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STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE (REVISED FINDINGS) AND DE NOVO HEARING

Local government..... City of Morro Bay
Local decision..... Approved with conditions, 9/27/99
Appeal number..... A-3-MRB-99-082
Applicants..... Tri W Enterprises, Inc.
Appellants..... Jack McCurdy
Project location..... Terminus of Morro Bay Boulevard at Highway One, Morro Bay (San Luis Obispo County) (APN 064-401-004)
Project description..... One (1) year time extension for PM 04-92/CDP 43-92 allowing a minor land division of an approximately 175 acre parcel to create one 17.54 acre parcel and one remainder parcel of approximately 157 acres. Original tentative map approved June 14, 1993.
Substantive file documents..... City of Morro Bay Administrative Record for PM 04-92/CDP43-92; City of Morro Bay certified Local Coastal Program.
Commissioners on the prevailing side: Desser, Estolano, Kruer, Orr, Potter, Rose, Woolley, and Wan.

Note: Staff recommended a finding of no substantial issue at the October 2000 hearing; however, on October 12, 2000, the Commission found that a substantial issue exists with respect to the contentions raised by the appeal, and took jurisdiction over the coastal development permit by a vote of 8 to 1. Since the staff report for the October hearing recommended a finding of no substantial issue, these revised findings are necessary to support the Commission's October decision on the project. This staff report includes findings for substantial issue and subsequent findings for the de novo hearing. New text that follows is shown in underline notation; deleted text is shown as ~~crossouts~~.



EXECUTIVE SUMMARY~~SUMMARY OF STAFF RECOMMENDATION~~

Staff recommends that the Commission, after public hearing, adopt revised findings that ~~no~~-a **substantial issue** exists with respect to the grounds on which the appeal is based and then proceed with a de novo hearing and **deny** the request for permit extension. The action taken by the City of Morro Bay was to ~~extend~~approve a one-year time extension for an approved vesting tentative map and concurrently to accept the withdrawal of a time extension request for an approved conditional use permit for a shopping center on the site of the map. The vesting tentative map divides an approximately 175 acre parcel into one 17.54 acre parcel and one remainder parcel of approximately 157 acres.

Substantial Issue

The appellant contends that by accepting the withdrawal of the time request for the conditional use permit associated with this site (thereby allowing the use permit to expire) the City could not then approve a time extension for the tentative map. The appellant refers to Measure H (incorporated into the LCP via Policy 6.09) because it requires that the siting of a use on the site "be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act Chapter 3 policies." According to the appellant, this means that the City cannot approve (or extend an approval of) a land division unless there is also an approved development to go on the new parcels. (via a Precise Plan) for the new parcels. Although there is some question as to the precise meaning of Policy 6.09, the LCP ~~nonetheless does not clearly require that~~ specifically address whether or not a Precise Plan **must** be included as a part of a Tentative Parcel Map submittal. Thus, it is difficult to determine whether the use permit and coastal development permit (and extensions thereof) should continue to be evaluated hand-in-hand. The Appellant also raises questions about the general consistency of the extension with the City's Municipal Code. LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) require that an agricultural preserve or open space easement be placed over the land, or that the landowner grant the development rights of the property. The City did not require such a protective measure in the original approval of the use permit, nor was the issue raised when evaluating subsequent extensions of the permit for compliance with the LCP. Thus, the City's action appears inconsistent with these portions of the certified LCP and a substantial issue is raised.

~~The appellant also raises concerns regarding the general consistency of the Parcel Map with the certified LCP, and measures to protect the property from future development. Although there are significant changed circumstances that should be evaluated in any future project proposal reviews for the site, including visual resource protection and traffic concerns, these changes do not raise a substantial issue with respect to the land division, which essentially reflects the land use designations and zoning of the certified LCP. Further, while the original subdivision approval technically may not have been fully consistent with LCP requirements to protect the remainder parcel, particularly concerning LCP requirements for permanent agricultural land protection, adequate measures have been put into place or already exist to protect this agriculturally zoned land, including a prohibition against future land division.~~



De Novo

The Commission has identified a number of issues that raise questions regarding the consistency of the extension of the permit with the certified LCP. First, while the land use history of the site indicates approval of a commercial development in the area shown in Exhibit 3, no land division, or extension thereof, may be approved unless there is a requirement that the applicant “permanently secure the remaining acreage in agricultural use.” The City did not apply all necessary requirements regarding the protection of agricultural land, and therefore, the request for time extension of the coastal development permit must be denied. Second, there are a number of changed circumstances, including the designation of this portion of Highway One as a State Scenic Highway and the potential for future development on the newly created parcel to exacerbate traffic problems in the area. These changed circumstances further support the denial of this time extension request because they raise questions about the consistency of the extension with the certified LCP.

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10. Correspondence

I. SUMMARY OF APPELLANT'S CONTENTIONS

(Please see Exhibit 1 for the full text of the appeal.)

In summary, the appellant contends that the project does not comply with the City of Morro Bay certified LCP in the following two ways:

1. Measure H, incorporated into the LCP via Policy 6.09, designates 13 acres on the property for "district commercial" uses and states that "(t)he citing (sic) of such use shall be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act-Chapter 3 policies." The City's action extending the tentative parcel map for subdivision of the property, while concurrently accepting a withdrawal of the use permit for the approved shopping center, violates the LCP because that action approved the parcel map for development of the property for commercial purposes (i.e. siting of such use) in the absence of a required Precise Plan (i.e. in accordance with a precise development plan).
2. The conditions of approval for the Parcel Map and the Precise Plan for the shopping center allow extensions of the Parcel Map upon finding that the project complies with all applicable provision of the City's Municipal Code. However, the City allowed the precise plan to be withdrawn so there is no project with which compliance can be determined.

II. LOCAL GOVERNMENT ACTION

The Morro Bay City Planning Commission approved an extension of vesting tentative parcel map PM-04-92/CDP 43-92R on August 16, 1999. Concurrently, the applicant requested and the Planning Commission accepted withdrawal of a time extension request for CUP 03-88, a conditional use permit for a 120,000 square foot shopping center. The Planning Commission's action was appealed to the City Council, which denied the appeal and upheld the Planning Commission's action on September 21, 1999.

III. 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 because it is located within 100 feet of a stream.



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

IV. STAFF RECOMMENDATION ON REVISED FINDINGS SUBSTANTIAL ISSUE

The staff recommends that the Commission adopt revised findings which support the Commission's action to find substantial issue and take jurisdiction over the project.~~determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed, pursuant to Coastal Act Section 30603.~~

MOTION: *I move that the Commission adopt the following revised findings for A-3-99-082. ~~determine that Appeal No. A-3-MRB-99-082 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.~~*

STAFF RECOMMENDATION:

Staff recommends a YES vote. ~~Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present. Commissioners eligible to vote on adoption of revised findings are: Desser, Estolano, Kruer, Orr, Potter, Rose, Woolley, and Wan. The motion passes by an affirmative vote by a majority of the Commissioners entitled to vote.~~

RESOLUTION TO ADOPT REVISED FINDINGS FIND NO SUBSTANTIAL ISSUE

The Commission hereby adopts the findings set forth below for A-3-99-082 on the ground that the findings support the Commission's decision made on October 12, 2000 and accurately reflect the reasons for it. The Commission finds that Appeal No. A-3-MRB-99-082 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 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.



V. REVISED RECOMMENDED FINDINGS FOR SUBSTANTIAL ISSUE AND DECLARATIONS

A. Location and Background

The property, authorized for subdivision by Coastal Development Permit 43-92, is a 175-acre parcel located at the southeastern end of Morro Bay Boulevard, just inland of Highway One, adjacent to land in unincorporated San Luis Obispo County (see Exhibit 2). The property lies on a generally west facing slope and the portion of the property involved in this project lies on either side of the upper reaches of Willow Camp Creek, between two hills. Although currently vacant, the property has in the past been used primarily for cattle grazing. A small, abandoned redrock quarry is also on the property, but not in the area of the proposed development. The entire 175 acres are located within the coastal zone and were initially zoned as Agriculture with certification of the LCP in 1982. Following is a brief history of the Commission's involvement with a variety of location, intensity, and density of use issues on this site. Table 1 following this narrative history presents the history in tabular form.

Excluding the certification process for the City's LCP, the history of the Coastal Commission's involvement with development on this site goes back to at least 1988, when the City submitted an LCP amendment request (LCP 1-88). This LCP amendment, which changed the LUP designation on a portion of the Williams property from Agriculture to Commercial and Visitor-Serving Commercial, was the result of an initiative (Measure B) passed by the voters of Morro Bay on November 4, 1986. The amendment, which was approved by the Commission on June 7, 1988, redesignated "thirty (30) net acres generally located adjacent to Highway 1 and Morro Bay Boulevard, with approximately fifteen (15) net acres to be available for 'district commercial' uses and approximately fifteen (15) net acres to be available for 'visitor-serving' uses". The Commission found that the conversion of the 30 net acre portion of the property from agriculture to non-agricultural uses "can be justified under Sections 30241.5 and 30242." The findings also state:

The Commission finds that strict adherence to the standards of the LUP and the Coastal Act after conversion [of ag land] to urban uses will assure that no significant adverse effects are created and that any adverse impacts on the remaining adjacent agricultural lands will be mitigated.

Subsequently, the City submitted LCP amendment request 2-88, which changed the zoning on the 30 net acres from Agriculture to Central Business District Commercial and Visitor-Serving Commercial, to be consistent with the new LUP designation. On September 13, 1988, the Commission approved amendment 2-88.

On March 26, 1990, the City of Morro Bay approved Conditional Use Permit 03-88/Coastal Development Permit 05-88R for a 237,000 square foot commercial retail development with 977 parking spaces, including 605,000 cubic yards of grading, filling approximately 1,200 linear feet of Willow Camp Creek, and the extension of Morro Bay Boulevard. That action was appealed to the Commission by the Voters Initiative Committee, and on April 8, 1991, the Commission found that



substantial issue existed regarding the grounds of appeal. On July 17, 1991, the Commission approved a project consisting of a 126,235 square foot commercial retail shopping center, 235,000 cubic yards of grading, a stream enhancement program, 728 parking spaces, a frontage road extension, three bridges, crib walls to 28 feet high, and on-site drainage and utilities.

On November 11, 1990, the City of Morro Bay approved a vesting tentative parcel map, Coastal Development Permit 37-90R/Parcel Map 04-90, for a subdivision of the 177.23 acre parcel into four parcels (three parcels totaling 38.3 acres for commercial and visitor-serving commercial development and a remainder parcel of 138.93 acres). That City action was appealed to the Coastal Commission by the Voters Initiative Committee, Roy Harley et al., and Commissioners Gwyn and Franco. On April 8, 1991, the Commission determined that a substantial issue existed. On July 17, 1991, the Commission denied the subdivision request and found that 1) the City's approval would not restrict the use of the portion of the property not proposed for the shopping center to agricultural uses, as required by LUP Policy 6.05 and Zoning Ordinance Section 17.39.135 and, 2) LUP Policies 3.03 and 3.04 prohibited new water and sewer services to previously unsubdivided areas until a water management plan was incorporated into the LCP.

In 1991, the City submitted amendment request LCP 2-91 (Measure H). This amendment, which originated with another citizens' initiative, limited the shopping center area to 13 gross acres. The City's submittal included a proposed shopping center area of 13 gross acres, in accordance with Measure H, with an additional 9.5 acres of visitor-serving commercial uses. LCP Amendment 2-91 was approved by the Coastal Commission on November 13, 1991.

Subsequent to that Commission approval, the City was sued by the Voters Initiative Committee, which claimed that Measure H did not allow any visitor-serving uses. The San Luis Obispo Superior Court agreed with the petitioner and ordered the City to inform the Coastal Commission that visitor-serving uses were impermissible on the site. The City then submitted LCP amendment request 1-93 to delete the 9.5 acres of visitor-serving area. That amendment was approved by the Commission on June 9, 1993.

On June 14, 1993, the City of Morro Bay approved Coastal Development Permit 43-92, a tentative map, for subdivision of the site into two parcels; a 17.54 acre parcel (the commercial development area plus creek open space and buffer areas), and a 157.45 acre remainder parcel, consistent with Measure H (see Exhibit 4). However, the approval did not permanently restrict the use of the portion of the property not proposed for the shopping center to agricultural uses, nor did it prohibit future subdivisions, as required by the LCP. Nonetheless, that action was not appealed to the Coastal Commission.

Thus, by mid-1993, there existed one City Conditional Use Permit and one Coastal Commission Coastal Development Permit for the proposed commercial development and one City Coastal Development Permit for the subdivision of the property, outlined in the table below.



TABLE 1

| | City Permits (CUP and CDP) | Coastal Commission Permit (CDP) |
|-------------------------------|---|---|
| Commercial Development | CUP 03-88 (CDP 05-88R was appealed to the Commission) | A-3-MRB-89-134 (result of appeal of CDP 05-88R to the Commission) |
| Tentative Parcel Map | CDP 43-92 | None |

Each of these permits have been extended over the years. During that time, the applicant has investigated the possibility of some development on the site other than that approved, but located in the same area and consistent with the commercial zoning. In 1998 the property owner requested from the City an extension of the map (CDP 43-92), which had previously been automatically extended according to amendments to the Subdivision Map Act. As part of the discussions with City staff, the owner agreed to request withdrawal of the conditional use permit (CUP 03-88) for commercial development.

On August 16, 1999, the City Planning Commission approved the time extension for the map and accepted the withdrawal of CUP 03-88. That action was appealed to the City Council, and on September 27, 1999, the City Council denied the appeal and upheld the decision of the Planning Commission. On October 26, 1999, the City's action was appealed to the Coastal Commission.

B. Measure H

On November 6, 1990, the electorate of Morro Bay passed Measure H. That initiative proposed to reduce the total acreage allowed for commercial development on the subject site from 30 net acres to 13 gross acres and to allow only commercial uses, and not visitor-serving uses. Although not explicitly stated, it was implied that the remaining acres not included within the 13 gross acres (but within the original 30 net acres) would be rezoned back to Agriculture; however, the text of the initiative did not discuss the designation of property outside of the district-commercial zone.

Measure H has essentially three parts (see Exhibit 5). The first part directs the City to amend its land use regulations to designate a portion of the Williams' property for "District Commercial" use, including a new shopping center. The second part sets the size of the development ("13 gross acres") and its location ("generally located adjacent to Highway 1 and Morro Bay Boulevard"). The third part says that "[t]he citing (sic) of such use shall be in accordance with a precise development plan. . . ." referring to the second step of the City's two-step development permit process (approval of a Concept Plan followed by the Precise Plan, which constitutes final approval).

Measure H was originally submitted to the Commission in June 1991, as LCP Amendment 2-91, and was approved with suggested modifications at the Commission's November 1991 meeting. Subsequently, before the certification review of the City's acceptance of the Commission's action, the City was sued by the Voters Initiative Committee (the Measure H proponents). The suit was brought to force the City to remove all language in the City's submittal that allowed for visitor-



serving uses. In an order dated May 18, 1992, the court found for the Voters Initiative Committee and ordered the City to rescind its decision designating nine and one half acres of the site as visitor-serving. A second court order dated November 9, 1992, clarified the earlier order by requiring the City to inform the Commission in writing that visitor-serving uses were impermissible as a provision of LCP Amendment 2-91, to rescind the ordinance and resolution that were adopted by the City and submitted to the Commission as part of the Measure H amendment request allowing visitor-serving uses on the subject parcel, and to immediately submit to the Commission a revision of LCP Amendment 2-91 that would remove all provisions allowing for visitor-serving uses.

Complying with the court orders, the City rescinded its previous ordinance and resolution and submitted a new amendment, LCP Amendment 1-93. This amendment was approved, as submitted, by the Commission on June 9, 1993. LCP Amendment 1-93 revised both the LUP and the zoning maps by reducing the commercially zoned area to 13 acres and designated the remainder of the 30 net acres (from LCP Amendment 1-88) as Open Area. Table 2 below summarizes the various measures, LCP amendments, and coastal development permit actions that have occurred over the years with respect to the project site.

TABLE 2

| Item | CCC Action and Date | Effect |
|-------------------------|---|---|
| LCP 1-88 (Measure B) | Approved 06/07/88 (Revised Findings 10/13/88) | Changed LUP designation of agriculture to commercial and visitor serving commercial. Redesignated "thirty (30) net acres, generally located adjacent to Highway 1 and Morro Bay Boulevard, with approximately fifteen (15) net acres to be available for 'district commercial' uses and approximately fifteen (15) net acres to be available for 'visitor-serving' uses." |
| LCP 2-88 | Approved 09/13/88 | Changed zoning on the 30 net acres from Agriculture to Central Business District Commercial and Visitor-Serving Commercial. |
| A-4-MRB-89-134 | Project approved 07/17/91 (Revised Findings 08/09/91) | Approved 126,235 sq.ft. commercial retail shopping center, 235,000 cu. yds. of grading, stream enhancement, 728 parking spaces, frontage road extension, three bridges, crib walls to 28 feet high, on-site drainage and utilities. |



| Item | CCC Action and Date | Effect |
|---|---|---|
| A-4-MRB-90-49 | Tentative map denied 07/17/91 (Revised Findings 01/14/92) | Disallowed proposed subdivision of 177.23 acre parcel into a 38.3 acre parcel and a remainder parcel of 138.93 acres. Commission found that 1) the City's approval would not restrict the use of the portion of the property not proposed for the shopping center to agricultural uses, 2) LUP Policies 3.03 and 3.04 prohibited new water and sewer services to previously unsubdivided areas until a water management plan was incorporated into the LCP. |
| LCP 2-91 (Measure H) | Approved 11/13/91 (Revised Findings 04/08/92) | Reduced allowable shopping center area to 13 gross acres and limited visitor-serving area to 9.5 acres. |
| LCP 1-93 (Measure H, as interpreted by Superior Court) | Approved 06/09/93 (Revised Findings 07/20/93) | Eliminated the 9.5 acre visitor-serving designation and placed that area into the Open Area designation. |
| Morro Bay CDP 43-92, Tentative Map, approved by City on 06/14/93 | None | Tentative map for subdivision of site consistent with Measure H. |

C. Appellant's Contentions (Part I)

The appellant contends that the City's extension of the coastal development permit for the tentative map is inconsistent with LUP Policy 6.09 (Measure H), which states that "the citing (sic) of [a district commercial] use shall be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act and especially Chapter 3 policies." As discussed above, the City extended the tentative parcel map for subdivision of the property and concurrently accepted a withdrawal of the time extension request for the use permit associated with the commercial shopping center (~~based upon the assumption that the withdrawal of the request to extend the use permit was appropriate to mitigate any concerns regarding the extension of the Parcel Map~~). The appellant claims that that City's decision to approve the extension of the Parcel Map "in the absence of a required Precise Plan" is inconsistent with the LCP.

The appellant argues that the correct interpretation of Measure H is that the "siting" of a commercial use on the site means not only the locating and design of a specific commercial project, but also the subdivision of the property prior to such specific project approval. The logic of such an approach is that the subdivision establishes basic parameters such as the development envelope, that implicate such coastal resource issues as visual impacts and riparian setbacks. Thus, the appellant argues that



the drawing of appropriate lot lines must necessarily go hand-in-hand with the evaluation of specific project details that would be addressed in a precise plan.

As discussed above, the City extended the tentative parcel map for subdivision of the property and concurrently accepted a withdrawal of the time extension request for the use permit (precise plan) associated with the commercial shopping center (based upon the assumption that the withdrawal of the request to extend the use permit was appropriate to mitigate any concerns regarding the extension of the Parcel Map). This precise plan, originally approved by the City in 1993 in coordination with a tentative parcel map, demarcated the *specific area* (including details regarding the dimensions and location of proposed buildings, parking lots, and included landscaping and engineering plans) to be developed. Thus, the appellant claims that the subdivision of the Williams' property was predicated on a specific commercial development (a development proposal that has since been withdrawn) and therefore, any future proposals for development on this property may be found to be more appropriate in a different location.

The term "Precise Plan" pertains to a portion of the comprehensive planning process defined by the LCP, and is required for all development subject to the Planned Development (PD) Overlay Zone. The 13 gross acres zoned for District Commercial uses are subject to the requirements of such a PD Overlay Zone, the purpose of which is "to provide for detailed and substantial analysis of development on parcels which, because of location, size, or public ownership, warrant special review."

Zoning Ordinance Section 17.40.030G (Planned Development – Precise Plans Required) states in relevant part:

Upon approval by the City Council of a concept plan, ...a precise plan of development shall be submitted to the Planning Commission showing the details of the property improvement and uses or activities to be conducted on the site, and any subdivision proposals. Precise plans shall be processed in accordance with procedures for a Conditional Use Permit as contained in Chapter 17.60.

1. Plans shall be prepared containing all the general information required of concept plans, which has been further developed to a precise level of detail.... A precise plan shall contain the following minimum information:

g. Tentative tract or parcel map, where lands involved in the proposal are to be divided or joined together.

Whether or not the appellant's claim concerning consistency with Measure H (LCP Policy 6.09) raises a substantial issue requires interpretation of LCP procedural standards that are less than precise. Zoning ordinance 17.40.030G above clearly requires that a tentative map be included as a part of a Precise Plan submittal. However, the converse is not clearly stated in the ordinance. That is, does the LCP require that a Precise Plan be included as a part of a Tentative Parcel Map submittal? Appellant argues that the correct interpretation of Measure H is that the "siting" of a



~~commercial use on the site means not only the locating and design of a specific commercial project, but also the subdivision of the property prior to such specific project approval. The logic of such an approach is that the subdivision establishes basic parameters such as the development envelope, that implicate such coastal resource issues as visual impacts and riparian setbacks. Thus, the appellants argue that the drawing of appropriate lot lines must necessarily go hand in hand with the evaluation of specific project details that would be addressed in a precise plan.~~

Although the LCP does not clearly answer this question, there is merit to the Appellant's argument. Nonetheless, there is also merit to the argument that the appropriate design of a subdivision does not necessarily require a precise development project. Indeed, many subdivisions occur well in advance of any specific development planning. ~~In addition, in this case, the subdivision map essentially reflects the land use designations and zoning of the certified LCP. Thus, the subdivision does not establish development potential beyond that already incorporated into the LCP. It is true that the subdivision does not technically address the LCP requirement to protect agricultural land but this is not an issue raised by this procedural argument of the appellant (see below). In addition, any specific concerns about changed environmental circumstances (e.g. visual and traffic) can be addressed in the coastal development permit review of a specific project. However, based on the history of proceedings at the City level, it appears that both the use permit (Precise Plan) for the subdivision and the coastal development permit for the commercial development have been submitted and analyzed together. As mentioned, the logic of keeping these submittals concurrent is that the subdivision establishes basic parameters such as the development envelope, that implicate such coastal resource issues as visual impacts and riparian setbacks. Thus, the appellant argues that the drawing of appropriate lot lines must necessarily go hand-in-hand with the evaluation of specific project details that would be addressed in a precise plan. Ultimately, in light of this concern, and because the LCP does not specifically address whether or not this concurrent submittal is required, Therefore, on balance, no a substantial issue is raised by this contention of the appeal.~~

D. Appellant's Contention (Part 2)

The appellant's second contention of appeal is similar in nature to the first. He points out that the conditions of approval for the parcel map and the precise plan for the shopping center allow extensions of the parcel map upon finding that the project complies with all applicable provisions of the City's Municipal Code. However, the condition of approval referred to in the appellant's contentions is that of a coastal development permit approved in 1993, for both the tentative parcel map and the commercial development. Because the City's most recent approval did not include the extension of the precise plan, this condition of approval was removed from the coastal development permit extension subject to this appeal. In addition, the standard of review in this case is not the conditions of approval for the coastal development permit, rather, it is the certified LCP. However, this contention of the appeal further supports the appellant's first point (the necessity of evaluating the tentative parcel map in conjunction with the precise plan) and raises question to the project's conformance with the Morro Bay Municipal Code (of which the LCP is a part), making it reasonable to further analyze this point made by the appellant.



Zoning Ordinance Section 17.58.130—(Expiration of Coastal Permits/Time Extensions)—states in relevant part: provides direction regarding the term (or life) of a coastal development permit (17.58.130A) and the procedures for extending the term of a coastal permit (17.58.130B) as follows:

- A. *A Coastal Development Permit shall expire on the latest expiration date applicable to any other permit or approval required for the project, including any extension granted for other permits or approvals...*¹
- B. *The term for CDP [Coastal Development Permit] permits and variances may be extended by the Director for up to two (2) one year periods.... The Director shall review the proposal for consistency with all applicable ordinances and policies effective at the time of the request for extension [emphasis added].*²

Section 17.58.130A provides that a CDP shall have a term equivalent to the longer term of any associated permits. Thus, if an associated permit is approved with an initial term of two years, the CDP will be valid for this length of time as well. This Section further provides that when an extension of an associated permit is granted, the additional length of time granted to the associated permit will also apply to the CDP. It should be noted that this Section does not provide for the automatic extension of coastal development permits, it simply provides for the term of any extension.

The LCP clearly contemplates that coastal development permits will be subject to discretionary extensions because Section 17.58.130B provides the standards and procedures for extending coastal development permits. If coastal development permits were automatically extended under 17.58.130A, then there would be no reason to include this procedure.

Section 17.58.130(B) is meant to embody the Coastal Act requirement that extensions of permits be evaluated “to determine whether there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the Coastal Act or with a certified local coastal program”.

~~As discussed above, the existing zoning of the property, established by Measure H, will remain in place on the project site whether or not the vesting Parcel Map is recorded. Therefore, the subject~~

¹ Thus, the Coastal Development Permit expiration date is extended in conjunction with any extension of the tentative map's expiration date.

² The project was originally approved for a two year period; however, for a period of approximately 12.5 months after approval, the amount of time remaining to implement the permits was “tolled” administratively, with the concurrence of the City until the City's Water Management Plan (WMP) was accepted by the Coastal Commission (since project conditions specified that the map could not be recorded until the WMP was approved). This administrative extension effectively changed the original approval date from June 14, 1993 to July 5, 1994; however, during this time period, the State legislature enacted several statutes extending the life of maps and related projects tentatively approved by local agencies. On September 9, 1993 State law provided an automatic two-year time extension for projects viable as of that date. On May 15, 1996, the State approved an additional one-year automatic time for projects viable as of that date. These extensions changed the effective approval expiration date for the project to July 5, 1999. The City's deadline for acting on the time extension request was September 3, 1999 (the Planning Commission acted on August 16, 1999).



~~Parcel Map simply creates a single parcel, consistent with the boundaries of the site previously zoned for commercial development. Zoning Ordinance Section 17.58.130B requires the governing body to determine whether there are changed circumstances that would affect the consistency of the development with the certified LCP.~~

~~Because the development in question is the extension of the Parcel Map, and not the commercial shopping center, the analysis of whether or not changed circumstances exist must be limited to those issues raised by the proposed extension of the Map. Issues related to the future development of this parcel, such as its potential to impact visual and environmental resources, and circulation patterns, or the larger question regarding the need for such a development, should be addressed at the time of such a proposal. Again, while there are significant changed circumstances with respect to potential future development on this site, these changes do not raise a substantial issue with respect to consistency of the Parcel Map with the LCP because of the existing zoning in the LCP. However, because of past concerns regarding water supply in the City, a brief discussion of the current water situation is provided below.~~

The City's action fails to protect agricultural lands in a manner that is consistent with the LCP. As part of LCP amendment request 1-88, the agricultural potential of the land was analyzed. The Commission found that the conversion of the 30 net acre portion of the property from agriculture to non-agricultural uses "can be justified under Coastal Act Sections 30241.5 and 30242." The findings also state:

The Commission finds that strict adherence to the standards of the LUP and the Coastal Act after conversion [of ag land] to urban uses will assure that no significant adverse effects are created and that any adverse impacts on the remaining adjacent agricultural lands will be mitigated.

LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) both state:

Land divisions or development proposals shall include a means of permanently securing the remaining acreage in agricultural use, such as agricultural preserves, open space easements, or granting of development rights. Covenants not to further divide shall also be executed and recorded prior to issuance of development permits.

The City's action originally approving CDP 43-92, the tentative map for the subdivision of the property into two parcels, did not include a "means of permanently securing the remaining acreage in agricultural use..." nor did it prevent future divisions of land. The applicant contends that the property is essentially protected in perpetuity because the zoning, which was established by a voter's initiative (Ordinance No. 266 - Growth Management), cannot be changed without a majority vote of the people. In addition, since the appeal was filed, the City has added a condition of approval to the recent extension of the use permit to create a covenant to not further subdivide the property.



However, regardless of the two measures already in place to protect the agriculturally zoned land, LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) require that an agricultural preserve or open space easement be placed over the land, or that the landowner grant the development rights of the property. The City did not require such a protective measure in the original approval of the use permit, nor was the issue raised when evaluating subsequent extensions of the permit for compliance with the LCP. Thus, the City's action was inconsistent with these portions of the certified LCP and a substantial issue is raised.

Water Supply

~~At the time of the appeal of this project to the Coastal Commission, the City was experiencing water supply shortages due to a drought and restrictions on pumping from the Chorro Valley so as to maintain a minimum stream flow for habitat purposes. At that time the City built a desalination plant and pursued delivery of water from the State Water Project. Subsequently, the City also submitted a water management plan for certification into the LCP. That plan guides the City's use of its water supplies and describes the City's priorities for water supply as, in descending order, conservation, State Water, groundwater, and desalination.~~

~~Overall, the water supply situation in Morro Bay is much better that it was in the late 1980s and early 1990s, when the permits for the shopping center development and subdivision were approved. This is due primarily to the arrival of State Water in late 1997. In 1997, State Water accounted for 20 percent of the City's water supply. For 1998, the percentage supplied by State Water rose to 97 percent and for 1999, State Water accounted for 98 percent of the City's water supply. This has resulted in a dramatic reduction in pumping from the City's groundwater wells. The total production from the Chorro Valley wells dropped from 985 acre feet in 1997 (64 % of total) to 38 acre feet in 1998 (3 % of total) to 34 acre feet (2 % of total) in 1999. Production from the City's other wells, in the Morro Valley, dropped from 249 acre feet in 1997 (16 % of total) to zero in both 1998 and 1999.~~

~~Although the water supply situation has changed in Morro Bay since approvals were granted for the shopping center development and the subdivision, the change has been a positive one rather than a negative one. Therefore, there is no reason to revisit the approvals based on water supply.~~

E. Agriculture

~~Although not explicitly stated in the contentions of appeal, the appellant raises concern regarding protection of the property from future development. As part of LCP amendment request 1-88, the agricultural potential of the land was analyzed. The Commission found that the conversion of the 30 net acre portion of the property from agriculture to non agricultural uses "can be justified under Coastal Act Sections 30241.5 and 30242." The findings also state:~~

The Commission finds that strict adherence to the standards of the LUP and the Coastal Act after conversion [of ag land] to urban uses will assure that no significant adverse effects are created and that any adverse impacts on the remaining adjacent agricultural lands will be mitigated.



LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) both state:

Land divisions or development proposals shall include a means of permanently securing the remaining acreage in agricultural use, such as agricultural preserves, open space easements, or granting of development rights. Covenants not to further divide shall also be executed and recorded prior to issuance of development permits.

As a condition of approval, the City required the applicant to record open space easements with the Parcel Map, pursuant to LCP Policy 6.05(3). The location of the open space easements, which account for approximately 46.2 acres of the 175 acre parcel, protect the creek corridor, steep slopes (30% slopes or greater), and the hilltops (areas within 50 feet vertical elevation of ridgetops). Exhibit 8 of this report identifies those areas of the parcels subject to the easement.

Although the City's approval adequately protects open space on the property, the City's action fails to protect agricultural lands in a manner that is consistent with the LCP. In addition, the City's action originally approving CDP 43-92, the tentative map for the subdivision of the property into two parcels, and the recent extension of that permit failed to require measures to prevent the future subdivision of the agriculturally zoned land. However, City of Morro Bay Ordinance No. 266 (attached as Exhibit 9) mandates that any change of zoning from its current Agricultural designation must be approved by a majority vote of the people. Although not the equivalent of an agricultural easement, this requirement provides protection against a future re-zoning of the property. However, it does not address the LCP Policy's requirement to prevent future land divisions. Thus, subsequent to the appeal of this project to the Commission, the City agreed to incorporate an additional condition of approval for the extension of the Parcel Map, which addresses concerns regarding future land divisions on the remainder agriculture parcel. This condition (referenced in correspondence attached as Exhibit 10) requires the applicant to enter into an agreement with the City to ensure "that the agriculturally zoned portion of the Remainder Parcel [shall] not be further subdivided." The condition also states that any future modification to the covenant would be an amendment to the City's coastal development permit, and would be appealable to the Coastal Commission. Therefore, the second requirement of LCP Policy 6.05(3), regarding future land divisions, has been fulfilled. **Thus, no substantial issue exists with this contention of the appeal.**

F. Extension of Coastal Commission Coastal Development Permit A-4-89-134

The applicant has filed a request to extend Coastal Commission permit A-4-MRB-89-134. However, the applicant plans to withdraw that extension after the Commission acts on this appeal. The applicant's intent is to then go back to the City at some future date and make application for a new coastal development permit for a different project, but in the same location and with the same zoning. Regardless of this intent, though, it should also be noted again that there are significant changed circumstances in this case, and thus it would likely be inappropriate to further extend the commercial development permit that currently exists for the site, regardless of the disposition of the subdivision extension.



~~VI. 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 the California Environmental Quality Act (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 that would substantially lessen any significant adverse effect that the project may have on the environment.~~

~~The Commission's review of this appeal has not identified any environmental impacts that have not been appropriately resolved by the project and the City's conditions of approval. Thus, the project is not expected to have any significant adverse impact on the environment within the meaning of the California Environmental Quality Act.~~

VI. STAFF RECOMMENDATION ON EXTENSION OF COASTAL DEVELOPMENT PERMIT

The staff recommends that the Commission, after public hearing, **deny** the extension of the coastal development permit for the proposed project because the proposal is inconsistent with the certified LCP.

MOTION: *I move that the Commission grant a one-year extension to Coastal Development Permit No. A-3-MRB-99-082 because it is consistent with the applicable sections of the certified LCP.*

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION

The Commission hereby denies the extension of a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the extension does not conform with the policies of the certified Morro Bay Local Coastal Program. Approval of the extension would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.



VII. RECOMMENDED FINDINGS FOR EXTENSION OF THE COASTAL DEVELOPMENT PERMIT

A. Standard of Review

The Commission certified the City's Local Coastal Program in 1982; therefore, the standard of review in this case is the LCP. The applicable section of the Zoning Ordinance states the following in regard to time extension requests for coastal development permits.

Zoning Ordinance Section 17.58.130B (Time Extensions):

The term for CDP [Coastal Development Permit] permits may be extended by the Director for up to two (2) one year periods.... The Director shall review the proposal for consistency with all applicable ordinances and policies effective at the time of the request for extension.

B. Agriculture

As part of LCP Amendment request 1-88, the agricultural potential of the land was analyzed. The Commission found that the conversion of the 30 net acre portion of the property from agriculture to non-agricultural uses "can be justified under Sections 30241.5 and 30242." The findings also state

The Commission finds that strict adherence to the standards of the LUP and the Coastal Act after conversion [of ag land] to urban uses will assure that no significant adverse effects are created and that any adverse impacts on the remaining adjacent agricultural lands will be mitigated.

LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) both state:

Land divisions or development proposals shall include a means of permanently securing the remaining acreage in agricultural use, such as agricultural preserves, open space easements, or granting of development rights. Covenants not to further divide shall also be executed and recorded prior to issuance of development permits.

The City's action originally approving CDP 43-92, the tentative map for the subdivision of the property into two parcels, did not include a "means of permanently securing the remaining acreage in agricultural use..." nor did it prevent future divisions of land. The applicant contends that the property is essentially protected in perpetuity because the zoning was established by a voter's initiative (Ordinance No. 266 - Growth Management) and cannot be changed without a majority vote of the people. In addition, since the appeal was filed, the City has added a condition to the approval of the recent use permit extension to create a covenant to not further subdivide the property.

However, regardless of the two measures already in place to protect the agriculturally zoned land, LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) require that an agricultural



preserve or open space easement be placed over the land, or that the landowner grant the development rights of the property, *as part of the land division proposal*, not a general zoning restriction or policy restriction. Moreover, agricultural zoning is not an equivalent protection of the agricultural remainder as is an in-perpetuity easement, preserve, or granting of development rights. Such permanent legal instruments typically specify and limit future use of agricultural lands to uses that meet the objective of permanent agricultural land preservation. Mere land use or zoning designations do not provide an independent legal instrument with such limitations and indeed, uses within land use or zoning categories can easily be amended to allow uses that may conflict with the agricultural preservation policy requirement of the LCP. The City did not require such a protective measure in the original approval of the use permit, nor was the issue raised when evaluating subsequent extensions of the permit for compliance with the LCP. Thus, the City's action fails to protect agricultural lands in a manner that is consistent with the LCP. Therefore, approval of the extension request for the map is inconsistent with the LCP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5 (F). Consequently, it cannot be found that the extension of CDP 43-92 is consistent all applicable ordinances and policies effective at the time of the request for extension. **Therefore, the extension must be denied pursuant to LCP Ordinance Section 17.58.130B.**

C. Scenic and Visual Qualities

LUP Policy 12.01 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic and coastal areas, to minimize the alteration on 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 on Figure 31, shall be subordinate to the character of its setting.

In addition, the project site is subject to a Special Design Criteria Overlay Zone (S.4), implemented through Zoning Ordinance Section 17.40.050G, which states:

In order to maintain and enhance the character and visual quality of these areas, special design review has been found to be necessary. Applications for development shall include (as appropriate) submittal of architectural, landscaping, lighting, signing and viewshed plans for review and approval.

Since the City's original approval of the tentative map in 1993, the section of Highway One from the San Luis Obispo City limit to the Monterey County Line was designated a State Scenic Highway. This section of the highway passes through Morro Bay within 150 yards of the project site and travelers find the site's hillside area as a part of the view to and along the coast. The scenic and visual qualities of the site serve to provide identity, character, and value to the community, and are recognized in the text and policies within the Land Use Plan. LUP Visual Resources Section XIII (p. 218) states the following in regard to the adjacent hillsides of the Morro Highlands area:



The backdrop of the community, the hills climbing up from the coastal bench and the agricultural flatlands of the Morro and Chorro Valleys are a significant visual resource.... The undeveloped hillsides and ridgelines, left open for grazing, add an important visual dimension to the City. Their color, texture and shape contrast sharply with the urban areas and coastline, and reinforce Morro Bay's image and character as a rural, small scale waterfront community.

While the highway is lower than the project site, the site is visible from the highway (see Exhibit 6) and development in this area would change the character of the hillside and views from the highway. Although the tentative map was originally approved (and development was planned for the area generally located adjacent to Highway One and Morro Bay Boulevard) prior to the designation of Highway One as a Scenic Highway, the CDP extension request should be evaluated for consistency with all applicable ordinances and policies effective at the time of the request for extension, including LUP Policy 12.01.

Clearly, the designation of this section of Highway One as a State Scenic Highway is a changed circumstance since the time of the approval of the tentative map in 1993. All of the ramifications of the State Scenic Highway designation with regard to development on the subject site are not fully known at this time. Although the LCP has designated a portion of this parcel for commercial development, it may not be appropriate to develop the entire site, based on visual analyses conducted at the time the development is proposed. It could be, for example, that views of the hillsides at the subject site should be protected as a highly scenic area and development may be subject to applicable viewshed protection standards. As a result, the proposed division of land for future development in this area may or may not be appropriate, based on its potential to be developed in such a way that would adversely impact the scenic and visual resources of the area. Without such visual analysis, the extension cannot be found consistent with Policy 12.01, particularly the requirement that development proposals include viewshed analyses that allow for the protection of sensitive visual resources. Because of this inconsistency, the extension must be denied as inconsistent with LCP Ordinance 17.58.130B.

D. Traffic

The project site is adjacent to the Highway One/Morro Bay Boulevard off-ramp; however, no public vehicular access exists to the proposed development site. This off-ramp is one of two major thoroughfares from Highway 1 used to access the core of the City and the Embarcadero. The LCP incorporates, by reference, the general land use policies of the Coastal Act, including the 30250 requirement that new development be approved in areas able to accommodate it (LCP Policy 0.1) Though no specific LUP/IP standards address traffic per se, the LUP does provide for protecting public access, and providing adequate infrastructure (water, sewer) for new development.

According to a traffic analysis conducted for the original commercial development proposal, in 1988 (Weston Pringle & Associates, September 19, 1988), the Highway One/northbound Morro Bay Boulevard off-ramp was operating at a Level of Service C and the Morro Bay Boulevard/Quintana Road intersection was operating at a Level of Service B, both of which are acceptable levels of



traffic flow.³ However, given the length of time that has elapsed since this study was conducted and because it does not consider changed circumstances since the approval of the tentative map in 1993, this analysis is no longer valid. In fact, in a letter to Marshall E. Ochylski, dated July 12, 1999, Greg Fuz, Morro Bay Public Services Director, states that, "the key intersection affected by the project, Morro Bay Boulevard/Quintana [Road], is now operating at an unacceptable level of service...." Future development on the eastern side of Highway One will only serve to exacerbate this problem, and potentially impede public access to the sea, unless necessary improvements to the circulation system in this area are completed.

Original approval of the commercial development in 1991 included conditions requiring specific circulation improvements. These include the construction of two new intersections of Morro Bay Boulevard/Highway One northbound ramps and Morro Bay Boulevard/"Ocean View Drive," signalization of existing intersections, and other related roadway improvements and redesign. These circulation improvements were based on a specific commercial development proposed at that time; a proposal that has since been withdrawn by the applicant. Future development proposals may require a different parcel configuration (e.g. location, size, number of parcels), which may or may not place a different demand on the existing circulation system and thus, require alternative improvements.

As opposed to mere commercial zoning, subdivisions provide a more specific framework for future development and thus, the potential impacts to the circulation system should be analyzed concurrently with the proposal to subdivide the property. To date, this has not been done. Secondly, given the length of time that has elapsed since these circulation improvements were proposed, it is possible that additional, or alternative, requirements may be deemed more appropriate for existing development and the current level of service in this area. Therefore, because new, updated traffic analyses are needed to address changed circumstances in regard to the project's impacts on traffic patterns, the extension is not consistent with LCP policy 0.1, which incorporates, as a guiding policy, the Coastal Act requirement that new development be located in areas able to accommodate it. Thus, the extension is not consistent with LCP Ordinance 17.58.130B.

E. Water Supply

At the time of the appeal of this project to the Coastal Commission, the City was experiencing water supply shortages due to a drought and restrictions on pumping from the Chorro Valley so as to maintain a minimum stream flow for habitat purposes. At that time the City built a desalination plant and pursued delivery of water from the State Water Project. Subsequently, the City also submitted a water management plan for certification into the LCP. That plan guides the City's use of its water supplies and describes the City's priorities for water supply as, in descending order, conservation, State Water, groundwater, and desalination.

³ Level of Service (LOS) A to C are described as operating quite well, Level of Service D is typically the LOS for which an urban street is designed, LOS E is the maximum volume a facility can accommodate, and LOS F occurs when a facility is overloaded and is characterized by stop-and-go traffic with stoppages of long duration.



Overall, the water supply situation in Morro Bay is much better than it was in the late 1980s and early 1990s, when the permits for the shopping center development and subdivision were approved. This is due primarily to the arrival of State Water in late 1997. In 1997, State Water accounted for 20 percent of the City's water supply. For 1998, the percentage supplied by State Water rose to 97 percent and for 1999, State Water accounted for 98 percent of the City's water supply. This has resulted in a dramatic reduction in pumping from the City's groundwater wells. The total production from the Chorro Valley wells dropped from 985 acre feet in 1997 (64 % of total) to 38 acre feet in 1998 (3 % of total) to 34 acre feet (2 % of total) in 1999. Production from the City's other wells, in the Morro Valley, dropped from 249 acre feet in 1997 (16 % of total) to zero in both 1998 and 1999.

Although the water supply situation has changed in Morro Bay since approvals were granted for the shopping center development and the subdivision, the change has been a positive one rather than a negative one. Therefore, there is no reason to revisit the approvals based on water supply.

F. Conclusion

It is important to note that as stated in the LCP, and further embodied in the Coastal Act, any request for an extension of a coastal development permit shall be reviewed "for consistency with all applicable ordinances and policies effective at the time of the request for extension." In accordance with this policy, staff has identified a number of issues that raise question to the consistency of the extension of the permit with the certified LCP, summarized below, and noted that the provision of water services has actually improved since the permit was originally approved.

First, while the land use history of the site indicates approval of a commercial development in the area shown in Exhibit 3, no land division, or extension thereof, may be approved unless there is a requirement that the applicant "permanently secure the remaining acreage in agricultural use." The City did not apply such a requirement; therefore the request for time extension of the coastal development permit must be denied.

Secondly, there are a number of changed circumstances, including the designation of this portion of Highway One as a State Scenic Highway and the potential for future development on the newly created parcel to exacerbate traffic problems in the area. These changed circumstances, and the lack of updated analysis of these circumstances, raise conflicts with the resource protection policies of the LCP. Thus, the extension cannot be approved under Zoning Ordinance Section 17.58.130B.

VIII. 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 the California Environmental Quality Act (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 that would substantially lessen any significant adverse effect that the project may have on the environment.



As detailed in the findings of this staff report, the Commission has identified environmental impacts of the project that were not effectively addressed by the City's action. In particular, the City's action did not provide for the protection of agricultural land. As a result, the permit must be denied to assure that there will not be a significant adverse affect on the environment within the meaning of the California Environmental Quality Act.



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
831) 427-4863

RECEIVED



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

OCT 25 1990

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

SECTION I. Appellant(s)

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

JACK McCURDY
700 ANCHOR STREET
MORRO BAY, CA 93942 (805) 772-2426
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF MORRO BAY

2. Brief description of development being appealed: TIME EXTENSION FOR VESTING TENTATIVE PARCEL MAP

3. Development's location (street address, assessor's parcel no., cross street, etc.): TERMINUS OF MORRO BAY BOULEVARD off HIGHWAY 1

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: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

Exhibit 1 (1 of 11)
Appellant's Contentions
A-3-99-082

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: SEPT 27, 1999

7. Local government's file number (if any): PM 04-92/CDP 43-92

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:

TIG W ENTERPRISES INC c/o MARSHALL E. CHYLSKI
P.O. BOX 14327
SAN LUIS OBISPO, CA 93406

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) SUEAN MULLEN
925 PACIFIC STREET
MORRO BAY, CA 93442

(2) BEDWIE MELVIN
2492 ELM AVENUE
MORRO BAY, CA 93442

(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 1
(2 of 11)

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 SHEETS

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]
Signature of Appellant(s) or
Authorized Agent

Date Oct. 26, 1999

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 1
(3 of 11) Date _____
Signature of Appellant(s)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT,
SECTION IV

Reasons Supporting This Appeal:

On Sept. 27, 1999, the Morro Bay City Council denied my appeal of the city Planning Commission's approval on Aug. 16, 1999, of a one-year time extension for vesting of a tentative parcel map (PM 04-92/CDP 43-92) and the Commission's concurrent acceptance of withdrawal of a time extension request for CUP 03-88 (precise plan). Acceptance of the withdrawal was granted as a condition of approval of the time extension. I contend that the City Council's action in approving the map and withdrawal of the precise plan contravenes requirements for a development project approved by the city in 1994, for which a coastal permit was granted by your body, on two grounds.

1. The parcel map and precise plan at issue are for a 13-acre parcel east of the terminus of Morro Bay Boulevard and Highway 1 in undeveloped territory. In 1994, Tri W Enterprises Inc. obtained approval of the parcel map and precise plan to develop a shopping center on the property. Morro Bay voters in 1990 approved an initiative (Measure H) which zoned the 13 acres for commercial use by amending the city's General Plan Land Use Element and all applicable ordinances, policies and maps to that effect (copy attached). That initiative, along with a court order requiring the city to allow use of the 13 acres for commercial purposes only, were incorporated into revised Local Coastal Program amendment 1-93, LU-49 and LCP Policy 6.09, according to a city staff report on my appeal to the City Council dated Sept. 21, 1999.

Measure H, in designating the 13 acres for "district commercial" use, states:

"The citing of such use shall be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act Chapter 3 policies."

However, the City Council's action of Sept. 27, 1999, violates Measure H by approving the parcel map for development of the property for commercial purposes, i.e. "citing of such use," in the absence of a required precise plan, i.e. "in accordance with a precise development plan..." The Council's action allowed withdrawal of the precise plan and, therefore, none exists.

Exhibit 1
(4 of 11)

2. The "Conditions of Approval" (copy attached) for the parcel map and precise plan related to the 120,000-square-foot shopping center proposed by Tri W Enterprises Inc. states that approval of the parcel map will expire unless it is recorded within two years or unless an extension is requested. A one-year extension may be granted, the Conditions of Approval state:

"...upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code..."

However, the Council action of Sept. 27, 1999, allowed the precise plan to be withdrawn and, therefore, there is no project for which compliance can be determined in accordance with the Conditions of Approval.

According to a city staff report to the City Council dated Aug. 16, 1999, Tri W Enterprises Inc. "indicated that they are no longer interested in pursuing development of the shopping center project, and are considering submittal of a replacement project later this year, including a hotel/conference center and related facilities within" the 13 acres. A Tri W Enterprises Inc. representative also has appeared before the City Council and several local groups outlining its plans for such a visitor-serving use of the property. However, it is zoned for commercial use. A court has ruled that under Measure H, it may not be used for visitor-serving purposes, which is how a hotel/conference center is defined in the city's zoning regulations. Therefore, the zoning history and conditions of approval of the parcel map are inconsistent with any planned use of it for visitor-serving purposes. And, therefore, it would only be appropriate for Tri W Enterprises Inc. to apply for a new parcel map that would be considered, processed and subject to public comment as part of a different project and precise plan that Tri W Enterprises or some other owner of the property might submit.

The City Council justified its approval of the time extension and withdrawal of the precise plan on grounds that the city in return would receive certain easements on hilltops, slopes and the banks of Willow Camp Creek on the 13 acres and other property owned by Tri W Enterprises Inc. in the vicinity. However, it is reasonable to expect that such easements could be obtained as a condition of approval of some future development on the properties. The terrain of the easement areas are not suitable as sites for development in any case, a Tri W Enterprises Inc.

representative stated to the city Planning Commission.

As contextual background, it should be noted that there have been reports in the community that the subject property has been for sale. The city's attorney at the City Council's Sept. 21, 1999, meeting acknowledged that financial value would be added to the 13 acres by granting the time extension and allowing the parcel map to be recorded, giving Tri W Enterprises Inc. vesting rights. Such rights have been granted by courts as a matter of fairness to assure a developer that once a project has been undertaken it can be completed as planned without imposition of new or additional legal requirements. But in the case of the Tri W Enterprises Inc. application, it presents the prospect of vesting rights protecting against new requirements without a project being in existence or pursued. After many years of controversy, debate and previous initiatives, Morro Bay voters made their decision: they would accept precedent-setting development in the open space east of Highway 1 if a supermarket--which is specifically mentioned in Measure H--were to be built. Only city voters can change the zoning on the property through an initiative and could decide to do it again, but their rights to do so would be deprived by vesting rights on the property. If a conservancy sought to purchase the property for open space and habitat preservation, vesting rights would enhance the property in determining market value. In either case, vesting rights established by the courts would have an unintended effect because no development project exists to be protected by such rights.

7
ORDINANCE NO. 389
(Measure H)

INITIATIVE MEASURE TO REZONE A PORTION OF WILLIAMS BROTHERS PROPERTY TO REDUCE THE ACREAGE ALLOWED FOR COMMERCIAL AND TO PROHIBIT VISITOR SERVING COMMERCIAL

THE PEOPLE OF THE CITY OF MORRO BAY DO ORDAIN:

SECTION 1: Morro Bay General Plan policy LU-48, Section 2 shall be repealed.

SECTION 2: Morro Bay General Plan policy LU-49 shall be amended to read as follows:

The City shall amend its General Plan Land Use Element LU-49 and all applicable ordinances, policies and maps to designate a portion of the Williams' property within the city limits for "district commercial" use, including a new shopping center. The total area to be designated for such use shall be thirteen (13) gross acres generally located adjacent to Highway 1 and Morro Bay Boulevard. The citing of such use shall be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act Chapter 3 policies.

Nothing contained herein shall be construed to permit any residential development on the Williams property.

SECTION 3: Upon adoption, this ordinance shall be immediately submitted to the California Coastal Commission for certification as an amendment to the General Plan for the City of Morro Bay.

SECTION 4: If any provision of this ordinance is adjudged invalid by a court of competent jurisdiction, such provision shall be deemed separate, distinct and severable and such adjudication shall not affect the remaining provisions of the ordinance.

SECTION 5: This ordinance shall supersede all other ordinance and General Plan Policies in conflict therewith.

CERTIFICATION

I Ardith Davis, City Clerk of the City of Morro Bay, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by a majority vote of the electors voting in a general municipal election held in the City of Morro Bay on the 6th day of November, 1990.

Dated: January 14, 1991

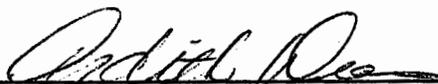

ARDITH DAVIS, City Clerk
City of Morro Bay, California

Exhibit 1
(7 of 11)

4

CONDITIONS OF APPROVAL

Case No. PM 04-92 (VESTING)/CDP 43-92/CUP 03-88 (A PORTION OF PRECISE PLAN)

STANDARD CONDITIONS

1. Permit: This approval is granted for the land described in the application and any attachments thereto, and as shown on Exhibit A submitted May 10, 1993, and on file with the Community Development Department. The locations of all buildings and other features shall be located and designed substantially as shown on the aforementioned exhibit, unless otherwise specified herein.
2. Inaugurate Within Two Years: Unless the Final Map is recorded not later than two years after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void; provided, however, that upon the written request of the applicant, prior to the expiration of this approval, an extension for not more than one (1) additional year may be granted by the Planning Commission, upon finding that the project complies with all applicable provisions of the Morro Bay Municipal Code in effect at the time of the extension request and there have been no changes in the character of the site or its surroundings that affect how the standards of the land use plan or zoning ordinance apply to the project, and there have been no changes to the capacities of community resources, including but not limited to water supply, sewage treatment or disposal facilities, roads or schools such that there is no longer sufficient remaining capacity to serve the project per Section 16.10.050.
*pkred
off
16/99*
3. Changes: Any minor change may be approved by the Community Development Director. Any substantial change will require the filing of an application for an amendment to be considered by the Planning Commission.
4. Compliance with Law: All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, or hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

- 6. Compliance with Conditions: Compliance with and execution of all conditions listed hereon shall be necessary, unless otherwise specified, prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Community Development Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.
- 7. Acceptance of Conditions: Prior to obtaining a building permit and within thirty (30) days hereof, the applicant shall file with the Director of Planning and Community Development written acceptance of the conditions stated herein.

B. SPECIAL SUBDIVISION CONDITIONS:

- 1. Future Permits Required: The applicant shall record with the ^{Parcel} Final Map a statement which identifies that the map does not confer any rights to develop on the subject parcels and that all required Coastal Development Permits, Concept Plans, Precise Plans and other required permits shall be obtained prior to any development or new uses required by ordinance. *Add language in 8/10/99 staff memorandum.*
- 2. Limitation to Parcel 1: ~~The Tentative Vesting Map shall be limited to Parcel 1 as defined on the map and the remainder parcel shall include the area defined as previous Parcels 2 and 3. All reference to Parcels 2 and 3 shall be eliminated from the map. All street right-of-ways, easements and public improvements indicated on the map or otherwise indicated in these conditions shall be included with the Final Map.~~ *2p1a1 with language 2/8/10/99 staff memo*
- 3. Consistency of Parcel 1 Uses with Concept Plan: ~~A statement shall be recorded with the Final Map identifying the requirement that all uses and project design of Parcel 1 will be consistent with the approved Concept Plan. Said statement shall be subject to the review and approval of the City Attorney and the Director. Said statement shall not be modified without approval of the City.~~ *etc*
- 4. Dedication of Open Space Easement: An open space easement shall be recorded with the Parcel Map identifying those areas of the parcels which are identified in the Concept Plan as follows:

a. Area of Parcel 1 along Willow Camp Creek shown on the Concept Plan, *coinciding with the boundaries of the OA-1 Zone District*

Conditions Of Approval

PM 04-92 (Vesting)/CDP 43-92/CUP 03-88

A Part of the Precise Plan

- b. 8.2 Acre within remainder parcel identified in Concept Plan Conditions B.27. *Coinciding with the boundaries of the OAI Zone District immediately north of Parcel 1.*
- c. Areas of slopes of 30 percent or steeper.
- d. Areas within 50 feet vertical elevation of ridgetops.
- e. Further, the Parcel Map shall also include a note that the City is clarifying its hillside regulations and that they may be more restrictive than the provisions of the easement. The note shall state that all development on the remainder parcel shall be consistent with the hillside regulations as ultimately adopted by the City Council and certified by the State Coastal Commission. Said language shall be subject to the approval of the City Attorney.

Delek

5. Additional Statements on Map: A statement shall be recorded with the Final Map identifying that all future development on Parcel 1 shall be subject to the grading, archaeological, design, environmental protection and other standards established by Concept Plan CUP 03-88. Said statement shall detail the issues as expressed in the Concept Plan Conditions and shall be subject to the review and approval of the City Attorney and the Director and may not be modified without approval of the City.

Delek

6. Timing of Recordation of Map: No Final Map for this subdivision shall be recorded until a Water Management Plan, as required by the Morro Bay Local Coastal Program Policies, 3.01 and 3.03 and fully incorporating the requirement of Policy 3.04 has been adopted by the City of Morro Bay and submitted to the Coastal Commission for review and approval as an amendment to the City's Local Coastal Program.

Delek

C. LANDSCAPING CONDITIONS

1. Planting Easement: An easement for the special tree buffer identified in the EIR Supplement shall be recorded with the Final Map providing for the access, ability to plant and maintain said tree buffer. This shall be a private covenant for the owner(s) of Parcel 1 to have the right to provide the required tree buffer in the remainder parcel. Removal of this restriction shall require approval of the City.

Delek

D. PUBLIC WORKS CONDITIONS

1. Improvement Plans and Bonding: Prior to the recordation of the final Map, compliance with all pertinent conditions of approval under CUP 03-88/CDP 05-88 Concept Plan, including, but not limited to, submittal

Delek

*as 8/11/99
ok'd in
- Jeff memo*

and approval of all grading and improvement plans, required outside agency permits and submittal and approval of securities for all improvements as required by the City Engineer shall be accomplished.

2. Access Denial Abandonment: Prior to or concurrent with recordation of the Final Map, the existing access denial per 933 OR 307 shall be abandoned within the proposed Williams Blvd. Right-Of-Way.
3. Restriction for Access: Concurrent with the recordation of the Final Map, the developer shall restrict access rights along the southern edge of the City right-of-way (Creekside Boulevard) from the existing CalTrans right-of-way to the beginning of the cul-de-sac bulb. Access restriction shall be defined upon construction of the improvements by an access restriction fence. Design and location of the fence shall be to the satisfaction of the Community Development Director and the City Engineer.
- 4.- Circulation System: A private easement for roadway and utility purposes in favor of the remainder parcel shall be recorded concurrently with the Parcel Map across Parcel 1 from Morro Bay Blvd to the eastern most property line of Parcel 1. The width of said easement shall be 64 feet. Implementation of this condition shall not preclude development of the project approved in Case CUP 03-88.

E. FIRE DEPARTMENT

1. Fire Water System: The fire water supply system pursuant to CUP 03-88 shall be designed and approved by the Fire Chief and bonded prior to recordation to the Final Map.

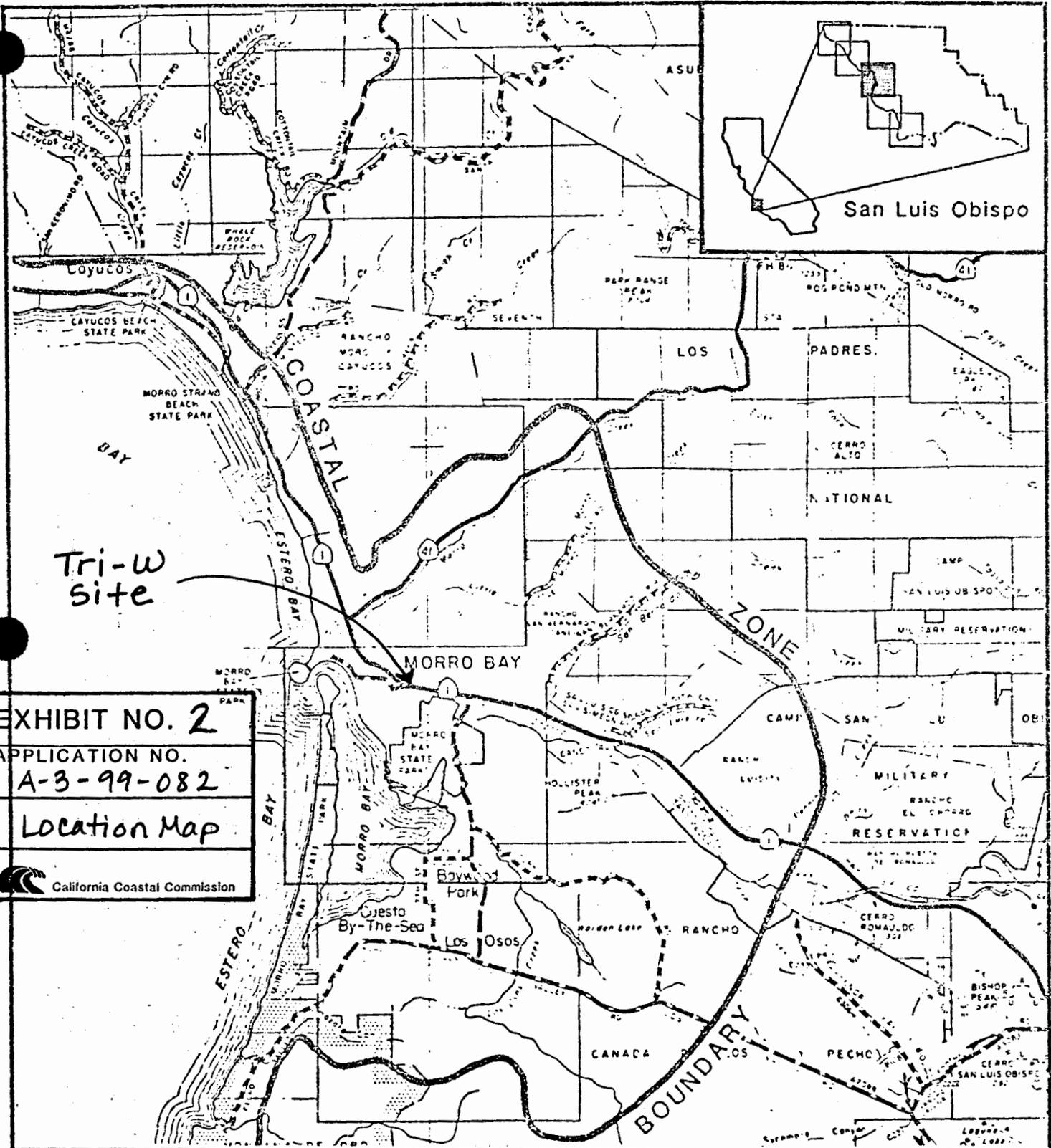
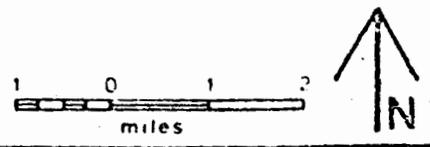


EXHIBIT NO. 2
 APPLICATION NO.
A-3-99-082
 Location Map
 California Coastal Commission

 California Coastal Commission

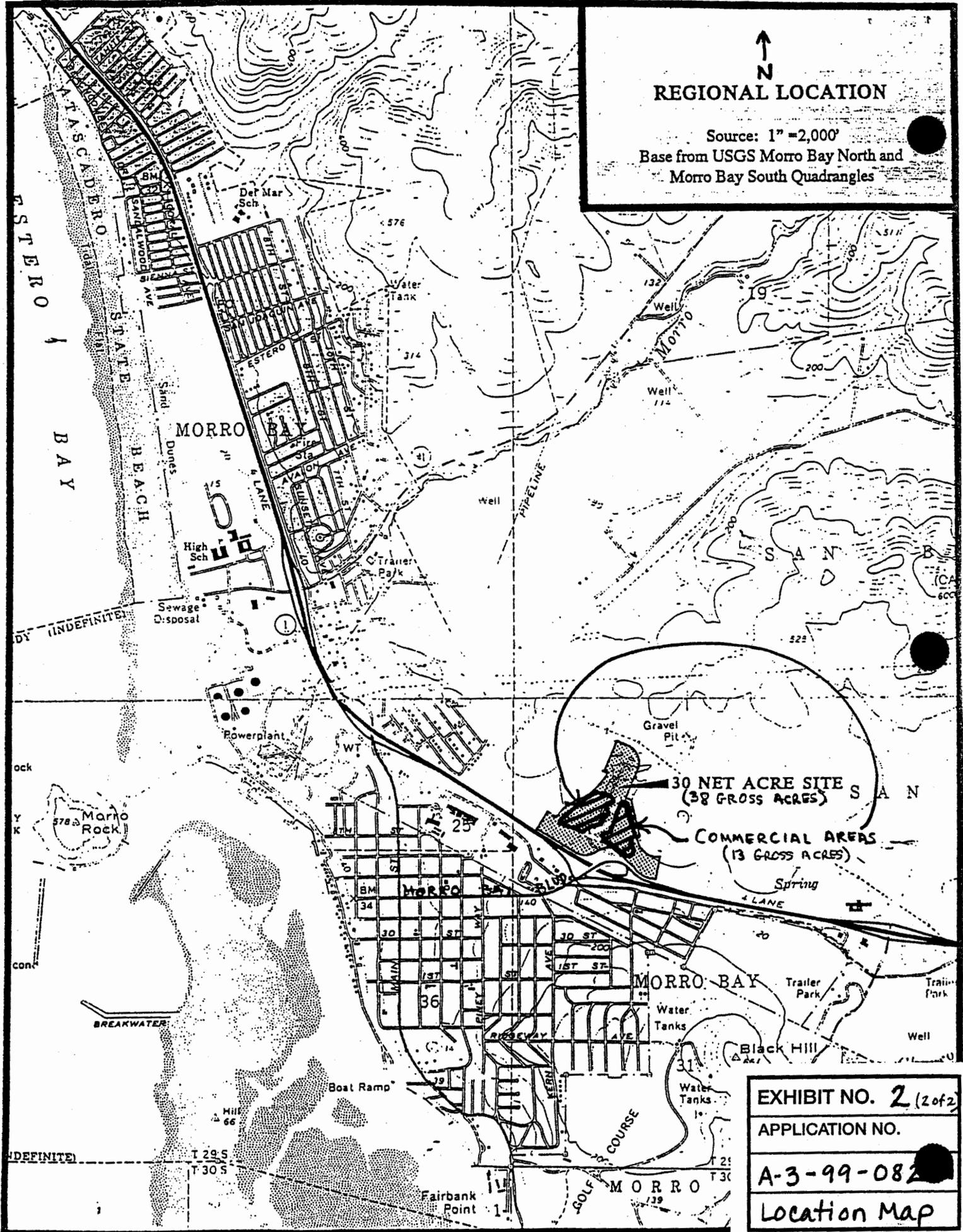
LOCATION MAP



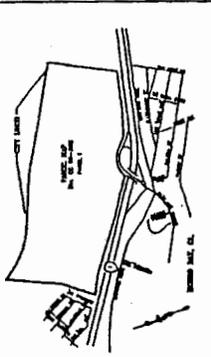
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REGIONAL LOCATION

Source: 1" = 2,000'
Base from USGS Morro Bay North and
Morro Bay South Quadrangles

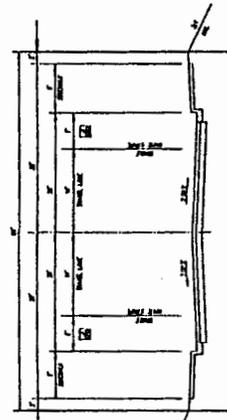
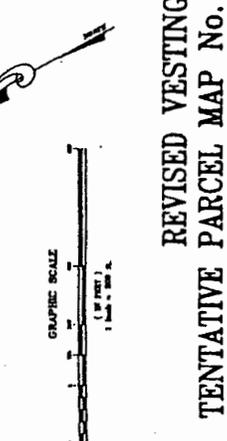
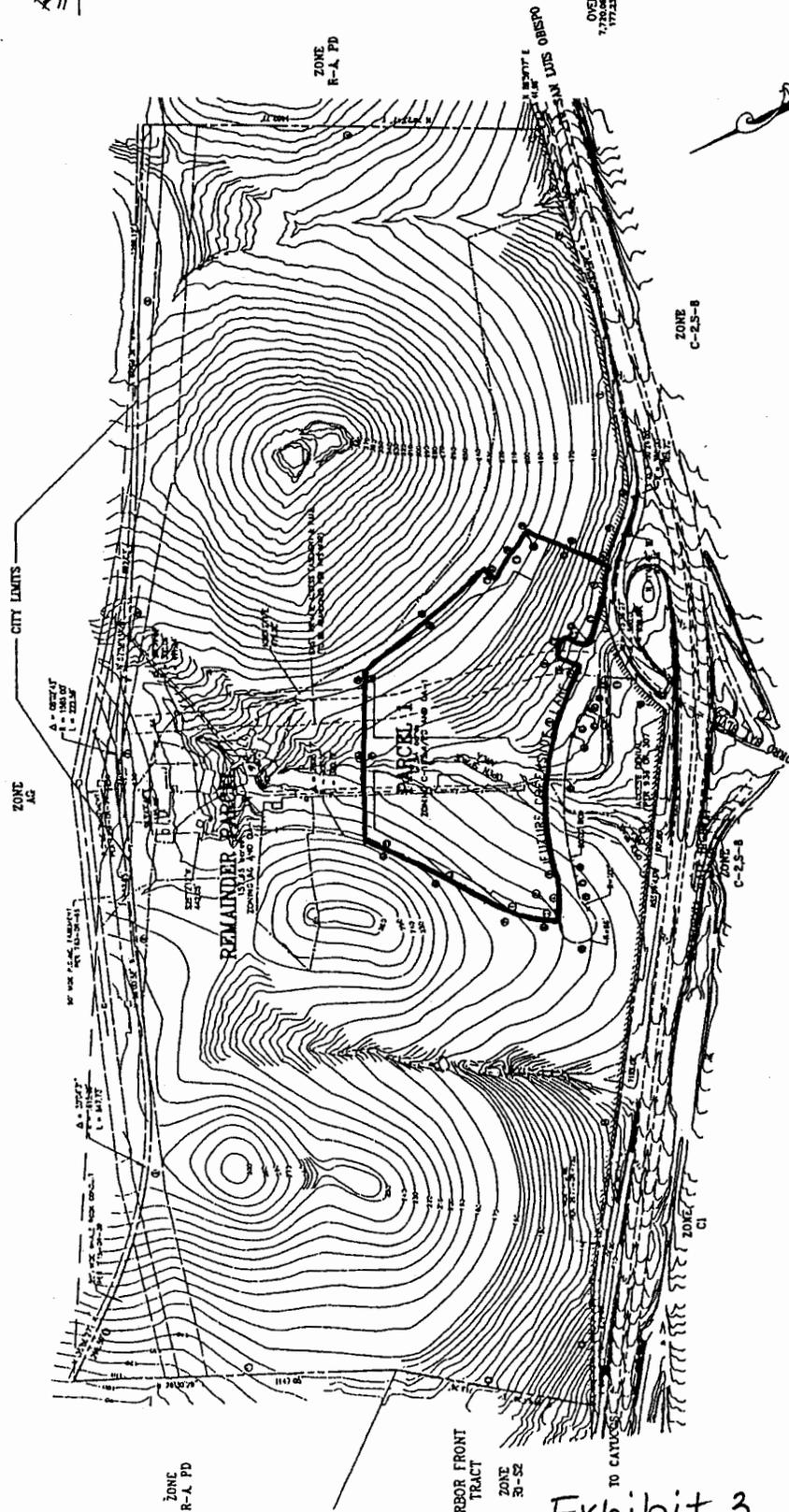


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| EXHIBIT NO. 2 (2 of 2) |
| APPLICATION NO. |
| A-3-99-082 |
| Location Map |



VICINITY MAP

| PARCEL | TRACT | AREA | OWNER |
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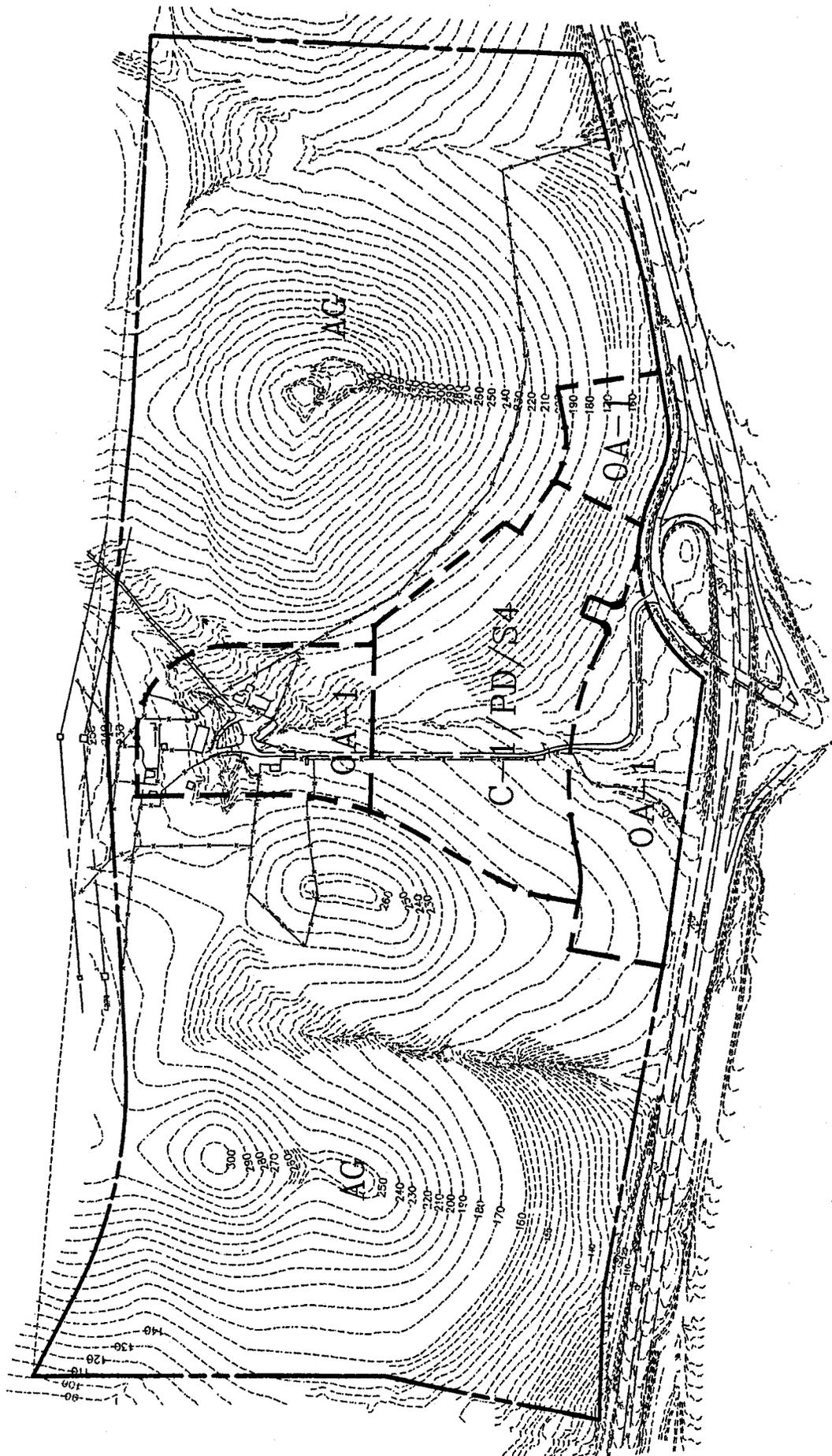
**REVISED VESTING
TENTATIVE PARCEL MAP No. MB 92-099**

BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. CO/MB 88-343, IN THE CITY OF MORENO VALLEY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED IN BOOK 48 AT PAGE 13 OF PARCEL MAPS.

APRIL 1995
OWNER & SUBDIVIDER
TRI-Y ENTERPRISES, INC. & KERRILL WILLIAMS
SUITE 100, CALIFORNIA 94144

- NOTES:
1. THIS MAP IS THE PROPERTY OF THE CITY OF MORENO VALLEY AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE CITY OF MORENO VALLEY.
 2. THE CITY OF MORENO VALLEY HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF MORENO VALLEY ZONING ORDINANCE AND THE CITY OF MORENO VALLEY SUBDIVISION MAP ACT.
 3. THE CITY OF MORENO VALLEY HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF MORENO VALLEY ZONING ORDINANCE AND THE CITY OF MORENO VALLEY SUBDIVISION MAP ACT.
 4. THE CITY OF MORENO VALLEY HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF MORENO VALLEY ZONING ORDINANCE AND THE CITY OF MORENO VALLEY SUBDIVISION MAP ACT.
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 9. THE CITY OF MORENO VALLEY HAS REVIEWED THIS MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF MORENO VALLEY ZONING ORDINANCE AND THE CITY OF MORENO VALLEY SUBDIVISION MAP ACT.
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A-3-MRB-99-082 (1 of 2) Exhibit 3




OMINI
DESIGN GROUP
 CIVIL ENGINEERING
 LANDSCAPE ARCHITECTURE
 PROJECT MANAGEMENT
 SURVEYING

888 PACIFIC STREET
 OAKLAND, CALIFORNIA 94612
 PHONE: (808)844-4300
 FAX: (808)844-4327

ZONING

SCALE: 500'

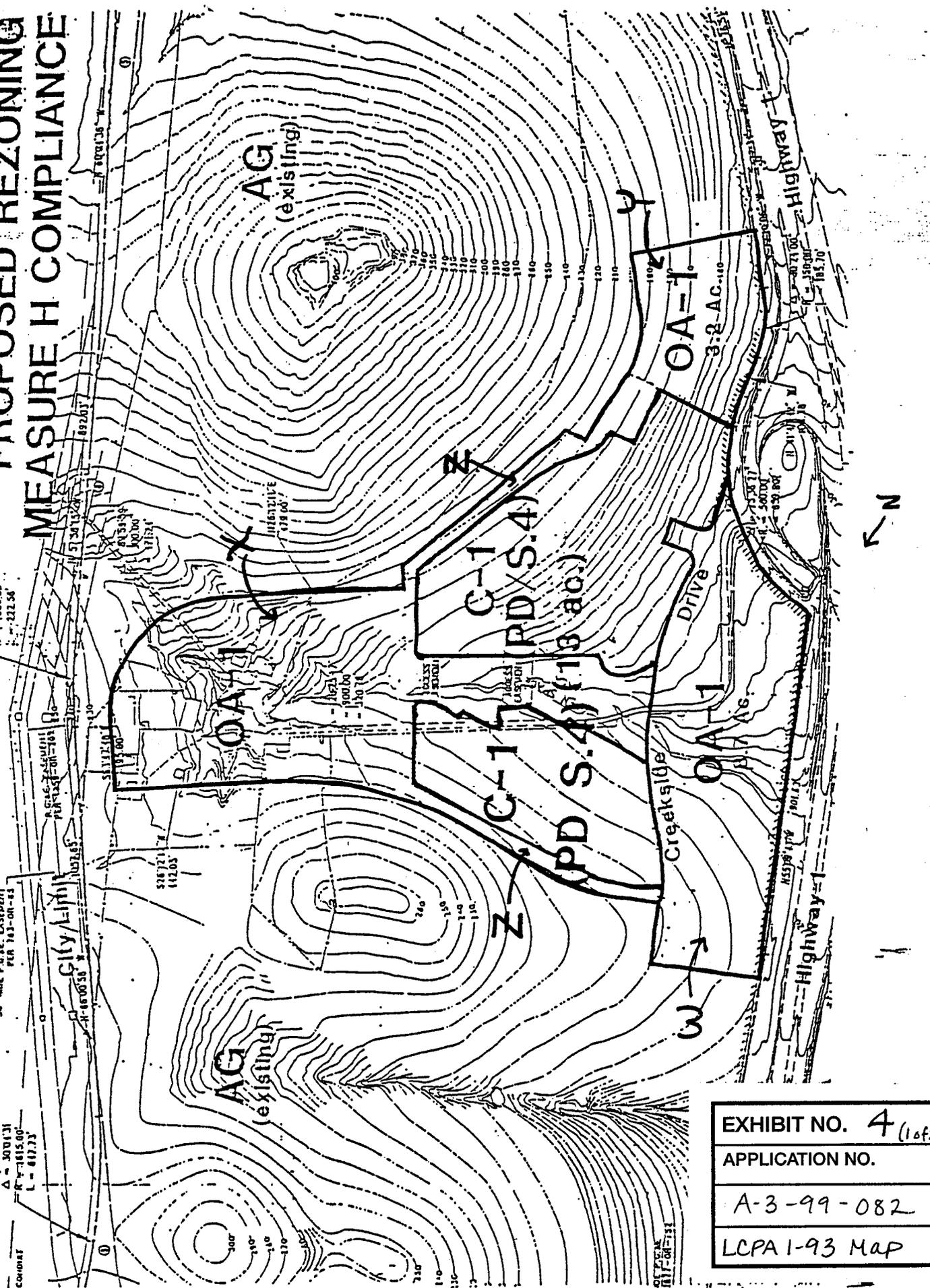
Exhibit 3 (2 of 2)
Existing Zoning

PROPOSED REZONING MEASURE H COMPLIANCE

Δ = 0801.131
R = 1585.00'
L = 212.58'

30' WIDE P.A. E.C. CASEMENT
PER 1923-081-83

Δ = 3001.31
R = 1815.00'
L = 417.23'

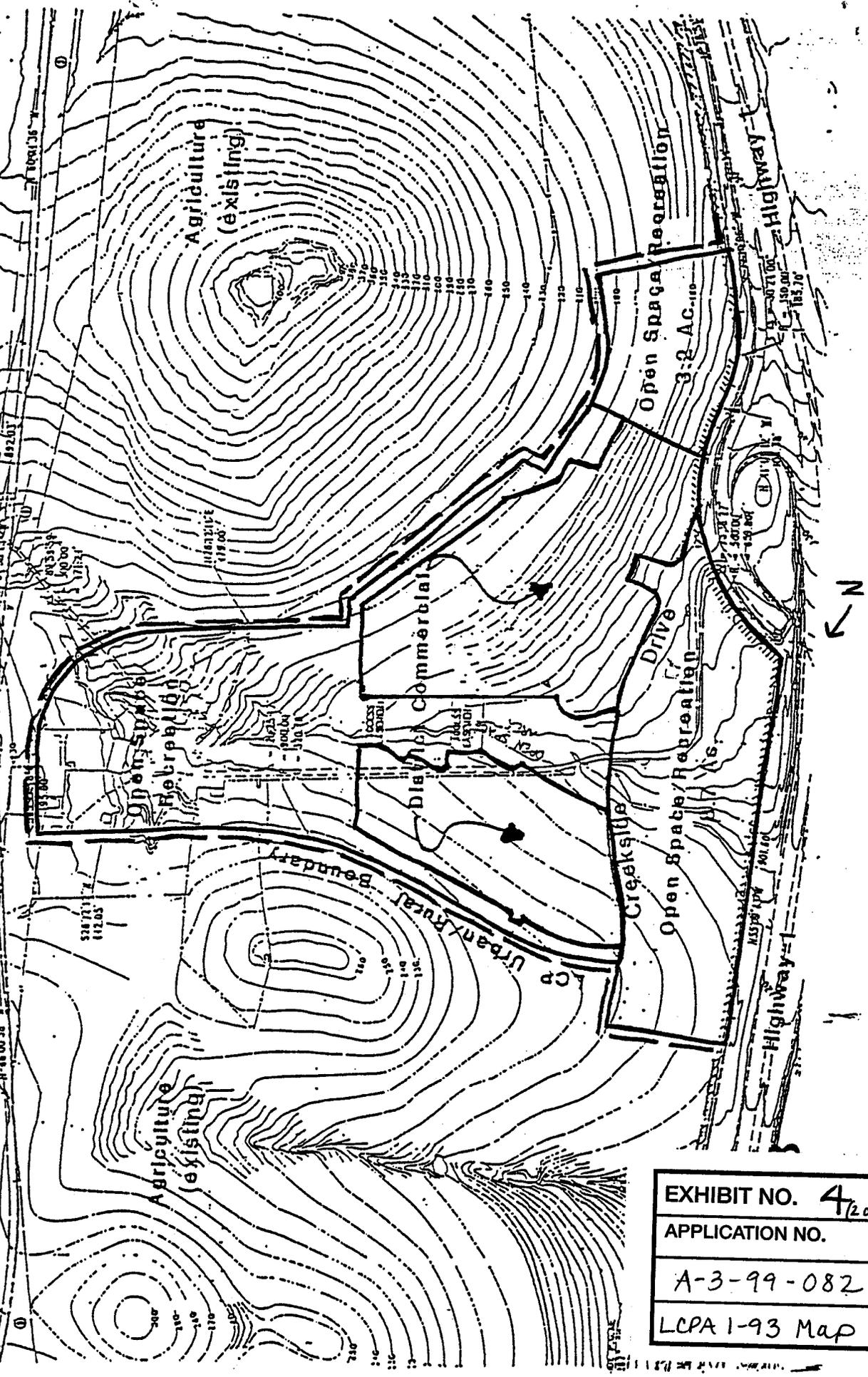


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| EXHIBIT NO. 4 (1 of 2) |
| APPLICATION NO. |
| A-3-99-082 |
| LCPA 1-93 MAP |

PROPOSED GENERAL PLAN/LOCAL COASTAL PLAN MEASURE H COMPLIANCE

Δ = 300'±
 1" = 1615.00'
 L = 417.33'

30' WIDE P.U.C. CASEMENT
 PER 703-08-03



| |
|------------------------|
| EXHIBIT NO. 4 (2 of 2) |
| APPLICATION NO. |
| A-3-99-082 |
| LCPA 1-93 Map |

7

ORDINANCE NO. 389
(Measure H)

INITIATIVE MEASURE TO REZONE A PORTION OF WILLIAMS BROTHERS PROPERTY TO REDUCE THE ACREAGE ALLOWED FOR COMMERCIAL AND TO PROHIBIT VISITOR SERVING COMMERCIAL

THE PEOPLE OF THE CITY OF MORRO BAY DO ORDAIN:

SECTION 1: Morro Bay General Plan policy LU-48, Section 2 shall be repealed.

SECTION 2: Morro Bay General Plan policy LU-49 shall be amended to read as follows:

The City shall amend its General Plan Land Use Element LU-49 and all applicable ordinances, policies and maps to designate a portion of the Williams' property within the city limits for "district commercial" use, including a new shopping center. The total area to be designated for such use shall be thirteen (13) gross acres generally located adjacent to Highway 1 and Morro Bay Boulevard. The citing of such use shall be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act Chapter 3 policies.

Nothing contained herein shall be construed to permit any residential development on the Williams property.

SECTION 3: Upon adoption, this ordinance shall be immediately submitted to the California Coastal Commission for certification as an amendment to the General Plan for the City of Morro Bay.

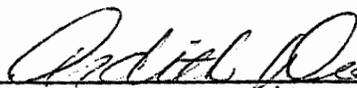
SECTION 4: If any provision of this ordinance is adjudged invalid by a court of competent jurisdiction, such provision shall be deemed separate, distinct and severable and such adjudication shall not affect the remaining provisions of the ordinance.

SECTION 5: This ordinance shall supersede all other ordinance and General Plan Policies in conflict therewith.

CERTIFICATION

I Ardith Davis, City Clerk of the City of Morro Bay, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by a majority vote of the electors voting in a general municipal election held in the City of Morro Bay on the 6th day of November, 1990.

Dated: January 14, 1991



ARDITH DAVIS, City Clerk
City of Morro Bay, California

Exhibit 5
Measure H



7/20/90
site photo 6



Tri W Site - looking east (structures have since been removed)



Tri W Site - looking northeast at Camp Willow Creek (structures have since been removed)

Tri W Site - looking northeast (structures have since been removed)

CONDITIONS OF APPROVAL
Case No. PM 04-92 (VESTING)/CDP 43-92
as Modified for a One (1) Year Time Extension
Affirmed by City Council on September 27, 1999

A. STANDARD CONDITIONS

1. Permit: This approval is granted for the land described in the application and any attachments thereto, and as revised per the Modifications to Parcel Map described on Page 2 of the staff report dated August 16, 1999.
2. Inaugurate Within One (1) Year: Unless the Parcel Map is recorded not later than one (1) year after the effective date of this approval and is diligently pursued thereafter, this approval will automatically become null and void. (expires Sept. 27, 2000)
3. Changes: Any minor change may be approved by the Community Development Director. Any substantial change will require the filing of an application for an amendment to be considered by the Planning Commission.
4. Compliance with Law: All requirements of any law, ordinance or regulation of the State of California, City of Morro Bay, and any other governmental entity shall be complied with in the exercise of this approval.
5. Hold Harmless: The applicant, as a condition of approval, hereby agrees to defend, indemnify, or hold harmless the City, its agents, officers, and employees, from any claim, action, or proceeding against the City as a result of the action or inaction by the City, or from any claim to attack, set aside, void, or annul this approval by the City of the applicant's project; or applicants failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.
6. Compliance with Conditions: Compliance with and execution of all conditions listed hereon shall be necessary, unless otherwise specified, prior to obtaining final building inspection clearance. Deviation from this requirement shall be permitted only by written consent of the Community Development Director and/or as authorized by the Planning Commission. Failure to comply with these conditions shall render this entitlement null and void. Continuation of the use without a valid entitlement will constitute a violation of the Morro Bay Municipal Code and is a misdemeanor.
7. Acceptance of Conditions: Prior to obtaining a building permit and within thirty (30) days hereof, the applicant shall file with the Director of Planning and Community Development written acceptance of the conditions stated herein.

B. SPECIAL SUBDIVISION CONDITIONS:

1. Future Permits Required: The applicant shall record with the Parcel Map a statement which identified that the map does not confer any rights to develop on the subject parcels and that all required Coastal Development Permits, Concept Plans, Precise Plans and

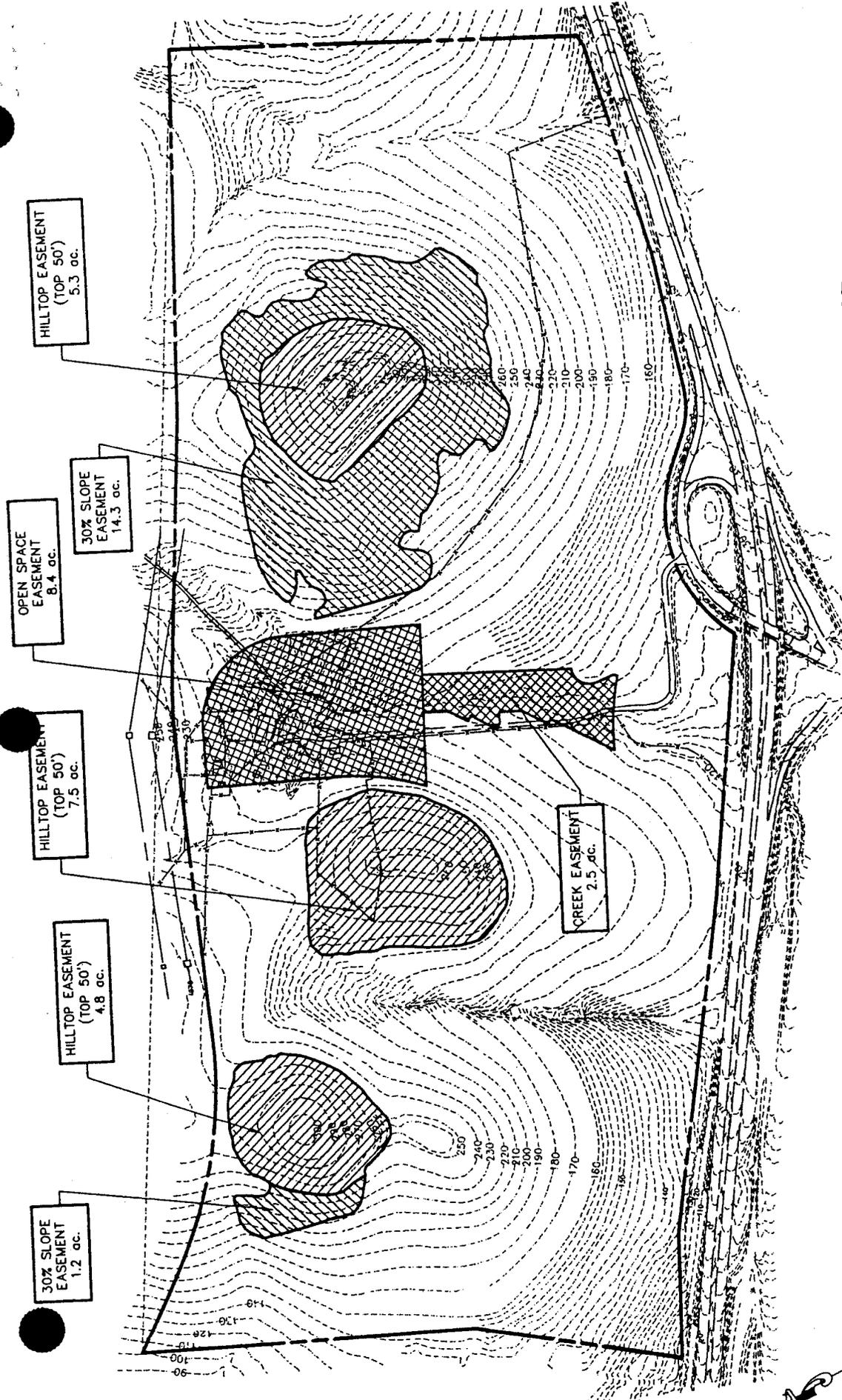
Exhibit 7
(1 of 2)

other required permits shall be obtained prior to any development or new uses as required by ordinance. All discretionary permit previously approved by the City and the California Coastal Commission related to development of the site have expired.

2. Limitation to Parcel 1: The Tentative Vesting Map shall only confer vested rights on Parcel 1 as defined on the map.
3. Dedication of Open Space Easement: An open space easement shall be recorded with the Parcel Map identifying those areas of the parcels which are identified as follows:
 - a. Area of Parcel 1 along Willow Camp Creek coinciding with the boundaries of the OA-1 Zoning District.
 - b. 8.2 Acre within remainder parcel coinciding with the boundaries of the OA-1 Zoning District immediately north of Parcel 1.
 - c. Areas of slopes of 30 percent or steeper.
 - d. Areas within 50 feet vertical elevation of ridgetops.

C. PUBLIC WORKS CONDITIONS

1. Blanket Easement: Prior to recordation of the Parcel Map, the Map shall be modified to indicate a blanket easement, 24 feet in width, over the remainder parcel in favor of Parcel 1 for emergency access and public utility purposes to the eastern and westernmost boundaries of the remainder parcel.



HILLTOP EASEMENT
(TOP 50')
5.3 ac.

OPEN SPACE
EASEMENT
8.4 ac.

30% SLOPE
EASEMENT
14.3 ac.

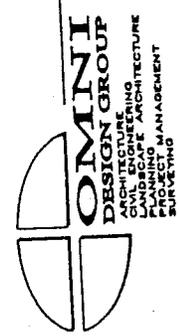
HILLTOP EASEMENT
(TOP 50')
7.5 ac.

HILLTOP EASEMENT
(TOP 50')
4.8 ac.

30% SLOPE
EASEMENT
1.2 ac.

CREEK EASEMENT
2.5 ac.

Open space Easements
Exhibit 8



838 PACIFIC STREET
SAN LUIS OBISPO, CA 95060
PHONE: (805) 461-4327
FAX: (805) 461-4327



SCALE: 1" = 500'

| EASEMENT | TOTAL ACREAGE |
|----------------------------|---------------|
| CREEK EASEMENT | 2.5 ac. |
| OPEN SPACE EASEMENT | 8.4 ac. |
| HILLTOP EASEMENT (TOP 50') | 19.8 ac. |
| 30% SLOPE EASEMENT | 15.5 ac. |

PROPOSED EASEMENTS

ORDINANCE NO. 266

AN ORDINANCE ESTABLISHING A GROWTH MANAGEMENT PROCEDURE WHICH WILL ALLOW FAIR DISTRIBUTION OF OUR SCARCE WATER RESOURCES AND PROTECT THE SMALL TOWN CHARACTER AND SURROUNDING OPEN SPACE OF THE CITY

Be it ordained by the people of the City of Morro Bay as follows:

SECTION 1. Both the Coastal Commission certified Land Use Plan and the Morro Bay city council-adopted Water Management Plan allow for a city residential population to grow from present 9600 to 12,200 by the year 2000 IF ADDITIONAL WATER RESOURCES OF ADEQUATE QUALITY AND QUANTITY ARE MADE AVAILABLE THROUGH IMPLEMENTATION OF THE WATER MANAGEMENT PLAN. In order to insure even and balanced growth during the 16 year period from January 1, 1985 through December 31, 2000, building permits will be limited to a number permitting an annual increase in population which would achieve the 12,200 person goal by the year 2000. No further residential building will be permitted after a population of 12,200 has been reached, unless an increase has been approved by a majority vote at a regular or special election.

SECTION. 2. If water and wastewater treatment capacities become available allowing for a population increase beyond 12,200, the growth management procedures of this ordinance may be altered ONLY BY A MAJORITY VOTE OF THE PEOPLE AT A REGULAR OR SPECIAL ELECTION.

SECTION 3. Residential building permits in 1985 will be limited to 70 residential units. The city council, with advice of the planning commission, will determine by January 15 of each calendar year thereafter the mix of multi-unit and single family residential units for that calendar year. The 70 unit ceiling may be increased or decreased by a factor not exceeding 10 percent if necessary to achieve the allotted annual population growth target. The determination of the mix will be based on a study of the historical building permit pattern for the decade prior to 1977 and the years since 1982, plus an estimate of population increase of the previous year. Final adjustment of the building permit limit in each year will be made by the city council after a public hearing.

SECTION 4. In any calendar year the commercial and industrial building permits issued shall not require more than 130% of the water allocated to residential units that year.

SECTION 5. Residential building permit approvals will follow Coastal Act priorities for water allocation required by Coastal Development Permit 4-81-309A or as revised after the Coastal Commission review scheduled for December 1984. These priorities shall be reviewed again when the pipe replacement program is completed and necessary amendments submitted to the Coastal Commission.

SECTION 6. For purposes of awarding building permits, only those development proposals which meet the definition of infill now in use for water allocations may be approved. This definition was approved by city council Resolution No. 26-84 on March 12, 1984.

* SECTION 7. Land Use Plan policies 6.01 through 6.08 have been designed to preserve open space and agricultural land within the city limits. These policies and the zoning ordinances which now implement them may be amended or repealed ONLY BY A MAJORITY VOTE OF THE PEOPLE AT A REGULAR OR SPECIAL ELECTION held after final approval of an amendment or repeal by the city council and prior to submission to the Coastal Commission.



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

August 24, 2000

Via Facsimile

Diane Landry, Esq.
Staff Attorney
Central Coast Area Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: *California Coastal Commission Appeal Number A-3-MRB-99-082
One-Year Time Extension of PM 04-92, CDP 43-92
Morro Bay, California*

Dear Ms. Landry:

Please be advised that the City of Morro Bay, with the approval of the applicant, Tri-W Enterprises, Inc., has added the following condition of approval as a minor change to the above-referenced map.

Condition B.4

Covenant to Not Further Subdivide: A covenant shall be executed with the City of Morro Bay prior to the recordation of the Parcel Map agreeing that the agriculturally zoned portion of the Remainder Parcel not be further subdivided. This covenant between Tri-W and the City of Morro Bay shall run with the land and be binding on all successors in interest in full accordance with Civil Code § 1462. This covenant shall include specific language that this covenant is a Condition of the Coastal Development Permit for the Map and that any future modification of this covenant would be an amendment of that Permit and as such would be appealable to the Coastal Commission.

This condition was approved on August 14, 2000, by Greg Fuz, Public Services Director, as a minor change as allowed under Standard Condition of Approval Number 3 which allows the Director to approve any minor change to the extension of the Map. Condition B.4 shall be incorporated into the Conditions of Approval of the Map.

Correspondence

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPARTMENT
715 Harbor Street

PUBLIC SERVICES
590 Morro Bay Boulevard

HARBOR DEPARTMENT
1275 Embarcadero

POLICE DEPARTMENT
850 Morro Bay Boulevard

RECREATION AND PARKS
1001 Kennedy Way

*Exhibit
10
(1 of 2)*

DIANE LANDRY, ESQ.
AUGUST 24, 2000
PAGE 2

If you have any questions, please do not hesitate to call.

Sincerely,

CITY OF MORRO BAY

By: Robert Schultz
Robert W. Schultz
City Attorney

RWS/vj
S:/rws/cmbcty.pw/LandryD000824.ltr

Exhibit 10
(2 of 8)

The Law Office of Marshall E. Ochylski
Post Office Box 14327
979 Osos Street, Suite A5
San Luis Obispo, California 93406

Telephone: (805) 544-4546
Facsimile: (805) 544-4594
E-mail: MOchylski@SLOlegal.com

Transmittal via Facsimile
Original to Follow

October 30, 2000

Ms. Diane Landry, Esq.
Staff Attorney
Central Coast Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Subject: California Coastal Commission Appeal Number: A-3-MRB-99-082
One Year Time Extension of PM 04-92 (Vesting)/CDP 43-92
Morro Bay, California

I would like to again thank you for arranging the meeting to discuss the above-referenced appeal, which was held last Tuesday in your office.

As a result of that discussion, we are providing the following supplemental information to address those issues that Coastal staff has identified as remaining in regard to this appeal. Since this information addresses legal, procedural, and substantive issues, we are also providing this information to Ms. Renee Brooke, the Staff Analyst for this project.

Lack of Coastal Commission Jurisdiction:

Under the specific language of the certified Local Coastal Plan, the Coastal Commission lacks jurisdiction in this matter.

Application of §17.58.130 *Expiration of Coastal Permits, Subsection A. Expiration of the City of Morro Bay's Zoning Ordinance*, to the facts of this case leads to the legal conclusion that the extension of the Coastal Development Permit for the map is not appealable to the Coastal Commission since the extension of the map automatically extended the expiration date of the Coastal Development Permit.

"A coastal development permit shall expire on the latest expiration date applicable to any other permit or approval required for the project, including any extension granted for other permits or approvals."

- 1 - Exhibit 10
(3 of 8)

As Rob Schultz, City Attorney for Morro Bay correctly points out in his letter of October 27, 2000, the language of this Section is clear, precise and unequivocal, the extension of the map establishes a new expiration date for the Coastal Development Permit and there is no further action required, or even allowed, by the Coastal Commission.

Since the City's *Local Coastal Plan* has been certified by the Coastal Commission, this language is controlling in this matter. Consequently, Subsection B, discussed below, is not even applicable to the current extension of the map.

However, even if this section were not included as an integral part of the certified *Local Coastal Plan*, the extension of that map is still consistent with that plan.

Consistency with the Local Coastal Plan:

Although Staff raises §16.58.130 *Expiration of Coastal Permits B. Time Extensions* in support of upholding the appeal, Mr. Greg Fuz, Director of Public Services, the Planning Commission and the City Council all found the map extension to be consistent with the LCP policies, including *LCP Policy 6.05*.

The agriculturally zoned portion of the property is well protected from future development by Condition of Approvals that require that Tri W offer open space easements and enter into a covenant not to further subdivide the agriculturally zoned portion of the property. Each of which by itself is superior to the protections included as possible methods of protection in *LCP Policy 6.05(3)*.

These open space easements total approximately 46.2 acres of the 175 total acres and protect the creek corridor, the areas with slopes in excess of 30 percent, and the areas within 50 feet vertical elevation of the ridgetops.

In addition, *City Ordinance No. 266 (Measure F)* and *Policy 6.09 (Measure H)* provide additional specific protections.

Ordinance No. 266 requires that any change of the zoning on the agriculturally zoned portion of the property shall have the approval of a majority vote of the people. This requirement offers greater protection to the property than any of the alternative methods of protection discussed under *LCP Section 6.05(3)*.

Local Coastal Plan Policy 6.09, approved by the voters as *Measure H*, also supplements *Policy 6.05* as it relates to the Williams property. The voters, in their approval of *Measure H*, zoned only a limited area of the property as available for commercial development, thereby further protecting the agriculturally zoned portion of the property.

Application of the rules of statutory construction further credence to this analysis. Under these rules, later enacted statutes take precedence over earlier ones, and specific

statutes take precedence over those that are more general. [58 Cal. Jur 3rd Statutes §§104 - 108 and §§96 - 99.] In this case, harmonizing these policies is a simple matter since the later voter approved Measures provide more specific and greater protections than the examples mentioned as possible alternative in LCP Policy 6.05.

Finally, it must be repeated that the property's physical location outside the City's Urban Services Line adds another layer of protection since urban services required for development could not be extended to this area.

However, the above analysis is rendered moot, since it is clear that aforementioned §17.58.130(A.) of the *City of Morro Bay Municipal Code* controls in this matter.

"Changed Circumstances":

The LCP policies that deal with the extension of existing maps are based on a determination of whether there "changed circumstances" exist that would affect the consistency of the development with the Coastal Act or the certified Local Coastal Plan.

The City found that there were no "changed circumstances" that would affect the extension of the Map.

Prior to discussing the specific issues that staff has identified as possible grounds for upholding the appeal, the following background information should clarify why there are no "changed circumstances" that meet the standard required for such a finding.

The map, although a project under the terms of the Local Coastal Plan and the Coastal Act, will not generate any impacts since any physical development on the site still requires full discretionary reviews, including possible appeal to the Coastal Commission, prior to any development on the site. In addition to the general zoning requirements for discretionary review, the specific zoning designation of the site, which includes a PD-S.4 overlay, provides additional layers of review and protection.

Section 17.40.030 of the *Zoning Ordinance* states any development on property in the Planned Development overlay zone is "subject to the granting of a conditional use permit" and by inference a Coastal Development Permit. In addition, the *S.4 Special Treatment Zone Overlay* [Section 17.40.050(G.)] requires special "design review" and approval by the Planning Commission prior to the issuance of a permit. [Section 17.40.050(J.)]

In addition, it must also be noted that the Coastal Development Permit for the commercial shopping center proposed for the site has been annually extended by the Coastal Commission with a finding of "no changed circumstances." Given the fact that the commercially shopping center certainly generates physical impacts, it is not clear how the extension of the map, which will generate no physical impacts, can be denied on the basis of "changed circumstances."

Based on the above analysis, there are no "changed circumstances" that would allow the pending appeal to be upheld.

Potential Traffic Impacts:

Morro Bay Subdivision Ordinance §16.10.060(C.) requires that "There have been no changes to the capacities of community resources, including but not limited to water supply, sewage treatment or disposal facilities, roads or schools such that is no longer sufficient remaining capacity to serve the project."

The extension of the map simply does not generate any traffic impacts, and certainly none that would rise to the required level "such that is no longer sufficient remaining capacity to serve the project."

There are three issues that should be addressed in this regard.

First, for the reasons discussed above, the map will not generate any traffic since it does not allow any development. Any development will require full discretionary review and approval.

Second, as the Greg Fuz, Morro Bay Director of Public Services, has confirmed, all the potential impacts identified in his July 12, 1999, letter will all be mitigated by the withdrawal of the approved commercial shopping center project.

Finally, all traffic studies performed for the City since the commercial shopping center project was approved have included the traffic generated from the approved commercial development on this site in their calculations of levels of service under build-out and any level of service analysis completed after that approval have included these numbers as part of their analysis. The withdrawal of the approved commercial shopping center project, which is required as a Condition of Approval of the extension of the map, will eliminate all currently approved traffic impacts associated with development on the property and remove the traffic associated with this project from current level of service analyses. Any future development proposals would be independently evaluated for traffic impacts at the time of their submittal.

The extension of the map will simply not generate any traffic impacts and therefore "changed circumstances" do not apply in this regard.

Potential Impact on Visual Resources:

In its review of "changed circumstances," staff points to the designation of Highway 1 as a "scenic highway" as an additional "changed circumstance" that could lead to upholding the appeal.

Morro Bay Subdivision Ordinance §16.10.060(A.) requires that "There have been no changes to the provisions of the land use plan or zoning ordinance applicable to the project since the approval of the tentative map."

A detailed review of this scenic highway designation, shows that there are no "changed circumstances" connected with this designation.

This designation does not add another layer of review, or even add new review criteria, to those that existed at the time of the original approval of the map. This designation under §261 of the *California Streets and Highways Code* merely certifies that the local governmental agency has enacted five specific types of development review ordinances. These requirements include regulation of land use and density of development, detailed land use and site planning, signage ordinances, grading and landscaping ordinances, and design review. This designation does not add or change the review criteria that the City had in effect at the time the map was originally approved. Caltrans merely monitors that the City's ordinances remain in effect and are being applied. Caltrans does not, nor any other body, review projects for consistency.

For your additional information, I am mailing a copy of the "*Guidelines for the Official Designation of Scenic Highways*" to Renee Brooke along with a copy of this letter.

It should also be noted that during the hearing process the impact of the City requesting this designation on the approved commercial shopping center project was discussed. It was made clear, as part of the legislative intent of the request to Caltrans for inclusion in the scenic highway program, that this designation would have no impact on the future development of the Tri W property.

It must also be reiterated that the open space easements required as a Condition of Approval are also meant to protect the visual resources on the property by protecting the creek corridor, the areas with slopes in excess of 30 percent, and the areas within 50 feet vertical elevation of the ridgetops.

The above discussion is intended to supplement the information forwarded to the Coastal Commission at its meeting on October 12, 2000 regarding the consistency of the extension of the map with Measure H and the requirement of including a Precise Plan as part of a Vesting Tentative Parcel Map submittal.

I believe that after staff has considered all of the information that has been provided in this matter it will find that there is no legal or factual basis for this appeal. If not, I would appreciate an opportunity to discuss these matters further.

Again, I appreciate your cooperation and assistance in this matter, and I look forward to the satisfactory resolution of this matter.

Sincerely,



Marshall E. Ochylski,
Attorney at Law

MEO/lpp

cc: Ms. Renee Brooke
Central Coast Area Office,
California Coastal Commission

Mr. Greg Fuz,
Department of Planning and Building,
City of Morro Bay

Mr. Robert Schultz, Esq.
City Attorney,
City of Morro Bay

Ms. Sharon Williams,
President
Tri W Enterprises, Inc.

RECEIVED

The Law Office of Marshall E. Ochylski

979 Osos Street, Suite A-5
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San Luis Obispo, California 93406
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Facsimile: (805) 544-4594
E-Mail: MOchylski@SLOlegal.com

NOV 02 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST OFFICE

MEMORANDUM OF TRANSMITTAL

DATE: October 30, 2000

TO: Ms. Diane Landry, Esq.
California Coastal Commission,
Central Coast Office
Santa Cruz, CA 95060

SUBJECT: Tri W Tentative Map Extension
Appeal Number: A-3-MRB-99-082

COMMENTS:

I am transmitting a copy of a letter that I have prepared for the Coastal Commission regarding the above-referenced appeal.

Thank you for your cooperation and assistance in this matter.

THIS MESSAGE IS INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE.

- | | | | |
|--------------------------|---------------|-------------------------------------|---------------------|
| <input type="checkbox"/> | Hand Delivery | <input checked="" type="checkbox"/> | U.S. Postal Service |
| <input type="checkbox"/> | Facsimile | <input checked="" type="checkbox"/> | Overnight Delivery |

SIGNED:


Marshall E. Ochylski, Attorney at Law

| |
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| EXHIBIT NO. 10a |
| APPLICATION NO. |
| A-3-MRB-99-082 1 of 10 |
|  California Coastal Commission |

The Law Office of Marshall E. Ochylski

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RECEIVED

NOV 02 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Transmittal via Facsimile
Original to Follow

October 30, 2000

Ms. Diane Landry, Esq.
Staff Attorney
Central Coast Office
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Subject: California Coastal Commission Appeal Number: A-3-MRB-99-082
One Year Time Extension of PM 04-92 (Vesting)/CDP 43-92
Morro Bay, California

I would like to again thank you for arranging the meeting to discuss the above-referenced appeal, which was held last Tuesday in your office.

As a result of that discussion, we are providing the following supplemental information to address those issues that Coastal staff has identified as remaining in regard to this appeal. Since this information addresses legal, procedural, and substantive issues, we are also providing this information to Ms. Renee Brooke, the Staff Analyst for this project.

Lack of Coastal Commission Jurisdiction:

Under the specific language of the certified Local Coastal Plan, the Coastal Commission lacks jurisdiction in this matter.

Application of §17.58.130 *Expiration of Coastal Permits, Subsection A. Expiration of the City of Morro Bay's Zoning Ordinance*, to the facts of this case leads to the legal conclusion that the extension of the Coastal Development Permit for the map is not appealable to the Coastal Commission since the extension of the map automatically extended the expiration date of the Coastal Development Permit.

"A coastal development permit shall expire on the latest expiration date applicable to any other permit or approval required for the project, including any extension granted for other permits or approvals."

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| EXHIBIT NO. 10a |
| APPLICATION NO. |
| A-3-MRB-99-082 2 of 10 |
|  California Coastal Commission |

As Rob Schultz, City Attorney for Morro Bay correctly points out in his letter of October 27, 2000, the language of this Section is clear, precise and unequivocal, the extension of the map establishes a new expiration date for the Coastal Development Permit and there is no further action required, or even allowed, by the Coastal Commission.

Since the City's *Local Coastal Plan* has been certified by the Coastal Commission, this language is controlling in this matter. Consequently, Subsection B, discussed below, is not even applicable to the current extension of the map.

However, even if this section were not included as an integral part of the certified *Local Coastal Plan*, the extension of that map is still consistent with that plan.

Consistency with the Local Coastal Plan:

Although Staff raises §16.58.130 *Expiration of Coastal Permits B. Time Extensions* in support of upholding the appeal, Mr. Greg Fuz, Director of Public Services, the Planning Commission and the City Council all found the map extension to be consistent with the LCP policies, including *LCP Policy 6.05*.

The agriculturally zoned portion of the property is well protected from future development by Condition of Approvals that require that Tri W offer open space easements and enter into a covenant not to further subdivide the agriculturally zoned portion of the property. Each of which by itself is superior to the protections included as possible methods of protection in *LCP Policy 6.05(3.)*.

These open space easements total approximately 46.2 acres of the 175 total acres and protect the creek corridor, the areas with slopes in excess of 30 percent, and the areas within 50 feet vertical elevation of the ridgetops.

In addition, *City Ordinance No. 266 (Measure F)* and *Policy 6.09 (Measure H)* provide additional specific protections.

Ordinance No. 266 requires that any change of the zoning on the agriculturally zoned portion of the property shall have the approval of a majority vote of the people. This requirement offers greater protection to the property than any of the alternative methods of protection discussed under *LCP Section 6.05(3.)*.

Local Coastal Plan Policy 6.09, approved by the voters as *Measure H*, also supplements *Policy 6.05* as it relates to the Williams property. The voters, in their approval of *Measure H*, zoned only a limited area of the property as available for commercial development, thereby further protecting the agriculturally zoned portion of the property.

Application of the rules of statutory construction further credence to this analysis. Under these rules, later enacted statutes take precedence over earlier ones, and specific

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| EXHIBIT NO. 10a |
| APPLICATION NO. |
| A-3-MRB-99-082 3 of 10 |
|  California Coastal Commission |

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Finally, it must be repeated that the property's physical location outside the City's Urban Services Line adds another layer of protection since urban services required for development could not be extended to this area.

However, the above analysis is rendered moot, since it is clear that aforementioned §17.58.130(A.) of the *City of Morro Bay Municipal Code* controls in this matter.

“Changed Circumstances”:

The LCP policies that deal with the extension of existing maps are based on a determination of whether there “changed circumstances” exist that would affect the consistency of the development with the Coastal Act or the certified Local Coastal Plan.

The City found that there were no “changed circumstances” that would affect the extension of the Map.

Prior to discussing the specific issues that staff has identified as possible grounds for upholding the appeal, the following background information should clarify why there are no “changed circumstances” that meet the standard required for such a finding.

The map, although a project under the terms of the Local Coastal Plan and the Coastal Act, will not generate any impacts since any physical development on the site still requires full discretionary reviews, including possible appeal to the Coastal Commission, prior to any development on the site. In addition to the general zoning requirements for discretionary review, the specific zoning designation of the site, which includes a PD-S.4 overlay, provides additional layers of review and protection.

Section 17.40.030 of the *Zoning Ordinance* states any development on property in the Planned Development overlay zone is “subject to the granting of a conditional use permit” and by inference a Coastal Development Permit. In addition, the *S.4 Special Treatment Zone Overlay* [Section 17.40.050(G.)] requires special “design review” and approval by the Planning Commission prior to the issuance of a permit. [Section 17.40.050(J.)]

In addition, it must also be noted that the Coastal Development Permit for the commercial shopping center proposed for the site has been annually extended by the Coastal Commission with a finding of “no changed circumstances.” Given the fact that the commercially shopping center certainly generates physical impacts, it is not clear how the extension of the map, which will generate no physical impacts, can be denied on the basis of “changed circumstances.”

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| EXHIBIT NO. 10a |
| APPLICATION NO. |
| A-3-MRB-99-082 4 of 10 |
|  California Coastal Commission |

Based on the above analysis, there are no "changed circumstances" that would allow the pending appeal to be upheld.

Potential Traffic Impacts:

Morro Bay Subdivision Ordinance §16.10.060(C.) requires that "There have been no changes to the capacities of community resources, including but not limited to water supply, sewage treatment or disposal facilities, roads or schools such that is no longer sufficient remaining capacity to serve the project."

The extension of the map simply does not generate any traffic impacts, and certainly none that would rise to the required level "such that is no longer sufficient remaining capacity to serve the project."

There are three issues that should be addressed in this regard.

First, for the reasons discussed above, the map will not generate any traffic since it does not allow any development. Any development will require full discretionary review and approval.

Second, as the Greg Fuz, Morro Bay Director of Public Services, has confirmed, all the potential impacts identified in his July 12, 1999, letter will all be mitigated by the withdrawal of the approved commercial shopping center project.

Finally, all traffic studies performed for the City since the commercial shopping center project was approved have included the traffic generated from the approved commercial development on this site in their calculations of levels of service under build-out and any level of service analysis completed after that approval have included these numbers as part of their analysis. The withdrawal of the approved commercial shopping center project, which is required as a Condition of Approval of the extension of the map, will eliminate all currently approved traffic impacts associated with development on the property and remove the traffic associated with this project from current level of service analyses. Any future development proposals would be independently evaluated for traffic impacts at the time of their submittal.

The extension of the map will simply not generate any traffic impacts and therefore "changed circumstances" do not apply in this regard.

Potential Impact on Visual Resources:

In its review of "changed circumstances," staff points to the designation of Highway 1 as a "scenic highway" as an additional "changed circumstance" that could lead to upholding the appeal.

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| EXHIBIT NO. 10a |
| APPLICATION NO. |
| A-3-MRB-99-082 5 of 10 |
|  California Coastal Commission |

Morro Bay Subdivision Ordinance §16.10.060(A.) requires that "There have been no changes to the provisions of the land use plan or zoning ordinance applicable to the project since the approval of the tentative map."

A detailed review of this scenic highway designation, shows that there are no "changed circumstances" connected with this designation.

This designation does not add another layer of review, or even add new review criteria, to those that existed at the time of the original approval of the map. This designation under §261 of the *California Streets and Highways Code* merely certifies that the local governmental agency has enacted five specific types of development review ordinances. These requirements include regulation of land use and density of development, detailed land use and site planning, signage ordinances, grading and landscaping ordinances, and design review. This designation does not add or change the review criteria that the City had in effect at the time the map was originally approved. Caltrans merely monitors that the City's ordinances remain in effect and are being applied. Caltrans does not, nor any other body, review projects for consistency.

For your additional information, I am mailing a copy of the "*Guidelines for the Official Designation of Scenic Highways*" to Renee Brooke along with a copy of this letter.

It should also be noted that during the hearing process the impact of the City requesting this designation on the approved commercial shopping center project was discussed. It was made clear, as part of the legislative intent of the request to Caltrans for inclusion in the scenic highway program, that this designation would have no impact on the future development of the Tri W property.

It must also be reiterated that the open space easements required as a Condition of Approval are also meant to protect the visual resources on the property by protecting the creek corridor, the areas with slopes in excess of 30 percent, and the areas within 50 feet vertical elevation of the ridgetops.

The above discussion is intended to supplement the information forwarded to the Coastal Commission at its meeting on October 12, 2000 regarding the consistency of the extension of the map with Measure H and the requirement of including a Precise Plan as part of a Vesting Tentative Parcel Map submittal.

I believe that after staff has considered all of the information that has been provided in this matter it will find that there is no legal or factual basis for this appeal. If not, I would appreciate an opportunity to discuss these matters further.

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Again, I appreciate your cooperation and assistance in this matter, and I look forward to the satisfactory resolution of this matter.

Sincerely,



Marshall E. Ochylski,
Attorney at Law

MEO/lpp

cc: Ms. Renee Brooke
Central Coast Area Office,
California Coastal Commission

Mr. Greg Fuz,
Department of Planning and Building,
City of Morro Bay

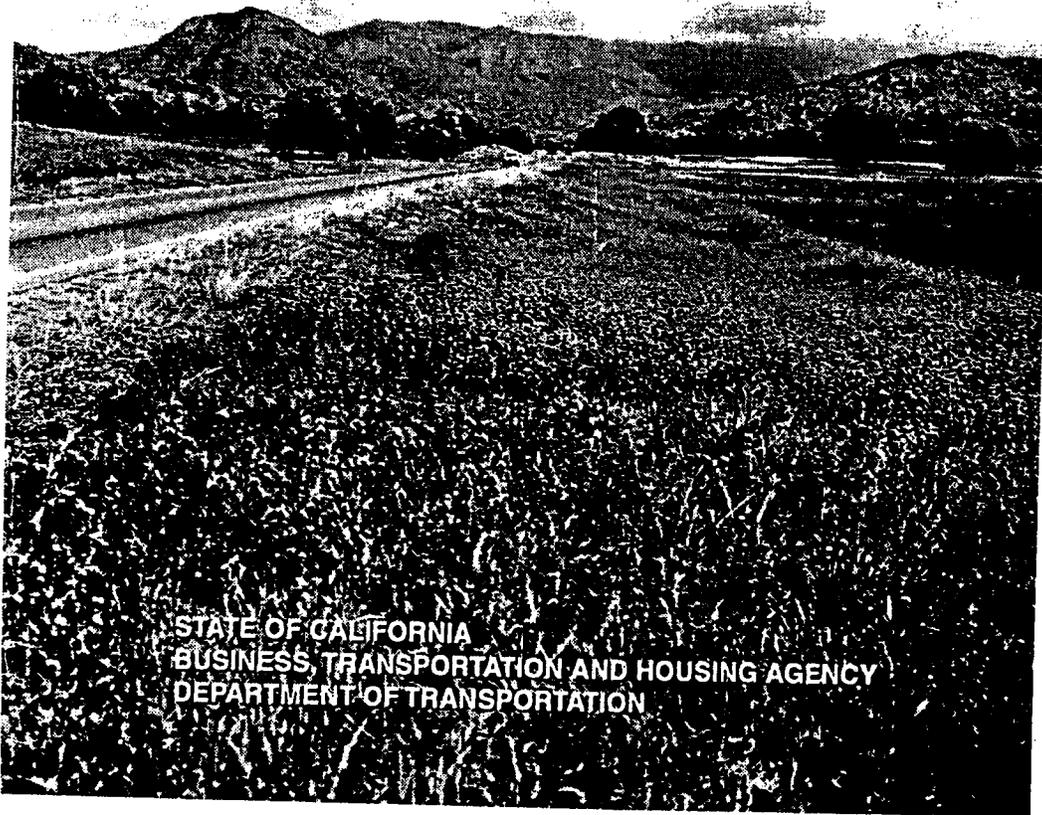
Mr. Robert Schultz, Esq.
City Attorney,
City of Morro Bay

Ms. Sharon Williams,
President
Tri W Enterprises, Inc.

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MARCH 1996

Guidelines for the Official Designation of Scenic Highways



STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

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SECTION IV

DESIGNATION PROCESS

STEP 1

PREPARATION AND ADOPTION OF SCENIC CORRIDOR PROTECTION PROGRAM

Scenic Corridor Protection Programs do not preclude development but ensure compatible development that is consistent with the community's scenic values and goals of the California Scenic Highway Program.

This step requires the local jurisdiction to develop and adopt protection measures in the form of ordinances to apply to the area of land within the scenic corridor. Such regulations may already exist in various portions of local codes. They should, however, be assembled under an easy to read format that includes, at a minimum, the five legislatively required standards listed below. They should be written in sufficient detail to avoid broad discretionary interpretation.

Minimum Standards

The five minimum requirements* under Section 261 of the Streets and Highways Code are:

- Regulation of land use and density of development (i.e., density classifications and types of allowable land uses),
• Detailed land and site planning (i.e., permit or design review authority and regulations for the review of proposed developments),
• Prohibition of off-site outdoor advertising** and control of on-site outdoor advertising,
• Careful attention to and control of earthmoving and landscaping (i.e., grading ordinances, grading permit requirements, design review authority, landscaping and vegetation requirements), and
• The design and appearance of structures and equipment (i.e., placement of utility structures, microwave receptors, etc.).

* also see "Undergrounding of Utility Lines" in Section VI
** as required per Section 5440.1 of the Business and Professions Code (Outdoor Advertising Act)

SECTION IV

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SECTION V**MONITORING PROCESS**

The degree to which a scenic corridor protection program is successful depends on enforcement of the protection measures. This requires that the Caltrans district staff remain familiar with the requirements of the protection program and experienced in inspection procedures.

To maintain the consistency and integrity of the California Scenic Highway Program, Caltrans, in conjunction with DTAC, will conduct a monitoring program. The appropriate local jurisdiction will be asked to attest to continued enforcement of the approved corridor protection measures once every five years. The District Scenic Highway Coordinator will inspect the scenic highway to confirm compliance.

Caltrans, with the advice of DTAC, is authorized by statute to revoke official scenic highway designations if the scenic corridor protection program has ceased to be enforced or if it is determined that the scenic appearance of the corridor has not been protected.

Caltrans will extend designation for another five years if the local jurisdiction has reasonably enforced its adopted corridor protection measures. If the local jurisdiction is not in compliance, Caltrans will send notification of the infraction(s). When it is feasible for the local jurisdiction to remedy the infraction(s), a time period of one year (from the date of the notification) will be granted to make corrections. When the infraction(s) cannot be remedied, the scenic highway designation will be revoked.

A local jurisdiction may request that Caltrans remove a route from Official Scenic Highway status at any time.

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