

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 (408) 427-4863
 HEARING IMPAIRED: (415) 904-5200

RECORD PACKET COPY

DM
 08/22/96



TH99

Staff: JC-SC
 Staff Report: 08/22/96
 Hearing Date: 09/12/96
 Commission Action:

**STAFF REPORT
 DETERMINATION OF MATERIALITY OF
 AMENDMENT 3-87-248-A1**

APPLICATION NUMBER: 3-87-248 AMENDMENT NUMBER: 3-87-248-A1

APPLICANT: Louis Calcagno Agent: Melanie Mayer Gideon

PROJECT DESCRIPTION: Moss Landing History and Heritage Center; multi-level, 39,260 sq.ft. visitor serving facility including a 30 room inn, 80 seat restaurant. and ancillary facility on 2.5 ac. parcel (APN 133-221-06).

PROJECT LOCATION: State Highway 1 and Moss Landing Road, Moss Landing, Monterey County

AMENDMENT DESCRIPTION: Incorporation of a habitat mitigation plan for the creation of one acre of freshwater wetland and restoration of over 8 acres of degraded, marginal wetland to biologically diverse freshwater wetland, located on the east side of Highway 1 and bordered to the north by Moro Cojo Slough.

EXECUTIVE DIRECTOR DETERMINATION OF IMMATERIALITY: July 31, 1996 (See Exhibit 1)

OBJECTIONS TO DETERMINATION: (1) Noel Oard Mapstead (See Exhibit 2)
 (2) Sally D. Slichter, SMILE (See Exhibit 3)

PERMITTEE'S RESPONSE: See Exhibit 4.

PROCEDURAL NOTE

The Commission's regulations (Section 13166) provide for referral of permit amendment requests to the Commission if:

1. The Executive Director determines that the proposed amendment is a material change,
2. Objection is made to the Executive Director's determination of immateriality, or
3. The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

- EXHIBITS:**
- Exhibit A - Commission Letter to Permittee Affirming Validity of Coastal Permit.
 - Exhibit B- Monterey County Letter Accepting Mitigation Plan as Compliance with Monterey County Permit ZA 1361 Condition 3.
 - Exhibit 1 - Notice of Proposed Amendment 3-87-248-A1.
 - Exhibit 2 - Noel Mapstead Letter of Objection to Determination of Immateriality.
 - Exhibit 3 - Sally Slichter Letter of Objection to Determination of Immateriality.
 - Exhibit 4 - Tony Lombardo, applicant's representative, Letter in Response to Objections.
 - Exhibit 5 - Coastal Commission Staff Report for 3-87-248.

STAFF RECOMMENDATION

The staff recommends that the Commission independently determine that the proposed amendment is immaterial, and approve the following motion:

I move that the Commission determine that the proposed amendment 3-87-248-A1 is immaterial.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

RECOMMENDED FINDINGS

1. REQUEST FOR INDEPENDENT DETERMINATION

Objections have been received to the Executive Director's determination of immateriality by Noel Mapstead and Sally D. Slichter. Noel Mapstead has requested that the Commission make an independent determination as to the materiality of the amendment request. Section 13166 (c) of the California Code of Regulations provides that "if an objector so requests, the commission shall make an independent determination as to whether the proposed amendment is material".

2. DESCRIPTION OF ORIGINAL PERMIT

In October 1987 the Commission approved 3-87-248 for a multi-level, 39,260 sq.ft. visitor serving facility including a 30 room inn, 80 seat restaurant and related facilities on a 2.5 acre parcel in the community of Moss Landing in Monterey County.

The 2.5 acre parcel was created in coastal permit 3-85-198 Rubis for a subdivision of a 31.9 acre parcel into three parcels of 2.5, 13.6 and 15.8 acres approved by the Commission in January 1986. The 2.5 and 13.6 acre parcels are on the west side of Highway 1 adjacent to Moro Cojo Slough. The 15.8 ac parcel which was located east of Highway 1 was dedicated to the Elkhorn Slough Foundation. The Commission found that because of the dedication of the 15.8 acres that "it will not be necessary to preserve and restore the approximately 4 acres degraded wetland on the proposed 2.5 and 13.6 acre parcels and that development will not be restricted because of this habitat".

Condition 3 of the coastal permit 3-87-248 for the development of the 2.5 acre site stated:

3. The restoration of a 2.5 acre site to a natural wetlands habitat within the Elkhorn Slough area, as required by County conditions to this project, will require an amendment to this coastal permit.

3. AMENDMENT REQUEST

The permittee has submitted "Habitat Mitigation and Monitoring Plan, Moss Landing History and Heritage Center" in fulfillment of condition 3 of coastal permit 3-87-248. The habitat mitigation plan is for the creation of one acre of freshwater wetland and restoration of over 8 acres of degraded, marginal wetland to biologically diverse freshwater wetland, located on the east side of Highway 1 and bordered to the north by Moro Cojo Slough. The mitigation site is part of the 15.8 acre parcel dedicated to the Elkhorn Slough Foundation under 3-85-198.

The mitigation plan has been approved by Monterey County and the California Department of Fish and Game.

4. DESCRIPTION OF OBJECTIONS/STAFF DISCUSSION

The Executive Director's determination of materiality of a proposed amendment is based on "whether or not the proposed amendment is a material change to the permit" (Section 13166(a)(2)).

Objections stated that are relevant to this question are discussed below. Other objections, such as questions of other Monterey County permit conditions, changes that may have taken place in the Moss Landing area since approval of the permit, or other projects that may take place in the future are not relevant to the issue of materiality and are not discussed by staff. The permittee's legal counsel has, however, responded to these objections; see Exhibit 4 attached.

- a. Assertion: The permit has expired and therefore cannot be amended.

Staff Response: Grading on the project began before the 1989 expiration date of the permit but was halted for processing of a U.S. Army Corps Permit. Thus although work on the site has been temporarily halted to comply with Army Corps requirements, the permit was exercised in a timely fashion. No additional permit would thus be needed to resume work authorized by the 1989 permit. The Corps permit was issued May 8, 1995 and the applicant anticipates that construction will resume soon. A letter from the Commission to the permittee's attorney (December 20, 1995) stating that the permit is valid is attached as Exhibit A. Hence, the permit has not expired.

- b. Assertion: The condition of the county permit ZA-6151 requires 2.5 acres of mitigation separate from the 15.8 acres dedicated to the Elkhorn Slough Foundation as discussed in the earlier permit, 3-84-198 Rubis. Hence, the mitigation for this project should not take place on the 15.8 acre site.

Staff Response: The Monterey County permit ZA-6151, condition 3 states:

3. The developer shall purchase and restore a site of an equivalent size to the project size, (approximately 2.5 acres) in the Elkhorn Slough area to a natural wetlands habitat. The specific site and method of restoration shall be subject to approval by the California Department of Fish and Game and the Director of Planning or provide evidence to the Director of Planning that alternate dedication has been made to mitigate the development of this site.

The Monterey County Planning Director has accepted the proposed mitigation as fulfilling the condition of their permit. Please see Exhibit B attached which is a letter from Monterey County Planning Department to Melanie Mayer Gideon, a representative of the permittee. Senior Planner Steven Maki (personal communication, August 22, 1996) affirms that the County accepts the proposed mitigation as fulfillment of the condition.

The Coastal Commission had itself found in coastal permit 3-84-198 Rubis that because of the dedication of the 15.8 acres "it will not be necessary to preserve and restore the approximately 4 acres degraded wetland on the proposed 2.5 and 13.6 acre parcels and that development will not be restricted because of this habitat". The 2.5 acre parcel referenced in this quotation from the Rubis findings is the subject property of this amendment.

Summary: The mitigation plan has been accepted by Monterey County as fulfilling the condition of their permit and therefore fulfills the requirement of condition 3 of the Commission's coastal development permit. Therefore, the proposed amendment is not a "material change" to the permit and the Executive Director's determination of immateriality is correct.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200



December 20, 1995

Anthony Lombardo, Attorney at Law
P.O. Box 2119
Salinas, CA 93902

Re: 3-87-248 Calcapno - Moss Landing Heritage and History Center

Dear Mr. Lombardo:

This letter is a follow up to letters from your office dated November 21, December 18, and December 19, 1995 regarding the above-referenced project. Coastal Development Permit 3-87-248 is valid and its conditions remain in full force and effect.

The current grading plan which shows a reduced amount of grading will require an amendment to the coastal development permit. An amendment application is enclosed for your convenience. After the amendment request is received the Executive Director will make a determination as to whether the proposed amendment is material or immaterial. We need to review the materials relative to the Corps of Engineers approval for the project.

If you have any questions or if we can be of further help, please contact Jeri Sheele of my staff.

Sincerely,

Les Strnad

Les Strnad
Supervisor of Planning and Regulation

JS/cm

Enclosure

cc: Diane Landry, Legal Counsel
Dale Ellis, Zoning Administrator
John Knight, Building Dept.

27j

3-87-248-A1

CALIFORNIA COASTAL COMMISSION
EXHIBIT A

MONTEREY COUNTY



PLANNING AND BUILDING INSPECTION DEPARTMENT

P.O. BOX 1208 SALINAS, CALIFORNIA 93902 (408) 755-5025

ROBERT SLIMMON, JR.
DIRECTOR OF PLANNING AND BUILDING INSPECTION

July 19, 1994

Melanie A. Mayer Gideon, M.S.
Melanie Mayer Consulting
10 Center Street
Salinas, CA 93905

RE: Moss Landing History and Heritage Center Habitat Mitigation
and Monitoring Plan, June 1994

Dear Ms. Mayer Gideon:

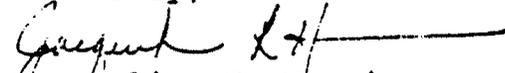
Condition No. 3 of Resolution No. ZA-6151 states that:

"The developer shall purchase and restore a site of an equivalent size to the project size, (approximately 2.5 acres) in the Elkhorn Slough area to a natural wetlands habitat. The specific site and method of restoration shall be subject to approval by the California Department of Fish and Game and the Director of Planning or provide evidence to the Director of Planning that alternate dedication has been made to mitigate the development of this site."

We have reviewed the Habitat Mitigation and Monitoring Plan (revised version June 1994) for the Moss Landing History and Heritage Center Development (Calcagno ZA-6151) and find it to be acceptable.

If you have any questions, please do not hesitate to call me at (408) 755-5854.

Sincerely,


Jacqueline R. Harrison
Associate Planner

cc: Steven Maki, Senior Planner (Special Projects Team)
JRH/ca

3-87-248-A1
CALIFORNIA COASTAL COMMISSION
EXHIBIT B

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4863

NOTICE OF PROPOSED PERMIT AMENDMENT 3-87-248-A1

HEARING IMPAIRED: (415) 904-5200



TO: All Interested Parties
FROM: Peter Douglas, Executive Director
DATE: July 31, 1996
SUBJECT: Permit No. 3-87-248 granted to Louis Calcagno

for: A multi-level, 39,260 sq. ft. visitor-serving facility (Moss Landing History and Heritage Center) including an 80-seat restaurant, 30-room inn, shops, bakery, and cheese factory on a 2.5 acre parcel designated for visitor serving commercial use.

at: State Highway 1 and Moss Landing Road, Moss Landing, Monterey County, APN 133-221-006

The Executive Director of the California Coastal Commission has reviewed a proposed amendment to the above referenced permit, which would result in the following change(s):

Incorporation of a habitat mitigation plan for the creation of one acre of freshwater wetland and restoration of over 8 acres of degraded, marginal wetland to biologically diverse freshwater wetland, located on the east side of Highway 1 and bordered to the north by Moro Cojo Slough (APN 131-151-001 owned by the Elkhorn Slough Foundation).

FINDINGS

Pursuant to 14 Cal. Admin. Code Section 13166(a)(2) this amendment is considered to be IMMATERIAL and the permit will be modified accordingly if no written objections are received within ten working days of the date of this notice. This amendment has been considered "immaterial" for the following reason(s):

Note:

The wetland restoration plan was required by the original conditions of the County's and the Coastal Commission's approvals for the project. The required restoration plan has now been completed, and (as required by the permit conditions) has been submitted for incorporation into the permit by amendment. The restoration plan has received approval from the County and the Department of the Army, Corps of Engineers.

If you have any questions about the proposal or wish to register an objection, please contact Jeri Sheele, Coastal Planner at the Commission Area office.

C2: 4/88 0666C

CALIFORNIA COASTAL COMMISSION

EXHIBIT

3-87-248-A1

To:
Peter Douglas, Executive Director
California Coastal Commission
C/O Central Coast Office
725 Front Street, Ste 300
Santa Cruz, Ca 95060

RECEIVED
AUG 14 1996

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

From: Noel Oard Mapstead

RE: Permit No. 3-87-248/Amendment granted to Louis Calcagno
OBJECTION TO DETERMINATION OF IMMATERIAL

This is an objection to the determination of Peter Douglas that amendment application to permit no. 3-87-248 by Louis Calcagno is immaterial.

Such objection is raised pursuant to Cal. Admin. Code sec. 13166(a)(2)&(3).

Such determination shall be conclusive if no objection is received at the commission office within ten (10) working days publishing notice. (13166(a)(2))

Insofar as the notice was date published for July 31, 1996, such notice was not mailed out from the Santa Cruz office postmarked August 8. Mapstead received the notice in the mail on August 10. Therefore, the commission has created an unfair due process of allowing only 4 working days to reveiw the permit.

Though Mapstead has yet to exhaust reviewing the permit file for this amendment, and has been treated unfairly, Mapstead nevertheless makes this objection to protect the statue of limitation to objecting.

This objection pursuant to sec. 13166(a)(3), which states that if an objection is made to the exexutive director determination the application will be referred to the commission after notice to any person(s)...If the objector so requests the commission shall make an independent determination as to whether the proposed amendment is material.

There appears to be no requirement for grounds for objection, other than the act of objectiing. Nevertheless, Mapstead objects, that the amendment is material.

1) The Calcagno permit of 1987 is expired. 2) No extension of time is on file, pursuant to sec. 13169. 3) There has been a defacto assignment of the permit to another party, not pursuant to sec. 13170. 4) There have been violations of the expired permit, in that project construction started, and quit in 1995. 5) Conditions required by the expired permit, regarding county conditions, have not been completed, in areas of fire, water, transportation, ect. 6) No coastal permit exists from the county, since this project crosses a time period of which permit jurisdiction was transferred from the commission to the county. 7) Significant adverse issues have arisen in the project area since 1987, including adverse impacts to water, transportation and cumulative impacts, that require of the commission and the county an EIR, or supplemental neg dec., or a subsequent/ supplemental EIR pursuant to PRC 21166, of which the commission as lead agency or responsible agency is mandated to comply with.

CALIFORNIA COASTAL COMMISSION

EXHIBIT 2

3-87-248-A1

The commission is only exempt from CEQA PRC chapter 3 commencing with 21100 et.ceq.

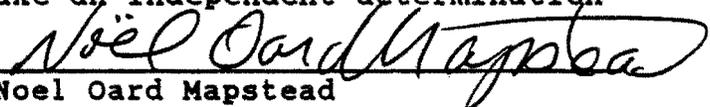
Finally, the proposed amendment and expired project permit remain in direct conflict with Cal Trans plans to widen HY 1 from Castroville through Moss Landing. The county record shows that Calcagno has been warned to cooperate in discussing this issue before proceeding any further. There is as yet, no easment granted from Cal Trans over the public right of way for this project, and there may never be such approval forth coming from Cal Trans, given that other new projects are pending in the area.

The seriousness of this issue is a matter of life and death and blood, of the many citizens whom are seriously injured and left dead on Hy 1 through Moss Landing daily. For this project to proceed in face of the prima facie showing that the project has serious flaws in planning and procedures, will continue to threaten and cause great harm to the welfare of all peoples who use Hy 1 as a transportation corridor. Such harm, the commission and Calcagno and anyone acting in concert will be held fully responsible to defend in a court of law of competent jurisdiction.

Therefore, Mapstead states:

1. I object to the determination of immateriality
2. I request that the matter be referred to the commission
3. I request the commission make an independent determination

Dated: August 14, 1996


Noel Oard Mapstead

Noel Oard Mapstead
P.O.Box 1962
Carmel, CA 93921

RE: Mapstead objection to permit no. 3-87-248 amemdment

3-87-248-A1

SMILE

Save Moss Landing's Indians, Land & Environment

August 14, 1996

Ms. Jeri Sheele, Coastal Planner
California Coastal Commission
Central Coast Area Office
725 Front Street, Suite 300
Santa Cruz, CA. 95060

RECEIVED
AUG 14 1996

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: PERMIT NO. 3-87-248 GRANTED TO LOUIS CALCAGNO

Dear Ms. Sheele:

I am writing on behalf of SMILE to object to the classification of the proposed amendment of Permit No. 3-87-248 as Immaterial.

The "Notice of Proposed Permit Amendment 3-87-248-A1", dated July 31, 1996 states:

- ▶ "The wetland restoration plan was required by the original conditions of the County's and the Coastal Commission's approvals for the project. The required restoration plan has now been completed, and (as required by the permit conditions) has been submitted for incorporation into the permit by amendment. The restoration plan has received approval from the County and the Department of the Army, Corps of Engineers."

CALIFORNIA COASTAL COMMISSION

EXHIBIT 3

P.O. Box 69 Moss Landing, California 95039
Phone: 408-633-6098 FAX: 408-633-5784
Cellular Phone: 408-671-8964 Pager: 408-759-4336

3-87-248-A1

In fact, this is not the wetland restoration plan required by the original conditions of the County's and the Coastal Commission's approvals for the project.

I have attached copies of the documents from both the Coastal Commission, as well as Monterey County describing the conditions regarding the wetland restoration.

Exhibit A:

The original Coastal Commission application, filed 10/2/87, with the application No.: 3-87-248, page 2 states:

- ▶ **"3. The restoration of a 2.5 acre site to a natural wetlands habitat within the Elkhorn Slough area, as required by County conditions to this project, will require an amendment to this coastal permit."**

Page 4 of the same Exhibit describes in further detail the 2.5 acre site to be restored as mitigation for project:

- ▶ **"...In addition to wetland mitigation measures previously provided for in Coastal Permit 3-185-198, the County in its approval of this subject project, has required the purchase and restoration of a 2.5 acre site to a natural wetlands in the Elkhorn slough complex."**

Coastal Permit 3-185-198, (Exhibit B) filed 9/27/85 contained the original dedication of 15.8 acres to the Elkhorn Slough Foundation as mitigation for the original land subdivision. This mitigation was an agreement between the then land owner Mrs. Rubis and the Coastal Commission in 1985. Mr. Calcagno did not become the owner of record of the property until March, 1986.

Exhibit C is a copy of a letter dated July 19, 1994, in which the County states once again, according to "Condition No. # 3 of Resolution No. ZA-6151 states that:

- ▶ **"The developer shall purchase and restore a site of an equivalent size to the project size, (approximately 2.5 acres) in the Elkhorn Slough area to a natural wetlands habitat. The specific site and**

P.O. Box 69 Moss Landing, California 95039
 Phone: 408-633-6098 FAX: 408-633-5784
 Cellular Phone: 408-671-8964 Pager: 408-759-4336

method of restoration shall be subject to approval by the California Department of Fish and Game and the Director of Planning or provide evidence to the Director of Planning that alternate dedication has been made to mitigate the development of this site."

Exhibits C (1) and C (2) are copies of the Inspection Checklist for the County affirming the requirement to purchase the 2.5 acres. Please note it is signed off as "ok" on 7-19-94. The bottom of Exhibit C (2) is a note from Dale Ellis, Zoning Administrator, stating again that condition 3, "must be met prior to issuance of grading permits. All conditions must be met prior to issuance of building permits for any structures." (dated 12-20-88)

A letter from the Department of Fish and Game (Exhibit D) dated April 22, 1994, approving a mitigation plan for the restoration of 7.22 acres (of the already donated 15.8 acres) was written before the letter from the county stating "the developer shall purchase and restore a site of an equivalent size"... Did the Department of Fish and Game realize that the 2.5 acres that was to be purchased and restored was to be purchased in addition to the original mitigation dedication of 15.3 acres?

Also, the statement of overriding consideration for the development permit, according to ZA 6151 also refers to: "Project approval requires that a section of coastal wetlands in the Elhorn Slough area be purchased by the applicant to be restored to its' natural habitat...."

And ZA6151 (in Attachment "B" Finding 1 and Attachment C, Finding #2) obviously recognizes a difference between the original mitigation for the subdivision and the mitigation required for the proposed project.

As further evidence that a mistake has been made, the Water Quality Certification, dated December 21, 1992, Exhibit E, was waived based on: "Condition 3 for approval of the Building Permit requires the developer to restore 2.5 acres in the Elkhorn Slough area to natural wetlands habitat..." Obviously, the Water Quality Control Board was also under the impression, by granting the waiver, that the purchase and restoration of 2.5 acres was being accomplished.

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Furthermore, Exhibit F, a letter from Anthony Lombardo, dated February 22, 1988 states that a deed donating the acreage on the East side of Highway 1 to the Elkhorn Slough Foundation is the proof of compliance with Condition #3 of ZA6151 is simply not correct. That deed donating that acreage is a deed from Jessie Sandholdt and Marie Louise Shandholdt aka Louise Marie Rubis, to the Elkhorn Slough Foundation dated December 30, 1985.

And, the application 3-85-198, filed 9/27/85, page 4, concerning the dedication of the 15.8 acres to the Elkhorn Slough Foundation as mitigation for the subdivision states:

- ▶ "A visitor-serving facility is being planned for the proposed 2.5 acre parcel, to be the subject of a subsequent coastal permit. Approval of this permit is no guarantee of future development approvals."

Finally, since no encroachment permit has been received by Caltrans regarding this project (as required in the County's conditions of approval) it is impossible to know whether or not the area proposed to be restored as mitigation for the project would not become part of a future freeway system for Highway #1. Which, of course, is further reason that an additional 2.5 acres of wetland be purchased and restored outside of this area. Certainly, that alone is reason to consider this mitigation plan as MATERIAL.

SMILE therefore objects to the assignment of this amendment as IMMATERIAL.

Cordially,



Sally D. Slichter
for SMILE

P.O. Box 69 Moss Landing, California 95039
Phone: 408-633-6098 FAX: 408-633-5784
Cellular Phone: 408-671-8964 Pager: 408-759-4336

SMILE Exhibits To Calcagno 3-87-248

RECEIVED
AUG 14 1996

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Exhibits

- (A) 1. Permit 3-87-248
- (B) 2. Permit 3-85-198 dated 9/29/85
- (C) 3. letter dated July 19, 1994 from
Jacqueline Harrison To Melanie Gideon
- (C) 4. Inspection check list for file #
2A 6151
- (C) 5. Note Dale Ellis B file
- (D) 6. letter dated April 22 1994 from
fish + Game To Melanie Mayer
- (E) 7. letter Dec 21 1992 from
Water Quality To Randy
Meyenberg
- (F) 8. letter dated feb 22, 1988
from Lombardo To Dale
Ellis
- (Fa) 9. Deed

ANTHONY LOMBARDO & ASSOCIATES
ATTORNEYS AT LAW

ANTHONY L. LOMBARDO
DERINDA L. MESSENGER
JACQUELINE M. MISCHKE
VANESSA W. VALLARTA
WENDY L. ROSS

POST OFFICE BOX 2119
SALINAS, CALIFORNIA 93902

SALINAS (408) 754-2444
MONTEREY (408) 873-2444
FAX (408) 754-2011

File No. 00107.000

August 21, 1996

VIA FACSIMILE

Mr. Peter M. Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Coastal Commission Permit 3-87-248
Calcapo; Moss Landing Heritage and History Center
Immaterial Amendment

Dear Mr. Douglas:

I am writing to respond to the objections filed by Noel Mapstead and Sally Slichter to your determination that the amendment to this permit required by Condition No. 3 is an immaterial amendment.

The objection to your determination by Mr. Mapstead and Ms. Slichter is a meritless abuse of process.

As a matter of law, this amendment could not be a material amendment to the permit because it is an amendment required by the permit. As defined in §13166(a)(2), an amendment may be considered material only if that amendment results in a material change to the permit. Section 13166(a)(1) further defines grounds for rejecting an amendment which are that the amendment would "lessen or avoid the intended effect of a ... conditioned permit"

The requested amendment cannot be a "material change" to the permit because it is required by Condition No. 3 of the original Coastal Commission permit which states:

Special Conditions

3. The restoration of a 2.5 acre site to a natural wetland habitat within the Elkhorn Slough area, as

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CALIFORNIA COASTAL COMMISSION

EXHIBIT 4

3-87-248-A1

Mr. Peter M. Douglas
Executive Director
California Coastal Commission
August 21, 1996
Page 2

required by County conditions to this project, will require an amendment to this coastal permit.

Consistent with the requirements of this Condition, as well as the conditions of approval of the County of Monterey, Mr. Calcagno's contract to purchase the property on which this project is located, included a right to obtain the dedication of sixteen acres adjacent to the project site which could be restored as wetlands (see Exhibit "A" attached hereto). The dedication of the sixteen acre site occurred only as a result of Mr. Calcagno's purchase.

It is within this sixteen acre site that the applicant has proposed the restoration of two and one-half acres of wetlands consistent with the County's condition of approval as well as the conditions required by the Coastal Commission permit.

The Wetlands Restoration Plan which has been submitted to you contains a provision for the restoration of two and one-half acres of wetland and therefore is, per se, consistent with the approved conditions and cannot be a material amendment to this permit.

The grounds on which Ms. Slichter and Mr. Mapstead have objected to this amendment are:

1. That the permit conditions have not been fully met.
2. No encroachment permit has been granted by CalTrans.
3. That the permit has expired.

**THE APPLICANT DOES NOT HAVE TO PROVE
COMPLIANCE WITH ALL OF THE CONDITIONS IN ORDER
TO SATISFY A PARTICULAR CONDITION.**

1. Mr. Mapstead's and Ms. Slichter's position is absurd, since it would require that no condition could be satisfied unless all conditions were satisfied at the same instant. There is neither common sense nor legal support for such a requirement. The applicant is in the process of completing compliance with the conditions of approval and has obtained a grading permit for the project. The remainder of the conditions that are required to be

Mr. Peter M. Douglas
Executive Director
California Coastal Commission
August 21, 1996
Page 3

satisfied prior to the issuance of a building permit are also being complied with.

THE APPLICANT IS NOT REQUIRED TO OBTAIN AN ENCROACHMENT PERMIT AS A CONDITION OF THE APPROVAL OF THE AMENDMENT FOR THE RESTORATION OF THE TWO AND ONE-HALF ACRES.

The two and one-half acre restoration site which is going to be restored to wetlands is not located on the project site. There is no requirement to obtain an encroachment permit on the sixteen acre site since it is not proposed for development. Mr. Mapstead and Ms. Slichter appear to be concerned that if CalTrans widens Highway 1 to four lanes, that wetlands will be lost which could include the loss of this two and one-half acre site.

If CalTrans proposes a design to widen Highway 1 which would result in the loss of any wetlands (including the wetlands that are going to be created adjacent to the Slough by this amendment), CalTrans would have to obtain not only a coastal development permit, but a 404 permit from the Army Corp of Engineers. These permits (if granted) would contain substitute mitigations. This issue completely irrelevant to both this application and its pending amendment.

THIS PERMIT HAS NOT EXPIRED.

The applicant has just completed an eight year process to obtain a 404 permit from the Army Corp of Engineers.

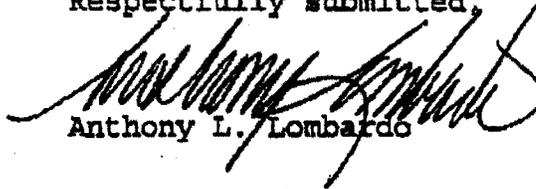
The issue of the expiration of the permit has been reviewed extensively with both Monterey County and the Coastal Commission staff because of the lengthy delays occasioned by the Corp of Engineers' approval process. The case of Community Development v. City of Fort Bragg (1988) 204 Cal.App.3d 1124 held that as long as the applicant is, in good faith, pursuing compliance of the conditions of approval and the development of the project, the permit does not expire. As previously mentioned in this letter, the applicant has continued to comply with the conditions of approval, obtain other necessary permits, and complete plans for grading and building.

The compliance with the condition which requires the pending amendment is one of the last conditions necessary to allow

Mr. Peter M. Douglas
Executive Director
California Coastal Commission
August 21, 1996
Page 4

construction of the development and the applicant respectfully requests that the Commission grant the amendment and determine that it is an immaterial amendment.

Respectfully submitted,



Anthony L. Lombardo

ALL:ncs

Enclosure

cc: Mr. Louis Calcagno

AGREEMENT

This Agreement is executed in duplicate this 25th day of September, 1984, by and between LOUIS R. CALCAGNO and CAROL L. CALCAGNO, hereinafter referred to as "Buyers", and JESSIE L. SANDHOLDT, LOUISE M. RUBIS (aka MARIE L. SANDHOLDT), KATHARINE S. HAAKE and RICHARD E. HAAKE, hereinafter referred to as "Sellers".

WHEREAS, Sellers are the owners of an approximate sixteen (16) acre parcel of unimproved real property located immediately West of Highway 1 in the Moss Landing area of Monterey County, California, which parcel is designated as Assessor's Parcel #133-221-2 and more particularly described in Exhibit "A", which exhibit is attached hereto and made a part hereof;

WHEREAS, Sellers desire to sell and Buyers desire to purchase the southernmost 2.5 acres of said property;

NOW, THEREFORE, Buyers and Sellers agree as follows:

1. Sale of Property:

Subject to the following terms and conditions, Sellers hereby sell and Buyers hereby purchase the southernmost 2.5 acres of the above-described property, which 2.5 acres (hereinafter referred to as the "subject property") are more particularly described in Exhibit "B", which exhibit is attached hereto and made a part hereof.

2. Purchase Price:

The purchase price for said 2.5 acres shall be TWO HUNDRED SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$207,500.00), plus interest on said sum at the rate of twelve percent (12%) per annum from

October 1, 1985, to the date of close of escrow if escrow has not closed by October 1, 1985, which sum shall be paid as follows:

a. Within five (5) days of the date of execution of this Agreement, Buyers shall deposit the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) in an escrow account to be opened at Safeco Title Company (hereinafter referred to as the "escrow agent"), in Monterey, California, which sum shall be held by said escrow agent until close of escrow or expiration or sooner cancellation of this Agreement as provided for herein. Buyers shall have the right to direct the escrow agent to place said \$50,000 deposit in such money market fund or other commercial interest bearing account as may be selected by Buyers, provided the withdrawal of funds from such account requires the signature of the escrow agent.

b. Prior to close of escrow, Buyers shall deposit with the escrow agent the remaining ONE HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$157,500.00) principal sum owing on the purchase price, plus any interest owing on said sum as provided for above.

c. If the date of close of escrow precedes October 1, 1985, interest upon the \$50,000 deposit referred to in subparagraph "a" shall revert to Buyers.

3. Transfer of Title:

Title to the subject property shall not be transferred from Sellers to Buyers until such time as Buyers have tendered the full \$207,500.00 principal sum, together with any interest owing thereon as provided for above, to the escrow agent.

4. No Warranties:

The subject property is being purchased by Buyers in "as is" condition. Sellers make no representations or warranties as to

the condition, zoning, useability or any other features or characteristics relating to the property, except for the wetland characteristics mutually acknowledged in Paragraph 5, below.

5. Wetland:

Buyers and Sellers are aware that State and/or local government entities have, or likely will, designate the subject property as a "wetland area". It is anticipated that such government entities will require the transfer of some interest in an additional approximate 16-acre parcel of real property owned by Sellers, which parcel is located adjacent to the subject property and immediately east of Highway 1, as mitigation in return for development rights for the subject property. Sellers agree to transfer whatever interest in such additional parcel may be required by any government entity in mitigation of a wetland designation of the subject property. Buyers shall not be required to pay any compensation to Sellers in connection with such mitigation transfer unless a government entity requires the construction of a berm or other affirmative alteration of the mitigation property, in which event Sellers shall pay 85% and Buyers shall pay 15% of such alteration costs, provided, however, that as to any such alteration costs incurred prior to the close of escrow, Buyers shall pay 100% of said costs and be reimbursed for all but 15% of the same upon close of escrow, such reimbursement to be in the form of a credit against the remaining \$157,500 principal sum owing on the purchase price for the subject property provided for in Paragraph 2, above.

6. Government Approvals:

Buyers shall assume responsibility for and the risk of obtaining minor subdivision approval and any other government

approvals necessary for the transfer of the subject property from Sellers to Buyers, and shall pay any fees or costs to be incurred in obtaining such approvals except the sum of TWO THOUSAND DOLLARS (\$2,000.00), which sum has been previously paid by Sellers to Gordon Lewis in connection with survey work relating to the property. Both Sellers and Buyers shall receive complete copies of the survey prepared by Gordon Lewis. Sellers consent to Buyers' use of Sellers' name for the purposes of application for such governmental permits and approvals herein mentioned and shall endorse such application documents regarding the minor subdivision approval and other government approvals as are necessary for the completion of the provisions of this Contract.

7. Cancellation/Expiration:

Buyers shall have the right to cancel this Agreement at any time prior to close of escrow. Further, this Agreement shall automatically terminate if escrow does not close within three (3) years of the date of execution hereof recited above. In the event of expiration or sooner cancellation of this Agreement by Buyers, the \$50,000.00 deposit shall be returned to Buyers, less a sum equivalent to interest on said \$50,000.00 sum at the rate of twelve percent (12%) per annum from the date of execution of this Agreement recited above to the date of cancellation or expiration thereof, which sum shall be delivered to Sellers by the escrow agent and received by Sellers as liquidated damages for the cancellation or expiration of the Agreement.

8. Easement:

An access easement shall be included in the deed conveying the subject property from Sellers to Buyers, which easement shall

extend from Highway 1 to Moss Landing Road, shall run along and be parallel to the northern boundary of the subject property, and shall be of a width of 40 feet or such other width equal to that required (as of the date of close of escrow) by any county or other government entity for the construction of a two-lane road. The easement shall be located such that six feet of the width of the easement is on Buyers' 2.5-acre parcel and 34 feet of the width of the easement is on Sellers' remaining parcel. In the event that an easement with a width greater than 40 feet is required by a government entity as referenced above, the additional width shall be allocated so as to preserve the 15%/85% (6/34) division of the total width of the easement between Buyers' and Sellers' parcels, respectively. The easement shall mutually benefit and burden the 2.5-acre parcel being purchased by Buyers and Sellers' remaining parcel.

9. Closing Costs:

Escrow fees, title insurance and other closing costs shall be divided equally between Sellers and Buyers. Taxes on the subject property shall be pro-rated to the date of close of escrow.

10. Assignability:

Buyers may not assign their interest in this Agreement, or any part thereof, without the prior written consent of Sellers.

11. Binding Effect:

Subject to the limitations of Paragraph 10, above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

12. Execution of Documents:

Buyers and Sellers shall sign and deliver to the escrow agent any documents necessary to effect the provisions of this Agreement.

13. Attorney's Fees:

In the event of any legal action between the parties hereto arising out of or relating to this Agreement or the breach thereof, the prevailing party in such action shall be entitled to recover a reasonable sum for attorney's fees as determined by the Court.

14. Entire Agreement:

This instrument contains the entire agreement between Buyers and Sellers relating to the subject property. This Agreement shall not be modified except by subsequent written modification signed by all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BUYERS:

Louis R. Calcagno
LOUIS R. CALCAGNO

Carol L. Calcagno
CAROL L. CALCAGNO

SELLERS:

Jessie L. Sandholdt
JESSIE L. SANDHOLDT

Louise M. Rubis
LOUISE M. RUBIS aka
MARIE L. SANDHOLDT

Katharine S. Haake
KATHARINE S. HAAKE

Richard E. Haake
RICHARD E. HAAKE

EXHIBIT "A"

A part of Lot 21 of Rancho Bolsa Nueva Y Moro Cojo, in County of Monterey, State of California as numbered and designated upon J. Westcott's Map of said Rancho, dated August 1875, and now on file in the office of the County Recorder of said County of Monterey being that same certain tract of land conveyed by Saron N. and Hattie J. Laughlin to Frank Gomez, by deed dated November 24, 1900, recorded December 6, 1900 in Volume 62 of Deeds, at page 228, records of Monterey County and particularly described as follows, to-wit:

Beginning at the point of intersection of the center line of the County Road (60 feet wide) leading from Castroville to Moss Landing with the boundary between Lots 20 and 21 of Rancho Bolsa Nueva Y Moro Cojo, as designated on said Westcott's Map, from which a post marked LG1, MLR, L20, L21, standing in fence corner on the Easterly line of said County Road and in the said boundary between Lots 20 and 21 bears N. 54° 03 1/2' E., 31.33 feet distant; thence along fence and the said boundary between said Lots 20 and 21, N. 54° 03 1/2' E., 1269.30 feet at 31.33 feet said post marked LG1, MLR, L21, at 1144.67 feet a post marked WP, Lg, L20, L21, on edge of Moro Cojo Slough, 1269.30 feet to center line of said slough; thence, along center line of said slough following the Westerly boundaries of that certain 204.91 acre tract of land conveyed by John Foster et ux to George Lyons, a widower, by deed dated January 21, 1926, recorded in Volume 69 of Official Records at page 462, records of Monterey County with the following 3 courses and distances, N. 30° 45' W., 471.24 feet N. 60° W., 765.60 feet and N. 30° W., 570.90 feet to the Southeast corner of that certain 1.54 acre tract of land conveyed by Saron N. and Hattie J. Laughlin to Mrs. Charlotte V. Day by deed dated April 17, 1903, recorded May 8, 1903 in Volume 73 of Deeds, at page 433, records of Monterey County; thence, leave line of said 204.91 acre tract N. 0° 30' E., 206.58 feet to a point; thence, leave center line of said slough S. 33° 37' W., 207.24 feet to point in the Southerly boundary of that certain 1.86 acre tract as conveyed by the above mentioned deed, Saron N. and Hattie J. Laughlin to Mrs. Charlotte V. Day; thence along fence and said Southerly boundary, N. 70° 54' W., 290.8 feet at 260.24 feet a post marked MLR, LG4, standing in the Easterly line of said County Road 290.8 feet to a point in the centerline of said County Road; thence, along said center of County Road with the following 3 courses and distances, S. 8° 04' W., 456.0 feet to a point from which a post marked S, standing in the angle of a fence at the southeast corner of that certain tract of land conveyed by Juan B. Castro, et ux, to Charles Moss by deed dated October 31, 1870 recorded in Volume 0 of Deeds, at page 465, records of Monterey County bears S. 88° 26' W., 30.4 feet distant; thence, S. 24° 15' E., 390.2 feet to a point from which a post marked LG bears N. 68° 31 1/2' E., 30.03 feet distant and a post marked LG12, MLR, bears S. 68° 31 1/2' E., 30.03 feet distant; thence, S. 18° 42' E., 1414.2 feet to the place of beginning.

Containing 37.68 acres of land of which 1.548 acres are included within the limits of the County Road leaving a net area of 36.132 acres of land.

EXHIBIT "B"

STATE HIGHWAY NO. 1

S 4° 05' 10" W

585.79

S 54° 41' 40" W
90.26

2.50 ACRES

N 12° 24' 00" E

312.35

566.42

N 18° 36' 00" W

MOSS LANDING ROAD

SLOUGH

HWY No 1

MORO

COJO

SITE

VICINITY MAP

PLAT

OF 2.5 ACRE PARCEL OF LAND
AT STATE HWY. 1, AND MOSS
LANDING ROAD, MONTEREY COUNTY,
CALIFORNIA.

FOR

MARK DEL PIERO

BY

GORDON B. LEWIS LAND SURVEYOR

SCALE 1" = 100'

AUG 1984

08/21/96 WED 14:51 FAX 408 772 0874 ANTHONY LOMBARDO

Courses all true, Variance of the Magnetic needle being 17° 31' East.

EXCEPTING THEREFROM all that certain real property as described in that certain Deed from Katherine Sandholdt, et ux, to County of Monterey, dated October 1, 1930 and recorded October 7, 1930 in Book 263, of Official Records of Monterey County, California at page 50.

ALSO EXCEPTING THEREFROM all that certain real property as described in that certain Deed from Katherine K. Sandholdt, et ux to County of Monterey, dated October 8, 1931 and recorded November 3, 1931 in Book 314, of Official Records of Monterey County, California, at page 343.

ALSO EXCEPTING THEREFROM all that certain real property as described in that certain Deed from Karl Koss Sandholdt, et al, to Standard Oil Company of California, dated April 20, 1950 and recorded April 20, 1950 in Book 1211 of Official Records of Monterey County, California at page 322.

ALSO EXCEPTING THEREFROM all that certain real property as described in that certain Deed from Karl Koss Sandholdt, et al, to Central Counties Company, a Delaware Corporation, dated February 11, 1947 and recorded February 13, 1947 in Book 967 of Official Records of Monterey County, at page 130.

ALSO EXCEPTING THEREFROM all that certain real property described in that certain Deed from Jessie Leslie Sandholdt, et al to County of Monterey (a body politic and corporate), of the State of California, recorded July 8, 1982 in Reel 1564 of Official Records of Monterey County at page 323.

ALSO EXCEPTING THEREFROM any portion thereof lying Easterly of the Westerly line of State Highway No. 1.

A.P. NO. 133-221-02

D/SJK 11/6/87

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST AREA
701 OCEAN STREET, ROOM 310
SANTA CRUZ, CA 95060
(408) 426-7390 8-525-4863

FILED: 10/2/87
49TH DAY: 11/20/87
180TH DAY: 1/29/88
STAFF REPORT: 10/29/87
HEARING DATE: 11/20/87
STAFF: VR/sc
DOCUMENT NO.: 0741P

ADOPTED

CONSENT CALENDAR

STAFF REPORT

PROJECT INFORMATION

APPLICANT: Louis Calcagno

APPLICATION NUMBER: 3-87-248

PROJECT LOCATION: State Highway 1 & Moss Landing Road
Moss Landing, (Monterey County)

PROJECT DESCRIPTION: Construction of a multi-level, 39,260 sq. ft. visitor-serving facility including an 80 seat restaurant, 30 room inn, shops, bakery, cheese factory on a 2.5 acre parcel designated for visitor serving commercial use.

ASSESSOR'S PARCEL NUMBER(S): 133-221-06

LOT AREA: 2.5 acre parcel ZONING: H-1-P

BUILDING COVERAGE: 29,500 sq. ft. LCP JURISDICTION: Monterey County

PAVEMENT COVERAGE: 45,400 sq. ft. PLAN DESIGNATION: Visitor-serving Commercial

LANDSCAPE COVERAGE: 34,000 sq. ft.

HEIGHT ABV. FIN. GRADE: 35'

LOCAL APPROVALS RECEIVED: Monterey Co. Use Permit No. ZA 6151
EIR Certified 5/11/87

SUBSTANTIVE FILE DOCUMENTS: North Monterey Co. Land Use Plan
Draft LCP Implementation Ordinances - Monterey Co. 3-87-248-A1
EIR #85-001, Moss Landing Visitor Center
County Use Permit No. ZA 6151
Coastal Development Permits 3-85-198,
P-78-772.

CALIFORNIA COASTAL COMMISSION

EXHIBIT 5

STAFF RECOMMENDATION

The Staff recommends that the Commission adopt the following Resolution:

Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

RECOMMENDED CONDITIONSStandard Conditions

See Exhibit A.

Special Conditions

1. This permit incorporates the conditions imposed by the County of Monterey (ZA-6151, Exhibit B attached). All plans, programs, or documents requiring review by Monterey County permit conditions shall be submitted for review and approval of the Executive Director. If compliance with conditions requires a change to plans as approved by this permit, the permittee shall also submit such changes to the Executive Director for review and approval.
2. PRIOR TO ISSUANCE OF THE PERMIT, the permittee shall submit to the Executive director for review and approval, FINAL grading, foundation, drainage, building, and landscaping plans.
3. The restoration of a 2.5 acre site to a natural wetlands habitat within the Elkhorn Slough area, as required by County conditions to this project, will require an amendment to this coastal permit.

RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

1. Project Description

The subject development request is a proposal to construct a visitor-serving commercial complex including a 80 seat restaurant, 30 room inn, deli, wine shop, bakery, cheese factory and a variety of small retail shops having a "farmers market" atmosphere. The 2.5 acre project site is located in the Moss Landing community of North Monterey County, at the intersection of Highway One and Moss Landing Road. The proposed project will consist of a complex of four buildings (See Exhibit 2). Most of the complex will be one and two stories in height (See Exhibit 3). A 2,736 sq. ft. portion of the motel/restaurant will be three stories in height and is consistent with the LCP zoning for the area.

Square footages and seating for the proposed project are as follows:

Restaurant	2,424 sq. ft. (80 seats)
Motel	13,472 sq. ft. (30 rooms)
Shops	5,040 sq. ft.
Cheese factory	1,340 sq. ft.
Delicatessen	1,550 sq. ft. (no seating)
Bakery	640 sq. ft.
Wine Shop and Historical Display	5,060 sq. ft.
Parking	134 auto spaces 3 bus spaces 3 truck-loading spaces

The proposed buildings will utilize a system of pilings for structural support as compensation for the compressible nature of the soils in the project area. Over most of the site, the proposed buildings will be supported above grade allowing for seasonal ponding to occur. One portion of the complex, a circular building housing the cheese and wine shops, will be supported by pilings but will be sunk approximately 4 to 5 feet below grade to create the atmosphere of a wine cellar.

Site preparation will require 1,454 cubic yards of balanced on-site grading. Parking for the complex will be provided along the northern and western portion of the site. The building complex is set back 70 feet from the centerline of Highway 1 allowing for future widening of the highway to four lanes. A wood constructed sidewalk/boardwalk will be built along the frontage of Moss Landing Road. Proposed landscaping will utilize native plant materials featuring Monterey cypresses and native grasses.

As noted, the project site is bordered by Moss Landing Road to the west and Highway One to the east. Surrounding land uses include commercial uses and a cemetery to the west across Moss Landing Road. To the north is a commercial strip fronting Highway 1 and the mixed residential/commercial uses of the Moss Landing Community.

2. Environmentally Sensitive Habitats

Sections 30230, 30231, 30240, 30233, of the Coastal Act and North Monterey County LUP policies 2.3.2.1, 2.3.2.5, 2.3.2.6, & 2.3.3.B.4 provide policy for the protection and enhancement of the area's aquatic habitats, riparian and wetland areas. Among these policies are provisions for appropriate setbacks, buffer areas and wetland dedications.

The subject parcel was created through a land division which was reviewed and approved by the Coastal Commission in 1985 (Coastal Permit 3-85-198). As addressed during the land division review, the subject parcel was considered to be a historic degraded wetland habitat area. A site specific biological assessment concluded that the area was part of the Moro Cojo Salt marsh that was destroyed near the end of the last century. The area encompassing the project site presently harbors a degraded seasonal freshwater wetland created by human activities during the last 100 years as is a drainage sink for adjacent roads.

The noted coastal development permit approving the land division incorporated an offer by the applicant to dedicate a 16 acre portion of the property, containing wetlands, to the Elkhorn Slough Foundation. This dedication and other related conditions addressing an easement along Moro Cojo Slough, provided mitigation measures which adequately addressed the historic wetland characteristic of the site. In addition to wetland mitigation measures previously provided for in Coastal Permit 3-85-198, the County in its approval of this subject project, has required the purchase and restoration of a 2.5 acre site to a natural wetlands in the Elkhorn Slough complex. The specific site and method of restoration is subject to approval by the Department of Fish and Game and will require an amendment to this permit. As part of its approval, the County has also imposed appropriate conditions requiring development of grease and silt traps as well as the development of a maintenance program requiring vacume-sweeping of all paved areas. The County's conditions will adequately mitigate against potential adverse impacts from cumulative sedimentation upon the wetlands of Moro Cojo Slough.

In summary, adequate wetland mitigation measures have been provided for in previous Commission action addressing the subdivision of the subject property and by conditions adopted by Monterey County in approval of the use permit for this development request. The County imposed conditions are incorporated by reference into this permit. (See Exhibit B) Accordingly, the subject development request, as conditioned, is found to be consistent with the policies of the Coastal Act and North Monterey County LUP addressing environmentally sensitive habitats.

3. Public Services / Sewer Services, Highway Capacity.
Section 30254 of the Coastal Act states in part:

"...Where existing or planned public works facilities can accomodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development."

Wastewater. Development in the Moss Landing area is constrained by limited sewer service capacity. A new wastewater system serving the area was approved by the Commission under permit P-78-772. This system has been constructed. The wastewater collection system for the Moss Landing Sanitation District has a limited design capacity of 105,000 gpd. Acknowledging the limited capacity of the system, the Commission's approval of that project required the development of an allocation plan to ensure that sewer service be provided to priority uses as required by Section 30254 of the Coastal Act. The wastewater district was divided up into local service areas. In these service areas the allocation and priority systems were further defined.

The proposed development request is located in Service Area #5 (Moss Landing Road). Capacity allocated for Service Area #5 is 33,650 gpd of which 11,900 gpd is from existing uses. Based on sewage generation factors used by Monterey County Public Works Department and assumptions made from estimated water usage as presented in the project EIR, it is expected that the project will generate a total estimated wastewater generation of 5,780 gpd (average daily flow). This demand represents 17% of the allocation for Service Area #5 and will leave available 16,630 gpd unused capacity allocation in Service area #5.

As noted, the proposed development is a visitor-serving/commercial recreational land use. Under Section 30254 such uses are priority uses. Under the terms of Commission approval of the area's wastewater system and the approved County allocation plan, hotels and restaurants as visitor-serving/commercial recreational uses, are also given priority. Although there is limited sewer service capacity within the Moss Landing area, the expected sewage generation of the proposed use will leave sufficient capacity for other priority uses established in Section 30254 and for those priority uses setforth within the area's LUP and capacity allocation plan developed in accordance with the conditions of Coastal permit 78-772. Accordingly it is found that the proposed development is consistent with the provisions of Section 30254 of the Coastal Act.

Traffic. The prime transportation emphasis of the Coastal Act is to preserve highway capacity for coastal access and coastal-dependent land uses. Of primary concern in North Monterey county is the improvement of Highway 1 for safety and efficiency in carrying the increasingly large volumes of traffic using this corridor. Recognizing the limited capacity of Highway 1, and in response to the provisions of Section 30254, the area's LUP contains a specific Policy (3.1.3.1.) giving development priority to coastal dependent industrial, agriculture, commercial, and recreational uses over non-coastal dependent development in areas where Highway 1 provides the major transportation access. As addressed in the project EIR, the proposed development will add incremental increases to traffic volumes along Highway 1 which does currently operate at an unacceptable level of service. The County has conditioned the project to maintain ample development setback from Highway 1 for future improvement and widening of Highway 1 consistent with certified LUP policy. As the proposed development request is a recognized priority use as a visitor serving/commerical recreational facility, the project is found to be consistent with the provisions of Section 30254 of the Coastal Act.

4. Hazards

Section 30253 of the Coastal Act states in part:

"New development shall:

- (1) Mimimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area...."

The subject site occupies an essentially flat terrace that was once an historic wetland area. The project site is located within an area identified as having a high liquefaction potential. A soils analysis/report was prepared for the the site. In general, the report concluded that large total settlements and large differtial settlements could be expected due to a varied layer of compressible clay across the site. This would preclude the use of convential footings or a slab mat to support structures which could not accomodate settlement of the degree expected.

As noted, the proposed buildings will utilize a system of pilings for structural support as compensation for the compressible nature of the soils in the project area. Over most of the site, the proposed buildings will be supported above grade allowing for seasonal ponding to occur. Recommended conditions for approval require final Commission review of the grading, foundation, building and drainage plans for the project. The applicant has incorporated a project design which is intended to mitigate against known

difficult soils and drainage conditions. Accordingly it is found that the project as designed, will minimize risks to property and will assure stability and structural integrity as required by Section 30253.

5. LCP Policies / CEQA

Allowable use & units. The Land Use Plan (LUP) for the North Monterey County area was certified in June 1982. The LUP incorporates a community plan for the Moss Landing area. Policy 5.2.1.B.1. and related land use map, designates four areas within Moss Landing for visitor-serving commercial recreational uses. The subject site is among those designated areas. The plan permits up to 150 hotel/motel units in the area based on available land and wastewater collection system capacity. The plan requires that hotel/motel units generally be provided by several smaller establishments not exceeding 30 units each. The proposed visitor center conforms to this policy.

Highway 1 setback. Policy 5.2.2. addressing circulation in Moss Landing, provides that Highway 1 will ultimately be improved as a divided four lane scenic highway. This improvement will require about a 150 ft. right of way width. The current right of way width in the project vicinity is 70 to 80 feet. At the present time Caltrans has not determined how an additional 70 to 80 ft. of required right of way would be established or which side of Highway 1 the necessary land would be obtained from. As conditioned by approval of Monterey Co., the proposed visitor center is required to maintain a minimum building setback of 70 feet from the existing centerline of Highway 1. Therefore assurance is provided that development of the project will not preclude future improvement to and widening of Highway 1 as provided for in the Commission approved Land Use Plan for North Monterey.

Visual Resources and Character. The Moss Landing community is recognized as a popular visitor destination point for recreational use. As such the section 5.6 of the area's LUP contains specific policies and standards directed at protecting and enhancing the visual and community character of the Moss Landing community. The visual character of Moss Landing is derived from a unique combination of industrial uses, a working commercial fishing harbor, historic buildings and natural scenery. The project site is located at the southern edge of the Moss Landing community and can be considered as an "entrance" to the community from the south. The project, though highly visible from Highway 1, will not adversely impact any major views of the ocean, harbor or Elkhorn Slough. The architectural style of the proposed facility could be described as nautical or cannery style by virtue of the use of timber pilings for foundation support, and the clean-lined rectangular-shaped building and shed roofs of varying heights (See Exhibit 3). The project has received design review approval and is found to be in compliance

with the specific policies of the Moss Landing Community Plan addressing views. The project is also consistent with associated LCP draft implementing zoning ordinance addressing building height in the subject area.

Implementation/CEQA. As conditioned by the county, the proposed development conforms to the policies of Chapter 3 of the Coastal Act and certified LUP policies for the North Monterey area. Approval of the project will not prejudice the implementation of the Local Coastal Program of Monterey County. An Environmental Impact Report was prepared for this development request. The final report was certified on May 11, 1987. As conditioned the proposed project will not create any significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

EXHIBIT-A

RECOMMENDED CONDITIONS

455

STANDARD CONDITIONS:

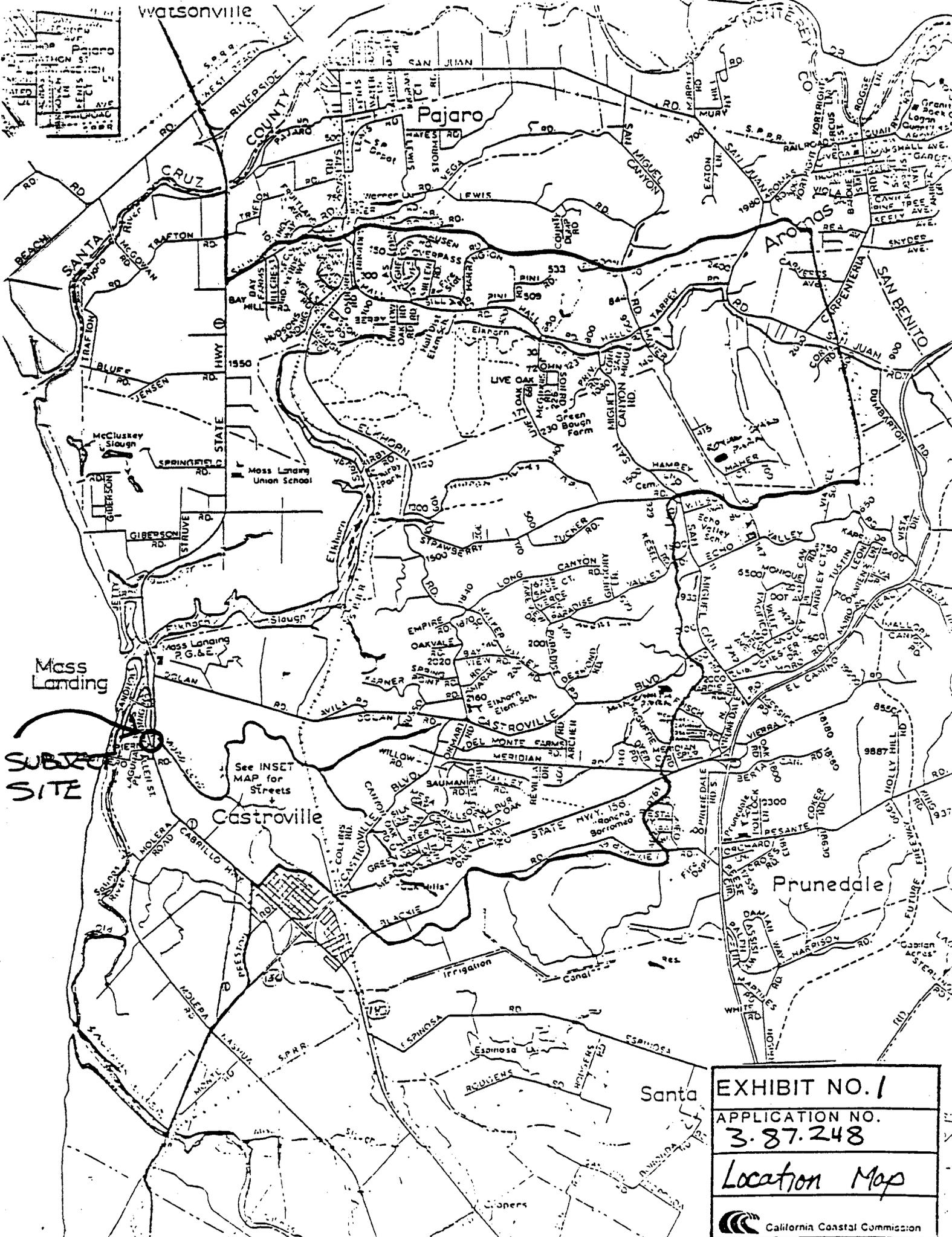
1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXHIBIT NO. A

APPLICATION NO.

3.87.248

Standard Conditions



SUBJECT SITE

See INSET MAP for Streets

<p>EXHIBIT NO. 1</p> <p>APPLICATION NO.</p> <p>3-87-248</p> <p><i>Location Map</i></p>  <p>California Coastal Commission</p>

Revised as of 15 November, 1996

VICINITY MAP
NO SCALE

SITE PLAN
25 ACRES
1/8" SCALE

RESTAURANT
 INN
 SHOPS
 CHECK FACTORY
 ORICASSIN
 WINE & HISTORY

NO SCALE
 1/8" SCALE
 1/4" SCALE
 1/2" SCALE
 3/4" SCALE
 1" SCALE
 1 1/2" SCALE
 2" SCALE
 3" SCALE
 4" SCALE
 6" SCALE
 8" SCALE
 12" SCALE
 18" SCALE
 24" SCALE

ENTIRE SITE TO BE LANDSCAPED WITH NATIVE PLANTS
 NO AREA SUBJECT TO SUBDIVISION

EXHIBIT NO. 2
 APPLICATION NO.
 3-87-248
 SITE PLAN

Sheet 1 of 1

MOSS LANDING VISITOR CENTER



Revised as of 2.5 November, 1980

EXTERIOR ELEVATIONS



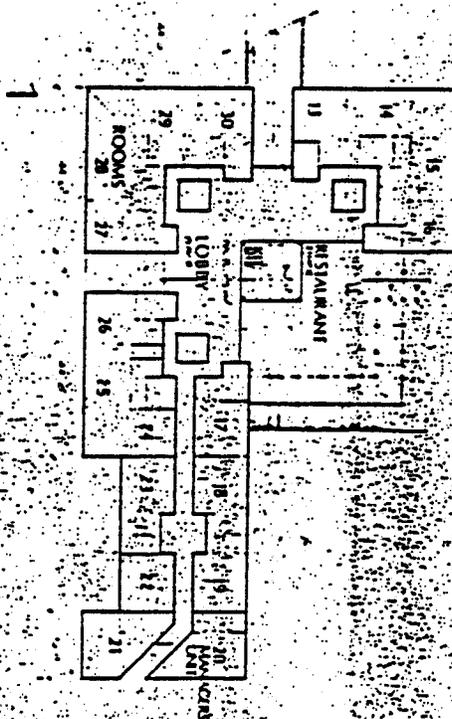
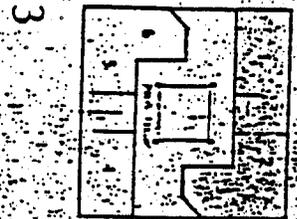
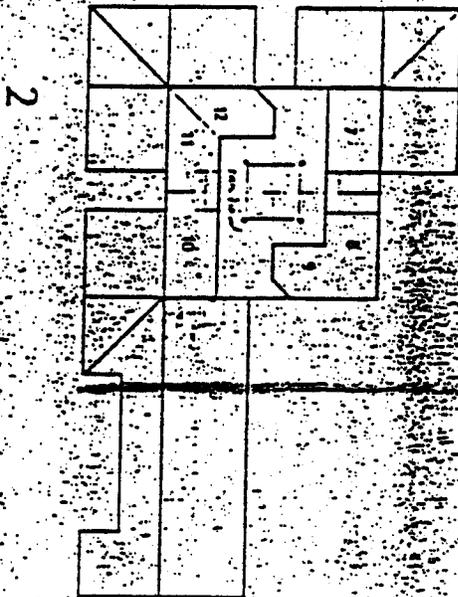
Sheet 4 of 4

MOSS LANDING VISITOR CENTER

Richard K. Rhodes, AIA, Architects and Planners • 256 San Jose Street • Salin

EXHIBIT NO. 3
APPLICATION NO. 3-87-248
ELEVATIONS
 California Coastal Commission

THE INN AT MOSS LANDING
SCALE 1/8" = 1'-0"



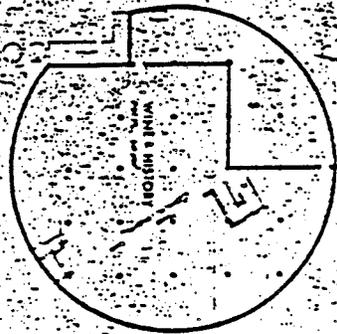
Revised as of 25 November 1988

EXHIBIT NO.4A
APPLICATION NO. 3.87.248
FLOOR PLAN
California Coastal Commission

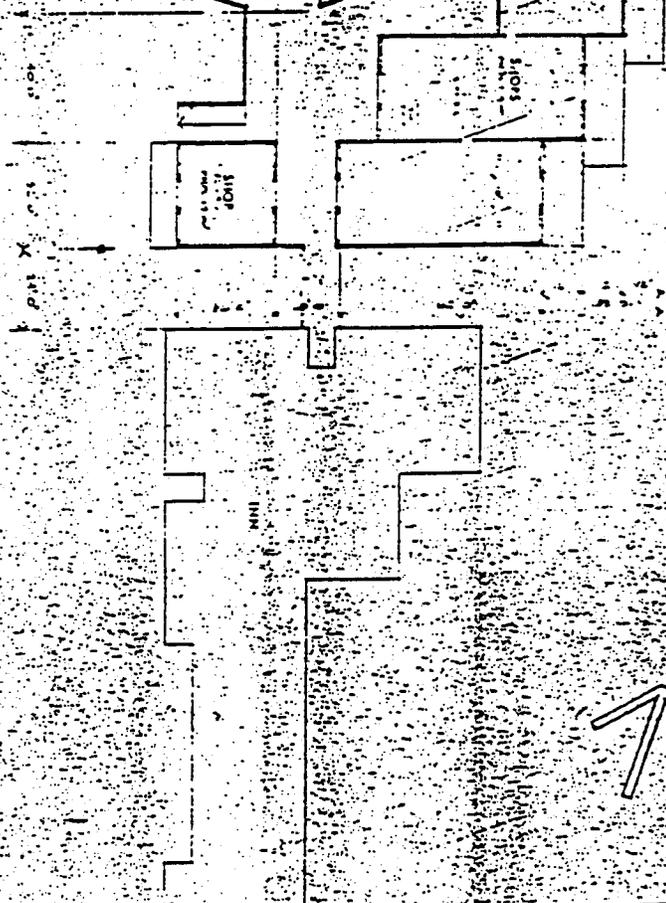
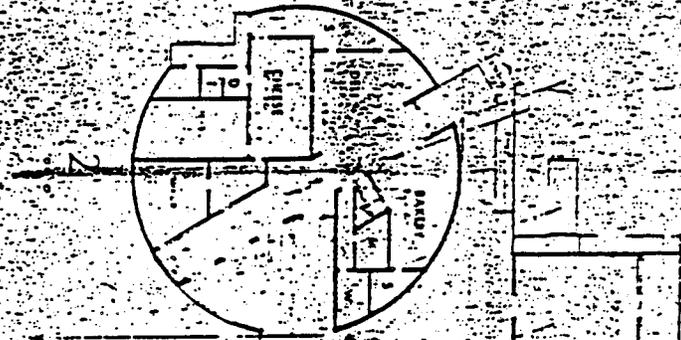
Sheet 3 of 4

MOSS LANDING VISITOR CENTER

Richard K. Rhodes, AIA, Architects and Planners • 256 San Jose Street • Salinas



FLOOR PLANS



THE CHEESE FACTORY

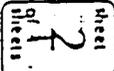
Revised as of 30 November 1984 ROM



EXHIBIT NO. 4 B.

APPLICATION NO.
3-87-248

FLOOR PLAN



MOSS-LANDING VISITOR CENTER

Richard K. Rhodes, -AIA, Architects and Planners - 256 San Jose Street - Salinas



California Coastal Commission

10. FINDING: Provisions for dedication and/or project lay-out modification in light of the potential widening of Highway 1 is not appropriate at the present time.
EVIDENCE: The appropriateness of land dedication and/or project modification was considered as a requirement of project approval and it was determined that in light of the lack of an adequately developed highway-widening project and the lack of a definite timeline for this widening, the requirement for plan modification/land dedication is not appropriate nor feasible at this time.
11. FINDING: That the conditions of approval adequately address and mitigate the impacts of the project.
EVIDENCE: Matrix of impacts/conditions attached to this permit.

DECISION

THEREFORE, it is the decision of said Zoning Administrator that said application be granted as shown on the attached sketch, subject to the following conditions:

1. The applicant shall provide certification to the satisfaction of the Director of Environmental Health that all required permits from the Monterey Regional Water Pollution Control Agency and the Moss Landing County Sanitary District have been obtained. These permits shall include, but may not be limited to, a sewer connection permit and an Industrial Waste Discharge Permit.
2. A deed restriction shall be recorded with the County Records Office that restricts a unit of the Inn facility to a permanent "Manager's Unit". The recorded deed to be submitted to the Director of Planning.
3. The developer shall purchase and restore a site of an equivalent size to the project size, (approximately 2.5 acres) in the Elkhorn Slough area to a natural wetlands habitat. The specific site and method of restoration shall be subject to approval by the California Department of Fish and Game and the Director of Planning or provide evidence to the Director of Planning that alternate dedication has been made to mitigate the development of this site.
4. Conduct a detailed soils analysis addressing the current site plan and buildings and follow the recommendations of the soils engineer for development of the site. This soils analysis shall include a study upon the liquefaction potential of the site and the development of a schedule for maintenance of parking lots and paving grades as settlement occurs.
5. Applicant shall comply with the erosion control ordinance in force at the time of project approval. As a component of erosion control on the site, the applicant shall complete a drainage plan to convey runoff from the site utilizing lined ditches and energy dissipaters to minimize erosion and channel incision.
6. Provide grease and silt traps subject to the approval of the Director of Public Works and the Flood Control District.

EXHIBIT NO. B₁

APPLICATION NO.

3.87.248

Monterey County Conditions

7. A maintenance and operation schedule shall be developed by the applicant for the grease and silt traps subject to the approval of the Public Works Department. Periodic checks of the operations by the Public Works Department shall be a component of the maintenance and operation schedule. The maintenance and operation schedule shall also include the requirement of regular vacuum-sweeping of paved areas during the fall and winter months.
8. That the site be landscaped, including land sculpturing and fencing, where appropriate, by the applicant and that a plan for such improvements be approved by the Director of Planning. Landscaping plans to be approved by the Director of Planning prior to issuance of building permits.
9. The landscape plan shall adequately screen the parking lots, service areas and building equipment from the view of Highway 1 and other public roads.
10. The landscaping plan shall allow for variation in height and species-type utilized in order to vary the view of the facility and to aid in the reduction of noise impacts to the facility.
11. The project must comply with the State Noise Insulation Standards of 45 decibels (dba) interior noise level (habitable rooms) per Title 25 of the California Administrative Code.
12. Provide to the Director of Environmental Health certification and any necessary documentation from state agencies that Moss Landing Harbor District can and will supply sufficient water flow and pressure to comply with both health and fire flow standards.
13. All food facilities must comply with the California Uniform Retail Food Facility Law.
14. That the applicant incorporate all applicable requirements of the 1985 Uniform Fire Code into the development and construction plans.
15. That the applicant incorporate automatic sprinkler protection throughout the complex, subject to the approval of the North County Fire District.
16. That the applicant develop or upgrade the water system to provide required fire flow, subject to the approval of the North County Fire District.
17. That the applicant provide the required fire flow prior to any construction using combustible or flammable materials subject to the approval of the North County Fire District.
18. A drainage plan shall be prepared by a registered civil engineer to correct any existing drainage problems and provide for stormwater runoff from the development subject to the approval of the Public Works Department and Flood Control District.
19. Install low-flow water fixtures in all motel rooms and project restrooms.
20. Any change in color or design shall be subject to approval by the Planning Commission.
21. That the location of all structures, roads, utilities and

EXHIBIT NO. B₂

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County Conditions



22. The height of the structure is limited to 28 feet above average natural grade. The height is allowed to increase to 35 feet above average natural grade in specified areas provided that the gross square footage of any story above 28 feet does not exceed 40% of the structure's footprint.
23. The large cypress tree (sp. Cupressus Macrocarpus) on site shall be retained as a part of the facility. The applicant shall undertake all necessary precautions to protect the cypress from harm during and after construction.
24. Application of dust control measures shall be undertaken during the site preparation and construction periods to mitigate negative impacts of the development upon air quality. Dust control measures are subject to the approval of the Director of Building Inspection.
25. The site shall be maintained in a clean and litter free condition at all times.
26. Applicant shall submit to the Director of Environmental Health the proposed operation by which whey by-products from the on-site cheese production are recycled as cattle feed, insuring that that these by-products are not disposed of in the sanitary sewer system. The applicant shall record with the County Recorder's office, and provide proof of that recordation to the Director of Environmental Health, a statement indicating that all whey by-products shall be disposed of as cattle feed and shall not be disposed of through the sanitary sewer system. If at some point the use of whey as cattle feed is no longer feasible, applicant shall inform the Director of Environmental Health as to the alternative disposal action. This alternative is subject to the approval of the Director of Environmental Health.
27. If the sewage treatment facility is able to accommodate the disposal of the whey by-products from on-site cheese production, documentation shall be submitted to the Director of Environmental Health attesting to this fact.
28. Security features as deemed necessary by the Monterey County Sheriff's Department shall be incorporated into the design of the facility. This shall include such features as solid-core doors, deadbolts, maintenance of visibility by proper landscaping. All required security features shall be submitted to and subject to the approval of the Monterey County Sheriff's Department.
29. Install energy-saving appliances and other measures in rooms. These shall include: energy-efficient fluorescent lighting for interior lighting and high pressure sodium lights for outside lighting and heavy drapes to reduce nighttime heat loss. These improvements to be subject to the approval of the Director of Building Inspection and the Director of Planning.
30. All exterior lighting shall be unobtrusive, harmonious with the local area and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. A plan showing the location, type and wattage of all exterior lighting must be approved by the Director of Planning prior to operation of the facility.
31. In the event that the coastal permit authority has not been granted to the County of Monterey prior to the date of expiration of this approval, provide evidence to the Director of Planning that the Coastal Commission has

XHIBIT NO. B 3

PLICATION NO.

3-87-248

erty Conditions

32. Submit sanitary sewer plans for review and approval of the Moss Landing County Sanitation District.
33. Have plans prepared by a Professional Engineer in Civil Engineering and obtain an encroachment permit from Monterey County Department of Public Works and CALTRANS. Combine the two intersections (Pieri Court/Route 1 and Moss Landing Road/Route 1) into a single, right angle intersection with Route 1 including necessary channelization. Contribute to the Department of Public Works one third (1/3) of Public Works estimated cost of a signal installation. The current estimated cost is \$100,000.00
34. That the off street parking and internal circulation be approved by the Director of Planning.
35. Grant to the State of California by deed a 1' non-access strip along the entire frontage of Route 1.
36. Install vertical curb, gutter, sidewalk and paveout along entire frontage of Moss Landing Road. Driveway locations including a bus stop shall be subject to the approval of the Department of Public Works.
37. Provide drainage improvement study on-site and off-site subject to the approval of the Department of Public Works and Monterey County Flood Control District.
38. Maintain a minimum building setback of 70' from the existing centerline of Route 1.
39. Exterior doors to have viewing holes for security. All security hardware shall be properly installed and functional, subject to the approval of the Monterey County Sheriff's Department.
40. All exterior doors shall be equipped with double-cylinder deadbolt locks. If glass doors are used, a shatter-resistant security film may be applied to the interior surface of the glass. All exterior doors must also be well-lighted. Subject to the approval of the Monterey County Sheriff's Department.
41. Windows shall be equipped with adequate locking devices to prevent prying or removing of windows. Subject to the approval of the Monterey County Sheriff's Department.
42. Alarm systems should be considered for retail shops. There are three basic types of alarm systems. Local - includes the use of bells, sirens, buzzers and/or strobe lights located on-site. Remote or Central Station - also referred to as a "silent system" a system that transmits the signal to a monitoring station, not on-site. Proprietary - the same as a remote, however, the monitoring station is on-site. Specific alarm needs may be better assessed once construction of the site is complete. All these requirements are subject to the approval of the Monterey County Sheriff's Department.
43. To prevent vehicle burglaries, vandalism and the possibility of physical assault, all parking areas shall be well-lighted and highly visible.

EXHIBIT NO. B4

APPLICATION NO.

3-87-248

SALE CONDITIONS

