City of Morro Bay
City Council Agenda

Mission Statement
The City of Morro Bay is dedicated to the preservation and enhancement of the quality of life. The City shall be committed to this purpose and will provide a level of municipal service and safety consistent with and responsive to the needs of the public.

REGULAR MEETING – FEBURARY 14, 2012

CLOSED SESSION – FEBRUARY 14, 2012
CITY HALL CONFERENCE ROOM - 5:00 P.M.
595 HARBOR ST., MORRO BAY, CA

CS-1 **GOVERNMENT CODE SECTION 54957.6; CONFERENCE WITH LABOR NEGOTIATOR**. Conference with City Manager, the City's Designated Representative, for the purpose of reviewing the City's position regarding the terms and compensation paid to the City Employees and giving instructions to the Designated Representative.

CS-2 **GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS**. Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two (2) parcels.

- **Property: 3300 Panorama Drive**
  Negotiating Parties: US General Services Administration and City of Morro Bay
  Negotiations: Purchase and Sale

- **Property: 895 Monterey Street**
  Negotiating Parties: Woolley and City of Morro Bay
  Negotiations: Voluntary Purchase and Sale

IT IS NOTED THAT THE CONTENTS OF CLOSED SESSION MEETINGS ARE CONFIDENTIAL AND EXEMPT FROM DISCLOSURE.

PUBLIC SESSION – FEBRUARY 14, 2012
VETERANS MEMORIAL HALL - 6:00 P.M.
209 SURF ST., MORRO BAY, CA

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
MAYOR AND COUNCILMEMBERS ANNOUNCEMENTS & PRESENTATIONS
CLOSED SESSION REPORT

PUBLIC COMMENT PERIOD - Members of the audience wishing to address the Council on City business matters (other than Public Hearing items under Section B) may do so at this time.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and address for the record. Comments are to be limited to three minutes.
- All remarks shall be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (805) 772-6205. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A. CONSENT CALENDAR

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF JANUARY 24, 2012; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 AUTHORIZATION TO FILL ONE RECREATION AND PARKS DEPARTMENT MAINTENANCE WORKER II POSITION; (RECREATION & PARKS)

RECOMMENDATION: Authorize staff to fill position.

A-3 APPROVAL OF AMENDMENT #2 TO THE LEASE AGREEMENT FOR LEASE SITE 110-112/110W-112W, AND 20' OF THE EASTERLY PORTION OF 111.5W, BETWEEN THE CITY OF MORRO BAY AND GAFCO INC., LOCATED AT 1185 EMBARCADERO; (CITY ATTORNEY)

RECOMMENDATION: Adopt Resolution 10-12 approving Amendment #2 to the lease agreement for Lease Site 110-112/110W-112W and 20' of the easterly portion of 111.5W, between the City of Morro Bay and GAFCO, located at 1185 Embarcadero.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 M. ARETE AND J. ROSS APPEALS OF MEDINA PRJECT; AMENDMENT TO S00-089 AND CPO-276; (PUBLIC SERVICES)

RECOMMENDATION: Deny the appeal and uphold the Planning Commission's conditional approval of the amendment to Subdivision #S00-089 and Coastal Development Permit #CPO-276.

B-2 REVIEW OF DRAFT ZONING TEXT AMENDMENT A00-013 AMENDING SECTION 17.48.32 (SECONDARY UNITS); (PUBLIC SERVICES)

RECOMMENDATION: Provide direction to staff to incorporate any changes and bring the Ordinance back to City Council for Introduction and First Reading.

C. UNFINISHED BUSINESS – NONE.

D. NEW BUSINESS

D-1 DISCUSSION ON THE CLOSURE OF ATASCADERO STATE BEACH (MORRO STRAND); (ADMINISTRATION)

RECOMMENDATION: Review staff report and information provided by Mr. Franco regarding the potential closure of Atascadero State Beach (Morro Strand) and provide staff with any further direction.

D-2 DISCUSSION AND CONSIDERATION OF REGULATING PUBLIC SMOKING; (CITY ATTORNEY)

RECOMMENDATION: Take direction from Council regarding whether to prepare an Ordinance regulating secondhand smoke in the City of Morro Bay.

D-3 DISCUSSION AND CONSIDERATION OF AMENDMENTS TO MORRO BAY MUNICIPAL CODE CHAPTER 5.24 REGARDING TAXICABS; (CITY ATTORNEY)

RECOMMENDATION: Review the staff report and MBMC 5.24 and direct staff to return with this item for Introduction and First Reading with any changes suggested by Council.

E. DECLARATION OF FUTURE AGENDA ITEMS

F. ADJOURNMENT

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE THAT REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

AGENDA NO: A-1

MEETING DATE: 02/14/2012

MINUTES - MORRO BAY CITY COUNCIL
CLOSED SESSION – JANUARY 24, 2012
CITY HALL CONFERENCE ROOM - 5:00 P.M.

Mayor Yates called the meeting to order at 5:00 p.m.

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney

CLOSED SESSION

Mayor Yates adjourned the meeting to Closed Session.

Mayor Yates read the Closed Session Statement.

CS-1 **GOVERNMENT CODE SECTION 54956.8; REAL PROPERTY TRANSACTIONS**. Instructing City's real property negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property as to two (2) parcels.

- **Property: Lease Site 110/110W-112/112W; 1185 Embarcadero**
  Negotiating Parties: GAFCO and City of Morro Bay
  Negotiations: Lease Terms and Conditions

- **Property: 3300 Panorama Drive**
  Negotiating Parties: US General Services Administration and City of Morro Bay
  Negotiations: Purchase and Sale

The meeting adjourned at 5:50pm.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JANUARY 24, 2012
VETERANS MEMORIAL HALL - 6:00 P.M.

Mayor Yates called the meeting to order at 6:00 p.m.

PRESENT:	William Yates	Mayor
	Carla Borchard	Councilmember
	Nancy Johnson	Councilmember
	George Leage	Councilmember
	Noah Smukler	Councilmember
STAFF:	Andrea Lueker	City Manager
	Robert Schultz	City Attorney
	Jamie Boucher	City Clerk
	Eric Endersby	Harbor Operations Manager
	Rob Livick	Public Services Director
	Tim Olivas	Police Chief
	Mike Pond	Fire Chief
	Susan Slayton	Administrative Services Director
	Joe Woods	Recreation & Parks Director
	Kathleen Wold	Planning Manager
	Janeen Burlingame	Management Analyst

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
MAYOR AND COUNCIL MEMBERS REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CLOSED SESSION REPORT – City Attorney Robert Shultz reported that City Council met in Closed Session and no reportable action under the Brown Act was taken.

PUBLIC COMMENT

Elena Ramos-Peffly, owner of Toes-in-the-Sand Weddings, provided the City local business report. Home of the first ever Morro Bay/Central Coast destination beach wedding business, they provide the location, the officiant, the professional photographer, and the floral decorations paired up with themed packages you can select and design. In addition, they will perform traditional denominational ceremonies, non-denominational ceremonies as well as commitment ceremonies. They encourage people to visit their website – www.toesinthesandweddings.com to learn more.

Robert Davis let us know that SLOCOG put out its annual call for unmet bicycle and pedestrian needs. The Morro Bay Citizens Bike Committee responded by compiling their own list of local unmet needs and he wants to highlight some here tonight. They include the need for the completion of the new Bicycle and Pedestrian Plan so that grant funds can be

made available through the application process, if they can be of any assistance to help move the plan along, they'd be happy to do that; Safe Routes to School Class 2 bike routes at and around San Jacinto and Del Mar School; a Class 1 multi-use trail at the Dynegy Power Plant connecting the Embarcadero through the Power Plant up to Main Street; and, replacing the 6 metal bollards at Main Street and Cloisters with something more flexible.

Craig Schmidt announced that the Chamber has put together a tool kit to aid businesses which convey the City of Morro Bay as being business friendly, as well as promotes the green building incentive program. He also spoke on Item D-4 (Facade Improvement Program Concept) in hopes that Council will consider reactivating the Facade Improvement Program. The Chamber of Commerce Installation Banquet was held the previous week and he wanted to recognize the following: City's Living Treasure was Mike Dominguez; City's Business of the Year was Pacific Dance Center; and, Citizen of the Year was Janice Peters. All winners exemplify what it means to live in and support a community like Morro Bay.

Jamie Irons is excited to see Item A-4 (Approving the Application for Grant Funds for Sustainable Communities Planning Grant and Incentives Program) being brought forward as it shows the importance of moving forward with our General Plan. He had questions regarding Item D-5 (Proposed Moratorium on the Payment of Development Impact Fees on Residential Development) and the fee reductions: has the 50% reduction in fees in 2006 been successful? And the 5 year period for waiving this – where did we come up with the 5 years? Is that based on the $500,000 figure in the staff report? If so, maybe consider a price versus saying 5 years.

Roger Ewing spoke on Item D-2 (Roundabout Concept at Highway 41 and Main Street). He stands in opposition to its placement and in fact had thought this had been put to bed years ago. He feels the area is too small to safely put a roundabout in. He also feels that this time and money could be put to use at San Jacinto and Main Street. He also spoke on Item D-5 regarding the Proposed Moratorium on the Payment of Development Impact Fees for Residential Development. He stressed that there needs to be fairness and a sense of community and that to consider waiving these fees goes against that philosophy. He was concerned that this reduction wouldn't be fair to those applicants who have previously been in and paid the impact fees as compared to those who may come in after the fees are reduced and as such, don't have to pay.

John Barta spoke on Item A-3 (2011 Annual Water Report). The report highlighted the fact that the City has a variety of sources for water and complimented both the City and residents alike on their very low rate of consumption which compares favorably with anywhere in the State. He also noticed that the rate of water loss is down to the 5% range which is also far below the State average. He also felt that the City would be doing the right thing by reducing the impact fees for residential development. And finally, please take a look at the exact words with the sign issue and make sure you agree with it.

Betty Winholtz spoke on agenda item D-5 (Proposed Moratorium on the Payment of Development Impact Fees for Residential Development) feeling that these proposed reductions would not help the City with their revenues. Regarding Item D-2 (Roundabout Concept at Highway 41 and Main Street), she remembers that the high school and their administration was against the idea and hopes that if the decision is made to move forward in concept, that the high school is consulted from the beginning. She also feels that, as a whole, our elected officials are not being consistent in their decision making processes.

Nikita Van Nordstram stated that she is here to back Councilmember Johnson up with her Facade Improvement Program and thinks it could also use an additional City incentive program because she feels the people have money to improve their business, they just choose not to. She encouraged Council and staff to contact the Dana Point Director of Tourism as they are going through some of the same problems we are going through.

Mayor Yates closed the hearing for public comment.

A. CONSENT CALENDAR

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF JANUARY 10, 2012; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA CALLING A PRIMARY MUNICIPAL ELECTION TO BE HELD ON TUESDAY, JUNE 5, 2012 FOR THE PURPOSE OF ELECTING CERTAIN OFFICERS OF SAID CITY; AND REQUESTING THE BOARD OF SUPERVISORS OF SAN LUIS OBISPO COUNTY TO CONSOLIDATE SAID ELECTION WITH THE CONSOLIDATED DISTRICTS ELECTION TO BE HELD IN THE COUNTY ON TUESDAY, JUNE 5, 2012; AND OTHER ELECTION MATTERS AS REQUIRED BY LAW; (ADMINISTRATION)

RECOMMENDATION: Adopt Resolution No. 07-12.

A-3 2011 ANNUAL WATER REPORT; (PUBLIC SERVICES)

RECOMMENDATION: Adopt Resolution No. 08-12.

A-4 RESOLUTION OF THE CITY COUNCIL BY THE CITY OF MORRO BAY, CALIFORNIA APPROVING THE APPLICATION FOR GRANT FUNDS FOR

THE SUSTAINABLE COMMUNITIES PLANNING GRANT AND INCENTIVES PROGRAM FOR UPDATES TO THE GENERAL PLAN AND LOCAL COAST PLAN UNDER THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006 (PROPOSITION 84)

RECOMMENDATION: Adopt Resolution No. 09-12.

Councilmember Johnson pulled Item A-1 from the Consent Calendar.

MOTION: Councilmember Borchard moved the City Council approve the Consent Calendar with the exception of Item A-1. The motion was seconded by Mayor Yates and carried unanimously. (5-0)

A-1 APPROVAL OF CITY COUNCIL MINUTES FOR THE REGULAR MEETING OF JANUARY 10, 2012; (ADMINISTRATION)

Councilmember Johnson asked that the motion made be corrected so that it read "…and Public Services Department for **rewrite**."

MOTION: Councilmember Johnson moved the City Council approve Item A-1 of the Consent Calendar with the stated correction. The motion was seconded by Councilmember Borchard and carried unanimously. (5-0)

Mayor Yates called for a break at 7:04 p.m.; the meeting resumed at 7:19 p.m.

B. PUBLIC HEARINGS, REPORTS & APPEARANCES

B-1 RESOLUTION NO. 05-12 AUTHORIZING SUBMISSION OF RURAL TRANSIT FUND GRANT APPLICATIONS; (PUBLIC SERVICES)

Management Analyst, Janeen Burlingame presented her staff report on this item.

Mayor Yates opened the hearing for public comment; seeing no one wishing to speak, Mayor Yates closed hearing for public comment.

MOTION: Councilmember Borchard moved the City Council adopt Resolution 05-12 authorizing submission of Rural Transit Fund grant applications for the following projects: Triennial Performance Audit and purchase of a vehicle for a volunteer Community Bus program for initiation of service in 2012. The motion was seconded by Councilmember Smukler and carried unanimously. (5-0)

C. UNFINISHED BUSINESS – None.

D. NEW BUSINESS

D-1 RESOLUTION NO 06-12 ADOPTING THE MID-YEAR BUDGET AMENDMENTS; (ADMINISTRATIVE SERVICES)

City Manager Andrea Lueker presented the staff report requesting the budget amendments as presented.

Barbara Spagnola, spokesperson for the Measure Q Committee, presented their report of 2010/2011 fiscal year activities.

Mayor Yates has a tremendous amount of respect for Chief Olivas as well as Sheriff Parkinson but has no respect for the Drug Task Force of last year. He believes that if we want to be a part of this task force, it should be brought back to Council as a separate item. He is fine with the request made by the Recreation & Parks Department. He also complemented staff for staying within their budgets.

Councilmember Smukler thanked the Measure Q Committee for all their hard word. He too has concerns with the drug task force expenditure and feels that if we want to have a discussion, it should be as a full discussion at the full budget review.

Councilmember Leage agrees with Mayor Yates's comments.

Councilmember Johnson noted that the TOT is up 5.1% over this time last year and that plan check and building inspection fees were down $22,000; she too appreciated the work of the Measure Q Committee.

Councilmember Borchard is in full support of spending the $10,000 for the task force as it had always been in the budget until we had to make cuts a few years ago.

Chief Tim Olivas gave a synopsis of his request of the $10,000 as a 6 month commitment to the newly formed County Narcotics and Gang Task Force. He stressed that this is a new task force that is in no way associated with the State's Narcotics Task Force, which as of January 2012, no longer exists. The County run task force will be locally managed and if we choose not to join, then it could hurt us as an agency in the short and long term as we wouldn't be able to ask them for assistance with narcotics or gang enforcement.

Councilmember Borchard asked if there would be an opt-out clause and if not, could one be placed into the contract.

Councilmember Smukler, acknowledging that there could be an opt-out clause, is willing to go along with the current mid-year funding request with the stipulation that it would be looked at in depth when the new fiscal year budget is presented.

MOTION: Councilmember Borchard moved the City Council adopt Resolution 06-12 authorizing the budget amendments as submitted by staff. The motion was seconded by Councilmember Johnson and carried 3-2 with Mayor Yates and Councilmember Leage voting no.

D-2 DISSCUSSION OF INTERSECTION IMPROVEMENTS AT HIGHWAY 41 AND MAIN STREET – ROUNDABOUT CONCEPT; (PUBLIC SERVICES)

Public Services Director Rob Livick presented his staff report to Council. Back in 2003, staff was near the completion of a draft design report in the environmental process for a Roundabout at Highway 41 and Main Street. Due to funding concerns at the local and state level, that application was pulled from consideration and money was shifted to the Roundabout at Quintana and Morro Bay Blvd. To date, the intersection still has similar if not greater problems. We have applied and received recommendation from the SLOCOG Board for $113,000 in Regional Service Transportation Funds which would move this project along to take another look at the alternatives and finalize the environmental document as well as make us ready for when additional monies might become available. The two (2) options being looked at are signalization and a Roundabout.

Councilmember Smukler was concerned about the high school and the pedestrian traffic versus the heavy vehicle traffic. He is in favor of pursuing the monies to review the concept as long as signalization was looked at as well, especially given the amount of time that has elapsed since the concept was brought forward years ago. He also stressed his desire to engage the high school earlier than later as part of this step forward.

Councilmember Leage is surprised that to date, there hasn't been a terrible accident at that intersection. Both the vehicle and pedestrian traffic at that location is so dangerous. He feels that something has to be done.

Mayor Yates definitely thinks the Roundabout is something to look into; and he agrees that reaching out to the high school needs to happen and in fact would be more than happy to reach out to them.

Councilmember Johnson agrees that we need to do something with that corner and hopes to start discussions to look into the matter. Not sure if a signal is the answer either as that could lead to a waste of gasoline with cars idling for extended periods of time.

Councilmember Borchard is not in support of a RoundaBout concept there. With additional RV's, as well as the tractor trailers and school busses she doesn't feel it is safe. She would

be more supportive of signalization of some kind. She loves the current Roundabout but that one doesn't feed into as many streets as one would at Highway 41 and Main Street.

MOTION: Councilmember Johnson moved the City Council look at a range of alternatives for intersection improvements at Highway 41 and Main Street and bring forward the one that's best. The motion was seconded by Councilmember Smukler and carried unanimously. (5-0)

D-3 INFORMATION ON SEXUAL REGISTRANTS WITHIN THE COMMUNITY AND HOW JESSICA'S LAW RESTRICTS WHERE NEWLY RELEASED OFFENDERS CAN RESIDE; (POLICE)

Police Chief Olivas gave a short presentation on the status of the living restrictions of registered sex offenders who may reside or attempt to reside in our community. Chief Olivas stressed that as of November 7, 2006, with the passing of Jessica's Law (Proposition 83), registered sex offenders are banned from residing within 2000 feet of a school or park where children congregate. This restriction was further modified when, in a court decision, the law now applies to all prisoners or registrants paroled after Proposition 83 was enacted which was February 10, 2010, irregardless of when the crime(s) were committed. Chief Olivas further went on to say that based on the City's linear orientation, there is only a very small section of the City totaling approximately 9 blocks located on the south/east edge of the City, that is not impacted by Jessica's Law.

This item was informational only, no action was taken.

D-4 DISCUSSION OF REACTIVATING THE DOWNTOWN FAÇADE IMPROVEMENT PROGRAM CONCEPT; (COUNCILMEMBER/PUBLIC SERVICES)

Public Services Director Rob Livick gave a short presentation on the status and history of the Downtown Facade Improvement Program.

Councilmember Johnson has spoken to the Chamber of Commerce and several local merchants and found that many of them are interested in resurrecting the program. She feels we should be using all the tools available to us in order to allow them to grow and prosper. To date, we have established a moratorium on impact fees which has not as of yet been taken advantage of. She feels we need to act immediately on the following ideas: we need to get a letter written and signed by the Mayor to both property and business owners to let them know we've initiated 3 programs to encourage them to invest in their buildings, their businesses and our City – we have already eliminated parking requirements in North Morro Bay for merchants who want to expand or change their use; there is a moratorium on impact fees which she feels should be extended by another year as part of their action tonight; and, the Facade program, which should include a City guaranteed low interest rate loan, waive permit

fees and should last 3 years. New and improved business in our City will improve our sales tax revenues and allow us to be able to shop locally.

Councilmember Borchard is appreciative of staff continuing to provide Council with redevelopment strategies to bring forward to help the community.

Councilmember Leage thinks it's a great idea. Was curious if there was a geographical boundary to this proposal?

Councilmember Smukler thanked Councilmember Johnson for bringing this forward and questioned whether or not bike racks can fit into the definition of facade improvement? Also whether or not historical marking and signage might fit into the definition? And finally, would the extension of the moratorium of the commercial impact fees be folded into this request or would it be kept separate?

MOTION: Councilmember Johnson moved the City Council approve a Facade Improvement Program of up to a total of $100,000 to assist business owners in upgrading the appearance of their store fronts by providing low interest loans of up to $25,000 each through the bank, hopefully Rabobank, against City guaranteed funds. In addition, within 30 days, staff is to write and send a letter to both business and property owners advising them of the program. The motion was seconded by Councilmember Leage and carried unanimously. (5-0)

D-5 DISCUSSION OF A PROPOSED MORATORIUM ON THE PAYMENT OF DEVELOPMENT IMPACT FEES FOR RESIDENTIAL DEVELOPMENT; (PUBLIC SERVICES)

Planning Manager Kathleen Wold presented her staff report on the proposed moratorium on the payment of development impact fees for residential development and in their deliberations, request that Council weigh the benefits to the development community against the loss of revenue to determine if the benefits outweigh the costs.

Councilmember Leage is in support of the moratorium as he is interested in stimulating business, spurring on construction and getting people back to work. If we don't get building going around here then many of our local businesses will go under.

William Yates is also in support of the moratorium as he feels this will put many, many more people back to work which in turn spurs the economy.

Councilmember Johnson totally understands the prospect of building and getting people back to work however the difference she sees is that with commercial impact fees, the commercial businesses bring in more sales tax and more business.

Councilmember Smukler feels this is too arbitrary as we don't have enough good information/data to make an informed decision. To say we will pick a number – 5 years – and do away with the funds that pay for some of our most important services and infrastructure is of great concern to him. He feels it is a very risky and even an extreme move which he cannot support.

Mayor Yates agrees that it is a gamble, there is the chance of a cost of $100,000/year, but if it is successful, we will be able to make it up.

Councilmember Borchard agrees it's a very challenging time for the construction industry in our City. Part is the cost of the impact fees, but that isn't all of it; the entire cost to build, all factor into it. Her concern isn't about this as much as it is that someone can walk into the department, get fees but find out later that there are going to be additional fees that they weren't aware of up front. She doesn't feel she can support the item as it is presented at this juncture.

As there was no majority support for the item, no action was taken.

E. DECLARATION OF FUTURE AGENDA ITEMS

Councilmember Borchard requests staff look into paperless agendas and computerized programs; Councilmember Johnson and Councilmember Smukler concurred.

Councilmember Johnson requested extending the moratorium of commercial property impact fees for one more year; Councilmember Borchard, Councilmember Leage and Mayor Yates concurred.

ADJOURNMENT

The meeting adjourned at 8:43p.m.

Recorded by:

Jamie Boucher
City Clerk

AGENDA NO: A-2
MEETING DATE: 2/14/2012

Staff Report

TO: **Honorable Mayor and City Council** **DATE: February 8, 2012**

FROM: **Joe Woods, Recreation and Parks Director**

SUBJECT: **Authorization to Fill One Recreation and Parks Department Maintenance Worker II Position**

RECOMMENDATION:

It is recommended that the City Council authorize staff to fill one of the two Recreation and Parks Department Maintenance Worker II vacancies.

FISCAL IMPACT:

The requested position to be filled is a General Fund position. The continued funding of this position will allow the Recreation and Parks Department to maintain the current expected level of service to the Morro Bay community, as well as City Departments. There will be no additional financial impact on the General Fund resulting from this action.

BACKGROUND:

The City Council instituted a hiring freeze, when the Fiscal Year 2004 / 2005 budget was adopted that has been continued with ensuing budgets. This policy requires City Council approval for the filling of any new or vacant positions while the freeze is in effect. Recently, two vacancies have arisen, both of which are Maintenance Worker II employees within the Maintenance Division; however, staff is requesting to fill only one vacancy at this time. The other position is under management review and will be presented at a later date. The job description is included for your review. Some core and other duties assigned to this position include, but are not limited to the following:

- Performs general cleaning and skilled maintenance duties within City facilities and grounds.
- Operates building, mechanical, and electrical systems at assigned buildings and related systems.
- Performs maintenance and repair on custodial and office equipment.
- Performs set ups for public meetings and outside rental usage.
- Assist in other maintenance operations.

Prepared By: _*JMW*_____	**Dept Review:**_____
City Manager Review: _____	
City Attorney Review: _____	

CITY OF MORRO BAY

MAINTENANCE WORKER II

DEFINITION

This is the journey level class in the maintenance class series. Under general supervision to perform a variety of semi-skilled and skilled tasks in the construction, repair, installation, and maintenance of streets, parks, and facility maintenance and to do related work as required.

ESSENTIAL DUTIES & RESPONSIBILITIES

PARKS AND STREETS

1. Removes and replaces road material, such as asphalt.
2. Uses premix asphalt to repair streets and gutters.
3. Measures, lays out, and paints crosswalks, curbs, stop and center lines.
4. Operates paint striping machine to paint solid or broken center lines
5. As qualified and assigned, operates loader, mower, tractor, motor grader, skip and drag or backhoe to excavate or backfill trenches, prepare streets for paving or to remove dirt and debris.
6. Patrols for drainage problems and cleans clogged storm drain basins.
7. Cleans and performs routine maintenance on equipment, mowers and vehicles used in the course of work.
8. Plants and transplants, removes, fertilizes, cultivates, waters, and sprays flowers; and prunes, trims and sprays shrubs and trees.
9. Mows, trims, waters and fertilizes lawns and other grass areas.
10. Repairs and maintains irrigation systems.
11. Applies herbicides and pesticides
12. May be required to be on-call in event of emergency on weekends or in the evening.
13. May provide direction to supervised volunteers and alternative work crews such as CMC, CCC and community service workers.
14. Performs related duties as required.

FACILITY MAINTENANCE

1. General services and maintenance of city owned facilities to include custodial work, routine repairs, painting, carpets, floors, electrical, and plumbing.
2. Picks up trash, sweeps walks, entrances and adjacent facility grounds.
3. Moves furniture, does meeting setups (chairs, tables, sound systems).

4. May supervise community service workers.
5. Performs maintenance on custodial equipment including buffers, vacuum cleaners, etc.
6. Stocks cleaning supplies.
7. May be required to be on-call in event of emergency on weekends or in the evening.
8. May provide direction to supervised volunteers and alternative work crews such as CMC, CCC and community service workers.
8. Performs related duties as required.

QUALIFICATIONS

Knowledge of:

General maintenance and repair materials, procedures, and equipment with particular reference to street, parks and facility operations to include irrigation systems, grounds maintenance, and use of pesticides and herbicides; methods and materials used in general maintenance, repair and construction of buildings and appurtenant structures to include carpentry, plumbing, mechanical, cement, electrical and painting trades; and methods and materials used in maintenance and repair of streets, sidewalk, curbs and gutters; occupational hazards and safety precautions, use, operation, and maintenance of heavy and light power driven equipment; and all associated safe work practices.

Ability to:

Perform semi skilled or skilled work on streets, parks and facility maintenance and repair assignments; operate a variety of heavy and light power driven equipment, including motor graders, loaders, sweepers, dozers, backhoes, skip and drag, dump trucks, tractors and mowers as required; analyze maintenance problems and complete minor and major repairs; use a variety of shop and portable power and hand tools and equipment; perform heavy manual labor; provide training to less experienced maintenance employees; read and write at the level required for successful job performance; understand and carry out oral and written direction; and maintain cooperative working relationships with other City employees and the public.

Education and Experience:

High school diploma or equivalent.

Two years of experience performing duties comparable to that of a Maintenance Worker in a municipal streets, parks or facility maintenance division.

Possession of valid and appropriate California Driver's License; must attain Class B Driver's license within 2 years of hire.

TOOLS & EQUIPMENT USED

Motorized vehicle, lawn and landscaping equipment including tractors, mowers, airifier, chain saw, edgers, weed trimmers, electric motors, pumps, sprinklers, irrigation systems; miscellaneous hand and power tools for turf maintenance, carpentry, painting, plumbing, electrical, and cement finishing work; dump truck, utility truck, street sweeper, street roller, manlift, tamper, plate compactor, saws, pumps, aeroil propane kettle, compressors, sanders, generators, common hand and power tools, shovels, wrenches, detection devices, ditch witch; floor buffers, steam cleaners, washers, power and hand tools and equipment for carpentry and general construction work such as saws, drills, sanders and hammers, mobile radio, and telephone.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee must possess strength, stamina and mobility to perform heavy physical work, use varied hand and power tools, drive a motor vehicle and heavy construction equipment and lift and move materials. The employee is regularly required to walk, sit, climb, balance, stoop, kneel or crouch; to frequently use hands to finger, handle, feel and operate objects, tools, or controls as well as reach with hands and arms. The employee is required to read printed materials as well as have hearing and speech to communicate both in person and over the telephone or radio. The employee must frequently lift and/or move up to 50 pounds and occasionally lift and/or move up to 100 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee regularly works in outside weather

conditions. The employee frequently works near moving mechanical parts and is frequently exposed to wet and/or humid conditions and vibration. The employee occasionally works in high, precarious places and is occasionally exposed to fumes or airborne particles, toxic or caustic chemicals, and risk of electrical shock.

The noise level in the work environment is usually loud.

SELECTION GUIDELINES

Formal application, rating of education and experience, oral interview and reference check; job related tests may be required.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Approved by the Morro Bay City Council on May 28, 1996.
Approved by the Morro Bay City Council on June 14, 2010.

AGENDA NO:	**A-3**
MEETING DATE:	**02/14/2012**

Staff Report

TO: **Honorable Mayor & City Council** **DATE: February 7, 2012**

FROM: **Rob Schultz, City Attorney**

SUBJECT: **Approval of Amendment #2 to the Lease Agreement for Lease Site 110-112/110W-112W, and 20' of the easterly portion of 111.5W, between the City of Morro Bay and GAFCO INC., located at 1185 Embarcadero**

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 10 -12 approving Amendment #2 to the Lease Agreement for Lease Site 110-112/110W-112W and 20' of the easterly portion of 111.5W between the City of Morro Bay and GAFCO, Inc.

FISCAL IMPACT:

Staff would estimate a very limited fiscal impact due to a potential small loss of percentage gross revenue during construction.

SUMMARY:

Staff is proposing a minor amendment to the lease agreement for Lease Site 110-112/110W-112W, GAFCO, located at 1185 Embarcadero (GAFCO). The current Lease provides the Tenant with a twenty (20) year option if he completes construction of the improvement as outlined in CUP #UP0-058. Amendment #2 would change the twenty (20) year option into two (2) ten (10) year options in order for the Tenant to phase the construction and obtain financing.

CONCLUSION:

To facilitate a major waterfront redevelopment plan in the Measure D Area, staff recommends that the City Council adopt Resolution No. 10-12 approving Amendment #2 to the Lease Agreement for Lease Site 110-112/110W-112W and 20' of the easterly portion of 111.5W between the City of Morro Bay and GAFCO, Inc.

Prepared By: _____	**Dept Review:**_____
City Manager Review: _____	
City Attorney Review: _____	

RESOLUTION NO. 10-12

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA**

APPROVAL OF AMENDMENT #2 TO THE LEASE AGREEMENT FOR LEASE SITE 110-112/110W-112W AND 20' OF THE EASTERLY PORTION OF LEASE SITE 111.5W BETWEEN THE CITY OF MORRO BAY AND GAFCO INC., LOCATED AT 1185 EMBARCADERO

**T H E C I T Y C O U N C I L
City of Morro Bay, California**

WHEREAS, the City of Morro Bay is the lessor of certain properties on the Morro Bay waterfront described as City Tidelands leases and properties; and,

WHEREAS, GAFCO Inc. is the lessee of said property; and,

WHEREAS, GAFCO Inc. along with adjacent City Tidelands leaseholders proposed a major waterfront redevelopment project; and,

WHEREAS, said redevelopment project was granted a Coastal Development Permit CUP #UPO 058 by the City of Morro Bay and the Coastal Commission; and,

WHEREAS, the existing Lease provides that if Tenant completes the improvements pursuant to CUP #UPO 058, Tenant shall obtain an option to extend the Lease for an additional 20 years; and,

WHEREAS, the Tenant is requesting an Amendment to the Lease to allow Tenant to complete the improvements pursuant to CUP #UPO 058 in two phases and obtain an extension of the Lease for 10 years upon the completion of Phase 1, and an additional 10 years upon completion of all other improvements pursuant to CUP #UPO 058; and

WHEREAS, to encourage completion of this major redevelopment project, the City and GAFCO Inc. have agreed to the attached Amendment #2 to the Lease Agreement that will allow for the phasing and development of the project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that Amendment #2 to the Lease Agreement for Lease Site 110-112/110W-112W and the 20 easterly feet of 111.5W is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute said amendment.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of February 2012 on the following vote:

AYES:
NOES:
ABSENT:

_____
William Yates, Mayor

ATTEST:

_____
Jamie Boucher, City Clerk

AMENDMENT #2 TO LEASE AGREEMENT FOR LEASE SITE 110W-112W

This amendment is made and entered into as of this ___ day of _____ 2012 by and between the City of Morro Bay, a municipal corporation of the State of California (hereinafter "City") and George Leage, dba Great American Fish Company, (hereinafter "Tenant") to amend that certain lease agreement for Lease Site 110W-112W (hereinafter Lease) between City and Tenant dated July 1, 2005 and Amendment #1 dated December 13, 2011.

Whereas, Tenant has been considering plans for long-term improvements on the Lease Site; and,

Whereas, the existing Lease terminates on June 30, 2025; and,

Whereas, the existing Lease has language relating to Tenant completing improvements pursuant to CUP# UPO 058 to obtain an option to extend the Lease for an additional 20 years; and,

Whereas, the Tenant is requesting an amendment to allow Tenant to complete the improvements pursuant to CUP# UPO 058 in two phase and obtain an extension of the Lease for 10 years upon the completion of Phase 1, and an additional 10 years upon completion of all other improvements pursuant to CUP# UPO 058; and

Whereas, due to planning and permitting complexities, it is in the City's and Tenant's best interests to allow for the phasing of improvements; and,

Whereas, City and Tenant have agreed to an amendment of the lease agreement in order to allow for the phasing of improvements on the Lease Sites

NOW THEREFORE, City and Tenant mutually agree to amend said Lease as follows:

Section 13.01 – <u>Option to Extend Lease for Twenty Years</u>: Delete Existing Language and replace with the following:

Section 13.01 <u>Option to Extend Lease for Twenty Years</u>:

TENANT has submitted plans to renovate the improvements on the Premises as outlined in CUP application #UPO-058. CITY and TENANT agree that TENANT will have an option to extend this Lease for two (2) - ten (10) year periods beyond the termination date of June 20, 2025, if Tenant completes certain improvements as outlined below pursuant to CUP application #UPO-058.

If TENANT completes the following renovations and repairs to the Lease site (Phase 1), valued at a minimum of $143,000, in accordance with the following timeframe, then Tenant shall have the option to extend the lease for and additional ten (10) years (extension until June 30, 2035):

Demolition and Reconstruction of the two bathrooms	December 31, 2012
Construction and installation of new floating dock and gangway	March 31, 2013
Installation of new heating and air conditioning system	May 31, 2013

TENANT must notify CITY in writing of their intent to proceed with said Phase 1 option prior to June 30, 2013. Said Phase 1 ten (10) year extension option must be approved by the City Council through an amendment to this Lease.

If Tenant completes the above reference improvements (Phase 1) and then completes the remaining renovations repairs and improvements as outlined in CUP application #UPO-058, including but limited to, the construction of the fish market and public view deck (Phase 2), prior to July 1, 2014, then Tenant shall have the option to extend the Lease for an additional ten (10) years until June 30, 2045.

TENANT must notify CITY in writing of their intent to proceed with said Phase 2 option prior to September 30, 2014. Said Phase 2 ten (10) year extension option must be approved by the City Council through an amendment to this Lease.

All other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto hereby execute this Amendment.

CITY OF MORRO BAY

_____
William Yates, Mayor

_____
Andrea Lueker, City Manager

ATTEST:

_____
Jamie Boucher, City Clerk

TENANT – George Leage

_____
George Leage

AGENDA NO: B-1

MEETING DATE: February 14, 2012

Staff Report

TO: **Honorable Mayor and City Council** **DATE: February 8, 2012**

FROM: **Rob Livick, Public Services Director**
By: Sierra Davis, Assistant Planner

SUBJECT: **M. Arete and J. Ross Appeals of Medina Project; Amendment to S00-089 and CPO-276**

RECOMMENDATION:
Staff recommends the City Council deny the appeal and uphold the Planning Commission's conditional approval of the amendment to Subdivision #S00-089 and Coastal Development Permit #CP0-276 subject to the Findings made in Attachment "A" and the Conditions of Approval included as Attachment "B".

FISCAL IMPACT:
There will be fiscal impact to the City's General Fund based on the processing of these appeals as there is not an appeal fee for projects located in the California Coastal Commission Appeal Jurisdiction. The costs of processing the appeals were based on staff time reviewing the appeals and preparing the staff report. The project was also publically noticed in the Tribune Newspaper for approximately $250.00 and postcard mailings were processed for approximately $46.00.

PROJECT DESCRIPTION: The applicant has applied for an amendment to the approved Subdivision Permit #S00-089 and Coastal Development Permit #CP0-276 for a 2 parcel subdivision map and to construct a two story single-family residence with attached two car garage. The applicant requests an amendment to the previous Planning Commission approval modifying the required 50 foot buffer from the ESH (Environmentally Sensitive Area). The applicant requests further modification of the 50 foot ESH buffer to allow for a second driveway approximately 133 feet long, with an area of approximately 2,700 square feet (1,400 square feet of paved area and 1,300 square feet of pavers). The proposed driveway will encroach into the 50 foot buffer setback as well as the 25 foot buffer setback.

BACKGROUND:
The Planning Commission approved the project on July 19, 2010, however a request to reduce the buffer to less than 50 feet was denied. The Planning Commission decided that approving the project and denying the buffer reduction request would not be considered a taking, as the property is still a developable parcel. The Planning Commission approved the project with the following conditions:

Prepared by: _____ **Dept. Review:_____**

City Manager Review:_____

City Attorney's Review:_____

I. Restoration of Creek Area. The creek restoration plan shall include the buffer area between the 50 foot and 25 foot. In addition, mediation will be allowed within the 25 to 50 foot buffer area to include the bioswale and detention but there shall be no extension of the retaining wall located in the 50 foot to 25 foot buffer area.

J. Creek Restoration Plan: Prior to the issuance of any building permit or the recordation of the map, a restoration plan for the ESH area shall be submitted to the City for review and approval. The city easement including the block wall shall be included and evaluated and corrected in this plan. A qualified biologist shall produce the plan and the plan shall contain milestones to ensure that the initial plantings thrive. In addition once the plan is approved, the removal of all non-native species shall be removed from the creek and buffer area prior to the issuance of any building permit or the recordation of the map. Prior to any final granted on the project all restoration work shall be completed except for the ongoing maintenance required.

Subsequent to Planning Commission conditionally approving the Coastal Development Permit the applicant engaged an engineer to design the driveway to access parcel two. The applicant and his engineer determined that it would be a hazard to located to driveway outside the 25 foot buffer because of the close proximity to the existing house on parcel 1. The applicant submitted a driveway design with the final map that demonstrated the hazards associated with the design. The applicant was encouraged to apply for an amendment for a less hazardous driveway design because of the perceived hazards.

The project as was heard at a duly noticed public hearing on January 4, 2012 before the Planning Commission. During this meeting staff presented a report which provided project details including the environmental assessment, the amendment to the existing conditionally approved subdivision and coastal development permit, and an analysis of the Local Coastal Plan and Municipal Code regulations. The Planning Commission also took public testimony which included eight individuals speaking in opposition of the project. A brief summary of this testimony is as follows:

- Johnnie Medina Jr., Applicant, stated they have worked with staff to design the home within the requirements and get the driveway as tight as possible. The Fire Department's required driveway width is why the home goes into the buffer and he is requesting approval to access the back home.

The following individuals spoke against the project:

- Dennis Cook, neighbor of Applicant, spoke against the proposal and stated the Applicant must have known when the property was purchased there would not be room to put in the driveway.

- Jan Zerbe, spoke against the amendment and stated buffer setbacks were put in place to protect the ESH and the Commission should not allow a private driveway to encroach into this area.

- Michelle Arete, resident of Morro Bay, spoke against the amendment and was also representing 200 petition and letter signers. The LCP and Municipal Code do not provide allowances for development within the ESHA. Arete stated the Applicant has not fulfilled the original conditions from 2002. Arete urged the Commission to uphold the decision made at the July 2010 Planning Commission meeting.

- Jim Ross, resident of Morro Bay, spoke against the City staff making exceptions. He stated he sent a letter to the Public Services Dept. where he opposed allowing 17 feet into the 25 foot buffer zone and stated the Applicant should be required to use the common driveway of the existing residence. Ross addressed the issue of the conservation easement which should be enforced and maintained.

- Roger Ewing, resident of Morro Bay, spoke against the amendment and questioned how a variance could be granted when the current requirements have still not been met. Ewing expressed concern about destroying the ESH and urged the Commission to deny the request.

- Laura Mouns, resident of Morro Bay, read a letter from Abe Paregeen, past president of Bay Creek Condominiums stating the owners in the condo complex are upset over the additional requests from the Applicant. The letter further stated the Applicant was aware of the setbacks when the property was purchased. The Bay Creek Condominiums was not allowed exceptions to setbacks and urged the Commission to not allow the Applicant to bend the rules and endanger the creek area.

- Betty Winholtz, resident of Morro Bay, spoke against the amendment. Winholtz noted when the law uses the word shall, it is required to be obeyed and urged the Commission to uphold the law.

- William Dallick, neighbor of Applicant, spoke against the amendment and opposes any encroachment into the creek bed boundaries.

After taking public testimony the Planning Commission took action to conditionally approve the project as recommended by staff with the following motion:

Commissioner Solu moved to adopt the findings included as Exhibit A and conditionally approve amendment to Subdivision #S00-089 and Coastal Development Permit #CP0-276, subject to the Conditions included as Exhibit B and the site development plans dated November 21, 2011.

The motion was seconded by Commissioner Grantham and passed 3-2 with Commissioners Nagy and Irons voting no.

Subsequent to this action and within the designated time frame two appeals were filed requesting the City Council overturn the conditional approval of the project.

Discussion

The City of Morro Bay received two appeals during the appeal time frame. The following is a summary of the appeal issues:

Date Submitted	Appellant	Issues
January 13, 2012	Michele Arete	1) LCP and MBMC do not provide for development in ESH buffer, particularly LCP Policy 11.14; 2) Amendment and Exhibit A contradict CP/LCP and render CEQA findings invalid; 3) The parcel is not rendered unusable as it was previously conditionally approved; 4) Applicant has not fulfilled/maintained the original conditions from the 2001 development; and 5) A similar ESH development project, Black Hill Villas, approved by the California Coastal Commission lost in Court.
January 17, 2012	James A. Ross	1) Driveway will be located within the 25 foot buffer for No Name Creek and the LCP and Municipal Code do not allow development within the 25 foot buffer; 2) Previous Planning Commission denied the request to encroach in the buffer; and 3) Previous conditions of approval were not addressed in regards to drainage.

Many of the issues that have been brought up by the appellants are issues that have been previously addressed by staff and the Planning Commission.

The main issue remains the reduction of the buffer from the previously approved 50 foot buffer. Pursuant to 17.40.040.D.6.b. the applicant consulted with the California State Department of Fish and Game and the California Coastal Commission to reduce the buffer. The Department of Fish and Game stated in the letter to John Medina dated October 21, 2009 (Attachment 3) "The department does not object to construction of the proposed wall extension and home within 50 feet of the ESH. In an email from Michael Watson from the California Coastal Commission (Attachment 4), dated August 20, 2008, "All structural development must be setback a minimum of 50 feet from the stream/ESHA corridor per the LCP including 50 feet from the drip line of the willows". To the extent that the proposed driveway access might encroach into the ESHA buffer, a commensurate amount of restoration must be included". The City has conditioned the proposed amendment to comply with the requirements of the Department of Fish and Game and California Coastal Commission.

There are conditions that were not addressed prior to finaling the existing house on parcel 1. The conditions that were not addressed were carried over and incorporated into the Coastal Development Permit and Subdivision approvals in July of 2010. The conditions did not appear in the amendment staff report because the staff report only addressed the requested amendment, however the amendment is in addition to the previous approve conditions.

The project qualifies for a Mitigated Negative Declaration (SCH 2009061049) and was adopted by the Planning Commission at the July 19, 2010 Planning Commission meeting. The Mitigated Negative Declaration was circulated on June 9, 2009 with a review period that ended on July 13, 2009. The applicant has agreed to implement the mitigation measures proposed in the Negative Declaration. Mitigation was required for Geology, Hydrology, Land Use, Noise, Transportation/Circulation, and Utility/Service.

Staff has reviewed the environmental document and the amendment of the driveway area would not render the Environmental Document invalid. The biological section of the environmental document determined that the mitigation required for a driveway would be as follows: "To the extent that the proposed driveway access might encroach into the ESHA buffer, commensurate amount of restoration must be in included." The environmental document project description does not define the driveway, however the mitigation measure is adequate and the amendment does not make the document invalid.

The Local Coastal Plan and Morro Bay Municipal Code sections and policies were addressed in the January 4, 2012 Planning Commission packet. The Planning Commission reviewed the staff report and amendment and deemed the driveway necessary to access parcel two. The Planning Commissioners determined that if the driveway were to be required to be located outside the 25 foot buffer it would require an easement on Parcel 1 for access. Commissioners did not like the idea of requiring an easement and therefore the driveway for parcel 2 would be located entirely on parcel 2 and within the 25 foot buffer as proposed by the applicant.

The City Attorney has prepared an additional analysis of the City's Local Coastal Plan and his memorandum is attached hereto.

PUBLIC COMMENT

On February 7, 2012 the appellant, Michele Arete submitted an amendment to the appeal filed on January 13, 2012. Due to submitting the amendment during preparation of the staff report the amendment was not included in the discussion, however it will be accepted as public comment and has been included in the packet for your review.

CONCLUSION

At a public hearing the Planning Commission determined that the amendment is in substantial conformance with the environmental document and conditionally approved the amendment subject to the findings and conditions included in the January 4, 2012 staff report. Insufficient information has been provided by the appellants to demonstrate that the Planning Commission's findings or their approval were in error, therefore staff finds that the

appeal is without merit and recommends that the City Council uphold the Planning Commission's decision.

ATTACHMENTS

1. January 4, 2012 Planning Commission Minutes
2. January 4, 2012 Planning Commission Packet
3. Department of Fish and Game Letter dated October 21, 2009
4. California Coastal Commission E-mail dated August, 20 2008
5. Department of Fish and Game Letter dated August 13, 2007
6. Appeal filed by Michele Arete, submitted January 13, 2012
7. Appeal filed by John A. Ross, submitted January 17, 2012
8. Amendment to Michele Arete Appeal, submitted February 7, 2012

City of Morro Bay
City Attorney Department
595 Harbor Street
Morro Bay, CA 93442
805-772-6568

MEMORANDUM

TO: Mayor & Council
FROM: Rob Schultz, City Attorney
DATE: February 9, 2012
SUBJECT: 3390 Main Street Appeal

The Staff Report for the above referenced matter recommends that the City Council deny the appeal and uphold the Planning Commission's decision to allow the Applicant to construct a driveway within the ESHA buffer area. I am providing you this memorandum as further analysis and support for the denial of the Appeal.

The only issue in front of the City Council is whether the Applicant should be granted an amendment to the previous Planning Commission decision requiring a 50 foot buffer from the ESHA (Environmentally Sensitive Habitat Area) for all development on the parcel. The Applicant has amended the development plans so that the residential structure is situated outside of the ESHA buffer area. However, the applicant requests a modification of the 50 foot ESH buffer to allow for a driveway within the ESHA buffer area. The proposed driveway would encroach into the 50 foot ESHA buffer setback as well as the 25 foot ESHA buffer setback. The applicant is requesting the modification because the project as approved (without modification to the 50 foot ESH buffer) does not provide sufficient space outside the 50 foot ESHA buffer to allow for a driveway to access the proposed new house. The existing house on parcel one is within the 50 foot buffer and is approximately 11 feet away from the 25 foot ESHA buffer boundary. In addition, other residential properties in the area are also within the 50 foot ESHA buffer area.

The proposed driveway is adjacent to Noname Creek and an area that has been mapped as Environmental Sensitive Habitat Area (ESHA) on the City's Zoning and LCP Maps. The appeal basically contends that the project does not provide an adequate setback or buffer between the driveway and Noname Creek and the ESHA.

Noname Creek enters a 36" diameter culvert through a flat concrete headwall located at the Navy Fuel Storage Facility. The culvert conveys the flow to the west beneath Panorama Drive and beneath a condominium development adjacent to Panorama Drive. The Creek emerges in a poorly maintained channel west of the condominiums and flows to Tide Avenue where it enters a 48" diameter CMP culvert. The water emerges from the 48" culvert west of Tide Avenue between Whidbey Street and Vashon Street. It then flows through a wide unimproved drainage channel to Main Street (next to the Applicants property) where the water enters a 54" diameter RCP

CALTRANS culvert and drains to the west beneath Highway 1 and discharges to the beach. The Map below shows the path of Noname Creek.

As the staff report points out, the core issue of this appeal is LCP Policy 11.14. LCP Policy 11.14 states:

> ***A minimum buffer strip along all streams shall be required as follows:***
>
> ***1. A minimum buffer strip of 100 feet in rural areas;***
> ***2. A minimum buffer strip of 50 feet in urban areas.***
>
> ***If the applicant can demonstrate that the implementation of the minimum buffers on previously subdivided parcels would render the subdivided parcel unusable for its designated use, the buffer may be adjusted downward only to a point where the designated use can be accommodated, but in no case shall the buffer be reduced to less than 50 feet for rural areas and 25 feet for urban areas. Only when all other means to project modifications are found inadequate to provide for both the use***

> ***and the larger minimum buffer. The lesser setback shall be established in consultation with U.S. Fish and Wildlife and the California Department of Fish and Game and shall be accompanied by adequate mitigations. The buffer area shall be measured landward from the landward edge of riparian vegetation or from the top of the bank (e.g. in channelized streams). Maps and supplemental information may be required to determine these boundaries.***

Buffer areas are not in themselves a part of the environmentally sensitive habitat area to be protected. Buffers and development setbacks protect biological productivity by providing the horizontal spatial separation necessary to preserve habitat values and transitional terrestrial habitat area. Spatial separation minimizes the adverse effects of human use and urban development on wildlife habitat value through physical partitioning. The width of such buffers would vary depending on the type of ESHA and on the type of development, topography of the site, and the sensitivity of the resources to the particular kind of disturbance.

It is very important that as Council considers LCP Policy 11.14 relating to Stream Buffer setbacks, that Council also consider in totality all other LCP Policies and Coastal Act provisions related to the protecion of enviromental sensitive habitat. In addition, it is important to apply these Policies to facts and evidence supporting the granting or denial of the encroachment into the ESHA buffer setback.

In that regard, LCP Policy 11.01 states the following:

> ***Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values.***

In addition, LCP Policy 11.02 States the following:

> ***Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be site and designed to prevent impacts which would significantly degrade such areas, and shall maintain the habitat's functional capacity.***

The first test for determining ESHA under the Coastal Act and the City's LCP is whether the Environmentally Sensitive Habitat Area including plants or animals or their habitats is either (a) rare, or (b) especially valuable because of its special nature or role in an ecosystem. (Pub. Res. Code § 30107.5) The second test for determining ESHA under the Coastal Act and City's LCP is whether the habitat could be easily disturbed or degraded by human activities and developments. (Pub. Res. Code § 30107.5)

In order to meet the requirements of our LCP and the Coastal Act, the City consulted with California

Fish & Game Staff, US Fish & Wildlife Staff, the Project Biologist/Ecologist, and Coastal Commission Staff. All three agencies and the Project Biologist all agreed that this project has been sited to protect against any significant disruption of habitat values. In fact, the California Department of Fish and Game has issued three letters to the City regarding the construction of the wall extension and driveway and have stated that the proposed Project would not affect fish and wildlife resources. More specifically, William Loudermilk, Regional Manager for the Department of Fish and Game states:

> ***After surveying the lot it caused me to ask why the creek on this lot has a designated ESA. Based on the Department's review of the site specific plans and other information you submitted, consultation with you regarding the scope of proposed work, consultation with staff of the City of Morro Bay, the site visit conducted by staff, and our knowledge of the Project site, we have determined that there is no existing fish or wildlife resource that will be substantially adversely affected by your Project, if it is constructed in the manner described.***

In addition, Senior Environmental Scientist, Julie Means, from the Central Region of the California Department of Fish and Game (CDFG) has viewed the property and determined:

> ***That there is no existing fish or wildlife resource that will be substantially adversely affected by the project.***

In addition, William Kirchner, PWS for US Fish and Wildlife Service, Chief NWI Branch, states:

> ***My understanding of ESH is that an area has this designation if plant of animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem. The two letters from the CA Department of Game and Fish clearly indicate that there are no fish and wildlife resources that would be impacted by the development. In my opinion, the CA Department of Game and Fish would be the definitive source to determine if ESH habitat is on site or not based on a biological assessment. I have no comment on the application of the local ordinance rules.***

Finally Mike Watson, Coastal Commission Planner, weighed in on this project and stated:

> ***Our staff biologist has reviewed the materials and concurs with the ESHA delineation prepared by the applicant's consultation with the following exception, it needs to include the willows on the near the east side of the property. Accordingly, all structural development must be setback a minimum of 50 feet from the stream/ESHA corridor per the LCP including 50 feet from the dripline of the willows. To the extent that the proposed driveway access might encroach into***

> ***the ESHA buffer, a commensurate amount of restoration must be included. Of course, we recommend that only native, non-invasive plant species be allowed and strongly encourage restoration with native species wherever possible.***

A further LCP Policy for Council to consider is 11.05, which states:

> ***Prior to the issuance of a coastal development permit… Projects which could adversely impact an environmentally sensitive habitat area shall be subject to adequate environmental impact assessment by a qualified biologist(s).***

In response to this LCP Policy, the City consulted with Mike McGovern, the Biologist/Ecologist for the project and he states:

> ***The lot offers no appropriate habitat for botanical species…The plethora of exotic vegetation, particularly the more aggressive invasive species, precludes the opportunity of the establishment of those native species with special listing….there is nothing sensitive or unique about the flora or fauna on the lot in its present state" and that "to extend the existing retaining wall to approximate the new proposed ESA boundary also will have no significant impact on the biota.***
>
> ***Ms. Julie Means, Senior Environmental Scientist, from the Fresno office the California Department of Fish and Game (CDFG) has visited the property and viewed the creek. She reviewed the scope of the proposed project and determined that the retaining wall and the development behind it is not within the jurisdiction of the CDFG and a Stream Alteration Notification does not need to be submitted for this project. They also conclude that this proposed project will not impact fish or wildlife resources because none exist on the property.***
>
> ***Dr. Jeffrey R. Single, Ph. D. and Mr. William Loudermilk of the California Department of Fish and Game have determined that there is no existing fish or wildlife resource that will be substantially adversely affected by the project. I agree with their conclusion.***

Finally Council should consider during its deliberations LCP Policy 11.06, which states the following:

> ***No permanent structures shall be permitted within the setback area except for structures of a minor nature such as fences or at-grade improvements for pedestrian or equestrian trails. Such project shall be subject to review and comment by the Department of Fish and Game prior to commencement of development within a setback area. For other than wetland designated use, the***

> ***setback area may be adjusted downward only to a point where the designated use is accommodated but in no case is the buffer to be less than 50 feet. The lesser setback shall be established in consultation with the Department of Fish and Game. If a setback area is adjusted downward mitigation measures developed in consultation with the Department of Fish and Game shall be implemented.***

With respect to reducing buffers, this LCP Policy clearly contemplates the ability to reduce minimum buffers. For this project, the City consulted with California Fish & Game, US Fish & Wildlife and the Coastal Commission. All three agencies have agreed:

> ***There is no existing fish or wildlife resource that will be substantially adversely affected by the project.***

Quite frankly, the Applicant has proven with facts and evidence that the 25 foot ESHA buffer for the driveway is not necessary. Staff has provided conditions of the permit that are intended to ensure that the habitat protection and restoration objectives of the project are fulfilled and will maximize protection of adjacent habitat areas.

In a case eerily similar to the instant project, the California appellate court in *Ross v California Coastal Commission* held that the California Coastal Commission complied with the California Coastal Act and the California Environmental Quality Act when it certified a coastal development project along beachfront dune property in the city of Malibu. Petitioners argued that the commission failed to comply with the 100-foot buffer requirement set forth in the city's land use plan policy. The Court held that 100-foot buffer policy must be considered in conjunction with all the other local implementation policies and must be interpreted together to give effect to all provisions of the local coastal program. The Court held that there was substantial evidence to support the commission's determination that a five-foot minimum buffer would provide adequate protection of the ESHA. Moreover, the Court held that commission's interpretation of the local coastal program is entitled to great deference.

The Court decision in *Ross v California Coastal Commission* quotes the Director of the Coastal Commission, Peter Douglas, regarding the issue of fairness and equity that must always be considered by the commission and is applied from time to time where other properties or areas are similarly situated. Mr. Douglas explained the Coastal Commission rationale for granting a Coastal Development permit within the ESHA buffer area as follows:

> ***[I]n this case, when you look at the other approvals in the City of Malibu, that there were no buffer setbacks required before, we didn't [appeal] those approvals in the past, and therefore this is a case of first impression. So, we felt that treating this party, in as much similarly to others situated in the same way made sense, but the additional factor was that the restoration that we are getting here was of such***

> ***importance that we felt both the equity issues, in terms of how others had been treated—and this is the first time that we are requiring this kind of a buffer—and the restoration component warranted the requirement of a 5-foot buffer to avoid a direct impact on the environmentally sensitive habitat areas.***

The City must also consider Section 30010, and the United States Supreme Court's decision in *Lucas v. South Carolina Coastal Council.* Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner that will take private property for public use. The subject of what sort of government action results in a "taking" was addressed by the Court in the *Lucas* case. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Other Supreme Court precedent establishes that another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations. With this Project, due to the size and shape of the adjacent parcel and already developed residential home, it is not possible to locate the driveway in a manner that would meet the required 25 foot ESHA buffer setback. Although not having a driveway to ones property may not be considered a taking of all economically viable use of the property, it certainly would interfere with the reasonable investment backed expectations. Especially in light of the fact that there is no evidence to support a twenty five foot ESHA buffer area.

As stated above, the proposed project has been reviewed and approved by the California Fish & Game, US Fish & Wildlife and Coastal Commission. The project, as conditioned, can be found to be consistent with applicable City goals and policies and will not be detrimental to the ESHA mapped area. The Planning Commission determined that the granting of an exception to the 25 foot buffer will not constitute a special privilege to the applicant or property owner because other properties that are in the immediate vicinity are developed similarly with residential homes that are encroaching into ESHA or abutting ESHA. Since the applicant is constructing a single-family residence consistent with the use allowed by the zoning district, granting this exception does not constitute a special privilege to the property owner.

In sum, the Planning Commission's approved project struck a reasonable balance between competing LCP policies designed to both protect resources and to respect constitutional private property rights. This is a single family residential project with no impacts in relation to existing overall impacts from existing development in this area. While the driveway for this project is located within the required ESHA buffer, there are no alternative driveway locations that could provide the required buffer or significantly increase the buffer and it has been determined that the driveway will not have a significant impact on the ESHA. As with the Coastal Commission in the *Ross Case*, the Planning

Commission considered what would be both equitable and most protective of coastal resources. In this case, given that three governmental agencies and the project Biologist have determined that the required ESHA buffer is not necessary, the project, as approved by the Planning Commission does conform to the ESHA protection policies and standards of the Morro Bay LCP and Coastal Act.

If you have any other questions, please do not hesitate to call.

RWS

AGENDA ITEM: A-1

DATE: January 18, 2012

ACTION: APPROVED

ATTACHMENT 1

SYNOPSIS MINUTES - MORRO BAY PLANNING COMMISSION
REGULAR MEETING – JANUARY 4, 2012
VETERANS MEMORIAL HALL – 6:00 P.M.

Chairperson Grantham called the meeting to order at 6:00 p.m.

PRESENT:	Rick Grantham	Chairperson
	John Solu	Vice-Chairperson
	Jamie Irons	Commissioner
	Paul Nagy	Commissioner
	Jessica Napier	Commissioner
STAFF:	Rob Livick	Public Services Director
	Sierra Davis	Assistant Planner

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE / PLEDGE OF ALLEGIANCE
PLANNING COMMISSIONER ANNOUNCEMENTS
PUBLIC COMMENT

Chairperson Grantham opened Public Comment period.

Betty Winholtz, resident of Morro Bay, addressed Item D-1 regarding bylaws and stated the Planning Commission cannot be compared to other City Boards and committees since it is a special body under State law with responsibilities that other Boards do not have. Policy development however, belongs with the City Council not the Planning Commission.

Chairperson Grantham closed Public Comment period.

PRESENTATIONS

Unless an item is pulled for separate action by the Planning Commission, the following actions are approved without discussion.

A. CONSENT CALENDAR

A-1 Approval of minutes from the Planning Commission meeting held on December 7, 2011

STAFF RECOMMENDATION: Approve minutes as submitted.

Commissioner Irons asked to pull Item A-1 for discussion. Irons noted that on page 3 regarding discussion of item B-3, 2 State Park Road, there was a letter and an email from a resident received which was brought forward and Commissioners discussed the concerns stated in the letter. He asked the minutes be corrected to include that we brought forth the email from the public and discussed the concerns with staff and the applicant.

MOTION: Commissioner Irons moved to approve the minutes as corrected. The motion was seconded by Chairperson Grantham and carried unanimously. (5-0)

B. PUBLIC HEARINGS

B-1 ***Continued Item from the December 7, 2011 Meeting***
Case No.: #A00-013
Site Location: Citywide
Applicant/Project Sponsor: City of Morro Bay
Request: Zoning Text Amendment proposing to amend Section 17.48.320 (Secondary Units) modifying the section to be consistent with State regulations.
CEQA Determination: Mitigated Negative Declaration
Staff Recommendation: Forward a favorable recommendation to the City Council to approve the proposed Zoning Text Amendment and adopt the Mitigated Negative Declaration.
Staff Contact: Kathleen Wold, Planning and Building Manager (805) 772-6211

Wold presented the staff report.

Chairperson Grantham opened the Public Comment period.

Amy Perry, resident of Morro Bay, spoke against the zoning text amendment. She stated that on her block the secondary units have caused parking and noise problems and urged the Commission not to ease the current restrictions.

Betty Winholtz, resident of Morro Bay, spoke against the zoning text amendment. Winholtz stated that allowing second units to go from 900 to 1,200 square feet does not take into consideration the impacts to noise, parking, and circulation on neighborhoods and stated the current law is already compliant with State law; just more restrictive. Winholtz disagreed that the proposed changes will further affordable housing.

Dorothy Cutter, resident of Morro Bay, spoke against the zoning text amendment and expressed concern about allowing two large houses on one small lot. Cutter stated that residents will not want rental homes to surround them cutting off their views, light and air. Cutter stated the State law only states the granny units can be up to 1,200 square feet, but can be less. She stated this is not about affordable housing but about greed.

John Barta, resident of Morro Bay, spoke in favor of the zoning text amendment and stated as a former Planning Commissioner, he was involved with granny units. Barta read from the State law which cites that granny units can ease a rental housing shortage, maximize limited land

resources, infrastructure and assist low to moderate income homeowners with supplemental rental income. Barta stated he supports staff's proposal.

Dan Reddell, resident of Morro Bay, spoke in favor of the zoning text amendment, stating he supports reducing these restrictions and that rental income from a second unit could help struggling homeowners.

Roger Ewing, resident of Morro Bay, spoke against the zoning text amendment. Ewing stated that while he agrees with Mr. Reddell, he disagrees with Mr. Barta. Ewing stated 1,200 square feet is not affordable housing and questioned why changes are proposed when this was not approved by the Coastal Commission. He said the Commission should not make changes at the expense of neighbors and urged the Commission to consider the whole community.

Hearing no further comment, Chairperson Grantham closed the Public Comment period.

Commissioner Napier stated as a renter, she appreciates the smaller size for its affordability. The increased cost of renting a secondary unit at 1,200 square feet would not be affordable.

Commissioner Solu asked staff to clarify lot size versus home size in terms of the "building envelope." Wold clarified that the State guidelines allow the density to increase, not the lot coverage to increase.

Commissioner Irons asked for Commission support on the following suggested changes:

1. Secondary units to be consistent with the primary unit noting we do not have design guidelines that require neighborhood compatibility and line out "and the neighborhood".
2. Zoning be left as "consistent" and to line out "reasonably compatible."
3. The total floor area for a detached secondary unit shall not exceed 1,200 square feet which is consistent with State law.
4. Restrict attached guest houses to not exceed 30% of the primary existing unit size and limited to owner occupied housing in the primary dwelling.

Solu and Nagy were not in support of dictating design requirements. Nagy stated regarding size, the lot size requirements are still present. Having a requirement which limits size to a percentage of the main house does not work if the main house is small.

Napier stated her support for Irons' suggestion on design requirement and also size limitations, noting that a developer is still limited to the building envelope.

Grantham stated his support and noted that reasonable compatibility provides flexibility.

MOTION: Grantham moved to pass as amended B-1. Solu seconded the motion.

Discussion included:

Commissioner Solu requested to amend the motion secondary unit subsection Item C to include "said unit shall be consistent and/or reasonably compatible."

Commissioner Irons requested to amend the motion to state the increased floor area of an attached second unit shall not exceed 30% of the existing living area to bring us into conformance with State code and also the guest unit on "A" (Section 17.48.315) for an attached unit. A detached unit shall not exceed 1,200 square feet.

Commissioner Irons amended the motion on the floor and Chairperson Grantham seconded. Rob Schultz confirmed State law.

VOTE: The motion carried 3-2 with Commissioners Napier and Irons voting no.

B-2 **Case No.:** #S00-109 and #AD0-065
Site Location: 821 Pacific and 700, 710 and 710 ½ Bernardo
Applicant/Project Sponsor: Ruth Viau/ Cathy Novak
Request: Requesting Planning Commission to amend the previously approved project conditions by deleting Planning Commission Condition 1, which requires parking to be provided on parcel two east of the power pole.
CEQA Determination: Categorically Exempt Section 15305, Class 5
Staff Recommendation: Conditionally approve amendment to #S00-109 and #AD0-065
Staff Contact: Kathleen Wold, Planning and Building Manager (805) 772-6211

Wold presented the staff report and discussed with Commissioners the non-conforming status of the property including the previously approved parking exception.

Chairperson Grantham opened the Public Comment period.

Cathy Novak, Applicant's Representative, explained the Applicant's request and asked the Commission to support the modified parking request.

Chairperson Grantham closed the Public Comment period.

Commissioners discussed the request with staff.

Irons stated he was not in support of the Applicant's request to delete the parking condition as it is not an unreasonable condition. Irons addressed his concerns made known at the previous Commission meeting where he had requested the garage setback be made conforming at 5 feet from the existing 1 foot. And also his concern regarding the parking, which could be a safety issue having the parking spot straddle the right of way which he felt was not appropriate.

MOTION: Commissioner Nagy made a motion to approve Lot Line Adjustment #S00-109 and Variance #AD0-065, subject to the modified conditions of approval as stated in Exhibit B. The motion was seconded by Chairperson Grantham and carried 3-2 with Commissioners Napier and Irons voting no.

B-3 **Case No.:** #SP0-141
Site Location: Off premise signs at: Corner of Beach and Market, entry to parking lot of former Virg's location on the Embarcadero, boat launch ramp.

Applicant/Project Sponsor: Sharon Moores (Virg's Sport Fishing) / Cathy Novak
Request: Requesting sign exception to place four off-premise signs on the public right-of-way for Virg's Sport Fishing to advertise the sale of fishing licenses. The proposed signs located at Beach and Embarcadero locations will be mounted to the existing poles within the City right-of-way, the launch ramp sign will be posted on the existing wood sign, and Walker's Mobile Home Park on the existing sign supports.
CEQA Determination: Categorically Exempt, Section 15305, Class 5.
Staff Recommendation: Conditionally approve #SP0-141.
Staff Contact: Kathleen Wold, Planning and Building Manager (805) 772-6211

Wold presented the staff report detailing each location where the off premise signs would be located.

Rob Schultz noted that Commissioner Solu may have a conflict of interest due to being within 500 feet of two of the proposed signs. Schultz recommended that the signs be deliberated separately, and have Commissioner Solu leave the dais during the deliberations for the signs located at Beach & Market and Walker's Mobile Home Park at 1105 Morro Ave.

Chairperson Grantham opened the Public Comment period.

Cathy Novak, Applicant's Representative explained the need for the proposed project.

Gary Johnson, resident of Morro Bay, spoke in favor of the proposed project.

Hearing no further comment, Chairperson Grantham closed the Public Comment period.

First discussed were the proposed sign locations of the former Virg's location, 1215 Embarcadero Road and the boat launch area.

Commissioners discussed whether granting the off-premise signs would set a precedent, and whether new businesses should also be allowed off-premise signs.

Napier and Nagy stated support for a temporary sign at the Embarcadero Road location and also stated support for a sign at the boat launch area since it is the State that requires the fishing license. Irons also stated support for signs at the Embarcadero Road location and the boat launch area.

Grantham and Irons discussed alternative sign suggestions such as a sign that directs customers to the Harbor Office for license locations or a sign that has multiple phone numbers to contact for license purchases.

MOTION: Chairperson Grantham moved to allow one temporary sign at the former 1215 Embarcadero Road location stating they have moved and deny a sign at the boat launch area. The motion failed for lack of a second.

Chairperson Grantham opened Public Comment period and asked Cathy Novak to return to the podium.

Novak clarified that the Applicant does not have permission to post a sign on the old lease site. A sign would need to be put in the public right of way.

Chairperson Grantham closed Public Comment period.

MOTION: Commissioner Nagy moved to approve a temporary sign at the old location, 1215 Embarcadero Road through December 2012. Grantham seconded the motion.

Commissioners discussed whether to require the sign to state "we've moved", instead of "fishing licenses" and what size the sign should be. Commissioners asked Cathy Novak to return to the podium again.

Chairperson Grantham opened Public Comment period.

Cathy Novak, Applicant Representative, stated the appropriate language for the Embarcadero Road location would be "we've moved" and the appropriate language for the boat launch area would be "fishing licenses". Novak further stated that if another business begins selling fishing licenses in May, that the Applicant would add their business phone number to the sign as a public service.

Chairperson Grantham closed Public Comment period.

Commissioner Nagy modified his motion to state:

MODIFIED MOTION: Commissioner Nagy moved to approve two temporary signs, a 24" x 24" sign at the old location, 1215 Embarcadero Road to say "we've moved" and a 24" x 18" sign at the boat ramp to say fishing licenses, through December 2012. Commissioner Irons seconded the motion.

Solu stated he was not in support of a sign at the boat ramp area. He stated there are other ways to locate the business or location of fishing licenses.

VOTE: Motion failed 2-3 with Grantham, Napier and Solu voting no.

MOTION: Chairperson Grantham moved to allow one informational sign at the old location, 1215 Embarcadero Road stating the business has moved to a new location with new location and phone number listed. Commissioner Napier seconded and motion carried unanimously. (5-0).

Commissioner Solu recused himself for the deliberation of the proposed signs at Beach and Market Streets and at Walkers Mobile Home Park, 1105 Morro Ave.

MOTION: Commissioner Nagy moved to deny the sign at Beach and Market Streets and the sign at Walkers Mobile Home Park, 1105 Morro Ave. Grantham seconded and motion carried unanimously. (4-0).

Commissioner Solu rejoined the meeting.

B-4 **Case No.:** Amendment to #S00-089 and #CP0-276
Site Location: 3390 Main Street
Applicant/Project Sponsor: Johnnie Medina
Request: Amend the approved Subdivision Permit #S00-089 and Coastal Development Permit #CP0-276 for 2 parcel subdivision map and to construct a two story single-family residence with attached two car garage. The applicant requests an amendment to the previous Planning Commission approval requiring a 50 foot buffer from the ESH (Environmentally Sensitive Area) allowing only a bio swale with this area. The applicant requests a second driveway approximately 133 feet long, with an area of approximately 2,700 square feet (1,400 square feet of paved area and 1,300 square feet of pavers). The proposed driveway will encroach into the 50 foot buffer setback and 25 foot buffer setback. This site is located inside the Coastal Commission Appeals Jurisdiction.
CEQA Determination: Mitigated Negative Declaration has been adopted for the previously approved for the project. State Clearinghouse #2009061049
Staff Recommendation: Conditionally approve the amendment to #S00-089 and #CP0-276
Staff Contact: Sierra Davis, Assistant Planner, (805) 772-6270

Davis presented the staff report. Rob Livick clarified that the previous Commission approval did not leave enough room for a standard driveway to access the rear house and the LCP policy states that the buffer can be reduced if it renders the property unusable.

Chairperson Grantham opened Public Comment period.

Johnnie Medina Jr., Applicant, stated they have worked with staff to design the home within the requirements and get the driveway as tight as possible. The Fire Department's required driveway width is why the home goes into the buffer and he is requesting approval to access the back home.

Dennis Cook, neighbor of Applicant, spoke against the proposal and stated the Applicant must have known when the property was purchased there would not be room to put in the driveway.

Jan Zerbe, spoke against the amendment and stated buffer setbacks were put in place to protect the ESH and the Commission should not allow a private driveway to encroach into this area.

Michelle Arete, resident of Morro Bay, spoke against the amendment and was also representing 200 petition and letter signers. The LCP and Municipal Code does not provide allowances for development within the ESHA. Arete stated the Applicant has not fulfilled the original conditions from 2002. Arete urged the Commission to uphold the decision made at the July 2010 Planning Commission meeting.

Jim Ross, resident of Morro Bay, spoke against the City staff making exceptions. He stated he sent a letter to the Public Services Dept. where he opposed allowing 17 feet into the 25 foot buffer zone and stated the Applicant should be required to use the common driveway of the

existing residence. Ross addressed the issue of the conservation easement which should be enforced and maintained.

Roger Ewing, resident of Morro Bay, spoke against the amendment and questioned how a variance could be granted when the current requirements have still not been met. Ewing expressed concern about destroying the ESH and urged the Commission to deny the request.

Laura Mouns, resident of Morro Bay, read a letter from Abe Paregeen, past president of Bay Creek Condominiums stating the owners in the condo complex are upset over the additional requests from the Applicant. The letter further stated the Applicant was aware of the setbacks when the property was purchased. The Bay Creek Condominiums was not allowed exceptions to setbacks and urged the Commission to not allow the Applicant to bend the rules and endanger the creek area.

Betty Winholtz, resident of Morro Bay, spoke against the amendment. Winholtz noted when the law uses the word shall, it is required to be obeyed and urged the Commission to uphold the law.

William Dallick, neighbor of Applicant, spoke against the amendment and opposes any encroachment into the creek bed boundaries.

Hearing no further comment, Chairperson Grantham closed the Public Comment period.

Commissioner Solu noted that the LCP Policy 11.14 specifies the minimum buffer strip along all streams and allows an adjustment in buffer from 100 to 50 to 25 feet if the Applicant can demonstrate the parcel is rendered unusable.

Commissioners discussed clarifications with Wold and Livick regarding:

- The driveway width requirement. Wold clarified the Fire Dept. requirement noting that it is the width, not the location or length of the driveway. Livick noted there is not enough room for a standard driveway to access the rear second house as demonstrated by the Applicant's engineer; The Fire Department condition is to require a fire apparatus road of 20 feet in width until you get within 150 feet of the residence. The Fire Chief can grant an exception to reduce this which does have precedence;
- The retaining wall and the setback of the driveway to the retaining wall. Commissioner Napier questioned if the old wall will need to come out;
- Fish and Game correspondence received;
- The status of the three underlying parcels. Livick noted instead of a lot line adjustment, the Applicant did a parcel map which the final map has not been recorded yet. All conditions would need to be met prior to the final recordation of the map.

Commissioners Irons disagreed that this renders the property unusable, since the Planning Commission worked diligently on this at the July 2010 meeting. Rob Livick stated that since there has not been a recorded map, then it would not render the property unusable.

Chairperson Grantham noted there are other properties that go through the ESH area.

Commissioner Nagy stated he does not support infringing on property rights, however he is not comfortable with the amount of encroachment going into the wetlands area and stated this should be minimized.

Rob Schultz clarified for the Commission that under conditions from the previous Planning Commission the project will not encroach any farther westward than the retaining wall. The driveway is not encroaching into the ESH area but it is whether to allow encroaching into the buffer area.

Chairperson Grantham reopened Public Comment period to ask the Applicant to respond.

Johnnie Medina Jr., Applicant, responded that they cannot adjust the lot line anymore in order to meet the minimum 6,000 square foot lot size. They are agreeable to have the 20 foot driveway width be thinner if Fire Dept. approves it.

Chairperson Grantham closed Public Comment period.

Commissioner Irons suggested whether to require an easement between the two properties since there is only one owner in order to require a shared driveway. Irons noted to Schultz the driveway would still be partially in the buffer anyway. By using one common driveway, it would not be as far into the ESH.

Commissioner Solu disagreed with potentially requiring an easement.

MOTION: Commissioner Solu moved to adopt the findings included as Exhibit A and conditionally approve amendment to Subdivision #S00-089 and Coastal Development Permit #CP0-276, subject to the Conditions included as Exhibit B and the site development plans dated November 21, 2011. The motion was seconded by Commissioner Grantham and passed 3-2 with Commissioners Nagy and Irons voting no.

UNFINISHED BUSINESS

C-1 Current and Advanced Planning Processing List
Staff Recommendation: Receive and file.

Wold reviewed the Work Program with Commissioners.

C-2 Discussion on Title 16 (Subdivision Ordinance) Streamlining Procedures and Identifying Issues with Document Implementation
Staff Recommendation: Per City Council direction, provide comments to staff.

Commissioner Nagy discussed the goal is to identify areas of the Housing Element and Zoning Ordinance that do not align well for future process.

Commissioner Irons suggested with his term expiring a replacement committee person be identified. It was agreed to discuss that under declaration of future agenda items.

NEW BUSINESS

D-1 Discussion on Planning Commission Bylaws
Staff Recommendation: Review bylaws in Exhibit A and provide recommendations to the City Council.

Commissioners reviewed the bylaws' recommended changes with City Attorney Rob Schultz. Schultz stated he would bring forward the Commission's recommendations to the City Council. Schultz also recommended a review of the City Council's Policies and Procedures manual be done in order to avoid conflicts, especially in regards to rules of public hearing items.

D-2 Schedule of Meeting Dates
Staff Recommendation: Approve schedule of 2012 meeting dates.

Commissioners reviewed the 2012 calendar and agreed to cancel the Planning Commission meetings scheduled for July 5, 2012, November 21, 2012 and December 19, 2012.

DECLARATION OF FUTURE AGENDA ITEMS

Commissioners agreed to agendize for the next meeting nominating a subcommittee replacement person for the Subdivision Ordinance and a discussion of attending the 2012 Planners Institute to be held March 20-22, 2012 in San Jose.

ADJOURNMENT

The meeting adjourned at 10:00 pm to the next regularly scheduled Planning Commission meeting at the Veteran's Hall, 209 Surf Street, on Wednesday, January 18, 2012 at 6:00 pm.

Rick Grantham, Chairperson

ATTEST:

Rob Livick, Secretary

ATTACHMENT 2

AGENDA NO: B-4

MEETING DATE: January 4, 2012

Staff Report

TO: **Planning Commissioners** **DATE: December 30, 2011**

FROM: **Rob Livick, Public Services Director**
Sierra Davis, Assistant Planner

SUBJECT: **Amend the approved Subdivision Permit #S00-089 and Coastal Development Permit #CP0-276 by approving a modification to the 50 foot and 25 foot ESH buffer to allow a second driveway approximately 133 feet long that would encroach into the 50 foot buffer setback as well as the 25 foot buffer setback.**

RECOMMENDATION:
CONDITIONALLY APPROVE THE PROJECT by making the following motion:

A. Adopt the Findings included as Exhibit "A";
B. Conditionally approve amendment to Subdivision #S00-089 and Coastal Development Permit #CP0-276, subject to the Conditions included as Exhibit "B" and the site development plans dated November 21, 2011.

APPLICANT: Johnnie Medina

LEGAL DESCRIPTION/APN (ADDRESS): 065-085-019

PROJECT DESCRIPTION: The applicant has applied for an amendment to the approved Subdivision Permit #S00-089 and Coastal Development Permit #CP0-276 for a 2 parcel subdivision map and to construct a two story single-family residence with attached two car garage. The applicant requests an amendment to the previous Planning Commission approval modifying the required 50 foot buffer and 25 foot buffer from the ESH (Environmentally Sensitive Area). The applicant requests further modification of these ESH buffers to allow for a second driveway approximately 133 feet long, with an area of approximately 2,700 square feet (1,400 square feet of paved area and 1,300 square feet of pavers). The proposed driveway will encroach into the 50 foot buffer setback as well as the 25 foot buffer setback.

Prepared By: _____ Dept Review: _____

City Manager Review: _____

City Attorney Review: _____

PROJECT SETTING:

Adjacent Zoning/Land Use			
North:	R1/S.1, Low/Med. Residential & R-4(SP)	South:	R1/S.1, Low/Med. Residential & MCR/R-4(SP)
East:	R-1(S.1), Low/Med. Residential	West:	Highway 1

Site Characteristics	
Site Area	40,119 Square feet
Existing Use	Single-family residence
Terrain	Gently sloping
Vegetation/Wildlife	Exotic vegetation and a sparse representation of native vegetation, no special species or wildlife noted.
Archaeological Resources	Greater than 1,500 feet from any known site and the closest survey was taken 400 feet away (#2819) where no known resources were found.
Access	Lots will take access from Main Street.

General Plan, Zoning Ordinance & Local Coastal Plan Designations	
General Plan/Coastal Plan Land Use Designation	Low/Med. Residential & Mixed Use Area F
Base Zone District	R-1 & MCR/R-4
Zoning Overlay District	ESH
Special Treatment Area	None
Combining District	S.1 & SP
Specific Plan Area	North Main Street Specific Plan, Area A
Coastal Zone	Inside Coastal Commission Appeal Jurisdiction

PROJECT ANALYSIS:

Background

The project was heard at a regularly scheduled Planning Commission public hearing on July 20, 2009 (Exhibit I of Attachment 4) in which the Planning Commission continued the item indefinitely in order to address various issues. The project was brought back before Planning Commission on July 19, 2010. The memo to the Planning Commission on July 19, 2010 (Attachment 4) addresses the issues from the July 20, 2009 meeting and the project was

conditionally approved with the following motion:

A. Adopt the Findings for Approval for the Vesting Tentative Map and Coastal Development Permit included as Exhibit "A" of the staff report and the Findings for Denial of the reduction of the ESH buffer and allowing the west property line of parcel 2 to be adjusted westward so long as parcel 1 meets the minimum lot requirements and setback of the zone district.
B. Approve Mitigated Negative Declaration (SCH 2009061049)
C. Approve Tentative Parcel Map dated January 26, 2010 and Coastal Development Permit based on site development plans received by the Public Services Department on January 5, 2008 and subject to the Conditions of Approval included as Exhibit 'B" of the staff report.
D. Property Line. The applicant shall be allowed to adjust the west property line of parcel 2 westward, so long as parcel 1 meets the minimum lot requirements and setback of the zone district.
E. ESHA. The ESH area shall be defined by surveyed coordinates with markers easily identified and permanent and visible. The area defined shall be fenced during construction.
F. ESHA. There shall be no activity allowed in the ESH area that would be detrimental to the native habitat.
G. Drainage. Prior to recordation of the parcel map, drainage for parcel 2 shall be evaluated and remedied prior to permit approval.
H. Landscape Plan. A landscape plan shall be required prior to issuance of a building permit for the residence on parcel 2. The landscape plan shall adhere to the 50 foot buffer and shall consist of only native and drought tolerate plants.
I. Restoration of Creek Area. The creek restoration plan shall include the buffer area between the 50 foot and 25 foot and there shall be no extension of the retaining wall located in the 50 foot to 25 foot buffer area.
J. Creek restoration Plan. Prior to the issuance of any permit of the recordation of the map, a restoration plan for the ESH area shall be submitted to the City for review and approval. The City easement including the block wall shall be included and evaluated and corrected in this plan. A qualified biologist shall produce the plan and the plan shall contain milestones to ensure that the initial plantings thrive. In addition once the plan is approved, the removal of all non-native species shall be removed from the creek and buffer area prior to the issuance of any building permit of the recordation of the map. Prior to any final granted on the project all restoration work shall be completed except for the ongoing maintenance required.

The memo to the Planning Commission dated July 19, 2010 discusses the requirements and procedures for reducing buffers in an ESH area (Section 17.40.040.D.6). A stream corridor

buffer may be reduced on a previously subdivided parcel if the 50 foot buffer would render that subdivided parcel unusable for its designated use. Although the parcel in question, parcel 2, is not a previously subdivided parcel, the applicant has been allowed to request a reduction to the buffer due to the fact that there are currently more than one parcels existing on the subject property and the proposed parcel map does not create a larger number of parcels.

Staff has previously determined that parcel 2 would allow for a buildable area of 1,400 square feet and a 900 square foot building pad. Staff has determined that the parcel is still developable for its designated use of a single family property therefore the reduction of the buffer was not supported and was not granted for the development on the property.

Environmental Determination

The project qualifies for a Mitigated Negative Declaration (SCH 2009061049) in accordance with the applicable provisions of the California Environmental Quality Act (Public Resources Code 21000 et. Seq.). The Mitigated Negative Declaration was circulated on June 9, 2009 with a review period that ended on July 13, 2009. The applicant has agreed to implement the mitigation measures proposed in the Negative Declaration. Mitigation was required for Geology, Hydrology, Land Use, Noise, Transportation/Circulation, and Utility/Service. Thus staff recommends that there would not be significant impacts with the implementation of those mitigation measures.

The environmental document was adopted by Planning Commission at the July 19, 2010 Planning Commission Meeting.

Project Specifics

The applicant is requesting to amend the approved Subdivision Permit #S00-089 and Coastal Development Permit #CP0-276 for a 2 parcel subdivision map and construction of a single family residence.

The applicant proposes an amendment to the previous Planning Commission by eliminating the condition requiring that the 50 foot buffer from the ESH (Environmentally Sensitive Area) be maintained with only a bio swale and no additional construction. The applicant requests further modification of the 50 foot and the 25 foot ESH buffer to allow a second driveway approximately 133 feet long, with an area of approximately 2,700 square feet (1,400 square feet of paved area and 1,300 square feet of pavers). The proposed driveway will encroach into the 50 foot buffer setback as well as the 25 foot buffer setback.

The applicant is requesting the modification because they have determined that the project as approved (without modification to the 50 foot ESH buffer) does not provide sufficient space outside the 50 foot ESH buffer to allow for a driveway to access the proposed new house. The

existing house on parcel 1 is within the 50 foot buffer and is approximately 11 feet away from the 25 foot buffer boundary.

LCP Policies

The following Local Coastal Plan (LCP) guidelines and policies are specific to Environmentally Sensitive Habitat Areas (ESH). The project as proposed and modified by the conditions of approval met the intent of the Local Coastal Plan and Morro Bay Municipal Code in regards to ESH area.

The California Coastal Act of 1976 requires that the biological productivity and quality of coastal waters, streams, wetlands and estuaries be maintained, and where feasible, restored. (LCP, pg. 182)

Section 30240 "(a) Environmentally sensitive habitat areas shall be protect against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas."

Policy 11.02 Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall maintain the habitat's functional capacity.

Policy 11.14 A minimum buffer strip along all streams shall be required as follows:

1. A minimum buffer strip of 100 feet in rural areas;
2. A minimum buffer strip of 50 feet in urban areas.

If the applicant can demonstrate that the implementation of the minimum buffers on previously subdivided parcels would render the subdivided parcel unusable for its designated use, the buffer may be adjusted downward only to a point where the designated use can be accommodated, but in no case shall the buffer be reduced to less than 50 feet for rural areas and 25 feet for urban areas. Only when all other means to project modifications are found inadequate to provide for both the use and the larger minimum buffer. The lesser setback shall be established in consultation with U.S. Fish and Wildlife and the California Department of Fish and Game and shall be accompanied by adequate mitigations. The buffer area shall be measured landward from the

landward edge of riparian vegetation or from the top of the bank (e.g. in channelized streams). Maps and supplemental information may be required to determine these boundaries.

Adjustments to the minimum buffer must protect the biological productivity and water quality of the streams. Assessment of impact shall include, but not be limited to the following factors:

a) Soil type and stability of stream corridors;
b) How surface waters filter into the ground;
c) Slope of land on either side of the stream; and
d) Location of the 100 year flood plain boundary.

When riparian vegetation has been previously removed, except for stream channelization, the buffer shall allow for the re-establishment of riparian vegetation to its prior extent to the greatest degree possible.

Policy 11.15 No structure shall be located within the stream corridor except: public trails located within a buffer when no alternative location is feasible but outside of riparian habitat; necessary water supply projects; flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety of to protect existing development; and development where the primary function is the improvement of fish and wildlife habitat. Bridges (when support structures are located outside the critical habitat areas) may be permitted when no alternative route/ location is feasible. All development shall incorporate the most protective mitigation feasible.

Policy 11.16 All permitted development, including dredging, filling, and grading within stream beds and setback buffer areas shall be limited to activities necessary for the construction of uses specified in Policy 11.15. When such activities require removal of riparian plant species, revegation with local native riparian species shall be required. Project which would cause the removal of vegetation shall be subject to review and comment by U.S. Fish and Wildlife Service and the Department of Fish and Game.

Policy 11.23 As a condition of approval of development prior to commencement of any development, property owners/applicants shall dedicate appropriate habitat, such as dunes, beach, wetlands, or riparian corridor.

Municipal Code

17.40.040.C.4. Stream Corridor. The following are conditionally permitted uses: controlled public access, including public trails within the buffer; necessary pipelines and water supply projects where no alternative location exists; flooding control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development; road and bridges where no alternative route/location is feasible and if support structures are not sited in the environmentally sensitive habitat.

17.40.040.D.1. General application and requirement for uses. The ESH overlay zone shall be applied to all environmentally sensitive habitat areas and to buffers around such habitat areas necessary to ensure continued protection of the habitat values.

17.40.040.D.7. Uses in Buffer Areas.

a. General. The uses permitted in buffers shall generally be limited to those permitted in the adjacent habitat area.

b. Permanent Structures. No permanent structures shall be permitted within buffer areas except for those of a minor nature such as:

- i. In residential areas:
  - (A.) Fences;
  - (B.) Eaves;
- ii. In other districts;
  - (A.) At grade improvements for pedestrian and equestrian trails.
  - (B.) Instructional or informational signs.
  - (C.) Designated observation areas, or other public access or education facilities;
  - (D.) Fences;
  - (E.) Eaves;

Applications for all such improvements shall be submitted to the Department of Fish and Game for review and comment before issuance of a Coastal Development Permit.

Regulation Analysis

Review of the project leads to the conclusion that the project shall be reviewed pursuant to the four distinct areas on the property: the ESH area, the 25 foot buffer, the 50 foot buffer and the area outside the buffer.

Existing and Proposed Development

	Existing	Proposed
Between ESH Boundary and 25 foot Buffer	Stacked Block Wall and vegetation	New Retaining wall, asphalt driveway, permeable paver driveway
Between 25 foot buffer and 50 foot buffer	Existing house on parcel 1 and vegetation	Existing house on parcel 1, asphalt driveway, permeable paver driveway, vegetation, stairs to the proposed house on parcel 2
Outside 50 foot buffer	Existing House on parcel 1 and vegetation	Existing House on parcel 1, proposed house on parcel 2

ESH Area

The LCP and the Municipal Code do not provide any allowances for development or disturbance within designated ESH area. The project does not propose to locate the house within the ESH area or the required buffers.

Area Between the ESH Boundary and 25 Foot Buffer

The Local Coastal Plan and Municipal Code *does not* provide provisions to allow any development between the ESH boundary and the 25 foot buffer. The applicant has proposed the driveway to be located between the ESH boundary and 25 foot buffer, however at no time shall development occur within the 25 foot buffer.

The proposed driveway encroaches into the 25 foot buffer to a maximum point of 16 feet, leaving a distance of 9 feet from development to the ESH boundary. The proposed driveway also requires a new retaining wall to maintain the soil to hold the development. The proposed wall is approximately 4.5 feet past the existing stacked wall within the 25 foot setback. The proposed retaining wall follows the existing stacked block wall except in the area where the road is 20 feet wide pursuant to the Fire Code.

The decision of the previous Planning Commission allowed for the construction of the stormwater mitigation features within the ESH buffer. In keeping with this decision staff recommends that the proposed Low Impact Development (LID) driveway constructed with permeable pavers be allowed within the ESH buffer. This would be in keeping with the purpose of protecting the ESH by providing for storm water filtration prior to entering the stream corridor.

Previous correspondence from the California Department of Fish and Game and the California Coastal Commission staffs, already in the record, indicate that any construction southerly

(beyond) of the existing retaining wall will not have an adverse impact any habitat value of the ESH and no Fish and Game permit is required.

Area Between the 25 Foot Buffer and 50 Foot Buffer
The Local Coastal Plan and Municipal Code allows for reducing the required 100 foot buffer from any stream corridor to a 50 foot buffer in urbanized areas. The buffer can further be reduced to 25 feet, (Section 17.40.040.D.6) if the property has been previously subdivided and the resulting parcel with the 50 foot setback would render that subdivided parcel unusable for its designated use. Although the map in process does not meet the requirements pursuant to the municipal code for a reduced buffer, the applicant has been allowed to proceed. The applicant was allowed to process based on the fact that there are currently three lots on the subject site and with the recording of the map there will be two lots, therefore ultimately there will be no additional lots created.

The applicant has previously applied for a buffer reduction to reduce the buffer from 50 feet to 25 feet. The request for the buffer reduction was denied by Planning Commission and all new development shall be located outside the 50 foot buffer boundary. Pursuant to section 17.40.040.D.7. Uses in Buffer Areas, only fences and eaves may be allowed in the buffer area in this case in the area between the 25 foot buffer and the 50 foot buffer. The Local Coastal Plan and Municipal Code do not provide for the allowance of a paved driveway for vehicular access in the buffer area.

In order for the driveway to be allowed in the area between the 25 foot buffer and the 50 foot buffer the Planning Commission would have to amend the previous denial of the buffer reduction and make the findings that the buffer can be reduced to 25 feet. With the reduction of the buffer to 25 feet, that would allow for a clearance of 11 feet between the existing house on parcel 1 and the 25 foot buffer from the ESH boundary.

Outside the Buffer
The proposed house was reduced in scope and is proposed to be located outside the 50 foot buffer.

PUBLIC NOTICE: Notice of this item was published in the San Luis Obispo Tribune newspaper on December 23, 2011, and all property owners of record within 300 feet and occupants within 100 feet of the subject site were notified of this evening's public hearing and invited to voice any concerns on this application.

CONCLUSION: Staff has determined that the 50 foot buffer restricts the applicant from accessing parcel 2, however the driveway as proposed does not meet the intent of the Local Coastal Plan and the Municipal Code. Staff does not have an exhibit to present to the Planning

Commission for a driveway that is located substantially out of the 25 foot buffer and minimally in the 50 foot buffer.

The project as proposed has been conditioned including environmental mitigations to meet code requirements and reduce environmental impacts and therefore meets the findings required for approval of the Vesting Subdivision Map and Coastal Development Permit.

ATTACHMENTS:

1. Findings, Exhibit A
2. Conditions, Exhibit B
3. Graphics/Plan Reductions, Exhibit C
4. July 19, 2010 Packet and Minutes (July 20, 2009 Packet and Minutes within the July 19, 2010 Packet labeled as Exhibit "I")
5. Applicant's letter
6. Correspondence from the public

EXHIBIT A

FINDINGS
SUBDIVISION PERMIT #S00-089 AND
COASTAL DEVELOPMENT PERMIT #CP0-276
SITE: 3390 MAIN STREET

Subdivision Permit #S00-089 and Coastal Development Permit #CP0-276 for a 2 parcel subdivision map and to construct a two story single-family residence with attached two car garage. The applicant requests an amendment to the previous Planning Commission approval modifying the required 50 foot buffer from the ESH (Environmentally Sensitive Area).

California Environmental Quality Act (CEQA)

A. The project qualifies for a Mitigated Negative Declaration (SCH 2009061049) in accordance with the applicable provisions of the California Environmental Quality Act (Public Resources Code 21000 et. Seq.). The Mitigated Negative Declaration was circulated on June 9, 2009 with a review period that ended on July 13, 2009. The applicant has agreed to implement the mitigation measures proposed in the Negative Declaration. Mitigation was required for Geology, Hydrology, Land Use, Noise, Transportation/Circulation, and Utility/Service. Thus staff recommends that there would not be significant impacts with the implementation of those mitigation measures.

The environmental document was adopted by Planning Commission at the July 19, 2010 Planning Commission Meeting.

Coastal Development Permit Findings

B. The project will not be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood because the modular buildings for preschool uses are a permitted use subject to a special use within the zoning district applicable to the project site and said buildings are on an existing church property.

C. The project will not be injurious or detrimental to property and improvements in the neighborhood because the modular buildings are consistent with the City regulations applicable to this use.

D. The project will not be injurious or detrimental to the general welfare of the City because the modular buildings are a permitted use within the zone district and plan designation applicable to the site is in accordance with all applicable project conditions and City regulations.

EXHIBIT B

CONDITIONS OF APPROVAL AS AMENDED ON JANUARY 4, 2012
SITE: 3390 MAIN STREET
SUBDIVISION PERMIT #S00-089 AND
COASTAL DEVELOPMENT PERMIT #CP0-276

Subdivision Permit #S00-089 and Coastal Development Permit #CP0-276 for a 2 parcel subdivision map and to construct a two story single-family residence with attached two car garage. The applicant requests an amendment to the previous Planning Commission approval modifying the required 50 foot buffer from the ESH (Environmentally Sensitive Area).

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report referenced above, dated January 4, 2012, for the project depicted on the attached plans dated November 21, 2011, labeled "Exhibit C", on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

   Site development, including all buildings and other features, shall be located and designed substantially as shown on plans, unless otherwise specified herein.

2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Public Services Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.

3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Public Services Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.

4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval, (b) This project shall meet all applicable

requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. Applicant understands and acknowledges that City is under no obligation to defend any legal actions challenging the City's actions with respect to the project.This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Public Services Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

7. Compliance with Morro Bay Standards: This projects shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use plan and General Plan for the City of Morro Bay.

PLANNING CONDITIONS

1. Conditions of Approval: Conditions of Approval shall be included as a full sheet in the building plan submittal.

ENGINEERING CONDITIONS

1. The proposed driveway and proposed new retaining wall shall not extend beyond the existing staked block wall. Where the proposed driveway/retaining wall encroach into the ESH buffer commensurate amount of restoration shall be required. Encroachment into the 25ft ESH buffer shall be minimized to the maximum extent feasible.

2. The entire proposed driveway shall be constructed using Low Impact Development techniques, specifically permeable pavers to provide filtration of stormwater prior to entering the stream corridor.

FIRE CONDITIONS

Fire Apparatus Access Road. The designated fire apparatus access road shall include the first 40 feet of the driveway entering the project site, from Main Street and as illustrated on Sheet 2 of the Grading Plan. (CFC 503.1.1)

Fire Apparatus Access Road Dimensions. The fire apparatus access road shall have an unobstructed width of not less than 20 feet, exclusive of shoulders, and an unobstructed vertical clearance of not less than 13 feet 6 inches. **The first 40 feet of the driveway, from the public street, shall be not less than 20 feet in width.** (CFC 503.2.1)

Fire Apparatus Access Road Surface. The fire apparatus access road shall be designed and maintained to support the imposed load of a 20-ton fire apparatus and be surfaced so to provide all-weather driving capabilities. **The first 80 feet of the driveway, from Main Street, shall be designed to support fire apparatus and surfaced for all-weather driving capabilities.** (CFC 503.2.3)

Fire Lane Markings. Approved signage and markings that include the words NO PARKING-FIRE LANE shall be provided for the access road to identify and prohibit the obstruction of the access road. **Project shall provide NO PARKING-FIRE LANE signage for the first 40 feet of the driveway.** (CFC 503.3)

BUILDING CONDITIONS

Grading Permit- Prior to the start of construction, the applicant shall submit a complete application to the building division and obtain the required permits for grading, utilities, and the construction of other improvements associated with PM MB 07-0274. The application may be submitted separately or in combination with an application for construction of a residence.

Bonding- The application shall include an engineer's estimate of the cost to complete the permitted scope of work. Prior to issuance, the applicant shall submit a bond for the amount of 150% of the engineer's estimate, to ensure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

ATTACHMENT 4

AGENDA ITEM: X-A
ACTION: _____

CITY OF MORRO BAY
PUBLIC SERVICES DEPARTMENT
MEMORANDUM

TO: Planning Commission

FROM: Kathleen Wold, Planning Manager

DATE: July 19, 2010

RE: 3390 Main Street, Coastal Development Permit, Parcel Map and ESH

FILE NUMBER SOO-089/CPO-276 Subdivision Map and Coastal Development Permit

LOCATION: 3390 Main Street Morro Bay, CA (APN 065-085-019)

APPLICANT Johnie Medina,

AGENT Westland Engineering, Inc. 3480 S. Higuera Street, Suite 130 San Luis Obispo, Ca 93401

STAFF RECOMMENDATION

It is recommended that the Planning Commission CONDITIONALLY APPROVE THE PROJECT by adopting a motion including the following action(s):

A. Adopt the Findings for Approval for the Vesting Tentative Map and Coastal Development Permit included as Exhibit "A" of the staff report and the Findings for Denial of the reduction of the ESH buffer.

B. Adopt Mitigated Negative Declaration (SCH 2009061049) .

C. Approve Tentative Parcel Map dated January 26, 2010 and Coastal Development Permit based on site development plans received by the Public Services Department on January 5, 2008 and subject to the Conditions of Approval included as Exhibit "B" of the staff report.

D. Deny the request for reduction of the ESH buffer from 50 feet to 25 feet.

DISCUSSION

A public hearing for this project was held on July 20, 2009. At this meeting the Planning Commission voted to indefinitely continue the item until such time as the following issues were addressed:

- Staff to determine if any conditions remain outstanding from the original development on the site.
- Staff to investigate the drainage problem to the creek.

- Provide assurance that the applicant understands what LID technology is and has generated a plan to reduce urban runoff into the creek.
- Have Staff research the willow trees, natural vegetation history and current status.
- Provide additional information on the 50 foot buffer requirement from the ESH area and provide a recommendation of whether the buffer should be reduced.

ISSUES AND UNRESOLVED PERMIT CONDITIONS FOR USE PERMIT SUBJECT: CASE NO: CUP 18-01/LM 05-01/CDP 26-01R

A condition was placed on the first house built at 3390 N. Main Street that required the following:

Roof and driveway runoff shall be directed to the street in a non-erosive manner and not concentrate runoff onto adjacent properties or the unnamed creek. The applicant may be required to submit a grading and/or drainage plan with calculations to demonstrate the proposed on-site drainage will handle the peak run-off from a 25-year storm. If deemed necessary by the Building Official, a grading and drainage plan shall be submitted by the Applicant for approval by the Public Works Division and City Engineer prior to issuance of a building permit.

According to City records on September 12, 2002 a letter was sent to Rand Waterworth (the agent for Mr. Medina) indicating that Mr. Waterworth had requested to deviate from the City's standard drainage requirement as it related to the first house built at 3390 Main Street. In lieu of requiring surface runoff discharging to the street, it was agreed upon to allow the storm water to flow north to the adjacent creek. The letter goes on to further document that all historic flows from 3350 needed to be accommodated with the improvements for 3390 Main Street and that at the time of the letter (9/12/2002) this had not been accomplished thus creating a potential for 3350 Main Street to flood. On September 4, 2003 a letter was submitted to City regarding the drainage issues at 3350 Main Street requesting that the improvements as originally agreed to be installed. There is no documentation in the file that the necessary modifications were ever made those modifications being either lowering the driveway at 3390 Main Street or installing a culvert.

The applicant's engineer has responded to the question regarding historic flow patterns. His response states that there appears to have been a low area near the street at the westerly corner of the neighboring property that filled during storms and then overtopped a low band near the creek. Larger flow would have emptied to the creek along this path. This low area appears to have been partially filled with the street improvements and the lawn area. The lawn area and street improvements appear to drain without issue. The street improvements have raised the flow path to the creek. The flow path is open though the lawn area and across the paved driveway and there is an alternate flow path southerly.

It would appear that from the engineer's report that the improvements required in the letter sent on September 12, 2002 were never constructed and therefore the concerns over flooding issues for 3350 Main Street are still valid.

Another condition of approval was to implement a Creek Restoration Plan. The condition specifically required the applicant to do the following:

Creek Restoration Plan: Prior to the issuance of a building permit, the landscape plan shall be reviewed by a City approved biologist verifying the following:

- The landscaping plan includes native riparian species, and
- Non-native species are identified by the biologist and shall be removed from the creek vicinity.

Documentation in the historic files indicate that a letter was sent on September 30, 2002 which states that after taking occupancy of the new home an unapproved landscape plan was started at 3390 Main Street. The City requested that the work cease and it did. There is no additional information that demonstrates that there was ever compliance with the condition. Onsite conditions as detailed by the applicant's biologist in his report dated May 3, 2008 indicate that the undeveloped portion of the lot contains a mosaic of primarily exotic vegetation. A variety of invasive species are also present on the lot that includes Ice plant, Rip gut brome and Cheeseweed. He further states that the property supports very little native vegetation. Therefore it would appear unlikely that all non-native species were removed from the creek vicinity (ESH area). In addition there are some plans on file that indicate a proposal to introduce an extensive amount of sod into the project area. As stated above all landscaping on the project site was to be native riparian species, sod would not qualify.

STORM WATER, FLOODING AND DRAINAGE ISSUES

City staff has worked diligently with the applicant's engineer (Westland Engineer) to educate them on LID methodology and to assist them in revising their drainage report to ensure that it addressed the Planning Commission's issues. There have been numerous versions of the drainage plan and we have included the final version dated August 10, 2009 for your consideration.

WETLAND ISSUE

The Vesting tentative map as well as, the Biologist report originally submitted for the project indicated the project site contained a wetland area within the ESH area. Pursuant to section 17.40.040.d.6.a wetland ESH areas are not subject to having the required buffer reduced. The applicant had indicated to staff that the wetland notations had been listed in error. Staff requested that the applicant have his biologist submit an addendum to his report indicating that the area is not a wetland. The biologist told staff that he was not qualified to determine whether this area was a wetland although he did offer his opinion that the presence of willows on site could be an indicator of a wetland area. Staff indicated to the applicant that he would need to provide city staff a letter indicating the area was not a wetland from a qualified source.

The applicant has submitted numerous emails for the U.S. Department of Fish and Wildlife. As noted in the correspondence, many of the emails had qualifiers such as the determination was based on information submit to the department by the applicant and not based on a site inspection. The series of emails are provided for your consideration in the supplemental materials.

Ultimately the Planning Commission will have to make a determination if this documentation is sufficient information to make the determination that the land is not a wetland as defined by the Morro Bay Municipal Code. Wetlands as defined in the Zoning Ordinance means:

> *lands which may be covered periodically or permanently with shallow water, including saltwater marshes freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens.*

If the Commission determines that the area is not a wetland but falls under the Stream Corridor category then a request to reduce the buffer is allowed.

REDUCING BUFFER

Section 17.40.040.d.6. provides for the requirements and procedures for reducing buffers to an ESH area. The Municipal Code states that the buffer may be reduced in accordance with the following standards if the application of the buffer specified in Section 17.40.040(D)(4) on a previously subdivided parcel would render that subdivided parcel unusable for its designated use. If the Planning Commission determines that the ESH area on the subject property is a stream corridor then the required setback would be 50 feet in an urban area. Staff also notes that the provision for reducing the buffer is applicable to previously subdivided parcels and not new maps such as this one. Staff has allowed the applicant's request to continue processing forward based on the fact that there are currently three lots on the subject site and with the recording of the map there will be two lots, therefore ultimately there will be no additional lot created.

Staff has received an exhibit from the applicant demonstrating both a 50 foot buffer and a reduced 25 foot buffer. Staff analyzed the exhibit and was able to determine that the building area remaining after allowing for the 50 foot buffer is approximately 1400 square feet and after deducting the required setbacks the building area would be approximately 900 square feet. This would allow for a 900 square foot first floor and 900 square foot second floor or 1800 square foot allowance for the living unit and garage. As such staff feels that the second criteria (rendering the subdivided parcel unusable for it designated use) cannot be met and therefore the reduction in the buffer should not be granted.

WILLOW TREES AND NATURAL VEGETATION HISTORY

Staff has conducted research on the site as it relates to the willow trees and the overall vegetation history. Staff was able to determine that the only record of the vegetation is the historic photographs and a few maps. Staff has complied all the historic photographs and maps including the date of these photographs and maps when available into a supplemental exhibit for your consideration.

Maps were submitted as part of a proposal for the 3390 Main Street site which indicate that the riparian vegetation (Willows) was within 16 feet of the flood line at its closest point. The current map indicates the willows to be approximately 90 feet back for the same point or a reduction of 74 feet.

Staff was unable to determine who cut the willows but it would appear that the reduction did take place sometime after 1993. City staff is permitted to clear the willows from inside the creek and along the public right-of-way, but would not have been responsible for the removal of the

riparian vegetation on the bank or upland. It should be noted that the Willows do come back even when cut, therefore it would appear that the cutting of the Willows would have to occur continually or the roots of the willow be removed in their entirety in order to have the reduction in the vegetation we see today. In addition, staff would like to reiterate that the original house built on the subject site was conditioned to perform restoration work within the ESH area and therefore if the conditions were to have implemented by the applicant, today we should see a more healthy ESH area and not one where the Riparian vegetation has been reduced.

PUBLIC NOTICE:

Notice of this item was posted at the site and published in the San Luis Obispo Telegram-Tribune newspaper on July 9, 2010, and all property owners of record within 300 feet of the subject site and occupants within 100 feet of the subject site were notified of this evening's public hearing and invited to voice any concerns on this application.

CONCLUSION

Staff has revised the recommendation and the conditions of approval to reflect the analysis provided within the staff memo dated July 19, 2010 and the new information that has come to light.

California Environmental Quality Act (CEQA)

That for purposes of the California Environmental Quality Act, Case No. S00-089/CPO-276 is subject to a Mitigated Negative Declaration. Any impacts associated with the proposed development will be brought to a less than significant level through the Mitigations required as conditions of approval.

Subdivision Map Act Findings

A. The proposed map to create a two lot subdivision project is consistent with the General Plan and Coastal Land Use Plan because residential development and the given parcel sizes are allowed under the land use designation and zoning & subdivision ordinance.

B. The design and improvements to create two lot subdivision project is consistent with the General Plan and Coastal Land Use Plan.

C. The site is physically suitable for the type and density of development proposed because the site is zoned for single-family residential low to medium density (4-7 du/ac) and consistent with the land use designation.

D. The design of the subdivision and related improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because the project has been condition which includes environmental mitigations to ensure all impacts are less than significant. An adequate buffer can be provided from the ESH area on site.

E. The design of the subdivision and improvements will not cause serious public health problems.

F. The design of the subdivision and related improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision because no easements are required for the public.

Coastal Development Permit Findings

That the approved or conditionally approved project is consistent with the applicable provisions of the certified local coastal program.

Buffer reduction Findings

The ESH buffer is not needed to ensure that the parcel is usable for its designated use (single family residence) and therefore cannot be granted.

EXHIBIT B
CONDITIONS OF APPROVAL
SOO-089/CPO-276 Subdivision Map and Coastal Development Permit.
3390 Main Street
Vesting Subdivision Parcel Map and Coastal Development Permit for the creation of two parcels and the development of a single family residence.

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report referenced above, dated July 20, 2009 for the project depicted on the attached plans labeled "Exhibit C", dated January 05, 2008 on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Planning and Building Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.

3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Planning and Building Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.

4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval (b) This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of Approval. Compliance with and execution of all conditions listed here on shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Planning and Building Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

7. Undergrounding of Utilities: Pursuant to MBMC Section 17.48.050, prior to final occupancy clearance, all on-site utilities including electrical, telephone and cable television shall be installed underground.

8. Construction Hours: Pursuant to MBMC Section 9.28.030 (I), noise-generating construction related activities shall be limited to the hours of seven a.m. to seven p.m. during the weekdays and eight a.m. and seven p.m. during the weekends, unless an exception is granted by the Building Official pursuant to the terms of this regulation.

9. Dust Control: Prior to issuance of a grading permit, a method of control to prevent dust, construction debris, and wind blown earth problems shall be submitted to and approved by the Building Official to ensure conformance with the performance standards included in MBMC Section 17.52.070.

10. Parkland In-Lieu Fees: Prior to recordation of the Final Map requirements of the City of Morro Bay for dedication of land for park purposes and/or payment of fee-in-lieu thereof shall be met (MBMC Section 16.13.005).

11. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation and implementation of any protective measures as determined by the Director of Planning & Building.

12. Property Line Verification. It is owner's responsibility to verify lot lines. Prior to foundation inspection the lot corners shall be staked and setbacks marked by a licensed professional.

13. Environmental Conditions

Geology/Soils: The proposed project shall be designed in a manner that is compliant with the California Building Code to ensure that the structures are as seismically sound as is feasible.

Hydrology/Water Quality: 1) The applicant shall provide an Erosion and Sedimentation Control Plan that shall be approved by the City prior to building permit issuance. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area. The applicant and development team shall utilize best management practices and include low impact development techniques to the maximum extent possible. All construction proposed onsite shall comply with all building code requirements for construction within a flood plain.

Land Use and Planning: 1) At publicly noticed hearing, the Planning Commission shall consider the requested exceptions and determine whether it is compatible with applicable land use patterns, and fence/wall height concerns as they relate to the required findings being made.

Cultural: An approved cultural monitor who is a qualified professional archaeologist knowledgeable in Salinan and Chumash culture shall monitor the site during any ground disturbance. At the conclusion of the cultural resource monitoring, the archaeologist should complete a report of the results and submit said report to the City of Morro Bay and the Information Center at the University of California at Santa Barbara.

If during construction excavation, any bones, concentrations of sea shells, angular chert rocks, burnt rock or other unusual cultural materials are unearthed, work in the area should halt until they can be examined by a qualified archaeologist and Native American and appropriate recommendations made as outlined in California Environmental Quality Act of 1970, and the City of Morro Bay Cultural Resource Guidelines.

If any archaeological resources all found, grading or excavation shall cease immediately in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage.

Transportation/Circulations: The project shall provide approved "Fire Lane-No Parking" signage with red-painted curbs on the frontage of the alley where applicable.

Biology: All structural development must be setback a minimum of 50 feet for the stream/ESHA corridor per the LCP including 50 feet from the drip line of the willows. To the extent that the proposed driveway access or other improvements might encroach into the ESHA buffer, commensurate amount of restoration must be in included. Restoration shall include only native non-invasive plant species. All plantings shall be done within 90 days after the retaining walls are installed.

Utilities and Service Systems: Prior to the issuance of a building permit, the Applicant/Developer shall pay to the City an impact fee at a future date towards the construction of municipal sewer improvements as determined by the Engineering Division in accordance with the Sewer System Master Plan. The applicant and future lot owners shall agree to this fair share payment and waive any rights to challenge the fees by signing an agreement.

FIRE CONDITIONS

1. Access Road. An approved fire access shall be provided for every building or portion thereof, and shall extend to within 150 ft. of all portions of the building and exterior walls, as measured by an approved route around the exterior of the building. (CFC 503.1.1) This requirement may be modified if the structure is protected by an automatic fire sprinkler system.(CFC 503.1.1 Exception 1)

2. Dead Ends. Dead-end fire access roads in excess of 150 feet shall be provided with an approved area for turnaround fire apparatus. (CFC 503.2.5) This requirement may also be modified is if the structure is protected with fire sprinklers.

3. Fire Sprinkler. All new buildings exceeding on thousand square feet regardless of separation walls, shall be protected with automatic fire sprinklers.(MBMC 14.60.200910 and CFC 903.2)

4. Required Water Supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided. (CFC 508.1) Presently, it is unknown what the fire flow requirements will be for the project, 2007 CFC Appendix B will determine it. An additional fire hydrant may be required.

PUBLIC WORKS CONDITIONS

1. The existing driveway approach shall be upgraded to meet ADA requirements, 4 foot wide path of travel behind the approach per City standards (B-6).

2. The new driveway approach shall meet ADA requirements, 4 foot wide path of travel behind the approach per City standards (B-6).

3. Submit a Conditional Letter of Map Revision (CLOMR) followed up with a Letter of Map Revision (LOMR) prior to issuance of a building permit.

4. Reconstruct AC curb on Tide Ave and replace existing oversized CMP (corrugated metal pipe) drain with a City standard curb inlet with inlet protection.

5. Parcel 2 shall meet the current stormwater requirements with the building permit application.

PLANNING CONDITIONS

1. Building Height Verification: Prior to either roof nail or framing inspection, a licensed surveyor shall submit a letter to the building inspector certifying that the height of the structures are in accordance with the approved plans and complies with the height requirement of 25 feet above average natural grade as accepted by the City Engineer.

2. Fence Height –All proposed fencing and retaining walls shall meet the City of Morro Bay's Zoning Ordinance requirements for height. Any new retaining wall shall match the character and color of the existing retaining to provide continuity in character

3. House Size. Applicant shall submit a new house design that fits within the building pad area created by the property lines, all easements and the 50 foot ESH buffer (approximately 900 square feet) for review and approval.

4. Creek Restoration Plan: Prior to the issuance of any building permit or the recordation of the map, a restoration plan for the ESH area shall be submitted to the City for review and approval. A qualified biologist shall produce the plan and the plan shall contain milestones to ensure that the initial plantings thrive. In addition once the plan is approved, the removal of all non-native species shall be removed from the creek and buffer area prior to the issuance of any building permit or the recordation of the map. Prior to any final granted on the project all restoration work shall be completed except for the ongoing maintenance required. (LCP policy 11.10)

5. Conservation of the ESH area. The ESH area including the buffer shall be placed into a conservation easement. (LCP policy 11.04)

PLANNING COMMISSION CONDITIONS

1. ESHA. The ESH area shall be defined by surveyed coordinates with markers easily identified and permanent and visible.

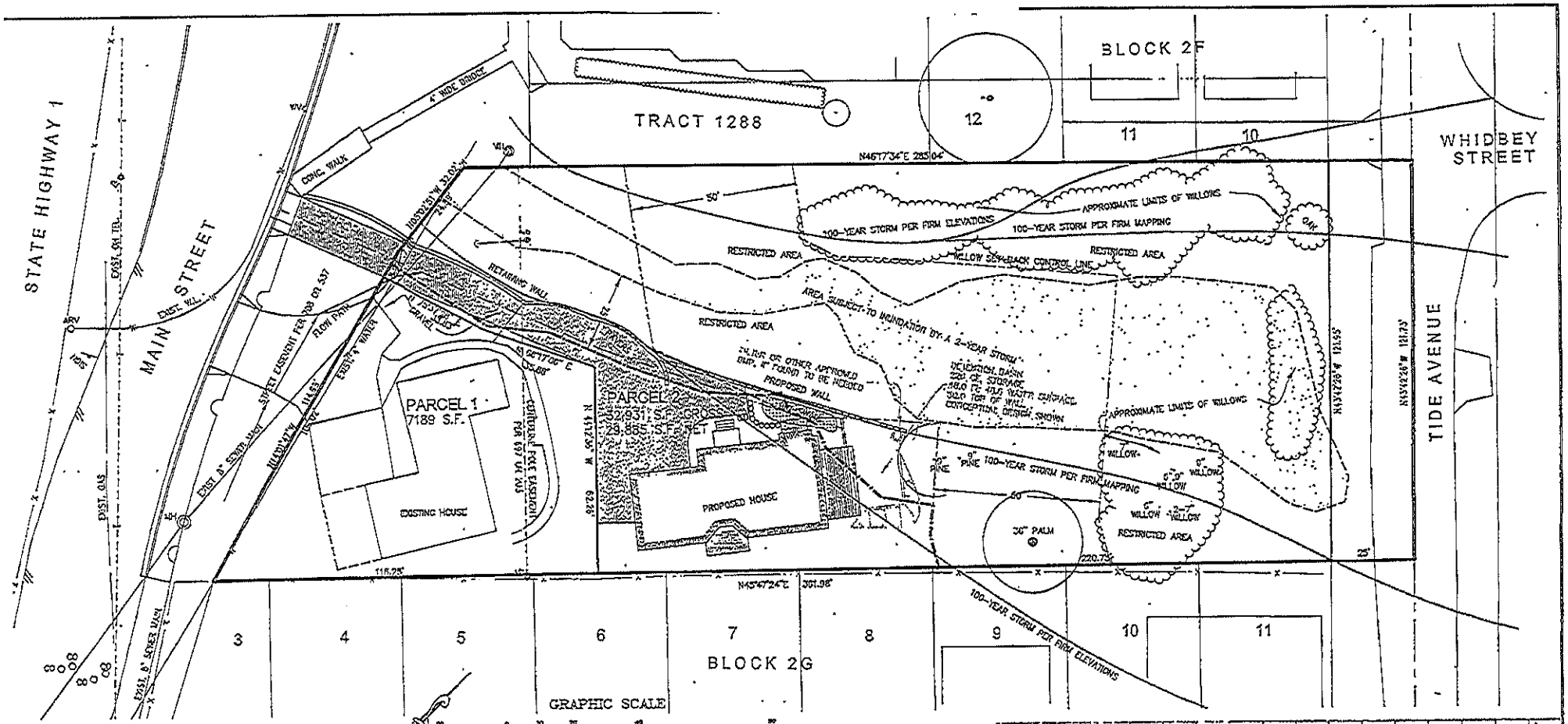
2. ESHA . The shall be no activity allowed in the ESH area that would be detrimental to the native habitat.

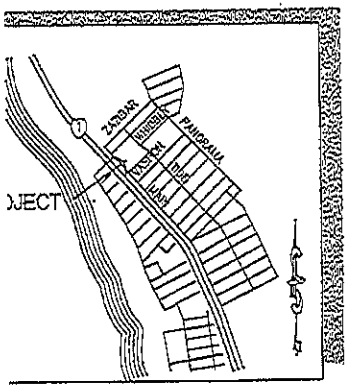
3. Drainage. The drainage from the adjacent properties across parcel one and two shall be evaluated and remedied.

EXHIBITS

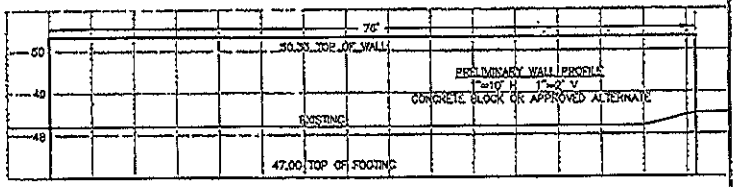
A. Findings for Approval
B. Conditions of Approval
C. Graphics/Plan reductions
D. Materials from Previous Planning Commission Meeting of July 20, 2009
E. Correspondence from Bill Kirchner, U.S. Fish and Wildlife Services
F. Historic and current photographs of the site.
G. Applicant's response to LID issues
H. Information from the file on the original house built at 3390 Main Street.
I. Letters
J. Additional materials submitted by the applicant on July 14, 2010

EXHIBIT C





VICINITY MAP
NO SCALE



OWNER'S STATEMENT

I HEREBY APPLY FOR APPROVAL OF THE DIVISION OF REAL PROPERTY SHOWN ON THIS PLAT AND STATE THAT I AM THE LEGAL OWNER OF SAID PROPERTY OR THE AUTHORIZED AGENT OF THE LEGAL OWNER AND THAT THE INFORMATION SHOWN HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130, SAN LUIS OBISPO, CA 93401
(805)-541-2394

RECORD OWNER:
JOHNIE MEDINA
3390 MAIN STREET
MORRO BAY, CA 93442

ENGINEER'S STATEMENT

I HEREBY STATE THAT THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION AND TO THE BEST OF MY KNOWLEDGE COMPLIED WITH THE LOT DIVISION ORDINANCE OF THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA.

1-26-10

TERENCE K. ORTON, P.E. 21807, EXPIRES 9-30-2009
WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130, SAN LUIS OBISPO, CA 93401
(805)-541-2394

APN 65-065-019

SITE ADDRESS:
3390 MAIN STREET
MORRO BAY, CA

SITE AREA
40,119 S.F. (0.92 ACRES)

RECEIVED
JAN 26 2010
Public Works Department

MB 07-0274
VESTING TENTATIVE MAP
BEING A SUBDIVISION OF A PORTION OF BLOCK 2G OF ATASCADERO BEACH IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA
PREPARED FOR:
JOHNIE MEDINA
PREPARED BY:
WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130
SAN LUIS OBISPO, CA., 93401
(805) 541-2394

SHEET 1 OF 1
DECEMBER 2004 JOB NO. 04.040

EXHIBIT D

HISTORIC INFORMATION REGARDING ONSITE VEGETATION AND MITIGATION FOR REDUCTION OF BUFFER

City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

November 24, 1993

Gary Swauger
Post Office Box 1177
Cambria, California 93428

RE: 3390 Main Street, 8 unit Affordable Housing Project (Moderate)
Response to your Letter of September 28, 1993

Dear Gary,

Please excuse the delay in the response to the questions posed in the above referenced letter received in this office on September 28, 1993. Staff could support a reduction in the front setback for a small portion of the building, meaning a corner of the building (10-20% of footprint), not meaning orienting the entire edge of the building along the property line. Staff could also support a limited amount of encroachment of the roof structure (such as you propose) above the height limit in the MCR district where the exception constitutes a diversity of roof forms (specify the percentage of the roof area above the 25 foot limit). Be aware that the portion of the site located within the R-1 district has a maximum building height limit of 25 feet.

In response to your question about the view corridor requirements of the Specific Plan, staff does not believe the subject site is within a view corridor area. You could check with adjacent neighbors/property owners to determine whether they have objections to the project massing and if it limits their existing views. At this time, the recovery costs for the preparation of the specific plan are not being required (17.71.040.G). Installation of street trees located behind the six foot sidewalk will be recommended by staff for this type of project. The previous review of the project's itemized list of fee waiver requests to determine the equivalent financial value did not include the intersection or landscape improvement fees. At this time staff will recommend these fees be paid. The intersection improvement fee will be determined by the City Engineer based on the trip generation of the project.

The storage requirements appear to be met with the latest information submitted. Your proposed partial use of the ESH buffer area as common open space is not consistent with the intent of the limitations of the

ESH district. Hopefully the remaining areas on either side of the creek that are outside of the ESH and riparian buffers will provide sufficient area. As previously stated, the ESH buffer can not be reduced less than 25 feet without amendment to the Local Coastal Plan and Zoning Ordinance. You are correct that the City Council review of your project included waiver of the Tide Street improvements. Whether the current City Engineer and Council agree this is a prudent waiver is not known. Some type of improvements may be recommended as necessary by the City Engineer. You are correct in that the previously accessed values submitted were for $79,424.00.

As a follow-up to the SRB/DRC meeting of November 3, 1993, staff has addressed some relevant issues raised. Staff has evaluated the site during field inspections and determined the approximate location of the south creek bank. Staff has posted six (6) lathe stakes along the edge of the bank, beginning at the culvert opening at Tide Street, they are lettered "A-F" (numbers indicate feet to south property line) and end to the west at the previously agreed 45 foot contour interval. Please verify the location of the bank and incorporate this information into the plan. The 50 foot ESH setback is measured from this point and can be reduced to a minimum of 25 feet by the Planning Commission with consultation from the State Department of Fish & Game.

The Riparian setback must also be reduced to allow driveway and building encroachments as proposed. Reductions to the riparian habitat have been allowed in the past through approval of enhancement plans. A recent enhancement plan approved by the City used a restoration factor of 3:1, as recommended by Fish & Game for the Cloister's project. An enhancement plan needs to be prepared and approved by Fish & Game that will address both the ESH and Riparian issues. As part of determining the application complete a letter from F&G will need to be submitted recommending a reduction in the ESH setback to 25 feet, support for the reduction of the riparian habitat setback, and review and approval of an enhancement and restoration plan for the riparian area.

The proposal to vacate a portion of the public ROW along Main Street for the purposes of open parking would be an appropriate use and would remove the need for a front setback variance request. The Community Development and Public Works Departments have indicated conceptual support of this idea.

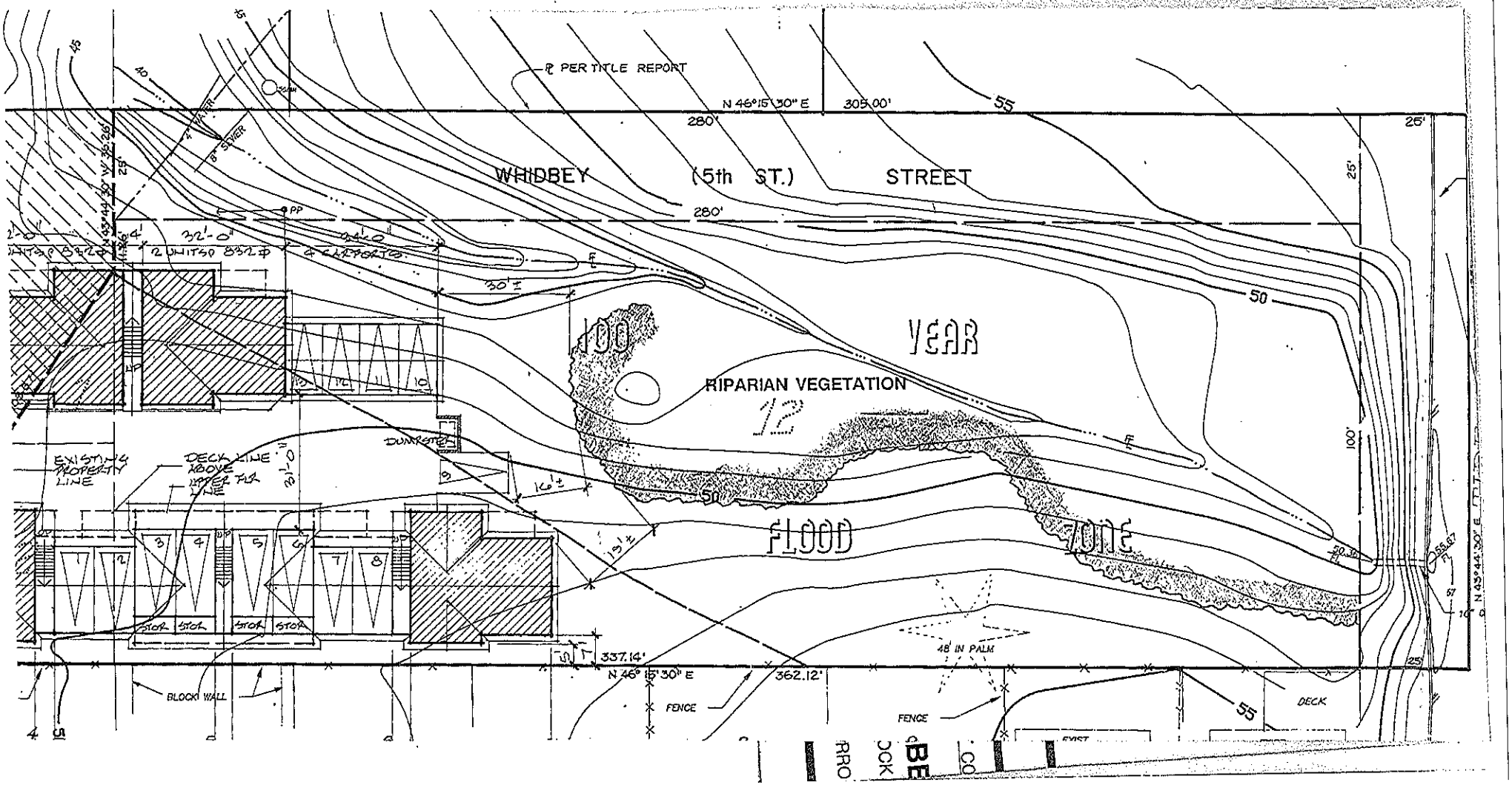
If you have any questions regarding these matters, please contact this office at your earliest convenience.

Sincerely,

Robert B. Malone, Planner
Community Development Department

cc: Jon Crawford, City Engineer

Copy of plan submitted as part of a project in 1989 on the project site. Plan shows riparian vegetation as of 1989. 1" = 20'



Copy of Plan submitted as part of a project (Sept 1993) showing the delineated ESH area as of 1993.

1/20 = 1.0

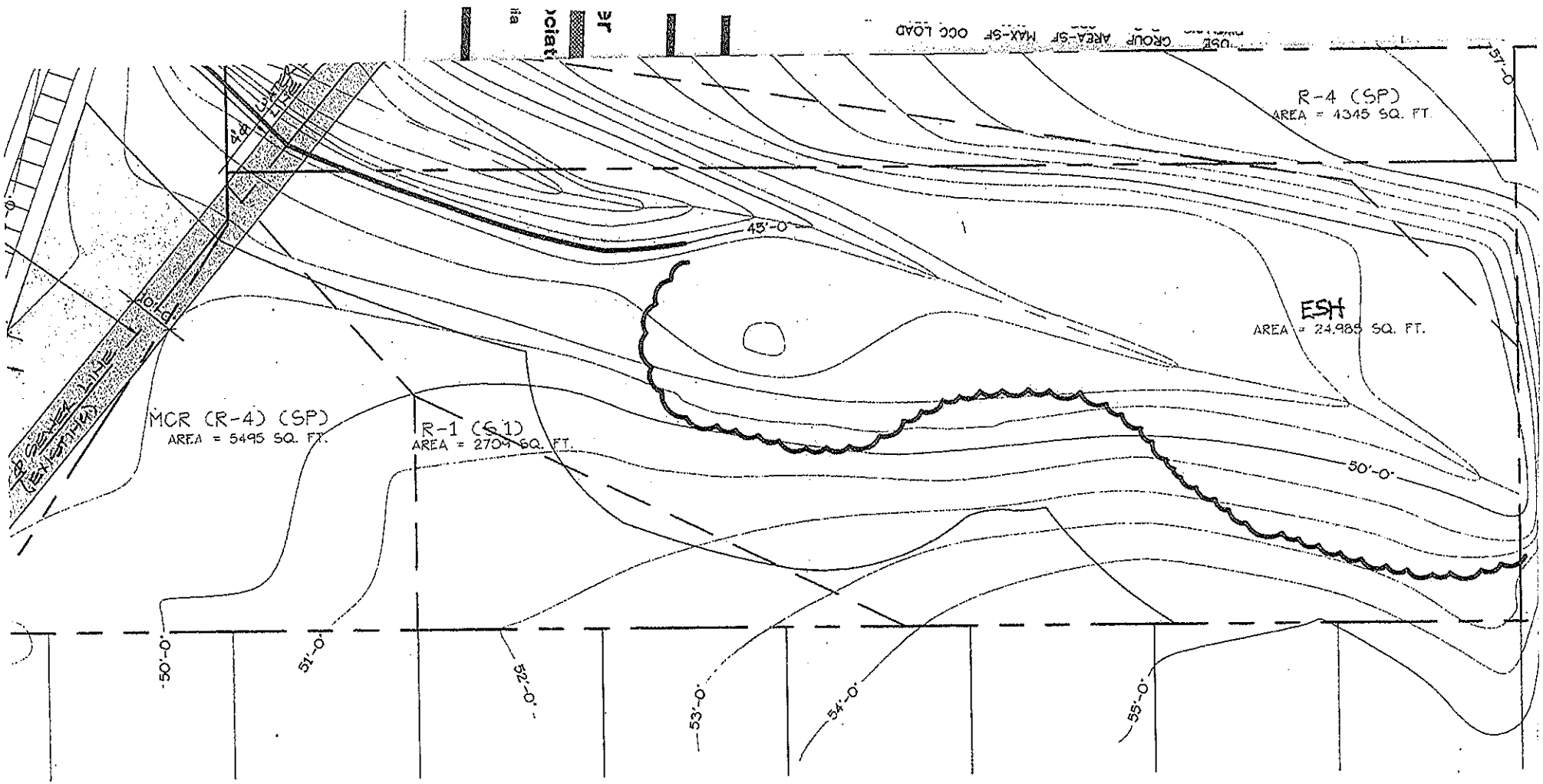


EXHIBIT E

Chronological List of Events at 3390 Main Street

Projects on 3390 Main Street
Chronological List

Medina Project (#1)

10/3/2002 – Department of Fish and Game allowed the stackable brick wall that is located close to the ephemeral creek channel. DFG recommends 100-foot setback, but allows the wall in this case.

9/30/2002 – After taking occupancy of new home an unapproved landscape plan was started. Stop work order was issued, because 2/3 of creek wall on City property and in the flood zone. Homeowner (Medina) was issued a Conditional Use Permit with conditions. Conditions were not followed.

11/26/2001 – Conditional Use Permit Issued for a lot merger and a Regular Coastal Development Permit to construct a new 2,585 square foot single-family house with conditions.

11/19/2001 – Staff report for Planning Commission Meeting. Staff recommendation: conditionally approve the project.

10/29/2001 – State Clearinghouse submitted the above named Negative Declaration to state agencies and there were no comments.

4/6/1994 (reference material) – Memo to applicant from planning department detailing preliminary list of items to be included with formal application:

- Indicate existing drainage (including flood)
- Existing vegetation on more accurate site plan
- Proposed fencing and landscape
- Provide a botanical study for the site justifying the request for a reduced stream corridor buffer to 25 feet.
- Archaeological surface study

4/5/01 – Ventura Fish and Wildlife Office Branch Chief of SLO County determined the project would not affect the issue of disturbing the California red-legged frog. Applicant told if frogs are seen on site, to not disturb or kill frogs.

9/17/01 – Mitigated Negative Declaration – finding: the project will not have a significant effect on the environment. Summary of required mitigated measures:

- Protection of red-legged frog, project shall be carried out in the dry season
- Protection of cultural resources
- Grading and Drainage: roof and driveway runoff shall be directed to the street in a non-erosive manner and not concentrate run off onto adjacent properties or unnamed creek.
- Finished floor elevation to be one foot above base flood elevation.

- Creek restoration plan – The plan shall include, the following measures; landscaping shall be with native riparian species, Non-native species shall be removed from the creek vicinity.

7 unit Moderate Cost Condominium Project

6/30/1994 – Project withdrawal letter

4/14/1994 - Gary Michael Swauger, architect on project requests for the city to resolve the creek setback issue.

> 'The ESH zone will either need to be considered as an overlay of the location of the ESH zone realigned to accurately reflect the top of the bank. Until this is clarifies, the project you reviewed could not be approved. The current ESH zoning boundary unnecessarily limits the developable area to the extent that the project becomes infeasible'.

11/24/1993 – Letter to Swauger addressing ESH districts.

- 'The ESH buffer can not be reduced to less than 25 feet without amendment to the local Coastal Plan and Zoning Ordinance'
- 'Staff has evaluated the site during field inspections and determined the approximate location of the south creek bank. Staff has posted six lathe stakes alonf the edge of the bank, beginning at the culvert opening at Tide street, they are letteres "A-F" and end to the west at the previously agreed 45 foot contour interval. The 50 foot ESH setback is measured from this point and can be reduced to a minimum of 25 feet by the Planning Commission with consultation from the State Department of Fish and Game.'
- 'Reductions to the riparian habitat have been allowed in the past through approval of enhancement plans. A recent enhancement plan approved by the used a restoration factor of 3:1, as recommended by Fish & Game for the Cloister's project. An enhancement plan needs to be prepared and approved by Fish and Game that will address both the ESH and Riparian issues'.

EXHIBIT F

INFORMATION FROM THE FILE ON THE ORIGINAL HOUSE BUILT AT 3390 MAIN STREET

MEMORANDUM

September 30, 2002

TO: Frank Cunningham, Engineering
Gary Kaiser, Planning

CC: Al Sengstock, P.D.
Clyde Ganes, Building

FROM: ENGINEERING DIVISION, N.M.

RE: Block Wall - 3390 Main - Johnnie & Dianne Medina, Owner

After taking occupancy of the new home an unapproved landscape plan was started. As requested by the city, work was stopped a few weeks ago. Per attached Owner's Exhibit 'A' and 'B', 2/3 of the creek wall is on City property and in a 100 year flood zone. The height of the proposed wall starts at 6" at back of sidewalk then rising to 31" and ending at 6".

Please provide your comments and any permits or process you may require. Exclusive of FEMA requirements, and per Planning/Zoning, could you show a line on the Exhibit representing the nearest acceptable wall location to the creek. We are unclear as to what creek setback lines were established for the new home structure. Engineering will address the FEMA/Flood Zone concerns, and special encroachment permit including sprinklers and plumbing in the front right of way.

The Owner said that Fish & Game will provide comments to the City by this Friday October 4th. The attached color copy of a GeoSolutions, Inc. SITE PLAN is old and, was found in the planning file, and provides more topo info. It does not depict the home in its current location.

Per the letter below from the City, the Owner is now at step 1) awaiting 2) from Fish & Game.

From: Nick Muick
To: johnmedina@petejohnston.com
Date: 9/24/02 2:31PM
Subject: 3390 Main - Proposed Landscape Plan

September 24, 2002

Dear Johnnie & Dianne,

A copy of this email is being USPS mailed to your home at 3390 Main.

As you know, portions of your proposed landscape plan are on City property, in/near an ESH

zone, in a 100 year flood zone, and in/near a creek setback area.

I have reviewed your Planning file and the Landscape Plan there does not show the encroachments or block wall in your current proposal.

In the Planning file I also noted the following related conditions (Conditional Use Permit) for your project which were sent to Randy Watterworth, the Applicant, on November 26, 2001.

#19 Creek Restoration Plan
#28 100 Year Flood Zone

You should have them, but if you would like to see the text of the conditions, please ask for the file at our counter.

To enable us to evaluate your current proposal, please note the following process. If you have any questions please call me.

1) At your Exhibit 'A' plan please show how high the block wall is above the original grade such as 24", 31", etc. (In plan the wall is composed of three arcs.
Show the height above original grade at the beginning and center of each arc. So starting from the back of sidewalk, to the termination of the wall at rear of home, there should be seven heights provided)

2) Provide the names and phone numbers of contacts you have made regarding the wall with Fish and Game and the Army Corps.

3) Your revised Exhibit 'A' will be transmitted to and reviewed by: State Fish and Game, U.S. Army Corps of Eng., Morro Bay Planning, and Morro Bay Engineering & Flood Plain Administration since most of the wall is in a Special Flood Hazard Area (100 year flood zone per FEMA's Map)

4) We will reply to you following reception of comments from Fish and Game and the Army corps.

5) Your landscape plan will require a Special Encroachment Permit for those portions on City property including:
a. the sod, sprinklers and related plumbing
b. the block retaining wall

For your information, if the current proposed landscape plan was submitted as part of the initial plan check, the following standard condition would have been included:

Flood Hazard Development in Creek Areas:

The creek on and adjacent to the property is in a Special Flood Hazard Area. If the applicant

proposes any work affecting the creek, the following shall apply:

The National Flood Insurance Rate Map for the City of Morro Bay (Panel No. 060307 0005 C, November 1, 1985), prepared by the Federal Emergency Management Agency (FEMA), identifies Applicant's project as being in a 100 year Flood Zone.

MBMC Section 14.72, Flood Damage Protection, requires the Applicant pay a Flood Hazard Development Fee (currently $102.60+cost), plans showing the extent to which any watercourse will be altered as a result of the proposed construction , and review by the City Engineer to determine that the proposed development does not adversely affect the carrying capability of the floodplain (where "adversely affect" meas that the cumulative effect of the proposed project when combined with all other existing and anticipated construction will not increase the water surface elevation of the base flood more than one foot at any point and that adjacent properties are not adversely impacted). The cumulative combined effect resulting in an increase of more than one foot elevation or to the existing limits of the 100-year flood zone would need to be reflected on a revised NFIP Rate Map that would be prepared at the applicant's expense.

The Applicant's registered civil engineer shall provide the City with a hydraulic and geometric analysis for the proposed project. The engineer shall also verify that erosion or existing flooding conditions at other locations will not increase as a result of the proposed project. The base flood elevations have already been determined on the Rate Map pursuant to the Flood Insurance Study by FEMA. A copy of the Study is on file at the Engineering Division.

The applicant shall obtain a grading permit. The grading plan permit submittal shall include drainage calculations by the engineer and all items as required by the Uniform Building Code. Upon completion of construction and prior to final acceptance the engineer shall submit an "as-built" grading plan of the completed construction, and shall submit a statement that to the best of his knowledge the work was done in accordance with the final approved grading plan.

Other permits and approvals required for creek projects may include State Department of Fish and Game #1601, and Federal Corps of Engineers #404, Water Quality Control Board Certification and State Coastal Zone Management Act compliance. It is the applicant's responsibility to be aware of and obtain all necessary permits.

CC: Clyde Ganes; Dan Doris; Frank Cunningham; Gary Kaiser; Greig Cummings; Michael Prater

Exhibit 'A'

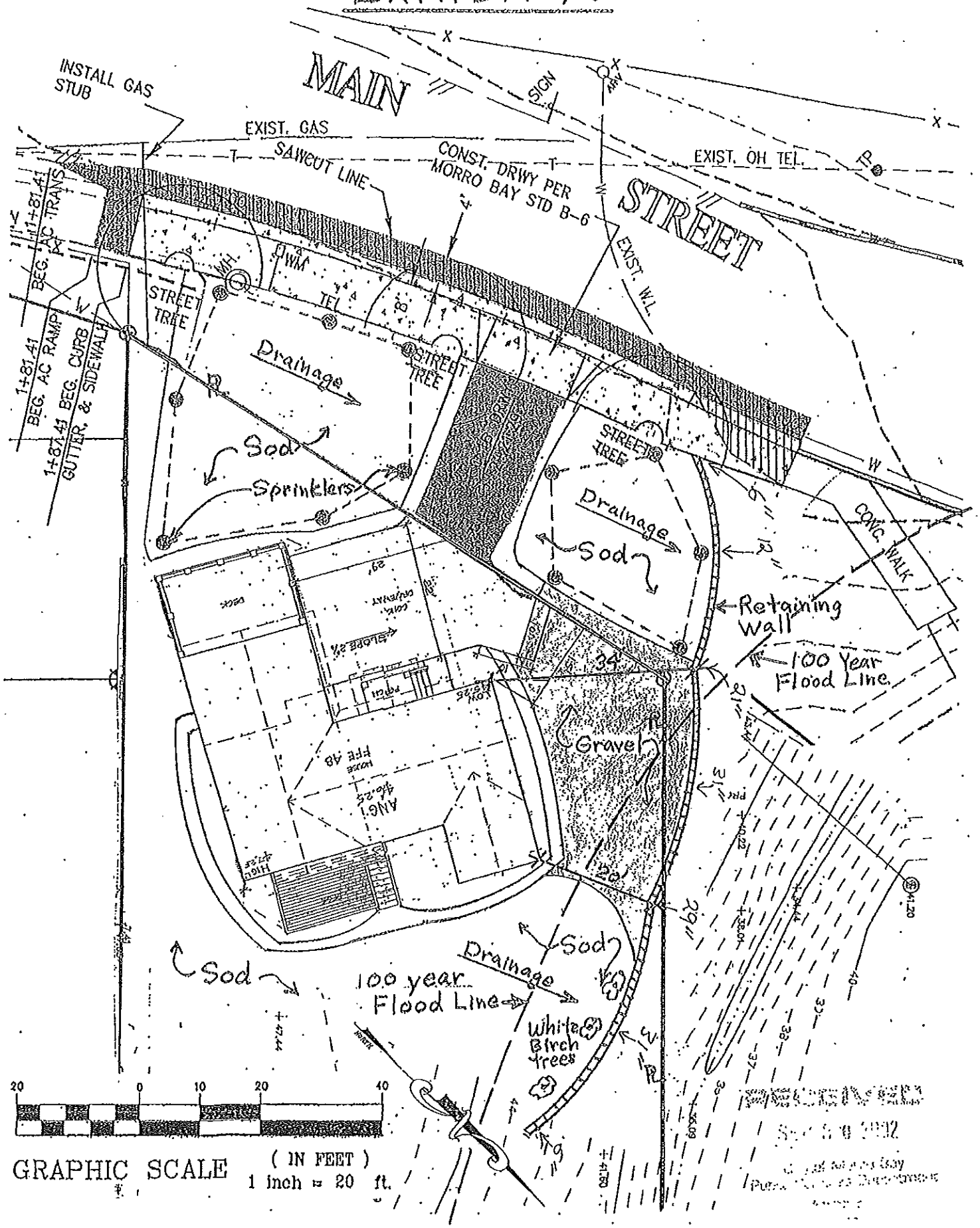
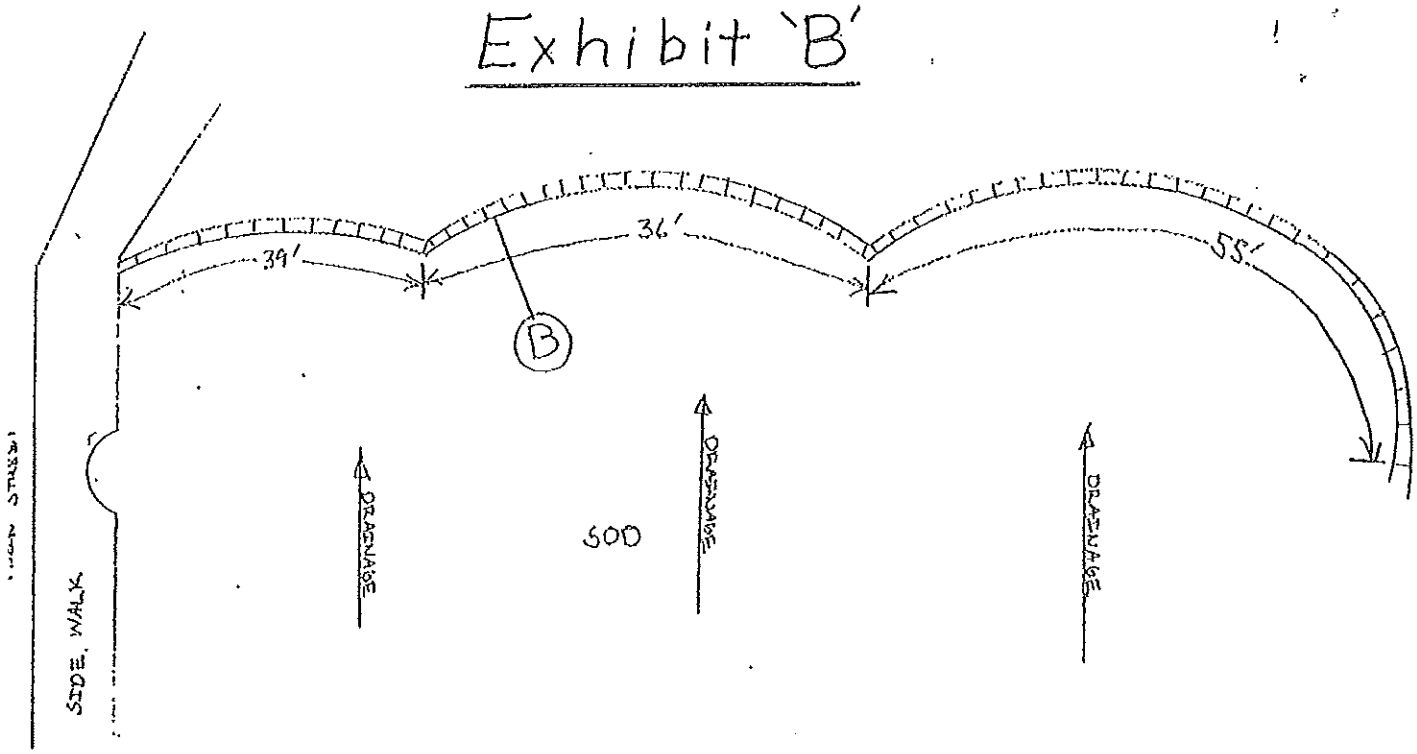
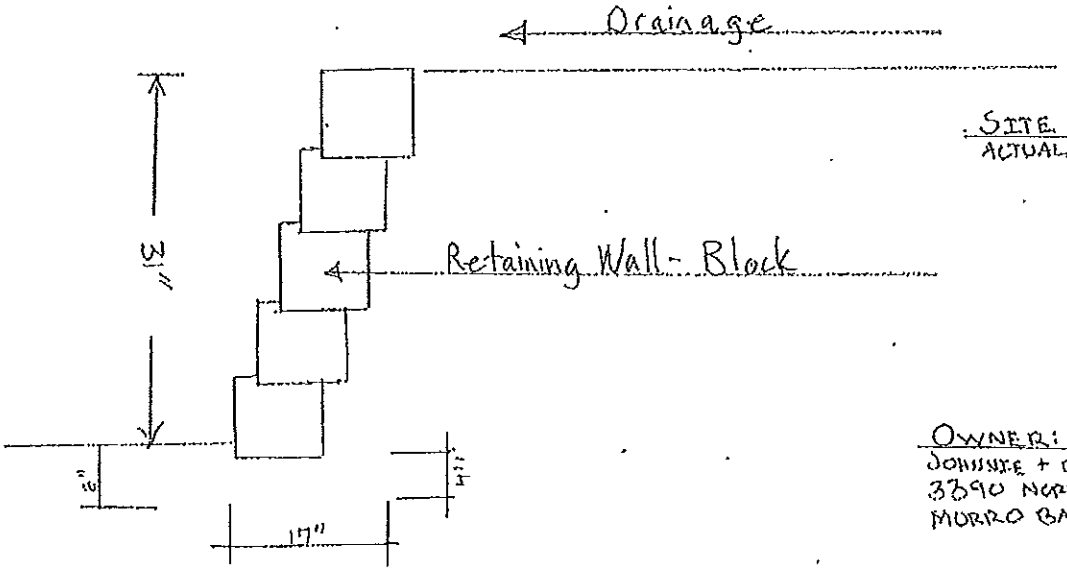

MAIN STREET
INSTALL GAS STUB
EXIST. GAS
SAWCUT LINE
CONST. DRWY PER MORRO BAY STD B-6
EXIST. OH TEL.
SIGN
EXIST. W.L.
1+81.41 BEG. AC TRANS
1+87.41 BEG. AC RAMP
1+87.41 BEG. CURB GUTTER, & SIDEWALK
STREET TREE
Drainage
Sod
Sprinklers
Retaining Wall
100 Year Flood Line
Gravel
CONC. WALK
100 year Flood Line
White Birch trees
GRAPHIC SCALE (IN FEET)
1 inch = 20 ft.

Exhibit 'B'

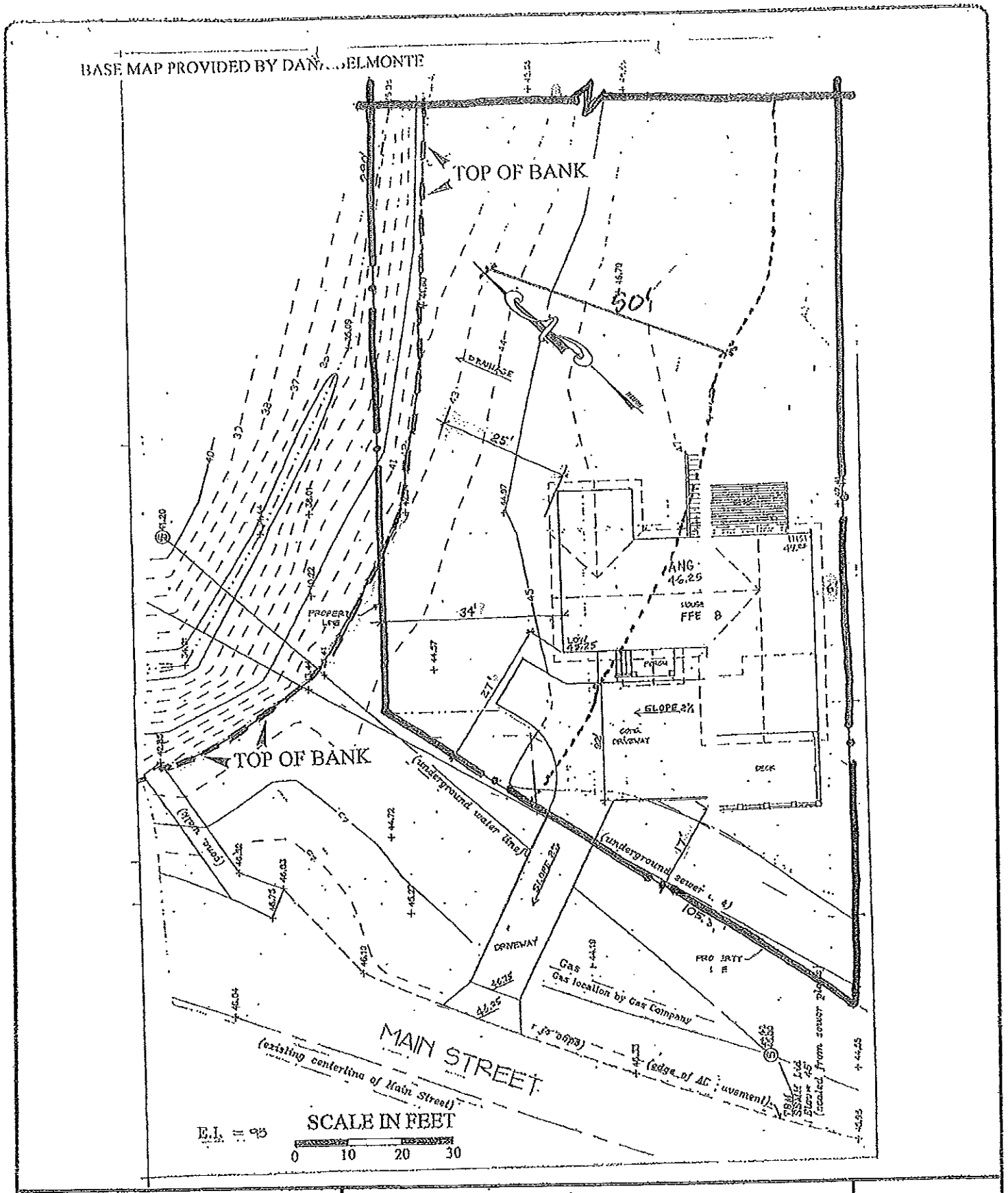




SITE PLAN
ACTUAL FOOTAGE

OWNER:
JOHNNIE + DIANE MEDINA
3390 NORTH MAIN
MORRO BAY, CA

B
WALL SECTION



GeoSolutions, Inc.

220 High Street
San Luis Obispo, CA 93401
(805) 543-8539 Fax: (805) 543-2171

SITE PLAN

3390 MAIN STREET
MORRO BAY, CALIFORNIA

FIGURE
2

PROJECT
SL01969-2

File Copy

MEMORANDUM

October 3, 2002

TO: Frank Cunningham, Engineering
Gary Kaiser, Planning

CC: Al Sengstock, P.D.
Clyde Ganes, Building

FROM: ENGINEERING DIVISION, N.M.

RE: Block Wall - 3390 Main - Johnnie & Dianne Medina, Owner

Per the previous (September 30) Memo to you on this matter, at first page 3rd paragraph.....

"The Owner said that Fish & Game will provide comments to the City by this Friday October 4th."

Attached is the letter from Fish and Game.

We would like to receive your comments by October 9.

Thanks

State of California - The Resources Agency
DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
POST OFFICE BOX 47
YOUNTVILLE, CALIFORNIA 94599
(707) 944-5500

GRAY DAVIS, Governor

September 30, 2002

RECEIVED
OCT 0 3 2002
City of Morro Bay
Public Services Department

Mr. Johnie Medina
3390 North Main Street
Morro Bay, California 93442

Dear Mr. Medina:

Stackable Brick Wall
3390 North Main Street
Morro Bay, San Luis Obispo County

On September 26, 2002, Department of Fish and Game (DFG) personnel reviewed the construction of a stackable brick wall at your residence located at the above address. The wall is located near an ephemeral creek channel that drains storm water runoff to the Pacific Ocean, and is intended to allow for placing additional fill material behind the wall to raise the level of the rear and side yards at the above address. While the wall's location is close to the channel, it is not located within the stream channel and is not within the Department's jurisdiction under the Streambed Alteration Agreement.

While DFG typically recommends a 100-foot setback from the top of the creek bank in order to protect riparian resources and to allow for changes in the channel course, it appears that construction of the wall will not impact the creek channel or the flow of water through the creek. It also appears that significant efforts have been taken to avoid placement of any fill, sediment, or other material in the channel. Based on this information, it is unlikely that sensitive resources or riparian vegetation have been or would be impacted by this project.

Please contact DFG prior to any future projects that are located close to the stream channel. Any construction that may alter the bed, bank, or channel of a stream may require a Streambed Alteration Agreement prior to initiation or

construction. If you have any questions or need additional information regarding the Streambed Alteration Agreement program or this letter, please contact Mike Hill, Associate Fisheries Biologist, at (805) 489-7355; or Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584

Sincerely,

Robert W. Floerke
Regional Manager
Central Coast Region

City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

3 PAGES TOTAL

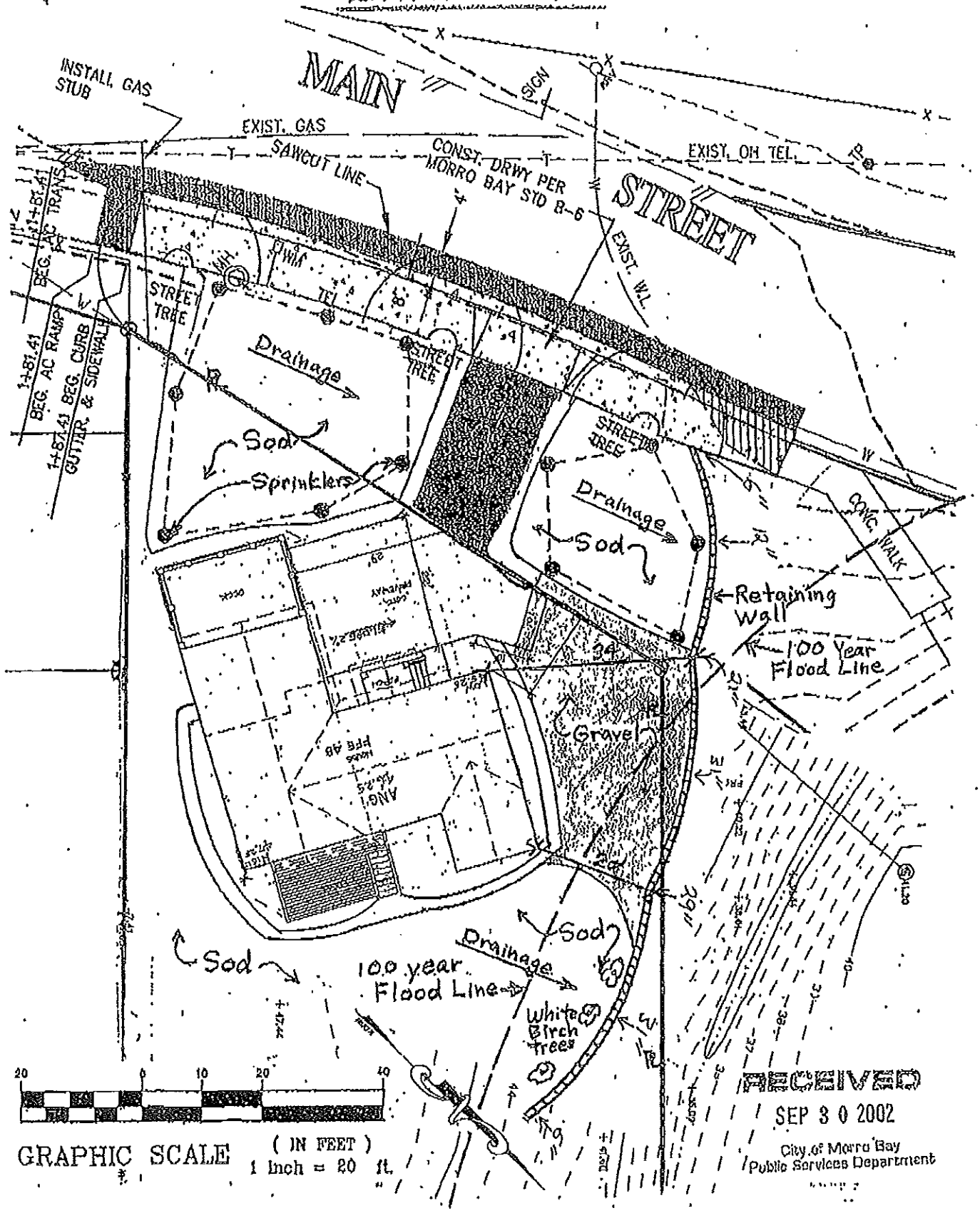
541-2439

TERRY

RE: 3390 MAIN
MEDINA

NICK
772-6265

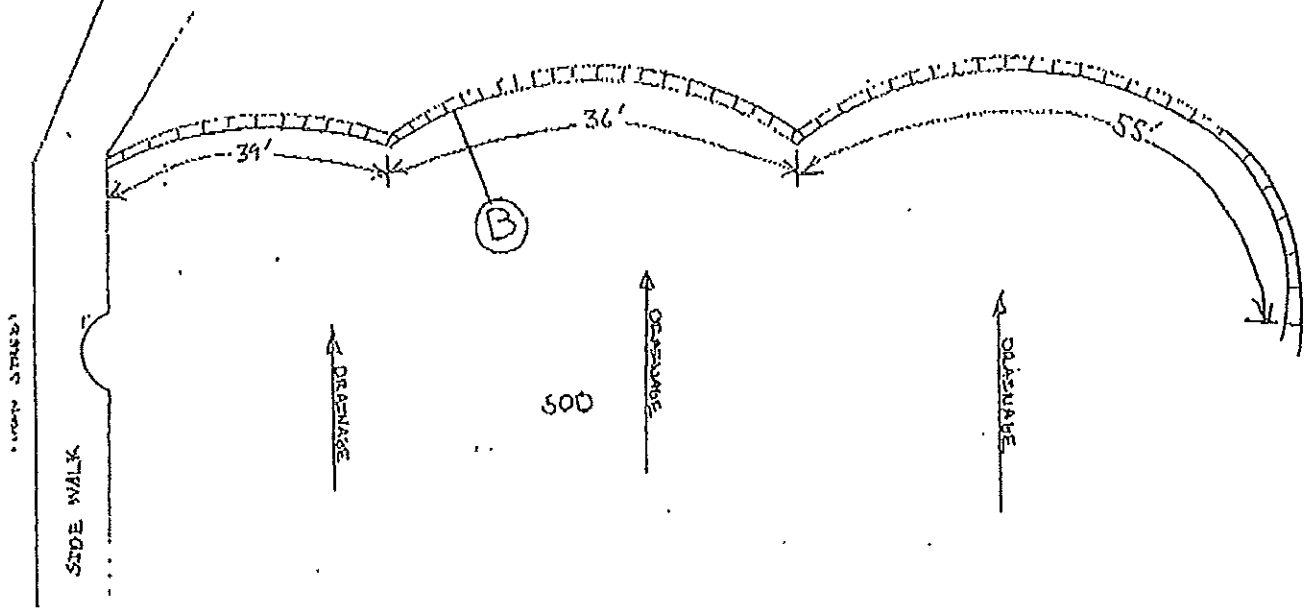
Exhibit 'A'

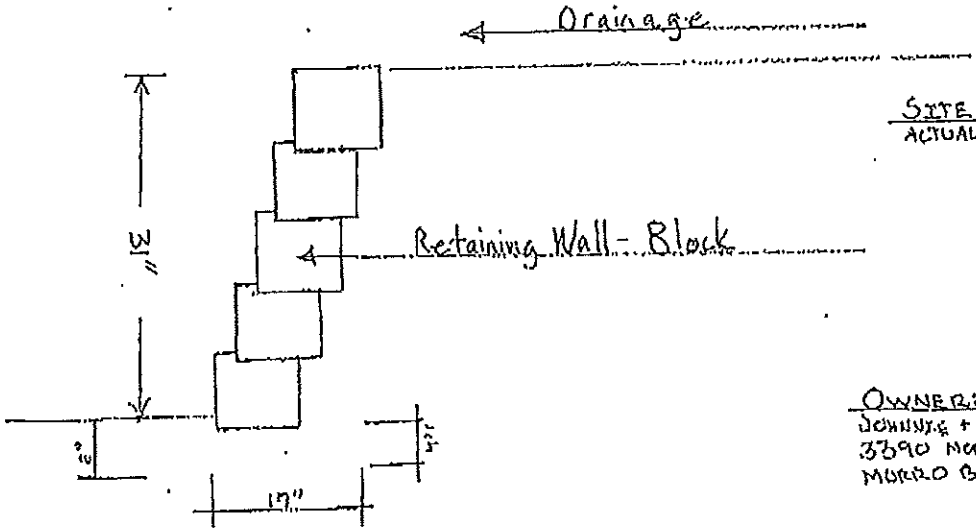


RECEIVED
SEP 3 0 2002
City of Morro Bay
Public Services Department

5412439

Exhibit 'B'





SITE PLAN
ACTUAL FOOTAGE

OWNER:
JOHNNY + DIANE DEDINA
3390 NORTH MAIN
MORRO BAY, CA

B
WALL (CUTTER)

EXHIBIT G

LETTERS FROM 2002 CONCERNING DRAINAGE ISSUE

City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

September 12, 2002

Waterworth Construction
Attention; Randy Waterworth

Regarding: 3390 Main Street Improvements, Morro Bay CA 93442

Dear Randy,

The situation at 3350 Main Street is of concern to the City of Morro Bay, and therefore prompts a written dialogue. As you recall, during the construction phase of the permitted improvements at 3390 Main Street, you approached the City with a request to deviate from the City's standard drainage requirements. In lieu of requiring surface runoff discharging to the street, it was agreed upon to allow the storm water to flow north to the adjacent creek. A condition was agreed upon, that since the neighboring house to the south (3350 Main St/J. Masterson) also historically partially drained north to the creek, and that historic storm water flows from 3350 Main Street would be maintained. That left you with the option to either lower the entrance driveway to the new home as required to allow drainage, or place a culvert under the driveway as needed. Neither of these two options was completed as agreed upon, thus creating a potential for flooding next door at 3350 Main Street. We have all met at various times in the last week at the site to discuss how best to resolve this issue. The City does not want be in a position to direct you on how to mitigate the cutoff-drainage condition, but does agree with the concerns of the property owner next door. I would accept that since Eric surveyed the lot and has since graded it to hopefully drain to the south/west corner near Vashon and Main, we test the storm water runoff drainage one of two ways. To properly resolve any doubt, we either apply water as needed, or we wait for an adequate winter storm to demonstrate adequate drainage to the satisfaction of the neighbor (Ms. Masterson). In the meantime, all parties must have a clear understanding of these requirements and consequences.

On another note, I must also address the pre-existing split-rail fence that was also in the neighbors yard. Pictures indicate prior to the improvement construction next door at 3390 Main St, the old fence was intact. As I stated in the field on 9-9-02, I would request that the fence be raised as needed to the existing grade, reconstructed as needed, and an inventory be made of damaged pieces that need to be replaced. I am confident that all parties will successfully be able account for their shared responsibility in damaging the fence. I am also to recently understand that Ms Masterson has agreed to not requiring the fence along the north side because of the new Allan-block retaining wall..

Sincerely

Frank Cunningham

Frank Cunningham, City Engineer

cc. Bill Orndorff — FINANCE, 595 Harbor Street
City Attorney — ADMINISTRATION, 595 Harbor Street
J. Masterson — FIRE DEPARTMENT, 715 Harbor Street
File — PUBLIC SERVICES, 590 Morro Bay Boulevard

cc

Jane –
Here is a copy of the letter just sent.
Carmen

September 4, 2003

Frank Cunningham, City Engineer
City of Morro Bay
955 Shasta Ave.
Morro Bay, CA 93442

Subject: 3390 Main Street Improvements, Morro Bay CA 93442

Dear Mr. Cunningham:

It has come to my attention that there is an unresolved drainage problem at 3350 Main Street caused by City-permitted construction. Waterworth Construction filled and graded the subject property thereby raising the elevation of the lot considerably before constructing a large home. The 3390 property is in-between a drainage channel to the north which eventually drains to the ocean and the adjacent residence at 3350 Main Street owned by Ms Jane Masterson. The new construction has essentially dammed the runoff which historically has flowed north through the Masterson property.

In your letter to Randy of Waterworth Construction, dated September 12, 2002, you stated that the City allowed deviation from the City's standard requirements with the condition that he fix the drainage problem at 3350 by either lowering the entrance driveway to the new home to allow drainage, or place a culvert under the driveway of 3390. Ms Masterson's front yard was then surveyed and graded in the hopes that it would drain to the south/west corner near Vashon and Main. You suggested that the parties wait for an adequate winter storm to demonstrate adequate drainage to the satisfaction of Ms Masterson.

In December 2002, a significant rainfall caused the front yard of Ms Masterson's and the Vashon Road shoulder to flood. When Ms Masterson called your office to inform you about the flooding on her property, she was told you'd come to inspect the flooding but no one from the City ever responded.

On behalf of Ms Masterson, I request that you have Waterworth Construction implement one of the two options that are conditions to his permit: either lower the driveway or install a culvert immediately. Please

respond to me at the address below within 10 calendar days with a time line when the City-conditioned work is to be completed.

If you have any questions regarding this letter or you wish to discuss the matter, please contact me at 528-3782.

Sincerely,

Carmen V. Fojo, P.E.
1416 Las Encinas Drive
Los Osos, CA 93402

EXHIBIT H

WEED ABATEMENT NOTICE OF APRIL 1, 2009

CITY OF MORRO BAY
FIRE DEPARTMENT

715 HARBOR STREET.....MORRO BAY, CA.....772-6242

NOTICE TO CLEAR WEEDS AND DEBRIS

April 1, 2009

THE ANNUAL WEED ABATEMENT PROGRAM TARGETS POTENTIAL FIRE HAZARDS IN THE CITY, AND, IS INTENDED TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC THROUGH THE PROVISIONS OF THE MORRO BAY MUNICIPAL CODE (CHAPTERS 1.03 AND 8.12.030) AND, 2007 CALIFORNIA FIRE CODE (SECTION 304).

This is your notification for the 2009 Weed Abatement Program. THIS IS THE ONLY NOTIFICATION YOU WILL RECEIVE. The latest assessor's tax information indicates you are the owner of the parcel number indicated on the address label. Please notify us immediately if you have sold this parcel.

As the owner, you have the responsibility to abate any fire hazardous conditions that may exist on your property by **June 15, 2009.** Due to the extended growing season from Morro Bay's marine climate, we request that owners abate their parcels between **May 15 and June 15**. **Please note that if your parcel is cut early, and the City experiences late rains, which cause the vegetation on the parcel to grow before it is inspected (around June 15), the City may require that it be further abated.** The City **DOES NOT** cut lots that are in violation. **Administrative Citations (Fine Amount $90 for first offense) will be issued to property owners who fail to comply**. If you need to hire someone to abate hazardous conditions, please refer to the list of contractors on the reverse side of this letter.

ABATEMENT GUIDELINES

- Clear empty lots to no more than 4" high by mowing. (No discing or rototilling is allowed) This includes all vegetation that is now green but will dry out later.
- Remove dead bushes, trees, tree limbs, excess trash, wood or other combustibles.
- All cuttings within 10 feet of adjoining properties, streets or sidewalks must be removed, and, sidewalks, gutter and street areas shall be left clean. No piles or clumps shall be left on the property; however, finely cut material can be scattered as long as the above requirements are met and material will not blow onto adjoining properties or street areas.

Your cooperation is greatly appreciated in the interest of keeping Morro Bay a fire-safe community. If you have special problems, questions or need assistance, please contact the Morro Bay Fire Department at (805) 772-6242 (attention Tom Prows).

EXHIBIT I

MATERIALS FROM PREVIOUS PLANNING COMMISSION MEETING OF JULY 20, 2009

AGENDA ITEM: X-E
ACTION Continued

CITY OF MORRO BAY
PLANNING COMMISSION
July 20, 2008

PROJECT SUMMARY
Request for a Vesting Tentative Map to subdivide an existing 40,119 square foot parcel into two parcels, parcel 1 is approximately 7,189 square feet in size and parcel 2 approximately 32,931 square feet in size. The applicant proposes construction of a 2,487 square foot house on Parcel 2. Parcel 1 has an existing residence.

FILE NUMBER
SOO-089/CPO-276 Subdivision Map and Coastal Development Permit.

LEGAL DESCRIPTION
Parcel 1—Lots 12 in Block 2G of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California according to the map recoded July 2, 1917 in Book 2, page 15 of maps, in the office of the County recorder of said county.

Parcel—That portion of Lots 1 and 2 in Block 2G of Atascadero Beach, in the City of Morro Bay, County of San Luis Obispo, State of California according to the map recoded July 2, 1917 in Book 2, page 15 of maps, in the office of the County recorder of said county.

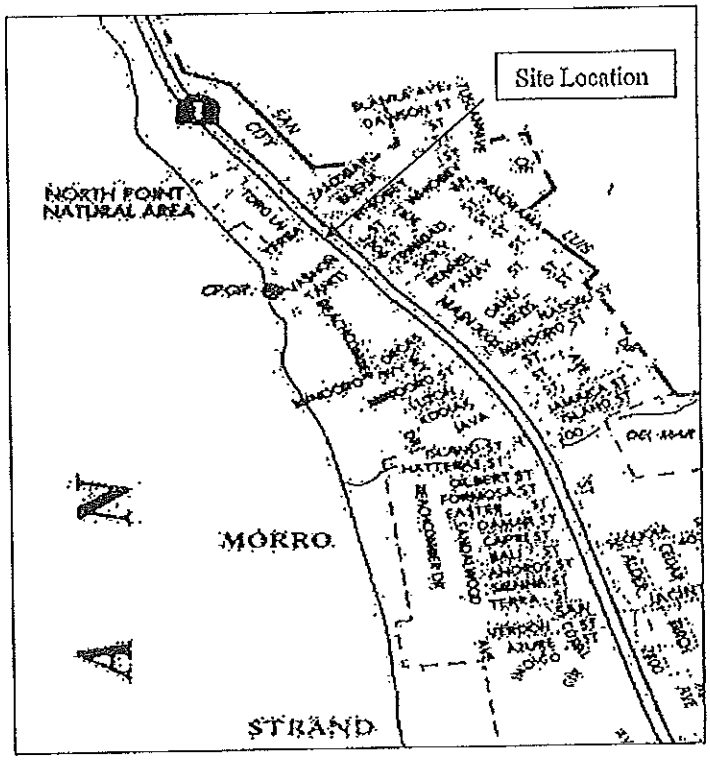
ADDRESS
3390 Main Street

APN
065-085-019

APPLICANT
Johnie Medina
3390 Main Street, Morro Bay, CA

AGENT
Westland Engineering, Inc.
3480 S. Higuera Street, Suite 130
San Luis Obispo, Ca 93401

EXHIBITS
A. Findings for Approval
B. Conditions of Approval
C. Graphics/Plan reductions
D. Mitigated Negative Declaration & biological study



Vicinity Map

STAFF RECOMMENDATION

It is recommended that the Planning Commission *CONDITIONALLY APPROVE THE PROJECT* by adopting a motion including the following action(s):

A. Adopt Mitigated Negative Declaration (SCH 2009061049)

B. Adopt the Findings for Approval included as Exhibit "A" of the staff report,

C. Approve Tentative Parcel Map and Coastal Development Permit based on site development plans received by the Public Services Department on January 5, 2008 and subject to the Conditions of Approval included as Exhibit "B" of the staff report.

ENVIRONMENTAL DETERMINATION:

The project qualifies for a Mitigated Negative Declaration (SCH 2009061049) (Exhibit D) in accordance with the applicable provisions of the California Environmental Quality Act (Public Resources Code 21000 et. Seq.). The Mitigated Negative Declaration was circulated on June 9, 2009 with a review period that ended on July 13, 2009. The applicant has agreed to implement the mitigation measures proposed in the Negative Declaration. Mitigation was required for Geology, Hydrology, Land Use, Noise, Transportation/Circulation, and Utility/Service. Thus staff recommends that there would not be significant impacts with the implementation of those mitigation measures.

SETTING

The project site encompasses 40,119 square feet and is currently occupied by a two-story 2,040 square foot single-family residence. The site also contains a creek and natural vegetation.

Adjacent Zoning/Land Use			
North:	R1/S.1, Low/Med. Residential & R-4(SP)	East:	R-1(S.1), Low/Med. Residential
South:	R1/S.1, Low/Med. Residential & MCR/R-4(SP)	West:	Highway 1

Site Characteristics	
Site Area	40,119 Square feet
Existing Use	Single-family residence
Terrain:	Gently sloping
Vegetation/Wildlife	Exotic vegetation and a sparse representation of native vegetation, no special species or wildlife noted.
Archaeological Resources	Greater than 1,500 feet from any known site and the closest survey was taken 400 feet away (#2819) where no known resources were found.
Access	Lots will take access from Main Street.

General Plan/Zoning Ordinance & Local Coastal Plan Designations	
General Plan/Coastal Plan Land Use Designation	Low/Med. Residential & Mixed Use Area F
Base Zone District	R-1 & MCR/R-4
Zoning Overlay District	ESH
Special Treatment Area	None
Combining District	S.1 & SP
Specific Plan Area	North Main Street Specific Plan, Area A
Coastal Zone	Inside Coastal Commission Appeal Jurisdiction

DISCUSSION

The applicant has submitted a Vesting Tentative Parcel Map to subdivide their property into two parcels. The Parcel Map will divide an existing 40,119 square foot parcel into two parcels, parcel 1 is approximately 7,189 square feet in size and parcel 2 is approximately 32,931 square feet in size. The applicant then proposes construction of a 2,487 square foot house on Parcel 2. Parcel 1 has an existing residence that will remain. Creating four or less parcels only requires a Parcel Map approval, which does not require City Council action, although the Planning Commission's decision may be appealed to them.

The map has been reviewed and has been conditioned to meet all Title 16 and Title 17 requirements including minimum lot sizes.

Due to the location of the site, within the Coastal Appeals Jurisdiction, the construction of a new home requires a Coastal Development Permit. However, the size of the home at 2,497 square feet does not require any heightened review under separate Conditional Use Permit as it is under the 2,500 square foot maximum.

Staff has received numerous letters and one petition against the project. The main concerns of these letters is the effect of building an additional home within an area in close proximity to an ESH (Environmental Sensitive Habitat) area and an area subject to flooding.

ENVIRONMENTAL SENSITIVE HABITAT AREA ISSUES

The project area includes area identified as Environmental Sensitive Habitat Area (ESHA) The ESHA incorporates and straddles an ephemeral creek. A Biological Assessment was conducted for the site on May 3, 2008. The study concluded that the entire lot is significantly disturbed and exhibits a large variety of exotic vegetation and only a sparse representation of native vegetation. The lot offers no appropriate habitat for native botanical species. The plethora of exotic vegetation, particularly the more aggressive invasive species, precludes the opportunity of the establishment of those native species with special listing. The lot is poorly suited for avian species and no habitat for Cooper's hawk, golden eagle, snowy egret, northern harrier, horned lark, or logger head shrike due to the size of the property, lack of trees, no source of water, and proximity of development. The study concluded that the habitat requirements for the red-legged frog, steelhead trout and the southwest pond turtle can not be met by the creek on the lot in question. The creek is choked by exotic vegetation and contains no opportunity for water to pool and remain in the channel. It is also has a very narrow channel although it may carry significant amounts of water during a severe rain storm. The report concluded that there are no existing fish

or wildlife resources that will be substantially adversely affected by the project. The applicant consulted with California Coastal Commission staff to request a clear delineation of the ESHA area. Coastal Commission staff concurred with the applications delineation with the provision that it be expanded to include the willows on the east side of the property and accordingly all structural development must be setback a minimum of 50 feet for the stream/ESHA corridor per the LCP including 50 feet from the drip line of the willows. The report also provided that to the extent that the proposed driveway access might encroach into the ESHA buffer, commensurate amount of restoration must be in included.

STORMDRAINAGE AND FLOODING ISSUES

Prior to building permit issuance for any construction at the site, the applicant shall be required to provide a Grading and Drainage Plan along with an Erosion and Sedimentation Control Plan for the City's review and approval. Said plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right-of-way, adjacent properties, waterway, or ecologically sensitive area.

The improvements for the proposed project including the private road/driveway would be designed to accommodate the existing historic drainage within an easement that leads toward the west across adjacent parcels. An easement will be acquired but the facility will be able to handle the development such that the increase in run-off will not exceed historic flow plus 5 percent increase. In addition, the proposed project and cumulative projects would be required to maintain the sites with permeable surfaces to ensure the run-off does not increase by 5 percent of historical flow. The remaining water flow would be required to drain within the collection facility in a non-erosive manner. Therefore, the proposed project would not substantially alter existing drainage on the site, nor result in substantial erosion or siltation on or off site.

Since the project site is less than one acre, a Construction Activities Storm Water General Permit is not required, per the Federal Clean Water Act. However, the city routinely requires erosion control plans. This is a component of the permit process that can be relied upon to ensure that water quality issues associated with erosion will be suitably addressed. The applicant has submitted documentation indicating that the proposed wall will not negatively affect drainage on site or to the nearby creek.

The project site is within an area designated as a special flood hazard zone AE on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) (Map Number 06079C0813F, dated August 28, 2008) and is subject to inundation during a 100 year flood. Pursuant to Chapter 17.42 – Flood Damage Prevention Regulations of the City's Municipal Code, residential development within a flood plain is allowed provided the structure's finish floor elevation is one foot above the 100-year water surface elevation. This requirement is to reduce the potential for flood related impacts to the structure. The applicant's engineer report indicates that the construction of a new retaining wall will not affect the water surface elevation in a 100 year storm. Additionally, the construction of the new home, due to its location in the fringe of the floor plain, will not significantly impact the 100 year water surface elevation and is in conformance within the City's flood damage prevention regulations.

SINGLE FAMILY HOME

The new home is proposed on a parcel two. This parcel is extremely large, however the actual building envelope is reduced in size due to the setback requirements from the ESH area, in particular the 50 foot setback requirement from the willows within the ESH area. The main area of concern regarding the construction of the new home is the height limitation. The applicant did not provide drawings that could be scaled to indicate the height of the building he has however, indicated that the building is 24 feet in height. Because the finished floor elevation must be 1 foot over the flood plain elevation it may not leave enough leeway for the home to be 24 feet in height. Staff has placed a condition on the project requiring the height of the new home to be less than 25 feet measured from the average natural grade regardless of the modification needed to meet the flood plain requirements. A two car garage is also being proposed as required by the code.

Project and Zoning Setbacks.

Setbacks	Project	R-1/S.1 Required
Front yard	106 feet	10 feet
Rear yard	115+ feet	5 feet
Interior side yard	6'6"feet	3 feet.
Exterior side yard	N/A	6 feet
Lot coverage	8%	45% maximum
Height	24 feet	25 feet
Minimum Lot width required at property line	40 feet	40 feet

FLOOR TO AREA RATION COMPARISON

Pursuant to City Council direction on March 30, 2009, staff has complied the following analysis based upon information provided by a citizen's group on April 8, 2009 that advocates the use of Floor Area Ratios (FAR's). The example FAR calculation which includes the garage, (1300+0.30(lot sf-29885-2000) = 9,665/29,885 = 0.32. The project proposes 2,497/29,885 or 0.08 FAR.

CONSISTENCY WITH THE LOCAL COASTAL PROGRAM

For the proposed project to be approved, findings must be made that the project is consistent with applicable goals, objectives and policies of the Local Coastal Program. The proposed project is consistent with the Zoning and Subdivision regulations and with the various applicable goals, objectives and policies of the LCP for all of the reasons stated above.

PUBLIC NOTICE:

Notice of this item was posted at the site and published in the San Luis Obispo Telegram-Tribune newspaper on July 10, 2009, and all property owners of record within 300 feet of the subject site and occupants within 100 feet of the subject site were notified of this evening's public hearing and invited to voice any concerns on this application.

CONCLUSION

The project as proposed has been conditioned including environmental mitigations to meet code requirements and reduce environmental impacts and therefore meets the findings required for approval of the Vesting Subdivision Map and Coastal Development Permit.

Report prepared by: Kathleen Wold, Senior Planner

EXHIBIT A:
FINDINGS

SOO-089/CPO-276 Subdivision Map and Coastal Development Permit.
3390 Main Street

Vesting Subdivision Parcel Map and Coastal Development Permit for the creation of two parcels and the development of a single family residence.

California Environmental Quality Act (CEQA)

That for purposes of the California Environmental Quality Act, Case No. S00-089/CPO-276 is subject to a Mitigated Negative Declaration. Any impacts associated with the proposed development will be brought to a less than significant level through the Mitigatations required as conditions of approval.

Subdivision Map Act Findings

A. The proposed map to create a two lot subdivision project is consistent with the General Plan and Coastal Land Use Plan because residential development and the given parcel sizes are allowed under the land use designation and zoning & subdivision ordinance.

B. The design and improvements to create two lot subdivision project is consistent with the General Plan and Coastal Land Use Plan.

C. The site is physically suitable for the type and density of development proposed because the site is zoned for single-family residential low to medium density (4-7 du/ac) and consistent with the land use designation.

D. The design of the subdivision and related improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because the project has been condition which includes environmental mitigations to ensure all impacts are less than significant.

E. The design of the subdivision and improvements will not cause serious public health problems.

F. The design of the subdivision and related improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision because no easements are required for the public.

Coastal Development Permit Findings

A. That the approved or conditionally approved project is consistent with the applicable provisions of the certified local coastal program.

EXHIBIT B
CONDITIONS OF APPROVAL
SOO-089/CPO-276 Subdivision Map and Coastal Development Permit.
3390 Main Street

Vesting Subdivision Parcel Map and Coastal Development Permit for the creation of two parcels and the development of a single family residence.

STANDARD CONDITIONS

1. This permit is granted for the land described in the staff report referenced above, dated July 20, 2009 for the project depicted on the attached plans labeled "Exhibit C", dated January 05, 2008 on file with the Public Services Department, as modified by these conditions of approval, and more specifically described as follows:

2. Inaugurate Within Two Years: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Planning and Building Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.

3. Changes: Minor changes to the project description and/or conditions of approval shall be subject to review and approval by the Planning and Building Director. Any changes to this approved permit determined not to be minor by the Director shall require the filing of an application for a permit amendment subject to Planning Commission review.

4. Compliance with the Law: (a) All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval (b) This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use Plan and General Plan for the City of Morro Bay.

5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

6. Compliance with Conditions: The applicant's establishment of the use and/or development of the subject property constitutes acknowledgement and acceptance of all Conditions of

Approval. Compliance with and execution of all conditions listed hereon shall be required prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Planning and Building Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

6. Undergrounding of Utilities: Pursuant to MBMC Section 17.48.050, prior to final occupancy clearance, all on-site utilities including electrical, telephone and cable television shall be installed underground.

7. Construction Hours: Pursuant to MBMC Section 9.28.030 (I), noise-generating construction related activities shall be limited to the hours of seven a.m. to seven p.m. during the weekdays and eight a.m. and seven p.m. during the weekends, unless an exception is granted by the Building Official pursuant to the terms of this regulation.

8. Dust Control: Prior to issuance of a grading permit, a method of control to prevent dust, construction debris, and wind blown earth problems shall be submitted to and approved by the Building Official to ensure conformance with the performance standards included in MBMC Section 17.52.070.

9. Parkland In-Lieu Fees: Prior to recordation of the Final Map requirements of the City of Morro Bay for dedication of land for park purposes and/or payment of fee-in-lieu thereof shall be met (MBMC Section 16.13.005).

10. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation and implementation of any protective measures as determined by the Director of Planning & Building.

11. Property Line Verification. It is owner's responsibility to verify lot lines. Prior to foundation inspection the lot corners shall be staked and setbacks marked by a licensed professional.

12. Environmental Conditions

Geology/Soils: The proposed project shall be designed in a manner that is compliant with the California Building Code to ensure that the structures are as seismically sound as is feasible.

Hydrology/Water Quality: 1) The applicant shall provide an Erosion and Sedimentation Control Plan that shall be approved by the City prior to building permit issuance. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way,

adjacent properties, any harbor, waterway, or ecologically sensitive area. The applicant and development team shall utilize best management practices and include low impact development techniques to the maximum extent possible. All construction proposed onsite shall comply with all building code requirements for construction within a flood plain.

Land Use and Planning: 1) At publicly noticed hearing, the Planning Commission shall consider the requested exceptions and determine whether it is compatible with applicable land use patterns, and fence/wall height concerns as they relate to the required findings being made.

Cultural: An approved cultural monitor who is a qualified professional archaeologist knowledgeable in Salinan and Chumash culture shall monitor the site during any ground disturbance. At the conclusion of the cultural resource monitoring, the archaeologist should complete a report of the results and submit said report to the City of Morro Bay and the Information Center at the University of California at Santa Barbara.

If during construction excavation, any bones, concentrations of sea shells, angular chert rocks, burnt rock or other unusual cultural materials are unearthed, work in the area should halt until they can be examined by a qualified archaeologist and Native American and appropriate recommendations made as outlined in California Environmental Quality Act of 1970, and the City of Morro Bay Cultural Resource Guidelines.

If any archaeological resources all found, grading or excavation shall cease immediately in the immediate area, and the find should be left untouched until a qualified professional archaeologist, or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage.

Transportation/Circulations: The project shall provide approved "Fire Lane-No Parking" signage with red-painted curbs on the frontage of the alley where applicable.
Biology: All structural development must be setback a minimum of 50 feet for the stream/ESHA corridor per the LCP including 50 feet from the drip line of the willows. To the extent that the proposed driveway access might encroach into the ESHA buffer, commensurate amount of restoration must be in included. Restoration shall include only native non-invasive plant species.

Utilities and Service Systems: Prior to the issuance of a building permit, the Applicant/Developer shall pay to the City an impact fee at a future date towards the construction of municipal sewer improvements as determined by the Engineering Division in accordance with the Sewer System Master Plan. The applicant and future lot owners shall agree to this fair share payment and waive any rights to challenge the fees by signing an agreement.

FIRE CONDITIONS

17. Access Road. An approved fire access shall be provided for every building or portion thereof, and shall extend to within 150 ft. of all portions of the building and exterior walls, as measured by an approved route around the exterior of the building. (CFC 503.1.1) This requirement may be modified if the structure is protected by an automatic fire sprinkler system.(CFC 503.1.1 Exception 1)

18. Dead Ends. Dead-end fire access roads in excess of 150 feet shall be provided with an approved area for turnaround fire apparatus. (CFC 503.2.5) This requirement may also be modified is if the structure is protected with fire sprinklers.

19. Fire Sprinkler. All new buildings exceeding on thousand square feet regardless of separation walls, shall be protected with automatic fire sprinklers.(MBMC 14.60.200910 and CFC 903.2)

20. Required Water Supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided. (CFC 508.1) Presently, it is unknown what the fire flow requirements will be for the project, 2007 CFC Appendix B will determine it. An additional fire hydrant may be required.

PUBLIC WORKS CONDITIONS

22. The existing driveway approach shall be upgraded to meet ADA requirements, 4 foot wide path of travel behind the approach per City standards (B-6).

23. The new driveway approach shall meet ADA requirements, 4 foot wide path of travel behind the approach per City standards (B-6).

24. Submit a Conditional Letter of Map Revision (CLOMR) followed up with a Letter of Map Revision (LOMR) prior to issuance of a building permit.

25. Reconstruct AC curb on Tide Ave and replace existing oversized CMP (corrugated metal pipe) drain with a City standard curb inlet with inlet protection.

26. Parcel 2 shall meet the current stormwater requirements with the building permit application.

PLANNING CONDITIONS

Building Height Verification: Prior to either roof nail or framing inspection, a licensed surveyor shall submit a letter to the building inspector certifying that the height of the structures are in accordance with the approved plans and complies with the height requirement of **25 feet above average natural grade as accepted by the City Engineer.**

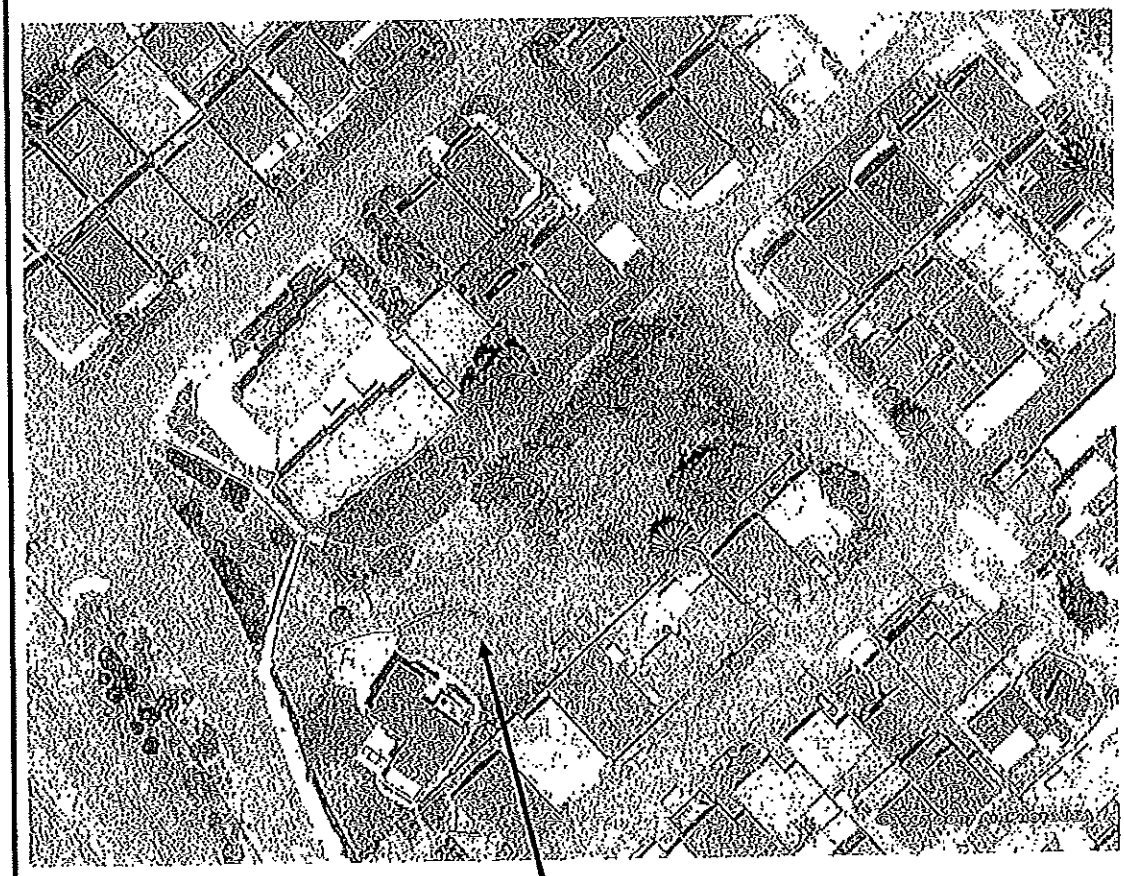
Fence Height –All proposed fencing and retaining walls shall meet the City of Morro Bay's Zoning Ordinance requirements for height. Any new retaining wall shall match the character and color of the existing retaining to provide continuity in character

EXHIBIT C
GRAPHICS/PLAN REDUCTIONS

Planning Commission

Johnie Medina

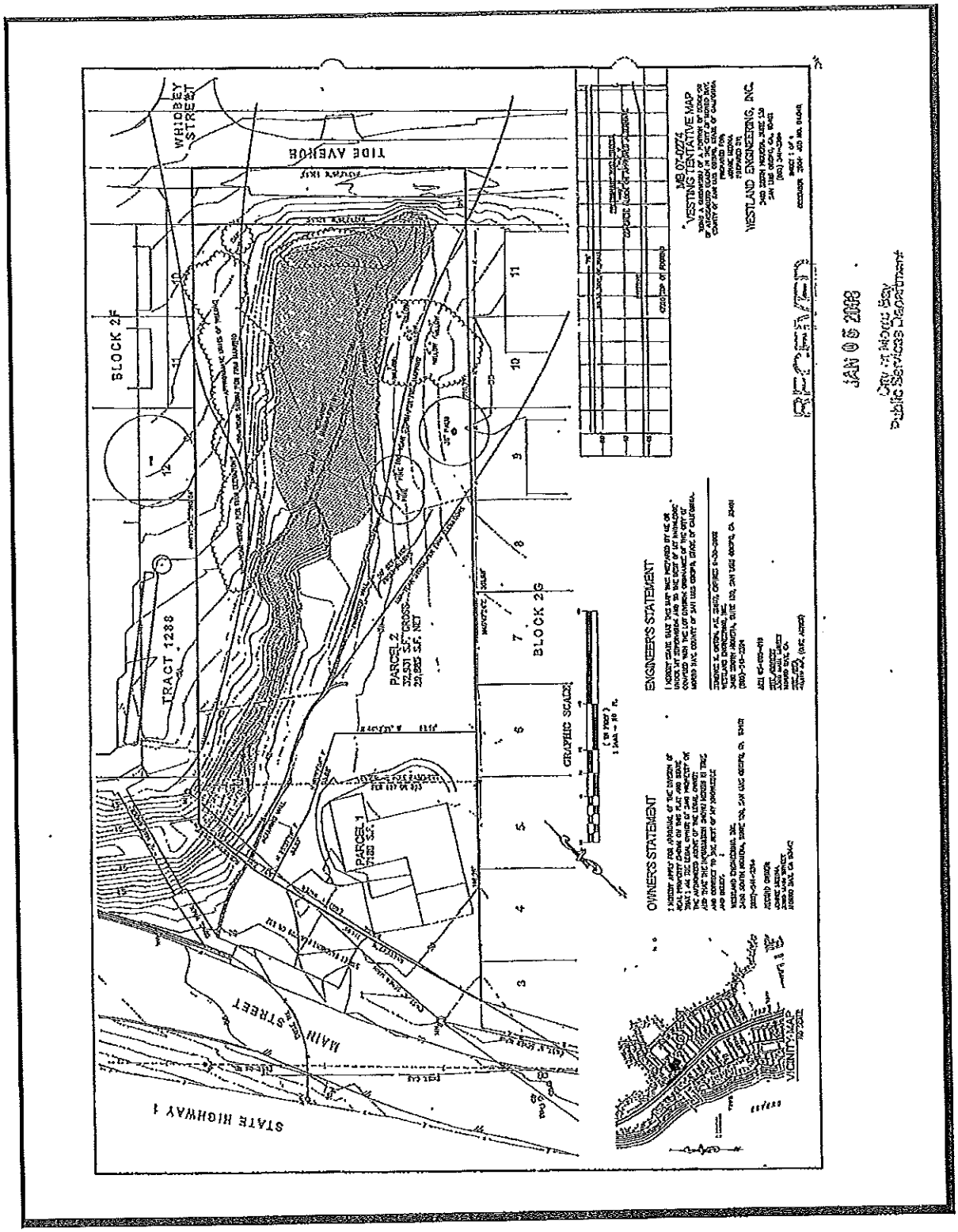
ZONING MAP



Planning Commission

Johnie Medina

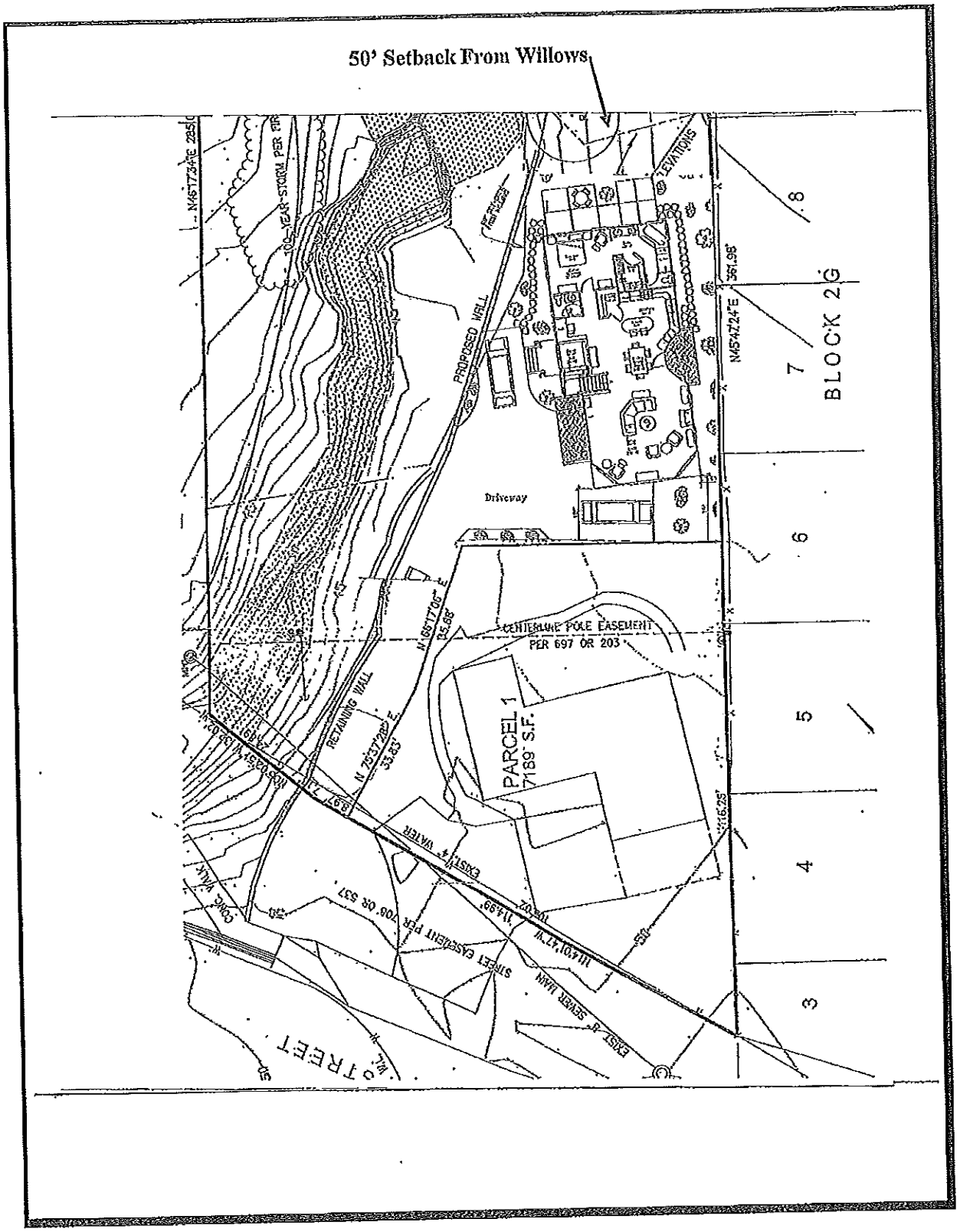
Aerial View



Planning Commission

Johnie Medina

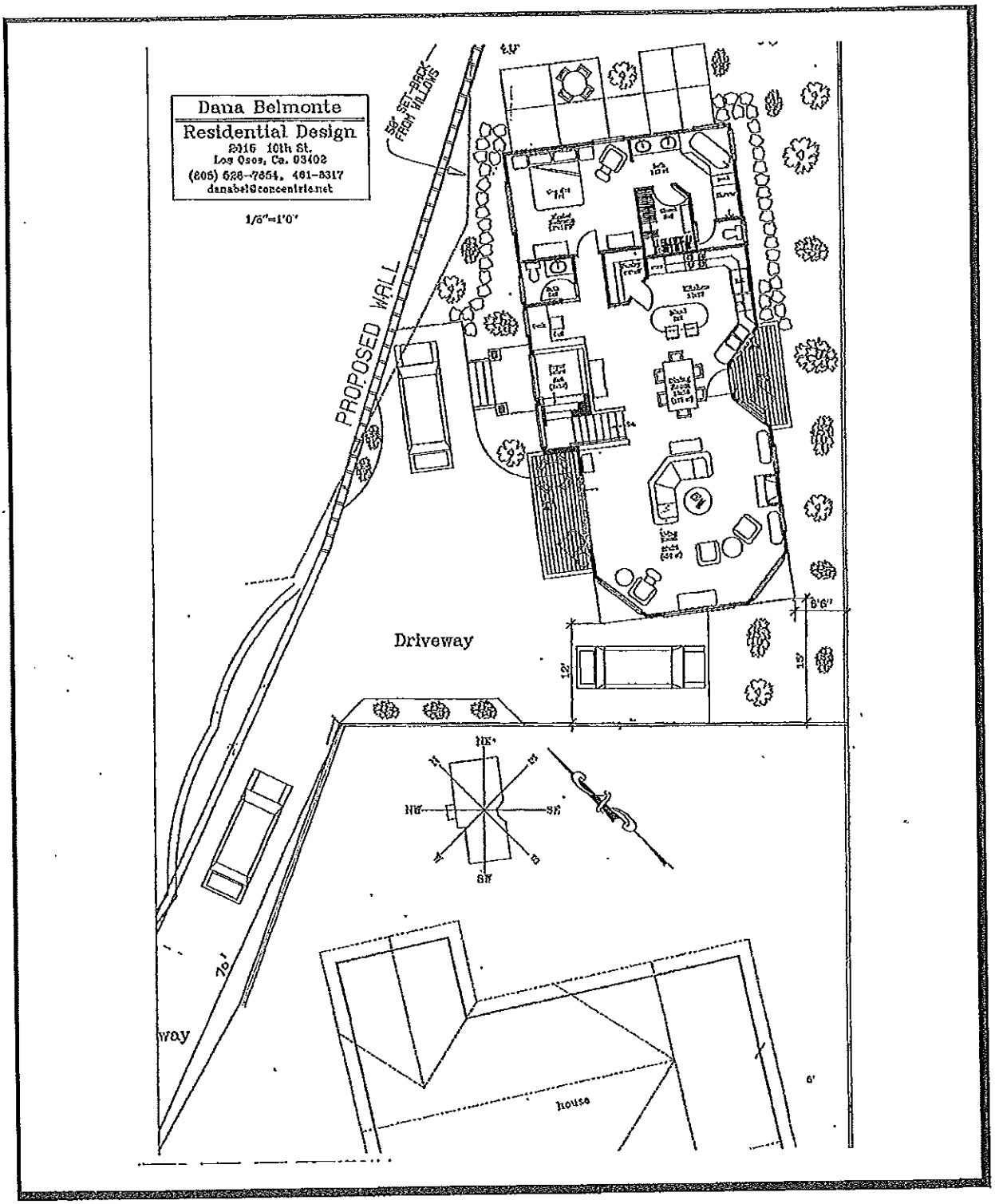
Subdivision Map



Planning Commission

Johnie Medina

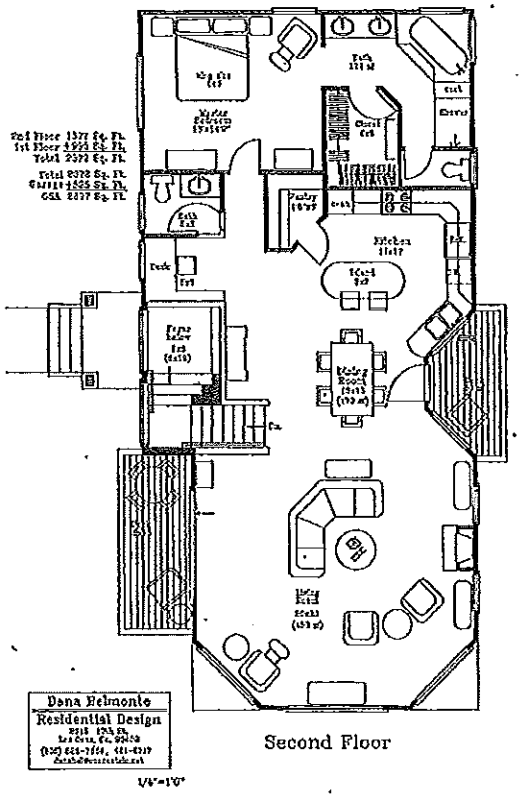
SITE PLAN

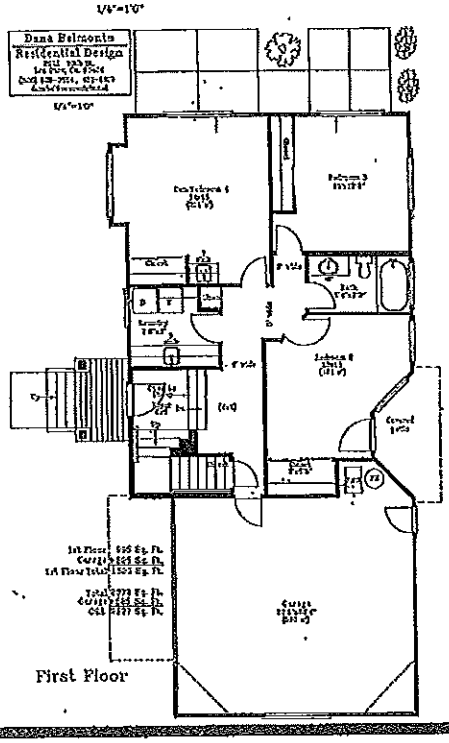


Planning Commission

Johnie Medina

SITE PLAN



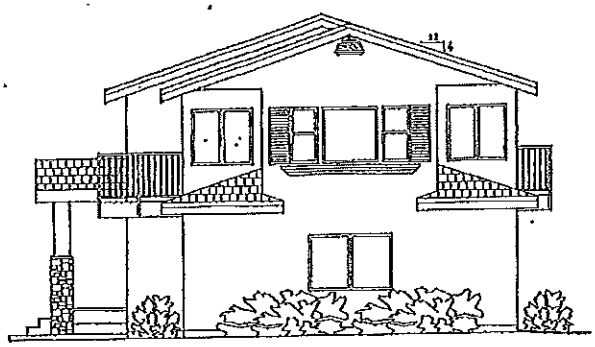


Planning Commission

Johnie Medina

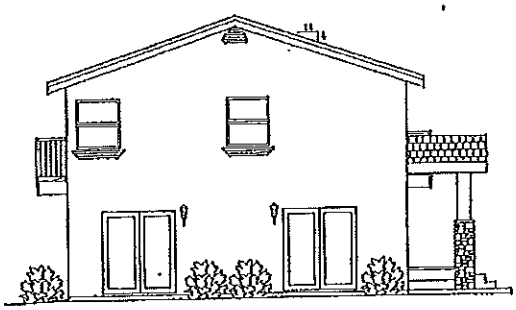
FLOOR PLAN

Dana Belmonte
Residential Design
14000 Morro Rd.
Atascadero, Ca
(805) 461-8317 cell: 976-8933
danabel@concentric.net



South/West Elevation

North/West Elevation



Dana Belmonte
Residential Design
14000 Morro Rd.
Atascadero, Ca
(805) 461-8317 cell: 976-8933
danabel@concentric.net

North/East Elevation

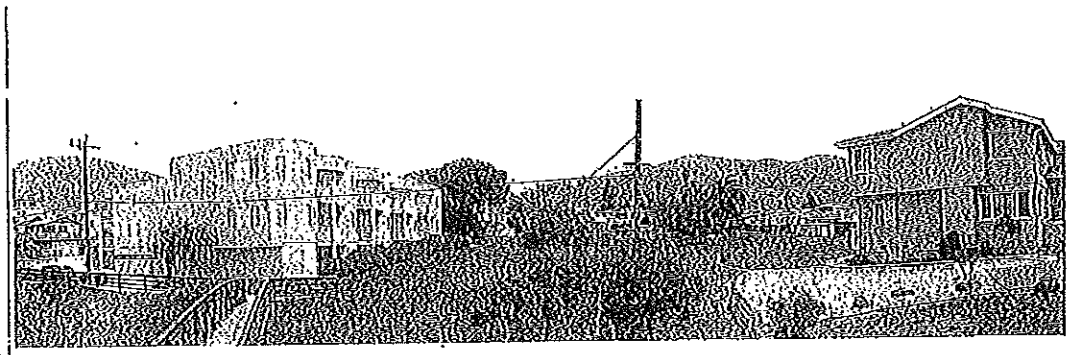
South/East Elevation

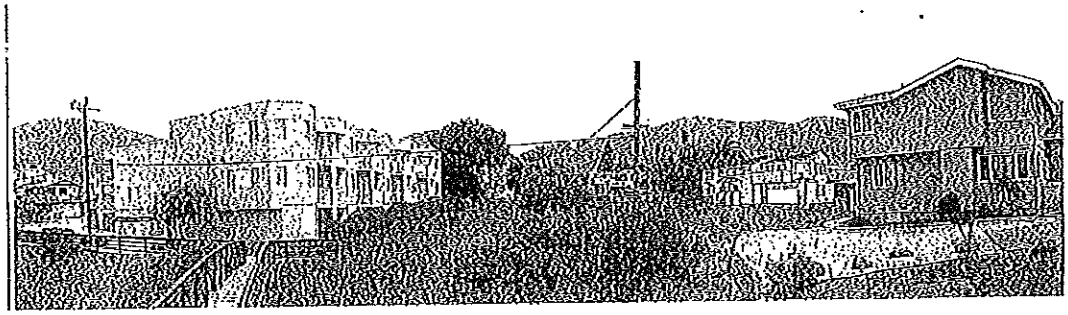
Planning Commission

Johnie Medina

ELEVATIONS

Existing





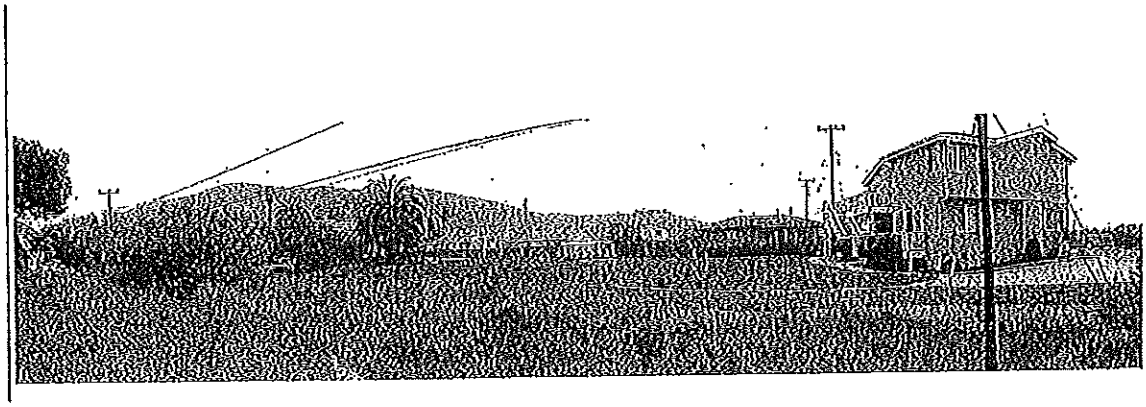
Proposed

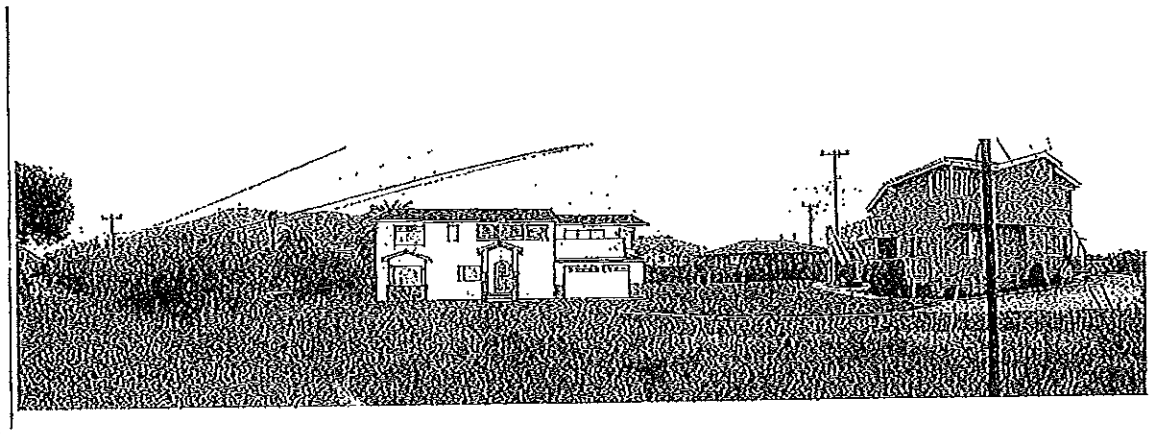
Planning Commission

Johnie Medina

PHOTO SIMULATION
View From Main St.

Existing





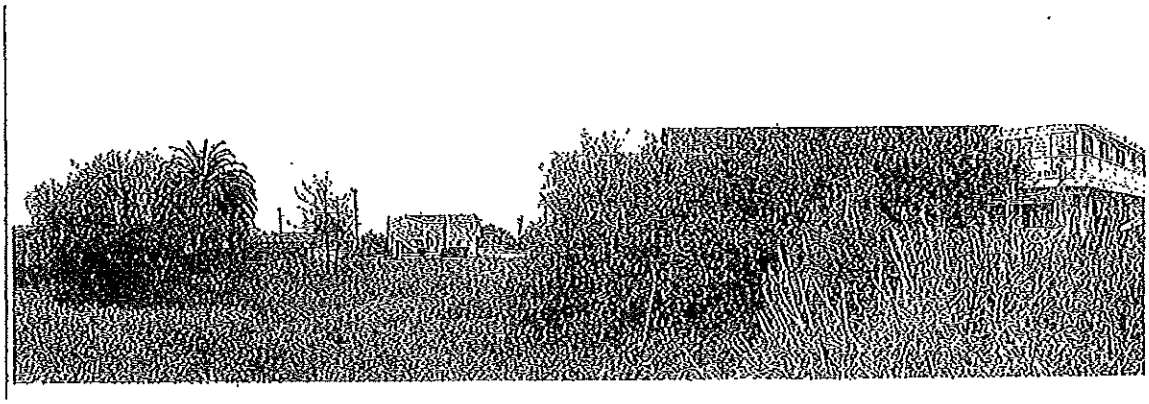
Proposed

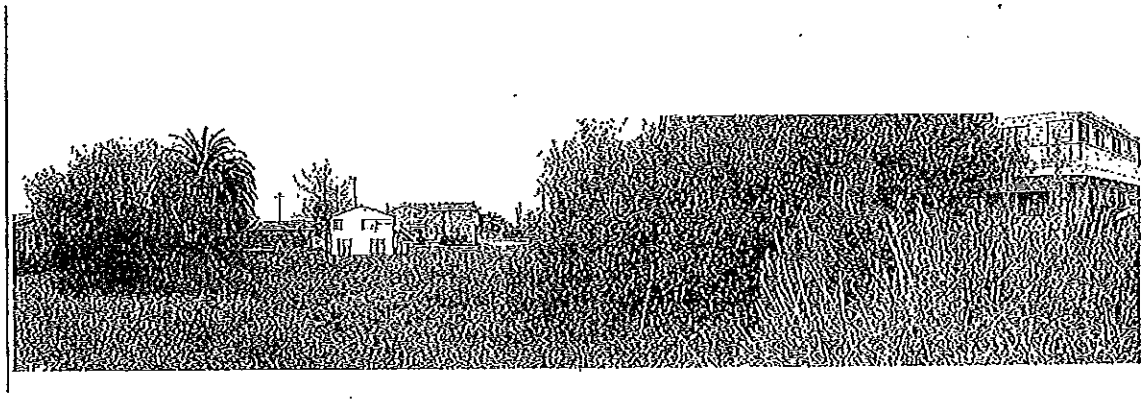
Planning Commission

Johnie Medina

PHOTO SIMULATION
View From Main St.

Existing





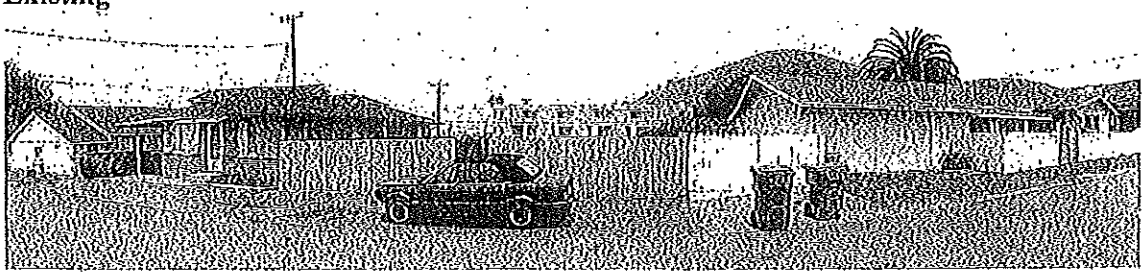
Proposed

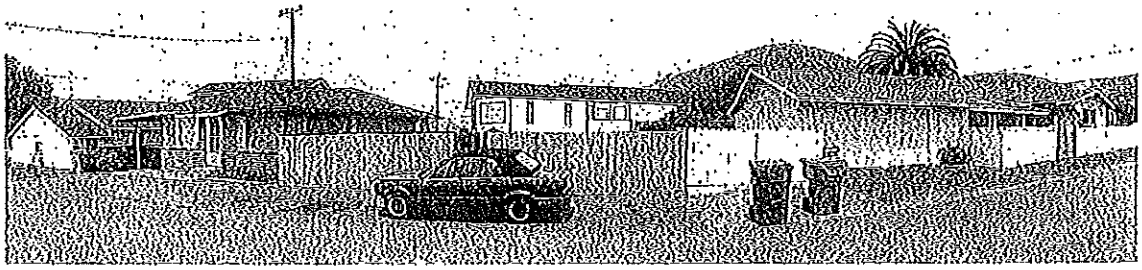
Planning Commission

Johnie Medina

PHOTO SIMULATION
House from Tide Ave.

Existing





Proposed

Planning Commission

Johnie Medina

PHOTO SIMULATION
House from Vashon St.

EXHIBIT D
Letters

BAY CREEK CONDOMINIUMS

306 Yerba Buena
Morro Bay, CA 93442
E-mail: apareglan@comcast.net

(805) 772-4232
(559) 439-1118
Fax: (559) 440-9358

(Mailing Address) 2705 W. Sample
Fresno, CA 93711

June 29, 2009

RECEIVED

JUL 01 2009

City of Morro Bay
Public Services Department

City of Morro Bay
Public Services Department
955 Shasta Avenue
Morro Bay, CA 93442

Project Title:	Medina Parcel Map (MB 07-0232)
Location:	3390 Main Street
County:	San Luis Obispo
City:	Morro Bay
Case No.:	S00-089/CP0-276
Hearing Date:	July 20, 2009 at 6:00 p.m.
Hearing Location:	209 Surf Street, Morro Bay Vets Hall

Gentlemen:

I would like to voice our concerns regarding the above-referenced proposed subdivision of an existing parcel by Mr. Medina. I represent Bay Creek Homeowners' Association, which is the nine-unit condominium complex directly to the north of Mr. Medina. We are separated only by the creek that runs between us. Our main concern with Mr. Medina's subdivision request is the proposed roadway that will lead off Main Street and run past his home along the north side of his property. That area is narrow and we do not see any way a road could be put there without it being directly on the edge of the creek.

When we were required in 1989 to install the presently existing foot bridge over the creek, we were advised that the creek was an extremely environmentally sensitive area and any construction and/or changes to the area would be extensively scrutinized. Has the City changed it restrictions and requirements concerning environmentally sensitive areas? We feel that allowing any type of construction that close to the edge and in fact right on the edge of the creek should not be allowed.

Unfortunately, given the situation at present, any roadway next to Mr. Medina's residence would have to be extremely narrow and basically right on top of the edge of the creek. I note the proposed roadway would be adjacent to the existing retaining wall and that wall is presently a little past the edge of the creek and slightly down into the creek itself. We feel any vehicular movement directly on the edge of that creek could cause ecological and environmental problems.

Other than the study done by Mr. Medina's engineer, which indicates CEQA has prepared a "Mitigated Negative Declaration", has an actual Environmental Impact Report (EIR) been made? A Mitigated Negative Declaration indicates that the project does have a significant environmental impact but that the impact "may be mitigated to a level of less than significant". We do not see any way that situation could be made "less than significant" with vehicles driving along the edge of the creek. What has happened to the setback requirements for "minor creeks" which prohibit "parking, driveways, other vehicular surfaces"? We strongly request the City require a full Environmental Impact Report for this project.

We are very concerned about the proposed roadway's impact on the creek for a number of reasons including, among many potential problems, possible bank impairment. Any proposed road that would sit directly on or extremely close to the edge of the bank could cause severe environmental problems. What would happen should the 100-year flood occur? A 100-year flood has approximately a 63.4% chance of occurring in any 100-year period. This entire area is in a "flood zone" and it has always been.

What we do not understand is why access to the proposed developable lot has not been requested from Tide Street? Why should a home that is more closely situate to Tide Street not be granted ingress and egress from that street? That would make more sense and the entire issue of endangering the creek would be negated. We fail to understand why Mr. Medina is attempting to place an unnecessary and ecologically hazardous roadway to the proposed residential lot when such ingress and egress could so easily be constructed from Tide Street.

Please accept this correspondence as our "voice" at the scheduled hearing which is presently set for July 20, 2009 at 6:00 p.m.

Sincerely,

Abe Paregian

Abe Paregian, President
Bay Creek Homeowners' Association
Civil Engineer License No. C 19743

AP:mp

cc - All Bay Creek Home Owners

7/10/09

TO: The City Council
The Planning Commission

From: ANTHONY TIGLIO
330 VASHON St
M-B "

RE: Medina Parcel Map (MB07-0232)
3390 Main St., Morro Bay

I am opposed to further subdivision to create a second developable lot on that parcel.

Concern 1: Putting another house will disrupt the natural flow of watershed. Building the house on a pad is not feasible. The height of the house should be limited to one-story.

Concern 2: Privacy, noise & ocean view will be disturbed. No windows or balcony should face Vashon and Tides St.

Concern 3: Defacing & disturbing the Env. Sensitive Habitat area, destroying the wetlands & they are using the area as a trash & rubbish dump.

Concern 4: The willows on the builders side of the creek have been repeatedly cut down & removed. They have ridden ATV's throughout the ESHA area with total disregard for the environment.

Anthony Tiglio

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JUL 13 2009
City
Public Serv...

7-9-9

TO: Morro Bay City Council
and Planning Commission

From:

Re: Medina Parcel Map (MB 07-0232)
3390 Main St, Morro Bay CA

I am a concerned citizen and neighbor in Morro Bay. I want to state a few facts on how the project isn't feasible.

Concern 1: By putting another house on the property it will disrupt the natural flow of water, it is a FEMA Flood Zone Area, and was entirely under water many times, recently in mid-1990's.

Concern 2: We dont want the wetlands disturbed, as it is a habitat for the red-legged frog and many other species.

Concern 3: Building another house will take away privacy, ocean views and scenic vistas from neighbors..

Concern 4: The Willows have been cut down + bull-dozed, by the owners, ATV's were ridden all over the sensitive area with total disregard for the environment. They have killed wildflowers + pine trees. They use the area for dumping ground.

If you do allow this development, I request a height restriction of one-story, no windows or balconies facing Vashon + Tide Sts.

Paul Wills

7-9-9

To: Morro Bay City Council
and Planning Commission

From: Michele Arete
361 Vashon St.
Morro Bay 93442

Re: Medina Parcel Map (MB 07-0232)
3390 Main St, Morro Bay CA

I am a concerned citizen and neighbor in Morro Bay. I want to state a few facts on how the project isn't feasible.

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If you do allow this development, I request a height restriction of one-story, no windows or balconies facing Vashon & Tide Sts.

Michele Arete
361 Vashon
Mo Bay

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JUL 13 2009
City of Morro Bay
Public ... Department

7/10/09

TO: The City Council
The Planning Commission

From: Laura Mounce
330 Vashon St.
Morro Bay CA 93442

RE: Medina Parcel Map (MB07-0232)
3390 Main St., Morro Bay

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Concern 1: Putting another house will disrupt the natural flow of watershed. Building the house on a pad is not feasible. The height of the house should be limited to one-story.

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RECEIVED
JUL 13 2009
City of Morro Bay
Public Services Department

Sincerely
Laura Mounce

Duane & Janet Schultz
42235 315th Avenue
Saint Peter, MN 56082
1-507-931-4665
janschultz@myclearwave.net

Monday, July 6, 2009

RECEIVED
JUL 08 2009
City of Morro Bay
Public Services Department

City of Morro Bay
Public Services Department
955 Shasta Avenue
Morro Bay, CA 93442

RE: Medina Parcel Map (MB 07-0232)

Dear Sirs,

We are the owners of 314 Yerba Buena Street in Morro Bay, CA, one of the nine-unit condominium complex, and are members of the Bay Creek Homeowners' Association. We are concerned about Mr. Medina's proposal to build on land adjacent to the narrow creek that separates us. Part of Mr. Medina's plan is to construct a roadway that we feel would cause ecological and environmental problems.

I assume an environmental impact study would have been taken, and we wish to know how Mr. Medina's building project would be involved. We believe that Mr. Median could access his developable lot from Tide Street, giving it an equally useful entrance which would protect the creek.

We hope that the Public Services Depart will consider out request to save the creek from environmental damage. We also agree completely with the letter sent to you from Abe Paregian, President of the Bay Creek Homeowners' Association. This letter serves as our input at the scheduled hearing on July 20, 2009. Thank you for your consideration.

Sincerely,

Janet & Duane Schultz

Janet and Duane Schultz

7-12-09

RECEIVED

JUL 13 2009

To: Planning Comm.

Re: 3390 Main St., Morro Bay

Concerned neighbors have a petition circulating opposing the proposed sub-division of 3390 Main St.

I am writing today to inform you of recent activity in the ESHA area.

The Medinas have used the area under the palm tree for a dumping ground for rubbish, broken cement, old metal fireplace, old swing set, plastic, old park bench, old cement dolphin statue, and piles of misc. metal + plastic rubbish. This extended out 15+ feet x 14 feet on one side (approx.) + about 6 feet on the right.

Pictures were taken on July 2, 2009 to document this dumping ground. The neighbors that took the pictures were verbally abused by Mr. Medina.

On Sat. July 11, 2009 - Mr. Medina had 2 trucks + a bobcat with bucket scraping the entire area. They removed the trash, (which is good!) In the process the Bobcat scraped the area, further removing vegetation, particularly willows on the Creek bank. We are concerned for the ESHA here.

The owners have cut the willows down for years, + removed them, on their side of the creek.

We believe this has been done in order to establish willow drip-line boundary from across the Creek. Did he have a permit?

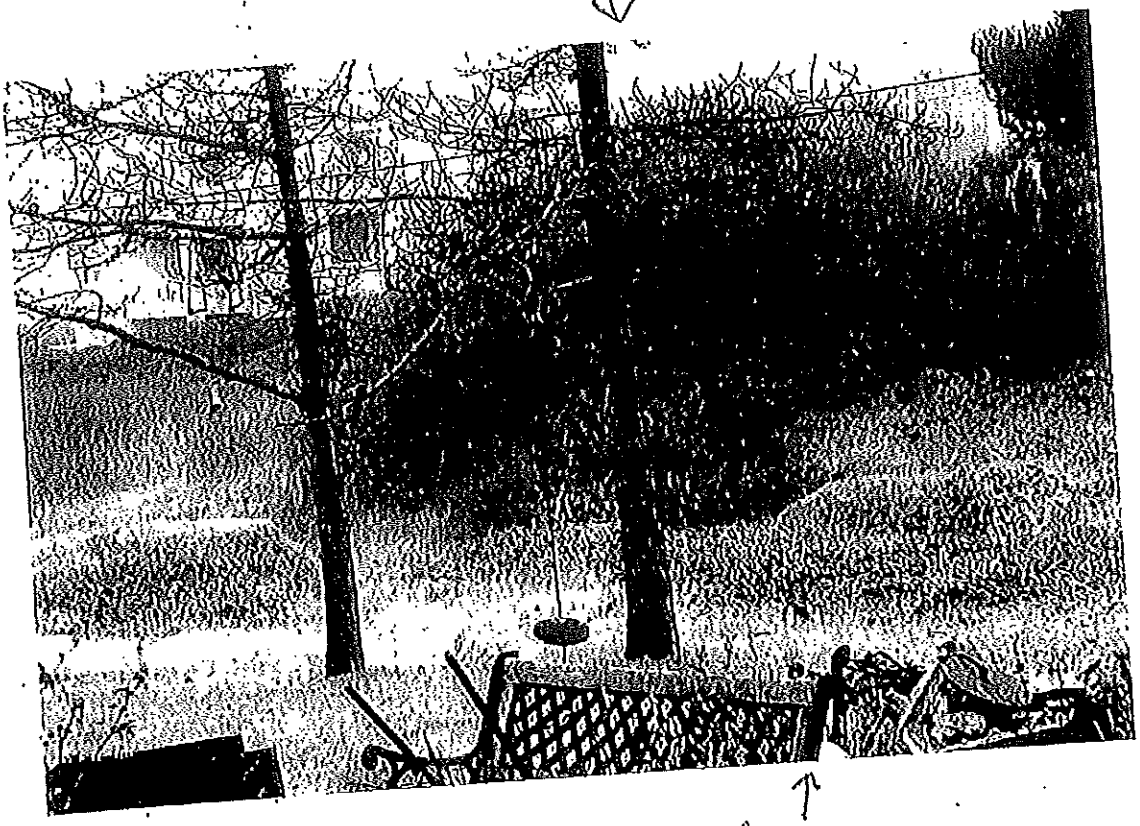
These owners have a track record of utter disregard for the Env. Sensitive Habitat area, as proven over the years by their actions of: ATV Riding across + all over the area,

Defacing the ESHA area by using it as a dumping ground for rubbish, (see attached) photos

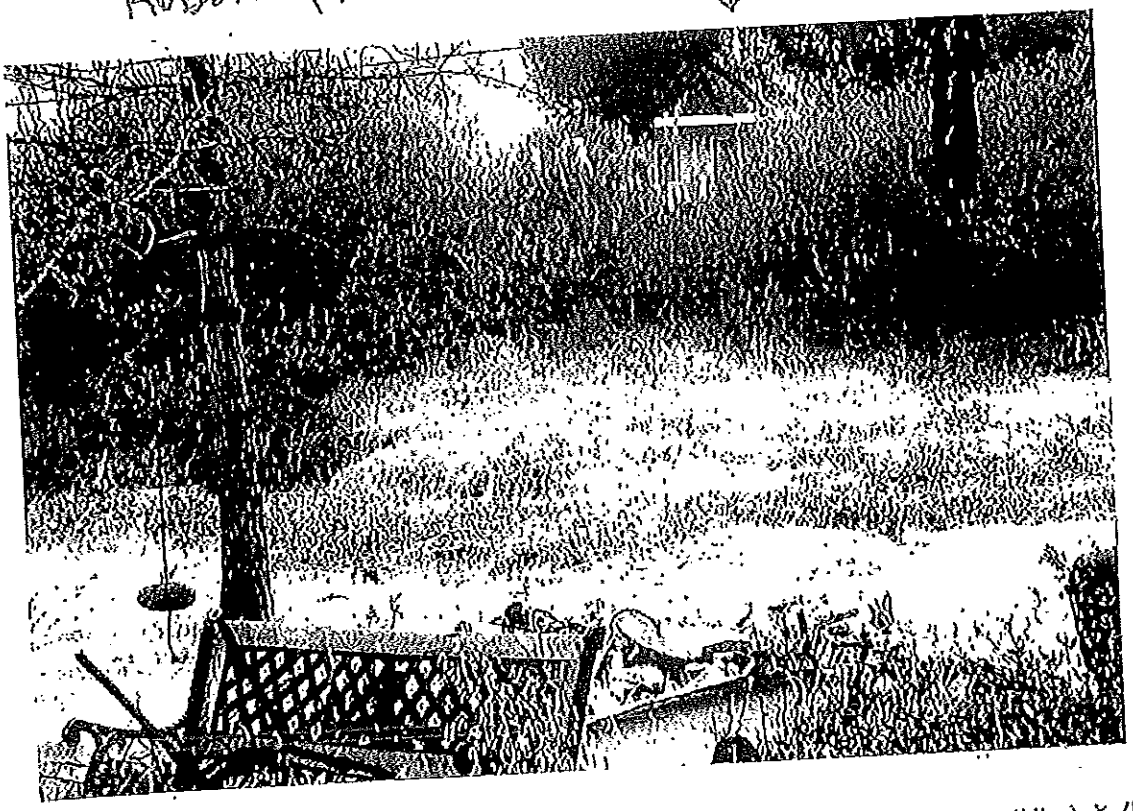
Michele Arete - 361 Vashon - M Bay

p.2 3390 Main St, MB

WILLOWS CUT down



Rubbish/Trash Dumped



JUL 1 8 2009

City Clerk's Copy
Public Services Department

Petition to stop Johine Medinia: Terri Orton of Westland engineering, inc agent. Building on Parcel mb07-0232 3390 Main street Morro Bay 93442 Case # s00-089/cpo-s70

name	address	phone#
1 Anthony Tiglio	330 VASHON M-B	805-294-0250
2 Laura Maurice	330 Vashon St. M-B	805 294-3200
3 Ronni Gates	340 Vashon St. M-B	661-342-5385
4 Jeff Gates	340 Vashon St M-B	661 619 9614
5 Paul Willis	POBOX 116 MB	(805) 459 8128
6 Don Willis	500 Atascadero Rd	805 772 5867
7 Marge Paregian	306 Yerba Buena	772-4232
8	351 Yerba Buena	1683
9 Michele Arete	361 Vashon	234-3550
10 Daniel Puett	411 Java Street	(805) 440-7761
11 Joy Pickell	305 Yerba Buena	772-5505
12 Jill Chamon	371 Vashon	748-8661

RECEIVED

JUL 1 3 2009

City of Morro Bay
Public Services Department

Petition to stop Johine Medinia: Terri Orton of Westland engineering, inc agent. Building on Parcel mb07-0232 3390 Main street Morro Bay 93442 Case # s00-089/cpo-s70

name	address	phone#
1 Anthony Tiglio	330 VASHON M-B	805-294-0250
2 Laura Maurice	330 Vashon St. M-B	805 294-3200
3 Ronni Gates	340 Vashon St. M-B	661-342-5385
4 Jeff Gates	340 Vashon St M-B	661 619 9614
5 Paul Willis	POBOX 116 MB	(805) 459 8128
6 Don Willis	500 Atascadero Rd	805 772 5867
7 Marge Paregian	306 Yerba Buena	772-4232
8	351 Yerba Buena	1683
9 Michele Arete	361 Vashon	234-3550
10 Daniel Puett	411 Java Street	(805) 440-7761
11 Joy Pickell	305 Yerba Buena	772-5505
12 Dill Chamorro	371 Vashon	748-8661

772-7894

13 Chu Caffey 350 Vashon, Morro Bay CA

14 Bill Buck 195 Formosa St, M.B. CA (215-0573)

15 Ray Grant 371 Whitney St

16 FOELKER KEVIN 387 Vashon St.

17 Hazel McKibbin 311 Main, Morro Bay CA.

18 Glenn Sparks 46 6th St Cayucos

19 Tyler Sites 470 Island

20 Hank Stollmayer 3310 Nomain St 772-2702

21 ~~Karo Stollmayer 0 320 Toto~~ ~~772-2702~~

22 Davik Stollmayer 340 Widbay 772-2702

23 Millie & VanDusen 772-5334

24 Oliver Marks 5425 Olmeda 801-8858

25 Gary H. Grotte 1956 9th St L.O. 801-0097

26 JANE MASTERSON 3350 MAIN 805 772-4013

27 Amy Foosler 772-1302

28 [illegible] 772-9123

29 [illegible] 771-9520

30 [illegible] 298-6252

Name	Address	Phone
Roger Hood	175 Andros St Morro Bay	772-3358
32 [illegible]	371 Vashon Morro Bay	2487645
33 Dorothy Tesla	370 Vashon Morro Bay	(818) 219-0445 cell
34 Anne Schoennauer	390 Vashon St Morro Bay	772-7508
35 Lucy Massey Lucy Massey	3348 Tide Ave, Morro Bay	225-1033
36 Wayne Benham	3334 Tide Ave	Morro Bay 772-8174
37 Catherine Bierna	340 Vashon St	Morro Bay None
38		
39		
40		

City of Morro Bay
PUBLIC SERVICES DEPARTMENT
955 SHASTA AVENUE • MORRO BAY, CA 93442
805-772-6261

Public Notice of Availability

Document Type: Mitigated Negative Declaration

CEQA: CALIFORNIA ENVIRONMENTAL QUALITY ACT

CITY OF MORRO BAY

February

The City has determined that the following proposal qualifies for a

☐ **Negative Declaration** ☒ **Mitigated Negative Declaration.**

PROJECT TITLE: 3390 Main Street Subdivision (MB 07-0274) and new single family residence.

PROJECT LOCATION: 3390 Main Street

CITY: Morro Bay **COUNTY:** San Luis Obispo

CASE NO.: S00-089/CP0-276

PROJECT DESCRIPTION: A request for a 2 Lot Vesting Tentative Map to subdivide an existing parcel to create a second developable lot. The existing 40,119-square foot lot would be divided to create a 7,189-square foot parcel (Parcel 1: already developed with a single-family residence) and a 32,931-square foot parcel (Parcel 2). Discounting the Environmentally Sensitive Habitat Area (ESHA) from the gross area of the site, Parcel 2 would have a net site area of 29,885 square feet. The two lots are in excess of the required 6,000 square feet of gross area required by City standards. Parcel 1 would retain the existing residence and access off of Main Street. Future development of the proposed lot would also take access off of Main Street.

APPLICANT / PROJECT SPONSOR: Johnie Medina; Terri Orton of Westland Engineering, Inc, Agent

LEAD AGENCY: City of Morro Bay

CONTACT PERSON: Kathleen Wold, Senior Planner

TELEPHONE: (805) 772-6270

ADDRESS WHERE DOCUMENT MAY BE OBTAINED:

Public Services Department
955 Shasta Avenue
Morro Bay, California 93442
(805) 772-6261

PUBLIC REVIEW PERIOD: *Begins: June 9, 2009 Ends: July 8, 2009*

SCHEDULED PUBLIC HEARING

Date: July 20, 2009

Time: 6:00 p.m.

Location: 209 Surf St., Morro Bay Veterans Hall

Anyone interested in this matter is invited to comment on the document by written response or by personal appearance at the hearing. Persons wishing to appear at the hearing should call:

Public Services Dept. **Phone: (805) 772-6270**

Kathleen Wold, Senior Planner

Signature

City of Morro Bay
PUBLIC SERVICES DEPARTMENT
955 SHASTA AVENUE ◆ MORRO BAY, CA 93442
805-772-6261

DRAFT MITIGATED NEGATIVE DECLARATION

CEQA: CALIFORNIA ENVIRONMENTAL QUALITY ACT
CITY OF MORRO BAY
955 Shasta Avenue
Morro Bay, California 93442
805-772-6210

The State of California and the City of Morro Bay require, prior to the approval of any project, which is not exempt under CEQA, that a determination be made whether or not that project may have any significant effects on the environment. In the case of the project described below, the City has determined that the proposal qualifies for a Mitigated Negative Declaration.

CASE NO.: S00-089/CP0-276

PROJECT TITLE: 3390 Main Street 2-Lot Subdivision (MB 07-0274)

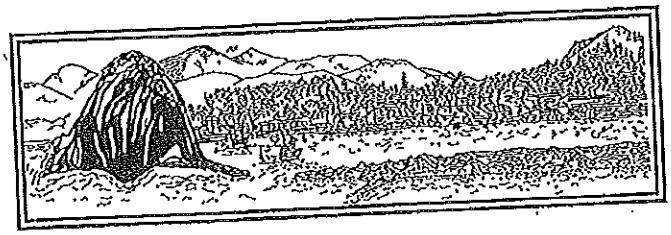
PROJECT LOCATION: 3390 Main Street. Project site is located within an Environmentally Sensitive Habitat Area and within the AE zone of the FEMA Flood Insurance Rate Map.

APPLICANT: Johnie Medina; Terri Orton of Westland Engineering, Inc, Agent

PROJECT DESCRIPTION: A request for a Vesting Tentative Map to subdivide an existing parcel into two lots, creating a second developable lot. The resulting lots include: Parcel 1, with an area of 7,189 square feet, and Parcel 2, with a gross area of 32,931 square feet and net area of 29,885 square feet. The two lots each exceed the required 6,000 square feet of gross area. Parcel 1 would retain the existing residence. A single family residence is proposed for Parcel 2.

FINDINGS OF THE: Environmental Coordinator

It has been found that the project described above will not have a significant effect on the environment. The Initial Study includes the reasons in support of this finding. Mitigation measures, if necessary and required to assure that there will not be a significant effect in this case, are described in the attached Initial Study and Checklist and have been added to the permit conditions of approval.



City of Morro Bay
PUBLIC SERVICES DEPARTMENT
955 SHASTA AVENUE ◆ MORRO BAY, CA 93442
805-772-6261

INITIAL STUDY AND CHECKLIST

I. PROJECT INFORMATION

Project Title: 2-Lot Subdivision (MB 07-0274) and new single family residence

Case Number: S00-089/CP0-276

LEAD AGENCY: City of Morro Bay, 955 Shasta Ave., Morro Bay, CA 93442 — Phone: (805) 772-6261, Fax: (805) 772-6268

Project Applicant: Johnie Medina, 3390 Main Street, Morro Bay, CA 93442 — Phone: (808) 388-0173, Fax:

Project Landowner:: Johnie Medina — Phone:

Project Designer Westland Engineering, Inc., 3480 S. Higuera St., Ste 130, San Luis Obispo, CA 93401 — Phone: (805) 541-2394, Fax:

Project Description: A request for a Vesting Tentative Map to subdivide an existing parcel into two lots, creating a second developable lot. The existing 40,119-square foot lot would be divided to create a 7,189 -square foot parcel (Parcel 1: already developed with a single-family residence) and a 32,931-square foot parcel (Parcel 2). Discounting the Environmentally Sensitive Habitat Area (ESHA) from the gross area of the site, Parcel 2 would have a net site area of 29,885 square feet. The two lots are in excess of the required 6,000 square feet of gross area required by City standards. Parcel 1 would retain the existing residence and access off of Main Street. The new single family residence will also take access of Main Street.

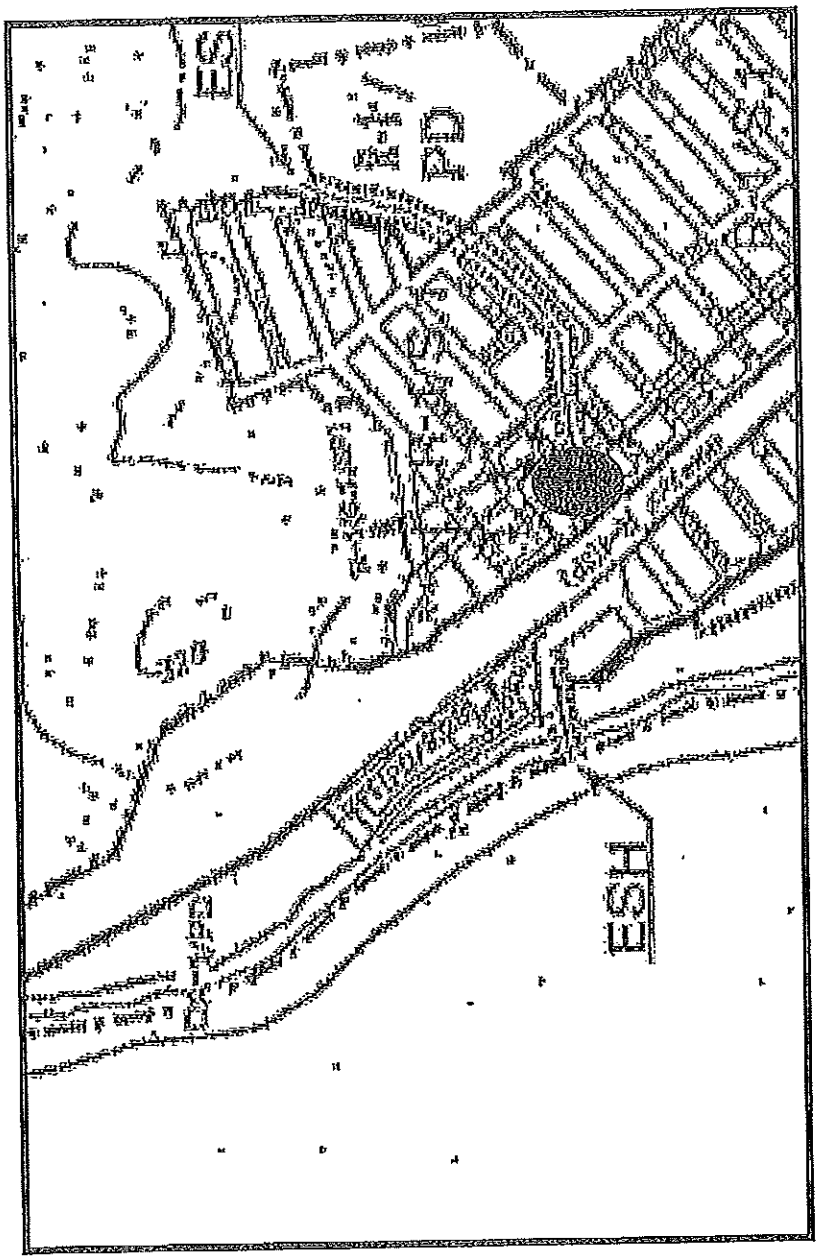
Project Location: 3390 Main Street

Assessor Parcel Number(s) 065-085-019

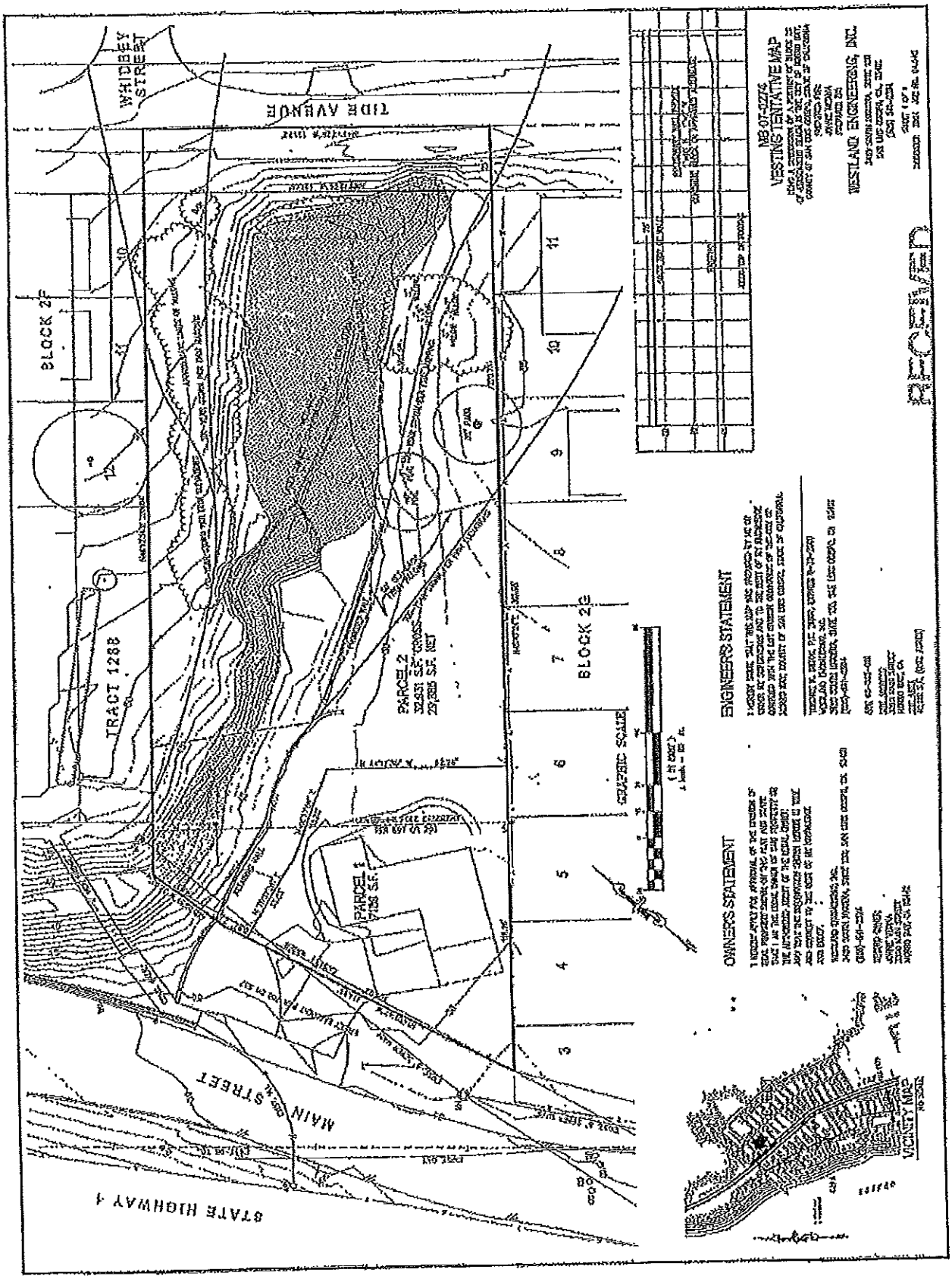
General Plan Designation: Low/Medium Density Residential (4-7 du/ac)

Zoning: Single-Family Residential (R-1) (S.1)

ZONING MAP



VESTING TENTATIVE PARCEL MAP



II. ENVIRONMENTAL SETTING AND IMPACTS

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" or is "Potentially Significant Unless Mitigated", as indicated by the Environmental Checklist:

	1. Aesthetics		x	9. Land Use/Planning
	2. Agricultural Resources		x	10. Noise
	3. Air Quality			11. Population/Housing
x	4. Biological Resources			12. Public Services
x	5. Cultural Resources			13. Recreation
	6. Geology/Soils		x	14. Transportation/Circulation
	7. Hazards/Hazardous Materials		x	15. Utility/Service Systems
x	8. Hydrology/Water Quality			16. Mandatory Findings of Significance

Environmental Setting:. The project site is a 40,119-square foot lot. The lot contains an Environmentally Sensitive Habitat Area (ESHA). A portion of the lot (parcel 1) contains a single family residence. The site also contains some decorative plantings. The general area is designated for residential use. The area directly surrounding the project site consists of single family residences and condominiums. To the south and west of the site are vacant parcels in identical zoning with the ability to subdivide further into smaller lots.

Surrounding Land Use

North: Single-Family Residential (R-1)
South: Single-Family Residential (R-1)
East: Single-Family Residential (R-1)
West: Single-Family Residential (MCR/R.4)

III. ENVIRONMENTAL CHECKLIST

The following checklist indicates the potential level of impact and is abbreviated as follows:

Known Significant:	Known significant environmental impacts.
Unknown Potentially Significant:	Unknown potentially significant impacts, which need further review to determine significance level.
Potentially Significant and Mitigable:	Potentially significant impacts which can be mitigated to less than significant levels.
Not Significant:	Impacts which are not considered significant.
Impact Reviewed in Previous Document:	Adequate previous analysis exists regarding the issue; further analysis is not required due to tiering process (Section 21094 of CEQA and Section 15162 of the State CEQA Guidelines). Discussion should include reference to the previous documents and identification of mitigation measures incorporated from those previous documents. Where applicable, this box should be checked in addition to one indicating significance of the potential environmental impact.

1. AESTHETICS:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
Would the project:					
a. Have a substantial adverse effect on a scenic vista?				X	
b. Substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within view of a state scenic highway?				X	
c. Substantially degrade the existing visual character or quality of the site and its surroundings?				X	
d. Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?				X	

Impact Discussion:

a. The site is not in an identified public view area in the General Plan nor is it identified as an area of visual significance. The future home site will be developed in accordance with municipal code and consistent with the existing aesthetics in the area.

b. The site is in close proximity to Highway 1, a scenic highway, but existing development obscures the bulk of the view from Highway 1 of the proposed home. The construction of an additional single family residence at this location built to City of Morro Bay's Zoning standards will not damage the scenic resource. The existing residence is not considered a historic building and the new project proposal does not impact the home.

c. The project site slopes gradually downward towards the west and is surrounded by residential development on all sides. The proposed project should not have a significant impact because it will be consistent in height and character with neighboring development.

d. The project will not create a substantial source of light or glare due to its small size and the residential nature of the project.

Mitigation:. No mitigation measures are required.

2. AGRICULTURAL RESOURCES:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland.					
Would the project:					
a. Convert prime farmland, unique farmland, or farmland of statewide importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X	
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X	
c. Involve other changes in the existing environment, which, due to their location or nature could result in conversion of farmland, to non-agricultural use?				X	

Impact Discussion: (a.-c.)The existing and proposed uses on the site are residential, which is consistent with the zoning designation of the site. The property and surrounding areas are not zoned for agricultural uses and are not suitable for agricultural use because the site is surrounded by residential and commercial development and does not have adequate soil characteristics. The site has not historically been used for farming nor has it been designated as prime or otherwise important farmland. The project does not impact any agricultural lands or uses.

Mitigation: No mitigation measures are required.

3. AIR QUALITY Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
A. Conflict with or obstruct implementation of the applicable air quality plan?				X	
b. Exposure of sensitive receptors to substantial pollution concentrations (emissions from direct, indirect, mobile and stationary sources)?				X	
c. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?				X	
d. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?				X	
e. Create objectionable smoke, ash, dust or odors affecting a substantial number of people?				X	

Impact Discussion:

a. The San Luis Obispo County Air Pollution Control District's (APCD) Guide for Assessing the Air Quality Impacts for Projects Subject to CEQA Review establishes thresholds of significance for air quality impacts. If the air quality impacts of a given project exceed the Tier I threshold, mitigation is required. Projects that would generate less than 10 lbs. of ROG, NO_x, SO_2, or PM_{10} per day and less than 50 lbs. of Carbon Monoxide per day would be considered as not having significant air quality impacts. The project consists of adding one additional residential unit, as such the Air Pollution Control District Air Quality Handbook indicates that the project is well below the 35 unit size that would exceed the mitigation threshold, therefore no long term impacts will result from this project.

b. The addition of one residential unit will not create substantial pollution and there are no substantial sources of pollution near the source to cause an impact to this sensitive receptor, therefore there is no long term impact.

c. The use does not generate substantial pollution and therefore does not violate any air quality standards. No impact will result.

d. The Air Pollution Control District Air Quality Handbook indicates that a project of this size does not generate significant air pollution.

e. The proposed project does not generate objectionable smoke, ash, dust or odors affecting a substantial number of people and does not result in a substantial impacts

Mitigation: No mitigation measures are required.

4. BIOLOGICAL RESOURCES Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California department of Fish and Game or U.S. Fish and Wildlife Service?			X		
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife service?			X		
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc) through direct removal, filling, hydrological interruption, or other means?			X		
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?			X		
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X	
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?				X	

Impact Discussion: (a.-f.)
The project area includes area identified as Environmental Sensitive Habitat Area (ESHA) The ESHA incorporates and straddles an ephemeral creek. A Biological Assessment was conducted for the site on May 3, 2008. The study concluded that the entire lot is significantly disturbed and exhibits a large variety of exotic vegetation and only a sparse representation of native vegetation. The lot offers no appropriate habitat for botanical species. The plethora of exotic vegetation, particularly the more aggressive invasive species, precludes the opportunity of the establishment of those native species with special listing. The lot is poorly suited for avian species and no habitat for Cooper's hawk, golden eagle, snowy egret, northern harrier, horned lark, or logger head shrike due to the size of the property, lack of trees, no source of water, and proximity of development. The study concluded that the habitat requirements for the red-legged frog, steelhead trout and the southwest pond turtle can not be met by the creek on the lot in question. The creek is choked by exotic vegetation and contains no opportunity for water to pool and remain in the channel. It is also has a very narrow channel although it may carry significant amounts of water during a severe rain storm. The report concluded that there are no existing fish or wildlife resources that will be substantially adversely affected by the project. The applicant consulted to the California coastal Commission to request a clear delineation of the ESHA area. CCC concurred with the applications delineation with the provision that it be expanded to include the willows on the east side of the property and accordingly all structural development must be setback a minimum of 50 feet for the stream/ESHA corridor per the LCP including 50 feet from the drip line of the willows. To the extent that the proposed driveway access might encroach into the ESHA buffer, commensurate amount of restoration must be in included.

Mitigation:
a-d all structural development must be setback a minimum of 50 feet for the stream/ESHA corridor per the LCP including 50 feet from the drip line of the willows. To the extent that the proposed driveway access might encroach into the ESHA buffer, commensurate amount of restoration must be in included. Restoration shall include only native non-invasive plant species.

5. CULTURAL RESOURCES Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5?			X		
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?			X		
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?			X		
d. Disturb any human remains, including those interred outside of formal cemeteries?			X		

Impact Discussion: (a., b., c. and d.) There are over 30 surveyed archaeological sites in the corporate boundaries of the City and there could well be as many, or more, unsurveyed sites. At least two of these known sites are documented as the sites of prehistoric villages with significant resources including one with a cemetery. As a result of these discoveries, cultural resource surveys are frequently required for new development within the city and it is not unusual that mitigation measures are required. In this case however, the project site is located in excess of 1,500 feet from any known archaeological site and the closest survey was taken 400 feet away (#2819) where no known resources were found. A Phase I was conducted for the project site and it was the conclusion of the survey that there is no good evidence of significant cultural resources on the site. The lot split and subsequent grading and construction for a single-family residence with utilities and access, would not have an adverse impact on any known significant cultural resources. This report did recommend cultural resource monitoring accompany initial grading of the lot.

Mitigation:
An approved cultural monitor who is a qualified professional archaeologist knowledgeable in Salinan and Chumash culture shall monitor the site during any ground disturbance. At the conclusion of the cultural resource monitoring, the archaeologist should complete a report of the results and submit said report to the City of Morro Bay and the Information Center at the University of California at Santa Barbara.

If during construction excavation, any bones, concentrations of sea shells, angular chert rocks, burnt rock or other unusual cultural materials are unearthed, work in the area should halt until they can be examined by a qualified archaeologist and Native American and appropriate recommendations made as outlined in California Environmental Quality Act of 1970, and the City of Morro Bay Cultural Resource Guidelines.

If any archaeological resources are found, grading or excavation shall cease immediately in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage.

6. GEOLOGY /SOILS Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant or Not Applicable	Impact Reviewed in Previous Document
a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				X	
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Refer to Division of Mines and Geology Publication 42)				X	
ii) Strong Seismic ground shaking?				X	
iii) Seismic-related ground failure, including liquefaction?				X	
iv) Landslides?				X	
b. Result in substantial erosion or the loss of topsoil?				X	
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X	
d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				X	
e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?				X	

Impact Discussion:

a. The General Plan Safety Element depicts landslide prone areas, areas of high liquefaction potential, and areas of potential ground shaking. The proposed project site is not located within any of these areas; therefore, the proposed project would not expose people or structures to adverse impacts resulting from these risks.

b. The proposed project would primarily involve filling the lots and retaining along the western property lines, so substantial loss of topsoil would not occur.

c.-e. In order to ensure that the proposed project will be designed in a manner that will utilize appropriate foundations systems for the soils on site, the applicant will be required to submit a soils report to the City of Morro Bay. This is a standard requirement for residential building permits within the City of Morro Bay and allows the Building Official to ensure that the site is adequately prepared for the proposed development.

Mitigation: The proposed project shall be designed in a manner that is compliant with the California Building Code to ensure that the structures are as seismically sound as is feasible.

Monitoring: Prior to granting a building/grading permit, the Building Official shall review the plans to ensure compliance with the California Building Code.

7.HAZARDS/HAZARDOUS MATERIALS	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
Would the project:					
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X	
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X	
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X	
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or the environment?				X	
e. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X	
f. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				X	

Impact Discussion: (a.-f.) The proposed project is not expected to generate any significant hazards or risk of upset impacts. The project does not involve any interference with emergency response plans, creation of any potential public health or safety hazard; or exposure to hazards from oil or gas wells and pipeline facilities. The project does not include any activities, which could result in contamination of a public water supply. No hazardous materials or other such hazardous conditions exist on-site nor are any proposed.

Mitigation: No mitigation measures are required.

8. HYDROLOGY/WATER QUALITY Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Violate any water quality standards or waste discharge requirements?			X		
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X	
c. Substantially alter the existing drainage pattern on the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on or off-site?				X	
d. Substantially alter the existing drainage pattern on the site or area, including through the alteration of the course of a stream or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or off-site?				X	
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?				X	
f. Otherwise substantially degrade water quality?				X	
g. Place housing within a 100-year flood hazard area as mapped on a federal flood hazard boundary or flood insurance rate map or other flood hazard delineation map?				X	
h. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?			X		
i. Inundation by seiche, tsunami, or mudflow?				X	

Impact Discussion:

a. The sewage that will be generated by this project will be collected and disposed of in the City's sewage system and runoff will be conveyed via storm drains to the bay. Prior to building permit issuance for any construction at the site, the applicant shall be required to provide an Erosion and Sedimentation Control Plan for the City's review and approval. Said plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right-of-way, adjacent properties, any harbor, waterway, or ecologically sensitive area.

b. The City of Morro Bay has sufficient water resources to serve the proposed development. The City's predominant source of water to serve residences is obtained from the State Water Project. Therefore, substantial depletion of ground water would not occur as a result of the proposed project.

c-d The improvements for the proposed project including the private road/driveway would de designed to accommodate the existing historic drainage within an easement that leads toward the west across adjacent parcels. An easement will be acquired and facility will be able to handle adjacent development potential towards the south such that the increase in run-off will not exceed historic flow plus 5 percent increase. In addition, the proposed project and cumulative projects would be required to maintain the sites with permeable surfaces to ensure the run-off does not increase by 5 percent of historical flow. The remaining water flow would be required to drain within the collection facility in a non-erosive manner. Therefore, the proposed project would not substantially alter existing drainage on the site, nor result in substantial erosion or siltation on or off site.

e-f. The proposed development would result in a minimal increase in runoff. Since the project site is less than one acre, a Construction Activities Storm Water General Permit is not required, per the Federal Clean Water Act. However, the city routinely requires erosion control plans. This is a component of the permit process that can be relied upon to ensure that water quality issues associated with erosion will be suitably addressed. The applicant has submitted documentation indicating that the proposed wall will not negatively affect drainage on site or to the nearby creek.

g-i The project site is designated as AE on the FEMA flood maps (special flood area subject to a 100 year flood), however the project proposes to raise the pad height to reduce the potential for flood related impacts to actual home site. The proposed development as constructed would not subject people or structures to significant risk of loss, injury or death resulting from flooding, inundation by seiche, tsunami, or mudflow.

Mitigation:

1. The applicant shall provide an Erosion and Sedimentation Control Plan that shall be approved by the City prior to building permit issuance. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area.
2. The applicant and development team shall utilize best management practices and include low impact development techniques to the maximum extent possible.
3. All construction proposed onsite shall comply with all building code requirements for construction within a flood plain.

Monitoring: Public Services Department staff shall monitor compliance with conditions during the normal course of reviewing improvement plan and building plans and via site inspections to ensure erosion control devices are in place.

9. LAND USE AND PLANNING Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Physically divide an established community?				X	
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?			X		
c. Conflict with any applicable habitat conservation plan or natural community conservation plan?				X	

Impact Discussion:

a - c The proposed project would not physically divide an established community as it is infill in nature. The proposed project would be generally consistent with applicable provisions of local zoning ordinances, the General Plan, and Coastal Land Use Plan. The proposed residential uses would be consistent with the adjacent properties, and in compliance with the zoning ordinance, general plan and land use plan designations applicable to the project site. The retaining wall along the western property lines would raise the pad elevation that could require an exception to the fence/wall heights.

Mitigation: 1) At publicly noticed hearing, the Planning Commission shall consider the requested exceptions and determine whether it is compatible with applicable land use patterns, and fence/wall height concerns as they relate to the required findings being made.

Monitoring: Public Services Department staff shall hold public hearings before the Planning Commission to discuss the proposed project and the requested exceptions. Staff shall ensure that an agreement approved by the City Attorney is recorded.

10 NOISE Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Expose people to, or generate, noise levels exceeding established standards in the local general plan, coastal plan, noise ordinance or other applicable standards of other agencies?				X	
b. Expose persons to or generate excessive groundborne vibration or groundborne noise levels?				X	
c. Cause a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X	
d. Cause a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X		

Impact Discussion:

(a.-c.) The project will not add noise levels that are inconsistent with the surrounding uses or in conflict with standards in the general plan, local coastal plan or zoning ordinance.

(d.) However, construction noise represents a short-term impact related to the use of construction equipment including trucks, loaders, bulldozers, and backhoes. The peak noise level for most of the equipment that will be used during construction is estimated to reach 80 to 95 dBA at a distance of 50 feet (without mitigation). At 250 feet, the peak construction noise (without mitigations) is estimated to reach approximately 67 to 82 dBA (without mitigation). These noise levels are based upon "worst case" conditions. These potential noise levels are dependent on the location of the equipment on the site as well as the actual number and type of equipment used during construction. The surrounding properties are either vacant or well beyond 60 feet. The short term construction activity would only consist of roadway, pad grading, and utility work and should take substantially less time than it would take to construct a typical single-family residence.

Mitigation:

On site construction shall adhere to the following:

Construction Hours: Pursuant to MBMC Section 9.28.030 (l), noise-generating construction related activities shall be limited to the hours of seven a.m. to seven p.m. weekdays and eight a.m. to seven p.m. on weekends.

11. POPULATION AND HOUSING Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X	
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X	
c. Induce substantial growth in an area either directly (for example, by proposing new homes and businesses) or indirectly (e.g. through extension of roads or other infrastructure)?				X	

Impact Discussion:

(a.-c.) The site currently has one single family residence that will be retained and one new single family residence to be constructed. No units are proposed for demolition, therefore, neither substantial numbers of people or residential units will be displaced as a result of this project. The small, infill nature of the project or cumulative potential will not induce substantial growth either directly or indirectly.

Mitigation: No mitigation measures are required.

12. PUBLIC SERVICES Would the project result in a substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Fire protection?				X	
b. Police protection?				X	
c. Schools?				X	
d. Parks or other recreational facilities?				X	
e. Other governmental services?				X	

Impact Discussion:

(a.-e.) The project is not expected to cause any change in governmental service levels or trigger the need for new facilities or equipment to maintain existing service levels. The project is within the density allowed and planned for and all existing services are considered adequate to serve the project.

Mitigation: No mitigation measures are required.

13. RECREATION Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X	
b. Include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?				X	

Impact Discussion:

(a.-b.) The project is of a small scale and is also required to pay park in-lieu fees for future park construction, thus no significant impacts will result from the project.

Mitigation: No mitigation measures are required.

14 TRANSPORTATION/CIRCULATION Would the project:	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Cause an increase in traffic, which is substantial in relation to the existing traffic load and capacity of the Avenue system (i.e. result in a substantial increase in either the number of vehicle trips, the volume to capacity ration on roads, or congestion at intersections)?				X	
b. Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?				X	
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X	
d. Substantially increase hazards due to a design feature (e.g. limited sight visibility, sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?				X	
e. Result in inadequate emergency access?			X		
f. Result in inadequate parking capacity?				X	
g. Conflicts with adopted policies supporting alternative transportation (e.g. bus turnouts, bicycle racks)?				X	

Impact Discussion:

(a.-c.) Per the Institute of Transportation Engineers the existing site produces one peak hour trip daily and the proposed project will produce three peak hour trips daily with a net increase of two daily peak hour trips. The anticipated increase of two peak hour trips per a day will not have a significant impact on traffic or levels of service. In addition, the proposed project will have no impact on air traffic patterns because the net increase in units will not significantly increase air traffic levels.

(d.-g.) As designed, the project provides all required off-street parking and will improve pedestrian accessibility adjacent to the site via the installation of curb, gutter and sidewalk in accordance with the City Engineer's recommendation. The private driveway will be marked for "No Parking" to ensure adequate emergency access.

Mitigation: The project shall provide approved "Fire Lane-No Parking" signage with red-painted curbs along the driveway.

Monitoring: The Fire Department shall ensure compliance with this condition prior to final building/grading permit approval or public improvement plan release.

15. UTILITIES & SERVICE SYSTEMS Would the project:		Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X	
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X	
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X	
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X	
e. Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?			X		
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X	
g. Comply with federal, state, and local statutes and regulations related to solid waste?				X	

Impact Discussion:

(a-g) Due to the small size of the project, with required mitigations there will be no significant impact to utilities and service systems. The City water system has been reviewed with capacity studies that have determined that there is sufficient capacity for build out. However, the Sewer System Master Plan has identified some deficiencies in the system that must be addressed when new development is proposed. Solid waste is taken to the Cold Canyon Landfill that has been expanded to take increased waste anticipated within its services area.

Mitigation:

Prior to the issuance of a building permit, the Applicant/Developer shall pay to the City an impact fee at a future date towards the construction of municipal sewer improvements as determined by the Engineering Division in accordance with the Sewer System Master Plan. The applicant and future lot owners shall agree to this fair share payment and waive any rights to challenge the fees by signing an agreement.

IV. INFORMATION SOURCES:

A. County/City/Federal Departments Consulted:

City of Morro Bay Public Works Department, Fire Department, Police Department, Building Division, City Engineer, Parks and Recreation Department.

B. General Plan

X Land Use Element
X Circulation Element
X Seismic Safety/Safety Element
X Zoning Ordinance
___ Conservation Element
X Noise Element
x Local Coastal Plan and Maps

C. Other Sources of Information

X Field work/Site Visit
___ Calculations
X Project Plans
___ Traffic Study
X Records
___ Grading Plans
X Elevations/architectural renderings
X Published geological maps
X Topographic maps
___ Ag. Preserve Maps
X Flood Control Maps
___ Other studies, reports
X Zoning Maps
X Soils Maps/Reports
___ Plant maps
X Archaeological maps and reports
X (Others) APCD Handbook

V. MANDATORY FINDINGS OF SIGNIFICANCE (Section 15065)

A project may have a significant effect on the environment and thereby require a focused or full environmental impact report to be prepared for the project where any of the following conditions occur (CEQA Sec. 15065):

	Significant	Unknown Potential Significant	Potential Significant And Mitigated	Not Significant	Impact Reviewed In Previous Document
Potential to degrade: Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X	
Cumulative: Does the project have impacts that are individually limited but cumulatively considerable? (Cumulatively considerable means that incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?				X	
Substantial adverse: Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?				X	

Impact Discussion: The project is an in-fill residential development generally consistent with zoning and subdivision regulations. It does not have the potential to substantially degrade the quality of the environment, including wildlife habitat value.

VI. DETERMINATION

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared. [ ]

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. **A MITIGATED NEGATIVE DECLARATION** will be prepared [X]

I find that the proposed project MAY have limited and specific significant effect on the environment, and a **FOCUSED ENVIRONMENTAL IMPACT REPORT** is required. [ ]

I find that the proposed project MAY have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required. [ ]

[X] With Public Hearing [ ] Without Public Hearing

Previous Document : None

Project Evaluator : Kathleen Wold, Senior Planner

Kathleen Wold
Signature

June 4, 2009
Initial Study Date

Kathleen Wold
Printed Name

City of Morro Bay
Lead Agency

VII. ATTACHMENTS

Attachment A – Summary of Required Mitigation Measures.

ATTACHMENT A
SUMMARY OF REQUIRED MITIGATION MEASURES

Attachment "A"

SUMMARY OF REQUIRED MITIGATION MEASURES

Geology/Soils: The proposed project shall be designed in a manner that is compliant with the California Building Code to ensure that the structures are as seismically sound as is feasible.
Hydrology/Water Quality: 1) The applicant shall provide an Erosion and Sedimentation Control Plan that shall be approved by the City prior to building permit issuance. The Plan shall show control measures to provide protection against erosion of adjacent property and prevent sediment or debris from entering the City right of way, adjacent properties, any harbor, waterway, or ecologically sensitive area. The applicant and development team shall utilize best management practices and include low impact development techniques to the maximum extent possible. All construction proposed onsite shall comply with all building code requirements for construction within a flood plain.

Land Use and Planning: 1) At publicly noticed hearing, the Planning Commission shall consider the requested exceptions and determine whether it is compatible with applicable land use patterns, and fence/wall height concerns as they relate to the required findings being made.

Cultural: An approved cultural monitor who is a qualified professional archaeologist knowledgeable in Salinan and Chumash culture shall monitor the site during any ground disturbance. At the conclusion of the cultural resource monitoring, the archaeologist should complete a report of the results and submit said report to the City of Morro Bay and the Information Center at the University of California at Santa Barbara.

If during construction excavation, any bones, concentrations of sea shells, angular chert rocks, burnt rock or other unusual cultural materials are unearthed, work in the area should halt until they can be examined by a qualified archaeologist and Native American and appropriate recommendations made as outlined in California Environmental Quality Act of 1970, and the City of Morro Bay Cultural Resource Guidelines.

If any archaeological resources all found, grading or excavation shall cease immediately in the immediate area, and the find should be left untouched until a qualified professional archaeologist or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage.

Transportation/Circulations: The project shall provide approved "Fire Lane-No Parking" signage with red-painted curbs on the frontage of the alley where applicable.

Biology: All structural development must be setback a minimum of 50 feet for the stream/ESHA corridor per the LCP including 50 feet from the drip line of the willows. To the extent that the proposed driveway access might encroach into the ESHA buffer, commensurate amount of restoration must be in included. Restoration shall include only native non-invasive plant species.

Utilities and Service Systems: Prior to the issuance of a building permit, the Applicant/Developer shall pay to the City an impact fee at a future date towards the construction of municipal sewer improvements as determined by the Engineering Division in accordance with the Sewer System Master Plan. The applicant and future lot owners shall agree to this fair share payment and waive any rights to challenge the fees by signing an agreement.

Acceptance of Mitigation Measures by Project Applicant:

_____ Applicant

08 JUN 09 Date

Biological Assessment

For

Mr. John Medina
At
3390 North Main Street
Morro Bay, California 93442

By

Mike McGovern, Ph. D.

Biologist / Ecologist

2060 Varian Circle
Arroyo Grande, CA 93420

May 3, 2008

RECEIVED
MAY 29 2008
City of Morro Bay
Public Services Department

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SUMMARY

Mr. Medina proposes to split his lot within the City of Morro Bay, California. In order to accomplish this he needs to provide a building envelope with a minimum of 6,000 square feet. Establishment of the boundary of a prescribed Environmentally Sensitive Area on the lot is needed to accomplish this. The lot in question is highly disturbed and dominated by exotic vegetation. No species with special listing or habitat for such was observed on the lot. A biological assessment suggests that the location shown on the attached map will cause no significant ecological detriment.

INTRODUCTION

Mr. John Medina built a home in Morro Bay on a 0.92-acre lot. The constructed home is near the front (west) of the lot and it, the driveway, and the horticultural enhancements consumes approximately 7200 square feet. The remainder of the property is undeveloped with a small creek transecting the property and both are significantly disturbed. Mr. Medina proposes to split his lot into two parcels. The size of the lot that contains the existing house (parcel 1) will be about 7,189 square feet and parcel 2 will be about 32,931 square feet. Parcel two will contain the creek and offer minimal area proposed for a building site. The City of Morro Bay has required that the area designated for building of a house be a minimum of 6,000 square feet. The proposed lot 2 presently contains a designated Environmental Sensitive Area (ESA). Mr. Medina, however, states that the ESA is ill defined. It is proposed by Mr. Medina and Westland Engineering, Inc. of San Luis Obispo, CA that the ESA be defined via surveyed coordinates to permanently establish it. This will allow a more easily managed ESA and also allow Mr. Medina to meet the size requirements imposed.

The proposal is to survey in the location defining the ESA that will not interfere with the creek and will allow the building envelope to contain 6,000 square feet. A 2 to 3-foot high mortarless retaining wall is planned to be put along this proposed surveyed line and backfilled to create a level area. The remainder of the property is to be dedicated as an open space easement.

Ms. Julie Means, Senior Environmental Scientist, from the Fresno office the California Department of Fish and Game (CDFG) has visited the property and viewed the creek. She reviewed the scope of the proposed project and determined that the retaining wall and the development behind it is not within the jurisdiction of the CDFG and a Stream Alteration Notification does not need to be submitted for this project. They also conclude that this proposed project will not impact fish or wildlife resources because none exist on the property.

The city of Morro Bay has requested that a biological assessment be conducted on the property as a requirement for the issuance of a permit. Following is such a report.

LOCATION AND SETTING

The 0.92 acre property in question is a city lot within the city of Morro Bay, California and located at 3390 North Main Street (figs. 1 & 2). The lot is trapezoidal in shape with its longest axis aligned east / west. It is bound by Tide Avenue on the east and North Main Street on the west. The southern boundary abuts single family residences and a multifamily edifice is along its northern boundary as is a "paper" street that is the extension of Whidbey Street. Presently a pedestrian path substitutes for the paper street.

There is an existing home in the southwest corner of the property. The home is surrounded by ornamental plantings including a lawn and a driveway that allows access to North Main Street. The remainder (eastern portion) of the property is highly disturbed

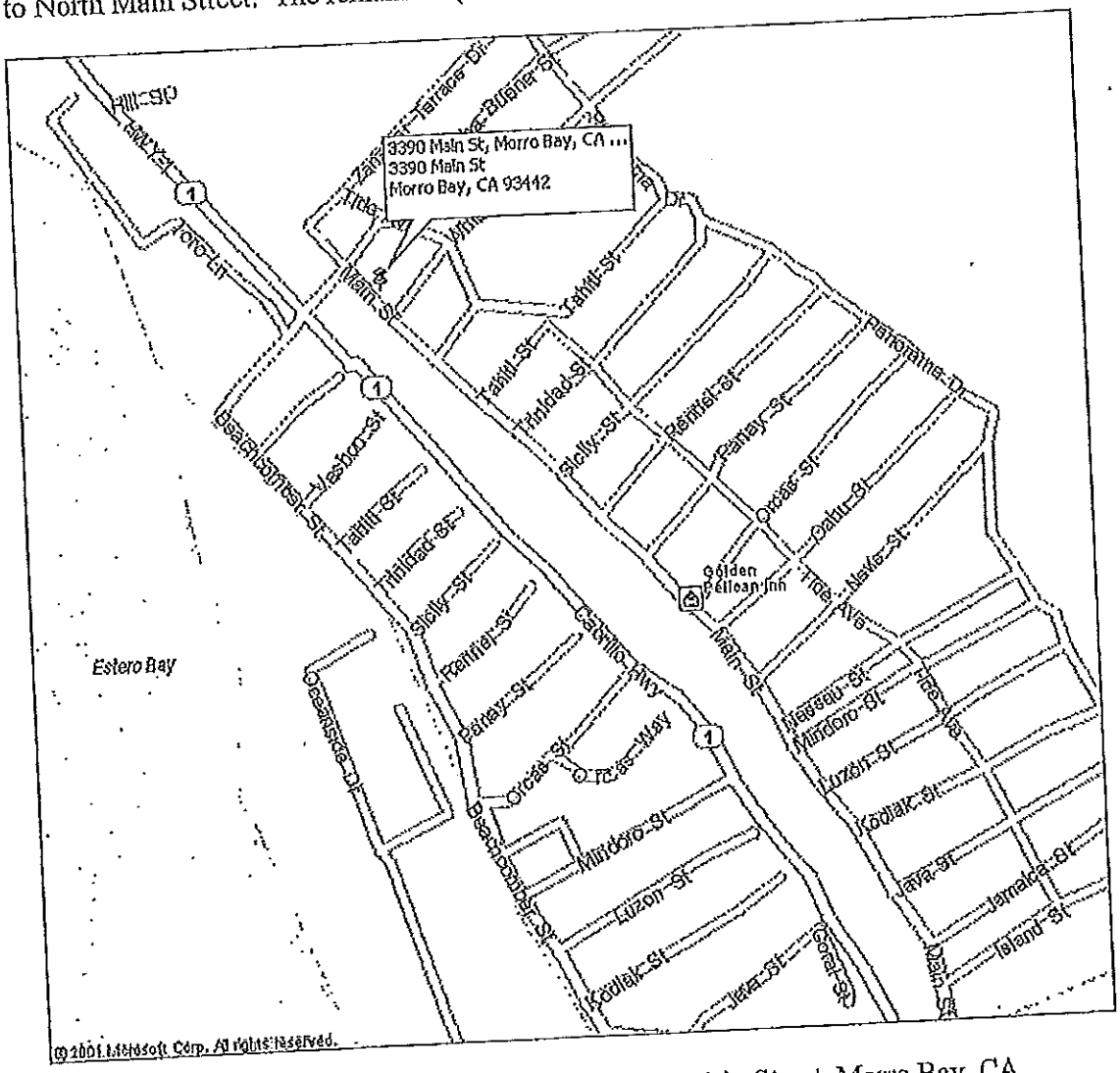

Figure 1: Location of the property in question on N. Main Street, Morro Bay, CA.

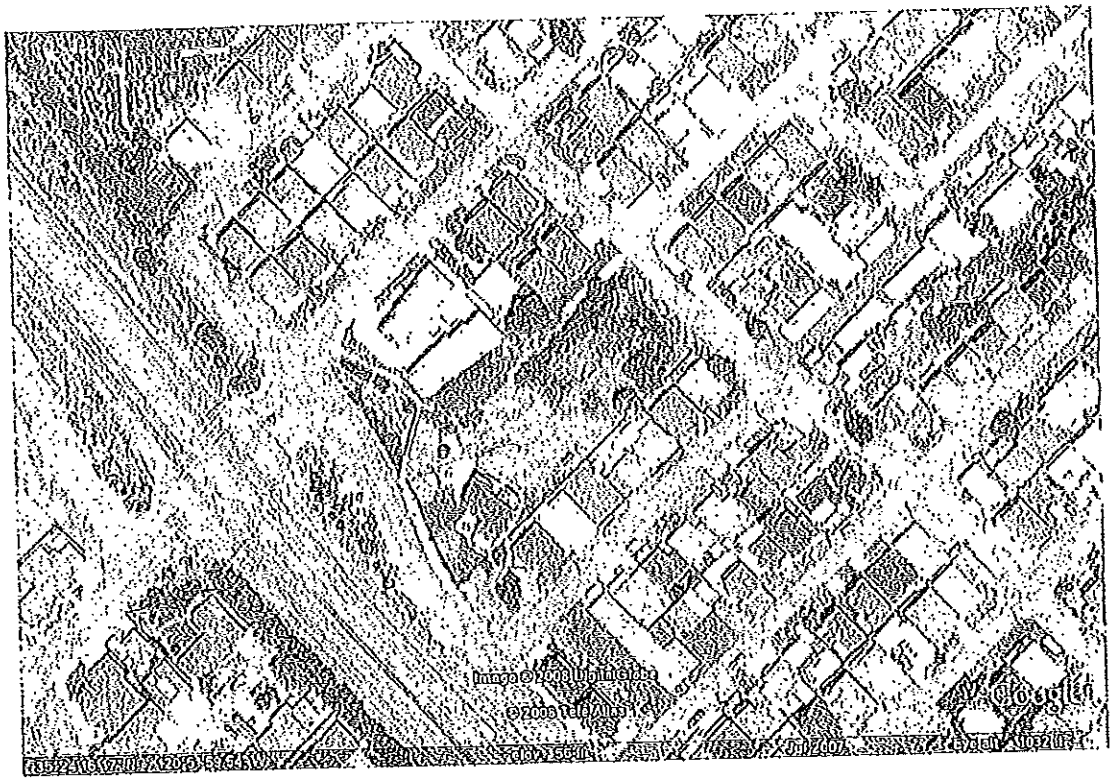

Figure 2: Aerial view of the lot (undeveloped area) in center of the photo. North is up.

but undeveloped. A power line traverses the property at approximately the location of the creek and two pipelines also cross the creek near the western edge of the lot.

The undeveloped portion of the lot has a drainage that, in pristine times, was an ephemeral creek. The drainage emerges from a pipe near the eastern portion of the lot in question and bisects it from the southeast portion of the lot to its northwest corner. The drainage is defined by sloping banks that change into relatively steep banks on either side of the narrow creek. The bottom of the creek contains a small but well defined "V" shaped channel that is approximately 18 inches deep and about the 12 inches wide. The channel is completely soil. The banks of the creek are dominated by introduced grasses including Zyosia (*Zoysia matrella*), wild oats (*Avena sp.*), and Italian rye grass (*Lolium multiflorum*).

The undeveloped portion of the lot contains a mosaic of primarily exotic vegetation. Besides the aforementioned grasses there are ornamental plantings scattered on the lot including pride of madera (*Echium candicans*), nasturtium ((*Tropaeolum majus*), gazania (*Gazania splendens*), naked ladies (*Amaryllis belladonna*), and pampas grass (*Cortaderia selloana*). A variety of invasive species also present on the lot that include ice plant (*Carpobrotus edulus*), rip gut brome (*Bromus diandrus*), and cheeseweed (*Malva parviflora*). The property supports very little native vegetation. The most noticeable

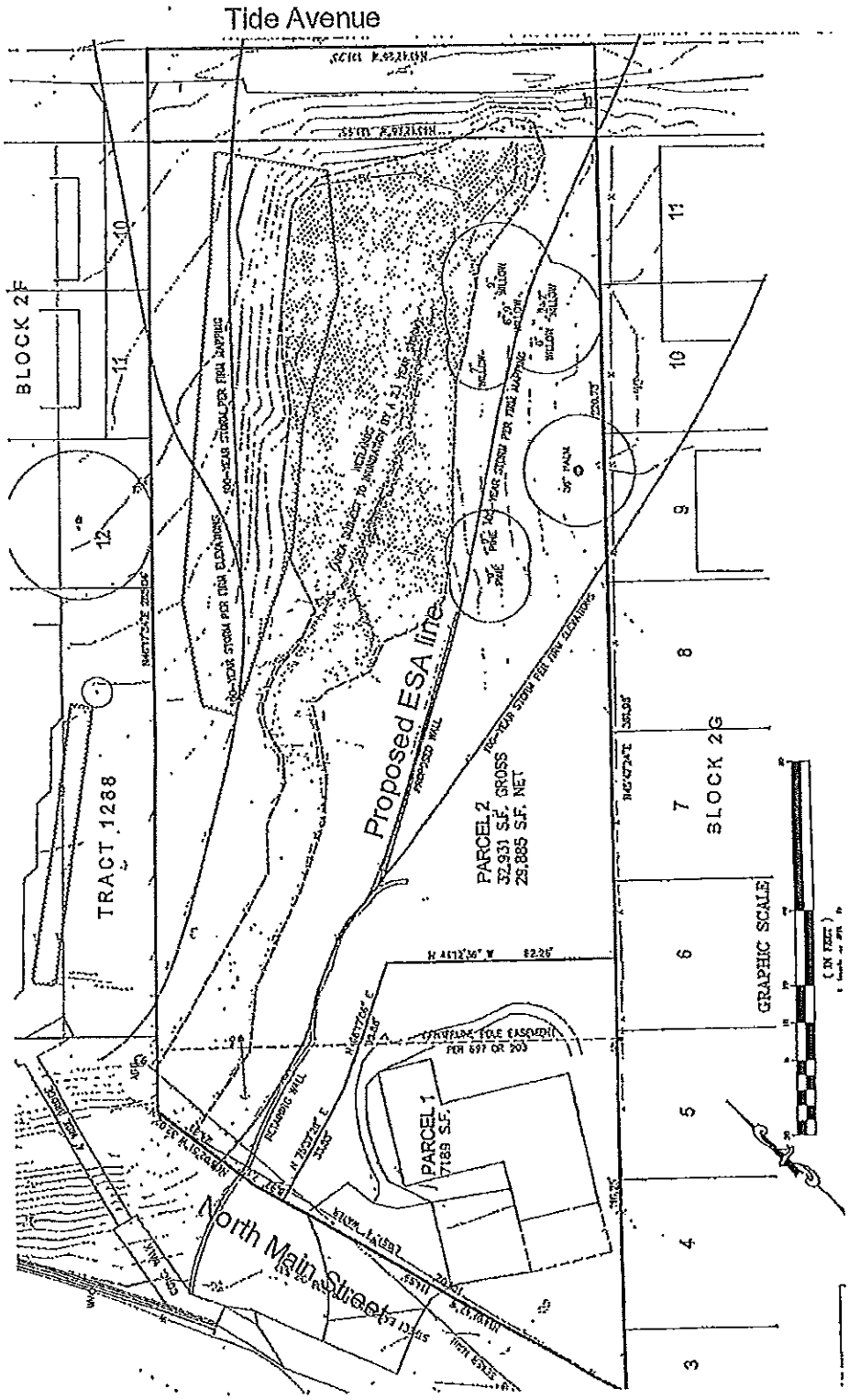

Figure 3: Shape of the lot with proposed ESA line

native flora on the property is arroyo willow (*Salix leptolepis*) and coyote bush (*Baccharis pilularus*).

The lot in question is completely surrounded by single and multi family dwellings with the exception of the western side. The west side affronts North Main Street with Highway 101 immediately beyond.

METHOD

Prior to my survey I searched the California Natural Diversity Data Base (CNDDB) reports for the Morro Bay North, Morro Bay South, Cayucus, Atascadero, Cyprus Mountain, York Mountain, Templeton, and San Luis Obispo United Sates Geological Service (USGS) quadrangles. I also consulted the California Native Plant Society (CNPS) "Inventory".

On the morning of April 26, 2008 I met with Mr. Medina on his lot in Morro Bay. He provided me with a map and a verbal description of what he proposed. Subsequently I spoke with Mr. Terence Orton of Westland Engineering, Inc. of San Luis Obispo, California. Mr. Orton also apprised me of Mr. Medina's proposal and the engineering aspect involved.

I walked the lot in an east / west direction in transects about 20 feet apart on each side of the creek. I also walked down the channel of the drainage. In this manor I was able to make a comprehensive list of all botanical species encountered. Specimens of plants not easily identified were taken to be identified with the help of botanical manuals. Photographs were also taken on the site.

I spent a little over an hour walking the property and taking notes. The weather for the survey was clear and in the 70's F^0 during my visit.

RESULTS

The lot in question contains an existing home on its southwestern corner. The home is surrounded by a lawn, horticultural plantings, and a driveway. The remainder of the property is undeveloped and disturbed.

The property, in general, is a mosaic of introduced exotic vegetation. These exotics are weedy species as well as horticultural cultivars. The dominant weedy species include wild oats, Italian rye grass, and brome grasses. Towards the back (eastern) half of the lot the dominant ground vegetation is zoysia grass that forms a dense mat. Also of significant presence is nasturtium, and ice plant.

There were seven native species observed on the property in question and they were poorly represented with the exception of coyote bush. Appendix 1 is a listing of those species that were discovered on the property with the asterisk denoting indigenous species.

During the survey no botanical species with special listing was discovered. The highly disturbed condition of the property and the plethora of invasive exotic species curtails the opportunity of native species especially those that have a special listing.

The CNDDB reports also include a variety of zoological species that occur in the above mentioned quadrangles. Of the zoological species noted in Appendix 2 none was noted on the property. Special attention was afforded to inspection of the creek but no habitat for or observation of the red-legged frog (*Rana aurora draytonii*), southwest pond turtle (*Emys marmorata pallida*), or the steelhead trout (*Oncorhynchus mykiss irideus*) was noted.

The lot in question failed to reveal any species with special listing or habitat for such.

DISCUSSION

The lot in question has a designated Environmentally Sensitive Area (ESA) on a portion of it. The ESA incorporates and straddles the creek. The entire lot is significantly disturbed and exhibits a large variety of exotic vegetation and only a sparse representation of native vegetation. The ephemeral creek emerges from an underground drainage as it enters the property and resubmerges shortly after leaving the property.

The lot offers no appropriate habitat for botanical species as noted in the CNDDB reports. The plethora of exotic vegetation, particularly the more aggressive invasive species, precludes the opportunity of the establishment of those native species with special listing..

Approximately half of the zoological species that are included on the CNDDB reports are avian. The lot in question is poorly suited for these avian species. There is no habitat for Cooper's hawk, golden eagle, snowy egret, northern harrier, horned lark, or logger head shrike due to size of the property, lack of trees, no source of water, and proximity of development.

The presence of a creek on the property suggests that there may be habitat of importance for red-legged frog and steelhead trout as noted on the CNDDB reports and possibly the southwest pond turtle.

The southwest pond turtle *(Emys marmorata pallida)* is loosing the population densities it once enjoyed. Because its numbers are declining the United States Fish and Wildlife Service and the California Department of Fish and Game have listed the southwestern pond turtle as a species of concern. Southwestern pond turtles are found in San Luis Obispo County. I have observed them within the county in a sulfur spring on Santa Ysabel Ranch and in San Marcos Creek near Paso Robles, and they have been reported in Arroyo Laguna Creek near San Simeon (Lovell, 1991) and Corral de Piedras Creek near Edna, CA.

Pond turtles prefer large, deep pools with logs, branches, or boulders for sunning areas (Bury, 1972). They are also found in fast and slow moving streams, marshes, irrigation canals, and in springs (Ernst and Barbour 1989). They, however, lay eggs on dry land and have been noted up to one quarter mile from water for this purpose (Storer, 1930). The turtles are active for approximately six months of the year and lay eggs primarily in June and July (Bury, 1972).

There are four native salmonid fish in California streams, the Chinook Salmon (*Oncorhynchus tshawlytscha*), the Coho salmon (*Oncorhynchus kisutch*), the coast cut throat trout (*Oncorhynchus clarkii*), and the steelhead trout (*Oncorhynchus mykiss*) (Flosi, 1991). Steelheads are anadromous rainbow trout and can enter the rivers and creeks in the state at most months of the year. Typically there are runs of steelhead in late summer through October (fall runs), November through April (winter runs), and May through June (spring runs). The steelhead enter a river or stream that can be shared by larger salmonids but they usually occupy smaller tributaries than salmon and use finer beds of river gravel in which to spawn (Flosi 1991). Typically steelhead trout spend one to two years in fresh water before entering the ocean and then return to spawn at three to four years old. In the past few decades, steelhead populations have diminished similarly to those of salmon possibly due to the same reasons. Steelhead, consequently, were listed by the National Marine Fisheries Service as an endangered species in August of 1977.

Steelhead were formerly abundant in many of the steams and rivers of the Central Coast of California. They were a common component of the Salinas River and some of its tributaries but they are now considered to be uncommon (Barclay 1975). A similar phenomenon occurs in the Santa Ynez River, another river of the Central Coast of California (Santa Ynez River Tech. Adv. Comm. 1999). Historically winter runs of steelhead entered streams and rivers of the Central Coast during the months from February to May (in Woodward-Clyde 1998). This corresponds well with the winter rains that are common to this area. Degradation of many streams and rivers has, however, lead to the diminution or demise of steelhead in certain drainages.

The California red-legged frog is listed as a Federally Threatened Species and a California Species of Special Concern. Their present distribution includes Sonoma and Butte counties south to Riverside County. Historically, the California red-legged frog ranged coastally from Marin County inland to Shasta County, southward to northwestern Baja California, Mexico. They have been eliminated from 70% of their historical range due to the spread of exotic predators, such as bullfrogs (*Rana catesbeiana*) and mosquito fish (*Gambusia affiis*) (Allen and Tennant 2000; Lawler et al. 1999), fragmented habitat, isolated populations, degraded streams and they were once hunted for human consumption. Bullfrogs were introduced from Maryland and Florida in 1896 to help satisfy the demand for frogs used for food once California red-legged frog populations declined. Bullfrogs are known predators of California red-legged frogs, preying on eggs, tadpoles and adult frogs.

California red-legged frogs require dense, shrubby riparian vegetation associated with deep (1.7m), still or slow moving water (Hayes and Jennings 1988). Water sources are

usually shaded by overhanging arroyo willow (*Salix lasiolepis*), cattails (*Typha spp.*) and bulrushes (*Scirpus spp.*). Emergent vegetation is required during breeding season for the attachment of eggs. Juveniles favor open, shallow aquatic habitats with dense submergents.

The habitat requirements of the above mentioned three species cannot be met by the creek on the lot in question. The creek is choked by exotic vegetation and contains no opportunity for water to pool and remain in its channel. It is also has a very narrow channel although it may carry significant amounts of water during a severe rain storm. But the nature of the water flowing in the creek is ephemeral. There is no opportunity for the establishment or shelter of red-legged frog, southwest pond turtle, or steelhead trout.

Senior Environmental Scientist Julie Means from the Central Region of the California Department of Fish and Game (CDFG) has viewed the property. Her determination is; "that there is no existing fish or wildlife resource that will be substantially adversely affected" by the project" (Appendix 4). The CDFG, therefore, approved the commencement of the project. I concur. After surveying the lot it caused me to ask why the creek on this lot has a designated ESA. There, indeed, is nothing sensitive or unique about the flora or fauna on the lot in its present state. The proposed project to realign the current ESA boundary and to permanently have it marked will not compromise or significantly affect the biota on the lot. In addition, to extend the existing retaining wall to approximate the new proposed ESA boundary also will have no significant impact on the biota.

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Appendix 1: List of botanical species observed. Asterick denotes a native species.

Agapantha sp.	Lilly of the Nile
Amaryllis belladonna	Naked ladies
Artemisia vulgaris *	Mugwort
Avena fatua	Common wild oat
Baccharis pilularis *	Coyote bush
Brassica nigra	Black mustard
Bromus catharticus	Rescue grass
Bromus diandrus	Ripgut brome
Bromus hordeaceus	Soft chess brome
Carduus sp.	Italian thistle
Carpobrotus edulus	Ice plant
Conium maculatum	Poison hemlock
Cortaderia selloana	Pampas grass
Cynata cardunculue	Artichoke
Echium candicans	Pride of madera
Foeniculum vulgare	Fennnel
Gazania splendens	Gazania
Heteromeles arbutifolia *	Toyon
Hordeum sp.	Wild barley
Hypochaeris glabra	Smooth cat's ear
Knlphofia uvaria	Red hot poker
Lolium multiflorum	Italian rye grass
Malva parviflora	cheeseweed
Medicago polymorpha	Bur clover
Oxalis Pes-capral	Bermuda buttercup
Picris echioides	Bristly ox-Tongue
Plantago erecta *	California plantain
Plantago lanceolata	Narrow leaved plantain
Prunus sp.	Prunus tree
Raphanus sativus	Wild radish
Rubus ursinus	Blackberry
Rumex crispus	Curly dock
Rush *	Juncus sp.
Salix lasiolepis *	Arroyo willow
Sonchus asper	Prickly sow thistle
Trapopogon porrifolius	Salsify
Tropaeolum majus	Nasturtium
Verbena lasiostachys	Vervain
Vicia gigantean *	Giant vetch
Palmae sp.	Palm tree
Vicia sp.	Vetch
Zoysia matrella	Zoysia grass

Appendix 2: Species listed on the CNDDB reports for Morro Bay North, Morro Bay South, Cayucus, Atascadero San Luis Obispo, Cyprus Mountain, York Mountain, and Templeton USGS quadrangles. Asterisk denotes a species of concern.

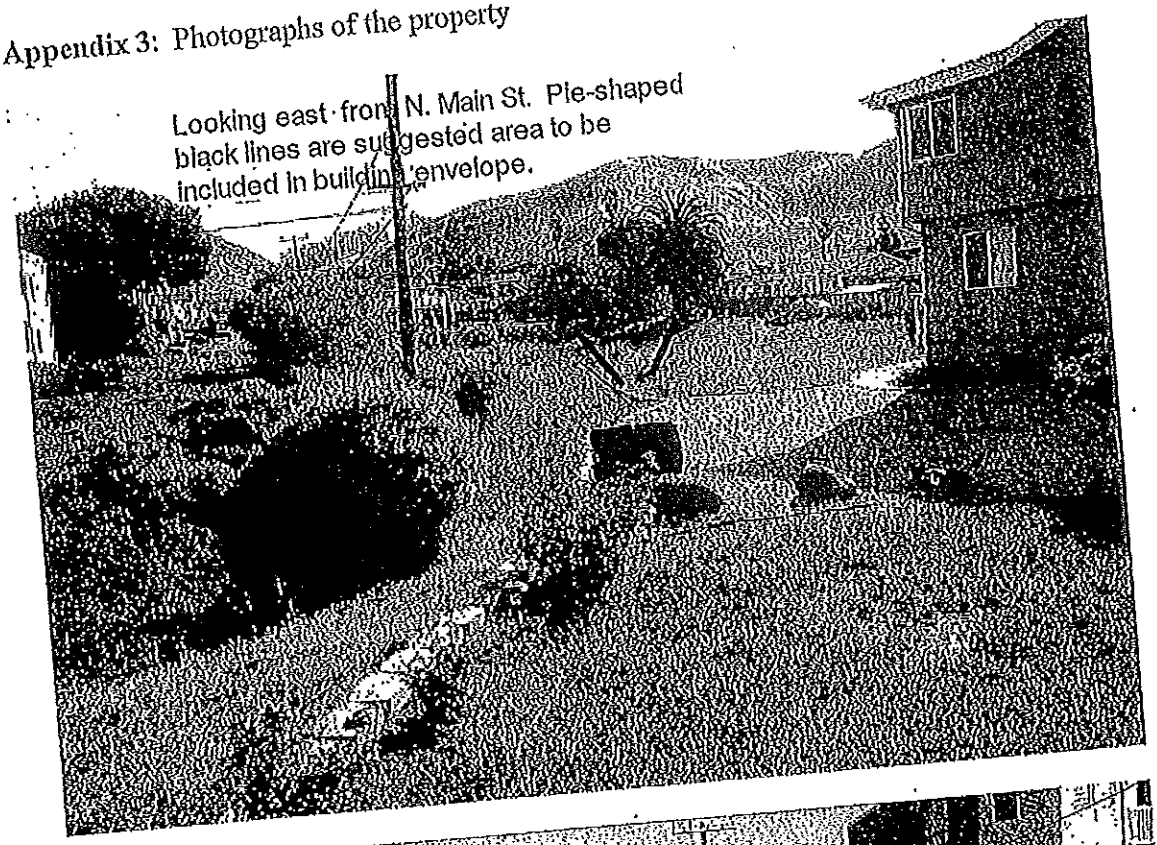
ZOOLOGICAL SPECIES BINOMIAL	COMMON NAME	FED / CAL	
Accipiter cooperii	Cooper's hawk	None	
Anniella pulchra nigra	black legless lizard	None	
Anniella pulchra pulchra	silvery legless lizard	None	
Branchinecta lynchi	vernal pool fairy shrimp	T /	
Circus cyaneus	northern harrier *	None	
Coelus globosus	globose dune beetle	None	
Dipodomys heermanni morroensis	Morro Bay kangaroo rat	End/End	
Egretta thula	snowy egret	None	
Eremophila alpestris actia	California horned lark	None	
Lanius ludovicianus	loggerhead shrike *	None	
Oncorhynchus mykiss irideus	steelhead - south/central California coast ESU *	T /	
Plebejus icarioides moroensis	Morro Bay blue butterfly	None	
Aquila chrysaetos golden eagle	golden eagle	None	
Rana aurora draytonii	California red-legged frog *	T /	
Sternula antillarum browni	California least tern	End/end	

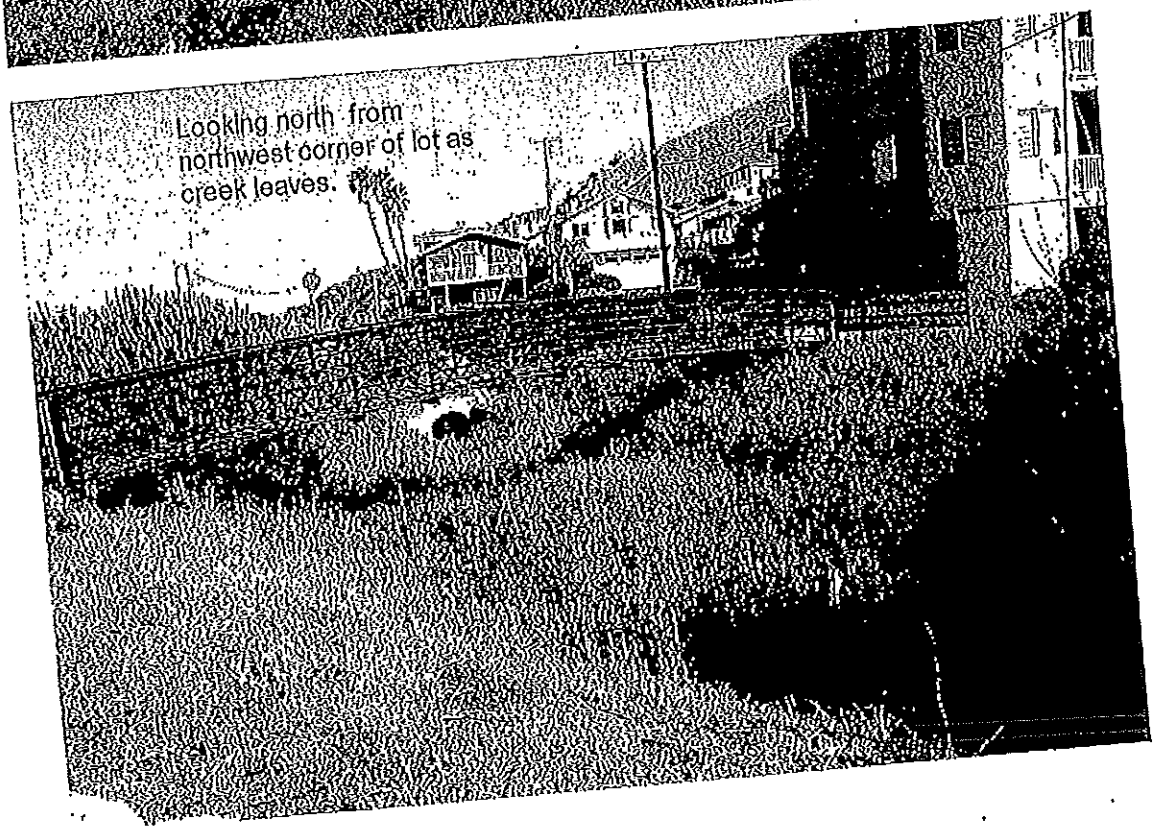
BOTANICAL SPECIES BINOMIAL	COMMON NAME	FED / CAL	CNPS
Amsinckia douglasiana	Douglas' fiddleneck	None	4.2
Arctostaphylos morroensis	Morro manzanita	T /	1B.1
Arctostaphylos obispoensis	Bishop manzanita	None	4.3
Arctostaphylos pilosula	Santa Margarita manzanita	None	1B.2
Aspidotis carlotta-halliae	Carlotta Hall's lace fern	None	4.2

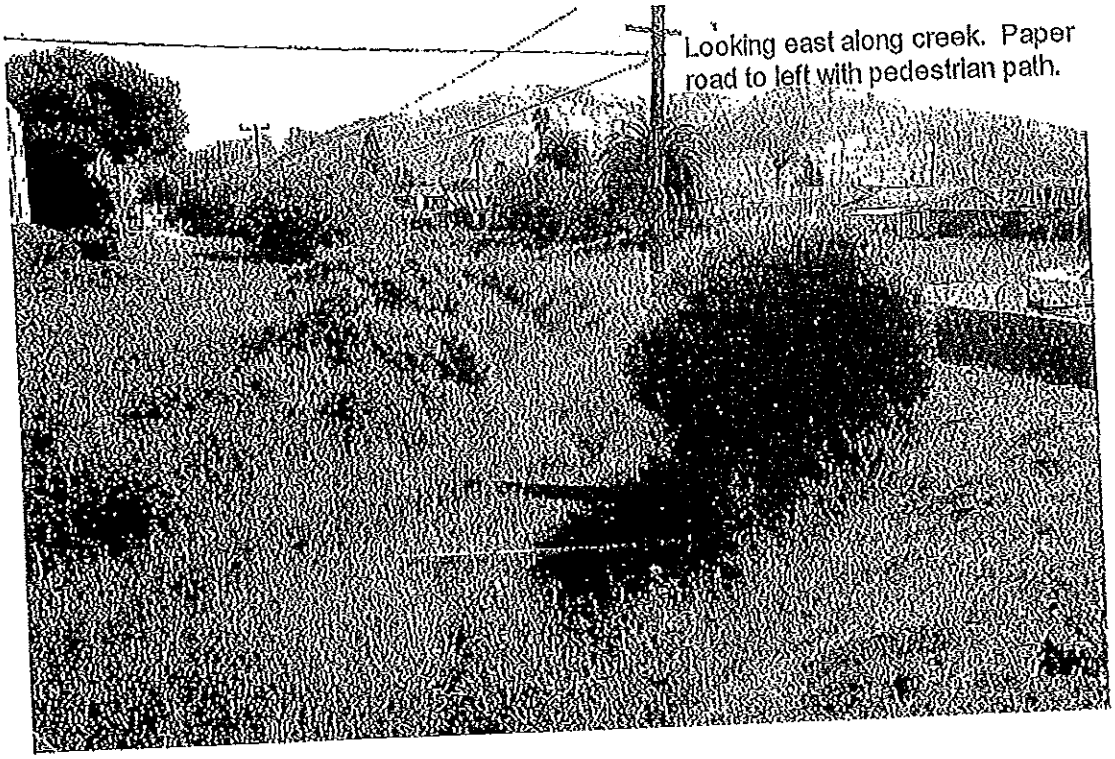
Astragalus macrodon	Salinas milk-vetch	None	4.3
Astragalus nuttallii var. nuttallii	Nuttall's milk-vetch	None	4.2
Calochortus clavatus var. clavatus	club-haired mariposa-lily	None	4.3
Calochortus obispoensis	La Panza mariposa-lily	None	1B.2
Calochortus simulans	San Luis Obispo mariposa-lily	None	1B.3
Calystegia subacaulis ssp. episcopalis	Cambria morning-glory	None	1B.2
Camissonia hardhamiae	Hardham's evening-primrose	None	1B.2
Carex obispoensis	San Luis Obispo sedge	None	1B.2
Castilleja densiflora ssp. obispoensis	San Luis Obispo owl's-clover	None	1B.2
Chorizanthe breweri	Brewer's spineflower	None	1B.3
Chorizanthe palmeri	Palmer's spineflower	None	4.2
Cladonia firma	firm cup lichen	None	
Cupressus macrocarpa	Monterey cypress	None	1B.2
Delphinium gypsophilum ssp. gypsophilum	gypsum-loving larkspur	None	4.2
Dudleya abramsii ssp. murina	mouse-gray dudleya	None	1B.3
Erysimum insulare ssp. suffrutescens	suffrutescent wallflower	None	4.2
Fritillaria agrestis	stinkbells	None	4.2
Fritillaria ojaiensis	Ojai fritillary	None	1B.2
Grindelia hirsutula var. maritima	San Francisco gumplant	None	1B.2
Horkelia cuneata ssp. puberula	mesa horkelia	None	1B.1
Horkelia yadonii	Santa Lucia horkelia	None	4.2
Layia jonesii	Jones' layia	None	1B.2
Lomatium parvifolium	small-leaved lomatium	None	4.2
Malacothamnus jonesii	Jones' bush-mallow	None	4.3
Malacothamnus niveus	San Luis Obispo County bush-mallow	None	4.3
Malacothamnus palmeri var. palmeri	Santa Lucia bush-mallow	None	1B.2
Monardella palmeri	Palmer's monardella	None	1B.2

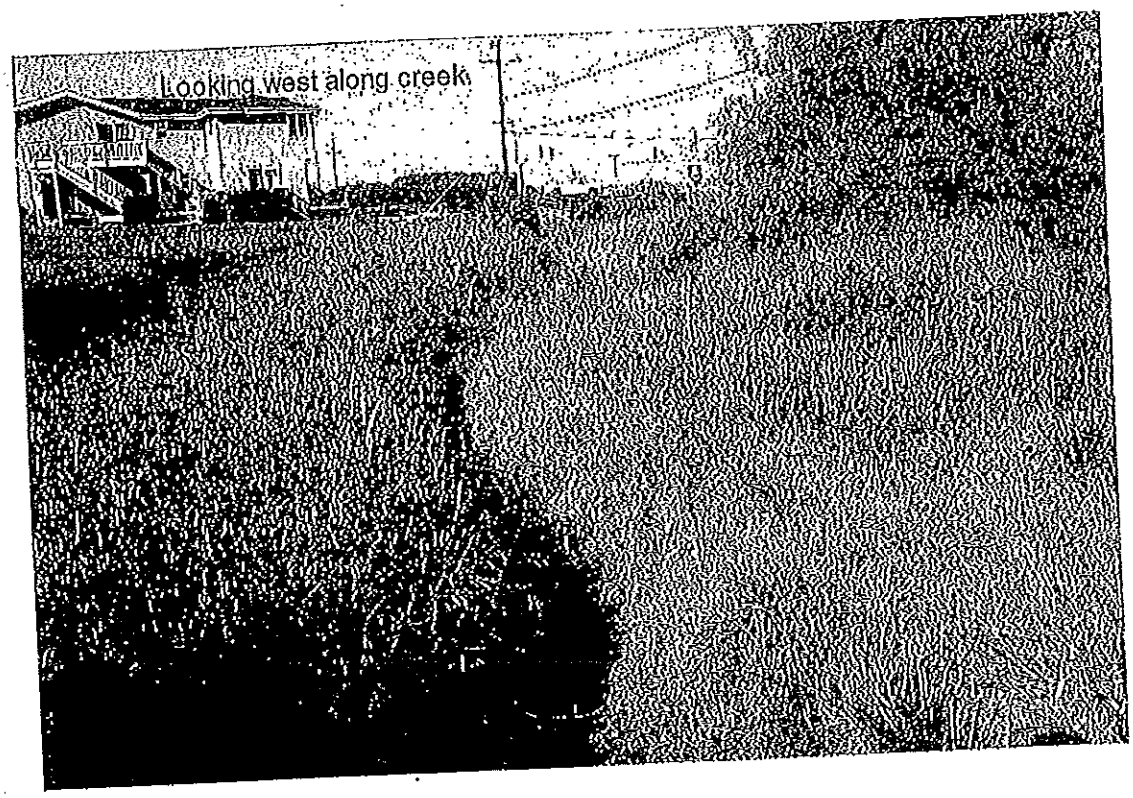
Piperia leptopetala	narrow-petaled rein orchid	None	4.3
Poa diaboli	Diablo Canyon blue grass	None	1B.2
Sanicula hoffmannii	Hoffmann's sanicle	None	4.3
Senecio astephanus	San Gabriel ragwort	None	4
Senecio astephanus	San Gabriel ragwort	None	4
Sidalcea hickmanii ssp. anomala	Cuesta Pass checkerbloom	/ rare	1B.2
Streptanthus albidus ssp. peramoenus	most beautiful jewel-flower	None	1B.2

Appendix 3: Photographs of the property






Looking east along creek. Paper
road to left with pedestrian path.


Looking west along creek

Appendix 4: Letter from CDFG

DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
(559) 243-4005

August 13, 2007

John Medina
3390 North Main Street
Morro Bay, California 93442

Dear Mr. Medina:

Extension to Stackable Brick Wall
3390 North Main Street
Morro Bay, San Luis Obispo County

This is in response to the information you submitted to the Department of Fish and Game (Department) regarding the above referenced Project, which is located near an ephemeral creek channel that drains storm water runoff to the Pacific Ocean. The proposed Project is the 84 foot extension of an existing three (3) foot high stackable brick retaining wall, and is intended to allow for additional fill material behind the wall to raise the level of the rear yard of the property. The extension wall will continue without any change in direction or dimensions from the existing wall. A driveway will be constructed above the wall. The construction location of the existing portion of the retaining wall, and associated fill, was previously determined by the Department to be non-jurisdictional, pursuant to Section 1600 of the Fish and Game Code. The proposed wall extension is also not within the Department's jurisdiction, and therefore a Stream Alteration Notification does not need to be submitted for the Project.

Based on the Department's review of the information you submitted, consultation with you regarding the scope of proposed work, and our knowledge of the Project site, we have determined that there is no existing fish or wildlife resource that will be substantially adversely affected by your Project, if it is constructed in the manner described.

As a result, you may begin your Project or activity if you have obtained all other necessary permits. You are responsible for complying with all applicable local, state, and federal laws in completing your Project or activity.

If you have any questions regarding this matter, please contact Julie Means, Senior Environmental Scientist, at the above address or by telephone at (559) 243-4014, extension 240. Thank you for your cooperation.

Sincerely,

For Julie Means
William Loudermilk
Regional Manager

Conserving California's Wildlife Since 1870

WESTLAND ENGINEERING, INC.
CIVIL ENGINEERING
LAND SURVEYING
LAND PLANNING

3480 Higuera Street, Suite 130 ¤ San Luis Obispo, CA 93401
Telephone: (805) 541-2394 ¤ Fax: (805) 541-2439

MEDINA PROPERTY DRAINAGE

January 2008

The Intent of these calculations is to determine the approximate location of the ordinary high water level and the affect of the 100 year storm upon the property. We also want to determine if the proposed wall will affect the water surface elevation during a 100 year storm.

Determine the flows adjacent to the site.

FLOW CALCULATIONS

Annual Rainfall – 17"±
Tributary Area at Main Street – 275 acres
Time in Concentration – 22 minutes±
Coefficient of Run-Off – 40% > 50%
I_{10} – 0.95
I_{100} – 2.30
Q_{10} – 105 cfs – 130 cfs
Q_{100} – 253 cfs – 315 cfs

COMPARISONS WITH OTHER STUDIES

	Westland	Wallace	FEMA
Tributary Area	275 ac.	279 ac.	
Q_{10} @ Main	105 cfs/130 cfs	101 cfs	>240 cfs*
Q_{100} @ Main	250 cfs/315 cfs	191 cfs	>340 cfs*

The map show a normal depth solution for a 2 year storm which approximates the ordinary high water line for the creek.

Determine the flow through the existing culverts at Tide and Main

TIDE AVENUE CULVERT
The culvert at Tide Avenue is 48" and has approximately 6' of available head. Assuming the culvert is 50' long at 1% with a projecting inlet, the potential flow is 125± cfs through the culvert.

MAIN STREET CULVERT
Wallace notes the culvert as being a 54". Approximately 13' of head is available. Assuming a length of 150' at 1%, the culvert would carry approximately 260 cfs. The head at 190 cfs is 8'± and the head at 250 cfs is 12'±.

SWALE FLOWS

A detailed analysis of the flow characteristic of the swale was not done. However, some preliminary conclusions can be drawn from the available information. The invert elevation of the Main Street culvert is 34.9. Approximately 8' of head is needed for the 54" culvert. A ponding condition at elevation 43 is needed for culvert flows.

Distance From culvert	On-site Location	Approximate 100-Year Elevation from Review	From FIRM Plot
75'	8' northerly of property	45	46
160'	Near upstream end exist. wall	47	48
225'	At elevation change in swale	49	50
310'	At large willows	52	54

Determine the 100 year water surface elevation adjacent to the site and find the impact of a wall to be constructed from the existing site wall easterly.

Our topographic map used a USGS NAVD 29 bench mark as the basis of elevations. Therefore, the elevations on our drawings will correspond to the FEMA elevations. Attached is a copy of the FEMA map for this area. Since the City and Westland Engineering do not have the original calculations for the water surface elevation, I do not know if the grading in the area is different from when the original FEMA work was performed.

Also, since the flow rates for FEMA, Wallace and our offices are different we decided to determine the water surface profiles using HEC-RAS. Attached to the report is a HEC-RAS computer model of the field located grades at the site. We preformed two different runs with both critical depth (at the upstream side) and normal depth (at the down stream side). Both runs complimented each other and the higher water surface elevation was used. Table 1 shows the computed water surface elevations.

I used the highest number we computed for the 100 year storm (which was not as high as FEMA) since it did not match either ours or Wallace's numbers. At Tide, I determined that approximately 115 cfs went through the culvert and the remainder went over the street.

Station	Computed Water surface elevation subcritical	Computed Water surface elevation supercritical
2300	57.95	57.95
2243	50.49	49.82
2156	47.10	44.50
2084	44.60	44.41
2000	42.82	41.47

Table 1

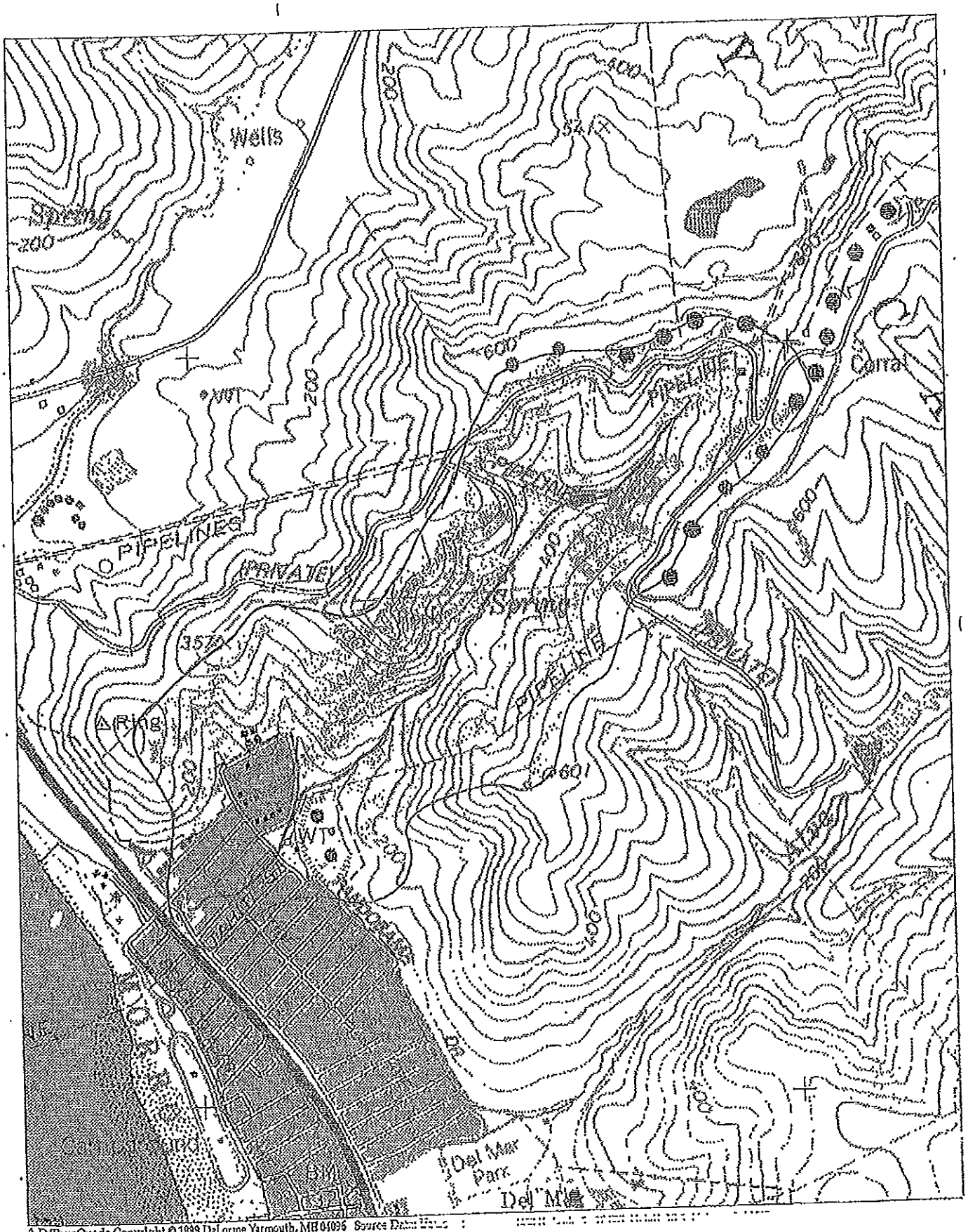
The wall that is built and the proposed wall are below the water surface elevation and do not affect the

water surface in a 100 year storm. I would still propose building the structure above the FEMA elevation so no LOMA is required for the site.

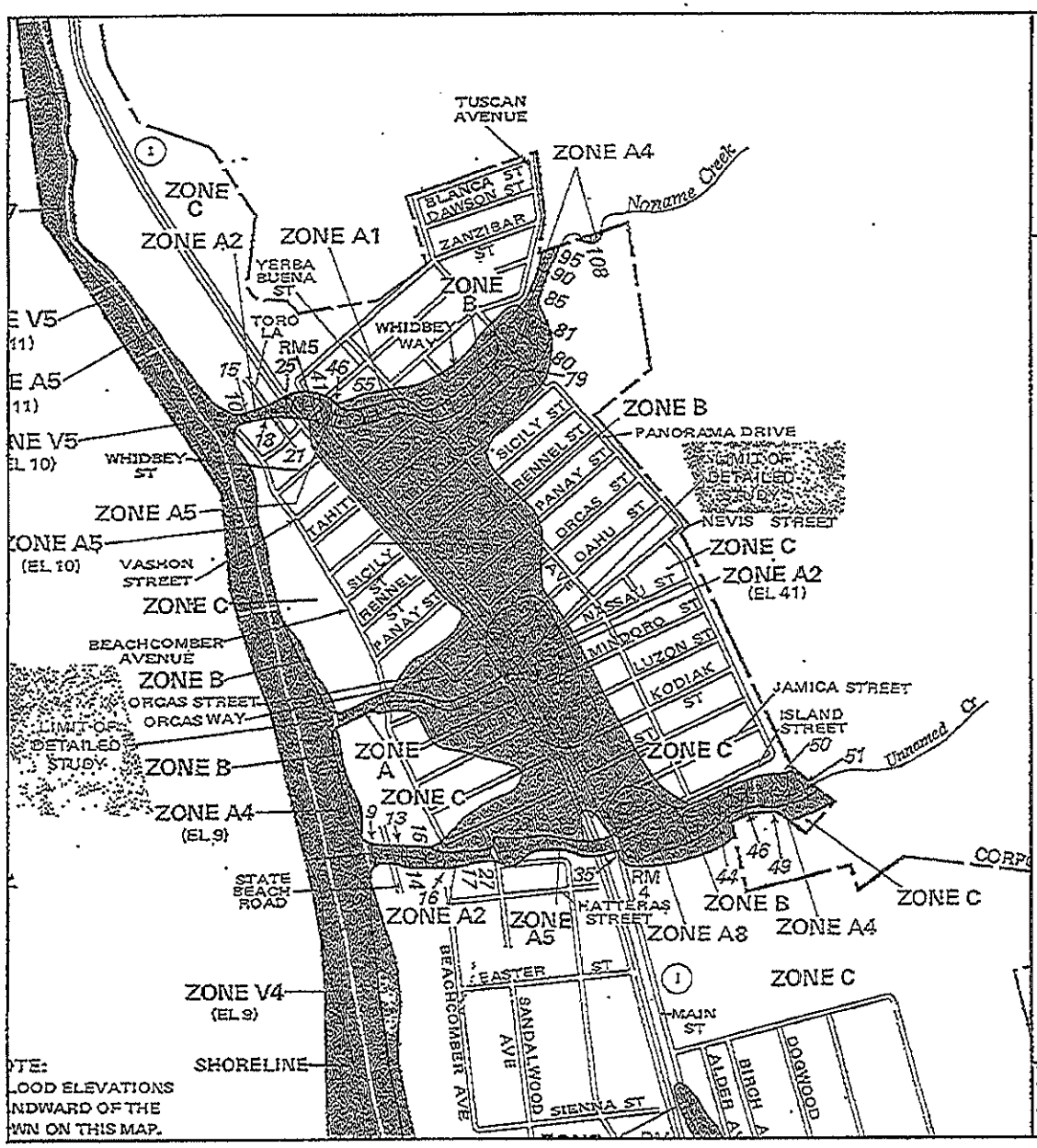
Terence K. Orton
PE 21,807 (Expires 9-30-09)

REGISTERED PROFESSIONAL ENGINEER
TERENCE K. ORTON
No. 21807
exp. 9/30/2009
CIVIL
STATE OF CALIFORNIA

Attachments FEMA Map
HEC-RAS runs
Area Map



3-D TopoQuads Copyright © 1999 DeLorme Yarmouth, ME 04096 Source Data



APPROXIMATE SCALE IN FEET

300 0 300

NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

CITY OF
MORRO BAY,
CALIFORNIA
SAN LUIS OBISPO COUNTY

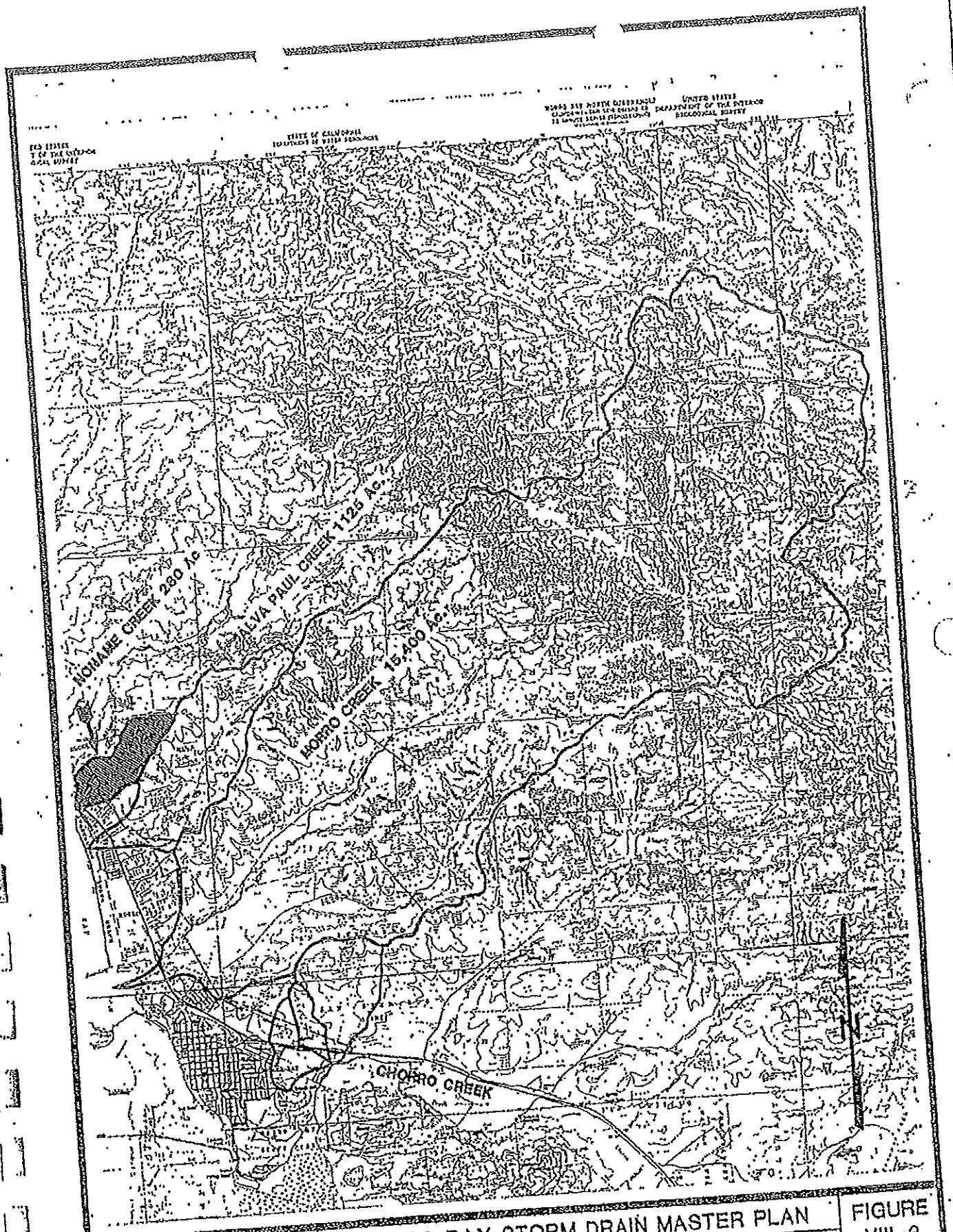
ONLY PANEL PRINTED

COMMUNITY-PANEL NUMBER
060307 0005 C

MAP REVISED:
NOVEMBER 1, 1985

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



JOHN L. WALLACE & ASSOCIATES

MORRO BAY STORM DRAIN MASTER PLAN

NONAME CREEK

FIGURE VIII-3

CITY OF MORRO BAY
STORM DRAIN MASTER PLAN

PROJECT NUMBER: 1

NONAME CREEK

Noname Creek is located at the northern edge of the City of Morro Bay's residential area. Most of its 279 acre watershed is steep hillside grasslands with a small amount of residential area east of Highway One at the lower end of the watershed. The facilities of this watershed should be designed to carry a 10 year flow with freeboard, and a 25 year storm without freeboard.

The Creek enters a 36" diameter culvert through a flat concrete headwall located at the Navy Fuel Storage Facility. The ground surface is approximately 5.5 feet above the culvert invert. The culvert conveys the flow to the west beneath Panorama Drive and beneath a condominium development adjacent to Panorama Drive. The Creek emerges in a poorly maintained channel west of the condominiums and flows to Tide Avenue where it enters a 48" diameter CMP culvert. The ground surface is approximately 6.6 feet above the culvert invert. The water emerges from the 48" culvert west of Tide Avenue between Whidbey Street and Vashon Street. It then flows through a wide unimproved drainage channel to Main Street where the water enters a 54" diameter RCP CALTRANS culvert through concrete wing walls and drains to the west beneath Highway 1 and discharges to the beach. Main Street is approximately 13.7' above the invert of the 54" diameter culvert. The streets in the vicinity of Noname Creek do not have curbs.

There is a Standard Oil containment basin, consisting of two ponds, near the top of the Noname Creek watershed. This basin has a large diameter overflow pipe as well as a valved drain beneath the dam. If drained prior to a storm, the ponds serve as detention basins, retarding peak flows in the Creek. Standard Oil does operate the basins to be normally empty as to be full would defeat the ability to store and contain oil. As a result, the ponds play an important role in preventing lowering peak stormwater runoff amounts. However, the outlet to the basin is a valved outlet, dependent upon the awareness of an operator to insure that the basin is properly drained. For this reason the beneficial effect of the oil containment basins cannot be always counted upon.

DRAINAGE PROBLEM:

Without considering the role of the oil containment basins as detention basins, the existing 36" culvert beginning in the Navy fuel storage facility yard appears to be too small to accommodate even a 10 year event. Water will surcharge at the inlet and flow across an open field towards Panorama Drive and then to Tahiti

Street. There is the potential for some property damage to the condominiums located at the corner of Tahiti Street and Panorama Drive and possibly to houses along Tahiti Street. Almost all of the excess flow will be deflected by the condominiums toward Tahiti Street.

The channel located between Panorama Drive and Tide Avenue is relatively unimproved and is clogged with foliage. The 48" diameter CMP culvert at Tide Avenue immediately downstream from the unimproved channel is adequate for a 10 year storm but not for a 25 year storm. Overflow from this culvert will have a definite impact on residences immediately west of Tide Avenue and along Vashon Street, the overflow channel.

However, it is not clear exactly how much of the flow from a 25 year event would reach the 48" diameter culvert, since some of the excess flow would continue down Tahiti Street toward Main Street. The unimproved channel located west of Tide Avenue is adequate in size because the adjacent houses are constructed well above and horizontally distant from the channel. However, the channel makes a sharp turn at Main Street, greatly reducing its capacity at that point. The hydraulic characteristics of the channel could be significantly improved with some grading and foliage control. The CALTRANS 54" culvert is adequately sized for a 100 year storm event although water will be significantly higher than the culvert entrance. There should be no property damage adjacent to this culvert as long as the culvert remains clear of debris. A grading and maintenance program is needed for this channel, particularly since houses are located along each side of the channel and will be directly effected by channel surcharging.

The Flood Insurance Rate Map (FIRM) delineates the boundaries of a 100 year flood event passing through the residential area along Noname Creek. The conclusions of the Flood Insurance Study are essentially the same as in this report although the flow may not actually overflow Highway One, as indicated by the FIRM. If there is debris clogging the CALTRANS 54" culvert then the runoff could backup and flow across Highway One. Otherwise the existing culvert is probably sufficiently large. Also, the FIRM shows the excess flood water spreading out along Panorama Street, flowing around the condominiums, and then reentering the Creek. It is more probable that the excess flows will be deflected by the condominiums down Tahiti Street.

Local experience has shown that there has been little of the flooding predicted by traditional methods. This lack of flooding may be attributed to the oil containment ponds serving as detention basins. Runoff analysis of the potential flows originating above and below the basins supports the theory that the ponds are significantly moderating the peak flows. Because of this important relationship, Standard Oil should be encouraged

to maintain the water levels in the ponds as low as possible, to provide the maximum amount of detention volume available, consistent with the requirements of oil containment. If the ponds are inadvertently allowed to remain full during a peak flood event so that no detention occurs, the downstream channel will experience significantly higher peak flows.

According to the City Staff, there is a drainage easement under the condominiums next to Tahiti Street but not elsewhere between Tahiti Street and Highway One. The lack of a drainage easement makes flood control action difficult. Responsibility for the maintenance, and improvement of flood routes is not clearly defined relative to existing improvements that may be damaged by flood water. Future improvements and drainage responsibility may be controlled and clearly defined through the permit process. For existing drainage routes without easements, where the City meets with opposition from property owners when attempting to implement drainage improvements and maintenance activities, the City should attempt to clearly document the limits of the City's liability and to inform the property owners of their own liability.

POTENTIAL SOLUTIONS:

1. Complete a study delineating the role of the oil containment ponds as detention basins, comparing the relative costs of maximizing the potential of the basins and installing a new storm drain in Tahiti Street to the existing channel west of Tide Avenue.

2. Examine the existing ponds' ability to withstand a major flood event and determine the danger to property and public safety if the ponds are found to be inadequate.

3. Encourage the installation of automatically operating drain inlets that will optimize the detention capacity of the oil containment ponds.

4. Complete a study examining the feasibility of installing a relief storm drain for the existing 36" storm drain.

5. Clean and grade the existing drainage channel between the condominiums and Tide Avenue to maximize the flow capacity of the available area. Building improvements that could contribute to debris within the channels should be removed.

6. Increase the frequency of clearing the drainage channels between Panorama Avenue and Main Street of debris that clogs culverts and restrain flows during a flood. The channels should be observed to determine a cleaning interval that will maintain the channels in a clear state.

7. If other improvements are not considered, provide an interception storm drain in Tahiti Street to direct flood waters flowing down Tahiti Street back to the drainage channel. These improvements will minimize damage caused by overflowing flood waters that are deflected by the Panorama Drive condominiums down Tahiti Street.

8. Clearly define the responsibility for maintaining and improving drainage routes. Document the responsibilities and inform all of the parties involved.

HYDROLOGY:

Noname Creek at Highway 1, without the detention effect of the oil containment ponds

Q10 = 101 cfs
Q25 = 136 cfs
Q100 = 191 cfs

Noname Creek at 36" CMP culvert, Tahiti Street, without the detention effect of the oil containment ponds.

Q10 = 84 cfs
Q25 = 113 cfs
Q100 = 158 cfs

Noname Creek at oil containment ponds.

Q10 = 43 cfs Q25 = 57 cfs Q100 = 79 cfs

Noname Creek between oil containment ponds and 36" CMP culvert, assuming no flow from the ponds.

Q10 = 54 cfs Q25 = 71 cfs Q100 = 97 cfs

Flood Insurance Study flows at Panorama Drive, not including overflows.

Q10 = 105 cfs Q50 = 615 cfs Q100 = 1010 cfs

Flood Insurance Study flows at Tide Avenue, not including overflows.

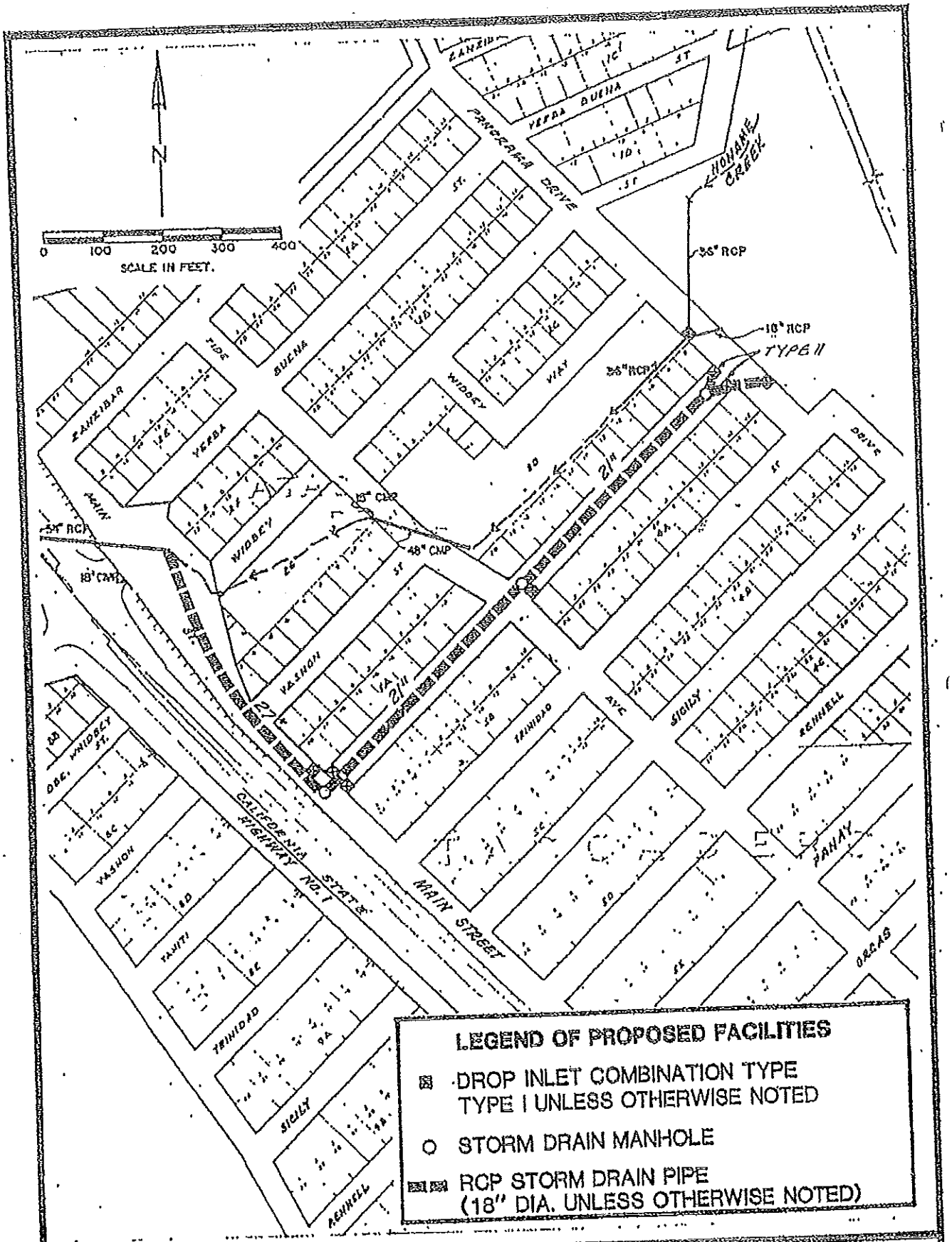
Q10 = 100 cfs Q50 = 240 cfs Q100 = 340 cfs

Flood Insurance Study flows at Whidbey Way (extended).

Q10 = 180 cfs Q50 = 700 cfs Q100 = 1100 cfs

Flood Insurance Study flows at Yerba Buena Street, not including overflows.

Q10 = 100 cfs Q50 = 170 cfs Q100 = 210 cfs



JOHN L. WALLACE & ASSOCIATES	MORRO BAY STORM DRAIN MASTER PLAN NONAME CREEK	FIGURE VIII-2

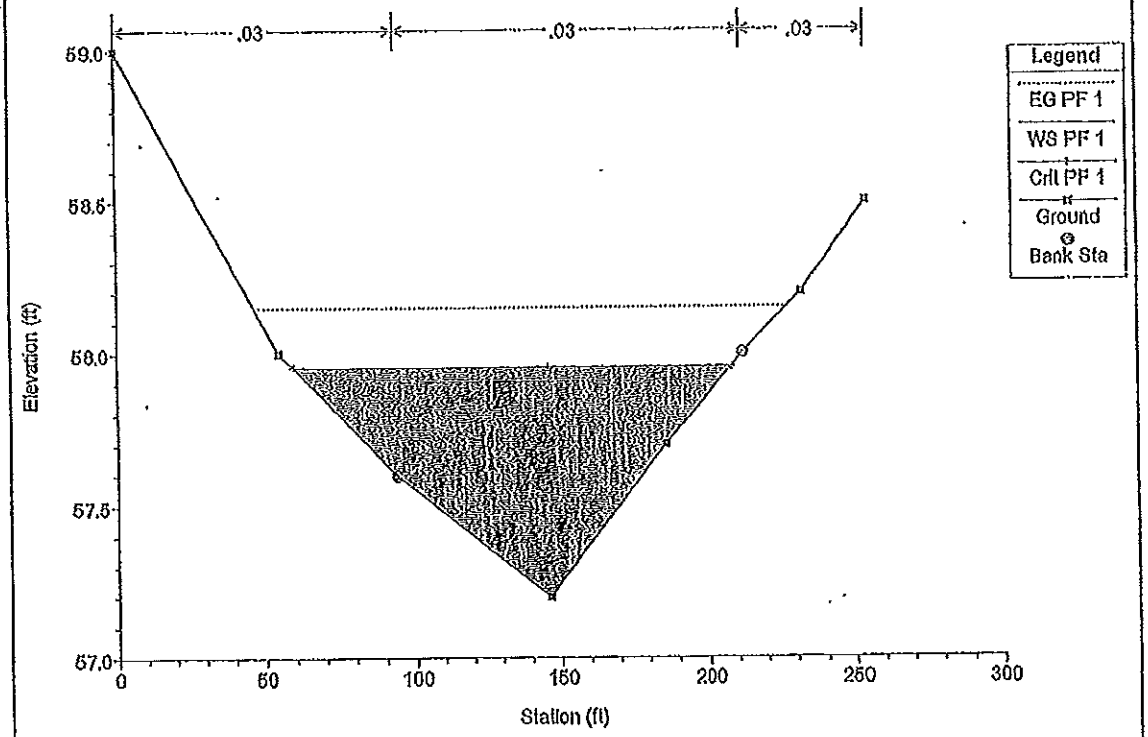
HEC-RAS Plan: crw-rd River: noname Reach: noname Profile: PF 1 subcritical

Reach	River Sta	Profile	Q Total	Min Ch El	W.S. Elev	Crit W.S.	E.G. Elev	E.G. Slope	Vel Chnl	Flow Area	Top Width	Froude # Chl
			(cfs)	(ft)	(ft)	(ft)	(ft)	(ft/ft)	(ft/s)	(sq ft)	(ft)	
noname	2300	PF 1	200.00	57.20	57.95	57.95	58.15	0.015772	3.86	57.40	147.95	0.96
noname	2240	PF 1	315.00	49.00	50.49	50.49	50.99	0.140700	5.57	55.33	56.62	0.99
noname	2156	PF 1	315.00	42.00	47.10		47.28	0.012211	3.44	91.77	28.05	0.32
noname	2085	PF 1	315.00	40.00	44.60	44.42	45.59	0.053774	7.67	39.93	17.97	0.80
noname	2000	PF 1	315.00	39.00	42.82	41.47	43.11	0.016028	4.35	72.38	26.83	0.47

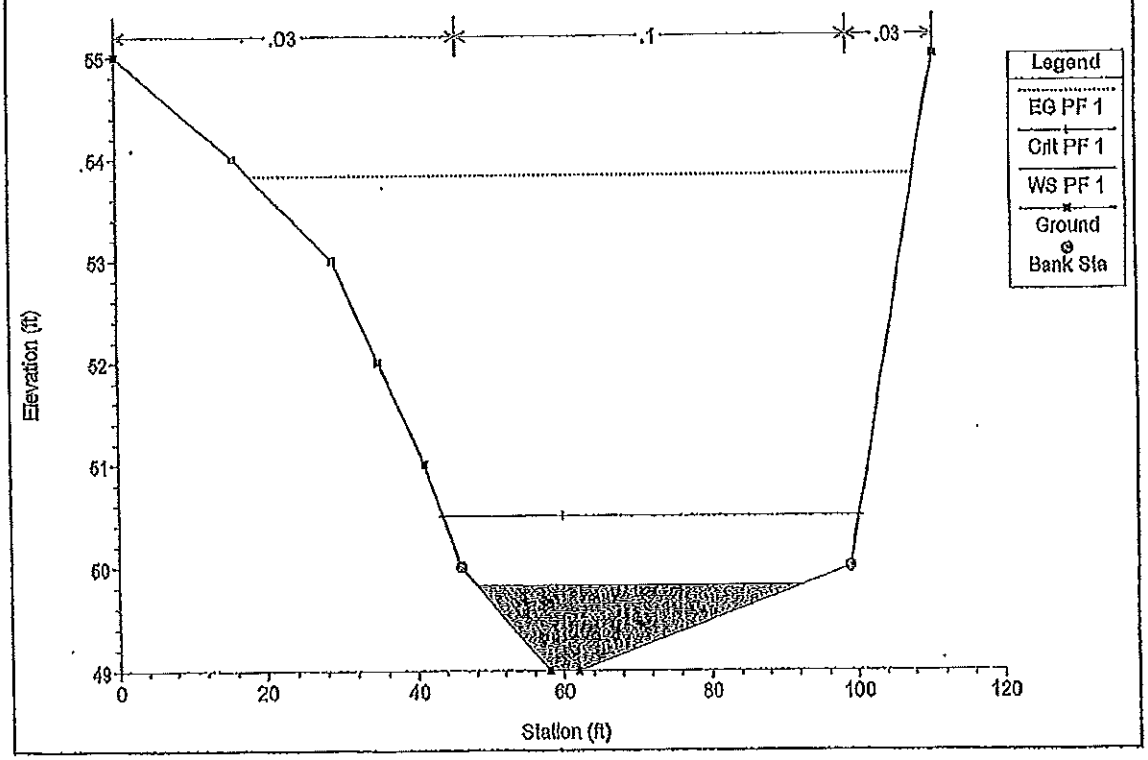
HEC-RAS Plan: crw-rd River: noname Reach: noname Profile: PF 1 SUPER CRITICAL

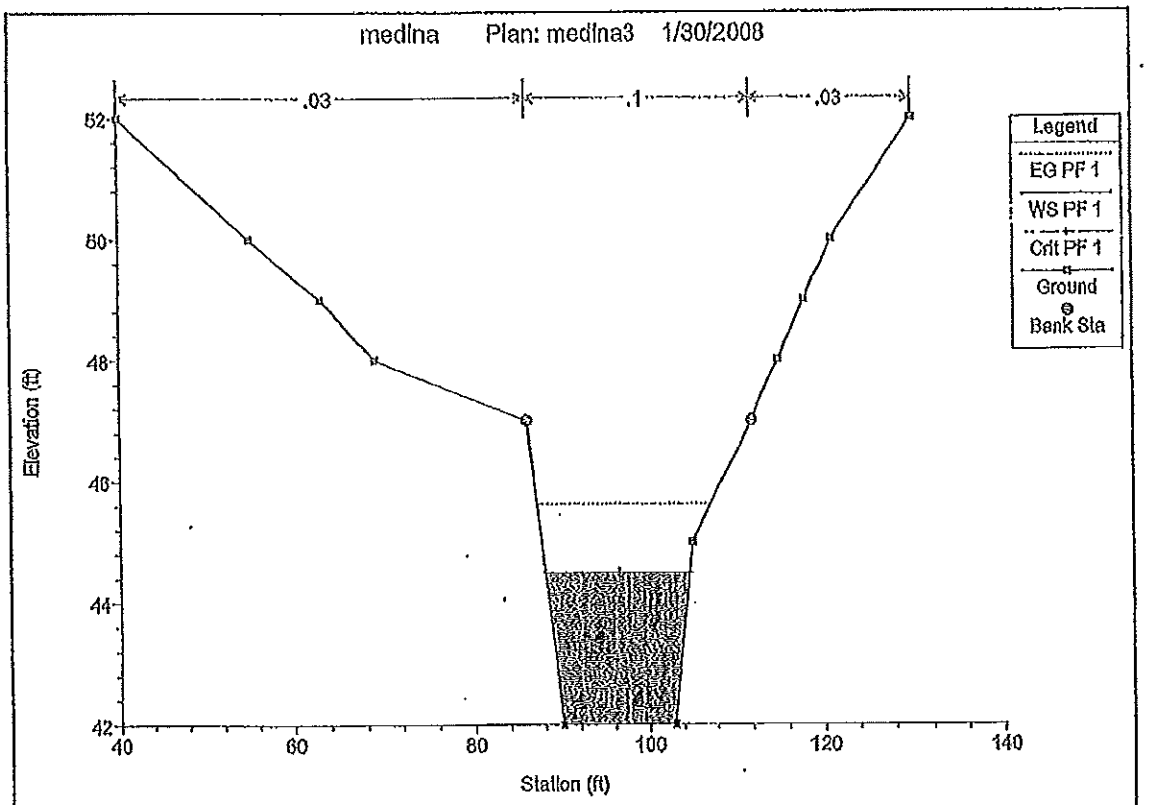
Reach	River Sta	Profile	Q Total	Min Ch El	W.S. Elev	Crit W.S.	E.G. Elev	E.G. Slope	Vel Chnl	Flow Area	Top Width	Froud # Chnl
			(cfs)	(ft)	(ft)	(ft)	(ft)	(ft/ft)	(fps)	(sq ft)	(ft)	
noname	2300	PF 1	200.00	57.20	57.95	57.95	58.15	0.015429	3.63	57.88	148.54	0.95
noname	2243	PF 1	315.00	49.00	49.82	50.49	53.83	3.441925	16.07	19.60	44.01	4.24
noname	2100	PF 1	315.00	42.00	44.50	44.50	45.62	0.136599	8.51	37.02	16.66	1.01
noname	2000	PF 1	315.00	40.00	44.41	44.41	45.57	0.068900	8.44	36.67	17.02	0.90
noname	1000	PF 1	315.00	39.00	41.47	41.47	42.43	0.082365	7.84	40.16	21.19	1.00

medina Plan: medina3 1/30/2008



medina Plan: medina3 1/30/2008

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Crit PF 1
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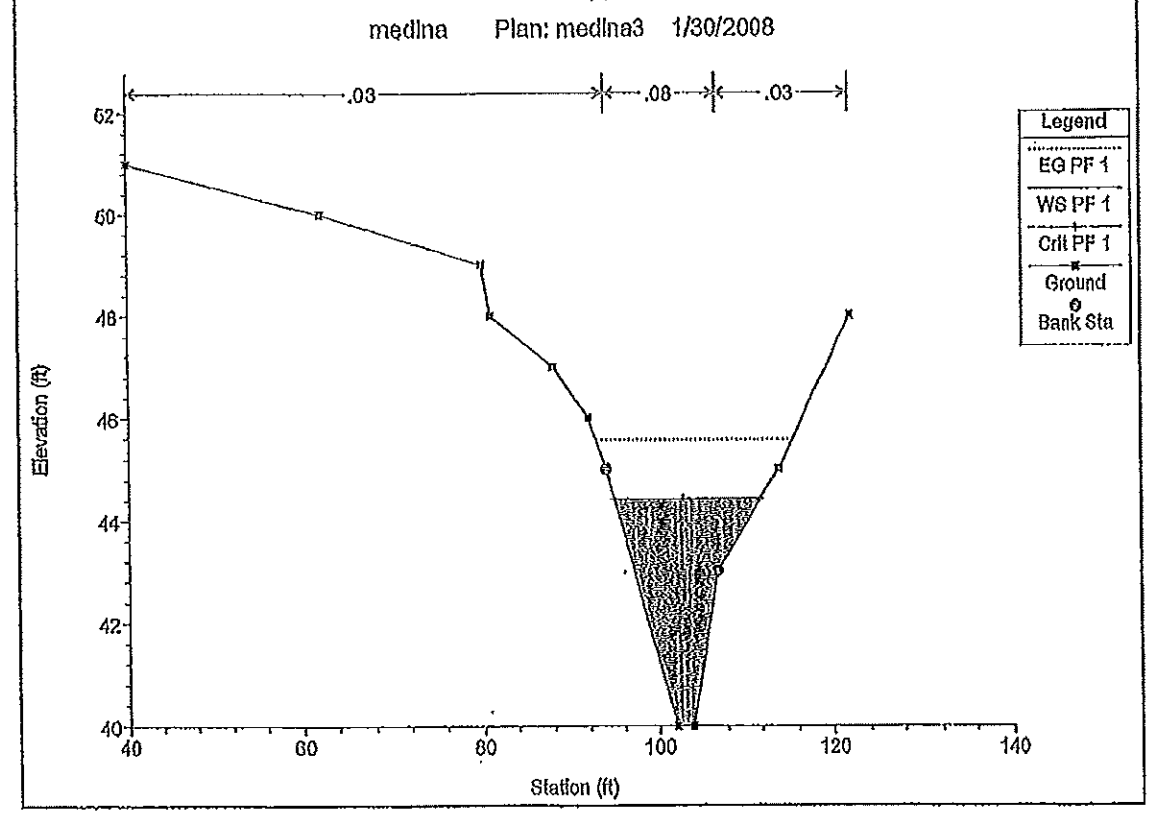
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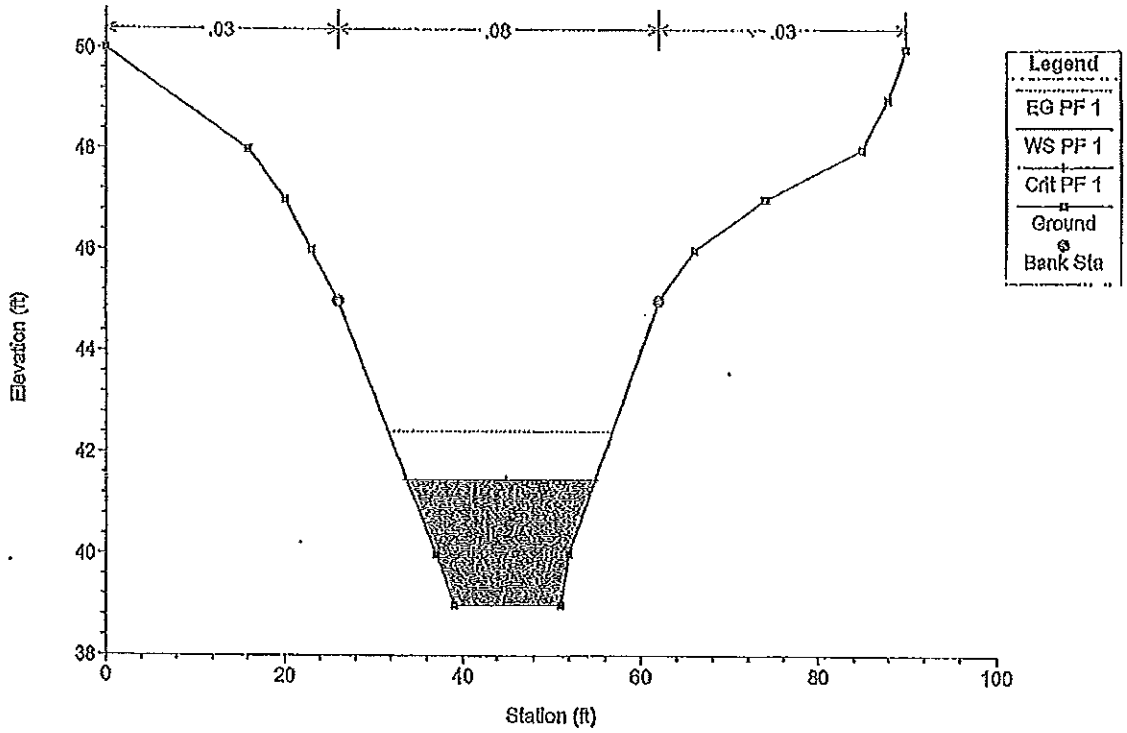


EXHIBIT J

MINUTES FROM THE JULY 20, 2009 PLANNING COMMISSION MEETING

CITY OF MORRO BAY
PLANNING COMMISSION
SYNOPSIS MINUTES

(Complete audio- and videotapes of this meeting are available from the City upon request)

Veteran's Memorial Building
Regular Meeting, 6:00 p.m.

209 Surf Street, Morro Bay
Monday, July 20, 2009

Chairperson Nancy Johnson

Vice-Chairperson Bill Woodson
Commissioner Gerald Luhr

Commissioner Michael Lucas
Commissioner John Diodati

Bruce Ambo, Secretary

I. CALL MEETING TO ORDER

Johnson called the meeting to order at 6:00 p.m.

II. PLEDGE OF ALLEGIANCE

Kathleen Wold led the Pledge of Allegiance.

III ROLL CALL

Johnson asked that the record show all Commissioners were present except for Commissioner Lucas.
Staff Present: Bruce Ambo, Kathleen Wold, Aileen Nygaard, Rob Livick and Kay Miller.

IV. ACCEPTANCE OF AGENDA

Johnson moved to have item E presented first and then proceed in order per the Agenda.

V. DIRECTOR'S REPORT/WRITTEN COMMUNICATIONS

Ambo reported at the July 13, 2009 City Council:

- Authorized the Harbor Department to request a Water Resources Control Board Grant for the low impact development of the boatyard proposal and financial assistance.
- Adopted a resolution authorizing the City's participation in the California Energy Commission Partnership Program.
- Heard the appeal for the proposal at 560 Bernardo and upheld the appeal with the condition the project be limited to 2500 sq.ft.
- Adopted amendments to Title 15 in the Municipal Code relating to pump out facilities for boats in the harbor.
- Heard consideration for reactivating the Redevelopment Agency for the City and set a special meeting date for August 10, 2009 at 5:00p.m.
- Continued an item on goal setting as a follow up to the Management Partners Report.
- Heard a status report on waterfront development fees that was continued to a special meeting.

Johnson asked Commission if they had any questions for staff: None.

VI. PUBLIC COMMENT

Johnson opened Public Comment.

- Dorothy Cutter urged the public to attend the Redevelopment Agency Meeting that the City Council will be voting on.

- Bill Martony stated he spoke before the Coastal Commission regarding the zoning south of Tidelands Park, pollution in the bay and the Los Osos Sewer Project. The Whale's Tale lease site is out for bid and Martony suggests holding back the lease.

Seeing no further comments, Johnson closed Public Comment

Johnson announced Dahlia Days on August 15, 2009

VII. CONSENT CALENDAR – None.

VIII. PRESENTATIONS – None.

IX. FUTURE AGENDA ITEMS

A. Planning Commission interpretation on decks in the front yard setback and what elements are allowed on them.
B. Gates on the Embarcadero Harborwalk.
C. Downtown Visioning.

X. PUBLIC HEARINGS

E. **Site Location:** 3390 Main Street, R-1/S.1 and MCR/R-4(SP, North Main Area A) and ESH
Applicant: Johnie Medina
Request: Coastal Development Permit for 2 parcel subdivision map and for a 2,497 square foot two story single-family residence with an attached two-car garage. This site is located inside the Coastal Commission Appeals Jurisdiction.
Recommended CEQA Determination: Mitigated Negative Declaration
Staff Recommendation: Conditionally approve.
Staff Contact: Kathleen Wold, Senior Planner, 772-6211

Wold presented the Staff Report. Johnson asked if there were questions of staff.

Woodson asked about the wall.
Wold clarified the existing block wall will remain and clarified the house requires a coastal development permit.
Livick explained the CMP drain will be replaced with a curb inlet with a concrete swale out the backside of the inlet.
Wold clarified where the Environmentally Sensitive Habitat (Area), boundary and the 50 ft. setback are located, and stated weed abatement and the applicant and the City cleared vegetation. Wold stated the house is out of ESH(A).
Regarding stormwater requirements, Livick stated the Project needs to meet municipal code standards and construction is allowed in the flood zone with requirements.
There was discussion in regards to the length and width of the driveway. Livick stated the Chief of the Fire Department makes the final decision based on the California Fire Code.
Diodati stated the cultural condition has changed and Ambo stated this is a condition and the applicant needs to hire a qualified professional archaeologist.
Johnson asked for a definition for a natural creek bed and a drainage ditch.
Livick responded a natural creek bed is from natural erosion and a drainage ditch is constructed.
Wold explained, as stated in the biological assessment, the creek does not provide viable habitat for protected or endangered species.

Johnson opened the Public Hearing asking the applicant or their agent to address the Commission.

The applicant, Johnie Medina, requested the Planning Commission to approve his project.

Engineer, Terry Orton, took information the biologist had obtained from the project to the Coastal Commission and Fish & Game. The suggestion was to keep the wall dividing ESH(A) and non-ESH(A).

Mike McGovern, the biologist, studied this property and defined the ESH(A) boundary and determined the property did not have habitat that was protected or endangered. The biological habitat is significantly disturbed; there are no native species and the stream/creek supports no wild life.

Michelle Arete is representing herself, neighbors and has a petition from people that are opposed to this project. Arete voiced concern about missing willow trees on the property and asked the Commission to not approve this project.

Laura Mounce on behalf of Ms. Masterson, stated there is unresolved drainage problems at this location and requests the problem to be fixed.

Seeing no further comment, Johnson closed the Public Hearing

Johnson asked if the Planning Commission had questions for the applicant.

Woodson asked if there would be changes to the existing wall.
Orton clarified no changes will be made to the existing driveway retaining wall and the new wall will match the existing wall. The flood area will be raised, not the ESH(A). Landmarks have been delineated on the final map including bearings and distances.

Woodson questioned why is the City encroaching on private property and clearing vegetation and what type of permit does the City have?
Livick responded the City has a blanket permit with the California Fish and Game to clear creeks within the City limits. Livick also clarified the City can trim vegetation but cannot remove vegetation. Livick stated willows are trimmed on an annual basis in all the creeks in Morro Bay. Livick reiterated the City does not remove trees, the City trims trees.

Luhr questioned the drainage problem at the driveway.
Orton responded the driveway would be modified for drainage and all drainage goes to the creek.

Diodati asked how the requirements to maintain permeable surfaces and landscaping would be accomplished?
Medina stated the architect is looking into a permeable driveway and landscaping.
Diodati questioned who mapped the willows?
Wold stated the applicant's engineer, the applicant and City Staff mapped the willows and sent them to The Coastal Commission and the Fish and Game who told Orton to use the 50 ft. set back.

Livick responded to Diodati's question regarding the stormwater ordinance and Livick stated the project meets the current interim stormwater conditions.

Johnson asked if the City has cleaned the creek since last Saturday?
Livick responded no.

Johnson asked the applicant if there is energy saving features in this house?
Applicant responded the entirety of the house will have energy savings features and a tankless water heater will be installed in the garage.
Johnson asked if applicant graded the lot and his response was no.

Woodson asked if the City is liable for clearing vegetarian on private property?
Livick responded the City gets permission from the property owner who holds the City harmless.

Luhr asked if there have been any complaints about drainage and should we condition this project to address drainage issues?
Livick stated the only complaints he has heard has been from tonight's meeting and he would need to research the previous project requirements on the other property and it may already be a condition.

Johnson asked if the driveway could be changed from Main Street To Tide Street and Orton replied the Coastal Commission would not allow the change.

During discussion the Commissioners expressed the following opinions and concerns:

Diodati discussed the stormwater ordinance and what the conditions are for the first property, he asked the applicant to work with LID requirements and verify setback at 50 ft. Staff concurred 50 ft. setback is accurate.

Luhr shares the same concerns as Diodati and would like staff to also investigate when and by whom the willows were taken out and check to see if the 50 ft. setback is in the historical willow grove.

Woodson agrees with Staff, the applicant has provided the Commission with adequate plans and the house meets building requirements. Woodson stated the following three items are on the table, insure that the first property conditions were met, require a run off criteria which applies to the first property and confirm the 50 ft. set back as conditioned.

Johnson is concerned about the 50' ft. setback and the willows.

Luhr asked if the building plans would require them to meet the new stormwater management practices and
Livick responded that is correct and it applies to all new construction.

Lengthy discussion amongst the Commissioners about the willow grove.

MOTION: Woodson/Luhr 2nd to approve the project as with the following changes in Exhibit B:

On page 10 *add* to the extent that the proposed driveway access *or other improvements* might encroach on the ESHA buffer commensurate amount of restoration must be included.
Add: "plantings shall be done within 90 days after the retaining walls were installed."
Add: A new section. ESHA - The ESHA shall be defined by surveyed coordinates with markers easily identified and permanent and visible from the property line.
Luhr wants to remove *from the property line.*
Johnson asked Woodson if he would amend his motion, he responded yes.
Johnson asked Luhr if he would amend his second, he responded yes.
Luhr wants to add a condition that states *no activity allowed in the ESHA that would be detrimental to the native habitat.*
Johnson asked Woodson if he would accept that amendment, he responded yes.
Luhr wants to include in the condition: *drainage to adjacent properties from parcel one and two shall be evaluated and remedied.*
Johnson asked Woodson if he would accept this amendment to his motion, he responded yes.
Diodati spoke about the Salinian and Chumash Tribes and Ambo suggested this item be forwarded to an archaeologist.

VOTE: 2-2 MOTION FAILS DUE TO TIE VOTE Woodson and Luhr – Yes. Diodati and Johnson No.

MOTION: Diodati/Johnson 2nd for an indefinite continuance with the following conditions:

- Staff to investigate status of two-parcel issue.
- Staff to investigate the drainage problem to the creek.
- Wants assurance that the applicant understands what LID technology is and generate a plan to reduce urban run off into the creek.
- Have Staff research the willow trees and natural vegetation history and current status.

VOTE: 4-0

A. **Site Location:** 2930 Elm Street, R-1/S.2 zone
Applicant: Bill and Linda Mecum
Request: Conditional Use Permit to allow a 776 square foot second story addition to an existing 714 square foot nonconforming single-family residence. The existing two-car garage is to be accessed from Fir Street. This site is located outside the Coastal Commission Appeals Jurisdiction.
Recommended CEQA Determination: Categorically Exempt, Class 1, section 15301
Staff Recommendation: Conditionally approve.
Staff Contact: Aileen Nygaard, Associate Planner, 772-6211

Nygaard presented the Staff Report. Johnson asked if there were questions of staff.

Woodson wanted clarification on the width of the deck.
Nygaard responded a 5' width meets code.
Diodati stated this is a simple project and it has inserts and he would like to see more inserts on the more complex projects.
Luhr questioned the garage having two driveways.
Nygaard stated the applicant does not have to have two driveways and could eliminate the Elm Street driveway.
Johnson questioned the length of the driveway and Nygaard stated the applicant is going to remodel the garage from a one-car garage to a two-car garage and will be installing a rolling garage door to as required for an undersized driveway.

Johnson opened the Public Hearing asking the applicant or their agent to address the Commission.

The applicants, Bill and Linda Mecum stated the garage will be a two-car garage.

Seeing no further comment, Johnson closed the Public Hearing

Woodson asked the applicant if they had a problem changing the cantilever deck from 6' to 5', the applicant replied no.
Luhr commented the project lacked a good design and isn't keeping scale with the neighborhood.
Diodati asked if the photo provided during the presentation was provided by Staff or by the Applicant?
The Applicant responded he provided the photo.
Johnson stated this is a big box house that the City is trying to eliminate with FAR, and suggests keeping existing driveway and to install additional landscaping.
Luhr commented he would like to see a reduction to the scale of the front facade.

Discussion continued amongst the Commissioners and applicant regarding FAR.

MOTION: Woodson/Luhr 2nd to approve the project with the following condition:

The second floor deck facing Elm Street shall not exceed 5' into the front setback.
VOTE: 4-0

B. **Site Location:** 3460 Toro Drive, R-1/S.2a zone
Applicant: Derrel Ridenour
Request: Variance to increase lot coverage from 50% to 54% on R-1/S.2a zoned lot. This site is located inside the Coastal Commission Appeals Jurisdiction.
Recommended CEQA Determination: Categorically Exempt, Class 5, section 15305
Staff Recommendation: Deny request for variance.
Staff Contact: Kathleen Wold, Senior Planner, 772-6211

Wold presented the Staff Report. Johnson asked if there were questions of staff.

Ambo clarified if the Commission approves this project, everything is approved and the project will not come back to the Planning Commission.
Woodson and Wold conversed in regards to definition of covered porch versus covered patio.
Johnson asked about zoning of this project, why are the zones different?
Ambo responded it is the same reason they are different all over the city.
Diodati is concerned about setting precedence in regards to covered patios versus covered porches.
Wold responded the City's Zoning Ordinance does not exempt a project for aesthetic reasons.
Johnson asked if it is the job of the Commission to look at exceptions for projects?
Wold responded the law states a variance is given to the property not to a home.

Johnson opened the Public Hearing asking the applicant or their agent to address the Commission.

- Marshall Ochylski, representing the applicant, is asking for an interpretation of ambiguity not for a variance. Are the areas in the project, covered porches? If Commission makes the determination they are not covered porches then no variance is needed. A variance is needed if the Commission determines them to be covered porches. The overhangs should be considered an architectural feature, not covered porches.
- Derrel Ridenour, applicant, stated the project has met all development standards requirements and has been approved on this flag lot. The City Ordinance needs to be interpreted by the Commission.
- John Pryor, design architect, spoke of the project's design and the interior courtyard. The eaves are upswept architectural features, the applicant has worked with neighbors to ensure compatibility in the neighborhood and the structure is within the 50% lot coverage.
- Jacqueline Dallairer, neighbor to the project, approves of the project and stated she was at the meeting when staff previously approved this project.
- Marshall Ochylski reiterated what John Pryor stated and asked Commission for interpretation of covered porches.

Seeing no further comment, Johnson closed the Public Hearing

Johnson asked if the Planning Commission had questions for the applicant.

Woodson asked Staff if the definition of a porch is out of the proposed LCP or from existing code and ordinances?
Ambo responded the applicant is not held to a non-certified zoning ordinance.
Luhr asked Pryor in the contested areas, are there doorways leading from the exterior to the interior?

Pryor responded there are sliding panels to the courtyard, there are no swing doors and the upswept overhang is not considered covered porches.
Diodati wanted to know what does the non-certified LCP say?
Ambo responded it should not have been referenced, and he prefers to not speculate on what it means.
Ambo suggested this project be approved as a variance.

MOTION: Woodson/Luhr 2nd to approve the project as a variance.
VOTE: 3-1 Johnson, Woodson and Luhr Yes. Diodati No.

C. **Site Location:** 600 Morro Bay Boulevard, C-1/S.4 zone
Applicant: Samuel Gilstrap
Request: Tentative tract map for the purpose of creating 19 condominiums with exterior spaces owned in common. This site is located outside the Coastal Commission Appeals Jurisdiction.
Recommended CEQA Determination: Mitigated Negative Declaration Adopted 6/13/2005
Staff Recommendation: Conditionally approve.
Staff Contact: Kathleen Wold, Senior Planner, 772-6211

Wold presented the Staff Report. Johnson asked if there were questions of staff.

Woodson asked if the recording of the final tract map is required before occupancy is allowed?
Ambo responded tenants can occupy now.
Woodson wants to know about the monies owed to the City from parking-in-lieu fees, affordable housing issues and parking fees?
Wold stated some of the fees have been paid and the applicant has been working with Staff and tentative agreements have been met. Occupancy would not be allowed until final inspection.
Luhr wanted to know why this tentative map expired?
Ambo stated the applicant's let it expire.
Diodati asked about the 10% parking-in-lieu fees and asked Staff if they are confident the City will see payment?
Wold stated payment is spread out over 10 years and Staff feels confident payments will be received.
Johnson asked has Commission already approved this project as condominiums?
Wold responded, yes.
Woodson inquired about the affordable housing at this project.
Ambo responded affordable housing gets recorded and a fee is paid or a unit is reserved and another unit is held until the issue is resolved.

Johnson opened the Public Hearing asking the applicant or their agent to address the Commission.

Samuel Gilstrap, the applicant, clarified the parking-in-lieu fees will be paid when people move in. The applicant has elected to have two affordable housing units.

Seeing no further comment, Johnson closed the Public Hearing.

Johnson asked if the Planning Commission had questions for the applicant.

Luhr wanted confirmation that the City will be paid.
Diodati was concerned about repetitive writings in the Staff Report.
Wold will correct.

MOTION: Diodati/Luhr 2nd to approve the project as presented.
VOTE: 4-0

Johnson made a motion to continue Planning Commission Meeting past 10:00 p.m.
MOTION: Woodson/Diodati 2nd
Vote: 4-0

D. **Site Location:** 850 Quintana Road, C-1 zone
Applicant: Bob's Big Boy Restaurant
Request: Conditional Use Permit for Signage Program to include a program of wall and monument signs, and to increase the allowable sign area. This site is located outside the Coastal Commission Appeals Jurisdiction.
Recommended CEQA Determination: Categorically Exempt, Class 11, section 15311
Staff Recommendation: Conditionally approve.
Staff Contact: Aileen Nygaard, Associate Planner, 772-6211

Nygaard presented the Staff Report. Johnson asked if there were questions of staff.

Diodati asked if the tree is going to be removed?
Luhr asked does the tree belong to the gas station or the restaurant?
Nygaard replied the tree is on the restaurant's property.
Luhr asked is LED strip lighting considered signage?
Nygaard replied no, not in this instance.
Luhr asked about the yellow architectural element underneath the checkerboard. Is it an awning or stucco projection?
Nygaard replied the applicant can answer that question.
Luhr asked are changeable text signs allowed?
Nygaard stated the code is silent to restaurants and the code applies to movie theatres and motels.
Luhr stated concern about keeping the landscape trimmed.
Diodati asked what was the conclusion in the Staff Report regarding sign two?
Nygaard replied she presented both sides in the report and it is up to the Commission to make a decision.
Woodson asked, where is the tree?
Johnson stated let's open Public Hearing and ask the applicant questions.

Johnson opened the Public Hearing asking the applicant or their agent to address the Commission.

Luis Rodriquez, representative for the owner stated the tree needs to be trimmed and maintained by the applicant.
Rodriquez stated the checkerboard pattern and the yellow stripe are very important to the applicant's branding and identity.

Seeing no further comment, Johnson closed the Public Hearing.
Johnson asked if the Planning Commission had questions for the applicant.

Diodati asked if continuation of the checkerboard and yellow stripe around the entire building could be done?
Rodriquez replied, yes.

Woodson asked about alternative two and wants the tree trimmed and maintained by applicant.
Luhr was concerned about the size of the sign and restaurants in the area that have signs that are 125 sq.ft. but this one is 500 sq. ft.
Wold replied sign footage is to attract people to the restaurant.
Johnson stated there is a need to encourage business in this town. We need to differentiate between a sit down restaurant and a fast food restaurant. A sit down restaurant qualifies for a larger sign versus a fast food restaurant. Johnson would like a continuation of the checkerboard and yellow stripe around the entire building.

MOTION: Woodson/Johnson 2nd to approve the project with the following conditions:

- Wall sign two to have continuation of the checkerboard and yellow stripe around the entire building and to be consistent with the overall design of the perimeter of the building.
- The tree stays and is trimmed and maintained by applicant.

VOTE: 3-1 Johnson, Diodati and Woodson Yes. Luhr No.

XI. OLD BUSINESS

A. Current Planning Processing List

XII. NEW BUSINESS

A. None

XIII. ADJOURNMENT

Johnson adjourned the meeting at 10:35p.m. to the next regularly scheduled Planning Commission meeting at the Veterans Hall, 209 Surf Street, on Monday, August 3, 2009 at 6:00 p.m.

Nancy Johnson, Chairperson

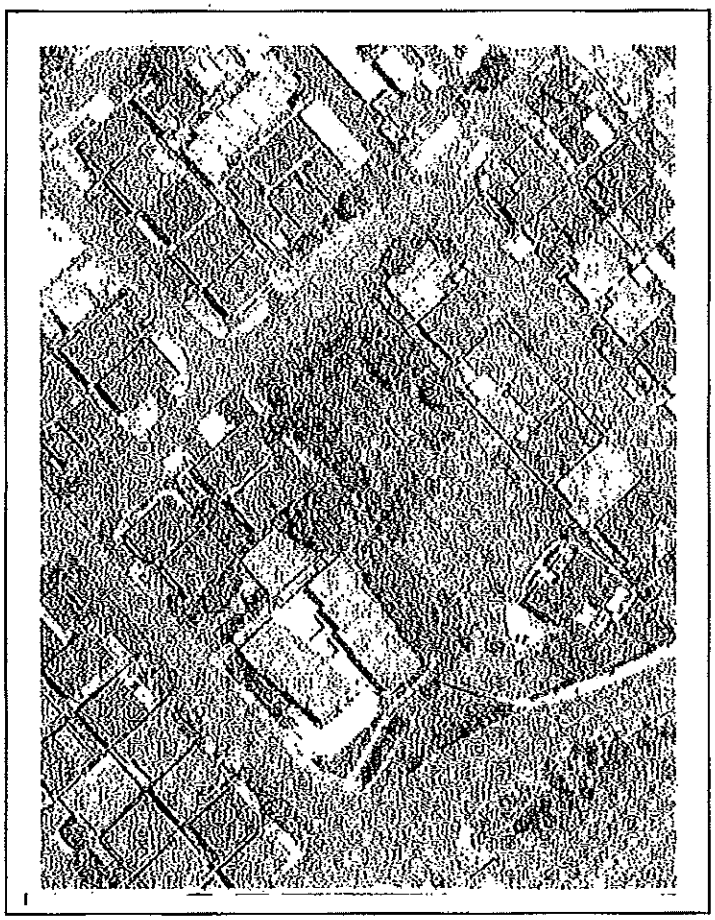
ATTEST:

Bruce Ambo, Secretary

EXHIBIT K

Site Photographs

Date: January 25, 2002



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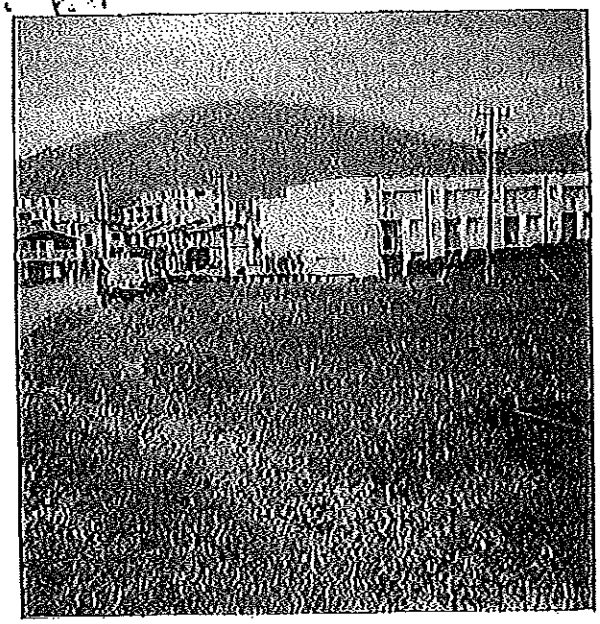
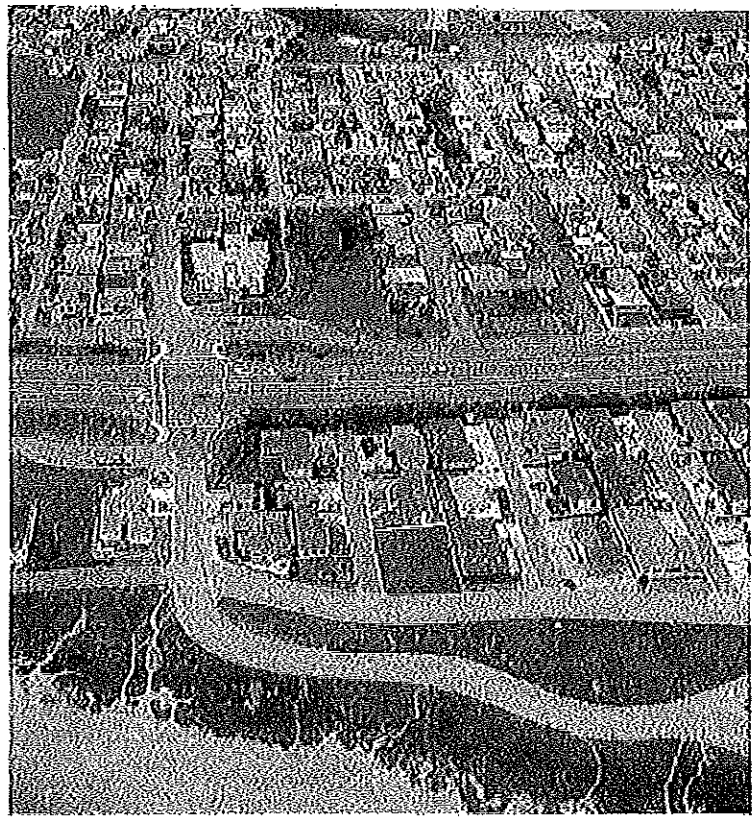
3390 Main - Hurlbert ③
3/18/94

Date: March 18, 1994



3390 Main - Hurlbert ①
3/18/94.

Date: March 18, 1994

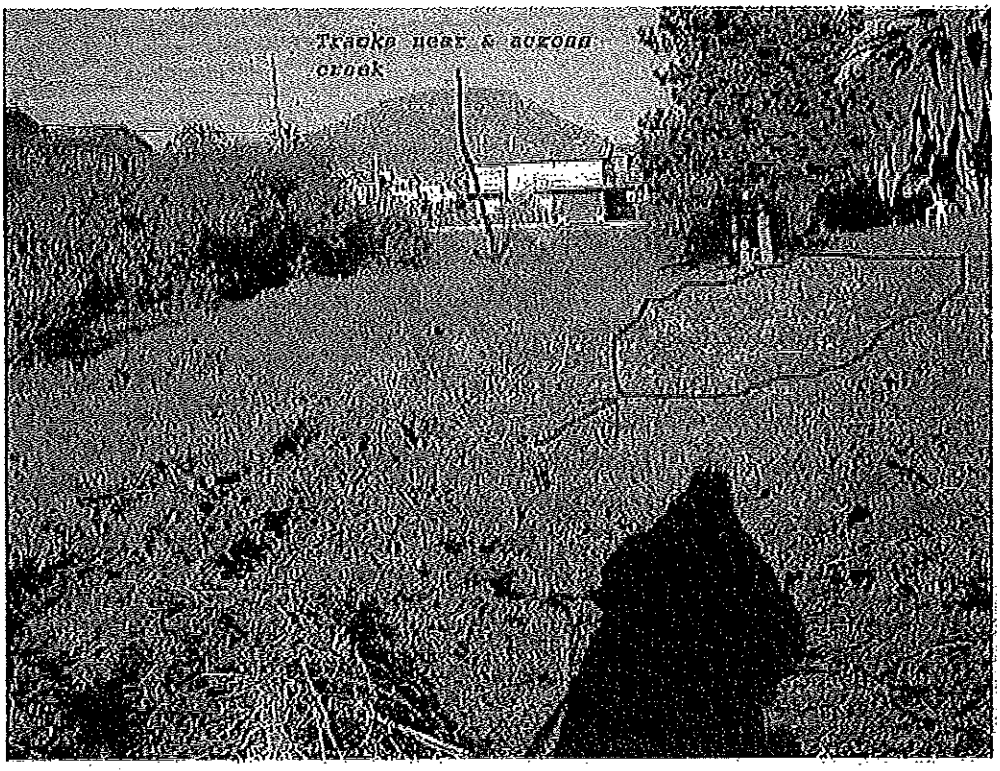


Date: January 25, 2002

Date: Winter 2001

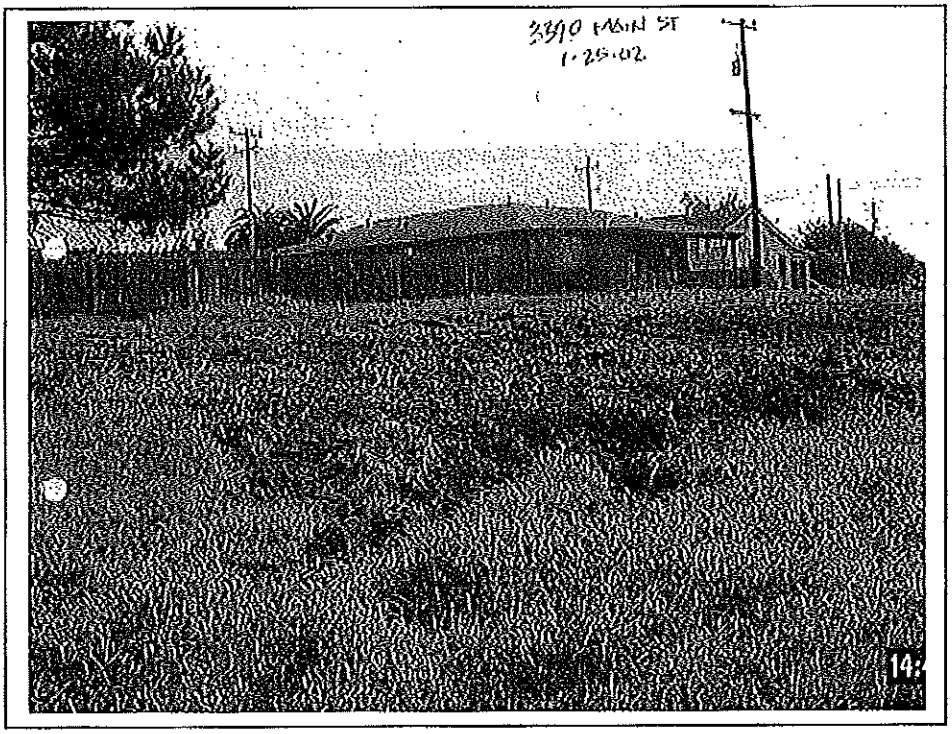
winter 2001

Date: Winter 2001



photos taken ~ 1/18/02

Date: January 18, 2002



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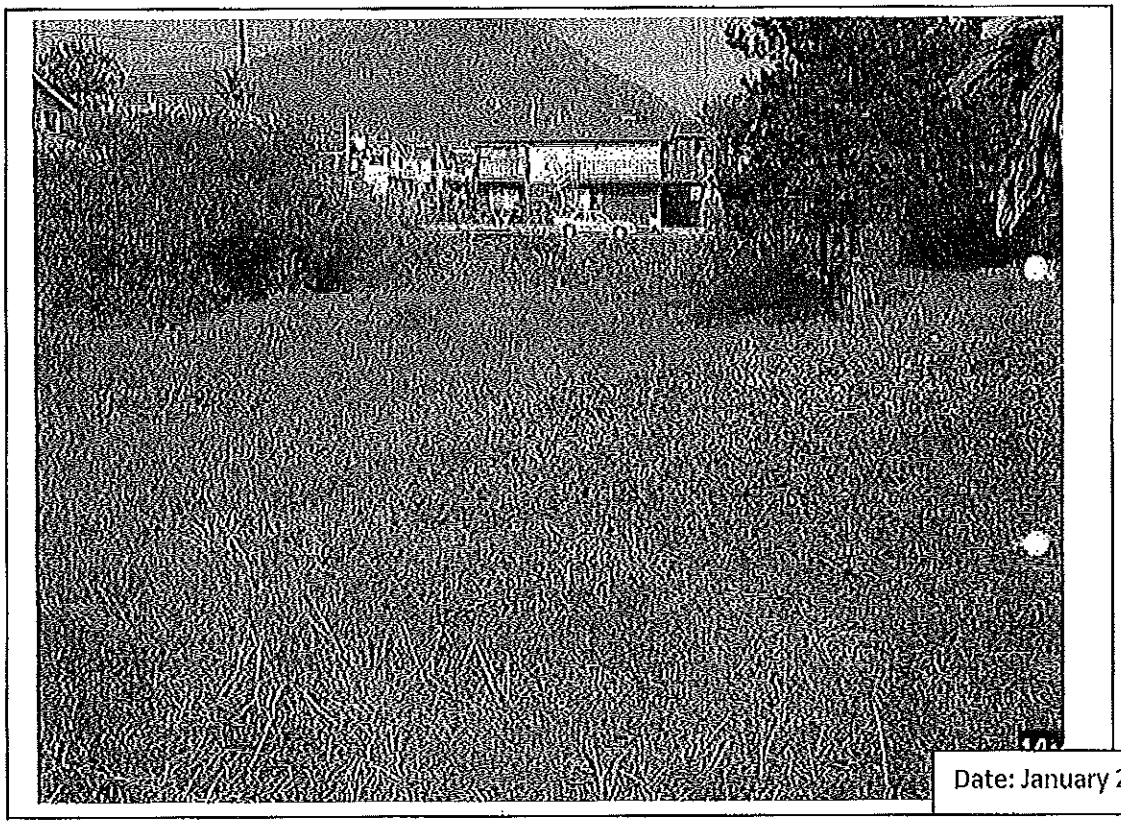

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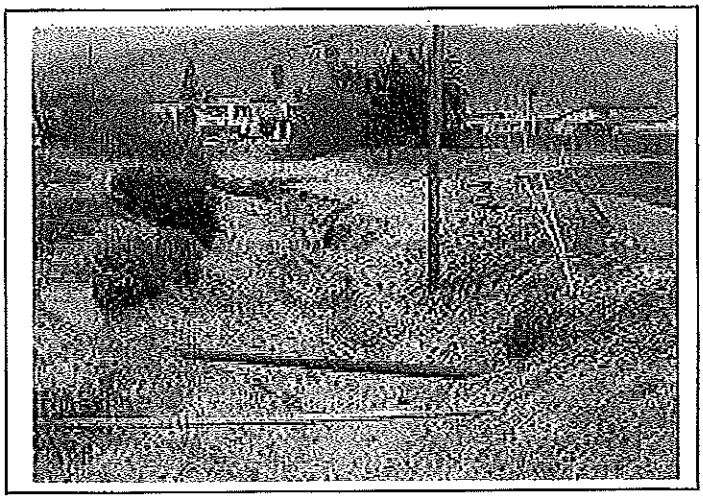

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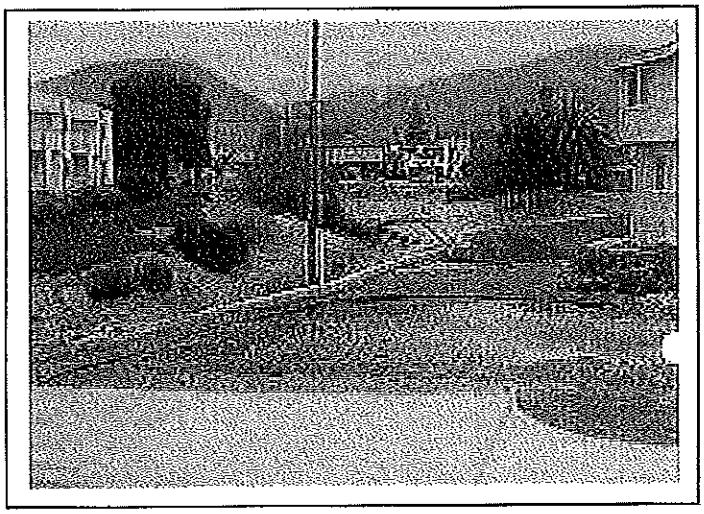

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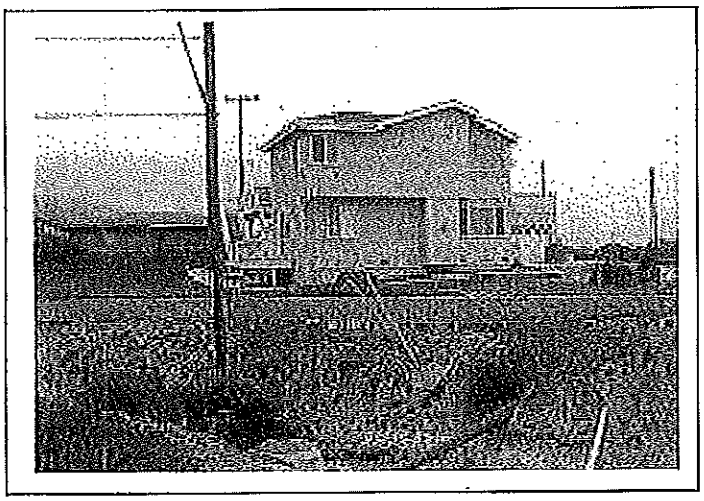

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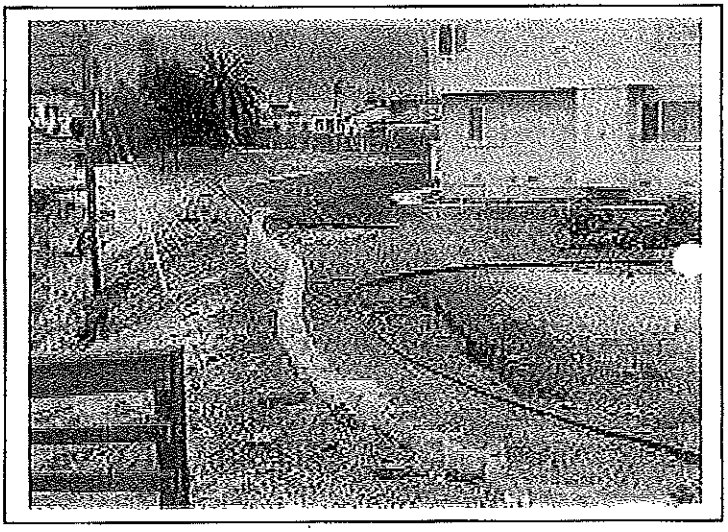

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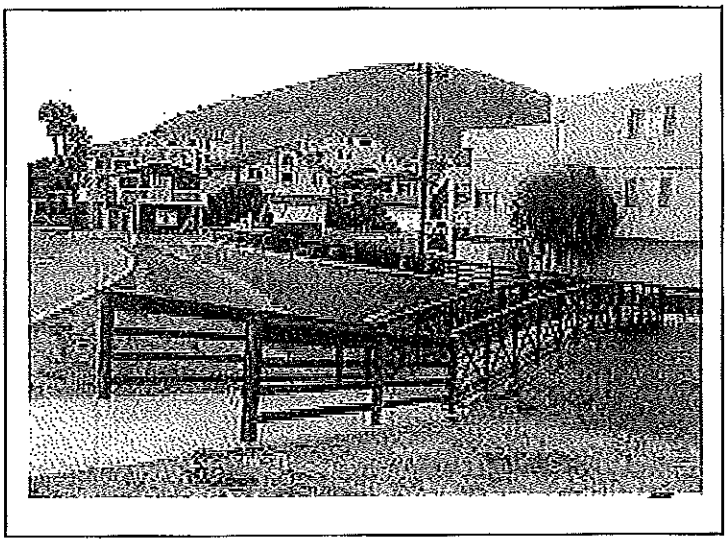

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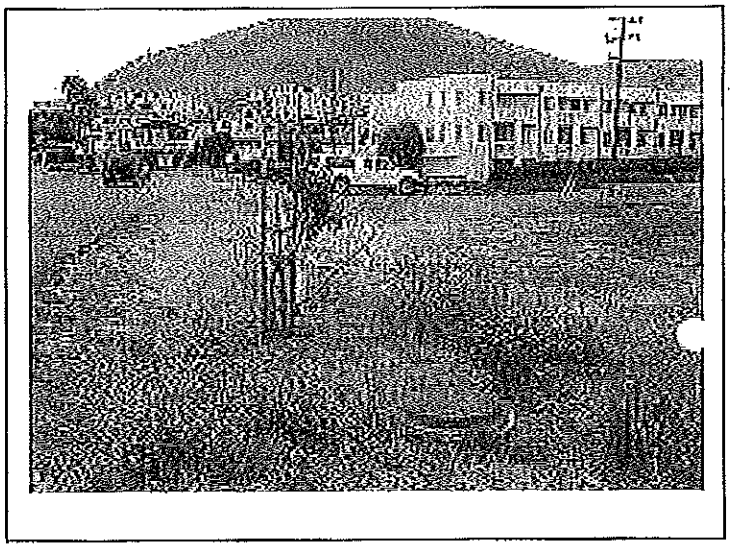

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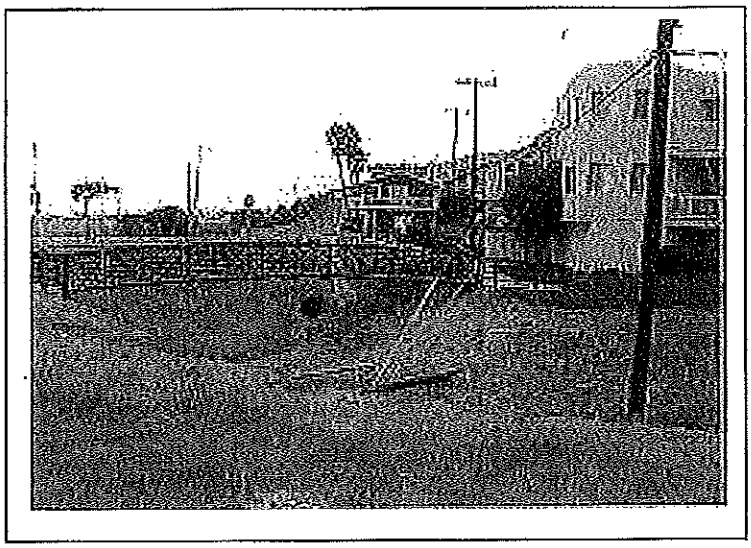

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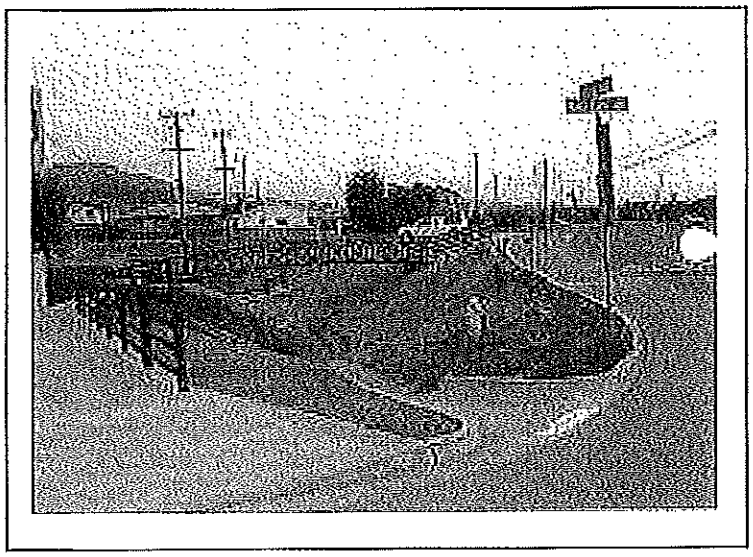

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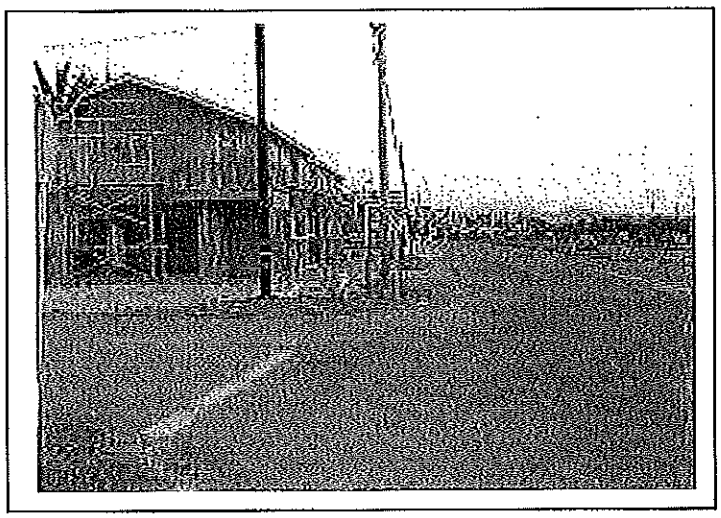

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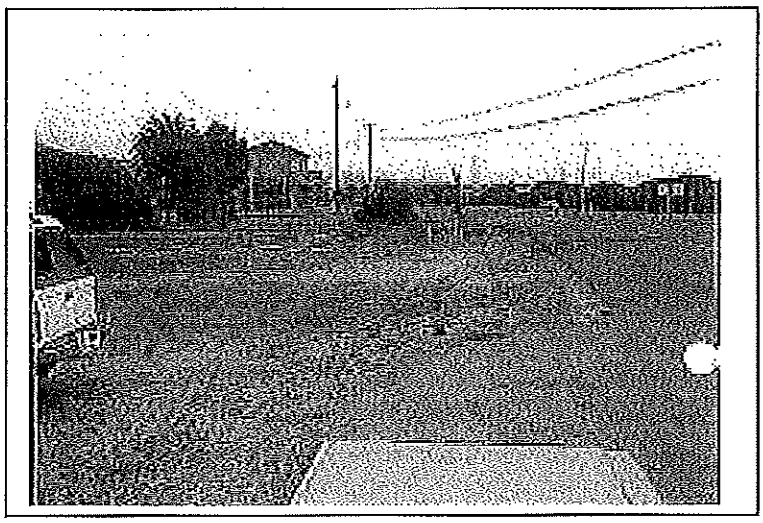

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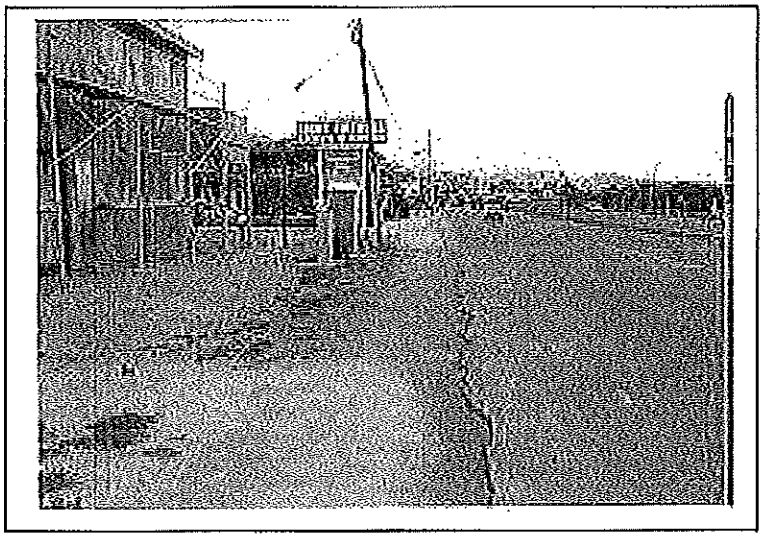

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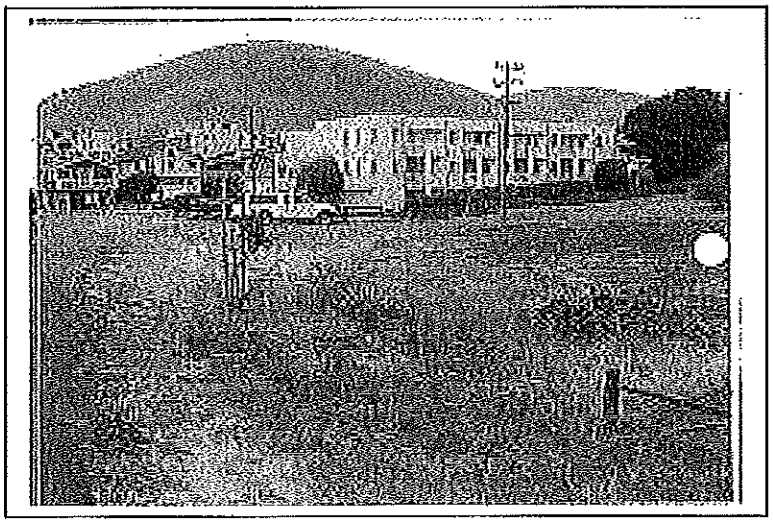

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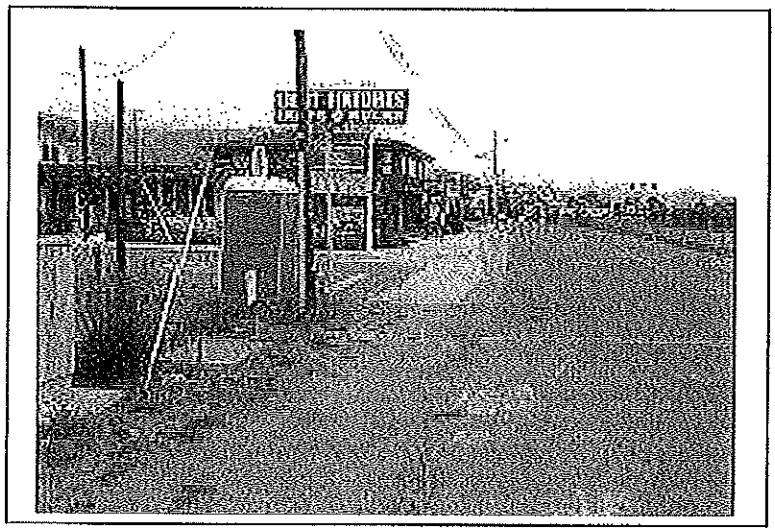

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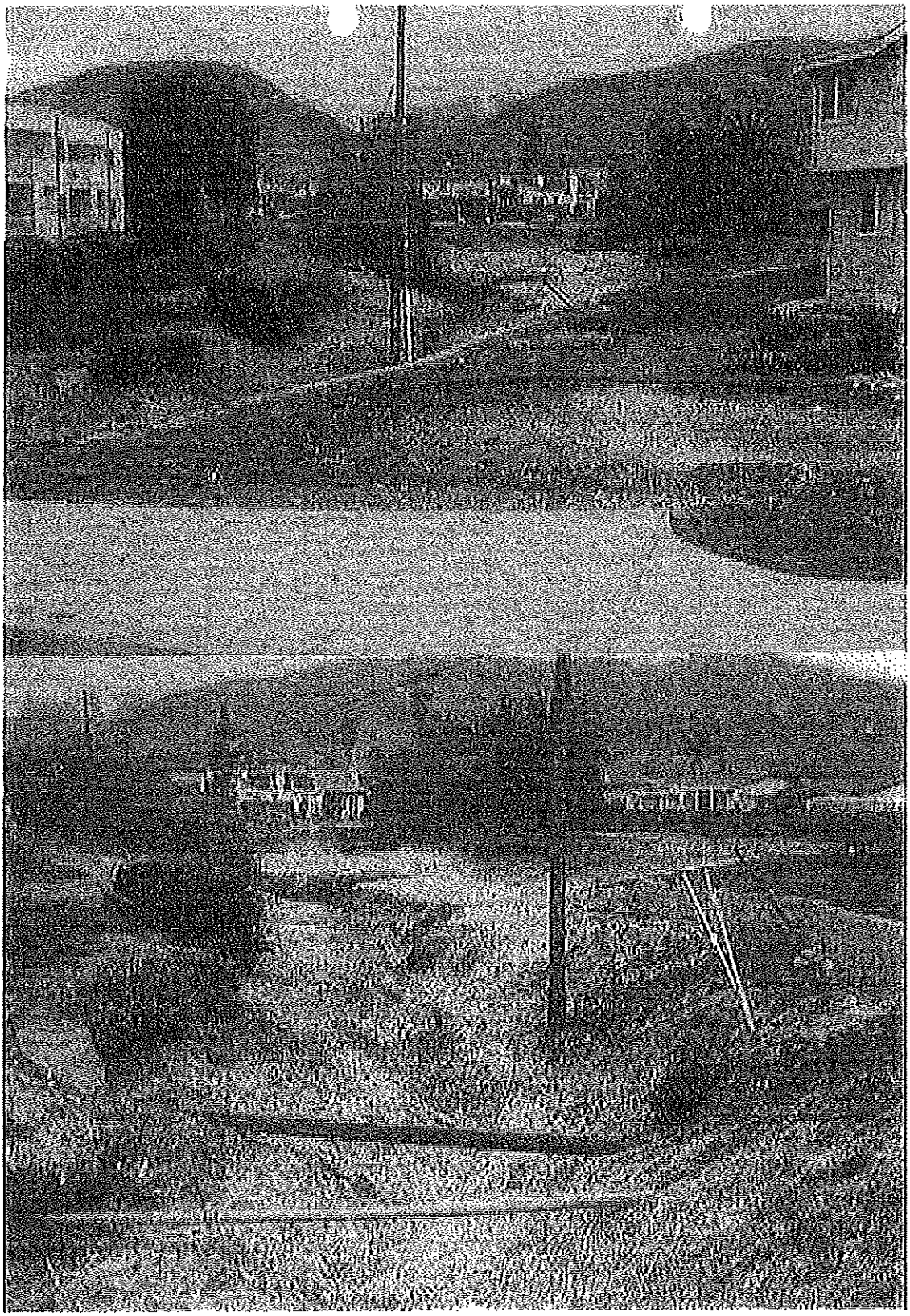


OCT 2002

Date: October 2002

DIGITAL MAP

3390 Main Street

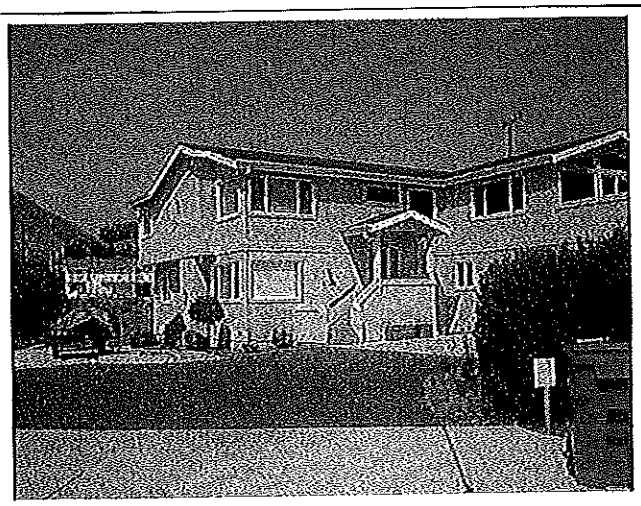
Proposed Medina Development

N

100 ft

CityGIS

Date: Unknown



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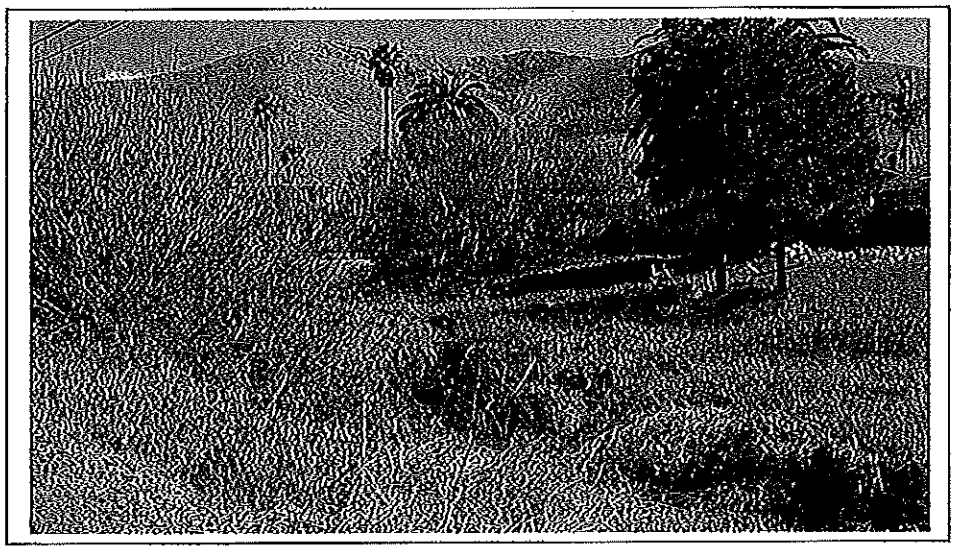

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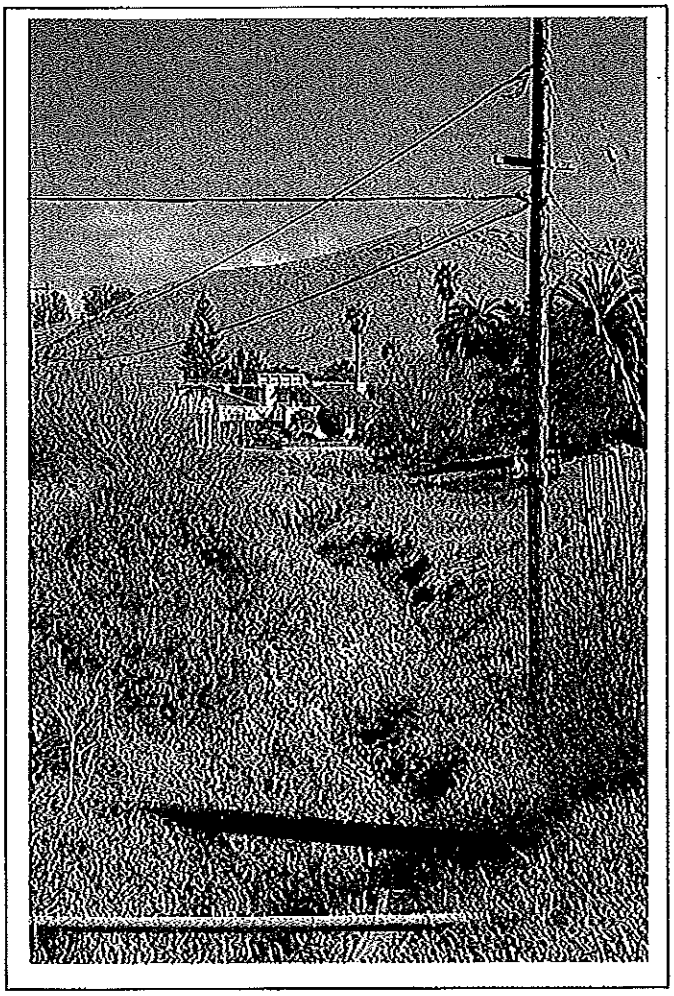

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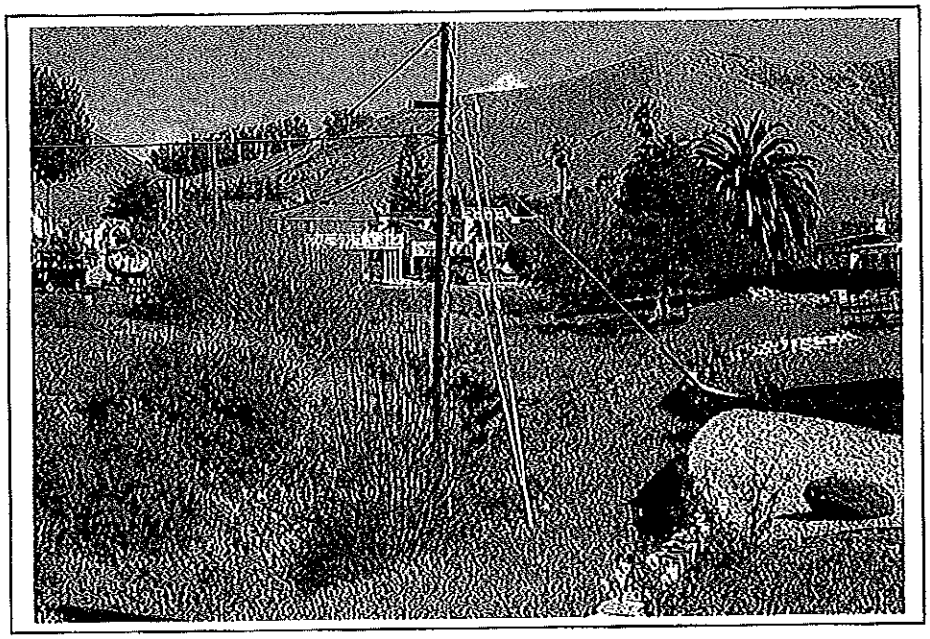

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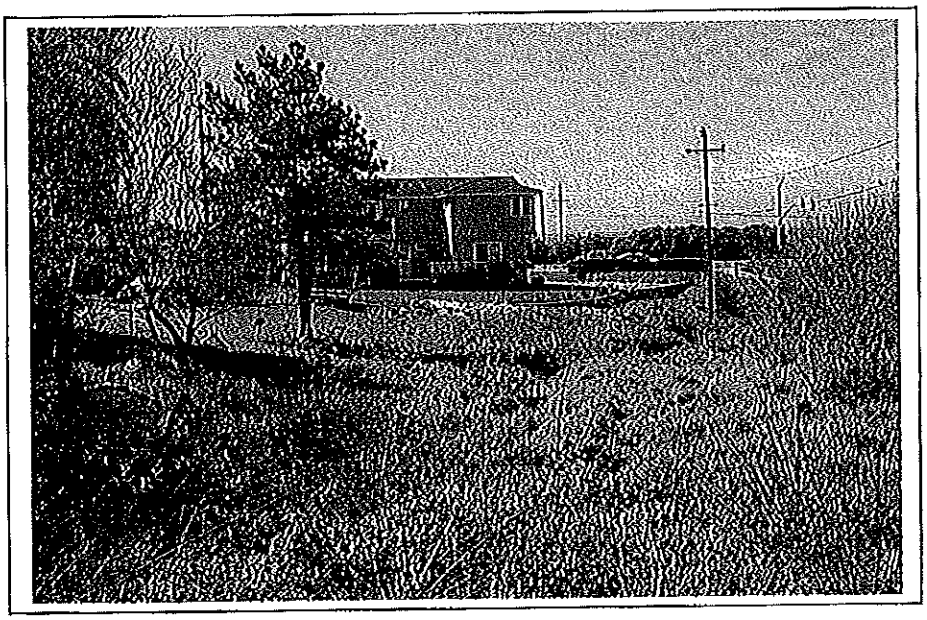

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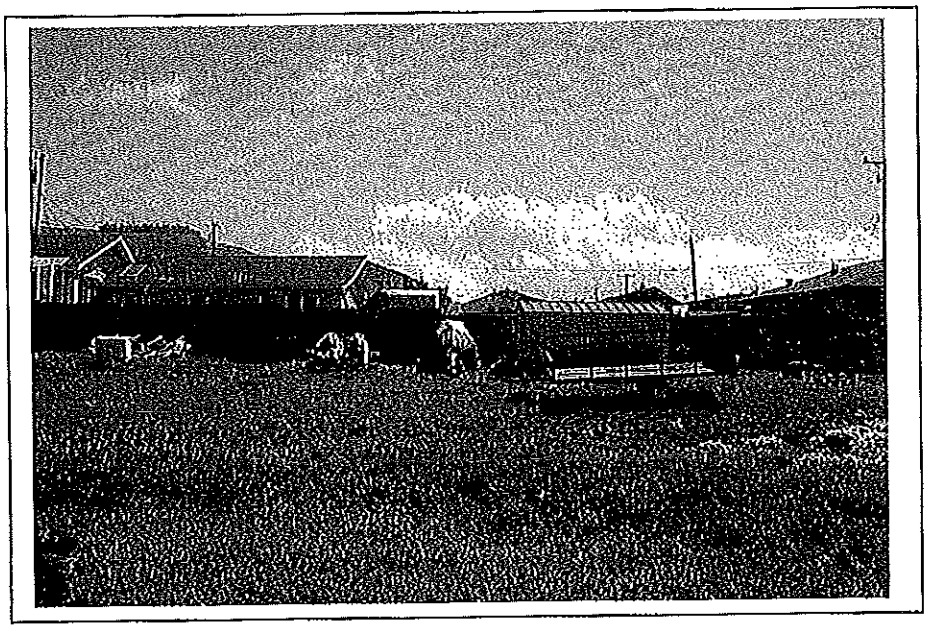

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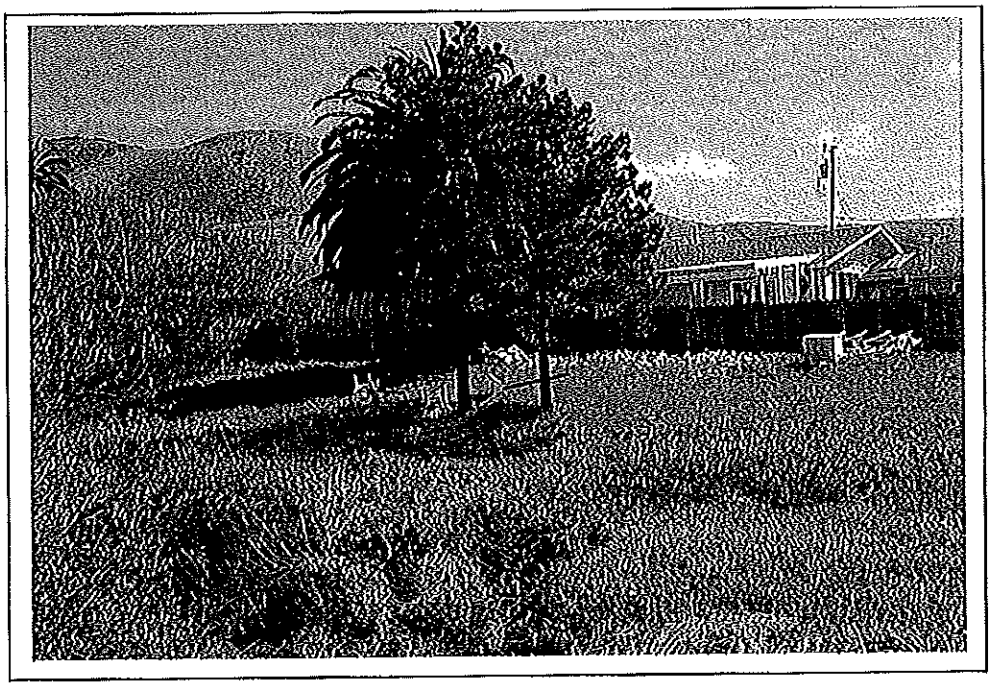

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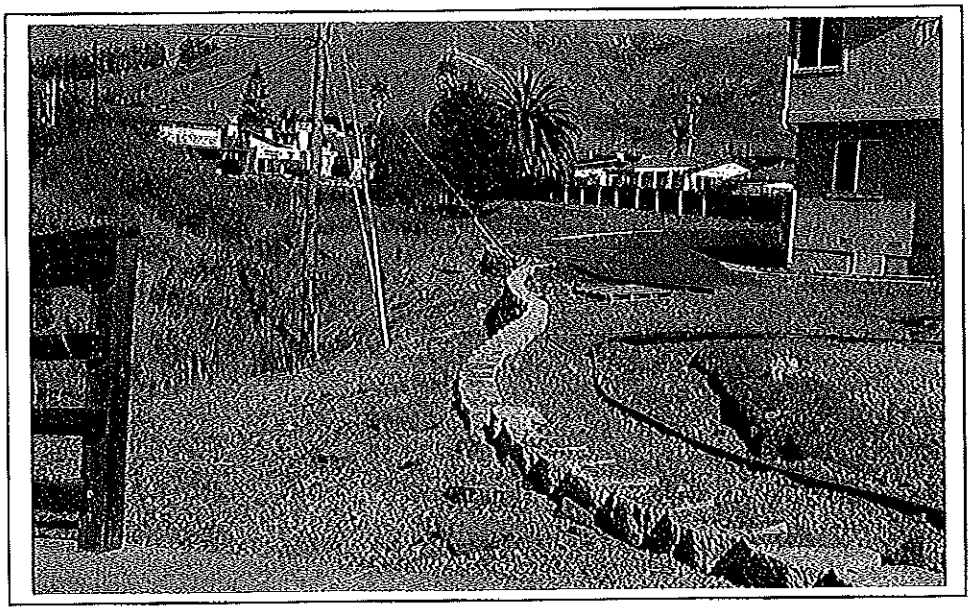

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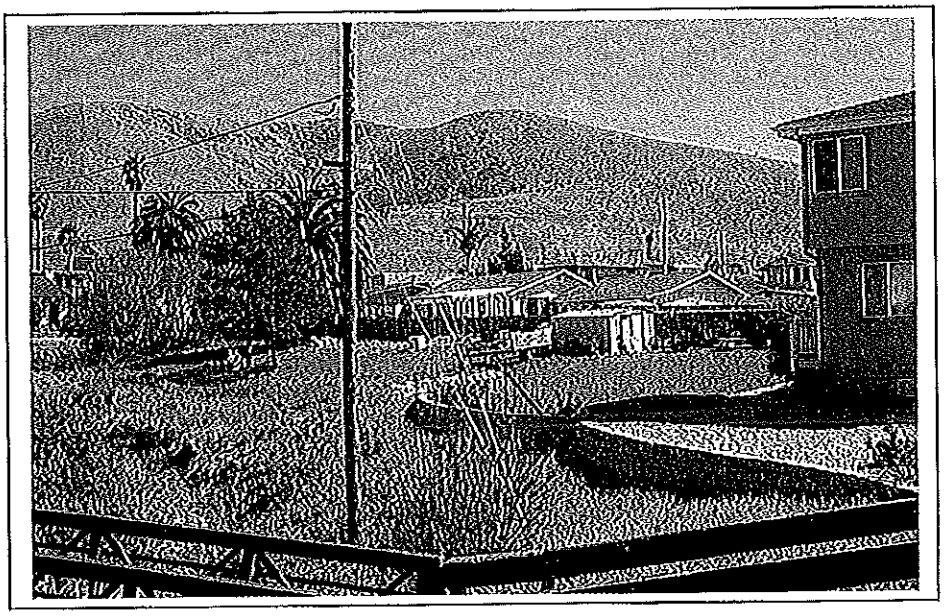

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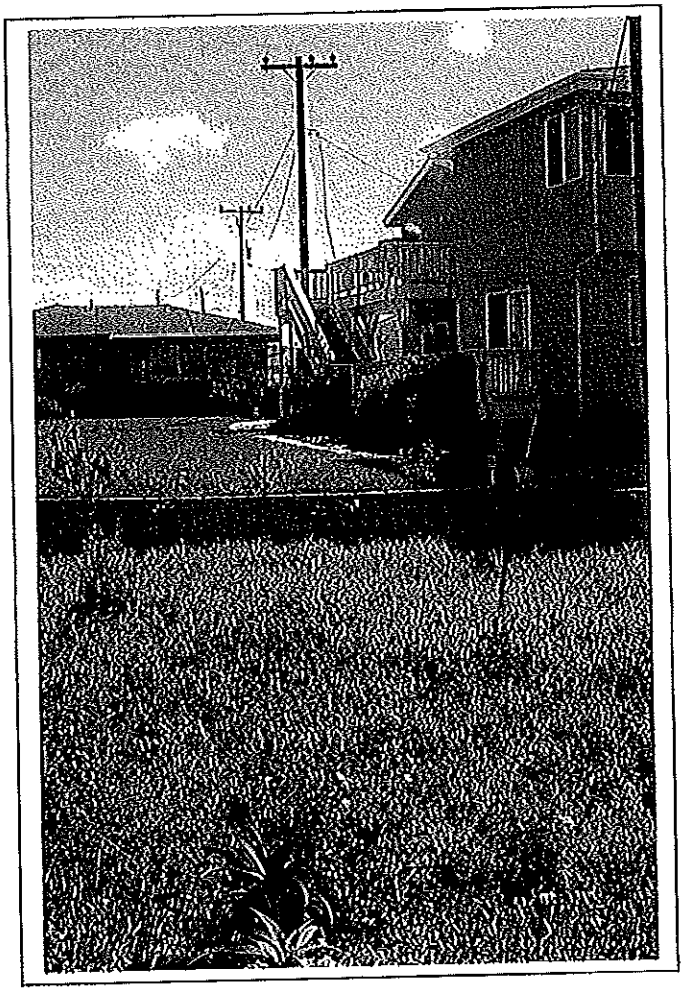

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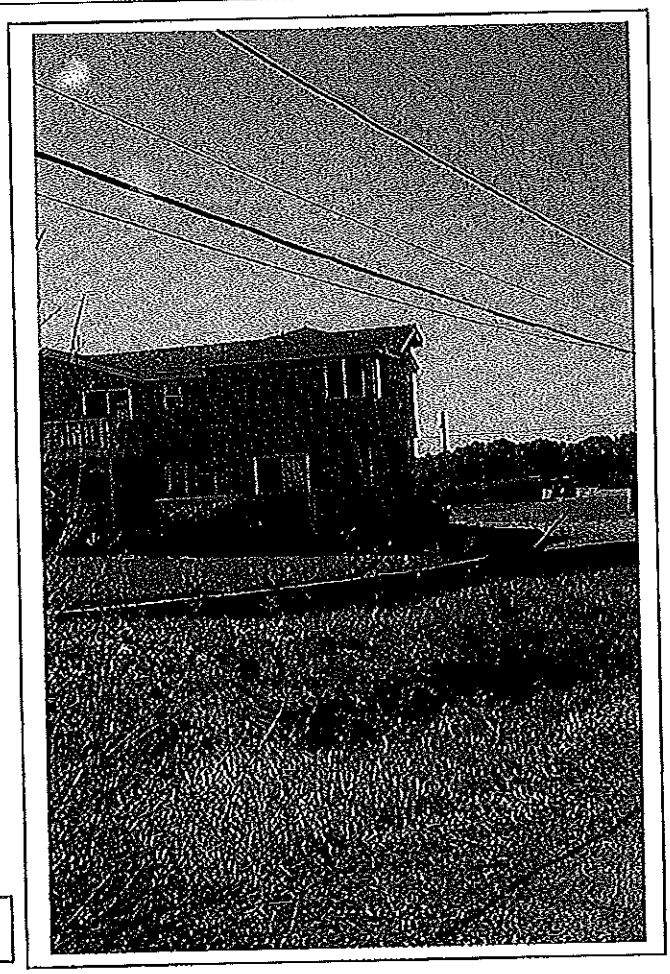

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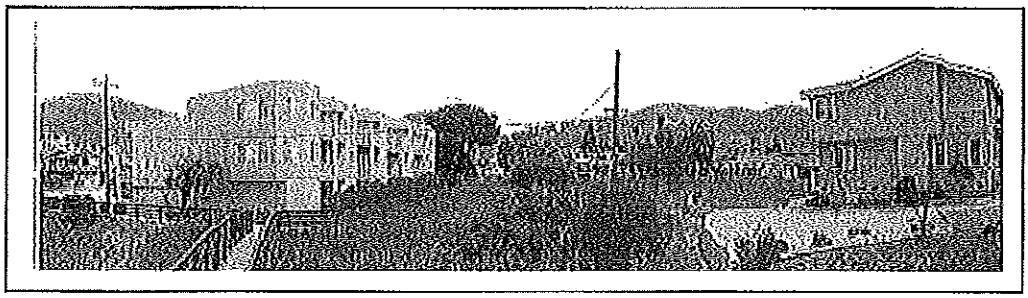

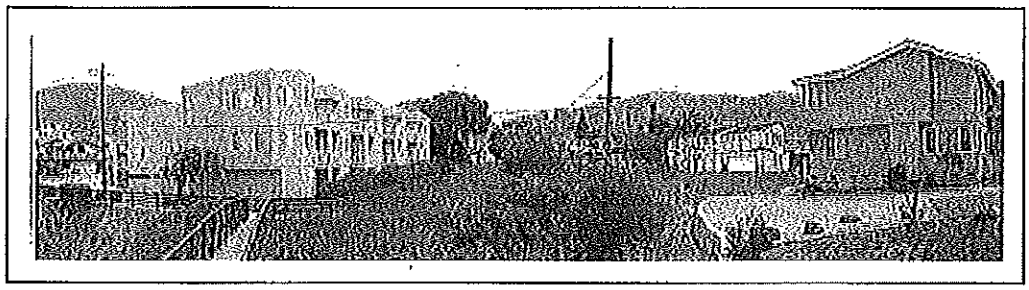

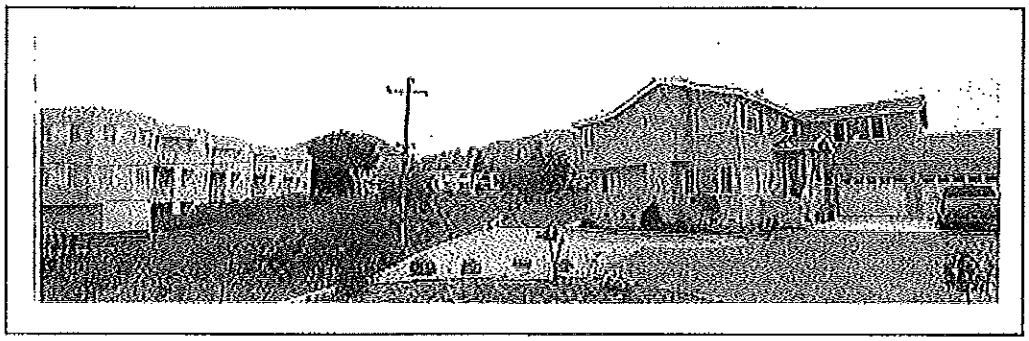

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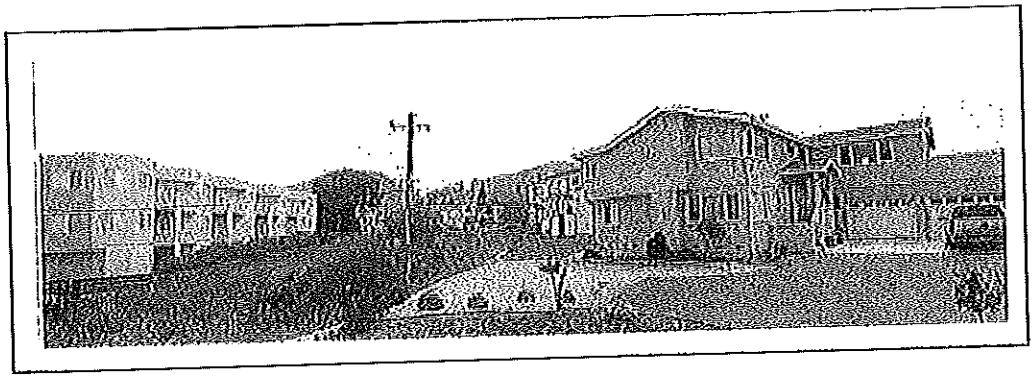

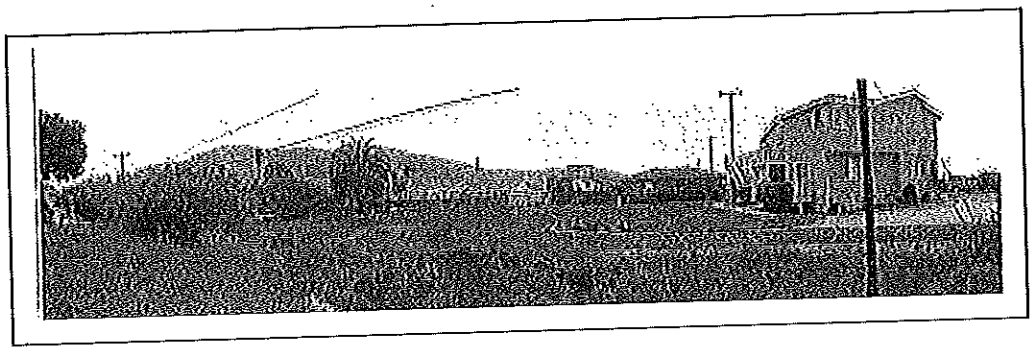

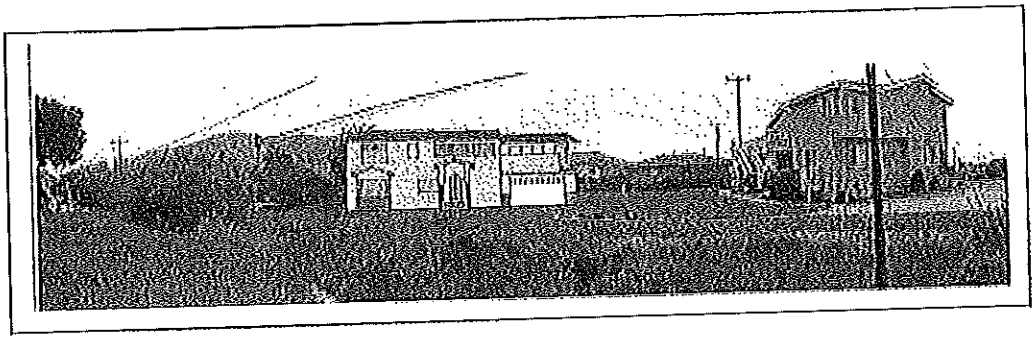

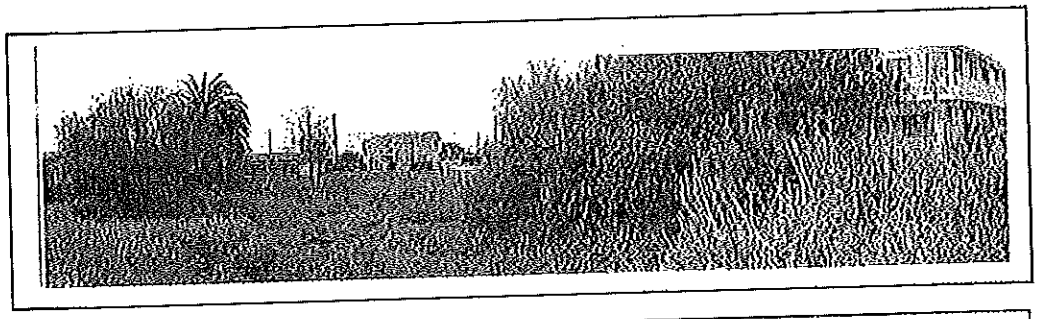

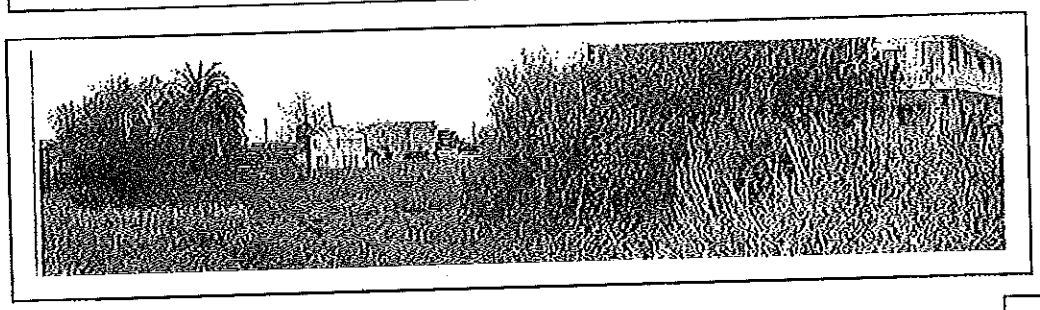

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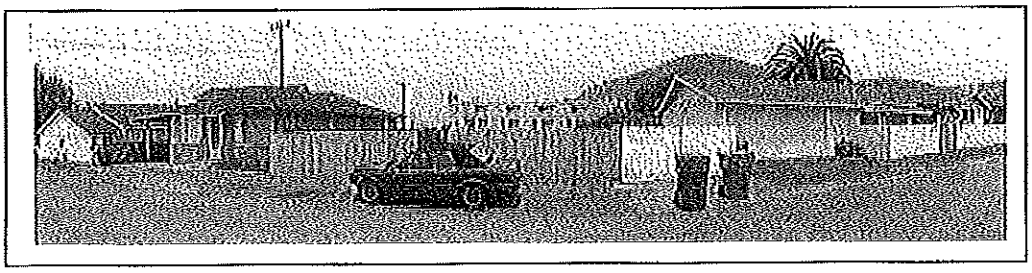

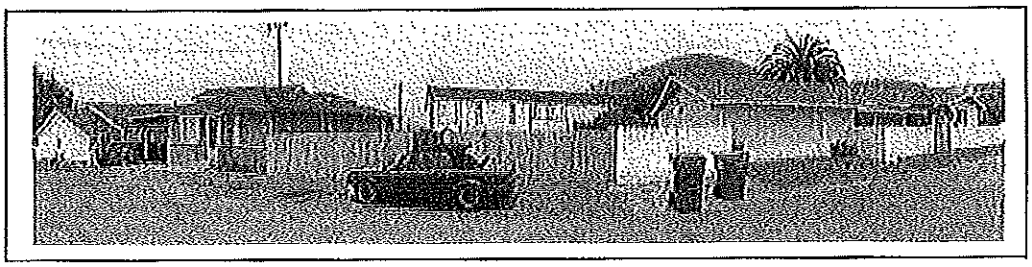

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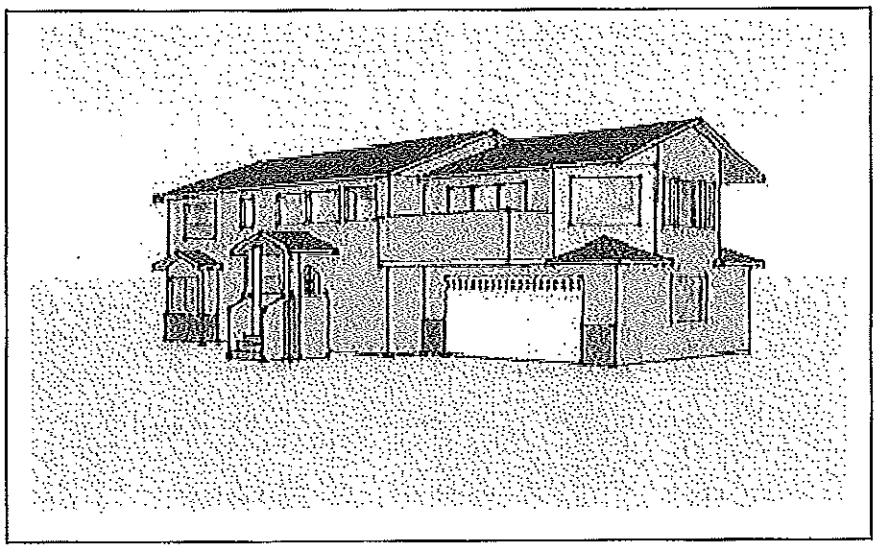

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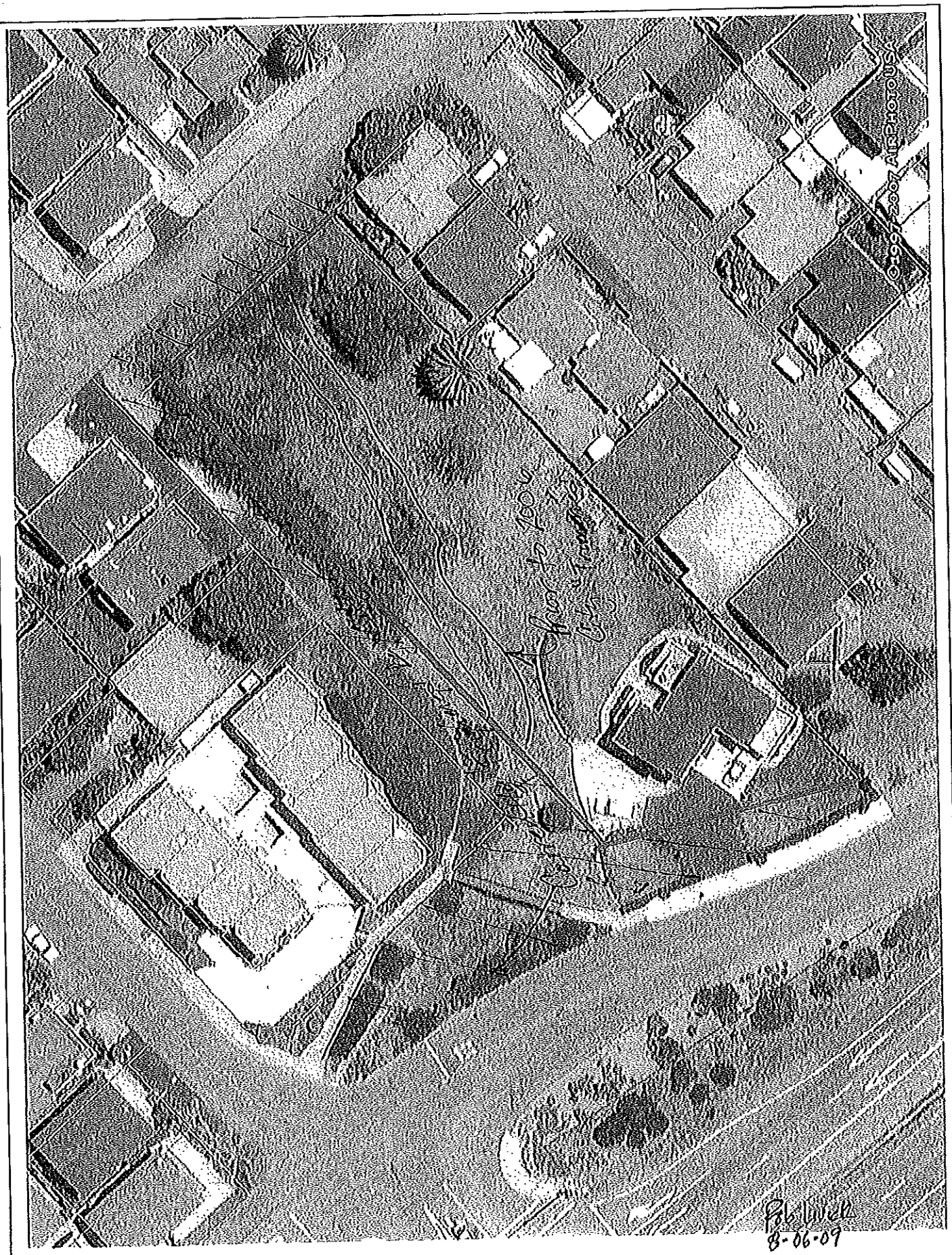


Date: August 6, 2009

EXHIBIT L

Westland Engineering, Inc.

August 10, 2009

Response to City's Comments

WESTLAND ENGINEERING, INC.
CIVIL ENGINEERING
LAND SURVEYING
LAND PLANNING

3480 Higuera Street, Suite 130 ¤ San Luis Obispo, CA 93401
Telephone: (805) 541-2394 ¤ Fax: (805) 541-2439

AUGUST 10, 2009 RESPONSE TO CITY'S COMMENTS FOR TENTATIVE PARCEL MAP MB 07-0274

ISSUES
1. Low Impact Development (LID) Compliance.
2. Disruption of historical drainage pattern from adjacent (southeasterly) properties.
3. Project Structure Elevation.

LOW IMPACT DEVELOPMENT

ORDINANCE
Reference: Title 14, Chapter 14.48 of the City Code
The referenced City Code requires:

- BMP treatment for all projects with 2500 square feet of impervious surface or more.
- Peak Flow treatment for 28% of a 2-year storm event and volumetric treatment of 1" / 24 hour events.
- No significant increases in downstream flows. Significant being defined as increases in excess of 5%. Roof areas being exempt.
- Erosion control plans are required.

Said ordinance has been amended for this project by the following verbiage from the interim City ordinance:

- Development projects that exceed 500 square feet of new or redeveloped impervious area will be required to provide water quality treatment for the runoff resulting from a two year storm event either through retention (infiltration) or an alternative Water Quality BMP such as biofiltration, mechanical filtration or hydrodynamic separation.
- Additionally, these same development or redevelopment projects that drain to a natural creek, swale or City storm drain either directly or indirectly will be required to provide peak runoff rate control for the runoff resulting from the ten through hundred year rainfall events. For the purposes of stormwater management the pre-construction condition shall be that of native soil and vegetation.
- Drainage analysis, runoff calculations, design and justification of drainage facilities shall be preformed by a Registered Civil Engineer and submitted with the building permit application. The responsible Soils Engineer shall review all proposed infiltration or storage systems for site suitability.

EXISTING CONDITIONS

See Appendix A which shows the flood elevations as determined by FEMA.

STORM FLOWS

Three methods were used to determine the flows: The Rational method (Q=CIA), Wallace Group's Report, and FEMA. The determination of the flows for the various storms was by interpolation based upon average intensity, where necessary.

PROJECT

The proposed house and driveway add approximately 2750 square feet of driveway. Approximately 450 square feet of the driveway would be built over the existing gravel driveway for a net increase of 2300± square feet. The house will add approximately 1750 square feet of roof plus the porch and decking. The proposed improvements are shown on a annotated portion of the Tentative Map for the project in Appendix B.

Creek Flow at Main Street

Interval	Intensity In/Hr	Westland * cfs	Wallace cfs	FEMA (at Tide) cfs	Used cfs
2-Year	0.95	65-75	60**	60**	65
10-Year	1.60	105-130	101	100	100
50-Year	2.30	230-290	175**	240	240
100-Year	2.50	250-315	191	340	315

*=CIA=A = Coefficient of Run-Off – 40%-50%, times Intensity, times Area – 275 acres

** = Calculated

Estimated flow increases at upstream edge of proposed house. Total Creek Flow
(The tributary area at the proposed new house is 98.5% of the overall.)

Interval	Flow cfs	Flow Increase cfs	Percent Increase
2-Year	64	0.04	0.06
10-Year	99	0.06	0.06
50-Year	236	0.09	0.04
100-Year	310	0.10	0.03

Increase in flows caused by the project. 2750 square feet of driveway plus 1950 square feet of house, porch, and decking gives 4700 square feet of improvements or 0.11 acres..The run-off coefficient for the existing conditions is 40%. The impervious condition will be 90%. The remainder of the project will be native or landscaping.

Interval	Existing Flow cfs	New Flow cfs	Increase cfs
2-Year	0.06	0.13	0.07
10-Year	0.10	0.23	0.13
50-Year	0.13	0.30	0.17
100-Year	0.14	0.32	0.18

PROPOSED MITIGATION

See Appendix B. The project has a maximum increase of 0.2 cfs with a maximum flow of 0.3 cfs. The following mitigation is proposed with the preliminary designs:

- Pavers for the driveway to reduce run-off
  - No sheet flow.
  - Flows directed to a bio-swale and then to a detention basin / bio-swale.
- All downspouts directed to either dry wells or the detention basin / bio swale.
- Bio-Swale - Grassy area that pre-treats flows directing flows to the detention basin.
- Detention Basin / Bio-Swale - Treats particulates, partially treats contaminants, and reduces peak flows.
  - County of San Luis Obispo detention method
  - (50-Year developed storm in, 2-Year undeveloped storm out)
    - Developed Coefficient of Run-Off – 90%
    - Undeveloped Coefficient of Run-Off – 40%
    - Area – 0.11 acres
    - Required Storage = 220 cubic feet
    - 2-Year undeveloped outlet flow = 0.06 cfs
  - 220 cubic foot provided in preliminary design. Alternate designs with same storage and treatment capacity could be substituted.
- If the bio-swales treatment are determined to be inadequate to remove particulates and contaminants, outlet flows should be treated with a fossil filter, sand filter, or equivalent BMP.

HISTORICAL FLOW PATTERN

This office reviewed the following information to determine the historical flow pattern across the site from the southeast:

- Existing contours.
- Contours from an undocumented topographic survey taken prior to improvements being placed.
- Improvement Plans for Main Street.
- Photographs from 2001 for the area along Main Street taken by this office.
- A site visit on August 6, 2009.

This office did not take elevations on the property prior to the existing house being built. A grading plan for the site by another consultant was found. This plan shows elevations and contours that existed prior to grading. Spot elevations on this plan were compared elevations taken by this office to verify accuracy. The undocumented contours on the older plan, when compared to the current contours, indicate that fill was placed along the slope of the creek bank between the existing house and the constructed wall and that the elevation on the southeasterly portion of the lot remained unchanged.

The plans for Main Street indicate that some filling has occurred along Main Street as a part of the curb, gutter, sidewalk installation. Cross Sections with the plans show a low area near the manhole adjacent to Main Street with flow towards the Creek. The area adjacent to the Creek is higher than the flow line and apparently caused ponding.

Field locations taken by this office prior to the street improvements show the low area and the higher elevation near the Creek. Most of the low area was within the Public right-of-way.

Comparisons of photographs taken in 2001 and the recent site visit indicate that a lawn area between the sidewalk and the house has been filled to about the level of the sidewalk. The filled area drains across the constructed driveway in a flat swale.

CONCLUSIONS: Based upon the available information, there appears to have been a low area near the street at the westerly corner of the neighboring property that filled during storms and then overtopped a low bank near the Creek. Larger flows would have emptied to the Creek along this path. This low area appears to have been partially filled with the street improvements and the lawn area. The lawn area and street improvements appear to drain without issue. The street improvements have raised the flow path to the Creek. The flow path is open though the lawn area and across the paved driveway. There is an alternate flow path southerly.

PROJECT STRUCTURE ELEVATION

The 100-Year storm elevation noted on the FIRM at the upstream edge of the proposed house is 51+. The proposed finished floor elevation is 52.5, or 1' above the 100-Year flood elevation. From the preliminary plans for the house provided by the applicant, we find that the house will have a finished floor to roof peak difference of 22.5'. Therefore, the roof peak elevation should be 75.0.

APPENDIX A

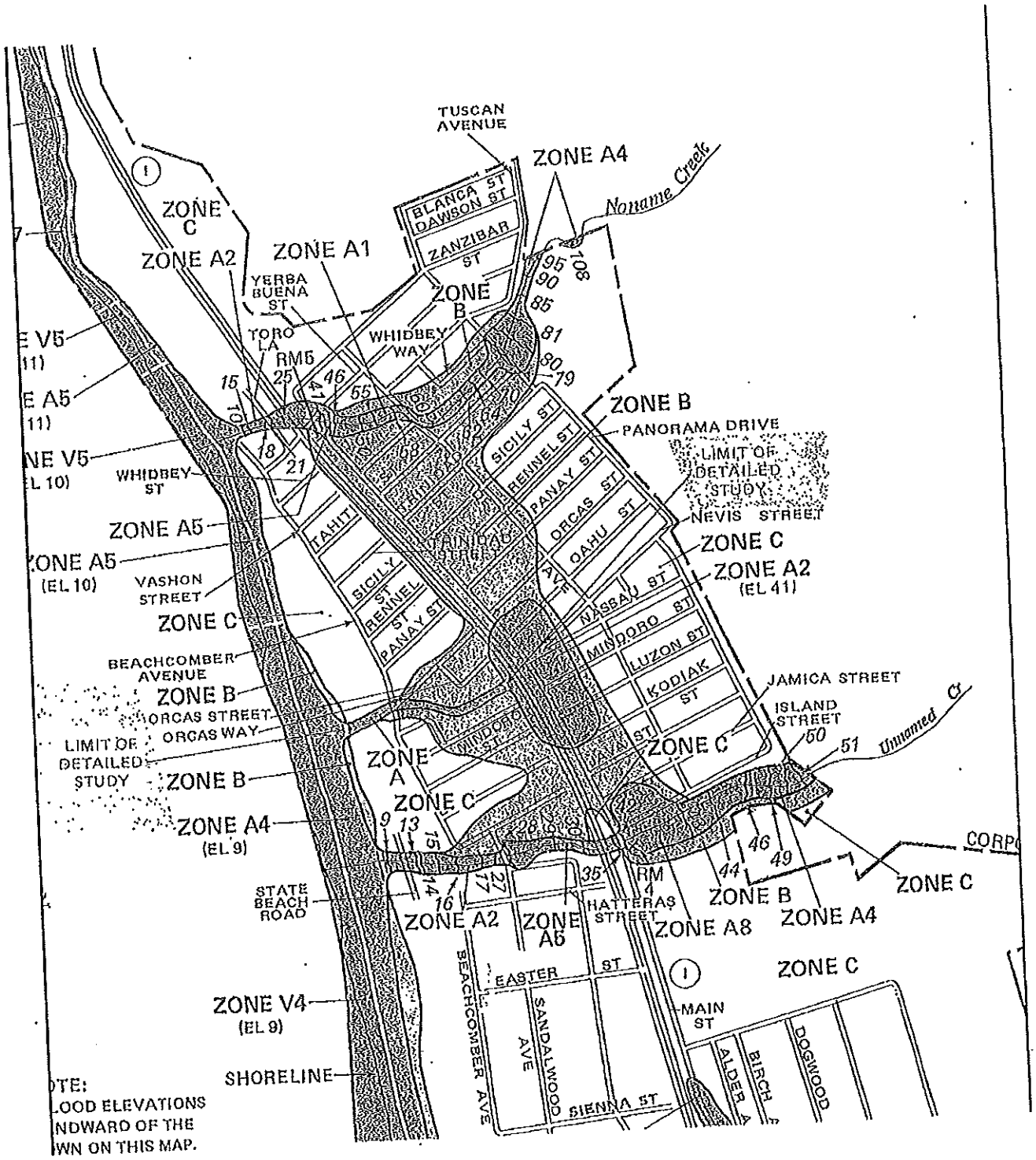

TUSCAN AVENUE
ZONE A4
Noname Creek
BLANCA ST
DAWSON ST
ZANZIBAR ST
ZONE C
ZONE A2
ZONE A1
YERBA BUENA ST
ZONE B
TORO LA
RM5
WHIDBEY WAY
ZONE B
PANORAMA DRIVE
LIMIT OF DETAILED STUDY
NEVIS STREET
ZONE C
ZONE A2 (EL 41)
WHIDBEY ST
ZONE A5
ZONE A5 (EL 10)
VASHON STREET
ZONE C
BEACHCOMBER AVENUE
ZONE B
ORCAS STREET
ORCAS WAY
LIMIT OF DETAILED STUDY
ZONE B
ZONE A4 (EL 9)
SICILY ST
RENNEL ST
PANAY ST
ORCAS ST
OAHU ST
TRINIDAD STREET
NASSAU ST
MINDORO ST
LUZON ST
KODIAK ST
JAMICA STREET
ISLAND STREET
Unnamed Cr
ZONE C
ZONE A
ZONE C
CORP
ZONE C
ZONE B
ZONE A4
STATE BEACH ROAD
ZONE A2
ZONE A5
HATTERAS STREET
ZONE A8
EASTER ST
ZONE C
ZONE V4 (EL 9)
MAIN ST
SHORELINE
BEACHCOMBER AVE
SANDALWOOD AVE
SIENNA ST
ALDER
BIRCH
DOGWOOD
TE:
LOOD ELEVATIONS
NDWARD OF THE
WN ON THIS MAP.

EXHIBIT M

OCTOBER 21, 2009 DEPARTMENT OF FISH AND GAME LETTER

California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4593
http://www.dfg.ca.gov

ARNOLD SCHWARZENEGGER, Governor
DONALD KOCH, Director

RECEIVED
OCT 26 2009
City of Morro Bay
Public Services Department

October 21, 2009

John Medina
3390 North Main Street
Morro Bay, California 93442

Re: Extension to stackable brick wall and proposed home site at 3390 North Main Street, Morro Bay, San Luis Obispo County

Dear Mr. Medina:

This is in response to your request for information regarding the above-referenced Project. Your Project consists of extending an existing stackable block wall and building a home on the lot behind the existing residence at 3390 North Main Street, which is located near an ephemeral creek channel that drains storm water runoff to the Pacific Ocean, in the City of Morro Bay. The Department of Fish and Game (Department) issued two (2) previous letters to you regarding the construction of the wall extension, wherein the determination was stated that the proposed Project would not affect fish and wildlife resources; and in addition was not subject to Section 1600 et sec., of the Fish and Game Code, per the request of the City of Morro Bay. We understand that the City of Morro Bay has again requested a letter from the Department regarding this Project, which now includes the home site. The Department appreciates this opportunity to assist you in this matter.

Mr. Mike Hill, Environmental Scientist, Department of Fish and Game, visited the Project site on September 29, 2009, reviewed the site-specific plans (dated July 15, 2009) prepared by Dana Belmonte and then met with you and your son to evaluate the proposed Project site to determine if the extended wall or home pad would adversely affect the ephemeral stream or other Environmentally Sensitive Habitat (ESH). On October 8, 2009, Mr. Hill discussed your Project with Ms. Kathy Wold, planner for the City of Morro Bay, who stated that the City requires construction to occur a minimum of 50 feet from any ESH unless a waiver is obtained from the Department of Fish and Game.

The proposed wall extension and construction of the home would both occur within the 50-foot setback from the ESH, which in this case consists of a seasonal stream and riparian habitat on your property. However, the proposed wall extension would

be south of, and several feet from, the stream bank and the ESH. The proposed home site would be farther south and away from the ESH. Based on Mr. Hill's site visit, the Department has determined that construction of the wall extension and home would not adversely affect the ESH; and therefore, the Department does not object to construction of the proposed wall extension and home within 50 feet of the ESH. In addition, the location of the home construction site, retaining wall extension, and associated fill, as determined by the Department, is non-jurisdictional, pursuant to Section 1600 of the Fish and Game Code. Therefore a Stream Alteration Notification does not need to be submitted for the Project.

To ensure that no inadvertent impacts to the ESH occur during construction, the Department recommends that the boundaries of the wall and home site be clearly marked prior to any construction activities, and that silt fencing or similar sediment control measures be placed between the wall extension and the stream channel to prevent soil or other material from entering the ESH. Any such device be removed upon completion of construction, and all cut or fill material not used for backfill should be disposed of at an appropriate off-site location where it cannot enter the ESH or other "Waters of the State".

Based on the Department's review of the site specific plans and other information you submitted, consultation with you regarding the scope of proposed work, consultation with staff of the City of Morro Bay, the site visit conducted by staff, and our knowledge of the Project site, we have determined that there is no existing fish or wildlife resource that will be substantially adversely affected by your Project, if it is constructed in the manner described.

Please be aware that you are responsible for compliance with all applicable local, State, and Federal laws in completing this Project. Thank you again for the opportunity to assist you. If you have any questions regarding this matter, please contact Mr. Mike Hill, Environmental Scientist, at (805) 489-7355.

Sincerely,

John Means

for Jeffrey R. Single, Ph.D.
Regional Manager

cc: Kathy Wold
City of Morro Bay
955 Shasta Ave
Morro Bay, California 93442

EXHIBIT N

BIOLOGIST'S ADDENDUM TO REPORT

RECEIVED
NOV 30 2009
City of Morro Bay
Public Services Department

Mike McGovern
2060 Varian Circle
Arroyo Grande, CA 93420
441-7208

November 18, 2009

Kathleen Wold
Associate Planner City of Morro Bay
955 Shasta Ave.
Morro Bay, CA 93442

Dear Kathleen Wold,

The purpose of this addendum letter is to clarify a misconception of the ESA delineation in my report of May 3, 2008 for Mr. John Medina of 3390 North Main Street, Morro Bay, CA. In that report it is suggested that a precise delineation of an ESA be established on the property of Mr. Medina. It was proposed that the line be established along the existing brick wall. This was recommended because it was assumed that the delineation would incorporate the ESA and the necessary setback. I also offer a suggestion for the boundary of the ESA. I, in addition, want to establish that the term ESA is equal to ESHA and ESH. All three designations have been used in discussing the property of Mr. Medina. I prefer to use the term ESA (Environmentally Sensitive Area).

It appears that the ESA in question on the property of Mr. Medina may have been established in 1987 or before. A review of the zoning map for the City of Morro Bay: Index Map Post-LCP Certification Permit and Appeal Jurisdiction for the City of Morro Bay indicates that an ESA was established to incorporate a significant portion of the drainage that passes through Mr. Medina's property and beyond. The ESA is shown on the map to commence at the drainage's mouth near the ocean and continue toward the genesis of the drainage with the exception of where it passes under California State Highway 1. There are no coordinates to precisely establish the ESA however. Subsequently, it appears that the ESA designation was ignored and a significant portion of the ESA was encroached upon by development. The drainage channel received a culvert and covered and homes were built over it. The only remaining portion of the ESA without development is on Mr. Medina's property. In essence, the ESA has disappeared with the exception of the portion on Mr. Medina's property.

An ESA is defined by the California Coastal Act as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. It appears that the once existent
ESA has succumbed to human activities and development. I have visited the property in question on two occasions and it is my opinion that this remnant of a once larger ESA has also succumbed to human activities. The area in question exhibits no plant or animal life that is rare, threatened, endangered or has zoological species listed as species of concern or botanical species listed by the California Native Plant Society as in jeopardy. There are no species of any kind with special consideration and there is no habitat that is considered valuable, rare, or threatened. On the contrary, the property in question is significantly disturbed. The botanical component on the property consists of primarily exotic vegetation with some being highly invasive. Only seven native species exist. Of those that do they are represented by one or a few members except for the willows. Dr. Jeffrey R. Single, Ph. D. and Mr. William Loudermilk of the California

Department of Fish and Game have determined that there is no existing fish or wildlife resource that will be substantially adversely affected by the project. I agree with their conclusion.

During my investigation I reviewed photos from 1982 and from 2002. The photos from 2002 do not support that the area had vegetation that was more conducive to wildlife. Those photographs suggested that the property has experienced extreme disturbance. The photographs from 1982 were aerial photographs and were more difficult to interpret but it appeared from them that taller vegetation existed in the eastern half of the property in question. The vegetation was most likely willows. Willows can be an important component of the environment in providing shelter and foraging areas for some avian species. It may be that before the development of the ESA willows extended farther up the drainage and thus provided more extensive habitat. It is the case, presently, that this type of habitat is limited to the eastern portion of Mr. Medina's property. In its present, and possibly diminished area, it offers poor habitat for nesting birds due to the adjacent development, the trafficked roadways and footpaths, and general persistent human disturbance.

The establishment of an ESA in former times failed to delineate the precise location of it. This may be a reason why it was ignored by former development. Presently, in the situation at hand, it is necessary to more accurately place the boundaries for the ESA. I must, again, take this opportunity to say that it is to my dismay as to why this area was designated as an ESA because it is biologically uninteresting. Perhaps in former times when the ESA was intact it may have offered a different picture. The most significant aspect of the vacant space on Mr. Medina's property is the drainage from where it emerges from the culvert on the eastern portion of his property until in again submerges into another culvert near Highway 1. It seems that it may be most prudent to incorporate this drainage within the ESA boundary. It is suggested that the ESA follow the creek using the two-year high water mark as its delineation. This was chosen because the two-year high water mark is commonly accepted. In keeping with such practice Mr. Terence Orton of Westland Engineering, San Luis Obispo, CA has included this boundary on his Vesting Tentative Map for MB 07-0274. It is sometimes useful to define such as the Top-of-Bank but this demarcation was illusive. It is also suggested that the eastern portion of the property be designated as open space to enhance the opportunity for the repatriation of willows. City Code asks that a 50-foot buffer zone be utilized from the established ESA boundary. It also states that it is permissible to reduce the buffer zone up to half of the fifty feet. It is my opinion that if this reduced buffer is offered that it will have no additional impact to the biology on the property as the fifty-foot buffer would. I believe this because of the highly disturbed nature of the entire property.

Sincerely,

Mike McGovern Ph. D.

EXHIBIT O

Correspondence

From

Bill Kirchner, PWS

Chief NWI Branch

U.S. Fish and Wildlife Services

From: <Bill_Kirchner@fws.gov>
To: "Rob Livick" <RLivick@morro-bay.ca.us>
CC: "Andrea Lueker" <ALueker@morro-bay.ca.us>, <Bruce.A.Henderson@usace.army...
Date: 6/21/2010 11:24 AM
Subject: Re: 3390 North Main Street

Rob,

I was contacted by Mr. Medina who asked me to revise the wording in my statement. Below is the revised statement.

"There are no wetlands on the property based on the information provide by the applicant and the site assessment findings of the California Department of Game and Fish."

Bill

William Kirchner, PWS
Chief NWI Branch
911 NE 11th Ave
Portland OR 97232
503 231-2070

Bill Kirchner/RO/R1/FWS/DOI
06/16/2010 04:18 PM

To
"Rob Livick" <RLivick@morro-bay.ca.us>

cc
"Andrea Lueker" <ALueker@morro-bay.ca.us>, Bruce.A.Henderson@usace.army.mil, Johnnie.Medina@gmail.com, "Kathleen Wold" <KWold@morro-bay.ca.us>, novakconsulting@charter.net, "Rob Schultz" <RSchultz@morro-bay.ca.us>

Subject
Re: 3390 North Main Street

Rob et al:

Please except my apologies for the previous response being lost in the transmission. Below are the comments I wanted to convey to the group.

Please let me know if you have questions.

There are no wetlands on the property based on the information provided. There is an ephemeral channel as referenced by the CA Department of Game and Fish and pictured in the site assessment.

The National Wetland Inventory data should not be used to establish local, state or federal regulatory jurisdiction.

My understanding of ESH is that an area has this designation if plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem. The two letters from the CA Department of Game and Fish clearly indicate that there are no fish and wildlife resources that would be impacted by the development. In my opinion, the CA Department of Game and Fish would be the definitive source to determine if ESH habitat is on site or not based on a biological assessment.

I have no comment on the application of the local ordinance rules.

William Kirchner, PWS
Chief NWI Branch
911 NE 11th Ave
Portland OR 97232
503 231-2070

From: <Bill_Kirchner@fws.gov>
To: "Rob Livick" <RLivick@morro-bay.ca.us>
CC: "Andrea Lueker" <ALueker@morro-bay.ca.us>, <Bruce.A.Henderson@usace.army...
Date: 6/16/2010 4:18 PM
Subject: Re: 3390 North Main Street

Rob et al:

Please except my apologies for the previous response being lost in the transmission. Below are the comments I wanted to convey to the group. Please let me know if you have questions.

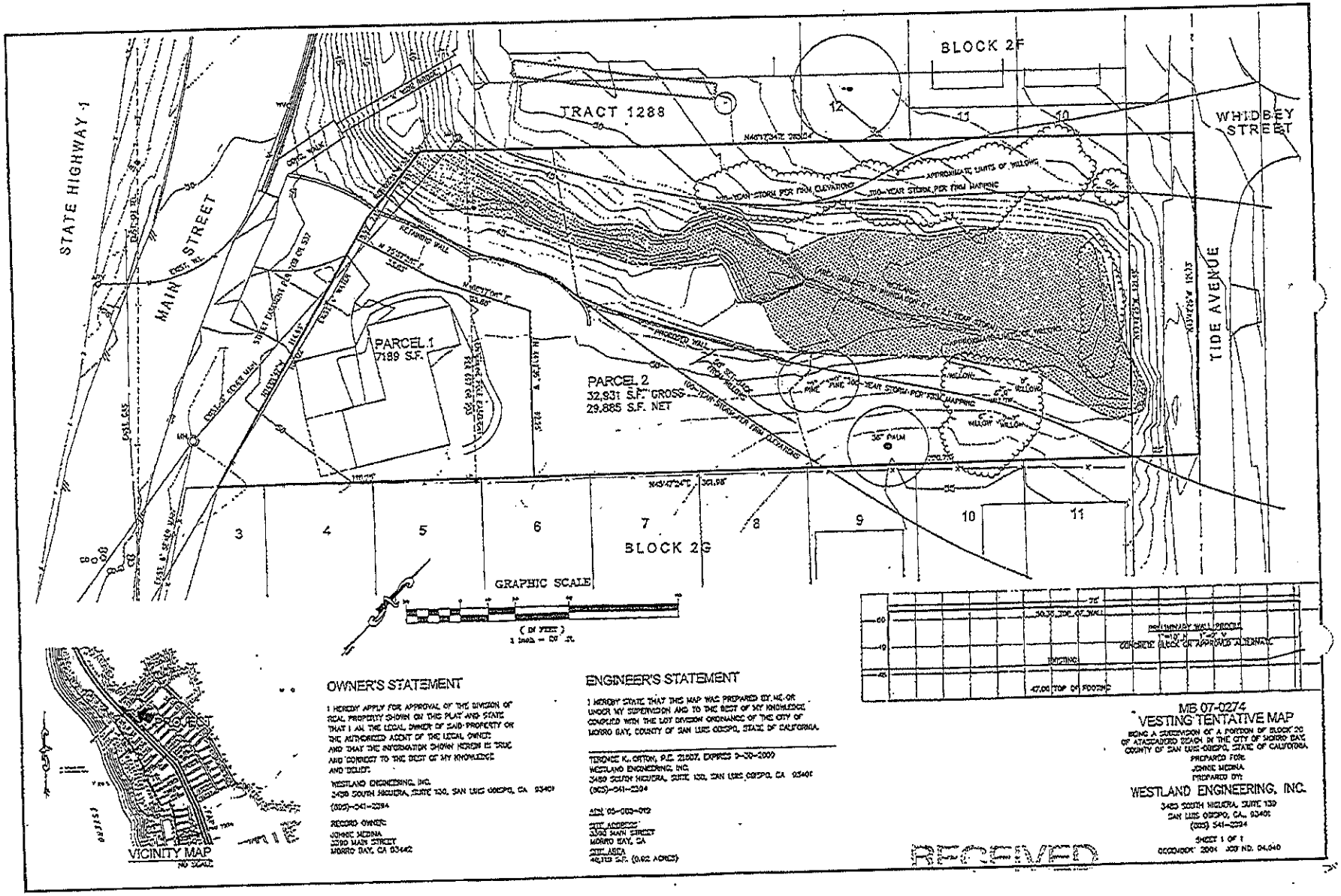
There are no wetlands on the property based on the information provided. There is an ephemeral channel as referenced by the CA Department of Game and Fish and pictured in the site assessment.

The National Wetland Inventory data should not be used to establish local, state or federal regulatory jurisdiction.

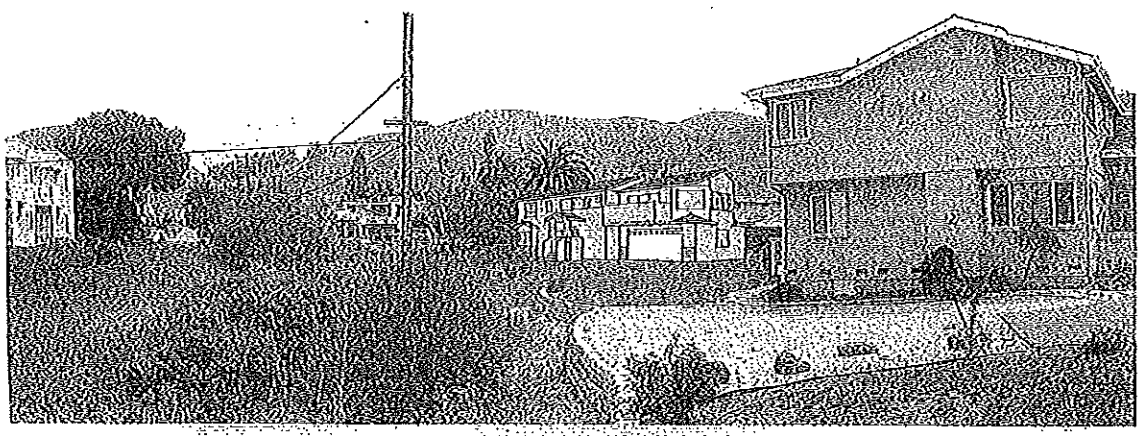
My understanding of ESH is that an area has this designation if plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem. The two letters from the CA Department of Game and Fish clearly indicate that there are no fish and wildlife resources that would be impacted by the development. In my opinion, the CA Department of Game and Fish would be the definitive source to determine if ESH habitat is on site or not based on a biological assessment.

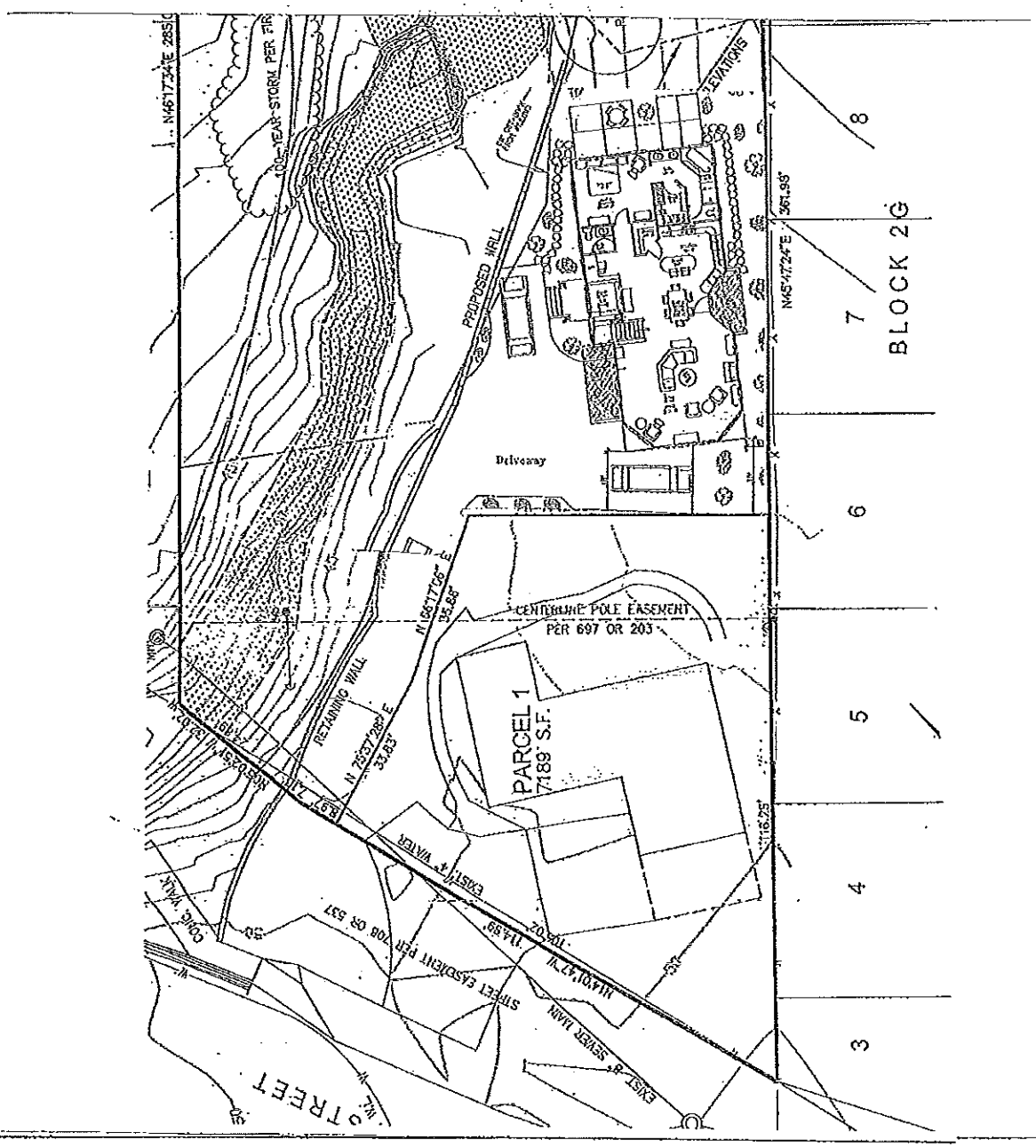
I have no comment on the application of the local ordinance rules.

William Kirchner, PWS
Chief NWI Branch
911 NE 11th Ave
Portland OR 97232
503 231-2070



RECEIVED
JAN 05 2008
City of Morro Bay
Public Services Department





100-YEAR STORM PER FIR
PROPOSED WALL
Driveway
CENTERLINE POLE EASEMENT
PER 697 OR 203
RETAINING WALL
PARCEL 1
7189 S.F.
EXIST. 4" WATER
STREET EASEMENT PER 708 OR 537
EXIST. 8" SEWER MAIN
CONC. WALK
STREET
BLOCK 2G
3
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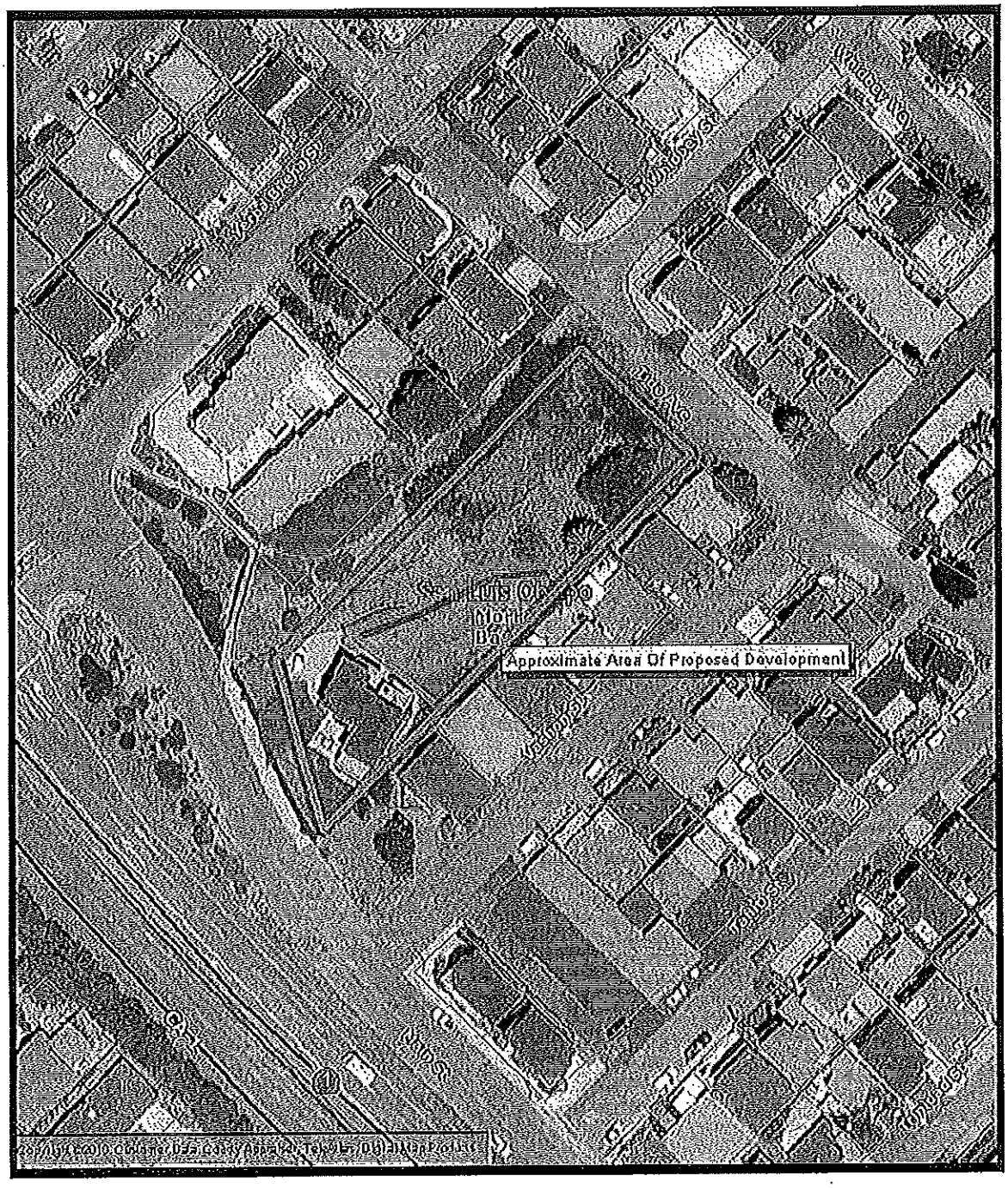


DIGITAL MAP PRODUCTS

3390 Main Street

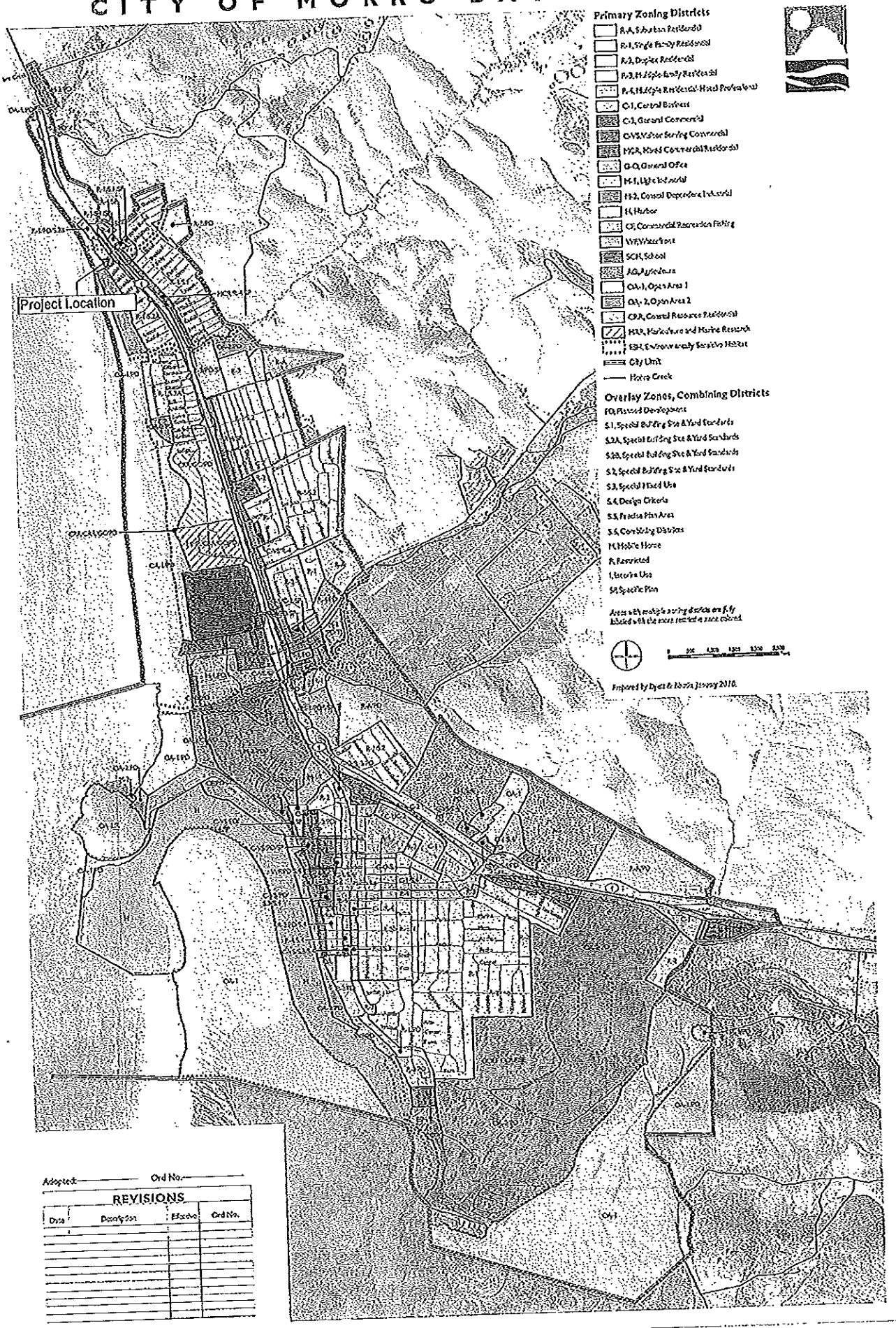
Proposed Medina Development

N

100 ft

CityGIS

CITY OF MORRO BAY ZONING



From: <Bill_Kirchner@fws.gov>
To: Kathleen Wold <kwold@morro-bay.ca.us>, Rob Livick <RLivick@morro-bay.ca.us>
CC: <Johnnie.Medina@gmail.com>
Date: 6/3/2010 1:20 PM
Subject: 3390 North Main Street

Kathleen and Rob:

Based on the information provided by the California Department of Fish and Game, the Corps of Engineers and site photos; it is my opinion that the area to be filled is not a wetland subject to regulatory jurisdiction under the Clean Water Act. The ephemeral creek does not have sufficient flows to create wetland hydrology (frequency and duration) on the area to be filled. The National Wetland Inventory data is for planning purposes only and should not be used for establishing jurisdiction for local, state or federal regulatory programs.

Should you have any questions please feel free to call me!

Bill

William Kirchner, PWS
Chief R1/8 NWI Branch
US Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232
503 231-2070 Fax 2050

From: <Bill_Kirchner@fws.gov>
To: "Rob Livick" <rlivick@morro-bay.ca.us>
CC: "Andrea Lueker" <ALueker@morro-bay.ca.us>, "Kathleen Wold" <KWold@morro-...
Date: 3/2/2010 2:36 PM
Subject: Re: 3390 Main Street Morro Bay - Medina Projects RE:Wetlands
Attachments: Main_3390_wetlands_email_copy.pdf; Main_3390_wetlands_email_copy_map.pdf

Rob, thanks for the phone call and the new information about the dominant plants being willows.

Although the National Wetland Inventory (NWI) map does not reflect a wetland (i.e., hydrology, hydrophytic plants and a hydric soil) at the site, there is a stream bed that can be seen on Google Earth. If you follow the stream bed through the neighborhood it eventually ties to the R4SBC polygon (i.e., Riverine intermittent stream bed, seasonally flooded) uphill from the property. Parts of this stream system are piped underneath roads and it's unclear where it goes from the property towards the ocean, presumably it's piped under Hwy 1.

As you are aware the NWI maps are not meant for jurisdictional purposes due to limitations associated with aerial photo interpretation. In this case if the stream bed has an ordinary high water mark then it may be considered a "water of the US" by the US Army Corps of Engineers. Given the information on the dominant plant, willow, I would recommend that a wetland determination be made by the Corps of Engineers. The land owner should contact Matthew Vandersande, Ventura Field Office of the COE. Mr. Vandersande has responsibilities for San Luis Obispo County and he can be reached at 805 585-2151.

Should you have any questions please call me!

Bill

William Kirchner, PWS
Chief R1/8 NWI Branch
US Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232
503 231-2070 Fax 2050

"Rob Livick" <rlivick@morro-bay.ca.us>
02/26/2010 12:14 AM

To
<bill_kirchner@fws.gov>

cc
<johnnie.medina@gmail.com>, "Andrea Lueker" <ALueker@morro-bay.ca.us>, "Kathleen Wold" <KWold@morro-bay.ca.us>, "Rob Schultz" <RSchultz@morro-bay.ca.us>

Subject
3390 Main Street Morro Bay - Medina Projects RE:Wetlands

Subject: Re: Medina Project
Date: Thursday, February 25, 2010 2:42 PM
From: Bill_Kirchner@fws.gov
To: Johnnie Medina <johnnie.medina@gmail.com>

Mr. Medina, below is what I sent to you!

Mr. Medina, as reflected on the attached map there are no wetlands shown on
your property located at 3390 North Main, Morro Bay CA.

(See attached file: 3390 N Main Morro Bay CA map30798.pdf)

Let me know if you need additional information!

Bill

William Kirchner, PWS
Chief NWI and GIS Unit
US Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232
503 231-2070 Fax 2050

Johnnie Medina
<johnnie.medina@gmail.com>
02/25/2010 02:39 PM

To <Bill_Kirchner@fws.gov>
cc
Subject Medina Project

My email.

Much thanks again.

From: Rob Livick
To: bill_kirchner@fws.gov
CC: johnnie.medina@gmail.com; Schultz, Rob; Wold, Kathleen; Lueker, Andrea
Date: 2/26/2010 12:14 AM
Subject: 3390 Main Street Morro Bay - Medina Projects RE:Wetlands
Attachments: Main_3390_wetlands_email_copy.pdf; Main_3390_wetlands_email_copy_map.pdf

Mr. Kirchner,

Mr. Medina was tasked with determining the existence of wetlands on his property at 3390 Main St, Morro Bay, Ca 93442. This was required because the map prepared for his development project labeled a portion of the site as wetlands. Mr. Medina and his engineer stated that that label was a typo and the Environmentally Sensitive Habitat Area (ESH) is a just a creek with riparian vegetation, not wetlands. This map has already gone to the City's planning commission with this label (wetlands), therefore we requested the determination prior to recommending a reduction in the ESH buffer, and also told Mr Medina he could have a private biologist make the determination. Mr. Medina requested that if he got a letter from a Federal Agency stating that it was not wetlands would the City accept their determination. City staff agreed with this request.

City staff would like to confirm that your attached email is indeed that determination and that you have concluded that the site in question does not contain wetlands.

Thank you for your time.

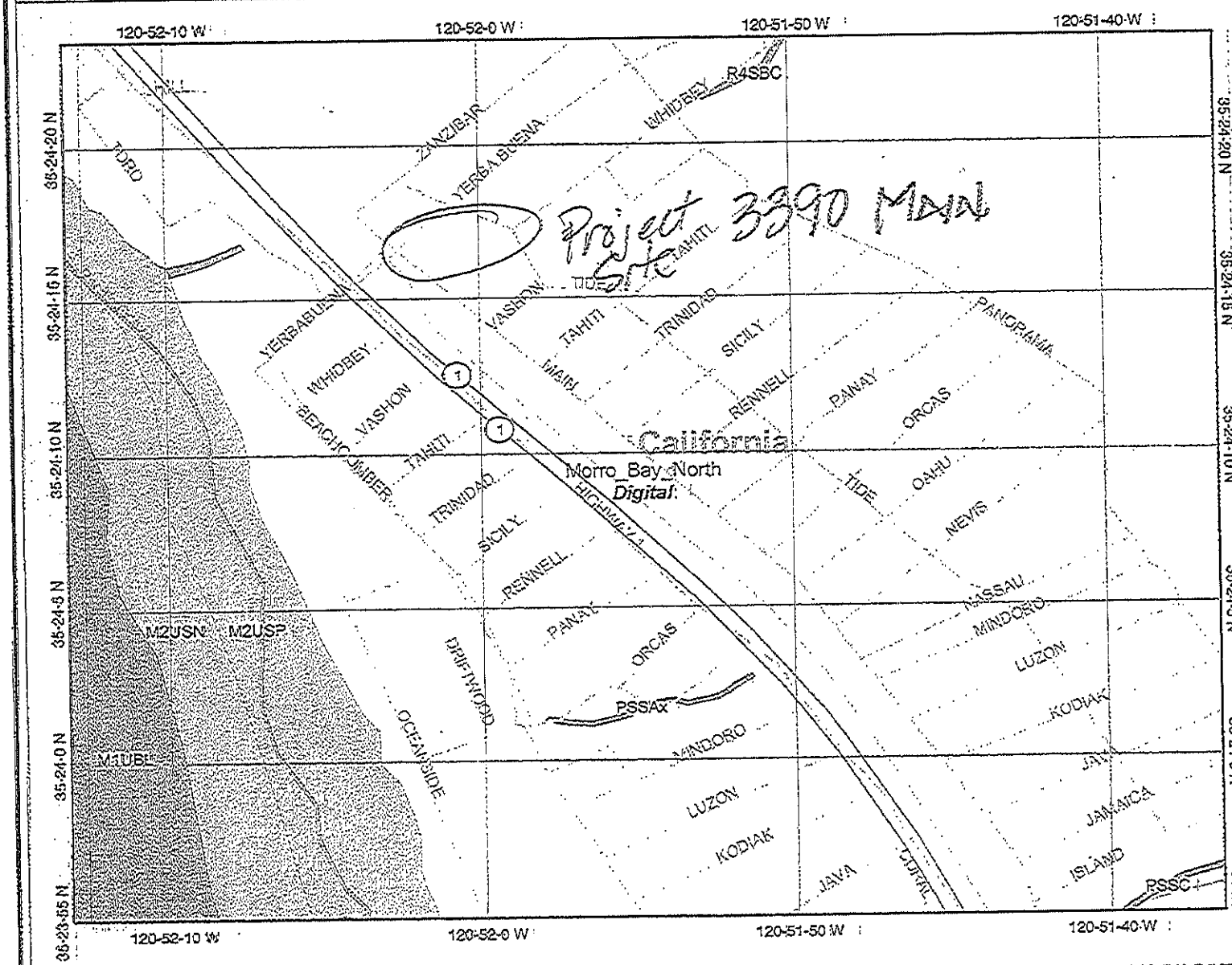
Sincerely,

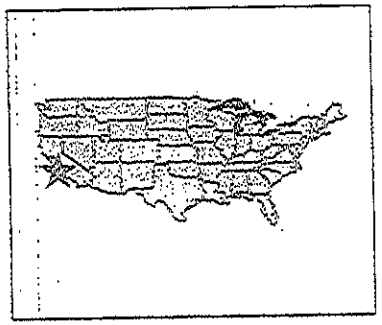
Rob

Rob Livick, PE/PLS - City Engineer
City of Morro Bay - Public Services
955 Shasta Avenue
Morro Bay, CA 93442

rlivick@morro-bay.ca.us
Phone: (805)772-6569
Fax: (805)772-6268

U.S. Fish & Wildlife Service National Wetlands Inventory





Legend

- Interstate
- Major Roads
- Other Road
- Interstate
- State highway
- US highway
- Roads
- Cities
- USGS Quad Index 24K
- Lower 48 Wetland Polygons
- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine
- Lower 48 Available Wetland Data
- Non-Digital
- Digital
- No Data
- Scan
- NHD Streams
- Counties 100K
- States 100K
- South America
- North America

Scale: 1:6,134

Map center: 35° 24' 9.1" N, 120° 51' 54.7" W

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

EPA Wetland Regulatory Authority

Regulatory Requirements

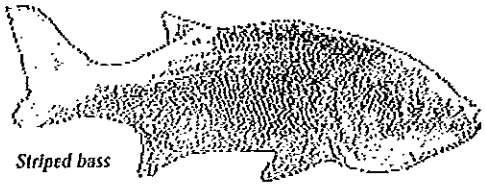
Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g. certain farming and forestry activities).

Wetlands subject to Clean Water Act Section 404 are defined as "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas."

The basic premise of the program is that no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded. In other words, when you apply for a permit, you must show that you have, to the extent practicable:

- Taken steps to avoid wetland impacts;
- Minimized potential impacts on wetlands; and
- Provided compensation for any remaining unavoidable impacts.

Proposed activities are regulated through a permit review process. An *individual permit* is required for potentially significant impacts. Individual permits are reviewed by the U.S. Army Corps of Engineers, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. However, for most discharges that will have only minimal adverse effects, a *general permit* may be suitable. General permits are issued on a nationwide, regional, or State basis for particular categories of activities. The general permit process eliminates individual review and allows certain activities to proceed with little or no delay, provided that the general or specific conditions for the general permit are met. For example, minor road activities, utility line backfill, and bedding are activities that can be considered for a general permit. States also have a role in Section 404 decisions, through State program general permits, water quality certification, or program assumption.



Striped bass

Agency Roles and Responsibilities

The roles and responsibilities of the Federal resource agencies differ in scope.

U.S. Army Corps of Engineers:

- Administers day-to-day program, including individual and general permit decisions;
- Conducts or verifies jurisdictional determinations;
- Develops policy and guidance; and
- Enforces Section 404 provisions.

U.S. Environmental Protection Agency:

- Develops and interprets policy, guidance and environmental criteria used in evaluating permit applications;
- Determines scope of geographic jurisdiction and applicability of exemptions;
- Approves and oversees State and Tribal assumption;
- Reviews and comments on individual permit applications;
- Has authority to prohibit, deny, or restrict the use of any defined area as a disposal site (Section 404(c));
- Can elevate specific cases (Section 404(q));
- Enforces Section 404 provisions.

U.S. Fish and Wildlife Service and National Marine Fisheries Service:

- Evaluates impacts on fish and wildlife of all new Federal projects and Federally permitted projects, including projects subject to the requirements of Section 404 (pursuant to the Fish and Wildlife Coordination Act); and
- Elevates specific cases or policy issues pursuant to Section 404(q).

Manual for Identifying Wetlands

The U.S. EPA and U.S. Army Corps of Engineers use the 1987 *Corps of Engineers Wetlands Delineation Manual* to identify wetlands for the CWA Section 404 permit program. The 1987 manual organizes the environmental characteristics of a potential wetland into three categories: soils, vegetation, and hydrology. The manual contains criteria for each category. Using this approach, an area that meets all three criteria is considered a wetland.

Wetlands on Agricultural Lands

Farmers who own or manage wetlands are directly affected by two important Federal programs—Section 404 of the CWA and the Swampbuster provision of the Food Security Act. The Swampbuster provision withholds certain Federal farm program benefits from farmers who convert or modify wetlands. The U.S. EPA, U.S. Army Corps of Engineers, U.S. Department of Agriculture, and U.S. Fish and Wildlife Service have established procedures to ensure consistency between the programs. Many normal farming practices are exempt from Section 404.

Water lilies

The Wetland Fact Sheet Series

EPA843-F-04-001
Office of Water

- Wetlands Overview
- Types of Wetlands
- Threats to Wetlands
- Wetland Restoration
- Funding Wetland Projects
- Functions and Values of Wetlands
- Teaching About Wetlands
- Wetland Regulatory Authority
- Wetlands Compensatory Mitigation
- Benefits of Wetland Monitoring

For more information, call EPA's Wetlands Helpline at 1-800-832-7828

Wetland Resources

On the Internet

EPA's Wetlands Website ..... www.epa.gov/owow/wetlands/regs/

Section 404 of the Clean Water Act ..... www.epa.gov/owow/wetlands/laws/

Wetland Delineation Manual ..... www.wes.army.mil/el/wetlands/wlpubs.html

U.S. Army Corps of Engineers Regulatory Program ..... www.usace.army.mil/inet/functions/cw/cecwo/reg/

U.S. Army Corps of Engineers' Waterways Experiment Station Environmental Laboratory ..... www.wes.army.mil/el/wetlands/wetlands.html

Environmental Law Institute ..... www.eli.org

In Print

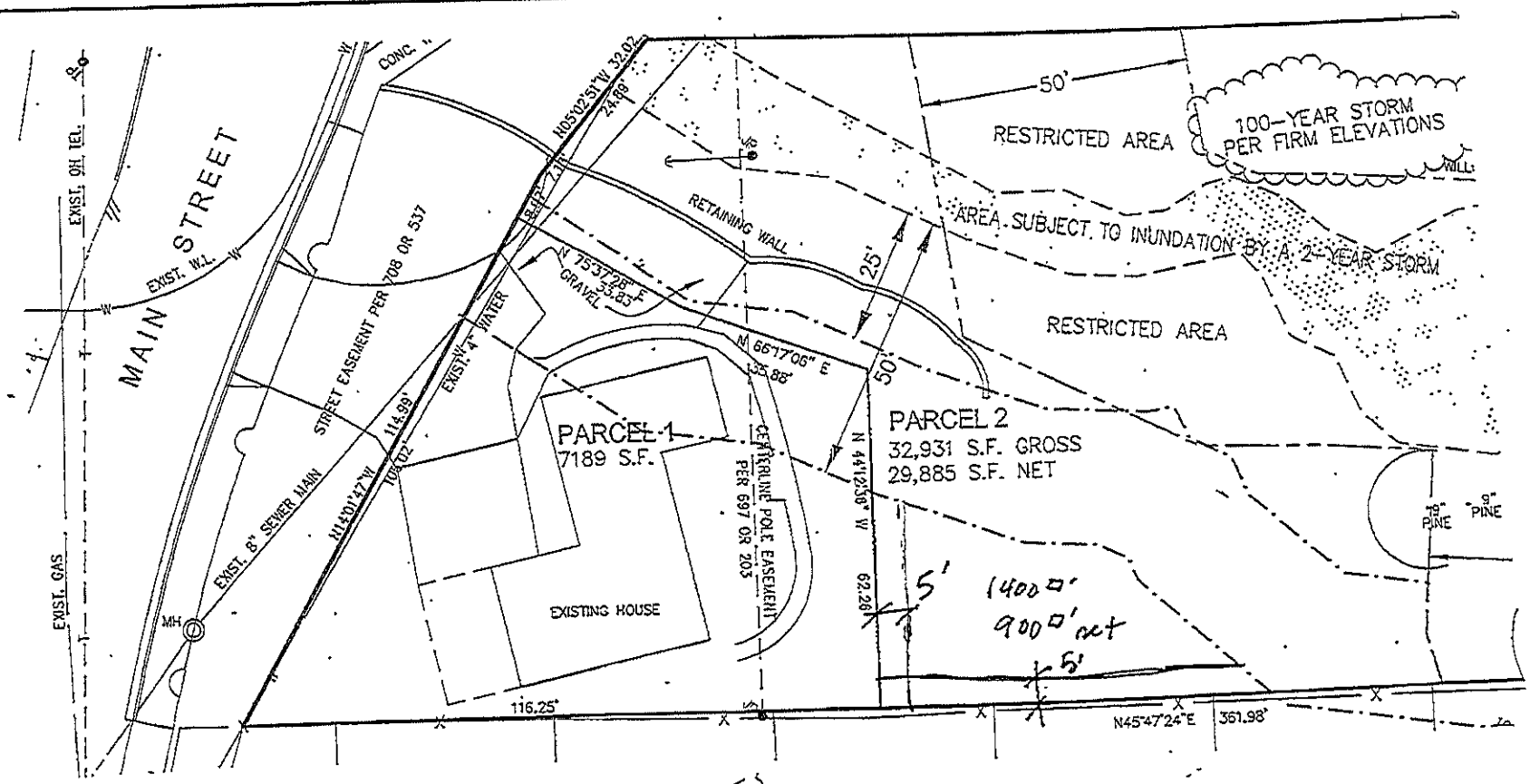
America's Wetlands: Our Vital Link Between Land and Water. For a copy, order from EPA's publications web site at http://yosemite.epa.gov/water/owrccatalog.nsf or call the EPA Wetlands Helpline at 1-800-832-7828.

Wetlands Deskbook, 2nd Edition, Margaret N. Strand. Available from the Environmental Law Institute. Call 1-800-433-5120; fax your request to (202) 939-3868; or e-mail to orders@eli.org.

Our National Wetland Heritage: A Protection Guide, 2nd Edition, Jon A. Kusler, Ph.D., Executive Director, Association of State Wetland Managers. Available from the Environmental Law Institute. Call 1-800-433-5120; fax your request to (202) 939-3868; or e-mail to orders@eli.org.

EXHIBIT P

GRAPHIC SHOWING ESH SETBACK AND REMAINING BUILDING PAD



GRAPHIC SCALE

30 0 15 30 60 120

(IN FEET)
1 inch = 30 ft.

SETBACK EXHIBIT

WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130
SAN LUIS OBISPO, CA., 93401
(805) 541-2394

RECEIVED
JUL 0 2 2010

EXHIBIT Q

APPLICANT'S LETTER REGARDING BUFFER REDUCTION JUSTIFICATION

3390 North Main Street
Morro Bay, CA 93442
05 July 2010

Mr. Rob Livick
Public Works Advisory Board
955 Shasta Avenue
Morro Bay, CA 93442

Mr. Livick,

Per your request this is my formal request and explanation in regards to my proposed buffer reduction at my project site;

There are policies within the City's Local Coastal Plan that address the buffering setbacks and also the reductions allowed in ESA areas. Specifically the reductions are allowed when the parcels would be rendered unusable for its designated use. Furthermore, the LCP allows for buffer reductions to 25 feet within an urban area. This site is located within an urban area and should be considered as such.

This determination would be consistent with other properties in the same zoning designation that have been constructed near this site and other sites within the City of Morro Bay. With the inclusion of project conditions, his site is suitable for the development proposed and will provide the necessary buffering of any of the habitat area. The access way to the lot will also follow regulations as outlined within the City's Zoning Ordinance.

Thank You,

Johnnie Medina

RECEIVED
JUL 07 2010
City of Morro Bay
Public Services Department

EXHIBIT R

ADDITIONAL MATERIALS SUBMITTED BY THE APPLICANT ON JULY 14, 2010

RECEIVED

JUL 14 2010
City of Morro Bay
Public Services Department

Petition to allow Johnnie Medina: Terri Orton of Westland Engineering, Inc. agent.
Building on Parcel mb07-0232 3390 Main Street Morro Bay 93442 File Number
SOO-089/CPO-276.

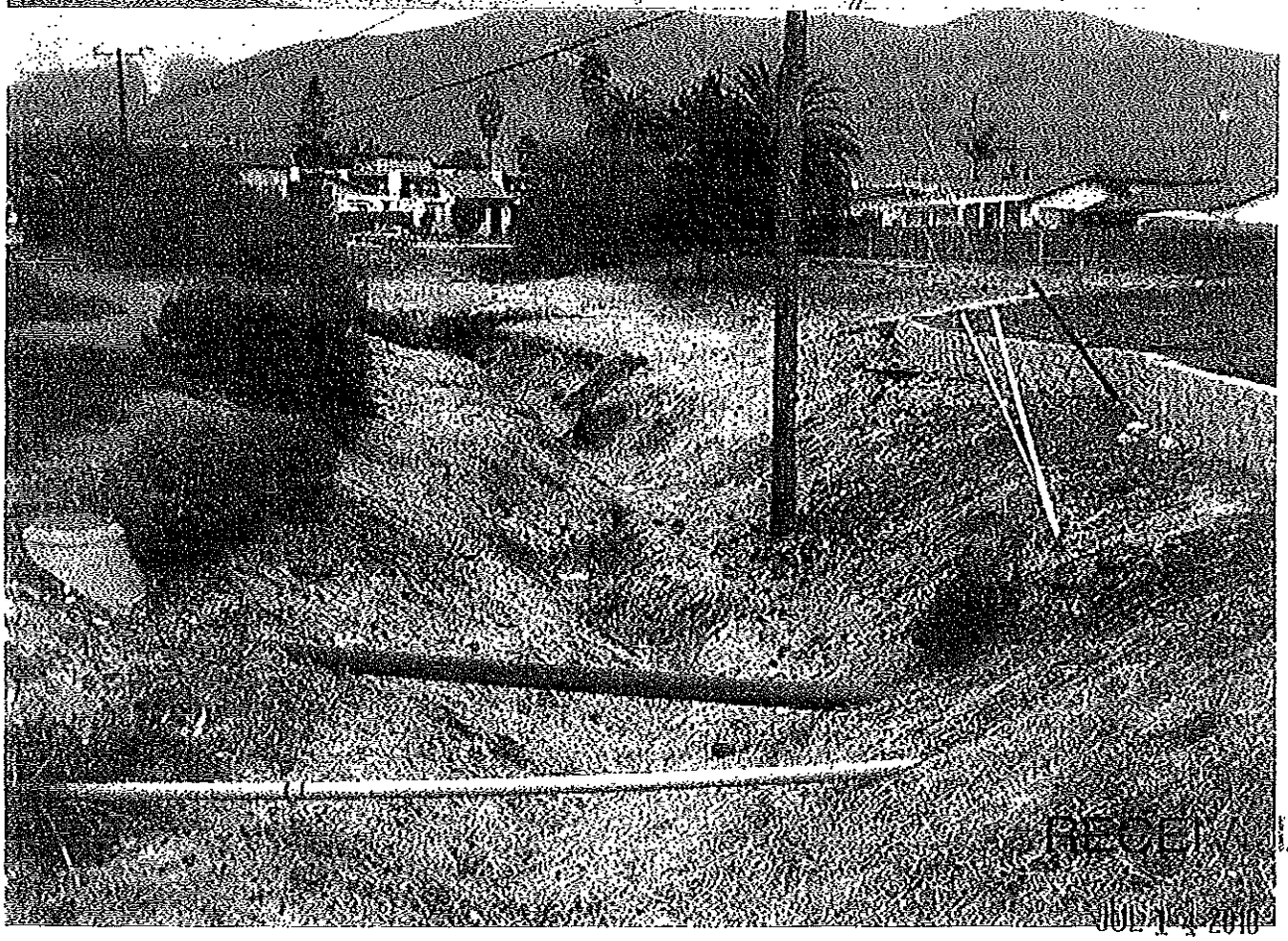
Name	Address	Phone
CHRIS KNITTEL	421 BAKEMAN LN.	(805) 704-4509
Hunter Garris	1220 bond st	(805) 550-9441
John Tolmean	1447 7TH ST	(805) 528-4156
[illegible]	160 Cecchetti Rd	805 489-5611
Brian Federico	3695 Lawnwood SLO	805 550-8145
Thomas Walton	1075 Muscat Ct Templeton	805 434 0734
Jan Rueda	3860 S. Higuera St. #185 San Luis Obispo	805-541-1948
[illegible]	12840 SANTA LUCIA RD ATASCADERO CA 93422	805-703-9204
[illegible]	790 LOMA VISTA S.M	805 7056860
CENEN SISON	70 Villa Ct. Pismo Beach	773-4956
Steve Zak	749 Mira Vista Dr. Los Osos	805 528-1408
James Kleiman	1501 Killer Cyn RD, Paso Robles	(805) 610-1616
GREGORY L. KROTHE	8942 PALOMAR AVE. ATASCADERO	805 984 2964
RYAN MANUEL	1805 S. MIRASOL WAY ATASCADERO	(805) 471-3860
CHRIS CARBERO	948 SEABRIGHT AVE.	(805) 709-6904
Keith Pedersen	1261 Messina Ct. Grover Beh.	(805) 441-4523
DALE SYLJESTER	765 MESA VIEW DR ARROYO GRANDE CA	805-709-6053
KARL GOLDSMITH	1436 W TRIPEKA SANTA MARIA	354-3901

Carolyn Johnson	9450 Santa Lucia Atascadero, CA 93422	(805) 610-2731
CHRIS MCGREGOR	3150 ROCKVIEW PL SAN LUIS OBISPO, CA 93401	(805) 704-9489
CHRIS Wallace	1500 W. OAK AVE LOMPOC CA 93436	805-286-8786
Sergio Laguna	8220 Curbaril Ave Atascadero, Ca 93422	(805) 423-3430
Scott McKinney	10060 Atascadero Ave, Atascadero CA 93422	805 400-9769
Josh Brown	1905 Mesa Rd., Paso Robles, CA 93446	(805)296-2223
Terri Ose	434 N. 2nd St Grover Beach 93433	(805) 5503421
[illegible]	2722 Nivena Pl Santa Maria, CA 93455	805-459-6632
[illegible]	2700 Cienaga Sp 45 Oceano, CA 93445	805 801-1261
Tina Williams	8105 Warren Rd Paso Robles, CA 93446	805-610-2609
Vickie McNally	183 S Elm St Arg Ca 93420	805 431 2717

Petition to allow Johnnie Medina: Terri Orton of Westland Engineering, inc. agent. Building on Parcel mb07-0232 3390 Main Street Morro Bay 93442 File Number SOO-089/CPO-276.

Name	Address	Phone
Pauline Stansbury	145 Java st. Morro Bay	772 4258
[illegible] Stansbury	145 Java St. Morro Bay	772-4258
[illegible]	390 Vashon St. Morro Bay	772-7508
[illegible]	456 Panay St. Morro Bay	772-3166
Nolan Kirkley	456 Panay St. Morro Bay	772-3166
Carlo Galvez	1872 6 street Los Osos	(805) 234-6506
Charlie Galvez	1872 6 street Los Osos	(805) 234-6586
Nitza Galvez	1872 6 street Los Osos	(805) 234-6587
[illegible]	1072 9th St Los Osos	(805) 534-9551

OCT 2002



RECEIVED
JUL 14 2010
City of
Public Services

I clean and cut vegetation through the right of way of Whidbey, Tide, and partially in through the back land area of Tide. When the Willows started growing back on Tide I cut them back.

Walter K Rosser

12JUL2010

RECE

JUL 1 4 2010

City of
Public Service

EXHIBIT S

MATERIALS SUBMITTED BY THE CITIZENS GROUP OPPOSED TO THE PROJECT

RECEIVED

JUL 14 2010

City of Morro Bay
Public Services Department

TO: MORRO BAY PLANNING COMMISSION

RE: 3390 MAIN ST., MB

July 14, 2010

PETITION ENCLOSED- IS NOW UP TO *120 SIGNATURES* OF CONCERNED CITIZENS OPPOSED TO SUB-DIVIDING CREEK AND ESHA.

WE ARE REQUESTING DOCUMENTATION THAT THE APPLICANT HAS MEET ALL THE CONDITIONS SET BY THE PLANNING COMMISSION AT LAST YEARS JULY 20, 2009 MEETING.

ATTACHED ARE PICTURES DOCUMENTING THE FOLLOWING:

- WILLOWS ALONG BOTH SIDES OF CREEK PRIOR TO MEDINAS BUILDING HOUSE

-2009- WILLOWS COMPLETELY GONE ON SOUTH CREEK BANK BY MEDINAS HOUSE.

-TRASH DUMPED IN ESHA AFTER MEDINAS PROMISED TO ENHANCE THE AREA.

-AUG 2009- WILLOWS STARTING TO GROW BACK.

-JULY 2010- WILLOWS COMPLETELY GONE AGAIN. (WILLOWS ON OTHER SIDE OF CREEK ARE GROWING AND ABOUT 12 PLUS FEET TALL- EVIDENCE THAT WILLOWS ON MEDINAS AREA HAVE BEEN TAMPERED WITH AND ARE NOT ABLE TO GROW.)

-2010- MEDINAS OLD SWING SET AND LADDER ABANDONED IN ESHA WILLOWS.

-OCT 2009- DOE AND FAWN FEEDING ON CREEK BANK.

THE APPLICANTS, THE MEDINAS HAVE SHOWN BLATANT DISREGARD FOR THE ENVIRONMENTALLY SENSITIVE HABITAT AREA, AS EVIDENCED IN THE PICTURES. USING THE ESHA AS A TRASH DUMP, KILLING THE PINE TREES AND WILLOWS ON THEIR SIDE OF THE CREEK.

WE THE UNDERSIGNED PETITIONERS DO NOT WANT THIS ENVIRONMENTALLY SENSITIVE HABITAT AREA DEVELOPED, AND DO NOT WANT ESHA BORDERS CHANGED. WE ARE CONCERNED WITH DRAINAGE AS THIS NO-NAME CREEK DRAINS DIRECTLY INTO THE OCEAN. THERE ARE RED LEGGED FROGS IN THE AREA, AS WELL AS DEER, RACOONS, SKUNKS, AND BIRDS, CONTRARY TO THE BIOLOGIST HIRED BY MEDINAS.

June 18, 2009

City of Morro Bay
Public Notice of Availability
955 Shasta Ave
Morro Bay, CA 93442

RE: Case#S00-0889/CPO-276 Medina Parcel Map (MB 07-0232)
Public meeting July 20, 2009 at 6 pm

To whom it may concern,

We are residents at 300 Vashon, Morro Bay, CA and are concerned for our property. We are unable to attend in person the meeting scheduled, but want to be heard.

We are contacting the City in writing per our notice dated 6-9-09. We are **NOT in favor** of this parcel being Subdivided to create a second lot for location 3390 Main Street, Morro Bay, CA. We feel the land in question was originally set up to be a natural drainage point for excess rain/water run off. Allowing another structure on the parcel would really **defeat the natural flow from our homes.** The house's directly beside the parcel in question would really feel the impact of the natural flow of rain/water run off, as the parcel at 3390 was built above the original land level, so the water now drain's back to the area of Vashon, not into the ravine, which cause's flooding.

The city manager has come out to our homes at the corner of Main/Vashon and did an assessment that concluded that we could flood in the invent of a hard rainy season, due to the lack of drainage when the house at 3390 Main was built.

We do NOT want this parcel subdivided.

Thank you,

Jeff & Stacy Shinoda
300 Vashon
Morro Bay, CA 93442
APN: 065-041-22

PETITION TO STOP THE SUB-DIVISION AND FURTHER BUILDING OF THE CREEK AREA BEHIND 3390 MAIN ST.

TOTAL SO FAR: 120 signatures

NAME [illegible]	ADDRESS 3351 KULHIDBEY WAY, M.B.
NAME Victoria Fitty	ADDRESS 414 Yerba Buena
NAME Diane [illegible]	ADDRESS 428 Yerba Buena
NAME Tamara Cross	ADDRESS 701 St Mary Cay.
NAME JOE BOWLAND	ADDRESS 701 St MARY
NAME Bill George	ADDRESS 701 St Mary
NAME Ralph Seidel	ADDRESS 428 Yerba Buena
NAME [illegible]	ADDRESS [illegible]
NAME Lisa J. Bohanon	ADDRESS 360 Chimney
NAME [illegible]	ADDRESS [illegible]
NAME	ADDRESS
NAME	ADDRESS
NAME	ADDRESS
NAME	ADDRESS
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NAME	ADDRESS
NAME	ADDRESS

Save our green belt!

Petition to stop the building of a single-family residence at the property of 3390 Main st.

TOTAL: 108 signatures

86	Name Jolene Davisson	103 Name Bill Murray	Name
	Address 2790 Main St	Address 1650 Main	Address
87	Name OZZIE CAMUS	104 Name Mike K. O'Billy	Name
	Address 3025 SANDALWOOD	Address 498 B Hill St.	Address
88	Name Pamela Hood	105 Name Yarmin Maldonado	Name
	Address 1299 Los Olivos #17	Address 361 Jamaica	Address
89	Name Vince Cardenas	106 Name Leon Dallete	Name
	Address 560 Kings Ave.	Address 485 Shasta Ave	Address
90	Name PHYLLIS BALSAM	107 Name Amber Daugherty	Name
	Address 3025 SANDALWOOD	Address 485 Shasta Ave	Address
91	Name Margaret Cam	Name Michele Garcia 108	Name
	Address 3025 SANDALWOOD	Address 510 Marina St.	Address
92	Name mike mullikin	Name	Name
	Address 2306 Mesa Vista Ct	Address	Address
93	Name J. HALE	Name	Name
	Address 470 JAMAICA	Address	Address
94	Name ROBERT SMITH	Name	Name
	Address 321 ORCAS	Address	Address
95	Name Marilynn Brandmeyer	Name	Name
	Address 521 Zanzibar St	Address	Address
96	Name Frank C. Gutierrez	Name	Name
	Address 2017 Sunset Ave.	Address	Address
97	Name Anthony [illegible]	Name	Name
	Address 330 Vashon St	Address	Address
97	Name Rene Grogan	Name	Name
	Address 340 Vashon St	Address	Address
98	Name KUNIO SHIBATA	Name	Name
	Address 331 VASHON ST	Address	Address
99	Name Andy Batty	Name	Name
	Address 473 D St	Address	Address
100	Name Beth Ann Shrouk	Name	Name
	Address P.O. Box 6485	Address	Address
101	Name R. Tepshay	Name	Name
	Address 390 Nevis	Address	Address
102	Name Thomas Moore	Name	Name
	Address 1472 11th St.	Address	Address

Save our green belt!

Petition to stop the building of a single-family residence at the property of 3390 Main st.

	Name KEVIN FOELKER	53	Name Maggie Woods	71	Name Richard Dorflinger
	Address 387 Vashon St. MB		Address 630 Quintana		Address 340 Tahiti St
38	Name Kim Kaufman	54	Name Tiruko Shibata	72	Name Marcy Dorflinger
34	Address 451 Whidbey St.		Address 331 VASHON ST.		Address 340 Tahiti St
39	Name Craig Kaufman	55	Name Peter Saiki	73	Name Sonia Gayo
	Address 422 Kodiak St.		Address 2659 Main St.		Address 175 Sandpiper La
40	Name Richard M'Allen	56	Name Jim Nance	74	Name Linda Thayer Allen
	Address 400 Whidbey		Address 250 Dumar		Address 340 Sicily
41	Name Nancy M'Allen	57	Name Alice Bricker	75	Name Russell R Allen
	Address 400 Whidbey		Address 477 Kern M.B.		Address 340 Sicily
42	Name DAN JAMES	58	Name Maggie Mathis	76	Name Lisa Kontilis
	Address 327 YERBA BUENA		Address 2130 Main St		Address 28 20th
43	Name CAVAN HADLEY	59	Name [illegible] Mathis	77	Name Holly Rodriguez
	Address 381 Tahiti St.		Address 2130 Main St		Address 370 Vashon St. MB, CA
44	Name Erin Hadley	60	Name Dion Hellwor	78	Name Rachel Miller
	Address 381 Tahiti St.		Address 370 Vashon St		Address 671 Fresno Ave
	Name Michele Arete	61	Name [illegible]	79	Name Nicole Esparza
	Address 361 Vashon St.		Address 351 Vashon St		Address 900 B Napa Ave
	Name LAURA MOUNCE	62	Name MIKE ELBRACHT	80	Name Kailey Langston
	Address 330 VASHON ST		Address 1182 Pacific Blvd		Address 1870 Sunny Hill
45	Name Paul Willis	63	Name Barbara Volpa	81	Name Brett Ash
	Address 500 A [illegible]		Address 2970 Cedar Ave		Address 2740 Ironwood
46	Name Don Willis	64	Name Frank Volpa	82	Name JACK GRIFFITH
	Address Poo box 118 Morrow		Address 2970 Cedar ave		Address 2680 Ironwood
47	Name KIRK KONTILIS	65	Name [illegible]	83	Name [illegible]
	Address 28 20th St		Address 2988 Birch Ave		Address 2680 Ironwood
48	Name Violet Sugii	66	Name [illegible]	84	Name Jeff Shinopa
	Address 1150 Monterey Morro Bay		Address 2988 Birch Ave		Address 300 Vashon
49	Name Luella Hershey	67	Name Adeliza Norton	85	Name [illegible]
	Address 1150 Monterey Morro Bay		Address 370 Yerba Buena St		Address 351 Vashon
50	Name BENNER HARRIS	68	Name Cortney Wagner		Name
	Address 2461 KOA AVE		Address 441 Oahu St		Address
51	Name LORI OLIVEIRA	69	Name Bill Tregler		Name
	Address 281 SHASTA		Address 441 Oahu St.		Address
52	Name LEROY STOCK STELL	70	Name Fred W [illegible]		Name
	Address 1900 SUNSET		Address 2426 Reno Ct.		Address

	Name	Address	Phone
31	Roger Haas	175 Andros St Morro Bay	772-3358
32	[illegible]	371 Vashon Morro Bay	7487645
33	Dorothy Tisola	370 Vashon Morro Bay	(818) 219-0445 cell
34	Anne Schoennauer	390 Vashon St Morro Bay	772-7508
35	Lucy Massey Lucy Massey	3348 Tide Ave, Morro Bay	225-1033
36	Wayne Benham	3334 Tide Ave Morro Bay	772-8174
37	Catherine Bierna	340 Vashon St Morro Bay	None
~~38~~			
~~39~~			
~~40~~			

772-7894

13 Ann Caffey 350 Vashon, Morro Bay CA

14 Bill Bush 195 Formosa St, M.B. CA (215-0573)

15 Ray Boone 371 Whiskey St

16 FOELKER KEVIN 387 Vashon St.

17 Hazel McKibbin 311 & Main. Morro Bay CA.

18 Glenn Sparks 46 10th St Cayucos

19 Tyler Sites 470 Island

20 Hazie Stollmeyer 3310 N. Main St 772-2702

21 ~~Kevin Stollmeyer 320 Toledo~~ ~~772-2750~~

22 Davik Stollmeyer 340 Widbey 772-2702

23 Millie G Van Dusen 772-5334

24 Oliver Marks 5425 Olmedo 801-8658

25 Gary H. Grotte 1956-9th St L.O. 801-0097

26 [signature] JANE MASTERSON 3350 MAIN 805 772-4013

27 Amy Foosler 772-1302

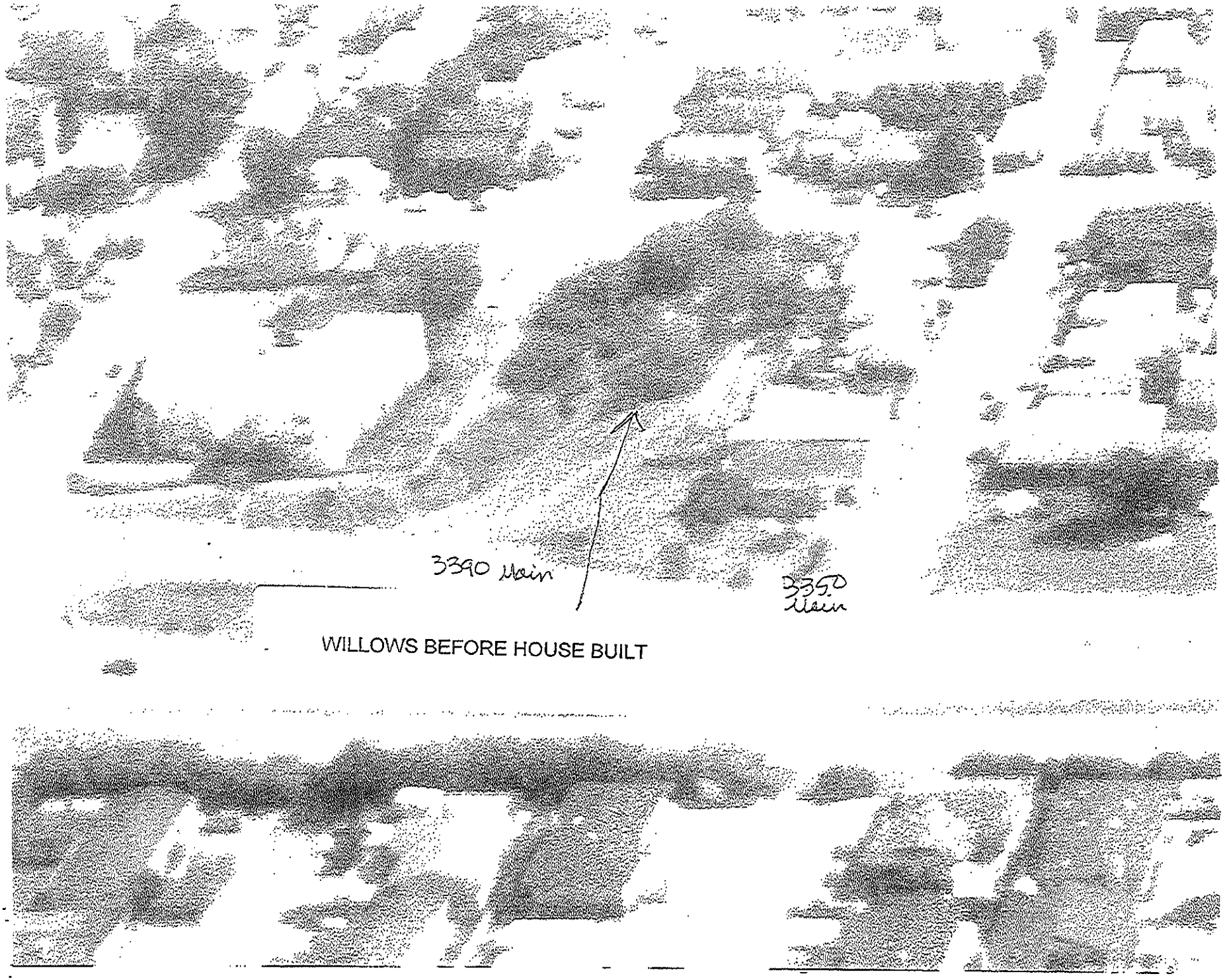
28 [signature] 772-9123

29 [signature] 771-9320

30 [signature] 298-6252

Petition to stop Johine Medinia: Terri Orton of Westland engineering, inc agent. Building on Parcel mb07-0232 3390 Main street Morro Bay 93442 Case # s00-089/cpo-s70

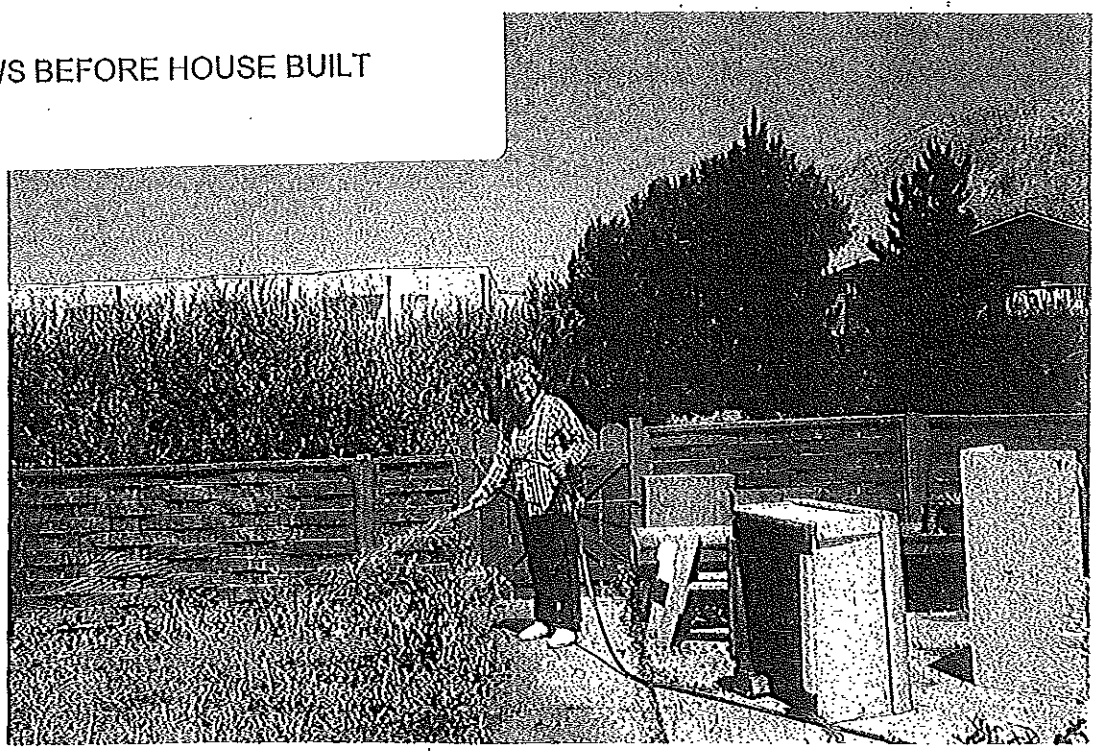
name	address	phone#
1 Anthony Tiglio	330 VASHON M-B	805-294-0250
2 Laura Maurice	330 Vashon St. M-B	805 294-3200
3 Ronni Gates	340 Vashon St. M-B	661-342-5385
4 Jeff Gates	340 Vashon St M-B	661 619 9614
5 Paul Willis	POBOX 116 MB (805) 459 8128	
6 Don Willis	500 Atascadero Rd	805 772 5867
7 Marge Paregian	306 Yerba Buena	772-4232
8	351 Yerba Buena	1683
9 Michele Arete	361 Vashon	234-3550
10 Daniel Puett	411 Java Street	(805) 440-7761
11 Joy Pickell	305 Yerba Buena	772-5505
12 Dill Chamish	371 Vashon	748-8666



WILLOWS BEFORE HOUSE BUILT

2000- WILLOWS BEFORE HOUSE BUILT

Willows BEFORE



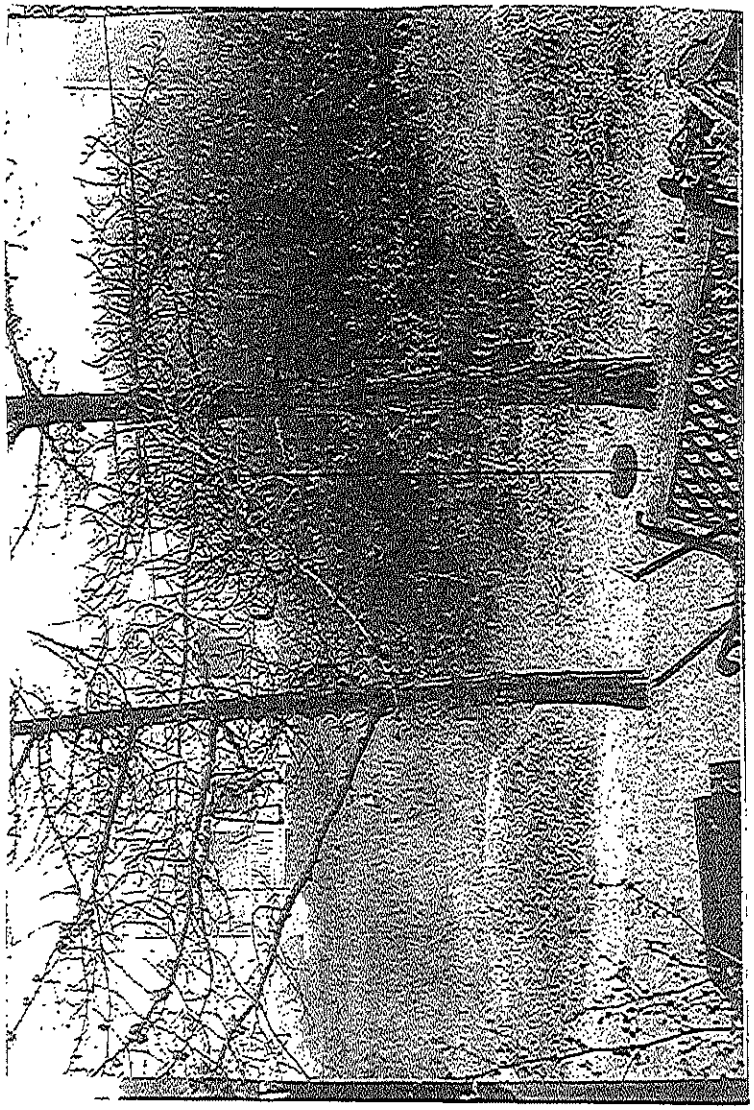
2009- WILLOWS GONE BY MEDINAS HOUSE

Willows After

July 2009

JULY 2009- TRASH DUMPED BY MEDINAS IN ESHA, AFTER THEY PROMISED TO ENHANCE THE AREA.

2010- MEDINAS OLD SWING IN ESH WILLOWS



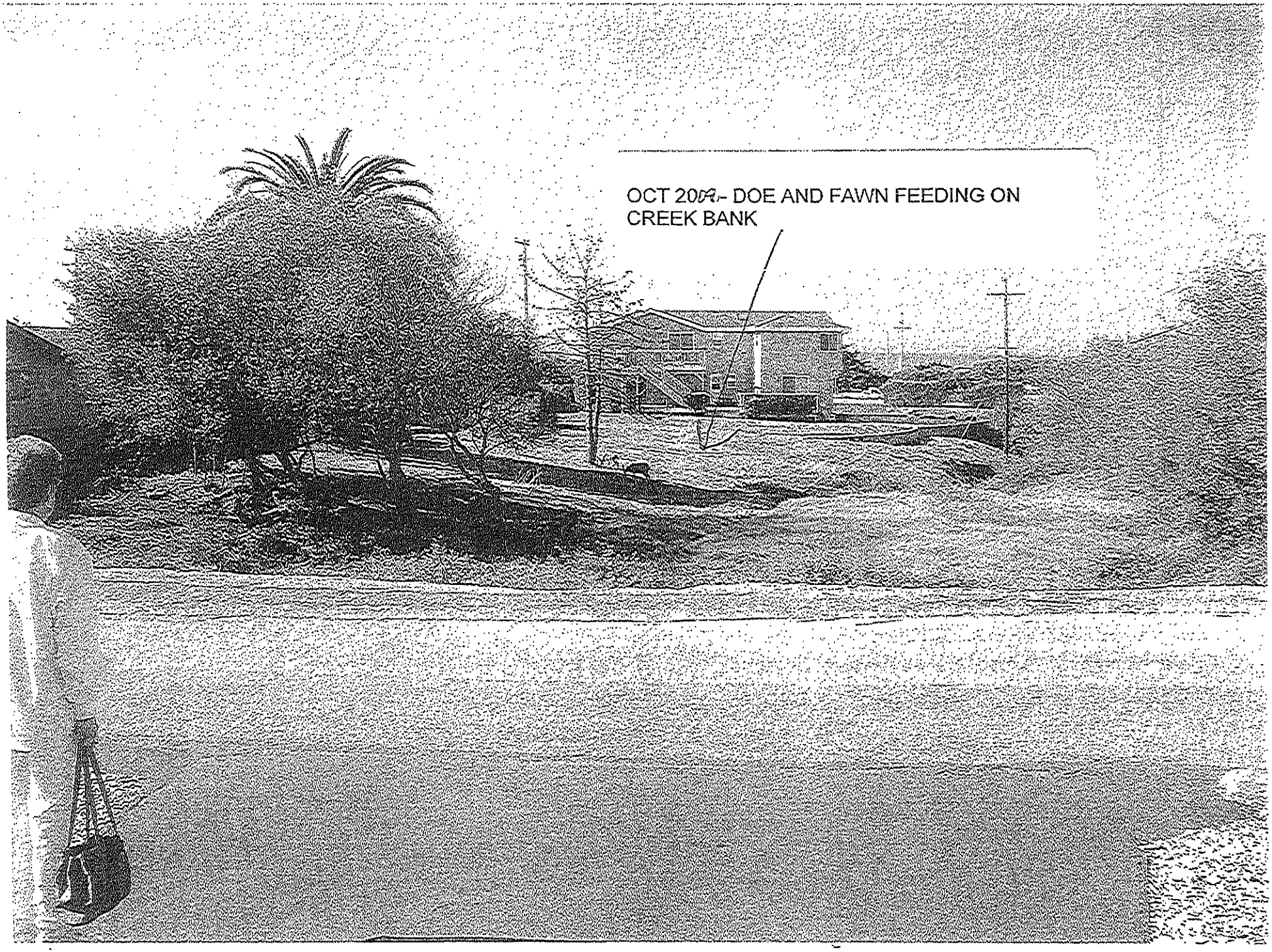

OCT 2009- DOE AND FAWN FEEDING ON
CREEK BANK

EXHIBIT T

ADDITIONAL MATERIALS SUBMITTED BY THE APPLICANT ON JULY 15, 2010

RECEIVED

JUL 1 5 2010

City of Morro Bay
Public Services Department

WESTLAND ENGINEERING, INC.

CIVIL ENGINEERING
LAND SURVEYING
LAND PLANNING

3480 Higuera Street, Suite 130 ¤ San Luis Obispo, CA 93401
Telephone: (805) 541-2394 ¤ Fax: (805) 541-2439

SEPTEMBER 10, 2009 RESPONSE TO CITY'S COMMENTS FOR TENTATIVE PARCEL MAP MB 07-0274

ISSUES

1. Low Impact Development (LID) Compliance.
2. Disruption of historical drainage pattern from adjacent (southeasterly) properties.
3. Project Structure Elevation.

LOW IMPACT DEVELOPMENT

ORDINANCE
Reference: Title 14, Chapter 14.48 of the City Code
The referenced City Code requires:

- BMP treatment for all projects with 2500 square feet of impervious surface or more.
- Peak Flow treatment for 28% of a 2-year storm event and volumetric treatment of 1" / 24 hour events.
- No significant increases in downstream flows. Significant being defined as increases in excess of 5%. Roof areas being exempt.
- Erosion control plans are required.

Said ordinance has been amended for this project by the following verbiage from the interim City ordinance:

- Development projects that exceed 500 square feet of new or redeveloped impervious area will be required to provide water quality treatment for the runoff resulting from a two year storm event either through retention (infiltration) or an alternative Water Quality BMP such as biofiltration, mechanical filtration or hydrodynamic separation.
- Additionally, these same development or redevelopment projects that drain to a natural creek, swale or City storm drain either directly or indirectly will be required to provide peak runoff rate control for the runoff resulting from the ten through hundred year rainfall events. For the purposes of stormwater management the pre-construction condition shall be that of native soil and vegetation.
- Drainage analysis, runoff calculations, design and justification of drainage facilities shall be preformed by a Registered Civil Engineer and submitted with the building permit application. The responsible Soils Engineer shall review all proposed infiltration or storage systems for site suitability.

EXISTING CONDITIONS

See Appendix A which shows the flood elevations as determined by FEMA.

STORM FLOWS

Three methods were used to determine the flows: The Rational Method (Q=CIA), Wallace Group's Report, and FEMA. The determination of the flows for the various storms was by interpolation based upon average intensity, where necessary.

PROJECT

The proposed house and driveway add approximately 2750 square feet of driveway. Approximately 450 square feet of the driveway would be built over the existing gravel driveway for a net increase of 2300± square feet. The house will add approximately 1750 square feet of roof plus the porch and decking. The proposed improvements are shown on a annotated portion of the Tentative Map for the project in Appendix B.

Creek Flow at Main Street

Interval	Intensity In/Hr	Rational * cfs	Wallace cfs	FEMA (at Tide) cfs	Used cfs
2-Year	0.95	65-75	60**	60**	65
10-Year	1.60	105-130	101	100	100
50-Year	2.30	230-290	175**	240	240
100-Year	2.50	250-315	191	340	315

*=CIA=A = Coefficient of Run-Off – 40%-50%, times Intensity, times Area – 275 acres

** = Calculated

Estimated flow increases at upstream edge of proposed house. Total Creek Flow
(The tributary area at the proposed new house is 98.5% of the overall.)

Interval	Flow cfs	Flow Increase cfs	Percent Increase
2-Year	64	0.04	0.06%
10-Year	99	0.06	0.06%
50-Year	236	0.09	0.04%
100-Year	310	0.10	0.03%

Increase less than 5%

Increase in flows caused by the project. 2750 square feet of driveway plus 1950 square feet of house, porch, and decking gives 4700 square feet of improvements or 0.11 acres..The run-off coefficient for the existing conditions is 40%. The impervious condition will be 90%. The remainder of the project will be native or landscaping.

Interval	Existing Flow cfs	New Flow cfs	Increase cfs
2-Year	0.06	0.13	0.07
10-Year	0.10	0.23	0.13
50-Year	0.13	0.30	0.17
100-Year	0.14	0.32	0.18

PROPOSED MITIGATION

See Appendix B. The project has a maximum increase of 0.2 cfs with a maximum flow of 0.3 cfs. The following mitigation is proposed with the preliminary designs:

- Pavers for the driveway to reduce run-off
  - No sheet flow.
  - Flows directed to a bio-swale and then to a detention basin / bio-swale.
- All downspouts directed to either dry wells or the detention basin / bio swale.
- Bio-Swale - Grassy area that pre-treats flows directing flows to the detention basin.
- Detention Basin / Bio-Swale - Treats particulates, partially treats contaminants, and reduces peak flows.

  Although the increase in drainage flows caused by the project are less than 5%, as noted above, some mitigation was assumed to be prudent. Therefore, a detention basin that would act as an additional bio-swale is proposed. This would treat the flows from the project letting particulates settle out and would reduce the peak flow. To size the basin the County of San Luis Obispo detention method (50-Year developed storm in, 2-Year undeveloped storm out) was used as a guide.

  Developed Coefficient of Run-Off – 90%
  Undeveloped Coefficient of Run-Off – 40%
  Area – 0.11 acres
  Required Storage = 220 cubic feet
  2-Year undeveloped outlet flow = 0.06 cfs

  220 cubic foot provided in preliminary design. Alternate designs with same storage and treatment capacity could be substituted.
- If the bio-swales treatment are determined to be inadequate to remove particulates and contaminants, outlet flows should be treated with a fossil filter, sand filter, or equivalent BMP.

HISTORICAL FLOW PATTERN

This office reviewed the following information to determine the historical flow pattern across the site from the southeast:

Existing contours.
Contours from an undocumented topographic survey taken prior to improvements being placed.
Improvement Plans for Main Street.
Photographs from 2001 for the area along Main Street taken by this office.
A site visit on August 6, 2009.

This office did not take elevations on the property prior to the existing house being built. A grading plan for the site by another consultant was found. This plan shows elevations and contours that existed prior to grading. Spot elevations on this plan were compared with elevations taken by this office to verify accuracy. The undocumented contours on the older plan, when compared to the current contours, indicate that fill was placed along the slope of the creek bank between the existing house and the constructed wall and that the elevation on the southeasterly portion of the lot remained unchanged.

The plans for Main Street indicate that some filling has occurred along Main Street as a part of the curb, gutter, sidewalk installation. Cross Sections with the plans show a low area near the manhole adjacent to Main Street with flow towards the Creek. The area adjacent to the Creek is higher than the

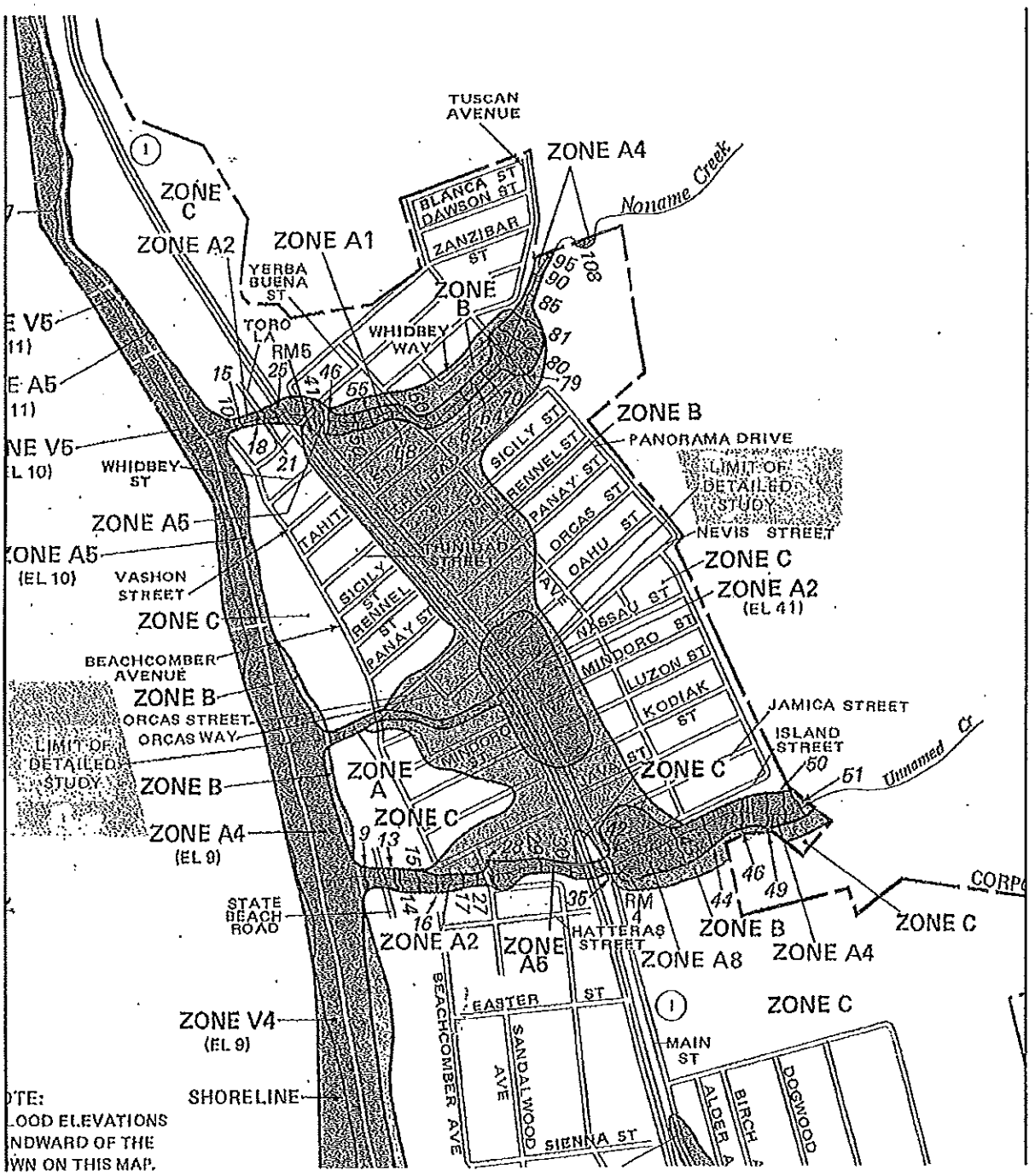
flow line and apparently caused ponding.

Field locations taken by this office prior to the street improvements show the low area and the higher elevation near the Creek. Most of the low area was within the Public right-of-way.
Comparisons of photographs taken in 2001 and the recent site visit indicate that a lawn area between the sidewalk and the house has been filled to about the level of the sidewalk. The filled area drains across the constructed driveway in a flat swale.

CONCLUSIONS: Based upon the available information, there appears to have been a low area near the street at the westerly corner of the neighboring property that filled during storms and then overtopped a low bank near the Creek. Larger flows would have emptied to the Creek along this path. This low area appears to have been partially filled with the street improvements and the lawn area. The lawn area and street improvements appear to drain without issue. The street improvements have raised the flow path to the Creek. The flow path is open though the lawn area and across the paved driveway. There is an alternate flow path southerly.

PROJECT STRUCTURE ELEVATION
The 100-Year storm elevation noted on the FIRM at the upstream edge of the proposed house is 51+. The proposed finished floor elevation is 52.5, or 1' above the 100-Year flood elevation. From the preliminary plans for the house provided by the applicant, we find that the house will have a finished floor to roof peak difference of 22.5'. Therefore, the roof peak elevation should be 75.0.

APPENDIX A



TUSCAN AVENUE
ZONE A4
Noname Creek
BLANCA ST
DAWSON ST
ZANZIBAR ST
ZONE C
ZONE A2
ZONE A1
YERBA BUENA ST
ZONE B
TORO LA
RM5
WHIDBEY WAY
ZONE B
PANORAMA DRIVE
LIMIT OF DETAILED STUDY
NEVIS STREET
ZONE C
ZONE A2 (EL 41)
WHIDBEY ST
ZONE A5
ZONE A5 (EL 10)
VASHON STREET
ZONE C
BEACHCOMBER AVENUE
ZONE B
ORCAS STREET
ORCAS WAY
LIMIT OF DETAILED STUDY
ZONE B
ZONE A4 (EL 9)
STATE BEACH ROAD
ZONE A2
ZONE A5
HATTERAS STREET
ZONE A8
ZONE B
ZONE A4
ZONE C
ZONE C
ZONE V4 (EL 9)
SHORELINE
EASTER ST
MAIN ST
SIENNA ST
BEACHCOMBER AVE
SANDALWOOD AVE
ALDER
BIRCH
DOGWOOD
SICILY ST
RENNEL ST
PANAY ST
ORCAS ST
OAHU ST
NASSAU ST
MINDORO ST
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JAMICA STREET
ISLAND STREET
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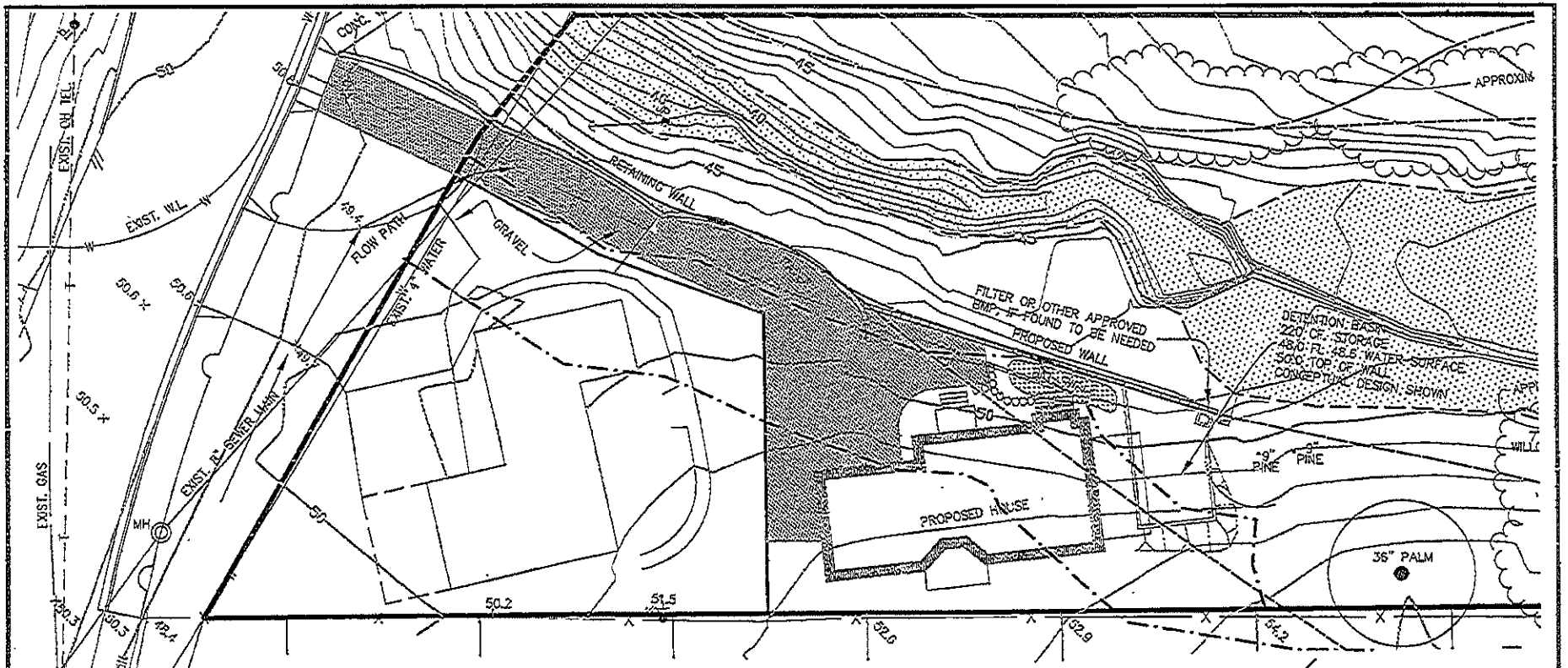
TAHITI
TRINIDAD STREET
ZONE A
ZONE C



IMPROVEMENTS

- PAVERS FOR THE DRIVEWAY TO REDUCE RUN-OFF – NO SHEET FLOW. FLOWS DIRECTED TO A BIO-SWALE AND THEN TO A DETENTION BASIN / BIO-SWALE.
- ALL DOWNSPOUTS DIRECTED TO EITHER DRY WELLS OR THE DETENTION BASIN / BIO SWALE.
- BIO-SWALE – GRASSY AREA THAT PRE-TREATS FLOWS DIRECTING FLOWS TO THE DETENTION BASIN.
- DETENTION BASIN / BIO-SWALE – TREATS PARTICULATES, PARTIALLY TREATS CONTAMINANTS, AND REDUCES PEAK FLOWS.

FLOW INCREASE:

STORM EVENT	EXISTING CREEK FLOWS	INCREASE
2-YEAR	65 CFS	0.04 CFS = 0.06%
10-YEAR	100 CFS	0.06 CFS = 0.06%
50-YEAR	240 CFS	0.09 CFS = 0.04%
100-YEAR	315 CFS	0.10 CFS = 0.03%

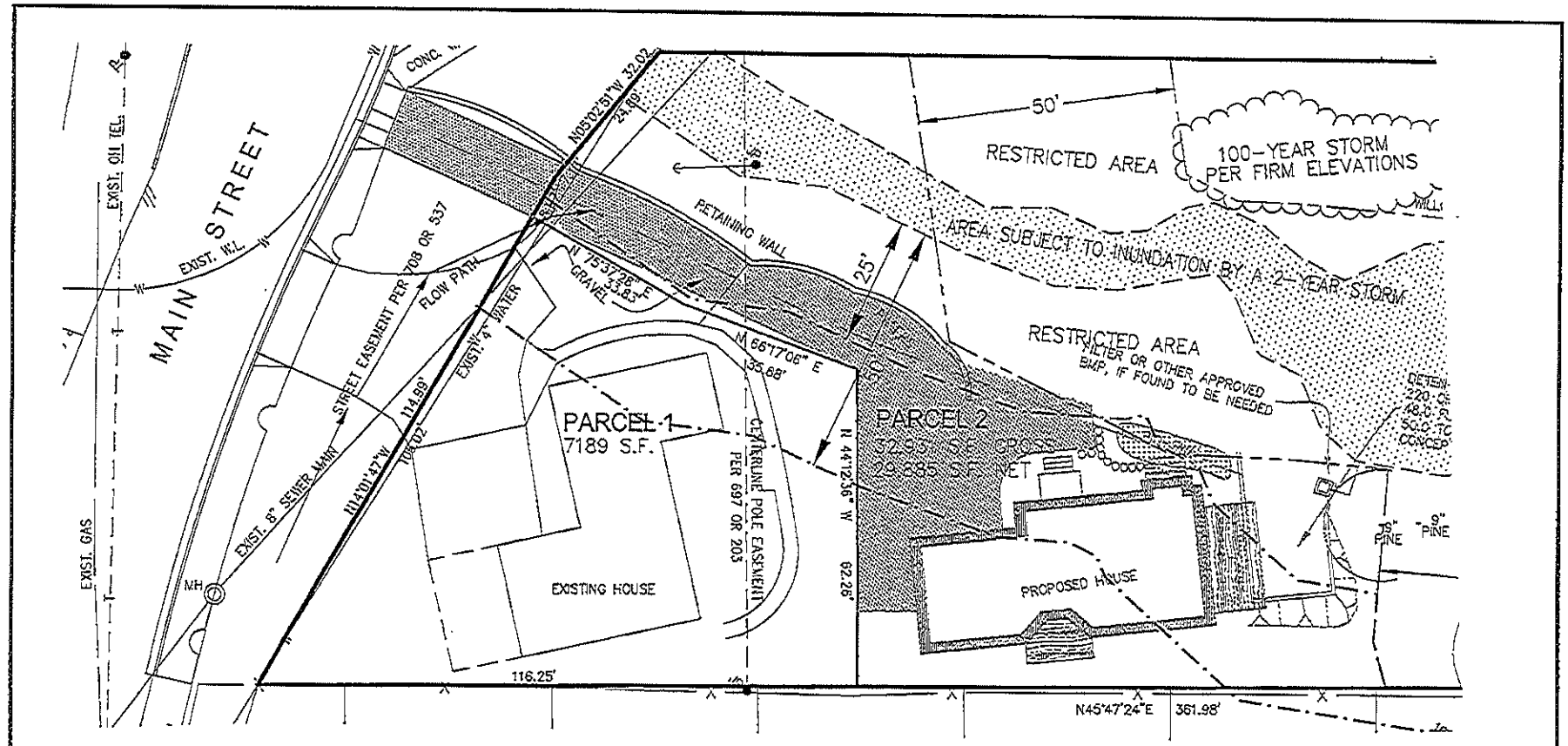
FLOW INCREASE <5%. USE COUNTY OF SAN LUIS OBISPO DETENTION METHOD TO DETERMINE A DETENTION BASIN TO FURTHER MITIGATE FLOWS (50-YEAR DEVELOPED STORM IN, 2-YEAR UNDEVELOPED STORM OUT)
DEVELOPED COEFFICIENT OF RUN-OFF – 90%, UNDEVELOPED COEFFICIENT OF RUN-OFF – 40%
AREA – 0.11 ACRES REQUIRED STORAGE = 220 CUBIC FEET
2-YEAR UNDEVELOPED OUTLET FLOW = 0.06 CFS
220 CUBIC FOOT PROVIDED IN PRELIMINARY DESIGN. ALTERNATE DESIGNS WITH SAME STORAGE AND TREATMENT CAPACITY COULD BE SUBSTITUTED.

- IF THE BIO-SWALE TREATMENTS ARE DETERMINED TO BE INADEQUATE TO REMOVE PARTICULATES AND CONTAMINANTS, OUTLET FLOWS SHOULD BE TREATED WITH A FOSSIL FILTER, SAND FILTER, OR EQUIVALENT BMP.

APPENDIX B

MB 07-0274
VESTING TENTATIVE MAP
WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130
SAN LUIS OBISPO, CA., 93401
(805) 541-2394

JULY 15, 2010



SETBACK EXHIBIT

WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130
SAN LUIS OBISPO, CA., 93401
(805) 541-2394

ATTACHMENT 5

Driveway Use Permit Request

I am writing this letter to request a Use Permit for my original driveway access plan. The plan with direct access is included for reference. At the previous planning commission meeting in July a consensus was met to keep the driveway outside of the 50 foot ESH buffer area. In order to gain access to the second home the ESH area must be encroached into. During developmental phases a plan was generated showing an arced driveway which would encroach the 50 foot ESH buffer area from a different angle. These plans were terminated upon recommendation and consensus upon the second direct access driveway.

Johnnie Medina
Cell: 917.409.6043
Email: Johnnie.Medina@gmail.com

RECEIVED

NOV 1 5 2011

City of Morro Bay
Public Services Department

ATTACHMENT 6

11-30-11

RECEIVED
NOV 30 2011
City of Morro Bay
Public Services Department

CITY OF MORRO BAY
PUBLIC SERVICES DEPARTMENT
955 SHASTA AVE
MORRO BAY, CA 93442

PROJECT: 3390 MAIN ST
S00-089 & CPD-276

1. I AM OPPOSED TO ALLOWING ANOTHER APPROX 17 FT INTO THE 25 FT BUFFER ZONE FOR THE ACCESS DRIVE INTO THE NEW RESIDENCE. THE PROJECT SHOULD BE REQUIRED TO USE A COMMON DRIVE WITH THE EXISTING RESIDENCE AS SUGGESTED BY CITY STAFF.

2. WHICH PROPERTY WILL BE REQUIRED TO MAINTAIN THE CONSERVATION EASEMENT THAT IS BEING ESTABLISHED TO FACILITATE THE DEVELOPMENT OF THE SECOND RESIDENCE ON THIS PARCEL? THAT SHOULD BE ESTABLISHED AND ENFORCED FOR WEED ABATEMENT AND ETC.

3. AN ENGINEERED PROPER RETAINING WALL SHOULD BE REQUIRED.

4. OWNER, JOHNNIE MEDINA NEVER INSTALLED PROPER DRAINAGE FOR THE PROPERTIES ON VASHON ST, AS REQUIRED AND OVERLOOKED BY CITY UPON FINAL SIGN OFF FOR 3390 MAIN ST. THIS SHOULD BE FIRST PRIORITY IF THIS PROJECT IS APPROVED.

James A Ross

JAMES A. ROSS
301 TRINIDAD ST
MORRO BAY, CA 93442

From: William Daillak <wdaillak@yahoo.com>
To: <sdavis@morro-bay.ca.us>
Date: 11/30/2011 3:33 PM
Subject: RE: Permits# S00-089 & CPO-276.

I am opposed to a variance that provides for a reduction in the buffer around the creek and believe a public hearing should take place prior to any approval.

William H Daillak
3351 Whidbey Way
Morro Bay, CA 93442

805-238-1262

RE: 3390 Main St Project #S00-089 & CPO-276

Date: 11-29-11

ATTACHED IS A PETITION OF CITIZENS OPPOSED TO THIS PROJECT.

THERE ARE 151 TOTAL SIGNATURES. PLEASE LISTEN TO THE NEIGHBORS WHO ARE IN OPPOSITION TO THIS PROJECT BEING AMENDED.

We ask that the City uphold the decision of the current permit, of the July 19, 2010 Planning Comm. Meeting. We ask that the applicant not be allowed to change buffer zones, setbacks, size of house and size of driveway.

There has been two years of Planning Commission Mtgs. The Planning Commission has given the applicant direction that is fair and they should be required to follow the guidelines everyone has to adhere to.

He has not fulfilled the original conditions of the first permit, and has not fulfilled the conditions of the second permit. We are wondering why the applicant has not been held to the direction of the City and the Planners, and feel it is unfair for him to appeal, when he was told by the Planners, that he had certain conditions to fulfill before he could come back.

Thank You for your attention in this matter. We hope that all the signatures, emails and letters will bring to attention the feelings of the citizens, and that this matter will go back to the Planning Commission and Public Hearing.

We have a total of 151 signatures. With 33 of those signatures currently signed on November 2011. The previous signatures 118 are still very concerned and serious about opposing this project.

Thank You for listening to the Citizens of Morro Bay.

WE THE UNDERSIGNED RESIDENTS OF MORRO BAY, OBJECT TO THE 3390 MAIN ST PROJECT APP. # S00-089 & CPO-276. THE APPLICANT HAS NOT FULFILLED THE CONDITIONS OF THE PRIOR PERMITS, WE WANT THE ESHA PRESERVED, AND THE BUFFERS TO REMAIN. WE ASK THAT THE PROPOSED DEVELOPMENT REMAIN AS APPROVED ON JULY 19, 2010.

11-28-11

NAME	ADDRESS	EMAIL
142. Shawn Kuha	752 Butte Ave Morro Bay, CA 93442	sakuha22@aol.com
143. Toni Guerra	1847 Atascadero Rd. Morro Bay, CA 93442	—
144. Marla Carmody	371 Vashon St Morro Bay, CA 93442	—
145. Sheila Bohay	450 HARBOR ST. Morro Bay, CA 93442.	
146. Sherrye Haynie	550 Main St.	
147. John Delgado	308 Main Street, Morro Bay, CA	
148. [illegible]	308½ Main St	
149. [illegible]	206 Hard St MB	
150. [illegible]	942 Marina MB	
151. Kathleen Oakley	942 Marina St M.B.	

WE THE UNDERSIGNED RESIDENTS OF MORRO BAY, OBJECT TO THE 3390 MAIN ST PROJECT APP. # S00-089 & CPO-276. THE APPLICANT HAS NOT FULFILLED THE CONDITIONS OF THE PRIOR PERMITS, WE WANT THE ESHA PRESERVED, AND THE BUFFERS TO REMAIN. WE ASK THAT THE PROPOSED DEVELOPMENT REMAIN AS APPROVED ON JULY 19, 2010.

11-29-11

NAME	ADDRESS	EMAIL
131. DAN JAMES	387 YERBA BUENA	
132. James Searby	400 Yerba Buena	
133. [illegible]	356 YERBA BUENA ST.	
134. TOM REDDINGER	429 YERBA BUENA ST.	
135. David Camilleri	497 Tahiti St.	
136. Bruce Keogh	400 Zanzibar	
137. Cecelia Searby	400 Yerba Buena St.	
138. JASON BUCKMASTER	420 YERBA BUENA ST	
139. JON MCALPIN	415 YERBA BUENA ST., MB, CA	93442
140. Terry Nelson	351 " " " "	"
141. Doreen M. Danton	387 Yerba Buena St. MB, Cal.	93442

WE THE UNDERSIGNED RESIDENTS OF MORRO BAY, OBJECT TO THE 3390 MAIN ST PROJECT APP. # S00-089 & CPO-276. THE APPLICANT HAS NOT FULFILLED THE CONDITIONS OF THE PRIOR PERMITS, WE WANT THE ESHA PRESERVED, AND THE BUFFERS TO REMAIN. WE ASK THAT THE PROPOSED DEVELOPMENT REMAIN AS APPROVED ON JULY 19, 2010.

11-28-11

NAME	ADDRESS	EMAIL
119. GREGORY R DOYLE	1070 ALLESANDRO ST. MORRO BAY, CA. 93442	11-28-11
120. Margaret E. Whittemore	400 Norwich St. Morro Bay, CA 93442	
121. Jane Agiardine	361 Vashon St Morro Bay, Ca 93442	
122. Victoria Petty	414 Yerba Buena MB 93442	
123. BILL BREWER	414 YERBA BUENA	
124. JOAN Parker	845 Napa Suite C	
125. R RIOS	PO box 356 MB, CA 93443	
126. L. Santa Cruz	601 Woodland LO Ca 93402	
127. [illegible]	414 Yerba Buena MB	
128. Marlene McQueen	709 Highland Los Osos	
129. Ronnie Ruggles	560 Piney Way MB	
130. [illegible]	400 Tahiti St.	

PETITION TO STOP THE SUB-DIVISION AND FURTHER BUILDING OF THE CREEK AREA BEHIND 3390 MAIN ST.

TOTAL SO FAR: 118 signatures

109. NAME [illegible] ADDRESS 3351 [illegible] Way, M.B.
110. NAME Victoria [illegible] ADDRESS 414 Yerba Buena
111. NAME Diane [illegible] ADDRESS 428 Yerba Buena
112. NAME Tamara Cross ADDRESS 701 St Mary Cay.
113. NAME JOE BOWLAND ADDRESS 701 St Mary
114. NAME Bill George ADDRESS 701 St Mary
115. NAME [illegible] ADDRESS 418 Yerba Buena
116. NAME [illegible] ADDRESS [illegible]
117. NAME Lisa J. [illegible] ADDRESS 360 Chancy
118. NAME [illegible] ADDRESS [illegible]

NAME ADDRESS
NAME ADDRESS
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NAME ADDRESS
NAME ADDRESS

Save our green belt!

Petition to stop the building of a single-family residence at the property of 3390 Main st.

TOTAL: 108 signatures

86	Name Jolene Davisson	103 Name Bill Meurer	Name
	Address 2790 Main St	Address 1650 Main	Address
87	Name OZZIE CAMUS	104 Name MIKE K. CRBILY	Name
	Address 3025 SANDAL	Address 498 B Hill St.	Address
88	Name Pamela Hood	105 Name Yarmin Maldonado	Name
	Address 1299 Los Olivos #17	Address 361 Jamaica	Address
89	Name Vince Cardenas	106 Name Leon Vallejo	Name
	Address 560 Kings Ave.	Address 485 Shasta Ave	Address
90	Name PHYLLIS BALSAM	107 Name Amber Dauphinais	Name
	Address 3025 SANDAL	Address 485 Shasta Ave	Address
91	Name Margaret Cam	Name Michele Berry	108 Name
	Address 3025 SANDAL	Address 510 Marina St.	Address
92	Name mike mullikin	Name	Name
	Address 2306 Mesa Vista Ct	Address	Address
93	Name J. HALE	Name	Name
	Address 470 JAMAICA	Address	Address
94	Name ROBERT SMITH	Name	Name
	Address 921 BIRCAS	Address	Address
95	Name Marilynn Brandmeyer	Name	Name
	Address 521 Zanzibar St	Address	Address
96	Name Frank C. Gutierrez	Name	Name
	Address 2017 Sunset Ave.	Address	Address
97	Name Anthony Zi[illegible]	Name	Name
	Address 3300 Vashon St	Address	Address
98	Name Rene Gloan	Name	Name
	Address 340 Vashon St	Address	Address
99	Name KUNIO SHIBATA	Name	Name
	Address 331 Vasquez St	Address	Address
100	Name Andy BATY	Name	Name
	Address 473 Oak St.	Address	Address
101	Name Beth Ann Sheck	Name	Name
	Address P.O. Box 6485	Address	Address
102	Name R. Tepshay	Name	Name
	Address 390 Nevis	Address	Address
	Name Thomas Moore	Name	Name
	Address 1472 11TH St.	Address	Address

over

Save our green belt!

Petition to stop the building of a single-family residence at the property of 3390 Main st.

Name KEVIN FUELLER
Address 387 Vashon St.
38 Name Kim Kaufman
39 Address 451 Whidbey St.
39 Name Craig Kaufman
Address 422 Kodiak St.
40 Name [illegible]
Address 400 Whitby
41 Name Nancy McAllister
Address 400 Whitby
42 Name DAN JAMES
Address 387 YERBA BUENA
43 Name CAVAN HADLEY
Address 381 Tahiti St.
44 Name Erin Hadley
Address 381 Tahiti St.
Name Michele Arata
Address 361 Vashon St.
Name LAURA Mounce
Address 330 VASHON ST
45 Name Paul Wilkie
Address 500 A Ty [illegible]
46 Name DON Wilkie
Address PO Box 116 Murray
47 Name KIRK KONTILIS
Address 28 20th St
48 Name Violet Sugii
Address 1150 Monterey Morro Bay
49 Name Lucille Hershey
Address 1150 Monterey Morro Bay
50 Name BENNER HARRIS
Address 2461 KOA AVE
51 Name LORI OLIVEIRA
Address 281 SHASTA
52 Name LEROY STOCKSTILL
Address 1900 SUNSET

53 Name Maggie Woods
Address 632 Alcatraz
54 Name Tiruko Shibata
Address 331 VASHON ST.
55 Name Peter Saiki
Address 2659 Main St.
56 Name Jim Nance
Address 250 Oamaru
57 Name Steve Burkhart
Address 477 Ken M.B.
58 Name Maggie Mathis
Address 2135 Main St
59 Name [illegible]
Address 2130 Main St
60 Name DON Hellman
Address 370 Vashon St
61 Name [illegible]
Address 251 Vashon St
62 Name MIKE ELBRACHT
Address 1182 PACIFIC BLVD
63 Name Barbara Volpa
Address 2970 Cedar Ave
64 Name Frank Volpa
Address 2970 Cedar ave
65 Name [illegible]
Address 2988 Birch Ave
66 Name [illegible]
Address 2988 Birch Ave
67 Name Adelina Norm
Address 370 Vashon Burnett
68 Name Cortney Wagner
Address 441 Oahu St
69 Name Bill Wagner
Address 441 Oahu St.
70 Name Fred Wilson
Address 2426 Reno Ct.

71 Name Richard Dorfsinger
Address 340 Tahiti St.
72 Name Mary Dorfsinger
Address 340 Tahiti St
73 Name Sonia Gray
Address 175 Sandpiper Ln
74 Name Linda Thayer Allen
Address 380 Sicily
75 Name Donald P Allen
Address 380 Sicily
76 Name Dick Kontilis
Address 28 20th
77 Name Holly Rodriguez
Address 370 Vashon St. MB, Ca
78 Name Rachel Miller
Address 671 Fresno Ave
79 Name Nicole Esparza
Address 900 B Napa Ave
80 Name Kailey Langston
Address 1870 Sunny Hill
81 Name Brett Ash
Address 2740 Ironwood
82 Name JACK GRAFTH
Address 2680 Ironwood
83 Name [illegible]
Address 2680 Ironwood
84 Name Jeff Shiwopa
Address 300 Vashon
85 Name [illegible]
Address 351 Vashon
Name
Address
Name
Address
Name
Address
Name
Address

Name	Address	Phone
31 Roger Hood	175 Andros St Morro Bay	772-3358
32 [illegible]	371 Vashon Morro Bay	7487645
33 Dorothy Tesla	370 Vashon Morro Bay	(818) 219-0445 cell
34 Anne Schoennauer	390 Vashon St Morro Bay	772-7508
35 Lucy Massey Lucy Massey	3348 Tide Ave, Morro Bay	225-1033
36 Wayne Benham	3334 Tide Ave Morro Bay	772-8174
37 Catherine Beaman	340 Vashon St Morro Bay	None

772-7894

13 Chu Caffey 350 Vashon, Morro Bay CA

14 Bill Bush 195 Formosa St, M.B. CA (215-0573)

15 Ray Gaal 371 Whiskey St

16 FOELKER KEVIN 387 Vashon St.

17. Hazel McKibbin 311 & Main. Morro Bay CA.

18 Glenn Sparks 46 [illegible] St Cayucos

19 Tyler Sites 470 Island

20 Hazel Stollmeyer 3310 N. Main St 772-2702

21 ~~Kane Stollmeyer 320 [illegible]~~ ~~[illegible]~~

22 Davik Stollmeyer 340 Widbey 772-2702

23 Millie G Van Dusen 772-5334

24 Oliver Marks 5425 Olmedo 801-8858

25 Gary H. Grotte 1956-9th St. L.O. 801-0097

26 [signature] JANE MASTERSON 3350 MAIN 805 772-4013

27 Amy Foosleer 772-1302

28 [signature] 772-9123

29 [signature] 771-9320

30 [signature] 298-6252

Petition to stop Johine Medinia: Terri Orton of Westland engineering, inc agent. Building on Parcel mb07-0232 3390 Main street Morro Bay 93442 Case # s00-089/cpo-s70

name	address	phone#
1 Anthony Tiglio	330 VASHON M-B	805-294-0750
2 Laura Maurice	330 Vashon St M-B	805 294-3200
3 Ronni Gates	340 Vashon St. M-B	661-342-5385
4 Jeff Gates	340 Vashon St M-B	661 619 9614
5 Paul Willis	POBOX 116 MB	(805) 459 8128
6 Don Willis	500 Atascadero Rd	805 772 5867
7 Marge Paregian	306 Yerba Buena	772-4232
8	351 Yerba Buena	1683
9 Michele Arete	361 Vashon	234-3550
10 Daniel Puett	411 Java Street	(805) 440-7761
11 Joy Pickell	305 Yerba Buena	772-5505
12 Jill Chomsk	371 Vashon	748-8661

11-29-11

I am opposed to reviving the Creek Area and the View Area.

I would request that the permits stay the same as the City approved on July 19, 2010. ~~the~~ Please uphold that decision.

Morro Bay
CHAMBER OF COMMERCE
& VISITOR CENTER

Celebrating 55 Years
1956-2011

Sherrye Haynie
Ambassador
805.772.4467

Fax: 805.772.6038
Toll-Free: 800.231.0592
brownpelican@morrbay.org

845 Embarcadero, Ste. D
Morro Bay, CA 93442
www.morrobay.org

Serving the Morro Bay Business Community & Our Visitors

Sincerely

Sherrye Haynie 772-8088
550 Main St. Morro Bay

Sierra Davis - 3390 Main Street Project

From: "Abe Paregian" <aparegian@comcast.net>
To: "Sierra Davis" <SDAVIS@MORRO-BAY.CA.US>
Date: 11/29/2011 10:22 AM
Subject: 3390 Main Street Project

To: Planning Commission Members

Re: 3390 Main Street

Please consider this my formal protest of Mr. Medina's continued requests to build an additional home behind his existing residence. He has come before you twice and was denied permission pending certain requirements - as I understand it he has not met any of those requirements yet continues to file appeals for the second residence.

You currently have on file my previous correspondence to you of June 29, 2009 and the attached email sent to you July 18, 2010 citing many reasons why everyone is so upset about his continued attempts to "get his plan through" regardless of the Planning Commission's requirements and conditions which he has to date not met. I understand he is requesting an even larger home and driveway than before which the Planning Commission and all neighboring residents previously found unacceptable.

I am no longer the President of the Bay Creek Homeowners Association but have purchased a home across the street at 305 Yerba Buena and am therefore still involved. Please read my previous correspondence and email below to fully understand my position and total frustration as to why he has even been allowed to submit his request and why it is simply going to vote among you rather than a public hearing.

Abe Paregian
305 Yerba Buena
Morro Bay, CA 93442

----- Original Message -----
From: Abe Paregian
To: nanj93442@yahoo.com ; michael_a_lucas@sbcglobal.net ; luhr@charter.net ; jirons@charter.net
Sent: Sunday, July 18, 2010 1:13 PM
Subject: Application for 3390 Main Street Project

To: Planning Commission Members

Re: Site Location: 3390 Main Street, R-1/S.1 and MCR/R-4(SP, North Main Area A) and ESH
Applicant: Johnnie Medina

You currently have on file in the above application my previous correspondence to you of June 29, 2009 which I sent as President of the northerly neighbors to Mr. Medina (the 9 unit condominium complex - Bay Creek Condominiums). All owners in our complex are upset and confused as to why this issue is even still before the Planning Commission.

Now Mr. Medina is coming back at you with more requests for modifications to already existing setbacks. I understand he now wishes to reduce the 50' existing requirement to 25' which he refers to as "buffer reduction". In his correspondence to Mr. Livick dated July 5, 2010 he states that the reduction should be allowed when a parcel is rendered unusable for its designated use. He was totally aware of all set backs when he purchased the property - why is it now "unusable for its designated use"?

He also states that this new designation would be consistent with other properties near this site. The Bay Creek Condominium complex constructed in 1989/90 is the newest structure "near this site" and was held specifically to the existing set backs. We were not allowed to have any reduction in those setbacks and fail to understand why Mr. Medina - simply because he has determined the existing setbacks make his property unusable - should be allowed to do so to the detriment of our existing creek area.

He has always known what the existing setbacks and restrictions are but chose to come up with a plan that would require a modification to those restrictions. This makes absolutely no sense to any of our nine owners and we are all very frustrated and concerned that he can simply bend the rules for his own purposes and thereby endanger our creek area.

We are aware that Mr. Medina has employed many experts, etc. to plead his case and that he has been extremely aggressive in his attempts to push forward with his self-serving agenda to the detriment of his neighbors and the existing creek area. We hope you will consider all facts and all interests before making any decisions.

Abe Paregian, President
BAY CREEK CONDOMINIUMS

RECEIVED

NOV 29 2011

City of Morro Bay
Public Services Department

To Morro Bay City Counsel & City Atty.

I have lived in Morro Bay 16 years & Feel that For the City Counsel to Allow Variance after Variance For the property at 3390 main St Morro Bay These people have affected Our Drainage on Vashon St causing some Flooding Over heavy rain. I and my neighbors are going to Sue the City counsel For the Inapropiat Way it is handling The Situation at said address Furthermore If Construction Starts We are ready to File Our Injuction on any attempt to Start Construction on this Property. the Fact is you cannot get a Fire Truck up the Proposed Driveway. As well as the loss of privacy for my Neighbors who border this Property. The land was purchased at Fire Sale price because of The Inability to Build on It Safely & Up to Code. Why are the Medinas pushing this Issue? Not up to Code is not up to Code No Matter Who You Are. To force this issue is Acinine To Say The Least Anthony Tiglio

330 VASHON M-B

November 28, 2011

RECEIVED
NOV 29 2011
City of Morro Bay
Public Services Department

City of Morro Bay Public Services Department
955 Shasta Ave.
Morro Bay, CA 93442

To Whom It May Concern:

We are writing due to concerns about the Administrative Amendment to Subdivision #S00-089 and Coastal Development Permit 3CP0-276. According to the post card we received, this amendment would allow a private driveway to encroach not only into the 50 foot buffer setback from the stream, but also into the 25 foot buffer setback.

We feel that these buffers were put in place for a purpose: to protect an ESH (Environmentally Sensitive Area) and should be adhered to. During rains, this stream carries a large volume of water and encroaching into the buffer zones would possibly lead to erosion and more runoff downstream. The 1,400 foot square feet of paved area, being impervious, would certainly increase runoff and the 1,300 square feet of pavers, depending on what type of pavers are used, might also add to the runoff volume.

Allowing a private driveway to encroach into an ESH is just not acceptable. As this is located in a coastal zone and inside the Coastal Commission Appeals Jurisdiction, this decision to be made by the Morro Bay Public Services Department should adhere to the regulations set forth in the Coastal Act.

As we recall, this application for amendment was turned down once before and as far as we know, no regulations have been changed. Does the applicant think that the Public Services Department will now change their mind? Any additional information you can provide would be appreciated.

Thank you,

Dennis Cook
Janet Surbey

Dennis Cook
Janet Surbey
3346 Tide Ave.
Morro Bay, CA 93442
(805)459-2013

From: dorothycutter <dorothycutter@sbcglobal.net>
To: <sdavis@morro-bay.ca.us>
Date: 11/29/2011 4:07 PM
Subject: Project at Vashon and Main St.

Hi! This project needs to have a public hearing because there has been no substantial change to the original, 2. It required mitigation from the original building still not done and is not planned to be as conditioned by the prior hearing and 3. There are incomplete plans for the public to review..

You must follow our zoning codes!

Dorothy Cutter

Morro Bay, Ca. 93442

From: Roger <rle42@sbcglobal.net>
To: <sdavis@morro-bay.ca.us>
Date: 11/29/2011 8:36 AM
Subject: Medina project...

Dear Sierra...it has come to my attention that the Medina project is back before you for an administrative approval. Allow me, please, to remind you that when this project was last before the Planning Commission, the Commissioners went to great lengths to keep the project from intruding upon the ESHA. Mr. Medina still has yet to comply with the previous conditions set forth by the PC. To allow him now to receive approval without any input from the Public is nothing short of an end run around the will of the people who sought fairness and an adherence to our zoning laws. I urge you, please, to send this item back to the Commission for a true Public Hearing, as there has been no compliance with the will of the PC, no change to his original plans to invade the ESHA, and thus no basis for legal approval of this project. Do the right thing, please...

Respectfully...
Roger Ewing

NOV 29 2011

I am Jane Masterson the owner of 3350 Main St Morro Bay. I would like to know the status of 3390 Main St. Property in regards to them fullfilling their original conditions

They have not installed a culvert as they were required to do, thus creating a potential flooding on my property at 3350 Main St

Lowering their driveway has not & will not drain my land to the ravine as it originally did!

Jane Masterson
Post Commander - DAV CH #96
3350 MAIN ST.
MORRO BAY, CA. 93442

RECEIVED

NOV 29 2011

I object the application to amend the approved permits #500-089 & #CPO-276 at 3390 Main St

I object to the to the construction of the 2,497 single family residence. As the 1,800 SF should remain the same as the City first proposed in July 26, 2010.

What will happen to the ravine that carry's our rain & storm waters to the ocean. I'm concerned about the flooding of Vashon St! Thank you for your consideration in this matter

LAURA MOUNCE
330 Vashon St
MB

Laura Mounce

From: Eric & Chris' Gmail <eric.chris.lillo@gmail.com>
To: "sdavis@morro-bay.ca.us" <sdavis@morro-bay.ca.us>
CC: "newportgal1@live.com" <newportgal1@live.com>
Date: 11/28/2011 9:32 PM
Subject: Proposed Development at 3390 Main Street, Morro Bay

This correspondence has been prepared to express our opposition to any waiver of the requirement for a 50 foot buffer (creek setback) for the proposed development listed above.

We have these setback requirements for the benefit of everyone in the neighborhood. The other buildings that have been constructed have had to comply with them. There is no reason to have these requirements if they can simply be waived when they are not convenient.

Please maintain the requirements and do not allow a waiver.

Thank you,

-Eric & Chris Lillo

From: Jan Goldman <justjan2@charter.net>
To: <sdavis@morro-bay.ca.us>
Date: 11/28/2011 8:03 PM
Subject: 3390 Main Street

I want to express my opposition and concern about Mr. Medina's proposed 2,497 square foot two story home and second driveway on his property at 3390 Main Street. The increased size of the home and the longer driveway will encroach into the 50 foot buffer setback.

I own a condo at 312 Yerba Buena on the other side of the creek. When our development was built there were strict limits on the distance from the creek that any type of building was allowed.

I respectfully ask that Mr. Medina be held to these same restrictions.

Jan Goldman
312 Yerba Buena Street
Morro Bay, CA 93442

Sierra Davis - 3390 MAIN ST.

From: Newport Gal <newportgal1@live.com>
To: <sdavis@morro-bay.ca.us>
Date: 11/28/2011 4:08 PM
Subject: 3390 MAIN ST.

I am opposed to the 3390 Main St. project and its appeal. The applicant has not fulfilled the conditions of the previous permits. I would like to see the ruling be upheld of July 19, 2010. That is a fair decision the Planning Commission made, to keep the future home at 1800 SF, keep it outside of the ESH Boundaries, and move the lot line closer to the existing house. That would be the least intrusive development of that creek bank area. It is a small creek bank, and no place for a large house.

We have 150 people opposed to this development, and would like the Administration to listen to the voice of the people. We will be submitting further objections by Weds.

Thank you,
Michele Arete
361 Vashon St.

Sierra Davis - 3390 Main Street, Morro Bay, CA.

From: Stuart Crisman <stuartcrisman@gmail.com>
To: <SDAVIS@MORRO-BAY.CA.US>
Date: 11/28/2011 7:19 PM
Subject: 3390 Main Street, Morro Bay, CA.

Dear Sirs,

I am writing to express my opposition to the Medina's request to build a 2497 Sq Ft. house and 133 foot driveway at the above location. It appears they are requesting to encroach on the 50 foot buffer setback. It is not acceptable to allow building that close to the creek.

We own a condo at 308 Yerba Buena directly on the other side of the creek. When our development was built there were strict limits on the distance from the creek that any type of building was allowed.

We respectfully ask that their request not be approved.

Stuart & HaeJa Crisman
308 Yerba Buena
Morro Bay, Ca. 93442

Sierra Davis - Re: 3390 Main Street, Morro Bay, CA.

From: Carol Hansen <hnsnstr@att.net>
To: <SDAVIS@MORRO-BAY.CA.US>
Date: 11/28/2011 8:31 PM
Subject: Re: 3390 Main Street, Morro Bay, CA.
CC: <stuartcrisman@gmail.com>

Dear Sirs,

We are also condo owners at 306 Yerba Buena and ask that the Medina's request to build a 2497 sq. ft. house and driveway be denied due to the limitations on building next to the creek.

Thank you,

Doug and Carol Hansen
306 Yerba Buena
Morro Bay, Ca 93442

From: Stuart Crisman <stuartcrisman@gmail.com>
To: SDAVIS@MORRO-BAY.CA.US
Sent: Mon, November 28, 2011 7:19:31 PM
Subject: 3390 Main Street, Morro Bay, CA.

Dear Sirs,

I am writing to express my opposition to the Medina's request to build a 2497 Sq Ft. house and 133 foot driveway at the above location. It appears they are requesting to encroach on the 50 foot buffer setback. It is not acceptable to allow building that close to the creek.

We own a condo at 308 Yerba Buena directly on the other side of the creek. When our development was built there were strict limits on the distance from the creek that any type of building was allowed.

We respectfully ask that their request not be approved.

Stuart & HaeJa Crisman
308 Yerba Buena
Morro Bay, Ca. 93442

TO: MB Planning Comm
RE: 3390 Main St, MB
11/28/11

Please be sure that the decisions you make reflect the decisions made last time this issue came up — as the Medina's have NOT done what they were supposed to do, per your requests. Conditions NOT fulfilled on the original permits!

Vicki Fitch
414 Yerba Buena St.
MB 90742

City of Morro Bay
Public Notice of Availability
955 Shasta Ave
Morro Bay, CA 93442

RE: Case#S00-0889/CPO-276 Medina Parcel Map (MB 07-0232)

To whom it may concern,

We are residents at 300 Vashon, Morro Bay, CA and are concerned for our property.

We are contacting the City in writing per our notice dated 11-11. We are **NOT in favor** of this parcel being Subdivided to create a second lot for location 3390 Main Street, Morro Bay, CA. We feel the land in question was originally set up to be a natural drainage point for excess rain/water run off. Allowing another structure on the parcel would really **defeat the natural flow from our homes.** The house's directly beside the parcel in question would really feel the impact of the natural flow of rain/water run off, as the parcel at 3390 was built above the original land level, so the water now drain's back to the area of Vashon, not into the ravine, which cause's flooding.

The city manager has come out to our homes at the corner of Main/Vashon and did an assessment that concluded that we could flood in the invent of a hard rainy season, due to the lack of drainage when the house at 3390 Main was built.

We do NOT want this parcel subdivided.

Thank you,

Jeff & Stacy Shinoda
300 Vashon
Morro Bay, CA 93442
APN: 065-041-22

November 28, 2011

TO: MB Planning Commission

RE: 3390 Main St. Project #S00-089 & CPO-276

I object to amending the approved permits #S00-089 and CPO-276.

The applicant has been denied previously. He has not fulfilled the conditions of the first two permits, as required.

I ask that the 50 foot buffer from the ESH Area remain for the location of the proposed home.

I ask that the driveway remain as allowed in the previous permit, and not encroach into the 50 foot buffer setback and the 25 foot buffer setback.

I also request that the 1,800 SF proposed home size remain the same, with the lot line moved closer to the first parcel, as requested by the Planning Comm. In the last hearing, July 19, 2010.

I request that the creek remain in its natural state, and that a Bio Swale not be allowed here.

Thank you,

Michele Arete

361 Vashon St.

Morro Bay CA

11-28-11

TO: MB Planning/Building Dept.

I object to a larger (2,497) SF house being built.

I ask it goes to a Public Hearing so that citizens may have input.

I ask that current Permit 500089/CP0276 remain the same. It is a fair guideline.

Please preserve the 50 Foot Buffer.

Re: 500089
CP0276
3390 Main St

Thank You

(Janet Giardine)
301 Vashon St
MB

California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4593
http://www.dfg.ca.gov

ARNOLD SCHWARZENEGGER, Governor
DONALD KOCH, Director

ATTACHMENT 3

RECEIVED
OCT 26 2009
City of Morro Bay
Public Services Department

October 21, 2009

John Medina
3390 North Main Street
Morro Bay, California 93442

Re: Extension to stackable brick wall and proposed home site at 3390 North Main Street, Morro Bay, San Luis Obispo County

Dear Mr. Medina:

This is in response to your request for information regarding the above-referenced Project. Your Project consists of extending an existing stackable block wall and building a home on the lot behind the existing residence at 3390 North Main Street, which is located near an ephemeral creek channel that drains storm water runoff to the Pacific Ocean, in the City of Morro Bay. The Department of Fish and Game (Department) issued two (2) previous letters to you regarding the construction of the wall extension, wherein the determination was stated that the proposed Project would not affect fish and wildlife resources; and in addition was not subject to Section 1600 et sec., of the Fish and Game Code, per the request of the City of Morro Bay. We understand that the City of Morro Bay has again requested a letter from the Department regarding this Project, which now includes the home site. The Department appreciates this opportunity to assist you in this matter.

Mr. Mike Hill, Environmental Scientist, Department of Fish and Game, visited the Project site on September 29, 2009, reviewed the site-specific plans (dated July 15, 2009) prepared by Dana Belmonte and then met with you and your son to evaluate the proposed Project site to determine if the extended wall or home pad would adversely affect the ephemeral stream or other Environmentally Sensitive Habitat (ESH). On October 8, 2009, Mr. Hill discussed your Project with Ms. Kathy Wold, planner for the City of Morro Bay, who stated that the City requires construction to occur a minimum of 50 feet from any ESH unless a waiver is obtained from the Department of Fish and Game.

The proposed wall extension and construction of the home would both occur within the 50-foot setback from the ESH, which in this case consists of a seasonal stream and riparian habitat on your property. However, the proposed wall extension would

be south of, and several feet from, the stream bank and the ESH. The proposed home site would be farther south and away from the ESH. Based on Mr. Hill's site visit, the Department has determined that construction of the wall extension and home would not adversely affect the ESH; and therefore, the Department does not object to construction of the proposed wall extension and home within 50 feet of the ESH. In addition, the location of the home construction site, retaining wall extension, and associated fill, as determined by the Department, is non-jurisdictional, pursuant to Section 1600 of the Fish and Game Code. Therefore a Stream Alteration Notification does not need to be submitted for the Project.

To ensure that no inadvertent impacts to the ESH occur during construction, the Department recommends that the boundaries of the wall and home site be clearly marked prior to any construction activities, and that silt fencing or similar sediment control measures be placed between the wall extension and the stream channel to prevent soil or other material from entering the ESH. Any such device be removed upon completion of construction, and all cut or fill material not used for backfill should be disposed of at an appropriate off-site location where it cannot enter the ESH or other "Waters of the State".

Based on the Department's review of the site specific plans and other information you submitted, consultation with you regarding the scope of proposed work, consultation with staff of the City of Morro Bay, the site visit conducted by staff, and our knowledge of the Project site, we have determined that there is no existing fish or wildlife resource that will be substantially adversely affected by your Project, if it is constructed in the manner described.

Please be aware that you are responsible for compliance with all applicable local, State, and Federal laws in completing this Project. Thank you again for the opportunity to assist you. If you have any questions regarding this matter, please contact Mr. Mike Hill, Environmental Scientist, at (805) 489-7355.

Sincerely,

for John Means

Jeffrey R. Single, Ph.D.
Regional Manager

cc: Kathy Wold
City of Morro Bay
955 Shasta Ave
Morro Bay, California 93442

ATTACHMENT 4

Kathleen Wold - RE: Concurrence with processing an application

From: "Michael Prater" <MPrater@morro-bay.ca.us>
To: "Michael Watson" <mwatson@coastal.ca.gov>
Date: 8/20/2008 4:31 PM
Subject: RE: Concurrence with processing an application

Thanks Mike, I will inform the applicant of the permit process and move forward on this one with the recommendations.
Mike

>>> "Michael Watson" <mwatson@coastal.ca.gov> 8/20/08 3:38 PM >>>
Mike,

Our staff biologist has reviewed the materials and concurs with the ESHA delineation prepared by the applicant's consultant with the following exception, it needs to include the willows on the near the east side of the property. Accordingly, all structural development must be setback a minimum of 50 feet from the stream /ESHA corridor per the LCP including 50 feet from the dripline of the willlows. To the extent that the proposed driveway access might encroach into the esha buffer, a comensurate amount of restoration must be included. Of course, we recommend that only native, non-invasive plant species be allowed and strongly encourage restoration with native species wherever possible.
Mike

-----Original Message-----
From: Michael Prater [mailto:MPrater@morro-bay.ca.us]
Sent: Tuesday, June 17, 2008 2:19 PM
To: Michael Watson
Subject: Concurrence with processing an application

Mike,
I just wanted to run a lot split application by you that the City received to subdivide a .92 acre property into two lots. Parcel 1 would be 7,189 sqft with an existing residence permitted in November of 2001. Parcel 2 a new vacant lot 32,931 sqft that has an ephemeral creek running through the property. A portion of the site is designated ESH in the LCP, however a site specific biological study was conducted and concurrence from CDF&G was sought for a no effect by the project. I have attached a parcel map of the new lot layout and developable area, along with biologist representation of the ESH boundary based on site conditions, photos of the property, and letter from CDFG. Please review this information and assist the City in determining if the project needs an LCP zoning change to remove the ESH designation and any likelyhood of coastal support for the project or conditions to facilitate the project in moving forward through the process. Thanks

Mike

If you need more information please let me know.

Mike Prater, Planning Manager
Public Services Department
955 Shasta Ave.
Morro Bay, Ca 93442
Tel: (805) 772-6211 Fax: (805) 772-6268
mprater@morro-bay.ca.us

Please consider the environment before printing this email.

Kathleen Wold - Concurrence with processing an application

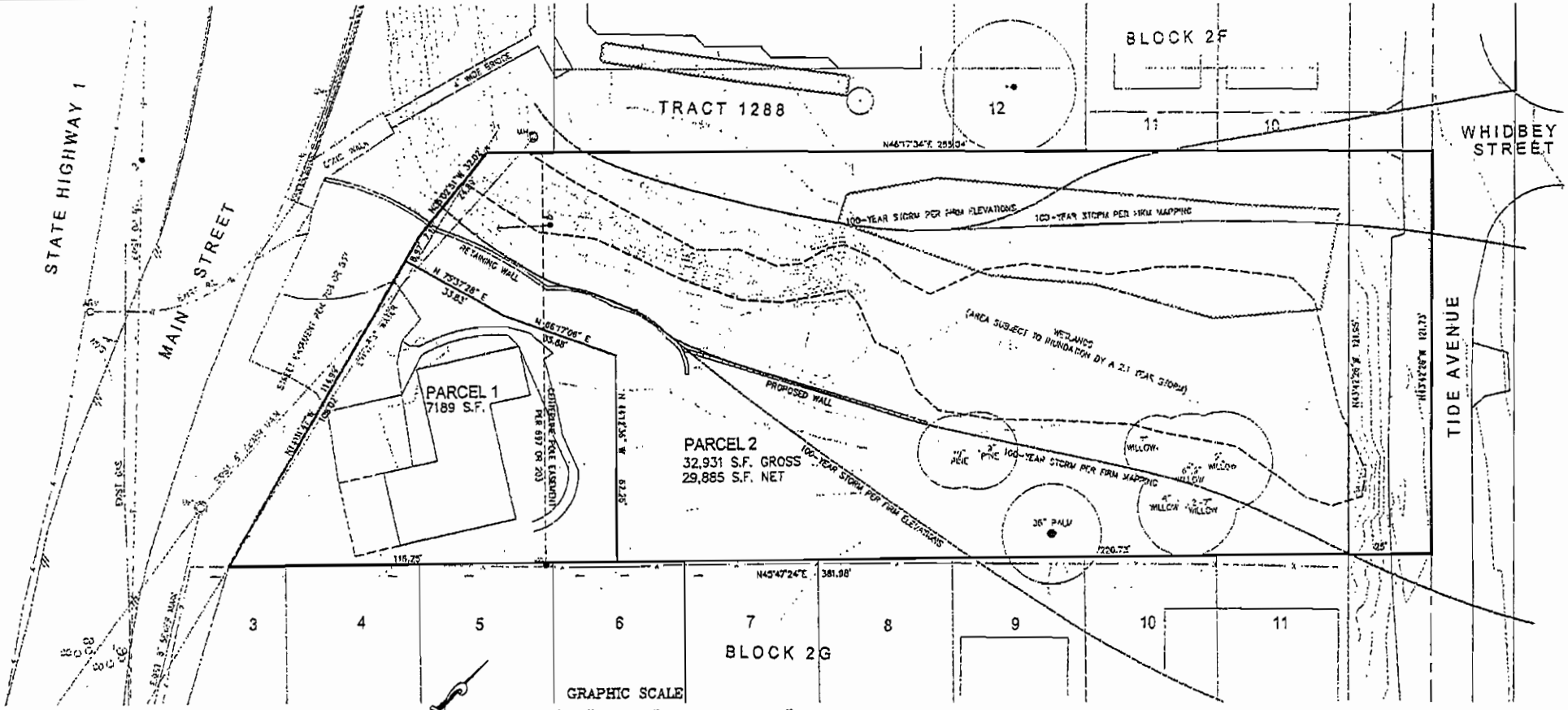
From: "Michael Prater" <MPrater@morro-bay.ca.us>
To: "Michael Watson" <mwatson@coastal.ca.gov>
Date: 6/17/2008 2:18 PM
Subject: Concurrence with processing an application
Attachments: submittal package June 17, 2008.pdf

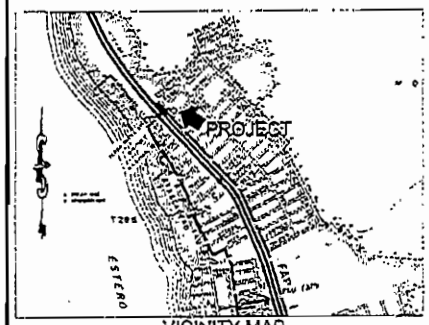
Mike,
I just wanted to run a lot split application by you that the City received to subdivide a .92 acre property into two lots. Parcel 1 would be 7,189 sqft with an existing residence permitted in November of 2001. Parcel 2 a new vacant lot 32,931 sqft that has an ephemeral creek running through the property. A portion of the site is designated ESH in the LCP, however a site specific biological study was conducted and concurrence from CDF&G was sought for a no effect by the project. I have attached a parcel map of the new lot layout and developable area, along with biologist representation of the ESH boundary based on site conditions, photos of the property, and letter from CDFG. Please review this information and assist the City in determining if the project needs an LCP zoning change to remove the ESH designation and any likelyhood of coastal support for the project or conditions to facilitate the project in moving forward through the process. Thanks
Mike

If you need more information please let me know.

Mike Prater, Planning Manager
Public Services Department
955 Shasta Ave.
Morro Bay, Ca 93442
Tel: (805) 772-6211 Fax: (805) 772-6268
mprater@morro-bay.ca.us

Please consider the environment before printing this email.





VICINITY MAP
NO SCALE

OWNER'S STATEMENT

I HEREBY APPLY FOR APPROVAL OF THE DIVISION OF REAL PROPERTY SHOWN ON THIS PLAT AND STATE THAT I AM THE LEGAL OWNER OF SAID PROPERTY OR THE AUTHORIZED AGENT OF THE LEGAL OWNER AND THAT THE INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130, SAN LUIS OBISPO, CA 93401
(805)-541-2394

RECORD OWNER:
JOHNIE MEDINA
3390 MAIN STREET
MORRO BAY, CA 93442

ENGINEER'S STATEMENT

I HEREBY STATE THAT THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION AND TO THE BEST OF MY KNOWLEDGE COMPLIED WITH THE LOT DIVISION ORDINANCE OF THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA.

TERENCE K. ORTON, P.E. 21807, EXPIRES 9-30-2009
WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130, SAN LUIS OBISPO, CA 93401
(805)-541-2394

APN: 65-085-019

SITE ADDRESS
3390 MAIN STREET
MORRO BAY, CA

SITE AREA
40,119 S.F. (0.92 ACRES)

MB 07-0274
VESTING TENTATIVE MAP

BEING A SUBDIVISION OF A PORTION OF BLOCK 2G OF ATASCADERO BEACH IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

PREPARED FOR:
JOHNIE MEDINA

PREPARED BY:
WESTLAND ENGINEERING, INC.
3480 SOUTH HIGUERA, SUITE 130
SAN LUIS OBISPO, CA. 93401
(805) 541-2394

SHEET 1 OF 1
DECEMBER 2004 JOB NO. 04.040

ATTACHMENT 5

Appendix 4: Letter from CDFG

DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
(559) 243-4005

August 13, 2007

John Medina
3390 North Main Street
Morro Bay, California 93442

Dear Mr. Medina:

Extension to Stackable Brick Wall
3390 North Main Street
Morro Bay, San Luis Obispo County

This is in response to the information you submitted to the Department of Fish and Game (Department) regarding the above referenced Project, which is located near an ephemeral creek channel that drains storm water runoff to the Pacific Ocean. The proposed Project is the 84 foot extension of an existing three (3) foot high stackable brick retaining wall, and is intended to allow for additional fill material behind the wall to raise the level of the rear yard of the property. The extension wall will continue without any change in direction or dimensions from the existing wall. A driveway will be constructed above the wall. The construction location of the existing portion of the retaining wall, and associated fill, was previously determined by the Department to be non-jurisdictional, pursuant to Section 1600 of the Fish and Game Code. The proposed wall extension is also not within the Department's jurisdiction, and therefore a Stream Alteration Notification does not need to be submitted for the Project.

Based on the Department's review of the information you submitted, consultation with you regarding the scope of proposed work, and our knowledge of the Project site, we have determined that there is no existing fish or wildlife resource that will be substantially adversely affected by your Project, if it is constructed in the manner described.

As a result, you may begin your Project or activity if you have obtained all other necessary permits. You are responsible for complying with all applicable local, state, and federal laws in completing your Project or activity.

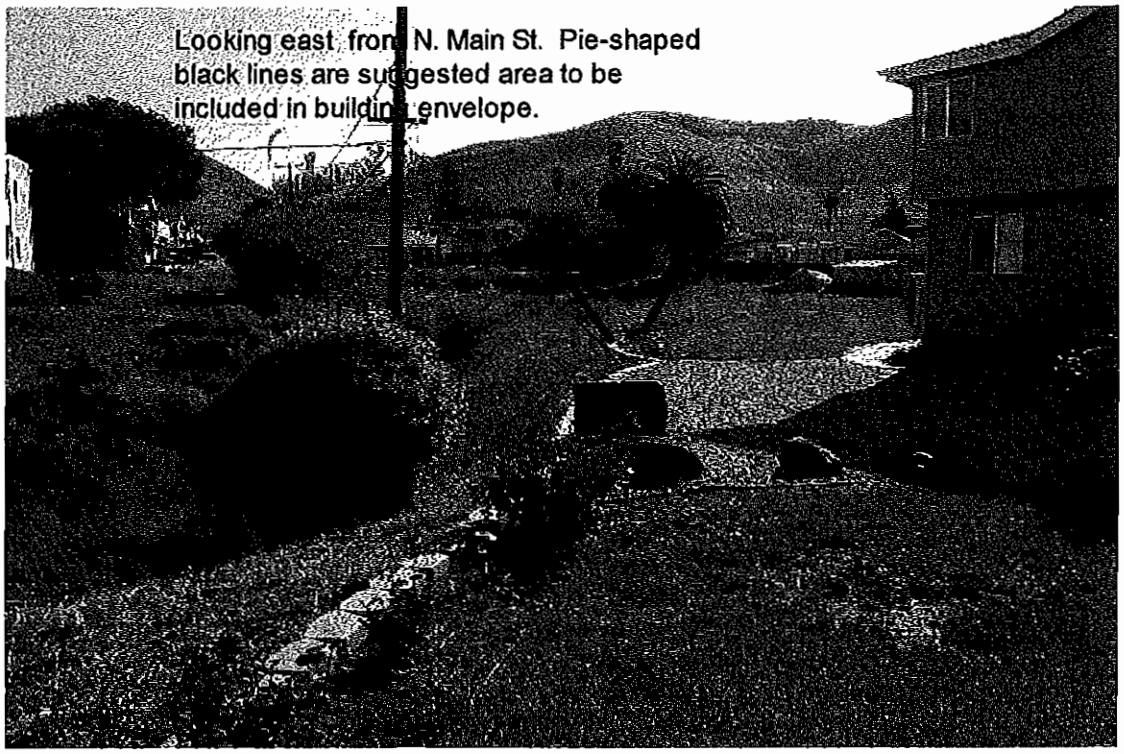
If you have any questions regarding this matter, please contact Julie Means, Senior Environmental Scientist, at the above address or by telephone at (559) 243-4014, extension 240. Thank you for your cooperation.

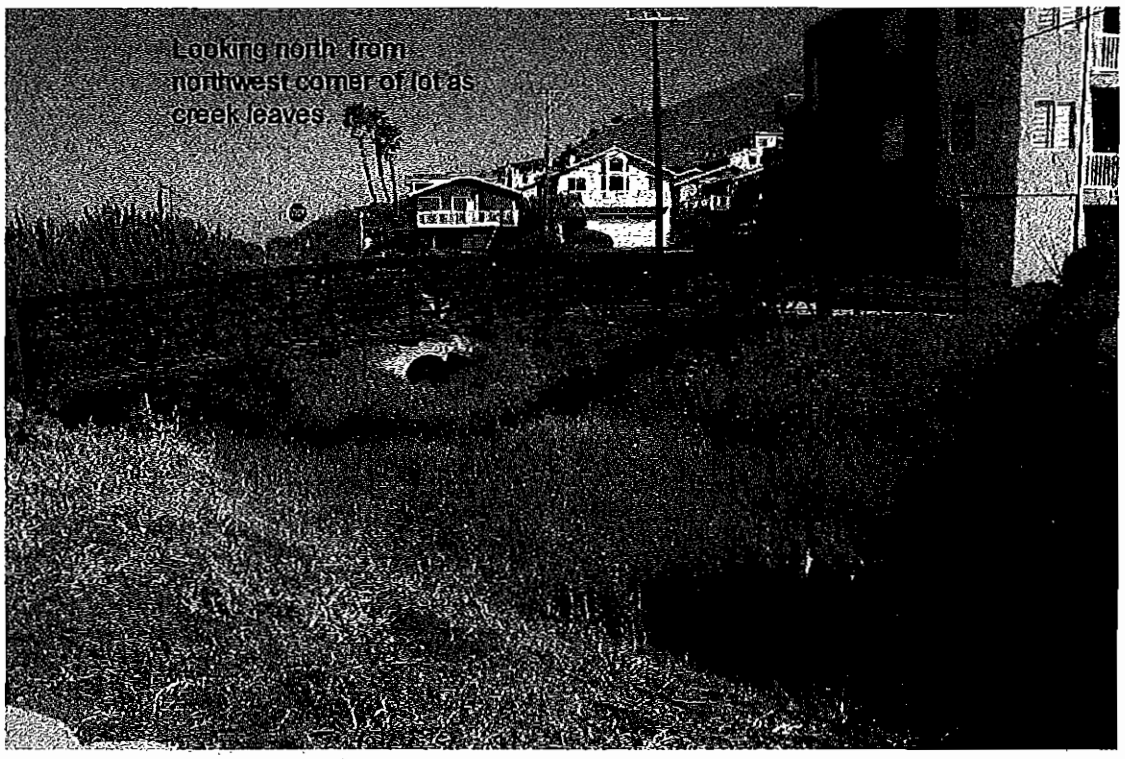
Sincerely,

for William Loudermilk
Regional Manager

Conserving California's Wildlife Since 1870

Appendix 3: Photographs of the property





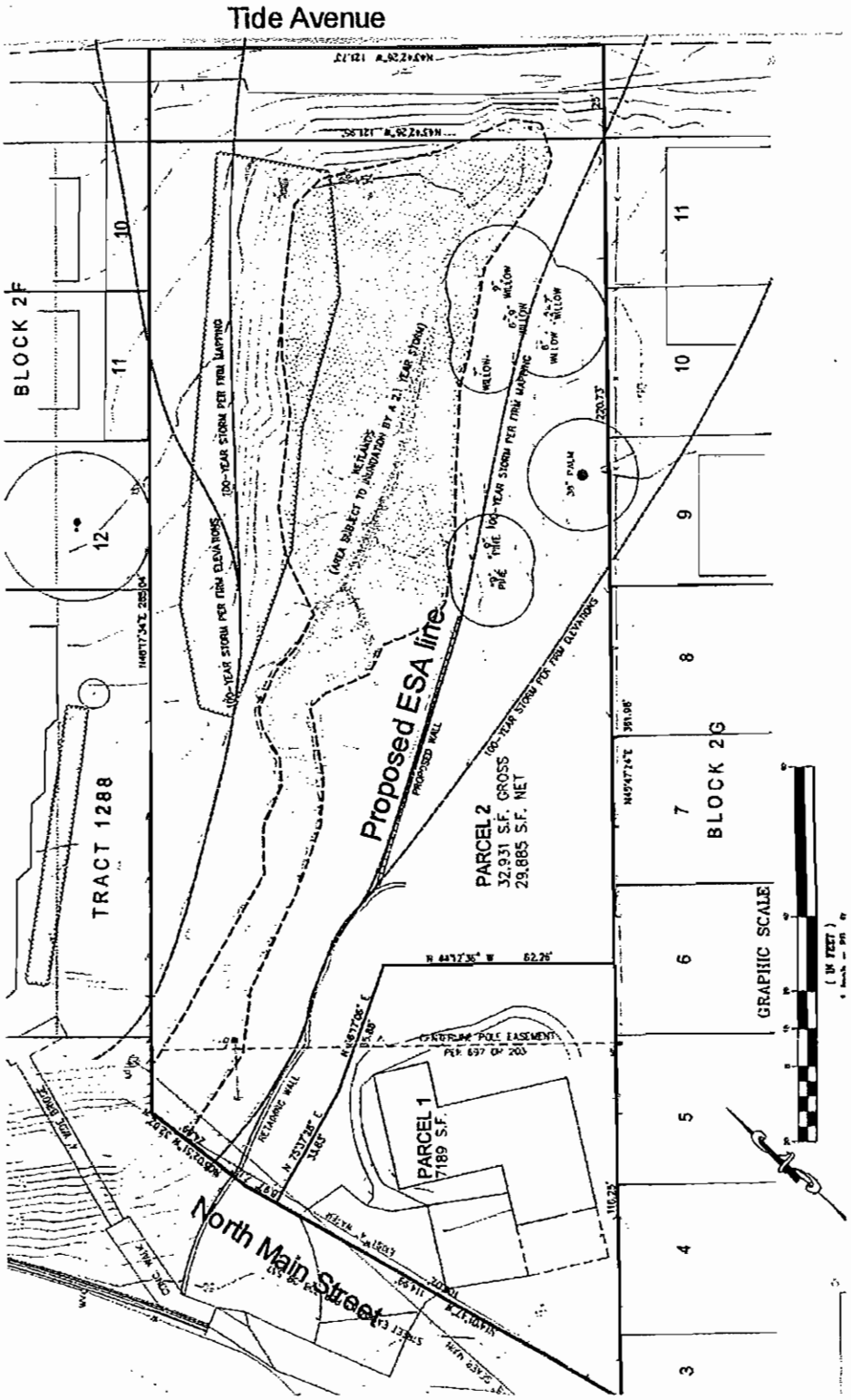


Figure 3: Shape of the lot with proposed ESA line

ATTACHMENT 6

CITY OF MORRO BAY
PUBLIC SERVICES DEPARTMENT
APPEAL FORM

RECEIVED

JAN 13 2012

ADMINISTRATION OFFICE
CITY OF MORRO BAY

APPEAL FROM THE DECISION OR ACTION OF (GOVERNING BODY OR CITY OFFICER):	
Planning Commission	
APPEAL OF SPECIFIC DECISION OR ACTION:	
Conditionally approved amendment to Subdivision #S00-089, CDP #CPO-276, and Exhibit A	
PERMIT TYPE BEING APPEALED (IE. COASTAL PERMIT, USE PERMIT, TENTATIVE SUBDIVISION):	
Amendment to the approved Subdivision Permit #S00-089 and Coastal Development Permit #CP0-276	
DATE DECISION OR ACTION RENDERED: January 4, 2012	
APPELLANT (PLEASE PRINT): Michele Arete	
SIGNATURE: Michele Arete	
ADDRESS: 361 Vashon Street	*TELEPHONE NUMBER:* 234-3550

GROUNDS FOR THE APPEAL (ATTACH SHEETS AS NECESSARY):
1. LCP and MBMC do not provide for development in ESH buffer, particularly LCP Policy11.14.
2. Amendment and Exhibit A contradict GP/LCP and render CEQA findings invalid.
3. The parcel is not rendered unusable as it was previously conditionally approved.
4. Applicant has not fulfilled/maintained the original conditions from his 2001 development.
5. A similar ESH development project, Black Hill Villas, approved by the CCC lost in court.

REQUESTED RELIEF OR ACTION:
1. Uphold the Planning Commission's July 19, 2010, motion which conditionally approved the project.
2. Deny the Amendment and findings of Exhibit A.

FOR OFFICE USE ONLY	
DATE APPEAL FILED:	ACCEPTED BY:
APPEAL BODY:	
DATE OF APPEAL HEARING:	

S:\Planning\Templates\Form\Appeal.doc

ATTACHMENT 7

RECEIVED

JAN 17 2012

City of Morro Bay
Public Services Department

CITY OF MORRO BAY
PUBLIC SERVICES DEPARTMENT
APPEAL FORM

APPEAL FROM THE DECISION OR ACTION OF (GOVERNING BODY OR CITY OFFICER):	
PLANNING COMMISSION	
APPEAL OF SPECIFIC DECISION OR ACTION:	
AMENDMENT TO S00-089 & CPO-276	
PERMIT TYPE BEING APPEALED (IE. COASTAL PERMIT, USE PERMIT, TENTATIVE SUBDIVISION):	
SUBDIVISION & COASTAL DEVELOPMENT	
DATE DECISION OR ACTION RENDERED: 1-4-12	
APPELLANT (PLEASE PRINT): JAMES A ROSS	
SIGNATURE: James A Ross	
ADDRESS: 301 TRINIDAD ST	*TELEPHONE NUMBER:* 772-4186

GROUNDS FOR THE APPEAL (ATTACH SHEETS AS NECESSARY):
SEE ATTACHED GROUNDS FOR THE APPEAL OF
AMENDMENT OF S00-089 AND CPO-276

REQUESTED RELIEF OR ACTION:
ADMINISTRATIVE ACTION TO DENY PLANNING
COMMISSION APPROVAL OF THIS AMENDMENT
TO THE APPROVED PERMITS #S00-089 AND
#CPO-276.

FOR OFFICE USE ONLY	
DATE APPEAL FILED:	ACCEPTED BY:
APPEAL BODY:	
DATE OF APPEAL HEARING:	

S:\Planning\Samples & Stocks\Form\Appeal.doc

Grounds for the appeal of amendment to S00-089 and CPO-276

Driveway for the proposed subdivided lot that will have a driveway within the 25 foot buffer for No Name Creek

Local Coastal Plan and Municipal Code states that "At no time shall development occur within the 25 foot buffer".

The previous Planning Commission denied this request and recommended the use of a common driveway easement to prevent this intrusion.

This intrusion could have been foreseen and addressed when Johnnie Medina built his home.

As a provision of this subdivided lot split and conservation easement it is prudent to assign which lot is responsible to maintain the conservation easement and what will be required.

Johnnie Medina never provided for drainage runoff for the lot or lots to the south when he built his home and the staff failed to catch the requirement at final sign off. That could also be addressed as a provision of this subdivided lot split and conservation easement.

RECEIVED

JAN 1 7 2012

City of Morro Bay
Public Services Department

ATTACHMENT 8

ADDENDUM To Appeal of 3390 Main St Project 02-07-12

Exhibit A- A. Page 11
CEQA was approved because it had certain conditions to make it abide by the law, now those conditions have been removed, so it is not meeting CEQA Standards anymore. The primary condition was to stay out of the Buffer, and restore the ESHA. Now the applicant is intending to invade the buffer and the Creek.

Page 11, Part B,C,D
The findings of the Coastal Dev Permit all relates to another project with modulars, not this one, and does not justify this CDP, so there are no CDP findings.

Page 12 Exhibit B, Standard Condition #4 and #7
We are objecting to this, as it is not in compliance with the Local Coastal Plan Policy 11.14, 11.18, 11.19 , as explained below.

Policy 11.14- The parcel has been deemed usable by the Planning Comm. On July 19, 2010, therefore according to this Policy 11.14, the applicant does not qualify for a reduction to the Buffer. In addition 11.14 " where riparian vegetation has been previously removed, except for stream channelization, the buffer shall allow for the re-establishment of riparian vegetation to its prior extent to the greatest degree possible".

Not only has the applicant not restored as conditioned to do by the 2010 Permit, he is now applying to place the driveway upon the very Creek bank buffer he was conditioned to restore. To summarize, not only is the applicant not going to restore the vegetation, he is now going to pave over it!!

Policy 11.18 Subdivisions shall be prohibited in designated ESHA's. Also subdivisions adjacent to wetlands shall not be approved unless building sites are ENTIRELY outside the buffer which is 50 feet.

In the 2010 Approval, the building site met this Condition, and now the applicants Amendment violates this policy. Without ANY discussion and viewing of the new building plans, the applicant has increased the size of the house to 2,597 SF, and increased the size and length of driveway.

Policy 11.19 states NO VEHICLE TRAFFIC shall be permitted in wetlands.
Development adjacent to wetlands shall not result in adverse impacts due to sediment, runoff, noise or other disturbances.
The Bio-Swale is located in the Buffer zone, so now this is adverse impact.

RECEIVED
07
FEB 08 2012
ADMINISTRATION OFFICE
CITY OF MORRO BAY

We are not saying not to build, but we are asking that building in this area, be in accordance with the laws, and in accordance with the July 19, 2010 Permit be upheld, as it deemed the parcel usable. That would be the 1800 SF house, 1300 SF driveway. 25' from the Buffer.

Please listen to the 151 Petition signers, and the 45 email and letter writers, that are objecting to the unlawful encroachment into the Creek and ESHA.

Thank you,
Michele Arete
Owner 361 Vashon St.
Morro Bay CA 93442

AGENDA NO: B-2

MEETING DATE: February 14, 2012

Staff Report

TO: **Honorable Mayor and City Council** **DATE: February 7, 2012**

FROM: **Kathleen Wold, AICP – Planning and Building Manager**
Rob Livick, PE/PLS – Public Services Director/City Engineer

SUBJECT: **Review of Draft Zoning Text Amendment A00-013 amending Section 17.48.32 (Secondary Units).**

RECOMMENDATION:

Staff recommends the City Council:

1) Open the public hearing and receive testimony; and
2) Provide direction to staff to incorporate any changes and bring the ordinance back to City Council for "First Reading".

FISCAL IMPACT:

This action has minimal fiscal impact in that the processing and publication of the ordinance change will require some staff resources. Additionally, the reduction in fees through processing a public hearing is offset by a reduction in staff time required to review the project.

BACKGROUND/DISCUSSION:

The purpose of this amendment is to modify the current regulations and comply with the amendments made in 2002 to State Law Section 65852.2 which requires cities to set standards for the development of second dwelling units with ministerial review in an effort to increase supply of small, affordable housing units while ensuring that those units remain compatible with the existing neighborhood. Nothing in this amendment will affect the due process rights that citizens possess through the City's Local Coastal Plan or the California Coastal Act. Language will be added to the ordinance to this effect based on Coastal Commission Staff comments.

On March 22, 2011 the City Attorney brought to the City Council a staff report on the status of secondary dwelling unit regulations with a recommendation that City Council provide direction to staff. At this meeting the Council directed staff to return with the following amendments to Morro Bay Municipal code Section 17.48.320 (Secondary Units):

1. Minimum and Maximum Floor area. The floor area of a second unit shall not exceed

Prepared By: RL/KW Dept Review: RL

City Manager Review: _____

City Attorney Review: _____

the maximum allowable amount of 1,200 square feet as per State guidelines.

2. Architectural compatibility. The architectural design, exterior materials and colors, roof pitch and style, reasonable compatible of the second unit….

3. Parking. The parking space can be open and uncovered; however neither may be in tandem with required parking….

4. Conditional Use Permit. Remove entire requirement.

Staff has researched the Secondary Unit regulations and found that the changes proposed in 2005 were never certified by the California Coastal Commission (CCC). Because the changes approved by the City Council in 2005 were never certified by the CCC staff has used the prior secondary unit regulations as the base document and made changes to that document as instructed by the City Council. All changes proposed are consistent with Government Code Section 65852.150 and 65852.2 which pertain to Secondary Units.

The proposed revisions to Chapter 17.48 are as follows (words in italics are added and words with strikethrough will be deleted):

17.48.320 ~~GRANNY~~ SECOND*ARY* UNITS

The purpose of this Section is to provide affordable low- and moderate-income housing. *The following supplemental regulations are intended to comply with government Code Sections 65852.150 and 65852.2 on second units and implement the general plan, by allowing second units in all R districts subject to the following requirements*; ~~Pursuant to Government Code Section 65852.2, in zones where designated, a permit may be granted allowing a granny second unit on lots where there is one single-family residence, subject to the following provisions:~~

~~A. Minor Use Permit and Deed Restriction Required~~

~~A granny second unit may be permitted only after obtaining a Minor Use Permit pursuant to Chapter 17.60. A deed restriction in a form approved by the City Attorney shall be recorded limiting the use of said real property to residential purposes only.~~

~~B.~~ A. Location

Said unit may be located, as an accessory use, on any lot zoned for single-family or multi-family uses in accordance with the District Tables in Chapter 17.24 where a primary residential use has been previously established or proposed to be established in conjunction with said unit. Only one-second unit or one guesthouse is permitted per one primary single family dwelling on the same lot:

~~C.~~ B. Lot Coverage

Maximum lot coverage allowed for the District that they are located in.

~~D.~~ C. Design

Said unit shall be ~~consistent~~ *reasonably compatible* with the architectural style of the main residence and the neighborhood, and shall be located on the same lot as the primary residence.

~~E.~~ D. Size

The total floor area, not including a garage, for a ~~granny~~ second*ary* unit shall not exceed 1,200 square feet *as per State guidelines.*

~~F.~~ E. Parking

A minimum of one additional parking space per bedroom, not to exceed two spaces, shall be provided. The parking space can be open and uncovered, however may not be in tandem with the required parking of the principal dwelling unit but can be located in setbacks areas and in tandem if both spaces are for the secondary unit~~. Off-street parking shall be permitted in setback areas or through tandem parking, unless the following specific findings are made:~~ The principal dwelling unit must conform to the parking requirements of Chapter 17.44 "Off-Street Parking and Loading:"

~~1. That parking in setback areas or tandem parking is not feasible based upon specific site topography constraints or adverse fire and life safety conditions, or~~

2. ~~That it is not permitted anywhere else in the City.~~

~~G. Water Equivalencies and Other Public Facilities~~

~~The developer shall obtain and/or pay for all applicable water equivalency and other public facility improvements at the standard set for an apartment unit prior to issuance of a building permit, but will not be subject to a residential unit allocation under the provisions of Measure F.~~

~~H.~~ F. Compliance with Title 14

A granny/second unit shall be in conformance with all applicable provisions of Title 14 of the Morro Bay Municipal Code in addition to the applicable requirements for height, setback, lot coverage, etc. pursuant to the provisions of Chapter 17.24.

~~I. Use Limitation~~

~~Single-family residences with approved secondary units shall not have the secondary unit rented independent of the main residence when neither is occupied by the owner. Primary and secondary Single family residences with approved granny second units shall not have the granny unit rented independent of the main residence when neither is occupied by the owner.~~

In addition to the above changes there are also the following changes:

- Remove requirement for a Conditional Use Permit in the AG, R-A, R-1, R-2, R-3, R-4 and CRR zone districts; and,
- Change title from Granny Unit to Secondary Unit within Section 17.44 (Parking), Section 17.12 (Definitions).

Staff has included both Attachment A the redlined version of the proposed changes and Attachment B which shows the final version of the text for your convenience.

In addition to changes to the Secondary Unit regulations, staff is recommending the following changes to the Guesthouse regulations to be consistent with State law.

17.48.315 GUESTHOUSES/QUARTERS AND ACCESSORY LIVING AREAS

Where provided by this Title, guesthouses/quarters and habitable structures for accessory living area may be permitted in conjunction with a dwelling unit, subject to these further requirements:

A. Guesthouse Restrictions

A guesthouse shall not contain more than six hundred forty (640) square feet of habitable floor area containing not more than one bedroom and bathroom nor shall it exceed thirty (30) percent of the floor area of the main residence, and no cooking or food preparation or food storage facilities shall be provided.

~~B. Use Permit Requirements~~

~~A guesthouse may be permitted only after obtaining a Minor Use Permit pursuant to Chapter 17.60. In all cases, the Director shall require the recordation of a deed restriction limiting the use to guest purposes only and prohibiting its rental or occupation as a second unit. Such deed restriction shall be subject to the approval of the City Attorney. (Ord. 288 Exh. B (part), 1986; Ord. 263 § 1 (part), 1984)~~

B. Location. Guesthouses may be established on any lot in any R or AG district where a primary single-family dwelling has been previously established or is proposed to be established in conjunction with construction of a guesthouse. Only one-guesthouse or second unit is permitted per one primary single-family dwelling on the same lot.

Environmental Determination

A Negative Declaration was prepared for this project, as defined by CEQA, as there were no environmental impacts associated with the project. The environmental document was posted for review and comment for a thirty day period beginning on October 31, 2011 and ending on November 29, 2011.

Public Notification

Notice of this item will be published as a 1/8th page in the San Luis Obispo Tribune newspaper prior to the "first reading" notifying all Morro Bay residents of these proposed changes.

Planning Commission Recommendations

This proposed secondary unit revision was discussed at the December 7, 2011 Planning Commission meeting and then continued to their meeting of January 4, 2012. Six members of the public spoke in regards to modifications to the ordinance. The commissioners considered the public testimony and adopted planning commission resolution with the following amendments to the proposed ordinance:

1. Change language in 17.48.320 C to read " said unit shall be consistent and/or reasonably compatible".

2. The increased floor area of an attached second unit shall not exceed 30-percent of the existing living area, per state law.
3. A detached unit shall not exceed 1,200 square feet.

CONCLUSION:

The proposed Text Amendment will bring the City's regulations regarding Secondary Units into conformance with Government Code Section 65852.150 and 65852.2 and incorporate the recommendations given to staff by the Planning Commission and previous direction from City Council. And, to bring this ordinance revision, along with the revisions to definitions and parking sections, to insure consistency with terminology, back to City Council for "First Reading" on February 28, 2012.

ATTACHMENTS

1. Planning Commission Meeting Minutes of January 4, 2012
2. Current City of Morro Bay Section 17.48.320

Commissioner Irons asked to pull Item A-1 for discussion. Irons noted that on page 3 regarding discussion of item B-3, 2 State Park Road, there was a letter and an email from a resident received which was brought forward and Commissioners discussed the concerns stated in the letter. He asked the minutes be corrected to include that we brought forth the email from the public and discussed the concerns with staff and the applicant.

MOTION: Commissioner Irons moved to approve the minutes as corrected. The motion was seconded by Chairperson Grantham and carried unanimously. (5-0)

B. PUBLIC HEARINGS

B-1 ***Continued Item from the December 7, 2011 Meeting***
Case No.: #A00-013
Site Location: Citywide
Applicant/Project Sponsor: City of Morro Bay
Request: Zoning Text Amendment proposing to amend Section 17.48.320 (Secondary Units) modifying the section to be consistent with State regulations.
CEQA Determination: Mitigated Negative Declaration
Staff Recommendation: Forward a favorable recommendation to the City Council to approve the proposed Zoning Text Amendment and adopt the Mitigated Negative Declaration.
Staff Contact: Kathleen Wold, Planning and Building Manager (805) 772-6211

Wold presented the staff report.

Chairperson Grantham opened the Public Comment period.

Amy Perry, resident of Morro Bay, spoke against the zoning text amendment. She stated that on her block the secondary units have caused parking and noise problems and urged the Commission not to ease the current restrictions.

Betty Winholtz, resident of Morro Bay, spoke against the zoning text amendment. Winholtz stated that allowing second units to go from 900 to 1,200 square feet does not take into consideration the impacts to noise, parking, and circulation on neighborhoods and stated the current law is already compliant with State law; just more restrictive. Winholtz disagreed that the proposed changes will further affordable housing.

Dorothy Cutter, resident of Morro Bay, spoke against the zoning text amendment and expressed concern about allowing two large houses on one small lot. Cutter stated that residents will not want rental homes to surround them cutting off their views, light and air. Cutter stated the State law only states the granny units can be up to 1,200 square feet, but can be less. She stated this is not about affordable housing but about greed.

John Barta, resident of Morro Bay, spoke in favor of the zoning text amendment and stated as a former Planning Commissioner, he was involved with granny units. Barta read from the State law which cites that granny units can ease a rental housing shortage, maximize limited land

resources, infrastructure and assist low to moderate income homeowners with supplemental rental income. Barta stated he supports staff's proposal.

Dan Reddell, resident of Morro Bay, spoke in favor of the zoning text amendment, stating he supports reducing these restrictions and that rental income from a second unit could help struggling homeowners.

Roger Ewing, resident of Morro Bay, spoke against the zoning text amendment. Ewing stated that while he agrees with Mr. Reddell, he disagrees with Mr. Barta. Ewing stated 1,200 square feet is not affordable housing and questioned why changes are proposed when this was not approved by the Coastal Commission. He said the Commission should not make changes at the expense of neighbors and urged the Commission to consider the whole community.

Hearing no further comment, Chairperson Grantham closed the Public Comment period.

Commissioner Napier stated as a renter, she appreciates the smaller size for its affordability. The increased cost of renting a secondary unit at 1,200 square feet would not be affordable.

Commissioner Solu asked staff to clarify lot size versus home size in terms of the "building envelope." Wold clarified that the State guidelines allow the density to increase, not the lot coverage to increase.

Commissioner Irons asked for Commission support on the following suggested changes:

1. Secondary units to be consistent with the primary unit noting we do not have design guidelines that require neighborhood compatibility and line out "and the neighborhood".
2. Zoning be left as "consistent" and to line out "reasonably compatible."
3. The total floor area for a detached secondary unit shall not exceed 1,200 square feet which is consistent with State law.
4. Restrict attached guest houses to not exceed 30% of the primary existing unit size and limited to owner occupied housing in the primary dwelling.

Solu and Nagy were not in support of dictating design requirements. Nagy stated regarding size, the lot size requirements are still present. Having a requirement which limits size to a percentage of the main house does not work if the main house is small.

Napier stated her support for Irons' suggestion on design requirement and also size limitations, noting that a developer is still limited to the building envelope.

Grantham stated his support and noted that reasonable compatibility provides flexibility.

MOTION: Grantham moved to pass as amended B-1. Solu seconded the motion.

Discussion included:

Commissioner Solu requested to amend the motion secondary unit subsection Item C to include "said unit shall be consistent and/or reasonably compatible."

Commissioner Irons requested to amend the motion to state the increased floor area of an attached second unit shall not exceed 30% of the existing living area to bring us into conformance with State code and also the guest unit on "A" (Section 17.48.315) for an attached unit. A detached unit shall not exceed 1,200 square feet.

Commissioner Irons amended the motion on the floor and Chairperson Grantham seconded. Rob Schultz confirmed State law.

VOTE: The motion carried 3-2 with Commissioners Napier and Irons voting no.

B-2 **Case No.:** #S00-109 and #AD0-065
Site Location: 821 Pacific and 700, 710 and 710 ½ Bernardo
Applicant/Project Sponsor: Ruth Viau/ Cathy Novak
Request: Requesting Planning Commission to amend the previously approved project conditions by deleting Planning Commission Condition 1, which requires parking to be provided on parcel two east of the power pole.
CEQA Determination: Categorically Exempt Section 15305, Class 5
Staff Recommendation: Conditionally approve amendment to #S00-109 and #AD0-065
Staff Contact: Kathleen Wold, Planning and Building Manager (805) 772-6211

Wold presented the staff report and discussed with Commissioners the non-conforming status of the property including the previously approved parking exception.

Chairperson Grantham opened the Public Comment period.

Cathy Novak, Applicant's Representative, explained the Applicant's request and asked the Commission to support the modified parking request.

Chairperson Grantham closed the Public Comment period.

Commissioners discussed the request with staff.

Irons stated he was not in support of the Applicant's request to delete the parking condition as it is not an unreasonable condition. Irons addressed his concerns made known at the previous Commission meeting where he had requested the garage setback be made conforming at 5 feet from the existing 1 foot. And also his concern regarding the parking, which could be a safety issue having the parking spot straddle the right of way which he felt was not appropriate.

MOTION: Commissioner Nagy made a motion to approve Lot Line Adjustment #S00-109 and Variance #AD0-065, subject to the modified conditions of approval as stated in Exhibit B. The motion was seconded by Chairperson Grantham and carried 3-2 with Commissioners Napier and Irons voting no.

B-3 **Case No.:** #SP0-141
Site Location: Off premise signs at: Corner of Beach and Market, entry to parking lot of former Virg's location on the Embarcadero, boat launch ramp.

ATTACHMENT 2

17.48.320 - Secondary units.

The following supplemental regulations are intended to comply with Government Code Sections 65852.150 and 65852.2 on second units and implement the general plan, by allowing second units in all R districts subject to the following requirements:

A. Location. Second units may be established on any lot in any R or AG district where a primary single-family dwelling has been previously established or is proposed to be established in conjunction with construction of a second unit. Only one-second unit or one guesthouse is permitted per one primary single-family dwelling on the same lot;

B. Type of Unit. A second unit may be attached, detached, or located within the living area of the primary dwelling unit on the lot, subject to the standards of this section;

C. Minimum and Maximum Floor Area. The maximum floor area of a second unit shall not exceed nine hundred square feet, or fifty percent, whichever is smaller, of the existing or proposed living areas of the primary dwelling unit, except that a secondary dwelling unit of three hundred square feet is permitted regardless of the size of the primary dwelling unit. No second unit shall be smaller than three hundred square feet;

D. Development Standards. Second units shall conform to setback, height, lot coverage, and other zoning requirements applicable to the primary dwelling in the zoning district where the second unit is proposed;

E. Architectural Compatibility. The architectural design, exterior materials and colors, roof pitch and style, type of windows, and trim details of the second unit shall be substantially the same as and visually compatible with the style and character of the surrounding neighborhood, as determined by the public services director. Color photographs of the street-facing side(s) of the street shall be submitted with the second unit building permit application;

F. Parking. One additional parking space shall be provided for each second unit with one bedroom and two additional parking spaces shall be provided for units with two or more bedrooms. The parking space can be open and uncovered, however neither may be in tandem with required parking of the principal dwelling unit or secondary unit, and cannot be located in the front or street side setback area. The principal dwelling unit must conform to the parking requirements of Chapter 17.44: Off-Street Parking and Loading;

G. Use Limitation. Single-family residences with approved secondary units shall not have the secondary unit rented independent of the main residence when neither is occupied by the owner. Primary and secondary units may be rented under a single rental agreement if the owner is not occupying either unit. The terms of the single rental agreement shall not allow sub-lease of one unit. An owner is deemed to occupy a unit if they hold it off of the rental market for their own use;

H. Emergency Access. A second dwelling unit may be permitted only on a lot with access from a roadway that meets the fire apparatus access road requirements of the California Fire Code Section 902.2.2.1;

I. Conditional Use Permit. A secondary unit that is larger than nine hundred square feet may be permitted only after obtaining a conditional use permit pursuant to Chapter 17.60. The maximum size of a secondary dwelling unit shall not exceed one thousand two hundred square feet or fifty percent, whichever is smaller, of the existing or proposed living areas of the primary dwelling unit;

J. Parking Exception. The planning commission may grant exceptions to the limitations of parking subject to appropriate conditions adopted with a conditional use permit in accordance with Chapter 17.44

(Ord. 507 § 1 (part), 2005: Ord. 501 § 1 (Exh. A (part)), 2004: Ord. 445 § 3 (part), 1995)

AGENDA NO: D-1

MEETING DATE: 2/14/2012

Staff Report

TO: **Honorable Mayor and City Council** **DATE: February 7, 2012**

FROM: **Andrea K. Lueker, City Manager**

SUBJECT: **Discussion on the Closure of Atascadero State Beach (Morro Strand)**

RECOMMENDATION

Staff recommends the City Council review the staff report and information provided by Mr. Franco, San Luis Obispo Coast District Superintendent, regarding the potential closure of Atascadero State Beach (Morro Strand) and provide staff with any further direction.

FISCAL IMPACT

The fiscal impact of the closure of Atascadero State Beach (Morro Strand) would be significant to the City of Morro Bay. According to the 2009/10 California State Park Statistical report, usage totaled 197,873 free uses and 34,414 campers, for a total of 232,287. Using a conservative estimate, closure to the park could reduce spending in our local economy by $2-2.5 million a year.

BACKGROUND

Since the announcement of the closure of Atascadero State Beach (Morro Strand) in May of 2011, the City has been in constant communication with State Parks to review and discuss the potential for keeping this important asset to the community open. The City has sent several communications regarding the status of the State Park, including one in May2011, to the Senate Appropriations Committee members in support of SB356 which would require the Department of State Parks to notify a County or City that they intend to fully close a park within their jurisdiction and give the locality the options of voluntarily assuming the responsibility for the park. The City sent a second correspondence in August 2011 to the Director of State Parks, Ruth Coleman and District Superintendent, Nick Franco reiterating our support of SB 356 as well as our on-going concerns with the closure.

Unfortunately, in October 2011, SB 356 was not signed by Governor Brown; he stated it was duplicative as there are currently numerous localities that have already signed agreements to operate State Parks. Specifically in our case, the City currently has an operating agreement with State Parks for the State Park Marina as well as the City currently exercises regulatory authority over the California Tideland Trust Lands.

Since the May 2011 announcement, staff has also been communicating directly with Nick Franco, the San

Prepared By: ___AL__ **Dept Review:**_____

City Manager Review: _____

City Attorney Review: _____

Luis Obispo Coast District Superintendent, in an effort to keep informed of the status of the Morro Strand closure as well as the action the State was planning in regards to keeping the campground open. Mr. Franco provided the following update which was forwarded to the City Council:

> California State Parks has been directed to reduce its expenditures statewide by $22 million through the closure of 70 state parks. It is possible that some of these units can be kept open through partnerships with other agencies, non-profits and/or through concession operations with for-profit businesses. At this point, nine parks have either entered into agreements or are close to finalizing agreements with partners to keep the parks open to the public.
>
> California State Parks has been meeting with Cal Poly to pursue a unique partnership that would allow a true "learn-by-doing" operation of Morro Strand State Beach that can provide a means to keep the park open to the public while also developing job skills and practical understanding of public land management to Cal Poly students.
>
> This partnership is being explored by the cooperative efforts of California State Parks, the Biology Department, the Political Science Department, and the Recreation, Parks and Tourism Department along with the College of Research and Graduate Programs. Cal Poly Corporation is also involved as a non-profit able to assist with the mechanics of contracting and operation.
>
> It is our goal to have a draft framework and a good understanding of the likelihood for success by March. If, by March, it appears that we are unlikely to be able to proceed with an operation by Cal Poly, we will pursue a Request for Proposals from concessionaires to operate the park.
>
> Separate from the partnership work, we are also pursuing a proposal to use some funding to install hookups in some of the sites in Morro Strand campground with the idea that increased rates from hookups as well as increased occupancy during the traditional off-season, will turn the park into a positive revenue source. While this won't reduce expenditures, it may provide sufficient income to cover the cost of expenditures.

State Parks will also be holding several State Park Partnership Workshops, one of which staff will be attending, during February or early March, 2012. These workshops are designed to offer non-profit organizations and public agencies information on assuming some or all of the functions of a State Park that is slated for closure. The workshop will review the "Partnership Workbook for Operating Agreements" which includes a proposal checklist, explains the proposal requirements and lists the core functions to operate a State Park.

CONCLUSION

As most agree, it is extremely important to keep Morro Strand campground open and operating for a number of reasons, some of the most important being the local economy, vibrancy to the community as well as providing recreational opportunities. The City has kept an open and ongoing dialog with State Parks and both agencies are poised to ensure the campground remains open now and into the future.

AGENDA NO: _____D-2_ _____
MEETING DATE:__February 14, 2012__

Staff Report

TO: **Honorable Mayor and City Council** **DATE:** **February 1, 2012**

FROM: **Rob Schultz, City Attorney**

SUBJECT: **Discussion and Consideration of Regulating Public Smoking**

RECOMMENDATION

Staff seeks direction from City Council regarding whether to prepare an ordinance regulating secondhand smoke in the City of Morro Bay.

INTRODUCTION

Staff has been asked to present a report on prohibiting smoking within certain areas of Morro Bay. This report reviews possible benefits and implications of implementing a smoking ban, including a review of prohibitions in other cities.

FISCAL IMPACT

There is no financial impact associated with providing policy direction to staff on tobacco control ordinances. Existing resources in the City Manager's Office and City Attorney's Office will be sufficient to enable staff to draft ordinances based on the City Council's direction.

BACKGROUND

California has long been considered a pioneer with its statewide initiatives to reduce the harmful effects of smoking. The 1988 passage of Proposition 99, the Tobacco Tax and Health Protection Act, imposed a 25 cent per pack cigarette tax and created statewide programs to reduce smoking.

By 1993, local jurisdictions throughout the state had enacted smoke-free workplace ordinances that protected nearly two-thirds of California workers. The success of local tobacco control legislation helped inform the 1994 creation and passage of Assembly Bill (AB) 13, the California Smoke-Free Workplace Act. This landmark bill created a 100% smoke-free environment for most workplaces.

Prepared By: _____	**Dept Review:_____**
City Manager Review: _____	
City Attorney Review: _____	

The passage of AB 13 was heralded as a groundbreaking replacement for a "patchwork of local laws," but it was also criticized for its negative effect upon local tobacco control initiatives because it was limited to workplace protections. In addition, its passage created the perception that local legislation was no longer necessary. In researching this issue, staff discovered that many cities over the last several years have started to implement additional protections beyond those provided by state law.

DISCUSSION

Local governments that have chosen to enact tobacco control ordinances that are stronger than the protections provided by the state have generally focused their protections for indoor or enclosed places; protections for outdoor public places; secondhand smoke housing policies; and regulation of sales.

Recently, the community has expressed interest in improving the City of Morro Bay's secondhand smoke and tobacco control policies. Rather than presenting the City Council with an ordinance that might not meet the City Council's interests in this area, staff thought it prudent to request the City Council's policy direction regarding each of the four potential areas for regulation. Staff relied on several sources to compile the information below, including the Public Health Law and Policy's Technical Assistance and Legal Center, the American Lung Association's Center for Tobacco Policy and Organizing, and San Luis Obispo County's Tobacco Control Program.

Protections for Indoor or Enclosed Work Places

AB 13, codified in Labor Code section 6404.5, prohibits smoking in most indoor workplaces, but exempts certain workplace environments. Most other cities have acted to extend protections to cover these areas. A comprehensive secondhand smoke ordinance would eliminate the exemptions to cover all enclosed workplace environments, as well as other enclosed places that are open to the public.

Examples of enclosed public or workplace environments where protections can be extended include:

- Private residences used as licensed child care and health care facilities
- Taxi cabs
- Tobacco retailers/smoking lounges/hookah bars
- Truck cabs
- Hotel lobbies
- Rooms in hotels/motels (by increasing the required number of smoke-free rooms; state law requires 35%)
- Banquet rooms (hotels)
- Warehouse facilities
- Small businesses with fewer than six employees
- Owner-only workplaces that are open to the public
- Public places such as sports arenas or convention halls

Protections for Outdoor Public Places

There are numerous studies concluding that secondhand smoke is harmful to individuals, including a report from the California Air Resources Board declaring secondhand smoke as a toxic air contaminant, and a report from the U.S. Surgeon General stating that there is no risk-free level of exposure to secondhand smoke. A 2007 study conducted by researchers from Stanford University found that outdoor secondhand smoke exposure can be comparable to indoor secondhand smoke levels when an individual is near a smoker outdoors. Many cities throughout the state have used these compelling healthcare studies as the basis for implementing some level of protection from secondhand smoke to outdoor public places. Eighty-three cities and counties in California have passed what are considered to be comprehensive outdoor secondhand smoke ordinances.

Two approaches have been generally accepted as the best methodologies to implementing a comprehensive outdoor secondhand smoke ordinance. The first approach, known as the "inclusive approach," legislates a complete ban on smoking in all outdoor public places. Three cities in Southern California have adopted this type of ordinance.

The second approach, known as the "listing approach," targets seven key outdoor areas for protection. The seven areas targeted for protection under the listing approach include:

1. Dining areas: defined as outdoor seating at restaurants, bars, etc.
2. Entryways (reasonable distance): defined as within a certain distance of doors, windows, and other openings into enclosed areas.
3. Public events: defined as farmers' markets, fairs, concerts, etc.
4. Recreation areas: defined as parks, trails, sports fields, etc.
5. Service areas: defined as bus stops, ticket lines, ATM lines, taxi stands, etc.
6. Sidewalks: defined as public sidewalks in downtown shopping and business areas.
7. Worksites: defined as any outdoor working area, such as constructions areas.

Under the listing approach, the protection extended to these seven targeted areas must go beyond any protections currently offered by state law, which prohibits smoking within 20 feet of the main entrance, exits, and windows of government buildings, and within 25 feet of tot lots and playgrounds. To be considered as a comprehensive secondhand smoke policy by policy advocates, five of the seven areas targeted for protection must be included in the ordinance.

Other provisions that may be included in an ordinance regulating smoking in public places include:

- Requiring that No Smoking signs be posted
- Prohibiting the placement of ash cans and ashtrays
- Requiring commercial property owners and managers to prevent patrons and guests from illegally using tobacco on their premises

Secondhand Smoke Housing Policies

Smoke in multi-unit housing poses health problems for non-smoking residents through the drifting of smoke from neighboring units, balconies, and outdoor spaces. The Surgeon General has determined that the dangers from secondhand smoke cannot be controlled by ventilation, air cleaning, or the separation of smokers from non-smokers. Several studies have concluded that smoking in multi-unit housing also contributes to higher maintenance and insurance costs. Many cities in California have begun to address the health dangers and additional costs related to secondhand smoke by implementing secondhand smoke housing policies. As of January 2011, 101 communities in California have adopted some form of secondhand smoke housing policy.

Secondhand smoke housing policies are complex because the provisions necessary to implement a secondhand smoke housing policy are varied. Generally, the provisions of secondhand smoke housing policy can be broken up into three policy areas: common area prohibitions, individual unit prohibitions, and the size and type of multi-unit housing to be regulated.

Common Area Prohibitions

Most housing policies include a prohibition on smoking in both indoor and outdoor common areas, except for areas designated for smoking that meet certain criteria. Provisions for outdoor buffer zones are also another important aspect for determining where smoking may be prohibited. Buffer zones protect tenants from drifting smoke from adjacent areas that can include balconies, patios, and decks that are within a "reasonable distance" of enclosed areas where smoking is prohibited.

Individual Unit Prohibitions

Restricting smoking within individual rental units is an important consideration when drafting secondhand smoke housing policies. The American Lung Association supports prohibiting smoking in 100% of multi-unit rental housing due to the public health impacts of secondhand smoke, but recognizes that public policy makers must also consider the privacy rights of smokers and the logistics surrounding the implementation of secondhand smoke housing policies. Some cities use a tiered approach to secondhand smoke housing protections by requiring that new complexes be 100% smoke-free, while permitting existing complexes to allow for a certain percentage of smoking units.

A 2009 report from the California Department of Public Health revealed that 13.1% of Californians are smokers, down from 22.7% in 1988. Policy makers are encouraged to consider the percentage of non-smokers and the increased costs associated with maintaining smoking units when determining the percentage of new and existing units that shall be smoke-free. Other provisions that support the implementation of secondhand smoke housing policies include reasonable phase-in periods and the clustering of smoking units so that secondhand smoke exposure is limited as much as possible.

The Size and Type of Multi-Unit Housing Regulated

The minimum size of the multi-unit housing complex upon which to impose secondhand smoking regulations needs to be determined. The size of complexes that are regulated vary by city, and often depend on the other types of provisions that are included in the ordinance.

The rights of condominium owners (both non-smokers and smokers) pose a difficult challenge for policy makers because the regulatory avenues used to mitigate the dangers of secondhand smoke in rental housing, i.e. the clustering of smoking units, is not as practical for condominiums, since they are individually owned. Options available to policy makers to extend secondhand smoke protections to condominium complexes include:

- Prohibiting smoking in common areas
- Establishing reasonable distance provisions
- Requiring the disclosure of smoking units and areas at the time of sale and leasing of a condominium unit
- Declaring secondhand smoke a nuisance

Ten cities in California have declared secondhand smoke to be a nuisance. A nuisance declaration makes it easier for an individual to seek the redress of grievances through the civil court system, because a nuisance declaration lessens the burden of proof for an individual seeking private civil action. In the housing context, declaring secondhand smoke a nuisance is helpful because it eliminates the need to prove that some particular level of exposure has occurred and then to prove that such exposure is an unjustified intrusion or hazard.

Other provisions that can be included in a secondhand smoke housing ordinance include:

- Requiring no smoking lease terms in rental agreements
- Requiring landlords to disclose where smoking is allowed, including which units
- Requiring landlords to submit diagrams of smoking and non-smoking units to City officials
- Including motels and hotels with long term lodging policies

Regulations of Tobacco Sales

The California Department of Public Health reports that three out of four adult smokers started using tobacco before the age of 18, and considers the limitation of youth access to tobacco as a critical component to improving public health. Many communities in California are regulating the location and operation of tobacco retailers as a way to reduce the illegal sale of tobacco to minors.

Tobacco retail licensing laws and land use controls are being credited with helping to reduce the illegal sale of tobacco to minors. The California Department of Public Health revealed that only 7.7% of retailers surveyed in 2010 sold tobacco to minors, down from 8.6% in 2009, and 12.6% in 2008. When the state began monitoring in 1995, the minors participating in the survey were able to buy tobacco products during 37% of tobacco purchase attempts.

Tobacco Retail Licensing

Under the Cigarette and Tobacco Products Licensing Act of 2003, businesses that sell cigarettes and tobacco products in California are required to have a state-issued retailer's license. License holders are responsible for ensuring that they display their license, maintain accurate sales records, and allow inspection of these records. It is illegal under state and federal law for retailers to sell cigarettes or tobacco products to minors.

Many cities in California have adopted local licensing programs as an additional mechanism for enforcing federal and state tobacco control laws. As of December 2010, 109 cities and counties in California have adopted local tobacco retailer licensing ordinances.

Four elements are available as policy options when crafting a tobacco retail license program:

1. Requiring all tobacco retailers to obtain a local license and renew it annually
2. Providing that violations of any federal, state, or local tobacco control law is also a violation of the license
3. Authorizing suspension or revocation of the local license for any violation of the license terms, and identify a dedicated enforcement agency
4. Establishing a sufficient license fee to fund all costs of administration, implementation, and enforcement of the license

The fourth element, establishing a sufficient license fee, is particularly critical to the adoption of an effective licensing ordinance. Licensing fees are permissible but are limited to the actual costs associated with necessary government regulation. Fees charged by other cities for ordinances containing all four policy options average $300 per year, with the highest fees at $1,500. The fee structure established by those jurisdictions with local licensing regulations does not always represent a full cost recovery of administering this type of program.

Right to Smoke

A question of whether or not this ban would be an infringement of a person's "right to smoke" may be raised. However, smoking is not a protected right under the Federal or State Constitution. The authority to ban smoking is expressly given in California Assembly Bill 846 and Health and Safety Code Section 104495, which authorizes cities and counties to implement smoking bans more stringent than what the state has imposed.

Public Education

If a smoking ban is implemented, a public education and signage program will be necessary. Secondhand smoke and tobacco control laws are typically complaint-driven and self enforcing. Ordinances that contain some sort of educational component, where the public is informed about the relevant regulations, are particularly helpful in instances where regulations are supported by self-enforcement.

RECOMMENDATION

Provide direction on improving the City of Morro Bay's secondhand smoke and tobacco control policies.

AGENDA NO:	**D-3**
MEETING DATE:	**2/14/12**

Staff Report

TO: **Honorable Mayor and City Council** **DATE: February 8, 2012**

FROM: **Rob Schultz, City Attorney**

SUBJECT: **Discussion and Consideration of Amendments to Morro Bay Municipal Code Chapter 5.24 regarding Taxicabs**

RECOMMENDATION:

Review the Staff Report and MBMC 5.24 regarding the regulations for Taxicabs and direct staff to return with this item for Introduction and First Reading with any changes suggested by Council.

FISCAL IMPACT:

None at this time.

BACKGROUND:

Mayor Yates expressed interest in amending the City's Taxicab regulations in order to streamline and remove impediments to Taxicab companies in Morro Bay.

DISCUSSION:

Taxicabs provide an essential component of the public transit system for cities throughout America. A well functioning taxi system can be a valuable resource for visitors, business people, and patrons of bars, clubs, restaurants and stores. At the same time, taxis can assist those who do not have a car for a variety of reasons, such as income, age, disability, or simply personal choice.

Taxicabs are operated by private persons that utilize the public rights of way to advertise and deliver their services. Most communities heavily regulate Taxicabs because it is assumed that left unregulated; the competitive and transient nature of the business would result in predatory, discriminatory, fraudulent and dangerous conduct. Therefore, most communities are of the opinion that appropriate regulation of taxicab companies, taxicab drivers and their operations must be in place to protect the public health, safety, and welfare.

However, in the past 25 years, many cities have deregulated taxi markets and a substantial amount of literature has emerged examining the merits of deregulation. The literature basically states that local regulatory barriers impose powerful obstacles to start-up taxicab companies, either by establishing unnecessary financial burdens and bureaucratic rules, or outright restrictions on new taxicab

Prepared By: _____	**Dept Review:**_____
City Manager Review: _____	
City Attorney Review: _____	

businesses. The literature states that when regulations become too onerous for taxicabs, would-be taxicab entrepreneurs, like other businesses, sometimes go underground and provide their services illegally. Most importantly, many will never start at all. The literature states that a taxicab business should be one of the easiest businesses to start up. The only requirements should be a clean, safe automobile; a driver in good physical condition without a recent criminal record; a driver's license; a simple, low-cost business permit; and the proper insurance.

The City of Morro Bay currently has one Taxicab business that is approved and licensed to operate in Morro Bay. Attached is MBMC Section 5.24 (Attachment "A") which regulates taxicabs in Morro Bay. MBMC Section 5.24 was enacted in 1964 and has had only two minor amendments since then. I have highlighted the following sections of the ordinance for the City Council to specifically review and decide whether to streamline these requirements:

- 5.24.020 - Certificate of public convenience and necessity and permit.
- 5.24.040 - Certificate hearing.
- 5.24.050 - Investigation.
- 5.24.060 - Compliance required.
- 5.24.070 - Additional permits—Council determination.
- 5.24.080 - Additional permit—Application.
- 5.24.090 - Taxicab owner before enactment.
- 5.24.100 - All day operation.
- 5.24.120 - Transfer of certificate and permit.
- 5.24.150 - Approval of established rates.
- 5.24.160 - Rate change—Hearing.
- 5.24.180 - Inspection.
- 5.24.210 - Interior cleanliness.
- 5.24.240 - Driver's permit—Application.
- 5.24.250 - Driver's permit—Prohibited persons.
- 5.24.260 - Applicant residency.
- 5.24.270 - Applicant examination.
- 5.24.300 - Taxicab stands.

Another approach the City Council might want to consider is to completely delete MBMC Section 5.24 and enact a very simple ordinance such as one the town of Danville did recently. Attachment "B" is the town of Danville's taxicab ordinance which is simple, containing minimal requirements

and allows for driver permits issued in other jurisdictions to be used in lieu of issuing the Town's own permit.

CONCLUSION:

Staff recommends that Council discuss changes to the current ordinance and direct staff to return this item for Introduction and First Reading.

Attachment "A"

Chapter 5.24 - TAXICABS*

Sections:

5.24.010 - Definitions.
5.24.020 - Certificate of public convenience and necessity and permit.
5.24.030 - Application for certificate.
5.24.040 - Certificate hearing.
5.24.050 - Investigation.
5.24.060 - Compliance required.
5.24.070 - Additional permits—Council determination.
5.24.080 - Additional permit—Application.
5.24.090 - Taxicab owner before enactment.
5.24.100 - All day operation.
5.24.110 - Taxicab replacement.
5.24.120 - Transfer of certificate and permit.
5.24.130 - Suspension and revocation of certificate.
5.24.140Registration - and license.
5.24.150 - Approval of established rates.
5.24.160 - Rate change—Hearing.
5.24.170 - Taxicab specifications and equipment.
5.24.180 - Inspection.
5.24.190 - Right of entry.
5.24.200 - Unsuitable taxicab—Proof of safety.
5.24.210 - Interior cleanliness.
5.24.220 - Operating regulations.
5.24.230 - Driver's permit—Required.
5.24.240 - Driver's permit—Application.
5.24.250 - Driver's permit—Prohibited persons.
5.24.260 - Applicant residency.
5.24.270 - Applicant examination.
5.24.280 - Revocation of license.
5.24.290 - Appeal to council after revocation.
5.24.300 - Taxicab stands.
5.24.310 - Insurance—Liability.
5.24.320 - Permit revocation.
5.24.330 - Penalty for refusal to pay fare.

5.24.010 - Definitions.

Unless otherwise expressly stated, whenever used in this chapter the following terms are defined as follows:

A. "Certificate holder" means any person to whom a certificate of public convenience and necessity has been issued under the provisions of this chapter and which certificate has not been revoked.

B. "Driver" means every person in charge of, or operating, any passenger-carrying or motor-

propelled vehicle, either as agent, employee, or otherwise, of owner, as owner, or under the direction of the owner.

C. "Street" means any place commonly used for the purpose of public travel.

D. "Taxicab" means any motor-propelled vehicle used for the transportation of passengers who direct the route to be traveled over the streets and not operated over a fixed route for compensation.

E. "Taxicab stand" means a public place alongside the curb of a street or elsewhere in the city which has been designated by the council as reserved exclusively for the use of a holder of a certificate of public convenience and necessity.

F. "Taxicab permit" means an authorization issued to a holder of a certificate of public convenience and necessity pursuant to the provisions of this chapter to operate a taxicab within the city.

(Ord. 5 § 1, 1964)

5.24.020 - Certificate of public convenience and necessity and permit.

No person shall engage in the business of operating any vehicle defined in Section 5.24.010 within the city without first having obtained a certificate of public convenience and necessity from the council and a taxicab permit for the operation of each vehicle authorized under such certificate of public convenience and necessity from the city clerk.

(Ord. 5 § 2, 1964)

5.24.030 - Application for certificate.

All persons applying to the council for a certificate of public convenience and necessity to operate one or more taxicabs shall file with the council a sworn application in a form stating as follows:

A. The name and address of the owner or person applying; if a partnership, the name of each partner; if a corporation, the names of the directors and principal officers;

B. The number of vehicles proposed to be operated for taxi service;

C. The designated number of each taxicab to be operated;

D. A description of the proposed color scheme, insignia, trade style, and any other distinguishing characteristics of the proposed taxicab design;

E. Any facts which the applicant believes tend to prove that public convenience and necessity require the granting of a permit;

F. Proposed rates to be charged;

G. Such further information as the council requires.

(Ord. 5 § 3, 1964)

5.24.040 - Certificate hearing.

No certificate of public convenience and necessity for the operation of any taxicab shall be granted until the council, after hearing, declares by resolution that the public convenience and necessity require the issuance of such certificate.

(Ord. 5 § 4, 1964)

5.24.050 - Investigation.

In determining whether the public convenience and necessity require the operation of a taxicab, or taxicabs, for which application is made, the council shall hold such public hearing as may be necessary in its discretion to determine that fact. Before any application is acted upon, the chief of police shall cause an investigation to be made and shall report his findings, in writing, to the council on the following:

A. The demand of the public for additional taxicab service;

B. The adequacy of existing mass transportation and taxicab service;

C. The financial responsibility and experience of the applicant;

D. The number, kind and type of equipment and the color scheme to be used;

E. The effect which such additional taxicab service may have upon traffic congestion and parking;

F. Whether the additional taxicab service will result in a greater hazard to the public;

G. Such other relevant facts as the council may deem advisable or necessary.

(Ord. 5 § 5, 1964)

5.24.060 - Compliance required.

No certificate of public convenience and necessity shall be issued to any person who has not fully complied with all the requirements of this chapter necessary to be complied with before the commencement of operation of the proposed service.

(Ord. 5 § 7, 1964)

5.24.070 - Additional permits—Council determination.

If the council determines that the public convenience and necessity require additional service, it shall then determine the number of taxicab permits which shall be necessary to furnish such services. The council may award such additional taxicab permits to existing holders of certificates of public convenience and necessity or to any new applicants who are qualified for issuance of certificates of public convenience and necessity.

(Ord. 5 § 6, 1964)

5.24.080 - Additional permit—Application.

Any holder of a certificate of public convenience and necessity may make application to the city clerk for such additional taxicab permits as he may desire. The city clerk shall notify the other certificate holders of such application and if no objections are filed within ten days, the applicant shall be granted such taxicab permit or taxicab permits as requested without necessity of a hearing or investigation as provided in Section 5.24.050. If, however, protests are filed, then such taxicab permits shall be granted or denied only in accordance with the provisions of Sections 5.24.050 and 5.24.060.

(Ord. 5 § 8, 1964)

5.24.090 - Taxicab owner before enactment.

Every owner operating a license taxicab prior to the seventh day of October, 1964, shall be presumed, in the absence of any contrary evidence and finding of the council, to have established a prima facie evidence of public convenience and necessity for the licensing of the taxicab or taxicabs actually in operation, and the council, upon application received not later than fifteen days after the seventh of October, 1964, shall grant a certificate of public convenience and necessity to such owner for the operation of taxicabs. Every owner obtaining a certificate as aforesaid shall be entitled to the number of taxicab permits held by such owner that were in force on the day prior to the seventh day of October, 1964.

(Ord. 5 § 9, 1964)

5.24.100 - All day operation.

All persons holding certificates of public convenience and necessity shall regularly and daily operate their taxicabs on a twenty-four hour basis during each day of the license year.

(Ord. 5 § 10, 1964)

5.24.110 - Taxicab replacement.

Whenever a certificate holder replaces a taxicab for which a permit has been issued, he shall file with the city clerk the name, type, year of manufacture, serial number, and motor number of the vehicle abandoned and the vehicle to be placed in use. The city clerk shall, as a matter of right, authorize the replacement of such vehicle under the existing permit.

(Ord. 5 § 11, 1964)

5.24.120 - Transfer of certificate and permit.

Any person having a certificate of public convenience and necessity for the operation of taxicabs shall be authorized by the council to transfer the certificate of public convenience, taxicab permits and taxicab stands issued pursuant thereto, unless after a hearing held for the purpose the council finds that such proposed transferee is not a person of good moral character or that the transferee does not possess sufficient financial responsibility to meet the requirements of a holder of a certificate of public convenience and necessity under this chapter. The hearing shall be held within thirty days after the holder of the certificate of public convenience and necessity shall give notice in writing to the city clerk of the intended transfer.

(Ord. 5 § 12, 1964)

5.24.130 - Suspension and revocation of certificate.

The certificate of public convenience and necessity shall be suspended or revoked by the council upon the following grounds:

A. The owner wilfully fails to operate the vehicles under permit in accordance with the provisions of this chapter;

B. The taxicab or taxicabs are operated at a rate of fare other than that approved by the council;

C. The company abandons its operation of all vehicles for a period of thirty days. Acts of God, labor disputes and other acts beyond control of the certificate holder are not an abandonment within the meaning of this section. No suspension shall be made effective until a hearing has been had before the council at which time the certificate holders may be present and represented by counsel. The certificate holder shall have not less than ten days notice by registered mail of the hearing.

(Ord. 5 § 13, 1964)

5.24.140Registration - and license.

Every holder of a certificate of public convenience and necessity shall pay registration and license fees to the city in accordance with the Business License Rate Schedule. The license shall be issued in the same manner provided for other licenses of the city.

(Ord. 285 § 2 (part), 1986: Ord. 225 § 25, 1982; Ord. 5 § 14, 1964)

5.24.150 - Approval of established rates.

The rate schedule of every owner operating a licensed taxicab or taxicabs prior to the seventh day of October, 1964, and who, under the provisions of this chapter, was granted a certificate of public convenience and necessity and whose rates were, on the seventh day of October, 1964, on file with the clerk and approved prior to the seventh day of October, 1964, by the council, are hereby approved.

(Ord. 5 § 15, 1964)

5.24.160 - Rate change—Hearing.

The council, upon its own motion or upon application of a certificate holder, may set, establish, change, modify or amend the schedule of rates to be charged by all vehicles operated by each holder of a certificate of public convenience and necessity under the provisions of this chapter. No rates shall be set, established, changed, modified or amended without a hearing before the council. Notice of such hearing shall be given to each certificate holder in writing by the city clerk at least five days before the hearing, and the council may give such other notice as it deems necessary.

(Ord. 5 § 16, 1964)

5.24.170 - Taxicab specifications and equipment.

Every taxicab shall have permanently printed or placed on each side and rear of such taxicab the name of the owner or the fictitious name under which the owner operates, together with the telephone number of the owner or company. All of the lettering shall be in letters not less than two and one-quarter inches

in height and not less than five-sixteenths of an inch stroke. In addition thereto, every taxicab shall have printed or placed upon its exterior in conspicuous letters of at least three and one-half inches in height and not less than one-half inch stroke, of a color in contrast to the color of the taxicab, the number of such taxicab, which numbering shall be printed or placed in the following locations:

A. In front center of taxicab on metal above windshield;

B. One number on each side of taxicab; and

C. One number on each side of outside rear of taxicab.

All taxicabs shall conform to the color scheme, name, monogram, or insignia approved by the city clerk.

No person shall imitate any color scheme, monogram or insignia used by any other holder of a certificate of public convenience and necessity which has been approved by the city clerk.

(Ord. 5 § 17, 1964)

5.24.180 - Inspection.

Before a permit is issued to any owner, the taxicab for which such permit is requested shall be delivered to a place designated by the council for inspection, and the council shall designate agents to inspect such taxicab or taxicabs, and their equipment, to ascertain whether such taxicab complies with the provisions of this chapter, all costs thereof to be paid by cab owner.

(Ord. 5 § 18(a), 1964)

5.24.190 - Right of entry.

The chief of police, or any member of the police department under his direction, shall have the right, at any time after displaying proper identification, to enter into or upon any certificated taxicab for the purpose of ascertaining whether or not any of the provisions of this chapter are being violated.

(Ord. 5 § 18(b), 1964)

5.24.200 - Unsuitable taxicab—Proof of safety.

Any taxicab which is found, after any such inspection, to be unsafe or in any way unsuitable for taxicab service shall be immediately ordered out of service, and before again being placed in service, proof must be furnished to the chief of police that it is in a safe condition.

(Ord. 5 § 18(c), 1964)

5.24.210 - Interior cleanliness.

The interior of every taxicab shall be thoroughly cleaned at least once in every twenty-four hours.

(Ord. 5 § 18(d), 1969)

5.24.220 - Operating regulations.

A. Any driver employed to transport passengers to a definite point shall take the most direct route possible that will carry his passenger to his destination safely and expeditiously.

B. No driver of any licensed taxicab shall refuse any person prompt taxi service in the city at any time while such taxicab is on the public streets ready for service, unless the taxicab is already engaged in the carrying of one or more passengers or is en route to answer a call for taxicab service; provided further that nothing in this subsection shall require any owner or driver to furnish taxicab service to any person under the influence of intoxicating liquor or narcotics, or to any person who is insane or who is a known criminal.

C. Every driver, upon request, shall give a correct receipt for the amount of payment received.

D. No driver of any taxicab shall accept, take into his vehicle or transport any larger number of passengers than the rates covering the seating capacity of his vehicle.

E. No driver shall permit any taxicab to remain standing in any established taxicab stand, unless the cab is attended by a driver or operator, except when assisting passengers to load or unload, or when answering the telephone.

F. No driver shall carry any passenger other than paying passengers or persons authorized by or on company business.

G. Every driver shall at all times display his driver's permit and picture in a conspicuous place in the taxicab which he is operating.

H. Any violation of the provisions of this section shall be cause for the revocation of the permit of the driver guilty of such violation.

(Ord. 5 § 19, 1964)

5.24.230 - Driver's permit—Required.

No person shall drive or operate any of the vehicles mentioned in Section 5.24.010 without first obtaining a permit in writing so to do from the chief of police, or any person designated by him. The permit issued will entitle the driver to work for only those whose name appears on the permit. A new permit will be required for each subsequent employment, provided, however, that no application shall be necessary other than a ratification of change of employment.

(Ord. 5 § 20(a), 1964)

5.24.240 - Driver's permit—Application.

Applicants for taxicab driver's permits shall file applications therefor with the chief of police. The application shall contain the following information together with the application fee in accordance with the Business License Rate Schedule, and three pictures of the applicant:

A. Name, marital status, age, residence, last previous address, and length of residence at such last address and in the city;

B. The names and addresses of two residents of the city acquainted with the applicant;

C. Complete fingerprinting of applicant.

(Ord. 285 § 2 (part), 1986; Ord. 225 § 26, 1982; Ord. 5 § 20(b), 1964)

5.24.250 - Driver's permit—Prohibited persons.

No taxicab driver's permit shall be issued to any of the following persons:

A. Any person under the age of eighteen years;

B. Any person not a citizen of the United States or who has not unlawfully declared his intention to become such;

C. Any person who has been convicted of a felony or a crime involving moral turpitude;

D. Any person who has been convicted within the last three years of driving a vehicle recklessly or while under the influence of intoxicating liquors or narcotics.

(Ord. 343, 1989; Ord. 144 § 1, 1976; Ord. 5 § 20(c), 1964)

5.24.260 - Applicant residency.

No applicant may obtain a permit to drive or operate any of the vehicles mentioned in this chapter unless and until he shall have been a continuous resident of the county for at least thirty days immediately preceding the date of the application; provided, however, that a temporary permit only may be granted for a period not to exceed sixty days after which time the license may be made permanent if, after investigation, the applicant is found to be a fit and proper person.

(Ord. 5 § 21, 1964)

5.24.270 - Applicant examination.

Each applicant for a permit shall be examined by a person designated by the chief of police as to his knowledge of the provisions of this chapter and traffic regulations, and if the result of the examination be unsatisfactory he may be refused a permit.

(Ord. 5 § 22, 1964)

5.24.280 - Revocation of license.

The chief of police may revoke or refuse to renew an operator's license if the driver or applicant has since the granting of his permit:

A. Been convicted of a felony or a crime involving moral turpitude; pandering, using, possessing, selling or transporting narcotics; or imparting information for obtaining narcotics;

B. Been convicted of driving recklessly or while under the influence of liquors or narcotics;

C. Had his state driver's license revoked or suspended;

D. Had two or more convictions of misdemeanor hit and run, or speed violation as set forth in the Vehicle Code of the state occurring during any consecutive period not exceeding twelve months.

(Ord. 5 § 23, 1964)

5.24.290 - Appeal to council after revocation.

Any driver whose license has been revoke as provided in Section 5.24.280, may, within ten days of such revocation, file an appeal from such revocation with the council, and a hearing shall be held before the council on such revocation. If, in the opinion of the council, the revocation is not justified from the evidence submitted to it at the hearing, the permit shall be reinstated. If, upon the hearing, it appears that good cause exists therefor, the council shall affirm the action of the chief of police and order the permanent revocation of the permit. The action of the council on such a revocation shall be final and conclusive. Pending such hearing and reinstatement, it is unlawful for such driver to operate a taxicab within the city.

(Ord. 5 § 24, 1964)

5.24.300 - Taxicab stands.

The council may designate taxicab stands on public streets for each certificate holder which shall remain in effect until revoked by the council.

No owner or driver of any taxicab shall park it on any public street in the central traffic district for the purpose of soliciting business, other than at the stands designated by the council.

The taxicab stands shall be designated by alternating striped colors of the taxicab company painted on the curb, with the words "taxicab only."

(Ord. 5 § 25, 1964)

5.24.310 - Insurance—Liability.

The motor vehicle liability policy required by this chapter shall insure the owner and any other person using or responsible for the use of any such vehicle, with the consent, express or implied, of the owner against loss from the liability imposed upon such owner by law for injury to, or death of, any person, or damage to property, growing out of the maintenance, operation or ownership of any public motor vehicle to the amount or limit of fifty thousand dollars, exclusive of interest and costs, on account of injury to, or death of, any one person; of one hundred thousand dollars, exclusive of interest and costs, on account of any one accident resulting in an injury to, or death of, more than one person, and of twenty-five thousand dollars for damage to property of others resulting from any one accident.

The motor vehicle liability policy shall inure to the benefit of any and all persons suffering loss or damage either to person or property, as herein provided, and the liability of the insurance carrier shall be in no manner abrogated or abated by the death of the tort feasor or the owner.

Every certificate required under the provisions of this chapter shall certify that the motor vehicle liability policy or policies therein cited shall not be cancelled except upon ten days prior written notice thereof to the council. The motor vehicle liability insurance shall be a continuing liability up to the full amount thereof, notwithstanding any recovery thereon, and the certificates thereof shall so certify. All motor vehicle liability policies and all certificates thereof shall be subject to the approval of the city attorney in any and all matters and if at any time, in the judgment of the council, the motor vehicle liability policies are not sufficient for any cause, the council may require the owner of such public motor vehicle who filed the same to replace the motor vehicle policies within ten days with other policies in accordance with the provisions of this chapter. If the owner fails to replace the motor vehicle policies within the ten day period with good and sufficient policies, as aforesaid, then at the termination of the period the

owner's permit issued hereunder shall be by such failure automatically suspended until such time as the requirement is complied with, and the chief of police shall enforce such suspension.

(Ord. 5 § 26, 1964)

5.24.320 - Permit revocation.

Any person convicted of violating any of the provisions of this chapter shall, in addition to any other penalty provided by this code, have the permit to him revoked.

(Ord. 5 § 27, 1964)

5.24.330 - Penalty for refusal to pay fare.

Except where credit is intended, no person shall fail or refuse to pay at the end of the trip or the termination or discharge of service, the regular fare for the public passenger vehicle for hire he has hired, and upon conviction for violation thereof, in addition to any other penalty provided for in this code, he shall be compelled to pay to the driver of the vehicle an amount equal to the legal fare and in case any bail required is forfeited, the amount of the legal fare shall be paid to the driver from such amount forfeited, and the court or judge before whom the case is heard shall order the same to be paid from the proper account.

(Ord. 5 § 28, 1964)

5-7 TAXICABS.

Part 1
Driver Permits[1]

1 Editor's Note: For the statutory provisions regarding carriers generally, see Government Code, §2085ff; for the provisions regarding financial responsibility, see Vehicle Code, §16300ff; for the authority of local agencies to license and regulate the operation of vehicles for hire, see Vehicle Code, §16501.

5-7.1 Driver Permits Required.

No person shall engage in the occupation of driving a taxicab within the Town without first having obtained a permit from the Danville Police Department. (Ord. #15, §1[4])

5-7.2 Application; Fee.

An applicant for a taxicab driver's permit shall submit his application, under oath, to the Danville Police Department. The application shall include:

a. The true name and residence and business address of the applicant;

b. The criminal record, if any, of the applicant;

c. Fingerprints and photograph of the applicant;

d. Any other information required by the Police Department.

e. An application fee of one ($1.00) dollar.

(Ord. #15, §1[4])

5-7.3 Issuance or Denial.

The Danville Police Department shall investigate the application and may deny the permit if the applicant has been convicted of any felony or of a misdemeanor involving moral turpitude or violation of alcoholic beverage control laws. In all other cases the Danville Police Department shall issue the permit, which the applicant shall conspicuously display in his taxicab. The permit shall expire one (1) year after date of issuance and may be renewed upon application and payment of the one ($1.00) dollar fee. Renewal may be denied on the grounds stated in this section for denial of an original application. (Ord. #15, §1[4])

5-7.4 Exclusions.

This section shall not apply to any taxicab driver holding a current active permit under an ordinance of any county or any other city, which ordinance provides for the denial of the drivers' permits on account of the criminal record of the applicant. (Ord. #15, §1[4])

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