

CALIFORNIA COASTAL COMMISSION

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



F10a

Appeal filed:	5/10/2007
49th day:	Waived
Staff report prepared:	5/22/2008
Staff report prepared by:	Jonathan Bishop
Staff report approved by:	Dan Carl
Hearing date:	6/13/2008

APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION AND DE NOVO HEARING

Application numberA-3-SLO-07-024 (SLO Land Corporation SFDs)

Applicant.....SLO Land Corporation

Appellants.....Commissioners Mike Reilly and Sara Wan

Local governmentSan Luis Obispo County

Local decisionApproved with conditions on April 6, 2007: Minor Use Permit/Coastal Development Permit (CDP) Number D020030P.

Project locationUndeveloped roughly 31,300 square foot site consisting of three lots between “E” Street and Little Cayucos Creek in Cayucos, San Luis Obispo County.

Project description.....Construction of three two-story single family dwellings (SFDs) ranging from approximately 3,200 to 3,600 square feet (including garages), and related road access and utility improvements (including construction on adjacent properties). The project includes placement of about half of the site (in the Little Cayucos Creek riparian corridor) into an open space conservation easement.

File documents.....San Luis Obispo County Final Local Action Notice for CDP Number D020030P; San Luis Obispo County Certified Local Coastal Program (LCP).

Staff recommendation ...Substantial Issue; Approve with Conditions

Summary of Staff Recommendation: San Luis Obispo County approved a Minor Use Permit/Coastal Development Permit (CDP) to allow the construction of three new two-story single family residences, including access and related improvements, on three undeveloped lots totaling approximately 31,300 square feet adjacent to and including a portion of the Little Cayucos Creek riparian corridor. The project also includes the placement of roughly half of the site (in the Little Cayucos Creek corridor) into an open space conservation easement. The project is located in the LCP’s Estero planning area between “E” Street and Little Cayucos Creek in the town of Cayucos.

Staff recommends that the Commission find that the project raises substantial issues as to conformity with San Luis Obispo County LCP policies and standards that require the protection of riparian and related environmentally sensitive habitat area (ESHA) resources. The SFDs and related development are sited within 5 feet of the Little Cayucos Creek riparian corridor (although the County’s approval references 10 feet, the approved plans show a 5-foot setback). At this location, the Little Cayucos Creek



riparian corridor also includes a Monarch butterfly habitat area, and development is sited within about 10 feet of this portion of the riparian corridor. Little Cayucos Creek and its riparian corridor, including the Monarch butterfly habitat within it, are categorically ESHA per the LCP, and a 5- (or even 10-) foot setback is inconsistent with both the LCP’s ESHA protection policies and with the LCP’s minimum 20-foot setback required for this creek riparian area. The project does not qualify for an exemption from or an adjustment to this mandatory setback requirement because there are feasible, less environmentally damaging alternative project designs that can meet the LCP’s setback requirements.

Staff further recommends that the Commission approve the project subject to conditions to protect creek resources, Monarch butterfly habitat, and water quality, and to address construction-related impacts. The primary way this is achieved is to apply the LCP’s prescribed 20-foot creek riparian setback to protect both the creek/riparian corridor and the Monarch habitat within it, consistent with the Commission ecologist’s recommendation for protecting these resources. As conditioned, the approval would provide for a building envelope of approximately 10,000 square feet that would allow for the same number of SFD units as proposed, up to three residential units, albeit in a more confined space further away from the riparian and related resources on the site. To further address LCP requirements, special conditions also require that an open space/conservation deed restriction be recorded over the riparian habitat and buffer area, and require that native landscaping, restoration, and maintenance to enhance and protect riparian and Monarch resource values occur within this habitat and buffer area in perpetuity.

Staff notes that, as of the date of this staff report, staff and the Applicant are in agreement on the parameters of the staff recommendation, including maintaining a 20-foot setback from the Little Cayucos Creek riparian corridor and its Monarch habitat, and including the enhancement of the resource value of this area.

Motions and resolutions to find substantial issue and to approve the project subject to the staff recommendation can be found on page 5.

Report Contents

I. Appeal of San Luis Obispo County Decision.....3

II. Staff Recommendation on Substantial Issue.....5

III. Staff Recommendation on CDP.....5

IV. Conditions of Approval6

 A. Standard Conditions.....6

 B. Special Conditions6

V. Substantial Issue Determination12

VI. Coastal Development Permit Determination15

 A. Project Location and Description.....15

 B. Riparian/Environmentally Sensitive Habitat Area (ESHA).....16

 C. Water Quality24

 D. Archaeological Resources.....25

 E. Public Services27

 F. California Environmental Quality Act (CEQA).....28

VII. Exhibits

- Exhibit A: Regional Location Map
- Exhibit B: Project Vicinity Map
- Exhibit C: Parcel Map
- Exhibit D: Original Design Site Plan (shows original vegetation)
- Exhibit E: County Approved Site Plan
- Exhibit F: County Final Local Action Notice on CDP Decision: Findings and Conditions
- Exhibit G: Appeal of County's CDP decision
- Exhibit H: Graphic Depiction of Maximum Allowable Building Envelope
- Exhibit I: DFG Project Referral, March 2005
- Exhibit J: Central Coast Archaeology: Phase III Mitigation Report, July 2006
- Exhibit K: Settlement Agreement (Case No. CV 040191)
- Exhibit L: Biological Assessments and Reports (excerpts)
- Exhibit M: Memo from San Luis Obispo County Environmental Division dated February 1, 2005
- Exhibit N: Notice of Voluntary Merger (Document # 2005024021)
- Exhibit O: Aerial Photos
- Exhibit P: Correspondence
- Exhibit Q: Memo from Coastal Commission Ecologist Dr. Jonna Engel

I. Appeal of San Luis Obispo County Decision

A. San Luis Obispo County Action

On April 7, 2007, San Luis Obispo County approved a Minor Use Permit/CDP for three new two-story residences on three lots subject to conditions (see Exhibit F for the County's adopted findings, conditions, and related materials supporting this action). Notice of the County's action on the CDP application was received in the Coastal Commission's Central Coast District Office on April 26, 2007. The Commission's ten-working day appeal period began on April 27, 2007 and concluded at 5pm on May 10, 2007. One valid appeal was received during the appeal period (see below).

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is



appealable to the Commission. This project is appealable because it is located in an LCP-designated sensitive coastal resource area and it is within 100 feet of a stream.

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

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

C. Summary of Appeal Contentions

The Appellants contend that the County-approved project is inconsistent with the LCP’s creek riparian habitat and Monarch butterfly habitat protection requirements. The Appellants further contend that the policies of the LCP intended to protect the Little Cayucos Creek riparian ESHA were not adequately considered in the County’s approval of the project, and the project could result in the degradation and disturbance of the Little Cayucos Creek and the Monarch butterfly riparian ESHA area (see Exhibit G for complete appeal text).

D. Commission Hearing History

The appeal was filed on May 10, 2007. Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date that an appeal is filed. The 49th day in this case was June 28, 2007. On May 16, 2007, the Applicant waived the right for a hearing to be set within the 49-day period to allow Commission staff sufficient time to review the project information and the Appellants’ contentions. The matter was subsequently set for the July 11, 2007 hearing, and a staff report and recommendation was distributed ahead of that hearing. On July 3, 2007, the Applicant exercised their one right to postpone the de novo hearing on their application¹ so that they could develop additional information for consideration by the Commission. The Applicant subsequently completed and submitted this material, which has been considered in this report, and the item was set for the Commission’s June 2008 hearing calendar.

¹ Pursuant to California Code of Regulations (CCR) Section 13073(a).



II. Staff Recommendation on Substantial Issue

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

Motion. I move that the Commission determine that Appeal Number A-3-SLO-07-024 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

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

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-SLO-07-024 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

III. Staff Recommendation on CDP

Staff recommends that the Commission, after public hearing, approve a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number A-3-SLO-07-024 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a CDP. The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program. Approval of the coastal development permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.



The Commission finds and declares as follows:

IV. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Final Site Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of Final Site Plans to the Executive Director for review and approval. The Final Site Plans shall be substantially in conformance with the site plans submitted to the Coastal Commission (*Preliminary Grading, Drainage and Utility Plan* by Triad/Holmes Associates dated received in the Coastal Commission's Central Coast District Office November 15, 2007) but shall show the following changes to the project:
 - (a) **Little Cayucos Creek Setback.** Other than habitat restoration related development (see special condition 2 below), all development, including but not limited to cut and fill slopes, retaining walls, drainage features, fencing, decking, and parking areas, shall be set back a minimum distance of 20 feet from the upland edge of Little Cayucos Creek riparian vegetation (see Exhibit H for a graphic depiction of the required 20-foot setback).
 - (b) **Approved Development Envelope.** All areas of the site outside of the Little Cayucos Creek Riparian Habitat Area and its required setback (see parts (a) and (c) of this Special Condition) shall be demarked as the Approved Development Envelope (see Exhibit H for a graphic



depiction of the Approved Development Envelope). Wood burning fireplaces or equivalent shall be prohibited within the Approved Development Envelope.

- (c) **Little Cayucos Creek Riparian Habitat Area.** The area of the site outside of the Approved Development Envelope shall be demarked as the Little Cayucos Creek Riparian Habitat Area (see Exhibit H for a graphic depiction of the Little Cayucos Creek Riparian Habitat Area), where development and uses shall be limited to restoration, enhancement, protection, and interpretation of the Little Cayucos Creek riparian and Monarch Butterfly habitats (see also Special Conditions 2 and 8).
- (d) **Site Access.** All access to the residential units from E Street shall be clearly identified on the Final Site Plans, and shall include verification that the access has been reviewed and approved by: (1) the appropriate San Luis Obispo County representatives with respect to improvements in the Birch Street right-of-way; (2) the Cayucos Fire Chief with respect to fire safety regulations; and (3) the Cayucos School District, including that the School District has provided the Permittee an easement or equivalent legal right for any such access across their property.

The Permittee shall undertake development in accordance with the approved Final Site Plans.

- 2. **Landscape Restoration and Enhancement Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit four copies of a Landscape Restoration and Enhancement Plan (LREP) to the Executive Director for review and approval. The LREP shall provide for riparian corridor and Monarch butterfly landscape restoration and enhancement in the Little Cayucos Creek Riparian Habitat Area (see Special Condition 1), with the goal of enhancing and restoring this area to a self-sustaining and high resource value natural habitat state. The LREP shall be prepared by a qualified restoration ecologist, and shall take into account the specific condition of the site (including soil, exposure, temperature, moisture, wind, etc.), as well as restoration and enhancement goals. At a minimum, the plan shall provide for the following:
 - (a) A baseline assessment, including photographs, of the current physical and ecological condition of the restoration and enhancement area.
 - (b) A description of the goals and measurable success criteria of the plan, including, at a minimum, the requirement that success be determined after a period of at least three years wherein the site has been subject to no remediation or maintenance activities other than weeding, and that this condition be maintained in perpetuity.
 - (c) Removal of invasive and non-native plant species, except for existing eucalyptus trees associated with the Monarch butterfly habitat.
 - (d) Planting of native species of local stock appropriate to the Little Cayucos Creek riparian corridor, including provision of fall and winter-flowering nectar sources for Monarch butterflies at appropriate locations. Non-native and/or invasive plant species, such as those listed on the California Invasive Plant Council's Inventory of Invasive Plants, shall be prohibited.



- (e) Monitoring and maintenance provisions including a schedule of the proposed monitoring and maintenance activities to ensure that success criteria are achieved.
- (f) Provision for submission of annual reports of monitoring results to the Executive Director, beginning the first year after completion of the restoration effort and concluding once success criteria have been achieved. Each report shall document the condition of the site area with photographs taken from the same fixed points in the same directions, shall describe the progress towards reaching the success criteria of the plan, and shall make recommendations, if any, on changes necessary to achieve success.

The Permittee shall undertake development in accordance with the approved Final Landscape Restoration and Enhancement Plan.

The Final Landscape Restoration and Enhancement Plan shall be implemented during construction as directed by a qualified restoration ecologist, and initial planting and plant removal shall be completed prior to the occupancy of the approved residential units. To the maximum extent possible, landscaping shall not be performed while Monarch butterflies are present at the site, where butterfly presence shall be determined by a qualified Monarch butterfly biologist.

- 3. Non-Native and Invasive Plant Species Prohibited.** Landscaped areas within the Approved Development Envelope (see special condition 1) shall consist only of native plants of local origin that are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the property except for existing eucalyptus trees associated with the Monarch butterfly habitat.
- 4. Final Drainage, Erosion, and Sedimentation Control Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of Final Drainage, Erosion, and Sedimentation Control Plans to the Executive Director for review and approval. The Final Plans shall include the following:

- (a) Implementation of Best Management Practices During Construction.** The Drainage, Erosion and Sedimentation Control Plans shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook and the criteria established by the San Luis Obispo County Resource Conservation District. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas; and provide for the hydro seeding (with native plants) of disturbed areas immediately upon conclusion of construction activities in that area. The plans



shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated off site maintenance areas; and the immediate clean-up of any leaks or spills.

The plans shall indicate that PRIOR TO THE COMMENCEMENT OF GRADING, the Permittee shall delineate that the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

(b) Permanent Drainage and Erosion Control Plan. The plans shall include a permanent drainage and erosion control plan that shall clearly identify all permanent measures to be taken to control and direct all site runoff, and that shall clearly identify a drainage system designed to collect all on-site drainage (in gutters, pipes, drainage ditches, swales, etc.) for use in on-site irrigation, infiltration, and/or habitat enhancement, and/or to be directed to off-site storm drain systems. The plan shall be prepared by a licensed engineer with experience in low impact development techniques and water quality protection systems, and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater and other runoff associated with the property. The plan shall include all supporting calculations and documentation for all BMPs clearly demonstrating compliance with this condition. Such drainage and erosion control plan shall at a minimum provide for:

1. The drainage system shall be designed to filter and treat (i.e., to remove typical urban runoff pollutants) the volume of runoff produced from irrigation and from each and every storm and/or precipitation event up to and including the 85th percentile 24-hour runoff event for volume-based BMPs and/or the 85th percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to its use for on-site infiltration, landscape irrigation, habitat enhancement, and/or discharge offsite. All filtering and treating mechanisms shall be clearly identified, and supporting technical information (e.g., brochures, technical specifications, etc.) shall be provided.
2. Runoff from the roofs, driveways, parking lots, and other impervious surfaces shall be collected and directed into pervious areas on the site for infiltration to the maximum extent practicable in a non-erosive manner, prior to being conveyed off-site.
3. Post-development peak runoff rates and volumes shall be maintained at levels similar to, or less than, pre-development conditions.
4. All runoff shall be directed away from the creek/riparian habitat area unless proven appropriate for habitat enhancement purposes.
5. All drainage system elements shall be permanently operated and maintained.

The Permittee shall undertake development in accordance with the approved Final Drainage, Erosion, and Sedimentation Control Plans.



- 5. Final Exterior Lighting Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of Final Exterior Lighting Plans to the Executive Director for review and approval. All proposed exterior lighting shall be shielded to the maximum extent possible and be of the lowest intensity feasible in order to avoid artificial light pollution of the riparian habitat area. Exterior lighting elements on the north and northwest sides of the project (bordering the creek) shall be avoided where possible and be the minimum necessary to meet safety requirements. Exterior light shall be shielded and lighting shall be directed downward and away from the creek and riparian areas.
- 6. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two copies of Construction Plans to the Executive Director for review and approval. The Construction Plans shall identify the specific location of all construction areas, all staging areas, all storage areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to minimize impacts on the Little Cayucos Creek Riparian Habitat Area (see Special Conditions 1 and 2 above, and Special Condition 8 below). The Plan shall specify all construction methods to be used, including all methods to be used to keep construction areas separated from these areas, and shall include a final construction schedule. All erosion control/water quality best management practices to be implemented during construction and their location shall be noted. Silt fences, or equivalent apparatus, shall be installed at the perimeter of the allowable construction area to prevent construction related runoff and/or sediment from entering Little Cayucos Creek and its riparian habitat area. The Construction Plan shall, at a minimum, include the following required criteria specified via written notes on the Plan:
- (a) All work shall take place during daylight hours. Lighting of the creek and riparian area is prohibited.
 - (b) Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
 - (c) Construction shall only occur during the dry season and Monarch roosting off season, between April 15 and October 1. No construction shall be permitted during any other month to ensure Monarch habitat protection.

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide evidence to the Executive Director that a licensed surveyor has identified and delineated the setback areas required by Special Condition 1 as shown on the approved Final Site Plans. Temporary fencing shall be erected one foot outside of the setback area (and in the development envelope) to delineate it clearly for the construction phase. No disturbance, vehicular traffic, or equipment/material staging shall occur within the setback area during construction or following completion of the project, except as otherwise authorized under the approved Final Landscape Restoration and Enhancement Plan (see Special Condition 2).

- 7. Construction Site Documents & Construction Coordinator.** DURING ALL CONSTRUCTION:



- (a) **Construction Site Documents.** Copies of the signed coastal development permit and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (b) **Construction Coordinator.** A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

8. Little Cayucos Creek Riparian Habitat Area. Development, as defined in Coastal Zone Land Use Ordinance Section 23.11.030 of the San Luis Obispo County LCP, shall be prohibited in the Little Cayucos Creek Riparian Habitat Area (see Exhibit H for a graphic depiction of the Little Cayucos Creek Riparian Habitat Area) described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- (a) Restoration, protection, and enhancement of native riparian habitat and Monarch butterfly habitat consistent with the terms of the approved Final Landscape Restoration and Enhancement Plan;
- (b) Public interpretive access improvements approved by a coastal development permit.

PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the Permittee shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, which shall include all of the Little Cayucos Creek Riparian Habitat Area as described in Special Condition 1.

9. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"; and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the subject property.



The deed restriction shall include a legal description of the applicant's entire subject property. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit of the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

10. Incorporation of County Conditions. San Luis Obispo County Conditions 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 22, 23, 24, 25, 31, 33, 34, 35, 36, 37, 38, 40, and 41 are incorporated as conditions of this approval. All other County conditions imposed pursuant to land use authorities other than the Coastal Act remain unaffected by this action (see Exhibit F for the full text of all County conditions). Any of the incorporated County conditions requiring materials to be submitted to the County and/or otherwise requiring County approval (such as Planning Director approval), shall also require the same materials to be submitted to, and/or the same approvals granted by, the Executive Director under the same review and approval criteria as specified in the County conditions. For future condition compliance tracking purposes, such incorporated County conditions shall be considered subsections of this Special Condition 10. To the extent any such subsections of Special Condition 10 conflict with Special Conditions 1 through 9 above, such conflicts shall be resolved in favor of Special Conditions 1 through 9 above.

V. Substantial Issue Determination

As detailed below, the Commission finds that the project as approved by the County raises substantial issues of conformity with the San Luis Obispo County LCP. Section VI of this report, Coastal Development Permit Determination, provides further details concerning these Substantial Issue Determination findings, and Section VI is incorporated in full to these findings by reference.

A. Applicable Policies

The Appellants contend that the project approved by San Luis Obispo County is inconsistent with the LCP's riparian/ESHA policies with respect to protection of creek, riparian, and Monarch butterfly habitats on the site. The San Luis Obispo County LCP includes general policies, Area Plan standards, and implementing ordinances that protect these resources.

LCP Policy 1 requires that "new development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource." Policy 20 specifically defines "coastal streams and adjoining riparian vegetation" as "environmentally sensitive habitat areas." Policy 21 goes on to require that development "shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas." Policy 28 requires setbacks from riparian vegetation, defining the "minimum standard" for urban areas as 50 feet "except where a lesser buffer is specifically permitted."



In this case, the Estero Area Plan establishes specific setbacks for creeks in the Estero area. For Little Cayucos Creek, which is at issue here, the required minimum setback is 20 feet. The plan further specifies that setbacks be measured from “the outer limits of riparian vegetation or the top of the stream bank where no riparian vegetation exists.”

The LCP Coastal Zone Land Use Ordinance (CZLUO) in Section 23.07.174.d.2 (i-iv) outlines the necessary process and findings to adjust an otherwise required setback. A Minor Use Permit approval and the following findings are required:

- (i) Alternative locations and routes are infeasible or more environmentally damaging; and*
- (ii) Adverse environmental effects are mitigated to the maximum extent feasible; and*
- (iii) The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks; and*
- (iv) The adjustment is the minimum that would allow for the establishment of a principal permitted use.*

Finally, San Luis Obispo Coastal Plan Policy 29 states that “[d]esignated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community.” Additionally, Policy 35 requires that “[v]egetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.” Section 23.07.176 of the San Luis Obispo County CZLUO, titled Terrestrial Habitat Protection, reiterates these policies and establishes that the intent of the policies is “to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats.”

B. Substantial Issue Analysis

The project site includes a portion of the Little Cayucos Creek and its riparian corridor. As approved by the County, the project’s riparian setback would be reduced from the required minimum setback of 20 feet down to 10 feet for the access road, although the County-approved plans actually show road development as close as 5 feet to the riparian zone (see Exhibit E). At this location, the Little Cayucos Creek riparian corridor also includes a Monarch butterfly habitat area, and the County-approved development is sited within about 10 feet of this portion of the riparian corridor.

According to the biological report for the project, Little Cayucos Creek provides potential habitat for four listed species known to occur in the watershed or surrounding area (steelhead, tidewater goby, the southwestern pond turtle, and the California Red Legged Frog), although degradation of the creek over time makes it unlikely that they would be present here (Kevin Merk, Rincon Consultants, Inc., 2002). The creek corridor also provides foraging area for nectar and water for Monarchs during their winter migration and habitat for several other species, including several species of songbirds (common yellowthroat, plain titmouse and song sparrow), the Pacific chorus frog, western fence lizard, red tailed hawks, and red shouldered hawks.

With respect to Monarch butterflies specifically, the Monarch roosting area is made up of several large eucalyptus and cypress trees located on the western portion of the site within the Little Cayucos Creek



riparian corridor described above. Although Monarchs are not globally threatened, their range is restricted in California and overwintering habitat is listed as rare by the California Department of Fish and Game (CDFG), in part because of its importance in providing important feeding and resting opportunities for butterflies during a migratory stage of their life cycle.² Monarch experts are increasingly concerned about the impacts of development and changing ecosystem dynamics on historic overwintering sites.³ Monarchs have highly specific habitat requirements that include the need for wind-protection, buffered temperatures, high humidity, filtered sunlight, proximity to water and nectar sources and habitat heterogeneity (Bell, 2002). Many formally large Monarch sites have slowly deteriorated due to a lack of protection from human influences.

The Monarch habitat area in the riparian corridor on the site has been subject to these pressures of development over time, including residential development that has removed trees from along the outer grove boundary,⁴ altering the wind dynamics and thus disturbing the overwintering microclimate. Historically, Monarch populations at this site ranged from 20,000 to 60,000 butterflies per season, placing the site among the largest Monarch sites in California at that time. Since then the population has significantly declined due to these human activities, and it is now better categorized as an autumnal Monarch roosting site as opposed to an overwintering site.⁵

The Commission's staff ecologist has visited the site, has evaluated the relevant biological information pertaining to it, and has indicated that a minimum 20-foot setback, as required by the LCP, must be applied to adequately protect Little Cayucos Creek riparian resources, including the Monarch butterfly resource, in this case (see Exhibit Q). Given the resource values of the riparian corridor and its butterfly habitat, the County-approved reduction of the minimum setback for Little Cayucos Creek down to 5 feet for the road and 10 feet for the Monarch habitat portion of the riparian corridor raises a substantial issue with respect to the LCP provisions cited above requiring the protection of creek riparian ESHA, including the incorporated Monarch habitat, and with governing Estero Area Plan LCP standards requiring a minimum 20-foot setback from the Little Cayucos Creek riparian corridor.

In addition, although the County made findings to adjust the creek riparian/ESHA setback down to 10 feet (again, the actual setback shown on the County-approved plans is as narrow as about 5 feet), it did not find that alternative locations or routes were infeasible or more environmentally damaging, as required by CZLUO Section 23.07.174.d.2(i); nor that the adjustment is necessary to allow a principal permitted use of the property as required by CZLUO Section 23.07.174.d.2(iii). In both cases,

² For example, the California Natural Diversity Database (CNDDDB) identifies Monarch overwintering habitat at a G4S3 level (where the S3 designation is defined as "restricted range, rare" habitat area statewide; further defined as 3,000 – 10,000 individuals or 10,000 – 50,000 acres of occupied habitat (CDFG, 2006)).

³ For example, in 1984, the International Union for Conservation of Nature and Natural Resources classified the Monarch migration and the overwintering behavior of the Monarch butterfly a "threatened phenomenon."

⁴ For example, according to the Applicant's architect, two trees further up the riparian corridor were recently lost due to natural causes; one tree fell down during a major storm and the other was struck by lightning. These trees were apparently removed by County crews so as not to block water flow in the creek channel and cause flooding.

⁵ In 2002, Dr. Kingston Leong, a Monarch specialist and professor of biology at California Polytechnic State University, conducted a study of the site and obtained data that showed that the site, while no longer suitable as an overwintering site, was still a valuable site for autumnal Monarch roosting. Richard Little, a consulting project biologist and also Monarch expert, reviewed Dr. Leong's study and concurred that "the site is still used by Monarchs and should be protected" (Little, 2003).



alternative routes that avoid the riparian corridor as directed by the LCP are available, and the site is large enough outside of the required setbacks to provide for a principally permitted residential use that respects the required setbacks (see also CDP findings that follow). Therefore, a substantial issue is also raised with respect to the County-approved project's conformance with the LCP's riparian/ESHA setback adjustment requirements.

C. Substantial Issue Conclusion

The County-approved project raises substantial issues concerning compliance with the LCP policies and standards designed to protect creek and riparian ESHA resources, and the Monarch butterfly habitat within it. As approved, urban development would be allowed within 5 feet of the Little Cayucos Creek riparian corridor and within 10 feet of the Monarch butterfly habitat area within the corridor when a 20-foot minimum setback is required by the LCP (and recommended by the Commission's staff ecologist) to adequately protect these resources, and the minimum required riparian ESHA setback has been adjusted downward without the proper findings. Therefore, the Commission finds that a substantial issue exists with respect to the County-approved project's conformance with the certified San Luis Obispo County LCP and takes jurisdiction over the CDP application for the proposed project.

VI. Coastal Development Permit Determination

In a de novo review of the proposed CDP application, the standard of review remains the certified LCP. The above Substantial Issue Determination findings are incorporated herein by reference.

A. Project Location and Description

The project site is located in the town of Cayucos, west of Highway 1 in San Luis Obispo County, and it is a roughly 31,300 square foot undeveloped site located between Little Cayucos Creek and E Street. The site is basically rectangular, and it is framed to the north by the Birch Avenue paper street (i.e., undeveloped) right-of-way, an alley and several related SFDs to the south, a Cayucos School District building and property to the east, and Little Cayucos Creek proper (actually on the site) and more residential development on the other side of the creek to the west. The site is made up of three lots: a western lot containing the creek riparian corridor and making up about half of the site,⁶ and two smaller lots to the east making up the other half of the site. The LCP designates the western half of the western lot as recreational, and designates the rest of the site multi-family residential. About half of the site is occupied by both the riparian and related Monarch butterfly habitat associated with Little Cayucos Creek. These habitat features span the three lots, but are mostly located on the western lot. See Exhibits D and E for site maps and Exhibit O for aerial photos.

The Applicant applied to the County to construct three new two-story single-family residences, one on each of the three lots, along with related access road and utility construction both on an off-site. The residences range from about 3,200 to 3,600 square feet, including garages. Access road improvements

⁶ The western lot was created by a voluntary merger on March 5, 2005 (see Exhibit N).



would link from E Street across the Birch Avenue paper street, then across a portion of the School District property, and then spanning the three lots, with the residential structures located to the south. About half of the site, containing a portion of the Little Cayucos Creek riparian corridor, would be placed into an open space conservation easement. See Exhibit E for County approved project plans and the general easement location.

As initially proposed to the County, the project required an easement from the Cayucos School District to create an access road through the alley located along the southern edge of the site. A private settlement (Exhibit K) between neighboring property owners required that the Applicant use an alternate route for access to the site. Thus, the Applicant changed the project to use the undeveloped Birch Avenue access route, as is currently proposed. According to the County, this alternative necessitated an adjustment of the riparian setback from 20 feet to 10 feet,⁷ and reoriented the dwellings to face north (towards the creek), as opposed to the alley as originally planned (see Exhibits D and E for the original proposed plans and County approved plans, respectively).

In the time since this matter was last agendized before the Commission, the Applicant has submitted revised project plans to the Commission that respect the 20-foot Little Cayucos Creek setback requirement, and has indicated that they would be willing to revise the project to meet this 20-foot standard and to include habitat restoration and enhancement in the corridor (see Exhibit P). These revised project plans help provide useful context regarding one version of an alternate project that could be pursued at this site, but the proposed project for the purposes of the Commission's review remains that that was originally proposed and approved by the County during the local review process.

B. Riparian/Environmentally Sensitive Habitat Area (ESHA)

As discussed below, the proposed project does not comply with LCP policies protecting creek riparian ESHA, including the Monarch butterfly habitat contained within it, and special conditions are needed to bring the project into conformance with the LCP in this respect.

1. Applicable Policies

The LCP has multiple overlapping provisions that protect the Little Cayucos Creek riparian area and the Monarch habitat within it. The way the LCP is structured is that to the extent more specific guidance and direction is provided in the LCP's area plan, in this case the LCP's Estero Area Plan, then the area plan standards govern. This is relevant in this case because the Estero Area Plan provides a very specific prescription for this riparian/ESHA resource area, and it is those standards that form the basis for project review as a result. Applicable LCP policies include:

Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats. *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.*

⁷ As previously indicated, actually within 5 feet of the riparian corridor per the County approved plans; see Exhibit E.



Policy 2: Permit Requirement. *As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate.*

Policy 20: Coastal Streams and Riparian Vegetation. *Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.*

Policy 21: Development in or Adjacent to a Coastal Stream. *Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas. This shall include evaluation of erosion and runoff concerns.*

Policy 28: Buffer Zone for Riparian Habitats. *In rural areas (outside the USL) a buffer setback zone of 100 feet shall be established between any new development (including new agricultural development) and the upland edge of riparian habitats. In urban areas this minimum standard shall be 50 feet except where a lesser buffer is specifically permitted. The buffer zone shall be maintained in natural condition along the periphery of all streams. Permitted uses within the buffer strip shall be limited to passive recreational, educational or existing nonstructural agricultural developments in accordance with adopted best management practices. Other uses that may be found appropriate are limited to utility lines, pipelines drainage and flood control facilities, bridges and road approaches to bridges to cross a stream and roads when it can be demonstrated that: 1) alternative routes are infeasible or more environmentally damaging and 2) adverse environmental effects are mitigated to the maximum extent feasible. Lesser setbacks on existing parcels may be permitted if application of the minimum setback standard would render the parcel physically unusable for the principal permitted use. In allowing a reduction in the minimum setbacks, they shall be reduced only to the point at which a principal permitted use (as modified as much as is practical from a design standpoint) can be accommodated.*

Policy 29: Protection of Terrestrial Habitats. *Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site. Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.*

Policy 35: Protection of Vegetation. *Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.*



CZLUO Section 23.07.174 - Streams and Riparian Vegetation: Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and protect the natural hydrological system and ecological functions of coastal streams.

a. Development adjacent to a coastal stream. Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat.

...

d. Riparian setbacks: New development shall be setback from the upland edge of riparian vegetation the maximum amount feasible. In the urban areas (inside the URL) this setback shall be a minimum of 50 feet....A larger setback will be preferable in both the urban and rural areas depending on parcel configuration, slope, vegetation types, habitat quality, water quality, and any other environmental consideration.

(1) Permitted uses within the setback: Permitted uses are limited to those specified in Section 23.07.172d (1) (for wetland setbacks), provided that the findings required by that section can be made. Additional permitted uses that are not required to satisfy those findings include pedestrian and equestrian trails, and non-structural agricultural uses.

All permitted development in or adjacent to streams, wetlands, and other aquatic habitats shall be designed and/or conditioned to prevent loss or disruption of the habitat, protect water quality, and maintain or enhance (when feasible) biological productivity. Design measures to be provided include, but are not limited to:

(i) Flood control and other necessary instream work should be implemented in a manner than minimizes disturbance of natural drainage courses and vegetation.

(ii) Drainage control methods should be incorporated into projects in a manner that prevents erosion, sedimentation, and the discharge of harmful substances into aquatic habitats during and after construction.

(2) Riparian habitat setback adjustment: The minimum riparian setback may be adjusted through Minor Use Permit approval, but in no case shall structures be allowed closer than 10 feet from a stream bank, and provided the following findings can first be made:

(i) Alternative locations and routes are infeasible or more environmentally damaging; and

(ii) Adverse environmental effects are mitigated to the maximum extent feasible; and

(iii) The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks; and

(iv) The adjustment is the minimum that would allow for the establishment of a principal permitted use.



e. Alteration of riparian vegetation: Cutting or alteration of natural riparian vegetation that functions as a portion of or protects a riparian habitat shall not be permitted except:

- (1) For streambed alterations allowed by subsections a and b above;*
- (2) Where an issue of public safety exists;*
- (3) Where expanding vegetation is encroaching on established agricultural uses;*
- (4) Minor public works projects, including but not limited to utility lines, pipelines, driveways and roads, where the Planning Director determines no feasible alternative exists;*
- (5) To increase agricultural acreage provided that such vegetation clearance will:*
 - (i) Not impair the functional capacity of the habitat;*
 - (ii) Not cause significant streambank erosion;*
 - (iii) Not have a detrimental effect on water quality or quantity;*
 - (iv) Be in accordance with applicable permits required by the Department of Fish and Game.*
- (6) To locate a principally permitted use on an existing lot of record where no feasible alternative exists and the findings of Section 23.07.174d (2) can be made.*

CZLUO Section 23.07.176 - Terrestrial Habitat Protection: *The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.*

a. Protection of vegetation. Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.

b. Terrestrial habitat development standards:

- (1) Revegetation. Native plants shall be used where vegetation is removed.*
- (2) Area of disturbance. The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.*

Estero Area Plan Standards

Sensitive Resource Area (SRA)

1. Setbacks - Coastal Streams. *Development shall be setback from the following coastal streams the minimum distance established below. Such setbacks shall be measured from the outer limits of riparian vegetation or the top of the stream bank where no riparian vegetation exists. This may be adjusted through the procedure provided in the Coastal Zone Land Use Ordinance.*

Cayucos Creek: 25 feet from either bank



<i>Little Cayucos Creek:</i>	<i>20 feet from either bank</i>
<i>Old Creek:</i>	<i>50 feet from either bank</i>
<i>Willow Creek:</i>	<i>20 feet from either bank north of Ocean Avenue</i>

2. Background and Site Description

The project site is bordered by Little Cayucos Creek to the north and west. Biologists who have visited the site noted two types of habitat; Central Arroyo Willow Riparian Forest associated with the creek corridor and disturbed annual grassland in the upland area to the south and southeast of the creek. They also noted several large blue gum eucalyptus (*Eucalyptus globulus*) and Monterey cypress (*Cupressus macrocarpa*), which provide roosting and feeding areas for Monarch butterflies, in the western portion of the riparian area.

Riparian Habitat

The riparian habitat is comprised of mostly native trees and shrubs, including Coast Live Oak and Toyon. The understory is a mixture of native and non-native invasive plants, but is dominated by non-native species. Native hydrophytic vegetation is present along the creek itself. The riparian area contains habitat suitable for many bird species and the site is potentially a movement corridor for steelhead, tidewater goby, the southwestern pond turtle, and the California Red Legged Frog, each of which are considered special status species (Rincon, 2002; Exhibit L). Although none of these species were observed during subsequent surveys, they are recorded as occurring within the watershed. Downstream and in the northwest portion of the project site large eucalyptus and cypress trees comprise a portion of the riparian habitat area. The riparian corridor also provides habitat for a variety of bird species, including common yellowthroat, plain titmouse, song sparrow, red tailed hawks and red shouldered hawks. Reptile and amphibian species noted to occur included the Pacific chorus frog and western fence lizard.

Monarch Habitat in the Riparian Corridor

The project site includes a historic Monarch butterfly overwintering site. For several decades, this butterfly habitat supported between 20,000 and 60,000 butterflies through the winter portion of their life-cycle. Today, due to anthropogenic impacts, such as tree removal and nearby development projects, the butterfly habitat has been degraded in quality to primarily an autumnal feeding and resting site, carrying about 250 butterflies through the early winter in more recent years (Little, 2002; Exhibit L).

Monarch butterflies rely on several hundred acres of habitat during the winter months—as compared to the more than 200 million acres used during the summer months—confining them to a small habitat area. In early fall, the Monarch populations migrate from the Western states and southwest Canada to the California coast for the winter months. As they arrive at the coast, starting as early as September, the Monarchs gravitate toward groves of trees, often composed of Monterey Cypress and non-native blue gum Eucalyptus trees. While the weather remains mild, these groves of trees provide a resting area and give the Monarchs the opportunity to forage for nectar nearby and replenish fat reserves diminished by the long migration. Most groves only support a few dozen butterflies during these milder months.



As winter approaches, the weather gets more severe, the temperatures get colder and the first winter storms occur. At this time Monarchs begin to move from “poorer” quality sites to “better” quality sites. The factors that determine the quality of a site can be dynamic from year to year. They vary with changing weather patterns and different age-compositions of the tree groves, among many other variables. The variable nature of Monarch winter habitat makes it difficult in some cases to distinguish definitively between an overwintering site and an autumnal site. According to Mr. Sakai, Professor of Biology at Santa Monica College, “in some years, an autumnal site may persist through the winter to be a permanent site.”⁸

Similar to many butterfly species, Monarch butterflies are highly sensitive to change and extremely particular when choosing roosting areas. They can even be flushed from tree groves by people coming too near their clusters. They are highly sensitive to pesticides, both airborne and on the ground varieties, and will abandon a site due to smoke from fireplaces.⁹ In addition to these direct human impacts on Monarch habitat, they require extremely specific habitat conditions. They can only persist in wind-protected groves (a maximum speed of 2 meters per second), with buffered temperatures, high humidity levels, filtered sunlight and high habitat heterogeneity (Bell, 2001).¹⁰ Trees surrounding habitat locations strongly influence wind protection and the microclimate near the core of the grove (Leong, 1991). Tree trimming and limb removal performed on perimeter trees can severely degrade Monarch habitat because of microclimatic alterations. The sensitivity of this site in particular, has been demonstrated by its declining quality in direct correlation to increasing surrounding development and historic tree removal on the outer edges of the grove site.

3. Analysis of Impacts and LCP Consistency

Little Cayucos Creek and its surrounding riparian vegetation, including the Monarch butterfly habitat within it, is ESHA as defined in LCP Policy 20 and as mapped in the LCP. As required by LCP Policy 21, new development on the subject property must be designed to prevent impacts to and ensure the continuance of this habitat area. Additionally, buffers are required by LCP Policy 28 and CZLUO Section 23.07.174 to be a minimum of 50 feet generally, and the Estero Area Plan (Chapter 8, Section B, SRA Standard 1) provides a more specific prescription for this creek segment and requires that such setbacks be a minimum of 20 feet from the edge of riparian vegetation; the specific area plan standards take precedence over the more general LCP standards in this respect.¹¹

In this case the LCP establishes a minimum setback of 20 feet for Little Cayucos Creek. Given the character of the resources here, including the width and species composition of the riparian zone, and considering the substantial urban development already existing along the urban reach of this creek

⁸ As described by Mr. Walter Sakai in an email to Commission staff dated June 8, 2007 and on his website (http://homepage.smc.edu/sakai_walter/Monarch%20Butterfly/nathis.htm).

⁹ These types of impacts have generally been noted in relation to Monarch butterfly habitats (for example, in Capitola, “Habitat Utilization and Assessment of Impacts from Development Proposed by Beardslee Development Association” prepared by Dr. Elizabeth A. Bell for the Rispin Mansion Project, June 2003 EIR).

¹⁰ Dr. Elizabeth Bell studied the Lighthouse Field Monarch Habitat in Santa Cruz, Ca and supplied a letter of review for the Commission’s review of a 2001 CDP appeal of the Oblates of St Joseph Parking Lot in Santa Cruz (A-3-STC-01-045). In her letter she discusses the general requirements for and the nature of Monarch habitat.

¹¹ According to the LCP’s Coastal Zone Framework for Planning: page 8-3, numbers 5 and 6.



meandering through Cayucos, a minimum buffer of 20 feet is appropriate and adequate for protecting the riparian and Monarch ESHA resources at this location. Although a wider buffer would provide even more resource protection, the 20-foot Area Plan requirement is appropriate given the LCP's prescription for Little Cayucos Creek, including in relation to the degree of urban development in Cayucos along the creek. The Commission's staff ecologist, Dr. Engel, concurs with the Area Plan standard and recommends a minimum riparian/ESHA buffer of 20 feet (See Exhibit Q). Dr. Engel further notes that the degree of disturbance at this site creates the need for appropriate protection measures. To ensure the continuance of the habitat she also recommends that enhancement and restoration measures be included in the conditions of the permit that will include invasive vegetation removal and a specific landscape restoration plan. Thus, coupled with restoration and enhancement of the riparian corridor for both riparian and butterfly resource values, the 20-foot buffer should result in appropriate protection of the riparian and butterfly ESHA over time.

The County LCP has provisions to allow the reduction the riparian buffer at this location to not less than 10 feet. In order to allow this buffer reduction, though, several findings must be made and a Minor Use Permit must be approved (CZLUO Section 23.07.174(d)(2)). The findings to support such a reduction cannot be made in this case. In order to reduce a minimum buffer, as the County did in their original approval in this case, Section (i) of CZLUO Section 23.07.174(d)(2) requires that alternative locations and routes be found to be either infeasible or "more environmentally damaging." In this case, there are feasible alternatives that can respect the minimum 20-foot setback found necessary here. First, one alternative route to access the subject site and stay out of the 20-foot buffer is to use the alley on the opposite side of the project site (shown in Exhibit C), located away from the creek, for site access. As mentioned earlier in this report, this alley was originally intended as the access for this project but due to a private settlement agreement (Exhibit K), the access was relocated to its current location (shown in Exhibit E). However, the private agreement does not preclude the option of locating the access away from the creek if the Commission finds that this is necessary to protect coastal resources (see Exhibit K). While not required by this permit, there is adequate room to provide for site access in the alley location, and provide for principally permitted use on the site. In addition, and more importantly, locating the access in roughly the same configuration as originally approved by the County but respecting the 20-foot setback also allows for a feasible and more environmentally protective access route. The Applicant has indicated that they would be willing to adjust the project to meet this 20-foot setback in this way (see Exhibit P).

The Commission finds, therefore, that an adjustment to the 20-foot minimum buffer requirement is not necessary to allow a principal permitted use; and the Commission further finds that a redesign of the proposed project would allow a residential use within the required setbacks. While not required under this permit approval, the alternative access through the alley does not raise significant environmental concerns and is therefore a feasible alternative to the County approved access road. Therefore, the Commission finds that access through the alley is a feasible alternative with respect to fire safety codes and despite the private settlement agreement. However, because this alley access option would lead to the same types of impacts as access to the site along the Birch Avenue paper street, this approval is structured to allow the Applicant to choose his route of access.



Finally, even with the required buffers applied, residential development in the approved development envelope could have impacts on the nearby riparian/butterfly ESHAs. Such impacts, associated with increased activity, noise and light from the residential use of the property, could affect wildlife; potentially introduce non-native species into the riparian corridor; and could impact riparian species due to domestic animals and other unintentional human uses in the buffer areas. There may also be changes in the micro climate conditions, such as wind and temperature changes, that may adversely affect the Monarch roosting areas, although this type of potential impact is difficult to define with certainty without much more detailed site-specific data and future monitoring. These types of impacts may occur to a certain degree regardless of the habitat buffers required by this approval, and would be an issue with any use of this site even if buffers were increased. As discussed below, siting and design requirements and landscape restoration, including the removal of invasives and the planting of vegetation to enhance Monarch habitat, will avoid these impacts and appropriately mitigate for those that are unavoidable.

4. Project Modifications Required for an Approvable Project

In order to approve the project consistent with the LCP, the Commission must apply several special conditions designed to protect and preserve the creek riparian and Monarch ESHA as required by the LCP. The foundation for these conditions is Special Condition 1 that requires that the Applicant submit a revised site plan for the project showing all residential development outside the habitat and 20-foot habitat setback areas. In other words, the condition allows for the non-sensitive portion of the site to be developed, and requires that the habitat area be avoided and appropriately buffered. Wood burning fireplaces or equivalent are prohibited within the developable portion of the site as a means to further protect Monarch butterflies. See Special Condition 1.

Building upon Special Condition 1, Special Condition 2 requires implementation of a landscape restoration and enhancement plan designed to enhance and restore riparian vegetation and related Monarch habitat outside of the developable area to ensure that the development does not disrupt these habitat resources, and to ensure that habitat and buffer area resource values are enhanced. This restoration and enhancement plan is meant primarily as a vegetation planting and removal (i.e., for non-natives and invasives) plan, where success must be documented after a period of at least three years wherein the site has been subject to no remediation or maintenance activities other than weeding (see Special Condition 2). Building upon this restoration/enhancement requirement and to help facilitate its success, Special Condition 3 limits planting on the property, including within the allowed development envelope, to natives of local origin and prohibits invasive species (see Special Condition 3). Special Condition 5 requires a lighting plan designed to ensure that exterior lighting is low profile and directed away from sensitive habitat areas to avoid impacts from residential lighting (see Special Condition 5). Special Conditions 8 and 9 provide assurance that development in the riparian/butterfly ESHA and ESHA setback areas of the site will be limited to habitat restoration, enhancement, management, and possibly public interpretive access (requiring a separate CDP review) through application of a development prohibition and a deed restriction.

To further protect the sensitive habitats, Special Condition 4 requires a Drainage, Erosion and Sedimentation Control Plan that details the best management practices to be used on site during construction, as well as the permanent improvements required to collect, filter, and treat runoff from the



project to avoid drainage problems and enhance water quality. Similarly, Special Conditions 6 and 7 provide explicit construction requirements to protect riparian/butterfly ESHA.

Finally, certain of the County's previously applied conditions as listed in Special Condition 10 are incorporated as conditions of this permit in order to provide additional protection to the habitat resources on the site.

5. Conclusion

Little Cayucos Creek and its riparian corridor, including the Monarch butterfly habitat area that is part of this riparian corridor area, are categorically ESHA per LUP Policy 20, CZLUO Section 23.07.174, and LCP Combining Designation map #7. A 20-foot setback as measured from the edge of the riparian corridor is required by the LCP to adequately protect these resources (Estero Area Plan SRA Standard 1 Setbacks – Coastal Streams). The Commission's staff ecologist has evaluated the information submitted relevant to the Little Cayucos Creek riparian corridor, including the Monarch butterfly habitat within it, has visited the site, and has concluded that although a larger setback would be even more protective of the riparian corridor and butterfly habitat, the 20-foot minimum required LCP setback is appropriate to protect these resources in this case if accompanied by aggressive restoration and enhancement in the resource areas and in the 20-foot buffer area (see Exhibit Q). The Commission finds that the project, as conditioned, is consistent with the LCP's riparian/ESHA protection policies. The Special Conditions applied to this permit approval together modify the project sufficiently to comply with the applicable policies and protect and enhance creek riparian and Monarch butterfly ESHA.

C. Water Quality

1. Applicable Policies

Policy 8: Timing of Construction and Grading. Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]

Policy 9: Techniques for Minimizing Sedimentation. Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based on evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]



Policy 10: Drainage Provisions. *Site design shall ensure that drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

2. Analysis of Consistency

As previously described, the project is sited adjacent to Little Cayucos Creek and its associated riparian corridor that includes a sensitive Monarch butterfly habitat. The project would include increased impervious surface coverage, and new vehicular access areas across which runoff would flow. Runoff from the site would be expected to contain typical runoff pollutants associated with urban residential development, including those associated with vehicular use areas. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics (such as pesticides and herbicides).¹² Urban runoff can also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms. Runoff that flows directly to Little Cayucos Creek and then to the Pacific Ocean is expected to negatively impact creek and ocean resources.

To avoid potential water quality impacts in this respect, setbacks have been incorporated by special condition into the project approval to keep urban development away from the biological resources on the ground (see previous riparian/ESHA finding). In addition, conditions to assure protection of water quality are required for LCP water quality policy conformance. The project as conditioned will adequately prevent any harmful runoff effects by locating the project at an appropriate distance from the creek, and collecting, filtering, and treating all site runoff per the conditions of this approval (see special conditions 4 and 6). In order to comply with the erosion and sedimentation policies, the Applicant is also required to have a qualified professional prepare an erosion and sedimentation control plan. This plan will allow the approved project to minimize harmful impacts to riparian and related ESHA resources that may result from increased run-off, erosion or sedimentation. The project is also conditioned to provide a plan for controlling erosion and sedimentation associated with construction. See Special Conditions 4, 6, and 7. As conditioned the project is consistent with the water quality protection standards of the LCP.

D. Archaeological Resources

1. Applicable Policies

Policy 1: Protection of Archaeological Resources. *The county shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological*

¹² Pollutants of concern found in urban runoff include, but are not limited to: sediments; nutrients (nitrogen, phosphorous, etc.); pathogens (bacteria, viruses, etc.); oxygen demanding substances (plant debris, animal wastes, etc.); petroleum hydrocarbons (oil, grease, solvents, etc.); heavy metals (lead, zinc, cadmium, copper, etc.); toxic pollutants; floatables (litter, yard wastes, etc.); synthetic organics (pesticides, herbicides, PCBs, etc.); and physical changes (including to freshwater, salinity, temperature, and dissolved oxygen).



resources, adequate mitigation shall be required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 5: Mitigation Techniques for Preliminary Site Survey before Construction. *Where substantial archaeological resources are found as a result of a preliminary site survey before construction, the county shall require a mitigation plan to protect the site. Some examples of specific mitigation techniques include:*

a. Project redesign could reduce adverse impacts of the project through relocation of open space, landscaping or parking facilities.

b. Preservation of an archaeological site can sometimes be accomplished by covering the site with a layer of fill sufficiently thick to insulate it from impact. This surface can then be used for building that does not require extensive foundations or removal of all topsoil.

c. When a project impact cannot be avoided, it may be necessary to conduct a salvage operation. This is usually a last resort alternative because excavation, even under the best conditions, is limited by time, costs and technology. Where the chosen mitigation measure necessitates removal of archaeological resources, the county shall require the evaluation and proper deposition of the findings based on consultation with a qualified archaeologist knowledgeable in the Chumash culture.

d. A qualified archaeologist knowledgeable in the Chumash culture may need to be on-site during initial grading and utility trenching for projects within sensitive areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106 OF THE CZLUO.]

Policy 6: Archaeological Resources Discovered during Construction or through Other Activities. *Where substantial archaeological resources are discovered during construction of new development, or through non-permit related activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified archaeologist knowledgeable in the Chumash culture can determine the significance of the resource and submit alternative mitigation measures. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.05.140 AND 23.07.106 OF THE CZLUO.]*

2. Analysis of Consistency

To identify whether archaeological resources were present, Central Coast Archaeology started surveying the project site in 2002. In Phase I, evidence of a prehistoric archaeological site, containing shellfish remains and chipped stone, was found. This discovery led to Phase II testing that classified the site as a Late Period habitation site. A Phase III plan was developed by the Applicant's consultants to mitigate and monitor construction activities. This plan includes an archaeologist's review of footing trenches prior to mechanical excavation, monitoring by a Native American Monitor from the Salinan Tribe, and continued monitoring by both during any excavation and ground disturbing activities. Detailed mitigation requirements can be found in the archaeological report segment attached as Exhibit J. The County conditions for Cultural Resources (conditions 22, 23, 24, 35, and 37) are incorporated into Special Condition 10 and are required conditions of approval of this permit. These conditions directly



incorporate the archaeologist's recommendations for mitigation and continued monitoring. The Commission finds that these conditions adequately protect potential cultural/archaeological resources consistent with the archaeological protection provisions of the LCP.

E. Public Services

1. Applicable Policies

The County LCP contains policies to ensure that adequate public services are available for new development, and requires Applicants to produce evidence of service availability prior to permit issuance. Applicable LCP policies include:

Policy 1: Availability of Service Capacity. *New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable. ...*

CZLUO Section 23.04.430: Availability of Water Supply and Sewage Disposal Services. *A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by Resource Management System alert levels II or III:*

a. A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently-vacant parcels within the urban services line. ...

2. Analysis of Consistency

The proposed development does not raise significant concerns about availability of water or sewage disposal services. Cayucos receives water from the Whale Rock Reservoir via three service providers. The project site is located within the Morro Rock Mutual Water Company's service area. Conservation efforts in the area have helped maintain adequate water supplies for new development, and currently the water company is not limiting its will serve letters. Cayucos as a whole is at a level II severity for water supply, which means it is projected to reach capacity within the next five years. Thus, the Commission finds that adequate water exists to serve the proposed development.



Sewer services for Cayucos are provided through an agreement between the Cayucos Sanitary District and the City of Morro Bay; Cayucos is allocated a capacity of 0.721 million gallons per day (mgd) for sewage flow. Cayucos is currently at 42.3% of this capacity during the dry season. Peak day wet weather flow based on 2004 data shows 0.909 mgd for Cayucos. Winter flows have been noted to be 3 times greater than average daily flows, and inflow and infiltration are known problems within the system. Combined, Morro Bay and Cayucos are at 66% capacity for the system during the dry season and have entered into an agreement to convert the system from a primary treatment facility to a secondary treatment facility by 2014.¹³ Despite wet weather extreme high flows, the system has experienced a 40% reduction in total wastewater flows over the last two decades. Thus, the Commission finds that adequate sewage capacity exists to serve the proposed development.

Policy 1 requires that the Applicant provide evidence that there are sufficient services for the development. Prior to issuance of building permits, the Applicant is required to meet County conditions 14, 15 and 33. County condition 14 requires the Applicant to submit documentation from the Cayucos Sanitary District confirming they have met all the District's requirements and can provide adequate sewer function. Condition 33 requires a set of as-built plans be provided to the District for review. County condition 15 requires that the Applicant submit a final will serve letter from the Morro Rock Mutual Water Company to verify adequate water supply for the development. (The full text of the County conditions is available in Exhibit F.) The Commission finds that County conditions 14, 15 and 33, which are incorporated as conditions of this approval by Special Condition 10, adequately ensure the project is consistent with LCP public services standards.

F. California Environmental Quality Act (CEQA)

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

The County, acting as the lead CEQA agency, found that there was no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report was not necessary. Therefore, a Mitigated Negative Declaration was prepared pursuant to Public Resources Code Section 21000 et seq. and California Code of Regulations Section 15000 et seq., and approved by the County on April 6, 2007.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues with the proposed project, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources. All public

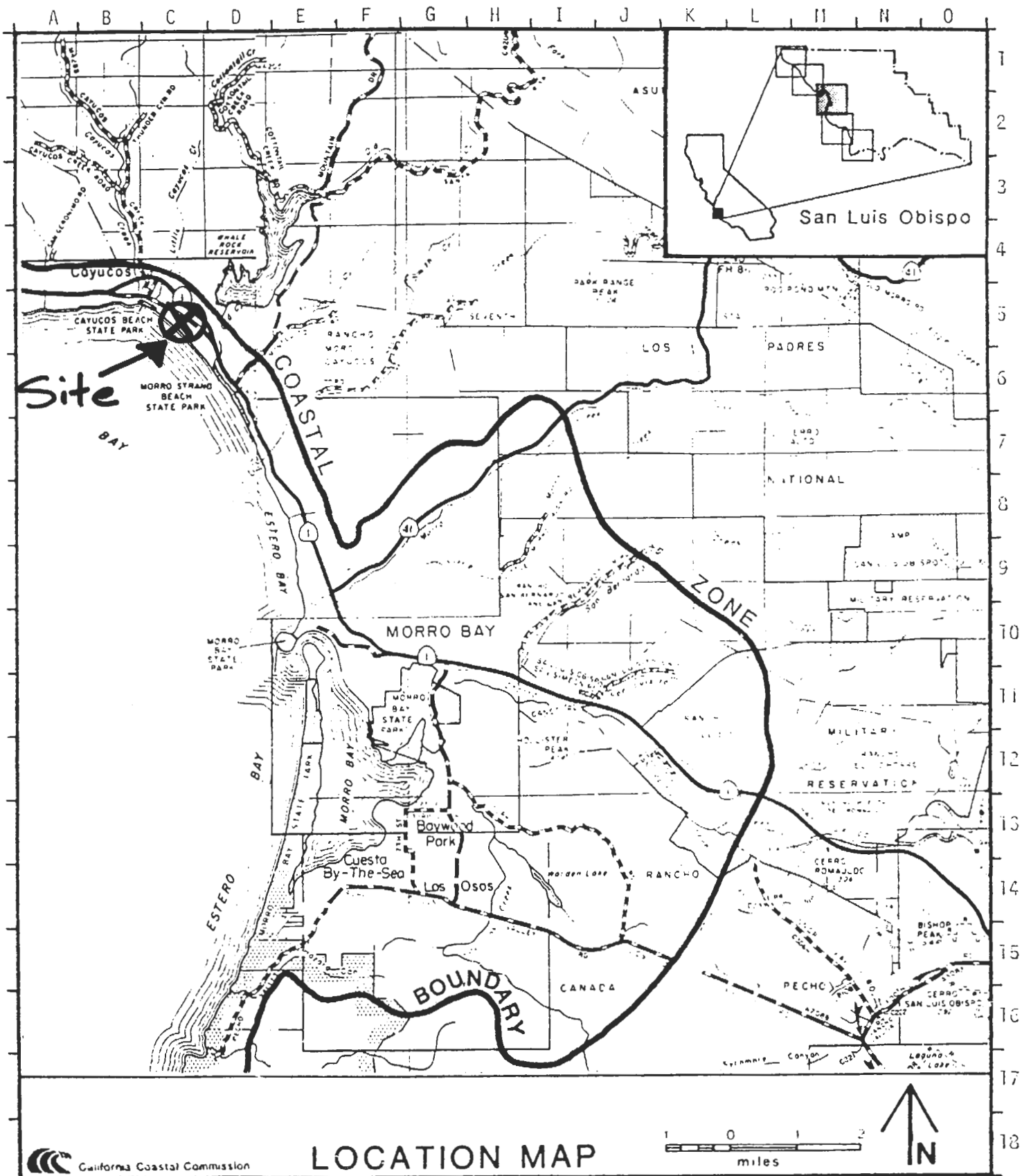
¹³ City of Morro Bay, Public Review: Sphere of Influence Update: Municipal Services Review April 2007



comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).





County of San Luis Obispo

Sheet 3 of 5

CCC Exhibit A
(page 1 of 1 pages)

LOCATION MAP

Primary # _____

HRI# _____

Trinomial CA-SLO-2195

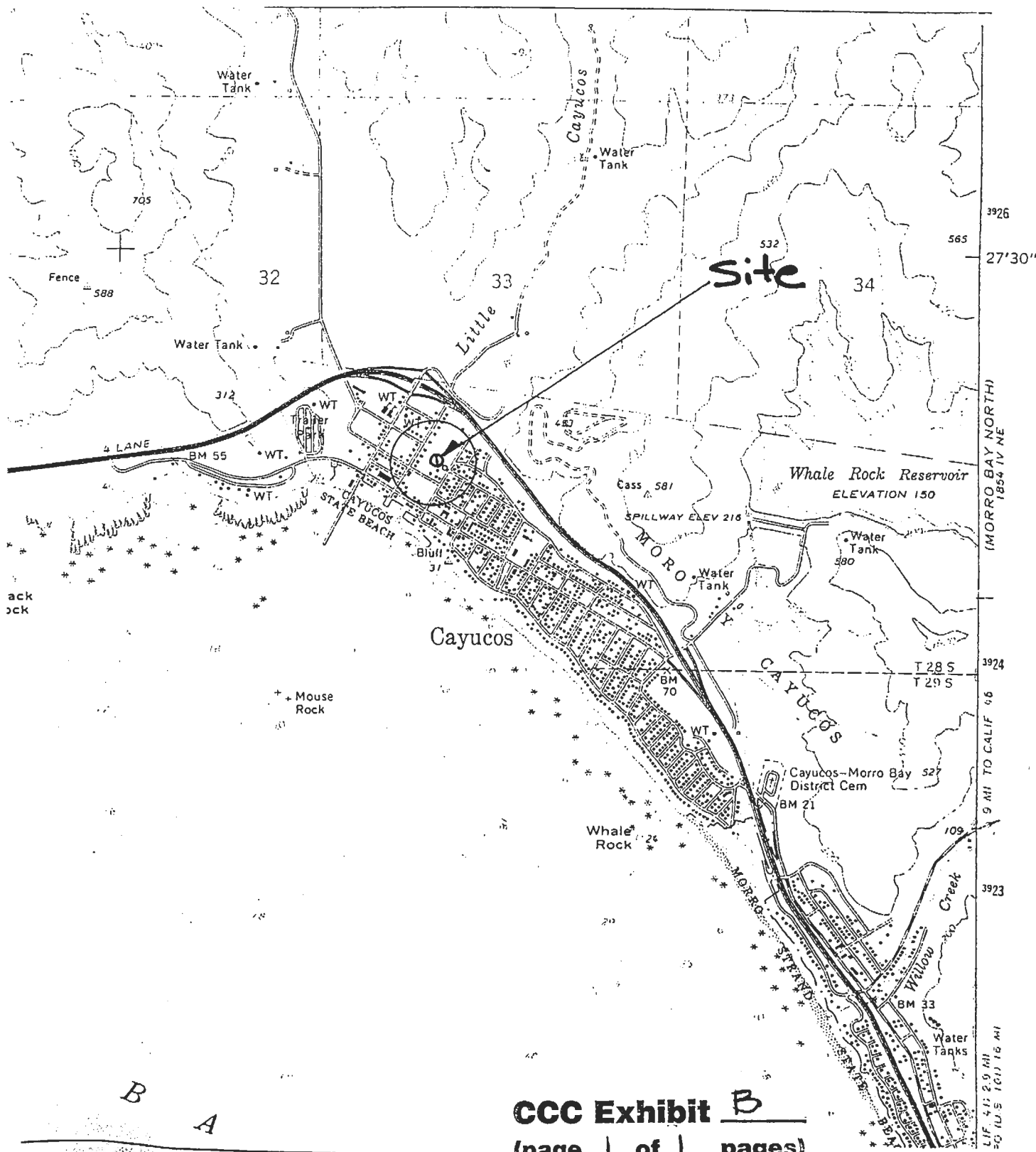
Page 4 of 4

*Resource Name or # (Assigned by recorder) Little Cayucos Creek 1

*Map Name: Cayucos Quadrangle

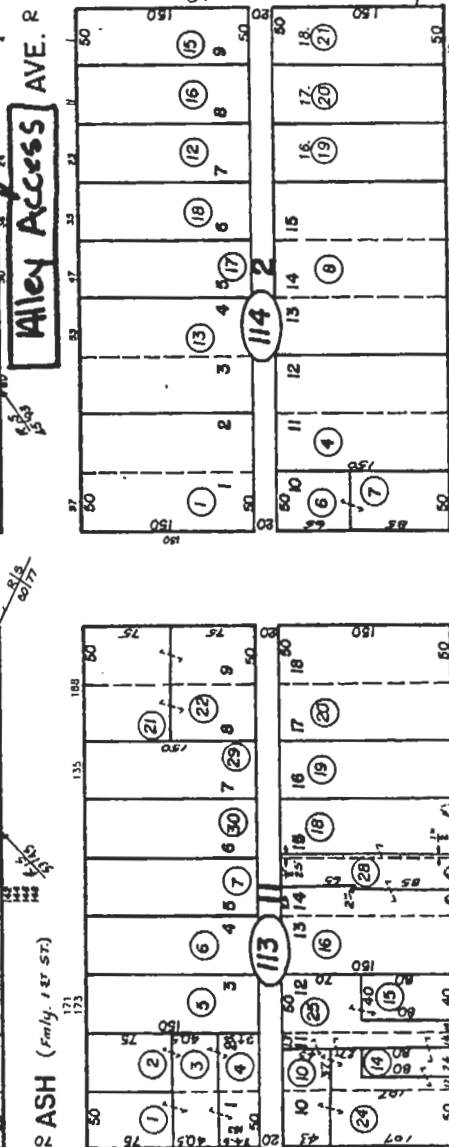
*Scale: 1:24000

*Date of map: _____

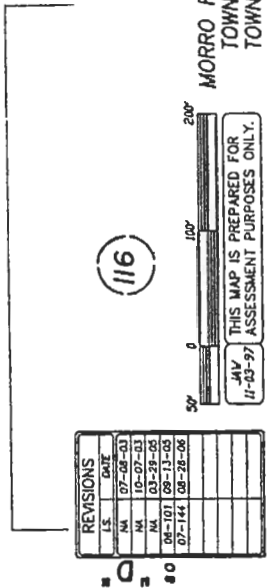


CCC Exhibit B
(page 1 of 1 pages)

Birch Ave.



OCEAN



40' 100' 200'

THIS MAP IS PREPARED FOR
ASSESSMENT PURPOSES ONLY.

11-03-97
JAF

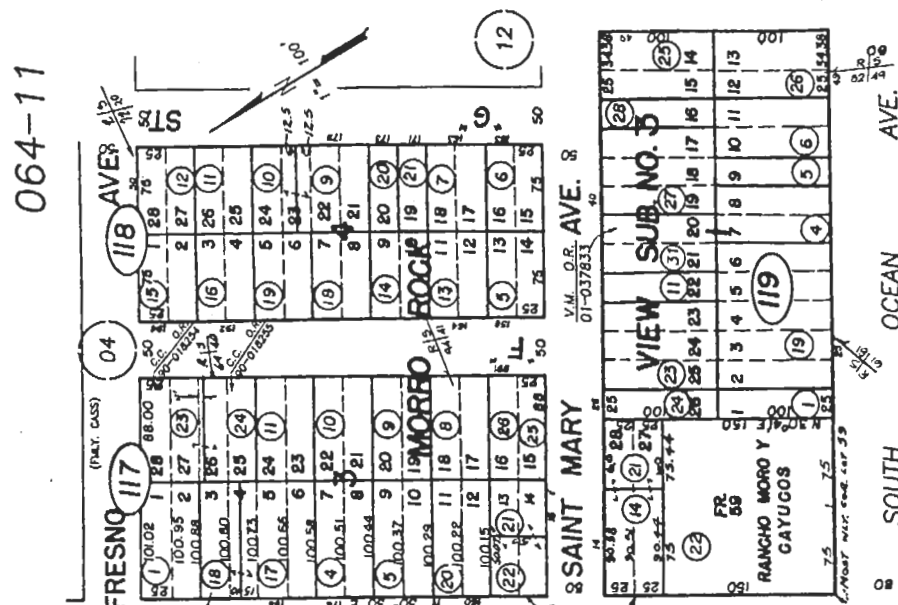
REVISIONS	
LS	DATE
NA	07-08-03
NA	10-07-03
NA	03-28-06
04-101	09-13-05
07-144	08-28-06

400' 100' 200'

THIS MAP IS PREPARED FOR ASSESSMENT PURPOSES ONLY.

JAN 17-03-97

MORRO ROCK VIEW #3, R.M. Bk. 3 , Pg. 101
TOWN OF CAYUCOS, R.M. Bk. 3 , Pg. 29
TOWN OF CAYUCOS, R.M. Bk. A , Pg. 160



28 SOUTH

42/5

8 NORTH

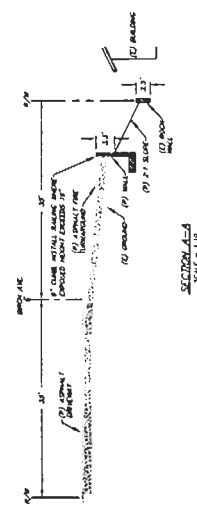
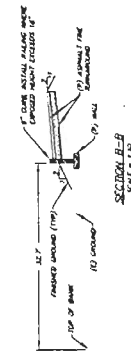
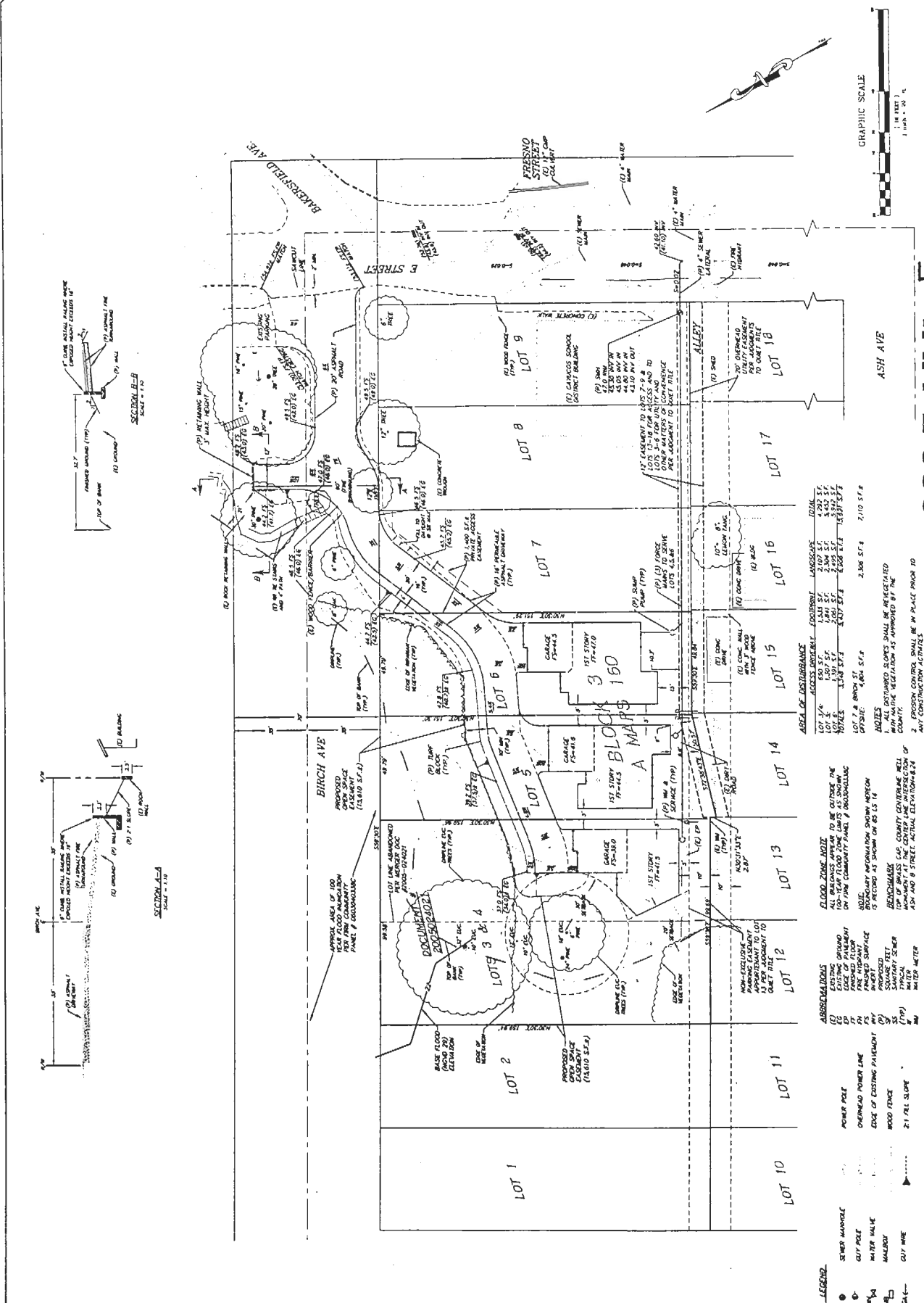
OCEAN

10

ccc Exhibit

(page 1 of 1 page)

DATE	11/02/15
BY	01/29/10
SCALE	1" = 20'
PROJECT	11/02/15
CLIENT	M & R INVESTMENTS (C/O STEVE MILLER)



LEGEND

○	SEWER MANHOLE
○	CUT POLE
○	WATER VALVE
○	WATER METER
○	WATER METER

ADDITIONALS

(1)	EXISTING GROUND
(2)	EXISTING FLOOR
(3)	PROPOSED FLOOR
(4)	PROPOSED SURFACE
(5)	PROPOSED SLOPE
(6)	PROPOSED SLOPE
(7)	PROPOSED SLOPE
(8)	PROPOSED SLOPE
(9)	PROPOSED SLOPE
(10)	PROPOSED SLOPE
(11)	PROPOSED SLOPE
(12)	PROPOSED SLOPE
(13)	PROPOSED SLOPE
(14)	PROPOSED SLOPE
(15)	PROPOSED SLOPE
(16)	PROPOSED SLOPE
(17)	PROPOSED SLOPE
(18)	PROPOSED SLOPE

AREA OF DISTURBANCE

LOT NO.	ACRES	PERCENT	TOTAL
LOT 1	1.00	1.00	1.00
LOT 2	1.00	1.00	1.00
LOT 3	1.00	1.00	1.00
LOT 4	1.00	1.00	1.00
LOT 5	1.00	1.00	1.00
LOT 6	1.00	1.00	1.00
LOT 7	1.00	1.00	1.00
LOT 8	1.00	1.00	1.00
LOT 9	1.00	1.00	1.00
LOT 10	1.00	1.00	1.00
LOT 11	1.00	1.00	1.00
LOT 12	1.00	1.00	1.00
LOT 13	1.00	1.00	1.00
LOT 14	1.00	1.00	1.00
LOT 15	1.00	1.00	1.00
LOT 16	1.00	1.00	1.00
LOT 17	1.00	1.00	1.00
LOT 18	1.00	1.00	1.00

NOTES

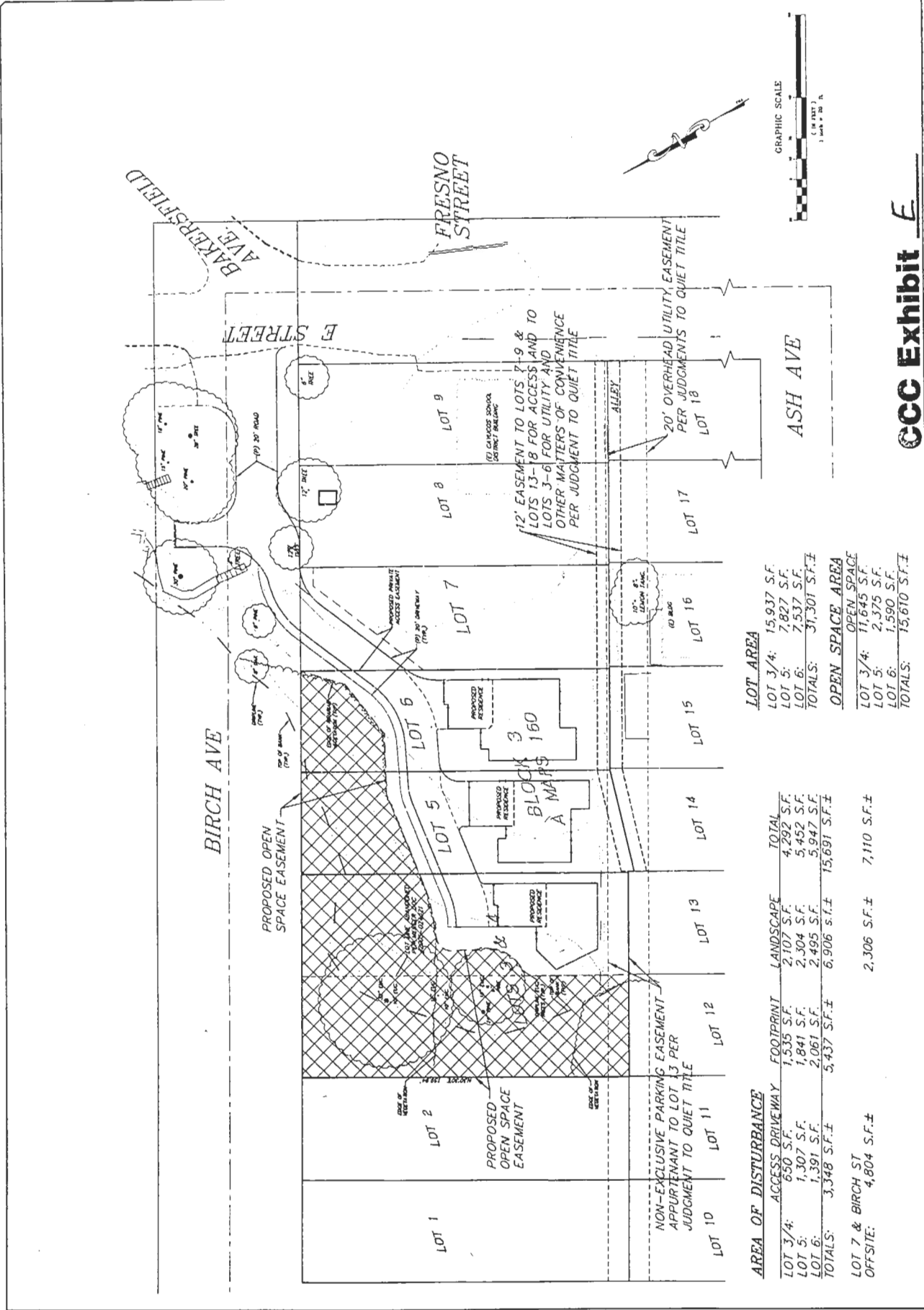
- ALL DISTURBED SLOPES SHALL BE REVEGETATED WITH THE SAME VEGETATION AS APPROVED BY THE COUNTY.
- PROPOSED CONSTRUCTION SHALL BE IN PLACE PRIOR TO ANY CONSTRUCTION ACTIVITIES.



DATE	BY	REVISION
07/09/07	MM	1
07/09/07	MM	2
07/09/07	MM	3
07/09/07	MM	4
07/09/07	MM	5
07/09/07	MM	6
07/09/07	MM	7
07/09/07	MM	8
07/09/07	MM	9
07/09/07	MM	10
07/09/07	MM	11
07/09/07	MM	12
07/09/07	MM	13
07/09/07	MM	14
07/09/07	MM	15
07/09/07	MM	16
07/09/07	MM	17
07/09/07	MM	18
07/09/07	MM	19
07/09/07	MM	20

DATE	BY	REVISION
07/09/07	MM	1
07/09/07	MM	2
07/09/07	MM	3
07/09/07	MM	4
07/09/07	MM	5
07/09/07	MM	6
07/09/07	MM	7
07/09/07	MM	8
07/09/07	MM	9
07/09/07	MM	10
07/09/07	MM	11
07/09/07	MM	12
07/09/07	MM	13
07/09/07	MM	14
07/09/07	MM	15
07/09/07	MM	16
07/09/07	MM	17
07/09/07	MM	18
07/09/07	MM	19
07/09/07	MM	20

DATE	BY	REVISION
07/09/07	MM	1
07/09/07	MM	2
07/09/07	MM	3
07/09/07	MM	4
07/09/07	MM	5
07/09/07	MM	6
07/09/07	MM	7
07/09/07	MM	8
07/09/07	MM	9
07/09/07	MM	10
07/09/07	MM	11
07/09/07	MM	12
07/09/07	MM	13
07/09/07	MM	14
07/09/07	MM	15
07/09/07	MM	16
07/09/07	MM	17
07/09/07	MM	18
07/09/07	MM	19
07/09/07	MM	20



CCC Exhibit E (page 2 of 2 pages)

LOT AREA	
LOT 3/4:	15,937 S.F.
LOT 5:	7,827 S.F.
LOT 6:	7,537 S.F.
TOTALS:	31,301 S.F.±
OPEN SPACE AREA	
LOT 3/4:	11,645 S.F.
LOT 5:	2,575 S.F.
LOT 6:	1,590 S.F.
TOTALS:	15,810 S.F.±

AREA OF DISTURBANCE			
ACCESS DRIVEWAY	FOOTPRINT	LANDSCAPE	TOTAL
LOT 3/4:	1,535 S.F.	2,107 S.F.	4,292 S.F.
LOT 5:	1,841 S.F.	2,304 S.F.	5,452 S.F.
LOT 6:	2,061 S.F.	2,495 S.F.	5,947 S.F.
TOTALS:	5,437 S.F.±	6,906 S.F.±	15,691 S.F.±
LOT 7 & BIRCH ST OFFSITE:			
		2,306 S.F.±	7,110 S.F.±



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

FINAL LOCAL
ACTION NOTICE

RECEIVED

April 12, 2007

APR 26 2007

Slo Land Corporation
P.O. Box 228
Cayucos, CA 93430

REFERENCE # 3-SLO-07-146
APPEAL PERIOD 4/27-5/10/07

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: April 6, 2007

SUBJECT: SLO LAND CORP. - County File Number: D020030P
Minor Use Permit / Coastal Development Permit
DOCUMENT NO. 2007-046

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced application was approved by the Hearing Officer, based on the approved Findings and Conditions, which are attached for your records. This Notice of Final Action is being mailed to you pursuant to Section 23.02.033(d) of the Land Use Ordinance.

This action is appealable to the Board of Supervisors within 14 days of this action. If there are Coastal grounds for the appeal there will be no fee. If an appeal is filed with non-coastal issues there is a fee of \$623.00. This action may also be appealable to the California Coastal Commission pursuant to regulations contained in Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal; criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission 10 working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhaustion of appeals at the county level is required prior to appealing the matter to the California Coastal Commission. This second appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (831) 427-4863 for further information on their appeal procedures.

CCC Exhibit F
(page 1 of 9 pages)

If the use authorized by this Permit approval has not been established or substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

976 OSOS STREET, ROOM 300

SAN LUIS OBISPO

CALIFORNIA 93408

(805) 781-5600

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six (6) months or conditions have not been complied with, such Permit approval shall become void.

If you have questions regarding your project, please contact your planner at (805) 731-5600. If you have any questions regarding these procedures, please contact me at (805) 788-2947.

Sincerely,

Nicole Retana

NICOLE RETANA, SECRETARY
PLANNING DEPARTMENT HEARINGS

(Planning Department Use Only)

Date NOFA copy mailed to Coastal Commission: April 23, 2007

Enclosed: X Staff Report
X Findings and Conditions

EXHIBIT A - FINDINGS

Environmental Determination

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 1, 2007 for this project. Mitigation measures are proposed to address air quality, biological resources, geology, cultural resources, aesthetics, water and land use and are included as conditions of approval.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the new residences will not conflict with the surrounding lands and uses.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is an allowed use and will not conflict with the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on a (local) road constructed to a level able to handle any additional traffic associated with the project

Coastal Access

- G. The project site is not located between the first public road and the ocean, therefore, the proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act

Sensitive Resource Area

- H. As conditioned, the development will not create significant adverse effects on the natural features (Coastal Stream) of the site or vicinity that are the basis for the Sensitive Resource Area designation, and will preserve and protect such features through site design because the project includes measures to protect the habitat.
- I. Natural features and topography have been considered in the design and siting of all proposed physical improvements and setbacks are adequate to preserve creek habitat.
- J. The proposed clearing of topsoil, trees, is the minimum necessary to achieve safe and convenient access and siting for the project, and will not create significant adverse effects on the identified sensitive resource.

- K. The soil and subsoil conditions are suitable for any proposed excavation and site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.

Riparian setback adjustment findings - Streams and Riparian Vegetation

- L. The proposed project structures are sited outside of a 30 foot setback, as measured from the trunk of the large eucalyptus tree, and no vegetation modification and pruning or tree removal is allowed, with the exception of one low hanging later limb that can be pruned per the pruning specifications. The structures are located outside of the required 20 foot riparian setback, and the setback is adjusted to 10 feet from riparian vegetation for the access road only. The alternative locations and routes were evaluated and determined to be less desirable and because the driveway gives additional creek setback for the structures. Erosion and sedimentation control measures are required.
- M. Adverse environmental effects have been mitigated to the maximum extent feasible.
- N. The adjustment to the riparian setback to 10 feet is for the access road which provides sufficient structure setback (at 20 feet) for maintaining riparian habitat and the eucalyptus trees of the Monarch butterfly feeding habitat.
- O. The adjustment is the minimum that would allow for the establishment of the new residences.

Archaeology findings

- P. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because the results of Phase II analysis suggest a late period habitation site and the project is conditioned for a Phase III Mitigation and Monitoring Plan.

EXHIBIT B - CONDITIONS OF APPROVAL

APPROVED DEVELOPMENT

1. This approval authorizes:
 - a. Grading for and construction of three new 2-story residences on 3 existing lots. A 2656 square foot residence with 550 square foot garage is proposed for merged Lots 3 and 4; a 2965 square foot residence with 528 square foot attached garage is proposed for Lot 5; and a 3102 square foot residence with a 540 square foot garage is proposed for Lot 6.
 - b. Construction of an access drive on Birch Avenue;
 - c. Access easement required on adjacent property
 - d. Grading with a total area of onsite disturbance is approximately 15,691 square feet and offsite disturbance is approximately 7100 square feet
 - e. An open space easement of approximately 15,610 square feet.

CONDITIONS REQUIRED TO BE COMPLETED AT THE TIME OF APPLICATION FOR CONSTRUCTION PERMITS

Site Development

2. Plans submitted shall show all development consistent with the approved site plan, floor plan, architectural elevations and revised landscape plan with the approved footprints..
3. The applicant shall submit plans for Birch Avenue access road to County Public Works for approval.
4. Show the limits 100 year floodway on the site plan and all development located outside of the floodway and submit to Public Works for approval.
5. The applicant shall provide details on any proposed exterior lighting, if applicable. The details shall include the height, location, and intensity of all exterior lighting. All lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface is visible from adjacent properties. Light hoods shall be dark colored.
6. Maintain all trees and riparian vegetation and no fireplaces are allowed in any of the structures.
7. Submit a color and materials board that blends the development with the surrounding area to Department of Planning and Building for approval.
8. Since smoke from fireplaces interfere with Monarch butterfly habitat, the Department of Planning and Building shall verify on plans that no fireplaces are allowed.

Fire Safety

9. All plans submitted to the Department of Planning and Building shall meet the fire and life safety requirements of the California Fire Code. Requirements shall include, but not be limited to those outlined in the Fire Safety Plan, prepared by the Cayucos Fire Department for this proposed project and dated August 29, 2002 and

CONDITIONS TO BE COMPLETED PRIOR TO ISSUANCE OF A CONSTRUCTION PERMIT

Access Easement

10. **Prior to issuance of a construction permit**, the applicant shall provide evidence of an access easement to Lots 3 and 4, Lot 5 and Lot 6, over the adjacent Lot 7 to the department of Planning and Building.

Open Space Easement

11. **Prior to issuance of a construction permit**, the applicant shall execute and record an open space easement, acceptable to County Counsel for creek habitat protection, for the Lots 3 and 4 (merged), and Lot 5, and Lot 6.

Erosion and Sedimentation Control and Drainage Plan

12. **Prior to issuance of a construction permit**, the applicant shall submit an Erosion and Sedimentation Control and Drainage Plan to Public Works for review and approval. The plan shall use sediment control measures to protect Little Cayucos Creek. Installation of erosion and sedimentation control devices shall be installed around the perimeter of the construction zone. No flows shall be directed to Cayucos Creek without NPDES permit.

Fees

13. **Prior to issuance of construction permits**, the applicant shall pay all applicable school and public facilities fees.

Cayucos Sanitary District

14. **Prior to issuance of construction permits**, the applicant shall provide to the Department of Planning and Building, a letter from Cayucos Sanitary District verifying all conditions of Cayucos Sanitary District, letter dated February 28, 2005 have been met, including but not limited to: Provide a title report from a title company authorized to do business in the State of California for all property in which sewer facilities and improvements intended to connect to the District's sewer system shall be installed, and shall obtain written authorization from all property owners identified therein for the installation of such sewer facilities and improvements. The applicant shall be responsible for all construction, repair and maintenance of any and all sewer lines, pipes, laterals, manholes, pumps, pumping systems, backflow devices, sump basins and associated appurtenances (collectively "sewer facilities") connecting to the District sewer line located in "E" Street, Cayucos, California and shall provide an annual independent certification by a licensed plumbing contractor certifying the satisfactory condition and operation of the subject sewer facilities. The applicant shall provide written recorded notice, in a form acceptable to the District, of this requirement to all of its heirs, assigns, grantees, and/or successors in interest.

Water Supply

15. **Prior to issuance of building permits**, the applicant shall submit a final will serve letter from Morro Rock Mutual Water Company to the Department of Planning and Building.

Biological Resources

16. **Prior to issuance of grading and/or construction permits**, the applicant shall retain an biological consultant approved by the County Planning and Building Department to monitor the implementation of the biological mitigation measures and erosion and sedimentation control measures during grading and construction activities. The biologist shall monitor the installation of fencing as per the approved construction plans and at a minimum, monitor the construction activities once per week and provide a summary report to the County Planning Department at the close of construction activities. If possible, construction activities shall be limited to the dry season (April through

October 15). If construction activities cannot take place during the dry season, the qualified biologist shall determine if additional erosion and sedimentation control measures are required. The biologist shall have the authority to halt construction activities if the mitigation measures are not properly implemented. The biologist shall coordinate with the County to resolve any problems or inconsistencies regarding the require mitigation measures.

18. The structures shall be setback a minimum of 20 feet from the edge of riparian vegetation and 30 feet from the trunk of the eucalyptus tree along the south bank of Little Cayucos Creek, and Birch Avenue extension driveway along the northern boundary of the property shall be setback 10 feet from the dripline of the riparian vegetation. No disturbance shall occur within the setback areas.
19. **Prior to issuance of construction permits**, the applicant shall submit an erosion and sedimentation control plan for review and approval by the department of planning and building. The plan shall utilize sediment control measures to protect Little Cayucos Creek. Installation of erosion/sediment control devices shall be installed around the perimeter of the construction zone.
20. **Prior to issuance of construction permits**, the applicant shall submit a drainage plan for review and approval by the planning and building department. The plan shall direct all potential pollutants from stormwater runoff away from Little Cayucos Creek.
21. **Prior to issuance of construction permits**, the applicant shall submit a landscaping plan including drought tolerance, native, and butterfly friendly landscaping for review and approval by the Department of Planning and Building.

Cultural Resources

22. **Prior to issuance of construction permit**, the applicant shall submit to the Environmental Coordinator (and possibly subject to peer review) for the review and approval, a detailed research design for a Phase III (data recovery) archaeological investigation. The Phase III program shall be prepared by a subsurface qualified archaeologist approved by the Environmental Coordinator. The consulting archaeologist responsible for the Phase III program shall be provided with a copy of the previous archaeological investigations (Bertrando; 2002, Lee; 2006), and shall be consistent with Phase III Mitigation & Monitoring Plan (Lee; 2006). The Phase III program shall include at least the following:

- A. Description of standard archaeological data recovery practices;
- B. Recommendation of sample size adequate to mitigate for impacts to archaeological site, including basis and justification of the recommended sample size. Sample size should be between 2-7% of the volume of disturbed area. If a lesser sample size is recommended, supporting information shall be presented that justifies the smaller sample size.
- C. Identification of location of sample sites/test units;
- D. Detailed description of sampling techniques and material recovery procedures (e.g. how sample is to be excavated, how the material will be screened, screen size, how material will be collected);
- E. Disposition of collected materials;
- F. Proposed analysis of results of data recovery and collected materials, including timeline of final analysis results;
- G. List of personnel involved in sampling and analysis.

Once approved, these measures shall be shown on all applicable plans and implemented during construction.

23. **Prior to issuance of construction permit**, the applicant shall submit to the Environmental Coordinator, a letter from the consulting archaeologist indicating that all necessary field work as identified in the Phase III program has been completed.
24. **Prior to issuance of construction permit**, the applicant shall submit a monitoring plan, prepared by a subsurface-qualified archaeologist, for the review and approval by the Environmental Coordinator. The monitoring plan shall include at a minimum:
 - A. List of personnel involved in the monitoring activities;
 - B. Description of how the monitoring shall occur;
 - C. Description of frequency of monitoring (e.g. full-time, part time, spot checking);
 - D. Description of what resources are expected to be encountered;
 - E. Description of circumstances that would result in the halting of work at the project site (e.g. What is considered "significant" archaeological resources?);
 - F. Description of procedures for halting work on the site and notification procedures;
 - G. Description of monitoring reporting procedures.

CONDITIONS TO BE COMPLETED DURING PROJECT CONSTRUCTION

Biological Resources

25. To reduce the likelihood of sedimentation to Little Cayucos Creek, all private and construction vehicle traffic should be limited to those areas away from the northern and eastern edges of the property, outside of the fenced areas.
26. Construction activities shall be limited to the dry weather season (April 15 thru October 15).
27. The applicant shall implement the erosion and sedimentation control plan.
28. The applicant shall implement the drainage plan.
29. The biological mitigation monitoring plan shall be implemented with on-site construction monitoring.
30. Landscaping in accordance with the approved landscaping plan shall be installed. All landscaping shall be maintained in a viable condition in perpetuity.
31. A monitoring report shall be submitted to the Planning and Building Department for review and approval.
33. The applicant shall provide Cayucos Sanitary District with a complete set of as-built plans and specifications for the subject sewer facilities.
34. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

Cultural Resources

35. **During all ground disturbing construction activities**, the applicant shall retain a qualified archaeologist (approved by the Environmental Coordinator) and Native American to monitor all earth disturbing activities, per the approved monitoring plan. If any significant archaeological resources or human remains are found, all ground disturbing work shall stop within the immediate vicinity (precise area to be determined by the archaeologist in the field) of the resource until such time as the resource can be

evaluated by an archaeologist and any other appropriate individuals. The applicant shall implement the mitigation as required by the Environmental Coordinator.

CONDITIONS TO BE COMPLETED PRIOR TO OCCUPANCY OR FINAL INSPECTION

Birch Avenue Access Drive and Fire Lane Signage

36. **Prior to final inspection**, the applicant shall provide to the Department of Planning and Building, evidence of a recorded maintenance agreement for Birch Avenue access driveway and "no parking (fire lane) signage" for Lots 3 and 4, Lot 5 and Lot 6.

Cultural Resources

37. **Upon completion of all monitoring/mitigation activities, and prior to occupancy or final inspection (whichever occurs first)**, the consulting archaeologist shall submit a report to the Environmental Coordinator summarizing all monitoring/mitigation activities and confirming that all recommended mitigation measures have been met. If the analysis included in the Phase III program is not complete by the time final inspection or occupancy will occur, the applicant shall provide to the Environmental Coordinator, proof of obligation to complete the required analysis.

Biological Resources

38. **Prior to final inspection or occupancy**, the applicant shall submit a biology monitoring report to the Environmental Coordinator for approval verifying completion of all necessary field work and monitoring.

Landscape

39. **Prior to final inspection**, the landscape shall be installed in accordance with the approved landscaping plan shall be installed. All landscaping shall be maintained in a viable condition in perpetuity.

Fire Safety

40. Which ever occurs first, the applicant shall obtain final inspection and approval from Cayucos Fire Department of all required fire/life safety measures.

ON-GOING CONDITIONS OF APPROVAL (VALID FOR THE LIFE OF THE PROJECT)

41. All landscape shall be maintained in viable condition in perpetuity
42. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
43. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863 FAX (831) 427-4877
www.coastal.ca.gov



COMMISSION NOTIFICATION OF APPEAL

DATE: May 11, 2007

TO: Matt Janssen, Permit Chief
County of San Luis Obispo, Planning & Building Department
976 Osos St., Room 300
San Luis Obispo, CA 93408

FROM: Steve Monowitz, District Manager

RE: Commission Appeal No. A-3-SLO-07-024

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

Local Permit #: **D020030P**

Applicant(s): **S L O Land Corporation**

Description: **Construction of three new two-story single family residences and access improvements adjacent to Little Cayucos Creek.**

Location: **Birch Avenue & "E" Street (Estero planning area), Cayucos (San Luis Obispo County) (APN(s) 064-112-22, 064-112-23)**

Local Decision: **Approved w/ Conditions**

Appellant(s): **California Coastal Commission, Attn: Commissioner Mike Reilly;
Commissioner Sara J. Wan**

Date Appeal Filed: **5/10/2007**

The Commission appeal number assigned to this appeal is A-3-SLO-07-024. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of San Luis Obispo's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

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

cc: S L O Land Corporation

CCC Exhibit G
(page 1 of 6 pages)

CALIFORNIA COASTAL COMMISSION

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

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

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

SECTION I. Appellant(s):

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

Commissioner Sara J. Wan	Commissioner Mary K. Shallenberger
California Coastal Commission	California Coastal Commission
45 Fremont Street, Suite 2000	45 Fremont Street, Suite 2000
San Francisco, CA 94105	San Francisco, CA 94105
	Phone No. (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County

2. Brief description of development being appealed:

Construction of three new two-story single family residences and access improvements adjacent to Little Cayucos Creek.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

Birch Avenue & "E" Street, Cayucos APN(s) 064-112-022, 064-112-023

4. Description of decision being appealed:

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

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-07-024
DATE FILED: 5-10-2007
DISTRICT: Central Coast

RECEIVED

MAY 10 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

CCC Exhibit 9
(page 2 of 6 pages)

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

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

a. ☒ Planning Director/Zoning
Administrator

c. ☐ Planning Commission

b. ☐ City Council/Board of
Supervisors

d. ☐ Other: _____

6. Date of local government's decision: April 6, 2007

7. Local government's file number: D020030P

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

SLO Land Corporation

P.O. Box 228

Cayucos, CA 93430

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

(1) Matt Janssen & Marsha Lee

SLO Planning & Building Department

967 Osos Street, Rm. 300, San Luis Obispo, CA 93408

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

See Attached.

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: May 10, 2007

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

Signed: _____

Date: _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

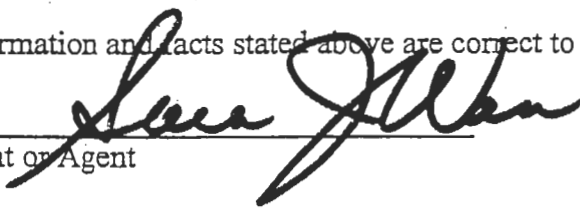
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

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

SECTION V. Certification

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

Signed: 
Appellant or Agent

Date: May 10, 2007

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

Signed: _____

Date: _____

(Document2)

CCC Exhibit G
(page 5 of 6 pages)

**Reasons for Appeal: San Luis Obispo County Coastal Development Permit
D020030P – (SLO Land Corporation)**

San Luis Obispo County approved a proposal to construct three single-family residences adjacent to Little Cayucos Creek at the northwest corner of Birch Avenue and "E" Street, in the community of Cayucos, in the Estero Planning Area. The County approved project raises Local Coastal Program (LCP) conformance issues and questions as follows:

The LCP defines Little Cayucos Creek and its riparian corridor as a Sensitive Resource Area (SRA) and Environmentally Sensitive Habitat Area (ESHA) and requires its protection, including requiring minimum setbacks (including LCP Environmentally Sensitive Habitats Policies 1, 2, 20, 21, 28, 29, 35 and Coastal Zone Land Use Ordinance Sections 23.07.170-178). The project site also includes Monarch butterfly habitat that may also be considered ESHA. The approved project locates new development in close proximity to these sensitive habitat areas and it appears that the County's approval lacks adequate measures to avoid impacts and significant disruptions to the resources as required by the LCP, including a lack of appropriate setbacks.

In addition, the Estero Area Plan of the LCP includes a specific setback standard for projects located adjacent to Little Cayucos Creek. Development is to be set back a minimum of 20 feet from the creek, as measured from the outer limits of riparian vegetation. The minimum setback may be reduced to no less than 10 feet provided that certain findings are made (Combining Designation SRA Standard #1). The County approval is inconsistent with these setback requirements because it locates the driveway within 10 feet of riparian vegetation, and within 6 feet for the turf block apron associated with the driveway. Fill slopes to support the driveway approach appear even closer. Moreover, the required riparian habitat setback adjustment findings to allow a lesser than 20-foot minimum setback (CZLUO Section 23.07.174 et seq) made by the County do not appear to be supported by the evidence at this location. It appears that alternative development locations and related access routes are feasible and less environmentally damaging, and would still allow for the establishment of a principally permitted use on the site.

Questions are also raised surrounding multiple project elements shown on the County approved site plans, including: apparent discrepancies in riparian and related habitat mapping; apparent inaccuracies in the location of portions of the driveway approach (turf block apron and fill slopes) as they relate to identified setbacks, and; apparent encroachments of second-story overhangs and residential decking on lot 4 within the required setback area, which are not shown on the approved project plans. This lack of clarity in project detail also raises questions regarding the project's conformance with the LCP.



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

✓ Frog. - March
April

VICTOR HOLANDA, AICP
DIRECTOR

BRYCE TINGLE, AICP
ASSISTANT DIRECTOR

ELLEN CARROLL
ENVIRONMENTAL COORDINATOR

FORREST WERMUTH
CHIEF BUILDING OFFICIAL

THIS IS A NEW PROJECT REFERRAL

DATE: August 22, 2002 3/8/05

TO: FG

FROM: Coastal Team Do20030P/Anderson-Thomas
Project Name and Number

Development Review Section (Phone 781- 5183)

PROJECT DESCRIPTION: Construct three SFD. supplement

Return this letter with your comments attached no later than:

Sept 5, 2002

PART I IS THE ATTACHED INFORMATION ADEQUATE FOR YOU TO DO YOUR REVIEW?

☒ YES (Please go on to Part II)

☐ NO (Call me ASAP to discuss what else you need. We have only 30 days in which we must accept the project as complete or request additional information.)

PART II ARE THERE SIGNIFICANT CONCERNS, PROBLEMS OR IMPACTS IN YOUR AREA OF REVIEW?

☐ NO (Please go on to Part III)

☒ YES (Please describe impacts, along with recommended mitigation measures to reduce the impacts to less-than-significant levels, and attach to this letter)

CCC Exhibit I
(page 1 of 1 pages)

PART III INDICATE YOUR RECOMMENDATION FOR FINAL ACTION. Please attach any conditions of approval you recommend to be incorporated into the project's approval, or state reasons for recommending denial.
IF YOU HAVE "NO COMMENT", PLEASE INDICATE OR CALL

March
April
Frog

A 50' setback from the largest eucalyptus
will be needed to protect monarch habitat.

Protonal surveys should be initiated for
California red-legged frog.

3-8-05 Bob Starnard

528-8670

Date 30' setback from eucalyptus ok as long as house built
Name in mirror image to that proposed on 5/12/05 (see attached map)
Phone built

C:\CURRENT\FORMS\Project Referral.wpd
COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO • CALIFORNIA 93408 • (805)781-5600 • 1-800-654-4636

EMAIL: ipcoping@slonet.org • FAX: (805)781-1242 • WEBSITE: <http://www.slonet.org/vv/ipcoping>

CENTRAL COAST ARCHAEOLOGY

ARCHAEOLOGICAL SURVEY-TESTING-MITIGATION • CULTURAL RESOURCE MANAGEMENT

Mr. Steve Miller c/o
Mr. John MacDonald
2813 Santa Barbara Ave.
Cayucos, CA. 93430

July 14, 2006

Subject: Phase III monitoring and mitigation plan for the M & R Investments Parcel, APN 064-112-002, at the intersection of E Street and Fresno Avenue in the Town of Cayucos, San Luis Obispo County, California.

Dear Mr. MacDonald:

Following are recommendations for archaeological monitoring and impact mitigation for the construction of three new homes on Lots 4, 5, and 6 of the M & R Investments Parcel in the Town of Cayucos. The subject property is part of archaeological site CA-SLO-2195, a prehistoric habitation deposit recorded in 2002 by Ethan Bertrando. This proposal addresses conditions of approval for a Minor Use Permit/Coastal Development Permit pending approval upon review of this mitigation plan.

ARCHAEOLOGICAL REQUIREMENTS IN CONDITIONS OF APPROVAL

Conditions of Approval includes a section entitled "Cultural Resources". This section lists a set of conditions for a Phase III program required by the San Luis Obispo County Environmental Coordinator. These conditions must be met prior to the issuance of a construction permit.

Conditions of Approval requires that prior to the issuance of construction permits, the applicant shall submit a monitoring plan prepared by a qualified subsurface archaeologist for the review and approval of the environmental coordinator, with a list of 7 required elements which must be included. They are paraphrased as follows:

- a. A description of standard archaeological data recovery practices;
- b. Recommendation of sample size adequate to mitigate impacts to the archaeological site, including basis and justification of the recommended sample size. San Luis Obispo County requires a 2-10% sample size;
- c. Identification of the location of the sample sites or test units;

P.O. Box 361 Cayucos, California 93430-0361
Phone/Fax 805.995.5053 Cell 805.235.5998

CCC Exhibit 5
(page 1 of 6 pages)

- d. A detailed description of sampling techniques and material recovery procedures, including the excavation and collection process, type of screening, and screen size;
- e. Arrangements for final disposition of the collected materials;
- f. Analysis of the results of data recovery from the test, including a timeline for completion of the final report;
- g. A list of personnel involved in the sampling and analysis.

Conditions of Approval requires a letter from the consulting archaeologist to be submitted to the Environmental Coordinator verifying completion of all necessary field work.

Conditions of Approval requires the submission of a monitoring plan to be reviewed and approved by the Environmental Coordinator. This plan must contain the following elements:

- a. List of personnel involved in the monitoring activities;
- b. Description of how monitoring shall occur;
- c. Description of frequency of monitoring;
- d. Description of what resources are expected to be encountered;
- e. Description of circumstances that would result in the halting of work, including a definition of significant archaeological resources;
- f. Description of procedures for halting work on the site and notification procedures;
- g. Description of monitoring reporting procedures.

Conditions of Approval requires the applicant to retain a qualified archaeologist and Native American Monitor during all earth disturbing activities. It also requires work stoppage in the event of the discovery of human remains or significant archaeological resources.

Conditions of Approval requires the consulting archaeologist to submit a report to the Environmental Coordinator confirming that all mitigation measures have been met. This report must be completed prior to occupancy or final inspection, or if the analysis is not complete, the applicant will provide proof of the obligation (contract) to complete it.

BACKGROUND

The M & R Investments Parcel, Lots 3, 4, 5, and 6, APN 064-112-002, is located at the intersection of E Street and Fresno Avenue in the Town of Cayucos, San Luis Obispo County, California. The parcel covers an area approximately 150 feet by 200 feet and is characterized by a relatively flat plateau consisting of native and non-native grasses which slopes to the north towards the bank of Little Cayucos Creek. The banks of Little Cayucos Creek are thick with native Willow (*Salix* sp.) and Sycamore (*Platanus racemosa*) and introduced Cypress and Eucalyptus. In October 2002 a Phase I survey report was completed for the subject property (Bertrando 2002) in which the field investigation found evidence of a prehistoric archaeological site. Although the remains may be associated with CA-SLO-1914/H immediately north of the subject property

across Little Cayucos Creek, the remains have been recorded as a separate site designated CA-SLO-2195.

The initial Phase I cultural resource investigation (Bertrando 2002) identified shellfish remains including mussel (*Mytilus californianus*), black turban snail (*Tegula funebris*), and abalone (*Haliotis* sp.). In addition, several specimens of chipped stone debitage were also noted representing both Franciscan and Monterey chert. Soils were noted as being dark grayish brown to black characteristic of prehistoric midden deposits. As a result of the initial prehistoric cultural resources present and the subsequent site designation, it was required that CA-SLO-2195 be mitigated through the excavation and analysis of scientifically consequential information from the resource per CEQA and The County of San Luis Obispo guidelines.

PHASE II TEST

Phase II archaeological testing was carried out by Central Coast Archaeology from January 9 through 11, 2006 (Lee 2006). Playano Salinan Heritage Services provided a Native American Monitor from the Salinan Tribe. One 1 meter by 1 meter test unit was hand excavated in each of the lots proposed for development (Lots 4, 5, and 6). Soils were removed in 15 cm levels to a maximum depth of 45 cm. Excavated soils were processed with water through 1/8" mesh screens. Stratigraphic data revealed that cultural deposits ended at approximately 30 cm below the surface. Below 30 cm deposits are orange clay with no characteristic midden features. Deposits above the orange sands showed no stratigraphic variation. This was consistent in all three test units with the exception of much lower prehistoric cultural remains frequencies in Lot 4. Cultural materials include small fish and mammal bone, lithic debitage and tools, marine shells, and three *Olivella biplicata* (Purple Dwarf Olive Shell) disk beads. Modern refuse was also present in the sample.

Analysis of deposits from the test units collected during Phase II testing suggest a Late Period habitation site. Map 2 details the locations of test units in relation to the proposed building plan.

MITIGATION AND MONITORING PLAN

The following text describes a combined Phase III mitigation and monitoring plan designed to minimize impacts associated with the planned development of the subject property. Specific conditions of approval addressed by this plan are in brackets. Once footing trenches are laid out, but prior to mechanical excavation, archaeologist Sean A. Lee will hand excavate sections of footing trenches to sterile soils, approximately 30 cm. Work will be monitored by a Native American Monitor from the Salinan Tribe. Excavated soils will be processed as outlined below. This plan calls for a 5% + sample and 100% monitoring by a qualified archaeologist and Native American Monitor of all proposed excavation and ground disturbing activities [a,a,b,b,c,c,g].

Volumetric Samples

Areas that will be impacted by proposed construction will be throughout the perimeters of all three house-footing trenches. The building plan calls for excavation of standard 15" wide by 27" deep two-story footing trenches. Total volume of disturbed cultural material is approximately 12.2 cubic yards. A 5% + sample size would be 0.61 cubic meters [b].

*

Sampling Strategy

All materials will be excavated by hand to the depth of sterile soils, approximately 30 cm, collected in buckets, and water processed through 1/8" mesh screen [d]. The location of Phase III test units are indicated on Map 3 [c]. All materials will be given a preliminary examination and identification during processing and marked and bagged separately for further analysis at the lab. Lab processing includes grade (size) sorting, separation of stone, bone, shell, and other materials, weighing, measuring, and describing in a catalog. Samples of shell will be prepared for radiocarbon dating. Samples will be compared with the collection from the Phase II Test [d,f]. Materials will be bagged and labeled according to standard archaeological practice and returned to the property owner [e].

Description of Occurrence of Monitoring

Monitoring shall occur by a qualified subsurface archaeologist and Native American Monitor during any earth disturbing activities related with the excavation of new footings/foundations [b]

Description of Frequency of Monitoring

A qualified subsurface archaeologist and Native American Monitor shall be present full time during the excavation of new footings/foundations for the proposed new residences [c].

Description of Expected Resources

Based on data from the Phase II archaeological investigations, lithic debitage, bone, and shell may be encountered [d].

Circumstances that may Halt Work

Should any features be encountered such as intact hearths or burials, the excavation of new footings/foundations will be delayed while such features are fully recorded and documented, including sampling, sketches, photographs, stratigraphic profiling, and scientific measurements [e].

Description of Procedure for Halting Work

Should features be encountered that require the halting of work such as human remains, all work will stop in the immediate area and the archaeologist will notify the Sheriff-Coroner, San Luis Obispo County Planning Department, the Native American Heritage Commission, and the appropriate Native American Consultant [f].

Description of Monitoring Reporting Procedures

Following the completion of the excavations for the proposed new residences, the archaeologist will provide the building contractor and/or property owner with signed

notification of completion of archaeological monitoring. A follow-up letter verifying completion of archaeological monitoring will be provided to the client and SLO County Environmental Coordinator. Upon completion of mitigated Phase III testing and once radiocarbon dated samples have been returned to Central Coast Archaeology, a final report on mitigation and monitoring will be submitted to the client [g]. *+ copy to Env. Coord*

Should you have any questions regarding this proposal, please do not hesitate to call the office.

Sincerely,



Sean A. Lee
Archaeologist
Central Coast Archaeology

REFERENCES CITED

Bertrando, Ethan

2002 Cultural Resource Inventory of the M & R Investments Parcel, Lots 3, 4, 5, and 6 of Block 3 APN 064-112-002 Cayucos, CA. Report prepared at the request of John MacDonald, Cayucos, California.

Lee, Sean A.

2006 Archaeological Investigations At CA-SLO-2195, The M & R Investments Parcel, Lots 3, 4, 5, And 6 Of Block 3 APN 064-112-002 In The Town Of Cayucos, San Luis Obispo County, California. Report prepared at the request of Mr. John MacDonald, Cayucos, California.

ATTACHMENTS

Map 1. A portion of the USGS Cayucos, CA., 7.5' topographic quadrangle showing the area tested for cultural resources.

Map 2. Site map detailing proposed building footprints and locations of test units.

Map 3. Site map detailing location of Phase III test units.

5/10/07
Sgt
J

1 KENNETH C. BORNHOLDT, SBN 42717
BORNHOLDT & ASSOCIATES
2 1035 Peach Street, Suite 202
San Luis Obispo, CA 93401
3 (805) 547-1500

4 Attorneys for Defendants and Cross-Complainants
WILBUR W. HARTZELL, JR. and MAVIS M. HARTZELL,
5 as Trustees

FILED

JAN 03 2007

SAN LUIS OBISPO SUPERIOR COURT
BY Nancy G. Gaudino
M. Gaudino, Deputy Clerk **MG**

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN LUIS OBISPO
9

10 M & R INVESTMENT COMPANY, INC., a
Nevada corporation,

11 Plaintiff,
12

13 vs.

14 WILBUR W. HARTZELL, JR. and MAVIS M.
HARTZELL, Trustees under Declaration of
Trust dated June 17, 1987; CHRISTOPHER
15 H. POPE; GRACE K. POPE; PEARL
CHARLOTTE SATTERBERG, Trustee of the
16 Satterberg Family Trust dated December 30,
1998; DANIEL CHIVENS and KRYSTALYN
17 CHIVENS, Trustees of the Chivens Family
Trust UTD [sic] January 31, 2000; CARL V.
18 NEGRANTI and MARY A. NEGRANTI,
Trustees of the Carl V. Negranti Family
19 Revocable Trust UDT November 20, 1992;
ALLAN HERSCHDERFER and DIANE
20 HERSCHDERFER, Trustees of The
Herschderfer Family Trust established
21 December 3, 2002; CAYUCOS
ELEMENTARY SCHOOL DISTRICT;
22 COUNTY OF SAN LUIS OBISPO; and all
persons unknown, claiming any legal or
23 equitable right, title, estate, lien or interest in
the property described in the complaint
24 adverse to Plaintiffs' title, or any cloud on
Plaintiffs' title thereto and DOES 1-20,
25

26 Defendants.
27

28 AND ALL RELATED CROSS-ACTIONS.

Case No. CV 040191

[Assigned for all Purposes to the
Honorable Roger T. Picquet]

~~PROPOSED~~ CORRECTED
JUDGMENT TO QUIET TITLE

1 Judgment was previously entered by this Court on April 5, 2006.

2 The judgment as entered by the Court was recorded in the County Recorder's
3 Office of San Luis Obispo County, California on June 20, 2006 as Document
4 #2006043083 and on July 18, 2006 as Document # 2006049953.

5 After the Judgment was recorded, the parties discovered that the exhibits
6 containing the legal description and plat of the subject property were not attached and
7 the legal description was erroneous.

8 This Corrected Judgment is entered to correct the legal description and attach the
9 exhibits correctly describing the subject property for recordation by the parties to
10 supersede and replace the Judgment entered on April 5, 2006.

11 This Judgment is entered pursuant to the stipulation and settlement entered into
12 on February 18, 2005, before the above-entitled court by and between M&R
13 INVESTMENT COMPANY, INC.("M&R"), a Nevada corporation, through its president
14 Steve Miller, WILBUR W. HARTZELL, JR. and MAVIS M. HARTZELL(collectively
15 "HARTZELL"), as Trustees under Declaration of Trust dated June 17, 1987,
16 CHRISTOPHER H. POPE and GRACE K. POPE (collectively "POPE"), PEARL
17 CHARLOTTE SATTERBERG ("SATTERBERG"), as Trustee of the Satterberg Family
18 Trust dated December 30, 1998, DANIEL CHIVENS and KRYSTALYN CHIVENS
19 (collectively "CHIVENS"), as Trustees of the Chivens Family Trust UTD January 31,
20 2000, CARL V. NEGRANTI and MARY A. NEGRANTI (collectively "NEGRANTI"), as
21 Trustees of the Carl V. Negranti Family Revocable Trust UDT November 20, 1992,
22 ALLAN HERSCHDERFER and DIANE HERSCHDERFER (collectively
23 "HERSCHDERFER"), as Trustees of The Herschderfer Family Trust established
24 December 3, 2002, and the CAYUCOS ELEMENTARY SCHOOL
25 DISTRICT("DISTRICT"), through George Erdelyi, Superintendent, as ratified by the
26 Board of Trustees of the DISTRICT on March 4, 2005, (hereinafter collectively referred
27 to as "Parties"), in connection with a dispute over the legal status of that certain 20-foot
28 alley (the "Map Alley") running west from "E" Street to Little Cayucos Creek, between Ash

1 Avenue and Birch Avenue, in the unincorporated area of the County of San Luis Obispo
2 ("COUNTY"), as shown in Block 3 on the Map of the Town of Cayucos (the "Town Map")
3 recorded in Book A, Page 160 of Maps in the Official records of the COUNTY.

4 The court takes judicial notice of the fact that the COUNTY filed a Disclaimer of
5 any interest in and to the Map Alley in this action on February 18, 2005.

6 The court takes judicial notice of the fact that the DISTRICT filed a Cross-
7 Complaint to quiet its title to Lots 7, 8 and 9 in Block 3 of the Town Map ("DISTRICT
8 Property"), that the Plaintiff and Defendants named above have filed Disclaimers of any
9 interest in and to said DISTRICT Property in this action, the DISTRICT published the
10 summons on said Cross-Complaint and no parties have appeared in the action except
11 the Parties who filed Disclaimers.

12 The court takes judicial notice of the fact that HARTZELL filed a Cross-Complaint
13 in this action seeking to quiet title to the Map Alley centerline on the grounds the public
14 never accepted the offer to dedicate the Map Alley in the Town Map, HARTZELL
15 published the summons on said Cross-Complaint and no parties have appeared in the
16 action except the Parties.

17 WHEREAS, the Parties have stipulated and agreed that:

18 1. The offer to dedicate the Map Alley in the Town Map was never accepted by
19 the COUNTY and no public use occurred within a reasonable time after the offer was
20 made or within 25 years of when the offer was made.

21 2. None of the Parties owns any private easement for ingress or egress in the
22 Map Alley.

23 3. All Parties own to the centerline of the Map Alley in fee simple by an extension
24 of their respective north-south lot lines shown on the Town Map, subject to an easement
25 for overhead utilities in the Map Alley area on their respective lots. A dispute exists as
26 to the location of said centerline due to historic use in the area of the New Alley, as
27 defined herein.

28 4. HERSCHDERFER shall own in fee simple to the centerline of the Map Alley

1 adjacent to Lot 13 of the Town Map as the new northerly line of said lot, subject to an
2 easement for overhead utilities in the Map Alley area, and the other half of said Map Alley
3 area adjacent to Lot 13 is owned in fee simple by M&R, subject to the non-exclusive right
4 of HERSCHDERFER to park vehicles thereon subject to M&R's easement right to ingress
5 and egress to and from Lot 4 of the Town Map.

6 5. The DISTRICT owns fee simple title to Lots 7, 8 and 9 as three separate legal
7 parcels as shown on the Town Map ("the DISTRICT Property").

8 6. All Parties have agreed to the creation of a twelve (12) foot wide private alley
9 (the "New Alley") between their respective lots as legally described in the attached
10 Exhibit "A" and the attached plat marked Exhibit "B".

11 7. All Parties will own to the centerline of the New Alley in fee simple by an
12 extension of their north-south lot lines shown on the Town Map.

13 8. All Parties except M&R shall have the right of ingress and egress over and
14 across the New Alley, which right is appurtenant to the Parties' respective lots.

15 9. M&R shall own an easement for ingress and egress in the New Alley for
16 garbage services, utilities, other matters of convenience necessary to the M&R lot owners
17 on an occasional basis and deliveries only to its lots but not for parking in the New Alley.
18 Residents and guests of the M&R lots shall have no other right to use the New Alley for
19 ingress and egress to the M&R lots.

20 10. The DISTRICT shall offer to dedicate an easement for ingress and egress to
21 the COUNTY over that portion of the DISTRICT Property needed for the New Alley. In
22 the event that the COUNTY rejects such dedication offer, then the DISTRICT shall grant
23 an easement to all Parties as abutters to the New Alley for access to and from that
24 certain public street know as "E Street" in the Town of Cayucos under Education Code
25 Section 17556.

26 11. In consideration of the DISTRICT's conveyance described in Paragraph 10
27 above, HARTZELL, SATTERBERG, POPE, CHIVENS, NEGRANTI, and
28 HERSCHDERFER, as a group, agree to pay the DISTRICT sum of \$6,000.00 upon

1 completion of said conveyance.

2 NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED THAT:

3 1. The offer to dedicate the Map Alley in the Town Map was never accepted by
4 the COUNTY and no public use occurred within a reasonable time after the offer was
5 made or within 25 years of when the offer was made.

6 2. None of the Parties owns any private easement for ingress or egress in the
7 Map Alley.

8 3. All Parties own to the centerline of the Map Alley in fee simple by an extension
9 of their respective north-south lot lines shown on the Town Map, subject to an easement
10 for overhead utilities in the Map Alley area on their respective lots.

11 4. HERSCHDERFER shall own in fee simple to the centerline of the Map Alley
12 adjacent to Lot 13 of the Town Map as the new northerly line of said lot, subject to an
13 easement for overhead utilities in the Map Alley area, and the other half of said Map Alley
14 area adjacent to Lot 13 is owned in fee simple by M&R, subject to the non-exclusive right
15 of HERSCHDERFER to park vehicles thereon subject to M&R's easement right to ingress
16 and egress to and from Lot 4 of the Town Map.

17 5. The DISTRICT owns fee simple title to the DISTRICT Property.

18 6. All Parties have agreed to the confirmation of a twelve (12) foot wide private
19 alley (the "New Alley") as consistent with the historic use of the alley by them between
20 their respective lots as legally described in the attached Exhibit "A" and the attached plat
21 marked Exhibit "B".

22 7. All Parties will own to the centerline of the New Alley in fee simple by an
23 extension of their north-south lot lines shown on the Town Map.

24 8. All Parties except M&R shall have the right of ingress and egress over and
25 across the New Alley, which right is appurtenant to the Parties' respective lots.

26 9. M&R shall own an easement for ingress and egress in the New Alley for
27 garbage services, utilities, other matters of convenience necessary to the M&R lot owners
28 on an occasional basis and deliveries only to its lots but not for parking in the New Alley.

1 Residents and guests of the M&R lots shall have no other right to use the New Alley for
2 ingress and egress to the M&R lots.

3 10. The DISTRICT shall offer to dedicate an easement for ingress and egress to
4 the COUNTY over that portion of the DISTRICT Property needed for the New Alley. In
5 the event that the COUNTY rejects such dedication offer, then the DISTRICT shall grant
6 an easement to all Parties as abutters to the New Alley for access to and from that
7 certain public street know as "E Street" in the Town of Cayucos under Education Code
8 Section 17556.


9 11. In consideration of the DISTRICT's conveyance described in Paragraph 10
10 above, HARTZELL, SATTERBECK, FOPE, CHIVENS, NEGRANTI, and
11 HERSCHDERFER, as a group, agree to pay the DISTRICT the sum of \$6,000.00 upon
12 completion of said conveyance.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that since this
14 Judgment does not include all of the terms and conditions of the settlement entered into
15 between the Parties on February 18, 2005, this Court shall retain jurisdiction of the
16 Parties and subject matter of this action to enforce all of the other terms and conditions
17 of the settlement.

18 IT IS SO STIPULATED:

19 Dated:

BELSHER & BECKER

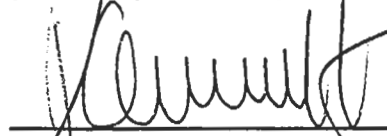
20
21 

22 John W. Belsher, Esq.

23 Attorneys for Plaintiff M&R Investments

24 Dated:

BORNHOLDT & ASSOCIATES

25
26 

27 Kenneth C. Bornholdt, Esq.

28 Attorneys for Defendants Wilbur W.

1 Residents and guests of the M&R lots shall have no other right to use the New Alley for
2 ingress and egress to the M&R lots.

3 10. The DISTRICT shall offer to dedicate an easement for ingress and egress to
4 the COUNTY over that portion of the DISTRICT Property needed for the New Alley. In
5 the event that the COUNTY rejects such dedication offer, then the DISTRICT shall grant
6 an easement to all Parties as abutters to the New Alley for access to and from that
7 certain public street know as "E Street" in the Town of Cayucos under Education Code
8 Section 17556.

9 11. In consideration of the DISTRICT's conveyance described in Paragraph 10
10 above, HARTZELL, SATTERBERG, POPE, CHIVENS, NEGRANTI, and
11 HERSCHDERFER, as a group, agree to pay the DISTRICT the sum of \$6,000.00 upon
12 completion of said conveyance.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that since this
14 Judgment does not include all of the terms and conditions of the settlement entered into
15 between the Parties on February 18, 2005, this Court shall retain jurisdiction of the
16 Parties and subject matter of this action to enforce all of the other terms and conditions
17 of the settlement.

18 IT IS SO STIPULATED:

19 Dated:

BELSHER & BECKER

20
21 _____
22 John W. Belsher, Esq.

23 Attorneys for Plaintiff **M&R Investments**

24 Dated:

BORNHOLDT & ASSOCIATES

25
26 _____
27 Kenneth C. Bornholdt, Esq.

28 Attorneys for Defendants **Wilbur W.**

1 **Hartzell, Jr. and Mavis M. Hartzell,**
2 Trustees under Declaration of Trust dated
3 June 17, 1987

4 Dated: 11/27/06

OGDEN & FRICKS, LLP

5
6
7 

8 *for* Roy E. Ogden, Esq.

9 Attorneys for **Pearl Charlotte Satterberg,**
10 Trustee of the Satterberg
11 Family Trust dated December 30, 1998
12 Attorneys for Defendants

13
14
15 Dated:

16 _____
P. Terence Schubert, Esq.

17 Attorney for Defendants **Carl V. Negranti**
18 **and Mary A. Negranti,** Trustees of the Carl
19 V. Negranti Family Revocable Trust UDT
20 November 20, 1992; and
21 **Allan and Diane Herschderfer,** Trustees of
22 the Herschderfer Family Trust established
23 December 3, 2002 and **Daniel Chivens**
24 **and Krystalyn Chivens,** Trustees of the
25 Chivens Family Trust UTD January 31,
26 2000

27 ///

28 ///

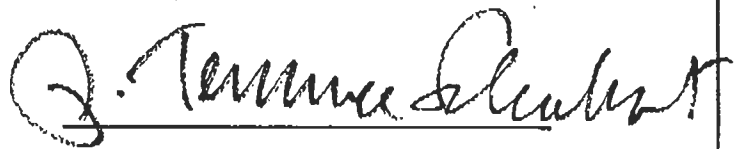
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Hartzell, Jr. and Mavis M. Hartzell,
Trustees under Declaration of Trust dated
June 17, 1987
OGDEN & FRICKS, LLP

Dated:

Roy E. Ogden, Esq.
Attorneys for Pearl Charlotte Satterberg,
Trustee of the Satterberg
Family Trust dated December 30, 1998
Attorneys for Defendants

Dated:

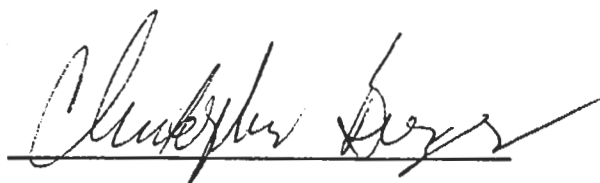


P. Terence Schubert, Esq.
Attorney for Defendants Carl V. Negranti
and Mary A. Negranti, Trustees of the Carl
V. Negranti Family Revocable Trust UDT
November 20, 1992; and
Allan and Diane Herschderfer, Trustees of
the Herschderfer Family Trust established
December 3, 2002 and Daniel Chivens
and Krystalyn Chivens, Trustees of the
Chivens Family Trust UTD January 31,
2000

///
///

1 Dated: 11/14/06

SCHOOLS LEGAL SERVICE

2
3
4 

5 Christopher P. Burger, Esq.

6 Attorneys for Defendant **Cayucos**

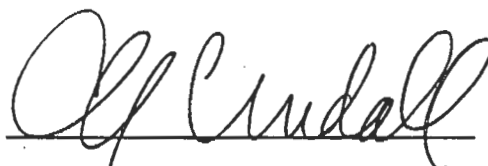
7 **Elementary School District**

8 Dated:

ADAMSKI, MOROSKI, MADDEN & GREEN

9
10
11
12
13
14
15
16 Judgment shall be so entered.

17
18 Dated: 1/3/07, ~~2006~~

19 

Judge of the Superior Court

ACCESS EASEMENT
Legal Description

A portion of Lots 5 through 9 inclusive and Lot 14 in Block 3 of the Town of Cayucos, County of San Luis Obispo, State of California, according to that map entitled, "Map of the Subdivisions of the Rancho Moro Y Cayucos" filed in Book "A", at Page 160 of Maps in the office of the Recorder for said County, more particularly described as follows:

Commencing at the Northeast corner of said Lot 9, being the intersection of the Southwesterly line of the Birch Avenue (formerly 2nd Street) right-of-way with the Northwesterly line of the "E" Street right-of-way as shown on said map;

Thence, on the Southeasterly line of said Lot 9, South 30° 25' 45" West, 160.00 feet to the centerline of that 20 foot wide alley shown on said map;

Thence, North 30° 25' 45" East, 2.69 feet to the **True Point of Beginning**;

Thence, leaving the Southeasterly line of said Lot 9, on a line that lies 2.69 feet offset Northerly from and parallel with the centerline of said 20 foot wide alley, North 59° 26' 55" West, 199.38 feet;

Thence, North 72° 38' 43" West, 51.19 feet to an intersection with the northerly prolongation of the Northwesterly line of said Lot 14;

Thence, on the northerly prolongation of the Northwesterly line of said Lots 5 and 14, North 30° 31' 33" East, 12.32 feet;

Thence, leaving the Northwesterly line of said Lot 5, South 72° 38' 43" East, 49.27 feet to a point that lies 14.69 feet offset northerly from the centerline of said 20 foot wide alley;

Thence, on a line that lies 14.69 feet offset Northerly from and parallel with the centerline of said 20 foot wide alley, South 59° 26' 55" East, 200.24 feet to the Southeasterly line of said Lot 9;

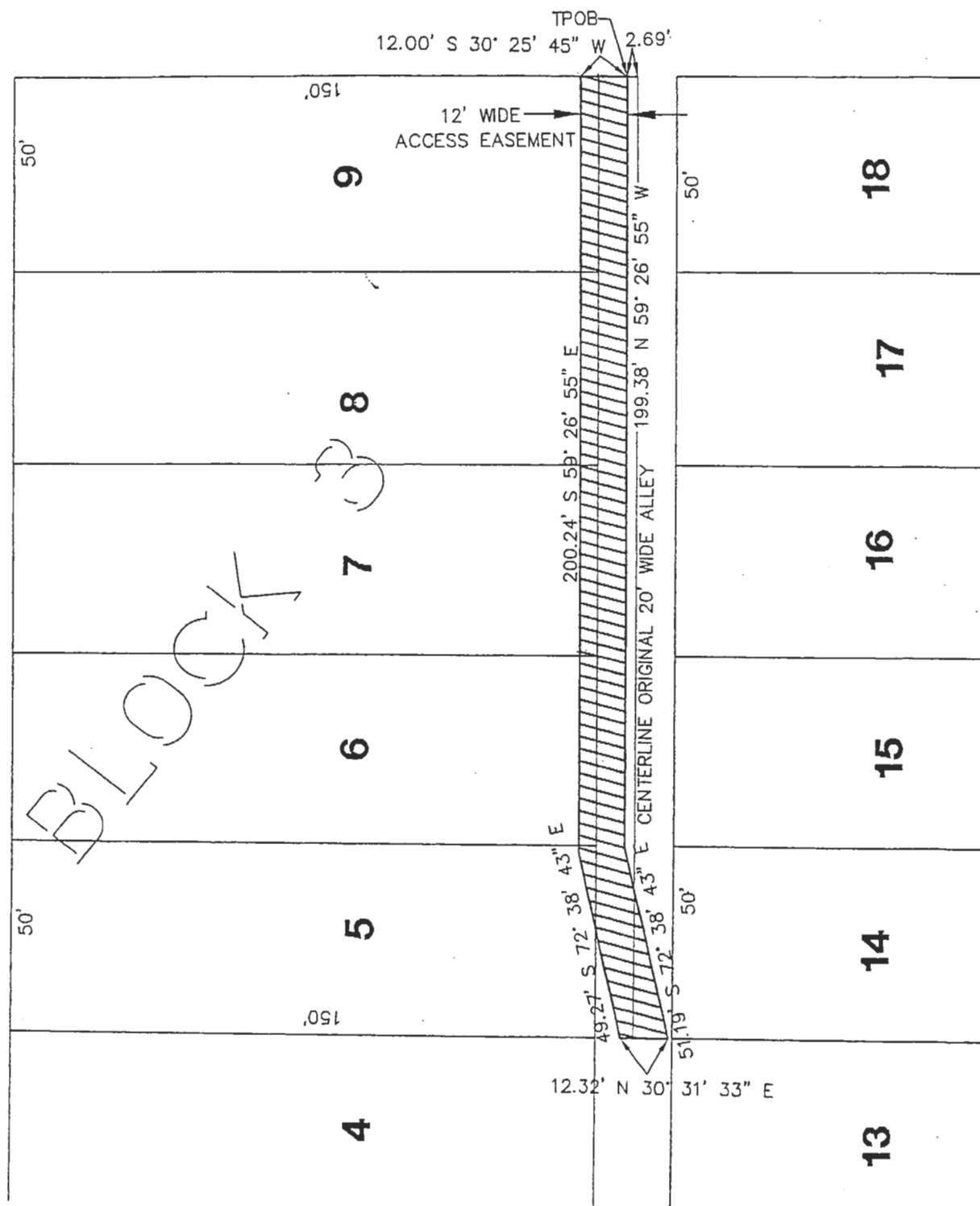
Thence, on the Southeasterly line of said Lot 9, South 30° 25' 45" West, 12.00 feet to the Point of Beginning.

End Description
Prepared by: *Dan Hutchinson*
Daniel S. Hutchinson, PLS 5139
(License renewal date 06/30/07)

Date: 09/07/06



CCC Exhibit K
(page 11 of 21 pages)



PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN LUIS OBISPO)

I, Sarah Flynn, am employed in the aforesaid county, State of California; I am over the age of 18 and not a party to the within action; my business address is 1035 Peach Street, Suite 202, San Luis Obispo, CA 93401.

On December 22, 2006, I served upon the interested party(ies) in this action the following described document(s): **[PROPOSED] CORRECTED JUDGMENT TO QUIET TITLE**

- [] **PERSONAL DELIVERY:** by delivering a true copy thereof by hand to the person or office, as indicated, at the address(es) set forth below.
- [X] **MAIL:** by placing a true copy thereof enclosed in a sealed envelope(s), addressed as set forth below. I am "readily familiar" with this office's practice for the collection and processing of correspondence for mailing. Under that practice such envelope will be deposited with the United States Postal Service on this date with postage thereon fully prepaid at San Luis Obispo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- [] **FACSIMILE:** by transmitting a true and correct copy of the document via facsimile to the person or office as indicated at the address(es) and telecopier number set forth below.
- [] **MESSENGER:** by causing a true copy thereof to be delivered via messenger service at the address(es) set forth below.

John W. Belsher, Esq.
Belsher & Becker
Attorneys at Law
412 Marsh Street
San Luis Obispo, CA 93401

Roy Ogden, Esq.
Ogden & Fricks LLP
656 Santa Rosa Street
Second Floor
San Luis Obispo, CA 93401

P. Terence Schubert, Esq.
1254 Marsh Street
San Luis Obispo, CA 93401

Christopher P. Burger
Schools Legal Service
1300 17th Street, 7th Floor
Bakersfield, CA 93301

John E. D. Nicholson, Esq.
Adamski, Moroski Madden
& Green, LLP
P.O. Box 3835
San Luis Obispo, CA 93403-3835

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made. (page 13 of 31)

[X] State) I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on December 22, 2006 at San Luis Obispo, ~~California~~.

Sarah Flynn
[Print Name]

[Signature]

CCC Exhibit K
of a member of the
(page 13 of 21 pages)
made.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into effective this 18th day of February, 2005, by and between M&R INVESTMENT COMPANY, INC., a Nevada corporation ("M&R"), WILBUR W. HARTZELL, JR. and MAVIS M. HARTZELL, as Trustees under that certain Declaration of Trust dated June 17, 1987 (collectively referred to as "HARTZELL"), CHRISTOPHER H. POPE and GRACE K. POPE (collectively referred to as "POPE"), PEARL CHARLOTTE SATTERBERG, as Trustee of the Satterberg Family Trust u/d/t 12/30/98 ("SATTERBERG"), DANIEL CHIVENS and KRYSTALYN CHIVENS, as Trustees of the Chivens Family Trust u/d/t/ 1/31/00 (collectively referred to as "CHIVENS"), CARL V. NEGRANTI and MARY A. NEGRANTI, as Trustees of the Carl V. Negranti Family Revocable Trust u/d/t 12/20/92 (collectively referred to as "NEGRANTI"), ALLAN HERSCHDERFER and DIANE HERSCHDERFER, as Trustees of The Herschderfer Family Trust u/d/t 12/3/02 (collectively referred to as "HERSCHDERFER"), and the CAYUCOS ELEMENTARY SCHOOL DISTRICT ("DISTRICT"), collectively referred to herein as "Parties".

RECITALS

WHEREAS, M&R filed a Complaint in the Superior Court for the County of San Luis Obispo ("COUNTY"), Case No. CV 04191("Action"), against HARTZELL, POPE, SATTERBERG, CHIVENS, NEGRANTI, HERSCHDERFER (collectively referred to herein as "DEFENDANTS"), COUNTY and DISTRICT to quiet its title to certain real property in the County in a 20 foot alley ("Map Alley") shown on that certain Map of Cayucos recorded in Book A, Page 160 of Maps in the Official Records of County ("Cayucos Map"), as more particularly shown in yellow on the Canon & Associates survey attached hereto as Exhibit "A";

WHEREAS, the DEFENDANTS filed Cross-Complaints against M&R, COUNTY and DISTRICT to quiet their title in the Map Alley based on their historic use of a 12 foot alley ("Historic Alley") in a location different from the Map Alley, as more particularly shown in red on the attached Exhibit "A";

WHEREAS, the DISTRICT filed its Cross-Complaint against M&R and DEFENDANTS to quiet its title to Lots 7, 8 and 9 in Block 3 of the Cayucos Map ("DISTRICT Property"), as shown on the attached Exhibit "A";

WHEREAS, on February 18, 2005, the COUNTY filed a Disclaimer in the Action, in which it disclaimed any interest in the Map Alley; and

WHEREAS, on February 18, 2005, pursuant to California Code of Civil Procedure Section 664.6, the Parties entered into a settlement of said Action in open court in which they agreed to quiet the title of the respective Parties under certain terms and to give to each other general releases of all known and unknown claims arising out of the allegations in the Complaint and Cross-Complaints on file in said Action.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth and subject to full performance of all the other terms of the settlement entered into, the Parties agree as follows:

1. Fee Title Quieted in DEFENDANTS. The Parties agree that the fee simple title to each of the DEFENDANTS shall be quieted as follows and more particularly described in the attached Proposed Judgment to Quiet Title marked Exhibit "B"

1.1 HARTZELL shall retain their fence as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area.

1.2 POPE shall use the extension of the HARTZELL fence as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area.

1.3 SATTERBERG shall use her driveway bounded by her fence and short retaining wall as her new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area.

1.4 CHIVEN shall use the area between the end of the existing utility pole and the new SATTERBERG northerly lot line as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area;

1.5 NEGRANTI shall use the area from the existing utility pole down to a four foot border parallel with the Map Alley as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area; and

1.6 HERSCHDERFER shall use the centerline of the Map Alley adjacent to Lot 13 of the Cayucos Map as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area and the other half the continued right to park subject to M&R's right to access Lot 4.

2. Fee Title Quieted in DISTRICT. The Parties agree that the fee simple title to the DISTRICT shall be quieted in and to the DISTRICT Property as more particularly described in the attached Exhibit "B".

2.1 The Parties agree to enter into a stipulation with the DISTRICT to file a Cross-Complaint to quiet its title to the DISTRICT Property in this Action and to file Disclaimers of any interest therein in the Action. The Parties further agree that the Proposed Judgment attached hereto as Exhibit "B" shall not be filed with the Court until after the DISTRICT has published the summons on said Cross-Complaint.

2.2 After Judgment to Quiet Title has been entered in said Action, the DEFENDANTS agree to cooperate with DISTRICT in processing applications for Certificates of Compliance with the COUNTY for its three lots.

3. Fee Title Quieted in New Alley. The Parties agree that the Historic Alley shall be realigned and relocated in accordance with a survey to be done by Canon & Associates which will be in the form of a legal description and plat more particularly described in the in the attached Exhibit B ("New Alley") as follows:

3.1 Each of the Parties shall own a fee interest in the New Alley measured from the boundary line of each lot owned by them adjacent to the New Alley to the centerline of the New Alley.

3.2 Each of the Parties except for M&R shall own an easement for ingress and egress in the New Alley appurtenant to their respective lots along the New Alley.

3.3 M&R shall own an easement for ingress and egress in the New Alley for garbage services and deliveries only to its lots but not for parking in the New Alley. Residents and guests of the M&R lots shall have no right to use the New Alley for ingress and egress to the M&R lots.

3.4 The DEFENDANTS collectively agree to pay for the cost of a survey for the New Alley.

4. DISTRICT Agreement to Sell District Property for the Alley. The DISTRICT agrees to sell and convey to the DEFENDANTS and M&R up to a total of 1500 square feet of DISTRICT Property for an alley between the Parties' lots and access to the M&R lots from Birch Avenue for the consideration and terms set forth in Sections 5, 6 and 7 of this Agreement.

5. DEFENDANTS' Consideration to DISTRICT for New Alley. The DISTRICT agrees to offer to dedicate in fee to the COUNTY that portion of the DISTRICT property needed for the New Alley location. In the event the COUNTY rejects such offer of dedication, then the DISTRICT agrees to convey said property to the Parties in fee as set forth above in Section 3.1, subject to the easements set forth in Sections 3.2 and 3.3 above.

5.1 In consideration of the conveyance of the DISTRICT Property for the New Alley, the DEFENDANTS collectively agree to pay to the DISTRICT the sum of \$49.00 per square foot of DISTRICT Property consisting of a cash sum of \$6,000.00 and their agreement not to oppose the DISTRICT's quiet title action and cooperate as set forth in Sections 2.1 and 2.2 above.

6. M&R Birch Avenue Project. M&R agrees to amend and diligently process in good faith its pending applications with the COUNTY (Application #D020030P) for development of the M&R lots 3, 4, 5 and 6 to provide for access to its proposed development from Birch Avenue as shown in the attached Triad/Holmes Assoc. survey marked Exhibit "C" ("Birch Avenue Project"). M&R agrees to not voluntarily change the route proposed for Birch Avenue and oppose any condition sought to be imposed by any public agency that would result in a change of such route. M&R agrees to process the Birch Avenue Project until the

agencies having jurisdiction over it have reached a final decision of approval or denial.

6.1 The DEFENDANTS agree to not oppose the Birch Avenue Project so long as M&R processes the applications with access from Birch Avenue in good faith. The DEFENDANTS are under no obligation to support the Birch Avenue Project.

6.2 In the event the Birch Avenue Project is denied and no environmental determination is certified by the COUNTY due solely to the location of the access from Birch Avenue, then M&R has the option to file a second application for the M&R Alley Project described in Section 7 below.

6.3 In the event the Birch Avenue Project is approved wherein a two-story house with a minimum driveway and without a garage with 1750 square feet on Lot 4 or a two-story house with 2500 square feet on each of Lots 5 and 6 on Exhibit "C" cannot be built due solely from the location of Birch Avenue, then M&R has the option to file a second application for the M&R Alley Project described in Section 7 below.

6.4 In the event the Birch Avenue Project is approved and M&R proceeds with development of its lots based on such approval, then M&R agrees to purchase and the DISTRICT agrees to sell at the rate of \$____.00 per square foot for the amount of DISTRICT Property needed to build the extension of Birch Avenue to the M&R lots.

7. M&R Alley Project. The Parties agree that if one of the two events described in Sections 6.2 or 6.3 occur, then M&R shall have the right to file and process a new application ("M&R Alley Project") with the County to develop its three lots using the alley for access in the location shown on the attached Exhibit "D" ("M&R Alley"). The occurrence of one of said events is a condition precedent to M&R proceeding with the M&R Alley Project.

7.1 The Parties agree that the DEFENDANTS can oppose the M&R Alley Project for any reason, and that the DEFENDANTS shall not be estopped from opposing such project on any and all grounds notwithstanding their non-opposition to the Birch Avenue Project as provided under Section 6.1 above.

7.2 In the event the M&R Alley Project is approved, then M&R agrees to purchase and the DISTRICT agrees to sell at the rate of \$62.00 per square foot for the amount of DISTRICT Property needed to expand the width of the New Alley to a total width of 18 feet. M&R shall pay for the cost of a survey for the M&R Alley.

8. General Release. The Parties hereto hereby agree to fully release and discharge each of the other Parties, and each of them, and their respective officers, agents, employees and representatives, from any and all claims, demands, damages, losses, liability, costs or causes of action arising out of or in connection with the allegations contained in the Complaint and Cross-Complaints on file in said Action, whether known or unknown.

8.1 The Parties each agree to bear their own attorneys fees and costs in connection with this Agreement and the Action.

9. Waiver and Release of Unknown Claims. All rights granted under Section 1542 of the California Civil Code are expressly waived by each of the Parties with respect to the releases made herein. Each of the Parties hereto expressly warrants to each of the other Parties that he, she and it have read and understand that Section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

9.1 The releases made herein operate as a release of future claims that may arise out of the allegations in the Complaint and Cross-Complaint in said Action whether the claims are currently known, unknown, seen or unforeseen. The Parties hereto expressly warrant to the other Parties that they understand and acknowledge the significance and consequences of this specific waiver of Section 1542 as to the releases given and hereby assume full responsibility for any future injury, damages, loss or liability that may occur after this Release is executed by them.

9.2 The Parties represent and warrant to each of the other Parties that they have consulted with and been advised by attorneys of their own selection with respect to the legal effect of the releases given by each of them in Sections 8 and 9 herein and intend to be bound by same.

10. No Admission. The entering into this Agreement does not constitute an admission of liability or fault by any of the Parties hereto.

11. Attorneys Fees. If any action at law or equity is commenced concerning this Agreement the prevailing Party shall be entitled to the payment of reasonable costs and attorneys' fees, in addition to any other relief which may be awarded.

12. Authority. The persons who are executing this Agreement on behalf of Parties hereto represent and warrant to each other and to the Parties hereto that they are the duly authorized and empowered to execute this Agreement and bind the Parties by their signatures.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be one agreement.

14. Further Assurances. The Parties hereto agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to fulfill and implement the terms of this Agreement.

15. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

16. Amendments. The terms of this Agreement shall not be modified or changed except by an instrument in writing executed by each of the Parties hereto.

17. Exhibits. The Exhibits attached hereto are hereby incorporated herein and made a part hereof as if set forth in full.

18. Governing Law. This Agreement is entered into and shall be interpreted and construed under the laws of the State of California.

19. Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, assigns and successors-in-interest of the respective Parties hereto.

20. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto, and supersedes any prior written or oral agreement between said Parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the Parties hereto, relating to the subject matter hereof, which are not fully expressed in this Agreement.

21. Enforcement. The Parties acknowledge and agree that this Agreement is made and entered into pursuant to Section 664.6 of the California Code of Civil Procedure, and that they did request and the Court in said Action did agree to retain jurisdiction over the Parties to enforce the settlement entered into in Court until such time as all of the terms of this Agreement have been fully performed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the date first above written.

[SIGNATURE BLOCKS]

FL. SLO COUNTY
CLERK'S OFFICE

2003 NOV -5 PM 3:30

Report on the
Proposed developments
of Lots 3, 4, 5 & 6 of Block 3 of Cayucos,
San Luis Obispo County California
Owners: Herfurth & Miller

CCC Exhibit L
(page 1 of 25 pages)

By Richard G. Little

2002/2003

REPORT OUTLINE

- ☐ INTRODUCTION
- ☐ BACKGROUND
- ☐ ENVIRONMENTAL CHARACTERISTICS OF SITE & MONARCH REQUIREMENTS
- ☐ METHOD AND MATERIALS:
- ☐ FIELD & HISTORICAL DATA
- ☐ RESULTS AND DISCUSSION
- ☐ MITIGATION:
- ☐ REFERENCES
- ☐ DESCRIPTION & PICTURES OF PROPOSED DEVELOPMENT OF LOTS 3, 4, 5 & 6 IN BLOCK 3

INTRODUCTION

The proposed development is located in Cayucos, San Luis Obispo County CA. in block 3 covering lots 3, 4, 5 & 6 which are located between Birch Avenue and E Street.

The purposes of this study is to evaluate a former overwintering Monarch butterfly site that was partially located on lot 3 of the lots proposed for development based on historical and present conditions at the site.

This report will use past and present information about the former overwintering site to determine the impact the proposed development will create. The report will also address if any and what kind of mitigation measures will be recommended.

BACKGROUND

Eucalyptus and Monterey pine groves along the California coastal regions are the locations that support overwintering sites of Monarchs. Environmental and climatic factors will determine the micro habitat present which will be the major factors deeming the suitability of a site. Climatic factors are factors such as specific temperature ranges, wind velocity, solar radiation, and humidity at the site. The climatic region inside the stand of trees that make up a Monarch site is often called the "microclimate." The microclimate that is found inside a Monarch habitat exist within a more restricted range then normally found outside of the site. This restricted range of climatic conditions that make up the microclimate at the grove will determine if the site is suitable for Monarchs and in what way. Species of trees, their size and clustering/density as well as other vegetation at the site will be the determining factors as to weather the site will offer the necessary conditions that will protect butterflies from wind and storms during the winter. The butterflies overwintering in these site during the winter will reach their peak numbers during this period. (Leong and Frey 1991)

ENVIRONMENTAL CHARACTERISTICS OF SITE & MONARCH REQUIREMENTS

Monarch overwintering sites will have a range of environmental requirements that usually only exist within those tree stand that will protect the Monarchs from the winter conditions which would be fatal if they were exposed to such conditions. The tree stand acts as a wind buffer. Monarch can not remain on trees if the wind velocity exceeds 2 meters/sec (Leong 1999). If the Monarch falls or are knocked off under such conditions when the temperatures are too low for flight, they can not recover to return to their roosting site in the trees, they can be killed by predators or other environmental factors. In this manner the site can protect the Monarch in a storm. Winter sites provide protection from freezing temperatures and gusty winds, and are generally associated with some source of free water such as a pond, stream or morning dew (Leong 1999) To be an successful overwintering site, the site must meet the Monarchs requirements of solar radiation, humidity, and temperature as well as food and water. The range of some of these environmental factors have been researched by Monarch Biologists over the years to determine what are necessary for Monarchs to survive. When one or more of the critical environmental factors exceed the Monarch survival range, that the site's value is degraded sometimes to the point of being of no use to Monarchs.

Non-native Eucalyptus and Monterey Pine trees are the preferred sites. We have lost many native pine trees to urbanization and now to Pitch Canker of Pines, Fusarium subglutinans (Wollenweb & Reinking) a fungus disease that is especially deadly to susceptible Monterey pine trees. The non-native Eucalyptus trees are also having major problems due to a number of serious insect pest that are new to California. Most of these new pests have come into California only in the last ten to fifteen years. The Eucalyptus trees were imported into California more then 150 years ago were pest free for most of this time. Because of these new pest it becomes difficult to protect individual trees from these pest. This is due to there being no natural biological controls agents to control these serious pest. The use if insecticides even if it were to work against these pests, it would be equally destructive or more so to the Monarchs we are trying to protect.

Another factor that Monarch Biologist have shown to be important to the suitability of the site is the vegetation characteristics other then the trees on which they may roost. Edge vegetation as this is often called by Monarch Biologist are small tree seedlings, low bushes and other plants some which may serve as food and/or water sources.

FIELD DATA & HISTORICAL DATA

The field data was generated for Herfurth & Miller during the winter of 2002/2003 by Kingston Leong. Much of the historical data was compiled by Kingston as well. All data was provided by Jim Herfurth and Steve Miller.

Field Data Winter 2002/2003

- Except for the last three winter seasons, the Cayucos winter site had supported large populations of overwintering butterflies each season for over twenty years.

- The degradation of this winter site seems associated with two residential homes (52 Birch Street) that were recently built on land northeast and adjacent to the historical aggregation trees. Construction of these homes required the removal of trees that once buffered winds from the northeast.
- This winter season, several northeast winds exceeding wind velocities of 2 m/sec were measured. Winds of this magnitude blew unobstructed through eucalyptus branches that had historically supported overwintering butterflies.
- Since the Cayucos winter site supported few roosting butterflies this season, there were very little biological activities (soaring, foraging for water and nectar, etc.) observed in the field south of the grove and surrounding area.
- On November 27, 2002 site visitation, 25 butterflies were observed at the end of D street and along Cypress Avenue feeding on Myoporum spp. flowers and on free water found in a drainage ditch. Due to the 25 butterflies centered in this area alone, the December 13, 2002 site visitation included a search at the end of D Street and along Cypress Avenue for possible winter aggregations on pine trees. No winter aggregation was found on these trees.
- Approximately 200 butterflies were observed clustering on eucalyptus foliage, at the northwestern section of the grove, during the October 24, 2002 site visitation. Their numbers declined sharply to 50 by October 31. A cluster of six butterflies was observed on eucalyptus foliage on the southwestern section by November 11 and none by November 27. Based on their population size and their short winter occupancy, it was concluded that the monarch butterflies were no longer using the Cayucos winter habitat as a climax site as they had done just a few years ago.
- Since this season's overwintering population at Cayucos winter site showed a decline from 200 butterflies to 0 by November 27, 2002, the field investigation of this study was terminated after the December 15 2002 sample.

Historical Data

- Historically, butterflies were commonly observed feeding on flowers of Blue gum eucalyptus, (*Eucalyptus globulus* Don), Queen Ann's Lace, and Willow (*Salix*. spp) that grew within or adjacent to the field south of the grove. It was not uncommon to see the butterflies imbibing on morning dew on grass growing in the field south of the grove. This winter, the butterflies were more disperse and foraged a greater distance from the aggregation area. They were observed feeding on flowers of Ivy (*Hedera* sp.), 40 meters south west of the grove; on lantana flowers (*Lantana* sp.) at the corner of E Street and Ash; and on morning dew of lawn grasses of residential homes located along D, E and Ash Streets
- Prior to the building of the two residential homes northeast of the aggregation area, Mrs. Kaberline has enjoyed viewing clusters of overwintering butterflies from her kitchen window for over 20 years. According to her, their numbers varied each season between

20,000 to over 60,000 butterflies.

- In 1998-1999 winter season, I visually documented a winter population of 60,000 overwintering butterflies. Based on the population of 60,000 butterflies, the Cayucos wintering site falls within the select few (0.59%) of 300+ California's winter sites that recorded populations greater than 50,000 overwintering butterflies (Leong et al. 2003). It is not surprising, therefore, that Estero Area Planning Committee designated Cayucos wintering site as a significant habitat for overwintering butterflies (1999).

RESULTS AND DISCUSSION

Even though no significant numbers of Monarchs have been seen at this site for the last three years (Kingston field data) the fact remains that the site is still used by Monarchs and should be protected. The present usage based on Kingston's field data is a transitional one. This means that the trees and vegetation at the site are important to maintaining the site suitability even if its only as a feeding habit.

We can not undo the destruction of this former site that in past years was one of the major Monarch overwintering sites along this part of the California coast. However, neither Steve Miller or Jim Herfurth were responsible for the destruction of this site. The mitigation measures that should have been imposed due to this destruction is a past issue. The responsibility of Herfurth and Miller lies within the proposed development and any impacts this development will have on the existing vegetation and its potential impact on any value as a Monarch site. Only a few of the major eucalyptus trees that make up the site are on the lots owned by the present owners which are under consideration for development, the rest of the trees are on lots owned by other property owners. Any serious attempt at rehabilitating this site would have to involve all of these other property owners. Such mitigation measures are beyond the legal reach of this report.

That so few eucalyptus are in this former overwintering site increases the risk that any rehabilitation could succeed. Eucalyptus trees in the coastal SLO county areas and elsewhere are under attack by several new exotic and serious eucalyptus tree pests. Most of these new pests are capable of killing healthy trees. These pests do not have any natural biological controls to keep them under a natural balance. If any one of them were to infest the few remaining eucalyptus trees at this site, they could be killed quickly. If this were to happen the site would most likely be severely degraded in its usefulness to Monarchs.

MITIGATION:

Mitigation measures imposed on the development should be as reasonable as possible directly related to and in "proportionality" of the impact the proposed development creates to the Monarch site.

While it might be possible to rehabilitate this former site, and make it more suitable, it would require a great amount of work in the form of vegetation management. It could be years before we would know if the rehabilitation attempt would succeed or not. It would also require giving up one or more lots in addition to the one already given up as well as a major financial

commitment and time on the part of the property owners. Surrounding property owners on whose property part of the Monarch site occupies would also have to be involved. Requiring the present owners to fund such a project is counter to the laws' requirement that any impact mitigation measures be proportional to the impact. The damage to this 'site' that has resulted in the site becoming unsuitable, occurred off site on lots owned by other property owners years ago. The present lot owners, who have owned the lot for only about a year or so, were not responsible nor did they have any control over those actions that occurred off site.

To preserve the habitat that is present in Lot 3 in perpetuity, Herfurth and Miller should create a conservation easement which would prevent any future development of this lot even though it is presently protected under the riparian/creek protection regulations. Even though the site has been degraded and may be suitable only as an autumnal site or transitional site it should still be protected because the site is suitable as a feeding site. Such feeding sites can provide a place for them to replenish their fat reserves before they move on to overwintering sites.

The impact of the proposed three single occupancy structures on the vegetation and any possible use by Monarch such as a feeding habitat by Monarch Butterflies can be mitigated in the following manner:

- No development should be permitted on lot 3. A conservation easement may be one way to provide the legal structure for preserving and managing this creek side habitat.
- Any development of a structure on lot 4 not be permitted to impact the existing tree canopy.
- Development of a single residential structure on lot 5 and 6 should not have any impact on the creek side vegetation zone providing the structure do not intrude into the creek protection zone.
- No vegetation modification such as pruning, attaching things to the trees or removal of trees in any of the four lots should be permitted. The exception would be the removal of poison oak plants adjacent to the homes. If there is significant die off of the tree stand or the under cover and surrounding vegetation in the stream zone, an Monarch Biologist should be consulted to determine what kind of vegetation should replace the dead vegetation. When possible the occupants should allow trees that die in the vegetation zone to remain unless the trees are deemed hazardous. Cavity-nesting birds and other wildlife use standing dead trees. The trees as they decompose will contribute to the vegetation growth that the site as well as provide wildlife habitats.
- Smoke should not be allowed to drift into Monarch habitats from 1 October to 1 April of each year or when the butterflies are present.
- No modifications of the terrain in the creek zone should be permitted by the occupants without prior consulting and permission of County Planning and with a Monarch Butterfly Biologist. This includes any trenching, digging, tunneling in or around the trees. Any grading either by addition or removal of soil that would create 'Root Zone' disturbances or change the existing drainage, runoff that would create puddling should not be permitted.

- Winter time activities should be such that they do not disturb any Monarch that may be using the site. The site usage normally would occur from Oct to March of each winter.
- No Pesticide or herbicide applications of any kind should be permitted in the creek/vegetation zone. For pest or disease problems, again a Monarch Biologist should be consulted.

While the mitigation measures are requiring the developers to basically to leave the vegetation as is and not to make any vegetation modifications the reality is that this will only work for so long. This is because no site is inert or unchanging, all will change in time and most likely in a manner as to cause the site to become more unsuitable for Monarchs. The developers and property owners should be encouraged to think long term and to work with a Monarch Biologist to try and keep the site as suitable to Monarchs as they reasonably can as long as they can.

REFERENCES & READINGS

- Brower, L. 1985. The yearly flight of the monarch butterfly, Pacific Discovery,
 Brower, L and S. B, Malcolm. 1989. Endangered Phenomena. Wings 14(.2):3-10.
 Leong, K. L. H, 1998. Restoration of an overwintering grove in Los Osos, San Luis Obispo County, California. Submitted for publication in the Proceedings of the North American Monarch Butterfly Conference. Morelia, Michoacan, Mexico.
 Leong,, K. L. H, E. O'Brien, K. Lowerisen and M. Colleran. 1995. Mating activity and status of overwintering monarch butterflies in central California. Ann. Entomol. Soc. Am. 88:45-50,
 Leong,, K. L. H. 1990. Micoenvironmental factors associated with the winter habitat of the monarch butterfly (Lepidoptera: Danaidae) in central California. Annals Entomol, Soc. Am. 83-906-.910,

DESCRIPTION & PICTURES OF PROPOSED DEVELOPMENT OF LOTS 3, 4, 5 & 6 IN BLOCK 3

- Picture 1: All four lots are shown in this picture. The black lines are the approximate property lines of each of the lots.
- Picture 2: This picture is an aerial overview of the lots proposed for development in Cayucos. The vegetation that makes up the creek zone and the monarch site can easily be seen to cover several different properties.
- Pictures 3-4: Shows the vegetation on the lots from different points to show the vegetation distribution.
- Picture 5: Shows the vegetation at the edge of lot 3 & 4 at ground level.

Picture 5:

Shows the vegetation at the edge of lot 3 & 4 at ground level.




Rincon Consultants, Inc.

1530 Monterey Street, Suite D
San Luis Obispo, California 93401

605 547 0900
FAX 547 0901

info@rinconconsultants.com
www.rinconconsultants.com

March 4, 2002

Mr. Steve Miller
55 Bakersfield Avenue
Cayucos, California 93430

Subject: Biological Assessment of Four Lots Located in Cayucos, San Luis Obispo County, California

Dear Mr. Miller:

At your request, Rincon Consultants, Inc. has completed an assessment of the existing biological resources and potential occurrences of special-status species in relation to the four lots that you are conducting due diligence on in the town of Cayucos. This letter report provides the results of our assessment.

STUDY AREA

The study area includes four 50 foot by 150 foot lots, including Lots 3, 4, 5, and 6 identified on the map provided by you, within the town of Cayucos in San Luis Obispo County, California. The lots are bordered on the north, northwest and northeast by Little Cayucos Creek, and bordered on the south, southwest and southeast by an alley, residential development and a small warehouse. A fenceline clearly marked the border of the study area's southern boundary between Lots 6 and 7. The northern lot limits, however, were not clearly identified at the time of the site visit, and the northern extent of the study area was approximated as the banks of Little Cayucos Creek for the preparation of this letter report.

METHODOLOGY

Rincon Consultants' biologist, Kevin Merk, met with you on February 15, 2002 to review the four lots that were the focus of this assessment. A reconnaissance-level survey was then conducted on the four lots, as well as within the upstream and downstream riparian habitat associated with Little Cayucos Creek. The purpose of the survey was to generally characterize the existing biological resources on the four lots and identify any habitat that could support special-status species or otherwise be of concern to resource agencies. No specific surveys for special-status plant or animal species were conducted during this reconnaissance.

The following maps were used to characterize and map vegetation within the study area: 1) a map illustrating the property lines of the four lots that you provided; 2) the Cayucos U.S.G.S. 7.5-minute topographic quadrangle map; and 3) a topographic map of the four lots prepared by Triad Holmes. The reconnaissance survey also evaluated the onsite habitat types as potential habitat for special-status species known to occur in the Cayucos vicinity. The special-status species targeted during this reconnaissance were the Southern/Central Coast steelhead ESU (ecologically significant unit) (*Oncorhynchus mykiss irideus*, a federally threatened species), tidewater goby (*Eucyclogobius newberryi*, a federally endangered species), the federally threatened California red-legged frog (*Rana aurora draytonii*, CRLF), and the southwestern pond turtle (*Clemmys marmorata pallida*, a California species of concern.) In addition to these two species, our fieldwork also focused on whether suitable roosting habitat was present onsite for the monarch butterfly (*Danaus plexippus*). Information contained in this letter report is based on our field observations, knowledge of the area, and review of the California Department of Fish and Game's Rarefind Natural Diversity Database (CNDDDB 2002).

RESULTS AND DISCUSSION

Vegetation

Elements of two habitat types were observed on the four lots. These habitat types included: 1) Central Coast Arroyo Willow Riparian Forest; and 2) disturbed (or ruderal) annual grassland. Additionally, several large non-native blue gum eucalyptus (*Eucalyptus globulus*) and Monterey cypress (*Cupressus macrocarpa*) trees occur as a component of the riparian vegetation associated with Little Cayucos Creek. Classification of these habitat types or vegetation communities is based on Holland (1986), and was compared to Sawyer and Keeler-Wolf (1995) for consistency. The following discussion focuses on the habitat types delineated on the attached habitat map and briefly describes the existing conditions and potential occurrences of special-status species associated with each of these areas.

Central Coast Arroyo Willow Riparian Forest

This habitat type described by Holland corresponds to the Arroyo Willow Series as described by Sawyer and Keeler-Wolf. The riparian habitat was observed along the northern portions of Lots 3, 4, 5, and 6 (please see attached habitat map). Lot 3 extends below the top of bank towards the creek, and is almost entirely covered with riparian vegetation. This habitat type is characterized as an open to closed canopy of arroyo willows (*Salix lasiolepis*) growing on the banks, top of bank area, and channel bottom along Little Cayucos Creek. This habitat type is dominated by arroyo willow, but includes other native trees and shrubs typical to riparian habitats in the vicinity such as coast live oak (*Quercus agrifolia*) and toyon (*Heteromeles arbutifolia*). Several large, non-native blue gum eucalyptus, and Monterey cypress trees were also observed along the banks of Little Cayucos Creek in this vicinity. Additionally, large eucalyptus trees were observed both upstream and downstream from the study area.

The riparian understory on the study area is composed of woody and herbaceous native plants as well as invasive, exotic herbaceous species typical of disturbed natural areas along the urban interface in the Cayucos vicinity. Native understory species observed within the study area included California blackberry (*Rubus ursinus*), creek clematis (*Clematis ligusticifolia*), poison oak (*Toxicodendron diversilobum*), and coyote brush (*Baccharis pilularis* var. *consanguinea*). While a number of native plants occur within the on-site riparian habitat, non-native plants are the dominant component of the understory on the study area. Non-native species observed in this area, included periwinkle (*Vinca major*), English ivy (*Hedera helix*), nasturtium (*Tropaeolum majus*), and Kikuyu grass (*Pennisetum clandestinum*). Furthermore, pockets of seasonal wetlands and several small pools (less than 12-inches deep) occur in Little Cayucos Creek within the study area. The wetland areas are located within the active channel, and comele with the riparian woodland. These wetland areas contained native hydrophytic (i.e.: water loving) vegetation in the active channel. Plants observed in this area included water cress (*Rorippa nasturtium-aquaticum*), Pacific oenanthe (*Oenanthe sarmentosa*), and common nutsedge (*Cyperus eragrostis*).

Riparian woodland communities provide habitat for a variety of songbirds including common yellowthroat (*Geothlypis trichas*), plain titmouse (*Baeolophus inornatus*), song sparrow (*Melospiza melodia*), as well as amphibians and reptiles such as the Pacific chorus frog (*Pseudacris regilla*) and western fence lizard (*Sceloporus occidentalis*). During the site visits, several red-tailed hawks (*Buteo jamaicensis*), red-shouldered hawks (*Buteo lineatus*), and numerous songbirds were observed perched in the blue gum eucalyptus and Monterey cypress trees in this area. ←

Ruderal/Disturbed Annual Grassland

The ruderal/disturbed annual grassland habitat type was the dominant habitat type observed within the study area. This habitat type was observed in the level, open areas within Lots 4, 5, and 6 inbetween the alley and the riparian vegetation in the northern portion of study area. These disturbed areas support a mixture of weedy species and non-native annual forbs and grasses that are likely the result of past and current vegetation management activities (i.e.: mowing). Dominant species in this habitat type included slender wild oats (*Avena barbata*), ripgut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), English plantain (*Plantago lanceolata*), wild radish (*Raphanus sativa*), fennel (*Foeniculum vulgare*), and Bermuda buttercup (*Oxalis pes-caprae*). Generally, ruderal areas provide marginal habitat for wildlife, especially considering the study area's proximity to residential and other urban development.

Special Status Species

For the purpose of this letter report, special-status species are those plants and animals listed, proposed for listing, or candidates for listing as threatened or endangered by the U.S. Fish and Wildlife Service (USFWS) under the federal Endangered Species Act (ESA); those considered "species of concern" by the USFWS; those listed or proposed for listing as rare, threatened, or endangered by the California Department of Fish and Game (DFG) under the California Endangered Species Act (CESA); animals designated as "Species of Special

Concern" by the DFG; and plants occurring on lists 1B, 2, and 4 of the CNPS's Inventory of Rare and Endangered Vascular Plants of California (CNPS 1994).

Rincon Consultants biologist developed a target list of special-status plant and animal species that occur in the Cayucos vicinity based on our review of the CNDDB, previous studies from the vicinity of the site, and other sources including our own knowledge of the area. Field reconnaissance to identify habitat types and an evaluation of the on-site soils helped refine the target list of species and focus our assessment of the actual or potential for occurrence of special-status species on the site.

The CNDDB identified a number of special-status plant and animal species that occur in the Cayucos vicinity. However, a number of these species have specific habitat requirements such as coastal dunes, coastal strand, coastal scrub, serpentine outcrops, and creeks with perennial water flows that do not occur within the study area. As such, no special-status plant species, western snowy plover, California horned lizard, or Morro shoulderband snail are expected to occur within the study area. However, potential habitat for four of the special-status wildlife species identified in the CNDDB, which includes the Southern/Central Coast steelhead ESU (ecologically significant unit), tidewater goby, California red-legged frog, and southwestern pond turtle, was observed on-site. Furthermore, a monarch butterfly over-wintering site that occurs on and adjacent to the study area has been documented in the CNDDB.

Southern/Central Coast steelhead ESU and the tidewater goby are two listed species known to occur in coastal drainages in the Cayucos area (CNDDB, 2002). The Southern/Central steelhead ESU occurs in coastal streams with suitable winter flows that contain appropriate substrate for spawning, and enough perennial water throughout the year or deep perennial pools to complete their two-year freshwater development before returning to the ocean. This ESU is known from the Pajaro River in the Monterey Bay Area south to, but not including the Santa Maria River. Tidewater goby is found in brackish water habitats along the California coast. This species typically occurs in shallow lagoons and lower stream reaches where they require fairly still but not stagnant water with high oxygen levels. Although the Little Cayucos Creek watershed is an ephemeral drainage system that only contains flowing water during the rain season, there is still potential for these two species to occur in the creek within the vicinity of the study area because there are no major obstructions between the Pacific Ocean and the study area. Furthermore, there are no recorded occurrences of these two species within Little Cayucos Creek. Should steelhead and tidewater goby exist within this watershed, they are likely present for only a portion of the year, and likely move upstream and downstream through the study area to areas of appropriate habitat. Therefore, Little Cayucos Creek within the study area does not appear to support suitable habitat for these species.

The CNDDB contains a number of recorded occurrences of CRLF within an approximately 5-mile radius of the study area. The CRLF typically inhabits lowlands and foothills in or adjacent to permanent sources of deep water with dense shrubby or emergent riparian vegetation. This species usually requires 11 to 20 weeks of permanent water for larval development, and must have access to suitable aestivation habitat. While the USFWS has

identified CRLF critical habitat surrounding the town of Cayucos, the study area occurs outside of designated CRLF critical habitat (Federal Register, 50 CFR Part 17). During the survey, Rincon Consultants' biologist walked approximately 100 feet upstream and 100 feet downstream of the study area to assess the study area's potential to support this species. Little Cayucos Creek contained a small amount of flowing water at the time of the survey, and several small pools less than 12-inches deep were observed within the riparian corridor. No tadpoles or frogs were observed. Moreover, the small ephemeral pools do not appear to persist long enough to provide appropriate breeding habitat for the CRLF. However, potential foraging, dispersal, and aestivation habitat was observed for this species and includes the riparian habitat throughout the study area. While it is unlikely that the CRLF occurs within this lower reach of Little Cayucos Creek within the study area, there is still potential for this species to occur in the study area. This species cannot be dismissed from the study area without conducting the USFWS protocol-level surveys, which require two daytime and two nighttime surveys to be conducted during the period from May 1 to October 31.

The southwestern pond turtle occurs throughout perennial coastal drainages along California's central coast, and has similar habitat requirements as the CRLF. The CNDDDB contains recorded occurrences of this species in nearby watersheds, but does not contain any records of southwestern pond turtle within the Little Cayucos Creek watershed. Given the lack of perennial flowing water, it is unlikely that this species occurs in the vicinity of the study area. Potential dispersal and foraging habitat may be present within this drainage system, however, it is highly unlikely given the lack of suitable habitat (i.e.: perennial pools greater than 16-inches deep) west of Highway 1 that southwestern pond turtles inhabit this lower reach of Little Cayucos Creek.

The CNDDDB contains a recorded occurrence of Monarch butterflies over-wintering on blue gum eucalyptus and Monterey Cypress trees on and adjacent to the study area. The USFWS or CDFG does not list the Monarch butterfly as a special-status species, but it is listed by the CNDDDB as a species with a G4S3 ranking for wintering sites. This translates to a state rank of a California restricted range and rare for wintering sites for this species. Monarch butterfly wintering sites meet the definition of "rare" according to the California Environmental Quality Act (CEQA) Section 15380, and are therefore included in this analysis.

Monarch butterflies congregate in clusters in eucalyptus, Monterey cypress and pine trees with water and nectar sources nearby during fall and winter migration. It is during the winter roosting and clustering period that the habitat is protected. As previously stated, the CNDDDB documents an occurrence listing for Monarch over-wintering within the large blue gum eucalyptus and Monterey Cypress trees on and immediately adjacent to the study area. This occurrence has been known to support up to 60,000 butterflies during the over-wintering (or roosting) period. However, over-wintering has not occurred at this site for approximately three years (personal communication with Dr. Kingston Leong 2/25/02). Also, neighbors in the area have told us that they have not seen butterflies congregating in the area for approximately three to four seasons. None-the-less, this area still constitutes a potential habitat area for the Monarch butterfly on this portion of the Central Coast.

CONCLUSION

The study area contains two habitat types typical of the general area, including Central Coast Arroyo Willow Riparian Forest and ruderal or disturbed annual grassland. Riparian habitats, in general, are of special concern to the resource agencies due to the extensive loss of this habitat type in California. Any activity that would remove or otherwise alter riparian habitat is closely scrutinized by the resource agencies, and would require a Streambed Alteration Agreement from the DFG. Although no special-status species were observed during the February site visit, the aquatic and riparian habitat associated with Little Cayucos Creek could provide potential movement, foraging, dispersal and aestivation habitat for four special-status animal species, which include the southern/central steelhead ESU, tidewater goby, California red-legged frog, and southwestern pond turtle. Furthermore, a recorded Monarch butterfly wintering site is located in the large blue gum eucalyptus and Monterey cypress trees that occur on and just outside of the study area. While the monarch butterfly is not technically a special-status species, its wintering sites on the central coast of California are considered a significant biological resource under CEQA. The monarch wintering sites are considered sensitive habitat and any impacts to these wintering sites are typically determined as a significant impact under CEQA review.

LIMITATIONS, ASSUMPTIONS AND USER RELIANCE

This limited Biological Assessment was prepared for use solely and exclusively by Mr. Steve Miller. Mr. Miller has requested this assessment and may use it to provide information to satisfy regulatory agency requirements. No other use or disclosure is intended or authorized by Rincon, nor shall this report be relied upon or transferred to any other party without the express written consent of Rincon Consultants. Mr. Miller agrees to hold Rincon harmless for any inverse condemnation or devaluation of said property that may result if Rincon's report or information generated is used for other purposes. Also, this report is issued with the understanding that it is to be used only in its entirety.

This work has been performed in accordance with good commercial, customary, and generally accepted biological investigation practices conducted at this time and in this geographic area. The biological investigations are limited by the scope of work performed. The identification of potential special-status species habitat has been based on a suitability analysis level only and did not include definitive surveys for the presence or absence of the species that may be present. Definitive surveys for special-status wildlife and plant species generally require specific survey protocols requiring extensive field survey time to be conducted only at certain times of the year. No other guarantee or warranties, expressed or implied are provided.

The findings and opinions conveyed in this report are based on findings derived from a site reconnaissance, review of the California Natural Diversity Data base report, and specified information sources. This report is not intended as a comprehensive biological characterization and should not be construed as such. Standard data sources, such as the California Natural Diversity Data Base, relied upon during the completion of this type of

Mr. Steve Miller
Cayucos Property
Biological Assessment
Page 7 of 7

report may vary with regard to accuracy and completeness. Although Rincon believes the data sources are reasonably reliable, Rincon cannot and does not guarantee the authenticity or reliability of the data sources it has used. Additionally, pursuant to our contract, the data sources reviewed included only those that are practically reviewable without the need for extraordinary analysis.

We trust that this information will assist with your due diligence activities at this time. Please do not hesitate to call Kevin Merk if you have any questions or concerns.

Sincerely,

RINCON CONSULTANTS, INC.



Kevin Merk
Plant Ecologist



David K. Wolff
Manager, Biological Resources Group
Certified Professional Wetland Scientist

Attachment: Habitat Map

CCC Exhibit L
(page 15 of 25 pages)



For file
Bio

Rincon Consultants, Inc.

1530 Monterey Street, Suite D
San Luis Obispo, California 93401

805 547 0900

FAX 547 0901

info@rinconconsultants.com

www.rinconconsultants.com

April 2, 2004

Ms. Marcia Lee
San Luis Obispo Cour
Department of Planning and Building
County Government Center
San Luis Obispo, California 93408

Subject: Riparian Habitat Setback Evaluation for Lots 3, 4, 5 and 6 - Block 3 (Project Number D020030P), Cayucos, California

Dear Ms. Lee:

Rincon Consultants, Inc., at the request of Mr. Steve Miller and Ms. Gayla Smelzer, is amending our *Biological Assessment of Four Lots Located in Cayucos, San Luis Obispo County, California* (March 4, 2002) to provide the County of San Luis Obispo's Department of Planning and Building additional information regarding the riparian habitat associated with Little Cayucos Creek on the subject properties and our recommendation of an appropriate development setback distance from these resources.

In our biological assessment, we provided a detailed characterization of the riparian habitat associated with Little Cayucos Creek in the vicinity of the subject properties. The Little Cayucos Creek area in the town of Cayucos is a classic example of disturbed natural areas along the urban interface. The drainage feature has been altered from its natural state by development and subsequent human occupation of the area. Many of the existing homes and their associated structures are situated within the riparian habitat associated with Little Cayucos Creek. In areas devoid of riparian habitat, residences have been constructed within 20 feet from the creek's centerline. Areas currently devoid of riparian habitat were likely cleared during the construction of the homes or shortly following occupation. Furthermore, the understory of the riparian habitat in the vicinity of the four lots is dominated by non-native invasive plant species such as periwinkle (*Viuca major*), English ivy (*Hedera helix*), and Kikuyu grass (*Pennisetum clandestinum*).

Given the high level of disturbance the creek and its riparian habitat have experienced (i.e.: trimming/removal of riparian vegetation, encroachment of adjacent property owners, and predominance of invasive non-native plants within the riparian understory), we recommend a 20-foot setback from the edge of riparian vegetation or the top of bank of Little Cayucos Creek. This distance would be sufficient to ensure long-term protection of the creek and its associated biological resources, while allowing development of the subject properties.

I trust this information assists with the reporting requirements for the subject project at this time. Please call me directly if you have any questions or need any additional information. Thank you.





Sincerely,
RINCON CONSULTANTS, INC.

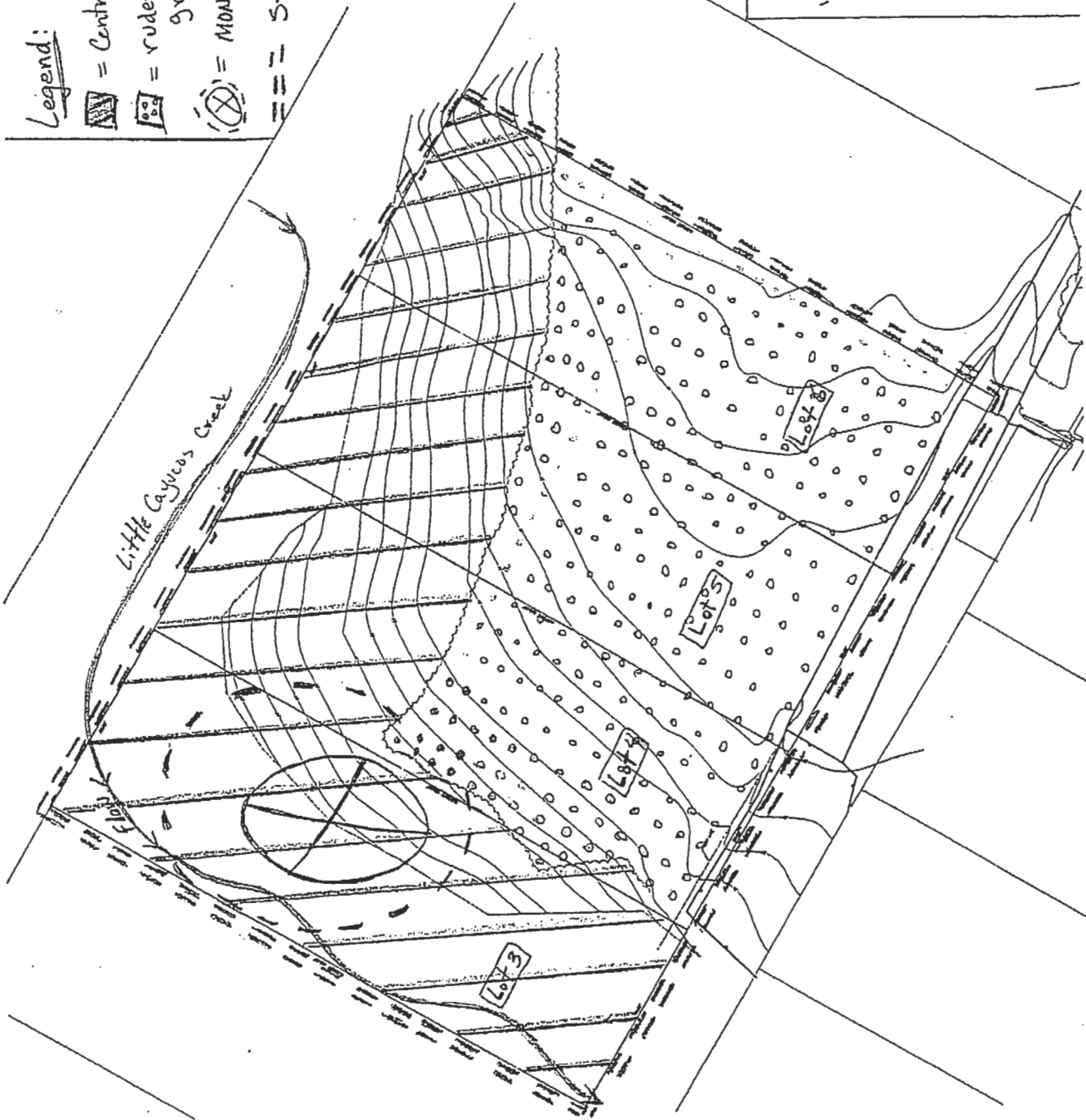
Kevin Merk
Senior Plant Ecologist

Attachment: Habitat Map
Updated Topographic Map with Setback

CCC Exhibit L
(page 16 of 25 pages)

Legend:

-  = Central Coast Arroyo Willow Riparia
-  = ruderal / disturbed Annual grassland
-  = MONARCH over-wintering site (approximate)
-  == Study Area



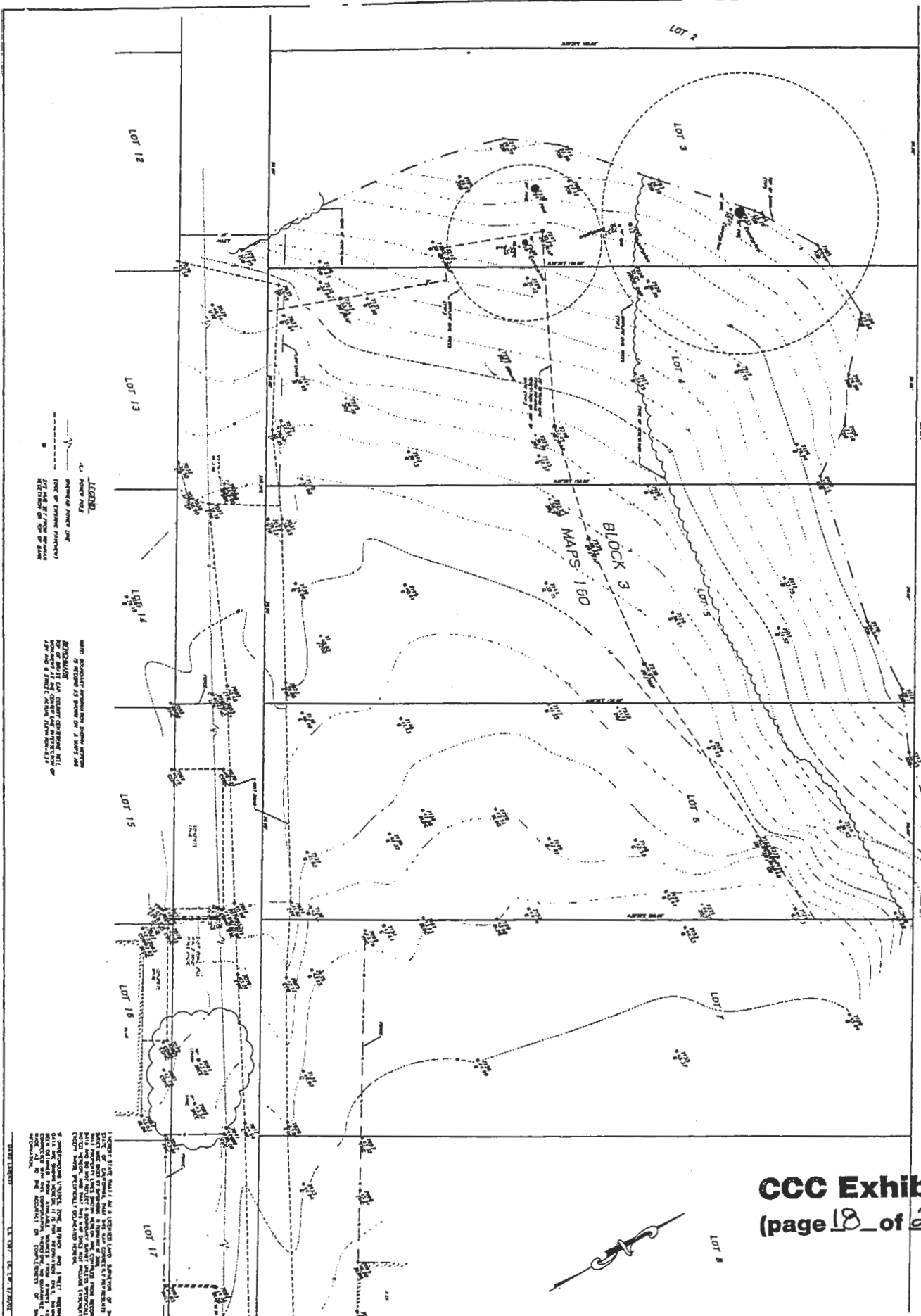
Habitat Map
for
"the Miller Property"
Coyucos, California



Rincon Consultants
3/02
drawn by km

BIRCH AVE

CCC Exhibit L
(page 18 of 25 pages)



NOTES: THIS MAP IS A REPRODUCTION OF THE ORIGINAL MAP AND IS NOT A SURVEY. IT IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED. THE ORIGINAL MAP IS THE ONLY AUTHORITY FOR THE LOCATION OF ANY POINT OR LINE SHOWN HEREON. THE REPRODUCTION OF THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE A WARRANTY OF ANY KIND. THE USER OF THIS MAP ASSUMES ALL LIABILITY FOR ANY DAMAGE OR INJURY RESULTING FROM THE USE OF THIS MAP.

Topol/
homes
assoc

11-0013
11-0014
11-0015
11-0016
11-0017
11-0018
11-0019
11-0020
11-0021
11-0022
11-0023
11-0024
11-0025
11-0026
11-0027
11-0028
11-0029
11-0030
11-0031
11-0032
11-0033
11-0034
11-0035
11-0036
11-0037
11-0038
11-0039
11-0040
11-0041
11-0042
11-0043
11-0044
11-0045
11-0046
11-0047
11-0048
11-0049
11-0050
11-0051
11-0052
11-0053
11-0054
11-0055
11-0056
11-0057
11-0058
11-0059
11-0060
11-0061
11-0062
11-0063
11-0064
11-0065
11-0066
11-0067
11-0068
11-0069
11-0070
11-0071
11-0072
11-0073
11-0074
11-0075
11-0076
11-0077
11-0078
11-0079
11-0080
11-0081
11-0082
11-0083
11-0084
11-0085
11-0086
11-0087
11-0088
11-0089
11-0090
11-0091
11-0092
11-0093
11-0094
11-0095
11-0096
11-0097
11-0098
11-0099
11-0100
11-0101
11-0102
11-0103
11-0104
11-0105
11-0106
11-0107
11-0108
11-0109
11-0110
11-0111
11-0112
11-0113
11-0114
11-0115
11-0116
11-0117
11-0118
11-0119
11-0120
11-0121
11-0122
11-0123
11-0124
11-0125
11-0126
11-0127
11-0128
11-0129
11-0130
11-0131
11-0132
11-0133
11-0134
11-0135
11-0136
11-0137
11-0138
11-0139
11-0140
11-0141
11-0142
11-0143
11-0144
11-0145
11-0146
11-0147
11-0148
11-0149
11-0150
11-0151
11-0152
11-0153
11-0154
11-0155
11-0156
11-0157
11-0158
11-0159
11-0160
11-0161
11-0162
11-0163
11-0164
11-0165
11-0166
11-0167
11-0168
11-0169
11-0170
11-0171
11-0172
11-0173
11-0174
11-0175
11-0176
11-0177
11-0178
11-0179
11-0180
11-0181
11-0182
11-0183
11-0184
11-0185
11-0186
11-0187
11-0188
11-0189
11-0190
11-0191
11-0192
11-0193
11-0194
11-0195
11-0196
11-0197
11-0198
11-0199
11-0200
11-0201
11-0202
11-0203
11-0204
11-0205
11-0206
11-0207
11-0208
11-0209
11-0210
11-0211
11-0212
11-0213
11-0214
11-0215
11-0216
11-0217
11-0218
11-0219
11-0220
11-0221
11-0222
11-0223
11-0224
11-0225
11-0226
11-0227
11-0228
11-0229
11-0230
11-0231
11-0232
11-0233
11-0234
11-0235
11-0236
11-0237
11-0238
11-0239
11-0240
11-0241
11-0242
11-0243
11-0244
11-0245
11-0246
11-0247
11-0248
11-0249
11-0250
11-0251
11-0252
11-0253
11-0254
11-0255
11-0256
11-0257
11-0258
11-0259
11-0260
11-0261
11-0262
11-0263
11-0264
11-0265
11-0266
11-0267
11-0268
11-0269
11-0270
11-0271
11-0272
11-0273
11-0274
11-0275
11-0276
11-0277
11-0278
11-0279
11-0280
11-0281
11-0282
11-0283
11-0284
11-0285
11-0286
11-0287
11-0288
11-0289
11-0290
11-0291
11-0292
11-0293
11-0294
11-0295
11-0296
11-0297
11-0298
11-0299
11-0300
11-0301
11-0302
11-0303
11-0304
11-0305
11-0306
11-0307
11-0308
11-0309
11-0310
11-0311
11-0312
11-0313
11-0314
11-0315
11-0316
11-0317
11-0318
11-0319
11-0320
11-0321
11-0322
11-0323
11-0324
11-0325
11-0326
11-0327
11-0328
11-0329
11-0330
11-0331
11-0332
11-0333
11-0334
11-0335
11-0336
11-0337
11-0338
11-0339
11-0340
11-0341
11-0342
11-0343
11-0344
11-0345
11-0346
11-0347
11-0348
11-0349
11-0350
11-0351
11-0352
11-0353
11-0354
11-0355
11-0356
11-0357
11-0358
11-0359
11-0360
11-0361
11-0362
11-0363
11-0364
11-0365
11-0366
11-0367
11-0368
11-0369
11-0370
11-0371
11-0372
11-0373
11-0374
11-0375
11-0376
11-0377
11-0378
11-0379
11-0380
11-0381
11-0382
11-0383
11-0384
11-0385
11-0386
11-0387
11-0388
11-0389
11-0390
11-0391
11-0392
11-0393
11-0394
11-0395
11-0396
11-0397
11-0398
11-0399
11-0400
11-0401
11-0402
11-0403
11-0404
11-0405
11-0406
11-0407
11-0408
11-0409
11-0410
11-0411
11-0412
11-0413
11-0414
11-0415
11-0416
11-0417
11-0418
11-0419
11-0420
11-0421
11-0422
11-0423
11-0424
11-0425
11-0426
11-0427
11-0428
11-0429
11-0430
11-0431
11-0432
11-0433
11-0434
11-0435
11-0436
11-0437
11-0438
11-0439
11-0440
11-0441
11-0442
11-0443
11-0444
11-0445
11-0446
11-0447
11-0448
11-0449
11-0450
11-0451
11-0452
11-0453
11-0454
11-0455
11-0456
11-0457
11-0458
11-0459
11-0460
11-0461
11-0462
11-0463
11-0464
11-0465
11-0466
11-0467
11-0468
11-0469
11-0470
11-0471
11-0472
11-0473
11-0474
11-0475
11-0476
11-0477
11-0478
11-0479
11-0480
11-0481
11-0482
11-0483
11-0484
11-0485
11-0486
11-0487
11-0488
11-0489
11-0490
11-0491
11-0492
11-0493
11-0494
11-0495
11-0496
11-0497
11-0498
11-0499
11-0500
11-0501
11-0502
11-0503
11-0504
11-0505
11-0506
11-0507
11-0508
11-0509
11-0510
11-0511
11-0512
11-0513
11-0514
11-0515
11-0516
11-0517
11-0518
11-0519
11-0520
11-0521
11-0522
11-0523
11-0524
11-0525
11-0526
11-0527
11-0528
11-0529
11-0530
11-0531
11-0532
11-0533
11-0534
11-0535
11-0536
11-0537
11-0538
11-0539
11-0540
11-0541
11-0542
11-0543
11-0544
11-0545
11-0546
11-0547
11-0548
11-0549
11-0550
11-0551
11-0552
11-0553
11-0554
11-0555
11-0556
11-0557
11-0558
11-0559
11-0560
11-0561
11-0562
11-0563
11-0564
11-0565
11-0566
11-0567
11-0568
11-0569
11-0570
11-0571
11-0572
11-0573
11-0574
11-0575
11-0576
11-0577
11-0578
11-0579
11-0580
11-0581
11-0582
11-0583
11-0584
11-0585
11-0586
11-0587
11-0588
11-0589
11-0590
11-0591
11-0592
11-0593
11-0594
11-0595
11-0596
11-0597
11-0598
11-0599
11-0600
11-0601
11-0602
11-0603
11-0604
11-0605
11-0606
11-0607
11-0608
11-0609
11-0610
11-0611
11-0612
11-0613
11-0614
11-0615
11-0616
11-0617
11-0618
11-0619
11-0620
11-0621
11-0622
11-0623
11-0624
11-0625
11-0626
11-0627
11-0628
11-0629
11-0630
11-0631
11-0632
11-0633
11-0634
11-0635
11-0636
11-0637
11-0638
11-0639
11-0640
11-0641
11-0642
11-0643
11-0644
11-0645
11-0646
11-0647
11-0648
11-0649
11-0650
11-0651
11-0652
11-0653
11-0654
11-0655
11-0656
11-0657
11-0658
11-0659
11-0660
11-0661
11-0662
11-0663
11-0664
11-0665
11-0666
11-0667
11-0668
11-0669
11-0670
11-0671
11-0672
11-0673
11-0674
11-0675
11-0676
11-0677
11-0678
11-0679
11-0680
11-0681
11-0682



Rincon Consultants, Inc.

1530 Monterey Street, Suite D
San Luis Obispo, California 93401

805 547 0900
FAX 547 0901

info@rinconconsultants.com
www.rinconconsultants.com

July 15, 2005
Job #05-B58180

Mr. Steve Miller
P.O. Box 228
Cayucos, California 93430

Subject: Results of the USFWS Protocol California Red-Legged Frog Surveys for the Cayucos Property, Cayucos, California

Dear Mr. Miller:

At your request, Rincon Consultants, Inc. conducted focused surveys for the Federally Threatened California red-legged frog (*Rana aurora draytonii*; CRLF) on four lots owned by you located in Cayucos, California. The surveys were conducted in accordance with the protocol developed by the United States Fish and Wildlife Service (USFWS) (*Guidance on Site Assessment and Field Surveys for California Red-legged Frogs*, 1997) to determine the presence or absence of this species from the project site. This letter report provides the results of our protocol surveys.

STUDY AREA DESCRIPTION

The study area includes four 50 foot by 150 foot lots located within the town of Cayucos, San Luis Obispo County, California (please see Figure 1). The four lots are shown as Lots 3, 4, 5, and 6 on the map provided by you and included as an attachment to this report (Triad Holmes, 2003). The lots are accessed by a small alley off of "E" Street and are bordered on the north by Little Cayucos Creek, to the south and southwest by an unnamed alley, to the east by undeveloped property and a small warehouse owned by the Cayucos Unified School District (identified as Lots 7 and 8), and to the west by residential development. Residential development more or less surrounds the study area, and Little Cayucos Creek flows in a primarily north to south direction through Lot 3.

Two habitat types, riparian and ruderal/disturbed annual grassland, were mapped on the study area during a biological assessment of the property in 2002 (Rincon Consultants, Inc.). An historic monarch butterfly (*Danaus plexippus*) overwintering site was also identified within Lot 3 in the study area, and was associated with a cluster of blue gum (*Eucalyptus globulus*) and Monterey cypress (*Cupressus macrocarpa*) trees. The site is relatively disturbed by past and present human activities in the area, and contains a number of weedy, invasive plant species in both the riparian and grassland habitat types. The riparian habitat in the study area consists primarily of arroyo willow (*Salix lasiolepis*) lining the Little Cayucos Creek corridor intermixed with blue gum and several large Monterey cypress trees. The understory of the riparian habitat is composed of non-native species such as periwinkle

CCC Exhibit L
(page 19 of 25 pages)



(*Vinca major*), English ivy (*Hedera helix*), nasturtium (*Tropaeolum majus*), Bermuda grass (*Cynodon dactylon*), and Kikuyu grass (*Pennisetum clandestinum*). Native plant species observed in the onsite riparian habitat included toyon (*Heteromeles arbutifolia*), coyote brush (*Baccharis pilularis* var. *consanguinea*), poison oak (*Toxicodendron diversilobum*), California blackberry (*Rubus ursinus*), and creek clematis (*Clematis ligusticifolia*). A small amount of wetland vegetation is also present along the low flow and adjacent overflow benches of the creek, and included water cress (*Rorripa nasturtium-aquatica*) and common nutsedge (*Cyperus eragrostis*). The onsite disturbed annual grassland is primarily dominated by Italian ryegrass (*Lolium multiflorum*), but also contains other introduced grasses such as ripgut brome (*Bromus diandrus*), red brome (*B. madritensis* ssp. *rubens*), and slender wild oats (*Avena barbata*). Fennel (*Foeniculum vulgare*) was also observed throughout the onsite grassland area.

Flowing water was observed within the study area at the time of the surveys, and consisted of an approximately three to five foot wide channel that ranged in depth from approximately two to six inches. Observable indicators of high flows during the 2004-2005 winter storm season were also present and included an ordinary high water mark well beyond the extent of the current low flow channel, drift lines on shrub and tree branches within the creek, and sediment and gravel deposition throughout the bed of the creek. A photo plate is included as an attachment to this report to illustrate the existing conditions of the site.

METHODOLOGY

The California Natural Diversity Database (CNDDDB 2005) was reviewed for CRLF occurrence data within 5-mile and 10-mile radii of the study area. The USFWS (pers. comm. with Ms. Julie Vanderweir, June 2005) and other knowledgeable individuals (pers. comm. with California State Parks Resource Ecologist Mr. Michael Walgren, June 2005) in the area were contacted regarding recent CRLF observations within the vicinity.

The CRLF protocol surveys for the Cayucos property were conducted in accordance with USFWS protocol (1997). The protocol requires an initial site assessment to determine whether or not suitable CRLF habitat is present. If suitable habitat is found, then field surveys including two daytime and two nighttime surveys separated by a minimum 24-hour period are required to follow the site assessment. Rincon Consultants' senior biologist, Kevin Merk, first identified potentially suitable habitat for the CRLF during general biological surveys of the study area in 2002. The primary goals of the general biological surveys in 2002 were to map the onsite habitat types, conduct a general floristic inventory, and evaluate the property's potential to support rare, threatened, or endangered plant or animal species. The 2002 investigation concluded that this lower reach of Little Cayucos Creek did not contain suitable breeding habitat for CRLF, but potential foraging, dispersal and aestivation habitat was present.

Focused surveys for the CRLF were conducted on May 24, 2005, and again on June 1, 2005 to determine this species presence/absence from the site. All areas of aquatic, wetland and riparian habitat on the project site were surveyed. The Little Cayucos Creek corridor was thoroughly traversed during the daytime surveys to determine if localized areas of ponding were present that were not observed during preliminary surveys of the site. Approximately

CCC Exhibit L
(page 20 of 25 pages)



100 feet upstream and 100 feet downstream of the project site were included in the study area and were surveyed to ensure adequate coverage of the area. Additionally, vantage/observation points were selected during the nighttime surveys upslope from and within the creek to sit and listen for frog vocalizations and any signs of movement.

RESULTS

No CRLF individuals were observed on the Cayucos property study area during the protocol-level surveys conducted in late May and early June 2005. Aquatic habitat within the study area is confined to the portion of Little Cayucos Creek occurring on Lot 3 of the study area, and was determined to be of marginal to poor quality habitat for CRLF because pools of substantial depth (i.e.: 18-inches or deeper) were not present, flowing water was confined to an approximately two to five-foot wide low flow channel only several inches deep, and the low flow channel was choked with green algae. The only amphibian species observed during surveys of the study area was the Pacific chorus frog (*Hylla regilla*). Pacific chorus frog adults and tadpoles were directly observed and adults were heard vocalizing during the surveys (please see the attached survey data sheets). Therefore, the CRLF is highly unlikely to occur in the portion of Little Cayucos Creek within the study area.

The CNDDDB contains occurrence data of CRLF within a five-mile radius of the study area (please see attached CNDDDB Map). The closest known occurrence is located approximately 0.75 mile to the north of the site within Cayucos Creek north of Highway 1. Additional occurrences are located further southeast of the study area within Willow Creek and Toro Creek, as well as several small drainages in northern Morro Bay. The CRLF is known to occur throughout coastal Central California, but has been restricted significantly in its range, primarily from alteration of habitat. The CRLF is now restricted to drainages along the central coast region with occurrences extending southward into Ventura County. Preferred habitat of the CRLF is characterized by dense shrubby, or emergent riparian vegetation, such as arroyo willow, cattails (*Typha* spp.), and bulrushes (*Scirpus* spp.), associated with a perennial source of deep (typically greater than two feet), still or slow-moving (ponded) water. CRLF have also been found in unvegetated stock ponds near suitable habitat. The USFWS previously identified critical habitat for this species surrounding the town of Cayucos, but has since withdrawn this designation. The USFWS is currently revising critical habitat for the CRLF.

Aquatic, riparian and wetland habitat types occur within the portion of Little Cayucos Creek occurring within the study area. Although a perennial water source appears to be present in this drainage feature during years of normal to above average rainfall, there were no pools observed greater than six inches deep that would provide suitable CRLF breeding habitat or refuge from predators and humans known to frequent the area. Flowing water was observed ranging from two to four inches deep with many areas being only an inch or two deep. Little Cayucos Creek in the site vicinity and the associated wetland and riparian habitat types were thoroughly searched for the presence of CRLF. The onsite drainage feature was also observed from select vantage/observation points during the night surveys to inventory frog vocalizations and other animals using the site at night.

The site occurs in the middle of the town of Cayucos. While the CRLF is known to move over upland areas between suitable habitat, and there is a known CRLF occurrence record



from just over a mile away from the site in Cayucos Creek further north of the Highway 1 overpass, the degree of hydrologic isolation of the subject property resulting from residential and urban development, and road construction, make it highly unlikely that CRLF would move onto the site. Unauthorized creekbank stabilization and ongoing vegetation management activities (i.e.: mowing and removal of vegetation within the creek corridor) on adjacent properties has lowered the habitat quality in the area, thereby reducing the likelihood of CRLF moving into this segment of Little Cayucos Creek and persisting. Densely matted algal growth throughout the water column further reduces the habitat quality of this segment of Little Cayucos Creek for native amphibians. Furthermore, Highway 1 forms a substantial barrier to larger aquatic organism movement onto the study area further lowering the potential that CRLF could occur on the subject properties during winter movement periods. Ultimately, the physical barriers and lack of a significant movement corridor connecting the site with known occurrences in the region does not appear to facilitate CRLF migration onto the subject property. Moreover, the proposed project as we understand will not occur within Lot 3 and would be situated in the disturbed annual grassland habitat type on Lots 4, 5, and 6, thereby, avoiding impacting any aquatic, riparian and wetland habitat types and any potential impacts to the CRLF.

CONCLUSION

No CRLF individuals were observed or heard vocalizing on the Cayucos property study area during the focused 2005 surveys for this species. Because deep pools of slow-moving water greater than two feet deep do not occur within the onsite portion of Little Cayucos Creek and the available aquatic habitat is restricted to a relatively narrow and shallow low-flow channel, the site cannot support the basic life history requirements of this highly aquatic species. Although a perennial source of fresh water appears to be present during years of average and above average rainfall within this portion of Little Cayucos Creek, suitable habitat, especially for CRLF breeding, was not present. Therefore, this species is highly unlikely to occur within the segment of Little Cayucos Creek within the study area, and is not expected to occur on the portions of the subject property proposed for development.

REFERENCES

- 1). California Department of Fish and Game, California Natural Diversity Data Base (Rarefind 2005). Computer listing and map locations of historic and current recorded occurrences of special-status species and natural communities of special concern for USGS 7.5 minute quadrangle maps: Cayucos and Morro Bay North.
- 2). Hayes, M. P. and M. R. Jennings. 1994. *Amphibian and Reptile Species of Special Concern in California*. California Department of Fish and Game, Rancho Cordova.
- 3). Holland, Robert F. 1986. *Preliminary Descriptions of the Terrestrial Natural Communities of California*. California Department of Fish and Game.
- 4). Hickman, James. 1993. *The Jepson Manual: Higher Plants of California*. University of California Press.



- 5). Sawyer, John and Todd Keeler-Wolf. 1995. *A Manual of California Vegetation*. California Native Plant Society.
- 6). Stebbins, Robert C. 1985. *A Field Guide to Western Reptiles and Amphibians*. Houghton Mifflin Company.
- 7). USFWS. 1997. *Guidance on Site Assessment and Field Surveys for California Red-legged Frogs*.

If you have any questions or need additional information regarding the findings in this letter please contact Kevin Merk directly. Thank you for the opportunity to provide additional environmental consulting services for this project.

Sincerely,

RINCON CONSULTANTS, INC.

Kevin Merk
Senior Biologist

Attachments: *Site Location Map*
 Site Topographic Map
 CNDDDB Map
 CRLF Survey Data Sheets
 Photo Plate

CCC Exhibit L
(page 23 of 25 pages)

547-0901
Kevin Meek

RECEIVED

JAN 08 2004

1 January 2004

Planning & Eng

Marsha Lee:

This letter is a follow up to our conversation this past week. I went out to the site in Cayucos in early Dec. Like the others you reported, I also saw some butterflies in and around the site. This is to be expected as the site is still an active feeding site. Kington's information given to Herfurth & Miller has indicated that this has been going on since the overwintering capability of the site was destroyed several years ago. This is also why I listed in the reports' 'Mitigation Section' that no vegetation modification should be permitted. Key parts of that section is copied below for your reference. Those in bold, are relevant to what we are discussing now in regards to the butterflies seen at the site. As long as no vegetation modifications are permitted (as stated in the report) the homes as planed should not have any adverse impact on the site as a feeding site. I hope this further clearfies what I saw during my visit. Thanks for letting me know about this and please let me know if you have any additional questions, I will be happy to help you.

FROM THE REPORT (PAGES 5-7)

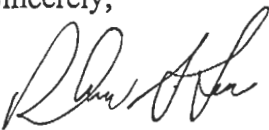
The impact of the proposed three single occupancy structures on the vegetation and any possible use by Monarch such as a feeding habitat by Monarch Butterflies can be mitigated in the following manner:

- No development should be permitted on lot 3. A conservation easement may be one way to provide the legal structure for preserving and managing this creek side habitat.
- **Any development of a structure on lot 4 not be permitted to impact the existing tree canopy.**
- Development of a single residential structure on lot 5 and 6 should not have any impact on the creek side vegetation zone providing the structure do not intrude into the creek protection zone.
- **No vegetation modification such as pruning, attaching things to the trees or removal of trees in any of the four lots should be permitted. The exception would be the removal of poison oak plants adjacent to the homes. If there is significant die off of the tree stand or the under cover and surrounding vegetation in the stream zone, an Monarch Biologist should be consulted to determine what kind of vegetation should replace the dead vegetation. When possible the occupants should allow trees that die in the vegetation zone to remain unless the trees are deemed hazardous. Cavity-nesting birds and other wildlife use standing dead trees. The trees as they decompose will contribute to the vegetation growth that the site as well as provide wildlife habitats.**
- Smoke should not be allowed to drift into Monarch habitats from 1 October to 1 April of each year or when the butterflies are present.

- No modifications of the terrain in the creek zone should be permitted by the occupants without prior consulting and permission of County Planning and with a Monarch Butterfly Biologist. This includes any trenching, digging, tunneling in or around the trees. Any grading either by addition or removal of soil that would create 'Root Zone' disturbances or change the existing drainage, runoff that would create puddling should not be permitted.
- Winter time activities should be such that they do not disturb any Monarch that may be using the site. The site usage normally would occur from Oct to March of each winter.
- No Pesticide or herbicide applications of any kind should be permitted in the creek/vegetation zone. For pest or disease problems, again a Monarch Biologist should be consulted.

While the mitigation measures are requiring the developers to basically to leave the vegetation as is and not to make any vegetation modifications the reality is that this will only work for so long. This is because no site is inert or unchanging, all will change in time and most likely in a manner as to cause the site to become more unsuitable for Monarchs. The developers and property owners should be encouraged to think long term and to work with a Monarch Biologist to try and keep the site as suitable to Monarchs as they reasonably can as long as they can.

Sincerely,



Richard Little

cc.

Jim Herfurth

Steve Miller



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

Environmental Division

Date: February 1, 2005

Memorandum for Record

Subject: Review of the following three reports for the Hurfurth and Miller parcel map (D020030P):

"Report on the Proposed Developments of Lots 3, 4, 5 & 6 of Cayucos, San Luis Obispo County California, Owners Herfurth & Miller" conducted by Richard G. Little;
"Biological Assessment of Four Lots Located in Cayucos, San Luis Obispo County, California" conducted by Rincon Consultants March 4, 2002; and
"Riparian Habitat Setback Evaluation for Lots 3, 4, 5 and 6 – Block 3 (Project Number D020030P), Cayucos, California" conducted by Rincon Consultants, Inc. April 2, 2004.

I reviewed the biological reports for the Herfurth and Miller parcel map and have the following comments:

1. I agree that the April 2, 2004 report recommended a 20 ft setback from the edge of the riparian vegetation. If the eucalyptus and cypress trees extend beyond the edge of the riparian zone, then the setback should be 20 ft from the edge of the eucalyptus/cypress tree canopy.
2. I agree with all of Richard Little's recommendations, which should be incorporated into the Negative Declaration as conditions. These recommendations include no development on lot 3, locating the building envelope outside of the tree canopy on lot 4, no removal of trees on any of the lots, and others. The latter condition is important, since it has been shown that removal of trees surrounding the monarch habitat has resulted in decline of the over-wintering population. Further tree removal will only exacerbate the declining conditions.
3. Rincon Consultants recommended that protocol-level surveys for red-legged frog surveys be conducted. If project activities are to be conducted when the creek is dry, the surveys are probably not needed. However, if project activities will occur when the creek contains water, then protocol red-legged frog surveys should be conducted (especially if development on lot 3 occurs).

CCC Exhibit M
(page 1 of 1 pages)

Julie Eliason

**RECORDING REQUESTED BY
SAN LUIS OBISPO COUNTY**

WHEN RECORDED, RETURN TO:

Director of Planning & Building
County Government Center
San Luis Obispo, California 93408
ATTN: Jo S. Manson

APN(S): 084-112-002 Portion
PROJECT/PCL NO: M2002-124/1 FILE NO: S010322V

JULIE RODEWALD

San Luis Obispo County - Clerk/Recorder

Recorded at the request of
JE except TX & DSS

LO

3/28/2005

4:19 PM

DOC#: **2005024021**



Titles: 1 Pages: **4**

Fees 16.00

Taxes 0.00

Others 0.00

PAID \$16.00



NOTICE OF VOLUNTARY MERGER

The following real property and the MERGER thereof into the following configuration, described in Exhibit A, has been voluntarily requested on the part of all owners of interest in said real property (see RECORD OWNER(S) below), and agreed to on the part of the County of San Luis Obispo. The following real property and the merger thereof into ONE (1) PARCEL as of the date of recording of this document, has been determined to be in compliance with the applicable provisions of the Subdivision Map Act of the State of California and local ordinances enacted pursuant thereto. The parcel CAN NOT be sold in units other than as described herein without having complied with all requirements of the State Subdivision Map Act and the county's Real Property Division Ordinance. Said real property being described as:

As described in Exhibit A attached to this notice and incorporated herein as if set forth in full.

RECORD OWNER(S):

M and R Investment Company, Inc., a Nevada Corporation.

VICTOR HOLANDA

Director, Department of Planning and Building

By: Jo S. Manson

Jo S. Manson, Planner II

On this 25th day of March, in the year 2005,
before me, Lynn A. Dotter, Notary Public, personally

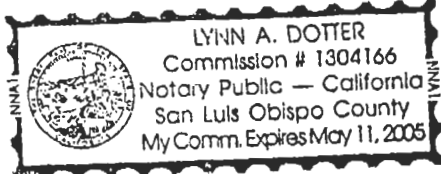
appeared Jo S. Manson,
personally known to me ~~(or proved to me on the basis of~~
~~satisfactory evidence)~~ to be the person(s) whose name(s) is are
subscribed to the within instrument and acknowledged to me
that, he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s) or the entity upon behalf of which the
person(s) acted, executed the instrument.

Witness my hand and official seal.

Lynn A. Dotter
Notary Public

STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO



(SEAL)

ccc Exhibit

(page 1 of 4 pages)

APN(S): 084-112-002 Portion
PROJECT NO: M2002-124

FILE NO: S010322V
PARCEL NO: 1

EXHIBIT A
Legal Description

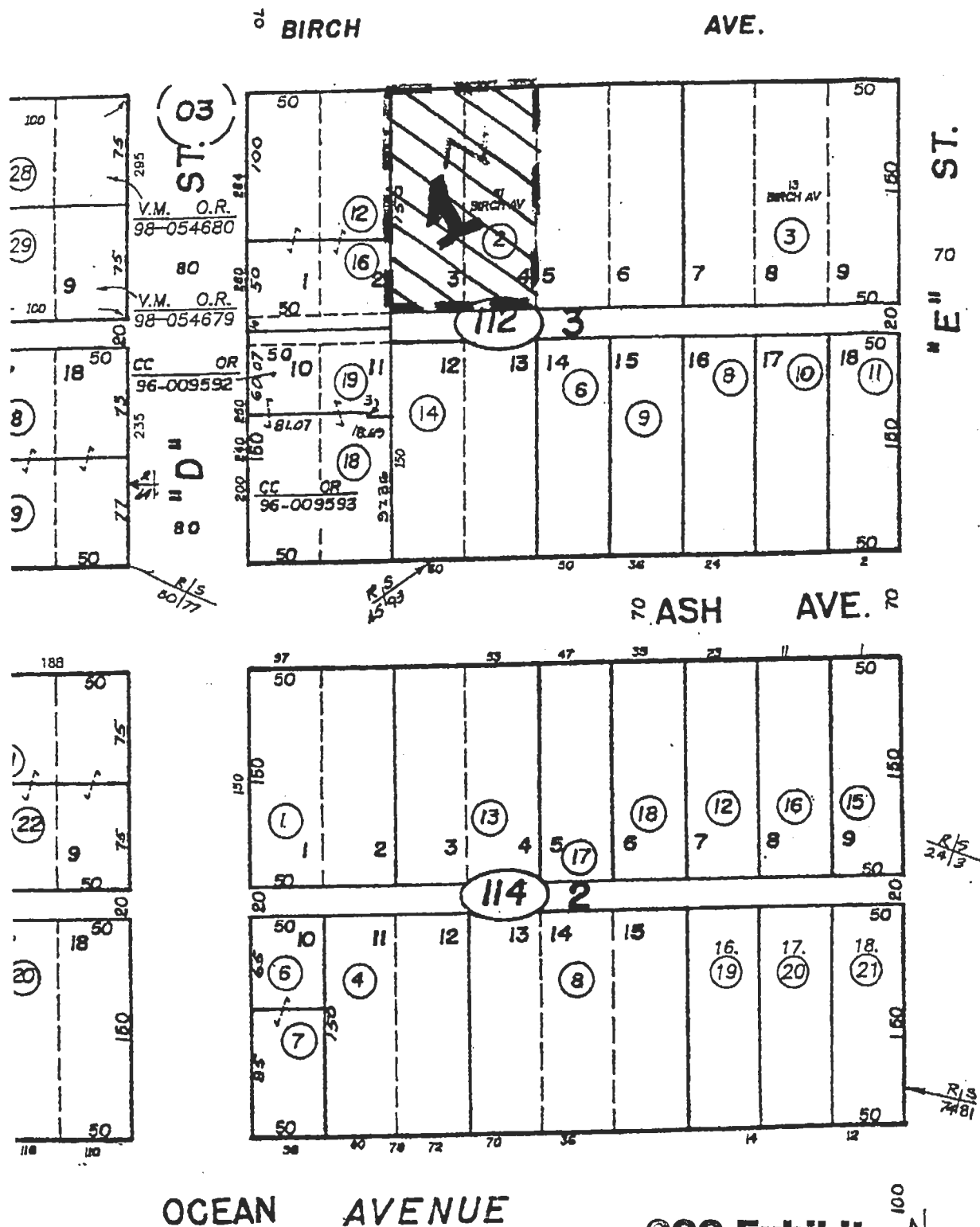
Lots 3 and 4 in Block 3 of the Town of Cayucos, in the County of San Luis Obispo, State of California, according to map recorded September 22, 1875, in Book A, Page 160 of Maps, in the Office of the County Recorder of said County.

APN(S): 084-112-002 Portion
PROJECT NO: M2002-124

FILE NO: S010322V
PARCEL NO: 1

EXHIBIT B

Map

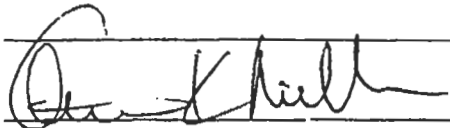


APN(S): 064-112-002 Portion
PROJECT NO: M2002-124

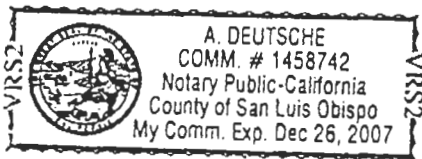
FILE NO: 501032
PARCEL NO:

OWNER SIGNATURE PAGE

OWNER(S):


Steve K. Miller President M & R Invest. Co.

STATE OF California)
COUNTY OF San Luis Obispo) SS




(SEAL)

On this 17 day of March, in the year 2005,
before me, A. Deutsche, a Notary Public,
personally appeared Steve K. Miller

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

Witness my hand and official seal.


Notary Public

OWNER(S):

STATE OF _____)
COUNTY OF _____) SS

(SEAL)

On this _____ day of _____, in the year 2002,
before me, _____, a Notary Public,
personally appeared _____

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

Witness my hand and official seal.

Notary Public

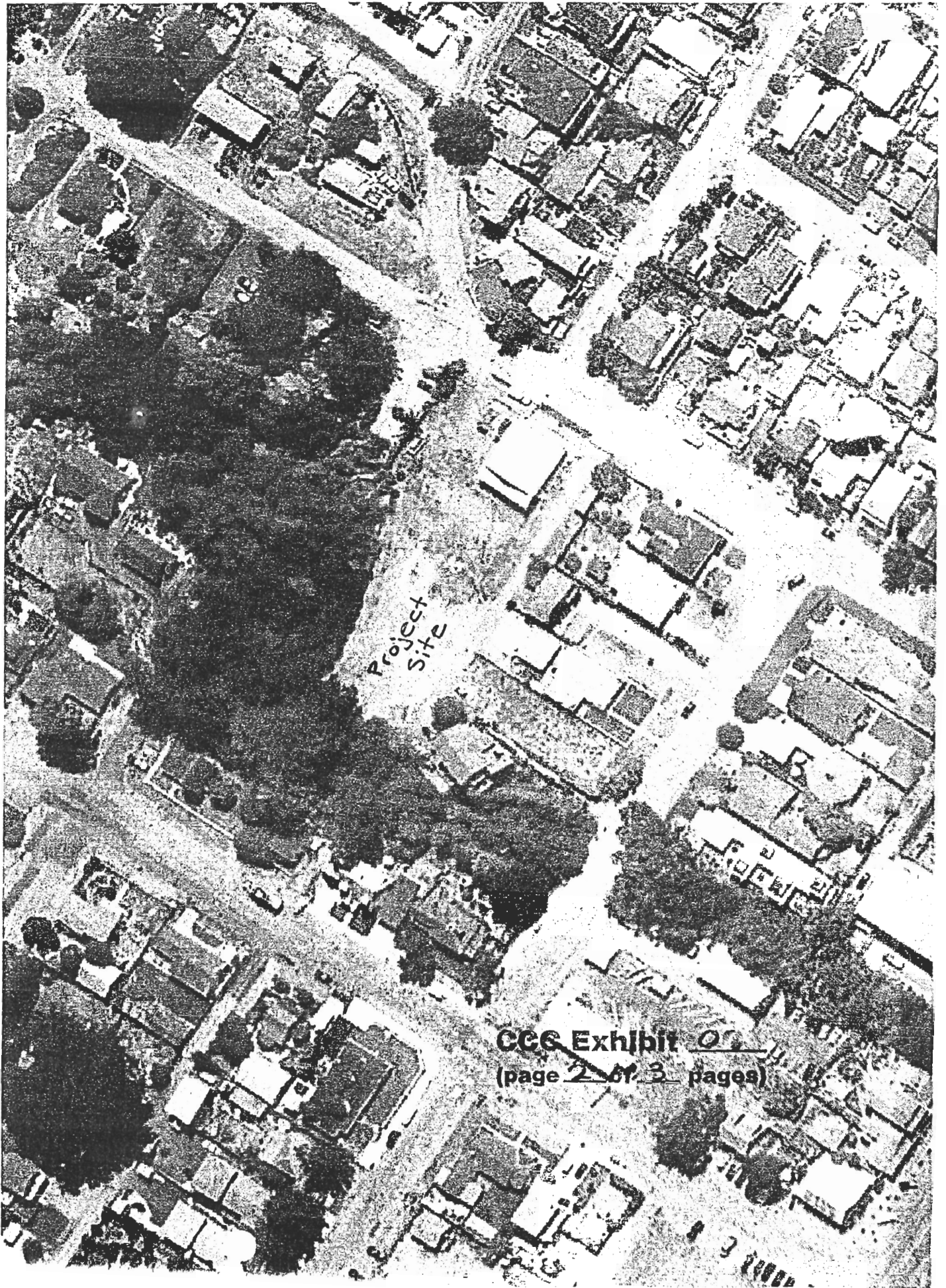
CCC Exhibit N
(page 4 of 4 pages)

END OF DOCUMENT



CCC Exhibit 0
(page 1 of 3 pages)

Site



CCG Exhibit 01
(page 2 of 3 pages)



Picture 1:

All four lots are shown in this picture. The black lines are the approximate property lines.

CCC Exhibit 0
(page 3 of 3 pages)

BELSHER & BECKER

ATTORNEYS AT LAW

412 MARSH STREET

SAN LUIS OBISPO, CALIFORNIA 93401

TELEPHONE (805) 542-9900

FAX (805) 542-9949

E-MAIL sjolaw@belsherandbecker.com

JOHN W. BELSHER

HOWARD MARK BECKER

STEVEN P. ROBERTS

GREGORY A. CONNELLEY

RECEIVED

NOV 15 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

November 14, 2007

Allison Kelly
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060**VIA FAX**
(831) 427-4877**Re: A-3-SLO-07-024**

Dear Allison:

As you and Jonathan are aware, the use of the public way, Birch Street, together with an easement over School District property so as to avoid the creek vegetation, was negotiated as a Court-approved settlement among eight neighbors after two years of litigation. The right of the applicants to use the alley way was and still is disputed. The remaining parties retain the right to challenge any project which uses the alley for access to the applicant's homes. We are aware Commissioners, and in particular, Commissioner Katcho Achadjian, highly value the collective endorsement by neighboring property owners of difficult land use circumstances. The neighbors will be furious if the Commission staff demands a change of the roadway to the alley, particularly as this right of use is disputed. I am advised several will submit their opposition to such a proposal by Commission staff.

Another consideration is that due to the dead end-nature of the alley, having a driveway out to Birch Street for the applicant's proposed houses provides a needed safety feature. The alley can provide an escape route for persons trapped by fire or other calamity. Should the alley be the only access, no such escape route will exist and residents might well be trapped in the event the alley is blocked or otherwise unavailable. This helps explain why the local fire chief preferred a Birch Street access.

The Birch Street access will also help protect riparian vegetation. Were the alley made into the sole access, owners of the proposed new homes would be free to improve their back yards. These private spaces would no doubt become co-opted by resident improvements due to their discreet locations. The Birch Street plan would prevent the future owners from developing backyards so as to adversely impact the riparian area. The Birch Street access on the other hand enhances the possibility of riparian vegetation protection by separating the homeowners' living area from the riparian vegetation.

The Court-approved settlement favors the Birch Street access over the alleyway. It provides lasting protection/buffering from the neighboring property owners' support. It provides lasting protection/buffering from the neighboring property owners' support.

Exhibit P
(page 1 of 7 pages)

Allison Kelly
California Coastal Commission
November 14, 2007
Page 2

riparian corridor and ensures safe emergency access for the homeowners. It is a better solution and has the support of the courts and the neighboring property owners. With the recent improvements to setbacks by the architect, the project's Birch Street access should be retained.

Sincerely,

BELSHER & BECKER

John Belsher

jwb

cc: John MacDonald
Steve Miller

P:\John's Files\Miller, Steve\M&R - Ash Street\Allison Kelly - California Coastal Commission 11 13 07.wpd

CCC Exhibit P
(page 2 of 7 pages)

John MacDonald, Architect
2813 Santa Barbara Avenue
Cayucos, CA 93430
805.995.1398
805.995.1544 FAX

November 11, 2007

Allison Kelly
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

RECEIVED

NOV 15 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Subject: A-3-SLO-07-024 SLO Land Corporation

Dear Ms. Kelly,

Please find the enclosed revised site plan for the above mentioned project. I have thoroughly read your staff report and appreciate your concerns regarding adequate buffer to the existing riparian and the former butterfly habitat. I have been working on this project for over three years and have attempted to be as sensitive to the site as possible. The project has been subject to considerable review and community input and I believe all concerns have been alleviated at the local level, including the access issues with neighboring property owners. I would like to briefly explain our position and how some design decisions were obtained and where we are attempting to satisfy your concerns.

The access to the site has been a major obstacle from the beginning. Several of the neighbors have been encroaching into the alley for a lengthy amount of time. We were planning on using the alley to access the project from the beginning as Birch Street was unimproved. The Fire Chief from the beginning wished us to improve Birch Street. Barring that, he wanted a full 20' width of alley improvement, a turnaround and the entire alley red striped and posted as a "Fire Lane" with no parking or stopping. This proved to be quite problematic as there was not 20' of clear alley due to the encroachments. This evolved into a lengthy legal process the outcome I believe you are aware of. Our attorney, John Belsher, is sending you a separate letter to further explain and clarify the legal issues. We believe accessing the project from Birch is the best solution for several reasons. It would provide a more permanent barrier to the riparian vegetation, it will be more aesthetically pleasing than a paved and posted fire lane approach, it will add to a more harmonious neighborhood.

The county was fine with our access driveway to be 10' from the riparian edge. This was due to the problems of the alley access and our proposed structures were a minimum of 30' plus setback from the riparian growth. I have increased the setback per your request to show the driveway setback minimum of 20' from the riparian on the enclosed

proposed site plan. Please also be aware we had the surveyors revisit the site in June and delineate the edge of riparian again. This latest site plan is accurate and reflects the edge of riparian as it exists now. I have also noted that all proposed structures are to be setback a minimum of 20 feet from riparian edge. This is to include all roof overhangs, second floor decks or cantilevers, etc. I know you had some concern on one house appearing to overhang into the setback, that was not our intention and SLO County would not have allowed it as per their conditions of approval.

The butterfly habitat has been a major concern from the beginning of the project. One of the first things we did was have a butterfly assessment done by Richard Little. He determined that due to natural causes and construction across the creek, that the habitat has been compromised and no longer supported over wintering as in the past. This habitat has been further compromised after the report was completed by the loss of two more trees further upstream. One tree fell down during a major storm and the other was struck by lightning. The County work crew came and cut up and removed these trees from the creek bed so as not to block water flow and cause flooding. These trees were important as they blocked the wind that sheltered the grove and gave butterflies the protection they need. I have enclosed two newspaper articles that address the butterfly issue on this site. One article is from 1999 and explains how the site is changing and no longer supports a wintering site. The other article from 2000 is mainly about a Nipomo site, but mentions the Cayucos site as "lost". Remember that these articles were written before the two major trees upwind were felled by nature. We have also contracted with Kevin Merk of Rincon Consultants, Inc., to observe the site this fall during the butterfly migration season. He has made several site visits to observe any activity. So far he has not observed any activity of fall foraging or the butterfly's using this as an over wintering site. You may contact him at 805-547-0900 ext. 101 if you have any questions of him. Given the history of butterflies at this site, we had prepared a landscape plan to plant butterfly attracting plants. Our goal was since the site was lost as an over wintering site, we could try to provide plants they could use as a food source and encourage the further use of the site for foraging. The County has also conditioned the project to not have wood burning fireplaces that might disturb any butterfly activity. The Department of Fish and Game has also weighed in and required a 30-foot setback from the closest eucalyptus tree. Due to the further degradation of the site since this requirement was set, I do not believe it is still valid, but we are prepared to meet this setback requirement in our project.

I hope this assists you in your review of our project and the revised site plan. The owner and myself would like to come to your office and meet with you to discuss these issues in depth. I realize this is a busy season for you. The owner has several commitments, but has December 3rd through the 11th open to meet if it fits your schedule. Please let us know and we will schedule a time.

We would like to build a quality project that is sensitive to the environment as well as achieve the goals of the owner. I appreciate your assistance in this matter. If you have any questions, please feel free to call me anytime.

Sincerely,

John MacDonald

RECEIVED

NOV 26 2007

Allison Kelly
Ca. Coastal Comm.
725 Front St .ste. 300
Santa Cruz, Ca. 95060

Re: A-3-SLO-07-024

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Allison :

The applicant for this project, M&R- a Nevada Corporation, sued all of the seven adjacent property owners to their Birch St. property including us in an attempt to widen the existing private alley for use as the only access to their lots. The primary reason for this was to save money on development costs.

After a costly dispute a settlement was finally reached which was acceptable to M&R as well as all six residential property owner defendants as well as the local school district which was the seventh defendant. The settlement provided a small easement allowing proper frontal access to M&R's Birch St. lots thus allowing them to be built out as closely as possible to the way they were intended to be when they were subdivided.

The alley behind the six residences affected by this project is the same as the other alleys in the town of Cayucos. The alleys are secondary access to properties which front and have addresses on actual streets with mailboxes, streetlights, parking, proper drainage, etc. There is no on street parking in a fire lane alley, and the proper secondary use being currently exercised by the existing residences would be compromised by the congestion of the development fronting onto an alley.

Allowing or forcing M&R to develop their property using only the alley negatively changes and impacts the adjacent properties to the point that future litigation, expenses, and stress will be unavoidable. Please consider allowing the proper access from Birch St. to these lots given the fact that a reasonable setback from vegetation is shown on the plans. Ash St. and N. Ocean Ave. both have bridges crossing the creek shown on the plans, and another was planned for this area of Birch St. Since no bridge will ever be built at this point, the proposed plan is the best way to develop the lots as close to how they were originally mapped and approved without the impact of the bridge on the environment.

Sincerely, Dan and Krys Chivens
36 Ash St., Cayucos, Ca. 93430

CCC Exhibit P
(page 6 of 7 pages)

BELSHER & BECKER

ATTORNEYS AT LAW

412 MARSH STREET

SAN LUIS OBISPO, CALIFORNIA 93401

JOHN W. BELSHER

HOWARD MARK BECKER

STEVEN P. ROBERTS

GREGORY A. CONNELL

TELEPHONE (805) 542-9900

FAX (805) 542-9949

E-MAIL slolaw@belsherandbecker.com

March 19, 2008

Jonathan Bishop
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

RECEIVED**VIA FAX
(831) 427-4877**

MAR 19 2008

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA**Re: A-3-SLO-07-024**

Dear Jonathan:

I understand the staff is contemplating recommending approval of the project with conditions which allow the access driveway to come off Birch Street. This recommendation will be supported by the property owner. I have confirmed the plans you have dated November of 2007 are current. We are amenable to including conditions of approval for this project based on those plans to include as follows:

- A. The open space dedication can be expanded to run from the creek to the edge of the driveway;
- B. The driveway on the applicant's property will be constructed with a permeable surface acceptable to local fire and building officials.
- C. There will be a 20-foot setback of the road per minimum standards in the County LCP.

I understand the State biologist will be offering some mitigation measures addressing the vegetation and former butterfly habitat. So long as any setback leaves the ability to build a reasonable house on the third lot (a setback of no more than 25 feet from the trunk of the eucalyptus tree next to the property line), these measures should be acceptable to us. Please advise us when you receive these recommendations, along with any proposed conditions to an approval of the project.

Thank you for your help and let me know if you need anything from us.

Sincerely,

BELSHER & BECKER
John Belsher

jwb

cc: John MacDonald
Steve Miller

CCC Exhibit P
(page 7 of 7 pages)

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

**MEMORANDUM**

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Jonathan Bishop
Coastal Analyst

SUBJECT: Riparian and Monarch butterfly habitat buffers for the proposed San Luis Obispo Land Corporation project

DATE: May 22, 2008

The San Luis Obispo Land Corporation project proposal is for three, two-story single family residences on a roughly 31,300 square foot undeveloped site in the City of Cayucos, San Luis Obispo County. The site contains and is adjacent to Little Cayucos Creek (LCC) and riparian and Monarch butterfly habitat. The proposed project includes related road access and utility improvements (including construction on adjacent properties). The proposed project also includes placement of about half of the site or roughly 15,610 square feet (in the LCC corridor) into an open space conservation easement as well riparian and Monarch butterfly habitat restoration. The proposed project is located in the Estero Planning Area and is subject to the San Luis Obispo County LCP which includes general policies, Area Plan standards, and implementing ordinances that protect environmentally sensitive habitat (ESHA). The purpose of my memorandum is to provide buffer dimension determinations for the riparian and Monarch butterfly habitats found on the proposed project property.

Buffers are important for preserving the integrity and natural function of rare or especially valuable species and habitats. The purpose of a buffer is to create a zone where there will be little or no human activity, to "cushion" species and habitats from disturbance, and to allow native species to go about their "business as usual". Buffer areas are essential open space between development and ESHA. The existence of open space ensures that development will not significantly degrade ESHA. Critical to buffer function is the fact that a buffer area is not itself a part of the ESHA, but a "buffer" or "screen" that protects the habitat area from adverse environmental impacts.

Maintaining and restoring riparian habitat along creeks, streams, and rivers is critical to preserving biodiversity in California, as in all parts of our country and world. While less than 10 percent of California's historic riparian areas remain,

those that do are biodiversity hotspots¹. Although riparian ecosystems generally occupy small areas on the landscape, they are usually more diverse and have more plants and animals than adjacent upland areas. In the western United States, riparian areas comprise less than one percent of the land area, but are among the most diverse, productive, and valuable natural resources². Watercourses are known to serve as important corridors for wildlife migration and dispersal³. Climate change experts predict that maintaining wildlife corridors and avoiding habitat fragmentation will grow in importance along the California coast in coming years as species range limits expand or contract due to global warming⁴.

Little Cayucos Creek crosses under Highway One and runs through the City of Cayucos where both homes and businesses line its banks until it spills into the Pacific Ocean. The riparian habitat bounding LCC is comprised of native and non-native trees and shrubs including Coast Live Oak, Toyon, Willow, Eucalyptus, and Cypress. The understory is a mixture of native and non-native invasive plants. The riparian area contains habitat suitable for many bird species including common yellowthroat, plain titmouse, song sparrow, red tailed hawks and red shouldered hawks. The reptile and amphibian species noted to occur along the creek include the western fence lizard and the Pacific chorus frog⁵. Little Cayucos Creek and its riparian corridor provide foraging area for nectar and water for Monarchs during the autumn and winter. Little Cayucos Creek is a potential movement corridor for steelhead, tidewater goby, the southwestern pond turtle, and the California Red Legged Frog, which are all special status species⁶. Although none of these species have been recently observed within or near LCC, which may be a reflection of the creek's degradation, they are recorded as occurring within the watershed⁷.

The San Luis Obispo County Coastal Plan Policy 1 requires that "*new development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource.*" Policy 20 specifically defines "*coastal streams and adjoining riparian vegetation*" as "*environmentally sensitive habitat areas.*" Policy 21 goes on to require that development "*shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.*" Policy 28

¹ Natural Resources Conservation Service, U.S. Department of Agriculture. 1996. Riparian Areas Environmental Uniqueness, Functions, and Values, RCA Issue Brief # 11.

² California Department of Fish and Game. 1996. California Environmental Resources Evaluation System (CERES). Biodiversity News, Vol. 4. No. 1.

³ Mount, J.F. 1995. California Rivers and Streams: The Conflict Between Fluvial Process and Land Use. University of California Press, Berkeley, CA; 359 pgs.

⁴ Personal Communication. January 8, 2007. Dr. David Ackerly, University of California, Berkeley.

⁵ Rincon Consultants, Inc. March 4, 2002. Biological assessment of four lots located in Cayucos, San Luis Obispo County, California. Prepared for Mr. Steve Miller.

⁶ Op. Cit. Rincon Consultants Inc., 2002.

⁷ Op. Cit. Rincon Consultants Inc., 2002.

requires setbacks from riparian vegetation, defining the "*minimum standard*" for urban areas as 50 feet "*except where a lesser buffer is specifically permitted.*"

The Estero Area Plan, certified in 1987, establishes specific setbacks for the area creeks. For Little Cayucos Creek, which is at issue here, the required minimum setback is 20 feet. The plan specifies that setbacks be measured from "*the outer limits of riparian vegetation or the top of the stream bank where no riparian vegetation exists.*" The Estero Area Plan's 20 foot setback distance from LCC is the smallest buffer required by any certified California coastal city or county LCP. In urban settings, 50 foot riparian habitat setbacks are the most common requirement whereas buffers ranging from 75 to 150 feet are the more common setbacks required for rural riparian habitats. As the Commission's understanding of the important functions of buffers grows, we have learned that only in exceptional cases are buffer dimensions below 100 feet suitable.

Determining the appropriate buffer for ESHA that exists within an urban setting and that has been degraded by land use practices is a difficult task. Even in these circumstances, 100 foot buffers are the more biologically sound distance. However, for a whole host of reasons, including small lots sizes, dated regulations, and historic land use, 100 foot buffers are often not feasible or realistic. **And therefore, while a larger buffer would be preferable, the proposed project should apply a 20 foot minimum setback from the outer limits of the riparian vegetation bordering LCC as required by the Estero Area Plan.**

The project site contains and is adjacent to a historic Monarch butterfly over-wintering site known to have supported 20,000 to 60,000 butterflies for several decades⁸. For the last five to ten years the number of Monarchs utilizing this site has dropped dramatically to less than 10 percent of historic figures. The decline in numbers has been attributed to a number of factors including tree removal and associated micro-climate impacts and near-by development⁹. Monarch butterfly over-wintering and autumnal sites continue to be threatened by development along the California coast. The Commission recognizes the rarity and sensitivity of Monarch butterfly habitat and requires new development to protect and restore this ESHA.

Monarch butterflies key in on a number of habitat attributes including specific non-native tree species, humidity levels, mild temperatures, filtered sunlight, edge vegetation, food and water, and protection from high winds. Threats to Monarch butterfly habitats include those listed above as well as noise, smoke, pesticides, and disease. **I recommend a 20 foot minimum setback from the the Monarch butterfly habitat on the proposed San Luis Obispo Land Corporation project.** A 20 foot Monarch butterfly habitat buffer coincides with a

⁸ Little, R.G. November 5, 2003. Report on the proposed developments of lots 3, 4, 5, & 6 of Cayucos, San Luis Obispo County California. Owners: Herfurth & Miller.

⁹ Op. Cit. Little. 2003.

20 foot riparian habitat buffer as these two habitats are merged on the proposed project property. Both buffers should be measured starting at the dripline of the Monarch butterfly trees and the outer extent of riparian vegetation. Twenty feet will buffer the butterfly habitat from the threats listed above and combined with the required restoration, enhance and improve the existing landscape for Monarch butterflies.

Given the importance of the riparian and Monarch butterfly habitat described above, a critical component of the proposed San Luis Obispo Land Corporation project is habitat restoration. The principal goals of a habitat restoration plan for the proposed project should be restoration, protection, and enhancement of the native riparian and Monarch butterfly habitat. The plan should show the proposed landscaping and vegetation management methods to protect and enhance riparian and Monarch butterfly habitat, including but not limited to removal of non-native invasive species, landscape restoration, and provision of fall and winter-flowering Monarch butterfly nectar sources. In addition, the plan should lay out a monitoring scheme that includes performance standards and provisions for action should the restoration fail to meet stated goals. Other landscaped areas within the development envelope should consist only of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California should be planted or allowed to naturalize or persist on the site.