

CALIFORNIA COASTAL COMMISSION

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Th9a



IMPORTANT NOTE: The Commission will not take public testimony during this phase of the appeal hearing unless at least three commissioners request it. If the Commission finds that the appeal raises a substantial issue, it will schedule the de novo phase of the hearing for a future meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

Appeal filed:	7/20/2011
49th day:	9/7/2011
Staff report prepared:	7/27/2011
Staff report prepared by:	Susan Craig
Staff report approved by:	Dan Carl
Hearing date:	8/11/2011

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal number **A-3-SCO-11-044, Pitt Riparian Development**

Applicant Michael Pitt

Appellant Commissioners Brian Brennan and Mark Stone; Claudia Slater

Local government Santa Cruz County

Local decision Coastal Development Permit (CDP) Application Number 101078 approved by the Santa Cruz County Zoning Administrator on June 17, 2011.

Project location Just upslope of Corcoran Lagoon in the riparian corridor on the lagoon side of 391 24th Avenue in the Live Oak beach area of Santa Cruz County (APN 028-181-05).

Project description Construction of retaining walls, concrete stairs, and associated residential use areas (some after-the fact), shed demolition, and riparian restoration.

File documents Final Local Action Notice for Santa Cruz County CDP Number 101078; Santa Cruz County certified Local Coastal Program (LCP).

Staff recommendation ... **Substantial Issue Exists**

A. Staff Recommendation

1. Summary of Staff Recommendation

The certified Santa Cruz County LCP categorically identifies wetlands, estuaries, lagoons, and riparian corridors as environmentally sensitive habitat areas (ESHAs) as that term is understood in the Coastal Act, and does not allow development within 100 feet of wetlands, estuaries, and lagoons (this 100-foot area is also defined by the LCP as a riparian corridor), plus an additional 10 foot buffer, absent approval of an exception subject to strict limiting criteria (akin to a variance). The LCP also requires that development be visually compatible with the surrounding area, including explicitly in terms of protecting the scenic value of natural features and views from public roads.



The County-approved project is located just upslope of Corcoran Lagoon (a mostly freshwater estuary at the mouth of Rodeo Gulch Creek) within its 100-foot riparian corridor on the lagoon side of a residential property that is currently developed further from the Lagoon (outside of the 100-foot area) with an existing single-family residence in the Live Oak beach area of unincorporated Santa Cruz County, and directly within primary public viewsheds associated with road and trail segments of the California Coastal Trail (CCT). The development approved in the 100-foot riparian corridor and viewshed area includes retaining walls, stairs, and associated residential use areas, some of which were already constructed and the approval is designed to recognize such structures after-the fact. The County's CDP decision allows such development as close as 35 feet from Corcoran Lagoon within the protected riparian corridor, and it justifies this physical and visual incursion through exception findings that are based primarily on an assertion that similar development existed at this site location previously, and that some other properties nearby also include development in this no-build area.

The Appellants contend that the County's decision is inconsistent with LCP requirements that don't allow development such as that approved in the riparian corridor, and that don't allow visually incompatible development in this important viewshed. **Staff believes that the appeals raise a substantial LCP conformance issue related to core LCP coastal resource protection requirements, and staff recommends that the Commission take jurisdiction over the CDP application for this project.**

The County-approved development allows inappropriate residential development within an LCP-defined ESHA and significant viewshed associated with Corcoran Lagoon. The idea that such development can be allowed based on a premise that this property historically included some such development and that other properties include some such development is counter to the core LCP objectives associated with such resources that direct development – including redevelopment – to locations outside of these habitat resource and open space areas to protect their natural value, including with respect to their natural landform and aesthetic value. It does not appear that the LCP-required exception findings made by the County in their approval are appropriate in this case, and this action by the County has the potential to prejudice future decisions that raise similar questions.

Thus staff recommends the Commission find substantial issue. If the Commission does, then the de novo hearing on the merits of the CDP application would be scheduled for a future Commission meeting. The motion and resolution to effect this recommendation are found directly below.

2. 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-SCO-11-044 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. I recommend a no vote.



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 of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-SCO-11-044 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

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B.Findings and Declarations

The Commission finds and declares as follows:

1. Project Location

The proposed project is located just upslope of Corcoran Lagoon in the riparian corridor on the lagoon side of 391 24th Avenue in the unincorporated Live Oak beach area of Santa Cruz County (APN 028-181-05).



Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties (see Exhibit A). The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to San Mateo County along the Pacific Ocean. The County's coastal zone resources are varied and oftentimes spectacular, including the Santa Cruz Mountains coastal range and its vast forests and streams; an eclectic collection of shoreline environments ranging from craggy outcrops to vast sandy beaches (in both urban and more rural locations); numerous coastal wetland, lagoon and slough systems; habitats for an amazing variety and number of endangered species; water and shore oriented recreational and commercial pursuits, including world class skimboarding, bodysurfing, and surfing areas; internationally renowned marine research facilities and programs; special coastal communities; vast State Park lands; and the Monterey Bay itself. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the Monterey Bay National Marine Sanctuary (MBNMS), one of the largest of the fourteen such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, the County has seen extensive development and regional growth over the years that the CCMP has been in place. In fact, Santa Cruz County's population has more than doubled since 1970 alone with recent State estimates indicating that the County is home to over one-quarter of a million persons.¹ This level of growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services, but also the need for park areas, recreational facilities, and visitor serving amenities. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and most significantly closer than that, coastal zone resources are a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems and destinations like Live Oak. With the Santa Cruz County shoreline and beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the large population centers of the San Francisco Bay area, San Jose, and the Silicon Valley nearby, this type of resource pressure is particularly evident in coastal Santa Cruz County.

Live Oak Beach Area

Live Oak is part of a larger urbanized area (along with the cities of Santa Cruz and Capitola) that is home to some of the best recreational beaches in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach recreation than the rest of the Monterey Bay area, but north bay beaches are generally the first beaches reached by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including from the San Francisco Bay Area, San Jose and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz

¹ Census data from 1970 shows Santa Cruz County with 123,790 persons; California Department of Finance estimates for 2007 indicate that over 264,125 persons reside in Santa Cruz County (*California Department of Finance, January 2007 Cities/Counties Ranked by Size, Numeric, and Percent Change*; Sacramento, California; May 2006).



Mountains (see Exhibit A). As such, the Live Oak beach area is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region.

Live Oak is the unincorporated segment of Santa Cruz County located between the City of Santa Cruz (upcoast) and the City of Capitola (downcoast). The Live Oak coastal area is well known for excellent public access opportunities for beach area residents, other Live Oak residents, other Santa Cruz County residents, and visitors to the area. Walking, biking, skating, viewing, skimboarding, bodysurfing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons, such as Corcoran Lagoon. Live Oak also includes a number of defined neighborhood and special communities within it. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area (roughly three miles of shoreline) can provide different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access system.

Primarily residential with some concentrated commercial and industrial areas, Live Oak is a substantially urbanized area with few major undeveloped parcels remaining. Development pressure has been disproportionately intense for this section of Santa Cruz County. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live Oak's public infrastructure (e.g., streets, parks, beaches, etc.) as the remaining vacant parcels are developed and developed residential lots are re-developed with larger homes.² Given that the beaches are the largest public facility in and out of the Live Oak coastal zone, this pressure will be particularly evident along the shoreline.

Proposed Development Site

The proposed project site is located just upslope of Corcoran Lagoon, a mostly freshwater estuary at the mouth of Rodeo Gulch Creek that connects at times to the Monterey Bay. The Lagoon generally is located in the area between inland Portola Drive and more seaward East Cliff Drive (the first through public road), and at times extends under the East Cliff Drive bridge onto the sandy beach, known locally as Santa Maria Cliffs Beach or Corcoran Lagoon Beach. This broad beach extends from a narrow tidal shelf area adjacent to Sunny Cove (upcoast) through to a promontory at 23rd Avenue that effectively contains the Lagoon proper most of the year, although at times it connects to the Bay and thus is at times an estuarine lagoon.

The Applicant's property extends from 24th Avenue down to the Lagoon, and is developed with an existing single-family residence on the relatively flat portion of the site nearest to 24th Avenue (see Exhibit A). The property extends downslope towards Corcoran Lagoon, and the proposed project

² Live Oak is currently home to some 20,000 residents, and the LCP indicates that build-out would add approximately 10,000 Live Oak residents, and would require 150 to 180 acres of park acreage. Although Live Oak accounts for less than 1% of Santa Cruz County's total land acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.



elements would be located in this more sloped area between the Lagoon and the existing house (some of which elements can be seen in an air photo of the site – see page 2 of Exhibit A).³ These project elements would be located within the defined 100-foot riparian corridor associated with Corcoran Lagoon. These elements would also be visible from Portola Drive and East Cliff Drive, and from the winding Francis L. Markey Public Nature Trail along the Lagoon side of Coastview Drive and connecting Portola and East Cliff Drives. All of these are public access areas and components of the CCT, and East Cliff Drive is the primary lateral route through coastal Live Oak.

Again, see Exhibit A for a location map and for an aerial photo of the project site.

2. Project Description

The County-approved project includes construction of three retaining walls (up to 3'-8", 4', and 4'-10" in height) and concrete steps, grading totaling about 9.5 cubic yards, demolition of one shed and removal of a 6-foot-high retaining wall that is 119 feet in length, and restoration of about 1,384 square feet of riparian habitat. All such development would be located within Corcoran Lagoon's 100-foot riparian corridor. Thus, the development approved in the above-described 100-foot riparian corridor and viewshed area includes retaining walls, stairs, and associated residential use areas, some of which were already constructed and the approval is designed to recognize such structures after-the fact (see air photo on page 2 of Exhibit A showing constructed wall segments). These project elements would extend to as close as 35 feet from Corcoran Lagoon within the riparian corridor. See project plans in Exhibit B.

3. Santa Cruz County CDP Approval

On June 17, 2011, the Santa Cruz County Zoning Administrator approved CDP Application Number 101078 (see Exhibit B).⁴ Notice of the Zoning Administrator's action on the CDP was received in the Coastal Commission's Central Coast District Office on July 6, 2011. The Coastal Commission's ten-working day appeal period for this action began on July 7, 2011 and concluded at 5 p.m. on July 20, 2011. Two valid appeals (see below) were received during the appeal period.

4. 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,

³ That is, some of the project was already constructed, and the County's CDP action that was appealed was designed to recognize such project components after-the-fact.

⁴ Note that this final Zoning Administrator action was preceded by a Zoning Administrator hearing on April 15, 2011, at which time County staff were recommending denial of the proposed project. As a result, the County's action notice documents in Exhibit B include a report for denial as well as the ultimate decision, findings, and conditions for approval.



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 County decision is appealable because it involves development that is located within 300 feet of the inland extent of the mean high tide line of the sea and seaward of the first public road (i.e., the “sea” includes Corcoran Lagoon due to its connectivity to the Pacific Ocean, per Coastal Act definition), because it is located within 100 feet of a wetland, and because it is within 300 feet of the coastal bluff.

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 located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission were to approve 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.

5. Summary of Appeal Contentions

The Appellants contend that the County’s CDP decision is inconsistent with certified LCP policies prohibiting non-resource-dependent development within the required 100-foot wetland setback/buffer from Corcoran Lagoon and within the LCP-defined riparian corridor; that the County-approved project elements are not allowed in and are inconsistent with the purpose of the O-U (Urban Open Space) land use designation; that the County-approved development in the riparian area associated with Corcoran Lagoon is visually incompatible with the surrounding natural environment of Corcoran Lagoon and public viewing areas inconsistent with the visual protection policies and standards of the LCP, and; that the project does not minimize site disturbance of natural landforms, inconsistent with LCP Implementation Plan Chapter 13.20. In short, the Appellants contend that the County’s decision is inconsistent with LCP requirements that don’t allow development such as that approved in the riparian corridor, and that don’t allow visually incompatible development in this important viewshed.



See Exhibit C for the complete appeal documents.

6. Substantial Issue Determination

A. Applicable LCP Policies

The appeal contentions raise questions of conformance with LCP policies protecting ESHA, including wetlands and riparian areas, from the impacts of development by, among other things, prohibiting non-resource dependent development in these areas and requiring prescribed setbacks; protecting public viewsheds from impacts due to development, including by requiring that development be visually compatible and integrated with the character of the surrounding area, and that site disturbance to be minimized; and prescribing appropriate use and development within the O-U land use designation (see Exhibit D for applicable policies).

B. Analysis

The LCP designates Corcoran Lagoon as both Sensitive Habitat and ESHA as that term is understood within a Coastal Act context (LUP Policy 5.1.2(i) and 5.1.3, IP Chapter 16.32). The LCP requires that development be set back a minimum of 100 feet from Corcoran as measured from its high water mark (IP Section 16.32.090(A)(11)) and designates this 100-foot area as a riparian corridor (LUP Policy 5.2.1 and IP Chapter 16.30) to which an additional 10-foot setback is required (LUP Policy 5.2.4); a total required minimum setback area of 110 feet. Riparian corridors are also designated as both Sensitive Habitat and ESHA by the LCP (LUP Policy 5.1.2(j) and 5.1.3, IP Chapter 16.32) within which development is generally prohibited (IP Section 16.30.040 and IP Chapter 16.32). Exceptions to setback requirements are only allowed under very limited circumstances, and are subject to making specific exception findings (IP Sections 16.30.060 and 16.32.100). ESHA and Sensitive Habitat are to be preserved, restored, protected against significant disruptions, and any development authorized in or adjacent to them must maintain or enhance the habitat (LCP Objectives and Policies 5.1 et seq and 5.2 et seq, IP Chapters 16.30 and 16.32).

The LCP is also highly protective of coastal zone visual resources, and specifically protective of the views available from publicly used roads and vistas points, where such public viewsheds are protected from disruption (LCP Objectives and Policies 5.10 et seq), including explicitly with respect to minimizing landform alteration and avoiding inappropriate structures in public viewsheds (LUP Policy 5.10.3). The LCP also specifically requires all new development to be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas (IP Section 13.20.130(b)(1)). And finally, the LCP designates the area where development is proposed O-U (Urban Open Space Lands), where the purpose of this designation is “to identify and preserve in open space uses those areas which are not suited to development due to the presence of natural resource values or physical development hazards” (LUP Objective 5.11), and where development can only be considered in such areas in very limited circumstances and only if such development is consistent with resource protection policies (LUP Policy 5.11.3).

The County-approved project is located just upslope of Corcoran Lagoon within its 100-foot riparian



corridor on the lagoon side of a residential property that is developed further from the Lagoon (outside of the 100-foot area) with an existing single-family residence in the Live Oak beach area of unincorporated Santa Cruz County, and directly within primary public viewsheds associated with road and trail segments of the California Coastal Trail (CCT). The development approved in the 100-foot riparian corridor and viewshed area includes retaining walls, stairs, and associated residential use areas, some of which were already constructed and the approval is designed to recognize such structures after-the fact. The County's CDP decision allows such development as close as 35 feet from Corcoran Lagoon in the riparian corridor, and it justifies this physical and visual incursion through exception findings that are based primarily on an assertion that similar development existed at this site location previously, and that some other properties nearby also include development in this no-build area. However, these reasons do not meet the criteria for an exception (see IP Section 16.30.060(d) in Exhibit D), including because it does not appear that there are any special circumstances affecting the property. If in fact non-conforming walls existed previously, then that is not dissimilar from other non-conforming development in many areas of the coastal zone, including, according to County review, for properties with similar development in the Corcoran Lagoon riparian corridor inconsistent with the LCP and located nearby. The LCP objective with respect to such development is to bring it into conformity with the LCP as development and redevelopment is proposed. Furthermore, there is adequate space inland of the required setback for outdoor development associated with the Applicant's home, and it is not clear how the approved development would be necessary in this respect. And finally, allowing such development will reduce and adversely impact the riparian corridor, and a no project (i.e., a remove all development from the corridor/buffer) alternative appears feasible in this case to avoid such impacts and meet LCP tests otherwise. Thus, the required riparian exception findings are inappropriate in this case. In addition, the County did not make any of the required sensitive habitat exception findings and, similar to above, it does not appear that these findings could be made in this case, including because the exception is not necessary for restoration, and is not necessary to protect public health, safety, or welfare (as required for a sensitive habitat exception pursuant to IP Section 16.32.100). In conclusion, the County-approved project is inconsistent with LCP requirements that don't allow development such as that approved in the riparian corridor/setback area.

In terms of public viewshed protection, the approved development is not sited or designed to be visually compatible with the surrounding neighborhood or with the natural aesthetic of Corcoran Lagoon (see page 2 of Exhibit A and pages 63-64 of Exhibit B for photographs). Although it may be true that there exists some similar residential development within the riparian corridor, it is equally true that such development is not allowed by the LCP (as described above). The Commission has not fully researched the history of all such development nearby, but it is possible that some pre-dates CDP requirements, that some was constructed without CDPs, and even possible that some was inappropriately permitted. However, the presence of such development in the corridor and required setback area is not an LCP reason to allow more of it. On the contrary, the LCP objective is that these areas are maintained as natural setback and habitat areas, as much for view protection as for habitat protection in some cases. The natural buffer provides an appropriate visual transition, and helps the residential built environment appropriately transition to the natural built environment, something that is particularly important in an urban setting where the value of such natural view respites can be heightened. On this point, the area

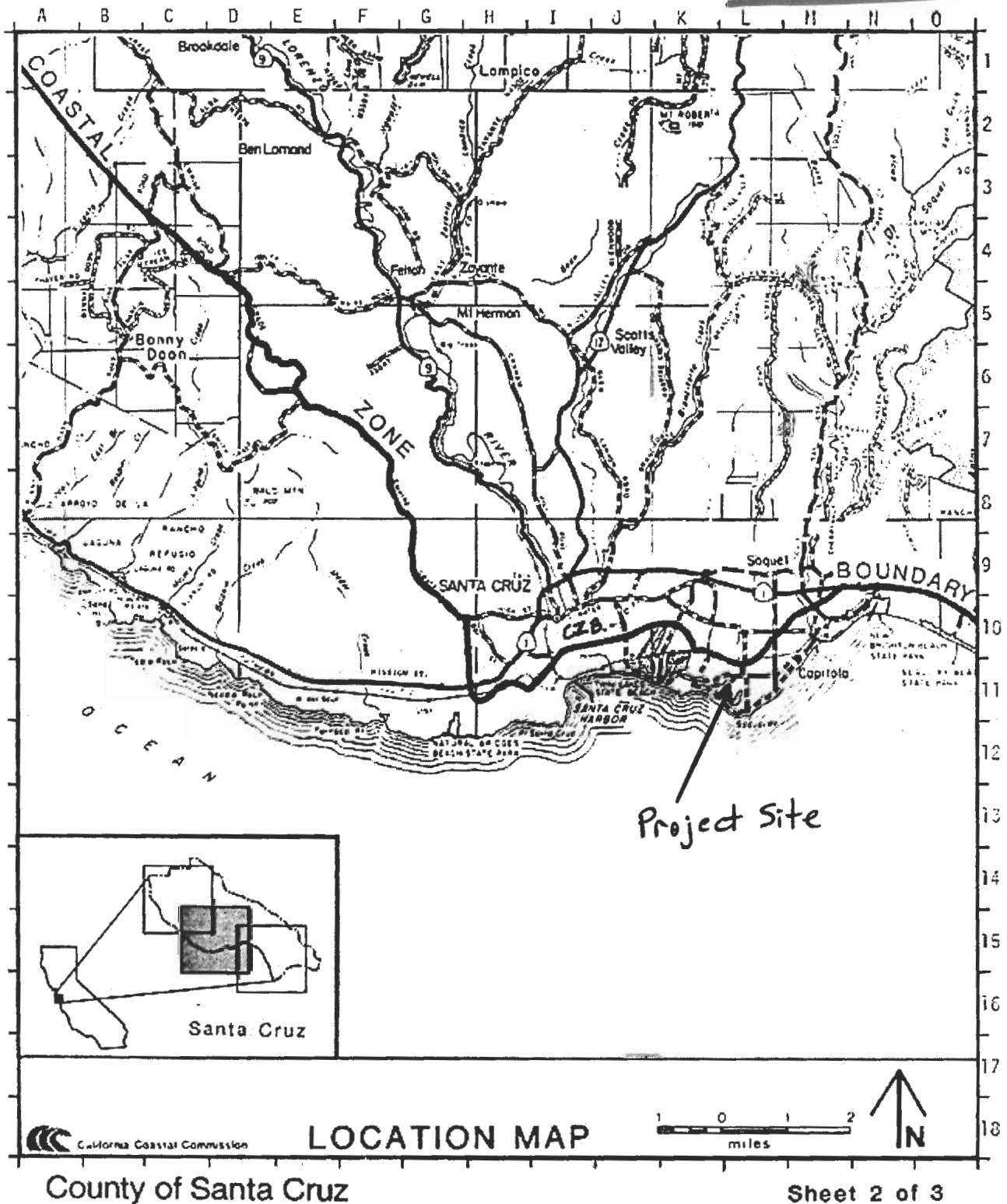


where the County approved development is also designated O-U, and the development is not consistent with preserving this area as open space, as is the objective of the O-U designation, and is prohibited in O-U because it is not consistent with the aforementioned resource protection policies, and thus not allowed pursuant to LUP Policy 5.11.3. It is also not consistent with protecting CCT public views. In conclusion, the County-approved project is inconsistent with LCP requirements that don't allow visually incompatible development in this important open space viewshed.

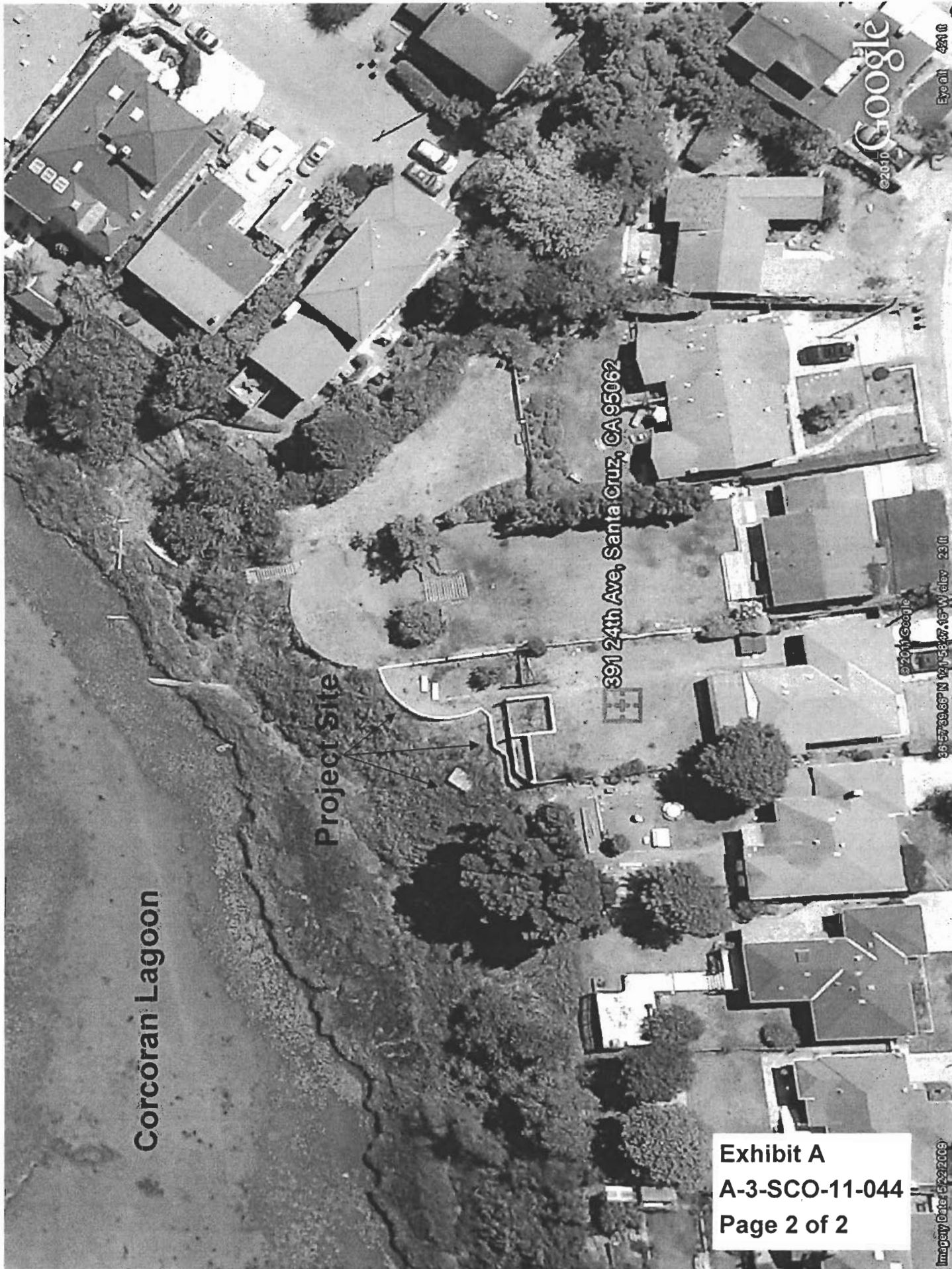
In conclusion, the County-approved development allows inappropriate residential development within an LCP-defined ESHA and significant viewshed associated with Corcoran Lagoon. The idea that such development can be allowed based on a premise that this property historically included some such development and that other properties include some such development is counter to the core LCP objectives associated with such resources that direct development – including redevelopment – to locations outside of these habitat resource and open space areas to protect their natural value, including with respect to their natural landform and aesthetic value. It does not appear that the LCP-required exception findings made by the County in their approval are appropriate in this case, and this action by the County has the potential to prejudice future decisions that raise similar questions. Thus, the Commission finds that a substantial issue is raised with respect to the grounds on which the appeals have been filed and takes jurisdiction over the CDP application for the proposed project.



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CCC Exhibit A
(page 1 of 2 pages)



Corcoran Lagoon

Project Site

391 24th Ave, Santa Cruz, CA 95062

Exhibit A
A-3-SCO-11-044
Page 2 of 2

Imagery Date: 6/22/2009

36°57'39.66"N 121°53'37.16"W elev: 23 ft

Google
©2010

Eye On 424 ft

NOTICE OF FINAL LOCAL ACTION ON COASTAL PERMIT

County of Santa Cruz

Date of Notice: July 1, 2011

Notice Sent (via certified mail) to:

California Coastal Commission
Central Coast Area Office
725 Front Street, Ste. 300
Santa Cruz, CA 95060

FINAL LOCAL ACTION NOTICE

REFERENCE # 3-SC0-11-136

APPEAL PERIOD 7/7-7/20/2011

RECEIVED

JUL 06 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please note the following **Final Santa Cruz County Action** on a coastal permit, coastal permit amendment or coastal permit extension application (all local appeals have been exhausted for this matter):

Project Information

Application No.: 101078

Project Applicant: Michael Pitt

Address: 391 24th Avenue, Santa Cruz, CA 95062

Phone/E-mail: 831-818-2020/

Applicant's Representative: Kim Tschantz

Address: P.O. Box 1844, Aptos, CA 95001

Phone/E-mail: 831-685-1007/kimt@cypressenv.com

Project Location: 391 24th Avenue, Santa Cruz (North side of 24th Avenue at the intersection with 25th Ave)

Project Description: Proposal to recognize construction of three retaining walls (maximum height 3'-8" and 4'-0" and 4'-10"); to remove one 6-foot high retaining wall of 119 feet in length, to place concrete steps; to perform and/or recognize ancillary grading of 9.5 cubic yards; demolish one shed and to restore 1,384 s.f. riparian habitat.

Final Action Information

Final Local Action: Approved with Conditions

Final Action Body:

- ☒ Zoning Administrator
☐ Planning Commission
☐ Board of Supervisors

Required Materials Supporting the Final Action	Enclosed	Previously sent (date)
Staff Report	X	
Adopted Findings	X	
Adopted Conditions	X	
Site Plans	X	
Elevations	X	

Additional Materials Supporting the Final Action	Enclosed	Previously sent (date)
CEQA Document	X	
Geotechnical Reports	X	
Biotic Reports	X	
Other: site photos	X	
Other:		

CCC Exhibit B
(page 1 of 64 pages)

Coastal Commission Appeal Information

This Final Action is appealable to the California Coastal Commission. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Action. The Final Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission Central Coast Area Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the Central Coast Area Office at the address listed above, or by phone at (831) 427-4863.

Copies of this notice have also been sent via first-class mail to:

- Applicant
- Interested parties who requested mailing of notice

COUNTY OF SANTA CRUZ
PLANNING DEPARTMENT
MEMORANDUM

RECEIVED

JUL 06 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

DATE: June 9, 2011
TO: Steve Guiney, Zoning Administrator
FROM: Robin Bolster-Grant, Project Planner
SUBJECT: Application 101078 (Pitt),
June 17, 2011 Zoning Administrator Agenda

Background

This item was first heard at the April 15, 2011 Zoning Administrator Hearing. During the hearing, the project applicant, Kim Tschantz, raised the issue of historical precedent concerning past Planning Department approval of Riparian Exception applications for surrounding coastal lagoon properties. Your action on April 15th was to continue the item in order to perform research concerning coastal development in the vicinity of the project site, which relied on Riparian Exception approval. The item was continued until May 6, 2011.

During the May 6, 2011 hearing, it was noted that four other properties along 24th Avenue contain development that encroaches into the riparian corridor associated with Corcoran Lagoon. In one case, the Planning Department made Riparian Exception findings for a single-family dwelling, which is located closer to the edge of the riparian corridor than the subject retaining wall.

Based on the evidence and historical practice, your action, on May 6, 2011, was to continue the item until June 17, 2011 with the direction to staff to prepare revised Coastal Findings, Riparian Exception Findings, and Conditions of Approval in support of approving the proposed retaining wall.

Attachments

1. Revised Findings
2. Conditions of Approval
3. Revised Categorical Exemption (CEQA determination)
4. Staff Report to the Zoning Administrator (April 15, 2011 hearing)
5. Additional Correspondence

CCC Exhibit B
(page 3 of 64 pages)

Coastal Development Permit Findings

1. That the project is a use allowed in one of the basic zone districts, other than the Special Use (SU) district, listed in section 13.10.170(d) as consistent with the General Plan and Local Coastal Program LUP designation.

This finding can be made, in that the property is zoned R-1-5-PP (Single family residential, 5,000 square foot minimum lot size, Pleasure Point combining district), a designation which allows retaining walls and outdoor residential uses. The proposed replacement retaining wall is a principal permitted use within the zone district, consistent with the site's (O-U and R-UM) Urban Open Space; Urban Medium Residential Density General Plan designation.

2. That the project does not conflict with any existing easement or development restrictions such as public access; utility, or open space easements.

This finding can be made, in that there are no existing easements or development restrictions such as public access, utility, or open space easements known to encumber the project site.

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to section 13.20.130 et seq.

This finding can be made, in that the development is consistent with the surrounding neighborhood. There are at least five other lots along 24th Avenue that are characterized by development within the 100-foot riparian corridor associated with the coastal lagoon. Of those, at least two were developed with permits. Section 13.20.130 of the Coastal Zone Regulations requires new development to be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas. The unpermitted replacement retaining wall system essentially mimics the original legal, non-confirming block wall in size, extent, and use. The replacement concrete wall, when viewed from various vantage points around the lagoon, is not visually intrusive or out of character with the *development located on* surrounding parcels, the riparian vegetation, or naturally-sloping landforms. With the required revegetation, the wall will not be visible. *(revised at 6/17/11 ZA Hearing)*

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the General Plan and Local Coastal Program land use plan, specifically Chapter 2: figure 2.5 and Chapter 7, and, as to any development between and nearest public road and the sea or the shoreline of any body of water located within the coastal zone, such development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act commencing with section 30200.

This finding can be made, in that although the project site is located between the shoreline and the first public road, the unpermitted replacement wall that is proposed to be recognized will not interfere with public access to the beach, ocean, or any nearby body of water. Historically, once the parcel was developed many decades ago before the passage of Proposition 20 in 1972 or the creation of the Coastal Act in 1976, there was no public access across the parcel to Corcoran Lagoon or the beach. Public access does exist to the lagoon and the beach nearby. The replacement wall will have no affect on public access and is therefore in conformity with the

public access and public recreation policies of the Coastal Act.

5. That the proposed development is in conformity with the certified local coastal program.

This finding can be made, in that the replacement wall is sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. The replacement wall is similar in scale to the ~~pre-existing~~ *previous* legal, non-conforming block wall and does not further extend the pre-existing encroachment of outdoor living space into the riparian corridor. Visually, the replacement wall will have less of an impact than the pre-existing, legal, non-conforming *unstained* wall in that the replacement wall will be stained a dark color to blend in with the existing vegetation and the required revegetation will ultimately completely obscure the wall from view. *(Revised at 6/17/11 ZA Hearing)*

General Plan/Local Coastal Program Policy 5.1.6 (Development Within Sensitive Habitats) states that any proposed development within or adjacent to sensitive habitat areas must maintain or enhance the functional capacity of the habitat. The unpermitted replacement retaining wall construction is consistent with this policy in that the required revegetation will assist the re-establishment of riparian vegetation and habitat into the portions of the wetland corridor that are now degraded. The revegetation will also enhance the filtration of stormwater runoff entering Corcoran Lagoon.

General Plan/Local Coastal Program Policy 5.2.5 (Setbacks from Wetlands) prohibits development within the 100 foot riparian corridor of all wetlands and allows exception to this setback only where consistent with the Riparian Corridor and Wetlands Protection Ordinance. As the findings necessary for a Riparian Exception, per Section 16.30.060 of the County Code, can be made (see Riparian Exception Findings, Exhibit B), the proposed development is consistent with this policy.

Riparian Exception Findings

1. That there are special circumstances or conditions affecting the property.

This finding can be made, in that the location of the original legal, non-conforming wall and outdoor use area *historically* extended into what is now the 100-foot riparian setback by about 68 feet. *A significant portion of the property, approximately 57%, is within the 100 foot riparian setback.* The replacement wall was built in the same location as the original wall, which was constructed before the riparian ordinance existed. While a new wall, as opposed to a replacement wall, likely would not be allowed in the riparian corridor, the fact that the original wall pre-dated the riparian ordinance, its location within the riparian corridor, and the existing outdoor use in the riparian corridor between the house and the wall are all special circumstances and conditions affecting the property (*Revised at 6/17/11 ZA Hearing*).

2. That the exception is necessary for the proper design and function of some permitted or existing activity on the property.

This finding can be made in that allowing a replacement wall in the same location as the original legal, non-conforming wall within the 100-foot riparian corridor is necessary for the proper function of the existing outdoor use. Without the replacement wall, the existing outdoor use area would be reduced through necessary grading to lay back the slope and/or through erosion of the outdoor use area.

3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property downstream or in the area in which the project is located.

This finding can be made in that the granting of the exception will include revegetation of the degraded riparian area, ultimately enhancing the lagoon, a public resource. There is no evidence that the granting of the exception will be detrimental to the public welfare or injurious to other property downstream or in the area of the project. On the contrary, the replacement wall along with the required revegetation will help reduce erosion into the lagoon and the replacement wall will be obscured from view from surrounding properties by the revegetation. *There are a number of adjacent and nearby property that have permitted or pre-existing non-conforming wall encroachments into the riparian setback; therefore, approval of the exception in this case will not create a development or use that is either inconsistent with other legal development or that would somehow cause injury to other property downstream.* (*Revised at 6/17/11 ZA Hearing*)

4. That the granting of the exception, in the Coastal Zone, will not reduce or adversely impact the riparian corridor, and there is no feasible less environmentally damaging alternative.

This finding can be made in that the granting of this exception will recognize the installation of a replacement wall that mimics the original legal, non-conforming block wall in location, size, extent, and purpose and will include revegetation of the degraded riparian area and therefore the project will not further reduce or adversely impact the riparian corridor. The only alternatives to the replacement wall are to remove the wall and allow natural erosion into the lagoon until the angle of repose is reached or to grade the slope to lay it back to a slope similar to that which

existed before the property was developed. None of those alternatives are feasible less environmentally damaging alternatives and in fact would be more environmentally damaging than allowing the replacement wall to remain and requiring revegetation of the degraded riparian vegetation area. *Thorough application of LCP standards through adoption and implementation of the conditions of approval will ensure that the replacement wall will not reduce or adversely impact the riparian corridor. (Revised at 6/17/11 ZA Hearing)*

5. That the granting of the exception is in accordance with the purpose of this chapter, and with the objectives of the General Plan and elements thereof, and the Local Coastal Program Land Use Plan.

This finding can be made even though the purpose of the Riparian Corridor and Wetlands Protection Ordinance (Ordinance) is "to eliminate or minimize any development activities in the riparian corridor in order to preserve, protect, and restore riparian corridors..." Were the present application a request for a permit to allow the development of a new wall where none existed before or to recognize the installation of a new unpermitted wall where none existed before, this finding likely could not be made. In this case, however, the unpermitted replacement walls were intended to replace the pre-existing, failing concrete block walls in location, size, extent, and purpose. The failing concrete block walls and associated grading were never permitted, but were installed prior to adoption of the Ordinance and were therefore legal, non-conforming uses, as is the associated outdoor use of the area between the walls and the house. Removing the replacement wall would not, by itself, be in keeping with the purpose of the Ordinance. In order to preserve, protect, and restore the riparian corridor, the slope necessarily would have to be returned to one similar to that which existed before the parcel was developed many decades ago, either by regarding or allowing natural erosion into the lagoon, and revegetated to enhance the riparian corridor. Granting of the exception for the replacement wall is in keeping with the purpose of the Ordinance and the objectives of the General Plan in that it allows the replacement of pre-existing legal, non-conforming retaining walls without further encroachment into or impact upon the riparian corridor and results in enhancement of the riparian corridor through the required revegetation.

Conditions of Approval

Exhibit A: Project Plans, (7 Sheets) Prepared by *Grounded Modern Landscape Architecture*, dated January 2011, and Surveyor's Map (1 Sheet), prepared by McGregor Land Surveys, dated December 2010.

I. This permit authorizes the construction of three retaining walls (maximum height 3'-8" and 4'-0" and 4'-10" respectively); the removal of one 6' retaining wall of 119 feet in length; the placement of concrete steps in the riparian corridor landward of one of the retaining walls, the ancillary grading of 9.5 cubic yards; the demolition of one shed, and the restoration of 1,384 square feet of riparian habitat. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:

- A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
- B. Obtain a Building Permit from the Santa Cruz County Building Official.
 - 1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.
- C. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.

II. Prior to issuance of a Building Permit the applicant/owner shall:

- A. Submit final ~~architectural~~ *building (revised at 6/17/11 ZA Hearing)* plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:
 - 1. The walls shall be stained an earth tone to blend in with the vegetation.
 - 2. Grading, drainage, and erosion control plans.



County of Santa Cruz, PLANNING DEPARTMENT

Discretionary Application Comments 101078

APN 028-181-05

Drainage Review

Review No: | Review Date: 10/07/2010

GERARDO VARGAS (GVARGAS) :

2. Identify how the new retaining wall will tie into the existing drainage system.

The applicant is encouraged to discuss the above comments with the reviewer to avoid unnecessary additional routings. A \$200.00 additional review fee shall be applied to all re-submittals starting with the third routing.

Please call the Dept. of Public Works, Stormwater Management Section, from 8:00 am to 12:00 noon if you have questions.

Environmental Planning

Review No: | Review Date: 10/07/2010

ANTONELLA GENTILE (AGENTILE) :

Comments by Antonella Gentile and Kent Edler

Completeness Comments

Revise the plans to show the retaining wall that was constructed along the property line between the subject parcel and parcel 028-181-04. If a portion of this wall is on or across the neighboring property line, please submit an owner-agent form or other written project approval signed by the neighboring property owner.

Please delineate on the plans the 100-foot riparian corridor extending from the high water mark of the lagoon.

Compliance/Miscellaneous

As previously discussed and commented on in application 09-0226, staff will recommend denial of the riparian exception (and this application) if the curved portion of the wall is not removed. Please note that Planning Department staff have considered this project and met with the applicant or corresponded with the applicant on at least the following dates: July 16, August 14, September 1, September 23, October 22, December 3, 2009 and April 20, 2010. Recommendations have been provided to the applicant regarding what would be considered for approval. Revise the plans accordingly to show the removal of the wall and the final grades in this area. Please also remove the "new concrete steps with flagstone cap" from the project plans, as approval of this will also not be recommended by staff.

A Riparian Exception fee is required for this application. Please contact your planner for payment information.

The restoration plan will be reviewed by the Environmental Coordinator during the Environmental Review process.

Conditions

CCC Exhibit B
(page 26 of 64 pages)

Print Date: 10/29/2010

Page: 2

EXHIBIT



County of Santa Cruz, PLANNING DEPARTMENT

Discretionary Application Comments 101078

APN 028-181-05

Environmental Planning

Review No: | Review Date: 10/07/2010

ANTONELLA GENTILE (AGENTILE) :

Success criteria will be required for the restoration plan.

A soils report will be required prior to building permit issuance.

A grading permit will be required prior to building permit issuance.

Project Review

Review No: | Review Date: 10/07/2010

ROBIN BOLSTER (RBOLSTER) :

See review comments from Environmental Planning

Redevelopment Agency Review

Review No: | Review Date: 10/07/2010

SHEILA MCDANIEL (SMCDANIEL) :

The Redevelopment Agency has no comment. Thank you for routing the plans to the agency.

Urban Designer Review

Review No: | Review Date: 10/07/2010

LAWRENCE KASPAROWITZ (LKASPAROWITZ) :

CCC Exhibit B
(page 29 of 64 pages)

Print Date: 10/29/2010

Page: 3

EXHIBIT

County of Santa Cruz Planning

701 Ocean Street, room 400

Santa Cruz, 95060

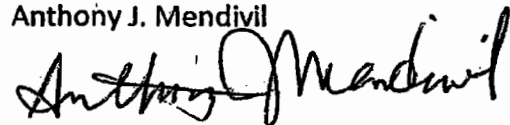
July 30th, 2009

Re: APN # 028-181-05, Permitting as-built retaining wall structures

Dear Tom Burns, Sheila McDaniel, Antonella Gentile, Jacob Rodriguez, Et All:

My brother-in-law, Jack Scoggin, told me that his parents Ray and Evelyn Scoggin moved into their house at 391 24th ave. in October 1962. Ray built the cement retaining walls sometime shortly after. My son Steve Mendivil remembers putting his footprints on the cement floor of the pump house in 1965 when he was nine years old. Ray Scoggin died on Oct. 13, 1968 and I remember seeing these retaining walls between 1963 and 1965 when we visited them on weekends.

Anthony J. Mendivil



381 24th Ave.

Santa Cruz, Ca 95062

(831) 476-4245

CCC Exhibit B
(page 30 of 64 pages)

5590 Bromely Drive
Oak Park, CA 91377
August 11, 2010

Planning Department
County of Santa Cruz
701 Ocean Street, Room 400
Santa Cruz, CA 95060

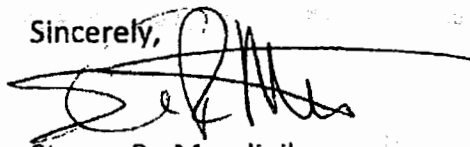
Subject: Mike Pitt Property; 391 24th Avenue, Santa Cruz, California

Dear Planning Staff Members,

I am providing you with this letter to document when the original retaining walls were constructed at 391 24th Avenue. My grandparents, Ray and Evelyn Scoggin, owned the property at 391 24th Avenue during the 1960's when I was a young boy. I spent quite a bit of time there including one whole summer in the mid 60's with my brother. The concrete block retaining wall system was built on the slope in the back part of the rear yard in the mid-1960's. The Scoggins also constructed a small pump house at the same time on the slope. I remember putting my footprints on the cement floor of the pump house when I was 10 years old. This would have been about 1965. My brother and I helped dig the trenches for the pipes to the terraced garden my grandparents had established.

If you need more information on the existence of the concrete block retaining walls, please contact me at (805) 313-1622 (office) or at (805) 479-0221 (cell).

Sincerely,



Steven R. Mendivil

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(page 31 of 64 pages)

769 30th Avenue
Santa Cruz, CA 95062
August 10, 2010

County Planning Department
701 Ocean Street, Room 400
Santa Cruz, CA 95060

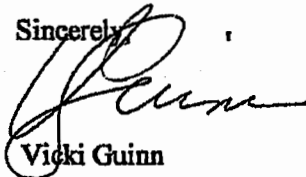
Subject: Mike Pitt Property at 391 24th Avenue, Santa Cruz

To Whom It May Concern,

This letter is being provided to substantiate the long-term existence of retaining walls, garden area and storage sheds on the property now owned by Mike Pitt at 391 24th Avenue. I have been a close friend of the previous owner, Evelyn Scoggin since 1981 until she passed away in 2008. I lived at 406 24th Avenue across the street from Mr. Pitt's property during 1996 to 2008. I visited the Scoggin property often and was very familiar with the physical characteristics of the back yard area.

The rear part of the back yard, where it begins to slope down to Corcoran Lagoon, was developed with several retaining walls made of concrete blocks for a vegetable garden (Mrs. Scoggin used to let me garden there). Two small storage sheds were also located in this area. These improvements appeared to have existed well before 1981 and continued to exist during the 17 years I frequented the property. It is my understanding that they were put in place while Evelyn's husband of 40 years Mr. Ray Scoggin was alive. He passed away in 1969. Please contact me if you need any additional information. I can be reached at 234-8425 (cell phone) or at vickiguinn01@hotmail.com.

Sincerely,



Vicki Guinn

CCC Exhibit B
(page 32 of 64 pages)



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, PLANNING DIRECTOR

September 23, 2009

Mr. Michael Pitt
391 24th Avenue
Santa Cruz, CA 95062

Subject: Application 09-0226 (APN# 028-181-05)

Dear Mr. Pitt,

This letter is in follow-up to the meeting you requested on September 1. During that meeting, you and your consultant, Mr. Kim Tschantz, asked us to explain why the Planning Department determined that it is not possible to make the necessary Riparian Exception Findings to recognize the walls that were constructed without authorization. You also requested that we consider a conceptual proposal whereby you would remove a small portion of the walls and be allowed to keep the remainder of the walls provided they were stained a natural color and screened by vegetation. On September 15, you submitted a drawing of this concept, which also included some redwood terracing.

After explaining the Department's reasoning with respect to the Riparian Exception Findings, I indicated that I would confer with staff about your conceptual proposal. I cautioned you, however, that the only way the Department could make the necessary Riparian Exception Findings to allow most of the walls to be retained would be if a qualified soils engineer indicated that the walls constructed are necessary to stabilize a failing slope.

Following our meeting, I coordinated with Department staff including our Senior Civil Engineer, Kent Edler. Based on a review of the project files (including the soils report, plans and photos) Kent has determined that the walls constructed are not necessary to stabilize the slope on your property. Moreover, as indicated in the Department's July 16 correspondence, the walls are inconsistent with County Code Sections 13.20.130 (b) (1) and (2) relating to design criteria for Coastal Zone developments. Consequently, I am not inclined to pursue your conceptual proposal any further. In all likelihood, it would simply lead to more expense on your part without providing the necessary justification for the Department to issue a Riparian Exception and Coastal Development Permit.

Therefore, consistent with the Director's letter of August 14, staff will proceed with processing your application with a recommendation for denial. As noted in that letter, you will have an opportunity to explain why you think the project should be approved during the public hearing on your application. Should the Zoning Administrator uphold staff's recommendation for denial, you will also have an opportunity to appeal that decision to the Planning Commission.

CCC Exhibit B

(page 33 of 64 pages)

EXHIBIT E

Sincerely,

Claudia Slater

Claudia Slater
Principal Planner

cc: Kim Tschantz, Cypress Environmental and Land Use Planning
Sheila McDaniel, Development Review
Jacob Rodriguez, Code Compliance
Kent Edler, Environmental Planning
Antonella Gentile, Environmental Planning

CCC Exhibit B
(page 34 of 64 pages)



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123
TOM BURNS, PLANNING DIRECTOR

August 14, 2009

Mr. Michael Pitt
391 24th Avenue
Santa Cruz, CA 95062

Subject: Application 09-0226 (APN # 028-181-05)

Dear Mr. Pitt,

I received your letter dated July 30, and have reviewed the documents you provided as well as our records with Department staff. After considering all of the information, I'd like to advise you that I agree with staff's conclusion that we cannot make the necessary Findings to issue a Riparian Exception to recognize the walls that were constructed without authorization. The specific reasons the Findings cannot be made are detailed in the Department's correspondence of July 16.

Rather than encourage you to spend any additional money on your current project proposal, I have directed staff to process your application with a recommendation for denial. During the public hearing on your application, you will have an opportunity to explain why you think the project should be approved. Should the Zoning Administrator uphold staff's recommendation for denial, you will also have an opportunity to appeal that decision to the Planning Commission.

If you have any questions please contact Claudia Slater, Principal Planner of Environmental Planning, at (831) 454-5175.

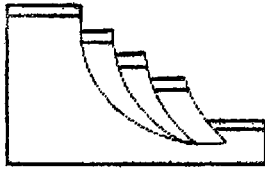
Sincerely,

Tom Burns
Planning Director

cc: Claudia Slater, Environmental Planning
Sheila McDaniel, Development Review
Jacob Rodriguez, Code Compliance

CCC Exhibit B
(page 35 of 64 pages)

EXHIBIT E



C M A G E N G I N E E R I N G

2526 HOWE STREET, SANTA CRUZ, CALIFORNIA 95065

PHONE: 831.334.2812

FAX: 831.475.1411

WWW.CMAGENGINEERING.COM

October 22, 2009
Project No. 09-109-SC

Mike Pitt
391 24th Avenue
Santa Cruz, California 95062

SUBJECT: REMOVAL OF EXISTING RETAINING WALLS
391 24th Avenue, Santa Cruz, Santa Cruz County, California
APN 028-181-05

REFERENCE: CMAG Engineering (April 17, 2009). *Geotechnical Investigation - Design Phase, Analysis of Existing Retaining Walls, 391 24th Avenue, Santa Cruz, Santa Cruz County, California, APN 028-181-05. Project No. 09-109-SC.*

Dear Mr. Pitt:

1.0 INTRODUCTION

It is our understanding that the County of Santa Cruz, Planning Department is requesting a portion of the existing retaining walls be removed. This letter documents the portion of the walls that are to be removed based on conversations with the County Civil Engineer and comments on the stability of the proposed configuration.

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(page 36 of 64 pages)

EXHIBIT B

4.0 DISCUSSIONS

It is our opinion that the overall proposed slope configuration, as presented above, is more stable than the original configuration prior to the construction of the walls. It is also our opinion that the proposed configuration is less stable than the current configuration. Removal of the curved wall may expose unengineered fill that was placed prior to the construction of the existing walls. However, it is our opinion that minor erosion and sloughing should be anticipated in this area.

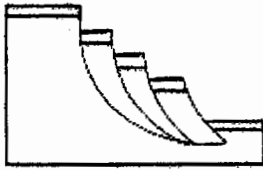
5.0 LIMITATIONS

The recommendations contained in this letter are based on our field explorations, and laboratory testing. The subsurface data used in the preparation of this letter was obtained from the borings drilled during our field investigation outlined in the referenced report. Variation in soil, geologic, and groundwater conditions can vary significantly between sample locations. As in most projects, conditions revealed during construction excavation may be at variance with preliminary findings. If this occurs, the changed conditions must be evaluated by the Project Geotechnical Engineer, and revised recommendations be provided as required. In addition, if the scope of the proposed construction changes from the described in the referenced report, our firm should also be notified.

Our investigation was performed in accordance with the usual and current standards of the profession, as they relate to this and similar localities. No other warranty, expressed or implied, is provided as to the conclusions and professional advice presented in this letter.

This letter is issued with the understanding that it is the responsibility of the Owner, or of his Representative, to ensure that the information and recommendations contained herein are brought to the attention of the Architect and Engineer for the project and incorporated into the plans, and that it is ensured that the Contractor and Subcontractors implement such recommendations in the field. The use of information contained in this report for bidding purposes should be done at the Contractor's option and risk.

This firm does not practice or consult in the field of safety engineering. We do not direct the Contractor's operations, and we are not responsible for other than our own personnel on the site; therefore, the safety of others is the responsibility of the Contractor. The Contractor should notify the Owner if he considers any of the recommended actions presented herein to be unsafe.



C M A G E N G I N E E R I N G

2526 HOWE STREET, SANTA CRUZ, CALIFORNIA 95065

PHONE: 831.334.2812

FAX: 831.475.1411

WWW.CMAGENGINEERING.COM

December 14, 2009
Project No. 09-109-SC

Mike Pitt
391 24th Avenue
Santa Cruz, California 95062

SUBJECT: REMOVAL OF EXISTING RETAINING WALLS
391 24th Avenue, Santa Cruz, Santa Cruz County, California
APN 028-181-05

REFERENCE: CMAG Engineering (April 17, 2009). *Geotechnical Investigation - Design Phase, Analysis of Existing Retaining Walls, 391 24th Avenue, Santa Cruz, Santa Cruz County, California, APN 028-181-05. Project No. 09-109-SC.*

Dear Mr. Pitt:

1.0 INTRODUCTION

It is our understanding that the County of Santa Cruz, Planning Department is requesting a portion of the existing retaining walls be removed. This letter documents the portion of the walls that are to be removed based on our conversations with the County Civil Engineer and provides recommendations and discussions for the removal of the walls.

2.0 DOCUMENTATION OF WALL REMOVAL

Based on our conversations with the Civil Engineer from the County of Santa Cruz, the walls that are to be removed include the curved wall, the upper most tiered wall, and the walls that run parallel to the length of the slope. The lower two tiered walls may remain.

Based on our conversations with the Civil Engineer from the County of Santa Cruz, it is our understanding that after the curved wall is removed, the slope should be cut back to a stable configuration.

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(page 38 of 64 pages)

EXHIBIT B

The on-site soils may be used as compacted fill. The material should be verified by a representative of CMAG Engineering in the field during grading operations. All soils, both existing on-site and imported, to be used as fill, should contain less than 3 percent organics and be free of debris and cobbles over 2.5 inches in maximum dimension.

3.3 Western Property Line

The slope configuration of the property to the west differs from the proposed grade configuration of the two tired walls with a 3:1 (H:V) fill slope. A retaining wall should be constructed due to the difference in grades. The length, height, and overall configuration will be dependent on conditions encountered in the field during grading due to the extent of fill material on the subject property and the neighboring property.

4.0 DISCUSSIONS

It is our opinion that the overall proposed slope configuration, as presented above, is more stable than the original configuration prior to the construction of the walls, however, it is also our opinion that the proposed configuration is less stable than the current configuration.

Removal of the curved wall may expose unengineered fill that was placed prior to the construction of the existing walls. However, due to the relative height of the cut slope (2 to 4 feet tall) it is our opinion that if loose unengineered fill was encountered within the cut slope only minor erosion and sloughing should be anticipated in this area.

The extent of the underpinning of the eastern property line retaining wall is dependent on the conditions encountered during construction of the 2:1 cut slope. Conditions that may increase or decrease the extent of underpinning are the depth of the existing footing, the presence of fill material, and the density and strength of the underlying soil.

The length, height, and overall configuration of the western property line retaining wall is dependent on the conditions encountered during grading. Conditions that may affect the length, height, and overall configuration are the presence of fill material, and the density and strength of the underlying soil.

Removal of Existing Retaining Walls
391 24th Avenue
Santa Cruz County, California

December 14, 2009
Project No. 09-109-SC
Page 5

It is a pleasure being associated with you on this project. If you have any questions or if we may be of further assistance please do not hesitate to contact our office.

Sincerely,

CMAG ENGINEERING



Adrian L. Garner, CE, GE
Principal Engineer
CE 66087, GE 2814
Expires 6/30/10

Distribution: (3) Addressee

CCC Exhibit B
(page 40 of 64 pages)

EXHIBIT B

- a. Erosion control plans must be prepared by a Certified Erosion and Sediment Control professional, *geotechnical engineer or landscape architect. (Revised at 6/17/11 ZA Hearing)*
 - b. Habitat restoration and management plan, to be reviewed and approved by the project biotic consultant and Environmental Planning staff.
 - c. No winter grading is allowed on this site.
 - d. All erosion control and tree protection measures shall be in place and inspected by Environmental Planning staff prior to the start of ground disturbance.
 - e. Grading plans shall include a note stating the following:
"All grading and other work to shall be approved by the project biotic consultant and geotechnical engineer."
3. Details showing compliance with fire department requirements and the requirements of the Wildland-Urban Interface code (WUI), California Building Code Chapter 7A, if applicable.
- B. Submit four copies of the approved Discretionary Permit with the Conditions of Approval attached. The Conditions of Approval shall be recorded prior to submittal, if applicable.
- C. Submit 2 copies of the approved soils report, prepared and stamped by a licensed Geotechnical Engineer.
- III. All construction shall be performed according to the approved plans for the Building Permit. Prior to final building inspection, the applicant/owner must meet the following conditions:
- A. All site improvements shown on the final approved Building Permit plans shall be installed.
 - B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.
 - C. The project must comply with all recommendations of the approved soils reports.
 - D. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.

IV. Operational Conditions

- A. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.
- B. Habitat restoration and management shall occur as described the Biotic Resources Group letter dated Jun9, 2010, including the method of restoration, plant species used, and performance standards and monitoring. Restoration monitoring shall be completed no earlier than June 2016. Owners' responsibility to complete the follow up activities will cease when the project biotic consultant certifies in the annual monitoring report covering through June 2016 that the success criteria given in the plan have been reached and the County concurs with that finding. Owners' responsibility to undertake follow up activities will extend beyond five years if necessary to attain success criteria.
- C. Property owners agree to submit annual monitoring/adaptive management reports to the County by December 31st of each year to ensure that the mitigation, restoration and management activities are continuing as given in the five year restoration plan.

V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
 - 1. COUNTY bears its own attorney's fees and costs; and
 - 2. COUNTY defends the action in good faith.

- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.

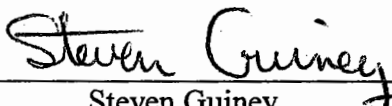
Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires three years from the effective date listed below unless a building permit (or permits) is obtained for the primary structure described in the development permit (does not include demolition, temporary power pole or other site preparation permits, or accessory structures unless these are the primary subject of the development permit). Failure to exercise the building permit and to complete all of the construction under the building permit, resulting in the expiration of the building permit, will void the development permit, unless there are special circumstances as determined by the Planning Director.

Approval Date: June 17, 2011

Effective Date: July 1, 2011

Expiration Date: July 1, 2014


Steven Guiney
Deputy Zoning Administrator


Robin Bolster-Grant
Project Planner

Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Zoning Administrator, may appeal the act or determination to the Planning Commission in accordance with chapter 18.10 of the Santa Cruz County Code.

CCC Exhibit B
(page 11 of 64 pages)

ATTACHMENT 2



Staff Report to the Zoning Administrator

Application Number: **101078**

Applicant: Kim Tschantz
Owner: Michael A. Pitt
APN: 028-181-05

Agenda Date: April 15, 2011
Agenda Item #: 1
Time: After 10:00 a.m.

Project Description: Proposal to recognize the construction of two retaining walls (maximum height 3'-8" and 4'-0" respectively), to remove one 6' retaining wall, to recognize the placement of stairs in the riparian corridor, to perform and/or recognize ancillary grading of 9.5 cubic yards, to demolish two sheds, and to restore riparian habitat.

Location: The project is located on the north side of 24th Avenue, at the intersection with 25th Avenue.

Supervisory District: 1st District (District Supervisor: John Leopold)

Permits Required: Coastal Development Permit, Riparian Exception
Technical Reviews: Preliminary Grading Approval; Design Review

Staff Recommendation:

- Certification that the proposal is exempt from further Environmental Review under the California Environmental Quality Act.
- DENIAL of Application 101078, based on the attached findings and conditions.

Exhibits

- | | | | |
|----|-----------------------------|----|-------------------------------------|
| A. | Project plans | D. | Assessor's, Location, Zoning and |
| B. | Findings | | General Plan Maps |
| C. | Categorical Exemption (CEQA | E. | Comments & Correspondence |
| | determination) | F. | Letters from Project Soils Engineer |

Parcel Information

Parcel Size:	9,627 square feet (Assessor's Records)
Existing Land Use - Parcel:	Residential/Open Space
Existing Land Use - Surrounding:	Residential
Project Access:	24 th Avenue
Planning Area:	Live Oak

Land Use Designation: O-U; R-UM (Urban Open Space; Urban Medium Residential Density)
Zone District: R-1-5-PP (Single-family residential, 5,000 square foot minimum lot size, Pleasure Point combining district)
Coastal Zone: X Inside ___ Outside
Appealable to Calif. Coastal Comm. X Yes ___ No

Environmental Information

Geologic Hazards: Not mapped/no physical evidence on site
Soils: N/A
Fire Hazard: Not a mapped constraint
Slopes: N/A
Env. Sen. Habitat: Riparian Corridor associated with Corcoran Lagoon
Grading: Approximately 9.5 cubic yards
Tree Removal: No trees proposed to be removed
Scenic: Not a mapped resource
Drainage: Existing drainage adequate
Archeology: No mapped evidence on site

Services Information

Urban/Rural Services Line: X Inside ___ Outside
Water Supply: Public
Sewage Disposal: Public
Fire District: Central Fire Protection District
Drainage District: Zone 5

History

The site is developed with a single-family dwelling that was built in the 1950s and a series of block gravity walls that, according to letter from neighboring property owners, date to the 1960s. On July 28, 2008 the Code Compliance Section of the Planning Department received a complaint regarding the unpermitted construction of new retaining walls within the riparian corridor associated with Corcoran Lagoon. The violation was recorded on January 9, 2009 and on June 15, 2009 the property owner applied for a Riparian Exception and Coastal Development Permit (Application# 09-0226) in order to recognize the retaining wall construction and resolve the Code Violation.

In making the application, the property owner asserted that the new retaining walls were replacing the existing, failing block wall system and occupied the same physical location on the property as the old wall system. In their review of the documents associated with application #09-0226, Environmental Planning staff determined that the scope of work represented by the new retaining wall construction exceeded the extent of the pre-existing configuration, in terms of mass, visual impacts, and the extent of impacts to the coastal wetland habitat.

In a letter dated August 14, 2009 (Exhibit E), Planning Director Tom Burns stated that he agreed with the determination made by Environmental Plan staff and directed the staff planner to process application 09-0226 with a recommendation for denial. Prior to scheduling a public hearing to consider the application, the property owner elected, on November 6, 2009, to withdraw the application.

The subject application was made on October 4, 2010. While several minor changes were made to the project plans, the proposal does not represent a substantial revision to the application that was made in 2009 and does not incorporate the changes requested by Environmental Planning staff.

Project Setting

The project site is located adjacent to Corcoran Lagoon, a coastal wetland, in the Pleasure Point area of Live Oak. The southern half of the site, which is developed with the existing single-family dwelling, is relatively flat, while the northern half of the parcel slopes steeply toward Corcoran Lagoon at grades of between 20% and 50%. The riparian corridor associated with the lagoon extends 100 feet from the high water mark and encompasses the entire retaining wall system. Approximately 1,700 square feet of flat, vacant, usable area exists between the edge of the dwelling and the corridor. Vegetation on the site includes both native and non-native grasses and ground cover.

Aerial photos show the prior construction of a failing concrete block wall system in generally the same location as the current wall. The old wall consisted of a series of small blocks stepped up the hillside and was marginally visible from the wetland and surrounding properties in that it had become overgrown and screened by native and non-native vegetation. The new wall, in contrast, is a vertical, monolithic structure, constructed in two or three sections with little or no interspersed vegetation.

Development of surrounding parcels is characterized by single-family dwellings, which are constructed away from the 100-foot riparian corridor, near 24th Avenue. Only one of the surrounding properties shows evidence of development within the corridor, while the remaining parcels have restricted development to the relatively flat upland area to the south.

Zoning & General Plan Consistency

The subject property is a parcel of approximately 9600 square feet, located in the R-1-5-PP (Single-family residential, 5,000 square foot minimum lot size, Pleasure Point overlay) zone district, a designation which allows residential uses. The parcel is governed by both the R-UM (Urban Residential – Medium Density) and O-U (Urban Open Space) General Plan designations. The O-U designation generally conforms to the boundaries of the Riparian Corridor.

The retaining wall construction is an allowed use within the zone district; however the area of development is located partially within the section of the lot governed by the O-U General Plan designation, which exists to preserve open space uses in areas not suited to development. Therefore, the retaining wall construction does not appear to be consistent with the purpose of the O-U designation.

Local Coastal Program Consistency

The retaining wall that is proposed to be recognized is not in conformance with the County's certified Local Coastal Program, in that the wall is monolithic and significantly exceeds the size and scale of the previous block wall system and is not sited or designed to be visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. The newly constructed wall is much taller and more imposing than the previous wall system and is visible from many vantage points around the lagoon. While the proposed construction does not impact public coastal access, the wall does impact the visual character of the coastal wetland from both private property and public roadways.

Riparian Resources/Riparian Exception

The unpermitted retaining wall is entirely located within the 100-foot riparian corridor associated with Corcoran Lagoon, a coastal wetland. The construction of the wall is defined as "Development Activity" under Section 16.30.030 of the Riparian Corridor and Wetland Protection Ordinance. Section 16.30.050 lists activities that are exempt from the Riparian Protection Ordinance, including:

"The continuance of any preexisting nonagricultural use provided such use has not lapsed for a period of one year or more. This shall include change of uses which do not significantly increase the degree of encroachment into or impact on the riparian corridor as determined by the Planning director."

The unpermitted wall was constructed generally in areas where portions of the previous wall was located; however the new wall represents an intensification of the preexisting wall, both in terms of visual impact as well as impacts to the riparian habitat. Specifically, photographs of the old wall show that it was constructed of a series of concrete "gravity" blocks that were terraced with the slope and included gaps within and surrounding the individual block units. This older wall system followed the natural contours of the slope within the corridor and allowed riparian vegetation to re-establish in areas of disturbance. The original block walls did not accommodate outdoor residential use, such as hardscape patios or other flat usable space; rather the walls simply functioned to support the steep slopes. The replacement wall, in contrast, is constructed as a monolithic vertical concrete wall that is essentially impenetrable and therefore restricts the ability of the riparian system to re-establish in areas where it previously existed. Additionally, the current proposal allows a new expansion of outdoor recreational use by recognizing unpermitted grading and by including new stairs where none existed previously. This expanded use is shown in site photos, which depict lawn chairs placed atop the curved wall segment, where the grade has been flattened to create new outdoor living space. Historically, this area was characterized by sloping terrain and vegetation.

Because the construction of the new wall does increase the degree of impact on the riparian corridor and cannot be considered exempt from the provisions of the Riparian Protection Ordinance, a Riparian Exception would be required in order to recognize the construction. Prior to approval of a Riparian Exception, however, the Approving Body must be able to make five findings (listed and discussed in Exhibit B). The property owner was informed, in a letter from the Environmental Planning Principal Planner, dated September 23, 2009 (Exhibit E), that "the only way the Planning Department could make the required findings to support a Riparian

Exception for the new wall would be if a qualified geotechnical engineer verified that the walls are necessary to stabilize a failing slope on the property." During subsequent discussions with the County, it was determined that a Riparian Exception might be supported for the majority of the new wall, with some reductions in height, but that the curved, northernmost portion was *not* structurally necessary and therefore could not be given a Riparian Exception. Environmental Planning staff directed the applicant to remove the curved portion of the wall and re-grade the adjacent hillside to its natural, historic contour. A letter from the project geotechnical engineer (Exhibit F) verifies that the curved portion of the wall is *not* necessary for the stability of the slope and makes recommendations for how to remove this part of the wall and re-contour the adjacent hillside to return it to its natural configuration.

The current proposal retains the curved portion of the wall and, as designed, is not supported by the Riparian Exception findings.

Coastal Zone Regulations

The unpermitted retaining wall is located within the appealable area of the Coastal Zone and is subject to Chapter 13.20 of the County Code, requiring Coastal Development Permit approval. Section 13.20.130 specifies design criteria for coastal zone development and states: "All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas." Additionally, prominent natural landforms are to be retained. While a portion of the new retaining wall is proposed to be modified to create a less intrusive visual impact, the northernmost curved segment of the wall is proposed to be retained in its present state. In comparing the visual impact of the older pre-existing wall with the unpermitted wall, the visual impact is striking. The expanse of light colored concrete, when viewed from other vantage points around the lagoon, is clearly out of character with the surrounding riparian vegetation and naturally-sloping landforms. Though the applicant has submitted a visual simulation to show the proposed vegetative screening, the photograph depicting the existing site conditions clearly show the extent of the visual impact and degree to which the wall is not compatible with and negatively impacts the look and feel of the coastal wetland. Moreover, approval of this wall would permanently restrict riparian vegetation from re-establishing the site and would reduce the natural capacity of the riparian area to filter runoff entering the lagoon.

Modifying the topography to accommodate an expansion of outdoor living area into a coastal wetland is inconsistent with Section 13.20.130(b) (2) which requires site disturbance to be minimized. Further, natural landforms, such as Corcoran Lagoon, are required to be maintained, and the grading, construction, and encroachment of human activity into this protected area are not supported by County Coastal Zone Regulations.

Environmental Review

Article 18, Section 15270 of the Guidelines for Implementation of the California Environmental Quality Act (CEQA) provides a Statutory Exemption from the requirements of CEQA for projects which are disapproved. The staff recommendation is for project denial; therefore, no further Environmental Review is required.

Coastal Development Permit Findings

3. That the project is consistent with the design criteria and special use standards and conditions of this chapter pursuant to section 13.20.130 et seq.

This finding **cannot** be made, in that the development is not consistent with the surrounding neighborhood. With one exception, each of the surrounding lots along 24th Avenue is characterized by development that maintains and protects the 100-foot riparian corridor associated with the coastal lagoon. Section 13.20.130 of the Coastal Zone Regulations requires new development to be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas. Additionally, prominent natural landforms are to be retained. The unpermitted retaining wall system exceeds the size, the extent, and the use of the previously existing wall. The expanse of monolithic concrete, when viewed from various vantage points around the lagoon, is visually intrusive and clearly out of character with the surrounding riparian vegetation and naturally-sloping landforms.

Modifying the topography to accommodate an expansion of outdoor living area into a coastal wetland is inconsistent with Section 13.20.130(b) (2) of the Coastal Regulations which requires site disturbance to be minimized. Further, natural landforms, such as Corcoran Lagoon, are required to be preserved, and the grading, construction, and encroachment of human activity into this protected area are not supported by County Coastal Zone Regulations. The preservation of Corcoran Lagoon is, in part, dependent on adequate filtration capacity of stormwater runoff provided by a vegetated filter strip.

4. That the project conforms with the public access, recreation, and visitor-serving policies, standards and maps of the General Plan and Local Coastal Program land use plan, specifically Chapter 2: figure 2.5 and Chapter 7, and, as to any development between and nearest public road and the sea or the shoreline of any body of water located within the coastal zone, such development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act commencing with section 30200.

This finding **cannot** be made, in that the project site is located between the shoreline and the first public road and, while the unpermitted wall that is proposed to be recognized will not interfere with public access to the beach, ocean, or any nearby body of water, the County General Plan identifies the Corcoran Lagoon Overlook as a Priority Site and the Preferred Designated Priority Use as coastal wetland protection. The unpermitted retaining wall represents encroachment of development into the Corcoran Lagoon corridor in addition to limiting riparian habitat from re-establishing throughout the protected corridor. The negative impacts to the habitat as well as the visual intrusion of the retaining wall into the coastal wetland corridor are inconsistent with the Designated Priority Use of the Corcoran Lagoon Overlook Priority Site.

5. That the proposed development is in conformity with the certified local coastal program.

This finding **cannot** be made, in that the structure is not sited and designed to be visually compatible, in scale with, and integrated with the character of the surrounding neighborhood. The new wall exceeds the scale and visual impact of the previously existing wall and allows

further encroachment of outdoor living space into the protected coastal wetland corridor. The natural contours of the corridor have been modified to provide additional flat, usable areas for human outdoor activity and the wall has been constructed in a way that prevents the future re-establishment of riparian vegetation and habitat where these resources previously existed. This modification of the Corcoran Lagoon riparian corridor is inconsistent with General Plan Policy 8.6.6, which requires prominent natural landforms be protected.

General Plan/Local Coastal Program Policy 5.1.6 (Development Within Sensitive Habitats) states that any proposed development within or adjacent to sensitive habitat areas must maintain or enhance the functional capacity of the habitat. The unpermitted retaining wall construction is inconsistent with this policy in that the wall modifies the natural sloped contour of the riparian corridor and the monolithic concrete walls prohibit the re-establishment of riparian vegetation and habitat into the portions of the wetland corridor where they historically existed. Filtration of stormwater runoff entering Corcoran Lagoon will similarly be impaired by this development. Creating additional outdoor recreational area and/or living space within the protected habitat is contrary to the purpose and function of the this sensitive habitat associated with Corcoran Lagoon.

General Plan/Local Coastal Program Policy 5.2.5 (Setbacks from Wetlands) prohibits development within the 100 foot riparian corridor of all wetlands and allows exception to this setback only where consistent with the Riparian Corridor and Wetlands Protection Ordinance. As the findings necessary for a Riparian Exception, per Section 16.30.060 of the County Code, cannot be made (see Riparian Exception Findings, Exhibit B), the proposed development is inconsistent with this policy.

CCC Exhibit B
(page 19 of 64 pages)

EXHIBIT B

Riparian Exception Findings

1. That there are special circumstances or conditions affecting the property.

This finding **cannot** be made, in that the subject property extends an average of approximately 186 feet from 24th Avenue to the rear property line. The extent of the 100-foot riparian corridor varies between 72 and 93 feet from the rear property line, leaving a distance of 95-101 feet from the edge of the corridor to the front property line for development access and use of yard areas. The depth and developable area of this property is therefore appropriate for a residential use without the need for a Riparian Exception and comparable to that of most surrounding properties. There are no special circumstances that would support this finding.

2. That the exception is necessary for the proper design and function of some permitted or existing activity on the property.

This finding **cannot** be made in that grading and modifying the slope with permanent and publicly visible retaining walls within the 100-foot riparian corridor is not necessary for the proper design and function of the existing home, which is at least 60 feet away from the nearest wall. In addition, the unpermitted retaining walls in their proposed configuration are not necessary for the proper design and function of the riparian resource, as demonstrated by the project soils engineer.

3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property downstream or in the area in which the project is located.

This finding **cannot** be made in that the granting of the exception will be detrimental to the public welfare. The walls currently are and will continue to be partially visible from areas all around the lagoon. Human use of up to 65 feet of the 100-foot corridor provides less habitat for lagoon wildlife and generally lowers the quality of the riparian corridor.

4. That the granting of the exception, in the Coastal Zone, will not reduce or adversely impact the riparian corridor, and there is no feasible less environmentally damaging alternative.

This finding **cannot** be made in that the granting of this exception will reduce the riparian corridor by allowing use of up to 65 feet of the 100-foot riparian corridor for the resident's yard area. A restoration plan has been provided, however the concrete steps, grass area, and planting plan within the retaining walls clearly indicate the yard area use. Restoration of this area to a more natural, gently sloping grade without intrusive concrete retaining walls would be less environmentally damaging than the current proposal and would re-establish the natural functional riparian setback and buffer.

CCC Exhibit B
(page 20 of 64 pages)

ATTACHMENT 4
EXHIBIT B

5. That the granting of the exception is in accordance with the purpose of this chapter, and with the objectives of the General Plan and elements thereof, and the Local Coastal Program Land Use Plan.

This finding **cannot** be made in that the purpose of the Riparian Corridor and Wetlands Protection Ordinance is "to eliminate or minimize any development activities in the riparian corridor in order to preserve, protect, and restore riparian corridors..." The applicant has stated that the unpermitted walls were intended to replace the failing concrete block walls that occupied generally the same location. The failing concrete block walls and associated grading were never permitted, but were likely installed prior to adoption of the Ordinance. In any case, applying the purpose of the Ordinance to this property, the failing blocks should have been removed and the slope laid back to restore the corridor. Instead, the small failing walls were replaced with a large, monolithic, unpermitted permanent structure so as to provide more yard area for the home occupants.

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(page 21 of 64 pages)

EXHIBIT B

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: 101078

Assessor Parcel Number: 028-181-05

Project Location: 391 24th Avenue

Project Description: Proposal to recognize construction of two retaining walls (maximum height 3'-8" and 4'-0" respectively); to remove one 6' retaining wall; to perform/recognize ancillary grading of 9.5 cubic yards; demolish shed and restore riparian habitat

Person or Agency Proposing Project: Kim Tschantz

Contact Phone Number: (831) 685-1007

- A. _____ The proposed activity is not a project under CEQA Guidelines Section 15378.
B. _____ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. _____ Ministerial Project involving only the use of fixed standards or objective measurements without personal judgment.
D. X Statutory Exemption other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

Specify type: Section 15270 Project Which Are Disapproved

E. _____ Categorical Exemption

Specify type:

F. **Reasons why the project is exempt:**

Staff recommends denial of the proposal.

Robin Bolster-Grant, Project Planner

Date: _____

CCC Exhibit B
(page 22 of 64 page(s))

EXHIBIT C

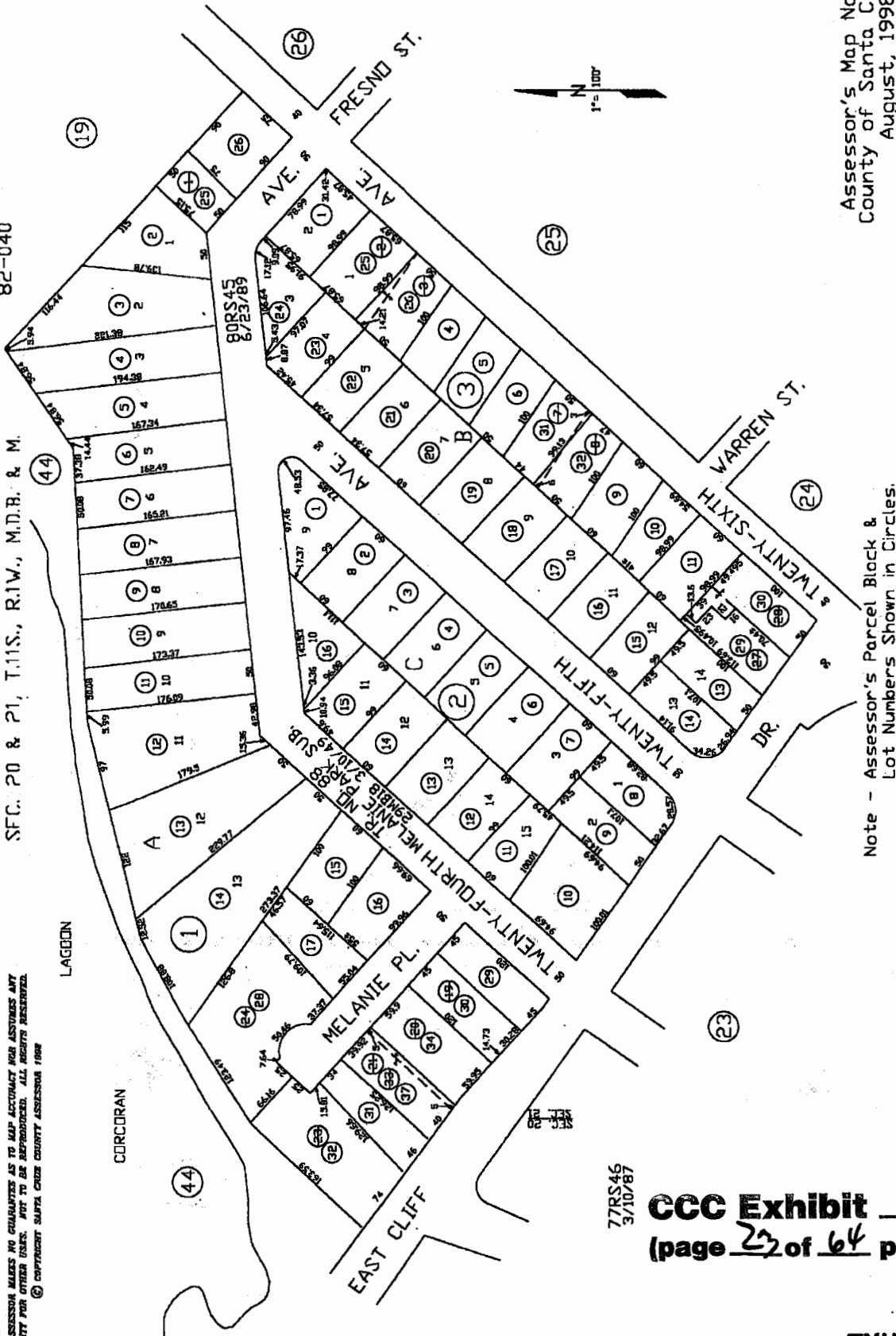
FOR TAX PURPOSES ONLY

AN ASSessor MAKES NO GUARANTEE AS TO MAP ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.
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POR. RANCHO ARROYO DEL RODEO
SFC. 20 & 21, T.11S., R.1W., M.D.B. & M.

Tax Area Code
82-040

28-18



Note - Assessor's Parcel Block & Lot Numbers Shown in Circles.

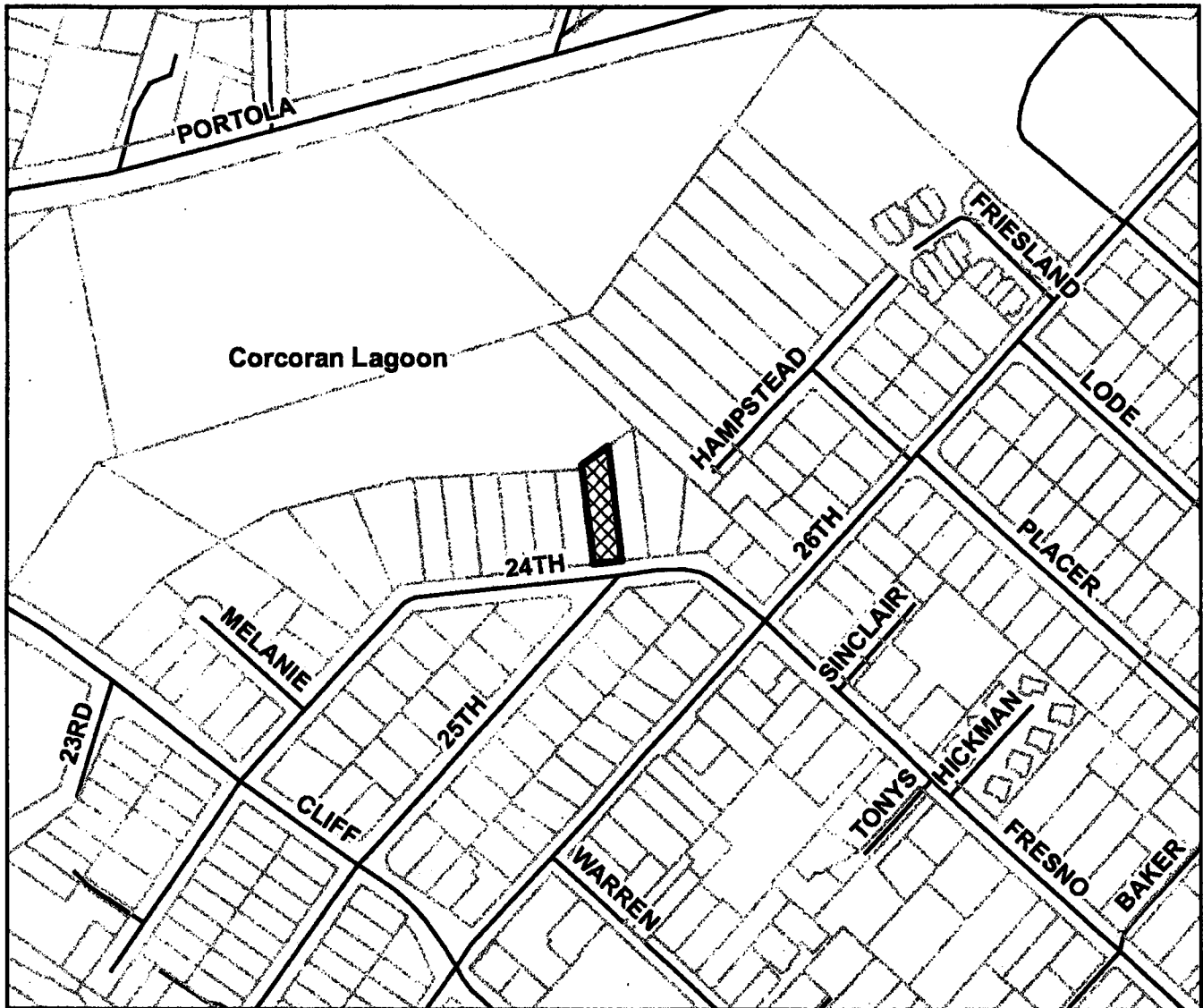
Assessor's Map No. 28-18
County of Santa Cruz, Calif.
August, 1998

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


EXHIBIT D

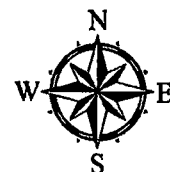


Location Map



LEGEND

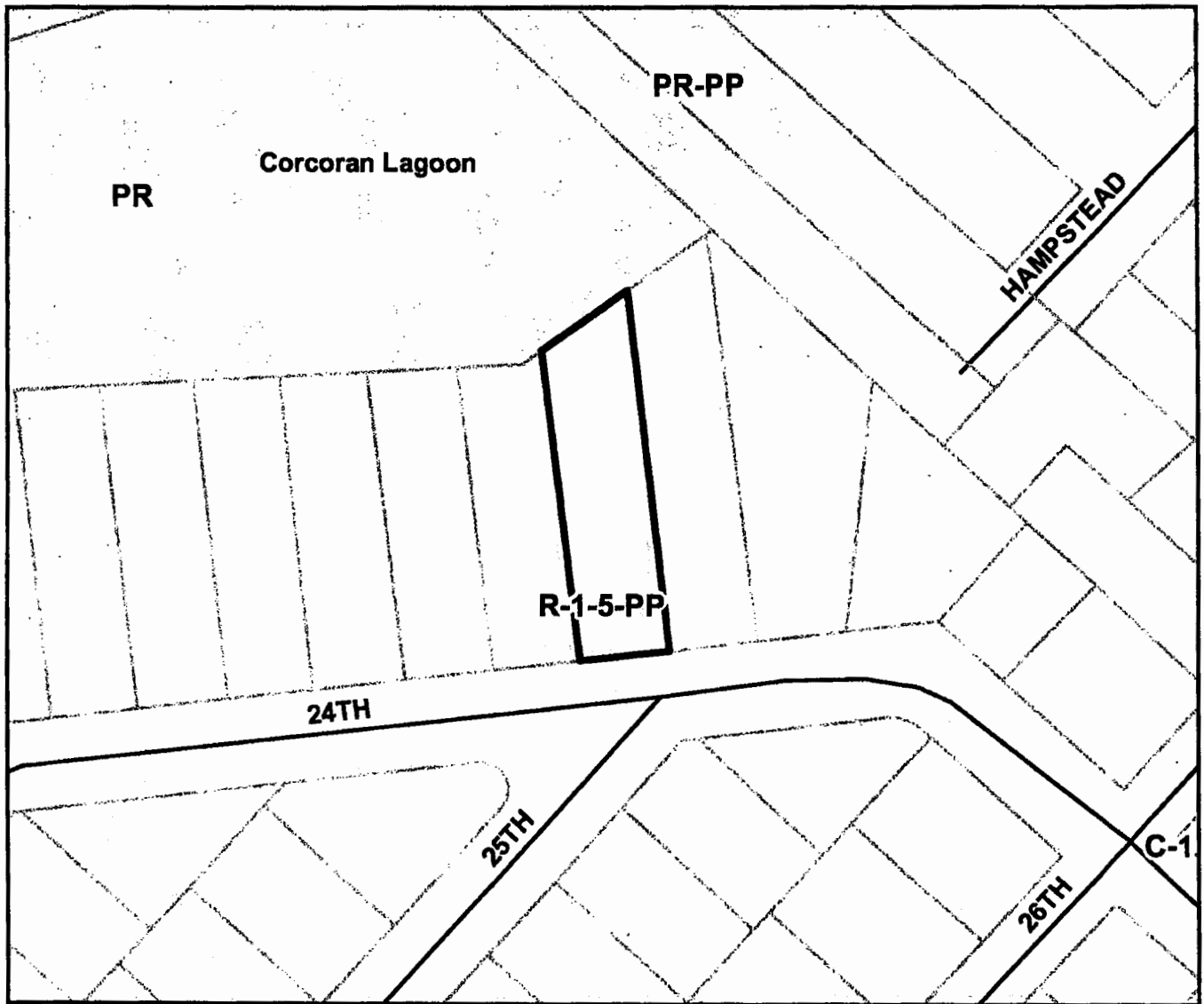
-  APN: 028-181-05
-  Assessors Parcels
-  Streets
-  Lakes



Map Created by
County of Santa Cruz
Planning Department
October 2010



Zoning Map



130 65 0 130 260 390 520 Feet

LEGEND



APN: 028-181-05



Assessors Parcels



Streets

RESIDENTIAL-SINGLE FAMILY

COMMERCIAL-NEIGHBORHOOD

PARK



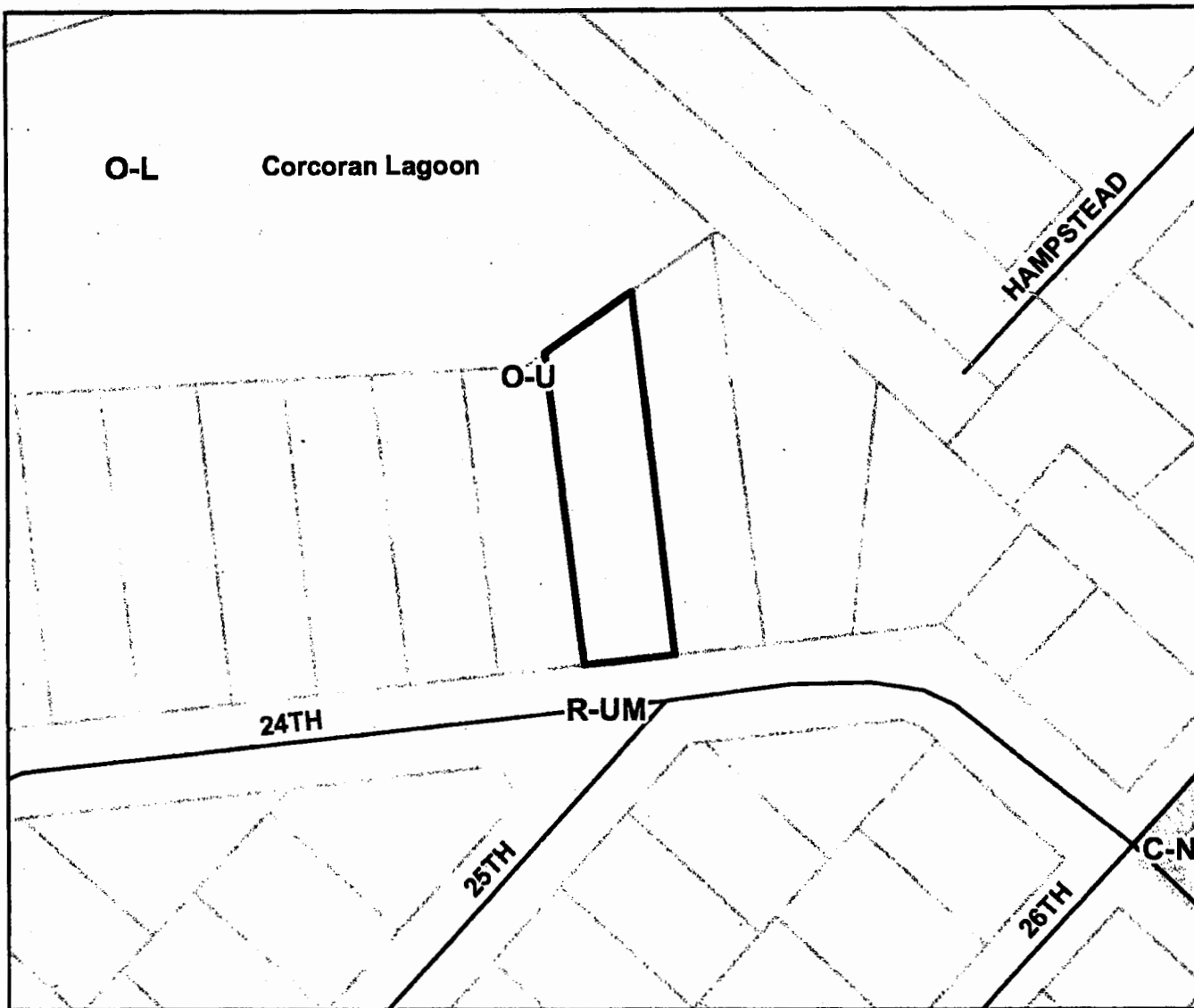
Map Created by
County of Santa Cruz
Planning Department
October 2010

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EXHIBIT D



General Plan Designation Map



130 65 0 130 260 390 520 Feet

LEGEND

APN: 028-181-05

Assessors Parcels

Streets

Residential - Urban Medium Density

Urban Open Space

Lake

Commercial-Neighborhood



Map Created by
County of Santa Cruz
Planning Department
October 2010



County of Santa Cruz, PLANNING DEPARTMENT

Discretionary Application Comments 101078

APN 028-181-05

Your plans have been sent to several agencies for review. The comments that were received are printed below. Please read each comment, noting who the reviewer is and which of the three categories (Completeness, Policy Considerations/Compliance, and Permit Conditions/Additional Information) the comment is in.

Completeness: A comment in this section indicates that your application is lacking certain information that is necessary for your plans to be reviewed and your project to proceed.

Policy Considerations/Compliance: Comments in this section indicate that there are conflicts or possible conflicts between your project and the County General Plan, County Code, and/or Design Criteria. We recommend that you address these issues with the project planner and the reviewer before investing in revising your plans in any particular direction.

Permit Conditions/Additional Information: These comments are for your information. No action is required at this time. You may contact the project planner or the reviewer for clarification if needed.

Code Compliance Review

Review No: | Review Date: 10/07/2010

Kevin Fitzpatrick (pln622) :

Coastal Commission Review

Review No: | Review Date: 10/07/2010

ROBIN BOLSTER (RBOLSTER) :

Drainage Review

Review No: | Review Date: 10/07/2010

GERARDO VARGAS (GVARGAS) :

Application No.: 101078

G_V

10/26/10

Completeness Comments:

Application has been approved for the discretionary stage in regards to drainage.

Miscellaneous Comments:

1. Please clarify how the backyard surface runoff will be controlled and discharged from wall. Are you proposing for runoff to cascade over wall or are you planning to put in a drainage structure at the top of the wall to carry runoff to an appropriate point of release?

CCC Exhibit **B**
(page **27** of **64** pages)

EXHIBIT B

Print Date: 10/29/2010
Page: 1

<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>REVISION</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>10/1/2008</td> <td>Initial Design</td> </tr> <tr> <td>2</td> <td>10/1/2008</td> <td>Revised Design</td> </tr> <tr> <td>3</td> <td>10/1/2008</td> <td>Final Design</td> </tr> </tbody> </table>		REVISION	DATE	DESCRIPTION	1	10/1/2008	Initial Design	2	10/1/2008	Revised Design	3	10/1/2008	Final Design	<p>PROJECT INFORMATION</p> <p>PROJECT NAME: Pitt Residence</p> <p>PROJECT ADDRESS: 391 24th Santa Cruz, California 95062</p> <p>CLIENT: Mr. & Mrs. Pitt</p> <p>DESIGNER: Grounded Modern Landscape Architecture</p> <p>DATE: 10/1/2008</p> <p>SCALE: AS SHOWN</p>	
REVISION	DATE	DESCRIPTION													
1	10/1/2008	Initial Design													
2	10/1/2008	Revised Design													
3	10/1/2008	Final Design													
<p>GENERAL NOTES</p> <ol style="list-style-type: none"> 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 2. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 3. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 4. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 5. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 6. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 7. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 8. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 9. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 10. THE DESIGNER HAS CONDUCTED A VISUAL ANALYSIS OF THE PROJECT AND HAS DETERMINED THAT THE PROJECT IS IN ACCORDANCE WITH THE CITY OF SANTA CRUZ, CALIFORNIA, AND THE CALIFORNIA CIVIL CODE, AND THE CALIFORNIA LAND DEVELOPMENT CODE. 		<p>DESIGNER'S CERTIFICATE</p> <p>I, the undersigned, a duly licensed and qualified landscape architect, do hereby certify that the design shown on the attached drawings is the design of the undersigned, and that the design is in accordance with the City of Santa Cruz, California, and the California Civil Code, and the California Land Development Code.</p> <p>DATE: 10/1/2008</p> <p>DESIGNER: Grounded Modern Landscape Architecture</p>													
<p>AREA MAP</p>		<p>LOCATION MAP</p>													
<p>Site Map</p>		<p>Location Map</p>													
<p>PROJECT PURPOSE</p> <p>TO PROVIDE A LANDSCAPE DESIGN FOR THE PROJECT, INCLUDING THE DESIGN OF THE LANDSCAPE, THE DESIGN OF THE BUILDING, AND THE DESIGN OF THE SITE.</p>		<p>PROJECT TEAM</p> <p>DESIGNER: Grounded Modern Landscape Architecture</p> <p>CLIENT: Mr. & Mrs. Pitt</p> <p>DATE: 10/1/2008</p>													
<p>PLANNING & BUILDING</p> <p>DESIGNER: Grounded Modern Landscape Architecture</p> <p>CLIENT: Mr. & Mrs. Pitt</p> <p>DATE: 10/1/2008</p>		<p>PUBLIC WORKS</p> <p>DESIGNER: Grounded Modern Landscape Architecture</p> <p>CLIENT: Mr. & Mrs. Pitt</p> <p>DATE: 10/1/2008</p>													
<p>APPROVALS</p> <p>DESIGNER: Grounded Modern Landscape Architecture</p> <p>CLIENT: Mr. & Mrs. Pitt</p> <p>DATE: 10/1/2008</p>		<p>PERMITS</p> <p>DESIGNER: Grounded Modern Landscape Architecture</p> <p>CLIENT: Mr. & Mrs. Pitt</p> <p>DATE: 10/1/2008</p>													

2 Failed Slope & Modular Crib Wall (from side)

3 Close-up of Failed Modular Crib Wall

Call **Order/Products** modular crib with pump out a concrete anchoring order (optional)

4 Failed Slope & modular Crib Wall (from below)

Effect of Protein Intake on CRD and Milk Yield

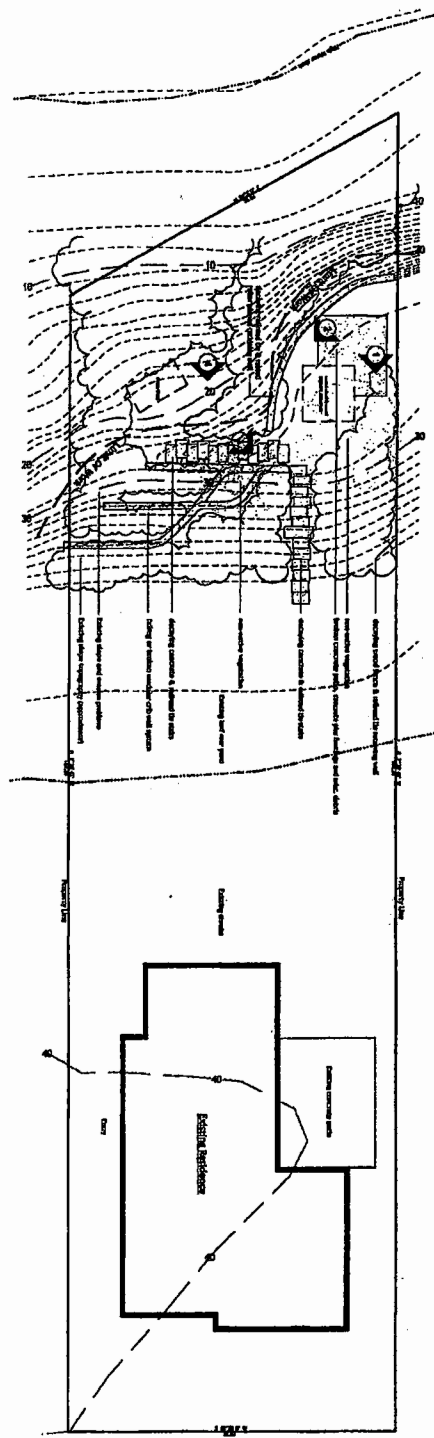


FIGURE 1

Photo location and direction

[illegible]

Pitt Residence

391 24th Santa Cruz, California 95062

Pre-construction Condition Site Plan

CCC Exhibit

(page 42 of 64 pages)

GROUNDED
Modern Landscape Architecture

EXHIBIT DATE: Dec., 2008
 EXHIBIT DATE: Apr., 2011

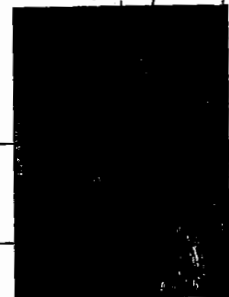
EXHIBIT A

Reinforced all British
concrete ducts and ribs
slabs. —————
Grouted gaps after to
match neighbouring
property)



1 Curved Poured in Place Lower Concrete Wall

Case 3: Please indicate how you responded to the following statement: "I am not interested in the company's products." (Please circle the number that best describes your response.)



2 Angled Poured in Place Lower Concrete Wall

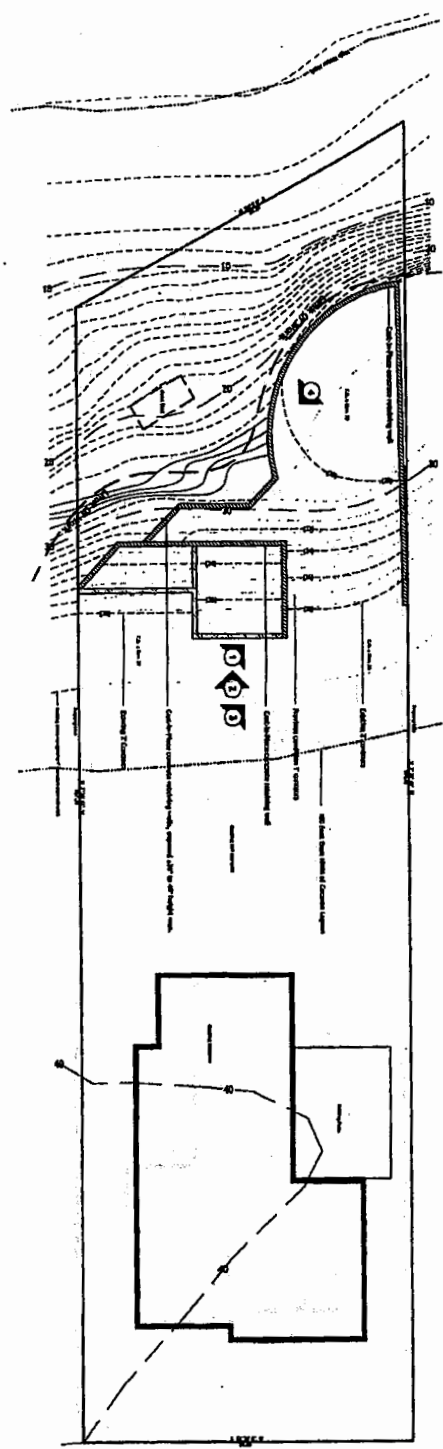
Case 10-19-03 (including -
wall) (200 of wall to match
neighboring grade surface)



3 Poured in Place Concrete Wall @ Property Line



4 Upper & Lower Poured in Place Concrete Walls



EXTENSION		APPROVED		SHEET		APPROVALS	
						<div>3</div> <div>3 OF 7</div>	
SPECIAL NOTES: NONE IN FILE AND CONSTRUCTION, ONLY FROM THE FIELD. IF ANY CHANGES TO THE PROJECT ARE MADE, THEY MUST BE MADE IN THE FIELD AND IN THE PROJECT RECORDS. VENDOR'S TO BE REVIEWED.		PAVERS & RESURFACING WORKED BY:		WATER DIST. WORKED BY:		FIRE PROTECTION DIST. WORKED BY:	
						ENGINEERING SERVICES DIST. WORKED BY:	
						PLANNING & BUILDING WORKED BY:	
						PUBLIC WORKS WORKED BY:	
						APPROVED BY:	
						RECOMMENDED BY:	

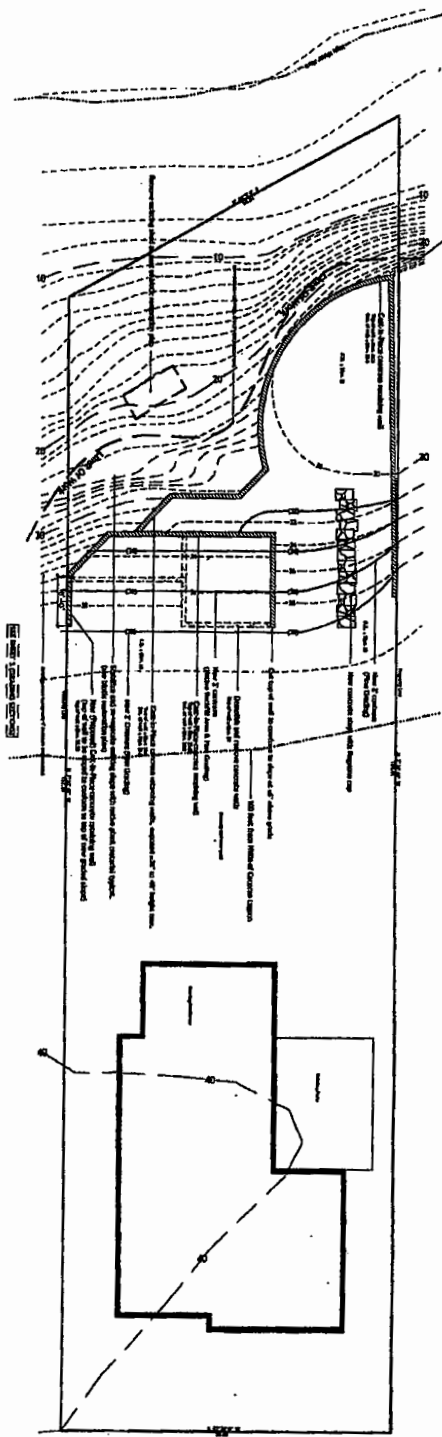
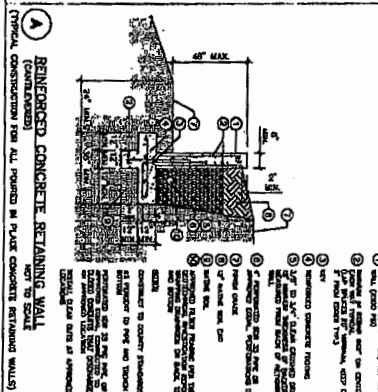
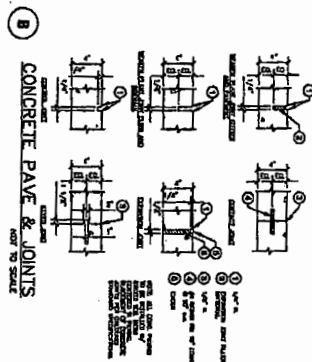
BEST MANAGEMENT PRACTICES REQUIREMENTS

THE FOLLOWING BEST MANAGEMENT PRACTICES (BMPs) ARE REQUIRED FOR ALL NEW DEVELOPMENT PROJECTS TO PREVENT SOIL EROSION, SEDIMENTATION, AND POLLUTION OF ADJACENT WATERBODIES. THESE BMPs ARE BASED ON THE CURRENT BEST MANAGEMENT PRACTICES FOR CONSTRUCTION ACTIVITIES IN CALIFORNIA, AS SET FORTH IN THE CALIFORNIA BEST MANAGEMENT PRACTICES MANUAL, 2008 EDITION, PUBLISHED BY THE CALIFORNIA WATER RESOURCES DIVISION, DEPARTMENT OF WATER. THE BMPs ARE INTENDED TO BE USED IN CONJUNCTION WITH THE CALIFORNIA BEST MANAGEMENT PRACTICES MANUAL AND THE CALIFORNIA BEST MANAGEMENT PRACTICES MANUAL, 2008 EDITION, PUBLISHED BY THE CALIFORNIA WATER RESOURCES DIVISION, DEPARTMENT OF WATER.

CONTRACTOR BMP REQUIREMENTS

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN, INSTALLATION, MAINTENANCE, AND REMOVAL OF ALL BMPs REQUIRED FOR THE PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN, INSTALLATION, MAINTENANCE, AND REMOVAL OF ALL BMPs REQUIRED FOR THE PROJECT.
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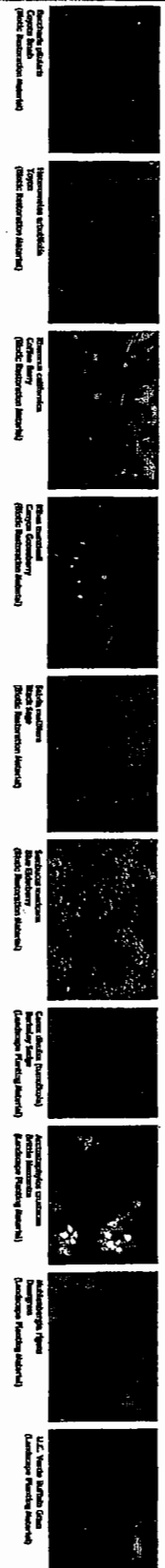
REVISION	DATE	DESCRIPTION
1	01/11/2011	ISSUED FOR PERMIT
2	01/11/2011	REVISIONS TO BMP REQUIREMENTS
3	01/11/2011	REVISIONS TO BMP REQUIREMENTS
4	01/11/2011	REVISIONS TO BMP REQUIREMENTS
5	01/11/2011	REVISIONS TO BMP REQUIREMENTS
6	01/11/2011	REVISIONS TO BMP REQUIREMENTS
7	01/11/2011	REVISIONS TO BMP REQUIREMENTS
8	01/11/2011	REVISIONS TO BMP REQUIREMENTS
9	01/11/2011	REVISIONS TO BMP REQUIREMENTS
10	01/11/2011	REVISIONS TO BMP REQUIREMENTS

Pitt Residence
351 24th Santa Cruz, California 95062

Proposed Grading/Drainage/Erosion Control Plan

CCG Exhibit B

DATE: 01/11/2011
DRAWN BY: [Signature]
CHECKED BY: [Signature]
APPROVED BY: [Signature]



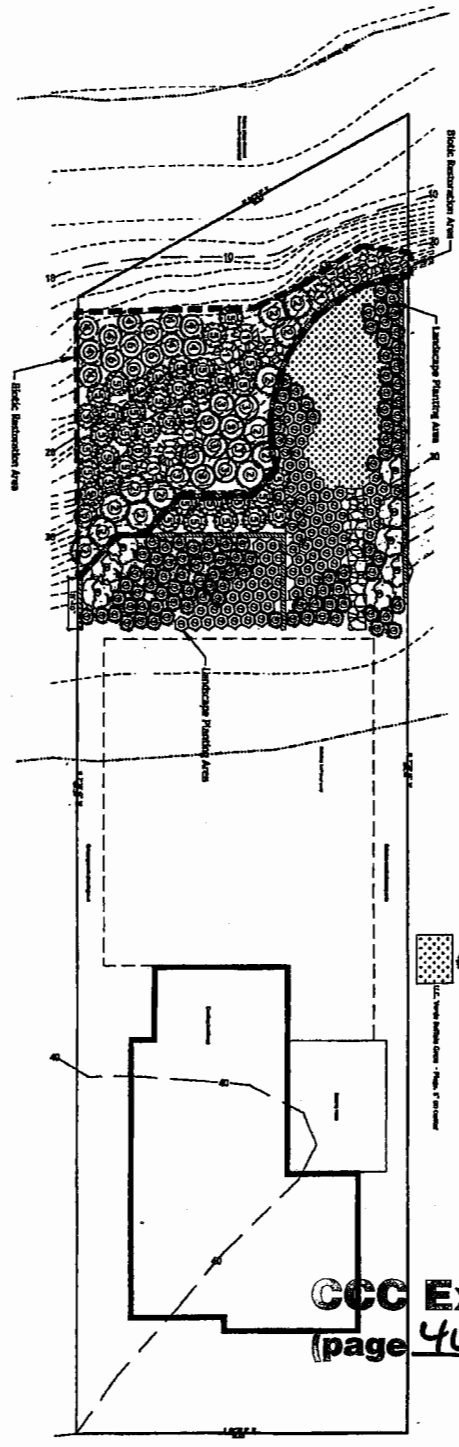
PROJECT NO. 2008-0001
 DATE: 10/1/2008
 PROJECT NAME: Biotic Restoration Plan
 PROJECT LOCATION: 391 24th Santa Cruz, California 95062

Pitt Residence
 391 24th Santa Cruz, California 95062
Biotic Restoration Plan



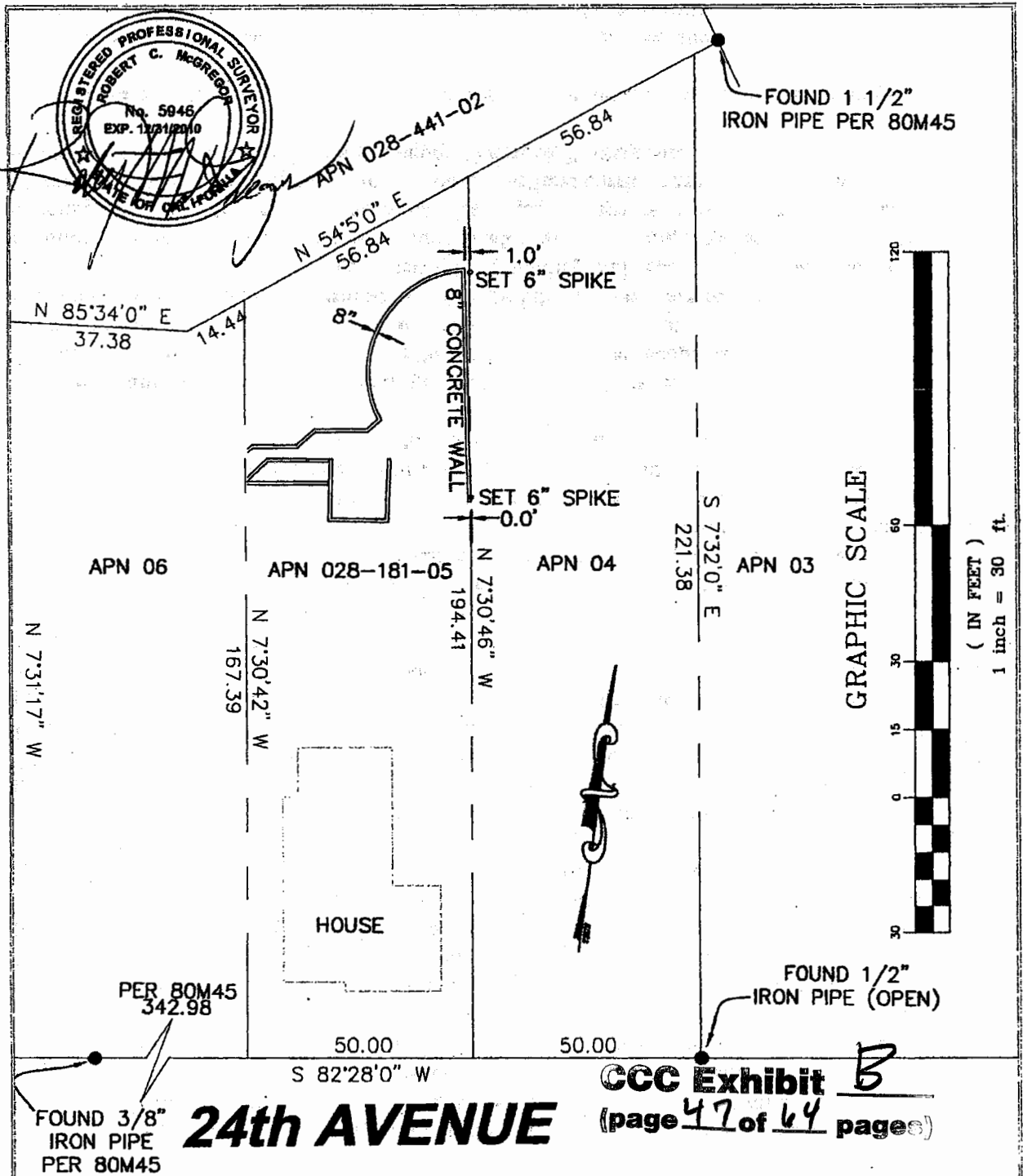
SCALE: 1/8" = 1'-0"
 SHEET 6 OF 7

Biotic Plant Restoration List
 1. Native Plant Species - 1 species, 1 specimen
 2. Native Plant Species - 1 species, 1 specimen
 3. Native Plant Species - 1 species, 1 specimen
 4. Native Plant Species - 1 species, 1 specimen
 5. Native Plant Species - 1 species, 1 specimen
 6. Native Plant Species - 1 species, 1 specimen
 7. Native Plant Species - 1 species, 1 specimen
 8. Native Plant Species - 1 species, 1 specimen
 9. Native Plant Species - 1 species, 1 specimen
 10. Native Plant Species - 1 species, 1 specimen
 11. Native Plant Species - 1 species, 1 specimen
 12. Native Plant Species - 1 species, 1 specimen



DATE	APPROVED	REVISIONS
10/1/2008	[Signature]	1. Initial Design
10/1/2008	[Signature]	2. Final Design
10/1/2008	[Signature]	3. Final Design
10/1/2008	[Signature]	4. Final Design
10/1/2008	[Signature]	5. Final Design
10/1/2008	[Signature]	6. Final Design
10/1/2008	[Signature]	7. Final Design
10/1/2008	[Signature]	8. Final Design
10/1/2008	[Signature]	9. Final Design
10/1/2008	[Signature]	10. Final Design
10/1/2008	[Signature]	11. Final Design
10/1/2008	[Signature]	12. Final Design

CCC Exhibit B
 (page 46 of 64 page)



<p>MCGREGOR LAND SURVEYS P.O. BOX 1871 SOQUEL, CA 95073 (831) 479-1953</p>	<p>SCALE: 1"=30' DATE: 12-22-10 DRAWN: R.M. CHECKED: R.M. JOB NO.: 5008 SHEETS: 1 OF 1</p>	<p>SURVEYOR'S MAP PREPARED AT THE REQUEST OF MICHAEL PITT APN 028-181-05 SANTA CRUZ COUNTY, CA MCGREGOR LAND SURVEYS DEC 12, 2010</p>
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CCC Exhibit B
 (page 47 of 64 pages)

CYPRESS ENVIRONMENTAL AND LAND USE PLANNING

P.O. BOX 1844

APTOS CALIFORNIA

(831) 685-1007

kimt@cypressenv.com

April 27, 2011

Steve Guiney, Deputy Zoning Administrator
County of Santa Cruz Planning Department
701 Ocean Street, 4th floor
Santa Cruz, CA 95060

SUBJECT: Mike Pitt Project at 391 24th Avenue (APN 28-181-05); Applic. 101078

Dear Steve,

Introduction

As you know from the testimony for Item #1 at the April 15, 2011 Zoning Administrator meeting, the primary disagreement between the applicant's proposed project and the view of Planning staff is the inclusion of a 43-foot curved segment of the lower retaining wall as part of the project. This letter discusses the curved wall segment in regards to the associated non-conforming use of that portion of the rear yard adjoining the curved wall segment. (See Attachment 1).

At the end of the public hearing on April 15 you indicated that the regulations for non-conforming uses in the County Code state when new replacement structures are built, the new structures must conform to current regulations. I believe your statement was in reference to curved wall segment and the 475 square foot level terraced area directly behind it. As you know, both are located within 100 feet from the high water mark of Corcoran Lagoon and therefore defined by County Code Chapter 16.30 as "riparian corridor" regardless of the habitat characteristics within the 100 foot area. I agree that new replacement *structures* must comply with current code regulations. But I do not think that the replacement of an existing structure associated with a non-conforming use of the land results in a loss of non-conforming use rights of the associated land. At issue here is Mr. Pitt's right to continue normal outdoor human use activities on the level terrace behind the curved retaining wall segment even though the terrace is located within the riparian corridor. I believe the provisions of the County Code support Mike Pitt's non-conforming use rights to the 475 square foot level terraced area use. The new curved segment of the retaining wall is necessary to continue that use in a manner that does not jeopardize the wetland habitat downslope from the level terrace. These issues are discussed below.

County Code Chapter 13.10 (Zoning Ordinance)

Most of the information about non-conforming uses and structures in the County Code is provided by Code Sections 13.10.260-13.10.265. However, the language in these sections of the

Environmental Planning and Analysis, Land Use Consulting and Permitting

CCC Exhibit B

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ATTACHMENT 2

Code is oriented towards zoning issues, primarily in regards to site standards for buildings and the relationship of existing land uses on a parcel to those allowed in the zoning district where the parcel is located. Neither of these issues is germane to the pre-existing non-conforming land use issue of the Mike Pitt project. However, there is one provision in Section 13.10.261 that is applicable to the Pitt project. This provision is:

(c) Nonstructural Uses and Home Occupations Regulations.

1. Nonstructural uses and home occupations shall not be expanded.
2. Loss of nonconforming status occurs after a continuous six month cessation of use.

Both public hearing testimony and documents we have submitted to Planning staff show outdoor human use of the lower terraced area has occurred since, at least, the mid-1960's and has not expanded from the area it originally occupied. While much of the project site was previously improved as a series of stepped terraces, the 475 square foot area has continuously been used as a single level terraced area for typical residential rear yard human uses of gardening, storage in a shed, concrete patio or just outdoor sitting on lawn turf during the past 48 years. Therefore, this is a non-structural non-conforming use that has not been expanded or intensified. One of the purposes of the new curved retaining wall is to maintain this level terrace within the rear yard with a structurally sound wall rather than rely on the previous failing wall that was beginning to generate erosion problems downslope of the terraced area.

County Code Chapter 16.30 (County Riparian and Wetland Protection Ordinance)

Other than the provision discussed above, it does not appear Code Sections 13.10.260–13.10.265 provide much guidance regarding non-conforming uses within a County designated riparian corridor such as the level terrace area on Mike Pitt’s property. However, Code Chapter 16.30 does provide guidance regarding how to view non-conforming uses that existed prior to the adoption of Chapter 16.30. Section 16.30.050 exempts pre-existing uses from the need for a Riparian Exception as stated below:

16.30.050 Exemptions.

The following activities shall be exempt from the provisions of this chapter.

- (a) The continuance of any preexisting nonagricultural use, provided such use has not lapsed for a period of one year or more. This shall include change of uses which do not significantly increase the degree of encroachment into or impact on the riparian corridor as determined by the Planning Director.
- d) Drainage, erosion control, or habitat restoration measures required as a condition of

County approval of a permitted project. Plans for such measures shall be reviewed and approved by the Planning Director.

Based on this language, it appears that while the new 43-foot curved wall segment may need a Riparian Exception due to it being a newly built structure, the level terrace area and its use for common outdoor activities does not. Mr. Pitt can continue normal rear yard uses on this 475 square foot portion of his rear yard without being subjected to the recommendation by Planning staff to grade back the face of the terrace to a 2:1 slope. This recommendation would convert a portion of the level terrace to a steep unusable slope and air space; thereby removing a portion of the 475 square foot area. It is our belief that the County cannot unilaterally take the property owner's use of the level terrace or require any portion of it to be altered in such a way as to make it no longer useable for the type of uses that occurred there during the past 48 years (or possibly longer). As a new retaining wall was and is required to maintain the continued use of the terrace for outdoor human uses while preventing erosion into the wetland habitat farther downslope, the 43-foot segment of the new retaining wall should be included in any approval of a Riparian Exception for this project.

Conclusion

During discussions with Planning staff about this project, Mr. Pitt and I have agreed to all the staff recommendations with the single exception of removing the curved wall segment. The staff recommendations that project plans show will be implemented with project approval include:

- Removal of 119 lineal feet of retaining wall, including all of the tallest walls;
- Grading to create a new slope in the area where 6-foot high walls will be removed; and
- Inclusion of the property line wall constructed by the neighbor.

It should be noted that the grading we agree to do would include converting some of the land previously used as terraced garden area to unusable slope. (Refer to photo of old terraces near pump house shed submitted at April 15 ZA meeting). However, unlike the issue with the level terrace area, grading in the area of the existing 6-foot high walls is an action Mr. Pitt voluntarily agrees to implement. Similarly, Mr. Pitt voluntarily agrees to implement a habitat restoration plan within that portion of the riparian corridor containing wetland habitat.

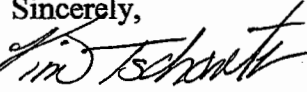
To ask the property owner to also convert a substantial portion of the level terrace area to unusable slope goes beyond normal administration of County regulations and would result in a "taking" of non-conforming use rights. The curved segment of the wall is necessary to maintain the pre-existing use of the level terrace area in a manner that will not jeopardize the wetland habitat area downslope with erosion and sedimentation.

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(page 50 of 64 pages)

ATTACHMENT 5

Mike Pitt Project at 391 24th Avenue
April 27, 2011
Page 4

Sincerely,



Kim Tschantz, MSP, CEP

Attachment 1 – Location of Curved Wall Segment and Adjoining Level Terrace Area

cc: Wanda Williams, Assistant Planning Director
Robin Bolster-Grant, Project Planner
Mike Pitt, property owner

Pitt-Ltr to ZA on Non-conform Uses

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CYPRESS ENVIRONMENTAL AND LAND USE PLANNING

P.O. BOX 1844

APTOS CALIFORNIA

(831) 685-1007

kimt@cypressenv.com

April 11, 2011

Steve Guiney, Zoning Administrator
County of Santa Cruz Planning Department
701 Ocean Street, 4th floor
Santa Cruz, CA 95060

**SUBJECT: Mike Pitt Project at 391 24th Avenue (APN 28-181-05); Applic. 101078
Staff Report Errors**

Dear Steve,

Introduction

I have recently reviewed the Planning staff report for the Mike Pitt project prepared for the April 15, 2011 Zoning Administrator hearing. There are several inaccuracies in the staff report that should be brought to your attention prior to the hearing. These issues are discussed below. I have also attached a copy of my application cover letter to Planning staff dated October 1, 2010 which documents and supports my conclusions about the inaccuracies contained in the staff report. Included in my October 1 letter is a discussion on how the project is consistent with applicable General Plan/LCP policies and implementing sections of Code Chapter 13.20. (See pages 4-7 of attached letter). The consistency discussion was included to show how and why findings should be made to approve the proposed project. Attachments to my October 1 letter are not included in this mailing; however, I understand they are retained in Planning staff's project file.

Project Description (Page 1)

The project description should be revised as shown below to accurately describe the project. Overstricken text indicates language that should be removed and bold text indicates new language that should be added.

Proposal to recognize the construction of ~~two~~ **three** retaining walls (maximum height 3'-8", 4'-0" and **4'-10"** respectively), to remove one 6' **high** retaining wall of **119 feet in length**, to ~~recognize~~ **propose** the placement of ~~stairs~~ **concrete steps** in the riparian corridor, to perform and/or recognize ancillary grading of 9.5 cubic yards, to demolish ~~two sheds~~ **one shed** and to restore **1,384 sq. ft. of** riparian habitat.

Among other corrections, the revised wording above includes the property line wall constructed

Environmental Planning and Analysis, Land Use Consulting and Permitting

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by the neighbor that was included in this project at the insistence of Planning staff. This is the third wall of the project.

Parcel Size (Page 1)

According to the Tax Assessor information provided on the County GIS website, the site area of the parcel is 9,645 square feet. The staff report states the site area is 9,627 square feet.

Changes to Project Plans (Page 3, Paragraph 2)

The sentence "While several minor changes were made to the project plans..." implies less than moderate revisions were made to the first submittal made under Application 09-0226 to formulate the current project. The current project includes deleting 156 lineal feet of new retaining wall which was proposed in the 2009 plan submittal as well as deletion of substantial hardscape (patio) surfacing. The current project does not include any hardscape surfacing. Therefore, this sentence should be revised as follows:

"While several ~~minor~~ major changes were made to the project plans..."

Project Setting – Description of Wall (Page 3, Paragraph 4)

The new wall system is described as being "a vertical, *monolithic structure*, constructed in two or three sections *with little or no interspersed vegetation*". (Italics mine). The use of the term monolithic structure is subjective with no basis in fact. The description including little or no vegetation does not acknowledge the plantings provided by landscape plan which is part of the project.

The Merriam-Webster Dictionary defines the term "monolith" as "a single great stone often in the form of an obelisk or column; a massive structure or an organized whole that acts as a single unified powerful or influential force". The proposal would *remove* 119 lineal feet of 6-foot high concrete wall at the top of the slope and retain the property line wall and the two concrete walls lower on the slope, which have a dominant height of 3.5 feet. No portion of either of the latter two walls will exceed a height of 4 feet). Therefore, the project should not be characterized a "monolithic" according to the correct definition of the term.

The project landscape and habitat restoration plan (Project Plans, Sheet 6) shows substantial plantings of native shrubs, sedges and grasses appropriate for the upper zone of wetland/riparian habitat. This planting includes several black sage shrubs between the two proposed primary walls that stabilize the slope.

Project Setting – Other Description within the Corridor (Page 3, Paragraph 5)

The statement "Only one of the surrounding properties shows evidence of development within

the corridor” is incorrect. In fact, there are, at least, six other nearby properties with development within the corridor of Corcoran Lagoon. The attached letter to County Planning, dated October 1, 2010, discusses two properties where Panning staff has approved Riparian Exceptions for development less than 100 feet from the high water mark of the south shore of Corcoran Lagoon. These properties are located at 401 24th Avenue and 469 Hampstead Way. (See page 3 of attached letter).

In addition, the montage of neighborhood photos, which were required to be submitted with other materials for this application, note several other properties with development within the wetland/riparian corridor. These properties are located at 351 24th Avenue, 361 24th Avenue, 463 Hampstead Way and 475 Hampstead Way. Please refer to the labeling on the reverse side of previously submitted photographs.

Local Coastal Program Consistency (Page 4, Paragraph 1)

The statement that “...the wall does impact the visual character of the coastal wetland from both private property and public roadways” may be a fair description of the *existing* condition of the walls but fails to correctly evaluate the project proposal.

The project before you includes the elimination of 119 lineal feet of retaining wall which currently is the most visible part of the unpermitted construction. In addition, the project includes changing the current concrete gray color of the walls to a shade of brown by permanent staining. Lastly, the landscape/habitat restoration plan will have a secondary benefit of visually screening the remaining retaining walls from offsite views after three to five years of growth. The visual simulations (Project Plans, Sheet 7) show that implementation of the project will not result in impacting the visual character of the area.

Riparian Resources/Riparian Exception-Previous Uses (Page 4, Paragraph 4)

The statement that “the original block walls did not accommodate outdoor residential use, such as hardscape patios or other flat useable space; rather the walls simply functioned to support the steep slopes” is incorrect. This sentence should be deleted from the staff report.

Photographic and written letter documentation has been submitted to Planning staff to both illustrate and to explain the subject area was indeed used for outdoor residential uses since *prior* to the County’s adoption of Code Chapter 16.30 in 1977. The retaining wall area of the property has historically been used to contain a large storage shed and a second pump house shed and to cultivate a substantial vegetable garden on a series of level useable terraces.

The paragraph continues with the statement describing the walls proposed to remain “as a monolithic vertical concrete structure that is essentially impenetrable and therefore restricts the ability of the riparian system to re-establish in areas where it previously existed.” There are several inaccuracies and problems with this statement. First, describing the walls proposed to

remain as “monolithic” is not consistent with the dictionary definition of the word as discussed above. Second, stating the proposed wall will prevent riparian habitat to re-establish itself is a conclusionary statement without any supporting evidence. Third, to state that the riparian system should re-establish itself where it has not existed for 48 years or longer is contrary to the language and intent of Code Chapter 16.30 which recognizes property owners’ rights to continue both agricultural and non-agricultural uses within the corridor that existed *prior* to adoption of Chapter 16.30. It is also contrary to generally accepted law regarding pre-existing non-conforming uses. As stated in my October 1, 2010 letter, no riparian habitat was removed when the existing walls were constructed.

The last sentence in this paragraph stating “historically, this area was characterized by sloping terrain and vegetation” is incorrect for, at least, the period of time from the mid-1960’s until today. The subject area of the property has been used for residential gardening and storage since, at least 1963. (See letter from Anthony Mendivil; Exhibit E of ZA staff report). The referenced sentence in the staff report should be deleted or revised to acknowledge the area has been used for residential gardening and storage uses for, at least, 48 years.

Coastal Zone Regulations (Page 5, Paragraph 3)

The description of the project including an “expanse of light colored concrete...” is incorrect. The existing light grey color of the retaining walls is not proposed for this project. Rather, the walls will be colored a shade of brown that most appropriately blends with the colors of the riparian habitat.

The last sentence of this paragraph stating “...approval of this wall would permanently restrict riparian vegetation from re-establishing the site and would reduce the natural capacity of the riparian area to filter runoff entering the lagoon” is another conclusionary statement with no supporting statements, facts or evidence. The sentence is also contrary to the language and intent of Code Chapter 16.30 as discussed above.

Coastal Zone Permit Findings (Page 14, All paragraphs)

The staff prepared findings are based on several inaccurate statements in the staff report. These inaccuracies are discussed above and include such statements as:

- “With one exception, each of the surrounding lots along 24th Avenue...maintains and protects the 100-foot corridor.”
- “The expanse of monolithic concrete...”
- “...limiting riparian habitat from re-establishing throughout the protected corridor.”
- “...allows further encroachment of outdoor living space...”

In addition, the second paragraph of the first finding (labeled as finding #3) begins by stating the project has modified the topography of the slope, which is a very misleading statement. The slope

topography was modified over 48 years ago when it was terraced for vegetable gardening and storage shed uses. The additional modification of the slope that occurred in 2009 was minor compared to what transpired during or before the 1960's. As findings are required to be based on facts, the Coastal Zone Permit findings prepared for this project are inadmissible.

Riparian Exception Findings (Page 16, All paragraphs)

Finding #1 incorrectly states "there are no special circumstances that would support this finding" regarding special circumstances or conditions affecting the property. As stated on page 1 of my attached letter there are certainly special conditions affecting the subject parcel which most other parcels throughout the County are not encumbered with. Foremost among these conditions is the fact that 57% of the urban-sized parcel is within 100 feet from the high water mark of the lagoon, and therefore defined as "riparian corridor" by Code Chapter 16.30. However, a portion of this area (including the project site) has historically been developed for outdoor residential uses.

Finding #2 is based on the erroneous statement "that grading and modifying the slope...is not necessary for proper design and function of the existing home". As previously stated, the slope was modified several years before this current project commenced. The project geotechnical engineer and Environmental Planning staff both agree that either grading or retention of the existing walls *is* necessary to prevent further instability of the slope. In fact, Planning staff's recommendation to us during our meetings in the Planning Department is to remove the 43-foot long curved wall and replace the level terrace behind the wall with extensive grading! It is this Planning staff recommended extensive grading that the proposed project design seeks to avoid.

The Finding #3 statement that approval of the project will allow "human use up to 65 feet of the 100 foot corridor" is very misleading. Review of the project plans shows that approval would only allow human use to continue to encroach into 53-65 feet of the 100-foot corridor in eastern 1/3 of the rear yard. Human use in the remaining 2/3 of the rear yard area would only encroach into the riparian corridor 27-39 feet. Finding #4 makes this same misleading statement.

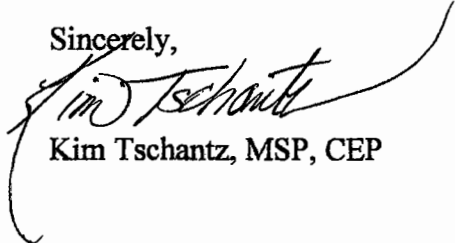
Finding #4 fails to describe the proposed habitat restoration plan with accuracy. The vast majority of the restoration plan provides for removal of exotic invasive vegetation from the native habitat area and planting a diversity of native shrubs suited to the upper zone of the wetland habitat area on a steep slope *where no human use would occur*. The same type of native shrub planting would occur between the two retaining walls on the slope. We believe implementation of this plan would be the most favorable treatment the Cocoran wetland habitat has received a several years.

The statement in Finding #5 that suggests the "failing blocks should have been removed and the slope laid back to restore the corridor" by the property owner is significantly inconsistent with generally accepted law governing pre-existing non-conforming use rights. There are no provisions in the County Code, General Plan or LCP that require property owners to return their yard areas to native habitat when retaining walls or similar improvements need to be repaired.

Conclusion

The staff report contains various factual errors which result in a biased evaluation of the project. In addition, the staff report uses language that confuses the existing condition of the retainin wall system with the proposed design of the project. We hope this letter will help you obtain a fair understanding of the project. Approval of this project will allow the property owner to continue pre-existing non-conforming use rights in his rear yard and provide for a significant improvement of the adjoining riparian habitat.

Sincerely,



Kim Tschantz, MSP, CEP

Attachment: Letter to County Planning staff, dated October 1, 2011 without its attachments

cc: Kathy Previsich, Planning Director (This cover letter only)
Robin Bolster-Grant, Project Planner (This cover letter only)
Mike Pitt, property owner (This cover letter only)

Pitt-Ltr to ZA on Rpt Errors

Biotic Assessment

Biotic Resources Group

Biotic Assessments ♦ Resource Management ♦ Permitting

June 9, 2010

Kim Tschantz
Cypress Environmental and Land Use Planning
P.O. Box 1844
Aptos, CA 95001

**RE: 391-24th Avenue, County of Santa Cruz: Results of Wetland Setback Evaluation
(APN 28-181-05)**

Dear Kim,

The Biotic Resources Group conducted a botanical review of the 100-foot wetland setback area on the property at 391-24th Avenue in the Pleasure Point area of Santa Cruz County. The review focused on documenting the condition of the setback area and identifying opportunities for habitat restoration and enhancement. The results of this review are described herein.

ASSESSMENT METHODOLOGY

A site visit to the parcel was conducted on May 13, 2010. The parcel supports a single-family residence that is accessed from 24th Avenue. The backyard abuts Corcoran Lagoon, a natural open water and wetland habitat area. The area of the property abutting the lagoon was walked and the vegetation noted. The 100-foot wetland setback area was measured in the field; the setback was measured from the high water line of the lagoon (as determined by the change in vegetation from wetland to upland). Opportunities for habitat restoration and enhancement of the setback area were also evaluated during the site visit.

ASSESSMENT RESULTS

Existing Resources. Within the 100-foot wetland setback the vegetation is comprised of a mosaic of native and non-native vegetation. A band of native wetland vegetation, characterized by cattail (*Typha sp.*), sedge (*Carex sp.*), bulrush (*Scirpus sp.*) and Pacific cinquefoil (*Potentilla anserina*), occupies the flat area abutting the lagoon/open water. As the hillside slopes up to the backyard and residence, the vegetation is dominated by non-native species, including some considered to be invasive. An old shed as well as newer retaining walls also occur in the setback area.

Plant species on the slope include landscape plants, such as rose (*Rosa sp.*), nasturtium (*Tropaeodum majus*), acacia (*Acacia sp.*), and agave (*Agave sp.*). Other plant species include poison hemlock (*Conium maculatum*), Cape ivy (*Delaireia odorata*), wild radish (*Raphanus sativa*), bull mallow (*Malva neglecta*), Himalaya berry (*Rubus procerus*), Italian ryegrass (*Lolium multiflorum*), ripgut brome (*Bromus diandrus*), and fescue (*Festuca sp.*). Native plant species are limited to California blackberry (*Rubus ursinus*). A portion of the property's irrigated turf occurs within the 100-foot wetland setback area.

Approximately 80% of the plant cover within the setback area is provided by non-native plant species. Most of these species are of low value to native riparian/wetland dependent animal species due to a lack of habitat diversity (i.e., lack of structural diversity, cover, and low forage value) Only the non-native Himalaya berry provides habitat value; value is created by the plant's dense growth, which creates thickets for cover, and the berries which provide food similar to the native California blackberry. The berry thicket also provides a structural/visual buffer between residential activities and wildlife utilizing the lagoon.

Review of Proposed Project Relative to Opportunities for Habitat Restoration and Enhancement.

The proposed project is the modification of the existing retaining walls/improvements and resolution of a County-issued red-tag.

There are opportunities for habitat restoration within the wetland setback area. The habitat value of this area could be significantly enhanced through removal/control of selected invasive non-native plant species and the installation of native shrubs that are compatible with the Corcoran Lagoon environment.

The areas recommended for restoration and enhancements are down slope of the lowest retaining wall, as depicted on Figure 1.



Figure 1. Recommended Restoration and Enhancement Areas

Restoration actions within the two treatment areas, as depicted on Figure 1, are outlined below.

Eastern Area. This area abuts the curved portion of the lowest wall and is adjacent to a dense thicket of Himalaya berry. Within this area the following actions are recommended:

1. Install native shrubs the base of the wall to enhance habitat values of the area and the adjacent berry thicket (berry thicket to be retained).

2. Create an approximately three foot-wide planting area outward from the wall (remove/trim existing Himalaya berry) and install a row of native shrubs. Suitable shrubs species for this area are coffee berry (*Rhamnus californica*), blue elderberry (*Sambucus mexicana*), toyon (*Heteromeles arbutifolia*), canyon gooseberry (*Ribes menziesii*), black sage (*Salvia mellifera*), and coyote brush (*Baccharis pilularis*). Any combination of these plant species is acceptable, as long as at least two different species are installed.

Central Area. This area is down slope of the lowest retaining wall. Within this area the following actions are recommended:

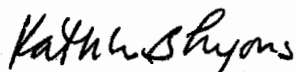
1. Remove existing shed and associated inorganic debris.
2. Remove landscape plants below the retaining wall. Plants to be removed include, at a minimum, two non-native roses, agave, acacia, and nasturtium.
3. Retain the Himalaya berry thicket(s) yet remove Cape ivy and poison hemlock that is growing amid the thicket. Although Himalaya berry is non-native, it has formed a dense thicket that is providing significant plant cover along the edge of the lagoon.
4. Remove occurrences of poison hemlock, bull mallow, wild radish, and Cape ivy that occur on the hillside. Utilize hand labor to remove plants.
5. Following the removal of material and plants noted in items 1-4, above, install native shrubs within the open area down slope of the retaining wall to improve habitat for native wildlife. Plant species recommended for installation are coffee berry (*Rhamnus californica*), blue elderberry (*Sambucus mexicana*), toyon (*Heteromeles arbutifolia*), canyon gooseberry (*Ribes menziesii*), black sage (*Salvia mellifera*), and coyote brush (*Baccharis pilularis*). Any combination of these plant species is acceptable, as long as at least of three different species are installed.

General Guidance for Plant Installation and Maintenance. The installed plants should be a minimum container stock size of 1-gallon, with plants installed 4-5 feet on-center. This spacing should create a dense shrub thicket. Installation of native plant species typically does not require soil amendments or fertilizer; however, if soil conditions are deemed poor or debris is encountered in the planting holes, a soil amendment can be added to the planting hole. Each planting should be surrounded by a watering basin, with the basin mulched to reduce weed growth. For all installed plants, the applicant should provide temporary drip irrigation to each plant for a minimum of three years.

Performance Standards and Monitoring. The installed plants should achieve 80% survival each year for five years. The success of the habitat enhancement should be recorded, with the applicant providing annual monitoring reports to the County Planning Department, documenting plant survival and control/removal of invasive, non-native plant species. The report should include photos of the restoration area from established photo-stations that depict the control of invasive non-native plant species and growth of the installed shrubs.

Please let me know if you have any questions on these findings or recommendations. Thank you for the opportunity to assist you in your project planning.

Sincerely,

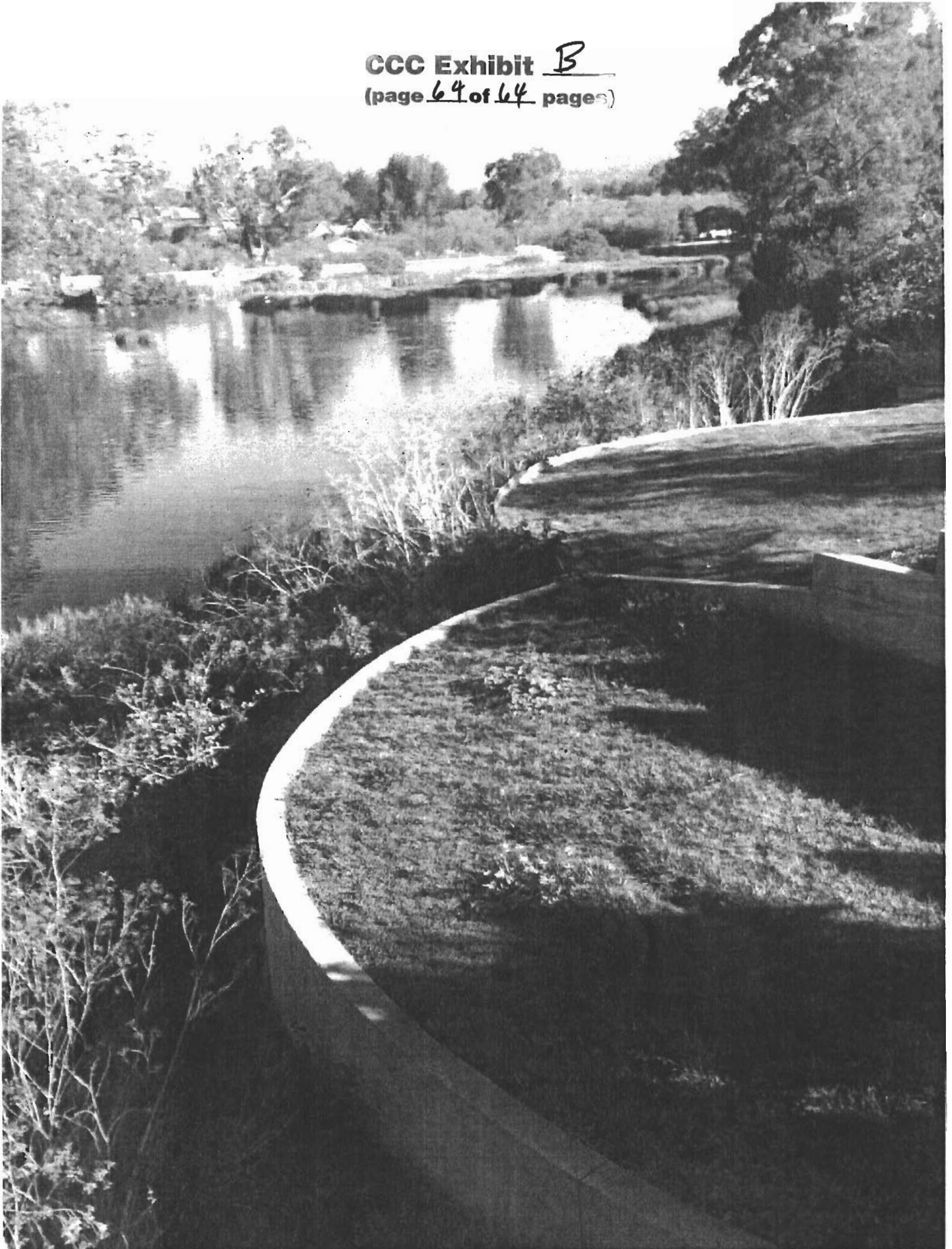


Kathleen Lyons
Plant Ecologist



CCC Exhibit B
(page 63 of 64 page)

CCC Exhibit B
(page 64 of 64 pages)



CALIFORNIA COASTAL COMMISSION

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

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

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

SECTION I. Appellant(s)

Name: California Coastal Commission, Commissioners Brian Brennan and Mark Stone

Mailing Address: 45 Fremont Street, Suite 200

City: San Francisco, CA

Zip Code: 95104

Phone: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

Santa Cruz County

2. Brief description of development being appealed:

Recognize construction of three retaining walls; remove one 6-ft. high retaining wall of 119 ft in length; recognize the installation of concrete steps; perform and/or recognize ancillary grading of 9.5 cubic yards; demolish one shed and to restore 1,384 s.f. of riparian habitat.

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

391-24th Avenue, north side of 24th Ave. at intersection with 25th Ave., Corcoran Lagoon, Live Oak area, Santa Cruz County APN 028-181-05

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

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

RECEIVED**JUL 20 2011****California Coastal Commission,
Central Coast Area**

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SCO-11-044

DATE FILED: July 20, 2011

DISTRICT: Central Coast

CCC Exhibit C
(page 1 of 11 pages)

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

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

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

6. Date of local government's decision: June 17, 2011

7. Local government's file number (if any): 101078

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:

Michael Pitt, 391-24th Avenue, Santa Cruz, CA 95062

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

(1) Claudia Slater, 6A Paradise Park, Santa Cruz, CA 95060

(2) Kim Tschantz, P.O. Box 1844, Aptos, CA 95001

(3) Steven Guiney, Santa Cruz County Zoning Administrator, 701 Ocean Street, 4th Floor, Santa Cruz, CA 95060

(4)

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: July 20, 2011

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: Mahua Stan
Appellant or Agent

Date: July 20, 2011

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

Signed: _____

Date: _____

Attachment A: Appeal Reasons

Santa Cruz County approved a coastal permit to: 1) recognize construction of three retaining walls; 2) remove one 6-foot-high retaining wall (119 feet in length); 3) recognize the installation of concrete steps; 4) perform and/or recognize grading of 9.5 cubic yards; 5) demolish one shed, and; 6) restore 1,384 square feet of riparian habitat, all in and near the riparian and upland corridor associated with Corcoran Lagoon. The project site is located at the rear of 391 24th Avenue where the property slopes down to Corcoran Lagoon, in the unincorporated Live Oak beach area of Santa Cruz County. The project approval is inconsistent with the County's LCP policies and standards for protection of environmentally sensitive habitats, including wetland and riparian habitats, and visual resources for the following reasons:

The LCP protects ESHA, including wetlands and riparian areas, from the impacts of development by, among other things, prohibiting non-resource dependent development in these areas and requiring prescribed setbacks (including LUP Policies 5.1 and 5.2 et seq., and LCP zoning chapters 16.30 and 16.32). The approved project includes retaining walls and concrete steps and associated residential use areas within the required 100-foot wetland setback/buffer and within the LCP-defined riparian corridor, inconsistent with the LCP. In addition, the portion of the parcel located within the riparian setback/buffer area is designated as O-U (Urban Open Space), the purpose of which is to "identify those lands within the Urban Services Line and Rural Services Line which are not appropriate for development" due to their location, in this case in relation to Corcoran Lagoon. These project elements are not allowed in O-U lands and are inconsistent with the purpose of the O-U designation.

The LCP protects public viewsheds from impacts due to development and requires the protection of visual resources, including that development be visually compatible and integrated with the character of the surrounding area (including LUP Objectives and Policies 5.10 et seq., and LCP zoning chapter 13.20). The project site is located directly adjacent to Corcoran Lagoon and is visible from nearby public viewing areas and trails, including California Coastal Trail segments along Portola Drive and East Cliff Drive. The retaining walls, concrete steps, and approved residential development in the riparian area associated with Corcoran Lagoon are visually incompatible with the surrounding natural environment of Corcoran Lagoon as seen from nearby roads, leading to adverse public viewshed impacts, inconsistent with the visual protection policies and standards of the LCP.

In summary, based on the information available, it appears that the approved project is inconsistent with LCP policies and standards related to protection of environmentally sensitive habitat, including wetland and riparian habitats, and visual resources.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060-4808

VOICE (831) 427-4863 FAX (831) 427-4877

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Claudia Slater

Mailing Address: 6A Paradise Park

City: Santa Cruz, CA

Zip Code: 95060

Phone: 831-458-5117

SECTION II. Decision Being Appealed

1. Name of local/port government:

County of Santa Cruz

2. Brief description of development being appealed:

Proposal to recognize construction of two unpermitted retaining walls (maximum height 3'8" and 4'0", respectively), to remove one 6' retaining wall, to recognize the placement of stairs in a riparian corridor, to perform and/or recognize ancillary grading of 9.5 cubic yards, to demolish two sheds, and to restore riparian habitat.

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

The proposed project is located at 391 24th Avenue, Santa Cruz, CA. Assessor's Parcel Number 028-181-05.

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

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

RECEIVED

JUN 29 2011

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-3-SC0-11-044DATE FILED: July 20, 2011DISTRICT: Central Coast**CCC Exhibit C**
(page 6 of 11 pages)

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

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

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

6. Date of local government's decision: June 17, 2011

7. Local government's file number (if any): Application Number 101078

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:

Michael A. Pitt
391 24th Avenue
Santa Cruz, CA 95062

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

(1) Kim Tschantz
kimt@cypressenv.com
831-685-1007

(2) Santa Cruz County Planning Department
Attn: Zoning Administrator
701 Ocean St, 4th Floor
Santa Cruz, CA 95060

(3) Santa Cruz County Planning Department
Attn: Robin Bolster-Grant
701 Ocean St, 4th Floor
Santa Cruz, CA 95060

(4)

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

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

As described in the April 15, 2011 staff report to the Zoning Administrator (attached and incorporated by reference), the proposed project is inconsistent with County Code Chapter 13.20, which requires Coastal Development Permit approval. Section 13.20.130 requires that: "All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas." The work represented by the unpermitted retaining walls clearly exceeds the extent of the pre-existing block walls in size and scale, and is not sited or designed to be visually compatible with the character of the surrounding neighborhood. The unpermitted walls are much taller, massive, and imposing than the previous wall system and are visible from many vantage points around Corcoran Lagoon.

In addition, modifying the topography to accommodate expansion of outdoor living area into a coastal wetland is inconsistent with Section 13.20.130(b)(2), which requires site disturbance to be minimized. Moreover, natural land forms such as Corcoran Lagoon are required to be maintained. The proposed grading, construction, and encroachment of human activity into this protected area are not supported by County Coastal Zone Regulations.

As outlined in the April 15 staff report, the proposed project is also subject to the County's Riparian Corridor and Wetland Protection Ordinance. Construction of the walls constitutes a "development activity" under 16.30.030, and is not exempt under 16.30.050 because: 1) the walls represent an intensification of the pre-existing walls, with respect to both visual and riparian habitat impacts; and 2) the project allows a new expansion of outdoor recreational use by recognizing unpermitted grading and includes new stairs where none existed previously. Consequently, in order to approve the proposed project, a Riparian Exception per 16.30.030(d) must be issued. However, as explained in the April 15 staff report, the Findings required to issue such an Exception cannot be made.

First, there are no special circumstances or conditions affecting the property. There is ample space for residential use of the parcel without permitting additional encroachment into the riparian corridor. Second, at least portions of the project are unnecessary for the proper design and function of a permitted or existing activity on the property. In fact, the project geotechnical engineer verified that the curved wall is not needed for slope stability, and made recommendations for how to remove this portion of the project and re-contour the slope to return it to its natural configuration. Third, the proposed project is detrimental to the public welfare because of increased, and unnecessary, visual impacts and encroachment into the riparian corridor. Fourth, as noted above, the proposed project will adversely

impact the Corcoran Lagoon riparian corridor by allowing use of up to 65 feet of the 100-foot corridor for the resident's yard area. Fifth, the proposed project is inconsistent with objectives of the General Plan and elements thereof and Local Coastal Program Land Use Plan, specifically the Riparian Corridor and Wetlands Protection Ordinance. The purpose of this ordinance is to: "eliminate or minimize any development activities in the riparian corridor in order to preserve, protect, and restore riparian corridors..." For the reasons previously described, it is not possible to make this Finding.

In conclusion, the April 15, 2011 staff report correctly interprets the General Plan and Local Coastal Program Land Use Plan, and supporting regulations. The revised Findings presented at the June 17, 2011 Zoning Administrator's hearing, and used as the basis for approving the project, are in error. The proposed project should be denied.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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

Claudia Slater
Signature of Appellant(s) or Authorized Agent

Date: 6/28/11

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

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

Please see Exhibit B pages 12-47 for the remainder of Appellant Claudia Slater's appeal documents (consisting of the April 15, 2011 Zoning Administrator staff report and attachments).

APPLICABLE SANTA CRUZ COUNTY LUP POLICIES AND IP STANDARDS

ESHA:

LUP Objective 5.1 Biological Diversity. To maintain the biological diversity of the County through an integrated program of open space acquisition and protection, identification and protection of plant habitat and wildlife corridors and habitats, low-intensity and resource compatible land uses in sensitive habitats and mitigations on projects and resource extraction to reduce impacts on plant and animal life.

LUP Policy 5.1.2 Definition of Sensitive Habitat. An area is defined as a sensitive habitat if it meets one or more of the following criteria: (a) Areas of special biological significance as identified by the State Water Resources Control Board. (b) Areas which provide habitat for locally unique biotic species/communities, including coastal scrub, maritime chaparral, native rhododendrons and associated Elkgrass, mapped grasslands in the coastal zone and sand parkland; and Special Forests including San Andreas Live Oak Woodlands, Valley Oak, Santa Cruz Cypress, indigenous Ponderosa Pine, indigenous Monterey Pine and ancient forests. (c) Areas adjacent to essential habitats of rare, endangered or threatened species as defined in (e) and (f) below. (d) Areas which provide habitat for Species of Special Concern as listed by the California Department of Fish and Game in the Special Animals list, Natural Diversity Database. (e) Areas which provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act guidelines. (f) Areas which provide habitat for rare, endangered or threatened species as designated by the State Fish and Game Commission, United States Fish and Wildlife Service or California Native Plant Society. (g) Nearshore reefs, rocky intertidal areas, seacaves, islets, offshore rocks, kelp beds, marine mammal hauling grounds, sandy beaches, shorebird roosting, resting and nesting areas, cliff nesting areas and marine, wildlife or educational/research reserves. (h) Dune plant habitats. (i) All lakes, wetlands, estuaries, lagoons, streams and rivers. (j) Riparian corridors.

LUP Policy 5.1.3 Environmentally Sensitive Habitats. Designate the areas described in 5.1.2 (d) through (j) as Environmentally Sensitive Habitats per the California Coastal Act and allow only uses dependent on such resources in these habitats within the Coastal Zone unless other uses are: (a) consistent with sensitive habitat protection policies and serve a specific purpose beneficial to the public; (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative.

LUP Policy 5.1.6 Development Within Sensitive Habitats. Sensitive habitats shall be protected against any significant disruption of habitat values; and any proposed development within or adjacent to these areas must maintain or enhance the functional capacity of the habitat. Reduce in scale, redesign, or, if no other alternative exists, deny any project which cannot sufficiently mitigate significant adverse impacts on sensitive habitats unless approval of a project is legally necessary to allow a reasonable use of the land.

LUP Objective 5.2 Riparian Corridors and Wetlands. To preserve, protect and restore all riparian corridors and wetlands for the protection of wildlife and aquatic habitat, water quality,

erosion control, open space, aesthetic and recreational values and the conveyance and storage of flood waters.

LUP Policy 5.2.1 Designation of Riparian Corridors and Wetlands. Designate and define the following areas as Riparian Corridors: (a) 50' from the top of a distinct channel or physical evidence of high water mark of perennial stream; (b) 30' from the top of a distinct channel or physical evidence of high water mark of an intermittent stream as designated on the General Plan maps and through field inspection of undesignated intermittent and ephemeral streams; (c) 100' of the high water mark of a lake, wetland, estuary, lagoon, or natural body of standing water; (d) The landward limit of a riparian woodland plant community; (e) Wooded arroyos within urban areas.

LUP Policy 5.2.4 Riparian Corridor Buffer Setback. Require a buffer setback from riparian corridors in addition to the specified distances found in the definition of riparian corridor. This setback shall be identified in the Riparian Corridor and Wetlands Protection ordinance and established based on stream characteristics, vegetation and slope. Allow reductions to the buffer setback only upon approval of a riparian exception. Require a 10 foot separation from the edge of the riparian corridor buffer to any structure.

LUP Policy 5.2.5 Setbacks From Wetlands. Prohibit development within the 100 foot riparian corridor of all wetlands. Allow exceptions to this setback only where consistent with the Riparian Corridor and Wetlands Protection ordinance, and in all cases, maximize distance between proposed structures and wetlands. Require measures to prevent water quality degradation from adjacent land uses, as outlined in the Water Resources section.

LUP Policy 5.2.6 Riparian Corridors and Development Density. Exclude land within riparian corridors in the calculation of development density or net parcel size. Grant full development density credit for the portion of the property outside the riparian corridor which is within the required buffer setback, excluding areas over 30% slope, up to a maximum of 50% of the total area of the property which is outside the riparian corridor.

LUP Policy 5.2.7 Compatible Uses With Riparian Corridors. Allow compatible uses in and adjacent to riparian corridors that do not impair or degrade the riparian plant and animal systems, or water supply values, such as non-motorized recreation and pedestrian trails, parks, interpretive facilities and fishing facilities. Allow development in these areas only in conjunction with approval of a riparian exception.

LUP Policy 5.2.8 Environmental Review for Riparian Corridor and Wetland Protection. Require environmental review of all proposed development projects affecting riparian corridors or wetlands and preparation of an Environmental Impact Report or Biotic Report for projects which may have a significant effect on the corridors or wetlands.

LUP Program 5.2.a Riparian Corridors and Wetlands. Maintain and enforce a Riparian and Wetland Protection ordinance to protect riparian corridors, wetlands, lagoons, and inland lakes by avoiding to the greatest extent allowed by law the development in these areas.

LUP Policy 5.11(b) Designation of Urban Open Space Lands (O-U). Designate Urban Open Space (O-U) areas on the General Plan and LCP Land Use Maps to identify those lands within the Urban Services Line and Rural Services Line which are not appropriate for development due to

the presence of one or more of the following resources or constraints: ... (b) Coastal lagoons, wetlands, and marshes...

IP Section 16.30.010 Purpose - The purpose of this chapter is to eliminate or minimize any development activities in the riparian corridor in order to preserve, protect, and restore riparian corridors for: protection of wildlife habitat; protection of water quality; protection of aquatic habitat; protection of open space, cultural, historical, archeological and paleontological, and aesthetic values; transportation and storage of floodwaters; prevention of erosion; and to implement the policies of the General Plan and the Local Coastal Program Land Use Plan.

16.30.030 Definitions... Development activities. Development activities shall include: 1. **Grading.** Excavating or filling or a combination thereof; dredging or disposal of dredge material; mining; installation of riprap; ... 3. **Building and paving.** The construction or alteration of any structure or part thereof, including access to and construction of parking areas, such as to require a building permit.

16.30.030 Definitions... Riparian Corridor. Any of the following: ... (4) Lands extending 100 feet (measured horizontally) from the high watermark of a lake, wetland, estuary, lagoon or natural body of standing water...

16.30.040 Protection. No person shall undertake any development activities other than those allowed through exemptions and exceptions as defined below within the following areas: (a) Riparian corridors.

IP Section 16.30.060 - Exceptions - (d) Findings. Prior to the approval of any exception, the Approving Body shall make the following findings: 1. That there are special circumstances or conditions affecting the property; 2. That the exception is necessary for the proper design and function of some permitted or existing activity on the property; 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property downstream or in the area in which the project is located; 4. That the granting of the exception, in the Coastal Zone, will not reduce or adversely impact the riparian corridor, and there is no feasible less environmentally damaging alternative; and 5. That the granting of the exception is in accordance with the purpose of this chapter, and with the objectives of the General Plan and elements thereof, and the Local Coastal Program Land Use Plan.

16.32.040 Definitions... Sensitive Habitat. An area is defined as a sensitive habitat if it meets one or more of the following criteria... (i) All lakes, wetlands, estuaries, lagoons, streams and rivers. (j) Riparian corridors.

16.32.090 Approval conditions... A. ENVIRONMENTALLY SENSITIVE HABITAT AREAS. Only resource-dependent uses shall be allowed within any environmentally sensitive habitat area... 11. Wetlands, Estuaries and Lagoons... One hundred foot buffer measured from the high-water mark shall be required. Distance between structures and wetland shall be maximized.

VISUAL RESOURCES

Objective 5.10.a Protection of Visual Resources. To identify, protect, and restore the aesthetic values of visual resources.

Objective 5.10.b New Development in Visual Resource Areas. To ensure that new development is appropriately designed and constructed to minimal to no adverse impact upon identified visual resources.

LUP Policy 5.10.2 Development Within Visual Resource Areas. Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....

LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations, ... inappropriate landscaping and structure design.

LUP Policy 5.10.9 Restoration of Scenic Areas. Require on-site restoration of visually blighted conditions as a mitigating condition of permit approval for new development. The type and amount of restoration shall be commensurate with the size of the project for which the permit is issued. Provide technical assistance for restoration of blighted areas.

LUP Policy 7.7.1 Coastal Vistas. Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...

IP Section 13.20.130(b)(1) Entire Coastal Zone, Visual Compatibility. The following Design Criteria shall apply to projects site anywhere in the coastal zone: All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

IP Section 13.20.130 - Design criteria for coastal zone developments... (b) Entire Coastal Zone. The following Design Criteria shall apply to projects sited anywhere in the coastal zone:

1. Visual Compatibility. All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.

2. Minimum Site Disturbance. Grading, earth moving, and removal of major vegetation shall be minimized. Developers shall be encouraged to maintain all mature trees over 6 inches in diameter except where circumstances require their removal, such as obstruction of the building site, dead or diseased trees, or nuisance species. Special landscape features (rock outcroppings, prominent natural landforms, tree groupings) shall be retained...