

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

27-4863

HEARING IMPAIRED: (415) 904-5200

F7a



Filed: February 20, 1997  
49th Day: April 10, 1997  
180th Day: August 11, 1997  
Staff: JC/SC  
Staff Report: March 13, 1997; 396127rp  
Hearing Date: April 8-11, 1997  
Commission Action:

REGULAR CALENDAR  
STAFF REPORT

PROJECT INFORMATION

APPLICANT: City of Santa Cruz Public Works Department

APPLICATION NO. 3-96-127

PROJECT LOCATION: Jessie Street Marsh, vicinity of Ocean Street, East Cliff Drive  
and the San Lorenzo River, Santa Cruz City, Santa Cruz County

PROJECT DESCRIPTION: Clear existing channel through marsh to improve  
drainage/flood control

APPROVALS RECEIVED: Local: none required. CEQA: Categorically Exempt 1a. California  
Dept. of Fish and Game Dept. Notification No. 027-96 February 12, 1996.

SUBSTANTIVE FILE DOCUMENTS: Santa Cruz City Local Coastal Program, December 15,  
1994; Biological Resources and Recommended Enhancement Plan Measures, Jessie Street  
Marsh, Michael Josselyn, San Francisco State University, July 1987

SUMMARY OF RECOMMENDATION: Staff recommends **approval** of this after-the-fact permit  
as conditioned.

The Jessie Street Marsh is a 3.2 acre remnant salt water marsh and seasonally flooded grassland in the flood plain of the San Lorenzo River. In October 1996 the Santa Cruz City Public Works Department under a Department of Fish and Game Stream Alteration Agreement cleared the existing channel of the Jessie Street Marsh to allow proper drainage through the marsh to the river to prevent flooding of nearby streets. Department of Fish and Game conditions limited the area, time and operation of the channel clearing. However, the marsh area is within the Coastal Commission's original jurisdiction and a coastal development permit from the Commission was required but not obtained. The City was advised of the violation and an application for an after-the-fact permit was submitted. The work has been completed and reviewed by the Department of Fish and Game. The marsh area has been purchased by the City and after formulation of a Jessie Street Marsh Management Plan management of the area will be transferred from the Public Works Department to the Resource Planner for the City's Department of Parks and Recreation. To assure the marsh is properly protected during the

transition period the permit has been conditioned to require prior review by the City Resource Planner for any additional work proposed in the marsh.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions.**

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, 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 implement its Local Coastal Program in conformance with 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.

**II. Standard Conditions.**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for the permit amendment, 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 project during its development, 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.

### III. Special Conditions

1. This permit is an after-the-fact permit for the clearing of the Jessie Street Marsh channel. No future work may be undertaken in the Jessie Street Marsh without a coastal development permit from the Coastal Commission. Any such future application for an amendment to this permit or a separate coastal development permit for work in Jessie Street marsh shall be accompanied by written approval of the City's Department of Parks and Recreation Associate Resource Planner for the work to be undertaken.

2. The City of Santa Cruz shall undertake corrective work, if any, as recommended by the Department of Fish and Game to bring this project into compliance with the Stream Alteration Agreement. In the event that corrective work is necessary, the recommendations of the Department of Fish and Game shall be submitted to the Executive Director for review and approval prior to commencement of work.

3. WITHIN 60 DAYS OF APPROVAL OF THIS PERMIT, the permittee shall provide to the Executive Director, a copy of a U.S. Army Corps of Engineers permit, letter of permission, or evidence that no Corps permit is necessary.

### IV. Findings and Declarations

The Commission finds and declares as follows:

#### 1. Description, Location, Background

Site Description: The Jessie Street Marsh is a remnant salt water marsh and seasonally flooded grassland in the flood plain of the San Lorenzo River approximately 1500 feet inland from the rivermouth. (See Exhibit 1 and 2 attached.) The wetland/grassland area is approximately 3.2 acres. It is bounded by residences along its western boundary and by a steep wooded hillside on the east. The southeast boundary abuts the City's Ocean View Park. The upper end of the wetland at Barson Street consists of a narrow freshwater channel that flows through a heavily vegetated riparian area. The riparian area grades into an open area of brackish and salt marsh near Lemos and Jessie Streets, with a narrow channel connecting the open area to the drainage system to San Lorenzo River. The outflow from the marsh is piped under East Cliff Drive and the San Lorenzo River levee. A path traverses the marsh area.

Project Description: In February 1996 the Santa Cruz City Public Works Department received a Department of Fish and Game Stream Alteration Agreement to clear the existing channel of the Jessie Street Marsh to a width of two feet and a depth of three feet from Barson Street to the curve and from East Cliff Drive to the storm drain outlet at the end of Jessie Street. Access to the work was limited to one access point at each end of the project. See Exhibit 2a attached. The Public Works Department completed the work. Whether or not the Public Works Department completed the work consistent with the requirements of the Department of Fish and Game is unclear. Residents reported that the Public Works Department dug a larger trench than permitted, continued work beyond the October 15, 1996 DFG limit, and seeded the area with annual grass species rather than wetland plants (see Exhibit 4).

The Department of Fish and Game has indicated they will review the work in field for consistency with the Streambed Alteration Agreement. The permit has been conditioned to require the City to undertake any corrective work recommended by the Department of Fish and

Game. In the event that corrective work is necessary, the City of Santa Cruz shall submit the Department's recommendations to the Executive Director for review and approval prior to initiation of the remedial work required.

Jurisdictional Requirements: The marsh area is within the Coastal Commission's original jurisdiction; a coastal development permit from the Commission was required but not obtained. The City was advised of the violation and an application for an after-the-fact permit was submitted.

Commission staff has advised the City that removal of major vegetation and dredging of wetland channels in the Coastal Zone requires a coastal permit from the City when located in the City's post-certification jurisdiction or from the Coastal Commission when located in the Coastal Commission's original jurisdiction.

The marsh is also within the U.S. Army Corps of Engineers jurisdiction and work in the marsh requires their approval. The permit has been conditioned to require verification of Corps authorization.

## 2. Violation Finding

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken without a coastal development permit.

## 3. Wetland Resources/Environmentally Sensitive Habitat

A Biological Resources and Recommended Enhancement Plan Measures for the Jessie Street Marsh by Michael Josselyn, San Francisco State University, July 1987, found that the Jessie Street Marsh includes brackish salt water marsh, uplands and grasslands and supports a wide range of species in a small accessible urban setting. A gradient from freshwater to salt marsh vegetation was evident. A channel flows from the upper end of the wetland at Barson Street through the marsh to a culvert that connects the marsh to the San Lorenzo River Lagoon. The culvert allows a tidal exchange. The upper riparian area is heavily vegetated and contains native willows and tules. Native trees such as buckeyes and elderberry provide good riparian habitat. The marsh contains Ruppia maritima, widgeon weed, Scirpus robustus, alkali bulrush, Potentilla, Jaumea, Salicornia, Lolium, and Distichlis. Numerous bird species use the marsh area and small fishes are expected to inhabit the lower end of the marsh area. The marsh may also provide habitat for several endangered species including the tidewater goby and the California brackish snail.

The Jessie Street Marsh is a wetland. The Commission has determined that wetlands are areas in which plant or animal life or their habitats are either rare or especially valuable and are, therefore, environmentally sensitive habitats.

The site is within the Commission original jurisdiction and the standard of review is the Coastal Act.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Coastal Act Policy 30231 provides in part that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms ...shall be maintained and, where feasible, restored through, among other means...preventing...substantial interference with surface water flow...maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 allows only eight types of development in wetlands and only where there is no feasible less environmentally damaging alternative. Very minor incidental public facilities, restoration, and nature study are among the allowable uses. Section 30233 further requires that dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation and dredging in wetlands shall maintain or enhance the functional capacity of the wetland or estuary.

Section 30236 provides in part that channelizations or other substantial alterations of streams shall incorporate "the best mitigation measures feasible and be limited to...flood control projects where no other method for protecting existing structures in the floodplain is feasible".

According to the San Lorenzo River Enhancement Plan, Santa Cruz City, February 1989 fresh water inflow to the Jessie Street Marsh consists of stormwater runoff from adjacent urbanized and unurbanized areas. A small amount of spring flow may also seep into the marsh area. In the summer, water levels and salinities in Jessie Street Marsh are controlled by water levels in the San Lorenzo River lagoon. The marsh is connected to the San Lorenzo River through a culvert and a manhole catch basin beneath San Lorenzo Blvd. and the land side of the levee. Depending on the direction of flow, water flows between the catch basin beneath Lorenzo River Lagoon through a 32 inch pipe. Stormwater drainage collected in Jessie Street Marsh is designed to flow into the river by gravity flow through a 32 inch pipe outlet that is fitted with a flap gate. The flap gate is designed to prevent flow from the river during high water stages from reaching the backside of the levees. The flapgate has a history of being stuck in the open position and allowing freshwater to enter Jessie Street Marsh.

The channel has a low gradient that can result in street flooding of the low lying surrounding residential areas under heavy storm runoff and particularly when high tides backup through the storm drain outlet to the river and prevent discharge to the river.

The Santa Cruz City Public Works Department maintains the City's drainage channels to allow for free flow to prevent flooding. As conditioned by the Department of Fish and Game the work in the most sensitive areas was to be done manually, areas of trenching were defined and the trench was limited to a two foot width and three foot depth, all excavated material was to be

removed from the site and placed where it could not enter any wetland or riparian habitat even by rain or runoff (see Exhibit 2a-b).

The proposed project as conditioned by the Department of Fish and Game could be considered a minor incidental public facility consistent with Section 30233 that is necessary to provide flood control and is, therefore, consistent with Section 30236 of the Coastal Act. The channel clearing as conditioned by the Department of Fish and Game to provide that the dredging be carefully limited and that the spoils be prevented from entering the marsh is consistent with Section 30240 and 30231 of the Coastal Act which protects the biological productivity of coastal waters and environmentally sensitive habitats.

#### 4. Local Coastal Program/CEQA

Jessie Street Marsh is identified as a wetland/riparian area in the City's certified Local Coastal Program, Map EQ-9: Sensitive Species and Habitats. Many policies of the LCP address the marsh.

Environmental Quality Element, Biotic Resources Policy 4.2 require that the City "Preserve and enhance the character and quality of riparian and wetland habitats..." Policy 4.2.1 states,

Develop, adopt and implement management plans for city-owned wetland and riparian areas including: San Lorenzo River, Neary Lagoon. Require management plans for sites not owned by the City in connection with development, and/or encourage other agencies to implement management plans for : Younger Lagoon, Jessie Street Marsh...

The San Lorenzo River Enhancement Plan chapter of the certified Santa Cruz City Local Coastal Program Land Use Plan has several policies addressing the Jessie Street Marsh including the following:

1.4.1 Restore estuarine conditions for vegetation and aquatic wildlife habitat in the lower river including the San Lorenzo Lagoon and Jessie Street Marsh.

1.4.3 Control summertime water levels and salinities in Jessie Street Marsh, by repairing the slide gate on the gravity outlet and installing a flashboard weir on the headwall of the Jessie Street Marsh outlet.

1.4.4 Implement the Area 15 drainage improvement to reduce winter time storm runoff inundation.

1.4.5 Continue to make efforts to acquire ownership of the Jessie Street Marsh.

1.4.6 Develop a specific restoration plan for the Jessie Street Marsh.

Completion of Purchase of the Jessie Street Marsh. The development of secondary treatment facilities for the Santa Cruz City Wastewater Treatment Plant resulted in the conversion of 4.4 acres of parkland to wastewater treatment uses. As a part of the mitigation program for this loss, the City of Santa Cruz was to purchase approximately 3.2 acres of the Jessie Street marsh for permanent habitat/open space use. Purchase of these marsh parcels was completed in 1996.

The Jessie Street Marsh is currently managed by the Public Works Department as a drainage/flood control channel. With the purchase of the property the marsh has become public property and the City is proceeding with planning implementation of the Land Use Plan policies to restore the habitat and provide a low impact recreational trail. The City's Parks and Recreation Department, Associate Planner, is currently processing a Request for Proposals for development of a Jessie Street Marsh Management and Enhancement Plan. The objectives are to address hydrology and flood control to regulate for a healthy marsh, remove invasive, non native species, improve habitat conditions for wildlife, and to provide low impact public access in a manner that will both protect the habitat and educate visitors.

The completion and implementation of a Management Plan will fulfill the policies of the Land Use Plan. According to the Department of Parks and Recreation after the management plan is developed and adopted by the City Council, the area will no longer be under the management of the Public Works Department but will become the responsibility of Planning Staff of the Parks and Recreation Department. This staff also manages Neary Lagoon.

However, the process of developing and implementing a management plan could take several months or longer. The Santa Cruz City Public Works Department is not historically involved in environmental management and does not have the expertise or the mandate to give full consideration to the natural resource values of this newly acquired public marsh.

To assure that the marsh is properly protected consistent with the Marine Resource and Land Resource policies of the Coastal Act, during this interim transition period between Public Works Department management and Parks and Recreation management, the permit has been conditioned to require that any work proposed for the Jessie Street Marsh must be reviewed and approved by the Resource Planner for the Santa Cruz City Department Parks and Recreation in addition to Coastal Commission review.

The City found the channel clearing to be Categorically Exempt, Class 1, Item (a). The development, as conditioned, will be consistent with the California Coastal Act, and will not create any significant adverse impacts within the meaning of the California Environmental Quality Act.

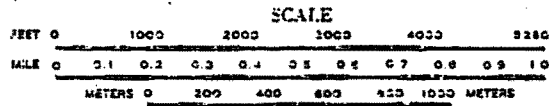
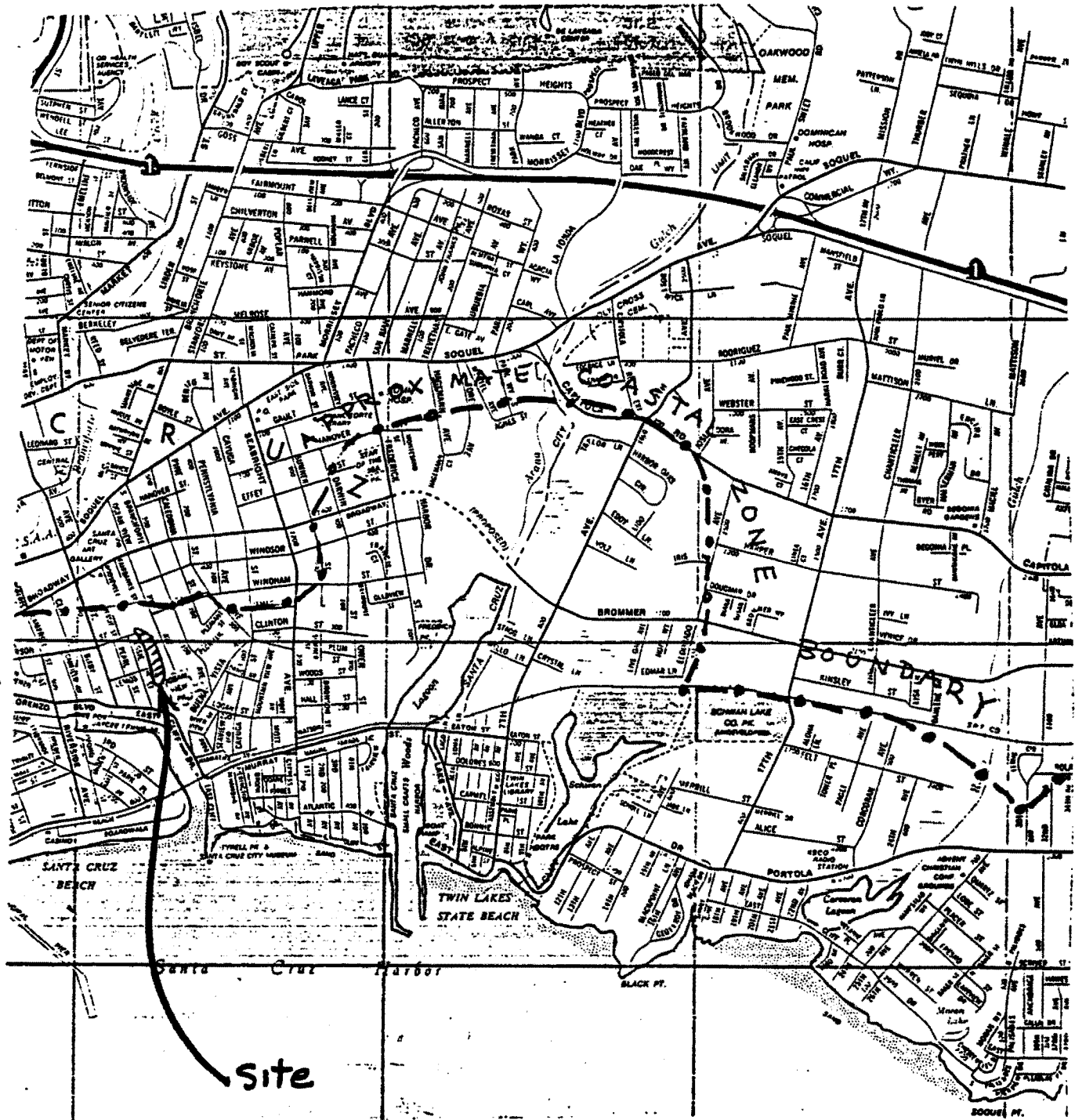

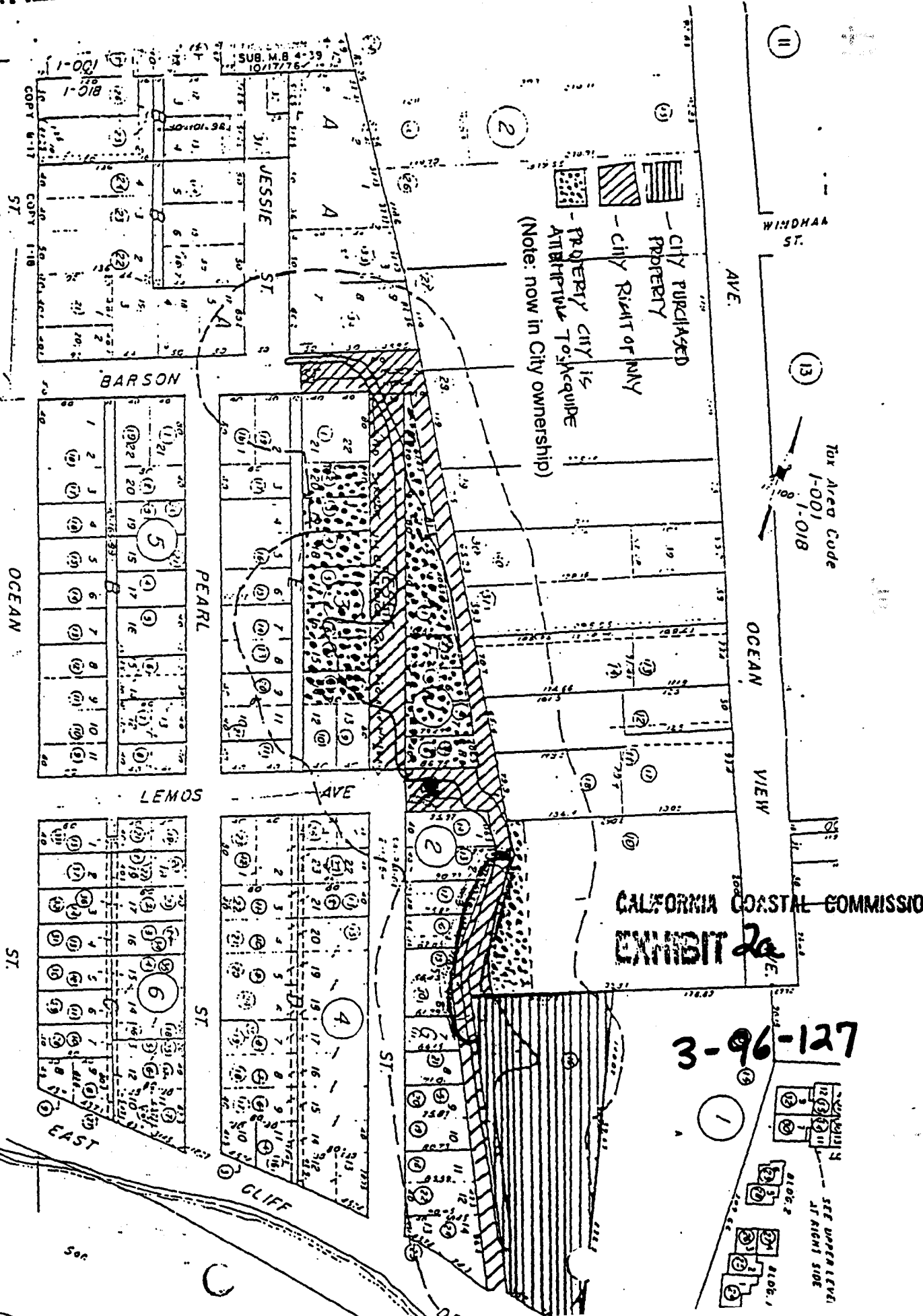


EXHIBIT NO. 1
APPLICATION NO. 3-96-127
LOCATION MAP
 California Coastal Commission

SANTA CRUZ-EAST/YACHT HARBOR



LIMIT OF PROJECT  
 AREA BE DONE BY HAND  
 8-13-96



# AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Richard McKinney / City of Santa Cruz of Santa Cruz, State of California, hereinafter called the operator, is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of California Fish and Game Code, the operator, on the 17th day of January, 1996, notified the Department that s/he intends to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed of, the following water: Jessie Street Marsh in the County of Santa Cruz, State of California.

WHEREAS, the Department (represented by C. Babich has made an inspection of subject area and ) has determined that such operations may substantially adversely affect existing fish and wildlife resources including: Wetland habitat and its' related species.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife during the operator's work. The operator hereby agrees to accept the following recommendations as part of his/her work: Numbers 2, 9, 11, 12, 20, 21, 22, from the list of recommendations attached to this page and the following special recommendations:

- A. All work in or near the stream or lake shall be confined to the period 2-15-96 through 10-15-96. In the future any clearing of the channel shall be done between May 1st and October 15th.
- B. The Operator may clear the marsh flow from the existing channel at the end of Barson Street to the curve and from the existing channel from East Cliff Drive to the storm drain outlet at the end of Jessie Street. (See attached map) If the remainder of the marsh is to be worked on the Operator shall first submit a certified biotic assessment on the effects of the project to the marsh and any adverse effects shall be mitigated. The Operator shall not do any work in the remainder of the marsh until the Department reviews their assessment and amends this agreement.
- C. As per the Operator, the channel clearing shall be limited to 2 feet wide by 3 feet deep. In addition, there shall be only one access point at each end of the project. The section between Lemco and East Cliff Drive in which the Operator stated had to be done by hand last year, shall be done in the same manner for this agreement. (See attached map)
- D. Stream or marsh turbidity shall not increase from this project. All excavated materials shall be removed from the site and placed where they cannot enter any wetland or riparian habitat even by rain or run-off.
- E. All erosion control shall be in place by 10-15-96 and shall be maintained throughout the winter.

The operator, as designated by the signature on this agreement, shall be responsible for the execution of all elements of this agreement. A copy of this agreement must be provided to contractors and subcontractors and must be in their possession at the work site.

If the operator's work changes from that stated in the notification specified above, this agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this agreement and with other pertinent Code Sections, including but not limited to Fish and Game Code Sections 5650, 5652, and 5948, may result in prosecution.

Nothing in this agreement authorizes the operator to trespass on any land or property, nor does it relieve the operator of responsibility for compliance with applicable federal, state, or local laws or ordinances.

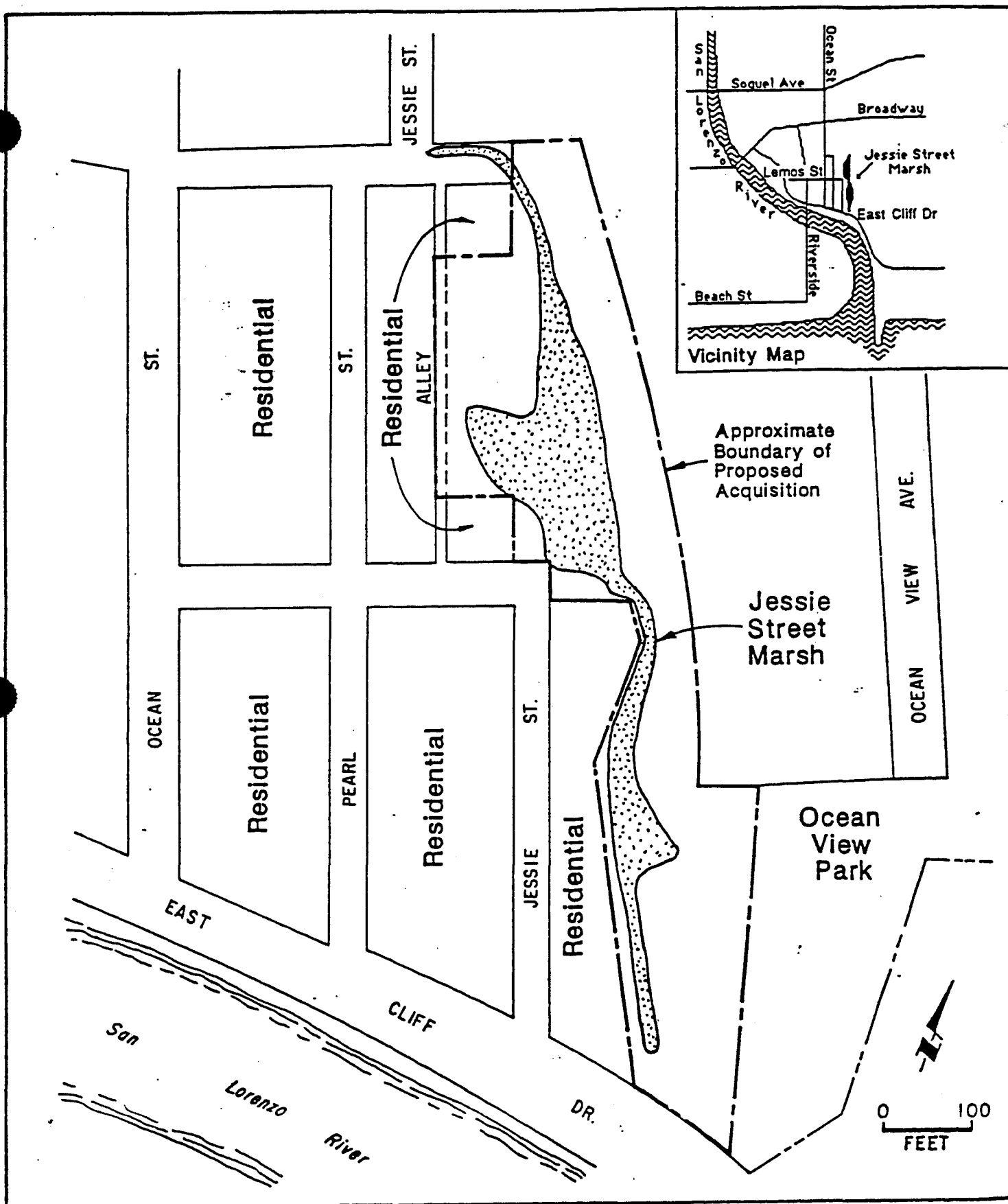
THIS AGREEMENT IS NOT INTENDED AS AN APPROVAL OF A PROJECT OR OF SPECIFIC PROJECT FEATURES BY THE DEPARTMENT OF FISH AND GAME. INDEPENDENT REVIEW AND RECOMMENDATIONS WILL BE PROVIDED BY THE DEPARTMENT AS APPROPRIATE ON THOSE PROJECTS WHERE LOCAL, STATE, OR FEDERAL PERMITS OR OTHER ENVIRONMENTAL REPORTS ARE REQUIRED.

This agreement becomes effective when signed by both parties.

Operator: Richard E. McKinney  
 Title: PUBLIC WORKS CHIEF, MGR  
 Organization: CITY OF SANTA CRUZ  
 Date: 2-13-96

Department Representative: C. Babich  
 Title: Fish and Game Warden  
 Department of Fish and Game, State of CA  
 Date: 2-12-96

3-96-127  
 CALIFORNIA COASTAL COMMISSION  
 EXHIBIT 2b



3-96-127  
FIGURE 2-1. JESSIE STREET MARSH, SANTA CRUZ

CALIFORNIA COASTAL COMMISSION

EXHIBIT 3

UNIVERSITY OF CALIFORNIA, SANTA CRUZ

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

Rachel O'Malley  
Biology Board

~~DIVISION OF NATURAL SCIENCES~~  
~~APPLIED SCIENCES BUILDING~~

SANTA CRUZ, CALIFORNIA 95064

January 1, 1997

A316 Earth and Marine Sciences Building  
University of California, Santa Cruz  
Santa Cruz, CA 95064

Coastal Commission  
725 Front Street  
Santa Cruz, CA 95060

To whom it may concern,


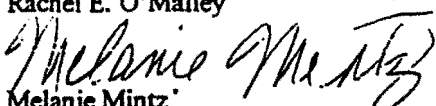

We wish to register concern about Santa Cruz Public Works Department's application for a permit to clear a trench through part of the Jesse Street Marsh for flood control. Having witnessed the Public Works department's activity at the end of October, we feel that they did unnecessary and illegal harm to the marsh. The department had a permit from US Fish and Game department to dig a small trench with exact specifications and to complete the work by mid-October. In fact workers dug a trench three times the width and depth that the permit allowed, and made a mess of the vegetation in the marsh. They did not complete this work until the beginning of November, and when they were finished they seeded with annual grass species rather than sedges or other wetland plants. Finally, the workers were not given a copy of the permit to carry with them, and they did not have a supervisor or a wetland biologist guiding their work on site in any way.

We have lived right on the edge of the marsh for four years, including the very wet winter of 1994-1995. We choose to live here because of the wildlife. Now that the water is channelized through the marsh, we don't see the blue herons and egrets and ducks wading up to the edge of the marsh, and the grasses and iceplant are invading the marsh very quickly. Yet the street flooding in front of the house continues.

The Public Works department appears to be sacrificing the integrity of the marsh in the name of flood control for public relations purposes, rather than implementing effective and appropriate habitat-sensitive flood management measures.

We encourage you to deny the permit for clearing of the Jesse Street Marsh any further, and to sanction the Department for the damage it has already occasioned.

Thank you very much for your attention to this matter.

  
Rachel E. O'Malley  
  
Melanie Mintz  
  
Christopher Krohn

Home address: 526 Barson Street, Santa Cruz, CA 95060

RECEIVED  
JAN 17 1997

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

CALIFORNIA COASTAL COMMISSION

EXHIBIT 4

cc: Public Works Department, Santa Cruz City Council, Parks and Recreation, US Fish and Game Dept.

3-96-127