

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4863  
HIMPAIRED: (415) 904-6200



W/66

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Hearing Date: 08/12-15/97  
Commission Action:

**STAFF REPORT: APPEAL**  
**NO SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: Monterey County  
DECISION: Approval with Conditions  
APPEAL NUMBER: A-3-MCO-97-043  
APPLICANT: Judith Pennycook AGENT: Anthony Lombardo  
APPELLANT: Mike Weaver  
PROJECT LOCATION: Strawberry & Tucker Roads, North Monterey County; APNs: 129-291-04 & 129-282-001 (see Exhibit 1).  
PROJECT DESCRIPTION: Minor land division of 25 acres into four parcels (three new vacant ones), well, two water tanks, 4,000 cubic yards of grading; lot line adjustment with designated building envelope for adjacent 5 acre vacant parcel; wetland enhancement (see Exhibit 2).  
SUBSTANTIVE FILE DOCUMENTS: Monterey County Local Coastal Program (LCP), specifically *North County Land Use Plan* and *Coastal Implementation Plan*; County permit file # 965437, including *Final Report Biological Assessment for the Strawberry Glen Subdivision* by Melanie Mayer Consulting, October 1996.

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**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The project is a subdivision into four parcels, one of which will contain an existing house, and a lot line adjustment with an adjacent five acre vacant parcel. Although 25 acres, the mostly steep sloping and vegetated site to be subdivided contains comparatively little buildable land, and also has a wetland on part of the gentler terrain. The appellant poses numerous contentions that the project will be environmentally damaging, but does not cite any specific LCP policy conflicts. On one hand, the project as conditioned by the County follows LCP policies to avoid development on the wetland, wetland buffer, and other sensitive habitat areas.

On the other hand, the additional potential development adjacent to the habitat areas may have some adverse impacts on them. The LCP would allow up to six residential parcels on the two sites, but clearly states that such is a maximum that can be reduced to account for environmental factors. In terms of cumulative impacts, the LCP has a cap of only about 648 more new parcels being created in North Monterey County (due to groundwater overdraft). The maximum number of potential units under zoning greatly exceeds that number. Given that:

- the LCP allows subdivisions on a first-come, first-serve basis;
- the LCP gives County decision-makers discretion as to site densities;
- the proposed project has been reduced from six to five lots total;
- the proposed development avoids the sensitive habitat areas;
- the proposed project includes erosion control, drainage, and other provisions to avoid impacts from the proposed development adjacent to the habitats;
- and, especially, the proposed project includes a wetland enhancement and dedication component,

staff is recommending no substantial issue. Each of the appellant's specific contentions were adequately addressed for LCP conformity in the local permit, in many cases by condition, as analyzed in the following findings.

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#### I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed, pursuant to Coastal Act section 30603.

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

I move that the Commission determine that Appeal No. A-3-MCO-97-043 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

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

## II. APPELLANT'S CONTENTIONS

In summary, appellant Mike Weaver contends (paraphrased and grouped; please see Exhibit 4 for the complete text of the appeal):

1. Wetland Impacts: Magnitude of development including grading, roads, utilities, four elevated building pads, and drainage will have significant effect on the unique and sensitive wetland environment, in contrast to the County's findings. One lot appears to have been filled some 30 years ago. "There are concerns regarding silting of the wetland, water draining from the 10 foot deep shallow leachfields and subdivision grading as it sometimes takes several seasons to revegetate graded areas."
2. Wetland Delineation and Buffer: Wetland on the site, and thus buffer, not clearly delineated; wetland described by various terminology; biology report likewise described by various terminology.
3. Natural Drainage: Inconsistency in using grout-lined channels for drainage and retaining water in wetlands using hay bales, when earthen berm recommended.
4. Endangered Species: No investigation for red-legged frogs, Santa Cruz Long-toed Salamander, nor Tiger Salamander.
5. Maritime Chaparral: May be excessive clearing of Maritime Chaparral.
6. Procedures: Subject permit should have been heard by the County Planning Commission.

## III. LOCAL GOVERNMENT ACTION

The Monterey County Board of Supervisors approved the proposed minor subdivision project with 47 conditions on April 29, 1997 (see Exhibit 3). Earlier the Minor Subdivision Committee had approved the project, but Mr. Weaver appealed that decision to the Board.

## IV. 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. Developments approved by counties may also be appealed if they are not the designated "principal permitted use" under the certified LCP, which is the case here. 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 not located between the sea and the first public road paralleling the sea, which is the case here, the grounds for an appeal shall be limited to an allegation that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(1)).

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," which is the case for this item, 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, at a subsequent hearing. 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.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

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.

## V. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

### 1. Background

The proposed project includes a subdivision of 25 acres of land at the intersection of Tucker and Strawberry Canyon Roads in North Monterey County in the Elkhorn Slough watershed (see Exhibit 1). The land is mostly steep sloping and heavily vegetated and also has a wetland on part of the gentler terrain. The original application was for five residential lots. The proposal was revised in process to be for only four residential lots: one lot contains an existing home; three new vacant lots will be created (see Exhibit 2). The fourth lot would contain the existing house, septic system and well. One of the new parcels will include some land from an adjacent lot; transferred to it under a lot line adjustment. The result will be four residential parcels of 5.15, 7.11, 5.77, and 7.35 acres respectively in addition to the adjacent undeveloped 5.3 acre parcel. Additional project components include a well, two water tanks, 4,000 cubic yards of grading, realigning the natural drainage channel, elevating building pads at least 1 foot above westerly the channel bank, and wetland enhancement using hay bales.

The site was subject to a previous coastal permit application for a subdivision into four lots that was withdrawn in 1978 (P-77-1138). This occurred during a period prior to local coastal program certification when almost all subdivisions in the sensitive Elkhorn Slough watershed were being denied by the Coastal Commission, due to various cumulative impact concerns. Subsequently, the local coastal program was certified establishing a maximum intensity of development under strict environmental criteria. This local coastal program, consisting of the *North County Land Use Plan* and *Coastal Implementation Plan* (zoning), is the standard of review for this appeal. The cited policies in

these findings appear to be most germane to the appeal; the appellant did not cite any specific policy inconsistencies in his appeal (see Exhibit 4). There are many other relevant LCP provisions which the approved project is consistent with but are not directly related to the appellant's contentions and hence are not cited.

## **2. Wetland Impacts**

### **Appellant's Contention:**

Magnitude of development including grading, roads, utilities, four elevated building pads, and drainage will have significant effect on the unique and sensitive wetland environment, in contrast to the County's findings. One lot appears to have been filled some 30 years ago. "There are concerns regarding silting of the wetland, water draining from the 10 foot deep shallow leachfields and subdivision grading as it sometimes takes several seasons to revegetate graded areas."

### **Local Government Action:**

The County determined that the project would not have a significant effect on the environment (Finding #15). Five residential lots were approved on 30 acres for a density of one unit per six acres. The project was designed to incorporate, and conditioned for, wetland and wetland buffer enhancement and permanent protection of the wetland through an easement dedication. Condition #41 states in part, "that a deed restriction shall be recorded concurrently with the parcel map stating that, 'A biological report has been prepared for this property by Melanie Mayer Consulting, and is on file in the Monterey County Planning and Building Inspection Department. The recommendations contained in said report shall be followed and in all further development of this property.'..." Building construction shall use special measures to control the erosion of soils, especially into the wetland. Bare soils shall not be allowed to erode. They shall be seeded with proper native grass seeds, covered with straw, and, during the dry season, watered to ensure proper seed germination..." Conditions #10 through 12 require compliance with Chapter 15.20 of the Coastal Implementation Plan for septic disposal systems and final detailed system designs.

### **Local Coastal Program Provisions:**

The *North County Land Use Plan* designates the site as "Rural Density 5-40 acres/unit." The zoning on the site is RDR(CZ)/5 (Rural Density Residential), maximum one unit per five acres. Several *Land Use Plan* policies elaborate on how to determine density:

*2.5.3B5: New on-site waste disposal systems shall not be allowed on slopes exceeding 30 percent...*

*2.5.3C5: These densities are maximums, that may be approved under ideal conditions where all resource considerations of the plan can be fully met...In areas designated for Rural...Density Residential development densities shall be reduced as necessary in order to site all development in Non-Critical Erosion Areas..."*

*4.3.1G: Development densities from 1 unit on 40 or more acres to a maximum of 1 unit per 5 acres would be allowed according to an evaluation of existing resource and public facilities constraints, and the residential character of the area. Site densities will be determined upon application review.*

*4.3.6D1: Land divisions for residential purposes shall be approved at a density determined by evaluation of site and cumulative impact criteria set forth in this plan. These include geologic, flood, and fire hazard, slope,*

*vegetation, environmentally sensitive habitat, water quality, water availability, septic tank suitability, adjacent land use compatibility, public service and facility..."*

The LCP also has a cap on development due to water supply constraints which allows only half of the otherwise permitted buildout, on a first-come, first-serve basis (Policy 2.5.3A2).

The LCP has numerous policies to protect wetlands found on properties including:

*2.3.2.2 Land use adjacent to locations of environmentally sensitive habitats [including wetlands] shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts, upon habitat values and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.*

*2.3.2.3 New development adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New subdivisions shall be approved only where significant impacts to environmentally sensitive habitats from development of proposed parcels will not occur.*

*2.3.2.4... To this end, parcels of land totally within sensitive habitat areas shall not be further subdivided. On parcels adjacent to sensitive habitats, or containing sensitive habitats as part of their acreage, development shall be clustered to prevent habitat impacts.*

The Coastal Implementation Plan amplifies these provisions with requirements for building envelopes, conservation easements, map notes and similar measures. The Implementation Plan also includes an erosion control ordinance (Chapter 16.12), which requires submittal of an erosion control plan.

#### **Analysis:**

The project as approved by the County directly avoids disturbing wetland and other sensitive areas. The project is a lot line adjustment and subdivision of two parcels into five parcels, one of which will contain an existing house. Although 30 acres in size, the mostly steep sloping and vegetated sites contain comparatively little useable land and also have a wetland on part of the gentler terrain. On one hand, the project, as conditioned by the County, follows LCP policies to avoid development on the wetland, wetland buffer, and other sensitive habitat areas. On the other hand, the additional potential development adjacent to the habitat areas may have some adverse impacts on them. The LCP would allow up to six residential parcels on the sites (the number originally applied for), but clearly states that such is a maximum that can be reduced to account for environmental factors. In terms of cumulative impacts, the LCP has a cap on only about 648 more new parcels being created in North Monterey County (due to groundwater overdraft). Given the potential to create up to double that number under the maximum permitted zoning densities, a possible exercise would be to prioritize all land to be developed based on comparative resource value. In some respects that was the approach taken in the Implementation Plan where "Rural Density" land was variously zoned with maximums of 5, 10, 20, or 40 acres. This was primarily based on existing development patterns. However, beyond that, the LCP is set up on a first-come, first-serve basis. It gives the County decision-makers discretion in deciding projects on a case-by-case basis.

In this case the proposed project has been reduced from six to five lots to avoid development in sensitive areas. Building sites, including septic systems, are sited off of steep slopes (defined as Critical Erosion Areas) in limited defined areas. Preliminary septic system locations and designs have been approved by the Environmental Health Department; the permit is conditioned for final system

designs in accordance with County Code/ Implementation Plan standards. Although two septic systems are for lots that were determined problematic in 1991, due to perched water tables, subsequent testing and system redesign has rendered these lots approvable. Additional drainage and erosion control measures are imposed.

Applying such mitigations and conditions can reduce, but may not eliminate any impacts on the adjacent wetland habitat. Any additional development can have some level of noise, lighting, activity, and runoff associated with it that may disturb adjacent habitat, even when physically buffered. Included in the project is a wetland enhancement and dedication component. The wetland area will hold water longer and the buffer will be planted and non-natives will be removed. The additional vegetation that will then grow or be planted will help filter any pollutants out of the water. An easement over the wetland and wetland buffer area is to be conveyed to the County or a non-profit organization (condition #42). While this plan may not restore the site to its historic appearance (e.g., the old fill that the appellant is concerned about is not proposed to be removed), it will be a definite improvement. Thus, the Commission finds that any negative adjacency impacts would be more than balanced by these positive enhancement features and no substantial issue is raised by the appellant's contentions.

### **3. Wetland Delineation and Buffer**

#### **Appellant's Contention:**

Wetland on the site, and thus buffer, not clearly delineated; wetland described by various terminology; biology report likewise described by various terminology.

#### **Local Government Action:**

Monterey County's permit conditions require a wetlands conservation easement over the wetlands and wetlands buffer area, as designated by a qualified biologist and engineer. Condition #45 states, "A 100 foot setback shall be maintained for all development from the landward edge of the riparian corridor, except for any wetland enhancement improvements." Condition #44 requires building envelopes to be shown on the parcel map consistent with LUP setback requirements. A biological report is contained in the County file which contains a habitat map and description. Condition #41 states "that a deed restriction shall be recorded concurrently with the parcel map stating that 'A biological report has been prepared for this property by Melanie Mayer Consulting, and is on file in the Monterey County Planning and Building Inspection Department. The recommendations contained in said report shall be followed and in all further development of this property.'"

#### **Local Coastal Program Provisions:**

The local coastal program employs various terms for wetlands including: lagoons, sloughs, and marshes (p. 10). The *Land Use Plan* contains the following relevant policies:

*2.3.2.5: Where public or private development is proposed in documented or potential locations of environmentally sensitive habitats... field surveys by qualified individuals or agencies shall be required in order to determine precise locations and to recommend mitigating measures to ensure protection of any sensitive habitat present.*

2.3.3.B1: *Riparian plant communities shall be protected by establishing setback requirements consisting of 150 feet on each side of the bank of perennial streams, and 50 feet on each side of the bank of intermittent streams, or the extent of riparian vegetation, whichever is greater. In all cases, the setback must be sufficient to prevent significant degradation of the habitat area. The setback requirement may be modified if it can be conclusively demonstrated by a qualified biologist that a narrower corridor is sufficient or a wider corridor is necessary to protect existing riparian vegetation from the impacts of adjacent use.*

2.3.3.B.4: *A setback of 100 feet from the landward edge of vegetation of all coastal wetlands shall be provided and maintained in open space use.*

Coastal Implementation Section 20.144.040 amplifies the biological survey requirements.

#### **Analysis:**

Although a final wetland delineation is still conditionally required, the information and protections built into the project approval are sufficient to determine LCP policy conformance. The County recognized that the site has a wetland on it; the fact that other terminology was used, while possibly confusing, is irrelevant. The biological report contains a map (Figure 2) showing existing habitat types including "wetland with willow." Unfortunately, the text then uses another term "vernal marsh" to describe the area. The boundary shown is approximated based on visual observation (p. 11). A final wetland delineation would need to follow and document established methodologies regarding presence of hydric soils, indicator vegetation, and/or hydrology. Thus, the final boundary, which must be drawn by a biologist and engineer, might differ from the one in the report. This representation of the wetland location was not transferred to the proposed subdivision map, which was revised after the biological report was prepared. Thus, the condition to prepare a final map is reasonable and necessary to ensure an accurate official delineation is made in the field and then shown on the final parcel map.

The biological assessment and other County material is slightly confusing with regard to buffers. The habitat map shows an area called "transitional buffer," but does not further define it. The biological consultant indicated that this area has some native vegetation associated with wetland areas, but they are not wetland indicator species (Mayer to Hyman, 7/17/97). Again, the proposed subdivision map does not designate a wetland buffer, which could only be shown following placement of the wetland boundary on the parcel map. A comparison of the biological report's wetland map with the proposed parcel map (drawn at different scales) appears to show a proposed building site partially within 100 feet of the wetland. Condition # 45 calls for a 100 foot setback from the riparian corridor, while condition #44 refers to following the riparian setback policy 2.3.3.B1 which requires a 50 or 150 foot riparian setback. The governing policy is 2.3.3.B4 which requires a 100 foot wetland setback. Therefore, condition #45 is correct, although the terminology and policy references may be confusing. Again, a final map is required to correctly show the building site beyond the 100 foot setback line. Thus, the building site shown on the plans attached to the County permit may have to be revised.

The biological report is termed a biological assessment on its cover but is referred to as a biological report in the permit. Again the terminology used to describe the report is irrelevant; what is important is that its preparation followed the criteria of the LCP. The report contains all of Section 20.144.040A4 required elements that are applicable.

In conclusion, the County action would have been better had a final, *scientific* wetland delineation been performed and accepted and the results, along with the 100 foot setbacks, portrayed on the project map. However, the County action has conditioned this to occur. Therefore, although the appellant's



characterizations are correct, no substantial issue is raised by these contentions as they do not represent inconsistencies with the local coastal program.

#### **4. Natural Drainage**

##### **Appellant's Contention:**

Inconsistency in using grout-lined channels for drainage and retaining water in wetlands using hay bales, when earthen berm recommended.

##### **Local Government Action:**

Monterey County Water Resources Agency recommended use of earthen berm instead of hay bales in a letter of 2/25/97. The final permit condition #41 requires following the recommendations of the biological report. The report and conditions require that hay bales be placed in the marsh are to retain water in the wetlands and to be planted. The biological report was endorsed by several other experts including, John Oliver, adjunct professor, Moss Landing Marine Laboratory. The permit findings state that "a natural drainage channel runs through the property. The applicant proposed to realign the drainage area to allow creation of building envelopes above the historic channel." The project plans show grouted rock lined channels both along Tucker Road draining into the wetland and along Strawberry Canyon Road leading out of the wetland. Condition #16 of the permit requires a drainage plan and conditions #17, 18, and 21 provide for the maintenance of the drainage facilities. The County permit file contains a "Preliminary Soil and Percolation Investigation," which includes surface drainage and erosion control recommendations.

##### **Local Coastal Program Provisions:**

The LCP does not mandate certain drainage or wetland mitigation features. The *Land Use Plan* generally states in policy 2.8.3B5:

*Where development...[is] permitted, the restoration of waterway banks and disturbed areas to a natural vegetated appearance should be required. Landscaping themes should emphasize the use of native plants which are appropriate to riparian corridors...*

The Implementation Plan's erosion control ordinance requires submittal of an erosion control plan containing a drainage component (Chapter 16.12). Section 19.10.050 of the IP's Subdivision Ordinance also requires an approved storm drain system.

##### **Analysis:**

Appellant may be confusing two separate, related aspects of the project. Drainage into the wetland is to be directed via a grout-lined channel. Drainage out of the wetland into another grouted channel is to be moderated by straw bales. The hay bales will result in ponding of more water to enhance the value of the wetland. The file does not contain plans showing the placement of the bales, but the applicant's consultant indicated orally at a public hearing that no grading in the wetland would be involved and that any failed bales would be replaced over a three year period. There are differing expert and agency opinions regarding the efficacy of using hay bales. Applicant's consultant has plausibly indicated why straw is preferred over earth. Evidence in the file indicates that "hay bales, once colonized by plants,

are self-sustaining. The bales naturally collect soils and are seeded with native grasses or wet plants as appropriate...The bales result in more water being present for a longer period of time." These recommendations were developed in the biological report, pursuant to the LCP procedures, which was endorsed by several wetland specialists. The overall wetland system would be enhanced by these measures. Furthermore, condition #17 requires a maintenance agreement for open space and drainage facilities. Presumably, this agreement would ensure that the hay bales are maintained or replaced in perpetuity. In conclusion, the decision whether to approve hay bales is one of detail that the County has discretion to make within the framework of the LCP policies which have been followed.

With regard to the grout lined channels, the Department of Fish and Game stated in a letter to the County (February 26, 1997):

...We would not object to the relocation of the channel provided the new channel complies with the restoration enhancement plan and does not completely drain the wetlands. Since we believe this channel is a stream, or serves to connect two sections of stream, it is important to allow riparian vegetation to grow to provide a wildlife corridor. This will not be possible if the channel is grouted. Therefore, we recommend the channel not be grouted and that it be constructed in such a way as to permit the growth of riparian vegetation along its length.

The Department has direct jurisdiction under Fish and Game Code sections 1601-03 in regard to any proposed activities that would divert or obstruct the natural flow or change the bed, channel, or bank of any stream. We recommend early consultation since modification of the proposed project may be required to avoid impacts to fish and wildlife resources. Formal notification under Fish and Game Code Section 1603 should be made after all other permits and certifications have been obtained. Work cannot be initiated until a streambed alteration agreement is executed.

According to the USGS map, an intermittent stream exists along Strawberry Road above and below the subject site, but not through it. The County did not require evidence of Fish and Game approval as a condition of its coastal permit. Thus, the Department of Fish and Game will have to be proactive to ensure that its requirements are fulfilled. As noted above, condition # 44 requires compliance with the LCP's riparian buffer policy. Thus, if there is a subsequent determination that the "ditch" is a natural stream that requires protection and can not be grouted, a 50 foot buffer would be required. Parcel 1's building envelope shown on the plans would have to be revised, since it is currently shown closer than 50 feet from the ditch. In conclusion, the County action would have been better had Fish and Game's streambed concerns been resolved and the results, if different, portrayed on the project map. However, since the Department has independent authority and the County has conditioned the project to be consistent with LCP policies, no substantial issue is raised by these contentions.

## **5. Endangered Species**

### **Appellant's Contention:**

No investigation for red-legged frogs, Santa Cruz Long-toed salamanders, nor tiger salamanders.

**Local Government Action:**

Information in the file indicates field studies were conducted on site on February, July, and September 1996. Finding #1 of the permit states, "no rare or endangered species were found to be present on the property."

**Local Coastal Program Provisions:**

LUP policy 2.3.2.5 cited above and companion Implementation Plan provisions are applicable.

**Analysis:**

Endangered species were searched for and not found. The Department of Fish and Game wrote a letter expressing some concern about the methodology used. It is unclear from the biological report whether the searches were conducted according to common accepted scientific methodology (e.g., seining for salamanders, field observations after winter rains). State Fish and Game personnel recommended an additional survey for the salamander this year if seining did not occur, and condition #41h requires a spring check of biological resources. This subsequently occurred, although seining was not performed. More significantly, the potential habitat area is being protected and enhanced and a wildlife corridor linking the wetlands to the steep, vegetated upland slopes will stay undeveloped under protective easement. Therefore, no substantial issue is raised by this contention as to conformance with LCP endangered species provisions.

**6. Maritime Chaparral****Appellant's Contention:**

May be excessive clearing of Maritime Chaparral.

**Local Government Action:**

The final approval states that "the majority of the habitats on the site will not be impacted by this development because the vegetation is dense and on steep slopes. Individual Pajaro manzanita and a small patch of maritime chaparral may be lost. This removal is a minor impact and replacement of the manzanita is planned as part of the project. Over thirty plants of manzanita plants of native stock will be planted on the site."

**Local Coastal Program Provisions**

The *Land Use Plan* defines "maritime chaparral" as an environmentally sensitive habitat. The Plan has protective measures for such habitat areas (see policy 2.3.2.1 quoted above). Specifically, policy 2.3.3.A.2 states:

*Maritime chaparral is an uncommon, highly localized and variable plant community that has been reduced in North County by residential and agricultural development...Where new residential development is proposed in chaparral areas, it shall be sited and designed to protect the maximum amount of maritime chaparral. All chaparral on land exceeding 25 percent slope should be left undisturbed to prevent potential erosion impacts as well as to protect the habitat.*

The *Land Use Plan* also has general policies for vegetation protection including 2.5.3.C.6.e:

*maximum retention of vegetation cover shall be required for all new development. In particular, natural vegetation should be retained to the fullest extent possible..."*

### **Analysis**

The County approval will result in protection of the Maritime Chaparral habitat. The findings may actually be outdated in that the originally threatened patch of chaparral is preserved as a result of the revised project plans approved. Individual, isolated manzanita plants are not sensitive habitats, but are being replaced as well. The appellant expressed concerns that the need to clear for fire hazard could result in habitat removal beyond the designated building envelopes, however, the habitat area is several hundred feet away from these. Therefore, no substantial issue is raised by this contention as to conformance with LCP policies to protect the Chaparral habitat.

### **7. Procedures**

#### **Appellant's Contention:**

Subject permit should have been heard by the County Planning Commission.

#### **Local Government Action:**

The matter was heard by the Minor Subdivision Committee and approved by that body on February 27, 1997. The original notice said that the matter would also be heard by the Planning Commission, but this was corrected at the hearing to say that a Planning Commission hearing was unnecessary. The item was then appealed by the appellant to the Board of Supervisors. The Board heard the appeal and voted on April 29, 1997.

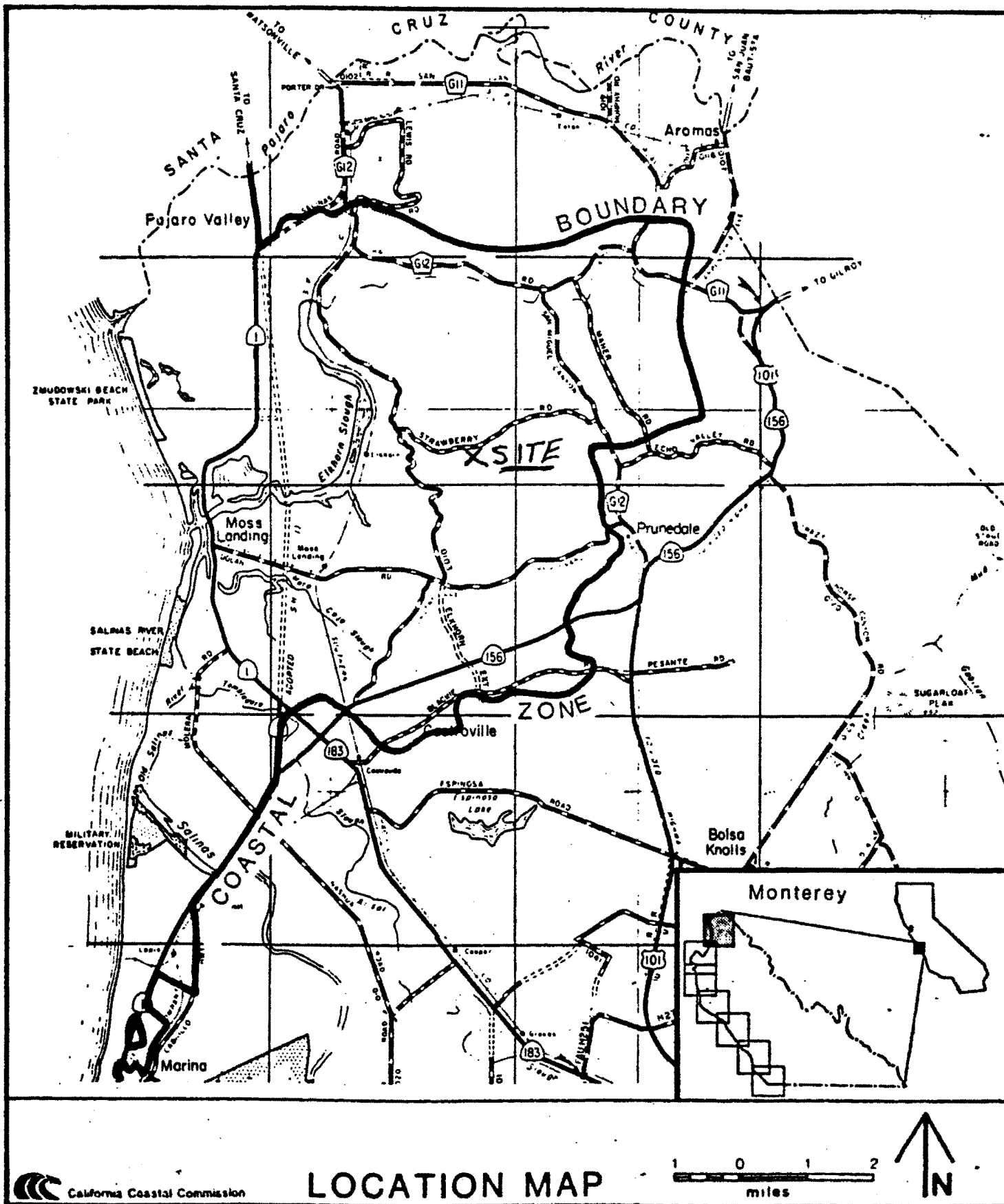
#### **Local Coastal Program Provisions:**

Section 20.82.030.A of the Implementation Plan states, "The appropriate authority to consider a Combined Development Permit shall be the Planning Commission, Zoning Administrator, Minor Subdivision Committee, or Board of Supervisors. The basis for the designation shall be that body established under State Law, Title 19 (Subdivisions), Monterey County Code, or Title 20 (Zoning), Monterey County Code, as the decision making body for the principal land use shall be the decision making body for the Combined Development Permit." The Minor Subdivision Committee is the appropriate authority to hear minor subdivision requests. The Planning Commission hears such requests if they include other matters as well. The Board of Supervisors hears appeals from each of those bodies.

#### **Analysis:**

The Subdivision Committee was the appropriate body to hear the request under the LCP. The request was for a subdivision. The County answered this contention in a letter to the appellant dated April 25, 1997. The appellant believes that because the project included a well, water tanks, and grading, these

were additional developments that fell under the Planning Commission's purview. However, these aspects of the proposed development are integral to the subdivision. Were the project to also include homes on each lot, then the Planning Commission would have had to hear the matter as well as the Subdivision Committee. Since there was an incorrect notice, it would have been clearer if the county had then sent out a corrected notice, although it was not mandatory. In any case, the matter was appealed to the Board of Supervisors, rendering the issue of which lower body first heard the matter moot. Most significantly, as the previous findings demonstrate, the relevant LCP policies were all fully considered and applied. Therefore, no substantial issue is raised by this procedural contention as to LCP conformance.

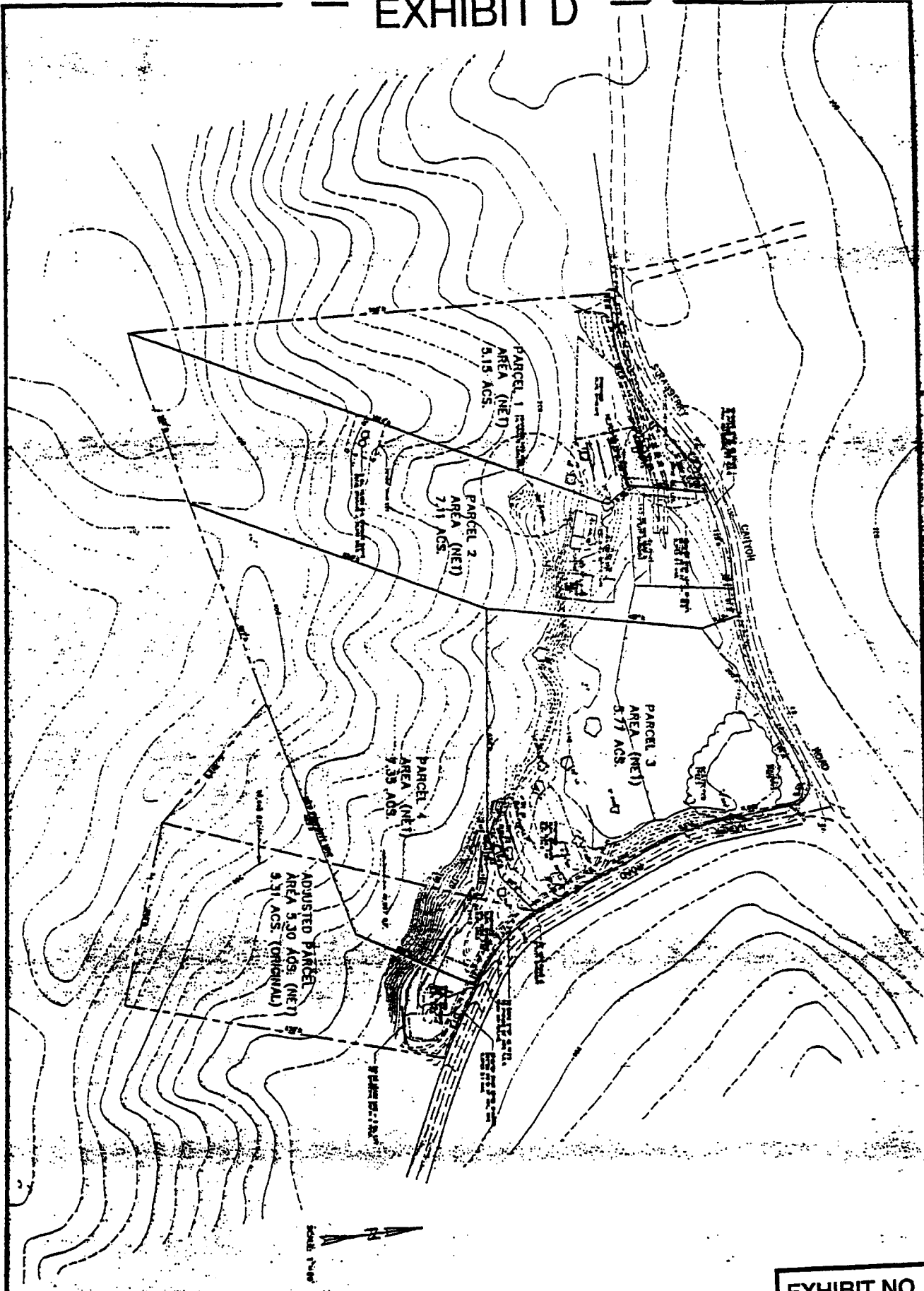


County of Monterey

Sheet 1 of 7  
EXHIBIT 1

A-3-MCO-99-43

# EXHIBIT D



|                                  |
|----------------------------------|
| EXHIBIT NO. 2                    |
| APPLICATION NO.<br>A-3-MCO-97-43 |
| Pennycook: Proposed              |
| Project Map                      |

|   |   |              |
|---|---|--------------|
| 10-01<br>STRANDBURY CLEN SUBDIVISION<br>LOT PENNYCOOK | TUNSTALL ENGINEERING<br>CONSULTANTS, INC.<br><small>100 WEST STREET - SUITE 2<br/>         NEWTON, MASSACHUSETTS 02459-1000</small> | TENTATIVE MA |
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*Before the Board of Supervisors in and for the  
County of Monterey, State of California*

RESOLUTION NO. 97-153 -- )  
RESOLUTION ADOPTING A NEGATIVE )  
DECLARATION AND APPROVING A )  
COMBINED DEVELOPMENT PERMIT FOR )  
JUDITH PENNYCOOK (965437) THAT )  
INCLUDES A COASTAL DEVELOPMENT )  
PERMIT AND A MAJOR LOT LINE )  
ADJUSTMENT; A COASTAL )  
DEVELOPMENT PERMIT AND A MINOR )  
SUBDIVISION TO ALLOW THE DIVISION )  
OF 25.23 ACRE PARCEL INTO FOUR )  
PARCELS OF 5.15 ACRES, 5.77 ACRES, 7.11 )  
ACRES AND 7.35 ACRES EACH, AND A )  
COASTAL DEVELOPMENT PERMIT TO )  
ALLOW A WELL, TWO WATER TANKS )  
AND 4,000 CUBIC YARDS OF GRADING. )

**FINAL LOCAL  
ACTION NOTICE**

REFERENCE # 3-MCO-97-16  
APPEAL PERIOD 5/12-5/23/97

WHEREAS, this matter was heard by the Board of Supervisors ("Board") of the County of Monterey on April 29, 1997, pursuant to an appeal by Mike Weaver et al ("Appellant").

WHEREAS, the property which is the subject of this appeal is located on a portion of Assessor's Map of Thomas Kirby Sub of part of Lot 14, 14A, 19, and 169, Bolsa Nueva Y Moro Cojo Rancho, fronting on Strawberry and Tucker Roads, Elkhorn Area; Coastal Zone, in the County of Monterey ("the property").

WHEREAS, Judith Pennycook ("Applicant") filed with the County of Monterey, an application for a Combined Development Permit that includes a coastal development permit and a major lot line adjustment; a coastal development permit and a minor subdivision to allow the division of 25.23 acre parcel into four parcels of 5.15 acres, 5.77 acres, 7.11 acres and 7.35 acres each, and a coastal development permit to allow a well, two water tanks and 4,000 cubic yards of grading.

WHEREAS, Judith Pennycook application for a Combined Development Permit came for consideration before the Minor Subdivision Committee at a publicly noticed meeting on January 16, 1996 and February 27, 1997.

WHEREAS, appellant Mike Weaver et al, timely filed an appeal from the Minor Subdivision Committee decision as outlined in the appeal to the Board of Supervisors dated March 24, 1997.

RECEIVED  
MAY 09 1997

CALIFORNIA  
COASTAL COMMISSION

|                                  |
|----------------------------------|
| EXHIBIT NO. 3                    |
| APPLICATION NO.<br>A-3-MCO-97-43 |
| Pennycook: Final                 |
| Local Action                     |



WHEREAS, the matter was set for hearing by the Monterey County Board of Supervisors on April 15, 1997, pursuant to the provisions of the Monterey County Zoning Ordinance (Title 20).

WHEREAS, pursuant to the provisions of the Monterey County Zoning Ordinance (Title 20) and other applicable laws and regulations, the Board, on April 29, 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 Minor Subdivision Committee, the Board now renders its decision to adopt the negative declaration and adopt the findings, evidence and conditions in support of the Combined Development Permit as follows:

#### FINDINGS OF FACT

1. **FINDING:** The proposed project consists of a Combined Development Permit which includes a Coastal Development Permit to allow a Major Lot Line Adjustment of parcels 129-291-004-000 and 129-282-001-000. The proposed lot lines adjustment would increase parcel 129-291-004-000 from 25.22 acres to 25.23 acres and would decrease parcel 129-282-001-000 from 5.31 acres to 5.30 acre; A Coastal Development Permit and a Minor Subdivision to allow the division of 25.23 acre parcel into four parcels of 5.15 acres, 5.77 acres, 7.11 acres and 7.35 acres each, well, two water tanks and 4,000 cubic yards of grading.

The applicant also proposes to realign the natural drainage channel and elevate building pads at least one foot above the westerly channel bank elevation. A wetland habitat plan, prepared for the project, indicates that drainage will be held for a longer period by placing hay bales to hold a greater volume of water in the marsh which is located on the site. The straw bales will be of rice straw so that no unwanted plant species are introduced to the area. Native plants will be planted on the bales to stabilize them. This enhancement will increase the volume of water for groundwater recharge and wet plant communities, thereby improving the water quality filter provided by the wetland. This filter will collect and clean water draining from Tucker Canyon and the upper part of Strawberry Canyon as well as any water draining from this subdivision and from the leach lines.

Individual conventional shallow leach field trenches are proposed for the septic system on each lot.

The subject parcels are a total of 30.54 acres in size and are located at the

COASTAL AREA  
T2A00

A-3-MCO-97-43

southwest corner of Strawberry Canyon Road and Tucker Road in the Elkhorn Area of North Monterey County. Existing improvements include a house, septic system and well which would be located on parcel two. The site is located approximately two miles east of Elkhorn Slough.

Access for each lot will extend from either Tucker or Strawberry Road.

Vegetation on the site consists of central maritime chaparral, coast live oak forest and woodland, central coastal scrub, non-native grassland, vernal marsh and central coast arroyo willow riparian forest. The wetland habitat is presently drained by a ditch at the lower end of the property will be improved, which would increase groundwater recharge and retain water to enhance the wet plant communities.

The biological report prepared for the site indicates that the property is rich in both numbers and kinds of wildlife. The reason for the diversity of habitats is the site's proximity to salt and fresh water marshes, ponds, riparian corridors, oak forest, and chaparral. No rare or endangered species were found to be present on the property.

**EVIDENCE:** The application and plans submitted for the Combined Development Permit, as found in File Number 965437 of the Monterey County Planning and Building Inspection Department.

2. **FINDING:** The project as proposed is consistent with policies of the North County Coastal Implementation Plan dealing with visual resources and will have no significant impact on the public viewshed.

- a) Approval of the tentative map will not create lots which will result in ridgeline development.
- b) The project is not located in the public viewshed as defined in Section 20.144.020.SSS of the North County Coastal Implementation Plan.

**EVIDENCE:** The on-site investigation by the project planner, pursuant to Chapter 20.144.030.A of the Monterey County Coastal Implementation Plan.

3. **FINDING:** Vegetation on the site consists of central maritime chaparral, coast live oak forest and woodland, central coastal scrub, non-native grassland, vernal marsh and central coast arroyo willow riparian forest. The wetland habitat is presently drained by a ditch at the lower end of the property will be improved which would increase groundwater recharge and retain water to enhance the wet plant communities. The majority of the habitats on the site will not be impacted by this development because the vegetation is dense and on steep slopes. Individual Pajaro manzanita and a small patch of maritime chaparral may be lost. This removal is a minor impact and replacement of the manzanita is planned as part of the project. Over thirty

manzanita plants of native stock will be planted on the site.

The biological report prepared for the site indicates that the property is rich in both numbers and kinds of wildlife. The reason for the diversity of habitats is the site's proximity to salt and fresh water marshes, ponds, riparian corridors, oak forest and chaparral. No rare or endangered species were found to be present on the property.

Biological report prepared for the site by Melanie Mayer Consulting indicates that the enhancements proposed will reduce the impacts resulting from the project and any subsequent residential development. Recommended mitigation measures have been incorporated as conditions of approval.

**EVIDENCE:** Biological Report prepared by Melanie Mayer Consulting dated October 1996 as found in File Number 965437.

**EVIDENCE:** Condition 41.

4. **FINDING:** Groundwater assessment prepared by Geoconsultants indicates that the primary aquifer unit underlying the site and vicinity is Aromas sand which consists of cemented brown to red sand and silty sand with local fine gravel. Well logs and other related information in the area suggest that the Aromas sand is 600 to 800 feet thick, overlying the older Purisima Formation, which is water bearing, but is not tapped by any wells in the area because of its depth. Average yield for wells completed in the Aromas sand aquifer in the area is about 450 gallons per minute; their specific capacities are about 20 gallons per minute per foot of drawdown. Specific yield of the aquifer is high on the order of 15 to 20 percent. Natural recharge to the Aromas sand occurs through direct penetration of rain fall. Movement of ground water is mainly from east, in the vicinity of San Miguel Canyon Road, to the west in the vicinity of Elkhorn Slough, where surface elevations prevail.

The increase in ground water demand from the proposed residential development (1.8 acre feet per year) is minimal and any effect on the ground water subarea can be mitigated by leaving as much open space as possible in the development, and by limiting the impervious surfaces.

Although the project will not have a significant impact on the aquifer, there presently exists in the North Monterey County area a serious overdraft in the aquifers, together with seawater intrusion problems in the North County Coastal Zone and nitrate pollution problems throughout the area. The North County Land Use Plan, Coastal Implementation Plan, and Area Plan recognize the existence of these problems and direct that studies be made to determine the safe-yield of the North Monterey County aquifers and that procedures thereafter be adopted to manage development in the area so as to minimize adverse effects on the aquifers and preserve them as viable sources

of water for human consumption.

**EVIDENCE:** Ordinance #3496 of the County of Monterey adds Chapter 18.51 to the Monterey County Code to establish a Water Impact Fee for development in the North Monterey County Area to assist in financing a study and management plans relating to the safe yield of the North Monterey County aquifers.

**EVIDENCE:** Groundwater assessment prepared by Geoconsultants, Inc., as found in File Number 965437.

5. **FINDING:** The project is consistent with Section 20.144.070 of the Coastal Implementation Plan dealing with water resources. The subject site is located in North County Land Use Plan Subwatershed No. 25, which is not a Watershed Restoration Area.

A natural drainage channel runs through the property. The applicant proposes to realign the drainage area to allow creation of building envelopes above the historic channel. Because a significant amount of grading is proposed (4,000 cubic yards) a drainage and erosion control plan is required.

**EVIDENCE:** Appendix 2A, North County Resource Maps.

**EVIDENCE:** Condition number 16.

6. **FINDING:** The project as proposed is consistent with policies of the North County area segment of the Local Coastal Program dealing with development in archaeologically sensitive areas. An archaeological survey has been conducted on the project site by Archaeological Consulting. The report states that there are no identifiable archaeological resources located on site. A condition has been added to require that work be stopped in the event that any archaeological resources are found on site.

**EVIDENCE:** Archaeological report prepared by Archaeological Consulting, contained in the Project File Number 965437. Condition Number 34 has been added to require that work be stopped in the event that any archaeological resources are found on site.

7. **FINDING:** The proposed project is consistent with policies of the North County segment of the Local Coastal Program dealing with development in hazardous areas. A geologic report has been prepared for the site by John Kingsley and Associates. A soil and percolation investigation was prepared by Haro, Kasunich and Associates which is consistent with "Guidelines for Geologic/Seismic Reports" of the California Divisions of Mines and Geology. The report concludes that the subdivision appears feasible provided the conclusions and recommendation of the reports are incorporated in the project plans and specifications.

**EVIDENCE:** Appendix 2a, Resource Maps, of the Monterey County Coastal Implementation Plan.

**EVIDENCE:** Geologic Report prepared for the project by John Kingsley and Associates

contained in Project File 965437.

**EVIDENCE:** Condition No. 36 placed on the project.

8. **FINDING:** This project is expected to generate about 40 vehicle trips per day based upon a daily trip generation rate of 10 trips per day for each of the newly created parcels. This project will add incrementally to traffic on San Miguel/ Highway One, Salinas Road/ Highway One, Elkhorn/ Werner, San Miguel/ Castroville Blvd. Several Improvements are proposed at these impacted intersections. Monterey County Public Works Department recommendations include funding for road and infrastructure improvements to mitigate traffic impacts.

**EVIDENCE:** Referral from Monterey County Public Works Department with recommendations for conditions of approval, as found in project file number 965437.

9. **FINDING:** The proposed project is consistent with policies of the Local Coastal Program dealing with development in Hazardous areas. The project site is located in a high fire hazard zone. According to the Monterey County Coastal Implementation Plan, conditions of project approval require that a deed restriction be recorded and a note be placed on the parcel map which indicates the development restrictions as recommended by the North County Fire Protection District.

**EVIDENCE:** Appendix 2a, Resource Maps, of the Monterey County Coastal Implementation Plan.

**EVIDENCE:** Condition 31.

10. **FINDING:** That, in approving the tentative parcel map, the Minor Subdivision Committee has balanced the housing needs of the County against the public service needs of its residents and available fiscal and environmental resources.

**EVIDENCE:** The applicant will be required to comply with the Inclusionary Housing Ordinance as a condition of approval.

11. **FINDING:** The site of the proposed Lot Line Adjustment and Minor Subdivision is physically suitable for the type and density of the development proposed.

**EVIDENCE:** The property provides for adequate building sites as evidenced by the application materials submitted for the site, including an Archaeological Report prepared by Archaeological Consulting, Nitrate Balance Study prepared by Geoconsultants, Inc., a Geological Report prepared by John Kingsley Associates, a Soil and Percolation Investigation prepared by Haro, Kasunich and Associates and Ground Water Assessment prepared by Geoconsultants, Inc.

12. **FINDING:** The proposed project is consistent with Section 20.155.140.B.3.a, of the Monterey County Coastal Implementation Plan. This Section establishes a

50% buildout figure which is permitted as the first phase of new development in the North County Land Use Planning Area in an effort to limit groundwater use to the safe yield level.

**EVIDENCE:** Approval of this Minor Subdivision will result in 707 out of a maximum of 1,351 new lots or units (excluding one single family dwelling on a vacant lot of record) allowed to be approved since July, 1987 in the North County Land Use Planning Area.

13. **FINDING:** The project, as described in the application and accompanying materials, and as conditioned, conforms with the plans, policies, requirements, and standards of the Monterey County Local Coastal Program.

**EVIDENCE:** The Planning and Building Inspection staff reviewed the project, as contained in the application and accompanying materials, for conformity with:

- 1) The certified North County Land Use Plan,
- 2) The certified Monterey County Coastal Implementation Plan regulations for RDR(CZ) Districts in the Coastal Zone, and
- 3) Chapter 20.144 of the Monterey County Coastal Implementation Plan regulations for development in the North County Land Use Plan Area.

14. **FINDING:** The project, as described in the application and accompanying materials, conforms with the applicable provisions of the Monterey County Code relative to (1) Small Water Systems, Chapter 15.04, and (2) Sewage Disposal, Chapter 15.20.

**EVIDENCE:** The project was reviewed by the Monterey County Departments of Health and Public Works for conformity with the applicable provisions of the County Code. Appropriate recommendations for the project are contained in File No. 965437 and are conditions of project approval.

15. **FINDING:** The project will not have a significant adverse impact on the environment and a Negative Declaration has been adopted by the Minor Subdivision Committee. An initial study was prepared for the project and it was determined that the project would have no significant impacts and a Negative Declaration was filed with the County Clerk on February 4, 1997, noticed for public review, and circulated to the State Clearinghouse. The Minor Subdivision Committee considered public testimony and the initial study.

**EVIDENCE:** Initial Study and Negative Declaration contained in File Number 965437. The proposed project will not have a significant environmental impact.

16. **FINDING:** For purposes of the Fish and Game Code, the project will have a potential for adverse impact on fish and wildlife resources upon which the wildlife depends.

**EVIDENCE:** Staff analysis contained in the Initial Study, and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. Since the development and physical changes to those resources will take place the Fish and Game fee condition has been imposed.

17. **FINDING:** That the proposed lot line adjustment will not create any new parcels, nor will it render any parcel substandard.

**EVIDENCE:** The application and plans for a lot line adjustment found in Minor Subdivision File Number 965437.

18. **FINDING:** The parcels resulting from the lot line adjustment conform to the County Zoning and Building Ordinances. The proposed lot line adjustment and minor subdivision is consistent with Title 19 (Subdivision Ordinance) and Title 20 of the zoning ordinance for parcels within the "RDR or Rural Density Residential" Zoning District.

**EVIDENCE:** The application and plans for a lot line adjustment and minor subdivision found in Minor Subdivision File Number 965437.

19. **FINDING:** The establishment, maintenance, or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

**EVIDENCE:** The project as described in the application and accompanying materials was reviewed by the Department of Planning and Building Inspection, Health Department, Public Works Department, and the Water Resources Agency. The respective departments have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood; or the county in general.

20. **FINDING:** The project, as approved by the Combined Development Permit, is appealable to the Board of Supervisors. It is also appealable to the California Coastal Commission.

**EVIDENCE:** Section 20.87.070 and 20.87.80 of the Monterey County Coastal Implementation Plan.

### DECISION

NOW, THEREFORE, BE IT RESOLVED that it is the decision of the Board of Supervisors that the Negative Declaration be adopted and that said Combined Development Permit be approved as shown on the attached tentative map, subject to the following conditions:

1. This permit consists of a Combined Development Permit which includes a Coastal Development Permit to allow a Major Lot Line Adjustment of parcels 129-291-004-000 and 129-282-001-000. The proposed lot lines adjustment would increase parcel 129-291-004-000 from 25.22 acres to 25.23 acres and would decrease parcel 129-282-001-000 from 5.31 acres to 5.30 acre; A Coastal Development Permit and a Minor Subdivision to allow the division of 25.23 acre parcel into four parcels of 5.15 acres, 5.77 acres, 7.11 acres and 7.35 acres each, well, two water tanks and 4,000 cubic yards of grading, located on Strawberry Canyon and Tucker Roads, in the Elkhorn Area, Assessor's Parcel Numbers 129- 291-004-000 and 129-282-001-000, in accordance with County ordinances and land use regulations subject to the following terms and condition: Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal actions. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. (Planning and Building Inspection Department)
2. Obtain a new water system permit from the Division of Environmental Health. (Environmental Health)
3. Design the water system improvements to meet the standards as found in Chapters 15 and 16, Title 22 of the California Code of Regulations and as found in the Residential Subdivision Water Supply Standards. Submit engineered plans for the water system improvements and any associated fees to the Director of Environmental Health for review and approval prior to installing (or bonding) the improvements. (Environmental Health)
4. 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 installation or bonding and prior to filing of the parcel map. (Environmental Health)
5. The developer shall install or bond the water system improvements to and within the subdivision and any appurtenances needed prior to filing the parcel map. The water improvements shall only be installed or bonded after the engineered designs have been approved by the Division of Environmental Health and the local Fire Department. (Environmental Health)
6. The owner shall obtain a well permit for the replacement of the existing well from the Division of Environmental Health. The replacement well shall be installed and evidence that the water supply meets both quality and quantity standards as found in Chapter 15, Title 22 of the California Code of Regulations shall be provided to the Director of Environmental Health. (Environmental Health)



7. The owner shall destroy the existing well according to the standards found in State of California Bulletin 74-90, and Chapter 15.08 Monterey County Code. Prior to destruction, a permit for the destruction of the well(s) shall be obtained by a licensed well contractor from the Division of Environmental Health. (Environmental Health)
8. Submit a draft final parcel map indicating the proposed well lot(s), water distribution, and access easements for the water system to the Director of Environmental Health for review and approval prior to filing the parcel map. (Environmental Health)
9. Submit plans for surface and sub-surface drainage improvements for review and approval to the Director of Environmental Health to determine any potential septic system impacts. All improvements shall comply with Chapter 15.20 Monterey County Code, and prohibitions of the Basin Plan, RWQCB. (Environmental Health)
10. The applicant shall record a deed notification with the Monterey County Recorder for all five (5) parcel(s) concurrently with the filing of the parcel map indicating that:  
  
*"An approved septic system design is on file at the Division of Environmental Health, File Number 965437, and any future development or expansions on this property shall be in compliance with the design and Chapter 15.20 MCC, unless otherwise approved by the Director of Environmental Health." (Environmental Health)*
11. Submit an updated map indicating proposed septic envelopes for all five parcels to the Division of Environmental Health for review and approval prior filing the final parcel map. The approved septic envelopes shall appear as part of the final parcel map. (Environmental Health)
12. Submit a detailed disposal system design for lots 1, 2, 3, 4 and Assessor parcel number 129-282-001-000 to the Director of Environment Health of review and approval meeting the regulations found in Chapter 15.20 Monterey County Code, and Prohibitions of the Basin Plan, RWQCB prior to filing the final parcel map. The approval of the designs will include confirmation in the field. As necessary, submit revised designs or revised tentative maps as necessary to prove compliance with the above regulations. The designs shall include 200 percent additional expansion/repair areas, and shall meet the following criteria:
  - a. Accurate building footprints.
  - b. The design shall be at a scale of 1" = 50' or better.
  - c. Those areas determined to be unsuitable for sewage disposal.
  - d. The designs shall also include notes for; 1) landmarks/reference points adequate for future location of the trenches, 2) the requirement for the installation of both the primary and secondary leachfield systems at the time of system construction. (Environmental Health)
13. That the applicant provide a water system for fire protection that meets the requirements of Appendix III a and III b of the 1994 uniform fire code and is approved by North County Fire Protection District. (North County Fire Protection District)

14. That the applicant provide a fire apparatus access roadway to all structures, in the project site, that meets the requirements of the 1994 Uniform Fire Code and is approved by North County Fire District. (North County Fire Protection District)
15. That all plans for the building construction, fire sprinkler system, water system, and alarm system be approved by the North County Fire District. (North County Fire Protection District)
16. Natural drainage shall be routed around proposed development and in a way that it does not impact downslope development, in accordance with plans by a registered civil engineer. The proposed "grouted, rock lined channel" shall have its invert as the lowest point in the area between the steep hillside and Tucker Road to ensure that all flow will remain in the channel. Building pads shall be elevated at least one (1) foot above the westerly channel bank elevation. The diversion point of natural drainage into the artificial channel at the southerly property boundary shall be sufficiently bermed and armored to ensure that flow is positively contained in the diversion, and potential escapement of drainage around the diversions minimized. The surveyed invert elevation shall be at the same elevation as the mapped wetlands. (Water Resources Agency)
  - a. A drainage plan shall be prepared by a registered civil engineer to address on-site impacts. Stormwater runoff from impervious surfaces shall be dispersed at multiple points, away from and below any septic leach fields, over the least steep available slopes, with erosion control at outlets. (Water Resources Agency)
  - b. The existing driveway (off Strawberry Canyon Road) serving the building site on proposed parcel 1, and existing residence on parcel 2, shall have a new culvert installed at the channel crossing. All new driveway entrances serving the building sites located off Tucker Road shall be provided with culverts at the new "grouted, rock-lined channel." (Water Resources Agency)
17. Enter into an agreement with the County of Monterey to provide for the maintenance of roads, drainage facilities, and open spaces. The agreement shall be approved by the Director of Public Works, the Director of Planning and Building Inspection, and the General Manager of the Monterey County Water Resources Agency, prior to filing of the parcel map. The agreement shall include provisions for a yearly report by a registered civil engineer, and the monitoring of impacts of drainage and maintenance of drainage facilities. Report shall be approved by the County Water Resources Agency. (Water Resources Agency)

18. If the property owners after notice and hearing fails to properly maintain, repair or operate the drainage and flood control facilities in the project, Monterey County Water Resources Agency shall be granted the right by the property owners to enter any and all portions of the property to perform repairs, maintenance or improvements necessary to properly operate the drainage and flood control facilities in the project. The County Water Resources Agency shall have the right to collect the cost for said repairs, maintenance or improvements from the property owners upon their property tax bills. A hearing shall be provided by the Board of Supervisors as to the appropriateness of the cost. An agreement to this effect shall be entered into concurrent with the filing of the parcel map of the first phase of the subdivision. (Water Resources Agency)
19. A notice shall be recorded on the deed for each lot that all new construction shall incorporate the use of low water use plumbing fixtures and drought tolerant landscaping, in accordance with County Water Resources Agency Ordinance #3539. (Water Resources Agency)
20. The front yards of all homes shall be landscaped at the time of construction. Low water use or drought tolerant plants shall be used together with water efficient irrigation systems. This shall be the responsibility of the developer if the developer is also the builder. If not, a notice shall be recorded on the deed for each lot to inform future builders of this requirement. (Water Resources Agency)
21. Prior to the conveyance of any lots in the subdivision, developer shall have the sole responsibility for the care, maintenance, and repair of road and drainage improvements installed as a condition of approval of the subdivision. Upon each conveyance of each lot in the subdivision, developer shall be jointly obligated with the succeeding owners to perform such obligation pro rated on the basis of the remaining number of lots still owned by the developer. Developer's obligation shall cease upon the conveyance of the last lot in the subdivision. An agreement to this effect, running with the land, shall be recorded between developer and the County of Monterey prior to recordation of the tentative or parcel map. (Water Resources Agency)
22. The applicant shall provide to the Water Resources Agency a water balance analysis describing the pre-development and post-development water use on the property. Any proposed increase in water use shall require the identification and implementation of mitigation measures by the applicant. (Water Resources Agency)
23. The applicant shall provide to the Water Resources Agency information on the water system to serve the project, including the location of all water wells on the property, any well logs available, and the number of current hookups. (Water Resources Agency)
24. File parcel map delineating all existing and required easements or rights of way and monument new lines. (Public Works)
25. Thirty days prior to expiration date of the tentative map, Step A (8 items) of the County

Surveyor's Check Off List for Parcel Map Processing shall be completed. (Public Works)

26. Provide for all existing and required easements or right of way serving all parcels. (Public Works)
27. Dedicate to County 30 feet from center line of Strawberry Canyon, and 25 feet from the centerline of Tucker Road, including a 1 foot non-access strip excepting for on 30 foot opening for each parcel. (Public Works)
28. That the developers pay their proportionate share of a traffic signal on San Miguel Canyon in the vicinity of the intersection of Prunedale North Road intersection. (Public Works)
29. That the applicant pay the appropriate financial contribution in accordance with Ordinance 3496, adopted by the Board of Supervisors to implement an area-wide hydrological study to address ground water overdraft and water resources in the project area. The fees shall be paid prior to issuance of building permits. (Planning and Building Inspection)
30. That the applicant record a deed restriction and a note be placed on the parcel map which states: "The Minor Subdivision is located in a high fire hazard area and development may be subject to certain restrictions required as per Section 20.144.100.C of the Coastal Implementation Plan and per the standards for development of residential property." This deed restriction shall be recorded prior to recordation of the parcel map. (Planning and Building Inspection)
31. That a note be placed on the parcel map which states: "New utility and distribution lines shall be placed underground." (Planning and Building Inspection)
32. The subdivider/applicant shall comply with the recreation requirements as provided in Section 19.12.010 of the Subdivision Ordinance (Title 19, Monterey County Code) prior to filing of the parcel map. (Parks Department)
33. Applicant shall comply with the requirements of the Inclusionary Housing Ordinance prior to filing of the parcel map. (Planning and Building Inspection)
34. If, during the course of construction, cultural, archaeological, historical or palentological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (Planning and Building Inspection)
35. That a scenic easement be conveyed to the County over those portions of the property

where the slope exceeds 25 percent. The scenic easement deed shall be submitted to and approved by Director of Planning and Building Inspection prior to recordation of the parcel map. (Planning and Building Inspection)

36. That a note be placed on the parcel map and a deed restriction recorded concurrently with the parcel map stating that: "A geological report has been prepared for this property by John Kingsley and Associates, and is on file in the Monterey County Planning and Building Inspection Department. The recommendations contained in said report shall be followed and in all further development of this property." The note shall be located in a conspicuous location, subject to the approval of the County Surveyor and the Director of Planning and Building Inspection. (Planning and Building Inspection; and Public Works)
37. That the location and color (earth tone) of the water tank shall be subject to the approval of the Director of Planning and Building Inspection. The color shall be approved prior to the issuance of building permits. (Planning and Building Inspection)
38. That prior to recordation of the parcel map, the geotechnical consultant provide certification that all subdivision improvements have been constructed in accordance with the geotechnical report. (Planning and Building Inspection)
39. That a Grading Permit shall be required pursuant to the Monterey County Code relative to Grading, Chapter 16.08. (Planning and Building Inspection)
40. That no land clearing or grading shall occur on the subject parcel between October 15 and April 15. (Planning and Building Inspection)
41. That a deed restriction shall be recorded concurrently with the parcel map stating that: "A biological report has been prepared for this property by Melanie Mayer Consulting, and is on file in the Monterey County Planning and Building Inspection Department. The recommendations contained in said report shall be followed and in all further development of this property." (Planning and Building Inspection)
  - a. That hay bales of rice straw shall be placed in the marsh area, as described in the biological report prepared by Melanie Mayer Consulting, to hold a greater volume of water to enhance the wetlands. Native plants will be planted on the bales to stabilize them. Prior to filing of the parcel map, the applicant shall submit a landscaping plan which indicates the location of the placement of the hay bales, the species of the native plants that will be planted on the bales and evidence from a qualified biologist that the plan is consistent with the recommendation of the biological assessment. The improvements and landscaping shall be either installed, or a certificate of deposit or other form of surety made payable to the Monterey County Planning and Building Inspection Department, for the estimated cost of installation of said improvement.

- b. Willow riparian habitat shall be expanded around the edge of the marsh by planting wetland trees and bushes, such as arroyo, red and yellow willows, cottonwoods, alders, sycamores, creekside dogwood, elderberry and species of small understory plants which have been eliminated from the historical wet landscape throughout the Prunedale hills and Salinas Valley. All planting shall be local natural species. Prior to filing of the parcel map, the applicant shall submit a landscaping plan which includes the location, species, size of the native plants that will be planted and evidence from a qualified biologist that the plan is consistent with the recommendation of the biological assessment. The improvements and landscaping shall be either installed, or a certificate of deposit or other form of surety made payable to the Monterey County Planning and Building Inspection Department, for the estimated cost of installation of said improvement.
- c. Thirty Pajaro Manzanita plants of local stock in at least five gallon size pots shall be planted in areas indicated in the Biological Assessment prepared for the project. If needed, as determined by a qualified biologist, additional Pajaro Manzanita shall be planted on Parcel 4 approximately between the 165 and 180 foot contour area. Prior to filing of the parcel map, the applicant shall submit a landscaping plan which includes the location, species, size of the native plants that will be planted and evidence from a qualified biologist that the plan is consistent with the recommendation's of the biological assessment. The improvements and landscaping shall be either installed, or a certificate of deposit or other form of surety made payable to the Monterey County Planning and Building Inspection Department, for the estimated cost of installation of said improvement.
- d. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which states that "The area between the wetland and proposed building envelopes acts as a protective buffer which will also enhance the wildlife corridor between the slope communities and the wetlands. This buffer area shall not be developed." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
- e. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Building construction shall use special measures to control the erosion of soils, especially into the wetland. Bare soils shall not be allowed to erode. They shall be seeded with proper native grass seeds, covered with straw and, during the dry season, watered to ensure proper seed germination. Hairgrass would be the best seed to use on bare slopes since it is perennial, forms thick clumps and binds the soil well, and is a hardy, natural species native to the area. Soil erosion control is especially important for grading near the wetland and the steep drainage along the roadside. Soil moved in grading shall not be moved any closer than 10 feet to the edge of the upper berm of the ditch. At that point the bare soil shall be stabilized with seed mixture and rice straw. The toe of exposed grades shall be protected with a continuous row of rice hay bales, which

will stop any soil movement downhill from the graded area. This hay bale protection is critical for grading near the marsh and steep, narrow drainage. Straw and native grass seed shall be spread over all graded areas around the foundation and driveways to retard erosion with the row of whole hay bales preventing any soil movement from the downhill edge of the graded area. This protection is consistent with the recommendations from geological hazards and soil report for the property. Drainage from the houses and imperious surface shall follow the recommendations from the hydrology study to insure no soil erosion after construction." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.

- f. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Development activities and improvements shall be limited to the building envelopes and areas as shown in the biological assessment." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
- g. That a scenic easement be conveyed to the County over all areas of environmentally sensitive habitat, not currently defined by this project. The scenic easement deed shall be submitted to and approved by Director of Planning and Building Inspection prior to recordation of the parcel map.
- h. A spring check of biological resources, on assessor's parcel number 129-282-001-000, shall be completed in March or April of 1997. Prior to filing of the parcel map, the applicant shall submit a biological report from a qualified biologist that indicates that the spring check was completed in March or April of 1997, findings, recommendations and mitigations if needed. This report must be consistent with the requirements the Coastal Implementation Plan regulation for development in the North Monterey County Land Use Plan Section 20.144.040 A. -
- i. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Care shall be taken during construction to minimize root compaction of chaparral species including Pajaro Manzanita. Any revegetation or enhancement of area outside of building and driveways shall be done with only native plants of local origin." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
- j. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Downed wood and larger dead trees shall be left in place wherever possible away from homesites since these are very important dwelling sites for wildlife. This wood shall not be used in fireplaces." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.

- k. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Landscaping within and outside building envelopes shall use only local native plants appropriate to the site and habitat." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
- l. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that " No invasive species of plants shall be planted on the property. Invasive plants include pampas grass (*Cortaderia jubata*), Hottentot fig or iceplant (*Carpobrotus edule*) Eucalyptus (*Eucalyptus globus*) and green wattle (*Acacia decurrens*)." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
- m. Prior to the filing of the parcel map provide evidence from a qualified biologist that all invasive plant species now growing on the property have been eradicated to the maximum extent possible. These include pampas grass (*Cortaderia jubata*), Hottentot fig or iceplant (*Carpobrotus edule*) Eucalyptus (*Eucalyptus globus*) and green wattle (*Acacia decurrens*).
- n. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Care shall be taken to remove as few large coast live oaks as possible and to avoid impacts to landmark trees (twenty-four inches or greater in diameter breast height). Care shall be taken during construction to prevent damage to roots of trees or compaction of soil under their driplines. Oaks removed that are six inches or more in diameter when measured two feet above the ground shall be replaced". The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
- o. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Landscaping plans within development areas shall emphasize preservation of the natural character of the communities present. Individual trees and larger shrubs originally present on the land shall be integrated into landscape plans where possible." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
- p. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "If any limited fuel reduction program should become necessary in the native habitats for fire protection, it shall be developed with the aid of a qualified forester so as to best help reduce fire danger and maintain or improve habitat values." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
- q. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Chemical herbicides shall not



be used on the property and chemical pesticides shall be used only when other options for pest control have been exhausted. Keep chemicals confined to the immediate areas of use." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.

- r. Prior to the filing of the parcel map a deed restriction shall be recorded with the Monterey County Recorders office which reads that "Low level temporary fences shall be erected prior to construction to provide a visual marker to assure construction work stays out of the wetland buffer area and to protect maritime chaparral and Pajaro Mazanita." The deed restriction shall be subject to the approval of the Director of Planning and Building Inspection Department.
42. The applicant shall convey to the County of Monterey or to a non-profit organization a wetlands conservation easement over the wetlands and wetlands buffer area, as designated by a qualified biologist and engineer, to provide for protection and maintenance of the wetlands. The wetlands conservation easement deed shall be submitted to and approved by Director of Planning and Building Inspection prior to recordation of the parcel map. (Planning and Building Inspection)
43. The applicant shall convey to the County of Monterey an open space and conservation easement for all areas outside of the building envelope on Parcel 3, that are not included in the wetlands conservation easement. The open space and conservation easement deed shall be submitted to and approved by Director of Planning and Building Inspection prior to recordation of the parcel map. (Planning and Building Inspection)
44. That building envelopes shall be shown on the parcel map, subject to the approval of the Director of Planning and Building Inspection. The building envelopes shall comply with the setback requirements of the North County Land Use Plan, Local Coastal Program , specifically, policy 2.3.3.B.1. (Planning and Building Inspection)
45. That a 100 foot setback shall be maintained for all development from the landward edge of the riparian corridor, except for any wetland enhancement improvements proposed as part of this project. (Planning and Building Inspection)
46. The property owner agrees as a condition of the approval of this Combined Development Permit; that it will pursuant to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for in Government Code Section 66499.37. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the filing of the parcel map, whichever occurs first. The County shall promptly notify the subdivider of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible

to defend, indemnify or hold the County harmless. (Planning and Building Inspection)

47. The applicant shall record a notice which states: "A permit was approved by the Monterey County Board of Supervisors for Assessor's Parcel Number 129-291-004-000 and 129-282-001-000 on April 29, 1997. The permit was granted subject to 47 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 filing of the parcel map. (Planning and Building Inspection)

PASSED AND ADOPTED on this 29th day of April, 1997 upon motion of Supervisor  
Potter seconded by Supervisor  
Johnsen by the following vote, to wit:

AYES: Supervisors Salinas, Perkins, Johnsen and Potter.

NOES: None.

ABSENT: Supervisor Pennycook.

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT AND APPELLANT ON  
MAY 2, 1997

This is notice to you that the time with 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 of Supervisor duly made and entered in the minutes thereof at page --- of Minute Book 69, on April 29, 1997

Dated: April 29, 1997

Ernest K. Morishita, Clerk of the Board of Supervisor,  
County of Monterey, State of California.

By: Nancy Luckenwill  
Deputy

A-3-MCO-97-43

REASONS FOR APPEAL

- 1) Procedural
- 2) Environmental concerns regarding wetlands

1) This proposed project should have gone to the Monterey County Planning Commission as was publicly noticed. Initially the Monterey County Minor Subdivision Committee was to review this proposed project and refer it to the Monterey County Planning Commission, however, on the day of the Minor Subdivision Committee Hearing it was announced that the Minor Subdivision Committee would be the final hearing body. This was justified by stating that Monterey County had substantially complied with public notice requirements by noticing the date, time and subject content of the hearing before the Minor Subdivision Committee.

Please reference evidence A-1, A-2, and A-3. I never received a response to my final letter (A-3) asking specifically what code section number authorizes the Subdivision Committee to approve a Coastal Development Permit.

2) Reference B-1. The map does not clearly indicate the extent of the wetland. The wetland is variously referred to in staff reports as wetland, marshland, marshy area, and transition zone. There is no clear delineation of the wetland and I found the Biological Assessment to be of little help in delineating the extent of the wetland and thus the "buffers". How were the boundaries of the wetland determined?

The plan calls for relocating natural drainage around proposed development via grout lined channels. The plan also calls for a grout lined channel at the lowest level for "drainage" and at the same time proposes using hay bales around the "wetlands" to "retain" more water and thus "enhance" the wetlands. Which is it? A letter on file from the Water Resources Agency recommends using an earthen berm and deleting the hay bales.

The Biological Assessment prepared by ecologist Melanie Mayer Consulting is variously referred to in the staff report as a Biological Assessment, Biological Study and a Biological Report. Which is it?

|                                       |
|---------------------------------------|
| EXHIBIT NO. 4                         |
| APPLICATION NO.<br>A-3-MCO-97-43      |
| Pennycook: Appellants'<br>Contentions |

The Assessment fails to identify any reasonable investigation/reconnaissance done to determine the possible existence of Red Legged Frogs, the Santa Cruz Long-toed Salamander and the Tiger Salamander.

Certain comments in the "Biological Assessment" fairly leap out at the reader regarding both the uniqueness and sensitivity of the site.

"Freshwater marshes are uncommon in Monterey County."

"...property is an important part of the Prunedale Hills-Elkhorn Slough ecosystem."

"Dogs must not be allowed to roam free and disturb native wildlife. Cats should be allowed as housepets only..."

Referring to the area in general, "Over 100 years ago the water table was near the ground surface-a continuous riparian habitat... Now water table average is 140 feet below the elevation of the former table."

The proposed minor subdivision as configured would allow 4,000 cubic yards of grading. There are concerns regarding silting of the wetland, water draining from the 10 foot deep shallow leachfields and subdivision grading as it sometimes takes several seasons to revegetate graded areas.

The two building envelopes proposed along Strawberry Road are the biggest concern, one of which encroaches on Maritime Chaparral. The property is listed as a high hazard fire zone, the concern is how much Maritime Chaparral will be cleared for the adequate fire protection of a residence? One lot on Tucker Road appears to be located on an area previously filled some 30 years ago.

Finding #3..."The biological report prepared for the site indicates that the property is rich in both numbers and kinds of wildlife."

Finding #15...The Project will not have a significant adverse impact on the environment."

The Findings, numbers 3 and 15 are not supported by the scope of the project nor I believe the conditions, to wit:

- Fire Apparatus Roadway
- Access easements for water system
- Undergrounding of utilities
- 4,000 cu. yds. of grading
- Natural drainage routed around proposed development (grouted rock lined channel)
- Elevated building pads
- Artificial channel at southern property sufficiently "bermed and armored"
- Stormwater runoff from impervious surfaces away from and below leachfields
- New driveway entrances (plural)
- Well lot(s), WATER SYSTEM PAVING, WATER TANK(S)

A-3-MCO-97-43

Mr. Phillips  
Monterey County Planning Dept.

April 9, 1997

Dear Mr. Phillips,

I attended the Board of Supervisors meeting yesterday at 9:55 a.m., the time scheduled for public comments. My intent was to request the Board to reschedule its April 15 hearing on my appeal of the minor subdivision committee's approval of the Pennycook matter (MS965437). My April 3 letter to Ms. Lukenbill explains that it would be an extreme hardship to attend on the 15th because my business partner will be out of town from the 15th through the 19th of April. I waited until 2:35 p.m. yesterday in an effort to present my request, then I had to leave.

After spending 4 1/2 hours in a futile effort to request the Board to change the hearing date, I spent last night reading Title 19 and 20. I realized that the Planning Commission should be hearing the appeal, not the Board of Supervisors. (Title 19, Section 19.16.020.B) The Planning Commission should have heard the matter in the first place because it is the Appropriate Authority to hear applications for Coastal Development Permits, the Subdivision Committee is not. (Title 20, Section 20.70.030.) When a Combined Development Permit includes any permit normally considered by the Planning Commission, then the Planning Commission shall consider the entire Combined Development. (Title 20, Section 20.82.030.A.)

Please call me today at 394-3374 to inform me whether the Pennycook matter will be heard by the Planning Commission.

Sincerely,

*Mike Weaver*  
Mike Weaver

A-3-MCO-97-43

THE LAW OFFICES OF  
JANE HAINES

614 LIGHTHOUSE AVENUE, SUITE G  
PACIFIC GROVE, CALIFORNIA 93950  
FAX (408) 372-0582  
TELEPHONE (408) 372-6665  
E-MAIL envirlaw@mbay.net

**RECEIVED**

JUL 07 1997

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

July 2, 1997

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

Re: 7/8/97 hearing  
Appeal - Permit No. A-3-MCO-97-043 (Pennycook)

Dear Coastal Commission:

I received the public hearing notice in the above-referenced matter because I represented a client at a hearing before the County's Minor Subdivision Committee. I no longer represent the client in this matter. However I see by the staff report that as of June 20, the County of Monterey had not sent Commission staff the administrative record that was due by June 4.

I too was unable to obtain timely information from the County of Monterey about this project. If and when the County sends you the record, you will find documentation submitted to the County's Minor Subdivision Committee on my client's behalf that it was impossible for the public to obtain timely answers from County staff to timely, legitimate questions about this project.

Yours truly,

LAW OFFICES OF JANE HAINES

*Jane Haines*

Jane Haines

copy: Michael Weaver - Appellant  
Bud Carney - Supervisor, County Coastal Planning  
Mark Diaz - Chair, County Minor Subdivision Committee

|                                  |
|----------------------------------|
| EXHIBIT NO. 5                    |
| APPLICATION NO.<br>A-3-MCO-97-43 |
| Pennycook:                       |
| Correspondence                   |

CALIFORNIA COASTAL COMMISSION  
 c/o Rick Hyman

July 22, 1997

RE: PROPOSED PENNYCROCK SUBDIVISION IN THE ELKHORN AREA  
CONCERNS:

- WHERE IS THE ABANDONED HOUSE OFF TOCKER ROAD (ON SUBJECT PROPERTY) SHOWN ON ANY MAP?
- WHAT ARE MD. MELANIE MAYERS CREDENTIALS? SHOULD NOT A REGISTERED BIOLOGIST DO AN ASSESSMENT? SINCE THE SUBJECT PROPERTY HAS A WETLAND ON IT SHOULD IT NOT REQUIRE A BIOLOGICAL STUDY AND A BIOLOGICAL REPORT? SHOULDN'T THE EXTENT OF THE WETLAND BE DETERMINED BY A REGISTERED BIOLOGIST RECOGNIZED BY USF&W USING THE THREE TIERED APPROACH METHOD? THE CURRENT FIELD RECONNAISSANCE WAS DONE DURING DAYLIGHT HOURS DURING A DRY TIME OF YEAR. DOES SIMPLY ADDING A CONDITION TO DO ANOTHER ASSESSMENT IN THE "SPRING" RECTIFY THIS? IS A FISH AND GAME "FEE CONDITION" A SOLUTION?
- PARCEL 'SIZES' ADDED UP DO NOT EQUAL THE TOTAL BEING CONSIDERED, I.E.  $5.15 + 5.77 + 7.11 + 7.35 = 25.38$  NOT 25.23 SUBJECT PARCEL TOTAL REFERRED TO AS A TOTAL OF 30.54 ACRES, ACTUALLY IT'S 30.68 ACRES.
- THE MINOR SUBDIVISION COMMITTEE DECISION, WHICH WAS CONSIDERED FINAL BY MONTEREY COUNTY CONTAINED A STATEMENT THAT THE DECISION WAS NOT APPEALABLE TO THE COASTAL COMMISSION. WHY?

A-3-MCO-97-43

- SHOULD THERE BE AN OVERLAY OF THE ENTIRE WETLAND AREA ON THE SUBDIVISION MAP?
- AGAIN, SPECIFICALLY WHICH CODE SECTION ALLOWS THE MINOR SUBDIVISION COMMITTEE TO BE THE FINAL DECISION MAKING AUTHORITY ON COASTAL DEVELOPMENT PERMITS?
- FROM WATER WELL STANDARDS: STATE OF CALIFORNIA

"WHEN WATER IS PUMPED FROM A WELL A DRAWDOWN "CONC OF DEPRESSION" IS FORMED IN THE WATER SURFACE SURROUNDING THE WELL AND GROUNDWATER IN THE AREA OF THE CONE FLOWS TOWARDS THE WELL. SIMILAR CONES FORMED BY NEARBY WELLS CAN INFLUENCE THE SHAPE OF THE CONE OR ENLARGE THE AREA BEING DRAWN UPON RESULTING IN A CHANGE OF FLOW.

IN ADDITION, THE AREA AROUND THE WELL SHALL SLOPE AWAY FROM THE WELL AND SURFACE DRAINAGE SHALL BE DIRECTED AWAY FROM THE WELL."

ALTHOUGH A TENTATIVE LOCATION OF A WELL (SINGULAR) IS SHOWN ON THE MAP, A LANDOWNER CAN PUT A WELL WHERE THEY CHOOSE ON PROPERTY, WHEREVER THEY CAN DRILL AND FIND WATER. A WELL PERMIT DOES NOT DESIGNATE WHERE, HOW DEEP, NOR HOW MUCH WATER (A CAP) CAN BE PUMPED.

SIMILARLY THE MONTEREY COUNTY HEALTH DEPT. (SMALL WATER SYSTEMS) DOES NOT REQUIRE WATER STORAGE TANKS TO GO IN ANY PARTICULAR LOCATION. AT THE BOTTOM OF A HILL NEXT TO THE WELL OR AT THE TOP OF A HILL. THEY DO REQUIRE A WATER SYSTEM PLAN FOR PIPING & THE NECESSARY SIZE STORAGE TANKS BOTH FOR WATER STORAGE AND A 10,000 GALLON STORAGE TANK FOR FIRE PROTECTION. OUTSIDE OF THAT, IT'S PRETTY



MUCH UP TO THE APPLICANT(S). THUS THE TENTATIVE MAP IS ONLY THAT, TENTATIVE. THE CONCERN IS WELLS, TANKS & WATER LINES TO THE VARIOUS PARCELS AND BUILDING ENVELOPES THAT ARE ON THE PERIMETER OF THE PROPERTY (ON TUCKER) AND THE EVENTUAL LOCATION AND ROUTING OF THESE.

- THE TWO PERCHED WATER TABLES DISCOVERED IN 1991 AND REFERENCED BY THE HEALTH DEPT. IN A MAY 1 1991 LETTER, MADE "LOTS" 3, 4, & 5 UNACCEPTABLE FOR SEPTICS. LOT 2 WAS PROBABLY ACCEPTABLE. THE CONCERN IS BY NOW RELOCATING SEPTIC FIELDS TO 25% SLOPES AND PUMPING EFFLUENT UPHILL IT MAY CAUSE PROBLEMS. LEACHFIELD WATER STILL RUNS DOWNHILL.

- THE APPROVAL OF THIS SUBDIVISION BY MONTEREY COUNTY OCCURRED PRIOR TO THE ACCEPTANCE BY THE MONTEREY COUNTY BOARD OF SUPERVISORS OF THE NORTH COUNTY HYDROGEOLOGICAL ASSESSMENT AND RECOMMENDATIONS, WHY? AMONGST RECOGNIZING THE 100% OVERDRAFT SITUATION IN NORTH COUNTY IT RECOMMENDED 100% OFFSETS FOR SUBDIVISIONS AMONG OTHER THINGS.

- AS THE PRESENT ENVIRONMENTAL/BIOLOGICAL ASSESSMENT STATED DOGS SHOULD NOT BE ALLOWED ON THE PROPERTY AND HOUSECATS ONLY, WHY IS THERE NO CONDITION AS SUCH RECOGNIZING THIS?

THANK YOU FOR REVIEWING A FEW OF MY CONCERNS.

Vicki Weaver

408-484-2243

