

CALIFORNIA COASTAL COMMISSION

RECORD PACKET COPY

CENTRAL COAST AREA OFFICE

725 FRONT STREET, SUITE 300

MORRO BAY, SANTA CRUZ, CA 95060

(408) 427-4863

HEARING IMPAIRED: (415) 904-5200



Mlba

Filed: 04/24/98
 49th day: 05/12/98
 180th day: 10/21/98
 Staff: SG
 Staff Report: 05/27/98
 Hearing Date: 06/08/98

**STAFF REPORT: APPEAL
 SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Morro Bay
 LOCAL DECISION: Approved with conditions, April 13, 1998
 APPEAL NUMBER: A-3-98-37
 APPLICANT: KEYOTO MORRO BAY
 APPELLANT: Warren Dorn, Ned Rogoway, Donald Funk, and Bernard Melvin
 PROJECT LOCATION: 2225 emerald Circle (Lot 94), Cloisters Subdivision, between Azure Street and the Morro Bay High School, City of Morro Bay
 PROJECT DESCRIPTION: Single story (17 feet) Single Family Residence
 FILE DOCUMENTS: File for A-4-MRB-91-44 (Cloisters Subdivision Appeal), Administrative File for City Coastal Development Permit CUP34-97 (Precise Plan)/CDP81-97R, and City of Morro Bay certified LCP

SUMMARY OF STAFF RECOMMENDATION

This is an appeal of single family residence in the Cloisters subdivision in the City of Morro Bay. Appellants Dorn and Rogoway and then-Commission Chair Gwynn and Commissioner Giacomini appealed the City's approval of the Cloisters subdivision in 1991. On July 9, 1992, the Commission approved the Cloisters subdivision subject to special conditions which, among other things, required Commission certification of a water management plan for the City and City certification that water was available to serve the subdivided lots; limited elevation of finished grade; imposed height limits of 14 feet, 17 feet, and 25 feet on specified lots; and expanded a proposed wetland mitigation area. All of the conditions imposed by the Commission have been fulfilled.

Appellants now assert that the City's approval of this residence fails to comply with various water and visual resource policies of the LCP; as well as with a grading condition of the subdivision and a water conservation policy that is not part of the LCP. 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 in part because the conditions of the

original subdivision have been fulfilled, including the relevant findings of water availability; and because the grading of the lot in question was done consistent with the Commission's requirements.

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

The appellants contend that the City's approval of the house is inconsistent with the following sections of the LCP:

1. Policies 12.01 and 12.06(a) which protect scenic vistas to the ocean.
2. Policy 3.01 where it must be shown that adequate water service is available to new construction.
3. Policy 3.03 which requires the City to show it can implement its Water Management Plan.
4. Policy 3.04(3) where the City must show its water management plan provides for adequate safeguards to protect coastal stream environments.
5. Policy 3.05 which requires the City to produce a five-year Capital Improvement Program for sewer and water service.
6. Failure to comply with Measure F concerning compliance with water conservation requirements.

In addition, the appellants state as reasons for their appeal the following issues, which do not involve the LCP:

1. Failure to comply with Condition D3(f) of tract 1996 which requires finished grade to not exceed the minimum needed for flood-proofing and to not exceed the finished grade as shown on the 1991 City-approved grading plan.
2. Failure to fulfill the mandate of Measure I concerning compliance with water conservation requirements.

II. LOCAL GOVERNMENT ACTION

On March 2, 1998, the Morro Bay Planning Commission approved five single family dwellings, including this one, on vacant lots in the Cloisters subdivision. Approval of the five houses was appealed to the City Council. On April 13, 1998, the City Council upheld the decision of the Planning Commission.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Because this project is appealed on the basis of its

location between the sea and the first public road paralleling the sea, the potential grounds for an appeal to the Coastal Commission include not only the allegation that the development does not conform to the standards set forth in the certified local coastal program but also the allegation that the development does not conform to the public access policies of the Coastal Act. However, no such allegation has been made in this case.

Staff notes that disputes regarding condition compliance of the subdivision with the coastal development permit and with the terms of uncertified or partially certified City ordinances are not grounds for appeal under the Coastal Act. Revisiting the 1992 coastal permits is also inappropriate because the Commission found that the project, as conditioned, was consistent with the certified LCP. The LCP policies on which that decision was based have not changed over the past six years.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed, because the City has approved the proposal in a manner that is consistent with the certified Local Coastal Program.

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

I move that the Commission determine that Appeal No. A-3-98-37 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

V. RECOMMENDED FINDINGS AND DECLARATIONS

1. Project Description and Background

The project at issue is a single family dwelling on a vacant lot in the Cloisters subdivision. On July 9, 1992, the Commission found that the subdivision was consistent with the Morro Bay LCP and approved it on appeal subject to special conditions. The special conditions required Commission certification of a water management plan for the City prior to recordation of a final map; City certification that water was available to serve the subdivided lots; limited the elevations of finished grade; imposed height limits of 14 feet, 17 feet, and 25 feet for houses on specified lots; and required an expanded wetland mitigation area. All of the conditions imposed by the Commission have been fulfilled.

Although many issues were raised by the appellants in the appeal of the original subdivision, the major issues, as reflected in the Commission's 1992 action, concerned the adequacy of the City's water supply, filling of wetlands, landform alteration, and protection of public views -- essentially the same issues raised by this current appeal of a house in the subdivision. The following Findings explain why the appeal raises no substantial issue in terms of conformance with the certified Morro Bay Local Coastal Program (LCP).

2. Policies 12.01 (Scenic Views), 12.06(a) (Visual Compatibility), and Coastal Act 30251

Appellants allege a "failure to comply with LCP Policy 12.01 and 12.06(a) and Resource Code Section 30251, which sections protects [sic] scenic vistas to the ocean." Staff notes that Coastal Act section 30251 is not part of the certified LCP and thus does not provide valid grounds for appeal.

LCP Policy 12.01 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as designated on Figure 31 [which includes the Cloisters site], shall be subordinate to the character of its setting.

Policy 12.06(a) states:

New residential development in areas designated on Figure 31 as having visual significance [which includes the Cloisters,] shall include as appropriate the following:

- a. Height/bulk relationships compatible with the character of surrounding areas or compatible with neighborhoods or special communities which, because of their unique characteristics, are popular visitor destination points for recreation uses.

In 1988, the Commission certified Morro Bay LCP Amendment 3-88, as modified. Among other things, that amendment created a northbound view corridor across the Cloisters site in addition to the already required southbound view corridor and limited structure heights in both the north and south ends of the site to 14 feet. The applicant then filed suit against both the City and the Commission over the view corridors and height limits of LCP amendment 3-88. A subsequent Settlement Agreement among the parties to the lawsuit ended litigation.

In 1990, the Commission certified Morro Bay LCP amendment 2-89, which incorporated the Settlement Agreement. The amendment decreased the view corridor in the northern portion of the property by 50 feet and by 100 feet in the southern part of the property and increased the maximum allowed height in the southern part from 14 feet above grade to 25 feet above grade with finished grade above flood level to be determined by the City Engineer (see Exhibit 4, p. 22). Height of houses in the north part of the site remained at 14 feet, as certified by the Commission in LCP amendment 3-88.

In the 1992 appeal of the subdivision, the Commission found that, as conditioned, the height of the proposed houses on each lot was "consistent with the adopted LCP of the City of Morro Bay regarding protection of visual resources." In particular, the Commission imposed Condition 3a., which states:

No structure in the south cluster (lots 46 through 120) shall exceed 25 feet in height above finished grade. Further, on lots 49 through 58, 89, 90, 93, 95, 101, 104, 108, 110, 112, 113, 115, 116, 118, 119, and 120 no structure shall exceed 25 feet above finished grade; on lots 91, 92, 94, 96 through 100, 102, 103, 105, 106, 107, 109, 111, 114 and 117 no structure shall exceed 17 feet in height above finished grade; and on lots 46, 47, 48, and 59 through 88 no structure shall exceed 14 feet in height above finished grade (See Exhibit E [Exhibit 4, p. 22]). Finished grade shall not exceed the minimum elevation necessary to flood-proof future residences nor shall it exceed finished grade as shown on the grading plan for the project approved by the City of Morro Bay on December 9, 1991.

Houses on the lots along the south property line, which abuts Morro Bay High School, are all allowed to be 25 feet tall. Cypress trees along the school's north boundary, planted some 35 years ago to provide a windbreak and screen the school from Highway One, also partially block the view of Morro Rock from southbound Highway One. Based on this fact, the Commission found:

[b]y limiting the number of houses 25 feet above finished grade to one-third of the total in the south Cluster and requiring their location nearest the trees on the High School property, there will be no significant further impairment of the view of Morro Rock and the project can be found consistent with LCP Policy 12.01.

With respect to the overall mix of heights the Commission found the following:

The existing view of Highway 1 across the site toward the southeast presents a stair-stepped appearance leading toward Morro Rock. Grasses, coyote brush, and willow on the site and cypress trees just beyond the south boundary of the site, in ascending order, lead the eye from ground level upward to the Rock. A mix of 14, 17, and 25 foot heights above finished grade will allow for a continuation of this stair stepped view. Heights greater than 25 feet or all structures at 25 feet would impair that view. Special Condition 3 allowing only 25 two-story houses (25 foot height limit), 17 houses 17 feet in height, and 33 houses 14 feet in height will provide a mix of heights in the southern cluster and protect significant coastal views from further impairment. The Commission finds that only with the imposition of Special Condition 3 can the project be consistent with the adopted LCP of the City of Morro Bay regarding the protection of visual resources.

As mentioned above, because the Cloisters site is in the floodplain, Condition 3a also limited fill on the site to the minimum necessary for flood protection but in no case could finished grade exceed the heights shown on the grading plan for the project approved by the City of Morro Bay on December 9, 1991.

This coastal development permit is for lot 94 in the south cluster of the Subdivision. Under Condition 3a, the house on this site must not exceed 17 feet in height above finished grade. Finished grade can not exceed the minimum elevation necessary to flood-proof future residences and in no case may it exceed finished grade as shown on the grading plan for the project approved by the City of Morro Bay on December 9, 1991.

Commission staff have reviewed the as-built grading plan for the subdivision (Tract 1996 Grading Plans, Central Coast Engineers, 9/23/96), which shows the finished grade after grading was completed. The plans are signed by the City's licensed engineer. These plans indicate that the finished elevations are at or below those required by Condition 3a. In addition, staff has determined that the finished grade: 1) does not exceed the minimum elevation necessary to flood-proof future residences; and, 2) does not exceed finished grade as shown on the grading plan approved by the City of Morro Bay on December 9, 1991. Staff's flood elevation analysis is summarized as follows:

The predicted 100-year probability stormwater inundation level is elevation 16.3 feet. A 30-inch culvert is needed to drain this tract. Full effectiveness of the culvert during the 100-year storm event therefore requires the outlet flow line to be at 16.3 feet and the inlet at ± 16.8 feet to provide the necessary gradient for the water to effectively flow through the pipe. This means the top of the culvert at the inlet would be at least elevation 19.3, at theoretical full effectiveness during a 100-year storm event. Therefore, because the actual culvert outlet and inlet elevations are 13.2 and 13.7 feet respectively, the culvert will not be operating at optimum efficiency during such a storm event. Therefore, we believe the low point on the bank of the drainage swale (18.6 ft.) rather than the culvert will be the controlling elevation. The adjoining lot elevations are 17.7 feet, barely adequate to avoid flooding of a finished floor level if a 1-foot+ foundation height is assumed. The other lots in the tract are graded to provide about a 4 foot elevation difference over a 400 foot distance, to insure runoff flow towards the culvert invert. This will provide a 1 percent gradient, barely adequate for storm conditions. Accordingly, we conclude that the lot elevations could not be any lower and still meet minimum flood avoidance standards.

Finally, the house's architectural elevations also show structure heights consistent with the Commission's 17 foot maximum height requirement. The City has conditioned the project to require the submittal of a letter from a licensed surveyor, prior to either a roof nail or framing inspection, that certifies that the height of the structure is in accordance with approved plans and the maximum height limits (see Exhibit 2, p. 4).

In conclusion, the subdivision, as approved by the Commission, was found to be consistent with the LCP regarding grading, finished grade heights, and proposed house heights. The as-built grading plans and the house height as shown on the architectural elevations are consistent with this approval. Therefore, the city's approval of a coastal development permit for the house is consistent with LCP policies 12.01 and 12.06(a). The appellant's claim thus raises no substantial issue.

3. Policy 3.01 (Water Availability)

Appellants allege a "[f]ailure to comply with LCP Policy 3.01, where it must be shown that adequate water service is available to new construction."

Policy 3.01 states, in relevant part:

The City of Morro Bay shall approve future growth in conjunction with water and sewage treatment availability. Development shall be approved only if the City finds that sewer and water services are available to serve the proposed use.

This policy also limits the allocation of water to a model adopted by the Commission in a 1981 permit (4-81-309) until such time as a water management plan is submitted to the Commission as an LCP amendment.

Compliance with Policy 3.01 was raised in the appeal of the Cloisters subdivision. To address water supply issues, the Commission conditioned the subdivision as follows:

The final map or maps may be recorded in phases, provided that no final map or maps for this subdivision shall be recorded until a Water Management Plan, as required by Morro Bay Local Coastal Program Policies 3.01 and 3.03 and fully incorporating the requirements of Policy 3.04, shall be adopted by the City of Morro Bay and certified by the Coastal Commission as an amendment to the City's Local Coastal Program, and until the City of Morro Bay certifies to the satisfaction of the Executive Director that water is available to serve the lot or lots within the applicable unit of the subdivision for which a final map has been recorded.

In compliance with this condition, the City submitted a water management plan to the Commission 1995, which the Commission certified as an amendment to the LCP. On May 21, 1996, the Executive Director approved the City's certification that water was available to serve the lots within the Cloisters subdivision. Thus, the overall subdivision is consistent with Policy 3.01.

In the case of this specific single family development, the City has further found that water is available through its standard application of the existing retrofit requirement. In particular, the City requires that prior to the issuance of a building permit, "all necessary water equivalencies for the proposed use shall be obtained by the applicant; and a determination made that water service is available for the proposed use." The City's planning director has confirmed that prior to issuance of the building permit, the applicant must submit documentation that shows that 14 dwellings have been retrofitted. This would produce twice as much water as is needed by this single family use. No increased water demand will be created by this project. Staff notes that as of this writing, there were approximately 1500 - 1800 residential structures available for retrofitting in the City of Morro Bay. In addition, as discussed in City of Morro Bay LCP amendment 1-97, the City is now receiving state water, which substantially relieves the supply pressures that have previously been of concern in the City (see Staff Recommendation for LCP amendment 1-97). In summary, because this project is in effect required to create its own water, prior to the issuance of the building permit, no substantial issue is raised with respect to compliance with Policy 3.01.

4. Policy 3.03 (Water Management Plan)

Appellants allege a "[f]ailure to comply with LCP Policy 3.03, which condition requires the City to show it can implement their Water Management Plan." Policy 3.03 states:

The City may develop a specific, comprehensive, long-range water plan which will implement water management policies that will provide water service consistent with sound resource planning. New water and sewer services to

previously unsubdivided areas shall not be approved until a Water Management Plan has been developed, adopted, and submitted for Coastal Commission review and approval as a subsequent amendment to the LUP.

Policy 3.03 does not apply to the approval of a coastal development for a house in an area that has already been subdivided. This house is in an area that has been subdivided. Further, a water management plan was in fact certified by the Commission in 1995. Therefore, the City action is not inconsistent with Policy 3.03 and no substantial issue is raised.

5. Policy 3.04 (Environmental Safeguard for Coastal Waters)

Appellants allege a "[f]ailure to comply with LCP Policy 3.04(3), where the City must show its water management must provide for adequate safeguards to protect coastal stream environment." Policy 3.04(3) requires that the water management plan ensure that there will be an "adequate groundwater supply to protect the biological productivity of coastal waters including riparian stream corridors" Policy 3.04 does not apply to approval of a coastal development permit for an individual house but to the approval of a water management plan. Therefore, the City's action is not inconsistent with Policy 3.04(3) and no substantial issue is raised. Staff notes that the water management plan has been certified by the Commission, in part on the basis of its being consistent with the Environmental Sensitive Habitat policies of Chapter 3 of the Coastal Act (LCP Amendment 1-94).

6. Policy 3.05 (City Capital Improvement Program)

Appellants allege a "[f]ailure to comply with LCP Policy 3.05 which requires the City to produce a five year Capital Improvement Program for sewer and water improvements." Policy 3.05 states that the City shall adopt a five-year Capital Improvement Program for sewer and water service maintenance and improvements but does not propose a moratorium on construction until a Capital Improvement Program is in place. At the time of adoption of this policy, the City's sewer and water infrastructure was in poor condition. The purpose of the policy was to conserve water by upgrading the water and sewer systems to reduce leaks, etc. Since that time the City has replaced water lines and upgraded the sewer system. Thus, the primary concerns addressed by Policy 3.05 have now been addressed. Moreover, Policy 3.05 does not apply to the approval of a coastal development permit for a house. No substantial issue is raised because Policy 3.05 does not apply to the approval of a coastal development permit for a house. Therefore, the City action is not inconsistent with Policy 3.05 and no substantial issue is raised.

7. Measure F (Water Conservation)

Appellants allege a "[f]ailure to fulfill the mandate Measure "F" . . . concerning compliance with water conservation requirements."

Measure F was an initiative passed by the voters of Morro Bay in 1984. Only two of Measure F's 10 sections, sections 3 and 4, have been certified by the Commission as LCP amendments. Section 3 governs the maximum number (77) and mix (multi-family and single family) of residential building permits that can be issued each year. Section 4 limits the amount of water for commercial and industrial building permits to no more than 130 percent of the residential allocation.

Section 3 potentially affects the appealed house in that the City can issue no more than 77 residential building permits per year. Thus, a building permit for the house would not be issued if it would be building permit number 78. However, the City action that has been appealed is the approval of a coastal development permit, not a building permit. Section 3 does not apply to actions on coastal development permits. Therefore, no substantial issue is raised by this element of measure F. Staff does note, though, that as of this writing, the City of Morro Bay has issued 14 single family dwelling building permits for the year to date, and that 42 more are in process, including 11 for single family dwellings in the Cloisters subdivision. The first dwelling in the Cloisters subdivision received the fifth building permit for the year.

Section 4 limits the amount of water that commercial and industrial building permits require to no more than 130 percent of the residential allocation. The appeal concerns a single family dwelling, not a commercial or industrial building. Section 4 does not apply to the approval of a coastal development for a house. Therefore, no substantial issue is raised by this element of measure F.

8. Non-LCP Issues Raised by Appellants

The appellants' state as additional reasons for their appeal the following issues, which do not involve the LCP:

a. Cloisters Subdivision Condition D3(f) (Finished Grade)

Appellants allege that the City's approval of this single family dwelling "fail[s] to comply with Condition D3(f) Tract Tract 1996 (Cloisters) which conditions govern the grading of the property."

This City condition of the Cloisters subdivision required finished grade to not exceed the minimum needed for flood-proofing and to not exceed the finished grade as shown on the 1991 City-approved grading plan. The requirement is also reflected in condition 3a of the Commission's 1992 approval of the subdivision, which states in part:

Finished grade shall not exceed the minimum elevation necessary to flood-proof future residences nor shall it exceed finished grade as shown on the grading plan for the project approved by the City of Morro Bay on December 9, 1991 (see Exhibit 4).

The issue raised here is really one of condition compliance with specific terms of the Coastal Development Permit issued for the subdivision. If the grades and house elevations were inconsistent with the conditions of the subdivision, an enforcement action, rather than appeal would be the appropriate procedure for redress. No LCP policy or Coastal Act public access issue is raised by this claim. However, staff notes that the City engineer has stated in the public record that the finished grade is consistent with condition 3a. Moreover, as discussed earlier, Commission staff have reviewed the finished grade as shown on the City's grading plan and have not found any inconsistency with the grading plans originally approved. Nor does finished grade exceed the minimum elevation necessary to flood-proof future residences. No evidence, such as a survey, has been presented to indicate that grades are inconsistent with the

subdivision approval. See Finding 2 above, for discussion of grading issues related to potential visual impacts.

b. Measure I

Measure I limits the amount of savings from retrofitting that can be allocated to a new use to no more than one-half of the savings. Furthermore, Measure I prohibits the City from allocating water to a new use based on water savings derived from projects performed by the City or on City managed property; projects that had previously earned water saving credits; replacement of City water pipes; and mandated projects or measures (such as forced rationing of water use or compulsory retrofitting of private property). Measure I also defined the word "project" to mean ". . .any measure, act, process or procedure by which the consumption of potable city water may be assumed, or expected, to decrease and thereby legally permit the allocation of city water to new use." Measure I is not certified as part of the LCP, although it is proposed for certification in pending LCP amendment 1-97. Because Measure I is not currently part of the LCP, it is not a valid grounds for appeal. Thus, no substantial issue is raised by this claim. Staff notes, however, that the City's approval complies with Measure I.

9. Conclusion

None of the issues raised by the appellants are substantial issues in terms of consistency with the certified LCP. In fact, most of the issues raised are the same issues that were raised on the appeal of the Cloisters subdivision. The subdivision, as conditioned by the Commission, was found to be consistent with the LCP. The as-built grading plans are consistent with the Commission's approval. The house is consistent with the height limits imposed by the Commission. Overall, the Commission finds that no substantial issues are raised by the appeal.

CALIFORNIA COASTAL COMMISSION

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

APR 24 1998



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

SECTION I. Appellant(s)

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

Warren Dorn	P.O. Box 601	Morro Bay, CA. 93443	(805) 772-8414
Ned Rogoway	150 Formosa	Morro Bay, CA. 93442	(805) 546-9300
D.J. Funk	P.O. Box 6291	Los Osos, CA. 93412	(805) 528-0632
Bernie Melvin	2998 Elm A.	Morro Bay, CA. 93442	(805) 772-4979
	Zip	Area Code	Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: city Of Morro Bay

2. Brief description of development being appealed: Single family house, one and one half stories (17 feet high)

3. Development's location (street address, assessor's parcel no., cross street, etc.): 2225 Emerald Circle 065-388-049
Near Coral Place

4. Description of decision being appealed:
- a. Approval; no special conditions: _____
 - b. Approval with special conditions: xx
 - c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-98-037

DATE FILED: 4/24/98

DISTRICT: Central Coast

Ex 1

A-3-98-37

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

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

- a. Planning Director/Zoning Administrator c. Planning Commission
b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: April 13, 1998

7. Local government's file number (if any): CUP27 97/CDP 74 97R

SECTION III. Identification of Other Interested Persons.

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

a. Name and mailing address of permit applicant:

Keyoto Morro Bay % Bruno Bosio 1685 Tanglewood San Luis Obispo, CA.
93401

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

- (1) Lee and Sandy Lucas 165 Azure St. Morro Bay, CA. 93442
Ray McKelligott 479 South Bay Blvd. Morro Bay, CA. 93442

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

Ex 1, p2
A-3-98-37

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

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

1) Failure to comply with Condition D3(f) Tract Tract 1996 (Cloisters) which conditions govern the grading of the property (2) Failure to comply with LCP Policy 12.01 and 12.06(a) and Resource Code Section 30251, which sections protects scenic vistas to the ocean. (3) Failure to fulfill the mandate Measure "F" and "I" concerning compliance with water conservation requirements. (4) Failure to comply with LCP Policy 3.01 where it must be shown that adequate water service is available to new construction. (5) Failure to comply with LCP Policy 3.03, which condition requires the City to show it can implement their Water Management Plan. (6) Failure to comply with LCP Policy 3.04(3), where the City must show its water management must provide for adequate safeguards to protect coastal stream environment (7) Failure to comply with LCP Policy 3.05 which requires the City to produce a five year Capital Improvement Program for sewer and water improvements.

(See statement Reasons for Appeal)

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

SECTION V. Certification

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

Walter M. Ross

Signature of Appellant(s) or
Authorized Agent

Raymond C. McVie

Date

April 20, 1998

[Signature]

NOTE:

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Ex 8, p 3
A-3-98-37

Page two
Appeal of Five Single family homes in the Cloisters
April 19, 1998

RECEIVED

APR 24 1998

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Reasons for appeal

1. Grading, Drainage and Visual

The developer elevated the subject lot to a greater height than permitted by the Condition of Approval 3D(f) as approved by the City Council. City staff claims the finished level was dictated by the developers original grading plan which considered drainage on the property and the flow of sewerage to trunk lines. We believe the approved configuration was designed primarily for the purpose of raising the lots to obtain views to the ocean by residents of the property. Not satisfied with the developers grading plan, the Planning staff changed the condition to make the design of grading so that it would place the level of the lot at the lowest level at least one foot above the flood plain and still effectively sewer and drain the property. There could have been other drainage plans devised that would meet the intent of that Condition of approval. Because the staff changed in the interim, the developer ignored the new condition and continued to use the original grading plan. That plan was accepted and processed by the Public Works Department.

As a case in point, the Atascadero Beach tract was not elevated in 1968 as was the Cloisters and the homes constructed on Beachcomber Drive are at a minimum ten feet lower than the most western lots on the Cloisters. They have no sewer or drainage problems. Highway One is elevated about ten feet over the natural grade of the Cloisters. Had the lots not been constructed as they were, the public would have a clear view over the structures to the ocean (except for the proposed two story houses). If it were not for the dense shrubbery, views of the ocean can be seen over the Atascadero Beach Tract. By elevating the property as the developers did to the constructed elevation, any structure built will obscure the views to the ocean from Highway One.

The viewshed requirement as stated by the condition would implement the visual policies of the Morro Bay Local Coastal Plan and Section 30251 of the Coastal Act. The City Zoning Ordinance requires a demonstration of height and bulk for any structure built in the viewshed and this would be particularly true of the house built in excess of fourteen feet. Consequently, we implore the

Ex 1, p 4

A-3-98-37

Page three

Appeal of five single family homes in the Cloisters
April 19, 1998

Council and the Coastal Commission (if necessary) to obtain elevations of the property and if alternatives are found to implement the Coastal Policies, the Coastal Act and the Condition of approval, steps should be taken to correct the noncompliance.

2. Water Supply

Failure of the City Council to fulfill the mandate of measures 'F' and 'I' enacted by the people of Morro Bay and the consequential failure of the Council to comply with Local Coastal Policy 301, 303, 304(3), and 305. The enacted water conservation measures guarantee that owners of the property be assured a water supply as a condition of land use and building permit approval. The implementation features requires a builder to assure the City there is sufficient water savings connected with the development so that no additional water supply is needed.

After the Water Management Plan was adopted by the Council, the Council began taking steps to implement the Plan by securing additional sources of water, i.e., State Water and a permit to operate the desalination plant. It was presumed, and rightly so, that these sources of water together with the existing sources from the Morro and Chorro basins would be sufficient to build out Morro Bay and supply water to the Cloisters. However, before these operations were put together into an operative system, several adverse actions have deterred the City from achieving those goals. The State of California placed severe restrictions on the Chorro wells, thus removing this source from implementation. The City filed suit against the State to retrieve what they think is their right to that water. Until that law suit is resolved and the City is able to obtain full appropriation to the water supply, it cannot be considered a source of water for the long range goals of the City.

Next the City tried to obtain rights to operate the desalination plant. Cayucos (co-owner of the sewer plant) would not let the City use its joint outfall to discharge saltwater brine from the plant. Next, the City went to PGand E to seek an agreement to use their outfall. It is our understanding PG and E authorized use of its outfall. That permit is revokable at any time. Based upon this agreement, the City was able to obtain a permit from the State to use the plant as a source of water so long as the agreement was in effect. But temporary use of the outfall cannot be considered in the long range goals of the City and therefore the Desalination plant cannot be a source of water used for development purposes as a means of satisfying the Coastal Plan policies until a permanent

Exp 105

A-3-98-37

Page four
Appeal of five single family homes in the Cloisters
April 19, 1998

ocean outfall is found for the salt brine. According to employees who have operated the Desalination Plant, the initial temporary use of the plant to purify brackish water caused severe clogging of the membranes which will require very costly repairs to make the plant operative.

On every chart supplied to the City showing total water supply verses total water needs, the City cannot state it has an adequate supply under the terms of the Local Coastal Plan policies until the City clears these impediments. A single family house is 'development' under the definition as used in the Coastal Act and the Local Coastal Plan.

3.A Promise to the People of Morro Bay

The subdividers argued before the City Council in 1990, that they intended to sell vacant improved lots and the subsequent owners when they decided to build would place their name at the bottom of the waiting list maintained by the city for prospective home builders. Consequently, the developers agent said there would be no houses built for some years to come. By that time, the City would have worked out its water problems. The developer had already placed all lots on the waiting list in anticipation of this process. The Council suggested the developer remove all lots from the waiting list in order to allow the new owners to progressively place their names on the waiting list when they decided to apply for a building permit. The presumption being that this was fair and equitable treatment of the people who owned vacant lots and had already signed the waiting list.

Since that time, the City produced and adopted a Water Management Plan, voted to obtain rights to some State water, bought a desalination plant, and entered into a lawsuit with the State over a dispute about entitlements from the City wells. The sum total of these action leaves the City without a legal entitlement to a sufficient amount of water to serve the City. The City does not have a clear and unrestricted appropriations from the Chorro Valley wells until the lawsuit is settled and the State Water Resources Commission grants approval to their entitlements. Although the City has obtained a permit to operate the desalination plant, it has done so with what we understand to be a revokable agreement from P.G. and E. to use their ocean outfall for discharging salt brine from the plant. Until the City obtains discharge standards from Water Quality Control Board using a permanently defined ocean outfall, the City cannot claim the Desalter to be an additional source of water supply for purposes of complying with LCP Policy #301. Also, the plant needs to be verified as workable.


Ex 7, p 6
A-3-98-37


Page five

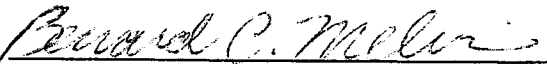
Appeal of five single family homes in the Cloisters
April 19, 1998

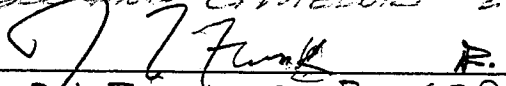
Enclosed is a page of the Boyle Engineering Report, TABLE 12-2 which table describes the various sources of water supply available to the City and the amount of water needed by the year 2000 and 2010. If you remove the Chorro Valley wells (subject to judgment of the court) from that chart, the total supply available does not supply enough water to serve the City in the year 2000. In two scenarios, the Desalter is shown as a source of supply, which unless there is a permanent arrangement for discharge, it also cannot be used as a water source in this chart and therefore reduces the available water that much more. The water issues would not appear in this appeal if it were not for the fact that the City must clear up these impediments before they can claim these sources of water as an implementation to their Water Management Plan.

This appeal is signed by the following persons


Warren Dorn President, Morro Bay Beautiful
P.O. Box 601 Morro Bay, California 93443


Ned Rogoway, AICP Vice President Morro Bay Beautiful
150 Formosa Morro Bay, California 93442


BERNARD C. MELVIN 2998 ELM AVE MORRO BAY 93442


D. J. FUNK P.O. Box 6291 LOS OSOS, CA. 93412

Enclosure:

Table 12-2 Yields of State Water Allocation
Water Management Plan, Boyle Engineering Corp.

Ex 7, r7
A-3-98-37

Funk River Consultants

Planning • Environmental Studies • Mediation

April 23, 1998

Steve Guiney
State Coastal Commission
725 Front St., Suite 300
Santa Cruz, CA 95060

SUBJECT: Cloisters Subdivision, Appeal of Coastal Development Permits for 2233 Emerald Circle, 2749 Indigo Circle, 2050 Emerald Circle, 2225 Emerald Circle and 2751 Indigo Circle

Dear Steve:

I request that I be included as an appellant with Mr. Warren Dorn, Mr. Bernie Melvin and Mr. Ned Rogoway for the appeal of the Planning Commission approval of the Coastal and Use Permits granted for the five homes listed above. I request that my letter be included as an attachment to the letter submitted this morning by the three individuals listed above. I authorized Mr. Rogoway to sign an appeal letter on my behalf. My reasons for appeal are as follows:

The City made a pact with the State Coastal Commission in 1982. In that compact, the Coastal Commission agreed to give the City the authority to administer coastal permits locally in return for the promise that the City would comply with and enforce its Local Coastal Plan. The City has clearly broken its pledge. For example, for almost a year, the City has ignored hundreds of tons of rock placed on the top of Morro Creek bank at the Silver City Mobile Home Park, this despite the fact that a Coastal Permit would be required. The three foot tall rock is still sitting on the bank today. That same rock had been required to be removed by the EPA, was removed by Madonna Construction and then was brought back by Silver City.

This is only one example. The Cloisters project is another. Despite inadequate water resources and an improperly graded site, the City has forged ahead in promoting this development. The Coastal Commission admonished the City just last week for relying heavily on unreliable State Water and Chorro Valley water. This is the same water source that the City's Public Works Director used over a year ago to justify allowing the recording of the Cloisters Subdivision. When the City allowed the 120 lot subdivision to be recorded, it jeopardized higher priority uses such as agriculture, fishing industry and tourist serving uses. (see my previous comments in previous letters to your agency about the City's over drafting of the Chorro and Morro Creek groundwater basins- causing salt water intrusion in both basins and the degradation of the habitat in the Morro Estuary Watershed).

Ex 1, p 8

A 3-98-37

Then there is the issue of building heights. The original permits for this subdivision required that lots be lowered to reduce the visual impact of the houses. The condition was similar to that for the Point Subdivision, where considerable earth was removed from the site in order to keep the roofs of the homes below the height of the bluffs. However, when Cloisters was graded, they took the dirt out of the central pond and excessively filled the lots. During the winter of '96-'97, some lots had as much as 10 feet of fill added and much of the southern portion had 6 to 8 feet of fill added!

Since the lots were improperly graded, the one story homes will actually be as tall as two stories and the two story homes will be as tall as three stories from the natural grade. Therefore, one story homes will be an effective 25 feet tall and two story homes will be 35 feet tall above natural grade only feet from the State Beach. This clearly violates the LCP and will result in homes much taller than would have been allowed if the tract conditions had been followed.

Therefore, the project, in my opinion, is not consistent with CDP Permit Precise Plan Condition D.3.f. on page number 5 of 19, enclosure number 2, of Mr. Lee Otter's January 13th letter to me. I and three other appellants have contended that the developers of the Cloisters Subdivision added up to 10 feet of fill to raise the lots to **get better views** at the sacrificing of coastal views from State Highway 1, which was contrary to Permit Condition D.3.f and contrary to the Coastal Act.

For these reasons, all of the houses under review should be denied for non-compliance with the building height limitations of the tract and the tract should be regraded to lower the lots which have been filled.

Sincerely,



Donald J. Funk

CC Tim Staffel, Warren Dorn, Bernie Melvin, Ned Rogoway

Ex 1, p 9

A-3-98-37

TABLE 12-2
Yields of State Water Alternatives

Alt. No.	Water Source	Average Yield (AF/Yr)	Yield During Critical Drought (AF/Yr)	Yield During Worst Year (AF/Yr)	Peak Flow ^b (gpm)
2A	State Water Project	1155	748	253	826
	Morro Wells	500	250	250	628
	Chorro Wells (w/o Wells 8 & 12)	1100	700	700	1150
	TOTAL SUPPLY AVAILABLE	2755	1698	1213	2604
2B & 2C	State Water Project	1155	748	283	826
	Morro Wells	500	250	250	628
	Chorro Wells (w/o Wells 8 & 12)	1100	700	700	1150
	Existing Desalination Plant	--	645	645	--
	TOTAL SUPPLY AVAILABLE	2755	2343	1858	2604
2D	State Water Project	1155	748	283	826
	Morro Wells	500	250	250	628
	Chorro Wells (w/o Wells 8 & 12)	1100	700	700	1150
	Nacimiento Supplement	--	645	645	440
	TOTAL SUPPLY AVAILABLE	2755	2343	1858	3044
TOTAL SUPPLY NEEDED					
	Year 2000	1930	1780	1780	2270
	Year 2010	2330	2150	2150	2740

Subtract Chorro Wells from Total

^a Not used under normal conditions

^b Does not include a replacement for Well 8.

-309 -131 -617 -816

(NOTE BY NAR): Using the water yields on the highlighted chart 2B & 2C, if you subtract the Chorro Wells, which are the subject of the current lawsuit, from any of the columns Morro Bay will not produce enough water during the year 2000 to serve the City with the supply needed. Per capita use of water is measured on the average throughout the year, not just during the rainy season.

Ex1, p10

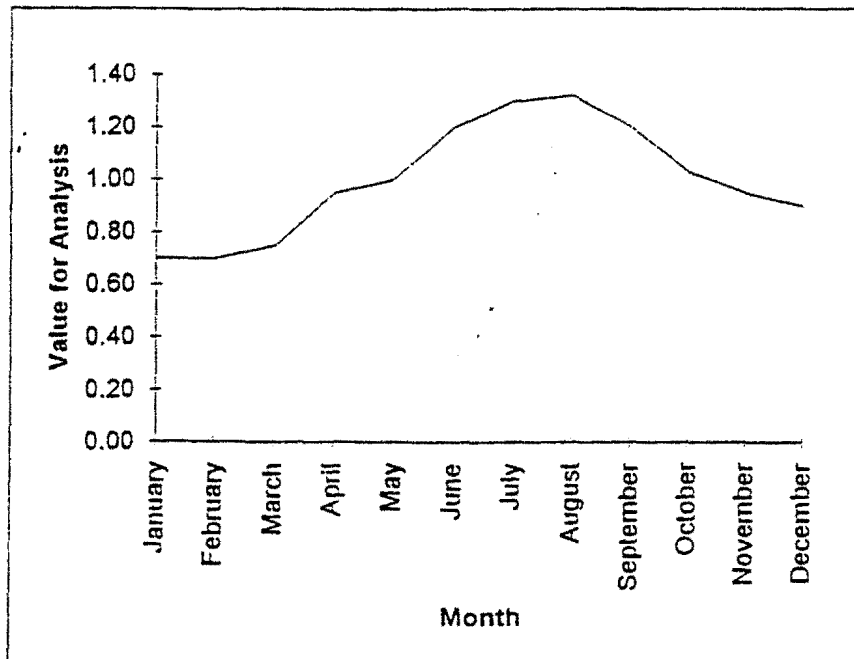
A-3-98-37

NOTE BY NAR:

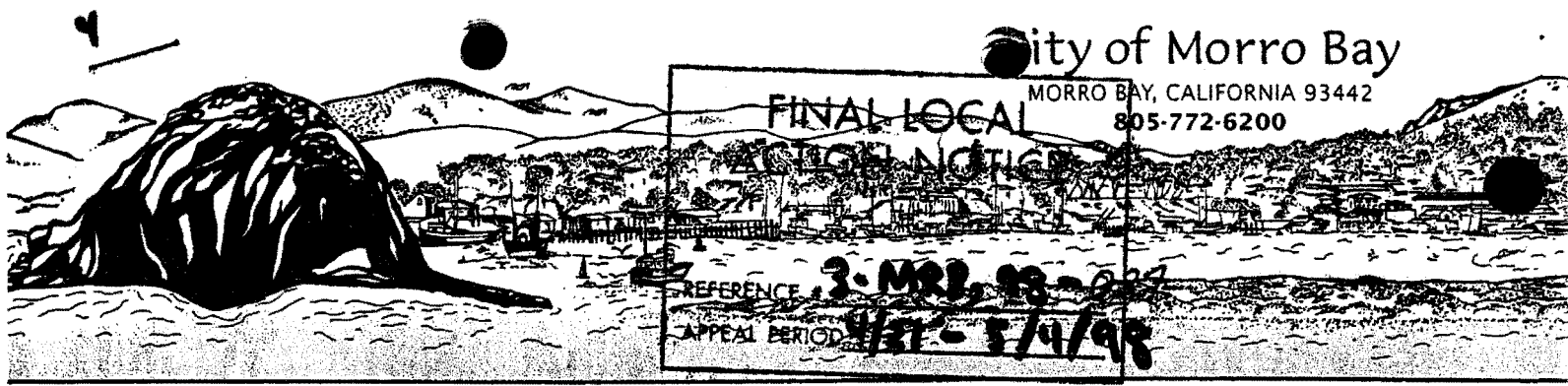
The M.B. staff has contended in the last three months, that the City does not need Morro or Chorro VAL well water. The City is drawing only 1200 acre feet equivalent without well water entirely from the State project. These statements during the early months of the year when per capita use is at its lowest level. These comments were intended to fend off criticism that the City does not have an adequate supply. In reality, per capita use of water rises rapidly after the rains stop. (See table 6-6) **TABLE 6-6**

**Monthly Peaking Factors
for Water Demand in Morro Bay**

Month	Monthly Peaking Factors				Value Used for Analysis
	1990	1991	1992	1990-1992 Average	
January	0.99	0.94	0.85	0.93	0.70
February	0.85	1.16	0.81	0.94	0.70
March	0.89	0.70	0.74	0.78	0.75
April	1.03	0.86	0.92	0.94	0.95
May	0.98	0.91	0.99	0.96	1.00
June	1.06	1.08	1.17	1.10	1.20
July	1.27	1.07	1.15	1.16	1.30
August	1.02	1.23	1.31	1.19	1.32
September	1.15	1.17	1.08	1.13	1.20
October	0.95	0.98	1.16	1.03	1.03
November	0.94	0.99	0.91	0.95	0.95
December	0.88	0.92	0.91	0.90	0.90



Exl, p 11
A-3-98-37



City of Morro Bay

MORRO BAY, CALIFORNIA 93442
805-772-6200

FINAL LOCAL ACTION NOTICE
REFERENCE: 3-MR2, 98-027
APPEAL PERIOD: 4/31 - 5/4/98

PLANNING AND BUILDING DEPARTMENT

NOTICE OF FINAL ACTION ON COASTAL DEVELOPMENT PERMIT

NOTICE OF FINAL CITY ACTION
on Coastal Development Permit No CUP 27-97(Precise Plan)/CDP 74-97R

The Following project is located in the Morro Bay Coastal Zone and a Coastal Permit Application has been acted on by the City.

RECEIVED

Applicant: Keyoto Morro Bay % Bruno Bosio

APR 20 1998

Address: 1685 Tanglewood, SLO CA 93401

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Project Description: Construct a new 1,906 square foot single story residence with a 550 square foot garage.

Project Location 2225 Emerald Circle

APN No. 065-388-049

Lot Area: 8,038 sq.ft.

Zoning: MMR/CRR/GC/PD

LUP/General Plan: Mixed Use Area G

Filing Date: 1/31/98

Action Date April 13, 1998

Action By: CITY COUNCIL

Action Taken: DENIED APPEAL AND UPHELD
PLANNING COMMISSION ACTION

Attachments: Permit, Findings, if any, and Conditions of Approval

- THIS SITE IS OUTSIDE OF THE COASTAL COMMISSION APPEAL JURISDICTION
- This City decision is appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. Any person may appeal this decision to the Coastal Commission within TEN (10) working days following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, Ste, 300, Santa Cruz, CA 95060, Phone: 415-427-863

Ex 2

m104/15/98 10:43 AMS:MSOFFICE\ADMIN\PL... D:\P\MS\2225EMR2.PMT

CC: WARREN DORN; NED ROGOWAY; BERNIE MELVIN; AND DONALD

FINANCE 595 Harbor Street	ADMINISTRATION 595 Harbor Street	FIRE DEPARTMENT 715 Harbor Street	PUBLIC WORKS 695 Harbor Street
HARBOR DEPARTMENT 1275 Embarcadero	PLANNING AND BUILDING 595 Harbor Street	POLICE DEPARTMENT 850 Morro Bay Blvd.	RECREATION AND PARKS 1001 Kennedy Way

FINDINGS
CASE NO. CUP 27-97/CDP 74-97R
2225 Emerald Circle
Construction of a Single Family Residence and Detached Garage

Staff recommends that the Planning Commission make the following Findings:

1. The project will not be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood; and
2. The project will not be injurious or detrimental to property and improvements in the neighborhood; and
3. The project will not be injurious or detrimental to the general welfare of the City; and
4. The project is an allowable use in its zoning district and is also in accordance with the certified Coastal Land Use plan for the City of Morro Bay, and is in conformance with the coastal access policies of Chapter 3 of the California Coastal Act.
5. The project is in conformance with the applicable conditions of approval for Tract 1996 (Case No. CUP 28-90/TM 01-90); and
6. The project design is consistent with the elements contained in the approved CC&R's for Tract 1996, the Cloisters, that are intended to create a unified architectural and aesthetic consistency and tone so that each residence will harmonize with the beauty and natural surroundings and coastal nature of the property.
7. That for purposes of the California Environmental Quality Act, Case No. CUP 27-97/CDP 74-97R is Categorically Exempt, Class 3 (CEQA Guidelines Section 15303).

Ex2, p2
A-3-98-37

**CONDITIONS OF APPROVAL FOR
A SINGLE FAMILY RESIDENCE AND DETACHED GARAGE
CASE NO. CUP 27-97/CDP 74-97R
2225 EMERALD CIRCLE**

SC. STANDARD CONDITIONS:

1. Permit: This permit is granted for the land described in the staff report, referenced above, and all attachments thereto, and as shown on the attached exhibits, and on file with the Planning and Building Department. The locations of all buildings and other features shall be located and designed substantially as shown on the aforementioned exhibit(s), unless otherwise specified herein.
2. Inaugurate Within Two Year: Unless the construction or operation of the structure, facility, or use is commenced not later than two (2) years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, the applicant may request up to two extensions for not more than one (1) additional year each. Said extensions may be granted by the Planning and Building Director, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code, General Plan and Local Coastal Program Land Use Plan (LCP) in effect at the time of the extension request.
3. Changes: Any minor change may be approved by the Planning and Building Director. Any substantial change will require the filing of an application for an amendment to be reviewed and approved by the Planning Commission.
4. Compliance with the Law: All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, and hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
6. Compliance with Conditions: Compliance with and execution of all conditions listed hereon shall be necessary, unless otherwise specified, prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Planning and Building Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement, at the discretion of the Director, null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.

Ex 2, p 3
A-3-98-37

7. Acceptance of Conditions: Prior to obtaining a building permit and within thirty (30) days of the effective date of this permit, the applicant shall file with the Director of Planning and Planning and Building written acceptance of the conditions stated herein.
8. Compliance with Morro Bay Standards: This project shall meet all applicable requirements under the Morro Bay Municipal Code, and shall be consistent with all programs and policies contained in the certified Coastal Land Use plan and General Plan for the City of Morro Bay.

PB. PLANNING AND BUILDING CONDITIONS:

1. Compliance with Conditions of Approval for Tract 1996: The approved project shall comply with all applicable conditions of approval for approved Conditional Use Permit and Tract Map, Case No. CUP 28-90/TM 01-90, including, but not limited to, required noise standards, residential fire sprinklers, building and fence height limitations, lot coverage, and undergrounding of all utilities.
2. Design Review: The exterior finishes and materials shall remain in substantial conformance to the plans reviewed and on file with this approval. Any approved changes shall meet the intent as stated in Section 5.1 of the approved CC&R's for Tract 1996.
3. Setbacks: The setback of all new construction shall be measured from the property line or view corridor line as follows:

Front: 20 foot. minimum
Garage: 20 foot minimum
Exterior Side: 10 foot minimum
Interior Side: 10 % of the lot width, with a 6 foot maximum
Interior Side (det. gar.): 1'-0" minimum/6'-0" from residence
Rear: 10 foot minimum
4. Building Height Verification: Prior to either roof nail or framing inspection, a licensed surveyor shall submit a letter to the building inspector certifying that the height of the structure is in accordance with the approved plans and complies with the height requirement of **17 foot maximum above finish grade as accepted by the City Engineer**. The finish grade shall not exceed the minimum elevation necessary to flood-proof the residence, and in any event, shall not exceed the finished grade as shown on the grading plan for Tract 1996 approved by the City.
5. Water Equivalencies: Prior to the issuance of a building permit, all necessary water equivalencies for the proposed use shall be obtained by the applicant; and a determination made that water service is available for the proposed use.
6. Water Saving Devices: Water saving devices shall be installed in the project in accordance with the policies of the Morro Bay Coastal Land Use Plan and as approved by the Building Official.

Ex2, #4
A-3-98-37

7. Dust Control: That prior to issuance of a grading permit, a method of control to prevent dust and wind blow earth problems shall be submitted for review and approval by the Building Official.
8. Landscape Plan: Prior to issuance of a building permit, the applicant shall submit a landscape plan, including irrigation and hardscape details, for review and approval by the Planning and Building Director. Pursuant to the conditions of approval for Tract 1996, no landscaping shall be maintained at a height exceeding the maximum allowed for the structure. Additionally, the criteria contained in the CC&R's, Sections 5.17-5.22 shall be met.
9. Maintenance of Landscaping: All plant materials shall be maintained diligently to ensure proper health, growth, and appearance. Replacement materials shall have similar functional characteristics as that originally approved. Sloped areas within the view corridor easement portion of the lot shall be maintained in accordance with the provisions outlined in the approved CC&R's.
10. Archaeology: In the event of the unforeseen encounter of subsurface materials suspected to be of an archaeological or paleontological nature, all grading or excavation shall immediately cease in the immediate area, and the find should be left untouched until a qualified professional archaeologist, knowledgeable in Chumash Culture, or paleontologist, whichever is appropriate, is contacted and called in to evaluate and make recommendations as to disposition, mitigation and/or salvage. The developer shall be liable for costs associated with the professional investigation.

PW. PUBLIC WORKS CONDITIONS

1. Fees: Fees required pursuant to these Public Works Conditions shall be paid at or mailed to the Public Works Department, 695 Harbor Street, Morro Bay, CA 93442. Checks shall be made payable to the City of Morro Bay.
2. Encroachment Permits: Are issued at the Department of Public Works, 695 Harbor Street, prior to construction in or use of land in the City right-of-way and may be required prior to, building permit issuance, or as required by the City. Fees for required encroachment permits are as set forth in the Master Fee Schedule adopted by the City Council.

--Standard Encroachment Permit,

Required for standard construction per City standard drawings and specifications.
Current fee \$71.82

--Special Encroachment Permit,

Required for non-standard work or encroachments in the City right-of-way. Current fee \$35.91 plus applicable direct costs for checking, administration, and recording.

--Sewer Encroachment Permit,

Required for any sewer work or construction in the City right-of-way. Current fee \$71.82

Ex2, p5
A-3-98-37

3. Repair & Replacement of Public Improvements: The Applicant shall repair curb, gutter, street, or any public improvements which were damaged by Applicant during the course of construction of this project. Applicant shall replace site frontage curb, berm or gutter at abandoned or illegal drive approach areas.
4. Grading and Drainage Plan: Route roof and driveway runoff to the street in a non-erosive manner and not concentrate runoff onto adjacent properties. The applicant may be required to submit a grading and/or drainage plan with calculations to demonstrate the proposed on-site drainage facilities will handle the peak run-off from the 25-year storm. If a proposal does not satisfy the Building Official that the parameters below will be met, a grading and drainage plan shall be submitted by the Applicant for approval by the Public Works Department and City Engineer prior to issuance of a building permit.
5. Grading/Erosion Provisions: If grading operations extend into the rainy season, November 1 through March 31, an Erosion and Sedimentation Control Plan shall be submitted for approval. The plan shall provide for positive measures to protect against erosion of adjacent property and prevent sediment or debris from entering any harbor, waterway, ecologically sensitive area, or public roadway. The plan shall be accompanied by such bond or other assurance as may be required by the Public Works Director. (Method of dust control shall be submitted to Building Official at the Community Development Department).
6. Domestic Water Pressure Reducer: The Applicant's plumber shall install a pressure reducer on the private property portion of the project if in his judgment his static water pressure readings indicate such device should be required. (Water pressure zones in Morro Bay vary from 40 to 120 psi.).
7. Domestic Water Backflow Prevention Device: If required, the Applicant is responsible for the installation of an approved domestic water backflow prevention device per MBMC chapter 13.08. Devices are generally not required for single family homes. Devices are usually required for irrigation systems on a dedicated water meter; systems which use may change in character of use (commercial rentals, etc.); gray water systems; or any plumbing system which has cross-connections or the ability to allow water of deteriorated sanitary quality to enter the public water supply. The installation shall occur prior to building permit completion approval by the City. Should the Applicant need further information, the City's contracted inspection provider can be reached at: (805) 781-5544, Office of Cross-Connection Inspector, S.L.O. County Health Agency, 2156 Sierra Way, San Luis Obispo, Ca. 93406.
8. Sewer Backwater Valve: The sewer lateral shall be provided with a backwater valve on private property to prevent a blockage of the municipal sewer main from causing damage to the proposed project.
9. Street Trees: Installation or removal of a tree in the City right-of-way shall be pursuant to the Morro Bay Municipal Code, Chapter 12.08 and the Standard Drawings and Specifications of the City of Morro Bay Public Works Department.

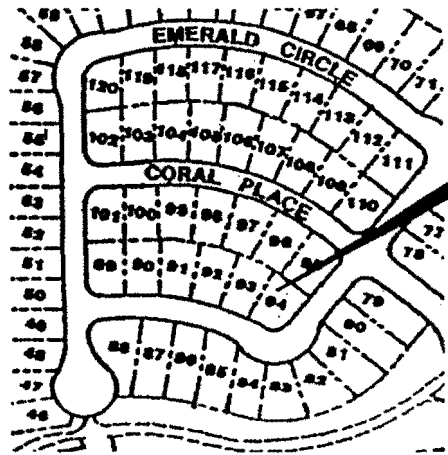
Ex2, p6
A-3-98-37

BUILDING SUMMARY

SITE AREA:	8,038 SF	
USE:	Single Family Residence	
OCCUPANCY:	R-3	
CONSTRUCTION:	Type V-N, Sprinklered	
NUMBER OF STORIES:	One	
BUILDING AREA:	Conditioned Space	1,906 sf
	Non-conditioned Garage	550 sf
HEIGHT RESTRICTION:	17'	
LOT COVERAGE:	31%	

EXHIBIT A

LOT 95



PROJECT SITE
SCALE: NTS



the Cloisters
Plan 4- Lot 94
2225 Emerald Circle

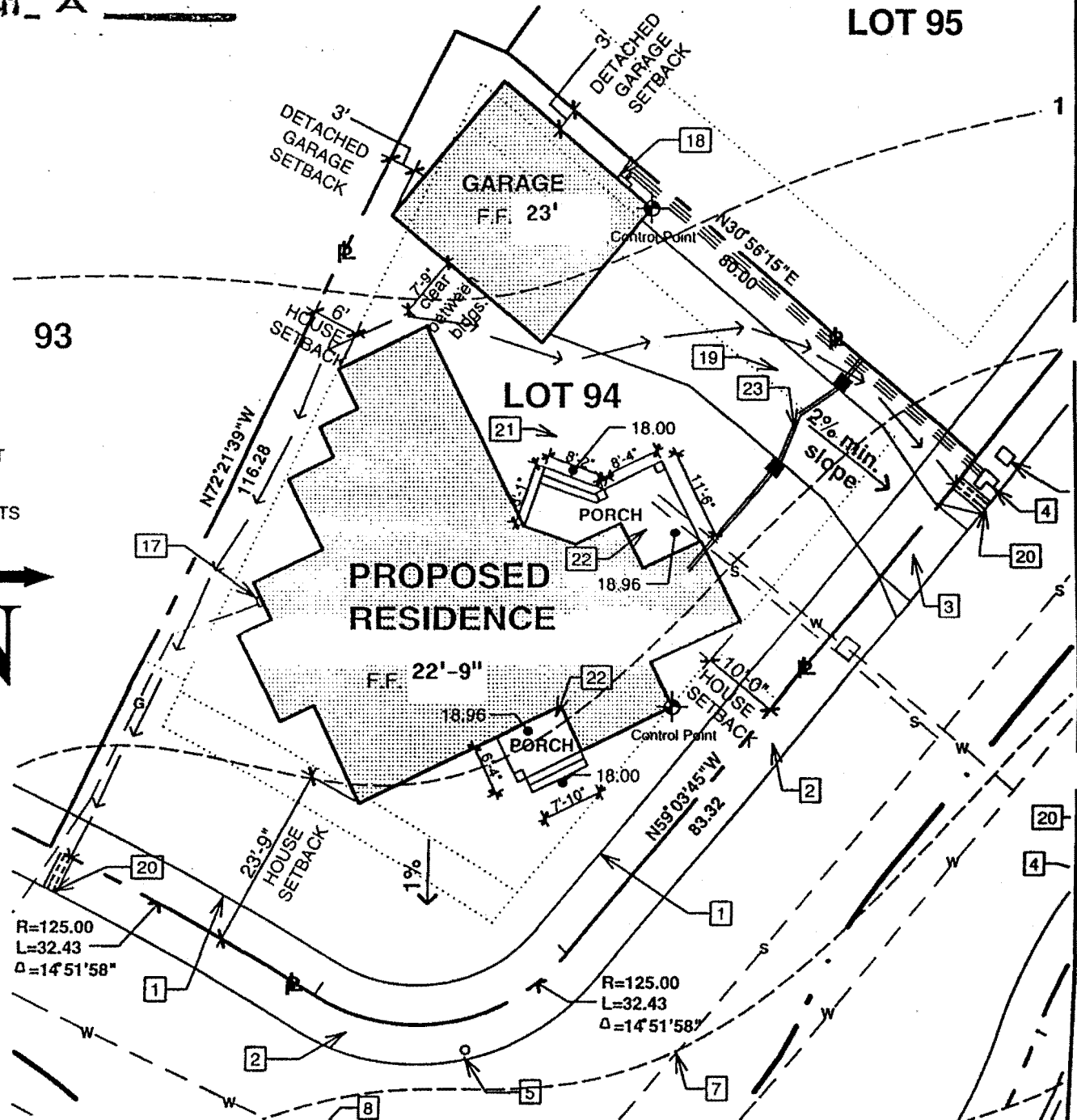


RRM
DESIGN
GROUP

Architecture · Planning · Engineering · Interiors · Landscape Architecture

3701 SOUTH HICUERA STREET, SAN LUIS OBISPO, CALIFORNIA 95071 805/543-1794

Victor Montgomery Architect - Lic. Number CA 11090



EX2, P 7
A-3-98-37

2225EMERAL

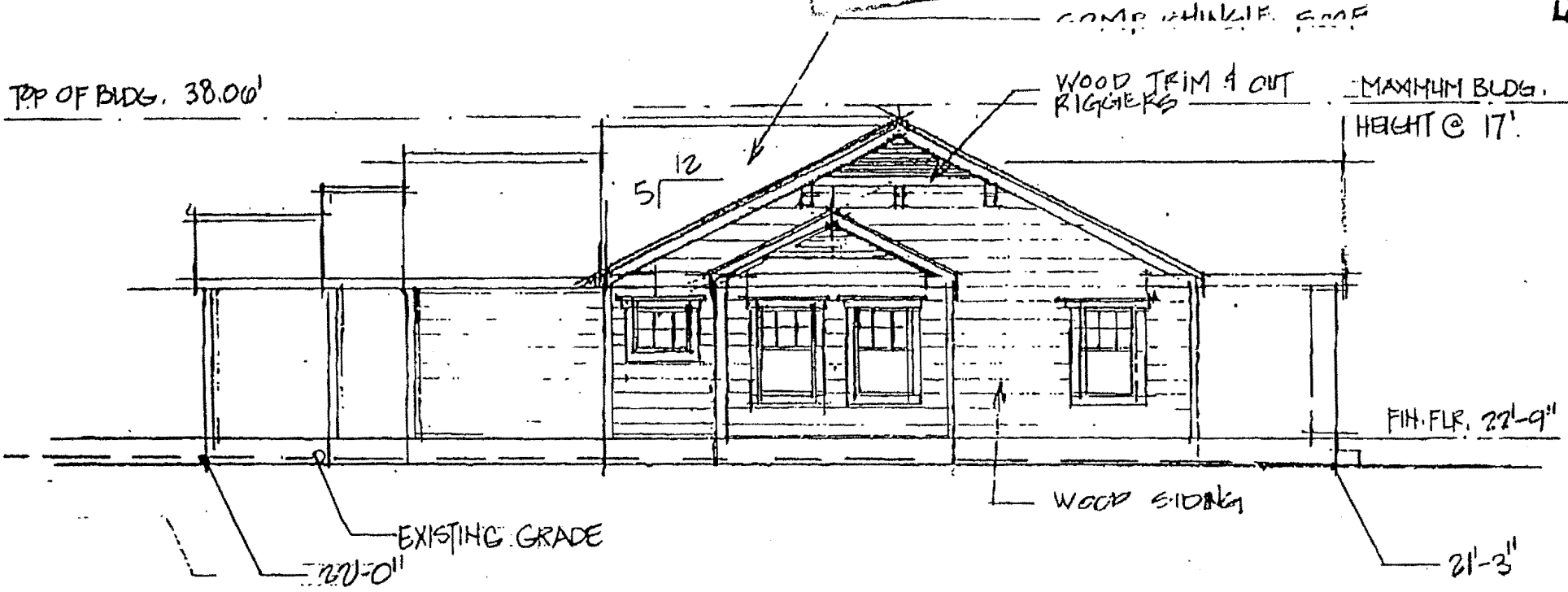
Roof Height Compliance

$$\frac{\text{Low} + \text{High}}{2} = \text{Avg.} + \text{Max. Height} = \text{Max. Elev. Of Roof Top}$$

$$\frac{21.25' + 22'}{2} = 21.63' + 17' = 38.63'$$

RECEIVED
 FEB 26 1998
 COMMUNITY DEVELOPMENT
 DEPARTMENT

EX2, P 8
 A-3-98-37



SOUTH ELEVATION Scale: 1/8

005
 CTY OF MORRO BAY
 RRM DESIGN
 6186
 781 5085 805
 02/26/98

Funk River Consultants



planning • environmental studies • mediation

May 20, 1998

Rusty Areias, Chairman
Coastal Commission
1400 "N" Street, Suite 9
Sacramento, CA 95814

RE: Cloisters Subdivision - Appeal of Coastal Permits for numerous residences

To the Honorable Commissioner Areias,

We have an issue with the grading of the Cloisters Subdivision in Morro Bay. This 120 lot subdivision was granted City and Coastal Commission Permits several years ago. The Tentative Map required that lots not be filled unless it is necessary to prevent flooding. This provision was added because of great public controversy over the potential that this subdivision had for blocking scenic views. The code and LCP required that building heights be determined from natural grade. The code, which was certified by the Coastal Commission, stated as follows:

When measuring the various levels on a lot to calculate the height, the grades in existence on the lot on January 1, 1986 shall be used: any fill added to the site since that date shall be deducted from the present grade elevations . . . (emphasis added)

However, when this project was presented to the City and Coastal Commission, the applicant's engineer argued that lots would need to be raised to keep the future houses from flooding. A compromise was struck in which the developer would be permitted to fill the site as long as it was the minimum feasible. The following condition D.3.f. was the result of that compromise. The Morro Bay Code was similarly written to incorporate this language (after the subdivision was approved). Remember, if it wasn't for the potential flooding of the site, the building heights would be determined by the elevation **before** fill was added.

- f. Finished grade within the north and south lot areas shall only exceed existing grade by the minimum fill necessary to meet flood plain elevation requirements and tract drainage, engineering and utility design criteria as determined by the city engineer in sole discretion. The final grading plan for this site shall be reviewed to insure that the natural grade is not elevated beyond the levels necessary to meet flood plain elevation requirements and tract drainage, engineering and utility design as determined by the city engineer in his sole discretion.

In order to protect public visual access from Scenic Route 1, final grade may be less but shall not exceed those elevations shown on attached Exhibit C-2.

Since the project engineer has certified that flooding levels are limited to 16.3 feet, few lots should have been higher than 17.3 feet, assuming one foot of safety pursuant to code. Even taking drainage into consideration, the lots furthest from drainage ways should only be a few feet higher. However, when

Cloisters was recently graded, they took the dirt out of the central pond and excessively filled the lots. During the winter of '96-'97, some lots had as much as 10 feet of fill added and much of the southern portion had 6 to 8 feet of fill added! We contend that the developer did so in order to have better views for the future homes. Before the fill was added, someone standing behind the dunes could not see over the dunes to the ocean. Now, these elevated lots afford great views of the sea (of course at the expense of the viewing public).

Since the lots were improperly graded, the one story homes will actually be as tall as two stories and the two story homes will be as tall as three stories from the natural grade. This clearly violates the LCP and will result in homes much taller than would have been allowed if the tract conditions had been followed. The City's engineer is arguing that sewerage is an issue. It is our opinion that, in order to keep the lots lower, they could have engineered a sewer system if less fill had been added. After all, if flooding had not been an issue, the lots would have been kept at the natural grade and not been allowed to be filled. The only justification for the fill was the flooding potential of the site.

This is the only development in Morro Bay that was permitted to add this kind of fill. The EIR addressed this matter in explaining the need for the fill. Other similar subdivisions, like the Point Subdivision north of this site, were required to excavate and lower all of the lots to protect overviews. This subdivision got special consideration because of the flooding issue. However, they shouldn't have been allowed to fill more than needed to protect the lots.

Please call me if you have any questions. Thank you for your consideration of this matter.

Sincerely,

Donald J. Funk

CC Charles Lester

Ex3, p2
A-3-98-37

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
640 CAPITOLA ROAD
SANTA CRUZ, CA 95062
(408) 479-3511Filed: 07/09/92
Staff: SG/cm
Staff Report: 08/27/92
Hearing Date: 09/11/92
Commission Action:**ADOPTED**STAFF REPORT: REVISED FINDINGS

APPLICATION NO.: A-4-MRB-91-44

APPLICANT: KEYOTO MORRO BAY, INC./MORRO BAY NATALIE, INC.
AGENT: RRM Design

PROJECT LOCATION: West side of Highway 1, between the highway and Morro Strand State Beach, north of Morro Bay High School and south of Azure Street, City of Morro Bay, San Luis Obispo County

PROJECT DESCRIPTION: Vesting tentative tract map, conditional use permit, and coastal development permit for subdivision of an 84.4 acre parcel into 120 residential lots and open space.

SUBSTANTIVE FILE DOCUMENTS: Staff Report on Substantial Issue for A-4-MRB-91-44 dated February 20, 1992; Dorn and Rogoway Appeal; Commissioners Gwyn and Giacomini Appeal; Final Local Action Notice with Findings and Conditions; Morro Bay Certified LCP; Draft Environmental Impact Report for the Cloisters Residential Subdivision Project, September 1991; Final, December 1991; 1988 and 1990 LCP Amendments; Atascadero Beach subdivision map recorded in Book 2 at Page 15 of Maps of San Luis Obispo County; Record of Survey Map 45 RS 57; Decree excluding land pursuant to "The Subdivision Land Exclusion Law," recorded in Volume 1077 at Page 196 of Official Records of San Luis Obispo County; San Luis Obispo County Assessor's Parcel Maps 65-37, 65-38, and 65-152.

COMMISSIONERS ON PREVAILING SIDE: Doo, Malcolm, Rynerson, Neely, Rick, Wright, and Gwynn

SUMMARY OF COMMISSION ACTION: On July 9, 1992, the Commission approved development of the subject parcel into 120 residential lots and open space, subject to special conditions which: A) prohibit the recordation of a final map or maps until 1) a Water Management Plan for the City of Morro Bay is certified by the Commission and 2) the City certifies that water is available to serve the number of lots proposed within the applicable unit of the subdivision, B) imposed limits on the number of residences 25 feet, 17 feet, and 14 feet above finished grade, and C) require incorporation of additional elements into the wetland mitigation plan. These conditions will not result in fundamental changes in the design of the project, but will result in a project that will achieve consistency with the City's certified Local Coastal Program.Ex 4,
A-3-98-37

STAFF NOTE: •

Because staff had recommended denial of the proposal, the text of the conditions was not available on the date of decision. Since that time staff has prepared written conditions and revised findings, based on review of staff's meeting notes and the hearing tapes, that support the Commission's approval of this proposal.

STAFF RECOMMENDATION:

The staff recommends that the Commission confirm the following conditions and adopt the following findings in support of its approval of the project on July 9, 1992.

I. STANDARD CONDITIONS: See Exhibit A

II. SPECIAL CONDITIONS:

1. PRIOR TO THE TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall obtain the requisite permits from the U.S. Army Corps of Engineers and the wetlands mitigation and enhancement plan shall be approved by both the California Department of Fish and Game and the Executive Director.

2. RECORDATION OF FINAL MAP(S)

The final map or maps may be recorded in phases, provided that no final map or maps for this subdivision shall be recorded until a Water Management Plan, as required by Morro Bay Local Coastal Program Policies 3.01 and 3.03 and fully incorporating the requirements of Policy 3.04, shall be adopted by the City of Morro Bay and certified by the Coastal Commission as an amendment to the City's Local Coastal Program, and until the City of Morro Bay certifies to the satisfaction of the Executive Director that water is available to serve the lot or lots within the applicable unit of the subdivision for which a final map has been recorded.

3. HEIGHT OF STRUCTURES

a. No structure in the south cluster (lots 46 through 120) shall exceed 25 feet in height above finished grade. Further, on lots 49 through 58, 89, 90, 93, 95, 101, 104, 108, 110, 112, 113, 115, 116, 118, 119, and 120 no structure shall exceed 25 feet in height above finished grade; on lots 91, 92, 94, 96 through 100, 102, 103, 105, 106, 107, 109, 111, 114 and 117 no structure shall exceed 17 feet in height above finished grade; and on lots 46, 47 48, and 59 through 88 no structure shall exceed 14 feet in height above finished grade (See Exhibit E). Finished grade shall not exceed the minimum elevation necessary to flood-proof future residences nor shall it exceed finished grade as shown on the grading plan for the project approved by the City of Morro Bay on December 9, 1991.

b. CC and R's for the development shall specify the maximum structure height allowed on each lot and a copy of the CC and R's shall be submitted to the Executive Director for review.

Ex4, p2
A-3-98-37

4. FINAL LANDSCAPING PLANS

Final landscaping plans shall be submitted to the Executive Director for review and approval and shall incorporate the following:

- a. no landscaping in the parking area at the new wetland or elsewhere within the established view corridor shall exceed eight feet above finished grade nor block more than 10% of the viewshed from Highway One.
- b. no landscaping, including street trees, in the north residential cluster outside of the view corridor shall, when mature, exceed the maximum allowed structure height of 14 feet in that cluster and no landscaping, including street trees, on any lot in the south residential cluster outside of the view corridor shall, when mature, exceed the maximum allowed structure height on that lot.
- c. appropriate species shall be selected which meet these requirements and in addition shall be drought tolerant and non-invasive and to the greatest extent possible shall be native species.
- d. CC and R's for the development shall specify the maximum height allowed for landscaping as noted in 4.b. above.

5. WETLANDS MITIGATION

The proposed new wetlands mitigation area shall be enlarged or altered as necessary in consultation with the Department of Fish and Game to provide the widest variety of wildlife habitats consistent with those that could reasonably be expected to occur on the site, to ensure the viability of the new wetland, and to allow for surface drainage channels. Such enlargement or alteration shall include more variety in depth, inclusion of an island or islands to provide more habitat area better protected from terrestrial predators and human access, and open drainage channels instead of pipes from the wetland mitigation area to the dune slack.

6. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)

- a. The ESHA of the sand dunes as shown on vesting tentative tract map 1996 approved by the City of Morro Bay on December 9, 1991, shall be offered for dedication to the California Department of Parks and Recreation prior to the issuance of building permits. The applicant shall be responsible for the restoration of the ESHA as specified in the City of Morro Bay's Special Condition 8 regardless of ownership of the ESHA.
- b. The ESHA fence shall be designed in consultation with the California Departments of Parks and Recreation and Fish and Game, and the U.S. Fish and Wildlife Service. The Habitat Protection Fence shall be designed in consultation with the California Departments of Parks and Recreation and Fish and Game. Final design shall be submitted to the Executive Director for review and approval.

7. VERTICAL ACCESS

Two vertical accessways shall be provided, one at the south cluster and one at

Ex 4, p 3

A-3-98-37

the proposed improved parking lot at the northwest corner of the site as shown on Exhibit G. Dedications and bonding for access improvements shall be as specified in the City of Morro Bay's Special Condition 10.

8. CITY PERMIT CONDITIONS

All City required conditions shall remain in full force and effect except where those conditions conflict with the above conditions. In that case, these conditions adopted by the Coastal Commission shall take precedence.

9. PROJECT CHANGES

Any change or amendment to the City's conditions shall require approval of an amendment from the Commission.

10. OTHER LOTS

PRIOR TO TRANSMITTAL OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall demonstrate the ability to develop according to the plans proposed to the Commission by the applicant including, if necessary, the acquisition of the lots not presently owned by the applicant, to provide the required open space or Environmentally Sensitive Habitat Area.

EXHIBITS:

- A. Standard Conditions
- B. Regional Map
- C. Location Map
- D. Land Use/Zoning
- E. Height Distribution
- F. Lots Owned By Others
- G. Accessways
- H. Morro Bay City Conditions of Approval

Ex4, p4
A-3-98-37

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares that the history of the property is unique among properties in the Coastal Zone and that the decision to approve the project with Special Conditions is a result of the unique circumstances and background concerning this property, including specific findings applicable solely to this property during LCP Amendments in 1988 and 1990.

The Commission hereby further finds and declares:

1. Site Location and Description

The project site is located in the City of Morro Bay; bounded on the east by Highway 1; on the north by Azure Street and the existing Atascadero Beach single-family residential area; on the south by 54th Street, an unimproved street, beyond which is Morro Bay High School; and on the west by Morro Strand State Beach. The site is roughly 3,000 feet long and varies from about 800 feet to 1300 feet wide. Total site area is about 84.4 acres. Of this, approximately 22 acres are sand dunes. From Highway 1 the site slopes gently (1 - 2%) to the western boundary; it is essentially flat. The site outside the sand dunes is vegetated mostly with wild grasses, Coyote brush, and willow. The dunes are vegetated mostly with dune lupine, European beach grass, and iceplant or are bare sand. Highway 1 is from six to 12 feet above the eastern edge of the property. At its highest point, near the northeast corner, the site is about 32 feet above sea level. The dunes rise to about 25 feet above sea level, or some 10 to 15 feet above the adjacent non-dune portion of the site.

2. Project Background

Originally subdivided in 1915 into several hundred lots, the site now contains 176 lots, three of which are owned by others and are not a part of this proposal. The owners of APN's 065-381-028, 065-382-001, and 065-382-031, which are not a part of this proposal, were notified of all Commission hearings on this proposal. No notices to those owners were returned to the Commission. There is no indication that the addressees are no longer at the addresses furnished to the Commission by the City or that the addresses were insufficient. The owners of those three parcels have not contacted staff with any concerns or questions about the project. The Commission finds that those owners were properly notified pursuant to Government Code requirements, that those owners have had adequate opportunity to express their views, that no diminution of the value of those properties is intended by the Commission's action on this project, and that the applicant is solely responsible for any claim or action on the part of the owners of those three lots not a part of this project.

All of these lots were legally created as they were shown on a duly recorded map when the site was originally subdivided. On June 29, 1988, the applicant applied for certificates of compliance from the City. According to the applicant, this was done to force the City to acknowledge the lots existing on

E x 4, p 5

A-3-98-37

the property. The certificates of compliance were never issued and were not required to establish the fact that the lots were legally created because the City acknowledged that the map recorded in 1915 constituted a certificate of compliance, as provided in Government Code Section 66499.35(d):

A recorded final map, parcel map, official map, or an approved certificate of exception shall constitute a certificate of compliance with respect to the parcels of real property described therein.

It should be noted that neither a certificate of compliance nor a recorded map dating from 1915 guarantee that a parcel or parcels are free from development constraints; they merely certify that a parcel or parcels were legally created.

Based on review of reduced Assessor's parcel maps provided by the applicant, of the 173 lots owned by the applicant, 128 are 2,400 square feet each (60 feet by 40 feet net), 44 are 3,000 square feet each (75 feet by 40 feet net), and one is a large parcel of about 70 acres. This latter area in 1960 was excluded from the original 1915 subdivision, reverted to acreage, and became one large parcel. Approximately 140 of the 173 lots owned by the applicant are largely or wholly within the sand dunes, which are designated an Environmentally Sensitive Habitat.

There have been several proposals for this site over the past two decades including an RV park, a 390-unit condominium development, a 466-unit single family residential development, a 455-unit mixed residential development, and a 213-unit residential development. None of these were approved.

Morro Bay's LCP was originally certified by the Commission on October 24, 1984. Most of the site was designated on the LUP maps as Low/Medium Density Residential (4-7 units/acre) with Planned Development overlay, with the westernmost portion designated Environmentally Sensitive Habitat. Zoning on most of the site was Planned Development, Single-Family Residential with the sand dunes zoned Environmentally Sensitive Habitat.

In 1987 the City placed an interim development moratorium on this property which was to expire in 1989. The applicant, who was also the property owner then, sued the City over the appropriateness and legality of the moratorium. During this period the City submitted LCP amendment 3-88 which was approved as modified by the Commission on December 14, 1988. That amendment changed the land use categories to Coastal Resource Residential, Golf Course, and Mariculture and Marine Research. A new density range, Limited Density (2 dwelling units/acre), was added to the residential land use category. The amendment revised the access policy to require two rather than three vertical accessways, one each at the north and south portions of the property. It also created a northbound view corridor in addition to the existing southbound view corridor, limited structures within the view corridor to no more than four feet in height, and limited uses within the view corridor to golf course, passive recreation, parking, public access, and mariculture. Height in the areas on the north and south ends of the site, outside the view corridors, was limited to 14 feet. The applicant then filed suit against both the City and the Commission concerning LCP Amendment 3-88.

Ex 4, p 6

A-3-98-37

Subsequently, a settlement was agreed to by the parties to the lawsuit. LCP amendment 2-89, incorporating the Settlement Agreement, was approved by the Commission on January 10, 1990. That amendment increased the developable area from 13.9 net acres to 20.5 net acres by reducing the view corridors by 50 feet in the northern portion of the property and by 100 feet in the southern portion, allowed up to 120 units divided between the north and south ends of the site outside the view corridors based on an allowed density of 2 units per acre in the 60 acre residentially designated portion of the site, provided for minimum lot size of 6,000 square feet (7,000 square feet for corner lots), allowed an increase in lot coverage from 45% to 60% if alternate water sources were provided, increased maximum allowed height in the southern portion from 14 feet to 25 feet above grade with finished grade above flood level to be determined by City Engineer, and required the developer to agree to establish an assessment/maintenance district to maintain street paving, curbs, gutters, sidewalks, and parking lots of any approved subdivision of the site until the subdivision is 90% built out.

3. Project Description

The current proposal is for a 120 lot subdivision with the lots to be sited in two clusters, one each at the south and north ends of the site with a large view corridor between the two clusters.

All of the lots would be for market rate housing. The final EIR stated an estimated sale price of \$400,000 per house. The City has required the applicant to prepare a feasibility study to determine how to provide affordable housing. The feasibility study required of the applicant has not been commenced pending action by the Commission. The draft EIR states that houses built on the lots created by this subdivision are expected to be affordable only to the above moderate income range. And that the average lot sale price would not facilitate the ultimate provision of affordable housing. This apparently puts the project in conflict with the Housing Element of the City's General Plan which has as its objectives facilitating and encouraging a variety of housing for all income levels and providing adequate housing for the needs of low and moderate income households to the extent feasible.

Forty-five (45) of the lots are proposed for the north cluster and 75 lots for the south cluster. Minimum lot size would be 6,000 square feet, with 7,000 square feet minimum for corner lots. Maximum building height above finished grade would be 14 feet in the north cluster. The south cluster would be allowed a maximum height of 25 feet above finished grade, with building heights in the south cluster to be apportioned with 25 structures at 25 feet, 17 at 17 feet, and 33 at 14 feet above finished grade. Second-stories would be no more than 50% of the size of the first floor. Finished grade would be determined by the City Engineer based on the assumed elevation of the 100 year floodplain.

Fill to raise the building pads would come from material excavated from the site of the proposed new wetland between the north and south clusters in the view corridor area. This new wetland would be approximately 2.4 acres in size

Ex 4, p 7

A-3-98-37

and is proposed as mitigation for the filling of several small, scattered wetlands ranging in size from 900 square feet to 17,000 square feet and totalling about 0.8 acre. The new wetland would be a maximum of six feet deep and would hold 7.5 acre feet of water. All runoff to the site from Highway 1 and the 263 acre residential and commercial area east of the highway, which now enters the site at several locations, would be diverted along a grassy drainage swale to the new wetland. The water would pond there until it reached an elevation of 14.2 feet above sea level, at which point it would overflow into two 48 inch diameter pipes approximately 350 feet long placed through the sand dunes to the dune stack area of the dune pipe placed under the taxiway access path to the existing drainage channel near the southwest edge of the dune area open drainage channels. Drainage would then exit through the dunes in a naturally created, existing drainageway out to the beach.

Approximately 20 to 25 mature willows would be transplanted from existing clumps on site to the new wetland and willow cuttings from existing clumps on site would be planted around the new wetland at slightly more than a 1:1 replacement ratio. Other species would also be planted in the area of the new wetland to serve as landscaping and habitat enhancement.

There are approximately 22 acres of sand dunes on the site which are in a degraded state, with non-native invasive species, primarily European beach grass and iceplant, covering large portions of the dunes. There are some bare sand areas that are used as habitat by the western snowy plover, a candidate for listing under the Federal Endangered Species Act. It is proposed that the vegetated areas be revegetated and restored with native dune scrub vegetation.

The north and south residential cluster would be connected by an extension of Coral Avenue from Azure Street and San Jacinto Avenue to the north. All vehicular ingress and egress would be via Coral Avenue and San Jacinto Avenue to Highway 1. Emergency access would be provided to the south cluster via 54th Street. There would be public bicycle and pedestrian access paralleling and adjacent to Coral Avenue through the site, continuing on local streets off-site to the north, and continuing onto the high school property off-site to the south. Public beach access would be via two vertical accessways and by lateral access running the length of the site just east (inland) of the base of the dunes. There would be vertical access at the northwest corner of the site in conjunction with a new 50 space public parking lot, and there 300 feet south of the parking lot, and one at the south cluster. The 50 space public parking lot planned at the extreme northwest corner of the site would anchor the north end of the lateral accessway and also provide direct access to the beach. Most of this parking lot would be on adjacent State Park land. A 30 space public parking lot is proposed near the center of the site, in the view corridor between the north and south clusters adjacent to the proposed new wetland, with trails connecting to the lateral accessway. Also at this location would be a one acre park with restrooms, benches and tables, and minimal play equipment.

Ex 4, p 8

A-3-98-37

4. Water Supply and Use

The City of Morro Bay's LCP was certified by the Commission in 1984 with provision for development of a water management plan to be submitted to the Commission for approval. Prior to certification of the LCP one "reconnaissance investigation" and two major studies of the water situation were made. These were the 1972 Department of Water Resources (DWR) Bulletin 63-6: Sea Water Intrusion: Morro Bay Area, San Luis Obispo County; Brown and Caldwell's 1981 Preliminary Water Management Plan; and the 1982 DWR study, Morro Bay Area Water Management Plan for Torro, Morro, and Chorro basins. The first two were referenced and/or abstracted or summarized in the LUP. The results of the latter study were not available for inclusion in the LUP. The City has worked with Commission staff on the scope of work of a Water Management Plan and will very soon solicit consultants for preparation of the Water Management Plan.

a. Supply

The following information and quotations are taken from City documents attached to previous staff reports on this project; those City documents are incorporated here by reference and are part of the record on file with the Commission.

All of the City's water comes from wells in the lower Chorro and Morro Creek basins. Average annual precipitation is about 16 inches in Morro Bay. The highest elevations in the basins receive about 30 to 35 inches per year. The majority of rain falls from October through March. There is usually no significant precipitation from April through September. The water in the Chorro Creek basin is used for institutional, rural residential, and agricultural purposes. Water in the Morro Creek basin is used for rural residential and agricultural purposes. In addition, both creeks contribute water to the urban uses of the City. They also support riparian habitat. Additionally, Chorro Creek is one of two major creeks draining into Morro Bay, a significant coastal estuary (the other creek, Los Osos Creek, is not utilized by the City as a water source). Any reduction in the surface or subsurface flow of Chorro Creek may have a direct impact on the estuary by reducing the volume of fresh water flow into the Bay and changing the fresh water/salt water balance of the Bay and the tidal wetlands within the Bay.

Due to the small size and shallowness of the aquifers, there is very little storage of ground water from year to year. During a "normal" year, precipitation is sufficient to recharge the aquifers for use during the following summer and fall. In a drought year there is not sufficient recharge of the aquifers to provide adequate water the following summer and fall. The latter is what has occurred to the aquifers from which the City of Morro Bay gets its water. There is no reserve capacity from year to year.

While recent rains have improved the quantity and quality of ground water in the Chorro and Morro Creek basins, late winter winter/early spring rains have occurred in prior drought years; there is no guarantee that the recent

Ex 4, p 9

A-3-98-37

precipitation signifies the end of the drought. In March of 1991 alone, for example, precipitation was 11 inches, but the drought has persisted overall. The City was forced to operate its desalinization plant this past winter to meet demand. Any increased growth will place greater demand on a precarious supply. The City has committed to 1,300 afy of water from the State Water Project. If that project comes on line, it would not be until 1996 at the earliest; it would greatly improve the City's water situation if it materializes.

There have been several differing estimates of the annual ground water yield of these two basins. About one-half of the total from the two basins has been assumed to be available to the City; the rest has gone primarily to agricultural uses mostly upstream of the City's wells. The various yield estimates are as follows:

<u>Estimator and year</u>	<u>Estimated Total Annual Yield Both Basins</u>	<u>Estimated Annual Yield Available to City</u>
DWR 1969	3,400 acre feet/year(afy)	1,700afy
OBrown and Caldwell, 1981	3,944afy ("normal year")	1,972afy
	6,415afy (2 year drought)	3,207.5afy
	3,863afy (7 year drought)	1,931.5afy
City of Morro Bay, 1992	no estimate	1,723afy

It is clear from the above figures that the yields are not known with certainty. Preparation of the Water Management Plan will allow for realistic and stable yield figures.

In May of 1992 the City of Morro Bay requested and the San Luis Obispo County Flood Control and Water Conservation District approved the request for 1,313 acre feet of water from the proposed State Water Project Coastal Branch extension. The Commission finds that while the City has committed to providing an additional permanent source of water which would greatly improve the City's precarious water position, the proposed project will not deliver any additional water before 1996 at the earliest.

b. Use

The safe annual ground water yield of the Chorro and Morro basins, i.e., the amount that can be withdrawn from the aquifers on a sustained basis without adversely affecting water quality or damaging the aquifers, is unknown.

City water demand in 1979 was 1,614 acre feet. In 1990, the fourth year of drought, demand was 1,527 acre feet, but the yield was only 1,265 acre feet of potable ground water, well below any previous estimates of annual yield. The difference of 260 acre feet was made up through use of a portable, temporary desalinization plant to treat non-potable ground water on an

Ex4, p10

A-3-98-37

emergency-only basis. In 1991 the City built a permanent desalinization plant, housing it within a 10,000 square foot building, although it was still to be for emergency use only. The plant has been used in both 1991 and 1992. It was authorized by the City issuing itself emergency coastal development permits. It also received permit 4-91-37 from the Commission for shallow wells adjacent to the beach to produce saline water for use in the desalinization plant. It has been necessary for the City to operate each plant in order to provide water of sufficient quality and quantity to meet the demand, even though the demand has been reduced through mandatory water conservation restrictions. According to the City, at its present population and without conservation measures, Morro Bay's estimated total annual water use would be about 1,730 afy, slightly more than the City's estimated historical annual ground water yield of 1,723 afy, and much more than the 1,265 afy of potable ground water available recently without the desalinization plant.

On November 13, 1990, the City Public Works Director reported that:

The City's wells continue to be barely able to provide the community's demand for water under current aquifer conditions and water conservation requirements. There is no assurance this will remain the case. Additional wells may go out of service at any time.

The December 18, 1990, Public Works Director's report said that "...the City does not have a dependable annual water supply." (Emphasis added.)

On February 11, 1991, the City Council declared a Level 5 Emergency Water Supply Condition (Resolution No. 13-91), the most severe condition, which allowed the city to impose those water rationing requirements it deemed appropriate. These included discontinuing of watering of parks and ball fields, limits on water consumption for single and multiple family units and commercial uses, and targeting the top 100 water users to retrofit toilets, sinks, showers, and irrigation systems. This condition lasted over one year until February 24, 1992, when the City Council declared the water supply condition to be "moderately restricted," a Level 2 situation (Resolution No. 18-92) which prohibited water use resulting in excessive runoff, required hoses used for outdoor washing of cars, etc., to have automatic shutoff devices, and controlled days and hours of irrigation for landscaping and turf areas.

The staff report recommending the Council reduce the water supply condition from Level 5 to Level 2 also, however, stated that "It is not known if this" less restrictive water supply condition "will have a deleterious effect on the current ground water supply." The report goes on to say "Both basins are capable of producing sufficient water to meet present system demand without difficulty." (Emphasis added.)

E x 4, p 11

A-3-98-37

According to the Draft EIR, the Cloisters subdivision would require approximately 30 afy of water. This additional demand without clear direction on water policy and a water supply that is certified to be available would further exacerbate an already precarious situation. Dependable water supply has already been exceeded by water demand. There is no reserve.

The Commission acknowledges that the City has recently requested staff assistance on the content of a water management plan to be submitted to the Commission for approval at a future date and that staff has responded to the City's request. The Commission, in April of 1992, approved permit number 4-92-01 for a one year period. That permit was for the desalinization plant operated by the City of Morro Bay. That permit required the City to submit a Water Management Plan to the Commission for certification as an LCP Amendment 60 days prior to the expiration of the permit. Thus the Water Management Plan will be completed and before the Commission early in 1993 unless 1) the City receives an extension for permit 4-92-01, or 2) the City does not follow through on the creation of a Water Management Plan. In any event, no lots will be created by this project without the Water Management Plan being in place and the City's certification of water availability. Given all of the foregoing, the Commission finds that the City of Morro Bay does not have a Water Management Plan as called for in the certified LCP, but is in the process of developing one pursuant to LCP Policies 3.01, 3.03, and 3.04, and that only with the imposition of Special Condition 2 will this project not increase dependence on an already inadequate water supply in the City of Morro Bay.

c. Water Allocation

There are about 282 lots on Morro Bay's waiting list for water hookups. If building permits were being issued for new residential construction, typically between 50 and 70 permits would be issued annually. Thus, if water were available it would take about 5 years for those at the bottom of the list to get a building permit. Prior to March 17, 1992, there were about 455 lots on the City's waiting list for water hookups. On March 17, 1992, the owner of the Cloisters property requested the City to remove all 173 of their lots from that list. Those lots are no longer in line to get water hookups and building permits.

According to the City, residential building permits are limited to one per property owner per year. If an owner had more than one property that rose into the top 50 of the waiting list and are therefore in the group eligible for a building permit, only one property could receive a building permit that year. The others could not be considered for a building permit until the next year.

The 120 lots that will be created by this approval would not appear on the waiting list immediately upon recordation of the map. The applicant has indicated that there is no intent to construct houses but merely to sell the

Ex 4, p 12

A-3-98-37

lots once they are created. The 120 lots proposed will not be created, that is have a final map or maps recorded, until the City not only has a Water Management Plan certified by the Commission, but the City must also certify to the satisfaction of the Executive Director that water is available to serve the lots created by the map or maps. Once the Water Management Plan is certified and the City certifies that water is available, then, and only then, will it be possible to record a map which creates lots. At that time the lots may be sold and the new owners could apply for a place on the waiting list. Special Condition 2 will ensure that there is adequate water to supply all lots created by this project. Since any lot created by this project must wait in line with other, existing, lots in the City to obtain a water allocation and building permit, and since the City must certify that water is available to serve the lots created by this project, necessarily water will be available to serve all lots, whether within this subdivision or not, that are eligible for water allocation and a building permit.

5. Certified LCP Water Policies

Policy 3.01 of the City's LCP states, in part:

The City of Morro Bay shall approve future growth in conjunction with water and sewage treatment availability. Development shall be approved only if the City finds that sewer and water services are available to serve the proposed use.

Water service is not available to serve this proposed subdivision. "Development" as used in Policy 3.01 and defined in the LCP and the Coastal Act are identical, and includes, "...change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act and any other division of land..." *THIS PROPOSAL WOULD CERTAINLY CHANGE THE INTENSITY OF DENSITY OF LAND USE AND IT IS A SUBDIVISION ACCORDING TO POLICY 3.01 THIS PROPOSAL FOR DEVELOPMENT CANNOT BE APPROVED BY THIS CITY BECAUSE WATER IS NOT AVAILABLE TO SERVE THE PROPOSED DEVELOPMENT*

Policy 3.03 of the City's LCP states:

The City may develop a specific, comprehensive, long-range water plan which will implement water management policies that will provide water service consistent with sound resource planning. New water and sewer services to previously unsubdivided areas shall not be approved until a Water Management Plan has been developed, adopted, and submitted for Coastal Commission review and approval as a subsequent amendment to the LUP.

ALTHOUGH THIS SITE ORIGINALLY CONSISTED OF SEVERAL HUNDRED LOTS, THE MAJORITY OF THE SITE WAS EXCLUDED FROM THE 1978 SUBDIVISION BY THE SUPERIOR COURT UPON PETITION OF THE THEN OWNER IN 1980 AND BECAME ONE LARGE PARCEL OF ABOUT 70 ACRES. THIS PROPOSAL WOULD RESUBMIT THE SUBDIVISION WHICH IN 1980 BECAME AN

Ex 4, p 13
A-3-98-37

undivided area // This being the case, Policy 3.03 applies and the proposal cannot be approved because no water management plan has been developed or adopted or submitted to the Commission for review and approval as an amendment to the LUP.

Policy 3.04 of the City's LCP states:

Chapter 3 Coastal Act Policies shall be the basis for reviewing the adequacy of any Water Management Plan. A Water Management Plan shall ensure at a minimum, the following:

1. An adequate water supply for coastal-dependent activities such as commercial fishing, oyster farming, fish and shellfish processing, recreational boating and fishing and industrial energy development.
2. Continued protection of the Morro Bay wetland area with assurances that the wetlands shall continue to be seasonally flushed of accumulated salts from sediments.
3. An adequate ground surface water supply to protect the biological productivity of coastal waters including riparian stream corridors upon which the anadromous fishery depends for viability.
4. Sufficient water for agricultural operations in the Morro and Chorro Valleys.

Once a Water Management Plan has been incorporated into the LUP, the approved elements of the Plan shall be implemented with each project approval accompanied by findings that the resources listed above have been protected consistent with Chapter 3 policies contained in the Coastal Act. Upon implementation of the Water Management Plan, new subdivision in previously undeveloped areas may be permitted.

This policy clearly states that new subdivision in previously undeveloped areas may not occur until there is a developed water management plan.

In the Williams Brothers decision, A-4-MRB-90-49, and A-4-MRB-90-49R, the Commission addressed the issue of whether the applicable policy 3.03 and 3.04 to subdivisions with the City of Morro Bay // Specifically in A-4-MRB-90-49 the Commission found that // Policies 3.03 and 3.04 clearly and unambiguously apply to subdivisions or undeveloped or subdivided property.

For all of the foregoing reasons, this proposal is not consistent with the water use and supply policies of the Morro Bay LUP // Approval of this proposal at this time would aggravate the ongoing serious water supply and management problem. Through no fault of its own, the City of Morro Bay has

Ex 4, p 14

A-3-98-37

very limited options regarding its water supply. Currently all water comes from wells in the lower Chorro and Morro Creek basins. These wells are susceptible to sea water intrusion and with heavy pumping during periods of drought there have been serious problems with ground water quality and quantity. The City has been able to meet the demand only by imposing strict, mandatory water conservation measures; utilizing its desalinization plants on an emergency basis; and by not issuing building permits for new housing construction for the past two years.

While various reports and studies have been done on various aspects of the chronic water problems of Morro Bay, there has never been a certified water management plan to give overall direction and cohesiveness to the City's water policies. Without such a plan, there will be continual problems, emergencies, and crises. A water management plan will not by itself relieve the pressing water situation in Morro Bay. It would, however, give the decision-makers in the City a powerful tool and clear direction to help solve the water problems the City faces. Development based on the existing water policies of the LUP will insure consistency with the City's development of the water management plan. When such a plan is developed, the Commission can be assured that the water resources available are utilized to the maximum extent possible. The LCP water policies require that approval of development shall occur "only if the City finds that...water services are available to serve the proposed use"(Policy 3.01), and that "New water...services to previously unsubdivided areas shall not be approved until a Water Management Plan has been...submitted for Coastal Commission review and approval as a subsequent amendment to the LUP."(Policy 3.03). Commission approval of this project imposing Special Condition 2 will ensure that the proposal is consistent with the LCP water policies since no map or maps may record, and therefore no lots may be created, prior to certification of the Water Management Plan by the Commission and certification by the City that water is available to serve the number of lots created by the map or maps. The Commission finds that the development and completion of the Water Management Plan and the development of an adequate water supply for new development is the responsibility of the City and that only by imposing Special Condition 2 can the approval of the project be found consistent with LCP Policies 3.01, 3.02, 3.03, and 3.04.

6. Visual Quality

Amendment 2-89 established the view corridors across the site, confined the residential areas to the north and south clusters, and limited the height of structures in the residential clusters to 14 feet above finished grade in the north and 25 feet above finished grade in the south.

Ex 4, 15
A-3-98-37

and // if // so // would // intrude // on // the // view // of // Morro // Rock // // houses // of // this // height // with // a // so // elevated // the // stairs // stepped // view // and // replace // it // with // a // more // massive // wall // like // appearance // which // would // lessen // the // existing // dramatic // view // from // highway // one // // while // the // height // is // allowed // by // the // LCP // again // it // is // a // maximum // // the // Commission // finds // that // there // is // a // discretion // to // require // a // mix // of // heights // with // a // maximum // height // of // 17 // feet // above // finished // grade // in // the // southern // cluster // to // protect // existing // views // Special Condition 3 allowing only 25 two-story houses (25 foot height limit), 17 houses 17 feet in height, and 33 houses 14 feet in height will provide a mix of heights in the southern cluster and protect significant coastal views from further impairment. The Commission finds that only with the imposition of Special Condition 3 can the project be consistent with the adopted LCP of the City of Morro Bay regarding protection of visual resources.

7. Landform Alteration and Environmentally Sensitive Habitat Areas

LCP Policy 11.01 says, in part, that "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas." It also requires that buffer areas around wetlands shall be a minimum of 100 feet.

LCP Policy 9.06 says:

All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. To accomplish this, structures shall be built to existing natural grade whenever possible. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in project open space.

This proposal will fill the existing scattered wetlands on the site outside of the ESHA and emplace up to eight feet of fill for building pads to elevate them above the 100 year flood level. The fill material is proposed to come from an excavation in the central portion of the site where the new wetland mitigation area is proposed.

The proposed wetlands mitigations have received approval from the Department of Fish and Game, but no permit has as yet been secured from the US Army Corps of Engineers to fill the existing wetlands, although the Corps in January of this year sent notices and application forms to both the City and the applicant informing them of the need for an Individual Permit under Section 404 of the Clean Water Act (personal communication from Gary Sanchez, USACOE, March 19, 1992).

As proposed, the development would route excess water from the new wetland mitigation area to the dune slack area by means of a pipe that would lie

Ex 4, p 17

A-3-98-37

underneath the lateral access path and drain to an existing natural drainage channel to the southwest of the north cluster. It is also possible for overflow waters to drain south-westerly from the wetland and enter an existing natural drain channel that runs westerly from near the south cluster, if the pipe cannot handle the runoff.

This proposal will result in grading over the entire site except the sand dunes, filling of existing wetlands outside of the ESHA, destruction of some existing habitat areas, and the creation of a relatively deep (up to six feet) ponding area, much deeper than the existing wetlands. The Commission finds that there are alternative mitigation measures including, but not limited to, areal expansion of the new wetland area with general reduction in and more variety of depth, inclusion of an island or islands within the wetland to provide more habitat area that is better protected from terrestrial predators and human access, and routing drainage from the new wetland to existing drainage channels by means of open drainages instead of placing pipes through the dunes or elsewhere. ~~and reduction in the number of lots proposed // even though the Department of Fish and Game has approved the proposed mitigation // final approval of the wetland mitigation rests with the Commission~~ The Commission further finds that the Special Conditions relative to the wetlands mitigation and the requirement for approval by the Department of Fish and Game and the Executive Director of the Wetlands Mitigation and Enhancement Plan will assure that significant coastal resources are protected, and that the approval of the project is consistent with the adopted policies of the Morro Bay LCP.

8. Access

The City found the project to be in conformity with public access policies of Chapter 3 of the Coastal Act. There is an inconsistency between access as conditioned by the City and the City's LCP. Policy 1.13(a) says, "Two vertical accessways to the beach shall be provided, one each on the north and south portions of the parcel." The City's Special Condition 10.a. says, "Three vertical accessways to the beach shall be...placed as shown on the concept plan, with the additional or third accessway to be provided between lots 15 and 19", in the north cluster.

The proposal includes improvement of the existing dirt parking area abutting this site on the north on State Park land at the foot of Azure Street. There would be direct access to the beach from the improved parking and access area. It is unclear whether the City meant to provide access from between lots 15 and 19 to the lateral accessway which traverses the parcel just inland of the dunes or to provide vertical access in that area past the lateral accessway and across the dunes. This latter option would mean another crossing of the ESHA only some 300 feet from the established access on State Park land and would contribute to unnecessary impacts on the dunes, being especially close to the snowy plover habitat.

E x 4, p 18

A-3-98-37

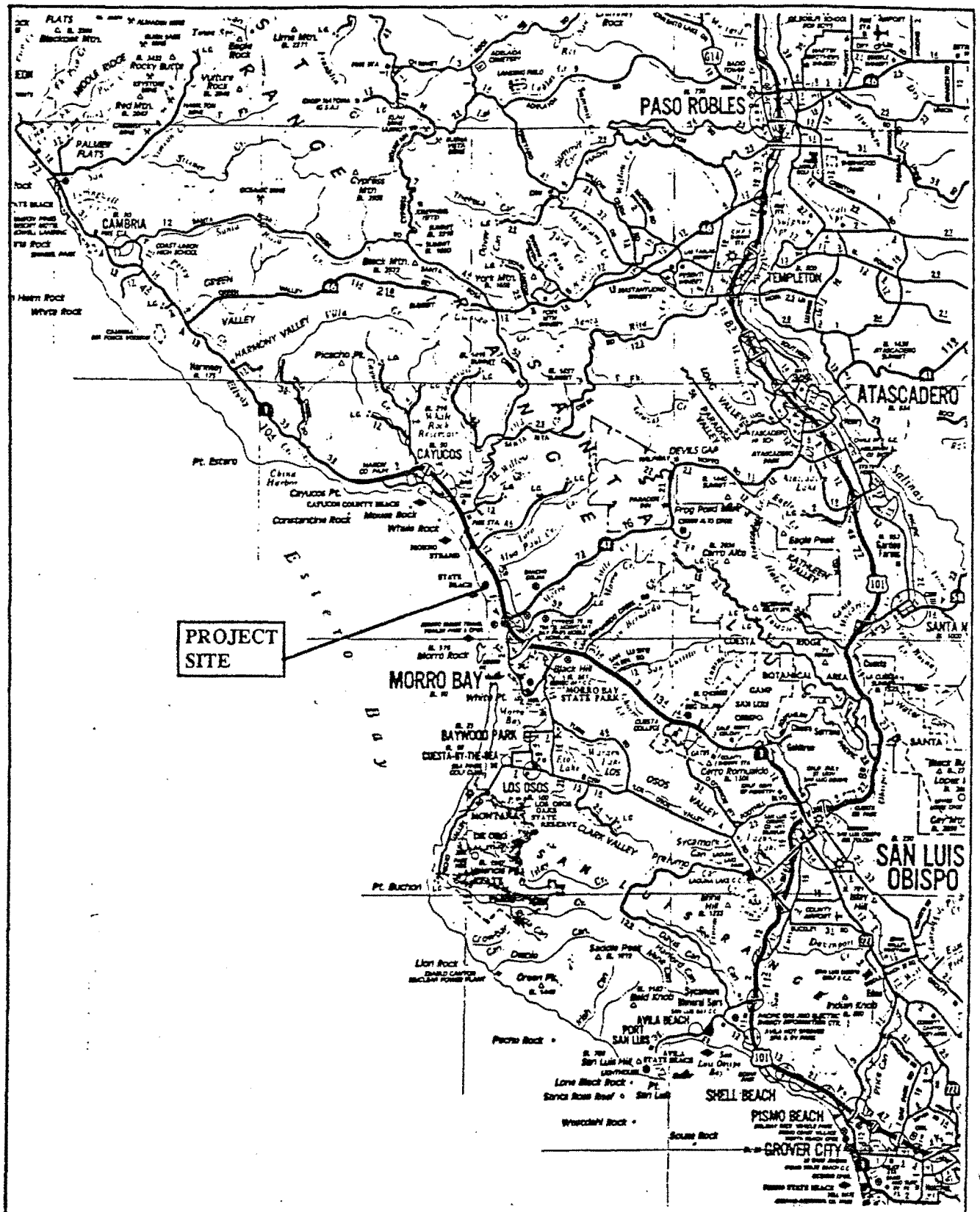
Coastal Act Section 30211 requires that development not interfere with the public's right of access to the sea where acquired through use or legislative authorization. In 1978 the Attorney General's Office researched the history of public access on this property and the possibility of the existence of prescriptive rights. That implied dedication report ended:



It is concluded that public usage of the property under investigation has been of such variety and intensity and has occurred from a period of time significantly longer than five years (sic). The extent that the owners have sought to control this usage has not been significant. Thus, a strong case can be made for the establishment of public prescriptive rights over the access trail system and common areas. This conclusion is, of course, subject to the need for further investigation as outlined in this report.

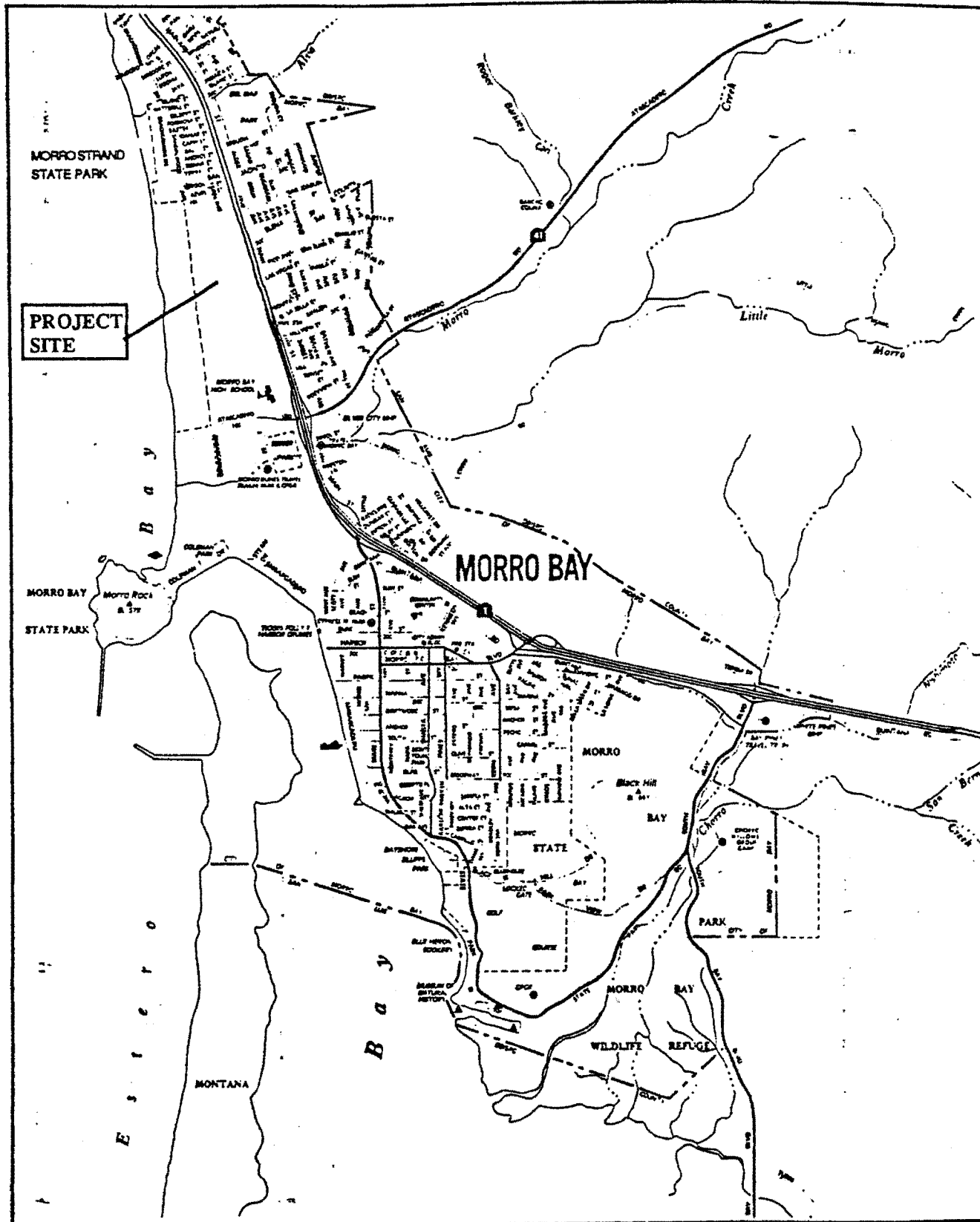
Interviews were conducted with some 99 individuals to determine nature, location, duration, and extent of public use of this property. Photographs and newspaper articles were also included. Additional interviews were conducted in 1989; they produced the same information as the ones from 1978. All of these various sources indicated public use was essentially unrestricted, but was concentrated in the dunes and laterally along the inland base of the dunes. Access was from Azure Street on the north and 54th Street on the south. The proposed subdivision's physical access provisions essentially mimic the areas of access historically occurring on this property. The main difference is that vehicle access would be restricted to the extended Coral Avenue and parking area, and pedestrian access to the dunes from the site would be restricted to the north and south vertical accessways to discourage disturbing the western snowy plover nesting area.



Section 30212 of the Coastal Act requires provision of public access from the nearest public roadway to the shoreline and along the coast in new development, while Section 30214 provides for regulating access. The Commission finds that the proposal, with the imposition of Special Condition 7 requiring only two vertical accessways, recognizes and preserves the historical public access indicated in the 1978 implied dedication report, is consistent with the LCP, and satisfies the access requirements of Chapter 3 of the Coastal Act.

Ex 4, p 19
A-3-98-37



 <p>earth metrics</p>	 <p>SCALE 1.75" = 1 MI.</p>	<p>FIGURE 1.1-1</p> <p>Ex 4, p 20</p> <p>A-3-98-37</p>	<p>EXHIBIT NO. B</p> <p>APPLICATION NO. A-4-MB-91-44</p> <p>REGIONAL MAP</p>
--	--	--	--



 <p>earth metrics</p>	 <p>SCALE 1.75" = 1 MI.</p>	<p>FIGURE 1.1-2 Ex 4, p 21 A-3-98-37</p>	<p>EXHIBIT NO. 2 APPLICATION NO. A-4-MR-91-44 LOCATION MAP</p>	
--	--	--	---	--

California Coastal Commission

