

CALIFORNIA COASTAL COMMISSION

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APPEAL STAFF REPORT**SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING**

Appeal numberA-3-STC-00-041, Arroyo Seco Creek Relocation & Restoration

ApplicantsConopco, Inc. D B A Lipton, Rep. Baker & McKenzie

AppellantsCitizens for Better Planning, Rep: Ed Chun

Local governmentCity of Santa Cruz

Local decisionApproved with conditions (March 14, 2000)

Project location2200 Delaware Avenue, Santa Cruz (APN's 009-111-05, 003-171-18, 003-022-14, 003-032-01, 003-081-01, 003-121-01)

Project descriptionCoastal, Design, and Grading permits for the relocation of Arroyo Seco creek to approximately its original location along the western property line of the approximately 53 acre site known as the Lipton property; partial fill of existing channel, resulting in approximately three (3) foot deep drainage swale; and subsequent establishment of native riparian and wetland species within new channel.

File documentsCity of Santa Cruz Certified Local Coastal Program (LCP), including Land Use Plan (LUP) and Zoning (IP); City of Santa Cruz Coastal Development Permit File 99-200; Phase I Environmental Assessment for *Santa Cruz Metropolitan Transit District Consolidated Facility Site*, September 1995 - Revised October 1995; Final Initial Study/Environmental Assessment for *Santa Cruz Metropolitan Transit District Consolidated Facility*, February 21, 1996; Initial Study for *Santa Cruz Metropolitan Transit District Consolidated Facility*, June 1998.

Staff recommendation ..Substantial Issue; Approval with Conditions

Summary of staff recommendation: This is the substantial issue determination and de novo hearing for appeal number A-3-STC-00-041 (the Commission previously opened and continued the substantial issue hearing for this matter on May 12, 1999). Staff recommends that the Commission find that a substantial issue exists with respect to this project's conformance with the certified City of Santa Cruz Local Coastal Program (LCP) and, after public hearing of the appeal, approve a coastal development permit for



California Coastal Commission
June 15, 2000 Meeting in Santa Barbara

Staff: K. Colin Approved by:

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the project.

There are three separate issues raised through the appeal: (1) the fulfillment of public noticing requirements of the LCP; (2) project piecemealing; and (3) the applicability of LCP policies pertaining to stream alterations, wetlands, setbacks, past degradation of habitat, and the adequacy of proposed restoration efforts.

The City-approved coastal permit provides for the relocation and subsequent restoration of Arroyo Seco creek, approximately 400 feet to the west of its present location. The creek will be relocated to its approximate 1946-1954 location along the western boundary of the Lipton property. The remaining channel would be partially filled and result in a swale approximately three (3) feet deep throughout the entire length of the existing channel alignment. By relocating the creek, approximately 330 feet of the current creek course would be removed from culverts and become "daylighted." Currently, the culvert causes the existing channel to travel in a very "unnatural" alignment, as it travels at a ninety degree angle under the railroad tracks at the north of the project site. The new channel would be excavated at a gentler slope of approximately 0.82 %, vary between 40 to 50 feet in width, and would be constructed in a stepped manner to convey both year-round and winter season flows through primary and overflow channel walls. All railroad tracks and spurs would be removed from the site. Once relocated, restoration of the new channel would begin by the establishment of native plants and riparian vegetation under a proposed resource management plan.

The overall benefit that would be derived from the proposed project is an increased capacity of the Arroyo Seco creek to perform basic stream functions. These include the cycling of nutrients, filtering of contaminants from runoff, gradual absorption release of floodwaters, maintenance of wildlife habitat, recharging ground water, and the maintenance of stream flows to name a few.

The appellant's contend that the project is actually part of the Santa Cruz Metropolitan Transit District's (SCMTD) proposed consolidated operations facility know as the "Metrobase," and as such should be reviewed together with this project. Although the relocation of Arroyo Seco creek would facilitate development of the remainder of the site, no specific development proposal has been approved at this time. The SCMTD holds no legal interest in the property and the City of Santa Cruz has not reviewed, committed to, or approved the "Metrobase" facility. Furthermore, there is no direct physical connection with the proposed project to the "Metrobase" facility. Staff recommends that, for these reasons, no substantial issue is raised by the appeal in this regard.

The appellant's also contend that the local coastal permit should be revoked since public notice for the Zoning Board's hearing incorrectly indicated that the project was not appealable to the Commission. Although an issue is raised in regards to this improper public noticing, the overall effect of this has not resulted in a substantial diminishment of the public's ability to participate in the review of the development proposal, or the opportunity for bringing the item before the Commission. The final decision on the project was made at a second public hearing by the City Council and was properly noticed as appealable. Therefore, staff recommends that no substantial issue is raised in this regard.

In addition, the appellant's contend that nothing presented by the applicant indicates that the stream



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could not be restored in its present site, and actions proposed under the project are insufficient to ensure the future of the relocated stream. In this case, the City did not fulfill all the requirements of the LCP addressing the relocation and restoration of streams such as Arroyo Seco creek. Specifically, the City did not consult with the California Department of Fish and Game (DFG) prior to approval of the project, as required by the LCP. In addition, DFG staff has expressed concerns about certain elements of the project. As such, staff recommends a substantial issue is raised in this regard.

The appellant's also contend that Arroyo Seco creek should be considered a wetland in addition to a stream, and that under such designations the proposed project is not permitted. However, from an ecological perspective streams are qualitatively different from other wetlands and, the existing policies of the LCP and Coastal Act reflect this. The LCP sets forth the circumstances under which stream alterations may take place, and it does not prohibit the alteration of Arroyo Seco creek in this case. Therefore, staff recommends that no substantial issue is raised in this regard.

The appellant's also assert that the LCP required 100-foot setback should be recorded on the deed and that the proposed resource management plan is insufficient to ensure the long-term future of Arroyo Seco creek. The LCP is explicit in stating that any encroachment within the 100-foot setback requires approval of an amendment to the Land Use Plan by the Commission. In this case the City imposed a condition which is inconsistent with this requirement of the LCP. As such, staff recommends that a substantial issue is raised in this regard. In regards to the second assertion, as mentioned above, the City is required to consult with the DFG prior to approving a coastal permit for stream alteration. In light of the fact that the City approved a resource management plan for the relocation and restoration of the creek was done without consultation with the DFG, it is possible that the DFG would have required revisions to the plan. Preliminary feedback from DFG staff indicates that, in fact, modifications to the project would be required by the DFG. Therefore, staff recommends that substantial issue is raised in this regard as well.

The appellant's also contend that the proposed relocation does not conform with the general policies of the LCP in that it does not promote the preservation nor promote the enhancement of riparian or wetlands because the applicant has applied the herbicide "Rodeo" to the creek since at least 1987. Although past degradation of the habitat of Arroyo Seco creek would be inconsistent with the LCP, the subject watercourse has inherent restoration potential regardless if habitat values would have presented themselves in the absence of the application of the herbicide. As such, staff recommends that the past degradation of habitat at this location does not raise a substantial issue in regards to the appeal.

Finally, the coastal zone boundary essentially bisects the project site, with the southern portion remaining in the coastal zone. (See Exhibit D for coastal zone boundary) This substantial issue determination pertains only to those portions of the project within the coastal zone.

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Exhibit K: Appellant's Aerial Photography Chronology of Arroyo Seco Creek	
Exhibit L: Appellant's Photo's of Arroyo Seco Creek	
Exhibit M: LCP map EQ-11 (Streams)	
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1. Appellants' Contentions

Appeal of Citizens for Better Planning

The appellants contend in relevant part (see Exhibit B for the complete appeal document):



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The appellant's assert that the permit must not be approved as it was obtained in violation of the procedural requirements of the local coastal program and the Act, based upon the following contentions:

- a) *The permit was issued in violation of CCR Section 13302 (d) and City of Santa Cruz Municipal Code Section 24.04.100.* These sections require notice by first class mail to all people, property owners and tenants of any real property located within 100 feet, not including roads, of the proposed request for the coastal permit. They also provide that the applicant is to supply a list of names and all those served. This list is to be maintained by the planning department. Allegations: (1) no proof that such mailing was done, no list accomplished, and therefore noticing requirements have not been met; (2) even if proof exists the first alleged postcards incorrectly indicates that the project is not appealable, and is therefore in direct violation of the LCP; (3) where there is insufficient notice the Commission shall revoke the permit (Coastal Commission Regulations, CCR Title 14, Section 13054(e)).
- b) *The permit was issued in violation of CCR Section 13301 (b), that provides, in pertinent part, "...that no individual development activity may be commenced or initiated in any way until the overall development has been reviewed pursuant to the provisions of section 13315 – 13325."* Thus, if the permit issued is part of a larger development, the permit should either (1) be revoked or not certified until there is sufficient review of the larger project or (2) any work pursuant to the permit must be stayed until the entire development is reviewed. In this case, the applicant claims that the project of the stream relocation is a project that has no connection to any other project. The Santa Cruz Metropolitan Transit District (SCMTD) has designated the property upon which the stream flows as their only site for the Metrobase since 1995. The SCMTD has negotiated for the land, conducted studies on the property, has a site plan for the property, and even issued a negative declaration.

The appellant's also assert that the permit must not be approved as it fails to conform with the LCP or the Act, based upon the following contentions:

- a) *The proposed relocation does not conform with the general policies of the LCP in that it does not promote the preservation nor promote the enhancement of the quality of riparian or wetlands. (EQ 4, EQ 4.2, EQ 4.2.4)* It is the applicant's own malfeasance which has caused the degraded condition of the stream area. In a report prepared by Terratech, Inc. concerning their Phase I and limited Phase II environmental site assessment for SCMTD in June 1995, "...on May 19, we observed a truck spraying the drainage. The operator of the truck informed us that the was spraying Rodeo, for weed control." The applicant's representative, on May 14, 2000, confirmed that this has been occurring since at least 1987. According to the "Unclean Hands" doctrine the applicant should be refused relief (i.e. permit).
- c) *The watercourse is a wetland and a stream as defined in and protected by the LCP and thus the subject project is not permitted under EQ 4.2.6, EQ 4.2.4, EQ 4.2.2.3 or the Act.* In the present case, Lipton, as the applicant would have the burden of proof to establish that the area is not a wetland. Consequently, the area should be deemed by the Commission, a wetland.



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The project does not promote preservation or improvement of the existing wetland and stream; seeks to destroy it. The area should be considered ESHA and by doing so the Act does not permit the habitat values of such areas to be destroyed and recreated in another location. LCP Policy EQ 4.2.6 and EQ 4.2.4 require preservation and improvement of existing habitat. Furthermore, there is no reason given why relocation is necessary; and there is nothing presented by the applicant that indicated that the stream could not be located in its present site. As such, because there is a less environmentally damaging alternative the project is not allowed under PRC Section 30233.

- d) *The resource management plan and the conditions imposed on the permit are insufficient to ensure the future of the relocated stream pursuant to EQ 4.2.2.* The 100-foot setback required by EQ 4.2.2 should be imposed on the permit, recorded on the deed, be firm, and subject to no reduction.

2. Local Government Action

On February 10, 2000 the Zoning Board held a public hearing for the proposed development that ultimately resulted in the Board's failure to certify the Mitigated Negative Declaration, and the denial of grading, design, and coastal permits for the project. This decision of the Zoning Board resulted in an appeal by the applicant to the City Council. On March 7, 2000 the City Council upheld the appeal, certified the Mitigated Negative Declaration, and approved the grading, design, and coastal permits for the project.

3. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility.

This project is appealable because of its location within 100 feet of a stream. The applicant's representative, though, has contested the project's appealability and asserts that the Commission does not have appellate jurisdiction over the proposed project because (1) under CCR § 13357(a), "channelized streams not having significant habitat value should not be considered" as a stream subject to appellate jurisdiction; and (2) neither the Lipton property nor the area surrounding Arroyo Seco stream is shown as an appeal area on the jurisdictional appeal map certified by the Commission. (See Exhibit G for full text of May 1, 2000 letter).



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Is Arroyo Seco a Stream for purposes of §30603(a)(2)?

With respect to the Applicant's first claim, CCR §13577(1)(a) provides further guidance for the Commission in their interpretation of Coastal Act § 30603(a)(2), and states in full,

For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other provision of the Coastal Act of 1976, the precise boundaries of the jurisdictional areas described therein shall be determined using the following criteria:

(a) Streams. Measure 100 feet landward from the top of the bank of any stream mapped by USGS on the 7.5 minute quadrangle series, or identified in a local coastal program. The bank of a stream shall be defined as the watershed and relatively permanent elevation or acclivity at the outer line of the stream channel which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the water within the bed and to preserve the course of the stream. In areas where a stream has no discernable bank, the boundary shall be measured from the line closest to the stream where riparian vegetation is permanently established. For purposes of this section, channelized streams having no significant habitat value should not be considered.

There is little doubt that the Arroyo Seco watercourse should be considered a stream for purposes of the Commission's appeal jurisdiction under Coastal Act Section 30603(a)(2).

First and foremost, the Commission and the City of Santa Cruz have previously recognized the importance of the Arroyo Seco stream course as a coastal resource of some importance. Apart from appearing on the most current USGS 7.5 quadrangle, Arroyo Seco is shown on LCP maps EQ-11 (Streams) and LCP-8 (Coastal Commission Review and Authority) of the City of Santa Cruz certified Local Coastal Program (LCP). Thus, in 1992 and 1994 the Commission certified LCP maps that specifically identify Arroyo Seco for purposes of the stream protection policies of the LCP and for purposes of Commission appeal jurisdiction (see Exhibits M & N). As discussed later in these findings, Arroyo Seco is also specifically referenced in LCP policy L3.4, which concerns the development of management plans for resource protection and enhancement. More recently, the City of Santa Cruz, in collaboration with the Commission, produced a map of urban stream corridors for its Model Urban Runoff Program map titled *City of Santa Cruz-Urban Runoff Program-Watershed Boundaries and Land Use Study* (September 1997). The purpose of this map is to identify those locations, including streams, within the urban area of the City that are important to protect and enhance as component's of the City's urban watershed.

Second, Arroyo Seco creek is not a watercourse that is devoid of habitat values. Although the project site certainly contains degraded habitat values, environmental documents published to date have recognized the presence of such values. As discussed in greater detail in the findings below, an EIP biologist concluded that suitable habitat for certain sensitive species currently was present at the project site. The City adopted Mitigated Negative Declaration summarizes this conclusion, and addresses habitat values of the project site, by stating:

[..] in late July 1999, an EIP Associates biologist concluded that certain sensitive species could be present at least at certain times of the year. For example, vegetation (cattails, bullrushes,



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sedges) suitable to provide breeding habitat for California Red-legged frogs was observed in the existing channel. Water in the channel contained aquatic insects, including diving beetles. Occasional occurrences of algal growth were observed. In July 1995, Biosystems observed larvae of the common Pacific chorus frog (treefrog) in the channel. The amount of disturbance on the site (limited to annual disking of upland vegetation) and the surrounding land uses would not necessarily preclude that suitable habitat exists at some times for the California Red-legged frog, burrowing owl, and Santa Cruz tarplant.

Also, the City approved resource management plan, acknowledges the presence of lower quality habitat in the watercourse:

There is no riparian vegetation in the Channel or surrounding area. Vegetation in the Channel is of low quality in terms of distribution, diversity, and coverage. Plant species within the Channel include tall flatsedge (Cyperus eragrostis), bullrush (Scirpus americanus), cattail (Typha sp.), and rabbitfoot grass (Polypogon monspeliensis). [...] Most of the drainage bank is bare ground and existing vegetation is patchily distributed.¹

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

Third, although the Applicant has just begun a formal consultation with the California Department of Fish and Game concerning the project, preliminary discussions with Fish and Game staff indicate that that agency will be requiring a stream alteration agreement to proceed with any work on Arroyo Seco, rather than granting an exemption from Fish and Game requirements.

Fourth, the fact that Arroyo Seco has habitat values (previously recognized and mapped) as well as significant habitat restoration potential, distinguishes it from the "channelized stream[s] having no significant habitat value" that are excluded from the Commission's appeal jurisdiction by CCR §13577(1)(a). As discussed later in these findings, there is evidence that the natural channel (or perhaps sheet flow) across the project site has been manipulated by humans, including relocation and deepening. USGS maps from 1902 to 1946 do not show a watercourse upon the marine terrace before this time, while a 1954 USGS map illustrates a stream for the first time. Appellants, though, have submitted evidence showing stream course as early as 1928, though no direct evidence has been presented as to the presence of streams across the terrace prior to 1928. It may be that Arroyo Seco's channel crossed the marine terrace as sheet flow prior to this time, while historical aerial photos suggest that agricultural land uses in the area may have redirected this flow into a more narrow watercourse. Nonetheless, this human manipulation falls short of the deliberate and unnatural alteration that is normally associated with flood control projects where natural stream courses are converted to concrete channels surrounded by urban development. (The flood control channelization of the Los Angeles River is an example of this type of alteration.) Such channelized streams can truly be said to have "no significant habitat value" or restoration potential to speak of, in light of the unnatural, engineered channel and urban development that typically encroaches upon them.

¹ Resource Management Plan for Channel Relocation Project, dated August 16, 1999.



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In contrast, Arroyo Seco is not a concrete channel, nor is it surrounded by urban development that would preclude habitat restoration and enhancement. Rather, it does have habitat values, natural banks without hardened structures, and significant restoration potential. In fact, if herbicides and disking along the stream were discontinued, a natural riparian habitat would likely reestablish itself within a few years. To be sure, if the Arroyo Seco segment on the project site did qualify for exemption from the Commission's appeal jurisdiction under CCR §13577(1)(a), it would set up a perverse incentive whereby important stream resources could be removed from the Commission's oversight authority simply by redirecting the flow through incremental grading, and applying herbicides to remove riparian vegetation. This would not be consistent with the Coastal Act section 30231, which requires that the biological productivity and quality of coastal streams be maintained and, where feasible, restored; or with the broad legislative mandate of Section 30001.5(a), which also calls for the enhancement and restoration of natural resources in the coastal zone.

Finally, although the habitat values of that portion of Arroyo Seco creek in the Coastal Zone and on the project site are degraded, it is important to at least note that in its entirety (i.e., headwaters to the Pacific Ocean), the Arroyo Seco stream corridor provides significant habitat values and interconnected stream functions. Adjacent creek reaches to both the north and south of the project site contain significant riparian and in-stream habitat values. In particular, Arroyo Seco creek's northern half traversing through the coastal foothills contains substantially higher habitat values, with less encroachment of urban land uses. The appellant's have submitted photographs that document portions of the stream to the north and south of the project site, of which are located within Exhibit L. Critical functions provided by Arroyo Seco creek occur through the movement of water and other materials, energy, and organisms over space and time. These functions include the cycling of nutrients, filtering of contaminants from runoff, absorbing and gradually releasing floodwaters, maintaining wildlife habitat, recharging ground water, and the maintenance of stream flows to name a few. Alteration of a single portion of the creek will have a direct impact on these functions.

In light of all the above, the Commission finds that the phrase "channelized streams without significant habitat values" does not apply in this case, and that the reach of Arroyo Seco creek on the project site does constitute a stream for purposes of appellate jurisdiction under Coastal Act §30603(a)(2) and CCR § 13577 (a).

Do Streams not shown on the post-LCP certification map establish §30603(a)(2) Appeal Jurisdiction?

Although the applicant's representative is correct in stating that the adopted post-LCP certification map does not show Commission appellate jurisdiction on the subject site, the Commission's appellate jurisdiction is not limited to only those areas actually delineated on the adopted post-LCP certification map. Coastal Act § 30603(a)(2) provides the standard for determining appellate jurisdiction in this case and states in full:

- (a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:*



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- (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

CCR § 13576 (a) (Map(s) of Areas of Commission Permit and Appeal Jurisdiction) speaks to the process of creating post-LCP certification maps and states in full:

In conjunction with final Local Coastal Program certification or the delegation of coastal development permit authority pursuant to Public Resources Code Section 30600.5, whichever occurs first, the Commission shall, after public hearing, adopt a map or maps of the coastal zone of the affected jurisdiction that portrays the areas where the Commission retains permit authority pursuant to Public Resources Code Sections 30603(a)(1) and (a)(2), or 30600.5 (d). These maps shall be drawn based on the criteria for permit and appeal boundary determinations, set forth in Section 13577 below, and will serve as the official maps of the Commission's permit and appeal jurisdiction. The Commission, in consultation with the local government, shall update these maps from time to time, where changes occur in the conditions on which the adopted maps were based, or where it can be shown that the location of the mapped boundary does not adequately reflect the intended boundary criteria. Revisions of the adopted maps shall be based on precise boundary determinations made using the criteria set forth in Section 13577. The revised maps shall be filed with the affected jurisdiction within 30 days of adoption by the Commission. In addition, each adopted map depicting the permit and appeal jurisdiction shall include the following statement:

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit and appeal jurisdiction pursuant to P.R.C. § 30519(b), and §30603(a)(1) and (a)(2). In addition, developments may also be appealable pursuant to P.R.C. §30603(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plat may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission (emphasis added).

As is made clear by this regulation, Coastal Act Section 30603 establishes the Commission's appeal jurisdiction, and the certification maps may not necessarily represent all resources, as they exist on the ground, that would establish appeal jurisdiction under section 30603. The City of Santa Cruz adopted post-LCP certification map includes the above second paragraph of CCR § 13576 (a) and so it is clear that these specific maps may not show all relevant bases for appeal jurisdiction

As discussed in the section above, although the adopted post-LCP certification map does not show Commission appellate jurisdiction on the subject site, the Arroyo Seco stream corridor does qualify as stream for purposes of Section 30603 and thus does establish appeal jurisdiction for the Commission. Moreover, as mentioned, the Commission has previously certified LCP maps LCP-8 (Coastal Commission Review and Authority) and EQ-11 (Streams) that show Arroyo Seco as a stream resource



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(See Exhibits M & N for maps). Map LCP-8 was adopted during the Commission's review of Exclusion Order E-94-1, and EQ-11 was adopted through the Commission's certification of the City of Santa Cruz LCP in October of 1992. In reviewing these maps EQ-11 and LCP-8 the Commission specifically recognized the resource values of those portions of Arroyo Seco creek within the coastal zone. While not updates of the post-certification map, these actions do effectively meet the intent of the Commission's regulations that resource maps be updated from time to time based on field observations. Finally, consistent with these Commission actions, Commission staff has previously prepared a draft revision of the current adopted-post LCP certification map which, while not yet adopted, does include all of Arroyo Seco creek within the coastal zone as a stream establishing appeal jurisdiction. Therefore, the Commission finds that the Applicant's claim about the non-appearance of the Arroyo Seco stream corridor on the adopted post-LCP certification maps is without merit.

Grounds for Appeal

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. In this case the project is not located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone and therefore does not require the specific finding that the project is in conformity with the public access and recreation policies of Chapter 3.

4. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a **substantial issue exists** with respect to one of the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

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

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

***Resolution To Find Substantial Issue.** The Commission hereby finds that Appeal Number A-3-*



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STC-00-041 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

5. Staff Recommendation on Coastal Development Permit

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

I move that the Commission approve Coastal Development Permit Number A-3-STC-00-041 subject to the conditions below and that the Commission adopt the following resolution:

***Approval with Conditions.** The Commission hereby grants a permit for the proposed development, as modified by the conditions below, on the grounds that the modified development will be in conformance with the provisions of the City of Santa Cruz certified Local Coastal Program (LCP), is not located between the sea and the first public road nearest the shoreline, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).*

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

6. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its



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development, subject to 24-hour advance notice.

6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Final Project Plans and Resource Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval project plans and a revised resource management plan that shows the incorporation of recommendations by the California Department of Fish and Game, as described by LCP Policy EQ 2.3.1.9, or evidence that the California Department of Fish and Game deems the project as approved by the City as acceptable, for APNs 009-111-05, 003-171-18, 003-022-14, 003-032-01, 003-081-01, 003-121-01.
2. **Required Setback.** Approval of coastal permit A-3-STC-00-041 does not allow any future encroachment within 100 feet of the centerline of the restored stream. As required by LCP Policy 4.2.2.3, any development proposal on the property in the future which proposes development within the 100 foot setback shall be required to submit a resource management plan, which must be approved by the Coastal Commission as an amendment to the Land Use Plan.
3. **City of Santa Cruz Conditions.** With the exception of Condition #19 which is replaced by Special Condition 2 above, and Condition #15 which is replaced by Special Condition 1 above, all conditions attached to the local approval of the project that are authorized under the City's general police power all remain in effect. (City Council Decision on Application 99-200; See Exhibit A).

7. Recommended Findings and Declarations

The Commission finds and declares as follows:

7.1 Project Background

Site: The site at 2200 Delaware Avenue is an assemblage of six parcels totaling approximately 53 acres, that is bisected by the centerline of the creek corridor of the Arroyo Seco Drainage Basin. The western half of the site is developed with the Lipton plant and associated parking lots, while the eastern half totaling approximately 20 acres remains vacant. The Arroyo Seco creek corridor flows on an intermittent basis (including summer months) and is home to both aquatic wildlife and native freshwater plants. The creek corridor on this site is currently highly degraded, but contains the potential for increased habitat values and also the creation of an attractive "greenway" in the midst of a mostly built out urban environment. The balance of the area outside of the creek channel consists of native and nonnative grass



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species, along with the invasive and weedy species common to disturbed sites. See Exhibit H for photographs of select creek reaches.

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

The creek reach extending across the Lipton property and the adjacent property across the street at 2155 Delaware is a major portion of the daylighted extent of the creek. As discussed in an earlier section of this recommendation, this portion of the creek contains habitat values. Habitat values at the Lipton site are degraded due to the disking and regular herbicide applications. On the Lipton property, the constructed channel ranges in size from 15 – 40 feet wide (at the top of the bank) and 6 – 10 feet deep with an estimated ten year storm flow of 200 cubic feet per second. The Coastal Zone Boundary crosses the Lipton site on the inland side of Delaware Avenue about half way between the railroad tracks and Delaware Avenue. See Exhibit D attached.

Surrounding Development: The vacant project site is located within an industrial area at the west-end of Santa Cruz. To the west of Arroyo Seco creek is the Lipton plant, while to the east are various industrial offices and a live-work development. North, the creek travels through a culvert under existing railroad tracks, and to the south is Delaware Avenue, across which other various other industrial office buildings are located.

Site History: The approximate western half of the site contains the Lipton plant and associated structures, while the eastern half of the site has essentially remained undeveloped according to the available historical record. The site was in agricultural use from at least 1928 through about 1970.² In summary, according to the City certified mitigated negative declaration, the historical alignment of the creek at the project site is as follows,

The channel was originally constructed between 1946 and 1954. Historical maps from 1902 to 1946 indicate that no channel existed on the site before this time. Evidence suggests that intermittent flow of the Arroyo Seco drainage north of the site probably crossed the site as sheet flow prior to construction of the channel. The alignment was moved to the east during the construction of the Lipton plant in the early 1970s to accommodate the construction of the southern railroad spur serving the Lipton plant. This realignment of the channel was

² Phase I environmental assessment by Terratech dated June 5, 1998.



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intended, at least in part, to facilitate the potential expansion of the Lipton plant. This alignment was similar to the existing alignment; however, the northern portion of the channel was adjusted to the east in 1976 when the 300-foot culvert along the northern rail spur was constructed.

Although the City made findings that the channel was originally constructed on the project site sometime between 1946 and 1954, the appellant's have submitted copies of aerial photos that rebut such findings (See Exhibit K for aerial photos). These aerial photographs date back to 1928 and all show a watercourse with a channel flowing across the marine terrace. However, as discussed, no direct evidence has been presented as to the presence of streams across the terrace prior to 1928. Arroyo Seco's channel north of the site may have crossed marine terrace as sheet flow prior to construction of the channel before this time, while historical aerial photos suggest that agricultural land uses in the area may have redirected the flow of the Arroyo Seco into a more narrow watercourse.

As discussed in the jurisdiction findings, the habitat values of the creek at this site are degraded, but not insignificant (see Section 4 above, discussion incorporated herein by reference). According to the applicant's representative the herbicide "Rodeo" has been applied to the subject watercourse yearly since at least 1987 in order to abate weeds under the requirements of the Santa Cruz Fire Department.

7.2 Project Description

The proposed project would relocate the existing Arroyo Seco creek, approximately 400 feet to the west, to its approximate 1928 location along the western property line. The existing channel would be partially filled and result in a swale approximately three (3) feet deep throughout the entire length of the existing channel alignment. By relocating the creek, approximately 330 feet of the current creek course would be removed from culverts and become "daylighted." Currently, the culvert causes the existing channel to travel in a very "unnatural" alignment, as it travels at a ninety degree angle under the railroad tracks at the north of the site. The result of relocating the creek would be an alignment more natural and consistent with creek segments to the north and south of the site.

In addition, the grade and depth of the existing channel are also in an unnatural state. The existing channel currently conveys flows at a steep gradient causing the acceleration of flows, while the depth of the channel currently extends all the way to bedrock. Overall, the unnatural alignment, depth, and grade has resulted in the decreased capacity of the Arroyo Seco creek to perform basic stream functions. As mentioned, these functions include the cycling of nutrients, filtering of contaminants from runoff, gradual absorption release of floodwaters, maintenance of wildlife habitat, recharging ground water, and the maintenance of stream flows to name a few.

The new channel would be excavated at a gentler slop angle of approximately 0.82 %, vary between 40 to 50 feet in width, and would be constructed in a stepped manner to covey both year-round and winter season flows through primary and overflow channel walls. Additionally, all railroad tracks and spurs would be removed from the site. Once relocated, restoration of the new channel would begin by the



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establishment of native plants and riparian vegetation under a proposed resource management plan.

See Exhibit E for proposed project plans.

8. Substantial Issue Findings

Analysis of Consistency with LCP

As discussed above, the appellant's contend that the project, as approved by the City, is not consistent with the certified LCP. This includes allegations that the project was not duly processed under the procedural requirements of the LCP and Commission Regulations; that the project is tied to a larger project, and therefore represents project piecemealing that is not allowed under the Commission's regulations; and finally that the project violates the ESHA policies of the Coastal Act and LCP.

8.1 Procedural Requirements

The appellant's assert that the coastal permit approval obtained by the applicant from the City of Santa Cruz should be revoked because it was received in violation of the procedural requirements of both the LCP and the Commission's Regulations. The appellant's assertion hinges upon the allegation that (1) no list of names of those served with public notice exists; (2) there exists no proof that those parties required to receive notice prior to public hearing were notified; (3) and even if proof exists the notice incorrectly indicated that the project was not appealable.

Implementation Zoning Ordinance Applicable Regulations

IP Section 24.04.100 of the LCP states in relevant part:

When a hearing is required, notice shall be given not less than ten (10) calendar days prior to said public hearing.

1. *Notice shall be given by publication in a newspaper of general circulation, posting on the site by the applicant or his/her representative, and notification by first class mail. All means of notice shall include:*

- a) *The case number assigned;*
- b) *The time, place, and date of the hearing;*
- c) *A brief description of the matter to be considered and permits required;*
- d) *A brief description of the property involved;*
- e) *A brief description of the general procedure concerning submission of public comments;*
- f) *A statement whether the development is within the Coastal Zone;*
- g) *The date of the filing of the application, and the name of the applicant;*
- h) *The procedure for appealing coastal permits, if applicable.*



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2. *Notification by first class mail shall be made to the following:*
 - a) *Owner or authorized agent'*
 - b) *All property owners and tenants within one hundred feet of the periphery of the project site; applicant shall provide appropriate mailing labels to the planning department;*
 - c) *District Office of Coastal Commission, for coastal permits only.*

City Action

The City of Santa Cruz held two separate public hearings on the proposed development prior to the Commission receiving the subject appeal. On February 10, 2000 the Zoning Board held a public hearing on the proposal which ultimately resulted in the Board's failure to adopt the proposed mitigated negative declaration and the denial of grading, design, and coastal permits. The second and final public hearing occurred at the City Council in the form of an appeal of the Zoning Board's denial of the project, of which resulted in the upholding of the appeal, adoption of the mitigated negative declaration, and the Council's approval of the grading, design, and coastal permits. The City has provided Commission staff with noticing materials used for both of these hearings.

Substantial Issue Determination on Procedural Requirements

The appellant's contend that, according to CCR Section 13054(e), the local coastal permit should be revoked since public notice for the Zoning Board's hearing incorrectly indicated that the project was not appealable to the Commission. The grounds for this contention are based upon the allegation that the public noticing requirements of IP Section 24.04.100 of the LCP and Section 13302 (d) of the Commission's Regulations were not met.

Public noticing materials provided by the City for the February 10, 2000 Zoning Board meeting includes a copy of the public meeting notification postcard sent and newspaper advertisement, a list of one-hundred fifty (150) property owners within 100 feet of the subject site, and a sign-in sheet identifying interested parties who attended the Board's meeting of that day. The public noticing materials for this hearing fulfill the requirements of the LCP except that they incorrectly state that the project is not appealable to the California Coastal Commission.

Public noticing materials provided by the City for the March 14, 2000 City Council meeting also includes a copy of the public notification postcard sent and newspaper advertisement, the same list of property owners within 100 feet of the subject site, as well as the list of persons who spoke at the hearing. The public noticing materials for this hearing fulfill all the requirements of the LCP and correctly state that the project is appealable to the California Coastal Commission.

As mentioned, the City's first public hearing (Zoning Board) for the project was incorrectly noticed in that it failed to indicate that the project was appealable to the Coastal Commission. Prior to the Zoning Board's hearing, Commission staff sent written correspondence on February 9, 2000 to the City indicating this error; and also verbally indicated to the City that it would be inappropriate for the City to



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act on the item at the February 10, 2000 hearing, given this error.³ (See Exhibit J for full text of 2/9/00 memo) Instead, the City elected to acknowledge verbally during City staff's presentation of the item at the meeting that it was in fact appealable to the Commission, rather than require re-noticing of the project prior to action by the City. As discussed above, the outcome of this hearing resulted in the denial of the project by the Zoning Board and was not the final action taken on the project by the City. However, the fact that it was improperly noticed does present an issue in terms of the project's consistency with the LCP. Nonetheless, this is not a substantial issue because based upon evidence submitted by the City, the final action taken by the City Council on the project was duly noticed in that it fulfilled all the information of IP Section 24.04.100 (1) (a) through (h) of the LCP. In addition, the improper Zoning Board notice has not resulted in a substantial diminishment of the public's ability to participate in the review of the development proposal, or the opportunity for bringing the item before the Commission. As discussed, person's wishing to provide their input into the public review process had opportunities to participate at two separate local public hearings, regardless of the Commission appeal status stated on published notices. In this case the first public hearing by the Zoning Board on the proposal resulted in the denial of the project and the applicant appealed this decision to the City Council, of which ultimately resulted in an upholding of the appeal and approval of the project. This final decision by the City was properly noticed as appealable and as such the practical effect of public's ability to bring the project before Commission has not been reduced since the subject appeal has in fact been brought before the Commission. **Therefore, the Commission finds that the appeal raises no substantial issue in regards to insufficient public notice.**

The appellants also reference CCR Section 13302 (d) for alleged noticing inconsistency. However, in this case the LCP and public access and recreation policies of the Coastal Act are the standard of review and not the Commission's Regulations. **Therefore, the Commission finds that are no grounds with which to base the appeal in regards to alleged inconsistencies with CCR section 13302 (d) since it is not the standard of review, and as such no substantial issue is raised in this regard.**

The appellant's also contend that there is no proof that the noticing requirements to be made by first class mail were met. As discussed, the City has provided Commission staff with a list of property owners within 100 feet of the project, and in doing so has rebutted the appellant's allegation that the list was never submitted. In addition to the allegation that the required mailing list was never submitted, the appellants contend that there is no proof that the actual mailing was done. Although not explicitly stated, the Commission assumes that the appellants are inferring that the City did not send all first class mailing notices by certified mail in order to obtain written confirmation of delivery. This would be only the practical means by which the City could prove that each notice was received by the required recipients, however, the LCP does not require that public notice provided by first class mail include the provision of certified mail. **Therefore, the Commission finds that the appeal does not raise a substantial issue in regards to the allegation that there exists no proof that the required parties were duly noticed prior to public hearing according to the requirement of the LCP.**

8.2 Piecemealed Project

³ February 9, 2000 Telephone conversation between Patrick Murphy (City Planner) and Kevin Colin (CCC Planner).



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Appellants assert that the project is actually part of a larger development, and as such, should be reviewed with this development as required by Section 13301 (b) of the Commission's Regulations. This section states:

Where any proposed activity involves more than one action constituting a development under Public Resources Code, Section 30106, the sum of such actions may be incorporated into one coastal development permit application and into one coastal development permit of notification requirements of Section 13315; provided, however, that no individual development may be commenced or initiated in any way until the overall development has been reviewed pursuant to the provisions of Sections 13315-13325.

The additional project that the appellants assert should be included for review alongside the proposed creek relocation and restoration project is the Santa Cruz Metropolitan Transit District's (SCMTD) proposed consolidated operations facility known as the "Metrobase". The SCMTD has considered acquiring the undeveloped portion of the Lipton property for use as the "Metrobase."

Substantial Issue Determination on Piecemealed Project

First, the Commission's regulations are not the standard of review in appeals of local actions. Nevertheless, there is still no issue raised by this piecemealing claim. Although the relocation of Arroyo Seco creek would facilitate development of the remainder of the site, no specific development proposal has been approved at this time. Neither the City of Santa Cruz nor Lipton nor the SCMTD has committed to the development of the "Metrobase" facility. The SCMTD holds no legal interest in the property and the City of Santa Cruz has not reviewed, committed to, or approved the "Metrobase" facility. Furthermore, there is no direct physical connection with the proposed project to the "Metrobase" facility. **Therefore, the Commission therefore finds there are no grounds for appeal in regards to alleged inconsistencies with CCR § 13301(b) and that no substantial issue is raised in this regard.**

8.3 ESHA and Conservation Regulations

The appellants assert that the coastal permit approval obtained by the applicant from the City of Santa Cruz should be revoked because it was received in violation of the ESHA policies of the Coastal Act and the conservation regulation of the City's LCP. Specifically, the appellant's contend that: (1) there was nothing presented by the applicant which indicated that the stream could not be restored in its present site, and that the resource management plan and the conditions imposed on the permit are insufficient to ensure the future of the relocated stream; (2) the proposed relocation does not conform with the general policies of the LCP in that it does not promote the preservation nor promote the enhancement of the quality of riparian areas or wetlands. (EQ 4, EQ 4.2, EQ 4.2.4); (3) the water course is a wetland and a stream as defined in and protected by the LCP and thus the subject project is not permitted under EQ 4.2.6, EQ 4.2.4, EQ 4.2.2.3 or the Act; and (4) the resource management plan and the conditions imposed on the permit are insufficient to ensure the future of the relocated stream pursuant to the 100 foot setback requirements of EQ 4.2.2.

Applicable General Plan/Land Use Policies



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EQ 2.3.1.9 Coordinate with the Department of Fish and Game to assure that development that involves alteration of or discharge into wetlands or streams and riparian vegetation is reviewed by the Department and their recommendations incorporated into project plans prior to approval of the coastal development permits.

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

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

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

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

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

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

EQ 4.2.2.3 Prohibit uses such as construction of main or accessory structures, grading or removal of vegetation within riparian and wetland resource and buffer areas and allow permitted uses (such as pervious non-motor vehicular trails, incidental public services, maintenance and replacement of existing Public Works facilities, maintenance of existing or restoration of previously dredged depths in flood control projects and navigational channels, small-scale facilities (500 sq. ft. or less) associated with nature study or resource dependent



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activities, construction, grading or removal of vegetation necessary for maintenance, landscaping designed to provide a natural buffer and grading necessary as a part of such landscaping plan, passive recreation, habitat preservation and restoration) that are consistent with the environmental quality policies of the Plan, Section [30233] of the Coastal Act, and adopted management plans. Development in wetlands can be undertaken only where there is not feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. If any exceptions to this policy are to be considered, it shall be within the context of a resource management plan which plan shall be approved by the Coastal Commission as an amendment to the Land Use Plan.

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

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

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

EQ 4.2.6 *River or stream alterations must be consistent with the natural characteristics of the stream and limited to those allowed under Coastal Act Section 30236 which includes those necessary for water supply, flood control and habitat improvement projects (See policy S 3.1.2)*

Applicable Implementation Zoning Ordinances

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

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

IP Section 24.24.080(3)(a). *Uses Prohibited for Intermittent/Perennial Streams. Construction of main or accessory structures, grading, or removal of vegetation shall not be permitted in any designated riparian area or within one hundred feet from the center of a watercourse (as identified in subsection (1)(a) above), except as provided in subsections (4)a) and (4)(b), below.*



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IP Section 24.14.080(4)(a). Uses Permitted – General. The following uses of all areas, (as identified in subsections (1)(a) through (1)(c) above) including setbacks (as identified in subsections (3)(a) and (3)(c) above), may be permitted. Where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. (1) Maintenance and replacement of existing Public Works facilities...; (2) Maintenance of existing, or restoration of previously dredged, depths in existing flood control projects and navigational channels, pursuant to an approved management plan; (3) Pervious, non-motor-vehicular trails; (4) Incidental public services projects...; (5) Small-scale facilities associated with nature study or other similar resource-dependent activities; (6) Construction, grading or removal of vegetation necessary for maintenance of existing improvements; (7) Landscaping designed to provide a natural buffer and grading necessary as a part of such landscaping plan; (8) Passive recreation; (9) Habitat preservation and restoration; (10) Other uses similar to the foregoing found by the zoning administrator or board as consistent with the intent of this part.

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

City Action

The Initial Study/Mitigated Negative Declaration for the project explains that relocation of the creek and subsequent restoration is authorized by the City's LUP and Zoning Ordinance and that a biotic study prepared for the site found that such a proposal would be appropriate given the predominance of non-native vegetation along the drainage in the project vicinity and lack of significant wildlife use due to the urbanized nature of the area. Ultimately, the City found that:

- The project protects trees, vegetation, and sensitive wildlife habitat and will enhance the overall habitat of the site;
- The project will result in the creation of riparian habitat on the property which presently does not exist;
- The existing creek channel does not contain any riparian vegetation and the site consists of predominately non-native vegetation;
- The creek relocation project would be consistent with the Environmental Quality policies of the General Plan/LCP and the provisions of the City Zoning Ordinance since the project will improve habitat for terrestrial, avian, invertebrate, and aquatic species associated with riparian areas;
- Any development within 100' feet of the riparian plantings to be established in the new channel would be subject to General Plan policy 4.2.2.3 and would require a 100' setback from the new channel. (This policy of the LCP requires approval of a Resource Management Plan by the Commission in order to allow development within 100-feet of the stream.);



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- In this case, a revision to the Resource Management Plan to allow any development within 100' of the creek would need to be approved as an LCP Amendment by the Coastal Commission, or as an alternate approach to requiring an individual LCP Amendment for future development on the site, the property owner may choose to enter into a cooperative land use agreement with the City whereby the property owner agrees to implement all restoration criteria to be established for the Arroyo Seco corridor by the City-wide Creek Management Study; and
- Suitable habitat for the following listed species is assumed: Red-legged frog (*Rana aurora draytonii*), and Burrowing owl (*Athene cunicularia hypugae*), and Santa Cruz Tarplant (*Holocarpha macradenia*).

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

Substantial Issue Determination on EHSA & Conservation Regulations

The appellants raise a variety of claims including (see Exhibit B for detail):

- The policies of the LCP are to protect and enhance the riparian and wetlands. (EQ 4.2) There was nothing presented by the applicant which indicated that the stream could not be restored in its present site. The resource management plan and the conditions imposed on the permit are insufficient to ensure the future of the relocated stream.*
- The proposed relocation does not conform with the general policies of the LCP in that it does not promote the preservation nor promote the enhancement of the quality of riparian or wetlands. (EQ 4, EQ 4.2, EQ 4.2.4)*
- The water course is a wetland and a stream as defined in and protected by the LCP and thus the subject project is not permitted under EQ 4.2.6, EQ 4.2.4, EQ 4.2.2.3 or the Act.*
- The resource management plan and the conditions imposed on the permit are insufficient to ensure the future of the relocated stream. The 100-foot setback required by EQ 4.2.2 should be imposed on the permit, recorded on the deed, be firm, and subject to no reduction.*

The appellants also include alleged inconsistencies with policies of the Coastal Act. Except for the access and recreation policies of the Coastal Act, the Act does not provide grounds for appeal of local actions. This finding addresses only on the appellant's relevant LCP claims. In addition, as noted, the coastal zone boundary essentially bisects the project site, with the southern portion remaining in the coastal zone. This finding pertains only to those portions of the project within the coastal zone. (See Exhibit D for coastal zone boundary).

Background

As discussed previously, no direct evidence has been presented as to the presence of streams across the marine terrace prior to 1928. Inconclusive evidence suggests that Arroyo Seco's channel may have crossed the marine terrace as sheet flow prior to construction of the channel, while historical aerial photos suggest that agricultural land uses and urbanization in the area may have led to redirection and narrowing of the Arroyo Seco water flow. In any event, the exact nature of the watercourse prior to 1928



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is not known. As mentioned, the appellant's have submitted an aerial photo chronology of the Arroyo Seco creek from 1928 to 1982. (See Exhibit K) Since 1928, the surrounding properties at the Westside of Santa Cruz have undergone substantial urbanization, which has further defined the stream corridor. With respect to those portions of the creek within the coastal zone, a majority of the creek has been culverted, and in turn encroached upon by urban development with the only exception being the southern half of the Lipton property and adjacent Wavecrest property at 2155 Delaware. This reach across the Lipton and Wavecrest properties represents a significant portion of the daylighted portion or Arroyo Seco Creek within the coastal zone. The urbanized setting of Arroyo Seco establishes the reasonable limits for restoration in this case. Habitat values can be greatly improved upon what currently exists, and the subject creek reach contains the potential to create an attractive urban greenway that provides an increased ability for the creek to perform basic stream functions. As discussed, these include the cycling of nutrients, filtering of contaminants from runoff, absorbing and gradually releasing floodwaters, maintaining wildlife habitat, recharging ground water, and the maintenance of stream flows. In addition, Arroyo Seco contains the potential for enhanced visual attractiveness and the possibility of future public access amenities once restored.

8.3.1 Stream Restoration

The appellant's allege that nothing presented by the applicant indicates that the stream could not be restored in its present site, and actions proposed under the project are insufficient to ensure the future of the relocated stream. LCP policy EQ 4 (Goal), which requires the protection and enhancement of natural vegetation communities and wildlife habitats throughout the City, sets the stage for the protection of biologic resources. To implement this goal, LCP policy EQ 4.2.6 allows stream alterations when for purposes of habitat improvement:

River or stream alterations must be consistent with the natural characteristics of the stream and limited to those allowed under Coastal Act Section 30236 which includes those necessary for water supply, flood control and habitat improvement projects (See policy S 3.1.2)

Coastal Act § 30236 states in full,

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

As discussed previously, the section of Arroyo Seco creek on the project site does qualify as a stream for purposes of EQ 4.2.6, and has been designated as such by the Commission and the City (see discussion in Section 4 above for detail).

The City of Santa Cruz LCP provides further guidance in evaluating the project for consistency with policy EQ 4.2.6 through its definitions of "stream restoration" and "stream rehabilitation":

Stream Restoration (LCP Definition) The unearthing of a culverted stream or natural



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watercourse and the design of a new open channel to re-create the original stream channel and environment.

Stream Rehabilitation (LCP Definition) *The improvement of a natural watercourse by the use of erosion control technology, revegetation, vegetation management and/or selective channel clearing with the objective to conserve and manage a natural waterway and riparian system.*

Although the most significant habitat improvement component of a restoration project at this site may be the removal of approximately 330 feet of culverted creek course, which lies outside the Commission's jurisdiction, significant restoration will occur in the coastal zone as well.⁴ (See Exhibit E for project plans).

Under the proposed project Arroyo Seco creek would be relocated, approximately 400 feet to the west, to its approximate 1928 location along the western property line. As mentioned, Arroyo Seco creek is an intermittent stream that is confined in a channel ranging in size from 15 – 40 feet wide (at the top of the bank) and 6 – 10 feet deep with an estimated ten year storm flow of 200 cubic feet per second. The current configuration of Arroyo Seco creek at the project site is dictated by unnatural man made features, principally two culverts that remain outside the coastal zone. The northern most culvert on the site currently causes Arroyo Seco creek to turn at a ninety degree angle, perpendicular to the direction of the creek's flow, for a length of approximately three hundred (300) feet along the northern most railroad spur. The second culvert conveys the creek's flow under the southern most railroad spur for a distance of approximately thirty (30) feet.

In addition, the grade and depth of the existing channel are also in an unnatural state. The existing channel currently conveys flows gradient steeper than reaches to the north and south of the project site. This results in an unnatural acceleration of flow velocities, while the excavation of the channel all the way to bedrock facilitates this condition. Both the unnaturally steep gradient and the deep excavation of the channel cause the diminishment of ability of Arroyo Seco to perform basic stream functions discussed in the findings above.

While the policies and definitions of the LCP discussed above represent most of those that would provide guidance on the restoration of streams such as Arroyo Seco creek, one policy that was absent from the City's analysis of the project is LCP policy EQ 2.3.1.9. This policy of the LCP requires that the,

“City coordinate with the Department of Fish and Game to assure that alteration of or discharge into wetlands or streams and riparian vegetation is reviewed by the Department and their recommendations incorporated into the project plans **prior** (emphasis added) to approval of the coastal development permit.”

The purpose of LCP policy EQ 2.3.1.9 is to ensure that any proposal for the restoration of wetlands or streams is done under the best available science, with prior consultation from knowledgeable experts on the subject matter. In fact, the Department of Fish and Game is responsible for conserving, protecting,

⁴ The primary benefit derived from the removal of these culverts would be the improvement of both in-stream and riparian habitats. There is no way of removing the culverts without some modification to the configuration of the creek.



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and managing California's fish, wildlife, and native plant resources. When put into the broader context of the intent of LCP policies addressing stream alterations, EQ 2.3.1.9 works in conjunction EQ 4.2.6 and Coastal Act § 30236 to ensure the long term future of the resource under question, Arroyo Seco creek.

While the Commission observes that the creek contains restoration potential for the aforementioned reasons, in this case the City approved the relocation and restoration of the creek without consultation with the California Department of Fish and Game. As such, the City's approval of the project is not consistent with all LCP policies in this regard.

As mentioned above, the applicant currently has an application for exemption from the streambed alteration requirements of Fish & Game Code § 1603 pending with the California Department of Fish and Game (DFG).⁵ According to DFG staff, this application is based upon the premise that the reach of Arroyo Seco creek at the project site is not a stream, but rather a man made drainage ditch⁶. In fact, this premise has the same basis as the applicant's assertion that the Commission does not retain appellate jurisdiction over the proposed project. However, as detailed above, Arroyo Seco creek is a stream for purposes of Coastal Act § 30603 (a)(2) at the project site. Based upon telephone conversations with DFG staff it appears that the DFG will likewise also term Arroyo Seco creek a stream at the project site. Given this circumstance, the DFG would require the submittal of an application for a streambed alteration agreement under the requirements of Fish & Game Code § 1603, and not grant an exemption from such requirements.

In addition to indicating that the project would not be exempt from Fish & Game Code § 1603, DFG staff has indicated that there are elements of the proposed project that would not likely be deemed acceptable under the requirements of Fish & Game Code § 1603. These elements include: (1) the decrease in length of stream course; (2) straightening or absence of meandering in the proposed alignment; (3) the placement of gabion mattresses at proposed stream bends, as opposed to willow mattresses; and (4) the use of the existing channel as a detention basin. It is possible that the DFG would incorporate some or all of these elements through the streambed alteration agreement process, while there may be additional modifications to the City approved project that they have yet to identify.

In this case the Commission recognizes that the ecological connectivity between habitats of the Arroyo Seco corridor is key to the long term survival and integrity of the resource, and the first step to accomplishing this is the restoration of Arroyo Seco creek at the project site. In this case the appellants have questioned the adequacy of the project's ability to ensure the long-term future of Arroyo Seco creek at this site. Taking this question of adequacy into consideration, the Commission recognizes that the California Department of Fish and Game has expressed concerns with the City's approval of the project in similar regards. These concerns, when put into the perspective of the appellant's allegations and LCP policy EQ 2.3.1.9, raise a substantial issue in terms of the project's consistency with the City of Santa Cruz certified LCP.

As such, the Commission finds that the proposed relocation and restoration of Arroyo Seco creek

⁵ Telephone conversation with DFG senior biologist Pat Coulsten.

⁶ Telephone conversation with DFG biologist Patricia Anderson (May 31, 2000).



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raises a substantial issue in this case because the City did not consult with the Department of Fish and Game, as required by LCP policy EQ 2.3.1.9, prior to approval of the project. The lack of a consultation with the DFG has resulted in a project that may not adequately protect the resource in question, while the LCP has a specific directive to prevent such a situation from occurring.

8.3.2 Presence of Wetlands

In this case the appellant's have asserted that Arroyo Seco creek should be considered a wetland in addition to a stream. Specifically, the appellant's assert the proposed project is not permitted under EQ 4.2.6, EQ 4.2.4, EQ 4.2.2.3 or the Act. However, from an ecological perspective streams are qualitatively different from other wetlands and, the existing policies of the LCP and Coastal Act reflect this separation. The City's approval of the project reflects this scientific and policy approach, as the applicant was not required to conduct a site specific wetland survey for this site. The U.S. Army Corps of Engineers has declined jurisdiction over the project through a letter dated August 31, 1999.

From an ecological point-of-view streams and other wetlands are considered separately because wetlands are generally defined by periodic inundation or saturation in the upper 12 inches of soil. Shallow rooted, wetland herbs and the juvenile stages of wetland shrubs and trees are adapted to tolerate the soil conditions associated with such periodic saturation. Riparian plants associated with stream courses are also considered wetland species. However, they are usually deep-rooted shrubs or trees that are able to more-or-less continuously access water even during dry periods and even where the soil is infrequently inundated or saturated, and so can persist some distance from the stream channel. The herbaceous layer among the riparian trees and shrubs often includes upland species, because the soil is seldom saturated long enough to prevent their establishment.

The LCP and Coastal Act also reflect the qualitative difference between streams and wetlands. As discussed above, LCP policy EQ 4.2.6 sets forth the circumstances under which stream alterations may take place, which includes habitat improvement projects such as the project at issue here. Although portions of Arroyo Seco creek at the project site might technically delineate as wetlands, both the LCP and the Act provide for alterations of streams when for necessary water supply, flood control, or habitat improvement projects. The purpose of the project is to restore the Arroyo Seco watercourse on this site to a location that more closely approximates a natural watercourse, thereby enhancing its stream functions and habitat values. EQ 4.2.6 does not prohibit the alteration of Arroyo Seco creek in this case.

Therefore, the Commission finds that no substantial issue is raised in regards to the contention that the relocation of Arroyo Seco creek should not be allowed since it could also be considered a wetland.

8.3.3 Resource Management Plan & 100 Foot Setback

As discussed previously, the appellant's contend that the proposed resource management plan and the conditions imposed on the permit are insufficient to ensure the future of the relocated stream pursuant to EQ 4.2.2. Specifically the appellant's contend that the 100-foot setback required by EQ 4.2.2 should be imposed on the permit, recorded on the deed, be firm, and subject to no reduction.

City imposed condition of approval number nine-teen (19) addresses the 100-foot setback issue and



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states in full,

Approval of the Resource Management Plan, as amended above, does not allow any future development to encroach within 100' of the centerline of the new channel. As required by General Plan policy 4.2.2.3, any development proposal on the property in the future which proposes to encroach within the 100' setback shall be required to submit an amended Resource Management Plan for the channel which identified project-specific impacts and mitigation measures to protect the biological and hydrological resources of the channel. The amended Resource Management Plan shall be approved by the Coastal Commission as an amendment to the City's Local Coastal Program (LCP). As an alternate approach to requiring an individual LCP Amendment for future development on the site, the property owner may choose to enter into a cooperative land use agreement with the City whereby the property owner agrees to implement all restoration criteria to be established for the Arroyo Seco corridor by the City-wide Creek Management Study. This land use agreement would be recorded as a deed restriction on the property. Should the City-wide Creek Management Study not be adopted by the City, an individual LCP Amendment would pursuant to General Plan policy 4.2.2.3.

Once relocated at this site, Arroyo Seco creek would be protected by the City's LCP under EQ policies 4.2 et. Seq. and Conservation Regulations Section 24.14.010 ET. Seq. No structural development within the subject setback is contemplated through this proposed development. Under these policies of the LCP Arroyo Seco creek will continue to be subject to the 100-foot setback requirement, regardless of condition of approval nineteen (19) stated above. However, the cooperative land use agreement offered through the condition nineteen (19) is inconsistent with LCP policy EQ 4.2.2.3 that requires:

EQ 4.2.2.3 [...] If any exceptions to this policy are to be considered, it shall be within the context of a resource management plan which plan shall be approved by the Coastal Commission as an amendment to the Land Use Plan.

The cooperative land use agreement offered through condition nineteen (19) is not consistent with LCP policy EQ 4.2.2.3 because it does not explicitly state that the City-wide Creek Management Study must be approved by the Commission as an amendment to the LCP, but rather states that only the City adopt the Study. The LUP is very specific as to the width and point of measurement of the setback in EQ 4.2.2. The required setback is 100 feet or greater from the watercourse centerline. The certified Zoning Ordinance, Section 24.14.080, requires a 100 foot setback from streams identified in LUP and USGS maps and as refined in environmental review. As described above, the subject stream is so mapped (as required by the LCP). LUP Policy EQ 4.2.2.3 is also very clear that any exceptions to the setback requirement must occur within the context of a resource management plan that has been approved by the Commission as an amendment to the Land Use Plan.

As discussed, the proposed project is inconsistent with LCP policies EQ 4.2.2.3, EQ 4.2.2, and IP Section 24.14.080 because the wording of condition number nineteen (19) is not clear as to whether a setback less than 100 feet would be permitted without approval of an LCP amendment by the Commission. **Therefore, the Commission finds that, as evidenced by language of condition nineteen (19), a substantial issue is raised in regards to the project's consistency with LCP policies EQ**



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4.2.2.3, EQ 4.2.2, and IP Section 24.14.080.

The appellants have alleged that the provisions under the proposed resource management plan are insufficient to ensure the future of the relocated stream. As mentioned, Commission staff commented on the resource management plan in a letter dated January 27, 2000. All suggestions made by staff were inserted verbatim into condition sixteen (16) of the City's approval. These suggestions were the direct result of consultations with the Commission's staff biologist. However, the DFG has identified some concerns with actions proposed under the resource management plan.⁷

In addition to actions proposed under the resource management plan the City has imposed conditions to ensure success of the restoration of the habitat. As mentioned above, these include: (1) monitoring and maintenance of the habitat improvement work for a period of five (5) years; (2) securing a five year bond to ensure success of habitat improvement work; (3) implementation of an annual invasive species eradication program by current and/or future property owner(s) through a deed restriction; and (4) the submission of plans for water facilities to provide newly established plants with adequate water provisions through the installation of a fully automated irrigation system. Taken together, actions proposed under the resource management plan and all of the above conditions might be sufficient to ensure the future of the relocated stream to the greatest extent feasible.

However, in light of the fact that the appellant's contend that the proposed resource management plan and the conditions imposed on the permit are insufficient to ensure the future of the relocated stream and the likelihood that the DFG may require alterations to the proposed resource management plan, the project is inconsistent with the LCP in this regard as well.

Therefore the Commission finds that the actions proposed under the resource management plan, as well as the conditions imposed by the City, may result in a resource management plan that is insufficient to ensure the long-term future of Arroyo Seco creek at this location as required by the LCP and thus a substantial issue in raised in this regard.

8.3.4 Past Degradation of Habitat

As discussed, the appellant contends that the proposed relocation does not conform with the general policies of the LCP in that it does not promote the preservation nor promote the enhancement of the quality of riparian or wetlands. (EQ 4, EQ 4.2, EQ 4.2.4) This contention centers upon the fact that the applicant has caused the degraded habitat state of the creek by applying the herbicide Rodeo since at least 1987; that according to the "Unclean Hands" doctrine the applicant should be refused relief (i.e. permit). The crux of the appellants assertion on this issue is that, "the applicant should not benefit from their illegal acts; to do so would create a policy and a precedent which would reward anyone for destroying an inconvenient riparian or wetland area just they could find a more convenient place to have it."

As mentioned, according to the applicant's representative the herbicide "Rodeo" has been applied to the subject watercourse yearly since at least 1987 in order to abate weeds under the requirements of the

⁷ Telephone conversation with DFG biologist Patricia Anderson (May 31, 2000).



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Santa Cruz Fire Department.

Substantial Issue Determination on the Past Degradation of Habitat

There is no doubt that the habitat value of the Arroyo Seco creek is highly degraded at this site. In addition, the creek has been substantially altered physically by man on more than one occasion in the past. Past alterations of the portion of Arroyo Seco creek crossing the marine terrace are detailed in an aerial photography chronology presented by the appellant's in Exhibit K. The end result of the alterations that have taken place at the project site has been a stream of unnatural alignment, depth, and gradient, with very low habitat values.

Taken on the whole, the overarching issue raised by the appellant is whether or not the LCP allows the relocation of the subject watercourse in this case. Although past degradation of the habitat of the Arroyo Seco creek would be inconsistent with the LCP, the subject watercourse has inherent restoration potential regardless if habitat values would have presented themselves in the absence of the application of the herbicide. As discussed in the findings above, the primary components of the stream that would benefit from the proposed restoration project include the alignment, slope gradient, and depth of the creek. Once returned to a more natural state, more consistent with reaches of the creek to the north and south of the project site, increased habitat values will present themselves under the actions resulting from the proposed resource management plan. The overall benefit to be derived from the proposed project would be an increased ability of Arroyo Seco stream to perform basic stream functions and an improvement to the stream corridor as a whole.

The appellant has referenced the "Unclean Hands" doctrine as a reason for denying the applicant a coastal permit, however, the LCP is the standard of review in this case and not the "Unclean Hands" doctrine. **Therefore, the Commission finds the past degradation of habitat at this location does not raise a substantial issue in regards to the appeal because, taken on the whole, the subject reach of Arroyo Seco creek has inherent restoration potential as manifested by the current unnatural state of the stream that was created by man-induced physical alterations to the stream configuration.**

9. Coastal Development Permit Findings

9.1 Approvable Development

As discussed in detail on pages 23 through 32 of this staff report, the proposed project is inconsistent with the certified LCP because it allows the relocation and restoration of Arroyo Seco creek without consultation with the California Department of Fish and Game. The project is also inconsistent with the certified LCP because condition of approval nineteen (19) is unclear as to whether future development would be allowed within the required 100-foot setback of the LCP without approval of an LCP amendment by the Commission. However, there are two options available to modify the project so as to make it consistent with the aforementioned LCP policies.

First, as discussed in the substantial issue findings above, the proposed project is inconsistent with LCP policy EQ 2.3.1.9 that requires the,



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*City coordinate with the Department of Fish and Game to assure that alteration of or discharge into wetlands or streams and riparian vegetation is reviewed by the Department and there recommendations incorporated into the project plans **prior** (emphasis added) to approval of the coastal development permit.*

Therefore, in order to bring the project into conformance with the certified LCP, prior to issuance of the coastal development permit, this approval requires the consultation with DFG, through the imposition of special condition 1, and only by doing so can the project be found consistent with the certified LCP.

Secondly, condition of approval nineteen (19) for the proposed project does not clearly indicate whether any future encroachment into the LCP required setback of one hundred (100) feet would be allowed at the project site. As such, the proposed project is inconsistent with LUP policy EQ 4.2.2 and EQ 4.2.2.3, and IP Policy 24.14.080 that require,

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

IP Section 24.14.080(4)(a). Uses Permitted – General. The following uses of all areas, (as identified in subsections (1)(a) through (1)(c) above) including setbacks (as identified in subsections (3)(a) and (3)(c) above), may be permitted. Where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. (1) Maintenance and replacement of existing Public Works facilities...; (2) Maintenance of existing, or restoration of previously dredged, depths in existing flood control projects and navigational channels, pursuant to an approved management plan; (3) Pervious, non-motor-vehicular trails; (4) Incidental public services projects...; (5) Small-scale facilities associated with nature study or other similar resource-dependent activities; (6) Construction, grading or removal of vegetation necessary for maintenance of existing improvements; (7) Landscaping designed to provide a natural buffer and grading necessary as a part of such landscaping plan; (8) Passive recreation; (9) Habitat preservation and restoration; (10) Other uses similar to the forgoing found by the zoning administrator or board as consistent with the intent of this part.

EQ 4.2.2.3 [...] If any exceptions to this policy are to be considered, it shall be within the context of a resource management plan which plan shall be approved by the Coastal Commission as an amendment to the Land Use Plan.

The LUP is very specific as to the width and point of measurement of the setback in EQ 4.2.2. The required setback is 100 feet or greater from the watercourse centerline. The certified Zoning Ordinance, Section 24.14.080, requires a 100 foot setback from streams identified in LUP and USGS maps and as refined in environmental review. As described above, the subject stream is so mapped (as required by the LCP). While LUP Policy EQ 4.2.2.3 is also very clear that any exceptions to the setback requirement must occur within the context of a resource management plan that has been approved by the



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Commission as an amendment to the Land Use Plan.

Therefore, the proposed project is inconsistent with LCP policies EQ 4.2.2, EQ 4.2.2.3, and IP Section 24.14.080(4)(a) because the wording of condition number nineteen (19) is not clear as to whether a setback less than 100 feet would be permitted without approval of an LCP by the Commission. As such, only by imposing special condition 2 which clarifies that a Commission approved LCP amendment would be required for encroachment into the required 100 foot setback can the proposed project be brought into consistency with the certified LCP.

Besides these inconsistencies the City has adequately addressed other Coastal Act issues related to this project such as erosion control, tree protection, sensitive species protection, through conditions imposed on the permit. Therefore Special Condition 3 retains the appropriate City conditions.

The Commission finds that only as modified by Special Condition 1, 2, and 3 of this approval can the proposed project be considered consistent with the stream restoration and setback requirements of the certified LCP.

9.2 California Environmental Quality Act (CEQA)

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

The City of Santa Cruz issued a Mitigated Negative Declaration for the proposed creek relocation and restoration on January 3, 2000. Commission staff commented on the Mitigated Negative Declaration on January 27, 2000 raising several issues of consistency with the project in regards to the adequacy of the resource management plan, suggested modifications to the plan, and required future LCP amendments (See Exhibit F for full text of letter).

The issues previously forwarded to the City by Commission staff, as well as others that have become apparent since the Mitigated Negative Declaration, have been discussed in this staff report and appropriate mitigation has been developed to supplement the City of Santa Cruz approval of the proposed project. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (See Special Condition 1, 2, & 3). **As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.**





CITY COUNCIL AGENDA REPORT

DATE: March 1, 2000

AGENDA OF: March 14, 2000

DEPARTMENT: Planning and Community Development

SUBJECT: 2200 Delaware Avenue 99-200 APN 003-111-05, 003-171-18,
& Adjacent Vacant Parcel 003-022-14, 003-032-01,
003-081-01, 003-121-01

Appeal of the Zoning Board's denial of Grading, Design and Coastal Permits for the relocation of an existing drainage channel on a 53-acre parcel commonly referred to as the Lipton property.

RECOMMENDATION: That the City Council adopt the attached resolution (1) adopting the Negative Declaration and Mitigation Monitoring Program and (2) upholding the appeal and approve the project.

PROJECT DESCRIPTION / BACKGROUND:

Project Description. This is an appeal of the Zoning Board's denial of Coastal and Design Permits associated with a grading permit to relocate an existing drainage channel on a 19.5 acre parcel which is part of the 53 acre Lipton property. The new drainage channel would be relocated to approximately its original location along the western property line (see attached map). The project would establish native plants and riparian vegetation in the channel where none presently exists. Should the Design and Coastal Permits be approved, the final grading and drainage plan would be acted upon by the City's Chief Building Official.

The project site is located on the north side of Delaware Avenue, between Swift Street and Swanton Boulevard. It abuts industrial offices and a live-work development on the west side of Swift Street, the Union Pacific Railroad tracks to the north, Delaware Avenue and Industrial offices to the south, and the Lipton plant to the west.

Background. The channel was originally constructed between 1946 and 1954. Historical maps indicate that no channel existed on the site before this time. The original channel approximately followed the alignment of the Pacific Gas & Electric easement, as shown on Figure 2. The alignment was moved to the east during the construction of the Lipton plant in the early 1970s to accommodate the construction of the southern railroad spur serving the Lipton plant. The existing drainage channel, which is part of the Arroyo Seco drainage basin, enters the site from the north through a culvert under the Union Pacific railroad tracks. It enters another culvert immediately north of the northern rail spur and travels east for about 300', then south under the

northern rail spur. From there, it flows as an open, unlined channel to a culvert below the southern rail spur. The channel continues open and unlined from this point to the south, where it bends to the west and enters a culvert below Delaware Avenue near the Lipton plant.

The purpose of the project would be to relocate the channel closer to its original location just west of the Pacific Gas & Electric easement. While the applicant has stated that the primary purpose of moving the channel back to its original location is to improve habitat on the site, the project will also make the eastern portion of the property more developable for future uses. The existing drainage channel will be partially filled which will result in a swale about 3' deep throughout the entire length of the existing channel alignment. This swale will continue to drain the eastern portion of the property and will discharge into the new channel.

A Resource Management Plan will be implemented as part of the project which will result in the creation of a riparian zone between the new channel and upland areas (see the attached Initial Study and Creek Management Plan for additional information on the proposed creek restoration work).

February 10, 2000 Zoning Board Hearing. At its February 10, 2000 meeting, on a 3 to 1 vote, the Zoning Board failed to adopt the proposed Mitigated Negative Declaration and denied the proposed Coastal and Design Permits. The Zoning Board cited concerns over segmenting the environmental analysis for this project from the larger Transit District project and questioned the need to relocate the channel in order to carry out the proposed restoration work.

The Zoning Board's denial of the project was followed by an appeal letter from the applicant's representative. The appeal letter and accompanying documentation is attached. A discussion of the key issues pertaining to the project and the issues raised by the Zoning Board is given below.

DISCUSSION:

Consistency with General Plan and Zoning Ordinance. The project site has an "Industrial" land use designation in the City's General Plan and a General Industrial (IG) zoning designation. Roughly the southern half of the project site is located within the Coastal Zone. General Plan and Local Coastal Program (LCP) policy EQ 4.2.6 allows certain stream alterations in the Coastal Zone if such alterations result in habitat improvement. The creek relocation project would be consistent with Environmental Quality policies of the General Plan/LCP and the provisions of the City Zoning Ordinance since the project will improve habitat for terrestrial, avian, invertebrate, and aquatic species associated with riparian areas. In the long-term, the project would also improve water quality by reducing sediment discharges into the channel.

Coastal Commission staff, in their letter dated September 17, 1998, determined that the implementation of the streambed channel project back to its original location may be supportable on this site as a "habitat improvement project." A Resource Management Plan has been prepared for the project and will be implemented as a condition of approval. The preparation of such a management plan is consistent with General Plan/LCP Policy EQ 4.2.1.

Any future development within 100' of the riparian plantings to be established in the new channel would be subject to General Plan policy 4.2.2.3 and would require a 100' setback from the new channel. A revision to the Resource Management Plan to allow any development within 100' of the creek would need to be approved as an LCP Amendment by the Coastal Commission. The City, however, is in the process of preparing a city-wide Creek Management Study in cooperation with the Coastal Commission. It is anticipated that this study will establish specific restoration/mitigation criteria for the Arroyo Seco creek corridor for any future development proposed within 100' of the creek. As an alternate approach to requiring an individual LCP Amendment for future development on the site, the property owner may choose to enter into a cooperative land use agreement with the City whereby the property owner agrees to implement all restoration criteria to be established for the Arroyo Seco corridor by the City-wide Creek Management Study. Should the city-wide Creek Management Study not be adopted by the City, an individual LCP Amendment would be required pursuant to General Plan policy 4.2.2.3.

A full discussion of the project's conformance with General Plan and Local Coastal Program policies is set forth in the attached February 10, 2000 Zoning Board packet.

Creek Channel Realignment. At the February 2, 2000 hearing, several members of the Zoning Board questioned the need to realign the creek channel to western property line in order to carry out the proposed creek restoration work. Zoning Board members stated that the restoration work could be undertaken within the existing creek channel alignment and that the reason for the channel alignment is to make the property more developable. The applicant did acknowledge that the creek relocation would make the property more developable for future uses. At the same time, however, the applicant's wetlands expert responded that the proposed creek alignment would follow the historical alignment of the channel and the natural contours of the land. In realigning the creek channel, the existing right-angle turn created by the culverts would be eliminated from the channel, resulting in a more natural creek configuration.

Future Site Development. The Santa Cruz Metropolitan Transit District has considered acquiring the undeveloped portion of the project site for use as a consolidated operations facility. City staff is aware of some sentiment in the community that the channel relocation project and the larger Transit District consolidation project should be treated as a single larger project. Neither the City of Santa Cruz nor Lipton nor the Transit District, however, has committed to the development of the consolidated operations facility at the site. A review of CEQA case law clearly reveals that the mere fact that a single project may in some way be related to a potential future project does not necessarily make the two projects a single, larger project. Where a project arguably might be part of a larger scheme but nevertheless has independent utility in and of itself, the project can be processed separately because, even if a later related project is denied, the first project will serve a valid and useful purpose. The City has determined that approval of the channel relocation project is separate and distinct from any future development of the larger, Lipton site because (i) approval of the environmentally benign channel relocation project would not *cause* or render in any way inevitable a subsequent development approval, and (ii) the relocation project has "independent utility," even if the City denies any future development proposal for the larger property.

A more detailed discussion of the City's treatment of the creek relocation project and the Transit District project as separate projects is included in the "Mandatory Findings of Significance" section of the attached Initial Study. The Initial Study also includes a discussion of the potential cumulative impacts of the channel relocation project combined with the possible Transit District development.

ENVIRONMENTAL REVIEW:

In accordance with CEQA and the City's environmental review procedures, an Initial Study has been completed for the project. The Initial Study has identified five potentially significant impacts along with mitigation measures which will reduce such impacts to less than significant levels. A summary of the potential impacts and mitigation measures from the Initial Study/Negative Declaration are outlined in Table 1 below. For a complete discussion of site-specific impacts and associated mitigation measures, please see the attached Initial Study and Negative Declaration/Mitigation Monitoring Program.

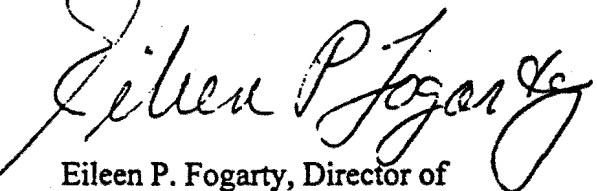
SUMMARY AND RECOMMENDATION:


It is recommended that the City Council adopt the attached resolution (1) adopting the Negative Declaration and Mitigation Monitoring Program and (2) upholding the appeal, and overturning the Zoning Board's denial of Coastal and Design Permits to relocate an existing drainage channel on the Lipton property.

FISCAL IMPACT: None.

Submitted by:

Approved by:

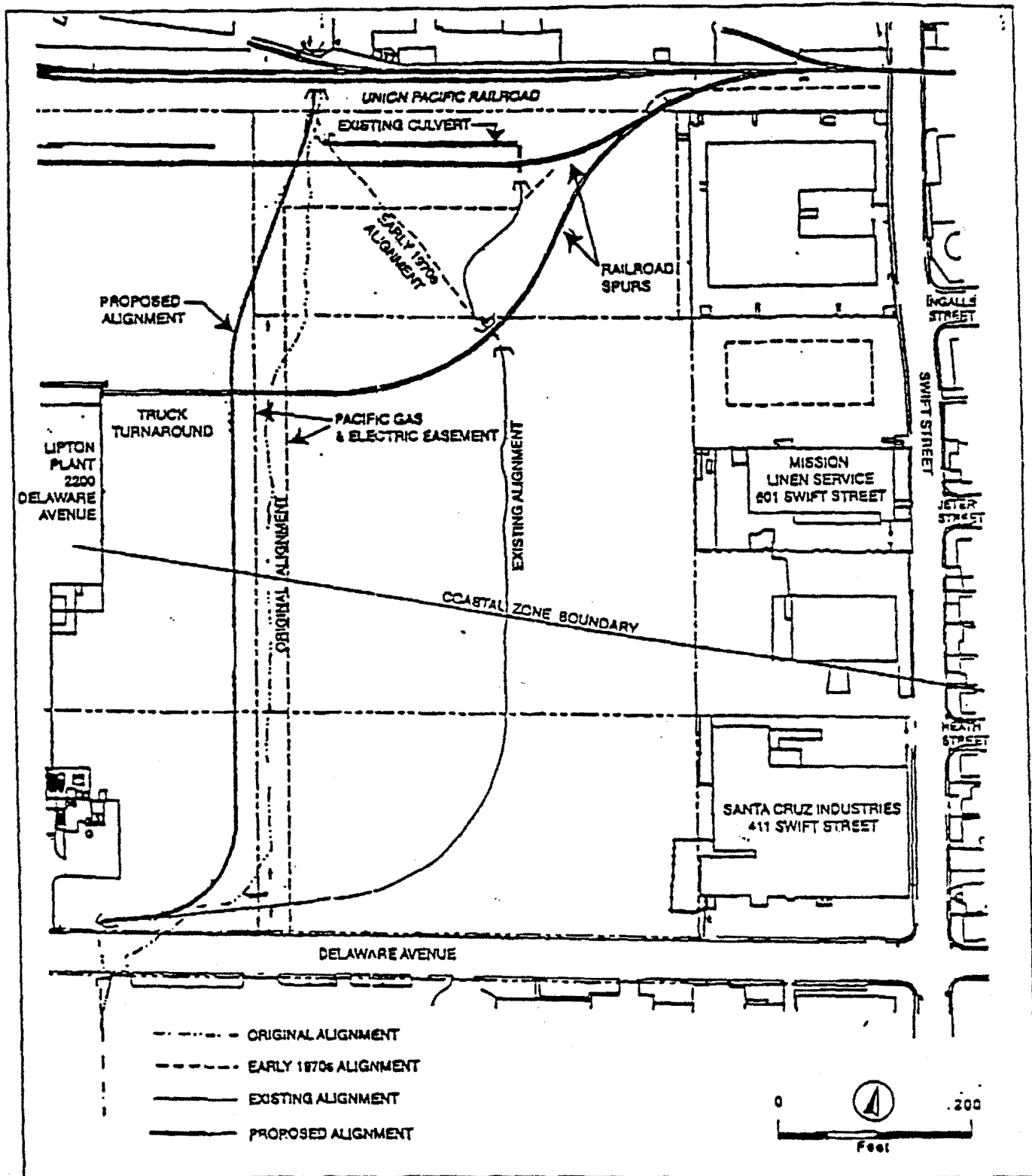

Eileen P. Fogarty, Director of
Planning and Community Development


for Richard C. Wilson
City Manager

o:\334-rpt, 334-reso

Attachments:

- ~ Draft Resolution;
- ~ Appeal Letter of Baker & McKenzie, dated February 16, 2000; including: letters from Baker & McKenzie dated November 4, 1999; October 13, 1999; October 4, 1999; September 23, 1999; and August 16, 1999.
- ~ February 10, 2000 Zoning Board Meeting Minutes;
- ~ February 10, 2000 Zoning Board Agenda Report



SOURCE: Robert Dewie & Associates



LIPTON PROPERTY CHANNEL RELOCATION PROJECT
FIGURE 2: PAST, EXISTING, AND PROPOSED DRAINAGE ALIGNMENTS

34-5

A: 5-14

Table 1: Summary of Potential Impacts and Mitigation Measures for the Lipton Channel Relocation Project

<u>Impact 1</u> Potential for alteration to existing drainage patterns on site and surrounding area.	<u>Mitigation 1</u> A flow control structure will be installed at the downstream end of the channel to allow it to act as a detention basin which will insure that post-project runoff does not exceed pre-project levels. The existing drainage channel will be partially filled which will result in a swale about 3' deep throughout the entire length of the existing channel alignment. This swale will continue to drain the eastern portion of the property and will discharge into the new channel.
<u>Impact 2</u> Potential for soil erosion sediment transport during construction and operations.	<u>Mitigation 2</u> The slope design and landscaping would prevent erosion of the channel walls, thereby ensuring that minimal siltation would occur downstream following completion of the project. A flow control structure would be installed at the downstream end of the channel to allow it to act as a detention basin, thereby regulating flow to the downstream reaches, and preventing erosive flows downstream from the site. Erosion control measures are included as part of the project, including scheduling construction to avoid wet months when feasible and implementing a biotechnical slope protection program.
<u>Impact 3</u> Potential impacts to the red-legged frog and burrowing owl.	<u>Mitigation 3</u> A qualified wildlife biologist will be on site to monitor all construction and filling activities in accordance with U.S. Fish & Wildlife Service protocol to assure that no red-legged frogs are present on site. A pre-construction survey will be conducted for the Burrowing Owl in accordance with State Department of Fish and Game protocol to assure that no owls are present on site during construction. Should any owls be located, construction activities will only be allowed to take place in accordance with accepted mitigation measures approved by Fish and Game staff.
<u>Impact 4</u> Potential for noise impacts on adjacent land uses during construction.	<u>Mitigation 4</u> Construction activities shall be subject to all noise-related performance standards as set forth in the Zoning Ordinance to minimize impacts upon neighboring land uses.
<u>Impact 5</u> Potential for air quality impacts during construction.	<u>Mitigation 5</u> Active construction areas will be watered at least twice daily to minimize fugitive dust. During construction, vehicle travel speeds on unpaved areas would be limited to 15 miles per hour. If visible soil were carried off the construction site, it will be swept from neighborhood streets. When construction is complete, disturbed areas will be revegetated as proposed in the Resource Management Plan.

RESOLUTION NO. NS-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ
ADOPTING A NEGATIVE DECLARATION AND MITIGATION
MONITORING PROGRAM AND UPHOLDING AN APPEAL AND
OVERTURNING THE ZONING BOARD'S DENIAL OF APPLICATION NO.
99-200 FOR COASTAL AND DESIGN PERMITS FOR THE RELOCATION
OF AN EXISTING DRAINAGE CHANNEL ON THE LIPTON PROPERTY
AT 2200 DELAWARE AVENUE.**

WHEREAS, Thomas J. Lipton applied for Coastal and Design Permits to relocate an existing drainage channel on the 53 acre Lipton property; and

WHEREAS, an Initial Study, Mitigated Negative Declaration and Mitigation Monitoring Program have been prepared for the project consistent with the California Environmental Quality Act; and

WHEREAS, the Initial Study has identified five potentially significant impacts associated with the project and the Mitigated Negative Declaration has identified mitigation measures which will reduce such impacts to less than significant levels; and

WHEREAS, the Zoning Board conducted a public hearing on February 10, 2000 and failed to adopt the Mitigated Negative Declaration and denied the application, citing concerns over segmenting the environmental analysis for this project from the larger Transit District project and questioning the need to relocate the channel in order to carry out the proposed restoration work; and

WHEREAS, an appeal letter was filed by the applicant's representative on February 16, 2000 appealing the Zoning Board's denial of the project; and

WHEREAS, the City Council conducted a public hearing on March 14, 2000 to consider an appeal of the Zoning Board's action denying the project design; and

WHEREAS, the City Council now makes the following findings:

Design Permit, Section 24.08.430

- The proposed channel relocation project is consistent with the physical development policies of the General Plan, Local Coastal Program and Zoning Ordinance. (1)
- With implementation of conditions of approval, the project will not impact other neighboring land uses. (4)
- The site consists of predominantly non-native vegetation. The project will result in the filling of the existing creek channel and the creation of a new channel along the western property line. The existing creek channel does not contain any riparian vegetation. The new creek channel will be revegetated with native species and riparian species as part of the Resource Management Plan for the project. The grading for the new channel will utilize natural land forms to the extent feasible and will restore and enhance the visual quality of visually degraded areas. (5, 6)

RESOLUTION NO. NS-

- As identified in the Initial Study prepared for the project, the project will not result in a significant increase in traffic on local roadways during construction. (7)
- The project has been conditioned to protect surrounding properties during construction by requiring that all construction activities adhere to noise regulations set forth in the Zoning Ordinance. (10).

Coastal Permit, Section 24.08.250

- The channel relocation project will not impact views between the sea and the first public roadway parallel to the sea. (1)
- The project will result in the creation of riparian habitat on the property which presently does not exist. As such, the project will be consistent with the policies of the City's LCP. (2, 3)
- The project will not impact any public access to the coast and will not impact any visitor-serving needs or coastal development uses (4, 5).

Shoreline Protection Overlay, Section 24.10.2430 (Review Criteria)

- The project protects trees, vegetation, and sensitive wildlife habitat and will enhance the overall habitat on the site. (1)
- The project will not be located adjacent to any bluff or cliff. (2)
- An erosion control plan has been completed for the project which will ensure that erosion and sedimentation of on-site watercourses will be mitigated during construction and upon completion of the project. (3)
- The project will not impact any public view corridors or natural views of the coastline. (4)
- The project will not impact any known paleontological resources and has been conditioned to address such paleontological and/or archaeological resources should any be found during construction. (5)
- The project will not impact public access to or along a beach. (6)
- The conditions of approval for the project have incorporated all mitigation measures identified in the Mitigated Negative Declaration for the project. (7)
- The project will be consistent with the policies of the Local Coastal Program, the General Plan, and California Coastal Act. (9, 10)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santa Cruz that it hereby adopts the Negative Declaration and Mitigation Monitoring Program, attached hereto and

RESOLUTION NO. NS-

made a part hereof as Exhibit "A," and approves the appeal and overturns the Zoning Board's denial of Coastal and Design Permits on the Lipton Property located at 2200 Delaware Avenue; subject to the Conditions of Approval listed in Exhibit "B," attached hereto and made a part hereof, with the following changes: (1) condition 17 be revised to require that the landowner continue to implement an invasive species eradication program on an annual basis and that an annual report be submitted to the Planning Department on the status of such program; (2) condition 16 be revised to specify that the maintenance and monitoring program will continue on an annual basis; (3) that the requirement for implementation of the Resource Management Plan, including the on-going maintenance program, be recorded on the deed of the affected parcel(s); and (4) any future development on any vacant parcel(s) require a Design Permit approved by the City Council by way of the Zoning Board;

PASSED AND ADOPTED this 14th day of March , 2000 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

DISQUALIFIED: Councilmembers:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

EXHIBIT "B"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT

2200 Delaware Avenue; Application 99-200;

Design and Coastal Permits associated with a grading permit application to relocate an existing drainage channel on the Lipton property
(as approved by City Council on March 14, 2000)

Conformance with Approved Grading and Drainage Plans

1. If one or more of the following conditions is not met with respect to all its terms, then this approval may be revoked.
2. All plans for future construction which are not covered by this review shall be submitted to the City Planning and Community Development Department for review and approval.
3. This permit shall be exercised within three (3) years of the date of final approval or it shall be come null and void.
4. If, upon exercise of this permit, this use is at any time determined by the Zoning Board to be incompatible with the surrounding neighborhood, revocation of, or amendment to, this permit by the Zoning Board could occur.
5. The use shall meet the standards and shall be developed within limits established by Chapter 24.14 of the Santa Cruz Municipal Code as to the emission of noise, odor, smoke, dust, vibration, wastes, fumes or any public nuisance arising or occurring incidental to its establishment or operation.
6. The applicant shall be responsible for the completeness and accuracy of all forms and supporting material submitted in connection with any application. Any errors or discrepancies found therein may result in the revocation of any approval or permits issued in connection therewith.
7. The development of the site shall be in accordance with the approved plans submitted and on file in the Department of Planning and Community Development of the City of Santa Cruz. Modifications to plans or exceptions to completion may be granted only by the City authority which approved the project.
8. Final grading and drainage plans shall fully comply with all requirements set forth in the City Municipal Code Chapter 18.45(Excavation & Grading Regulations) to the satisfaction of the Chief Building Official.

Grading

9. During all grading and subsurface excavations (including utility-line trenching), construction will be halted if significant archaeological resources are discovered. For the purpose of this use permit, significant archaeological resources shall include the remains of previous Indian living areas or human burials. In the instance of Indian living areas, these objects shall be

EXHIBIT "B"

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2200 Delaware Avenue; Application 99-200;

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recorded and mapped prior to further excavation on that portion of the site. In the event human burials are discovered during excavation, work shall be halted and the County Coroner, the Northwest Indian Cemetery Protective Association (NICPA), and other appropriate authorities shall be notified. Mitigation measures developed by the applicant and authorized archaeologists shall be subject to the approval of the Planning Department.

10. The plan for erosion control approved as part of this application shall be submitted and all work installed by November 1.
11. Grading shall be done during periods of dry weather and protective measures shall be incorporated during grading to prevent siltation from any grading project halted due to rain. No earth-moving activities shall occur between December 1 and March 1.
12. All recommendations set forth in the Geotechnical Report prepared for the project by Haro, Kasunich & Associates shall be incorporated into the final design of the project.

Tree Protection

13. Prior to site grading all trees and/or tree stands indicated for preservation or approved plans shall be protected through fencing or other approved barricade. Such fencing shall protect vegetation during construction and shall be installed to the satisfaction of the Director of Planning and Community Development.
14. Any tree marked for preservation which is subsequently removed shall be replaced by two (2) specimen trees of a variety and at locations specified by the Zoning Administrator.

Resource Management Plan

15. All recommendations provided in the Resource Management Plan for the project shall be incorporated into the design and construction of all improvements.
16. The Resource Management Plan shall be revised to include the following:
 - (a) The Plan shall establish explicit performance standards for vegetation, hydrology and a clear schedule and procedure for determining whether they are met. Such performance standards shall include: the identification of minimum goals for each herbaceous species, by percentage of total plantings and by percentage of total cover when defined success criteria are met; and active maintenance and monitoring will continue on an annual basis. All performance standards should state in quantifiable terms the level and extent of the attributes necessary to reach the goals and objectives. In conjunction with

EXHIBIT "B"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT

2200 Delaware Avenue; Application 99-200;

Design and Coastal Permits associated with a grading permit application to relocate an existing drainage channel on the Lipton property
(as approved by City Council on March 14, 2000)

- such standards, the plan should include measures to address those portions of the restoration that are unsuccessful and specify methods to remedy them.
- (b) The monitoring and maintenance of habitat improvement work shall be extended to a minimum of 5 years, with monitoring reports submitted to the Planning Department on an annual basis by a qualified biologist to ensure that plant establishment success and performance criteria have been achieved.
 - (c) Check dams (w/woody debris or other material) shall be used to create a curvilinear flow in the channel bottom, and to create riffle-pool regime for enhanced habitat productivity.
17. Maintenance during the initial establishment period shall be secured through a five (5) year bond prior to issuance of a grading permit by the Department of Planning and Community Development. Thereafter, the landowner shall continue to implement an invasive species eradication program on an annual basis, and submit an annual report to the Planning Department. Implementation of the Resource Management Plan, including the requirement for an on-going maintenance program, shall be required by the current property owner and/or any future property owner(s) and shall be recorded on the deed of the affected parcel(s).
18. Adequate provisions shall be made to supply water to establish the proposed plantings along both sides of the new creek channel as specified in the Resource Management Plan. The design of water facilities shall be to standards of the Water Department, and plans therefore must be submitted to the Water Department Director for review and approval prior to the issuance of a grading permit. A fully automated irrigation system shall be installed in all planting areas.
19. Approval of the Resource Management Plan, as amended above, does not allow any future development to encroach within 100' of the centerline of the new channel. As required by General Plan policy 4.2.2.3, any development proposal on the property in the future which proposes to encroach within the 100' setback shall be required to submit an amended Resource Management Plan for the channel which identifies project-specific impacts and mitigation measures to protect the biological and hydrological resources of the channel. The amended Resource Management Plan shall be approved by the Coastal Commission as an amendment to the City's Local Coastal Program (LCP). As an alternate approach to requiring an individual LCP Amendment for future development on the site, the property owner may choose to enter into a cooperative land use agreement with the City whereby the property owner agrees to implement all restoration criteria to be established for the Arroyo Seco corridor by the City-wide Creek Management Study. This land use agreement would

EXHIBIT "B"

CONDITIONS OF APPROVAL FOR THE PROJECT ON PROPERTY AT

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(as approved by City Council on March 14, 2000)**

be recorded as a deed restriction on the property. Should the City-wide Creek Management Study not be adopted by the City, an individual LCP Amendment would pursuant to General Plan policy 4.2.2.3.

20. Future development on any vacant parcel(s) affected by this permit shall require a Design Permit to be approved by the City Council. The Zoning Board shall provide a recommendation on such Design Permit(s) to the City Council.

Mitigation Measures in Negative Declaration

21. All mitigation measures identified in the Negative Declaration/Initial Study for the project shall be incorporated into the design and construction of all improvements. These mitigation measures are as follows:

- **Mitigation Measure 1:**

Insure that post-project runoff does not exceed pre-project levels. A flow control structure would be installed at the downstream end of the channel to allow it to act as a detention basin, thereby regulating flow to the downstream reaches, and preventing erosive flows downstream from the site. Although the existing channel will be filled to form a swale, it will continue to function as a drainageway for the eastern half of the site which will discharge into the new channel. The project will be conditioned to retain the swale on-site for drainage purposes.

- **Mitigation Measure 2:**

The slope design and landscaping would prevent erosion of the channel walls, thereby ensuring that minimal siltation would occur downstream following completion of the project. A flow control structure would be installed at the downstream end of the channel to allow it to act as a detention basin, thereby regulating flow to the downstream reaches, and preventing erosive flows downstream from the site.

Erosion control measures are included as part of the project, including scheduling construction to avoid wet months when feasible and implementing a biotechnical slope protection program.

- **Mitigation Measure 3:**

To ensure that no red-legged frogs would be harmed during construction, the existing channel would be filled between September 1 and October 31, and a qualified wildlife biologist would be on site to monitor construction and filling activities. Alternatively, the channel would be filled between November 1 and August 31 only if a preconstruction survey conducted by a qualified wildlife biologist were to determine

EXHIBIT "B"

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that no red-legged frog eggs, larvae, metamorphosing juveniles, or adults were present. The survey would be completed between May 1 and November 1 in accordance with U.S. Fish and Wildlife Service protocol, unless the U.S. Fish and Wildlife Service were to grant an exception to its prescribed survey period.

- **Mitigation Measure 4:**

A four-day pre-construction survey shall be conducted no more than 30 days prior to construction to determine whether breeding owls are present. The pre-construction survey will be conducted in accordance with approved Department of Fish and Game survey protocol. If any owl nests were found, the project would avoid excavating, filling, or grading within 250 feet of the nests during the breeding season (from February 1 to August 31). The project would avoid excavating, filling, or grading within 160 feet of the owl nests during the non-breeding season (from September 1 to January 31). If excavation, filling, or grading within 160 feet of a nest could not be avoided, then prior to such disruption, passive relocation would be undertaken in accordance with accepted protocols. Implementing the Resource Management Plan proposed as part of the project would include a roughly 1:1 replacement program for loss of foraging habitat to offset any permanent displacement of burrowing owl habitat.

- **Mitigation Measure 5:**

Construction activities shall be subject to all noise-related performance standards as set forth in the Zoning Ordinance to minimize impacts upon neighboring land uses.

- **Mitigation Measure 6:**

Active construction areas will be watered at least twice daily to minimize fugitive dust. During construction, vehicle travel speeds on unpaved areas would be limited to 15 miles per hour. If visible soil were carried off the construction site, it will be swept from neighborhood streets. When construction is complete, disturbed areas will be revegetated as proposed in the Resource Management Plan.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

(831) 427-4863

HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED

APR 07 2000

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

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

Renee Flower1747 King StreetSanta Cruz, CA 95060(831) 427-2202

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government: City of Santa Cruz, City Council decision2. Brief description of development being
appealed: Relocation of a stream located at 2200 Delaware Street
in the City of Santa Cruz by Thomas Lipton.3. Development's location (street address, assessor's parcel
no., cross street, etc.): 2200 Delaware Street
Santa Cruz, CA

4. Description of decision being appealed:

a. Approval; no special conditions: See attached Exhibit A

b. Approval with special conditions: _____

c. Denial: _____

Note: For jurisdictions with a total LCP, denial
decisions by a local government cannot be appealed unless
the development is a major energy or public works project.
Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-STC-00-041DATE FILED: 4/12/2000DISTRICT: Central Coast District

H5: 4/88

EXHIBIT NO. B

APPLICATION NO.

B:1-16A-3-STC-00-041

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: March 14, 2000

7. Local government's file number (if any): 99-200

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:

Conopco, Inc. dba Lipton Foods

390 Park Ave

New York, NY

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) City Council, City of Santa Cruz

809 Center Street

Santa Cruz, CA

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

B2-16

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

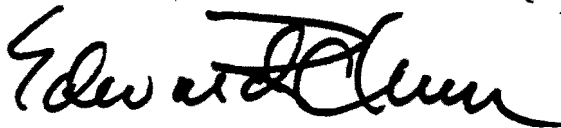
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)


See attachment

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.





Signature of Appellant(s) or
Authorized Agent

Date April 6, 2000

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

B:3-16

ISSUES ON APPEAL

POINTS AND AUTHORITIES

I. Standing.

Ms. Renee Flower made a presentation at the public hearing held before the Santa Cruz City Council on March 14, 2000 to oppose the subject permit. Thus, Ms. Flower, herein Appellant, is an aggrieved party within the meaning of California Code of Regulations Title 14, herein CCR, § 13111.

II Introduction.

The instant appeal is based on the ground that the permit granted along with the conditions do not conform with the standards set forth in the Local Coastal Program, herein LCP, or the Coastal Act of 1976, herein Act. (California Code of Regulations, herein CCR, § 13113; California Public Resources Code, herein PR, § 30603(b).) The specific sections of the applicable codes and regulations are discussed below and are divided into procedural and substantive issues.

III The permit must not be certified as it was obtained in violation of the procedural requirements of the local coastal program and the Act.

A. The permit was issued in violation of CCR § 13302(d).

CCR § 13302 sets forth requirements which must be met by the LCP in its permit process. Subsection (d) of CCR 13302 sets forth a notice requirement to the public which includes any rights of appeal to the Coastal Commission, herein Commission. The notice required by CCR § 13302 must be, at minimum, equivalent to the notice required by CCR §§ 13054 and 13063. The equivalent provision for the subject LCP is contained in the Municipal Code of the City of Santa Cruz, herein MC, § 24.04.100. These sections require notice by first class mail to all people,

ISSUES ON APPEAL

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A. The permit was issued in violation of CCR § 13302(d).

CCR § 13302 sets forth requirements which must be met by the LCP in its permit process. Subsection (d) of CCR 13302 sets forth a notice requirement to the public which includes any rights of appeal to the Coastal Commission, herein Commission. The notice required by CCR § 13302 must be, at minimum, equivalent to the notice required by CCR §§ 13054 and 13063. The equivalent provision for the subject LCP is contained in the Municipal Code of the City of Santa Cruz, herein MC, § 24.04.100. These sections require notice by first class mail to all people,

property owners and tenants of any real property of record located within 100 feet, not including roads, of the proposed request for the coastal permit. They also provide that the applicant is to supply a list of names of all those so served. This list is to be maintained by the planning department. (See CCR § 13054(a)(2); MC 24.04.100.)

In the present case, there is no proof that such mailing was ever done. Although the planning department has supplied to the Commission a copy of the alleged postcard which purports to be proof of the required notice, there is no mailing list provided. Nor is there even a list identifying all those people, tenants, or owners of the property within 100 feet of the proposed project. Without any further documentation or proof, the notice requirements cannot be found to have been met. Moreover, even if there was proof of notice, the first of the alleged postcards indicates incorrectly that the project was **not** appealable, to the Commission. Such incorrect information is in direct violation of CCR § 13302(d) and MC § 24.04.100(1)(h). Accordingly, the notice must be deemed insufficient. Where there is insufficient notice, the Commission **shall** revoke the permit. (CCR § 13054(e).)

B. The permit was issued in violation of CCR § 13301(b).

CCR § 13301(b) is applicable to anyone who wishes to perform or undertake any development in the coastal zone. (CCR § 13300.) CCR § 13301(b) provides, in pertinent part, "...that no individual development activity may be commenced or initiated in any way until the overall development has been reviewed pursuant to the provisions of section 13315 - 13325."¹ Thus, if the permit issued is part of a larger development, the permit should either (1) revoked

¹ Section 13315 through 13325 describes the Commission's review of development permits issued by local coastal programs.

or not certified until there is sufficient review of the larger project or (2) any work pursuant to the permit must be stayed until the entire development is reviewed. The policy behind such a requirement is obvious. The Commission must have the ability to make a determination as to the affect of the entire project within the coastal zone as well as how each part of a project relates and affects each other. While any smaller project or portion of a project, taken by itself, may have little impact on the coastal zone, its impact is likely to be exponentially greater when viewed in light of a larger project.

In this case, Lipton claims that the project of the stream location is a project that has no connection to any other project. Lipton's assertion is that the stream relocation is but an altruistic offering to the City of Santa Cruz which happens to have the collateral consequence of increasing the ability to develop and sell the land upon which the stream flows. However, the assertion is but a canard. As is demonstrated in the documents contained in Exhibit B, the Santa Cruz Municipal Transit District, herein SCMTD, has been involved with Lipton to purchase the land since 1995. The SCMTD has designated the property upon which the stream flows as their only site for their Metrobase since 1995. The SCMTD has negotiated for the land, conducted studies on the property, has a site plan for the property, and even issued a negative declaration as to the impact of the stream relocation and the Metrobase on the property and the adjoining neighborhood. Moreover, SCMTD makes it clear to anyone who will visit its website (www.scmttd.com/metrobase) that the project is, for lack of a better term, a done deal. Any reasonable person viewing this connection and the statements made by Lipton and SCMTD would conclude that the stream relocation is but a part of the larger Metrobase project. In fact, Honorable Keith Sugar, Mayor of the City of Santa Cruz, at the conclusion of the March 14, 2000

City Council meeting, specifically found that the conclusion that the stream relocation and Metrobase are part of one project is inescapable.² Accordingly, the provisions of CCR § 13301(b) come into play. As such, the Commission must either (1) revoke the permit as issued until it is combined with the larger project or (2) stay all work on the permit as issued until the entire Metrobase project is reviewed.

IV The permit must not be certified as it fails to conform with the LCP or the Act.

- A. The proposed relocation does not conform with the general policies of the LCP in that it does not promote the preservation nor promote the enhancement of the quality of riparian or wetlands. (EQ 4, EQ 4.2, EQ 4.2.4.)**

The City of Santa Cruz General Plan and Local Coastal Program was designed to, among other things, "protect and enhance natural communities and wildlife habitats throughout the city." (General Plan and LCP Environmental Quality Policy, herein EQ, section 4.) Further, the LCP is designed to promote the preservation and enhance the character and quality of riparian and wetland areas. (EQ 4.2, EQ 4.2.4.) The approval of the proposed plan has the opposite effect.

Lipton, the applicant for the subject permit, argued that the project is a restoration of the stream and would thus be valid purpose under EQ 4.2.6. Their claim is that the stream in its present condition and in its present area is so degraded that it cannot be a viable resource. However, it is Lipton's own malfeasance which has caused the degraded condition of the stream area. In a report prepared by Terratech, Inc. concerning their Phase I and limited Phase II environmental site assessment for SCMTD in June 1995 on the subject stream, the preparers of

² Appellant can make available a copy of the videotape of the March 14, 2000 City Council upon request.

the report stated that "...on May 19, we observed a truck spraying the drainage. The operator of the truck informed us that he was **spraying Rodeo**, for weed control." (Exhibit C, emphasis added.)³ This poisoning within coastal lands was confirmed by Lipton's lawyer at the March 14, 2000 City Council meeting. In fact, when asked, he stated that it had been occurring at least yearly since 1987. Thus, Lipton has been systematically poisoning the stream and removing vegetation for over 12 years. The issuance of the permit then rewards Lipton's illegal activity.

The law recognizes the "unclean hands" doctrine. The "unclean hands" doctrine is an equitable rationale for refusing the requested relief, in this case a permit to move the stream in the guise of a restoration project, where the principles of fairness dictate that the party seeking relief should not get relief regardless of the merits of its position. (See Kendall-Jackson Winery, Ltd. v. Superior Court (1999) 76 Cal.App.4th 970.) In the present case, Lipton is very likely the cause of the stream's present condition. It must be noted that at the City Council meeting of March 14, 2000, there was testimony that the stream above and below the Lipton property, areas which have not been subject to systematic poisoning, contain valuable and viable water resources. There was also testimony that in the decade of the 1970's, there was vegetation and wildlife in and about the subject stream. Thus, the only rational and reasonable inference concerning the degraded condition of the stream is that Lipton has kept the stream from reaching its potential as a valuable resource by poisoning it.

Lipton should not be allowed to benefit from their illegal acts. The policies of the LCP

³ Only that page of Terratech, Inc.'s report is attached as an Exhibit. The remaining portions of the report can be provided on request or located on SCMTD's website.

are to protect and enhance the riparian and wetlands. (EQ 4.2.) Lipton has been doing quite the opposite. Now in the guise of a restoration project they are asking to further damage the stream by filling it in. The permit should not be granted to such an entity.

Allowing Lipton to go forward with the project creates a policy totally opposite the policies of the LCP and the Act. It would create a policy and a precedent which would reward anyone for destroying an inconvenient riparian or wetland area just so they could find a more convenient place to have it. Such is not the type of activity that the Commission should sanction. If Lipton was truly out to restore the stream, they could restore it in its present location or they could stop poisoning it. Even with the stream in its present location, the surrounding land would still be capable of being sold or developed. The permit should not be certified or granted.

B. The water course is a wetland and a stream as defined in and protected by the LCP and thus the subject project is not permitted under EQ 4.2.6, EQ 4.2.4, EQ 4.2.2.3 or the Act.

Any proposed development within the coastal zone is required to conform to the LCP and the Act. (MC §24.08.200.) Moreover, if the proposed development concerns alteration of a riparian or wetland area, the permissible acts are extremely limited. (See General Plan and Local Coastal Program Environmental Quality Policy, herein EQ, section 4; EQ 4.2.6.) Thus, in order to determine the appropriate policies which need to be protected, there must be a determination as to how to define the water channel. Lipton argued that the water course should not be covered by the Act because it was a man-made water channel. This argument was rejected by the city planning staff and, seemingly, by the city council when it placed some restrictions on the permit citing various policies of the LCP. It is appellant's position that the Commission should consider the area a wetland and a stream protected under EQ 4.2, EQ 4.2.2, EQ 4.2.2.1, EQ 4.2.2.3 and

In letter dated July 29, 1999 written by Lee Otter, District Chief Planner of the Central Coast District Office of the Commission (Exhibit D), Otter notes that the area is quite possibly a wetland within the definition used by the Commission. Otter refers to the three criteria used in determining whether the property is a wetland: hydrology, hydric soils, and vegetation.⁴ In reviewing the biotic resource analysis provided by SCMTD on the property, Otter notes that only vegetation has been ruled out by the study. He concluded that the area is potentially a "wetland resource" that should be "allowed to realize its potential" as required by the LCP. Additionally, in a letter written by Charles Lester, District Manager of the Central Coast District Office of the Commission, dated January 27, 2000 to Patrick Murphy, Associate City Planner for the City of Santa Cruz, Lester notes in footnote 1 that "[a]bsent direct evidence to the contrary...it would appear that wetlands, as defined by the Coastal Act and LCP, may be found in the vicinity of the Arroyo stream corridor." (Exhibit E) In the present case, Lipton, as the applicant would have the burden of proof to establish that the area is not a wetland. (See Sierra Club v. California Coastal Zone Conservation (1976) 58 Cal.App.3d 149.) They have not done so and, as noted above, they have made efforts to try and keep the stream from being a valuable resource. Consequently, the

⁴ The LCP defines wetland as transitional areas between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water periodically or permanently. Wetlands are identified by the presence of at least one of three criteria: hydrology (periodically inundated or saturated), vegetation (at least seasonal domination of hydrophytes), or soils (hydric soils). The city's definition of wetlands includes estuaries, lagoons, inlets and ponds along with their associated marshes and tideflats.

area should be deemed by the Commission, a wetland.

As a wetland and stream, there is very limited development that can be done within its boundaries. (EQ 4.2.2.3, PR 30233.) Further, where the project seeks to alter a stream, such alterations are limited by the Public Resources Code sections 30233, 30236 and EQ 4.2.6. One of the very limited approved developments in these highly environmentally sensitive areas is to preserve and restore the habitat. (EQ 4.2.6.) However, the project does not promote such preservation or improvement of the existing wetland and stream. The subject project seeks to destroy the existing stream and wetland. The project calls for the stream to be filled up and a new stream to be built. By the Commission's own interpretive guidelines, wetlands and streams are generally considered environmentally sensitive habitat areas. (See Bolsa Chica land Trust v. Superior Court (1999) 71 Cal.App.4th 493, 515.) As such, the Coastal Act does not permit the habitat values of such areas to be destroyed and recreated in another location. (Id.) Such actions are also wholly inconsistent with EQ 4.2.6 and 4.2.4 both of which require preservation and improvement of the existing habitat. Furthermore, there is no reason given by the applicant why relocation is necessary. There was nothing presented by Lipton which indicated that the stream could not be restore in its present site. In fact, PR §§ 30233 provides that the proposed act on a wetland can only be done if there is no feasible less environmentally damaging alternative. Certainly restoration in it present site is less environmentally damaging and there is no reason it would be any less feasible. Finally, as noted above, restoration can occur on the present stream and development and resale of the land can still be done. Accordingly, the permit should not be certified or granted.

C. The resource management plan and the conditions imposed on the permit are insufficient to ensure the future of the relocated stream pursuant to EQ 4.2.2.

EQ 4.2.2 requires a 100 foot setback for any development from streams and wetlands. Although there is a requirement that no development should encroach within 100 feet of the centerline of the new stream (See condition 19 to the permit), such requirement is not firm. The condition added to the permit allows for future development within the 100 foot setback in any way of an amended resource management plan or by entering into a land use agreement with the city whereby the owner of the property agrees to implement all restoration criteria to be established for the Arroyo Seco corridor by the City-wide Creek Management Study. Given (1) the conflict between the Commission and the City over other recent developments within the 100 foot setback which cause the Commission to urge the City to conduct the creek study and (2) the likelihood of a 20 acre 175 bus maintenance, repair and storage facility, whose plans call for development well within the 100 foot setback being placed on the site, the 100 foot setback required by EQ 4.2.2 should be imposed on the permit, recorded on the deed, be firm, and subject to no reduction. Without such protection, the new proposed stream is subject to the same fate the now existing stream faces: destruction. Accordingly, the permit should not be certified.

Citizens for Better Planning

PMB 335
849 Almar Avenue, Suite C
Santa Cruz, CA 95060

April 10, 2000

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

RECEIVED
APR 12 2000
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Appeal on relocation of stream at 2200 Delaware Avenue

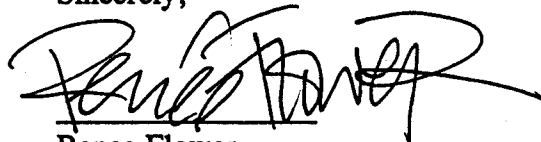
Dear Sirs and Madams:

I, **Renee Flower**, am a member of Citizens for Better Planning. We are a neighborhood organization concerned with the destruction of the stream located on 2200 Delaware. Several of our members spoke at the Santa Cruz City Council meeting on March 14, 2000 in opposition to the stream project proposed by Thomas Lipton. Others submitted written opposition.

I filed an appeal on April 7, 2000 to challenge the decision of the Santa Cruz City Council granting Lipton the coastal permit necessary to proceed with the project. By this letter I would like to join my organization as a party to the appeal and would also like to designate, **Ed Chun**, as a representative for myself and Citizens for Better Planning for the purpose of communicating with the Commission in regard to any issues on appeal.

Finally, I would like to request that any hearing granted on this appeal be held as close to Santa Cruz County as possible. This matter is of significant local public interest and members of the community may wish to attend.

Sincerely,



Renee Flower

B:14-16

Citizens for Better Planning

PMB 335

849 Almar Avenue, Suite C
Santa Cruz, CA 95060

April 11, 2000

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

RECEIVED

APR 12 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Appeal on relocation of stream at 2200 Delaware Avenue

Dear Sirs and Madams:

We are a neighborhood organization concerned with the destruction of the stream located on 2200 Delaware. Several of our members spoke at the Santa Cruz City Council meeting on March 14, 2000 in opposition to the stream project proposed by Thomas Lipton. Others submitted written opposition.

One of our members, **Renee Flower**, has filed an appeal with the Coastal Commission on April 7, 2000 to challenge the decision of the Santa Cruz City Council granting Lipton the coastal permit necessary to proceed with the project. By this letter we would like to join in Ms. Flower's appeal and would also like to designate, **Ed Chun**, as a representative for our organization for the purpose of communicating with the Coastal Commission in regard to any issues on appeal.

Finally, we would like to request that any hearing granted on this appeal be held as close to Santa Cruz County as possible. This matter is of significant local public interest and members of the community may wish to attend.

B-15-16

Kathy Pearson

Kathy Pearson

128 San Jose Ave

Santa Cruz Ca 95060

RICHARD ANDERSON

Richard Anderson

320 WANZEL STREET

SANTA CRUZ CA. 95060

Joseph L. Anderson
3411 Getchell St
Santa Cruz, CA 95060
John of Cedar

JOHN PALOCHA
227 CHICO AVE
SANTA CRUZ, CA
John Palocha

Lorna J. Torkos

LORNA J TORKOS

154 DuFour St
Santa Cruz, Ca 95060

Douglas Deitch (CCA)

DOUGLAS DEITCH
501 MISSION STREET
SANTA CRUZ, CA 95060

CAROL JOHNSON

Carol Johnson

890 WEST CLIFF #6
SANTA CRUZ, CA 95060

ROBERT BLITZER

518 FAIR AVE.

SANTA CRUZ CA 95060

PETER MCANENY
Petitioner
615 MIRAMAR DR
SANTA CRUZ, CA

Jim Holm

133 Los Altos Ct.

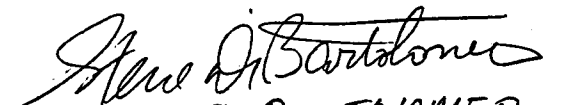
SANTA CRUZ CA 95060

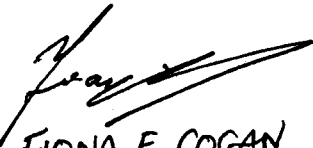
Citizens for Better Planning
Letter requesting to join appeal
page 2



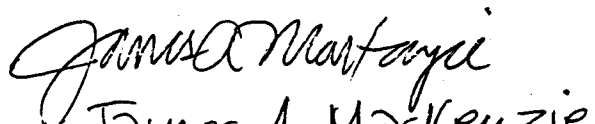
Warren E. Anderson
238 Chico Avenue
Santa Cruz, CA 95060

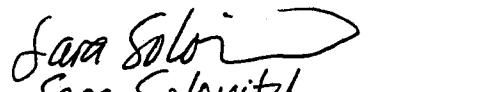
Catherine Anderson
Catherine Anderson
238 Chico Ave.
Santa Cruz, CA 95060


STEVE DI BARTOLOMEO
207 GETCHELL ST.
SANTA CRUZ, CA 95060

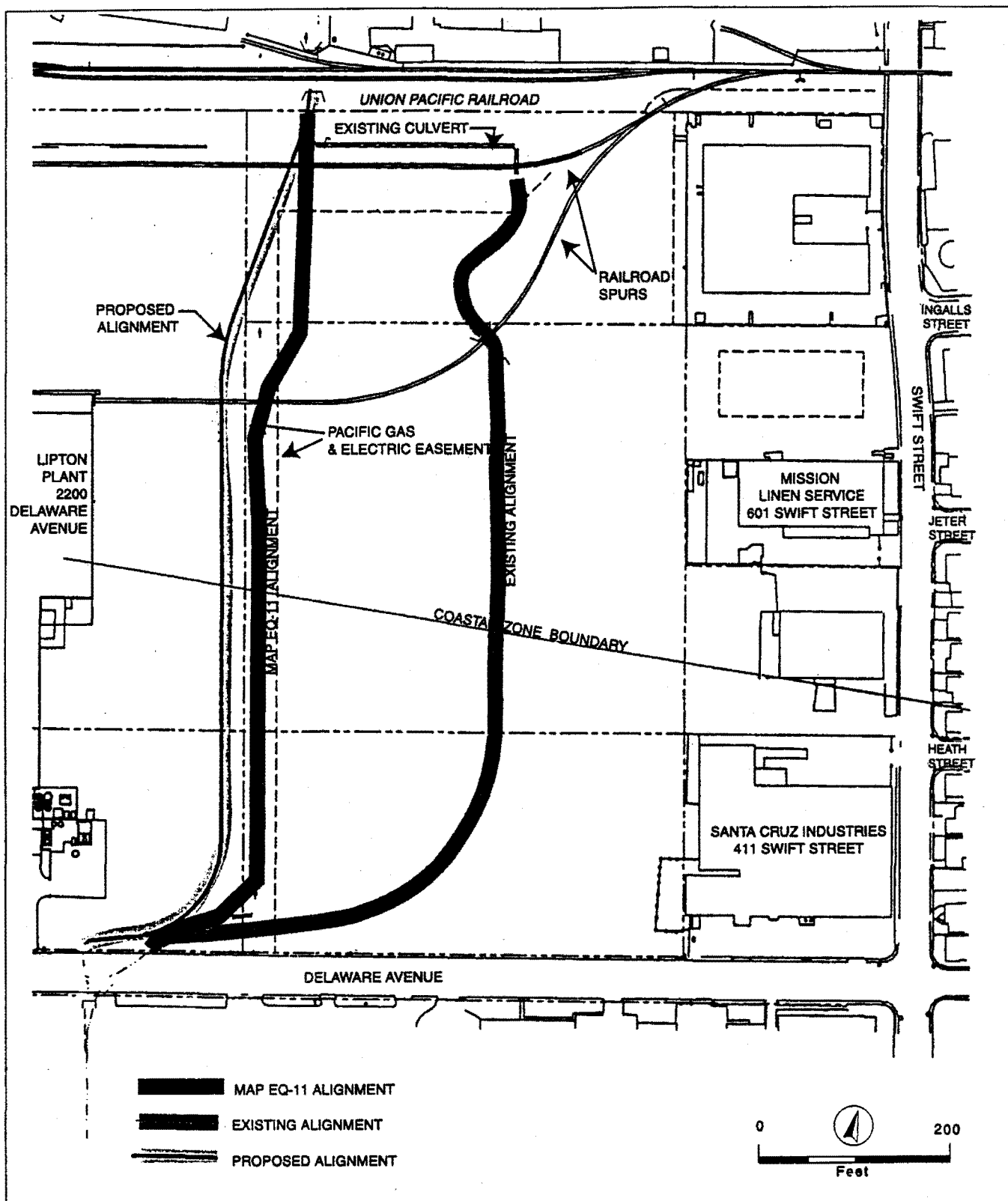


FIONA E. COGAN
244 SWANTON BLVD.,
SANTA CRUZ,
CA 95060


James A. MacKenzie
1747 King Street
Santa Cruz, CA 95060


Sara Solovitch
616 Modesto Ave.
Santa Cruz, CA 95060

Rachel Kliger
RACHEL KLIGER
546 ARROYO SECO
SANTA CRUZ, CA
95060



SOURCE: Robert Dewitt & Associates



**LIPTON PROPERTY CHANNEL RELOCATION PROJECT
PAST, EXISTING, AND PROPOSED DRAINAGE ALIGNMENTS**

EXHIBIT NO. **D**

APPLICATION NO.

A-3-STC-00-041

DRAINAGE RELOCATION PLAN
PREPARED FOR
CONOPCO INC., A NEW YORK CORPORATION
SANTA CRUZ COUNTY

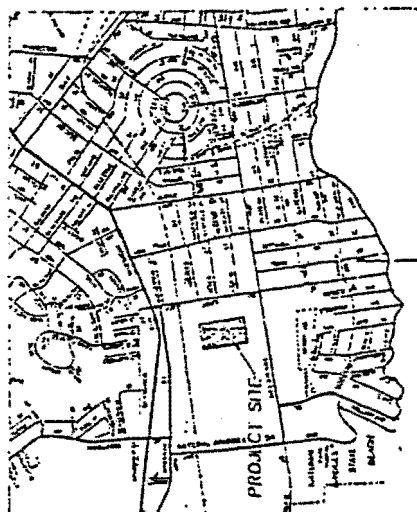
SHEET INDEX

- CROSS SECTIONS** A.T.A. MAP BY BOWMAN & WILLIAMS
SHOWING CHANNEL HISTORY TO STA 109+100
PLAN & PROFILE BEGINS TO STA 109+100
PLAN & PROFILE STA 109+00 TO END
CROSS SECTIONS BEGINS TO STA 109+00
CROSS SECTIONS STA 110+00 TO END
PORTAGE AT A.T.A. MAP BY BOWMAN & WILLIAMS
SHOWING NEW GRADING FOR OLD RAILROAD SPURNS.
SECTION WITHIN THE PORTAGE
DETAILS OF TYPICAL CHANNELS
PLANNING PLAN, BEGINS TO STA 109+00
PLANNING PLAN, 109+00 TO END

RECEIVED

FEB 02 2017

City Planning Dept.



GENERAL NOTES

- [illegible]

CHARGES & DISBURSES	COST (per unit)	PER UNIT (per unit)
CHARGES & DISBURSES	12.50	14.700
DISBURSES	1.750	0
TOTAL	14.250	14.700

	CPI (1957=100)	1961 (1957=100)
Transportation and Air Service	6.615	1.021
Insurance	872	0
TOTAL	7.220	1.021

EXHIBIT NO. E
APPLICATION NO.

A-3-STC-00-041

34-53

SCALE 1"=100'

1"=100'

Robert L. Dwyer
P. Associates, Inc.
City Engineer & Surveyor

APN'S 003-119-05, 171-18, 022-14,
031-01, 081-01, 032-01
SANTA CRUZ COUNTY, CALIFORNIA

DRAINAGE RELOCATION PLAN

PREPARED AT THE REQUEST OF
LIPTON COMPANIES
APN'S 003-119-05, 171-18, 022-14,
031-01, 081-01, 032-01
SANTA CRUZ COUNTY, CALIFORNIA
FOR THE CITY OF SAN JOSE

C2-11

PORTION OF ALTA SURVEY BY BOWMAN & WILLIAMS SHOWING CHANNEL HISTORY AND COASTAL ZONE BOUNDARY

BASIS OF BEARINGS

BEARINGS AND DISTANCES FOR THE CHANNEL HISTORY AND COASTAL ZONE BOUNDARY ARE BASED ON THE ALTA SURVEY BY BOWMAN & WILLIAMS, 1874, AND THE RELOCATION OF THE CHANNEL HISTORY AND COASTAL ZONE BOUNDARY BY THE CITY OF SAN JOSE, 1974.

BENCHMARK

THE BENCHMARK IS A 10" DIA. IRON PIPE SET IN CONCRETE, 10' HIGH, AND IS LOCATED AT THE CORNER OF THE ALTA SURVEY BY BOWMAN & WILLIAMS, 1874, AND THE RELOCATION OF THE CHANNEL HISTORY AND COASTAL ZONE BOUNDARY BY THE CITY OF SAN JOSE, 1974.

LEGEND
1"=100'
1"=100'

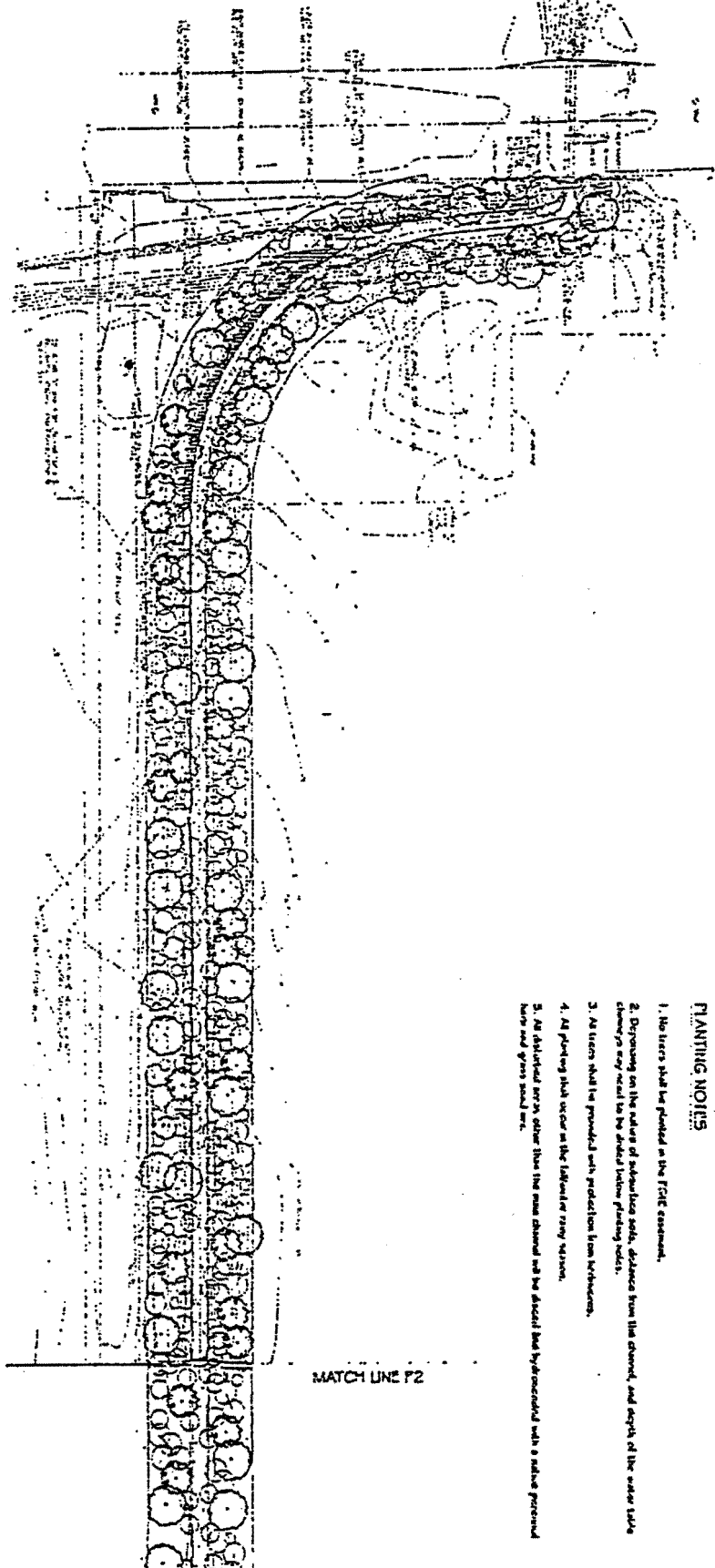
PREPARED BY
ROUTE OF 1974
JON (1983)










EXHIBIT NO. E
APPLICATION NO.

A-3-STC-00-041

34-54

ΣΗ-77



PLANT LEGEND				
Symbol	Common Name	Preferred Name	Flowers / Plant Size	Spacing
	Big leaf maple	Amorpha fruticosa	5' tall / 20'	Group 30' - 35' apart
	Small leaf ash	Fraxinus pyramidalis	5' tall / 20'	Group 30' - 35' apart
	Cornus bush	Quercus prinus	1' tall / 10'	20-25' between groups
	Red maple	Amorpha fruticosa	5' tall / 20'	Group 25' - 30' apart
	Cornus multiflora	Rubus occidentalis	1' tall / 50'	20-25' between groups
	Yucca	Linum catharticum	1' tall / 75'	20-25' between groups
	Cornus bicolor	Cornus americana	1' tall / 50'	20-25' between groups
	Shrub rose / Shrub rose	Rosa blanda Rosa carolina	1' tall / 100'	Scattered
	Black flower Hydrangea	Hydrangea	40' by 40'	Hydrangea

WILDLIFE ENHANCEMENTS

- A. Organisms enter and stay at one time channel and create an aquatic habitat by providing stable and cooler temperatures.
 - B. Aquatic biota and plants along the channel banks will attract the birds and reduce sediment disturbance into the channel.
 - C. An herb layer, planted in the buffer zone will reduce overhead sediment flow which will enhance water quality.
 - D. Fertilizer will be added including nitrogen and making improvements for terrestrial, stream, wetlands, and aquatic species associated with riparian communities.
 - E. Plant species were selected based on native species found along natural creeks in Santa Cruz County and on lists sponsored by the California Database.
- ### IRRIGATION HOLES
1. A temporary irrigation system will be designed and installed in order to provide water to the trees, shrubs, and ground cover.
 2. The irrigation system will be maintained and operated for at least two years. The irrigation system will be replaced when the system starts peaking.

PLANTING NOTES

1. No trees shall be planted in the FIC's easement.
2. Depending on the nature of subsidence, distance from the stream, and depth of the water table, easement may extend to the stream before planting ends.
3. No trees shall be planted with production from easement.
4. All planting shall occur in the following very season.
5. No structures shall occur in the stream channel and the stream bed hydro-connected with a native perennial stream and grass shall not.

MATCH LINE F2

EXHIBIT NO. E	
APPLICATION NO.	
A-3-STC-00-041	

64-13

34-63

WATCH LINE SEE P. 1

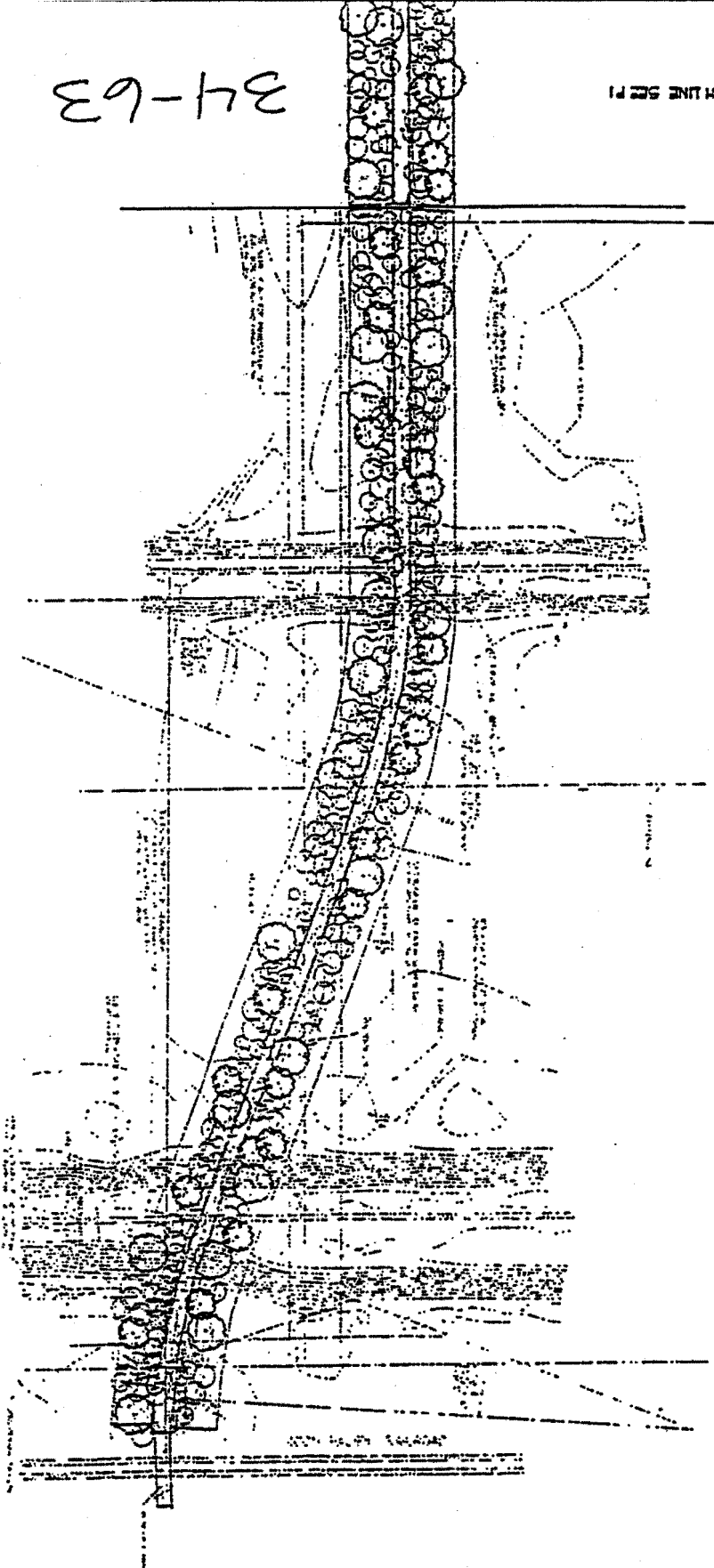


EXHIBIT NO. E
APPLICATION NO.
A-3-STC-00-041

01-11-2000
Scale: 1" = 30'



PLANTING PLAN

P-2

CALIFORNIA COASTAL COMMISSION

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



January 27, 2000

Patrick Murphy
Associate Planner
Planning and Community Development Department
City of Santa Cruz
809 Center Street, Room 206
Santa Cruz, Ca 95060

EXHIBIT NO. F

APPLICATION NO.

A-3-STC-00-041

Subject: *Notice of Intent (NOI) to Issue a Negative Declaration (ND) for the Relocation of a Portion of the Arroyo Seco Stream Corridor (SCH# 99122089)*

Dear Mr. Murphy,

Thank you for the opportunity to review this CEQA document. In general we are very supportive of efforts to improve urban stream corridor habitat, and that restoration of the degraded stream corridor on the Lipton property is being proposed. Restoration at this location has the potential to restore the physical and biological integrity of a portion of the Arroyo Seco stream corridor ecosystem.

After review of the Negative Declaration (ND) we have identified several aspects of the proposal that require further clarification. The following comments are based upon the proposed ND and the ND-incorporated Resource Management Plan.

Applicable Local Coastal Program Policies

The portion of the proposed project nearest Delaware Avenue is located in the coastal zone and is subject to the provisions of the City's certified Local Coastal Program (LCP). We have stated in our previous comments for the proposed transit district project, that the City's LCP generally supports habitat improvement projects. This project could improve the four components of the stream ecosystem most frequently adversely affected by urbanization, including catchment hydrology, water quality, floodplain ecology (i.e. riparian elements), and instream ecology.

The relocation of a stream, though, is a major undertaking with many resource and resource policy implications. The portion of the Arroyo Seco stream corridor proposed for relocation is identified as an intermittent stream by USGS and LUP map EQ 11 (Streams). Accordingly, although degraded and devoid of riparian vegetation, the subject stream reach is protected by the requirements of LCP policies EQ 4.2, EQ 4.2.1, EQ 4.2.2, EQ 4.2.2.1, EQ 4.2.2.3, L 3.4, and Section 24.14.080.¹

The primary purpose of the proposed project is the improvement of habitat. As such, it is consistent with LCP policies EQ 4.2 and EQ 4.2.6. These policies require the preservation and enhancement of riparian and wetland habitats, and LCP Policy EQ 4.2.6 sets forth the circumstances upon which the alteration of river or stream habitats may take place. However, the proposed project raises questions of consistency with LCP policies EQ 4.2.1, EQ 4.2.2, EQ 4.2.2.1, EQ 4.2.2.3, L 3.4, and Part 1 of Chapter 24.14 (Conservation Regulations) of the LCP's zoning setback requirements for wetlands and watercourses, prohibited development within such areas, and the requirement for management plans.

Although no development is currently proposed (other than habitat restoration) within the LCP's

¹ The ND also concludes that the existing channel could not be termed a wetland under City LCP and Coastal Act standards. Absent direct evidence to the contrary, though, it would appear that wetlands, as defined by the Coastal Act and LCP, may be found in the vicinity of the Arroyo Seco stream corridor.

required 100-foot setback, the ND and the ND's resource management plan do not adequately address the issue of future development in these LCP-protected areas. The LCP also requires the development of management plans for the City's wetlands and streams (LUP Policy L 3.4 specifically identifies this requirement for the Arroyo Seco Corridor). Any development within setback areas must be consistent with these plans. LCP policy EQ 4.2.2.3 requires an amendment to the Land Use Plan for such plans.

In this case, since a corridor would be relocated within an otherwise vacant landscape, the City should ensure that General Plan and LCP goals and objectives for such corridors are pursued. In other words, we suggest that the City pursue appropriate measures to protect buffer areas adjacent to the relocated channel from intrusion by future development. Such measures could include legal instruments such as deed restrictions and/or easements covering this buffer area. We note that no such provisions are currently proposed.

In response to the 100-foot setback requirement of LCP Policy EQ 4.2.2, the ND acknowledges that while the policy requires the setback, Policy EQ 4.2.2.3 allows development within the setback when a management plan has been created. This policy further requires that the plan contain the provisions called for under LCP Policies EQ 4.2.1 and L 3.4. Under LCP Policy EQ 4.2.2.3 the resource management plan can allow a limited number of permitted uses allowed within 100-foot buffer areas, consistent with the maintenance of habitat values at such locations.

In this case a resource management plan is being proposed for the new channel. This plan shows an overall stream corridor of 60 feet. This plan contains inadequate provisions for the area within the 200-foot (100-feet on each side) corridor required by the General Plan and LCP. Moreover, the ND-incorporated management plan does not provide for any foreseeable mechanisms to ensure that buffer requirements are met. If this plan is meant to be the EQ 4.2.2.3 required plan, then it is not adequate. While the ND-incorporated resource management plan may address the present development proposal, it does not address future potential for development within the 100-foot buffer.

Specifically, the ND-plan pertains only to the physical and biological components of the stream corridor. However, if future development is to be contemplated within the 100-foot buffer of the new channel, then LCP Policy EQ 4.2.2.3 clearly requires the preparation of a management plan that also includes a land use element. As the policy states, "if any exceptions to this policy," (i.e. setback), "are to be considered, it shall be within the context of a resource management plan which shall be approved by the Coastal Commission as an amendment to the Land Use Plan."

As you are aware, the City of Santa Cruz has been awarded grant monies by the Coastal Commission to be used for the preparation of citywide creeks and wetlands management plans. These plans would be adopted by the Commission and provide the site specific context and management goals and objectives for each corridor – including the Arroyo Seco stream corridor. We are encouraged that the City is pursuing such plans and suggest the pursuance of an effort by which the proposed project could take full advantage of this funded planning opportunity.

We would recommend that a management plan be submitted as an LCP amendment for this proposal. Additionally, the submittal should also amend LCP map EQ-11 (streams) so as to accurately delineate changes in the channels location.

Other Questions/Suggested Modifications

Our previous understanding of the proposal was that the entire existing channel was to be filled in tandem with the corridor relocation. It appears from the ND that this is not the case and only a portion of the existing channel would be so filled. Will the existing channel be filled at a future date? The ND states that a portion of the existing channel is being retained as a detention

basin. Please clarify what runoff would be detained; why it would be so detained, where such a basin would be on the site, and how it would function.

Also, we suggest that the new channel should be relocated to its true historic location, and also utilize the existing grade. The current proposal is close to the historic location, while we are unable to determine if it utilizes the existing grade.

In terms of comments upon the proposed resource management plan we suggest the following modifications that are specific to the restoration components of the plan only:

1. Monitoring and maintenance of habitat improvement should be extended from the proposed three (3) years to at least five (5), and if feasible up to seven or ten years. In addition, monitoring reports should be submitted at least annually in order to ensure that plant establishment success and performance criteria have been achieved.
2. The resource management plan should establish explicit performance standards for vegetation, hydrology, and wildlife, and a clear schedule and procedure for determining whether they are met should be provided. Any such performance standards should include; identification of minimum goals for each herbaceous species, by percentage of total plantings and by percentage of total cover when defined success criteria are met; and specification of the number of years active maintenance and monitoring will continue after ten years once success criteria are met. All performance standards should state in quantifiable terms the level and extent of the attributes necessary to reach the goals and objectives. Sustainability of the attributes should be part of every performance standard. Each performance standard should identify: (1) the attribute to be achieved; (2) the condition or level that defines success; and (3) the period over which success must be sustained. The performance standards should be specific enough to provide for the assessment of riparian habitat performance over time through the measurement of attributes of riparian habitat and functions including, but not limited to, vegetation, hydrology, and wildlife abundance. In conjunction with such standards, the plan should include measures to address those portions of the restoration that are unsuccessful and specify methods to remedy them.
3. We suggest that check dams (w/woody debris or other material) be used to create a curvilinear flow in channel bottom, and to create riffle-pool regime for enhanced habitat productivity.

Appealability

The proposed development would be appealable to Coastal Commission under Section 30603 (a)(2) of the Coastal Act since it lies within 100 feet of a stream. This section and subsections of the Act state,

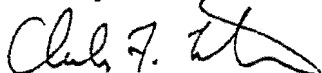
(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

Conclusion

Thank you for the opportunity to comment in the development stage of this project. As you move forward with your project analysis and environmental review, the issues identified above, as well as any other relevant coastal issues identified upon further review or due to project modifications, should be considered in light of the provisions of the Coastal Act and the certified City of Santa Cruz LCP. If you should have any questions regarding this matter, please contact me or Kevin Colin of my staff at (831) 427-4863.

Sincerely,



Charles Lester
District Manager
Central Coast District Office

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cc: John Dixon, Senior Biologist, California Coastal Commission
Carmel Babich, California Department of Fish and Game
Rob Lawrence, U.S. Army Corps of Engineers
Tim Tosta, Esq., Attorney for Lipton
Leslie R. White, General Manager, SCMTD

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

May 1, 2000

Via Fed Ex

Kevin Colin
California Coastal Commission
Central Coast Area Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: **Appeal No. A-3-STC-00-041**
City of Santa Cruz Approval of Coastal Development Permit For
Lipton Channel Relocation Project

Dear Mr. Colin:

In anticipation of our meeting later this week, we have prepared our preliminary response to the appeal, filed on April 12, 2000 ("Appeal"), of the City of Santa Cruz approval of the Coastal Development Permit ("Permit") for the Lipton Channel Relocation Project ("Project"). We believe that the Commission should not hear the Appeal because:

- (1) **the Commission does not have any appellate jurisdiction over the Project.** Neither the Lipton property ("Property") nor the area surrounding the Channel is shown as an appeal area on the jurisdictional appeal map certified by the Commission. In addition, under Commission regulations, channelized streams not having significant habitat value should not be considered subject to appellate jurisdiction (Title 14 Cal. Code of Regs ("CCR") sec. 13577(a)); and
- (2) **the Appeal does not present any substantial issue** of the Project's compliance with the City certified Local Coastal Program ("LCP").

The Project will result in the environmental enhancement of an existing, degraded man-made channel with no habitat value. The Project includes a Resource Management Plan for the new channel which will create habitat and riparian values where none currently exist, and fully daylight the existing culverted portions of the Channel. If the Project does not go forward, the



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existing, open dirt ditch will remain in place, a benefit to no one.

Furthermore, the clear purpose of Ms. Flowers' Appeal is to prevent the potential, future construction of the Santa Cruz County Metropolitan Transit District's Consolidated Facility ("MetroBase") on the Property. However, the MetroBase is not part of the Project before the City or Commission. Nor could it be, since the Transit District has no interest in the Property and no contract to acquire the Property from Lipton. Lipton will go forward with the Project whether or not the MetroBase is approved. The Commission and the City will have a full opportunity to review and consider the appropriateness of the MetroBase Project if and when an application is made in the future. The Commission should not allow appellants to misuse the appeal process to target other, unrelated projects.

A. Commission Does Not Have Jurisdiction Over The Project.

Since the City LCP is certified, the Commission has very limited appellate jurisdiction over City approvals of CDPs, none of which are present here. (See, Pub. Res. Code sec. 30603.) Neither the Lipton property nor the Channel is shown on the Commission-certified jurisdictional appeals map. Further, under Commission regulations, channels having no significant habitat value are not considered jurisdictional streams under the Coastal Act. (CCR § 13577(a).) The lack of appellate jurisdiction over the drainage course (of which the Channel is a part) was a significant factor in the Commission's decision to withdraw its own appeal of the Wave Crest development located within 30 feet of the drainage just south of the Lipton Property (across Delaware Avenue). After Wave Crest raised objections concerning the Commission's appellate jurisdiction, the appeal was withdrawn with the acceptance by Wave Crest of minor clarifications and modifications to the City permit approval.

The Project is not subject to appeal because the Lipton Property and the Channel are not shown on the certified Commission appeals jurisdiction map. Under Coastal Commission regulations, the Commission is required to adopt maps showing the area of appellate jurisdiction pursuant to Public Resources Code Section 30603(a)(2). (CCR § 13576(a).) Public Resources Code Section 30603(a)(2) states that the Coastal Commission has jurisdiction over developments "within 100 feet of any wetland, estuary, or stream"¹. However, the implementing regulations state that the official appeal jurisdiction map "will serve as the official maps of the Commission's permit and appeal jurisdiction" and "this map has been prepared to show where the California Coastal Commission retains permit and appeal jurisdiction pursuant to Public Resource Code Section ... 30603(a)(1) and (a)(2)". (CCR § 13576(a).) Therefore, with regard

¹ As discussed in detail below in Section 3(a), the man-made Channel is not a "stream" under the Coastal Act. Therefore, the Commission cannot assert jurisdiction under the "stream" provisions of Pub. Res. Code sec. 30603(a)(2). However, assuming for argument's sake that the Channel is a "stream", the failure of the Commission to show the area within 100 feet of the Channel on its appeals map means that the Commission may not assert jurisdiction.

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to jurisdiction along the boundaries of a stream, the official map controls and the Commission has no jurisdiction over the Channel or Lipton Property².

Furthermore, the Channel does not meet the criteria for appellate jurisdiction for streams under Commission regulations. In determining what streams are subject to appellate jurisdiction, the regulations state: "channelized streams not having **significant habitat value** should not be considered". (CCR § 13577(a).) Four independent biologists have determined that the Channel is not a wetlands, and does not have any riparian vegetation or resources, wildlife habitat, rare or endangered species, or water quality benefits associated with streams: the U.S. Army Corps of Engineers; EIP Associates (consultants for a Project Negative Declaration); Wetlands Research Associates (Mike Josselyn) (authors of the Resource Management Plan); and City staff as part of its review and analysis of the Negative Declaration. Since the Channel does not have any habitat value, let alone **significant habitat value**, it should not be considered a stream subject to appellate jurisdiction under the Commission's own regulations.

B. Since The Appeal Presents No Substantial Issue, The Commission Should Not Hear The Appeal Even If It Determines That Jurisdiction Exists.

Even if the Commission determines that it has appellate jurisdiction over the Project, it should not hear the Appeal because it presents no substantial issue of compliance with the City LCP. Since the City LCP is certified, the City is the chief permitting authority for CDPs and the Commission assumes a largely oversight role with limited authority to hear certain types of appeals. (Public Resources Code §§ 30603 and 30519.) The Commission's appellate authority is restricted to certain types of development and geographical areas. (Public Resources Code § 30603.) Assuming the Appeal meets these requirements, the Commission still has the discretion to determine whether to hear the Appeal.

The Commission shall not hear an appeal unless it determines that a "substantial issue" exists with respect to the grounds under which the appeal has been filed under Section 30603. (Public Resources Code § 30625(b)(2).) In making a substantial issue determination, the Commission should consider whether the appeal raises a "significant question". (CCR § 13115.) The significant question must relate to the narrow grounds for appeal which are non-conformance with standards set forth in the certified Local Coastal Program or public access policies of the Coastal Act. (Public Resources Code § 30603(b),(c).) The Commission has the discretion to determine whether or not to hear an appeal and the Commission should limit their appeal hearings to issues of implementation of important LCP policies with an appropriate

² This is reinforced by the fact that the Commission regulations state that, while the map shall control the determination of stream boundary jurisdiction, it does not control over other criteria stated in the statute, such as development within a sensitive coastal resource area, development which is not a principal permitted use, or development which constitutes a major public works project or major energy facility. (See Public Resources Code § 30603(a)(3), (a)(4), and (a)(5).) The Commission regulations specifically state that, in addition to the areas shown on the map, "development may also be appealable pursuant to Public Resources Code Section 30603(a)(5)". (CCR § 13576.)

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degree of deference to the local government's determination on these issues. In determining whether an appeal presents a "substantial issue", the question is not whether the local government's decision is the best decision or the one that the Commission itself would have reached. Rather, the Commission should take into account the following: the precedential value of the local government's decision for future interpretations of the LCP; whether the appeal raises issues of regional or statewide significance; and the extent and scope of the proposed development.

As discussed in detail below, none of the issues raised by the appellants meet the substantial issue threshold. Therefore, the Commission should not hear the Appeal.

1. Project Notice Was Proper And In Compliance With All Laws.

The City provided proper notice of both the Zoning Board and City Council hearings on the Project CDP. Since the City LCP is certified, the applicable notice provisions are CCR Sections 13565 or 13568, and City Code Section 24.04.100. The City notice complied with both of these provisions and the City provided evidence of compliance to the Commission as part of its Notice of Final Local Action.

The appellant's allegations of Notice deficiencies do not present a "substantial issue" of compliance with the LCP or Coastal Act. First, the appellant did not raise these issues before the City which it is required to do before raising these issues with the Commission. Since the appellant did not exhaust administrative remedies on this issue, the Commission cannot consider this issue for the first time on appeal. Second, any alleged technical deficiencies with the Notice do not present a significant issue of compliance with the LCP. The only alleged deficiency was that the Zoning Board hearing notice stated that the Project was not appealable to the Coastal Commission. The notice complied with all other requirements, including description of the Project, and time, date and place of the hearing. As discussed above in Section A., since the Commission does not have any appellate jurisdiction over the Project, the notice, in fact, was correct. However, assuming for argument's sake that the Commission does have appellate jurisdiction, the alleged error is insignificant. As the City Attorney opined at the Zoning Board meeting, this minor "mistake" did not invalidate the Notice. Further, this issue was corrected for the City Council appeal hearing notice. Certainly, the appellant had notice of both the Zoning Board and City Council hearing, access to all relevant Project documents, and, in fact, participated in the City hearing process. Therefore, any notice deficiencies do not rise to the level of a "substantial issue" for Commission consideration.

2. Permit Approval Did Not Violate CCR Section 13301(b). CEQA Segmentation Claim Is Not Proper Issue for the Commission.

The City properly did not consider the MetroBase as part of Project and CCR Section 13301 was not violated. CCR Section 13301 does not require that the MetroBase be considered part of the Channel Relocation Project. The section only addresses the local

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government CDP procedure, in general. It does not impose substantive requirements. It allows one coastal development permit to include "any proposed activity [which] involves more than one action" ... "for purposes of notification requirements of Section 13315". Therefore, this regulation establishes an optional procedure, not a mandatory requirement. The statement that "no individual development activity may be commenced or initiated in any way until the overall development has been reviewed" simply requires that, where multiple actions are incorporated into one permit, no action can proceed until the overall permit is issued.

Appellants are trying to twist the language of this regulation as a way to raise its project segmentation argument under CEQA before the Commission. However, project segmentation is a CEQA issue, not a LCP or Coastal Act issue. The fact that this issue is solely a CEQA issue is demonstrated by a review of the City process³. The issue of the "connection" between the Channel and MetroBase projects solely was raised as a violation of CEQA. Ample evidence was presented to the City that consideration of the Channel Project separate from the MetroBase did not violate CEQA⁴. Therefore, these allegations do not raise a "substantial issue" concerning compliance with the LCP and Coastal Act.⁵

In any event, the MetroBase clearly is not part of the Channel Relocation Project. The Transit District has identified and is considering several alternative sites for the MetroBase. Over a five year period, all of these sites (only one of which is the Lipton Property) have been evaluated. The Transit District has not made any final decision to consider only the Lipton Property as the MetroBase location. With regard to the Lipton Property alternative itself, the Transit District has no legal interest in the Lipton Property which would allow it to build the MetroBase. There is no contract between Lipton and the Transit District regarding purchase of the vacant Lipton Property. Although Lipton has had negotiations with the Transit District, there has been no meeting of the minds on purchase terms. Further, Lipton has received several offers for the Property from other perspective purchasers. Therefore, there is no evidence that the MetroBase ever could or would be built on the Lipton Property.

The Channel Relocation Project is a "stand-alone project", not dependent upon the development of the MetroBase. The Channel Relocation Project will go forward whether or not the MetroBase is built. The Channel Project also does not commit the City to a definite course of action on the MetroBase. The MetroBase will be subject to its own separate and future

³ The appellant's reference to Mayor Sugar's comments only reinforces this point because he stated that CEQA required the MetroBase Project to be considered part of the Channel Project.

⁴ Please note that two law firms specializing in CEQA (Remy, Thomas and Moose, and Baker & McKenzie) reviewed the claims of improper segmentation and issued written opinions that the consideration of the Channel project separate from the MetroBase did not violate CEQA.

⁵ Opponents of the Project have already filed a legal challenge to the City approval of the Project under CEQA, alleging the Project segmentation issue discussed in the Appeal.

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entitlement and environmental review process if the Transit District acquires the Lipton site. At this time, the Transit District cannot even file an application for a coastal development permit on the site. Lipton would not give permission for such an application. The City Council made it clear at the hearing on the Channel Project that it was not making a decision on the MetroBase and any future MetroBase application would be subject to full and complete review by the Council on its merits. Similarly, the Commission may not, and should not, consider the decision on the Appeal as including or involving the MetroBase.

3. To The Extent They Are Applicable, The Project Complies With The LCP Environmental Protection and Enhancement Policies.
 - a. Existing Channel Is Man-Made, Not A Natural Stream Subject To Regulation Under The Coastal Act and LCP.

The existing Channel is a man-made drainage ditch, excavated on the relatively flat coastal terrace, not a natural stream. It is used to convey storm water runoff. The Channel was excavated during the construction of the Lipton plant in the 1970s. The Plant construction resulted in significant grading and alteration of the property along both the former and present drainage courses. Several photos show the extensive grading of the area during Plant construction (Exhibit 1). The Channel was modified a second time and a 300 foot long culvert added, when the Lipton Plant was expanded in 1976 and a second railroad spur built. The Channel has not been moved since 1976. The man-made nature of the Channel is confirmed by the US Army Corps of Engineers. The Army Corps has concluded that the Channel relocation is exempt from Section 404 requirements because it was a "non-tidal drainage and irrigation ditch excavated on dry land" (Exhibit 2).

Historically, there was no natural stream on the Lipton property. From the turn of the century to the 1950s, the only natural drainage that flowed through the Arroyo Seco basin ended about 1,000 feet north of Mission Street near the mouth of the arroyo (USGS maps dated 1902- 1946, See Exhibit 3.) No USGS map between 1902-1946 shows any stream on the Lipton property (Exhibit 3)⁶. This historical data confirms that the entire drainage located south of Mission Street, including the Channel on the Lipton property, is not naturally occurring.

A man-made drainage channel appears on the Lipton property for the first time in the 1950s (Exhibits 4 and 5 – 1954 USGS map and 1956 aerial photo). This map shows a drainage channel traversing the entire coastal terrace to the ocean. This channel was culverted under Mission Street, the Southern Pacific railroad tracks, and Delaware Street, all of which existed prior to 1954. The channel was straight, narrow, and generally ran along the then existing property line, except for a jog slightly north of Delaware Avenue (Exhibits 4-5). The

⁶ By comparison, Moore Creek (located further west in the City) is depicted on the 1902 - 1946 USGS quad sheets as draining across the marine terrace all the way to the ocean (See Exhibit 3).

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original channel had no streamcourse features (*i.e.*, no meandering; no habitat). No riparian vegetation existed along the channel; rather, electric power lines and a utility easement ran along its edges (Exhibit 5). The land use adjacent to and abutting the channel appears to have been agricultural (Exhibit 5). The channel either served to irrigate the surrounding agricultural properties, or to divert sheet flow to aerate the land for cultivation.

Aerial photographs from 1928-1940 are consistent with the USGS maps and do not show a naturally occurring stream existed on the Lipton property (Exhibit 6).⁷ No vegetation characteristic of streams and no stream course features are present (Exhibit 6). There is a small, crescent-shaped channel that appears on the Lipton Property just north of Delaware Avenue which is most likely an agricultural ditch. This conclusion is consistent with a 1936 Department of Agriculture map of the area showing an agricultural ditch at this location (Exhibit 7). It is also consistent with the use of the adjacent farmland. The crescent-shaped ditch does not appear to extend to the north because this area is planted with trees in the 1940s.

A 1956 aerial photograph is the first time any channel clearly appears on the Lipton property (Exhibit 5). The 1956 photo shows a narrow, straight drainage ditch with no vegetation running north to south across the Lipton property. The appearance of this drainage channel in 1956 is consistent with the 1954 USGS map for the area (Exhibit 4).

b. Even Though The Channel Is Not A Natural Stream, It Is Consistent With Coastal Act and LCP Stream Alteration Policies As A Habitat Improvement Program.

Both the Coastal Act and LCP only regulate alterations of "**natural streams**" which are allowed as habitat improvement projects. (Public Resources Code § 30231; LCP Environmental Quality Element Policy 4.2.6.) This focus on **natural** environmental resources is emphasized in the LCP Environmental Quality Element Goal EQ-4 which states: protect and enhance "**natural vegetation communities and wildlife habitats throughout the City**". As discussed above in Section B.3(a), the Channel is man-made, not a natural stream. Therefore, it is not subject to these policies.

Even though the Channel is man-made, and not subject to the natural stream alteration provisions of the Coastal Act and LCP, it, nonetheless, complies because it is a "habitat improvement project". The Commission staff has acknowledged that the Channel Relocation Project is consistent with these provisions. (Letter From Charles Lester (Commission

⁷ Even though we find it difficult to ascertain any watercourse feature in the photos, if any exists, it is only an agricultural ditch, not a stream. A small crescent-shaped agricultural ditch is shown on the Lipton property on the 1936 Department of Agriculture Irrigation and Soil Survey. An agricultural ditch would have served the surrounding farmlands which are clearly shown in the aerial photos. Such agricultural ditches, by USGS policy, are not included on USGS maps.

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Central Coast District Office) to Patrick Murphy (City of Santa Cruz), dated January 27, 2000.) As described in the Negative Declaration and Resource Management Plan, the condition of the existing channel is degraded and lacks the important general values and functions of riparian resources, including vegetation, wildlife habitat, water quality benefits, and erosion control. The channel does not provide valuable wildlife habitat. The water quality is poor. There are no special status plants or rare or endangered species on the property site. The Project is a "habitat improvement program" because the Resource Management Plan will create habitat values where none currently exist through a channel flow design (which mimics a natural stream), and planting and landscaping program. The landscaping and planting plan will create habitat for wildlife, including nesting opportunities for terrestrial, avian, invertebrate and aquatic species associated with riparian areas. The vegetation and planting program will improve water quality by reducing sediment discharge into the channel. The planting of trees and shrubs also will provide aquatic habitat through providing shading and cooling of the channel. The Project further enhances the environment by daylighting a 300- foot portion of the existing Channel which is currently culverted.

c. Even Though 100-Foot Setback Requirements Under LCP Do Not Apply. The City Has Conditioned The Project To Comply With The Setback Requirement.

The 100 foot setback requirements under the LCP only apply to "riparian or wetland areas" and other "significant environmental resource systems" where resource management plans and specified setbacks are required. Since the Channel does not meet any of these standards, the 100 foot setbacks do not apply to the new channel. In any event, the City has conditioned the Project so that future development within 100 feet of the new channel must comply with the LCP policies⁸.

The 100-foot setback requirements under the LCP only apply to "riparian and wetland areas". (Environmental Quality Element Policy EQ 4.2.2). The existing channel is not a riparian or wetland and the policy does not apply to "created" habitats. Three biology experts have conducted site specific studies of the Channel and determined that it is not a riparian or a wetland area. EIP Associates (who prepared the Negative Declaration) concluded that the Channel had no riparian or wetland resources. This conclusion was reviewed and accepted by staff. Wetland Research Associates (Mike Josselyn), the authors of the Resource Management Plan, also reviewed existing conditions on the site and determined there were no wetland or riparian resources. The Army Corps also determined that the Channel is not a wetland or a stream subject to its jurisdiction because it is a "drainage ditch excavated on dry land". Therefore, the 100-foot setback requirements under the LCP, which are only applicable to riparian and wetland areas, do not apply to the Project.

⁸ The proposed Project does not include any new development within 100 feet of the centerline of the new channel

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Further, the LCP policies on Resource Management Plans and their related setbacks are not applicable to the Project because it is not located in one of the specified areas and does not constitute a "other significant environmental resource system" (Environmental Quality Element, Policies EQ4.2.1; 4.2.2.1; and L3.4.) The LCP only identifies the following areas as requiring resource management plans: City-owned wetland and riparian areas (San Lorenzo River, Neary Lagoon); Younger Lagoon, Jessie Street Marsh, Arana Gulch, Moore Creek, Natural Bridges Marsh, and Antonelli Pond. (Environmental Quality Element, Policies EQ 4.2.1; 4.2.2.1; and L 3.4.) The Channel is not within the enumerated areas. The Channel is also not a "other significant environmental resource system" requiring a Resource Management Plan with the incorporation of a 100-foot setback. The LCP does not identify the Channel as a significant or sensitive environmental resource under its Environmental Quality Element resource maps. (See Maps EQ-8, 9 and 10 depicting vegetation communities, sensitive species and habitat areas, and ecological and scientific study areas, respectively).⁹ As documented in detail in the Negative Declaration and Resource Management Plan, the Channel is not a "significant environmental resource" because the Channel has no fish or wildlife habitat; no rare or valuable vegetation; no rare or endangered species; and degraded water quality.

Even though the 100-foot setback is not required under the LCP and Coastal Act, Condition 19 of the City Permit approval specifically requires any future development within 100 feet of the relocated Channel to comply with these requirements. This requirement is clearly in excess of that which is necessary to protect the newly created resource. **None of the existing drainage from the Arroyo Seco Basin to the ocean has a 100-foot setback.** A large portion of the drainage is culverted, including over 50% of the drainage located in the Coastal Zone. Immediately north of the Channel, the setback along the drainage is only 25 feet, with industrial development located less than 50 feet from the drainage centerline. Immediately south of the Channel, the setback is 25 feet with industrial development located immediately on the 25-foot setback boundary. In light of these conditions, a 100-foot setback along the Channel not only is unnecessary, but also subjects this Property owner to a unique burden not applicable to

⁹ The setback and Resource Management Plan requirements under the LCP do not specifically refer to Map EQ11 of the Environmental Quality Element which depicts streams. In any event, Map EQ11 fails to show the Channel. Rather, the Map shows the Channel in its original 1950s location, prior to realignment during the construction of the Lipton plant in the 1970s. Therefore, the designation of the Channel as a stream on Map EQ11 was made in error and does not make the man-made Channel a "natural stream". In addition, only a portion of the Lipton Property and the proposed Channel are located within the Coastal Zone. Therefore, the policies and regulations related to Map EQ-11 only apply to the portion of the Channel in Coastal Zone.

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any other property owner along the drainage course¹⁰.

d. Weed Abatement in the Channel and Surrounding Area Was Properly Conducted As Required By Law And Has Not Caused the Channel's Low Habitat Values.

The appellants contend that the use of herbicide to abate weeds in the Channel is the cause of its low habitat values. However, the natural conditions of the site, not the herbicide, result in the absence of habitat value. Moreover, the weeds are removed solely to comply with City law.

City law requires the removal of weeds located in the Channel and on the Lipton property (City Code Chapter 19.40 Abatement of Combustible Vegetation and Waste Material). The City Code requires that owners of lots shall remove all weeds located on the premises before May 15 of each year (City Code Section 19.40.010). The City Fire Department sends property owners annual notices reminding them that weeds must be removed prior to May 15 or else the Fire Department will cause the weeds to be removed and assess the cost to the property owner (Exhibit 8). Consistent with this legal requirement, the Lipton property owner has contracted with a licensed pest control company to remove weeds from its vacant parcel and Channel on an annual basis.

The licensed contractor's use of herbicide to remove weeds from the Channel is permitted by all applicable laws. Moreover, no permit is required for the abatement procedure. The contractor has used an herbicide called Rodeo to remove weeds in the Channel. Rodeo is a product registered with the Environmental Protection Agency and approved for use in aquatic environments, including lakes, rivers, streams, ponds, estuaries, and irrigation and drainage ditches (Exhibit 9). The active ingredient in Rodeo has been rated by EPA as practically non-toxic for certain aquatic invertebrates and fish and is one of the rare herbicides approved for use in delicate estuary environments (Exhibit 9). We have confirmed with staff of the Santa Cruz County Agriculture Commission that Rodeo is approved for use in waterways, is proper to

¹⁰ The proposed Project includes a 30-foot setback from the centerline of the channel under the Resource Management Plan. Under the Plan, the channel, landscaping and habitat are designed in such a way so that activities outside 30 feet of the centerline will not affect the resources in the channel. The planting and landscape plan with the 30-foot setback and the design of the channel, is adequate to protect the created habitat. There are no biological issues that require a greater setback. Furthermore, 30 feet of vegetation from the centerline is the maximum width of planting that may be supported by the amount of drainage water that flows through the channel. Any larger planting area would need to be watered by irrigation in order to survive. In addition, the City and Commission allowed only a 30 foot setback from the drainage in the Wave Crest development just across Delaware Street from the Lipton Property. A 30 foot setback was found sufficient, even though a paved parking lot was located right at the 30 foot boundary.

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Kevin Colin

May 1, 2000

Page 11

apply in drainage ditches, and that no permit is required for its use. Further, the use of herbicide is the only practical way to control weeds in the Channel since it cannot be disked or mowed due to its steep and eroded bank condition.

The natural conditions of the Lipton property do not support riparian vegetation regardless of the abatement practice. As the aerial photos from the 1920s through the 1950s show, **there never has been riparian vegetation in the location of the original or relocated channels** (Exhibits 5 and 6). Biologists have confirmed that current conditions of the Channel do not support riparian or native vegetation. First, the Channel was dug in uplands, in sandy soil. The soil does not support riparian vegetation because it drains easily. Second, the surrounding conditions are a further constraint on the development of habitat. The adjacent vacant lot is dominated by non-native species. Originally, lands adjacent to the Channel were agricultural. Thereafter, industrial and other uses surrounding the Channel reduced any potential for habitat development on the site.

C. Conclusion

We hope that this letter will assist you in preparing the staff report on the "no substantial issue" determination for the Commission's June meeting. We seek a staff recommendation that the Commission should not hear the appeal because it has no appellate jurisdiction, or, in the alternative, the Appeal presents no substantial issue on consistency with the City LCP. Rarely is a project presented for decision which offers only environmental benefits. The Project will fully "daylight" and enhance a 1970s man-made ditch and create a channel with riparian habitat and native plant species. No future development on the site results from the Project. If the MetroBase is ever proposed on the Lipton Property, it will be subject to its own review under the Coastal Act, the City LCP and CEQA. The MetroBase simply is not before the City and Commission at this time and any decision based on the "merits" of that project would be improper.

Sincerely,



Timothy A. Tosta

TAT:rw

EXHIBIT NO. 6
APPLICATION NO.
A-3-STC-00-041

5



6



EXHIBIT NO. H

APPLICATION NO.

A-3-STC-00-041

HEADWATERS
MOORE CREEK

NEARY

STATE HWY 1

Antonelli Pond

Younger Lagoon

EXHIBIT NO. I

APPLICATION NO.

A-3-STC-00-041

PROJECT
SITE

TERMINUS

CALIFORNIA COASTAL COMMISSION

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



February 9, 2000

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

RE: *Item 6a on the Zoning Board Agenda for February 10, 2000 (2200 Delaware Avenue & Adjacent Vacant Parcel- City of Santa Cruz Case Number 98-152)*

Dear Mr. Murphy,

Please note that the above-referenced item on tonight's Zoning Board agenda is incorrectly identified as not being appealable to the Coastal Commission. The proposed project is located in an appealable area based upon its location within 100 feet of Arroyo Seco Creek on the subject site. As such, the coastal permit is appealable to the Coastal Commission.

Sincerely,

Kevin Colin
Coastal Planner

EXHIBIT NO. 5

APPLICATION NO.

A-3-STC-00-041

Key to Aerial Photos

This 1940 aerial photograph is labeled to show elements mentioned in captions describing the aerial photos on the following pages. These photos, taken between 1928 and 1982, show a stream that is the southern portion of the Arroyo Seco drainage corridor in Santa Cruz, California. This stream is documented on City of Santa Cruz *Map EQ-11: Streams*.

Part of this stream runs through property located at 2200 Delaware Avenue, which is owned by Lipton/Unilever, Inc. The City of Santa Cruz has granted Lipton permission to relocate the section of the stream on their property, ostensibly to "create habitat value where presently none exists," even though Lipton has systematically destroyed habitat by removing vegetation from the stream and preventing growth of any vegetation in or near the stream through the use of herbicides. (Lipton previously relocated the stream in the 1970s, then modified it in the early 1990s.) Lipton has also stated that relocating the stream again will make the property more developable.

Renée Flower and Citizens for Better Planning have appealed the granting of a coastal permit to Lipton for relocation of this section of the stream. This document is an addendum to that appeal.

All photo images reproduced on the following pages were scanned from original photographs found on file in the Map Room, McHenry Library, University of California, Santa Cruz. All images are unretouched; adjustments in brightness and contrast were made, in some cases, to bring out detail.

(submitted by Jim MacKenzie
and Renée Flower, 1747 King
Street, Santa Cruz, CA 95060)

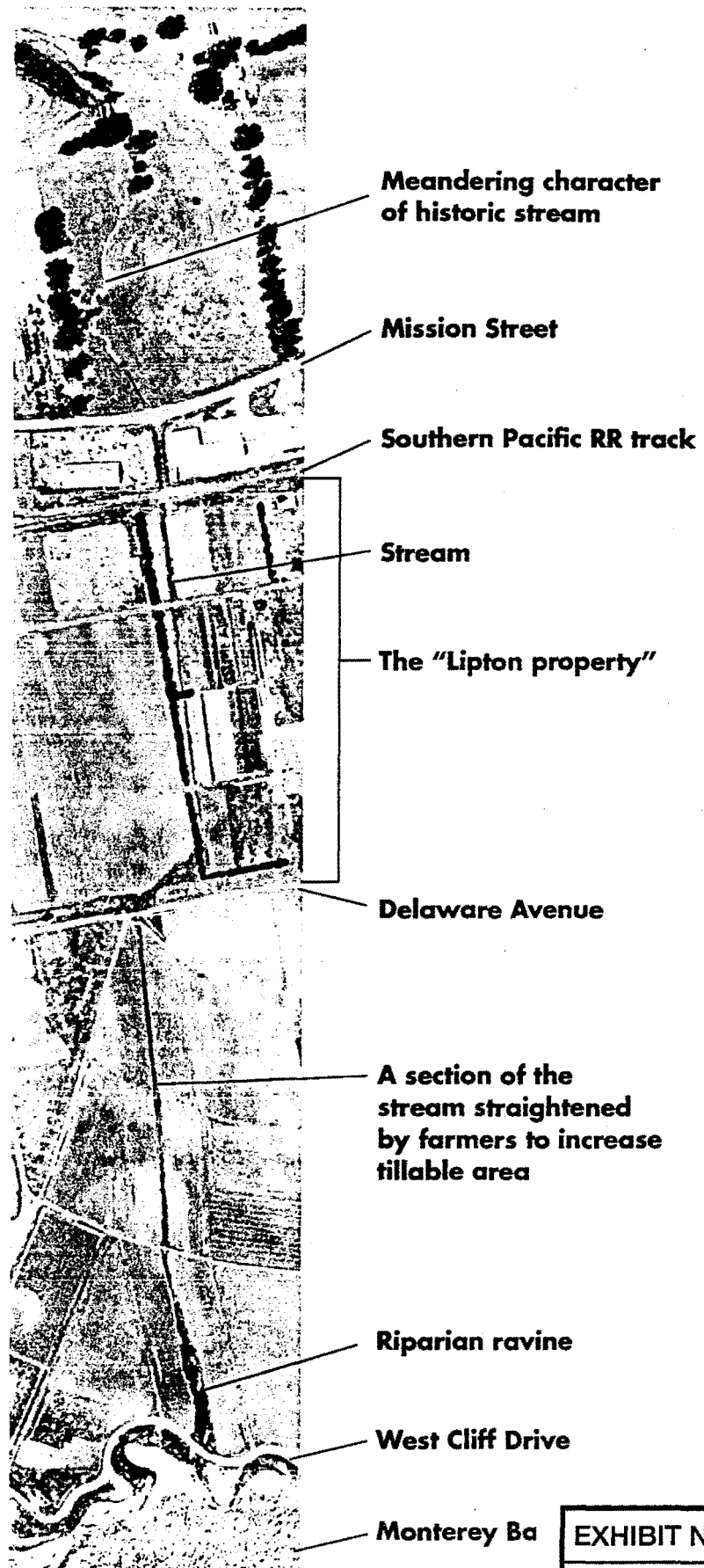
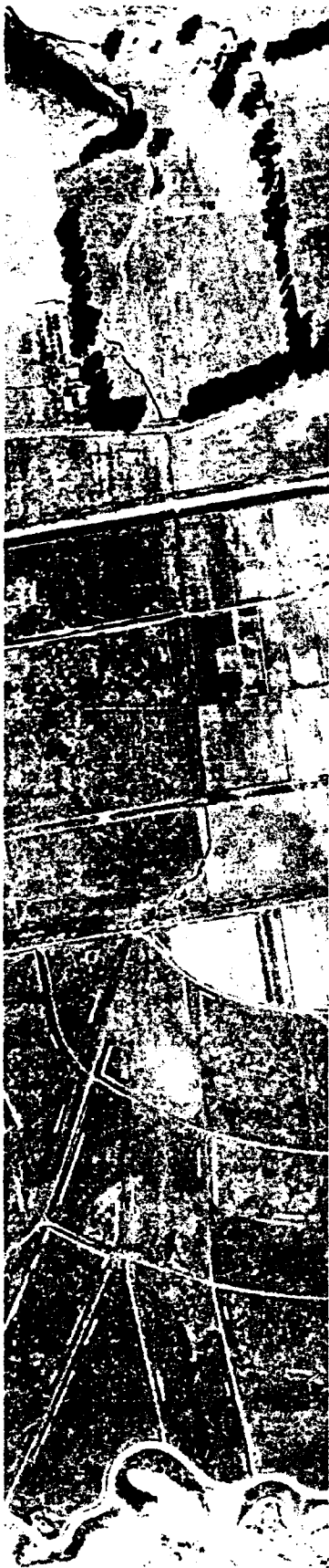


EXHIBIT NO. K: 1-5
APPLICATION NO.
A-3-STC-00-041



1928 North of Mission Street, the stream has a natural, meandering character; south of Mission, the stream has been straightened to maximize the tillable area of the adjacent farmland (see 1956).



1940 As it reaches the coast, the stream enters a heavily vegetated riparian ravine (also visible in the 1928 photo); there are no visible agricultural irrigation channels connected to the stream.



1956 North of Mission Street, the stream has been straightened to maximize tillable area of farmland; note the new housing development to the east of the riparian ravine at the southern end of the stream.



1965 Considerable vegetation is visible in the stream channel as it crosses the future Lipton property (also visible in 1956 photo).

K:2-5



1931



1948

K:3-5



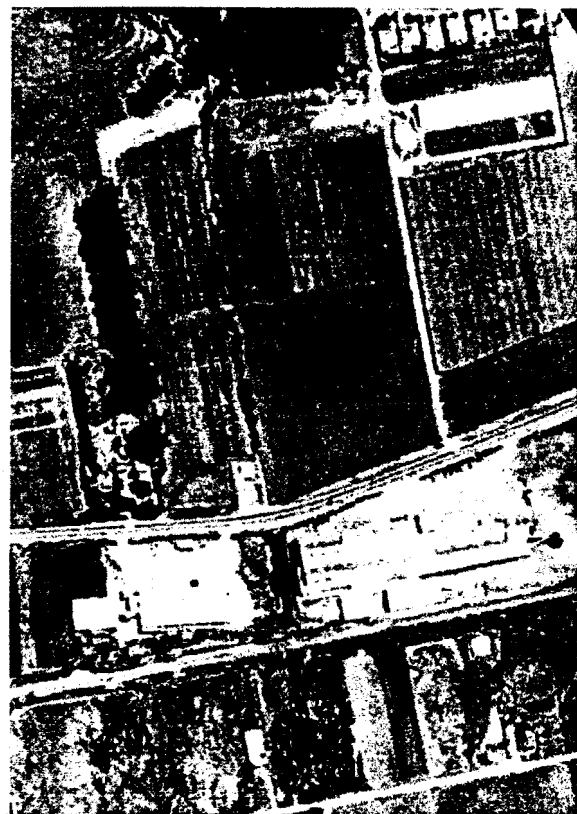
1928



1940

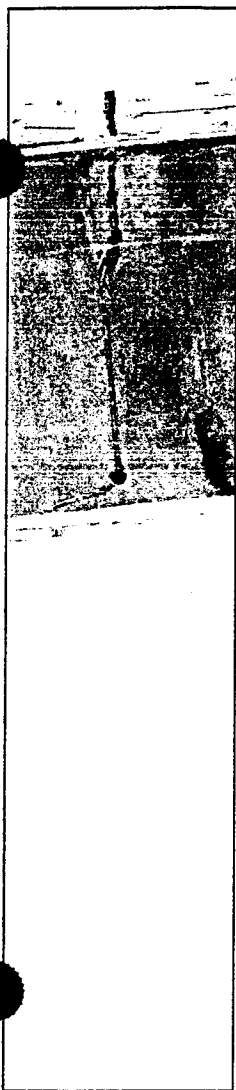


1948



1956

This series of photographs shows the stream just north of Mission Street. The photos from 1928, 1940, and 1948 show a naturally meandering stream. The 1956 photo shows that this portion of the stream has been straightened to maximize the tillable area of adjacent farmland. It is very likely that similar straightening and channelization was carried out by farmers prior to 1928 to the portion of the stream running through what is now the Lipton property.



1965

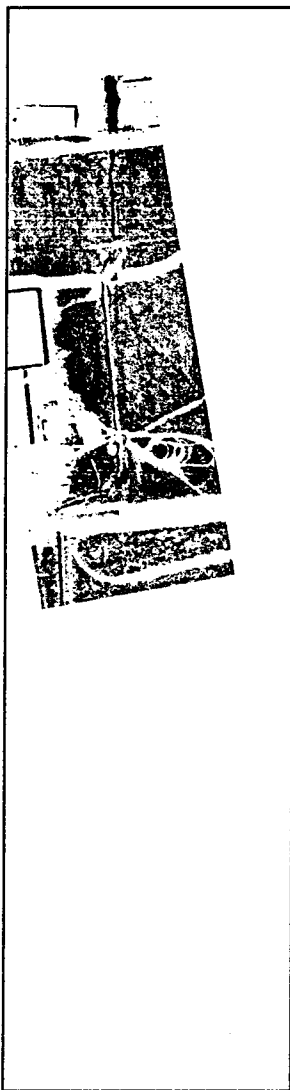
This series of photographs shows the systematic degradation of the stream under Lipton's care.

The 1965 photo shows the stream's condition when the land was initially purchased by Lipton.

The 1970 photo shows the Lipton plant under construction; note that most of the trees lining the stream on the northern portion of the Lipton property—clearly visible in the 1965 photo—have been removed.

The 1976 photos show the stream relocated (by Lipton) to the east of its 1970 position—purportedly either to accommodate future expansion of Lipton facilities or "to accommodate construction of the southern railroad spur." Vegetation lining the stream channel clearly shows the channel's ability to support life.

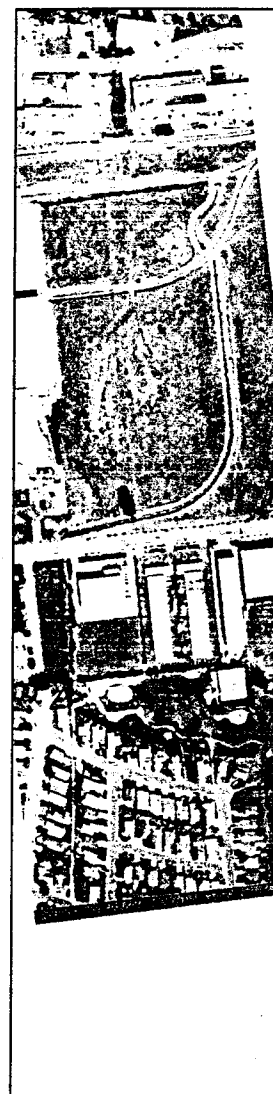
The 1982 photos show that the stream's path has been changed by Lipton again, and it appears that most of the vegetation has been removed from the stream channel. It also appears that the channel sides may have been scraped smooth by mechanical means.



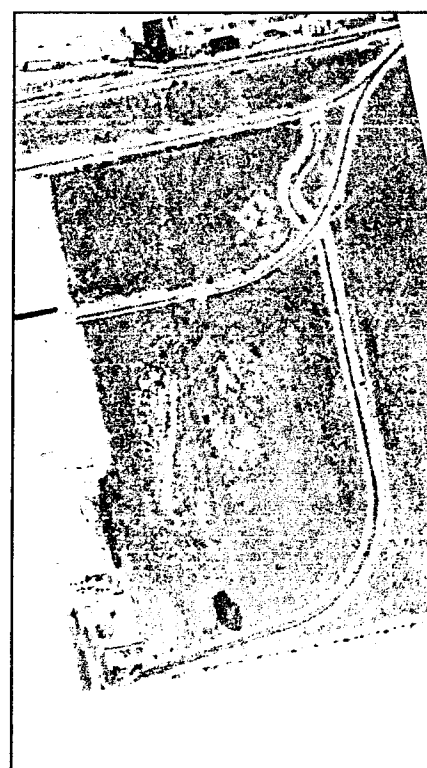
1970



1976



1982





Looking north at subject stream corridor from the south side of Meder Street,
near the top of Arroyo Seco canyon



Subject stream in the Arroyo Seco canyon just south of Meder Street, adjacent to
University Terrace Park and the Home of Peace Cemetery

EXHIBIT NO. L

APPLICATION NO.

A-3-STC-00-041



Subject stream running through residential area north of the Lipton site, across Hwy 1



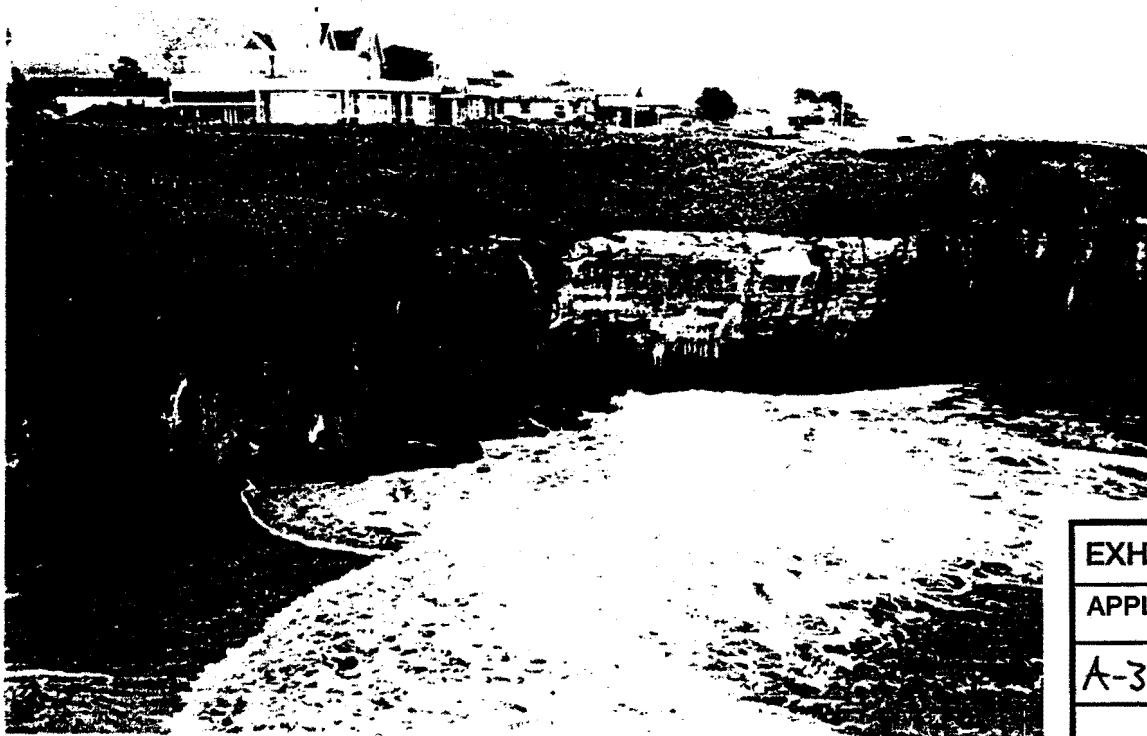
Subject stream in the Arroyo Seco canyon north of the Lipton project site, across Hwy 1, hidden by willows and other riparian vegetation. Animal life is abundant.

EXHIBIT NO. L
APPLICATION NO.
A-3-STC-00-041

(photos: Jim MacKenzie, 2/19/2000)



Subject stream, south of the Lipton Property, flows under West Cliff Drive and over the edge of the cliff into the Monterey Bay Marine Sanctuary.



Subject stream (center) cascades over natural rock cliff into the Monterey Bay

EXHIBIT NO. L

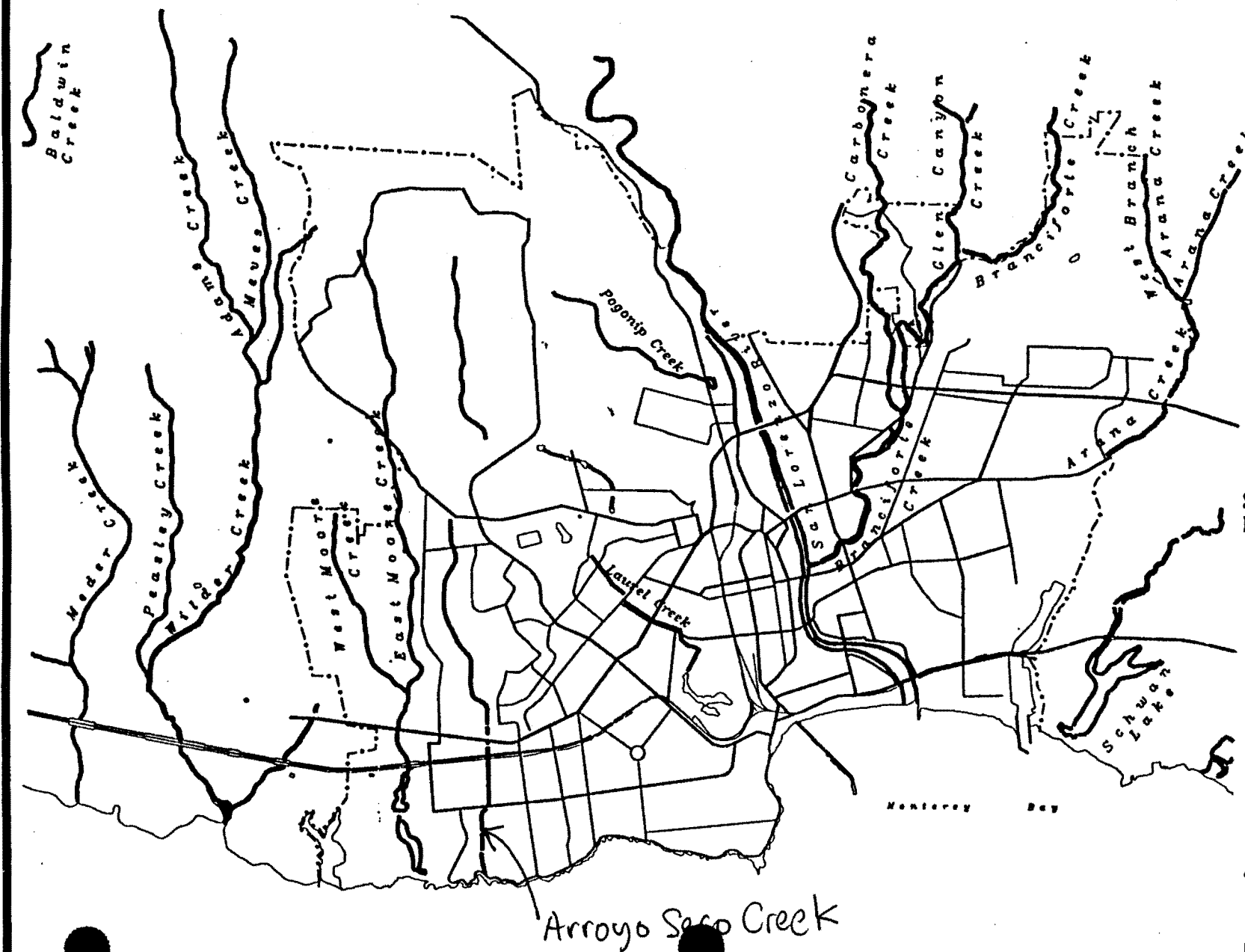
APPLICATION NO.

A-3-STC-00-041



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

EXHIBIT NO. <i>WA</i>
APPLICATION NO.
A-3-SIC-00-041

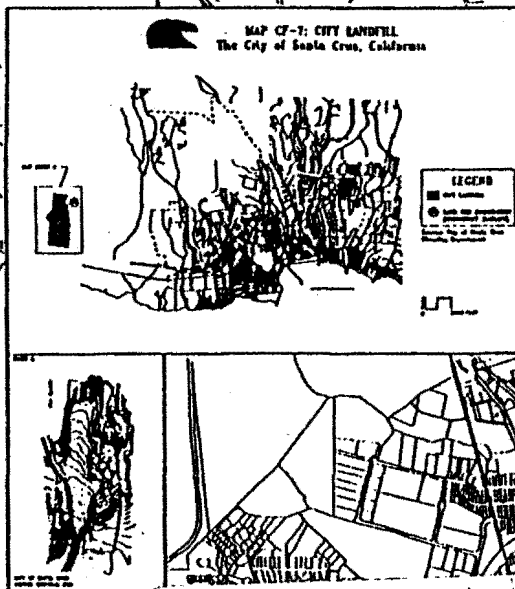


MAP LCP-8 Coastal Commission Review and A

EXHIBIT NO. 2

APPLICATION NO.

A-3-STC-00-04



LEGEND

- COASTAL ZONE
- AREA OF DEFERRED CERTIFICATION
- - - CITY LIMITS
- COASTAL PERMIT JURISDICTION
- APPEAL JURISDICTION (SFO)
- COASTAL EXCLUSION

ZONE A

Source: City of Santa Cruz Planning Department, 1993

NOTES:

1. In addition to the areas shown on this map, the following areas are also under the jurisdiction of the Coastal Commission: (a) areas within the Coastal Zone that are not within the jurisdiction of the Coastal Commission; (b) areas within the Coastal Zone that are not within the jurisdiction of the Coastal Commission; (c) areas within the Coastal Zone that are not within the jurisdiction of the Coastal Commission.
2. In addition to the areas shown on this map, the following areas are also under the jurisdiction of the Coastal Commission: (a) areas within the Coastal Zone that are not within the jurisdiction of the Coastal Commission; (b) areas within the Coastal Zone that are not within the jurisdiction of the Coastal Commission; (c) areas within the Coastal Zone that are not within the jurisdiction of the Coastal Commission.
3. In those areas where a permit is required by the Coastal Commission, the applicant must submit a permit application to the Coastal Commission. The Coastal Commission will review the application and make a decision on whether to issue a permit. The Coastal Commission will also review the application and make a decision on whether to issue a permit.
4. The map has been prepared to show the areas under the jurisdiction of the Coastal Commission. It is not intended to show the boundaries of the Coastal Commission's jurisdiction. The boundaries of the Coastal Commission's jurisdiction are shown on the map. The boundaries of the Coastal Commission's jurisdiction are shown on the map.



Monterey Bay

Post LCP Certification Permit and Appeal Jurisdiction

California Coastal Commission

City of Santa Cruz

ARROYO SECO CREEK

SANTA CRUZ CITY CATEGORICAL EXCLUSION E-47-1