

MONTEREY COUNTY ZONING ADMINISTRATOR

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| Meeting: January 9, 2014 Time: 2:20 P.M. | Agenda Item No.: 6 |
| Project Description: Consider an after-the-fact Combined Development Permit to clear Code Enforcement File No. 19900060 consisting of: 1) a Coastal Administrative Permit and Design Approval to allow the construction of a 499 square foot non-habitable accessory structure with a 285 square foot attached deck, and 421 linear feet of fencing and retaining walls; 2) a Coastal Development Permit to allow development within 50 feet of a coastal bluff; 3) a Coastal Development Permit to allow development on slope exceeding 30 percent; and 4) a Variance to allow a reduction in the side setback. | |
| Project Location: 40990 Highway 1, Big Sur | APN: 418-171-003-000 |
| Planning File Number: PLN120392 | Owner: Jacqueline Lowther Agent: Brian Silveira |
| Planning Area: Big Sur Coast Land Use Plan | Flagged and staked: No |
| Zoning Designation: WSC/40-D (CZ) [Watershed and Scenic Conservation, 40 acres per unit, with Design Control Overlay (Coastal Zone)] | |
| CEQA Action: Categorically Exempt per CEQA Guidelines Section 15303 | |
| Department: RMA – Planning | |

RECOMMENDATION:

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

- 1) Find the project categorically exempt per CEQA Guidelines Section 15303; and
- 2) Approve an after-the-fact Combined Development Permit, based on the findings and evidence and subject to the conditions of approval (**Exhibit C**).

PROJECT OVERVIEW:

The Applicant requests an after-the-fact Combined Development Permit to clear Code Enforcement File No. 19900060 to allow the construction of a 499 square foot non-habitable accessory structure with a 285 square foot attached deck, and 421 linear feet of fencing and retaining walls. The project also involves development within 50 feet of a coastal bluff and on slope exceeding 30 percent, and a reduction in the side setback. See **Exhibit B** for a detailed discussion of the project.

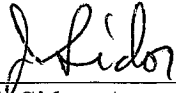
OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this project:

- RMA - Public Works
- Environmental Health Bureau
- Water Resources Agency
- CALFIRE Coastal (Fire Protection District)
- California Coastal Commission

Agencies that submitted comments are noted with a check mark (“√”). Conditions recommended by RMA – Planning have been incorporated into the Condition Compliance/Mitigation Monitoring and Reporting Plan attached to the draft resolution (**Exhibit C**).

The project was referred to the Big Sur Land Use Advisory Committee (LUAC) for review. The Big Sur LUAC, at a public meeting held on September 24, 2013, recommended to support the project with the following conditions: 1) the existing color (driftwood gray) of the accessory structure remain and not be changed to match the existing residence, and 2) the bulk and mass of the structural envelope not increase beyond that currently existing.

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



Joseph Sidor, Associate Planner
(831) 755-5262, SidorJ@co.monterey.ca.us
December 20, 2013

cc: Front Counter Copy; Zoning Administrator; CALFIRE Coastal (Fire Protection District); RMA - Public Works; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; Laura Lawrence, Planning Services Manager; Delinda Robinson, Senior Planner; Joseph Sidor, Project Planner; Jacqueline Lowther, Owner; Brian Silveira, Agent; The Open Monterey Project; LandWatch; Planning File PLN120392

Attachments: Exhibit A Project Data Sheet
 Exhibit B Project Discussion
 Exhibit C Draft Resolution, including:
 • Conditions of Approval
 • Site Plan, Floor Plan and Elevations
 Exhibit D Vicinity Map
 Exhibit E Advisory Committee Minutes (Big Sur LUAC)

This report was reviewed by Delinda Robinson, Senior Planner.



EXHIBIT A

Project Information for PLN120392

Application Name: Lowther Jacqueline A Tr
Location: 40990 Hwy 1, Monterey
Applicable Plan: Coast-Big Sur
Advisory Committee: Big Sur Coast Advisory Committee
Permit Type: Combined Development Permit
Environmental Status: Categorical Exemption
Zoning: WSC/40-D(CZ)

Primary APN: 418-171-003-000
Coastal Zone: Yes
Final Action Deadline (884): 2/17/2014
Land Use Designation: Watershed & Scenic Conservation

Project Site Data:

Lot Size: 217800
Existing Structures (sf): 1453
Proposed Structures (sf): 499
Total Sq. Ft.: 1952

Coverage Allowed: 21780
Coverage Proposed: 2237
Height Allowed: 15
Height Proposed: 12.5
FAR Allowed: NA
FAR Proposed: NA

Special Setbacks on Parcel:

Resource Zones and Reports:

Seismic Hazard Zone: UNDETERMINED
Erosion Hazard Zone: High
Fire Hazard Zone: High
Flood Hazard Zone: V / X
Archaeological Sensitivity: High
Visual Sensitivity: BIG SUR CRITICAL VIEWSHED

Soils Report #: LIB130513
Biological Report #: LIB130511
Forest Management Rpt. #: NA
Geologic Report #: LIB130512
Archaeological Report #: LIB130510
Traffic Report #: NA

Other Information:

Water Source: WATER SYSTEM
Water Purveyor: SOUTH 40
Fire District: Big Sur VFB
Tree Removal: 0

Grading (cubic yds.): 60
Sewage Disposal (method): SEPTIC
Sewer District Name: NA

EXHIBIT B DISCUSSION

Project Description

The Applicant proposes an after-the-fact Combined Development Permit to clear Code Enforcement File No. 19900060 to allow the construction of a 499 square foot non-habitable accessory structure with a 285 square foot attached deck, and 421 linear feet of fencing and retaining walls. The project also involves development within 50 feet of a coastal bluff and on slope exceeding 30 percent, and a reduction in the side setback.

Project Issues

Development on slope exceeding 30 percent and within 50 feet of a coastal bluff: The project, as constructed, is consistent with the applicable policies of the Big Sur Coast Land Use Plan (LUP) and the Monterey County Zoning Ordinance (Title 20). The project involved the construction of a 499 square foot non-habitable accessory structure. The topography of the parcel, as well as the access road, severely limits the potential building area on the property, and no feasible alternative building site exists. Staff recommends the Zoning Administrator apply Condition No. 6, Geotechnical Certification, to ensure stability of the foundation under-pinning and to assure compliance with Monterey County Code (MCC) Section 20.64.230.E.1. In addition, due to the location of the structure (i.e., less than 20 feet from the bluff edge) staff recommends Condition No. 9, Deed Restriction/Geologic Hazard, to ensure future property owners understand the risk involved with development near a coastal bluff.

Variance to allow a reduction of the side setback: The property has a zoning designation of Watershed and Scenic Conservation, 40 acres per unit, with a Design Control Overlay (Coastal Zone) [WSC/40-D (CZ)]. Single family dwellings, additions, and accessory structures are allowed uses within this district, as identified in MCC Section 20.17. Moreover, special circumstances exist on the parcel that severely limit site development potential. The subject parcel, as well as the other parcels in the immediate vicinity, is severely constrained by topography, the access road, and the Big Sur Critical Viewshed. Due to the severe site constraints shared by all four parcels in the South 40 area of Big Sur, it is not feasible to provide an area suitable for development that also meets all of the required setback standards. In addition, the Variance would not result in a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated. The County granted a reduction in the front yard setback due to identical site constraints for ZA05224 (Stadler), located in the immediate vicinity (South 40 area of Big Sur), and under identical zoning classification. Also, compared to the subject parcels' 1,952 square feet of structural improvements, two adjacent properties have structural improvements totaling 4,365 square feet and 3,470 square feet. Condition No. 8, Structural Connection, has also been applied to minimize the amount of setback reduction requirements. This condition, and the required connection, would eliminate the need for a Variance to reduce the minimum distance between structures.

Environmental Review

California Environmental Quality Act (CEQA) Guidelines Sections 15303 categorically exempts the construction of new, small facilities or structures, including accessory structures to a single family dwelling or residential use. The project involves the permitting of a constructed non-habitable accessory structure, and is consistent with the parameters of this exemption. The technical reports prepared for the project do not identify any potential significant or cumulative impacts, and no evidence of significant adverse environmental effects were identified during

staff review of the development application during a site visit on June 26, 2012. No unresolved issues remain.

Recommendation

Staff recommends the Zoning Administrator find PLN120392 categorically exempt per CEQA Guidelines Section 15303, and approve the after-the-fact Combined Development Permit (PLN120392), based on the findings and evidence and subject to the conditions of approval (**Exhibit C**).

**EXHIBIT C
DRAFT RESOLUTION**

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

In the matter of the application of:

LOWTHER (PLN120392)

RESOLUTION NO. 14 -

Resolution by the Monterey County Zoning
Administrator:

- 1) Finding the project categorically exempt per CEQA Guidelines Section 15303; and
- 2) Approving an after-the-fact Combined Development Permit to clear Code Enforcement File No. 19900060 consisting of: 1) a Coastal Administrative Permit and Design Approval to allow the construction of a 499 square foot non-habitable accessory structure with a 285 square foot attached deck, and 421 linear feet of fencing and retaining walls; 2) a Coastal Development Permit to allow development within 50 feet of a coastal bluff; 3) a Coastal Development Permit to allow development on slope exceeding 30 percent; and 4) a Variance to allow a reduction in the side setback.

[PLN120392, Lowther, 40990 Highway 1, Big Sur, Big Sur Coast Land Use Plan, Coastal Zone (APN: 418-171-003-000)]

The Lowther application (PLN120392) came on for public hearing before the Monterey County Zoning Administrator on January 9, 2014. 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 an after-the-fact Combined Development Permit to clear Code Enforcement File No. 19900060 consisting of: 1) a Coastal Administrative Permit and Design Approval to allow the construction of a 499 square foot non-habitable accessory structure with a 285 square foot attached deck, and 421 linear feet of fencing and retaining walls; 2) a Coastal Development Permit to allow development within 50 feet of a coastal bluff; 3) a Coastal Development Permit to allow development on slope exceeding 30 percent; and 4) a Variance to allow a reduction in the side setback.
- EVIDENCE:** The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File

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;
- Big Sur Coast Land Use Plan;
- Monterey County Coastal Implementation Plan Part 3; and
- 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 40990 Highway 1, Monterey/Big Sur (Assessor's Parcel Number 418-171-003-000), Big Sur Coast Land Use Plan. The parcel is zoned Watershed and Scenic Conservation, 40 acres per unit, with a Design Control Overlay (Coastal Zone) [WSC/40-D (CZ)], which allows accessory structures as a principle use with a Coastal Administrative Permit. Therefore, the project is an allowed land use for this site.
- c) The project planner conducted a site inspection on June 26, 2012, to verify that the project on the subject parcel conforms to the plans listed above.
- d) Development on slope exceeding 30 percent and within 50 feet of a coastal bluff: See Finding No. 8.
- e) Variance: See Finding Nos. 9, 10, and 11.
- f) Archaeological/Cultural Resources: The project is consistent with the cultural resource policies of the Big Sur Coast Land Use Plan and will have no impact on pre-historic resources. County records identify that the project site is within an area of high sensitivity for prehistoric cultural resources. However, the archaeological survey (LIB130510) prepared for the project site did not identify any potential impacts to prehistoric resources. The potential for inadvertent impacts to cultural resources is limited and will be controlled by the use of the County's standard project condition (Condition No. 4).
- g) Big Sur Critical Viewshed: The project is consistent with the visual resource policies of the Big Sur Coast Land Use Plan and will have no impact on the critical viewshed. The project planner conducted a site inspection on June 26, 2012, to verify that the project site conforms to the visual resource policies of the plans listed above. The proposed development does not create any new structures within the critical viewshed (Big Sur Coast LUP Policy 3.2.2). Although the project site is located near Highway 1, a state-designated scenic highway, the structure is not visible from the highway or any areas within the Big Sur Critical Viewshed.
- h) The project was referred to the Big Sur 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 warrant referral to the LUAC because it

involves a Variance and a Design Approval subject to review by the Zoning Administrator or Planning Commission. The Big Sur LUAC, at a public meeting held on September 24, 2013, recommended to support the project with the following conditions: 1) the existing color (driftwood gray) of the accessory structure remain and not changed to match the existing residence, and 2) the bulk and mass of the structural envelope not increase beyond that currently existing.

- i) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN120392.

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, CALFIRE Coastal (Fire Protection District), RMA - Public Works, 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 Archaeological Resources, Biological Resources, and Soil/Slope Stability. The following reports have been prepared:
 - Preliminary Cultural Resources Reconnaissance (LIB130510) prepared by Archaeological Consulting, Salinas, California, December 5, 1989.
 - Biotic Survey & Assessment (LIB130511) prepared by Jeffrey B. Froke, Consulting Ecologist, Pebble Beach, California, August 30, 2012.
 - Geologic Hazard Investigation (LIB130512) prepared by Gasch & Associates, Inc., Santa Barbara, California, January 31, 2001.
 - Geotechnical and Geologic Hazards Report (LIB130513) prepared by Grice Engineering, Inc., Salinas, California, April 10, 2013.

The above-mentioned technical reports by outside consultants 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 June 26, 2012, 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 Department for the proposed development found in Project File PLN120392.

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 RMA – Planning, CALFIRE Coastal (Fire Protection District), RMA - 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) Necessary public facilities are available. The existing residence has a water system connection and a functional wastewater disposal system. The residence will continue to use these same connections. The Environmental Health Bureau reviewed the project application and did not require any conditions.
 - c) The Geologic Hazard Investigation (LIB130512) and the Geotechnical and Geologic Hazards Report (LIB130513) prepared for the site and project, indicate that although the site has potential hazards, the site is suitable for the existing development and no significant conditions were observed. The County has applied Condition Nos. 6 and 9 to ensure a qualified consultant confirms the stability of the foundation underpinning, and to ensure future property owners understand the risk involved with development near a coastal bluff due to the location of the structure.
 - d) Staff conducted a site inspection on June 26, 2012, 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 the Monterey County RMA - Planning Department for the proposed development found in Project File PLN120392.

5. **FINDING:** **NO VIOLATIONS** - The subject property is in not compliance with all rules and regulations pertaining to applicable provisions of the County's zoning ordinance. Violations exist on the property. The approval of this permit will correct the violations and bring the property into compliance.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning and Building Services records and is aware of a violation existing on the subject property.
 - b) Staff conducted a site inspection on June 26, 2012, and researched County records to assess if any violation exists on the subject property.
 - c) The proposed project would correct an existing violation regarding unpermitted development of the non-habitable accessory structure (Code Enforcement File No. 19900060). When implemented, the project will bring the subject property into compliance with all rules and regulations pertaining to the property and will remove the existing violations.
 - d) Zoning violation abatement costs, if any, have been paid.
 - e) The application, plans and supporting materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development are found in Project File PLN120392.

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(e) categorically exempts the construction of new, small facilities or structures, including accessory structures to a single family dwelling or residential use.
 - b) The project involves the permitting of a constructed non-habitable accessory structure, and is consistent with the parameters of the categorical exemption per Evidence 6a above.
 - c) No adverse environmental effects were identified during staff review of the development application during a site visit on June 26, 2012.
 - d) 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, unusual circumstances that would result in a significant effect, development that would result in a cumulatively significant impact, development located within view of a state-designated scenic highway, nor development in a particularly sensitive environment. The technical reports prepared for the project do not identify any potential significant or cumulative impacts, and no evidence of significant adverse environmental effects were identified during staff review of the development application. Although the project site is located near Highway 1, a state-designated scenic highway, the structure is not visible from the highway or any areas within the Big Sur Critical Viewshed. See also Evidence 2g above.
 - e) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN120392.

7. **FINDING:** **PUBLIC ACCESS** – The project is in conformance with the public access and recreation policies of the Coastal Act (specifically Chapter 3 of the Coastal Act of 1976, commencing with Section 30200 of the Public Resources Code) and Local Coastal Program, and does not interfere with any form of historic public use or trust rights.
- EVIDENCE:**
- a) No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.145.150 of the Monterey County Coastal Implementation Plan (Part 3) can be demonstrated.
 - b) The subject property is not described as an area where the Local Coastal Program requires public access (Figure 2, Shoreline Access Plan, or Figure 3, Trails Plan, in the Big Sur Coast Land Use Plan).
 - c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over these properties or project sites.
 - d) Staff conducted a site inspection on June 26, 2012.
 - e) The application, plans and supporting materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development are found in Project File PLN120392.

8. **FINDING: DEVELOPMENT ON SLOPE/BLUFF** – There is no feasible alternative which would allow development to occur on slopes of less than 30 percent.
- a) In accordance with the applicable policies of the Big Sur Coast Land Use Plan (LUP) and the Monterey County Zoning Ordinance (Title 20), a Coastal Development Permit is required and the criteria to grant said permit have been met. No feasible alternative to the building site exists.
 - b) The project includes application for development on slopes exceeding 30 percent, and within 50 feet of a coastal bluff. The project involved the construction of a 499 square foot non-habitable accessory structure. The topography of the parcel, as well as the access road, severely limits the potential building area on the property, and no feasible alternative building site exists.
 - d) The Zoning Administrator shall require such conditions of approval and changes in the development as it may deem necessary to assure compliance with MCC Section 20.64.230.E.1. Condition No. 6, Geotechnical Certification, has been applied to assure compliance and to ensure a qualified consultant confirms the stability of the development. In addition, due to the location of the structure (i.e., less than 20 feet from the bluff edge), the County has applied Condition No. 9, Deed Restriction/Geologic Hazard, to ensure future property owners understand the risk involved with development near a coastal bluff. Application of these conditions will also ensure consistency with applicable Big Sur Coast LUP policies regarding geologic hazards.
 - e) Staff conducted a site inspection on June 26, 2012, to verify the subject project minimizes development on slopes exceeding 30 percent in accordance with the applicable goals and policies of the Big Sur Coast Land Use Plan and applicable zoning codes.
 - f) The application, plans and supporting materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development are found in Project File PLN120392.
9. **FINDING: VARIANCE (Authorized Use)** – The Variance shall not be granted for a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property.
- a) The property has a zoning designation of Watershed and Scenic Conservation, 40 acres per unit, with a Design Control Overlay (Coastal Zone) [WSC/40-D (CZ)].
 - b) The allowed uses for a WSC zone are identified in Section 20.17 of the Monterey County Zoning Ordinance (Title 20). Single family dwellings, additions, and accessory structures are allowed uses within this district. Therefore, the project is an authorized use for the zoning district.
 - c) The application, plans and supporting materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development are found in Project File PLN120392.
10. **FINDING: VARIANCE (Special Circumstances)** – Because of special circumstances applicable to the subject property, including the size, shape, topography, location of the lot, or the surrounding area, the strict

application of development standards in the Monterey County Code (MCC) is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under identical zoning classification.

- a) Development standards for the WSC zone are identified in MCC Section 20.17.060. Allowed site coverage in the WSC zone is 10 percent. The existing structures conform to site coverage limitations (2,237 square feet, or approximately 1.0 percent, of 21,780 allowed). Required setbacks in this WSC zone for an accessory structure attached to the main structure are 30 feet (front), 20 feet (rear), and 20 feet (side). The non-habitable accessory structure is non-conforming with regard to the required side setback of 20 feet, and extends into the side setback by approximately 2 feet. If the non-habitable accessory structure were detached from the main structure, the required setbacks would be 50 feet (front), 1 foot (rear), 6 feet (side, front one-half of the property), and 1 foot (side, rear one-half of the property).
- b) The intent of the setback development standard is to limit the bulk and mass of development on a parcel in proportion to the size of the parcel, and to ensure the structure(s) blend with the surrounding environment. The subject parcel, as well as the other parcels in the immediate vicinity, is severely constrained by topography, the access road, and the Big Sur Critical Viewshed. Due to these constraints, it is not feasible to provide an area suitable for development that also meets all of the required setback standards.
- c) The project planner conducted a site inspection on June 26, 2012, to verify the circumstances related to the property. There are special circumstances on the site that warrant a Variance to allow the proposed development, resulting in a reduction of the side setback by approximately 2 feet, provided there is no special privilege (Finding No. 11) and it is an authorized use (Finding No. 9).
- d) The application, plans and supporting materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development are found in Project File PLN120392.

11. **FINDING:** **VARIANCE (Special Privileges)** – The Variance shall not constitute a grant of privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

- EVIDENCE:**
- a) The project planner conducted a site inspection on June 26, 2012, to identify circumstances related to other properties in the vicinity and in the same zoning district.
 - b) Staff researched County records to assess if any similar Variances were granted in the vicinity and under identical zoning classification.
 - c) Other property owners in the vicinity and under identical zoning classification have been afforded the same privilege sought by the property owner of this application.
 - d) The County granted a reduction in the front yard setback due to identical site constraints for ZA05224 (Stadler), located in the immediate vicinity (South 40 area of Big Sur), and under identical zoning classification.
 - f) In addition, due to severe site constraints shared by all four parcels in the South 40 area of Big Sur (topography, access road, and the Big Sur

Critical Viewshed), it is not feasible to provide an area suitable for development that also meets all of the required setback standards. Compared to the subject parcels' 1,952 square feet of structural improvements, two adjacent properties have structural improvements totaling 4,365 square feet and 3,470 square feet. Also, Condition No. 8, Structural Connection, has been applied to minimize the amount of setback reduction requirements.

- g) The application, plans and supporting materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development are found in Project File PLN120392.

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

- EVIDENCE:**
- a) Board of Supervisors: Section 20.86.030 of the Monterey County Zoning Ordinance (Title 20) allows an appeal to be made to the Board of Supervisors by any public agency or person aggrieved by a decision of an Appropriate Authority other than the Board of Supervisors.
 - b) California Coastal Commission: Sections 20.86.080.A.1, A.2, and A.3 of the Monterey County Zoning Ordinance (Title 20). The project is subject to appeal by/to the California Coastal Commission because it involves development between the sea and the first through public road paralleling the sea, development within 300 feet of the top of the seaward face of any coastal bluff, and development that is permitted in the underlying zone as a conditional use.

DECISION

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

1. Find the project categorically exempt per CEQA Guidelines Section 15303; and
2. Approve an after-the-fact Combined Development Permit to clear Code Enforcement File No. 19900060 consisting of a Coastal Administrative Permit and Design Approval to allow the construction of a 499 square foot non-habitable accessory structure with a 285 square foot attached deck, and 421 linear feet of fencing and retaining walls; a Coastal Development Permit to allow development within 50 feet of a coastal bluff; a Coastal Development Permit to allow development on slope exceeding 30 percent; and a Variance to allow a reduction in the side setback; 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 9th day of January, 2014.

Jacqueline R. Onciano, Zoning Administrator

COPY OF THIS DECISION MAILED TO APPLICANT ON _____.

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 _____.

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 the Monterey County Planning Department and 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 Planning Department

DRAFT Condition of Approval Implementation Plan/Mitigation Monitoring Reporting Plan

PLN120392

1. PD001 - SPECIFIC USES ONLY

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: This After-the-fact Combined Development Permit (PLN120392) to clear Code Enforcement File No. 19900060 allows a Coastal Administrative Permit and Design Approval for the construction of a 499 square foot non-habitable accessory structure with a 285 square foot attached deck, and 421 linear feet of fencing and retaining walls; a Coastal Development Permit for development within 50 feet of a coastal bluff; a Coastal Development Permit for development on slope exceeding 30 percent; and a Variance for a reduction in the side setback. The property is located at 40990 Highway 1, Monterey (Assessor's Parcel Number 418-171-003-000), Big Sur Coast Land Use Plan, Coastal Zone. 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: Planning Department

Condition/Mitigation Monitoring Measure: The applicant shall record a Permit Approval Notice. This notice shall state: "An After-the-fact Combined Development Permit (Resolution Number 14 -) was approved by the Zoning Administrator for Assessor's Parcel Number 418-171-003-000 on January 9, 2014. The permit was granted subject to nine (9) 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 grading and building permits or commencement of use, the Owner/Applicant shall provide proof of recordation of this notice to RMA - Planning.

3. PD002(A) - ATTACH RESOLUTION TO CONSTRUCTION PLANS

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: A copy of the Resolution of Approval (Resolution No. 14 -) for the After-the-fact Combined Development Permit (Planning File No.: PLN120392) shall be incorporated onto the construction plans for the project prior to the issuance of a grading or building permit. The Contractor/Owner/Applicant shall be responsible for compliance with all conditions of approval. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to commencement of any grading or construction activities, the Owner/Applicant shall submit evidence to RMA-Planning for review and approval, that the Resolution of Approval, for the project, has been incorporated onto the construction plans for the project/approved development.

Ongoing throughout construction and until all Conditions of Approval and/or Mitigation Measures have been complied with, the Contractor/Owner/Applicant shall provide evidence of compliance with Conditions of Approval to the Responsible Land Use Department as specified in the "Condition of Approval Implementation Plan/Mitigation Monitoring Reporting Plan."

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

Responsible Department: Planning Department

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. The Monterey County RMA - Planning Department 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.

5. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: Planning Department

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 or 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 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, 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: Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, whichever occurs first and as applicable, 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.

6. PD009 - GEOTECHNICAL CERTIFICATION

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: Prior to final inspection, the geotechnical consultant shall provide certification that all development has been constructed in accordance with the geotechnical report. (RMA - Planning and RMA - Building Services)

Compliance or Monitoring Action to be Performed: Prior to final inspection, the Owner/Applicant/Geotechnical Consultant shall submit certification by the geotechnical consultant to RMA-Building Services showing project's compliance with the geotechnical report.

7. PD032(A) - PERMIT EXPIRATION

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: The permit shall be granted for a time period of three (3) years, to expire on January 9, 2017, 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 valid grading or building permit and/or 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.

8. PDSP001 - STRUCTURAL CONNECTION (NON-STANDARD)

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: The Owner/Applicant shall construct a structural connection between the existing single family dwelling and the non-habitable accessory structure. (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to issuance of a building permit, the Owner/Applicant shall submit plans showing the proposed structural connections to RMA - Planning for review and approval.
Prior to final, the Owner/Applicant shall submit evidence to RMA - Planning of the completion of the structural connection.

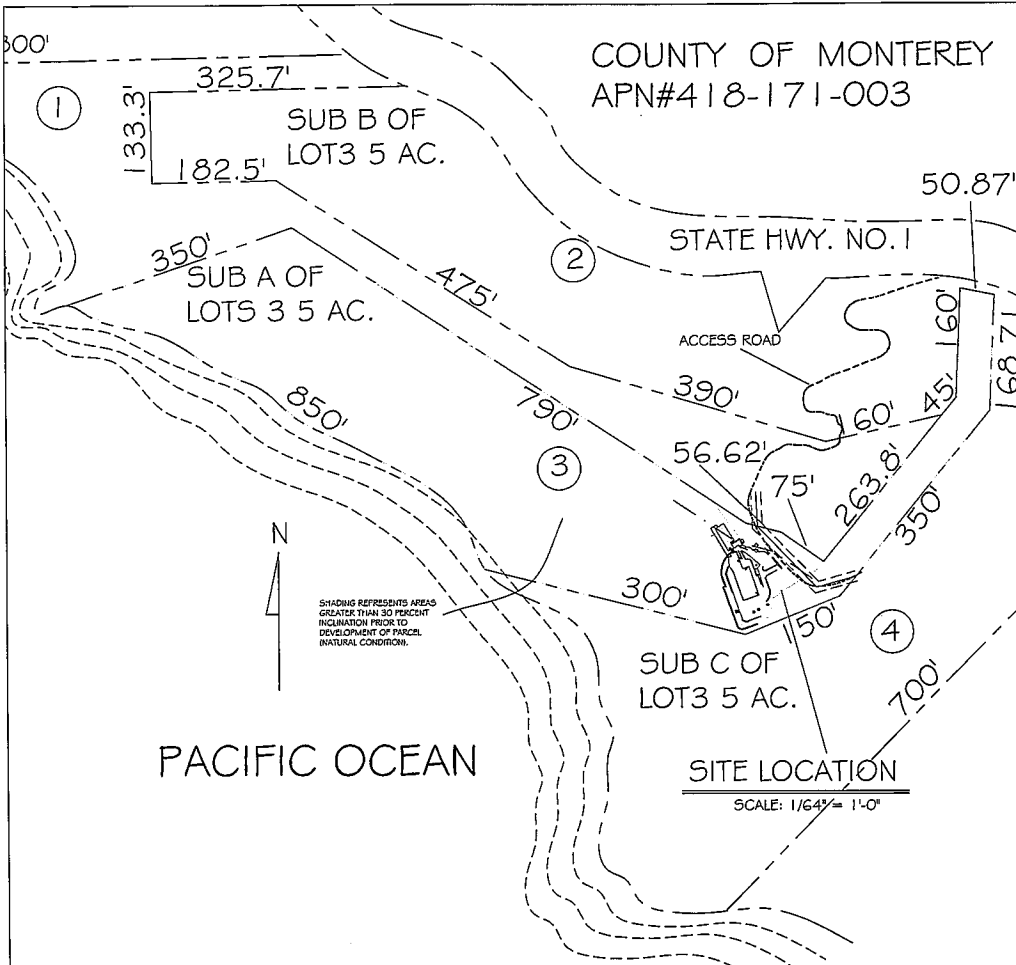
9. PDSP002 - DEED RESTRICTION / GEOLOGIC HAZARD (NON-STANDARD)

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: Prior to final of a building permit the applicant shall record a deed restriction which states: "The parcel is located in a high geologic hazard area and development may be subject to certain restrictions as per section(s) of the Coastal Implementation Plan and per the standards for development of residential property." (RMA - Planning)

Compliance or Monitoring Action to be Performed: Prior to the final of the building permit, the Owner/Applicant shall submit proof of recordation of the deed restriction to the Director of RMA-Planning.

COUNTY OF MONTEREY
APN#418-171-003



PROJECT DATA

PROJECT: LOWTHER ESTATE
40990 HIGHWAY ONE
CARMEL, CALIFORNIA 93922

SCOPE OF WORK: ADDRESS CONDITIONS OF UNPERMITTED DETACHED STORAGE UNIT, SITE RETAINING WALLS AND FENCES

MONTEREY COUNTY A.P.N.: 418-171-003-000

ZONING: NSC40(CZ)
PARCEL AREA: 5 ACRES
GENERAL PLAN DESIGNATION: RESIDENTIAL
EXISTING: PRIMARY RESIDENCE 1,453 SQUARE FEET
DETACHED STORAGE 489 SQUARE FEET
TOTAL STRUCTURES 1,952 SQUARE FEET

ATTACHED DECK: 285 SQUARE FEET

EXISTING COVERAGE: 0.896 %
ALLOWABLE SITE COVERAGE: 10%
ALLOWABLE AREA: 21,780 SQUARE FEET

AREA OF PARCEL OVER 30% SLOPE (NATURAL CONDITION): 206,256 SQUARE FEET (94.7 %)
AREA OF STRUCTURES ON SLOPES OVER 30% (NATURAL CONDITION): 700 SQUARE FEET

IMPERVIOUS PAVEMENT 311 SQUARE FEET
ASPHALT PARKING AREA 1511 SQUARE FEET (INCLUDES STAIRS)
BRICK/ACCESSIBLE WALKS 1511 SQUARE FEET (INCLUDES STAIRS)
TOTAL IMPERVIOUS PAVEMENT: 1822 SQUARE FEET

GRADING
CUT: 41 CUBIC YARDS
FILL: 17 CUBIC YARDS
EXPORT: 24 CUBIC YARDS

ALLOWABLE DISTANCE BETWEEN STRUCTURES: 10 FEET
CLOSEST DISTANCE BETWEEN STRUCTURES: 48"
ALLOWABLE STRUCTURE HEIGHT - DETACHED STORAGE: 15 FEET
MINIMUM NATURAL GRADE ELEVATION: 305.00 FEET
MAXIMUM NATURAL GRADE ELEVATION: 316.00 FEET
AVERAGE NATURAL GRADE ELEVATION: 310.50 FEET
ALLOWABLE MAXIMUM ELEVATION: 315.50 FEET
FINISH FLOOR ELEVATION: 308.33 FEET
ROOF PEAK ELEVATION: 300.92 FEET

ALLOWABLE SETBACKS FOR ACCESSORY STRUCTURES
FRONT: 50 FEET
SIDE: 6 FEET FRONT ONE-HALF OF PROPERTY
REAR: 1 FOOT ON REAR ONE-HALF OF PROPERTY

EXISTING SETBACK OF STORAGE STRUCTURE (MINIMUMS - ODD SHAPED PROPERTY)
FRONT: 18 FEET
SIDE: 123 FEET
REAR: 112 FEET

PARKING: TWO UNCOVERED PARKING SPACES

TREE REMOVAL: NONE (ASSUMED)

WATER PROVIDED BY SMALL COMMUNITY WATER SYSTEM
NAME OF WATER SYSTEM: NOT KNOWN

NO AREAS SUBJECT TO INUNDATION OR 100 YEAR FLOOD LEVELS

NO KNOWN ENVIRONMENTALLY SENSITIVE HABITAT, ARCHAEOLOGICAL RESOURCES, HISTORICAL SITE OR HAZARDS

NO WETLANDS, STREAMS, CREEK OR ANY OTHER BODIES OF WATER WITHIN THE AREA OF CONSTRUCTION

NO WATER WELLS ARE LOCATED ON THE PROPERTY

SEWAGE TREATMENT IS PROVIDED FOR ON SITE BY SEPTIC SYSTEM. SEPTIC EFFLUENT IS DISPOSED OF ON SITE BY SUBSURFACE LEACHFIELDS.

SHADING REPRESENTS AREAS GREATER THAN 30 PERCENT INCLINATION PRIOR TO DEVELOPMENT OF PARCEL (NATURAL CONDITION).

PACIFIC OCEAN

SITE LOCATION

SCALE: 1/64" = 1'-0"

BRIAN SILVERIA
BRIAN SILVERIA &
ASSOCIATES
SILVERIA.BRIAN@GMAIL.COM

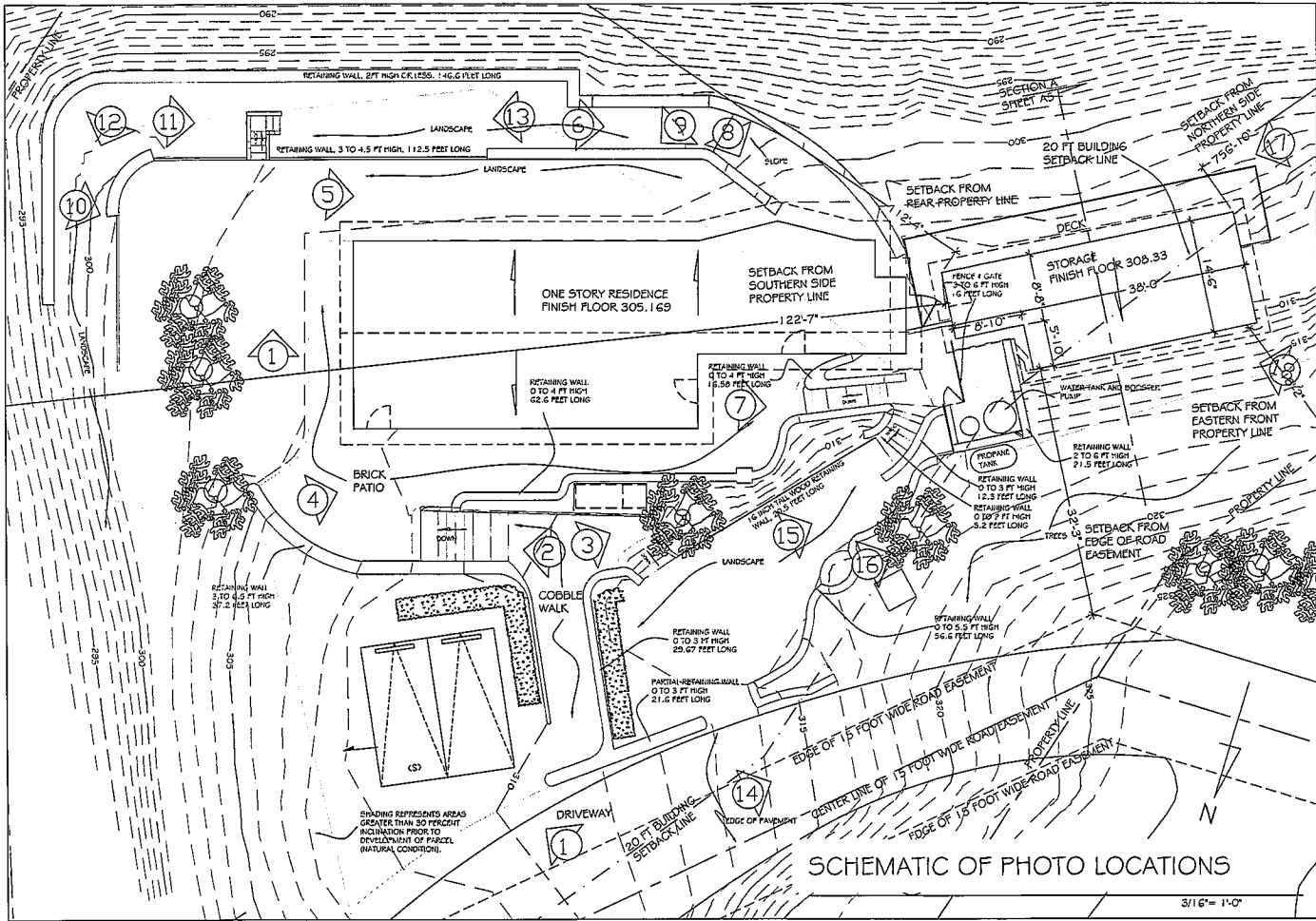
Ms. Jacqueline Lowther
P.O. Box 40238
Santa Barbara, CA 93140

LOWTHER - HIGHWAY 1
40990 HIGHWAY 1
CARMEL, CA 93922
APN# 418-171-003 (MONTEREY COUNTY)

PROJECT: HIGHWAY 222102
DATE: SEPT-01-2013
SCALE: 1/64" = 1'-0"

SITE PLAN

AI



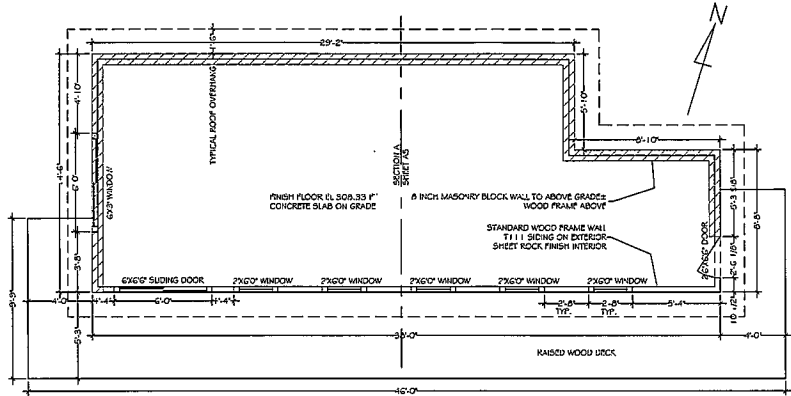
BRIAN SILVERIA
 BRIAN SILVERIA &
 ASSOCIATES
 SILVERIA.BRIAN@GMAIL.COM

ENGINEER/ARCHITECT
 Ms. Jacqueline Lowther
 P. O. Box 40236
 Santa Barbara, CA 93140

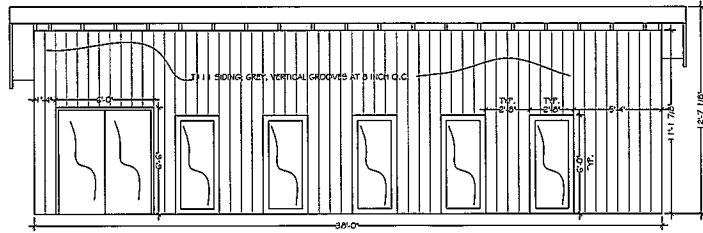
ENGINEER/ARCHITECT ADDRESS
 LOWTHER - HIGHWAY 1
 40990 HIGHWAY 1
 CARMEL, CA 93922
 APN# 418-171-003 (MONTEREY COUNTY)

PROJECT:
 HWYWAY 222102
 DATE:
 SEPT-01-2013
 SCALE:
 3/16" = 1'-0"

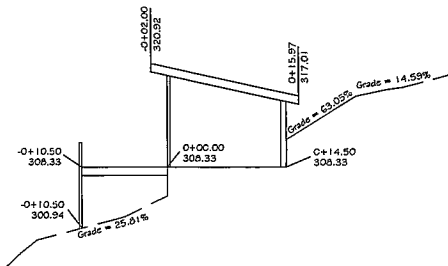
AREA VIEW
 A3



FLOOR PLAN SCALE 3/8" = 1'-0"



ELEVATION SCALE 3/8" = 1'-0"



SECTION A SCALE 3/16" = 1'-0"

DETACHED STRUCTURE
FLOOR PLAN, ELEVATION AND SECTION

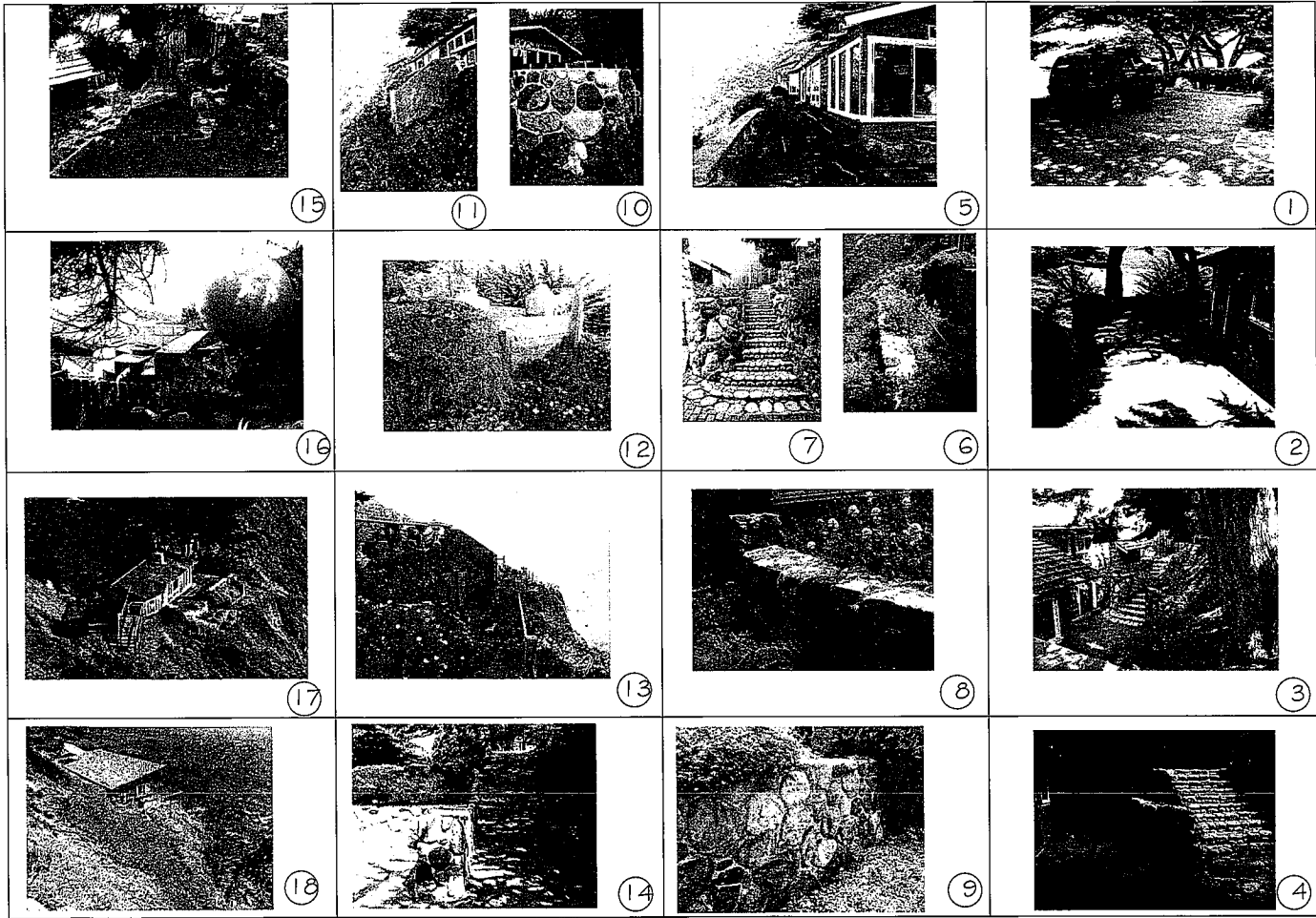
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ASSOCIATES
SILVERIA.BRIAN@GMAIL.COM

MR. JACQUELINE LOWTHER
P.O. BOX 40923
SANTA BARBARA, CA 93140

PROJECT NAME AND ADDRESS
LOWTHER - HIGHWAY 1
40990 HIGHWAY 1
CARMEL, CA 93922
APN# 4118-171-003 (MONTEREY COUNTY)

PROJECT: HKMAY 222102
DATE: AUG-09-2013
SHEET: AS NOTED
FLOOR PLAN

A5



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 BRIAN SILVERIA &
 ASSOCIATES
 SILVERIA.BRIAN@GMAIL.COM

SERIAL INFORMATION:
 Ms. Jacqueline Lowther
 P.O. Box 40236
 Santa Barbara, CA 93140

PROJECT NAME AND ADDRESS:
 LOWTHER - HIGHWAY 1
 40230 HIGHWAY 1
 SANTA BARBARA, CA 93140
 APN# 416-171-003 (MONTEREY COUNTY)

PROJECT:
 RIMAY 222102

DATE:
 AUG-09-2013

SCALE:
 PHOTO'S

A4

BIG SUR

Castle Rock

Bixby Landing

COAST RD

1

Bixby Creek

Hurricane Point

Los Padres Nat'l Forest

PROJECT SITE

COAST RD

Sierra Creek

Pacific Ocean

Little Sur River

APPLICANT: LOWTHER

APN: 418-171-003-000

FILE # PLN120392



2500' Limit

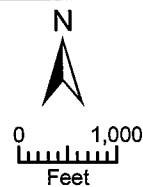


300' Limit

--- Water



City Limits



PLANNER: SIDOR

Action by Land Use Advisory Committee Project Referral Sheet

Monterey County Planning Department
168 W Alisal St 2nd Floor
Salinas CA 93901
(831) 755-5025

Advisory Committee: **Big Sur**

Please submit your recommendations for this application by: **September 24, 2013**

Project Title: LOWTHER JACQUELINE A TR

File Number: PLN120392

File Type: ZA

Planner: SIDOR

Location: 40990 HWY 1 MONTEREY

Project Description:

Combined Development Permit to clear code violation on the property (Code Enforcement Case No. 19960149) consisting of: (1) a Coastal Administrative Permit to allow new retaining walls, demolishing of unpermitted structures, and new 5,000 gallon water tank and a propane tank; (2) Coastal Development Permit to allow development on slope over 30%; and (3) a Design Approval. The property is located at 51404 Partington Ridge Road, Big Sur (Assessor's Parcel Number 420-221-017-000), Big Sur Coast Land Use Plan, Coastal Zone.

Was the Owner/Applicant/Representative Present at Meeting? Yes No

Was a County Staff/Representative present at meeting? Joe Sidor (Name)

PUBLIC COMMENT:

| Name | Site Neighbor? | | Issues / Concerns (suggested changes) |
|------|----------------|----|--|
| | YES | NO | |
| | | | |
| | | | |
| | | | |
| | | | |

LUAC AREAS OF CONCERN

| Concerns / Issues (e.g. site layout, neighborhood compatibility; visual impact, etc) | Policy/Ordinance Reference (If Known) | Suggested Changes - to address concerns (e.g. relocate; reduce height; move road access, etc) |
|---|--|---|
| | | |
| | | |
| | | |
| | | |

ADDITIONAL LUAC COMMENTS

Color of the building should be unobtrusive and color should be a driftwood gray. Any exterior changes including foot print and volume including deck and railing. Should require a design approval.

RECOMMENDATION :

Motion by: Richard Ravich (LUAC Member's Name)

Second by: Steve Beck (LUAC Member's Name)

Support Project as proposed

Recommend Changes (as noted above)

Continue the Item

Reason for Continuance: _____

Continued to what date: _____

AYES: Mary Trotter, Richard Ravich, Steve Beck and Dan Priano (4)

NOES: 0

ABSENT: Brian Lyke, David Smiley (2)

ABSTAIN: 0