

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863

Th10a

C22/10/00



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Commission Action:
Opened & Continued: 12/09/99
Substantial Issue: 10/12/00

STAFF REPORT: EXTENSION OF A COASTAL DEVELOPMENT PERMIT

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.
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.
Staff recommendation Denial of Extension

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. This staff report includes findings only for the de novo hearing.

EXECUTIVE SUMMARY

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 2, 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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I. STAFF RECOMMENDATION ON EXTENSION OF THE 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.

II. 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. 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 1). 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.

C. 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.
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.



D. 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 states:

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 (see Exhibit 10, pp. 1-2).

However, regardless of the two measures already in place to protect the agriculturally zoned land, LUP Policy 6.05(3) requires 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 could 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). 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.**

E. 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. 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. In light of the changed circumstances, though, 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 significant 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.**

F. 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 Section 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.¹ 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,"

¹ 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.



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.**

G. 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.



H. 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 2, 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.** The effect of this denial is that any future land division proposal must be submitted to the City as a new project, and will be analyzed for consistency with the City's LCP at that time.

Finally, the applicant has filed a request to extend Coastal Commission Coastal Development Permit A-4-MRB-89-134 (for the commercial development); however, the applicant requested that action on that permit extension be held until final action is taken on the extension of this coastal development permit. Depending on what course of action the applicant chooses in this regard, the Commission may, in the future, review the permit extension request for the proposed commercial development.

III. 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 request for permit extension 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.



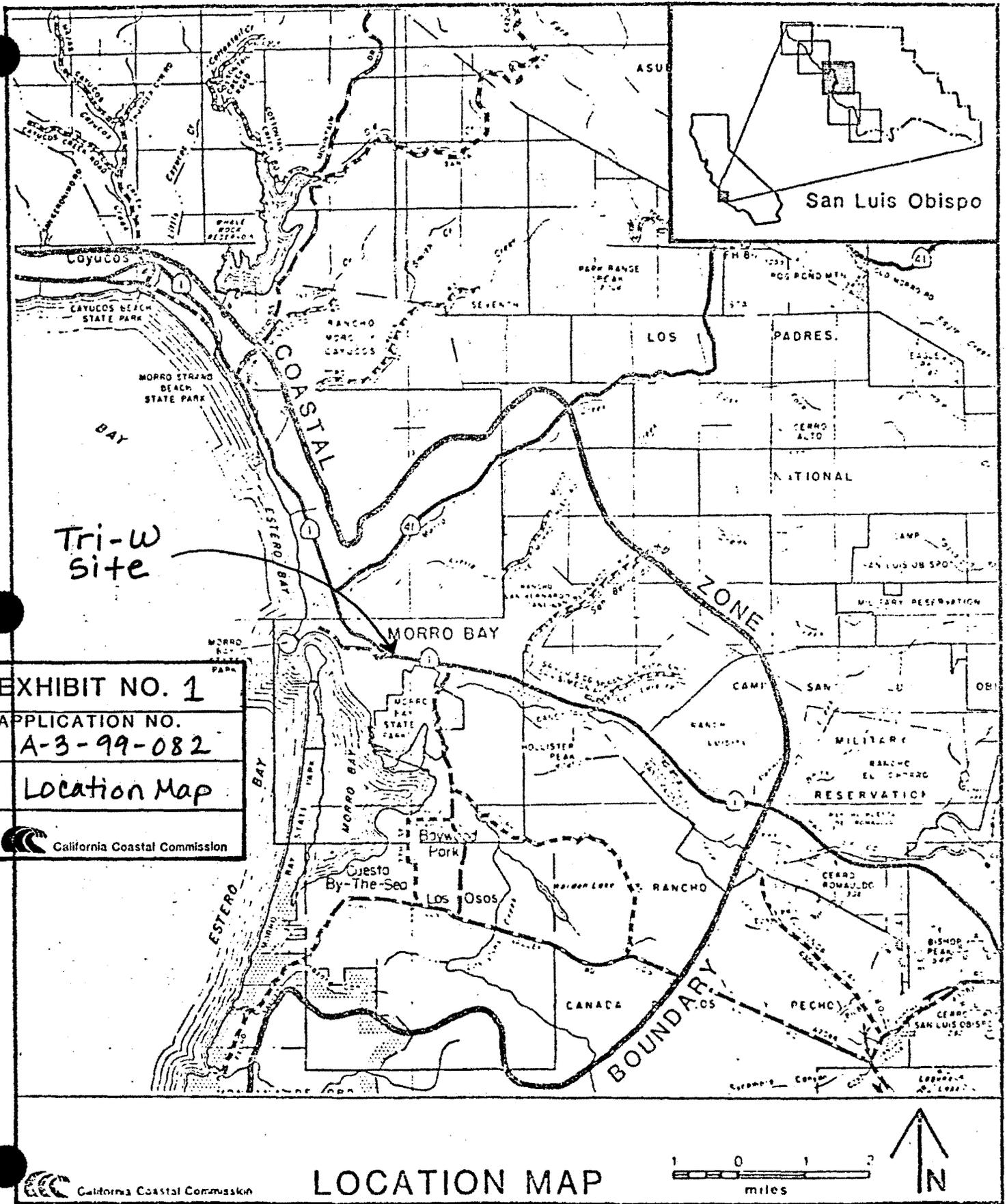


EXHIBIT NO. 1
 APPLICATION NO.
A-3-99-082
Location Map
 California Coastal Commission

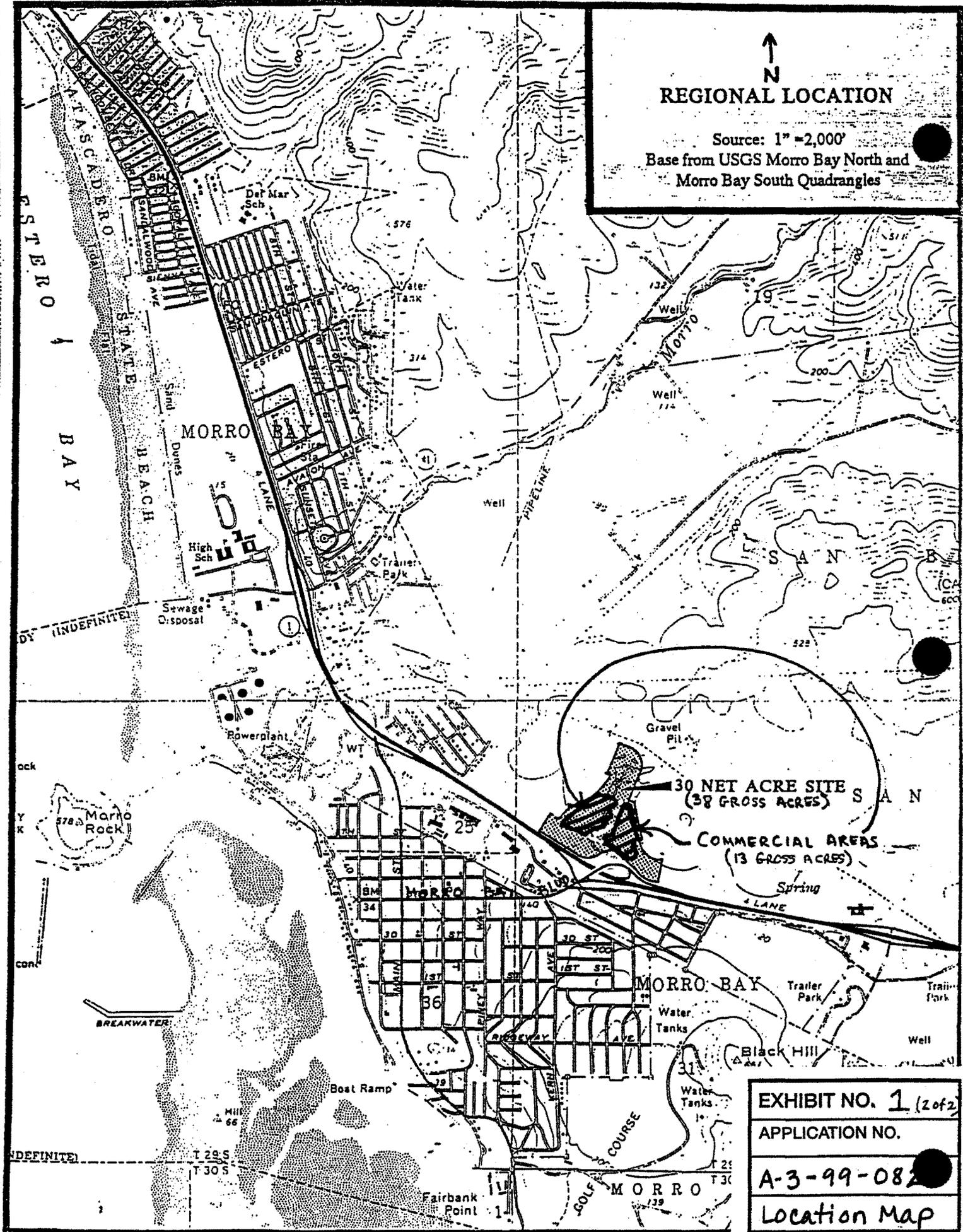
LOCATION MAP



REGIONAL LOCATION



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



30 NET ACRE SITE
(38 GROSS ACRES)

COMMERCIAL AREAS
(13 GROSS ACRES)

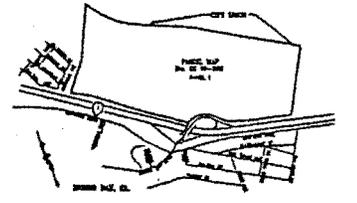
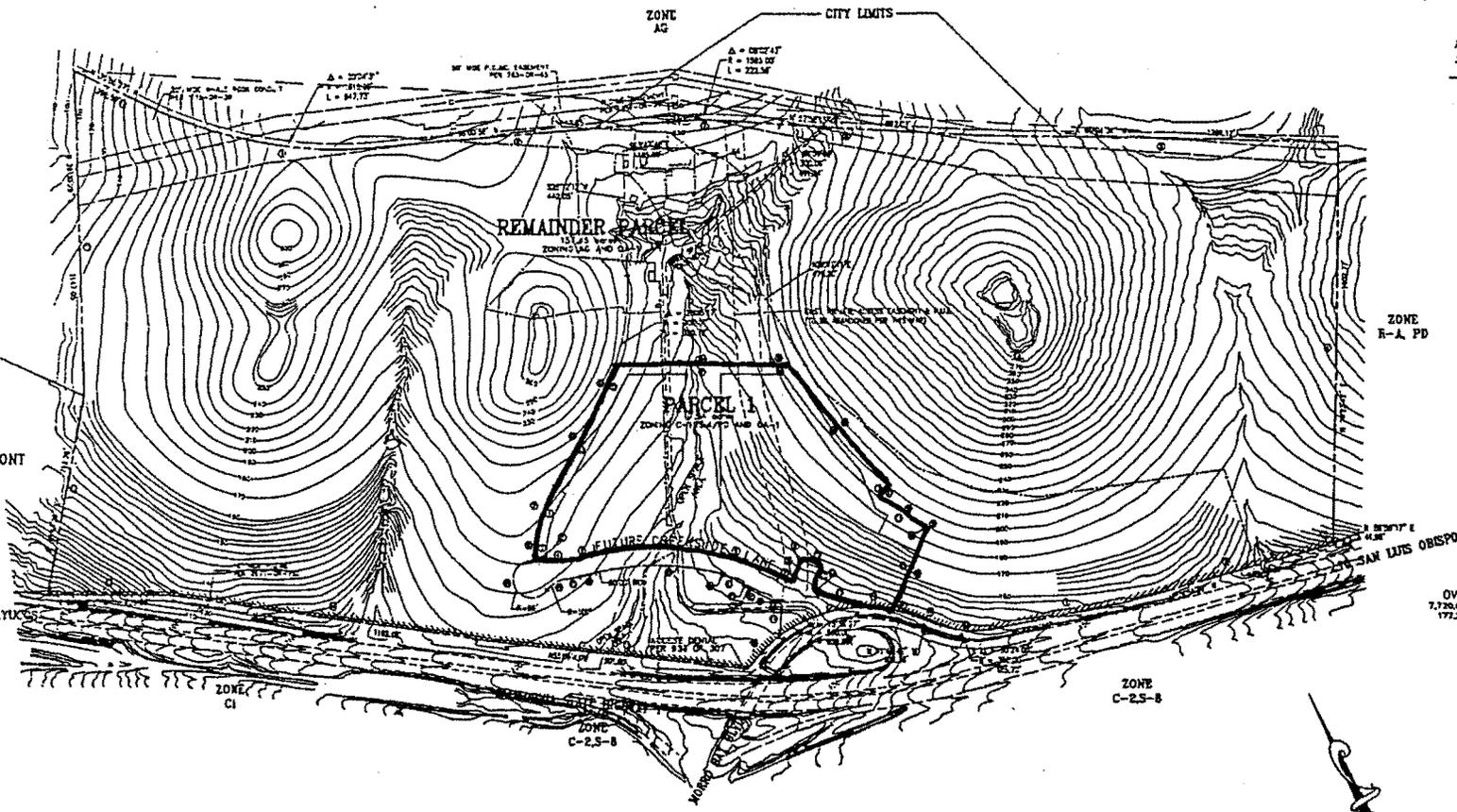
EXHIBIT NO. 1 (2 of 2)

APPLICATION NO.

A-3-99-082

Location Map

A-3-NRB-99-082
 Exhibit 2
 TH W



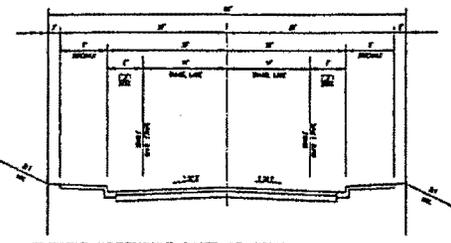
VICINITY MAP

PARCEL	184,178 sq. ft. 17.54 acres
1	184,178 sq. ft. 17.54 acres
2	184,178 sq. ft. 17.54 acres
3	184,178 sq. ft. 17.54 acres
4	184,178 sq. ft. 17.54 acres
5	184,178 sq. ft. 17.54 acres
6	184,178 sq. ft. 17.54 acres
7	184,178 sq. ft. 17.54 acres
8	184,178 sq. ft. 17.54 acres
9	184,178 sq. ft. 17.54 acres
10	184,178 sq. ft. 17.54 acres
11	184,178 sq. ft. 17.54 acres
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OVERALL
7,726,584 sq. ft.
177.23 acres

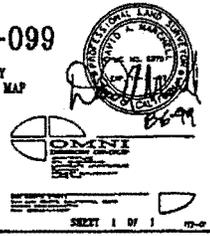
- NOTES:
1. WATER LINE WILL BE LOCATED UPON AN EXISTING OR PARCEL 1 ADJACENT TO CLIP 65-141/207 65-141 AND ALL THE PROVISIONS AND REQUIREMENTS OF THE CITY OF MORRO BAY AS PART OF CLIP 65-141/207 65-141 AND ALL THE PROVISIONS AND REQUIREMENTS OF THE CITY OF MORRO BAY.
 2. UTILITIES:
POWER: PACIFIC GAS & ELECTRIC
GAS: SOUTHERN CALIFORNIA GAS COMPANY
WATER: CITY OF MORRO BAY
SEWER: CITY OF MORRO BAY
TELEPHONE: PACIFIC BELL
CABLE TV: SONG CABLE TV
 3. ZONING: EXISTING ZONING FOR PARCEL 1 AND THE REMAINDER PARCEL IS C-1/2.5-8 AND C-1/1 OR C-1/1 AND C-1/1 AND ARE ON THE REMAINDER PARCEL, AS SEPARATED ON THIS MAP.
 4. SOLE REPORT BY BRADA ENGINEERS, 8-1408-81 DATED JULY 17, 1987 ON FILE WITH THE CITY OF MORRO BAY AS PART OF CLIP 65-141/207 65-141.
 5. GEOTECHNICAL STUDY ON FILE WITH THE CITY OF MORRO BAY AS APPROVED BY THE PROJECT DESCRIPTION AND EXPANDED FINAL STUDY DATED JULY 12, 1987 BY E.L. WOODLEY AND INCORPORATED INTO FINAL CLIP BY CITY RESOLUTION NO. 17146.
 6. NOTES AND SEWER SHALL BE PROVIDED BY THE CITY OF MORRO BAY.
 7. T-2 REPORT TREST AMERICAN TITLE, INC. 810-1000-1 DATED JULY 17, 1987.

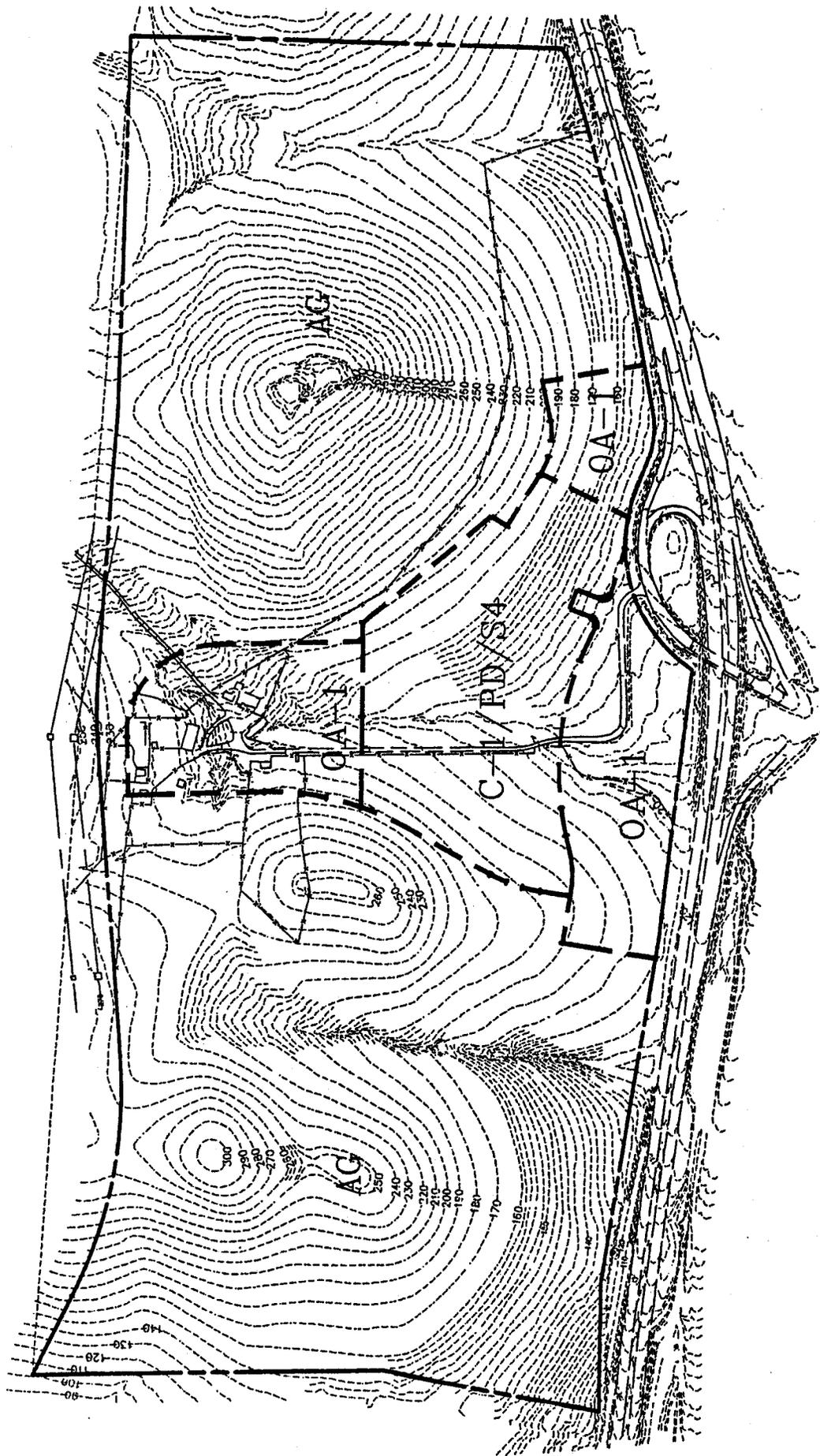


REVISED VESTING TENTATIVE PARCEL MAP No. MB 92-099

BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. CO/38 89-363, IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED IN BOOK 48 AT PAGE 15 OF PARCEL MAPS.

APRIL 1993
OWNER & SUBDIVIDER
TRI-Y ENTERPRISES, INC. & MERRELL WILLIAMS
PO BOX 8149
SANTA MARIA, CALIFORNIA 93456





288 PLACER STREET
SAN LUIS OBISPO, CALIFORNIA, 93401
PHONE: (805)544-8700
FAX: (805)544-4327

ZONING

SCALE: 500'

Exhibit 3 (Triw)
Existing Zoning

PROPOSED REZONING MEASURE H COMPLIANCE

A = 0807.13
R = 1505.00"
L = 212.56'

30' WIDE P.A.C. CASEMENT
PER 143-01-63

A = 3004.31
R = 1815.00"
L = 617.73'

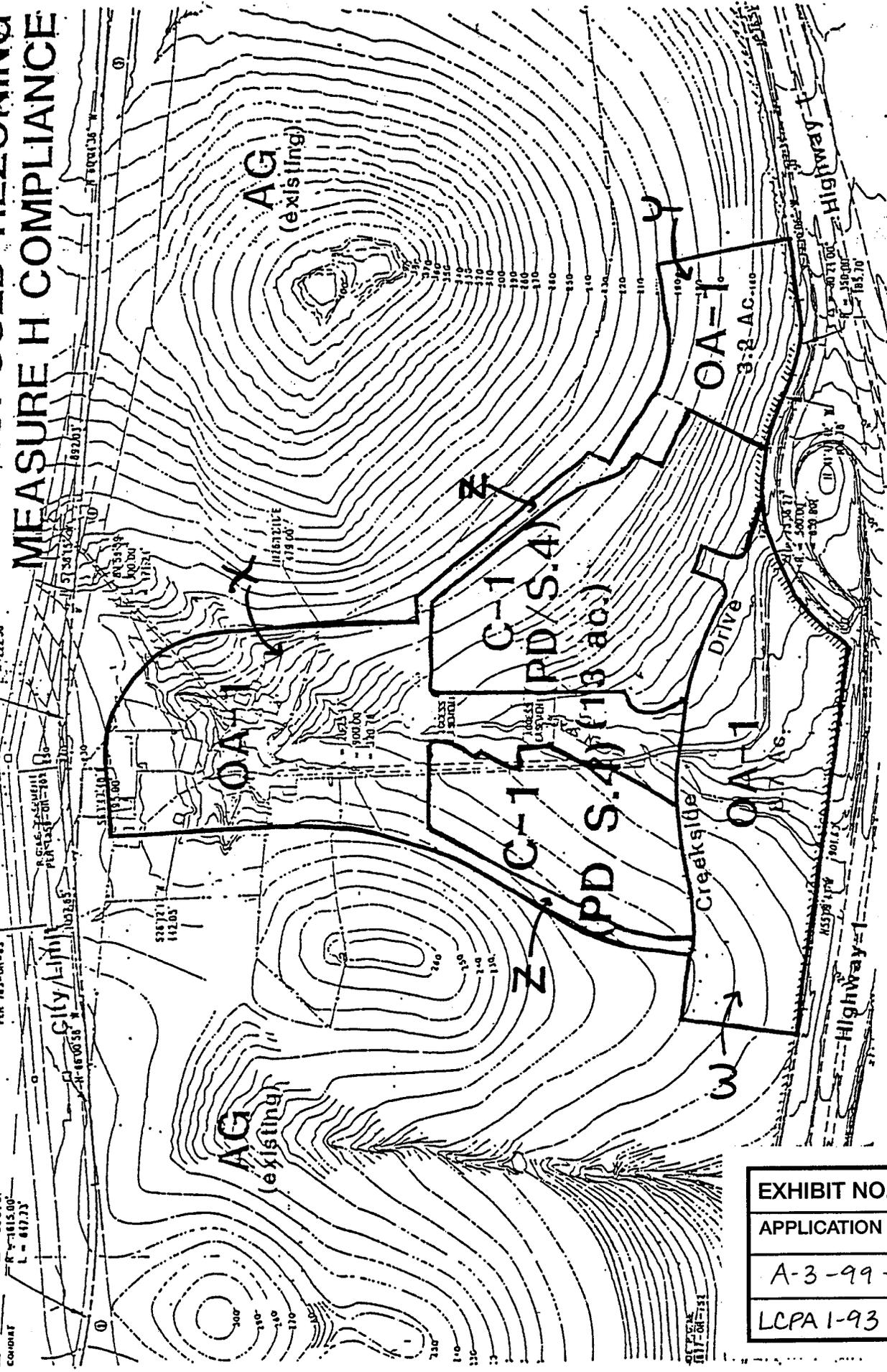


EXHIBIT NO. 4 (1 of 2)
APPLICATION NO.
A-3-99-082
LCPA 1-93 MAP

PROPOSED GENERAL PLAN/LOCAL COASTAL PLAN MEASURE H COMPLIANCE

30' WIDE P.O.D. CASEMENT
PER 763-04-01

A - 300121
P-161546
L - 41723

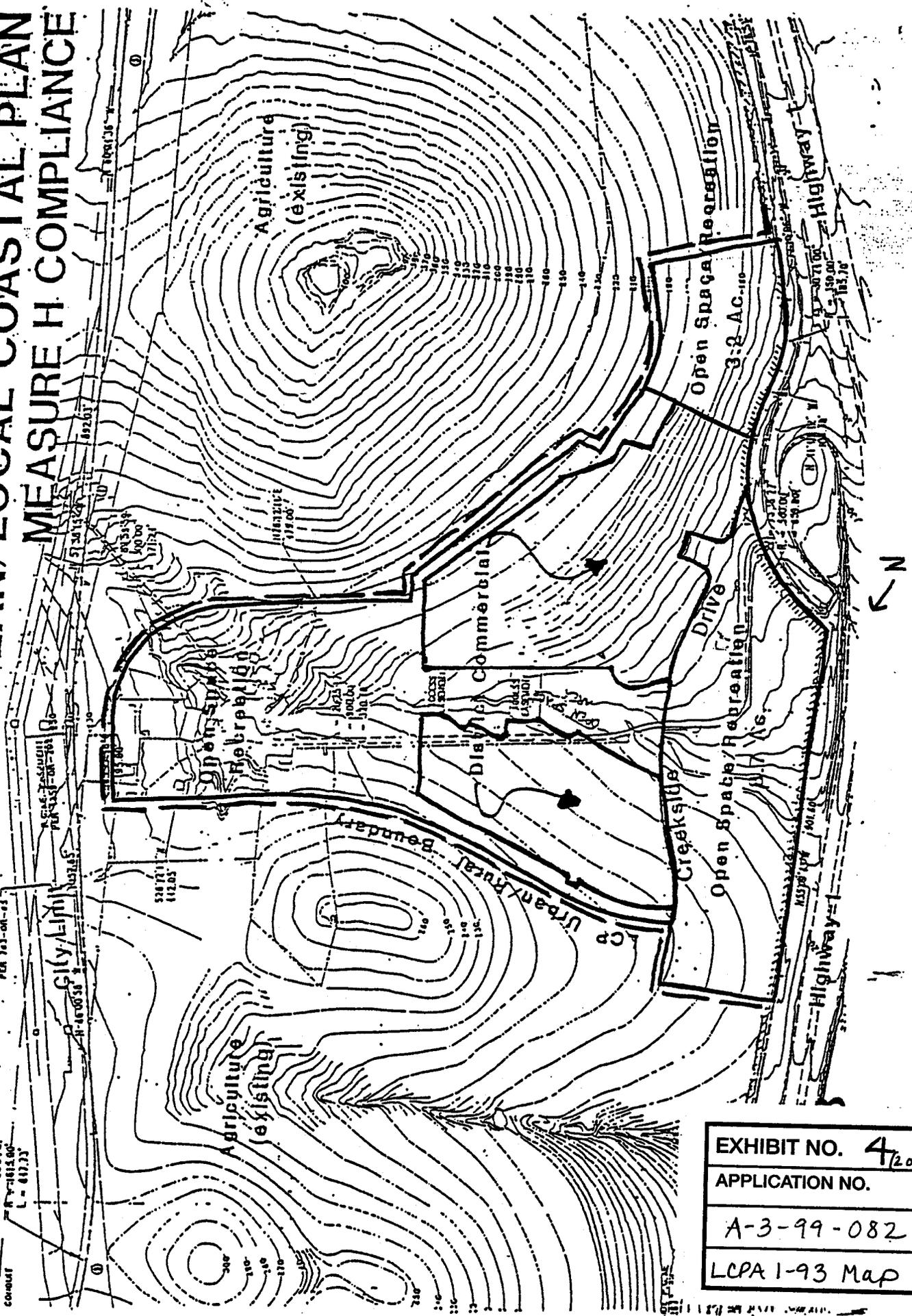


EXHIBIT NO. 4	2 of 2
APPLICATION NO.	
A-3-99-082	
LCPA 1-93 Map	

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

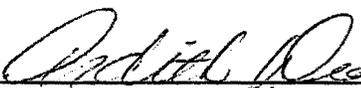

ARDITH DAVIS, City Clerk
City of Morro Bay, California

Exhibit 5
Measure H



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

Exhibit 6
Site Photos



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.

30% SLOPE
EASEMENT
1.2 ac.

HILLTOP EASEMENT
(TOP 50')
4.8 ac.

HILLTOP EASEMENT
(TOP 50')
7.5 ac.

OPEN SPACE
EASEMENT
8.4 ac.

HILLTOP EASEMENT
(TOP 50')
5.3 ac.

30% SLOPE
EASEMENT
14.3 ac.

CREEK EASEMENT
2.5 ac.

Open Space Easements
Exhibit 8

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



**OMNI
DESIGN GROUP**
ARCHITECTURE
CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
PLANNING
PROJECT MANAGEMENT
SURVEYING

669 PACIFIC STREET
SAN LUIS OBISPO, CALIFORNIA, 93401
PHONE: (805)844-9700
FAX: (805)844-4327



EASEMENT EXHIBIT

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.

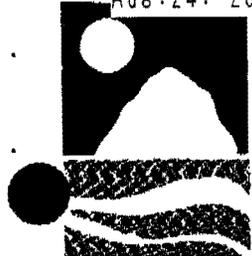
SECTION 5. Residential building permit approvals will follow Coastal Act priorities for water allocation required by Coastal Development Permit 4-81-309A or as revised after the Coastal Commission review scheduled for December 1984. These priorities shall be reviewed again when the pipe replacement program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

DIANE LANDRY, ESQ.
AUGUST 24, 2000
PAGE 2

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

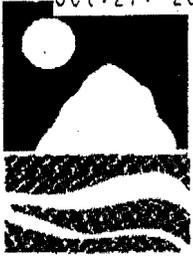
Sincerely,

CITY OF MORRO BAY

By: Robert Schultz
Robert W. Schultz
City Attorney

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

Exhibit 10
(2 of 5)



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

October 27, 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:

Thank you for taking the time to meet with us to discuss the above referenced Appeal. To be perfectly honest, I was surprised that Coastal Commission Staff was now taking the position that the extension of the above referenced Parcel Map and Coastal Development Permit was inconsistent with Morro Bay Land Use Policy 6.05. Prior to our meeting, the only issue raised in regard to inconsistencies was with Measure H. Upon further analysis, the City hereby provides you with the following facts and legal analysis to establish that the extension of the Parcel Map 04-92 and Coastal Development Permit 43-92 are consistent with our ordinances and policies.

It is my understand that Coastal Commission Staff is now using a portion of *Morro Bay Zoning Code Section 17.58.130 B* to support the upholding the appeal. The portion of Subsection B.1 reads as follows:

The director shall review the proposal for consistency with all applicable ordinances and policies effective at the time of the request for extension.

It is Coastal Commission Staff's position that the extension of the Coastal Development Permit is inconsistent with LUP policy 6.05, which states as follows:

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.

*Exhibit 10
(3 of 5)*

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

DIANE LANDRY, ESQ.
OCTOBER 27, 2000
PAGE 2

The City of Morro Bay respectfully disagrees with your analysis that the extension of the Parcel Map 04-92 and Coastal Development Permit 43-92 is inconsistent with LUP Policy 6.05. As a Condition of Approval of the Extension of the Parcel Map, 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).

In addition, City of Morro Bay Ordinance No. 266 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 meets the requirements of LUP 6.05 "such as" language. It is City's position that the vote of the people provides specific additional protection against a future re-zoning of the property that is not found in our Land Use Plan. These measures approved by the voters are preferable as a means of protecting the agricultural lands over those examples included in LCP Policy 6.05.

Finally, the City incorporated an additional condition of approval for the extension of the Parcel Map to address concerns regarding future land divisions on the remainder agriculture parcel. This condition 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, it is the City's position that all of the requirements of LCP Policy 6.05(3), regarding future land divisions, have been fulfilled. The City's Public Service Director, Greg Fuz, the Planning Commission and the City Council all found the map extension to be consistent with the LCP policies. Clearly, the extension of the map is consistent with LCP Policy 6.05 and all other LCP policies relating to the protection of agricultural lands.

Although the above adequately establishes a consistency determination, it is also the City's position that Section 11.58.130(A) is not applicable since Section 17.58.130(A) of the City of Morro Bay Municipal Code controls the expiration of the Coastal Permit. A close analysis of Section A and the aforementioned Subsection B leads one to conclude that under the facts of this case that the extension of the Coastal Development Permit for the Parcel Map is not appealable to the Coastal Commission since the extension of the Parcel 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.

Exhibit 10
(4 of 5)

DIANE LANDRY, ESQ.
OCTOBER 27, 2000
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The language of this Section is clear, precise and unequivocal, where there is another permit connected with a project the expiration date of that permit and the expiration date of the Coastal Development Permit are the same. Note, that a subdivisions is a "project" under both the certified LCP and the Coastal Act.

Therefore, the extension of the Parcel Map 04-92 establishes a new expiration date for the Coastal Development Permit and there is no further action required, or allowed, by the Coastal Commission. Subsequently, Subsection B, discussed above, is not even applicable to the current extension of the map. No action is required, or is even possible, by the Coastal Commission on the Coastal Development Permit for the map since the Coastal Commission proactively relinquished any role in this regard when it certified the City's LCP.

I hope this adequately explains the City's position and provides you with enough information to deny the appeal. If you have any questions please do not hesitate to call.

Sincerely,

CITY OF MORRO BAY

By: Robert W. Schultz
Robert W. Schultz
City Attorney

RWS/vj
cc: Greg Fuz, Public Services Director
S/rws/cmboty.pw/LandryD001026ltr

Exhibit 10
(5 of 5)

The Law Office of Marshall E. Ochylski

979 Osos Street, Suite A-5
Post Office Box 14327
San Luis Obispo, California 93406

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

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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.

Hand Delivery

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Facsimile

Overnight Delivery

SIGNED:



Marshall E. Ochylski, Attorney at Law

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

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

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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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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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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.”

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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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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

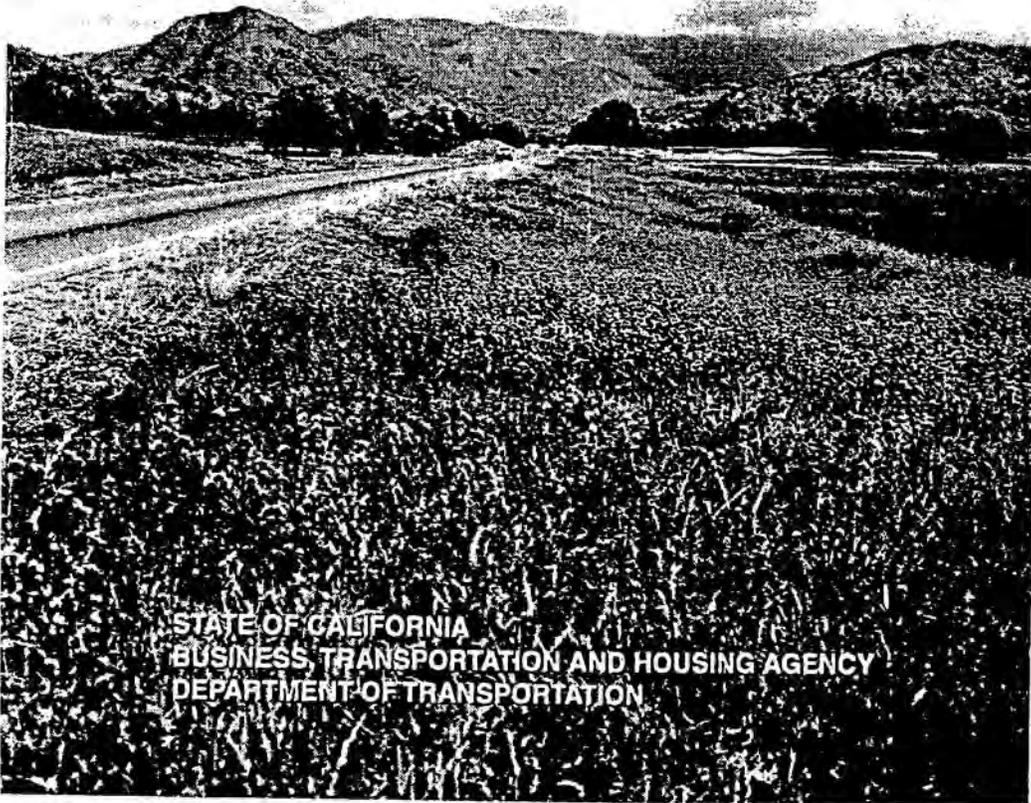
Mr. Robert Schultz, Esq.
City Attorney,
City of Morro Bay

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

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 California Coastal Commission

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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California Coastal Commission

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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