

**CALIFORNIA COASTAL COMMISSION**

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**W14c****RECORD PACKET COPY**

Filed: 8/20/99  
Hearing opened: 9/15/98  
49th day (waived): 10/8/99  
Staff: D. Carl  
Staff report: 12/16/99  
Hearing date: 1/12/99

## **APPEAL STAFF REPORT**

### **SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING**

**Appeal number** .....A-3-SCO-99-056, Hooper/Filizetti Revetment

**Applicants** .....Christine Hooper and Gary Filizetti

**Appellants** .....Commissioners Sara Wan and Pedro Nava; Christine Hooper and Gary Filizetti

**Local government** .....Santa Cruz County

**Local decision** .....Approved with conditions (August 6, 1999)

**Project location** .....Seaward end of 23<sup>rd</sup> Avenue on the beach bluffs (at Santa Maria Cliffs Beach fronting Corcoran Lagoon) in the Live Oak area of Santa Cruz County (APNs 028-231-01 and 23rd Avenue road right-of-way parcel).

**Project description** .....Recognize after-the-fact the extension of a rip-rap revetment around the corner of the coastal bluff and inland towards East Cliff Drive. Work took place primarily in February 1997, and involved approximately 500 cubic yards ( or roughly 1,200 tons) of large rock placed against the bluff and excavated into the bedrock on and under the sandy beach.

**File documents** .....Santa Cruz County Certified Local Coastal Program (LCP), including Land Use Plan (LUP) and Zoning (IP); Santa Cruz County Coastal Development Permit File 97-0076; Coastal Development Permit Application Number 3-97-027; California Coastal Commission Regional Cumulative Assessment Project (ReCAP) Database.

**Staff recommendation** ..Substantial Issue Exists; Denial

**Summary of staff recommendation:** This is the substantial issue determination and de novo hearing for appeal number A-3-SCO-99-056 (the Commission previously opened and continued the substantial issue hearing for this matter on September 15, 1999). Staff recommends that the Commission find that a substantial issue exists with respect to this project's conformance with the certified Santa Cruz County Local Coastal Program (LCP) and take jurisdiction over the project. Staff subsequently recommends that the Commission deny the coastal development permit for this development.



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### 1. Staff Report Summary

The Applicants propose to extend an existing bluff-fronting revetment approximately 100 linear feet along a coastal bluff in the Live Oak area of Santa Cruz County on and adjacent to Santa Maria Cliffs Beach and Corcoran Lagoon. The proposed 500 cubic yard (or roughly 1,200 ton) revetment extension is already in place, having been installed without benefit of a coastal development permit (CDP) in February 1997. As a result, the County approval that is the subject of this appeal is for after-the-fact recognition of this structure. The revetment is not intended to protect the blufftop residence, but rather is proposed to protect the existing revetment at this site. In other words, the proposed revetment is designed to protect another revetment.

The Appellants raise substantial issues concerning the consistency of the County's approval of the proposed project with the shoreline structure, public access, visual resource and environmentally sensitive habitat area (ESHA) policies of the certified LCP, and with the Coastal Act's access and recreation policies. These same policy inconsistencies are such that the project is not approvable.



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### **1.1 Shoreline Structures**

The LCP limits structural shoreline protection measures to protect "existing structures" at this location; the LCP further defines existing structures as "existing residences and business or commercial structures." The proposed revetment has been designed to protect another revetment. This is inconsistent with the LCP.

The LCP requires demonstration of "a significant threat to an existing structure" if a shoreline protection structure is to be considered. The subject residence is 50 to 75 feet from the break in slope defining the meandering bluff edge at this location and is not currently threatened by shoreline erosion. Likewise, even if the existing revetment could be considered an "existing structure" for which protection could be pursued (which it is not), there has been no measurable bluff retreat at the proposed extension location in over 70 years. Although wave runup and creek flow during storm surge conditions can result in some oblique storm attack at the base of the bluff proposed for armoring, and although some scour is likely at the end of the existing permitted revetment, such conditions do not create a "significant threat." This is inconsistent with the LCP.

Even were an "existing structure" "significantly threatened" at this location, the LCP requires a "thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure." Moreover, the LCP only allows structural measures "if non-structural measures...are infeasible from an engineering standpoint or not economically viable." In this case, the Commission's staff engineer has evaluated the project and determined that "relocation or partial removal" of the existing revetment proposed for protection is a reasonable engineering solution. In other words, maintenance of the tapered end of the existing revetment to ensure that it is operating as designed is a feasible solution, as is the "no project" alternative based on the lack of significant retreat or coastal erosional danger to LCP-defined existing structures at this location; these less damaging alternatives have not been pursued. This is inconsistent with the LCP.

### **1.2 Public Access & Recreation**

The proposed revetment extension would be constructed partially on the 23<sup>rd</sup> Avenue road right-of-way and partially on a beach parcel designated as a "coastal priority site." The LCP designates each of these areas for coastal recreational uses, facilities, and amenities. The development of this site with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened, that would unnecessarily degrade the adjacent beach recreational area, and that would displace other potential LCP-described priority uses, is inconsistent with the LCP and the Coastal Act.

The LCP and Coastal Act require protection of existing accessways. The proposed revetment would block an existing publicly used meandering trail from 23<sup>rd</sup> Avenue to the beach. The County's required access mitigation for this impact is ambiguous and it is unclear if this accessway would be adequately protected. Were the revetment to be otherwise approvable (which it is not), the reconfigured trail alignment required by the County would need to be better defined (both the legal instrument and the





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proposed physical trail improvements) in order to be found consistent with the LCP and the Coastal Act.

### 1.3 Visual Resources

The LCP and Coastal Act require protection of existing visual access at this location. The existing revetment (i.e., that rip-rap in place prior to the unauthorized placement of rock in February 1997), did not wrap fully around the bluff and was only minimally visible from the public vista along the East Cliff Drive at this location. The proposed revetment, even with the County-required vegetation at its peak, would frame the existing ocean vista at this location with a pile of rock. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large revetment in front of the previously unadorned bluff. This would negatively redefine the scenic corridor, reframe the ocean vista at this location, and upset the general viewshed of the open beach at this location. These negative viewshed impacts are inconsistent with the LCP and Coastal Act.

### 1.4 ESHA

The LCP protects ESHA at this location. The project proposes to place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. This system may provide habitat for listed species<sup>1</sup>. This area is an ESHA within which limited development activity is allowed. It is unclear to what extent ESHA would be negatively impacted by the proposed project because the LCP-required biotic assessment/report was not developed. This is inconsistent with the LCP.

### 1.5 Conclusion

In sum, there is not an existing, significantly threatened structure at this location. Even if such a case were clearly established (which it is not here), it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such a threatened existing structure. Even if it could then be demonstrated that the proposed revetment were the least environmentally damaging feasible solution (which it is not here), the impacts on public access, visual resources, and ESHA are considerable.

The project is inconsistent with the LCP, unnecessarily impacts coastal resources, and staff is recommending denial.

Finally, the proposed revetment extension was installed without benefit of a CDP and has been in place for nearly three years. The subject revetment's negative coastal resource impacts (i.e., on public access, on visual resources, on ESHA) have therefore been felt by the public for those 3 years. The Commission's denial of this project activates the clause in the County enforcement agreement (agreed to

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<sup>1</sup> Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.



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by Applicant Filizetti) that requires removal of the revetment and restoration of the site to its pre-unpermitted development condition within 30 days of this final Commission action. To restore coastal resources at the site, and in the interest of the public, the subject revetment must be removed in its entirety, and the site restored to its pre-violation status, as soon as possible. Since removal and restoration constitute "development," any such activities will require CDPs; one for work on the beach (in the Commission's CDP permitting jurisdiction) and an appealable CDP for that portion in the County's CDP jurisdiction above the toe of the bluff. In any event, removal and restoration will be handled through separate enforcement action.

### **2. Local Government Action**

The proposed project is located partially within the coastal permitting jurisdiction of Santa Cruz County, and partially within the Coastal Commission's coastal permitting jurisdiction. The jurisdictional boundary in this case is along the toe of the coastal bluff (see page 2 of Exhibit F for the approximate location of this boundary). Accordingly, the CDP which is the subject of this appeal is only for that portion of the project inland of the toe of the bluff. The remainder of the project is the subject of a pending CDP application to the Commission. This related application (application number 3-97-027) remains unfilled pending receipt of substantive filing information (see Exhibit M for latest status letter to the Applicant). Although clearly it is not always feasible to arbitrarily distinguish impacts between jurisdictions that are created by the one rip-rap project, this staff report, unless otherwise indicated, discusses the CDP for the portion of the project in the County's jurisdiction.

On August 6, 1999, grading and coastal permits for the proposed project were approved by the Santa Cruz County Zoning Administrator; this action was not appealed to the Santa Cruz County Planning Commission. Notice of this Santa Cruz County final local action was received in the Commission's Central Coast District Office on Monday, August 9, 1999. See Exhibit A for the County's staff report, findings and conditions on the project. The Commission's ten-working day appeal period for this action began on Tuesday, August 10, 1999 and concluded at 5:00 P.M. on Monday, August 23, 1999. Two valid appeals (see below) were received during the appeal period.

### **3. Appeal Procedures**

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



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because of its location between the sea and the first public road paralleling the sea and its location within 300 feet of the top of the seaward face of the coastal bluff.

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 LCP 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 3 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 located between the nearest public road and the sea and thus, this additional finding must 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.

## **4. Appellants' Contentions**

### **4.1 Appeal of Commissioners Sara Wan and Pedro Nava**

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

The Santa Cruz County-approved project is a follow-up permit to an emergency permit (authorized by the County in 1997) which covers additional work after-the-fact that was not authorized by the emergency permit. The emergency permit was for work on an existing revetment, while the additional work extended the rip-rap revetment around the corner of the coastal bluff and inland towards East Cliff Drive. Work involved approximately 500 cubic yards of large rock placed against the bluff and excavated into the bedrock on and under the sandy beach. The revetment does not protect the blufftop residence, but is proposed to protect the existing revetment at this site.

#### **Shoreline Structures**

The proposed project is not consistent with LCP Policy 6.2.16 (Structural Shoreline Protection Measures) and Section 16.10.070(g)(5) (Coastal Bluffs and Beaches Permit Conditions) because:

- It has not been adequately demonstrated that the revetment extension is necessary to protect an existing endangered structure at this location. The LCP requires demonstration of "a significant threat to an existing structure" if a shoreline protection structure is to be



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considered.

- It has not been adequately demonstrated that the required "thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure" has been performed. In fact, it appears that "relocation or partial removal" of the existing revetment is a reasonable alternative solution, particularly given the proposed project's negative impacts on public access, environmentally sensitive habitat area (ESHA), and visual resources.
- The proposed revetment reduces recreational beach area contrary to the LCP requirement that "the protection structure must not reduce or restrict public beach access."
- There is no discussion of the effect of the proposed project on shoreline processes and sand supply contrary to the LCP requirement that "the protection structure must not...adversely affect shoreline processes and sand supply." There are likewise no mitigations for any such impacts due to the project.
- The proposed project may increase erosion on adjacent properties contrary to the LCP requirement prohibiting such an impact.
- The proposed project is within the boundaries of Corcoran Lagoon and/or Rodeo Creek at this location, with the proposed revetment partly designed to protect against stream scour. However, no biotic report was done for the project. Corcoran Lagoon is potentially habitat for the Federally-listed steelhead, coho salmon and endangered Tidewater goby. It is not clear that the proposed project would not "cause harmful impacts on wildlife and fish habitats" as required by the LCP.
- The rocks do not minimize visual intrusion as required by the LCP.
- The project does not appear to have included a permanent survey monument as required by the LCP.

### **Wetland/Riparian Resources**

The project proposes to place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. However, no biotic report was done for the project as required by LCP Policy 5.1.9. Corcoran Lagoon is potential habitat for the Federally-listed steelhead, coho salmon and endangered Tidewater goby. The Lagoon and environs is a wetland which is an environmentally sensitive habitat area (ESHA). A revetment in this ESHA is inconsistent with LCP wetland and wildlife protection policies including, but not limited to, Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands), and Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection).

### **Visual Resources**



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The existing rip-rap (i.e., that rip-rap in place prior to the unauthorized placement of rock), did not wrap fully around the bluff and was only minimally visible from the East Cliff Drive scenic corridor. However, the proposed rip-rap would extend around the bluff and further northward towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor. Such a visual intrusion is contrary to LCP visual policies including, but not limited to, Policies 5.10 et seq (Visual Resources) and Sections 13.10.351 (Purposes of the "PR" District), 13.10.354 (Design Criteria for the "PR" District), 13.20.130(b)(1) (Coastal Zone Visual Compatibility Design Criteria), and 13.20.130(d)(2) (Beach Viewshed Design Criteria).

### **Public Access and Recreation**

The proposed project takes place primarily on parcel number 028-231-01. Pursuant to LCP Policy 2.23.2, parcel number 028-231-01 has been identified as a "Coastal Priority Site." Pursuant to LCP Figure 2-5, this site is reserved for "acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat." Pursuant to Policy 2.23.2, a master plan is required for development at this site – no master plan is part of the County's approval.

The proposed revetment removes recreational sandy beach area from availability on this Coastal Priority Site. Some portion of this site may also be in the public trust (i.e., it is partially covered by Corcoran Lagoon) or a property where the public has established a prescriptive right to access, but the County's approval has not discussed and/or examined these possibilities. The site is also subject to a "beach easement," the parameters of which – including any development restrictions – have not been described. The County approval dismisses the loss of recreational sandy beach area as "less than significant" and does not contain any mitigation for this beach access loss. However, the project will remove approximately 900 – 1,200 square feet of publicly used recreational sandy beach from use at this Coastal Priority Site. This is a significant negative access impact that has not been adequately characterized or mitigated by the County approval.

The proposed project also takes place partially on the 23<sup>rd</sup> Avenue road right-of-way. The proposed project will block existing physical access to the beach currently available through this right-of-way area; the County approval included conditions for an offer to dedicate and a reestablished trail across this area. However, the Applicant does not own the property which would be dedicated. The County approval also includes a condition for the Applicant to obtain an ownership interest in the right-of-way parcel through a "quit-claim" from the County. The County approval does not discuss the ramifications of the property ownership of this parcel. A portion of revetment may also extend onto the sandy beach portion of the right-of-way. This right-of-way is either: (1) public property; (2) private property where the public has established a prescriptive access right; or (3) private property where the public has not established a prescriptive access right. Lacking evidence to the contrary, the rebuttal presumption is that the



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public owns or has established prescriptive access rights on the 23<sup>rd</sup> Avenue road right-of-way. The LCP encourages the development of coastal vistas at this location (LCP Policy 7.7.1 and "Coastal Recreation" Program C) and protects this coastal blufftop area from intrusion by non-recreational structures and incompatible uses (Policy 7.7.4).

Accordingly, the project is inconsistent with Coastal Act access and recreation policies, and LCP access and recreation policies including, but not limited to, Policies 7.7 et seq (Coastal Recreation, Shoreline Access, and Beach Access).

In sum, it has not been clearly demonstrated that there is an existing principal structure in danger from erosion. If such a case could be clearly established, it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such an existing principal structure in danger from erosion. If it could be demonstrated that the revetment were the least environmentally damaging feasible solution, the coastal resource impacts associated with such a project have not been adequately characterized and mitigated. The proposed project is not consistent with Coastal Act access and recreation policies, and is not consistent with the LCP's shoreline structure, wetland/riparian, visual resource, and access and recreation requirements.

Please see Exhibit B for the Commissioner Appellants' complete appeal document.

### **4.2 Appeal of Applicants Christine Hooper and Gary Filizetti**

The two Applicants contend that "the [Santa Cruz County] conditions impose requirements and conditions that are far beyond any impacts caused by this development and represent an attempt to obtain public rights and shift public liability to a private property owner." The Applicants generally describe the following contentions:

- The Applicants contend that the County's approval "seeks unreasonable dedications of private property for public use in violation of the Constitutions of the State of California and the United States of America," specifically requirements: to build a stairway; to offer to dedicate an easement on the Applicant's property; to maintain the trail located within the required easement area; to maintain landscaping required to be placed on public property.
- The Applicants contend that the County's action creates "unreasonable personal liability on the private property owner for public use" because of the County's requirement for the Applicants to "maintain the established public access to the 'forebeach' in a permanent usable and safe condition."
- The Applicants contend that the County's approval contains "conflicts" because the Applicants may be required to meet both Coastal Commission and County mitigation requirements.

Please see Exhibit C for the Applicants' complete appeal document.

## **5. Procedural History (Post-County Action)**



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On September 15, 1999, the Commission opened and continued the substantial issue hearing on the appeal because the County had not delivered the Administrative Record on the County's decision to the Commission's Central Coast District office in time for Commission staff to prepare a staff report with a full analysis and recommendation for the Commission's September meeting (note: the County Administrative record was since received on October 1, 1999). Subsequently, the item was scheduled for the Commission's October 1999 hearing in Oceanside. The Applicant requested, and was granted, a postponement from the October hearing agenda in order to ensure that the Applicants' consulting engineering geologist would be able to attend the Commission hearing (see Exhibit K for hearing postponement correspondence).

The Applicant subsequently requested a second postponement (to the January Commission hearing) in order to have adequate time with which to gather materials in support of the unfiled CDP for that portion of the project within the Coastal Commission's coastal permitting jurisdiction (as described earlier). In the interest of hearing both the appeal and the Commission application at the same hearing, this second postponement was likewise granted. Staff has consistently informed the Applicant that the preference would be to hear the appeal and the application to the Commission at the same time in the interest of sound public policy and streamlined review. Unfortunately, however, as of the date of this staff report, the additional requested filing materials have not been received and this related CDP application remains unfiled (see Exhibit M for most recent status letter on this application).

While Commission staff would still prefer that the appeal and the related application be heard at the same time, this is not possible without additional postponements. The Applicant has known since August 1999 the materials necessary to file the CDP application with the Commission, and has not submitted these materials; the Applicant was likewise informed in May 1998 of many of the same informational requirements and did not submit any such materials. As such, it is not clear that additional postponements would ensure that the two items could be heard simultaneously. The subject request is for after-the-fact recognition of an unpermitted revetment that has been in place for nearly three years. Additional postponements at this time would not serve the public interest. Commission staff believe that the Applicant has been given ample opportunity to provide materials in support of the unfiled application. Although it creates an unnatural split in the project (in terms of the split CDP jurisdiction), Commission staff believe that it no longer serves any purpose to postpone this matter any further.

In any case, the Applicant has submitted three additional items of information since the County acted on the since appealed CDP: (1) a report by the consulting geologist, Rogers Johnson titled "Response to Coastal Commission Appeal, Appeal No. A-3-SCO-99-056" dated November 22, 1999; (2) Letter from Jerry Smith regarding Corcoran Lagoon habitat issues; and (3) a proposal for an alternative access mitigation. These materials have been used in the preparation of this staff report.



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### 6. 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. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

***Motion.** I move that the Commission determine that Appeal Number A-3-SCO-99-056 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

***Staff Recommendation of Substantial Issue.** Staff recommends a no vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.*

***Resolution To Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-SCO-99-056 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

### 7. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development.

***Motion.** I move that the Commission approve Coastal Development Permit Number A-3-SCO-99-056 for the development proposed by the Applicant.*

***Staff Recommendation of Denial.** Staff recommends a no vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*

***Resolution To Deny The Permit.** The Commission hereby denies a coastal development permit for the proposed development on the grounds that the project will not conform with the policies of the Santa Cruz County Local Coastal Program, and that it is located between the sea and the first public road nearest the shoreline and it will not conform with the access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

### Recommended Findings and Declarations



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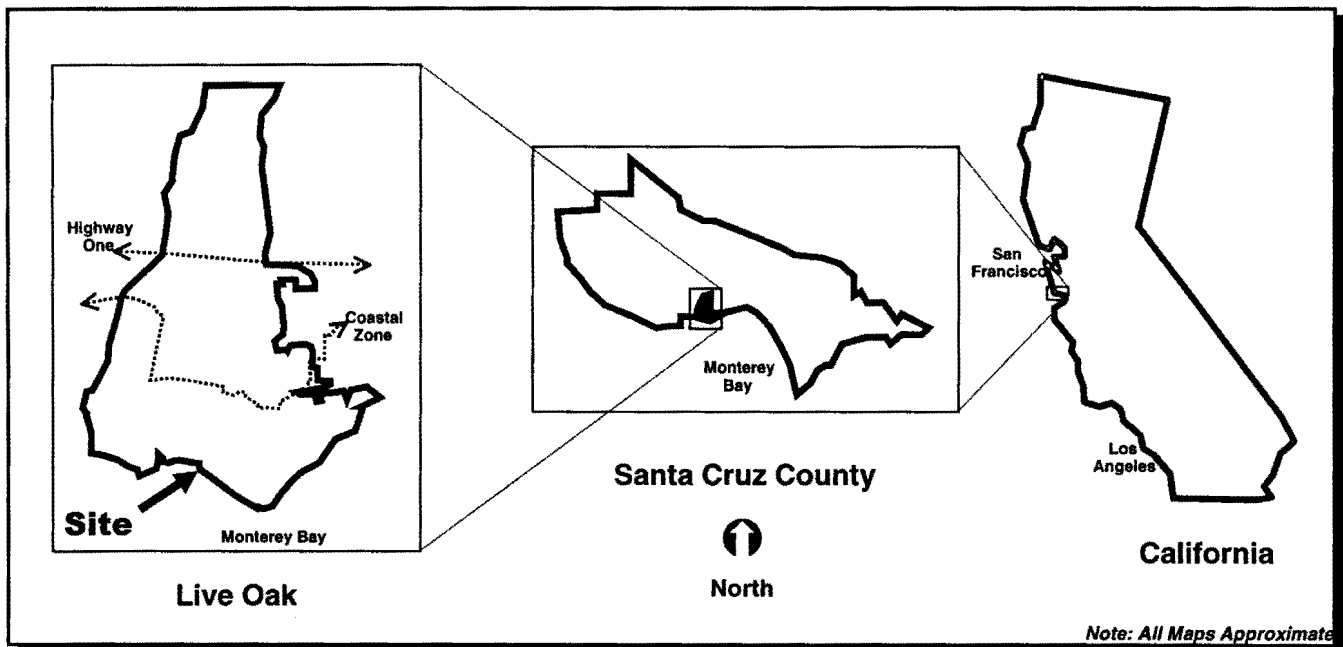
The Commission finds and declares as follows:

### 8. Project Description & Background

The proposed revetment is located on the beach and bluffs at Santa Maria Cliffs Beach fronting Corcoran Lagoon at the seaward end of 23<sup>rd</sup> Avenue in the unincorporated Live Oak area of Santa Cruz County.

#### 8.1 Regional Setting

Situated on the northern shore of the Monterey Bay, Santa Cruz County is bordered to the north and south by San Mateo and Monterey Counties. Santa Cruz County is characterized by a wealth of natural resource systems ranging from mountains and forests to beaches and the Monterey Bay itself. The Bay has long been a focal point for area residents and visitors alike providing opportunities for surfers, fishermen, divers, marine researchers, kayakers, and boaters, among others. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore became part of the largest federally protected marine sanctuary in the nation.<sup>2</sup>



Santa Cruz County's coastal setting, its mild climate, and multicultural identity combine to make the area a desirable place to both live and visit. As a result, Santa Cruz County has seen extensive

<sup>2</sup> The Monterey Bay National Marine Sanctuary.



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development and regional growth over the years. In fact, Santa Cruz County's population has nearly doubled since 1970 alone with projections showing that the County will be home to over one-quarter of a million persons by the year 2000.<sup>3</sup> This growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services but also the need for parks and recreational areas. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, coastal recreational resources are seen as a critical element in helping to meet these needs. Furthermore, with coastal parks and beaches themselves attracting visitors into the region, an even greater pressure is felt at coastal recreational systems such as that found in Live Oak. With Santa Cruz County beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the population centers of the San Francisco Bay area and the Silicon Valley nearby, this type of resource pressure is particularly evident in Live Oak.

Live Oak is part of a larger area including the Cities of Santa Cruz and Capitola that is home to some of the best recreational beaches in the Monterey Bay area. Not only are north Monterey Bay weather patterns more conducive to beach recreation than the rest of the Monterey Bay area, but north bay beaches are generally the first beaches accessed by visitors coming from the north of Santa Cruz. With Highway 17 providing the primary access point from the north (including San Francisco and the Silicon Valley) into the Monterey Bay area, Santa Cruz, Live Oak, and Capitola are the first coastal areas that visitors encounter upon traversing the Santa Cruz Mountains. As such, the Live Oak beach area is an important coastal access asset for not only Santa Cruz County, but also the entire central and northern California region.

See Exhibit D for regional location maps.

### **8.2 Live Oak Area**

Live Oak represents the unincorporated segment of Santa Cruz County located between the City of Santa Cruz and the City of Capitola. The Live Oak coastal area is well known for excellent public access opportunities for beach area residents, other Live Oak residents, other Santa Cruz County residents, and visitors to the area. Walking, biking, skating, viewing, surfing, fishing, sunbathing, and more are all among the range of recreational activities possible along the Live Oak shoreline. In addition, Live Oak also provides a number of different coastal environments including sandy beaches, rocky tidal areas, blufftop terraces, and coastal lagoons. These varied coastal characteristics make the Live Oak shoreline unique in that a relatively small area can provide different recreational users a diverse range of alternatives for enjoying the coast. By not being limited to one large, long beach, or solely an extended stretch of rocky shoreline, the Live Oak shoreline accommodates recreational users in a manner that is typical of a much larger access complex.

Primarily residential with some concentrated commercial and industrial areas, Live Oak is a substantially

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<sup>3</sup> Census data from 1970 shows Santa Cruz County with 123,790 persons; by 1996, California Department of Finance estimated that this number had increased to 243,000 persons; Association of Monterey Bay Area Governments (AMBAG) projections show that the population is expected to increase to 259,905 by the year 2000.



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urbanized area with few major undeveloped parcels remaining. Development pressure, particularly for shoreline armoring, has been disproportionately intense for this section of Santa Cruz County.<sup>4</sup> In fact, much of the Live Oak coastline is armored in some way with rip-rap or seawalls, and the shoreline armoring extending from the Santa Cruz Harbor's east jetty through to the Capitola wharf covers a total area of approximately 4½ acres of sandy beach. Because Live Oak is projected to absorb the majority of the unincorporated growth in Santa Cruz County, development pressure will likely continue to tax Live Oak's public infrastructure (e.g., streets, parks, beaches, etc.).<sup>5</sup> Given that the beaches are the largest public facility in Live Oak, this pressure will be particularly evident in the beach area.

See Exhibit D for Live Oak area maps.

### 8.3 Project Location

The proposed project is located on the bluffs and beach fronting the seaward end of 23<sup>rd</sup> Avenue. The beach at this location is known locally as Santa Maria Cliffs Beach or Corcoran Lagoon Beach. This broad beach extends from a narrow tidal shelf area adjacent to Sunny Cove (upcoast) through to the promontory at Applicant's residence above the beach. Corcoran Lagoon is present both inland (across East Cliff Drive) and temporally between East Cliff Drive and the ocean at this wide beach area below the Applicant's residence. Contrasting this wide sandy beach area at the Corcoran Lagoon inlet area, the beach setting changes quite drastically at this promontory and becomes extremely narrow all the way down to the westernmost outcroppings of rock at Soquel (aka Pleasure) Point (downcoast). This narrow beach is defined on its inland edge by rip-rap protecting residential structures along the blufftop and is most often referred to as 26th Avenue Beach. In fact, the Commission's ReCAP project estimates that almost one acre of the recreational beach area has been covered by revetments along the stretch of 26th Avenue Beach between Corcoran Lagoon and Moran Lake.<sup>6</sup> See Exhibits D and E.

### 8.4 Project Description

The existing permitted rip-rap revetment below the Applicant's blufftop residence historically extended along the narrow 26th Avenue Beach frontage, slightly wrapping around the headland at 23<sup>rd</sup> Avenue and inland towards East Cliff Drive. This existing revetment was initially installed in some form prior to the Coastal Act and has been repaired and maintained several times since. The Applicants now propose to extend this existing revetment inland perpendicular to the ocean along the bluff. The County's action describes this as a 60 linear foot extension; the County-approved site plan shows an approximately 65

<sup>4</sup> Although the Live Oak shoreline accounts for only about 7% of the Santa Cruz County coast, from 1983-1993 this shoreline accounted for over 20% of the coastal development projects immediately adjacent to the shoreline, and over 36% of the projects associated with shoreline armoring (source: California Coastal Commission Regional Cumulative Assessment Project (ReCAP) Database).

<sup>5</sup> The LCP identifies Live Oak at buildout with a population of approximately 29,850 persons; based on the County's recreational formulas, this corresponds to a park acreage of 150-180 acres. Though Live Oak accounts for less than 1% of Santa Cruz County's total acreage, this projected park acreage represents nearly 20% of the County's total projected park acreage.

<sup>6</sup> Approximately 1,700 linear feet of shoreline armoring were identified in this stretch as of 1993. Using 20 feet of sand beach coverage as the general width of these structures, this translates to approximately 34,000 square feet of beach now covered by rock. Shoreline armoring since 1993 will have increased this figure.



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foot extension. Commission staff field verification indicates that the proposed extension is actually approximately 100 linear feet. Approximately 500 cubic yards (or roughly 1,200 tons) of rock is involved placed at a approximately 2:1 slope gradient with a 10 foot keyway excavated in the sandstone bedrock below the beach. It is particularly important to note that the revetment is not intended to protect the blufftop residence, but rather is proposed to protect the existing revetment at this site.

The Applicant also proposes a pathway connecting from the existing blufftop foot trail both over the revetment to the forebeach, and along the bluff edge inland towards East Cliff Drive. The path over the revetment would be accomplished through positioning rip-rap; the inland path would be constructed along the inland edge of the of the bluff with a rock border along its beach edge.

See Exhibit F for proposed project plans.

### 8.5 Unpermitted Development

In February 1997, the proposed revetment extension was installed without benefit of a coastal development permit. An emergency permit had been issued by the County to repair the existing permitted revetment (County Emergency Permit 4914 E issued 2/7/97), but this emergency permit did not cover the proposed revetment extension. County Emergency Permit 4914 E was for approximately 225 tons of rock (or about 1/5 of that currently proposed) to maintain the *existing* revetment at the site. On February 24, 1997, Commission staff informed the Applicants that the constructed revetment extension was a violation of the Coastal Act's permitting requirements; County staff also informed the Applicants at this time that the work was not covered by County Emergency Permit 4914 E. Subsequently, on May 1, 1997 the Applicants were informed that all unpermitted rock was to be removed.

However, because the unpermitted rock was placed within Corcoran Lagoon, a wetland which may provide habitat for endangered species<sup>7</sup>, Commission staff and County staff in consultation with the California Department of Fish and Game (CDFG) determined that removal of the rock would need to be deferred until water levels in Corcoran Lagoon subsided to the extent that the rock could be removed without endangering these listed species. Ultimately, it was not until November 1997 that Lagoon conditions were conducive to removal of the rock. By this time, predictions of a major El Niño winter storm event were prevalent, and County and Commission staff allowed for a partial removal of the unpermitted rock with the remainder to stay in place until the County had taken an action on the Applicants' request for a revetment extension application (the subject appeal). At that time, a County decision on the unpermitted project seemed imminent and Commission staff determined it was prudent to let the County take its regulatory action prior to the Commission taking action.

Although Commission staff, County staff and the Applicants have had a series of meetings and

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<sup>7</sup> Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.



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discussions regarding resolution of the violation and the CDP applications during the course of 1998 and 1999, the County did not take an action on the proposed project application until August 6, 1999. As a result, the majority of the unpermitted rock has now been in place for nearly 3 years (i.e., since February 1997).



Consideration of the proposed revetment extension in this staff report is based solely upon the policies contained in the County's LCP, and the Coastal Act's public access and recreation policies as applicable, as if the project had not yet been installed. However, please note that consideration of this application does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act.

### 9. Substantial Issue Findings

In general, the Commissioner Appellants raise issues with respect to the project's conformance with certified Santa Cruz County LCP policies regarding shoreline structures and their associated impacts. Commissioner Appellants generally contend that it has not been clearly demonstrated that there is an



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existing structure that is significantly threatened as required by the LCP. If such a case could be clearly established, it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such a threatened existing structure. If it could be demonstrated that the proposed revetment were the least environmentally damaging feasible solution, the coastal resource impacts associated with such a project have not been adequately characterized and mitigated. Public access impacts are particularly clouded by property ownership issues. As summarized below, each of these issues raises a substantial issue with respect to the project's conformance with the Santa Cruz County LCP.

In general, the Applicant Appellants raise issues regarding the legality and proportionality of the access mitigations required by the County for the access impacts associated with the proposed revetment. As noted in this staff report, the public access impacts of the proposal are particularly clouded by property ownership issues. As such, the proportionality of access mitigations to access impacts is difficult to measure. To the extent that such issues are LCP issues, these issues too raise a substantial issue with respect to the project's conformance with the Santa Cruz County LCP.

Additional detail supporting these substantial issue findings is provided in the corresponding recommended findings for the coastal development permit.

### 9.1 Shoreline Structures

#### 9.1.1 Existing Structure

The LUP states that structural shoreline protection measures shall only be used to protect "existing structures, vacant lots which through lack of protection threaten adjacent lots, public works, public beaches, or coastal dependent uses." The IP mirrors this limitation but expands upon what constitutes an existing structure by defining such as "existing residences and business or commercial structures." In this case, the revetment extension is not proposed to protect the blufftop residence, but rather is proposed to protect the existing revetment at this site. In other words, the proposed revetment would protect another revetment. Because the LCP limits protection measures at this location to those designed to protect the existing residence, a substantial issue is raised.

#### 9.1.2 Threat to Existing Structure

The LCP requires demonstration of "a significant threat to an existing structure" if a shoreline protection structure is to be considered. The subject residence is 50 to 75 feet from the break in slope defining the meandering bluff edge at this location and is not currently threatened by shoreline erosion (see page 2 of Exhibit F). As stated by the Applicant's consulting geologist at the time the revetment was installed in 1997, "the [bluff erosion] to date does not threaten the Filizetti residence" (Rogers Johnson, 1/30/97 letter report). The Applicant maintains that the *existing permitted revetment* (fronting the ocean-side bluff) is in danger because a combination of creek induced erosion and oblique surf attack may scour and undermine the end of the existing permitted structure to the point that the end portion might fail, ultimately threatening the blufftop residence.



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However, even were the existing revetment to be considered a "structure" allowed shoreline protection, it is not clear from the geologic evidence that there is a "significant threat" to this structure. It is clear that Corcoran Lagoon and Rodeo Creek do meander adjacent to the subject coastal bluff at times. During storm surge conditions, wave runup and creek flow would result in some oblique storm attack at the base of the bluff proposed for armoring. However, although some amount of scouring and erosion is likely, it is not clear that such conditions have resulted in a significant threat to the existing revetment. In fact, the Applicant's consulting geologist has indicated that the bluff has changed little at this location in over 70 years: "the loss of the aforementioned promontory [a chunk of bluff that eroded away in the 1983 storms] is the only measurable retreat observed since the first aerial photographs [dating from 1928]" (Rogers Johnson, 11/22/99 letter report; see Exhibit G for the site plan view of this 1983 retreat event). In other words, there has been only one erosional event in the past 70 years, and no measurable retreat at this location since 1983. This is consistent with Commission staff site observations over the years. Accordingly, it is not clear that there is a "significant threat" to the revetment at this location. Because the LCP requires demonstration of a significant threat to allow structural protection, a substantial issue is raised.

### **9.1.3 Alternatives to Shoreline Protection**

Even were it to have been demonstrated that an existing structure for which protective measures were allowed was significantly threatened at this location, the LCP requires a "thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure." Moreover, the LCP only allows structural measures "if non-structural measures...are infeasible from an engineering standpoint or not economically viable." In this case, it appears that "relocation or partial removal" of the existing revetment is a reasonable engineering solution. In other words, as the bluff retreats on the inland bluff side of the subject area, the tapered end of the existing revetment subject to additional scour from the backside could be recontoured so that the revetment continues to front the ocean-side bluff and protect the blufftop residence. Such maintenance of existing revetments to ensure that they are operating correctly is more reasonable from a policy standpoint than would be a revetment to protect a revetment. The Commission's staff engineer has evaluated the project and determined that such an option is indeed feasible at this location.

In addition, other soft approaches may be feasible in this case. The Applicant's consulting geologist concluded in 1997 that although not as effective as rip-rap if there is an "intense, prolonged rainy season," "softer approaches such as revegetation and drainage control may alleviate the problem" (Rogers Johnson, 5/27/97 letter report). The "no project" alternative likewise appears feasible in this case since the Applicant's consulting geologist has indicated that there has been no measurable erosion since 1983 and the existing residence is not threatened at this time. In the evaluation of the no project alternative, the consulting geologist indicates that "if the slope proposed for protection is unprotected, it will gradually be eroded at its base, causing time-lagged slope failures that will eventually affect the Filizetti property" (Rogers Johnson, 5/27/97 letter report). Over time, most all unprotected coastal bluffs will erode - this is what bluffs do naturally. The fact that such erosion over time may "eventually affect the Filizetti property" is not sufficient to dismiss the "no project" alternative. Moreover, it is the existing



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revetment that is being protected according to the County findings and conditions, not the residence. Because the LCP only allows structural protection if non-structural measures are infeasible, and non-structural measures including, but not limited to, the no project alternative and maintenance of the existing revetment to recontour its end-point are feasible, a substantial issue is raised.

### **9.1.4 Sand Supply Impacts**

The LCP requires that "the protection structure must not...adversely affect shoreline processes and sand supply." The County asserts that this is the case, however, there is no discussion of this issue (or supporting documentation) in the County findings. The Commission's experience statewide has been that shoreline protection structures have a significant and measurable effect on shoreline process and sand supply. The proposed revetment would cover the toe and front of a coastal bluff. Bluff materials that would have contributed to the sand supply regime would be retained by such a structure, and the back beach location would be fixed to the detriment of the recreational beach area at this location as the shoreline migrates inland. The project includes no mitigation for this impact. Because of this, a substantial issue is raised.

### **9.2 Public Access**

The proposed project takes place primarily on parcel number 028-231-01. A portion of parcel number 028-231-01 is within the County's coastal permit jurisdiction and a portion is within the Commission's jurisdiction (see Exhibits E and F). Parcel number 028-231-01 is identified in the LCP as a "Coastal Priority Site" that is reserved for "acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat." The LCP requires a master plan for development at this site. Because the County did not consider or approve a master plan for the coastal priority site, a substantial issue is raised.

The LCP requires that any necessary shoreline protective structures (i.e., those that meet policy tests for need as described above) "must not reduce or restrict public beach access." The portion of the revetment within the County's jurisdiction also takes place partially on the 23rd Avenue road right-of-way (see Exhibits E and F). The proposed project will block existing physical access to the beach currently available through this right-of-way area (see Exhibit F). The County approval includes conditions for an offer to dedicate and a reestablished trail across this area. These requirements are the basis of the appeal by Appellants (and Applicants) Filizetti and Hooper.

In any case, however, the Applicant does not own the 23<sup>rd</sup> Avenue right-of-way property which would be dedicated. The County approval also includes a condition for the Applicant to obtain an ownership interest in the right-of-way parcel through a "quit-claim" from the County. The County approval does not discuss the ramifications of the property ownership of this parcel. This right-of-way is either: (1) public property; (2) private property where the public has established a prescriptive access right; or (3) private property where the public has not established a prescriptive access right. In any case, the public has used this area for many, many years as a beach access and blufftop viewing location. Lacking evidence to the contrary, the rebuttable presumption is that the public owns or has established





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prescriptive access rights on the 23rd Avenue road right-of-way. Because public access ramifications of the blocked trail, offer to dedicate, and right-of-way ownership issues are unclear, a substantial issue is raised.

### 9.3 Visual Resources

The LCP requires the protection of the public vista from the beach and East Cliff Drive at this location through "minimizing disruption of landform and aesthetic character." The LCP also encourages the development of coastal vistas at this location and protects this coastal blufftop area from intrusion by non-recreational structures and incompatible uses. LCP policies as a whole speak to the need to minimize development in sight of the public viewshed. The existing rip-rap (i.e., that rip-rap in place prior to the unauthorized placement of rock), did not wrap fully around the bluff and was only minimally visible from the East Cliff Drive scenic corridor. However, the proposed rip-rap would extend around the bluff and further northward towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor. It has not been demonstrated that the proposed revetment extension is necessary to protect an existing structure that is significantly threatened. In fact, as described above, it appears that a lesser project (or no project) is a feasible alternative. Such a reduced project would better "minimize disruption of landform and aesthetic character" as required by the LCP. As such, a substantial issue is raised.

### 9.4 Wetland and Other Environmentally Sensitive Habitats

Since only the portion of the site above the toe of the bluff is within the County's coastal permitting jurisdiction, the wetland and other ESHA issues are primarily applicable to the Commission's original jurisdiction area. As previously indicated, the portion of the project in the Commission's jurisdiction is the subject of unfiled CDP application 3-97-027 (see Exhibit M). To the extent that any wetland and other ESHA is in the County's jurisdiction, or is affected by the County's coastal permit decision, the following substantial issue determination applies.

The LCP requires an area to be defined as "sensitive habitat" if it includes a wetland or stream, or if listed species are present. The LCP further requires a biotic assessment of these areas "as part of normal project review to determine whether a full biotic report should be prepared." The project proposes to place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. This system may provide habitat for listed species<sup>8</sup>. Per the LCP, this area is considered ESHA. As such, a biotic assessment is required. Because no such assessment or report was conducted for this project, a substantial issue is raised.

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<sup>8</sup> Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.



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The LCP only allows uses that are dependent on ESHA resources within ESHAs with minor exceptions (that are inapplicable to this case – see CDP ESHA findings). The County's findings do not discuss any such ESHA policy issues, and the County staff report indicates that there is no ESHA at this location. The County has recognized that a Federally Endangered Species is present (Tidewater goby (*Eucyclogobius newberryi*)), and includes a condition disallowing construction activities when this species is present, but this is the only discussion of ESHA impacts and policy consistency. The LCP prohibits development in wetlands and riparian corridors unless an exception is granted per the LCP's Riparian Corridor and Wetlands Protection ordinance; no such exception was applied for or granted in this case. Because the project does not meet the LCP's ESHA criteria, a substantial issue is raised.

### 10. Coastal Development Permit Determination

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the CDP for that portion of the proposed project within the County's jurisdiction. The standard of review for this CDP determination is the County LCP and the Coastal Act's access and recreation policies. The substantial issue discussion above is incorporated herein by reference.

#### 10.1 Geologic Conditions and Hazards

##### 10.1.1 LCP Policies

The LCP addresses shoreline protective structures primarily through LUP Policy 6.2.16 (Structural Shoreline Protection Measures) and IP Section 16.10.070(g)(5) (Coastal Bluffs and Beaches Permit Conditions):

*LUP Policy 6.2.16 Structural Shoreline Protection Measures. Limit structural shoreline protection measures to structures which protect existing structures, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal-dependent uses. Require any application for shoreline protective measures to include a thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure, protection of the upper bluff or area immediately adjacent to the threatened structure, and engineered shoreline protection such as beach nourishment, revetments, or vertical walls. Permit structural protection measures only if non-structural measures (e.g., building relocation or change in design) are infeasible from an engineering standpoint or not economically viable. The protection structure must not reduce or restrict public beach access, adversely affect shoreline processes and sand supply, increase erosion on adjacent properties, or cause harmful impacts on wildlife and fish habitats or archeological or paleontological resources. The protection structure must be placed as close as possible to the development requiring protection and must be designed to minimize adverse impacts to recreation and to minimize visual intrusion. Shoreline protection structures shall be designed to meet approved engineering standards for the site as determined through the environmental*



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review process. Structural protection measures should only be considered where a significant threat to an existing structure exists, or where seawalls have been constructed on adjoining parcels. Detailed technical studies will be required to accurately define the oceanographic conditions affecting the site. All shoreline protective structures shall incorporate permanent survey monuments for future use in establishing a survey monument network along the coast for use in monitoring seaward encroachment or slumping of revetments and erosion trends. No approval shall be given for shoreline protective structures that do not include permanent monitoring and maintenance programs. Such programs shall include a report to the County every five years or less, as determined by a qualified professional, after construction of the structure, detailing the condition of the structure and listing any recommended maintenance work. Maintenance programs shall be recorded and shall allow for County removal or repair of a shoreline protective structure, at the owner's expense, if its condition creates a public nuisance or if necessary to protect public health and safety.

**IP Section 16.10.070(g)(5).** *Shoreline protection structures shall be limited to structures which protect existing residences and business or commercial structures, vacant lots which through lack of protection threaten adjacent developed lots, public works, public beaches, or coastal dependent uses. Structural protection measures shall be permitted only if non-structural measures (i.e. building relocation or change in design) are infeasible from an engineering or economic standpoint. Seawall construction shall be considered only where a significant threat to an existing structure exists, where seawalls have been constructed on adjoining parcels and where rip-rap would not adequately protect the structure. The protection structure shall be designed to meet adequate engineering standards based on the geologic hazards assessment or other detailed technical information. The protection structure shall not: (i) reduce or restrict public beach access; (ii) adversely affect shoreline processes and sand supply; (iii) increase erosion on adjacent properties; (iv) cause harmful impacts on wildlife and fish habitats; (v) be placed further than necessary from the development requiring protection; or (vi) create a significant visual intrusion.*

In addition, LUP Policy 6.2.18 specifically prohibits new structures in coastal hazard areas in most cases:

**LUP Policy 6.2.18 Prohibit New Structures In Coastal Hazard Areas.** *...Prohibit new structures, public facilities, and service transmission systems in coastal hazard areas unless they are necessary for existing residences or to serve vacant lots which through lack of protection threaten adjacent developed lots, public facilities, public beaches or coastal dependent uses.*

These policies generally allow for shoreline protection when it has been demonstrated that "existing structures, vacant lots which through lack of protection threaten adjacent lots, public works, public beaches, or coastal dependent uses" are "significantly threatened." Such structural protection is only allowable when non-structural measures are infeasible, and when such protection does not reduce public beach access, adversely affect shoreline processes and sand supply, or negatively impact habitat. On the whole, these LCP policies recognize that structural shoreline protection measures have negative resource



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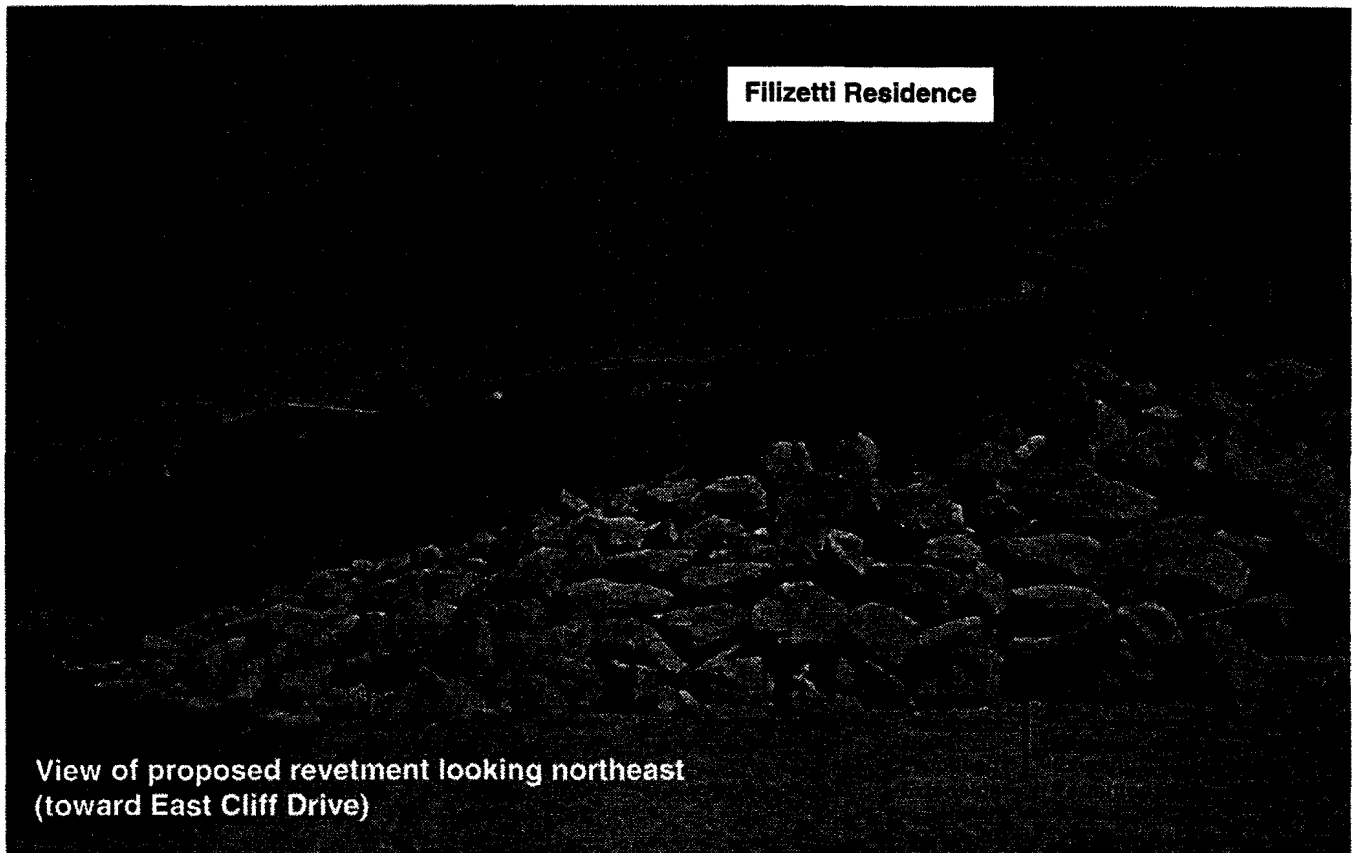
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impacts and are to be utilized sparingly – and only when it can be demonstrated that such measures are warranted and appropriately mitigated.

Under the LCP, the first and most important analytical test of this policy is to determine whether or not there is an existing structure in danger from erosion.



### 10.1.2 Defining the Existing Structure

The LUP states that structural shoreline protection measures shall only be used to protect “existing structures, vacant lots which through lack of protection threaten adjacent lots, public works, public beaches, or coastal dependent uses.” The IP mirrors this limitation but expands upon what constitutes an existing structure by defining such as “existing residences and business or commercial structures.” In this case, the revetment extension is not proposed to protect the blufftop residence, but rather is proposed to protect the existing revetment between the residence and the ocean at this site. In other words, the proposed revetment would protect another revetment.

The existing revetment is not a residence, business or commercial structure and does not constitute a structure for the purposes of LUP Policy 6.2.16 and IP Section 16.10.070(g)(5). The revetment proposed to be protected is an accessory structure put in place for the sole purpose of protecting the principal



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residential use atop the coastal bluff. Accessory Structure is defined in the LCP as follows:

*IP Section 13.10.700-S ("S" Definitions) Structure, Accessory. A detached, subordinate structure, or a subordinate structure attached to a main structure by a breezeway, the use of which is appropriate, subordinate and customarily incidental to that of the main structure or the main use of the land and which is located on the same site with the main structure or use.*

Further distinguishing the existing revetment as an accessory structure are the LUP and Zoning designations for the property in question. The LUP designation for the site is "Existing Parks and Recreation" and the beach and 23<sup>rd</sup> Avenue road right-of-way are zoned "Parks, Recreation and Open Space" (PR). Revetments are only allowed in the PR district as "accessory structures and uses."<sup>9</sup>

The Commission has generally interpreted LCP and Coastal Act policies to allow shoreline protection only for existing *principal* structures. The Commission must always consider the specifics of each individual project, but has found that accessory structures (such as patios, decks, gazebos, stairways, etc.) are not required to be protected or can be protected from erosion by relocation or other means that do not involve shoreline armoring.

The only structure at this location that would qualify for shoreline protection under the LCP (were such protective measures otherwise deemed necessary and accompanied by appropriate mitigations) is the blufftop residence. The existing revetment at the site is an accessory structure that does not constitute an "existing structure" for the purposes of LUP Policy 6.2.16 or IP Section 16.10.070(g)(5). To find otherwise is to find that a pile of rock on the beach is a principal structure for which shoreline protection can be pursued. Such a finding would imply that the remainder of the armored coastline in Santa Cruz County could likewise be protected with separate shoreline structures. The end result of such a line of reasoning would allow seawalls or revetments to be placed seaward of existing seawalls or revetments in order to protect these "existing structures." What would likely follow would be proposals to backfill these new lines of shoreline defense to create additional blufftop space at the expense of beach space. It is unclear how many iterations of such shoreline protective structures might ultimately be pursued at any location under such a policy interpretation.

### 10.1.3 Defining the Threat to the Existing Structure

The LCP requires demonstration of "a significant threat to an existing structure" if a shoreline protection structure is to be considered. Moreover, LUP Policy 6.2.18 prohibits new structures in coastal hazard areas (such as the subject site) "unless they are necessary for existing residences."<sup>10</sup> In this case, the subject residence is 50 to 75 feet from the break in slope defining the meandering bluff edge at this

<sup>9</sup> In any case, these accessory structures and uses must be according to a Master Site Plan (per IP Section 13.10.355) for the site in question; there is no such plan in place here (IP Section 13.10.352). Moreover, any such allowable accessory structures are to be "subordinate and incidental to the main structure or main use of the land" pursuant to IP Section 13.10.611 (IP Section 13.10.352).

<sup>10</sup> Policy 6.2.18 likewise allows new structures in coastal hazard areas if necessary "to serve vacant lots which through lack of protection threaten adjacent developed lots, public facilities, public beaches, or coastal dependent uses." However, these other specifications do not apply to this project.



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location and is not currently threatened by shoreline erosion (see Page 2 of Exhibit F). As stated by the Applicant's consulting geologist at the time the revetment was installed in 1997, "the [bluff erosion] to date does not threaten the Filizetti residence" (Rogers Johnson, 1/30/97 letter report). Because the existing residence at this location is not threatened without installation of the proposed revetment, the project is inconsistent with LUP Policies 6.2.16 and 6.2.18, and with IP Section 16.10.070(g)(5).

The Applicant maintains that the *existing permitted revetment* (fronting the ocean-side bluff) is in danger because a combination of creek induced erosion and oblique surf attack may scour and undermine the end of the existing permitted structure to the point that the end portion might fail, ultimately threatening the blufftop residence. However, even if the existing revetment could be considered a "structure" allowed shoreline protection (which it is not as described above), it is not clear from the geologic evidence that there is a "significant threat" to this revetment structure. It is clear that Corcoran Lagoon and Rodeo Creek do meander adjacent to the subject coastal bluff at times. During storm surge conditions, wave runup and creek flow would result in some oblique storm attack at the base of the bluff proposed for armoring. However, although some amount of scouring and erosion is likely, it is not clear that such conditions have resulted in a significant threat to the existing revetment. In fact, the Applicant's consulting geologist has indicated that the bluff has changed little at this location in over 70 years: "the loss of the aforementioned promontory [a chunk of bluff that eroded away in the 1983 storms] is the only measurable retreat observed since the first aerial photographs [dating from 1928]" (Rogers Johnson, 11/22/99 letter report). In other words, there has been only one erosional event in the past 70 years, and no measurable retreat at this location since 1983. Moreover, according to the Applicant's consulting geologist, the 1983 erosion event took place in an area currently covered by the existing permitted revetment – no measurable erosion has taken place in the area proposed for the revetment extension (Rogers Johnson, 11/22/99 letter report, Plate 1; see Exhibit G). This is consistent with Commission staff site observations over the past 25 years.

Accordingly, there is not a "significant threat" to either the residence or the existing revetment at this location. Lacking a demonstrable significant threat, the proposed revetment extension is unnecessary and is inconsistent with LUP Policies 6.2.16 and 6.2.18, and with IP Section 16.10.070(g)(5).

### 10.1.4 Alternatives to Shoreline Protection

Even if it were to have been demonstrated that an existing structure for which protective measures were allowed was significantly threatened at this location, the LCP requires a "thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure" (LUP Policy 6.2.16). Moreover, the LCP only allows revetments "if non-structural measures...are infeasible from an engineering standpoint or not economically viable" (LUP Policy 6.2.16; also IP Section 16.10.070(g)(5)).

In this case, "relocation or partial removal" of the existing revetment is a reasonable engineering solution. In other words, as the bluff retreats on the inland bluff side of the subject area, the tapered end portion of the existing revetment subject to additional scour from the backside (i.e., the northernmost terminus of the existing revetment) could be recontoured so that the revetment continues to front the



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ocean-side bluff and protect the blufftop residence as it was originally designed to do. Such maintenance of existing revetments to ensure that they are operating correctly is more reasonable from a policy standpoint than would be a revetment to protect a revetment. The Commission's staff engineer has evaluated the project and determined that such an option is indeed feasible at this location.

In addition, other soft approaches may be feasible in this case. The Applicant's consulting geologist concluded in 1997 that although not as effective as rip-rap if there is an "intense, prolonged rainy season," "softer approaches such as revegetation and drainage control may alleviate the problem" (Rogers Johnson, 5/27/97 letter report). The "no project" alternative likewise appears feasible in this case since the Applicant's consulting geologist has indicated that there has been no measurable erosion since 1983 and the existing residence is not threatened at this time. In the evaluation of the no project alternative, the consulting geologist indicates that "if the slope proposed for protection is unprotected, it will gradually be eroded at its base, causing time-lagged slope failures that will eventually affect the Filizetti property" (Rogers Johnson, 5/27/97 letter report). Over time, most all unprotected coastal bluffs will erode – this is what bluffs do naturally. The fact that such erosion over time may "eventually affect the Filizetti property" is not sufficient to dismiss the "no project" alternative. Moreover, it is the existing revetment that is being protected according to the County findings and conditions, not the residence.

There are several alternatives to the  $\pm 100$  foot revetment extension that are feasible in this case and which would not involve the substantial negative impacts to coastal resources that would be expected from the proposed project (as described in the findings below). The most LCP-consistent solution would be maintenance of the existing revetments to restack and recontour the end of the wall where it is subject to flanking and creek/lagoon erosion. The Commission's staff engineer has concluded that this is indeed a feasible engineering solution at this location. Accordingly, the proposed revetment extension is unnecessary and is inconsistent with LUP Policies 6.2.16 and 6.2.18.

### **10.1.5 Sand Supply Impacts**

The LCP requires that "the protection structure must not...adversely affect shoreline processes and sand supply" (LUP Policy 6.2.16; also IP Section 16.10.070(g)(5)). The County asserts that this is the case, however, there is no discussion of this issue in the County findings. The Commission's experience statewide has been that shoreline protection structures have a significant and measurable effect on shoreline process and sand supply. The natural shoreline processes referenced in LUP Policy 6.2.16 and IP Section 16.10.070(g)(5), such as the formation and retention of sandy beaches, can be significantly altered by construction of protective structures, since bluff retreat is one of several ways that beach quality sand is added to the shoreline. Bluff retreat and erosion is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. Shoreline armoring directly impedes these natural processes.

Beach material comes to the shoreline from inland areas, carried by rivers and streams; from offshore deposits, carried by waves; and from coastal dunes and bluffs, becoming beach material when the bluffs or dunes lose material due to wave attack, landslides, surface erosion, gullyng, et cetera. Coastal dunes



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are almost entirely beach sand, and wind and wave action often provide an on-going mix and exchange of material between beaches and dunes. Many coastal bluffs are marine terraces – ancient beaches which formed when land and sea levels differed from current conditions. Since the marine terraces were once beaches, much of the material in the terraces is often beach quality sand or cobble, and a valuable contribution to the littoral system when it is added to the beach. While beaches can become marine terraces over geologic time, the normal exchange of material between beaches and bluffs is for bluff erosion to provide beach material. When the back beach or bluff is protected by a shoreline protective device, the natural exchange of material either between the beach and dune or from the bluff to the beach will be interrupted and, if the shoreline is eroding, there will be a measurable loss of material to the beach. Since sand and larger grain material is the most important component of most beaches, only the sand portion of the bluff or dune material is quantified as beach material.

Some of the effects of engineered armoring structures on the beach (such as scour, end effects and modification to the beach profile) are temporary or difficult to distinguish from all the other actions which modify the shoreline. Such armoring also has distinct qualitative impacts to the character of the shoreline and visual quality. However, some of the effects that a structure may have on natural shoreline processes can be quantified, including: 1) loss of the beach area on which the structure is located; 2) the long-term loss of beach which will result when the back beach location is fixed on an eroding shoreline; and 3) the amount of material which would have been supplied to the beach if the back beach or bluff were to erode naturally.

In this case, the proposed revetment would extend primarily inland along the bluff headland fronting 23<sup>rd</sup> Avenue. Recreational sandy beach area that would be covered by such a revetment is in the Commission's coastal permitting jurisdiction and is the subject of unfiled CDP application 3-97-027. As such, the loss of the beach area on which the structure would be located is covered by this related application. Furthermore, although the proposed revetment would tie into an existing revetment fronting the subject residence on the ocean side of the property (originally installed pre-Coastal Act), it would not itself fix the back beach location at this site. The back beach was effectively "fixed" when the existing, permitted, pre-Coastal Act on-site revetment was installed years ago. Thus, the sand supply impact applicable to the County's action is limited to the retention of sand generating bluff materials.

The subject site is located within the Santa Cruz Littoral Cell. The Santa Cruz Cell is a high volume cell with annual longshore transport estimated between 300,000 and 500,000 cubic yards of beach quality materials annually. The dominant direction of longshore transport in this sand supply system is north north-west to south south-east; at the subject site, this translates roughly into a west to east distribution. Materials in this system have been estimated to come mainly from coastal streams (roughly 75%), with 20% coming from bluffs such as the subject site, and 5% coming from coastal ravines and sand dunes.<sup>11</sup>

The quantifiable loss of sand to the Santa Cruz Littoral Cell that would be due to the proposed revetment extension would be the volume of total material which would have gone into the sand supply system

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<sup>11</sup> Adapted from the Coastal Commission's March 1994 ReCAP project report for the Monterey Bay titled: *Preliminary Report on Resource Status and Change*.





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over the lifetime of the proposed shoreline protective device (applicable only to the County's coastal permitting jurisdiction). This volume of material would be the area between (a) the likely future bluff face location with shoreline protection; and (b) the likely future bluff location without shoreline protection. The Commission generally applies a sand supply calculation to determine this volume of material

In this case, however, the Applicant's consulting engineer has indicated that there has been no measurable erosion at the location of the proposed revetment in over 70 years (Rogers Johnson, 11/22/99 letter report). As such, the long-term bluff retreat rate at the proposed revetment location is essentially zero; the result is that the volume of material that would be retained due to the proposed revetment would also be essentially zero. In other words, since the bluff is not retreating at this location, a revetment would not result in the loss of materials that would have been supplied to the Santa Cruz Littoral Cell sand supply system. More importantly, since the bluff is not retreating, the revetment extension is not necessary (as described above).

### **10.1.6 Geologic Conditions and Hazards Conclusion**

The existing revetment at the site does not constitute an existing structure for which shoreline armoring can be pursued under the LCP. In any case, neither the existing blufftop residence nor the existing permitted revetment at the site are significantly threatened as required by the LCP to allow for shoreline armoring. Furthermore, there are feasible alternatives for maintaining the existing revetment, including those that do not involve extending the revetment, that would allow this existing structure to continue to protect the blufftop residence as it was originally designed to do. The "no project" alternative is likewise feasible given the lack of significant retreat or coastal erosional danger to LCP-defined existing structures at this location. As such, the Commission finds that the proposed revetment request is unnecessary and inconsistent with the certified LCP policies discussed in this finding and is therefore denied.

## **10.2 Public Access and Recreation**

### **10.2.1 Applicable Policies**

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." Because this project is located seaward of the first through public road (East Cliff Drive), for public access and recreation issues the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act.



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Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

*Section 30210 In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

*Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

*Section 30213. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred....*

*Section 30214(a). The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case...*

*Section 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

*Section 30223. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas. Section 30240(b) states:

*Section 30240(b). Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The LCP also protects existing public access and describes the need to obtain access easements. The LCP states:

*LUP Policy 7.7.10 Protecting Existing Beach Access. Protect existing pedestrian...access to all beaches to which the public has a right of access, whether acquired by grant or through use, as established through judicial determination of prescriptive rights.... Protect such beach access through permit conditions such as easement dedication...*

*LUP Policy 7.6.3 Utilization of Existing Easements. Seek to utilize existing publicly owned lands where possible to implement the trail system, subject to policy 7.6.2.*



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**LUP Policy 7.7.4 Maintaining Recreation Oriented Uses.** *Protect the coastal blufftop areas and beaches from intrusion by nonrecreational structures and incompatible uses to the extent legally possible without impairing the constitutional rights of the property owner, subject to policy 7.6.2.*

**LUP Policy 7.6.2 Trail Easements.** *Obtain trail easements by private donation of land, by public purchase, or by dedication of easements...*

**LUP Policy 7.7.11 Vertical Access.** *Determine whether new development may decrease or otherwise adversely affect the availability of public access, if any, to beaches and/or increases the recreational demand. If such impact will occur, the County will obtain as a condition of new development approval, dedication of vertical access easements adequate to accommodate the intended use, as well as existing access patterns, if adverse environmental impacts and use conflicts can be mitigated, under the following conditions: (b) Within the Urban Services Line: from the first public road to the shoreline if there is not dedicated access within 650 feet....*

**LUP Policy 7.7.12 Lateral Access.** *Determine whether new development would interfere with or otherwise adversely affect public lateral access along beaches. If such impact will occur, the County will obtain...dedication of lateral access along bluff tops where pedestrian and/or bicycle trails can be provided and where environmental and use conflict issues can be mitigated....*

**IP Section 15.01.060(b) Trail and Beach Access Dedication.** *As a condition of approval for any permit for a residential, commercial, or industrial project, an owner shall be required to dedicate an easement for trail or beach access if necessary to implement the General Plan or the Local Coastal Program Land Use Plan.*

LCP access and recreation policies otherwise specifically applicable to the subject site include:

**LUP Policy 2.22.1 Priority of Uses within the Coastal Zone.** *Maintain a hierarchy of land use priorities within the Coastal Zone:*

*First Priority: Agriculture and coastal-dependent industry*

*Second Priority: Recreation, including public parks; visitor serving commercial uses; and coastal recreation facilities.*

*Third Priority: Private residential, general industrial, and general commercial uses.*

**LUP Policy 2.22.2 Maintaining Priority Uses.** *Prohibit the conversion of any existing priority use to another use, except for another use of equal or higher priority.*

**LUP Policy 2.23.2 Designation of Priority Sites.** *Reserve the sites listed in Figure 2-5 for coastal priority uses as indicated. Apply use designations, densities, development standards, access, and circulation standards as indicated.*



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***LUP Policy 2.23.3 Master Plan Requirements for Priority Sites.*** Require a master plan for all priority sites, with an integrated design providing for full utilization of the site and a phasing program based on the availability of infrastructure and projected demand. Where priority use sites include more than one parcel, the master plan for any portion shall address the issues of site utilization, circulation, infrastructure improvements, and landscaping, design and use compatibility for the remainder of the designated priority use site. The Master Plan shall be reviewed as part of the development permit approval for the priority site.

LCP Figure 2-5 identifies the beach parcel at this location as one of the "Coastal Priority Sites – Live Oak" (APN 028-231-01). This parcel is subject to the following special development standards:

### ***LUP Coastal Priority Site – APN 028-231-01***

***Designated Priority Use:*** "Existing Park, Recreation & Open Space": Acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat.

***Special Development Standards:*** Locate permanent public recreational support facilities, as feasible, above the area subject to coastal inundation.

***Circulation and Public Access Requirements:*** Provide coastal access parking as feasible.

***LUP Policy 7.7.1 Coastal Vistas.*** Encourage pedestrian enjoyment of ocean areas and beaches by the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches...

***LUP Policy 7.7.18 Areas Designated for Neighborhood Public Access.*** Maintain a system of neighborhood access points appropriate for access by local residents at the following locations...23<sup>rd</sup> Avenue....

***LUP Policy 7.7.19 Improvements at Neighborhood Access Points.*** Provide, encourage, and/or require provision of the following improvements appropriate to neighborhood access points: path improvements and maintenance; bicycle parking; recycling; garbage collection; and law enforcement...

### **10.2.2 Property Ownership Issues – 23<sup>rd</sup> Avenue**

The proposed project would take place primarily on the open beach parcel (parcel number 028-231-01) and partially on the 23<sup>rd</sup> Avenue road right-of-way. The beach parcel is owned by Applicant Hooper. However, neither of the Applicants own the 23<sup>rd</sup> Avenue right-of-way property. Applicant Filizetti does not own any of the land on which the proposed revetment would be placed; Mr. Filizetti's residence is, however, atop the coastal bluff and existing revetment at this location. See Exhibits E and F.

The 23<sup>rd</sup> Avenue road right-of-way extends from East Cliff Drive (inland of the site) through to the Monterey Bay. Historically, 23<sup>rd</sup> Avenue connected through to the former location of East Cliff Drive, which historically ran laterally between the row of houses (extending south of the site) and the ocean at



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this location. This beach-fronting segment of East Cliff Drive was long ago lost to coastal erosion and the roadway realigned inland. 23<sup>rd</sup> Avenue itself is currently a narrow street which provides paved access to four existing homes on the southeast side of the road. The pavement stops at the fourth home. The right-of-way, however, continues through to the ocean. Undeveloped bluff and beach areas are within this right-of-way area, as is a portion of the existing permitted revetment fronting the Filizetti residence. See Exhibit E.

The property ownership status of the 23<sup>rd</sup> Avenue right-of-way remains unresolved as of the date of this staff report. The County's findings do not discuss the ramifications of the property ownership of this road right-of-way. Parcel maps for this area are inconclusive. However, it is clear that the 23<sup>rd</sup> Avenue right-of-way is not shown as a separate parcel on parcel maps for the area (again, see Exhibit E). This is unlike other *private* roadways in the area such as 22<sup>nd</sup> Avenue (aka Coastview Drive) directly inland of the subject site which *is* a privately owned separate parcel on which taxes are paid. The implication is that the 23<sup>rd</sup> right-of-way, like other right-of-ways in the area, came under the public trust when the it was offered to the County at the time of the original subdivision in the late 1800s. The County has since renamed this roadway (from Moran Drive to 23<sup>rd</sup> Avenue) and there has been a long history of public use as evidenced in part by the existing meandering trail to the beach at this location.

This right-of-way in the County's CDP jurisdiction is either: (1) public property; (2) private property where the public has established a prescriptive access right; or (3) private property where the public has not established a prescriptive access right. The County has acknowledged that the *Applicants* do not own the right-of-way by conditioning their approval for the Applicant's to obtain a quit-claim to the property from the County (County Condition II.C, see Exhibit A). Even if it were conclusively shown that the right-of-way were not public, the public has used this area for many, many years as a beach access and blufftop viewing location and the Commission is unaware of any restrictions that have been placed over the years on this long public use. Although only a court of law can establish or extinguish prescriptive rights of access, it would appear that *if* the public does not already own the right-of-way, the public may have established a prescriptive right of access at this location. In any case, from the evidence identified to date, it appears that the public owns or has established prescriptive access rights on the 23rd Avenue road right-of-way. Lacking evidence to the contrary, this is the rebuttable presumption at this location.

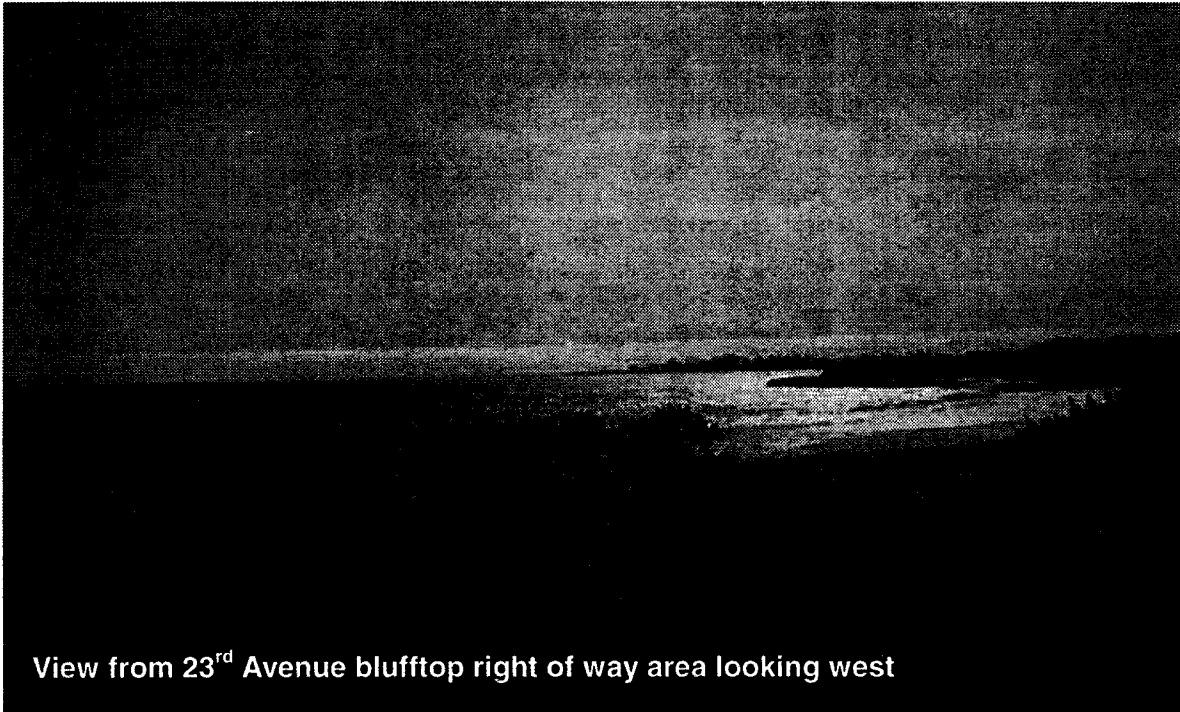
The County conditioned their approval to require the Applicant to obtain an ownership interest in the right-of-way parcel through a "quit-claim" from the County. Establishing ownership in this way is backwards to basic permitting requirements for showing an ownership interest in the property for which development is proposed. In this case, the County would need to be a co-applicant as the right-of-way property in question appears to be owned by the public, as are the other County roadways in the vicinity.



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In any case, 23<sup>rd</sup> Avenue is designated in the LCP as a neighborhood accessway for which the development of pathways and public amenities is to be pursued (LUP Policies 7.7.18 and 7.7.19). LUP Policy dictates that such publicly owned lands be utilized where possible for pedestrian trails. Likewise, 23<sup>rd</sup> Avenue provides a stunning coastal vista to the northwest for which the LCP encourages the development of vista points and overlooks with benches and railings, and facilities for pedestrian access to the beaches (LUP Policy 7.7.1).



View from 23<sup>rd</sup> Avenue blufftop right of way area looking west

This right-of-way is valuable coastal property for which the LCP dictates public uses. A “quit-claim,” as at least preliminarily agreed to by the County, would represent a gift of these lands to the Applicants. In urban recreational coastal areas such as Live Oak, where recreational amenities are in high demand, where land available for such amenities is limited, and where coastal land costs are exorbitant, such a gift of public lands is particularly senseless in light of LCP and Coastal Act policies protecting public access at this location.

The development of such public lands with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), and that would displace other potential LCP-described priority uses of the right-of-way, is inconsistent with LCP Policies 2.22.1, 2.22.2, 7.7.1, 7.7.18, 7.7.19 and Coastal Act Policies 30210, 30211, 30213, 30221, 30223 which protect this 23<sup>rd</sup> Avenue right-of-way area for public recreational uses. In addition, such a revetment extension would unnecessarily degrade the adjacent beach recreational area through the presence of an unnatural pile of rocks displacing recreational beach use. As such, the project is also



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inconsistent with Coastal Act Section 30240(b) protecting the adjacent beach areas from significant degradation.

### **10.2.3 Coastal Priority Site – Beach Parcel**

The majority of the revetment extension would take place on the open beach parcel below the coastal bluff at this location. This beach parcel (parcel number 028-231-01) encompasses much of the sandy beach seaward of East Cliff Drive at this location, extending between the 23<sup>rd</sup> Avenue right-of-way and two beach parcels to the north and west (a County owned beach parcel to the northwest and another private parcel to the north on the seaward side of East Cliff Drive). A portion of parcel number 028-231-01 is within the County's coastal permit jurisdiction and a portion is within the Commission's jurisdiction.<sup>12</sup> The beach parcel is owned by Applicant Hooper. See Exhibit E.

The LCP defines parcel number 028-231-01 as a "Coastal Priority Site" that is specifically reserved for "acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat" (LUP Policy 2.23.2 and LUP Figure 2-5). This site is designated "Existing Parks and Recreation" in the LUP and zoned "Parks, Recreation and Open Space" (PR). Pursuant to LUP Policy 2.23.3, a master plan (providing for full utilization of the site) is required for all priority sites. There is no master plan for this site, and the County did not process one as part of the project currently on appeal to the Commission. The County did not analyze any 'coastal priority site' issues.

Moreover, the coastal priority site may have other property ownership issues within the Commission's CDP jurisdiction. First, it is clear that there has been longstanding public use of this beach parcel. The Commission is unaware of any restrictions that have been placed over the years on this long public use. Although only a court of law can establish or extinguish prescriptive rights of access for this property, it would appear that the public may have established a prescriptive right of access at this location. Second, the entire coastal priority site parcel is at times covered by Corcoran Lagoon and/or high tides and may be a public trust area. Parcel maps from the late 1800s show this area as the mouth of the Corcoran Lagoon estuarine system. This mouth of this system was later fragmented when East Cliff Drive was installed inland of the subject parcel. In any case, although these issues do not apply to the area within the County CDP jurisdiction that is the subject of this appeal, they help to frame the level of unresolved property ownership concern at this location.

A property issue with the coastal priority beach site that is applicable to the County jurisdictional area, is that assessor parcel maps indicate a "beach easement" covers the seaward half of the parcel. The County did not analyze, and there is no information that has been provided as of the date of this staff report which indicates to what degree this easement may affect development of the coastal priority site, if at all.

In any case, it is clear that the LCP has prioritized this site for coastal recreation uses and facilities. It is inconceivable that a revetment would be allowed on this site absent a preponderance of evidence

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<sup>12</sup> Again, the toe of the bluff at this location defines the CDP jurisdictional boundary. The parcel boundary, however, is not coterminous with the toe of the bluff. Parcel number 028-231-01 extends up the bluff to a point approximately 10 to 20 horizontal feet from the toe of the bluff.



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supporting protection of an existing structure consistent with LCP policies. In this case, the evidence shows that such a revetment is not warranted (see previous geologic findings).

The development of the coastal priority site with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), and that would displace other potential LCP-described priority uses of the site, is inconsistent with LCP Policies 2.22.1, 2.22.2, 2.23.3, and Coastal Act Policies 30210, 30211, 30213, 30221, 30223 protecting this coastal priority site for public recreational uses. In addition, such a revetment extension would unnecessarily degrade the adjacent beach recreational area through the presence of an unnatural pile of rocks displacing recreational beach use inconsistent with Coastal Act Section 30240(b) which protects the adjacent beach areas from significant degradation.

### **10.2.4 Blocked Public Access – Existing Trail**

As identified in the County's approval, the proposed revetment would block existing beach access historically available from East Cliff Drive through the 23<sup>rd</sup> Avenue right-of-way. This access crosses the paved portion of 23<sup>rd</sup> (extending four houses seaward of East Cliff Drive) and then becomes a meandering path that historically led down the bluff edge to the terminus of the existing permitted revetment. This pathway has been blocked by the unpermitted revetment at its beachmost terminus for almost 3 years (i.e., since the revetment was installed without benefit of a coastal permit in February 1997). See Exhibit F for an approximate location of this trail.

The LCP and Coastal Act policies cited above protect this existing accessway and do not allow for development which would interfere with continued public use thereof (policies including, but not limited to, LUP Policy 7.7.10 and Coastal Act Sections 30210 and 30211). Moreover, the LCP requires that any necessary shoreline protective structures "must not reduce or restrict public beach access" (LUP 6.2.16 and IP Section 16.10.070(g)(5)). In light of these public access policies, the County required the reestablishment of the trail over the proposed revetment to the fore beach area "by means of a stairway (or alternative access acceptable to Planning Staff)" (County Condition II.A, see Exhibit A). The County likewise required an offer to dedicate (OTD) covering the reconfigured trail segment, and further requiring the Applicant to maintain the accessway (County Conditions II.E, IV.B, and V.F.1, see Exhibit A). It is these conditions that precipitated the Applicants appeal of the project to the Commission (see Exhibit C).

The OTD that was required by the County is ambiguous on at least two points. First, County Condition II.E requires the OTD for that portion of the site located "along the existing foot trail on the owner/applicant's property." The portion of the "existing" foot trail that is on the "owner/applicant's" property is limited to that portion of the existing trail that has since been covered with unpermitted rock on the coastal priority site (parcel number 028-231-01). This is because neither of the Applicants own the 23<sup>rd</sup> Avenue road right-of-way. The County also required the Applicant to establish an ownership interest in the right-of-way as a condition of approval (County Condition II.C, see Exhibit A). However, it is not clear that the required ownership interest must pre-date the OTD. Second, County Condition V.F.1 describes an OTD with the same issues as County Condition II.E, but it includes recognition of a



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segment leading to the fore beach at the site. County Condition V.F.1 describes a different area than County Condition II.E. As such, the County-required OTD(s) is(are) unclear.

If, as Commission staff believe, the road right-of-way is owned by the County, these OTD flaws would not be fatal as the legal ability of the public to access the beach would be preserved (over a County roadway and then an access easement to the beach). If, however, the County were to quit-claim their ownership interest in the right-of-way, then a private parcel (i.e., the 23<sup>rd</sup> Avenue road right-of-way) would intervene between the first public road (East Cliff Drive) and the required OTD. In any case, existing public access is not preserved, as required by the Coastal Act and LCP, by such a legal instrument.

Notwithstanding the question of the effectiveness of the OTD as a legal instrument, were the revetment otherwise approvable (which it is not, as described in earlier geologic hazard findings), the reconfigured accessway shown on the Applicant's plans would serve to recreate, and possibly improve, the existing pathway access from the 23<sup>rd</sup> Avenue blufftop to the beach at this location. This is because the accessway would have included path segments which extended to both the fore and back beach (see Exhibit F). Such fore and back beach access is important at this location because Corcoran Lagoon oftentimes migrates adjacent to the bluff at this location serving to cut-off fore beach access. Two path segments would allow beach users to circumvent this obstacle. However, this part of the project is also not without issues.

First, the Applicant's plans indicate a rip-rap border along the proposed backbeach path segment extending inland another 80 feet or so from the proposed end of the proposed revetment (see Exhibit F). These rip-rap boulders would raise the same issues of consistency with LCP policies as would the proposed revetment. And second, the Applicant has indicated that a stepped stairway would be constructed within the proposed revetment extension to provide access to the forebeach. The County previously required the reestablishment of the trail to the fore beach area by stairway or equivalent (County Condition II.A, see Exhibit A).

Commission staff have not seen any engineering specifications of such a rip-rap stairway, but are concerned that such a stairway would be difficult, if not impossible, to adequately construct and maintain within a rip-rap revetment. In terms of construction, it would be difficult to position boulders in such a way to mimic a stairway. In terms of maintenance, revetments are constantly in a state of oftentimes imperceptible movement (including subsidence, upsurge, and rock migration) and a stairway within such a structure is not likely to remain for any length of time (particularly during and after storm events) without constant maintenance. It is likely that such a stairway would require a concrete and steel foundation of some sort to be stable for any length of time. Such a stairway might need to be elevated above the revetment (e.g., on caissons or the like) to function at all. In fact, the Applicant has provided an exhibit showing what this accessway might eventually look like after construction were it to be constructed on piers (see Exhibit H, page 8).

In any case, any such pathway/stairway proposals would need better definition and more precise plans with which to analyze their consistency with the LCP. Lacking such information, as in this case, it is



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difficult to determine whether or not such a reconfigured accessory would be adequate to protect public access at this site consistent with applicable LCP and Coastal Act policies.

### **10.2.5 Public Access – Sand Supply Impacts**

As detailed earlier, the Commission's experience statewide has been that shoreline protection structures have a significant and measurable effect on shoreline process and sand supply. Natural shoreline processes, such as the formation and retention of sandy beaches, can be significantly altered by construction of protective structures, since bluff retreat is one of several ways that beach quality sand is added to the shoreline. Bluff retreat and erosion is a natural process resulting from many different factors such as erosion by wave action causing cave formation, enlargement and eventual collapse, saturation of the bluff soil from ground water causing the bluff to slough off and natural bluff deterioration. Shoreline armoring directly impedes these natural processes.

To the extent that such sand supply impacts would reduce the useable recreational beach at this location, there would be a significant public access impact with the proposed revetment. LUP Policy 6.2.16 requires that any otherwise approvable shoreline protection structure "must not reduce or restrict public beach access." In this case, the proposed revetment would extend primarily inland along the bluff headland fronting the 23<sup>rd</sup> Avenue. Recreational sandy beach area that would be covered by such a revetment is in the Commission's coastal permitting jurisdiction and is the subject of unfiled CDP application 3-97-027. As such, the loss of the *beach area* on which the structure would be located (which would be approximately 1,200 square feet of coverage), is the subject of this related application. Furthermore, although the proposed revetment would tie into an existing revetment fronting the subject residence on the ocean side of the property (originally installed pre-Coastal Act), it would not itself fix the back beach location at this site. The back beach was effectively "fixed" when the existing, permitted, pre-Coastal Act on-site revetment was installed years ago. Thus, the sand supply impact applicable to the County's CDP jurisdiction is limited the retention of sand generating bluff materials.

However, as detailed in the sand supply findings earlier, the Applicant's consulting engineer has indicated that there has been no measurable erosion at the location of the proposed revetment in over 70 years (Rogers Johnson, 11/22/99 letter report). If this is true and the bluff is not retreating at this location, a revetment is not necessary. Any future proof of erosion that is threatening an existing structure would have to be evaluated, and if a shoreline structure was to be approved, then mitigation would be required for any loss of materials from the Santa Cruz Littoral Cell sand supply system.

### **10.2.6 Public Access and Recreation Conclusion**

The proposed revetment extension would be constructed partially on the 23<sup>rd</sup> Avenue road right-of-way and partially on the "coastal priority site" beach parcel at this location. The LCP designates each of these areas (in different ways) for coastal recreational uses, facilities, and amenities. The development of the coastal priority site and the right-of-way with a revetment extension that serves no public purpose, that is not necessary to protect an existing structure significantly threatened (as discussed earlier), that would unnecessarily degrade the adjacent beach recreational area, and that would displace other potential LCP-



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described priority uses, is inconsistent with the LCP and Coastal Act policies cited in this finding.

Moreover, the proposed revetment would block an existing publicly used meandering trail from 23<sup>rd</sup> Avenue to the beach. Were the revetment to be otherwise approvable, the reconfigured trail alignment previously required by the County would need to be better defined (both the legal instrument and the proposed physical trail improvements) in order to be found consistent with the Coastal Act and LCP access policies cited in this finding.

Because of these access inconsistencies, and because the revetment is not otherwise approvable (as detailed in the previous geologic findings), the Commission denies the proposed revetment extension.

Finally, in the time since the County took action on the application, the Applicant has proposed an alternative accessway to mitigate for the loss of the pathway segment on 23<sup>rd</sup> Avenue (see Exhibit H). Under this alternative, the Applicant would reconstruct a boardwalk accessway within an existing County easement located to the north of the existing pathway at 23<sup>rd</sup> Avenue. This existing boardwalk was destroyed in the 1982-83 storms and never reconstructed by the County. This accessway is currently overgrown and only marginally useful at present because of variations in grade, holes in the path, Corcoran Lagoon overlap, et cetera. Also, the pathway generally ends before reaching the forebeach due to the typical water levels of Corcoran Lagoon in this area. See Exhibit H for photos of this accessway.

Such boardwalk accessway improvements as proposed by the Applicant would be welcome at this site, and could be used to mitigate some of the access impacts of the proposed revetment were it otherwise have been shown to be necessary and approvable (which it has not; see earlier geologic findings). However, if such off-site improvements were to be provided in-lieu of preserving existing access at 23<sup>rd</sup>, it would be difficult to find these trade-off consistent with LCP and Coastal Act policies protecting the existing accessway at 23<sup>rd</sup>. The County already has a public access easement in the existing boardwalk area. As described above, the property ownership situation at 23<sup>rd</sup> Avenue is ambiguous and would need to be clearly established before any such trade-offs could be evaluated against LCP and Coastal Act access policies. In general, if it is not possible to avoid impacts and mitigation is necessary, mitigation at the site of the impacts is the preferable method.

In any case, as described above, the Commission is denying the proposed revetment extension. As a result, the existing pathway from 23<sup>rd</sup> Avenue will not be blocked by the revetment in the future. Accordingly, there is no need for access mitigation for the proposed project.<sup>13</sup>

### **10.3 Visual Resources**

#### **10.3.1 Applicable Policies**

Visual access to and along the coast is a form of public access. As such, and as described in the above

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<sup>13</sup> While impacts from the proposed project will be avoided by denying the project, there remains an outstanding question of mitigating the access and recreational impacts associated with nearly 3 years of the revetment being in place without permits. See also Enforcement findings.



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public access and recreation finding, the standard of review for visual access is not only the certified LCP but also the access policies of the Coastal Act. Applicable Coastal Act policies are:

*Section 30210. In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

*Section 30211. Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

*Section 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The County's LCP is fiercely protective of coastal zone visual resources, particularly views from public roads, and especially along the shoreline. The LCP states:

*LUP Policy 5.10.2 Development Within Visual Resource Areas. Recognize that visual resources of Santa Cruz County possess diverse characteristics.... Require projects to be evaluated against the context of their unique environment and regulate structure height, setbacks and design to protect these resources consistent with the objectives and policies of this section....*

*LUP Policy 5.10.3 Protection of Public Vistas. Protect significant public vistas...from all publicly used roads and vistas points by minimizing disruption of landform and aesthetic character caused by grading operations,... inappropriate landscaping and structure design.*

*LUP Policy 5.10.6 Preserving Ocean Vistas. Where public ocean vistas exist, require that these vistas be retained to the maximum extent possible as a condition of approval for any new development.*

*LUP Policy 6.2.16 Structural Shoreline Protection Measures. ... The protection structure must ...be designed to minimize...visual intrusion. ...*

*IP Section 16.10.070(g)(5)(vi). Shoreline protection structures...shall not create a significant visual intrusion.*



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*IP Section 13.20.130(b)(1) Entire Coastal Zone, Visual Compatibility. The following Design Criteria shall apply to projects site anywhere in the coastal zone: All new development shall be sited, designed and landscaped to be visually compatible and integrated with the character of surrounding neighborhoods or areas.*

*IP Section 13.20.130(d)(2) Beach Viewsheds, Beaches. The scenic integrity of open beaches shall be maintained....*

### 10.3.2 Visual Access Issues

The LCP requires the protection of the public vista from the beach and East Cliff Drive at this location through "minimizing disruption of landform and aesthetic character" (LUP Policy 5.10.3). The Coastal Act recognizes the public view at the site as a "resource of public importance" that must be protected from interference (Sections 30211 and 30251). The LCP likewise requires that the ocean vista at this site "be retained to the maximum extent possible" (LUP Policy 5.10.6) and that "the scenic integrity of open beaches shall be maintained" (IP Section 13.20.130(d)(2)). LCP and Coastal Act visual access policies as a whole speak to the need to minimize development in sight of the public viewshed.

The existing rip-rap revetment (i.e., that rip-rap in place prior to the unauthorized placement of rock in February 1997), did not wrap fully around the bluff and was only minimally visible from the public vista along the East Cliff Drive. The proposed revetment extension, however, would extend around the bluff and further inland towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor, reframe the ocean vista at this location, and upset the general



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In any case, there are complementary LCP policies at play with this project: both geologic hazards policies and visual resource policies seek to minimize the amount of structural development and landform alteration along coastal bluffs and beaches. In this case, as described earlier, it has not been demonstrated that the proposed revetment extension is necessary to protect an existing structure that is significantly threatened. In fact, as described above, it appears that a lesser project (or no project) is a feasible alternative. Such a reduced project would better "minimize disruption of landform and aesthetic character" as required by the LCP. The less rip-rap boulders in the viewshed the better from a visual access perspective.

In sum, the proposed project is inconsistent with the visual policies cited in this finding and is therefore denied. Denial of the project retains the existing scenic viewshed at this location "to the maximum extent possible" consistent with LCP and Coastal Act policies which protect this resource.

### 10.4 Wetland and Other Environmentally Sensitive Habitats

#### 10.4.1 LCP Policies

The LCP is very protective of riparian corridors, wetlands and other ESHAs. LCP wetland and wildlife protection policies include Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands), and Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection). These LCP Sections are shown in Exhibit I. In general, these LCP policies define and protect ESHAs, allowing only a very limited amount of development at or near these areas.

#### 10.4.2 Consistency Analysis

Since only the portion of the site above the toe of the bluff is within the County's coastal permitting jurisdiction (and thus the subject of this appeal), the wetland and other ESHA issues are primarily applicable to the Commission's original jurisdiction area.<sup>14</sup> In any case, however, the County's portion of the project likewise involves development which affects ESHA.

The LCP requires an area to be defined as ESHA if it includes a wetland or stream, or if listed species are present (LUP Policy 5.1.2, IP Section 16.32.040). In this case, the proposed project would place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. The project purports, in part, to protect against stream scour from these waterbodies. This system may provide habitat for listed species.<sup>15</sup> Per the LCP, this area is considered ESHA.

The LCP requires a biotic assessment of ESHAs "as part of normal project review to determine whether a full biotic report should be prepared" (LUP Policy 5.1.9, IP Section 16.32.070). This project did not include a biotic assessment nor a biotic report. As a result, it is difficult to determine: (1) the extent of

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<sup>14</sup> The subject of unfilled application number 3-97-027.

<sup>15</sup> Tidewater goby (*Eucyclogobius newberryi*, Federal Endangered Species), steelhead (*Oncorhynchus mykiss*, Federally Threatened Species), and coho salmon (*Oncorhynchus kisutch*, Federal Threatened Species, State Endangered Species) are all thought to be present in Corcoran Lagoon/Rodeo Creek system.



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the ESHA, and to what degree portions may be in the County's coastal permit jurisdiction; (2) whether the subject proposed revetment would be allowed at this location in light of ESHA protective policies; and (3) potential impacts and/or appropriate mitigations.

In any case, the LCP only allows uses that are dependent on ESHA resources within ESHAs with minor exceptions. LUP Policy 5.1.3 states:

***LUP Policy 5.1.3 Environmentally Sensitive Habitats.** Designate the areas described in 5.1.2 (d) through (j) as Environmentally Sensitive Habitats per the California Coastal Act and allow only uses dependent on such resources in these habitats within the Coastal Zone unless other uses are: (a) consistent with sensitive habitat protection policies and serve a specific purpose beneficial to the public; (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative.*

In this case, the proposed revetment does not meet LUP Policy 5.1.3 tests: (1) lacking the LCP-required biotic assessment/report, it is difficult to determine if it would be "consistent with sensitive habitat protection policies;" (2) the revetment would not serve a "specific purpose beneficial to the public;" (3) it is not clear that "any adverse impacts on the resource will be completely mitigated" since the LCP-required reports were not prepared in this case; (4) the revetment is not "legally necessary to allow a reasonable economic use of the land; and (5) as previously detailed in the findings above, there is a feasible less-damaging alternative (i.e., no project or maintenance of the existing revetment end). The proposed revetment is not dependent on any ESHA resources and does not otherwise meet any of these LCP tests for uses in such sensitive areas.

### 10.4.3 ESHA Conclusion

It is unclear to what extent the proposed revetment project would involve ESHA resources within the County's coastal permitting jurisdiction because LCP-required reports were not completed. Such a report was also requested, but not submitted as part of the pending unfiled CDP application to the Commission (see Exhibit M). The letter provided by the Applicant on this topic is insufficient for this purpose (see Exhibit J). In any case, it is clear that the proposed revetment would not qualify as an allowable use within an ESHA. The proposed project is inconsistent with LCP ESHA policies, is not necessary to protect an existing threatened structure consistent with the LCP, and is therefore denied. As a result, ESHA concerns with the proposed project no longer apply.<sup>16</sup>

### 10.5 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

<sup>16</sup> Except inasmuch as this denial ultimately requires removal of the revetment (since this is an after-the-fact application). This issue is discussed in more detail in the Enforcement finding.



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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.

Santa Cruz County issued a draft Initial Study for the proposed revetment extension on January 28, 1998. Commission staff commented on the draft Initial Study on February 6, 1999 raising several issues with regards to establishing property ownership (of the beach parcel and the 23<sup>rd</sup> Avenue right-of-way), encroachment on recreational beach area, encroachment on Corcoran Lagoon wetland resources, visual issues, potential alternatives that appeared feasible (including the suggestion that the no project alternative appeared feasible in this case), and potential mitigations were the project to be otherwise shown necessary to protect an existing structure in danger from erosion (see Exhibit L).

Subsequently, Santa Cruz County issued a Negative Declaration for the proposed revetment extension project on March 12, 1998. Commission staff commented on the revised CEQA document and again raised many of the same issues with regards to: the ambiguity of the property ownership where the development was proposed; the lack of quantification of the area of beach recreational space lost to the footprint of the proposed structure; the lack of a demonstration that an existing structure was at risk and that shoreline armoring was even warranted in this case; the lack of any quantification of the sand supply impact; a discussion of potential mitigations should the project be proven warranted to protect an existing structure at risk; and information on the coastal permit jurisdiction for the site (see Exhibit L).

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. All of the issues previously forwarded to the County in early 1998 during the CEQA review period are the same issues that have been discussed in this appeal. Commission staff has been consistent from the beginning, and at each stage in the long process since the unpermitted structure was installed in February 1997, in asserting that approval of this project is not well supported by the facts of the case. There are crucial information gaps, a lack of critical analyses, and major LCP and Coastal Act policy inconsistencies. Most importantly, the geotechnical information available shows that there is not a LCP-recognized existing structure that is significantly threatened at this location that would warrant the proposed shoreline protection and the range of negative coastal resource impacts associated with it.

As illustrated by the findings in this staff report, the Commission finds that the proposed revetment extension would result in significant adverse effects on the environment within the meaning of CEQA and that the "no project" alternative is the least environmentally damaging feasible alternative to the proposed project. Accordingly, the proposed project is not approvable under CEQA and is denied.

### **11. Enforcement**

As described in this staff report, the revetment extension that is the subject of this appeal has been in place since February of 1997. The proposal evaluated herein has been for CDP recognition of that



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portion of the proposed revetment extension inland of the toe of the bluff (i.e., that portion located within the County's CDP jurisdiction). Although this application has been considered based upon the policies contained in the County's LCP and the Coastal Act's public access and recreation policies as applicable, consideration of this application does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act.

In any case, the Applicant has entered into an enforcement agreement with Santa Cruz County arising out of the unpermitted rock installation in the County's jurisdiction (see Exhibit N). This enforcement agreement specifies that, in the event of ultimate denial of the proposed revetment extension, the Applicant "agrees to remove unauthorized construction and restore project area to original condition within 30 days of appeal denial date." Based upon the Commission's denial of this project on appeal, the site must be restored to pre-revetment condition by February 11, 2000 in order for the Applicants to be in compliance with the County enforcement agreement.

There are three concerns with this restoration:

First, since removal and restoration constitute "development" as defined by Coastal Act Section 30106 and LCP IP Section 13.10.700-D, the Applicants will have to file a CDP application to effect removal and restoration. More than likely, there would need to be two CDPs: one for work on the beach (in the Commission's CDP permitting jurisdiction) and an appealable CDP for that portion in the County's CDP jurisdiction above the toe of the bluff.

Second, the area where the revetment was installed is oftentimes occupied by Corcoran Lagoon/Rodeo Creek. As described in this staff report, this system is an ESHA within which listed species may be present at times. Accordingly, the greatest of care and timing is necessary on the part of the Applicant to ensure that this habitat is not unnecessarily threatened by revetment removal operations. CDFG will need to be consulted and CDFG authorizations may be required. In any event, because the Commission has yet to act upon the portion of the unpermitted extension project located within its retained permit jurisdiction, these removal and restoration operations will need to be closely coordinated with Commission staff in the Central Coast District Office.

And third, completion of the unfiled application for that portion of the project located in the Commission's jurisdiction remains outstanding. The latest status letter for this application was sent to the Applicant by Commission staff on August 13, 1999 (see Exhibit M). This August 13, 1999 letter requested additional substantive materials necessary to file the subject application. As of the date of this staff report, these materials have not been received. In any case, the subject application shares the same issues with the appeal currently before the Commission. The major substantive difference is that the standard of review for the unfiled application is the Coastal Act, with site specific (but non-binding) policy guidance provided by the LCP. As such, and barring *substantially* different geotechnical information than has been detailed to date for the project, the Commission's decision on this appeal must be seen as indicative of any future action on this unfiled application.



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In any case, the subject revetment extension has been in place for nearly three years. The subject revetment extension's negative coastal resource impacts (i.e., on public access, on visual resources, on ESHA) have been felt by the public for those 3 years. As discussed in this staff report, these impacts are, and have been, substantial. Although, the Commission sees no need to prolong this issue any longer than absolutely necessary, it is questionable whether or not all the necessary regulatory reviews can occur in the 30 day time frame specified by the County enforcement agreement. Notwithstanding this issue, the Commission encourages restoration to commence at the site as soon as possible.



California Coastal Commission

COUNTY OF SANTA CRUZ  
PLANNING DEPARTMENT

Date: 05/07/1999  
Agenda Item: No.  
Time: After 10:00 a.m.

STAFF REPORT TO THE ZONING ADMINISTRATOR

APPLICATION NO. 97-0076  
APPLICANT: Gary Filizetti  
OWNER: Hooper

APN: 028-231-01

PROJECT DESCRIPTION: Proposal to formally permit approximately 150 cubic yards of rock rip-rap placed under Emergency Permits issued 02/07/97, and an additional 350 cubic yards of rip-rap placed without authorization, in order to stabilize and protect and existing rip-rap shoreline protection structure.

LOCATION: Seaward end of 23rd Avenue right-of-way. Live Oak area.

FINAL ACTION DATE: 01/08/99 (per the Permit Streamlining Act)

PERMITS REQUIRED: Coastal and Grading.

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration

COASTAL ZONE: XX yes      no APPEALABLE TO CCC: XX yes      no

PARCEL INFORMATION

PARCEL SIZE: 3.9 ac (028-231-01),

EXISTING LAND USE: PARCEL: vacant (028-231-01)

SURROUNDING: residential and beach

PROJECT ACCESS: via Corcoran lagoon beach

PLANNING AREA: Live Oak

LAND USE DESIGNATION: parks, recreation and open space district

ZONING DISTRICT: PR

SUPERVISORIAL DISTRICT: First

ENVIRONMENTAL INFORMATION

<u>Item</u>	<u>Comments</u>
a. Geologic Hazards	a. Geotechnical report completed;
b. Soils	b. see Exhibit D for conclusions.
c. Fire Hazard	c. Not Applicable
d. Slopes	d. Steep coastal bluff. Addressed in geotechnical report and engineered plans.
e. Env. Sen. Habitat	e. None
f. Grading	f. Predominantly completed. Additional minor reconfiguring will occur within limits of existing rip-rap.
g. Tree Removal	g. None
h. Scenic	h. Site is designated scenic. Project minimizes visual impact.
i. Drainage	i. Not Applicable
j. Traffic	j. Not Applicable
k. Roads	k. Not Applicable
l. Parks	l. Not Applicable

1.

EXHIBIT A : SANTA CRUZ COUNTY STAFF REPORT,  
1 OF 17 FINDINGS & CONDITIONS

Filizetti/Hooper  
Application No. 97-0076  
APN: 028-231-01

m. Sewer Availability  
n. Water Availability  
o. Archeology

m. Not Applicable  
n. Not Applicable  
o. Not Applicable

#### SERVICES INFORMATION

W/in Urban Services Line: XX yes \_\_\_\_ no

Water Supply: City of Santa Cruz

Sewage Disposal: Sewer

Fire District: Central Fire

Drainage District: Zone 5 of the Santa Cruz County Flood Control and Water Conservation District

#### ANALYSIS & DISCUSSION

The project site is located on a coastal bluff, adjacent to Corcoran Lagoon, the beach and the Pacific Ocean. During the winter storms of early 1997, both storm wave action and stream scour from Rodeo Creek damaged the rip-rap structure, causing it to slump towards the beach and ocean, and caused accelerated erosion to occur at the toe of the bluff, resulting in a near vertical, unstable bluff face and oversteepened rip-rap structure. The structure was repaired under Emergency Coastal and Grading Permits issued on 02/07/97. Additional rock was placed beyond the scope of the issued Emergency permit. This work consisted of adding approximately 500 cubic yards of rock rip-rap to create a uniform and stable slope gradient. Therefore, this application is to formally permit existing, completed work and to rectify the existing violation.

The proposed project will be subject to strong seismic shaking during the design lifetime. The project geotechnical engineer has generated design criteria that will mitigate this potential hazard. The rip-rap that has been placed has been constructed in accordance with these criteria. Adequately constructed rip-rap will reduce the potential for accelerated erosion to occur at the project site.

Since the existing rip-rap essentially conforms to the face of the existing coastal bluff, there will not be a significant change in the topography or surface relief features at the site.

The project site is located on a coastal bluff which is an area having important visual and scenic value. The finished slope will essentially mimic the slope that existed prior to the February 1998 erosional events, and will also match the adjacent rip-rap structure.

The project geotechnical engineers have worked to reduce the total rip-rap to the minimum amount required to adequately protect the existing shoreline protection structure. Final plans shall include landscaping that will consist of plants that will grow out and over the top of the rip-rap to cover it as much as possible and soften hardened edges. Therefore, the proposed project will have a less than significant impact on this resource.

Filizetti/Hooper  
Application No. 97-0076  
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The project essentially conforms to the face of the pre-February erosional events bluff and encroaches, at most, the width of one rip-rap boulder onto the beach at the toe of the bluff. Therefore, the impacts to the established recreational use of the sandy beach will be less than significant.

The project site is located in an area designated for continued public beach access. This access is considered "secondary" to the other "primary" access points located on the west side of Corcoran lagoon and at the 26th Avenue stairway. The project site previously supported an infrequently used foot path extending along the top of the bluff, traversing, in a somewhat treacherous manner, the steep bluff face, and terminating on the beach between the ocean and the lagoon. It appears that this path is used almost exclusively by local residents on an infrequent basis. Placement of unauthorized rip-rap has obliterated the section of foot path that traversed the bluff face. Environmental impact mitigations include restoring beach access within the project area. Proposed plans include a foot path that traverses the bluff face and recently placed rip-rap and terminating on the ocean side of the lagoon. This proposed path sufficiently replaces the type of access that previously existed in the area and meets the mitigation requirements.

Corcoran lagoon supports the Tidewater Goby, a federally protected fish species. The Goby are only present when the lagoon is formed. Permit conditions include construction timing mitigations such that any potential adverse impacts are reduced to a less than significant level.

The project conforms to the pertinent General Plan Sections, 6.2.16 and 7.7b, in that the project is a maintenance and repair project that protects the existing shoreline protection structure, has included an evaluation of reasonable alternatives and provides the least intrusive option, does not reduce or restrict public beach access, significantly affect shoreline processes and sand supply, increase erosion on adjacent properties or cause harmful impacts to fish and wildlife habitats or archaeological or paleontological resources. The project is placed as close as possible to the development requiring protection. The project protects existing pedestrian access through permit conditions, required easement dedication and maintenance. It maintains, provides and encourages neighborhood access including signage and it serves to restore a neighborhood beach access trail with associated future monitoring and maintenance. The final project approval will include a recorded monitoring and maintenance plan.

Please see Exhibit "A" ("Findings") for a complete listing of findings and evidence related to the above discussion.

#### RECOMMENDATION

Staff recommends approval of Application No. 97-0076, based on the attached findings and conditions.

#### **EXHIBIT A**

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#### EXHIBITS

- A. Project Plans
- B. Coastal Zone Findings
- C. Development Permit Findings
- D. Conditions with Mitigation Monitoring Program
- D. Environmental Determination/Negative Declaration with Initial Study
- E. Maintenance and Monitoring Program
- F. Letter from project geologist regarding extent of required rip-rap

Filizetti/Hooper  
Application No. 97-0076  
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SUPPLEMENTARY REPORTS AND INFORMATION REFERRED TO IN THIS REPORT ARE ON FILE AND AVAILABLE FOR VIEWING AT THE SANTA CRUZ COUNTY PLANNING DEPARTMENT, AND ARE HEREBY MADE A PART OF THE ADMINISTRATIVE RECORD FOR THE PROPOSED PROJECT.

Report Prepared By: Joel Schwartz  
Santa Cruz County Planning Department  
701 Ocean Street, 4th Floor  
Santa Cruz CA 95060  
Phone Number: (408) 454-3164

BH.  
**EXHIBIT A**  
**4 OF 17**

## COASTAL ZONE PERMIT FINDINGS

1. THAT THE PROJECT IS A USE ALLOWED IN ONE OF THE BASIC ZONE DISTRICTS, OTHER THAN THE SPECIAL USE (SU) DISTRICT, LISTED IN SECTION 13.10.170(d) AS CONSISTENT WITH THE LUP DESIGNATION.

The project is a permitted use and is consistent with the LUP designation in that, as a coastal erosion control structure that is ancillary and incidental to the use of the site, it is a permitted use in the designated PR Zone Districts.

2. THAT THE PROJECT DOES NOT CONFLICT WITH ANY EXISTING EASEMENT OR DEVELOPMENT RESTRICTIONS SUCH AS PUBLIC ACCESS, UTILITY, OR OPEN SPACE EASEMENTS.

The project is not in conflict with any known easements or development restrictions. The project will not reduce or restrict public access.

3. THAT THE PROJECT IS CONSISTENT WITH THE DESIGN CRITERIA AND SPECIAL USE STANDARDS AND CONDITIONS OF THIS CHAPTER PURSUANT TO SECTION 13.20.130 ET SEQ.

The project is consistent with the Design Criteria and Conditions of this chapter. It is sited and designed to be visually compatible and integrated with the urban, coastal character of the surrounding area. Its presence is subordinate to the natural character of the site.

4. THAT THE PROJECT CONFORMS WITH THE PUBLIC ACCESS, RECREATION, AND VISITOR-SERVING POLICIES, STANDARDS AND MAPS OF THE LOCAL COASTAL PROGRAM LAND USE PLAN, SPECIFICALLY SECTION 4, 5, 7.2 AND 7.3, AND, AS TO ANY DEVELOPMENT BETWEEN THE NEAREST PUBLIC ROAD AND THE SEA OR THE SHORELINE OF ANY BODY OF WATER LOCATED WITHIN THE COASTAL ZONE, SUCH DEVELOPMENT IS IN CONFORMITY WITH THE PUBLIC ACCESS AND PUBLIC RECREATION POLICIES OF CHAPTER 3 OF THE COASTAL ACT COMMENCING WITH SECTION 30200.

The project conforms with the Public Access, Recreation and Visitor-Serving Policies and Public Recreation policies in that it is ancillary and incidental to the use of the site, does not reduce or restrict public access and is designed to conform to, and blend with the natural surroundings.

5. THAT THE PROPOSED DEVELOPMENT IS IN CONFORMITY WITH THE CERTIFIED LOCAL COASTAL PROGRAM.

The project conforms with the certified Local Coastal Program in that the project is a permitted use in the zone district; environmental mitigations and permit conditions reduce to insignificance potentially adverse geotechnical, visual, biotic and beach access impacts and the engineered plans are supported by the required geotechnical work and conform to County Policies and Ordinances.

**EXHIBIT A**

**50617**

DEVELOPMENT PERMIT FINDINGS:

1. THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY, OR WELFARE OF PERSONS RESIDING OR WORKING IN THE NEIGHBORHOOD OR THE GENERAL PUBLIC, AND WILL NOT RESULT IN INEFFICIENT OR WASTEFUL USE OF ENERGY, AND WILL NOT BE MATERIALLY INJURIOUS TO PROPERTIES OR IMPROVEMENTS IN THE VICINITY.

The location of the proposed erosion protection structure and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity in that similar projects have been approved and exist adjacent and near to the subject site, the project will not interfere or pose hazards to public beach users and construction will comply with prevailing grading, drainage and erosion control standards, the Permit Conditions and Environmental Mitigations and the applicable County Codes to insure the optimum in safety and the conservation of energy and resources.

2. THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL BE CONSISTENT WITH ALL PERTINENT COUNTY ORDINANCES AND THE PURPOSE OF THE ZONE DISTRICT IN WHICH THE SITE IS LOCATED.

The project site is located in the PR Districts. The proposed location of the erosion control project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the PR Zone Districts in that the project will not adversely impact the existing open space and recreational use of the land, as an accessory structure and use that is ancillary and incidental to the use on the site, is a principally permitted use in the zone district, conforms to the applicable sections of County Codes 16.10 and 16.20 and includes engineered grading, drainage, erosion control and landscaping plans that are based upon site and project specific studies.

3. THAT THE PROPOSED USE IS CONSISTENT WITH ALL ELEMENTS OF THE COUNTY GENERAL PLAN AND WITH ANY SPECIFIC PLAN WHICH HAS BEEN ADOPTED FOR THE AREA.

The project is located within the parks, recreation and open space land use designation. The proposed project is consistent with all elements of the General Plan in that the project, as an accessory structure and use that is ancillary and incidental to the use on the site, is a principally permit-

**EXHIBIT A**

**6 of 12**



ted use in the zone district; by requiring the structure to be located as close as possible to the bluff face and environmental mitigations and permit conditions reduce to insignificance adverse visual impacts (5.10.2); the project protects existing structures, does not significantly reduce or restrict public beach access, adversely affect shoreline processes and sand supply, increase erosion on adjacent properties or cause harmful impacts on wildlife and fish habitats or archaeological or paleontological resources, the project is placed as close as possible to the development requiring protection and is designed to minimize visual intrusion, the project will include a recorded monitoring and maintenance program and therefore, the engineered grading, drainage and erosion control plans, landscaping plan, environmental mitigations and permit conditions ensure conformance with Shoreline Protection Policies 6.2.16, and 6.2.18.

4. THAT THE PROPOSED USE WILL NOT OVERLOAD UTILITIES AND WILL NOT GENERATE MORE THAN THE ACCEPTABLE LEVEL OF TRAFFIC ON THE STREETS IN THE VICINITY.

The use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity in that no new utilities are required for the project.

5. THAT THE PROPOSED PROJECT WILL COMPLEMENT AND HARMONIZE WITH THE EXISTING AND PROPOSED LAND USES IN THE VICINITY AND WILL BE COMPATIBLE WITH THE PHYSICAL DESIGN ASPECTS, LAND USE INTENSITIES, AND DWELLING UNIT DENSITIES OF THE NEIGHBORHOOD.

The proposed erosion control measures will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood in that the proposed project is a principally permitted use in the zone district; environmental mitigations and permit conditions minimize potential visual and access impacts; the project will utilize natural materials and colors and landscaping in order to blend in with the surroundings and the project does not increase the land use intensity or dwelling unit density of the neighborhood.

**EXHIBIT A**

**70517**

CONDITIONS OF APPROVAL

Development Permit No. 97-0076

Applicant and Property Owner: Applicant: Gary Filizetti

Owner: Hooper

Assessor's Parcel No. 028-231-01

Property location and address: Southerly end of 23rd Avenue right-of-way  
adjacent 103 24th Avenue property.

Live Oak planning area

---

EXHIBITS:

- A. Project Plans: Plans by Kier and Wright consisting of one sheet dated 12/01/97. Plans by Johnson Associates consisting of one sheet dated 02/10/99.

- 
- I. This permit authorizes the construction of an approximately 500 cubic yard extension of an existing rip-rap shoreline protection structure. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:

- A. Within 15 days of final approval, sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof. Failure to do so shall invalidate this permit.
- B. Within 60 days of final approval, obtain a valid Grading Permit from the Santa Cruz County Planning Department.
- C. Pay a negative Declaration/EIR filing fee of \$25.00 to the Clerk of the Board of the County of Santa Cruz as required by the California Department of Fish and Game mitigation fees program.
- D. Obtain any required permits from the California Coastal Commission or other State or Federal Agencies that retain jurisdiction within the project area.
- E. Submit to the Planning Department for review and approval, documentation that the applicant/owner has the authority to bind the property on behalf of the other property owners.

- II. Prior to issuance of a Grading Permit the applicant/owner shall:

1.

**EXHIBIT A**

**8017**

- A. Within 15 days from final approval, submit final plans for review and approval by the Planning Department. The shoreline access trail that is cut off by the rip-rap shall be re-established over the rip-rap by means of a stairway (or alternative access acceptable to Planning Staff) constructed with all necessary permits to provide pedestrian access over the rip-rap to the fore beach (area between the formed lagoon and the ocean). The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. The final plans shall include, but not be limited to, the following:
1. A site plan with cross-sections showing the location of all project-related improvements.
  2. A final Landscape Plan.
  3. Construction details for the pedestrian access pathway.
  4. Clearly visible signage shall designate the stairway (or acceptable alternative access) as a public access point.
- B. Follow all recommendations of the geotechnical reports prepared for this project regarding the construction and other improvements on the site. All pertinent geotechnical/geologic report recommendations shall be included in the construction drawings submitted to the County for a Grading Permit. All recommendations contained in the report shall be incorporated into the final design. A plan review letter from the geotechnical engineer/project geologist shall be submitted with the plans stating that the plans have been reviewed and found to be in compliance with the recommendations of the geotechnical/geologic report.
- C. Obtain a Quitclaim from the County of Santa Cruz thereby establishing the applicant's interest in the property lying within the Southerly end of Twenty-Third Avenue.
- D. Obtain an Encroachment Permit from the Department of Public Works, as necessary, for any work performed in the public right-of-way. All work shall be consistent with the Department of Public Works Design Criteria.
- E. Record the approved Maintenance and Monitoring Program in the Office of the County Recorder. This program shall include an agreement to submit an irrevocable offer to dedicate a shoreline access trail easement of at least five feet in width, located generally along the existing foot trail on the owner/applicant's property, as shown on Exhibit "A" and leading to the fore beach and language requiring the applicant/owner to maintain the pedestrian access in good condition including annual inspections and repairs, as necessary, to maintain it in good, working condition as determined by Planning Department staff.

- F. Record a Declaration of Restriction prohibiting any development or improvements within the area claimed that is unrelated to: 1. the maintenance of a shoreline access trail, and 2. the installation and maintenance of a rip-rap shoreline protections structure as permitted by the County of Santa Cruz and/ or the California Coastal Commission. The Declaration of Restrictions shall be permanently binding on the heirs, assigns and successors in interest of the property owners, and shall be recorded in the Official Records of Santa Cruz County.

III. All construction shall be performed in accordance with the approved plans. Prior to final building inspection and Coastal and Grading Permit final clearance, the applicant/owner shall meet the following conditions:

- A. All site improvements shown on the final approved Grading Permit plans shall be installed.
- B. All inspections required by the Grading permit shall be completed to the satisfaction of the County Planning Director.
- C. The project geologist shall submit a letter to the Planning Department verifying that all construction has been performed according to the recommendations of the accepted geotechnical report. A copy of the letter shall be kept in the project file for future reference.
- D. Pursuant to Sections 16.40.040 and 16.42.100 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.100, shall be observed.

IV. Operational Conditions.

- A. All landscaping shall be permanently maintained.
- B. The established public access to the fore beach shall be permanently maintained in a usable and safe condition, as determined by Planning Department staff.
- C. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the applicant/owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement actions, up to and including permit revocation.

- D. All construction shall be limited to the hours of 7:30 am to 4:30 pm, weekdays unless a temporary exception to this time is granted in writing by the Planning Department.
- E. All heavy equipment work shall be limited to the time period when the lagoon has naturally breached or receded and no Tidwater Goby are present in the project area. This work shall be approved in advance by the State Department of Fish and Game.

V. Mitigation Monitoring Program

The mitigation measures listed under this heading have been incorporated into the conditions of approval for this project in order to mitigate or avoid significant effects on the environment. As required by Section 21081.6 of the California Public Resources Code, a monitoring and reporting program for the above mitigations is hereby adopted as a condition of approval for this project. This monitoring program is specifically described following each mitigation measure listed below. The purpose of this monitoring is to ensure compliance with the environmental mitigations during project implementation and operation. Failure to comply with the conditions of approval, including the terms of the adopted monitoring program, may result in permit revocation pursuant to Section 18.10.462 of the Santa Cruz County Code.

- A. Mitigation Measure A.1 and A.2: Conditions II.A. and III.A, B, C: Rip-rap shall be placed to conform to the current contour of the coastal bluff. Only rocks that match the existing rocks in color family, darkness and tone shall be used for this project.

Monitoring Program: Final plans shall be reviewed by County Planning staff for conformance with these mitigations. Construction inspections by County staff and the project soils engineer shall ensure conformance with these mitigations. Final project inspection and approval will include conformance with these mitigations.

- B. Mitigation Measure A.3: Conditions II.A.2, IV.A: The upper section of the rip-rap structure shall be planted with plants that create visual conformity with the existing vegetation. The species and location of the plantings shall be specified in a planting plan that is submitted by the applicant prior to Grading Permit approval. The maintenance of the plantings shall be included in the overall maintenance program for the rip-rap structure.

Monitoring Program: Final approved plans shall incorporate the landscaping mitigation measures. Construction inspection and final project approval shall be granted only upon completion of all the required landscaping improvements.

- C. Mitigation Measure A.3: Condition II.D. ( Record Maintenance and Monitoring Program)

Monitoring Program: Prior to permit issuance, the owner shall submit to Planning staff a copy of the recorded Maintenance and Monitoring Program. The owner shall submit to Planning staff, copies of any other required encroachment permits.

- D. Mitigation Measure B: Condition IV.E: Tidewater Goby (Eucyclogobius newberryi), a federally protected species, is present at the site part of the year when the sand forms a berm and a lagoon forms behind the berm on the beach. To avoid impacts on this species, construction or maintenance that involves movement or placing of rock, or excavation, is prohibited during the time the species may be present. This period is bracketed by the build up of sand and formation of the lagoon in the spring and the breaching of the sand berm by waves or flows in fall/winter. If the owner/applicant wishes to do the above type of work when the lagoon is present behind the berm, he must submit a survey conducted by a qualified biologist, for County staff to approve in advance, that confirms the absence of this species while the proposed work would be underway. (Tidewater Goby protection)

Monitoring Program: Contractor shall limit construction hours in accordance with permit conditions. Owner shall obtain Fish and Game approval prior to commencing any heavy equipment construction. County Planning staff shall perform necessary construction inspections to ensure compliance.

- E. Mitigation Measure C: Conditions II.B and III.C: In order to mitigate negative impacts on the project from geologic and oceanic conditions the project plans shall reflect the recommendations of the geologic report (Rogers Johnson Associates, December, 1997). Prior to grading permit approval the applicant/owner shall submit a letter of plan review from the project geologist certifying that the plans are in conformance with his report. Further, the project geologist shall be on site to perform regular inspections during construction, and the applicant/owner shall submit a final letter of approval from the project geologist to County staff, prior to project final inspection. (adhere to geotechnical recommendations).

Monitoring Program: Prior to permit issuance, the project geologist shall submit the required plan review letter. The geologist shall perform the necessary construction observations in order to generate the required final construction approval letter report.

- F. Mitigation Measure D: Conditions II.A. and III.A, B and D. and IV.B: In order to mitigate the loss of an established access path that crosses the bluff through the rip rap area, the applicant/owner shall follow one of the following two courses of action:

1. Submit an irrevocable offer to dedicate a shoreline access trail easement of at least five feet in width, located generally along the existing foot trail on the owner/applicant's property as shown on Exhibit "A", and leading to the fore beach (the area between the ocean and the most seaward extent of the lagoon). The access that is cut off by the rip rap shall be re-established over the rip rap by means of a stairway, or similar structure, constructed with all necessary permits. Clearly visible signage shall designate the stairway or similar structure as a public access to the beach. An agreement to maintain the access in good condition and as a public access shall be recorded as an easement on the property. The applicant shall revise the maintenance plan to include the access. Specifically, the access must be inspected annually and repaired as necessary to maintain good, working access.
2. If the Coastal Permit, as issued by the Coastal Commission, contains conditions and agreements whereby the applicant/owner contributes improvements to coastal access, and if County planning staff concur that these conditions are sufficient mitigation to the loss of access on-site, then those conditions and agreements set forth by the Coastal Commission will represent sufficient mitigation for impacts generated by the activity covered in this grading permit.

Monitoring Program: Final plans shall be reviewed by County Planning staff for conformance with these mitigations. The required recorded Maintenance and Monitoring Program shall address the required access. Construction inspections by County staff and the project geologist shall ensure conformance with these mitigations. Final project inspection and approval will include conformance with these mitigations.

- G. Mitigation Measure E: Condition IV.D: To minimize noise and dust impacts on surrounding properties to insignificant levels during construction, the applicant/owner shall, or shall have the project contractor, comply with the following measures during construction work:
1. Limit all construction to the time between 7:30 A.M. and 4:30 P.M. weekdays unless a temporary exception to this time restriction is approved in advance by County Planning to address an emergency situation;
  2. Each day it does not rain, wet all exposed soil frequently enough to prevent significant amounts of dust from leaving the site.

Monitoring Program: During construction, County staff shall perform periodic inspections to ensure compliance with this mitigation. Prior to working beyond these approved time limits, the

owner shall obtain a variance approval in writing from the County Planning Department.

VI. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
  - 1. COUNTY bears its own attorney's fees and costs; and
  - 2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.
- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor(s) in interest, transferee(s), and assign(s) of the applicant.
- E. Within 30 days of the issuance of this development approval, the Development Approval Holder shall record in the office of the Santa Cruz County Recorder an agreement which incorporates the provisions of this condition, or this development approval shall become null and void.

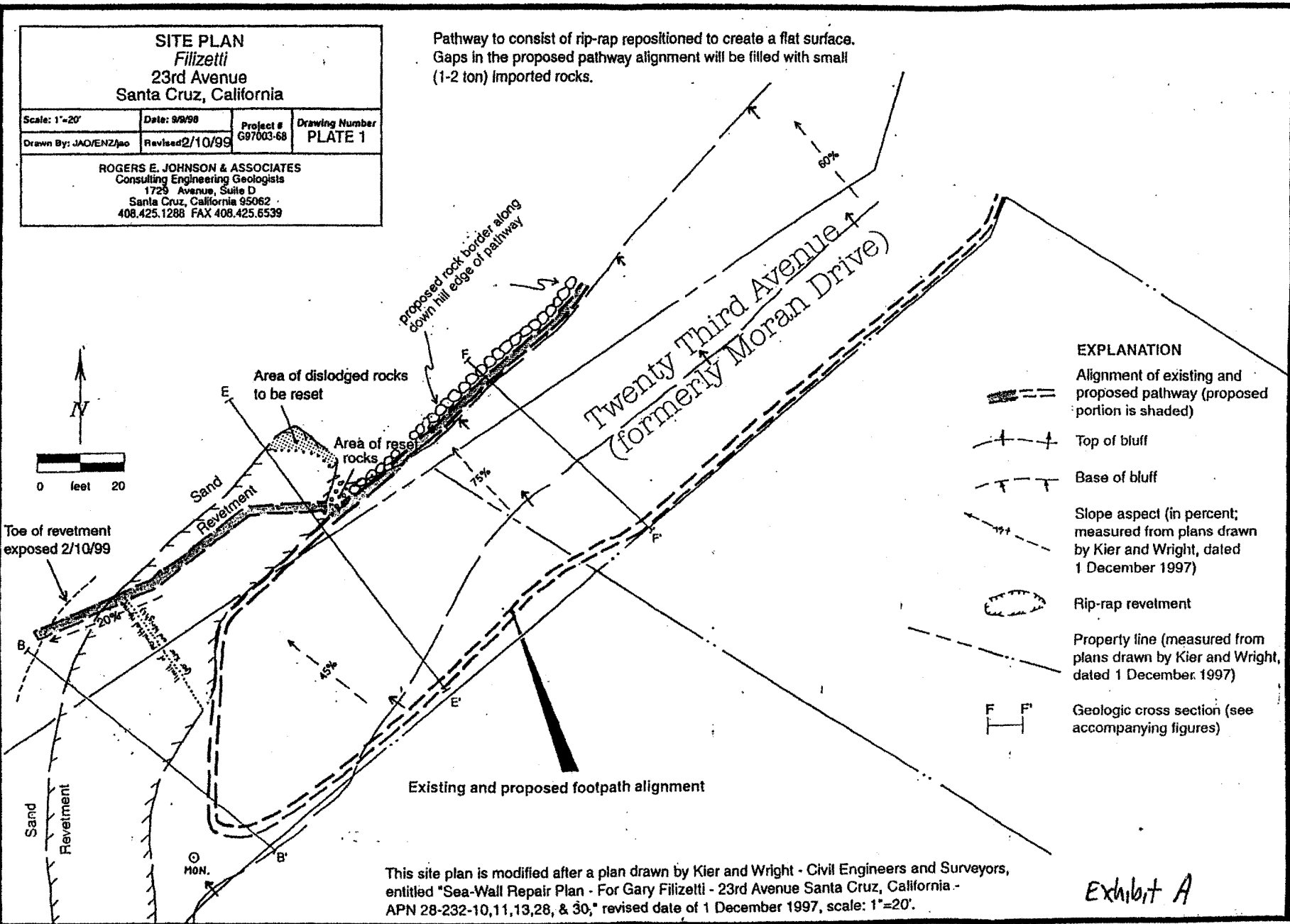


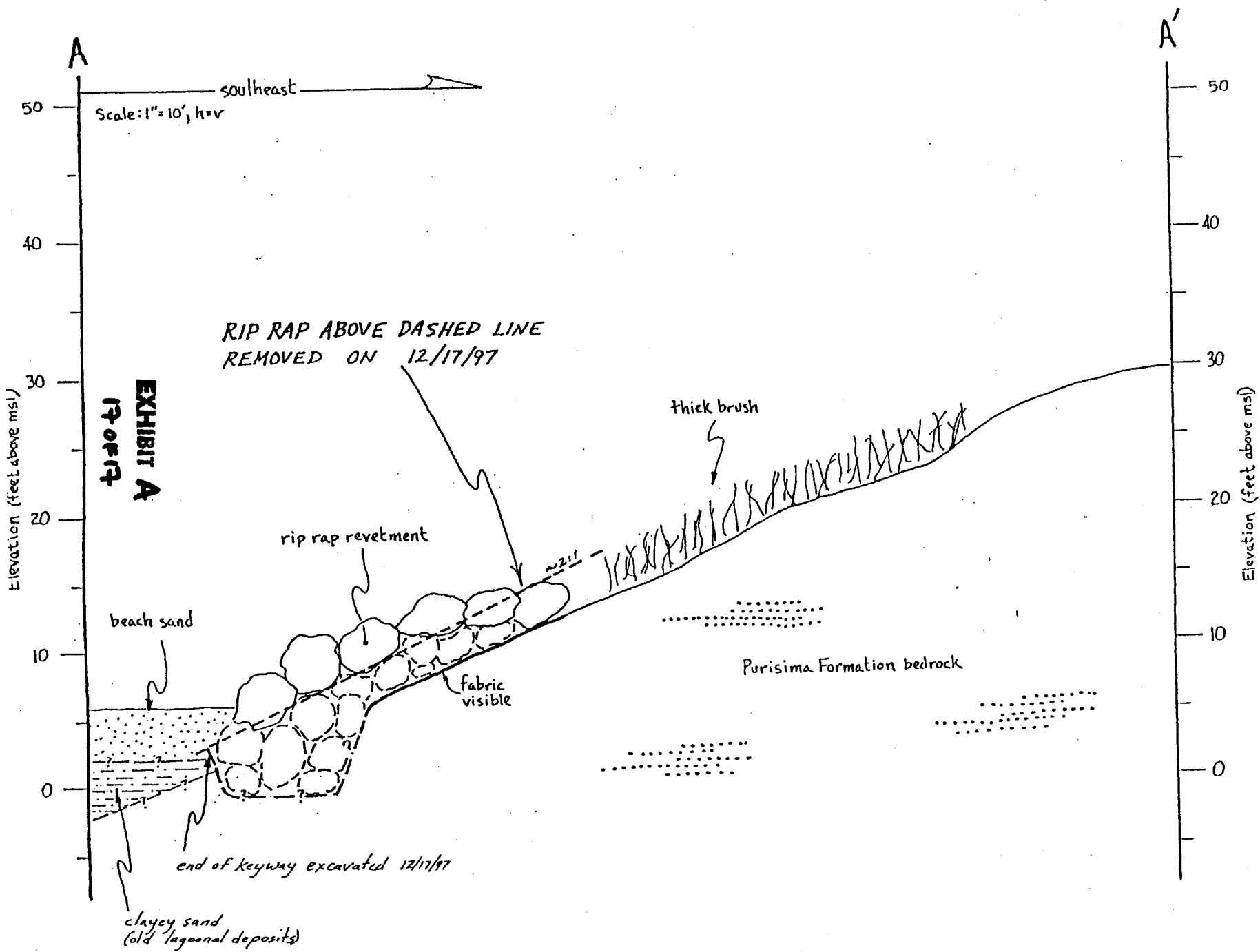
Filizetti/Hooper  
Development Permit No. 97-0076  
APN: 028-231-01

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

PLEASE NOTE: THIS PERMIT EXPIRES WITHIN 180 DAYS FROM FINAL DATE OF APPROVAL UNLESS YOU OBTAIN YOUR GRADING PERMIT. GRADING PERMIT TIME EXTENSIONS MAY BE GRANTED AT THE DISCRETION OF THE PLANNING DIRECTOR.

EXHIBIT A  
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**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863  
HEARING IMPAIRED: (415) 904-5200



APPEAL P.1 OF 7

**APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT**

Please review attached appeal information sheet prior to completing this form.

**SECTION I. Appellant(s):**

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

<u>Sara Wan, Chairperson</u>	<u>Pedro Nava, Commissioner</u>
<u>California Coastal Commission</u>	<u>California Coastal Commission</u>
<u>45 Fremont Street, Suite 2000</u>	<u>45 Fremont Street, Suite 2000</u>
<u>San Francisco, CA 94105-2219</u>	<u>San Francisco, CA 94105-2219</u>
<u>(415) 904-5200</u>	<u>(415) 904-5200</u>

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

Santa Cruz County

2. Brief description of development being appealed:

Recognize after-the-fact (work took place primarily in February 1997) the extension of a  
rip-rap revetment around the corner of the coastal bluff and inland towards East Cliff  
Drive. Work involved approximately 500 cubic yards of large rock placed against the  
bluff and excavated into the bedrock on and under the sandy beach.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

Seaward end of 23rd Avenue on the beach bluffs (at Santa Maria Cliffs Beach fronting  
Corcoran Lagoon) in the Live Oak area of Santa Cruz County (APNs 028-231-01 and  
23rd Avenue road right-of-way parcel).

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_  
b. Approval with special conditions: XXX  
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-SCO-99-056  
DATE FILED: 8/20/99  
DISTRICT: CENTRAL COAST

**RECEIVED**

AUG 20 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

**EXHIBIT B**

1 OF 7

**COMMISSIONER APPEAL**

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)**

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

a. XX Planning Director/Zoning  
Administratorc.      Planning Commissionb.      City Council/Board of  
Supervisorsd.      Other:                     6. Date of local government's decision: August 6, 19997. Local government's file number: 97-0076**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:

Christine Hooper (owner APN 028-231-01) Gary Filizetti (Applicant)4250 Opal Cliffs Drivec/o DEVCON ConstructionSanta Cruz, CA 950622-1532 East Cliff DriveSanta Cruz, CA 95062

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

(1) Don Hogue, DEVCON Construction (Mr. Filizetti's Representative)2-1532 East Cliff DriveSanta Cruz, CA 95062(2) Charlene Atack, Esq. (Attorney for Christine Hooper)Law Offices of Bosso, Williams, Sachs, Book, Atack & GallagherP.O. Box 1822Santa Cruz, CA 95061-1822(3) Robert E. Bosso, Esq.Law Offices of Bosso, Williams, Sachs, Book, Atack & GallagherP.O. Box 1822Santa Cruz, CA 95061-1822(4)                                     **SECTION IV. Reasons Supporting This Appeal**

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

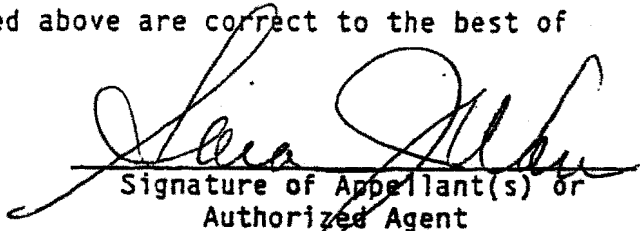
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

[SEE ATTACHED]

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 8/18/99

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**  
**3 of 7**

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

Date \_\_\_\_\_

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 ATTACHED]

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#### 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 8-20-99

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**  
**40F7**

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

Date \_\_\_\_\_

## Attachment: Reasons For This Appeal

Page 1 of 3 attachment pages

APPEAL P. 5 of 7

The Santa Cruz County-approved project is a follow-up permit to an emergency permit (authorized by the County in 1997) which covers additional work after-the-fact that was not authorized by the emergency permit. The emergency permit was for work on an existing revetment, while the additional work extended the rip-rap revetment around the corner of the coastal bluff and inland towards East Cliff Drive. Work involved approximately 500 cubic yards of large rock placed against the bluff and excavated into the bedrock on and under the sandy beach. The revetment does not protect the blufftop residence, but is proposed to protect the existing revetment at this site.

### Shoreline Structures

The proposed project is not consistent with LCP Policy 6.2.16 (Structural Shoreline Protection Measures) and Section 16.10.070(g)(5) (Coastal Bluffs and Beaches Permit Conditions) because:

- It has not been adequately demonstrated that the revetment extension is necessary to protect an existing endangered structure at this location. The LCP requires demonstration of "a significant threat to an existing structure" if a shoreline protection structure is to be considered.
- It has not been adequately demonstrated that the required "thorough analysis of all reasonable alternatives, including but not limited to, relocation or partial removal of the threatened structure" has been performed. In fact, it appears that "relocation or partial removal" of the existing revetment is a reasonable alternative solution, particularly given the proposed project's negative impacts on public access, environmentally sensitive habitat area (ESHA), and visual resources.
- The proposed revetment reduces recreational beach area contrary to the LCP requirement that "the protection structure must not reduce or restrict public beach access."
- There is no discussion of the effect of the proposed project on shoreline processes and sand supply contrary to the LCP requirement that "the protection structure must not...adversely affect shoreline processes and sand supply." There are likewise no mitigations for any such impacts due to the project.
- The proposed project may increase erosion on adjacent properties contrary to the LCP requirement prohibiting such an impact.
- The proposed project is within the boundaries of Corcoran Lagoon and/or Rodeo Creek at this location, with the proposed revetment partly designed to protect against stream scour. However, no biotic report was done for the project. Corcoran Lagoon is potentially habitat for the Federally-listed steelhead, coho salmon and endangered Tidewater goby. It is not clear that the proposed project would not "cause harmful impacts on wildlife and fish habitats" as required by the LCP.
- The rocks do not minimize visual intrusion as required by the LCP.
- The project does not appear to have included a permanent survey monument as required by the LCP.

### Wetland/Riparian Resources

The project proposes to place rock within the boundaries of an area seasonally occupied by Corcoran Lagoon and/or Rodeo Creek. However, no biotic report was done for the project as required by LCP Policy 5.1.9. Corcoran Lagoon is potential habitat for the Federally-listed steelhead, coho salmon and endangered Tidewater goby. The Lagoon and environs is a wetland which is an environmentally sensitive habitat area (ESHA). A revetment in this ESHA is inconsistent with LCP wetland and wildlife

**EXHIBIT B**

5 of 7



protection policies including, but not limited to, Policies 5.1 et seq (Biological Diversity) and 5.2 et seq (Riparian Corridors and Wetlands), and Chapters 16.30 (Riparian Corridor and Wetlands Protection) and 16.32 (Sensitive Habitat Protection).

### **Visual Resources**

The existing rip-rap (i.e., that rip-rap in place prior to the unauthorized placement of rock), did not wrap fully around the bluff and was only minimally visible from the East Cliff Drive scenic corridor. However, the proposed rip-rap would extend around the bluff and further northward towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor. Such a visual intrusion is contrary to LCP visual policies including, but not limited to, Policies 5.10 et seq (Visual Resources) and Sections 13.10.351 (Purposes of the "PR" District), 13.10.354 (Design Criteria for the "PR" District), 13.20.130(b)(1) (Coastal Zone Visual Compatibility Design Criteria), and 13.20.130(d)(2) (Beach Viewshed Design Criteria).

### **Public Access and Recreation**

The proposed project takes place primarily on parcel number 028-231-01. Pursuant to LCP Policy 2.23.2, parcel number 028-231-01 has been identified as a "Coastal Priority Site." Pursuant to LCP Figure 2-5, this site is reserved for "acquisition and improvement of beach parcels for coastal access, recreation and protection of coastal biotic habitat." Pursuant to Policy 2.23.2, a master plan is required for development at this site – no master plan is part of the County's approval.

The proposed revetment removes recreational sandy beach area from availability on this Coastal Priority Site. Some portion of this site may also be in the public trust (i.e., it is partially covered by Corcoran Lagoon) or a property where the public has established a prescriptive right to access, but the County's approval has not discussed and/or examined these possibilities. The site is also subject to a "beach easement," the parameters of which – including any development restrictions – have not been described. The County approval dismisses the loss of recreational sandy beach area as "less than significant" and does not contain any mitigation for this beach access loss. However, the project will remove approximately 900 – 1,200 square feet of publicly used recreational sandy beach from use at this Coastal Priority Site. This is a significant negative access impact that has not been adequately characterized or mitigated by the County approval.

The proposed project also takes place partially on the 23<sup>rd</sup> Avenue road right-of-way. The proposed project will block existing physical access to the beach currently available through this right-of-way area; the County approval included conditions for an offer to dedicate and a reestablished trail across this area. However, the Applicant does not own the property which would be dedicated. The County approval also includes a condition for the Applicant to obtain an ownership interest in the right-of-way parcel through a "quit-claim" from the County. The County approval does not discuss the ramifications of the property ownership of this parcel. A portion of revetment may also extend onto the sandy beach portion of the right-of-way. This right-of-way is either: (1) public property; (2) private property where the public has established a prescriptive access right; or (3) private property where the public has not established a prescriptive access right. Lacking evidence to the contrary, the rebuttal presumption is that

**Attachment: Reasons For This Appeal**

Page 3 of 3 attachment pages

APPEAL P. 70F7

the public owns or has established prescriptive access rights on the 23<sup>rd</sup> Avenue road right-of-way. The LCP encourages the development of coastal vistas at this location (LCP Policy 7.7.1 and "Coastal Recreation" Program C) and protects this coastal blufftop area from intrusion by non-recreational structures and incompatible uses (Policy 7.7.4).

Accordingly, the project is inconsistent with Coastal Act access and recreation policies, and LCP access and recreation policies including, but not limited to, Policies 7.7 et seq (Coastal Recreation, Shoreline Access, and Beach Access).

In sum, it has not been clearly demonstrated that there is an existing principal structure in danger from erosion. If such a case could be clearly established, it is not clear that the proposed project would be the least environmentally damaging feasible solution to protect such an existing principal structure in danger from erosion. If it could be demonstrated that the revetment were the least environmentally damaging feasible solution, the coastal resource impacts associated with such a project have not been adequately characterized and mitigated. The proposed project is not consistent with Coastal Act access and recreation policies, and is not consistent with the LCP's shoreline structure, wetland/riparian, visual resource, and access and recreation requirements.

**EXHIBIT B**

70F7

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

25 FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

TEL: 408-4863

HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENTGRAY DAVIS, GOVERNOR  
RECEIVED

AUG 20 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREAPlease Review Attached Appeal Information Sheet Prior To Completing  
This Form.SECTION I. Appellant(s)

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

Christine Hooper; Gary Filizetti c/o Bosso, Williams, Sachs, Book, Atack & Gallagher  
P O Box 1822Santa Cruz CA 95061-1822

Zip

(831 )

Area Code

426 8484

Phone No.

SECTION II. Decision Being Appealed1. Name of local/port  
government: County of Santa Cruz2. Brief description of development being  
appealed: Extension of existing rip-rap shoreline protection3. Development's location (street address, assessor's parcel  
no., cross street, etc.): APN 028-231-01

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-3-500-99-056DATE FILED: 8/20/99DISTRICT: Central Coast

H5: 4/88

EXHIBIT C : APPLICANT APPEAL

1 OF 5

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

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

a. ☒ Planning Director/Zoning Administrator      c. ☐ Planning Commission

b. ☐ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: \_\_\_\_\_

7. Local government's file number (if any): \_\_\_\_\_

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:

Gary Filizetti

103 24th Avenue

Santa Cruz CA 95062

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) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

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

**EXHIBIT C**  
**2015**

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


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

See attached letter dated August 18, 1999.

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.

 Attorney  
Signature of Appellant(s) or  
Authorized Agent

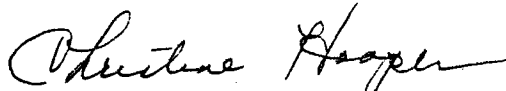
Date 8/19/99

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

Section VI. Agent Authorization

I/We hereby authorize Robert E. Bosso, Esq. to act as my/our representative and to bind me/us in all matters concerning this appeal.

**EXHIBIT C**  
**3055**



Signature of Appellant(s)  
Christine Hooper

Date August 20, 1999

LAW OFFICES

BOSSO, WILLIAMS, SACHS  
BOOK, ATACK & GALLAGHER

A PROFESSIONAL CORPORATION

ROBERT E. BOSSO  
LLOYD R. WILLIAMS  
PHILIP M. SACHS  
DENNIS R. BOOK\*  
CHARLENE B. ATACK  
JOHN M. GALLAGHER  
CATHERINE A. RODONI  
JASON R. BOOK  
JOSEPH P. HARRIS

\* CERTIFIED SPECIALIST IN ESTATE PLANNING,  
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E-MAIL  
ADMIN@SCLAWFIRM.COM

RECEIVED

AUG 19 1999

August 19, 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

PERSONAL DELIVERY AND U.S. MAIL

California Coastal Commission  
Central Coast District Office  
725 Front Street  
Santa Cruz, CA 95060

Re: County of Santa Cruz Development Permit Number 97-0076  
APN: #028-231-01

Gentlepersons:

The applicant, Gary Filizetti, and the owner, Christine Hooper, hereby appeal the Development Permit granted by the County of Santa Cruz on August 6, 1999 on the following grounds:

1. The permit as conditioned seeks unreasonable dedications of private property for public use in violation of the Constitutions of the State of California and the United States of America, and in particular as set forth in Nollan vs. California Coastal Commission (1987) 403 U.S. 825, 107 S.Ct. 314 and Dolan vs. City of Tigard (1994) 512 U.S. 374, 114 S.Ct. 2309 in that there is an insufficient nexus between the development and the dedications and conditions imposed. The same requirement is found in Government Code Section 65909(a) and County Code Section 15.01.060(b).

2. Specifically:

A. the permit in paragraph IIA requires the construction of a stairway which has never before existed,

B. the permit conditions require that an irrevocable offer to dedicate a shoreline access trail easement of at least five feet in width located along a foot trail on the owners property to the public,

EXHIBIT C  
4005

C. the permit conditions require the owner to maintain the foot trail at the owner's expense,

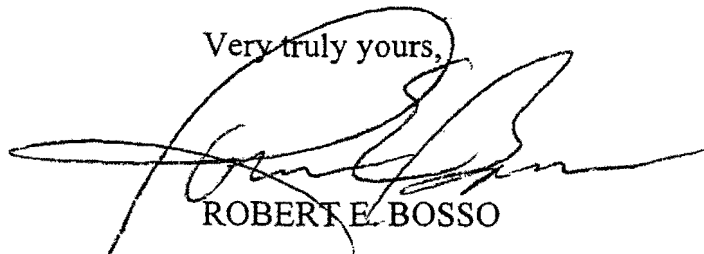
D. the permit conditions require that the owner maintain all of the landscaping required to be placed on public property.

3. In addition, said permit unlawfully requires that the owner maintain the established public access to the "forebeach" in a permanent usable and safe condition, thereby creating unreasonable personal liability on the private property owner for public use, and creating a financial obligation on the property owner for the costs of future inspections if the County disagrees with the condition of the path.

4. The permit contains potential inherent conflicts in that it provides that if any Coastal Permit is granted for this project, the owner may be required to both meet County mitigation requirements and any mitigation requirements required by the Coastal Commission unless County planning staff concurs that the Coastal Commission mitigation requirements are sufficient.

This permit is for the extension of an existing rip-rap shoreline protection structure to protect private property from the ravages of winter storms. The conditions impose requirements and conditions that are far beyond any impacts caused by this development and represent an attempt to obtain public rights and shift public liability to a private property owner.

Very truly yours,



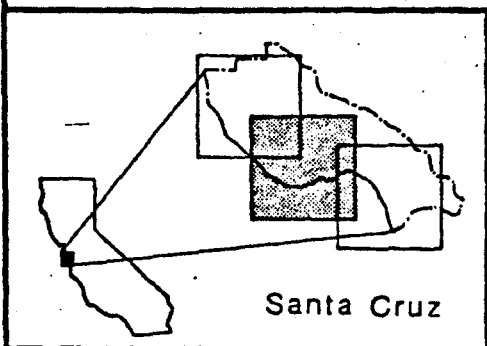
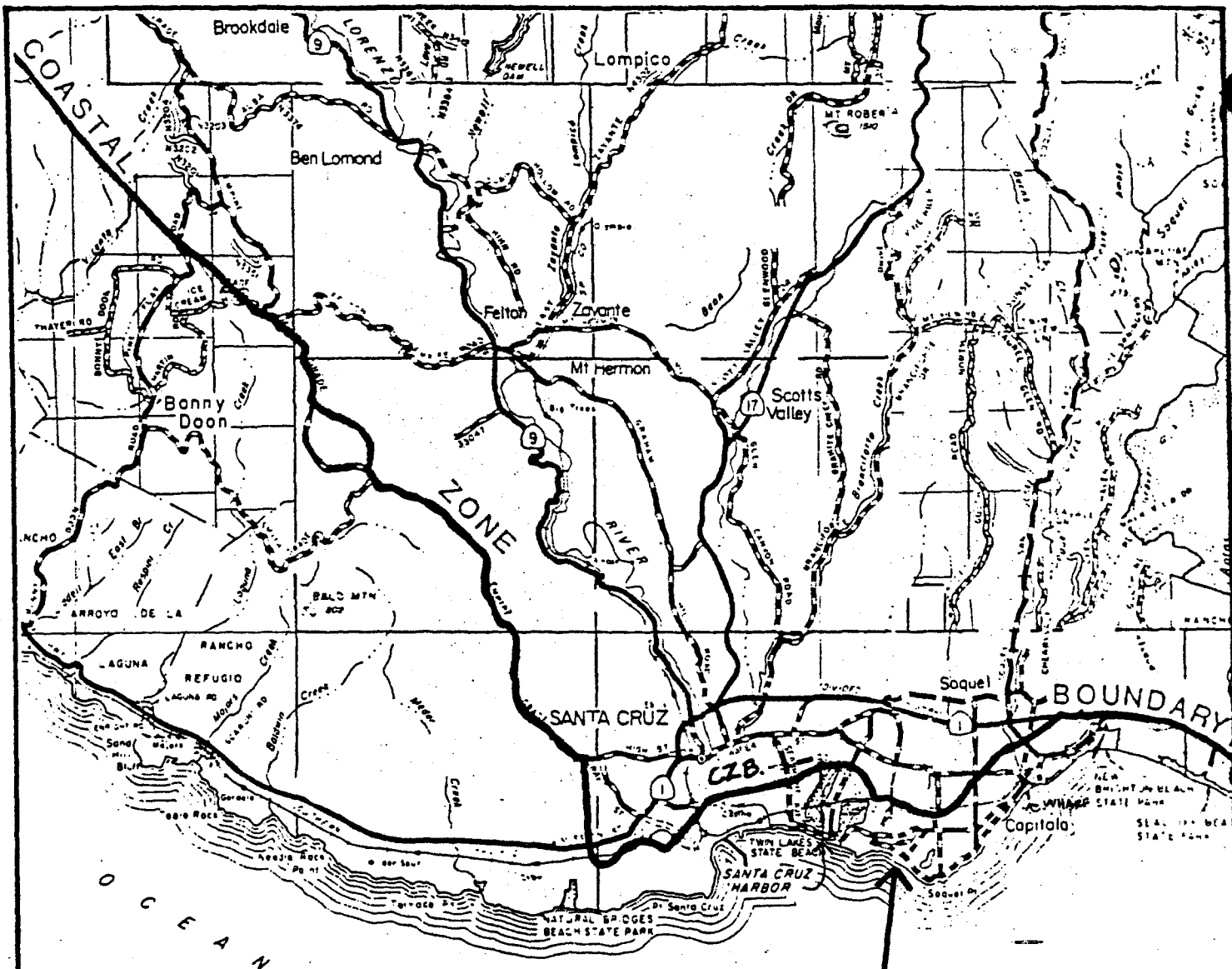
ROBERT E. BOSSO

REB/kb  
cc: Christine Hooper  
cc: Gary Filizetti

COASTAL.APP

**EXHIBIT C**

5005



**PROJECT LOCATION**

**MONTEREY BAY**

California Coastal Commission

**LOCATION MAP**



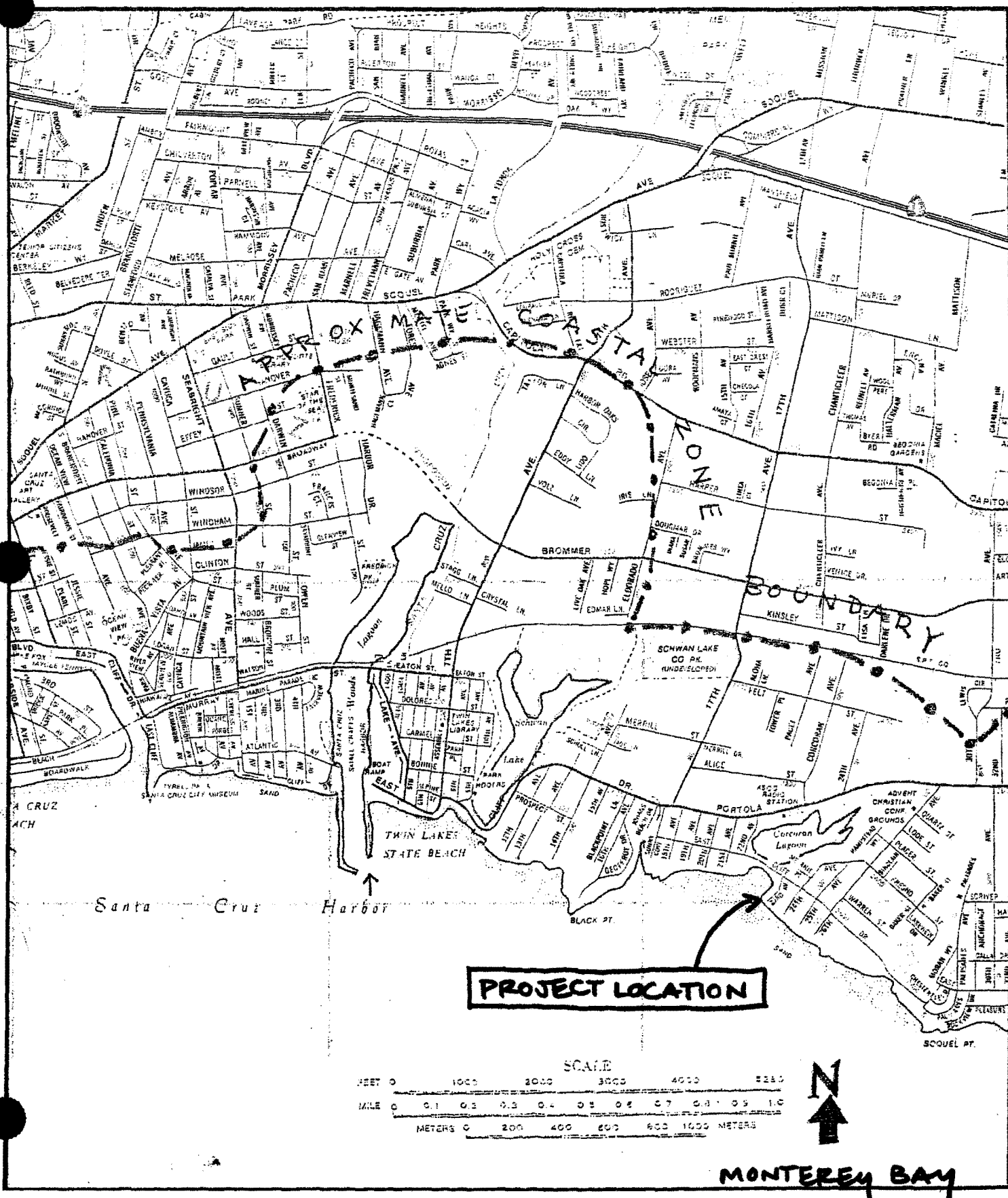
County of Santa Cruz

Sheet 2 of 3

**EXHIBIT D : PROJECT LOCATION**

10E3

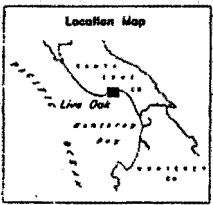
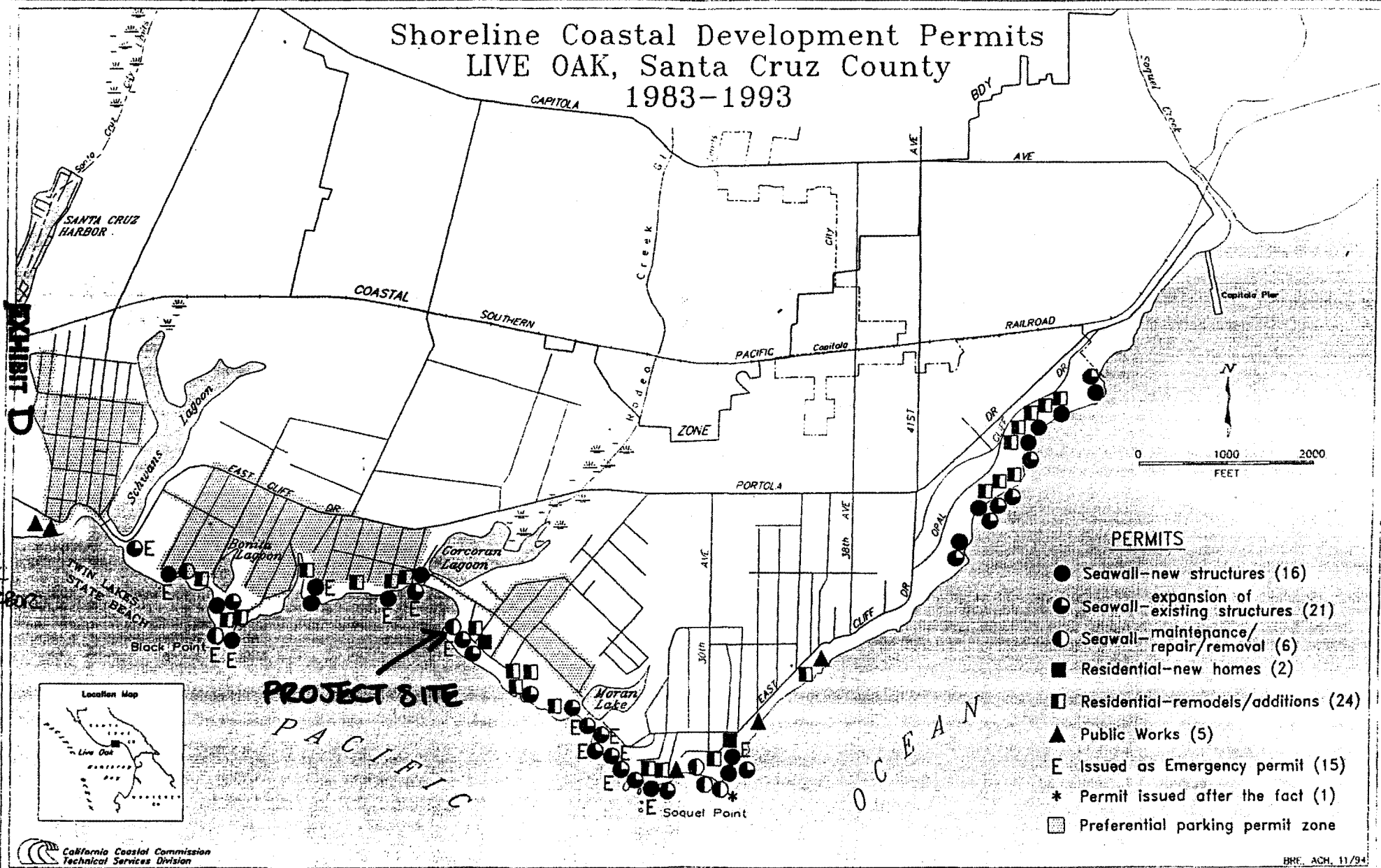




# Shoreline Coastal Development Permits LIVE OAK, Santa Cruz County 1983-1993

3053

↑ S.C. HARBOR



California Coastal Commission  
Technical Services Division

# TAX PURPOSES ONLY

FUR. RANCHO ARRL U DEL

FOR MAKES NO GUARANTEE AS TO MAP ACCURACY NOR ASSUMES ANY  
OR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED.

SEC. 20 & 21, T.11S., R.1W., M.I

© COPYRIGHT SANTA CRUZ COUNTY 19880000 1000

AP 028-231-01 "COASTAL PRIORITY SITE"

SEC 21  
SEC 20

HOOPER  
PROPERTY

BEACH/CORCORAN  
LAGOON  
AREA

TOE OF BLUFF (---)  
JURISDICTIONAL BOUNDARY  
(APPROXIMATE)

PROPOSED  
REVETMENT  
(APPROXIMATE)

EAST CLIFF DRIVE  
SANTA MARIA DEL

FILIZETTI SFD  
(APPROXIMATE)

MONTEREY  
BAY

23<sup>RD</sup> AVENUE  
RIGHT-OF-WAY

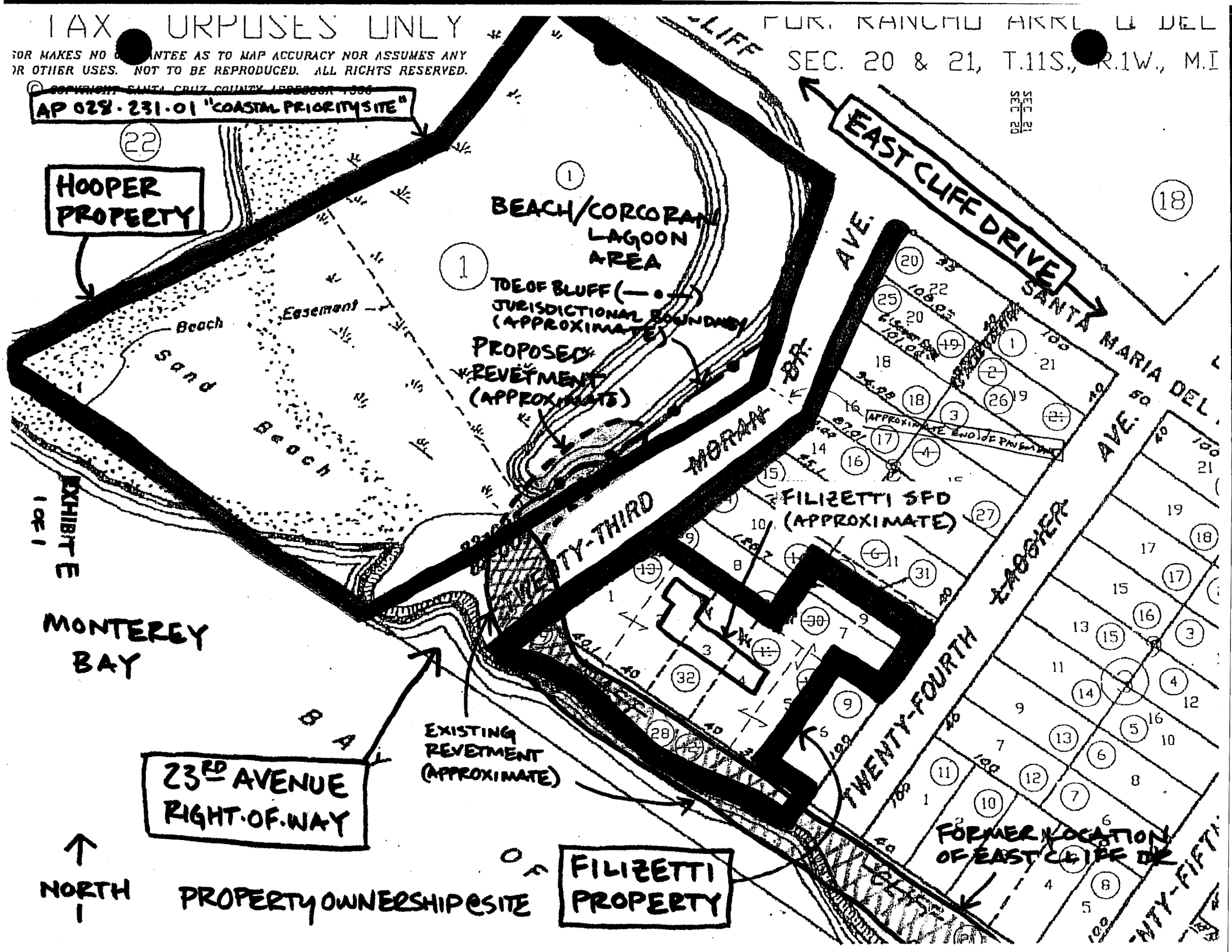
EXISTING  
REVETMENT  
(APPROXIMATE)

FILIZETTI  
PROPERTY

FORMER LOCATION  
OF EAST CLIFF DR

NORTH

PROPERTY OWNERSHIP SITE



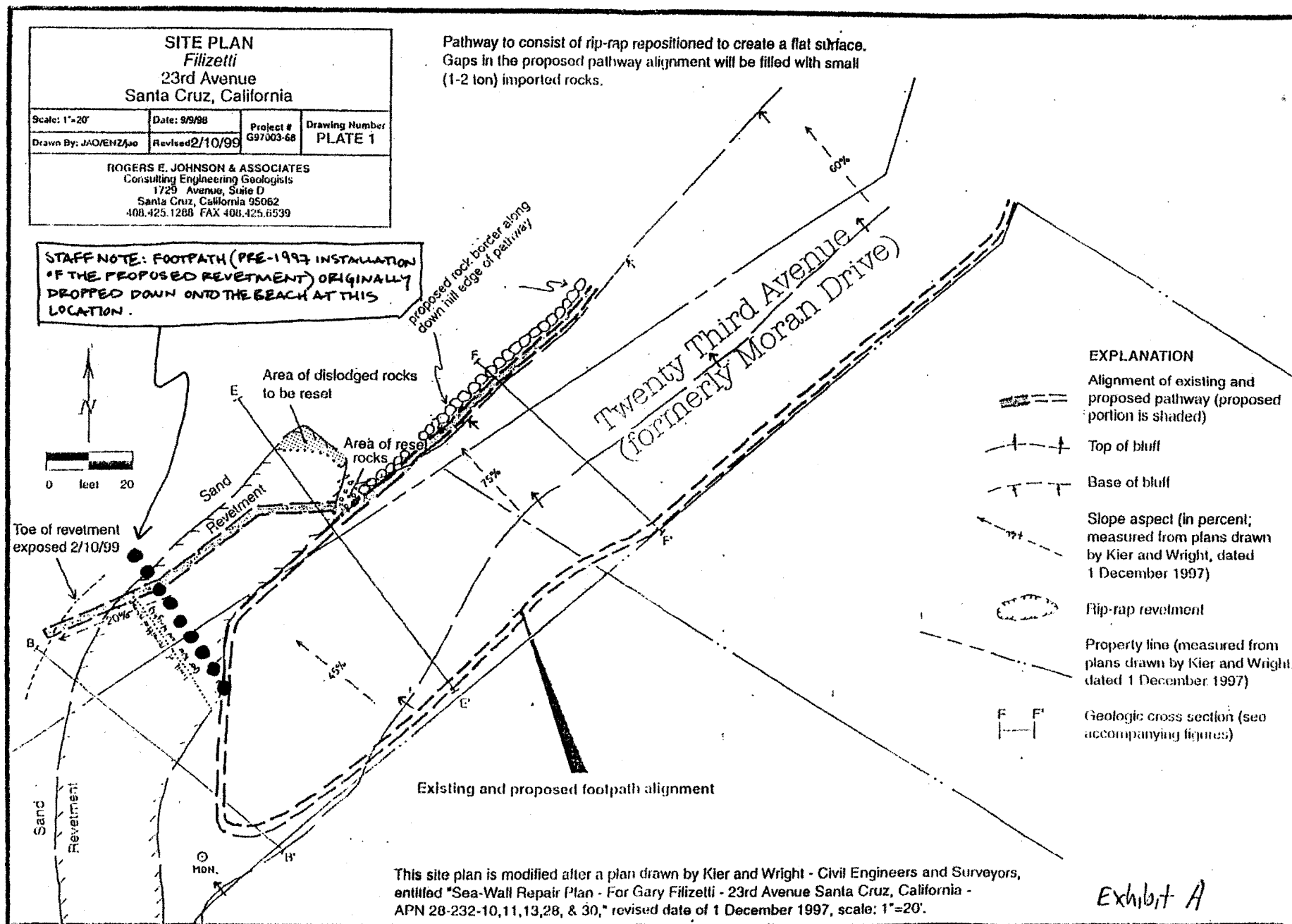
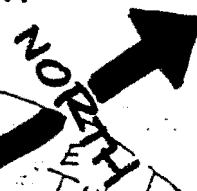


Exhibit A

MONTEREY BAY

SANDY BEACH



APPROXIMATE TOE OF BLUFF (PRIOR TO 1997 INSTALLATION OF THE PROPOSED REVETMENT) DEFINES CDP JURISDICTIONAL BOUNDARY (CCC VS. COUNTY) ---

REVETMENT  
EXISTING / NEW  
← / →

23RD AVENUE R.O.W.

EDGE OF BLUFF

FILIZETTI RESIDENCE

FROM:  
SEA - WALL REPAIR PLAN

FOR

GARY FILIZETTI

23rd AVENUE SANTA CRUZ, CALIFORNIA

APH 28-232-10,11,13,28 & 30

EXHIBIT F  
2 OF 2

KIER & WRIGHT  
CIVIL ENGINEERS & SURVEYORS, INC.  
2350 Santa Boulevard, Building 22 • (408) 727-6665  
Santa Clara, California 95054 • FAX (408) 727-5841  
JULY, 1993

12-1-97

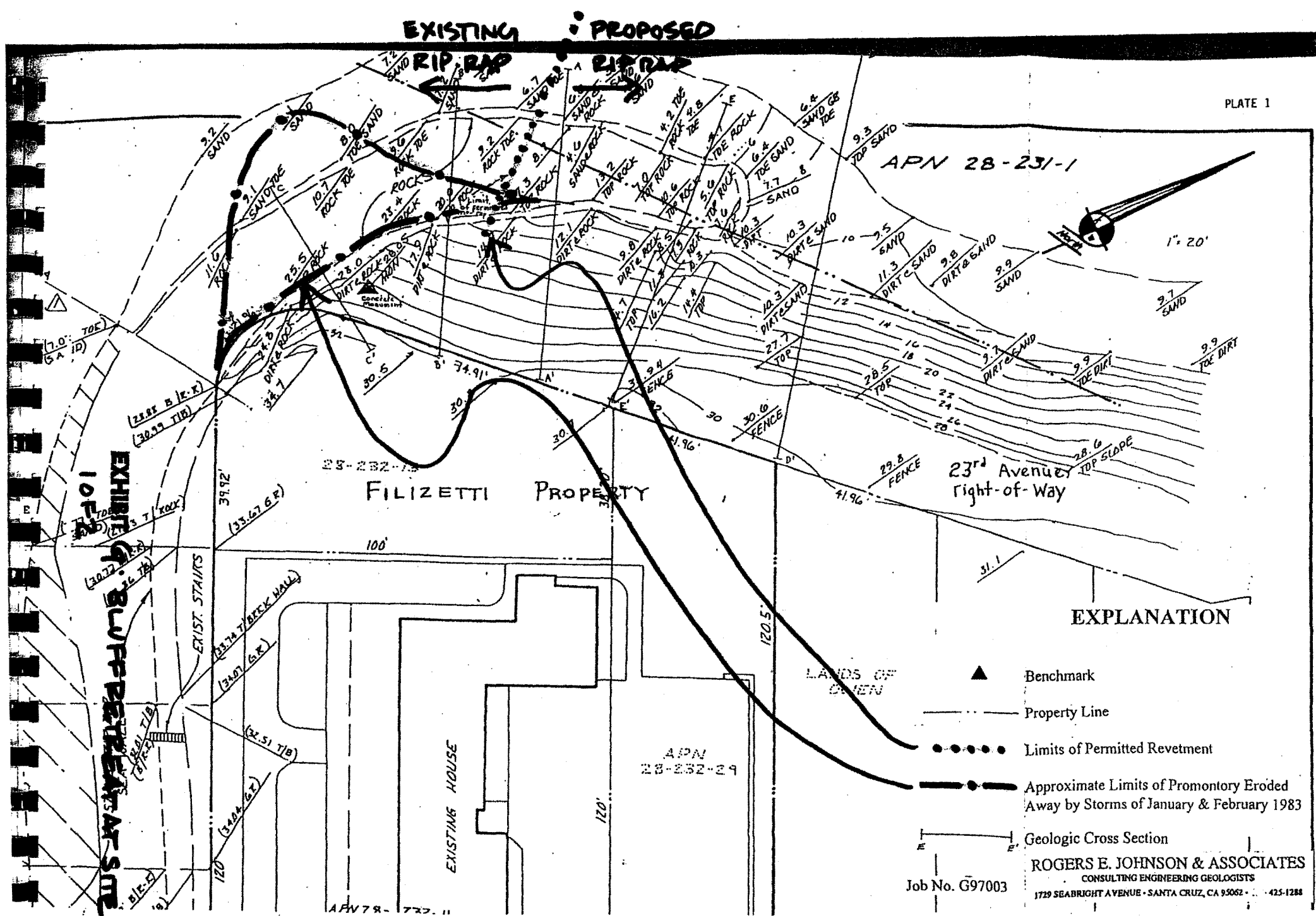
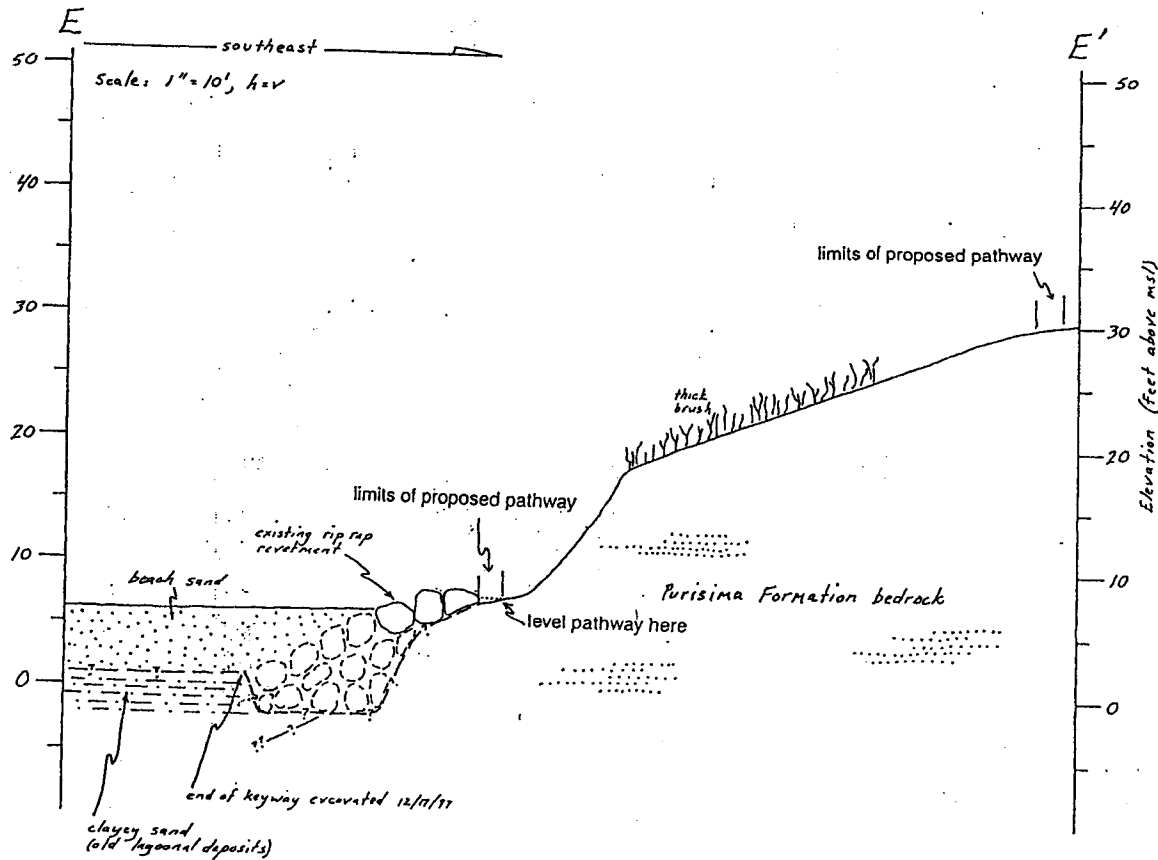


EXHIBIT 4  
2042



Note:

1. The scale of the geologic cross section (1"=10') is not the same scale as the site plan (1"=20').

GEOLOGIC CROSS SECTION  
Filizetti  
23rd Avenue  
Santa Cruz, California

Scale: 1"=10', H=V	Date: 12/97	Project # G97003-68	Drawing Number PLATE 2
Drawn By:	Revised: jao 9/9/98		

ROGERS E. JOHNSON & ASSOCIATES  
Consulting Engineering Geologists  
1729 Avenue, Suite D  
Santa Cruz, California 95062  
408.425.1288 FAX 408.425.6539

GEOLOGIC CROSS SECTIONS--FILIZETTI PROPERTY

REJA Job No. G97003-68

12/97

LAW OFFICES

BOSSO, WILLIAMS, SACHS,  
BOOK, ATACK & GALLAGHER

A PROFESSIONAL CORPORATION

ROBERT E. BOSSO  
LLOYD R. WILLIAMS  
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\* CERTIFIED SPECIALIST IN ESTATE PLANNING,  
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BOARD OF LEGAL SPECIALIZATION

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E-MAIL  
ADMIN@SCLAWFIRM.COM

December 3, 1999

Dan Carl  
Coastal Commission  
Central Coast District Office  
725 Front Street  
Santa Cruz CA 95060

**RECEIVED**

DEC 03 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Re: Appeal A-3-SCO-99-056  
Filizetti/Hooper Revetment

Dear Dan:

In order to resolve the current appeal and project application before the Commission, specifically the issue of the deletion of the condition requiring a dedicated and signed pathway along the Filizetti/Hooper property cliff, Mr. Filizetti and Ms. Hooper are requesting your consideration of the proposal set forth below.

Before I begin to describe the new Filizetti/Hooper pathway proposal, I trust you have had the opportunity to review the Rogers E. Johnson and Associates report dated November 22, 1999. It is the opinion of Johnson & Associates that without the extension of the rip rap revetment onto the bluff that faces Corcoran Lagoon, there is a "significant threat" that the permitted revetment would eventually be undermined and destroyed by surf attack and creek erosion and that the extension is necessary for maintaining the integrity of the revetment. Further, Johnson & Associates' analysis shows that the existing rip rap is the minimum amount necessary to protect the structures and will actually reduce the bluff erosion with little effect on beach sand supply. Most importantly, the report concludes that the removal of any of the rip rap presently in place as has been suggested, will jeopardize not only the revetment wall, but also the Filizetti home.

With the conclusions of the Johnson & Associates report, we are hoping that the Commission will consider allowing the County's approval of the existing rip rap to remain.

**EXHIBIT H: APPLICANT'S ALTERNATIVE  
ACCESS PROPOSAL**

1058

F:\WPDATA\CHARLENE\CARL3.LTR



Filizetti/Hooper Proposal Regarding the Santa Cruz Pathway Condition:

We are requesting the deletion of the County's current condition for a dedicated, signed pathway along the Filizetti/Hooper property. As an alternative to the County's condition, Filizetti and Hooper would agree (and Filizetti would pay) to reconstruct the existing boardwalk and ramp which is located on the other side of the Corcoran Lagoon.

On the west side of the Corcoran Lagoon, across from the Filizetti/Hooper parcels, immediately adjacent to Ms. Hooper's parcel, is a dedicated pathway which runs from East Cliff Drive across the Lagoon to the beach. The existing stairs to the pathway and ramp on the pathway are in disrepair. At the moment, the wooden walkway on the dedicated path is completely underwater and impossible to use as an access way to the beach. Enclosed are photographs numbered 1, 2, 3, and 4 which show the existing dilapidated condition of the wooden walkway. Mr. Filizetti proposes to pay for and perform the following work with respect to the pathway: to reconstruct the stairs to the dedicated pathway, to reconstruct the original configuration of the walkway and its appurtenances. He will reconstruct the existing ramp, stairs and walkway.

Mr. Filizetti would also sign the stairs, ramp and wooden walkway, and as part of the walkway will construct a view platform (if acceptable to all concerned), install interpretative signage at the East Cliff Drive entrance to the dedicated pathway or at the viewing platform regarding the wildlife, and/or history of the Lagoon.

Enclosed are drawings numbered 5, 6, and 7 which are artist renderings of the newly reconstructed ramp, stairs, and wooded walkway in the dedicated path. Photograph number 8 is an example of the type of signage and type of possible benches which would be installed by Mr. Filizetti.

Mr. Filizetti believes that his proposal to rebuild in the existing publically dedicated path is a far superior answer to the question of beach access from East Cliff Drive than the construction and dedication of a new path over the 23<sup>rd</sup> Street property and the property of Ms. Hooper. Ms. Hooper will not agree to dedicate a new path over her property and the other owners of property on the Filizetti/Hooper side of the Corcoran Lagoon are opposed to having such a new dedicated path in their driveways.

The existing public path is a superior site, it is safer and wider than any path which could be constructed on the Filizetti/Hooper side of the Lagoon. A newly repaired and rebuilt path on the west side of the Lagoon would not require any further dedication because that public path is property already dedicated to such use. A rebuilt walkway over this existing

pathway has a chance of being accessed by the handicapped, while it would be prohibitively expensive, if not virtually impossible, to build a handicapped access route on the Filizetti/Hooper side of the Lagoon.

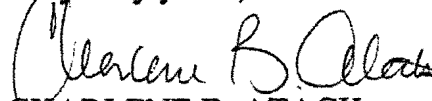
It should also be noted that there are two public parking areas which are near the existing pathway which Filizetti proposes to rebuild, but there is no public parking anywhere near 23<sup>rd</sup> Street and the Filizetti/Hooper parcels.

We have also examined the area of the Lagoon to assess parking in the area. Enclosed are two photographs numbered 9 and 10. Photo number 9 is an aerial photograph of a portion of Corcoran Lagoon to the north and south of East Cliff Drive. This photograph contains two hand inserted circles and a line for which it is noted "repair existing walkway". This line is drawn to show where the existing dedicated pathway is in relation to two parking areas. The top two photographs and the bottom left hand photograph on (multiple) Photo 10 are photographs of these two parking areas. There is no parking near the Filizetti/Hooper parcels.

Finally, we are enclosing Photo 11 which is a photograph of the Filizetti house, superimposed on which is a wooden pathway, hand railing, stairs and landings which would be required to create a pathway over the Filizetti/Hooper parcels. The structure is unsightly, would not be handicap accessible and, we believe, would be far steeper than it appears in the enclosed photograph. It probably would also be larger as it would require more twists and turns because of the steep angle of the cliff. Ms. Hooper will not agree to a dedication of any portion of her lot for this path and consequently there is no way for Mr. Filizetti to comply with this condition. Furthermore, the other neighbors to the north on 23<sup>rd</sup> Street are opposed to a pathway over the Filizetti/Hooper parcels because they are fearful that the persons who would use such a path to get to the beach would need to park in their driveways and block their ability to back their cars out of their carports and garages. Given that there is no other parking available, their fears are not unfounded.

We would be happy to meet with you and other members of the Commission staff to discuss this alternative proposal.

Very truly yours,

  
CHARLENE B. ATTACK

CBA/kb  
cc: clients  
encls.

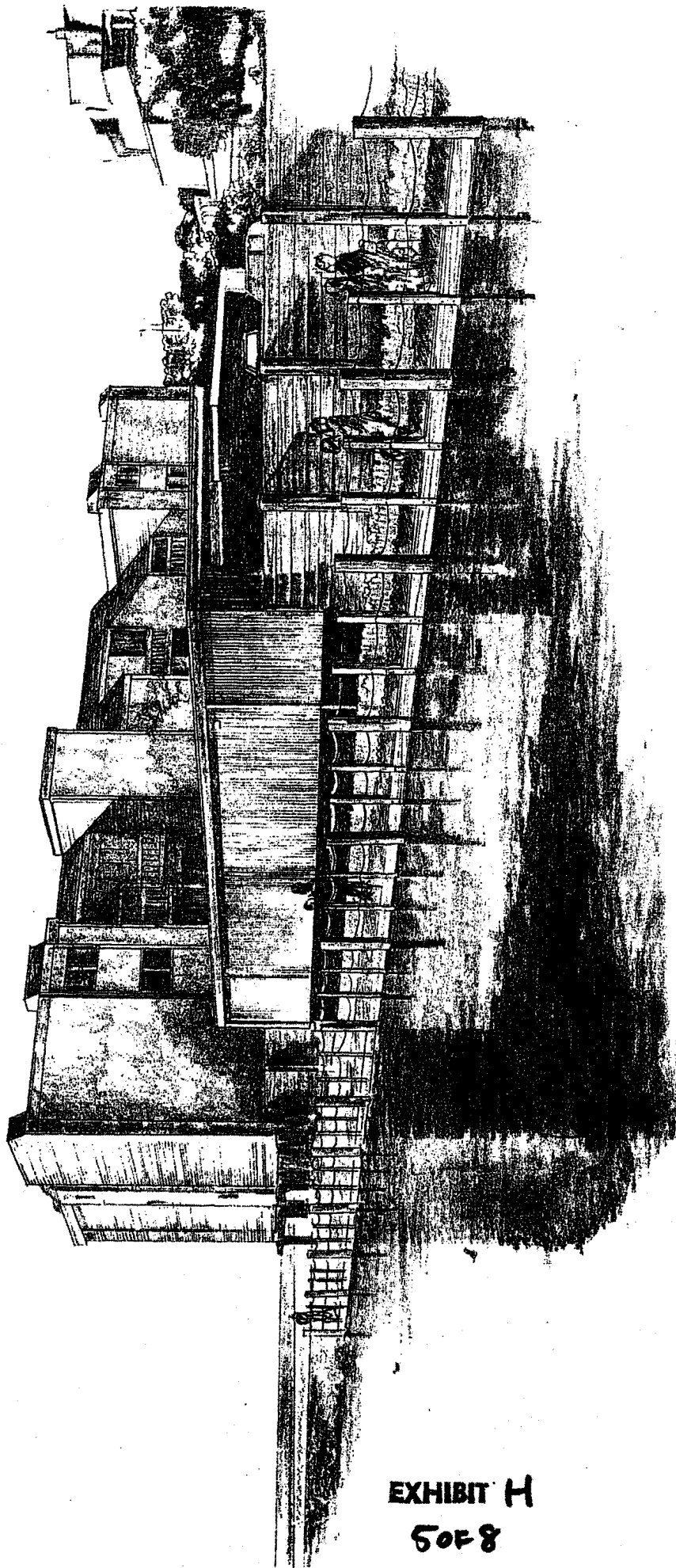
**EXHIBIT H**

**3 of 8**

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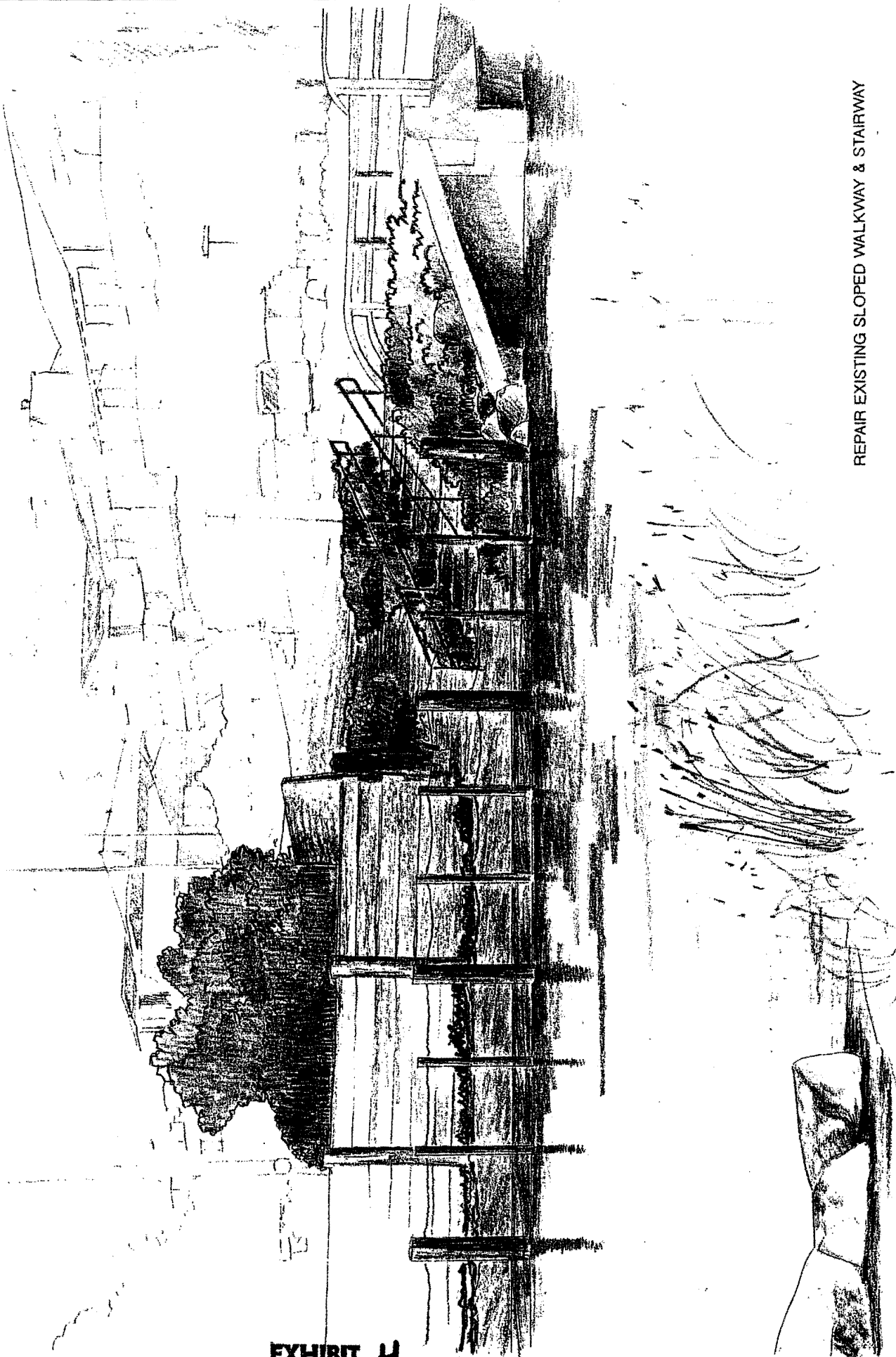
EXHIBIT  
400





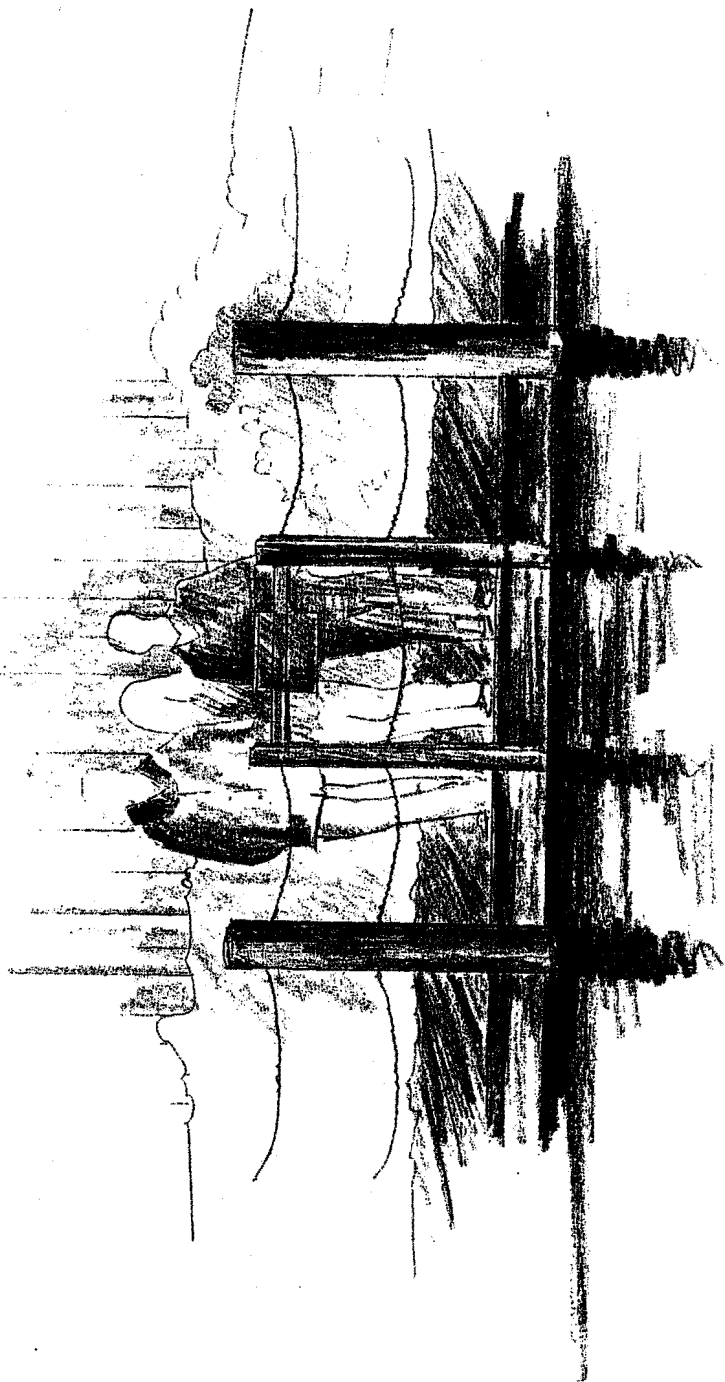
REPAIR EXISTING WALKWAY

EXHIBIT H  
5048



REPAIR EXISTING SLOPED WALKWAY & STAIRWAY

EXHIBIT H  
6048

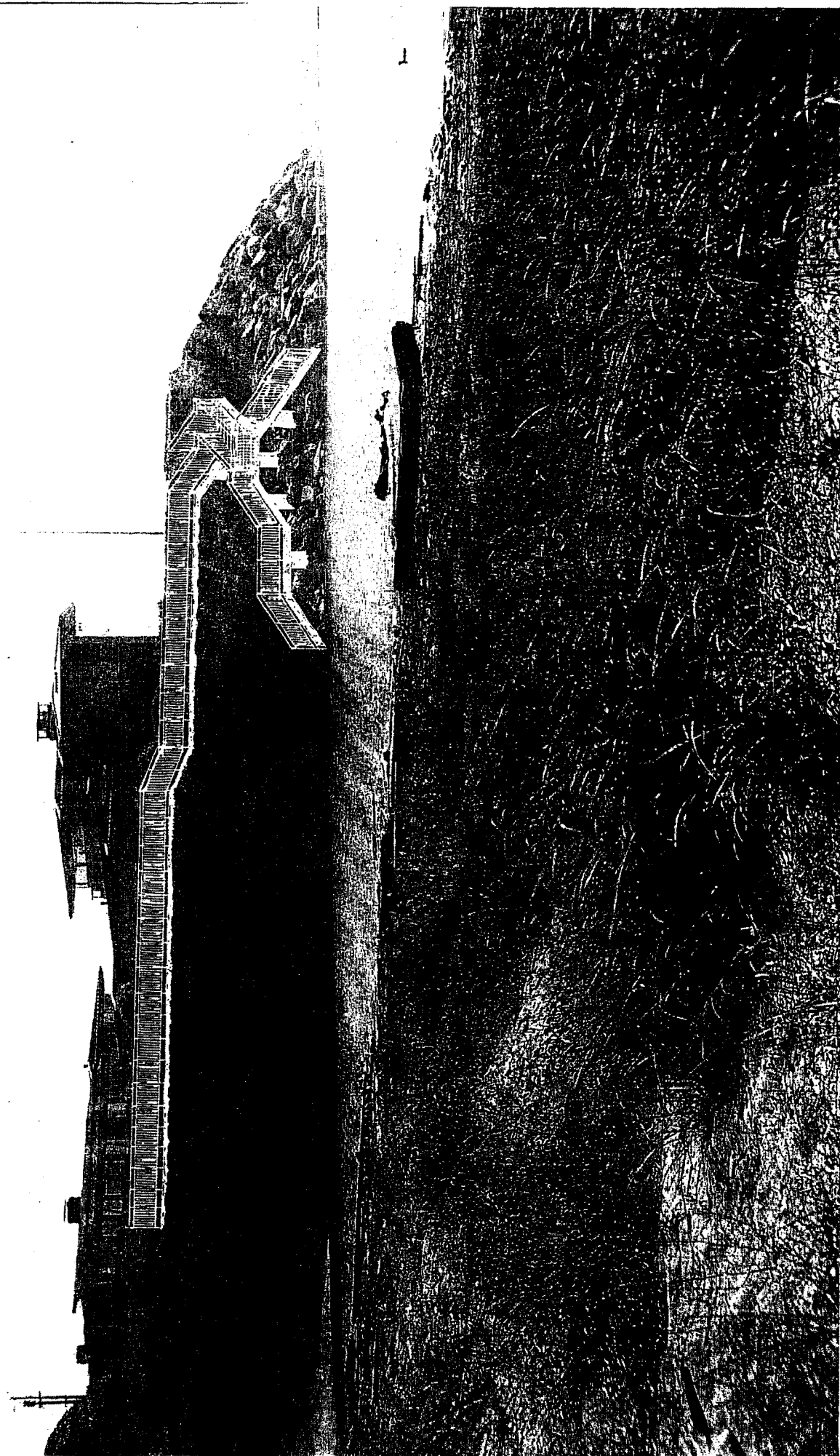


PROPOSED SIGNAGE AT WALKWAY RAILING

EXHIBIT H  
7028

EXHIBIT H

8058



## BIOLOGICAL RESOURCES

### Objective 5.1 Biological Diversity

- (LCP) To maintain the biological diversity of the County through an integrated program of open space acquisition and protection, identification and protection of plant habitat and wildlife corridors and habitats, low-intensity and resource compatible land uses in sensitive habitats and mitigations on projects and resource extraction to reduce impacts on plant and animal life.

### Policies

#### 5.1.1 Sensitive Habitat Designation

- (LCP) Designate the following areas as sensitive habitats: (a) areas shown on the County General Plan and LCP Resources and Constraints Maps; (b) any undesignated areas which meet the criteria (policy 5.1.2) and which are identified through the biotic review process or other means; and (c) areas of biotic concern as shown on the Resources and Constraints Maps which contain concentrations of rare, endangered, threatened or unique species.

#### 5.1.2 Definition of Sensitive Habitat

- (LCP) An area is defined as a sensitive habitat if it meets one or more of the following criteria:
- (a) Areas of special biological significance as identified by the State Water Resources Control Board.
  - (b) Areas which provide habitat for locally unique biotic species/communities, including coastal scrub, maritime chaparral, native rhododendrons and associated Elkgrass, mapped grasslands in the coastal zone and sand parkland; and Special Forests including San Andreas Live Oak Woodlands, Valley Oak, Santa Cruz Cypress, indigenous Ponderosa Pine, indigenous Monterey Pine and ancient forests.
  - (c) Areas adjacent to essential habitats of rare, endangered or threatened species as defined in (e) and (f) below.
  - (d) Areas which provide habitat for Species of Special Concern as listed by the California Department of Fish and Game in the Special Animals list, Natural Diversity Database.
  - (e) Areas which provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act guidelines.
  - (f) Areas which provide habitat for rare, endangered or threatened species as designated by the State Fish and Game Commission, United States Fish and Wildlife Service or California Native Plant Society.
  - (g) Nearshore reefs, rocky intertidal areas, seacaves, islets, offshore rocks, kelp beds, marine mammal hauling grounds, sandy beaches, shorebird roosting, resting and nesting areas, cliff nesting areas and marine, wildlife or educational/research reserves.
  - (h) Dune plant habitats.
  - (i) All lakes, wetlands, estuaries, lagoons, streams and rivers.
  - (j) Riparian corridors.
- (See Appendix B for a list of specific habitats and/or species.)

#### 5.1.3 Environmentally Sensitive Habitats

- (LCP) Designate the areas described in 5.1.2 (d) through (j) as Environmentally Sensitive Habitats per the California Coastal Act and allow only uses dependent on such resources in these habitats within the Coastal Zone unless other uses are:
- (a) consistent with sensitive habitat protection policies and serve a specific purpose beneficial to the public;
  - (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and
  - (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative.

### EXHIBIT I : LCP ESHA POLICIES



**5.1.4 Sensitive Habitat Protection Ordinance**

- (LCP) Implement the protection of sensitive habitats by maintaining the existing Sensitive Habitat Protection ordinance. The ordinance identifies sensitive habitats, determines the uses which are allowed in and adjacent to sensitive habitats, and specifies required performance standards for land in or adjacent to these areas. Any amendments to this ordinance shall require a finding that sensitive habitats shall be afforded equal or greater protection by the amended language.

**5.1.5 Land Division and Density Requirements in Sensitive Habitats**

- (LCP) Allow land divisions in sensitive habitats only when the density and design of the subdivision are compatible with protection of these resources as determined by environmental assessment and applicable County land use and zoning standards. Apply the following land division and density standards to the habitats listed:
- (a) Grasslands - Prohibit land division of native and mixed native grassland habitat mapped in the Coastal Zone unless the area to be divided is removed from the mapped grassland habitat area by General Plan-Local Coastal Program amendment. On parcels with existing mapped native and mixed native grasslands and which contain developable land outside those habitats, allow development at the lowest density of the land use designation and require that development be clustered and located outside the habitat areas. Allow one single family dwelling unit per existing parcel of record. Where property owners upgrade grasslands on their parcels, outside of mapped areas, through resource management activities, the prevailing General Plan densities shall not be reduced.
  - (b) Special Forests - Prohibit land divisions within designated Special Forests unless the area to be divided is removed from the mapped special forests habitat area by General Plan-Local Coastal Plan amendment. On parcels with existing mapped special forest areas which contain developable land outside that habitat, allow development at the lowest density of the land use designation and require that development be clustered and located outside the habitat areas. Allow one single family dwelling unit per existing parcel of record. Where property owners upgrade special forest areas on their parcels, outside of mapped areas, through resource management activities, the prevailing General Plan densities shall not be reduced.

**5.1.6 Development Within Sensitive Habitats**

- (LCP) Sensitive habitats shall be protected against any significant disruption of habitat values; and any proposed development within or adjacent to these areas must maintain or enhance the functional capacity of the habitat. Reduce in scale, redesign, or, if no other alternative exists, deny any project which cannot sufficiently mitigate significant adverse impacts on sensitive habitats unless approval of a project is legally necessary to allow a reasonable use of the land.

**5.1.7 Site Design and Use Regulations**

- (LCP) Protect sensitive habitats against any significant disruption or degradation of habitat values in accordance with the Sensitive Habitat Protection ordinance. Utilize the following site design and use regulations on parcels containing these resources, excluding existing agricultural operations:
- (a) Structures shall be placed as far from the habitat as feasible.
  - (b) Delineate development envelopes to specify location of development in minor land divisions and subdivisions.
  - (c) Require easements, deed restrictions, or equivalent measures to protect that portion of a sensitive habitat on a project parcel which is undisturbed by a proposed development activity or to protect sensitive habitats on adjacent parcels.
  - (d) Prohibit domestic animals where they threaten sensitive habitats.
  - (e) Limit removal of native vegetation to the minimum amount necessary for structures, landscaping, driveways, septic systems and gardens;
  - (f) Prohibit landscaping with invasive or exotic species and encourage the use of characteristic native species.

**5.1.8 Chemicals Within Sensitive Habitats**

- (LCP) Prohibit the use of insecticides, herbicides, or any toxic chemical substance in sensitive habitats, except when an emergency has been declared, when the habitat itself is threatened, when a substantial risk to public health and safety exists, including maintenance for flood control by Public Works, or when such use is authorized pursuant to a permit issued by the Agricultural Commissioner.

**5.1.9 Biotic Assessments**

- (LCP) Within the following areas, require a biotic assessment as part of normal project review to determine whether a full biotic report should be prepared by a qualified biologist:
- (a) Areas of biotic concern, mapped;
  - (b) Sensitive habitats, mapped & unmapped.

**5.1.10 Species Protection**

- (LCP) Recognize that habitat protection is only one aspect of maintaining biodiversity and that certain wildlife species, such as migratory birds, may not utilize specific habitats. Require protection of these individual rare, endangered and threatened species and continue to update policies as new information becomes available.

**5.1.11 Wildlife Resources Beyond Sensitive Habitats**

- (LCP) For areas which may not meet the definition of sensitive habitat contained in policy 5.1.2, yet contain valuable wildlife resources (such as migration corridors or exceptional species diversity), protect these wildlife habitat values and species using the techniques outlined in policies 5.1.5 and 5.1.7 and use other mitigation measures identified through the environmental review process.

**Programs**

- (LCP) a. Maintain, as Appendix B, current plant and animal habitats and species lists as a reference for the General Plan/LCP. Sources for species classification include, but are not limited to: State Water Resources Control Board, Section 15380 of the California Environmental Quality Act, California State Fish and Game Commission and the Special Animals List, Natural Diversity Data Base, United States Fish and Wildlife Service and California Native Plant Society. (Responsibility: Planning Department)
- (LCP) b. Work with State Department of Fish and Game, United States Fish and Wildlife Service and other relevant agencies to ensure adequate protection of biological resources in the County. (Responsibility: Planning Department, Board of Supervisors)
- (LCP) c. Establish a mapping program to determine the boundaries of sensitive habitats based on field mapping of parcel specific conditions: including but not limited to: lakes, lagoons, wetlands, urban riparian corridors and trail routes, rare, endangered or threatened species and unique biotic communities and surrounding areas necessary to protect them. (Responsibility: Planning Department, Fish and Game Commission, Parks, Planning Commission, Board of Supervisors)
- (LCP) d. Once baseline data are computerized, periodically update County maps when biotic and environmental reports are accepted by the County on individual parcels, areas or development projects, or when updated confirmed biotic information is received from any source. (Responsibility: Planning Department, Information Services, Board of Supervisors)
- (LCP) e. Identify and seek funding sources to acquire special sensitive habitats. (Responsibility: Planning Department, Board of Supervisors)

- (LCP) f. Maintain a Sensitive Habitat Protection ordinance which describes: habitat types, permitted and conditional uses within the habitats, and development standards, consistent with all General Plan, Local Coastal Program and California Coastal Act Sensitive Habitat protection policies. Any amendments to this ordinance shall require a finding that sensitive habitats shall be afforded equal or greater protection by the amended language. (Responsibility: Planning Department, Planning Commission, Board of Supervisors)
- (LCP) g. Determine minimum area requirements for the protection of rare, endangered and threatened species. Integrate biotic review into the timber harvest regulations. Develop a program to enforce performance standards protecting rare, endangered, threatened and unique species. Develop Memoranda of Understanding and similar agreements with state and federal agencies to assist with enforcement of performance standards. (Responsibility: Planning Department, Board of Supervisors)
- (LCP) h. Evaluate those Sensitive Habitats which are affected by agricultural activities to determine their biological importance relative to the importance of the agricultural use and develop programs to resolve conflicts between resource use and protection. (Responsibility: Planning Department, Agricultural Commissioner)
- i. Utilize a prescribed burning program or other means of removing slash to mimic the effects of natural fires in order to reduce the fire hazard to human residents and to enhance the health of biotic communities. (Responsibility: County Fire Marshal, California Department of Forestry)
- j. Prepare a countywide grassland management plan. Develop education programs, grazing management plans, or other solutions where there is evidence of over-grazing in cooperation with Soil Conservation Service, and the Santa Cruz County Resource Conservation District. Develop prescribed burning, grazing, or other measures to preserve grassland, except where an area is being replanted with native trees and a timber management plan has been approved. (Responsibility: Planning Department, Board of Supervisors)
- k. Continue to ensure survival of the endangered Santa Cruz Long-Toed Salamander (SCLTS) through County programs including:
- (1) Maintain the existing salamander protection development criteria in the Sensitive Habitat Protection ordinance.
  - (2) Support of state and federal efforts for habitat preservation at Valencia Lagoon, Ellicott Pond, Seascape Uplands, other known habitat locations, and habitat locations that may be discovered in the future through information obtained in environmental review or other professionally recognized sources.
  - (3) Seek funding for acquisition of lots and development of Habitat Conservation Plans for all known SCLTS habitats.
  - (4) Establish a procedure whereby, upon receiving a development application for an undeveloped parcel within the essential habitat, the County shall notify the California Coastal Commission, Coastal Conservancy, California Department of Fish and Game, U.S. Fish and Wildlife Service and other interested organizations. The County or other agency shall have one year to decide whether to acquire the parcel. If the County and other agencies decide not to acquire the parcel, and if development potential in the essential habitat has not been otherwise eliminated and development cannot be accommodated on the parcel outside the essential habitat, development may proceed consistent with the standards for the area adjacent to the salamander essential habitat and other LCP policies. A security deposit shall be required to ensure compliance with those standards.
  - (5) Delineate SCLTS habitat on County maps and utilize a salamander habitat combining zone district to identify parcels which contain such habitat.
  - (6) Establish inter-agency communication between Planning, Fish and Game, and Fish and Wildlife to determine the success of the current policies in protecting the SCLTS. If current policies are inadequate, implement additional actions as recommended by inter-agency consultation.
- (Responsibility: Planning Department, California Fish and Game Department, County Fish and Game Commission, Board of Supervisors)

EXHIBIT I

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1. Establish an education and monitoring program cooperatively with the Department of Fish and Game and other interested agencies to prevent substantial lot disturbance and removal of native vegetation on lots which are currently built out in or adjacent to essential salamander habitat. (Responsibility: Planning Department)

## RESTORATION OF DAMAGED SENSITIVE HABITATS

### Policies

#### 5.1.12 Habitat Restoration With Development Approval

- (LCP) Require as a condition of development approval, restoration of any area of the subject property which is an identified degraded sensitive habitat, with the magnitude of restoration to be commensurate with the scope of the project. Such conditions may include erosion control measures, removal of non-native or invasive species, planting with characteristic native species, diversion of polluting run-off, water impoundment, and other appropriate means. The object of habitat restoration activities shall be to enhance the functional capacity and biological productivity of the habitat(s) and whenever feasible, to restore them to a condition which can be sustained by natural occurrences, such as tidal flushing of lagoons.

#### 5.1.13 Habitats Damaged From Code Violations

- (LCP) In all cases where a sensitive habitat has been damaged as a result of a code violation, require that restoration of damaged areas be undertaken in compliance with all necessary permits and that the size of the restored area be in compliance with Department of Fish and Game requirements. Such restoration shall include monitoring over time to ensure the success of the restoration effort.

#### 5.1.14 Removal of Invasive Plant Species

- (LCP) Encourage the removal of invasive species and their replacement with characteristic native plants, except where such invasive species provide significant habitat value and where removal of such species would severely degrade the existing habitat. In such cases, develop long-term plans for gradual conversion to native species providing equal or better habitat values.

#### 5.1.15 Priorities for Restoration Funding

- (LCP) Use the following criteria for establishing funding priorities among restoration projects:
- (a) Biological significance of the habitat, including productivity, diversity, uniqueness of area, presence of rare, endangered or unique species, or regional importance (e.g., waterfowl resting areas, etc.).
  - (b) Degree of endangerment from development or other activities, and vulnerability to overuse or misuse.

### Programs

- (LCP) a. Identify key restoration sites and seek funding to supplement private restoration. (Responsibility: Planning Department, Flood Control Zone 4, POSCS, Public Works)
- b. Encourage enhancement and restoration of Sensitive Habitats on private lands by providing technical assistance and available resource information to property owners. Work to develop incentives for habitat restoration. (Responsibility: Planning Department, Board of Supervisors, Resource Conservation District)
- c. Develop a program for control and eradication of feral pigs throughout the County. (Responsibility: Board of Supervisors, State Fish and Game, Fish and Game Commission)

- (LCP)
- d. Support the City of Santa Cruz and Harbor District in efforts to restore wetland habitat in Lower Arana Gulch and facilitate by encouraging and reviewing any portion of a restoration project under County jurisdiction, consistent with other applicable policies. (Responsibility: Board of Supervisors, Planning Department, Flood Control Zone 4)
  - e. Cooperate with AMBAG, Monterey County, San Benito County, and State Department of Fish and Game in the implementation of the Pajaro River Corridor Management Plan and forthcoming Lagoon Management Plan for the lower Pajaro River including specific habitat restoration projects for the Pajaro River and tributaries. (Responsibility: Fish and Game Commission, Public Works, Flood Control Zone 7 and Zone 4)
  - f. Work with the City of Watsonville to develop a comprehensive management plan for South County sloughs and wetlands. (Responsibility: Planning Department, Board of Supervisors)
  - g. Develop a coordinated review procedure and criteria which protect sensitive habitats as well as meet standards for fire protection. (Responsibility: Fire Agencies, County Fire Marshal, California Department of Forestry, Planning Department)
  - h. Encourage the attraction of private capital for purposes of restoration and stewardship of natural resources including vegetation, wildlife, water and soil resources. Assemble an ecological enhancement group to include: land owners, professionals in the fields of planning, natural resources and development for the purpose of creating a resource protection incentives program for consideration by the Board of Supervisors. Recommend to the Board of Supervisors a system of density bonuses, cost savings, or other resource protection incentives based upon:
    - (1) The quality and extent of preservation and/or restoration of natural habitat; and
    - (2) Permanent measures for ongoing stewardship of natural resources.(Responsibility: Board of Supervisors, Planning Department, Resource Conservation District, Native Plant Society)

## Objective 5.2 Riparian Corridors and Wetlands

(LCP) To preserve, protect and restore all riparian corridors and wetlands for the protection of wildlife and aquatic habitat, water quality, erosion control, open space, aesthetic and recreational values and the conveyance and storage of flood waters.

### Policies

#### 5.2.1 Designation of Riparian Corridors and Wetlands

(LCP) Designate and define the following areas as Riparian Corridors:

- (a) 50' from the top of a distinct channel or physical evidence of high water mark of a perennial stream;
- (b) 30' from the top of a distinct channel or physical evidence of high water mark of an intermittent stream as designated on the General Plan maps and through field inspection of undesignated intermittent and ephemeral streams;
- (c) 100' of the high water mark of a lake, wetland, estuary, lagoon, or natural body of standing water;
- (d) The landward limit of a riparian woodland plant community;
- (e) Wooded arroyos within urban areas.

Designate and define the following areas as Wetlands:

Transitional areas between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water periodically or permanently. Examples of wetlands are saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The US Army Corps of Engineers, and other federal agencies utilize a "unified methodology" which defines wetlands as "those areas meeting certain criteria for hydrology, vegetation, and soils."

#### 5.2.2 Riparian Corridor and Wetland Protection Ordinance

(LCP) Implement the protection of Riparian Corridors and Wetlands through the Riparian Corridor and Wetland Protection ordinance to ensure no net loss of riparian corridors and riparian wetlands. The ordinance identifies and defines riparian corridors and wetlands, determines the uses which are allowed in and adjacent to these habitats, and specifies required buffer setbacks and performance standards for land in and adjacent to these areas. Any amendments to this ordinance shall require a finding that riparian corridors and wetlands shall be afforded equal or greater protection by the amended language.

#### 5.2.3 Activities Within Riparian Corridors and Wetlands

(LCP) Development activities, land alteration and vegetation disturbance within riparian corridors and wetlands and required buffers shall be prohibited unless an exception is granted per the Riparian Corridor and Wetlands Protection ordinance. As a condition of riparian exception, require evidence of approval for development from the US Army Corps of Engineers, California Department of Fish and Game, and other federal or state agencies that may have regulatory authority over activities within riparian corridors and wetlands.

#### 5.2.4 Riparian Corridor Buffer Setback

(LCP) Require a buffer setback from riparian corridors in addition to the specified distances found in the definition of riparian corridor. This setback shall be identified in the Riparian Corridor and Wetland Protection ordinance and established based on stream characteristics, vegetation and slope. Allow reductions to the buffer setback only upon approval of a riparian exception. Require a 10 foot separation from the edge of the riparian corridor buffer to any structure.

**5.2.5 Setbacks From Wetlands**

- (LCP) Prohibit development within the 100 foot riparian corridor of all wetlands. Allow exceptions to this setback only where consistent with the Riparian Corridor and Wetlands Protection ordinance, and in all cases, maximize distance between proposed structures and wetlands. Require measures to prevent water quality degradation from adjacent land uses, as outlined in the Water Resources section.

**5.2.6 Riparian Corridors and Development Density**

- (LCP) Exclude land within riparian corridors in the calculation of development density or net parcel size. Grant full density credit for the portion of the property outside the riparian corridor which is within the required buffer setback, excluding areas over 30% slope, up to a maximum of 50% of the total area of the property which is outside the riparian corridor. (See policy 5.11.2.)

**5.2.7 Compatible Uses With Riparian Corridors**

- (LCP) Allow compatible uses in and adjacent to riparian corridors that do not impair or degrade the riparian plant and animal systems, or water supply values, such as non-motorized recreation and pedestrian trails, parks, interpretive facilities and fishing facilities. Allow development in these areas only in conjunction with approval of a riparian exception.

**5.2.8 Environmental Review for Riparian Corridor and Wetland Protection**

- (LCP) Require environmental review of all proposed development projects affecting riparian corridors or wetlands and preparation of an Environmental Impact Report or Biotic Report for projects which may have a significant effect on the corridors or wetlands.

**5.2.9 Management Plans for Wetland Protection**

- (LCP) Require development in or adjacent to wetlands to incorporate the recommendations of a management plan which evaluates: migratory waterfowl use December 1 to April 30; compatibility of agricultural use and biotic and water quality protection; maintenance of biologic productivity and diversity; and the permanent protection of adjoining uplands.

**5.2.10 Development in Wetland Drainage Basins**

- (LCP) Require development projects in wetland drainage basins to include drainage facilities or Best Management Practices (BMPs) which will maintain surface runoff patterns and water quality, unless a wetland management plan specifies otherwise, and minimize erosion, sedimentation, and introduction of pollutants.

**5.2.11 Breaching of Lagoon, River, Stream or Creek Sandbars**

- (LCP) Do not permit breaching of lagoon sandbars unless the breaching is consistent with an approved management plan for that wetland, river, stream, or creek system.

## Programs

(Also see programs for Maintaining Surface Water Quality in section 5.8. and programs for Biological Diversity and Restoration of Damaged Sensitive Habitats in section 5.1.)

- (LCP) a. Maintain and enforce a Riparian and Wetland Protection ordinance to protect riparian corridors, wetlands, lagoons and inland lakes by avoiding to the greatest extent allowed by law the development in these areas. Maintain a resource management program (Flood Control Zone 4 or similar) to fund protection and restoration of these areas and seek to increase riparian corridor and wetland acreage over the long-term. (Responsibility: Planning Department, Planning Commission, Board of Supervisors)
- b. Establish a program in cooperation with the California Department of Fish and Game to identify and revegetate disturbed areas in riparian corridors with appropriate native species. (Responsibility: Planning Department, Flood Control Zone 4)
- (LCP) c. Cooperate with the City of Santa Cruz and the Harbor District in the evaluation of the Arana Creek Marsh and evaluate other appropriate marsh areas for rare and endangered plants and devise a Biotic Management Plan for their preservation. Investigate ways to return the marshes to their natural state. (Responsibility: Public Works, Port Commission, Flood Control Zone 4)
- (LCP) d. In conjunction with AMBAG, the City of Watsonville, and the State Water Resources Control Board, develop and implement a coordinated resource management plan for the Watsonville Slough system and surrounding wetlands to improve water quality and biological habitat. (Responsibility: Flood Control, Public Works, AMBAG, City of Watsonville, and/or other appropriate agencies)
- (LCP) e. Follow the guidelines in the Pajaro River Corridor and Lagoon Management Plans to improve environmental quality of the riparian corridor and to reduce the risk of flooding to Watsonville and surrounding areas. (Responsibility: Pajaro River Task Force, Public Works, Flood Control Zone 7, Army Corps of Engineers, City of Watsonville, Board of Supervisors, Monterey County, and/or other appropriate agencies)
- f. Review site-specific recommendations in Urban Watersheds Study in connection with the design of drainage and other improvements and the review of development projects in or adjacent to riparian corridors within the Urban Services Line. Incorporate suggested restoration and enhancement measures where practical. Develop long-term plans to implement other suggested measures. (Responsibility: Planning Department, Public Works, Redevelopment Agency, and/or other appropriate agencies)
- (LCP) g. Prepare a map of all wetlands and wetland drainage basins in the County. Seek funding and support for development of management plans for wetlands from state and federal agencies and explore the possibility of establishing a development-funded wetland management program to prepare wetland management plans.



## AQUATIC AND MARINE HABITATS

### Objective 5.3 Aquatic and Marine Habitats

(LCP) To identify, preserve and restore aquatic and marine habitats; to maximize scientific research and education which emphasizes comprehensive and coordinated management consistent with the mission of the Monterey Bay National Marine Sanctuary; and to facilitate multiple use and recreation opportunities compatible with resource protection.

#### Policies

##### 5.3.1 Support the Monterey Bay Sanctuary

(LCP) Support the mission of the Monterey Bay National Marine Sanctuary to facilitate the long-term management, protection, understanding and awareness of its resources and qualities.

##### 5.3.2 Protecting Shorebird Nesting Sites

(LCP) Discourage all activities within 100 feet of shorebird nesting sites during nesting season (March-July). Prohibit dogs from beaches having nesting sites.

##### 5.3.3 Davenport Pier, Rock Cliffs and Outcrops

(LCP) Maintain low intensity use, such as nature observation and educational instruction on and adjacent to the Davenport Pier, Rock Cliffs and rock outcrops.

##### 5.3.4 Coastal Dunes and Strand

(LCP) Prohibit off-road vehicle use in the coastal dunes and strand, and discourage other uses with the potential to degrade dune habitat. Where trails through dunes are permitted, utilize wooden boardwalks or other techniques to minimize damage to dune habitat.

##### 5.3.5 Anadromous Fish Streams

Require new water diversions, dams and reservoirs which are constructed on anadromous fish streams to be designed to protect fish populations and to provide adequate flow levels for successful fish production.

##### 5.3.6 Marine Mammal Hauling Grounds

(LCP) Prevent access to the bluff top observation points likely to cause disturbance to animals. Discourage access to immediately adjacent beach areas where necessary to minimize disturbance by roping off sensitive areas and posting explanatory signs along fence lines and restricted paths. Fence where necessary to prevent marine mammals from crossing Highway One.

## CHAPTER 16.30

### RIPARIAN CORRIDOR AND WETLANDS PROTECTION

#### Section:

- 16.30.010 Purpose
- 16.30.020 Scope
- 16.30.025 Amendment
- 16.30.030 Definitions
- 16.30.040 Protection
- 16.30.050 Exemptions
- 16.30.060 Exceptions
- 16.30.070 Inspection and Compliance
- 16.30.080 Violations
- 16.30.110 Appeals

16.30.010 PURPOSE. The purpose of this chapter is to eliminate or  
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minimize any development activities in the riparian corridor in order to preserve, protect, and restore riparian corridors for: protection of wildlife habitat; protection of water quality; protection of aquatic habitat; protection of open space, cultural, historical, archeological and paleontological, and aesthetic values; transportation and storage of floodwaters; prevention of erosion; and to implement the policies of the General Plan and the Local Coastal Program Land Use Plan. (Ord. 2460, 7/19/77; 3335, 11/23/82)

16.30.020 SCOPE. This chapter sets forth rules and regulations to  
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limit development activities in riparian corridors; establishes the administrative procedure for the granting of exceptions from such limitations; and establishes a procedure for dealing with violations of this Chapter. This Chapter shall apply to both private and public activities including those of the County and other such government agencies as are not exempted therefrom by state or federal law. Any person doing work in nonconformance with this Chapter must also abide by all other pertinent local, state and federal laws and regulations. (Ord. 2460, 7/19/77; 3335, 11/23/82; 4027, 11/7/89; 4166, 12/10/91)

16.30.025 AMENDMENT. Any revision to this chapter which applies to  
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the Coastal Zone shall be reviewed by the Executive Director of the California Coastal Commission to determine whether it constitutes an amendment to the Local Coastal Program. When an ordinance revision

constitutes an amendment to the Local Coastal Program such revision shall be processed pursuant to the hearing and notification provisions of Chapter 13.03 of the County Code and shall be subject to approval by the California Coastal Commission.

16.30.030 DEFINITIONS. All definitions shall be as defined in the  
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General Plan or Local Coastal Plan glossaries, except as noted below:

Agricultural Use. Routine annual agricultural activities such as  
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clearing, planting, harvesting, plowing, harrowing, disking, ridging, listing, land planning and similar operations to prepare a field for a crop.

Arroyo. A gully, ravine or canyon created by a perennial, inter-  
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mittent or ephemeral stream, with characteristic steep slopes frequently covered with vegetation. An arroyo includes the area between the top of the arroyo banks defined by a discernible break in the slope rising from the arroyo bottom. Where there is no break in slope, the extent of the arroyo may be defined as the edge of the 100 year floodplain.

Body of standing water. Any area designated as standing water on  
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the largest scale U.S. Geological Survey Topographic map most recently published, including, but not limited to, wetlands, estuaries, lakes, marshes, lagoons, and man-made ponds which now support riparian biota.

Buffer. The area abutting an arroyo where development is limited  
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in order to protect riparian corridor or wetland. The width of the buffer is defined in Section 16.30.040 (b).

Development activities. Development activities shall include:  
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1. Grading. Excavating or filling or a combination there-  
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of; dredging or disposal of dredge material; mining; installation of riprap:
2. Land clearing. The removal of vegetation down to bare  
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soil.
3. Building and paving. The construction or alteration of  
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any structure or part thereof, including access to and construction of parking areas, such as to require a building permit.

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4. Tree and shrub removal. The topping or felling of any standing vegetation greater than 8 feet in height.
5. The deposition of refuse or debris.
6. The use of herbicides, pesticides, or any toxic chemical substances.
7. Any other activities determined by the Planning Director to have significant impacts on the riparian corridor.

Disturbed area. An area determined by the Planning Director to have experienced significant alteration from its natural condition. Such disturbance may typically consist of clearing, grading, paving, landscaping, construction, etc.

Director. The Planning Director or his or her designee.

Emergency. A sudden unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services.

Ephemeral stream. A natural watercourse or portion thereof which flows only in direct response to precipitation, as identified through field investigations.

Intermittent stream. Any watercourse designated by a dash-and-dots symbol on the largest scale U.S. Geological Survey Topographic map most recently published, or when it has been field determined that a watercourse either:

1. Has a significant waterflow 30 days after the last significant storm; or
2. Has a well-defined channel, free of soil and debris.

Minor proposal. Building remodels or additions less than 500 square feet or grading less than 100 cubic yards which takes place within a previously developed or disturbed area; tree removal or trimming for the purpose of mitigating hazardous conditions or allowing solar access; drainage structures (e.g. culverts, downdrains, etc.); erosion control structures (e.g. retaining walls, riprap, checkdams, etc.); emergency measures requiring prompt action; resource management programs carried out under the auspices of a government agency; development

activities within buffer zones which do not require a discretionary permit; other projects of similar nature determined by the Planning Director to cause minimal land disturbance and/or benefit the riparian corridor.

Perennial stream. Any watercourse designated by a solid line symbol on the largest scale U.S. Geological Survey Topographic map most recently published or verified by field investigation as a stream that normally flows throughout the year.

Riparian Corridor. Any of the following:

- (1) Lands within a stream channel, including the stream and the area between the mean rainy season (bankfull) flowlines;
- (2) Lands extending 50 feet (measured horizontally) out from each side of a perennial stream. Distance shall be measured from the mean rainy season (bankfull) flowline;
- (3) Lands extending 30 feet (measured horizontally) out from each side of an intermittent stream. Distance shall be measured from the mean rainy season (bankfull) flowline;
- (4) Lands extending 100 feet (measured horizontally) from the high watermark of a lake, wetland, estuary, lagoon or natural body of standing water;
- (5) Lands within an arroyo located within the Urban Services Line, or the Rural Services Line.
- (6) Lands containing a riparian woodland.

Riparian vegetation/woodland. Those plant species that typically occur in wet areas along streams or marshes. A woodland is a plant community that includes these woody plant species that typically occur in wet areas along streams or marshes. Characteristic species are: Black Cottonwood (*Populus trichocarpa*), Red Alder (*Alnus oregona*), White Alder (*Alnus rhombifolia*), Sycamore (*Plantanus racemosa*), Box Elder (*Acer negundo*), Creek Dogwood (*Cornus Californica*), Willow (*Salix*).

Vegetation. Any species of plant.

(Ord. 2535, 2/21/78; 2536, 2/21/78; 2800, 10/30/79; 3335, 11/23/82; 3441, 8/23/83; 3601, 11/6/84; 4346, 12/13/94)

16.30.040 PROTECTION. No person shall undertake any development activities other than those allowed through exemptions and exceptions as defined below within the following areas:

- (a) Riparian corridors.
- (b) Areas within the Urban Services Line or Rural Services Line which are within a buffer zone as measured from the

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top of the arroyo. All projects located on properties abutting an arroyo shall be subject to review by the Planning Director. The width of the buffer shall be determined according to the following criteria:

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CRITERIA FOR DETERMINING BUFFER FROM ARROYOS

Character of Vegetation in Buffer

	Riparian Vegetation			Live Oak or Other Woodland		
Average slope within 30 feet of edge	20-30%	10-20%	0-10%	20-30%	10-20%	0-10%
Buffer Distance (feet) from:	50	50	50	50	40	30
Perennial Streams Wetlands, Marshes, Bodies of Water						
Buffer Distance (feet) from:	50	40	30	30	30	20
Intermittent Streams						
Buffer Distance (feet) from:	30	30	20	20	20	20
Ephemeral Streams						

The buffer shall always extend 50 feet from the edge of riparian woodland and 20 feet beyond the edge of other woody vegetation as determined by the dripline, except as provided for in Section 16.30.060. Once the buffer is determined, a 10-foot setback from the edge of buffer is required for all structures, to allow for construction equipment and use of yard area.

See allowable density credits within the General Plan.

# CRITERIA FOR DETERMINING BUFFER FROM ARROYOS

## Character of Vegetation in Buffer

	Grassland or Other			Buffer area is developed or other wise disturbed (does not include recent clearing)		
Average slope within 30 feet of edge	20-30%	10-20%	0-10%	20-30%	10-20%	0-10%
Buffer Distance (feet) from:						
Perennial Streams, Wetlands, Marshes Bodies of Water	50	30	20	30	20	20
Buffer Distance (feet) from:						
Intermittent Streams	30	20	10	20	10	10
Buffer Distance (feet) from:						
Ephemeral Streams	20	10	10	20	10	10

The buffer shall always extend 50 feet from the edge of riparian woodland and 20 feet beyond the edge of other woody vegetation as determined by the dripline, except as provided for in Section 16.30.060. Once the buffer is determined, a 10-foot setback from the edge of buffer is required for all structures, to allow for construction equipment and use of yard area.

See allowable density credits within the General Plan. (Ord. 2460, 7/19/77; 3335, 11/23/82; 4346, 12/13/94)

16.30.050 EXEMPTIONS. The following activities shall be exempt from the provisions of this chapter.

- (a) The continuance of any preexisting nonagricultural use, provided such use has not lapsed for a period of one year or more. This shall include change of uses which do not significantly increase the degree of encroachment into or impact on the riparian corridor as determined by the Planning Director.
- (b) The continuance of any preexisting agricultural use, provided such use has been exercised within the last five years.
- (c) All activities done pursuant to a valid County timber harvest permit.
- (d) All activities listed in the California Food and Agricul-

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tural Code pursuant to the control or eradication of a pest as defined in Section 5006, Food and Agriculture Code, as required or authorized by the County Agricultural Commissioner.

(e) Drainage, erosion control, or habitat restoration measures required as a condition of County approval of a permitted project. Plans for such measures shall be reviewed and approved by the Planning Director. (Ord. 2460, 7/19/77; 2537, 2/21/78; 3335, 11/23/82)

(f) The Pajaro River Sediment Removal Project, under the Army Corps of Engineers Permit No. 21212S37, issued May, 1995, or as amended. (Ord. 4374, 6/6/95)

16.30.060 EXCEPTIONS. Exceptions and conditioned exceptions to the  
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provisions of this Chapter may be authorized in accordance with the following procedures:

(a) Application. Application for an exception granted pursuant  
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to this chapter shall be made in accordance with the requirements of Chapter 18.10, Level III or V, and shall include the following:

1. Applicant's name, address, and telephone number.
2. Property description: The assessor's parcel number, the location of the property and the street address if any.
3. Project description: A full statement of the activities to be undertaken, mitigation measures which shall be taken, the reasons for granting such an exception, and any other information pertinent to the findings prerequisite to the granting of an exception pursuant to this section.
4. Two sets of plans indicating the nature and extent of the work proposed. The plans shall depict property lines, landmarks and distance to existing watercourse; proposed development activities, alterations to topography and drainage channels; mitigation measures, including details of erosion control or drainage structures, and the extent of areas to be revegetated. Plans shall be a minimum size of 18" x 24", except that plans for minor proposals may be a minimum size of 8 1/2" x 11".
5. Applicant's property interest or written permission of the owner to make application.
6. Requested Information: Such further information as the Planning Director may require.
7. Fees: The required filing fee, set by resolution of the Board of Supervisors, shall accompany the application.

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(b) Notice. Notices of all actions taken pursuant to this  
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chapter shall be in accordance with the requirements of Chapter  
18.10.

(c) Action. Proposals for minor riparian exceptions may be  
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acted upon at Level III and proposals for major riparian excep-  
tions may be acted upon at level V pursuant to chapter 18.10.

(d) Findings. Prior to the approval of any exception, the  
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Approving Body shall make the following findings:

1. That there are special circumstances or conditions affect-  
ing the property;
2. That the exception is necessary for the proper design and  
function of some permitted or existing activity on the proper-  
ty;
3. That the granting of the exception will not be detrimental  
to the public welfare or injurious to other property downstream  
or in the area in which the project is located;
4. That the granting of the exception, in the Coastal Zone,  
will not reduce or adversely impact the riparian corridor, and  
there is no feasible less environmentally damaging alternative;  
and
5. That the granting of the exception is in accordance with  
the purpose of this chapter, and with the objectives of the  
General Plan and elements thereof, and the Local Coastal Pro-  
gram Land Use Plan.

(e) Conditions. The granting of an exception may be condi-  
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tioned by the requirement of certain measures to ensure compli-  
ance with the purpose of this chapter. Required measures may  
include, but are not limited to:

1. Maintenance of a protective strip of vegetation between  
the activity and a stream, or body of standing water. The strip  
should have sufficient filter capacity to prevent significant  
degradation of water quality, and sufficient width to provide  
value for wildlife habitat, as determined by the Approving  
Body.
2. Installation and maintenance of water breaks.
3. Surface treatment to prevent erosion or slope insta-  
bilities.

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4. Installation and maintenance of drainage facilities.
5. Seeding or planting of bare soil.
6. Installation and maintenance of a structure between toe of the fill and the high water mark.
7. Installation and maintenance of sediment catch basins.

(f) Concurrent Processing of Related Permits. An application

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for exception may be processed concurrently with applications for discretionary permits required for the activity in question. No ministerial permit(s) for the activities in question shall be issued until an exception has been authorized. All discretionary permits for the activity in question shall include all conditions included in the exception. Where associated discretionary permits are authorized by the Planning Commission or Board of Supervisors, that body shall be authorized to act in place of the Zoning Administrator in considering an application for an exception if the applications are considered concurrently.

(g) Expiration. Unless otherwise specified, exceptions issued

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pursuant to this chapter shall expire one year from the date of issuance if not exercised. Where an exception has been issued in conjunction with a development permit granted pursuant to Chapter 18.10, the exception shall expire in accordance with the provisions of Chapter 18.10. (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3441, 8/23/83)

16.30.070 INSPECTION AND COMPLIANCE. The Planning Director may  
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conduct inspections to ensure compliance with this chapter.

(a) Inspection. The following inspections may be performed by  
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the Director:

1. A pre-site inspection to determine the suitability of the proposed activity and to develop necessary conditions for an exception.
2. A final inspection to determine compliance with conditions, plans and specifications.

These inspections may take place concurrent with inspection required by any permits necessary for the activities in question.

(b) Notification. The permittee shall notify the Director 24  
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hours prior to start of the authorized work and also 24 hours

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prior to the time he or she desires a required inspection.

(c) Right of Entry. The application for exception constitutes

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a grant of permission for the County to enter the permit area for the purpose of administering this chapter from the date of the application to the termination of any erosion control maintenance period. If necessary, the Director shall be supplied with a key or lock combination or be permitted to install a County lock. (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3441, 8/23/83)

#### 16.30.080 VIOLATIONS.

(a) It shall be unlawful for any person to do cause, permit, aid, abet, suffer or furnish equipment or labor for any development activity within a riparian corridor as defined in Section 16.30.030 unless either (1) a development permit has been obtained and is in effect which authorizes the development activity as an exception; or (2) the activity is exempt from the requirement for a development permit by the provisions of Section 16.30.050 of this chapter.

(b) It shall be unlawful for any person to do, cause, permit, aid, abet, suffer or furnish equipment or labor for any development activity within a buffer zone of an arroyo as defined in Section 16.30.030 and as prescribed by the provisions of subsection 16.30.040(b) unless either (1) a development permit has been obtained and is in effect which authorizes the development activity as an exception; or (2) the activity is exempt from the requirement for a development permit by the provisions of Section 16.30.050 of this chapter.

(c) It shall be unlawful for any person to exercise a development permit authorizing development activity as an exception without complying with all of the conditions of such permit.

(d) It shall be unlawful for any person to knowingly do, cause, permit, aid, abet or furnish equipment or labor for any work in violation of a stop work notice from and after the date it is posted on the site until the stop work notice is authorized to be removed by the Planning Director. (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335; 11/23/82; 3451-A, 8/23/83)

16.30.081 (Repealed 4/2/96, Ord. 4392A)

16.30.090 (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3451-A, 8/23/83; Repealed 4/2/96, Ord. 4392A)

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16.30.100 (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335,  
11/23/82; 3451-A, 8/23/82; Repealed 4/2/96, Ord. 4392A)

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16.30.103 (Repealed 4/2/96, Ord. 4392A)

16.30.107 (Repealed 4/2/96; Ord. 4392A)

16.30.110 APPEALS. All appeals of actions taken pursuant to the provisions of this Chapter shall be made in conformance to the procedures of Chapter 18.10. (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3451-A, 8/23/83)  
(v001)

## CHAPTER 16.32

### SENSITIVE HABITAT PROTECTION

#### Sections:

- 16.32.010 Purposes
- 16.32.020 Scope
- 16.32.030 Amendment
- 16.32.040 Definitions
- 16.32.050 General Provisions
- 16.32.060 Approval Required
- 16.32.070 Assessments and Reports Required
- 16.32.080 Report Preparation and Review
- 16.32.130 Violations
- 16.32.140 Fees

16.32.010 PURPOSES. The purposes of this chapter are to minimize

the disturbance of biotic communities which are rare or especially valuable because of their special nature or role in an ecosystem, and which could be easily disturbed or degraded by human activity; to protect and preserve these biotic resources for their genetic scientific, and educational values; and to implement policies of the General Plan and the Local Coastal Program Land Use Plan. (Ord. 3342, 11/23/82; 3442, 8/23/83)

16.32.020 SCOPE. This Chapter sets forth rules and regulations for

evaluating the impacts of development activities on sensitive habitats; establishes the administrative procedures for determining whether and what type of limitations to development activities are necessary to protect sensitive habitats; and establishes a procedure for dealing with violations of this Chapter. This Chapter shall

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apply to both private and public activities including those of the County and other such government agencies where not exempted therefrom by state or federal law. Any person doing work in conformance with this Chapter must also abide by all other pertinent local, state and federal laws and regulations. (Ord. 3342, 11/23/82; 3442, 8/23/83; 4027, 11/7/89; 4166, 12/10/91)

16.32.030 AMENDMENT. Any revision to this chapter which applies to

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the Coastal Zone shall be reviewed by the Executive Director of the California Coastal Commission to determine whether it constitutes an amendment to the Local Coastal Program. When an ordinance revision constitutes an amendment to the Local Coastal Program such revisions shall be processed pursuant to the hearing and notification provisions of Chapter 13.03 of the County Code and shall be subject to approval by the California Coastal Commission. (Ord. 3342, 11/23/82; 3342, 8/23/83)

16.32.040 DEFINITIONS. All terms used in this chapter shall be as  
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defined in the General Plan and Local Coastal Program Land Use Plan and as follows:

Area of Biotic Concern. Any area in which development may affect  
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a sensitive habitat, as identified on the Local Coastal Program Sensitive Habitats maps, the General Plan Resources and Constraints maps and other biotic resources maps on file in the Planning Department, or as identified during inspection of a site by Planning Department staff.

Biotic Assessment. A brief review of the biotic resources  
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present at a project site prepared by the County biologist.

Biotic Permit. A permit for development in an area of biotic  
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concern issued pursuant to the provisions of this chapter.

Biotic Report. A complete biotic investigation conducted by an  
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approved biologist from a list maintained by the county, including but not limited to the following:

1. Identification of the rare endangered, threatened and unique species on the site;
2. Identification of the essential habitats of such species;
3. Recommendations to protect species and sensitive habitats. When a project is found to have a significant effect

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on the environment under the provisions of the Environmental Review Guidelines, the biotic report shall be made a part of the Environmental Impact Report.

Building Envelope. A designation on a site plan or parcel map indicating where structures and paving are to be located.

Decision-Making Body. The Zoning Administrator, Planning Commission, or Board of Supervisors, whichever body is considering the development permit, when biotic review is concurrent with review of a development permit. When a biotic permit is required, the decision-making body shall be the Planning Director.

Disturbance. Any activity which may adversely affect the longterm viability of a rare, endangered, threatened, or locally unique species or any part of a sensitive habitat.

Development/Development Activity. On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; reconstruction, demolition, alteration or improvement of any structure in excess of 50 percent of the existing structure's fair market value, including any facility of any private, public or municipal utility; the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973; the disturbance of any rare, endangered, or locally unique plant or animal or its habitat.

Environmental Coordinator. The Planning Department staff person assigned to review applications and make determinations based upon the County Environmental Review Guidelines adopted pursuant to Chapter 16.01 of the Santa Cruz County Code.

Environmentally Sensitive Habitat Area. See Sensitive Habitat.



Essential Habitat. See Sensitive Habitat.

Feasible. Capable of being accomplished in a successful manner

within a reasonable period of time, taking into account economic, environmental, social and technological factors, as determined by the County.

Impervious Surface. Any non-permeable surface, including roofs

and non-porous paving materials such as asphalt or concrete, but not including directly permeable surfaces such as decks that allow the passage of water or gravel driveways less than five inches thick.

Person. Any individual, firm, association, corporation, partnership, business, trust company, a public agency as specified in Section 53090 of the California Government Code, or the state or a state agency.

Rare and Endangered Species. A plant or animal species designated

as rare, endangered or threatened by the State Fish and Game Commission, the United States Department of Interior Fish and Wildlife Service, or the California Native Plant Society.

Resource Dependent Use. Any development or use which requires

utilization of a natural resource and must be sited within a sensitive habitat in order to be able to function at all, such as a fish hatchery.

Restoration. Restoring native vegetation, natural drainage, and

water quality, including but not limited to replanting native vegetation, removing garbage, and protecting the habitat from the inflow of polluted water or excessive sedimentation.

Sensitive Habitat. An area is defined as a sensitive habitat if it meets one or more of the following criteria.

- (a) Areas of special biological significance as identified by the State Water Resources Control Board.
- (b) Areas which provide habitat for locally unique biotic species/communities including but not limited to: oak woodlands, coastal scrub, maritime chaparral, native rhododendrons and associated Elkgrass, indigenous Ponderosa Pine, indigenous Monterey Pine, mapped grassland in the Coastal Zone and sand parkland; and Special Forests including San Andreas Oak Woodlands, indigenous Ponderosa Pine, indigenous Monterey Pine and ancient forests.

- (c) Areas adjacent to essential habitats of rare, endangered or threatened species as defined in (e) and (f) below.
- (d) Areas which provide habitat for species of special concern as listed by the California Department of Fish and Game in the Special Animals list, Natural Diversity Database.
- (e) Areas which provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act guidelines.
- (f) Areas which provide habitat for rare, endangered or threatened species as designated by the State Fish and Game Commission, United States Fish and Wildlife Service or California Native Plant Society.
- (g) Nearshore reefs, rocky intertidal areas, seacaves, islets, offshore rocks, kelp beds, marine mammal hauling grounds, sandy beaches, shorebird roosting, resting and nesting areas, cliff nesting areas and marine, wildlife or educational/research reserves.
- (h) Dune plant habitats.
- (i) All lakes, wetlands, estuaries, lagoons, streams and rivers.
- (j) Riparian corridors.

Structure. Anything constructed or erected which requires a location on the ground or in the water, including but not limited to any building, retaining wall, driveway, telephone line, electrical power transmission or distribution line, water line, road or wharf.

Toxic Chemical Substance:

1. Any chemical used for killing insects, fungi, rodents, etc., including insecticides, acaricides, fungicides, herbicides, rodenticides, and nematocides.
2. Any chemical which would be deleterious to a sensitive habitat.

Water Purveyor. Any agency or entity supplying water to five or more connections.

(Ord. 3342, 11/23/82; 3442, 8/23/83; 4346, 12/13/94)

16.32.050 GENERAL PROVISIONS.

- (a) No toxic chemical substance shall be used in a sensitive habitat in such a way as to have deleterious effects on the habitat unless an emergency has been declared by a federal,

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state, or county agency, or such use has been deemed necessary by the California Department of Fish and Game to eliminate or reduce a threat to the habitat itself, or a substantial risk to public health will exist if the toxic chemical substance is not used.

(b) Pursuant to California Administrative Code Section 2452, the Agricultural Commissioner, in reviewing an application to use a restricted material, shall consider the potential effects of the material on a sensitive habitat, and mitigation measures shall be required as necessary to protect the sensitive habitat. No approval shall be issued if adverse impacts cannot be mitigated. (Ord. 3342, 11/23/82; 3442, 8/23/83)

#### 16.32.060 APPROVAL REQUIRED.

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- (a) Except as provided in Subsection (b) below, no person shall commence any development activity within an area of biotic concern until a biotic approval has been issued unless such activity has been reviewed for biotic concerns concurrently with the review of a development or land-division application pursuant to Chapter 18.10, Level III. (Ord. 3342, 11/23/82; 3442, 8/23/83; 4030, 11/21/89)
- (b) A biotic assessment shall not be required for repair or reconstruction of a structure damaged or destroyed as a result of a natural disaster for which a local emergency has been declared by the Board of Supervisors, when:
  - (1) the structure, after repair or reconstruction, will not exceed the floor area, height or bulk of the damaged or destroyed structure by 10%, and
  - (2) the new structure will be located in substantially the same location. (Ord. 4030, 11/21/89; 4160, 12/10/91)

#### 16.32.070 ASSESSMENTS AND REPORTS REQUIRED. A biotic assessment

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shall be required for all development activities and applications in areas of biotic concern, as identified on maps on file in the Planning Department or as identified during inspection of the site by Planning Department staff. A biotic report shall be required if the Environmental Coordinator determines on the basis of the biotic assessment that further information is required to ensure protection of the sensitive habitat consistent with General Plan and Local Coastal Program Land Use Plan policies. If the Environmental Coordinator determines that the project will have a significant effect on the environment under the provisions of the Environmental Review Guidelines, the biotic report shall be part of

the Environmental Impact Report. (Ord. 3342, 11/23; 3442,  
8/23/83)

16.32.080 REPORT PREPARATION AND REVIEW.  
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(a) Submittals Required. When a biotic assessment or biotic  
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report is required, the applicant shall submit an accurate plot plan showing the property lines and the location and type of existing and proposed development and other features such as roads, gullies, and significant vegetation. Any other information deemed necessary by the Planning Director shall be submitted upon request.

(b) Report Preparation. The biotic assessment shall be con-  
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ducted by the county biologist. The biotic report shall be prepared by a biologist from a list maintained by the Planning Department, at applicant's expense, and shall be subject to acceptance as specified in this section. All biotic assessments and report shall conform to county report guidelines established by the Planning Director.

(c) Report Acceptance and Review. All biotic assessments and  
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reports shall be found to conform to county report guidelines by the Environmental Coordinator. When technical issues are complex, the report may be reviewed and found adequate by a biologist retained by the County. All biotic reports shall be referred to the California Department of Fish and Game for review and comment, and shall be available for review by other interested parties.

(d) Report Expiration. A biotic assessment shall be valid for  
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one year and a biotic report shall be valid for five years following acceptance of the assessment or report, except where a change in site conditions, development proposal, technical information, or county policy significantly affects and thus may invalidate the technical data, analysis, conclusions, or recommendations of the report. (Ord. 3342, 11/23/82; 3442, 8/23/83).

16.32.090 APPROVAL CONDITIONS.  
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(a) Conditions of approval shall be determined by the Environmental Coordinator through the environmental review process. These conditions may be based on the recommendations of the biotic assessment or biotic report and shall become conditions of any subsequent approval issued for the property. Such conditions shall also apply to all development activities engaged in on the property. Any additional measures deemed necessary by the decision-making body shall also become development permit

EXHIBIT I

conditions.

(b) The following conditions shall be applied to all development within any sensitive habitat area:

1. All development shall mitigate significant environmental impacts, as determined by the Environmental Coordinator.
2. Dedication of an open space or conservation easement or an equivalent measure shall be required as necessary to protect the portion of a sensitive habitat which is undisturbed by the proposed development activity or to protect a sensitive habitat on an adjacent parcel.
3. Restoration of any area which is a degraded sensitive habitat or has caused or is causing the degradation of a sensitive habitat shall be required, provided that any restoration required shall be commensurate with the scale of the proposed development.

(c) All development activities in or adjacent to a sensitive habitat area shall conform to the following types of permitted uses, and the following conditions for specific habitats shall become minimum permit conditions unless the approving body pursuant to Chapter 18.10 finds that the development will not affect the habitat based on a recommendation of the Environmental Coordinator following a biotic review pursuant to Section 16.32.070.

A. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Only resource-dependent uses shall be allowed within any environmentally sensitive habitat area.

<u>Type of Sensitive</u> <u>Area</u>	<u>Permitted or</u> <u>Discretionary uses</u>	<u>Conditions</u>
1. All Essential Habitats	nature study & research, hunting, fishing and equestrian trails that have no adverse impacts on the species or habitat; timber harvest as a conditional use	Preservation of essential habitats shall be required
2. Kelp Beds	nature observation, mariculture, scuba diving	No development shall be allowed which might result in a discharge to the marine environment, whether within or without the sensitive habitat, which might adversely affect this habitat type
3. Rocky Intertidal Areas	nature observation, scientific research, educational instruction, take of marine organisms consistent with Department of Fish & Game regulations	
4. Marine Mammal Hauling Grounds	scientific research	
5. Shorebird Nesting Areas	scientific research	

A. ENVIRONMENTALLY SENSITIVE HABITAT AREAS (Continued)

Type of Sensitive Area	Permitted or Discretionary uses	Conditions
6. Davenport Pier Rock Cliffs and Rock Outcrops offshore which are Seabird/ Shorebird Resting Areas and Roosting Sites	scientific research	
7. Sandy Beaches which are Sea- bird/Shorebird Resting Areas and Roosting Sites	seasonal beach recreation	
8. Dunes and Coastal Strand	scientific research, educational instruction	Wooden boardwalks for trails through dunes shall be required.
9. Cliff Nesting Areas	scientific research	Fifty-foot buffer from blufftop at or above nesting area shall be required.
10. Coastal Scrub	blufftop viewing, hiking, nature observation	Land clear- ing shall be minimized.



A. ENVIRONMENTALLY SENSITIVE HABITAT AREAS (Continued)

Type of Sensitive Area	Permitted or Discretionary uses	Conditions
11. Wetlands, Estuaries, & Lagoons	educational instruction, scientific research, managed nature observation, wetland restoration, maintenance to exist- ing public utilities, aquaculture, recreational fishing subject to Department of Fish and Game regulations	One hundred- foot buffer measured from the high water- mark shall be required  Distance between structures and wetland shall be maximized.
12. Rivers and Streams (includes Anadromous Fish Spawning Areas)	scientific research, educational instruction, aquaculture	
13. Intermittent Wetlands	limited grazing, uses within wetlands (above), existing agriculture	
14. Reservoirs & Ponds	water storage and diversion, aquaculture	

No new development shall be allowed adjacent to marshes, streams, and bodies of water if such development would cause adverse impacts on water quality which cannot be mitigated or will not be fully mitigated by the project proponent.

B. AREAS ADJACENT TO THE ESSENTIAL HABITATS OF RARE AND  
ENDANGERED SPECIES

<u>Type of Habitat</u>	<u>Permitted or Discretionary Uses</u>	<u>Conditions</u>
Santa Cruz Long-Toed Salamander District) Also see Section	nature study & re- search, residential uses at urban low den- sities as condition- ed, where designated on LCP Land Use Maps, existing agriculture	Site disturbance before revegeta- (SP (i.e. total site coverage) shall not exceed 25% of lot.  Site disturbance after revegetation (i.e., total site coverage) shall not exceed 15% of lot.  Impervious surface shall not exceed 10% of lot. The objec- tive of this require- ment is to reduce the amount of erosion and siltation impacts; therefore, it does not apply to sites lying outside the drainage basin.  Conservation easement over undisturbed por- tion of site shall be dedicated to Department of Fish and Game.

B. AREAS ADJACENT TO THE ESSENTIAL HABITATS OF RARE AND  
-----  
ENDANGERED SPECIES (Continued)  
-----

Type of Habitat -----	Permitted or ----- Discretionary Uses -----	Conditions -----
Santa Cruz Long Toed Salamander (SP District) (continued)		<p>Step or pole founda- tions shall be re- quired on slopes over 15%. Pole foundations shall be required on slopes over 30%.</p> <p>All curbs and gutters shall be rounded.</p> <p>Seepage pits shall be required where feasible.</p> <p>No grading shall be allowed between Octo- ber 15 and April 15.</p> <p>Grading and removal of vegetation shall be minimal and shall be restricted to areas where it is necessary to maintain existing agricultural use and for the construction of buildings, drive- ways, and septic systems.</p>

EXHIBIT I  
36 OF 45

B. AREAS ADJACENT TO THE ESSENTIAL HABITATS OF RARE AND  
ENDANGERED SPECIES (continued)

<u>Type of habitat</u>	<u>Permitted or Discretionary Uses</u>	<u>Conditions</u>
Santa Cruz Long Toed Salamander (SP District) (Continued)		Grading or filling within drip line of 24" or larger diameter trees shall be avoided.  A landscape plan consisting of native shrubs and/or trees shall be submitted with building plans for areas of vegetation removal.  Native trees shall be retained to the maximum extent possible.  Disturbed areas shall be revegetated promptly with native or approved species.

EXHIBIT I

B. AREAS ADJACENT TO THE ESSENTIAL HABITATS OF RARE AND  
 -----  
 ENDANGERED SPECIES (continued)  
 -----

Type of habitat	Permitted or ----- Discretionary Uses	Conditions
Santa Cruz Long Toed Salamander (SP District) (Continued)		<p>For the purposes of calculating site disturbance and impervious surface coverage, when the project is an addition to an existing development, the existing development and the addition shall be considered as a new development.</p> <p>Except for new foundations which may not feasibly be constructed according to the standards, additions to existing developments shall conform to other Local Coastal Plan performance standards.</p>

B. AREAS ADJACENT TO THE ESSENTIAL HABITATS OF RARE AND  
ENDANGERED SPECIES (continued)

Type of Habitat	Permitted or Discretionary Uses	Conditions
2. Santa Cruz cypress Groves	scientific research educational instruction	A minimum of 50 foot buffer between cypress communities and location of dev- opment shall be required.

EXHIBIT I

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# C. HABITATS OF LOCALLY UNIQUE SPECIES

Type of Habitat	Permitted or Discretionary Uses	Conditions
1. Special Forests (San Andreas, Live Oak, Wood- land/Maritime Chaparral, Indigenous Ponderosa Pine Forest, and Indigenous Monterey Pine Forest)	forest preserve, nature observation, educational instruction residential uses, meeting performance criteria	Structures shall be clus- tered, and/or located near to any existing structure.  Landscaping plans shall include characteristic native species.  Applicants shall enter into a "declaration of restriction" allowing the development and utilization of a prescribed burning program or other means to mimic the effects of natural fires.  For residential development, site distur- bance shall not exceed 1/4 acre per unit or 25% of the parcel, whichever is less.

C. HABITATS OF LOCALLY UNIQUE SPECIES

<u>Type of Habitat</u>	<u>Permitted or Discretionary Uses</u>	<u>Conditions</u>
2. Grassland in the Coastal Zone	nature observation, educational instruction, grazing, viticulture, consistent with Local Coastal Plan policies; residential uses meeting performance criteria	Structures shall be clustered and located outside the grassland where feasible

(Ord. 3342, 11/23/82; 3442, 8/23/83)



#### 16.32.095 PROJECT DENSITY LIMITATIONS

The following requirements shall apply to density calculations for new building sites created in habitats of locally unique species through minor land divisions, subdivisions, planned development, or planned unit development:

- (a) Special Forests - Prohibit land divisions within designated Special Forests unless the area to be divided is removed from the mapped special forests habitat area by General Plan - Local Coastal Program amendment. On parcels with existing mapped special forest areas which contain developable land outside those areas, allow development at the lowest density of the land use designation and require that development be clustered and located outside the habitat areas. Allow one single family dwelling unit per existing parcel of record. Where property owners upgrade special forest areas on their parcels, outside of mapped areas, through resource management activities, the prevailing General Plan densities shall not be reduced.
- (b) Grasslands - Prohibit land divisions of native and mixed native grassland habitat mapped in the Coastal Zone unless the area to be divided is removed from the mapped grassland habitat area by General Plan-Local Coastal Program amendment. On parcels with existing mapped native and mixed native grasslands and which contain developable land outside those habitats, allow development at the lowest density of the land use designation and require that development be clustered and located outside the habitat areas. Allow one single family dwelling unit per existing parcel of record. Where property owners upgrade grasslands on their parcels, outside of mapped areas, through resource management activities, the prevailing General Plan densities shall not be reduced.

(Ord. 4346, 12/13/94)

16.32.100 EXCEPTIONS. Exceptions to the provisions of Section 16.32.090 may be approved by the decision-making body.

(a) In granting an exception, the decision-making body shall make the following findings:

1. That adequate measures will be taken to ensure consistency with the purpose of this chapter to minimize the disturbance of sensitive habitats; and
2. One of the following situations exists:
  - (i) The exception is necessary for restoration of a sensitive habitat; or
  - (ii) It can be demonstrated by biotic assessment, biotic report, or other technical information that the exception is necessary to protect public health, safety, or welfare.

**EXHIBIT I**

(b) Notwithstanding the above, the decision-making body may grant an exception for development within the essential habitat of the Santa Cruz Long-Toed Salamander as follows:

1. Upon receiving a development application for an undeveloped parcel within the essential habitat, the County shall notify the California Coastal Commission, the Coastal Conservancy, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service. The County or other agency shall have one year to decide whether acquisition of the parcel is to proceed. If the County and other agencies decide not to acquire the parcel and development potential in the essential habitat has not been otherwise permanently eliminated by resubdivision, easement, or other recorded means, the decision-making body may grant an exception to allow the development to proceed provided that it finds that the proposed development cannot be accommodated on the parcel outside the essential habitat, and that it will be consistent with the standards for the area adjacent to the essential habitat and other LCP policies.

2. The permittee shall provide a cash deposit, Time Certificate of Deposit, or equivalent security, acceptable to the County. This security shall be payable to the County, in an amount not less than \$5000 or greater than \$10,000, to be determined by the County on case-by-case basis, depending on site-specific circumstances. The purpose of this security shall be to ensure compliance with the development standards for the area adjacent to the essential habitat, and shall not be returned unless and until all required standards and improvements are met. All expenditures by the County for corrective work necessary because of the permittee's failure to comply with the provisions of the permit and this chapter shall be charged against the security deposit. (Ord. 3342, 11/23/82; 3442, 8/23/83)

16.32.105 EXEMPTION. Existing commercial agricultural operations and related activities shall be exempted from the provisions of Section 16.32.060. Any development activity which has received a riparian exception approved according to the provisions of Chapter 16.30 (Riparian Corridors and Wetlands Protection) may be exempted from the provisions of this chapter if the Planning Director determines that such development activity has received a review, in connection with the granting of the riparian exception, equivalent to the review that would be required by this chapter. (Ord. 3342, 11/23/82; 3442, 8/23/83)

16.32.110 (Ord. 3342, 11/23/82; 3442, 8/23/83; Repealed 4/2/96, Ord. 4392A)

16.32.120 (Ord. 3342, 11/23/82; 3442, 8/23/83; 4/2/96, Ord. 4392A)

All appeals of actions taken pursuant to the provisions of this Chapter shall be made in conformance with the procedures in Chapter 18.10; provided, however that code enforcement actions and decisions are not sub-

**EXHIBIT I**

ject to administrative appeal except for appeals of revocation of permits pursuant to Section 18.10.136(c).

16.32.130 VIOLATIONS.

(a) It shall be unlawful for any person at any time to do, cause, permit, aid, abet, suffer or furnish equipment or labor for any development activity within an area of biotic concern as defined in Section 16.32.040 unless (1) a development permit has been obtained and is in effect which authorizes such development activity; or (2) the development activity has been reviewed for biotic concerns concurrently with the discretionary review of an approved permit required by Title 13 or Title 14 of the Santa Cruz County Code, within such area; or (3) the activity is exempt from the requirement for a development permit by the provisions of Section 16.32.105 of this Chapter and from the requirements for a coastal permit by the provisions of Chapter 13.20.

(b) It shall be unlawful for any person to exercise a development permit which authorizes development activity within an area of biotic concern without complying with all of the conditions of such permit.

(c) It shall be unlawful for any person to use, cause, permit, aid, abet, suffer or furnish equipment or labor to use any toxic chemical substance in a sensitive habitat in such a way as to have a deleterious effect on the habitat unless (1) an emergency has been declared by a federal, state, or county agency, or (2) such use has been deemed necessary by the California Department of Fish and Game to eliminate or reduce a threat to the habitat itself; or (3) a substantial risk to public health will exist if the toxic chemical substance is not used.

(d) It shall be unlawful for any person to refuse or fail to carry out measures as required by a notice of violation issued by the Planning Director under the provisions of Section 16.32.131 of this Chapter.

(e) It shall be unlawful for any person to knowingly do, cause, permit, aid, abet or furnish equipment or labor for any work in violation of a stop work notice from and after the date it is posted on the site until the stop work notice is authorized to be removed by the Planning Director. (Ord. 3451, 8/23/83)

16.32.131 (Ord. 3451, 8/23/83; Repealed 4/2/96, Ord. 4392A)

16.32.132 (Ord. 3451, 8/23/83; Repealed 4/2/96, Ord. 4392A)

16.32.134 (Ord. 3451, 8/23/83; Repealed 4/2/96, Ord. 4392A)

16.32.140 FEES. Fees for biotic assessments, biotic reports, and

-----  
review of technical reports shall be set by resolution by the Board  
of Supervisors. (Ord. 3342, 11/23/82; 3442, 8/23/83)

**EXHIBIT I**

**RECEIVED**

DEC 13 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Charlene B. Atack

Bosso, Williams, Sachs, Book

Atack &amp; Gallagher

3047 Baronscourt Way

San Jose, CA 95132

3 December 1999

**Re: Coastal Commission Appeal - Corcoran Lagoon**

Dear Ms. Atack:

I have read the documents from the Coastal Commission and from the Santa Cruz County Planning Department concerning the rip-rap fill at Corcoran Lagoon and revisited the lagoon on 7 November 1999 to observe the potential effects of the rip-rap. My comments concerning the fisheries effects are based on over 15 years experience with steelhead, coho salmon and tidewater goby in central coast streams and estuaries.

1. Coho salmon are not present in the watershed, and steelhead are unlikely, because of the small, generally dry watershed and the warm summer temperatures of the lagoon. Even if either of the species was present in the lagoon, the rip-rap would not adversely affect them. The rip-rap area is flooded and deep enough for salmonid rearing only when the sandbar is in place. At that time the rip-rap would not adversely affect the habitat, but might provide some limited additional feeding and escape cover opportunities. When the sandbar is open and the area is much shallower, the rip-rap might provide limited escape cover for fish moving through or temporarily holding in the area.

2. Tidewater goby permanently use the lagoon and rarely enter the ocean or move between lagoons. They are tolerant of a wide range of water temperature, salinity and water quality conditions, but are most affected by availability of winter refuges from high stream flows and wave action and by availability of calm summer lagoon conditions for reproduction and rearing. Their poor swimming ability and intolerance of fast currents from stream flow and wave action mean that they are really a "lagoon goby", rather than a "tidewater goby."

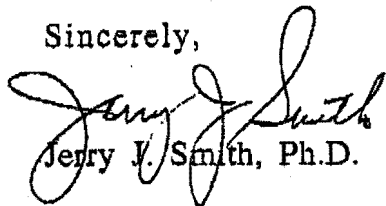
**EXHIBIT J: APPLICANT-SUPPLIED  
1062 LETTER ON ESHA**

page 2: Smith/Corcoran Lagoon

3. In winter the outlet to the lagoon is usually to the "south" against the rip-rap area, because of the prevailing southward currents. At that time the shallow channel would be subject to heavy stream flow during storms and strong wave action during high tides and storm surges. Tidewater goby would avoid the area because of the currents, but if present, especially immediately after sandbar breaching, the rip-rap would probably be used as a refuge from strong currents. The rip-rap would have no adverse effects, and might provide a very limited potential benefit.

4. After sandbar formation in summer the lagoon water level would rise, and the calmer, deeper water in the rip-rapped outlet area would be used by gobies for reproduction and rearing. The population would increase and expand from the winter refuge areas in the deeper channels in the inland portions of the lagoon. The rip-rap would have no adverse effect on their use of that portion of the lagoon, but the addition of rip-rap or movement of rip-rap during that time could affect gobies. Construction and maintenance activities should be limited to periods when the sandbar is open and gobies are unlikely to be present near the cliff.

Sincerely,



Jerry J. Smith, Ph.D.

EXHIBIT J

2052

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



October 26, 1999

Charlene Atack, Esq.  
Law Offices of Bosso, Williams, Sachs, Book, Atack & Gallagher  
P.O. Box 1822  
Santa Cruz, CA 95061-1822

Subject: ***Appeal Number A-3-SCO-99-056 (Filizetti-Hooper) - Request for Postponement of Commission Hearing from December 1999 to January 2000***

Dear Charlene,

We have received your fax dated October 22, 1999 in which you request that the above-referenced appeal hearing, which we had tentatively scheduled for the Commission's December 1999 hearing in San Francisco, be postponed until the January 2000 Commission meeting. It is our understanding that such a postponement will allow your client's geotechnical consultant to finish work on the materials previously requested for the related coastal development permit application submitted to this office (application number 3-97-027). As we have previously indicated, we believe that it makes the most sense to have the hearing for both the appeal and the coastal permit application to the Commission at the same time because they are inextricably linked.

Accordingly, at your request, the Executive Director has agreed to postpone the appeal hearing to a later date and has tentatively scheduled the A-3-SCO-99-056 hearing for the Coastal Commission's January 11-14, 2000 hearing in Santa Monica. If application number 3-97-027 is filed by December 2, 1999, we will schedule this item for the Santa Monica hearing as well. Please note that this tentative scheduling information is being provided for your convenience and is subject to change. Written notification of final scheduling of the hearing, along with a copy of the staff report, will be mailed to you approximately 10 days prior to the hearing. In any event, if your client would like to submit any materials for use in preparing the staff recommendation, please note that the deadline for submitting application materials for the January hearing is December 2, 1999.

Finally, as we discussed by telephone this morning, please find enclosed the 49-day waiver form. This form can be signed by the authorized agent for Mr. Filizetti and Ms. Hooper. Please complete and return the form as soon as possible. If you have any questions regarding this matter, please feel free to contact me at (831) 427-4863.

Sincerely,

**DANIEL CARL**

Dan Carl  
Coastal Planner

**EXHIBIT K: POSTPONEMENT CORRESPONDENCE**  
**10FS**

**2ND POSTPONEMENT GRANTED**

Enclosures: 49-day waiver form  
cc (w/o enc.): Don Hogue, DEVCON Construction  
Rogers Johnson, Rogers E. Johnson and Associates  
Rahn Garcia, Assistant County Counsel, Santa Cruz County  
Joel Schwartz, Resource Planner, Santa Cruz County Planning Department

LAW OFFICES  
**BOSSO,  
WILLIAMS,  
SACHS, BOOK,  
ATAK &  
GALLAGHER**  
A PROFESSIONAL CORPORATION

**F A X**

133 Mission Street, Suite 280, PO Box 1822, Santa Cruz, CA 95061  
(831) 426-8484 • Fax: (831) 423-2839 • E-mail: admin@sclawfirm.com

To: Dan Carl

From: Charlene Atack

Fax #: 427-4877

Regarding: Hooper appeal

Date: October 22, 1999

Copy to:

Phone:

Fax #:

OCT 22 1999

Originals Mailed:

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Documents Sent:

You should receive 2 page(s), including this cover sheet.  
If you do not receive all the pages, please call (831) 426-8484.

**MESSAGE:** Dan, I checked with Rogers Johnson and he wasn't sure if he could have everything together by the end of the month for a December hearing. He is sure that he can have everything completed by November 24, 1999. Do you think we can hear the appeal and permit together for the hearing at the January date? Rogers is also available for the hearing at that time. This would really save a lot of time and energy. Let me know and thanks for your assistance. Also, would it be helpful for your staff report, we could meet with Rogers to review the information for the permit. Charlie

IMPORTANT / CONFIDENTIAL: This message is intended for the individual or entity to whom it is addressed. This message contains information from BOSSO, WILLIAMS, SACHS, BOOK, ATACK & GALLAGHER which may be privileged, confidential and/or exempt from disclosure under law. If the reader of this message is neither the intended recipient nor the employee or agent responsible for delivering the message to the intended recipient, please be aware that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately at (831) 426-8484. We will be happy to arrange for the return of this message at no cost to you.

**EXHIBIT K**  
**2005**

2ND POSTPONEMENT REQUEST

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## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
726 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



September 14, 1999

Charlene Atack, Esq.  
Law Offices of Bosso, Williams, Sachs, Book, Atack & Gallagher  
P.O. Box 1822  
Santa Cruz, CA 95061-1822

Subject: ***Appeal Number A-3-SCO-99-056 (Filizetti-Hooper) - Request for Postponement of Commission Hearing from October 1999 to November 1999***

Dear Charlene,

We have received your letter dated September 13, 1999 in which you request that the above-referenced appeal hearing, which we had tentatively scheduled for the Commission's October 1999 hearing in Oceanside, be postponed until the November or December 1999 Commission meeting. At your request, the Executive Director has agreed to postpone the hearing to a later date and has tentatively scheduled the A-3-SCO-99-056 hearing for the Coastal Commission's November 2-5, 1999 hearing in Santa Monica. Please note that this tentative scheduling information is being provided for your convenience and is subject to change. Written notification of final scheduling of the hearing, along with a copy of the staff report, will be mailed to you approximately 10 days prior to the hearing.

We note that the related coastal development permit application submitted to this office (for the portion of the proposed project within the Coastal Commission's coastal permitting jurisdiction) remains unfiled. As we previously indicated in our August 13, 1999 letter, we had hoped to bring both the appeal and the Commission application before the Commission at the same time. However, the supporting information requested in our August 13, 1999 letter remains outstanding. Lacking a filed application, we intend to schedule the appeal for a Commission hearing by itself.

In any event, if your client would like to submit any materials for use in preparing the staff recommendation, please note that the deadline for submitting application materials for the November hearing is September 29, 1999.

If you have any questions regarding this matter, please contact Dan Carl of my staff at (831) 427-4863.

Sincerely,

Lee Otter  
District Chief Planner

**EXHIBIT K****1ST POSTPONEMENT GRANTED****3055**

cc: Don Hogue, DEVCON Construction  
Rogers Johnson, Rogers E. Johnson and Associates  
Rahn Garcia, Assistant County Counsel, Santa Cruz County  
Joel Schwartz, Resource Planner, Santa Cruz County Planning Department

## LAW OFFICES

BOSSO, WILLIAMS, SACHS,  
BOOK, ATACK & GALLAGHER

A PROFESSIONAL CORPORATION

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DENNIS R. BOOK\*  
CHARLENE B. ATACK  
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\* CERTIFIED SPECIALIST IN ESTATE PLANNING,  
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BOARD OF LEGAL SPECIALIZATION

TELEPHONE  
(831) 426-8484

FACSIMILE  
(831) 423-2839

E-MAIL  
ADMIN@SCLAWFIRM.COM

September 13, 1999

RECEIVED

Dan Carl  
Coastal Commission  
Central Coast District Office  
725 Front Street  
Santa Cruz, CA 95060

SEP 13 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

1999

Re: Appeal A-3-SCO-99-056  
Hooper/Filizetti Revetment

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Dear Dan:

I just spoke with Diane Landry, who informed me that you may decide to hear the appeal before the permit. I was surprised because you indicated last week that you were unsure of the date for the continued hearing and were going to get back to me to discuss the available options for the appeal hearing and the permit hearing. Our engineer on the project, Rogers Johnson, will not be available for the hearing in October. Therefore, I request that the hearing be set for November or December so that Rogers can be present to explain our project and answer any questions. Since Rogers has been the sole engineer on this project, prepared all of the plans for the permit, and placed the rock at the location, it would be difficult, if not impossible, for us to have a full hearing without his attendance.

If the hearing is set in December, we would also be able to hear both the appeal and the permit at the same time which should be a convenience to the Commission members and the staff, not to mention the appellants. Rogers indicated that he could have the information to you in the first part of November.

Please consider our request to hold the hearing at such a time that both the appeal and permit can be heard together or at least that the hearing be continued to November so that our engineer for the project can be available on the appeal.

EXHIBIT K  
405

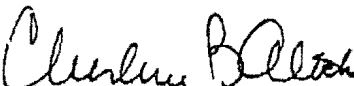
15 POSTPONEMENT REQUEST

DanCarl  
September 13, 1999  
Page 2

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Thank you in advance for your cooperation and your consideration of our request.

Very truly yours,

  
Charlene B. Attack

CBA/kj  
cc: Christine Hooper  
Gary Filizetti

CARL2.LTR

EXHIBIT K  
5055

**CALIFORNIA COASTAL COMMISSION**

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



April 15, 1998

Joel Schwartz  
Santa Cruz County Planning Department  
701 Ocean Street, Room 420  
Santa Cruz, CA 95060

Subject: *Proposed Negative Declaration for the Filizetti/Hooper Rip-Rap Revetment (Santa Cruz County File Number 97-0076, State Clearinghouse Number 98031081)*

Dear Joel,

Thank you for the opportunity to comment on the above-referenced CEQA document. The following comments build upon the previous comments that we submitted to you on this same project regarding the CEQA Initial Study (see attached letter dated February 6, 1998). We appreciate your having afforded us the opportunity to comment at the initial study stage and we were pleased to see that some of our comments regarding Corcoran Lagoon and visual resource issues have been addressed through mitigations in this proposed negative declaration. However, there still appear to be significant questions that remain unresolved and which need further analysis.

***Property Ownership***

As we previously highlighted in our February 6, 1998 Initial Study comments, the property ownership of the parcels where the development is proposed remains unclear (see also attached letter). Most of the project is within the 23rd Avenue right-of-way with a smaller portion on the Hooper property (APN 028-231-01) — none of the project is on the Filizetti property (APN 028-232-32). There is nothing in the negative declaration describing the owner of the 23rd Avenue right-of-way. Likewise, there is no mention of any public interest in the Hooper beach property.

The 23rd Avenue right-of-way is either (1) public property, (2) private property where the public has established a prescriptive access right, or (3) private property where the public has not established a prescriptive access right. Because there is no conclusion on right-of-way ownership, it is difficult to adequately measure the coastal access impacts of the project relating to this right-of-way parcel. The proposed project, as we currently understand it, will block existing physical access to the beach currently available through this right-of-way area. Regardless of the property ownership, this is a significant impact, as aptly described in the proposed negative declaration. However, if the parcel is publicly owned (as it appears to be), or the public has established a prescriptive access right through historical use, there is the **additional impact**, not described in the proposed negative declaration, of lost coastal access opportunities. By that we mean that by developing this site now with rip-rap boulders, any future public recreational development at this location is constrained. This is problematic because not only does the LCP designate this location as existing shoreline access (as appropriately described in the negative declaration), but the LCP also encourages the development of coastal vistas at this location (Policy 7.7.1 and "Coastal Recreation" Program C) and protects this

**EXHIBIT L : STAFF CEQA COMMENTS**

**1057**

coastal blufftop area from intrusion by non-recreational structures and incompatible uses (Policy 7.7.4).

Similarly, the privately-owned Hooper property (APN 028-231-01) has some ownership issues of its own including the fact that: (1) long public use of this sandy beach parcel may have established a prescriptive access right; (2) the parcel is at times covered by Corcoran Lagoon and may be a public trust area; and (3) the parcel at this location is described on Santa Cruz County assessor's maps as being in "Beach Easement". The ramifications of these ownership constraints on the Hooper property have not been described in the proposed negative declaration.

The proposed rip-rap would cover a portion of the Hooper property bluff but, according to the negative declaration, it would **not** extend onto the beach. The project plans that we received from you today conflict with this assertion because the new rip-rap (i.e., all of that being both "recognized" and extended) appears to extend out from the toe of the bluff approximately 15 feet and cover approximately 900 square feet of recreational beach area. Furthermore, Mr. Filizetti previously sent this office a letter dated February 16, 1998 from the consulting engineer, Rogers Johnson, which contained a different site plan which appears to extend the proposed revetment an additional 25 feet towards East Cliff Drive, covering an additional 300 square feet or so of sandy beach. Contrary to the description in the negative declaration, it would appear that the additional rip-rap will cover somewhere in the neighborhood of 1,200 square feet of beach. Given the long history of public use and the ownership issues described above for the Hooper property, this sandy beach coverage is a significant negative beach access impact that is not described in the negative declaration.

Based upon our presumption that (1) the public owns or has established prescriptive access rights on the 23rd Avenue right-of-way which will be covered with rip-rap, and (2) the project will remove approximately 900 - 1,200 square feet of publicly used recreational sandy beach from use, there are significant negative access impacts associated with the proposed rip-rap project that have not yet been adequately characterized and which will require further analysis as you move forward with environmental review and permit analysis. In order to accurately characterize any impacts, we would suggest that County Counsel prepare an analysis of who owns the two subject parcels and whether any of this land is encumbered by access or recreation easements which benefit the public. Potential public trust issues should also be explored and the State Lands Commission contacted if they have not been already. These ownership questions should be resolved before the permit is acted on because it is difficult to accurately assess the impacts that would be associated with the proposed rip-rap without establishing property ownership. If the ownership questions remain unanswered, then we would recommend that the permit findings and mitigating conditions be based on the assumption that there is a public interest in both of the subject parcels.

#### ***Geotechnical Analysis***

We understand the intent of the project is to protect the existing Filizetti structure, but the project plans and geotechnical information that we received today provide minimal information regarding the rationale for the project. As a result, we cannot tell if the Coastal Act and LCP policy tests are met in this instance for permitting shoreline protective devices: (1) Is there an existing structure at risk? (2) If so, has the shoreline protective device chosen been shown to be the least environmentally damaging alternative for protecting this structure? (3) If so, and in addition to the potential public access impacts described above, what are the impacts of the

additional rip-rap on shoreline processes and sand supply and how are they mitigated? (See also our previous comments attached.) As you are aware, LCP Policy 6.2.16 and Coastal Act Sections 30235 and 30253 have specific requirements for shoreline protective works and their impacts. It is not clear to us from the negative declaration that these requirements have been considered.

In fact, the geotechnical information that we have reviewed to date does not appear to present adequate analysis to support a revetment at this location. In his December 23, 1997 letter (attached to the negative declaration) the consulting engineer, Rogers Johnson, indicates his opinion that there is inadequate armoring at this location but he does not specifically describe the rationale supporting the installation of rip-rap to protect Mr. Filizetti's primary residence. Likewise, the letter from Mr. Johnson to Mr. Filizetti sent to our offices (dated February 16, 1998) similarly states that the bluff protection is necessary to protect against future bluff failure, but it does not describe the relationship between any potential bluff failure and potential risks to Mr. Filizetti's residence. Mr. Johnson's December 23, 1997 letter indicates the existence of previous letters discussing the rationale for the project, but these letters were not in the geotechnical package that we received from you today nor have we seen these letters or rationale previously. Is Mr. Filizetti's residence at risk? If so, is a rip-rap revetment the least environmentally damaging alternative?

In terms of shoreline processes and sand supply impacts, the negative declaration and the project plans that we received from you today do not appear to adequately describe the impacts from the proposed revetment. The negative declaration states that there is active erosion at this location (which necessitates the rip-rap), but then turns around and states that the project would have no effect on sand distribution. Wouldn't the proposed rip-rap halt the distribution of these eroding materials into the sand supply system? These shoreline process impacts need to be considered in light of the LCP and Coastal Act policies previously noted. As a result, if you are considering mitigations pursuant to LCP and/or Coastal Act shoreline protection policies, please be aware that the Commission has procedural guidance equations used for calculating an in-lieu fee requirement for the sand supply impacts of shoreline protective works; we can provide you with this information as necessary.

#### **Access Mitigations**

If the project is to be permitted (i.e., it is shown that there is an existing structure at risk, the shoreline protective device chosen is shown to be the least environmentally damaging alternative for protecting the at-risk structure, and any negative shoreline process impacts are appropriately mitigated), we would hope that you would also consider the potential access mitigations detailed in our previous comments (see attached letter dated February 6, 1998). The primary access mitigation proffered in the proposed negative declaration, that of establishing a staircase down the new rip-rap revetment, may prove inadequate given that: (1) such a stairway would not significantly improve vertical beach access, which is already currently available where East Cliff Drive descends to beach grade at Corcoran Lagoon, and (2) at times when Corcoran Lagoon migrates to the new rip-rap, use of the stairway would trap beach goers on the small beach area between Corcoran Lagoon and East Cliff Drive where they could not reach the ocean. Furthermore, such a stairway may be adequately proportional to the loss of the existing pathway at this location, but it does not address the public opportunities foregone nor does it reflect the loss of the 900 - 1,200 square feet of recreational beach area which would appear to be covered by rip-rap through the proposed project.

Accordingly, there are a myriad of alternative mitigations that should be considered (see also attached letter). For the lost footpath, a more appropriate mitigation may be to develop a walkway (i.e., a walkable bench or platform level) within the shoreline protective device to help beach goers reach the beach when Corcoran Lagoon has migrated and/or to improve the existing boardwalk access present on the northwest side of the beach. For the lost bluff right-of-way area and the loss of any sandy recreational area, a more appropriate and proportional mitigation may be to develop the blufftop right-of-way at this location as a vista point with the necessary signage and a path leading to blufftop benches and trash cans for public use. In this way, the project could improve coastal public access at this location proportional to the negative access impacts of the project. Furthermore, this type of a project could likely be found consistent with the LCP's shoreline access policies for this particular blufftop location.

#### **Coastal Permit**

Finally, as noted in my phone message to you, the Santa Cruz County coastal permit jurisdiction extends to the toe of the bluff at this location, and hence the County will need to process an appealable coastal permit for this project. Previous coastal permits to Mr. Filizetti for rip-rap have been issued by the County and thus the County will need to take the lead on this as well. For the work that extends seaward of the bluff, including any construction staging, Mr. Filizetti will also need some type of Coastal Commission approval. Mr. Filizetti currently has an unfiled coastal permit application with this office (Commission application number 3-97-027) that we intend to perfect pending the outcome of the County's review of application number 97-0076.

Please continue to keep us informed as to the status of this application. We hope that the above comments and our previous comments (attached) prove helpful as the above-described impacts are further evaluated — please also consider these as comments on the permit application as well. In addition, please note that when we have received and reviewed more complete information regarding Filizetti/Hooper's current plans and current geotechnic information, we may have further comments to submit to you on this project.

Thank you for the opportunity to comment on the proposed negative declaration. As always, if you should have any questions regarding this matter, please contact Rick Hyman or myself at (408) 427-4863.

Sincerely,



Dan Carl  
Coastal Planner

cc: Ken Hart, Environmental Coordinator, Santa Cruz County Planning Department  
Chris Belsky, State Clearinghouse (SCH # 98031081)  
Linda Locklin, Manager, California Coastal Commission Access Program  
Scott Kathey, Monterey Bay National Marine Sanctuary  
Deborah Johnston, California Department of Fish and Game  
Don Hogue, Devcon Construction (Mr. Filizetti's representative for CDP application 3-97-027)

**EXHIBIT L**  
**4057**

## CALIFORNIA COASTAL COMMISSION

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



February 6, 1998

Joel Schwartz  
Santa Cruz County Planning Department  
701 Ocean Street, Room 420  
Santa Cruz, CA 95060

RE: *Initial Study for Application 97-0076 (Hooper/Filizetti)*

Dear Joel,

Thanks for the opportunity to comment on the proposed Hooper/Filizetti rip-rap project. We have reviewed the initial study dated January 28, 1998 and we are concerned that the impacts associated with the proposed project have not been adequately characterized. Specifically, we believe that the environmental assessment needs to better evaluate the potential impacts of the project in light of the underlying property ownership, beach encroachment, Corcoran Lagoon encroachment, and visual concerns. There appear to be significant Coastal Act and Local Coastal Program (LCP) policy questions that remain unresolved and which need further analysis. We have the following comments:

#### Ownership

It remains unclear as to the ownership of the parcel where the development is proposed. It would appear that a sizable portion of the project is actually within the 23rd Avenue right-of-way with a smaller portion on the Hooper property (APN 028-231-01)—none of the project is on the Filizetti property (APN 028-232-32). Previously permitted rip-rap to the south of the proposed rip-rap would also appear to be in the road right-of-way. As we understand it, though it appears that the right-of-way, like other street end right-of-ways in Live Oak, is owned by Santa Cruz County, this has not been definitively established.

The question of who owns this right-of-way parcel (where the work will be done) is crucial to analyzing the impacts of this project. If, as we believe, this is publicly owned bluff and beach, the potential adverse impact on public access rights becomes a critical issue. Furthermore, the portion of the Hooper property (APN 028-231-01) where the project is proposed is in a "beach easement" and the ramifications from this designation have not been explained. The project will not only remove existing coastal access at this location, but it will narrow future public access options for the publicly owned beach and bluff. The Coastal Act and the LCP both fundamentally protect this existing public access. (Note that the unauthorized placement of rock has *already* impacted existing public access at this location.) Furthermore, LCP policies 5.10.6, 7.1.5, 7.7.1, 7.7.4, 7.7.10, among others, protect this type of blufftop area for public recreational development.

*Reference locations in initial study: Sections G - 5, L - 1.*

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### **Beach Encroachment**

Contrary to the initial study, it seems unlikely that the proposed rip-rap structure will *not* encroach upon the beach. Almost by definition, rip-rap placed at a 1.5:1 or 2:1 ratio typically occupies beach area that would otherwise be occupied by sand. Does the project remove a portion of the bluff to allow for the rip-rap to be laid within the newly exposed cavity? If so, then the impacts of this type of bluff reconstruction, which would be contrary to Coastal Act and LCP policies for landform alteration, need to be further explored. If not, then it would seem likely that some portion of the project will remove useable sandy beach area. The sandy beach at this location has a long established history as a public recreational space. Both the Coastal Act and the LCP fundamentally protect this public recreational use. The loss of *any* sandy beach area, particularly publicly owned sandy beach, magnifies the potential public access impacts associated with the project and needs to be further explained in the environmental assessment.

*Reference locations in initial study: Sections A - 3, A - 7, G - 5, L - 1.*

### **Lagoon Encroachment**

The proposed project is located either in or directly adjacent to Corcoran Lagoon but the initial study does not make this identification. Corcoran Lagoon is potentially habitat for the Federally-listed steelhead, coho salmon and endangered Tidewater goby. Shouldn't this project require a biotic assessment? Given that the unauthorized rock was within Corcoran Lagoon for the majority of the past year, and the project is characterized at least partially as protecting against stream erosion, there is arguably a biotic concern that should be further evaluated by the project's environmental assessment. Furthermore, if the work is within Corcoran Lagoon, the project is *not* a Coastal Act allowable use.

*Reference locations in initial study: Sections B - 1, B - 2. Mandatory Finding 1.*

### **Visual Concerns**

The existing rip-rap (i.e., that rip-rap in place prior to the unauthorized placement of rock), did not wrap fully around the bluff and was only minimally visible from the East Cliff Drive scenic corridor. However, the proposed rip-rap would extend around the bluff and further northward towards East Cliff Drive creating a substantial visual impact. Travelers along East Cliff would no longer see a meandering coastal bluff altered only at its end by unsightly rock, but rather would see a large, unnatural pile of rock in front of the previously unadorned bluff which would essentially redefine the scenic corridor. The aesthetic impacts of this new structure in this visually sensitive area should be further evaluated by the project's environmental assessment.

*Reference locations in initial study: Sections G - 3, G - 4..*

### **Potential Alternatives**

If the project is to achieve Coastal Act and LCP conformance, there will need to be an analysis of other feasible, less environmentally damaging alternatives. For example, rip-rap is well known to take up more beach space than vertical options such as seawalls. Timber pile walls, which are appropriate in situations such as this where the shoreline is subject to oblique rather than direct wave attack, also take up less space and are more

aesthetically pleasing than exposed rip-rap or seawalls. Furthermore, given that LCP policies 6.2.11 and 6.2.12 require a setback which will provide for 100 years of site stability *without* shoreline protective devices (isn't the structure that is proposed to be protected only a couple of years old?), the 'no project' alternative should also be explored. Is the existing structure in danger? These alternatives, and others as appropriate, should be further evaluated by the project's environmental assessment.

#### Potential Mitigations

In addition to exploring project alternatives, there are a variety of potential mitigations that should also be considered in the project's environmental assessment. In addition to the mitigations described in the initial study, and depending upon the final proposed project, potential mitigations may include, among others, the following:

- Offer to dedicate (OTD) in front of proposed project (i.e., on Hooper property).
- OTD in front of APN 028-232-28 (i.e., between existing structure east of the proposed project and the ocean).
- Blufftop access improvements at the end of 23rd Avenue and/or 24th Avenue to include signs, benches, trash cans, landscaping, etc. as described in LCP policies and programs for these important coastal vista points.
- Pathways built into structure to allow for continued blufftop access from 23rd Avenue and to allow for continued access along the base of the bluff when Corcoran Lagoon extends to the structure.
- Improvements to the existing pathway to the beach adjacent to the beachside apartments to the west of the subject site.
- Camouflaging the protective structure with sand contouring at the base and soil and landscaping pushed over the top. (Note that this type of camouflaging has been achieved quite successfully in the Carmel area—we can provide assistance with examples as necessary.)

Thank you for the opportunity to comment on the initial study. We remain concerned about the impacts associated with this project and we hope that these comments prove helpful as the potential impacts are further evaluated. While your project analysis will obviously rely upon the certified Santa Cruz County LCP, please keep in mind that a portion of the project may be below mean high tide and/or in public trust lands where it is also subject to Coastal Act requirements as indicated above. As the project moves forward, and more detailed answers are determined for the above questions, we welcome the opportunity to provide additional input to ensure that the project is in conformance with LCP and Coastal Act issues. If you should have any questions regarding this matter, please contact Rick Hyman or myself at (408) 427-4863.

Sincerely,



Dan Carl  
Coastal Planner  
Central Coast District Office

EXHIBIT L

7 OF 7

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
125 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE (831) 427-4863  
FAX (831) 427-4877



August 13, 1999

Don Hogue  
Representative for Gary Filizetti  
DEVCON Construction  
2-1532 East Cliff Drive  
Santa Cruz, CA 95062

**Subject: Coastal Development Permit Application Number 3-97-027 (Rip-Rap Revetment Extension near 23<sup>rd</sup> Avenue in the Live Oak area of Santa Cruz County)**

Dear Mr. Hogue,

The purpose of this letter is to update you on the current status of Mr. Filizetti's above-referenced after-the-fact coastal development permit application. We have received notification from Santa Cruz County that the County Zoning Administrator approved the after-the-fact Filizetti revetment extension request on August 6, 1999; the local appeal period for this action is currently running. As you are aware, a portion of the proposed project is also within the Coastal Commission's coastal permitting jurisdiction, for which you have submitted a coastal development permit application to this office on Mr. Filizetti's behalf. Please note that this application remains unfiled.

In our May 12, 1998 application status letter, we noted that we would be in contact with you regarding the application after the County had reviewed the project. It appears that we will soon be receiving the County's final action notice for this project (barring local appeals). Accordingly, we have re-reviewed your application. We note that the outstanding application materials listed in our May 12, 1998 letter remain outstanding (see enclosed), and that we are unable to file this after-the-fact application until the following are submitted:

1. Please submit one full-size set and one reduced set (8½" x 11" or 11" x 17") of project plans (site plan and cross-section) which specifically describe the proposed rip-rap project (i.e., all rock being permitted after-the-fact and any extension). We note that the scope of the project has changed several times since your original application and we need plans for the current proposed project. At a minimum, these plans shall clearly identify:
  - (a) All pre-revetment and post-revetment topography and label, at a minimum, top of bluff, sand-bluff interface, and mean high tide;
  - (b) Nature of the site, including bluff topography and extent of previously permitted revetment, prior to installation of the unpermitted rock;

**EXHIBIT M : MOST RECENT STATUS LETTER  
1 OF 6 FOR CDP APPLICATION 3-97-027**

- (c) Limits of the project on both site plans and cross-sections, including clear indication of the extent of the toe of the revetment;
- (d) All property lines in relation to the project (including, but not limited to, APNs 028-231-01 and 028-231-32, and the 23rd Avenue right-of-way); these lines shall be labeled on all plans;
- (e) Location of any easements, dedications, and/or other property restrictions associated with all properties involved. Any easements, dedications, and/or other property restrictions so identified shall be accompanied by the recorded documents providing for and/or describing said easements, dedications, and/or other property restrictions. We note that based upon our current understanding, at least the Hooper property (APN 028-231-01) is covered by some type of beach easement.
- (f) Permanent surveyed benchmark(s) to be used for future project maintenance and monitoring; benchmark elevation(s) (in terms of NGVD and MSL) must be shown. Horizontal and vertical distances from the toe and top of the revetment to the benchmark(s) must be indicated in site plan and cross-section views;
- (g) Limits of Corcoran Lagoon/Rodeo Creek on all plans;
- (h) All pathways existing prior to the installation of the unpermitted rock, and any pathways that will remain and/or are being proposed. Sufficient detail shall be provided to evaluate pathway proposals (including, but not limited to, materials, path widths, any stair components, cross-sections, etc.); and
- (i) For reduced plans, a graphic scale to allow for correct measurement from the reduced plans.

Please note that in the event of Commission approval of the project, two final sets of full sized plans will be required for final sign-off (one set to be returned to you and one set for the Commission's records). Needed to define project and determine conformance with Coastal Act Sections 30210-30214, 30230, 30231, 30233, 30235, 30236, 30240, 30251, and 30253. (Note previously requested May 12, 1998)

2. Please submit a current geotechnical report. The geotechnical information that we have accumulated to date includes a series of letters and site plans from your consulting engineering geologist dated 1997 or later that relate to different variations of this project as well as background soils and geotechnical reports that were done for previous revetment projects at and/or near the site going back to 1984. Since the scope of the project has changed several times since your original application, we need a geotechnical report which specifically addresses the proposed project (i.e., all rock being permitted after-the-fact and any extension). This report may be a summary of any pertinent previous reports, but it must be clear that the geotechnical analysis and findings support the exact project which is being proposed. At a minimum, this report shall clearly identify:

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- (a) Erosion rate(s) for the section of bluff covered with unpermitted rip-rap (were the revetment to not have been installed);
- (b) Wave and creek run-up design calculations;
- (c) All structure(s) being protected and their relative position to the edge of the top of the bluff;
- (d) Amount of time (as estimated in terms of winter storm seasons) before the structure(s) being protected would be considered unsafe to occupy or unsafe to utilize without the project;
- (e) Analysis of feasible nonstructural alternatives (for example, bluff stabilization through landscaping), if any, to a hard protective structure, or indication that there is no feasible nonstructural alternative;
- (f) Analysis of feasible options for removing any rock not protecting an existing principal structure in danger from erosion;
- (g) Rough estimate of the volume, and the sand content, of the bluff materials that will be retained or removed from the sand supply system due to the proposed project;
- (h) Indication of the size and quantity (in cubic yards and tons) of rock required to construct the proposed revetment; and
- (i) Provisions for long-term monitoring and maintenance for the proposed project.

Please also take note of the enclosed information requirements for shoreline development. Needed to define project and determine conformance with Coastal Act Sections 30210-30214, 30221, 30235, 30236, 30240, and 30253. (Note previously requested May 12, 1998)

- 3. Please submit a detailed staging and construction plan which identifies construction methods, staging considerations, timing, erosion control plans, dewatering plans, and all measures to be taken to protect Corcoran Lagoon/Rodeo Creek resources and through beach access during any construction periods. Needed to define project and to determine conformance with Coastal Act Sections 30210, 30211, 30230, 30231, 30233 and 30240.
- 4. Please submit a biotic report which, at a minimum, shall identify: major plant communities affected by the proposed project; potential sensitive biotic resources, including plant and wildlife species of concern affected by the proposed project; and measures to avoid or reduce negative impacts on the Corcoran Lagoon/Rodeo Creek wetland and lagoon areas. Such biotic report shall delineate the extent of Corcoran Lagoon/Rodeo Creek and the delineation shall be the same as identified on the site plans and elevations (item number 1 above). Needed to define project and to determine conformance with Coastal Act Sections 30230, 30231, 30233 and 30240.

5. Please submit copies of all Santa Cruz County approvals and permits received for the proposed project including all staff reports, CEQA documents, findings, conditions, and resolutions authorizing the proposed project. We note that the project was recently approved by the Zoning Administrator; it may, however, yet be appealed at the local level. In any event, after all local appeals have been exhausted and provided that project has ultimately been approved, please submit all documentation described above accompanied by a completed Appendix B, Local Agency Review Form (enclosed). Needed to substantiate local agency review. (Note previously requested May 12, 1998)
6. Please submit a determination from the California State Lands Commission as to whether or not the project encroaches on sovereign lands of the State of California. Needed to substantiate other agency review and to determine conformance with Coastal Act Sections 30210, 30211, 30212, 30220, 30221, 30230, 30231, 30233 and 30240. (Note previously requested May 12, 1998)
7. Please submit verification of all other permits, permissions or approvals applied for and/or granted, or evidence that no approvals are necessary, by the California Department of Fish and Game, the U.S. Army Corps of Engineers, the Monterey Bay National Marine Sanctuary, and – especially with respect to the endangered Tidewater goby – the United States Fish and Wildlife Service. Needed to substantiate other agency review and to determine conformance with Coastal Act Sections 30230, 30231, 30233 and 30240.
8. Please submit proof of property ownership for all parcels where development is proposed (including property proposed to be used for staging, grading and any other activities necessary for revetment construction). Your current application lists Mr. Filizetti as the sole applicant. However, according to our records, most of the project is within the 23rd Avenue right-of-way with a smaller portion on the Hooper property (APN 028-231-01) — none of the project appears to be located on the Filizetti property (APN 028-232-32). Consequently, the owners of these affected properties must be invited to join as co-applicants. Needed to define project. (Note previously requested May 12, 1998)
9. Please submit evidence from all other involved parties that they consent to being co-applicants for the proposed project. Please also submit formal notification of all parties who will be communicating on behalf of the applicant(s) for the proposed project. Currently, you are identified on the permit application as Mr. Filizetti's representative in this matter. This notification should include designation of a primary contact person for the application, and the names, addresses, phone and fax numbers for all such parties. Needed to define project.
10. Please submit reduced (8½" x 11") general location maps (e.g., Thomas Brothers or similar) and assessor's parcel maps which show all properties involved and all adjacent properties within 100 feet of all involved property boundary(ies). Needed to define project and provide public notice to adjacent landowners.

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11. To the extent that the mailing list and envelopes that you submitted with your application do not cover the following, please submit envelopes addressed to: (a) each applicant and each applicant's representative (two envelopes for each); (b) each property owner and occupant of property situated within 100 feet of the property lines of the property(ies) involved (excluding roads); (c) all other parties known to be interested in the proposed development (e.g., persons expressing interest at Santa Cruz County hearings, etc.), and (d) Joel Schwartz and Rahn Garcia at Santa Cruz County (two envelopes for each). The envelopes must be accompanied by a list (in address label sheet format) containing the names, addresses and assessor's parcel numbers of all addressees. The envelopes must be plain (i.e., no return address), regular business size (9½" x 4½"), and stamped with first class postage (metered postage is not acceptable). Please also submit fifty (50) self-adhesive one-cent stamps for the envelopes already submitted as the cost of first class postage has since increased to 33 cents. Needed to provide public notice.
12. Please post the site with the enclosed posting notice and return a completed copy of Appendix D, declaration of posting (also enclosed), after you have placed the posting notice. Needed to provide public notice.
13. Please submit a completed and signed Appendix A (enclosed). Note that all applicants need to complete this form. Needed to determine extent of campaign contributions (if any) to Coastal Commissioners and alternates.
14. Please submit an additional fee in the amount of \$600. The \$600 fee that you submitted with your application is correct for a proposed project valued at \$30,000 (as you indicated on the application form). However, fees for after-the-fact permit applications are doubled. If the cost of the project is, in fact, more than \$30,000, an additional fee will be necessary. Please provide verification that the project remains valued at \$30,000. Needed to cover application fees.

As you are well aware from the series of meetings that we have had over the course of the past two years with you, Mr. Filizetti's consulting engineering geologist, Mr. Filizetti and his attorney, the County, as well as Ms. Hooper and her attorney, we are very concerned about the coastal resource implications of the proposed after-the-fact revetment extension. As we have informed you and the other involved parties, and do so again now, we fully expect that if the County ultimately approves the Zoning Administrator-approved version of the proposed project, it will be appealed to the Coastal Commission. We would prefer to bring the entire package (i.e., any appeal and the Coastal Commission after-the-fact application) before the Coastal Commission at the same time. Accordingly, we will hold your application for no more than 30 days pending receipt of the above-listed materials.

In any event, please note that all work done at the site without benefit of a coastal development permit remains the subject of Coastal Act Violation Number V-3-97-001. Although we will diligently process this coastal permit application, processing this application does not constitute

admission as to the legality of any development undertaken on the subject site without a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Chapter 9 of the Coastal Act. We will continue to pursue resolution of V-3-97-001, both through this after-the-fact application and any other means appropriate to the facts of the case. We will continue to keep you informed as to the status of V-3-97-001.

After we have received the above-listed application materials, your application will again be reviewed and will be filed if all is in order (Government Code Section 65943(a)). If you have any questions regarding your application, please contact Dan Carl of my staff at the address and phone number listed above.

Sincerely,



DAN CARL FOR:

Lee Otter

District Chief Planner

Central Coast District Office

Enclosures: May 12, 1998 Status Letter for CDP Application 3-97-027  
Coastal Commission Shoreline Structures Handout  
CDP Application Appendix A Declaration of Campaign Contributions  
CDP Application Appendix B Local Agency Review Form  
CDP Application Appendix D Declaration of Posting and Posting Notice

cc: Rahn Garcia, Assistant County Counsel, Santa Cruz County  
Joel Schwartz, Resource Planner, Santa Cruz County Planning Department  
Charlene Atack, Attorney for Christine Hooper  
Diane Landry, Legal Counsel, California Coastal Commission Central Coast District Office

**EXHIBIT M**

**6 OF 6**



## SANTA CRUZ COUNTY ENFORCEMENT AGREEMENT

THIS AGREEMENT is entered into this 10 day of November, 1997, by and between the COUNTY OF SANTA CRUZ, hereinafter called "COUNTY" and Gary Filizetti hereinafter called "OWNER." The parties agree to the terms and conditions as follows:

1. OWNER is the record owner of that certain real property located at 103 24th Avenue, Santa Cruz, California, and identified as Assessor Parcel No. 028-232-32, and hereinafter called "SUBJECT PROPERTY".

2. The SUBJECT PROPERTY is in violation of the Santa Cruz County Code in that OWNER constructed, remodeled, and/or allowed the maintenance and use of a rip-rap slope protection structure without the required permits and inspections, in violation of County Code Sections 13.10.275, 13.10.280, 13.10.170(a), 16.20.210(c) and 16.30.080(a).


3. The OWNER hereby agrees to correct the building and zoning violations mentioned in Paragraph 2 above, as follows:

- A. OWNER hereby agrees to immediately remove rock rip-rap as detailed in the letter from the County to the owner dated 11/10/97. Removal shall be completed within 10 days from the execution date of this agreement.
- B. OWNER hereby agrees to pay enforcement costs concurrent with the issuance of the pending discretionary permit 97-0076.
- C. Discretionary permit shall be obtained for all proposed work. If permit application, or any portion thereof, is denied and an appeal is not filed, then OWNER hereby agrees to remove unauthorized construction and restore project area to original condition within 30 days of denial date. If the original decision is appealed and the project is again denied, OWNER hereby agrees to remove unauthorized construction and restore project area to original condition within 30 days of appeal denial date.

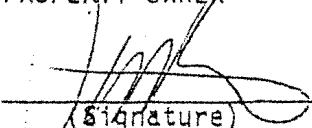
4. In the event that the OWNER does not comply with or violates any provision of this Agreement, COUNTY shall be entitled to immediately commence full legal enforcement actions.

IN WITNESS WHEREOF, the parties hereto have set their hand on the day and year first above written.

COUNTY OF SANTA CRUZ  
PLANNING DEPARTMENT

  
DAVID LEE  
Assistant Planning Director

Gary Filizetti  
PROPERTY OWNER

  
(Signature)

EXPIRATION DATE:

**EXHIBIT N : SANTA CRUZ COUNTY  
1 OF 1 ENFORCEMENT AGREEMENT**

