

**CALIFORNIA COASTAL COMMISSION**

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**Th5a**

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Staff report: 2/17/99  
Hearing date: 3/11/99

## APPEAL STAFF REPORT

### SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

**Appeal number**..... **A-3-STC-98-086, Zulim/Wave Crest Development**

**Applicants**..... David Zulim/Wave Crest Development (Agent: William Boyd)

**Appellants**..... Commissioners Sara Wan & Andrea Tuttle

**Local government**..... City Of Santa Cruz

**Local decision** ..... Approved with conditions, 8/20/98

**Project location**..... 2155 Delaware Avenue, City of Santa Cruz, Santa Cruz County (APN 003-161-57).

**Project description** ..... Construct a 44,300 sq. ft. office/manufacturing building with a variance to conservation regulations for the 100-foot setback to intermittent streams.

**File documents**..... City of Santa Cruz certified LCP & permit file 97-089.

**Staff recommendation** ... **Substantial Issue Exists, Approval with Conditions**

#### Summary of Staff Recommendation

This is the substantial issue determination and de novo hearing for appeal number A-3-STC-98-086 (the Commission previously opened and continued the substantial issue hearing for this matter on November 5, 1998). Staff recommends that the Commission find that a **substantial issue exists** with respect to this project's conformance with the certified City of Santa Cruz Local Coastal Program (LCP) and take jurisdiction over the project. Staff subsequently recommends that the Commission **approve the project subject to special conditions** designed to bring the project into conformance with the certified LCP.

The City-approved project includes a parking lot that would be constructed within 21 feet of the centerline of an intermittent stream which runs along the eastern property line of the subject 2.6 acre site. However, the City's LCP requires a 100 foot setback from the stream centerline within which a strictly limited list of activities (such as nature study, passive recreation, and restoration) are allowed - a parking lot is **not** an allowed use. The LCP allows for exceptions to this policy **only** "within the context of a



California Coastal Commission

March 11, 1999 Meeting in Carmel

Staff: D. Carl Approved by: C.F.C. 2/18/99

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resource management plan which plan shall be approved by the Coastal Commission as an amendment to the Land Use Plan." No such management plan has been prepared and adopted for this stream corridor.

In order to approve the project, the City approved a variance to Conservation Regulations which require a 100 foot setback from intermittent streams. The City determined that the subject stream is essentially artificial, lacking in natural resource value, and that the setback requirements apply only because of a map technicality; there would be no change to the stream channel due to the project. However, the subject stream, part of the larger Arroyo Seco drainage basin on the west side of the City of Santa Cruz, is identified on USGS Topographic maps and LUP Environmental Quality maps as a stream. The biotic assessment done for the site characterizes the watercourse as "an intermittent stream" "wherein some native freshwater plant species were evident" and "some areas of wetland fringe were observed along the waterway." The Commission's staff biologist visited the site and likewise observed that, although degraded, the stream did support freshwater habitat species and wetland vegetation. In addition, the subject stream is mapped as "Arroyo Seco Corridor" on the City's Urban Runoff Program map. Accordingly, the subject stream does enjoy status as a stream corridor for which the LCP specifically requires 100 foot setbacks, protection and enhancement.

Moreover, the LCP is very clear that exceptions to the adopted conservation regulations for development within the required 100 foot setback areas are accomplished through the development of a management plan which has been approved by the Coastal Commission as an amendment to the LUP. Approximately 1.6 acres of the subject site is outside of LCP-required 100 foot setback area. If the Applicant wishes to pursue development within the 100 foot setback, then the Applicant must work with the City to complete an LCP amendment providing for a management plan which adjusts the setback requirement for this stream reach based on valid biological criteria. The fact that this management plan mechanism has not yet been utilized is not grounds for a variance to conservation regulations. Lacking such a plan which determines appropriate setbacks, restoration, and management, the required variance findings cannot be made and a variance cannot be found consistent with the LUP and the Zoning Ordinance.

The proposed project is inconsistent with the certified LCP because it places prohibited development within the required 100 foot stream setback without benefit of a management plan previously adopted by the City and approved by the Coastal Commission as required by the LCP. Moreover, the variance procedure utilized by the City to reduce the setbacks established in the LUP and LCP Implementation Conservation Regulations for protection of wetlands, streams, and other habitat resource areas is not designed to address the intent of the LCP policies and regulations to protect these resources. As articulated by the LCP, a management plan is the general regulation provided by the LCP to allow for exceptions to stream setback requirements. For these reasons, **a substantial issue is raised in terms of the proposed project's conformance with the certified City of Santa Cruz LCP.**

There are two options available to modify the project so as to make it LCP consistent: (1) the Applicant can pursue a less ambitious building and parking lot which can be constructed outside of the 100 foot setback area; or (2) a City-adopted, Commission-approved LUP amendment management plan can be



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developed to provide for appropriate setbacks, restoration, enhancement and management of the stream corridor *and then* the Applicant can pursue a project consistent with this approved management plan. Although Commission staff has been working with the Applicant (and the Lipton Company which owns the inland property containing a portion of the same stream reach) on the basic parameters of such a stream management plan, the prospects for an LUP amendment memorializing this plan are as yet unclear. In addition, because the management plan option is outside of the Applicant's control, there is no way for the Commission to allow for this contingency through conditions of this approval.

**Therefore, in order to bring the project into conformance with the certified LCP, prior to issuance of the coastal development permit, this approval requires the submittal of revised project plans showing all development outside of the 100 foot stream setback (see Special Condition 1).** However, in recognition of the fact that a lesser setback may be found sufficient for this site through future planning efforts, this approval is without prejudice as to the Applicant's ability to pursue an amendment to this coastal development permit which would provide for additional development closer to the stream centerline than 100 feet pursuant to a City adopted, Commission-approved stream management plan. Because a future Commission would make the decision on any such amendment request, any action taken by the Commission in this approval shall not be considered an endorsement of any future coastal development proposal for this site and shall be without prejudice as to a future Commission's ability to pass independent judgement on any future application based upon the facts of the case presented at that time.

With this approval, the Applicant has the choice to go forward now without a management plan provided the Applicant's proposed project is reduced in light of the applicable conservation regulations (i.e., 100 foot stream setback) or wait to pursue larger scale development until such time as a management plan is in place to guide development activity along this stream corridor. In any event, the Applicant remains responsible for securing any additional approvals that may be required by the City of Santa Cruz for any modified project.

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**1. Local Government Action**

On September 12, 1997 the City of Santa Cruz Zoning Administrator approved Design and Coastal Permits to construct a 44,300 square foot office and manufacturing building with a variance to Conservation Regulations for the setback to intermittent streams. The project was appealed by Westside Area Residents for Responsible Development for several reasons including: (1) inadequate environmental review (because a 1990 negative declaration for a previous similar project was used and not recirculated); (2) failure to consider the impacts to the creek that runs along the site; and (3) insufficient parking were the City to maintain the 100 foot setback required in the General Plan. Subsequently, on June 18, 1998, the City recirculated a revised Initial Study/Negative Declaration for the proposed project. On August 20, 1998, the City of Santa Cruz Zoning Board made findings for a Coastal Permit, Design Permit and a Variance to Conservation regulations for setback from intermittent streams, denied the appeal, adopted the Negative Declaration and approved a coastal permit with 56 conditions (see Exhibit A). The City's complete final action was received by the Coastal Commission's Central Coast District Office on September 14, 1998. The Commission's ten-working day appeal period for this action began on September 15, 1998 and concluded at 5:00 P.M. on September 28, 1998. One valid appeal (see below) was received during the appeal period.

**2. Appeal Procedures**

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in



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jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because of its location within 100 feet of a coastal stream.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is *not* located between the nearest public road and the sea and thus, this additional finding need *not* be made in a de novo review in this case.

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

### 3. Appellants' Contentions

The two Commissioner Appellants contend in full (see Exhibit B for the complete appeal document):

A portion of the parking lot is located within 100 feet of a stream and that portion is appealable to the Coastal Commission. The following LCP policies are among those that address stream setbacks.

Land Use Plan Policy EQ 4.2.2 states, "Minimize the impact of development upon riparian and wetland areas through setback requirements of at least 100 feet from the center of a watercourse for riparian areas and 100 feet from a wetland. Include all riparian vegetation within the setback requirements, even if it extends more than 100 feet from the water course or if there is no defined water course present."

Land Use Plan Policy EQ 4.2 Preserve and enhance the character and quality of riparian and wetland habitats, as identified on Maps EQ-8 and EQ-11, or as identified through the



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planning process or as designated through the environmental review process

Land Use Plan Policy EQ 4.2.2.3 Prohibit uses such as construction of main or accessory structures, grading or removal of vegetation within riparian and wetland resource and buffer areas and allow permitted uses....

The LCP provides a 100 foot setback from the center of streams. The City found that the creek had limited natural resources, that it was channeled into a pipe downstream and that other nearby development encroached into the setback, and approved a variance for the construction of a parking lot within 25 feet of the center of Arroyo Seco Creek. However, the stream in fact flows even during summer months, supports at least some aquatic wildlife, and comprises at this location an attractive "greenway" corridor.

LCP policies require that stream corridors be preserved and enhanced. The LUP requires at least a 100 foot setback. The setback is both to prevent direct removal of vegetation, to buffer resources, and to provide adequate area for meaningful enhancement. The project fails to conform with the require setback, and the City's variance from the standard does not appear supportable. As approved, an adverse precedent would be established for nearby properties (also crossed by this same stream) under consideration for development.

#### 4. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. Staff recommends a **NO** vote on the following motion:

*I move that the Commission determine that appeal number A-3-STC-98-086 raises no substantial issue with respect to the grounds on which the appeal has been filed.*

A no vote would result in a finding of substantial issue and bring the project under the jurisdiction of the Commission for hearing and action. A majority of the Commissioners present is required to pass the motion.

#### 5. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below. Staff recommends a **YES** vote on the following motion:

*I move that the Commission approve Coastal Development Permit Number A-3-STC-98-086 subject to the conditions below and that the Commission adopt the following resolution:*

*Approval with Conditions. The Commission hereby grants a permit for the proposed development, as modified by the conditions below, on the grounds that the modified development will be in conformance with the provisions of the City of Santa Cruz certified Local Coastal*



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*Program (LCP), is not located between the sea and the first public road nearest the shoreline, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).*

A yes vote would result in approval of the project as modified by the conditions below. The motion passes only by affirmative vote of a majority of the Commissioners present.

### 6. Conditions of Approval

#### A. Standard Conditions

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

#### B. Special Conditions

1. **Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval project plans that show no development (except for that allowed pursuant to City of Santa Cruz Zoning Ordinance Sections



24.14.080(4)(a) (Uses Permitted – General) and 24.14.080(4)(b) (Uses Permitted – Intermittent/Perennial Streams) in effect as of the date of this approval) within 100 feet of the centerline of the intermittent stream present along the eastern property line of APN 003-161-57.

- 2. City of Santa Cruz Conditions.** With the exception of Conditions #4, #7, #43, and #50 which are replaced by Special Condition 1 above, all other previous conditions of approval from the City of Santa Cruz remain in effect (Zoning Board Decision on Application 97-089; See Exhibit A). PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval evidence that those conditions requiring action prior to the commencement of any work have been signed-off by the appropriate City of Santa Cruz official. Evidence of subsequent condition compliance must also be submitted to the Executive Director at the required stage. In the event that City of Santa Cruz officials do not exercise such authority, permittee shall submit condition compliance materials to the Executive Director for review and approval.

## **7. Recommended Findings and Declarations**

The Commission finds and declares as follows:

### **A. Project Background**

**Site:** The site at 2155 Delaware Avenue is a 2.6 acre parcel whose eastern boundary is the centerline of the stream corridor of the Arroyo Seco Drainage Basin. The development area of the parcel which is subject to appeal is that which is located within 100 feet of the stream. The unnamed stream flows on an intermittent basis (including summer months) and is home to both aquatic wildlife and native freshwater plants. The stream corridor on this site is an attractive “greenway” in the midst of a mostly built out urban environment. The balance of the area within 100 feet of the stream centerline on the subject parcel is currently vegetated with non-native turf grasses along with a mixture of native and non-native trees and shrubs which define its bank. See Exhibits C through I (in particular, Exhibits H & I) attached.

**Arroyo Seco Drainage Corridor:** The Arroyo Seco corridor, of which the subject stream reach is a part, originates in the coastal foothills above Highway 1 and flows from north to south ultimately to the ocean. North of Highway 1, the stream follows natural channels until entering underground culverts that carry the watercourse beneath Mission Street (State Highway 1). The stream reemerges on the ocean side of the Union Pacific rail line to flow overland approximately 1,200 feet through a reconfigured drainage swale which crosses a vacant 20 acre site owned by the Lipton Company. A 60 inch culvert then carries the watercourse beneath Delaware Avenue to the open channel on the Applicant’s site which extends approximately 400 feet before entering into an underground culvert which carries the flow the remaining 1,600 feet to daylight on the coastal terrace seaward of West Cliff Drive. The stream then cascades in a waterfall onto a small pocket beach and into the Monterey Bay National Marine Sanctuary. See Exhibit D attached.





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As a result, the stream reach extending across the Lipton property and the subject property is a major portion of the daylighted extent of the stream. On the Lipton parcel, directly north across Delaware Avenue, the constructed channel ranges in size from 15 – 40 feet wide (at the top of the bank) and 6 – 10 feet deep with an estimated ten year storm flow of 200 cubic feet per second. On the Applicant's site, the channel is approximately 20 feet wide at the top of the bank and 5 – 6 feet deep. The Coastal Zone Boundary crosses the Lipton site on the inland side of Delaware Avenue about half way between the railroad tracks and Delaware Avenue. See Exhibit G attached.

**Surrounding Development:** East of the Applicant's site, across the Arroyo Seco drainage swale, is the Crystal Springs distribution center. The Crystal Springs building is within 60 feet of the stream and portions of its driveway, fences, and appurtenant structures are within 10 feet of the stream. South, the watercourse goes underground below an alley through the residential subdivisions to the ocean. As described above, north across Delaware Avenue is the 20 acre vacant Lipton parcel. Currently, the Santa Cruz Metropolitan Transit District is negotiating with Lipton for purchase of a portion of the property for the development of a consolidated transit operations facility. West of the subject parcel, across Swanton Boulevard, is Natural Bridges Beach State Park. Development between Swanton Boulevard and the Applicant's site is described below. See Exhibit G attached.

**Site History:** The subject parcel was once part of a larger 5.47 acre site on the corner of Swanton Boulevard and Delaware Avenue. Under a 1995 minor land division, the industrially zoned 5.47 acre site was divided to separate the Applicant's 2.6 acres from 2.8 acres containing an existing industrial facility (under common ownership) to the west (i.e., on the corner Swanton and Delaware). The industrial building was approved by the Coastal Commission in 1976 (P-3-76-181). When the parcel was subdivided, a driveway and portion of the parking for the existing building was on the new (subject) parcel. Approximately one-third of the subject site is currently covered with a parking lot utilized by the existing industrial building.

In 1990 the City approved a two story 40,000 square foot office and manufacturing building on the subject site with a variance to allow construction within the 100 foot stream setback. This permit expired in 1993. Subsequently, in September 1997 the City Zoning Administrator approved Design and Coastal Permits to construct a 44,300 square foot building with a variance to the Conservation Regulations to again allow construction within the 100 foot stream setback. The project was appealed to the City's Zoning Board with key issues of design and compatibility with the neighborhood, justification for the reduction in the 100 foot setback to the center of a watercourse, and lack of adequate environmental review. Prior to the Zoning Board action on the appeal, the Initial Study/Negative Declaration was recirculated. Finally, the Zoning Board denied the appeal and approved a Coastal Permit, Design Permit and a Variance to Conservation regulations for setback from intermittent streams on August 20, 1998. The project was not appealed to the City Council.

As approved by the City, the proposed parking lot for the proposed industrial building is a minimum 21 feet and a maximum 35 feet from the centerline of the stream corridor. See Exhibit J attached.



## **B. Analysis of Project Consistency with Local Coastal Program**

### **1. Local Coastal Program Provisions**

#### **General Plan/Land Use Plan Applicable Environmental Policies**

*Goal EQ 4: Protect and enhance natural vegetation communities and wildlife habitats throughout the City.*

*EQ 4.2 Preserve and enhance the character and quality of riparian and wetland habitats, as identified on Maps EQ-8 and EQ-11, or as identified through the planning process or as designated through the environmental review process.*

*EQ 4.2.1 Develop, adopt and implement management plans for City-owned wetland and riparian areas including: San Lorenzo River, Neary Lagoon. Require management plans for sites not owned by the city in connection with development, and/or encourage other agencies implement management plans for : Younger Lagoon, Jessie Street Marsh, Arana Gulch, Moore Creek, Natural Bridges Marsh, and Antonelli Pond. The need for management plans for other significant environmental resource systems in the Coastal Zone, where ownership is fragmented, will be evaluated on a case-by-case basis when identified in the planning process. When a management plan is prepared, mechanisms will be adopted to implement the plan through permit conditions and other measures to enhance the natural resource.*

*E.Q. 4.2.2 Minimize the impact of development upon riparian and wetland areas through setback requirements of at least 100 feet from the center of a watercourse for riparian areas and 100 feet from a wetland. Include all riparian vegetation within the setback requirements, even if it extends more than 100 feet from the water course or if there is no defined water course present.*

*EQ 4.2.2.1 Require that all development within 100 feet of these areas be consistent with the applicable management provisions under EQ 4.2.1 and L 3.4, if one has been established.*

*L 3.4 Develop, implement and maintain updated management plans for the protection and enhancement of natural areas throughout the City including: Jessie Street Marsh, Arana Gulch, Lighthouse Field, San Lorenzo River, Pogonip, Arroyo Seco, Moore Creek, Neary Lagoon, Antonelli Pond, Natural Bridges Marsh and portions of DeLaveaga Park. Management plans should address the following: description of the resource, preservation objectives, strategies to fulfill the objectives, and the means to carry out those strategies (e.g. timeline, funding, authorities). (See policies EQ 4.2.1, EQ 4.2.2.1 and PR 1.6)*

*EQ 4.2.2.3 Prohibit uses such as construction of main or accessory structures, grading or removal of vegetation within riparian and wetland resource and buffer areas and allow permitted uses (such as pervious non-motor vehicular trails, incidental public services,*



*maintenance and replacement of existing Public Works facilities, maintenance of existing or restoration of previously dredged depths in flood control projects and navigational channels, small-scale facilities (500 sq. ft. or less) associated with nature study or resource dependent activities, construction, grading or removal of vegetation necessary for maintenance, landscaping designed to provide a natural buffer and grading necessary as a part of such landscaping plan, passive recreation, habitat preservation and restoration) that are consistent with the environmental quality policies of the Plan, Section [30233] of the Coastal Act, and adopted management plans. Development in wetlands can be undertaken only where there is not feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. If any exceptions to this policy are to be considered, it shall be within the context of a resource management plan which plan shall be approved by the Coastal Commission as an amendment to the Land Use Plan.*

**EQ 4.2.5** *Protect and minimize the impact of development on bird, fish and wildlife habitat in and adjacent to waterways.*

#### **Implementation Zoning Ordinance Applicable Regulations**

The City's certified Zoning Ordinance includes Chapter 24.14 "Environmental Resource Management." Part 1 of Chapter 24.14 describes "Conservation Regulations" for which a designated purpose is to "preserve riparian areas and other natural habitat by controlling development near the edge of ponds, streams, or rivers" (24.14.010(4)). Section 24.14.080, "Intermittent/Perennial Streams, Wetland Areas, Wildlife Habitats and Plant Communities," implements setback provisions.

**Section 24.14.080(1)(a). Applicability for Intermittent/Perennial Streams.** *Identified on the largest scale USGS topographic map by either a solid line or a dash-and-dot symbol and Map EQ-11 of the Environmental Quality Element of the General Plan and Coastal Land Use Plan or in riparian areas as designated by Map EQ-8 in the General Plan and refined by the environmental review process.*

**Section 24.14.080(3)(a). Uses Prohibited for Intermittent/Perennial Streams.** *Construction of main or accessory structures, grading, or removal of vegetation shall not be permitted in any designated riparian area or within one hundred feet from the center of a watercourse (as identified in subsection (1)(a) above), except as provided in subsections (4)(a) and (4)(b), below.*

**Section 24.14.080(4)(a). Uses Permitted – General.** *The following uses of all areas, (as identified in subsections (1)(a) through (1)(c) above) including setbacks (as identified in subsections (3)(a) and (3)(c) above), may be permitted. Where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. (1) Maintenance and replacement of existing Public Works facilities...; (2) Maintenance of existing, or restoration of previously dredged, depths in existing flood control projects and navigational channels, pursuant to an approved management plan; (3) Pervious, non-motor-vehicular trails; (4) Incidental public*



services projects...; (5) Small-scale facilities associated with nature study or other similar resource-dependent activities; (6) Construction, grading or removal of vegetation necessary for maintenance of existing improvements; (7) Landscaping designed to provide a natural buffer and grading necessary as a part of such landscaping plan; (8) Passive recreation; (9) Habitat preservation and restoration; (10) Other uses similar to the forgoing found by the zoning administrator or board as consistent with the intent of this part.

**Section 24.14.080(4)(b). Uses Permitted – Intermittent/Perennial Streams.** Construction, grading, or removal of vegetation shall be permitted within required setbacks only where necessary for protection against erosion, scouring and for maintenance of flow.

The City's certified Zoning Ordinance also includes Chapter 24.08 "Land Use Permits and Findings" Part 2 of Chapter 24.08 describes "Variances."

**Section 24.08.100. Purpose.** The purpose of this part is to allow variation from the strict application of the terms of this title where, by reason of the exceptional narrowness, shallowness, or unusual shape of a specific piece of property, or by reason of exception size, shape, topographic conditions, or other extraordinary situation or condition of such piece of property, or because of the use or development of lands immediately adjoining such property, the literal enforcement of the of the requirements of this title would involve practical difficulties or would cause undue hardship, which are unnecessary to carry out the intent and purpose of this title.

This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan.

**Section 24.08.110 General Provisions.** In no case shall a variance be granted to permit a use or a density other than a use or density permitted in the district in which the property in question is situated. Nonconforming uses of neighboring lands, structures, or buildings in the same district or other districts shall not be considered grounds for issuance of a variance.

**24.08.130. Findings Required.** A variance shall be granted only when all of the following conditions are found:

1. That a hardship peculiar to the property, not created by any act of the owner, exists. In this context, personal, family or financial difficulties, loss of prospective profits, and neighboring violations, are not hardships justifying a variance.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and in the same vicinity; and that a variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his neighbors.
3. That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purpose and intent of this title or the public interest, nor adversely affect the General Plan.



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*Section 24.08.140 Recurrent Conditions.* No grant of a variance shall be authorized if the zoning administrator finds that the condition or situation of the specific piece of property, or the intended use of said property for which the variance is sought, or one or the other in combination, is so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation for such condition or situation.

*Section 24.08.150 Precedents.* A previous variance shall not be considered to have set a precedent for the granting of further variances; each case must be considered only on its individual merits.

**Summarized Relevant Land Use Plan Policies:**

- Goal EQ 4 requires the protection and enhancement of natural vegetation communities and wildlife habitats throughout the City.
- EQ 4.2 requires preservation and enhancement of the character and quality of riparian and wetland habitats as identified on LUP Maps EQ-8 and EQ 11. (The subject watercourse is identified on Map EQ-11 "Streams.")
- EQ 4.2.2 requires setbacks of at least 100 feet from the centerline of a watercourse to minimize impacts upon riparian and wetland areas. (The project approved by the City provides a setback ranging from 21 to 35 feet.)
- EQ 4.2.2.3 prohibits construction of main or accessory structures, grading or removal of vegetation within riparian and wetland resources and buffer areas.
- EQ 4.2.2.3 does allow some very strictly limited uses which do not include parking lots for industrial facilities.
- EQ 4.2.2.3 concludes that if any exception to the policy is to be considered, "it shall be within the context of a resource management plan which plan shall be approved by the Coastal Commission as an amendment to the Land Use Plan." (No management plan exists for the subject watercourse.)
- EQ 4.2.2.1 requires that all development within 100 feet be consistent with approved management plan provisions.
- EQ 4.2.1 directs that management plans for City-owned wetland and riparian areas shall be developed and that the need for management plans for environmental resource systems where ownership is fragmented shall be evaluated on a case-by-case basis.
- L 3.4 requires management plans for the "protection and enhancement of natural areas throughout the City including...Arroyo Seco." (The subject watercourse is part of the Arroyo Seco corridor.)

**Summarized Relevant Conservation and Variance Regulation Sections:**

- Section 24.14.080(1)(a) provides that the Conservation Regulations apply to intermittent/perennial



streams identified on the USGS map and LUP Maps EQ-11 or EQ-8. (The subject watercourse is shown on USGS Topographic maps as an intermittent stream and on LUP Map EQ-11 "Streams.")

- Section 24.14.080(3)(a) describes uses prohibited within 100 feet of the centerline of intermittent streams (construction of main or accessory structures, grading, or removal of vegetation are not allowed uses).
- Section 24.14.080(4)(a) lists uses permitted (in general) in streams, wetlands, wildlife habitats, and plant communities (including within any required setback areas); these uses are extremely limited and do **not** include parking lots.
- Section 24.14.080(4)(b) lists uses permitted specifically within intermittent/perennial streams and their required 100 foot (centerline) setbacks; these uses are likewise strictly limited and do **not** include parking lots.
- Section 24.08.100 allows for variances if by reason of exceptional narrowness, shallowness, or unusual shape of property, the literal enforcement of the conservation regulation would involve practical difficulties or would cause undue hardship, which are unnecessary to carry out the intent and purpose of the zoning ordinance. (The subject property is 2.6 acres of which approximately 1.6 acres is outside of the 100 foot setback area.)
- Sections 24.08.110 and 24.08.130 provide that neighboring, non-conforming uses shall not be considered grounds for variance, and that variances shall only be granted where it is found that a hardship exists, that the preservation and enjoyment of property rights require such a variance, and that the variance will not materially impair the intent and purpose of the zoning ordinance or the public interest. (Across the stream to the east, Crystal Springs distribution center buildings are about 60 feet from the stream with portions of driveway, fences, and appurtenant structures within 10 feet of the stream.)
- Sections 24.08.140 and 24.08.150 do not allow for variance if the situation requiring the variance is so general or recurrent in nature as to more appropriately be addressed by a general regulation and further indicates that past variances are not precedential. (LUP Policy EQ 4.2.2.3 is a general regulation which provides for exceptions to setback requirements through the development of management plans.)

## **2. City Action**

The Initial Study/Negative Declaration for the project explains that variation to the Conservation Regulations to the setback from streams and riparian corridors is authorized by the City's Zoning Ordinance and that a biotic study prepared for the site found that a 100-foot setback is not necessary due to the lack of native vegetation along the drainage in the project vicinity and lack of significant wildlife use due to the urbanized nature of the area. Ultimately, the City found that:

- Zoning ordinance Section 24.14.080 which requires the 100 foot setback applies only because of a technicality in that Map EQ 11 does not distinguish between creek segments which are natural,



channeled or underground.

- The creek channel is essentially artificial without natural plant communities and that a 100 foot setback would encumber 37% of the lot without benefit to riparian or wetland resources.
- The proposed project would be the only one in the district and vicinity to require the setback. The residential subdivision buildings to the south are within 15 feet of the creek; the Crystal Springs building immediately to the east is within 60 feet of the creek and its driveways, fences, and appurtenant structures are within 10 feet.
- There will be no change to the creek channel since only lawn will be replaced with a parking lot.
- There would be no detriment to adjacent properties and the variance will not materially impair the intent of the zoning ordinance or the public interest.

See Exhibit A attached for the City's variance and coastal permit findings.

### **3. Substantial Issue Determination**

#### **Status of on-site stream**

There is no question that the subject stream qualifies for protection under the LCP. As described in LUP Policy EQ 4.2 and as required by Zoning Section 24.14.080(1)(a), the subject watercourse is identified as an intermittent stream on the USGS Topographic map and shown on General Plan/LUP Map EQ 11 (Streams) (see Exhibits E and F attached). Furthermore, the biotic assessment for the project (by Biotic Resources Group dated March 1998) likewise characterizes the watercourse as "an intermittent stream" "wherein some native freshwater plant species were evident" and "some areas of wetland fringe were observed along the waterway." When describing the site's "sensitive biotic resources," the biotic assessment states:

*Sensitive habitats are defined by local, State, or Federal agencies as those habitats that support special status species, provide important habitat values for wildlife, represent areas of unusual or regionally restricted habitat types, and/or provide high biological diversity. **The only habitat meeting this criteria in the 2155 Delaware Street parcel is the intermittent waterway and associated areas of wetland fringe vegetation.** (emphasis added)*

The Commission's staff biologist visited the site and likewise observed that, although degraded, the stream did support freshwater habitat species and wetland vegetation.

The watercourse is identified as an intermittent stream by USGS, LUP Map EQ 11, and the project's biotic assessment. Although not an adopted part of the City's LCP, the City's 1997 Urban Runoff Program map likewise shows the subject watercourse as a stream labeled "Arroyo Seco Corridor." Furthermore, the project biotic report identified the presence of wetland vegetation along the stream which was corroborated by the Commission's staff biologist. Although not pristine, the subject stream is a degraded riparian corridor with some resource value for which LCP-required enhancement (see below)



is appropriate. As such, the Commission finds that LUP Policies EQ 4.2 et seq and Implementation Ordinance Section 24.14.080 apply to the subject stream.

#### **Setback required**

The LUP is very specific as to the width and point of measurement of the setback in EQ 4.2.2. The required setback is 100 feet or greater from the watercourse centerline. The certified Zoning Ordinance, Section 24.14.080, requires a 100 foot setback from streams identified in LUP and USGS maps and as refined in environmental review. As described above, the subject stream is so mapped (as required by the LCP). Furthermore, riparian resource characteristics have been further "identified through the planning process" and "designated through the environmental review process" (as per LUP Policy 4.2) by the project's biotic assessment and by Commission staff CEQA comments (see Exhibit K attached). As such, a 100 foot development setback is required.

The City approved a parking lot which would be set back from the stream a minimum of 21 feet and a maximum of 35 feet. Since the LCP-required setback from this stream is 100 feet, and a parking lot is not an allowed use within the setback area per LUP Policy EQ 4.2.2.3 and Zoning Section 24.14.080, a **substantial issue is raised in terms of the proposed project's conformance with the City of Santa Cruz LCP.**

#### **Exceptions to setback requirements**

According to the City, a 100 foot setback is not required to protect existing resources nor is it appropriate to this particular urban setting. Commission staff does not dispute this assertion. In fact, it seems likely that a setback somewhat less than 100 feet would be protective of the urban greenway at this site. However, the City did not follow the procedure provided by the LCP for allowing an exception to the 100 foot setback through a management plan which determines appropriate setbacks, restoration, and management. Moreover, lacking such a plan which adjusts the setback requirement for this stream reach based on valid biological criteria, it is difficult to know what lesser setback would be sufficient to protect and enhance the degraded riparian corridor.

LUP Policy EQ 4.2.2.3 and Zoning Section 24.14.080 et seq describes the uses that are prohibited, and those that are allowed, within streams and stream setbacks; parking lots are not allowed uses. Although Zoning Section 24.14.080 does not provide any mechanism for a lesser stream setback (it only provides a description of what are and are not allowed uses within the setback), LUP Policy EQ 4.2.2.3 concludes:

*If any exceptions to this policy are to be considered, it shall be within the context of a resource management plan which plan shall be approved by the Coastal Commission as an amendment to the Land Use Plan.*

Therefore, if a lesser setback is to be considered for the subject stream, the LCP requires it to be within the context of a management plan submitted and approved by the Commission as an LUP amendment.





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LUP Policies EQ 4.2.1 and L 3.4 describe specific areas for which management plans are necessary, including Arroyo Seco. Pursuant to EQ 4.2.1, where ownership is fragmented, as is the case of the Arroyo Seco stream corridor, the need for management plans will be evaluated on a case-by-case basis through the planning process. In this case, since the Applicant proposes development within the required stream setback, and since the proposed development (i.e., parking lot) is not an allowed use within the setback, a management plan which has been adopted by the Commission as an LUP amendment is **required** by the LCP to allow for this development to take place. Subsequently, LUP Policy 4.2.2.1 requires all development within the setback area to be consistent with any plans developed pursuant to EQ 4.2.1 and L 3.4.

Contrary to the LCP, the City approved development within the required 100 foot setback area based upon the finding that there would be no change to the existing condition of the stream. However, although a lesser setback may be appropriate for this development, the setback, the enhancement of the system, and its management must be determined through a Commission-adopted management plan pursuant to the Environmental Quality policies of the Land Use Plan. This segment of the mapped stream, of which the Applicant's site contains a portion, is above ground for approximately 1,600 feet (including the Applicant's property and the inland Lipton property), has some natural resource value (as described above), and provides a clear opportunity for enhancement pursuant to LUP Goal EQ 4 and LUP Policy EQ 4.2. Since the City did not create a management plan for this site and the Lipton site, and further given that no management plan for this stream segment has been adopted by the Commission as an LUP amendment, and since development in the setback area has been approved outside of the context of the LUP required management plan, **a substantial issue is raised in terms of the proposed project's conformance with the City of Santa Cruz LCP.**

**Variance**

The City chose to process the exception to the LCP's 100 foot stream setback requirement as a variance. As shown above, a variance requires three specific findings:

***Required variance finding 1***

The first required variance finding is "that a hardship peculiar to the property, not created by any act of the owner, exists. In this context, personal, family or financial difficulties, loss of prospective profits, and neighboring violations, are not hardships justifying a variance."

According to the City, the creek channel lacks the characteristics of a natural stream which the General Plan seeks to protect. Because the Zoning Ordinance does not distinguish between a natural creek and a creek which is transformed into a drainage channel lacking associated riparian habitat, a hardship is created for this property as the setback requirement serves no General Plan purpose. The setback would remove 37% of the property from uses without benefit to riparian resources. See Exhibit A attached.

However, as described above, the subject watercourse is identified on USGS Maps and LUP maps as a stream. The biotic assessment done for the site characterizes the watercourse as "an intermittent stream"



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“wherein some native freshwater plant species were evident” and “some areas of wetland fringe were observed along the waterway.” The Commission’s staff biologist visited the site on two occasions (August 20, 1998 and December 2, 1998) and likewise observed that, although degraded, the stream did support freshwater habitat species and wetland vegetation. The subject stream is mapped as “Arroyo Seco Corridor” on the City’s Urban Runoff Program map.

Moreover, even in its present state, the stream does represent a valuable natural resource. The documented presence of wetland vegetation and other freshwater habitat along the subject stream is important because it shows that the stream is capable of sustaining riparian resources. It is not a “drainage channel” but rather a degraded riparian corridor. As such, and contrary to the City’s findings, the setback requirement for this site **does** serve a General Plan/LUP purpose. In fact, LUP Goal EQ 4 and Policy 4.2 specifically require protection and **enhancement** of the subject stream. Even if its resource value has been degraded over time, the long-range planning and resource enhancement objectives of the LCP are not met by allowing the stream on the subject site (or any stream in the City for that matter) to be further constrained by an encroaching urban environment when the LCP specifically protects these areas. As the City’s built environment slowly redevelops, these urban “greenways” should be acknowledged as resources – and not constraints.

Finally, it is hard to support a finding of hardship when only about a third of the subject property is within the required setback area. Even were the full 100 foot setback applied (lacking an adopted management plan to provide for a lesser distance), 1.6 acres of the property would **not** be affected. More importantly, it is hard to argue that a hardship is created when the LCP specifically allows for a lesser setback pursuant to an adopted management plan. Just because such a management plan has not been developed for this stream does not represent a hardship. The mechanism for the lesser setback is available and it has not been used.

### **Required variance finding 2**

The second required variance finding is “that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and in the same vicinity; and that a variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his neighbors.”

According to the City, the proposed project would be the only one in the district and vicinity to require the setback. The residential subdivision buildings to the south are within 15 feet of the creek and the Crystal Springs building immediately to the east is within 60 feet of the creek and its driveways, fences, and appurtenant structures are within 10 feet. The industrial development to the north has been allowed within the Zoning ordinance setback requirements. See Exhibit A attached.

However, none of the surrounding uses on properties containing the stream corridor were analyzed through the permitting process in terms of the LCP’s 100 foot setback requirement. *To the south of the subject site*, the stream flows through an underground culvert beneath a City-owned alley to the ocean. The culvert through City-owned Derby Park and the residential subdivisions (located between the



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subject parcel and the ocean) was approved by the Central Coast Regional Commission in March 1975 before guidelines were developed (1981) and before certification of the LCP. *To the east of the subject site* (across the stream itself), the Crystal Springs project was approved by the City Zoning Administrator in November 1991. When the City approved this project, there was no indication in the project description, the Coastal Development Policy Checklist, or the conditions of approval that there was a watercourse present. As a result, no provisions were made to protect it and the Crystal Springs structures are within the required setback area. Comparatively, the City permit (since expired) for the earlier project at the subject site *did* identify the stream and the setback requirement (August 1990). *To the north of the subject site* (across Delaware Avenue), the Lipton facility was constructed prior to the Coastal Act. With the exception of the portion of the stream directly adjacent to Delaware and the portion adjacent to the railroad lines on the Lipton property (i.e., at either end of the property), there is no development within 100 feet of the stream centerline as it crosses the Lipton site. In any event, as described in Zoning Section 24.08.110, nonconforming neighboring uses (notwithstanding the reasons they are not conforming) shall not be considered grounds for issuance of a variance.

Furthermore, as described above, the Applicant could not be denied substantial use of his property since the LCP-required management plan would allow for exceptions to the 100 foot setback requirement within the parameters of an adopted management plan for the stream. Approximately 1.6 acres of the subject site is outside of 100 foot setback area. If the Applicant wishes to pursue development within the 100 foot setback, then the Applicant must work with the City to complete an LCP amendment providing for a management plan which adjusts the setback requirement for this stream reach based on valid biological criteria. The fact that this mechanism has not yet been utilized is not grounds for a variance to conservation regulations.

### **Required variance finding 3**

The third required variance finding is "that the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purpose and intent of this title or the public interest, nor adversely affect the General Plan."

According to the City, there would be no change to the creek channel or adjacent properties since only lawn will be replaced with a parking lot. Further, Zoning Ordinance Section 24.14.080 which requires the 100 foot setback applies only because of a technicality in that Map EQ 11 does not distinguish between creek segments natural, channeled or underground. The General Plan acknowledges the channel as a creek (Map EQ-11) but it does not acknowledge the site as riparian (MAP EQ-8). The project biotic assessment indicates a lack of natural plant communities. Since it is not mapped as riparian on EQ-8 and the biotic assessment supports this conclusion, the City concluded that the variance is not in conflict specifically with LUP Policy EQ 4.2 or EQ 4.2.2, and it is not in conflict with the General Plan or the intent of the Zoning Ordinance. See Exhibit A attached.

The City findings attempt to make the case that this stream does not matter, and LCP policies are not impaired, because it is not a riparian area. However, as has been described above, the subject stream is identified on the USGS Topographic Map and LUP Map EQ-11 as a stream. As such, according to the



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requirements of Zoning Section 24.14.080(1)(a), the subject stream is an "intermittent/perennial stream" for the purposes of Section 24.14.080 and the 100 foot setback provision does apply in this case. Lending credence to this status, the biotic assessment done for the site characterizes the watercourse as "an intermittent stream" for which the proposed setback distance "is not consistent with City of Santa Cruz policy for a 100-foot setback." As already discussed, the subject stream is also mapped as "Arroyo Seco Corridor" on the City's 1997 Urban Runoff Program map.

The City findings attempt to dispute the applicability of the conservation regulations by arguing that the stream is not "riparian." The City's findings are correct that the subject stream is not identified on Map EQ-8 as a riparian area. However, it is shown on Map EQ-11 ("Streams"), as described in LUP Policy EQ 4.2. More importantly, its resource values have been better identified through the planning process, as also described in LUP Policy EQ 4.2. Specifically, and contrary to the City's findings that the biotic assessment did not identify any natural plant communities, the biotic assessment done for the site found that "some native freshwater plant species were evident" and "some areas of wetland fringe were observed along the waterway." Although the biotic assessment minimizes the extent of riparian resources, it identifies these resources nonetheless. Commission staff informed the City of the resource and setback issues during the CEQA review period for the project by letter dated July 17, 1998 (see Exhibit K). Likewise, the Commission's staff biologist visited the site on two occasions (August 20, 1998 and December 2, 1998) and observed that the stream was indicative of a degraded riparian area and that it did support freshwater habitat species and wetland vegetation.

Furthermore, the intent of City Zoning Section 24.14.080 is to provide for a 100-foot setback from intermittent/perennial streams. Section 24.14.080 specifically applies to the subject stream. A lesser setback is not allowed by Section 24.14.080. LUP Policy 4.2.2.3 provides for development within the 100 foot setback only through the adoption of management plans approved by the Coastal Commission as LUP amendments. Lacking such a management plan, the subject variance is in conflict with the LUP and the Zoning Ordinance.

***Recurrent conditions***

Zoning Ordinance Section 24.08.140 does not allow for variances when the situation requiring the variance is so recurrent in nature that a regulation could be drafted to cover the situation. In the case of a variance from regulations requiring 100 foot setbacks, the LCP currently provides a mechanism for allowing development within setback areas; a Commission approved management plan which provides for a lesser setback. To date, no such plans have been adopted by the City and approved by the Commission. Even if this situation comes up time and time again, Section 24.08.140 does not allow for a variance since a general regulation has already been formulated to account for this situation.

Instead, the City has continued to approve lesser setbacks as variances (such as the proposed project currently before the Commission). At least three such variances at other coastal zone locations within the City preceded the subject application in 1998; the number outside the coastal zone is not known. Each of these previous 1998 cases involved single-family residential development backing up on watercourses. Rather than recommending Commissioner appeals of these previous 1998 actions, Commission staff has



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continued to inform the City that the LCP requires a 100 foot setback from watercourses and has encouraged the City to pursue the development of management plans as the vehicle for lesser setbacks as envisioned by the LCP. As discussed previously, Commission staff has continued to convey our concerns on this project as well. Nonetheless, the City continued its pattern of granting variance to the setback requirement. Given this recurring pattern, and the scale of this particular development, staff felt it was appropriate to pursue an appeal in this case. Moreover, the granting of variance for the proposed project without a stream management plan could provide an adverse precedent for development on other vacant parcels such as the inland Lipton property which contains a larger segment of the same stream reach. As described above the Santa Cruz Metropolitan Transit District is negotiating with Lipton for purchase of a portion of the property for the development of a consolidated bus operations facility.

### ***Variance conclusion***

The LUP is very clear that exceptions to the adopted conservation regulations for development within the required 100 foot setback areas are accomplished through the development of a management plan which has been approved by the Coastal Commission as an amendment to the LUP. Lacking such a plan which determines appropriate setbacks, restoration, and management, a variance cannot be found consistent with the LUP and the Zoning Ordinance. Setbacks are established in the LUP and LCP Implementation Conservation Regulations for protection of wetlands, streams, and other habitat resource areas. In general, the variance procedure currently utilized by the City to reduce these required setbacks is not designed to address the intent of the LCP policies and regulations to protect these resources and its use raises a substantial issue. As such, and for the reasons further articulated above in this finding, **a substantial issue is raised in terms of the proposed project's conformance with the City of Santa Cruz LCP.**

## **4. Coastal Development Permit Determination**

### **A. Approvable Development**

As discussed in detail on pages 10 through 21 of this staff report, the proposed project is inconsistent with the certified LCP because it places prohibited development within the required 100 foot stream setback without benefit of a management plan previously adopted by the City and approved by the Coastal Commission as required by the LCP (these above substantial issue findings are incorporated by reference into this CDP determination). However, there are two options available to modify the project so as to make it consistent with the aforementioned LCP policies.

The first option is for the Applicant to pursue a less ambitious building and parking lot which can be constructed outside of the setback area. For example, were the project square footage to be cut in half, half the parking spaces would be required, and additional developable area outside of the stream setback area would be available to place a parking lot. Based upon the current site plan, this type of redesign could easily be accomplished while maintaining the 100 foot setback. Moreover, it is likely that the Applicant could explore other redesign possibilities that would allow for more than half of the current



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44,300 square foot footprint while still maintaining the required setback.

The second option would be for the City to process a management plan for the Arroyo Seco stream corridor which provided for the appropriate setbacks, restoration, enhancement, and management. Commission staff is of the opinion that in the case of 2155 Delaware, a setback that is less than 100 feet may still be sufficient to protect and enhance the urban stream corridor along the eastern portion of the site. Pursuant to LUP Policy EQ 4.2.2.3, this management plan would then need to be approved by the Coastal Commission as an LUP amendment. Provided that the City approved, Commission-adopted management plan for this stream corridor provided for a lesser setback, the Applicant could then request an amendment to this coastal permit to allow for additional structural development within the 100 foot setback area pursuant to the plan provisions as provided for by LUP Policy EQ 4.2.2.1.

The Applicant has been pursuing the development of such a management plan in tandem with the Lipton Company for the daylighted reach of the stream extending from the railroad line through to the culvert which begins at the southern property line of the subject parcel. Although Commission staff has been working with the Applicant (and the Lipton Company which owns the inland property containing a portion of the same stream reach) on the basic parameters of such a stream management plan, the prospects for an LUP amendment memorializing this plan are as yet unclear. As such, it is not clear when a stream management plan allowing for some incursion into the setback area may 'catch up' to this current development proposal. Because the management plan option is outside of the Applicant's control, there is no way for the Commission to allow for this contingency through conditions of this approval.

Therefore, in order to bring the project into conformance with the certified LCP, prior to issuance of the coastal development permit, this approval requires the submittal of revised project plans showing all development outside of the 100 foot stream setback (see Special Condition 1). However, in recognition of the fact that a lesser setback may be found sufficient for this site through future planning efforts, this approval is without prejudice as to the Applicant's ability to pursue an amendment to this coastal development permit that would provide for additional development closer to the stream centerline than 100 feet. Such an amendment request would require revised project plans showing all development outside of the setback area defined pursuant to an approved stream management plan which will have previously been adopted by the Coastal Commission as an amendment to the LUP. Any other requirements of a future stream management plan pertinent to this site would need to be included in the project description of such an amendment request. A future Commission would make the decision on any such amendment request. As such, any action taken by the Commission in this approval shall not be considered an endorsement of any future coastal development proposal for this site and shall be without prejudice as to a future Commission's ability to pass independent judgement on any future application based upon the facts of the case presented at that time.

With this approval, the Applicant has the choice to go forward right away without a management plan provided the Applicant's proposed project is reduced in light of the applicable conservation regulations (i.e., 100 foot stream setback) or wait to pursue larger scale development until such time as a



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management plan is in place to guide development activity along this stream corridor. In any event, the Applicant remains responsible for securing any additional approvals that may be required by the City of Santa Cruz for any modified project.

**The Commission finds that only as modified by Special Condition 1 of this approval can the proposed project be considered consistent with the stream setback requirements of the certified LCP.**

**B. California Environmental Quality Act (CEQA)**

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Santa Cruz issued an Initial Study/Negative Declaration for the project on June 18, 1998. Commission staff commented on the Initial Study/Negative Declaration on July 17, 1998 and informed the City that the on-site watercourse was a mapped stream resource, that this stream represented a degraded riparian area in need of enhancement pursuant to LCP polices, that the stream was subject to a 100 foot setback requirement, and that the proposed parking lot within the required setback area was inconsistent with LUP Policy 4.2.2 and Zoning Section 24.14.080 (see Exhibit K). Subsequently, the project was not altered and the Negative Declaration was adopted when the project was approved by the City of Santa Cruz Zoning Board on August 20, 1998.

The issues previously forwarded to the City by Commission staff, as well as others that have become apparent since the Negative Declaration, have been discussed in this staff report and appropriate mitigations have been developed to supplement the City of Santa Cruz approval of the proposed project. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (See Special Condition 1). **As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.**



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California Coastal Commission



XVI. Heating systems for hot tubs and swimming pools shall be solar where possible but in all cases energy efficient.

A. This finding does not apply.

**Findings for Variance from setback requirement  
for office/industrial project at 2155 Delaware Street.**

The variance sought is to allow an office/industrial project within the otherwise 100 foot setback requirement from an intermittent stream. The building is set back 148 feet from the centerline of the channel. Associated parking comes to within 21 feet of the centerline.

**Variance Findings Section 24.08.130**

A variance shall be granted only when all of the following conditions are found:

- I. That a hardship peculiar to the property, not created by any act of the owner, exists. In this context, personal, family or financial difficulties, loss of prospective profits, and neighborhood violations, are not hardships justifying a variance.
  - A. The Zoning Ordinance setback requirement (24.14.080(3)(a)) is derived from General Plan policy to preserve riparian and wetland habitats.
  - B. The creek channel along the easterly property line lacks the characteristics of a natural stream which the General Plan would intend to protect. The creek is essentially an artificial channel. Adjacent vegetation is introduced landscaping typical of office development, consisting of lawn and planted trees and shrubs. To the south, immediately adjacent to the property, the creek runs in a culvert to the ocean. To the north, the creek is either underground or in an open ditch.
  - C. A Biological Study performed in 1990, and another Biotic Assessment done in 1998 indicate that the project site does not exhibit natural plant communities. The General Plan Map EQ-8, VEGETATION COMMUNITIES, does not show any vegetation community for the project site

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- D. The Zoning Ordinance does not distinguish between a natural creek and a creek which is transformed into a drainage channel lacking an associated riparian habitat. Thus a hardship is created for this property as the setback requirement serves no General Plan purpose. This hardship was not imposed on development to the south of this property where residential development has been allowed within the setback requirement of the ordinance or on the industrial zoned parcel to the east.

The setback requirement would remove 37 percent the lot from uses allowed in the district with no benefit to policies intended to protect natural riparian habitat.

- II. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and in the same vicinity; and that a variance, if granted, would not constitute a special privilege of the recipient not enjoyed by his neighbor.
- A. If the Zoning Ordinance setback were to be required, this property would be the only one in this district and in this vicinity with this requirement. The Crystal Springs business immediately adjacent to the east lies within the setback requirement of the creek. The main building was approved with a distance of 60 feet from the centerline of the channel. Driveways, fences and appurtenant structures lie within 10 feet of the centerline of the creek.
- B. Residential development to the south (in excess of 40 homes) has been allowed within the Zoning Ordinance setback of the creek. In some cases residential buildings are within 15 feet of the creek.
- C. The City of Santa Cruz has constructed access to Derby Park, and improvements in Derby Park within the setback requirement of the creek.
- D. To the north, industrial development has been allowed within the Zoning ordinance setback requirements.
- III. That the authorization of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purpose and intent of this title or the public interest, nor adversely affect the General Plan.

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2155 Delaware Avenue

- A. Granting of the variance will not have a substantial detrimental impact to adjacent properties. As a practical matter, there will be no material change to the existing condition. The creek channel will continue as it is. Adjacent vegetation, introduced landscaping and trees, will remain adjacent to the channel. Additional landscaping will be installed. Surfaced parking areas will displace what is currently planted lawn.
- B. Granting of the variance is not in conflict with the General Plan or the intent of the Zoning Ordinance.

While the General Plan acknowledges the channel as a creek in Map EQ-11, STREAMS, it shows no vegetation community, i.e. Riparian, on Map EQ-8 VEGETATION COMMUNITIES.

Environmental assessments support the information in the General Plan. A Biological Study done in 1990, and another Biotic Assessment in 1998 indicate that the project site does not exhibit natural plant communities.

The Zoning Ordinance setback requirement flows from General Plan policy EQ 4.2 which intends to "preserve and enhance the character and quality of riparian and wetland habitats...". Program EQ 4.2.2 implements the policy through a setback requirement: "Minimize the impact of development upon riparian and wetland areas through setback requirements of at least 100 feet from the center of a water course for riparian areas, and 100 feet from a wetland." As Map EQ-8 does not indicate a riparian area in the location of the proposed project, and site specific environmental assessment supports this conclusion, the variance is not in conflict with Policy EQ 4.2 or Program EQ 4.2.2.

- C. The purpose of the Conservation Regulations of the Zoning Ordinance is to preserve the natural environmental resources of the City. Among other objectives, conservation regulations intend to "preserve riparian areas and other natural habitat by controlling development near the edge of ponds, streams, or rivers."

The Zoning Ordinance section for which a variance is sought is 24.14.080. It applies to this property not because it is identified as a riparian area but because of a technicality. It is affected by the requirement because the creek is shown on the map of streams (EQ-11). However, Map EQ 11 does not distinguish between creek segments which are in a natural condition, channeled or underground in culverts.

EXHIBITA (3 OF 10)

6A-24

**Findings for Coastal Permit for  
Office/Industrial Project at 2155 Delaware Avenue  
Coastal Permit Findings Section 24.08.250**

The hearing body must find that the development is consistent with the General Plan, the Local Coastal Land Use Plan and the Local Coastal Implementation Plan and will:

- I. Maintain views between the sea and the first public roadway parallel to the sea;
  - A. The first public roadway parallel to the sea is West Cliff Drive. The proposed project does not affect this view. In any case, the project is more than 1,400 feet from the ocean, with several blocks of residential development intervening.
- II. Protect vegetation, natural habitat and natural resources consistent with the Local Coastal Land Use Plan;
  - A. The site of the proposed project consists of introduced landscaping typical of an office/industrial development. Landscaping includes lawn and a variety of trees and other landscape material. The creek at the Easton property line has been channeled and is bordered by the same landscaping, lawn and planted trees. No natural riparian areas occur in this stretch of the creek, as indicated in General Plan Map E.Q 8.
- III. Be consistent with any applicable design plans and/or area plans incorporated into the Local Coastal Land Use Plan;
  - A. There are no design plans and area plans in effect for the site of the proposed project.
- IV. Maintain public access to the coast along any coastline as set forth in the Local Coastal Land Use Plan;
  - A. The site of the proposed project does not relate to any access to the coast. The site is some 1,400 feet from the ocean with intervening residential development.
- V. Be consistent with the Local Coastal Land Use Plan goal of providing visitor serving needs as appropriate;
  - A. The site of the proposed project is designated for industrial uses in the Local Coastal Land Use Plan.

**EXHIBIT A (4 OF 10)**

AGENDA REPORT  
ZB July 30, 1998  
2155 Delaware Avenue

- VI. Be consistent with the Local Coastal Land Use Plan goal of encouraging coastal development uses as appropriate.
- A. The proposed project does not interfere with any goals of encouraging coastal development uses. This site has been designated for industrial use in the Local Coastal Land Use Plan.

Attachments

- Letter of Appeal
- Conditions of Approval
- Negative Declaration
- Initial Study
- Zoning Administrator minutes
- Letters

EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT

**2155 Delaware Avenue--#97-089**

**Design and Coastal Permits and Variance to conservation Regulations  
for Setback From Intermittent Streams  
44,300 sf Office/Manufacturing Buildings**

1. If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.
2. This permit shall be exercised within three (3) years of the date of final approval or it shall be come null and void.
3. The applicant shall be responsible for the completeness and accuracy of all forms and supporting material submitted in connection with any application. Any errors or discrepancies found therein may result in the revocation of any approval or permit issued in connection therewith.
4. All plans for future construction which are not covered by this review, shall be submitted to the City Planning and Community Development Department for review and approval.
5. All final working drawings shall be submitted to the Zoning Administrator for review and approval.
6. Handicap access and parking shall be provided in accordance with state law.
7. The development of the site shall be in accordance with the approved plans submitted and on file in the Department of Planning and Community Development of the City of Santa Cruz. All aspects of construction must be completed prior to occupancy. Modifications to plans or exceptions to completion may be granted only by the City authority which approved the project.
8. All requirements of the Building, Fire, Public Works and Water Departments shall be completed prior to occupancy.
9. Adequate provisions shall be made to supply water to each of the premises covered by this application. The design of water facilities shall be to standards of the Water Department, and plans therefore must be submitted to the Water Department Director for review and approval prior to the issuance of a building permit.
10. If upon exercise of this permit this use is at any time determined by the Zoning Board to be incompatible with the surrounding neighborhood, revocation of, or amendment to, this permit by the Zoning Board could occur.
11. A review of this permit shall be conducted in one (1) year after occupancy to ensure conformity with conditions of approval.
12. The use shall meet the standards and shall be developed within limits established by Chapter 24.36 of the Santa Cruz Municipal Code as to the emission of noise, odor, smoke, dust,

EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT  
**2155 Delaware Avenue--#97-089**  
Design and Coastal Permits and Variance to conservation Regulations  
for Setback From Intermittent Streams  
44,300 sf Office/Manufacturing Buildings

vibration, wastes, fumes or any public nuisance arising or occurring incidental to its establishment or operation.

13. Future uses shall submit a disclosure statement for Zoning Administrator review prior to issuance of an occupancy permit regarding materials and chemicals to be used and disposed of from the site.
14. This permit shall serve as a master permit for office uses in the new building. Any future office tenant is required to obtain an occupancy permit and zoning clearance from the Planning Department prior to occupancy.
15. All grading shall be done in conformance with requirements of the Santa Cruz Municipal Code, Chapter 24.27. An engineered site plan and soils report shall be required prior to the issuance of a building permit.
16. A preliminary soils report is required. All clearing, site preparation or earth work shall be performed under inspection by the soils Engineer and to the satisfaction of the Soils Engineer.
17. Dust caused by the grading operation shall be controlled by proper watering.
18. Grading shall be done during periods of dry weather and protective measures shall be incorporated during grading to prevent siltation from any grading project halted due to rain. No earth-moving activities shall occur between December 1 and March 1.
19. Prior to site grading all trees and/or tree stands indicated for preservation on approved plans shall be protected through fencing or other approved barricade. Such fencing shall protect vegetation during construction and shall be installed to the satisfaction of the Director of Planning and community Development.
20. The structure requires the installation of an automatic fire sprinkler system. Plans shall be prepared and submitted to the satisfaction of the Fire Department.
21. A fire hydrant near the southeast corner of the building in the parking lot island and a minimum 20 foot wide fire lane is required and subject to review by the Fire Department.
22. Any existing curb, gutter or sidewalk that is damaged shall be repaired or replaced.
23. A sidewalk shall be constructed along the Delaware Avenue frontage to Swanton Blvd.
24. A plan for the undergrounding location and size of all utilities shall be submitted for approval in conjunction with an application for building permits.

**EXHIBIT A (70F10)**

EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT  
**2155 Delaware Avenue--#97-089**  
Design and Coastal Permits and Variance to conservation Regulations  
for Setback From Intermittent Streams  
44,300 sf Office/Manufacturing Buildings

25. An engineered drainage plan shall be submitted in conjunction with application for building permits.
26. All downspouts shall either be directed to the City street or into percolation wells provided for the handling of such runoff.
27. Parking areas shall incorporate grease traps in accordance with City specifications. Handicap accessible space must have van-accessible discharge minimum 8 feet in width.
28. Plans for an on-site detention system shall be designed to limit the runoff to the pre-development rate for a ten-year return period storm which shall be reviewed and approved by the Public Works Department prior to the issuance of a building permit.
29. All new mechanical equipment and appurtenances, including gas and water meters, electrical boxes, roof vents, air conditioners, antennas, etc. visible from the public way and from adjacent properties, shall be screened with material compatible with the materials of the building and shall be subject to the approval of the Zoning Administrator.
30. All utilities and transformer boxes shall be placed underground unless otherwise specified.
31. Bicycle parking shall be provided in accordance with Section 24.12.250 of the City's Zoning Ordinance.
32. The applicant shall prepare a signage plan for the project and submit it for design permit review and approval prior to occupancy of the structure(s).
33. Final colors shall be approved by the Zoning Administrator prior to application for building permits.
34. Applicant shall submit an outdoor security lighting plan for Zoning Administrator approval prior to issuance of building permits.
35. The design and location of the trash and recycling enclosure(s) shall be reviewed and approved by the Zoning Administrator and the Department of Public Works prior to the issuance of building permits.
36. Construction documents shall contain engineering to address issues of seismic constraints and soil settlement/liquefaction, etc.
37. The project shall incorporate water-conserving fixtures. These shall be specified on the construction plans.

EXHIBIT A (8 OF 10)



EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT

**2155 Delaware Avenue--#97-089**

**Design and Coastal Permits and Variance to conservation Regulations  
for Setback From Intermittent Streams  
44,300 sf Office/Manufacturing Buildings**

38. A revised landscaping plan shall be submitted to the Zoning Administrator for review and approval prior to the issuance of a building permit.
39. To the greatest extent feasible, drought-tolerant plants shall be included on the landscape plan.
40. A fully automated irrigation system shall be installed in all planting areas.
41. All landscaping shall be installed prior to final utility release or issuance of occupancy permits.
42. Subsequent to occupancy of the premises, all landscaping shall be permanently maintained. Such maintenance shall be guaranteed by a security instrument approved by the Zoning Administrator. The instrument shall be held for a term of eighteen (18) months.
43. The creek habitat value shall be preserved by retaining all existing trees and understory in the creek channel and not paving any area within 21 feet of the centerline of the creek to the satisfaction of the Zoning Administrator.
44. Security lighting plans shall direct all lighting away from the residential zone to reduce the potential disturbance of light on the residential property to the satisfaction of the Planning Department.
45. A six-inch (6") continuous concrete curb shall be used to separate paved areas from landscaped areas.
46. Prior to the issuance of a building permit, the applicant shall submit a map to the City's Parks and Recreation Department for evaluation of removal of heritage trees and obtain a permit for removal as required by City ordinance.
47. All trees shall be a minimum 15-gallon size with those trees surrounding the perimeter of the new building being at least 24-inch box size to replace the lost heritage trees.
48. A number of transportation management strategies are appropriate and should be initiated by the property owner, including:

>Management agree to participate in an association of employers for the development of an area-wide transportation management program. A program of minimal expense could be established working with the resources available at the County Transportation Commission. For example, computer car pool matching services are available at no cost from the County.

>Adopt a company policy allowing flextime for employees.

**EXHIBIT A (9 OF 10)**

EXHIBIT "A"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT  
**2155 Delaware Avenue--#97-089**  
Design and Coastal Permits and Variance to conservation Regulations  
for Setback From Intermittent Streams  
44,300 sf Office/Manufacturing Buildings

- >Encourage transit use by providing free bus passes to all employees on the site who use transit to get to work.
  - >Encourage the use of bicycles for commuting to work.
  - >Encourage the use of car-pooling to work by providing priority parking areas.
49. During all grading and subsurface excavations (including utility-line trenching), construction will be halted if significant archaeological resources are discovered. For the purpose of this use permit, significant archaeological resources shall include the remains of previous Indian living areas or human burials. In the instance of Indian living areas, these objects shall be recorded and mapped prior to further excavation on that portion of the site. In the event human burials are discovered during excavation, work shall be halted and the County Coroner, the Northwest Indian Cemetery Protective Association (NICPA), and other appropriate authorities shall be notified. Mitigation measures developed by the applicant and authorized archaeologists shall be subject to the approval of the Planning Department.
  50. Plans shall be revised to incorporate outdoor eating areas in the area between the buildings and along the creek channel to the satisfaction of the Zoning Administrator.
  51. Applicant shall submit parking easement agreement between subject site and adjacent parcel to the west, 2161 Delaware Avenue.
  52. All damaged asphalt paved areas shall be repaired prior to final occupancy.
  53. The final landscape plan shall indicate similar plantings along the rear fence as is currently planted.
  54. An arborist report shall be submitted prior to issuance of building permits, assessing the health of the existing trees along the riparian corridor and any recommended measures to ensure the long-term health of the corridor.
  55. Applicant shall provide onsite stormwater drainage detention facilities in accordance with Public Works Department requirements. Monitoring: Measure to be included as condition of project approval. Building and Public Works staff responsible for checking final plans to insure incorporation of measure.
  56. Building exterior may be redesigned to eliminate arches. Revised design shall include details to provide articulation to the satisfaction of the Zoning Administrator.

EXHIBIT A (10 of 10)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
7-4863
HEARING IMPAIRED: (415) 904-5200



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT RECEIVED

SEP 28 1998

SECTION I. Appellant(s)

CALIFORNIA COASTAL COMMISSION CENTRAL COAST AREA

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

Sara Wan, Vice Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Area Code (415) Phone No. 904-5200
Andrea Tuttle, Commissioner
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Area Code (415) Phone No. 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Santa Cruz

2. Brief description of development being appealed:
44,300 sq.ft. office/manufacturing building (Wavecrest Development) and parking lot.

3. Development's location (street address, assessor's parcel no., cross street, etc.):
2155 Delaware Avenue, Santa Cruz, Santa Cruz County, APN 003-161-57

- 4. Description of decision being appealed:
a. Approval; no special conditions:
b. Approval with special conditions: X
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-STC-98-086
DATE FILED: 9/28/98 DISTRICT: Central Coast District

EXHIBIT B
APPEAL OF COMMISSIONERS WAN & TUTTLE
1 OF 5 PAGES

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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

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

6. Date of local government's decision: August 20, 1998

7. Local government's file number (if any): 97-089.1

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:

David Zulim.....  
150 Felker Street, Suite F  
Santa Cruz, CA 95060

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) Carol Manson  
345 Church Street  
Santa Cruz, CA 95060

(2) Scott Richardson  
113 Quintana Court  
Santa Cruz, CA 93060

(3) Josh and Jodi Mader  
105 Quintana Court  
Santa Cruz, CA 93060

(4) William P. Parkin  
5540 Glen Haven Road  
Soquel, CA 95073

(5) Petitioners List to be Attached.

SECTION IV. REASONS SUPPORTING THIS APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

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.)

A portion of the project parking lot is located within 100 feet of a stream and that portion is appealable to the Coastal Commission. The following LCP policies are among those that address stream setbacks.

Land Use Plan Policy EQ 4.2.2 states, "Minimize the impact of development upon riparian and wetland areas through setback requirements of at least 100 feet from the center of a watercourse for riparian areas and 100 feet from a wetland. Include all riparian vegetation within the setback requirements, even if it extends more than 100 feet from the water course or if there is no defined water course present."

Land Use Plan Policy EQ 4.2 Preserve and enhance the character and quality of riparian and wetland habitats, as identified on Maps EQ-8 and EQ-11, or as identified through the planning process or as designated through the environmental review process

Land Use Plan Policy EQ 4.2.2.3 Prohibit uses such as construction of main or accessory structures, grading or removal of vegetation within riparian and wetland resource and buffer areas and allow permitted uses....

The LCP provides a 100 foot setback from the center of streams. The City found that the creek had limited natural resources, that it was channeled into a pipe downstream and that other nearby development encroached into the setback, and approved a variance for the construction of a parking lot within 25 feet of the center of Arroyo Seco Creek. However, the stream in fact flows even during summer months, supports at least some aquatic wildlife, and comprises at this location an attractive "greenway" corridor.

LCP policies require that stream corridors be preserved and enhanced. The LUP requires at least a 100 foot setback. The setback is both to prevent direct removal of vegetation, to buffer resources, and to provide adequate area for meaningful enhancement. The project fails to conform with the require setback, and the City's variance from the standard does not appear supportable. As approved, an adverse precedent would be established for nearby properties (also crossed by this same stream) under consideration for development.

**EXHIBIT B (3 OF 5)**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

See Page 3.

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.

Andrea E. Tittle  
Signature of Appellant(s) or  
Authorized Agent

Date 9/28/98

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)

Date \_\_\_\_\_

EXHIBIT B (4 OF 5)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

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.)

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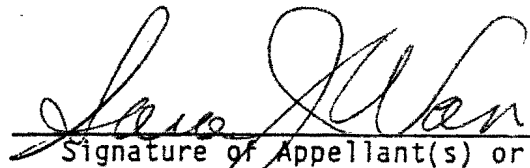
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See page 3.

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.

  
\_\_\_\_\_  
Signature of Appellant(s) or  
Authorized Agent

Date September 25, 1998

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

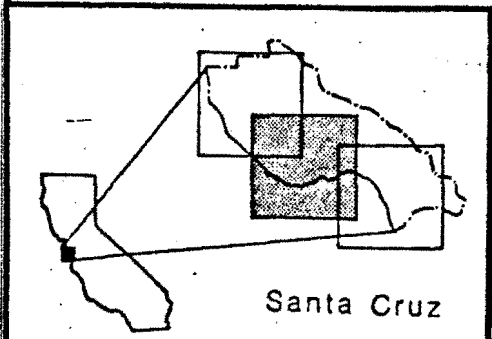
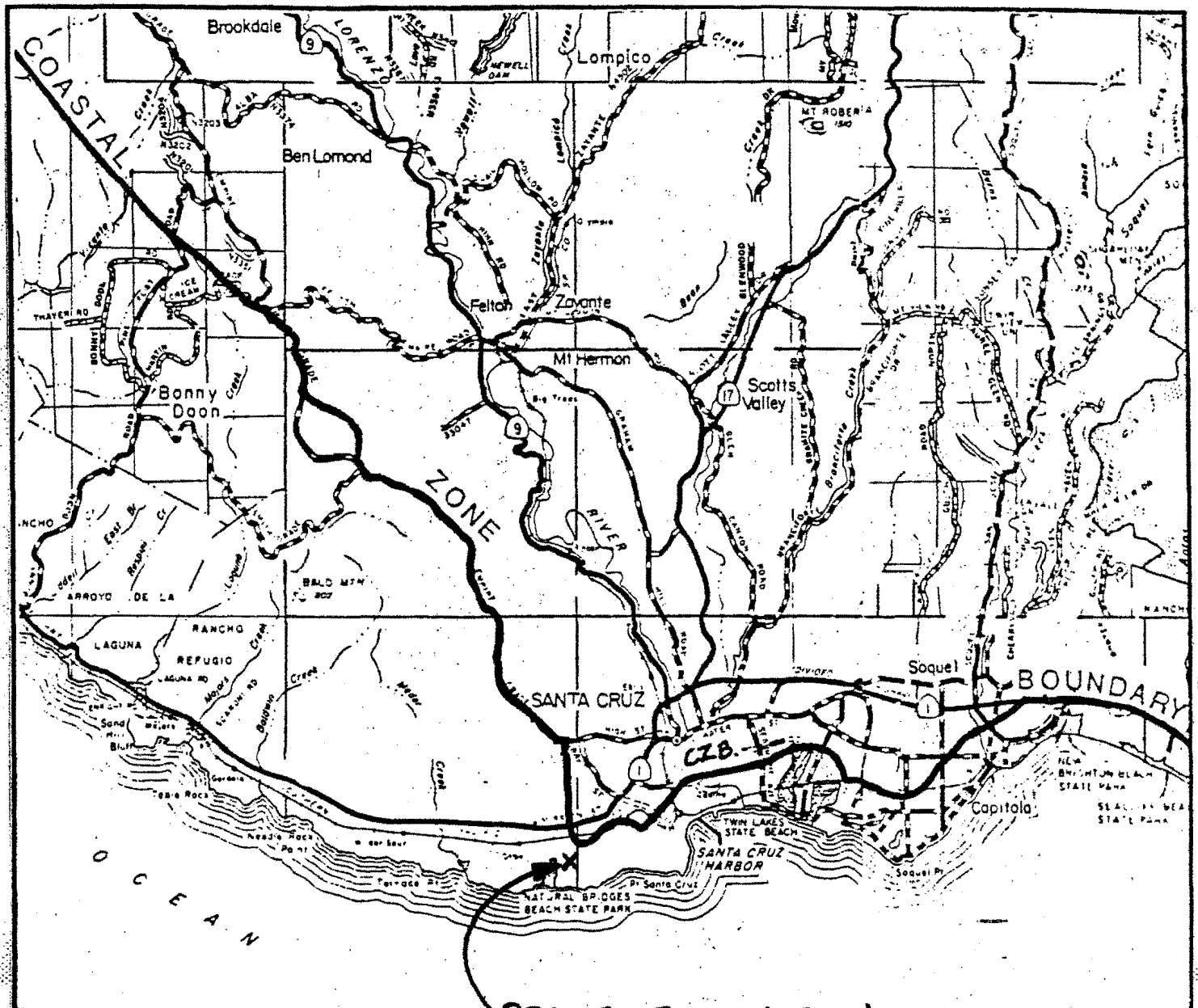
Section VI. Agent Authorization

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

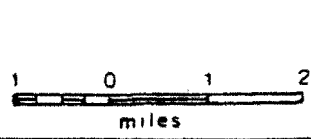
**EXHIBIT B (5 OF 5)**

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

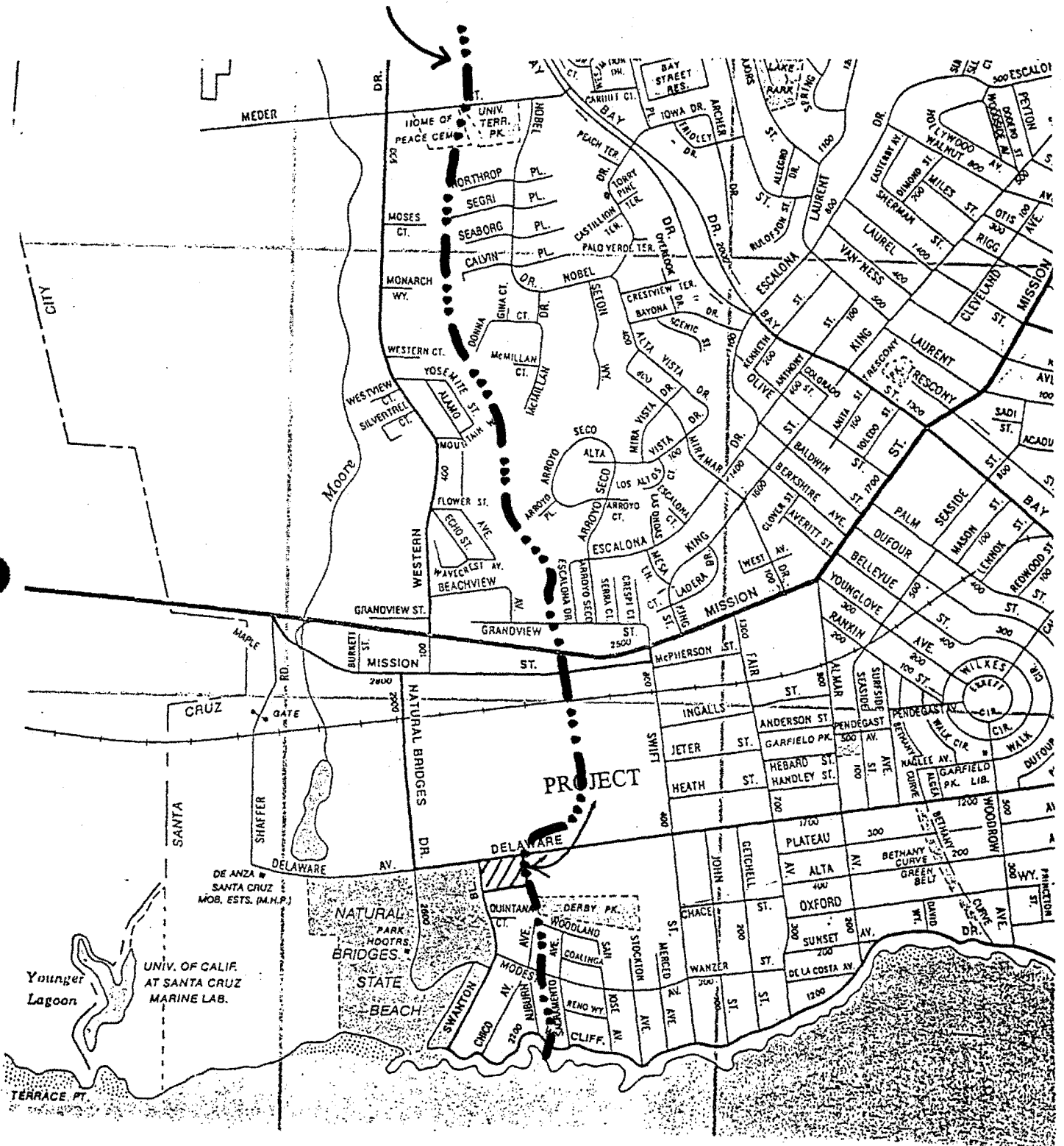


PROJECT LOCATION



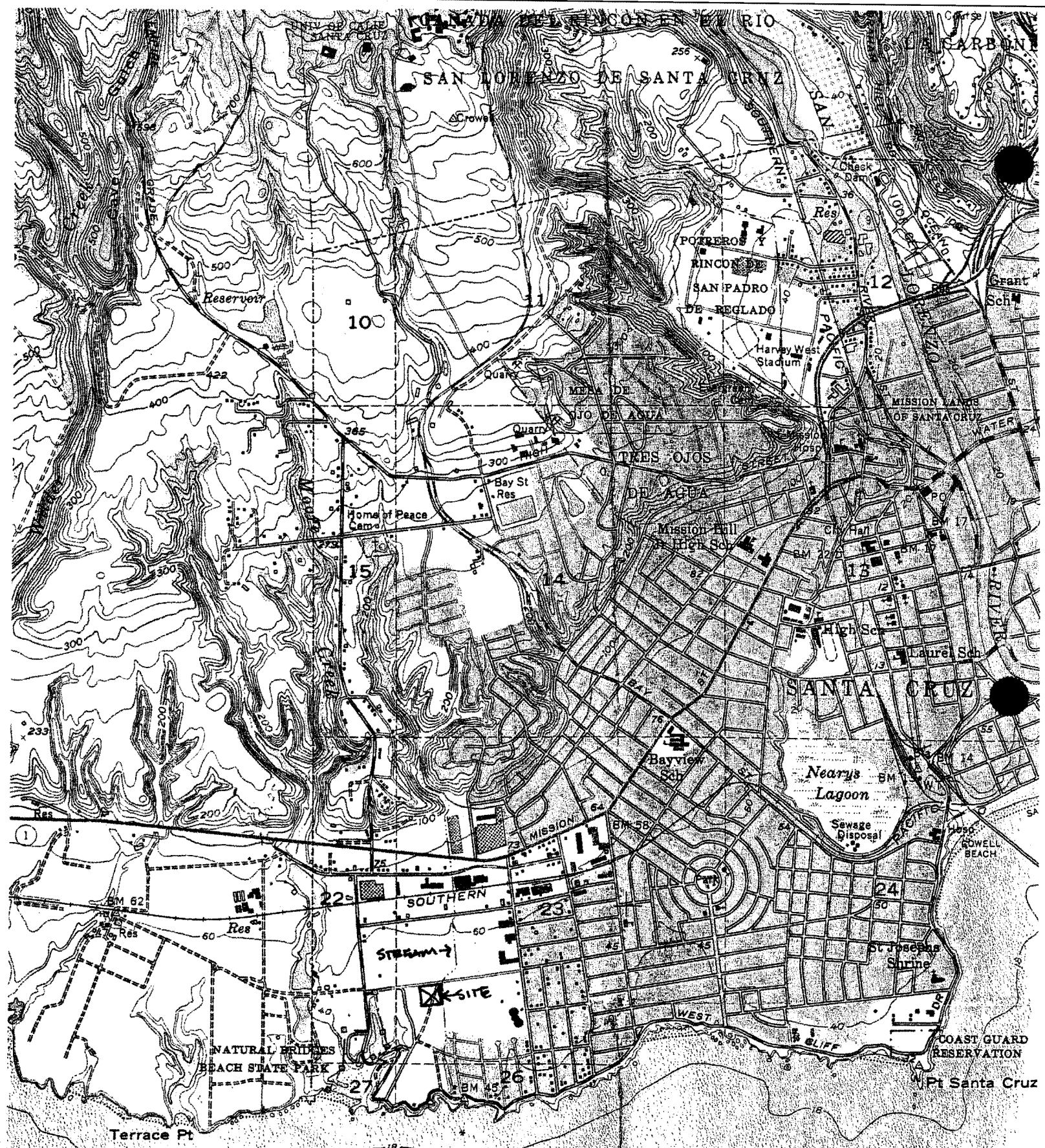


# ARROYO SECO CORRIDOR INTERMITTENT STREAM



**EXHIBIT D  
ARROYO SECO CORRIDOR**

**EXHIBIT 1-  
PROJECT LOCATION  
MAP**



**ROAD CLASSIFICATION**

Heavy-duty ————— Light-duty - - - - -  
 Medium-duty - - - - - Unimproved dirt - - - - -  
 State Route

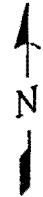
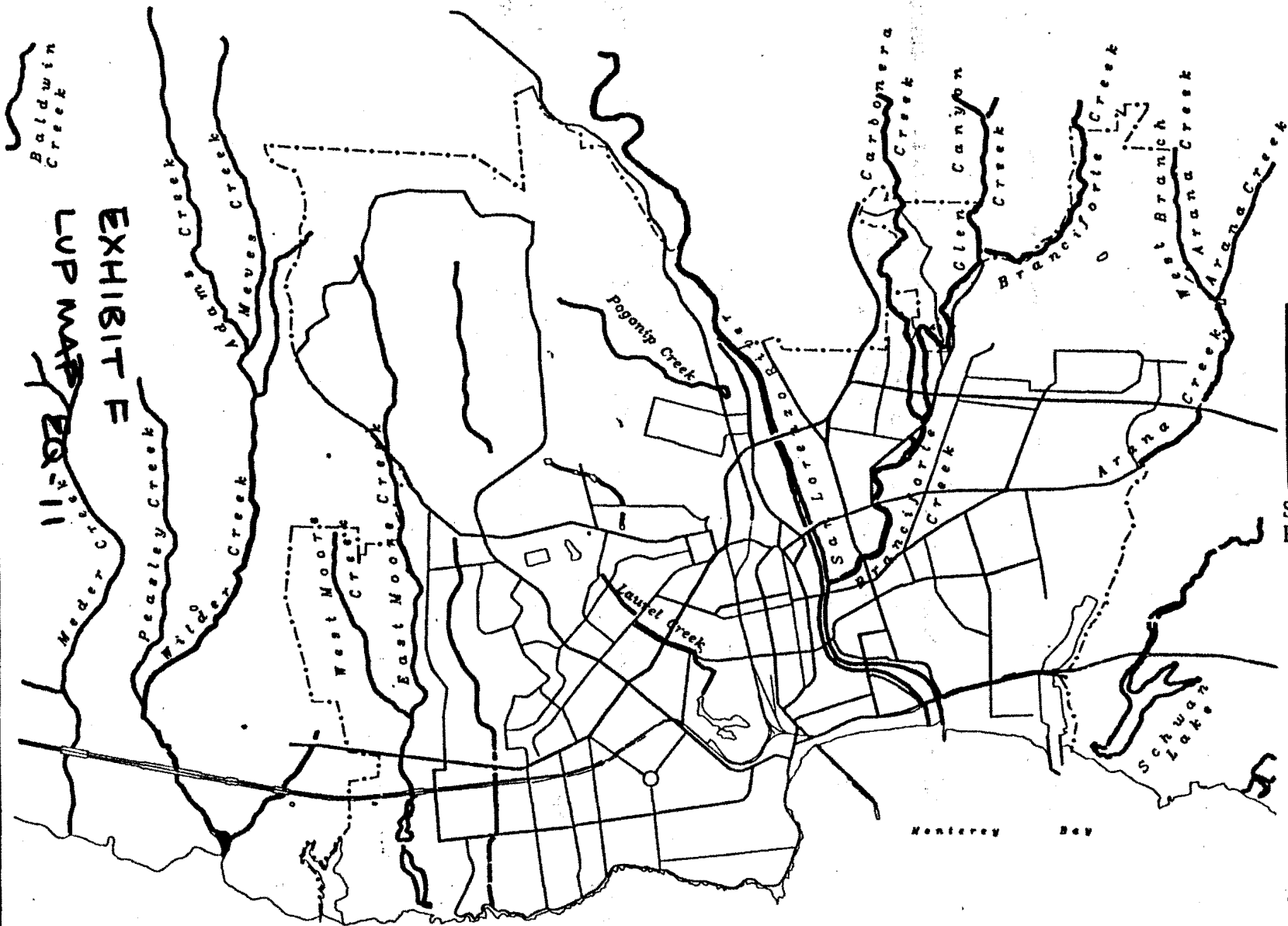
# EXHIBIT E USGS TOPOGRAPHIC MAP

**SANTA CRUZ, CALIF**  
 SOUTH PORTION OF BEN LOMOND 15'x15' QUADRANGLE  
 N 3655 — W 12200/5x11

1954  
 AMS 1957 1 NE-SERIES V995



MAP EQ-11: STREAMS  
The City of Santa Cruz, California



**LEGEND**

- CREEKS
- - - CITY LIMITS

Source: City of Santa Cruz Planning Department, 1992

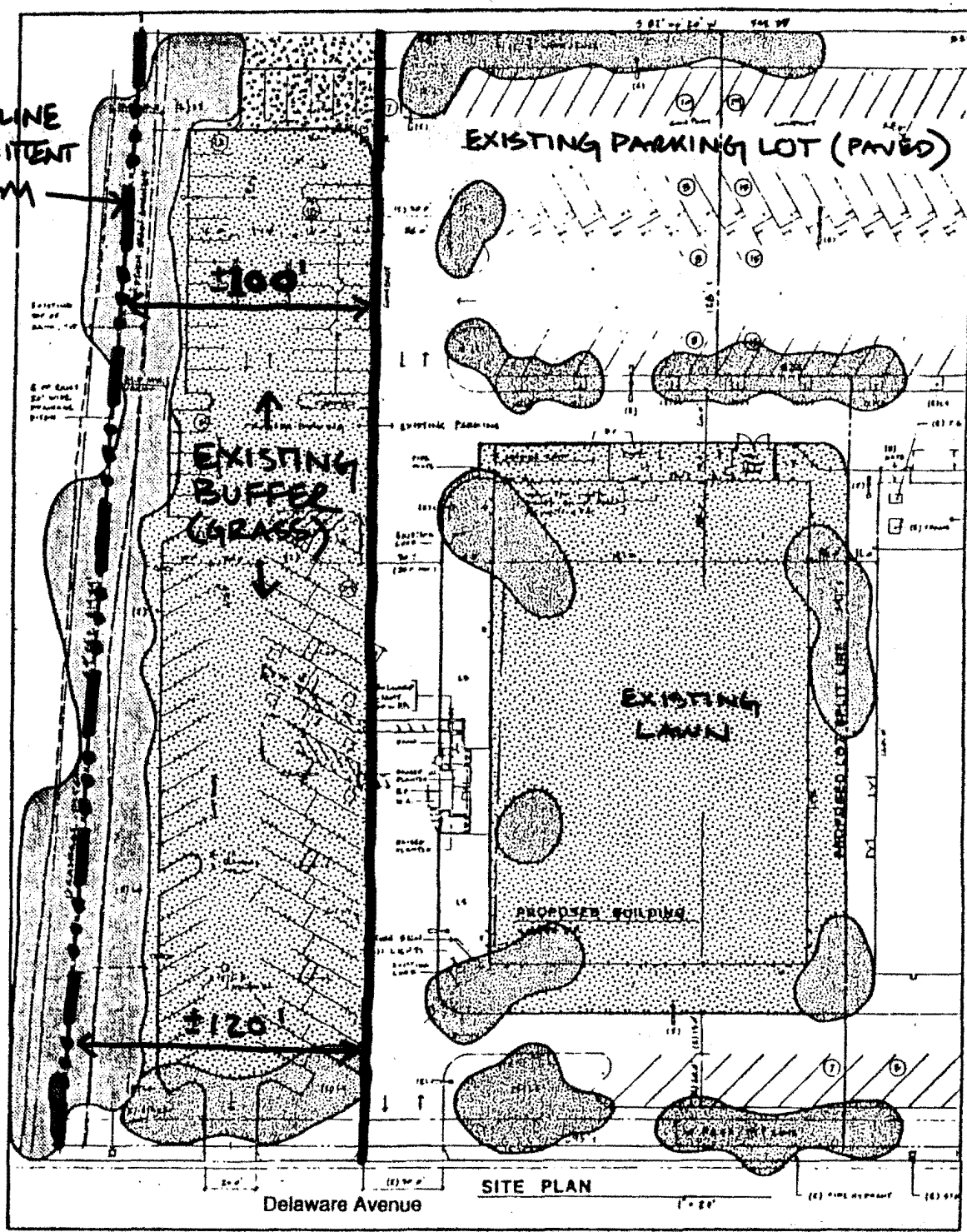


EXHIBIT F  
LUP MAP EQ-11






MONTEREY BAY

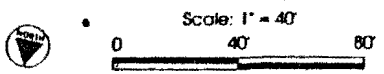


STERILINE  
INTERMITTENT  
STREAM



**LEGEND**

-  Landscape Trees and Shrubs (non-native)
-  Non-native Turf Grass
-  Native and Non-native Tree Grove (along intermittent waterway)
-  Patches of Wetland Vegetation (along intermittent waterway)
-  Centerline of Intermittent Waterway



Biologic Resources Group  
P.O. Box 14 • Santa Cruz, CA 95083

2155 Delaware Avenue  
Existing Vegetation

Figure 1  
3/98  
136-01

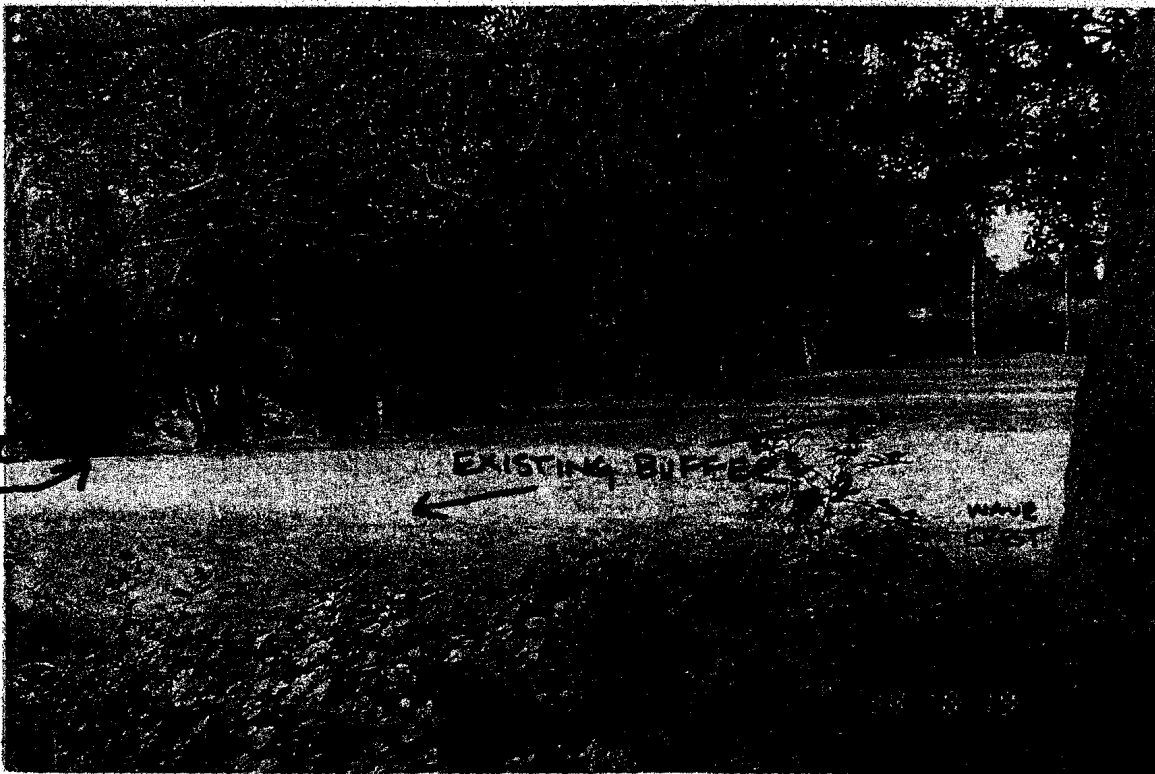
**EXHIBIT H**  
**EXISTING SITE CONDITIONS**

CRYSTAL  
SPRINGS



VIEW OF INTERMITTENT STREAM CORRIDOR LOOKING SOUTH

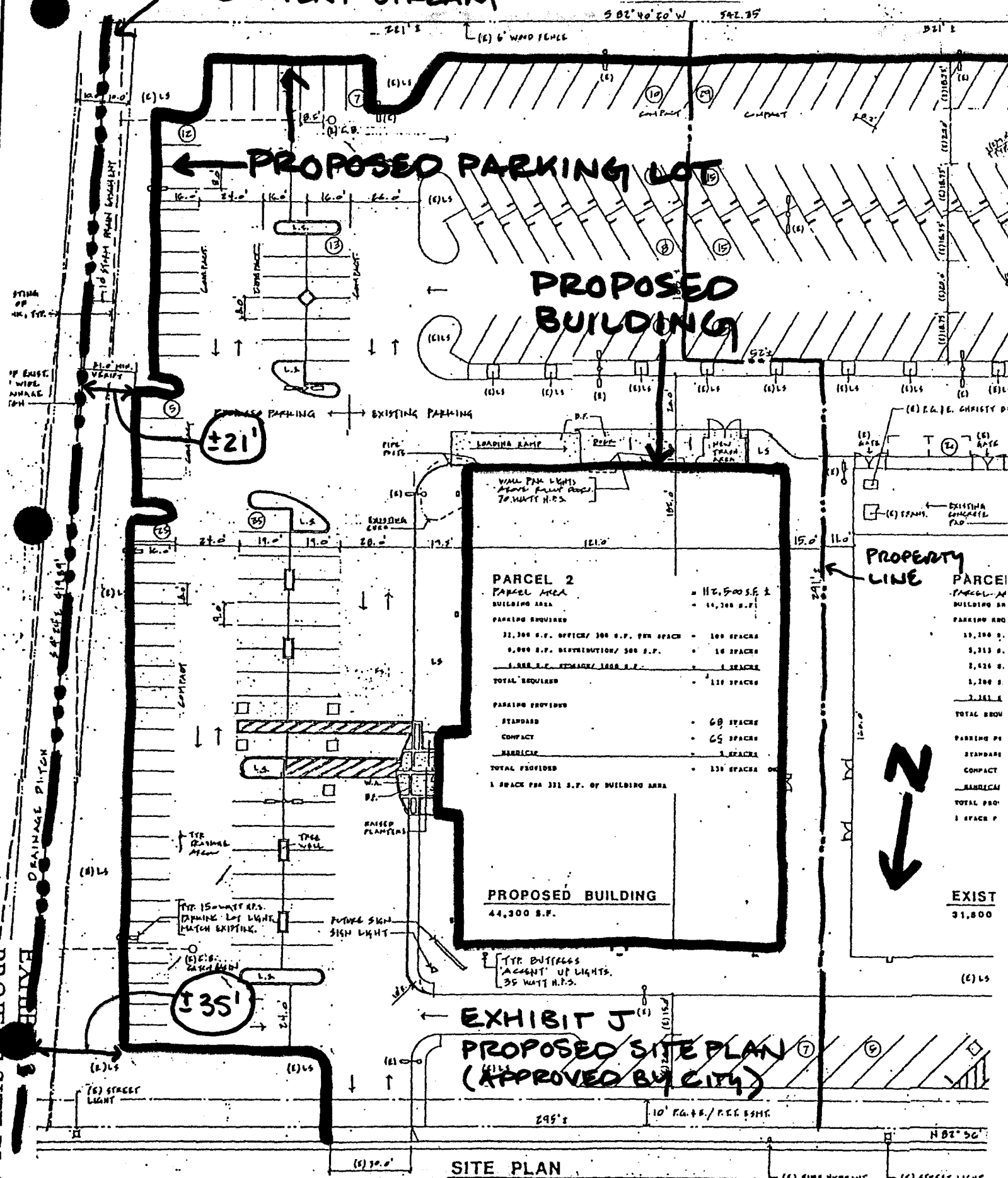
STREAM  
CORRIDOR



VIEW OF INTERMITTENT STREAM CORRIDOR AND EXISTING BUFFER AREA LOOKING SOUTHEAST

EXHIBIT I  
STREAM CORRIDOR PHOTOS

CENTERLINE OF  
INTERMITTENT STREAM



**PARCEL 2**  
PARCEL AREA = 117,500 S.F. ±  
BUILDING AREA = 44,300 S.F.

PARKING REQUIRED	
31,300 S.F. OFFICE/ 300 S.F. PER SPACE	100 SPACES
9,000 S.F. DISTRIBUTION/ 500 S.F.	18 SPACES
1,000 S.F. STORAGE/ 1,000 S.F.	1 SPACE
<b>TOTAL REQUIRED</b>	<b>119 SPACES</b>
PARKING PROVIDED	
STANDARD	68 SPACES
COMPACT	45 SPACES
NARRICAP	3 SPACES
<b>TOTAL PROVIDED</b>	<b>116 SPACES</b>
1 SPACE PER 311 S.F. OF BUILDING AREA	

**EXIST**

PARKING AND BUILDING AREA	31,300 S.
	2,313 S.
	2,426 S.
	2,200 S.
	2,381 S.
<b>TOTAL BROW</b>	
PARKING PROVIDED	
STANDARD	
NARRICAP	
<b>TOTAL PROVIDED</b>	
1 SPACE PER	

SITE PLAN

1" = 20' DELAWARE AVE

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(408) 427-4883  
HEARING IMPAIRED: (415) 904-5200



July 17, 1998

Nancy Boyle  
City of Santa Cruz  
Department of Planning and Community Development  
809 Center Street, Room 206  
Santa Cruz, CA 95060

**RE: *Proposed Negative Declaration for the Wavecrest Development at 2155 Delaware Avenue (City of Santa Cruz Case Number 97-089)***

Dear Ms. Boyle,

Thank you for the opportunity to review the above-referenced CEQA document. We have the following comments.

The stream on the subject site is identified on Land Use Plan (LUP) Map EQ-11 as an unnamed stream. From the limited information that we have for this project, it appears as though this existing stream on the site is being moved to the east to make way for parking lot development. LUP Policy 4.2.6 requires stream alterations to be consistent with the natural characteristics of the stream. Further, Policy 4.2.6 only allows these alterations for a limited number of uses; parking lots are not one of these uses. As a result, this proposed element of the project is inconsistent with LUP policies for stream alteration.

Even were the alteration of the stream watercourse justified (or if the stream was not being re-routed), any development which encroaches into the 100 foot setback from its centerline is inconsistent with LUP Environmental Quality Policy 4.2.2 and Zoning Section 24.14.080. This 100 foot buffer is required by the LUP and Zoning element in order to maintain, and enhance, the City's watercourse areas. The project plans that we have seen to date show that the proposed parking lot would be placed approximately 20 feet from the centerline of this (re-routed) stream. This minimal buffer is inconsistent with LUP Policy 4.2.2 and Zoning Section 24.14.080.

When evaluating the proposed project's conformance with the above-describe policies, the question is not the level of value of the stream but rather whether or not it is a resource. In this case, the stream on the site is a mapped resource (i.e., LUP Map EQ-11). As such, the unnamed on-site stream requires protection and enhancement pursuant to LUP Policy 4.2 which refers specifically to LUP Map EQ-11. While the proposed negative declaration downplays the resource value of the on-site stream, it is a resource nonetheless as certified by the Coastal Commission and as shown on the adopted LUP and post-certification maps.

Furthermore, even in its present state, the stream does represent a valuable resource. The proposed negative declaration states that the biotic resource report prepared for the proposed project did not identify any riparian vegetation on-site, but did identify wetland vegetation on the eastern side of the stream. This documented presence of wetland vegetation along the subject stream is important because it shows that, even in its degraded state, the stream is capable of sustaining riparian resources. As a result, this stream area should be allowed to realize its

**EXHIBIT K**  
**COMMISSION STAFF CEQA COMMENTS**  
**1 OF 2 PAGES**



potential (as required by LUP and Zoning policies for setbacks and allowable uses within them) rather than being hemmed in by concrete which will limit its natural ability to recover — and flourish.

In fact, even if its resource value has been degraded over time, it is poor long-range planning to allow the stream on the subject site (or any stream in the City for that matter) to be further constrained by an encroaching urban environment. The goal of LUP Environmental Quality Section 4, to "protect and enhance natural vegetation communities and wildlife habitats throughout the City," is more difficult to achieve when adopted setback requirements are not upheld. The more appropriate strategy with these identified watercourses is to develop projects which are sensitive to these natural resources and which provide for adequate (100 feet per LUP policy) setbacks from these resources.

As you move forward with your project analysis and environmental review, we would encourage you to reconsider the project in terms of its consistency with the City's adopted watercourse protective policies as discussed above. After we have seen more information on this project (including the biotic resource report), we may have further comments to submit to you. In the interim, thank you for the opportunity to comment on this project.

Sincerely,

Lee Otter  
District Chief Planner



Dan Carl  
Coastal Planner

**RECEIVED**  
 William M. Boyd  
 Attorney-at-Law

Land Use,  
 Environmental and  
 Administrative Law

FEB 16 1999

Tel (510) 548-2198  
 Fax (510) 548-8827

CALIFORNIA  
 COASTAL COMMISSION  
 CENTRAL COAST AREA

**URGENT**

To: Lee Otter and Charles Lester  
 From: Bill Boyd  
 Subject: Wavecrest - Substantial Issue  
 Recommendation  
 Date: 2/15/99

cc: Maynard and  
 Carol Manson  
 Tim Tosta

2 page memo

After discussing the staff's current position on the Wavecrest permit with Lee Otter, I have re-examined Policy EQ 4.2.1 and 4.2.2.3 and still do not understand the basis for staff's position. According to Policy 4.2.1, management plans are required under three circumstances:

- City-owned wetland and riparian areas (San Lorenzo River, Neary Lagoon)
- In connection with development involving Younger Lagoon, Jessie Street Marsh, Arana Gulch, Moore Creek, Natural Bridges Marsh and Antonelli Pond
- Case-by-case determinations for "other significant environmental resource systems" in the Coastal Zone

The Wavecrest site does not involve either of the two categories of enumerated areas listed above. Regarding the last category, "other significant environmental resource systems," no one has asserted that the former agricultural drainage course adjacent to Wavecrest is to be considered a "significant environmental resource." Such an assertion would not even pass the "red-face" test.

Policy 4.2.2.3, which is a sub-policy of the immediately following Policy E.Q. 4.2.2 refers to grading within "riparian and wetland resource and buffer areas" (since this policy immediately follows Policy EQ 4.2.1 which identifies circumstances under which there is a need for a management plan, it would seem logical that the term "resource" means just that, an area with some significant resource value). Again, no one has identified the Wavecrest site drainage ditch as a "riparian" or "wetland resource." The portion of the drainage ditch to the west is underground and the portion of the drainage ditch to the east is clearly a floodflow drainage course with no resource

**EXHIBIT I**  
**APPLICANT CORRESPONDENCE**

value. The City made extensive findings that the Wavecrest drainage ditch has no resource value, findings which to my knowledge have yet to be disputed by the Coastal staff.

Thus, the drainage ditch flowing at the edge of the Wavecrest site does not constitute a "significant environmental resource system under LCP Policy EQ 4.2.1 or a "riparian and wetland resource" under Policy EQ 4.2.2.3. Under these circumstances, the zoning policy allowing for development within 100 feet of a streamcourse pursuant to a City approved resource management plan applies rather than a management plan necessitating Coastal Commission approval. In other words, the City zoning ordinance under Section 24.14. 080. 4. c. providing for a "restoration/management plan" only applies to development within 100 feet of streamcourses that do not have resource values. Development within 100 feet of significant environmental resource systems or a "riparian and wetland resource" would require a resource management plan subject to Coastal Commission approval.

If Coastal staff and/or the Coastal Commission in the future were to determine that a stream constitutes a "significant environmental resource" under Policy EQ 4.2.1 or a "riparian and wetland resource" under Policy EQ 4.2.2.3, such a determination could be communicated to the City of Santa Cruz, with the City fully aware of the strong likelihood of a Commissioner appeal in circumstances where a management plan was not prepared in conjunction with projects located within 100 feet of a true "resource."

Under Coastal staff's current interpretation, we are faced with the rather bizarre conclusion that the certified LCP zoning ordinance in fact has no meaning at all because all streamcourses are deemed to be considered "resource" areas even where they clearly have no resource value.

Let us give meaning to the term "resource" and not demean true resource protection under the Coastal Act by contorting our common sense understanding of the word "resource" in order to embrace a former agricultural runoff channel with no present resource value. Does either the City of Santa Cruz LCP or the Coastal Act contemplate Coastal Commission review and approval of a management plan for a drainage ditch?

**William M. Boyd**  
Attorney-at-Law

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Environmental and  
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Tel (510) 548-2198  
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To: Lee Otter and Charles Lester  
From: Bill Boyd  
Subject: LCP Management Plan Provisions  
Date: 1/22/99

cc: Maynard and  
Carol Manson  
Tim Tosta

During a recent discussion, Lee Otter indicated that Commission staff is concerned that LCP Policy EQ 4.2.2.3 (attached) addressing construction within "buffer areas" may apply to the Wavecrest project currently under appeal to the Coastal Commission. In particular, staff appears to be concerned about language requiring Coastal Commission approval of resource management plans where construction is allowed within "buffer areas."

In contrast with the LUP language addressing development within "buffer areas," the LCP Implementing Actions Program ordinance 24.14.080, subsection 4. c. (1) (attached) indicates that development "shall be permitted . . . within required setbacks where:

- (1) A restoration/management plan has been submitted and approved;
  - (2) Any construction and/or use is consistent with the approved plan."
- (emphasis added)

The ordinance makes no reference to Coastal Commission approval of such a management for development within "required setbacks." As will be reviewed below, the LCP distinction between "buffer areas" and "setbacks" is substantive and extremely significant.

To begin with, Policy EQ 4.2.1 (attached) requires management plans for City-owned wetland/riparian areas and then requires management plans for certain specified wetland/riparian areas none of which includes the drainage area adjacent to the Wavecrest project. The policy then

states that the need for management plans for other areas will be evaluated on a case-by-case basis and implemented through permit conditions and other measures.

Policy EQ 4.2.2 then goes on to require "setbacks," with sub-policy EQ 4.2.2.1 requiring consistency "with the applicable management provisions under EQ 4.2.1. Sub-policy EQ 4.2.2.3 prohibits the removal of vegetation within riparian and wetland resources and buffer areas and then goes on to state that exceptions to "this policy" can only occur within the context of a resource management plan approved by the Coastal Commission as an LUP amendment. It is important to note that the above reference to "buffer areas" is a specific and narrower policy applying to a subset of resource types within an overall policy addressing the broader category of "setbacks."

The drainage course adjacent to the Wavecrest project is historically an agricultural drainage ditch (see the historic aerial photos supplied by Lipton). The immediately inland portion of the drainage course on the Lipton property has been re-routed from even its historic location and contains virtually no resources. The immediately seaward portion of the drainage course is undergrounded. As a consequence of these historic conditions of the drainage course, no "buffer area" has been delineated because there are no resources to buffer. For this reason, and as elaborated further below, Policy EQ 4.2.2.3 does not apply to these areas of this streamcourse.

As an example, the project on the other side of the drainage course from the Wavecrest project (located at 2151 Delaware Avenue) was approved for a coastal development permit under the LCP even though the building is 60 feet from the centerline of the drainage course; utility installations, including a driveway and trash enclosure are within 10 feet of the drainage course centerline. A cyclone fence about 10 feet from the bank of the drainage course was used to separate the driveway area from the drainage course. Thus, prior LCP actions make clear that there is no defined or definable "buffer area" for this drainage course. Although not as close as the 2151 Delaware uses, the existing accessway to the existing uses on the Wavecrest site is also located closer than 100 feet from the drainage course. Thus, pre-LCP and post-LCP uses are presently

existing at locations closer than 100 feet from the drainage course.

Unlike the cyclone fence approach on the other side of the drainage course, the Wavecrest project proposed to create a "buffer area" where none presently exists. According to the Biotic Assessment by the project adopted by the City of Santa Cruz:

"The proposed landscaping plan, which includes planting a dense growth of native understory plants along the drainageway and retaining the existing trees, will enhance the natural resource values of the drainageway and buffer the waterway from increased human activities in the proposed parking area."

(Biotic Assessment, March 1998, p. 7, emphasis added)

The creation of this buffer area is cited in the portion of the City staff report (excerpt attached) that determined:

"The project is consistent with zoning ordinance Section 24.14.080 which allows for a reduction in areas where there is considered an intermittent stream and wetlands the project does provide a restoration plan, the existing vegetation is preserved to the maximum extent possible, the integrity of the area as a habitat is not compromised and the landscaping is designed to provide a natural buffer. To insure the parking lot would minimize impact to the existing trees along the stream, staff recommendation would include the use of turfblock on portions of the parking lot where the dripline extends over the spaces. The applicant is in agreement and a condition of approval has been added to accomplish this.

Water quality would be maintained by filtering water from the building site through standard grease traps and filters before entering onsite and overflow detention facilities. The existing site has a catch basin at the east/south property line that was required this issue - it has been installed since the 1990 meeting.  
(7/30/98 City staff report, p. 4, attached, emphasis added)

Thus, the City clearly understood that, pursuant to Section 24.14.080 4. c. "a restoration/management plan" must be "submitted and approved."

That restoration plan includes: (a) the creation of a buffer where none presently exists through the planting of a dense understory of native vegetation; (b) design measures to protect existing trees; and (c) water quality BMP measures to maintain the quality of stormwater runoff.

If there were an existing "buffer area," then it could be argued that Policy EQ 4.2.2.3 requiring Coastal Commission of a management plan would be necessary. But where there is no existing buffer area and where the streamcourse is not one of the high value resource areas specified in the LCP, development within the 100 foot setback area is allowed when a "restoration/management plan" has been submitted and approved by the City.

It would truly be remarkable to require Coastal Commission approval of a management plan for a remnant of an agricultural drainage ditch that is underground on one side and totally devoid of resource values on another side, and where a prior LCP-approved project has constructed facilities within 15 feet of the drainage course.

In an effort to clarify the commitments already made in the City-approved restoration/management plan, Wavecrest has agreed to: (1) replace any of the existing Monterey pines that die from the blight currently affecting pines throughout the state with native riparian trees such as the alder and willows currently on-site; (2) install grease traps/filters on any existing runoff currently not so treated; (3) clarify the location of turfblock in the area within 25 feet of the streamcourse; and (4) clarify the implied obligation to assure that on-site runoff does not adversely impact the integrity of the bank of the streamcourse.

To demonstrate the biological integrity of the City-approved restoration/management plan, Wavecrest has also worked closely with the owners of the Lipton property to assure a coordinated restoration/management plan so that the two properties together will, consistent with the directive in LCP ordinance 24.14.080, significantly enhance the values of a highly degraded streamcourse. It is our understanding that, as in the case of the Wavecrest project, the Lipton project will create a native plant species buffer where none presently exists, in addition to a wide range of resource enhancement actions both within and outside the

coastal zone.

In conclusion, the Wavecrest project is fully consistent with LCP requirements. Rather than impacting buffer areas, the Wavecrest restoration/management plan will create a buffer. Such restoration actions are clearly encouraged, and mandated, by the LCP zoning ordinance as a biological enhancement that more than offsets development occurring within the 100 foot setback area. Given the fact that there are existing uses within the 100 foot setback area on both sides of the streamcourse and that there is no existing buffer area, the City proceeded to act within the directives specified in the LCP. The additional clarifying actions, and the coordination with the Lipton property, merely amplify the City-required and applicant-proposed restoration/management actions.

To require a formal LCP amendment would be contrary to the LCP and contrary to common sense, both in light of the history of this streamcourse and in light of the City's efforts to carry out the restoration/management policies of the LCP implementing ordinance.



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WAVECREST

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## b. Local Coastal Program Provisions

General Plan/Land Use Plan Applicable Environmental Policies

EQ 4.2 Preserve and enhance the character and quality of riparian and wetland habitats, as identified on Maps EQ-8 and EQ-11, or as identified through the planning process or as designated through the environmental review process.

EQ 4.2.1 Develop, adopt and implement management plans for City-owned wetland and riparian areas including: San Lorenzo River, Neary Lagoon. Require management plans for sites not owned by the city in connection with development, and/or encourage other agencies implement management plans for : Younger Lagoon, Jessie Street Marsh, Arana Gulch, Moore Creek, Natural Bridges Marsh, and Antonelli Pond. The need for management plans for other significant environmental resource systems in the Coastal Zone, where ownership is fragmented, will be evaluated on a case-by-case basis when identified in the planning process. When a management plan is prepared, mechanisms will be adopted to implement the plan through permit conditions and other measures to enhance the natural resource.

E.Q. 4.2.2 Minimize the impact of development upon riparian and wetland areas through setback requirements of at least 100 feet from the center of a watercourse for riparian areas and 100 feet from a wetland. Include all riparian vegetation within the setback requirements, even if it extends more than 100 feet from the water course or if there is no defined water course present.

EQ 4.2.2.1 Require that all development with 100 feet of these areas be consistent with the applicable management provisions under EQ 4.2.1 and L 3.4, if one has been established.

EQ 4.2.2.2 For Neary Lagoon....

EQ 4.2.2.3 Prohibit uses such as construction of main or accessory structures, grading or removal of vegetation within riparian and wetland resource and buffer areas and allow permitted uses (such as pervious non-motor vehicular trails, incidental public services, maintenance and replacement of existing Public Works facilities, maintenance of existing or restoration of previously dredged depths in flood control projects and navigational channels, small-scale facilities (500 sq. ft. or less) associated with nature study or resource dependent activities, construction, grading or removal of vegetation necessary for maintenance, landscaping designed to provide a natural buffer and grading necessary as a part of such landscaping plan, passive recreation, habitat preservation and restoration) that are consistent with the environmental quality policies of the Plan, Section 30232

A-3-STC-98-066

WAVECREST

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of the Coastal Act, and adopted management plans. Development in wetlands can be undertaken only where there is not feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. If any exceptions to this policy are to be considered, it shall be within the context of a resource management plan which plan shall be approved by the Coastal Commission as an amendment to the Land Use Plan.

4.2.3 Minimize increased runoff into riparian and wetland areas unless biological evaluation recommends increased flows. (See Maps EQ-8 and EQ-11.)

4.2.4 Preserve riparian and wetland vegetation by minimizing removal and allowing only for uses dependent on the resources, passive recreational use, and maintenance of existing uses according to adopted management plans with compensating mitigation.

- Remove non-native invasive plants as specified in the management plans.
- Where consistent with the protection of riparian and wetland areas, provide actual or visual access of a low impact nature (e.g., unpaved, narrow trails, boardwalks and vista ways).

4.2.5 Protect and minimize the impact of development on bird, fish and wildlife habitat in and adjacent to waterways.

4.2.6 River or stream alterations must be consistent with the natural characteristics of the stream and limited to those allowed under Coastal Act Section 30236 which includes those necessary for water supply, flood control and habitat improvement projects.

EQ 4.5 Continue the protection of rare, endangered, sensitive and limited species and the habitats supporting them as shown in Map EQ-9 or as identified through the planning process or as designated as part of the environmental review process.

#### Implementation Zoning Ordinance Regulations

The City's certified Zoning Ordinance, Section 24.14.080, number 1. Applicability, for Intermittent/Perennial Streams, Wetland Areas, Wildlife Habitats and Plant Communities applies its provisions to (1) Intermittent/Perennial streams identified on the largest USGS topographic maps, LUP Map EQ 11 and Map EQ-8 as refined by the environmental review process; (2) wetlands, marshes, grasslands identified on LUP Map EQ-8 or as designated as part of the environmental review process, and (3) wildlife habitat areas and plant communities on LUP Map EQ 8 and 9 or as designated as part of the environmental review process.

EXHIBIT L (90419)

24.14.070

e. Delineation of areas to be cleared during development activities.

f. Vegetation proposed for all surfaces exposed or expected to be exposed during development activities, including cut-and-fill slopes.

g. Approximate location and drip line of existing trees or tree stands with an eight-inch or greater trunk caliper. Any trees proposed to be removed shall be so designated.

h. Name and address of owner.

i. Name, address, professional status, license number, if applicable, and phone number of the person who prepared the plan.

5. Exceptions. Applications for activities where no land disturbance is anticipated may be accompanied by a statement to that effect, for planning director approval, in lieu of an erosion control plan. Such activities may include, but are not limited to:

a. Change of use where there would be no expansion of land-disturbing activities.

b. Construction within an existing structure.

(Ord. 94-33 § 67, 1994: Ord. 85-05 § 1 (part), 1985).

#### 24.14.070 SEISMIC HAZARDS.

1. Applicability. This section shall apply to project sites within areas identified as having potential for liquefaction as designated in the Safety Element of the General Plan (Map S-6).

2. Requirements. A site-specific investigation prepared by a qualified professional shall be conducted for new residential developments of more than four units, new commercial, industrial, public, and quasi-public structures proposed for construction in areas defined in subsection (1) herein. This investigation shall assess the degree of potential for liquefaction and/or seismic disturbance and shall suggest mitigation measures.

In addition, in the Coastal Zone seismic hazard areas a site-specific investigation shall be prepared for all habitable structures.

3. Action. When reviewing projects located in designated liquefaction areas, the zoning administrator or board shall find that appropriate mitigation measures from the required site investigation report have been incorporated into the design of the project. Further, if the zoning administrator or board finds that proposed mitigation measures, including engineering techniques, cannot reduce identified hazards to acceptable risk levels, then the location of the proposed project shall be modified and/or the project disapproved.

(Ord. 94-33 § 68, 1994: Ord. 85-05 § 1 (part), 1985).

#### 24.14.080 INTERMITTENT/ PERENNIAL STREAMS, WETLAND AREAS, WILDLIFE HABITATS AND PLANT COMMUNITIES.

1. Applicability. The provisions of this section shall apply to the areas listed below.

a. Intermittent/Perennial Streams. Identified on the largest scale USGS topographic map by either a solid line or a dash-and-dot symbol and Map EQ-11 of the Environmental Quality Element of the General Plan and Coastal Land Use Plan or in riparian areas as designated by Map EQ-8 in the General Plan and refined by the environmental review process.

b. Wetlands, Marshes and Seasonally Flooded Grasslands. Identified by Map EQ-8 of the Environmental Quality Element of the General Plan and Coastal Land Use Plan or as designated as part of the environmental review process.

c. Wildlife Habitat Areas and Plant Communities. Identified in Maps EQ-8 and EQ-9 of the Environmental Quality Element of the General Plan and Coastal Land Use Plan or as designated as part of environmental review process.

2. Precise Boundaries of Designated Areas. The precise boundary of areas identified in subsection (1), above shall be determined

24.14.080

on a case-by-case basis by a biologist with relevant academic training and experience in instances of uncertainty.

**3. Uses Prohibited.**

a. **Intermittent/Perennial Streams.** Construction of main or accessory structures, grading, or removal of vegetation shall not be permitted in any designated riparian area or within one hundred feet from the center of a watercourse (as identified in subsection (1)(a) above), except as provided in subsections (4)(a) and (4)(b), below.

b. **Wetlands, Marshes and Seasonally Flooded Grasslands.** Construction of main or accessory structures, grading, or removal of vegetation shall not be permitted within one hundred feet of a wetland (as identified in subsection (1)(b) above), except as provided in subsections (4)(a) and (4)(c), below.

**4. Uses Permitted.** Only those uses listed below are permitted subject to the provisions of subsection (e).

a. **General.** The following uses of all areas, (as identified in subsections (1)(a) through (1)(c) above) including setbacks (as identified in subsections (3)(a) and (3)(c) above), may be permitted. Where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

(1) Maintenance and replacement of existing public works facilities, such as pipes, cables, lines or accessways;

(2) Maintenance of existing, or restoration of previously dredged, depths in existing flood-control projects and navigational channels, pursuant to an approved management plan;

(3) Pervious, non-motor-vehicular trails;

(4) Incidental public services projects including but not limited to, the burying of cables and pipes, or inspection of piers, and maintenance of existing intake and outfall lines;

(5) Small-scale facilities associated with nature study or other similar resource-dependent activities;

(6) Construction, grading or removal of vegetation necessary for maintenance of existing improvements;

(7) Landscaping designed to provide a natural buffer and any grading necessary as part of such landscaping plan;

(8) Passive recreation;

(9) Habitat preservation and restoration;

(10) Other uses similar to the foregoing found by the zoning administrator or board as consistent with the intent of this part.

b. **Intermittent/Perennial Streams.** Construction, grading, or removal of vegetation shall be permitted within required setbacks only where necessary for protection against erosion, scouring and for maintenance of flow.

c. **Wetlands, Marshes and Seasonally Flooded Grasslands.** Construction, grading or removal of vegetation shall be permitted in wetlands, etc, and within required setbacks where:

(1) A restoration/management plan has been submitted and approved;

(2) Any construction and/or use is consistent with the approved plan.

d. **Wildlife Habitats and Plant Communities.** Construction, grading or removal of vegetation shall be permitted within wildlife habitats and plant communities where:

(1) Existing vegetation is preserved to the maximum extent possible;

(2) The integrity of the area as a habitat is not compromised;

(3) Landscaping is designed to provide a natural buffer and provide native food-bearing plant species to the greatest extent feasible;

(4) Protected species under the federal Endangered Species Act, the California Endangered Species Act, and the California Native Plant Protection Act are not present or jurisdictional permits from the appropriate state or federal agency have been received for their removal.

EXHIBIT L (11 OF 17)

I

**2155 Delaware Avenue**

**Biotic Assessment**

*Santa Cruz, California*

**Biotic Resources Group**

Biotic Assessments ♦ Resource Management ♦ Permitting

Post Office Box 14 ♦ Santa Cruz, California 95063 ♦ (408) 476-4803

**EXHIBIT I (12 OF 19)**

## IMPACTS AND MITIGATION DISCUSSION

### IMPACT CRITERIA

The thresholds of significance presented in Appendix VI of the Guide to the California Environmental Quality Act (CEQA) were used to evaluate project impacts and to determine if the proposed development of the project poses significant impacts to biological resources. For this analysis, significant impacts are those that substantially affect either:

- A species (or its habitat) listed or proposed for listing by State or Federal governments as rare or endangered (none identified to utilize the project area);
- Breeding/nesting habitat for a State species of special concern (none identified to utilize the project area);
- A plant considered rare (i.e., List 1B) by CNPS (none identified to utilize the project area);
- A habitat regulated by State or Federal law (i.e., waterway and/or associated riparian habitat), or
- A habitat or resource recognized as sensitive by the City of Santa Cruz (i.e., waterways, riparian habitat, heritage trees).

### POTENTIAL IMPACTS AND MITIGATION MEASURES

Impacts were not considered significant to vegetation communities or habitats that are not protected, are generally common, and do not support special status species. On the Delaware Street project site, removal of the non-native turf grass and non-native landscape trees is not considered a significant impact to botanical resources.

As described above, the project site does not provide suitable habitat for any sensitive wildlife species, and therefore, project impacts are not expected to be significant to wildlife resources.

The proposed landscaping plan will benefit wildlife by providing more understory vegetative cover, as well as enhancing food resources from native plants (e.g. coffeeberry).

The project proposes to construct a parking lot approximately 25 feet from the centerline of the intermittent waterway. This distance is not consistent with City of Santa Cruz policy for a 100-foot setback. The project site's minimal riparian resources combined with the intermittent nature of the drainageway, the landscaped character of the area and the close proximity of commercial/industrial/residential land uses on adjacent parcels, significant adverse effects to the waterway from the parking area are not anticipated. The proposed landscaping plan, which includes planting a dense growth of native understory plants along the drainageway and retaining the existing trees, will enhance the natural resource values of the drainageway and buffer the waterway from increased human activities in the proposed parking area. The proposed lighting for the parking lot is directed downward, such that indirect impacts to nocturnal wildlife from night lighting are not anticipated.

EXHIBIT L (13 OF 19)

K. b

**AGENDA**  
 City of Santa Cruz  
**ZONING BOARD**  
 Council Chambers - City Hall  
 809 Center Street  
 July 30, 1998 - 7:30 p.m.

1. ROLL CALL - W. Schultz, Chair, R. Bickal, M. Primack, C. Calfo, R. Quartararo
2. APPROVAL OF MINUTES - June 25, 1998
3. COMMUNICATIONS - The Zoning Board will consider brief (3 minute) communications on items not on the agenda.
4. CONSENT AGENDA -
5. OLD BUSINESS

5 a.    **115 Baymount St.**                    **98-011**                                    **APN 011-132-07**  
 Design and Coastal Permits, and Variance to reduce the required 100-foot setback to the centerline of a water course to about 27 feet and to reduce the front yard setback from 20 feet to about 10 feet on a substandard lot; and a modification to the slope regulations to allow construction of a new 2½-story dwelling within 14 feet of a 30 percent slope. (Carole DePalma, owner / filed: 1/26/98) ND <sup>2</sup>

6. NEW BUSINESS

6a.    **2155 Delaware Ave.**                    **97-089**                                    **APN 003-161-57**  
 Design and Coastal Permits to construct a 44,300 sq. ft. office/manufacturing building. (Wavecrest Development, owner/filed: 4/29/97) ND <sup>1</sup>

6b.    **433 Meder Street**                    **98-050**                                    **APN 002-042-43, 42**  
 Conceptual Planned Development and Design Permit to construct a 4000 sq. ft. home on a 63,451 sq. ft. lot with shared access from the adjacent parcel; Variance to build within the 100 foot Riparian setback. (Robert Alford, owner / filed: 3/11/98) ND

6c.    **415 Miramar Dr.**                    **98-025**                                    **APN 002-173-02**  
 Variance to slope regulations to construct two retaining walls on slopes greater than 30%. (Christopher Brady, owner / filed: 2/18/98) ND

7. ITEMS INITIATED BY THE BOARD

8. STAFF REPORT

8A.    Past City Council Actions

9. ADJOURNMENT

The next Zoning Board meeting will be on August 13, 1998.

**EXHIBIT I (19 OF 19)**

AGENDA REPORT  
ZB July 30, 1998  
2155 Delaware Avenue

included planting a dense growth of native understory plants along the drainageway and retaining existing trees which overall will enhance the natural resource values of the drainage way and buffer the waterway from increased human activities in the proposed parking area.

(A) The project is consistent with zoning ordinance Section 24.14.080 which allows for a reduction in areas where there is considered an intermittent stream and wetlands the project does provide a restoration plan, the existing vegetation is preserved to the maximum extent possible, the integrity of the area as a habitat is not compromised and the landscaping is designed to provide a natal buffer. To insure the parking lot would minimize impact to the existing trees along the stream, staff recommendation would include the use of turfblock on portions of the parking lot where the dripline extends over the spaces. The applicant is in agreement and a condition of approval has been added to accomplish this. [sic. natural]

Water quality would be maintained by filtering water from the building site throughout standard grease traps and filters before entering onsite and overflow detention facilities. The existing site has a catch basin at the east/south property line that was required to address this issue - it has been installed since the 1990 meeting.

**Use.** The applicants have designed the building for an office/manufacturing use based on the proposed parking ratio which meets ordinance requirement of 1 per 325 sq. ft of floor area (i.e. ratio is 1 parking space for every 321 sq. ft.) this results in the provision of 138 parking spaces; ordinance requirement is 128 spaces. In the IG General Industrial district, general manufacturing and processing industries (except bulk petroleum, scrap and waste materials which are not allowed) require a use permit. Therefore, occupancy of the building and the specific use will be reviewed at a future public hearing. Staff finds that given the proximity to residential use, a research and development use would be more appropriate than a heavy industrial use with a less intensive parking requirement.

**Letter of Appeal.** The item is before the Zoning Board as an appeal of the Zoning Administrators approval. The following is a response to statements made in the appeal letter.

**Recirculation of Negative Declaration.** Staff did not recirculate the negative declaration for there had not been any major change in the footprint, nor layout of the proposed building that was originally approved in 1990. However, the applicants submitted additional reports including a biotic report, drainage study and traffic report and new environmental review was conducted. The initial study has been recirculated; staff recommendation includes adoption of the Negative Declaration.

EXHIBIT I (150219)

6A-12



William M. Boyd  
Attorney-at-Law

Land Use,  
Environmental and  
Administrative Law

Tel (510) 548-2198  
Fax (510) 548-8827

To: Lee Otter and Charles Lester  
From: Bill Boyd  
Subject: Wavecrest Permit Commitments  
Date: 12/24/98

cc: Maynard and  
Carol Manson  
Tim Tosta  
Larry Hummer  
Mike Josselyn

The following are a set of preliminary commitments, subject to final concurrence by Maynard and Carol Manson, which we would propose as a "clarification" of the Wavecrest Coastal Development Permit provisions. Hopefully, these items reflect our conversations and the overall Interim Stream Management concept for Reach 3, as set forth in Tim Tosta's memo of 12/23/98, which is to maintain the stable existing character of the drainage in this reach of the drainage course.

Permit clarification provisions would comprise the following:

- Commitment to maintain the physical integrity of the bank of the drainage course in order to maintain a stable streambank and the current physical character of the bank of the drainage course on the Wavecrest property. If the bank of the drainage course is impacted by extraordinary flood events (i.e. above and beyond the design capacity of this reach of the drainage course), we would expect that upstream properties, the City and the adjoining landowner would contribute to flood control improvements on a proportionate basis.
- Impervious surface parking areas would be set back 25' from the centerline of the drainage course, with a vegetated filter strip (such as turfblock) placed in the setback located between 21' and 25' from the centerline of the drainage course [this is consistent with the City staff zoning report, p. 4 attached]
- Water quality will be maintained pursuant to City-specified BMPs and grease traps on the existing direct drainage pipe. The City staff report states: "Water quality would be maintained by filtering water

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**EXHIBIT I (16 OF 19)**

from the building site throughout standard grease traps and filters before entering onsite and overflow detention facilities. The existing site has a catch basin at the east/south property line that was required to address this issued - it has been installed since the 1990 meeting." (p. 4 attached)

- The City requirement to plant "a dense growth of native understory plants along the drainageway" and to retain existing trees (see p. 4 attached) will be clarified to indicate that, if and when the existing Monterey Pines become unhealthy, the pine trees will be replaced with native trees including alders and the willow species presently found on-site.

Pursuant to my 12/22/98 discussion with Charles Lester, we need to discuss options for addressing the current appeal including the possibility of a "no substantial issue" recommendation. Given comments regarding the extent to which the Commission is determining substantial issue even when staff recommends no substantial issue, we should also review the possibility of staff contacting the two Commissioners who signed the appeal to determine whether they will support no substantial issue or whether the option of withdrawing the appeal should be considered. The no substantial issue and appeal withdrawal options may also be significant in terms of the aspect of the joint landowner program that would include commitments outside the coastal zone on lands over which there is no Coastal Act permit jurisdiction.

Unfortunately, I will be in my office next week. If Lee and Charles are in, it would be helpful to set up a conference call among the interested parties.

AGENDA REPORT  
Zoning Board  
July 30, 1998  
PUBLIC HEARING

Address: 2155 Delaware Avenue

Application No.: 97-089

Recommendation: Uphold Zoning Administrator Approval and Adoption of Negative Declaration

Project Data:

Property Owner: Wavecrest Development APN: 3-161-55

Representative: D. Zuylim

Application Type: Appeal of Zoning Administrator Approval of Design and Coastal Permits to construct 44,000 square foot office/industrial building with variance to conservation regulations regarding setback from intermittent streams.

Zoning: I G

Project Consistency: Project is consistent with the district zoning

General Plan: General Industrial

Project Consistency: Project is consistent with the General Plan designation.

Land Use:

existing: Research and Development, manufacturing, office  
proposed: Office/Manufacturing  
in area: Manufacturing, Office, Research and Development, Single Family Residential, State Park

Lot Area: 2.58 acres

Lot Dimensions: 290' x 418'

Existing Building:

Building Height: 38' 8' (ridge)  
35' (midpoint)

Floor Area:

Total: 44,300 s/f

First floor: 22,278 s/f

Second floor: 22,022 s/f

Site Coverage: 22,278 s/f 20%

Site Landscaping: 29,000 s/f 26%

Paving: 61,000 s/f 54%

Parking:

Required: Standard 67  
Compact 66  
Handicap

Environmental Review: Negative Declaration

Mandatory Action Date: December 18, 1998

Planning Staff: N. Boyle

AGENDA REPORT  
ZB July 30, 1998  
2155 Delaware Avenue

included planting a dense growth of native understory plants along the drainageway and retaining existing trees which overall will enhance the natural resource values of the drainage way and buffer the waterway from increased human activities in the proposed parking area.

(K) The project is consistent with zoning ordinance Section 24.14.080 which allows for a reduction in areas where there is considered an intermittent stream and wetlands the project does provide a restoration plan, the existing vegetation is preserved to the maximum extent possible, the integrity of the area as a habitat is not compromised and the landscaping is designed to provide a natal buffer. To insure the parking lot would minimize impact to the existing trees along the stream, staff recommendation would include the use of turfblock on portions of the parking lot where the dripline extends over the spaces. The applicant is in agreement and a condition of approval has been added to accomplish this.

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