

CALIFORNIA COASTAL COMMISSIONCENTRAL COAST DISTRICT OFFICE
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SANTA CRUZ, CA 95060
427-4863**Th 6a****RECORD PACKET COPY**

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STAFF REPORT: APPEAL

Local Government..... City of Morro Bay

Local Decision..... Approved with conditions, 9/27/99

Appeal Number..... A-3-MRB-99-082

Applicant..... Tri W Enterprises, Inc.

Appellant..... Jack McCurdy

Project Location Terminus of Morro Bay Boulevard at Hwy. 1, Morro Bay (San Luis Obispo County) (APN 064-401-004)

Project Description..... One (1) year time extension for PM 04-92/CDP43-92 allowing a minor land division of an approximately 175 acre parcel to create one 17.54 acre parcel and one remainder parcel of approximately 157 acres. Original tentative map approved June 14, 1993.

Substantive File Documents..... Local Permits PM 04-92/CDP43-92; City of Morro Bay certified Local Coastal Program.

Staff Recommendation..... No Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

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

The appellant contends that by accepting the withdrawal of the time request for the conditional use permit associate with this site (thereby allowing the use permit to expire) the City could not then approve a time extension for the tentative map. The appellant refers to Measure H



(incorporated into the LCP via Policy 6.09) because it requires that the location of a use on the site "be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act Chapter 3 policies." According to the appellant, this means that the City cannot approve (or extend an approval of) a land division unless there is also an approved development (via a Precise Plan) to go on the new parcels. However, the LCP does not require that a Precise Plan be included as a part of a Tentative Parcel Map submittal.

In addition, the appellant raises concerns regarding the consistency of the Parcel Map with the certified LCP, and measures to protect the property from future development. Staff has not found that changed circumstances exist which question the project's consistency with the LCP. In addition, adequate measures have been put into place to protect the remainder, agriculturally zoned, parcel from re-zoning or future land division.

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I. SUMMARY OF APPELLANT'S CONTENTIONS

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

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

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

II. LOCAL GOVERNMENT ACTION

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

III. APPEAL PROCEDURES

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

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

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed, pursuant to Coastal Act Section 30603.

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

STAFF RECOMMENDATION:

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE

The Commission finds that Appeal No. A-3-MRB-99-082 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. RECOMMENDED FINDINGS AND DECLARATIONS

A. Location and Background

The property, authorized for subdivision by Coastal Development Permit 43-92, is a 175-acre parcel located at the southeastern end of Morro Bay Boulevard, just inland of Highway One,

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

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

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

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

On March 26, 1990, the City of Morro Bay approved Conditional Use Permit 03-88/Coastal Development Permit 05-88R for a 237,000 square foot commercial retail development with 977 parking spaces, including 605,000 cubic yards of grading, filling approximately 1,200 linear feet of Willow Camp Creek, and the extension of Morro Bay Boulevard. That action was appealed to the Commission by the Voters Initiative Committee, and on April 8, 1991, the Commission found that substantial issue existed regarding the grounds of appeal. On July 17, 1991, the Commission approved a project consisting of a 126,235 square foot commercial retail shopping center, 235,000 cubic yards of grading, a stream enhancement program, 728 parking spaces, a frontage road extension, three bridges, crib walls to 28 feet high, and on-site drainage and utilities.

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

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

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

On June 14, 1993, the City of Morro Bay approved Coastal Development Permit 43-92, a tentative map, for subdivision of the site into two parcels; a 17.54 acre parcel (the commercial development area plus creek open space and buffer areas), and a 157.45 acre remainder parcel, consistent with Measure H (see Exhibit 4), without restricting the use of the portion of the property not proposed for the shopping center to agricultural uses. However, that action was not appealed to the Coastal Commission.

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

TABLE 1

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

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

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

TABLE 2

| Item | CCC Action and Date | Effect |
|-------------------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| LCP 1-88 (Measure B) | Approved 06/07/88 (Revised Findings 10/13/88) | Changed LUP designation of agriculture to commercial and visitor serving commercial. Redesignated "thirty (30) net acres, generally located adjacent to Highway 1 and Morro Bay Boulevard, with approximately fifteen (15) net acres to be available for 'district commercial' uses and approximately fifteen (15) net acres to be available for 'visitor-serving' uses." |
| LCP 2-88 | Approved 09/13/88 | Changed zoning on the 30 net acres from Agriculture to Central Business District Commercial and Visitor-Serving Commercial. |
| A-4-MRB-89-134 | Project approved 07/17/91 (Revised Findings 08/09/91) | Approved 126,235 sq.ft. commercial retail shopping center, 235,000 cu. yds. of grading, stream enhancement, 728 parking spaces, frontage road extension, three bridges, crib walls to 28 feet high, on-site drainage and utilities. |
| A-4-MRB-90-49 | Tentative map denied 07/17/91 (Revised Findings 01/14/92) | Disallowed proposed subdivision of 177.23 acre parcel into a 38.3 acre parcel and a remainder parcel of 138.93 acres. Commission found that 1) the City's approval would not restrict the use of the portion of the property not proposed for the shopping center to agricultural uses, 2) LUP Policies 3.03 and 3.04 prohibited new water and sewer services to previously unsubdivided areas until a water management plan was incorporated into the LCP. |

| Item | CCC Action and Date | Effect |
|------------------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| LCP 2-91 (Measure H) | Approved 11/13/91 (Revised Findings 04/08/92) | Reduced allowable shopping center area to 13 gross acres and limited visitor-serving area to 9.5 acres. |
| LCP 1-93 (Measure H, as interpreted by Superior Court) | Approved 06/09/93 (Revised Findings 07/20/93) | Eliminated the 9.5 acre visitor-serving designation and placed that area into the Open Area designation. |
| Morro Bay CDP 43-92, Tentative Map, approved by City on 06/14/93 | None | Tentative map for subdivision of site consistent with Measure H. |

B. Measure H

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

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

Measure H was originally submitted to the Commission in June 1991, as LCP Amendment 2-91, and was approved with suggested modifications at the Commission's November 1991 meeting. Subsequently, before the certification review of the City's acceptance of the Commission's action, the City was sued by the Voters Initiative Committee (the Measure H proponents). The suit was brought to force the City to remove all language in the City's submittal that allowed for visitor-serving uses. In an order dated May 18, 1992, the court found for the Voters Initiative Committee and ordered the City to rescind its decision designating nine and one half acres of the site as visitor-serving. A second court order dated November 9, 1992, clarified the earlier order by requiring the City to inform the Commission in writing that visitor-serving uses were impermissible as a provision of LCP Amendment 2-91, to rescind the ordinance and resolution that were adopted by the City and submitted to the Commission as part of the Measure H

amendment request allowing visitor-serving uses on the subject parcel, and to immediately submit to the Commission a revision of LCP Amendment 2-91 that would remove all provisions allowing for visitor-serving uses.

Complying with the court orders, the City rescinded its previous ordinance and resolution and submitted a new amendment, LCP Amendment 1-93. This amendment was approved, as submitted, by the Commission on June 9, 1993. LCP Amendment 1-93 revised both the LUP and the zoning maps by reducing the commercially zoned area to 13 acres and designated the remainder of the 30 net acres (from LCP Amendment 1-88) as Open Area.

C. Appellant's Contentions (Part I)

The appellant contends that the City's extension of the coastal development permit for the tentative map is inconsistent with LUP Policy 6.09 (Measure H), which states that "the citing (sic) of [a district commercial] use shall be in accordance with a precise development plan consistent with the General Plan Land Use Element and relevant Coastal Act and especially Chapter 3 policies."

The City extended the tentative parcel map for subdivision of the property and concurrently accepted a withdrawal of the time extension request for the use permit associated with the commercial shopping center (based upon the assumption that the withdrawal of the request to extend the use permit was appropriate to mitigate any concerns regarding the extension of the Parcel Map). The appellant claims that that City's decision to approve the extension of the Parcel Map "in the absence of a required Precise Plan" is inconsistent with the LCP.

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

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

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

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

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

Although the LCP requires that a tentative map be included as a part of a Precise Plan submittal, the converse does not hold true. In other words, the LCP does not require that a Precise Plan be included as a part of a Tentative Parcel Map submittal. **Therefore, no substantial issue is raised by this contention of the appeal.**

D. Appellant's Contention (Part 2)

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

Zoning Ordinance Section 17.58.130 (Time Extensions) states in relevant part:

A. A Coastal Development Permit shall expire on the latest expiration date applicable to any other permit or approval required for the project, including any extension granted for other permits or approvals...¹

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

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

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

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

The existing zoning of the property, established by Measure H, will remain in place on the project site whether or not the vesting Parcel Map is recorded. Therefore, the subject Parcel Map simply creates a single parcel, consistent with the boundaries of the site previously zoned for commercial development. Zoning Ordinance Section 17.58.130B requires the governing body to determine whether there are changed circumstances that would affect the consistency of the development with the certified LCP.

Because the development in question is the extension of the Parcel Map, and not the commercial shopping center, the analysis of whether or not changed circumstances exist must be limited to those issues raised by the proposed extension of the Map. Issues related to the future development of this parcel, such as its potential to impact visual and environmental resources, and circulation patterns, or the larger question regarding the need for such a development, should be addressed at the time of such a proposal. **Staff has not identified changed circumstances that affect the consistency of the Parcel Map with the LCP, and therefore, no substantial issue is raised by this contention of the appeal.** However, because of past concerns regarding water supply in the City, a brief discussion of the current water situation is provided below.

Water Supply

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

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

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

E. Agriculture

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

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

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

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

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

Although the City's approval adequately protects open space on the property, the City's action fails to protect agricultural lands in a manner that is consistent with the LCP. Neither the City's action originally approving CDP 43-92, the tentative map for the subdivision of the property into two parcels, nor the recent extension of that permit required measures to prevent the future subdivision of the agriculturally zoned land. However, City of Morro Bay Ordinance No. 266 (attached as Exhibit 9) mandates that any change of zoning from its current Agricultural designation must be approved by a majority vote of the people. This requirement provides protection against a future re-zoning of the property, however, it does not address the LCP Policy's requirement to prevent future land divisions. Thus, subsequent to the appeal of this project to the Commission, the City agreed to incorporate an additional condition of approval for the extension of the Parcel Map, which addresses concerns regarding future land divisions on the remainder agriculture parcel. This condition (referenced in correspondence attached as Exhibit 10) requires the applicant to enter into an agreement with the City to ensure "that the

agriculturally zoned portion of the Remainder Parcel [shall] not be further subdivided." The condition also states that any future modification to the covenant would be an amendment to the City's coastal development permit, and would be appealable to the Coastal Commission. Therefore, the second requirement of LCP Policy 6.05(3), regarding future land divisions, has been fulfilled. **Thus, no substantial issue exists with this contention of the appeal.**

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

The applicant has filed a request to extend Coastal Commission permit A-4-MRB-89-134. However, the applicant plans to withdraw that extension after the Commission acts on this appeal. The applicant's intent is to then go back to the City at some future date and make application for a new coastal development permit for a different project, but in the same location and with the same zoning.

VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

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

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

725 FRONT STREET, STE. 300

SANTA CRUZ, CA 95060

(831) 427-4863

HEARING IMPAIRED: (415) 904-5200

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OCT 23 1993

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTCALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREAPlease Review Attached Appeal Information Sheet Prior To Completing
This Form.SECTION I. Appellant(s)

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

JACK MCCURDY
810 ANCHOR STREET
MORRO BAY, CA 93442 (805) 772-2426
Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port
government: CITY OF MORRO BAY2. Brief description of development being
appealed: TIME EXTENSION FOR VESTING TENTATIVE PARCEL MAP3. Development's location (street address, assessor's parcel
no., cross street, etc.): TERMINUS OF MORRO BAY BOULEVARD at
HIGHWAY 1

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: X

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

H5: 4/88

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

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

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

- a. ☐ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☒ City Council/Board of Supervisors d. ☐ Other _____

6. Date of local government's decision: SEPT 27, 1999

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

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

TIL W ENTERPRISES INC c/o MARSHALL E. CHYLSKI
PO BOX 14327
SAN LOUIS OBISPO, CA 93406

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

- (1) SEAN MULLEN
925 PACIFIC STREET
MORRO BAY, CA 93442
- (2) BEDNIE MEIVIN
2992 ELM AVENUE
MORRO BAY, CA 93442
- (3) _____
- (4) _____

SECTION IV. Reasons Supporting This Appeal

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

Exhibit 1
(2 of 11)

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

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

SEE ATTACHED SHEETS

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

SECTION V. Certification

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

John McComb

Signature of Appellant(s) or
Authorized Agent

Date Oct. 26, 1999

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

Section VI. Agent Authorization

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

Exhibit 1
(3 of 11)

Signature of Appellant(s)

Date _____

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT,
SECTION IV

Reasons Supporting This Appeal:

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

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

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

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

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

Exhibit 1
(4 of 11)

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

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

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

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

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

Exhibit 1
(5 of 11)

representative stated to the city Planning Commission.

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

7
ORDINANCE NO. 389
(Measure H)

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

THE PEOPLE OF THE CITY OF MORRO BAY DO ORDAIN:

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

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

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

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

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

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

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

CERTIFICATION

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

Dated: January 14, 1991



ARDITH DAVIS, City Clerk
City of Morro Bay, California

Exhibit 1
(7 of 11)

CONDITIONS OF APPROVAL

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

STANDARD CONDITIONS

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

Exhibit 1
(8 of 11)

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

B. SPECIAL SUBDIVISION CONDITIONS:

1. Future Permits Required: The applicant shall record with the Final Map a statement which identifies that the map does not confer any rights to develop on the subject parcels and that all required Coastal Development Permits, Concept Plans, Precise Plans and other required permits shall be obtained prior to any development or new uses as required by ordinance. *Add language in 8/10/99 staff memorandum.*

2. Limitation to Parcel 1: The Tentative Vesting Map shall be limited to Parcel 1 as defined on the map and the remainder parcel shall include the area defined as previous Parcels 2 and 3. All reference to Parcels 2 and 3 shall be eliminated from the map. All street right-of-ways, easements and public improvements indicated on the map or otherwise indicated in these conditions shall be included with the Final Map. *Replace with language in 8/10/99 staff memorandum*

3. Consistency of Parcel 1 Uses with Concept Plan: A statement shall be recorded with the Final Map identifying the requirement that all uses and project design of Parcel 1 will be consistent with the approved Concept Plan. Said statement shall be subject to the review and approval of the City Attorney and the Director. Said statement shall not be modified without approval of the City. *Delete*

4. Dedication of Open Space Easement: An open space easement shall be recorded with the Parcel Map identifying those areas of the parcels which are identified in the Concept Plan as follows:

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

Conditions Of Approval

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

A Part of the Precise Plan

7

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

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

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

C. LANDSCAPING CONDITIONS

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

D. PUBLIC WORKS CONDITIONS

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

*AS 8/15/99
ok'd in staff memo*
Exhibit 1
(10 of 11)

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

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

3. Restriction for Access: Concurrent with the recordation of the Final Map, the developer shall restrict access rights along the southern edge of the City right-of-way (Creekside Boulevard) from the existing CalTrans right-of-way to the beginning of the cul-de-sac bulb. Access restriction shall be defined upon construction of the improvements by an access restriction fence. Design and location of the fence shall be to the satisfaction of the Community Development Director and the City Engineer.

4.- Circulation System: A private easement for roadway and utility purposes in favor of the remainder parcel shall be recorded concurrently with the Parcel Map across Parcel 1 from Morro Bay Blvd to the eastern most property line of Parcel 1. The width of said easement shall be 64 feet. Implementation of this condition shall not preclude development of the project approved in Case CUP 03-88.

E. FIRE DEPARTMENT

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

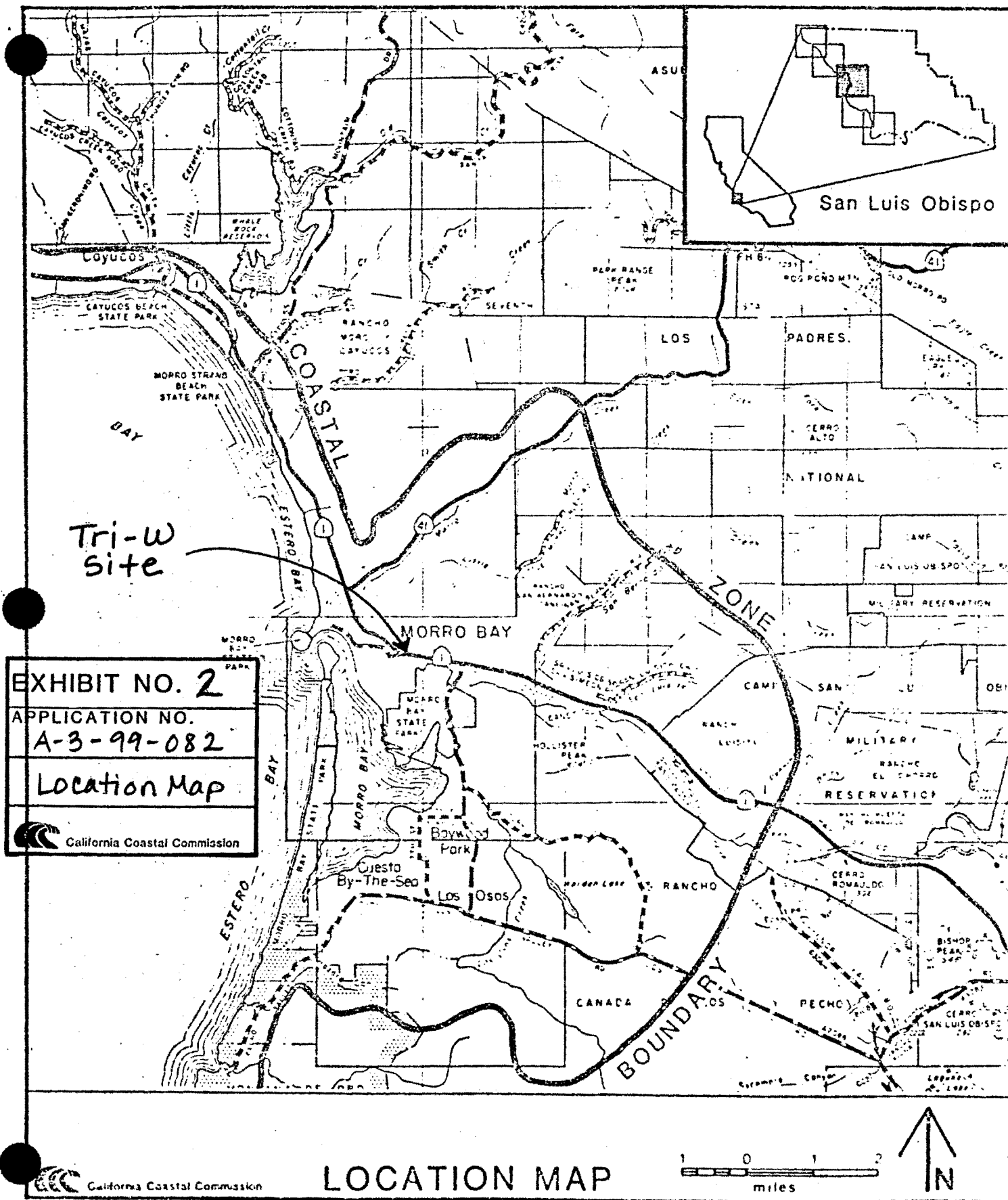
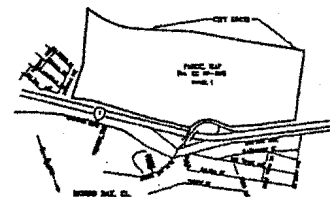
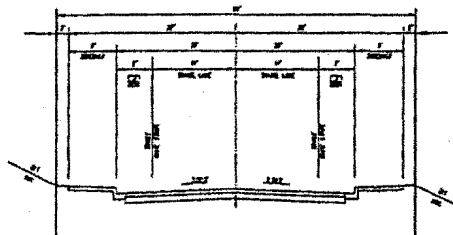


Exhibit 3
(1 of 2)

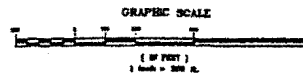
**VICINITY MAP**[illegible]

NOTES:

- [illegible]



FUTURE CREEKSIDE LANE SECTION
SCALE: HORIZ. 1" = 10'
VERT. 1" = 5'



REVISED VESTING
TENTATIVE PARCEL MAP No. MB 92-099

BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. CO/MB 89-363, IN THE CITY OF MORRO BAY, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED IN BOOK 48 AT PAGE 13 OF PARCEL MAPS.

APRIL 1963

OWNER & SUBDIVIDER
TRI-V ENTERPRISES, INC. & MERRELL WILLIAMS
PO BOX 6149
SANTA MARIA, CALIFORNIA 93456



DOMINION
ENERGY

SECRET 1 OF 1

04/22/2015

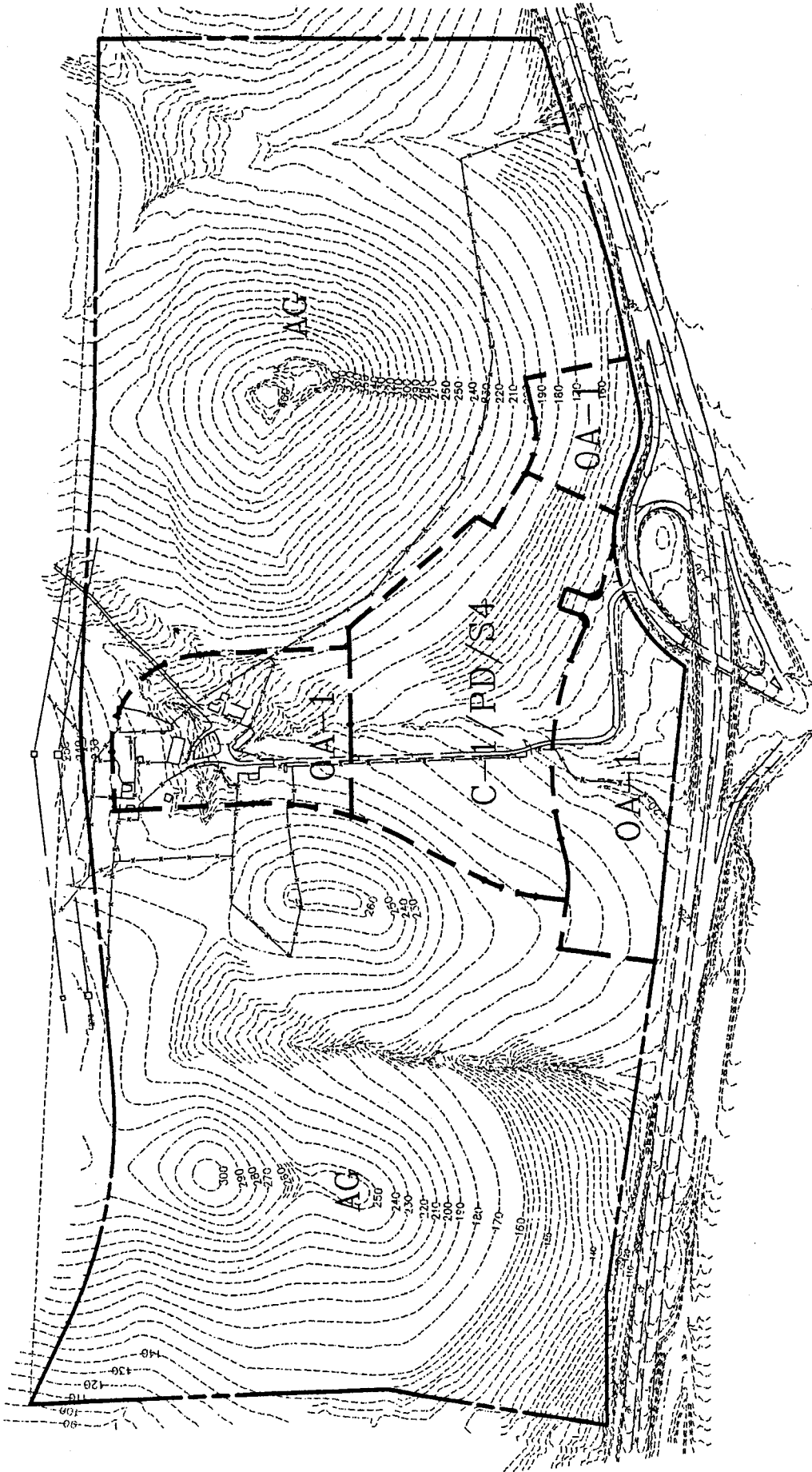


Exhibit 3 (2 of 2)
Existing Zoning

OMINI
DESIGN GROUP
ARCHITECTURE
CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
PLANNING
PROJECT MANAGEMENT
SURVEYING

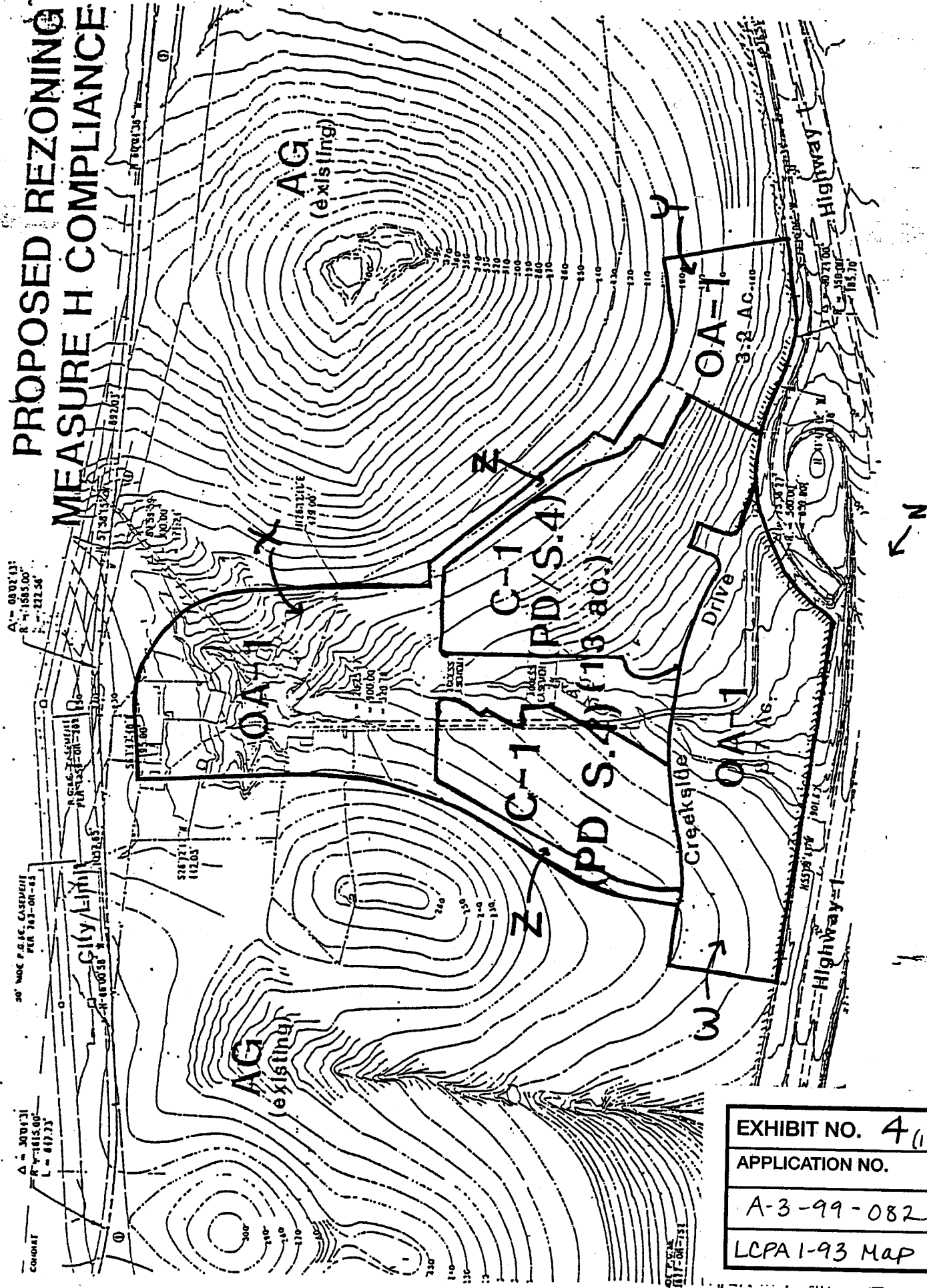
888 E. GATE STREET
SUITE 100
SAN JOSE, CALIFORNIA 95128
PHONE: (408) 544-8700
FAX: (408) 544-4327

ZONING

SCALE: 1" = 500'

ZONING

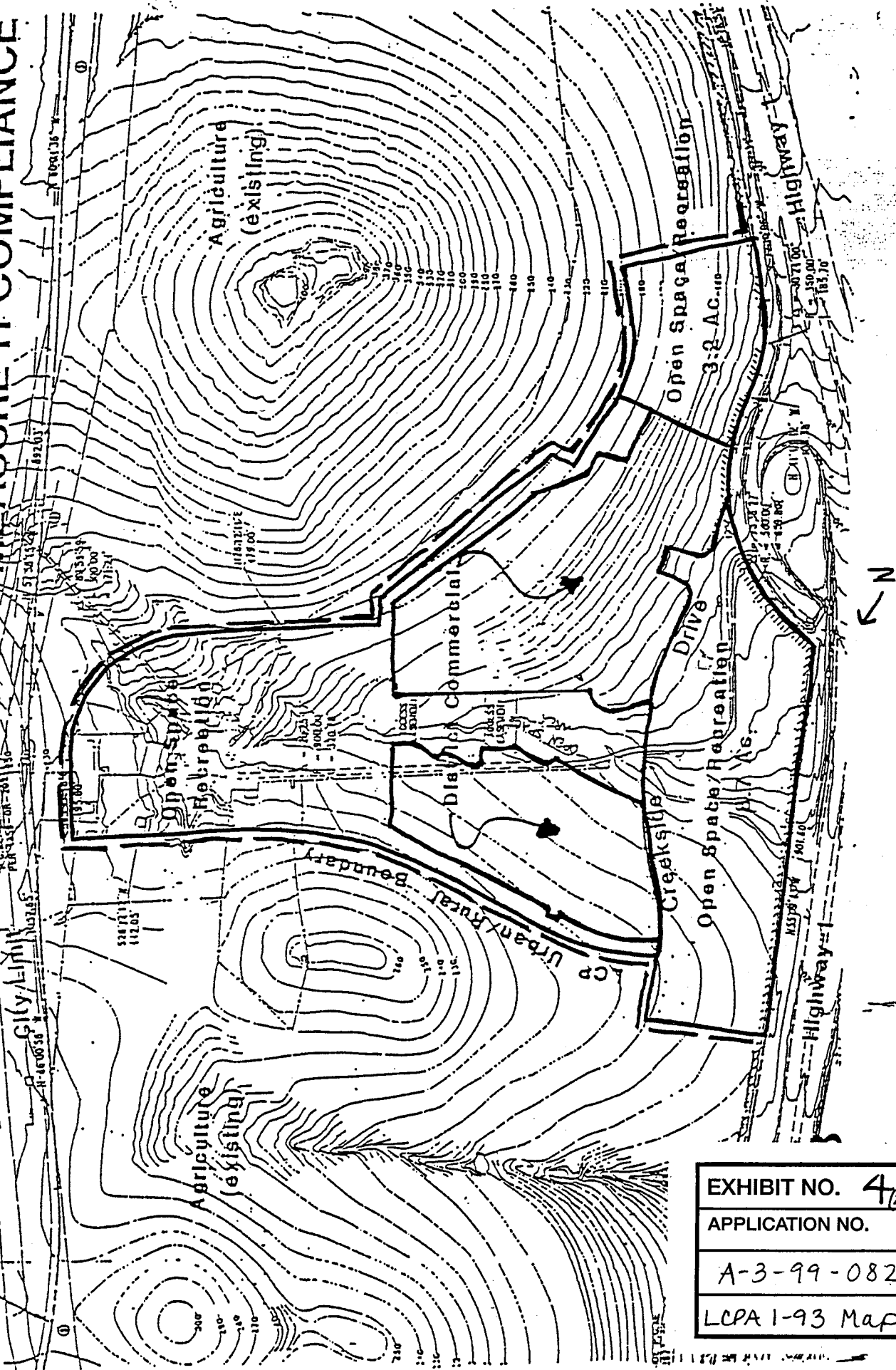
PROPOSED REZONING MEASURE H COMPLIANCE



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

PROPOSED GENERAL PLAN/LOCAL COASTAL PLAN MEASURE H COMPLIANCE

CORRELAT
 Δ = 309131
 R = 1615.00'
 L = 417.33'
 30' WIDE P.O.L. EASEMENT
 PER 163-08-41



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

7
ORDINANCE NO. 389
(Measure H)

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

THE PEOPLE OF THE CITY OF MORRO BAY DO ORDAIN:

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

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

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

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

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

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

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

CERTIFICATION

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

Dated: January 14, 1991

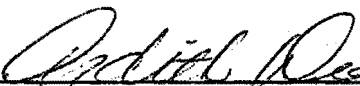
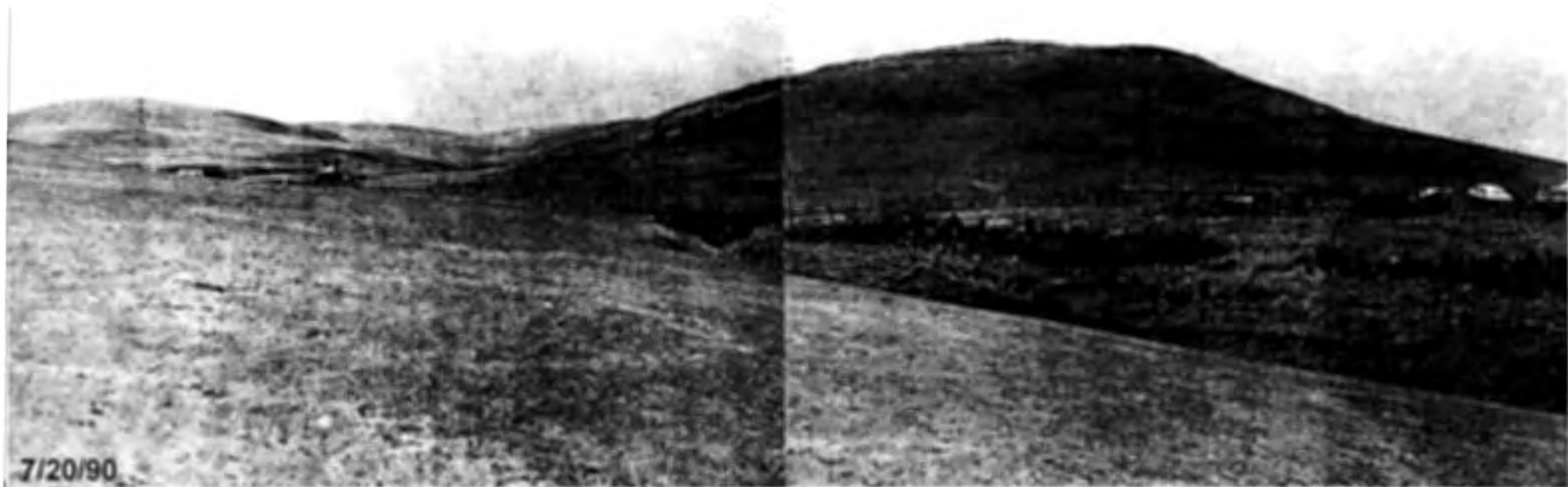

ARDITH DAVIS, City Clerk
City of Morro Bay, California

Exhibit 5
Measure H



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



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



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

Exhibit
Site Photos

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

A. STANDARD CONDITIONS

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

B. SPECIAL SUBDIVISION CONDITIONS:

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

Exhibit 7
(1 of 2)

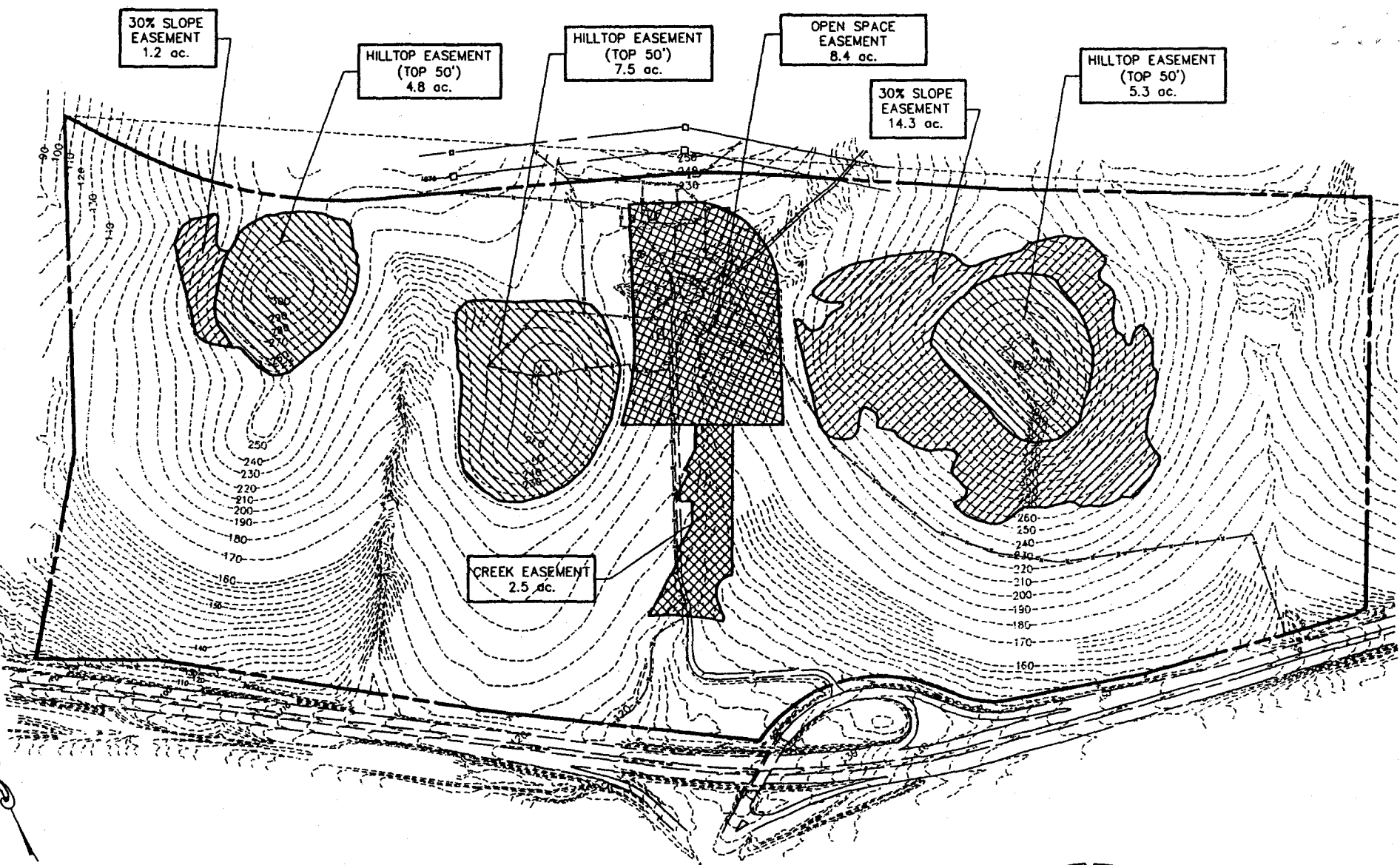
other required permits shall be obtained prior to any development or new uses as required by ordinance. All discretionary permit previously approved by the City and the California Coastal Commission related to development of the site have expired.

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

C. PUBLIC WORKS CONDITIONS

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


Open Space Easements
Exhibit 8



SCALE: 1" = 500'

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

PROPOSED EASEMENTS



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

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



EASEMENT EXHIBIT

ORDINANCE NO. 266

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

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

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

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

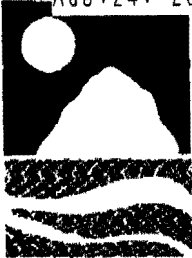
SECTION 3. Residential building permits in 1985 will be limited to 70 residential units. The city council, with advice of the planning commission, will determine by January 15 of each calendar year thereafter the mix of multi-unit and single family residential units for that calendar year. The 70 unit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

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

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

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

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



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

August 24, 2000

Via Facsimile

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

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

Dear Ms. Landry:

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

Condition B.4

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

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

Correspondence

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPARTMENT
715 Harbor Street

PUBLIC SERVICES
590 Morro Bay Boulevard

HARBOR DEPARTMENT
1275 Embarcadero

POLICE DEPARTMENT
850 Morro Bay Boulevard

RECREATION AND PARKS
1001 Kennedy Way

Exhibit
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DIANE LANDRY, ESQ.
AUGUST 24, 2000
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If you have any questions, please do not hesitate to call.

Sincerely,

CITY OF MORRO BAY

By: Robert Schultz
Robert W. Schultz
City Attorney

RWS/vj
S/rws/cmbcty.pw/LandryD000824.Jtr

Exhibit 10
(2 of 2)

