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# W18a

**Prepared December 10, 2013 for December 11, 2013 Hearing**

**To:** Coastal Commissioners and Interested Persons  
**From:** Nancy Cave, District Manager  
Jeannine Manna, District Supervisor  
**Subject:** **STAFF REPORT ADDENDUM for W18a**  
**Appeal Numbers A-2-SMC-11-040 & A-2-SMC-11-041 (Hodge Residential Development and Vegetation Clearing)**

The purpose of this addendum is to modify the staff recommendation for the above-referenced item. Specifically, in the time since the staff report was distributed, staff was able to verify the height of the proposed single-family residence (at a height of 28 feet for the main portion of the house, and a height of 23 feet for the garage portion), and further discussed restoration and mitigation options with both the County Parks Department and the Applicants as a means of coming up with a package that appropriately addresses project impacts in a way that best provides for on- and off-site wetland and riparian resources. On the latter, staff remains convinced that restoration on and around the Applicants' property makes the most sense biologically, as is presented in the staff report, but County staff have in the past several days raised some concerns with restoration on County property that lies adjacent to the Applicant's property, and it is not clear if the County will allow for restoration in that form at the current juncture. To account for the possibility that the County does not allow for such restoration on County property adjacent to the site, this addendum provides an option for allowing that portion of the required restoration to be accounted for offsite, namely at San Vicente Creek in the County's Fitzgerald Marine Reserve where such restoration activities are ongoing. In such a scenario, the Applicant would pay for an equivalent amount of restoration offsite.

Thus, the staff report dated prepared November 27, 2013 will be modified throughout to conform to the changes shown below (where applicable, text in underline format indicates text to be added, and text in strikethrough format indicates text to be deleted):

**1. Modify references to the height of the single-family residence as follows:**

**a. Modify Special Condition 1(a) on page 8 as follows:**

***Height.** The revised project plans shall illustrate that the height of the residential development is no greater than 24 28 feet for the main residence portion, and 23 feet for the garage portion.*

**b. Modify the 3rd sentence of footnote 2 on page 15 as follows:**

*Alternative 3 included the smallest (and shortest) house alternative of 2,081 square feet, with a height of 28 feet~~not indicated in the staff report~~, maintained the required front property line setback of 20 feet, but still required a variance to reduce the side yard setback from 10 to 5-7 feet.*

**c. Modify the 2nd sentence in the second paragraph on page 29 as follows:**

*The two-story residence would be 2,081 square feet in size, with a lot coverage of 1,414 square feet and would contain a pitched roof with a height of 28 feet for the main residence portion, and 23 feet for the garage portion ~~an unspecified height~~.*

**d. Modify the 4th sentence in the second paragraph of page 40 as follows:**

*Finally, to further minimize the project's visual impacts, **Special Condition 1** requires that the maximum height of the house not exceed 28 feet consistent with alternative ~~evaluated by the CDRC approved by the County Board of Supervisors~~ and places lighting restrictions to minimize glare to the surrounding public use areas and sensitive habitats.*

**2. Modify the habitat restoration and mitigation as follows:**

**a. Replace Special Condition 2(a) on page 9 with the following:**

***Restoration Area.** A detailed site plan of all restoration areas with habitat acreages identified shall be provided, based on **Exhibit 10**, where all areas noted as "Riparian Impact" on Exhibit 10 shall be restored with riparian vegetation and all areas noted as "Proposed Wetland" on Exhibit 10 shall be restored as wetland/riparian areas, where the objective is to maximize biological value in relation to the creek feature (running along the northwest property line) and related riparian areas both on and offsite at this location, and to maximize screening value (to protect public viewsheds). If the County does not allow for such restoration on adjacent County property, then the required restoration area shall be limited to the Permittee's property and the Permittee shall submit a fee of \$11,328 to the County to provide for offsite restoration of San Vicente Creek at the County's Fitzgerald Marine Reserve facility. If the County allows for some such restoration on their adjacent property, then such fee shall be commensurately reduced.*

**b. Modify the second paragraph on page 40 as follows:**

*...The Applicants are now proposing 2,720 square feet of riparian restoration and 5,915 square feet of wetland restoration/mitigation as follows: 1) the 2,720 square feet of riparian habitat cleared without a coastal development permit (CDP) on the portion of the subject property located northeast of the proposed house, and on the portion of the County property northeast of the proposed house, will be restored in place; 2) the 1,823 square feet of wetland cleared without a CDP on the portion of the subject property east and west of the proposed house and on the County property north of the proposed house, will be restored as wetland/riparian area; 3) the former wetland occupied by the footprint of the house will be mitigated at a ratio of 4:1 offsite adjacent to the site as wetland/riparian area on adjacent County property. In all cases, the objective is to maximize biological value in relation to the creek feature (running along the northwest property line) and related riparian areas both on and offsite at this location, and to maximize screening value (to protect public viewsheds). If the County does not allow for such restoration on adjacent County property, then the required restoration area shall be limited to the Permittee's property and the Permittee shall submit a fee of \$11,328 to the County to provide for offsite restoration of San Vicente Creek at the County's Fitzgerald Marine Reserve facility. If the County allows for some such restoration on their adjacent*

~~property, then such fee shall be commensurately reduced. between the restored wetland and the restored riparian habitat east and north of the proposed house on the subject property and County property, west of the proposed house, on the northwest end of subject parcel, and on County land between the Trail and the western property boundary.~~ ~~F~~ In addition to maximizing biological value in relation to the creek feature (running along the northwest property line) and related riparian areas both on and offsite at this location, the restoration proposed by the Applicants would reduce the visibility of the house as seen from the trail and Highway 1 and improve the visual characteristics associated with the surrounding sensitive habitats by restoring the front yard setback area, the area between the trail and the western property boundary, and the north east portions of the parcel. Lastly, the Applicants propose to restrict future development within the restored and mitigated areas on the subject property.....

**c. Modify the fourth paragraph on page 41 as follows:**

...by proposing a Habitat Restoration Plan that includes 4:1 mitigation for the impacts of the proposed single-family residence on wetlands and also proposes to restore in place, or on other areas of the Applicants' property and the adjacent County property, the wetlands and riparian habitat impacted without benefit of a CDP on both the Applicants' and the County's properties. The Habitat Restoration Plan would include the restoration of wetland and riparian areas to their 2004 boundaries where possible, as illustrated on page 2 of Exhibit 10.....

**CALIFORNIA COASTAL COMMISSION**

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# W18a

Appeal Filed:	11/28/2011
49th Day:	Waived
Staff:	J.Manna- SF
Staff Report:	11/27/2013
Hearing Date:	12/11/2013

## **APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING**

<b>Appeal Numbers:</b>	<b>A-2-SMC-11-041 &amp; A-2-SMC-11-040</b>
<b>Applicants:</b>	<b>David and Hi-Jin Hodge</b>
<b>Appellants:</b>	Committee for Green Foothills (A-2-SMC-11-041) and Evy Smith (A-2-SMC-11-040)
<b>Local Decisions:</b>	Approved by the County of San Mateo Board of Supervisors on November 1, 2011 (County application numbers PLN2008-00380 & PLN2009-00358).
<b>Project Location:</b>	The corner of Magellan and Alameda Avenues, Miramar, San Mateo County (APNs 048-016-010 and 048-016-020)
<b>Project Descriptions:</b>	Construction of a 2,081 square foot single-family residence with attached 2-car garage on a 10,802 square foot vacant U-shaped lot (A-2-SMC-11-041); After-the-fact approval of vegetation clearance on the Applicants' property and an adjacent property (A-2-SMC-11-040).
<b>Staff Recommendation:</b>	Substantial Issue Exists; Approval with conditions of the single-family residence; Denial of vegetation clearance.

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### **SUMMARY OF STAFF RECOMMENDATION**

San Mateo County approved two coastal development permits: (1) a coastal development permit (CDP) for construction of a 2,081 square foot single-family residence with attached garage on a



10,802 square foot vacant, U-shaped lot; and (2) a separate after-the-fact CDP to authorize vegetation clearance on a portion of that same parcel as well as an adjoining parcel owned by the County. Both of the County's CDP decisions were appealed to the Commission, with the appeals raising questions of Local Coastal Program (LCP) consistency with respect to sensitive habitat and visual resource impacts, allowance of variances, and lot legality. The two projects were the subject of multiple County hearings over an approximately three-year period, in part due to the complexity of the issues related to sensitive habitats, parcel legality, and unpermitted activities which occurred on the property. Both CDPs were appealed to the Commission. In the time since the appeals were filed, Commission staff has reviewed the County's approvals and evaluated the projects, including with regard to the legality of the parcel and the Applicant's reasonable investment backed expectations, as well as with regard to the visual and biological resources at the site, including the extent of riparian and wetland habitat impacts that were caused by the unpermitted activity.

**Staff recommends that the Commission find that both appeals raise a substantial issue and that the Commission take jurisdiction over the CDP applications. Staff further recommends that the Commission adopt two separate motions to: (1) approve a CDP with special conditions for the single-family residence; and (2) deny the after-the-fact CDP for the vegetation clearance.**

The San Mateo County LCP includes strong protections for sensitive habitats (which include wetlands and riparian corridors), limits the allowed uses occurring within these habitats to resource dependent uses, prohibits land uses which could have adverse impacts on sensitive habitats, and includes specific buffer area requirements for development occurring adjacent to these habitats. At the time of approval, the County evaluated the proposed projects based on information contained in biological surveys from 2009 and 2010 which reflected the extent of sensitive habitats at the project site at that time. However, the Applicants allowed unpermitted vegetation clearance and stockpiling of dirt to take place on their property and conducted unpermitted vegetation clearance in 2008 and 2009. Thus, the biological surveys conducted in 2009 and 2010 did not evaluate the resources that were on the ground prior to the unpermitted activities that took place in 2008 and 2009. Reevaluation of the proposed projects using biological information based on the site conditions that existed prior to these activities revealed that a greater extent and diversity of sensitive habitats existed on the property and that the unpermitted activities resulted in the removal and fill of riparian and wetland areas. The vegetation clearance and stockpiling of dirt occurred within riparian corridors and a wetland area and their respective buffers. These activities are not permitted within these sensitive habitats and buffers and resulted in adverse impacts to these habitats. In addition, the location of the proposed single-family residence is within the wetland area and the riparian buffer, as defined by the habitat boundaries that existed prior to the unpermitted activities. Therefore, neither of the two approved CDPs can be found consistent with the LCP sensitive habitat policies and the specific policies related to riparian corridors and wetlands, and their required buffers.

Further, the proposed single-family residence would be located in a highly scenic area within the Cabrillo Highway (Highway 1) scenic corridor, between Highway 1 and the shoreline, and adjacent to a County park and trail, as well as a riparian corridor and sensitive habitats. The LCP includes the protection of visual resources associated with sensitive habitats, ridgelines, ocean

views, and scenic corridors. Both the single-family residence and the proposed after-the-fact vegetation clearance would adversely impact the visual resources of the area, inconsistent with the visual resource policies of the LCP.

However, consistent with the mandate of Coastal Act section 30010, and since any economic use of the subject property would result in some form of LCP inconsistency because the property is almost entirely covered with wetland and riparian habitat, staff recommends approval of the single-family residence to provide for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use. As discussed in the takings findings, the Applicants are proposing a house that is smaller than the average house in the vicinity, on a parcel that is substantially larger than the average size residential parcel in the area. In addition, the actual lot coverage on the proposed residence is only 1,414 square feet, 13% of the total area of the parcel. The allowable floor area ratio for the R-1/S-94 zoning district is 53%. Therefore, the proposed single-family residence is significantly smaller than what is allowed in regards to floor area ratio for this zoning district.

In addition, the siting of the single-family residence on the southwest end of the parcel, adjacent to Magellan Avenue, allows for a reasonable economic use of the property while clustering with nearby development and maintaining larger contiguous areas of sensitive habitat. While the western end of the residence would be adjacent to a public trail, the development would be setback 20 feet from the western property boundary as required by the LCP. The location of the residence would also cluster development as it would be located adjacent to the road, on the southwest end of the property, and to the public restroom, which is to be developed on adjacent property to the north (see Page 2 of **Exhibit 10**). Also, the siting of the house in this location will not require additional removal of sensitive vegetation and allows for larger, more contiguous areas of sensitive habitats to be restored and created on the north and east ends of the property, adjacent to a perennial stream and a County park and open space area.

Further, the Applicants have revised their project for purposes of de novo review to propose restoration of the habitat that was impacted by the unpermitted vegetation clearance and to propose mitigation for the impacts to wetlands resulting from the proposed residence at a 4:1 ratio. The restoration proposed by the Applicants would also serve to reduce the visibility of the house as seen from the trail and Highway 1 and improve the visual characteristics associated with the surrounding sensitive habitats by restoring the front yard setback area, between the trail and the western property boundary, and the north east portions of the parcel. Lastly, the Applicants propose to restrict future development within the restored and mitigated areas on the subject property.

In order to comply with the otherwise applicable requirements of the LCP and the Coastal Act, staff recommends special conditions necessary to mitigate all significant adverse environmental effects in and adjacent to the project site to the greatest extent feasible. Special conditions require a Habitat Restoration Plan and an open space restriction to ensure successful implementation of the proposed habitat restoration, as well as a Landscape Screening Plan that is in conformance with and complimentary to the Habitat Restoration Plan, to ensure the house is screened from public views. In addition, special conditions require construction BMPs and a stormwater

pollution prevention plan to protect water quality, and a deed restriction is required to ensure all special conditions are recognized and adhered to by future property owners.

As conditioned, staff believes that the approved residence provides the landowner with a reasonable sized residential use that will minimize impacts to surrounding sensitive habitats and visual resources, taking into account the unique circumstances of this case. Thus, staff recommends that the Commission; (1) **deny the proposed after-the-fact vegetation clearance**; and (2) **approve the proposed CDP for the single-family residence** subject to the recommended conditions. The **two separate motions** are found on **page 5** below.

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### APPENDICES

Appendix A – Substantive File Documents

### EXHIBITS

Exhibit 1 – Project Vicinity and Site Map

Exhibit 2 – Project Plans

Exhibit 3 – Final Local Action Notice for CDP A-2-SMC-11-041 - Single-Family Residence

Exhibit 4 – Final Local Action Notice for CDP A-2-SMC-11-040 - Vegetation Clearing

Exhibit 5 – Appeal by Committee for Green Foothills

Exhibit 6 – Appeal by Evy Smith

Exhibit 7 – Dr. John Dixon’s Memo

Exhibit 8 – Site Photographs

Exhibit 9 – Correspondence between the Applicants and the County

Exhibit 10 – Wetland and Riparian Impacts and Proposed Restoration/Mitigation Areas

Exhibit 11 – 2007 Property Listing

Exhibit 12 – Open Space Restricted Area

## **I. MOTIONS AND RESOLUTIONS FOR EACH OF THE TWO LOCAL GOVERNMENT ACTIONS BEING APPEALED**

### **A. Substantial Issue Determination**

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeals of each of the two local government actions were filed. A finding of substantial issue would bring both CDP applications for the proposed projects under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a **NO** vote on the following two motions. Failure of these motions, as recommended by staff, will result in a de novo hearing on the CDP applications, and adoption of the following resolutions and findings. Passage of these motions will result in a finding of No Substantial Issue and the local actions will become final and effective. The motions pass only by affirmative vote of a majority of the Commissioners present.

#### **1. Motion and Resolution Finding Substantial Issue on Appeal of Single-family Residence (A-2-SMC-11-041)**

***Motion:** I move that the Commission determine that Appeal Number A-2-SMC-11-041 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-2-SMC-11-041 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.*

#### **2. Motion and Resolution Finding Substantial Issue on Appeal of Vegetation Clearance (A-2-SMC-11-040)**

***Motion:** I move that the Commission determine that Appeal Number A-2-SMC-11-040 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a no vote.*

***Resolution to Find Substantial Issue:** The Commission hereby finds that Appeal Number A-2-SMC-11-040 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.*

### **B. De Novo CDP Determinations Approving Single Family Residence as Conditioned and Denying Unpermitted Vegetation Clearance**

#### **1. Approval of Single-family Residence as Conditioned (A-2-SMC-11-041)**

Staff recommends that the Commission, after public hearing, **approve** a coastal development

permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:*** *I move that the Commission approve Coastal Development Permit Number A-2-SMC-11-041 pursuant to the staff recommendation, and I recommend a yes vote.*

***Resolution to Approve CDP:*** *The Commission hereby approves Coastal Development Permit Number A-2-SMC-11-041 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with San Mateo County Local Coastal Program policies and Coastal Act access and recreation policies. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## **2. Denial of Unpermitted Vegetation Clearance (A-2-SMC-11-040)**

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure to adopt the motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:*** *I move that the Commission approve Coastal Development Permit Number A-2-SMC-11-040 pursuant to the staff recommendation, and I recommend a no vote.*

***Resolution to Deny CDP:*** *The Commission hereby denies Coastal Development Permit Number A-2-SMC-11-040, and adopts the findings set forth below, on the grounds that the development does not conform with the policies of the San Mateo County Local Coastal Program or with the Coastal Act's access and recreation policies. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

## III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicants shall submit two full size sets of Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be substantially in conformance with the proposed project plans (see **Exhibit 2**) except that they shall be revised and supplemented to comply with the following requirements:
  - (a) **Height.** The revised project plans shall illustrate that the height of the residential development is no greater than 24 feet.
  - (b) **Lighting.** There shall be no exterior night lighting, other than the minimum lighting necessary for pedestrian and vehicular safety purposes. All lighting shall be downward directed and designed so that it limits the amount of light or glare visible from the Miranda Surf Trail, the public restroom, and riparian and wetland habitats on the property and adjacent to the property to the maximum extent feasible, including through directing all interior lighting away from windows to the maximum extent feasible. Lighting plans shall be submitted with documentation associated with chosen lighting features demonstrating compliance with this condition.
  - (c) **Site Maintenance.** All site maintenance activities, including those associated with

maintaining landscaping and/or restored site areas, shall be clearly identified, and shall only be allowed consistent with the terms and conditions of this coastal development permit.

All requirements above and all requirements of the approved Revised Project Plans shall be enforceable components of this coastal development permit. The Permittees shall undertake development in accordance with the approved Revised Project Plans.

**2. Habitat Restoration Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicants shall submit two sets of a Habitat Restoration Plan to the Executive Director for review and approval. The plan shall at a minimum include:

- (a) **Site Plan.** A detailed site plan of the restoration and mitigation areas with habitat acreages identified. All riparian and wetland areas shall be restored, in place, to their 2004 boundaries (as illustrated in figure 2 in **Exhibit 7**) except for the area of the approved single family residence, including the driveway. Wetland areas impacted by the approved single-family residence shall be mitigated at a ratio of 4:1 on-site, on the adjacent parcel, or on other County land adjacent to the Miranda Surf Trail. The site plan shall be substantially consistent with the plan submitted to the Commission on November 26, 2013 (**Exhibit 10**).
- (b) **Baseline.** The ecological assessment of the current condition of the restoration and mitigation areas.
- (c) **Success Criteria.** Goals, objectives, and performance standards for successful restoration and mitigation.
- (d) **Restoration Methods.** The final design and construction methods that will be used to ensure the habitat plan achieves the defined goals, objectives, and performance standards.
- (e) **Initial As Builts.** Provisions for submittal, within 30 days of completion of initial restoration and mitigation work, of “as built” plans demonstrating that initial restoration and mitigation area activities have been completed in accordance with the approved plan.
- (f) **Monitoring and Maintenance.** For each habitat type, provisions for monitoring and maintenance, including a schedule, maintenance activities, a quantitative sampling plan, fixed photographic points, interim success criteria, final success criteria for native and non-native vegetative cover, biodiversity and wetland hydrology, and a description of the method by which success will be evaluated.
- (g) **Reporting.** Provision for submitting, for the review and approval of the Executive Director, monitoring reports prepared by a qualified specialist that assess whether the restoration is in conformance with the approved plan, beginning the first year after initiation of implementation of the plan, and annually for at least five years. Final monitoring for success will take place no sooner than 3 years following the end of all remediation and maintenance activities other than weeding. If the final report indicates that the restoration project has been unsuccessful, in part or in whole, based on the approved success criteria, the Permittees shall within 90 days submit two sets of a revised



or supplemental restoration program for the review and approval of the Executive Director. The revised or supplemental restoration program shall be processed as an amendment to the coastal development permit unless the Executive Director determines that no permit amendment is required. The program shall be prepared by a qualified specialist, and shall be designed to compensate for those portions of the original restoration that did not meet the approved plan's success criteria.

All requirements above and all requirements of the approved habitat plan shall be enforceable components of this CDP. The Permittees shall undertake development in accordance with this condition and the approved habitat restoration plan.

- 3. Landscape Screening Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicants shall submit two sets of a Landscape Screening Plan to the Executive Director for review and approval. The plan shall provide for landscaping (at maturity) capable of screening the approved single-family residence for the life of the project. The plan shall identify all plant materials (size, species, quantity, etc.), all irrigation systems, and all proposed maintenance measures, including providing for vegetation as necessary to achieve required screening. The plan shall be in conformance with and complimentary to the Habitat Restoration Plan identified in **Special Condition 2**, using native vegetation to screen the surrounding area. All plant materials shall be native and non-invasive species selected to be complimentary with the mix of native species in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. All landscaped areas shall be continuously maintained by the Permittees; all plant material shall be continuously maintained in a litter-free, weed-free, and healthy growing condition, and shall be replaced as necessary to maintain compliance with this CDP. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist. All requirements above and all requirements of the approved Landscape Screening Plan shall be enforceable components of this CDP. The Permittees shall undertake development in accordance with the approved Landscape Screening Plan.

- 4. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicants shall submit two sets of a Construction Plan to the Executive Director for review and approval. Minor adjustments to the following construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. The Construction Plan shall, at a minimum, include the following:

- (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, all construction access corridors (to the construction site and staging areas), and all public pedestrian access corridors. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to minimize construction encroachment on sensitive habitats and public use areas and to have the least impact on coastal resources, including public access, overall.

- (b) **Construction Methods and Timing.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from sensitive habitat and public recreational use areas. All erosion control/water quality best management practices to be implemented during construction and their location shall be noted. The timing/work seasons restrictions for the various construction components shall be limited from 7am to 6pm, Monday through Friday, and 9am to 5pm on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.
- (c) **Construction Requirements.** The Construction Plan applies to initial construction as well as future maintenance. The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan.
1. Prior to the commencement of any development authorized under this CDP, the Permittee shall ensure that all on-site workers and contractors understand and agree to observe the standards for work outlined in this CDP and in the detailed project description included as part of the application submittal as revised by these conditions.
  2. Prior to commencement of ground-disturbing activities, erosion, sediment, and runoff control measures shall be deployed in accordance with the final Storm Water Pollution Prevention Plan approved pursuant to **Special Condition 5**, and all measures shall be properly maintained throughout the duration of construction activities.
  3. Prior to the commencement of construction, the limits of the work areas and staging areas shall be delineated in consultation with a qualified biologist, limiting the potential area affected by construction and ensuring that all wetlands and other habitats adjacent to construction areas are avoided during construction. All vehicles and equipment shall be restricted to pre-established work areas and haul routes and to established or designated staging areas.
  4. All trash shall be properly contained, removed from the work site, and disposed of on a regular basis to avoid contamination of habitat during construction activities. Any debris inadvertently discharged into coastal waters shall be recovered immediately and disposed of consistent with the requirements of this CDP.
  5. Topsoil removed by grading operations shall be stockpiled for reuse and shall be protected from compaction and wind or erosion during stockpiling.
  6. Equipment staging, materials storage, and stockpiling areas shall be limited to the locations and sizes specified in the approved construction plans. Construction vehicles shall be restricted to designated haul routes. Construction equipment and materials shall be stored only in designated staging and stockpiling areas as depicted on the approved construction plans.
  7. Any fueling and maintenance of construction equipment shall occur within upland areas outside of habitat areas or within designated staging areas. Mechanized heavy

equipment and other vehicles used during the construction process shall not be refueled or washed within 100 feet of streams.

8. Fuels, lubricants, and solvents shall not be allowed to enter coastal waters, riparian areas or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up.

All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittees shall undertake development in accordance with this condition and the approved Construction Plan.

5. **Final Storm Water Pollution Prevention Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicants shall submit two sets of a final Storm Water Pollution Prevention Plan (SWPPP) to the Executive Director for review and approval. Minor adjustments to the following requirements may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources. The final SWPPP shall include provisions for all of the following:

- (a) **Sedimentation Controlled.** Runoff from the project site shall not increase sedimentation in coastal waters or wetlands post-construction. During construction, runoff from the project site shall not increase sedimentation in coastal waters beyond what is allowable under the final Water Quality Certification approved for the project by the Regional Water Quality Control Board.
- (b) **Pollutants Controlled.** Runoff from the project site shall not result in other pollutants entering coastal waters or wetlands during construction or post-construction.
- (c) **BMPs.** Best Management Practices (BMPs) shall be used to prevent the entry of polluted stormwater runoff into coastal waters and wetlands during construction and post-construction, including use of relevant BMPs as detailed in the current California Storm Water Quality Best Management Handbooks (<http://www.cabmphandbooks.com>).
- (d) **Spill Measures.** An on-site spill prevention and control response program, consisting of BMPs for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and emergency services agencies in the event of a spill, shall be implemented at the project to capture and clean-up any accidental or other releases of oil, grease, fuels, lubricants, or other hazardous materials, including to avoid them entering coastal waters or wetlands.
- (e) **BMP Schedule.** A schedule for installation and maintenance of appropriate construction source-control BMPs to prevent entry of stormwater runoff into the construction site and to prevent excavated materials from entering runoff leaving the construction site.

All requirements above and all requirements of the approved SWPPP shall be enforceable components of this CDP. The Permittees shall undertake development in accordance with this condition and the approved SWPPP.

- 6. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittees shall submit to the Executive Director for review and approval documentation demonstrating that the Permittees have executed and recorded against the property governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and graphic depiction, prepared by a licensed surveyor, of the property governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the property.
- 7. Open Space Restriction**

  - (a) No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area depicted in **Exhibit 12** as the “Open Space Restricted Area” except for habitat restoration and landscaping allowed pursuant to Special Conditions 2 and 3, and stormwater runoff and erosion control measures allowed pursuant to Special Condition 5.
  - (b) PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-2-SMC-11-041, the Applicants shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal metes and bounds legal description and corresponding graphic depiction drawn to scale and prepared by a licensed surveyor of the portions of the subject property affected by this condition, as generally described above and generally shown in **Exhibit 12** as the “**Open Space Restricted Area**,” attached to this staff report.
- 8. Permission From County. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT,** the Applicants shall provide evidence, for the review and approval of the Executive Director, that the County has provided the Applicant with permission to use and develop their property for restoration purposes as conditioned herein.
- 9. County Conditions.** All conditions of approval of the local approvals imposed on the project by San Mateo County pursuant to an authority other than the California Coastal Act remain in effect, but do not alter the Permittee’s responsibility to satisfy all conditions of approval as specified herein. The Permittees shall be responsible for satisfying all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local conditions.

#### IV. FINDINGS AND DECLARATIONS

##### **A. PROJECT LOCATION**

The County approved two separate CDPs involving 2 separately owned properties. The County-approved single-family residence would be located on the Applicants' property. The County's after-the-fact approval for vegetation clearance is for activities which occurred on the Applicants' property and an adjacent property. Both sites are located at the corner of Magellan and Alameda Avenues in Miramar, San Mateo County (APNs 048-016-010 and 048-016-020) (**Exhibit 1**). The Applicants' property consists of a vacant, 10,802 square foot, U-shaped parcel, and the adjacent parcel is 3,200 square feet in size and located in the middle of the U. The northern end of the Applicants' parcel is adjacent to Miranda Surf, which is a County-owned park and open space area, and is also adjacent to a perennial creek that is surrounded by willow riparian habitat, which extends onto the Applicants' property. The western ends of the parcel are adjacent to the Miranda Surf Trail, which was constructed in 2008. The parcel located in the middle of the U is owned by the San Mateo County Parks Department.<sup>1</sup> This parcel is currently vacant, but the County has approved development of a 170 square-foot restroom on this parcel to support the Miranda Surf Trail (County CDP No. PLN 2010-00356). The northern end of the Applicants' parcel is in close proximity to Highway 1 and the entire project site is located within the Cabrillo Highway County scenic corridor. Other land uses in the vicinity of the Applicants' parcel include other single-family residences ranging in size from 600 square feet to 5,200 square feet, and a restaurant.

##### **B. PROJECT DESCRIPTION**

One of the two CDPs approved by the County would allow construction a new 2,081 square foot single-family residence with an attached two-car garage. The residence would be located on southern end of the Applicants' parcel, adjacent and parallel to Magellan Avenue, and access to the residence would be from Magellan Avenue. The approved residential development includes a variance to reduce the side yard setbacks from the required 10 feet to 5 to 7 feet (**Exhibit 2**). The other County after-the-fact approval authorizes the vegetation clearance which occurred on the Applicants' U-shaped parcel and portions of the County-owned parcel in 2008 and 2009.

##### **C. PROJECT BACKGROUND**

The subject projects were the subject of County hearings for 35 months, including four hearings in front of the Planning Commission and one hearing before the Board of Supervisors, due to outstanding issues related to sensitive habitats, parcel legality, and unpermitted activities which occurred on the property.

The Applicants originally purchased the U-shaped parcel in April of 2008. In September of 2008, during construction of the Miranda Surf Trail, the Applicants gave the trail contractor permission to use their lot as a staging area, which resulted in vegetation clearing and the stockpiling of

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<sup>1</sup> The County's parcel was previously owned by Peninsula Open Space Trust and was transferred to County ownership on May 4, 2010.

large amounts of dirt on portions of their property and the adjacent County-owned parcel (see figure 1 of **Exhibit 7**). In addition, in June of 2009 there was another documented incidence of clearing of vegetation on the Applicants' property and the adjacent County-owned parcel. The County approval process was delayed a number of times in order to gather information to understand any impacts to sensitive habitats which occurred from these activities.

#### **D. SAN MATEO COUNTY APPROVAL**

On May 20, 2010, due to outstanding issues associated with the project as discussed above in the "Project Background" Section, the Zoning Hearing Officer referred both of the CDP applications to the San Mateo Planning Commission. The Planning Commission continued the items 3 times until its final hearing on April 13, 2011, at which time the Planning Commission denied both of the CDP applications in a 4 to 1 vote. The Applicants submitted an appeal of the Planning Commission's decisions to the Board of Supervisors, and offered three alternative proposals for the single-family residence.<sup>2</sup> On November 1, 2011 the County Board of Supervisors approved CDP PLN2008-00380 to allow for construction of a 2,081 square foot single-family residence with a pitched roof, setback 50 feet from riparian habitat and with a variance to the side yard setbacks (**Exhibit 3**). On the same date the Board of Supervisors approved an after-the-fact CDP (PLN2009-00358) to legalize the vegetation clearance that had previously taken place on the Applicants' property and the adjacent County-owned property (**Exhibit 4**). In its final decision, the County Board of Supervisors found that the unpermitted vegetation removal did not result in impacts to sensitive habitats. Notice of the County's actions on both of the CDPs was received in the Coastal Commission's North Central Coast District Office on November 8, 2011. The Coastal Commission's ten-working day appeal period for these actions began on November 9, 2011 and concluded at 5 p.m. on November 23, 2011. Two valid appeals (see **Exhibit 5** and **6** below) were received during the appeal period.

#### **E. APPEAL PROCEDURES**

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

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<sup>2</sup> Alternative 1 included a 2,612 square foot house, 24 feet in height, with a variance to reduce the front property line setback from 20 to 10 feet, and a variance to reduce the side yard setback from 10 to 5 to 7 feet. Alternative 2 included a shorter 2,230 square foot house, 24 feet in height, with a proposed variance to reduce the front property line setback from 20 to 10 feet, and a variance to reduce the side yard setback from 10 to 5 to 7 feet. Alternative 3 included the smallest (and shortest) house alternative of 2,081 square feet, with a height not indicated in the staff report, maintained the required front property line setback of 20 feet, but still required a variance to reduce the side yard setback from 10 to 5-7 feet. Alternative 3 also changed the flat roof design to a pitched roof. None of the alternatives met the setback from riparian vegetation that existed prior to the clearing.

facility and/or a special district development) or an energy facility is appealable to the Commission. In this case, both projects are appealable because they involve development that is located between the sea and the first public road paralleling the sea, and because they are located within 100 feet of a wetland and a stream.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct the de novo portion of the 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 considers the CDP de novo 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. These projects are located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves the projects following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicants (or their representatives), 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.

## **F. SUMMARY OF APPEAL CONTENTIONS**

The Appellants contend that the County-approved projects raise LCP conformance issues and questions with respect to sensitive habitat and visual resource impacts, allowance of variances, and lot legality. Specifically, the Appellants contend that: 1) the Applicants knowingly conducted unpermitted vegetation removal and fill activities on the property inconsistent with the LCP sensitive habitat policies, which resulted in adverse impacts to sensitive habitats; 2) the County’s variance findings for the approved single-family residence alternative are not consistent with the LCP ; 3) the County did not adequately evaluate the potential visual impacts of the single-family residence, as required by the LCP ; 4) the approved single-family residence is inconsistent with the LCP’s sensitive habitat policies; and 5) it is unclear whether the Applicants’ parcel is a legal parcel under the LCP.

See **Exhibits 5** and **6** for the full text of the appeals.

## **G. SUBSTANTIAL ISSUE DETERMINATION**

### **Substantial Issue Background**

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (California Code of Regulations, Title 14, Section 13115(b)). In

previous decisions on appeals, the Commission has been guided by the following factors in making such determinations: (1) the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act; (2) the extent and scope of the development as approved or denied by the local government; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or those of regional or statewide significance. Even where the Commission chooses not to hear an appeal, Appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission determines that the County's approval of the projects presents a substantial issue.

### **Substantial Issue Analysis**

#### *Sensitive Habitats – Vegetation Clearance*

The Appellants contend that the Applicants conducted unpermitted activities on their property and on the adjacent parcel which resulted in adverse impacts to sensitive habitats, inconsistent with the LCP sensitive habitat policies. See **Exhibits 5 and 6** for the full text of the Appellants' contentions. For the specific policy language referenced below, please see the "Sensitive Habitat" Section in the De Novo portion of the appeal staff report.

As mentioned in the project background, the Applicants allowed vegetation clearance and stockpiling of dirt to take place on their property and the adjacent County-owned parcel in September of 2008 and June of 2009. The County's approval of the vegetation clearance was based on a summary of biological information<sup>3</sup> produced by the Applicants' consultant which reviewed previous biological assessments and wetland delineations conducted in 2009 and 2010 at the project site, after the occurrence of the unpermitted activities. The 2010 summary report found no indication of hydric soils or wetland hydrology and concluded that wetland resources did not occur on or adjacent to the project area. In addition, the 2010 summary report found no evidence of willow stumps or woody debris in the cleared area and concluded that the extent of willow riparian habitat on the property in 2010 was similar to the willow riparian boundary prior

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<sup>3</sup> WRA. December 2, 2010. Wetland and Vegetation Summary Report for Proposed Hodge Residence. This document summarized findings from:

Biotic Resource Group. 2010. Miranda Surf West Restroom Project Biological Impact Form. Prepared for County of San Mateo.

WRA, 2009a. Biological Resource Assessment for Proposed Hodge Residence, February 12, 2009.

WRA 2009b. Wetland Delineation results at proposed Hodge Residence, Magellan Avenue, Miramar (APN: 048-016-010) Letter from WRA to Stephanie Skangos, Planning and Building Department, County of San Mateo, August 14, 2009

WRA. 2009c. Previous Habitat Conditions of Cleared Area: Proposed Hodge Residence, Magellan Avenue, Miramar. Letter to David Hodge from WRA, May 21, 2009.



to vegetation clearance by the Applicants. However, a 2004 biological evaluation<sup>4</sup> of the sites for the Mirada Surf Coastal Trail extension project documented that the Applicants' property contained extensive willow riparian habitat growing adjacent to a perennial stream on the northeastern end of the property, and also found that a wetland area was located on the property, in the approximate location of the approved single-family residence (see figure 2 of **Exhibit 7**). The 2004 biological evaluation and comparison of aerial photographs from 2005 and 2008, indicates that the 2010 summary report better describes the resources present in 2010 and not the resources that existed on the site prior to unpermitted activities (see figure 4 for a comparison of the extent of sensitive habitats in 2004 and 2010 of **Exhibit 7**).

As defined by LCP Policy 7.1, sensitive habitats include wetlands and riparian corridors. The LCP includes strong protections for sensitive habitats and limits the allowed uses occurring within these habitats to resource dependent uses, prohibits land uses which would have an adverse impact on sensitive habitats, includes specific buffer areas for development occurring adjacent to these habitats, and limits uses occurring within sensitive habitat buffers (LCP Policies 7.3, 7.4, 7.9, 7.11, 7.12, 7.16, 7.18, and 7.19). Resource dependent uses allowed in riparian corridors and wetlands as defined by the LCP include, but are not limited to, research and education, consumptive uses consistent with the California Fish and Wildlife Code, fish and wildlife management, and trails (LCP Policies 7.9 and 7.16). In addition, the filling of wetlands is only allowed by LCP Policy 7.16 to maintain dikes or channels in the Pescadero Marsh for flood protection for existing dwellings or to enhance the biological productivity of the marsh, or to restore or enhance the productivity of a wetland.

The vegetation clearance and stockpiling of dirt on the Applicants' property and County-owned parcel occurred within a riparian corridor and in wetland areas. The vegetation clearance removed a portion of the riparian vegetation on the northeastern end of the Applicants' parcel, and also resulted in the removal of wetland vegetation on the southwest end of the Applicants' parcel and on the adjacent County-owned parcel. The stockpiling of dirt resulted in the fill of wetlands on the Applicants' parcel and on the adjacent County-owned parcel as well. These activities are not defined in the LCP as resource dependent uses allowed in riparian corridors and wetlands, or their associated buffers, and resulted in significant adverse impacts to sensitive habitats, inconsistent with the LCP. Therefore, the Commission finds that the County's approval of the after-the-fact vegetation clearance raises a substantial LCP conformance issue with respect to sensitive habitats.

#### *Sensitive Habitats – Single-family Residence*

An Appellant contends that the approved single-family residence is inconsistent with the LCP's sensitive habitat policies as the required buffer is not set back 50 from the edge of the riparian vegetation that existed in 2004 prior to the unpermitted vegetation clearance. Please see **Exhibit 5** for the full text of the Appellant's contentions. For the specific policy language referenced

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<sup>4</sup> San Mateo County Environmental Services Agency. March 17, 2005. Biological Impact Form (for compliance with Local Coastal Program Policy 7.5). A report based on biological assessments conducted by Kathleen Lyons (Biotic Resources Group) and Dan Bland (Dana Bland & Associates). Site visits for this assessment were conducted in March and June of 2004.

below, please see the “Sensitive Habitat” Section in the De Novo portion of the appeal staff report.

As mentioned above, the LCP only allows resource-dependent and a few other specific uses within sensitive habitat areas, such as wetlands and riparian areas (LCP Policies 7.4, 7.9, and 7.16). The LCP also requires specific buffers between development and such sensitive habitats. Specifically, the LCP requires a minimum 100-foot buffer between development and wetlands, and a minimum 50-foot buffer between development and the edge of riparian vegetation that is associated with a perennial stream (LCP Policies 7.11 and 7.18). LCP policies 7.12 and 7.19 also specify permitted uses allowed within these buffer areas. The County-approved project allows for the development of a single-family residence within an area on the Applicants’ parcel where a known wetland existed prior to the fill activities mentioned above. Although there was no wetland present at the time of the County’s approval of the residence, the habitat was removed without the required CDP. Therefore, the County’s approval of the residential development within a wetland is inconsistent with the LCP’s wetland policies. Also, the County-approved project provides for a 50-foot buffer from the riparian habitat as defined by the Applicants’ 2010 biological summary report. However, the unpermitted vegetation clearance completed in 2008 and 2009 resulted in the reduction of the riparian corridor, as documented by the County’s biological report from 2005 (See figure 4 in **Exhibit 7**). As such, the riparian buffer should have been based on the location of the riparian vegetation that existed prior to the unpermitted vegetation clearance. Therefore, the riparian buffer approved by the County is inconsistent with the LCP. Thus, the Commission finds that the County’s approval of the single-family residence raises a substantial LCP conformance issue with respect to sensitive habitats.

#### *Lot Legality*

An Appellant contends that while the County demonstrated that the three individual lots that make up the U-shaped parcel were conveyed separately from any adjacent lots, there is nothing in the County’s record that demonstrates whether the three lots have been treated as one parcel in one ownership as they were conveyed over the years, and as such, there is a question whether the Applicants’ parcel constitutes a legal lot. The Appellant also states that the parcel legality issue should be evaluated in light of the *Witt and Abernathy* decisions. These decisions concluded that antiquated subdivision maps could not be the sole basis for determining lot legality.

LCP Section 6105.0 requires that no permit be issued for lots that are not legal and states:

*Section 6105.0 Legal Lot Requirement. No permit for development shall be issued for any lot which is not a legal lot. For purposes of this ordinance, development does not include non-structural uses of property including but not limited to roads, fences, or water wells.*

LCP Policy 1.27 specifies when a coastal development permit is required when issuing a certificate of compliance, and states:

#### *1.27 Confirming Legality of Parcels*

*Require a Coastal Development Permit when issuing a Certificate of*

*Compliance to confirm the legal existence of parcels as addressed in Section 66499.35(a) of the California Government Code (e.g., lots which predated or met Subdivision Map Act and local government requirements at the time they were created), only if: (1) the land division occurred after the effective date of coastal permit requirements for such division of land (i.e., either under Proposition 20 or the Coastal Act of 1976), and (2) a coastal permit has not previously been issued for such division of land.*

Finally, LCP Policy 1.21 requires the consolidation of contiguous lots held in the same ownership to protect coastal resources, as follows:

*1.21 Lot Consolidation*

*According to the densities shown on the LCP Land Use Plan Map, consolidate contiguous lots, held in the same ownership, in residential subdivisions in Seal Cove to minimize risks to life and property and in Miramar to protect coastal views and scenic coastal areas.*

LCP Policy 1.27 requires that a coastal development permit be approved when issuing a Certificate of Compliance (CoC) Type A only if the land division occurred after the effective date of Prop 20 or the Coastal Act of 1976, and if a permit had not been previously issued. On January 20, 2010, the County issued one Certificate of Compliance (Type A) for the Applicants' property, listed as APN 048-016-010. The County found that the Applicants' parcel was created by deed in the early 1900's, prior to the Coastal Act and the County's first subdivision ordinance. Therefore, the County confirmed the legality of the parcel through a COC (Type A) consistent with Policy 1.27.

Since the appeal was filed, the Applicants and the County have provided the Commission with additional information, including the Chain of Title and Deeds for the transfers of property through 1937. This information confirms that the certificate of compliance was not based upon appearance of the property on antiquated subdivision maps; therefore, the decisions and concerns raised in *Witt* and *Abernathy* are not at issue. Further, only one certificate of compliance was issued, not three, in recognition of the fact that the property had been merged by operation of law. The LCP, as originally certified, required merger of commonly owned contiguous lots in Miramar to achieve density limitations protective of scenic coastal views. In January 1984, the County recorded a Notice of Merger that acknowledges the subject parcel, consistent with the San Mateo County LCP Policy 1.21 and the contemporaneous 30 day notice requirements of the then operative Subdivision Map Act.

Furthermore, as discussed below in the section discussing whether the Commission should treat the property as a single parcel for purposes of determining whether denial of the single-family residence would constitute a taking, the Applicants own the subject vacant parcel proposed to be developed with a single-family residence (APN 048-016-10), but do not own any adjacent parcels. The adjoining parcels are owned by others. The parcel located in the middle of the "U" (APN 048-016-020) is currently owned by San Mateo County (formerly owned by Peninsula Open Space Trust). The undeveloped adjoining parcel directly to the east (APN 048-016-050) is

owned by Thomas E. Bishop, Trustee of the Martha E. Bishop Revocable Trust (formally owned by Martha E. Bishop). The parcels further east within the same block are owned by Philomena LLC (formally owned by Mary C McDonald and Thomas Carey). The adjacent parcel to the north (APN 047-331-010) is owned by San Mateo County Department of Parks and Recreation. Given all of the above, the County's issuance of a Certificate of Compliance (Type A) for the Applicants' parcel is sufficient to confirm the legality of the Applicants' parcel. Thus, this aspect of the appeal does not raise a substantial LCP conformance issue.

### **Substantial Issue Conclusion**

The appeal of the County-approved residential project raises substantial LCP conformance issues with respect to sensitive habitats and their required buffers. The appeal of the County's after-the-fact approval of the vegetation clearance also raises a substantial LCP conformance issue with respect to sensitive habitats. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved projects' conformance with the certified San Mateo County LCP, and takes jurisdiction over the CDP applications for both projects.

## **H. COASTAL DEVELOPMENT PERMIT DETERMINATION**

The standard of review for this CDP determination is the San Mateo County certified LCP and, because the project sites are located between the first public road and the sea, the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference.

### **Sensitive Habitats**

#### *Applicable Policies*

The County's LCP includes strong protections for biological resources, including the preservation and protection of sensitive habitats. The LCP defines sensitive habitats, requires the protection of sensitive habitats, and limits the uses permitted within sensitive habitats as follows:

#### ***7.1 Definition of Sensitive Habitats***

*Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.*

*Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.*

### **7.3 Protection of Sensitive Habitats**

- a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.*
- b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.*

### **7.4 Permitted Uses in Sensitive Habitats**

- a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33, and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.*
- b. In sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife and State Department of Fish and Game regulations.*

As stated in LCP Policy 7.1 above, the LCP considers riparian corridors as sensitive habitats. The LCP defines riparian corridors and riparian buffers and includes specific policies outlining uses permitted in these areas as follows:

### **7.7 Definition of Riparian Corridors**

*Define riparian corridors by the “limit of riparian vegetation” (i.e., a line determined by the association of plant and animal species normally found near streams, lakes and other bodies of freshwater: red alder, jaumea, pickleweed, big leaf maple, narrow-leaf cattail, arroyo willow, broadleaf cattail, horsetail, creek dogwood, black cottonwood, and box elder). Such a corridor must contain at least a 50% cover of some combination of the plants listed.*

### **7.9 Permitted Uses in Riparian Corridors**

- a. Within corridors, permit only the following uses: (1) education and research (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.*
- b. When no feasible or practicable alternative exists, permit the following uses: (1) stream dependent aquaculture, provided that non-stream dependent facilities locate outside of corridor, (2) flood control projects, including selective removal of riparian vegetation, where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, (3) bridges when supports are not in significant conflict with corridor resources, (4) pipelines, (5) repair or maintenance of roadways or road crossings, (6) logging operations which are limited to temporary skid trails, stream crossings, roads and landings in accordance with State and County timber harvesting regulations, and (7) agricultural uses, provided no existing riparian vegetation*

### **7.11 Establishment of Buffer Zones**

- a. On both sides of riparian corridors, from the “limit of riparian vegetation” extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.*
- b. Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams.*
- c. Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point except for man-made ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.*

### **7.12 Permitted Uses in Buffer Zones**

*Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors; (2) residential uses on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists; (3) on parcels designated on the LCP Land Use Plan Map: Agriculture, Open Space, or Timber Production, residential structures or impervious surfaces only if no feasible alternative exists; (4) crop growing and grazing consistent with Policy 7.9; (5) timbering in “streamside corridors” as defined and controlled by State and County regulations for timber harvesting; and (6) no new residential parcels shall be created whose only building site is in the buffer area.*

In addition, as stated in LCP Policy 7.1 above, the LCP considers wetlands as sensitive habitats. The LCP defines wetlands and wetland buffers and includes specific policies outlining uses permitted in these areas as follows:

### **7.14 Definition of Wetland**

*Define wetland as an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.*

*In San Mateo County, wetlands typically contain the following plants: cordgrass, pickleweed, jaumea, frankenia, marsh mint, tule, bullrush, narrow-leaf cattail, broadleaf cattail, pacific silverweed, salt rush, and bog rush. To qualify, a wetland must contain at least a 50% cover of some combination of these plants,*

*unless it is a mudflat.*

#### **7.16 Permitted Uses in Wetlands**

*Within wetlands, permit only the following uses: (1) nature education and research, (2) hunting, (3) fishing, (4) fish and wildlife management, (5) mosquito abatement through water management and biological controls; however, when determined to be ineffective, allow chemical controls which will not have a significant impact, (6) diking, dredging, and filling only as it serves to maintain existing dikes and an open channel at Pescadero Marsh, where such activity is necessary for the protection of pre-existing dwellings from flooding, or where such activity will enhance or restore the biological productivity of the marsh, (7) diking, dredging, and filling in any other wetland only if such activity serves to restore or enhance the biological productivity of the wetland, (8) dredging man-made reservoirs for agricultural water supply where wetlands may have formed, providing spoil disposal is planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation, and (9) incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*

#### **7.18 Establishment of Buffer Zones**

*Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only where: (1) no alternative development site or design is possible; and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem.*

#### **7.19 Permitted Uses in Buffer Zones**

*Within buffer zones, permit the following uses only: (1) uses allowed within wetlands (Policy 7.16) and (2) public trails, scenic overlooks, and agricultural uses that produce no impact on the adjacent wetlands.*

#### **Analysis**

The northern end of the Applicants' property is adjacent to a perennial stream that is surrounded by riparian vegetation, which extends onto the northeast portion of the property. The proposed projects include development of a single-family residence and a request for after-the-fact authorization of vegetation clearance. The Applicants' biological consultant (WRA) evaluated the site a number of times and produced a summary report in 2010.<sup>5</sup> The 2010 report summarized findings from previous biological surveys and assessments conducted in and around the project area, including WRA's wetland delineation and biological resource assessment from 2009 and Biotic Resources Group's assessment of vegetation resources conducted in August 2010. WRA's 2010 summary report concluded that wetland resources did not occur on or adjacent to the project area and that the extent of willow riparian habitat on the property in 2010

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<sup>5</sup> WRA. December 2, 2010. Wetland and Vegetation Summary Report, Proposed Hodge Residence.

was similar to the willow riparian boundary prior to vegetation clearance by the Applicants, which occurred in 2008 and 2009.

However, there is evidence in the record that suggests there was a greater extent and diversity of sensitive habitats which existed on the Applicants' property and adjacent County-owned parcel prior to the unpermitted activities, and that the vegetation clearance and stockpiling of dirt in 2008 and 2009 resulted in the removal and fill of these sensitive habitats. This evidence includes a Biological Impact Form prepared in 2005 for the Miranda Surf Coastal Trail Extension Project, a comparison of aerial photographs from before and after the unpermitted activities, related information from WRA's 2009 biological report, and supplemental soil samples conducted by WRA in 2012. The Coastal Commission's Senior Ecologist, Dr. John Dixon, evaluated the aforementioned information and concludes that wetlands did exist on the Applicants' property and the adjacent County-owned parcel prior to the unpermitted vegetation clearance and stockpiling of dirt. In addition, Dr. Dixon concludes that the riparian habitat extended further onto the northeast end of the Applicants' property prior to the vegetation clearance. See **Exhibit 7** for Dr. Dixon's memo regarding riparian clearing and wetland fill on the two parcels.

As indicated in Dr. Dixon's memo, a comparison of aerial photographs taken in 2005 (prior to vegetation clearance) and in 2008 (after the first incident of vegetation clearance) show a clear loss of riparian vegetation in 2008, due to the unpermitted vegetation clearance. The memo also compares the results of biological surveys of the site conducted by the County's biologist in June 2005 and June 2010, which illustrate evidence that the filling of wetlands took place on the property. Specifically, the County's 2004 survey (results included in the 2005 report) found that the Applicants' parcel and adjacent property supported a seasonal wetland, i.e. the County identified indicators of wetland hydrology and dominant vegetation comprised of wetland indicator species on the two parcels. This wetland was located on the area of the two parcels where dirt was stockpiled during construction of the Miranda Surf Trail. The 2009 and 2012 WRA reports found fill material and rough cobble in the upper 2-10 inches of soil, with dark loam and decaying vegetation beneath the fill, and thus, also support the conclusion that the stockpiling of dirt resulted in fill of a wetland on the two parcels. Therefore, since the fill of wetlands and the removal of riparian and wetland vegetation were undertaken without the required CDP, the Commission reviews the CDP application based on the resources that existed prior to unpermitted activities. Therefore, the analysis below is based on the assumption that the wetlands and the extent of riparian habitat which existed on the property in 2004 still exist (see figure 2 of **Exhibit 7** for 2004 sensitive habitat boundaries relative to the Applicants' property).

The LCP's definition of sensitive habitats includes riparian corridors and wetlands (LCP Policy 7.1). Prior to unpermitted vegetation clearance and fill activities, wetlands and an extensive riparian corridor existed on the Applicants' property and the adjacent County-owned parcel. LCP Sensitive Habitat Policies 7.3 and 7.4 limit the allowable uses in sensitive habitats such as riparian corridors and wetlands. These policies prohibit development which would adversely affect or degrade sensitive habitats and limit uses permitted within sensitive habitats to resource dependent uses that comply with US Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) regulations. As mentioned earlier, the stockpiling of dirt for construction and vegetation clearance resulted in the fill of wetlands and removal of wetland and riparian vegetation on the Applicants' property and the adjacent County-owned



property, thus reducing the biological productivity of these habitats and completely removing portions of these habitats. These activities do not qualify as resource dependent uses under LCP Policy 7.4 (a) and the policies cited within. Therefore, the unpermitted activities conducted by the Applicants were not resource dependent uses and resulted in adverse impacts to sensitive habitats, inconsistent with LCP Policies 7.3 and 7.4.

The LCP defines riparian corridors by the “limit of riparian vegetation” and establishes riparian buffer zones for perennial streams to extend 50-feet from the limit of riparian vegetation (LCP Policies 7.7 and 7.11). Uses permitted within riparian corridors and riparian buffers are limited to those defined in LCP Policies 7.9 and 7.12, and do not include residential development and vegetation clearance. LCP Policy 7.11 requires a buffer zone of 50 feet from the limit of riparian vegetation associated with a perennial stream, and LCP Policy 7.12 establishes the allowed uses in riparian corridor buffer zones. Similarly, the LCP defines wetlands as areas with hydric soils or areas that support the growth of wetland vegetation, and establishes wetland buffer zones to extend 100-feet from the outermost line of wetland vegetation (LCP Policies 7.14 and 7.18). Uses permitted within wetlands and wetland buffers are limited to those defined in LCP Policies 7.16 and 7.19. The vegetation clearance and fill activities conducted by the Applicants occurred within riparian corridors, riparian buffers, wetlands, or wetland buffers as defined by the sensitive habitat boundaries which existed in 2004 (see figure 4 of **Exhibit 7**). These unpermitted activities were not uses permitted within these sensitive habitats and sensitive habitat buffers, and thus are inconsistent with LCP Policies 7.9, 7.12, 7.16, and 7.19. In addition, the location of the proposed single-family residence would occur within the wetland area and the riparian habitat buffer defined by the 2004 habitat boundaries, inconsistent with LCP policies 7.14 and 7.12.

For all the reasons discussed above, neither the proposed single family residence nor the unpermitted vegetation clearance can be found consistent with the LCP’s sensitive habitat policies, specifically with respect to sensitive habitat policies related to riparian corridors and wetlands, and their required buffer areas.

## **Visual Resources**

### *Applicable Policies*

The LCP includes policies which protect the visual resources associated with perennial streams, riparian habitats, and wetlands, as follows:

#### ***8.6 Streams, Wetlands, and Estuaries***

- a. Set back development from the edge of streams and other natural waterways a sufficient distance to preserve the visual character of the waterway.*
- b. Prohibit structural development which will adversely affect the visual quality of perennial streams and associated riparian habitat, except for those permitted by Sensitive Habitats Component Policies.*
- c. Retain the open natural visual appearance of estuaries and their surrounding beaches.*
- d. Retain wetlands intact except for public accessways designed to respect the visual and ecological fragility of the area and adjacent land, in accordance with*

*the Sensitive Habitats Component policies.*

The LCP requires that the location of new development minimize visual impacts to skylines and ridgelines, views to the ocean from public viewpoints and public roads, as follows:

**8.7 Development on Skylines and Ridgelines**

*a. Prohibit the location of development, in whole or in part, on a skyline or ridgeline, or where it will project above a skyline or ridgeline, unless there is no other developable building site on the parcel. Consistent with Policy 9.18, a site of greater than 30% slope may be deemed developable if it is the only other building site on the parcel and can be developed consistent with all other applicable LCP policies.*

*Prohibit the location of development, in whole or in part, on a skyline, or where it will project above a skyline, when a developable building site exists on a ridgeline.*

*A skyline is the line where sky and land masses meet, and ridgelines are the tops of hills or hillocks normally viewed against a background of other hills (General Plan Policy 4.7).*

*b. Where no other developable building site exists on a parcel, limit development on a skyline or ridgeline to 18 feet in height from the natural or finished grade, whichever is lower.*

*c. Prohibit the creation of new parcels which have no developable building site other than on a skyline or ridgeline.*

**8.12 General Regulations**

*a. Apply the Design Review (DR) Zoning District to urban areas of the Coastal Zone*

*(1) For one- and two-family developments in the Midcoast, apply the design standards contained in Section 6565.20.*

*(2) For all other development, apply the design standards contained in Section 6565.17 and the design criteria set forth in the Community Design Manual.*

*b. Locate and design new development and landscaping so that ocean views are not blocked from public viewing points such as public roads and publicly-owned lands.*

The LCP provides specific guidance for the design of development within the Miramar Coastal Community, where the proposed project is located, as follows:

**8.13 Special Design Guidelines for Coastal Communities**

***a. Montara-Moss Beach-El Granada-Miramar***

*(1) Design structures that fit the topography of the site and do not require extensive cutting, grading, or filling for construction.*

*(2) Employ the use of natural materials and colors that blend with the vegetative cover of the site.*

*(3) Use pitched roofs that are surfaced with non-reflective materials except for the employment of solar energy devices. The limited use of flat roofs may be allowed if necessary to reduce view impacts or to accommodate varying architectural styles that are compatible with the character of the surrounding area.*

*(4) Design structures that are in scale with the character of their setting and blend rather than dominate or distract from the overall view of the urbanscape.*

*(5) To the extent feasible, design development to minimize the blocking of views to or along the ocean shoreline from Highway 1 and other public viewpoints between Highway 1 and the sea. Public viewpoints include coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches. This provision shall not apply in areas west of Denniston Creek zoned either Coastsides Commercial Recreation or Waterfront.*

*(6) In areas east of Denniston Creek zoned Coastsides Commercial Recreation, the height of development may not exceed 28 feet from the natural or finished grade, whichever is lower.*

Finally, the LCP defines scenic corridors along scenic highways, requires the protection of the visual resource associated with these scenic corridors, and regulates the development in scenic corridors, as follows:

#### ***8.28 Definition of Scenic Corridors***

*Define scenic corridors as the visual boundaries of the landscape abutting a scenic highway and which contain outstanding views, flora, and geology, and other unique natural or man-made attributes and historical and cultural resources affording pleasure and instruction to the highway traveler.*

#### ***8.30 Designation of County Scenic Roads and Corridors***

- a. Expand existing County Scenic Corridors to include the visual limits of the landscape abutting the scenic road.*
- b. Designate County Scenic Roads and Corridors as shown on the Scenic Roads and Corridors Map for the Coastal Zone. These are Coast Highway north of Half Moon Bay city limits (State Route 1), Half Moon Bay Road (State Route 92), La Honda Road (State Route 84), Higgins-Purissima Road, Tunitas Creek Road, Pescadero Road, Stage Road, Cloverdale Road, and Gazos Creek Road (Coast Highway to Cloverdale Road).*

#### ***8.32 Regulation of Scenic Corridors in Urban Areas***

- a. Apply the regulations of the Design Review (DR) Zoning Ordinance.*
- b. Apply the design criteria of the Community Design Manual.*
- c. Apply specific design guidelines for Montara, Moss Beach, El Granada, Princeton-by-the-Sea, Miramar, San Gregorio, and Pescadero as set forth in Urban Design Policies of the LCP.*

### ***SECTION 6325.1. PRIMARY SCENIC RESOURCES AREAS CRITERIA.***

*The following criteria shall apply within Scenic Corridors and other Primary Scenic Resources Areas as defined or designated in the Open Space and Conservation Element of the San Mateo County General Plan:*

*(a) Public views within and from Scenic Corridors shall be protected and enhanced, and development shall not be allowed to significantly obscure, detract from, or negatively affect the quality of these views. Vegetative screening or setbacks may be used to mitigate such impacts. Development visible from Scenic Corridors shall be so located and designed as to minimize interference with ridgeline silhouettes.....*

#### *Analysis*

The proposed single-family residence would be located in a highly visible area as it is within the Cabrillo Highway (Highway 1) scenic corridor as defined by the LCP, is between Highway 1 and the shoreline, and is adjacent to a County park and trail and sensitive habitats. The LCP requires the protection of visual resources associated with sensitive habitats, ridgelines, ocean views, and scenic corridors. Specifically, LCP Policy 8.6 prohibits development that would adversely affect the visual quality of perennial streams and adjacent riparian habitat, and requires that wetland areas be retained in order to maintain the visual characteristics associated with these fragile coastal resources. The LCP also prohibits development which would impact skylines and ridgelines and views to the ocean from public roads such as Highway 1 (LCP Policy 8.7, 8.12, and 8.13). The Applicants' parcel is located within a County scenic corridor as defined by LCP Policies 8.28 and 8.30, as it is located adjacent to Highway 1. For scenic corridors, the LCP requires that development be located and designed to minimize interference with ridgeline silhouettes (LCP Section 6325.1). As required by LCP Policy 8.32 for projects within scenic corridors in urban areas, the regulations of the Design Review Zoning Ordinance, design criteria of the Community Design Manual, and design guidelines for the Miramar Urban area should be applied to the proposed single-family residence.

The proposed single-family residence would be located on the southern arm of the U shaped parcel, adjacent and parallel to Magellan Ave. The two-story residence would be 2,081 square feet in size, with a lot coverage of 1,414 square feet and would contain a pitched roof with an unspecified height. While the subject parcel is located between Highway 1 and the ocean, potentially affecting ocean views, there is a large stance of trees to the west of the parcel which block ocean views to a certain extent from Highway 1. In addition, the parcel is at a lower elevation than Highway 1 and the remaining existing riparian vegetation would provide some coverage of the proposed structure from Highway 1 (**Exhibit 8**). The originally proposed single-family residence, larger in size than the approved alternative with a maximum height of 24 feet and a flat roof, was reviewed by the CDRC as required by the LCP. This CDRC approved the design for the originally proposed project concluding that it did not impact the ridgeline silhouettes and was consistent with the LCP regulations. The project alternative approved by the Board of Supervisors instead included a pitched roof. The pitched roof design improves consistency with the design guidelines for the Miramar Coastal Community as outlined in LCP Policy 8.13(a)(3) which recommends the use of pitched roofs. Therefore, the single family residence is consistent with the LCP scenic corridor visual resources policy 8.32.

However, as described in the Sensitive Habitat section above, the subject parcel is adjacent to a perennial stream and associated riparian vegetation which extends onto the northeast end of the parcel. There was also a wetland on the southwest end of parcel which existed prior to unpermitted activities. The proposed after-the-fact vegetation clearance CDP would authorize vegetation clearance which resulted in the removal of wetland and riparian habitats, impacting the natural visual quality of these resources as seen from the surrounding areas, which include high public use areas and a public road. In addition, the proposed single-family residence would be located in a previously existing wetland, which would otherwise have been restored, impacting the visual characteristics associated with the wetland and blocking the views to the riparian habitat to the north. Therefore, the approved projects are inconsistent with LCP Visual Resource Policy 8.6.

Both the proposed single family residence and the proposed after-the-fact authorization of vegetation clearance would result in approval of development which impacts the fragile visual characteristics and quality associated with the riparian and wetland habitat. Therefore, the proposed projects are inconsistent with the visual resource policies of the LCP.

### **CDP Determination Conclusion**

As discussed in the previous sections, both the proposed single family residence and the unpermitted vegetation clearance and fill activities would occur within sensitive habitats and result in adverse impacts to these sensitive habitats and the visual resources associated with these habitats, inconsistent with the sensitive resource and visual resource policies of the LCP, including LCP Policies 7.3, 7.4, 7.9, 7.12, 7.16, 7.19, 7.14, 7.12 regarding development within sensitive habitats and sensitive habitat buffers, and LCP Policies 8.6 and 8.32 regarding maintaining the visual quality of sensitive resources and scenic corridors. Thus, both proposed projects should be denied.

## **I. TAKINGS**

### **Need to Allow a Reasonable Residential Development to Avoid an Unconstitutional Taking of Property**

As discussed above, the proposed projects are inconsistent with LCP Policies 7.3, 7.4, 7.9, 7.12, 7.16, 7.19, 7.14, 7.12 regarding development within sensitive habitats and sensitive habitat buffers, and LCP Policies 8.6 and 8.32 regarding maintaining the visual quality of sensitive resources and scenic corridors. Therefore, the LCP requires that the projects be denied. However, when the Commission considers denial of a project, a question may arise as to whether the denial results in an unconstitutional “taking” of the Applicants’ property without payment of just compensation. Coastal Act Section 30010 addresses takings and states as follows:

*The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the*

*rights of any owner of property under the Constitution of the State of California or the United States.*

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its action constitutes a taking, the Coastal Act imposes on the Commission the duty to assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project with the assurance that its actions are consistent with Section 30010. If the Commission determines that its action could constitute a taking, then the Commission could also find that application of Section 30010 would overcome the presumption of denial. In this latter situation, the Commission will propose modifications to the development to minimize its Coastal Act inconsistencies while still allowing some reasonable amount of development.<sup>6</sup>

In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, its denial of all development on the single parcel could constitute a taking. As discussed further below, the Commission finds that to avoid a takings in compliance with Section 30010, the Commission determines it will deny the Applicants' proposal for after-the-fact recognition of the vegetation clearance but allow a reasonable residential development on the subject property.

### **General Takings Principles**

The Fifth Amendment of the United States Constitution provides that private property shall not “*be taken for public use, without just compensation.*”<sup>7</sup> Article 1, section 19 of the California Constitution provides that “[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner.”

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* [(1922) 260 U.S. 393]. Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories [see *Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523]. First, there are the cases in which government authorizes a physical occupation of property [see, e.g., *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419]. Second, there are the cases whereby government merely regulates the use of property (*Yee, supra*, 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation [e.g., *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18]. The Commission's actions here would be evaluated under the standards for a regulatory taking.

In its recent takings cases, the Court has identified two circumstances in which a regulatory taking might occur. The first is the “categorical” formulation identified in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a “case specific” inquiry into the public interest involved (*Id.* at p. 1014). The *Lucas* court emphasized, however, that this

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<sup>6</sup> For example, in CDP A-1-MEN-03-029 (Claiborne and Schmitt), the Commission in 2004 approved residential development on a site that was entirely ESHA, even though it was not resource-dependent development and thus was inconsistent with the LCP (which was the standard of review in that case).

<sup>7</sup> The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

category is extremely narrow, applicable only “in the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted” or the “relatively rare situations where the government has deprived a landowner of all economically beneficial uses” or rendered it “valueless” [*Id.* at pp. 1016-1017 (emphasis in original)] (see *Riverside Bayview Homes, supra*, 474 U.S. at p. 126 (regulatory takings occur only under “extreme circumstances”)).<sup>8</sup>

The second circumstance in which a regulatory taking might occur is under the three-part, *ad hoc* test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations [*Id.* at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005]. In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur [see *id.* (rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*)].

### **Before a Landowner May Establish a Taking, Government Must Have Made a Final Determination Concerning the Use to Which the Property May Be Put**

Before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, however, it must demonstrate that the taking claim is “ripe” for review. This means that the takings claimant must show that government has made a “final and authoritative” decision about the use of the property [*e.g.*, *Williamson County Regional Planning Com. v. Hamilton Bank* (1985) 473 U.S. 172; *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348]. Premature adjudication of a takings claim is highly disfavored, and the Supreme Court’s cases “uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it” (*Id.* at p. 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (*e.g.*, *McDonald, supra*).

In this case, and as discussed further below, although the LCP instructs the Commission to deny both proposed projects that would be located within sensitive habitats, including wetland and riparian buffers, and a scenic corridor, the Commission’s denial of the single-family residence would preclude the Applicants from applying for some other economic use on the site. As discussed further below, the subject property, APN 048-016-10, is planned and zoned for residential use, and to deny the Applicants residential use of the parcel would leave no other economic use of the property. In these circumstances, the Applicants could successfully argue that the Commission has made a final and authoritative decision about the use of the subject property. Therefore, the Applicants could successfully argue that the Commission’s denial is a taking because a taking claim is “ripe.”

### **Determination of Unit of Property Against Which Takings Claim Will be Measured**

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<sup>8</sup> Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036).

As a threshold matter, before a taking claim can be analyzed, it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be aggregated as a single parcel for takings purposes. In determining whether lots should be aggregated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition, and the extent to which the parcel has been treated as a single unit [*e.g.*, *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 (nine individual lots treated as single parcel for takings purposes); *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318].

In this case, the Applicants own the subject vacant parcel proposed to be developed with a single-family residence (APN 048-016-10), but do not own any adjacent parcels. The Applicants purchased APN 048-016-10 for \$20,000 with a closing date of July 14, 2008. On July 23, 2008, a Grant Deed was recorded in Volume 2008, page 084665 of the Official Records, San Mateo County Records Office, effectively transferring and vesting fee-simple ownership to Applicants David Hodge and Hi-Jin Hodge, Trustee of the David Hodge and Hyu-Jin Kang Hodge Revocable Trust, aka The Hodge 2007 Trust.

The adjoining parcels are owned by others. The parcel located in the middle of the “U” (APN 048-016-020) is currently owned by San Mateo County (formerly owned by Peninsula Open Space Trust). The undeveloped adjoining parcel directly to the east (APN 048-016-050) is owned by Thomas E. Bishop, Trustee of the Martha E. Bishop Revocable Trust (formally owned by Martha E. Bishop). The parcels further east within the same block are owned by Philomena LLC (formally owned by Mary C McDonald and Thomas Carey). The adjacent parcel to the north (APN 047-331-010) is owned by San Mateo County Department of Parks and Recreation.

Therefore, the evidence, including the evidence of lot legality discussed in the substantial issue section of this report, establishes that the Commission should treat APN 048-016-010 as a single parcel for the purpose of determining whether a taking occurred.

### **The Commission Will Allow a Reasonable Residential Development on the Subject Property to Avoid a Takings in Compliance with Section 30010 of the Coastal Act**

#### *(i) Categorical Taking*

Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council* (1992).

In *Lucas*, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use, unless the proposed project would constitute a nuisance under State law.



The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if an applicant demonstrates that Commission denial of the project would deprive his or her property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act or LCP provision would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, unless the proposed project would constitute a public nuisance under state law, the applicable provisions of the certified LCP cannot be read to deny all economically beneficial or productive use of land because these sections of the certified LCP cannot be interpreted to require the Commission to act in an unconstitutional manner. In complying with this requirement, however, a regulatory agency may deny a specific development proposal, while indicating that a more modest alternative proposal could be approved, and thus assure the property owner of some economically viable use.

LCP Section 6161 sets forth the permitted uses in the R-1 zoning district, which include (1) one-family dwellings, (2) public parks and playgrounds, (3) crop and tree farming and truck gardening, (4) home occupations, (5) accessory buildings and accessory uses, (6) keeping of pets, (7) animal fanciers, catteries, domestic poultry, (8) vending machines at public facilities, (9) facilities for recyclable materials at public facilities, (10) large residential day care facilities for children, (11) subject to permit: churches, schools, libraries, fire stations, golf courses, non-commercial clubs, nurseries and greenhouses, second residential unit, and (12) confined animals.

The Commission finds that in this particular case, none of the other permitted uses at the subject property would avoid development within sensitive habitats or scenic corridors and provide the property owners with an economically viable use. The Applicants' property is located adjacent to a County-owned park and open space area. This fact suggests there may be an impetus for a public agency to purchase the Applicants' property. However, as outlined in the County's findings for the approval of the public restroom to be developed on the County-owned parcel located in the middle of the U adjacent to the Applicants' parcel, "The adjacent property<sup>9</sup> is in private ownership and is currently subject to an approved permit for development (presently on appeal to the CCC). While the applicant (County) could acquire the property by eminent domain or negotiated purchase, doing so would likely be cost prohibitive to the public project planned to be undertaken and would merely result in a structure that is oddly out of scale with the resulting parcel." Therefore, there is no evidence in the record suggesting that the County's potential purchase of the Applicants' property is an economically feasible option.

Thus, the Commission finds that it is reasonable to conclude that denial of the proposed residential use would deprive the Applicants of all economically viable use of their property. Therefore, whether or not denial of the permit would constitute a taking under the *ad hoc* inquiry required by *Penn Central* and discussed below, the Commission finds it necessary to approve some residential use of the property to avoid a categorical *Lucas*-type taking.

*(ii) Taking Under Penn Central*

Although the Commission has already determined it is necessary to approve some residential use to avoid a categorical taking under *Lucas*, a court may also consider whether the permit decision would constitute a taking under the *ad hoc* inquiry stated in *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This *ad hoc* inquiry generally requires an examination

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<sup>9</sup> This part of the quote refers to the Applicants' property.

into factors such as the sufficiency of the applicant's property interest, the regulation's economic impact, and the regulation's interference with reasonable, investment-backed expectations.

**Sufficiency of Interest.** The Applicants purchased APN 048-016-10 for \$20,000 with a closing date of July 14, 2008. On July 23, 2008, a Grant Deed was recorded in Volume 2008, page 084665 of the Official Records, San Mateo County Records Office, effectively transferring and vesting fee-simple ownership to Applicants David Hodge and Hi-Jin Hodge, Trustee of the David Hodge and Hyu-Jin Kang Hodge Revocable Trust, aka The Hodge 2007 Trust. Upon review of these documents, the Commission concludes that the Applicants have demonstrated that they have sufficient real property interest in the subject parcel to allow pursuit of the proposed project.

**Reasonable Investment-Backed Expectations.**

In this case, the Applicants may have had an investment-backed expectation and a reasonable expectation that the subject property could be developed with a residence; however it could be argued that a reasonable person would not have had a reasonable expectation to build a house of the size and scale as that proposed.

To determine whether the Applicants had an investment-backed expectation to construct a house on APN 048-016-10, it is necessary to assess what the Applicants invested when they purchased the lot. To determine whether an expectation to develop a property as proposed is reasonable, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed for the Applicants' proposed use, taking into account all the legal, regulatory, economic, physical, and other restraints that existed when the property was acquired.

The Applicants purchased APN 048-016-10, a 10,802 square foot, U-shaped parcel, for a single purchase price of \$20,000. Compared to the price that other comparable properties in the Miramar community sold for in the same timeframe as when the Applicants purchased the subject property, \$20,000 is a relatively low purchase price. There is conflicting evidence regarding whether the Applicant knew that the property might be undevelopable at the time of purchase. When the Applicants purchased the property in 2008, there was an indication that development of a single-family residence on the parcel may be restricted as indicated in the listing for the property in 2007 (**Exhibit 11**). However, discussions which occurred between the Applicants and County staff prior to the purchase date indicate that the Applicants may have been led to believe that some form of development would be possible even under the constraints of the LCP (see **Exhibit 9**). Consequently, the Applicants may have had a reasonable *investment-backed* expectation that they had purchased a lot that could be developed consistent with the sensitive habitat policies of the certified LCP, and their investment was made under the assumption that the future development of a residential use could be approved on APN 048-016-010. Given that other homes were in existence in the Miramar area at the time of the property purchase, and given that the property was planned and zoned for residential use, viewed objectively, a reasonable person could thus have had a reasonable expectation that APN 048-016-010 could be developed as a residential parcel.

To assess whether the Applicants had a reasonable expectation to build a 2,081 square foot house, Commission staff calculated the average square footage of homes and the average residential lot size in the Miramar area. The average square footage of homes in the surrounding Miramar area (west of Highway 1 and north of Medio Avenue) is 2,447 square feet. The average

lot size in the surrounding area is 6,805 square feet. The Applicants are proposing a 2,081 square foot house on a 10,802 square foot parcel. Therefore, the Applicants are proposing a house that is smaller than the average house in the vicinity, on a parcel that is substantially larger than the average size residential parcel in the area. Thus, the Applicants had an investment-backed expectation and a reasonable expectation that the subject property could be developed with a residence; and it could be argued that a reasonable person would have had a reasonable expectation to build a house of the size and scale as that proposed, given the average size of surrounding homes.

**Economic Impact.** In this case, the evidence demonstrates that the Commission's action would have substantial impact on the value of the subject property.

As noted previously, the subject property is planned and zoned for medium low density residential use in the County's LCP. According to LCP Section 6161, the permitted use in the R-1 zoning district, include (1) One-family dwellings, (2) public parks and playgrounds, (3) crop and tree farming and truck gardening, (4) home occupations, (5) accessory buildings and accessory uses, (6) keeping of pets, (7) animal fanciers, catteries, domestic poultry, (8) vending machines at public facilities, (9) facilities for recyclable materials at public facilities, (10) large residential day care facilities for children, (11) subject to permit: churches, schools, libraries, fire stations, golf courses, non-commercial clubs, nurseries and greenhouses, second residential unit, and (12) confined animals.

In this particular case, the Commission finds that none of the other principally permitted uses allowable on the subject property would avoid development within sensitive habitats and scenic corridors and provide the property with an economically viable use. The project site is located adjacent to a County-owned park and open space area, which suggests that there may be the possibility that a public agency would purchase the lot. However, as discussed above, there is no evidence in the record suggesting that this would be an economically feasible option, and the Applicants have not expressed interest in such an option.

In these circumstances, it is reasonable to conclude that the denial of the proposed residential use would have a substantial economic impact on the value of the subject property. To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit allows for the construction of a residential development, to provide a reasonable economic use of the subject property. This determination is based on the Commission's finding in this staff report that residential development is commensurate with the investment-backed expectations for the property, and that none of the uses otherwise allowable under the certified LCP would provide an economic use.

### **A Taking Cannot Be Avoided Because the Project Could Not Be Prohibited Under Background Principles of State Property Law**

Finally, *Lucas* provides that a regulatory action does not constitute a taking if the restrictions inhere in the title of the affected property; that is, "background principles" of state real property law would have permitted government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036). These background principles include a State's traditional public nuisance doctrine or real property interests that preclude the proposed use, such as restrictive easements. Here, the proposed project would not constitute a public nuisance, so as to preclude a finding that the Commission's denial of the project would constitute a taking.

California Civil Code Section 3479 defines a nuisance as follows:

*Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.*

California Civil Code Section 3480 defines a public nuisance as follows:

*A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.*

There is no evidence that construction of a residence on the subject property would create a nuisance under California law. The site is located in a residential area where the proposed single-family residential development would be compatible with surrounding land uses. Additionally, water service will be provided to the single-family residential development by the Coastside County Water District, and sewer service will be provided by the Granada Sanitary District, and both Districts have confirmed that there is service available for the property. This ensures that the proposed new residence would not create public health problems in the area. Furthermore, the proposed use is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance.

Therefore, the Commission finds the proposed single-family residence would not constitute a public nuisance that would preclude a finding that the regulatory action constitutes the taking of private property without just compensation.

### **Conclusion**

To preclude a claim of takings and to assure conformance with California and United States Constitutional requirements, as provided by Coastal Act Section 30010, this permit approval allows for the construction of a residential development to provide a reasonable economic use of the subject property. In view of the evidence that: (1) permanently restricting use of the property to resource dependent uses could potentially eliminate the economic value of the property; (2) residential use of a small portion of the property would provide an economic use; and (3) an applicant could have had a reasonable investment-backed expectation that a mitigated residential use would be allowed on the property, there is a reasonable possibility that a court might determine that the final denial of a residential use, based on the inconsistency of this use with LCP Policies and LCP Zoning Regulations would constitute a taking. Therefore, the Commission determines that the County LCP in this case does not preclude non resource-dependent development within sensitive habitats and scenic corridors.

Having reached this conclusion, however, the Commission also finds that the LCP only instructs the Commission to construe the resource protection policies of the San Mateo County LCP in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on this appeal. Thus, the Commission must still comply with the requirements of the LCP by avoiding, to the maximum extent feasible, the significant disruption of habitat values at the site.

### **Maximizing LCP Conformity while Avoiding Takings**

Though Applicants are entitled under Coastal Act Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to completely avoid application of the policies and standards of the certified LCP, including LCP Policies 7.3, 7.4, 7.9, 7.12, 7.16, 7.19, 7.14, 7.12 regarding development within sensitive habitats and sensitive habitat buffers, and LCP Policies 8.6 and 8.32 regarding maintaining the visual quality of sensitive resources and scenic corridors. Instead, the Commission is only directed to avoid construing these applicable policies in a way that would take private property for public use. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the LCP. Therefore, in this situation, the Commission must still comply with LCP Policies 7.3, 7.4, 7.9, 7.12, 7.16, 7.19, 7.14, 7.12, 8.6 and 8.32 by requiring measures to mitigate adverse environmental effects on sensitive habitats and scenic views from the development of the single-family residence.

### **Mitigation Measures to Minimize Adverse Environmental Effects on Sensitive Habitats and Visual Resources**

To achieve consistency with the LCP's policies in light of constitutional takings issues, the Commission denies the after-the-fact vegetation clearance and approves development of the single-family residence with special conditions to minimize adverse effects on sensitive habitats and visual resources.

To support the protection of sensitive habitats when development occurs within or adjacent to a sensitive habitat area, the LCP outlines permit requirements to ensure proper biological reports are prepared identifying potential impacts to sensitive habitats, feasible mitigation measures, and restoration, if necessary, as follows:

#### ***LCP Policy 7.5 Permit Conditions***

- a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Component, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.*
- b. When applicable, require as a condition of permit approval the restoration of damaged habitat (s) when in the judgment of the Planning Director restoration is partially or wholly feasible.*

As stated in LCP Policy 7.1, the LCP defines riparian corridors as a sensitive habitat. The LCP includes specific policies outlining performance standards for development occurring within riparian corridors and riparian buffers as follows:

#### ***7.13 Performance Standards in Buffer Zones***

*Require uses permitted in buffer zones to: (1) minimize removal of vegetation, (2) conform to natural topography to minimize erosion potential, (3) make provisions to (i.e. catch basins) to keep runoff and sedimentation from exceeding pre-development levels, (4) replant where appropriate with native and non-invasive exotics, (5) prevent discharge of toxic substances, such as fertilizers and pesticides into the riparian corridor...*

As discussed in previous sections of this report, the proposed residence is inconsistent with the sensitive habitat and visual resources policies and standards of the LCP. However, the Commission finds it will approve a residence on the site in order to avoid a Constitutional takings claim. In general, when a project is approved to avoid a taking, the project will still include implementation of mitigation measures necessary to minimize the impacts of development on sensitive coastal resources, such as wetlands and riparian corridors and scenic views.

The siting of the single-family residence on the southwest end of the parcel, adjacent to Magellan Avenue, allows for a reasonable economic use of the property while clustering nearby development and maintaining larger contiguous areas of sensitive habitat. While the western end of the residence would be adjacent to a public trail, the development would be setback 20 feet from the western property boundary as required by the LCP. In addition, the location of the residence would also cluster development as it would be located adjacent to the road, on the southwest end of the property, similar to the public restroom to be developed on adjacent property (see Page 2 of **Exhibit 10**). Finally, the siting of the house in this location will not require additional removal of sensitive vegetation and allows for larger, more contiguous areas of sensitive habitats to be restored and created on the north and east ends of the property, adjacent to a perennial stream and a County park and open space area.

As discussed in the takings findings, the Applicants are proposing a house that is smaller than the average house in the vicinity, on a parcel that is substantially larger than the average size residential parcel in the area. In addition, the actual lot coverage on the proposed residence is only 1,414 square feet, 13% of the total area of the parcel. The allowable floor area ratio for the R-1/S-94 zoning district is 53%. Therefore, the proposed single-family residence is significantly smaller than what is allowed in regards to floor area ratio for this zoning district. The proposed project size and location would also maintain the required 20 foot front yard setback while including a 50 foot setback from the existing riparian vegetation. The proposed side yard variance from 10 feet to 5 to 7 feet allows for development to occur in this location consistent with other LCP policies that are more protective of coastal resources including with respect to sensitive habitats, sensitive habitat buffers, public access, and visual resources as this alternative would allow for a larger riparian buffer, a 20-foot front setback from a highly scenic area adjacent to a trail, and would provide adequate parking to eliminate the potential for impacts to public access to the shoreline. While the project would still be located within a wetland, it would not be possible to develop a residence outside the wetland area that is reasonable in size and meets the other LCP setback requirements. Thus, the Commission is not proposing to alter the size, location, or side yard setback variance of the proposed single-family residence.

Further, the Applicants have revised their project for purposes of de novo review consistent with the limitation contained in Zoning Code section 6105.1 on the issuance of permits for any lot containing an existing zoning or building violation. The Applicants are now proposing 2,720 square feet of riparian restoration and 5,915 square feet of wetland restoration/mitigation as follows: 1) the 2,720 square feet of riparian habitat cleared without a coastal development permit (CDP) on the portion of the subject property located northeast of the proposed house, and on the portion of the County property northeast of the proposed house, will be restored in place; 2) the 1,823 square feet of wetland cleared without a CDP on the portion of the subject property east and west of the proposed house and on the County property north of the proposed house, will be restored in place (excluding the area covered by the County project); 3) the wetland occupied by the footprint of the house will be mitigated at a ratio of 4:1 for a total area of 4,092 square feet. 4,092 square feet of new wetland or riparian habitat will be created between the restored wetland and the restored riparian habitat east and north of the proposed house on the subject property and County property, west of the proposed house, on the northwest end of subject parcel, and on County land between the Trail and the western property boundary. The restoration proposed by the Applicants would reduce the visibility of the house as seen from the trail and Highway 1 and improve the visual characteristics associated with the surrounding sensitive habitats by restoring the front yard setback area, the area between the trail and the western property boundary, and the north east portions of the parcel. Lastly, the Applicants propose to restrict future development within the restored and mitigated areas on the subject property.

To ensure ongoing conformity of the project with the certified LCP, **Special Condition 2** requires submittal of a Habitat Restoration Plan which in part includes 4:1 wetland mitigation for the footprint of the house that would occur within wetland area. **Special Condition 3** requires the submission of a Landscape Screening Plan that includes appropriate native, noninvasive plants to be planted on the Applicants' property that will screen the house as viewed from the public trail and Highway 1 and improve the visual quality of the riparian and wetland habitats as required by the LCP's visual resource policies. To provide consistency with the performance standards in LCP policies 7.5 and 7.13, **Special Condition 4** requires submission of a construction plan with best management practices, and **Special Condition 5** requires submission of a storm water pollution prevention plan to minimize any adverse impacts to these sensitive habitats, including the adjacent perennial creek. Finally, to further minimize the project's visual impacts, **Special Condition 1** requires that the maximum height of the house not exceed 24 feet consistent with alternative evaluated by the CDRC and places lighting restrictions to minimize glare to the surrounding public use areas and sensitive habitats. Finally, **Special Condition 7** restricts future development in the open space restricted area depicted on Exhibit 12.

The Commission finds that the special conditions attached to the permit will improve and protect sensitive habitats on-site and on nearby adjacent sites, improve visual resources associated with the on-site and surrounding sensitive habitats, protect surrounding views from the public trail and Highway 1, and will thus minimize significant adverse impacts to sensitive habitats and visual resources while providing for a reasonable use of the property that will avoid an unconstitutional taking of private property for public use.

#### **Public Access**

Coastal Act Section 30604(c) requires that every CDP issued for any development between the nearest public road and the sea "include a specific finding that the development is in conformity

with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed single-family residence would be located seaward of the first through public road and thus such a finding is required for a CDP approval. Coastal Act Sections 30210 through 30213 and 30221 specifically protect public access and recreation. Coastal Act Section 30240(b) also protects parks and recreation areas, such as the adjacent Mirada Surf. These overlapping policies protect the County park and open space area, the beach (and access to and along it) and offshore waters for public access and recreation purposes, including lower-cost access and recreational opportunities.

The area along this section of coast is developed with single-family residences and no public access is available from the project site to the beach. Public access to the beach is provided via the adjacent Mirada Surf trail and subsequent trails which lead west to Half Moon Bay State Beach. There is also access to Half Moon Bay State Beach via the western end of Magellan Avenue. As a result, the project site is not necessary for direct public access, and the single-family residence would not significantly adversely impact existing public access. Thus, the Commission finds that, as conditioned, the project is consistent with the public access and recreation policies of the Coastal Act and the LCP.

#### **J. UNPERMITTED DEVELOPMENT**

As discussed in the “Project Background” section above, unpermitted activities occurred in 2008 and 2009 including vegetation clearance and stockpiling of dirt on the Applicant’s property and the adjacent County-owned parcel. The Applicant applied to the County for an after-the-fact CDP to legalize the vegetation clearance and the County approved the project in November of 2011. The County’s approval was appealed to the Commission, and on December 11, 2013 Commission found that the County’s approval raised a substantial issue with respect to the project’s conformance with the LCP, and the Commission took jurisdiction over the CDP application for the project.

Although development has taken place prior to Commission review of this permit application, consideration of the application by the Commission has been based solely upon the policies of the certified LCP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the violations, nor does it constitute an implied statement of the Commission’s position regarding the legality of any development undertaken on the subject site without a coastal development permit, or that all aspects of the violation have been fully resolved. However, the Applicant proposes to resolve this violation by proposing a Habitat Restoration Plan that includes 4:1 mitigation for the impacts of the proposed single-family residence on wetlands and also proposes to restore in place the wetlands and riparian habitat impacted without benefit of a CDP on both the Applicants’ and the County’s properties. The Habitat Restoration Plan would include the restoration of wetland and riparian areas to their 2004 boundaries as illustrated on page 2 of **Exhibit 10**. Once restoration is fully implemented, the Applicants can request a letter from Commission Enforcement staff regarding resolution of the alleged violation consistent with the terms of this CDP.

#### **K. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be



consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

San Mateo County, acting as lead agency, conducted an environmental review for the proposed residential project as required by CEQA and issued a Mitigated Negative Declaration.

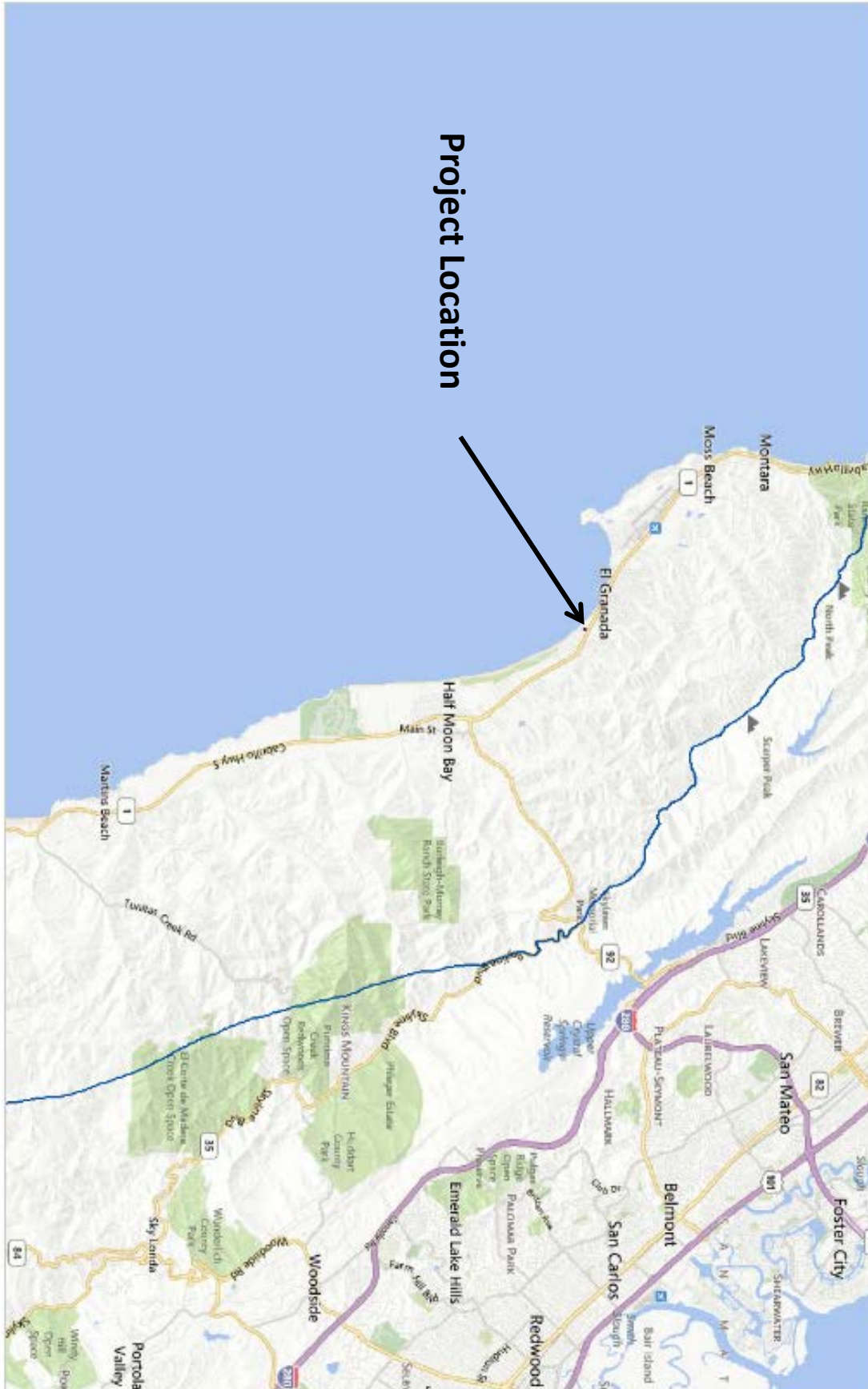
The Coastal Commission's review and analysis of land use proposals have been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The Commission has reviewed the relevant coastal resource issues associated with the proposed single family residence, and has identified appropriate and necessary modifications to address adverse impacts to such coastal resources to the extent allowed while avoiding a taking of private property without just compensation. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

## **APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

1. County of San Mateo Planning and Building Department, Certificate of Compliance, Planning File No. PLN 2008-00380, January 20, 2010.
2. County of San Mateo Inter-Departmental Correspondence, County File Number PLN 2008-00380 (Hodge), From Jim Eggemyer, Community Development Director, November 1, 2011.
3. County of San Mateo Inter-Departmental Correspondence, County File Number PLN 2009-00358 (Hodge/San Mateo County Department of Parks), From Jim Eggemyer, Community Development Director, November 1, 2011.
4. County of San Mateo Planning and Building Department, County File Number PLN 2009-00358 (Hodge/San Mateo County Department of Parks), From Stephanie Skangos, Project Planner, May 20, 2010.
5. County of San Mateo Planning and Building Department, County File Number PLN 2010-00356 (San Mateo County Parks), From Planning Staff, September 20, 2012.
6. San Mateo County Environmental Services Agency (SMC). March 17, 2005. Biological Impact Form (for compliance with Local Coastal Program Policy 7.5). A report based on biological assessments conducted by Kathleen Lyons (Biotic Resources Group) and Dan Bland (Dana Bland & Associates).
7. San Mateo County Environmental Service Agency (SMC). August 31, 2010. Biological Impact Form (for compliance with Local Coastal Program Policy 7.5). A report based on a biological assessment conducted by Kathleen Lyons (Biotic Resources Group)
8. WRA. February 24, 2009. Biological resource assessment. Proposed Hodge residence, Magellan Avenue, Miramar, San Mateo County, California.
9. WRA. March 4, 2009. Letter report to D. Hodge, re: "Wetland delineation at proposed Hodge Residence, Magellan Avenue, Half Moon Bay."

## Project Vicinity Map



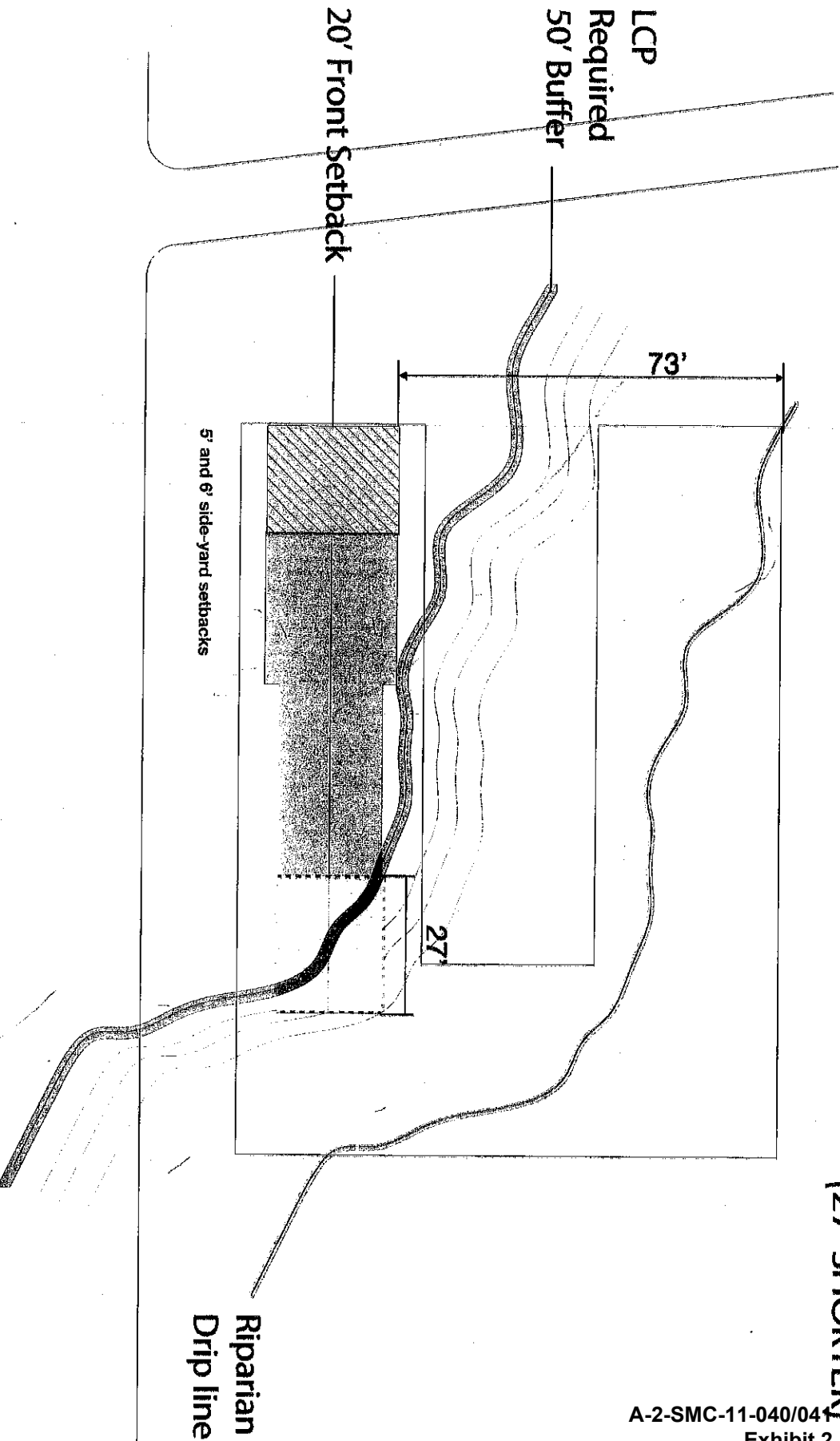


100 ft



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# **ALTERNATE 3** (27' SHORTER)



San Mateo County Board of Supervisors Meeting

Owner/Applicant: **HODGE**

Attachment: **E.3**

File Numbers: **PLN 2008-00380**

11 - 4 - 11 - that was

**Lot Coverage**

- House (w/garage)

1,414 sq. ft

- Lot area

10,800 sq. ft

- % Lot

13.0%

**Floor Area**

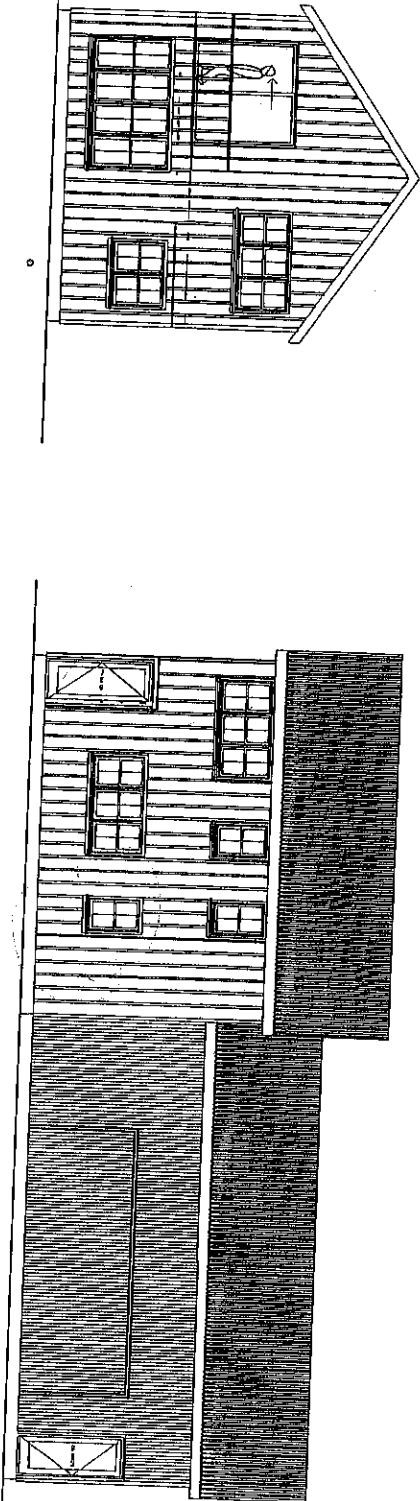
- 1st Floor (w/garage)
- 2nd Floor

1,414 sq. ft

667 sq. ft

**Total floor area (w/garage)**

2,081 sq. ft



**ALTERNATIVE 3**  
(27' SHORTER)

San Mateo County Board of Supervisors Meeting

Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**

Attachment **E.3**



County of San Mateo

**Planning & Building Department**

455 County Center, 2nd Floor  
Redwood City, California 94063  
650/363-4161 Fax: 650/363-4849

2-SMC-08-199

Mail Drop PLN122

plngbldg@co.sanmateo.ca.us

www.co.sanmateo.ca.us/planning

DATE: 11/4/2011

**NOTICE OF FINAL LOCAL DECISION**

Pursuant to Section 6328.11.1(f) of the San Mateo County Zoning Regulations

**CERTIFIED MAIL**

California Coastal Commission  
Nr. Central Coast District Office  
Attn: Ruby Pap Coastal Planner  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**RECEIVED**

NOV 08 2011

**CALIFORNIA  
COASTAL COMMISSION  
NORTH CENTRAL COAST**

PLANNING CASE NO.: PLN2008-00380  
APPLICANT: DAVID & HI-JIN HODGE  
OWNER: DAVID & HI-JIN HODGE

PROJECT DESCRIPTION: CDP, Coastsides DR & Variance for a new 2,692 sq/ft (reduced to 2,081 s/f) single-family residence with attached 2-car garage, on a 10,800 sq/ft parcel; Variance is to allow 5' & 7' (revised/approved to 5' & 6') side setbacks, where 10' minimum is req'd on each side; no trees proposed for removal (this application is in conjunction with PLN2009-00358 for illegal land clearing on the property).

The above listed Coastal Development Permit was conditionally approved by the County of San Mateo on 11/1/2011. The County appeal period ended on N/A. Local review is now complete.

This permit **IS** appealable to the California Coastal Commission; please initiate the California Coastal Commission appeal period.

If you have any questions about this project, please contact D. Holbrook at 650-363-1837.

Sincerely,

D. Holbrook, Project Planner



RECEIVED  
JAN 10 1961

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JAN 10 1961  
JAN 10 1961





## County of San Mateo

### Planning & Building Department

455 County Center, 2nd Floor  
Redwood City, California 94063  
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122  
plngbldg@co.sanmateo.ca.us  
www.co.sanmateo.ca.us/planning

November 4, 2011

David Hodge  
100 Coronado Avenue  
Half Moon Bay, CA 94019

Dear Mr. Hodge:

Subject: **LETTER OF DECISION**  
File Number: PLN2008-00380  
Location: Corner of Magellan and Alameda Avenues  
APN: 048-016-010

On November 1, 2011, the San Mateo County Board of Supervisors, at a public hearing, considered an appeal of the Planning Commission's decision to deny your project, consisting of: (1) certification of a Mitigated Negative Declaration; and (2) Variance, Coastal Development Permit and Coastside Design Review, for a new 2,692 sq. ft. single-family residence with an attached two-car garage, with side yard setbacks of 5 to 7 feet, where 10-foot minimum side yard setbacks are otherwise required, at 97 Alameda Avenue, in the unincorporated Miramar area of San Mateo County. This project is appealable to the California Coastal Commission.

Based on information provided by staff and evidence presented at the hearing, the Board of Supervisors voted 5-0 to uphold the Planning Commission's decision to deny the project as submitted to them, pursuant to the Denial Findings shown on Attachment A.

In a second motion, the Board of Supervisors considered an alternative proposal, described in the staff report as Alternative 3, consisting of a new 2,081 sq. ft. single-family residence with an attached two-car garage, with side setbacks of 5 to 6 feet, where 10-foot minimum side yard setbacks are otherwise required, and where the residence had been relocated entirely outside of the Local Coastal Program's 50-foot riparian buffer zone as required by LCP Policy 7.12. The residence had also been slightly redesigned such that the single story portion of the house was reduced in length by 27 feet and the two-story portion of the house lengthened, with its previously flat-topped second story roof deck replaced with a traditional pitched roof.

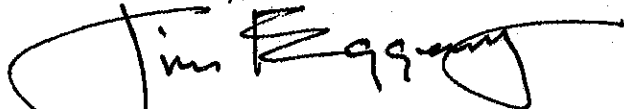
David Hodge  
November 4, 2011  
Page 2

Based on information provided by staff and evidence presented at the hearing regarding Alternative 3, the Board of Supervisors voted 5-0 to certify the Negative Declaration and approve the Alternative, subject to the Revised Findings and Conditions of Approval listed in Attachment B.

A Board of Supervisors' approval is appealable to the California Coastal Commission. Any aggrieved person who has exhausted local appeals may appeal this decision to the California Coastal Commission within 10 working days following the Coastal Commission's receipt of the Board's decision. Please contact the Coastal Commission's North Central Coast District Office at 415/904-5260 for further information concerning the Commission's appeal process. A project is considered approved when this appeal period has expired and no appeals have been filed.

If you have questions regarding this matter, please contact Dave Holbrook, Senior Project Planner, at 650/363-1837.

Sincerely,



For Rosario Fernandez  
Planning Commission Secretary  
bosdec1101V\_rf(Hodge Variance)

Enclosure: San Mateo County Survey - An online version of our Customer Survey is also available at: <http://www.co.sanmateo.ca.us/planning/survey>

cc: Christine Usher  
Evy Smith  
Lennie Roberts  
Bill Kehoe  
David Byers  
Kathryn Slater-Carter

COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT

**FINDINGS FOR DENIAL**

Permit File Number: PLN 2008-00380

Board Meeting Date: November 1, 2011

Prepared By: David Holbrook, Senior  
Planner

Adopted By: Board of Supervisors

**FINDINGS:**

Regarding the Coastal Development Permit, Found:

1. That the project, as described in the application and accompanying materials required by Section 6328.7 does not conform with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program (LCP), specifically relative to the project's non-compliance with LCP Sensitive Habitats Component Policies 7.11 (*Establishment of Buffer Zones*) and 7.12 (*Permitted Uses in Buffer Zones*), as well as Visual Resources Component Policies 8.13 (*Design Guidelines for Coastal Communities*) and 8.32 (*Regulation of Scenic Corridors in Urban Areas*).
2. That the project does not conform to the specific findings required by the policies of the LCP with regard to the components cited above.

Regarding the Coastsides Design Review, Found:

3. The project is not in compliance with the Design Review Standards for the Coastsides.

Regarding the Variance, Found:

4. That the parcel's location, size, shape, topography and/or other physical conditions do not vary substantially from those of other parcels in the same zoning district or vicinity.
5. That without the variance, the landowner would not be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity.

6. That the variance would grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity.
7. That the variance is not necessary to authorize the uses or activities which are permitted in the zoning district.
8. That the variance is not consistent with the objectives of the General Plan and the Zoning Regulations.

COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT

**FINDINGS AND CONDITIONS FOR APPROVAL FOR  
THE APPLICANT'S ALTERNATIVE THREE (3)**

Permit File Number: PLN 2008-00380

Board Meeting Date: November 1, 2011

Prepared By: David Holbrook, Senior  
Planner

Adopted By: Board of Supervisors

**FINDINGS:**

**Regarding the Negative Declaration, Found:**

1. That the Negative Declaration is complete, correct and adequate, and prepared in accordance with the California Environmental Quality Act and applicable State and County Guidelines. The public review period for this document was January 21, 2010 to February 10, 2010.
2. That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the project will have a significant effect on the environment. The Initial Study/Negative Declaration does not identify any significant or cumulative impacts associated with this project.
3. That the Negative Declaration reflects the independent judgment of San Mateo County. The Negative Declaration was prepared by the project planner.
4. That the mitigation measures in the Mitigated Negative Declaration and agreed to by the owner and placed as conditions on the project have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with the California Public Resources Code Section 21081.6.

**Regarding the Coastal Development Permit, Found:**

5. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County LCP, as the plans and materials have been reviewed against the application requirements, staff has completed an LCP Policy

Checklist, and the project has been conditioned in accordance with the Locating and Planning New Development, Sensitive Habitats and Visual Resources Components of the LCP.

6. That the project conforms to the specific findings required by the policies of the LCP with regard to the Locating and Planning New Development, Sensitive Habitats and Visual Resources Components. Specifically, the project conforms with the location of new development, zoning and parking requirements, protection of sensitive habitats and buffer zones (the residence is located outside of the LCP-required 50-foot riparian buffer zone), the minimization of vegetative cover removal (the vegetation previously removed, as described in County File No. PLN 2009-00358, shall be re-landscaped with native vegetation pursuant to the applicant's biologist's recommendation and under their supervision) and the Coastsides design criteria for urban parcels located in the Midcoast and in areas of scenic qualities and views (the previously flat-roofed second-story portion of the residence has been replaced with a traditional hip roof, matching that of the single-story portion and more in character with that of surrounding residential development).

Regarding the Coastsides Design Review, Found:

7. That the project is in compliance with the Design Review Standards for the Coastsides.

Regarding the Variance, Found:

8. That the parcel's location, size, shape, topography and/or other physical conditions vary substantially from those of other parcels in the same zoning district or vicinity, as the parcel is oddly shaped. The parcel is comprised of three lots in the shape of a "U," with the middle portion of the "U" a separate property under different ownership. The width of each part of the "U" that runs along Alameda Avenue is 34 feet. The length along Magellan Avenue is 140.02 feet. With such a small width, it would not be feasible for any structure to comply with the required 10-foot minimum side yard setback. In addition, the surrounding perennial creek and willow riparian habitat (along with the LCP-mandated 50-foot riparian buffer zone) further restrict development on the project site. A residence could not be positioned in any other location on this property without requiring a variance or exception for one or more zoning regulations and/or development standards.
9. That without the variance, the landowner would be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity, as the landowner would be denied the right to construct a residence

on his property. The surrounding residential area consists of parcels that are more standard in shape. The landowners of these properties would likely be able to construct a new residence or a new addition to an existing residence without requiring a variance. The surrounding residential parcels are shaped and sized so that the R-1/S-94 Zoning District development standards would be more easily met and complied with.

10. That the variance does not grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity, as there are existing residential properties to the south of the project site with more standard sized and shaped parcels. A new residence or an addition to an existing residence would likely be able to be constructed on these properties without the need for a variance. Additionally, the option to request a variance is available for other landowners with similar situations and therefore, the granting of this variance to allow a new residence with non-conforming side yard setbacks does not constitute the granting of a special privilege.
11. That the variance authorizes only uses or activities which are permitted by the zoning district, as the proposal includes a new residence, which is an allowed use in the R-1/S-94/DR/CD Zoning District.
12. That the variance is consistent with the objectives of the General Plan and the Zoning Regulations, as discussed in the staff report.

**CONDITIONS FOR APPROVAL:**

**Current Planning Section**

1. This approval applies only to the proposal, documents and plans described in this report as Alternative Three (3) and submitted to and approved by the Board of Supervisors on November 1, 2011. Minor revisions or modifications may be approved by the Community Development Director if they are consistent with the intent of and in substantial conformance with this approval.
2. These permits shall be valid for one (1) year from the date of final approval by which time a valid building permit shall have been issued **and a completed inspection (to the satisfaction of the Building Inspector) shall have occurred within 180 days of its issuance.** Any extension of these permits shall require submittal of an application for permit extension and payment of applicable permit extension fees sixty (60) days prior to expiration.

3. The applicant shall apply for a building permit and shall adhere to all requirements from the Building Inspection Section, Department of Public Works and the respective Fire Authority.
4. The applicant shall include the final approval letter on the top pages of the plan sets submitted with an application for a building permit.
5. No development or construction shall occur within 50 feet of the edge of the willow riparian habitat, as mapped by WRA Environmental Consultants. Prior to the issuance of a building permit for the proposed residence, the applicant shall delineate the 50-foot buffer zone from the edge of the willow riparian habitat with visible fencing and shall verify that the construction location is outside of this area.
6. After the completion of construction, the applicant shall install permanent fencing to demarcate the 50-foot riparian buffer zone. The fencing shall consist of wood posts and wiring and be no taller than a maximum height of 4 feet. Small signs shall be placed on the fencing, approximately every 10 to 15 feet, and indicate that the area is a riparian buffer zone and access is not allowed. The applicant shall submit material samples to Planning for review and approval during the building permit phase of the project. Prior to final Planning approval of the building permit, verification that the approved permanent fencing has been implemented shall be required.
7. The applicant shall revise the plans to eliminate any access to and from the rear of the new residence into the required 50-foot riparian buffer zone. The revision shall be included in the plans submitted during the building permit phase.
8. Prior to the beginning of any construction or grading activities, the applicant shall implement the approved erosion and sediment control plan. Erosion control measure deficiencies, as they occur, shall be immediately corrected. The goal is to prevent sediment and other pollutants from leaving the project site and to protect all exposed earth surfaces from erosive forces. Said plan shall adhere to the San Mateo Countywide Stormwater Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:
  - a. Stabilizing all denuded areas and maintaining erosion control measures continuously between October 1 and April 30. Stabilizing shall include both proactive measures, such as the placement of hay bales or coir netting, and passive measures, such as revegetating disturbed areas with plants propagated from seed collected in the immediate area.



- b. Storing, handling, and disposing of construction materials and wastes properly, so as to prevent their contact with stormwater.
  - c. Controlling and preventing the discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, wash water or sediments, and non-stormwater discharges to storm drains and watercourses.
  - d. Using sediment controls or filtration to remove sediment when dewatering the site and obtaining all necessary permits.
  - e. Avoiding cleaning, fueling, or maintaining vehicles on-site, except in a designated area where wash water is contained and treated.
  - f. Delineating with field markers clearing limits, easements, setbacks, sensitive or critical areas, buffer zones, trees, and drainage courses.
  - g. Protecting adjacent properties and undisturbed areas from construction impacts using vegetative buffer strips, sediment barriers or filters, dikes, mulching, or other measures as appropriate.
  - h. Performing clearing and earth-moving activities only during dry weather.
  - i. Limiting and timing applications of pesticides and fertilizers to prevent polluted runoff.
  - j. Limiting construction access routes and stabilizing designated access points.
  - k. Avoiding tracking dirt or other materials off-site; cleaning off-site paved areas and sidewalks using dry sweeping methods.
  - l. The contractor shall train and provide instructions to all employees and subcontractors regarding the construction best management practices.
  - m. The approved erosion and sediment control plan shall be implemented prior to the beginning of construction.
9. The applicant is responsible for ensuring that all contractors are aware of all stormwater quality measures and implement such measures. Failure to comply with the construction BMPs will result in the issuance of correction notices, citations or a project stop order.

- a. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration and minimize the use of fertilizers, herbicides and pesticides that can contribute to runoff pollution.
  - b. Where subsurface conditions allow, the roof downspout systems from all structures shall be designed to drain to a designated, effective infiltration area or structure (refer to BMPs Handbook for infiltration system designs and requirements).
10. The applicant shall submit a final landscaping plan for the parcel at the time of the building permit application for review and approval by the Planning Department. The landscaping plan shall be designed in collaboration with a qualified biologist (WRA or other qualified environmental consultant group) and landscape architect to ensure the planting of native vegetation that is compatible with the landscaping required pursuant to PLN 2009-00358 and complies with State water efficiency requirements. Such professionals shall include their recommendations on plant species, density and location of new vegetation on the landscaping plan. Prior to final Planning approval of the building permit for this project, the applicant shall submit written verification from the applicant's consultants that the recommended vegetation was planted pursuant to the recommendations shown on the submitted landscaping plan. In addition, photos of the completed landscaping shall be submitted to the Planning Department to verify that the approved landscaping plan has been implemented.
11. The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementation and maturation of the landscaping plan, payable upon confirmation that the plan has been implemented. The COD shall be held for a period of two (2) years after final approval by the Building Inspection Section of the associated building permit. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.
12. The only permitted uses within the buffer zone for the riparian area on the property shall be those allowed by Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP), subject to CDP approval. All other uses shall be prohibited.

13. The applicant shall include an erosion and sediment control plan, developed in accordance with Condition No. 8, on the plans submitted for the building permit. This plan shall identify the type and location of erosion control devices to be installed upon the commencement of construction in order to maintain the stability of the site and prevent erosion and sedimentation off-site.
14. The applicant shall implement the approved erosion control measures prior to the beginning of grading or construction operations. Such activities shall not commence until the associated building permit for the project has been issued. Revegetation of denuded areas shall begin immediately upon completion of grading/construction operations.
15. The project shall include water runoff prevention measures for the operation and maintenance of the project for the review and approval by the Community Development Director. The project shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the discharge of pollutants with stormwater runoff and other water runoff produced from the project.
16. The applicant shall submit a permanent stormwater management plan in compliance with the County's Drainage Policy and NPDES requirements for review and approval by the Department of Public Works. The plan shall address how drainage from the site will be managed and controlled to prevent pollution or sedimentation of the adjacent stream, and to retain and/or restore natural drainage patterns.
17. To reduce the impact of construction activities on neighboring properties, the applicant shall comply with the following:
  - a. All debris shall be contained on-site; a dumpster or trash bin shall be provided on-site during construction to prevent debris from blowing onto adjacent properties. The applicant shall monitor the site to ensure that trash is picked up and appropriately disposed of daily.
  - b. The applicant shall remove all construction equipment from the site upon completion of the use and/or need of each piece of equipment which shall include but not be limited to tractors, back hoes, cement mixers, etc.
  - c. The applicant shall ensure that no construction related vehicles will impede traffic along the right-of-way on Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. All construction vehicles shall be parked on-site outside the public right-of-way or in locations which do not impede safe access on Cabrillo Highway, Magellan Avenue and/or

Alameda Avenue. There shall be no storage of construction vehicles in the public right-of-way.

18. Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activities shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.
19. The project shall be constructed in compliance with the plans approved by the Board of Supervisors on November 1, 2011. Any changes or revisions to the approved plans shall be submitted to the Coastside Design Review Officer for review and approval prior to implementation. Minor adjustments to the project may be approved by the Coastside Design Review Officer if they are consistent with the intent of and are in substantial conformance with this approval. Alternatively, the Coastside Design Review Officer may refer consideration of the revisions to the Coastside Design Review Committee, with applicable fees to be paid.
20. The applicant shall indicate on the landscape plans and plans submitted for a building permit, as stipulated by the Coastside Design Review Committee, that tree heights shall be maintained to grow no taller than the structure's roof.
21. The applicant shall provide "finished floor elevation verification" to certify that the structure is actually constructed at the height shown on the submitted plans. The applicant shall have a licensed land surveyor or engineer establish a baseline elevation datum point in the vicinity of the construction site.
  - a. The applicant shall maintain the datum point so that it will not be disturbed by the proposed construction activities until final approval of the building permit.
  - b. This datum point and its elevation shall be shown on the submitted site plan. This datum point shall be used during construction to verify the elevation of the finished floors relative to the existing natural or to the grade of the site (finished grade).
  - c. Prior to Planning approval of the building permit application, the applicant shall also have the licensed land surveyor or engineer indicate on the construction plans: (1) the natural grade elevations at the significant corners (at least four) of the footprint of the proposed structure on the submitted site plan, and (2) the elevations of proposed finished grades.

- d. In addition, (1) the natural grade elevations at the significant corners of the proposed structure, (2) the finished floor elevations, (3) the topmost elevation of the roof, and (4) garage slab elevation must be shown on the plan, elevations, and cross-section (if one is provided).
  - e. Once the building is under construction, prior to the below floor framing inspection or the pouring of the concrete slab (as the case may be) for the lowest floor(s), the applicant shall provide to the Building Inspection Section a letter from a licensed land surveyor or engineer certifying that the lowest floor height--as constructed--is equal to the elevation specified for that floor in the approved plans. Similarly, certifications on the garage slab and the topmost elevation of the roof are required.
  - f. If the actual floor height, garage slab, or roof height--as constructed--is different than the elevation specified in the plans, then the applicant shall cease all construction and no additional inspections shall be approved until a revised set of plans is submitted to and subsequently approved by both the Building Official and Community Development Director.
- 22. All new power and telephone utility lines from the street or nearest existing utility pole to the main dwelling and/or any other structure on the property shall be placed underground.
  - 23. The exterior color samples submitted to the Committee are recommended for approval. Color verification shall occur in the field after the applicant has applied the approved materials and colors but before a final inspection has been scheduled.
  - 24. The downward lighting fixture cut sheet submitted to the Coastside Design Review Committee is approved. Verification shall occur in the field after installation but before a final inspection has been scheduled.
  - 25. The applicant shall ensure that during construction, noise, light, dust, odors and other interference with persons and property off the development site be minimized.
  - 26. The applicant shall submit the following fees to the Current Planning Section: Within four (4) working days of the final approval date of this permit, the applicant shall pay an environmental filing fee of \$2,044.00 (fee effective January 1, 2011), as required under Fish and Game Code Section 711.4(d), plus a \$50.00 recording fee. The applicant shall submit a check in the amount of \$2,094.00, made payable to San Mateo County, to the project planner to file

with the Notice of Determination, as required with a certified Negative Declaration.

Building Inspection Section

27. Building permits are required and shall be issued prior to any grading or construction on-site.
28. Prior to pouring any concrete for foundations, written verification from a licensed surveyor shall be submitted which will confirm that the required setbacks as shown on the approved plans have been maintained.
29. An automatic fire sprinkler system shall be required. This permit shall be issued prior to or in conjunction with the building permit.
30. If a water main extension, upgrade or hydrant is required, this work shall be completed prior to the issuance of the building permit or the applicant shall submit a copy of an agreement and contract with the water purveyor which will confirm the work will be completed prior to finalization of the building permit.
31. The applicant shall submit a site drainage plan, designed in accordance with Condition No. 16 and approved by the Department of Public Works. This plan shall demonstrate how roof drainage and site runoff will be directed to an approved disposal area.
32. Sediment and erosion control measures shall be installed prior to beginning any site work and maintained throughout the term of the permit. Failure to install or maintain these measures shall result in stoppage of construction until the corrections have been made and fees paid for staff enforcement time.
33. This project shall comply with the Green Building Ordinance.
34. This project shall comply with Chapter 7A of the Building Code, with respect to the State's Fire Hazard Area Maps.
35. All drawings shall be drawn to scale and clearly define the whole project and its scope in its entirety.
36. The design and/or drawings shall be done according to the 2010 Editions of the California Building Standards Code, 2010 California Plumbing Code, 2010 California Mechanical Code, and the 2010 California Electrical Code, and this information shall be included in the code summary.

Department of Public Works

37. Prior to the issuance of the building permit, the applicant will be required to provide payment of "roadway mitigation fees" based on the square footage (assessable space) of the proposed building per Ordinance #3277.
38. The provision of San Mateo County Grading Ordinance shall govern all grading on and adjacent to this site. Unless exempted by the Grading Ordinance, the applicant may be required to apply for a grading permit upon completion of their review of the plans and should access construction be necessary.
39. The applicant shall submit a permanent stormwater management plan in compliance with the County's Drainage Policy and NPDES requirements, as well as the requirements of Condition No. 19 of this permit, for review and approval by the Department of Public Works.
40. The applicant shall submit a driveway "plan and profile" to the Department of Public Works, showing the driveway access to the parcel (garage slab) complying with County standards for driveway slopes (not to exceed 20%) and to County standards for driveways (at the property line) being the same elevation as the center of the access roadway. When appropriate, this plan and profile shall be prepared from elevations and alignment shown on the roadway improvement plans. The driveway plan shall also include and show specific provisions and details for both the existing and the proposed drainage patterns and drainage facilities.

Geotechnical Section

41. The applicant shall submit a soils and foundation report at the building permit stage.

Coastside County Fire Protection District

42. **Occupancy Separation:** As per the 2007 CBC, Section 406.1.4, a one-hour occupancy separation wall shall be installed with a solid core, 20-minute fire rated, self-closing door assembly with smoke gasket between the garage and the residence.

43. **Fire Hydrant:** As per 2007 CFC, Appendix B and C, a fire district approved fire hydrant (Clow 960) must be located within 250 feet of the proposed single-family dwelling unit measured by way of drivable access. As per 2007 CFC, Appendix B, the hydrant must produce a minimum fire flow of 1,000 gallons per minute at 20 pounds per square inch residual pressure for 2 hours. Contact the local water purveyor for water flow details.
44. **Wharf Type Hydrant:** As per Fire District Ordinance, you are required to install a wharf type hydrant located no further than 150 feet from the proposed residence along the driveway access. The wharf hydrant must have a minimum flow of **250 gallons per minute at 20 pound per square inch for a minimum of 20 minutes** and be supplied by a minimum 4-inch supply line. The plans for this system must be submitted to San Mateo County Planning and Building Department. A building permit **will not** be issued until plans are received, reviewed and approved. Upon submission of plans, the County will forward a complete set of plans to the Coastside Fire District for review.
45. **Automatic Fire Sprinkler System:** As per San Mateo County Building Standards and Coastside Fire Protection District Ordinance No. 2007-01, the applicant is required to install an automatic fire sprinkler system **throughout** the proposed or improved dwelling and garage. All attic access locations will be provided with a pilot head on a metal upright. All areas that are accessible for storage purposes shall be equipped with fire sprinklers including closets and bathrooms. The only exception is small linen closets less than 24 sq. ft. with full depth shelving. The plans for this system must be submitted to the San Mateo County Planning and Building Department. A building permit **will not** be issued until plans are received, reviewed and approved. Upon submission of plans, the County will forward a complete set to the Coastside Fire Protection District for review. The fee schedule for automatic fire sprinkler systems shall be in accordance with Half Moon Bay Ordinance No. 2006-01. Fees shall be paid prior to plan review. **Installation of underground sprinkler pipe shall be visually inspected and flushed by the Fire District prior to hookup to riser. Any soldered fittings must be pressure tested with trench open.**
46. **Exterior bell and interior horn/strobe** are required to be wired into the required flow switch on your fire sprinkler system. The bell, horn/strobe and flow switch, along with the garage door opener, are to be wired into a separate circuit breaker at the main electrical panel and labeled.
47. **Smoke Detectors which are Hardwired:** As per the California Building Code, State Fire Marshal Regulations, and Coastside Fire Protection District Ordinance No. 2007-01, the applicant is required to install State Fire Marshal approved and listed smoke detectors which are **hardwired, interconnected, and have battery**



**backup.** These detectors are required to be placed in each sleeping room and at a point centrally located in the corridor or area giving access to each separate sleeping area. A minimum of one detector shall be placed on each floor. Smoke detectors shall be tested and approved prior to the building final.

48. **Address Numbers:** As per Coastside Fire Protection District Ordinance No. 2007-01, building identification shall be conspicuously posted and visible from the street. (TEMPORARY ADDRESS NUMBERS SHALL BE POSTED PRIOR TO COMBUSTIBLES BEING PLACED ON-SITE.) The letters/numerals for permanent address signs shall be **4 inches** in height with a minimum 3/4-inch stroke. Such letters/numerals shall be internally illuminated and facing the direction of access. Finished height of bottom of address light unit shall be greater than or equal to 6 feet from finished grade. When the building is served by a long driveway or is otherwise obscured, a reflectorized address sign shall be placed at the entrance from the nearest public roadway. See Fire Ordinance for standard sign.
49. **Roof Covering:** As per Coastside Fire Protection District Ordinance No. 2007-01, the roof covering of every new building or structure, and materials applied as part of a roof covering assembly, shall have a minimum fire rating of Class "B" or higher as defined in the current edition of the California Building Code.
50. **Fire Access Roads:** The applicant must have a maintained all-weather surface road for ingress and egress of fire apparatus. The San Mateo County Department of Public Works, the Coastside Fire Protection District Ordinance No. 2007-01, and the California Fire Code shall set road standards. As per the 2007 CFC, dead-end roads exceeding 150 feet shall be provided with a turnaround in accordance with Coastside Fire District specifications. As per the 2007 CFC, Appendix D, road width shall not be less than 20 feet. Fire access roads shall be installed and made serviceable prior to combustibles being placed on the project site and maintained during construction. Approved signs and painted curbs or lines shall be provided and maintained to identify fire access roads and state the prohibition of their obstruction. If the road width does not allow parking on the street (20-foot road) and on-street parking is desired, an additional improved area shall be developed for that use.
51. **Solar Photovoltaic Systems:** These systems shall meet the requirements of the Coastside Fire Protection District as outlined in Standard Detail DI-007 Solar Photovoltaic Systems (if installed).
52. **Vegetation Management:** The Coastside Fire Protection District Ordinance No. 2007-01, the 2007 California Fire Code and Public Resources Code 4291:

- a. A fuel break of defensible space is required around the perimeter of all structures to a distance of not less than 30 feet and may be required to a distance of 100 feet or to the property line. In the State Responsible Area (SRA), the fuel break is 100 feet or to the property line.
- b. Trees located within the defensible space shall be pruned to remove dead and dying portions, and limbed up 6 to 10 feet above the ground. New trees planted in the defensible space shall be located no closer than 10 feet to adjacent trees when fully grown or at maturity.
- c. Remove that portion of any existing tree which extends within 10 feet of the outlet of a chimney or stovepipe or is within 5 feet of any structure.

Granada Sanitary District

53. The applicant shall submit an application for a sewer permit.




**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
**Planning and Building Department**



**PROJECT FILE**

**DATE:** October 17, 2011  
**BOARD MEETING DATE:** November 1, 2011  
**SPECIAL NOTICE/HEARING:** 10 days; within 300 feet  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** Jim Eggemeyer, Community Development Director 

**SUBJECT:** EXECUTIVE SUMMARY: Public hearing to consider an appeal of the Planning Commission's decision to deny the Hodge project, consisting of: (1) certification of a Mitigated Negative Declaration; and (2) Variance, Coastal Development Permit and Coastsides Design Review, for a new 2,692 sq. ft. single-family residence with attached two-car garage, with side yard setbacks of 5 to 7 feet, where a 10-foot minimum side yard setback is otherwise required, at 97 Alameda Avenue, in the unincorporated Miramar area of San Mateo County. This project is appealable to the California Coastal Commission.

**RECOMMENDATION:**

Deny the appeal and uphold the decision of the Planning Commission to deny the Variance, Coastal Development Permit and Coastsides Design Review, County File Number PLN 2008-00380, subject to the findings for denial included in Attachment A.

**BACKGROUND:**

The applicant is proposing a new 2,692 sq. ft., two-story, single-family residence with an attached two-car garage on a 10,802 sq. ft. parcel at the corner of Magellan and Alameda Avenues. The parcel is in the shape of a "U" and the two pieces of the "U" shape are 34 feet each in width. The middle portion of this "U" shape is under County ownership and the Parks Department has a pending Coastal Development Permit (CDP) for a restroom facility (PLN 2010-00356). The proposed residence would be located on a portion of the parcel that runs parallel to Magellan Avenue and is furthest from County-owned park and open space land known as Mirada Surf, which is located immediately north of the project site. The applicant is requesting a variance to allow non-conforming side yard setbacks for the project on a section of the parcel that is 34 feet wide. The applicant is also requesting an exception to allow for a 34-foot buffer from an existing willow riparian habitat on the property, where a minimum 50-foot buffer is otherwise required, pursuant to San Mateo Local Coastal Program (LCP) Policies 7.11 and 7.12. No trees are proposed for removal.

After having considered the project in three previous meetings, on April 13, 2011, the Planning Commission denied the project, stating that there were potential alternative proposals for a new residence on the project site that would not require a variance or an exception to the required 50-foot riparian buffer and that the findings required to approve the project could not be supported as the project did not comply with required variance findings and LCP policies, including those governing the location of new development, the minimization of negative impacts on sensitive habitats and in areas of scenic qualities, and the required buffer area for riparian corridors.

In their appeal, the applicant contends that the project should be approved for the following reasons that: (1) the project site is an unusually shaped parcel and there are very few options available to construct a residence on this property that would not require a variance for either front or side yard setbacks and/or an exception to the required riparian buffer area; (2) the proposed residence fits the criteria set by the County; and (3) the proposed residence is relatively small and has total lot coverage of 16% on a 10,800 sq. ft. parcel (where maximum lot coverage of 30% is permitted in the S-94 Zoning District). The applicant also states that the length of the permitting process has been excessively long, citing 30 months since the date of application and 16 months since the application was deemed complete.

#### **DISCUSSION:**

Regarding the owner's appeal issues: (1) the Planning Commission did not disagree that the parcel is unusually shaped or somewhat constrained by the location of the riparian area and the LCP's requisite 50-foot buffer zone. While they did not dismiss the need for some of the variances, the Commission felt that the house could still be redesigned or repositioned to better comply with applicable LCP policies; (2) the Planning Commission took issue of the degree with which the house location complied with all County criteria, particularly select LCP policies; and (3) the Planning Commission did not disagree that the lot coverage taken up by the house was small relative to the parcel's total size; they did, however, suggest the house could be repositioned or somewhat decreased in size to better comply with the cited regulations.

County Counsel has reviewed and approved the materials as to form and content.

The denial of the Coastal Development Permit, Design Review Permit, and Variance for a new single-family residence contributes to the 2025 Shared Vision outcome of a Livable Community by protecting sensitive habitats, buffer zones, and scenic qualities for compliance with applicable Local Coastal Program policies and zoning regulations.

#### **FISCAL IMPACT:**

There is no Net County Cost. If approved, future residential development of the parcel which would result in additional tax revenue due to increased tax assessment of the parcel.



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
Planning and Building Department



**DATE:** October 17, 2011  
**BOARD MEETING DATE:** November 1, 2011  
**SPECIAL NOTICE/HEARING:** 10 days; within 300 feet  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** Jim Eggemeyer, Community Development Director

**SUBJECT:** Public hearing to consider an appeal of the Planning Commission's decision to deny the Hodge project, consisting of: (1) certification of a Mitigated Negative Declaration; and (2) Variance, Coastal Development Permit and Coastsides Design Review, for a new 2,692 sq. ft. single-family residence with attached two-car garage, with side yard setbacks of 5 to 7 feet, where a 10-foot minimum side yard setback is otherwise required, at 97 Alameda Avenue, in the unincorporated Miramar area of San Mateo County. This project is appealable to the California Coastal Commission.

County File Number: PLN 2008-00380 (Hodge)

**RECOMMENDATION:**

Deny the appeal and uphold the decision of the Planning Commission to deny the Variance, Coastal Development Permit and Coastsides Design Review, County File Number PLN 2008-00380, subject to the findings for denial included in Attachment A.

**BACKGROUND:**

Proposal: The applicant is proposing a new 2,692 sq. ft., two-story, single-family residence with an attached two-car garage on a 10,802 sq. ft. parcel at the corner of Magellan and Alameda Avenues. The parcel is in the shape of a "U," with the middle portion of this "U" shape under the separate ownership and the two pieces of the "U" shape 34 feet each in width. The proposed residence would be located on a portion of the parcel that runs parallel to Magellan Avenue and is furthest from County-owned park and open space land known as Mirada Surf, which is located immediately north of the project site. The applicant is requesting a variance to allow non-conforming side yard setbacks for the project on a section of the parcel that is 34 feet wide. The applicant is also requesting an exception to allow for a 34-foot buffer from an existing willow riparian habitat on the property, where a minimum 50-foot buffer is otherwise required, pursuant to San Mateo Local Coastal Program (LCP) Policies 7.11 and 7.12. No trees are proposed for removal.

Planning Commission Action: Denied on April 13, 2011

Zoning Hearing Officer Action: Referred to Planning Commission on May 20, 2010

Coastside Design Review Committee Action: Recommended approval on May 14, 2009

Report Prepared By: David Holbrook, Senior Planner, Telephone 650/363-1837

Appellants/Owners/Applicants: David and Hi-Jin Hodge

Location: 97 Alameda Avenue, Miramar

APN: 048-016-010

Parcel Size: 10,802 sq. ft.

Existing Zoning: R-1/S-94/DR/CD (Single-Family Residential/10,000 sq. ft. minimum lot size/Design Review/Coastal Development)

General Plan Designation: Medium Low Density Residential (2.1-6.0 dwelling units/acre)

Parcel Legality: A Certificate of Compliance, Type A, has been recorded for the parcel on January 20, 2010, Document No. 2010-005909

Existing Land Use: Vacant

Water Supply: Coastside County Water District

Sewage Disposal: Granada Sanitary District

Flood Zone: Zone C (Areas of Minimal Flooding); Community Panel No. 060311 0225C; effective date August 5, 1986

Environmental Evaluation: Initial Study and Negative Declaration issued with a public review period from January 21, 2010 to February 10, 2010

Setting: The parcel is located on Magellan Avenue, west of Cabrillo Highway, within the designated Cabrillo Highway County Scenic Corridor. The parcel is in the shape of a "U," with the middle portion of the "U" shape comprised of a single parcel owned by the Parks Department. On that parcel, the Parks Department has a pending Coastal Development Permit (CDP) for a restroom facility (PLN 2010-00356). Immediately north of the project site is San Mateo County-owned park and open space land known as Mirada Surf. Adjacent and within the Mirada Surf property is an existing perennial creek that is surrounded by willow riparian habitat. The riparian habitat encroaches into the northeast corner of the project site. The area to the south of the subject parcel is zoned

residential. Some properties are developed with single-family dwellings, while others are undeveloped.

Chronology:

<u>Date</u>	<u>Action</u>
November 4, 2008	- Original Variance, CDP, Coastsides Design Review and "After-the-Fact" CDP application submitted.
April 9, 2009	- Coastsides Design Review Committee (CDRC) reviewed and continued the item to its May hearing.
April 27, 2009	- Applicant submitted revised plan in response to CDRC comments. A variance for the front yard setback is no longer requested (as last considered by the Planning Commission).
May 14, 2009	- The CDRC unanimously recommended approval.
June 2009 to September 2009	- Biological documents and reports submitted for review.
September 2009	- Applicant submitted revised application to include attached second unit.
October 21, 2009	- Coastsides Design Review Officer approved minor change to proposed colors and materials.
December 22, 2009	- "After-the-Fact" CDP application separated from this request.
January 4, 2010	- Applicant submitted Chain of Title report for parcel legalization, and application deemed complete.
January 20, 2010	- Certificate of Compliance (CoC) Type A recorded to verify parcel legality.
January 21, 2010	- Initial Study and Mitigated Negative Declaration circulated for review and comment. Comments received from public.
March 26, 2010	- Applicant submitted revised application to exclude second unit.
April 1, 2010	- Zoning Hearing Officer considered the project and continued it to a date uncertain.

- May 20, 2010 - Zoning Hearing Officer considered the project and referred it to the Planning Commission.
- June 2010 - Applicant requested that Planning Commission hearing be pushed to the fall, upon return from traveling abroad.
- November 10, 2010 - Planning Commission considered the project and continued it to a date uncertain.
- November 4, 2010 - San Mateo County Parks Department submits CDP application (PLN 2010-00356) for proposed restroom facility on adjacent parcel (048-016-020).
- December 2, 2010 - Applicant submitted revised application, requesting an exception to LCP required 50-foot riparian buffer based on new information submitted by project biologist.
- February 23, 2011 - Planning Commission considered the project and continued it to its March 23 hearing.
- March 2011 - Initial Study and Mitigated Negative Declaration separated for the two projects.
- March 23, 2011 - Planning Commission considered the project and continued it to its April 13 hearing.
- April 13, 2011 - Planning Commission considered the project and denied the project on a 4 to 1 vote.
- April 18, 2011 - Applicant submitted appeal application.
- April 26, 2011 - Applicant submitted three alternative proposals.
- November 1, 2011 - Board of Supervisors hearing.

## **DISCUSSION:**

### **A. PREVIOUS ACTIONS**

Upon the Zoning Hearing Officer (ZHO) remanding this project as well as the "After-the-Fact" clearing CDP (PLN 2009-00358) to the Planning Commission for consideration, both projects were placed on the Planning Commission's November 10, 2010 and February 23, 2011 agendas. The Planning Commission continued the "After-the-Fact" CDP at both hearings and did not consider this project at either hearing. The Planning Commission first heard and considered this project on March 23, 2011. There were several comments from the public, requesting that the Planning Commission deny the permit request for numerous reasons, including that: (1) the proposed residence did not comply with Design Review Standards or the



character of the Coastside; (2) the project site was a sensitive habitat and should be first restored to its natural condition before any subsequent approvals are given; (3) a variance should not be granted because it would set a precedent in the surrounding area, the project site meets the minimum lot size required by zoning and the house could be built smaller so as not to require any such variances; and (4) the project would negatively affect public use of the County's Mirada Surf property, due to the visual proximity of the development to the roadway (at Alameda) that serves as the public pedestrian access to the County property.

During the hearing, the Planning Commission discussed several issues and concerns regarding the proposal. The Planning Commission was primarily concerned with: (1) the request for a variance for side yard setbacks, which also included options to reduce those variance requests in exchange for, perhaps instead, some degree of encroachment into the front yard setback (this had initially been proposed by the applicant, but dropped with the Design Review Committee's decision cited in the chronology cited earlier in this report) believing that a house could be designed to fit onto the parcel; (2) the encroachment of the new residence a few feet into the required 50-foot riparian buffer; and (3) the design of the proposed residence with specific issues surrounding the front portion, or "cube," of the residence. The Planning Commission struggled with the question of to what degree some variances could be considered if it resulted in, at least, the development otherwise complying with the 50-foot riparian buffer. Several motions were made at the hearing, but the Planning Commission could not come to an agreement and continued the project to April 13, 2011, so that the entire Planning Commission could consider the project (one Commissioner was not in attendance on March 23, 2011).

On April 13, 2011, the Planning Commission again considered the project. The applicant presented alternative proposals based on comments from the previous hearing, but the Planning Commission felt that the alternatives did not address its concerns. The Planning Commission voiced that there were potential alternative proposals for a new residence on the project site that would not require a variance or an exception to the required 50-foot riparian buffer. Ultimately, the Planning Commission denied the project, stating that the findings required to approve the project could not be supported, as the project did not comply with applicable Zoning Regulations and LCP policies, all relative to the previously cited LCP, Variance and Design Review policies and regulations.

#### B. KEY ISSUES OF THE APPEAL

The following are points and issues raised by the applicant as part of the appeal application. A copy of the submitted appeal application is included as Attachment D to the staff report. Each issue (*in italicized text*) is followed by staff's response (in context of both the Planning Commission's denial, as well as relative to the owner's submitted design alternatives as shown on Attachment E).

1. *The project site is an unusually shaped parcel and there are very few options available to construct a residence on this property that would not require a variance for either front or side yard setbacks and/or an exception to the required riparian buffer area.*

Staff's Response (Based on Planning Commission's Decision). While the Planning Commission did not question the unique shape of the parcel, nor that there were some constraints created by the riparian area and the LCP's 50-foot buffer setback policy, they believed a house could still be built – albeit of reduced size – on the parcel. The Planning Commission was generally supportive of the variance requests to the parcel's northerly and southerly side yards (5 to 7 feet on each), but reached no consensus on the options presented to them of moving the house (as currently designed) in any direction that would create the need for a front yard variance (facing Alameda).

Staff's Response (Based on Applicant's Alternatives). In efforts to locate the house out of the cited LCP's 50-foot buffer, the applicant submitted two alternatives. While both maintained the same variance request for both side yard setbacks, Alternative 1 moves the house forward, which would require a 10-foot front yard setback, but also removes 17 feet of length from the rear of the house (facing east) and maintains the 50-foot buffer entirely. Alternative 2 moves the house forward triggering the 10-foot front yard variance but encroaches only 6 feet (as opposed to 12 feet per the original proposal) into the 50-foot riparian buffer zone.

2. *We have designed a small residence that fits the criteria set by the County and our personal needs for a home and studio. The proposed residence is relatively small and has total lot coverage of 16% on a 10,800 sq. ft. parcel.*

Staff's Response (Based on Planning Commission's Decision). Again, the Planning Commission did not disagree with that the house was relatively small. Their decision, as cited above, suggested that they thought the house could be smaller in order to, minimally anyway, comply with the LCP's 50-foot riparian buffer policy.

Staff's Response (Based on Applicant's Alternatives). As with Issue No. 1, above, Alternative 1 does result in a smaller house (with the east facing portion removed), which triggers the new front yard variance but stays out of the cited buffer zone.

3. *The length of this permitting process has been excessive. It has been 30 months [as of March 23, 2011] since we first submitted our application and 16 months since the application was deemed complete. The project has been continued numerous times by the Planning Commission and other decision makers involved in the process.*

Staff's Response (Based on Planning Commission's Decision). The Planning Commission acknowledged that the applicant's separate "After-the-Fact" clearing CDP (PLN 2009-00358) that occurred on the lot clearly resulted in the project becoming more complicated to review and adjudicate, relative to staff review, regulatory compliance and public comment. In addition, the Planning Commission is aware of the challenges that the house design posed as well as its encroachment into the LCP buffer zone.

Staff's Response (Based on Applicant's Alternatives). If the Board of Supervisors chooses to adopt and approve one of the applicant's alternatives, this decision will be not be final until the project's appeal period to the California Coastal Commission (CCC) has lapsed; if appealed to the CCC, it will be their project to approve or deny.

### C. REGULATORY COMPLIANCE

The Planning Commission's denial of the project took into consideration its inability to comply with the following and applicable polices and regulations:

#### 1. Conformance with Local Coastal Program

A Coastal Development Permit (CDP) is required pursuant to San Mateo County Local Coastal Program (LCP) Policy 1.1, which mandates compliance with the California Coastal Act for any development proposed within the Coastal Zone. Based on review of the project by staff and the Planning Commission, it was determined that the proposal does not comply with applicable LCP policies, including those governing the location of new development, the minimization of negative impacts on sensitive habitats and in areas of scenic qualities, and the required buffer area for riparian corridors. Specifically, the Planning Commission focused on LCP Policy 7.12, which requires a 50-foot buffer zone from the limit of riparian vegetation. While disputed by neighbors and resulting in an appeal of the associated "After-the-Fact" Clearing/CDP (PLN 2009-00358), the Planning Commission ultimately accepted the owner's biological study (approving PLN 2009-000358) that located the cited riparian area and its 50-foot buffer. The owner's proposal to the Planning Commission placed the house 34 feet away from the riparian edge (instead of the 50-foot minimum just cited), which is potentially allowed pursuant to LCP Policy 7.13, which allows residential uses to be set back as close as 20 feet from the limit of riparian vegetation "only if no feasible alternative exists and only if no other building site on the parcel exists." It was this critical exception to which the Planning Commission believed that other feasible alternatives did exist, such that the full 50-foot buffer setback could be maintained. Additionally, the Planning Commission's denial took into consideration LCP Policies 8.12 (Application of the Coastside Design Review Guidelines) and 8.13 (which includes a guideline for the Montara-Moss Beach-El Granada-Miramar area to: "Design structures that are in scale with the character of their setting and blend

rather than dominate or distract from the overall view of the urbanscape”), for reasons cited in Section C.3 below.

2. Conformance with Zoning Regulations

S-94 District Development Standards

The proposal complies with the development standards of the R-1/S-94 Zoning District, except for required minimum side yard setbacks. Therefore, the applicant has requested a variance for each of the side yard setbacks, for which the Planning Commission could not make the required findings, as discussed in Section C.4 below.

3. Conformance with Design Review District Guidelines

The Coastsides Design Review Committee (CDRC) recommended approval of the project on May 14, 2009. The Planning Commission did not explicitly challenge the CDRC’s decision, nor did they cite any specific Design Review policies they believed the residence to violate. However, they did hear and consider testimony from some who believed: (1) the design was not in keeping with other residential development of the area, and (2) its “cube” shaped westernmost portion presented an adverse visual impact to views from within public roadways looking westward.

4. Conformance with Variance Findings

Pursuant to Section 6531 of the Zoning Regulations, a variance may be granted when proposed development varies from minimum yard, maximum building height or maximum lot coverage requirements, or from any other specific requirements of the Zoning Regulations. The applicant is requesting a variance for non-conforming side yard setbacks.

Section 6534.1 of the Zoning Regulations requires the following findings in order to approve a variance:

- a. **That the parcel’s location, size, shape, topography and/or other physical conditions vary substantially from those of other parcels in the same zoning district or vicinity.**
- b. **That without the variance, the landowner would be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity.**
- c. **That the variance does not grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity.**

- d. That the variance authorizes only uses or activities which are permitted by the zoning district.
- e. That the variance is consistent with the objectives of the General Plan, the Local Coastal Program (LCP) and the Zoning Regulations.

The Planning Commission concluded that Findings b. and c. could not be made to support the granting of a variance. While the Planning Commission was not specific as to how the project did not comply, respectively, with these two findings, their overall decision reflected an assumption that even on a parcel with such reduced buildable area (due to the parcel's "U" shaped size and the riparian buffer area's coverage of most of the parcel except for the 34-foot wide southerly piece of the "U" shape), it was still reasonable that a house (albeit smaller) could otherwise be built such that no variances might be required. The Planning Commission's decision took into consideration the constraints posed by previously cited LCP Policy regulating development relative to the riparian buffer zone. The Planning Commission, however, generally supported the project's need for relief to the northerly side setback proposal of 5 to 7 feet where a 10-foot side setback is required (due to that portion of the parcel's 34-foot width). In fact, the Planning Commission entertained allowing a lesser setback – say 3 to 5 feet on that side, if the development could otherwise comply with all other zoning and LCP requirements.

#### D. ENVIRONMENTAL REVIEW

An Initial Study was completed and a Negative Declaration (Attachment G) issued in conformance with California Environment Quality Act (CEQA) Guidelines for this project and an associated project for an "After-the-Fact" CDP (PLN 2009-00358) to legalize unpermitted land clearing on two properties, including the project site. The public review period for this document was January 21, 2010 to February 10, 2010 (this document was subsequently separated for each project in March 2011 and did not require another public review according to County Counsel). Public comments were received during the initial review period and previously addressed and presented to the Planning Commission. The Planning Commission's denial of the project resulted in neither the ability nor need to certify the Negative Declaration. If the Board of Supervisors approves the project or an alternative indicated below, they would certify this document.

#### E. ALTERNATIVE PROPOSALS

The applicant is presenting three alternative proposals (Attachment E) for consideration by the Board of Supervisors, as described below. Staff discussion regarding compliance with County regulations follows each alternative proposal. Please note that if the Board of Supervisors approves any of the alternatives, Attachment B (Alternative Recommended Findings and Conditions for Approval) includes Condition No. 5, whose setbacks would be revised to reconcile with the

alternative approved. The initial proposal considered and denied by the Planning Commission is included in Attachment E for comparison purposes.

1. Alternative 1 (Attachment E.1). This proposal is very similar to the original request considered by the Planning Commission. The only difference is that the proposed residence has moved 10 feet forward toward the front property line, resulting in a revised variance request to allow a 10-foot front setback where 20 feet is required (this alternative still retains the same variance requests to both side yard setbacks). This was the proposal initially submitted by the applicant and reviewed by the Design Review Committee (DRC). However, the DRC's positive recommendation required that it maintain the 20-foot front yard setback, which is how the project proceeded through to the Planning Commission hearings. This alternative sets the northeasterly rear-most corner of the house 44 feet (where a 50-foot buffer is required) from the riparian corridor's edge.

Staff's Response. This alternative, while triggering a 10-foot front yard setback variance, results in a project that maintains a 44-foot riparian buffer; 10 more feet than the 34-foot buffer proposal considered by the Planning Commission. Increasing the riparian buffer (if not complying with it entirely) was a critical issue raised by the Planning Commission relative to their inability to approve the project. While LCP Policy 7.12 does allow encroachment into the riparian buffer zone to a minimum of 20 feet from the riparian edge (and this alternative does extend the buffer setback from the original proposal), the Planning Commission left open to what – if any – degree of encroachment might have been considered. Their decision strongly suggested that a house could feasibly be designed to stay entirely out of the buffer zone. Regarding the new front yard variance, the Planning Commission did not rule out the feasibility of such a variance in the event that the 50-foot riparian buffer could be maintained.

2. Alternative 2 (Attachment E.2). This proposal retains the changes cited in Alternative 1 (including the 10-foot front yard and side yard variances), except that it shortens the eastern end of the house by 17 feet, resulting in a fully compliant 50-foot riparian buffer.

Staff's Response. This alternative would satisfy a chief issue held by the Planning Commission – that the house be redesigned or relocated to comply with the LCP's 50-foot buffer requirement.

3. Alternative 3 (Attachment E.3). This last alternative maintains the 20-foot front yard setback (although still requiring both side yard variances), but shortens the house by 27 feet, thus still meeting the required 50-foot riparian buffer requirement. This alternative also includes a critical redesign of house itself, modifying the flat roofed (which included a roof deck) second story with a pitched hip roof, matching the lower roof pitch over the eastward extending single-story portion of the house. While deleting the roof deck, this

modification would include a more traditional, smaller second-story, covered deck (facing Alameda).

**Staff's Response.** In addition to complying with both the required front yard setback and LCP required 50-foot buffer, the house roof redesign affecting the Alameda-facing portion of the house addresses another critical issue raised by both the Planning Commission and some neighbors throughout the process: that of the "cube" or box-like appearance of the house on its western end. Criticism of the original was relative to the rest of the house as well as its alleged incompatibility compared to the surrounding neighborhood design character. This design also changes the exterior materials from a horizontal siding to a vertical siding more compatible with the single story portion of the house. It is assumed that the roof and exterior materials/siding redesign could be applied, as well, to either Alternatives 1 or 2, above.

### **ALTERNATIVE ACTIONS**

**Should your Board find that the applicant's original proposal or one of the three alternatives complies with the applicable regulations, staff has provided the following alternative actions for approval.**

- 1. Grant the appeal and approve the applicant's original request, based on information presented by the applicant and discussed in Section F of this staff report, by making the required findings and adopting the recommended conditions of approval included in Attachment B, or**
- 2. Approve one of three alternatives proposed by the applicant, based on information presented by the applicant and discussed in this report, by making the required findings and adopting the recommended conditions of approval included in Attachment B.**

### **F. ORIGINAL PROPOSAL**

*The following section is provided so that the Board of Supervisors can – in the event they choose to approve the applicant's original proposal – have the necessary background of how staff initially reviewed the proposal against all applicable policies. This includes the project's environmental review, which also summarizes public comment to that document. Understandably, should the Board of Supervisors choose to approve the project based on one of the applicant's submitted alternatives (or some variation thereof), some elements of the discussion below would not be strictly applicable.*

The applicant is requesting that the Board of Supervisors grant the appeal and approve the proposed project as originally presented to and denied by the Planning Commission. The original application included the request for: (1) a Coastal Development Permit; (2) Coastside Design Review Permit; (3) a Variance to allow side yard setbacks of 5 to 7 feet, where a minimum 10-foot side yard setback is

otherwise required by zoning; (4) an exception to allow a 34-foot riparian buffer pursuant to LCP Policy 7.12, where a 50-foot riparian buffer is otherwise required per LCP Policy 7.11; and (5) certification of a Mitigated Negative Declaration for a new 2,692 sq. ft. single-family residence with attached two-car garage.

1. Compliance with General Plan

Staff has reviewed the project for conformance with the following policies contained in the General Plan:

Chapter 1 – Vegetative, Water, Fish and Wildlife Resources. Policies 1.2 (*Protect Sensitive Habitats*), 1.22 (*Regulate Development to Protect Vegetative, Water, Fish and Wildlife Resources*), 1.24 (*Protect Vegetative Resources*) and 1.27 (*Regulate Development to Protect Sensitive Habitats*) require, respectively, protecting sensitive habitats from reduction in size or degradation of the conditions necessary for their maintenance; regulating land uses and development activities to prevent significant adverse impacts on vegetative, water, fish and wildlife resources; ensuring that development will minimize the removal of vegetative resources; and regulating development within and adjacent to sensitive habitats.

The project site is located adjacent to an existing unnamed perennial creek that is surrounded by willow riparian habitat, which encroaches onto the northeast corner of the parcel, as determined and mapped by the project biologist. The proposed location of the new residence is set back 34 feet from the edge of the riparian habitat and approximately 80 feet from the perennial creek. The remainder of the site is dominated primarily by sparsely vegetated ground, including ruderal herbaceous grassland, which, according to the project biologist, does not qualify as a sensitive habitat nor does it provide suitable habitat for special status plant and wildlife species.

Vegetation removal is not proposed, and the applicant is proposing new native landscaping that will complement the surrounding natural environment. Therefore, the location of the proposed development, as conditioned, will not have significant adverse impacts to the existing willow riparian habitat. Mitigation measures discussed in the associated Mitigated Negative Declaration addressing required buffer zones and setbacks from riparian corridors, along with permitted uses in such areas and the requirement for native landscaping, have been included as recommended conditions of approval in Attachment B.

Chapter 2 – Soil Resources. Policy 2.17 (*Regulate Development to Minimize Soil Erosion and Sedimentation*) requires using measures which minimize removal of vegetative cover and ensure stabilization of disturbed areas. The subject parcel is relatively flat, and minimal grading is required for the implementation of the new residence. However, some erosion and sedimentation are likely to occur during construction activities on the site, and staff has included conditions of approval, including those recommended by the



Department of Public Works, requiring that an erosion and sediment control plan be approved and implemented prior to the beginning of any such construction activities.

Chapter 4 – Visual Quality. Policies 4.1 (*Protection of Visual Quality*), 4.3 (*Protection of Vegetation*), 4.14 (*Appearance of New Development*), 4.21 (*Scenic Corridors*), 4.35 (*Urban Area Design Concept*), 4.64 (*Utilities in County Scenic Corridors*), and 4.66 (*Fences*) require, respectively, (1) protecting and enhancing the natural visual quality of San Mateo County, encouraging positive visual quality for all development and minimizing adverse visual impacts; (2) minimizing the removal of visually significant trees and vegetation to accommodate structural development; (3) regulating development to promote and enhance good design, site relationships and other aesthetic considerations; (4) protecting and enhancing the visual quality of scenic corridors by managing the location and appearance of structural development; (5) maintaining and, where possible, improving upon the appearance and visual character of development in urban areas, and ensuring that new development in urban areas is designed and constructed to contribute to the orderly and harmonious development of the locality; (6) installing new distribution lines underground; and (7) encouraging fences which minimize visual impact.

The project site is located within the designated Cabrillo Highway County Scenic Corridor. This area has been designated as a scenic corridor because of the surrounding natural scenic views and qualities; therefore, it is likely that the project may cause some visual impact to the area. The project site is approximately 100 feet from Cabrillo Highway and separated from this main transportation corridor by existing riparian willows. The parcel is also at a lower elevation than the Cabrillo Highway right-of-way, decreasing in slope as you move west of the highway. The existing topography and vegetation help create a visual barrier and minimize potential visual impacts on the scenic views and qualities of the surrounding area.

The applicant is proposing new landscaping and cedar fencing around the property to further minimize any potential adverse visual impacts. All new utility lines will be placed underground, and no tree or vegetation removal is proposed. The new residence will be constructed of materials and colors that are in compliance with the CDRC Design Guidelines. The architectural design of the structure complies with these design guidelines, as determined by the CDRC at its May 14, 2009 meeting, provided that recommended conditions of approval (Attachment B) are included.

Chapter 8 – Urban Land Use. Policies 8.14 (*Land Use Compatibility*) and 8.29 (*Infilling*) require, respectively, protecting and enhancing the character of existing single-family areas and encouraging the infilling of urban areas where infrastructure and services are available. As mentioned above, the proposed single-family residence was reviewed by the CDRC and, as conditioned, found to be in compliance with the Coastside Design Review Guidelines that protect

the character of the existing residential area. The project is located within a partially built-out urban area, and infrastructure and services from the Coastside County Water District and the Granada Sanitary District are available for the new residence.

Chapter 10 – Water Supply. Policy 10.10 (*Water Suppliers in Urban Areas*) requires considering water systems as the preferred method of water supply in urban areas and discouraging use of wells to serve urban uses. The project site is under the service area of the Coastside County Water District. The District has confirmed that water service is available for the new residence. A well is not required or proposed.

Chapter 11 – Wastewater. Policy 11.5 (*Wastewater Management in Urban Areas*) requires considering sewerage systems as the appropriate method of wastewater management in urban areas. The project site is under the service area of the Granada Sanitary District, which has confirmed that service is available for the property.

## 2. Conformance with Local Coastal Program

A Coastal Development Permit (CDP) is required pursuant to San Mateo County Local Coastal Program (LCP) Policy 1.1, which mandates compliance with the California Coastal Act for any development proposed within the Coastal Zone. Staff has completed a Coastal Development Checklist for this proposal. Summarized below are the sections of the LCP that are relevant:

### a. Locating and Planning New Development Component

Policy 1.18 (*Location of New Development*) requires directing new development to existing urban areas in order to: (1) discourage urban sprawl, (2) maximize the efficiency of public facilities, services, and utilities, and (3) protect and enhance the natural environment. As discussed above with respect to General Plan Policies 8.14 and 8.29, the project site is located in an area where there are existing infrastructure, water and sewer services, and utilities available. The area to the south of the project site is within the same residential district as the subject parcel, and there are existing single-family residences on some of the properties. The proposal does not create or result in urban sprawl.

### b. Sensitive Habitats Component

Policies 7.3 (*Protection of Sensitive Habitats*) and 7.5 (*Permit Conditions*) require, respectively, that development in areas adjacent to sensitive habitats be sited and designed to prevent impacts that could significantly degrade the sensitive habitats, and that the applicant demonstrate that there will be no significant impact on sensitive habitats. As previously discussed, the parcel is located adjacent to an existing perennial creek,

which is surrounded by an area designated as a riparian corridor, as established by Policy 7.8 (*Designation of Riparian Corridors*), and encroaches onto the northeastern part of the project site, as surveyed by the project biologist. Based on the project biologist's assessment of the project site, no additional sensitive habitats were found.

The proposed location of the new residence is set back 34 feet from the edge of the riparian habitat and 80 feet from the perennial creek. Policy 7.11 (*Establishment of Buffer Zones*) requires a 50-foot buffer zone on both sides of riparian corridors from the "limit of riparian vegetation" for perennial streams. However, Policy 7.12 (*Permitted Uses in Buffer Zones*) allows for an exception to this requirement for residential uses on existing legal building sites, allowing a minimum buffer of 20 feet when no feasible alternative building site exists on a parcel. The applicant is requesting an exception to encroach 16 feet into the otherwise required 50-foot buffer, which is less than the LCP allows under certain circumstances. To ensure protection of the riparian habitat, staff is recommending a condition of approval that would require permanent fencing around the approved riparian buffer area. With this provision, staff has concluded that the proposed location of the new residence will not negatively affect the existing riparian habitat.

c. Visual Resources Component

Policy 8.5 (*Location of Development*) requires that new development be located on a portion of a parcel where the development: (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, (3) is consistent with all other LCP requirements, and (4) best preserves the visual and open space qualities of the parcel overall. The proposed location of the new residence is the only location on the property where a structure would be allowed due to the odd shape of the parcel and the surrounding willow riparian habitat. Existing vegetation, proposed native landscaping, fencing and the use of natural colors and materials for the new residence will help minimize any adverse impacts to the visual quality of the area. Additionally, the existing riparian willows will help shield the project from the Cabrillo Highway County Scenic Corridor, minimizing any potential negative effects on scenic views. For further discussion, refer to staff's discussion of the General Plan policies regulating visual quality and urban design in Section G.1, which also covers the following LCP policies: Policies 8.6 (*Streams, Wetlands, and Estuaries*), 8.9 (*Trees*), 8.10 (*Vegetative Cover*) and 8.12 (*General Regulations*).

### 3. Conformance with Zoning Regulations

#### S-94 District Development Standards

The proposal complies with the development standards of the R-1/S-94 Zoning District, except for required minimum side yard setbacks, as indicated in the following table. A variance is required for the project and is discussed in Section F.5 below.

	<b>S-94 Development Standards</b>	<b>Existing</b>	<b>Proposed</b>
Building Site Area	10,000 sq. ft.	10,802 sq. ft.	N/A
Building Site Width	50 ft. average	Varies from 34 to 100 ft.	N/A
Minimum Front Setback	20 ft.	N/A	20 ft.
Minimum Rear Setback	20 ft.	N/A	31 ft.
Minimum Side Setback	10 ft.	N/A	Right: 5-7 ft.* Left: 5-7 ft.*
Maximum Building Site Coverage	30%	N/A	17.4%
Maximum Floor Area Ratio	53%	N/A	24.9%
Maximum Building Height	28 ft.	N/A	24 ft.
*Variance required.			

### 4. Conformance with Design Review District Guidelines

The Coastsides Design Review Committee found the proposal to be in compliance with the required Design Review Standards for the urban Midcoast and recommended approval of the project on May 14, 2009, subject to recommended conditions of approval.

### 5. Conformance with Variance Findings

Pursuant to Section 6531 of the Zoning Regulations, a variance may be granted when proposed development varies from minimum yard, maximum building height or maximum lot coverage requirements, or from any other specific requirements of the Zoning Regulations. The applicant is requesting a variance for the project to allow side yard setbacks of 5 to 7 feet on either side, where a minimum 10-foot side yard setback is otherwise required by zoning.

Section 6534.1 of the Zoning Regulations requires the following findings in order to approve a variance for the proposed project:

- a. **That the parcel's location, size, shape, topography and/or other physical conditions vary substantially from those of other parcels in the same zoning district or vicinity.**

Although the subject parcel meets the minimum building site area of 10,000 sq. ft. required in the R-1/S-94 Zoning District, the parcel is oddly shaped in a "U" form, with the middle portion under separate ownership. The width of each part of the "U" that runs along Alameda Avenue is 34 feet. With such a small width, it would not be feasible for any structure to comply with the required 10-foot minimum side yard setback, as this would result in a 14-foot wide structure. Such a structure would not be able to meet parking requirements, and the applicant would need to request an exception to the required two covered parking spaces. (Each parking space is required to be 9 feet in width by 19 feet in length.)

In addition to the odd shape of the parcel, the northernmost portion of the project site is surrounded by the County's Mirada Surf property, an existing perennial creek and riparian habitat, which further restrict development on the project site. A residence could not be positioned in any other location on this property without requiring a variance or exception for one or more zoning regulations and/or development standards.

- b. **That without the variance, the landowner would be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity.**

As mentioned above, because of the odd shape of the parcel, any proposed location on the subject site for a new residence would require some sort of exception to the R-1/S-94 development standards and/or other zoning requirements. If a variance were not allowed for the proposal, the landowner would be denied the right to construct a residence on his property. The surrounding residential area consists of parcels that are more standard in shape, and it is likely that the landowners of these properties would be able to construct a new residence or residential addition without the need for a variance.

- c. **That the variance does not grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity.**

As discussed in the findings above, allowing the new residence with non-conforming side yard setbacks does not constitute the granting of a special privilege, as there are existing residential properties to the south of the project site with more standard sized and shaped parcels. Construction of a new residence or an addition to an existing residence on these properties would likely not require the approval of a variance. Additionally,

the option to request a variance is available for other landowners with similar situations and therefore, the granting of this variance does not constitute a special privilege.

- d. **That the variance authorizes only uses or activities which are permitted by the zoning district.**

The project site is located within the R-1/S-94/DR/CD Zoning District. A single-family residence is an allowed use in this district.

- e. **That the variance is consistent with the objectives of the General Plan, the Local Coastal Program (LCP) and the Zoning Regulations.**

The project complies with the policies and objectives of the General Plan and the Zoning Regulations, as discussed in Sections F.1, F.2 and F.3 above.

## 6. Environmental Review

An Initial Study was completed and a Negative Declaration (Attachment G) issued in conformance with California Environment Quality Act (CEQA) Guidelines for this project and an associated project for an "After-the-Fact" CDP (PLN 2009-00358) to legalize unpermitted land clearing on two properties, including the project site. The public review period for this document was January 21, 2010 to February 10, 2010. Public comments were received during the review period. Only those comments pertaining to this permit are discussed below. Any comments relating to the unpermitted land clearing and vegetation removal under application PLN 2009-00358 are addressed by staff in a separate staff report for that application. Mitigation measures pertaining to this project have been included as recommended conditions of approval in Attachment B.

### Response to Public Comments

Public comments regarding this project were received from David Hodge, property owner and applicant, Kathryn Slater-Carter and Evy Smith, concerned public, and Grace Ma, Coastal Planner with the California Coastal Commission. Many comments addressed similar issues and therefore, have been aggregated and summarized below.

- a. *Staff's response to Section 7.a. of the Negative Declaration is inaccurate, as the new residence will have no more impact on scenic views in the area than the house across the street, especially since existing willows surround the project.*

Section 7.a of the Initial Study/Negative Declaration asks: "Will (or could) this project be adjacent to a designated Scenic Highway or within a State

or County Scenic Corridor?" As previously mentioned, the project site is located within the designated Cabrillo Highway County Scenic Corridor. In reviewing this project, staff does not take into account existing structures in the area and base the new development's impact on scenic views in relation to existing development. Because the subject parcel is currently vacant, any proposed development would have some sort of impact on scenic views and visual quality in the area. Staff has found the project, as proposed and conditioned, will have minimal impact on the visual resources in the area. Refer to Section F.1 above for further discussion regarding the project's potential impact on the scenic qualities and views in the surrounding area.

- b. *The design of the new residence is not compatible with the surrounding community or with the design review standards; the project has the potential to substantially change the coastal character of the area due to the proposed colors and materials. The Coastsides Design Review Committee was specifically instructed that it cannot make decisions based on the LCP.*

The Coastsides Design Review Guidelines were created as a component of the LCP and therefore, address the policies found in the Visual Resources Component. The CDRC reviewed the proposal and found it to be in compliance with the Design Review Standards and recommended approval of the project.

- c. *The project will add to the traffic congestion of an already congested area.*

The proposed project is located in a residential district and immediately south of the Mirada Surf Trail property. Vehicular traffic is common in the area as many users of the Mirada Surf Trail park in the area. Access to the proposed residence will be obtained off Magellan Avenue, and the applicant is proposing sufficient parking on the property. The addition of a new residence would, at most, cause a slight increase in vehicular traffic in and around the area, but nothing that would result in noticeable changes in either vehicular traffic or volumes.

- d. *The Mitigated Negative Declaration states that the development will be visible from the Mirada Surf Trail and that the site is located within a County Scenic Corridor. Therefore, the project should be reviewed against LCP Policies 8.5 and 8.30, and whether the proposed development should be relocated.*

Refer to Section F.2.

- e. *LCP policy requires a 50-foot setback from riparian corridors and a 100-foot setback from lakes, ponds, and other wet areas. The third parking space is within the required 50-foot setback, and the 2005 biological study that included the project site indicated there was a wetland on the property.*

The second unit component of the project has been removed and a third parking space is no longer required or proposed. Refer to Section F.1 above for discussion about the 2005 biological study's results.

- f. *Both a County parcel tag and a disclosure during the transfer of the subject parcel indicated that the site was not buildable due to existing riparian and wetland habitats on the parcel.*

The parcel tag for the subject parcel indicated that the site may not be buildable due to findings made by the 2005 biological report for the Mirada Surf Trail Project. That the site may not be fully developable was fully disclosed. However, there are several factors that affect whether a site is buildable or not. It is the burden of the applicant to present evidence regarding the conditions of a site in determining whether sensitive habitats exist on a property and to determine the extent of the site's developability. As discussed above, the applicant submitted several biological reports from WRA, which have concluded that the existing riparian habitat only minimally extends onto the project site, and that there is no wetland on the property. Both water and sewer services can be obtained, and the proposal complies with General Plan, Zoning and LCP policies and regulations.

- g. *Granting a variance for this proposal will set precedence in the West Miramar area and the rest of the urban Midcoast.*

Granting this variance can only be allowed if the required findings can be made. If the variance is approved, this will not constitute a precedent in the surrounding coastal area to approve variances. While anyone can apply for a variance, one can only be granted if specific findings can be made. This is the same standard for all locations within the unincorporated San Mateo County.

- h. *The view of the harbor from the neighboring property across the project site will be blocked by the new development.*

The visual impact to the existing area as a whole is considered in the review of a project. The project must meet the required LCP Visual Resources policies. Staff does not consider, nor do the LCP policies require, that individual private views be taken into account. The project, as proposed and conditioned, complies with the required policies, and the



overall visual impact to the area will be minimal. Refer to Section F.2 for further discussion of the project's compliance with visual quality policies.

**G. REVIEWING AGENCIES**

Building Inspection Section  
Department of Public Works  
Geotechnical Section  
Coastside County Fire Protection District  
California Coastal Commission  
Coastside Design Review Committee  
Coastside County Water District  
Granada Sanitary District  
Midcoast Community Council

County Counsel has reviewed and approved the materials as to form and content.

The denial of the Coastal Development Permit, Design Review Permit, and Variance for a new single-family residence contributes to the 2025 Shared Vision outcome of a Livable Community by protecting sensitive habitats, buffer zones, and scenic qualities for compliance with applicable Local Coastal Program policies and zoning regulations.

**FISCAL IMPACT:**

There is no Net County Cost. If approved, future residential development of the parcel which would result in additional tax revenue due to increased tax assessment of the parcel.

**ATTACHMENTS:**

- A. Recommended Findings for Denial
- B. Alternative Recommended Findings and Conditions for Approval
- C. Location Map
- D. Project Plans (Original)
  - 1. Site Plan
  - 2. Floor Plans
  - 3. Elevations
- E. Applicant's Alternative Plans (includes Original Proposal for Comparison)
  - 1. Alternative 1
  - 2. Alternative 2
  - 3. Alternative 3, including Design Photo Sims of Revised Exterior Design
- F. Planning Commission Denial Letter, Dated April 15, 2011
- G. Initial Study/Negative Declaration
- H. Map of Surrounding Developed Parcels
- I. Owner's Appeal
- J. Photo of Story Poles (Original Location)

K. Project Biological Reports\*

1. WRA Biological Resource Assessment – February 24, 2009\*
2. WRA Report: Previous Habitat Conditions of Cleared Area: Proposed Hodge Residence, Magellan Avenue, Miramar – May 20, 2009\*
3. WRA Report: Wetland Delineation at Proposed Hodge Residence, Magellan Avenue, Half Moon Bay – June 16, 2009\*
4. WRA Report: Wetland Delineation Results at Proposed Hodge Residence, Magellan Avenue, Miramar (APN 048-016-010) – August 14, 2009\*

\*These documents are available on the County's Planning and Building's website, under "Pending Projects" (10/18/11 BOS Hearing – Hodge Bio Reports).

COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT

**RECOMMENDED FINDINGS FOR DENIAL**

Permit File Number: PLN 2008-00380

Board Meeting Date: November 1, 2011

Prepared By: David Holbrook, Senior  
Planner

For Adoption By: Board of Supervisors

**RECOMMENDED FINDINGS:**

**Regarding the Coastal Development Permit, Find:**

1. That the project, as described in the application and accompanying materials required by Section 6328.7 does not conform with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program (LCP), specifically relative to the project's non-compliance with LCP Sensitive Habitats Component Policies 7.11 (*Establishment of Buffer Zones*) and 7.12 (*Permitted Uses in Buffer Zones*), as well as Visual Resources Component Policies 8.13 (*Design Guidelines for Coastal Communities*) and 8.32 (*Regulation of Scenic Corridors in Urban Areas*).
2. That the project does not conform to the specific findings required by the policies of the LCP with regard to the components cited above.

**Regarding the Coastsides Design Review, Find:**

3. The project is not in compliance with the Design Review Standards for the Coastsides.

**Regarding the Variance, Find:**

4. That the parcel's location, size, shape, topography and/or other physical conditions do not vary substantially from those of other parcels in the same zoning district or vicinity.
5. That without the variance, the landowner would not be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity.
6. That the variance would grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity.

7. That the variance is not necessary to authorize the uses or activities which are permitted in the zoning district.
8. That the variance is not consistent with the objectives of the General Plan and the Zoning Regulations.

COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT

**ALTERNATIVE RECOMMENDED FINDINGS AND CONDITIONS FOR APPROVAL**

Permit File Number: PLN 2008-00380

Board Meeting Date: November 1, 2011

Prepared By: David Holbrook, Senior  
Planner

For Adoption By: Board of Supervisors

**RECOMMENDED FINDINGS:**

**Regarding the Negative Declaration, Find:**

1. That the Negative Declaration is complete, correct and adequate, and prepared in accordance with the California Environmental Quality Act and applicable State and County Guidelines. The public review period for this document was January 21, 2010 to February 10, 2010.
2. That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the project will have a significant effect on the environment. The Initial Study/Negative Declaration does not identify any significant or cumulative impacts associated with this project.
3. That the Negative Declaration reflects the independent judgment of San Mateo County. The Negative Declaration was prepared by the project planner.
4. That the mitigation measures in the Mitigated Negative Declaration and agreed to by the owner and placed as conditions on the project have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with the California Public Resources Code Section 21081.6.

**Regarding the Coastal Development Permit, Find:**

5. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County LCP, as the plans and materials have been reviewed against the application requirements, staff has completed an LCP Policy Checklist, and the project has been conditioned in accordance with the Locating and Planning New Development, Sensitive Habitats and Visual Resources Components of the LCP.
6. That the project conforms to the specific findings required by the policies of the LCP with regard to the Locating and Planning New Development, Sensitive

Habitats and Visual Resources Components. Specifically, the project conforms with the location of new development, zoning and parking requirements, protection of sensitive habitats and buffer zones, the minimization of vegetative cover removal and the Coastsides design criteria for urban parcels located in the Midcoast and in areas of scenic qualities and views.

Regarding the Coastsides Design Review, Find:

7. That the project is in compliance with the Design Review Standards for the Coastsides.

Regarding the Variance, Find:

8. That the parcel's location, size, shape, topography and/or other physical conditions vary substantially from those of other parcels in the same zoning district or vicinity, as the parcel is oddly shaped. The parcel is comprised of three lots in the shape of a "U," with the middle portion of the "U" a separate property under different ownership. The width of each part of the "U" that runs along Alameda Avenue is 34 feet. The length along Magellan Avenue is 140.02 feet. With such a small width, it would not be feasible for any structure to comply with the required 10-foot minimum side yard setback. In addition, the surrounding perennial creek and willow riparian habitat further restrict development on the project site. A residence could not be positioned in any other location on this property without requiring a variance or exception for one or more zoning regulations and/or development standards.
9. That without the variance, the landowner would be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity, as the landowner would be denied the right to construct a residence on his property. The surrounding residential area consists of parcels that are more standard in shape. The landowners of these properties would likely be able to construct a new residence or a new addition to an existing residence without requiring a variance. The surrounding residential parcels are shaped and sized so that the R-1/S-94 development standards would be more easily met and complied with.
10. That the variance does not grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity, as there are existing residential properties to the south of the project site with more standard sized and shaped parcels. A new residence or an addition to an existing residence would likely be able to be constructed on these properties without the need for a variance. Additionally, the option to request a variance is available for other landowners with similar situations and therefore, the granting of this variance to allow a new residence with non-conforming side yard setbacks does not constitute the granting of a special privilege.
11. That the variance authorizes only uses or activities which are permitted by the zoning district, as the proposal includes a new residence, which is an allowed use in the R-1/S-94/DR/CD Zoning District.

12. That the variance is consistent with the objectives of the General Plan and the Zoning Regulations, as discussed in the staff report.

### **RECOMMENDED CONDITIONS FOR APPROVAL:**

#### **Current Planning Section**

1. This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Board of Supervisors on November 1, 2011. Minor revisions or modifications may be approved by the Community Development Director if they are consistent with the intent of and in substantial conformance with this approval.
2. These permits shall be valid for one (1) year from the date of final approval by which time a valid building permit shall have been issued **and a completed inspection (to the satisfaction of the Building Inspector) shall have occurred within 180 days of its issuance.** Any extension of these permits shall require submittal of an application for permit extension and payment of applicable permit extension fees sixty (60) days prior to expiration.
3. The applicant shall apply for a building permit and shall adhere to all requirements from the Building Inspection Section, Department of Public Works and the respective Fire Authority.
4. The applicant shall include the final approval letter on the top pages of the plan sets submitted with an application for a building permit.
5. No other development or construction shall occur within 50 feet of the edge of the willow riparian habitat, as mapped by WRA Environmental Consultants. The new residence shall be allowed to encroach into the buffer by \_\_\_\_ feet, allowing for a total distance of \_\_\_\_ feet between the limit of riparian vegetation and the rear of the new residence. Prior to the issuance of a building permit for the proposed residence, the applicant shall delineate the approved \_\_\_\_-foot buffer zone from the edge of the willow riparian habitat with visible fencing and shall verify that the construction location is outside of this area.
6. After the completion of construction, the applicant shall install permanent fencing to demarcate the approved \_\_\_\_-foot riparian buffer zone. The fencing shall consist of wood posts and wiring and be no taller than a maximum height of 4 feet. Small signs shall be placed on the fencing, approximately every 10 to 15 feet, and indicate that the area is a riparian buffer zone and access is not allowed. The applicant shall submit material samples to Planning for review and approval during the building permit phase of the project. Prior to final Planning approval of the building permit, verification that the approved permanent fencing has been implemented shall be required.

7. The applicant shall revise the plans to eliminate any access to and from the rear of the new residence into the required \_\_\_\_-foot riparian buffer zone. The revision shall be included in the plans submitted during the building permit phase.
8. Prior to the beginning of any construction or grading activities, the applicant shall implement the approved erosion and sediment control plan. Erosion control measure deficiencies, as they occur, shall be immediately corrected. The goal is to prevent sediment and other pollutants from leaving the project site and to protect all exposed earth surfaces from erosive forces. Said plan shall adhere to the San Mateo Countywide Stormwater Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:
  - a. Stabilizing all denuded areas and maintaining erosion control measures continuously between October 1 and April 30. Stabilizing shall include both proactive measures, such as the placement of hay bales or coir netting, and passive measures, such as revegetating disturbed areas with plants propagated from seed collected in the immediate area.
  - b. Storing, handling, and disposing of construction materials and wastes properly, so as to prevent their contact with stormwater.
  - c. Controlling and preventing the discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, wash water or sediments, and non-stormwater discharges to storm drains and watercourses.
  - d. Using sediment controls or filtration to remove sediment when dewatering the site and obtaining all necessary permits.
  - e. Avoiding cleaning, fueling, or maintaining vehicles on-site, except in a designated area where wash water is contained and treated.
  - f. Delineating with field markers clearing limits, easements, setbacks, sensitive or critical areas, buffer zones, trees, and drainage courses.
  - g. Protecting adjacent properties and undisturbed areas from construction impacts using vegetative buffer strips, sediment barriers or filters, dikes, mulching, or other measures as appropriate.
  - h. Performing clearing and earth-moving activities only during dry weather.
  - i. Limiting and timing applications of pesticides and fertilizers to prevent polluted runoff.
  - j. Limiting construction access routes and stabilizing designated access points.



- k. Avoiding tracking dirt or other materials off-site; cleaning off-site paved areas and sidewalks using dry sweeping methods.
  - l. The contractor shall train and provide instructions to all employees and subcontractors regarding the construction best management practices.
  - m. The approved erosion and sediment control plan shall be implemented prior to the beginning of construction.
9. The applicant is responsible for ensuring that all contractors are aware of all stormwater quality measures and implement such measures. Failure to comply with the construction BMPs will result in the issuance of correction notices, citations or a project stop order.
- a. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration and minimize the use of fertilizers, herbicides and pesticides that can contribute to runoff pollution.
  - b. Where subsurface conditions allow, the roof downspout systems from all structures shall be designed to drain to a designated, effective infiltration area or structure (refer to BMPs Handbook for infiltration system designs and requirements).
10. The applicant shall submit a final landscaping plan for the parcel at the time of the building permit application for review and approval by the Planning Department. The landscaping plan shall be designed in collaboration with a qualified biologist (WRA or other qualified environmental consultant group) and landscape architect to ensure the planting of native vegetation that is compatible with the landscaping required pursuant to PLN 2009-00358 and complies with State water efficiency requirements. Such professionals shall include their recommendations on plant species, density and location of new vegetation on the landscaping plan. Prior to final Planning approval of the building permit for this project, the applicant shall submit written verification from the applicant's consultants that the recommended vegetation was planted pursuant to the recommendations shown on the submitted landscaping plan. In addition, photos of the completed landscaping shall be submitted to the Planning Department to verify that the approved landscaping plan has been implemented.
11. The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementation and maturation of the landscaping plan, payable upon confirmation that the plan has been implemented. The COD shall be held for a period of two (2) years after final approval by the Building Inspection Section of the associated building permit. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.

12. The only permitted uses within the buffer zone for the riparian area on the property shall be those allowed by Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP), subject to CDP approval. All other uses shall be prohibited.
13. The applicant shall include an erosion and sediment control plan, developed in accordance with Condition No. 8, on the plans submitted for the building permit. This plan shall identify the type and location of erosion control devices to be installed upon the commencement of construction in order to maintain the stability of the site and prevent erosion and sedimentation off-site.
14. The applicant shall implement the approved erosion control measures prior to the beginning of grading or construction operations. Such activities shall not commence until the associated building permit for the project has been issued. Revegetation of denuded areas shall begin immediately upon completion of grading/construction operations.
15. The project shall include water runoff prevention measures for the operation and maintenance of the project for the review and approval by the Community Development Director. The project shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the discharge of pollutants with stormwater runoff and other water runoff produced from the project.
16. The applicant shall submit a permanent stormwater management plan in compliance with the County's Drainage Policy and NPDES requirements for review and approval by the Department of Public Works. The plan shall address how drainage from the site will be managed and controlled to prevent pollution or sedimentation of the adjacent stream, and to retain and/or restore natural drainage patterns.
17. To reduce the impact of construction activities on neighboring properties, the applicant shall comply with the following:
  - a. All debris shall be contained on-site; a dumpster or trash bin shall be provided on-site during construction to prevent debris from blowing onto adjacent properties. The applicant shall monitor the site to ensure that trash is picked up and appropriately disposed of daily.
  - b. The applicant shall remove all construction equipment from the site upon completion of the use and/or need of each piece of equipment which shall include but not be limited to tractors, back hoes, cement mixers, etc.
  - c. The applicant shall ensure that no construction related vehicles will impede traffic along the right-of-way on Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. All construction vehicles shall be parked on-site outside the public right-of-way or in locations which do not impede safe access on

Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. There shall be no storage of construction vehicles in the public right-of-way.

18. Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activities shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.
19. The project shall be constructed in compliance with the plans approved by the Board of Supervisors on November 1, 2011. Any changes or revisions to the approved plans shall be submitted to the Coastsides Design Review Officer for review and approval prior to implementation. Minor adjustments to the project may be approved by the Coastsides Design Review Officer if they are consistent with the intent of and are in substantial conformance with this approval. Alternatively, the Coastsides Design Review Officer may refer consideration of the revisions to the Coastsides Design Review Committee, with applicable fees to be paid.
20. The applicant shall indicate on the landscape plans and plans submitted for a building permit, as stipulated by the Coastsides Design Review Committee, that tree heights shall be maintained to grow no taller than the structure's roof.
21. The applicant shall provide "finished floor elevation verification" to certify that the structure is actually constructed at the height shown on the submitted plans. The applicant shall have a licensed land surveyor or engineer establish a baseline elevation datum point in the vicinity of the construction site.
  - a. The applicant shall maintain the datum point so that it will not be disturbed by the proposed construction activities until final approval of the building permit.
  - b. This datum point and its elevation shall be shown on the submitted site plan. This datum point shall be used during construction to verify the elevation of the finished floors relative to the existing natural or to the grade of the site (finished grade).
  - c. Prior to Planning approval of the building permit application, the applicant shall also have the licensed land surveyor or engineer indicate on the construction plans: (1) the natural grade elevations at the significant corners (at least four) of the footprint of the proposed structure on the submitted site plan, and (2) the elevations of proposed finished grades.
  - d. In addition, (1) the natural grade elevations at the significant corners of the proposed structure, (2) the finished floor elevations, (3) the topmost elevation of the roof, and (4) garage slab elevation must be shown on the plan, elevations, and cross-section (if one is provided).
  - e. Once the building is under construction, prior to the below floor framing inspection or the pouring of the concrete slab (as the case may be) for the

lowest floor(s), the applicant shall provide to the Building Inspection Section a letter from a licensed land surveyor or engineer certifying that the lowest floor height--as constructed--is equal to the elevation specified for that floor in the approved plans. Similarly, certifications on the garage slab and the topmost elevation of the roof are required.

- f. If the actual floor height, garage slab, or roof height--as constructed--is different than the elevation specified in the plans, then the applicant shall cease all construction and no additional inspections shall be approved until a revised set of plans is submitted to and subsequently approved by both the Building Official and Community Development Director.
22. All new power and telephone utility lines from the street or nearest existing utility pole to the main dwelling and/or any other structure on the property shall be placed underground.
23. The exterior color samples submitted to the Committee are recommended for approval. Color verification shall occur in the field after the applicant has applied the approved materials and colors but before a final inspection has been scheduled.
24. The downward lighting fixture cut sheet submitted to the Coastside Design Review Committee is approved. Verification shall occur in the field after installation but before a final inspection has been scheduled.
25. The applicant shall ensure that during construction, noise, light, dust, odors and other interference with persons and property off the development site be minimized.
26. The applicant shall submit the following fees to the Current Planning Section: Within four (4) working days of the final approval date of this permit, the applicant shall pay an environmental filing fee of \$2,044.00 (fee effective January 1, 2011), as required under Fish and Game Code Section 711.4(d), plus a \$50.00 recording fee. The applicant shall submit a check in the amount of \$2,094.00, made payable to San Mateo County, to the project planner to file with the Notice of Determination, as required with a certified Negative Declaration.

#### Building Inspection Section

27. Building permits are required and shall be issued prior to any grading or construction on-site.
28. Prior to pouring any concrete for foundations, written verification from a licensed surveyor shall be submitted which will confirm that the required setbacks as shown on the approved plans have been maintained.
29. An automatic fire sprinkler system shall be required. This permit shall be issued prior to or in conjunction with the building permit.

30. If a water main extension, upgrade or hydrant is required, this work shall be completed prior to the issuance of the building permit or the applicant shall submit a copy of an agreement and contract with the water purveyor which will confirm the work will be completed prior to finalization of the building permit.
31. The applicant shall submit a site drainage plan, designed in accordance with Condition No. 16 and approved by the Department of Public Works. This plan shall demonstrate how roof drainage and site runoff will be directed to an approved disposal area.
32. Sediment and erosion control measures shall be installed prior to beginning any site work and maintained throughout the term of the permit. Failure to install or maintain these measures shall result in stoppage of construction until the corrections have been made and fees paid for staff enforcement time.
33. This project shall comply with the Green Building Ordinance.
34. This project shall comply with Chapter 7A of the Building Code, with respect to the State's Fire Hazard Area Maps.
35. All drawings shall be drawn to scale and clearly define the whole project and its scope in its entirety.
36. The design and/or drawings shall be done according to the 2010 Editions of the California Building Standards Code, 2010 California Plumbing Code, 2010 California Mechanical Code, and the 2010 California Electrical Code, and this information shall be included in the code summary.

#### Department of Public Works

37. Prior to the issuance of the building permit, the applicant will be required to provide payment of "roadway mitigation fees" based on the square footage (assessable space) of the proposed building per Ordinance #3277.
38. The provision of San Mateo County Grading Ordinance shall govern all grading on and adjacent to this site. Unless exempted by the Grading Ordinance, the applicant may be required to apply for a grading permit upon completion of their review of the plans and should access construction be necessary.
39. The applicant shall submit a permanent stormwater management plan in compliance with the County's Drainage Policy and NPDES requirements, as well as the requirements of Condition No. 17 of this permit, for review and approval by the Department of Public Works.
40. The applicant shall submit a driveway "plan and profile" to the Department of Public Works, showing the driveway access to the parcel (garage slab) complying

with County standards for driveway slopes (not to exceed 20%) and to County standards for driveways (at the property line) being the same elevation as the center of the access roadway. When appropriate, this plan and profile shall be prepared from elevations and alignment shown on the roadway improvement plans. The driveway plan shall also include and show specific provisions and details for both the existing and the proposed drainage patterns and drainage facilities.

#### Geotechnical Section

41. The applicant shall submit a soils and foundation report at the building permit stage.

#### Coastside County Fire Protection District

42. **Occupancy Separation:** As per the 2007 CBC, Section 406.1.4, a one-hour occupancy separation wall shall be installed with a solid core, 20-minute fire rated, self-closing door assembly with smoke gasket between the garage and the residence.
43. **Fire Hydrant:** As per 2007 CFC, Appendix B and C, a fire district approved fire hydrant (Clow 960) must be located within 250 feet of the proposed single-family dwelling unit measured by way of drivable access. As per 2007 CFC, Appendix B, the hydrant must produce a minimum fire flow of 1,000 gallons per minute at 20 pounds per square inch residual pressure for 2 hours. Contact the local water purveyor for water flow details.
44. **Wharf Type Hydrant:** As per Fire District Ordinance, you are required to install a wharf type hydrant located no further than 150 feet from the proposed residence along the driveway access. The wharf hydrant must have a minimum flow of **250 gallons per minute at 20 pound per square inch for a minimum of 20 minutes** and be supplied by a minimum 4-inch supply line. The plans for this system must be submitted to San Mateo County Planning and Building Department. A building permit **will not** be issued until plans are received, reviewed and approved. Upon submission of plans, the County will forward a complete set of plans to the Coastside Fire District for review.
45. **Automatic Fire Sprinkler System:** As per San Mateo County Building Standards and Coastside Fire Protection District Ordinance No. 2007-01, the applicant is required to install an automatic fire sprinkler system **throughout** the proposed or improved dwelling and garage. All attic access locations will be provided with a pilot head on a metal upright. All areas that are accessible for storage purposes shall be equipped with fire sprinklers including closets and bathrooms. The only exception is small linen closets less than 24 sq. ft. with full depth shelving. The plans for this system must be submitted to the San Mateo County Planning and Building Department. A building permit **will not** be issued until plans are received, reviewed and approved. Upon submission of plans, the County will forward a complete set to the Coastside Fire Protection District for review. The fee schedule

for automatic fire sprinkler systems shall be in accordance with Half Moon Bay Ordinance No. 2006-01. Fees shall be paid prior to plan review. **Installation of underground sprinkler pipe shall be visually inspected and flushed by the Fire District prior to hookup to riser. Any soldered fittings must be pressure tested with trench open.**

46. **Exterior bell and interior horn/strobe** are required to be wired into the required flow switch on your fire sprinkler system. The bell, horn/strobe and flow switch, along with the garage door opener, are to be wired into a separate circuit breaker at the main electrical panel and labeled.
47. **Smoke Detectors which are Hardwired:** As per the California Building Code, State Fire Marshal Regulations, and Coastside Fire Protection District Ordinance No. 2007-01, the applicant is required to install State Fire Marshal approved and listed smoke detectors which are **hardwired, interconnected, and have battery backup**. These detectors are required to be placed in each sleeping room and at a point centrally located in the corridor or area giving access to each separate sleeping area. A minimum of one detector shall be placed on each floor. Smoke detectors shall be tested and approved prior to the building final.
48. **Address Numbers:** As per Coastside Fire Protection District Ordinance No. 2007-01, building identification shall be conspicuously posted and visible from the street. (TEMPORARY ADDRESS NUMBERS SHALL BE POSTED PRIOR TO COMBUSTIBLES BEING PLACED ON-SITE.) The letters/numerals for permanent address signs shall be **4 inches** in height with a minimum 3/4-inch stroke. Such letters/numerals shall be internally illuminated and facing the direction of access. Finished height of bottom of address light unit shall be greater than or equal to 6 feet from finished grade. When the building is served by a long driveway or is otherwise obscured, a reflectorized address sign shall be placed at the entrance from the nearest public roadway. See Fire Ordinance for standard sign.
49. **Roof Covering:** As per Coastside Fire Protection District Ordinance No. 2007-01, the roof covering of every new building or structure, and materials applied as part of a roof covering assembly, shall have a minimum fire rating of Class "B" or higher as defined in the current edition of the California Building Code.
50. **Fire Access Roads:** The applicant must have a maintained all-weather surface road for ingress and egress of fire apparatus. The San Mateo County Department of Public Works, the Coastside Fire Protection District Ordinance No. 2007-01, and the California Fire Code shall set road standards. As per the 2007 CFC, dead-end roads exceeding 150 feet shall be provided with a turnaround in accordance with Coastside Fire District specifications. As per the 2007 CFC, Appendix D, road width shall not be less than 20 feet. Fire access roads shall be installed and made serviceable prior to combustibles being placed on the project site and maintained during construction. Approved signs and painted curbs or lines shall be provided and maintained to identify fire access roads and state the prohibition of their obstruction. If the road width does not allow parking on the street (20-foot road)

and on-street parking is desired, an additional improved area shall be developed for that use.

51. **Solar Photovoltaic Systems:** These systems shall meet the requirements of the Coastside Fire Protection District as outlined in Standard Detail DI-007 Solar Photovoltaic Systems (if installed).
52. **Vegetation Management:** The Coastside Fire Protection District Ordinance No. 2007-01, the 2007 California Fire Code and Public Resources Code 4291:
  - a. A fuel break of defensible space is required around the perimeter of all structures to a distance of not less than 30 feet and may be required to a distance of 100 feet or to the property line. In the State Responsible Area (SRA), the fuel break is 100 feet or to the property line.
  - b. Trees located within the defensible space shall be pruned to remove dead and dying portions, and limbed up 6 to 10 feet above the ground. New trees planted in the defensible space shall be located no closer than 10 feet to adjacent trees when fully grown or at maturity.
  - c. Remove that portion of any existing tree which extends within 10 feet of the outlet of a chimney or stovepipe or is within 5 feet of any structure.

Granada Sanitary District

53. The applicant shall submit an application for a sewer permit.





County of San Mateo - Planning and Building Department

# ATTACHMENT C

48-1

TAX CODE AREA

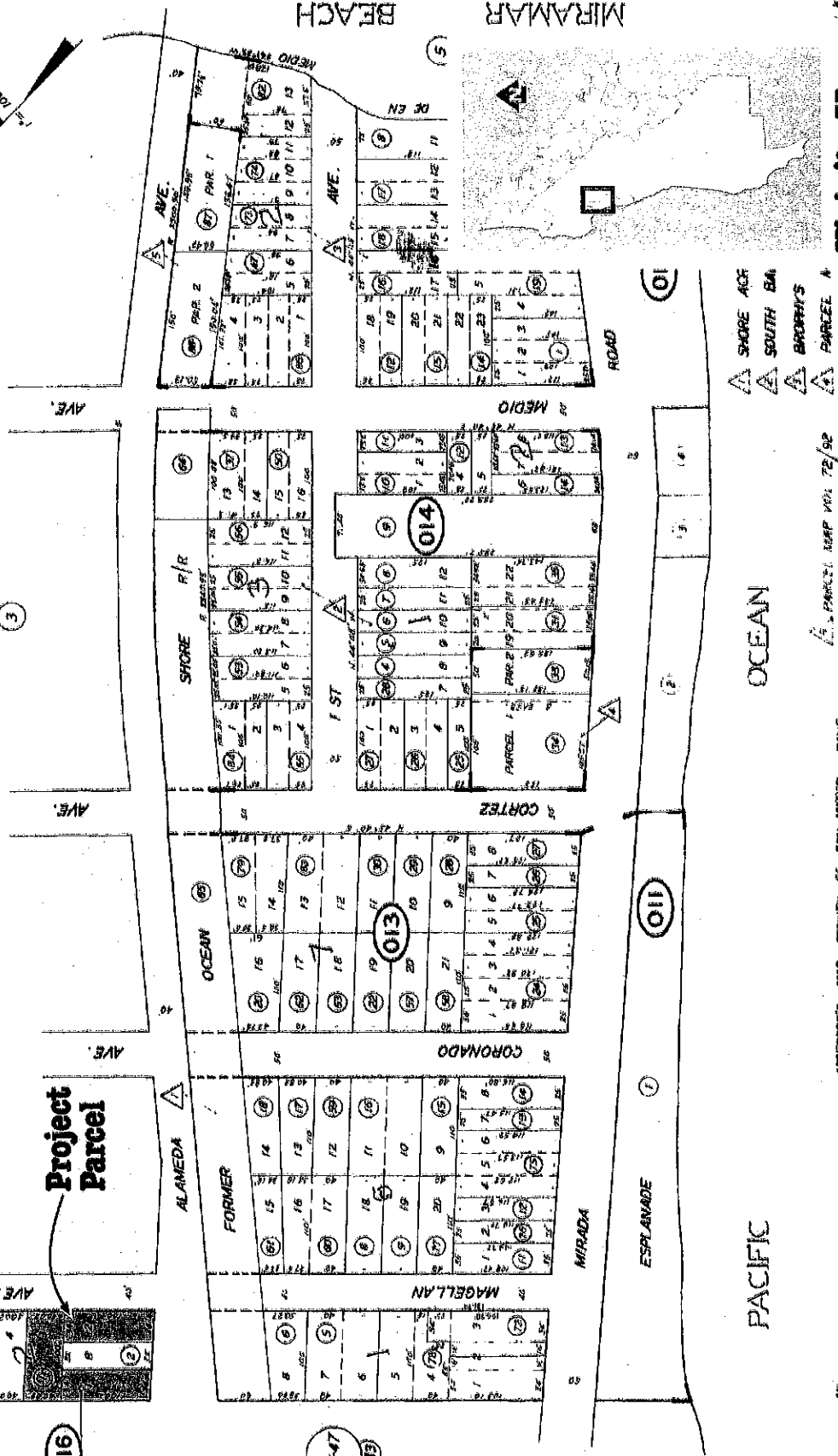
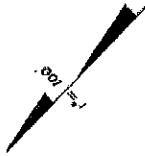
HWY.

CABRILLO



Project Parcel

016



ASSESSOR'S MAP COUNTY OF SAN MATEO, CALIF. PARCEL MAP VOL 72/92

ML

Vicinity Map

# San Mateo County Board of Supervisors Meeting

Owner/Applicant: **HODGE**

Attachment **C**

File Numbers: **PLN 2008-00380**

A- C-11-040/041

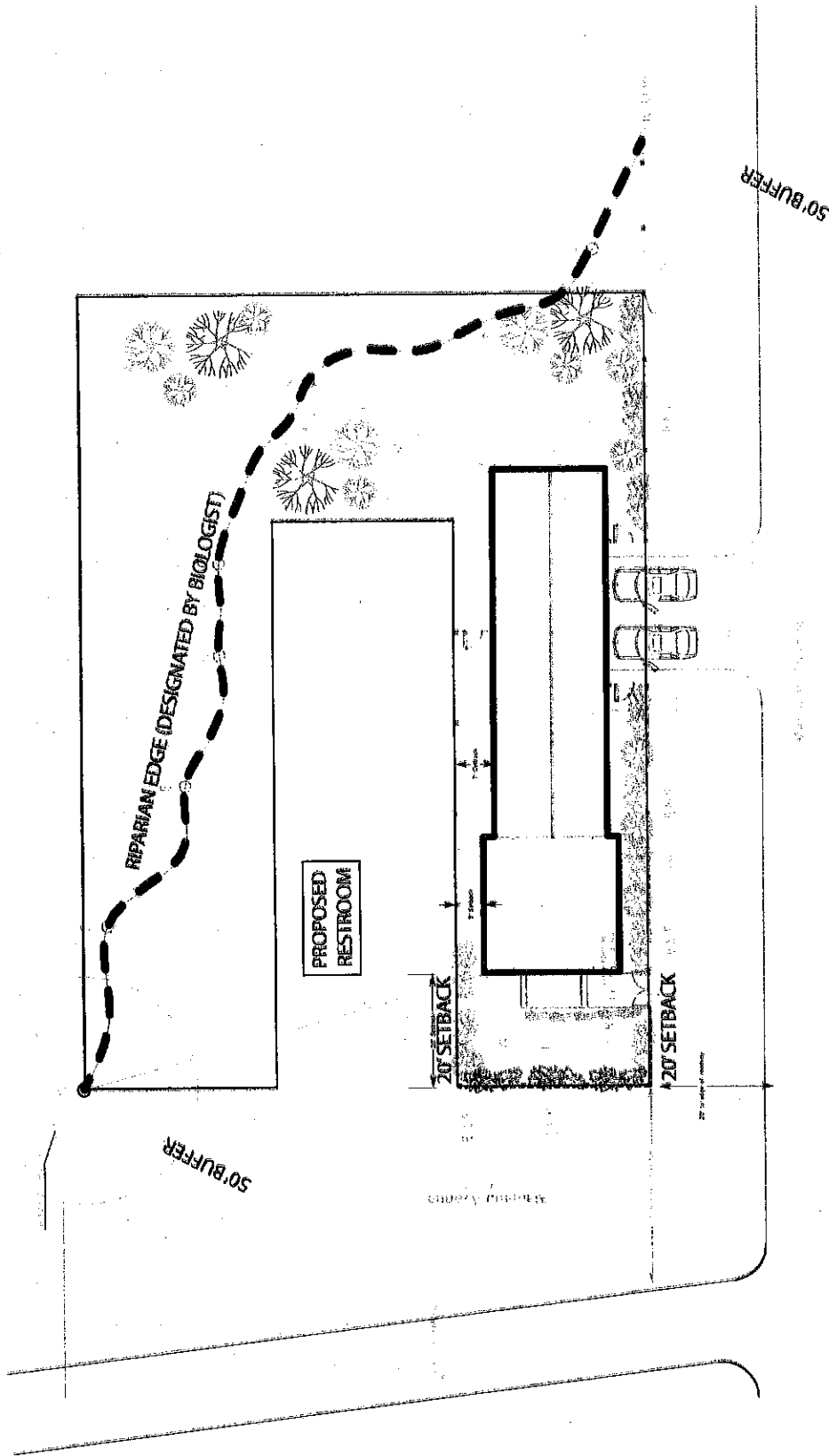


County of San Mateo - Planning and Building Department

# ATTACHMENT D

# ORIGINAL PROPOSAL

(AS CONSIDERED BY THE PLANNING COMMISSION)



## Site Plan & Preliminary Landscape Plan

San Mateo County Board of Supervisors Meeting

Attachment **D.1**

Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**

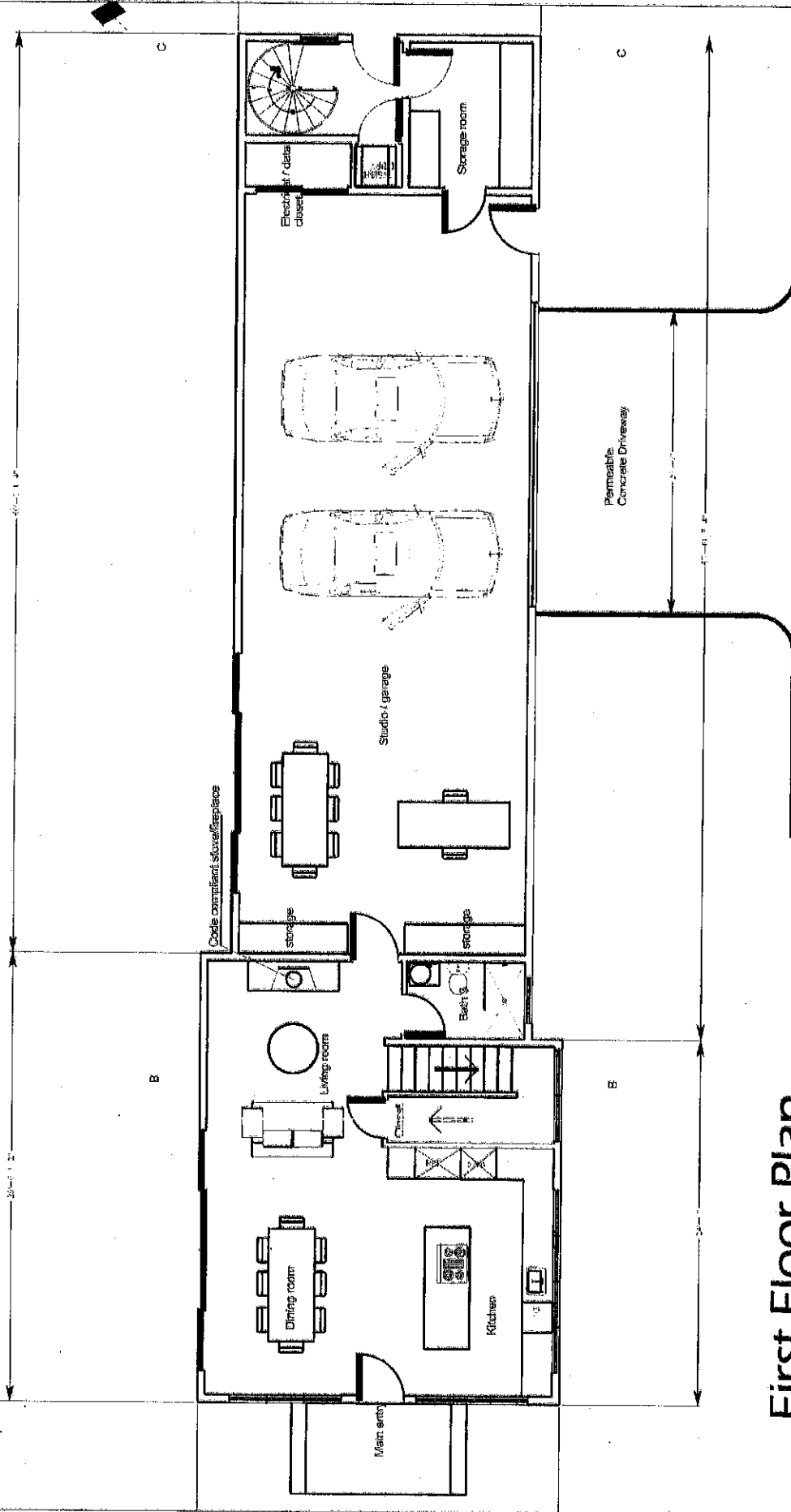
A-2 C-11-040/P41

Exhibit 3

Page 62 of 128

# ORIGINAL PROPOSAL

(AS CONSIDERED BY THE PLANNING COMMISSION)



## First Floor Plan

San Mateo County Board of Supervisors Meeting

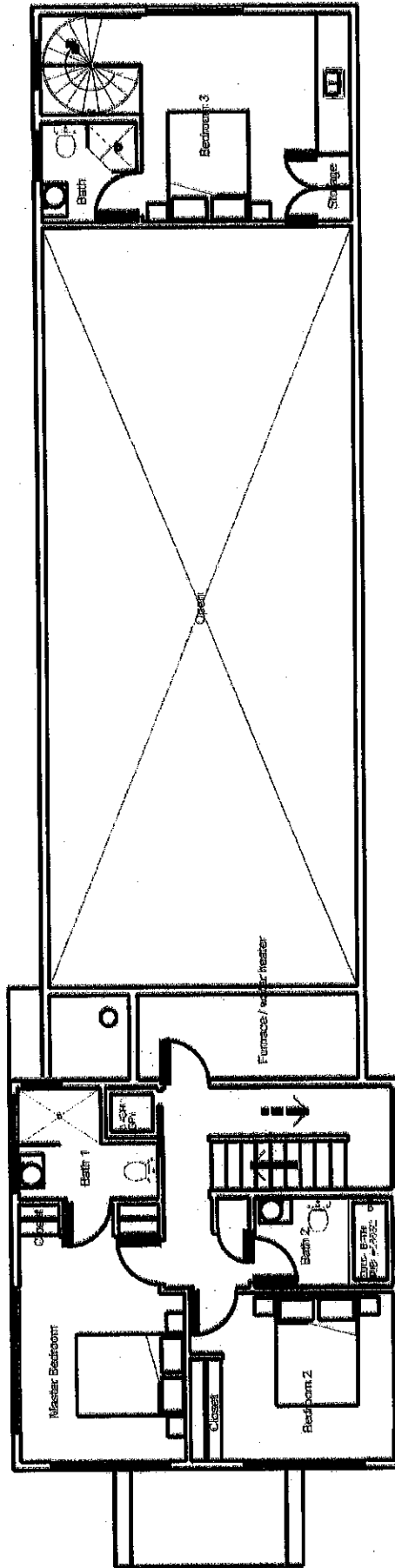
Owner/Applicant: **HODGE**

Attachment **D.2**

File Numbers: **PLN 2008-00380**

# ORIGINAL PROPOSAL

(AS CONSIDERED BY THE PLANNING COMMISSION)



## Second Floor Plan

San Mateo County Board of Supervisors Meeting

Attachment: **D.2**

Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**

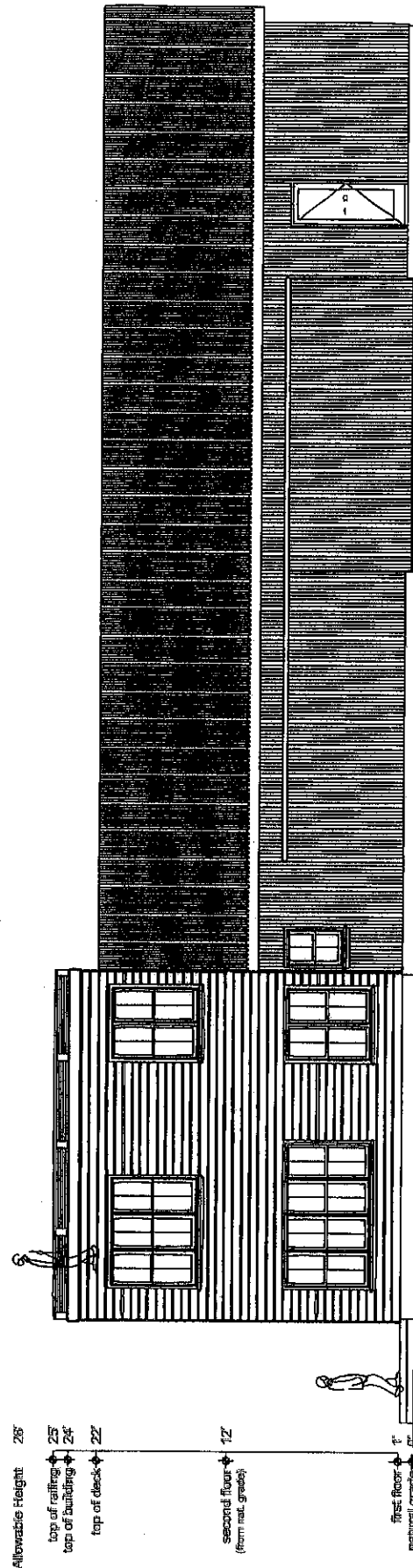
A-2 C-11-040/041

Exhibit 3

Page 64 of 128

# ORIGINAL PROPOSAL

(AS CONSIDERED BY THE PLANNING COMMISSION)



## South Elevation

San Mateo County Board of Supervisors Meeting

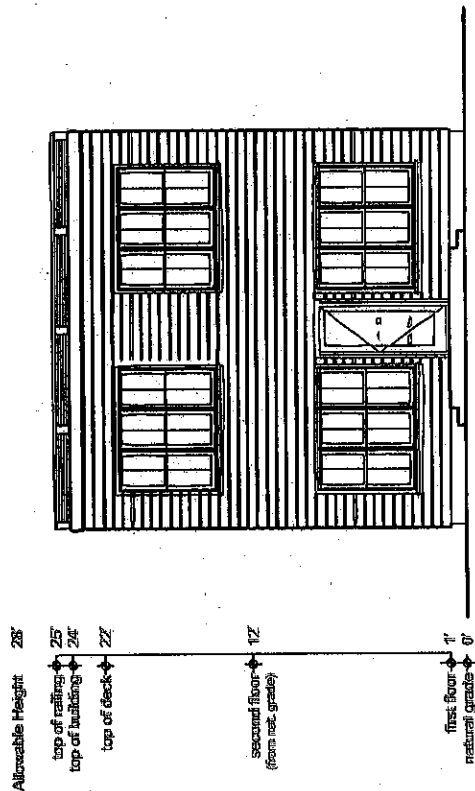
Attachment **D.3**

Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**

# ORIGINAL PROPOSAL

(AS CONSIDERED BY THE PLANNING COMMISSION)



## West Elevation

San Mateo County Board of Supervisors Meeting

Attachment **D.3**

Owner/Applicant: **HODGE**

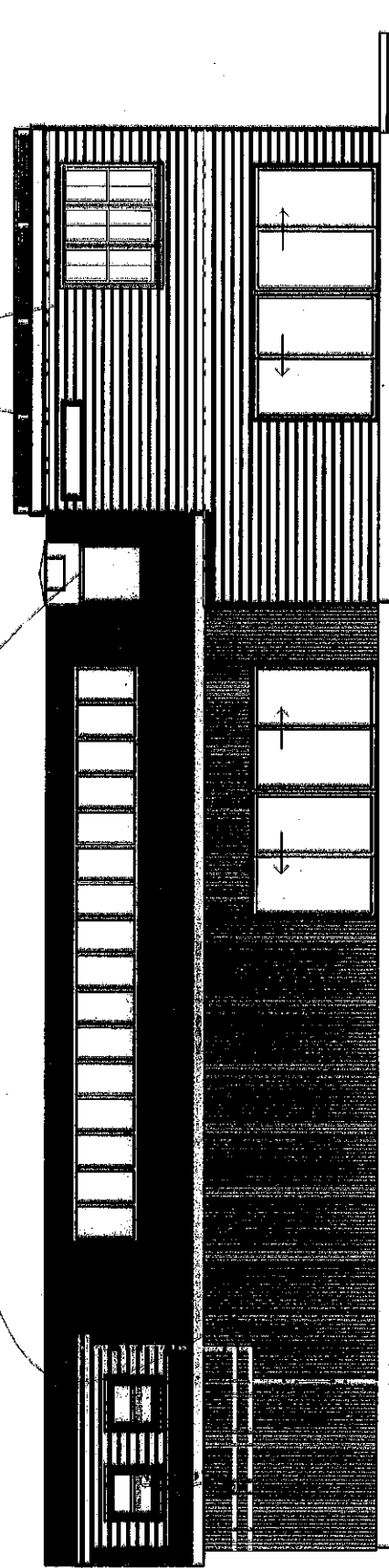
File Numbers: **PLN 2008-00380**



# ORIGINAL PROPOSAL

(AS CONSIDERED BY THE PLANNING COMMISSION)

- Fireplace chimney smooth plaster finish, window chase cap
- Corrugated metal roof and barn siding w/ Geraume non-reflective finish
- Dutch-lap siding (wood) painted on house
- All tralis parts and related trim, railings, and fence posts will be westerm red cedar
- 142 window and door trim (typ)
- Windows are casement or double hung, sash
- Doors are french style patio or slide glass
- (All doors and windows are Anderson Windows or equivalent)



## North Elevation

San Mateo County Board of Supervisors Meeting

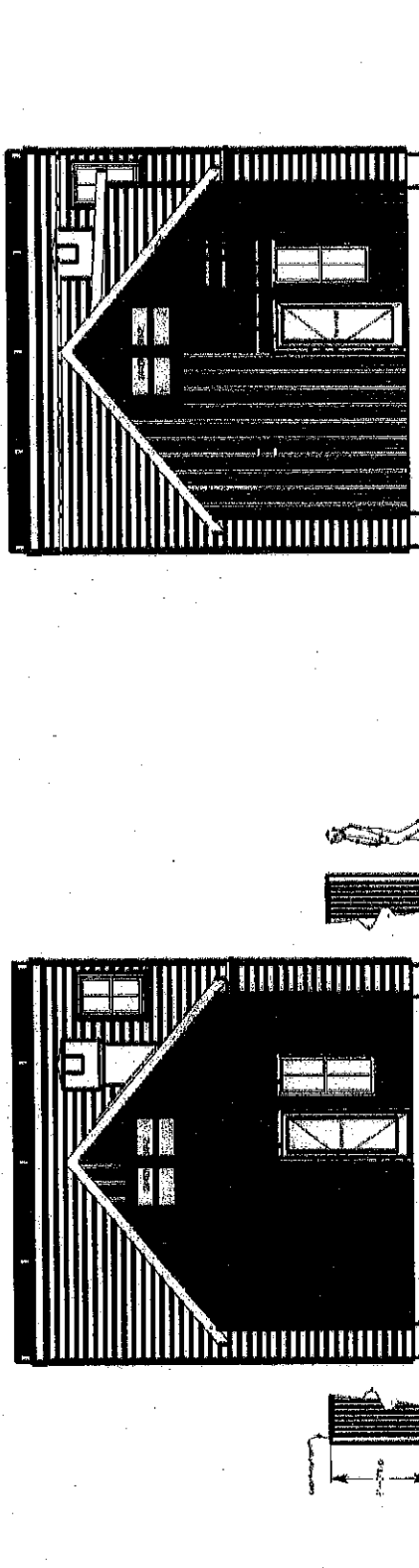
Owner/Applicant: **HODGE**

Attachment **D.3**

File Numbers: **PLN 2008-00380**

# ORIGINAL PROPOSAL

(AS CONSIDERED BY THE PLANNING COMMISSION)



East Elevation

## East Elevation

San Mateo County Board of Supervisors Meeting

Owner/Applicant: **HODGE**

Attachment: **D.3**

File Numbers: **PLN 2008-00380**

A- C-11-040/041

Exhibit 3

Page 68 of 128

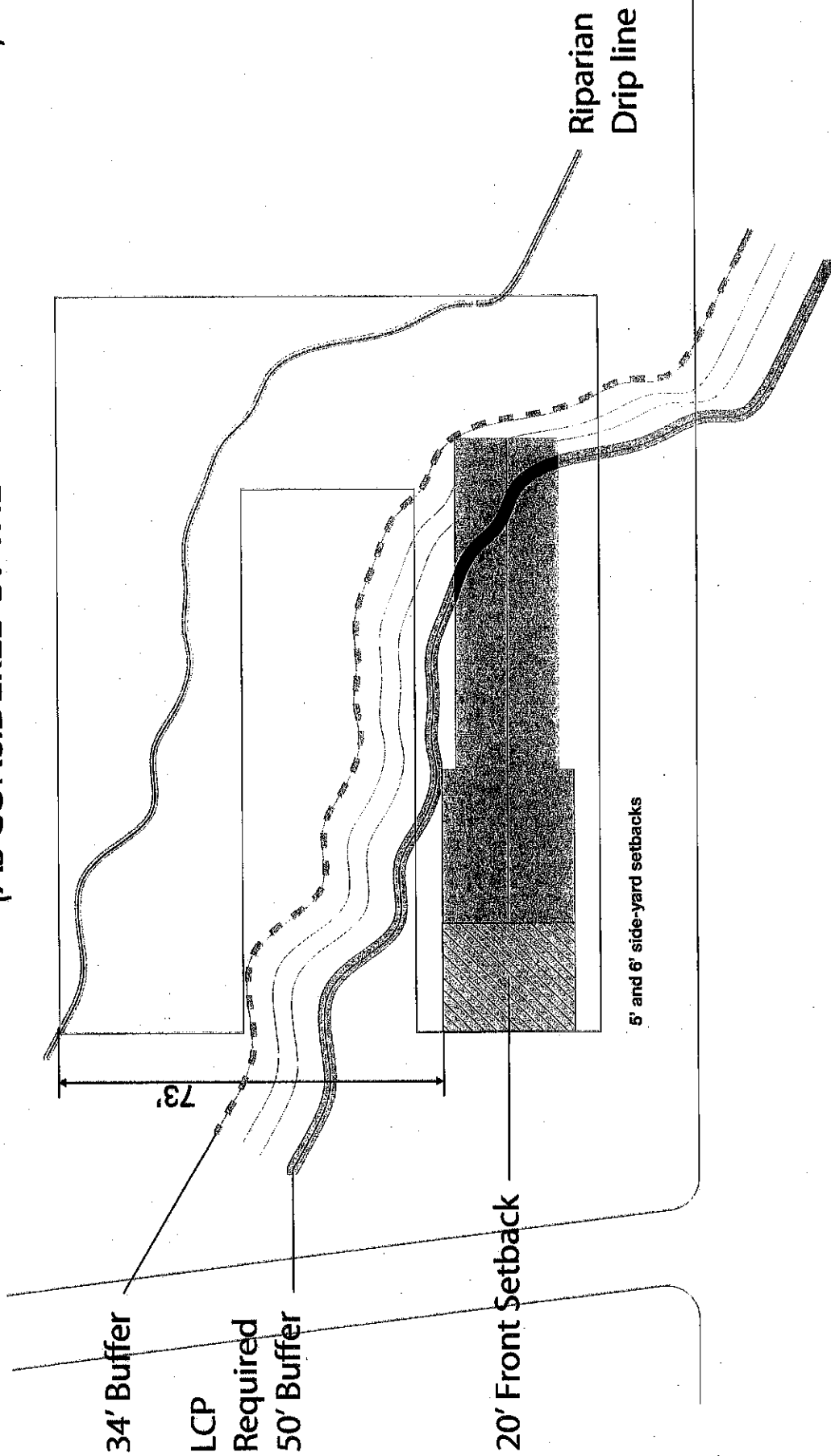


County of San Mateo - Planning and Building Department

# ATTACHMENT E

# ORIGINAL PROPOSAL

(AS CONSIDERED BY THE PLANNING COMMISSION)



A- C-11-040/041  
Exhibit 3  
Page 70 of 128

**San Mateo County Board of Supervisors Meeting**

Owner/Applicant: **HODGE** Attachment: **E**  
File Numbers: **PLN 2008-00380**

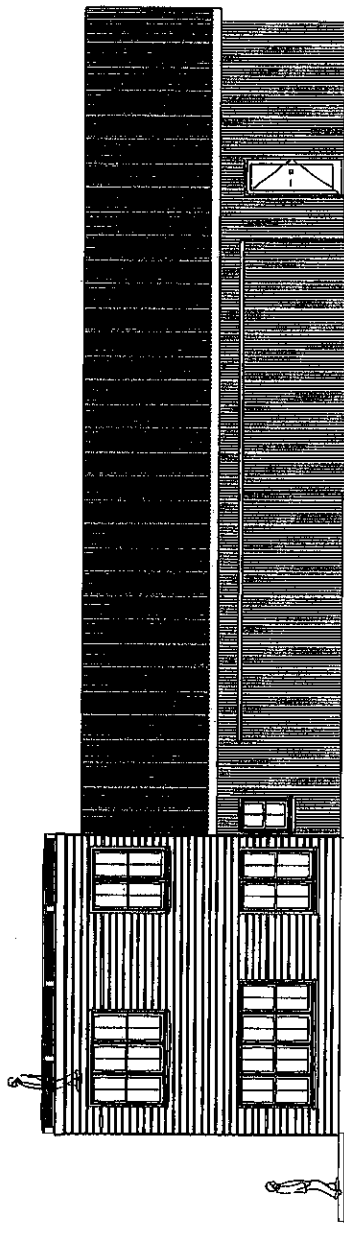
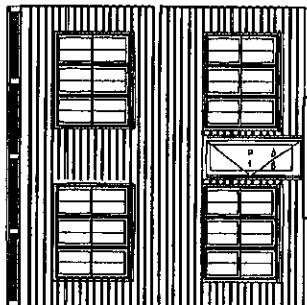
**Lot Coverage**

- House (w/garage) 1,776 sq. ft
- Lot area 10,800 sq. ft
- % Lot 16.4%

**Floor Area**

- 1st Floor (w/garage) 1,776 sq. ft
- 2nd Floor 836 sq. ft

Total floor area (w/garage) 2,612 sq. ft



**ORIGINAL PROPOSAL**  
(AS CONSIDERED BY THE PLANNING COMMISSION)

**San Mateo County Board of Supervisors Meeting**

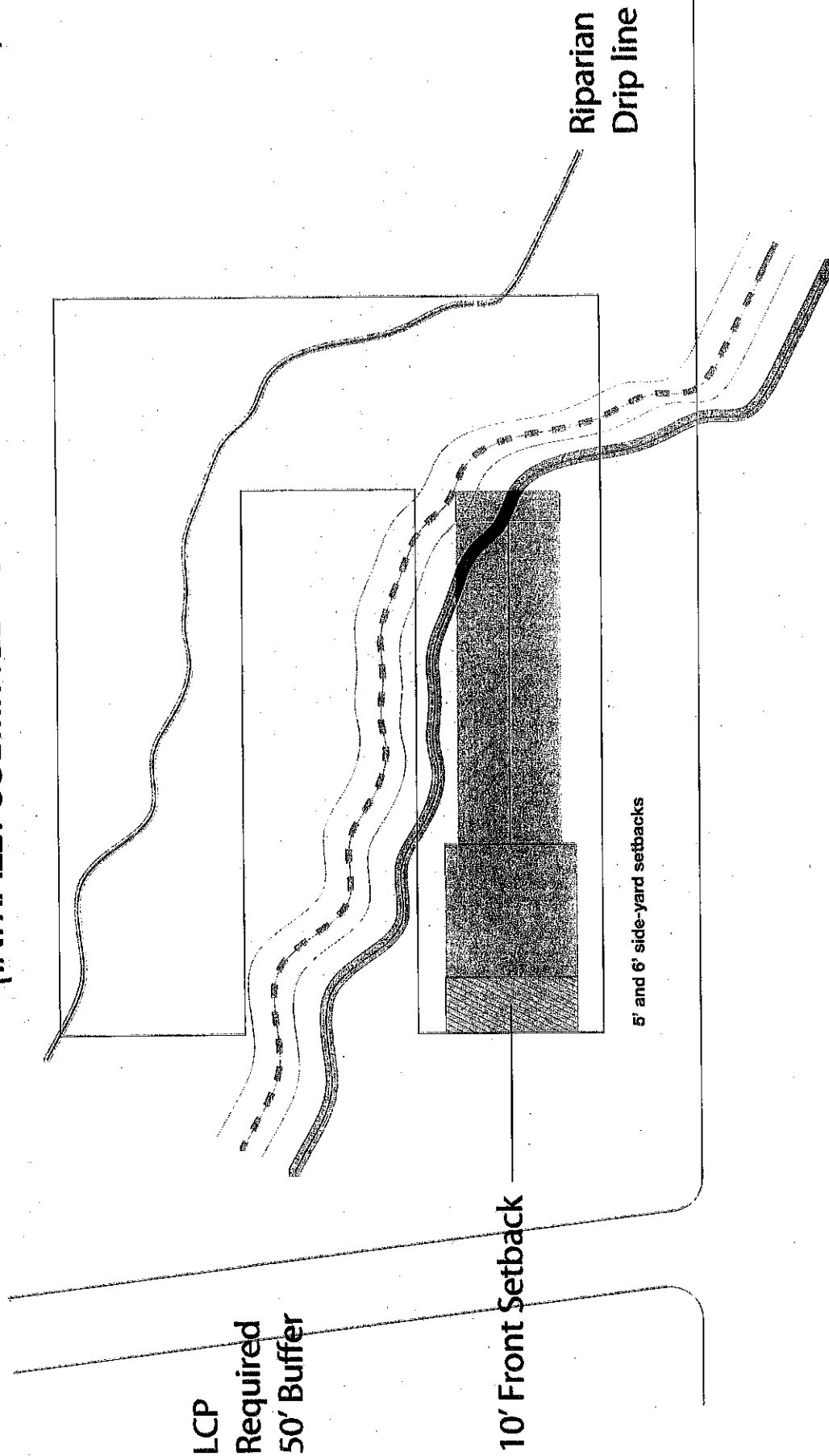
Owner/Applicant: **HODGE**

Attachment: **E**

File Numbers: **PLN 2008-00380**

# ALTERNATE 1

(INITIALLY SUBMITTED TO DESIGN REVIEW COMMITTEE)



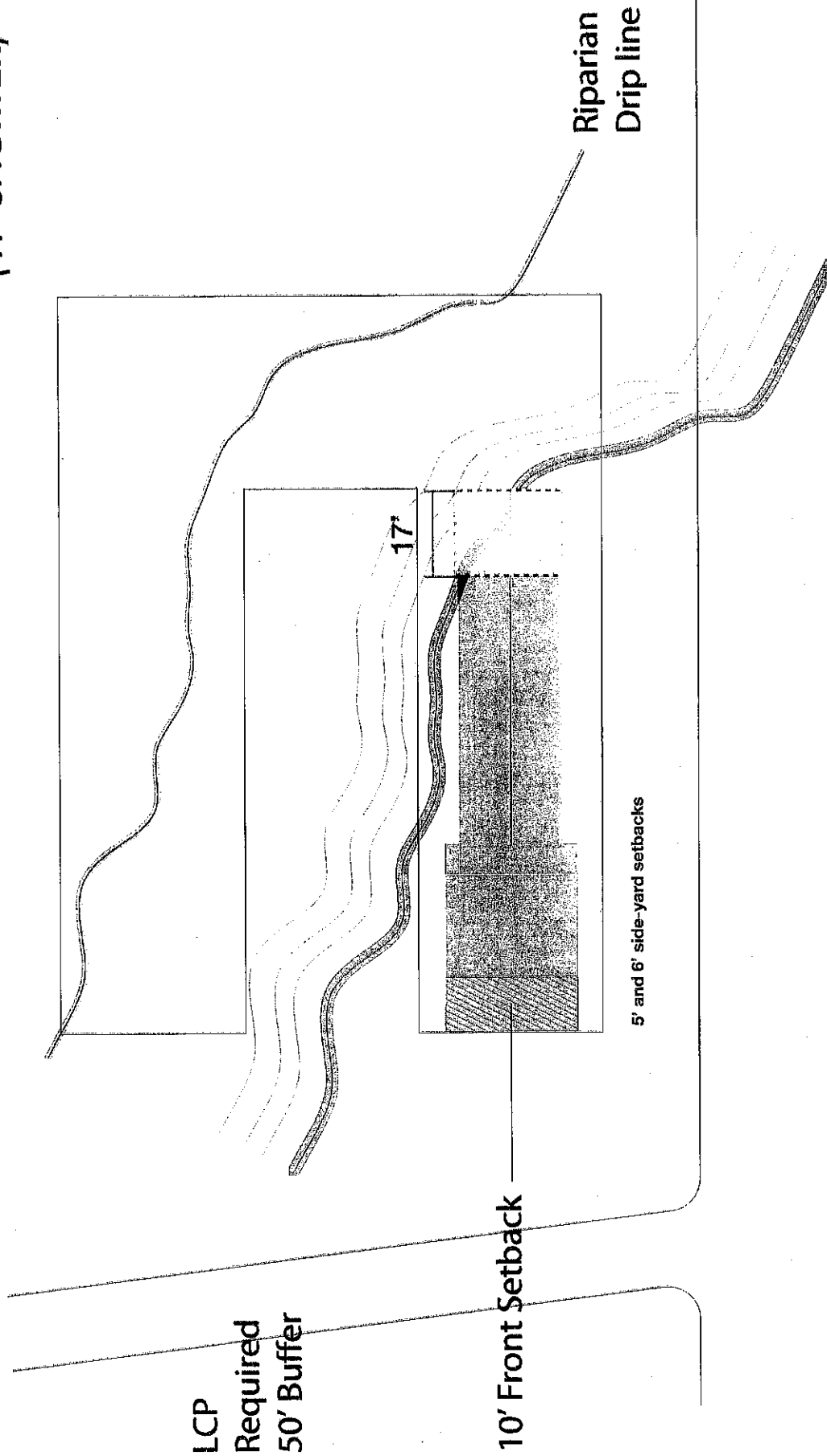
San Mateo County Board of Supervisors Meeting

Attachment **E.1**

Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**

# ALTERNATE 2 (17' SHORTER)



San Mateo County Board of Supervisors Meeting

Owner/Applicant: **HODGE**

Attachment **E.2**

File Numbers: **PLN 2008-00380**

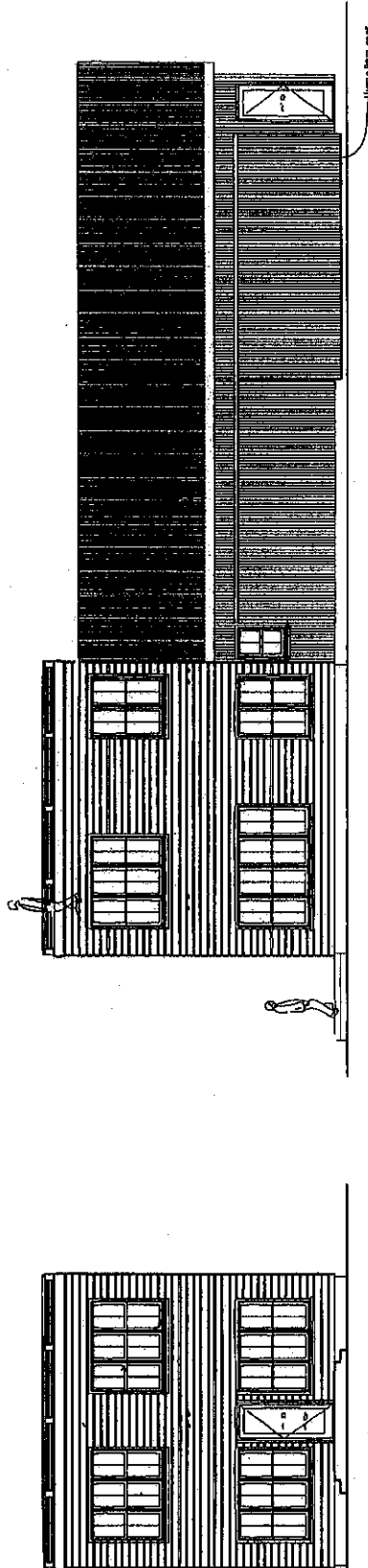
**Lot Coverage**

- House (w/garage) 1,654 sq. ft
- Lot area 10,800 sq. ft
- % Lot 15.3%

**Floor Area**

- 1st Floor (w/garage) 1,1654 sq. ft
- 2nd Floor 576 sq. ft

Total floor area (w/garage) 2,230 sq. ft



**ALTERNATE 2**  
(17' SHORTER)

**San Mateo County Board of Supervisors Meeting**

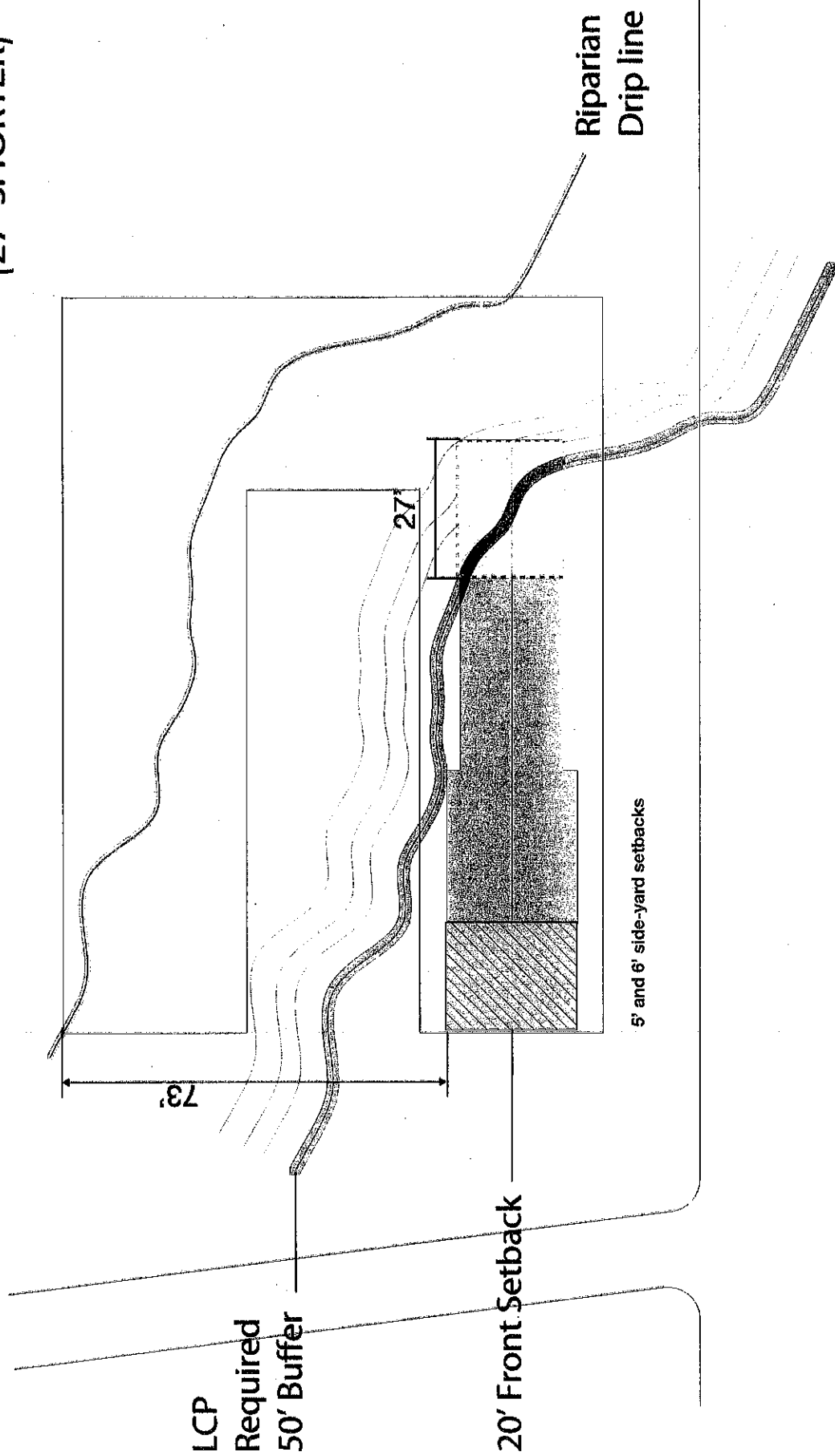
Owner/Applicant: **HODGE**

Attachment: **E.2**

File Numbers: **PLN 2008-00380**



# ALTERNATE 3 (27' SHORTER)



San Mateo County Board of Supervisors Meeting

Attachment: **E.3**

Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**

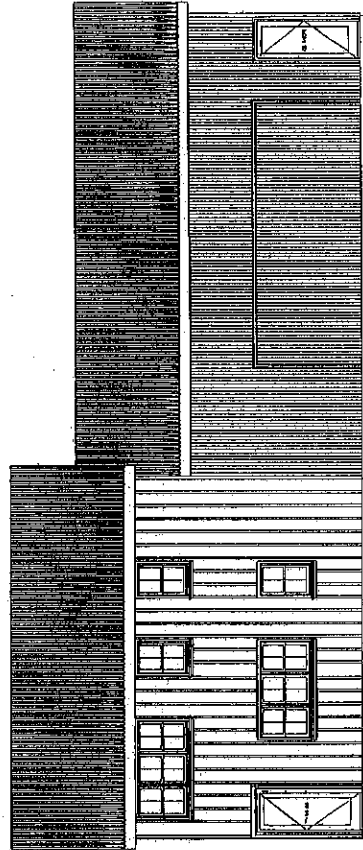
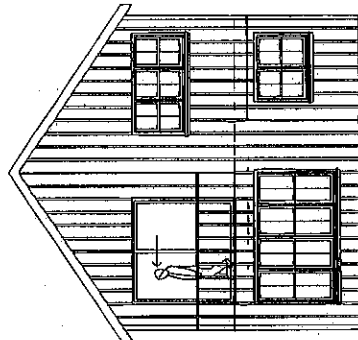
**Lot Coverage**

- House (w/garage) 1,414 sq. ft
- Lot area 10,800 sq. ft
- % Lot 13.0%

**Floor Area**

- 1st Floor (w/garage) 1,414 sq. ft
- 2nd Floor 667 sq. ft

**Total floor area (w/garage) 2,081 sq. ft**



**ALTERNATIVE 3**  
**(27' SHORTER)**

**San Mateo County Board of Supervisors Meeting**

**Owner/Applicant: HODGE**

**Attachment: E.3**

**File Numbers: PLN 2008-00380**

**ALTERNATE 3**  
(NEW EXTERIOR HIP ROOF)



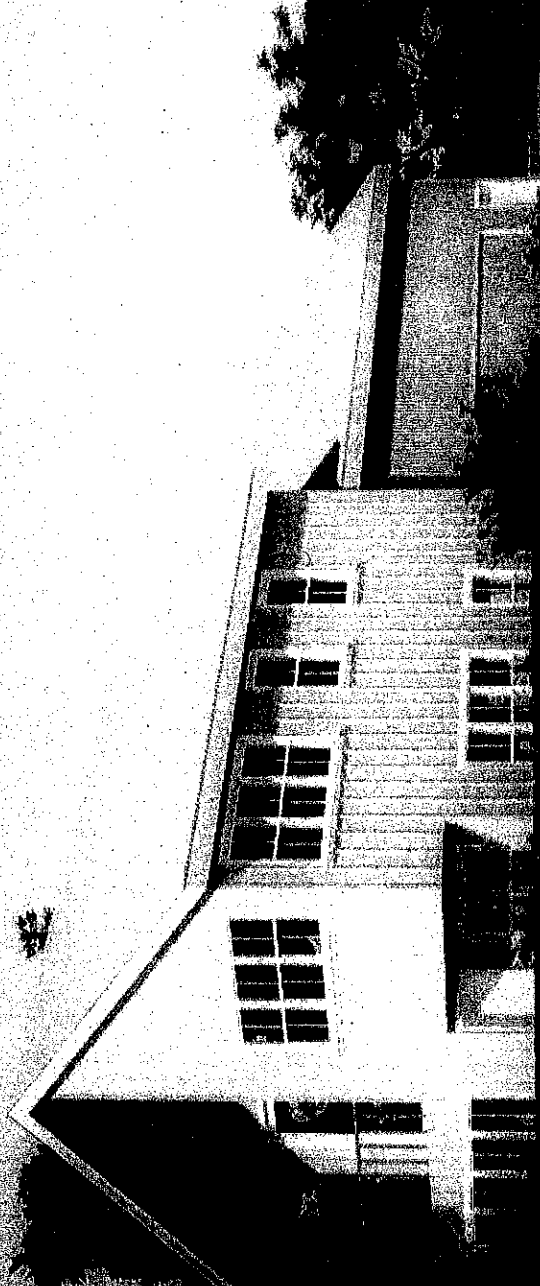
San Mateo County Board of Supervisors Meeting

Attachment: **E.3**

Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**

**ALTERNATE 3**  
**(NEW EXTERIOR HIP ROOF)**



San Mateo County Board of Supervisors Meeting

Attachment: **E.3**

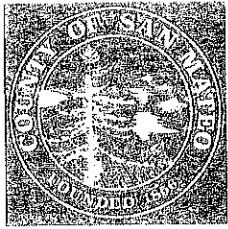
Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**



County of San Mateo - Planning and Building Department

# ATTACHMENT F



County of San Mateo

## Planning & Building Department

455 County Center, 2nd Floor  
Redwood City, California 94063  
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122

plngbldg@co.sanmateo.ca.us

www.co.sanmateo.ca.us/planning

April 15, 2011

David and Hi-Jin Hodge  
100 Coronado Avenue  
Half Moon Bay, CA 94019

Dear Mr. and Mrs. Hodge:

Subject: **LETTER OF DECISION**  
File Number: PLN2008-00380  
Location: 97 Alameda Avenue, Half Moon Bay  
APN: 048-016-010

On April 13, 2011, the San Mateo County Planning Commission considered your application for a Variance, Coastal Development Permit and Coastsides Design Review, pursuant to Sections 6531, 6328.4 and 6565.1, respectively, of the San Mateo County Zoning Regulations, and certification of a Mitigated Negative Declaration, pursuant to the California Environmental Quality Act (CEQA), for a new 2,692 sq. ft. single-family residence with attached two-car garage, with side yard setbacks of five (5) to seven (7) feet, where a 10-foot minimum side yard setback is otherwise required, at 97 Alameda Avenue, in the unincorporated Miramar area of San Mateo County. No trees are proposed for removal. This project is appealable to the California Coastal Commission.

Based on information provided by staff and other evidence presented at the hearing, the Planning Commission denied this project (Vote 4-1) based on the following findings.

### **FINDINGS**

#### **Regarding the Coastal Development Permit, Found:**

1. That the project, as described in the application and accompanying materials required by Section 6328.7 does not conform with the plans, policies, requirements and standards of the San Mateo County LCP.
2. That the project does not conform to the specific findings required by the policies of the LCP.

Mr. and Mrs. Hodge  
April 15, 2011  
Page 2

Regarding the Coastsides Design Review, Found:

3. That the project is not in compliance with the Design Review Standards for the Coastsides.

Regarding the Variance, Found:

4. That the parcel's location, size, shape, topography and/or other physical conditions do not vary substantially from those of other parcels in the same zoning district or vicinity.
5. That without the variance, the landowner would not be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity.
6. That the variance would grant the landowner a special privilege, which is inconsistent with the restrictions, placed on other parcels in the same zoning district or vicinity.
7. That the variance is not necessary to authorize only uses or activities, which are permitted by the zoning district.
8. That the variance is not consistent with the objectives of the General Plan and the Zoning Regulations.

This Planning Commission denial is appealable to the Board of Supervisors. If approved by the Board of Supervisors, that decision is appealable to the California Coastal Commission. Any aggrieved person who has exhausted local appeals may appeal a decision of approval by the Board of Supervisors to the California Coastal Commission within 10 working days following the Coastal Commission's receipt of the Board decision. Please contact the Coastal Commission's North Central Coast District Office at 415/904-5260 for further information concerning the Coastal Commission's appeal process. The County and Coastal Commission appeal periods are sequential, not concurrent, and together total approximately one month.

Mr. and Mrs. Hodge  
April 15, 2011  
Page 3

If you have questions regarding this matter, please contact Dave Holbrook, Project Planner, at 650/363-1837.

Sincerely,

Rosario Fernandez  
Planning Commission Secretary  
Pcd0413V\_rf (HodgeVariance).doc

cc: Lennie Roberts  
Leonard Woren  
Mark Moulton  
Jeff Dreier  
Evy Smith  
Bill Kehoe  
Leonard Woren  
Yvonne Bedor  
Lennie Roberts  
Dave Byers

Enclosure: San Mateo County Survey - An online version of our Customer Survey is also available at: <http://www.co.sanmateo.ca.us/planning/survey>





County of San Mateo - Planning and Building Department

# ATTACHMENT G

COUNTY OF SAN MATEO, PLANNING AND BUILDING DEPARTMENT

**NOTICE OF INTENT TO ADOPT  
NEGATIVE DECLARATION**

A notice, pursuant to the California Environmental Quality Act of 1970, as amended (Public Resources Code 21,000, et seq.), that the following project: *Single-Family Residence*, when adopted and implemented, will not have a significant impact on the environment.

FILE NO.: PLN 2008-00380

OWNERS/APPLICANTS: David and Hi-Jin Hodge

ASSESSOR'S PARCEL NO.: 048-016-010

**PROJECT DESCRIPTION AND LOCATION**

*NOTE: This mitigated Negative Declaration (N/D) is a revised version of the document that underwent the required 21-day circulation period (January 21 through February 10, 2010), and originally included both the project described below and the legalization of unpermitted land clearing on the same parcel as well as an adjacent parcel owned by the County Parks Department. Each of those projects was then and continues to be considered under separate Planning cases: PLN 2008-00380 (for the new residence) and PLN 2009-00358 (for the unpermitted land clearing). At their hearing of February 23, 2011, the Planning Commission requested that prior to acting on either case, the original N/D document be separated into two separate N/Ds, relative to each of the cited Planning cases. This allows the Commission to potentially certify the N/D specific to either project should they decide to approve either project without the other. County Counsel, upon review of CEQA law, concluded that this was feasible - without requiring recirculation of the two documents - because segregating the original N/D and its analysis into two N/Ds represented no substantial revision to the original N/D's conclusion regarding environmental impacts and associated mitigation measures respective to each project. In doing so, staff concludes that each project's respective impacts are not significantly different than as represented in the original N/D.*

The applicant is proposing a new 2,692 sq. ft., two-story, single-family residence with an attached two-car garage on a 10,800 sq. ft. parcel within the R-1/S-94/DR/CD District in the unincorporated Miramar area of San Mateo County. The parcel is located on Magellan Avenue, west of Cabrillo Highway and immediately south of San Mateo County-owned park and open space land known as Mirada Surf. The area to the south of the subject parcel is zoned residential. Some properties are developed with single-family dwellings, while others are undeveloped. The subject parcel is in the shape of a "U", with the middle property under separate ownership. The proposed residence and second unit will be located on a portion of the parcel that runs parallel to Magellan Avenue and is furthest from the Mirada Surf property. The applicant is requesting a Variance to allow non-conforming side yard setbacks for the project on a section of the parcel whose width is 34 feet wide. No trees are proposed for removal.

As indicated in the NOTE above, a separate N/D for the unpermitted land clearing has been prepared and accompanies that project's permit application (PLN 2009-00358).

### FINDINGS AND BASIS FOR A NEGATIVE DECLARATION

The Current Planning Section has reviewed the initial study for the project and, based upon substantial evidence in the record, finds that:

1. The project will not adversely affect water or air quality or increase noise levels substantially.
2. The project will not have adverse impacts on the flora or fauna of the area.
3. The project will not degrade the aesthetic quality of the area.
4. The project will not have adverse impacts on traffic or land use.
5. In addition, the project will not:
  - a. Create impacts which have the potential to degrade the quality of the environment.
  - b. Create impacts which achieve short-term to the disadvantage of long-term environmental goals.
  - c. Create impacts for a project which are individually limited, but cumulatively considerable.
  - d. Create environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.

The County of San Mateo has, therefore, determined that the environmental impact of the project is insignificant.

MITIGATION MEASURES included in the project to avoid potentially significant effects:

**Mitigation Measure 1:** No development or construction shall occur within 50 feet of the edge of the willow riparian habitat, as mapped by WRA Environmental consultants. The new residence shall be allowed to encroach into the buffer by 18 feet, allowing for a total distance of 32 feet between the limit of riparian vegetation and the rear of the new residence. Prior to the issuance of a building permit for the proposed residence and attached second unit, the applicant shall delineate the approved 32-foot buffer zone from the edge of the willow riparian habitat with visible fencing and shall verify that the construction location is outside of the buffer zone.

**Mitigation Measure 2:** Prior to the beginning of any construction or grading activities, the applicant shall implement the approved erosion and sediment control plan. Erosion control measure deficiencies, as they occur, shall be immediately corrected. The goal is to prevent

sediment and other pollutants from leaving the project site and to protect all exposed earth surfaces from erosive forces. Said plan shall adhere to the San Mateo Countywide Stormwater Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:

- a. Stabilizing all denuded areas and maintaining erosion control measures continuously between October 15 and April 15. Stabilizing shall include both proactive measures, such as the placement of hay bales or coir netting, and passive measures, such as revegetating disturbed areas with plants propagated from seed collected in the immediate area.
- b. Storing, handling, and disposing of construction materials and wastes properly, so as to prevent their contact with stormwater.
- c. Controlling and preventing the discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, wash water or sediments, and non-stormwater discharges to storm drains and watercourses.
- d. Using sediment controls or filtration to remove sediment when dewatering the site and obtaining all necessary permits.
- e. Avoiding cleaning, fueling, or maintaining vehicles on-site, except in a designated area where wash water is contained and treated.
- f. Delineating with field markers clearing limits, easements, setbacks, sensitive or critical areas, buffer zones, trees, and drainage courses.
- g. Protecting adjacent properties and undisturbed areas from construction impacts using vegetative buffer strips, sediment barriers or filters, dikes, mulching, or other measures as appropriate.
- h. Performing clearing and earth-moving activities only during dry weather.
- i. Limiting and timing applications of pesticides and fertilizers to prevent polluted runoff.
- j. Limiting construction access routes and stabilizing designated access points.
- k. Avoiding tracking dirt or other materials off-site; cleaning off-site paved areas and sidewalks using dry sweeping methods.
- l. The contractor shall train and provide instructions to all employees and subcontractors regarding the construction best management practices.
- m. The approved erosion and sediment control plan shall be implemented prior to the beginning of construction.

**Mitigation Measure 3:** The applicant is responsible for ensuring that all contractors are aware of all stormwater quality measures and implement such measures. Failure to comply with the construction BMPs will result in the issuance of correction notices, citations or a project stop order.

- a. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration and minimize the use of fertilizers, herbicides and pesticides that can contribute to runoff pollution.
- b. Where subsurface conditions allow, the roof downspout systems from all structures shall be designed to drain to a designated, effective infiltration area or structure (refer to BMPs Handbook for infiltration system designs and requirements).

**Mitigation Measure 4:** The applicant shall submit a final landscaping plan for the parcel at the time of the building permit application for review and approval by the Planning Department. The landscaping plan shall be designed in collaboration with a qualified biologist (WRA or other qualified environmental consultant group) and landscape architect to ensure the planting of native vegetation. Such professionals shall include their recommendations on plant species, density and location of new vegetation on the landscaping plan. Prior to final Planning approval of the building permit for this project, the applicant shall submit written verification from the applicant's consultants that the recommended vegetation was planted pursuant to the recommendations shown on the submitted landscaping plan. In addition, photos of the completed landscaping shall be submitted to the Planning Department to verify that the approved landscaping plan has been implemented.

**Mitigation Measure 5:** The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementation and maturation of the landscaping plan. The COD shall be held for a period of two (2) years after final approval by the Building Inspection Section of the associated building permit. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.

**Mitigation Measure 6:** No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.

**Mitigation Measure 7:** The only permitted uses within the buffer zone for the riparian area on the property shall be pursuant to Policies 7.9 (Permitted Uses in Riparian Corridors) and 7.12 (Permitted Uses in Buffer Zones) of the San Mateo County Local Coastal Program (LCP). All other uses shall be prohibited.

**Mitigation Measure 8:** The applicant shall implement erosion control measures prior to the beginning of grading or construction operations. Such activities shall not commence until the associated building permit for the project has been issued. Revegetation of denuded areas shall begin immediately upon completion of grading/construction operations.

**Mitigation Measure 9:** The project shall include water runoff prevention measures for the operation and maintenance of the project for the review and approval by the Community Development Director. The project shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the discharge of pollutants with stormwater runoff and other water runoff produced from the project.

**Mitigation Measure 10:** The applicant shall submit a permanent stormwater management plan in compliance with the County's Drainage Policy and NPDES requirements for review and approval by the Department of Public Works.

**Mitigation Measure 11:** To reduce the impact of construction activities on neighboring properties, the applicant shall comply with the following:

- a. All debris shall be contained on-site; a dumpster or trash bin shall be provided on-site during construction to prevent debris from blowing onto adjacent properties. The applicant shall monitor the site to ensure that trash is picked up and appropriately disposed of daily.
- b. The applicant shall remove all construction equipment from the site upon completion of the use and/or need of each piece of equipment which shall include but not be limited to tractors, back hoes, cement mixers, etc.
- c. The applicant shall ensure that no construction related vehicles will impede traffic along the right-of-way on Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. All construction vehicles shall be parked on-site outside the public right-of-way or in locations which do not impede safe access on Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. There shall be no storage of construction vehicles in the public right-of-way.

**Mitigation Measure 12:** Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activity shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.

**Mitigation Measure 13:** The project shall be constructed in compliance with the plans approved by the Coastside Design Review Committee on May 14, 2009. Any changes or revisions to the approved plans shall be submitted to the Coastside Design Review Officer for review and approval prior to implementation. Minor adjustments to the project may be approved by the Coastside Design Review Officer if they are consistent with the intent of and are in substantial conformance with this approval. Alternatively, the Coastside Design Review Officer may refer consideration of the revisions to the Coastside Design Review Committee, with applicable fees to be paid.

**Mitigation Measure 14:** The applicant shall indicate on the plans submitted for a building permit, as stipulated by the Coastside Design Review Committee, that tree heights shall be maintained to grow no taller than the structure's roof.

**Mitigation Measure 15:** The applicant shall provide "finished floor elevation verification" to certify that the structure is actually constructed at the height shown on the submitted plans. The applicant shall have a licensed land surveyor or engineer establish a baseline elevation datum point in the vicinity of the construction site.

- a. The applicant shall maintain the datum point so that it will not be disturbed by the proposed construction activities until final approval of the building permit.
- b. This datum point and its elevation shall be shown on the submitted site plan. This datum point shall be used during construction to verify the elevation of the finished floors relative to the existing natural or to the grade of the site (finished grade).
- c. Prior to Planning approval of the building permit application, the applicant shall also have the licensed land surveyor or engineer indicate on the construction plans: (1) the natural grade elevations at the significant corners (at least four) of the footprint of the proposed structure on the submitted site plan, and (2) the elevations of proposed finished grades.
- d. In addition, (1) the natural grade elevations at the significant corners of the proposed structure, (2) the finished floor elevations, (3) the topmost elevation of the roof, and (4) garage slab elevation must be shown on the plan, elevations, and cross-section (if one is provided).
- e. Once the building is under construction, prior to the below floor framing inspection or the pouring of the concrete slab (as the case may be) for the lowest floor(s), the applicant shall provide to the Building Inspection Section a letter from a licensed land surveyor or engineer certifying that the lowest floor height--as constructed--is equal to the elevation specified for that floor in the approved plans. Similarly, certifications on the garage slab and the topmost elevation of the roof are required.
- f. If the actual floor height, garage slab, or roof height--as constructed--is different than the elevation specified in the plans, then the applicant shall cease all construction and no additional inspections shall be approved until a revised set of plans is submitted to and subsequently approved by both the Building Official and Community Development Director.

**Mitigation Measure 16:** All new power and telephone utility lines from the street or nearest existing utility pole to the main dwelling and/or any other structure on the property shall be placed underground.

**Mitigation Measure 17:** The exterior color samples submitted to the Committee are recommended for approval. Color verification shall occur in the field after the applicant has applied the approved materials and colors but before a final inspection has been scheduled.

**Mitigation Measure 18:** The downward lighting fixture cut sheet submitted to the Coastside Design Review Committee is approved. Verification shall occur in the field after installation but before a final inspection has been scheduled.

**Mitigation Measure 19:** The applicant shall ensure that during construction, noise, light, dust, odors and other interference with persons and property off the development site be minimized.

**INITIAL STUDY**

The San Mateo County Current Planning Section has reviewed the Environmental Evaluation of this project and has found that the probable environmental impacts are insignificant. A copy of the initial study is attached.

**REVIEW PERIOD:** January 21, 2010 to February 10, 2010

All comments regarding the correctness, completeness, or adequacy of this Negative Declaration must be received by the County Planning and Building Department, 455 County Center, Second Floor, Redwood City, no later than **5:00 p.m., February 10, 2010.**

**CONTACT PERSON**

Stephanie Skangos  
Project Planner, 650/363-1814

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Stephanie Skangos, Project Planner

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(01/11/2007)



County of San Mateo  
Planning and Building Department

**INITIAL STUDY**  
**ENVIRONMENTAL EVALUATION CHECKLIST**  
(To Be Completed By Current Planning Section)

**I. BACKGROUND**

Project Title: Single-Family Residence

File No.: PLN 2008-00380

Project Location: 97 Alameda Avenue, Miramar

Assessor's Parcel No.: 048-016-010

Applicants/Owners: David and Hi-Jin Hodge

Date Environmental Information Form Submitted: November 4, 2008

**PROJECT DESCRIPTION**

The applicant is proposing a new 2,692 sq. ft., two-story, single-family residence with an attached two-car garage on a 10,800 sq. ft. parcel within the R-1/S-94/DR/CD District in the unincorporated Miramar area of San Mateo County. The parcel is located on Magellan Avenue, west of Cabrillo Highway and immediately south of San Mateo County-owned park and open space land known as Mirada Surf. The area to the south of the subject parcel is zoned residential. Some properties are developed with single-family dwellings, while others are undeveloped. The subject parcel is in the shape of a "U", with the middle property under separate ownership. The proposed residence and second unit will be located on a portion of the parcel that runs parallel to Magellan Avenue and is furthest from the Mirada Surf property. The applicant is requesting a Variance to allow non-conforming side yard setbacks for the project on a section of the parcel whose width is 34 feet wide. No trees are proposed for removal.

## II. ENVIRONMENTAL ANALYSIS

Any controversial answers or answers needing clarification are explained on an attached sheet. For source, refer to pages 11 and 12.

	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
<b>1. <u>LAND SUITABILITY AND GEOLOGY</u></b>						
Will (or could) this project:						
a. Involve a unique landform or biological area, such as beaches, sand dunes, marshes, tidelands, or San Francisco Bay?			X			B,F,O
b. Involve construction on slope of 15% or greater?	X					E,I
c. Be located in an area of soil instability (subsidence, landslide or severe erosion)?	X					Bc,D
d. Be located on, or adjacent to a known earthquake fault?	X					Bc,D
e. Involve Class I or Class II Agriculture Soils and Class III Soils rated good or very good for artichokes or Brussels sprouts?	X					M
f. Cause erosion or siltation?			X			M,I
g. Result in damage to soil capability or loss of agricultural land?	X					A,M
h. Be located within a flood hazard area?	X					G
i. Be located in an area where a high water table may adversely affect land use?	X					D
j. Affect a natural drainage channel or streambed, or watercourse?			X			E

		IMPACT					SOURCE
		NO	YES			Cumulative	
			Not Significant	Significant Unless Mitigated	Significant		
<b>2. <u>VEGETATION AND WILDLIFE</u></b>							
Will (or could) this project:							
a. Affect federal or state listed rare or endangered species of plant life in the project area?	X						F
b. Involve cutting of heritage or significant trees as defined in the County Heritage Tree and Significant Tree Ordinance?	X						I,A
c. Be adjacent to or include a habitat food source, water source, nesting place or breeding place for a federal or state listed rare or endangered wildlife species?	X						F
d. Significantly affect fish, wildlife, reptiles, or plant life?			X				I
e. Be located inside or within 200 feet of a marine or wildlife reserve?	X						E,F,O
f. Infringe on any sensitive habitats?			X				F
g. Involve clearing land that is 5,000 sq. ft. or greater (1,000 sq. ft. within a County Scenic Corridor), that has slopes greater than 20% or that is in a sensitive habitat or buffer zone?		X					I,F,Bb
<b>3. <u>PHYSICAL RESOURCES</u></b>							
Will (or could) this project:							
a. Result in the removal of a natural resource for commercial purposes (including rock, sand, gravel, oil, trees, minerals or topsoil)?	X						I

	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
b. Involve grading in excess of 150 cubic yards?		X				I
c. Involve lands currently protected under the Williamson Act (agricultural preserve) or an Open Space Easement?	X					I
d. Affect any existing or potential agricultural uses?	X					A,K,M
4. <u>AIR QUALITY, WATER QUALITY, SONIC</u>  Will (or could) this project:						
a. Generate pollutants (hydrocarbon, thermal odor, dust or smoke particulates, radiation, etc.) that will violate existing standards of air quality on-site or in the surrounding area?			X			I,N,R
b. Involve the burning of any material, including brush, trees and construction materials?	X					I
c. Be expected to result in the generation of noise levels in excess of those currently existing in the area, after construction?	X					Ba,I
d. Involve the application, use or disposal of potentially hazardous materials, including pesticides, herbicides, other toxic substances, or radioactive material?	X					I
e. Be subject to noise levels in excess of levels determined appropriate according to the County Noise Ordinance or other standard?		X				A,Ba,Bc
f. Generate noise levels in excess of levels determined appropriate according to the County Noise Ordinance standard?			X			I

		IMPACT					SOURCE
		NO	YES			Cumulative	
			Not Significant	Significant Unless Mitigated	Significant		
g.	Generate polluted or increased surface water runoff or affect groundwater resources?			X			I
h.	Require installation of a septic tank/leachfield sewage disposal system or require hookup to an existing collection system which is at or over capacity?	X					S
<b>5. <u>TRANSPORTATION</u></b>							
	Will (or could) this project:						
a.	Affect access to commercial establishments, schools, parks, etc.?	X					A,I
b.	Cause noticeable increase in pedestrian traffic or a change in pedestrian patterns?	X					A,I
c.	Result in noticeable changes in vehicular traffic patterns or volumes (including bicycles)?	X					I
d.	Involve the use of off-road vehicles of any kind (such as trail bikes)?	X					I
e.	Result in or increase traffic hazards?		X				S
f.	Provide for alternative transportation amenities such as bike racks?	X					I
g.	Generate traffic which will adversely affect the traffic carrying capacity of any roadway?	X					S

		IMPACT					SOURCE
		NO	YES			Cumulative	
			Not Significant	Significant Unless Mitigated	Significant		
<b>6. LAND USE AND GENERAL PLANS</b>							
Will (or could) this project:							
a. Result in the congregating of more than 50 people on a regular basis?	X						I
b. Result in the introduction of activities not currently found within the community?	X						I
c. Employ equipment which could interfere with existing communication and/or defense systems?	X						I
d. Result in any changes in land use, either on or off the project site?	X						I
e. Serve to encourage off-site development of presently undeveloped areas or increase development intensity of already developed areas (examples include the introduction of new or expanded public utilities, new industry, commercial facilities or recreation activities)?			X				I,Q,S
f. Adversely affect the capacity of any public facilities (streets, highways, freeways, public transit, schools, parks, police, fire, hospitals), public utilities (electrical, water and gas supply lines, sewage and storm drain discharge lines, sanitary landfills) or public works serving the site?	X						I,S
g. Generate any demands that will cause a public facility or utility to reach or exceed its capacity?	X						I,S
h. Be adjacent to or within 500 feet of an existing or planned public facility?			X				A

	IMPACT						SOURCE
	NO	YES			Cumulative		
		Not Significant	Significant Unless Mitigated	Significant			
i. Create significant amounts of solid waste or litter?	X					I	
j. Substantially increase fossil fuel consumption (electricity, oil, natural gas, coal, etc.)?	X					I	
k. Require an amendment to or exception from adopted general plans, specific plans, or community policies or goals?		X				B	
l. Involve a change of zoning?	X					C	
m. Require the relocation of people or businesses?	X					I	
n. Reduce the supply of low-income housing?	X					I	
o. Result in possible interference with an emergency response plan or emergency evacuation plan?	X					S	
p. Result in creation of or exposure to a potential health hazard?	X					S	
<b>7. <u>AESTHETIC, CULTURAL AND HISTORIC</u></b>							
Will (or could) this project:							
a. Be adjacent to a designated Scenic Highway or within a State or County Scenic Corridor?			X			A,Bb	
b. Obstruct scenic views from existing residential areas, public lands, public water body, or roads?			X			A,I	
c. Involve the construction of buildings or structures in excess of three stories or 36 feet in height?	X					I	

	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
d. Directly or indirectly affect historical or archaeological resources on or near the site?	X					H
e. Visually intrude into an area having natural scenic qualities?			X			A,I

III. **RESPONSIBLE AGENCIES.** Check what agency has permit authority or other approval for the project.

AGENCY	YES	NO	TYPE OF APPROVAL
U.S. Army Corps of Engineers (CE)		X	
State Water Resources Control Board		X	
Regional Water Quality Control Board		X	
State Department of Public Health		X	
San Francisco Bay Conservation and Development Commission (BCDC)		X	
U.S. Environmental Protection Agency (EPA)		X	
County Airport Land Use Commission (ALUC)		X	
CalTrans		X	
Bay Area Air Quality Management District		X	
U.S. Fish and Wildlife Service		X	
Coastal Commission	X		Appeals Jurisdiction
City		X	
Sewer/Water District: Granada Sanitary District/Coastside County Water District	X		Sewer Permit, Water Permit
Other:			



#### IV. MITIGATION MEASURES

Yes No

Mitigation measures have been proposed in project application.

X

Other mitigation measures are needed.

X

The following measures are included in the project plans or proposals pursuant to Section 15070(b)(1) of the State CEQA Guidelines:

**Mitigation Measure 1:** No development or construction shall occur within 50 feet of the edge of the willow riparian habitat, as mapped by WRA Environmental consultants. The new residence shall be allowed to encroach into the buffer by 18 feet, allowing for a total distance of 32 feet between the limit of riparian vegetation and the rear of the new residence. Prior to the issuance of a building permit for the proposed residence and attached second unit, the applicant shall delineate the approved 32-foot buffer zone from the edge of the willow riparian habitat with visible fencing and shall verify that the construction location is outside of the buffer zone.

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**Mitigation Measure 11:** To reduce the impact of construction activities on neighboring properties, the applicant shall comply with the following:

- a. All debris shall be contained on-site; a dumpster or trash bin shall be provided on-site during construction to prevent debris from blowing onto adjacent properties. The applicant shall monitor the site to ensure that trash is picked up and appropriately disposed of daily.
- b. The applicant shall remove all construction equipment from the site upon completion of the use and/or need of each piece of equipment which shall include but not be limited to tractors, back hoes, cement mixers, etc.
- c. The applicant shall ensure that no construction related vehicles will impede traffic along the right-of-way on Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. All construction vehicles shall be parked on-site outside the public right-of-way or in locations which do not impede safe access on Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. There shall be no storage of construction vehicles in the public right-of-way.

**Mitigation Measure 12:** Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activity shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.

**Mitigation Measure 13:** The project shall be constructed in compliance with the plans approved by the Coastsides Design Review Committee on May 14, 2009. Any changes or revisions to the approved plans shall be submitted to the Coastsides Design Review Officer for review and approval prior to implementation. Minor adjustments to the project may be approved by the Coastsides Design Review Officer if they are consistent with the intent of and are in substantial conformance with this approval. Alternatively, the Coastsides Design Review Officer may refer consideration of the revisions to the Coastsides Design Review Committee, with applicable fees to be paid.

**Mitigation Measure 14:** The applicant shall indicate on the plans submitted for a building permit, as stipulated by the Coastsides Design Review Committee, that tree heights shall be maintained to grow no taller than the structure's roof.

**Mitigation Measure 15:** The applicant shall provide "finished floor elevation verification" to certify that the structure is actually constructed at the height shown on the submitted plans. The applicant shall have a licensed land surveyor or engineer establish a baseline elevation datum point in the vicinity of the construction site.

- a. The applicant shall maintain the datum point so that it will not be disturbed by the proposed construction activities until final approval of the building permit.
- b. This datum point and its elevation shall be shown on the submitted site plan. This datum point shall be used during construction to verify the elevation of the finished floors relative to the existing natural or to the grade of the site (finished grade).

- c. Prior to Planning approval of the building permit application, the applicant shall also have the licensed land surveyor or engineer indicate on the construction plans: (1) the natural grade elevations at the significant corners (at least four) of the footprint of the proposed structure on the submitted site plan, and (2) the elevations of proposed finished grades.
- d. In addition, (1) the natural grade elevations at the significant corners of the proposed structure, (2) the finished floor elevations, (3) the topmost elevation of the roof, and (4) garage slab elevation must be shown on the plan, elevations, and cross-section (if one is provided).
- e. Once the building is under construction, prior to the below floor framing inspection or the pouring of the concrete slab (as the case may be) for the lowest floor(s), the applicant shall provide to the Building Inspection Section a letter from a licensed land surveyor or engineer certifying that the lowest floor height—as constructed—is equal to the elevation specified for that floor in the approved plans. Similarly, certifications on the garage slab and the topmost elevation of the roof are required.
- f. If the actual floor height, garage slab, or roof height—as constructed—is different than the elevation specified in the plans, then the applicant shall cease all construction and no additional inspections shall be approved until a revised set of plans is submitted to and subsequently approved by both the Building Official and Community Development Director.

**Mitigation Measure 16:** All new power and telephone utility lines from the street or nearest existing utility pole to the main dwelling and/or any other structure on the property shall be placed underground.

**Mitigation Measure 17:** The exterior color samples submitted to the Committee are recommended for approval. Color verification shall occur in the field after the applicant has applied the approved materials and colors but before a final inspection has been scheduled.

**Mitigation Measure 18:** The downward lighting fixture cut sheet submitted to the Coastside Design Review Committee is approved. Verification shall occur in the field after installation but before a final inspection has been scheduled.

**Mitigation Measure 19:** The applicant shall ensure that during construction, noise, light, dust, odors and other interference with persons and property off the development site be minimized.

V. **MANDATORY FINDINGS OF SIGNIFICANCE**

	Yes	No
1. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal, or eliminate important examples of the major periods of California history or prehistory?		X
2. Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals?		X
3. Does the project have possible environmental effects which are individually limited, but cumulatively considerable?		X
4. Would the project cause substantial adverse effects on human beings, either directly or indirectly?		X

On the basis of this initial evaluation:

I find the proposed project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared by the Current Planning Section.

I find that although the proposed project could have a significant effect on the environment, there **WILL NOT** be a significant effect in this case because of the mitigation measures in the discussion have been included as part of the proposed project. A **NEGATIVE DECLARATION** will be prepared.

I find that the proposed project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.

Stephanie Skangos

Project Planner  
(Title)

Date

## **VI. SOURCE LIST**

- A. Field Inspection
- B. County General Plan 1986
  - a. General Plan Chapters 1-16
  - b. Local Coastal Program (LCP) (Area Plan)
  - c. Skyline Area General Plan Amendment
  - d. Montara-Moss Beach-EI Granada Community Plan
  - e. Emerald Lake Hills Community Plan
- C. County Ordinance Code
- D. Geotechnical Maps
  - 1. USGS Basic Data Contributions
    - a. #43 Landslide Susceptibility
    - b. #44 Active Faults
    - c. #45 High Water Table
  - 2. Geotechnical Hazards Synthesis Maps
- E. USGS Quadrangle Maps, San Mateo County 1970 Series (See F. and H.)
- F. San Mateo County Rare and Endangered Species Maps, or Sensitive Habitats Maps
- G. Flood Insurance Rate Map – National Flood Insurance Program
- H. County Archaeologic Resource Inventory (Prepared by S. Dietz, A.C.R.S.) Procedures for Protection of Historic and Cultural Properties – 36 CFR 800 (See R.)
- I. Project Plans or EIF
- J. Airport Land Use Committee Plans, San Mateo County Airports Plan
- K. Aerial Photography or Real Estate Atlas – REDI
  - 1. Aerial Photographs, 1941, 1953, 1956, 1960, 1963, 1970
  - 2. Aerial Photographs, 1981
  - 3. Coast Aerial Photos/Slides, San Francisco County Line to Año Nuevo Point, 1971
  - 4. Historic Photos, 1928-1937



**COUNTY OF SAN MATEO**  
Planning and Building Department

**Initial Study Pursuant to CEQA**  
**Project Narrative and Answers to Questions for Negative Declaration**  
**File Number: PLN 2008-00380**  
**Single-Family Residence**

**PROJECT DESCRIPTION**

***NOTE:** This mitigated Negative Declaration (N/D) is a revised version of the document that underwent the required 21-day circulation period (January 21 through February 10, 2010), and originally included both the project described below and the legalization of unpermitted land clearing on the same parcel as well as an adjacent parcel owned by the County Parks Department. Each of those projects was then and continues to be considered under separate Planning cases: PLN 2008-00380 (for the new residence) and PLN 2009-00358 (for the unpermitted land clearing). At their hearing of February 23, 2011, the Planning Commission requested that prior to acting on either case, the original N/D document be separated into two separate N/Ds, relative to each of the cited Planning cases. This allows the Commission to potentially certify the N/D specific to either project should they decide to approve either project without the other. County Counsel, upon review of CEQA law, concluded that this was feasible - without requiring recirculation of the two documents - because segregating the original N/D and its analysis into two N/Ds represented no substantial revision to the original N/D's conclusion regarding environmental impacts and associated mitigation measures respective to each project. In doing so, staff concludes that each project's respective impacts are not significantly different than as represented in the original N/D.*

The applicant is proposing a new 2,692 sq. ft., two-story, single-family residence with an attached two-car garage on a 10,800 sq. ft. parcel within the R-1/S-94/DR/CD District in the unincorporated Miramar area of San Mateo County. The parcel is located on Magellan Avenue, west of Cabrillo Highway and immediately south of San Mateo County-owned park and open space land known as Mirada Surf. The area to the south of the subject parcel is zoned residential. Some properties are developed with single-family dwellings, while others are undeveloped. The subject parcel is in the shape of a "U", with the middle property under separate ownership. The proposed residence and second unit will be located on a portion of the parcel that runs parallel to Magellan Avenue and is furthest from the Mirada Surf property. The applicant is requesting a Variance to allow non-conforming side yard setbacks for the project on a section of the parcel whose width is 34 feet wide. No trees are proposed for removal.

As indicated in the NOTE above, a separate N/D for the unpermitted land clearing has been prepared and accompanies that project's permit application (PLN 2009-00358).

**ANSWERS TO QUESTIONS**

**1. LAND SUITABILITY AND GEOLOGY**

- a. **Will (or could) this project involve a unique landform or biological area, such as beaches, sand dunes, marshes, tidelands, or San Francisco Bay?**



## **ANSWERS TO QUESTIONS**

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**Yes, Significant Unless Mitigated.** The parcel is located adjacent to an existing unnamed perennial creek that is surrounded by willow riparian habitat. The willow riparian habitat encroaches onto the northeast corner of the parcel. The proposed location of the new residence is set back 32 feet from the edge of the riparian habitat and approximately 80 feet from the perennial creek. There are no additional sensitive habitats on the parcel, as determined by a qualified biologist. The site is dominated primarily by sparsely vegetated ground, including ruderal herbaceous grassland, which does not qualify as a sensitive habitat nor provide suitable habitat for most special status plant and wildlife species. A biological study conducted in 2005 for the adjacent Mirada Surf Trail project (immediately north and west of the parcel) included the subject parcel. This report indicated that a seasonal wetland was in the vicinity of the subject parcel. Recent biological studies and reports completed by WRA Environmental Consultants (WRA) have determined that a wetland does not exist on the subject parcel, concluding that the area does not meet the definition of "wetland," as defined by both the Army Corps of Engineers (ACOE) and the San Mateo County Local Coastal Program (LCP) (see Attachment D). The applicant is proposing a landscaping plan that introduces native vegetation onto the parcel. As such, the following mitigation measures are recommended to ensure that future impacts to the existing riparian habitat are avoided during and after construction:

**Mitigation Measure 1:** No development or construction shall occur within 50 feet of the edge of the willow riparian habitat, as mapped by WRA Environmental consultants. The new residence shall be allowed to encroach into the buffer by 18 feet, allowing for a total distance of 32 feet between the limit of riparian vegetation and the rear of the new residence. Prior to the issuance of a building permit for the proposed residence and attached second unit, the applicant shall delineate the approved 32-foot buffer zone from the edge of the willow riparian habitat with visible fencing and shall verify that the construction location is outside of the buffer zone.

**Mitigation Measure 2:** Prior to the beginning of any construction or grading activities, the applicant shall implement the approved erosion and sediment control plan. Erosion control measure deficiencies, as they occur, shall be immediately corrected. The goal is to prevent sediment and other pollutants from leaving the project site and to protect all exposed earth surfaces from erosive forces. Said plan shall adhere to the San Mateo Countywide Stormwater Pollution Prevention Program "General Construction and Site Supervision Guidelines," including:

- a. Stabilizing all denuded areas and maintaining erosion control measures continuously between October 15 and April 15. Stabilizing shall include both proactive measures, such as the placement of hay bales or coir netting, and passive measures, such as revegetating disturbed areas with plants propagated from seed collected in the immediate area.

## **ANSWERS TO QUESTIONS**

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- b. Storing, handling, and disposing of construction materials and wastes properly, so as to prevent their contact with stormwater.
- c. Controlling and preventing the discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, wash water or sediments, and non-stormwater discharges to storm drains and watercourses.
- d. Using sediment controls or filtration to remove sediment when dewatering the site and obtaining all necessary permits.
- e. Avoiding cleaning, fueling, or maintaining vehicles on-site, except in a designated area where wash water is contained and treated.
- f. Delineating with field markers clearing limits, easements, setbacks, sensitive or critical areas, buffer zones, trees, and drainage courses.
- g. Protecting adjacent properties and undisturbed areas from construction impacts using vegetative buffer strips, sediment barriers or filters, dikes, mulching, or other measures as appropriate.
- h. Performing clearing and earth-moving activities only during dry weather.
- i. Limiting and timing applications of pesticides and fertilizers to prevent polluted runoff.
- j. Limiting construction access routes and stabilizing designated access points.
- k. Avoiding tracking dirt or other materials off-site; cleaning off-site paved areas and sidewalks using dry sweeping methods.
- l. The contractor shall train and provide instructions to all employees and sub-contractors regarding the construction best management practices.
- m. The approved erosion and sediment control plan shall be implemented prior to the beginning of construction.

**Mitigation Measure 3:** The applicant is responsible for ensuring that all contractors are aware of all stormwater quality measures and implement such measures. Failure to comply with the construction BMPs will result in the issuance of correction notices, citations or a project stop order.

## **ANSWERS TO QUESTIONS**

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- a. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration and minimize the use of fertilizers, herbicides and pesticides that can contribute to runoff pollution.
- b. Where subsurface conditions allow, the roof downspout systems from all structures shall be designed to drain to a designated, effective infiltration area or structure (refer to BMPs Handbook for infiltration system designs and requirements).

**Mitigation Measure 4:** The applicant shall submit a final landscaping plan for the parcel at the time of the building permit application for review and approval by the Planning Department. The landscaping plan shall be designed in collaboration with a qualified biologist (WRA or other qualified environmental consultant group) and landscape architect to ensure the planting of native vegetation. Such professionals shall include their recommendations on plant species, density and location of new vegetation on the landscaping plan. Prior to final Planning approval of the building permit for this project, the applicant shall submit written verification from the applicant's consultants that the recommended vegetation was planted pursuant to the recommendations shown on the submitted landscaping plan. In addition, photos of the completed landscaping shall be submitted to the Planning Department to verify that the approved landscaping plan has been implemented.

**Mitigation Measure 5:** The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementation and maturation of the landscaping plan. The COD shall be held for a period of two (2) years after final approval by the Building Inspection Section of the associated building permit. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.

**Mitigation Measure 6:** No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.

**Mitigation Measure 7:** The only permitted uses within the buffer zone for the riparian area on the property shall be pursuant to Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP). All other uses shall be prohibited.

- b. Will (or could) this project involve construction on slopes of 15% or greater?

**ANSWERS TO QUESTIONS**

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**No Impact.** The subject parcel is relatively flat, with an average slope of less than 15%.

- c. **Will (or could) this project be located in an area of soil instability (subsidence, landslide or severe erosion)?**

**No Impact.** The parcel has been designated as an area with Landslide Susceptibility I based on information gathered from the U.S. Geological Survey. Such areas have the lowest susceptibility to soil instability and a decreased potential for occurrences of a landslide.

- d. **Will (or could) this project be located on, or adjacent to, a known earthquake fault?**

**No Impact.** The project site is not located on or adjacent to a known earthquake fault. The Geotechnical Section will review the proposal when an application for the required building permit is submitted to verify that there are no geotechnical issues.

- e. **Will (or could) this project involve Class I or Class II Agriculture Soils and Class III Soils rated good or very good for artichokes or Brussels sprouts?**

**No Impact.** The project site is located on land that has been identified as having Class III soils; however, the parcel has been designated for residential use and is not intended for agricultural use or production. In addition, the immediate surroundings of the property are residential and County-owned park and open space land.

- f. **Will (or could) this project cause erosion or siltation?**

**Yes, Significant Unless Mitigated.** While minimal grading is proposed to implement the new residence, erosion and siltation are likely to occur during construction activities on the property. The following mitigation measures, in addition to Mitigation Measures 2 and 3 proposed in Question 1(a) above, are proposed to minimize any potential issues:

**Mitigation Measure 8:** The applicant shall implement erosion control measures prior to the beginning of grading or construction operations. Such activities shall not commence until the associated building permit for the project has been issued. Revegetation of denuded areas shall begin immediately upon completion of grading/construction operations.

**Mitigation Measure 9:** The project shall include water runoff prevention measures for the operation and maintenance of the project for the review and approval by the Community Development Director. The project shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the

## **ANSWERS TO QUESTIONS**

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discharge of pollutants with stormwater runoff and other water runoff produced from the project.

- g. **Will (or could) this project result in damage to soil capability or loss of agricultural land?**

**No Impact.** Refer to staff's response to Question 1(e) above.

- h. **Will (or could) this project be located within a flood hazard area?**

**No Impact.** The parcel has been designated as Flood Zone C, as defined by FEMA, which is an area of minimal potential flooding.

- i. **Will (or could) this project be located in an area where a high water table may adversely affect land use?**

**No Impact.** There is no indication of the presence of a high water table in this area.

- j. **Will (or could) this project affect a natural drainage channel or streambed, or watercourse?**

**Yes, Significant Unless Mitigated.** As discussed in the response to Question 1(a) above, the parcel is located adjacent to an existing perennial creek that is surrounded by willow riparian habitat. While the location of the proposed residence is set back 80 feet from the perennial creek and the subject parcel is relatively flat, it is possible that during and after construction, some stormwater runoff may be directed toward this area. Therefore, to prevent potential runoff into the perennial creek, the following mitigation measure is proposed, in addition to the mitigation measures discussed in the Answers to Questions 1(a) and 1(f) above.

**Mitigation Measure 10:** The applicant shall submit a permanent stormwater management plan in compliance with the County's Drainage Policy and NPDES requirements for review and approval by the Department of Public Works.

## **2. VEGETATION AND WILDLIFE**

- a. **Will (or could) this project affect federal or state listed rare or endangered species of plant life in the project area?**

**No Impact.** The project will not affect federal or state listed rare or endangered species of plant life because the site is not located within a sensitive habitat area, as determined by review of the California Natural Diversity Database (CNDDB). Furthermore, the biological documents submitted for the project indicate that the

**ANSWERS TO QUESTIONS**

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project area does not provide suitable habitat for such plant species (see Attachment C).

- b. **Will (or could) this project involve cutting of heritage or significant trees as defined in the County Heritage Tree and Significant Tree Ordinance?**

**No Impact.** No tree removal or tree topping is proposed or required as part of this project.

- c. **Will (or could) this project be adjacent to or include a habitat food source, water source, nesting place or breeding place for a federal or state listed rare or endangered wildlife species?**

**No Impact.** Based on review of the CNDDDB, the project site is not located within or adjacent to a mapped federal or state listed rare or endangered wildlife species. In addition, a qualified biologist has determined that the project area is not suitable for such habitats (see Attachment C).

- d. **Will (or could) this project significantly affect fish, wildlife, reptiles, or plant life?**

**Yes, Significant Unless Mitigated.** Refer to staff's response to Question 1(a) above.

- e. **Will (or could) this project be located inside or within 200 feet of a marine or wildlife reserve?**

**No Impact.** The proposed project is not located within 200 feet of a marine or wildlife reserve.

- f. **Will (or could) this project infringe on any sensitive habitats?**

**Yes, Significant Unless Mitigated.** Refer to staff's response to Questions 1(a) and 2(d) above.

- g. **Will (or could) this project involve clearing land that is 5,000 sq. ft. or greater (1,000 sq. ft. within a County Scenic Corridor), that has slopes greater than 20% or that is in a sensitive habitat or buffer zone?**

**Yes, Not Significant.** The project site is located within a designated County Scenic Corridor. Implementation of the project may involve some minor land clearing in the location of the footprint for the new residence. As previously mentioned, a qualified biologist has determined that there are no sensitive habitats located on the project site other than the encroachment of an existing willow riparian habitat. The residence is

## **ANSWERS TO QUESTIONS**

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to be located 32 feet from the edge of the riparian habitat, and, as such, will not cause a significant impact.

### **3. PHYSICAL RESOURCES**

- a. **Will (or could) this project result in the removal of a natural resource for commercial purposes (including rock, sand, gravel, oil, trees, minerals or top soil)?**

**No Impact.** Based on review of the County General Plan, there are no mapped natural resources on the subject property that would be used for commercial purposes.

- b. **Will (or could) this project involve grading in excess of 150 cubic yards?**

**Yes, Not Significant.** The implementation of the new residence does not require grading in excess of 150 cubic yards, as the parcel is relatively flat. Therefore, any grading associated with implementation of the project would be minimal. Mitigation Measures 2 and 3 recommended above in Question 1(a) will ensure that any impacts from grading are not significant.

- c. **Will (or could) this project involve lands currently protected under the Williamson Act (agricultural preserve) or an Open Space Easement?**

**No Impact.** The project property is currently not under the Williamson Act or an Open Space Easement.

- d. **Will (or could) this project affect any existing or potential agricultural uses?**

**No Impact.** Refer to staff's response to Question 1(e) above.

### **4. AIR QUALITY, WATER QUALITY, SONIC**

- a. **Will (or could) this project generate pollutants (hydrocarbon, thermal odor, dust or smoke particulates, radiation, etc.) that will violate existing standards of air quality on-site or in the surrounding area?**

**Yes, Significant Unless Mitigated.** While the project, once implemented, will not generate pollutants on-site or in the surrounding area, such pollutants may be generated temporarily during construction of the new residence. To help minimize any impact caused during construction, the mitigation measures proposed in Questions 1(a) and 1(f) above are recommended, as well as the following:

**ANSWERS TO QUESTIONS**

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**Mitigation Measure 11:** To reduce the impact of construction activities on neighboring properties, the applicant shall comply with the following:

- a. All debris shall be contained on-site; a dumpster or trash bin shall be provided on-site during construction to prevent debris from blowing onto adjacent properties. The applicant shall monitor the site to ensure that trash is picked up and appropriately disposed of daily.
- b. The applicant shall remove all construction equipment from the site upon completion of the use and/or need of each piece of equipment which shall include but not be limited to tractors, back hoes, cement mixers, etc.
- c. The applicant shall ensure that no construction related vehicles will impede traffic along the right-of-way on Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. All construction vehicles shall be parked on-site outside the public right-of-way or in locations which do not impede safe access on Cabrillo Highway, Magellan Avenue and/or Alameda Avenue. There shall be no storage of construction vehicles in the public right-of-way.

- b. **Will (or could) this project involve the burning of any material, including brush, trees and construction materials?**

**No Impact.** The project does not involve the burning of any material.

- c. **Will (or could) this project be expected to result in the generation of noise levels in excess of those currently existing in the area, after construction?**

**No Impact.** The project will not generate noise levels in excess of those currently existing in the area. The surrounding area is residential, and the addition of one single-family residence in this area would not increase noise levels.

- d. **Will (or could) this project involve the application, use or disposal of potentially hazardous materials, including pesticides, herbicides, other toxic substances, or radioactive material?**

**No Impact.** The project does not involve the application, use or disposal of potentially hazardous materials as the proposed project involves a new single-family residence.

- e. **Will (or could) this project be subject to noise levels in excess of levels determined appropriate according to the County Noise Ordinance or other standard?**



## **ANSWERS TO QUESTIONS**

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**Yes, Not Significant.** The subject property is located approximately 100 feet from the intersection of Cabrillo Highway and Magellan Avenue, within a mapped Noise Impact Area. This area is defined as experiencing a Community Noise Exposure Level (CNEL) of 60 or more. Noise levels may occasionally increase due to traffic along Cabrillo Highway. However, noise generated from traffic along this main corridor should be brief in nature and not significantly impact the project. Furthermore, the new residence will be located more than 130 feet from the Cabrillo Highway right-of-way and existing vegetation separates the highway from this proposed location. Therefore, any increase in noise levels along the highway would only slightly affect the project area, if at all.

- f. **Will (or could) this project generate noise levels in excess of levels determined appropriate according to the County Noise Ordinance standard?**

**Yes, Significant Unless Mitigated.** While this project will not generate noise levels in excess of appropriate levels once implemented, during construction activities, increased noise levels may occur. However, noise sources associated with demolition, construction or grading of any real property are exempt from the County Noise Ordinance provided these activities occur during designated time frames. As such, the following mitigation measure is recommended:

**Mitigation Measure 12:** Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activity shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.

- g. **Will (or could) this project generate polluted or increased surface water runoff or affect groundwater resources?**

**Yes, Significant Unless Mitigated.** The addition of a new residence will increase the amount of impermeable surface on the property. Due to the increased impermeable surface, increased surface water runoff is inevitable. In order to reduce any negative impacts caused by increased surface runoff, the mitigation measures discussed in the Answers to Questions 1(a), 1(f) and 1(j) above are recommended.

- h. **Will (or could) this project require installation of a septic tank/leachfield sewage disposal system or require hookup to an existing collection system, which is at or over capacity?**

**No Impact.** The project location is located within the Granada Sanitary District service area. The District has confirmed that there is an existing sewer mainline facility available to serve the proposed project and that it has sufficient sewer capacity. During the building permit phase of the project, the applicant will be

## **ANSWERS TO QUESTIONS**

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required to secure a sewer permit from the District, and verify that a permit has been approved prior to issuance of the building permit.

### **5. TRANSPORTATION**

- a. **Will (or could) this project affect access to commercial establishments, schools, parks, etc.?**

**No Impact.** The subject parcel is located immediately south of County-owned park and open space land known as the Mirada Surf. The County Parks Department has recently completed the construction of a pedestrian and bike path through the Mirada Surf property. This path is part of a regional coastal trail intended to extend along the length of the San Mateo County coastline. The Mirada Surf Trail extends from Magellan Avenue to the intersection of Mirada Road and Cabrillo Highway, across from Coronado Avenue. The path access from Magellan Avenue is along an abandoned portion of Alameda Avenue that runs in front of the subject parcel. The parcel's front boundary line is approximately 33 feet away from the path. The proposed residence will be set back 20 feet from the front property line, allowing approximately 53 feet between the new residence and the Mirada Surf Trail. The applicant is proposing a cedar fence and landscaping to create a barrier between the middle property under separate ownership, Alameda Avenue and the pedestrian and bike path, and Magellan Avenue. In addition, both vehicular and pedestrian access to the subject property and new residence will be solely from Magellan Avenue. Therefore, the proposal does not affect access to the Mirada Surf property and trail. There are no commercial establishments or schools in the vicinity.

- b. **Will (or could) this project cause noticeable increase in pedestrian traffic or a change in pedestrian patterns?**

**No Impact.** The proposed single-family residence will be located in a residential district and immediately south of County-owned park and open space land known as Mirada Surf. Pedestrian traffic is very common in the surrounding area due to the newly constructed pedestrian and bike path across the Mirada Surf property. Path access is obtained from Magellan Avenue, directly in front of the subject parcel. The addition of a residence and second unit in the area and the residents who will occupy the dwelling will not cause a noticeable increase in existing pedestrian traffic in the area.

- c. **Will (or could) this project result in noticeable changes in vehicular traffic patterns or volumes (including bicycles)?**

**No Impact.** As mentioned above, the proposed project is located in a residential district and immediately south of the Mirada Surf property. Vehicular traffic is common in the area as many users of the Mirada Surf Trail park in the area. Access

## **ANSWERS TO QUESTIONS**

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to the proposed residence will be obtained off of Magellan Avenue, and the applicant is proposing sufficient parking on the property. The addition of a new residence may cause a slight increase in vehicular traffic in and around the area, but nothing that would result in noticeable changes in either vehicular traffic or volumes.

- d. **Will (or could) this project involve the use of off-road vehicles of any kind (such as trail bikes)?**

**No Impact.** The project does not involve the use of off-road vehicles.

- e. **Will (or could) this project result in or increase traffic hazards?**

**Yes, Not Significant.** During construction of the proposed project, an increase in traffic hazards in the area may occur. However, this will be temporary, and once implemented, the project itself would not result in or increase traffic hazards.

- f. **Will (or could) this project provide for alternative transportation amenities such as bike racks?**

**No Impact.** Alternative transportation amenities are not required as part of this project.

- g. **Will (or could) this project generate traffic that will adversely affect the traffic carrying capacity of any roadway?**

**No Impact.** The addition of the proposed single-family residence correlates with new occupants, and possibly guests, to the subject property, but this increase will not impact the traffic carrying capacity of any roadway.

## **6. LAND USE AND GENERAL PLANS**

- a. **Will (or could) this project result in the congregating of more than 50 people on a regular basis?**

**No Impact.** The proposed project would not result in the congregation of more than 50 people on a regular basis.

- b. **Will (or could) this project result in the introduction of activities not currently found within the community?**

**No Impact.** The proposed project would not result in the introduction of new activities in the area, as the surrounding area is residential and open space.

**ANSWERS TO QUESTIONS**

County File Number PLN 2008-00380

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- c. **Will (or could) this project employ equipment that could interfere with existing communication and/or defense systems?**

**No Impact.** The proposed project would not employ equipment that could interfere with existing communication and/or defense systems.

- d. **Will (or could) this project result in any changes in land use, either on or off the project site?**

**No Impact.** The project will not result in any changes in land use, as the area is designated for residential uses.

- e. **Will (or could) this project serve to encourage off-site development of presently undeveloped areas or increase development intensity of already developed areas (examples include the introduction of new or expanded public utilities, new industry, commercial facilities or recreation activities)?**

**Yes. Not Significant.** The addition of a new residence on a vacant parcel designated for residential use will not encourage additional off-site development. While implementation of the proposed project would result in one new residential unit in the area, the location of the property in a residentially zoned district allows for such an increase. Further development of the property, other than accessory structures appurtenant to the main dwelling, is restricted. Therefore, any increase to the development intensity of the area is minimal.

- f. **Will (or could) this project adversely affect the capacity of any public facilities (streets, highways, freeways, public transit, schools, parks, police, fire, hospitals), public utilities (electrical, water and gas supply lines, sewage and storm drain discharge lines, sanitary landfills) or public works serving the site?**

**No Impact.** The proposed project would not adversely affect the capacity of any public utilities. Any use of public facilities and other public utilities would be minimal and similar to that of a standard single-family dwelling and associated residents.

- g. **Will (or could) this project generate any demands that will cause a public facility or utility to reach or exceed its capacity?**

**No Impact.** The proposed project may cause minimal demand on a public facility or utility, similar to that of a standard single-family dwelling, which would not cause either to reach or exceed its capacity.

- h. **Will (or could) this project be adjacent to or within 500 feet of an existing or planned public facility?**

**ANSWERS TO QUESTIONS**

County File Number PLN 2008-00380

Page 14

**Yes, Not Significant.** Refer to staff's response to Question 5(a) above.

- i. **Will (or could) this project create significant amounts of solid waste or litter?**

**No Impact.** The proposed project may result in slight amounts of solid waste or litter as a result of new residents in the area. However, the amount would be typical to that of any single-family residential family and would not be considered significant.

- j. **Will (or could) this project substantially increase fossil fuel consumption (electricity, oil, natural gas, coal, etc.)?**

**No Impact.** The proposed project would not substantially increase fossil fuel consumption, as the amount of any consumption would be typical to that of any single-family residential family.

- k. **Will (or could) this project require an amendment to or exception from adopted general plans, specific plans, or community policies or goals?**

**Yes, Not Significant.** The proposal does not comply with the minimum side yard setbacks as required by the County's Zoning Regulations. The parcel is located in the R-1/S-94 Zoning District, which requires a minimum side yard setback of 10 feet. The new residence is proposed to have side yard setbacks of 5 to 7 feet. Therefore, the applicant is requesting a Variance for the project, as revising the project to comply with the required side yard setbacks would not be feasible due to the "U" shape of the parcel and the 34-foot width of each side of the "U". In order to mitigate any potential negative effects caused by smaller side yards, the applicant is proposing cedar fencing and landscaping around the property.

- l. **Will (or could) this project involve a change of zoning?**

**No Impact.** The proposed project does not include or require a change in zoning.

- m. **Will (or could) this project require the relocation of people or businesses?**

**No Impact.** The proposal would not require the relocation of people or businesses.

- n. **Will (or could) this project reduce the supply of low-income housing?**

**No Impact.** The proposed project does not include or replace any low-income housing.

- o. **Will (or could) this project result in possible interference with an emergency response plan or emergency evacuation plan?**

## **ANSWERS TO QUESTIONS**

County File Number PLN 2008-00380

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**No Impact.** The proposed project would not interfere with any emergency response or evacuation plans.

- p. **Will (or could) this project result in creation of or exposure to a potential health hazard?**

**No Impact.** The proposed project does not involve any activities that would result in the creation of or exposure to a potential health hazard.

### **7. AESTHETIC, CULTURAL AND HISTORIC**

- a. **Will (or could) this project be adjacent to a designated Scenic Highway or within a State or County Scenic Corridor?**

**Yes, Significant Unless Mitigated.** The proposed project site is located within the designated Cabrillo Highway County Scenic Corridor. This area has been designated as a scenic corridor because of the surrounding natural scenic views and qualities; therefore, it is likely that the project may cause some visual impact to the area. The project site is approximately 100 feet from Cabrillo Highway and separated from this main corridor by existing riparian willows. The existing vegetation helps create a visual barrier and minimize potential visual impacts on the scenic views and qualities of the surrounding area. In addition, the new residence will be constructed of colors and materials that are in compliance with the Coastsides Design Review District design guidelines. The architectural design of the structure also complies with the design guidelines, as determined by the Coastsides Design Review Committee at their May 14, 2009 meeting. The applicant is proposing new landscaping and cedar fencing to further minimize any impacts caused by implementation of the project on the visual quality and surrounding scenic views. The Coastsides Design Review Committee has reviewed the project and recommended its approval, subject to recommended conditions of approval that have been included as mitigation measures below. These mitigation measures, in addition to Mitigation Measures 4 and 5 recommended in Question 1(a) above, are proposed to minimize the visual intrusion into the scenic corridor and the surrounding scenic views and qualities of the area.

**Mitigation Measure 13:** The project shall be constructed in compliance with the plans approved by the Coastsides Design Review Committee on May 14, 2009. Any changes or revisions to the approved plans shall be submitted to the Coastsides Design Review Officer for review and approval prior to implementation. Minor adjustments to the project may be approved by the Coastsides Design Review Officer if they are consistent with the intent of and are in substantial conformance with this approval. Alternatively, the Coastsides Design Review Officer may refer consideration of the revisions to the Coastsides Design Review Committee, with applicable fees to be paid.

## **ANSWERS TO QUESTIONS**

County File Number PLN 2008-00380

Page 16

**Mitigation Measure 14:** The applicant shall indicate on the plans submitted for a building permit, as stipulated by the Coastside Design Review Committee, that tree heights shall be maintained to grow no taller than the structure's roof.

**Mitigation Measure 15:** The applicant shall provide "finished floor elevation verification" to certify that the structure is actually constructed at the height shown on the submitted plans. The applicant shall have a licensed land surveyor or engineer establish a baseline elevation datum point in the vicinity of the construction site.

- a. The applicant shall maintain the datum point so that it will not be disturbed by the proposed construction activities until final approval of the building permit.
- b. This datum point and its elevation shall be shown on the submitted site plan. This datum point shall be used during construction to verify the elevation of the finished floors relative to the existing natural or to the grade of the site (finished grade).
- c. Prior to Planning approval of the building permit application, the applicant shall also have the licensed land surveyor or engineer indicate on the construction plans: (1) the natural grade elevations at the significant corners (at least four) of the footprint of the proposed structure on the submitted site plan, and (2) the elevations of proposed finished grades.
- d. In addition, (1) the natural grade elevations at the significant corners of the proposed structure, (2) the finished floor elevations, (3) the topmost elevation of the roof, and (4) garage slab elevation must be shown on the plan, elevations, and cross-section (if one is provided).
- e. Once the building is under construction, prior to the below floor framing inspection or the pouring of the concrete slab (as the case may be) for the lowest floor(s), the applicant shall provide to the Building Inspection Section a letter from a licensed land surveyor or engineer certifying that the lowest floor height--as constructed--is equal to the elevation specified for that floor in the approved plans. Similarly, certifications on the garage slab and the topmost elevation of the roof are required.
- f. If the actual floor height, garage slab, or roof height--as constructed--is different than the elevation specified in the plans, then the applicant shall cease all construction and no additional inspections shall be approved until a revised set of plans is submitted to and subsequently approved by both the Building Official and Community Development Director.

**ANSWERS TO QUESTIONS**

County File Number PLN 2008-00380

Page 17

**Mitigation Measure 16:** All new power and telephone utility lines from the street or nearest existing utility pole to the main dwelling and/or any other structure on the property shall be placed underground.

**Mitigation Measure 17:** The exterior color samples submitted to the Committee are recommended for approval. Color verification shall occur in the field after the applicant has applied the approved materials and colors but before a final inspection has been scheduled.

**Mitigation Measure 18:** The downward lighting fixture cut sheet submitted to the Coastsides Design Review Committee is approved. Verification shall occur in the field after installation but before a final inspection has been scheduled.

**Mitigation Measure 19:** The applicant shall ensure that during construction, noise, light, dust, odors and other interference with persons and property off the development site be minimized.

- b. **Will (or could) this project obstruct scenic views from existing residential areas, public lands, public water body, or roads?**

**Yes, Significant Unless Mitigated.** Refer to staff's response to Question 7(a) above.

- c. **Will (or could) this project involve the construction of buildings or structures in excess of three stories or 36 feet in height?**

**No Impact.** The proposed single-family residence does not exceed 36 feet in height.

- d. **Will (or could) this project directly or indirectly affect historical or archaeological resources on or near the site?**

**No Impact.** There are no known historical or archaeological resources on or near the site.

- e. **Will (or could) this project visually intrude into an area having natural scenic qualities?**

**Yes, Significant Unless Mitigated.** Refer to staff's response to Question 7(a) above.



***ANSWERS TO QUESTIONS***

County File Number PLN 2008-00380

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**ATTACHMENTS**

- A. Location Map
- B. Proposed Site Plan
- C. WRA Biological Resource Assessment – February 24, 2009
- D. WRA Report: Wetland Delineation at Proposed Hodge Residence, Magellan Avenue, Half Moon Bay – June 16, 2009

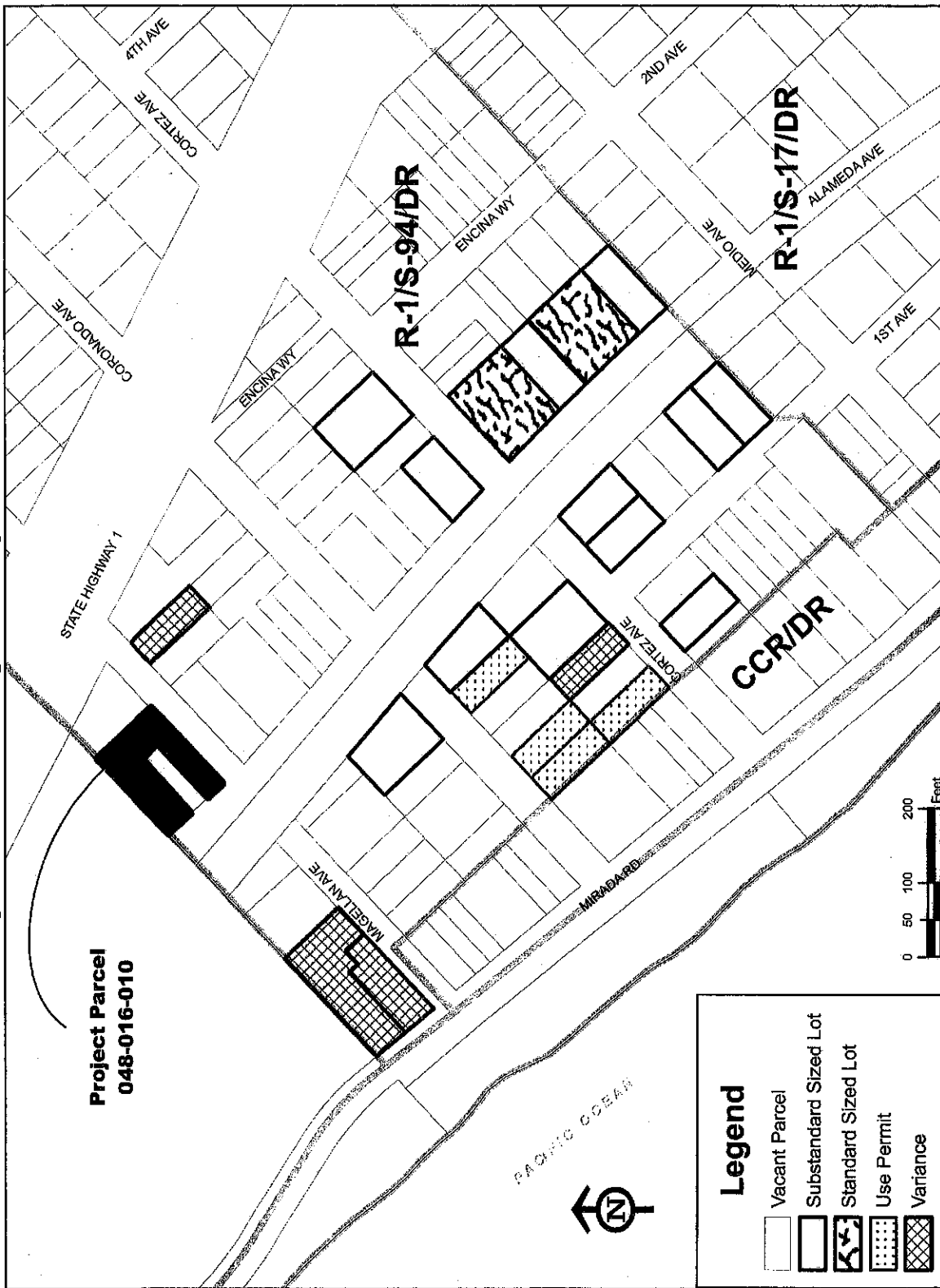
SS:cdn – SKSV0182\_WCH.DOC



County of San Mateo - Planning and Building Department

# ATTACHMENT H

# Map of Surrounding Developed Parcels



## Legend

- Vacant Parcel
- Substandard Sized Lot
- Standard Sized Lot
- Use Permit
- Variance

## San Mateo County Board of Supervisors Meeting

Owner/Applicant: **HODGE**

File Numbers: **PLN 2008-00380**

Attachment **H**



County of San Mateo - Planning and Building Department

# ATTACHMENT I



County of San Mateo - Planning and Building Department

# ATTACHMENT J

**Application for Appeal**

To the Planning Commission

• To the Board of Supervisors

County Government Center • 455 County Center, 2nd Floor  
Redwood City • CA • 94063 • Mail Drop PLN 122  
Phone: 650 • 363 • 4161 Fax: 650 • 363 • 4849Name David & Hi-Jin HodgeAddress 100 Coronado Avenue, Half Moon BayPhone W 6507264200Zip: 94019

Permit Numbers involved

PLN2008-0038097 Alameda AvenueI have read and understood the attached information  
regarding appeal process and alternatives☒ yes☐ no

I hereby appeal the decision of the:

- ☐ Staff or Planning Director  
☐ Zoning Hearing Officer  
☐ Design Review Committee  
☒ Planning Commission

Appellant's Signature:

Date:

4/14/11made on 0413 2011 to approve/deny  
the above-listed permit applications.

Planning staff will prepare a report based on your appeal. In order to facilitate this, your precise objections are needed. For example: Do you wish the decision reversed? If so, why? Do you object to certain conditions of approval? If so, then which conditions and why?

We disagree with the Planning Commission's findings and would like to appeal their decision  
refusing our request for side and front yard setbacks and to slightly reduce the buffer zone between  
our proposed home and the Riparian Willows. This is an usually shaped lot and we have very few  
options available to use. We have designed a small home that fits the criteria set by county and  
our need for a home and studio. It's a relatively small home that covers only 16% of a 10,800sqft lot.  
We feel the Planning Commission's denial is unfair and we also feel the length of this process has  
been excessive. We are headed into the 30th month since we applied for a planning permit and 16  
months since the application was deemed complete. We were continued 3 times by the planning  
commission prior to this recent denial.

We would like an opportunity to show our project to the Board of Supervisors and to move forward  
with the process of building our home. Thank you, David and Hi-Jin Hodge



County of San Mateo

**Planning & Building Department**

455 County Center, 2nd Floor  
Redwood City, California 94063  
650/363-4161 Fax: 650/363-4849

2 - SMC-10-106

Mail Drop PLN122

plngbldg@co.sanmateo.ca.us

www.co.sanmateo.ca.us/planning

DATE: 11/4/2011

**NOTICE OF FINAL LOCAL DECISION**

Pursuant to Section 6328.11.1(f) of the San Mateo County Zoning Regulations

**CERTIFIED MAIL**

California Coastal Commission  
Nr. Central Coast District Office  
Attn: Ruby Pap Coastal Planner  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

**RECEIVED**

**NOV 08 2011**

CALIFORNIA  
COASTAL COMMISSION

PLANNING CASE NO.: PLN2009-00358

APPLICANT: DAVID & HI-JIN HODGE

OWNER: DAVID & HI JIN HODGE & PARKS DEPARTMENT

PROJECT DESCRIPTION: 'After-the-fact' CDP to legalize illegal land clearing on property (this is intended to resolve VIO2008-00124 & is associated with PLN2008-00380 for a new SFD).

---

The above listed Coastal Development Permit was conditionally approved by the County of San Mateo on 11/1/2011. The County appeal period ended on N/A. Local review is now complete.

This permit **IS** appealable to the California Coastal Commission; please initiate the California Coastal Commission appeal period.

If you have any questions about this project, please contact D. Holbrook at 650-363-1837.

Sincerely,

D. Holbrook, Project Planner

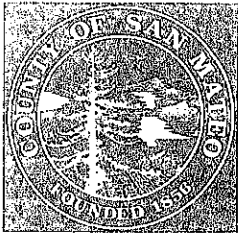
A-2-SMC-11-040/041

Exhibit 4

Page 1 of 98







County of San Mateo

## Planning & Building Department

455 County Center, 2nd Floor  
Redwood City, California 94063  
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122  
plngbidg@co.sanmateo.ca.us  
www.co.sanmateo.ca.us/planning

November 3, 2011

David Hodge  
100 Coronado Avenue  
Halfmoon Bay, CA 94019

PROJECT FILE

Dear Mr. Hodge:

Subject: **LETTER OF DECISION**  
File Number: PLN2009-00358  
Location: Corner of Magellan and Alameda Avenues  
APNs: 048-016-010 and 048-016-020

On November 1, 2011, the San Mateo County Board of Supervisors considered at a public hearing an appeal of the Planning Commission's decision to approve the Hodge and County Parks project, consisting of: (1) an "After-the-Fact" Coastal Development Permit, and (2) certification of a Mitigated Negative Declaration, to legalize land clearing on two parcels, located at the corner of Magellan and Alameda Avenues in the unincorporated Miramar area of San Mateo County. This project is appealable to the California Coastal Commission.


Based on information provided by staff and evidence presented at the hearing, the Board of Supervisors voted 5-0 and denied the appeal and upheld the decision of the Planning Commission to approval the "After-the-Fact" Coastal Development Permit, County File Number PLN 2009-00358; and certified the Mitigated Negative Declaration, subject to the findings and conditions of approval included in Attachment A.

A Board of Supervisors' approval is appealable to the California Coastal Commission. Any aggrieved person who has exhausted local appeals may appeal this decision to the California Coastal Commission within 10 working days following the Coastal Commission's receipt of the Board's decision. Please contact the Coastal Commission's North Central Coast District Office at 415/904-5260 for further information concerning the Commission's appeal process. A project is considered approved when these appeal periods have expired and no appeals have been filed.

David Hodge  
November 3, 2011  
Page 2

If you have questions regarding this matter, please contact Dave Holbrook, Senior Planner, at 650/363-1837.

Sincerely,

A handwritten signature in cursive script, reading "Rosario Fernandez". The signature is written in dark ink and is positioned above the printed name and title.

Rosario Fernandez  
Planning Commission Secretary  
bosdec1101V\_rf (Hodge after)

Enclosure: San Mateo County Survey - An online version of our Customer Survey is also available at: <http://www.co.sanmateo.ca.us/planning/survey>

cc: Christine Usher  
Evy Smith  
Lennie Roberts  
Bill Kehoe  
David Hodge  
Kathryn Slater-Carter

COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT

**FINDINGS AND CONDITIONS OF APPROVAL**

Permit File Number: PLN 2009-00358

Board Meeting Date: November 1, 2011

Prepared By: Dave Holbrook, Senior  
Planner

Adopted By: Board of Supervisors

**FINDINGS:**

Regarding the Negative Declaration, Found:

1. That the Negative Declaration is complete, correct and adequate, and prepared in accordance with the California Environmental Quality Act and applicable State and County guidelines. The public review period for this document was January 21, 2010 to February 10, 2010.
2. That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the project will have a significant effect on the environment. The Initial Study/Negative Declaration does not identify any significant or cumulative impacts associated with this project.
3. That the Negative Declaration reflects the independent judgment of San Mateo County. The Negative Declaration was prepared by the project planner.
4. That the mitigation measures in the Mitigated Negative Declaration and agreed to by the owner and placed as conditions on the project have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with the California Public Resources Code Section 21081.6.

Regarding the Coastal Development Permit, Found:

5. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County LCP. Project plans and materials have been reviewed against the application requirements, staff has completed an LCP Policy Checklist, and the project has been conditioned in accordance with the Sensitive Habitats and Visual Resources Components of the LCP.

6. That the project conforms to the specific findings required by the policies of the LCP with regard to the Sensitive Habitats and Visual Resources Components. Specifically, the project conforms with the protection of sensitive habitats because no special status plants, animals, or habitats were removed. Compliance with LCP requirements for buffer zones and the minimization of vegetative cover removal will be achieved through the implementation of the restoration plan required by Condition No. 4.

**CONDITIONS OF APPROVAL:**  
**Current Planning Section**

1. The approval applies only to the proposal as described in this report and materials submitted for review and approval by the Planning Commission on March 23, 2011 and subsequently by the Board of Supervisors on November 1, 2011. Any changes or revisions to the approved plans shall be submitted for review by the Community Development Director to determine if they are consistent with the intent of and in substantial conformance with this approval.
2. This permit shall be valid for one (1) year from the date of final approval by which time revegetation shall be initiated. Any extension of this permit shall require submittal of an application for permit extension and payment of applicable permit extension fees sixty (60) days prior to expiration.
3. Additional land clearing and/or vegetation removal shall not be allowed as part of this approval. Any additional or future clearing of either of the parcels must be addressed by a separate application submitted prior to any such land clearing or vegetation removal.
4. The applicant shall submit a revegetation plan within 60 days of this application's final approval for review and approval by the Community Development Director. The revegetation plan shall be prepared by the applicant's biologist and include the recommendations indicated in Section 5.0 (Conclusions and Recommendations) of the December 2, 2010 report submitted by WRA Environmental Consultants. The plan shall identify the existing riparian dripline and 50-foot required buffer area, and specify the types, density, general location and size of the plant species recommended for the buffer area and outside of the buffer area, in accordance with the biologist's recommendations, LCP Policy 7.13 and State water efficiency standards. The plan shall cover the entirety of both parcels (048-016-010 and 048-016-020). Within 60 days of the Community Development Director's approval, or at the earliest and best time to plant during the closest upcoming fall or growing season, as determined by the applicant's biologist (but in no case later than this year, 2011), the aforementioned plan shall be implemented. If the revegetation plan is proposed to be implemented prior to the upcoming fall or growing season, the applicant shall submit a plan to ensure that all plantings are adequately irrigated. Any subsequent approvals of development related to this

project, including PLN 2008-00380 for a new single-family residence on Parcel 1 and/or PLN 2010-00356 for a new restroom facility on Parcel 2, shall BE DEEMED TO INCORPORATE AND INCLUDE this requirement for a revegetation plan of the project site, and COMPLIANCE WITH CONDITIONS OF SUBSEQUENT APPROVALS INCORPORATING THIS REQUIREMENT shall constitute compliance with this condition.

5. The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementations and maturation of the landscaping/ revegetation plan, payable upon confirmation that the plan has been implemented. The COD shall be held for a period of two (2) years after the Planning and Building Department has confirmed that the approved plan has been installed. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.
6. No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.
7. The only permitted uses within the buffer zone for the riparian area on the properties shall be those allowed by Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP), subject to CDP approval. All other uses shall be prohibited.
8. Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activities shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.
9. The applicant shall submit the following fees to the Current Planning Section: Within four (4) working days of the final approval date of this permit, the applicant shall pay an environmental filing fee of \$2,044.00 (fee effective February 1, 2011), as required under Fish and Game Code Section 711.4(d), plus a \$50.00 recording fee. The applicant shall submit a check in the amount of \$2,094.00, made payable to San Mateo County, to the project planner to file with the Notice of Determination.
10. The applicant shall pay the cost of all staff time associated with this after the fact permit, which is determined to be for the time required above and beyond the normal processing time for a coastal development permit, as calculated to the satisfaction of the Community Development Director. Such cost shall be paid within 60 days of the receipt of this decision letter. The applicant shall contact Dave Holbrook, Senior Planner for the specific amount due.

Department of Public Works

11. No proposed construction work within the County right-of-way shall begin until County requirements for the issuance of an encroachment permit, including review of the plans, have been met and an encroachment permit issued.

COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT

**FINDINGS AND CONDITIONS OF APPROVAL**

Permit File Number: PLN 2009-00358

Board Meeting Date: November 1, 2011

Prepared By: Dave Holbrook, Senior  
Planner

Adopted By: Board of Supervisors

**FINDINGS:**

**Regarding the Negative Declaration, Found:**

1. That the Negative Declaration is complete, correct and adequate, and prepared in accordance with the California Environmental Quality Act and applicable State and County guidelines. The public review period for this document was January 21, 2010 to February 10, 2010.
2. That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the project will have a significant effect on the environment. The Initial Study/Negative Declaration does not identify any significant or cumulative impacts associated with this project.
3. That the Negative Declaration reflects the independent judgment of San Mateo County. The Negative Declaration was prepared by the project planner.
4. That the mitigation measures in the Mitigated Negative Declaration and agreed to by the owner and placed as conditions on the project have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with the California Public Resources Code Section 21081.6.

**Regarding the Coastal Development Permit, Found:**

5. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County LCP. Project plans and materials have been reviewed against the application requirements, staff has completed an LCP Policy Checklist, and the project has been conditioned in accordance with the Sensitive Habitats and Visual Resources Components of the LCP.

6. That the project conforms to the specific findings required by the policies of the LCP with regard to the Sensitive Habitats and Visual Resources Components. Specifically, the project conforms with the protection of sensitive habitats because no special status plants, animals, or habitats were removed. Compliance with LCP requirements for buffer zones and the minimization of vegetative cover removal will be achieved through the implementation of the restoration plan required by Condition No. 4.

**CONDITIONS OF APPROVAL:**

**Current Planning Section**

1. The approval applies only to the proposal as described in this report and materials submitted for review and approval by the Planning Commission on March 23, 2011 and subsequently by the Board of Supervisors on November 1, 2011. Any changes or revisions to the approved plans shall be submitted for review by the Community Development Director to determine if they are consistent with the intent of and in substantial conformance with this approval.
2. This permit shall be valid for one (1) year from the date of final approval by which time revegetation shall be initiated. Any extension of this permit shall require submittal of an application for permit extension and payment of applicable permit extension fees sixty (60) days prior to expiration.
3. Additional land clearing and/or vegetation removal shall not be allowed as part of this approval. Any additional or future clearing of either of the parcels must be addressed by a separate application submitted prior to any such land clearing or vegetation removal.
4. The applicant shall submit a revegetation plan within 60 days of this application's final approval for review and approval by the Community Development Director. The revegetation plan shall be prepared by the applicant's biologist and include the recommendations indicated in Section 5.0 (Conclusions and Recommendations) of the December 2, 2010 report submitted by WRA Environmental Consultants. The plan shall identify the existing riparian dripline and 50-foot required buffer area, and specify the types, density, general location and size of the plant species recommended for the buffer area and outside of the buffer area, in accordance with the biologist's recommendations, LCP Policy 7.13 and State water efficiency standards. The plan shall cover the entirety of both parcels (048-016-010 and 048-016-020). Within 60 days of the Community Development Director's approval, or at the earliest and best time to plant during the closest upcoming fall or growing season, as determined by the applicant's biologist (but in no case later than this year, 2011), the aforementioned plan shall be implemented. If the revegetation plan is proposed to be implemented prior to the upcoming fall or growing season, the applicant shall submit a plan to ensure that all plantings are adequately irrigated. Any subsequent approvals of development related to this



project, including PLN 2008-00380 for a new single-family residence on Parcel 1 and/or PLN 2010-00356 for a new restroom facility on Parcel 2, shall BE DEEMED TO INCORPORATE AND INCLUDE this requirement for a revegetation plan of the project site, and COMPLIANCE WITH CONDITIONS OF SUBSEQUENT APPROVALS INCORPORATING THIS REQUIREMENT shall constitute compliance with this condition.

5. The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementations and maturation of the landscaping/ revegetation plan, payable upon confirmation that the plan has been implemented. The COD shall be held for a period of two (2) years after the Planning and Building Department has confirmed that the approved plan has been installed. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.
6. No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.
7. The only permitted uses within the buffer zone for the riparian area on the properties shall be those allowed by Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP), subject to CDP approval. All other uses shall be prohibited.
8. Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activities shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.
9. The applicant shall submit the following fees to the Current Planning Section: Within four (4) working days of the final approval date of this permit, the applicant shall pay an environmental filing fee of \$2,044.00 (fee effective February 1, 2011), as required under Fish and Game Code Section 711.4(d), plus a \$50.00 recording fee. The applicant shall submit a check in the amount of \$2,094.00, made payable to San Mateo County, to the project planner to file with the Notice of Determination.
10. The applicant shall pay the cost of all staff time associated with this after the fact permit, which is determined to be for the time required above and beyond the normal processing time for a coastal development permit, as calculated to the satisfaction of the Community Development Director. Such cost shall be paid within 60 days of the receipt of this decision letter. The applicant shall contact Dave Holbrook, Senior Planner for the specific amount due.

Department of Public Works

11. No proposed construction work within the County right-of-way shall begin until County requirements for the issuance of an encroachment permit, including review of the plans, have been met and an encroachment permit issued.



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
**Planning and Building Department**



**PROJECT FILE**

**DATE:** October 17, 2011  
**BOARD MEETING DATE:** November 1, 2011  
**SPECIAL NOTICE/HEARING:** 10 days; within 300 feet  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** Jim Eggemeyer, Community Development Director

**SUBJECT:** **EXECUTIVE SUMMARY:** Public hearing to consider an appeal of the Planning Commission's decision to approve the Hodge and County Parks project, consisting of: (1) an "After-the-Fact" Coastal Development Permit, and (2) certification of a Mitigated Negative Declaration, to legalize land clearing on two parcels, located at the corner of Magellan and Alameda Avenues in the unincorporated Miramar area of San Mateo County. This project is appealable to the California Coastal Commission.

**RECOMMENDATION:**

1. Deny the appeal and uphold the decision of the Planning Commission to approve the "After-the-Fact" Coastal Development Permit, County File Number PLN 2009-00358; and
2. Certify the Mitigated Negative Declaration, subject to the findings and conditions of approval included in Attachment A.

**BACKGROUND:**

The applicants are requesting an "After-the-Fact" Coastal Development Permit (CDP) to address unpermitted land clearing and vegetation removal on two undeveloped parcels in Miramar (triggering two violation cases). The parcels are under separate ownership. The larger parcel, whose owner did the clearing, is proposed for development with a single-family residence (PLN 2008-00380). The smaller parcel is comprised of a single lot, owned by the San Mateo County Department of Parks (Parks Department) and is also proposed for development with a public restroom facility (not yet considered at a public hearing). The project site was also used to store equipment and soil associated with the adjacent Parks Department's Mirada Surf Trail Project, under an agreement between the applicant and a contractor working on the project. The Parks Department did not authorize this agreement and required all stored equipment and soil to be removed from the project site.

**DISCUSSION:**

On February 23, 2011, the Planning Commission approved the applicant's request for an "After-the-Fact" Coastal Development Permit (CDP) to legalize unpermitted land clearing and vegetation removal that occurred on two properties under separate ownership. The Planning Commission considered the subject proposal at several public hearings prior to this decision. Previously, on May 20, 2010, the Zoning Hearing Officer had considered the project, but after several hearings did not render a decision due to its complicated and contested history.

In previous hearings, the Planning Commission continued the project, requesting additional information from the project biologist, including a current biological assessment of the project site to determine the extent, if any, that sensitive habitats were affected by the infraction and the appropriate restoration measures for the project site. Based on current findings, the project biologist concluded that the unpermitted activities did not affect an existing willow riparian habitat that encroaches onto the northeast portion of the project site and that there were no other sensitive habitats located within the project site prior to the violation nor do any exist currently. The Planning Commission also requested that the Mitigated Negative Declaration, prepared for this project and an associated project for a new single-family residence on the larger parcel, be separated into two separate applications. While the "After-the-Fact" CDP was approved by the Planning Commission, the CDP for the proposed house was denied.

An appeal of the Planning Commission's approval was filed on April 6, 2011, with the appellant stating the following issues: (1) the findings of the Negative Declaration are erroneous and based on inaccurate biological data; (2) a Biological Impact Form, pursuant to LCP Policy 7.5, was not completed for the project site prior to the land clearing and vegetation removal; (3) the applicant purposefully cleared the lot without requesting a permit because he was aware that such a permit would be denied since both a County parcel tag and a disclosure at the time of sale indicated that the project site was not buildable due to sensitive habitats; and (4) a landscaping plan does not mitigate the removal of riparian willows and the destruction of wetlands.

Staff has reviewed and addressed each issue in the appeal. Staff's review and analysis of the project and the appeal, together with the Planning Commission's previous and unanimous approval of the project, supports the findings that the project complies with all applicable General Plan, Zoning, LCP regulations and policies, and CEQA.

County Counsel has reviewed and approved the materials as to form and content.

The approval of this project contributes to the 2025 Shared Vision outcome of a Livable Community by allowing the owners to restore the project site to a reasonable natural state previous to its initial clearing, furthering applicable LCP policies.

**FISCAL IMPACT:**

Nominal costs to the Planning and Building Department for monitoring of the restoration work.



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
**Planning and Building Department**



**DATE:** October 17, 2011  
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**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** Jim Eggemeyer, Community Development Director

**SUBJECT:** Public hearing to consider an appeal of the Planning Commission's decision to approve the Hodge and County Parks project, consisting of: (1) an "After-the-Fact" Coastal Development Permit, and (2) certification of a Mitigated Negative Declaration, to legalize land clearing on two parcels, located at the corner of Magellan and Alameda Avenues in the unincorporated Miramar area of San Mateo County. This project is appealable to the California Coastal Commission.

County File Number: PLN 2009-00358 (Hodge/San Mateo County Department of Parks)

**RECOMMENDATION:**

1. Deny the appeal and uphold the decision of the Planning Commission to approve the "After-the-Fact" Coastal Development Permit, County File Number PLN 2009-00358; and
2. Certify the Mitigated Negative Declaration, subject to the findings and conditions of approval included in Attachment A.

**BACKGROUND:**

Proposal: The applicants are requesting an "After-the-Fact" Coastal Development Permit (CDP) to address unpermitted land clearing and vegetation removal on two undeveloped parcels under separate ownership in Miramar (triggering violation cases VIO 2008-00124 and VIO 2008-00125). The large parcel, owned by David and Hi-Jin Hodge, is proposed for development with a single-family residence (PLN 2008-00380). The smaller parcel is comprised of a single lot, currently owned by the San Mateo County Department of Parks (Parks Department) and is also proposed for development with a public restroom facility to support their Mirada Surf property (PLN 2010-00356 pending; not yet taken to public hearing). The project site was also used to store equipment and soil associated with the adjacent Parks Department's Mirada Surf Trail

Project, under an agreement made with the applicant and a contractor working on the project. The Parks Department did not authorize this agreement and required all stored equipment and soil to be removed from the project site.

Planning Commission Action: Approved on February 23, 2011

Zoning Hearing Officer Action: Referred to Planning Commission on May 20, 2010

Report Prepared By: Dave Holbrook, Senior Planner, Telephone 650/363-1837

Appellant: Evy Smith

Applicants: David and Hi-Jin Hodge

Owners: David and Hi-Jin Hodge and San Mateo County Department of Parks

Location: Corner of Magellan and Alameda Avenues, Miramar

APNs: 048-016-010 and 048-016-020

Parcel Sizes: APN 048-016-010 (Hodge Property - Parcel 1) – 10,802 sq. ft.  
APN 048-016-020 (Parks Department Property – Parcel 2) - 3,200 sq. ft.

Existing Zoning: R-1/S-94/DR/CD (Single-Family Residential/10,000 sq. ft. Minimum Lot Size/Design Review/Coastal Development)

General Plan Designation: Medium Low Density Residential (2.1-6.0 dwelling units/acre)

Parcel Legality: A Certificate of Compliance, Type A, has been recorded for Parcel 1 on January 20, 2010, Document No. 2010-005909. The legal status of Parcel 2 (County Parks) will need to be resolved prior to any proposed development on APN 048-016-020.

Existing Land Use: Vacant

Water Supply: Coastside County Water District

Sewage Disposal: Granada Sanitary District

Flood Zone: Zone C (Areas of minimal flooding); Community Panel No. 060311 0225C, effective date August 5, 1986.

Environmental Evaluation: The Initial Study and Mitigated Negative Declaration were issued with a public review period from January 21, 2010 to February 10, 2010. Mitigation measures have been included as recommended conditions of approval in Attachment A. Comments received in response to the Mitigated Negative Declaration are addressed in Section E.1 of this staff report.

Setting: The two parcels are located at the corner of Magellan and Alameda Avenues, west of Cabrillo Highway, within the designated Cabrillo Highway County Scenic Corridor. Parcel 1 is 10,802 sq. ft. in size and in the shape of a "U." Parcel 2 is 3,200 sq. ft. in size and is located in the middle part of Parcel 1's "U" (see Attachment B). Adjacent and within the County-owned land known as the Mirada Surf property is an existing perennial creek that is surrounded by willow riparian habitat, which encroaches into the northeast corner of the project site. The area to the south of the project site is zoned for single-family residential use; some parcels are developed, while others are currently vacant.

Chronology:

<u>Date</u>	<u>Action</u>
→ September 3, 2008	- Violation complaint received, and violation cases opened by Code Compliance.
September 10, 2008	- Code Compliance conducted field inspection and sent Notice of Violation to property owners.
→ November 4, 2008	- Original Variance, CDP, Coastsides Design Review and "After-the-Fact" CDP application submitted (PLN 2008-00380).
→ 1/24/09 April 9, 2009	- Initial bio report completed - Coastsides Design Review Committee (CDRC) reviewed and continued the item to its May hearing.
May 14, 2009	- The CDRC unanimously recommended approval.
June 16, 2009	- Second violation complaint received by staff. (for fire suppression)
June 2009 - September 2009	- Add'l Biological documents and reports submitted for review.
November 10, 2009	- Peninsula Open Space Trust (POST) purchased Parcel 2.
December 22, 2009	- "After-the-Fact" CDP application separated from application for new residence.
January 4, 2010	- Application deemed complete.
January 20, 2010	- Certificate of Compliance (CoC) Type A recorded to verify the legality of Parcel 1.
January 21, 2010 - February 10, 2010	- Initial Study and Mitigated Negative Declaration circulated for review and comment. Comments received from public.

- April 1, 2010 - Zoning Hearing Officer considered the project and continued it to a date uncertain.
- May 4, 2010 - POST dedicated Parcel 2 to the Parks Department.
- May 6, 2010 - Additional biological information submitted (see Attachment J).
- May 20, 2010 - Zoning Hearing Officer considered the project and referred it to the Planning Commission.
- June 2010 - Applicant requested that Planning Commission hearing be pushed to the fall, upon return from traveling abroad.
- November 10, 2010 - Planning Commission considered the project and continued it to a date uncertain.
- December 2, 2010 - Comprehensive and current biological study submitted (Attachment J).
- February 23, 2011 - Planning Commission considered the project and continued it to its March 23, 2011 hearing.
- March 2011 - Initial Study and Mitigated Negative Declaration separated for the two projects.
- March 23, 2011 - Planning Commission considered the project and unanimously approved the project.
- April 6, 2011 - Appeal application submitted by appellant.
- November 1, 2011 - Board of Supervisors hearing.

## **DISCUSSION:**

### **A. PREVIOUS ACTIONS**

The project was first considered by the Zoning Hearing Officer (ZHO) on April 1, 2010 and continued to allow time for additional review and clarification of several items that arose at the hearing, including the validity of a Certificate of Compliance (CoC) Type A recorded for the Hodge parcel, the role of the Parks Department in storing equipment and dirt associated with the Mirada Surf Trail Project on the project site, and the accuracy of the biological reports submitted for the project. Staff presented their review of the additional information gathered to the ZHO on May 20, 2010. Although the validity of the recorded CoC Type A was confirmed, and the role of the Parks Department in the violation was clarified, the ZHO referred the project to the Planning Commission, due to contested issues raised by some



public members. The public was unsatisfied with the findings of the submitted biological documents, and there remained questions regarding the extent of damage, if any, caused by the unpermitted land clearing and vegetation removal and the appropriate remedies necessary to restore the project site.

The Planning Commission first considered the project on November 10, 2010 and continued the item to a date uncertain, requesting that the project biologist conduct a current biological assessment of the project site to: (a) determine the previous extent of wetland and riparian conditions within the project site, and (b) provide recommendations to restore the site to its original condition based on the most recent findings. Additionally, the Commission requested that the two property owners (Mr. Hodge and the Parks Department) work together to review the two development proposals for their respective properties—a new single-family residence on Parcel 1 and a restroom facility to serve the Mirada Surf property on Parcel 2—and discuss options to create a comprehensive plan for the project site that better integrated the incompatible uses.

The project was taken back to the Planning Commission on February 23, 2011 for consideration. The Planning Commission was satisfied with the findings and recommended restoration measures included in the recent biological report, as well as the attempt made by the property owners to create a comprehensive plan. (The two parties could not agree on an alternative plan that incorporated either a lot line adjustment or land swap.) However, the Planning Commission continued the project to March 23, 2011, requesting that the Initial Study and Mitigated Negative Declaration prepared for this project and the associated project for a new single-family residence on Parcel 1 (PLN 2008-00380) be separated into two documents, one Initial Study and Mitigated Negative Declaration for each project. On March 23, 2011, the Planning Commission unanimously approved the project.

#### B. KEY ISSUES OF THE APPEAL

The following are points and issues raised by the appellant, Evy Smith, as part of her appeal application (Attachment D). In addition, points and issues raised and submitted by the appellant at previous public hearings are included in this section. Several of the submitted materials, including the appeal application, address similar issues and have been aggregated and summarized by staff.\*

Each issue (*in italicized text*) is followed with staff's response.

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\*Throughout Sections B and C of this report, there are references to the project site's biological resources and the applicant's submitted biological reports. Aside from the December 2, 2010 report (included as Attachment E), the other reports (as entitled in Attachment J) are omitted and, instead, located under the Planning and Building's website, under "Pending Projects" (10/18/11 BOS Hearing – Hodge Bio Reports).

## Appeal Application Supplemental Statement

1. *The Mitigated Negative Declaration erroneously concludes, "that, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public meeting, **there is no substantial evidence that the project will have a significant effect on the environment.**" The Negative Declaration for this project is based on studies performed on behalf of the applicant that are erroneous and ignores the basic facts of the case.*

Staff's Response: The findings of the Negative Declaration for this project were made based on information submitted by the project biologist, who is certified and qualified to conduct biological assessments of the project site and infer accurate findings. Based on the several field evaluations and outside research completed by the project biologist, it has been determined that the unpermitted land clearing and vegetation removal on the project site did not have a significant effect on the environment. It is common practice for staff to rely on information obtained from qualified professionals to determine the impact of a project on the environment, and there is no reason in this particular case for staff to question the findings made by the project biologist.

2. *The applicant did not perform the Biologic Impact Form for the project site, as mandated by the County's Local Coastal Program (LCP) Policy 7.5, until after the site had been cleared twice.*

Staff's Response: A biological assessment of the project site prior to the unpermitted land clearing and vegetation removal could not be obtained because the infraction was done without the benefit of a permit. Therefore, as part of the applicant's request to remedy the violation, the requested biological documents required the project biologist to determine the most accurate information regarding the state of the project site prior to the violation. The project biologist has completed field studies and surveys of the project site to the best of their ability and has given a professional interpretation of the previous and current conditions of the site.

3. *Both a County parcel tag and a disclosure during the transfer of Parcel 1 indicate that the site is not buildable due to existing riparian and wetlands habitats on the parcel. The property owner was fully aware of the above, and purposely cleared the lot without requesting a permit because such a permit would have been denied by the County Planning Department. This is in clear violation of numerous LCP policies regarding protected habitats.*

Staff's Response: The County parcel tag for Parcel 1 indicated that the site may not be buildable due to findings made by a 2005 biological report completed for the adjacent Parks Department's Mirada Surf Trail Project. That report indicated that a seasonal wetland was in the vicinity of the project site; however, the main focus of the 2005 biological study was the Mirada Surf property, and the assessment was not specific to the project site.

Staff cannot assume that an application to conduct land clearing on the project site would have been denied nor the intent, if any, of the applicant in the actions that occurred. It is the burden of any applicant to present evidence regarding the conditions of a site in determining whether sensitive habitats exist on a property when development is proposed, including current biological documents.

As discussed above, the applicant submitted several biological reports for the project, including a wetland delineation study, which have concluded that the unpermitted actions did not have a significant effect on the environment and that there is no wetland on the project site. The applicant has demonstrated that the unpermitted land clearing caused no adverse impacts to sensitive habitats.

4. *A landscaping plan does not mitigate the removal of protected riparian willows and the destruction of seasonal wetlands.*

Staff's Response: The project biologist has concluded that the violation did not include the removal of any riparian willows or the destruction of a wetland. Part of the field survey of the project site included an examination of the riparian dripline and adjacent cleared area. The project biologist did not find evidence of willow stumps, willow stump-sprouting, and/or woody debris that would indicate the removal of any willows. The project biologist also conducted a wetland delineation study of the project site and determined that the area does not meet the criteria of a "wetland" under either the Army Corps of Engineers (ACOE) or the County's LCP definitions. As no areas of sensitive habitat were removed or destroyed, a restoration/landscaping plan of the project site is sufficient to mitigate for the native vegetation that was removed during the unpermitted land clearing and vegetation removal.

#### Points and Issues Raised at Previous Public Hearings

5. *The applicant is well aware of the demands of building on the Coast in unincorporated San Mateo County and of his responsibilities of due diligence. The applicant has developed other property in the area and was made aware of the sensitive habitats on the project site during the purchasing of the parcel. The applicant blatantly removed sensitive habitat from the project site without requesting a permit because he was aware that the County would not allow development on such habitat. Even after the applicant was notified by the County that the land clearing was a violation, he cleared the project site a second time, with no repercussions. Granting an "After-the-Fact" CDP for the illegal land clearing is only "rewarding" the applicant for committing actions he knew to be illegal in the first place. The applicant should be required to restore the project site to its pre-clearing state, removing the imported fill and restoring the riparian willow and wetland vegetation that was destroyed, and fined for the time and effort County staff has spent on this permit.*

Staff's Response: The applicant has stated that he was not aware that a permit was required for the land clearing and vegetation removal that occurred on his property. Once the applicant was notified that a violation had been committed, steps to remedy the violation were taken, in the form of an application for an "After-the-Fact" CDP, which is the subject of this request. An "after-the-fact" permit is not automatically approved. Staff reviews the proposal as a new request and determines whether the project complies with County Regulations. If staff is unable to make the required findings necessary to approve a permit, the permit is denied.

The applicant has also stated that the second clearing that occurred in June 2009 was in response to a letter for weed abatement received from the Coast-side County Fire Protection District, and that he did not view minor mowing to comply with fire requirements as a further violation. Staff did inform the applicant to cease and desist from any additional land clearing or vegetation removal during the processing of this permit; thus, an additional violation case was not opened. The applicant was also advised that any future land clearing and/or vegetation removal would require a permit prior to the start of such activities.

Based on findings made by the project biologist, there was no wetland on the project site at the time of the infraction, and the unpermitted land clearing and vegetation removal did not include the removal of any riparian willows. The site was primarily dominated by blackberry bushes and ruderal herbaceous grassland, both of which are to be included in the required restoration plan staff has included as a recommended condition of approval. In addition, staff has also included a recommended condition of approval requiring that the applicant pay fees in an amount to be determined by the Community Development Director to cover the time, in excess of the standard process time, staff has spent processing this permit.

6. *The biological documents submitted from the project biologist are inaccurate and do not correlate with the findings from a 2005 biological study conducted in association with a County Parks Department's project for the adjacent County-owned land known as the Mirada Surf property. The 2005 study indicated riparian and wetland habitat on the project site. The recent studies for this project were done AFTER land clearing had already occurred, and their findings are tainted because the site was disturbed.*

Staff's Response: When development is proposed, staff requires an applicant to submit a current biological study as part of the application and typically does not rely on older biological assessments, especially those that were not completed specifically for the project site. As mentioned above, the 2005 biological report prepared for the adjacent Mirada Surf Trail Project was not specific to the project site for this particular request.

The reports prepared by the project biologist, in accordance with LCP Policy 7.5, reflect the current environmental conditions of the project site, as well as, to the best of their ability, the previous conditions of the project site. Again, based on field studies and surveys conducted, the project biologist has determined that the existing riparian habitat was not affected by the unpermitted activities and that there is no wetland currently on the project site nor was there at the time the infraction occurred. Even though the project site was disturbed, the project biologist ascertains that soil studies conducted on-site to determine whether there were any hydric soils in the area were taken below the top layers of any imported or disturbed soil. Therefore, any land disturbance on the project site did not affect the overall conditions of the site and would not have caused the destruction of a "wetland" in the area.

7. *A biological report prepared for Parcel 2 in August 2010 concludes that, although the presence of a wetland on the project site is not found AFTER two illegal clearings and added fill per the stricter LCP policy, the project site DOES pass the Army Corps of Engineers' wetlands dominance test AFTER the clearing.*

Staff's Response: The US Army Corps of Engineers (ACOE) has specific diagnostic environmental characteristics to determine whether an area is considered a "wetland." This requires the presence of hydrophytic vegetation, hydric soils and hydrology. In order to make a positive wetland determination, the ACOE requires that "evidence of a minimum of one positive wetland indicator from EACH parameter (hydrology, soil, and vegetation) must be found." While it has been determined that the project site meets the hydrophytic vegetation dominance test under ACOE regulations, there are no indications of hydric soils or hydrology on either parcel based on a wetland delineation study prepared for the project. Therefore, the project site does not contain a "wetland" as defined by the ACOE.

8. *It is a physical impossibility that the "unpermitted land clearing did not involve the removal of any riparian or sensitive habitats." Google satellite images from 2007 show that Parcel 1 is covered with willows. Additionally, willows were observed on the site prior to the land clearing and vegetation removal that occurred.*

Staff's Response: While aerial photos can be suggestive of vegetative types on the ground, they do not supersede a qualified biologist's "on-site" investigative conclusions. The project biologist has concluded that the existing willow riparian habitat was not affected by the unpermitted land clearing and vegetation removal and that no willows were removed. As the project biologist is certified and qualified, staff has no reason to infer that the submitted reports are erroneous.

9. *The most recent report completed by the project biologist (December 2, 2010) in response to a request from the Planning Commission on November 10, 2010, is inaccurate, unclear and did not address the Commission's specific request to provide a current survey of the project site and recommendations for appropriate restoration of the site. The report did not include any Google photographs or other photographic evidence to support the findings made. In addition, the report does not include a review of any biological documents written PRIOR to the land clearing, only those completed AFTER the clearing.*

Staff's Response: The December 2, 2010 report (Attachment E) prepared for the Planning Commission was reviewed by the Commission for its February 23, 2010 hearing. The Commission was satisfied with the updated report, as they did not express any issues or concerns with the document nor request any additional biological information from the project biologist at the hearing. The Commission agreed with the findings made by the project biologist that the existing willow riparian habitat was not affected and that there was not a wetland on the property at the time of the infraction. The restoration recommendations included in the current report were also approved by the Commission.

10. *The applicant's desire to work with the County Parks Department and discuss potential lot line adjustment options so that the proposed residence for Parcel 1 would be located on Parcel 2 instead, proves that the applicant has no intention of taking responsibility for the illegal land clearing that destroyed environmentally protected habitats. The applicant not only wants to be given clemency for the illegal land clearing but also wants a better land situation than he purchased. The intent of dedicating Parcel 2 to the Parks Department was for "its utility as a site for restroom facilities for the public's use," as specified in Resolution No. 070733 adopted by the Board of Supervisors in April 2010. Therefore, a lot line adjustment between the two property owners should not be an option considered.*

Staff's Response: As previously discussed, at its December 10, 2010 public hearing, the Planning Commission requested that the applicant work with the Parks Department (owner of Parcel 2) to review their respective development proposals (a new residence on Parcel 1 and a new restroom facility on Parcel 2) to possibly collaborate on a better plan for the project site. Therefore, at the request of the Planning Commission, the applicant discussed several options with the Parks Department, including a potential lot line adjustment. However, an agreement could not be made that satisfied both property owners.

11. *Staff's response to public comments are inaccurate, dismissive and lack due diligence on their part. Staff is not seeking an accurate representation of the situation to best represent the interests of San Mateo County and its residents. Rather, staff continues to defend the actions of the applicant and*

*dismiss any documentation submitted by the community that conflicts with the applicant's statements.*

**Staff's Response:** Staff has reviewed and analyzed this project based on all the information provided and researched and has found that the project complies with all applicable County regulations and policies. While staff acknowledges the discrepancies between a previous biological study done for the County Parks Department and the several studies conducted by the project biologist for this project, the previous study was not specific to the project site, whereas, the current reports submitted by the applicant are. As previously mentioned, staff relies on the information obtained by private consultants with the proper credentials. LCP Policy 7.5 places the burden on the applicant to obtain qualified professionals to demonstrate impacts on sensitive habitats, if any, which the applicant has done.

#### C. RESPONSE TO PUBLIC COMMENTS

1. *Previous documentation regarding the stream and surrounding sensitive habitats adjacent to the project site has been submitted to the County in conjunction with a project appealed to the Board of Supervisors (Board) in March 2006. The Board decision in the "Bolsa Chica" case, that even damaged coastal resources are worthy of protection and that not only should environmentally sensitive habitat areas be protected from development but adjacent areas should be as well, fully apply to the current projects. The project site is adjacent to sensitive habitats and should be restored to its natural state.*

**Staff's Response:** Staff has consulted with County Counsel as to whether the "Bolsa Chica Decision" applies to the proposal at hand. County Counsel has determined that because the project does not impact any sensitive habitats, and the required setbacks for development are met, there is no conflict with the "Bolsa Chica Decision."

2. *The March 4, 2009 report prepared by the project biologist concludes that, even after clearing, fill and grading, all three sample points for their wetland delineation report met the wetland vegetation criterion.*

**Staff's Response:** For clarification, the date of the above-referenced report is incorrect, and the correct date is June 16, 2009. For this report, the project biologist conducted a wetland delineation study of the project site, following the current methodology of the ACOE and the California Coastal Commission (CCC). While all three sample points met the wetland vegetation criterion of both the ACOE and CCC, the hydric soils and hydrology criteria were not met. The ACOE criteria require the presence of hydric soils and hydrology in addition to hydrophytic vegetation for an area to be considered a "wetland." Based on the CCC's definition of "wetland," hydrology is the feature used to describe wetlands in the Coastal Act. Based on studies of the project site,

including soils tests, hydric soils and a clear hydrology source were not identified. Therefore, although the project site meets the wetland vegetation criterion, it is not considered a wetland pursuant to the ACOE criteria and the Coastal Act.

In addition, the project biologist chose to evaluate the project site against CCC criteria rather than the County's LCP criteria because the CCC's definition is not as narrow. The LCP definition of "wetland" is narrower in regard to the specificity of the plants that must occur in a feature to be considered a wetland. Specifically, LCP Policy 7.14 states that "wetlands typically contain the following plants: cordgrass, pickleweed, jaumea, frankenia, marsh mint, tule, bulrush, narrow-leaf cattail, broadleaf cattail, pacific silverweed, salt rush, and bog rush. To qualify, a wetland must contain at least a 50% cover of some combination of these plants." The plant species observed on the project site did not fit the above plant criteria. In fact, none of the plant species stipulated in LCP Policy 7.14 were found on the project site. Thus, even under the LCP, the project site would not be considered a wetland.

3. *The adjacent Mirada Surf Trail Project undertaken by the County Parks Department required extensive review and permits from several agencies, including the California Department of Fish and Game (DFG), the Army Corps of Engineers and the US Fish and Wildlife Service. Mr. Hodge's request for permits should include the same review and approval from these same agencies, as the project site is adjacent to the Mirada Surf property, and the 2005 biological study conducted for the area indicates that the subject project site contains sensitive habitats. Specifically, a Streambed Alteration Agreement should be required for the project.*

Staff's Response: The adjacent Mirada Surf Trail Project was different in substance and scope from the current proposal. That project was a much larger project that included the construction of a coastal trail through the Mirada Surf property and a new bridge to connect the trail over the existing perennial stream that runs on the property, immediately north of the project site. The actual construction activities for the project also involved the removal of several willows. Because the project included construction over an existing watercourse and the removal of sensitive riparian habitat, review and approval by other agencies, such as DFG, was required.

As discussed previously, the applicant has provided documentation from a qualified biologist confirming that no sensitive habitats were affected or removed by the unpermitted land clearing and vegetation removal on the project site. Based on these findings, staff did not refer the project to DFG. Furthermore, as this proposal does not include any alteration to the existing perennial creek, staff concluded that a Streambed Alteration Agreement with DFG was not required. Staff attempted to contact DFG to confirm the above, and a response was never received.



4. *Section 6103.5 of the Zoning Regulations, "Determination of Violation by Decision Maker," establishes the process by which a zoning or building violation is addressed. The violation on the project site does not meet any of the required criteria under this section. Therefore, the applicant's request for an "After-the-Fact" CDP should be denied, and the illegal grading and removal of riparian and wetland vegetation on the project site must be remedied by restoring the areas destroyed.*

Staff's Response: Under Section 6105.3 of the Zoning Regulations, a permit can be granted to remedy a violation if certain criteria are met. These include that the applicant was not aware that such action constituted a violation, the violation was minor in nature and the applicant has taken the required steps to resolve the issue. The applicant has stated that he was not aware that minor land clearing on his property required a permit. Once notified that the actions taken did in fact constitute a violation, the applicant was advised of how to remedy the violation by applying for the required permits, which has been done.

In addition, as previously mentioned, the project biologist has determined that there were no areas of sensitive habitat negatively affected or removed by the violation, and that the project site was primarily dominated by blackberry bush and ruderal herbaceous grassland. The Planning Commission and staff have included a condition of approval that requires a restoration plan for the project site that incorporates the project biologist's findings and restoration recommendations.

5. *Staff has failed to interpret and enforce the required regulations and repercussions for the violations committed on the project site. In spite of several documents submitted to staff, which include aerial photographs of the project site and the 2005 biological study, that clearly show previous sensitive habitat on the project site prior to the illegal land clearing and are in direct contradiction to the findings made by the project biologist, staff has continued to ignore facts and "side" with the applicant.*

Staff's Response: Pursuant to County Regulations, when a violation is committed, a violation case is opened, and the property owner is required to remedy the issue by either applying for the appropriate permits and/or abating the violation. The appropriate actions were taken by the County in this situation: the applicant was issued a violation notice, a violation case was opened for the unpermitted land clearing and vegetation removal that occurred, and an "After-the-Fact" CDP was applied for to remedy the violation. For further discussion, refer to staff's response to Comment No. 11 in Section B above.

## D. REGULATORY COMPLIANCE

### 1. Compliance with General Plan

Staff has reviewed the project for conformance with the General Plan and has determined that the project is in conformance with all applicable policies, with specific discussion of the following:

Chapter 1 – Vegetative, Water, Fish and Wildlife Resources. Policies 1.27 (*Regulate Development to Protect Sensitive Habitats*), 1.43 (*Develop Standard Mitigation Measures*) and 1.44 (*Improvement of Damaged Resources*) call for, respectively, the regulation of land uses and development within and adjacent to sensitive habitats; the development of mitigation measures to protect sensitive resources and habitats; and the implementation of programs which repair and/or enhance damaged sensitive resources and habitats with the goal of returning them to their natural condition.

The project biologist has determined that the unpermitted land clearing and vegetation removal on the project site did not involve the removal of any sensitive habitats. Several field studies of the project site have been conducted, including a wetland delineation study, and results indicate that an existing willow riparian habitat encroaches into the northeast corner of the project site. There was no indication that riparian willows were removed during the unpermitted land clearing, as the project biologist did not find evidence of willow stumps or sprouting during field evaluations. Slight trimming of willows did occur during the unpermitted land clearing, which, according to the project biologist, did not cause a significant negative effect on the riparian habitat. The remainder of the site is dominated primarily by grassland and non-native plant species, which do not provide suitable habitat for special status plant and/or wildlife species nor qualify as a sensitive habitat. The biologist has determined that the cleared area was also most likely dominated by blackberry bushes. A revegetation plan of the project site will be required to restore the cleared area to its previous natural condition.

Chapter 2 – Soil Resources. Policy 2.23 (*Regulate Excavation, Grading, Filling, and Land Clearing Activities Against Accelerated Soil Erosion*) calls for the regulation of land clearing activities to protect against accelerated soil erosion and sedimentation. Due to the minimal vegetation removed, as determined by the project biologist, and the relatively level slope of the property, the land clearing likely did not result in significant soil erosion and sedimentation. Conditions of approval have been recommended to ensure that the disturbed area is stabilized and that additional land clearing or vegetation removal, which would possibly result in accelerated soil erosion and sedimentation, does not occur.

Chapter 4 – Visual Quality. Policy 4.3 (*Protection of Vegetation*) calls for the minimization of the removal of visually significant trees and vegetation to

accommodate structural development. The land clearing and minimal vegetation removal that occurred on the site did not include the removal of any heritage or significant trees. The land clearing that occurred was partly done in anticipation of future development on this parcel and does not exceed that which is needed to accommodate a reasonable level of development.

## 2. Conformance with Local Coastal Program

A Coastal Development Permit is required pursuant to LCP Policy 1.1, which mandates compliance with the California Coastal Act for any development proposed within the Coastal Zone. Pursuant to Policy 1.2 of the LCP, the unpermitted land clearing and vegetation removal is considered development. Staff has completed a Coastal Development Checklist for this project. Summarized below are the sections of the LCP that are relevant:

### a. Sensitive Habitats Component

Policies 7.3 (*Protection of Sensitive Habitats*) and 7.5 (*Permit Conditions*) call for, respectively, the prohibition of any land use or development which would have significant adverse impact on sensitive habitat areas, and the applicant to: (1) demonstrate that there will be no significant impact on sensitive habitats, and (2) propose and implement a restoration plan for any portions of a sensitive habitat that may be damaged.

As mentioned above, the project biologist has determined that the only sensitive habitat on the site is an existing willow riparian habitat that is associated with an adjacent unnamed perennial creek. The biologist has mapped the limit of riparian vegetation in accordance with Policy 7.7 (*Definition of Riparian Corridors*). A large portion of the project site is designated as a buffer zone for the willow riparian habitat, as established by Policy 7.11 (*Establishment of Buffer Zones*). Unpermitted land clearing and vegetation removal did occur in the required 50-foot riparian buffer zone but did not include removal of or damage to the riparian habitat, as previously stated. Pursuant to Policy 7.5, the restoration of the cleared area has been included as a condition of approval in Attachment A.

### b. Visual Resources Component

Policy 8.10 (*Vegetative Cover*) calls for the replacement of vegetation removed during construction with plant materials which are compatible with surrounding vegetation and is suitable to the climate, soil, and ecological characteristics of the area. The project biologist has provided recommendations to restore the project site to its pre-clearing conditions based on findings determined from field surveys of the site and surrounding area. The Planning Commission and staff have included the

requirement for a revegetation plan and its implementation in the recommended conditions of approval found in Attachment A.

## E. ENVIRONMENTAL REVIEW

An Initial Study was completed and a Negative Declaration (Attachment F) issued in conformance with California Environment Quality Act (CEQA) guidelines for this project and an associated project for a new single-family residence on Parcel 1 (PLN 2008-00380). The public review period for this document was January 21, 2010 to February 10, 2010. (This document was subsequently separated for each project in March 2011 and did not require another public review according to County Counsel.) Public comments were received during the initial review period. Mitigation measures pertaining to this project have been included as recommended conditions of approval in Attachment A.

### 1. Response to Public Comments

Public comments regarding this project were received during the posting period. Many comments addressed similar issues and, therefore, have been aggregated and summarized below. Refer to Attachment E for complete comments.

- a. *Staff's response to Section 2.g of the Negative Declaration is inaccurate as the land clearing done did not include the entirety of Parcel 1, as only blackberry and various brush were removed, which covered only 20% of Parcel 1.*

Staff's Response: Based on a site plan submitted by the applicant on November 24, 2008, the extent of land clearing and vegetation removal done on the two properties included all of Parcel 2 and a large majority of Parcel 1, except for an area in the northeast corner of the parcel (see Attachment C). Section 2.g of the Initial Study/Negative Declaration asks: "Will (or could) this project involve clearing land that is 5,000 sq. ft. or greater (1,000 sq. ft. within a County Scenic Corridor), that has slopes greater than 20% or that is in a sensitive habitat or buffer zone?" The two parcels are located within the Cabrillo Highway County Scenic Corridor and adjacent to willow riparian habitat, which encroaches onto the project site and is considered a sensitive habitat. The buffer zone for a riparian corridor is 50 feet, as required by LCP Policy 7.11 and, therefore, extends onto the project site. The two parcels total 14,002 sq. ft. As the majority of Parcel 1 and all of Parcel 2 are shown on the site plan as being cleared, staff's response to Section 2.g of the Negative Declaration is accurate.

- b. *It is a physical impossibility that the "unpermitted land clearing did not involve the removal of any riparian or sensitive habitats." Google satellite images from 2007 show that Parcel 1 is covered with willows.*

*Additionally, willows were observed on the site prior to the land clearing and vegetation removal that occurred.*

Staff's Response: Refer to staff's response to Comment No. 8 in Section B above.

- c. *The biological documents submitted from the project biologist are inaccurate and do not correlate with the findings from a 2005 biological study conducted in association with a County Parks Department's project for the adjacent County-owned land known as the Mirada Surf property. The 2005 study indicated riparian and wetland habitat on the project site. The recent studies for this project were done AFTER land clearing had already occurred, and their findings are tainted because the site was disturbed.*

Staff's Response: Refer to staff's response to Comment No. 6 in Section B above.

- d. *Both a County parcel tag and a disclosure during the transfer of Parcel 1 indicate that the site is not buildable due to existing riparian and wetlands habitats on the parcel. The property owner was fully aware of the above, and purposely cleared the lot without requesting a permit because such a permit would have been denied by the County Planning Department.*

Staff's Response: Refer to staff's response to Comment No. 3 in Section B above.

#### F. REVIEWING AGENCIES

Building Inspection Section  
Department of Public Works  
Geotechnical Section  
Coastside County Fire Protection District  
California Coastal Commission  
Coastside County Water District  
Granada Sanitary District  
City of Half Moon Bay Planning Department  
Midcoast Community Council

County Counsel has reviewed and approved the materials as to form and content.

The approval of this project contributes to the 2025 Shared Vision outcome of a Livable Community by allowing the owners to restore the project site to a reasonable natural state previous to its initial clearing, furthering applicable LCP policies.

**FISCAL IMPACT:**

Nominal costs to the Planning and Building Department for monitoring of the restoration work.

**ATTACHMENTS:**

- A. Recommended Findings and Conditions of Approval
- B. Location Map
- C. Site Plan of Disturbed Area
- D. Appeal Document
- E. WRA Report: Wetland and Vegetation Summary Report – December 2, 2010
- F. Initial Study/Negative Declaration
- G. Planning Commission Decision Letter (Revised), Dated April 22, 2011
- H. Letter from Hodge Submitted to Planning Commission at March 23, 2011 Hearing
- I. Aerial Photos of Site (2005 – Before Hearing; 2008 – Just after Clearing; 2010 – Most Recent)
- J. Project Biological Reports\*
  - 1. WRA Biological Resource Assessment – February 24, 2009\*
  - 2. WRA Report: Previous Habitat Conditions of Cleared Area: Proposed Hodge Residence, Magellan Avenue, Miramar – May 20, 2009\*
  - 3. WRA Report: Wetland Delineation at Proposed Hodge Residence, Magellan Avenue, Half Moon Bay – March 4, 2009\*

\*These documents are available on the County's Planning and Building's website, under "Pending Projects" (10/18/11 BOS Hearing – Hodge Bio Reports).

COUNTY OF SAN MATEO  
PLANNING AND BUILDING DEPARTMENT

**RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL**

Permit File Number: PLN 2009-00358

Board Meeting Date: November 1, 2011

Prepared By: Dave Holbrook, Senior  
Planner

For Adoption By: Board of Supervisors

**RECOMMENDED FINDINGS:**

**Regarding the Negative Declaration, Find:**

1. That the Negative Declaration is complete, correct and adequate, and prepared in accordance with the California Environmental Quality Act and applicable State and County guidelines. The public review period for this document was January 21, 2010 to February 10, 2010.
2. That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the project will have a significant effect on the environment. The Initial Study/Negative Declaration does not identify any significant or cumulative impacts associated with this project.
3. That the Negative Declaration reflects the independent judgment of San Mateo County. The Negative Declaration was prepared by the project planner.
4. That the mitigation measures in the Mitigated Negative Declaration and agreed to by the owner and placed as conditions on the project have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with the California Public Resources Code Section 21081.6.

**Regarding the Coastal Development Permit, Find:**

5. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County LCP. Project plans and materials have been reviewed against the application requirements, staff has completed an LCP Policy Checklist, and the project has been conditioned in accordance with the Sensitive Habitats and Visual Resources Components of the LCP.
6. That the project conforms to the specific findings required by the policies of the LCP with regard to the Sensitive Habitats and Visual Resources Components.

Specifically, the project conforms with the protection of sensitive habitats because no special status plants, animals, or habitats were removed. Compliance with LCP requirements for buffer zones and the minimization of vegetative cover removal will be achieved through the implementation of the restoration plan required by Condition No. 4.

#### **RECOMMENDED CONDITIONS OF APPROVAL:**

##### **Current Planning Section**

1. The approval applies only to the proposal as described in this report and materials submitted for review and approval by the Planning Commission on March 23, 2011 and subsequently by the Board of Supervisors on November 1, 2011. Any changes or revisions to the approved plans shall be submitted for review by the Community Development Director to determine if they are consistent with the intent of and in substantial conformance with this approval.
2. This permit shall be valid for one (1) year from the date of final approval by which time revegetation shall be initiated. Any extension of this permit shall require submittal of an application for permit extension and payment of applicable permit extension fees sixty (60) days prior to expiration.
3. Additional land clearing and/or vegetation removal shall not be allowed as part of this approval. Any additional or future clearing of either of the parcels must be addressed by a separate application submitted prior to any such land clearing or vegetation removal.
4. The applicant shall submit a revegetation plan within 60 days of this application's final approval for review and approval by the Community Development Director. The revegetation plan shall be prepared by the applicant's biologist and include the recommendations indicated in Section 5.0 (Conclusions and Recommendations) of the December 2, 2010 report submitted by WRA Environmental Consultants. The plan shall identify the existing riparian dripline and 50-foot required buffer area, and specify the types, density, general location and size of the plant species recommended for the buffer area and outside of the buffer area, in accordance with the biologist's recommendations, LCP Policy 7.13 and State water efficiency standards. The plan shall cover the entirety of both parcels (048-016-010 and 048-016-020). Within 60 days of the Community Development Director's approval, or at the earliest and best time to plant during the closest upcoming fall or growing season, as determined by the applicant's biologist (but in no case later than this year, 2011), the aforementioned plan shall be implemented. If the revegetation plan is proposed to be implemented prior to the upcoming fall or growing season, the applicant shall submit a plan to ensure that all plantings are adequately irrigated. Any subsequent approvals of development related to this project, including PLN 2008-00380 for a new single-family residence on Parcel 1 and/or PLN 2010-00356 for a new restroom facility on Parcel 2, shall BE DEEMED TO INCORPORATE AND INCLUDE this requirement for a revegetation plan of the project site, and COMPLIANCE WITH CONDITIONS OF SUBSEQUENT APPROVALS

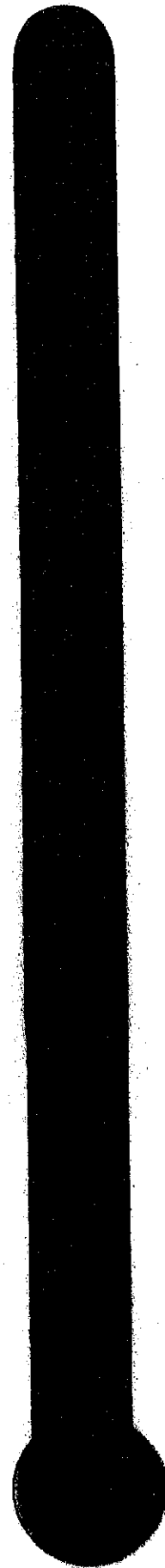


INCORPORATING THIS REQUIREMENT shall constitute compliance with this condition.

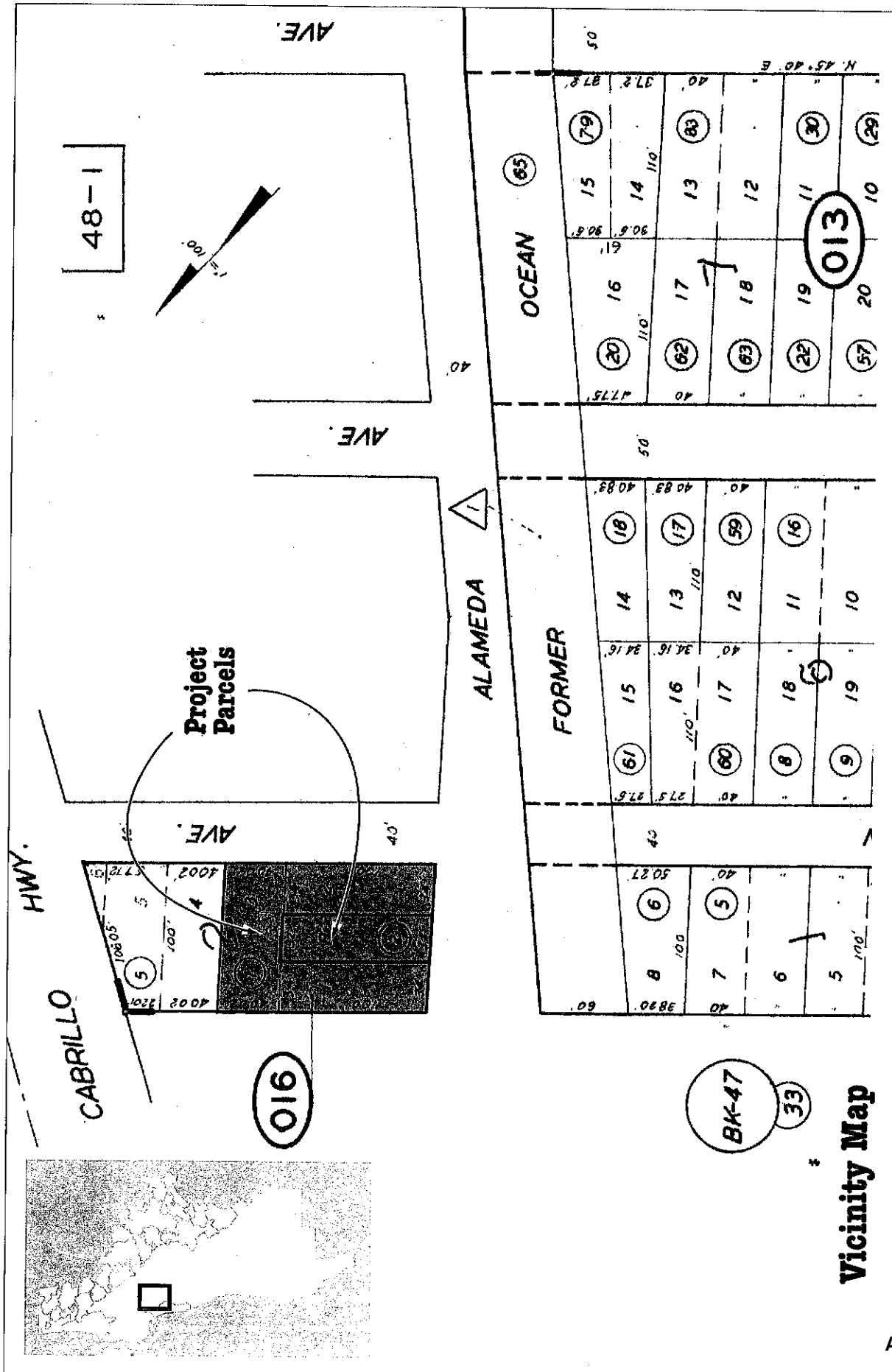
5. The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementations and maturation of the landscaping/ revegetation plan, payable upon confirmation that the plan has been implemented. The COD shall be held for a period of two (2) years after the Planning and Building Department has confirmed that the approved plan has been installed. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.
6. No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.
7. The only permitted uses within the buffer zone for the riparian area on the properties shall be those allowed by Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP), subject to CDP approval. All other uses shall be prohibited.
8. Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activities shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.
9. The applicant shall submit the following fees to the Current Planning Section: Within four (4) working days of the final approval date of this permit, the applicant shall pay an environmental filing fee of \$2,044.00 (fee effective February 1, 2011), as required under Fish and Game Code Section 711.4(d), plus a \$50.00 recording fee. The applicant shall submit a check in the amount of \$2,094.00, made payable to San Mateo County, to the project planner to file with the Notice of Determination.

Department of Public Works

10. No proposed construction work within the County right-of-way shall begin until County requirements for the issuance of an encroachment permit, including review of the plans, have been met and an encroachment permit issued.



# **ATTACHMENT B**



**Vicinity Map**

**San Mateo County Board of Supervisors**

Owner/Applicant: **David & Hi-Jin Hodge**

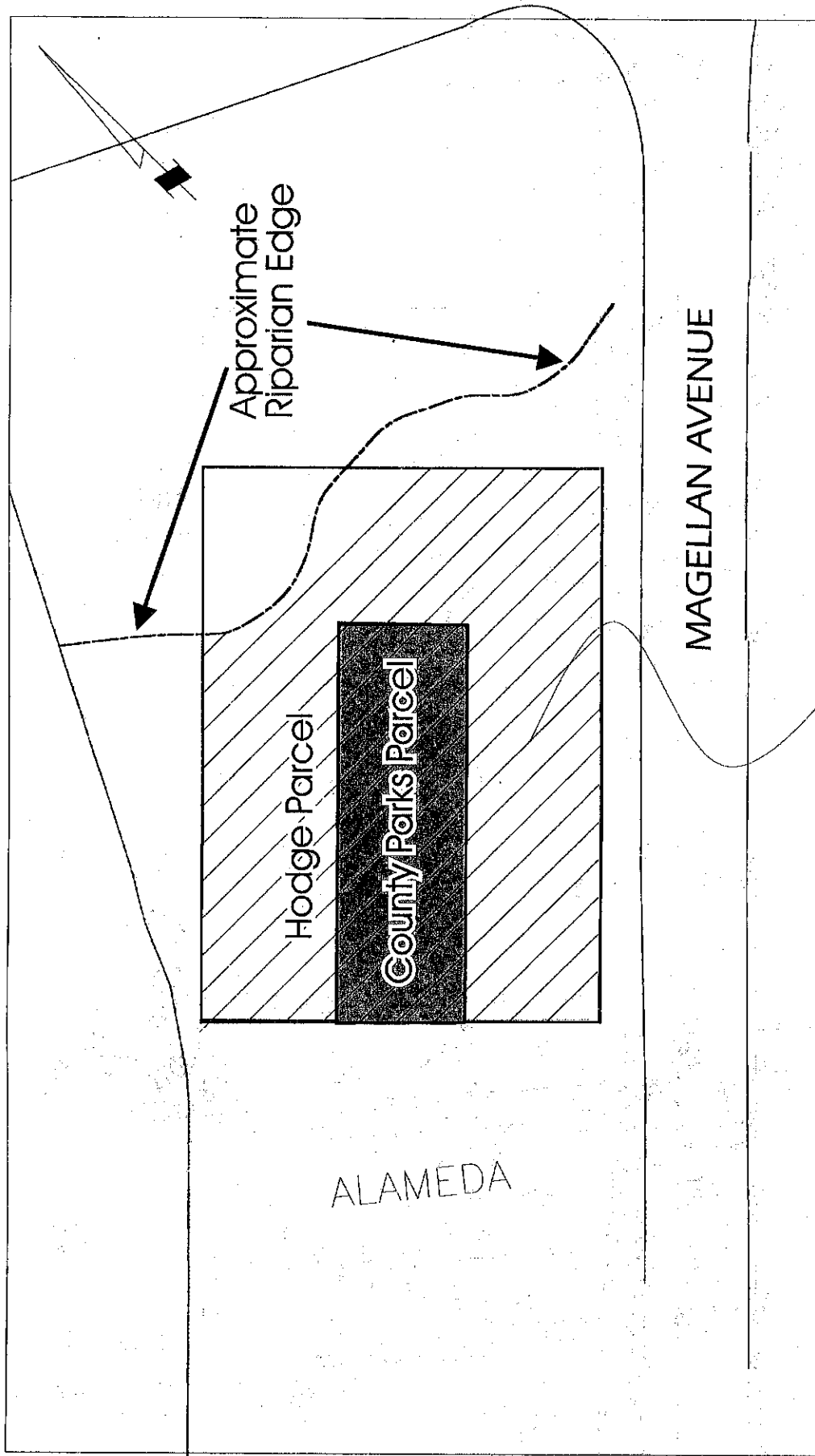
File Numbers: **PLN2009-00358**

Attachment: **B**



County of San Mateo - Planning and Building Department

# ATTACHMENT C



Area owner cleaned

## Site Plan of Disturbed Area

**San Mateo County Board of Supervisors**

Owner/Applicant: **David & Hi-Jin Hodge**

File Numbers: **PLN2009-00358**

Attachment: **C**



County of San Mateo - Planning and Building Department

# ATTACHMENT D

# Application for Appeal

Planning and Building Division

County Government Center • 590 Hamilton St. • Redwood City CA 94061  
Mail Drop PLN 122 • 415 • 363 • 416

☐ To the Planning Commission

☒ To the Board of Supervisors

Name: EVY Smith

Address: 216 Magellan Ave.

Half Moon Bay

Phone, W: 415-543-8368 H: 650-712-0582

CA Zip: 94019

Permit Numbers involved:

file# PLN2009-00358

APNs: 048-016-010 & 048-016-020

to clear violations VIO 2008-00124 & VIO 2008-00125

I hereby appeal the decision of the:

- ☐ Staff or Planning Director
- ☐ Zoning Hearing Officer
- ☐ Design Review Committee
- ☒ Planning Commission

I have read and understood the attached information regarding appeal process and alternatives.

☒ yes

☐ no

Appellant's Signature:

Evvy M. Smith

Date:

04.06.11

made on March 28 2011 to approve/deny the above-listed permit applications.

Planning staff will prepare a report based on your appeal. In order to facilitate this, your precise objections are needed. For example: Do you wish the decision reversed? If so, why? Do you object to certain conditions of approval? If so, then which conditions and why?

The purpose of this appeal is to reverse the decision of the San Mateo County Planning Commission to approve the After-the-Fact Coastal Development Permit for PLN 2009-0038. The decision to approve the permit was based on acceptance of the revised conditions of the Planning Staff's Negative Declaration.

The Negative Declaration is based on studies performed on behalf of the applicant that are erroneous and ignores the basic facts of the case. The Negative Declaration states, "That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public meeting, ***there is no substantial evidence that the project will have a significant effect on the environment.***" (emphasis added). A landscaping plan does not mitigate removal of protected riparian willows and the destruction of seasonal wetlands.

This project consists of the applicant purchasing a lot known to be in a wetlands and riparian willow area that was (according to listing) "not currently buildable". Applicant also signed disclosures at time of sale noting that "lot is in wetlands/riparian corridor, may not be buildable". The County log for the lot states that "there is both wetland and riparian area encumbering this parcel". Applicant purchased the lot and proceeded to clear and fill the land (twice) for both his lot and the lot adjoining without permits. This is in clear violation of numerous LCP Policies regarding protected habitats.

Additionally, applicant never performed the LCP 7.5 Policy mandated Biologic Impact Form regarding the properties until after the land had been cleared twice. Disregarding previous evidence to the contrary, the Planning Commission has given approval to the After-the-Fact permit.

For these reasons, I am appealing the decision and requesting that the Board of Supervisors reverse the Planning Commission decision.





County of San Mateo - Planning and Building Department

# ATTACHMENT E

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# Wetland and Vegetation Summary Report

## PROPOSED HODGE RESIDENCE

MAGELLAN AVENUE, MIRAMAR  
SAN MATEO COUNTY, CALIFORNIA

---

**Prepared For:**

David Hodge  
100 Coronado Avenue  
Half Moon Bay, CA 94019

**Contact:**

Jeff Dreier  
dreier@wra-ca.com

**Date:**

December 2, 2010



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APPENDIX A Aerial Photograph

## 1.0 INTRODUCTION

The purpose of this report is to 1) summarize previous biological resource assessments and surveys conducted within and adjacent to the Hodge Property (Project Area) to determine the previous extent of wetland conditions within and adjacent to the Project Area, and 2) provide recommendations for restoration of cleared areas to pre-disturbance conditions.

## 2.0 PROJECT AREA

The Project Area is located in the Miramar area of Half Moon Bay. The U-shaped site is an approximately 10,000 square foot vacant lot dominated by weedy, ruderal vegetation that nearly surrounds a portion of a County parcel. A portion of the site along the shoulder of Magellan Drive is used for off-street parking by the general public. The Mirada Surf Coastal Trail is adjacent to the site to the southwest. The trail was recently improved by installing a bridge crossing just to the west of an old unimproved trail. Improved surfacing was also constructed. A perennial creek that supports willow riparian habitat is located to the northwest.

A perennial drainage with willow riparian woodland traverses the northwest portion of the Project Area. This drainage empties into the Pacific Ocean (Half Moon Bay). The drainage supports willow-dominated riparian woodland. The woodland is comprised of arroyo willow (*Salix lasiolepis*), red willow (*S. laevigata*) and silky willow (*S. sitchensis* var. *coulteri*), as well as California blackberry (*Rubus ursinus*), bulrush (*Scirpus* sp.), and coyote brush (*Baccharis pilularis*). The creek also supports herbaceous species, such as water smartweed (*Polygonum amphibium*), cut-leaved water parsley (*Berula erecta*), nutgrass (*Cyperus esculentus*), watercress (*Rorippa nasturtium-aquaticum*), and water speedwell (*Veronica* sp.) (Biotic Resources Group 2010).

Upland ruderal vegetation occurs on a slope and flat area immediately east of the existing recreational trail. This area is dominated by upland grasses and forbs, such as wild radish (*Raphanus sativa*), wild oat (*Avena* sp.), cut-leaved plantain (*Plantago coronopus*), and bur clover (*Medicago polymorpha*), with lesser amounts of Italian ryegrass (*Lolium multiflorum*), bristly ox-tongue (*Picris echioides*), rattail fescue (*Vulpia myuros*), fennel (*Foeniculum vulgare*), and poison hemlock (*Conium maculatum*) (Biotic Resources Group 2010).

The Project Area was previously disturbed and is currently comprised of a mosaic of mesophytic and hydrophytic plant species. Dominant species include Italian ryegrass, bristly ox-tongue, velvet grass (*Holcus lanatus*), and curly dock. Species providing less than 20% cover include common plantain (*Plantago major*), bird's foot trefoil (*Lotus corniculatus*), spikerush (*Eleocharis* sp.), California aster (*Aster chilensis*), spring vetch, fiddle dock (*Rumex acetosella*), poison hemlock, and nutgrass (*Cyperus* sp.) (Biotic Resources Group 2010).

## **3.0 METHODS**

### **3.1 Document Review**

The following documents were reviewed to determine the presence/absence of wetlands within the Project Area:

- Mirada Surf West Restroom Project Biological Impact Form (Biotic Resources Group 2010)
- Biological Resource Assessment, Proposed Hodge Residence, Magellan Avenue, Miramar (WRA 2009a)
- Wetland Delineation results at proposed Hodge Residence, Magellan Avenue, Miramar (APN: 048-016-010). Letter to Stephanie Skangos, Planning and Building Department, County of San Mateo from WRA (2009b).
- Previous Habitat Conditions of Cleared Area: Proposed Hodge Residence, Magellan Avenue, Miramar. Letter to David Hodge from WRA (2009c).

### **3.2 Aerial Photograph Interpretation**

Historical aerial photographs were reviewed to compare existing Project Area vegetation cover with conditions prior to vegetation clearing. Historic aerial photographs were reviewed on *Google Earth*, the California Coastal Records Project (<http://www.californiacoastline.org/>), and Historic Aerials (<http://www.historicaerials.com/default.aspx>).

GPS point data were collected as part of the vegetation transect study described in Section 3.6. These points were plotted on historic aerial photographs to determine compare vegetation cover within and adjacent to the Project Area over time.

### **3.3 Wetlands**

In August 2009, WRA conducted a routine wetland delineation of the Project Area to determine if wetland conditions were present. The wetland delineation followed the methodology of the Army Corps of Engineers (Corps) in addition to that of the California Coastal Commission (CCC) since the Project Area is in the Coastal Zone.

In August 2010, Biotic Resources Group conducted an assessment of vegetation resources on County-owned property located adjacent to the Project Area. The assessment included a portion of the Mirada Surf West recreational trail and a County-owned parcel east of the trail. The report was prepared to evaluate the proposed project for compliance with the County's Local Coastal Program (LCP) riparian corridor and wetland policies.

## **Regulatory Background**

### Section 404 of the Clean Water Act

Section 404 of the Clean Water Act gives the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) regulatory and permitting authority regarding discharge of dredged or fill material into "navigable waters of the United States". Section 502(7) of the Clean Water Act defines navigable waters as "waters of the United States, including territorial seas." Section 328 of Chapter 33 in the Code of Federal Regulations defines the term "waters of the United States" as it applies to the jurisdictional limits of the authority of the Corps under the Clean Water Act. A summary of this definition of "waters of the U.S." in 33 CFR 328.3 includes (1) waters used for commerce; (2) interstate waters and wetlands; (3) "other waters" such as intrastate lakes, rivers, streams, and wetlands; (4) impoundments of waters; (5) tributaries to the above waters; (6) territorial seas; and (7) wetlands adjacent to waters. Therefore, for purposes of the determining Corps jurisdiction under the Clean Water Act, "navigable waters" as defined in the Clean Water Act are the same as "waters of the U.S." defined in the Code of Federal Regulations above.

The limits of Corps jurisdiction under Section 404 as given in 33 CFR Section 328.4 are as follows: (a) *Territorial seas*: three nautical miles in a seaward direction from the baseline; (b) *Tidal waters of the U.S.*: high tide line or to the limit of adjacent non-tidal waters; (c) *Non-tidal waters of the U.S.*: ordinary high water mark or to the limit of adjacent wetlands; (d) *Wetlands*: to the limit of the wetland.

Section 328.3 of the Federal Code of Regulations defines wetlands as:

*"Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas."*

EPA, 40 CFR 230.3 and CE, 33 CFR 328.3 (b)

The three parameters used to delineate wetlands are the presence of: (1) hydrophytic vegetation, (2) wetland hydrology, and (3) hydric soils. According to the Corps Manual, for areas not considered "problem areas" or "atypical situations":

*"....[E]vidence of a minimum of one positive wetland indicator from each parameter (hydrology, soil, and vegetation) must be found in order to make a positive wetland determination."*

Data on vegetation, hydrology, and soils collected at sample points during the delineation site visit was reported on the Corps' Western Mountains, Valleys and Coast Region data forms (attached). Indicators described in the Western Mountains, Valleys and Coast Region Supplement were used to make wetland determinations at each sample point in the Study Area.

#### California Coastal Commission

The California Coastal Act defines wetlands as:

*"Wetland" means land within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens."*

Generally, the California Coastal Commission (CCC) has utilized the same definition of wetlands adopted by the Department of Fish and Game. The Department's definition is the same as that used by the US Fish and Wildlife Service and requires the presence of wetland hydrology and one of three other attributes: wetland vegetation, undrained wetland (hydric) soils, or in the case of non-soils, saturated and covered with water. The CCC's definition, therefore, includes many non-vegetated areas such as mudflats, playas, and shallow water areas.

*Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes, (2) the substrate is predominantly undrained hydric soil, and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.*

In the CCC's discussion of technical criteria for identifying and mapping wetlands (Appendix D of the *Statewide Interpretive Guideline for Wetlands and Other Wet Environmentally Sensitive Habitat Areas*), it states that:

*"...the single feature that most wetlands share is soil or substrate that is at least periodically saturated with or covered by water, and this is the feature used to describe wetlands in the Coastal Act. The water creates severe physiological problems for all plants and animals except those that are adapted for life in water or in saturated soil, and therefore only plants adapted to these wet conditions (hydrophytes) could thrive in these wet (hydric) soils. Thus, the presence or absence of hydrophytes and hydric soils make excellent physical parameters upon which to judge the existence of wetland habitat areas for the purposes of the Coastal Act, but they are not the sole criteria. In some cases, proper identification of wetlands will require the skills of a qualified professional."*

#### County of San Mateo's LCP

The County of San Mateo's LCP identifies wetlands for lands within the Coastal Zone as areas consisting of:

*Define wetland as an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water or spring tides), marginal to lakes, ponds, and man-made impoundments. Wetlands do not include areas which in normal years are permanently submerged (streams,*

*lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water or spring tides, nor vernal wet areas where the soils are not hydric.*

The LCP also states that a wetland must contain at least 50% cover of some combination of typical wetland plants, unless it is a mudflat (LCP Section 7.14). To qualify, a wetland must contain at least 50 percent of some combination of the following plants: cordgrass, pickleweed, jaumea, frankenia, marsh mint, tule, bulrush, narrow-leaved cattail, broadleaf cattail, pacific silverweed, salt rush, and bog rush (County LCP, 1998).

Other waterbodies and water-associated habitat in the project area that the LCP regulates include riparian habitat (associations of plants that grow next to freshwater streams, lakes) plus a 50 -foot wide upland buffer measured from the edge of riparian habitat for perennial streams or a 30-foot buffer for intermittent streams.

### **WRA Wetland Delineation**

While the county's definition is more narrow due to the specificity of the plants that must occur in a feature to be considered a wetland, the State Coastal Commission definition and jurisdiction supercedes that of the County's and is not as narrow. Therefore the CCC's wetland definition was followed for the purposes of the WRA study. At the request of the County of San Mateo Planning Commission, two additional wetland sample points were established to obtain additional data.

### **Biotic Resources Group Assessment**

This assessment was focused on evaluating the presence of LCP-designated wetlands. As part of this assessment, previous reports for the project area were reviewed, including a report for the Mirada Surf Trail in 2005 (Biotic Resources Group 2005) and reports prepared for the Hodges property (WRA, 2009). In addition, five sample points were obtained within the County's parcel to document the existing vegetation and to determine if any species listed in the County LCP's definition of a wetland occur on site (Biotic Resources Group 2010).

### **3.4 Riparian**

Under the County's LCP, riparian corridors are defined by the limit of riparian vegetation, where the vegetation contains at least 50 percent cover of riparian plants species (e.g., red alder, big leaf maple, cattail, willow, and/or dogwood). According to County LCP guidelines, the drainage adjacent to the Project Area is subject to land use restrictions under the LCP. Perennial streams, such as this drainage, require a 50-foot wide upland buffer measured from the edge of riparian habitat (or high water point where no riparian vegetation exists). The County LCP allows certain uses in the riparian buffer zone. On legal building sites, Section 7.12 allows a reduced setback (to 20 feet) if no feasible alternative exists and if no other building site on the parcel exists (Biotic Resources Group 2010).



GPS point data were collected as part of the vegetation transect study described in Section 3.6. These points were plotted to determine the existing riparian drip line within and adjacent to the Project Area.

### **3.5 Other Biological Resources**

On February 20, 2009, WRA performed an assessment of biological resources within and adjacent to the Project Area. The purpose of the assessment was to gather information necessary to complete a review of biological resources under the California Environmental Quality Act (CEQA). The subsequent report described the results of the site visit, which assessed the Project Area for the (1) potential to support special status species; and (2) presence of other sensitive biological resources protected by local, state, and federal laws and regulations. The report also contained an evaluation of potential impacts to special status species and sensitive biological resources that may occur as a result of the proposed project and potential mitigation measures to compensate for those impacts.

Biotic Resources Group also conducted a rare plant habitat assessment of the adjacent County parcel in 2010.

### **3.6 Vegetation Transect Study**

The County of San Mateo Planning Commission suggested that the Project Area be restored to pre-clearing conditions. In order to determine the composition of past vegetative cover in the Project Area, data was collected from an undisturbed adjacent area as a comparison.

Vegetation cover within the Project Area was measured by conducting 12-inch point-intercept analysis along seven transects extending from the approximate riparian drip line (Appendix A). Transects were separated by approximately 20 feet. In addition to those in the Project Area, three transects were located downstream of the Hodge Property in an area that likely represents pre-disturbance vegetation conditions. The control transects allowed a comparison of vegetation cover between the Project Area that had been cleared, and a relatively undisturbed adjacent area. Relative percent cover was determined by calculating the percentage of intercepts by species at the 12-inch intervals. Percent cover exceeded 100 percent as necessary to account for different vegetation strata.

## 4.0 RESULTS

### 4.1 Aerial Photograph Interpretation


Table 1 summarizes the results of the aerial photograph interpretation. By comparing transect GPS points on historic and recent imagery, the photographs indicate that ruderal vegetation has dominated the Project Area for decades.

Table 1. Summary of aerial photograph interpretation. No Google Earth aerals were available for 2008. No photos were found for the period between June 29, 2007 and October 1, 2008.		
Date	Source	Comments
1946-1956	Historicaerials .com	Poor resolution; stream apparently channelized as part of Highway 1 construction; agriculture dominates area
1968	Historicaerials .com	Willow habitat appears to cover less area than in more recent times
1972	California Coastal Records Project	Willow habitat covers smaller area west of Highway 1, but appears to have increased on east side. Highway likely became barrier for runoff, which accumulated on east side. This may have created a more shallow water table on west side, supporting an eventual increase in willow cover
6/11/1993	Google Earth	Poor resolution; vegetation types unidentifiable
7/9/1993	Google Earth	Poor resolution; vegetation types unidentifiable
7/8/2002	Google Earth	Georectification error
10/30/2002	Google Earth	Project Area dominated by low vegetation similar to that on nearby parcels.
12/30/2003	Google Earth	No change since 2002
2/28/2004	Google Earth	No change since 2002
7/30/2004	Google Earth	Poor resolution; vegetation types unidentifiable
10/3/2004	Google Earth	Georectification error
10/12/2005	Google Earth	No change since 2002
12/30/2005	Google Earth	Poor resolution; vegetation types unidentifiable
8/29/2006	Google Earth	Poor resolution; vegetation types unidentifiable
2/18/2007	Google Earth	Poor resolution, but it appears unchanged since 2002
6/29/2007	Google Earth	No change since 2002
10/1/2008	California Coastal Records Project	Soil is being stored in the Project Area during trail and bridge construction. No vegetation is visible except for willow riparian.
6/5/2009	Google Earth	Project Area has been recolonized by ruderal vegetation.

## 4.2 Wetlands

In 2005, LCP-defined wetlands were documented from the Mirada Surf Trail project area (Biotic Resources Group 2010). At that time, bog (Pacific) rush (*Juncus effusus*) was common within the mapped wetlands and since this species is listed as a wetland indicator in the County LCP definition, all the wetlands mapped within the trail project area were identified as being LCP-defined wetlands.

The 2010 site survey and sampling points on the County parcel failed to locate bog rush, or any other plant species listed in the County's wetland definition (Biotic Resources Group 2010). As such, this area does not currently meet the definition of a wetland under the County's LCP. The area currently lacks plant species indicative of an LCP-defined wetland. In addition, field data contained in the 2009 WRA report has no listing of any LCP-defined wetland plant species on the property, providing further corroboration that the County parcel (which is almost surrounded by the Project Area) is currently not a LCP-defined wetland. . . .



## Soils

The Project Area lies just outside of the area of mapped soils in the Soil Survey of San Mateo Area (USDA 1961). The soils adjacent to the Study Area are mapped as Denison Loam, nearly level. This soil type has loamy soil in the top 3 to 30 inches and a high water-holding capacity. This soil is not listed as a hydric soil in the San Mateo List of Hydric Soils.

Up to the top six inches of soil in the Project Area appeared to fill material. These soils were a mixture of sands, cobble, gravel, clays and loams. Under the top layer of fill material the soils appeared to match the description of Denison Loam, nearly level. These soils were very dark grayish brown (10YR 3/2) in the Munsell Soil Color Chart (GretagMacBeth 2000). No redoximorphic features such as oxidized rhizospheres or redox concentrations were observed. The soils were determined to not meet the hydric soil criteria for either the Corps or CCC definitions (WRA 2009b).

## Hydrology

No indicators of wetland hydrology were observed in the Project Area. Hydrology in the Project Area is from precipitation and stormwater runoff from adjacent lands. The southeastern portion of the property adjacent to Magellan Avenue appears to receive runoff from Magellan Avenue based on the topography of the area. That said there was no evidence of standing water or other indicators of wetland hydrology on-site during the 2009 wetland delineation conducted by WRA.

The Project Area lacked wetland hydrology indicators and hydric soils in all five WRA sample points which do not meet the criteria of a wetland for the Corps or the Coastal Commission. Although all sample points met the wetland vegetation criterion, the dominant vegetation was largely non-native and included species common to disturbed, non-wetland habitats in the region. The lack of wetland hydrology indicators, especially the lack of ponding in the photographs of the Project Area in February when adjacent

areas were ponded, demonstrates that the Project Area does not support wetland conditions (WRA 2009b).

### **4.3 Riparian**

Willow-dominated riparian vegetation associated with the perennial drainage extends into the Project Area. Based on a review of historic aerial photographs, the existing riparian drip line is similar to pre-disturbance conditions.

### **4.4 Other Biological Resources**

The 2009 biological resources assessment conducted by WRA concluded that no sensitive plant communities, including wetlands, were identified within the Project Area. The Project Area does not provide suitable habitat for special status plants and wildlife (WRA 2009).

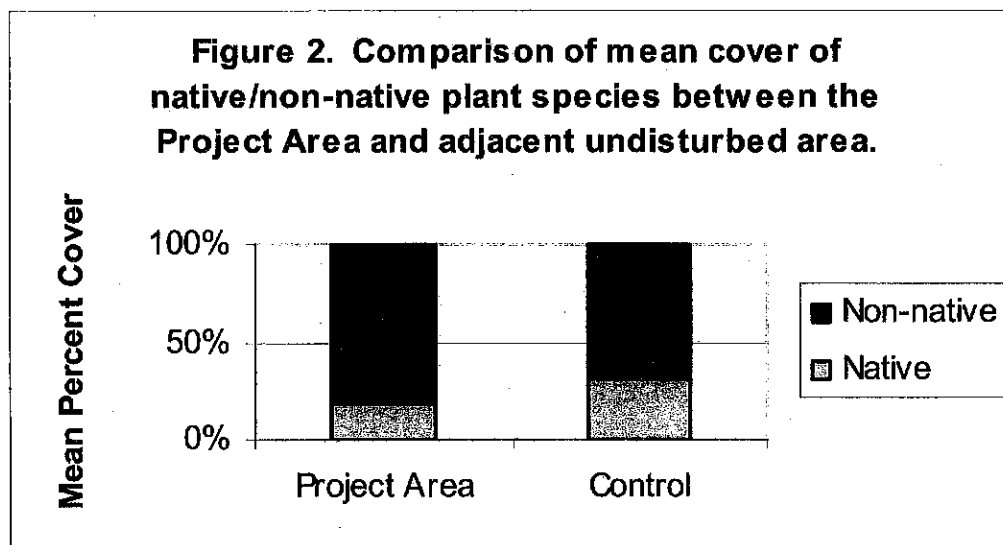
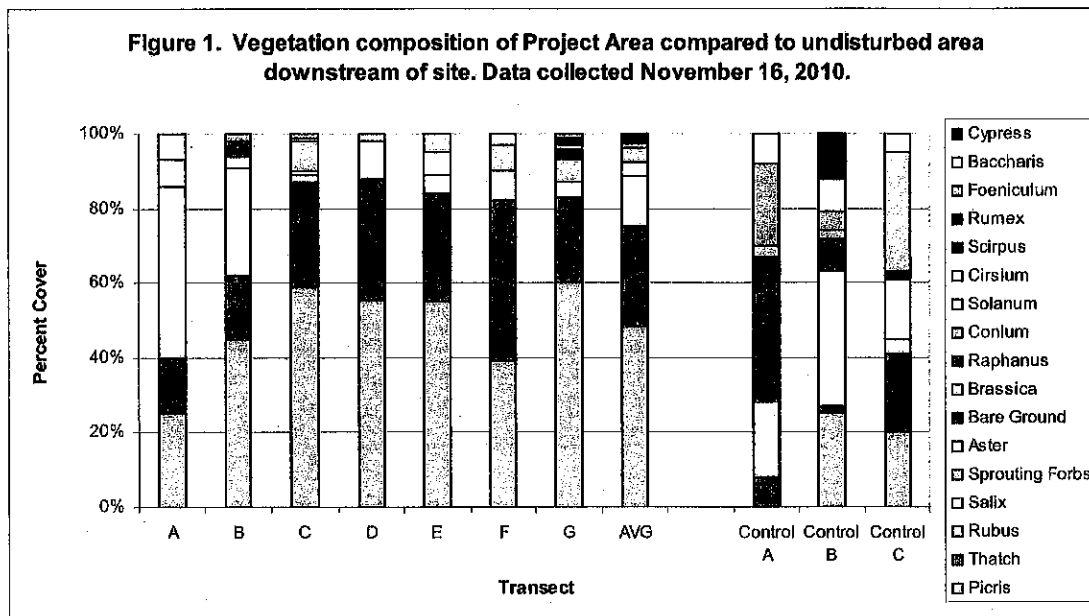
Biotic Resources Group conducted a rare plant assessment in 2010. They concluded that due to the habitat conditions on the site, including previous land disturbances and the dense growth of weedy, non-native species, the potential for special status plant species is considered low. No locally unique species as identified in the County LCP (e.g., beach strawberry) were observed in the study area (Biotic Resources Group 2010).

### **4.5 Vegetation Transect Study**

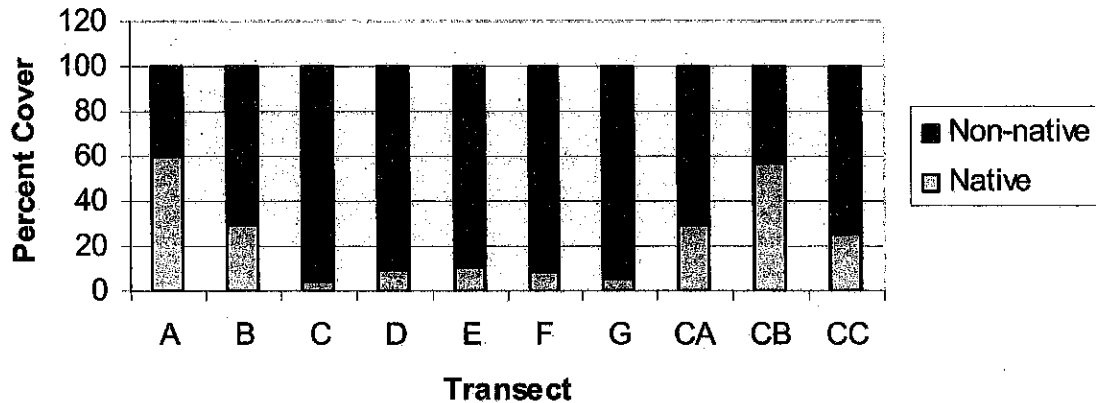
Vegetation transects conducted within the Project Area and the adjacent, relatively undisturbed area to the west of the trail determined that non-native weedy species represent the dominant cover (Figure 1). Due to the timing of the field work (November 2010), most herbaceous vegetation was characterized as thatch and could not be identified; however, it is likely that the thatch consisted of non-native annual grasses such as Italian ryegrass (*Lolium multiflorum*), Mediterranean barley (*Hordeum marinum*), foxtail barley (*Hordeum murinum*), and wild oats (*Avena fatua*), which were dominant in the Project Area during the wetland assessment field work (WRA 2009b).

A comparison of existing vegetation composition within the Project Area/County parcel and the relatively undisturbed area west of this area determined that the undisturbed area has more plant diversity and has greater native plant species cover than the Project Area/County parcel (Table 2; Figures 2 and 3).

Table 2. Summary of comparison of vegetation cover between Project Area (cleared) and undisturbed adjacent area.			
	Dominant Species	Native Species	Diversity
<b>Project Area</b>	<i>Picris</i> , grasses, <i>Rubus</i>	19% native species cover	83% of cover represented by <i>Picris</i> and grasses: Low diversity
<b>Undisturbed Area</b>	<i>Aster</i> , <i>Raphanus</i> , <i>Picris</i> , <i>Conium</i> , grasses	31% native species cover	85% of cover represented by 7 species: over 3 times greater plant diversity



**Figure 3. Native/non-native plant composition per transect**



## 5.0 CONCLUSION AND RECOMMENDATIONS

The purpose of this report is to 1) summarize previous biological resource assessments and surveys conducted within and adjacent to the Project Area to determine the previous extent of wetland conditions within and adjacent to the Project Area, and 2) provide recommendations for restoration of cleared areas to pre-disturbance conditions.

Based on the findings of both Biotic Resources Group and WRA, wetland conditions, as defined by the County of San Mateo LCP, do not exist within or adjacent to the Project Area.

A review of available historic aerial photography indicates that the existing riparian drip line appears to be similar to pre-disturbance conditions. The remainder of the Project Area appears to have been dominated by non-native invasive species for decades, as the photographic "signature" of the vegetation is similar to that of non-riparian habitat observed on nearby parcels. In addition, one or two small trees (possibly pine or cypress) are visible in some photos, but the site does not appear to provide suitable conditions for pine or cypress forest.

A comparison of existing vegetation composition within the Project Area/County parcel and the relatively undisturbed area west of this area determined that the undisturbed area has more plant diversity and has greater native plant species cover than the Project Area/County parcel. Both areas were dominated by non-native species.

It is recommended that the applicant implement habitat enhancement measures with the following goals:

- Increase diversity of plant cover within the riparian buffer area.
- Increase relative cover of native plant species within the riparian buffer.

Based on the speed of vegetative recovery within the Project Area since it was cleared, it is anticipated that these goals can be achieved quickly by implementing the following measures:

1. Allow the continuing colonization of blackberry throughout the buffer area (blackberry was present in all but one Project Area transect).
2. Plant and irrigate 25 1-gallon coyote brush (*Baccharis pilularis*) in the riparian buffer area.
3. Selectively remove hemlock, fennel, and *Picris* as the plantings become established and blackberry re-colonizes the area.

## 6.0 REFERENCES

Biotic Resources Group. 2010. Mirada Surf West Restroom Project Biological Impact Form. Prepared for County of San Mateo.

County of San Mateo. 1998. Local Coastal Program. Environmental Services Agency, Planning and Building Division. Redwood City.

GretagMacBeth. 2000. Munsell Soil Color Charts, revised washable edition.

U.S. Department of Agriculture, Natural Resources Conservation Service (USDA). 1961. Soil Survey of San Mateo Area, California. In cooperation with the University of California Agricultural Experiment Station.

WRA, 2009a. Biological Resource Assessment for Proposed Hodge Residence, February 12, 2009.

WRA. 2009b. Wetland Delineation results at proposed Hodge Residence, Magellan Avenue, Miramar (APN: 048-016-010). Letter to Stephanie Skangos, Planning and Building Department, County of San Mateo from WRA, August 14, 2009.

WRA. 2009c. Previous Habitat Conditions of Cleared Area: Proposed Hodge Residence, Magellan Avenue, Miramar. Letter to David Hodge from WRA, May 21, 2009.



A-2-SM





County of San Mateo - Planning and Building Department

# ATTACHMENT F

COUNTY OF SAN MATEO, PLANNING AND BUILDING DEPARTMENT

**NOTICE OF INTENT TO ADOPT  
NEGATIVE DECLARATION**

A notice, pursuant to the California Environmental Quality Act of 1970, as amended (Public Resources Code 21,000, et seq.), that the following project: Legalization of Land Clearing, when adopted and implemented, will not have a significant impact on the environment.

FILE NO.: PLN 2009-00358

OWNERS/APPLICANTS: David and Hi-Jin Hodge/San Mateo County Parks Department

ASSESSOR'S PARCEL NOs.: 048-016-010 and 048-016-020

**PROJECT DESCRIPTION AND LOCATION**

**NOTE:** *This mitigated Negative Declaration (N/D) is a revised version of the document that underwent the required 21-day circulation period (January 21 through February 10, 2010), and originally included both the project described below and the legalization of unpermitted land clearing on the same parcel as well as an adjacent parcel owned by the County Parks Department. Each of those projects was then and continues to be considered under separate Planning cases: PLN 2008-00380 (for the new residence) and PLN 2009-00358 (for the unpermitted land clearing). At their hearing of February 23, 2011, the Planning Commission requested that prior to acting on either case, the original N/D document be separated into two separate N/Ds, relative to each of the cited Planning cases. This allows the Commission to potentially certify the N/D specific to either project should they decide to approve either project without the other. County Counsel, upon review of CEQA law, concluded that this was feasible – without requiring recirculation of the two documents – because segregating the original N/D and its analysis into two N/Ds represented no substantial revision to the original N/D's conclusion regarding environmental impacts and associated mitigation measures respective to each project. In doing so, staff concludes that each project's respective impacts are not significantly different than as represented in the original N/D.*

The applicant is proposing the legalization of unpermitted land clearing on two parcels located on Magellan Avenue, west of Cabrillo Highway and immediately south of San Mateo County-owned park and open space land known as Mirada Surf. The parcels are under separate ownership. Parcel 1, owned by David and Hi-Jin Hodge, is 10,802 sq. ft. in size and in the shape of a "U." Parcel 2, owned by San Mateo County Parks Department, is 3,200 sq. ft. in size and is located in the middle part of Parcel 1's "U." Both parcels are proposed for development under separate applications (PLN 2008-00380 and PLN 2010-00356, respectively). The area to the south of the project site is zoned residential. Some properties are developed with single-family dwellings, while others are undeveloped. No trees are proposed for removal nor is additional land clearing included as part of this proposal.

As indicated in the NOTE above, a separate N/D for the unpermitted land clearing has been prepared and accompanies that project's permit application (PLN 2008-00380).

## FINDINGS AND BASIS FOR A NEGATIVE DECLARATION

The Current Planning Section has reviewed the initial study for the project and, based upon substantial evidence in the record, finds that:

1. The project will not adversely affect water or air quality or increase noise levels substantially.
2. The project will not have adverse impacts on the flora or fauna of the area.
3. The project will not degrade the aesthetic quality of the area.
4. The project will not have adverse impacts on traffic or land use.
5. In addition, the project will not:
  - a. Create impacts which have the potential to degrade the quality of the environment.
  - b. Create impacts which achieve short-term to the disadvantage of long-term environmental goals.
  - c. Create impacts for a project which are individually limited, but cumulatively considerable.
  - d. Create environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.

The County of San Mateo has, therefore, determined that the environmental impact of the project is insignificant.

MITIGATION MEASURES included in the project to avoid potentially significant effects:

**Mitigation Measure 1:** Additional land clearing and/or vegetation removal shall not be allowed as part of this permit approval. Any additional or future clearing of either of the parcels shall be addressed by a separate application submitted prior to any such land clearing or vegetation removal.

**Mitigation Measure 2:** The applicant's biologist shall prepare and submit a revegetation plan that includes recommended site restoration measures by WRA Environmental Consultants. The plan shall cover a planting area of 30 feet from the edge of the riparian vegetation. The plan shall identify the types, density, general location and size of the plant species to be planted and be prepared in compliance with State water efficiency standards. The plan shall be reviewed and approved by the Community Development Director prior to its implementation. Within 60 days of this application's final approval, or at the earliest and best time to plant near or during the closest upcoming winter or growing season, as determined by the applicant's biologist, the aforementioned plan shall be implemented.

**Mitigation Measure 3:** The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementation and maturation of the landscaping plan. The COD shall be held for a period of two (2) years after final approval by the Building Inspection Section of the associated building permit. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.

**Mitigation Measure 4:** No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.

**Mitigation Measure 5:** The only permitted uses within the buffer zone for the riparian area on the property shall be pursuant to Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP). All other uses shall be prohibited.

**Mitigation Measure 6:** Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activity shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.

#### **INITIAL STUDY**

The San Mateo County Current Planning Section has reviewed the Environmental Evaluation of this project and has found that the probable environmental impacts are insignificant. A copy of the initial study is attached.

**REVIEW PERIOD:** January 21, 2010 to February 10, 2010

All comments regarding the correctness, completeness, or adequacy of this Negative Declaration must be received by the County Planning and Building Department, 455 County Center, Second Floor, Redwood City, no later than **5:00 p.m., February 10, 2010**

#### **CONTACT PERSON**

Stephanie Skangos  
Project Planner, 650/363-1814

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Stephanie Skangos, Project Planner

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County of San Mateo  
Planning and Building Department

**INITIAL STUDY**  
**ENVIRONMENTAL EVALUATION CHECKLIST**  
(To Be Completed By Current Planning Section)

I. **BACKGROUND**

Project Title: Legalization of Land Clearing

File No.: PLN 2009-00358

Project Location: Corner of Magellan and Alameda Avenues, Miramar

Assessor's Parcel Nos.: 048-016-010 and 048-016-020

Applicants/Owners: David and Hi-Jin Hodge/San Mateo County Parks Department

Date Environmental Information Form Submitted: November 4, 2008

**PROJECT DESCRIPTION**

The applicant is proposing the legalization of unpermitted land clearing on two parcels located on Magellan Avenue, west of Cabrillo Highway and immediately south of San Mateo County-owned park and open space land known as Mirada Surf. The parcels are under separate ownership. Parcel 1, owned by David and Hi-Jin Hodge, is 10,802 sq. ft. in size and in the shape of a "U." Parcel 2, owned by San Mateo County Parks Department, is 3,200 sq. ft. in size and is located in the middle part of Parcel 1's "U." Both parcels are proposed for development under separate applications (PLN 2008-00380 and PLN 2010-00356, respectively). The area to the south of the project site is zoned residential. Some properties are developed with single-family dwellings, while others are undeveloped. No trees are proposed for removal nor is additional land clearing included as part of this proposal.

## II. ENVIRONMENTAL ANALYSIS

Any controversial answers or answers needing clarification are explained on an attached sheet. For source, refer to pages 11 and 12.

	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
<b>1. <u>LAND SUITABILITY AND GEOLOGY</u></b>						
Will (or could) this project:						
a. Involve a unique landform or biological area, such as beaches, sand dunes, marshes, tidelands, or San Francisco Bay?			X			B,F,O
b. Involve construction on slope of 15% or greater?	X					E,I
c. Be located in an area of soil instability (subsidence, landslide or severe erosion)?	X					Bc,D
d. Be located on, or adjacent to a known earthquake fault?	X					Bc,D
e. Involve Class I or Class II Agriculture Soils and Class III Soils rated good or very good for artichokes or Brussels sprouts?	X					M
f. Cause erosion or siltation?			X			M,I
g. Result in damage to soil capability or loss of agricultural land?	X					A,M
h. Be located within a flood hazard area?	X					G
i. Be located in an area where a high water table may adversely affect land use?	X					D
j. Affect a natural drainage channel or streambed, or watercourse?	X					E

		IMPACT					SOURCE
		NO	YES			Cumulative	
			Not Significant	Significant Unless Mitigated	Significant		
<b>2. <u>VEGETATION AND WILDLIFE</u></b>							
Will (or could) this project:							
a.	Affect federal or state listed rare or endangered species of plant life in the project area?	X					F
b.	Involve cutting of heritage or significant trees as defined in the County Heritage Tree and Significant Tree Ordinance?	X					I,A
c.	Be adjacent to or include a habitat food source, water source, nesting place or breeding place for a federal or state listed rare or endangered wildlife species?	X					F
d.	Significantly affect fish, wildlife, reptiles, or plant life?	X					I
e.	Be located inside or within 200 feet of a marine or wildlife reserve?	X					E,F,O
f.	Infringe on any sensitive habitats?			X			F
g.	Involve clearing land that is 5,000 sq. ft. or greater (1,000 sq. ft. within a County Scenic Corridor), that has slopes greater than 20% or that is in a sensitive habitat or buffer zone?			X			I,F,Bb
<b>3. <u>PHYSICAL RESOURCES</u></b>							
Will (or could) this project:							
a.	Result in the removal of a natural resource for commercial purposes (including rock, sand, gravel, oil, trees, minerals or topsoil)?	X					I

	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
b. Involve grading in excess of 150 cubic yards?	X					I
c. Involve lands currently protected under the Williamson Act (agricultural preserve) or an Open Space Easement?	X					I
d. Affect any existing or potential agricultural uses?	X					A,K,M
4. <u>AIR QUALITY, WATER QUALITY, SONIC</u>						
Will (or could) this project:						
a. Generate pollutants (hydrocarbon, thermal odor, dust or smoke particulates, radiation, etc.) that will violate existing standards of air quality on-site or in the surrounding area?	X					I,N,R
b. Involve the burning of any material, including brush, trees and construction materials?	X					I
c. Be expected to result in the generation of noise levels in excess of those currently existing in the area, after construction?	X					Ba,I
d. Involve the application, use or disposal of potentially hazardous materials, including pesticides, herbicides, other toxic substances, or radioactive material?	X					I
e. Be subject to noise levels in excess of levels determined appropriate according to the County Noise Ordinance or other standard?	X					A,Ba,Bc
f. Generate noise levels in excess of levels determined appropriate according to the County Noise Ordinance standard?			X			I



	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
g. Generate polluted or increased surface water runoff or affect groundwater resources?	X					I
h. Require installation of a septic tank/leachfield sewage disposal system or require hookup to an existing collection system which is at or over capacity?	X					S
5. <u>TRANSPORTATION</u>						
Will (or could) this project:						
a. Affect access to commercial establishments, schools, parks, etc.?	X					A,I
b. Cause noticeable increase in pedestrian traffic or a change in pedestrian patterns?	X					A,I
c. Result in noticeable changes in vehicular traffic patterns or volumes (including bicycles)?	X					I
d. Involve the use of off-road vehicles of any kind (such as trail bikes)?	X					I
e. Result in or increase traffic hazards?	X					S
f. Provide for alternative transportation amenities such as bike racks?	X					I
g. Generate traffic which will adversely affect the traffic carrying capacity of any roadway?	X					S

	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
<b>6. LAND USE AND GENERAL PLANS</b>						
Will (or could) this project:						
a. Result in the congregating of more than 50 people on a regular basis?	X					I
b. Result in the introduction of activities not currently found within the community?	X					I
c. Employ equipment which could interfere with existing communication and/or defense systems?	X					I
d. Result in any changes in land use, either on or off the project site?	X					I
e. Serve to encourage off-site development of presently undeveloped areas or increase development intensity of already developed areas (examples include the introduction of new or expanded public utilities, new industry, commercial facilities or recreation activities)?	X					I,Q,S
f. Adversely affect the capacity of any public facilities (streets, highways, freeways, public transit, schools, parks, police, fire, hospitals), public utilities (electrical, water and gas supply lines, sewage and storm drain discharge lines, sanitary landfills) or public works serving the site?	X					I,S
g. Generate any demands that will cause a public facility or utility to reach or exceed its capacity?	X					I,S
h. Be adjacent to or within 500 feet of an existing or planned public facility?		X				A

	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
i. Create significant amounts of solid waste or litter?	X					I
j. Substantially increase fossil fuel consumption (electricity, oil, natural gas, coal, etc.)?	X					I
k. Require an amendment to or exception from adopted general plans, specific plans, or community policies or goals?	X					B
l. Involve a change of zoning?	X					C
m. Require the relocation of people or businesses?	X					I
n. Reduce the supply of low-income housing?	X					I
o. Result in possible interference with an emergency response plan or emergency evacuation plan?	X					S
p. Result in creation of or exposure to a potential health hazard?	X					S
<b>7. <u>AESTHETIC, CULTURAL AND HISTORIC</u></b>						
Will (or could) this project:						
a. Be adjacent to a designated Scenic Highway or within a State or County Scenic Corridor?	X					A,Bb
b. Obstruct scenic views from existing residential areas, public lands, public water body, or roads?	X					A,I
c. Involve the construction of buildings or structures in excess of three stories or 36 feet in height?	X					I

	IMPACT					SOURCE
	NO	YES			Cumulative	
		Not Significant	Significant Unless Mitigated	Significant		
d. Directly or indirectly affect historical or archaeological resources on or near the site?	X					H
e. Visually intrude into an area having natural scenic qualities?	X					A,I

**III. RESPONSIBLE AGENCIES.** Check what agency has permit authority or other approval for the project.

AGENCY	YES	NO	TYPE OF APPROVAL
U.S. Army Corps of Engineers (CE)		X	
State Water Resources Control Board		X	
Regional Water Quality Control Board		X	
State Department of Public Health		X	
San Francisco Bay Conservation and Development Commission (BCDC)		X	
U.S. Environmental Protection Agency (EPA)		X	
County Airport Land Use Commission (ALUC)		X	
CalTrans		X	
Bay Area Air Quality Management District		X	
U.S. Fish and Wildlife Service		X	
Coastal Commission	X		Appeals Jurisdiction
City		X	
Sewer/Water District:		X	
Other:			

#### IV. MITIGATION MEASURES

	<u>Yes</u>	<u>No</u>
Mitigation measures have been proposed in project application.	<u>X</u>	<u>          </u>
Other mitigation measures are needed.	<u>X</u>	<u>          </u>

The following measures are included in the project plans or proposals pursuant to Section 15070(b)(1) of the State CEQA Guidelines:

**Mitigation Measure 1:** Additional land clearing and/or vegetation removal shall not be allowed as part of this permit approval. Any additional or future clearing of either of the parcels shall be addressed by a separate application submitted prior to any such land clearing or vegetation removal.

**Mitigation Measure 2:** The applicant's biologist shall prepare and submit a revegetation plan that includes recommended site restoration measures by WRA Environmental Consultants. The plan shall cover a planting area of 30 feet from the edge of the riparian vegetation. The plan shall identify the types, density, general location and size of the plant species to be planted and be prepared in compliance with State water efficiency standards. The plan shall be reviewed and approved by the Community Development Director prior to its implementation. Within 60 days of this application's final approval, or at the earliest and best time to plant near or during the closest upcoming winter or growing season, as determined by the applicant's biologist, the aforementioned plan shall be implemented.

**Mitigation Measure 3:** The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementation and maturation of the landscaping plan. The COD shall be held for a period of two (2) years after final approval by the Building Inspection Section of the associated building permit. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.

**Mitigation Measure 4:** No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.

**Mitigation Measure 5:** The only permitted uses within the buffer zone for the riparian area on the property shall be pursuant to Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP). All other uses shall be prohibited.

**Mitigation Measure 6:** Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activity shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.

**V. MANDATORY FINDINGS OF SIGNIFICANCE**

	Yes	No
1. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal, or eliminate important examples of the major periods of California history or prehistory?		X
2. Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals?		X
3. Does the project have possible environmental effects which are individually limited, but cumulatively considerable?		X
4. Would the project cause substantial adverse effects on human beings, either directly or indirectly?		X

On the basis of this initial evaluation:

I find the proposed project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared by the Current Planning Section.

I find that although the proposed project could have a significant effect on the environment, there **WILL NOT** be a significant effect in this case because of the mitigation measures in the discussion have been included as part of the proposed project. A **NEGATIVE DECLARATION** will be prepared.

I find that the proposed project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.

Stephanie Skangos

Project Planner  
(Title)

Date

## VI. SOURCE LIST

- A. Field Inspection
- B. County General Plan 1986
  - a. General Plan Chapters 1-16
  - b. Local Coastal Program (LCP) (Area Plan)
  - c. Skyline Area General Plan Amendment
  - d. Montara-Moss Beach-El Granada Community Plan
  - e. Emerald Lake Hills Community Plan
- C. County Ordinance Code
- D. Geotechnical Maps
  - 1. USGS Basic Data Contributions
    - a. #43 Landslide Susceptibility
    - b. #44 Active Faults
    - c. #45 High Water Table
  - 2. Geotechnical Hazards Synthesis Maps
- E. USGS Quadrangle Maps, San Mateo County 1970 Series (See F. and H.)
- F. San Mateo County Rare and Endangered Species Maps, or Sensitive Habitats Maps
- G. Flood Insurance Rate Map – National Flood Insurance Program
- H. County Archaeologic Resource Inventory (Prepared by S. Dietz, A.C.R.S.) Procedures for Protection of Historic and Cultural Properties – 36 CFR 800 (See R.)
- I. Project Plans or EIF
- J. Airport Land Use Committee Plans, San Mateo County Airports Plan
- K. Aerial Photography or Real Estate Atlas – REDI
  - 1. Aerial Photographs, 1941, 1953, 1956, 1960, 1963, 1970
  - 2. Aerial Photographs, 1981
  - 3. Coast Aerial Photos/Slides, San Francisco County Line to Año Nuevo Point, 1971
  - 4. Historic Photos, 1928-1937





**COUNTY OF SAN MATEO**  
Planning and Building Department

**Initial Study Pursuant to CEQA**  
**Project Narrative and Answers to Questions for the Negative Declaration**  
**File Number: PLN 2009-00358**  
**Legalization of Land Clearing**

**PROJECT DESCRIPTION**

***NOTE:** This mitigated Negative Declaration (N/D) is a revised version of the document that underwent the required 21-day circulation period (January 21 through February 10, 2010), and originally included both the project described below and the legalization of unpermitted land clearing on the same parcel as well as an adjacent parcel owned by the County Parks Department. Each of those projects was then and continues to be considered under separate Planning cases: PLN 2008-00380 (for the new residence) and PLN 2009-00358 (for the unpermitted land clearing). At their hearing of February 23, 2011, the Planning Commission requested that prior to acting on either case, the original N/D document be separated into two separate N/Ds, relative to each of the cited Planning cases. This allows the Commission to potentially certify the N/D specific to either project should they decide to approve either project without the other. County Counsel, upon review of CEQA law, concluded that this was feasible – without requiring recirculation of the two documents – because segregating the original N/D and its analysis into two N/Ds represented no substantial revision to the original N/D's conclusion regarding environmental impacts and associated mitigation measures respective to each project. In doing so, staff concludes that each project's respective impacts are not significantly different than as represented in the original N/D.*

The applicant is proposing the legalization of unpermitted land clearing on two parcels located on Magellan Avenue, west of Cabrillo Highway and immediately south of San Mateo County-owned park and open space land known as Mirada Surf. The parcels are under separate ownership. Parcel 1, owned by David and Hi-Jin Hodge, is 10,802 sq. ft. in size and in the shape of a "U." Parcel 2, owned by San Mateo County Parks Department, is 3,200 sq. ft. in size and is located in the middle part of Parcel 1's "U." Both parcels are proposed for development under separate applications (PLN 2008-00380 and PLN 2010-00356, respectively). The area to the south of the project site is zoned residential. Some properties are developed with single-family dwellings, while others are undeveloped. No trees are proposed for removal nor is additional land clearing included as part of this proposal.

As indicated in the NOTE above, a separate N/D for the unpermitted land clearing has been prepared and accompanies that project's permit application (PLN 2008-00380).

**ANSWERS TO QUESTIONS**

**1. LAND SUITABILITY AND GEOLOGY**

- a. Will (or could) this project involve a unique landform or biological area, such as beaches, sand dunes, marshes, tidelands, or San Francisco Bay?

**ANSWERS TO QUESTIONS**

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**Yes, Significant Unless Mitigated.** The project site is located adjacent to an existing unnamed perennial creek that is surrounded by willow riparian habitat. The willow riparian habitat encroaches onto the northeast corner of Parcel 1. There are no additional sensitive habitats on the parcel, as determined by a qualified biologist, as the site is dominated primarily by sparsely vegetated ground, including ruderal herbaceous grassland. This type of vegetative cover does not qualify as a sensitive habitat nor provide suitable habitat for most special status plant and wildlife species. A biological study conducted in 2005 for the adjacent Mirada Surf Trail project (immediately north and west of the parcel) included the project site. This report indicated that a seasonal wetland was in the vicinity of the project site. Recent biological studies and reports completed by WRA Environmental Consultants (WRA) have determined that a wetland does not exist on the project site, concluding that the area does not meet the definition of "wetland," as defined by both the Army Corps of Engineers (ACOE) and the San Mateo County Local Coastal Program (LCP) (see Attachment E). These most recent studies have also determined that the unpermitted land clearing done on the property did not involve the removal of any riparian or sensitive habitats. The area of the parcel that was cleared was most likely dominated by blackberry bushes, which grow in both wetland and upland areas, and ruderal herbaceous grassland (see Attachment D). The following mitigation measures are recommended to resolve the unpermitted land clearing and to ensure that future impacts to the existing riparian habitat are avoided:

**Mitigation Measure 1:** Additional land clearing and/or vegetation removal shall not be allowed as part of this permit approval. Any additional or future clearing of either of the parcels shall be addressed by a separate application submitted prior to any such land clearing or vegetation removal.

**Mitigation Measure 2:** The applicant's biologist shall prepare and submit a revegetation plan that includes recommended site restoration measures by WRA Environmental Consultants. The plan shall cover a planting area of 30 feet from the edge of the riparian vegetation. The plan shall identify the types, density, general location and size of the plant species to be planted and be prepared in compliance with State water efficiency standards. The plan shall be reviewed and approved by the Community Development Director prior to its implementation. Within 60 days of this application's final approval, or at the earliest and best time to plant near or during the closest upcoming winter or growing season, as determined by the applicant's biologist, the aforementioned plan shall be implemented.

**Mitigation Measure 3:** The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementation and maturation of the landscaping plan. The COD shall be held for a period of two (2) years after final approval by the Building Inspection Section of the associated building permit. At the end of the two-year period, the applicant shall confirm that all implemented

**ANSWERS TO QUESTIONS**

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landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.

**Mitigation Measure 4:** No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.

**Mitigation Measure 5:** The only permitted uses within the buffer zone for the riparian area on the property shall be pursuant to Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo County Local Coastal Program (LCP). All other uses shall be prohibited.

- b. **Will (or could) this project involve construction on slope of 15% or greater?**

**No Impact.** The project does not involve any construction.

- c. **Will (or could) this project be located in an area of soil instability (subsidence, landslide or severe erosion)?**

**No Impact.** The project site has been designated as an area with Landslide Susceptibility I based on information gathered from the U.S. Geological Survey. Such areas have the lowest susceptibility to soil instability and a decreased potential for occurrences of a landslide.

- d. **Will (or could) this project be located on, or adjacent to a known earthquake fault?**

**No Impact.** The project site is not located on or adjacent to a known earthquake fault.

- e. **Will (or could) this project involve Class I or Class II Agriculture Soils and Class III Soils rated good or very good for artichokes or Brussels sprouts?**

**No Impact.** The project site is located on land that has been identified as having Class III soils; however, the parcel has been designated for residential use and is not intended for agricultural use or production. In addition, the immediate surroundings of the property are residential and County-owned park and open space land.

- f. **Will (or could) this project cause erosion or siltation?**

**No Impact.** Based on determination by a qualified biologist, the unpermitted land clearing was minimal. Therefore, it is likely that any erosion was minimal as well. The project site will be restored to its pre-disturbance conditions, and no development is included in the proposal. Therefore, erosion and siltation are not an issue.

**ANSWERS TO QUESTIONS**

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- g. **Will (or could) this project result in damage to soil capability or loss of agricultural land?**

**No Impact.** Refer to staff's response to Question 1(e) above.

- h. **Will (or could) this project be located within a flood hazard area?**

**No Impact.** The project site has been designated as Flood Zone C, as defined by FEMA, which is an area of minimal potential flooding.

- i. **Will (or could) this project be located in an area where a high water table may adversely affect land use?**

**No Impact.** There is no indication of the presence of a high water table in this area.

- j. **Will (or could) this project affect a natural drainage channel or streambed, or watercourse?**

**No Impact.** As discussed in the response to Question 1(a) above, the project site is located adjacent to an existing perennial creek that is surrounded by willow riparian habitat. Based on the findings of a qualified biologist, the unpermitted land clearing did not involve the removal of any sensitive habitats. The recommended restoration of the project site will not cause a significant affect on the existing creek and riparian habitat in the area.

**2. VEGETATION AND WILDLIFE**

- a. **Will (or could) this project affect federal or state listed rare or endangered species of plant life in the project area?**

**No Impact.** The project will not affect federal or state listed rare or endangered species of plant life because the site is not located within a sensitive habitat area, as determined by review of the California Natural Diversity Database (CNDDDB). Furthermore, the biological documents submitted for the project indicate that the project area does not provide suitable habitat for such plant species and that the unpermitted land clearing did not include the removal of any sensitive habitats (see Attachments C and D).

- b. **Will (or could) this project involve cutting of heritage or significant trees as defined in the County Heritage Tree and Significant Tree Ordinance?**

**No Impact.** The unpermitted land clearing that occurred did not include the removal of any heritage or significant trees, as determined by a qualified biologist.

**ANSWERS TO QUESTIONS**

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- c. **Will (or could) this project be adjacent to or include a habitat food source, water source, nesting place or breeding place for a federal or state listed rare or endangered wildlife species?**

**No Impact.** Based on review of the CNDDDB, the project site is not located within or adjacent to a mapped federal or state listed rare or endangered wildlife species. In addition, a qualified biologist has determined that the project area is not suitable for such habitats (see Attachment C).

- d. **Will (or could) this project significantly affect fish, wildlife, reptiles, or plant life?**

**No Impact.** Refer to staff's responses to Questions 2(a) and 2(c) above.

- e. **Will (or could) this project be located inside or within 200 feet of a marine or wildlife reserve?**

**No Impact.** The proposed project is not located within 200 feet of a marine or wildlife reserve.

- f. **Will (or could) this project infringe on any sensitive habitats?**

**Yes, Significant Unless Mitigated.** Refer to staff's response to Questions 1(a) and 2(d) above.

- g. **Will (or could) this project involve clearing land that is 5,000 sq. ft. or greater (1,000 sq. ft. within a County Scenic Corridor), that has slopes greater than 20% or that is in a sensitive habitat or buffer zone?**

**Yes, Significant Unless Mitigated.** The project site is located within a designated County Scenic Corridor. Illegal land clearing was done on the majority of the project site. This amounts to more than 1,000 sq. ft.; however, there was minimal vegetation removal, as previously discussed. A qualified biologist has conducted a survey of the property and found that the illegal land clearing did not affect any sensitive habitats. The only sensitive habitat found on the property is the willow riparian corridor at the northeast corner of Parcel 1, and the illegal land clearing did not include the removal of any willow riparian habitat (see Attachment D). Mitigation Measures 2 and 3 in the discussion to Question 1(a) above are recommended to replant native vegetation to the area that was cleared.

**3. PHYSICAL RESOURCES**

- a. **Will (or could) this project result in the removal of a natural resource for commercial purposes (including rock, sand, gravel, oil, trees, minerals or topsoil)?**

**No Impact.** Based on review of the County General Plan, there are no mapped natural resources on the subject property that would be used for commercial purposes.

- b. **Will (or could) this project involve grading in excess of 150 cubic yards?**

**No Impact.** Based on documentation submitted by the applicant and a qualified biologist, it has been determined that the unpermitted land clearing involved minimal vegetation removal.

- c. **Will (or could) this project involve lands currently protected under the Williamson Act (agricultural preserve) or an Open Space Easement?**

**No Impact.** The project site is currently not under the Williamson Act or an Open Space Easement.

- d. **Will (or could) this project affect any existing or potential agricultural uses?**

**No Impact.** Refer to staff's response to Question 1(e) above.

**4. AIR QUALITY, WATER QUALITY, SONIC**

- a. **Will (or could) this project generate pollutants (hydrocarbon, thermal odor, dust or smoke particulates, radiation, etc.) that will violate existing standards of air quality on-site or in the surrounding area?**

**No Impact.** The project will not generate pollutants that will violate existing standards of air quality on-site or in the surrounding area.

- b. **Will (or could) this project involve the burning of any material, including brush, trees and construction materials?**

**No Impact.** The project does not involve the burning of any material.

- c. **Will (or could) this project be expected to result in the generation of noise levels in excess of those currently existing in the area, after construction?**

**No Impact.** The project will not generate noise levels in excess of those currently existing in the area, as the proposal does not involve construction activities. The site will be restored to its original natural condition.

**ANSWERS TO QUESTIONS**

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- d. **Will (or could) this project involve the application, use or disposal of potentially hazardous materials, including pesticides, herbicides, other toxic substances, or radioactive material?**

**No Impact.** The project does not involve the application, use or disposal of potentially hazardous materials.

- e. **Will (or could) this project be subject to noise levels in excess of levels determined appropriate according to the County Noise Ordinance or other standard?**

**No Impact.** The project legalizes land clearing that has already occurred on the project site. Restoration activities will be required, returning the project site to its natural conditions. As the project site is vacant, noise levels are not relevant.

- f. **Will (or could) this project generate noise levels in excess of levels determined appropriate according to the County Noise Ordinance standard?**

**Yes, Significant Unless Mitigated.** While this project will not generate noise levels in excess of appropriate levels once implemented, during restoration activities, increased noise levels may occur. However, noise sources associated with demolition, construction or grading of any real property are exempt from the County Noise Ordinance provided these activities occur during designated time frames. As such, the following mitigation measure is recommended:

**Mitigation Measure 6:** Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activity shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.

- g. **Will (or could) this project generate polluted or increased surface water runoff or affect groundwater resources?**

**No Impact.** The project does not involve construction activities and will not generate polluted or increased surface water runoff or affect groundwater resources.

- h. **Will (or could) this project require installation of a septic tank/leachfield sewage disposal system or require hookup to an existing collection system which is at or over capacity?**

**No Impact.** The project does not require sewage services.

**ANSWERS TO QUESTIONS**

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**5. TRANSPORTATION**

- a. **Will (or could) this project affect access to commercial establishments, schools, parks, etc.?**

**No Impact.** The project site is located immediately south of County-owned park and open space land known as the Mirada Surf. The County Parks Department has recently completed the construction of a pedestrian and bike path through the Mirada Surf property. This path is part of a regional coastal trail intended to extend along the length of the San Mateo County coastline. The Mirada Surf Trail extends from Magellan Avenue to the intersection of Mirada Road and Cabrillo Highway, across from Coronado Avenue. The path access from Magellan Avenue is along an abandoned portion of Alameda Avenue that runs in front of the project site. The project does not affect access to the Mirada Surf property, as no development is proposed. There are no commercial establishments or schools in the vicinity.

- b. **Will (or could) this project cause noticeable increase in pedestrian traffic or a change in pedestrian patterns?**

**No Impact.** The project site will be restored to its natural condition and development is not included as part of this proposal. Therefore, pedestrian traffic is not a factor in this proposal.

- c. **Will (or could) this project result in noticeable changes in vehicular traffic patterns or volumes (including bicycles)?**

**No Impact.** As mentioned above, the proposal does not include development. Therefore, vehicular traffic is not relevant to this project.

- d. **Will (or could) this project involve the use of off-road vehicles of any kind (such as trail bikes)?**

**No Impact.** The project does not involve the use of off-road vehicles.

- e. **Will (or could) this project result in or increase traffic hazards?**

**No Impact.** Refer to staff's response to Question 5(c) above.

- f. **Will (or could) this project provide for alternative transportation amenities such as bike racks?**

**No Impact.** Alternative transportation amenities are not required as part of this project.



**ANSWERS TO QUESTIONS**

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- g. **Will (or could) this project generate traffic which will adversely affect the traffic carrying capacity of any roadway?**

**No Impact.** Refer to staff's response to Question 5(c) above.

**6. LAND USE AND GENERAL PLANS**

- a. **Will (or could) this project result in the congregating of more than 50 people on a regular basis?**

**No Impact.** The proposed project would not result in the congregation of more than 50 people on a regular basis.

- b. **Will (or could) this project result in the introduction of activities not currently found within the community?**

**No Impact.** The proposed project would not result in the introduction of new activities in the area, as the project site will be restored to its natural state and development is not included as part of this proposal.

- c. **Will (or could) this project employ equipment which could interfere with existing communication and/or defense systems?**

**No Impact.** The proposed project would not employ equipment that could interfere with existing communication and/or defense systems.

- d. **Will (or could) this project result in any changes in land use, either on or off the project site?**

**No Impact.** Refer to staff's response to Question 6(b) above.

- e. **Will (or could) this project serve to encourage off-site development of presently undeveloped areas or increase development intensity of already developed areas (examples include the introduction of new or expanded public utilities, new industry, commercial facilities or recreation activities)?**

**No Impact.** Refer to staff's response to Question 6(b) above.

- f. **Will (or could) this project adversely affect the capacity of any public facilities (streets, highways, freeways, public transit, schools, parks, police, fire, hospitals), public utilities (electrical, water and gas supply lines, sewage and storm drain discharge lines, sanitary landfills) or public works serving the site?**

**No Impact.** Refer to staff's response to Question 6(b) above.

**ANSWERS TO QUESTIONS**

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- g. **Will (or could) this project generate any demands that will cause a public facility or utility to reach or exceed its capacity?**

**No Impact.** Refer to staff's response to Question 6(b) above.

- h. **Will (or could) this project be adjacent to or within 500 feet of an existing or planned public facility?**

**Yes, Not Significant.** Refer to staff's response to Question 5(a) above.

- i. **Will (or could) this project create significant amounts of solid waste or litter?**

**No Impact.** Refer to staff's response to Question 6(b) above.

- j. **Will (or could) this project substantially increase fossil fuel consumption (electricity, oil, natural gas, coal, etc.)?**

**No Impact.** Refer to staff's response to Question 6(b) above.

- k. **Will (or could) this project require an amendment to or exception from adopted general plans, specific plans, or community policies or goals?**

**No Impact.** Refer to staff's response to Question 6(b) above.

- l. **Will (or could) this project involve a change of zoning?**

**No Impact.** The proposed project does not include or require a change in zoning.

- m. **Will (or could) this project require the relocation of people or businesses?**

**No Impact.** The proposal would not require the relocation of people or businesses.

- n. **Will (or could) this project reduce the supply of low-income housing?**

**No Impact.** The proposed project does not include or replace any low-income housing.

- o. **Will (or could) this project result in possible interference with an emergency response plan or emergency evacuation plan?**

**No Impact.** The proposed project would not interfere with any emergency response or evacuation plans.

- p. **Will (or could) this project result in creation of or exposure to a potential health hazard?**

**ANSWERS TO QUESTIONS**

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**No Impact.** The proposed project does not involve any activities that would result in the creation of or exposure to a potential health hazard.

**7. AESTHETIC, CULTURAL AND HISTORIC**

- a. **Will (or could) this project be adjacent to a designated Scenic Highway or within a State or County Scenic Corridor?**

**No Impact.** Although the project site is located within the designated Cabrillo Highway County Scenic Corridor, the proposal does not include any development. Restoration of the site to its pre-disturbance conditions will be required and will not impact any scenic views or visual qualities in the surrounding area.

- b. **Will (or could) this project obstruct scenic views from existing residential areas, public lands, public water body, or roads?**

**No Impact.** Refer to staff's response to Question 7(a) above.

- c. **Will (or could) this project involve the construction of buildings or structures in excess of three stories or 36 feet in height?**

**No Impact.** The project does not involve any development.

- d. **Will (or could) this project directly or indirectly affect historical or archaeological resources on or near the site?**

**No Impact.** There are no known historical or archaeological resources on or near the site.

- e. **Will (or could) this project visually intrude into an area having natural scenic qualities?**

**No Impact.** Refer to staff's response to Question 7(a) above.

**ATTACHMENTS**

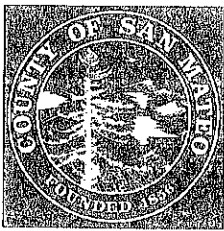
- A. Location Map
- B. Proposed Site Plan
- C. WRA Biological Resource Assessment – February 24, 2009
- D. WRA Report: Previous Habitat Conditions of Cleared Area: Proposed Hodge Residence, Magellan Avenue, Miramar – May 20, 2009
- E. WRA Report: Wetland Delineation at Proposed Hodge Residence, Magellan Avenue, Half Moon Bay – June 16, 2009

SS:pac - SKSV0185\_WPH.DOC



County of San Mateo - Planning and Building Department

# ATTACHMENT G



County of San Mateo

## Planning & Building Department

455 County Center, 2nd Floor

Redwood City, California 94063

650/363-4161 Fax: 650/363-4849

Mail Drop PLN122

plngbldg@co.sanmateo.ca.us

www.co.sanmateo.ca.us/planning

### REVISED DECISION LETTER

April 22, 2011

David and Hi-Jin Hodge  
100 Coronado Avenue  
Half Moon Bay, CA 94019

Sam Herzberg  
County Parks, County of San Mateo  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94062

| Dear Mr. and Mrs. Hodge, and Mr. Herzberg:

Subject: **REVISED** Decision Letter  
File Number: PLN2009-00358  
Location: Corner of Magellan and Alameda  
APNs: 048-016-010 and 048-016-020

On April 13, 2011, the San Mateo County Planning Commission made the following changes on Attachment A, under conditions of approval, number 4, shown with an (\*). See Revised Attachment A.

If you have questions regarding this matter, please contact Dave Holbrook, Senior Project Planner, at 650/363-1837.

Sincerely,

Rosario Fernandez  
Planning Commission Secretary  
Pcd0422V\_rf (REV1Hodge/Parks).doc

Attachment

County of San Mateo  
Planning and Building Department

**REVISED FINDINGS AND CONDITIONS OF APPROVAL**

Permit or Project File Number: PLN 2009-00358      Hearing Date: March 23, 2011

Prepared By: Stephanie Skangos,  
Project Planner

Adopted By: Planning Commission

**FINDINGS**

Regarding the Negative Declaration, Found:

1. That the Negative Declaration is complete, correct and adequate, and prepared in accordance with the California Environmental Quality Act and applicable State and County guidelines. The public review period for this document was January 21, 2010 to February 10, 2010.
2. That, on the basis of the Initial Study, comments received hereto, and testimony presented and considered at the public hearing, there is no substantial evidence that the project will have a significant effect on the environment. The Initial Study/Negative Declaration does not identify any significant or cumulative impacts associated with this project.
3. That the Negative Declaration reflects the independent judgment of San Mateo County. The Negative Declaration was prepared by the project planner.
4. That the mitigation measures in the Mitigated Negative Declaration and agreed to by the owner and placed as conditions on the project have been incorporated into the Mitigation Monitoring and Reporting Plan in conformance with the California Public Resources Code Section 21081.6.

Regarding the Coastal Development Permit, Found:

5. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance

with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County LCP. Project plans and materials have been reviewed against the application requirements, staff has completed an LCP Policy Checklist, and the project has been conditioned in accordance with the Sensitive Habitats and Visual Resources Components of the LCP.

6. That the project conforms to the specific findings required by the policies of the LCP with regard to the Sensitive Habitats and Visual Resources Components. Specifically, the project conforms with the protection of sensitive habitats because no special status plants, animals, or habitats were removed. Compliance with LCP requirements for buffer zones and the minimization of vegetative cover removal will be achieved through the implementation of the restoration plan required by Condition No. 4.

#### **CONDITIONS OF APPROVAL**

##### Current Planning Section

1. This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Planning Commission on March 23, 2011. Minor revisions or modifications may be approved by the Community Development Director if they are consistent with the intent of and in substantial conformance with this approval.
2. This permit shall be valid for one (1) year from the date of final approval by which time revegetation shall be initiated. Any extension of this permit shall require submittal of an application for permit extension and payment of applicable permit extension fees sixty (60) days prior to expiration.
3. Additional land clearing and/or vegetation removal shall not be allowed as part of this approval. Any additional or future clearing of either of the parcels must be addressed by a separate application submitted prior to any such land clearing or vegetation removal.
- \*4. The applicant shall submit a revegetation plan within 60 days of this application's final approval for review and approval by the Community Development Director. The revegetation plan shall be prepared by the applicant's biologist and include the recommendations indicated in Section 5.0 (Conclusions and Recommendations) of the December 2, 2010 report submitted by WRA Environmental Consultants. The plan shall identify

the existing riparian drip line and 50-foot required buffer area, and specify the types, density, general location and size of the plant species recommended for the buffer area and outside of the buffer area, in accordance with the biologist's recommendations, LCP Policy 7.13 and State water efficiency standards. The plan shall cover the entirety of both parcels (048-016-010 and 048-016-020). The plan shall identify the types, density, general location and size of the plant species to be planted and be prepared in compliance with State water efficiency standards. Within 60 days of the Community Development Director's approval, or at the earliest and best time to plant during the closest upcoming fall or growing season, as determined by the applicant's biologist (but in no case any later than this year, 2011), the aforementioned plan shall be implemented. If the revegetation plan is proposed to be implemented prior to the upcoming fall or growing season, the applicant shall submit a plan to ensure that all plantings are adequately irrigated. Any subsequent approvals of development related to this project, including PLN 2008-00380 for a new single-family residence on Parcel 1 and/or PLN2010-00356 for a new restroom facility on Parcel 2, shall BE DEEMED TO INCORPORATE AND INCLUDE this requirement for a revegetation plan of the project site, and COMPLIANCE WITH CONDITIONS OF SUBSEQUENT APPROVALS INCORPORATING THIS REQUIREMENT shall constitute compliance with this condition.

5. The applicant shall submit a \$2,000.00 Certificate of Deposit (COD) to the Planning Department to ensure the implementations and maturation of the landscaping/revegetation plan, payable upon confirmation that the plan has been implemented. The COD shall be held for a period of two (2) years after the Planning and Building Department has confirmed that the approved plan has been installed. At the end of the two-year period, the applicant shall confirm that all implemented landscaping is thriving and that any dead plantings have been replaced in like-kind. Upon verification, the COD shall be returned to the applicant.
6. No trees are permitted to be removed as part of this approval. If any tree is proposed for removal, the applicant shall be required to obtain approval of a tree removal permit for the proposed removal of any tree with a diameter greater than 12 inches as measured 4.5 feet above the ground.
7. The only permitted uses within the buffer zone for the riparian area on the properties shall be those allowed by Policies 7.9 (*Permitted Uses in Riparian Corridors*) and 7.12 (*Permitted Uses in Buffer Zones*) of the San Mateo



County Local Coastal Program (LCP), subject to CDP approval. All other uses shall be prohibited.

8. Noise levels produced by construction shall not exceed the 80-dBA level at any one moment. Construction activities shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.
9. The applicant shall submit the following fees to the Current Planning Section: Within four (4) working days of the final approval date of this permit, the applicant shall pay an environmental filing fee of \$2,044.00 (fee effective January 1, 2011), as required under Fish and Game Code Section 711.4(d), plus a \$50.00 recording fee. The applicant shall submit a check in the amount of \$2,094.00, made payable to San Mateo County, to the project planner to file with the Notice of Determination, as required with a certified Negative Declaration.
10. The applicant shall pay the cost of all staff time associated with this after the fact permit, which is determined to be for the time required above and beyond the normal processing time for a coastal development permit, as calculated to the satisfaction of the Community Development Director. Such cost shall be paid within 60 days of the receipt of this decision letter. The applicant shall contact Dave Holbrook, Senior Planner for the specific amount due.

Department of Public Works

11. No proposed construction work within the County right-of-way shall begin until County requirements for the issuance of an encroachment permit, including review of the plans, have been met and an encroachment permit issued.



County of San Mateo - Planning and Building Department

# ATTACHMENT H

david and hi-jin hodge

March 21st 2011

**Planning Commissioners**

San Mateo County Planning & Building Department  
County Office Building  
455 County Center  
Redwood City, CA 94063

Dear Planning Commissioners,

During the last few hearings we have listened to a number of interpretations about our intentions and what we do. I'd like to take a few minutes to clarify these misunderstandings and to communicate to the commission our intentions in doing this project.

Below are the comments we've heard and our response to each of them.

**1. The Hodges are trying to take advantage of this situation to make a quick profit on an unbuildable piece of land.**

We are not trying to take advantage of anything. We want to build a lower cost home to live in. This can be achieved because this property falls just outside of the flood zone, lessening the foundation costs that are required by FEMA. This is not speculative project. It is intended to be our home and studio.

**2. They knew this piece of land was unbuildable because they could buy it so cheap.**

In April of 2008 we learned this property was for sale. The low price was attractive, so we made a conditional offer asking for 30 days to do our due diligence on the property. I emailed and met with David Holbrook, Senior Planner at the County of San Mateo, to inquire about what residential design might work on this parcel. I had created a preliminary a concept for the house showing size and location on the parcel. David replied in an email on 5/14/08 stating the following.

*The good news is that LCP Policy 7.18 expressly allows the mandated 100' buffer to be reduced to 50' when no reasonable alternative exists. In that context, your project appears to have exhausted all other reasonable options. The project's setback from the creek is OK. One of the two req'd sideyard setbacks (along Magellan, you're proposing 5' where 10' would be minimum req'd) would likely qualify for a variance, so I don't see a critical issue there. So barring anything I'm not seeing or am missing here, this proposal appears feasible to submit as part of the required CDP/Variance application."*

Additionally we learned the setbacks could be even closer if necessary.

LCP Policy 7.12 (Permitted Uses in Buffer Zones) states:

*"Within buffer zones, permit only the following uses. (1) uses permitted in riparian corridors. (2) residential uses on existing legal building sites, setback 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists."*

100 Alameda Drive, Redwood City, CA 94063

tel 650 735 4100

david@hodgearts.com

A-2-SMC-11-040/041

Exhibit 4

Page 93 of 98

david and hi-jin hodge

Based on this information we felt we had a very good chance of being able to build on this lot based on David Holbrook's positive response and the other information. We then decided to purchase the lot.

**3. They cut willows and scraped the land without a permit.**

We cut black berry brush and other brush and did some minor trimming of the willows. We never touched the root stock nor did we move the drip line. This claim is supported by the field work done by WRA consultants. Please see the most recent report dated December 2nd 2010 for reference.

**4. It looked like they were really tearing things up.**

I think the brush cutting and the work that was being done on the bridge, the large piles of dirt and all the equipment made it appear that we were doing a lot more than clearing brush.

**5. They knew there were wetlands on the property when they purchased it.**

This was the one variable we did not know for certain. However after reading the study that was done in 2005 by Biotic Resources Group it appeared there was no substantial evidence of wetlands on our property. At the time we met with David Holbrook he shared the same opinion and advised us to have a biology study done. He recommended WRA. We had the report done very early in the process and it clearly indicated there were no wetland species on our parcel. The undisturbed soil did not contain indicators of the presence of wetlands, past or present. In the latest revision of the corps of Engineers wetlands delineation methodology wetland are not present on the property. This is consistent with the local LCP. Please note both firms came to the same conclusion. The WRA report also proved there was no evidence of wetlands prior to our purchase or before the brush clearing. They have been to the lot four times in the last 28 months and each time have come to the same conclusion. Prior to and during our ownership there have never been wetlands on our property.

**6. It said in the Realtors listing disclosure that this lot is not buildable.**

It actually said that it "may not be buildable" and that any buyer should do their own due diligence and the realtor will not be liable if the lot isn't buildable.

**7. They lied about the land clearing. They knew they needed a permit for this.**

At the time we did not know we needed a permit to clear brush from our property. We did the same thing on property on Coronado Avenue and on Kelly Avenue (where we built a house to live in while we were waiting for the permit to build the home on Coronado where we live now. No one ever said a word or told us differently. We made an incorrect assumption that it was okay.

**8. They shouldn't have cut the grass on the lot when they received the fire marshal order to do so.**

By the time we cut the grass (not brush clearing) WRA had already determined there were no wetlands on our property. So we thought it was our obligation to cut the grass. We have been told in the past that if you don't comply, they hire someone else to cut the grass, and you are billed and possibly even fined. We thought we were doing the proper thing.

**9. They are developers who are not concerned with the environment, only about profit.**

First, we are not developers. We make our living as designers and filmmakers. We create homes for ourselves or for family members. All of the homes we have built we have lived in for at least a period of 4 to 5 years. We are very concerned about the environment and how the architecture fits with sensitive areas.

david and hi-jin hodge

**10. They should restore the land to the condition it was in before they purchased it.**

Again if you read the findings from the latest report from WRA (Please see Section 5.6 Conclusions and Recommendations) you will see the land has already been returned to the state it was in before we did any brush clearing. The only mitigation measure WRA recommended was to plant 25-1 gallon Coyote Brush (*Baccharis pilularis*) in the riparian buffer area and to selectively remove some of the invasive species. We plan to develop a landscape plan that includes these recommendations.

**11. The Hodges create homes that don't fit on the coastside. They use metal roofs and we don't like them.**

Most people that have either seen or been in our homes are very positive about our design approach for this home and have praised our work. (We have signatures from 45 of our neighbors who like this home.)

Both of us have studied industrial design and architecture. I graduated from the Rhode Island School of Design in Providence, R.I. and Hi-Jin from Central St. Martins in London. We both have practiced professionally as industrial designers and now make our living as professional filmmakers and video artists. Our artistic work has been exhibited in museums around the world. In addition I'm currently an adjunct professor of design at San Francisco State University.

We have designed three homes in Half Moon Bay. Initially we created two homes, one for ourselves and another for my aging mother. We later built the current home we are living in. The first two have sold since and have added value to each of the neighborhoods they are in. Recently one of them sold again in a market where little or nothing has sold. Many people like the homes we design. We have been very consistent with our approach on all three of these homes. They share a vernacular style, simple barn shapes, modest fenestration and metal roofs that match the "barn" aesthetic of Half Moon Bay.

**12. Their design is blocking views and effect the "Scenic Corridor"**

The home we are proposing on Magellan Avenue is small in scale (16% land coverage) and is 3 feet below the height limit. We do not block anyone's view and have no impact on the scenic corridor.

I hope this helps clarify our intentions and gives the commission a clear picture of who we are, what we do, and why we would like to build our home. I would like to request that the commissioners consider the following:

- We are solid members of our community.
- We sincerely apologize for our indiscretion. We did not know we needed a permit to clear brush on our land.
- We have worked diligently with the Planning Department and have delivered everything that has been asked of us for this project.
- We headed into the 30th month since we began. We feel the timeline has reached beyond what is fair and reasonable for a simple home.
- We respectfully request that you approve our project today.

Sincerely,  
David & Hi-Jin Hodge

ENCLOSURE: 1. Home Plans 2. Photos of our homes 3. Photos of our work 4. david@hodgearts.com



March 21, 2011

David Hodge  
100 Coronado Avenue  
Half Moon Bay, California 94019

Planning Commissioners  
San Mateo County Planning & Building Department  
County Office Building  
455 County Center  
Redwood City, California 94063

**Re: Staff Report Addendum Conditions 4 (PLN 2009-00358) and 10 (PLN 2008-00380)  
(Revegetation Plan) Proposed Hodge Residence, Magellan Avenue, Miramar**

WRA reviewed Condition of Approval 4 for PLN 2009-00358 and Condition of Approval 10 for PLN 2008-00380, both of which are identical for the Hodge project. Both conditions require the preparation and submittal of a revegetation plan.

Because irrigation is not presently available on the property, and to avoid possible construction-related disturbance of the proposed revegetated area, it is recommended that the plantings coincide with other landscaping work during the later phases of residence construction. This will allow the installation of an irrigation system which will allow the shrubs to be planted at any time of year and likely ensure a high initial survival rate. This will also allow the existing natural vegetation to become well-established. During site visits conducted by WRA, it was noted that blackberry and coyote brush were present in the previously disturbed area. Allowing more time to identify areas where natural restoration is progressing would facilitate the identification of those areas within the riparian buffer where restoration/revegetation efforts should be concentrated.

It is recommended that these conditions be revised to allow the revegetation plan to be implemented at the time of construction.

Please let me know if you have any questions.

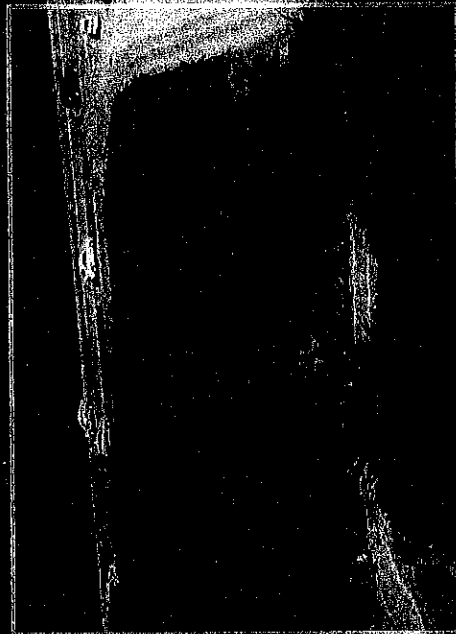
Sincerely,

Jeff Dreier  
Senior Wildlife Ecologist/Principal

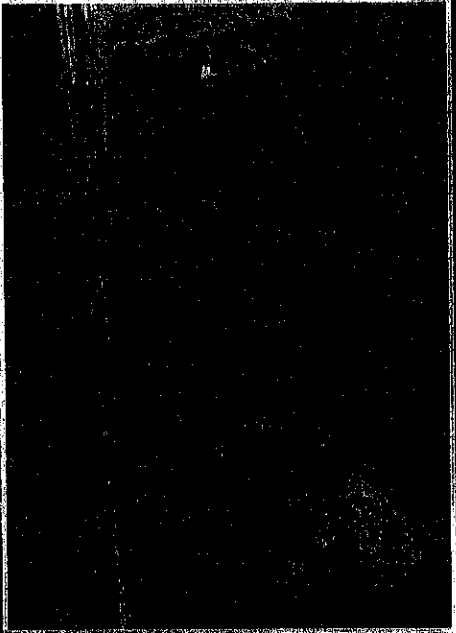


County of San Mateo - Planning and Building Department

# ATTACHMENT I



09-25-2010 (Current Conditions)



10-5-2005 (Prior to Clearing)



10-1-2008 (Just after Clearing)

# CALIFORNIA COASTAL RECORDS PROJECT

Source: Photography and website Copyright © 2002-2010 Kenneth & Gabrielle Adelman

## San Mateo County Board of Supervisors Meeting

Owner/Applicant: **HODGE**

Attachment: **I**

File Numbers: **PLN 2008-00380**



**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
(415) 904-5260 FAX (415) 904-5400  
[www.coastal.ca.gov](http://www.coastal.ca.gov)

**COMMISSION NOTIFICATION OF APPEAL**

DATE: November 28, 2011

TO: David J. Holbrook, Senior Planner  
County of San Mateo, Building & Planning  
455 County Center, 2nd Floor  
Redwood City, CA 94063

FROM: Nick Dreher, Coastal Program Analyst

WED

RE: **Commission Appeal No. A-2-SMC-11-041**

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

Local Permit #: PLN2008-00380  
Applicant(s): David & Hi-Jin Hodge  
Description: For new 2,692 sq/ft (reduced to 2,081 s/f) single-family residence with attached 2-car garage, on a 10,800 sq/ft parcel  
Location: Corner of Magellan and Alameda Avenues, Miramar (San Mateo County) (APN(s) 048-016-10)  
Local Decision: Approved w/ Conditions  
Appellant(s): Committee For Green Foothills, Attn: Lennie Roberts  
Date Appeal Filed: 11/28/2011

The Commission appeal number assigned to this appeal is A-2-SMC-11-041. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of San Mateo's consideration of this coastal development permit must be delivered to the North Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

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

cc: David & Hi-Jin Hodge  
Committee for Green Foothills, Lennie Roberts

**A-2-SMC-11-040/041**  
**Exhibit 5**  
**Page 1 of 9**

**DATE:** November 21, 2011

**FAX TO:** Ruby Pap + Nick Dreher

**AT FAX NUMBER:** 415-904-5400

**FROM: LENNIE ROBERTS**  
**FAX NUMBER: 650-854-5016**  
**PHONE: 650-854-0449**

**RECEIVED**

NOV 21 2011

CALIFORNIA  
COASTAL COMMISSION

**NUMBER OF PAGES** 8  
**(INCLUDING COVER)**

**MESSAGE:** Hi Ruby and Nick - Here is my  
Appeal of the Lodge single family residence  
I will also send a hard copy by U.S. Mail.

**NOTE: IF THERE ARE PROBLEMS WITH THIS  
TRANSMISSION, PLEASE CALL 650-854-0449**

**RECEIVED**

EDMUND G. BROWN JR., Governor

STATE OF CALIFORNIA - THE RESOURCES AGENCY

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2218  
VOICE (415) 904-5260 FAX (415) 904-5408  
TDD (415) 997-5885

NOV 21 2011

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

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

**SECTION I. Appellant(s)**

Name: Lennie Roberts / Committee for Green Foothills  
Mailing Address: 339 La Cuesta  
City: Portola Valley CA Zip Code: 94028 Phone: 650-854-0449

**SECTION II. Decision Being Appealed**

- Name of local/port government: County of San Mateo
- Brief description of development being appealed: CDP, Coastside Design Permit, and Variance for a 2,081 sq. ft. single-family residence with an attached two-car garage, with side setbacks of 5-6 feet, where 10-foot minimum side yard setbacks are required.
- Development's location (street address, assessor's parcel no., cross street, etc.):  
91 Alameda Avenue (corner of Alameda + Magellan Ave)  
unincorporated Miramar area of San Mateo County.
- Description of decision being appealed (check one.):
  - ☐ Approval; no special conditions
  - ☒ Approval with special conditions:
  - ☐ Denial

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

TO BE COMPLETED BY COMMISSION	
APPEAL NO.	A-2-SMC-11-041
DATE FILED	11/21/11
DISTRICT	North Central Coast

**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: November 1, 20117. Local government's file number (if any): PLN 2008-00380 (Note: this project is related to PLN 2009-00358)**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:

David Hodge  
100 Coronado Avenue  
Half Moon Bay, CA 94019

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) See County File

(2)

(3)

(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.

*Please See Attached*

**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.

*Committee for Green Foothills*  
*Lennie Roberts*

\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date

*November 21, 2011*

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

:

As set forth in detail below, Committee for Green Foothills appeals the actions of the San Mateo County Board of Supervisors on November 1, 2011, in reversing the decision of the Planning Commission and approving a Coastal Development Permit, Coastsides Design Permit, and Variance for a 2,081 sq. ft. single-family residence with an attached two-car garage, with side setbacks of 5 to 6 feet, where 10-foot minimum side yard setbacks are required, at 97 Alameda Avenue in the unincorporated Miramar area of San Mateo County.

The parcel is located west of Highway One, adjacent to the County owned park and open space land known as Mirada Surf. The Coastal Trail has been recently built along Alameda Avenue, a paper street. Visitors use the side of Magellan Avenue to park and access this highly popular section of the Coastal Trail.

The Planning Commission denied a different project that encroached into the 50-foot riparian buffer by at least 16 feet and required side yard setbacks of 5 to 7 feet, substantially reducing the 10 foot required setbacks on both sides of the house. The Planning Commission found that there were potential alternatives for a new residence on the project site that would not require a variance or an exception to the required 50-foot riparian buffer, and that the required findings to comply with LCP policies and to approve a variance could not be made.

The Applicant appealed the Planning Commission's denial, and submitted three Alternatives. The Board of Supervisors denied the Appeal, but approved Alternative 3, which (a) shortened the house by 27 feet (which the Applicant and staff erroneously stated met the 50-foot riparian buffer requirement), and (b) redesigned the house to replace the flat section of roof (with deck atop) closest to Alameda Avenue with a taller, pitched roof section. The revised project is still inconsistent with the Certified LCP.

**Variance is not warranted:** Despite the project revisions shown in Alternative 3, Committee for Green Foothills (CGF) continues to agree with the Planning Commission's determination that the Variance Findings b.: *"That without the variance, the landowner would be denied the rights and privileges that are enjoyed by other landowners in the same zoning district or vicinity."* and c.: *"That the variance does not grant the landowner a special privilege which is inconsistent with the restrictions placed on other parcels in the same zoning district or vicinity."* cannot be met. A redesigned house that has driveway access from Alameda Avenue could fully comply with the zoning regulations, thus not requiring a Variance from the two side yard setbacks. The Applicant is asking for special privileges to enable him to build a house that does not comply with the zoning.

CGF also believes Variance Findings a. and e. cannot be met. Variance Finding a. states: *"That the parcel's location, size, shape, topography and/or other physical conditions vary substantially from those of other parcels in the same zoning district or vicinity."* While the parcel has an unusual shape, the width and depth of the area proposed for development on one "leg" of the "U" does not vary substantially from many other parcels in the Mid-Coast area. The other "leg" and center of the "U" of the parcel are

already constrained by the riparian corridor and its 50 foot buffer. Indeed, houses have been built on some of the coastside's 25-foot wide parcels.

Variance Finding e. states: *"That the variance is consistent with the objectives of the General Plan, the Local Coastal Program (LCP) and the Zoning Regulations."* CGF does not believe that the project complies with the policies and objectives of the General Plan/LCP and the Zoning Regulations. LCP Policy 8.5 requires that *"new development be located on a portion of a parcel where the development ....is least visible from State and County Scenic Roads, is least likely to significantly impact views from public viewpoint, and... best preserves the visual and open space qualities of the parcel overall"*. LCP Policy 8.13 c requires: *"Locate and design new development and landscaping so that ocean views are not blocked from public viewing points such as public roads and publicly-owned lands."* LCP Policy 8.13 a (5) requires: *"To the extent feasible, design development to minimize the blocking of views to or along the ocean shoreline from Highway One and other public viewpoints between Highway One and the sea."* The proposed residence would be in a visually sensitive location adjacent to the Mirada Surf Park and Coastal Trail. Literally hundreds of people park along Magellan and use the Coastal Trail. The proposed two-story residence would be a jarring intrusion into the natural, open space character of the park and trailhead. CGF believes that the house could be redesigned and reduced in size to better fit this sensitive location.

**Inadequate Evaluation of Visual Impacts:** There was inadequate evaluation of the revised project's compliance with the relevant LCP Visual Policies, particularly Policies 8.5 and 8.30 and the Coastside Design Review Standards. There was no review of the revised design by the Coastside Design Review Committee. New story poles that accurately depict the proposed limits of house including the full extent of the revised roof-line, or photo simulations that evaluate the impacts of the house as viewed from Highway One, Magellan, and the Coastal Trail are needed. Based on the original story poles that were inadequate, but were nonetheless shown in photographs taken from public viewing points by citizens, the revised house design, as approved, would clearly break the ridgeline as viewed from public viewing points on Magellan and the Coastal Trail.

**Noncompliance with LCP Sensitive Habitats Policies:** The 50-foot riparian buffer, as mapped in the Staff Report and the Applicant's materials, is not a uniform 50 feet wide. If the buffer were accurately depicted — uniformly tracking the edge of the mapped riparian vegetation — the distance of the buffer between the northeastern end of the revised house and the riparian willow area would be significantly less than 50 feet. Therefore the project is not in compliance with LCP Policies 7.11 and 7.12. Wetlands mapped on the parcel by Biotic Resources Group in 2005 show wetlands on the subject property where the house is proposed to be located. The subsequent Biological Report prepared by the Applicants consultant should not be accepted, as it was done after the site had been disked and soil and other material temporarily dumped and subsequently removed as part of the coastal trail construction. Per LCP Policies 7.14, 7.16 and 7.18, and 7.19, residential structures are not permitted uses in wetlands or their buffer zones.



**Parcel Legality:** The subject parcel, consisting of three lots that were created as part of the Shore Acres Subdivision, recorded on December 18, 1905. The County recorded a Certificate of Compliance Type A on January 20, 2010. Committee for Green Foothills questioned the appropriateness of the COC-Type A. The County's response was that each lot was first conveyed separately from any adjacent lots by deed on June 8, 1906 (Lot 3), January 26, 1907 (Lot 2) and March 21, 1919 (Lot 1) of Block 2 of the Shore Acres Subdivision. There is no information as to whether these lots were conveyed to the same owner on those dates, and what the Chain of Title shows on subsequent transfers of property. The current owner obtained the three lots in one transaction from only one previous owner. It is not known whether the three lots have been treated as one parcel in one ownership as they were conveyed over the years. The parcel legality issue should be further evaluated in light of the Witt and Abernathy decisions.

**Land Clearing Violation and Destruction of ESHA:** The Applicant purchased this property with full knowledge that it may not be buildable due to the presence of environmentally sensitive habitats areas (ESHA), particularly wetlands. He then destroyed and the wetland and riparian vegetation on the parcel, as well as on the parcel of the adjacent owner (in the center of the "U" of the subject property). The Planning Commission separated the CDP for legalizing the parcel from the CDP for the residence, in order to ensure restoration of the vegetation within the riparian corridor. CGF is strongly opposed to rewarding people who knowingly violate ESHA protections.

CGF has asked the County to consider acquisition of this parcel, as well as the other three undeveloped parcels along Magellan contiguous to Mirada Surf Park in order to protect the park and the Coastal Trail's visual and open space qualities. Acquisition would also avoid continuous conflicts between the public use of the park and trail and future residents who will inevitably complain about intensive use of the trail, parking, and public restroom, which is planned to be located within the "U" of the subject property. To date, the County has not been able to reach an agreement with the property owner. By far, the best solution to this challenging parcel would be for public acquisition so that it can be fully restored and managed for its resource and scenic value.

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
(415) 904-5260 FAX (415) 904-5400  
[www.coastal.ca.gov](http://www.coastal.ca.gov)

**COMMISSION NOTIFICATION OF APPEAL**

DATE: November 28, 2011

TO: David J. Holbrook, Senior Planner  
County of San Mateo, Building & Planning  
455 County Center, 2nd Floor  
Redwood City, CA 94063

FROM: Nick Dreher, Coastal Program Analyst

NBD

RE: **Commission Appeal No. A-2-SMC-11-040**

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

Local Permit #: PLN2009-00358  
Applicant(s): David And Hi-Jin Hodge  
Description: To legalize illegal land clearing on property  
Location: Corner of Magellan and Alameda Avenues, Miramar (San Mateo County) (APN(s) 048-016-10, 048-016-20)  
Local Decision: Approved w/ Conditions  
Appellant(s): Evy Smith  
Date Appeal Filed: 11/28/2011

The Commission appeal number assigned to this appeal is A-2-SMC-11-040. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of San Mateo's consideration of this coastal development permit must be delivered to the North Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

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

cc: David And Hi-Jin Hodge  
Evy Smith

**A-2-SMC-11-040/041**  
**Exhibit 6**  
**Page 1 of 6**

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE

46 FREMONT STREET, SUITE 2000

SAN FRANCISCO, CA 94105-2219

VOICE (415) 904-5260 FAX (415) 904-5400

TDD (415) 597-5885

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

Name: Evy Smith

Mailing Address: 404 Coates Drive

City: Aptos

Zip Code: 95003

Phone: 415-543-8368

**SECTION II. Decision Being Appealed****RECEIVED**

1. Name of local/port government:

NOV 21 2011

San Mateo County

CALIFORNIA  
COASTAL COMMISSION

2. Brief description of development being appealed:

An After-the-Fact Coastal Development Permit and certification of a Mitigated Negative Declaration to legalize clearing of two parcels, located at the corner of Magellan and Alameda Avenues in unincorporated Miramar area of San Mateo County.

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

APN 048-016-010, corner of Magellan and Alameda Avenues, Half Moon Bay, CA. Also takes 048-016-020 into consideration, as it was also cleared by David Hodge (Applicant), has changed hands and is now owned by the County.

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

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

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

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

A-2-SMC-11-040

DATE FILED:

11/28/11

DISTRICT:

North Central Coast Dist

A-2-SMC-11-040/041

Exhibit 6

Page 2 of 6

**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: November 1, 2011

7. Local government's file number (if any): PLN2009-00358

**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:

~~Evy Smith  
404 Coates Drive.  
Aptos, CA 95003~~

~~(owner of 216 Magellan Ave., Half Moon Bay)~~

David Hodge  
100 Coronado Ave.  
Half Moon Bay CA 94019

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) Kathryn Slater-Carter, Kathryn@montara.com

(2)

(3)

## 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.

San Mateo County Parks sponsored a Biological Impact Form (BIF), produced in 2005, in order to construct a bridge and develop the Mirada Surf Trail. The BIF, performed by Kathy Lyons on Biotic Resources Group, clearly maps seasonal wetlands and riparian willow habitat in both APN 048-016-010 and 048-016-020. The BIF shows that the property is bordered by a perennial stream and requires a 100-foot buffer. The wetlands buffer is also 100 feet and 50 feet for the riparian corridor. Please note; the County Parks Department followed the guidelines as required and as detailed in the BIF for the bridge and trail.

In 2007, the San Mateo County Planning log for the APN 048-016-010 acknowledges same: *"There is both wetland and riparian area encumbering this parcel, as mapped by biologist in conjunction with adjacent County park to north; see PLN2005-00078 for full map and bio report. Given these resources, it's likely that any proposed development would run contrary to applicable LCP policies. The risk is considerable for someone to even apply and would may (sic) likely only be decided before Coastal Commission."*

Additionally, as per County records for PLN2009-00358, 6/1/09, *"The 2005 study notes a wet area adjacent to Magellan (on Hodge and middle property) that met definition of 'wetland' under both ACOE (Army Core of Engineers) and County LCP. A delineation was done supporting this."*

The lot APN 048-016-010 was listed for sale in 2007-8 timeframe for \$20,000, given *"Lot is in wetlands/reperian (sic) corridor, may not be buildable*. The price is well below market value for a similar lot without wetlands and riparian willows.

The applicants, David and Hi-Jin Hodge, purchase the lot for \$20,00 on 4/30/08. They signed a disclosure that states *"Coldwell Banker have no knowledge regarding this lot except that it is not currently buildable. Buyers should contact the County of San Mateo Planning Department to determine future development potential."*

The applicants built a home at 100 Coronado, a block from the purchased lot, and are very familiar with LCP regulations.

The applicants on September 4, 2008 then deliberately destroyed seasonal wetlands and riparian willow habitats without a permit; they cleared, deep disked and filled not only their lot of APN 048-016-016 but also the middle lot (048-016-010 is "U" shaped lot) of 048-016-020 in clear violation of San Mateo County LCPs: **7.1 Definition of Sensitive Habitats, 7.3 Protection of Sensitive Habitats, 7.5 Permit Conditions; 7.7 Definition of Riparian Corridors, 7.10 Performance Standards in Riparian Corridors**.

***7.11 Establishment of Buffer Zones, 7.13 Performance Standards in Buffer Zones; 7.14 Definition of Wetland, 7.16, Permitted Uses in Wetlands, 7.17, Performance Standards in Wetlands, 7.18, Establishment of Buffer Zones, 7.19, Permitted Uses in Buffer Zone***

If the LCP-mandated buffers for seasonal wetlands and riparian willows were applied, there would be no available space on the lot APN 0148-016-010 on which to build a house. If the buffers were honored from the original vegetation, the LCP's would have rendered the lot "unbuildable". Again, applicants destroyed the habitats not only on their lot, but also on the lot belonging to Stephen Mascovich (048-016-020).

On June 16, 2009, applicants again cleared both lots, hours before applicant's biologist was to inspect the property. Applicant claimed that they cleared the lot for "fire protection", although the lot had not been cleared in the previous 100+ years and they could not produce the letter they said the fire department sent them. There was an attempted third clearing on May 16<sup>th</sup>, 2011 that was stopped.

The clearing of lot 048-016020 had a significant impact on the owner, Stephen Mascovich. He wrote on 2/17/10; *"In 1908, my grandfather purchased lot APN 04800160-020 while on a railroad excursion along the Pacific Coast. Having moved to California from South Dakota, he was impressed by the beauty of the California coastline and the natural flora, including the riparian willows. I was surprised and disappointed when I learned – from the San Mateo County Code Enforcement Department - that Mr. Hodge had cleared my lot without my permission. And then he cleared the lot a second time, again without my permission. This is when the decision was made to sell the lot to POST, hoping it would be allowed to return to its wonderful natural state."* POST has since deeded the lot to San Mateo County Parks.

There is photographic evidence of vegetation and extensive riparian willows on the lot prior to the illegal clearings, both from personal photographs taken by neighbor (Appellant) and as seen on Bing and Google maps and from California Coastal Records.

Applicant and his biologist claim that there were no willows or wetlands and that he did not clear anything of a sensitive habitat. Applicant's biologist only evaluated the lots after they had been cleared (twice), deep disked and filled and during our drought years. No required BIF was performed prior to the destruction of the wetlands and riparian habitat. After-the-Fact biologist's reports are therefore, not useful.

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

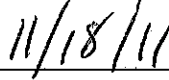
**SECTION V. Certification**

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



\_\_\_\_\_  
Signature of Appellant(s) or Authorized Agent

Date: \_\_\_\_\_



**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: \_\_\_\_\_

## MEMORANDUM

FROM: John D. Dixon, Ph.D.,  
Ecologist

TO: Jeannine Manna

SUBJECT: Riparian clearing and wetland fill at the Hodge property, San Mateo County

DATE: November 19, 2013

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### Documents reviewed:

Dreier, J. 2009. Letter report to D. Hodge dated May 20, 2009 regarding "Previous habitat conditions of cleared area: Proposed Hodge residence, Magellan Avenue, Miramar.

WRA. February 24, 2009. Biological resource assessment. Proposed Hodge residence, Magellan Avenue, Miramar, San Mateo County, California.

WRA. March 4, 2009. Letter report to D. Hodge, re: "Wetland delineation at proposed Hodge Residence, Magellan Avenue, Half Moon Bay."

San Mateo County Environmental Services Agency (SMC). March 17, 2005. Biological Impact Form (for compliance with Local Coastal Program Policy 7.5). A report based on biological assessments conducted by Kathleen Lyons (Biotic Resources Group) and Dan Bland (Dana Bland & Associates).

San Mateo County Environmental Service Agency (SMC). August 31, 2010. Biological Impact Form (for compliance with Local Coastal Program Policy 7.5). A report based on a biological assessment conducted by Kathleen Lyons (Biotic Resources Group)

Smick, G. (WRA). 2013. Memorandum to N. Dreher (CCC) dated January 23, 2013 regarding "Report of findings from supplemental soils study conducted January 15, 2013.

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It has been alleged that riparian vegetation has been removed and that seasonal wetlands have been filled on the U-shaped Hodge property and on the adjacent property enclosed by the "U". That portions of the property have been cleared and filled with imported dirt is obvious in a comparison of oblique aerial photographs taken in 2005 and 2008 (Figure 1). The fill was also documented by WRA (2009, 2013). On



June 16, 2009 at the three sample points used in WRA's wetland delineation, the upper two to six inches of soil was fill material, including "rough cobble," that was compacted and difficult to dig in. Similarly, on January 15, 2014, WRA found 2 – 10 inches of fill at 4 of the 5 sample points on the Hodge property. Beneath the fill was dark loam and, in 2009, decaying vegetation.

Whether riparian vegetation was removed when the property was cleared of vegetation and filled with imported gravel and soil is difficult to determine in the oblique aerial photographs (Figure 1). To make this determination, I compared vertical aerial photographs taken before and after October 1, 2008 when the site showed evidence of clearing and fill. In Google Earth photographs taken on and before May 21, 2007, the property appears covered with riparian woodland and lower shrubby or herbaceous vegetation. Photographs taken after 2008 show much of the site cleared and the line of riparian vegetation is more distinct and appears somewhat reduced. To estimate the change, I compared two aerial photographs chosen for clarity and for the fact that they register similarly (i.e., fixed points overlaid on the photographs tend to correspond spatially). First, I placed reference lines on a photograph taken prior to 2008 (October 10, 2005). The tops of the lines were placed to touch the apparent edge of the willow riparian vegetation. I then overlaid the reference lines on a photograph taken after the site was cleared and filled (September 9, 2009). Using a Google Earth measuring tool, I estimate that the edge of the riparian vegetation receded around 30 feet in the area most changed following the disturbances that took place in 2008 and 2009 (Figure 2). Since it is difficult to positively identify the riparian edge in an aerial photograph, I repeated the exercise in reverse. I placed the top of reference lines to touch the distinct edge of the willow riparian vegetation in the 2009 photograph and then overlaid those reference lines on the 2005 photograph. In this comparison, a loss of riparian vegetation was very obvious.

This loss of riparian vegetation and the fill of a season wetland were documented by the County's biological consultant, Kathleen Lyons. Ms. Lyons conducted biological surveys of the site in June 2004 and in June 2010. Data were recorded on a 2004 map prepared by Sigma Prime Geosciences that included the drip line of the willow riparian vegetation. Ms. Lyons field checked the map in the field and found it to be accurate except in one area where blackberry scrub had been included within the willow riparian boundary. She corrected this on the map. In 2004, the wetland boundary and sample point was sketched on the same map relative to other mapped features. In 2010, features were located on the map relative to surveyed reference stakes (K. Lyons, personal communication).

On June 16, 2004 a kidney-shaped depression supporting a seasonal wetland was identified on the Hodge and adjacent enclosed property by Kathleen Lyons (San Mateo County Environmental Services Agency 2005). There were dried algal mats present, which is a primary indicator of wetland hydrology because it generally requires a few weeks of standing water for algal populations to develop. All the dominant vegetation was comprised of wetland indicator species and included three facultative (FAC) species and an unidentified species of spikerush (*Eleocharis* sp). The latter are

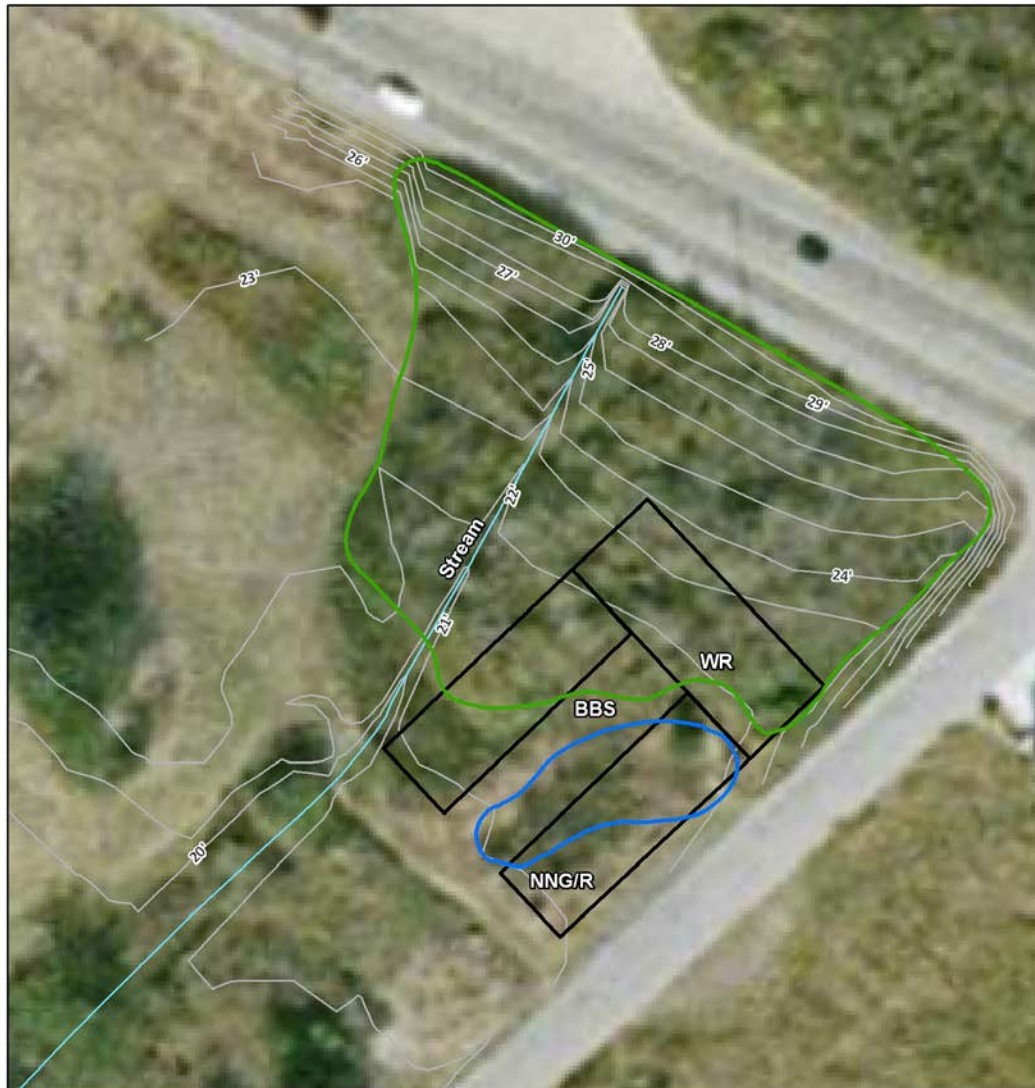
generally facultative wetland (FACW) or obligate wetland (OBL) species. Bog rush was also common although not present within the sampled area (SMC 2010). Ms. Lyons recommended that the wetland be demarcated in the field and best management practices be utilized to prevent any sediments from entering the wetland during construction activities and that the wetland be fenced to prevent entry. This wetland was filled along with the rest of the cleared area of the property. The position of the wetland and the mapped edge of the willow riparian vegetation in 2004 and in 2010 were digitized from a copy of Ms. Lyons original annotated map. The results of the 2004 and 2010 biological surveys are shown Figures 2 and 3, respectively. The boundaries of riparian vegetation from the two years are overlaid in Figure 4. The edge of the riparian vegetation has receded about 28 feet at the point of maximum change. This corresponds closely to the estimate based on aerial photographs.

On May 20, 2009, WRA (Dreier 2009) conducted a field investigation to determine whether wetlands or riparian vegetation were impacted during a 2008 vegetation clearing. Mr. Dreier found obligate upland species but no obligate wetland species and concluded that wetland hydrology and soil conditions “were not present before or after the clearing.” This says nothing about the conditions before the addition of fill. Mr. Dreier also found no evidence of willow stumps, stump-sprouting, or woody debris and concluded that there was no evidence that the cleared area had supported riparian vegetation. During the clearing, there is clear photographic evidence that a large exotic tree was removed. Apparently, this stump was not present at the time of Mr. Dreier’s observation. This suggests that that tree stump and any other large woody vegetation that was removed was removed using heavy machinery and then graded, leaving no evidence of the prior woody vegetation. This is also suggested by the fact that the edge of the riparian vegetation appeared diffuse in early photographs but has a sharp edge in photographs taken after 2008.

Figure 1. A comparison of the oblique aerial photographs taken on October 5, 2005 and on October 1, 2008 document the fact that woody vegetation has been removed and large amounts of fill has been applied to the site. Photographs (No. 200506257 & 200809657) courtesy of the Coastal Records Project.



Figure 2. Boundary of willow riparian vegetation and a seasonal wetland at the Hodge property as mapped by the County's biological consultant in June 2004 (data provided by K. Lyons).



Conditions in June 2004

— 2004 Riparian Edge     2004 Wetland     Parcels  
 WR = Willow Riparian Habitat    BBS = Blackberry Scrub  
 NNG/R = Non-Native Grassland-Ruderal



All Locations Approximate.  
For Illustrative Purposes Only.

0 25 50 100 Feet



DSM 8/28/13



Figure 3. Boundary of willow riparian vegetation at the Hodge property as mapped by the County's biological consultant in June 2010 (data provided by K. Lyons).



Conditions in June 2010

— 2010 Riparian Edge

- - - 2004 Wetland

▭ Parcels

WR = Willow Riparian Habitat

NNG/R = Non-Native Grassland-Ruderal



All Locations Approximate.  
For Illustrative Purposes Only.

0 25 50 100 Feet



DSM 8/28/13

Figure 4. Change in the extent of willow riparian vegetation on the Hodge property between June 2004 and June 2010.



**Comparison of 2004 and 2010**

- 2004 Riparian Edge
- 2010 Riparian Edge
- - - 2004 Wetland
- Parcels



All Locations Approximate.  
For Illustrative Purposes Only.

0 25 50 100 Feet



DSM 8/28/13

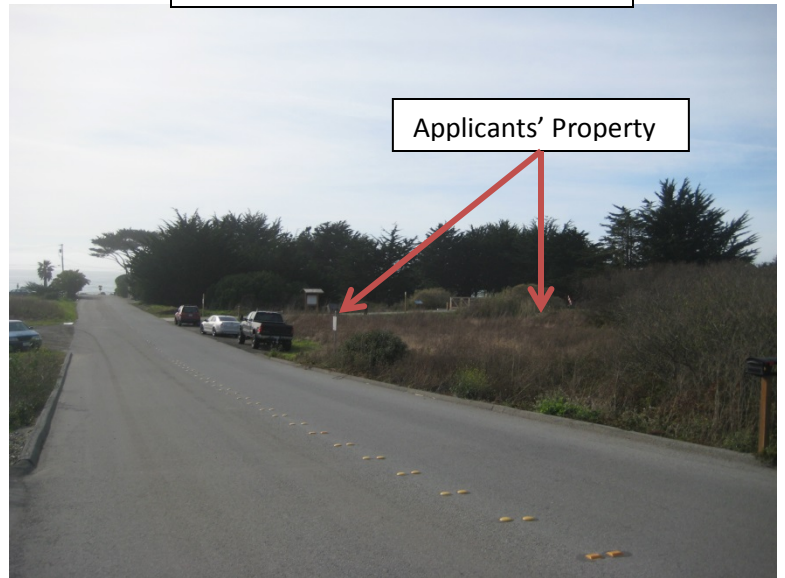


View west to east from Miranda Surf Trail



Applicants' Property

View east to west from Highway 1



Applicants' Property

View south to north from Magellan Avenue



Applicants' Property

**Nicholas Dreher**

**From:** David Hodge [david@hodgearts.com]  
**Sent:** Monday, December 12, 2011 10:50 AM  
**To:** Nicholas Dreher  
**Cc:** Hi-Jin Hodge  
**Subject:** Fwd: Magellan Avenue...

Hi Nicholas,

Below you will find the correspondence I had with David Holbrook back in May of 2008. You can see clearly he thought what we were proposing was feasible. With this we went forward and execute our purchase agreement. I did find the agreement and there is no special language saying anything about the property is not buildable. It's all boiler plate things that protect the realtor. It's a large document so I either have to have it copied and send it to you or I have contact the realtor who sold us the property and she may have a digital copy she can forward to you. Bottom line is there is nothing there that substantiates Lennie's claim in here appeal. Besides how would she have access to this contract? It's not public information.

I'll plan on giving you a call early next week to check in with you.

Warm regards,  
 David

Begin forwarded message:

[david@hodgearts.com](mailto:david@hodgearts.com) | <http://www.hodgearts.com> | <http://www.davidandhijin.com> | Tel 650 726 4200

**From:** "Dave Holbrook" <[DHolbrook@co.sanmateo.ca.us](mailto:DHolbrook@co.sanmateo.ca.us)>  
**Subject:** Re: Magellan Avenue...  
**Date:** May 14, 2008 11:40:08 AM PDT  
**To:** "David Hodge" <[david@hodgepictures.com](mailto:david@hodgepictures.com)>

The good news is that LCP Policy 7.18 expressly allows the mandated 100' buffer to be reduced to 50' when no reasonable alternative exists. In that context, you project appears to have exhausted all other reasonable options. The project's setback from the creek is OK. One of the two req'd sideyard setbacks (along Magellan; you're proposing 5' where 10' would be minimum req'd) would likely qualify for a variance, so I don't see a critical issue there. So barring anything I'm not seeing or am missing here, this proposal appears feasible to submit as part of the required CDP/Variance application. We can touch base on Friday, but that's the summary.

David Holbrook



**From:** David Hodge <david@hodgears.com>  
**Sent:** Monday, November 25, 2013 11:00 PM  
**To:** Manna, Jeannine@Coastal  
**Cc:** David Byers; Geoff Smick; Hi-Jin Hodge  
**Subject:** Re: UPDATE RE: Restoration/Mitigation Language  
**Attachments:** CCC Impacts Figure.pdf

Hi Jeannine,

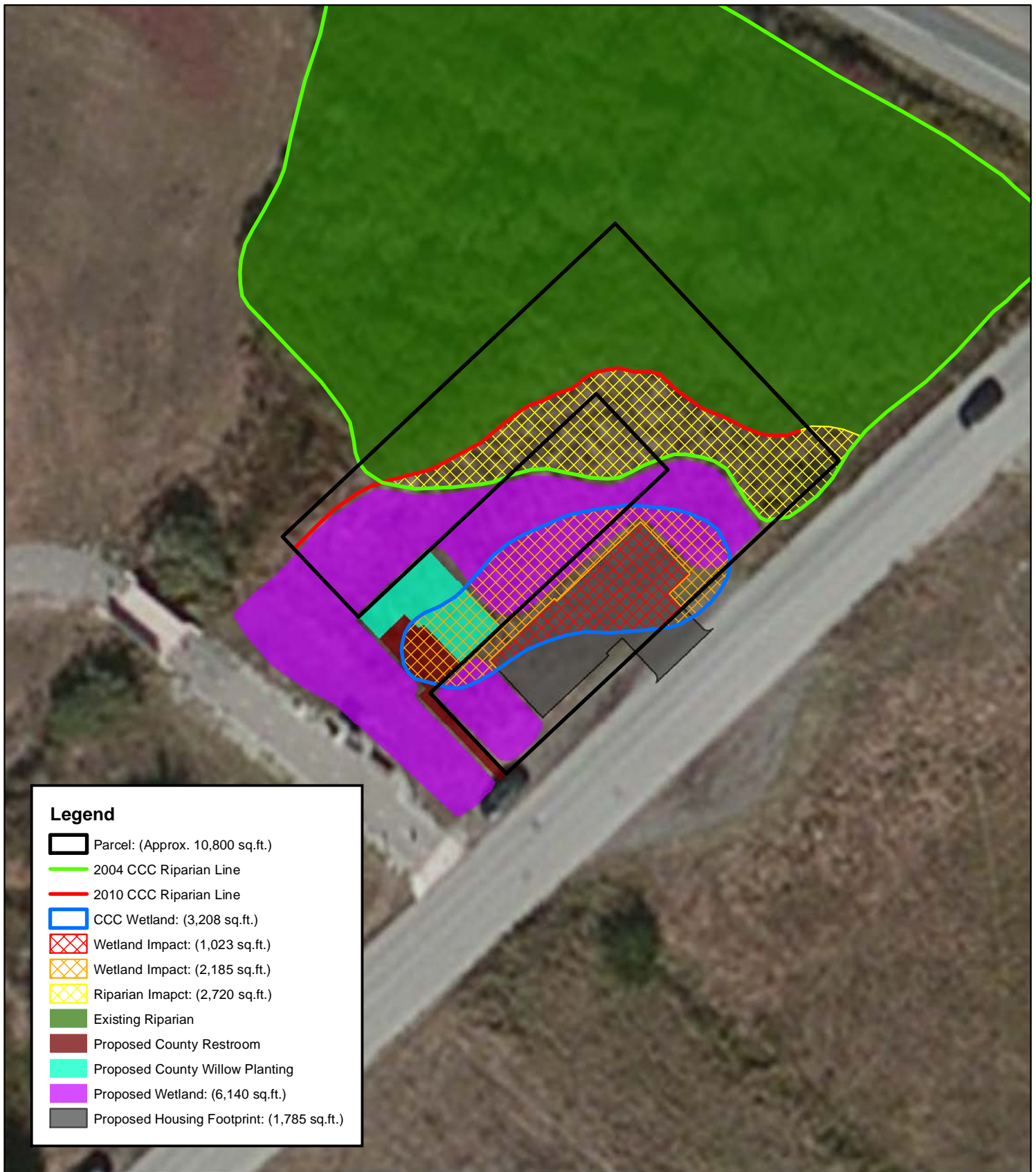
**2nd version.** I forgot to add our names on number four.

Below is the declaration & figure you and i discussed today. Please let me know if you need anything else. We would like the opportunity to amend this if necessary after we see your report and after Geoff is back from his vacation. Geoff said he maybe want to fine tune the map. I'm also copying David Byers so he can review it. Please send a copy of your report to David and Geoff when it's complete. A pdf version is fine.

Best,  
David

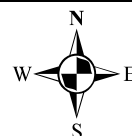
David and Hi-Jin Hodge are proposing 2,720 square feet of riparian restoration and 5,915 square feet of wetland restoration/mitigation as follows:

- 1) The 2,720 square feet of riparian habitat cleared without a coastal development permit (CDP) on the portion of the subject property located northeast of the proposed house, and on the portion of the County property northeast of the proposed house, will be restored in place. (This area is illustrated by the yellow crosshatching on the attached diagram)
- 2) 1,823 square feet of wetland cleared without a CDP on the portion of the subject property east and west of the proposed house and on the County property north of the proposed house, will be restored in place. (This area is illustrated by the area of purple which is covered by the orange crosshatching). The area covered by the County project will not be restored.
- 3) The wetland occupied by the footprint of the house will be mitigated at a ratio of 4:1 for a total area of 4,092 square feet . 4,092 square feet of new wetland or riparian habitat will be created between the restored wetland and the restored riparian habitat east and north of the proposed house on the subject property and County property, west of the proposed house, on the north west end of subject parcel, and on County land between the Trail and the western property boundary (This area is illustrated in purple).
- 4) David and Hi-Jin Hodge also propose to restrict future development within the restored and mitigated areas on the subject property.



## Coastal Commission Impacts

Hodge Residence  
Miramar, California



0 12.5 25 50  
Feet



Map By: SG  
Date: Nov 2013  
Image Source: ESRI World Imagery

A-2-SMC-11-040/041

Exhibit 10  
Page 2 of 2

# Agent Photo Report - Class 5 Residential Lots & Lands

0 MAGELLAN AVE

HMB

94019

613 - Miramar / City of Napals

Pending, do not show

County: SMC Prop Type: Single Family Residential Land

Lot Size Range: 8,000+ SqFt to .25 Acre

Approx. Lot Size: 10800.00 SF

Cross St: Highway One

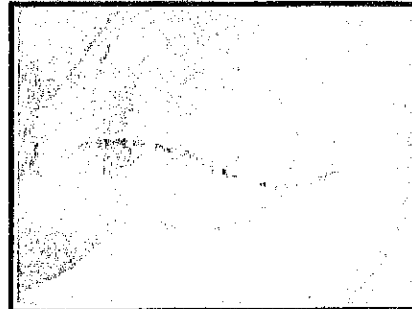
Approx. Acreage: 0.25

Tract Name:

Lot/Block#:

Zoning: R1-S9

Tnsfr Tax: N



## Schools

Elem Sch/Dist: /924 Middle Sch: High Sch/Dist: /924

## Maps

Barclay: Pg: Hz: Vt: Thomas: Pg: Grid:

Virtual Tour:

MLS#: 735459

PN#: 048-016-010

List Price: \$20,000

List Date: 06/26/2007

Exp Date: 12/25/2008

Sale Date: 05/29/2008

COE Date: 08/01/2008

FN: All Cash No Loans

lot is in wetlands/ reperiian corridor. may not be buildable property has 1- 5/8 inch CCWD priority water connection ( non transferable) and 1 water conection to be transfered off property before close of escrow. call agent for required addendum. please use First American Title in San Mateo

<b>Development Status</b> Unimproved Land	<b>Listing Assets Included</b> No Included Property	<b>Sewer/Septic System</b> Sewer Not Available	<b>Utilities Electric</b> Electricity Not Available
<b>Existing Structure</b> No Existing Structures	<b>New Financing Terms</b> All Cash or Conventional	<b>Showing Instructions</b> Go Direct	<b>Utilities available</b> No Utilities
<b>Fault Zone</b> Fault Zone-See Report	<b>Parcel Access</b> City Street Access	<b>Sites Advertised</b> MLSlistings.com Realtor.com	<b>View</b> Neighborhood View
<b>Fence</b> No Fencing	<b>Possession</b> COE	<b>Special Information</b> Call L/A Before Writing Deposit	<b>Water Sources</b> Water Not Available
<b>First Loan</b> No First Loan	<b>Present Use</b> Vacant	<b>Special Requirements</b> Variance	
<b>Flood Area</b> Flood Zone-See Report	<b>Property Type</b> Single Family Residential Land	<b>Topography/Improvements</b> Level Lot	

Owner's Name:

Listing Agent: William Derow

Office: Coldwell Banker-Half Moon Bay

Total Loans: \$0

Curr Rent:

Cash to Assum: \$0

Monthly Pymnt:

Listing Agrmt: Exclusive Right to Sell(ER)

Agent Phone: 650-726-8188

Commission Rate: 5.00 Percent

OLD: 06/26/2007 RD: 05/29/2008

OLP: \$50,000 DOM: 338 CDOM: 338

T1: TourAssoc1:

T2: TourAssoc2:

Selling Agent: Stella Johnson

Selling Office: CBR

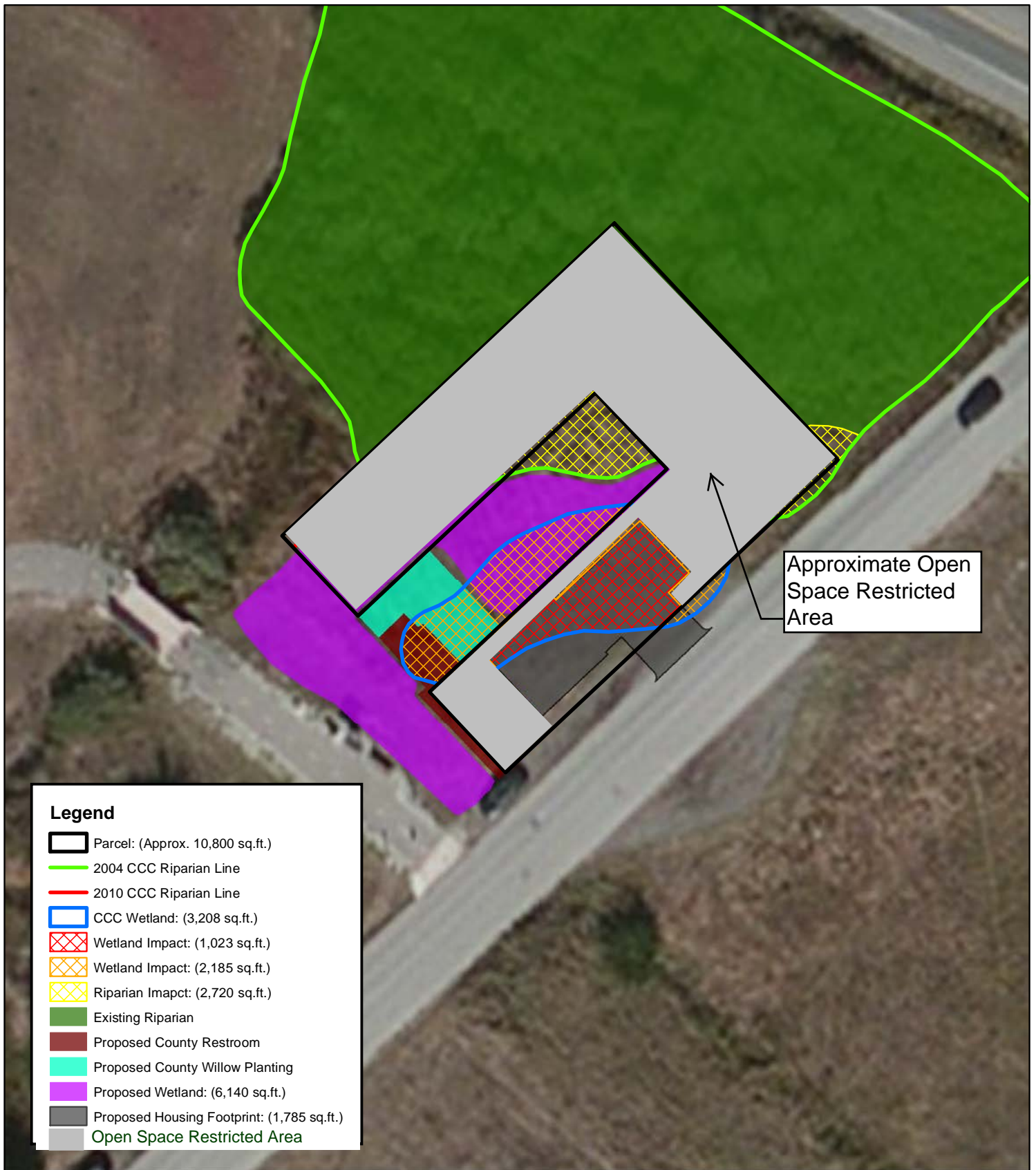
. 17

A-2-SMC-11-040/041

\*\*Confidential - This information is believed to be accurate but is not guaranteed - Confidential\*\*

Exhibit 11

Page 1 of 1



## Coastal Commission Impacts

Hodge Residence  
Miramar, California



0 12.5 25 50  
Feet



Map By: SG  
Date: Nov 2013  
Image Source: ESRI World Imagery

A-2-SMC-11-040/041

Exhibit 12

Page 1 of 1



W18a

## DISCLOSURE OF EX PARTE COMMUNICATIONS

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**Location of communication:**

Phone

**Type of communication:**

Teleconference

**Person(s) in attendance at time of communication:**

David Hodge

**Person(s) receiving communication:**

Carole Groom

**Description of project:**

Appeal No. A-2-SMC-11-040 & A-2-SMC-11-041 (Hodge, San Mateo County)

**Description of communication:**

Over the last several months, I have had telephone conversations with David Hodge regarding his appeal before the Coastal Commission. Most of these conversations were not about the project itself but about the scheduling of meetings or phone messages. We did discuss requests made by Coastal Commission staff asking for additional documents and other information. I frequently spoke with Mr. Lester about Mr. Hodge's complaints.

**Date:** Dec 2 2013

**Signature of Commissioner:** Carole Groom

W18a

December 6, 2013

To: California Coastal Commission  
Re: Appeal Staff Report: Substantial Issue Determination and De Novo Hearing  
Appeal Numbers: A-2-SMC-11-041 and A-2-SMC-11-040  
From: Evy Smith, Appellant (A-2-SMC-11-040)

Thank you for this opportunity to speak. I am one of two Appellants of San Mateo County's approval of the Hodge Residential Development and Vegetation Clearance. I reside at 216 Magellan Ave., in Half Moon Bay, the closest home with most direct view of the proposed development.

Thank you to the Commission staff for their diligent and thorough review of the history and situation presented with this case. I agree with the staff findings of Substantial Issue in relation to the sensitive habitat and visual resource impacts, the allowance of variance and lot legality.

As an Appellant, I disagree with the Staff recommendation of approval with special conditions of the single-family residence as the house approved is too large and rewards the negative visual impact, the unpermitted clearing of sensitive habitat and the precedent this approval would create. My recommendation is to modify the special conditions of approval and allow only a much smaller home on the lot in order to maximize, to the greatest extent feasible, the restoration of the destroyed vegetation.

My reasoning is based on the following:

- A. The deliberate destruction of the sensitive habitats, in clear violation of the San Mateo County LCP and Coastal Act
  - a. The applicants purchased a \$20,000 lot (not a "reasonable investment backed expectation"), which had been on the market for 2 years, and the listing stated that it may not be buildable given the sensitive habitats. There are no valid lots on the Coast, of this size, that can be purchased, for only \$20,000.
  - b. The applicants signed disclosures at the sale of the lot acknowledging that the lot may not be buildable as per County studies.
  - c. The applicants destroyed wetlands or allowed them to be destroyed and ripped out riparian willows and placed fill on the lots without the necessary permits (2008). The applicants not only did so on their lot, but also on the lot in the center of the U-shaped lot that did not belong to them. The owner of the middle lot (which was in his family for decades) was cited for the destruction of the wetlands and the fill. The applicants acknowledged that they were responsible for clearing both lots.

- d. And then the applicants cleared the lots again (2009).
- B. The lot in question is located in a highly scenic area. It is adjacent to the Mirada Surf County Park and Trail, which is part of the Coastal Trail. The lot was covered with wetlands and riparian willows that were destroyed. The native vegetation is gone. The San Mateo County LCP protects visual resources with sensitive habitats and ocean views.
- The proposed recommendation would allow set-back variances that would allow the house to be too close to Magellan Ave and create a parallel structure out of context in the neighborhood. It will block the visual beauty of the street and the entrance to the ocean views.
  - The proposed recommendation is to approve a large home, squeezed on a very small portion of the lot. If the sensitive wetlands vegetation had remained, the buffers applied would not have allowed any space on the lot on which to build a home. If the habitat is completely restored, there will not be any area for a home.
  - The original size of the U-shaped lot of 10,802 square feet is not relevant, given that the majority of the lot was covered in wetlands and riparian willows.
- C. The precedent that the special approval for the large 2,000 square feet home will be extremely damaging to the San Mateo County LCP and the future protection of our sensitive habitats and visual resources.
- If the applicants wanted to purchase the lot and propose to build a house, they could have sought permits prior to clearing the sensitive habitats.
  - The applicants are well versed with the LCP regulations, as they built a custom house a block away from this lot, where they currently reside and where they previously encountered wetland issues. They are also very familiar with the permits needed to clear land as they have built more than one house on the Coast.
  - The applicant is being financially rewarded for purchasing an "unbuildable" lot for very little money with the intent to destroy the sensitive habitats and build a large house.
  - If this is allowed to occur, what's to stop someone else from purchasing a lot, such as the adjacent lot to the east of the applicants lot, ripping out the riparian willows that cover the lot, and building any type of home that they desire? This is a dangerous precedent indeed.

My recommended resolution:

- Given the sensitive habitats and the need to first restore the property as close to it's original state and that if done correctly, there would then be no room for a house

- 
- Given the visual resource impact of a large, 2,000 sq ft home on the allowed area of the site
  - Given the visual resource impacts of set back variances that allow a two-story structure only 5-7 feet from the Coastal Trail and entry to this popular county park, parallel to the street, creating a large structure that blocks scenic views of the natural beauty of the adjacent Mirada Surf Park
  - Given the apparent intent of economic reward for homeowner at the expense of coastal resources

Therefore, I request that you amend the special conditions to allow a smaller house of no more than approximately 900 square feet (maximum) and require it to be designed and positioned as far south and west on the lot as possible.

This will allow the applicants to restore a greater amount of the sensitive habitat that was destroyed, minimize the visual resource impacts, and lessen, to some degree, the precedent this case creates.

Thank you.

Evy Smith  
216 Magellan Ave.  
Half Moon Bay, CA 94019

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of  
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December 8, 2013

Item W18a

Support with additional condition

Chair Mary Shallenberger, and Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

**Re: Appeal Numbers A-2-SMC-11-041 and A-2-SM-11-040; Appeal of (1) Construction of a 2,081 sq.ft. single-family residence with attached 2-car garage on a 10,802 sq.ft. vacant U-shaped lot (A-2-SMC-11-041), and (2) After-the-fact approval of vegetation clearance on the Applicant's property and an adjacent undeveloped property (A-1-SMC-11-040).**

Dear Chair Shallenberger and Commissioners,

CGF supports the Staff Recommendation for Finding of S.I., and Denial of the CDP for wetlands and other habitat destruction.

Regarding the CDP for the single-family residence, CGF requests that the Commission modify Special Condition #1 to specify that no more than a 900 square foot house, located in the south-west portion of the parcel, shall be permitted. This reduction in size of the house will not entirely restore the areas of the property containing ESHA that were destroyed, but will nonetheless help reduce the impacts to scenic and visual resources and ameliorate the disruption of habitat values on the property to the maximum extent feasible.

The Applicants purchased the parcel in April, 2008 for \$20,000, an extraordinary low price, no doubt due in large part to the disclosure on the listing that the lot may not be buildable (Staff Report, Exhibit 11).

In September, 2008, the Applicants allowed use of a portion of the parcel as a staging area for the construction of the Mirada Surf Trail, which was being built just to the west. This resulted in clearing of wetland vegetation and stockpiling of large amounts of dirt on the Applicants property as well as on the adjacent property that is now owned by San Mateo County Parks.

In June, 2009, there was more clearing of vegetation, including riparian willows, on the Applicants property and also on the adjacent property.

This unpermitted stockpiling of dirt and clearing of wetland vegetation, riparian vegetation, and areas within the riparian buffer was a clear violation of San Mateo County's LCP sensitive habitat protection policies. The Applicants should not be rewarded for these repeated unpermitted activities, particularly in light of the disclosures that were made with the sale of the property.

The Staff Report points out that other single-family residences in the vicinity range in size from 600 square feet to 5,200 square feet. A 900 square foot house is a reasonable size given the constraints of this particular property, its location, and the nature of the violation(s).

Thank you for consideration of our comments.

Sincerely,

Signature on file

Lennie Roberts, Legislative Advocate  
Committee for Green Foothills