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

Th8a

Filed:	08/01/02
49th day:	09/19/02
49 Day Waiver:	08/19/02
180 Day:	01/28/03
Staff:	SAM- SC
Staff report:	11/21/02
Hearing date:	12/12/02

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE DETERMINATION/DENOVO FINDINGS

Local government: .....Monterey County

Local Decision: .....Resolution 02-212 (PLN000239) Approved with conditions May 28, 2002 by the Monterey County Board of Supervisors (See Exhibit E).

Appeal Number **A-3-MCO-02-058**

Applicant.....Murray & Carol Smith

Appellants:.....Commissioners Sara Wan and John Woolley; Ken & Sharene Virnig, C/O Lombardo & Gilles, Attn: Todd Bessire; Janice M. O'Brien; Robert Berglass; Charles T. Olvis, and League of Women Voters of the Monterey Peninsula.

Project location.....3105 Seventeen Mile Drive, Pebble Beach (APN 008-012-007) (See Exhibits A, B, C) Del Monte Forest (Monterey County).

Project description .....Demolition of existing, one-story residence and construction of a new two-story single family residence with attached three-car garage, new driveway, addition and replacement of perimeter grape stake fence, new 6 ft. entry gate with stone columns and associated grading.

File documents.....County coastal permit file PLN000239; Monterey County Board of Supervisors Resolution # 02-212; Monterey County Local Coastal Program, including *Del Monte Forest Land Use Plan* and *Monterey County Coastal Implementation Plan*.

Staff recommendation ...**Project raises a Substantial Issue; denial of *de novo* permit application.**

Summary of Staff Recommendation:

The project is located in the Del Monte Forest planning area of Monterey County (project vicinity and site location maps are shown in Exhibits A and B, respectively). The applicant proposes to demolish an existing 2,250 square foot, one-story single family home and to construct a 4,802 sf, two-story single family home, a 900 sf attached garage, a new driveway, a new 6 ft. entry gate, and to repair and replace a 4 to 6 ft. grape stake fence. The project proposes to increase site coverage from the existing 2,850 square

feet (6.8% coverage) to approximately 10,678 square feet (25.4% coverage) on a lot that is entirely environmentally sensitive habitat in the form of remnant sand dunes.

Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the coastal development permit be **denied** due to the project's inconsistencies with the LCP, described herein.

The LCP requires protection of environmentally sensitive habitat areas (ESHA), among other ways, by prohibiting non-resource dependent development in ESHA, limiting the amount of vegetation and land that can be disturbed, and requiring deed restrictions or permanent conservation easements over ESHA. The project is inconsistent with these requirements because it allows non-resource dependent residential development in ESHA; because it allows for a larger house than currently occupies the site, increasing the amount of land disturbance and vegetation removal; and because it does not protect all ESHA on site with a conservation easement or deed restriction.

The LCP requires protection of visual resources by requiring new development to minimize alteration to natural landforms and to be subordinate to and harmonize with the natural setting. The LCP also protects visual resources by requiring structures to be sited and designed to blend in with the natural setting, and for screening of new development in visually sensitive areas. This project is inconsistent with these requirements because the proposed house is greater in height and thus more visually intrusive than the existing house, and its larger mass requires a greater amount of landform alteration to accommodate the development. The project is also inconsistent because no screening of the structure from public view with native vegetation is provided.

LCP Policy requires the preservation of historical cultural resources. The house proposed for demolition may be an historic structure that provides an example of early Wrightian modern architecture, and is the only home of this type in the Pebble Beach area. The County's approval is inconsistent with Policy 63 because it only considered archaeological resources and did not evaluate cultural resource issues such as historical architecture. Depending on the results of such evaluation, alternatives that would preserve the architectural character of the existing residence may be needed.

Staff Report Contents

Summary of Staff Recommendation:....1
I. Local Government Action....4
II. Summary of Appellants' Contentions....4
III. Standard of Review for Appeals....4
IV. Staff Recommendation on Substantial Issue....5
V. Staff Recommendation on De Novo Permit....5
VI. Recommended Findings and Declarations....6
A. Project Description and Location....6
B. Analysis of Appeal Issues....6
1. Environmentally Sensitive Habitat Resources....6

A. Appellant's Contentions 7
B. Local Coastal Program Provisions 7
C. Local Government Action 9
D. Substantial Issue Analysis and Conclusion 9
2. Visual Resources 14
A. Appellants' Contentions 14
B. Local Coastal Program Provisions 15
C. Local Government Action 16
D. Substantial Issue Analysis and Conclusion 16
3. Need for Comprehensive Review 17
A. Appellants' Contentions 17
B. Local Coastal Program Provisions 18
C. Local Government Action 18
D. Substantial Issue Analysis and Conclusion 18
4. Historic Resources 18
A. Appellants' Contentions 18
B. Local Coastal Program Provisions 19
C. Local Government Action 19
D. Substantial Issue Analysis and Conclusion 19
C. Substantial Issue Analysis- Conclusion 20
D. De Novo Coastal Permit Findings 20
E. California Environmental Quality Act (CEQA) 22
IV. Exhibits
A. Regional Location Map
B. Project Vicinity Map
C. Assessor's Parcel Map
D. Project Plans
E. Final Local Action from Monterey County Board of Supervisors, Resolution #02-212 Findings and Conditions.
F. Appellant's Contentions
G. Ferreira Biology Reports (2000 and 2001)
H. Tom Moss Biology Report for 3129 17-Mile Drive
I. Jeff Norman's 09/18/01 Biologic Resources Letter
J. 2001 Aerial Photo of Project Area.
K. Kent Seavey's 08/24/01 Historic Resources Letter
L. Site Photos
M. Public Comment
N. Applicant's Response

I. Local Government Action

The Monterey County Planning Commission originally approved a proposal for demolition and reconstruction of a single-family home on this site on October 31, 2002. The project was then appealed to the Monterey County Board of Supervisors, and a slightly redesigned project was approved on May 28, 2002 (Resolution #02-212). The proposed project involves the demolition of an existing one-story 2,250 square foot single-family dwelling, and the construction of a two-story, 4,802 sf single-family dwelling. The project also includes an attached, 900 sf three-car garage, a new driveway and motor court, repair and replacement of a 4 to 6 ft. grape stake fence and a new 6 ft. tall entry gate.

County approval of the project includes adoption of a Mitigated Negative Declaration and Mitigation Monitoring Plan, and approval of a Coastal Administrative Permit and Design Approval (PLN000239), subject to 37 special conditions of approval. All permit findings and conditions are included in Exhibit E.

II. Summary of Appellants' Contentions

The appellants have appealed the final action taken by the Monterey County Board of Supervisors (Resolution 02-212), asserting that approval of the project is inconsistent with policies of the Monterey County Local Coastal Plan in the following areas:

a. Environmentally Sensitive Habitat Areas (ESHA)

b. Visual Resources

c. Need for Comprehensive Environmental Review

d. Historic Resources

The complete text of the appellants' contentions can be found in Exhibit F.

III. Standard of Review for Appeals

The grounds for appeal to the California Coastal Commission under section 30603 of the California Coastal Act are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act if the project is located between the first public road and the sea. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. This project is appealable

because Section 30603(a)(1) allows for appeals of any development located between the first public road and the sea.

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a **"NO"** vote on the following motion:

> **"I move that the Commission determine that Appeal No A-3-MCO-02-058 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.**

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

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

RESOLUTION:

The Commission hereby finds that Appeal No. A-3-MCO-02-058 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **deny** the coastal development permit.

MOTION: Staff recommends a "**NO"** vote on the following motion:

> **"I move that the Commission approve Coastal Development Permit No. A-3-MCO-02-058 for the development proposed by the applicant."**

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION:

The Commission hereby **denies** a permit for the proposed development as conditioned below, on the grounds that the development does not conform to the policies of the Monterey County certified Local Coastal Program. Approval of the permit will not comply with the California Environmental Quality Act (CEQA) because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

VI. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The project consists of demolition of the existing one-story house and replacement with a larger two-story single family home, an attached three-car garage, an expanded driveway and the addition of a motor court, repair and replacement of a 4 to 6 foot grape stake fence, and the addition of a 6-foot entry gate. The existing, one-story, 2,250 square foot house and 600 square feet of paving are currently located on the front of the lot, close to Seventeen Mile Drive, almost directly across from the Bird Rock pull out, in the Del Monte Forest planning area of unincorporated Monterey County (See Exhibit B). The proposed two-story house and attached garage will have a footprint of 5,469 square feet, and the new driveway and motor court will cover roughly 5,209 square feet of the lot, for a total of 10,678 square feet or 25.4% lot coverage.

Seventeen Mile Drive is a highly visited scenic drive prized for its expansive views of the Pacific Ocean, that also provides fairly low cost visitor recreational opportunities. Surrounding land uses adjacent to the project area include single-family residential units to the north, east and south sides of 17-Mile Drive, a 20-acre dune restoration area located just to the north of the site, and open ocean to the west. The existing homes in this area consist of primarily one-story homes and some two-story homes.

The Spyglass Hill Golf Course is located slightly inland of the site, and the Cypress Point Golf Links is located roughly 2,000 feet to the south. Physically, the area is generally comprised of remnant sand dunes, which change gradually into Monterey pine forest (See Exhibit J). The area is included in the Asilomar dune system, which stretches roughly 4 miles from Point Pinos in the north to Fan Shell Beach to the south, and has the same physical characteristics including the same types of rare vegetation and animal species.

B. Analysis of Appeal Issues

1. Environmentally Sensitive Habitat Resources

A. Appellant's Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons (See Exhibit F for complete text of appellants' contentions):

- The project consists of new development in ESHA that is not dependent on the "resources therein".
- The project has not been sited and designed to prevent impacts to ESHA.
- A scenic and conservation easement is required over ESHA, and the County easement requirement does not include all ESHA on site.
- The County approval allows for non-native landscaping in ESHA.
- The project allows for a circuitous driveway rather than keeping access simple and direct.

B. Local Coastal Program Provisions

The appellants specifically reference the following Del Monte Forest Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies regarding environmentally sensitive habitat resources:

- ***Policy 8*** *Environmentally sensitive habitat areas that are not designated as rehabilitation areas shall be protected against any significant disruption of habitat values. Within environmentally sensitive habitat areas, new land uses shall be limited to those that are dependent on the resources therein. Land uses immediately adjacent to environmentally sensitive habitat areas shall be compatible with long-term maintenance of the resource; development shall be sited and designed to prevent impacts which would significantly degrade the protected habitat…*
- ***Policy 13*** *The protection of environmentally sensitive habitats shall be provided through deed restrictions or permanent conservation or scenic easements granted to the Del Monte Forest Foundation. Where developments are proposed within or near areas containing environmentally sensitive habitat, such restrictions or easements shall be established through the development review process…*
- ***Policy 14*** *Near environmentally sensitive habitat areas, the removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc.) shall be restricted to the minimum amount necessary to accommodate development….*
- ***Policy 15*** *The use of non-invasive plant species and appropriate native species shall be required in landscape materials used in projects, especially in developments adjoining environmentally sensitive habitat…*
- ***Policy 17*** *Prior to approval of development on existing legal lots of record, protection of rare, endangered, and sensitive native plant and animal habitats which potentially occur in the area shall be ensured by the following means:*

- *A site survey shall be conducted by a qualified botanist (or biologist in the case of animal habitat) for the purpose of determining the presence of rare, endangered, or unique plants and developing appropriate mitigation. This survey should be conducted in April or May, as it must be designed to detect the presence of any of the habitats listed in Appendix A of this Plan.*

- *Performance standards covering building locations, lot setbacks, roadway and driveway width, grading, and landscaping shall be established as a means of carrying out the recommendations of the site survey. The purpose of this is to isolate building sites from identified locations of rare or endangered plants or other environmentally sensitive habitat.*

- *Scenic or conservation easements covering the environmentally sensitive habitat shall be dedicated to the Del Monte Forest Foundation as provided by policy 13 above.*

- ***Policy 18*** *Uses of the remnant native sand dune habitat shall be limited to low-intensity scientific, educational, or recreational activities dependent on the resource, except in Spanish Bay rehabilitation area, where policy 93 shall apply. Particular attention shall be given to protection of rare and endangered plants from trampling…*
- ***Section 20.147.040.B.3.b*** *Scenic or conservation easements covering the environmentally sensitive habitat shall be dedicated to the Del Monte Forest Foundation as provided by Development Standard #7 of this section (Ref. Policy #17 Del Monte Forest Area Land Use Plan. The easement may also be extended to cover the buffer area required in Section 20.147.040.B.1, upon recommendation in the biological survey prepared for the project pursuant to Section 20.147.040.A as needed to protect the habitat's long-term maintenance.*
- ***Policy 74*** *Environmentally sensitive habitat areas will remain undeveloped except for parking or similar access facilities. Access improvements shall be developed consistent with the site-specific recommendations of the LUP Access Maps (Appendix B)*

Also relevant is the LCP's definition of ESHA:

- *Environmentally sensitive habitat areas are those 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; other sensitive species and habitats such as species of restricted occurrence and unique or especially valuable examples of coastal habitats; riparian corridors; rocky intertidal areas; nearshore reefs; offshore rocks and islets; kelp beds; rookeries and haul-out sites; important roosting sites; and Areas of Special Biological Significance (ASBS).*
- *In the Del Monte Forest Area, examples of terrestrial, aquatic, and riparian habitats which have been determined to be entirely or in part environmentally sensitive include: the rare Monterey cypress and endangered Gowen cypress forest communities, the endemic Monterey pine/Bishop pine association, remnants of the indigenous coastal sand dunes, riparian corridors, wetlands,*

and sites of rare and endangered plants and animals associated with these and other habitats. A complete listing is included as Appendix A of this Plan. The locations of these are shown in Figure 2.

C. Local Government Action

Finding numbers 1 and 2 in the County's action (Resolution 02-212, Exhibit E) address environmentally sensitive habitat issues. Finding #1 (Exhibit E, Page 1) states that the project is consistent with the plans policies, requirements and standards of the LUP. Evidence listed here is the biological reports prepared by Jean Ferreira (August 15th and 22nd of 2000 and May 8, 2001).

Finding #2 (Exhibit E, Page 3) states that the project will not have significant adverse impacts on the environment, and that a Mitigated Negative Declaration was prepared and the project incorporates all mitigation measures noted therein. The finding also includes approval of a monitoring report. Evidence for this finding states that no facts or reasonable assumptions have been submitted that refute the conclusion of the biological report by Jean Ferreira.

In addition to the County's findings, conditions of approval are placed on the project to mitigate for potential impacts to environmentally sensitive habitat areas. Condition #1 requires a Mitigation Monitoring Agreement; #17 requires a conservation and scenic easement over the rear portion of the property, the proposed dune restoration area, the 100' setback from the centerline of Seventeen Mile Dr., and the 20' side yard setback areas. The easement may allow for "private recreational access and enjoyment" including the placement of a boardwalk and a bench in the environmentally sensitive habitat area. Condition #18 requires a reduction in size of the motorcourt by removing the 10' wide extra parking area at the side of the garage, Condition #20 requires restoration of 7,000 sf of the lot to provide habitat area for the Monterey spineflower, and #21 requires a restoration plan for the "propagation and introduction of the Monterey spineflower" to the restored areas. Other conditions of approval require a biological monitor prior to construction, a pre-construction training session about the sensitivity of the area, a long-term management plan for the habitat area, moving the structures 10 feet toward 17-Mile Dr., and for landscaping with low water use or native drought resistant plants.

D. Substantial Issue Analysis and Conclusion

1) The Project Site is ESHA

The project site is located within the Asilomar dune complex, on the east side of 17 Mile Drive in a fairly large sand dune system referred to as the Spyglass Hill sand dune area (See Exhibit G, Ferreira 2000). The Asilomar Dune complex is approximately 4 miles long and extends from Point Pinos on the north end, south to Fan Shell Beach (See Exhibit H). Asilomar and most of the Monterey area coastline is formed by Santa Lucia granodiorite. This dense, hard rock is comprised of large rectangular crystals of feldspar, quartz, and mica. It was exposed through massive uplifts and this movement caused it to crack. The cracks weaken the integrity of the rock, making it more vulnerable to erosion. During severe winter storms the sand is moved from the shoreline into the ocean where it forms sandbars just off shore. In spring, the gentler waves redeposit the sand onto the beach. In late spring, the winds blow the unusually

pure, white quartz sand, farther inland where it is caught by plants in the foredunes.

The Asilomar Dune system, including the project site, is an environmentally sensitive habitat area for several reasons. First, coastal dunes are an extremely limited environmental resource of statewide significance. Oceanfront dunes provide unique, sensitive habitat values. Throughout its history, the Commission has placed a high priority on the protection and preservation of dune systems, including the Asilomar Dune system (Examples include Bonnano, Griggs & Miller 3-83-110; Page 3-96-102; Knight 3-99-071 Baldacci 3-01-013 and Child 3-02-023). The native landscape of the Asilomar Dunes comprises a community of coastal plants and associated animal life distinct from all other areas of California. For these reasons, this landscape is worthy of maximum protection and restoration.

Coastal dune ecosystems are threatened by the loss, fragmentation and disruption of habitat associated with development. For example, of the 27 dune fields in coastal California, the Monterey Bay dune system is one of the largest covering about 40 square miles. However, less than half of the dune field has survived urbanization, conversion to military or agricultural uses, sand mining, and shoreline erosion.

The Department of Fish and Game (DFG) has identified the Spyglass Hill area as a "significant natural area." Pursuant to a list of criteria including: 1) the occurrence of extremely rare species or natural communities and, 2) an ensemble of three or more rare species or natural communities within 500 meters of each other, this area has been mapped on the DFG Significant Natural Areas map for Monterey County. The Significant Natural Areas program was established to identify high-priority sites for the conservation of California's biological diversity and to inform decision makers about the importance of these sites. The programs goals include: 1) identifying the most significant natural areas in California; 2) ensuring the recognition of these areas; and 3) seeking the long-term perpetuation of these areas.

Coastal staff conducted a reconnaissance-level biological survey of the site on September 4, 2002. The plant community observed on-site can be classified as central dune scrub (Holland 1986), characterized by medium to low shrubs on exposed slopes of poor soil. Common plant species observed in the habitat include mock heather (*Ericameria ericoides*), beach sagewort (*Artemesia pycnocephala*), and beach primrose (*Camissonia cheiranthifolia*). Central dune scrub was identified as having "highest inventory priority" in 1986 by DFG. This plant community is limited in distribution throughout its range and is considered rare.

One of the most critical functions of the dune system is its role as a habitat for a very unique flora and fauna. Species present in this habitat are specially adapted to the conditions and opportunities found in dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion and hosting rare fauna. However, as the natural dune system has been reduced and fragmented, the risk of extinction has increased for many of these species. Thus, each new impact within the dunes system has and will continue to contribute to the cumulative decline of these species.

A review of the California Natural Diversity Database (CNDDB) to evaluate the special-status species that have been documented in the vicinity of the Smith Property was conducted by Coastal staff. A number of listed and declining sand endemic species have been observed near the site (Tables 1 and 2). This is an area rich in biodiversity and high in endemism and therefore, there are many special-status

species that occur in the dune habitat.

Table 1. Special-Status Animal Species Known to Occur in the Spyglass Hill Area

Common Name	Scientific Name	Status
Black legless lizard	*Aniella pulchra nigra*	State Species of Special Concern
Smith's blue butterfly	*Euphilotes enoptes smithi*	Federal Endangered Species
Globose dune beetle	*Coelus globosus*	Federal Species of Special Concern

Table 2. Special Status Plant Species Known to Occur in Spyglass Hill Area

Common Name	Scientific Name	Status
Coastal dunes milk-vetch	*Astragalus tener* var. *titi*	State and Federal Endangered Species
Monterey spineflower	*Chorizanthe pungens* var. *pungens*	Federal Threatened Species
Menzies's wallflower	*Erysimum menziesii* ssp *menziessii*	State and Federal Endangered Species
Sand gilia	*Gilia tenuiflora* ssp. *arenaria*	State Threatened and Federal Endangered Species
Beach layia	*Layia carnosa*	State and Federal Endangered Species
Tidestrom's lupine	*Lupinus tidestromii*	State and Federal Endangered Species
Monterey Indian paintbrush	*Castilleja latifolia*	CNPS List 4

According to surveys conducted on the property for special-status plant species on August 15 and 22, 2000, and May 8, 2001 (See Exhibit G, Ferreira 2000, 2001), the site is currently known to support at least one listed plant species, the federally listed Threatened Monterey spineflower (*Chorizanthe pungens var. pungens*). Monterey spineflower was listed by the US Fish and Wildlife Service in 1994

due to threats to its persistence from: industrial, residential and golf course development, recreational use, dune stabilization projects, agricultural conversion, and military activities (Federal Register 1994). This plant species is only found scattered on sandy soils along and adjacent to the coast of southern Santa Cruz County and northern Monterey Counties and inland to the coastal plain of Salinas Valley (Federal Register 1994).

Monterey spineflower is vulnerable to random fluctuations or variation (stochasticity) in annual weather patterns and other environmental factors (Federal Register 1994). This species is an annual plant and a portion of the seeds produced each year lay dormant in the upper layer of sand in what is referred to as the "seedbank." Only a small fraction of the seeds produced by a plant each year become seedlings, thus locations of individual plants vary from year to year. Due to this phenomena, it is critical that conservation efforts for the species focus on protecting the ecosystem within which the plant occurs rather than focusing on where a few individuals are observed in a given year. This approach will allow the species to shift in distribution over time, an inherent aspect of the species ecology.

The long term probability of the conservation of Monterey spineflower is dependent upon the protection of existing population sites, and the maintenance of ecological functions within these sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (i.e., dune dynamics) that maintain the openness of vegetative cover on which the species depends (Federal Register 2002). Fragmentation of habitat (e.g. through the construction of roads or certain types of fencing) must be minimized so that seed dispersal agents may move the seed (Federal Register 2002) and to facilitate pollinator activity as well. Therefore, it is important to preserve all areas that currently support the species since it has already undergone a reduction in the range which places great importance on the conservation of all known remaining sites (Federal Register 2002).

Since this population is the southern most occurrence of the species along the coast, the individuals may have genetic characteristics that have allowed them to survive under slightly different environmental conditions than the other populations. This potential uniqueness may be important for the long-term survival of the species (Federal Register 2002).

The surveys conducted by Elkhorn Native Plant Nursery did not reveal the presence of any other special-status plant species. However, due to the transient nature of some of these plant species, it is possible that they may exist in the seed bank on the site.

It is also noted that, the survey report prepared by Elkhorn Native Plant Nursery overlooked the presence of Monterey Indian paintbrush on the site. This species was observed on the site by consulting biologist, Jeff Norman (See Exhibit I), and coastal staff confirmed its presence. This species is identified on CNPS List 4, which is designated for species that are significant locally. The presence of this species is an indication of a plant community that is maintaining biological integrity.

Several animal species also have the potential to occur on the site including; Smith's blue butterfly (*Euphilotes enoptes smithi*), globose dune beetle (*Coelus globosus*) and black legless lizard (*Anniella pulchra nigra*). While these three species were discussed in the applicant's biological report, their

potential occurrence was dismissed, inappropriately, without having conducted surveys.

Smith's blue butterfly is a federally-listed Endangered butterfly that once ranged along the coast from Monterey Bay south through Big Sur to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. They spend their entire lives in association with two buckwheat plants in the genus *Eriogonum*. Emerging in late summer and early autumn, the adults mate and lay eggs on the flowers of these host plants. The eggs hatch shortly thereafter and the larvae begin to feed on the flowers of the plant. Important habitat for the Smith's Blue is threatened by development and the invasion of non-native plants. Dune buckwheat (*Eriogonum parvifolium*), a Smith's blue butterfly host plant, has been documented on the project site.

The globose dune beetle, a federal species of special concern, is endemic to California's coastal dune system. These beetles are primarily subterranean, tunneling through sand underneath dune vegetation. The species is fairly widely distributed in spite of the fact that the adults lack functional wings, however, due to habitat losses, there is some concern about its continued existence. Therefore, this species requires careful monitoring. Although no globose dune beetles were observed on the property by Elkhorn Native Plant Nursery, surveys were not conducted for species and therefore it is not possible to rule out their potential presence.

The black legless lizard is a fossorial (burrowing) animal that typically inhabits sand or loose soil. This species is regarded as a Species of Special Concern by DFG because of habitat loss due to human impacts to coastal dune habitats (Jennings and Hayes 1994). The potential for this species to occur on the site was identified in the biological report prepared for the applicant (See Exhibit G, Ferreira 2000). Ms. Ferreira states "if the lizard is present on the site, they would likely be near the mature mock heather shrubs in the 'Habitat' area." However, knowledge of the longevity, movement, and microhabitats of these lizards is incomplete because studying them in their underground habitat is difficult. Recent studies have shown that the legless lizards can utilize many different microhabitats and may reside in the soil/sand at a maximum depth of 11.5 cm. Therefore, assumptions of species/habitat affinities stated in the biological report may not be based on current knowledge of the species ecology, and its potential presence cannot be dismissed.

In conclusion, based on the above evidence, including the location of the site within the significant and sensitive Asilomar dune ecosystem, the existing resources on site, biology reports prepared for the project site, and the fact that a rare plant community, a federally-listed threatened plant, and potentially several other sensitive species occur on the site, the Commission finds that the project site meets the definition of ESHA established in the LCP.

2) The Project is Inconsistent with LCP Protection Provisions

The LCP contains numerous policies designed to protect environmentally sensitive habitat areas such as the area's indigenous remnant coastal sand dunes. Policy 8 prevents disruption of ESHA and restricts development to that which is resource dependent, such as nature study, and LCP Policy 18 specifically limits use of remnant sand dune habitat to "low-intensity scientific, educational, or recreational activities dependent on the resource…". Additionally, Policies 13 and 17 require

conservation easements over the sensitive habitat areas, and Policies 14 and 15 restrict removal of indigenous vegetation and the use of non-native plant species for landscaping. Policy 17 also provides for change in building design and location to avoid impacts to ESHA.

The project is inconsistent with LCP policies 8 and 18 because it involves residential development that is not resource dependent, nor a scientific, educational or recreational use, in remnant dune ESHA. As shown in project plans approved by Monterey County, the project involves the expansion of an existing house (through demolition and rebuild) into sensitive dune habitat (See Exhibit D, Page 1). The new house would increase coverage from approximately 6.8% of the lot (2850 sq. ft), to just over 25% (7828 sq.ft), -- nearly three times greater. This approval allows an unnecessary increase in the building footprint for a residential (i.e. non resource dependent) use in ESHA. In addition to an significant increase in the house size, its design includes a large motor court in the rear of the house and longer driveway than currently exists. This impact could be avoided by designing the house to not include a large motor court, and to provide main access to the front or side of the house rather than the rear, thus avoiding the long driveway. Also, the proposed fence is not consistent with avoiding impacts to the dune habitat system because its design prohibits the free movement of sand and seeds required for a healthy dune system (See Exhibit L for site photos). Although site plans show an existing fence around the perimeter of the property (See Exhibit D), a staff site visit confirmed that the existing fence does not surround the property, leaving the dune habitat in the rear of the property easily accessible to animals and the dispersal of seeds.

It is also inconsistent with LCP policies 13 and 17 because the proposed conservation easement area does not protect all ESHA on site outside of the building envelope. Moreover, the project has not been designed and sited to avoid impacts to ESHA, inconsistent with LCP policies 17 and 8. For example, the construction of a larger house and driveway/motor court will result in the removal of ESHA; an impact that could be avoided by siting and designing the home to be similar in size and location to the existing home (see de novo findings for more detail). The project is similarly inconsistent with LCP policy 14 because the removal of indigenous vegetation and land disturbance has not been minimized. Finally, the project is inconsistent with Policy 15 because the local approval does not limit landscaping material to native plants. Thus, the project does not adequately protect the dune habitat resources along Seventeen Mile Drive in the Del Monte Forest, and raises a substantial issue regarding inconsistency with LCP policies 8,13, 14, 15, 17, and 18.

2. Visual Resources

A. Appellants' Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons:

- This project is disproportionate to the lot and the adjacent front line houses.
- This project will impact the viewshed of the Bird Rock viewing area and Spyglass Hill Road.

- The house location does not blend in with the dunes.

B. Local Coastal Program Provisions

The appellants specifically reference the following Land Use Plan (LUP) and Coastal Implementation Plan (CIP) policies regarding visual resources (See Exhibit F for complete text of appellants' contentions):

- ***Policy 51*** *Areas within visually prominent settings identified on the LUP Visual Resources Map, when proposed for development, should be developed so that the lots and/or buildings are situated to allow the highest potential for screening from view the development and its access roads….*
- ***Policy 55*** *Areas within the viewshed of scenic corridors identified on the LUP Visual Resources Map shall be zoned with a district, which requires adequate structural setbacks (generally a minimum of 50), the siting and design of structures to minimize the need for tree removal and alterations to natural landforms. New structures shall be designed to harmonize with the natural setting and not be visually intrusive.*
- ***Policy 56*** *Design and siting of structures in scenic areas should not detract from scenic values of the forest, stream courses, ridgelines, or shoreline. Structures, including fences, shall be subordinate to and blended into the environment, using appropriate materials, which will achieve that effect. Where necessary, modifications shall be required for siting, structural design, shape, lighting, color, texture, building materials, access, and screening.*
- ***Policy 57*** *Structures in scenic areas shall utilize native vegetation and topography to provide screening from the viewing area. In such instances, the least visible portion of the property should be considered the most desirable building site location, subject to consistency with other siting criteria (e.g., proximity to environmentally sensitive habitat areas and safe access).*
- ***Policy 58*** *Parking on the seaward side of 17-Mile Drive should be designed to minimize the visual impact of parked vehicles in the viewshed and disturbance to the habitat. The appropriate site specific access recommendations shall apply to this area.*
- ***CIP Section 20.147.070.A. Public Viewshed Determination1*** *The project planner shall make an on-site investigation in order to determine whether the project is within the public viewshed or affects visual access from public viewing areas. Proposed buildings shall be accurately indicated as to dimensions, height and rooflines by poles with flags. The location of proposed access roads shall be accurately indicated by stakes with flags. Both poles and stakes shall remain in place for the duration of the project review and approval process. The project planner, at his/her discretion in the process of the on-site review, may record the proposed development photographically, and may require that the applicant superimpose on the photographs a representation of the proposed project. During the on-site investigation, the planner shall also review the project for conformance with the ordinance elements and shall determine development alternatives which would bring the project into full conformance with the*

ordinance.

- ***CIP Section 20.147.070.C. General Development Standards 1*** *Development, along with related access roads, within visually prominent settings as identified on Figure 2C "Visual Resources" in the Del Monte Forest Area Land Use Plan shall be sited on the least visible area of the lot, subject to consistency with other development standards of this implementation ordinance and as determined by staff field review of the proposed development on its' impact of visual sensitivity. Structures shall be screened from view using native vegetation and topography (Ref. Policy #50 Del Monte Forest Area Land Use Plan.)*
- ***CIP Section 20.147.070.C. General Development Standards 3*** *Ridgeline development is prohibited…"Ridgeline Development" is development on the crest or side of a hill which creates a silhouette against the sky when viewed from a public viewing area. A Use Permit for such development may only be granted if the decision-making body is able to make findings that: 1)… 2)… or 3) development on the ridge will minimize grading, tree removal or otherwise better meet resource protection policies of the Del Monte Forest Area Land Use Plan or development standards of this ordinance…*

C. Local Government Action

The County's action (Resolution 02-212, Exhibit E) allows for the demolition of a single-story home and its replacement with a larger two-story home on Seventeen Mile Drive. Finding #1 (Exhibit E, Page 1) states that the project is consistent with the plans policies, requirements and standards of the LCP. Evidence for this finding states that Planning and Building Inspection staff reviewed the project for conformity with the LCP. There is no separate finding dealing with visual impacts of the development.

The project is conditioned to use unobtrusive lighting and control off-site glare, to get approval from the Planning and Building Inspection Department regarding the location, type and size of all antennas, satelite dishes and similar appurtnances, and to protect native trees located close to the construction site. Additionally, the project is conditioned to require landscaping, and to continuously maintain the plant material "in a litter-free, weed-free, healthy, growing condition."

D. Substantial Issue Analysis and Conclusion

The protection of visual resources in the Del Monte Forest planning area is of high concern. There are numerous LCP policies designed to protect visual resources in this planning area, especially along scenic corridors and other sensitive visual areas, such as those visible from Point Lobos State Park. The visual Policy Guidance Statement describes 17-Mile Drive as an important visitor destination and lists the objective of the Plan as the protection of the area's "magnificent scenic and visual resources." Also found in the Policy Guidance Statement are the guiding principles of avoiding incompatible development and to encourage improvements that complement the natural scenic assets. This statement explicitly states, "only compatible development along 17-Mile Drive should be allowed."

The appellants contend that the new house will have visual impacts, specifically that it will be too large for the lot; that it will impact public viewing areas such as the Bird Rock pull out and Spyglass Hill Rd.;

and that the house location does not blend in with the dunes. Their concern is that this project will have impacts on the viewshed from the 17-Mile Drive scenic corridor.

The proposed project is inconsistent with the requirements of Policy 55 because the new residence will alter natural dune landforms, and it has not been designed to harmonize with the natural setting, specifically the surrounding dune habitat. As detailed in Finding 1 above, the proposed house and driveway/motor court has a much larger footprint than the existing residence, and because of the size, a greater amount of landform alteration (i.e. of dune habitat) is required for its development. The project also has not been sited to minimize detraction from scenic values of the shoreline as required by Policy 56, because the development, including the fence, has not been designed to be subordinate to and blended into the environment. The existing house is one story, with a flat roof that is stepped up gradually to simulate the gradual slope of the dunes (See Exhibit L). Similarly, the size of the proposed structure does not blend in with the surrounding dune environment. The height of the proposed structure is 26 feet 4 inches, with a steep sloping roof, as opposed to the existing structure's one story and flat roofs with stepped increases to the full height (see Exhibit D for site elevations). The proposed fence is also inconsistent with this policy because its design will breakup the relatively expansive views along the shoreline and scenic corridor.

Additionally, the project is inconsistent with Policies 51 and 57 which require maximum screening with native vegetation and topography because the new house is designed in a manner that makes it more visible from the Bird Rock public viewing area and unable to be adequately screened with native dune vegetation. Finally, the development may creates ridgeline impacts because it will create a "silhouette against the sky when viewed from a public viewing area", which is prohibited by CIP Section 20.147.070.C.General Development Standards 3 (See Exhibit L). Thus, the project as proposed and conditioned by the County is inconsistent with LCP visual policies 55, 56, 51, 57 and CIP Section 20.147.070.C, and the Commission finds that a substantial issue is raised with respect to visual issues.

3. Need for Comprehensive Review

A. Appellants' Contentions

The appellants contend in part that the project on appeal is inconsistent with the Certified LCP for the following reasons:

- Lack of fair or impartial hearing.
- Findings not supported by the evidence.
- The decision was contrary to law.

The appellants do not specifically reference any LCP or LCIP policies with regard to the issue of comprehensive environmental review (See Exhibit F for complete text of appellants' contentions).

B. Local Coastal Program Provisions

The LCP contains the following relevant policies regulating the public hearing process and defining required findings for Coastal Administrative Permits:

- ***CIP Section 20.84.030 Public Hearing Required*** *Any action to approve or deny any application for a discretionary permit by an Appropriate Authority, including the Board of Supervisors, shall require that a public hearing be held and notice given pursuant to this Chapter.*
- ***CIP Section 20.76.050.C*** *In acting on a Coastal Administrative Permit, the Appropriate Authority shall make findings as necessary to support its decision on the permit. Such findings shall address, but not be limited to, consistency with the Monterey County Local Coastal Program, site suitability, environmental issues, public access pursuant to Section 20.70.050.B.3of this Title, and Variances where applicable. The findings shall include a determination that the subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivisions, and any other applicable provisions of Title 20 and that all zoning violation abatement costs have been paid.*

C. Local Government Action

Appeal findings #10, 11, and 13 (Exhibit E, Page 5) state that public hearings were held on October 29, 2001 with the Planning Commission; October 31, 2001 with the Planning Commission; and May 21,2002 with the Board of Supervisors. The County adopted the findings required by CIP Section 20.76.050.C as findings 1, 2 and 3 of the final Resolution 02-212 (See Exhibit E, Pages 1-3).

D. Substantial Issue Analysis and Conclusion

The County conducted public hearings in accordance with LCP requirements and adopted the findings called for by 20.76.050. Thus, the appellants' contentions regarding hearings and findings do not raise a substantial issue. The more general contentions regarding evidence and consistency with the law are addressed in the other sections of this report. These sections conclude that, based on the evidence, the County's action is indeed in conflict with the LCP, and therefore raises a substantial issue.

4. Historic Resources

A. Appellants' Contentions

The appellants contend that the project on appeal is inconsistent with the Certified LCP because it involves the removal of a historic resource.

The appellants do not specifically reference any LCP or LCIP policies (See Exhibit F for complete text of appellants' contentions).

B. Local Coastal Program Provisions

The Land Use Plan and Coastal Implementation Plan contain policies designed to protect archaeologic and cultural resources:

- ***Policy 63*** *When developments are permitted on parcels where archaeological or other cultural resource sites are located, project design shall be required which avoids impacts to such sites. Where the site has religious significance, emphasis should be placed on preserving the entire site; likewise, where the site is of known regional significance, consideration shall be given to nominating the site to the National Register and preserving it.*
- ***CIP Section 20.147.080.D General Development Standards 1*** *All development permitted on parcels containing archaeological or other sensitive cultural resources must design such development to avoid impacts to those sites. … (Ref. Policy #63 Del Monte Forest Area Land Use Plan.)…*

C. Local Government Action

Finding #1 in Resolution 02-212 (Exhibit E, Page 1) states that the project is consistent with the "plans, policies, requirements and standards of the Local Coastal Program (LCP)." Evidence for this finding cites an archaeological report prepared by Archaeological Consulting, and states that the report "found no evidence of cultural or historical resources". The County did not evaluate the architectural significance of the existing structure.

D. Substantial Issue Analysis and Conclusion

The archaeological report prepared by Archaeological Consulting on July 31, 2000 states that no evidence of historic cultural resources were found on the parcel. Project methodology consisted of a literature search of files of the Northwest Regional Information Center of the California Archaeological Inventory located at Sonoma State University and a search of Archaeological Consulting's personal files and maps. Field reconnaissance was also conducted on July 18, 2000. In addition, the California Inventory of Historical Resources, California Historical Landmarks, and the National Register of Historic Places were checked for cultural resources that might be present other than archaeological resources. None were discovered.

Although no archaeologic resources have been identified on the site, the existing home to be demolished may indeed have historic significance, based on its architectural type, that merits an evaluation under LCP Policy 63 and IP section 20.147.080.D. A letter submitted by a historian hired by an appellant (See Exhibit K) describes the existing house on the site, constructed in 1952-1953, as a Usonian house (See Exhibit L, Page 4). According to the historian, this type of architecture, termed modern, was developed by Frank Lloyd Wright in the 1930's as a means to provide affordable housing in America. Usonian houses are characterized by low or flat roofs, finishes using natural materials, carports and the lack of basements, along with a flow of internal spaces, and a brick utility core with a massive chimney stack. The existing house was not designed by Wright himself, but by one of his protégés, and is possibly the only example of a Wrightian Usonian house in Monterey County. The house in question, along with two

others in the area, provide notable examples of modern architecture in close vicinity to the site (Pers. Comm. Kent Seavey 9/6/02).

Given the potential historic architectural design of the structure, a more in-depth review of its regional significance is needed to evaluate the consistency of its demolition with Policy 63 and IP section 20.147.080D. If such a review concludes that the existing structure is a regionally significant historic resource, the LCP requires the consideration of alternatives that would protect the resource, such as those that would retain the structure's unique architectural character. Therefore, the Commission finds that the appeals raise a substantial issue with respect to protection of historic/cultural resources.

C. Substantial Issue Analysis- Conclusion

In conclusion, the appeal raises a substantial issue in terms of compliance with the LCP, with respect to environmentally sensitive habitat, visual issues, and historic resource issues. The development approved by Monterey County, Board of Supervisors Resolution #02-212 does not conform to LCP policies protecting the historical, scenic and natural resources of the project site as required by the Monterey County Certified Local Coastal Program.

D. De Novo Coastal Permit Findings

The applicant proposes to demolish an existing, one-story, single-family residence and replace it with a much larger two-story, single-family residence, garage, and motor court. As discussed in the Substantial Issue findings above, **directly incorporated into these *de novo* findings by reference**, this project is inconsistent with the Monterey County LCP and cannot be approved.

First, as established in the above findings, the project is located on Seventeen Mile Drive, in the Asilomar dunes complex, an area of remnant sand dune habitat. The applicant proposes a non-resource dependent development in ESHA, and has not avoided and minimized damage to the remnant dune habitat. Nor does the project provide for the maximum amount of protection of remaining dune habitat on site through the use of conservation easements. Therefore, this development is inconsistent with LCP policies 8, 13 17, 14 and 18, which respectively require development in ESHA to be resource dependent and require resiting or redesign to prevent impacts to ESHA; to provide conservation easements over the ESHA on site; to restrict land disturbance (paving) and removal of indigenous vegetation near ESHA; and uses in remnant dunes to be of a scientific, educational or recreational nature.

Second, the above findings also show that the project is inconsistent with the LCP's visual protection policies. The applicant proposes to build a house that is larger than the existing residence, consisting of a greater amount of landform alteration, in addition to being more visually intrusive than the existing structure. The proposed development, including the proposed grape stake fence, is not subordinate to nor does it blend in to the surrounding dune habitat. Additionally, the proposed project does not include screening of the development from the public with native vegetation and topography. Therefore, this development is inconsistent with LCP policies 55, 56, 51 and 57 which require minimization of natural

landform alteration and for structures to harmonize with the natural setting; structures to be designed and sited in a manner that does not detract from the scenic values of the shoreline and for structures to be subordinate to and blended into the environment; and provision of the maximum screening with natural vegetation or topography from viewing areas. Thus, as designed, the project is inconsistent with visual protection policies and therefore must be denied.

Finally, the above findings also show that the project has the potential to conflict with LCP policy #63 and IP section 20.147.080.D, which protect cultural resources. In light of the fact that the County did not evaluate the historic value of the existing house proposed for demolition, and given that the only available historic evaluation of the existing house states that the house is a sensitive cultural resource, there is evidence supporting a conclusion that the existing house must be protected until proven otherwise or until its demolition is adequately mitigated. Thus, this project is not in conformance with LCP policy 63 and IP section 20.147.080.D pertaining to protection of cultural resources.

Because of these inconsistencies with the LCP, required design modifications to the project are numerous and substantial. In this instance, it would be more practical for the applicant to submit a redesigned project to the County, consistent with the LCP requirements, than it would be for the Commission to approve the project subject to conditions that would require substantial redesign and review by Commission staff through the condition compliance review process.

Alternatives

There are alternatives to demolishing the existing house on site and replacing it with a larger structure. The lot already contains a single-family home; continued use of the existing house is a viable use that avoids additional impacts to ESHA consistent with LCP requirements. Additionally, if the existing house is determined not to be a significant historical resource, or if the impacts to historical resources associated with its demolition are adequately mitigated for, the potential remains that the existing house could be demolished (or remodeled) and the applicant could propose to rebuild within the existing development footprint to avoid further impacts to ESHA. Similarly, the possibility also exists that if the existing house is demolished, given the proper determination of its historicity and mitigation for demolition, that a structure could be proposed outside of the existing development footprint as long as the new proposal does not exceed the size of the existing development footprint and would be more protective of the site's ESHA. For example, an alternative building envelope that is closer to 17-Mile Drive, combined with restoration of the existing footprint area may be a viable option for development because it would allow for a larger contiguous dune habitat area behind the house. Policy 84, not raised in this appeal, establishes a minimum setback of 15-20 feet from the front lot line, and thus would allow the building footprint to be moved closer to 17-Mile Dr. to achieve greater protection of the dune habitat. Although strict adherence to the screening aspect of Policies 51 and 57 would conflict with ESHA policies because low-growing native dune plants aren't generally suitable for screening, the Del Monte Forest Land Use Plan states that the protection of natural resources takes precedence over other resource concerns. *Chapter 6* provides that proposals "must satisfy the natural resource protection policies" of the plan, and that "<u>If land use and natural resource protection policies conflict, resource protection policies shall prevail</u>"(Emphasis added). Thus, staff notes that an alternative project could be accepted because the LCP prioritized the protection of natural resources. However, the alternative would have to be

designed to maximize protection and enhancement of dune habitats, such as one that replaces the existing residence with one of equal or smaller size closer to the street, and also provides for protection and enhancement of dune resources on the remainder of the site.

Conclusion

This analysis has revealed fundamental inconsistencies with Monterey County LCP, as well as significant issues that were not satisfactorily addressed by the County analysis. The project as presented does not conform to LCP policies calling for the protection and maintenance of Environmentally Sensitive Habitat areas and the protection of visual and cultural resources. Therefore, because the proposed demolition and reconstruction project is not resource dependent development in ESHA, causes negative visual impacts, and will destroy a potentially significant historical resource, it is inconsistent with LCP policies designed to protect the resources found at the project site, and must be denied.

E. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative 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 15042 of the CEQA Guidelines provides that "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment if the project were approved as proposed." The CEQA provides that its requirements do not apply to an exercise of a governmental body's regulatory authority in the manner described by section 15042. Public Resources Code Section 21080 outlines the application of CEQA to discretionary approvals of projects. Section 21080(b)(5) of the CEQA states that the requirements of the CEQA shall not apply to "projects which a public agency rejects or disapproves." Therefore in this instance CEQA requirements do not apply.