

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL SUBSTANTIAL ISSUE 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.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, find that **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 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 commercial shopping center.

The appellant contends that by accepting the withdrawal of the time request for the conditional use permit, thereby allowing the use permit to expire, the City could not then approve a time extension for the tentative map because the LCP requires that the location of a use on the site



California Coastal Commission
 May 11, 2000 Meeting in Santa Rosa
 Staff: RB, Approved by:

"shall 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. Essentially, without the precise plan, the subdivision of the property can not be adequately evaluated. Thus, the extension request for the current tentative map should be denied, allowing for any future development proposals on this property to be done in accordance with an updated, project-specific tentative map.

In addition, while the land use history of the site indicates approval of a commercial development in this area, 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 and, therefore, the permit extension should be denied.

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I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

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

RESOLUTION

The Commission hereby finds that Appeal No. A-3-MRB-99-082 presents 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.

II. 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.

III. SUMMARY OF APPELLANT'S CONTENTIONS

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

In summary, the appellant contends that the extension for 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 through 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 and especially 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.
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 for which compliance can be determined.

IV. 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 on September 21, 1999, upholding the Planning Commission's action.



V. APPEAL PROCEDURES

The Coastal Commission has jurisdiction over this appeal under Public Resources Code section 30603. Section 30603 provides that the Commission has jurisdiction over "an action taken by a local government on a coastal development permit application" that fits into one of the categories enumerated in section 30603. The City's decision to extend the permit constitutes "an action" under Section 30603 and is appealable because the project that is the subject of the extension action 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 local action on a coastal development permit 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 local action is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the action 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.

VI. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. RECOMMENDED FINDINGS FOR SUBSTANTIAL ISSUE

1. Location and Background

The property, authorized for subdivision by Coastal Development Permit 43-92, is a 177-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 177 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 location, intensity, and density of use 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. 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" (see Exhibit 3). 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), without restricting the use of the portion of the property not proposed for the shopping center to agricultural uses. However, 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.

	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 to be 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.

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.



TABLE 1

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.



2. 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.

3. Appellant's Contentions (Part I)

The appellant contends that the City's extension of the coastal development permit for the map is inconsistent with LUP Policy 6.09 (Measure H). This policy requires that "the siting of such 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.” 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 shopping center.

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.

The above-mentioned LCP standards, together with the requirements of LUP Policy 6.09, are clear in their intent that a precise plan and tentative map be analyzed together and found internally consistent with one another, in order to evaluate the project as a whole for its conformity with the LCP. The City has accepted the applicant's withdrawal of the time extension request for the precise plan (CUP 03-88), which showed specific details regarding the dimensions and location of proposed buildings, parking lots, and included landscaping and engineering plans. This precise plan, originally approved by the City in 1993 in coordination with a tentative parcel map, demarcated the *specific area* to be developed (the area designated for development was previously described in Measure H as “thirteen (13) gross acres generally located adjacent to Highway 1 and Morro Bay Boulevard”). Essentially, the subdivision of the Williams' property was predicated on a specific commercial development, a development proposal that has since been withdrawn, and any future proposals for development on this property may be found to be more appropriate in a different location. Moreover, as discussed in the de novo findings below, maintaining the integrated planning process envisioned by Measure H is particularly important to address changed circumstances. Without the precise plan, the subdivision of the property can not be adequately evaluated, based on the requirements of the previously mentioned LCP Policies. This is particularly true for such issues as the protection of



sensitive views, inasmuch as one purpose of subdivisions is to demarcate future development. **Therefore, a substantial issue is raised by this contention of the appeal.**

4. 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 17.58.130B (Time Extensions) states in relevant part:

*The term for CDP [Coastal Development Permits] 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].*

This LCP policy 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".

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.

Neither the City's action originally approving CDP 43-92, the tentative map for the subdivision of the property into two parcels, nor the recent extension of that permit required any "means of permanently securing the remaining acreage in agricultural use. ..." or preventing future divisions of land. The proposed remainder parcel is still zoned agriculture and there has been no request to rezone it to some other zone district. This inconsistency with the LCP is particularly important in light of changed circumstances concerning sensitive visual resources (see de novo findings). Absent such a rezoning with its concomitant findings of conversion of agricultural land to other uses, LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) apply here and the City's action was inconsistent with these portions of the certified LCP. **Thus, a substantial issue is raised.**

B. RECOMMENDED FINDINGS FOR EXTENSION OF THE COASTAL DEVELOPMENT PERMIT

1. 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 Permits] 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.

2. 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.

Neither the City's action originally approving CDP 43-92, the tentative map for the subdivision of the property into two parcels nor the recent extension of that permit required any "means of permanently securing the remaining acreage in agricultural use. . ." or preventing future divisions of land. The proposed remainder parcel is still zoned agriculture and there has been no request to rezone it to some other zone district. Absent such a rezoning with its concomitant findings of conversion of agricultural land to other uses, LUP Policy 6.05(3) and Zoning Ordinance Section 17.24.020B.5(F) apply here and the City's action was inconsistent with these portions of the certified 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) and the extension must be denied.**

3. 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 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; however, it could be, for example, that views of the hillsides at the subject site should be included on LUP Figure 31 as a highly scenic area. As a result, the 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. Therefore, the extension should be denied and the project heard anew so that the implications of the State Scenic Highway designation can be fully analyzed.

4. 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. 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

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.



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, 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. 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. 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, staff recommends that the Commission find that changed circumstances exist in regard to the project's impacts on traffic patterns in the and deny the request for permit extension, and suggests that this issue be addressed through an updated traffic analysis for any future proposals for subdivision of this parcel.

5. 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.

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

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 plans to withdraw that extension if the Commission denies this appeal and upholds the City's action. The applicant's intent is that he would then go back to the City at a 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. The applicant has already withdrawn his conditional use permit from the City, so there is no local permit for the project.

7. 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. Based on Zoning Ordinance Section 17.58.130B, the standard of review for extensions of coastal development permits, these changed circumstances further support the denial of this time extension request.

C. 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.



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

725 FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

(831) 427-4863

HEARING IMPAIRED: (415) 904-5200

RECEIVED

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

OCT 23 1990

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

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

JACK MCCORDY
20 ANCHOR STREET
MORRO BAY, CA 93442 (805) 772-8426
Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government: CITY OF MORRO BAY2. Brief description of development being
appealed: TIME EXTENSION FOR VESTING TENTATIVE PARCEL MAP3. Development's location (street address, assessor's parcel
no., cross street, etc.): TERMINUS OF MORRO BAY BOULEVARD AT
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. CCHYLSKI
P.O. BOX 14327
SAN LOUIS 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) SUSAN MULLEN
925 PACIFIC STREET
MORRO BAY, CA 93442

(2) BERNIE 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.

John McCord

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)

Signature of Appellant(s)

Date _____

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.

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.

Exhibit 1
(5 of 11)

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

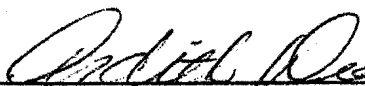

ARDITH DAVIS, City Clerk
City of Morro Bay, California

Exhibit 1
(7 of 11)

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.
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 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 8/16/99 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. *Replace with language in 8/16/99 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. *Delete*

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*

- b. 8.2 Acre within remainder parcel identified in Concept Plan Conditions B.27. *Coinciding with the boundaries of the OA.1 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. *pk* 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.

pk 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.

pk 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.

C. LANDSCAPING CONDITIONS

pk 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.

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

*as 8/15/89
kd in
lff 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.

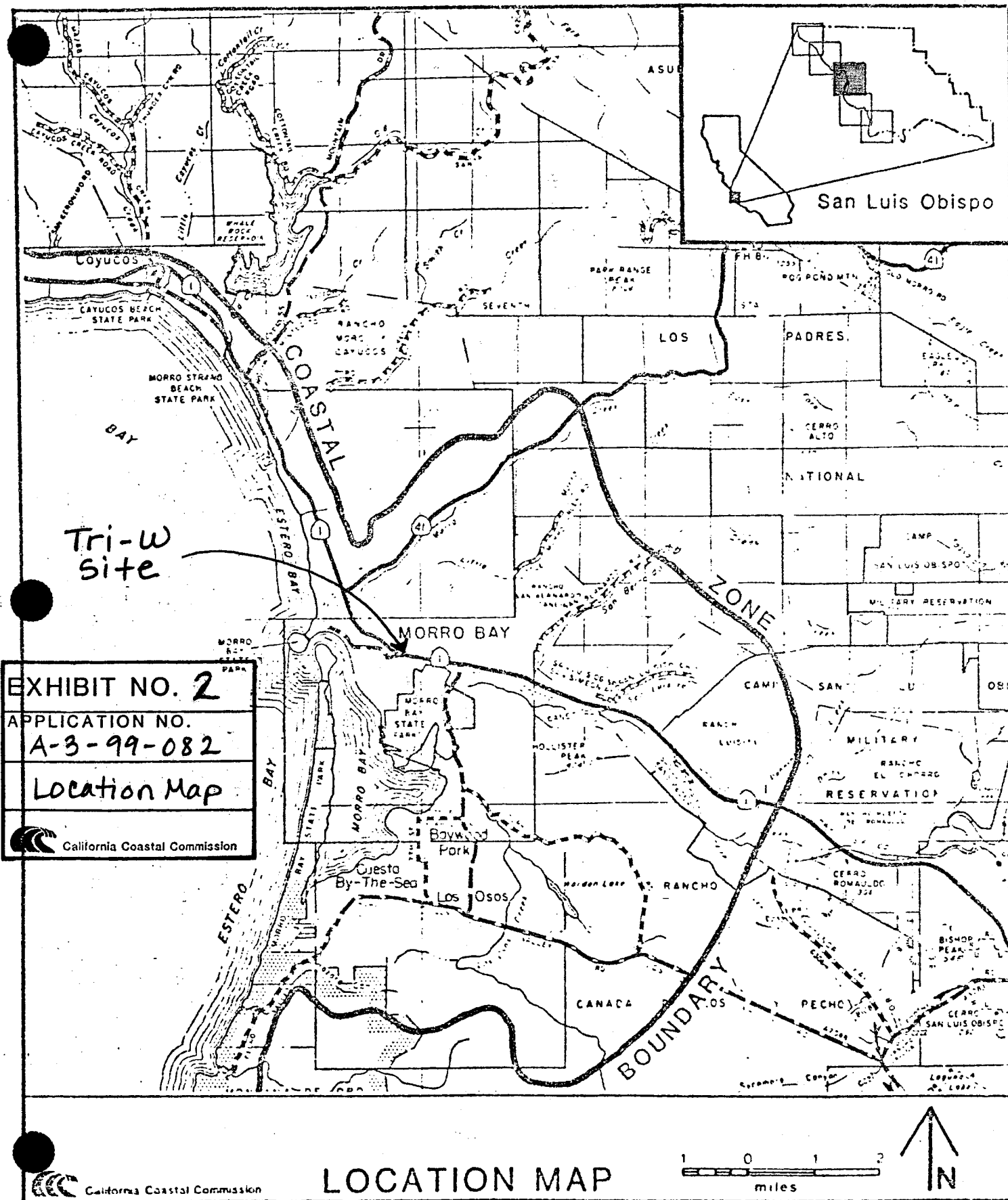
2. Access Denial Abandonment: Prior to or concurrent with recordation of the Final Map, the existing access denial per 933 OR 307 shall be abandoned within the proposed Williams Blvd. Right-Of-Way.

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.

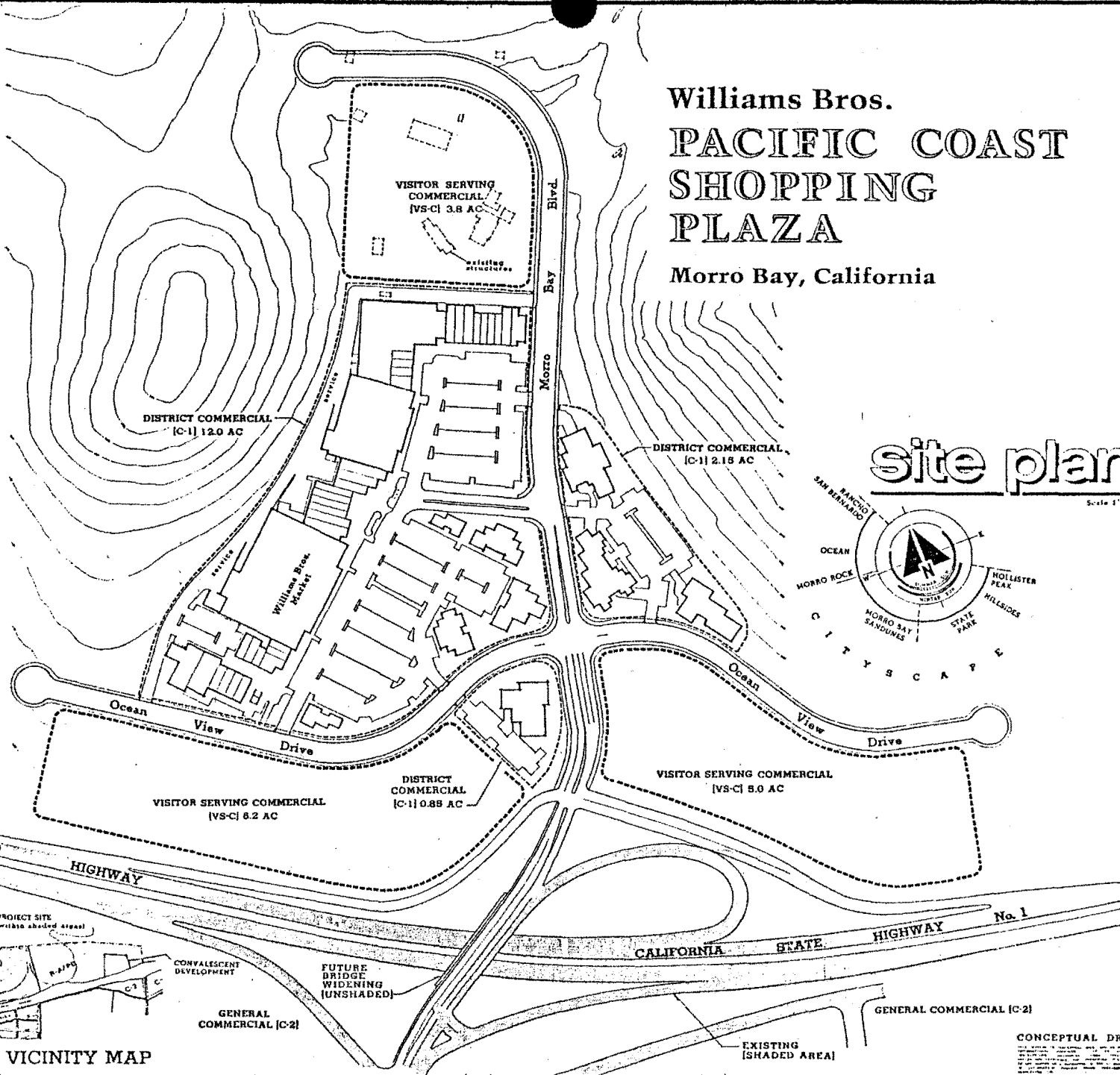
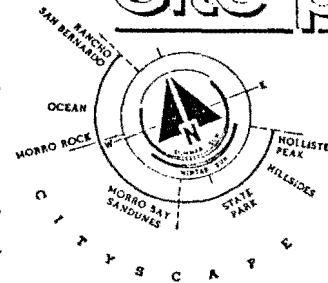


Williams Bros. PACIFIC COAST SHOPPING PLAZA

Morro Bay, California

site plan

Scale 1"=80'



VICINITY MAP

CONCEPTUAL DRAWING

PROJECT
Williams Bros.
PACIFIC COAST
SHOPPING
PLAZA
Morro Bay, California

OWNER
Williams Bros.
Market Inc.
817 East Main St.
Santa Maria, Ca.
93454

(805) 922-7373

CONCEPTUAL
COMMERCIAL
DEVELOPMENT
PLAN

DRAWN BY: JC
 CHECKED BY: JC
 DESIGNED BY: JC
 DATE: 1-27-88
 SCALE: 1"=80'
Courtney & Associates
 Environmental Engineers
 1000 N. Main St.
 Santa Maria, CA 93454
 (805) 922-7373

PROJECT NO. 8019
 SHEET
 1

EXHIBIT NO. 3
 APPLICATION NO.
 A-3-99-082
 LCPA 1-88 Map

$$\Delta = 30.00^\circ$$

892617

AG
(existing)

100
150
200

C-1

ROAD 55

C-1

PD X S.4

PD S.4 (13 ac)

Z

crackles

1

①

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

APPLICATION NO.

A-3-99-082

LCPA 1-93 Maf

PROPOSED GENERAL PLAN/LOCAL COASTAL PLAN MEASURE H COMPLIANCE

Δ = 300' ±
R = 1613.00'
L = 417.75'

30' WIDE P.O.L.E. CASQUET
PER 1-13-08-7

Gly/Lm

CONTRACT

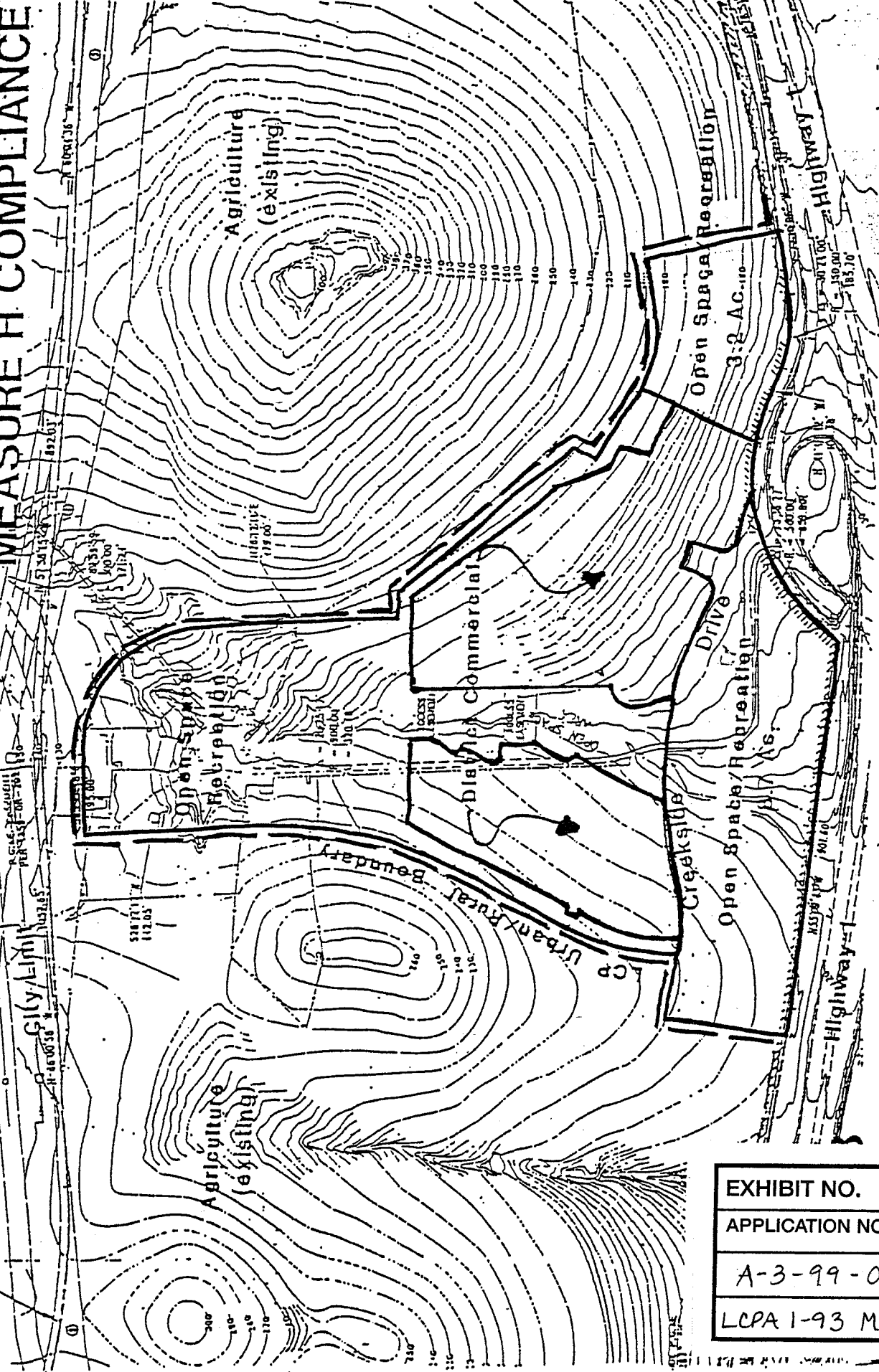


EXHIBIT NO. 4	2 of 2
APPLICATION NO.	
A-3-99-082	
LCPA 1-93 Map	

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)

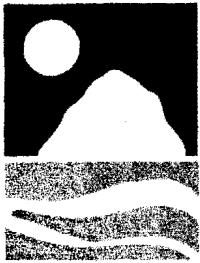


Tri W Site – looking northeast at Camp Willow Creek
(structures have since been removed)



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

Exhibit 6
Site Photos



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

RECEIVED

OCT 13 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

COASTAL DEVELOPMENT PERMIT

One (1) Year Time Extension
Notice of Final Action

FINAL LOCAL
ACTION NOTICE

CASE NO: PM 04-92/CDP 43-92

THIS TIME EXTENSION IS HEREBY APPROVED AND ISSUED FOR:

SITE ADDRESS: Terminus of Morro Bay Blvd. at Hwy 1

APPLICANT: Tri W Enterprises, Inc.

APN/LEGAL: 068-401-004

DATE APPROVED: September 27, 1999

APPROVED BY: City Council

APPROVED BASED UPON ATTACHED FINDINGS (*Findings and Conditions of Approval Attached*)

CEQA DETERMINATION: Exempt

DESCRIPTION OF APPROVAL: One (1) year time extension for PM 04-92/CDP 43-92 allowing a one parcel of 17.54 acres and one remainder parcel of approximately 175 acres.

THIS APPROVAL IS CONDITIONAL AND IS VALID ONLY IF CONDITIONS (ATTACHED) ARE MET. Failure to comply with the conditions of this permit shall render this entitlement null and void. - PERMIT EFFECTIVE DATE & INFORMATION APPLICABLE TO YOUR PROJECT IS OUTLINED FOLLOWING THE BOX CHECKED BELOW:

☒ THIS TIME EXTENSION IS EFFECTIVE: September 27, 1999

☒ **YOUR PROPERTY IS LOCATED IN THE COASTAL COMMISSION APPEALS JURISDICTION: THE FOLLOWING COASTAL COMMISSION APPEAL PERIOD MAY APPLY TO YOUR PROJECT:** This City decision may be appealable to the California Coastal Commission pursuant to the California Public Resource Code, Section 30603. If applicable, any person who may desire to appeal this decision to the Coastal Commission should do so within TEN (10) Working days following Commission receipt of this notice. Appeals must be in writing and should be addressed to: California Coastal Commission, 725 Front Street, Ste. 300, Santa Cruz, CA 95060, Phone: 831-427-4863. If you have any questions, please call the City of Morro Bay Public Services Department, 772-6261.

ATTEST: SHAUNA NAUMAN, Planning Manager

DATE: 10/4/99

A-3-99-082
Exhibit 7 (1 of 6)
Final Local Action Notice

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

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

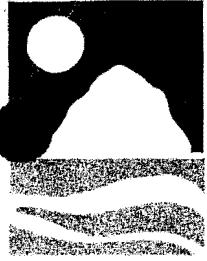
Exhibit 7
(2 of 6)

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.



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

October 4, 1999

Tri W Enterprises, Inc.
c/o Marshall E. Ochylski, Attorney at Law
P.O. Box 14327
San Luis Obispo, CA 93406

RE: Time Extension for Vesting Tentative Parcel Map Approved on June 14, 1993

Case No: PM 04-92/CDP 43-92

SITE: Terminus of Morro Bay Blvd. at Hwy 1

Dear Mr. Ochylski:

At its regular meeting on September 27, 1999 the City Council denied the appeal of the Planning Commission's August 16, 1999 action granting a one-year time extension for approved vesting tentative parcel map PM 04-92/CDP 43-92, thus affirming the one-year time extension based on the findings and conditions as approved on August 16, 1999 (attached). Approval of this time extension includes the acceptance of a withdrawal of the time extension request for CUP 03-88 (precise plan).

Your one (1) year time extension begins on September 27, 1999 and will expire on September 27, 2000.

As a condition of approval of the time extension for the parcel map the time extension request for CUP 03-88 (Precise Plan) is to be deemed withdrawn (see Condition B.1, attached). Any further processing of this project must be initiated by the applicant, subject to the applicable rules and regulations of the Morro Bay Municipal Code and State law for recordation of a final map.

Please be advised that you must return the Acceptance of Conditions form, signed, to this department within thirty (30) days of this approval or the action is null and void (see Condition A.7, attached).

Sincerely,

SHAUNA NAUMAN, Planning Manager
Public Services Department

cc: Jack McCurdy, Appellant
California Coastal Commission

Encl: Conditions of Approval - As Modified with Time Extension approval
Notice of Final Action
Acceptance of Conditions form (applicant only)

Exhibit 7
(4 of 6)

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FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

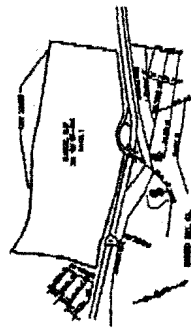
FIRE DEPARTMENT
715 Harbor Street

PUBLIC SERVICES
590 Morro Bay Boulevard

HARBOR DEPARTMENT
1275 Embarcadero

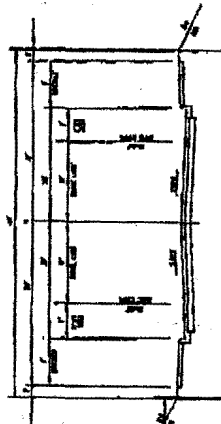
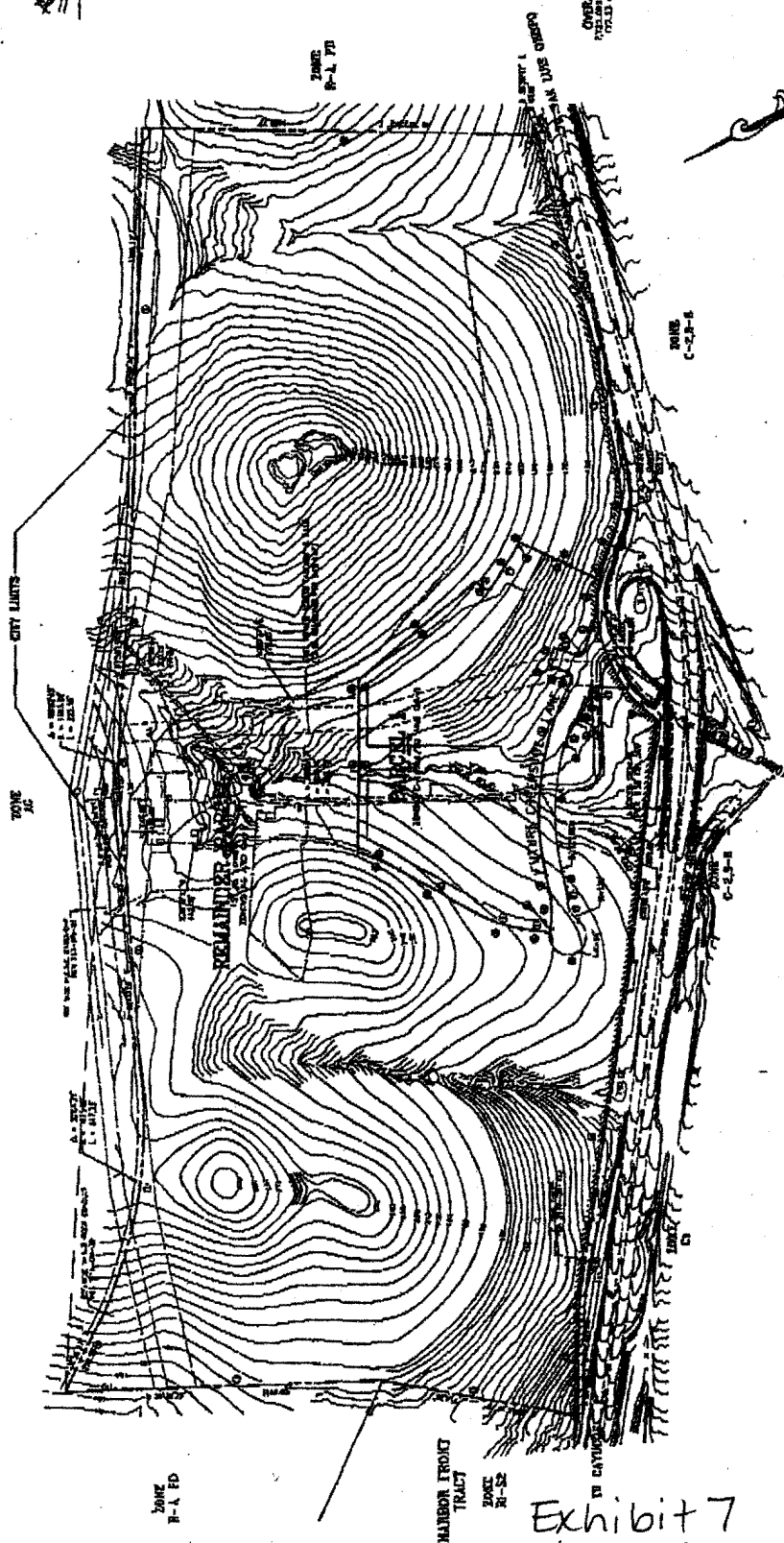
POLICE DEPARTMENT
850 Morro Bay Boulevard

RECREATION AND PARKS
1001 Kennedy Way



VEGETATION MAP

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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REVISED VESTING TENTATIVE PARCEL MAP No. MB 92-099

SHOWS A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. 18,700 84-004, IN THE CITY OF MARIETTA, COUNTY OF SAN JUAN, CALIFORNIA, STATE OF CALIFORNIA, ACCORDING TO LUP RECORDS IN BOOK 46 AT PAGE 13 OF PARCEL MAP.

OWNER & SUBDIVIDER
TET-1 ENTERPRISES INC. A GENERAL PARTNERSHIP
SANTA ANITA, CALIFORNIA 94060

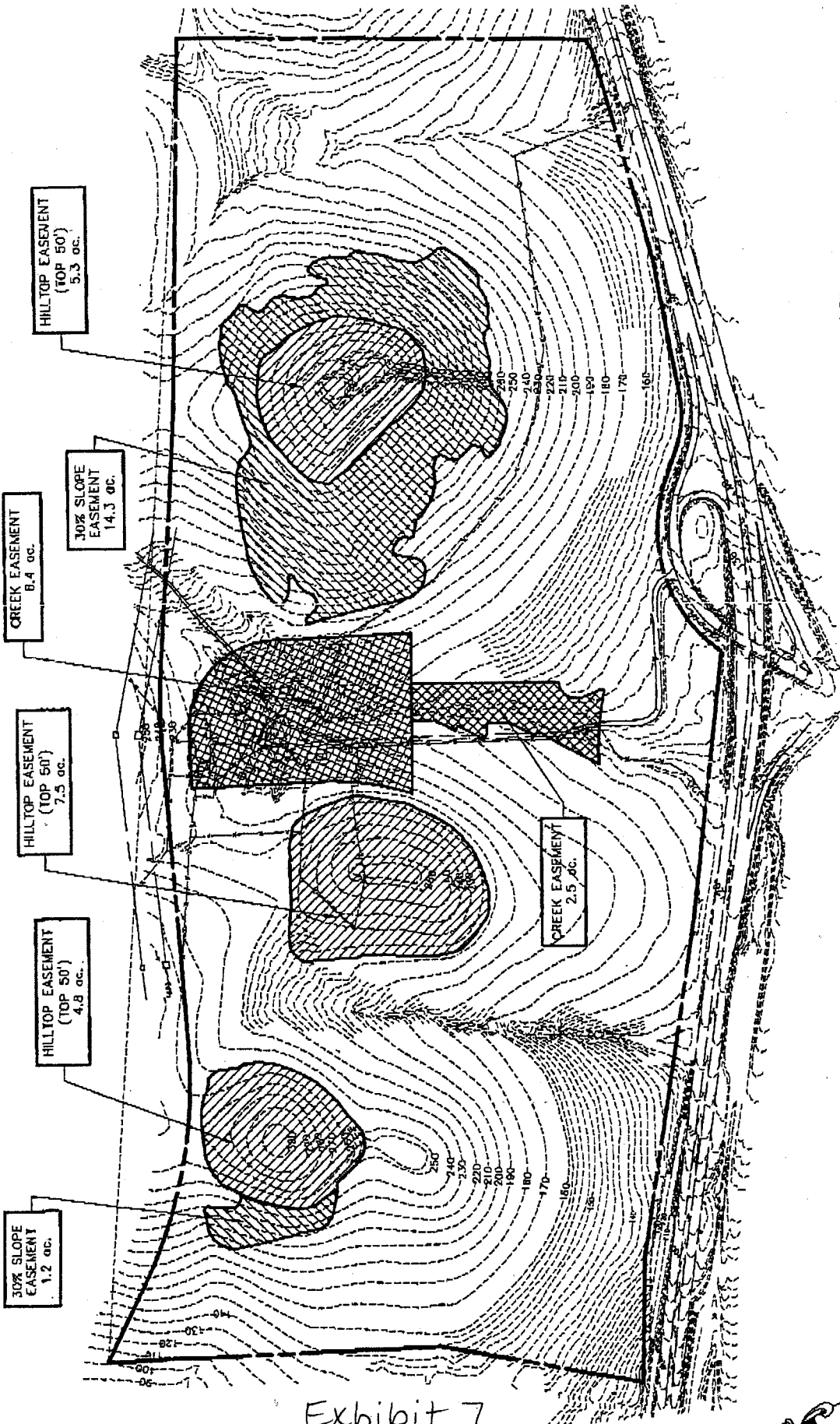
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AUG 06 1993

City of Marina Bay
Public Services Department

Exhibit 7
(5 of 6)

1. THE MAP IS A TENTATIVE PARCEL MAP, NOT A FINAL MAP, AND IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN TO SHOW THE GENERAL LAYOUT OF THE PROPOSED SUBDIVISION.
2. THE MAP IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN TO SHOW THE GENERAL LAYOUT OF THE PROPOSED SUBDIVISION.
3. THE MAP IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN TO SHOW THE GENERAL LAYOUT OF THE PROPOSED SUBDIVISION.
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9. THE MAP IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN TO SHOW THE GENERAL LAYOUT OF THE PROPOSED SUBDIVISION.
10. THE MAP IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN TO SHOW THE GENERAL LAYOUT OF THE PROPOSED SUBDIVISION.



HILLTOP EASEMENT
(TOP 50')
5.3 ac.

CREEK EASEMENT
8.4 ac.

30% SLOPE
EASEMENT
14.3 ac.

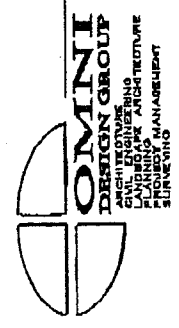
HILLTOP EASEMENT
(TOP 50')
7.5 ac.

HILLTOP EASEMENT
(TOP 50')
4.8 ac.

30% SLOPE
EASEMENT
1.2 ac.

CREEK EASEMENT
2.5 ac.

Exhibit 7
(6 of 6)



200 PLAZA STREET
SAN LUIS OBISPO, CALIFORNIA, 93401
PHONE: (805) 442-9700
FAX: (805) 442-4347

EASEMENT EXHIBIT

RECEIVED

SEP - 3 1999

City of Morro Bay
Public Services Department

SCALE: 1" = 500'

EASEMENT	TOTAL ACREAGE
CREEK EASEMENT	10.9 ac.
HILLTOP EASEMENT (TOP 50')	19.8 ac.
30% SLOPE EASEMENT	15.5 ac.



AGE DA NO. <u>B-1</u>
Meeting Date: <u>9/27/99</u> Action: _____

Staff Report

TO: Honorable Mayor and City Council

DATE: September 21, 1999

SUBJECT: Appeal by Jack McCurdy of a decision by the Planning Commission to approve a one year time extension for PM 04-92/CDP 43-92 (Vesting Tentative Map) and Acceptance of the Applicant's Withdrawal of a Time Extension Request for CUP 03-88 (Portion of Precise Plan) Applicant: Tri-W Enterprises, Inc. Agent: Marshall E. Ochylski. Site: Terminus of Morro Bay Boulevard at Highway One in the C-1/PD/S.4 and OA-1 districts (Commercial/Planned Development/Design Criteria and Open Area) . APN: 068-401-004. (CEQA determination: Exempt, Section 15061(b)(3) General Exemption)

Date of Planning Commission Action: August 16, 1999

Date Appeal Filed: August 26, 1999

Case No: PM-04-92/CDP 43-92R Time Extension

RECOMMENDATION

Staff recommends the following motion be made:

Motion: Deny the appeal of the Planning Commission's decision to approve a one year time extension for Case No. PM 04-92 & CDP 43-92R thereby affirming the Planning Commission's action subject to the adopted findings and conditions contained in the Planning Commission staff report, dated August 16, 1999, and based on all oral and written testimony received.

Fiscal Impact

Approximately three hours of staff time has been spent on this matter. Salaries and general staff support are part of the City's overall operating budget. Appeals of City actions on coastal development permits do not require payment of a fee.

Summary

The appellant, Mr. McCurdy, has appealed the action of the Planning Commission approving a one year time extension to a previously approved vesting tentative parcel map and coastal development permit for the Tri-W project in order to seek "...careful consideration by the City Council and possible denial of the parcel map time extension." The appeal letter filed by Mr. McCurdy alleges that there is substantial confusion over the effect of the Commission's action and that the Commission's action was based on insufficient facts and information. Staff and the City Attorney disagree with the statements by Mr. McCurdy. On the contrary, the Planning Commission weighed the costs and benefits of granting the applicant's request and determined that the public interest would best be served by approving the one year time extension.

Prepared by: <u>Gres Fuz</u>	Department Review: <u>J</u>
City Manager Review: <u>[Signature]</u>	<u>A-3-99-082</u>
City Attorney Review: <u>[Signature]</u>	<u>Exhibit 8 (1 of 16)</u>

City staff Report

The Planning Commission's action did not grant any new entitlements to the project, but rather, substantially reduced the scope of the previously approved project from a 120,000 square foot shopping center to a one lot parcel map, while at the same time, securing approximately 46 acres of open space easements on the site before the parcel map can be recorded.

Discussion

The appellant raises a number of issues in the appeal letter which will be reviewed sequentially below.

Effect of Recording the Parcel Map on the Existing Zoning: The existing zoning will remain in place on the project site whether or not the Parcel Map records. Recordation of the Parcel Map previously approved by the City in 1993 would entitle the owner to develop the property in accordance with the existing zoning for up to two years after recordation of the map (this is referred to as "vesting"). Any new development would still have to meet current City standards and would be subject to environmental review and full discretionary review by the City. The City or the voters can change the zoning of the property during this vesting period, in accordance with the procedures of the zoning ordinance; however, during the vesting period, the applicant would still be entitled to file development plans for City review consistent with the previous zoning.

Inappropriate to Separate the Parcel Map from the Conditional Use Permit for Development: The parcel map would create a single parcel, consistent with the boundaries of the site zoned for commercial development, separating this area from the remaining areas of the site zoned for agricultural or open space use. Creating a parcel consistent with zoning boundaries is considered good planning. Any future development within this parcel will require discretionary City review.

The Location and Extent of Open Space Easements Were Not Shown to the Planning Commission: The location and extent of the easements on the property are established by the conditions of approval of the Tentative Parcel Map. The applicant has prepared an exhibit showing the easements as part of his response to this appeal.

Steep Areas of Site and Hilltops would not be Developed Anyway: The appellant speculates that certain areas of the site which would be subject to open space easements may not be developed in the future; however, once the open space easements are obtained for these areas, it is certain that development inconsistent with these easements would not occur. Obtaining the easements eliminates the uncertainty regarding the development potential of these large areas of the site.

Extension for Tentative Parcel Map Inappropriate Since Changes to the Map may be Proposed in the Future: Any revisions to the Map would require subsequent City review and approval. Approving the one year time extension for the existing approved Map would not limit the City's ability to review any future changes to the Map which may be proposed by the applicant.

The Voter Approved Zoning For The Site Should Be Interpreted To Allow Only Approval Of A Shopping Center Development And The Planning Commission's Action Would Allow The Permits For This Shopping Center To Expire: The voter approved zoning for the site discussed by Appellant is Measure "H". Measure "H" was citizen's initiative passed by the voters on November 6, 1990. Its effect on the Tri-W property was to amend two policies of the General Plan and Local Coastal Land Use Plan and to cause the City's land use plan and map and zoning map to be amended to show a reduced area available for commercial use.

The previous zoning, which resulted from Measure "B" passed in November, 1986, provided for about 30 acres of mixed commercial uses, half of which were to be visitor-serving. Measure "H" reduced the total acreage allowed to 13 gross acres and to allow only commercial uses.

Measure "H" was originally submitted to the California Coastal Commission as LCP amendment 2-91 in July, 1991. At the November, 1991 meeting, the Commission approved Measure "H" with suggested modifications. Subsequently before the Executive Director's Sign-Off of the City's acceptance of the Commission's action, the City was sued by the Voter's Initiative Committee (the Measure "H" proponents). The suit was brought to force the City to removal all language in the City's submittal which allowed for visitor-serving uses. In an order dated May 18, 1992, the Superior Court found for the Voter's 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 19, 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 which 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 removal all provisions allowing for visitor-serving uses (see attached map).

Measure "H" and the court orders were subsequently incorporated into revised LCP amendment 1-93, LU-49 and LCP Policy 6.09 which states that the property shall be used for "district commercial" use including a new shopping center. Measure "H", LCP 1-93, LU-49 and LCP Policy 6.09 do not preclude commercial development other than a shopping center, they do preclude visitor-serving uses.

Possible Cooperation by the Applicant to fund a Traffic Study Not Considered by the Planning Commission in its action on August 16: The applicant would be required to fund a traffic study as part of any new development proposed for the project site. This would occur as part of the environmental review for the project. It was not necessary for the Planning Commission to consider this issue in reaching a conclusion on the proposed time extension for the Tentative Parcel Map.

Recordation Of The Parcel Map Would Increase The Value Of The Property, Implying That This Might Make Efforts To Purchase The Property For Preservation More Difficult: The appellant speculates that recordation of the Parcel Map would enhance the value of the property. The appellant further speculates that this would make any possible acquisition of the property for preservation more difficult, assuming that the property is targeted for acquisition by a preservation organization. The zoning which in large part determines the value of the property would remain in place, whether or not the Parcel Map is recorded. The Parcel Map merely separates areas zoned for commercial use from areas primarily zoned for open space and agricultural use. Recordation of the Parcel Map does not change the permitted uses for the property. Recordation of the Parcel Map would result in preservation of approximately one fourth of the entire property as open space upon City acceptance of the Open Space Easements which the applicant would have to provide prior to recordation.

Exhibit 9
(3 of 16)

Alternatives

1. Deny the appeal, upholding the Planning Commission's action, thereby granting a one year time extension to the Vesting Tentative Parcel Map and Coastal Development Permit for the Map and accepting the applicant's withdrawal of the time extension request for the Conditional Use Permit for the Shopping Center project. The applicant has also agreed to withdraw a similar time extension request from the Coastal Commission. Consequently, the previously approved shopping center project would expire.
2. Uphold the appeal, overturning the Planning Commission's action and deny the time extension for both the Vesting Tentative Map and the Conditional Use Permit.
3. Deny the appeal, but approve a one year time extension for both the Vesting Tentative Parcel Map and the Conditional Use Permit for the shopping center.

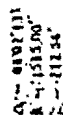
CONCLUSION

As noted in the staff report to the Planning Commission, securing the open space easements for the hillside areas on the project site ensures that these areas will remain open space in perpetuity. This substantial public benefit can be obtained if the Parcel Map is allowed to record. The Planning Commission's action recognizes this public benefit and at the same time ensures that the previously approved shopping center project will not be developed. Any new project proposed for the site will require full City review. Allowing additional time for the applicant to record a previously approved Tentative Parcel Map consistent with the City's zoning boundaries is the only concession made by the Planning Commission to obtain these public benefits. Consequently staff recommends the City Council deny this appeal thereby upholding the Planning Commission's decision.

Attachments:

1. Local Coastal Plan 1-93 Map Amendment
2. Appeal Letter dated 9/26/99
3. Response to Appeal Letter prepared by Marshall Ochilsky representing the applicant, dated 9/3/99.
4. Planning Commission Staff Report w/attachments dated August 16, 1999
5. Minutes of the August 16, 1999 Planning Commission Meeting

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A.~ 1513.00"
~ 11234"



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rid 123-25-1

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11712
11713

EXHIBIT NO. 5
APPLICATION NO. 1003
LCP AMENDMENT
CITY OF NORRIS BAY
California Coastal Commission

APPEAL FORM AND LETTER
by Jack McCurdy received
September 3, 1999

Exhibit 9
(6 of 16)



CITY OF MORRO BAY
PUBLIC SERVICES DEPARTMENT
APPEAL FORM

RECEIVED

AUG 25 1999

City of Morro Bay
Public Services Department

APPEAL FROM THE DECISION OR ACTION OF (GOVERNING BODY OR CITY OFFICER):

Morro Bay Planning Commission

APPEAL OF SPECIFIC DECISION OR ACTION:

Time extension for the Tri-W shopping center project

DATE DECISION OR ACTION RENDERED: Aug. 16, 1999

APPELLANT (PLEASE PRINT): JACK MCCURDY

SIGNATURE: Jack McCurdy

ADDRESS: 800 ANCHOR ST. MORRO BAY, CA.

GROUND FOR THE APPEAL (ATTACH SHEETS AS NECESSARY):

See attached sheet

REQUESTED RELIEF OR ACTION:

Careful consideration by the City Council and possible denial of the parcel map time extension.

FOR OFFICE USE ONLY

DATE APPEAL FILED:

ACCEPTED BY:

APPEAL BODY:

DATE OF APPEAL HEARING:

RECEIVED

AUG 23 1999

City of Morro Bay
Public Services Department

● GROUND'S FOR THE APPEAL:

I believe there is substantial confusion over the anticipated effect of the Planning Commission's action, based on insufficient facts and information available to the Commission at the time of its action and the emergence of additional statements and information since the action was taken. To wit:

--The city attorney stated at the commission's meeting that zoning on the parcel could not be changed by an initiative approved by voters if the parcel map were vested. Subsequently, the city attorney has advised that the parcel map vesting would not preclude such an initiative.

--It apparently is not clear whether the parcel map vesting would affect the legality of an initiative changing the zoning of the parcel. If such vesting would make an initiative legally indefensible or more difficult for the city to defend from legal challenge, then Planning Commission or City Council action that helps to enable such vesting would serve to deprive voters of their initiative rights by removing an opportunity to change the zoning, if they should so choose.

--It seems highly inappropriate to allow the conditional use permit for development of the parcel to expire while granting a time extension for vesting of the parcel map when the two are interdependent and were approved together as a package. Conceptually and as a planning and zoning issue, one cannot stand without the other.

--The staff report on the Tri-W matter stated that the city would benefit from approval of the time extension for the parcel map vesting because the city in return would receive open space easements on certain hilltops, slopes and creekside areas on the Tri-W property. However, no map containing the locations and sizes of the easements were available on Aug. 16, 1999, to enable the Planning Commission to make a determination whether the tradeoff of easements for a time extension is of sufficient benefit to the city to justify the action.

● --The Tri-W representative at the Aug. 16 meeting stated that Tri-W in fact has never had any intention of developing the hilltops on the property, and the slopes could not be developed because of the steep grades. It may

Exhibit 9
(8 of 16)

RECEIVED

AUG 25 1991

City of Morro Bay
Public Services Department

well be that the creeksides in question are protected from development from state and federal law, but that determination cannot be made without a map.

--At the Aug. 16 meeting, the staff stated that the time extension makes it more likely that the map will be recorded and more feasible to record, which was described as a clear benefit to the property owner. The Tri-W representative stated that the corporation's primary concern is to have the zoning vested on the property so that Tri-W will not face the situation of preparing a development project and then not having the zoning available to proceed with that project. However, the Tri-W representative also stated that his client will request adjustments to the parcel map in the future as well as "adjustments" to the zoning. Plans to request the City Council or voters to make such changes in the parcel map raise serious questions about the justification for the vesting at this time.

--The present zoning on the parcel was designated by an initiative in 1990 for a super market, but staff at the Aug. 16 meeting stated that fact is not an issue in the parcel vesting time extension. However, the initiative itself stated that it amended all applicable ordinances, policies and maps to designate the property for district commercial use, "including a new shopping center." Furthermore, the initiative stated that the citing of such use "shall be in accordance with a precise development plan." It seems that the initiative's language might and perhaps should be interpreted to mean that the zoning designated by voters is only appropriate for a shopping center--certainly that was the clear intent of voters--and only in concert with a precise development plan. But that precise plan is meant to expire under the Planning Commission's action.

--As the staff report stated, "a number of fairly substantive changes have taken place in the regulatory framework and environmental setting relative to the project," which was the proposed shopping center. Thus, due to significant changes in the proposed project and scope, regulatory framework and environmental setting, it is inappropriate to provide a time extension for the precise plan. This reasoning seems to apply equally to the parcel map, which should only be considered valid in the context of a specific plan for development. Again, the two go hand in hand and are inseparable.

Exhibit 9
(9 of 16)

RECEIVED

AUG 25 1999

City of Morro Bay
Public Services Department

--It has been mentioned that the time extension to record and vest the map would improve the likelihood that the property owner would contribute financially to a traffic study at the expected entrance to any development there, which is near the terminus of Morro Bay Boulevard and Highway 1. This could represent a significant benefit to the city, but it was not discussed at the Aug. 16 meeting or in the staff report.

--Vesting of the parcel map will add value to the property in the event Tri-W chooses to sell all or part of it or a conservancy seeks to purchase it for public preservation. This situation calls into question whether the city should take action adding value to the owner of private property and whether the city is receiving sufficient benefit in return.

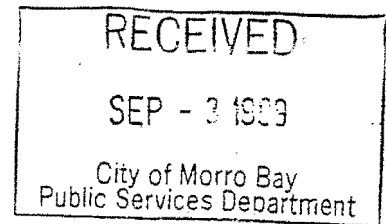
RESPONSE TO APPEAL BY APPLICANT

Letter by Marshall Ochilsky dated
September 3, 1999

Exhibit 9
(11 of 16)

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



September 3, 1999

Mr. Greg Fuz
City of Morro Bay
984 Harbor Street
Morro Bay, CA 93442

**Subject: Application for Extension of PM 04-92 (Vesting)/CDP 43-92/CUP 03-88 (A
Portion of Precise Plan)
Morro Bay, California**

This letter is a substantive response to the appeal of the extension of *Parcel Map 04-92 (Vesting)* which was granted by the Planning Commission on August 16, 1999.

The request for extension of the Map was based upon the desire of Tri W Enterprises, Inc. of Santa Maria to work closely with the City of Morro Bay to develop a plan for the site which meets the multiple needs of the City, its residents, and the property owner.

The rational for this request is most simply stated in the specific language of the Vesting Tentative Map statute adopted by the California Legislature.

"The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency"

(California Government Code § 66498.9(b).)

This expression of legislative intent is directly applicable to the extension of *Parcel Map 04-92* granted by the Planning Commission. With this extension, Tri W has the opportunity to work with the City with the assurance that zoning will be in place to implement the results of that process, which lessens the risk and increases the incentive to all parties to work together to develop a comprehensive plan for the site.

Exhibit 9
(12 of 16) -1-

The following information should address the specific questions and concerns raised in the text of the appeal as well as providing additional supplemental information.


1. **The vested rights granted by the extension of the map are effective only for a limited duration of time.** Under *Morro Bay City Code Chapter 16.10* these vested rights extend for an initial period of one year after the approval of the Final Map, with a provision for a one-year time extension with Planning Commission approval and a provision for an automatic extension for any time required by the City to process a completed application. This time would be used by the property owner to work with the City to prepare a comprehensive plan for the site to be submitted to the City for its review and approval. The zoning as previously approved by the voters would remain in place as a vested right during this period, however rezoning could occur anytime after those vested rights expire.
2. **The open space easements to be offered with the map total approximately 46.2 acres.** These easements represent over a 3.5 to 1 ratio of public benefit to vested zoning. These easements are of significant public benefit. These description and extent of those areas were included in the extension request considered by the Planning Commission, since these offerings include not only the easements that were originally a requirement of the map but also those creek easements which were a requirement of the CDP/CUP. The attached exhibit shows the total extent of those areas.
3. **The zoning of the property was approved by initiative prior to the approval of the project.** In fact, the project was designed after the passage of the voters' initiative to meet the requirements of that action. The rezoning, the approval of the CDP/CUP, and the approval of the parcel map were 3 distinct actions, separated in time. The plan approved in the CDP/CUP was an attempt by the property owner to develop a project that would work within the constraints of the rezoning initiative approved by the voters. It was this process that resulted in the current design and the approved Conditions of Approval which have proven to be problematic. It is Tri W's desire to avoid these problems in the future by having the opportunity to prepare, in conjunction with the City, an integrated and comprehensive development proposal for the commercially zoned 13 acres of their property.

4. The extension does not change any of the requirements for the development of the property established by the voter's initiative. Any development on the property must be in accordance with the initiative approved by the voters. The commercial use of the property will be in accordance with the precise development plan required by that initiative.
5. Any future development proposal for the property still requires full discretionary approval. Impacts of future development proposed for the property will be addressed during the preparation of specific development plans for the property, including traffic impacts. As is standard with any development proposal, the applicant will be required to pay for any required environmental studies, including a traffic study, to analyze the impacts of that proposal.

We respectfully request that the City Council deny the appeal of the extension of *Parcel Map 04-92* granted by the Planning Commission. As part of that action, we also request that the effective date of the one-year extension of the map be established as the date of your action.

If you have any questions, or require additional information, please contact me directly. I look forward to your continued cooperation in bring this process to a successful conclusion.

Sincerely,



Marshall E. Ochylski,
Attorney at Law

MEO/lpp

cc: Tri W Enterprises, Inc.

Exhibit 9
(14 of 16).3

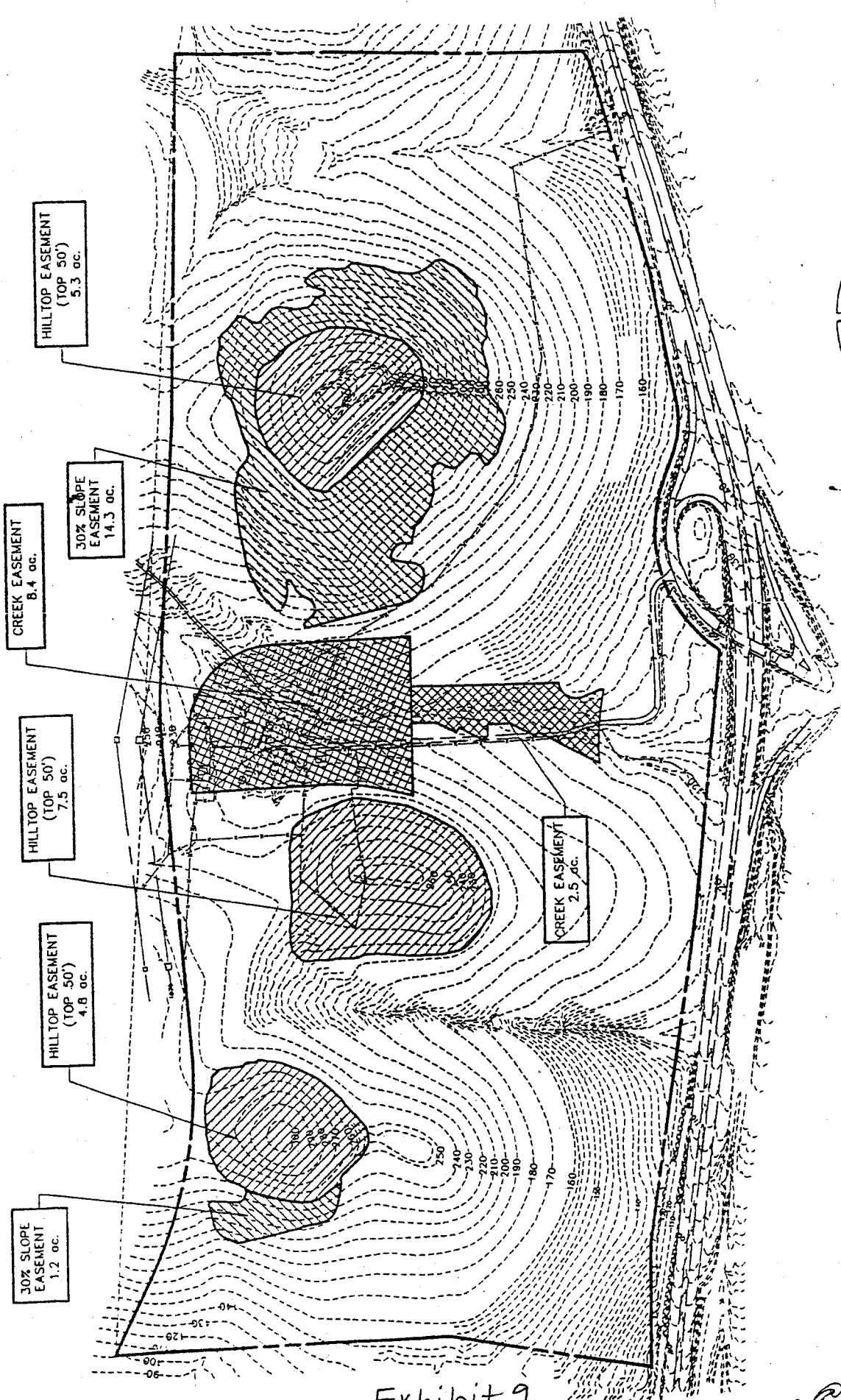


Exhibit 9
(15 of 16)

SCALE: 1" = 500'

EASEMENT	TOTAL ACREAGE
CREEK EASEMENT	10.9 ac.
HILLTOP EASEMENT (TOP 50')	19.8 ac.
30% SLOPE EASEMENT	15.5 ac.

RECEIVED
SEP - 3 1999
City of Morro Bay
Public Services Department

OMINI
DESIGN GROUP
ARCHITECTURE
ENGINEERING
PLANNING
SURVEYING

255 PACIFIC STREET
SAN LUIS OBISPO, CALIFORNIA, 93401
PHONE: (805)844-8700
FAX: (805)844-4327

LASZLO DUBAI

EASEMENT EXHIBIT

The Law Office of Marshall E. Ochylski

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979 Osos Street, Suite A5
San Luis Obispo, California 93406

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

Hand Delivery

August 16, 1999

Mr. Greg Fuz
City of Morro Bay
984 Harbor Street
Morro Bay, CA 93442

**Subject: Agreement to Withdraw Extension Request with the California Coastal
Commission for CDP 43-92 Upon Approval of Extension of PM 04-92
(Vesting)
Morro Bay, California**

Per our conversations, Tri W Enterprises, Inc. agrees that with the approval of the requested one year extension of the above-reference *Vesting Tentative Parcel Map* in accordance with the changes indicated in the City's Staff Report that Tri W will withdraw its pending application with the California Coastal Commission for extension of *CDP 43-92*.

Please note that this letter does not affect any tolling issues relating to any delays that may be attributable to the City and which may establish additional extensions of time if the City were to deny this extension request.

If you have any questions, or require any additional information, please contact me directly. I look forward to your continued cooperation in bring this process to a successful conclusion.

Sincerely,



Marshall E. Ochylski,
Attorney at Law

MEO/lpp

cc: Tri W Enterprises, Inc.

Exhibit 9
(16 of 16)

The Law Office of Marshall E. Ochylski

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RECEIVED

OCT 20 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 19, 1999

Steve Guiney
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

**Subject: Extension of PM 04-92 (Vesting)/CDP 43-92/CUP 03-88 (A Portion of Precise Plan)
Morro Bay, California**

Per our telephone conversation, I am also enclosing copies of the Parcel Map that was extended by the City of Morro Bay and a drawing illustrating the extent of the required offers of dedication for Open Space Easements.

The remainder of this letter is a substantive response to the possible appeal to the Coastal Commission of the extension of *Parcel Map 04-92 (Vesting)* granted by the City of Morro Bay on September 27, 1999.

The request for extension of the Map was based upon the desire of Tri W Enterprises, Inc. of Santa Maria to work closely with the City of Morro Bay to develop a plan for the site which meets the multiple needs of the City, its residents, and the property owner.

The rationale for this request is most simply stated in the specific language of the Vesting Tentative Map statute adopted by the California Legislature.

"The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency"

(California Government Code § 66498.9(b).)

This expression of legislative intent is directly applicable to the extension of *Parcel Map 04-92* granted by the Planning Commission. With this extension, Tri W has the opportunity to work with the City with the assurance that zoning will be in place to

EXHIBIT NO. 9 (1 of 6)
APPLICATION NO.
A-3-99-082 correspondence

implement the results of that process, which lessens the risk and increases the incentive to all parties to work together to develop a comprehensive plan for the site.

As you are aware, the criteria for appeal to the Coastal Commission are enumerated in *Public Resources Code § 30603*.

Under that Public Resources Code section, the grounds for appeal are limited by (b) (1), which states:

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

(Public Resources Code § 30603(b)(1).)

No such allegations were raised during the hearings held before the Planning Commission nor were any raised in the appeal hearing before the City Council. It would be spurious for an appellant to attempt to raise any such allegations after the conclusion of the City of Morro Bay's approval process.

It should also be reiterated that the action by the City of Morro Bay only extends the life of the Parcel Map. Any future development proposal for the property still requires full discretionary approval. Impacts of any future development proposed for the property will be addressed during the Conditional Use Permit/Coastal Development Permit approval process.

For the above reasons, we respectfully request that the Coastal Commission not accept an appeal of the above-referenced Parcel Map extension.

If you have any questions, or require additional information, please contact me directly. I look forward to your continued cooperation in bringing this matter to a prompt conclusion.

Sincerely,



Marshall E. Ochylski,
Attorney at Law

MEO/lpp

cc: Tri W Enterprises, Inc.
City of Morro Bay

EXHIBIT NO. 9 (2 of 6)
APPLICATION NO.
A-3-99-082

RECEIVED

October 19, 1999

OCT 20 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Steve Guiney
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

LANDPLANS
INCORPORATED

LANDSCAPE ARCHITECTURE
LAND/SITE PLANNING
PROJECT REPRESENTATION

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E-MAIL: lppinc@aol.com
Marshall E. Ochylski, C1862

**Subject: Coastal Development Permit #A-4-MRB-89-134,
Williams Morro Bay Creekside Center
Morro Bay, California**

Per our telephone conversation, Tri W Enterprises, Inc. is requesting that action on its request to extend the above-referenced **Coastal Development Permit** be deferred until any possible appeal to the Coastal Commission of the extension of **Parcel Map PM 04-92 (Vesting)** by the City of Morro Bay is resolved.

If you have any questions, or require any additional information, please contact me directly.

Thank you for your continuing cooperation in this matter.

Sincerely,



Marshall E. Ochylski, C1862

MEO/lpp

cc: Tri W Enterprises, Inc.

EXHIBIT NO. 9 (3 of 6)
APPLICATION NO.
A-3-99-082

The Law Office of Marshall E. Ochylski

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Transmittal by Facsimile
Original to Follow by Mail

November 5, 1999

Steve Guiney
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

Subject: Extension of PM 04-92 (Vesting)/CDP 43-92/CUP 03-88 (A Portion of Precise Plan)
Morro Bay, California

I am writing to reiterate my concerns regarding the appeal of the above-referenced Vesting Tentative Parcel Map extension that has been filed with the Coastal Commission.

As I previously discussed, the criteria for appeal to the Coastal Commission are enumerated in *Public Resources Code § 30603*.

Under that Public Resources Code section, the grounds for appeal are limited by (b) (1), which states:

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

(Public Resources Code § 30603(b)(1).)

No such allegations were raised during the hearings held before the Planning Commission, nor were any raised in the appeal hearing before the City Council, nor do I believe are any raised in the appeal filed with the Coastal Commission. Even if such allegations are now raised, it would be spurious for an appellant to attempt to raise any such allegations after the conclusion of the City of Morro Bay's approval process. A party who is not satisfied with the decision of the City's review and approval process does not have an automatic right to appeal to the Coastal Commission, they still must meet the above requirements for appeal.

EXHIBIT NO. 9 (4 of 6)
APPLICATION NO.
A-3-99-082

Looking at the text of the appeal, there are apparently two possible bases for the appeal, neither of which meets the above-stated requirements.

1. Conformance with the LCP.

The commercial zoning of the property is in full conformance with LCP Amendment 01-93, LU-49, LCP Policy 6.09, and all court orders regarding the implementation of voter approved Measure H.

Measure H was adopted by the voters and implemented in Morro Bay LCP Amendment 01-93. The commercial "use" on the property was sited in accordance with the requirements of Measure H. This implementation was approved by the City Council and Coastal Commission in conformance with all court orders. This extension does nothing to change this implementation of the zoning and therefore it remains in full compliance with the approved LCP.

The appellant appears to be confusing the zoning of the property, which stays in place regardless of the final disposition of the appeal, with the extension of a Tentative Parcel Map.

The extension of the Map by the City of Morro Bay complies with all the requirements of the approved LCP and there is no allegation to the contrary.

2. Extension of the Map.

Under both Chapter 16.10 of the City of Morro Bay Municipal Code and Section 66452.6 of the California Government Code, the City has the power to extend and amend the approved Vesting Tentative Parcel Map. There is no allegation that this extension does not comply with any of the requirements of either of those Sections.

As a condition of the extension the Map, the City will obtain offers of dedication from the property owners for all of the easements required by both the approved Vesting Tentative Parcel Map and the approved CUP/CDP. These offers of dedication will allow the City to obtain these open space easements immediately without the risk of delay. As we discussed, the current agricultural zoning of this land does not provide open space protection for this land. The current zoning allows for intensive agricultural use of the land which includes the possibility of extensive agricultural grading and terracing.

Although an extremely overused phrase, these offers of dedication are truly a "win-win" situation for all parties concerned.

EXHIBIT NO. 9 (5 of 6)
APPLICATION NO.
A-3-99-082

In addition, in order to mitigate any possible concerns about development impacts, the property owners agreed to withdraw their pending applications for extension of the approved CUP/CDP as a condition of this extension. This extension of the approved Vesting Tentative Parcel Map only vests the voter approved zoning currently in place.

The extension of the approved Vesting Tentative Parcel Map complies with all requirements of the Morro Bay Municipal Code and there is no allegation to the contrary.

Since neither of the above meet the Code requirements for an appeal, we respectfully request that the Coastal Commission not accept an appeal of the above-referenced Parcel Map extension since the appellant does not even meet the minimum requirements for a substantial issue determination.

If you have any questions, or require additional information, please contact me directly. I look forward to your continued cooperation in bringing this matter to a prompt conclusion.

Sincerely,



Marshall E. Ochylski,
Attorney at Law

MEO/lpp

cc: Diane Landry, Esq.
Tri W Enterprises, Inc.
City of Morro Bay

EXHIBIT NO. 9 (6 of 6)
APPLICATION NO.
A-3-99-082

