known populations (Kellner 1989 #2 and #2.1), the butterfly population is likely to be robust. Although the proposed project will remove 0.8 acres of coastal sage scrub habitat utilized by the Smith's Blue at this site, this acreage is estimated to represent less than 0.1 percent of the butterfly's currently known geographic range.

At least three invasive plant taxa, Hottentot fig (*Carpobrotus edulis*), ripgut brome (*Bromus diandrus*), and French broom (*Genista monspessulana*), are present at the project site. These invasive plants are especially well established along the shoulders of the existing dirt access road and occur in small, scattered patches or as solitary individuals in other portions of the project site. At other locations where the Smith's blue butterfly occurs, these species have displaced the buckwheat foodplants of the butterfly (Arnold 1983a and 1986). For this reason,

these invasive plants pose a threat to the maintenance of the Smith's blue butterfly at the project site.

5.0 IMPACTS AND ENVIRONMENTAL COMPLIANCE

5.1 IMPACT ASSESSMENT

Most of the impacts of the proposed project will occur during grading of the impact area, installation of drainage and erosion control improvements, and construction of the leach field. Lesser impacts are expected to occur outside of the impact area during the removal of invasive plants plus habitat restoration and enhancement activities. The remainder of this section identifies the specific activities that could result in impacts to the Smith's Blue butterfly and its habitat. Table 2 enumerates the impacted acreages for each habitat type at the project site.

Grading, development, and installation of drainage, erosion control, and leach field improvements within the 1.60-acre impact area, will result in the removal of approximately 0.80 acres of coastal sage scrub habitat. These activities will also result in the direct removal of an estimated 7,034 *E. parvifolium* plants, which support an unknown number of the endangered Smith's blue butterfly. The 7,034 impacted buckwheat plants represent approximately 17% of the estimated 40,560 buckwheat plants resident on the entire 11.46-acre project site. Based on a recent survey (Norman 1999) of the project site, 2% of these impacted plants (n = 141) are juveniles, and 28% (n = 1,970) are senescent individuals that are not producing sufficient flowers for use by Smith's blue. Thus, of the estimated 7,034 *E. parvifolium* plants growing within the 1.6-acre development footprint, only 4,923 could reasonably support the endangered butterfly at this time.

A small, but undetermined number of buckwheat plants may be lost outside of the impact area as invasive plants are removed, and during implementation of habitat restoration and enhancement activities. All future routine maintenance and repair activities of the aforementioned improvements are expected to be conducted within the impact area.

A potential indirect impact of the project is dust that is generated from grading activities and vehicular traffic on the dirt road, landscaping, and other construction activities. Dust will be controlled as necessary by watering down the graded areas to minimize any adverse impacts on the life stages of the butterfly or its buckwheat foodplant. Upon completion of grading and construction work, the access road will be replaced by an all-weather surface.

The patches of *E. parvifolium* located in the undeveloped portions of the site will remain unaffected and will continue to provide potential habitat for the butterfly at the project site during the grading and construction. Since the majority of grading activities are proposed to occur in the spring months before the butterfly's activity period or in the fall months after the butterfly's activity period, the potential for collisions with vehicles and equipment is greatly reduced.

The Fire District will ultimately determine the fire clearance requirements, if any, for any future residence on site once an actual development plan is submitted for their review. According to the Fire District, fire clearance requirements depend on the type of construction materials used to build the structure, the location of the proposed structure within the building envelope, and the presence of sensitive habitat on site. At this time, it is anticipated that no fire clearance will be necessary outside the impact area. In the unlikely event that the Fire District, in

consultation with the consulting biologist, determines that the removal of seaciff buckwheat is necessary to protect a future residence, the biologist shall survey the affected area for seaciff buckwheat plants and the property owners shall mitigate such impacts at a 1:1 ratio. Suitable revegetation and enhancement areas to accommodate these potential impacts are identified on Figure 7.

To summarize, impacts to the Smith's blue butterfly and its habitat will occur during grading of the site and the installation of various improvements to the site associated with the construction of a single residence. As discussed in greater detail in Section 7.0 on Minimization and Mitigation Measures, the loss of 0.80 acres of coastal sage scrub habitat for the Smith's blue within the impact area will be offset by the restoration of 0.97 acres with seaciff buckwheat plants. This restored acreage includes :

- a) 0.463 acres of unused portions of the existing dirt road;
- b) 0.270 acres of the site currently dominated by Hottentot fig; and
- c) 0.230 acres currently dominated by other invasives.

Table 2 summarizes the existing, impacted, and protected acreage for each plant community at the project site.

5.2 Level of Incidental Take

Since there are no estimates of the numbers of Smith's Blue butterflies that reside at the project site, it is not possible to quantify the exact number of individual animals that could be taken by the removal of its foodplant within the impact area. Also, since the numbers of seaciff buckwheat plants that will be removed have been estimated, the level of incidental take of the Smith's Blue is expressed as the acreage (0.80 acres) of habitat that will be removed. Thus, the incidental take permit associated with this HCP will authorize all such take of the Smith's Blue as will occur as a result of the removal of 0.80 acres of seaciff buckwheat plants within the impact area.

The level of take of Smith blue butterfly at the Wildcat Line property as described above is expected to have negligible effects on the species' overall survival. This is because the actual number of animals incidentally taken will likely be low; the percentage of the species habitat relative to the species entire range is very small; and its relative importance to the species both regionally and range wide is thought to be minor.

5.3 ENVIRONMENTAL COMPLIANCE (Internal Sec. 7 Assessment)

The following information is provided to assist the USFWS in complying with consultation requirements of Section 7 of the ESA.

5.3.1 Direct and Indirect Effects

Direct and indirect impacts to the Smith's Blue butterfly, its buckwheat foodplant, and its preferred habitat are expected to be minimal. Only 0.80 acres of coastal sage scrub habitat, which supports seaciff buckwheat plants, will be removed. As previously discussed in this HCP, the project site is situated in a region where neighboring and nearby parcels support

extensive stands of coastal sage scrub habitat, including seacliff buckwheat plants and the Smith's Blue butterfly. Furthermore, this loss of habitat will be temporary as the applicant will implement habitat restoration and enhancement measures to establish 0.97 acres of new, on-site habitat for the butterfly.

5.3.2 Cumulative Effects

Even though 0.80 acres of coastal sage scrub habitat will be permanently removed along with an unknown number of Smith's Blues, these losses are not expected to affect the survival of the butterfly or its foodplant due to the occurrence and abundance of its foodplant elsewhere on the project site and on several neighboring and nearby locations, as well as elsewhere throughout the Smith's Blue's entire geographic range. Indeed, the affected acreage will be replaced with 0.97 acres of restored coastal sage scrub habitat, so there will be a net gain in habitat (i.e., acreage) as a result of this project.

5.3.3 Effects on Critical Habitat

Although critical habitat was proposed (U.S. Fish & Wildlife Service 1976) for the Smith's Blue, it was never finalized. Thus, no areas of critical habitat will be affected by this project.

Table 2. Existing (i.e., pre-construction), impacted, restored, and protected (i.e., per the HCP) acreages for each plant community at APN 243-201-011.				
Plant Community	Existing Acreage	Impacted Acreage	Restored Acreage	Protected Acreage
Coastal Sage Scrub	7.02	0.80 ^a	0.00	6.22 ^b
Closed-Cone Coniferous Forest	2.93	0.67 ^c	0.00	2.26
Riparian	0.41	0.00	0.00	0.41
Disturbed access road	0.60	0.13	0.47	0.47 ^b
Hottentot Fig and other invasives	0.50	0.00	0.50	0.50 ^b
Totals	11.46	1.60	0.97	9.86

Notes:

^a The 0.80 acres of coastal sage scrub habitat located within the building footprint and the four locations of drainage and erosion control improvements will be impacted. Removal of invasive plants, and repair and maintenance of drainage and erosion control may impact an additional unknown amount of habitat.

^b The final protected acreage for coastal sage scrub habitat will be 7.19 acres, consisting of 6.22 acres of existing coastal sage scrub habitat, 0.500 acres of restored habitat in areas where invasive plants are removed, and 0.47 acres of restored habitat in the area of the former driveway.

^c Although 0.67 acres of closed cone coniferous forest will be impacted by construction of the new driveway and leach field, these improvements will be located in a manner that minimizes losses of Monterey pines.

6.0 TAKE OF THE COVERED SPECIES

Incidental take of Smith's blue butterfly will result from removal of approximately 0.80 acres of coast sage scrub habitat on the project site within the impact area. In addition, butterfly eggs, larvae, pupae, or adults may be directly harmed during initial grading activities or by construction equipment and vehicles or indirectly by dust. An undetermined, but limited number of buckwheat plants and life stages of the Smith's blue may be lost during habitat management activities, in particular, during the removal of non-native plants in other portions of the entire 11.46-acre parcel.

The maximum levels of take of the Smith's blue butterfly anticipated to occur under this HCP, and hereby authorized by its associated Section 10(a)(1)(B) permit, are as follows:

- 1) any Smith's blue butterflies that may be associated with up to 0.80 acres of foraging habitat that will be removed by the project;
- 2) any Smith's blue butterflies that may be killed or injured as a result of impacts by construction equipment or vehicles, activities related to construction, or dust;
- 3) any Smith's blue butterflies that may be killed or injured during habitat management, in particular during the removal of non-native plants in protected portions of the parcel; and
- 4) any Smith's blue butterflies that may be associated with up to five hundred buckwheat plants that may be removed pursuant to erosion control or fire clearance activity.

These incidental take limits are subject to full implementation of all minimization and mitigation measures described in Section 7.0. If any of these take limits are exceeded, Wildcat Line shall cease all construction and habitat management operations and contact the Service immediately.

7.0 MINIMIZATION AND MITIGATION MEASURES

The following measures have been incorporated into the proposed project to minimize and mitigate potential incidental take of the Smith's blue butterfly.

7.1 Biological Monitor

A knowledgeable, experienced biologist, approved by the Service, shall be present during initial grading activities (i.e., clearing of vegetation and stripping of the surface soil layer), in areas of potential Smith's blue butterfly habitat. The biological monitor shall be informed of the project starting date at least 7 days prior to the onset of construction. The monitor shall be present on site beginning with the installation of temporary fencing prior to clearing of vegetation, and shall conduct daily inspections of the project site during the initial grading period to ensure compliance with the mitigation measures provided in this HCP. The biological monitor will also periodically visit the project site during construction to insure that no impacts occur in protected portions of the property. The biological monitor shall have authority to stop immediately any activity that is not in compliance with this HCP, and to order any reasonable measure to avoid the take of an individual of Smith's blue butterfly.

7.2 Delineation of Impact Area

Prior to the initiation of construction, Wildcat Line will install a temporary fence along the limits of grading adjacent to the coastal scrub zones, and signs will be posted warning grader operators not to proceed beyond the fence. This fencing will remain in place until all construction and other site improvements, including landscaping within the impact area and revegetation activities in protected portions of the property, are completed. All project-related parking and equipment storage shall be confined to the construction site (i.e., the impact area). Undisturbed areas shall not be used for parking or equipment storage. In addition, prior to ground disturbance, a deed restriction for all protected habitat areas on the site shall be recorded.

7.3 Construction and Operational Requirements

Project-related vehicle traffic shall be restricted to established roads and the impact area. Temporary fencing will be installed along the perimeter of the impact area, and construction vehicles and equipment will be excluded from the fenced protected portions of the property.

7.4 Contractor and Employee Orientation

Wildcat Line shall conduct an orientation program for all persons who will work on-site during construction. The program shall consist of a brief presentation from a person knowledgeable about the biology of the Smith's blue butterfly and the terms of the HCP. The purpose of the orientation will be to inform equipment operators and field supervisors of the grading limit and construction activity restrictions. There will also be a discussion of the appropriate protocol should the covered species be encountered during construction activities.

7.5 Access to Project Site

Wildcat Line shall allow representatives from the U.S. Fish and Wildlife Service access to the project site to monitor compliance with the terms and conditions of this HCP.

7.6 Habitat Protection

7.6.1 Protection During Construction

Prior to initial grading, temporary fencing will be erected to protect existing coastal sage scrub habitat and buckwheat plants to prevent accidental disturbance during grading of the building site and construction of the new home. Signs will be placed on the fence at locations within 15 feet of the grading footprint, informing operators of the grading equipment of the presence of an endangered species. Signs will include the following language:

"NOTICE: SENSITIVE HABITAT AREA. GRADING PROHIBITED."

All equipment operators and field supervisors will attend a pre-construction conference to be conducted by a qualified biologist who will oversee the construction activities. The purpose of the conference will be to inform all grading and construction workers of the presence of endangered species on and adjacent to the project site, conduct a site visit to show participants where grading can and cannot occur, to inform operators of appropriate protocol should they encounter the butterfly during grading and construction activities, and to advise operators of the penalties they may incur if harm to the butterfly or its protected habitat on site occurs beyond what is authorized in the Service's incidental take permit.

The majority of grading activities are proposed to occur in the spring months before the butterfly's activity period or in the fall months after the butterfly's activity period. Appropriate dust control measures, such as periodically wetting down the dirt access road and graded areas, will be used as necessary during grading of the areas for building footprints and in other portions of the impact area during construction, landscaping, or any other activities that generate dust to minimize any adverse impacts on the life stages of the butterfly or its buckwheat foodplant. Any dust generated by grading activities will pose only a temporary problem that will be eliminated once the site is revegetated. The methods appropriate for dust control will be determined by consultation between the construction foreman and project biologist.

The patches of *E. parvifolium* located in the undeveloped portions of the site will remain unaffected and will continue to provide potential habitat for the butterfly at the project site during the grading and construction. Increased equipment traffic in the vicinity of any occupied butterfly habitat during grading and construction could result in increased collisions with adult butterflies. However, since the adults are weak fliers and tend to stay in close proximity to their buckwheat foodplants, and since the majority of grading activities are proposed to occur in the spring months before the butterfly's activity period or the fall months after the butterfly's activity period, the potential for collisions with equipment is greatly reduced.

Drainage improvements will be installed to prevent potential erosion in protected habitat

areas from runoff originating in the impact area. These improvements will include curbs, gutters, and other appropriate erosion control measures within the impact area.

A qualified biologist will monitor activities on a regular basis during the grading. Should any violation occur, a "stop work" order will be issued immediately. The Ventura office of the Service will be contacted and the "stop work" order will remain in effect until the issue is resolved.

7.6.2 Permanent Protection

To provide for long term protection of the existing and restored seacliff buckwheat habitat areas on the project site, Wildcat Line shall record a deed restriction over the undeveloped habitat areas of the property (ca. 9.86 acres) or shall implement another alternative acceptable to the USFWS that will protect the undeveloped habitat areas in perpetuity, prior to ground disturbance activity. The deed restriction shall be subject to the approval of USFWS and shall only permit uses consistent with habitat restoration, protection, and activities consistent therewith, and will prohibit further development in this area of the property.

Approximately 7.19 acres of existing and restored coastal sage scrub habitat, will be protected at the Wildcat Line project site. Of this total protected acreage, approximately 6.22 acres of existing coastal sage scrub habitat for the butterfly will be protected. In addition, once the grading for residential development has been completed, 0.47 acres of the existing dirt access road and 0.27 acres of coastal sage scrub habitat will be restored by the removal of ice plant and 0.23 acres will be restored by the removal of other invasive plants and the out-planting of *E. parvifolium* and put into a deed restriction.

The long term management goal will be to protect the existing and restored seacliff buckwheat on site to maintain its value as habitat for the Smith's blue butterfly. As described elsewhere in this HCP, the extensive restoration, enhancement, and maintenance activities that will occur throughout the permit term will provide long term benefits to the endangered butterfly.

Once the success criteria is achieved and the permit term ends, the seacliff buckwheat will be preserved and protected in perpetuity pursuant to the perpetual deed restriction. The deed restriction shall prohibit encroachment into the easement area and any activity that is incompatible with preservation efforts. Drainage from the impact area shall be diverted around the easement area.

Wildcat Line shall create a fund, in the form of a non-wasting endowment or other monetary instrument (i.e. cash deposit, a certificate of deposit, irrevocable letter of credit or surety bond) in favor of a third party approved by the USFWS in an amount sufficient to carry on management of the seacliff buckwheat habitat in perpetuity. The exact amount of the fund shall be determined in consultation with, and with the concurrence of USFWS, and shall be established prior to issuance of the permit. The fund shall generate sufficient interest so that at the end of the permit term the fund equals an amount, which once invested will yield sufficient interest to cover the long term management obligations of the HCP. Prior to the expiration of the permit term, the fund shall be transferred to the third party which will be responsible for the long term management of the seacliff buckwheat habitat

Wildcat line, on behalf of its successors, understands that a failure to comply with the terms of the deed restriction shall be deemed a violation of the HCP and USFWS may pursue any legal or equitable remedies against Wildcat Line or its successor to enforce its terms.

7.7 Habitat Management and Revegetation

The primary goal of the management program is to provide up to 7.19 acres of an enhanced, and permanently maintained and protected area of coastal sage scrub habitat that will support the endangered Smith's blue butterfly, while allowing for residential development of 1.6 acres of the project site.

Specific management goals can be enumerated as follows:

- a) Siting of some features of the project to avoid sensitive habitats and resources;
- b) Slope stabilization, if needed;
- c) Removal and control of exotic vegetation to less than 2% cover at the site;
- d) Restoration of coastal sage scrub habitat including revegetation with 4,923 surviving seaciff buckwheat plants;
- e) Habitat protection during grading and construction;
- f) Establishment of a deed restriction for permanent protection of habitat values on 9.86 acres; and
- g) Monitoring and maintenance of habitat values during and after construction.

The management goals and techniques described in this section are intended to minimize and mitigate the take of Smith's blue butterflies and mitigate impacts to coastal sage scrub habitat. The remainder of this section discusses the array of management techniques that will be used to meet the management goals of the HCP for the Wildcat Line project site. If new information about the Smith's Blue butterfly, its buckwheat foodplant, or site conditions becomes available during the life of the permit, management techniques may be altered to incorporate this new information.

7.7.1 Avoidance of Sensitive Habitat

The majority of the coastal sage scrub habitat on the project site, consisting of approximately 6.22 acres, will be avoided during grading and construction activities for the new home. Only about 0.80 acres of buckwheat-dominated coastal sage scrub habitat will be directly affected by project development.

7.7.2 Slope Stabilization

Grading for the new home site will occur on the flatter portions of the main finger ridge and only minor slope stabilization needs, within the impact area, are anticipated. Grading and backfill operations will be conducted to avoid slope failures in neighboring, protected habitat areas that currently support stands of buckwheat. A temporary fence will be constructed between the limit of grading and existing buckwheat stands that lie outside of the impact area. Heavy equipment will not be permitted beyond the fence. Equipment operators will be informed of the

reasons for installation of the fence and will be required to stop work and notify the project biologist and engineer immediately should slope failure, that threatens existing buckwheat plants, be imminent.

7.7.3 Control of Exotic Plants

Hottentot fig, ripgut brome, and French broom are exotic plants that have invaded 0.50 acres at the project site. In order to expand the cover of native plant species and enhance habitat values, they will be eliminated from the project site. These invasive plants will be eliminated using a combination of manual and mechanical removal techniques, with the particular method used being that which is most appropriate for each situation. Solitary individuals or small patches of these plants will be eliminated by manual removal, while larger stands will be removed mechanically using the bucket of a backhoe only at the periphery of the impact area and in a manner that will not disturb surrounding habitat for the endangered butterfly. No herbicides will be used. Other eradication techniques, such as the use of black plastic, may be used if appropriate.

Special care is required in areas where Hottentot fig and native plants, such as buckwheat, are growing together. The weed eradicator shall be informed of the need to protect native plants, and if necessary, native plants should be flagged for avoidance. Manual removal of Hottentot fig and other nonnative plants will be necessary within a five-foot radius of *Eriogonum parvifolium* plants.

Leach fields, because of the ground disturbance during installation and the nutrient enriched soils during operation, often provide conditions favorable for establishment of weeds. Appropriate weed control measures will be employed to prevent establishment of weeds or other invasives at the leach field.

7.7.4 Habitat Restoration

Establishment of viable populations of native plants, notably *E. parvifolium*, is proposed for portions of the site that will be restored, such as unused portions of the existing dirt road or where invasive plants are removed. Figure 7 illustrates portions of the project site that will be initially targeted for habitat restoration. The restoration goal is to successfully establish 4,923 seacliff buckwheat plants by the end of the five-year, post-construction monitoring period in portions of the project site targeted for habitat restoration.

Existing habitat quality in some of the undeveloped portions of the site is degraded by the presence of the invasive plant species. Appropriate weed control practices will be utilized to eradicate these invasives from the project site and provide additional habitat for the endangered butterfly. Approximately 0.5 acres of the site presently support invasive plants such as Hottentot fig (0.27 acres), plus ripgut Brome and French broom (0.23 acres). Areas currently occupied by invasives, as well as unused portions (0.46 acres) of the existing dirt road (0.60 acres) will be restored with buckwheat plants after the invasives are eradicated. It is anticipated that at least 0.97 acres of habitat for the Smith's blue will be restored/created on site.

Several methods of establishing new buckwheats are available, including seeding, propagation, planting of nursery stock, and natural succession. At the project site, a combination of these methods, such as seeding, propagation, and planting of nursery stock, will be used to revegetate locations where invasive plants are removed and habitat needs to be restored or enhanced. The particular revegetation method used at a given location will depend upon physical characteristics of the location, such as topography, soil condition, and hydrology, plus the time of year when revegetation is implemented, and the availability of suitable planting stock.

Prior to any revegetation effort, soils will be prepared to maximize potential for vegetation establishment. Site preparation techniques to improve soil conditions may include vegetation removal, mulching, soil compaction, application of fertilizer, raking, scarifying, and irrigation, as deemed appropriate based on existing site conditions.

Seeding will include the hand-broadcast of buckwheat seed mix directly onto the soil either prior to or following site preparation. A local expert will collect seed from the buckwheat plants within the impact area or from immediately surrounding parcels. The seed will be prepared and treated as required.

Propagation of seed collected on-site or at nearby off-site locations will be accomplished through germination in supercell containers or other containers as recommended by a native plant grower. The soil mix and any amendments used should be appropriate for the project site.

Buckwheat plants that will be lost within the impact area may be used to obtain rooted-cuttings and seeds. If necessary, a native plant grower should be consulted to select the best plants within the impact area for cuttings, and for the methods most suitable to root the cuttings. Seed and/or cutting collection of buckwheat plants will occur in June - October for later germination in August - October and outplanting in November - February.

E. parvifolium may be available from local commercial native plant nurseries or can be readily propagated. If available, nursery stock (propagated from the Carmel coastal zone) will be used to establish appropriate habitat composition and diversity. Either nursery flats, supercells, or 1-gallon stock will be used. It will be planted during appropriate seasons using methods that will facilitate the highest degree of success. The need for supplemental watering will be minimized by planting during the rainy season; however, a drip irrigation system may be used if hand watering is impractical.

By implementing the weed control, habitat restoration, enhancement and protection measures described in this HCP, the quality of habitat for the Smith's blue butterfly on the project site is expected to improve over existing conditions. On the other hand, in the absence of weed eradication, enhancements and restoration program, the invasive plant species may eventually outcompete the existing seaciff buckwheat habitat to the detriment of the Smith's Blue butterfly.

7.7.5 Monitoring and Maintenance

Wildcat Line or its assignees and/or successors will provide funding for a qualified individual or organization to monitor implementation of this HCP for a period of five to ten

years, depending on the success of the restoration effort. It is anticipated that this individual would visit the site regularly during the period of grading, and periodically during project construction and during the initial stages of implementation of the various management measures. This allows for timely solution to problems that may arise during construction or mitigation implementation.

Once habitat improvements have been completed, an assessment of the success of these measures will be necessary. The individual responsible for monitoring will visit the site once every four months for three years, then biannually up to the fifth year. The monitor will annually provide a brief written report to the property owners and USFWS, which describes:

- 1) an assessment of the condition of the on-site seaciff buckwheat;
- 2) evidence of erosion control or function;
- 3) an estimate of the non-native species cover;
- 4) a brief discussion of restoration efforts for the past year, including all monitoring activities that were performed and whether restoration goals are being achieved;
- 5) incidental take occurrences;
- 6) an mitigation problems and any corrective measures undertaken to insure restoration success;
- 7) recommendations to solve any problems; and
- 8) butterfly sightings.

7.7.6 Success Criteria

The restoration efforts will be considered successful if 4,923 seaciff buckwheat plants are established in 0.97 acres of restored coastal sage scrub habitat at the end of the five-year post-construction monitoring period. Buckwheat plants established in restored and enhanced areas should exhibit a stable or increasing population trend in at least three of the five monitoring years. In addition, up to 7.19 acres of coastal sage scrub, which provides suitable habitat for the butterfly, will be preserved in perpetuity under the proposed deed restriction. The maintenance goal of maximum cover of invasive non-native plants on site will be two (2) percent.

If at the end of five years, or at any point during the monitoring period, the survival rates and success criteria are not met, the biological monitor will provide an analysis of the cause(s) of failure, and in consultation with the Service, propose remedial action(s) appropriate to deal with the causal factors and to achieve the restoration goals. Depending upon the severity of the causal factor(s), a range of alternative corrective actions may need to be evaluated and implemented if restoration goals are not met. If specific factors become apparent that may preclude the establishment or success of buckwheat plants at the site, they will be described in the monitoring reports pursuant to Section 7.7.5.

7.7.7 Schedule for Implementation

The various management techniques described in this document will be implemented according to the following schedule. Plant collection and propagation will begin prior to initiation of grading. Seeds of seaciff buckwheat plants will be collected during the summer after the flowering period has concluded. The seeds will be stored or propagated by a designated

native plant specialist until planting of the restoration area occurs. Cuttings from seaciff buckwheat plants growing in the impact area may also be taken prior to grading. Plant duff and top soil from the impact area may also be collected, if appropriate to aid in buckwheat establishment. Timing of the collection of all plant material will be at the discretion of the native plant specialist who will be responsible for propagating the native plants. The native plant specialist hired to perform the habitat management and restoration activities will provide the Service with a more specific schedule of activities.

Control and eradication of invasive plants will be achieved by manual and mechanical removal of each target invasive species. The timing of these activities will be determined by the phenology of the targeted invasive plants.

Temporary fencing will be erected to protect existing habitat for the Smith's blue butterfly prior to the start of grading. If necessary, a qualified biologist will assist in staking the limit of grading and the alignment of the fence. This biologist will conduct pre-construction meetings with grading and construction personnel to inform them about the presence of special status species at the project site and appropriate protocol should the butterfly be encountered. The biological monitor will periodically visit the site to insure that all grading and construction activities comply with the parameters established in this HCP.

A monitoring program will continue for a period of five to ten years. The first year will begin when restoration activities in response to grading and construction activities are initiated. In the second and third years, i.e., immediately following construction, the biological monitor will visit the project site four times annually. In years four and five, the biological monitor will visit the project site biannually. If after the fifth year the success criteria have not been satisfied, biannual monitoring will occur through at least year ten to insure that success criteria are successfully achieved. An annual report will be prepared and submitted to the Service. This report will describe the monitoring activities performed, the results, and recommendations for any necessary remedial actions to achieve the goals of the HCP. Reporting requirements are discussed further in Section 8.6.

8.0 PLAN IMPLEMENTATION

8.1 BIOLOGICAL GOALS AND OBJECTIVES

The overall goal of this HCP is to replace the Smith's Blue habitat impacted by the proposed construction of one new residence at the project site. This will be accomplished by restoring 0.97 acres of coastal sage scrub habitat at the project site, by enhancing approximately 3.7 acres of existing coastal sage scrub habitat to improve habitat values for the endangered butterfly, and by protecting in perpetuity 9.86 acres, including 7.19 acres of existing and restored coastal sage scrub habitat at the project site via a deed restriction. Thus the loss of 4,923 buckwheat plants that serve as actual or potential habitat for the Smith's Blue and which will be impacted by the project, will be replaced by an equal number of successfully established plants in restored and protected areas of the project site.

8.2 DEED RESTRICTION

Prior to issuance of the incidental take permit, Wildcat Line shall record a deed restriction to insure that all areas outside of the impact area are preserved in perpetuity. Once recorded, the permittee shall perform periodic monitoring and maintenance as necessary to insure that Wildcat Line or the current permit holder are complying with the terms of the deed restriction. The monitoring and maintenance procedures that will be employed as described in Section 7.7.5 Monitoring and Maintenance.

8.3 IDENTIFICATION OF PROJECT REPRESENTATIVE

Prior to initiating ground-disturbing activities, Wildcat Line shall designate a representative responsible for communications with the Service and for overseeing compliance with the Section 10(a)(1)(B) permit. Initially, the designated representative is Mr. Dan Keig, 200 Crest Road, Carmel Highlands, CA 93923, (831) 642-3223. The Service shall be notified in writing of the representative's name, business address and telephone number, and shall be notified in writing if a substitute representative is designated.

8.4 IDENTIFICATION OF BIOLOGICAL MONITOR

Subject to approval by the Service, Wildcat Line nominates Mr. Jeff Norman as the biological monitor for this project. Mr. Norman can be contacted by mail at Box 15, Big Sur, CA 93920, or via phone (831) 667-2815 and 667-0105 (voice mail). Mr. Norman is a botanist, who is very familiar with habitats and special-status species that occur in Monterey County.

8.5 RESPONSIBILITIES

As specified in the USFWS Habitat Conservation Planning Handbook (1996b), an Implementing Agreement (IA) is not required for low-effect HCPs unless requested by the permit applicant. Wildcat Line understands that it is responsible for implementing this HCP in accordance with the specifications for mitigation.

Wildcat Line will satisfy its mitigation responsibilities by restoring coastal sage scrub habitat on 0.97 acres of the project site and by protecting 9.86 acres outside of the impact area via a deed restriction. Wildcat Line will assume all responsibilities for annual monitoring, replacement planting, maintenance of protected and restored habitat areas, and reporting, as described herein. It will also complete all obligations assigned to it within the Section 10 permit and the HCP.

8.6 PLAN DURATION

Wildcat Line seeks a ten (10) year permit from the Service to cover those activities associated with the removal of 0.80 acres of coastal sage scrub habitat at the project site. The ten (10) year period is necessary to insure that the mitigation is implemented successfully and benefits the endangered Smith's Blue butterfly. The permittee may request termination of the permit from the Service anytime after five (5) years, if the monitoring and success criteria for the restoration have been met and if there are not ongoing drainage, erosion, or other problems that will involve take of the endangered butterfly.

8.7 REPORTING

8.7.1 Post-Construction Compliance Report

A post-construction compliance report prepared by the monitoring biologist shall be forwarded to the Ventura Office of the U.S. Fish and Wildlife Service within 60 calendar days of the completion of construction. This report shall provide the following information:

- 1) dates that construction occurred;
- 2) pertinent information concerning the permittee's success in meeting the project's mitigation measures;
- 3) an explanation of failure to meet such measures, if any;
- 4) known project effects on Federally-listed species, if any;
- 5) occurrences of incidental take of Federally listed species, if any; and
- 6) other pertinent information.

8.7.2 Annual Monitoring Reports

If delays in grading and construction occur after issuance of the take permit, which result in delays in implementing habitat restoration and enhancement activities, then annual monitoring and reporting will not begin until these activities are initiated. In addition, annual monitoring reports will be prepared and submitted to USFWS by December 31st for the first five years of monitoring. If the success criteria have not been achieved by the fifth monitoring year, the monitoring biologist shall continue to submit annual reports for at least five additional years (i.e., for the full ten-year permit duration) or until the success criteria are achieved. This annual report shall include:

- 1) an assessment of the condition of the on-site seaclyff buckwheat;
- 2) evidence of erosion control or function;
- 3) an estimate of non-native species cover;
- 4) a brief discussion of restoration efforts over the past year, including all monitoring activities that were performed and whether restoration goals are being achieved;

- 5) incidental take occurrences;
- 6) any mitigation problems and any corrective measures undertaken to insure restoration success;
- 7) recommendations to solve problems; and
- 8) butterfly sightings.

8.8 FUNDING

The Wildcat Line limited partnership will provide all funding for implementation of take avoidance and mitigation measures as specified in this HCP. Wildcat Line understands that a failure to provide adequate funding, and a consequent failure to implement the terms of this HCP in full, could result in temporary permit suspension or permit revocation.

All funds required for the habitat restoration and monitoring during the permit term will be provided by Wildcat Line and secured by a performance bond. Restoration and habitat management activities on undeveloped lands will include, but will not be limited to: plant collection, propagation, and restoration, biological monitoring, fire control, and law enforcement, as necessary to maintain the lands in conditions suitable for the protection of its habitat value in perpetuity.

To cover long term management activity, Wildcat Line shall create a non-wasting endowment or other monetary instrument (i.e. cash deposit, a certificate of deposit, irrevocable letter of credit or surety bond) in favor of a third party approved by the USFWS in an amount sufficient to carry on management of the seacliff buckwheat habitat in perpetuity. The exact amount of the fund shall be determined in consultation with, and with the concurrence of USFWS, and shall be established prior to issuance of the permit.

Wildcat Line has established a budget to fund take avoidance measures, including monitoring, employee orientation, and other specific measures that may be required to avoid take of Smith's blue butterfly, as specified in this HCP. Estimated costs for the habitat restoration and monitoring activities described in this HCP and for the 10-year permit period are itemized in Table 2. The estimated cost for all implementation tasks is \$21,919, while construction and habitat monitoring tasks will cost \$16,400, and maintenance tasks will cost \$10,250. Thus, the total estimated cost of implementation, habitat restoration and monitoring is expected to be about \$48,569 for the 10-year permit period.

Table 3. Estimated costs for habitat restoration and monitoring.			
Task	Assumptions	Unit Cost	Total Cost
Implementation:			
Eradication of exotics			\$ 1,000
Seed collection	Collection of onsite material only	5 days @\$650/day	\$ 3,250
Plant propagation	4,923 liners	\$1/liner	\$ 4,923
Plant installation	4,923 plants	\$2/plant	\$ 9,846
Salvage buckwheat plants	Collect leaf litter and soil beneath and relocate	1 day @ \$650/day	\$ 650
Broadcast seed	0.9 acre – 50 lbs.	\$2,500/acre	\$ 2,250
Subtotal for Implementation:			\$21,919
Monitoring:			
Year #1	Construction monitoring	5 days @\$400/day	\$ 2,000
	Habitat monitoring	5 days @ \$400/day	\$ 2,000
Years #2 & #3	Habitat monitoring	10 days @ \$400/day	\$ 4,000
Years #4 - #7	Habitat monitoring	12 days @ \$400/day	\$ 4,800
Years #8 - #10	Habitat monitoring	9 days @ \$400/day	\$ 3,600
Subtotal for Monitoring			\$16,400
Maintenance:			
Watering	as needed during establishment period	25 days @ \$250/day	\$ 6,250
Exotics control	as necessary	1 day/yr. @ \$400/day	\$ 4,000
Subtotal for Maintenance			\$ 10,250
Grand Total			\$*48,569

** Note: the actual costs may be more or less than these estimates. Actual costs may be less if the applicant performs some of these tasks.*

9.0 CHANGED AND UNFORSEEN CIRCUMSTANCES

Section 10 regulations [50 CFR 17.22 (b)(2)(iii)] require that an HCP specify the procedures to be used for dealing with changed and unforeseen circumstances that may arise during the implementation of the HCP. In addition, the Habitat Conservation Plan Assurances (No Surprises) Rule [50 CFR 17.2, 17.22 (b)(5) and (6); 63 F.R.8859] defines changed and unforeseen circumstances and describes the obligations of the permittee and the Service. The purpose of the Assurances Rule is to provide assurances to non-Federal landowners participating in habitat conservation planning under the ESA that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP, in light of unforeseen circumstances, without the consent of the permittee.

9.1 Changed Circumstances

Changed circumstances are defined as changes in circumstances affecting a species or geographic area covered by an HCP that can reasonably be anticipated by plan developers and the Service and for which contingency plans can be prepared (e.g., the new listing of a species, a fire, or other natural catastrophic event in areas prone to such an event). If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and these additional measures were already provided for in the plan's operating conservation program (e.g., the conservation management activities or mitigation measures expressly agreed to in the HCP or IA), then the permittee will implement those measures as specified in the plan. However, if additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, the Service will not require these additional measures absent the consent of the permittee, provided that the HCP is being "properly implemented" (properly implemented means the commitments and the provisions of the HCP and the IA have been or are being fully implemented).

If a new species that is not covered by the HCP but that may be affected by activities covered by the HCP is listed under the Federal ESA during the term of the section 10 permit, the section 10 permit will be reevaluated by the Service and the HCP covered activities may be modified, as necessary, to insure that the activities covered under the HCP are not likely to jeopardize or result in the take or adverse modification of any designated critical habitat of the newly listed species. The Permittee shall implement the modifications to the HCP covered activities identified by the Service as necessary to avoid the likelihood of jeopardy to or take or adverse modification of the designated critical habitat of the newly listed species. The Permittee shall continue to implement such modifications until such time as the Permittee has applied for and the Service has approved an amendment of the Section 10 Permit, in accordance with applicable statutory and regulatory requirements, to cover the newly listed species or until the Service notifies the Permittee in writing that the modifications to the HCP covered activities are no longer required to avoid the likelihood of jeopardy or adverse modification of designated critical habitat of the newly listed species.

As to other potential changed circumstances; e.g., wildfire, erosion, extended drought, earthquake or other natural disaster, the short duration of the permit (i.e., 10 years) lessens the

likelihood that one of these phenomena may cause substantial changes to this site during the permit period. Furthermore, some types of changed circumstances, for example a wild fire, may actually enhance habitat values in the long term because seaciff buckwheat regenerates well after such fires. Nonetheless, in the event of a wildfire, some intrusion into the protected habitat area may be necessary to protect the residence, which would require future restoration of habitat. The permittee is responsible for restoration if, during a wildfire, degradation of the preserved area and take of Smith's Blue butterfly occur during attempts to protect and preserve the home or other structures to be built there. Extended drought could delay the establishment and growth of restoration plantings, which can be accommodated by extending the term of the permit until restoration goals are achieved. Winter storms could cause landslide or erosion problems in habitat areas that would require subsequent repairs, such as slope stabilization, and revegetation. The ongoing management of the protected and restored portions of the project site will allow for appropriate responses to changed circumstances during the life of the permit.

In addition, the HCP recognizes that potential maintenance and repair of the drainage and erosion control improvements and fire clearance requirements or due to erosion may result in additional impacts to seaciff buckwheat plants that grow outside of the impact area. If such changed circumstances occur, the permittee will notify the Service of the changed circumstances and will obtain the Service's written concurrence before proceeding with any clearing, minimization and mitigation. To mitigate potential future impacts due to these changed circumstances, the applicant agrees to restore the affected habitat at a 1:1 ratio using the procedures described elsewhere in this HCP. The cumulative maximum amount of vegetation removal permitted under these changed circumstances is 0.25 acres or 500 buckwheat plants, whichever occurs first. In addition, if vegetation must be removed in the designated restoration area to accommodate such impacts, then additional mitigation will be required to offset this take.

To accomplish such restoration, buckwheat plantings will be placed in other portions of the site where buckwheat density is currently low, but outside of areas targeted for restoration as mitigation due to the impact area. The primary area targeted for enhancement is the south slope below the impact area. The existing buckwheat numbers consist primarily of C and D densities (see Figure 7) and, where feasible, will be augmented to a B or C density as appropriate. Although approximately 3.7 acres of C and D density habitat is present on the southern slope, some portions of these areas are not suitable for buckwheat establishment due to exposed rocks, steep slopes, or poor soil conditions. Existing resident buckwheat plants will not be affected by enhancement efforts; rather, suitable openings between existing buckwheat patches will be targeted for enhancement. Most portions of the site north of the impact area are not appropriate for enhancement activities due to presence of other vegetation types, steep slopes, and shading. All buckwheat plants established in enhancement areas will need to be monitored for a minimum period of five (5) years, following the procedures used for the buckwheat plants established in restored areas to insure that the 1:1 replacement is successful.

Finally, if for any reason, 4,923 replacement buckwheat plants cannot be successfully established in areas targeted for restoration from the impact area, additional augmentation of resident buckwheat plants may occur, as needed, in portions of the site identified for enhancement activities. The enhancement procedures will follow the methods described earlier in this section.

9.2 Unforeseen Circumstances

The policy defines unforeseen circumstances as changes in circumstances that affect a species or geographic area covered by the HCP that could not reasonably be anticipated by plan developers and the Service at the time of the plan's negotiation and development and that result in a substantial and adverse change in status of the covered species. The purpose of the Assurances Rule is to provide assurances to non-Federal landowners participating in habitat conservation planning under the ESA that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP, in light of unforeseen circumstances, without the consent of the permittee.

In the case of an unforeseen event, Wildcat Line or the current permit-holder, shall immediately notify the Service staff who have functioned as the principal contacts for the proposed action. In determining whether such an event constitutes an unforeseen circumstance, the Service shall consider, but not be limited to, the following factors: size of the current range of the affected species; percentage of range adversely affected by the HCP; percentage of range conserved by the HCP; ecological significance of that portion of the range affected by the HCP; level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

If the Service determines that additional conservation and mitigation measures are necessary to respond to the unforeseen circumstance where the HCP is being properly implemented, the additional measures required of the permittee must be as close as possible to the terms of the original HCP and must be limited to modifications within any conserved habitat area or to adjustments within lands or waters that are already set-aside in the HCP's operating conservation program. Additional conservation and mitigation measures shall involve the commitment of additional land or financial compensation or restrictions on the use of land or other natural resources otherwise available for development or use under the original terms of the HCP only with the consent of the permittee.

10.0 PERMIT AMENDMENT/RENEWAL PROCESS

10.1 Amendments to the Permit

During the specified permit period, amendment of the Section 10(a)(1)(B) permit for the Wildcat Line project would be required for any of the following changes:

- a) significant revision of the permit area boundary;
- b) the listing under the ESA of a new species not currently addressed in this HCP that may be taken by project activities;
- c) modification of any important project action or mitigation component under the HCP, including funding, that may significantly affect authorized take levels, effects of the project, or the nature or scope of the mitigation program; or
- d) any other modification of the project likely to result in significant adverse effects to the Smith's blue butterfly not addressed in the original HCP and permit application.

10.2 Amendments to the HCP

This HCP may, under certain circumstances, be amended without amending its associated permit, provided that such amendments are of a minor or technical nature and that the effect on the species involved and the levels of take resulting from the amendment are not significantly different from those described in the original HCP. Examples of minor amendments to the Wildcat Line project HCP that would not require permit amendment include:

- a) minor revisions to monitoring or reporting protocols;
- b) minor revisions of the HCP's plan area or boundaries; and
- c) minor revisions in project design and construction procedures.

To amend the HCP without amending the permit, the permittee must submit to the Service in writing a description of the proposed amendment, an explanation of why the amendment is necessary or desirable, and an explanation of why the effects of the proposed amendment are believed not to be significantly different from those described in the original HCP. If the Service concurs with the amendment proposal, it shall authorize the HCP amendment in writing, and the amendment shall be considered effective upon the date of the Service's written authorization.

10.3 Permit Renewal

Upon expiration, the Wildcat Line project Section 10(a)(1)(B) permit may be renewed, if necessary, without the issuance of a new permit, provided that the permit is renewable, and that biological circumstances and other pertinent factors affecting Smith's blue butterfly at the site are not significantly different than those described in the original HCP. At least thirty (30) days prior to the expiration of this permit, Wildcat Line shall submit to the Service, in writing:

- a) a request to renew the permit;
- b) reference to the original permit number;
- c) certification that all statements and information provided in the original HCP and permit application, together with any approved HCP amendments, are still true and correct, or inclusion of a list of changes;

- d) a description of what take has occurred under the existing permit; and
- e) a description of what portions of the project are still to be completed, if applicable, or what activities under the original permit the renewal is intended to cover.

10.4 Permit Transfer

In the event of sale or transfer of ownership of the property, transfer of the permit shall be governed by the Service's regulations in force at the time, as explained in Section 2.2 Permit Holder/Permit Boundary.

11.0 ALTERNATIVES CONSIDERED

11.1 Alternative 1: No-Action

Under the No-action alternative, the Wildcat Line project would not be implemented. As a result, incidental take of Smith's blue butterfly associated with removal of vegetation from the property and from initial grading activities would be avoided, and no Section 10(a)(1)(B) permit would be required. However, impacts to the Smith's blue butterfly may be far greater in the absence of this HCP. Currently, the 11.46 acre parcel supports a significant amount of hottentot fig which, if not eradicated, could infest much of the coastal sage scrub habitat on site, including the seacliff buckwheat stands, which in a worst case scenario may eventually cause the extirpation of Smith's blue butterfly on the property. In this case, no mitigation replacement acreage would be restored for this project, and other conservation measures included in the project (e.g., establishment of a deed restriction, invasive weed eradication and other open space restoration measures on the property) would not be implemented. Therefore, the No-action Alternative is concluded to be of lesser conservation value to the Smith's blue butterfly than the proposed project and accompanying HCP. It would also result in an unnecessary economic burden to Wildcat Line. For these reasons, this alternative has been rejected.

11.2 Alternative 2: Redesigned Project

Under this alternative, the development footprint of the project would be reduced or relocated to another portion of the site, thereby reducing the loss of potential habitat for the butterfly. Although a Section 10(a)(1)(B) permit would still be required, the amount of mitigation would be less than that provided for the project as proposed. A reduction in the development would not significantly improve onsite habitat for the butterfly and there would still be an increase in human activity that could affect individual animals that may be using the areas. Also, incidental take of butterflies could still occur during initial grading activities. Similarly, the side slopes of the finger ridge are too steep (>30% slope) for development to be allowed. Relocation of the development footprint to the western portion of the property would result in the removal of an undetermined number of Monterey Pine trees, which may not be permitted by Monterey County, as well as some seacliff buckwheat plants. Thus, the gains in reduction of take of the covered species and reduced modification of the covered species habitat would not be significant; furthermore this alternative would also result in unnecessary economic burdens to Wildcat Line. For these reasons, this alternative has been rejected.

11.3 Alternative 3: Proposed Action (permit issuance)

Under the Proposed Action alternative, the Wildcat Line project would be developed as described in Section 2.0. The Proposed Action would require the issuance of a Section 10(a)(1)(B) permit to allow construction of the project. The project would result in the loss of approximately 0.8 acres of potential habitat for the Smith's blue butterfly. However, conservation measures as proposed in the HCP would result in greater habitat value for the butterfly than exists on the project site, because of the eradication of exotics that presently can outcompete the buckwheat foodplant of the butterfly. The Proposed Action thus provides greater

habitat conservation benefits than the No Action and Redesigned project alternatives, and also best meets the needs of the applicant. Therefore, the Proposed Action is the preferred alternative.

12.0 HABITAT CONSERVATION PLAN PREPARERS

Dr. Richard A. Arnold, Mr. Michael Zander, and Mr. Jason S. Retterer prepared this HCP. Dr. Arnold is the President of Entomological Consulting Services, Ltd., of Pleasant Hill, CA. Mr. Zander is the Principal of Zander Associates, located in Novato, CA. Mr. Retterer is a lawyer with the Salinas firm of Lombardo and Gilles.

13.0 REFERENCES

Arnold, R.A. 1983a. Conservation and management of the endangered Smith's blue butterfly, *Euphilotes enoptes smithi*. Journal of Research on the Lepidoptera 22:135-153.

Arnold, R.A. 1983b. Ecological studies of six endangered butterflies: island biogeography, patch dynamics, and the design of habitat preserves. Univ. of Calif. Publications in Entomology 99: 1-161.

Arnold, R.A. 1985. Ecological studies of the endangered El Segundo blue butterfly at the Chevron refinery in El Segundo, California during 1984. Final report for a contract with Chevron, U.S.A. 25 pp.

Arnold, R.A. 1986. Ecological studies of the endangered Smith's blue butterfly at Marina State Beach in 1986. Final report for an interagency agreement between the Calif. Dept. of Parks & Recreation and the University of California's University Research Expedition Program. 32 pp.

Arnold, R.A. 1990. The ecology and conservation of two endangered Southern California butterflies. IN, *Endangered Wildlife and Habitats in Southern California*. P.J. Bryant and J. Remington, eds. Memoirs of the Natural History Foundation of Orange County. Vol. 3, pp. 36-47.

Arnold, R.A. 1991a. Habitat and status surveys for the endangered Smith's blue butterfly at Rancho San Carlos in Carmel Valley, California. Final Report. 35 pp.

Arnold, R.A. 1991b. Habitat and status surveys for the endangered Smith's blue butterfly at Garland Park in Carmel Valley, California. Final Report. 30 pp.

Arnold, R.A. and A.E. Coins. 1987. Habitat enhancement techniques for the El Segundo blue butterfly, an urban endangered species. IN, *Integrating Man and Nature in the Metropolitan Environment*. L.W. Adams and D.L. Leedy, eds. Proc. Natl. Symposium on Urban Wildlife, Chevy Chase, MD, 4-7 Nov. 1986. Published by the National Institute for Urban Wildlife. pp. 173-181.

California Natural Diversity Data Base. 2000. Report form for 1992 observation of Smith's Blue butterfly at the Keig parcel by Thomas Reid Associates.

California Native Plant Society. 1994. Inventory of rare and endangered vascular plants of California. Special Publication #1, 5th ed. 338 pp.

Howe, W.H. 1975. The butterflies of North America. Doubleday, Garden City, N.Y.

International Union for the Conservation of Nature (IUCN). 1996. Red list of threatened animals. Gland, Switzerland. 368 pp.

Kellner, C. 1989. Survey for Smith's blue butterflies along the Big Sur coast, Monterey

County, California. LSA Associates Inc. Pt. Richmond, CA. 80 pp.

Langston, R.L. 1963. *Philotes* of central coastal California. Journ. Lepid. Soc. 17:201-223.

Langston, R.L. 1965. Distribution and hosts of five *Philotes* in California. Journ. Lepid. Soc. 19:95-102.

Langston, R.L. 1969. *Philotes* of North America: synonymic lists and distribution. Journ. Lepid. Soc. 23:49-62.

Lowe, D.W. (ed.) 1990. The official World Wildlife Fund guide to endangered species of North America. 2 Vols. Beacham Publishing, Inc. Washington, D.C. 1180 pp.

Mattoni, R.H.T. 1954. Notes on the genus *Philotes*. I. Descriptions of three new subspecies and a synoptic list. Bull. So. Calif. Acad. Sci. 53:157-165.

Mattoni, R.H.T. 1977. The Scolitantidini: I. Two new genera and a generic rearrangement (Lycaenidae). Journ. Res. Lepid. 16:223-242.

Miller, L.D., and F.M. Brown. 1981. A catalogue/checklist of the butterflies of America north of Mexico. The Lepidopterists' Society, Memoir #2. 280 pp.

Monterey County. 1988. Carmel Area Land Use Plan.

Monterey County. 19xx. Monterey County Coastal Implementation Plan.

Norman, J. 1994. Surveys for *Eriogonum parvifolium*, foodplant of the endangered Smith's blue butterfly. Final report for the U.S. Forest Service, Los Padres National Forest Unit.

Norman, J. 1996. Botanical report for APN 243-201-011. 10 pp.

Norman, J. 1999. Buckwheat density report for APN 243-201-011. 4 pp.

Pratt, G.F. & J.F. Emmel. 1998. Revision of the *Euphilotes enoptes* and *E. battoides* complexes. IN, Emmel, T.C. (ed.). *Systematics of western North American butterflies*. Mariposa Press. Gainesville, FL. pp. 207-270.

Scott, J.A. 1986. The butterflies of North America: a natural history & field guide. Stanford Univ. Press, Stanford, CA.

Shield, A.O. 1975. Studies on North American *Philotes* (Lycaenidae). V. Taxonomic and biological notes, and new subspecies. Bulletin Allyn Museum, No. 28: 1-30.

Steinhardt, P. 1990. California's wild heritage: threatened and endangered animals in the Golden State. California Dept. of Fish & Game. Sierra Club Books. Craftsman Press, Seattle,

WA. 108 pp.

Thelander, C.G. and Crabtree, M. (eds). Life on the edge: a guide to California's endangered natural resources. BioSystems Books. Santa Cruz, CA. 550 pp.

U.S. Fish & Wildlife Service. 1976. Determination that six species of butterflies are endangered species. Federal Register 41:22041-22044.

U.S. Fish & Wildlife Service. 1984. Smith's blue butterfly recovery plan. Portland, OR. 87 pp.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1996. Endangered Species Habitat Conservation Handbook. November, 1996.

Walsh, B. 1975. (untitled brief note). Atala 2:2.

Fig. 1: Keig Property in Carmel Highlands

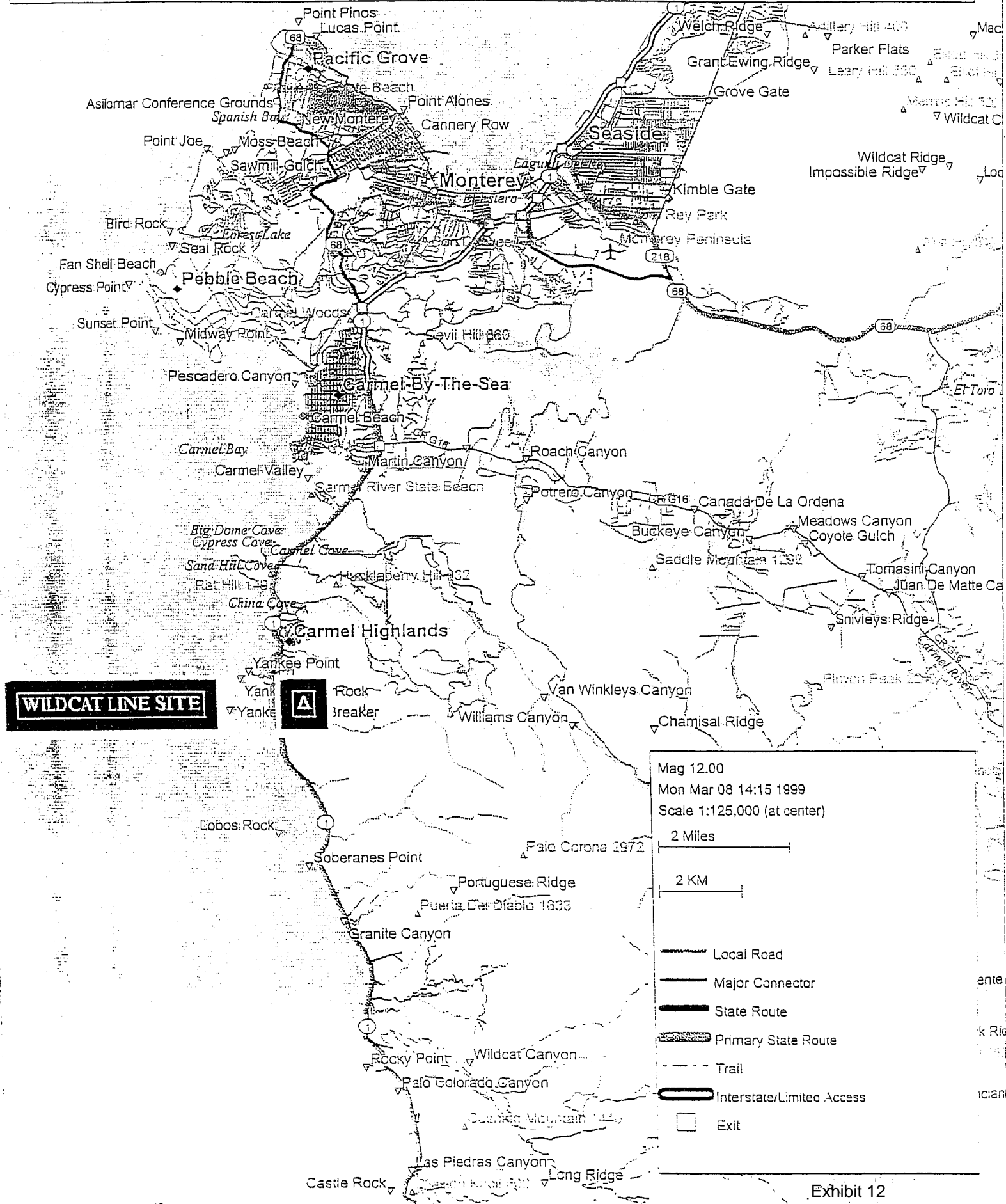
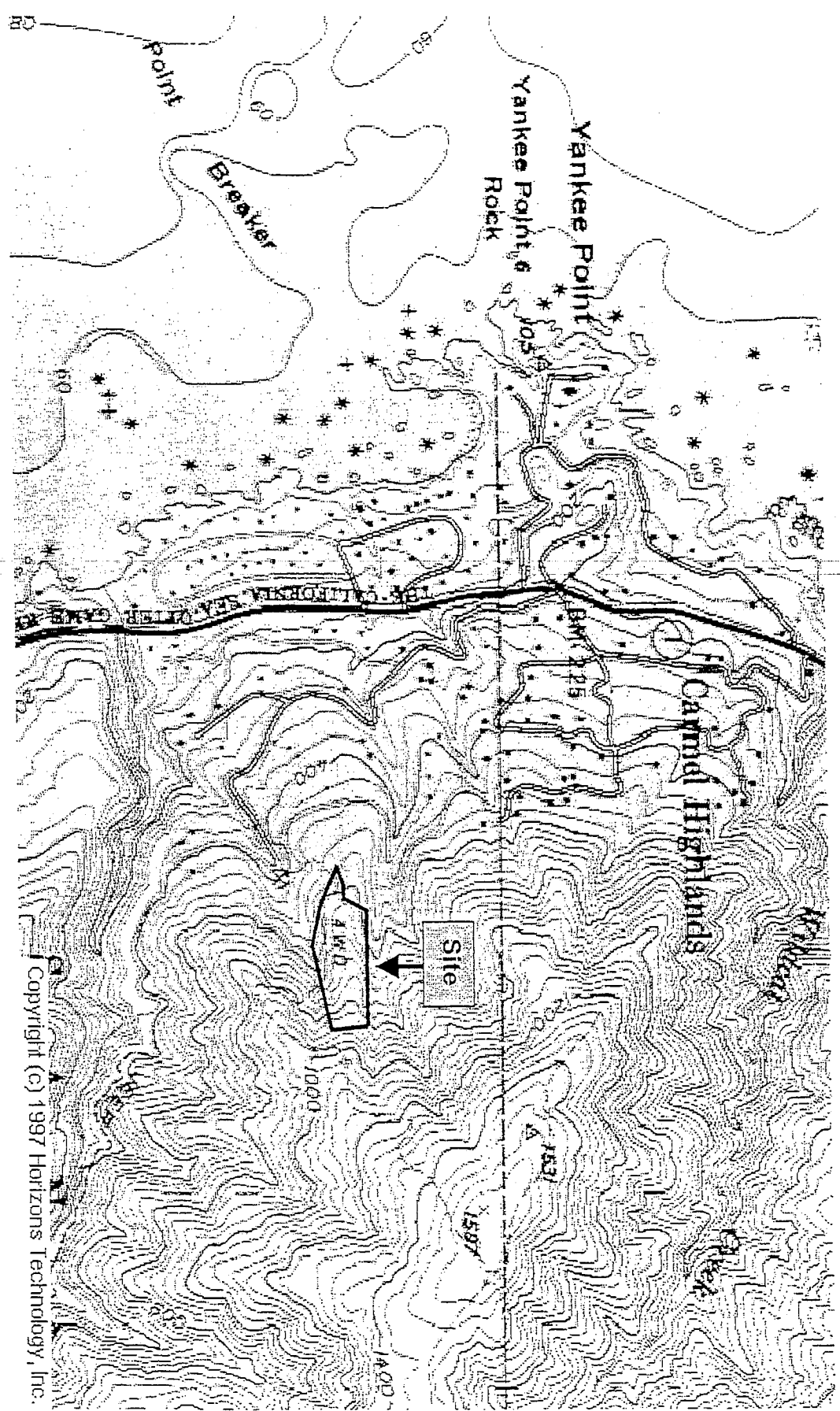


Fig. 2. Kaig Property near Carmel Highlands
Soberanes Point USGS 7.5' Quadrangle
From Sural Maps Raster



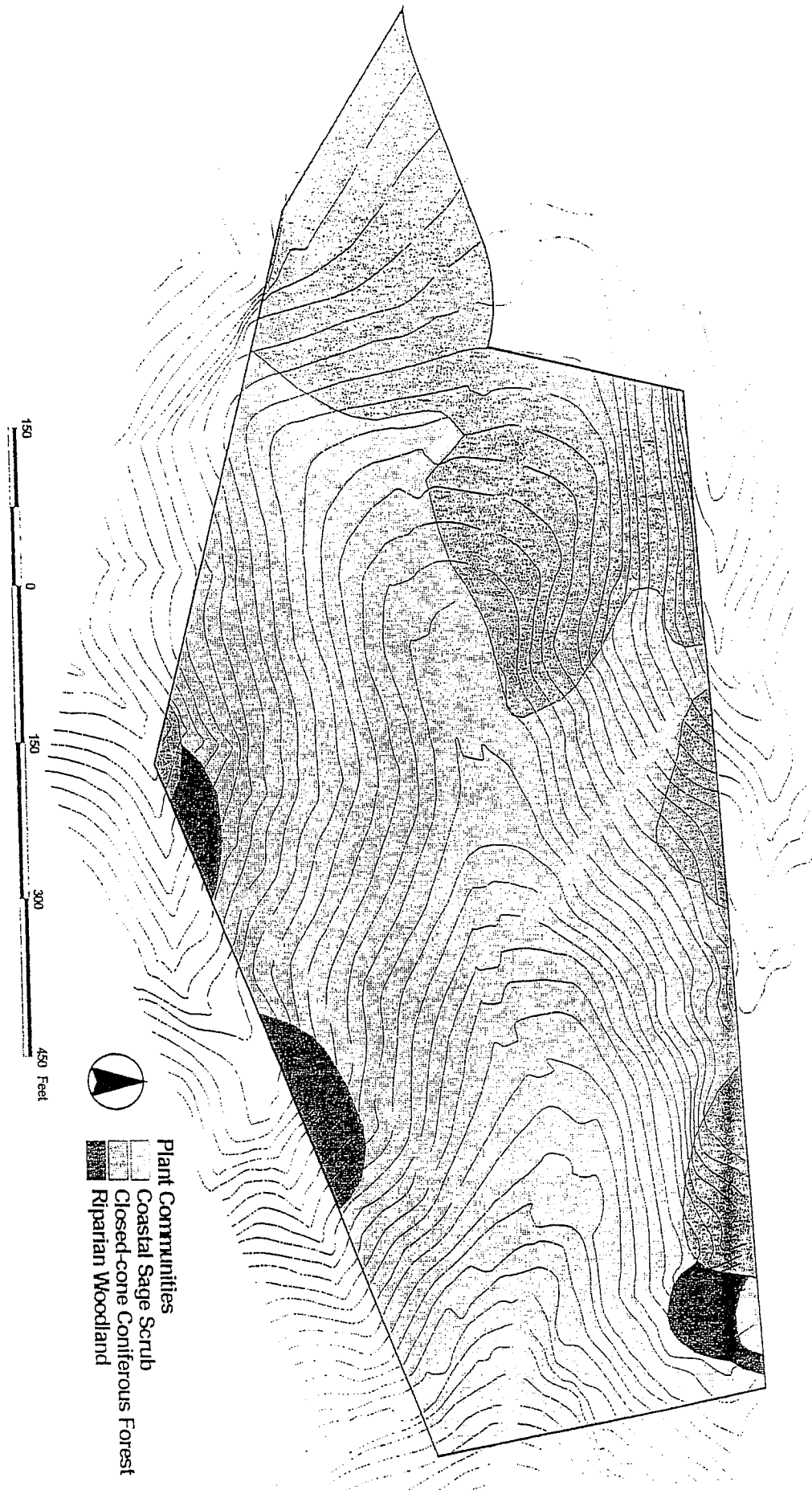


Figure 3
Site Vegetation
Keig Property
Carmel Highlands, California
 Entomological Consulting Services, Ltd.
 Pleasant Hill, California

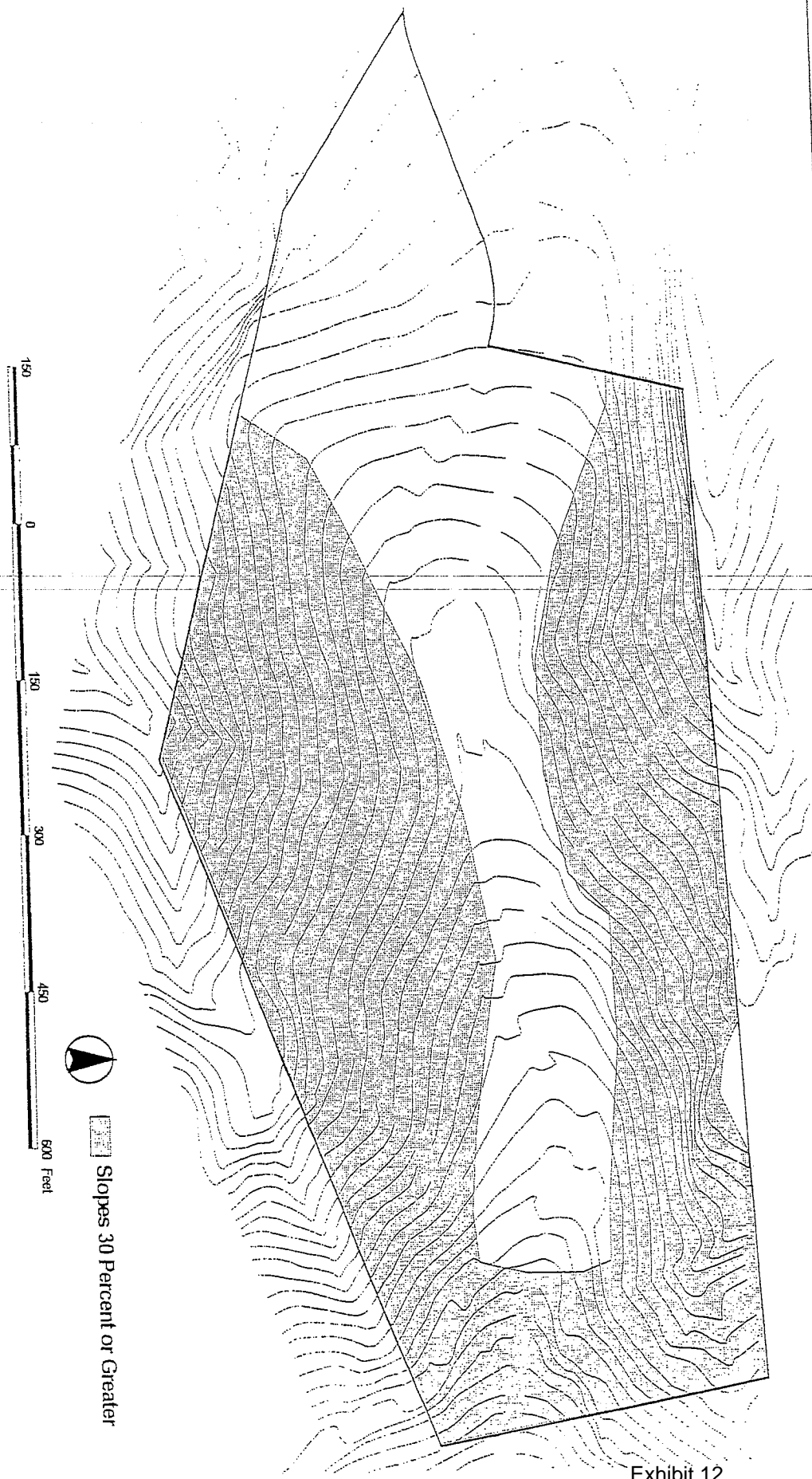


Figure 4
Areas With 30 Percent or Greater Slopes
Keig Property
Carmel Highlands, California
Entomological Consulting Services, Ltd.
Pleasant Hill, California

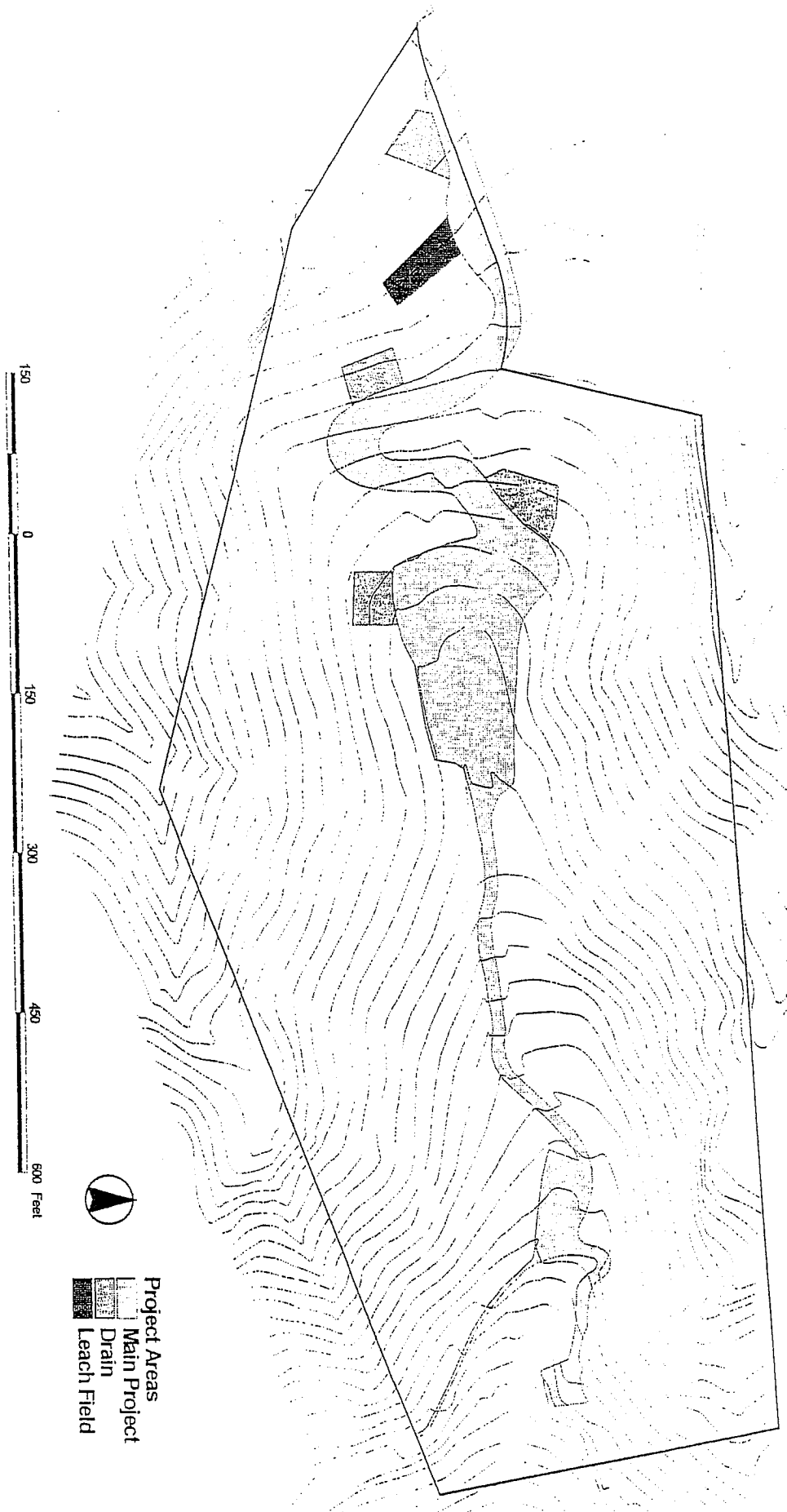


Figure 5
Site Plan and Impact Areas
Keig Property
Carmel Highlands, California
 Entomological Consulting Services, Ltd.
 Pleasant Hill, California

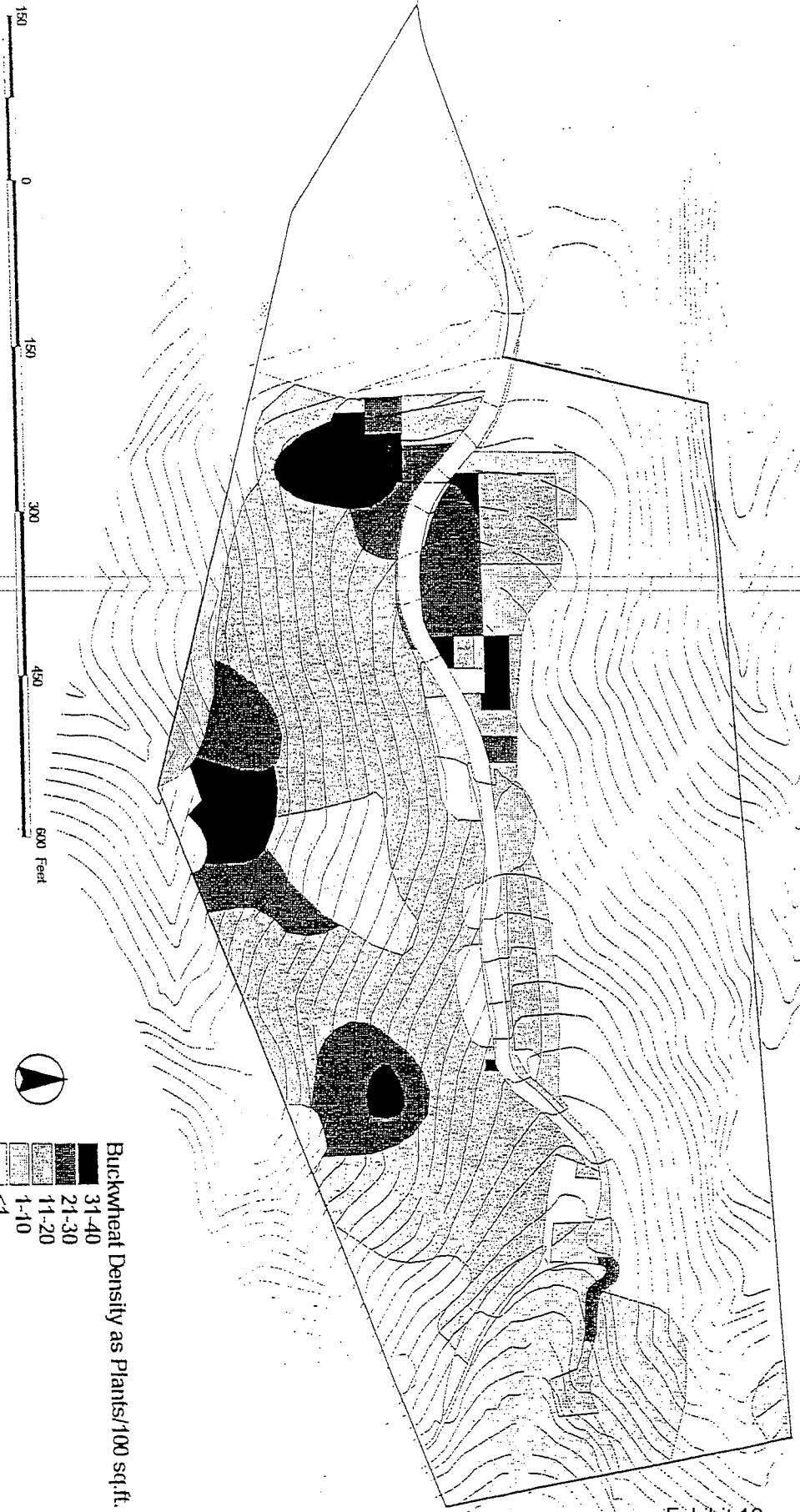


Figure 6
 Buckwheat Density
 Keig Property
 Carmel Highlands, California
 Entomological Consulting Services, Ltd.
 Pleasant Hill, California

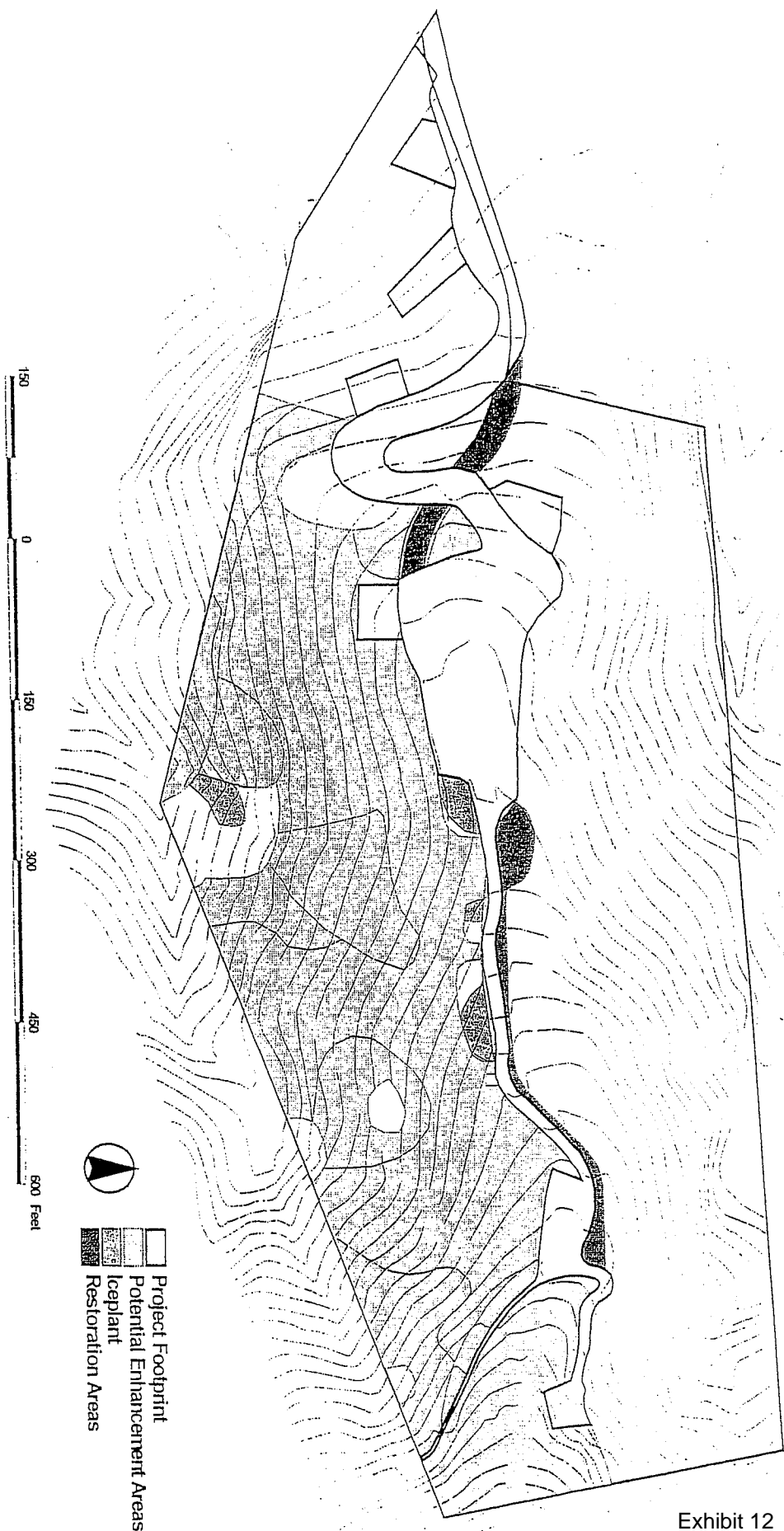


Figure 7
Potential Restoration Areas
Keig Property
Carmel Highlands, California
 Entomological Consulting Services, Ltd.
 Pleasant Hill, California



United States Department of the Interior

FISH AND WILDLIFE SERVICE

California/Nevada Operations Office
2800 Cottage Way, Suite W-2606
Sacramento, California 95825

SEP 12 2001

Dan Keig, General Partner
Wildcat Line, Limited Partnership
c/o Lombardo & Gilles
P.O. Box 2119
Salinas, California 93902-2119

Dear Mr. Keig:

Enclosed is a copy of your Endangered Species Act incidental take permit for the Wildcat Line property. This permit authorizes incidental take of the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) that will result from construction of a single family residence in Carmel Highlands, Monterey County, California. We look forward to assisting you in implementing your Habitat Conservation Plan.

Thank you for helping to conserve endangered species. If you have any questions about this permit, please contact Ms. Diane Noda, Field Supervisor of the Fish and Wildlife Service's Ventura Fish and Wildlife Office, at (805) 644-1766.

Sincerely,

Acting

Deputy Manager

Enclosures



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

3-201
(1/97)

FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

WILDCAT LINE, LIMITED PARTNERSHIP
C/O LOMBARDO & GILLES
P.O. BOX 2119
SALINAS, CA 93902-2119

2. AUTHORITY-STATUTES

16 USC 1539(A)

REGULATIONS (Attached)

50 CFR 17.22
50 CFR 13

3. NUMBER

TE040371-0

4. RENEWABLE

☒ YES
☐ NO

5. MAY-COPY

☒ YES
☐ NO

6. EFFECTIVE

9/12/2001

7. EXPIRES

9/11/2011

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

DAN KEIG
GENERAL PARTNER

9. TYPE OF PERMIT

ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

The 11.46-acre Wildcat Line parcel, Carmel Highlands, Monterey County, California.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE.
- D. Further conditions of authorization are contained in the attached Special Terms and Conditions.

☒ ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY

[Signature] *Atty*

TITLE

DEPUTY MANAGER, CA/NV OPERATIONS OFFICE

DATE

Exhibit 13

A-3-MCO-15-0023

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- E. All sections of *Title 50 Code of Federal Regulations*, parts 13 and 17.22, are conditions of this permit (Attachments 1 and 2).
- F. The authorization granted by this permit is subject to compliance with and implementation of, the *Low-Effect Habitat Conservation Plan for the Smith's Blue Butterfly, Wildcat Line Property, Carmel Highlands, Monterey County, California* (HCP); which is hereby incorporated into the permit.
- G. The permittee and designated agents are authorized under the Federal Endangered Species Act of 1973, as amended (Act), to incidentally take (injure, kill, harass, harm) the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) associated with disturbance of habitat at the project site. Smith's blue butterfly habitat at the project site consists of the larval and adult host plant, seaciff buckwheat (*Eriogonum parvifolium*). Take will occur within a 0.8-acre area of coastal sage scrub of the 1.56-acre impact area, the 9.86-acre conservation area, and 0.25 acres or 500 seaciff buckwheat plants as may be associated with fire clearance, erosion, and drainage control activities on the project site. Take is authorized to the extent that take of this species would otherwise be prohibited under section 9 of the Act and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act. Take must be incidental to otherwise lawful activities associated with the development of one single-family residence and associated site improvements within the 11.46-acre Wildcat Line parcel, Carmel Highlands, Monterey County, California, and with implementation of the HCP, as conditioned herein.
- H. Prior to any and all ground disturbance or clearing of vegetation, the permittee shall provide proof to the Ventura Fish and Wildlife Office, that the endowment for the long-term management of the on-site conservation area has been established and that the conservation area has been encumbered by a deed restriction limiting activities to long-term management and preservation of existing natural habitats. The deed restriction shall be submitted to the Ventura Fish and Wildlife Office for review and approval prior to execution and recordation.
- I. Periodic monitoring of Smith's blue butterfly habitat within the conservation area, as described in the HCP, shall include at least one assessment of the site conducted between mid-June and early September to enhance the detection of adult Smith's blue butterflies. A Service-approved individual shall visit the site periodically during implementation of grading and construction activities and during the initial stages of revegetation and implementation of habitat enhancement measures. Once habitat improvements have been completed, the success of the revegetation and habitat enhancement activities shall be assessed by a Service-approved biologist. Site visits for this purpose shall occur four times a year for 3 years, then biannually through the 5th year or until the success criteria are attained.

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SPECIAL TERMS AND CONDITIONS FOR TE040317-0

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- J. Mr. Jeff Norman and Dr. Richard A. Arnold are hereby authorized to conduct habitat management, enhancement, and monitoring activities as described in the HCP. Ms. Patti Kreiberg is hereby authorized to conduct buckwheat collection, propagation, and revegetation. If other personnel are required to conduct the habitat management, enhancement, and monitoring activities, the Service shall review their names and credentials at least 15 days prior to the onset of the activities that they seek authorization to conduct. They may conduct these activities only following the written concurrence of the Service.
- K. Upon finding dead, injured, or sick Smith's blue butterflies the permittee or designated agents must notify the Service's Division of Law Enforcement (370 Amapola Avenue, Suite 114, Torrance, California 90501) and the Ventura Fish and Wildlife Office (2493 Portola Road, Suite B, Ventura, California, 93003; (805) 644-1766). Notification must be within 3 working days and shall be in writing to both offices as well as by telephone to the Ventura Fish and Wildlife Office. The notification shall include the date, time, and location of the specimen, a photograph, cause of death, if known, and any other pertinent information. Care should be taken in handling the dead specimens to preserve biological material in the best possible state for later analysis. Arrangements shall be made regarding proper disposition of potential museum specimens with the California Academy of Sciences (Contact: Collections Manager, Golden Gate Park, San Francisco, California 94118; (415) 750-7177).
- L. Any other federally listed or proposed species found on or adjacent to the site must be reported within 3 working days of its finding. The Service contact for this information is the Chief of the Endangered Species Division, Ventura Fish and Wildlife Office, at (805) 644-1766.
- M. Wildcat Line shall submit a report to the Service documenting the actions which result in incidental take within 60 days of completion of construction activities on the 11.46-acre project site. This completion report shall include the status of the residential development project, the dates of ground disturbance, an assessment of the success of the habitat protection measures, an explanation of any failure to meet the project's minimization and mitigation measures, known project effects on the Smith's blue butterfly, and any known occurrences of incidental take.
- N. Wildcat Line, their Service-approved biologist, and any subsequent land management entities shall submit an annual report for a minimum of 5 years or until the success criteria are attained. The annual report shall detail the actions conducted in the conservation area and shall be postmarked or submitted by December 31st each year. The report shall contain an assessment of the condition of the seacliff buckwheat at the project site; any evidence of erosion control or function; an estimate of non-native species cover; a brief discussion of habitat restoration and enhancement activities completed or planned; the results of all biological monitoring activities; a brief discussion of the success of habitat enhancement and

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management; known occurrences of incidental take, if any; problems encountered in implementing mitigation measures and terms and conditions; any corrective measures undertaken to ensure restoration success; recommendations to correct any remaining problems, and; any other pertinent information.

- O. A copy of this permit must be in the possession of the permittee and designated agents while conducting taking activities. Please refer to the permit number in all correspondence concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003, telephone (805) 644-1766.

Attachments

SCREENING FORM FOR LOW-EFFECT HCP DETERMINATIONS

I. Project Information

- A. **Project name:** Wildcat Line/ Keig Habitat Conservation Plan (HCP)
- B. **Affected species:** Smith's Blue Butterfly (*Euphilotes enoptes smithi*)
- C. **Project size (in acres):** 11.46 acre parcel, of which 1.56 acres is to be developed.
- D. **Brief project description:**

The proposed project is development of a single-family residence and associated access road and picnic area on an 11.46-acre parcel in Carmel Highlands, Monterey County, California. About 1.56 acres of the site will be disturbed, of which 0.8 acre is coastal sage scrub dominated by seacliff buckwheat (*Eriogonum parvifolium*), a larval and adult foodplant of the Smith's blue butterfly.

- E. **Minimization and Mitigation Plans**

The proposed mitigation is restoration of 0.97 acre with seacliff buckwheat to replace the 0.8 acre of coastal sage scrub removed as a result of the project, and the placement of a deed restriction and establishment of a fund to preserve in perpetuity 9.86 acres, of which approximately 7.19 acres is coastal sage scrub habitat (6.22 acres existing and 0.97 acre restored).

II. Does the HCP fit the low-effect criteria in the HCP Handbook?

- A. **Are the effects of the HCP minor or negligible on federally listed, proposed, or candidate species and their habitats covered under the HCP prior to implementation of the mitigation plan?**

Yes. The area covered by the proposed project lies in a region with recorded occurrences of the federally endangered Smith's blue butterfly. Prior to implementation of the mitigation plan, the project will result in the loss of 0.80 acre of coastal sage scrub habitat, which supports an estimated 4,923 individuals of seacliff buckwheat, the larval and adult food plant of the Smith's blue butterfly. Although 0.80 acre of coastal sage scrub habitat will be permanently removed along with the take of an indeterminate amount of Smith blue butterflies, these losses are not expected to affect the survival of the Smith's blue butterfly or its foodplant due to the occurrence and abundance of its foodplant elsewhere on the project site and on several locations in close proximity, as well as elsewhere throughout the entire geographic range of the species. An estimated 15-20% of the adjacent 439 acres supports coastal sage scrub habitat and seacliff buckwheat

and is considered potential habitat for Smith's blue butterfly. The development of the homesite is unlikely to cause substantial degradation of surrounding habitat. Thus, the effects of taking of Smith's blue butterfly under the proposed project are expected to be minor or negligible because: 1) the percentage of habitat for the Smith's blue butterfly to be removed from the project site is small (approximately 0.1%) relative to the species' known geographic range (Salinas River to the San Luis Obispo County line) and; 2) the amount of individuals potentially impacted at the project site is of minor importance relative to the species both regionally and range wide.

B. Are the effects of the HCP minor or negligible on other environmental values or resources (e.g. air quality, geology and soils, water quality and quantity, socio-economic, cultural resources, recreation, visual resources, etc.) prior to implementation of the mitigation plan?

No impacts on air quality or water quality are expected. The proposed project does not contain any features that would alter air movement, moisture, temperature, or cause any change in climate. No odors would be created.

No impacts to soils will occur. Changes in natural topography or ground surface relief will be slight due to some grading of the project site. The proposed project will not cause any unstable earth conditions or changes in geological substructures, or the destruction, covering, or modification of any unique geologic or physical features. Appropriate protective actions will be implemented to prevent erosion during grading and construction of the project and after the project has been completed.

The proposed project will not cause changes in the course or direction of water movements, the amount of surface water in any water body, the amount of water available for public water supplies, or the filling of any wetlands.

Impacts to land uses or the socio-economic environment are not anticipated. The proposed project is not incompatible with existing land uses in the vicinity, nor will it adversely impact agricultural resources or operations. There will be no disruption or division of the physical arrangement of an established community.

Impacts to cultural resources are not anticipated, as no cultural resources are known from the project site. The proposed project will not alter or destroy a prehistoric or historic archeological site or adversely affect physical or aesthetic properties of a prehistoric or historic building, structure, or object. Similarly, the project will not affect unique ethnic or cultural values or restrict existing religious or sacred uses within the potential impact area. If any artifacts of historical significance are discovered during the grading, Wildcat Line will oversee the

removal and care of such items. In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with measures required by the Health and Safety Code and Public Resources Code of the State of California.

Impacts on recreation are not anticipated. The proposed project will not contribute to population growth or increased demand for neighborhood or regional parks or other recreation facilities. There will be no impact upon the quality of existing recreational opportunities, as no recreational opportunities currently exist on the project site.

Impacts to visual resources are not anticipated. There will be no significant change in existing views within view sheds or scenic vistas or highways. According to the Carmel Area Land Use Plan, which was prepared by Monterey County in accordance with the California Coastal Act, development is confined to an area that will ensure that houses and roads will be outside of the public viewshed. The property is also subject to coastal view shed requirements of the Monterey County Coastal Implementation Plan, which provides that no development shall be located on slopes of 30% or greater unless extenuating circumstances are present. The proposed project will not appreciably increase existing reflective surfaces or create artificial light that may impact sensitive receptors or cause negative aesthetic effects.

No impacts to other federally or state listed species are anticipated. Approximately 2.93 acres (26%) of the 11.46-acre parcel is characterized by closed cone coniferous forest, indicated by the presence of Monterey pine (*Pinus radiata*). Monterey pine is included on the California Native Plant Society (CNPS) List 1B as a species that is rare, threatened or endangered in California and elsewhere. While approximately 0.67 acre of closed cone coniferous forest will be impacted as a result of the project (specifically, due to the construction of the new driveway and leach field), these improvements will be located in a manner that will minimize losses of Monterey pines. During botanical surveys of the project site, Lewis' clarkia (*Clarkia lewisii*), a CNPS List 4 plant (species with limited distribution), was observed in association with the coastal scrub plant community. Loss of individual plants is expected to have a negligible effect on this species due to the small acreage of coastal scrub habitat impacted as a result of the project (0.8 acre).

In summary, the effects of this project on other environmental values and resources are expected to be minor or negligible because the project will not impact any biologically, culturally, or environmentally sensitive areas or resources.

C. Would the impacts of this HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects not result, over time, in cumulative effects to environmental values or resources which would be considered significant?

No significant cumulative effects are expected to result from the proposed project given the limited extent of vegetation that would be affected. The 11.46-acre parcel was formerly part of a 466-acre parcel purchased by Mr. Dan Keig in 1991. Monterey County approved a minor subdivision of the property, which consisted of four parcels and a "remainder parcel" of 450 acres. Of this 450-acre parcel, 439 acres are now protected from development and have been designated for watershed and scenic conservation due to policies of the Carmel Area Land Use Plan, topography that is too steep to build on (i.e., $\geq 30\%$ slopes), and the efforts of Mr. Keig. Mr. Keig's approximately 600-acre ranch, adjacent to the 11.46-acre project site, is zoned "WSC/199", or one residential lot per 199-acre lot. The primary objective of the watershed and scenic conservation designation is the protection of the watershed, streams, plant communities, and scenic values. The County is required to provide a condition of development approval that all areas of 30% slopes or greater be encumbered by a scenic easement, pursuant to Section 20.146.120.A.6 of the Coastal Implementation Plan. Approximately 7.8 acres, or 68%, of the 11.46 acre-parcel consist of slopes that are equal to or greater than 30%. An estimated 15-20% of the adjacent 439 acres supports coastal sage scrub habitat with seacliff buckwheat and is considered potential habitat for Smith's blue butterfly. This area is expected to remain undeveloped and to continue to provide habitat for the Smith's blue butterfly.

To-date, no other HCPs have been approved for the Smith's Blue butterfly in the vicinity of the Wildcat Line project site. Under the existing zoning of WSC/199, the area surrounding the project site is limited in its development potential. Furthermore, 439 acres adjacent to the parcel is anticipated to remain undeveloped. Therefore, if any HCPs for similarly situated projects are approved in the foreseeable future, we do not anticipate that there would be individual and cumulative effects to environmental values or resources that would have a significant effect on the environment.

III. Do any of the exceptions to categorical exclusions apply to this HCP? (from 516 DM 2.3, Appendix 2)

Would implementation of the HCP:

A. Have significant adverse effects on public health or safety?

No. The project site is currently undeveloped land that is part of a larger ranch. As described above, impacts to air quality would be negligible and no impacts to water quality are expected, resulting in no impacts to public health or safety.

- B. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks?**

No. The project site is surrounded primarily by residential properties and a ranch, which will not be adversely affected by the proposed project as impacts will be confined to the project site. There are no parks (Point Lobos State Park is a few miles NW of the site), recreation lands, wild or scenic rivers, sole or principal drinking water aquifers, or ecologically significant or critical areas in the vicinity of the project. Similarly, no historical building will be affected.

- C. Have highly controversial environmental effects?**

No. The project would not result in controversial environmental effects.

- D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?**

No. Proposed project activities are routine with predictable and negligible impacts. Therefore, issuance of the permit would not entail significant environmental effects or involve unique or unknown environmental risks.

- E. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?**

No. Future actions would be reviewed on their own merits. Implementation of this HCP involves routine activities with limited, predictable, and negligible impacts. Approval of similar HCPs in the future likewise would not involve potentially significant effects. Thus implementation of this HCP would not establish a precedent for future dissimilar actions.

- F. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?**

No. Implementation of the HCP is not directly related to other actions with significant cumulative environmental effects. The project is not expected to

significantly change resource capacity or functions nor the general character of the area (see II.C. above).

G. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?

No. There are no properties listed or eligible for listing on the National Register of Historic Places at the proposed project site.

H. Have adverse effects on listed or proposed species, or have adverse effects on designated Critical Habitat for these species?

No. Although take of the Smith's blue butterfly is anticipated to occur, the level of take would be small and would result in negligible impacts to the species (see II.A above). In addition, the project is not expected to have adverse effects on the Smith's blue butterfly because 0.97 acre of coastal sage scrub habitat will be restored and 9.86 acres, including 6.22 acres of existing and 0.97 acre of restored coastal sage habitat, will be protected in perpetuity via a recorded deed restriction. No critical habitat for this species would be affected by the proposed project. No other federally listed or proposed species would be affected by the implementation of this HCP.

I. Have adverse effects on wetlands, floodplains or be considered a water development project thus requiring compliance with either Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?

No. The proposed project would not adversely affect wetlands or impact floodplains. The project is not considered a water development project. Therefore compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act is not required.

J. Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment?

No. The proposed project is expected to comply with all other Federal, State, local and/or tribal laws and requirements imposed for the protection of the environment.

IV. ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record. Based on the analysis above, Wildcat Line Single-family residence development, Monterey County, California HCP qualifies as a "Low Effect" HCP as defined in the U.S. Fish and Wildlife Service Habitat Conservation Planning Handbook (November 1996). Therefore this action as is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1 and no further NEPA documentation will be made.

Other supporting documents (list):

Signature Approval:

Frank K. Noble
(1) Field Supervisor

4/11/01
Date

Acting [Signature]
(2) Deputy Manager
(California/Nevada Operations Office)

9-12-01
Date

FINDINGS AND RECOMMENDATIONS ON ISSUANCE OF AN INCIDENTAL TAKE
PERMIT FOR SMITH'S BLUE BUTTERFLIES AT THE WILDCAT LINE PROPERTY,
MONTEREY COUNTY, CALIFORNIA (TE040317-0)

I. DESCRIPTION OF PROPOSAL

Mr. Dan Keig, on behalf of Wildcat Line, a California limited partnership, has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531-1544, 87 Stat. 884), authorizing the incidental take of the federally endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) during the development of the Wildcat Line property. The project site, adjacent to the approximately 600-acre ranch of Mr. Keig, is located in Carmel Highlands, a community located about four miles south of Carmel in Monterey County, California.

The incidental take would occur as a result of the development of one single-family residence and associated site improvements within the 11.46-acre Wildcat Line property. Wildcat Line proposes to grade the upper portions of the finger ridge to provide an area suitable for construction of one single-family residence on 1.56 acres of the parcel (impact area). Other improvements within the impact area would include an all-weather driveway, picnic area, new water tank and access road, septic leach field, drainage and erosion control improvements, footpath, and landscaping.

Approximately 7 acres (about 60 percent) of the entire 11.46-acre Wildcat Line property consists of a coastal sage scrub plant community dominated by seaciff buckwheat (*Eriogonum parvifolium*), a larval and adult host plant of the Smith's blue butterfly. This portion of the property is presumed to be occupied by the Smith's blue butterfly; which were observed on the property in 1992 and in 1999. An estimated 15-20 percent of the adjacent 439 acres currently protected from development support coastal sage scrub habitat with seaciff buckwheat and is considered potential habitat for Smith's blue butterfly.

The proposed permit would allow the incidental take of Smith's blue butterflies within the 1.56-acre impact area and incidental take during habitat management and monitoring activities within the remaining 9.86-acre undeveloped area of the property (conservation area) and, if necessary, during vegetation removal pursuant to erosion or fire clearance activities within both areas. As part of the permit application package, Wildcat Line submitted the *Low-Effect Habitat Conservation Plan for the Smith's Blue Butterfly, Wildcat Line Property, Carmel Highlands, Monterey County, California* (HCP) which describes the proposed project and includes measures that Wildcat Line or its successor would implement to minimize and mitigate the effects of the project on the Smith's blue butterfly. The permit would be valid for a 10-year period.

II. ANALYSIS OF EFFECTS

The proposed permit would authorize the incidental take of adults, eggs, larvae, and pupae of Smith's blue butterflies associated with the permanent loss of 0.8 acre of seaciff buckwheat host plants and the management and monitoring of the 9.86-acre conservation area located within the

Wildcat Line property. We are unable to determine the specific number of individual Smith's blue butterflies that would be taken because adults, eggs, larvae, and pupae of this species are difficult to detect and because we cannot determine the extent to which the area surrounding the impact area could be affected. Although take of individual adult butterflies, eggs, larvae, and pupae cannot be quantified, proper implementation of the HCP, which requires establishing the conservation area as well as meeting identified performance standards, should ensure that the population of Smith's blue butterflies is maintained at the Wildcat Line property.

Wildcat Line has proposed to implement measures to minimize and mitigate for the removal of suitable habitat for the Smith's blue butterfly from the 1.56-acre impact area. About 0.8 acre of the impact area consists of seacliff buckwheat and associated coastal sage scrub species.

Approximately 4,923 mature individuals of seacliff buckwheat considered to provide suitable habitat for the Smith's blue butterfly grow within the impact area. The minimization and mitigation measures are fully described in the subject HCP.

Primary components of the HCP are the revegetation of over 0.97 acre of coastal sage scrub habitat with seacliff buckwheat, and enhancement and permanent protection of the 9.86-acre conservation area that will consist of 7.19 acres of coastal sage scrub habitat (6.22 acres existing and 0.97 acre restored). The HCP also defines measures to ensure that the elements of the HCP are properly implemented. Funding sources for the implementation of the HCP during the permit term, actions to be taken to address changed circumstances and unforeseen circumstances, success criteria, an adaptive management approach, and alternatives to the proposed project are also discussed in the HCP.

Preparation of the project site for construction and construction activities, including installation of drainage and erosion control improvements and a septic leach field, would result in the removal of approximately 4,923 individual plants of seacliff buckwheat that grow within 0.8 acre of suitable habitat for the Smith's blue butterfly. The removal of the identified seacliff buckwheat plants would result in direct effects to all life stages of Smith's blue butterflies in the impact area and would also result in the loss of feeding and breeding habitat for adult Smith's blue butterflies in the area. To offset the loss of seacliff buckwheat plants in the impact area and the habitat they provide for Smith's blue butterflies, 4,923 seacliff buckwheat plants would be established over 0.97 acre of restored coastal sage scrub.

Grading and construction activities could result in direct mortality; increased equipment traffic in the vicinity of any occupied butterfly habitat in the conservation area during grading and construction could result in increased collisions with adult butterflies. Wildcat Line has proposed measures to avoid inadvertent impacts to Smith's blue butterfly habitat in the conservation area during grading and construction through fencing to delineate the boundaries of the impact area, signage to identify the sensitive coastal sage scrub habitat area, and contractor and employee orientation by a qualified biologist. In addition, the majority of grading activities would be limited to the months outside of the active flight period of the Smith's blue butterfly.

Since adult Smith's blue butterflies are known to be weak fliers, and tend to stay in close proximity to their buckwheat host plants, the potential for collisions with equipment is minimal.

Grading, construction activities, and revegetation activities may result in a temporary increase in generation of dust, which could temporarily affect surrounding seacliff buckwheat plants and any Smith's blue butterflies using these plants. The presence of dust may inhibit the feeding and respiration of adult Smith's blue butterflies, causing them to leave the area surrounding the impact area. In addition, dust deposited on the seacliff buckwheat in the surrounding area may reduce the palatability of seacliff buckwheat flowerheads for Smith's blue butterfly larvae.

Appropriate dust control measures during grading, construction, and revegetation activities would be implemented to minimize any adverse effects on individual Smith blue butterflies or their host plants.

Exotic plants may invade the impact area disturbed by grading and in time, encroach further into coastal scrub habitat in the conservation area adjacent to the impact area. Invasive non-native plants are currently established on about 0.5 acre of the Wildcat Line property. The creation and operation of a septic leach field within the impact area may also provide favorable conditions for the establishment of invasive non-native plants in adjacent areas. Because exotic plant species are known to compete with and displace seacliff buckwheat, such encroachment would likely degrade the habitat for the Smith's blue butterfly.

To minimize the potential invasion of exotic plants, Wildcat Line has proposed to remove and control non-native species during the permit term and would provide the funds estimated to be sufficient to control non-native plants within the conservation area in perpetuity. Removal and continued control of non-native plants is expected to benefit the Smith's blue butterfly because it should allow for the persistence of its host plant within the conservation area and minimize the spread of invasive species within this vicinity.

Smith's blue butterfly habitat within the 9.86-acre conservation area would generally be managed to avoid or minimize disturbance to individual Smith's blue butterflies and their host plants. However, potential effects to Smith's blue butterflies resulting from habitat enhancement, management and monitoring activities conducted within the conservation area include disturbance, injury or mortality to eggs, larvae, or pupae if inadvertently damaged by project personnel or by any equipment or tools. Measures are proposed by Wildcat Line to avoid and minimize impacts during habitat enhancement, management, and monitoring activities.

Additionally, the revegetation of seacliff buckwheat in coastal sage scrub habitat would restore and enhance habitat for the Smith's blue butterfly on the Wildcat Line property. The revegetation effort would be considered successful when 4,923 seacliff buckwheat plants are established over 0.97 acre of restored coastal sage scrub habitat at the end of a 5 year post-construction monitoring period. A stable or increasing host plant population trend in at least three of the 5 monitoring years must also be exhibited. In addition, restoration efforts would be considered successful only if less than 2 percent cover of invasive non-native plants is attained

over the conservation area. If success is not achieved for any reason at the end of a 5-year post-construction monitoring period, then adaptive management would be implemented during the 10-year permit term until the success criteria are attained. If the monitoring requirements are met, restoration efforts are determined to be successful prior to the expiration of the 10-year permit term, and there are no ongoing activities that would involve take of the butterfly, then Wildcat Line may request termination of the permit anytime after 5 years.

A monitoring program would be implemented to assess the success of habitat protection, revegetation, and other habitat enhancement activities over a 5 to 10 year period. A qualified individual would visit the site periodically during implementation of grading and construction activities and during the initial stages of revegetation and implementation of habitat enhancement measures. Once habitat improvements have been completed, the success of the revegetation and habitat enhancement activities would be assessed by a qualified biologist. Site visits for this purpose would occur four times a year for 3 years, then biannually through the 5th year or until the success criteria are attained. In addition, Wildcat Line is proposing to provide funding for the perpetual monitoring of the seacliff buckwheat stands in the conservation area.

Wildcat Line would ensure that the conservation area is preserved in perpetuity through the establishment of a non-wasting, interest-bearing endowment named in favor of the National Fish and Wildlife Foundation (NFWF) or another entity approved by the Service, in an amount estimated to be sufficient for the perpetual maintenance, management and monitoring of Smith's blue habitat within the conservation area. Upon expiration of the permit, the NFWF would administer funds for long-term management and in accordance with terms of the HCP. Habitat monitoring and management activities would be implemented by a Service-approved biologist or qualified organization. Prior to expiration of the permit, the fund may be transferred to a third party which would be responsible for the implementation of long-term monitoring and management of the seacliff buckwheat habitat; an appropriate third party in Monterey County has not been identified to date. Wildcat Line would also record a deed restriction over the conservation area to limit use of the property for purposes not consistent with the protection of Smith's blue butterfly habitat. The long-term management goal for the conservation area would be to protect the existing and enhanced seacliff buckwheat stands on site to maintain its value as habitat for the Smith's blue butterfly. After the expiration of the permit, any biological consultant contracted to conduct long-term habitat monitoring and management activities within the conservation area would apply for authorization of any take that may occur during such activities, pursuant to 10(a)(1)(a) of the Act.

Changed circumstances: The project was developed in a way that avoids alteration or removal of vegetation outside of the boundaries of the impact area. However, changes in circumstances that may affect Smith's blue butterfly during the permit term that were reasonably anticipated by the Service and developers of the HCP primarily include alteration or removal of seacliff buckwheat from the conservation area. This measure may be required as a result of efforts to protect the residence in the event of a wildfire. Additional impacts to seacliff buckwheat plants that grow in the conservation area may result from potential future maintenance and repair of the drainage and

erosion control improvements and fire clearance requirements. The cumulative maximum amount of vegetation removal permitted under these changed circumstances is 0.25 acre or 500 seacliff buckwheat plants, whichever occurs first.

If changed circumstances warrant the alteration or removal of vegetation in the conservation area, the affected buckwheat plants would be established at a 1:1 ratio in other portions of the conservation area where buckwheat density is currently low, but outside of the areas revegetated as mitigation for removal of seacliff buckwheat from the impact area. In addition, if these changed circumstances require removal of seacliff buckwheat plants from the restored habitat area, then additional seacliff buckwheat would be planted within the conservation area.

Summary: The permanent loss of 0.8 acre of habitat which supports the Smith's blue butterfly would not preclude the survival or recovery of the Smith's blue butterfly. The collective effects on the Smith's blue butterfly under the proposed project are expected to be minor because: 1) the percentage of habitat for the Smith's blue butterfly to be removed from the project site is small (less than approximately 0.1 percent) relative to the species' known geographic range (Salinas River to the San Luis Obispo County line) and; 2) the amount of individuals potentially affected at the project site is estimated to be of minor importance relative to the species both regionally and range wide.

The loss of habitat and of an indeterminate number of Smith's blue butterflies from the impact area is not expected to threaten the survival of the species due to the occurrence and abundance of its host plant elsewhere on the project site and on several locations in close proximity, as well as elsewhere throughout the entire geographic range of the species (Salinas River to the San Luis Obispo County line). The percentage of habitat to be permanently removed is estimated to be approximately 0.1% of the amount of habitat within the geographic range of the species that is known to currently support seacliff buckwheat (Service 2001b). However, stands of seacliff buckwheat are likely to occur in additional areas within the species' range that we are not currently not aware of for various reasons. An estimated 15-20 percent of the adjacent 439 acres supports coastal sage scrub habitat and seacliff buckwheat and is considered potential habitat for Smith's blue butterfly. The development of the single-family residence within a 1.56-acre impact area is unlikely to cause substantial degradation of the surrounding habitat.

In addition, the proposed 9.86-acre conservation area would provide approximately 7 acres of permanently protected and maintained coastal sage scrub habitat for the Smith's blue butterfly. The proposed conservation area supports the majority of the seacliff buckwheat population that currently exists at the project site. The permanent protection and management of suitable habitat to offset the loss of a smaller area of habitat would be an overall benefit to the status and recovery of the Smith's blue butterfly.

III. PUBLIC COMMENT

The Service published a Notice of Availability of the low-effect HCP and receipt of an application for the incidental take permit by Wildcat Line for the proposed action in the *Federal Register* on March 28, 2001 (66 FR 16956). Publication of the notice initiated a 30-day comment period. The notice, screening form for the low-effect determination and environmental action statement, and the low-effect Wildcat Line Property HCP were mailed to government agencies, private organizations, and individuals with interest in the proposed action. The Service did not receive any comments in response to the notice for the proposed action.

IV. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS

1. The taking of listed species will be incidental.

The taking of listed species within the proposed 1.56-acre impact area and adjacent conservation area on the Wildcat Line property will be incidental to the otherwise lawful development of a single-family residence. The project site was formerly part of a 450-acre parcel, of which 439 acres are now protected from development and have been designated for watershed and scenic conservation due to policies of the Carmel Area Land Use plan and topography that is too steep to build on (i.e., greater than 30 percent slopes), pursuant to the Monterey County Coastal Implementation Plan, and the efforts of Mr. Keig. The remaining 11.46-acre Wildcat line parcel subsequent to the lot-line adjustment is zoned for development of one dwelling unit. Approximately 7.8 acres, or 68 percent, of the 11.46-acre parcel consist of slopes that are equal to or greater than 30 percent and are therefore protected from development under a scenic easement held by Monterey County, pursuant to section 20.146.120.A.6 of the Coastal Implementation Plan. The proposed development activities that would occur in the impact area would be outside of the area covered under the scenic easement.

2. The permittee will, to the maximum extent practicable, minimize and mitigate the impacts of taking listed species.

The HCP, developed by consultants to Wildcat Line in coordination with the Service, contain measures intended to minimize and mitigate the impact of the take of the Smith's blue butterfly. Wildcat Line will implement all minimization and mitigation measures described in the HCP for the projected future incidental take of the Smith's blue butterfly, including the perpetual protection and enhancement of a 9.86-acre conservation area consisting of approximately 7 acres of coastal sage scrub dominated by seacliff buckwheat, habitat for the Smith's blue butterfly. Wildcat Line will record a deed restriction, prior to ground disturbance, and establish a non-wasting, interest-bearing endowment named in favor of the NFWF in an amount estimated to be sufficient for the perpetual monitoring, maintenance, and management of Smith's blue habitat within the conservation area. The deed restriction will limit the use of the property for purposes not consistent with the protection of Smith's blue butterfly habitat within the established conservation area.

Establishment of a conservation easement for the purpose of mitigation would have been preferable but is currently not an option because an appropriate or willing agency or organization has not been identified. The County of Monterey (County) was considered as a potential easement holder. However, the planning department has recently undergone personnel changes and is under-staffed; their involvement in mitigation efforts for this project would not provide assurances that habitat would be adequately managed in perpetuity. In addition, the County was not willing to adjust language in its template conservation easement to conform to language that would provide adequate protection according to the HCP. The Big Sur Land Trust (BSLT) was approached and we formally requested its aid in the permanent protection and active habitat management of the proposed conservation area. The BSLT is focused on land acquisition along the Big Sur Coast and Monterey Bay and has denied our request because it is currently not interested in becoming involved in habitat management related to mitigation. The Center for Natural Lands Management and The Nature Conservancy are concentrating their efforts on large-scale projects and are generally not willing to take on the management responsibilities for small parcels such as this one.

During the permit term, all habitat monitoring, restoration, enhancement, and maintenance activities within the conservation area, including removal of 0.5 acre of non-native plants and restoration of approximately 1 acre with seacliff buckwheat, will be funded through a performance bond or other monetary instrument and conducted by a Service-approved biologist. Upon expiration of the permit, the NFWF will administer funds for long-term management and in accordance with terms of the HCP. Long-term habitat monitoring and management activities, including removal of non-native plant species, would be funded through the endowment administered by the NFWF and would be implemented by a Service-approved biologist or qualified organization. Prior to the expiration of the permit, the fund may be transferred to a third party which would be responsible for the implementation of long-term monitoring and management of the seacliff buckwheat habitat; an appropriate third party in Monterey County has not been identified to date.

The minimization and mitigation measures proposed by the permittee adequately mitigate the taking of the Smith's blue butterfly. The loss of occupied habitat represents a minor portion of the range of the species. The habitat loss would be mitigated to a level of insignificance and would contribute to the recovery of the Smith's blue butterfly by managing and protecting in perpetuity remaining habitat on site for the species. Wildcat Line considered alternatives to the proposed action but they are not feasible nor will they result in protection of additional habitat. For these reasons the Service finds that the permittee has minimized and mitigated the effects of the taking of the Smith's blue butterfly to the maximum extent practicable.

3. The permittee will ensure that adequate funding for the HCP will be provided.

During the permit term, all habitat monitoring, restoration, enhancement, and maintenance activities within the conservation area will be funded through a performance bond or other monetary instrument (i.e., certificate of deposit, irrevocable letter of credit) and conducted by a

Service-approved biologist. The monetary instrument will be established prior to or concurrent with permit issuance. A detailed budget and description of funding is described in section 8.8 of the HCP. The estimated cost for implementation of all minimization and mitigation activities during the 10-year permit period is approximately \$48,500.

Wildcat Line will provide funding in an amount estimated to be sufficient for the long-term monitoring, maintenance, and management of the conservation area, including removal of non-native plants and erosion control or other corrective actions determined to be necessary. Funding for long-term management will be in the form of an initial establishment of an \$11,000 non-wasting, interest-bearing endowment. This endowment will be established prior to ground disturbance and NFWF will manage the fund for the protection of Smith's blue butterfly habitat. Upon expiration of the permit, the NFWF will administer funds for long-term management and in accordance with terms of the HCP. Wildcat Line has determined that approximately \$11,000 will yield \$18,520 at the end of the 10-year permit term at 5.4 percent (10 year treasury rate). If the Service determines that the permit term may be terminated earlier, then Wildcat Line will review the endowment amount at that time and provide an additional sum to NFWF for inclusion in the designated account within the Smith's blue butterfly conservation fund, as necessary to yield the \$1,000 annual payment, as adjusted for inflation. Approximately \$18,500 will yield \$1,000 each year in interest, as may be adjusted per the CPI-U for inflation, to fund long-term management activities in perpetuity. Wildcat Line's biological consultant has estimated that \$1,000 per year is sufficient for long-term monitoring, maintenance, and management of the conservation area.

4. The taking will not appreciably reduce the likelihood that the species will survive and recover in the wild.

The Act's legislative history establishes the intent of Congress that this issuance criterion be identical to a finding of "no likely jeopardy" under section 7(a)(2) [see 50 CFR 402.02]. As a result, approval of Wildcat Line's permit application has also been reviewed by the Service under section 7 of the Act. In a biological opinion, which is attached hereto and incorporated by reference, the Service concluded that the approval of Wildcat Line's permit application would not likely jeopardize the continued existence of the Smith's blue butterfly. The conclusion was based on the following facts:

- a. The total area subject to permanent habitat loss constitutes a small portion of the protected area surrounding the project site and constitutes a small (less than approximately 0.1 percent) portion of the species' range (Salinas River to the San Luis Obispo County line), and;
- b. The applicant has proposed to provide funding to enhance, protect, and manage, in perpetuity, approximately 7 acres of habitat for Smith's blue butterfly within a 9.86-acre conservation area adjacent to the impact area.

The loss of habitat and of an indeterminate number of Smith's blue butterflies from the impact area is not expected to threaten the survival and recovery of the species due to the occurrence and abundance of its host plant elsewhere on the project site and on several locations in close proximity, as well as elsewhere throughout the entire geographic range of the species (Salinas River to the San Luis Obispo County line). The percentage of habitat to be permanently removed is estimated to be approximately 0.1% of the amount of habitat within the geographic range of the species that is known to currently support seacliff buckwheat (Service 2001b). However, stands of seacliff buckwheat are likely to occur in additional areas within the species' range that we are not currently not aware of for various reasons. An estimated 15-20 percent of the adjacent 439 acres supports coastal sage scrub habitat and seacliff buckwheat and is considered potential habitat for Smith's blue butterfly. The development of the single-family residence within a 1.56-acre impact area is unlikely to cause degradation of the surrounding habitat.

In addition, the proposed 9.86-acre conservation area would provide approximately 7 acres of permanently protected and maintained coastal sage scrub habitat for the Smith's blue butterfly. The proposed conservation area supports the majority of the seacliff buckwheat population that currently exists at the project site. The permanent protection and management of suitable habitat to offset the loss of a smaller area of habitat would be an overall benefit to the status and recovery of the Smith's blue butterfly.

5. Other measures, as required by the Director of the Fish and Wildlife Service, have been met.

The HCP incorporates all elements necessary for the issuance of the permit, including monitoring and reporting and procedures to deal with unforeseen and changed circumstances.

6. The Director of the Fish and Wildlife Service has received the necessary assurances that the plan will be implemented.

Signing of an agreement between the NFWF and the Service on the establishment of a fund designated for the conservation of Smith's blue butterfly habitat will assure that long-term monitoring and management, according to a direct request from Wildcat Line to the NFWF, will be implemented. The Service will concur in writing to NFWF that the administration of funds for the purpose specified by Wildcat Line is appropriate.

V. ALTERNATIVES

Two alternatives to the proposed action were considered: the No Action Alternative and the Redesigned Project Alternative. Both of these alternatives would not substantially benefit the Smith's blue butterfly. The Redesigned Project Alternative features the relocation of the development footprint to another portion of the parcel. This alternative was rejected because much of the property is too steep to be developed, and relocation of the footprint to the western portion of the property would result in the removal of an undetermined number of Monterey pine

(*Pinus radiata*), which is included on the California Native Plant Society List 1B as a species that is rare, threatened or endangered in California and elsewhere. Furthermore, the potential reduction of take of Smith's blue butterflies and reduction of modification of their habitat would not be substantial. Under the No Action Alternative, no permit would be issued. However, this alternative would result in an economic burden to Wildcat Line and conservation measures for the Smith's blue butterfly, such as exotic weed eradication and habitat enhancement, would not be implemented.

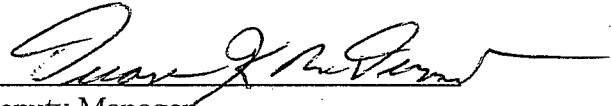
VI. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

The Service has no evidence that the permit application should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21(b)-(c).

VII. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend approval of the permit to Wildcat Line for the incidental taking of the endangered Smith's blue butterfly, to the extent that their take will be a violation of the Act. Further, I recommend assurances of no further mitigation requirements consisting of land use restrictions or financial compensation from the permittee for the covered species, aside from those provided for in the HCP.

Acting


Deputy Manager
California/Nevada Operations Office

7-12-01
Date

REFERENCES

Arnold, R.A., M. Zander and J.S. Retterer. 2001. Low-effect habitat conservation plan for the issuance of an incidental take permit for the federally endangered Smith's blue butterfly at the Wildcat Line property, Carmel Highlands, Monterey County, California. 41 pp. plus figures.

California Natural Diversity Data Base. 2000. Field survey forms and other unpublished reports for *Euphilotes enoptes smithi*. California Department of Fish and Game, Sacramento.

Monterey County. Carmel Area Land Use Plan, Local Coastal Plan Program. Certified April 14, 1983.

U.S. Fish and Wildlife Service. 2001a. Biological opinion for the issuance of an incidental take permit for the Wildcat Property, Carmel Highlands, Monterey County, California (1-8-01-FW-41). Signed by the Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California, on September 6, 2001.

U.S. Fish and Wildlife Service. 2001b. Screening form for low-effect HCP determination and environmental action statement for the Wildcat Line single-family residence development HCP, Monterey County, California. Signed by the Deputy Manager, California/Nevada Operations Office, on September 10, 2001. Prepared with technical assistance from R.A. Arnold.

Executive Department
State of California

EXECUTIVE ORDER B-29-15

WHEREAS on January 17, 2014, I proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions; and

WHEREAS on April 25, 2014, I proclaimed a Continued State of Emergency to exist throughout the State of California due to the ongoing drought; and

WHEREAS California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall this winter, with record low snowpack in the Sierra Nevada mountains, decreased water levels in most of California's reservoirs, reduced flows in the state's rivers and shrinking supplies in underground water basins; and

WHEREAS the severe drought conditions continue to present urgent challenges including: drinking water shortages in communities across the state, diminished water for agricultural production, degraded habitat for many fish and wildlife species, increased wildfire risk, and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Bay Delta; and

WHEREAS a distinct possibility exists that the current drought will stretch into a fifth straight year in 2016 and beyond; and

WHEREAS new expedited actions are needed to reduce the harmful impacts from water shortages and other impacts of the drought; and

WHEREAS the magnitude of the severe drought conditions continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat; and

WHEREAS under the provisions of section 8558(b) of the Government Code, I find that conditions of extreme peril to the safety of persons and property continue to exist in California due to water shortage and drought conditions with which local authority is unable to cope; and

WHEREAS under the provisions of section 8571 of the California Government Code, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the drought.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, in particular Government Code sections 8567 and 8571 of the California Government Code, do hereby issue this Executive Order, effective immediately.



IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my January 17, 2014 Proclamation, my April 25, 2014 Proclamation, and Executive Orders B-26-14 and B-28-14 remain in full force and effect except as modified herein.

SAVE WATER

2. The State Water Resources Control Board (Water Board) shall impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016. These restrictions will require water suppliers to California's cities and towns to reduce usage as compared to the amount used in 2013. These restrictions should consider the relative per capita water usage of each water suppliers' service area, and require that those areas with high per capita use achieve proportionally greater reductions than those with low use. The California Public Utilities Commission is requested to take similar action with respect to investor-owned utilities providing water services.
3. The Department of Water Resources (the Department) shall lead a statewide initiative, in partnership with local agencies, to collectively replace 50 million square feet of lawns and ornamental turf with drought tolerant landscapes. The Department shall provide funding to allow for lawn replacement programs in underserved communities, which will complement local programs already underway across the state.
4. The California Energy Commission, jointly with the Department and the Water Board, shall implement a time-limited statewide appliance rebate program to provide monetary incentives for the replacement of inefficient household devices.
5. The Water Board shall impose restrictions to require that commercial, industrial, and institutional properties, such as campuses, golf courses, and cemeteries, immediately implement water efficiency measures to reduce potable water usage in an amount consistent with the reduction targets mandated by Directive 2 of this Executive Order.
6. The Water Board shall prohibit irrigation with potable water of ornamental turf on public street medians.
7. The Water Board shall prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or microspray systems.



8. The Water Board shall direct urban water suppliers to develop rate structures and other pricing mechanisms, including but not limited to surcharges, fees, and penalties, to maximize water conservation consistent with statewide water restrictions. The Water Board is directed to adopt emergency regulations, as it deems necessary, pursuant to Water Code section 1058.5 to implement this directive. The Water Board is further directed to work with state agencies and water suppliers to identify mechanisms that would encourage and facilitate the adoption of rate structures and other pricing mechanisms that promote water conservation. The California Public Utilities Commission is requested to take similar action with respect to investor-owned utilities providing water services.

INCREASE ENFORCEMENT AGAINST WATER WASTE

9. The Water Board shall require urban water suppliers to provide monthly information on water usage, conservation, and enforcement on a permanent basis.
10. The Water Board shall require frequent reporting of water diversion and use by water right holders, conduct inspections to determine whether illegal diversions or wasteful and unreasonable use of water are occurring, and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water. Pursuant to Government Code sections 8570 and 8627, the Water Board is granted authority to inspect property or diversion facilities to ascertain compliance with water rights laws and regulations where there is cause to believe such laws and regulations have been violated. When access is not granted by a property owner, the Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of conducting an inspection pursuant to this directive.
11. The Department shall update the State Model Water Efficient Landscape Ordinance through expedited regulation. This updated Ordinance shall increase water efficiency standards for new and existing landscapes through more efficient irrigation systems, greywater usage, onsite storm water capture, and by limiting the portion of landscapes that can be covered in turf. It will also require reporting on the implementation and enforcement of local ordinances, with required reports due by December 31, 2015. The Department shall provide information on local compliance to the Water Board, which shall consider adopting regulations or taking appropriate enforcement actions to promote compliance. The Department shall provide technical assistance and give priority in grant funding to public agencies for actions necessary to comply with local ordinances.
12. Agricultural water suppliers that supply water to more than 25,000 acres shall include in their required 2015 Agricultural Water Management Plans a detailed drought management plan that describes the actions and measures the supplier will take to manage water demand during drought. The Department shall require those plans to include quantification of water supplies and demands for 2013, 2014, and 2015 to the extent data is available. The Department will provide technical assistance to water suppliers in preparing the plans.



13. Agricultural water suppliers that supply water to 10,000 to 25,000 acres of irrigated lands shall develop Agricultural Water Management Plans and submit the plans to the Department by July 1, 2016. These plans shall include a detailed drought management plan and quantification of water supplies and demands in 2013, 2014, and 2015, to the extent that data is available. The Department shall give priority in grant funding to agricultural water suppliers that supply water to 10,000 to 25,000 acres of land for development and implementation of Agricultural Water Management Plans.
14. The Department shall report to Water Board on the status of the Agricultural Water Management Plan submittals within one month of receipt of those reports.
15. Local water agencies in high and medium priority groundwater basins shall immediately implement all requirements of the California Statewide Groundwater Elevation Monitoring Program pursuant to Water Code section 10933. The Department shall refer noncompliant local water agencies within high and medium priority groundwater basins to the Water Board by December 31, 2015, which shall consider adopting regulations or taking appropriate enforcement to promote compliance.
16. The California Energy Commission shall adopt emergency regulations establishing standards that improve the efficiency of water appliances, including toilets, urinals, and faucets available for sale and installation in new and existing buildings.

INVEST IN NEW TECHNOLOGIES

17. The California Energy Commission, jointly with the Department and the Water Board, shall implement a Water Energy Technology (WET) program to deploy innovative water management technologies for businesses, residents, industries, and agriculture. This program will achieve water and energy savings and greenhouse gas reductions by accelerating use of cutting-edge technologies such as renewable energy-powered desalination, integrated on-site reuse systems, water-use monitoring software, irrigation system timing and precision technology, and on-farm precision technology.

STREAMLINE GOVERNMENT RESPONSE

18. The Office of Emergency Services and the Department of Housing and Community Development shall work jointly with counties to provide temporary assistance for persons moving from housing units due to a lack of potable water who are served by a private well or water utility with less than 15 connections, and where all reasonable attempts to find a potable water source have been exhausted.
19. State permitting agencies shall prioritize review and approval of water infrastructure projects and programs that increase local water supplies, including water recycling facilities, reservoir improvement projects, surface water treatment plants, desalination plants, stormwater capture, and greywater systems. Agencies shall report to the Governor's Office on applications that have been pending for longer than 90 days.



20. The Department shall take actions required to plan and, if necessary, implement Emergency Drought Salinity Barriers in coordination and consultation with the Water Board and the Department of Fish and Wildlife at locations within the Sacramento - San Joaquin delta estuary. These barriers will be designed to conserve water for use later in the year to meet state and federal Endangered Species Act requirements, preserve to the extent possible water quality in the Delta, and retain water supply for essential human health and safety uses in 2015 and in the future.
21. The Water Board and the Department of Fish and Wildlife shall immediately consider any necessary regulatory approvals for the purpose of installation of the Emergency Drought Salinity Barriers.
22. The Department shall immediately consider voluntary crop idling water transfer and water exchange proposals of one year or less in duration that are initiated by local public agencies and approved in 2015 by the Department subject to the criteria set forth in Water Code section 1810.
23. The Water Board will prioritize new and amended safe drinking water permits that enhance water supply and reliability for community water systems facing water shortages or that expand service connections to include existing residences facing water shortages. As the Department of Public Health's drinking water program was transferred to the Water Board, any reference to the Department of Public Health in any prior Proclamation or Executive Order listed in Paragraph 1 is deemed to refer to the Water Board.
24. The California Department of Forestry and Fire Protection shall launch a public information campaign to educate the public on actions they can take to help to prevent wildfires including the proper treatment of dead and dying trees. Pursuant to Government Code section 8645, \$1.2 million from the State Responsibility Area Fire Prevention Fund (Fund 3063) shall be allocated to the California Department of Forestry and Fire Protection to carry out this directive.
25. The Energy Commission shall expedite the processing of all applications or petitions for amendments to power plant certifications issued by the Energy Commission for the purpose of securing alternate water supply necessary for continued power plant operation. Title 20, section 1769 of the California Code of Regulations is hereby waived for any such petition, and the Energy Commission is authorized to create and implement an alternative process to consider such petitions. This process may delegate amendment approval authority, as appropriate, to the Energy Commission Executive Director. The Energy Commission shall give timely notice to all relevant local, regional, and state agencies of any petition subject to this directive, and shall post on its website any such petition.



26. For purposes of carrying out directives 2–9, 11, 16–17, 20–23, and 25, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division are hereby suspended. This suspension applies to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required, as well as for any necessary permits or approvals required to complete these actions. This suspension, and those specified in paragraph 9 of the January 17, 2014 Proclamation, paragraph 19 of the April 25, 2014 proclamation, and paragraph 4 of Executive Order B-26-14, shall remain in effect until May 31, 2016. Drought relief actions taken pursuant to these paragraphs that are started prior to May 31, 2016, but not completed, shall not be subject to Division 13 (commencing with section 21000) of the Public Resources Code for the time required to complete them.
27. For purposes of carrying out directives 20 and 21, section 13247 and Chapter 3 of Part 3 (commencing with section 85225) of the Water Code are suspended.
28. For actions called for in this proclamation in directive 20, the Department shall exercise any authority vested in the Central Valley Flood Protection Board, as codified in Water Code section 8521, et seq., that is necessary to enable these urgent actions to be taken more quickly than otherwise possible. The Director of the Department of Water Resources is specifically authorized, on behalf of the State of California, to request that the Secretary of the Army, on the recommendation of the Chief of Engineers of the Army Corps of Engineers, grant any permission required pursuant to section 14 of the Rivers and Harbors Act of 1899 and codified in section 48 of title 33 of the United States Code.
29. The Department is directed to enter into agreements with landowners for the purposes of planning and installation of the Emergency Drought Barriers in 2015 to the extent necessary to accommodate access to barrier locations, land-side and water-side construction, and materials staging in proximity to barrier locations. Where the Department is unable to reach an agreement with landowners, the Department may exercise the full authority of Government Code section 8572.
30. For purposes of this Executive Order, chapter 3.5 (commencing with section 11340) of part 1 of division 3 of the Government Code and chapter 5 (commencing with section 25400) of division 15 of the Public Resources Code are suspended for the development and adoption of regulations or guidelines needed to carry out the provisions in this Order. Any entity issuing regulations or guidelines pursuant to this directive shall conduct a public meeting on the regulations and guidelines prior to adopting them.



31. In order to ensure that equipment and services necessary for drought response can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended for directives 17, 20, and 24. Approval by the Department of Finance is required prior to the execution of any contract entered into pursuant to these directives.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

IN WITNESS WHEREOF I have
hereunto set my hand and caused the
Great Seal of the State of California to
be affixed this 1st day of April 2015.

EDMUND G. BROWN JR.
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



Recording Requested By and
When recorded Return to

Sheri L. Damon, Esq.
Lombardo & Gilles, PC
318 Cayuga Street
Salinas, CA 95901

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Attorney

CRLISA
2/17/2004
8:47:27

DOCUMENT: **2004014096**



Titles: 1/ Pages: 9

Fees	32.00
Taxes	
Other	
AMT PAID	32.00

DEED RESTRICTION REVISED
APN 243-201-013

Recording Requested by and
When Recorded, Return to:
Sheri L. Damon, Esq.
Lombardo & Gilles, PLC
318 Cayuga Street
Salinas, CA 93901

(Space Above Line for Recorder's Use)

DEED RESTRICTION REVISED

THIS DEED RESTRICTION ("Restriction") is made as of January 1, 2004 by Rebecca Olson (Olson).

RECITALS

- A. Olson is the fee owner of certain real property consisting of approximately 11.5 acres located in the County of Monterey, State of California, legally described on Exhibit A attached hereto and shown on the map in Exhibit B, attached hereto, and by this reference both exhibits are incorporated herein (the "Property").
- B. Olson is required to preserve in perpetuity a 10.2- acre portion of the Property as depicted on Exhibit B as the "Encumbered Acreage" pursuant to the provisions of the Low-Effect Habitat Conservation Plan for the Smith's Blue Butterfly, Wildcat Line Property, Carmel Highlands, Monterey County, California, dated February 12, 2001 (the "HCP") as modified on April 24, 2002 and November 28, 2003, and the Federal Endangered Species Act, Section 10(a)(1)(B) incidental take permit (PRT-TE040317-0) (the "Permit") issued to Wildcat by the United States Fish and Wildlife Service (the "Service") and subsequently transferred to Charles and Rebecca Olson, as they may be amended from time to time.

The Service has issued the Permit to allow the incidental take authority on approximately 11.5 acres of property in the County of Monterey (the "Benefitted Property") in connection with residential development.

- C. At this time, Olson wishes to place a revised deed restriction restricting the use of the Encumbered Acreage to satisfy the commitment Olson made to the Service in connection with an amendment to the HCP boundary area approved on November 28, 2003. Said Deed Restriction is legally described in Exhibit C, attached hereto and incorporated herein.
- D. This Restriction will assist in preserving in perpetuity and maintaining important open space and wildlife habitat in the Encumbered Acreage.

NOW, THEREFORE, in consideration of the foregoing benefits and the benefits obtained by Olson from the Permit, and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, Olson does hereby covenant and agree to restrict, and does by this instrument so intend to restrict, the future use of the Encumbered Acreage as set forth below, by the establishment of this Restriction and covenant running with the land which shall be an equitable servitude to protect the Encumbered Acreage in perpetuity.

1. The Encumbered Acreage shall not be utilized in any manner inconsistent with the conservation of the natural flora and fauna contained thereon. Without limiting the generality of the foregoing and without creating any affirmative duties with respect to preventing unauthorized activities by trespassers (which does occur at this time), the following activities are expressly prohibited:

- a. Development within the Encumbered Acreage for residential, commercial retail or industrial purposes;
- b. Destruction or removal of vegetation including, but not limited to, brushing, clearing, crushing, mowing, grubbing, disking or grading, except in accordance with the HCP;
- c. Fuelbreak modifications of vegetation that require the removal of more than five hundred (500) seacliff buckwheat plants or 0.25 acres of vegetation containing seacliff buckwheat;
- d. Any vegetation planting, except in accordance with the HCP;
- e. Use of motor vehicles;
- f. Use of off-road vehicles;
- g. Use of bicycles;
- h. Depositing of ashes, trash, agricultural waste, debris, garbage or other waste materials or other unsightly, offensive or toxic material;
- i. Unseasonal watering, use of herbicides, rodenticides, pesticides, or weed abatement activities, except in accordance with the management guidelines of the HCP;
- j. Grazing or surface entry for exploration or extraction of minerals;
- k. Erecting of any structure, including any building, billboard or sign;
- l. Excavating, dredging or removing of loam, gravel, soil, rock, sand or other material;
- m. Feeding or protection of feral, stray or abandoned animals, including domestic cats and dogs within the encumbered Acreage;
- n. Feeding of birds, including use of bird feeders within the Encumbered Acreage;
- o. Any other uses which would otherwise impair the long-term protection of the existing and restored seacliff buckwheat habitat area.

2. The United States, acting through any of its agencies (including, but not limited to, the Service) shall have the right to enforce each of the terms of this Restriction. If the Service determines that Wildcat, or any successor in interest (hereinafter, the "Owner"), is in violation of this Restriction, it shall give written notice to Owner of such violation and request corrective action sufficient to cure the violation and, where the violation involves injury to the area resulting from any use or activity inconsistent with the provisions of this Declaration, to restore the portion of the area so injured. If the Owner fails to cure the violation within the fifteen (15) day

period under circumstances where the violation can reasonably be cured within said period, or fails to continue diligently to cure such violation until finally cured, the Service may bring any action at law or equity that is appropriate under the circumstances. Notwithstanding the foregoing, if the Service, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Encumbered Acreage, the Service may pursue its remedies under this paragraph without waiting for the expiration of the fifteen (15) day cure period with whatever prior notice to Owner that is reasonable under the circumstances. The Service's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Deed Restriction. Wildcat further agrees that the Service's remedies at law for any violation of the terms of this Restriction are inadequate and that the Service shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which the Service may be entitled, including specific performance of the terms of this Restriction, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

3. Olson hereby agrees and acknowledges that the Encumbered Acreage shall be held, sold, conveyed, owned and used subject to the applicable terms, conditions, and obligations imposed by this Deed Restriction, relating to the use, repair, maintenance and/or improvements of the Encumbered Acreage and matters incidental hereto. Such terms, conditions, and obligations are a burden and restriction on the use of the Encumbered Acreage. The provisions of this deed restriction shall be enforceable as equitable servitudes and conditions, restrictions and covenants running with the land for the benefit of the Property and the people of the United States and shall be binding upon Olson and its heirs, devisees, successors and assignees, officers, directors, employees, agents, and upon future owners and on all parties having or acquiring any right, title or interest in the Encumbered Acreage or any part thereof.

4. If at any time Olson and the Service agree that an alternative conservation mechanism or instrument would be an appropriate replacement to this Restriction, the parties shall execute a recordable instrument to nullify and void this Restriction.

5. The United States Fish and Wildlife Service, its designee and/or any conservation organization managing open space land adjacent to the property shall have the right to enter, upon 24-hour notice to Wildcat or its successors or assigns, the Encumbered Acreage (from the adjacent open space) to inspect the condition of the Encumbered Acreage and the adjacent fence and to ensure compliance with, or enforce the terms of, this Restriction.

6. Any individual or organization retained to perform habitat management activities consistent with the Habitat Conservation Plan shall have access to the Encumbered Acreage as part of their conservation and management of the adjacent Conservation Area.

IN WITNESS WHEREOF, the undersigned has executed this Restriction as of the date hereinabove provided.

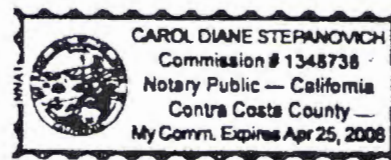
By: Rebecca Olson
REBECCA OLSON

State of California)
County of Contra Costa) ss.

On January 28th, 2004, before me, Carol Diane Stepanovich, a Notary Public, personally appeared REBECCA OLSON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Carol Diane Stepanovich



(SEAL)

PARCEL NUMBER 243 201 013

PARCEL 1

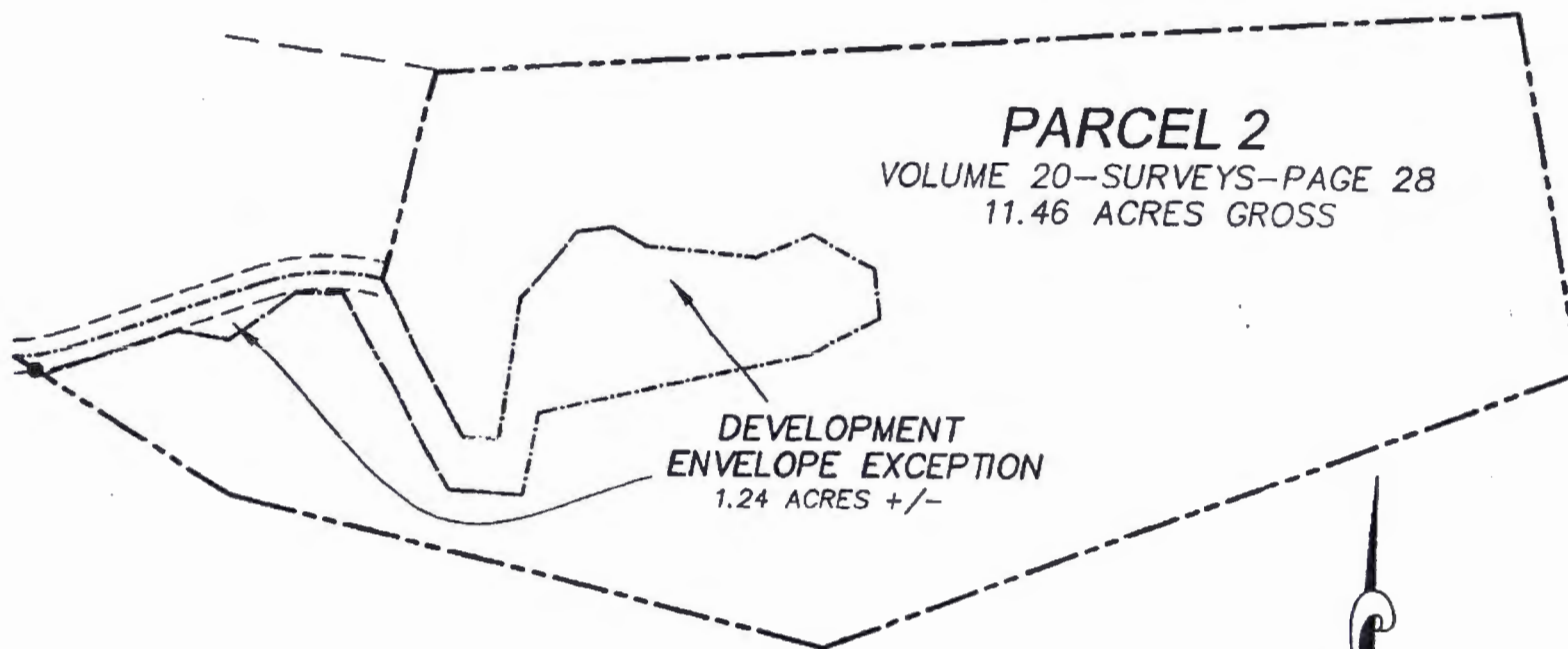
PARCEL 2 AS SHOWN ON THAT RECORD OF SURVEY FILED MAY 20,
1996 IN VOLUME 20 OF SURVEYS PAGE 28 IN THE OFFICIAL RECORDS
MONTEREY COUNTY OF CALIFORNIA.

PARCEL 2

A NON-EXCLUSIVE EASEMENT FOR ROAD AND UTILITIES OVER
PARCEL 3 AND 4 AS SHOWN AND DESIGNATED ON THAT PARCEL
MAP FILED DECEMBER 21, 1993 IN VOLUME 19 OF PARCEL MAPS
PAGE 55 OFFICIAL RECORDS MONTEREY COUNTY CALIFORNIA.

EXHIBIT A

EXHIBIT B



SCALE: 1" = 150'

EXHIBIT



February 4, 2004

L E G A L D E S C R I P T I O N

A DEED RESTRICTION over Parcel 2, as said parcel is shown on that certain Lot Line Adjustment Map, "Record of Survey of Wildcat Mountain Ranch", filed for record in the Office of the County Recorder, State of California, May 20, 1996 in Volume 20 of Surveys at Page 28, and described in Grant Deed filed for record July 18, 1996 in Reel 3396 of Monterey County Records at Page 255 EXCEPTING THEREFROM the following described Development Envelope Parcel:

BEGINNING AT the most westerly corner of said Parcel 2, distant North 57° 19' 01" West, 21.95 feet a $\frac{1}{4}$ " iron pipe, tagged RCE 25766, marking a point on the southwesterly boundary of said Parcel 2; thence north-easterly, along the boundary of said Parcel 2 and centerline of a 30-foot wide road and utility easement

(1) Along the arc of a circular curve to the left having a radius of 170 feet, through a central angle of 16° 27' 09" (the center of circle bears North 2° 52' 48" West), an arc distance of 48.82 feet; thence

(2) North 70° 40' 03" East, 176.44 feet; thence

(3) Along the arc of a circular curve to the right having a radius of 180 feet, through a central angle of 33° 59' 38" (the center of circle bears South 19° 19' 57" East), an arc distance of 106.79 feet; thence leaving the boundary of said Parcel 2

(4) South 27° 34' 37" East, 158.60 feet; thence

(5) South 88° 30' 26" East, 31.09 feet; thence

(6) North 07° 14' 33" East, 126.52 feet; thence

(7) North 39° 05' 16" East, 76.14 feet; thence

(8) North 81° 10' 03" East, 31.00 feet; thence

(9) South 61° 48' 54" East, 34.38 feet; thence

(10) South 84° 37' 33" East, 97.58 feet; thence

(11) North 67° 41' 38" East, 53.27 feet; thence

(12) South 60° 36' 11" East, 60.79 feet; thence

(13) South 07° 57' 34" East, 43.52 feet; thence

EXHIBIT C

- (14) South 60° 21' 12" West, 67.26 feet; thence
(15) South 77° 03' 00" West, 244.85 feet; thence
(16) South 09° 18' 39" West, 74.61 feet; thence
(17) North 86° 09' 06" West, 63.47 feet; thence
(18) North 28° 45' 31" West, 199.68 feet; thence
(19) North 89° 39' 49" West, 41.21 feet; thence
(20) South 54° 20' 02" West, 71.50 feet; thence
(21) North 80° 23' 02" West, 45.74 feet; thence
(22) South 70° 23' 00" West, 123.39 feet to the southwesterly
boundary of said Parcel 2; thence northwesterly along said boundary
line
(23) North 57° 19' 01" West, 29.68 feet to the POINT OF BEGINNING.

TOGETHER WITH AND SUBJECT TO covenants, easements, and restrictions
of record.

SEE ATTACHED EXHIBIT

END OF DESCRIPTION

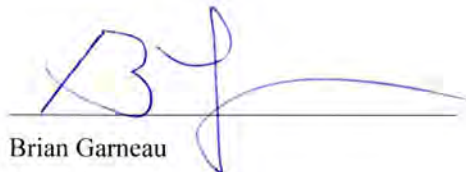
END OF DOCUMENT

I, Brian Garneau, declare as follows:

1. I am an employee of Carmel Lahaina Utility Services, Inc., and serve as one of the water system operators for the Carmel Riviera Mutual Water System.
2. I have personal knowledge of the facts recited in this Declaration.
3. Approximately six months ago, on or about September 2014, I witnessed some tree removal activities that were occurring in the area illustrated on the map attached hereto as Exhibit "A". Trees were being removed with use of chain saws. These fallen trees were loaded into a truck via a Bobcat and transported away offsite. The tree removal activities occurred over a two month period of time.
4. Based on the trees in the area, I believe the trees removed consisted of Monterey Pines. Prior to the tree removal, the views in this area were heavily wooded. As a result of the tree removal, the view in this area is now void of trees. I would estimate that at least five large trees were removed in this area.
5. The area of this tree removal, as shown on the aerial map, appears to extend to the project applicant's new or proposed septic/leach line that was identified in the Bierman map identified as Figure 1 in the County of Monterey staff report attached hereto as Exhibit "B".

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 12th day of May, 2015.


Brian Garneau













From: Aaron Bierman [mailto:abierman@comcast.net]
Sent: Wednesday, April 29, 2015 12:51 PM
To: Mason, Steve x5228
Cc: 'Jim Storer'
Subject: RE: PLN 140469

Steve –

There has been no hydrogeologic report completed for the well. However, the major questions is: Will Mr. Storer's irrigation well impose a cumulative significant impact to Carmel Rivera Mutual Water Well (CRMW) quantity and quality?

First, there is no site specific scientific evidence suggesting the wells would be hydrogeologically connected. The Storer Irrigation well as with the CRMW Well would be/are installed into a fractured Granite aquifer which receives its groundwater with the fractures of the granite. The fracturing variability in hardrock wells is very ambiguous and uncertain with vertical and horizontal distribution. Often times wells in close proximity have no well inference as the fractures each wells intersect – intersect different fractures and therefore no hydrogeologic connectivity between wells. Other times well interference is observed.

However, the only 100% definitive way to determine well interference would be to either install the Storer Irrigation Well and then conduct pump-testing, or complete a pumping test on the existing CRMW Well and monitoring other neighboring wells in the vicinity to determine constructive interference.

It should be noted that as part of the permitting process for obtaining a Water Distribution System (WDS) permit from Monterey Peninsula Water Management District (MPWMD) for Mr. Storer's Well, a pumping test would need to be completed to determine the sustainable yield of the Irrigation well, and in addition, whether there would be offsite impacts to other neighboring wells, including the CRMW Well. This determination is completed AFTER the Irrigation well is constructed and pump-tested. Pump testing allows for the computation of Transmissivity and Storage Coefficient of the fractured aquifer and provide data to determine the wells' pumping radius of influence and the potential for well interference on any well in the vicinity.

Of special note, MPWMD has regulations that if the impacts to offsite neighboring wells is greater than 5% of the offsite wells' saturated thickness, then the Storer Well would need to reduce their quantity to something less to prevent 5% impacts to neighboring wells.. These are regulations that Mr. Storer would already need to adhere to and are built-in to MPWMD regulations

Therefore, based on the current regulation in place for obtaining a WDS permit from MPWMD, Resource Management Agency should finalize the CAP process for the installation of the Storer Irrigation well, and thereafter pump tested to determine well interference.

Respectfully submitted,

Aaron Bierman
Hydrogeologist #819

Otts, Joe@Coastal

From: John S. Bridges <jbridges@fentonkeller.com>
Sent: Thursday, May 28, 2015 3:59 PM
To: Otts, Joe@Coastal; Craig, Susan@Coastal
Cc: Jim Storer (jstorer@vortekinst.com)
Subject: Storer (Cisar Trust) appeal (A-3-MCO-15-0023)
Attachments: Attachment 1 (00470867).pdf; Attachment 2 (00470868).pdf; Attachment 3 (00470869).pdf; Attachment 4 (00470866).pdf

Joe/Susan: As I mentioned last week, we have been researching the notice issue and I want to share with you the following:

First, written notice was mailed to all owners of real property within 300' of the Storer property (see attachment 1; assessors records and County's mailing list/affidavit). The appellant does not own nor reside at real property within 300' of the Storer property and therefore was not entitled to mailed notice. Appellant does not supply services to the "project" (which is a well).

Second, hearing notice was published (see attachment 2)

Third, Notice was posted in 3 places on or near the Storer property (see attachment 3). All the roads in the general vicinity, including Mentone Drive, are private but readily accessible (as is the case in many areas of the County). In any event, the appellant had direct access to Mentone Drive and had actual notice of the pending application and hearing date in this case. Appellant had unfettered access to Mentone Drive up to the Storer's driveway gate to service their water tank (located on an adjoining property) and in fact used that access during the time the notices were posted. One of the notices was actually posted on a red pump house door (just outside the Storer's driveway gate) that the appellant accessed to use electricity (opening and closing the door on which the notice was posted) during the notice period (see attachment 4; declarations). Moreover, appellant's general manager is the person who actually suggested the placement of a well on the Storer's property in the first instance (see attachment 4; declarations). The appellant, therefore, cannot claim they were denied the right of local appeal due to lack of notice.

Fourth, the exception contained at section 13573.a.3 only applies where the local notice and hearing "procedures" do not comply with the notice requirements of Article 17 (ref. section 13565). The County's procedures, which require mailed notice to property owners within 300 feet complies with the provision of Article 17. Moreover, section 13565 requires only notice by mail and only to property owners within 100 feet. Again, appellant is not a property owner within 100 feet.

In sum, the applicant was not entitled to mailed notice, could have read the published notice, and in any event had actual knowledge of the posted notice in this case. The standing prerequisite of exhaustion of local appeals contained in Section 13111 therefore applies, appellant's appeal is barred, and the Commission has no jurisdiction over the project.

No other appeals were timely filed and therefore the County's approval of the project is final.

Questions/allegations made appellant unrelated to the well application are subject to County jurisdiction.

JOHN

John S. Bridges
FENTON & KELLER
Post Office Box 791
Monterey, CA 93942-0791
831-373-1241, ext. 238

831-373-7219 (fax)
jbridges@fentonkeller.com
www.FentonKeller.com

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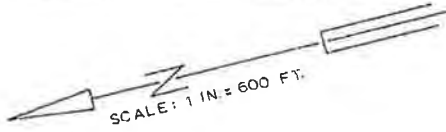
CONFIDENTIALITY NOTICE

This is a transmission from the Law Firm of Fenton and Keller. This message and any attached documents may be confidential and contain information protected by the attorney-client or attorney work product privileges. They are intended only for the use of the addressee. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you received this transmission in error, please immediately notify our office at 831-373-1241. Thank you.

ATTACHMENT 1

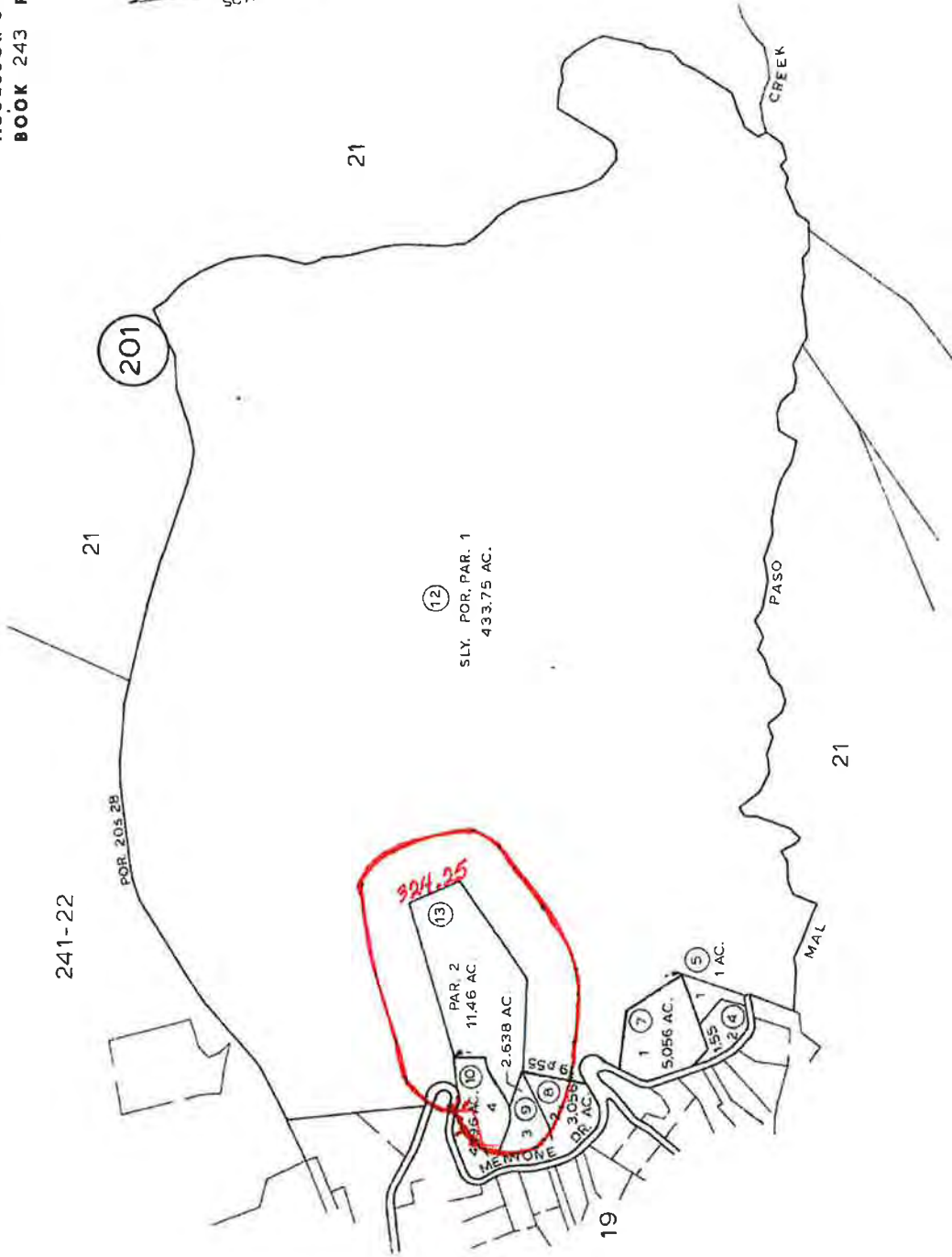
COUNTY OF MONTEREY
ASSESSOR'S MAP
BOOK 243 PAGE 20

TAX RATE AREA



SAN JOSE Y CHIQUITO RO.
POR. LOT 9 & POR W. J.W.
SUBD. NO. 1 LOTS 1 & 2

Properties within 300 ft.



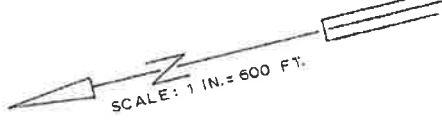
TAX RATE AREA

241-22

21

201

POR 203 28



Daniel J. Keig



12

SLY. POR. PAR. 1
433.75 AC.

Robert E. Bussinger



10

PAR. 2
11.46 AC.

Steven J. and
Sona M. Dennis



5

5,056 AC.

243-193-031
Henry Richard Risko +
Shelley Thompson



10

4,196 AC.

Gregory J. and
Teresa L. Kraft



1

5,056 AC.

13

24.35

2.638 AC.

11

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3,056 AC.

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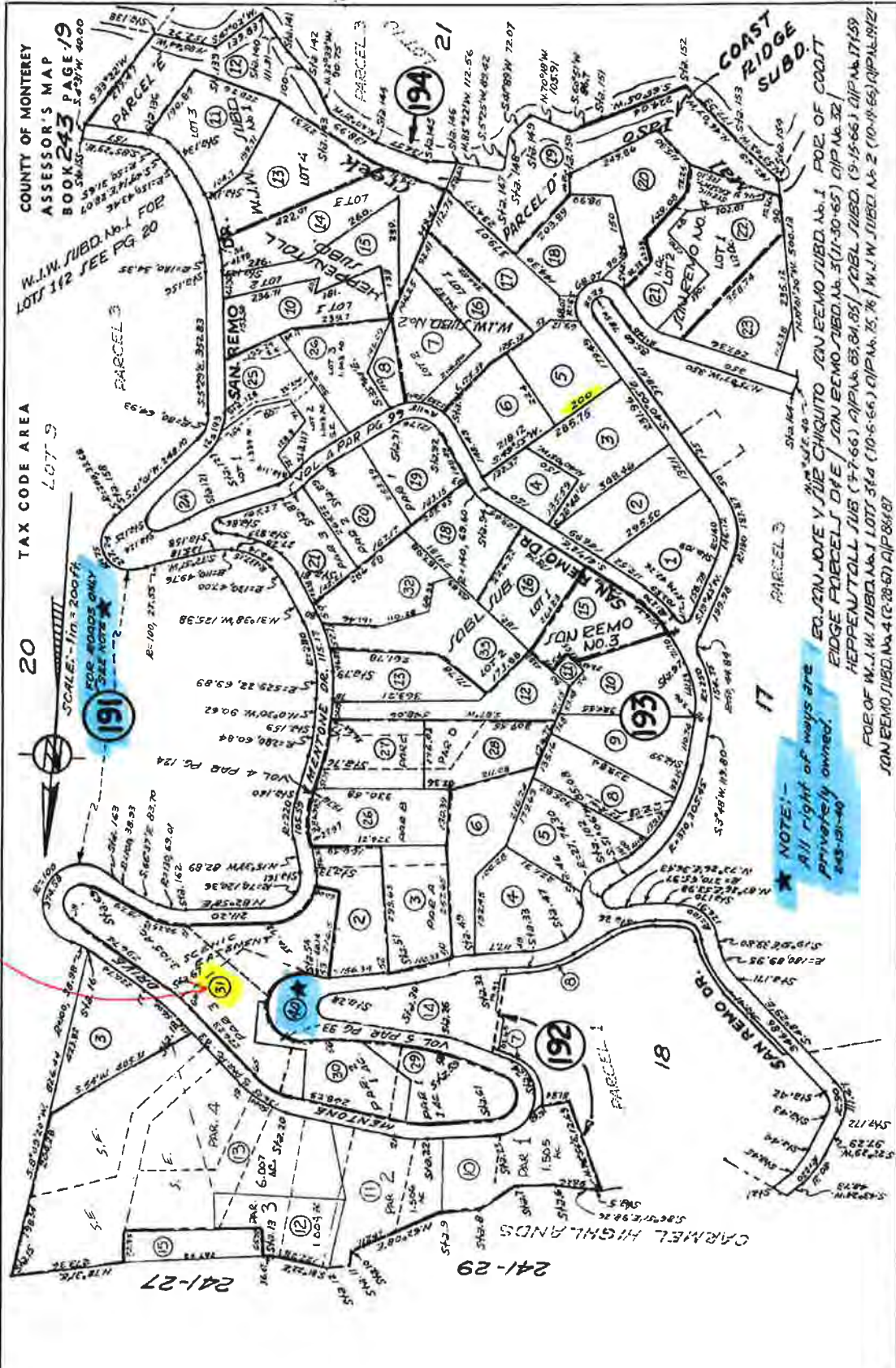
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SAN JOSE Y CHIQUITO RO.
POR. LOT 9 & POR W.J.W.
SUBD. NO. 1 LOTS 1 & 2

(Henry Richard Pisko and Shelley Thompson)





Property Overview

, CARMEL, CA 93923

Owner and Geographic Information



Primary Owner:

KEIG DANIEL J

Secondary Owner:

Mail Address: 200 CREST RD , CARMEL, CA 93923-9744

Site Address: , CARMEL, CA 93923

APN: 243-201-012 Lot Number: Page / Grid:

Housing Tract
Number:

Legal Description: Legal Brief Description: VOL 27 SUR MAPS PG 109 SLY PAR 1 433.75 AC

Property Details



Bedrooms:	0	Year Built:	Square Feet:	
Bathrooms:	0	Garage:	Lot Size:	433.75 AC
Total Rooms:		Fireplace:	Number of Units:	0
Zoning:		Pool:	Use Code:	Vacant Land (General)

Sale Information



Transfer Date:	07/18/1996	Seller:	N/A
Transfer Value:	\$0.00	Document#:	199733960255
Cost/Sq Feet:			

Assessment and Taxes



Assessed Value:	\$71,136.00	Percent Improvement:	0.00%	Homeowner Exemption:	
Land Value:	\$71,136.00	Tax Amount:	\$744.18	Tax Rate Area:	60-070
Improvement Value:	\$0.00	Tax Status:	Current	Tax Account ID:	
Market Improvement Value:		Market Land Value:		Market Value:	



Neighborhood Overview

, CARMEL, CA 93923

Nearby Neighbors

CISAR VIN CENT S

30 MENTONE RD , CARMEL , CA , 93923

APN: 243-201-013

Bedrooms: 4

Bathrooms: 4

Square Feet: 5,839

Lot Size: 11.46 AC

Year Built: 2005

Garage: A

MC QUILLAN JOHN & KARIN

268 SAN REMO RD , CARMEL , CA , 93923

APN: 243-201-007

Bedrooms: 2

Bathrooms: 5

Square Feet: 6,375

Lot Size: 5.06 AC

Year Built: 2003

Garage: A

KRISTE GEORGE V & RAIMIE B

190 SAN REMO RD , CARMEL , CA , 93923

APN: 243-201-004

Bedrooms: 0

Bathrooms:

Square Feet:

Lot Size: 1.55 AC

Year Built:

Garage:

BUSSINGER ROBERT E

28 MENTONE RD , CARMEL , CA , 93923

APN: 243-201-010

Bedrooms: 2

Bathrooms: 3

Square Feet: 3,844

Lot Size: 4.2 AC

Year Built: 1998

Garage: A

DENNIS STEVEN J & SONA M

24 MENTONE RD , CARMEL , CA , 93923

APN: 243-201-008

Bedrooms: 4

Bathrooms: 2

Square Feet: 3,997

Lot Size: 3.06 AC

Year Built: 1996

Garage: A

SIERRA ASSET SERVICING LLC,

30772 SAN REMO RD , CARMEL , CA , 93923

APN: 243-194-024

Bedrooms: 2

Bathrooms: 2

Square Feet: 2,685

Lot Size: 1.33 AC

Year Built: 1988

Garage: A

KENNEDY KEVIN

30850 SAN REMO DR , CARMEL , CA , 93923

APN: 243-194-011

Bedrooms: 3

Bathrooms: 3

Square Feet: 3,944

Lot Size:

Year Built: 1982

Garage: A

KRAFT GREGORY J & TERESA L

25 MENTONE RD , CARMEL , CA , 93923

APN: 243-201-009

Bedrooms: 4

Bathrooms: 3

Square Feet: 3,479

Lot Size: 2.64 AC

Year Built: 1998

Garage: A

SEMERIA, LYNNE L; LYNNE L SEMERIA 2014 REVO CABLE TRUST,

30776 SAN REMO RD , CARMEL , CA , 93923

APN: 243-194-025

Bedrooms: 3

Bathrooms: 2

Square Feet: 3,560

Lot Size: 1 AC

Year Built: 1992

Garage: A

TING, LYNNETTE GRIFFIN

16 MENTONE RD , CARMEL , CA , 93923

APN: 243-193-021

Bedrooms: 3

Bathrooms: 3

Square Feet: 2,970

Lot Size: 40,238 SF

Year Built: 1978

Garage: D



Neighborhood Overview

, CARMEL, CA 93923

MERKSAMER STEVEN A & LINDA S

30778 SAN REMO RD , CARMEL , CA , 93923

APN: 243-194-010

Bedrooms: 3

Bathrooms: 3

Square Feet: 3,497

Lot Size: 1.15 AC

Year Built: 2003

Garage: D

HALE SAMUEL JR & HOPE H

150 SAN REMO RD , CARMEL , CA , 93923

APN: 243-194-013

Bedrooms: 3

Bathrooms: 3

Square Feet: 1,901

Lot Size: 1.419 AC

Year Built: 1964

Garage: A

RISKO HENRY RICHARD & SHELLEY THOMPSON

20 MENTONE RD , CARMEL , CA , 93923

APN: 243-193-031

Bedrooms: 2

Bathrooms: 2

Square Feet: 3,414

Lot Size:

Year Built: 1976

Garage: A

DERRICK, JUDITH E; THE JUDITH E DERRICK SURVIVORS TRUST,

30774 SAN REMO RD , CARMEL , CA , 93923

APN: 243-194-026

Bedrooms: 1

Bathrooms: 3

Square Feet: 3,570

Lot Size: 1 AC

Year Built: 1982

Garage: A

DOELMAN, JAN; CHUPKA, NICOLE

30780 SAN REMO RD , CARMEL , CA , 93923

APN: 243-194-015

Bedrooms: 0

Bathrooms:

Square Feet:

Lot Size: 1.06 AC

Year Built:

Garage:

LIMITATIONS OF LIABILITY

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This property profile is being provided as a general service to the community at large without the condition of the referral of title insurance business.

◀◀ legals

continued from p. 96

creditor. You may want to consult with an attorney knowledgeable in California law. You may examine the file kept by the court. If you are a person interested in the estate, you may file with the court a Request for Special Notice (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A Request for Special Notice form is available from the court clerk. Attorney for Petitioner: Andrew M. Upton, Hudson Martin Fernante Stiles Witten & June PC, 4390 Calle Pimperial Monterey, CA 93940. 831-375 3151. Signed Ronald Spence. Publication dates: Jan, Feb, 5, 12, 2015.

[illegible]

With an attorney knowledgeable in California law, you may examine the file kept by the court. If you are a person interested in the estate, you may file with your court a Request for Special Notice (form DE-154) of the filing of an inventory and appraisal of estate assets, or of any petition or account presented in Probate Code sections 1250-1252. A Request for Special Notice form is available from our court clerk, Petitioner Margaret McMahon, 6429 Greenview Street, Redding, CA 96001, 339-241-0665. Publication dates: Jan. 29, Feb. 5, 12, 2015.

[illegible]

Notice of Public Hearing Monterey County Zoning Administrator

NOTICE IS HEREBY GIVEN that the Monterey County Zoning Administrator, State of California, will hold a Public Hearing to consider the project described below. The hearing will be held on **Thursday, February 12, 2015** at the hour of **9:30 a.m.** in the Monterey County Board of Supervisors Chambers, County Government Center, 128 West Alameda St., Salinas, California, at which time and place any and all interested persons may appear and be heard thereon.

Owner:	DAV FRANCESCO S/CAROLYN H
Project File No:	PLN141007
Project Location:	11427 Del Monte Ave, Castroville
Assessor's Parcel No:	030-211-055-000
Permit Type:	Design Approval
Planning Area:	North County
Environmental Status:	Categorical Exemption
Project Description:	Project Description is attached to the project

IF YOU CHALLENGE THIS MATTER IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS PUBLIC NOTICE OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE APPROPRIATE AUTHORITY AT OR BEFORE THE PUBLIC HEARING.

FOR ADDITIONAL INFORMATION CONTACT:

Mirra Lopez, Project Planner
Monterey County Resource Management Agency-Planning Department
168 West Alisal St. 2nd Floor, Salinas CA, 95067
831-755-5239 or lopezmir@rcma.monterey.ca.us

NOTICE IS HEREBY GIVEN that the Monterey County Zoning Administrator, State of California will hold a Public Hearing to consider the project described below. The hearing will be held on Thursday, February 12, 2015 at the hour of 9:40 a.m. in the Monterey County Board of Supervisors Chambers, County Government Center, 100 West Alvar St., Salinas, California, at which time and place any and all interested persons may appear and be heard thereon.

Owner:	NOEL ROBERT H/NANCY W
Project File No:	PLN140931
Project Location:	24731 Dolores St, Carmel
Assessor's Parcel No:	009-103-016-000
Permit Type:	Design Administrative
Planning Area:	Carmel LUP
Environmental Status:	Categorical Exemption
Project Description:	Design Amendment to allow

IF YOU CHALLENGE THIS MATTER IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS PUBLIC NOTICE OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE APPROPRIATE AUTHORITY AT OR BEFORE THE PUBLIC HEARING.

FOR ADDITIONAL INFORMATION CONTACT:

Monterey County Resource Management Agency-Planning Department
168 West Alisal St. 2nd Floor, Salinas CA, 93901
831-755-5285 or bernal@co.monterey.ca.us

NOTICE IS HEREBY GIVEN that the Monterey County Zoning Administration, State of California, will hold a Public Hearing to consider the project described below. The hearing will be held on Thursday, February 12, 2015 at the hour of 9:50 a.m. in the Monterey County Board of Supervisors Chambers, County Government Center, 160 West Alisal St., Salinas, California, at which time and place any and all interested persons may appear and be heard thereon.

Owner: **MOORE STEVEN VINCENT/CHRISTINA NAIKVAZ MOORE TRS**
 Project File No: **PLN140006**
 Project Location: **2955 Stevenson Dr, Pebble Beach**
 Assessor's Parcel Nn: **007-243-002-000**
 Permit Type: **Design Approval**
 Planning Area: **Greater Monterey Peninsula**
 Environmental Status: **Categorical Exemption**
 Project Description: **Design Approval to allow the demolition of an existing**

IF YOU CHALLENGE THIS MATTER IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS PUBLIC NOTICE OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE APPROPRIATE AUTHORITY AT OR BEFORE THE PUBLIC HEARING.

FOR ADDITIONAL INFORMATION CONTACT:

Lucy Bernal, Project Planner
Monterey County Resource Management Agency-Planning Department
160 West Alisal St., 2nd Floor Salinas CA, 92001
831-755-5285 or bernal@co.monterey.ca.us

NOTICE IS HEREBY GIVEN that the Monterey County Zoning Administrator, State of California, will hold a Public Hearing to consider the project described below. The hearing will be held on Thursday, February 12, 2015 at the hour of 10:00 a.m. in the Monterey County Board of Supervisors Chambers, County Government Center, 185 West Alisal St., Salinas, California, at which time and place any and all interested persons may appear and be heard thereon.

Owner: DR. DAN MURPHY, ALBANY, NEW YORK 12204-2000

Project File No:	PLAN 140731
Project Location:	3272 17 Mile Dr, Pebble Beach
Assessor's Parcel No:	008-393-003-000
Permit Type:	Combined Development Permit
Planning Area:	Del Norte Forest LUP
Environmental Status:	Categorical Exemption

Project Description: Combined Development Permit consisting of: 1) a Coastal Administrative Permit to allow a 441 square foot second floor addition to existing 1,207 square foot two-story single family residence; 2) a Coastal Administrative Permit for a new 490 square foot detached garage with a 490 square foot accessory dwelling unit over the garage; 3) a Coastal Development Permit to modify the nonconforming impervious coverage in the Pescadero Watershed; and 4) Design Approval.

IF YOU CHALLENGE THIS MATTER IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS PUBLIC NOTICE OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE APPROPRIATE AUTHORITY AT OR BEFORE THE PUBLIC HEARING.

FOR ADDITIONAL INFORMATION CONTACT

Elizabeth Gonzalez, Project Planner
Monterey County Resource Management Agency-Planning Department
168 West Alhambra St, 2nd Floor, Salinas CA, 93901
831-755-5102 or gonzalez@rcma.monterey.ca.us

NOTICE IS HEREBY GIVEN that the Monterey County Zoning Administrator, State of California will hold a Public Hearing to consider the project described below. The hearing will be held on Thursday, February 12, 2015 at the hour of 10:30 a.m. in the Monterey County Board of Supervisors Chambers, County Government Center 154 West First St., Salinas, California, at which time and place any and all interested persons may appear and be heard thereon.

Owner:	DAMI MACOMBER LLC
Project File No:	PLN140834
Project Location:	3235 Macomber Dr, Pebble Beach
Assessor's Parcel No:	008-162-013-000
Permit Type:	Combined Development Permit
Planning Area:	Del Monte Forest LUP
Environmental Status:	Categorical Exemption
Project Description:	Combined Development Permit

an existing 5,841 square foot single family dwelling; 2) Coastal Development Permit to allow the removal of three (3) Monterey Pine trees (14", 20" & 28") and the relocation of one (1) 14" Oak tree; and 3) Coastal Administrative Permit for the installation

within 750 feet of a known archaeological

CHALLENGE THIS MATTER IN COURT, YOU MAY BE LIMITED TO RAISING ONLY
YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN 11
IN WRITTEN CORRESPONDENCE DELIVERED TO THE APPROPRIATE AUTH
THE PUBLIC HEARING

FOR ADDITIONAL INFORMATION CONTACT:
Steve Mason, Project Planner
Monterey County Resource Management Agency-Planning Department
168 West Alisal St, 2nd Floor, Salinas CA, 93501
831-756-6228 or smason@rcma.monterey.ca.us

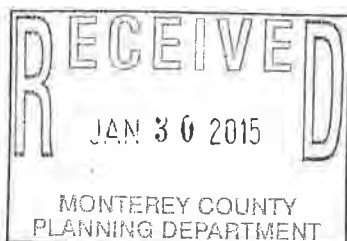
NOTICE IS HEREBY GIVEN that the Monterey County Zoning Administrator, Shari of Gulderson will lead a Public Hearing to consider the project described below. The hearing will be held on Thursday, February 12, 2015 at the hour of 10:20 a.m. in the Monterey County Board of Supervisors Chambers, County Government Center, 188 West Alhambra St. Salinas, California, at which time and place any and all interested persons may appear and be heard thereon.

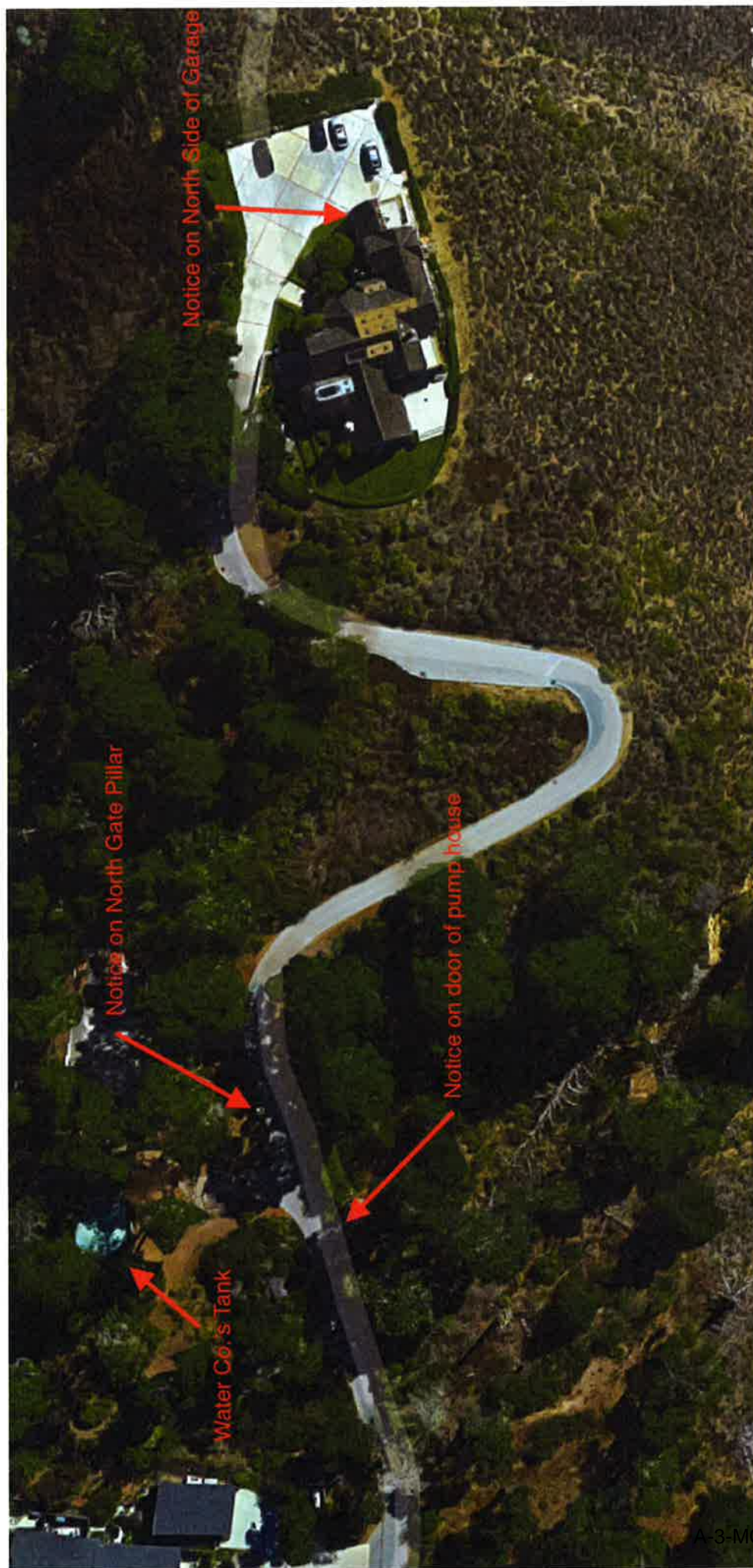
Owner:	CISAR VINCENT S TR
Project File No:	PLN140469
Project Location:	30 Mentone Dr, Carmel
Assessor's Parcel No:	243-201-013-000
Permit Type:	Combined Development
Planning Area:	Carmel LUP
Environmental Status:	Categorical Exemption
Project Description:	Combined Development

IF YOU CHALLENGE THIS MATTER IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARINGS DESCRIBED IN THIS PUBLIC NOTICE OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE APPROPRIATE AUTHORITY AT OR BEFORE THE PUBLIC HEARING.

FOR ADDITIONAL INFORMATION CONTACT

Steve Mason, Project Planner
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ATTACHMENT 4

STATE OF CALIFORNIA
COUNTY OF MONTEREY

**DECLARATION OF
JIM STORER**

I, Jim Storer, hereby declare:

1. My wife and I met with George Pysor, Director and Operations Manager for the Carmel Riviera Mutual Water Company, in February 2014. Mr. Pysor asked if the water company could locate temporary tanks on our property while they repaired a leak in their permanent tanks, which are located nearby on our neighbor's property. During our meeting, I mentioned to Mr. Pysor that we had received several water bills in excess of \$2,000 in 2013 and, as a result, had decided to remove most of the lawn that had been planted on our property and replace it with drought tolerant plants to conserve water. Mr. Pysor said he had recommended to the previous owner of our property that she install a private well to irrigate the landscaping on the property. He also said that he had assisted in locating a suitable site for a well on our property. Mr. Pysor then recommended to my wife and I that we install such a well and that he would help us with any water company paperwork when the time came. Mr. Pysor also said that in addition to helping us with our water bill, such a well would also help the water company by reducing the water demand from their system. Later, in accordance with Mr. Pysor's direction, we hired hydrologist Aaron Bierman to assist us in obtaining a well permit. Some weeks after that Mr. Pysor called to ask if he could borrow power from our pump house, which is located near their water tank, to assist with their maintenance work on the tank. We granted the permission and informed him that we had started the process to apply for a well permit. Water company personnel accessed our pump house and did use our power during the time our well permit application hearing notice was posted on the pump house door. I spoke with Mr. Pysor a number of times after that and he would typically ask how our well permit process was coming along. Not only did the water company have notice of our well permit application but they are the ones

{USB-470732;1}

1 who suggested we apply in the first instance.

2 I declare under penalty of perjury under the laws of the State of California, that the
3 foregoing is true and correct, except as to those matters based on information and belief, and as to
4 those matters I believe them to be true, and that if called as a witness I could and would
5 competently testify thereto.

6 Executed on this 28 day of May, 2015, at 30 Monterey Dr. Carmel, California.

7
8 By:

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JIM STORER

STATE OF CALIFORNIA
COUNTY OF MONTEREY

**DECLARATION OF
TERRI STORER**

I, Terri Storer, hereby declare:

1. On the afternoon of February 2, 2015, I assisted my daughter, Krysta, in posting notices for the hearing on our well permit application in accordance with instructions received from the County. We posted one of the notices on the outside of the door to our pump house located on Mentone Drive. The door was closed and latched at the time we posted the notice. On February 3, 2015, upon going to a doctor visit in Monterey, I noticed the pump house door was open and an orange electrical cord was running from the pump house across the road. The person who opened the door to access our pump house for electricity had to have seen the notice I posted on the outside of the pump house door the day before. On my return from the doctors I closed and latched the pump house door that day. Because the pump house door latch does not catch if the door is not closed properly, the door will sometimes swing back open on its own. The water company employees never seemed to understand this and I found the door left open several times while the water company was using our pump house electricity during the days after we posted the hearing notice.

2. The reason we applied for a well permit in the first place was due to the recommendation of George Pysor from the Carmel Riviera Water Company. He encouraged us to apply for a well permit and said he would assist us in the process. He also said he had encouraged the previous owner of our property to apply for a well permit and that he had actually sited the well for her on our property.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, except as to those matters based on information and belief, and as to those matters I believe them to be true, and that if called as a witness I could and would

1 competently testify thereto.

2 Executed on this 28th day of May, 2015, at 30 Montone, California.

3
4 By: 
5 TERRI STORER

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STATE OF CALIFORNIA
COUNTY OF MONTEREY

**DECLARATION OF
KRYSTA STORER**

I, Krysta Storer, hereby declare:

1. On February 2, 2015, at approximately 1:00 p.m. I noticed a cord running from our pump house located on Mentone Drive to an adjacent area. I asked my mother about the cord and she informed me that permission had been given to George Pysor of the Carmel Riviera Water Company to use the electricity at our pump house for a water company maintenance project. Later that afternoon, my mother and I posted our well permit hearing notices as instructed by the County including posting one on our pump house door. The notice was in plain view and would have been seen by anyone accessing our pump house.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, except as to those matters based on information and belief, and as to those matters I believe them to be true, and that if called as a witness I could and would competently testify thereto.

Executed on this 28 day of may, 2015, at 30 mentone, California.

By:


KRYSTA STORER