

CALIFORNIA COASTAL COMMISSION

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

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Commission Action:

**STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE DETERMINATION**

LOCAL GOVERNMENT: County of Monterey

LOCAL DECISION: Approval with Conditions (5/6/97)

APPEAL NUMBER: A-3-MCO-97-042

APPLICANT: CALIFORNIA STATE UNIVERSITY - MOSS LANDING MARINE LABORATORY, PETERSON TRUST, and THE ALCO WATER CO.

APPELLANT: Noel Mapstead

PROJECT LOCATION: Peterson Trust Parcel, on the hillside next to the community cemetery and fronting on Moss Landing Road, in the community of Moss Landing, north Monterey County. (APN 133-201-17)

PROJECT DESCRIPTION: Construction of an approximately 60,000 square foot Marine Laboratory (labs, classrooms, offices and storage), 90 space parking lot, removal of 100,000 gallon above grade water tower, placement of three 59,000 gallon water tanks below grade, pumphouse, seawater delivery system, approximately 31,000 c.y. of grading (17,950 cut, 13,500 fill); restoration and preservation of 17.1 acres of severely degraded dune habitat; and preservation of 7.4 acres of wetland habitat. Project properties total approximately 29 acres, including former 8 acre lab site. Proposed development envelope (buildings, paving, and impervious surface) at new 21 acre site is approximately 2.8 acres.

FILE DOCUMENTS: Monterey County LCP (inc. North Monterey County Land Use Plan - LUP); Final EIR, Moss Landing Marine Laboratories Earthquake Reconstruction Project (Jones and Stokes, March 1997); County Administrative Record, including all relevant materials for PC 95097 public hearing and decision.

RECOMMENDATION: NO SUBSTANTIAL ISSUE

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that the proposed project presents no substantial issue concerning its conformance with the Monterey County LCP.

The delayed mailing of this staff report was necessary because of the extensive administrative record (fully 2 boxes) associated with a project of this magnitude, received only one week prior to the Commission's mailing deadline for the July meeting.

SUMMARY OF APPELLANT'S CLAIMS AND SUBSTANTIAL ISSUE DETERMINATION

Appellant's Claims	Land Use Plan Policies	LCP Ordinances	Substantial Issue Determination
<p><u>Environmentally Sensitive Habitat</u> <i>Inconsistent with Coastal Act esha policy PRC 30240(a).</i></p> <p><i>Inconsistent with Sec. 2.3 esha policies.</i></p>	<p>NA</p> <p>Key Policy 2.3.1 requires that North County esha's must be protected, maintained and, where possible, enhanced and restored. Subsidiary ESHA policies offer specific direction for meeting this goal.</p>	<p>NA</p> <p>Ordinance requires adherence to specific development standards in esha's (Sec. 20.144.040).</p>	<p>No Substantial Issue. Coastal Act policies are not the standard of review for appeals of locally issued coastal permits</p> <p>No Substantial Issue. The project constitutes a resource-dependent, nature education and research facility and therefore is an allowable use. The appropriate conditions and mitigation measures for such a project are included in the County's decision.</p>
<p><u>Archaeology</u> <i>Project was not reviewed by Historic Resources Review Board</i></p> <p><i>Alternative sites to avoid archaeological resources not chosen.</i></p>	<p>N/A</p> <p>All available measures shall be explored to avoid development on sensitive sites.</p>	<p>Relevant ordinance does not require review by HRRB (Sec. 20.54.040).</p> <p>Alternative siting shall be utilized to reduce or avoid archaeological sites.</p>	<p>No Substantial Issue.</p> <p>No Substantial Issue. County's extensive alternative analysis indicated that impacts were unavoidable but insignificant in light of the mitigation measures and site redesign.</p>
<p><i>Inconsistent with</i></p>	<p>Policies require</p>	<p>Ordinance requires</p>	<p>No Substantial Issue.</p>

<i>site-specific development, review, and mitigation standards of County IP as well as CEQA</i>	adequate archaeology reports, mitigation in coordination with State Office of Historic Preservation and State Native American Heritage Commission; and adherence to CEQA.	adequate archaeological report, mitigation and re-zoning (Sec. 20.144.10 et. seq.)	Project approval by County complies with site specific requirements. Project was the subject of a full EIR, adequate archaeology report(s) were prepared, mitigation plan reviewed and approved by SHPO and Native American Heritage Commission as well as by the County.
<u>Visual Resources</u> <i>Inconsistent with Sec. 2.2 (visual resource policies) because buildings will be constructed on ridgeline.</i>	Key LUP Policy 2.2.1 prohibits development on ridgelines to the fullest extent possible Policy 2.2.2.4 states that the least visible portion of a parcel should be considered the most desirable building site.	Not raised by Appellant	No Substantial Issue. County's extensive alternative analysis, use of mitigation and siting design support a finding of insignificant visual impacts.
<u>Traffic</u> <i>Inconsistent with LCP highway capacity and traffic mitigation policies.</i>	Policies 3.2 et seq. encourage Highway One improvements and gives priority to coastal dependent development for limited existing road capacity (Policy 3.1.3)	New or expanded development of existing uses along a State highway or major county road shall be permitted only with sufficient mitigation measures.	No Substantial Issue. While project replaces former Marine Lab destroyed by 1989 earthquake, the new lab likely will not generate any more traffic than old one, and the lab <u>is</u> a coastal dependent use.
<u>Water Supply</u> <i>Inconsistent with Moss Landing Community Plan due to financial impacts on neighboring water needs.</i>	N/A	N/A	No Substantial Issue. The Moss Landing Community Plan portion of the LUP/CIP does not address financial impacts community water needs.
<i>Local water supply</i>	County's long term policy shall limits	Hydrologic report	No Substantial Issue. The County findings

<i>is inadequate to serve the project.</i>	ground water use to the safe yield level; regulates intensification of use of existing water supplies by permit; and requires water conservation measures in all new development.	required; prohibits development if report determines project will adversely impact the quantity or quality of local agricultural water supplies or will generate water demand exceeding the long term yield of the local aquifer.	specifically state that there is no potentially significant impact from the increased pumping at the municipal water supply well or potential increase in the risk of seawater intrusion at the well.
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TABLE OF CONTENTS

	<u>Page</u>
I. Summary of Appellant's Contentions	4
II. Local Government Action	5
III. Appeal Procedures	5
IV. Staff Recommendation on Substantial Issue	6
V. Findings and Declarations	6

EXHIBITS

1. Noel Mapstead Appeal
2. Project Location Map.
3. Project Site Map
4. Planned and Proposed Uses Adjacent to Moss Landing Laboratories Reconst.
5. Schematic Site Plan
6. Elevations
7. Applicant Correspondence Regarding ESHA
8. Memorandum of Agreement concerning Archeology
9. Monterey County Findings and Conditions
10. Correspondence

I. SUMMARY OF APPELLANT'S CONTENTIONS (See Exhibit 1 for the full text)

Appellant Noel Mapstead contends that the approval of the Moss Landing Marine Laboratory by the County of Monterey is inconsistent with the policies and ordinances contained in the Certified Local Coastal Program which provides the standard of review for projects in the County's coastal zone. The alleged inconsistencies are summarized as follows:

1. The proposed project is inconsistent with Coastal Act and LCP Environmentally Sensitive Habitat (ESHA) policies.

2. The proposed project will adversely affect archaeological resources inconsistent with LCP policies and ordinances which require identification, consideration of alternative sites, protection and adequate mitigation for these resources.
3. The project is inconsistent with LCP Visual Resource policies.
4. Public services (water, road capacity) are inadequate to serve the project. Demolition of the existing water tower and replacement with partially buried tanks will cause a financial burden for neighboring residents.

II. LOCAL GOVERNMENT ACTION

A coastal permit for this project was granted by the Monterey County Board of Supervisors on May 6, 1997. The project came to the Board as an appeal from a March 26 Planning Commission decision lodged by both the applicant and Noel Mapstead, albeit for different reasons. Adjustments to the terms of the conditions attached to the project by the Planning Commission sought by the applicant were approved by the Board. Other than these minor revisions, the action of the Planning Commission was upheld by the Supervisors.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county (Coastal Act Section 30603(a)).

For projects such as this one, located between the sea and the first public road paralleling the sea, the grounds for an appeal are that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(2)), or to the public access policies found in Chapter 3 of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the

Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program and the recreation and access policies of the Coastal Act.

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

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION. Staff recommends a YES vote on the following motion:

I move that the Commission determine that Appeal No. A-3-MCO-97-042 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

V. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Location and Description

The proposed project includes both restoration and construction components. The construction will take place within a 2.8 acre building envelope. The purpose is to replace the California State University (CSU) Moss Landing Marine Lab (MLML), destroyed in the 1989 Loma Prieta quake. It includes the construction of a one-story, $\pm 60,000$ square foot marine laboratory (labs, classrooms, storage and offices), a 90 space parking lot, removal of a 100,000 gallons above grade water tank, installation of three, partially buried 59,000 gallon water tanks, landscaping, and removal of a number of non-native trees.

Outside the building envelope, the overall project also includes the restoration and preservation of 17.1 acres of severely degraded dune habitat; and preservation of 7.4 acres of wetland habitat. The on-land piping for a seawater delivery system is also included in the project. (The off-shore portion and pumphouse for the seawater shore system is under the permit jurisdiction of the Coastal Commission and was previously approved under coastal development permit 3-97-30.) Approximately 31,000 cubic yards of grading is required for the project (17,950 cubic yards of cut, 13,500 cubic yards of fill).

The overall project area totals about 29 acres, including the 8 acre locale of the now-demolished old lab site on the seaward side of Old Salinas River. The new project site, on the inland side of Old Salinas River, comprising the "Peterson Trust Parcel," is 21 acres in size and

is located between the first public road and the sea in the southern part of the small unincorporated fishing port of Moss Landing. The parcel is moderately sloping on both the east (Highway One, Moss Landing Road) side and steeply sloping on the west (Old Salinas River Channel, Monterey Bay) side and is currently undeveloped except for a 100,000 gallon water tower owned by the local domestic water purveyor. (Please see Exhibit 2 and 3). Nearby land uses include the Moss Landing Cemetery (immediately south and east of the site, the Moss Landing Heights Subdivision (+50 single family homes) to the south and a variety of commercial buildings (antique stores, restaurants, etc.) to the east. The site for the "Moss Landing History & Heritage Center", a hotel/restaurant project approved by the County several years ago, is east of the subject parcel between Moss Landing Road and Highway 1. The sand dunes of the Moss Landing sandspit, the Old Salinas River Channel and Monterey Bay define the western boundary of the site. Salinas River State Beach is located approximately one quarter mile south-west of the parcel.

B. Issue Analysis

1. *Environmentally Sensitive Habitat Areas (esha)*

a. Appellant's Statement: Appellant contends that the project is "inconsistent with PRC 30240(a); LUP 2.3 et. seq." Public Resources Code (PRC) Section 30240(a) and Monterey County's North County Land Use Plan (LUP) section 2.3 both address protection and restoration of environmentally sensitive habitat areas (esha's). Appellant's supplementary statement also asserts that the permit and conditions fail to recognize esha's on the site, and treats the project only as adjacent to environmentally sensitive habitat. He further points to the lack of a finding that the project is a resource-dependent use with respect to "endangered plants and animals."

b. Applicable Standard of Review: That portion of the California Coastal Act cited as PRC 30240 requires that esha's be protected from significant disruption; and, limits uses to those which are dependent on the resource. In the North County LUP portion of Monterey County's LCP, these policies are applied through LUP section 2.3. Because Monterey County operates under a certified LCP, the LCP (including the North County LUP) rather than the Coastal Act policy comprises the standard of review for new development. Accordingly, appellant's contention the project is inconsistent with PRC 30240(a) is not valid, and will not be given further consideration.

c. LCP Key Policy. The North Monterey County portion of the certified Monterey County LCP is organized according to major land use topics. Each major policy topic is addressed by a chapter of the LUP devoted to that particular topic. Each of these chapters contains a Key Policy which establishes the overall purpose and intent of that chapter. Subsequent subordinate policies within the chapter then elaborate upon the guidance provided by the Key Policy.

The North County LUP's Section 2.3.1 is the Key Policy for environmentally sensitive habitat areas. It provides:

The environmentally sensitive habitats of North County are unique, limited, and fragile resources of statewide significance, important to the enrichment of

present and future generations of county residents and visitors; accordingly, they shall be protected, maintained, and, where possible, enhanced and restored.

d. Supporting Policies: The LUP also contains supporting policies that provide additional detail regarding various aspects of the Key Policy. Particularly applicable to the new MLML classroom complex are the following:

- 2.3.2.1 Restricts development in esha's, such as "sites of known rare and endangered species of plants and animals." Allows resource dependent uses "including nature education and research", but only if no significant disruption of esha's.
- 2.3.2.2 Requires new land uses to "incorporate all site planning and design features needed to prevent habitat impacts ... which, on cumulative basis, could degrade the resource."
- 2.3.2.4 Calls for contiguous areas of undisturbed habitat to be maintained "for low intensity recreation, education, or resource conservation use." Requires clustering of development to prevent habitat impacts.
- 2.3.2.8 Requires that where development is permitted in an esha "consistent with all other resource protection policies," that removal of indigenous vegetation be minimized.

e. Analysis: The overall project involves three types of environmentally sensitive habitat areas: 1) the 8.1 acre former MLML site, in Recent-era (Holocene) dunes which form the northern limit of the contiguous Monterey Bay Dune System; 2) a 7.4 acre wetland habitat, comprising saltmarsh and tidal mudflats within the perimeter of the new campus, to be protected through Conservation Easement; and, 3) a degraded native plant habitat comprising about 12 acres on the hill proposed for the new MLML classroom facility complex (which will cover 2.8 acres of this degraded habitat).

The project will result in completion of the 7.9 acre Recent-era dune restoration project, along the Monterey Bay shoreline, and reverse the progressive deterioration of the native plant habitat within the new campus location through restoration of 9.2 acres not utilized for academic facility development. The restored 9.2 acres on the hill will provide habitat for both the Sand gilia (a federal endangered subspecies) and the Monterey spineflower (a federal threatened subspecies). Absent this project, the gilia and spineflower populations on the hill can be expected to be completely lost as it is in the progress of being overrun with non-native and non-dune species. The restored dune habitat at the old lab site, along with the restored native plant habitat within the new MLML campus and the 7.4 acre wetland area, will all be permanently protected and managed under Conservation Easement(s) administered by the Calif. Dept. of Parks and Recreation (old lab site) and CSU Moss Landing Marine Laboratories (new parcel), for a total of 24.5 acres.

Given the 24.5 acres of dune and wetland habitat to be restored and protected under the proposed Conservation Easements and State Park ownership, the overall project will substantially help to carry out the LUP Key Policy restoration objective. However, the Coastal

Development Permit findings attached to County's decision fail to expressly identify the proposed MLML classroom complex as a location within an existing (albeit severely degraded and progressively declining) esha for two sensitive native plant species. In the permit findings, the project is treated as a development adjacent to an esha (which is also true, but not the whole picture).

Further, the findings do not mention whether or not the project constitutes a resource-dependent "nature education and research" use -- which status is necessary to establish this as an allowable use within an esha. The project design and County permit conditions all provide for an exemplary degree of mitigation that would be appropriate for a project either within or adjacent to an esha, as required by LUP Sections 2.3.1, 2.3.2.2, 2.3.2.4 and 2.3.2.8 cited above.

While the County's findings do not expressly identify this as a resource dependent, nature education and research use, there is nonetheless ample evidence to support such a conclusion. First, the very purpose of CSU's marine laboratory is education and research exclusively in the area of marine and coastal resources, as is clearly stated in the Federal Environmental Analysis prepared for FEMA, May 1995. Further, the use of the native plant habitat as an outroom classroom is an important component of the academic program. Biologist Peter Slattery states:

The plan (ABA 1995b) and federal Ennvironmental Assessment (LSA, 1995) explain the commitment of the marine laboratories to utilize the two species and associated habitat as an integral part of their research, college courses, and general public education programs. For example, undergraduate and graduate students working with doctoral level professors and other professionals will participate in rare and endangered dune plant research, restoration, enhancement, management, and monitoring through classroom, laboratory and thesis research; all focused on understanding, protecting, and conserving these species. This represents a renewal of similar over 20 year involvement by the marine laboratories prior to earthquake destruction of the previous facilities [sic]. (see correspondence in Exhibit 7 for full text)

In order to provide the needed type of "outdoor classroom," a unique combination of characteristics is required. Specifically, the relocated MLML needs a site in close proximity to the seawater intake system and the harbor facilities, yet also with immediate access to an area which supports native dune habitat that is neither "off-limits" nor overused by the public.

The former MLML site had these characteristics, but rebuilding there is infeasible due to geologic hazards. The dunes to the south of the old lab site cannot be used because they represent viable esha as part of the contiguous Monterey Bay Dune system and are protected as such. On the other hand, the sandy soils at the proposed new site are not part of the Monterey Bay dune System, yet are capable of growing the necessary native dune plants. In fact, a viable population of the more sensitive species can be maintained over the long run only through the activities or intervention of human management. No other location in or near Moss Landing has this combination of features. And, CSU MLML would appear to be an ideal candidate to provide stewardship for the sensitive native plant population found at the proposed new site -- a population which will disappear without such stewardship (see Exhibit 7 for details).

f. Conclusion: The project's benefits to environmentally sensitive habitat are clear. The County's findings do not provide an adequate basis for determining that the project conforms with the LCP habitat policies cited by appellant. However, evidence in the County record clearly demonstrates that in this case, the project nonetheless constitutes a resource-dependent facility and therefore is an allowable use. The appropriate conditions and mitigation measures for such a project are included in the County's decision. Therefore, the project presents no substantial issue in terms of LCP conformance.

2. Archaeological Resources

The appellant has made several general assertions of substantial issue regarding archaeological resources.

a. Historic Review: Appellant first asserts that the project is inconsistent with the Monterey County Implementation Plan, Part 1, Section 20.139 et. seq, "Regulations for Historic and Archaeologic Resources or HR (CZ) Districts," which appellant maintains requires that the project be reviewed by the Historic Resources Review Board of the County. However, Chapter 20.139, cited by the appellant, was superseded by Chapter 20.54 of the Zoning Ordinance (Monterey County LCP Amendment #1-95, April 1995) in August 1995. The Moss Landing Marine Laboratory relocation development was applied for and processed by the County after this date.

Analysis: Even if Section 20.54.20 were correctly referenced by appellant, though, this section states that the provisions of Chapter 20.54 apply only in districts with which an Historical Resources District is combined. The Peterson Trust Parcel basic zoning districts are not currently combined with the Historic Resources District Zone and the development is, therefore, not subject to Section 20.54. Moreover, Section 20.54.100 of the Monterey County Implementation Plan provides that development in areas of archaeological sensitivity shall be considered pursuant to Section 20.66.050 *without referral to the Historic Resources Review Board* [emphasis added]. This section then directs the reader to the North Monterey County Implementation Plan, 20.144.110 Archaeological Resources Development Standards, for proper review. Monterey County conducted its review under this section and thus, appellant's first assertion raises no substantial issue.

b. Consideration of Alternatives and Mitigation: Appellant's second assertion combines CEQA and LCP claims concerning the consideration of alternative sites and site specific questions about appropriate reporting and mitigation. Appellant asserts generally that the project is inconsistent with Monterey County LUP policy 2.9 and section 20.144.110 of the County's Implementation Plan. He also asserts that

The project is not compatible with historical resources and alternatives to avoid the historical resources have not been chosen as a means to avoid the resources. Instead, although the EIR recognizes many other alternative sites that would avoid the resources, they have not been chosen. There is no evidence that the chosen project site cannot be avoided.

Analysis: Key Policy 2.9.1 of the North Monterey County LUP states:

North County's archaeological resources, including those areas considered to be archaeologically sensitive but not yet surveyed and mapped, shall be maintained and protected for their scientific and cultural heritage values. New land uses, both public and private, should be considered compatible with this objective only where they incorporate all site planning and design features necessary to minimize or avoid impacts to archaeological resources.

The LUP's general and specific policies that elaborate on this key policy make clear that "all available measures" need to be explored to avoid significant impacts to archaeological resources. This includes timely identification and evaluation of such resources, conducting surveys, designing mitigation and limitations on public access (Section 2.9.2 et seq.; 2.9.3 et seq.)

Similarly, Section 20.144.110 of the North County Implementation Plan establishes various requirements intended to "assure the maintenance and protection of North County's archaeological resources." Most important is the section's stated intent that "[n]ew land uses and development, both public and private, shall be considered compatible with this intent only where they incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources." (sec. 20.144.110). Specific standards of this ordinance include a requirement that all development proposals with potential archaeological impacts undergo CEQA review, be designed and sited to avoid impacts if possible, and be thoroughly mitigated if impacts are unavoidable.

The appellant's contention questions whether the CEQA and County analysis of alternative sites provides adequate evidence to support the choice of the existing site and location on the site for development as it relates to impacts on archaeological resources.

In this case, Monterey County based its alternative site findings on an extensive CEQA review which reconsidered the 11 alternatives selected for review by FEMA in its Environmental Assessment. The EIR used primary and secondary screening criteria to evaluate the suitability of the site for development. Although some of the sites evaluated did not contain archaeological resources, they did have other sensitive coastal resources or hazards which were found to make them unsuitable for development. In balancing the various resource dimensions of this project, it appears that the County made a determination that the impacts to the archaeological resources on this site were unavoidable.

More important, attendant to its EIR process, FEMA initiated consultation with the State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation, and other interested parties, including the Native American community, pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f). These consultations produced a Memorandum of Agreement that specified mitigation measures necessary to allow development on the project site. As discussed in more detail below, these measures, as well as specific design features of the project, adequately mitigate for the development on this site, as required by the LCP. The County made a specific finding that with the mitigation measures, the impacts to archaeological resources would not be significant. In short, the record appears to substantiate that "all available measures" to avoid archaeological resource impacts have been explored and thus, that no substantial issue is raised.

c. CEQA Findings: Appellant also asserts that section 20.144.110 C 1 requires CEQA assessment and that "[t]he permit and approvals do not comply with county CEQA standards. The approvals and permit, violate PRC 21083.2(a) in that the EIR and permit conditions and evidence do not address the issues of the resources found on the site that would be impacted."

Analysis: The development has been designed to avoid excavation of the primary midden, which will be capped with fill and covered by a parking lot constructed above. In the event that archaeological or cultural artifacts are discovered Monterey County permit condition 52 requires implementation of the Memorandum of Agreement (MOA) which in Part II. Data Recovery, page 4, requires that "any discovery of archaeological or cultural artifacts other than human remains and associated burial goods during excavation or ground disturbance shall be accompanied by appropriate identification and analysis as determined by the archaeologist and the monitor in consultation with the concurring Native American parties." Hence, the appellant's assertion is not substantial since the permit conditions do address Archaeologic resources found on site.

d. Avoidance of Archaeological Resources: Next appellant contends that "the project does not avoid the resources, even though alternatives exist and no planning has been made as part of permit conditions to plan historical parks with any guarantee that such plans will and can be carried out," citing section 21083.2(b) of CEQA.

Analysis: The development is designed to avoid excavation of the primary midden and to mitigate for impacts to any of the secondary midden areas as discussed above. Section 21083.2 (b) of CEQA requires reasonable efforts to preserve unique archaeological resources in place or left undisturbed. Section 21083.2 (b) gives examples of such treatment, "in no order of preference and not limited thereto", which may include (1) planning to avoid the resource, (2) deeding sites into permanent conservation easements, (3) capping with a layer of soil before building on the sites, (4) planning parks, greenspace, or other open space to incorporate archaeological sites. Finally, CEQA does not require that the project applicant plan a historical park. The appellant's assertion does not raise a substantial issue.

e. Mitigation: Finally, appellant cites section 21083.2(c) of CEQA, claiming that:

"there is ample evidence that the permit disturbs the historical site, yet no condition is exacted that requires the applicant to guarantee paying one half the estimated cost of mitigation, nor is there an estimate given of such costs, or the in-kind values. Further, because of the need to pay such fees, no project approval shall be allowed until 60 days after the completion of the special EIR that addresses the historical resources, and allows for volunteer funding. For project permit, none of these CEQA standards have been addressed. As a result of these failures to comply with CIP and CEQA, there is no guaranteed funding for the permit conditions 52, 53, 54.

Analysis: 21083.2.(c) says that to the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources.

The applicant has been required through Monterey County permit conditions and FEMA has agreed through the Memorandum of Agreement to require that the mitigation measures be carried out. There is no provision in the mitigation measures that limits the implementation costs. The mitigation must be performed regardless of cost. The Federal Emergency Management Agency in its Finding of No Significant Impact conditions the use of Federal funds for the implementation of mitigation measures prescribed in the Environmental Assessment including and specifically the mitigation measures in the Memorandum of Agreement developed as part of the National Historic Preservation Act Section 106 Consultation process for the Moss Landing Marine Laboratory relocation.

The appellant's assertion that there is no guaranteed funding for the permit conditions is incorrect and does not present a substantial issue.

f. Conclusion: Given the extensive alternatives analysis conducted under CEQA, the use of an MOA concerning archaeological impacts, and the mitigation and siting design features of the proposed project, no substantial issue is raised.

3. Visual Resources

a. Alternative Sites: The appellant makes a general assertion that the proposed project is inconsistent with section 2.2 of the County's LUP -- the Visual Resources policies of the LCP. North Monterey County's LUP contains a variety of policies for new development to limit impacts on public views and to ensure that new structures are compatible with the scenic character of North County. In particular, North Monterey County's LUP Key Visual Policy states in part:

Only low intensity development that can be sited, screened, or designed to minimize visual impacts, shall be allowed on scenic hills, slopes, and ridgelines.

The general and specific policies of the LUP elaborate on this policy by protecting views to and along the shoreline and using site designs that minimize visual impacts; etc. (section 2.2 et seq.).

The proposed project will be constructed along the ridgeline of a hill on the seaward side of Highway 1 and will be visible from a variety of public viewing points. The County evaluated various other sites as a part of the CEQA process. Most of the alternatives to the Peterson Trust site are generally flat and do not contain ridgelines. However, like the subject parcel, they are all visible from a variety of public view points. They also contain other resources and hazards which the County found made them unsuitable for this project. In light of these other coastal resource concerns, it appears that the project site is reasonably in conformance with the LUP policy and the Marine Lab has been sited and designed consistent with the policy direction of 2.2.1.

In addition, though, the "Peterson Trust" parcel is not designated or zoned for scenic conservation treatment, but rather, low density residential. Some development, then, was clearly contemplated for the parcel in question. The County also observes in its findings that the project will be located in a viewshed already "highly impacted by PG&E and National Refractories." Nonetheless, the County did review the project pursuant to its ridgeline policies,

and concluded that the overall project, with its site design and incorporated mitigation, was consistent with these policies, and presented no significant impacts.

As discussed in more detail below, the EIR also concluded that the impacts of the project on the Highway 1 and Moss Landing Road viewsheds would be mitigated to a level of insignificance. In effect, the project will be visually perceived as "low intensity development" due to its careful design and efforts to site so as to minimize visual impacts. Overall, given the constraints of the alternatives available for this project, it appears that the County's findings do not raise a substantial issue with respect to the visual policies of the LUP.

b. On-site Location Issues: Beyond the overall site selection question, options for placing the structures at another location on the chosen site are also extremely limited due to a variety of constraints. Steep, unstable slopes preclude moving the buildings off the more stable ridge. Shifting the project south would not eliminate ridgeline development and shifting to the east would adversely affect an archaeological midden. Wetland and environmentally sensitive native plant habitats seaward of the approved location preclude re-siting in that direction. It therefore appears that the proposed site is the most appropriate inasmuch as the current location for the lab buildings is the least constrained when all factors are considered.

The applicant has also designed the structure to be as unobtrusive as possible consistent with the LUP policy direction to minimize the visual impacts of ridgeline development. The facility is generally one story, stepped into the landform, and will be painted in neutral light earth tones. Existing trees and planned landscaping will also serve to soften the appearance of the structure and integrate the buildings into the ridgeline in an unobtrusive fashion. (Please see Exhibit 6). The project is therefore consistent with the standards to minimize visual impacts of ridgeline development found in LUP 2.2.1 and no substantial issue is present relevant to this portion of the policy.

LUP policy 2.2.2.4 states that "[t]he least visually obtrusive portion of the parcel should be considered the most desirable site for the location of new structures. Structures should be located where existing topography and vegetation provide natural screening."

This policy encourages new structures to be developed on the least visible portion of a site. In the case of this site, virtually all of it is visible from some public viewing point. The eastern length of the site is visible from Highway One, Moss Landing Road, Dolan Road and other points in Moss Landing. The western slope (seaward side) is visible from the state beach and Monterey Bay. The project, therefore, is consistent with the intent of this policy because the plans include berming, landscaping and design to screen the project and minimize its impact on public views. There is no substantial issue raised relevant to consistency with this policy.

c. Conclusion: The appellant's assertions that the proposed project is inconsistent with the LUP Visual Resources Policies does not raise a substantial issue regarding the direction of Key Policy 2.2.1. Further, the extensive mitigation and siting measures incorporated into the project support a finding of no substantial issue with respect to the North Monterey County LUP Visual Resource policies.

4. Transportation/Circulation

The appellant broadly contends that the *"project exasperates an already deadly state highway death and injury rate along Highway 1 in Moss Landing, and does not comply with the LUP/CIP for transportation planning. More mitigation and conditions are needed.* Appellant's assertions thus raise general questions about highway capacity and mitigation of traffic impacts.

a. Highway Capacity

The project is a reconstruction and will operate at the same capacity as the former facility with a maximum of 122 individuals on site at any one time. The project will generate 342 daily trips with 26 in the a.m. peak hour and 31 in the p.m. peak hour. The increase in vehicle trips over existing conditions will impact Highway 1 and two critical project-area intersections, Highway 1/Moss Landing Road North and Highway 1/Moss Landing Road South-Potrero Road. Both are unsignalized and controlled by stop signs. At p.m. peak hour Highway 1 at Moss Landing Road operates at a Level of Service (LOS) F (represents over capacity flows with heavy congestion and considerable reduction in speed). Both intersections operate at LOS C (average delays) overall and at LOS F for left turn movements. Highway 1 and these intersections operated at the same Levels of Service prior to the earthquake and will continue to operate at those levels of service if the proposed development is constructed.

Though the Level of Service will not be reduced, the proposed development increases the number of vehicle trips over existing conditions and will further impact congestion. Under CEQA guidelines the proposed development was found to have significant and unavoidable cumulative impacts on Highway 1 and its Moss Landing Road intersections and Monterey County adopted a Statement of Overriding Consideration in adopting the EIR.

LUP policy 3.1 states in part that the prime transportation emphasis of the Coastal Act is to preserve highway capacity for coastal access and coastal dependent land uses. Policy 3.1.3.1 specifically states:

Due to the limited capacity of Highway 1 until the time that it is expanded, development of coastal dependent industrial , agricultural, commercial, and recreational uses shall be given priority over non-coastal-dependent development in areas where Highway 1 provides the major transportation access.

Implementation Zoning Ordinance Section 20.144.120 requires further that:

Where proposed development of new industrial, commercial, agricultural or recreational uses includes access to Highway 1, or Highway 1 is to provide the major transportation access to the proposed use, such development should be of a coastal-dependent type. As such, the development must require a site on or adjacent to the sea to be able to function at all...

The proposed Moss Landing Marine Laboratory requires seawater to function and relies on the close proximity of its boats and the accessibility of the marine and coastal dune environment to maximize public educational opportunities. The proposed project is a coastal dependent educational and public visitor serving use that meets the criteria for a coastal dependent priority use. The proposed development is consistent with LCP LUP policies 3.1 and 3.1.3.1.

and with Implementation regulation 20.144.120 B.3. and raises no substantial issue as to type of use allowed under the LCP Transportation policies.

The Monterey County Land Use Plan policies also describe the County's direction in circulation planning. LUP policy 3.1 Transportation states that 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 County is the improvement of Highway 1 for safety and efficiency in carrying the increasingly large volumes of traffic using this corridor. Key Policy 3.3.1 states that highways within the North Monterey County coastal area should be upgraded to provide for safe and uncongested flow of traffic. Policy 3.1.2 provides that Highway 1 should be widened on its existing alignment to four lanes of traffic with necessary left turn lanes as soon as possible. Finally, LUP 3.1.4 Recommended Actions states: The State Department of Transportation shall initiate a study for the widening of the existing Highway 1 alignment.

CalTrans has prepared preliminary engineering and environmental documents for upgrading Highway 1 to four lanes from Castroville to the Santa Cruz County line. CalTrans is also considering modification of Moss Landing Road intersections and improving circulation in the area. However, these projects have not yet been funded.

Signalization of the Highway 1 intersection is not recommended as an interim step and would simply further reduce traffic flow.

According to the EIR there are no measures available to improve circulation to an acceptable level of service. Major improvements to Highway 1 would appear to be beyond the scope of the applicant's responsibility and no substantial issue is raised regarding the widening of Highway 1 or its signalization.

b. Mitigation for Traffic Impacts

Implementation Zoning Ordinance Section 20.144.120 B Development Standards, requires that

Development of new or expansion of existing uses which require traffic to enter or exit along a State highway or major county road shall be permitted only where sufficient measures are available to mitigate traffic safety hazards resulting from the project. Mitigation measures required as a condition of project approval may include consolidated access, adequate acceleration and deceleration lanes, left hand turn lanes and other measures as recommended by the Public Works Department or in the traffic study.

Monterey County has required as mitigation for traffic impacts a Traffic Management Plan that at a minimum provides for: the installation of a stop sign at the campus intersection with Moss Landing Road; provision of bicycle parking; contacting MST regarding the possibility of providing transit information boards; contacting AMBAG for car pool information; continuing flex time to spread traffic load. The County also limited MLML special events, which substantially increase traffic and parking impacts, to three events a year; additional events will require county review. Moreover, the proposed project is essentially replacing traffic that the old facility generated and as a state agency, is not subject to the traffic impact fee. Finally, the

Marine Lab is a coastal dependent use and is thus a preferred use along Highway 1. Thus, no substantial issue is raised.

c. Conclusion: As a coastal dependent use the proposed Moss Landing Marine Laboratory has a high priority under the Monterey County Local Coastal Program and is consistent with the LCP regarding the type of use allowed under the existing traffic conditions. Major Highway 1 improvements appear to be beyond the scope of the applicant's responsibility. The applicant is providing mitigation, albeit minimal, for the increased traffic impacts created by the project. Given its overall character, the project raises no substantial traffic issues.

5. Water Supply

a. Community Water Plans: Appellant asserts that the project *is inconsistent with the community water plans of the LCP/CIP*.

The community water plans regarding this proposed development are essentially the following LCP policies. LUP Water Supply policies 2.5.3 et seq. protects water supply for coastal priority agricultural use; states that the county's long term policy shall be to limit ground water use to the safe yield level; regulates intensification of use of existing water supplies by permit; and requires water conservation measures in all new development.

Implementation Zoning Section 20.144.070 D. requires a hydrologic report and 20.144.070 E General Development Standards, paragraphs 10 and 11 prohibit development if the hydrologic report determines the project will adversely impact the quantity or quality of local agricultural water supplies or will generate a water demand exceeding the long term yield of the local aquifer.

A Moss Landing Marine Laboratories Earthquake Reconstruction Hydrology Report was prepared by ABA Consultants in October 1995. It reported that drinking water is supplied to the town of Moss Landing by the Alco Water Company whose 100 foot tall water tank and facilities is located on a lot within the applicant's parcel. Water is from a 1000 feet deep well three miles east of Moss Landing. The well draws from the deepest regional aquifer, the Purisima. Water overdraft in the Salinas Valley has caused salt water intrusion into the two shallow aquifers above and could reach the Purisima in time. The previous MLML facility was estimated to use 22,400 gallons of water each day. The new facility is projected to use the same. However, new State Building Codes would result in a substantial decrease in use.

The applicant's project would replace the structurally unsound water tower with three underground cement tanks which will meet seismic codes, store more water, reduce tank sedimentation to zero, and provide an emergency backup system. The system will improve water flow in Moss Landing. County conditions require water conservation measures. In addition the Alco Water Service has provided a "will serve" letter to the County indicating they can and will serve the proposed project. The hydrology report concludes that the marine lab reconstruction draws from the deepest aquifer and will cause no significant impact to the local or regional hydrographic environment and provides major mitigation in the form of improvements to the Moss Landing water supply system. The County findings specifically

state that there is no potentially significant impact from the increased pumping at the municipal water supply well or potential increase in the risk of seawater intrusion at the well.

The proposed project is consistent with the community water plan as interpreted in the LCP and raises no substantial issue.

b. Financial Impacts: The appellant asserts that *the project is inconsistent with the Moss Landing Community Plan portion of the LUP/CIP causing significant financial impacts to the Moss Landing Heights water needs, that have not been mitigated or conditioned. The projects cumulative impacts to the community, and other projects for sea water use, have not been mitigated or conditioned, or related to other on going projects.*

The Moss Landing Community Plan portion of the LUP/CIP does not address financial impacts to the Moss Landing Heights residential area's water needs or issues of sea water use.

c. Conclusion: Because of the specific County findings concerning groundwater supply and the lack of relevant LCP policies concerning financial impact, no substantial water supply issues are raised.

RECEIVED
MAY 23 1997
PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
723 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4663
HEARING IMPAIRED: (415) 904-8200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION



14:05
PM
-CM

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

CENTRAL
COAST AREA

SECTION I. Appellant(s)

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

NOEL OARD MAPSTEAD, AND (SALLY SLICHTER) (wife)
P.O. BOX 1962
CARMEL CA 93921 (408) 655-3304
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: MONTEREY COUNTY BOARD OF SUPERVISORS

2. Brief description of development being appealed: NEW CONSTRUCTION OF A MARINE LABORATORY ON TOP OF A 7000 YEAR OLD INDIGENOUS HISTORICAL SITE, IN MOSS LANDING, CALIFORNIA.

3. Development's location (street address, assessor's parcel no., cross street, etc.): MOSS LANDING, CA. LOT 11 + 212
ASSESSORS MAP 2, A-73-1 BOISA NUEVA Y MARCO COJO RANCHO
MOSS LANDING ROAD (ASSESSORS SUB A LOT A SAND PIT RD.)

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: CERTIFIED EIR/overriding consideration
COMBINED DEVELOPMENT PERMIT
USE PERMIT FOR FISHING DEVELOPMENT
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-MCO-97-042

DATE FILED: 5/27/97

DISTRICT: Central Coast

H5: 4/88

A-3-MCO-97-042

CALIFORNIA COASTAL COMMISSION

EXHIBIT 1 p. 1 of 5

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

a. Planning Director/Zoning Administrator c. Planning Commission

b. City Council/Board of Supervisors d. Other

6. Date of local government's decision: MAY 6, 1997

7. Local government's file number (if any): Resolution 97-164

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

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

- (1) NOEL MARSTEN
P.O. BOX 1402
CARMEL, CA. 93921
- (2) SALLY SLICHTER (SMILE)
LAGUNA PLACE
MOSS LANDING, CA.
- (3) TO BE SUBMITTED WITHIN
ONE WEEK OF FILING THIS APPEAL.
- (4) _____

SECTION IV. Reasons Supporting This Appeal

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

A-3-MCO-97-042

CALIFORNIA COASTAL COMMISSION

EXHIBIT / p. 2 of 5

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

- 1.) INCONSISTENT w/ CIP PART 1 Regulations For Historic Resources Chapter 20.139 AND ARCHEOLOGICAL RESOURCES
- 2.) INCONSISTENT w/ CIP PART 2, 20.144.110 ARCHEOLOGICAL RESOURCES DEVELOPMENT STANDARDS.
- 3.) INCONSISTENT w/ NORTH COUNTY LUP 2.9 et. cer.
- 4.) Other issues that may be discussed subsequent to filing this appeal. That will be submitted additionally.
- 5.) INCONSISTENT w/ PRC 30240(a); LUP 2.3 et. cer.
- 6.) INCONSISTENT w/ LUP 2.2 et. cer.
7. INCONSISTENT w/ CEQA PRC 21083.2
8. Transportation and community water plans of the LCP/CIP

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

SECTION V. Certification

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

Sally Sklar (nsu)
Noel David Munsiear
 Signature of Appellant(s) or
 Authorized Agent

Date MAY 23rd, 1997

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

Section VI. Agent Authorization

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

1800481:

11

Signature of Appellant(s)

A-3-MCD-97-042
 CALIFORNIA COASTAL COMMISSION
 EXHIBIT 1 p3 of 5

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

APPEAL BY NOEL OARD MAPSTEAD

APPEAL OF MONTEREY COUNTY BOARD OF SUPERVISORS GRANTING APPROVAL OF CERTIFYING AN EIR, COMBINED COASTAL DEVELOPMENT PERMIT FOR A COASTAL DEVELOPMENT PERMIT AND USE PERMITS ALLOWING FOR THE CONSTRUCTION OF A NEW MARINE LABORATORY ON TOP OF A KNOWN 7000 YEAR OLD INDIGENOUS HISTORICAL SITE IN MOSS LANDING, CALIFORNIA.

RE: MOSS LANDING MARINE LABORATORIES/CAL STATE UNIVERISITY

REASONS STATED BRIEFLY FOR THIS APPEAL ON ADDITIONAL PAPER INCORPORATED HEREIN TO THE APPEAL FORM, FILED MAY 23, 1997 BY FAX.

1. Inconsistent with CIP part 1 20.139 et. seq. The permit approval and conditions no where encompass the the provisions of 20.139. Although condition 53 requires the site to be rezoned, this happens before, what appears to be the the needed review by the Historic Resources Review Board. See 20.139.060 H. The site on watertower hill, the village of Calendra Rue, is more than just an archaeological site, it is an historical site

2. Inconsistent with CIP part 2 20.144.110.

A. The project is not compatible with historcal resources and alternatives to avoid the historical resources have not been chosen as a means to avoid the resources. Instead, although the EIR recognizes many other alternative sites that would avoid the resources, they have not been chosen. There is no evidence that the the chosen project site cannot be avoided.

B. 20.144.110 C 1 requires the project to be subject to CEQA assessment. The permit and approvals do not comply with county CEQA standards. The approvals and permit, violate PRC 21083.2(a) in that the EIR and permit conditions and evidence do not address the issues of the resources found on the site that would be impacted.

In 21083.2(b) the project does not avoid the resources, even though alternatives exists and no planning has been made as part of permit conditions to plan historical parks with any guarantcc that such plans will and can be carried out.

In 21083.2(c) there is ample evidence that the permit disturbs the historical site, yet no condiction is exacted, that requires the applicant to guarantee paying one-half the estimated cost of mitigation, nor is there an estimate given of such costs, or the in-kind value. Further, because of the need to pay such fees, no project approval shall be allowed until 60 days after the completion of the special EIR that addresses the historical resources, and allows for volunteer funding. For project permit, none of these CEQA standards have been addressed.

As a result of these failures to comply with the CIP and CEQA, there is no guaranteed funding for the permit conditions 52, 53, 54.

In 21083.2(d) no findings were made that testing or studies completed have adequately recovered the scientifically consequential information from and about the historical resouces. In effect, the self aggrandized need to build the marine lab ignores the historical resources and limited conditions recognizing them.

A - 3 - MCO - 97 - 042

CALIFORNIA COASTAL COMMISSION

EXHIBIT, 1 p. 4 of 5

C. The permit and conditions and EIR do not recognize that there is environmental sensitive habitats on the site. Instead, the approvals only recognizes building adjacent to ESH, yet the project builds on top of and impacts ESH. There is no finding that the project is a resource dependent use on historical resources, or endangered plants and animals. Yet there are other alternatives sites, that a marine lab would be considered dependent on the resources for those sites. The projects permit and conditions are inconsistent with the policies and regulations of the North County LUP, CIP and Coastal Act chapter 3, 30240(a), for ESH.

D. The project exasperates an already deadly state highway death and injury rate along highway 1 in Moss Landing, and does not comply with the LUP/CIP for transportation planning. More mitigation and conditions are needed.

E. The project is inconsistent with the Moss Landing Community Plan portion of the LUP/CIP causing significant financial impacts to the Moss Landing Heights water needs, that have not been mitigated or conditioned. The projects cumulative impacts to the community, and other projects for sea water use, have not been mitigated or conditioned, or related to other on going projects.

This appeal is not frivolous, and raises substantial issues,

Noel Mapstead, and Sally Slicther (smile)

May 23, 1997

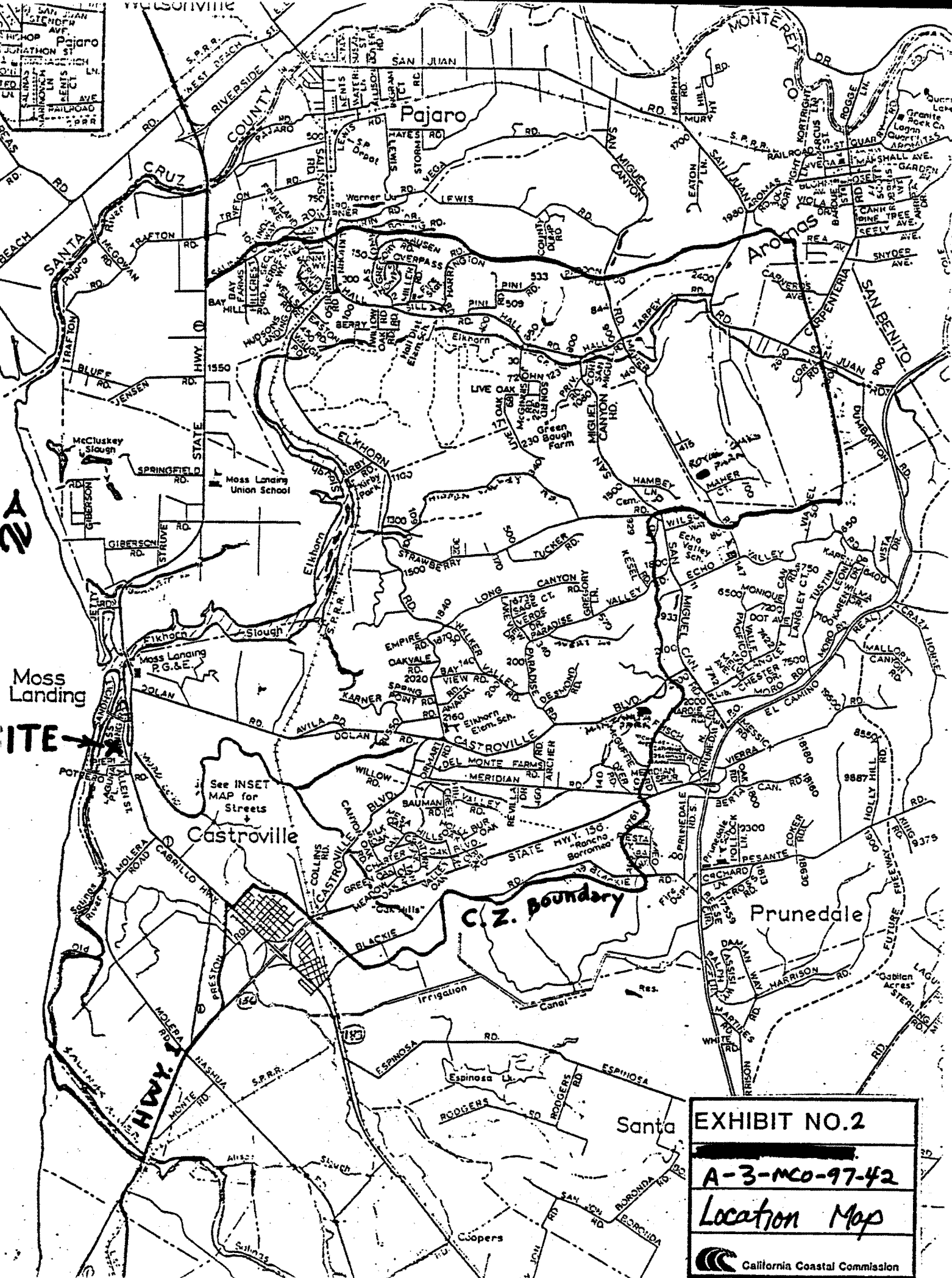
Noel Mapstead

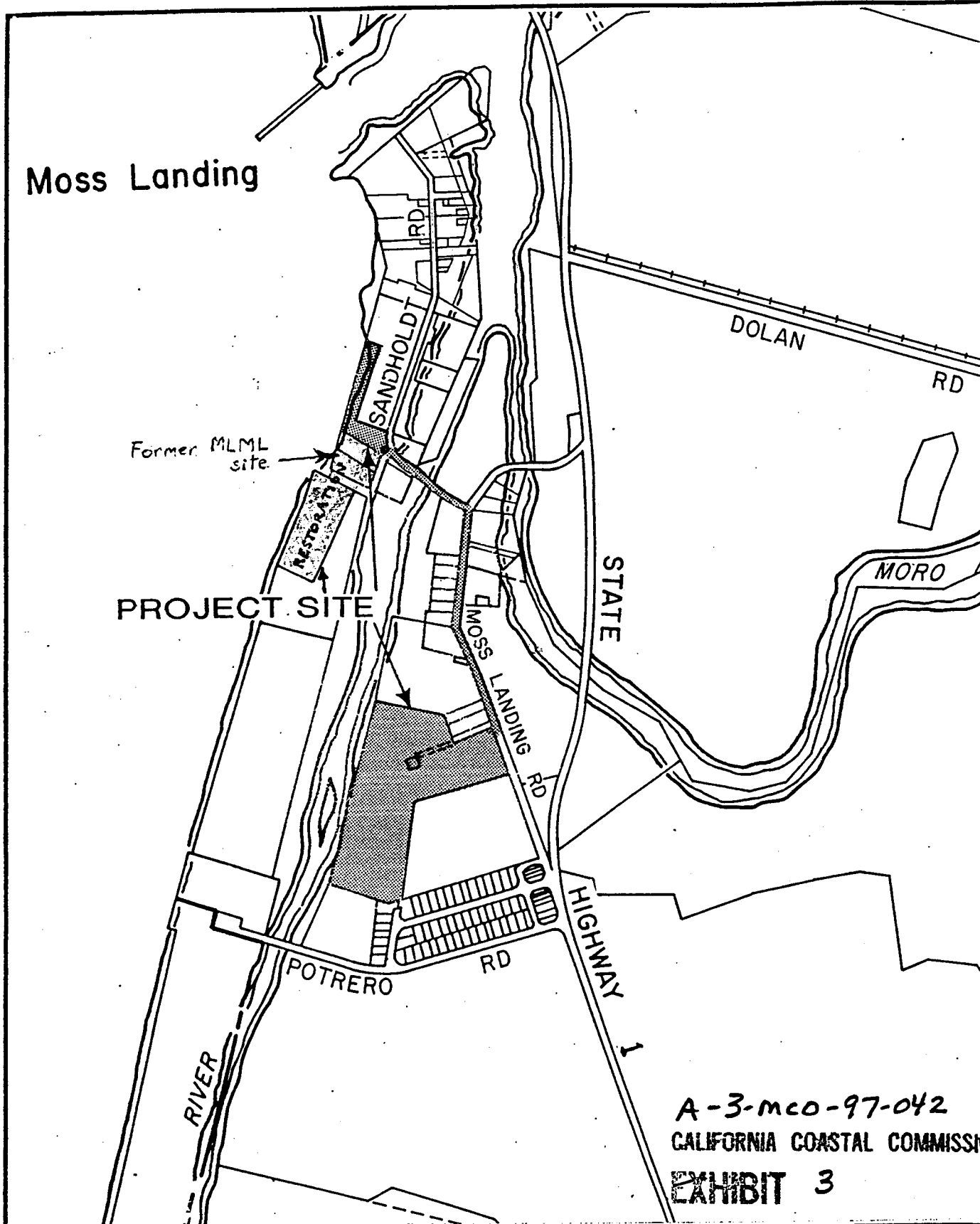
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A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT / p. 5 of 5





A-3-mco-97-042
CALIFORNIA COASTAL COMMISSION

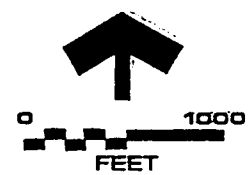
EXHIBIT 3

APPLICANT: CALIFORNIA STATE UNIVERSITY

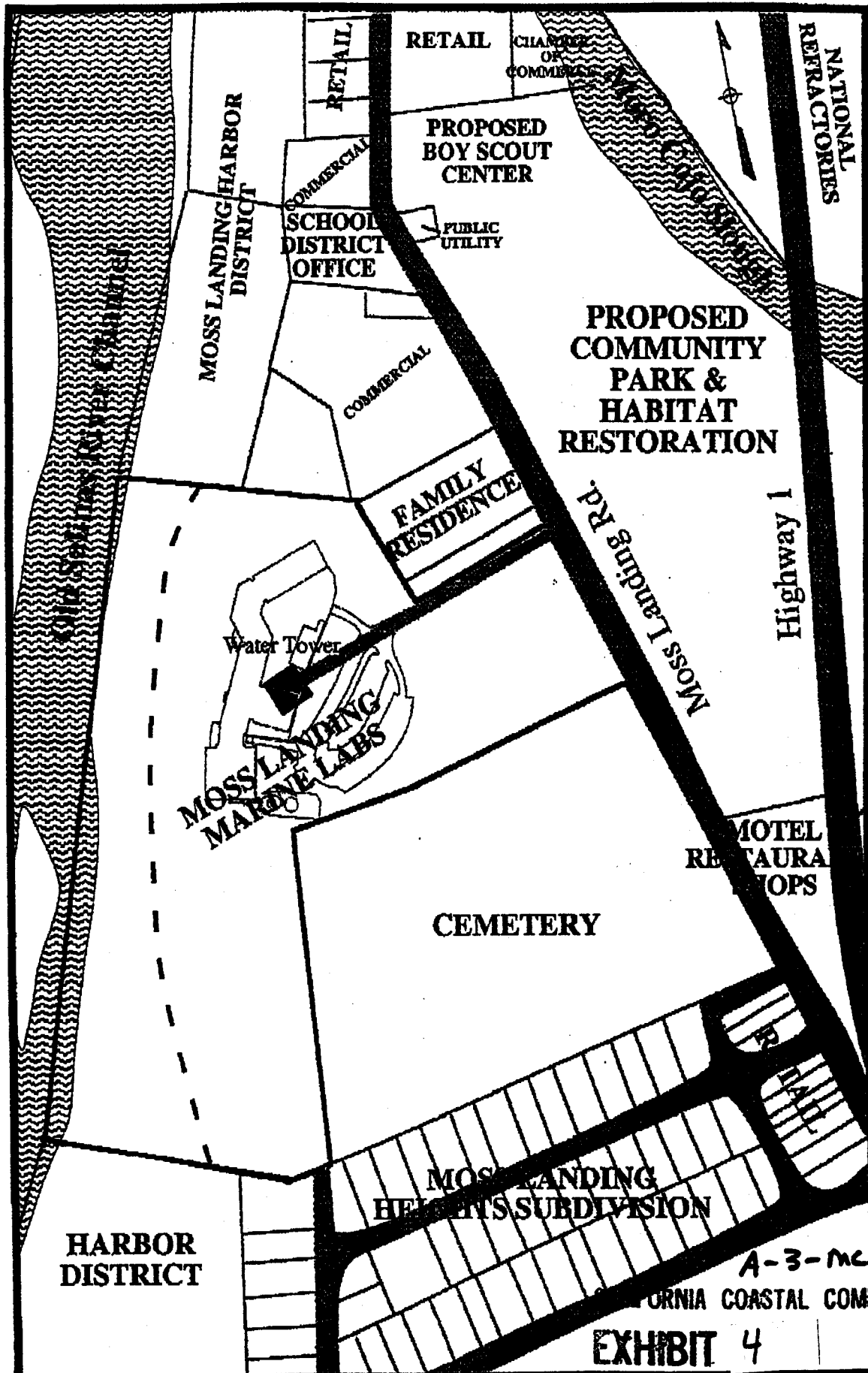
APN: 133-201-017-000M

P.C.# 95097

300' LIMIT -----
2,500' LIMIT -----



DATE: 3/26/97

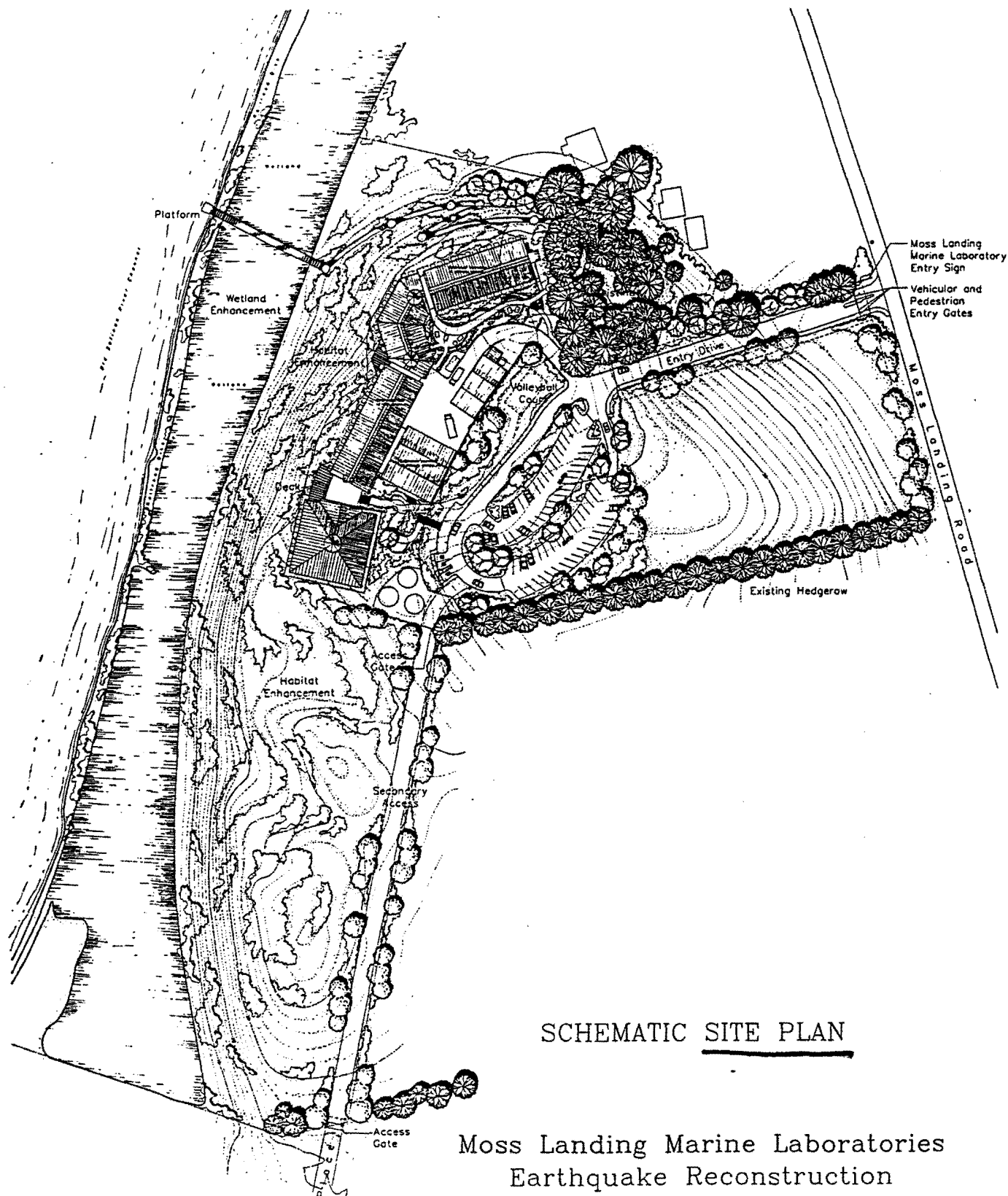


A-3-MCD-97-04

CALIFORNIA COASTAL COMMISSION

EXHIBIT 4

Planned and proposed land uses adjacent to Moss Landing
Marine Laboratories Reconstruction



SCHEMATIC SITE PLAN

Moss Landing Marine Laboratories Earthquake Reconstruction

California State University

Moss Landing, California

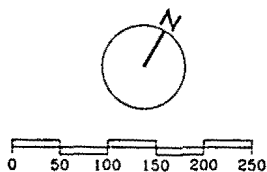
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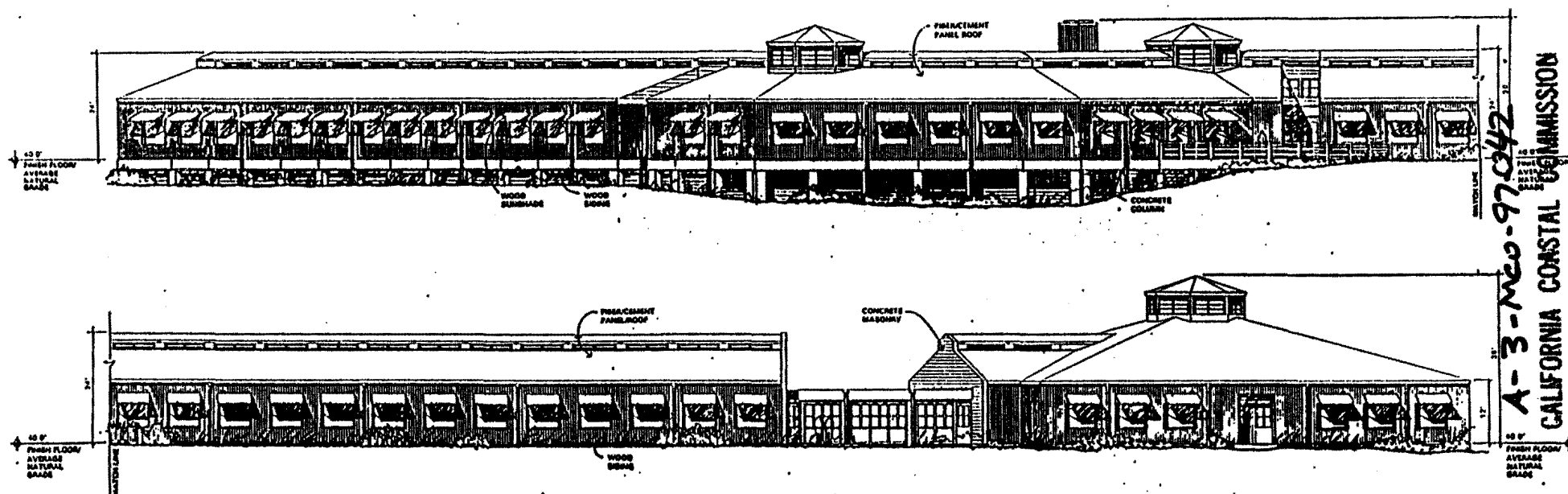
Drawing Prepared by: CALIFORNIA COASTAL COMM

Joni L. Janecki & Associates

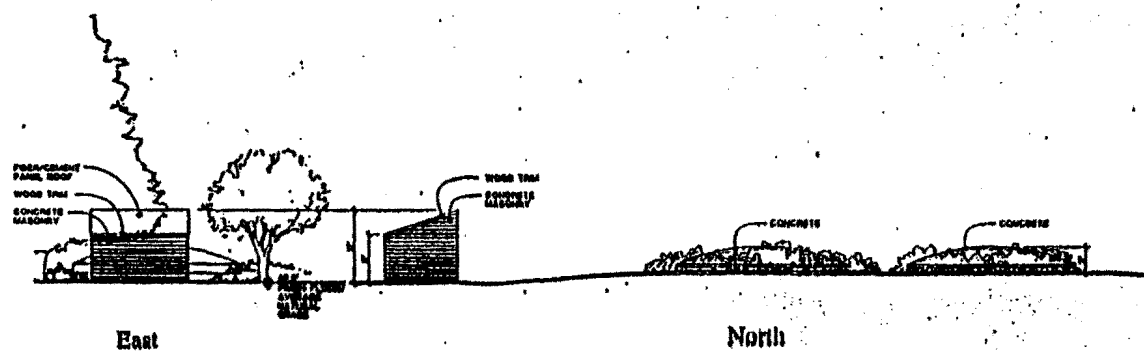
September 1995

EXHIBIT 5





West Elevation



East

North

Elevations - Water System

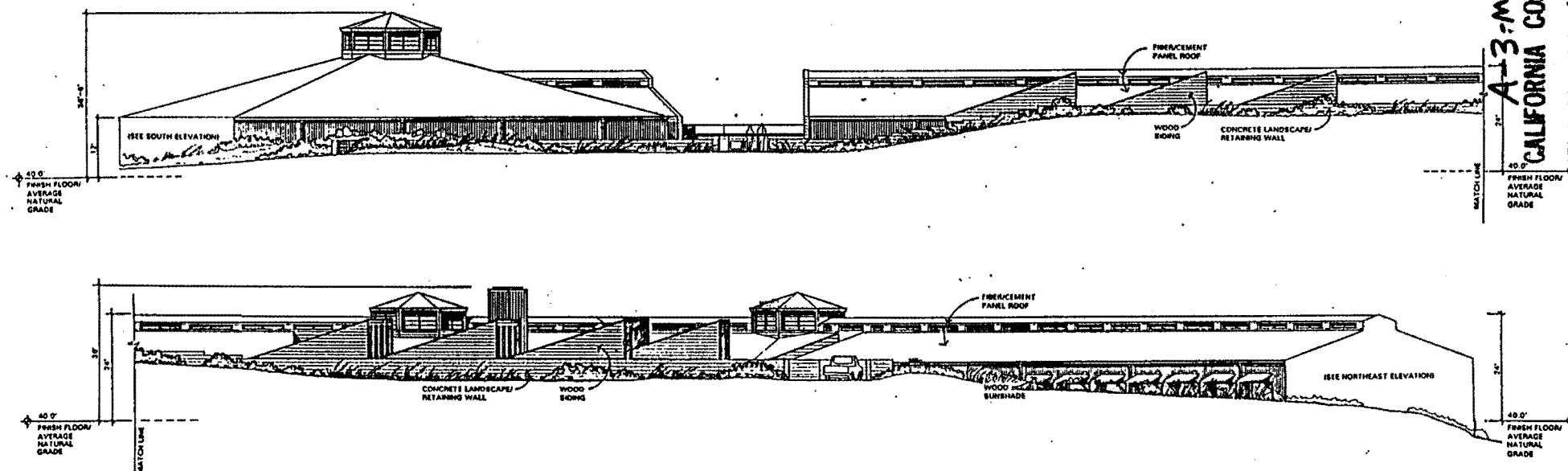
Elevations

Moss Landing Marine Laboratories Earthquake Replacement - California State University

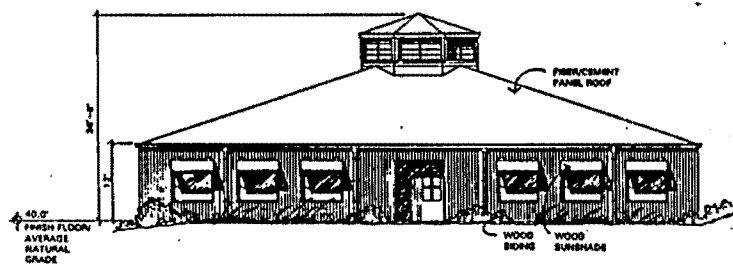
0 4 8 16
September 8, 1992

SMP

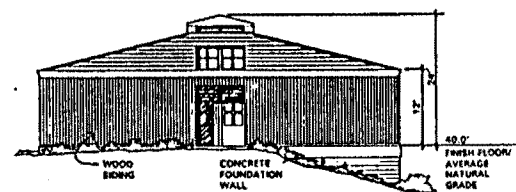
A-3-Med-97042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 6 p 1 of 2



East Elevation



South Elevation



Northeast Elevation

Elevations

Moss Landing Marine Laboratories Earthquake Replacement - California State University

0 4 8 16
September 8, 1992

SMP

Joy Chase
California Coastal Commission
725 Front St. Suite 300
Santa Cruz, CA 95060

June 24, 1997

Dear Joy,

I am writing in response to our telephone conversation concerning your questions about endangered species and Environmentally Sensitive Habitats (ESH) related to the Moss Landing Marine Laboratories Earthquake Reconstruction project. Attached is a letter from the biologist at ABA Consultants summarizing the ESH species findings at the marine laboratories' reconstruction site.

I want to summarize the existing information concerning habitat acreage which is included in Monterey County's project documentation. Following substantial damage by the Loma Prieta earthquake, Moss Landing Marine Laboratories abandoned the previous developed site due to the Federal Emergency Management Agency's (FEMA) direction (as reference see: Letter to Monterey County Judge Richard Silver from Richard Shivar of FEMA, May 12, 1994 and Letter to State Office of Emergency Services C.F. Wynne from T. Hamner of FEMA, March 28, 1990). The abandoned development was fully restored to ESH following demolition and removal of the former marine laboratories development. This was 100% replacement for the development except for a portion of the parking area which was left to facilitate public access for low intensity recreation. The enhanced and restored habitat at this previously developed location is suitable ESH for both Sand Gilia and Monterey Spineflower as well as other rare species. In fact, Monterey Spineflower is now at this location as a result of the enhancement and represents a net gain in ESH dune area of 7.9 acres. This ESH area is under permanent protection and management by a public institution, the California Department of Parks and Recreation.

The marine laboratories have proposed to relocate on a site previously developed in the past as a World War II gun emplacement with barracks and currently is developed by municipal a water tower system. The new site will be redeveloped to accommodate the marine laboratories and the water system. The marine laboratory has been granted permission per a ESA section 7 no jeopardy biological opinion with U.S. Fish and Wildlife Service and permission from the California Department of Fish and Game to collect seeds for the restoration and enhancement of rare and endangered species habitats for all of the relocation land identified in the federal Finding of No Significant Impact (FONSI) and the Monterey County certified Environmental Impact Report (EIR). There will be a total of 9.2 acres of sand dune ESH restored, enhanced and managed by a public institution, California State University, on the relocation site.

Table 1. Acreage of ESH that are currently being or will be restored, enhanced and managed by a public institution as a result of the proposed Moss Landing Marine Laboratories Reconstruction project.

<u>Location</u>	<u>Enhanced and Restored</u>	<u>Notes</u>
Original Site	7.9 dune acres of ESH	2.1 acres of Newly Created & 5.8 acres of Enhanced
Proposed Relocation	9.2 dune acres of ESH	In Conservation Easement, Does not include wetlands
Cumulative Dune Total	17.1 dune acres of ESH	Rare and Endangered Habitat
Proposed Relocation	7.4 wetland acres	In Conservation Easement
Total Coastal Act ESH	24.5 acres	As Result of the MLML Reconstruction

Through this proposed project there is a cumulative total of 17.1 acres of ESH (not including 7.4 acres of enhanced and restored managed wetlands) that will be restored and enhanced. This project has created and will create more than sufficient habitat area for the permanent sustainability of rare and endangered species. As part of FEMA's determination for funding pursuant to a section 7 evaluation for federal funded disaster replacement of a pre-existing public education institution, conservation easements will be created for all the ESH areas on the relocation site.

Within the construction site, the dune loss is a mere 2.1 acres of highly disturbed historic dune scrub and only 0.7 acres of existing somewhat less degraded dune scrub habitat (2.8 acres total). The remainder of the project is on annual grassland. This represents a total of more than 8 acres of ESH (previous development site and proposed redevelopment site) for each 1 acre of marine laboratories earthquake reconstruction on dune habitat (an 8:1 ratio). Using only the redevelopment site itself, there is over 3 acres of dune ESH for one acre of reconstruction (a 3:1 ratio, not including 7.4 acres of wetland habitat).

All of the above numbers can be verified in the 1997 certified EIR for the Moss Landing Marine Laboratories Earthquake Reconstruction project prepared by Jones and Stokes Associates for Monterey County. I hope this summary answers your inquiry about the redevelopment project. If you need further clarification or have questions, please feel free to contact me at (408)424-3940.

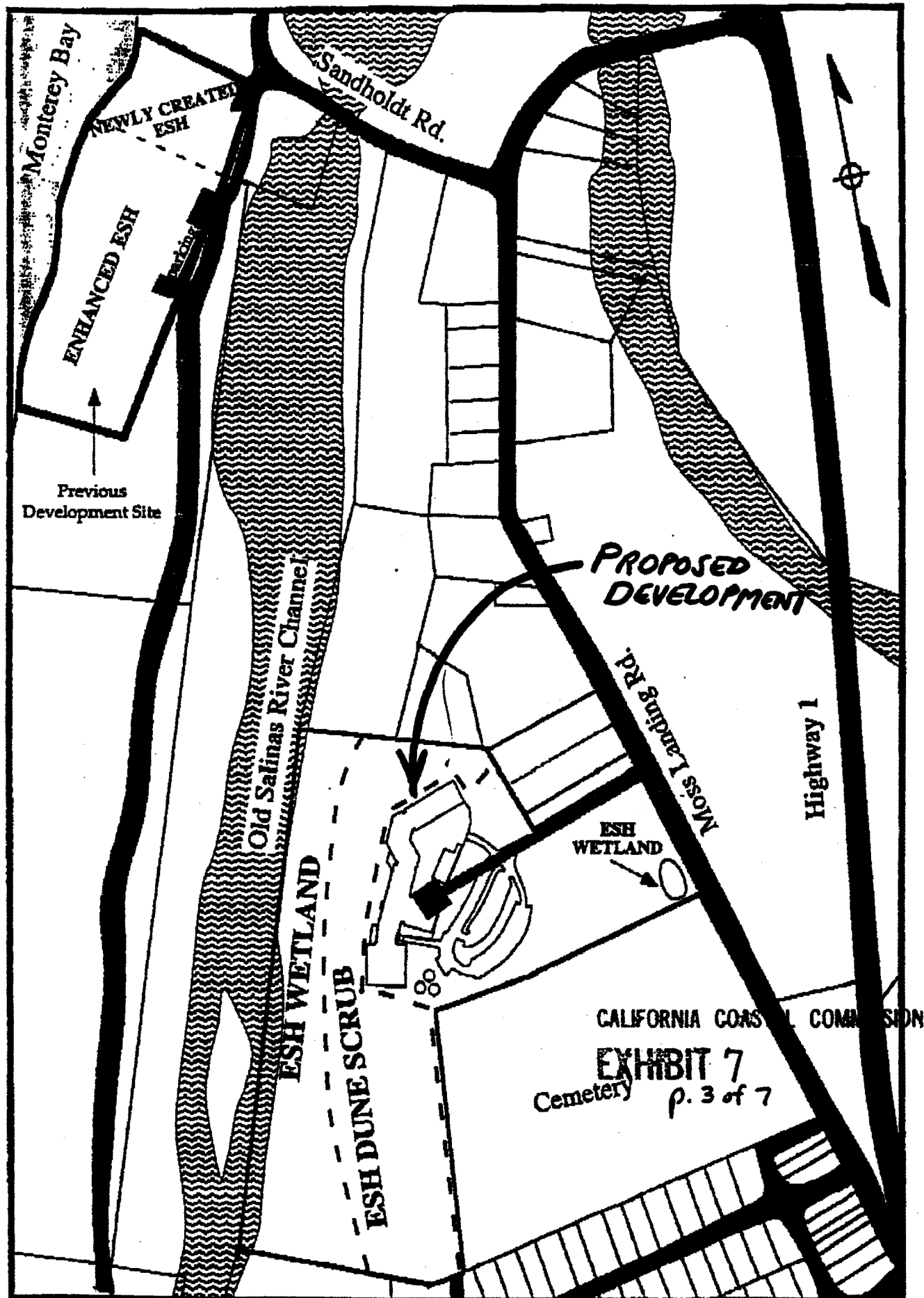
Sincerely,

Melanie Mayer Gideon

Melanie Mayer Gideon, M.S.

CALIFORNIA COASTAL COMMISSION

EXHIBIT 7 p. 2 of 7



Location of ESH Enhanced and Restored by MLML project.

Ms. Melanie Mayer Gideon
Melanie Mayer Consulting
10 Center St.
Salinas, CA 93905

June 23, 1997

Dear Melanie,

I am writing in response to your inquiry. This letter reviews information previously disseminated through planning documents submitted to Monterey County and to FEMA concerning the two listed plants which grow on the proposed Moss Landing Marine Laboratories reconstruction site. These documents, are part of or referenced in the county permit file, are referenced and some pertinent information is recapitulated herein (e.g. please see ABA 1995b for complete treatment of gilia and spineflower). Sand gilia is a state candidate and federal endangered subspecies, and Monterey spineflower is a federal threatened subspecies. Many spineflowers and gilia occur within or immediately adjacent to the proposed building footprint. The site also includes a seed bank for these annual species. Some of the area on top of the hill does not exhibit the target species as it is covered by other species however, the target species seeds are dormant in the soils and could take advantage of open, disturbed sands if available. Portions of these colonies and portions of associated seed banks will be lost as a result of the project construction. However, the USFWS biological opinion letter (1994) concluded that building construction in this habitat area does not jeopardize spineflowers or gilia, and that the site is not designated critical habitat.

Both plants are annual disturbance species (see ABA 1995b, especially pages 47, 48, 53; LSA pages 5-6). They grow during the wet part of the year, set seed and die in late spring or summer, and they require open, relatively unvegetated sands, often those which have been cleared of vegetation, through some disturbance either naturally or unnaturally, e.g. along roadsides (US Corps of Engineers 1992a, b; Reveal 1989, Reveal and Hardham 1989). Both plants are also very weather dependent: during good rain years they may be evident and widespread. Gilia colonies in Monterey county were vigorous following the 1995 rains (Dorrell-Canepa 1994). Conversely population sizes in the same area were limited during the preceding drought years. These sites have demonstrated that these species seed banks can be dormant for several years before germinating when conditions permit it.

The reconstruction site exemplifies dependence of the two subspecies on ecological events. During drought years when the initial biological field work

was carried out, no gilia were found and spineflowers were not very abundant. Heavy-equipment operation, which was required for permitting of the project, intensely churned the sands and that was followed by modest rains resulting in the appearance of several hundred gilia, in two main colonies, in 1993. Then in 1995 following the drought-breaking rains, gilia was very abundant, a few thousand appeared in the two colonies plus several dozen other plants scattered outside the colonies, and individual plants were strong and large. During the same time period, Spineflowers were widespread and grew very vigorously, also. Individual spineflower plants were estimated to be over 10,000. Since then, rains have been modest, no disturbance has occurred, non-native plants have re-invaded, and populations of the two subspecies on the site, particularly gilia, have become meager. The gilia population in 1997 was approximately less than 200 plants. Spineflowers grow over only a fraction of the previously occupied area and only a fraction of the number of plants occurred. Additionally, the biology of other plants jeopardizes the two subspecies. Annual and perennial plants are closing the open sands which the two subspecies require. Most significant is the aggressive invasion by riggut brome and iceplant which are absolutely destructive of native plant habitat and which are occupying more and more habitat on the site each year. The non-native plants as well as some native plants are rapidly covering colony areas and the seed bank.

The site has had a long history of disturbance (ABA 1995a) from unnatural and natural sources. Unnatural disturbance has included from cattle trampling, roads, equipment travel, bulldozer clearing, development for World War II, development for a water tower, and other trampling. Natural disturbance has included droughts, freezes (which can kill vegetation), wind and sand movement. During the past few years no disturbances have occurred, but past disturbance has set the stage for iceplant and riggut brome to invade open sands (see ABA 1995a, pages: 8, 12, 21, 22, 25, 32). Now these two weeds continue to grow over all habitats, including the rare and endangered plants, and cause a growing threat without being held in check by disturbances (see ABA 1995b, pages: 15, 31, 33, 39). In fact, the entire site, previously better habitat as well as the degraded habitat, is now being overwhelmed by iceplant. It is very probable that over the next few years without control, these two species will have completely overtaken the whole site.

ABA (1995b) provides a plan with listed goals to protect, manage, restore and enhance existing dune habitat (managed for natural and weed-free vegetation with associated faunal habitat), restore and enhance degraded habitat, restore destroyed habitat, and to provide habitat suitable for gilia and spineflower. The plan was found to be consistent with US Fish and Wildlife's opinion

CALIFORNIA COASTAL COMMISSION

EXHIBIT 7 p.5 of 7

ABA Consultants

that the building project does not jeopardize gilia nor spineflowers, that the area is not designated critical habitat, and that restoration will increase dune habitat for the two species. Restoration and the benefits it provides are also addressed in the EIR (Jones and Stokes 1997 - pages 5-2 through 5-4, and 5-15 through 5-19) and LSA (pages 5-1, 5-9, 6-1). Total area of gilia and spineflower habitat will be increased by many, many times through weed control such as eliminating iceplant carpets and extirpating ripgut. The two sensitive plant species will receive permanent protection through prevention of weed invasion and trampling, and by management for a mosaic of open sands. The two species will also be protected by intense management of some of the populations by providing optimum conditions: augmented water during drought years, hand weeding invading plants, including natives, to insure open sands, control of herbivory. Some seed collection of the two plant species has already been undertaken in anticipation of the restoration and enhancement program. Moss Landing Marine Laboratories, part of the California State University has agreed to acquire and manage these habitats and implement the current permit conditions.

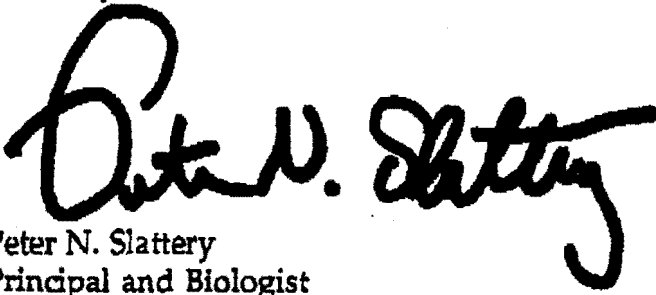
The plan (ABA 1995b) and federal Environmental Assessment (LSA, 1995) explain the commitment of the marine laboratories to utilize the two species and associated habitat as an integral part of their research, college courses, and general public education programs. For example, undergraduate and graduate students working with doctoral level professors and other professionals will participate in rare and endangered dune plant research, restoration, enhancement, management, and monitoring through classroom, laboratory and thesis research; all focused on understanding, protecting and conserving these species. This represents a renewal of similar over 20 year involvement by the marine laboratories prior to earthquake destruction of the previous facilities.

The marine laboratories has restored its previous building facilities to a natural (weed-free, healthy) sand dune habitat which has already attracted successful natural colonization by two listed species: legless lizards, and spineflowers (EIR, Jones and Stokes, 1997 - page 5-16). The success demonstrates such restoration and enhancement is highly beneficial for these rare and endangered dune species. It further demonstrates that the introduction of and enhancement for sand gilia at this site is will be successful.

Entrusting a public-oriented, field research facility with a conservation ethic such as the Moss Landing Marine Laboratories to restore and enhance degraded dune habitat and manage it for its intrinsic biological value, assures that the listed plant species will result in the net increase of occupied habitat

as determined by the USFWS opinion letter. Without intervening enhancement and restoration measures, and permanent protection, the two plant species are in jeopardy.

Sincerely,



Peter N. Slattery
Principal and Biologist

cc: G. Greene, MLML

attached: references

[attached list of
references omitted
from this copy]

CALIFORNIA COASTAL COMMISSION

EXHIBIT 7 p. 7i of 7

ABA Consultants

FROM

06-26-97 11:57AM TO SF CCC

914159045400

*48 P.2/44

JUN-09-1994 17:27 FROM

TO

4397900170801

P.03



Federal Emergency Management Agency

Washington, D.C. 20472

JUN - 5 1995

Dear Interested Party:

Enclosed you will find a copy the final Environmental Assessment (EA) of the relocation of the California State University's Moss Landing Marine Laboratories which were destroyed by the Loma Prieta earthquake of 1989. This document has been prepared for the Federal Emergency Management Agency (FEMA) pursuant to the requirements of the National Environmental Policy Act (NEPA) and 44 C.F.R. Part 10, FEMA regulations on Environmental Considerations. This EA reflects comments received and new information developed following issuance of the February 14, 1994 draft Environmental Assessment. Based on the findings of this assessment, FEMA has found that relocation of the MLML to the Peterson Site in the configuration described in the EA as the Federal Enhanced Alternative will not have a significant adverse impact on the environment provided the described mitigation measures are implemented.

The Finding of No Significant Impact attached to the EA conditions the use of Federal funds for the proposed facility relocation to the implementation of the prescribed mitigation measures. Two significant documents relating to the mitigation measures and memorializing formal consultations are the Memorandum of Agreement developed as part of the National Historic Preservation Act Section 106 Consultation process and the U.S. Fish and Wildlife Service biological opinion developed as part of the Endangered Species Act Section 7 consultation. These documents are included as appendices of the EA.

Sincerely, ,

A handwritten signature in cursive script, reading "Richard S. Shivar".

Richard S. Shivar
Acting Environmental Officer

Enclosure

A -3 -MCO -97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

FEDERAL EMERGENCY MANAGEMENT AGENCY**NOTICE OF AVAILABILITY
FINDING OF NO SIGNIFICANT IMPACT AND ENVIRONMENTAL ASSESSMENT
CALIFORNIA STATE UNIVERSITY
MOSS LANDING MARINE LABORATORIES PROPOSED RELOCATION**

Notification is hereby given by the Federal Emergency Management Agency (FEMA) of the availability of the *Finding of No Significant Impact (FONSI)* and the associated Environmental Assessment (EA) regarding the relocation of the California State University's Moss Landing Marine Laboratories which were destroyed by the Loma Prieta earthquake of 1989. These documents have been prepared pursuant to the requirements of the National Environmental Policy Act (NEPA) and 44 C.F.R. Part 10, FEMA regulations on Environmental Considerations. This EA reflects comments received and information collected following issuance of the February 14, 1994 Draft Environmental Assessment. Based on the findings of this assessment, FEMA has found that relocation of the MLML to the Peterson Site in the configuration described in the EA as the *Federal Enhanced Alternative* will not have a significant adverse impact on the environment provided the described mitigation measures are implemented.

The FONSI conditions the use of Federal funds for the proposed facility relocation to the implementation of the mitigation measures prescribed in the EA. Two significant documents relating to the mitigation measures and memorializing formal consultations are the Memorandum of Agreement developed as part of the National Historic Preservation Act Section 106 Consultation process and the U.S. Fish and Wildlife Service biological opinion developed as part of the Endangered Species Act Section 7 consultation. These documents are included as appendices of the EA.

The EA and the FONSI are available for inspection at FEMA Region IX Office at Building 105, Presidio of San Francisco, San Francisco, CA 94129; the Castroville, CA, Public Library at 11266 Merritt; the Monterey City Library at 625 Pacific; and the Moss Landing Harbor District Office, 7881 Sandholdt Road.

Communication regarding these materials should be directed to Sandro Amaglio, FEMA's Region IX Office, (415) 923-7284 or FAX 415-923-7270.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

FROM

06-26-97 11:57AM TO SF CCC

914159045400

*48 P.4/44

**MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY**

Among

**Federal Emergency Management Agency, the Advisory Council on Historic
Preservation, and the California State Historic Preservation Officer**

WHEREAS, the Federal Emergency Management Agency (FEMA) will act as the lead agency for the relocation (undertaking) of the Moss Landing Marine Laboratory (MLML) for the California State University (the applicant) to be undertaken pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended and its implementing regulations as contained in 44 CFR Part 206, for the assistance, repair or replacement of damaged facilities and structures affected by Disaster FEMA-845-DR-CA; and,

WHEREAS, FEMA has prepared an Environmental Assessment (EA) pursuant to the National Environmental Policy Act of 1969, as amended, that describes the undertaking, in its entirety, upon which this agreement is based and during the preparation of which it was determined that the undertaking could effect prehistoric archaeological site CA-MNT-234, a resource that has been determined to be eligible for the National Register of Historic Places; and,

WHEREAS, FEMA has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f); and,

WHEREAS, FEMA intends to use the provisions of this Memorandum of Agreement (MOA) to address applicable regulations of NHPA 110(b) and 101(d)(6)(B) and of the American Indian Religious Freedom Act (AIRFA); and,

WHEREAS, FEMA has invited the California State University (CSU), the Office of Emergency Services (OES), and the Monterey County Board of Supervisors to participate in consultation and to concur in this agreement; and,

WHEREAS, pursuant to Section 101(d)(6)(B) of NHPA and AIRFA, FEMA has invited local Native American representatives, particularly those of Ohlone/Costanoan descent, to participate in the consultation and concur in this MOA; and,

WHEREAS, FEMA has provided information to and considered comments from groups and individuals who have expressed interest both for and against the proposed action; their names are provided in Appendix A.

NOW, THEREFORE, FEMA, the SHPO, and the Council, agree that upon FEMA's decision to proceed with the undertaking it shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

A-3-MC-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

STIPULATIONS

To the extent of its legal authority and in coordination with the SHPO, the Council, other State and Federal agencies, other interested parties, and the applicant, FEMA will require that the following measures are carried out:

I. Historic Property Avoidance and Protection

(1) An archaeological project coordinator (Coordinator) shall be designated by FEMA subject to approval by SHPO and the Council, to oversee the project archaeologist and a Native American archaeological monitor(s) (Monitor). The Monitor(s) which will be used to the extent possible on a rotating basis, shall be selected by FEMA from Native Americans of Ohlone/Costanoan descent nominated by the Concurring Native American Parties. The Coordinator shall review plans and specifications and ensure MOA conditions are followed and implemented and shall document the compliance thereof to be made available to the parties of this agreement. The Monitor shall be bound by the terms of this MOA and the procedures promulgated thereunder.

(2) A project archaeologist shall be designated by the applicant considering the views of the concurring Native American parties, the requirements of CSU procurement regulations, and subject to approval by FEMA. The archaeologist will take part in the final design stage of the project and, as detailed plans are formulated, shall propose revisions and updates to the Preliminary Archaeological Mitigation Plan (Breschini and Haversat 1991) as necessary. The archaeologist shall discuss proposed revisions with the Monitor who, when revisions are deemed significant, shall seek input from concurring Native American parties who will have 10 days to respond to the proposed revision. The County of Monterey, the concurring Native American parties, SHPO, and FEMA will be provided with periodic updates as revisions are made.

(3) The Monitor and archaeologist shall be present during grading, trenching, and other subsurface activities which might have an adverse impact on the historic resource. If potentially significant archaeological resources or human remains are discovered during construction, work shall be halted within 50 meters (164 feet) of the find and the procedures described in stipulations (15) and (16) will be followed. Any mitigation measures needed relating to a discovery shall be formulated and implemented in consultation with the SHPO, the County of Monterey, the Coordinator, the Monitor, and the concurring Native American parties.

(4) In preparation of that area of the parking lot which is over the midden, the surface shall be leveled through the importation of sterile fill rather than grading. Under the direction of the project archaeologist and with the Monitor present, the midden area shall be covered with a thin layer (1-6 inches) of decomposed granite, followed by as much of the excess sand cut from other areas of the project as is needed

A-3-MCD-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

(5) The surface of the parking lot shall be appropriately sloped considering the existing terrain so that deep storm drains into the midden area are not required. Surface runoff channels shall be provided for.

(6) All parking lots shall be surfaced with semi-permeable paving such as decomposed granite or gravel, consistent with the recommendations in the archaeological report prepared by Archaeological Consulting (Breschini and Haversat 1991).

(7) Landscaping plans and other aspects of the proposed development shall be designed and constructed with preservation of the primary midden and cultural values in mind. Native plants that also have cultural significance as determined by the concurring Native American parties will be considered in the landscaping and dune restoration plans. Vegetation planted in the area of primary midden shall come from containers of no more than five gallon size and have shallow root systems.

(8) All proposed berm slopes shall not exceed a 4:1 ratio. The berms shall be initially stabilized with straw plugs and then planted with native plants, grasses and shrubs consistent with an approved landscaping and dune restoration plan, as well as the archaeology report submitted with the application.

(9) All lighting and other appurtenant facilities in the area of the primary midden shall be designed and constructed so that they do not require deep subsurface footings.

(10) Any access roads, seawater transport system, or utility lines entering the property from the east shall avoid cutting into the archaeological deposit. Rather, they shall rely on fill, natural grades, and above grade placement as much as possible.

(11) A deed restriction shall be recorded on the present commercial acreage (existing APN 133-201-017) which states, "A preliminary archaeological report has been prepared for this acreage by Archaeological Consulting dated September 15, 1985. Any project proposed on this acreage shall require SHPO concurrence and shall be preceded by a detailed secondary archaeological testing leading to the preparation of an Archaeological Mitigation Plan as well as a Final Technical Report. If warranted by the results of the testing, the Archaeological Mitigation Plan shall include mitigation measures under applicable state and local laws. Except as provided for during the initial construction phase, identified burial or reburial sites will not be disturbed in the future without agreement of the concurring Native American parties, or if not available, appropriate Native Americans of Ohlone/Costanoan descent."

(12) The applicant shall request of the County in writing that those portions of the resulting parcels which comprise site CA-MNT-234, including all of the acreage presently zoned commercial, be rezoned to include an Historical and Archaeological "HR" zoning designation if the county doesn't request such designation of its own initiative.

(13) The applicant shall, within one year of the commencement of construction, initiate nomination of the archaeological site (Figure 1) for inclusion in the National Register of Historic Places.

A-3-M20-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

(14) The applicant shall implement its county approved visitor access and education plan to exhibit for educational purposes, within its visitor center, information on marine research (the marine sanctuary) and marine science and in addition, information on Native American culture, lifestyles and archaeology especially in context of the coastal and ocean environment. This is to be done in cooperation with the California State University (CSU) system and Native Americans concurring with this agreement. CSU will consult, to the extent possible, with the concurring Native American parties in any future modifications or expansions of Native American exhibits. Access to the midden area and any burial sites and to the Native American exhibits will be provided on request to Native Americans so long as it does not conflict with the operation and primary purpose of the facility or with the habitat values on the site, and is consistent with county regulations or permits.

II. Data Recovery

(15) Any discovery of archaeological or cultural artifacts other than human remains and associated burial goods (see stipulation (16)) during excavation or ground disturbance shall be accompanied by appropriate identification and analysis as determined by the archaeologist and the monitor in consultation with the concurring Native American parties. All appropriate cultural material in the area proposed for disturbance shall be accompanied by excavations for the recovery unless, in consultation with the signatory parties and the County of Monterey, the applicant chooses to modify the project to avoid the area of disturbance. This recovery shall be accomplished through standard archaeological data recovery techniques as recommended in the Preliminary Archaeological Mitigation Plan (Breschini and Haversat 1991) and consistent with Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 CFR 44734-37). General rules regarding the level of recovery and analysis and the disposition of artifacts not addressed elsewhere in this MOA shall be determined and agreed to, preferably prior to ground breaking, by the applicant, the Coordinator, and the Monitor in consultation with the concurring Native American parties.

(16) If human remains are discovered during the project, the following provisions will be followed:

(a) Work shall be halted within 50 meters (164 feet) of the find and the Monterey County Coroner shall be notified as specified by Section 7050.5 of the California Health and Safety Code. Upon determination that the discovery contains Native American human remains Section 5097.98(a) and (b) of the California Public Resources Code will be followed.

(b) The Code provides that most likely descendants (MLD) be notified and given the opportunity to make recommendations to the applicant within the prescribed time, as to the treatment and disposition of the human remains and any associated grave goods. Upon receiving those recommendations, the applicant shall consult with the concurring Native American parties to find a mutually acceptable means for their implementation. If mutually acceptable resolution is

A-3-MC-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

not found then the provisions of Section 5097.98(b) of the Code define the steps to be taken. Where the recommendations are amenable the following conditions should be implemented:

1. The concurring Native American parties and the applicant representative working together should determine an appropriate place where the recovered human remains and associated grave goods can be reburied which will not be disturbed by any future construction and be as close to the area where said remains and associated artifacts were discovered as shall be possible.
 2. The human remains and associated grave goods shall be treated with dignity and respect and shall be reinterred as soon as possible, but not later than six months from the date of identification. All grave goods shall be reinterred along with the remains with which they were associated.
 - 3.. Any such reburial shall be accomplished in a respectful and appropriate manner where Ohlone/Costanoan descendants will be given the opportunity to participate and invite other concerned individuals.
 4. The reburial area will be dedicated as an archaeological conservation easement (granted to the county or other appropriate organization) or deed restricted so as not to be subjected to future disturbance as per stipulation (11).
 5. Pending disposition, any human remains and burial-associated artifacts shall be temporarily stored on site as a unit in a locked facility designated for this purpose, under the direction of the Coordinator and the MLD.
- (c) Any human remains encountered may be subject to the following non-destructive analysis based upon the recommendations of the MLD and during such analysis shall be treated with appropriate respect:

1. A detailed on-site analysis by the project archaeologist, observed by the MLD or the MLD's designee, shall determine, if possible, the age, sex, and bone pathologies of any human remains encountered, to add to the body of knowledge about Native American peoples. The concurring Native American parties shall be invited to be present.
2. If the human remains are in an area to be disturbed by construction and have not been determined to be of other than Native American origin, complete exposure and removal of the remains shall be mandatory. The MLD and concurring Native American parties shall determine what additional non-destructive analysis, if any, shall be performed on said human remains and burial-associated artifacts.

CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

3. If no additional analysis is recommended, the project archeologist shall document, according to Interior's Standards and Guidelines for Archeological Documentation, all Native American human remains and associated grave goods taken from any burial site to ensure everything removed is reburied.

III. Document Distribution

(17) FEMA shall ensure that all final archaeological documents resulting pursuant to this agreement and Section 110(b) of NHPA are made available for inspection or review within 30 days of completion, to the SHPO, the Council, all concurring parties, the California Native American Heritage Commission, the Northwest Coast Regional Information Center at Sonoma State University, and to such Native American groups and/or individuals as shall request an opportunity to review.

IV. Dispute Resolution

(18) Any signatory party may object to any action taken pursuant to this Agreement by notifying FEMA. Within 30 days of notification, FEMA shall consult with the objecting party to resolve the objection. If FEMA determines that the objection cannot be resolved, FEMA shall forward all documentation concerning the dispute to the Council including FEMA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the Council will either:

- (a) Advise FEMA that it concurs in FEMA's proposed response whereupon FEMA will respond to the objection accordingly;
- (b) Provide FEMA with recommendations, which FEMA will take into account in reaching a final decision regarding the dispute; or
- (c) Notify FEMA that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by FEMA in accordance with 36 CFR 800.6(c)(2) with reference to the subject of the dispute.

(19) Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; FEMA's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

(20) Should the Council not exercise one of the above options within the 30-day period, FEMA may assume the Council's concurrence in its proposed response to the objection.

CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

V. Failure to Comment

Failure of the SHPO or Council to provide written comments or comment on any documentation pursuant to this Agreement within the agreed time frames shall not preclude FEMA from implementing funding for construction in accordance with the findings resulting from the Agreement.

VI. Amendment

Any signatory party to the Agreement may propose to FEMA that it be amended, whereupon FEMA shall consult with the other signatory parties of this MOA to consider such amendment. 36 CFR §800.5(e) shall govern the execution of any such amendment.

VII. Failure to Carry Out Terms of this Agreement

Failure to carry out the terms of this Agreement requires that FEMA again request the Council's comments in accordance with 36 CFR 800.4-6. If FEMA cannot carry out the terms of this Agreement, it will not take or sanction any action or make any irreversible decision or comment that would result in an adverse effect to historic properties or that would foreclose the Council's opportunity to consider modifications or alternatives to the undertaking.

Execution of this Memorandum of Agreement and implementation of its terms evidence that FEMA has afforded the Council an opportunity to comment on the undertaking and its effects on historic properties, and that FEMA has taken into account the effects of the undertaking on historic properties.

REFERENCES

Breschini, G. S., and T. Haversat

- 1985 Preliminary Archaeological Reconnaissance of APN 133-201-17, Moss Landing, Monterey County, California. Ms. on file. Northwest Information Center, California Archaeological Inventory, Sonoma State University, Rohnert Park, California.
- 1991 Preliminary Archaeological Evaluation and Preliminary Mitigation Plan for CA-MNT-234, at the Proposed Moss Landing Marine Laboratory, Moss Landing, Monterey County, California. Submitted to ABA Consultants, Capitola. Ms. on file (S-13276), Northwest Regional Information Center of the California Archaeological Inventory, Sonoma State University, Rohnert Park.

CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

A-3-MCO-97-042

**MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY**

NAMES AND AFFILIATIONS OF THOSE WHO SIGNED THIS AGREEMENT

SIGNATORY PARTIES:

Robert D. Bush	Executive Director Advisory Council on Historic Preservation
Richard W. Krimm	Associate Director, Response & Recovery Directorate Federal Emergency Management Agency
Cherilyn Widell	State Historic Preservation Officer California State Historic Preservation Officer

CONCURRING NATIVE AMERICAN PARTIES:

Tony Cerda,	Chairman, Costanoan-Rumsen Carmel Tribe
Loretta Escobar-Wyer	Chairperson, Esselen Nation (with conditions)
Andrew Galvan	Ohlone Indian Tribe
Juanita Ingalls	Mutsun Ohlone
Jakki Kehl	Mustun Ohlone
Ella Mae Rodriguez	Costanoan Monterey Bay Family Band
Ann Marie Sayer	Indian Canyon Mutsun Band of Costanoan
Linda Yamane	Rumsien Ohlone
Irene Zwierlein	Amah Tribal Band

OTHER CONCURRING PARTIES:


John H. Regnier	for Richard P. West, Vice Chancellor, Business and Finance California State University
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Richard Ray	Governor's Authorized Representative California Office of Emergency Services
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A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

SIGNATORY PARTIES:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: 
Robert D. Bush, Executive Director

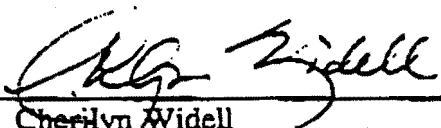
DATE: 4/27/95

FEDERAL EMERGENCY MANAGEMENT AGENCY

BY: 
Richard W. Krimm
Associate Director, Response & Recovery Directorate

DATE: 4/19/95

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY: 
Cheryl N. Widell
State Historic Preservation Officer

DATE: 4/25/95

Signatures - page 1 of 11

CALIFORNIA COASTAL COMMISSION

EXHIBIT B

A-3-mco-97-042

MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY

CONCURRING NATIVE AMERICAN PARTY:


Tony Cerda, Chairman
Costanoan-Rumsen Carmel Tribe

Ohlone/Costanoan *

5/23/95
Date

Signatures - page 2 of 11

- Cultural affiliation provided by the Native American Heritage Commission.
Other affiliation, if different, perferred by concurring party.

A-3-MC0-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

**MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY**

CONCURRING NATIVE AMERICAN PARTY:

Loretta Escobar-Wyer
Loretta Escobar-Wyer
Chairperson, Esselen Nation

Ohlone/Costanoan *

4-17-95

Date

Let it be known this MOA is signed under protest. 1) The MOA elevates individuals over tribal groups as interested parties which does not follow the intent of law under 106. 2) Under the State Heritage Commission Policy direct ancestry to a specific village area or site should be sufficient to identify the, MLDs [cultural affiliated with this area]. Esselen Nation alone had provided detailed information to prove connection to this area specifically. [submitted to Moss Landing's legal council Larry Horan and to Brent Paul, FEMA, genealogical and historical information that showed lineal connection]. Bringing in others who did not supply village/site information ignores the State Heritage Commission Policy on descendency.

Under these existing circumstances the Tribal Council of Esselen Nation voted on April 4, 1995 to have Loretta Wyer, Chairperson, sign the MOA For The Relocation Of The Moss Landing Marine Laboratory with the understanding the following stipulations (as written by Will Nightswonger, Program Manager Physical Planning and Development, The Chancellor's office, in his letter dated April 7, 1995 to Loretta Wyer) will be implemented to address some key inadequacies of the MOA:

1. That: "the constituent representation of each signatory will certainly be taken into account in the formation of such by-laws". [by-laws of the advisory group of MOA signatories] "That is to say a representative of a large tribe will carry appropriately greater weight than a small group or individual".
2. "Cultural sensitivity and demonstrated positive working relationships with the Native American community are certainly among the important qualifications for a project archaeologist during the Moss landing Marine Laboratories reconstruction....As such, we shall clearly indicate same on our solicitation for qualification proposals and in turn appropriately weigh them in our review and selection."

Signatures - page 3 of 11

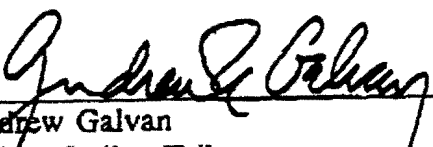
- Cultural affiliation provided by the Native American Heritage Commission(.
- * Other affiliation, if different, perferred by concurring party.

EXHIBIT 8

A-3-MCD-97-042

MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY

CONCURRING NATIVE AMERICAN PARTY:



Andrew Galvan Ohlone*
Ohlone Indian Tribe

26 IX 95
Date

Signatures - page 4 of 11

- * Cultural affiliation provided by the Native American Heritage Commission.
Other affiliation, if different, perferred by concurring party.

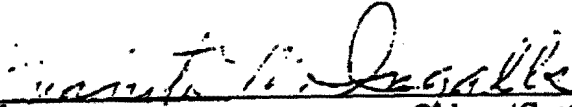
CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

A-3-MCO-97-042

MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY

CONCURRING NATIVE AMERICAN PARTY:



Juanita Ingalls
Matsun Ohlone *
Ohlone/Costanoan *

4-16-95
Date

Signatures - page 5 of 11

- Cultural affiliation provided by the Native American Heritage Commission.
- * Other affiliation, if different, perferred by concurring party.

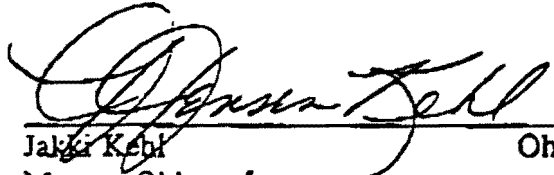
CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

A-3-MCO-97-042

MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY

CONCURRING NATIVE AMERICAN PARTY:



Jakki Kehl Ohlone/Costanoan *
Mustun Ohlone *

4-15-95

Date

Signatures - page 6 of 11

- * Cultural affiliation provided by the Native American Heritage Commission.
Other affiliation, if different, perferred by concurring party.

CALIFORNIA COASTAL COMMISSIO

EXHIBIT 8

A-3-MCO-97-042

MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY

CONCURRING NATIVE AMERICAN PARTY:

Ella Mae Rodriguez

Ella Mae Rodriguez ^{gfy} Ohlone/Costanoan
Costanoan Monterey Family Band *

4/17/95
Date

Signatures - page 7 of 11

- > Cultural affiliation provided by the Native American Heritage Commission
* Other affiliation, if different, perferred by concurring party.

CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

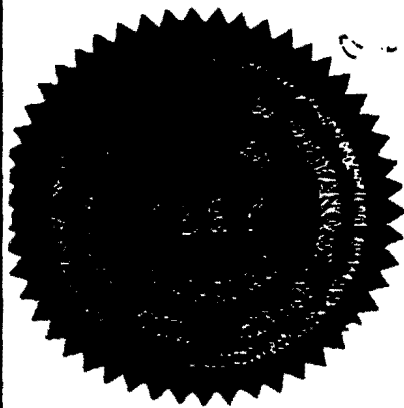
A-3-MCO-97-042

MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY

CONCURRING NATIVE AMERICAN PARTY:

Ang Marie Sayer
Ang Marie Sayer, Ohlone/Costanoan
Indian Canyon Mutsun Band of Costanoan

2/19/98
Date



Signatures - page 8 of 11

- Cultural affiliation provided by the Native American Heritage Commission*
• Other affiliation, if different, perferred by concurring party.

CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

A-3-MCD-97-042

**MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY**

CONCURRING NATIVE AMERICAN PARTY:

Linda Yamane
Rumsien Ohlone

Ohlone/Costanoan*

4-10-95

Date

Signatures - page 9 of 11

- * Cultural affiliation provided by the Native American Heritage Commission
Other affiliation, if different, perferred by concurring party.


CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

A-3-MCD-97-042

MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSS LANDING MARINE LABORATORY

CONCURRING NATIVE AMERICAN PARTY:



Irene Zwierlein Ohlone/Costanoan
Amiah Tribal Band

4/12/1995
Date

Signatures - page 10 of 11

- Cultural affiliation provided by the Native American Heritage Commission.
Other affiliation, if different, perferred by concurring party.

CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

A-3-MCD-97-042

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**MEMORANDUM OF AGREEMENT
FOR THE
RELOCATION OF THE MOSE LANDING MARINE LABORATORY**

OTHER CONCURRING PARTIES:

CALIFORNIA STATE UNIVERSITY

BY

Richard P. West
Richard P. West
Vice Chancellor, Business and Finance

4-20-95
Date

CALIFORNIA OFFICE OF EMERGENCY SERVICES

BY

Richard Ray
Richard Ray
Governor's Authorized Representative

4-19-95
Date

Signatures - page 11 of 11

CALIFORNIA COASTAL COMMISSION
EXHIBIT 8

A-3-MCO-97-042

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, N.W. # 809
Washington, DC 20004

Reply to: 730 Simms Street, #401
Golden, Colorado 80401

May 2, 1995

Richard S. Shivar
Acting Environmental Officer
Federal Emergency Management Agency
Federal Center Plaza
500 C Street, S.W.
Washington, D.C. 20472

REF: Memorandum of Agreement Regarding the Relocation of the Moss
Landing Marine Laboratory, CA

Dear Mr. Shivar:

The Memorandum of Agreement (MOA) regarding the relocation and reconstruction of the Moss Landing Marine Laboratory with assistance from the Federal Emergency Management Agency (FEMA) has been executed by the Council. Our Office of General Counsel has requested that we clarify two points included in the MOA. Stipulation III. notes that all final archaeological documents resulting from the agreement will be made available for inspection or review by various parties and interested persons. We anticipate that such documents will be sent directly to the California State Historic Preservation Officer (SHPO), the Council, and any other party that has a responsibility to review and comment on the document under the MOA, while other parties will be able to review the document by directly contacting FEMA or at its offices. We also understand that only signatory parties as designated by the signature page to be FEMA, SHPO, and the Council may request that the MOA be amended pursuant to Stipulation VI.

The Council's execution of this Agreement evidences our comments as required by Section 106 of the National Historic Preservation Act and the Council's regulations. Please forward a copy of the executed MOA to the California State Historic Preservation Officer, California State University, the Office of Emergency Services, the Monterey County Board of Supervisors, all concurring Native American parties, and your Federal Preservation Officer.

We appreciate the cooperation of all parties in reaching a satisfactory resolution of this matter, in particular the efforts of Brent Paul in identifying and consulting with the interested

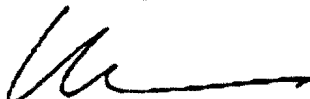
CALIFORNIA COASTAL COMMISSION

EXHIBIT 8

A-3-MCO-97-042

Native American parties. Their involvement of interest parties in the Section 106 review and the public's understanding of this MOA are key components of the process. The development of alliances between California State University and the Native American parties will ensure the long term viability of the exhibit on Native American culture, lifestyles, and archeology in the context of the coastal and ocean environment that will be included within the visitor center to be located at the marine laboratory.

Sincerely,



Claudia Nissley
Director, Western Office
of Review

Enclosure

CALIFORNIA COASTAL COMMISSION
EXHIBIT 8
A-3-mco-97-042

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No. 97-164 ---)
 Resolution Certifying an Environmental)
 Impact Report (#96-01), Adopting a)
 Statement of Overriding Consideration and)
 Approving an Application for the California)
 State University (PC95097 - "Moss Landing)
 Marine Laboratory") for a Combined)
 Development Permit consisting of a Coastal)
 Development Permit for a marine laboratory)
 including a seawater delivery system,)
 removal of a 100,000 gallon water storage)
 tank and replacement/relocation with three)
 59,000 inground water storage tanks and)
 grading; Coastal Development Permit for a)
 caretaker's quarters; Use Permit for Ridgeline)
 Development and Design Approval, Moss)
 Landing Area, Coastal Zone.)

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 CENTRAL COAST AREA

WHEREAS, this matter was heard by the Board of Supervisors ("Board") of the County of Monterey on May 6, 1997, pursuant to an appeal by California State University ("Applicant").

WHEREAS, the property which is the subject of this appeal is located on Lot 11 and a portion of Lot 212, Assessor's Map 2, Moss Landing A-73-1, Bolsa Nueva y Moro Cojo Rancho, fronting on and westerly of Moss Landing Road, and Sub 17 of Assessor's Sub A of Lot A, Monterey City Lands, Tract No. 3, Parcel IV, fronting on and westerly of Sandholdt Road, including the Sandholdt Road and Moss Landing Road Rights of Way, Moss Landing area, Coastal Zone, in the County of Monterey ("the property").

WHEREAS, Applicant filed with the County of Monterey, an application for a Combined Development Permit consisting of a Coastal Development Permit for a marine laboratory including a seawater delivery system, removal of a 100,000 gallon water storage tank and replacement/relocation with three 59,000 inground water storage tanks and grading; Coastal Development Permit for a caretaker's quarters; Use Permit for Ridgeline Development and Design Approval.

A-3-MCO-97-042
 CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

WHEREAS, an Environmental Impact Report was prepared for the proposed project, pursuant to a request from the applicant.

WHEREAS, California State University's application for the entire Combined Development Permit came for consideration before the Planning Commission at a public hearing on March 26, 1997.

WHEREAS, at the conclusion of the public hearing on March 26, 1997, the Planning Commission certified the EIR prepared for the project, adopted a Statement of Overriding Consideration, and approved California State University's application on the basis of the findings and evidence contained in Planning Commission Resolution No. 97023.

WHEREAS, applicant timely filed an appeal from the Planning Commission decision alleging that the Planning Commission's conditions are not supported by the evidence.

WHEREAS, appellant, Noel Mapstead, timely filed an appeal from the decision of the Planning Commission alleging that the findings, decision, or conditions are not supported by the evidence, and that the decision was contrary to law.

WHEREAS, pursuant to the provisions of the Monterey County Zoning Ordinance (Title 20) and other applicable laws and regulations, the Board, on May 6, 1997, heard and considered the appeal at a de novo hearing.

WHEREAS, at the conclusion of the hearing, the matter was submitted to the Board for a decision. Having considered all the written and documentary information submitted, the staff reports, oral testimony, and other evidence presented before the Planning Commission, the Board now renders its decision to adopt findings and conditions in support of the Combined Development Permit as follows:

FINDINGS

1. FINDING: California State University, Moss Landing Marine Laboratory (MLML) is proposing to rebuild facilities damaged by the 1989 Loma Prieta earthquake on a 21 plus acre parcel (APN 133-201-017-000), owned by the Peterson Trust. Reconstruction of the laboratory is proposed on the subject parcel since the Federal Emergency Management Agency ("FEMA") and the State Office of Emergency Services ("OES") will not provide funding for the project on the original parcel, primarily due to flood and seismic hazards.

The laboratory is proposed to be located on a portion of the subject parcel zoned "LDR/2.5(CZ)." Section 20.64.260.A of the Coastal Implementation Plan allows Public Quasi-Public uses such as schools in residential zones.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 9

The lab size is proposed at 60,000 square feet. Of the 60,000 square feet, 6,300 square feet is slated for future expansion (labeled "shell space" on plans) and will primarily be used for storage of lab equipment, books, museum, etc., and will not be for additional classrooms. The former lab was 44,486 square feet.

According to CSU's records, recent average student enrollment at the MLML is 145 with faculty and staff totaling 37. A maximum average number of 122 individuals use the labs during the day.

An existing 100,000 gallon water tower, 86 feet in height on a 70' x 70' tank lot, on the crest of the hill, is proposed to be removed to facilitate placement of the lab. Three (3) 59,000 gallon concrete in ground water storage tanks and a pumphouse are proposed to replace the water tower and would be located on a tank lot approximately 160 feet south. The tank lot is .137 acres. This new water system will better serve the Moss Landing community by providing greater water flow and storage and reduced sedimentation in the water.

The proposed project also includes a seawater delivery system. The seawater delivery system is proposed to carry seawater from the shore system located westerly of Sandholt Road (APN 133-232-006-000), to the proposed site on the Peterson Trust Parcel. From a pumphouse on APN 133-232-006-000 four (4) six-inch-diameter seawater conveyance pipes and one (1) four-inch diameter conduit pipe would be underground within existing public rights-of-way southeast along the edge of Sandholt Road and then south along Moss Landing Road to the project site.

Access to the proposed lab would occur along an existing paved accessway (proposed to be widened) from Moss Landing Road at State Highway 1 to the north, and Moss Landing Road at State Highway 1 from the south. A secondary emergency accessway is proposed from Laguna Place, a public road within the Moss Landing Heights subdivision. This additional access will be used primarily for emergency access to the lab and for utility line repairs. Construction of this secondary road will require removal of seven non-native cypress trees and will be paved with a pervious surface.

A 90 space parking lot, including three handicapped spaces is proposed on the easterly side of the hill. The proposed marine lab, parking lots, water tanks, and access roads will cover approximately 2.8 acres. Approximately 17,950 cubic yards of cut and 13,500

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 9

cubic yards of fill will be required to facilitate the project, as proposed.

EVIDENCE: 1) Plans, application, correspondence, and consultant reports in file number PC95097.
2) Volumes I and II, Monterey County Final EIR No. 96-01, March, 1997.
3) Sheet 3 of the Zoning Maps of Monterey County.
4) Section 20.64.260.A of the Coastal Implementation Plan.

2. FINDING: At the applicant's request, an Environmental Impact Report was prepared for the proposed project.

EVIDENCE: Correspondence in EIR File No. 96-01 from William R. Nighswonger, California State University, dated November 13, 1995.

3. FINDING: The Final Environmental Impact Report analyzes topics based on an Initial Study prepared by County Planning Staff and addressed in Findings 4 - 13 below.

EVIDENCE: Initial Study contained in EIR file no. 96-01, dated March 11, 1996.

CEQA FINDINGS

4. Geology/Seismicity and Soils:

FINDINGS:

This Board of Supervisors finds that:

- A.1. The following impacts of the proposed project will be less-than-significant: (a) exposure of people and structures to tsunami hazards; and (b) construction of buried concrete or uncoated steel in Alviso soils.
- A.2. The measures recommended in the FEIR to prevent potential slope failures from structural loading during construction, and from runoff discharge are adopted. For the reasons stated in the FEIR, these measures will mitigate the impact of exposure of people or structures to slope failure hazards to a less-than-significant level.
- A.3. The FEIR recommendation to incorporate the results of a final geotechnical report into the final project design is adopted. For the reasons stated in the FEIR, this measure will mitigate the increased potential for injury to people or damage to structures due to ground shaking hazards to a less-than-significant level.
- A.4. The recommendation for preparation and implementation of a pre-construction final geotechnical report specifying engineering practices to reduce liquefaction

4-3-400-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 9

hazards to a less-than-significant level is adopted. For the reasons stated in the FEIR, this measure will mitigate the impact of exposure of people or structures to earthquake-induced liquefaction hazards to a less-than-significant level.

- A.5. The recommendations to implement the 1995 ABA Consultants erosion control plan and the recommendations of the October, 1995 Rutherford and Chekene Corp. geotechnical report to mitigate construction-related erosion are adopted. For the reasons stated in the FEIR, these measures will mitigate the impact of accelerated erosion as a result of construction activities to a less-than-significant level.
- A.6. The recommendations to implement the 1995 ABA Consultants erosion control plan and the October, 1995 Rutherford and Chekene Corp. geotechnical report to mitigate stormwater discharge-related erosion are adopted. For reasons stated in the FEIR, these measures will mitigate the impact of stormwater discharge-related erosion to a less-than-significant level.
- A.7. The recommendation for an engineering report specifying measures to be used during project construction of the boardwalk to prevent failure of structures built in expansive Alviso soils is adopted. For the reasons stated in the FEIR, this measure will mitigate the impact of damage to boardwalk structures from shrinking and swelling of expansive soils to a less-than-significant level.

EVIDENCE:

The FEIR discusses geology/seismicity and soils impacts at pages B-33 to B-36, B-71 to B-72, B-82 to B-84, B-114 to B-115, B-130 to B-131, B-146, B-149, B-155 to B-156, B-161 to B-162, B-165 to B-167, B-185 to B-186, B-208, B-226, and B-228 of the Jones & Stokes March, 1997 Responses to comments on the FEIR ("Response Document") and at pages 3-1 through 3-14, S-3 through S-6, Table S-1 (pages 1 and 2), Table 13-2 (Page 1), Table 16-1 (Pages 1 and 2) and Appendix "A" through Appendix "B" of the FEIR.

- A.1. For the reasons stated in Chapter 3, the following impacts were determined by the FEIR to be less-than-significant: (a) exposure of people and structures to tsunami hazards; and (b) corrosion of buried concrete or uncoated steel in Alviso soils.
- A.2. According to the FEIR, the project could expose people or structures to slope failure hazards as explained on FEIR at page 3-9. Such impacts can be mitigated to a less-than-significant level by:
- (a) Requiring the applicant to prepare an engineering report specifying measures to be used to prevent potential slope failures from structural loading. As explained on FEIR page 3-10, such a report should evaluate the use of geotechnical slope stabilization techniques (including, but not limited to, retaining walls and rock berms) and soil improvements such as compaction, and such measures should be designed to not adversely affect cultural, visual and biological resources.

- (b) Requiring construction contractors to prevent dune slope failure during construction. As explained on FEIR page 3-10, during construction, shoring should be placed in trenches at sufficient depth to prevent any significant slumping of the existing hillside into excavated areas.
- (c) Requiring an engineering report specifying measures to be used to prevent slope failure caused by concentrated discharge of runoff from impervious surfaces. As explained more fully on FEIR page 3-10, such measures should include, but not be limited to, vegetating exposed slopes and/or installing subsurface drainage that is piped to the toe of the slope and has an energy dissipater. Such measures should be designed not to adversely affect cultural, visual and biological resources.
- A.3. According to the FEIR, project construction could increase the potential for injury to people or damage to structures due to ground shaking hazards. This impact can be mitigated to a less-than-significant level if a final geotechnical report is prepared specifying measures to be used to reduce the hazard from ground shaking. As explained on FEIR page 3-11 such report will be prepared before preparation of final building plans and should be based on current attenuation curves. The report should evaluate which engineering recommendations will be used to reduce or eliminate site-specific liquefaction hazards, including at a minimum, the use of spread-footing foundations, anchored fixtures and cabinets, and steel wall reinforcements. Such recommendations will be designed to not adversely affect cultural, visual and biological resources.
- A.4. According to the FEIR, people or structures could be exposed to earthquake-induced liquefaction hazards emanating from a low-lying area to the south of the proposed project site which may be prone to earthquake-induced liquefaction. This impact can be mitigated to a less-than-significant level by requiring the preparation and implementation of a pre-construction final geotechnical report containing recommendations for specific engineering practices.
- A.5. Project construction activities could result in accelerated erosion. This impact can be mitigated to a less-than-significant level by implementing the recommendations of existing 1992 ABA Consultants erosion control plan and the October, 1995 Rutherford and Chekene Corp. geotechnical report to mitigate construction-related erosion. As explained on FEIR page 3-12, the plan and report together specify that the proposed berms not exceed slopes of 4:1; that the berms be stabilized with straw plugs and then planted with native plants, grasses or shrubs consistent with an approved landscaping and dune restoration plan; that construction activities should minimize the amount of land disturbance and soil exposure; and limiting all excavation, grading, paving, foundation work, and drainage facilities to the period between April 15 and October 15.

A-39-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

A.6. According to the FEIR, discharge of stormwater from impervious surfaces and drains could accelerate erosion. This impact can be mitigated to a less-than-significant level by implementing the recommendations of the 1995 ABA Consultants erosion control plan and the October, 1995 Rutherford and Chekene Corp. geotechnical report to mitigate stormwater discharge-related erosion. As explained on FEIR page 3-13, the plan and report together:

- a) Contain detail to insure that the project will comply with applicable goals and policies to reduce the long-term potential for erosion;
- b) Include specifications that the impervious surfaces will drain to rock leach lines leading to natural drainage features or detention basins;
- c) Provide that all surfaces should be drained at a rate equal to the existing natural flow rate and patterns on the site;
- d) Provide that the drainage system should be large enough to accommodate peak design storm flows from the impervious surfaces;
- e) Provide that, after construction, excavation areas should be backfilled to the natural grade in accordance with the geotechnical engineer's recommendations. Reference mitigation measure B1 in Chapter 4 of the FEIR for specific details.

A.7. According to the FEIR, shrinking and swelling of expansive Alviso soils upon which portions of the paths, trails, and boardwalk crossing the Pickleweed Marsh would be constructed, could cause structures to crack or settle if they have not been properly engineered. This impact can be mitigated to a less-than-significant level if, prior to the preparation of a final building plan, an engineering report is prepared specifying practices which will reduce the potential for structural failure from shrinking and swelling of expansive soils to a less-than-significant level. As explained on FEIR page 3-14, the final engineering report should:

- a) Evaluate such measures as installing piers to a depth below that of soil moisture variations;
- b) Design structures to withstand the effects of shrinking and swelling of soils;
- c) Be consistent with applicable goals and policies; and
- d) Contain remedial measures designed to not adversely affect cultural, visual, and biological resources.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

5. Hydrology and Water Resources:

FINDINGS:

B.1. The following impacts of the proposed project will be less-than-significant:

- a) Increased pumping at the municipal water supply well and potential increase in the risk of seawater intrusion at the well;
- b) Potential increase in flood stage in the old Salinas River channel caused by the boardwalk;
- c) Increased potential for erosion during construction;
- d) Increased flood flows in the old Salinas River channel caused by increase runoff from the site;
- e) Discharge of stormwater runoff potentially containing contaminants into the on-site wetlands or Moro Cojo Slough;
- f) Altered groundwater recharge patterns at the site and seepage of groundwater into wetlands; and
- g) Potential alteration of shallow groundwater flow or quality caused by excavation for foundations, water tanks, and utilities.

B.2. The existing design features of the proposed facility, and the additional features recommended in the FEIR to prevent erosion from rainfall runoff are adopted. For the reasons stated in the FEIR, these measures will mitigate the potential for erosive overland flow caused by increased stormwater runoff to a less-than-significant level.

EVIDENCE: The FEIR discusses hydrology and water resources impacts at pages B-43 to B-44, B-61 to B-64, B-72, B-76, B-84, B-88, B-113 to B-115, B-129 to B-131, B-155 to B-156, and B-198 of the FEIR Response Document and at pages S-3 to S-5, 4-1 to 4-13, 14-3 to 14-5, Table S-1 (pages 2 and 3), Table 13-2 (page 1), Table 16-1 (page 2), and Appendix "A" of the FEIR.

B.1. For the reasons stated in Chapter 4, the following impacts were determined by the FEIR not to be potentially significant impacts:

- a) Increased pumping at the municipal water supply well and potential increase in the risk of seawater intrusion at the well;

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

- b) Potential increase in flood stage in the old Salinas River channel caused by the boardwalk;
- c) Increased potential for erosion during construction;
- d) Increased flood flows in the old Salinas River channel caused by increase runoff from the site;
- e) Discharge of stormwater runoff potentially containing contaminants into the wetlands of Moro Cojo Slough;
- f) Altered groundwater recharge patterns at the site and seepage of groundwater into wetlands; and
- g) Potential alteration of shallow groundwater flow or quality caused by excavation for foundations, water tanks, and utilities.

B.2. According to the FEIR, if runoff from the impervious surfaces becomes concentrated in localized areas, the runoff flows could erode the project hillside. This impact can be mitigated to a less-than-significant level by:

- a) Retaining the existing best management practices for runoff control already included in the project design for the proposed facility:
 - (1) Construct the emergency access road of a porous paving material;
 - (2) Pave one parking area with gravel or crushed aggregate;
 - (3) The parking lot to be paved will be constructed with curbs and drains to convey runoff to four buried gravel-filled infiltration chambers, large enough to allow all excess runoff to percolate;
 - (4) The paved roadway along the upper edge of this parking lot will also drain to the infiltration chambers;
 - (5) Runoff from the roof of the main building will be conveyed through a buried perforated pipe from the rainspouts to two locations along the edge of the wetland at the toe of the western slope of the hill. Any runoff that does not infiltrate from the pipe will be discharged into the wetland. A cobble dissipator will be placed at the end of the perforated pipe to prevent localized scouring around the discharge point; and
 - (6) Runoff from the service entrance driveway will be routed through gutters and drains to the perforated pipes and down the western slope of the hill.

1-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 9

- b) Implementation of the FEIR recommendation that runoff from the main entrance driveway should be collected in drains and conveyed through a perforated drain pipe to the existing drainage ditch along the west side of Moss Landing Road, allowing the runoff to infiltrate into the soil.

6. Plant and Animal Life:

FINDINGS:

This Board of Supervisors finds that:

- C.1. The following impacts of the proposed project will be less-than-significant:
 - a) Loss of less than 0.1 acre of introduced forest;
 - b) Loss of 0.1 acre of annual grassland/ruderal habitat;
 - c) Loss of potential habitat for California Horned lizard;
 - d) Loss of potential forging habitat for raptors; and
 - e) Loss of potential nesting habitat for Northern and Short-eared owls.
- C.2. The measures recommended in the FEIR for the enhancement and/or restoration of 2 acres of central dune scrub on-site and 7.9 acres of central dune scrub at the former MLML site in order to mitigate the loss of 0.7 acres of central dune scrub habitat and 2.1 acres of disturbed central dune scrub habitat are adopted. For the reasons stated in the FEIR, these measures will mitigate the impact of the loss of these habitat areas to a less-than-significant level. These measures will also further reduce loss of potential habitat for the California Horned lizard and loss of potential forging habitat for raptors, although these impacts are determined by the FEIR to be less-than-significant.
- C.3. The recommendation in the FEIR to conserve and enhance salt marsh and mud flats on the western site of the project site are adopted. For the reasons stated in the FEIR, these measures will mitigate the loss of and disturbance to salt marsh during boardwalk construction to a less-than-significant level.
- C.4. The FEIR recommendation to replace introduced trees that are removed with native trees is adopted. For the reasons stated in the FEIR, this measure will further reduce the already less-than-significant impact resulting from the loss of less than 0.1 acre of introduced (i.e., non-native) forest.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

- C.5. The FEIR recommendation to restrict access to the dune community, install interpretive signs, and monitor sensitive areas is adopted. For the reasons stated in the FEIR, these measures will mitigate the potential disturbance to the dune community and special-status species from trampling to a less-than-significant level.
- C.6. The FEIR recommendations to protect Sand gilia plants not removed during construction are adopted. For the reasons stated in the FEIR, these measures will mitigate the loss of sand gilia plants, state listed as threatened and federally listed as endangered, to a less-than-significant level.
- C.7. The measures recommended in the FEIR to protect Monterey spineflower plants not removed during construction, and to Enhance and/or restore 9.2 acres of central dune scrub on-site and 7.9 acres of central dune scrub at the former MLML site are adopted. For the reasons stated in the FEIR, these measures will mitigate the impact of loss of occupied habitat for Monterey spineflower plants [federally listed as threatened] to a less-than-significant level.
- C.8. The FEIR recommendations to remove legless lizards in the construction footprint before construction begins and determine subspecies, and enhance and/or restore 9.2 acres of central dune scrub on-site and 7.9 acres of central dune scrub at the former MLML site are adopted. For the reasons stated in the FEIR, these measures will mitigate the loss of legless lizard habitat and individuals to a less-than-significant level. If black legless lizards are found on site and the status of the species changes from proposed to listed before the project is completed, an amended or new biological opinion from USFWS will be required.
- C.9. The FEIR recommendations to minimize disturbance during the breeding and nesting season for White-tailed kite are adopted. For the reasons stated in the FEIR, these measures will mitigate the potential disturbance to raptors nesting in the grove of trees in the northern portion of the project site to a less-than-significant level.

EVIDENCE: The FEIR discusses plant and animal life impacts at pages B-9 to B-12, B-19 to B-22, B-62 to B-64, B-72 to B-73, B-84, B-97, B-99 to B-100, B-111 to B-112, B-115, B-118, B-129, B-131, B-135, B-137, B-139, B-143, B-151 to B-155, B-185, B-196, and B-220 of the Response Document, and at pages S-4 to S-5, S-1 to S-24, 14-5 to 14-7, Table S-1 (pages 3 to 5), Table 13-2 (page 2), Table 16-1 (page 2 to 3), Appendix "A" and Appendix "C" of the FEIR.

- C.1. The following impacts of the proposed project will be less-than-significant. For the reasons stated in Chapter 5, the following impacts were determined by the FEIR to be less-than-significant:

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

- a) Loss of less than 0.1 acre of introduced forest;
 - b) Loss of 0.1 acre of annual grassland/ruderal habitat;
 - c) Loss of potential habitat for California Horned lizard;
 - d) Loss of potential foraging habitat for raptors; and
 - e) Loss of potential nesting habitat for Northern and Short-eared owls.
- C.2. According to the FEIR, the project would result in the loss of 0.7 acre of central dune scrub habitat and 2.1 acres of disturbed central dune scrub habitat, as more fully explained on FEIR page 5-15 through 5-16. Such impacts can be mitigated to a less-than-significant level by:
- a) Requiring implementation of the Upland Restoration Plan (ABA Consultants 1995c) for the enhancement and restoration of 9.2 acres of central dune scrub habitat on-site. The plan calls for a conservation easement to protect the restored dunes in perpetuity and establishes performance standards;
 - b) Requiring CSU to complete ongoing restoration of approximately 7.9 acres of dune habitat at the former MLML site, where success criteria for restoration have almost been achieved and the California Department of Parks and Recreation is responsible for long-term site maintenance.
- C.3. According to the FEIR, the boardwalk construction under the proposed project would result in the loss of less than 0.1 acre of natural salt marsh habitat. Such impact can be mitigated to a less-than-significant level by implementation of the Wetland Enhancement Plan (ABA Consultants 1995d) to direct conservation and management of the natural wetlands on the project site. As explained on FEIR page 5-16 to 5-17, the Wetland Enhancement Plan calls for the removal of invasive weeds and establishes performance standards. CSU is responsible for monitoring the achievement of performance standards and for implementing any necessary remedial measures.
- C.4. According to the FEIR, the loss of less than 0.1 acre of introduced forest resulting from the project is a less-than-significant impact because the cypress trees are not native to the site. However, CSU proposes to further reduce the impact by replacing the introduced trees that are removed with native trees.
- C.5. According to the FEIR, potential disturbance may occur to the dune community and/or special status species from trampling by visitors and users of the proposed MLML facility. This measure can be mitigated to a less-than-significant level by implementing CSU's plans to restrict and control access, to install interpretive

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

signs. to monitor the area. and to provide an on-site caretaker. as described at FEIR page 5-18.

- C.6. According to the FEIR, construction of the project would result in the loss of individual Sand Gilia plants, a special status species. This impact can be mitigated to a less-than-significant level by protecting sand gilia plants not removed during construction. As explained more fully at FEIR page 5-18. CSU will retain a professional biologist to monitor construction activities and install signs and rope fences to provide additional protection. Additionally, CSU will promote the establishment of special-status plant species as described in FEIR mitigation measure C.2, and as discussed in Evidence paragraph C.2 above.
- C.7. According to the FEIR, construction of the project would result in the loss of Monterey spineflower plants, a special status species. This impact can be mitigated to a less-than-significant level by protecting Monterey spineflower plants not removed during construction. As explained more fully at FEIR page 5-19, CSU will retain a professional biologist to monitor construction activities and install signs and rope fences to provide additional protection. Additionally, CSU will promote the establishment of special-status plant species as described in FEIR mitigation measure C.2, and as discussed in Evidence paragraph C.2. above.
- C.8. According to the FEIR, project construction would result in the removal of 0.7 acre of central dune scrub and 2.1 acres of disturbed central dune scrub -- considered potential habitat for legless lizard. Legless lizards at the site are probably silvery, (as USFW species of concern and California species of special concern), intergrades and/or possibly black legless lizards (proposed for federal listing as endangered). This impact can be mitigated to a less-than-significant level by requiring removal of legless lizards and the construction footprint before construction begins, determination of the subspecies, and coordination with the California Department of Fish & Game ("DFG") and the United States Fish & Wildlife Service ("USFWS") concerning several options available for disposition of the captured lizards, as more fully described in the FEIR at pages 5-20 through 5-22.
- C.9. According to the FEIR, construction activities adjacent to the grove of trees in the northern portion of the project site, and laboratory activities in the grove, could disturb nesting raptors. This impact is considered less-than-significant for common raptors species, but is considered significant if a special-status raptor species such as the White-tailed kite were affected. This impact can be mitigated to a less-than-significant level by minimizing disturbance during the breeding and nesting season for the White-tailed Kite, as described in the FEIR at page 5-24.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

7. Transportation and Circulation:

This Board of Supervisors finds that:

FINDINGS:

- D.1. The following impacts of the proposed project will be less-than-significant: (a) demand for new parking facilities; and (b) increased vehicular and truck traffic on the existing roadway facilities during construction of the MLML.
- D.2. The measures recommended in the FEIR to reduce project generated increases to existing traffic volumes on Highway One and the Highway One/Moss Landing Road North and Highway One/Moss Landing Road South - Potrero Road intersections, which are currently operating at unacceptable levels, are adopted. For the reasons stated in the FEIR, these measures will serve to reduce project specific and cumulative traffic impacts, but not to a level of insignificance. This Board of Supervisors therefore finds this impact to be significant and unavoidable. This impact is overridden by project benefits as set forth in the Statement of Overriding Considerations.
- D.3. The FEIR recommendation to require the applicant, in coordination with the Monterey County Department of Public Works, to develop and implement a traffic control plan for the construction site and to minimize the effects of installation of a seawater delivery system on the roadway system are adopted. For the reasons stated in the FEIR, these measures will mitigate the potential alteration of present patterns of circulation and increased hazards to motor vehicles, bicyclists, and pedestrians during installation of the seawater delivery system to a less-than-significant level.

EVIDENCE:

The FEIR discusses transportation and circulation impacts at pages B-49 to B-51, B-55 to B-57, B-73, B-84 to B-85, and B-91 to B-93 of the Response Document, and at pages S-4 to S-6, 6-1 to 6-10, 14-8 to 14-10, Table S-1 (page 6), Table 13-2 (page 2), Table 16-1 (pages 3 to 4, and page 8), and Appendix "A" of the FEIR.

- D.1. For the reasons stated in Chapter 6, the following impacts were determined by the FEIR to be less-than-significant:
- a) Demand for new parking facilities; and
 - b) Increased vehicular and truck traffic on the existing roadway facilities during construction of the MLML.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

D.2. According to the FEIR, installation of the seawater delivery system pipeline in the public right-of-way could result in potential alternation of present patterns of circulation and increased hazards to motor vehicles, bicyclists, and pedestrians, and cause a temporary reduction in roadway level of service. This impact can be mitigated to a less-than-significant level by requiring the applicant to develop and implement a traffic control plan in coordination with Monterey County Department of Public Works. As explained on FEIR at pages 6-9 to 6-10, such plan shall include, but not be limited to, the following:

- a) Coordinating hours of construction and lane closures with the County;
- b) Keeping one lane of traffic open and minimizing closures during peak commuting hours;
- c) Specifying types and locations of traffic control devices;
- d) Maintaining private driveway access to the greatest extent feasible;
- e) Consultation with emergency service providers to expedite and facilitate the passage of emergency vehicles; and
- f) Repairing any damaged roadways to original conditions.

8. Air Quality:

FINDINGS:

E.1. This Board of Supervisors finds that air quality related impacts associated with the proposed project are less-than-significant, but the following FEIR recommendations to further reduce the less-than-significant impact of construction-related emissions on air quality are adopted:

- a) Use electric-powered equipment where practical;
- b) Maintain and operate equipment according to the manufacturer's specifications;
- c) Implement engine timing retard (4°) for diesel-powered equipment or as recommended by the manufacturer, and substitute gasoline-powered for diesel-powered equipment where feasible; and
- d) Apply water, using water trucks or sprinkler systems, in sufficient quantities to prevent airborne dust from leaving the site, increase watering frequency whenever winds exceed 15 mph; and spray all dirt stockpile areas daily.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

The following recommendation is adopted, at the recommendation of the Monterey Bay Unified Air Pollution Control District, to ensure that the project does not exceed the District's PM_{10} threshold:

- e) Excavation and grading shall be limited to two acres per day.

EVIDENCE: The FEIR discusses air quality impacts at pages B-47 to B-48, B-73, and B-85 of the Jones Stokes March, 1997 Responses to Comments on the FEIR ("Response Document") and at pages S-4, 7-5 through 7-7, Table S-1 (page 6), Table 13-2 (page 2), Table 16-1 (page 4) and Appendix "A" of the FEIR.

E.1. For the reasons discussed in Chapter 7, air quality impacts were determined by the FEIR to be less-than-significant. According to the FEIR, the construction of the project would result in the temporary generation of PM_{10} emissions. Because the estimated emissions are below the MBUAPCD's 82-ppd threshold of significance, this impact is considered less-than-significant. Although no mitigation is required, the FEIR recommends construction-period management techniques to further reduce NO_x and PM_{10} emissions. As explained on page 7-7 of the FEIR, the applicant should:

- a) Use electric-powered equipment where practical;
- b) Maintain and operate equipment according to the manufacturer's specifications;
- c) Implement engine timing retard (4°) for diesel-powered equipment or as recommended by the manufacturer, and substitute gasoline-powered for diesel-powered equipment where feasible; and
- d) Apply water, using water trucks or sprinkler systems, in sufficient quantities to prevent airborne dust from leaving the site, increase watering frequency whenever winds exceed 15 mph; and spray all dirt stockpile areas daily.

E.2 Correspondence from Janet Brennan, Monterey Bay Unified Air Pollution Control District dated March 13, 1997

9. Utilities - Water Supply & Delivery, Wastewater Treatment & Disposal:

FINDINGS:

This Board of Supervisors finds that water supply and delivery and wastewater treatment and disposal impacts associated with the proposed project are less-than-significant.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

EVIDENCE:

The FEIR discusses impacts on water supply and delivery and wastewater treatment at pages B-9, B-61 to B-64, B-73, B-85, B-112 to B-115, and B-129 to B-131 of the Jones & Stokes March, 1997 Responses to Comments on the FEIR ("Response Document") and at pages S-4, 8-1 to 8-4, 14-7 to 14-8, Table S-1 (page 7), Table 13-2 (page 2), Table 16-1 (page 4), and Appendix "A" of the FEIR.

For the reasons discussed in Chapter 8, the impacts on water supply and delivery and wastewater treatment on the proposed project were determined by the FEIR to be less-than-significant.

According to the FEIR, a comparison of the old and new laboratory design indicates that water demand at the new laboratory would be slightly lower than at the old laboratory. Because no substantial increase in required water demand will occur, demand for fire protection would not increase significantly, adequate water storage and delivery systems are proposed for the project, water service rates charged to the community would not increase, and water conservation measures are included in the project, this impact is considered to be less-than-significant.

10. Noise:**FINDINGS:**

This Board of Supervisors finds that:

- G.1. For the reasons discussed in Chapter 9, the exposure of noise-sensitive land uses to increased noise from operations of the proposed MLML facility will be less-than-significant. Implementation of the noise-reducing measures included in the facility design, and more fully described at FEIR page 9-5, are sufficient to reduce noise transmissions from the project to nearby noise-sensitive land uses.
- G.2. The FEIR recommendation to limit construction activity to weekdays between 8:00 a.m. and 5:00 p.m., and for incorporation of noise reducing construction practices, are adopted. For the reasons stated in the FEIR, this measure will mitigate the increased potential for temporary construction-related noise to a less-than-significant level.

EVIDENCE:

The FEIR discusses noise impacts at pages B-77, B-88, B-140, and B-143 of the Jones & Stokes March, 1997 Responses to Comments on the FEIR ("Response Document") and at S-4 to S-6, 9-1 to 9-6, Table S-1 (page 7), Table 13-2 (page 3), Table 16-1 (page 4), and Appendix "A" of the FEIR.

- G.1. According to the FEIR, the noise-reducing measures that are included in the project design are sufficient to reduce noise transmissions from the project to nearby noise-sensitive land uses. These features include excavating the site so that the facility and parking lot are below grade, using vegetation to shield sensitive land uses, enclosing the workshop, and enclosing noise-generating equipment, machinery, and pumps in structures sufficient to prevent noise levels exceeding 60 dBA at the nearest residence.
- G.2. According to the FEIR, the project could result in short-term noise from excavation and grading, erection of structures, construction of access roads, and construction of the seawater delivery system. Such impacts can be mitigated to a less-than-significant level by:
- a) Limiting construction activity to weekdays between 8:00 a.m. and 5:00 p.m.; and,
 - b) Limiting access from Laguna Place to that required for installing utilities and constructing the secondary access road;
 - c) Requiring the contractor to employ the quietest among alternative equipment or to muffle or control noise from available equipment;
 - d) Requiring the contractor to perform noise-generating operations (e.g., mixing concrete) offsite or on portions of the site distant from neighboring noise-sensitive land uses.

11. Hazards and Human Health:

FINDINGS:

This Board of Supervisors finds that human health and hazardous materials related impacts associated with the proposed project are less-than-significant.

EVIDENCE:

The EIR discusses the potential effects on human health and hazardous materials related impacts on pages B-39 to B-40, B-77, B-88, and B-181 to B-182 of the Jones & Stokes March, 1997 Responses to Comments on the FEIR ("Response Document") and at pages S-4, 10-1 to 10-6, Table S-1 (page 7), Table 13-2 (page 3), Table 16-1 (page 4), and Appendix "A" of the FEIR.

For the reasons stated in Chapter 10, the following impacts were determined by the FEIR to be less-than significant: (a) potential health hazard or explosion in the event of an accident or through use, production, or storage of hazardous materials; and (b) exposure of the public to hazardous materials from previous site uses.

12. Aesthetics:

FINDING:

This Board of Supervisors finds that:

- I.1. The following impacts of the proposed project will be less-than-significant:
 - a. Changes in the viewshed from Dolan Road;
 - b. Changes in the viewshed from the Salinas River State Beach;
 - c. Changes in the viewshed from the Moss Landing Heights Subdivision; and
 - d. Creation of a ridgeline silhouette.
- I.2. The FEIR recommendation for the development and implementation of an exterior lighting plan to reduce the impact of exterior lighting into the Highway One viewshed to a less-than-significant level is adopted. For the reasons stated in the FEIR, this measure will mitigate the impact of a new source of nighttime lighting into the Highway One viewshed to a less-than-significant level.

EVIDENCE: The FEIR discusses viewshed impacts at pages B-115 and B-131 of the Jones & Stokes, March, 1997 Responses to Comments on the FEIR ("Response Document") and at pages S-4, S-6, 11-1 to 11-16, Table S-1 (page 7 to 8), Table 13-2 (page 3), Table 16-1 (page 5) and Appendix "A" of the FEIR.

- I.1. For the reasons stated in Chapter 11, the following impacts were determined by the FEIR to be less-than-significant: (a) changes in the viewshed from Dolan Road; (b) changes in the viewshed from the Salinas River State Beach; (c) changes in the viewshed from Moss Landing Heights; and (d) creation of a ridgeline silhouette.
- I.2. According to the FEIR, the project would introduce a new source of nighttime lighting into the Highway One viewshed, potentially altering the visual character of Highway One. This impact can be mitigated to a less-than-significant level by:
 - a) Developing and implementing an exterior lighting plan. As explained on pages 11-12 to 11-13 of the FEIR, the plan should identify the location and orientation of all proposed exterior lighting, exterior lighting should be limited to the minimum amount necessary for safe operation and nighttime security, proposed

exterior lighting should be oriented downward to avoid contributing unnecessary light and glare to the surrounding area, hours of lighting should be restricted to those during normal seasonal hours of darkness and provisions such as timers should be included in the plan in the event that faculty or students remain after dark.

13. Historical and Archaeological Resources:

FINDINGS:

This Board of Supervisors finds that:

- J.1. The FEIR recommendation to implement the existing Memorandum of Agreement ("MOA"), including the mitigation measures contained therein, is adopted. For the reasons stated in the FEIR, these measures will mitigate the impact of disturbance to significant cultural resources to a less-than-significant level.

FEMA entered into a Memorandum of Agreement ("MOA") with ACHP and SHPO, as required by the Section 106 process and in accordance with input from all participating interested parties, particularly Native Americans having Coastanoan and Ohlone heritage.

EVIDENCE: The FEIR discusses historical and archaeological resources impacts at pages B-10 to B-12, B-23 to B-31, B-74 to B-75, B-86 to B-87, B-97, B-102 to B-103, B-120 to B-121, B-136, B-138, B-139, B-142, B-145 to B-150, B-157 to B-160, B-184, and B-194 to B-195 of the Response Document, and at pages S-6 to S-7, 2-4, 3-3, 3-10 to 3-12, 12-1 to 12-6, Table S-1 (page 8), Table 13-2 (page 4), Table 16-1(pages 5 to 8), and Appendices "A" and "E" of the FEIR.

- J.1. In 1993, FEMA initiated consultation with the State Historic Preservation Officer ("SHPO"), the Advisory Council on Historic Preservation ("ACHP"), and other interested parties pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act ("NHPA"), 16 U.S.C. 470f, regarding the effects of the proposed project on potentially eligible historic properties. It was determined that significant cultural resources would be potentially affected if the MLML replacement was constructed at the Peterson Trust parcel. FEMA prepared an Environmental Assessment ("EA") identifying a preferable alternative to the proposed undertaking, known as the "Federally Enhanced Alternative". A determination of effect was prepared for the Federal Enhanced Alternative and, in 1994, the SHPO confirmed that the relocation of the MLML to the Peterson Trust parcel would not result in an adverse impact on a significant cultural resource under federal regulations 4 Section 106. The FEIR also considers this impact significant under CEQA.

1-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

FEMA entered into a Memorandum of Agreement ("MOA") with ACHP and SHPO, as required by the Section 106 process and in accordance with input from all participating interested parties, particularly Native Americans having cultural ties to the area designated by the Native American Heritage Commission ("NAHC") as Ohlone/Costanoan (Appendix "E" of the FEIR). The MOA contains mitigation measures, many of which were initially developed by Monterey County for the 1993 permit.

According to the FEIR, the project could result in disturbance to significant cultural resources. Impacts on cultural resources will be reduced to a less-than-significant level under CEQA by implementation of the MOA stipulations more fully described on pages 12-3 to 12-6 of the FEIR, and in Appendix E thereto.

14. Alternatives:

A. INTRODUCTION:

The FEIR discusses project alternatives at pages B-10, B-12, B-33 to B-36, B-68 to B-69, B-72, B-75 to B-78, B-80, B-84, B-87 to B-89, B-97, B-104 to B-111, B-122 to B-129, B-139, B-141, B-155 to B-162, B-165 to B-167, B-185 to B-187, B-208, and B-226 of the Response Document, and at pages S-2, 13-1 to 13-9, Table 13-2 and Figure 13-1 of the FEIR.

As described in the FEIR at pages 13-4 to 13-5, after the Loma Prieta Earthquake destroyed the original MLML facility, CSU studied the feasibility of rebuilding at its original location. FEMA indicated that it would not provide funding for rebuilding at the original location, primarily because of seismic hazards. To determine feasible areas in which to relocate the laboratories, an extensive analysis of Moss Landing area was performed by CSU in conjunction with state and federal agencies. Approximately twenty (20) sites were examined, from which eleven (11) were selected for review by FEMA in its EA; seven (7) of these were chosen for detailed analysis.

The FEIR developed primary and secondary screening criteria for the MLML project alternatives. The primary screening criteria are two-fold:

- Criterion 1 - The alternative must reduce or avoid significant impacts of the proposed project; and
- Criterion 2 - The alternative must be accomplished within a reasonable period, and the site must be conducive to research and contain an area of sufficient size to provide, at one location, the primary functional needs of the research and education programs of MLML, including research laboratories, classrooms, offices, support space, parking, a corporation yard, the ability to support a full student enrollment (recent average of 145 students), a public education

program, compliance with all fire protection and safety codes, sewer and water connections, and zoning.

The secondary criteria describe features of the alternatives that CSU identified as highly desirable project objectives, but which the FEIR did not consider critical to the basic purposes of the laboratory, as more fully detailed at FEIR page 13-5.

The FEIR screening methodology requires an alternative to meet both primary screening criteria 1 and 2, and two of the three secondary screening criteria, in order to be further considered in the FEIR evaluation.

Through application of the screening criteria for feasibility, the following alternatives were eliminated from further evaluation in the FEIR.

1. Proposed project site with an alternative site plan - fails to meet screening criteria 1 (would have greater impacts on all resources evaluated in the FEIR and diminish the area available for habitat restoration and enhancement.)
2. Elkhorn Slough Foundation site (formerly designated as the "Rubis Site" in the Federal EA) - fails to meet screening criteria 1 and 2 (would have greater impacts on wetlands, higher flooding and liquefaction potential, greater visual impacts, and similar traffic impacts on Highway One, and could not be developed in a reasonable amount of time because it is not available for acquisition and private restrictions preclude its development.)
3. Potrero Site - fails to meet screening criteria 1 and 2 (is located out of the urban service line for Moss Landing and is designated for agricultural use, and could not be developed in a reasonable amount of time because of costs and location; development of the site would result in a conversion of agricultural land, which conflicts with Local Coastal Plan policies and the Monterey County General Plan.)
4. Current MLML location in Salinas in conjunction with other vacant sites in Salinas - fails to meet screening criteria 2, 3, 4, and 5 (current location does not contain sufficient space to allow operations at one location, is not close to a variety of estuarine and marine habitats, and would not have access to seawater or a deep water harbor.)
5. The former Fort Ord Military Base - fails to meet screening criteria 2, 3, 4, and 5 (coastal lands at former Fort Ord will not be available for several years while lead removal on the dunes is completed; the land is already obligated for transfer to the California Department of Parks and Recreation; former Fort Ord is distant from estuarine habitats and a deep water harbor; and a seawater delivery system would be infeasible in light of permitting requirements and distance from the ocean.)

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

6. Sand City - fails to meet screening criteria 3 and 5 (Sand City does not have the variety of coastal and estuarine habitats or a deep water harbor.)
7. Former MLML site - fails to meet screening criteria 2 (FEMA will not provide funding for reconstruction at this site and the time and uncertainty of alternative funding renders the site infeasible; the site has been transferred to the California Department of Parks and Recreation under an agreement for joint dune restoration efforts between MLML and CDPR; and other unresolved issues surrounding this alternative include geotechnical and flooding issues and aesthetic impacts.)
8. Santa Cruz Coastal Marine Research Center - fails to meet screening criteria 2 (cannot be achieved in a reasonable amount of time because the alternative is outside of the territorial jurisdiction of the lead agency), Criteria 3 (it is not located near numerous estuarine and marine habitat types), and Criteria 5 (it does not have a sufficiently deep water port to accommodate MLML's research vessel fleet and there are no small boat operation facilities)

B. FINDINGS:

The FEIR evaluates seven (7) project alternatives, including the proposed project and the no-project alternative. A comparison of the alternatives appears at Table 13-2 of the FEIR.

1. The Harbor District site is a 2.5 acre parcel located in central Moss Landing, west of Highway One (see FEIR Figure 13-1). Compared with the proposed project, this alternative would result in lesser impacts associated with slope stability, erosion from stormwater discharge, biological resources, sensitive species, and adjacent noise-sensitive land uses. This alternative would avoid impacts on known archaeological resources. This Board of Supervisors finds this alternative infeasible and less desirable than the proposed project and rejects this alternative for the following reasons:
 - a. This alternative would result in greater seismic and liquefaction impacts. The alternative has higher amounts of corrosion and shrink and swell soils and contains non-engineered fill, which conditions have potentially significant impacts on construction.
 - b. The entire site is subject to flooding from storms, dam failures and tsunamis. Flooding and drainage impacts would be greater than those of the proposed project and would be significant, requiring substantial mitigation.
 - c. The alternative would result in similar but slightly greater transportation and circulation impacts due to its location at a busy intersection.

- d. The alternative would result in similar air quality and utility service demand impacts to those of the proposed project.
 - e. The location of this alternative to the PG&E power plant and the harbor district announcement speaker system renders it non-conductive to study and research.
 - f. This alternative could result in hazards and human health impacts potentially greater than those of the proposed project.
 - g. This alternative would result in a viewshed impact, because the MLML facility would be located on open space in Moss Landing and could affect views of the harbor.
2. The 7.9 acre Moss Landing/Investment Garner site is located at the north end of the "Island", adjacent to the harbor's entrance channel. Compared with the proposed project, this alternative would result in lesser impacts associated with slope stability, erosion from stormwater discharge, and project-generated noise impacts. This alternative would avoid impacts on known archaeological resources. This Board of Supervisors finds that this alternative is infeasible and less desirable than the proposed project and rejects this alternative for the following reasons:
- a. Compared with the proposed project, this alternative would result in substantially greater seismic impacts and greater liquefaction impacts.
 - b. The entire site is subject to flooding from storms, dam failures and tsunamis. Flooding and drainage impacts would be significant, and require substantial mitigation.
 - c. This alternative would result in impacts on biological resources, including natural dune habitat and possibly listed species. In order to determine whether mitigation measures could successfully reduce these species impacts to a less-than-significant level, specific surveys would be required for the Globose dune beetle, Sand gilia, legless lizards, Monterey spineflower, wallflower, butterflies and others, which have not yet been performed.
 - d. This alternative would result in greater transportation and circulation impacts. It could affect Sandholt Road, because of the limited capacity of the bridge, and the spit would have significantly greater congestion.
 - e. This alternative would result in air quality and utility service demand impacts similar to those of the proposed project.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

- f. This alternative would result in severe construction-related impacts because the site would likely require pilings to be driven into the unstable soils and high-flood area. Pile driving typically creates greater noise disturbances than more commonly used construction methods. Furthermore, exposure to existing noise sources exceeds standards conducive to study and research, an impact which is unavoidable.
 - g. This alternative could result in hazards and human health impacts potentially greater than those of the proposed project.
 - h. This alternative would require the removal of debris at the marine salvage yard in the Garner portion of the project site yet to be replaced by large intrusive buildings. Views of the ocean could be adversely affected from the Highway One bridge at Elkhorn Slough, as demonstrated by impacts of the construction on the spit.
 - i. This project is not an allowable use under, and therefore inconsistent with, the current zoning and planning designation.
3. Western Salt I Site. The approximately 8 acre Western Salt I site is located northwest of central Moss Landing, at the southwest corner of the Highway One/Jetty Road intersection (see FEIR Figure 13-1). Compared with the proposed project, this alternative would result in lesser impacts associated with slope stability, and erosion from stormwater discharge. This alternative would avoid impacts on known archaeological resources. This Board of Supervisors finds that this alternative is infeasible and less desirable than the proposed project and rejects this alternative for the following reasons:
- a. Compared with the proposed project, this alternative would result in greater seismic and liquefaction impacts. In addition, the site has higher amounts of corrosion and shrink and swell soils, and contains non-engineered fill, which conditions have potentially significant impacts on construction.
 - b. The entire site is subject to flooding from storms, dam failures and tsunamis.
 - c. This alternative would result in the loss of annual grasslands, willow scrub, coyote brush scrub and salt marsh. Loss of salt marsh would occur by filling the wetlands and would require an Army Corps of Engineers' Section 404 permit. This alternative would result in the loss of Monterey spineflower and its habitat, but offers no on-site acreage for restoration.
 - d. This alternative would result in greater transportation and circulation impacts than those of the proposed project from the use of Jetty Road and the Highway One/Jetty Road intersection, and from repeated travel across Highway One

between the site and ship operation facilities. This alternative would result in the need for a Highway One left-turn lane.

- e. This alternative would result in air quality and utility service demand impacts similar to those of the proposed project.
 - f. This alternative would result in severe construction-related impacts because the site would likely require pilings to be driven into the unstable soils and high-flood area. Pile driving typically creates greater noise disturbances than more commonly used construction methods. Due to the project location next to Highway One, exposure to traffic noise levels that exceed standards for lecture, study and research would be a significant impact.
 - g. This alternative would not result in a significant hazards and human health impact.
 - h. This alternative would result in impacts on views from Highway One. This project may create an unavoidable impact on views from Moss Landing State Beach and affect views of the oceans and dunes from Highway One.
 - i. This project is not an allowable use under, and is therefore inconsistent with, the zoning and planning designation.
4. The approximately 7.5 acre Western Salt II site is located northwest of central Moss Landing, immediately west of Highway One and immediately north of the Elkhorn Slough bridge (see FEIR Figure 13-1). Compared with the proposed project, this alternative would result in lesser impacts associated with slope stability and erosion from stormwater discharge and plant and animal life. This alternative would avoid impacts on known archaeological resources. This Board of Supervisors finds that this alternative is infeasible and less desirable than the proposed project and rejects this alternative for the following reasons:
- a. Compared with the proposed project, this alternative would result in greater seismic and liquefaction impacts. The alternative has higher amounts of corrosive and shrink and swell soils, and contains non-engineered fill, which conditions have potentially significant impacts on construction.
 - b. The alternative may result in greater flooding impacts because a portion of this site is in the 100-year floodplain. The entire site is subject to flooding from storms, dam failures, and tsunamis. The site may require the building of a revetment to prevent erosion of the property by substantially higher tidal current.
 - c. If the site is selected, an Army Corps of Engineers' Section 404 Wetlands Delineation would need to be conducted, and the potential impacts on wetlands would need to be mitigated. The impact of a revetment retaining wall on the sensitive mud flats would be potentially significant.

A-3-MC-97-042
CALIFORNIA COASTAL COMMISSION

- d. This alternative would result in greater transportation and circulation impacts than those of the proposed project from the use of Jetty Road and the Highway One/Jetty Road intersection and from repeated travel across Highway One between the site and ship operation facilities. This alternative could result in the need to increase the length of the left-turn lane onto Highway One.
 - e. This alternative would result in air quality and utility service demand impacts similar to those of the proposed project.
 - f. This alternative would likely result in increased construction-related noise, because the site would likely require pilings to be driven into the unstable soils and high-flood area. Pile driving typically creates greater noise disturbances than more commonly used construction methods. Impacts from exposure to noise from Highway One and the PG&E power plant may exceeds standards for lecture, study and research and could be significant.
 - g. This alternative would not result in a significant hazards and human health impact.
 - h. This alternative would result in impacts on views from Highway One. This project may create an unavoidable impact on views from Moss Landing State Beach and affect views of the oceans and dunes from Highway One.
 - i. This site could be potentially sensitive for archaeological resources. Human remains were unearthed during highway construction on the south side of Highway One and Elkhorn Slough.
 - j. The project is not an allowable use under, and is therefore inconsistent with, the zoning and planning designation for this site.
5. The reconfigured on-site alternative involves relocating the laboratory complex and parking lot to further avoid the archaeological resources on site. The laboratory complex would be located to the south, and closer to Moss Landing Heights, and the parking lot would be located at the water tower location. This alternative would result in less severe impacts associated with views of the facility from Highway One and Moss Landing Road, and would avoid construction on known archaeological resources. This Board of Supervisors finds that this alternative is infeasible and less desirable than the proposed project and rejects this alternative for the following reasons:
- a. This alternative would result in impacts similar to those of the proposed project for slope stability, seismicity and erosion, but greater impacts associated with liquefaction. Corrosion and shrink and swell soil impact potential may be greater than the proposed project, because this alternative places a greater percentage of facilities on Alviso soils.

- b. This alternative may result in greater flooding impacts than the proposed project, because a portion of the site is in the 100-year floodplain.
 - c. This alternative would result in a greater loss of native central dune scrub habitats supporting sensitive species than the proposed project. It would also result in greater impacts on Sand gilia and Monterey spineflower, because there would be less central dune scrub acreage. Impacts on special-status wildlife species would be increased, including those on legless lizards, because more native dune scrub would be affected.
 - d. This alternative would result in the same or similar impacts as the proposed project related to transportation and circulation, air quality, utility service demands, hazards and human health, and noise; however, construction and operation noise would be closer to and could result in greater impacts on the Moss Landing Heights Subdivision.
6. Under the No-Action Alternative, no new MLML facilities would be constructed on the Peterson Trust parcel. This alternative would preserve existing conditions on the proposed project site, and no land use approvals would be adopted by the Monterey County Board of Supervisors. The current operations of the MLML would continue in two separate communities: Moss Landing and Salinas. The current Moss Landing site uses mobile units for classrooms and research facilities, has access to seawater, and all diving and ship operations. The Salinas site has classrooms, offices, administration areas, and limited research areas. This alternative would not increase potential impacts associated with transportation and circulation, air quality, utility service demands, noise levels, or historical and archaeological resources. This Board of Supervisors finds that this alternative is infeasible and less desirable than the proposed project and rejects this alternative for the following reasons:
- a. This alternative would result in the continued use of mobile units, and these temporary facilities are not constructed to meet earthquake standards, exposing students, faculty and visitors to seismic hazards and flooding risks.
 - b. This alternative would result in the continued use of mobile units, which are not in compliance with the Monterey County Floodplain Ordinance. Exposure of students, faculty and visitors to flooding from storms, dam failures and tsunamis would be a significant impact.
 - c. This alternative would not result in the restoration and enhancement of sensitive species habitats or an increase in their populations. This alternative would also forego the opportunity to preserve approximately 16.1 acres of open space on the project site without cost to Monterey County. This alternative would forego the

opportunity to create public educational opportunities at the project site without cost to Monterey County.

- d. This alternative would forego the opportunity to replace the existing water tower, putting the Moss Landing community at risk of losing water service in a seismic event, because the tower does not meet current seismic safety standards.
- e. This alternative would forego the opportunity to provide the public access to view from the Peterson site.
- 7. The Proposed Project, described more fully in the FEIR at pages S-1 through S-7, Table S-1, and Chapter 2, is designated by the FEIR and adopted by this Board of Supervisors as the environmentally superior alternative. Although the other alternatives examined reduce or avoid one or more significant impacts of the proposed project, these alternatives would result in other, more severe environmental impacts or a greater number of environmental impacts than the proposed project. All the other alternatives which would reduce or avoid one or more impacts of the proposed project, would have greater impacts overall. The proposed project would not result in any significant water supply or groundwater impacts. Nor would the proposed project result in a significant hazard to human health or the potential for exposure of the public to hazardous materials from previous uses of the site. The site has less risk of earthquake and flood than the previous location or any of the alternatives evaluated. The proposed project would also result in the removal of water tower and the mobile units on the spit, which would be aesthetically beneficial to the Moss Landing community. The proposed project would also provide access for visitors and the public to the viewshed. Lastly, the project is consistent with the current zoning and planning designations, and would remove the mobile units which are not in compliance with the Monterey County Floodplain Ordinance, thereby reducing hazards associated with their use.
 - a. Although this alternative would result in temporary construction-related erosion impacts, erosion resulting from the discharge of stormwater, the potential for the exposure of people or structures to damage from slope failure, and the potential of injury to people and structures attributable to seismic activity, these impacts would be reduced to a less-than-significant level with the implementation of mitigation measures.
 - b. Without mitigation, the proposed project would result in the loss and disturbance of central dune scrub, loss of seven large introduced trees, and loss of annual/ruderal habitats. The project would further result in the loss of Sand gilia and Monterey spineflower individuals, and the loss of habitat for legless lizards and possibly California horned lizards. The project may also result in the loss of raptor foraging habitat and loss of potential raptor nesting locations. However, with proper restoration mitigations successfully implemented, this project would

result in a net increase of sensitive species habitat, including salt marsh wetlands and central coast dune scrub. Sensitive species population would be increased, and native forest would be returned to the site.

- c. This project would result in a significant unavoidable impact due to an increase in traffic volumes at the Highway One/Moss Landing Road North and Highway One/Moss Landing Road South - Potrero Road intersections. Although the proposed project would result in the temporary alteration of present patterns of circulation and increased hazards to motor vehicles, bicyclists and pedestrians during the installation of the seawater delivery system, and in increased demand for new parking, these impacts are found to be less-than-significant.
- d. This alternative would result in temporary construction related emissions of PM10 and a minor increase in water and sewer service demand, which impacts are common to all of the other alternatives, except the No-Project Alternatives.
- e. This alternative would result in construction-related impacts that can be reduced to a less-than-significant level through implementation of typical construction noise mitigation measures. Because neighboring residences are distant from the project and screened by the building configuration, noise would not impact adjacent land uses significantly.
- f. The proposed parking lot and facility lighting could alter the night-time character of the view of the project site from Moss Landing Road and Highway One, but these impacts would be reduced to a less-than-significant level with implementation of a mitigation measure to develop and implement an exterior lighting plan.
- g. This alternative would result in construction above a known archaeological resource (a prehistoric village) at the proposed site, but this impact would be reduced to a less-than-significant level with the implementation of the mitigation measures contained in the project design and the MOA.

STATEMENT OF OVERRIDING CONSIDERATION FINDING

15. FINDING:

This Board of Supervisors adopts and make this statement of overriding considerations concerning the project's unavoidable significant impacts to explain why the project's benefits override and outweigh its unavoidable impacts. This project will bring substantial benefits to the County of Monterey, including enhancement and restoration activities resulting in a net increase of sensitive species habitat and sensitive species without cost to Monterey County; preservation of substantial open space without cost to Monterey County; restoration, enhancement and preservation of wetlands habitat without cost to Monterey County; creation of public educational opportunities and facilities on the project site and

increased public access to those facilities without cost to Monterey County; and assurance of jobs and local tax revenues through development of the project site under a carefully coordinated planning process that will minimize environmental impacts, in accordance with General Plan and Local Coastal Program goals and policies.

This Board of Supervisors finds that the project's unavoidable cumulative impacts associated with transportation and circulation, and all other impacts identified by this Commission and/or the FEIR, are acceptable in light of the project's benefits. Each benefit set forth below constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite the significant impact identified herein, whether unavoidable or mitigable to a less-than-significant level.

A. Benefits Unique to the Proposed Project:

1. Increased capacity and reliability of the Moss Landing municipal water system;
2. Enhanced views of the coast from the project site;
3. Enhancement and restoration activities resulting in a net increase of sensitive species habitat and sensitive species without cost to Monterey County;
4. Preservation of substantial open space without cost to Monterey County;
5. Restoration, enhancement and preservation of wetlands habitat without cost to Monterey County;
6. Creation of public educational opportunities and facilities on the project site and increased public access to those facilities without cost to Monterey County;
7. Preservation and protection of and education concerning historical, archaeological and cultural resources; and
8. Assurance of jobs and local revenues through development of the project site under a carefully coordinated planning process that will minimize environmental impacts, in accordance with the Monterey County General Plan, Moss Landing Community Plan and Local Coastal Program goals and policies.

B. Benefits Attributable to MLML and Its Function:

1. Continuation of MLML's stewardship over Monterey Bay habitats, recognizing its critical role in developing the Monterey Bay National Marine Sanctuary, protection of Elkhorn Slough, and wetland restoration and protection throughout the Salinas Valley and Monterey Bay regions;

2. Continuation of MLML as a preferred coastal dependent use in accordance with the California Coastal Act and the Local Coastal Program;
3. Continuation of MLML's function as a resource to other entities and institutions such as MBARI, CSUMB, California Department of Fish & Game, Sea Grant, Monterey Bay National Marine Sanctuary, Boy Scouts, California Coastal Commission, Association of Monterey Bay Area Governments, MBNMS Advisory Committee, Elkhorn Slough Foundation, and many others, including the provision of laboratories, library facilities and classrooms to serve these entities, groups and institutions;
4. Recognition that MLML was a pre-existing element of the Moss Landing community damaged in the 1989 Loma Prieta Earthquake, which resulted in a national disaster declaration providing for special considerations to be given to disaster victims;
5. Continuation for the many graduates of MLML who will live and work in Monterey County and make contributions to the community;
6. Continuation of MLML's contributions to science furthering the understanding of wide ranging problems such as global warming, El Niño, protection and creation of fisheries, medical developments and ecological understanding.

EVIDENCE: FEIR and Planning Commission File No. PC95097.

EIR CERTIFICATION FINDINGS

16. FINDING: The Board of Supervisors certifies that the Final EIR prepared for the project has been completed in compliance with the California Environmental Quality Act.
EVIDENCE: 1) Materials contained in EIR file no. 96-01 and planning file No. PC95097.
2) Volumes I and II Monterey County Final EIR No. 96-01, March, 1997.
17. FINDING: The Final EIR was reviewed by the Board of Supervisors and the information contained therein was considered prior to approving the project and reflects the Board's independent judgement.
EVIDENCE: 1) Materials contained in EIR file no. 96-01 and planning file No. PC95097.
2) Volumes I and II Monterey County Final EIR No. 96-01, March, 1997.
3) Public hearing conducted by the Board of Supervisors on May 6, 1997.

A-3-MCO-97-042
CENTRAL COASTAL COMMISSION
EXHIBIT 9

COASTAL DEVELOPMENT PERMIT (MARINE LABORATORY) FINDINGS

18. **FINDING:** The site of the proposed marine laboratory, and infrastructure is physically suitable for the type of development proposed.
- EVIDENCE:**
- 1) The on-site inspection of the parcel by the project planner and members of the Planning Commission at a publicly noticed field trip on March 19, 1997.
 - 2) Maps and application contained in PC File No. PC 95097.
 - 3) Geological/Geotechnical Report prepared by Rutherford and Chekene Corp. dated October 1995, which states the project site is buildable.
 - 4) Hydrology report prepared by ABA Consultants and Haro, Kasunich and Associates dated October, 1995.
 - 5) Biological report prepared by ABA Consultants dated October, 1995.
 - 6) Federal Environmental Assessment prepared for FEMA by LSA dated May, 1995.
 - 7) Volumes I and II, Monterey County Final EIR No. 96-01, March, 1997, which provides an independent review of documents listed in items 3-5 above.
19. **FINDING:** The proposed project is consistent with policies of the Local Coastal Program dealing with development in hazardous areas. The site is located in a hazardous geologic zone and a geologic/geotechnical report has been prepared for the site by Rutherford and Chekene dated October, 1995, consistent with "Guidelines for Geologic/Seismic Reports" of the California Divisions of Mines and Geology.

Although the field investigation and slope stability analysis by the above firm indicates that the existing slopes are marginally stable, the potential for slope movement can be reduced to acceptable levels by use of appropriate engineering solutions during the proposed development. The report states that the soil and foundation conditions at the proposed site are suitable for the proposed development. The Rutherford and Chekene report further states that although strong ground shaking should be expected at the site during a major earthquake, no faults are known or projected to traverse the site, thus, the possibility of ground rupture is considered to be negligible. The report concludes that the proposed project can proceed with mitigation measures which are contained therein.

According to the above referenced geological/ geotechnical report, the tsunami hazard potential is negligible due to the protection

variation. Affected structures shall be designed to withstand the effects of shrinking and swelling of soils. The final report shall be consistent with regional, local, and community goals and policies and shall confirm that the recommended engineering practices would reduce the potential for structural failure from the shrinking and swelling of expansive soils to a less-than-significant level. Remedial measures recommended to reduce this impact to a less-than-significant level shall be designed to not adversely affect cultural, visual, and biological resources.

Said report shall be submitted to the Monterey County Planning and Building Inspection Department prior to commencement of construction of the boardwalk over the wetlands. (Planning and Building Inspection - Mit. A6)

10. Prior to commencement of construction of the laboratory, a drainage and grading plan shall be prepared by a registered civil engineer addressing the routing of stormwater runoff. The final drainage and grading plans shall include the following best management practices at the site to prevent erosion from runoff:
 - The emergency access road shall be constructed of a porous paving material, such as Geoblock, that allows vegetation to grow through interstices in the hard paving surface. The resulting surface shall be rough and porous and allow infiltration rates almost equal to those of the native soils.
 - A portion of the parking area (approximately 25,750 square feet) shall be paved with gravel or crushed aggregate, which has a rough surface that retards runoff and is permeable enough to allow some infiltration.
 - The driveway, access and handicapped parking areas (approximately 27,200 square feet) will be paved. The lower edges of the aisles in the paved parking area shall have curbs and drains to convey parking lot runoff to four buried, gravel-filled infiltration chambers along the lower edge of the parking lot. The chambers shall be large enough to allow all excess runoff to percolate, even during periods of intense rainfall.
 - The paved roadway along the upper edge of the parking lot shall also drain toward the parking lot, and runoff shall infiltrate through the parking lot surface or the infiltration chambers.
 - Runoff from the roof of the main building shall be conveyed through a buried perforated pipe from the rainspouts to two locations along the edge of the wetland at the toe of the western slope of the hill. Any runoff that does not infiltrate from the pipe shall be discharged into the wetland. A cobble energy dissipator shall be placed at the end of the perforated pipe to prevent localized scouring around the discharge point.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

- Runoff from the service entrance driveway shall also be routed through gutters and drains to the perforated pipes and down the western slope of the hill.
- Runoff from the driveway shall be collected in drains (using gutters, if necessary) and conveyed through a perforated drain pipe to the existing drainage ditch along the west side of Moss Landing Road. The perforated pipe shall allow some of the runoff to infiltrate into the soil.

Final plans shall be submitted to the Monterey County Planning and Building Inspection Department, Water Resources Agency, and Public Works Department to confirm condition compliance prior to commencement of construction of the laboratory. Final plans shall also address runoff from the water tank parcel. (Water Resources Agency/Public Works/Planning and Building - Mit. B1)

11. Verification that drainage facilities have been constructed in accordance with approved plans shall be provided to the County Water Resources Agency by a State of California qualified engineer. (Water Resources Agency)
12. Owner shall record a notice stating that the property is located within or partially within a floodplain and may be subject to building and/or land use restrictions. A copy of the recorded notice shall be provided to the County Water Resources Agency, prior to construction of the laboratory. (Water Resources Agency)
13. A landscape plan is required. At least three weeks prior to occupancy, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for verification that the plan meets the following requirements. The landscaping plan shall be consistent with the biological report, upland restoration plan, forest management plan submitted with the application, as well as berming methods as outlined in the Aesthetics section of the Final EIR. The landscaping plan shall be in sufficient detail to identify the location, specie, and size of the proposed landscaping materials. Landscaping shall be initiated before occupancy. Landscaping shall be completed within one year. (Planning and Building Inspection - Mfirs. C1, C2, C3)
14. The applicant shall enhance and/or restore to dune habitat, the approximately 4.2 acres of central dune scrub on the hilltop and slopes south of the building site, 3 acres on the west and north slopes of the hill, and 2 acres around buildings and parking areas. All restoration and/or enhancement shall take place in accordance with the Upland Restoration Plan prepared by ABA Consultants October, 1995.

The applicant shall provide the County Planning and Building Inspection Department with annual monitoring reports prepared by a qualified dune scientist. The reports shall contain transect data accompanied by a narrative description of the

4-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION

changes in the site and the progress of the restoration. The reports shall also include an assessment based on the restoration goals. If the monitoring program indicates that the project goals as listed in the plan are not being met, then the report shall include further steps that should be taken to help further guide the restoration efforts.

The annual monitoring reports shall be submitted to the County Planning and Building Inspection Department for a period of five years due on October 1 of each year. The first annual monitoring report is due prior to occupancy of the laboratory. (Planning and Building Inspection - Mit. C1)

15. Prior to occupancy of the laboratory, the applicant shall demonstrate that access within the dune restoration areas has been restricted and controlled to protect habitat. The designation of walkways, trails, and boardwalks, and erecting interpretive and directional signs shall be in place for a period of five years during which monitoring is to occur, and shall be implemented in accordance with FEIR Chapter 16 and Mitigation C4. (Planning and Building Inspection - Mit. C4)
16. Prior to occupancy of the laboratory, a scenic easement shall be recorded over those areas of the parcel where the slope exceeds 25%, as well as the approximately 4.2 acres of central dune scrub on the hilltops and slopes south of the building site, 3 acres on the west and north slopes of the hill, and 2 acres around building and parking areas. (Planning and Building Inspection - - Mit. C1)
17. That the approximately 7.37 acres of salt marsh, including a 100 foot buffer, be formally dedicated by the current owner to Creative Environmental Consultants, or any other non-profit group deemed appropriate by the County to manage the parcel. The property transfer shall take place prior to occupancy of the laboratory. (Planning and Building Inspection - MitC2)
18. The applicant shall implement the wetland enhancement plan prepared by ABA Consultants dated October, 1995. (Planning and Building Inspection - Mit. C2)
19. That the applicants submit evidence of agreements with a qualified biological monitors to remain on site during construction activities to ensure that sand gilia colonies are disturbed as little as possible. The agreements shall be subject to the approval of the California Department of Fish and Game and the United States Fish and Wildlife Service. (Planning and Building Inspection - Mit. - C5)
20. That the applicants submit evidence of agreements with a qualified biological monitor(s) to remain on site during construction activities to ensure that Monterey spineflower plants are disturbed as little as possible. The agreements shall be subject to the approval of the California Department of Fish and Game and the

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 9

United States Fish and Wildlife Service. (Planning and Building Inspection - Mit. - C6)

21. Prior to any commencement of construction of the laboratory or issuance of building permits for the water tanks, construction zones shall be delineated using signage, ropes and fencing. The location and method of construction zone delineations shall be subject to approval of a qualified biological monitor and provide adequate protection of Monterey spineflower and sand gilia communities. No activity not permitted in approved plans shall take place outside of the construction zones. Activities prohibited include disposing of construction materials, vehicle access and parking, as well as disposal of construction materials such as chemicals, paints, solvents, wood and concrete. The construction fence shall remain on site until all construction is complete. (Planning and Building Inspection - Mit. C5,C6)
22. Prior to issuance of building or grading permits for the water tanks, a meeting between County staff, the water company, the project architect, consultants, environmental monitors, contractors and subcontractors take place for purposes of discussing activities prohibited outside the construction zones, and environmental concerns associated with the project.

Prior to construction of the laboratory, a meeting between County staff, CSU, the project architect, consultants, environmental monitors, contractors and subcontractors take place for purposes of discussing activities prohibited outside the construction zones, and environmental concerns associated with the project. (Planning and Building Inspection)
23. Prior to commencement of construction of the laboratory and issuance of building and grading permits for the water tanks, surveys for legless lizards shall be conducted in the respective construction footprints to remove as many legless lizards as possible from the construction area. The lizards shall be removed in accordance with the specific methods as outlined in Mitigation C7 in the Final EIR. The applicant shall provide evidence that the sampling design for conducting the surveys and removal of legless lizards has been completed and reviewed by the California Department of Fish and Game (DFG) before construction begins. (Planning and Building Inspection - Mit. C7)
24. If project construction is scheduled to begin between January 1 and August 31, at least once a month during this period (or until construction begins), the grove of trees in the northern portion of the parcel shall be surveyed for nesting white-tailed kites. The applicant shall submit evidence of an agreement with a qualified biological monitor undertake the white tailed kite surveys. Monitoring results shall be submitted to the County and DFG after each monitoring event.

A-3-MC-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 9

If kites are found nesting in the grove, construction activities within 75 feet of the nest shall be stopped until the young have fledged. If adult birds initiate nest building in the grove while construction is underway, the birds can be assumed to be tolerant of human presence, and construction activities and construction may proceed with no restrictions.

After construction is complete, the grove shall continue to be surveyed monthly during the breeding and nesting season. If nesting kites are found, activities within 50 feet of the nest shall be avoided as much as is practicable until the young have fledged. (Planning and Building Inspection - Mit. C8)

25. Prior to commencement of construction of the laboratory, the applicant shall submit final grading and building plans which contain the following notes:

To reduce construction related NOx emissions, the contractor shall:

- use electric-powered equipment, where practical;
- maintain and operate equipment according to the manufacturer's specifications;
- implement engine timing retard (4 degrees) for diesel-powered or as recommended by the manufacturer, and,
- substitute gasoline-powered for diesel-powered equipment, where feasible.

To reduce construction-related PM10 emissions, the contractor shall:

- apply water, using water trucks or sprinkler systems, in sufficient quantities to prevent airborne dust from leaving the site, and increase watering frequency whenever winds exceed 15 mph; and
- spray all dirt stockpile.

(Planning and Building Inspection -Air Qual. Mit.)

26. Excavation and grading shall be limited to two acres per day. (MBUAPCD)
27. Prior to commencement of construction of the laboratory, a Traffic Management Plan shall be submitted and approved by public works that commits to specific trip reduction measures for employees and special events. The plan shall include, at minimum, the following:

- Install a stop sign at the east terminus of the driveway to the project site at its intersection with Moss Landing Road. The stop sign shall be installed prior to occupancy of the laboratory.

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 7

- Prior to occupancy of the marine laboratory, provide a special events parking plan subject to approval of the Department of Public Works. The plan shall include, at minimum, the provision to use the parking lot at the shore facility on the "island" and provide a shuttle service to bring visitors to the laboratory, during special events that involve more cars than the laboratory parking lot can accommodate. Additionally, the plan shall include the requirement to make provisions in advance of special events to provide overflow parking on and adjacent to Moss Landing Road, at the Salinas River State Beach, and at the harbor district offices, as is currently the case during MLML open houses.
 - Install bicycle parking near building entrances. Bicycle parking shall be installed prior to occupancy of the laboratory.
 - Contact MST regarding the possibility of providing transit information boards at or near the project site.
 - Contact the Association of Monterey Bay Area Governments for car pool information.
 - Continue to implement trip reduction flex-time for staff employees, which effectively spreads the traffic load over a greater period.
(Planning and Building Inspection/Public Works - Mit. D1)
28. Prior to commencement of construction of the seawater delivery system, the applicant shall provide improvement plans for the installation of the seawater delivery system, including necessary bridge attachment. The plan shall be subject to the approval of the Department of Public Works. Since County roads and a County bridge are affected, the plans shall include alternatives for relocating the pipeline during the reconstruction of the Sandholdt Road Bridge. All costs for relocating the pipeline shall be borne by the applicant. (Public Works - Mit. D2)
29. To minimize effects of installation of the seawater delivery system and utilities, prior to commencement of such construction, the applicant shall submit a traffic control plan to the Public Works Department that addresses all roads involving such construction and access thereto, including Laguna Place. Elements of the traffic control plan shall include, but not be limited to the following:
- coordinating with Monterey County to determine hours of construction and lane closures that would minimize construction impacts on the roadways;

A-3-MCB-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT

9

- keeping at least one traffic lane open along affected roadways and minimizing lane closures during the a.m. and p.m. peak commuting hours to the greatest extent feasible;
 - specifying types and locations of warning signs, lights, and other traffic control devices;
 - maintaining access to private driveways to the greatest extent feasible;
 - notifying and consulting with emergency service providers, and providing access by whatever means necessary to expedite and facilitate the passage of emergency vehicles; and
 - repairing any damaged roadways to original conditions.
(Public Works - Mit. D2)
30. The applicant shall comply with State of California building codes and regulations for water conservation in state buildings. The regulations for new construction require, but are not limited to:
- a. All toilets shall be ultra-low flush toilets with a maximum tank size of flush capacity of 1.5 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
 - b. Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. (Water Resources Agency/Planning and Building Inspection)
31. That the water system applicant comply with the Uniform Fire Code (UFC) adopted by the District that is current at the time of construction plan submittal. (North County Fire)
32. That the water system required by UFC Appendix III-A be completed prior to construction with combustible materials. (North County Fire)
33. That the access roadway requirements of 1994 UFC Article 9 be complete prior to construction with combustible materials. (North County Fire)
34. That the marine lab applicant submit design plans, roadway plans, automatic sprinkler plans, alarm system plans, and building construction plans to the State Fire Marshall, for review and approval, who will coordinate with the North

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 7

- County Fire District prior to construction or installation of same. (North County Fire)
35. That the applicant pay all fees established by applicable government codes for mitigation in coordination with the North County Fire District Ordinance #95-1-1 and Monterey County Code Chapter 10.80. (North County Fire)
 36. The water system must be fully permitted and functional prior to removal of the water tower. (Planning and Building Inspection)
 37. Design the water system improvements to meet the standards as found in Title 22 of the California Code of Regulations and as found in Index No. 20 of the Monterey County General Plan. Engineered plans for the water system improvements shall be prepared by Alco Water Company for review and by the Division of Environmental Health prior to issuance of building permits for the water tanks. (Environmental Health)
 38. Design the water system improvements to meet fire flow standards as required and approved by the local fire protection agency. Submit evidence to the Division of Environmental Health that the proposed water system improvements have been approved by the local fire protection agency prior to issuance of building permits for the water tanks. (Environmental Health)
 39. Submit evidence that easements have been recorded, as necessary, for: the proposed water company main storage facility lot(s), water distribution, and access easements for the water system to the Director of Environmental Health, prior to obtaining a building permit for the water company facility. (Environmental Health)
 40. The applicant shall submit evidence to the Division of Environmental Health that the proposed sewer system improvements have been approved by Moss Landing Community Sanitation District and installed prior to commencement of construction of the laboratory. (Environmental Health)
 41. The applicant shall comply with Title 19 of the California Code of Regulations, Subchapter 3 and Health and Safety Code Chapter 6.95 (Hazardous Material Registration and Business Response Plans) as approved by the Director of Environmental Health. (Environmental Health)
 42. As necessary, the applicant shall comply with Title 23 of the California Code of Regulations and Monterey County Code 10.65 (underground tank requirements) as approved by the Director of Environmental Health. (Environmental Health)
 43. Comply with Title 22 of the California Code of Regulations and Chapter 6.50 of the Health and Safety Code (Hazardous Waste Management) as approved by the Director of Environmental Health. (Environmental Health)

44. As necessary, the applicant shall submit a site Spill Prevention Control Countermeasure (SPCC) Plan to the Director of Environmental Health for review and approval. The Plan shall meet the standards as per Title 26, Division 22, Article 3, Sections 676264.30-66264.56; Preparedness and Prevention. (Environmental Health)
45. The project shall remain in compliance with the Noise Element of the Monterey County General Plan and Chapter 10.60 (Noise Control) of the Monterey County Code. (Environmental Health)
46. A note shall be placed on the final construction plans for the lab, as well as for the water tanks, outlining the following noise reducing measures:
- Construction activity shall be limited to the weekdays between 8:00 a.m. and 5:00 p.m.
 - Access associated with construction of the marine lab shall be via Moss Landing Road. No access shall be allowed from Laguna Place, except as needed for the installation and service of underground utilities and installation of the secondary access road.
 - The contractor shall be required to employ the quietest among reasonably available alternative equipment or to muffle or control noise from available equipment.
 - The contractor shall perform noise-generating operations (e.g., mixing concrete) offsite or on portions of the site distant from neighboring noise sensitive land uses.

Project plans will be reviewed by the Environmental Health Division prior to commencement of construction for verification of the above requirements. (Environmental Health - Mts. G1a, G1b)

47. The final construction plans shall include features to reduce noise transmission from the facility to nearby noise-sensitive land uses. These features shall include excavating the site so that the facility is below grade, using vegetation to shield sensitive land uses, enclosing the workshop, and enclosing noise-generating equipment, machinery, and pumps in structures sufficient to prevent noise levels exceeding 60 dBA at the nearest residence. Final construction plans shall be provided to the Planning and Building Inspection Department prior to commencement of construction to verify compliance with this condition. (Planning and Building Inspection - Mit. G2)

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 9

48. Prior to commencement of construction of the marine lab, California State University shall submit an exterior lighting plan for the entire facility, including the parking lot, which is of low illumination. The plan shall be subject to the approval of the Director of Planning and Building Inspection and consistent with state law requirements (which require one footcandle minimum). The plan shall identify the location and orientation of all proposed exterior lighting. All proposed exterior lighting shall be oriented downward to avoid contributing unnecessary light and glare to the surrounding area. Exterior lighting shall be limited to the minimum amount necessary for safe operation and nighttime security. The plan shall restrict the hours of lighting in the parking lot during normal seasonal hours of darkness. Provisions such as timers shall be included in the plan in the event that faculty or students remain after dark. (Planning and Building Inspection - Mit. 11)
49. Prior to commence of construction of the boardwalk, the applicant shall provide documentation that permits have been obtained from the California Coastal Commission, California Department of Fish and Game, the Moss Landing Harbor District (acting on behalf of the State Lands Commission), and the Army Corp of Engineers. (Planning and Building Inspection)
50. That the final design of the lab include non-reflective windows and natural wood siding which will age to match the color of the dunes. (Planning and Building Inspection)
51. That the location, type and size of all antennas, towers, and similar appurtenances be approved by the Director of Planning and Building Inspection for compliance with the applicable viewshed protection policies of the North County Land Use Plan. (Planning and Building Inspection)
52. To mitigate impacts to archaeological resources, the applicant shall implement the Memorandum of Agreement (MOA) entered into between the Federal Emergency Management Agency, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and other parties, dated March 16, 1995, included as Appendix "E" of the Final EIR. The applicant shall provide FEMA with written documentation demonstrating compliance with the MOA in accordance with the mitigation monitoring program contained in Chapter 16 of the Final EIR. The project applicant shall abide by all the provisions of the Memorandum of Agreement (MOA) among the Federal Emergency Management Agency, the Advisory Council on Historic Preservation and the California State Historic Preservation Officer which resulted from the federal section 106 process. The stipulations in the MOA to protect archaeological site CA-MNT-23 include, among others, the following requirements:
 - designation by FEMA of an archaeological project coordinator;

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION
EXHIBIT 7

- designate a project archaeologist;
- include the presence of the project archaeologist and Native American monitor during grading, trenching, and other subsurface activities;
- use sterile fill to cap the midden area before installation of a parking lot;
- slope the parking lot to avoid installation of storm drains in midden area;
- use semipermeable surfacing in the parking lot;
- conduct project landscaping in a culturally and archaeologically sensitive manner;
- protect all proposed berm slopes from erosion;
- construct all utilities and other appurtenant facilities with minimized footings;
- install access roads and seawater lines above ground;
- install utility lines (electric, water, and sewer) from Laguna Place to avoid primary midden;
- initiate a nomination of CA-MNT-234 to the National Register of Historic Places upon acquisition of the site by CSU; and
- implement an educational exhibit in the MLML visitor center that includes information on local Native American culture, lifestyles, and archaeology.

The stipulations in the MOA to regulate data recovery procedures at archaeological site CA-MNT-234 include the following requirements:

- appropriate identification and analysis by the project archaeologist in consultation with the Concurring Native American Parties of archaeological or cultural artifacts discovered during excavation or ground disturbance, and
- implementation and enforcement by the project coordinator and project archaeologist of strict regulations for the treatment of archaeological materials if human remains are discovered during excavation or ground-disturbing activities.

These regulations are provided in detail in the MOA (Appendix E of the FEIR). Specific condition compliance is addressed in the Mitigation Monitoring Program (Chapter 16 of the FEIR). (Planning and Building Inspection - Mit J1)

A-3-MCO-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT 9

53. Prior to commencement of construction of the laboratory, the applicant shall request in writing that the those portions of the parcel containing the archaeological site (CA-MNT-234) be rezoned to include an Historical and Archaeological ("HR") zoning designation. (Planning and Building Inspection - Mit. J1)
 54. Prior to commencement of construction of the laboratory, the applicant shall record a deed restriction which states, "A preliminary archaeological report has been prepared for the commercially designated portion of the property, by Archaeological Consulting, dated September 15, 1985. Any project proposed on this portion of the property shall require State Historic Preservation Officer concurrence and shall be preceded by a detailed secondary archaeological testing leading to the preparation of an Archaeological Mitigation Plan, as well as a Final Technical Report. If warranted by the results of the testing, the Archaeological Mitigation Plan shall include mitigation measures under applicable state and local laws. Except as provided for during the initial construction phase, identified burial or reburial sites will not be disturbed in the future without agreement of the concurring Native American parties, or if not available, appropriate Native Americans of Ohlone/Costanoan descent." (Planning and Building Inspection - Mit. J1)
 55. Pursuant to the State Public Resources Code and the State Fish and Game Code, the applicant shall pay a fee to be collected by the County of Monterey in the amount of \$875. This fee shall be paid prior to filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to commencement of construction. The project shall not be considered operative, vested or final until the filing fees are paid. (Planning and Building Inspection)
 56. The access road from Laguna Place shall be only used for emergency access to the laboratory and the installation and servicing of utilities. Prior to occupancy of the laboratory, the applicant shall provide a sign at the southern entrance to the parcel at Laguna Place which states that the road is private. The sign shall meet local fire department and Public Works standards. (Planning and Building Inspection)
 57. Prior to occupancy of the laboratory, the applicant shall provide a gate on the secondary access road at Laguna Place and a gate at the entrance to the water tank parcel. The location of the gate(s) shall be approved for accessibility by the North County Fire Protection District and the County Surveyor. (Planning and Building Inspection)
 58. Approval of this permit limits Cal State University to three special events per year (based on the number of events which existed at the former marine lab). Any special events in excess of this yearly limit shall require permits in accordance with the Monterey County Local Coastal Program. (Planning and Building
-
59. The temporary trailers at the shore facility with temporary permits are not in compliance with the County's floodplain ordinance. Therefore, they shall be removed from that location immediately after the new facilities are occupied.

60. Only one caretaker unit shall be allowed on the subject parcel. (Planning and Building Inspection)
61. The caretaker shall be employed principally on the lot for purposes of care and protection of persons, plants, animals, equipment or other facilities on-site. (Planning and Building Inspection)
62. The maximum floor area of the caretaker unit shall be 850 square feet. (Planning and Building Inspection)
63. The caretaker unit shall not be separately rented, let or leased to other than the caretaker, whether compensation be direct or indirect. (Planning and Building Inspection)
64. The applicant shall record a deed restriction stating that the caretaker unit shall not be rented to other than the caretaker. (Planning and Building Inspection)
65. The property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of this permit. The property owner will reimburse the County for any court costs and attorneys' fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said indemnification agreement shall be recorded upon demand of County Counsel or prior to the issuance of building permits or use of the property, whichever occurs first. (Planning and Building Inspection)
66. Construct a commercial driveway to Moss Landing Road, including a pedestrian walkway along said road, in coordination with the Department of Public Works. Obtain an encroachment permit for the portion of the driveway and walkway within the County's public right of way. (Public Works)
67. That CSU shall work with the Moss Landing Harbor District and cooperate with the construction of any aid needed for the navigation of boats into the harbor. (Planning and Building Inspection)
68. The applicants shall enter into an agreement with the County to implement the mitigation monitoring program included in Chapter 16 of the Final EIR. (Planning and Building Inspection)

A-5-MC-97-042
CALIFORNIA COASTAL COMMISSION

EXHIBIT

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69. The applicants shall record a notice which states: "A permit (Resolution No. 97023) was approved by the Board of Supervisors for Assessor's Parcel Numbers 131-201-017-000, 133-201-014, and 133-232-006-000 on March 26, 1997. The permit was granted subject to 69 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection)

PASSED AND ADOPTED on this _____ day of _____, 1997, upon co-motion of Supervisors Pennycook & Perkins, seconded by Supervisor s Johnsen & Potter, carried by the following vote, to-wit:

AYES: Supervisors Salinas, Pennycook, Perkins, Johnsen & Potter.
 NOES: None.
 ABSENT: None.

A COPY OF THIS DECISION MAILED TO THE APPLICANT AND APPELLANT
 ON May 8, 1997

This is notice to you that the time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board Supervisors duly made and entered in the minutes thereof at page ____ of Minute Book 69 on May 6, 1997

Dated: May 6, 1997

ERNEST K. MORISHITA, Clerk of the Board of Supervisors,
 County of Monterey, State of California.

By

Deputy

SAM FARR
 17TH DISTRICT, CALIFORNIA

COMMITTEE ON AGRICULTURE

SUBCOMMITTEES:

DEPARTMENT OPERATIONS, NUTRITION,
 AND FOREIGN AGRICULTURE

RISK MANAGEMENT AND SPECIALTY CROPS

COMMITTEE ON RESOURCES

SUBCOMMITTEES:

FISHING, WILDLIFE, AND OCEANS

Congress of the United States
House of Representatives
 Washington, DC 20515-0517

7117 BOWEN DRIVE
 WASHINGTON, DC 20015-0517
 (202) 335-3801

DISTRICT OFFICE:
 320 ALVARADO STREET
 MONTEREY, CA 93940
 (408) 640-2655
 708 WEST ALBA
 SALINAS, CA 93907
 (408) 424-2222

May 1, 1997

California Coastal Commission
725 Front Street, Suite 200
Santa Cruz CA 95060

RE: Moss Landing Marine Laboratories

Dear Chairman Rusty Areais and Commissioners:

I am writing to express my support for Moss Landing Marine Laboratories-California State University application for approval of their Seawater Shore System. Moss Landing Marine Laboratories is a valuable marine research and education field station. The marine laboratories is a vital member of the coastal Monterey Bay community. They were instrumental in development for the Monterey Bay National Marine Sanctuary and the Elkhorn Slough National Estuarine Research Reserve.

I urge you to approve the seawater intake and outfall piping utility system that the marine laboratories need to serve their ongoing science courses for college students, to serve important scientific research, and to serve public education events such as their well attended annual public open house. The design utilizes an existing pipeline so as to reduce the need for underwater disturbance.

Thank you for your consideration of this worthwhile project.

Sincerely,



SAM FARR
Member of Congress

SF/db

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MAY 02 1997

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EXHIBIT 10

A-3-MCO-97-042

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CC: T. Grove - S.C.
RECEIVED
 APR 02 1997

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

CALIFORNIA
 COASTAL COMMISSION

March 27, 1997

Dear Mr. Douglas,

I am writing you today to express the support of Save Our Shores for the rebuilding of Moss Landing Marine Laboratories on the Peterson property adjacent to Moss Landing Harbor. The marine labs have been a vital part of the Monterey Bay area community for more than 30 years. In addition, MLML plays a critical role as a center for marine science and education that enriches us at the local, state and national levels. Their contribution to our understanding of the marine environment is significant and will be greatly enhanced by a return to a site on the Bay.

We have consulted with individuals intimately familiar with the project and have reviewed environmental documentation for this effort. Based on our review we find that the proposed project is appropriate and suitable for the proposed location.

We encourage the California Coastal Commission to publicly support the project as currently proposed, as well as to find favorably on MLML's request to build on the identified site. Their return to Moss Landing will be a positive step in creating greater access for students and the public to the wonders of the Sanctuary. Thank you for considering our views.

Sincerely,

Vicki Nichols

Vicki Nichols
 Executive Director

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 APR 3 1997

CALIFORNIA
 COASTAL COMMISSION

cc: John Chamberlain, Board member
 Pete Scrivani, Board member

SAVE OUR SHORES
 2222 E. Cliff Dr., #5A
 Santa Cruz, CA 95062

Phone 408-462-3660 • fax 408-462-6070
 Sanctuary Watch Hotline 800-9-SHORES

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A-3-MCO-97-042
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EXHIBIT 10

Concurring Native American Parties
c/o 1195-B Rasch Avenue
Seaside, CA 93955

April 25, 1997

Sally Slichter
P.O. Box 69
Moss Landing, CA 95039

Noel Mapstead
P.O. 1962
Carmel, CA 93921

We the undersigned are Concurring Native American Parties (CNAPs) who are signatories to the Memorandum of Agreement (MOA) for the proposed building of the Moss Landing Marine Lab (MLML).

Many of us have been active in this process since 1993, having participated in the 106 process, and eventually signed the above referenced MOA. Since the signing of that document in April 1995, we have met regularly with the Marine Lab, at our own time and expense, to assure that the requirements stipulated in the MOA are followed and that our voices and concerns continue to be heard.

We care about preserving and protecting our Ohlone cultural heritage.

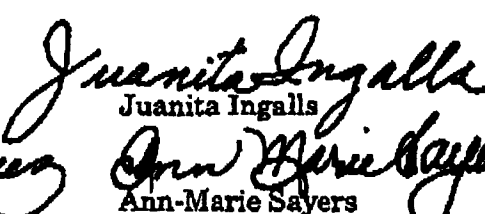
At our April 14, 1997 meeting, we were presented with a list of concerns that were presented by you to the MLML. Items A.a. through A.m. pertain to Native American issues. In reviewing this list, we find that these items are either stipulated in the MOA, and are therefore already mandated, or have already been raised by ourselves in our previous meetings with MLML.

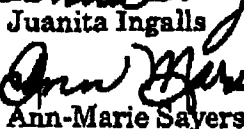
The point is, these suggestions are not new ones. We have already addressed these issues and will continue to do so on our own behalf. We are a dedicated and competent group that is capable of expressing our own concerns and defending the cultural rights of both ourselves and our ancestors.

Sincerely,


Tony Cerda


Ella Rodriguez


Juanita Ingalls


Ann-Marie Sayers


Jakki Kehl


Linda Yamane

cc: Brent Paul, FEMA
Monterey County Board of Supervisors
California Coastal Commission
Gary Greene, MLML

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EXHIBIT 10



**San José State
UNIVERSITY**

**College of Science
Office of the Dean**

One Washington Square
San Jose, CA 95192-0099
Voice: 408/924-4800
Fax: 408/924-4815
E-mail:
gselter@jupiter.sjsu.edu
http://www.sjsu.edu/dept/COS

Dean
Gerry Selzer

Biological Sciences
Chemistry
Geology
Mathematics and Computer
Science
Mathematics Education
Meteorology
Moss Landing Marine Labs
Nuclear Science
Physics
Science Education

March 21, 1997

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

Dear Coastal Commissioners:

As Dean of the College of Science at San José State University, I wish to offer my strong support for the approval of the Environmental Impact Report relating to the Reconstruction Plan for Moss Landing Marine Laboratories (MLML).

MLML has become a vital force in oceanographic education and research during the past 30 years. More than 300 students have received MS degrees from the Consortium of seven CSU campuses that sponsor the facility. Student and faculty research has gained international recognition for its originality, relevance and scientific merit. A fundamental aspect common to all MLML faculty, students, staff and programs is a genuine concern to understand and preserve the natural environment of the ocean and its coastal regions, and to share such knowledge as widely as possible in order to maintain and enhance it. Consistent with this posture are the design of the labs to blend with the landscape of the proposed site, the enhanced aesthetics associated with the removal of the water tower, the expansion of wildlife habitat via restoration of wetlands and dunes, the public access to the campus and adjacent wetlands, the increased educational exhibits and programs for children, and the fostering of a sustainable coastal environment within the Monterey Bay region, which will arise from the proposed MLML reconstruction.

Since MLML was destroyed in the 1989 Loma Prieta Earthquake, its staff and faculty have worked diligently with local, state and federal agencies, and local environmental groups in a collaborative effort to select the best possible site for rebuilding the facility – a site that would be integrated with the natural habitat. I trust you will agree that all efforts are being made to mitigate any potentially adverse impact upon the environment, that could arise from the reconstruction, and that the proposed facility actually will improve the area.

I sincerely hope that you will consider all that MLML reconstruction has to offer the Monterey Bay communities. The high caliber research performed there together with the quality educational programs, community service, and on-going collaboration with the Monterey Bay Aquarium Research Institute strongly reinforce the need for this permanent MLML facility. On behalf of the students, faculty and staff of both MLML and the SJSU College of Science, I respectfully request that you support the MLML reconstruction on the proposed site.

Sincerely yours,

Gerry Selzer,
Dean

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The California State University:
Chancellor's Office
Berkeley, Chico, Dominguez Hills,
Fresno, Fullerton, Hayward, Humboldt,
Long Beach, Los Angeles, Maritime Academy,
Merced, San Bernardino, San Diego,
San Francisco, San Jose, San Luis Obispo,
San Marcos, Stanislaus, Sutter