

CALIFORNIA COASTAL ST DISTRICT OFFICE

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Th7d**RECORD PACKET COPY**

Filed:	08/14/00
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Staff:	RB-MW <i>R&A</i>
Staff Report:	01/25/01
Hearing Date:	2/15/01
Commission Action:	
Open & Continued	09/14/00

STAFF REPORT: APPEAL DE NOVO REVIEW

Appeal Number..... A-3-SLO-00-121

Local Government..... San Luis Obispo County

Decision Approved with Conditions

Applicant..... Tom & Karen Hogan

Appellants Ruel J. Czach

Project Location 36 North Ocean Avenue (Estero Planning Area), Cayucos, San Luis Obispo County (APN 064-114-008)

Project Description..... Allow continued use of approximately 6,400 square feet of outdoor building material storage area in association with an existing hardware store; continued use of one retail space and two retail offices; replacement of fence and installation of retaining wall.

File Documents San Luis Obispo County certified Local Coastal Program; Local Administrative Record for Coastal Development Permit D990094D; *Riparian Vegetation of Little Cayucos Creek Next to Ocean Avenue Hardware* (V.L. Holland, Ph.D., June 9, 2000).

EXECUTIVE SUMMARY

On March 23, 1999, the San Luis Obispo County Planning Commission conditionally approved CDP D990094D for the proposed development. This decision was appealed to the Board of Supervisors on July 18, 2000 but was summarily denied. The appeal was brought before the Commission on October 12, 2000 whereby the Commission found substantial issue on two counts.

The staff recommends approval of the project, subject to special conditions. These recommended conditions of approval are necessary to provide project consistency with San Luis Obispo County certified Local Coastal Program policies and ordinances regulating the provision of off-street parking required for expansion of existing use, as well as those protecting sensitive habitat areas. The recommended conditions will require: the creation and/or securing of six additional parking spaces;

**California Coastal Commission**

Commission review and approval of a drainage plan and system to direct and control all site runoff to an appropriate County storm drain system; the use of Best Management Practices to eliminate parking lot contaminants prior to discharge and the storage and handling of hazardous materials; a spill response and containment plan; and regularly scheduled maintenance of all drainage system elements. These requirements reflect the scarcity of public parking in the area and the sensitivity of the site, which is directly adjacent to Little Cayucos Creek.

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I. STAFF RECOMMENDATION ON COASTAL DEVELOPMENT PERMIT

Staff recommends that the Commission, after the public hearing, **approve** the coastal development permit required for the proposed project.

MOTION: *I move that the Commission approve Coastal Development Permit No. A-3-SLO-00-121 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.



RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified San Luis Obispo County Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **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.

III. SPECIAL CONDITIONS

1. **Scope of the Permit.** This approval authorizes the continued use of the 6,400 square foot outdoor building material storage area in association with the existing hardware store, the continued use of an approximately 250 square foot retail space and two offices approximately 200 square feet each, and the installation of a chain link fence, as shown on Exhibit 3 and associated retaining wall; and the installation of any drainage improvements, pursuant to condition #3. The riparian corridor on the subject site north of the fence shall remain undisturbed; the cutting or alteration of riparian vegetation is prohibited.



2. Revised Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for review and approval by the Executive Director, the following:

- a) A revised floor plan indicating the location of the existing offices and retail space;
- b) A parking plan, consistent with CZLUO Section 23.04.170 indicating the placement and securing of six off-site parking spaces. Necessary landscape elements required by CZLUO Section 23.04.168 shall also be noted on the plan, indicating the location, species (all plant material shall be native species), container size, spacing and number of trees, shrubs, groundcover of proposed plant materials, and a calculation of the total area proposed for planting.

3. Drainage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a permanent drainage plan to the Executive Director for review and approval. Such plan shall clearly identify all permanent measures to be taken to control and direct all site runoff, and shall clearly identify a drainage system designed to collect all on-site runoff (in pipes, drainage ditches, swales, etc.) for use in on-site irrigation and/or to be directed to the County storm drain system. Such plan shall at a minimum provide for the following:

- (1) The drainage system shall be designed to filter and/or treat the volume of runoff produced from each and every storm event up to and including the 85th percentile 24-hour runoff event prior to its use for landscape irrigation and/or discharge to the County storm drain system;
- (2) Runoff from rooftops and vegetated areas may be discharged directly from the site. Runoff from areas subject to automobile use shall be filtered by an engineered filtration system, or equivalent Best Management Practices, specifically designed to remove vehicular contaminants (such as petroleum hydrocarbons, heavy metals, and other particulates) prior to discharge from the site;
- (3) All parking lot areas, driveways, and other vehicular traffic areas on site shall be swept and/or vacuumed at regular intervals and at least once prior to October 15th of each year. Any oily spots shall be cleaned with appropriate absorbent materials. All debris, trash and soiled absorbent materials shall be disposed of in a proper manner. If wet cleanup of any of these areas is absolutely necessary, all debris shall first be removed by sweeping and/or vacuuming, all storm drains inlets shall be sealed, and wash water pumped to a holding tank to be disposed of properly and/or into a sanitary sewer system;
- (4) Hazardous materials (pesticides, herbicides, fertilizers, etc.) shall be covered and subject to secondary containment measures;
- (5) Appropriate spill response materials (such as booms, absorbents, rags, etc.) to be used in the case of accidental spills shall be maintained on-site in a readily accessible area. Employees shall be adequately trained in the use of such materials;
- (6) Any outside storage areas shall be: (1) equipped with storm drain valves which can be closed in the case of a spill; or (2) equipped with a wash down outlet to the sanitary sewer;



(7) Any drainage system elements shall be permanently operated and maintained. At a minimum:

- (a) All traps/separators and/or filters shall be inspected to determine if they need to be cleaned out or repaired at the following minimum frequencies: (1) prior to October 15th each year; (2) prior to April 15th each year; and (3) during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all traps/separators and/or filters must be cleaned prior to the onset of the storm season, no later than October 15th of each year;
- (b) Debris and other water pollutants removed from filter device(s) during clean-out shall be contained and disposed of in a proper manner; and
- (c) All inspection, maintenance and clean-out activities shall be documented in an annual report submitted to the County Public Works Department no later than June 30th of each year.

It is the Permittee's responsibility to maintain the drainage system in a structurally sound manner and its approved state. Any proposed changes to the approved permanent drainage plan shall be reported to the Executive Director. No changes to the approved permanent drainage plan shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- 4. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and creek bank failure (e.g. erosion, undercutting); (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, and amounts (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 5. **Nonconforming Development.** By acceptance of this permit, the applicant acknowledges and agrees that if any nonconforming structure, a structure that constitutes a nonconforming land use, or a nonconforming sign is destroyed or partially destroyed to the extent of 75 percent or more of the replacement cost of the total structure before destruction by fire, explosion, or act of God, the destroyed use, structure or sign may be replaced or reconstructed only when the use, structure or sign and the site on which it was located are in conformity, or are brought into conformity with all applicable requirements of the Local Coastal Program.
- 6. **County Permits:** This project requires a County building permit and grading permit. The grading permit shall be submitted for Executive Director review and approval to ensure conformance with the above conditions.



- 7. Condition Compliance:** Within 90 days of Commission action on this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the application is required to satisfy prior to issuance of the permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. DE NOVO FINDINGS AND DECLARATIONS

The project site is located at 36 North Ocean Avenue, within the Central Business District of the community of Cayucos, San Luis Obispo County. Cayucos is a popular destination for visitors to the S.L.O. coastline and includes a wide sandy beach and a number of visitor serving uses. The heaviest visitor use is during summer weekends. During these times competition for parking spaces intensifies. The existing on-site structure, which is set back approximately 30 feet from the top of the creek bank (Little Cayucos Creek), contains the hardware store, a small retail space, offices, and a single family residence. The proposed project involves the permitting of the existing outdoor building material storage area associated with the existing hardware store and the establishment of 250 square feet of retail space, and two offices approximately 200 square feet each within the same structure. In addition, the project involves the previous replacement of an existing wooden fence with a chain link fence and associated retaining wall.

Based on the current site uses and a shared on-site parking space adjustment (20% reduction), a minimum of 23 off-street parking spaces should be provided. Currently, no off-street parking spaces are provided by the uses on the site, which is inconsistent with CZLUO Section 23.04.166c and decreases the amount of available parking for visitor-serving uses. The project also appears to be inconsistent with Policies 1, 5, 16, and 18, 19, and 21 (implemented as CZLUO Section 23.07.174) for environmentally sensitive habitat regarding the protection of coastal streams because adequate Best Management Practices were not incorporated into the County's approval. In spite of those facts, SLO County issued a coastal development permit D990094D granting approval for this project and an appeal was brought before the Commission, whereby substantial issue was raised on the two contentions made above (See Exhibit 1 for full text of Substantial Issue). Also, the project allows a non-conforming use, therefore it must satisfy Coastal Zone Land Use Ordinance requirements (Section 23.09.033) for such non-conforming uses (see condition 5).

Finally, although "development," has occurred prior to submittal of the coastal permit application to the County, consideration of this application on appeal to the Coastal Commission is based solely upon the County's local coastal program provisions, which have been certified as being consistent with the Chapter 3 policies of the Coastal Act. Review of this permit request does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred. The Commission acts on this application without prejudice and acts on it as if the existing development had not previously occurred. Given that development has already occurred, there is a 90 day time limit for condition compliance to ensure resource protection occurs (see condition # 7)



A. Parking

Currently, the hardware store and the additional uses located within that building do not have any off-street parking; therefore, employees and patrons must use the public parking spaces located directly in front of the hardware store on Ocean Avenue (see photos in Exhibit 3). Because Cayucos does not have a designated parking area to accommodate visitors to the area, tourists and local residents must share existing on-street parking. The on-going use of these parking spaces for commercial or office uses, such as those contained within the Ocean Avenue Hardware building, decreases the amount of available parking for visitor-serving uses.

Pursuant to CZLUO Section 23.04.162 regarding off-street parking, the establishment of the small retail space and two offices may be approved only after the requirements for off-street parking have been met. Similarly, pursuant to CZLUO Section 23.09.036 regarding nonconforming parking, the expansion of the existing hardware store by approximately 6,400 square feet (i.e. the outdoor storage area) within a central business district may occur only if parking is provided for the area of expansion.

According to CZLUO Section 23.04.166c, the project should provide one parking space for each of the two offices (1 space per 200 square feet of floor area), one parking space for the small retail space (1 space per 300 square feet of sales area), and three parking spaces for the expanded outdoor storage area (1 space per 3,000 square feet of outdoor use area), for a total of six off-street parking spaces.

Coastal Zone Land Use Ordinance Section 23.04.164b(1) prohibits "the design of parking areas for more than two vehicles...[that] require or encourage backing out into a public street, pedestrian walk or public alley." Based on the relatively narrow width of the outdoor storage area (ranging from 30' to 45'), the six parking spaces would need to be accommodated in a single loaded parking bay (angled at 45°, 60°, or 90°) with an aisle only large enough for one-way travel.¹ But, because of the lot configuration, the vehicles do not have adequate room to complete a maneuver that allows them to exit the parking area and enter Ocean Avenue in the proper (forward) direction. Thus, some flexibility in how the parking spaces are accommodated is necessary.

The following Coastal Zone Land Use Ordinance regulates the placement of additional required parking at the project site:

Section 23.04.170 – Off-Site Parking

Where it is not feasible to provide sufficient on-site parking, an adjustment (Section 23.01.044) may be granted to allow the required parking to be located off-site provided that:

- a) The most distant parking space is not more than 400 feet from the use; and*

¹ Parking bays typically range from 16' to 18' in width and large vehicles require approximately 25' to complete a three-point turnaround maneuver, for a total minimum width of 41' to 43'.



- b) *The parking lot site is in the same ownership as the principal use, or is under a recorded lease with the use in a form approved by County Counsel. In the event that off-site parking is leased, the approved use is to be terminated within 60 days of termination of the lease providing parking, unless the parking is replaced with other spaces that satisfy the requirements of this Title; and*
- c) *The parking lot site is not located in a Residential land use category unless the principal use requiring the parking is allowable in a residential land use category. Where any such principal use is subject to Development Plan approval, the off-site parking shall also be subject to Development Plan approval.*

At the present, the applicant has been negotiating with the County of San Luis Obispo to abandon the driveway leading to the storage area and creating in its place two parking spaces. Two additional parallel parking spaces could be accommodated in the right-of-way behind Ocean Avenue Hardware. And finally, negotiations are underway to secure (e.g., lease) two additional employee parking spaces in a private lot owned by an adjacent property owner. By leasing two parking spaces for its employees, Ocean Avenue Hardware will free-up two additional on-street parking spaces for patrons and and/or visitor-serving uses.

Special Condition 2 requires a parking plan indicating the location and securing of these six on and off-site parking spaces prior to the issuance of a coastal development permit. As conditioned, the proposed use is consistent with LCP requirements regarding the provision of off-street parking.

B. Environmentally Sensitive Habitats

The existing hardware store building is set back approximately 30 feet from the top of the creek bank. The subject outdoor storage area covers the remaining portion of the lot and extends to the edge of the riparian vegetation, set back slightly from the creek bank. Although this coastal development permit authorizes the continued use of the 6,400 square foot outdoor storage area, it should be noted that this portion of the lot has been used for similar activities but not as intensely. Therefore, no native vegetation is found in this area (see photos in Exhibit 3).

Given the degraded condition of the area adjacent to the remaining riparian vegetation and the historic pattern of development placing structures nearly on top of the creek bank, the emphasis of the conditions of approval for this permit is placed on controlling runoff and implementing Best Management Practices, rather than strictly enforcing setback requirements which may eliminate the outdoor storage area altogether. This approach is further supported by the botanical report (Holland, Ph.D, 2000), which states:

In regards to the setback from the creek and riparian vegetation, it should be noted that the buildings along this section of Little Cayucos Creek are historical and have been in this location for a long time.... The Way Station Building across the creek from Ocean Avenue Hardware sits right on top of the creek bank and thus displaced all riparian woodland vegetation in that area. The Ocean Avenue Hardware site



does have a setback from the creek and the creek bank in that there is a small terrace covered by a dense growth of arroyo willows with a lush understory of herbs, vines, and shrubs.... As long as proper precautions are taken to prevent contaminants such as petroleum products, herbicides, and pesticides from entering the creek, I do not think it is necessary to change the existing setback.

Policies 1, 5 and 16 for Environmentally Sensitive Habitat Areas and CZLUO Sections 23.07.164, 23.07.170, and 23.07.174, stated previously in the Substantial Issue Findings, require development within or adjacent to locations of Sensitive Resource Areas to not significantly disrupt the resource. Additionally, the following standard addresses necessary drainage controls in new development.

CZLUO Section 23.05.040 – Drainage: Standards for the control of drainage and drainage facilities provide for designing projects to minimize harmful effects of storm water runoff resulting inundation and erosion on proposed projects, and to protect neighboring and downstream properties from drainage problems resulting from new development.

Because the site is currently developed, runoff from the site may contain urban runoff constituents (e.g., nutrients, trash and debris, sediments, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics such as pesticides and herbicides), eventually making their way into Little Cayucos Creek and the Pacific Ocean. However, as conditioned to require implementation of Best Management Practices (BMPs) designed to reduce or eliminate the introduction of pollutants into runoff (e.g., regular sweeping/vacuuming of vehicle parking areas and the outdoor storage area) the project will meet the requirements of Policies 1, 5 and 16 for ESH and CZLUO Sections 23.05.040, 23.07.164, 23.07.170 and 23.07.174. Secondly, the retaining wall installed to support the new chain link fence decreases the amount of surface runoff into the creek and impedes erosion of the creek bank. Finally, given the proximity of the site to the creek, and the potential for the creek bank to experience failure (e.g. flooding, erosion, undercutting), Special Condition 4 requires the applicant to assume this risk. Special Condition 5 requires the applicant to acknowledge that any nonconforming structure, sign, or land use destroyed, or partially destroyed, shall be brought into conformance prior to being reconstructed. Special condition #1 emphasizes that no disturbance of the riparian corridor shall occur. Therefore, as conditioned, the proposed use is consistent with LCP requirements regarding the protection of environmentally sensitive habitat areas.

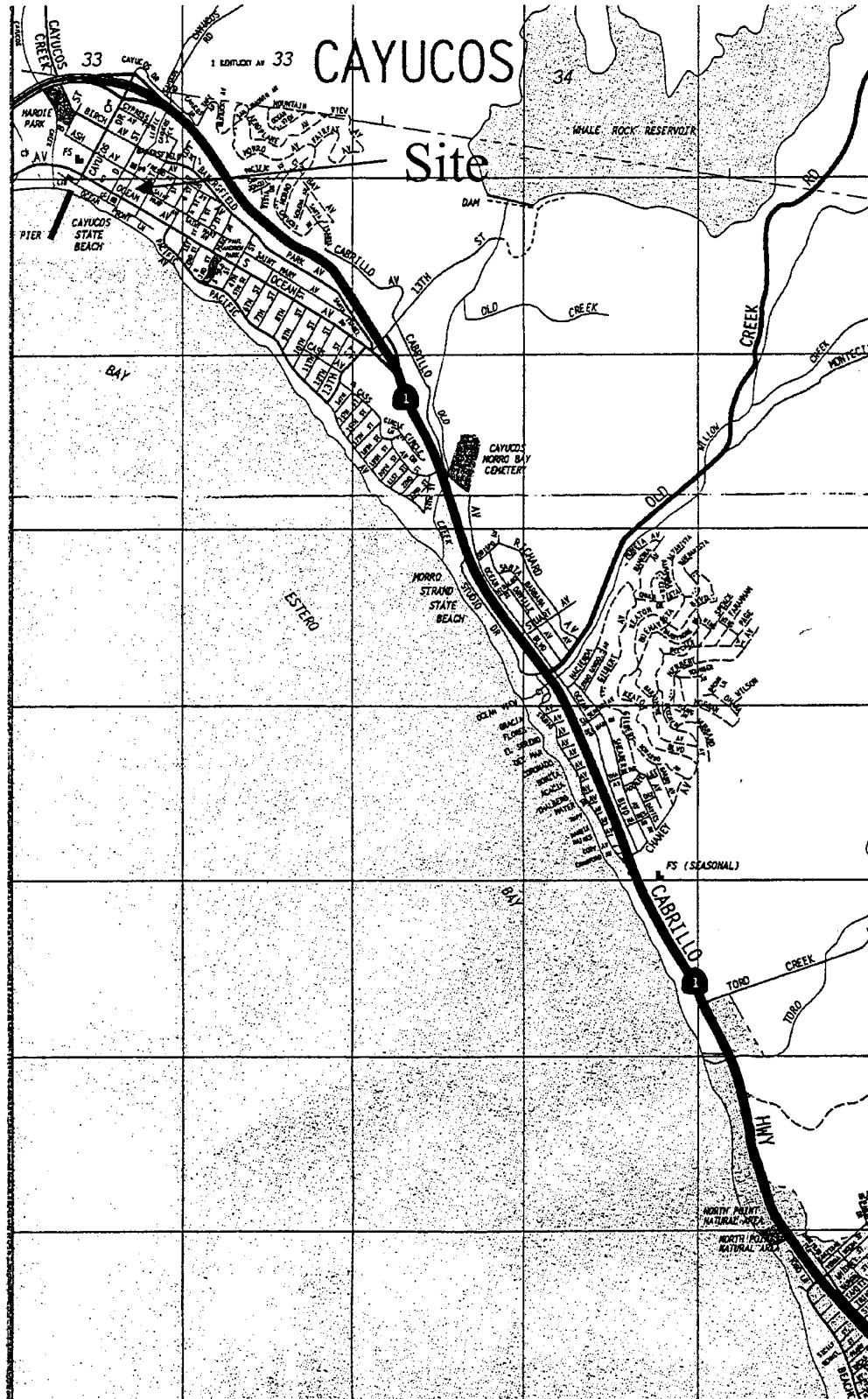
V. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. The impacts of the proposed project on coastal resource issues have been discussed in this staff report and the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (see Special Conditions of Approval). 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.





PROJECT

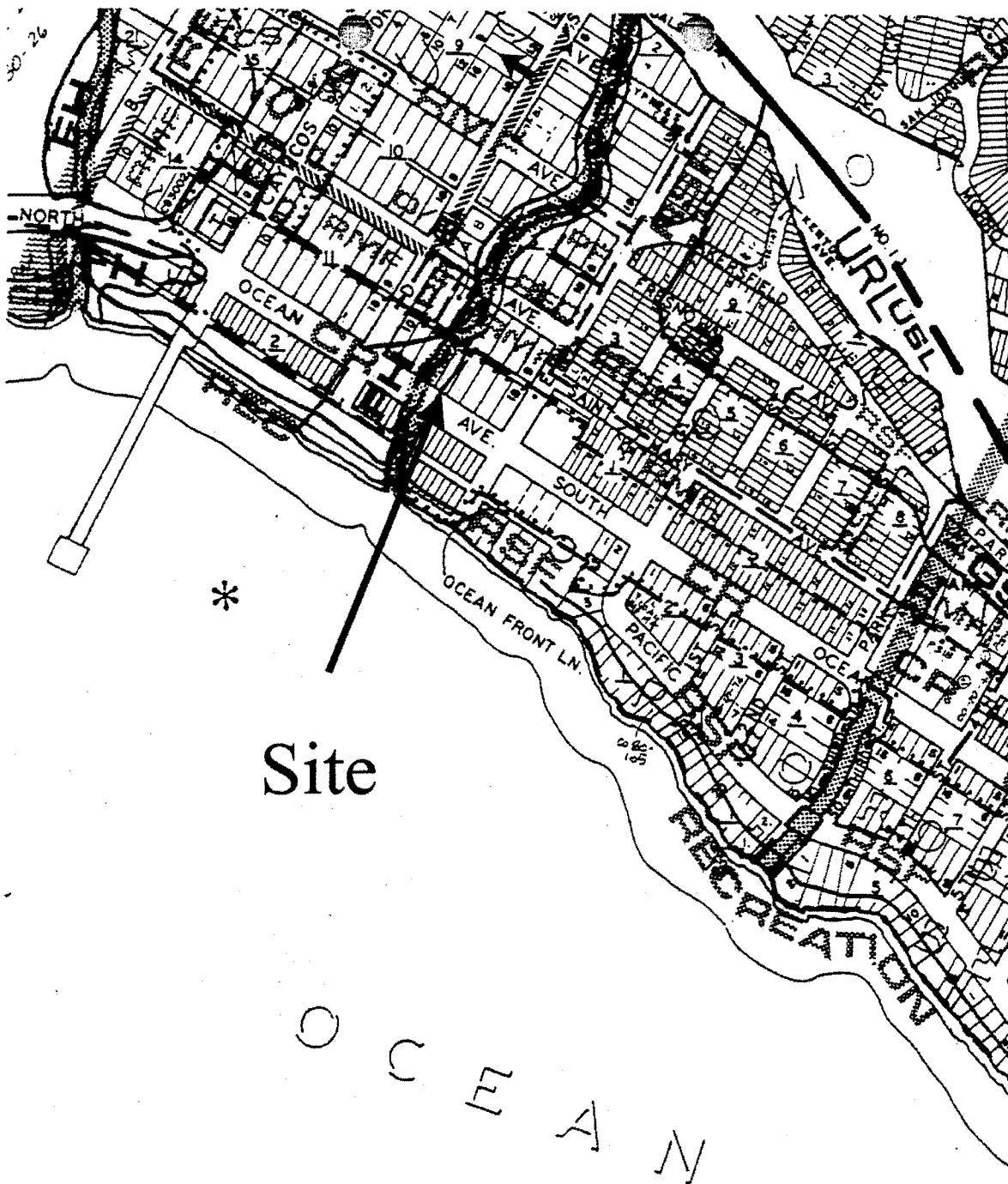
Minor Use Permit
Hogan - D990094D



EXHIBIT

Vicinity Map

Exhibit 1
(1 of 2)



PROJECT

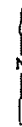
Minor Use Permit
Hogan - D990094D



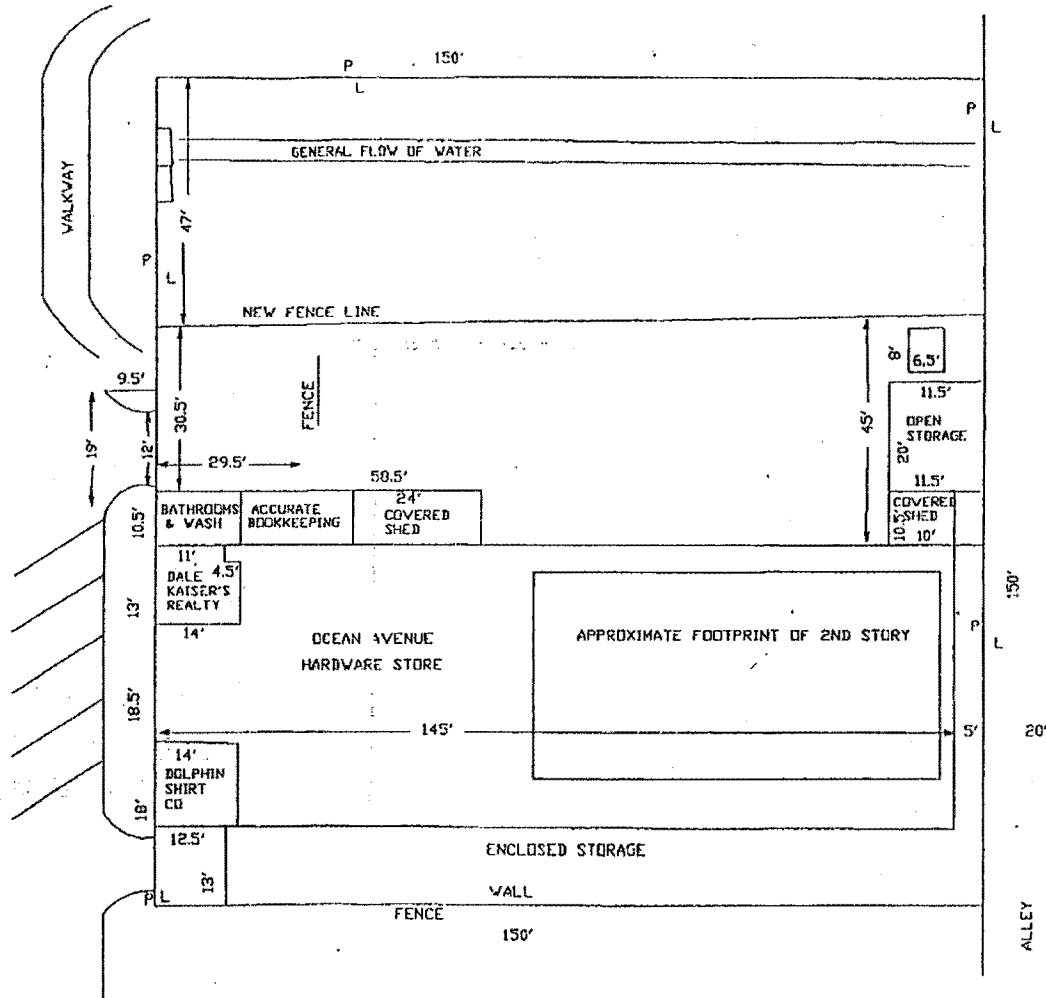
EXHIBIT

Land Use Map

Exhibit 1
(2 of 2)



SCALES
1" SQ = 5'
1" = 20'
ACAD/TOOLS/PC



7' FROM CREEK BED
TO TOP OF CULVERT
2 - 6' DIAMETER CULVERTS

EDGE OF CURB TO EDGE OF CURB
IS APPROXIMATELY 78 FEET

OCEAN AVENUE

WATER HYDRANT AT CORNER OF
OCEAN AVENUE & 'E' STREET
AT NORTH WEST SIDE
APPROXIMATELY 400' FROM OAH

OCEAN AVENUE HARDWARE SKEMATIC
36 NORTH OCEAN AVENUE
CAYUCOS, CA. 93430

PROJECT

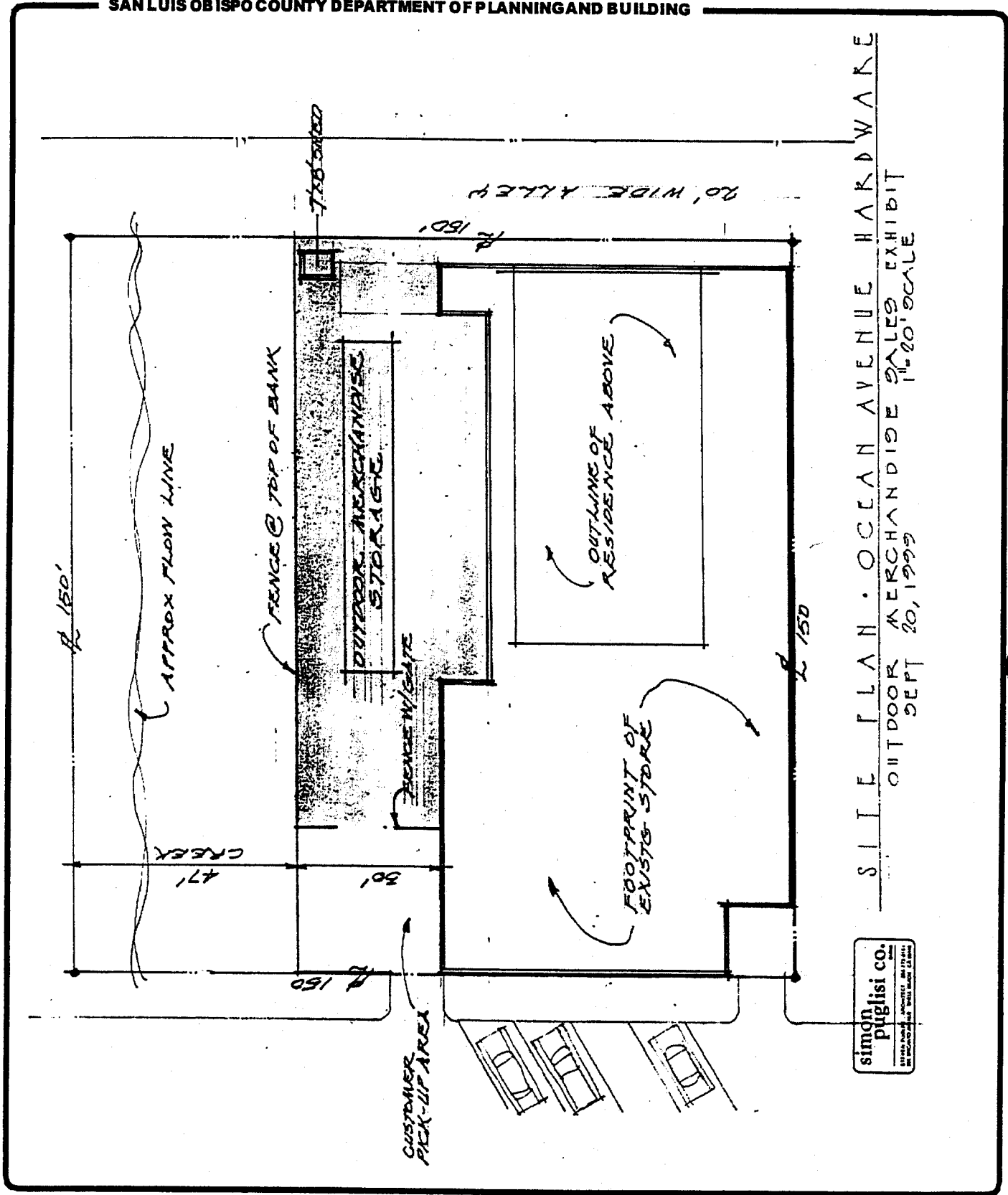
Minor Use Permit
Hogan - D990094D



EXHIBIT

Revised Site Plan

Exhibit 2
(1 of 2)



PROJECT

Minor Use Permit
Hogan - D990094D



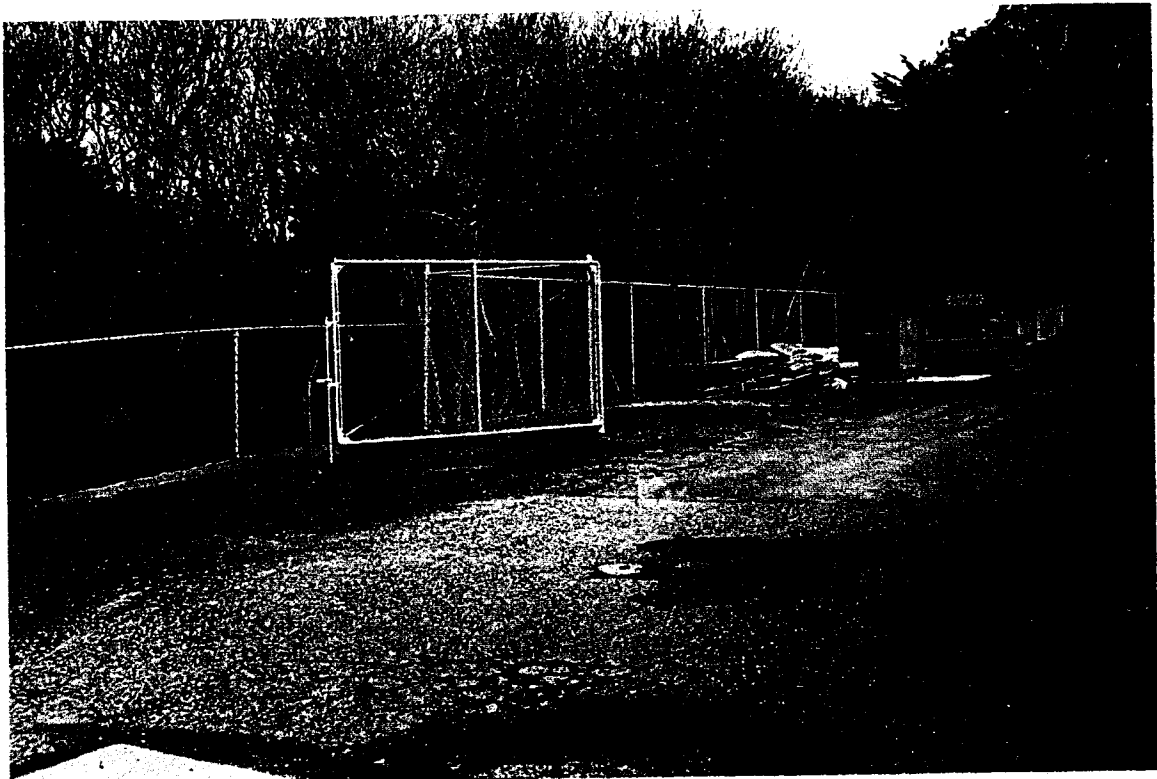
Exhibit 2
(2 of 2)

EXHIBIT

Site Plan

Handwritten signature/initials

~ SITE PHOTOS ~



Storage
area



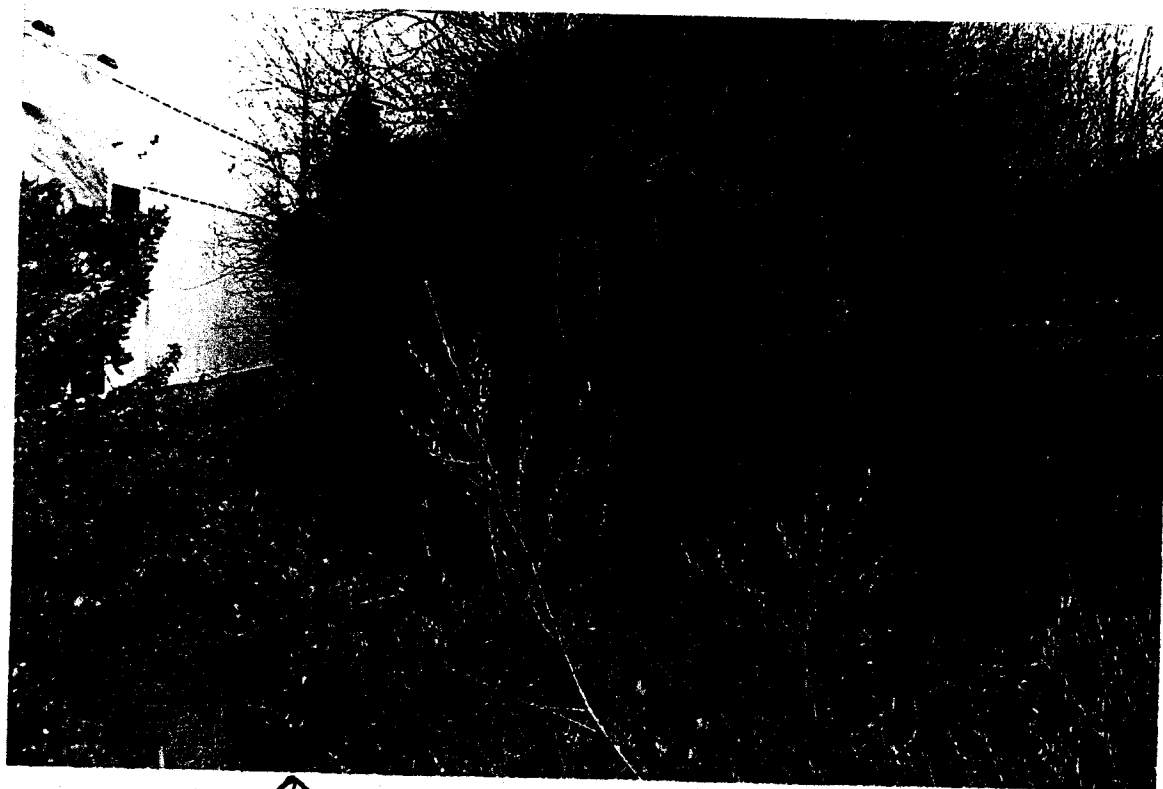
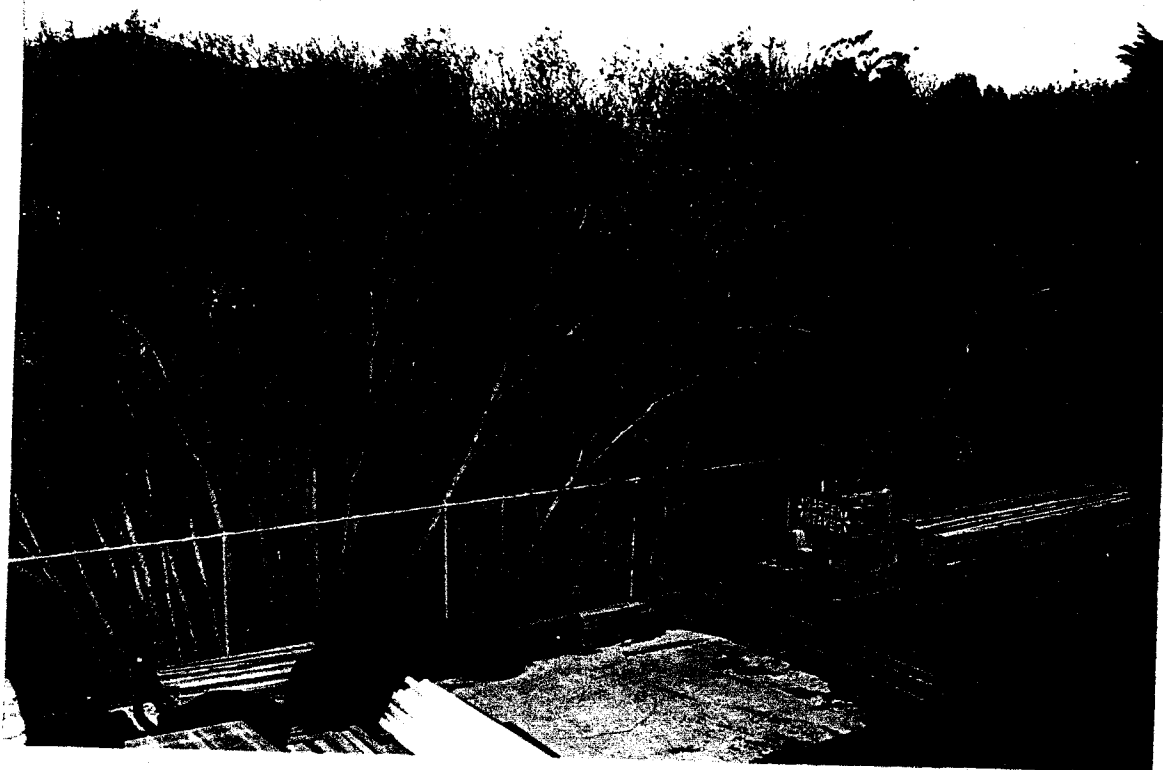
New Fence



Old Fence

Site Photos
Exhibit 3
(1 of 8)

✓ SITE PHOTOS ✓



↑
Little Cayucos
Creek

Exhibit 3
(2 of 8)

SITE PHOTOS



Exhibit 3
(3 of 8)

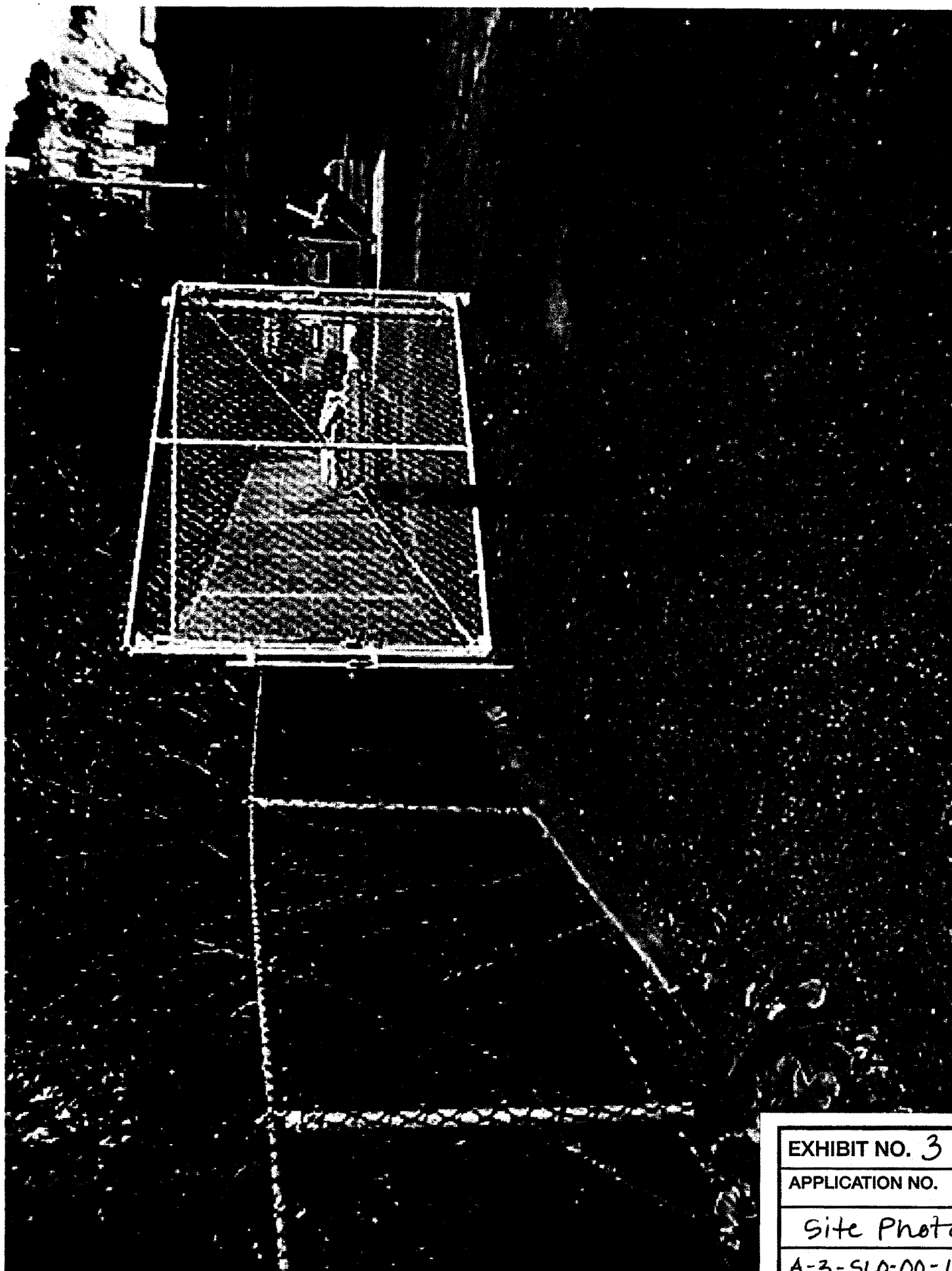


EXHIBIT NO. 3

APPLICATION NO.

Site Photos

A-3-SLO-00-121



EXHIBIT NO. 3
APPLICATION NO.
Site Photos

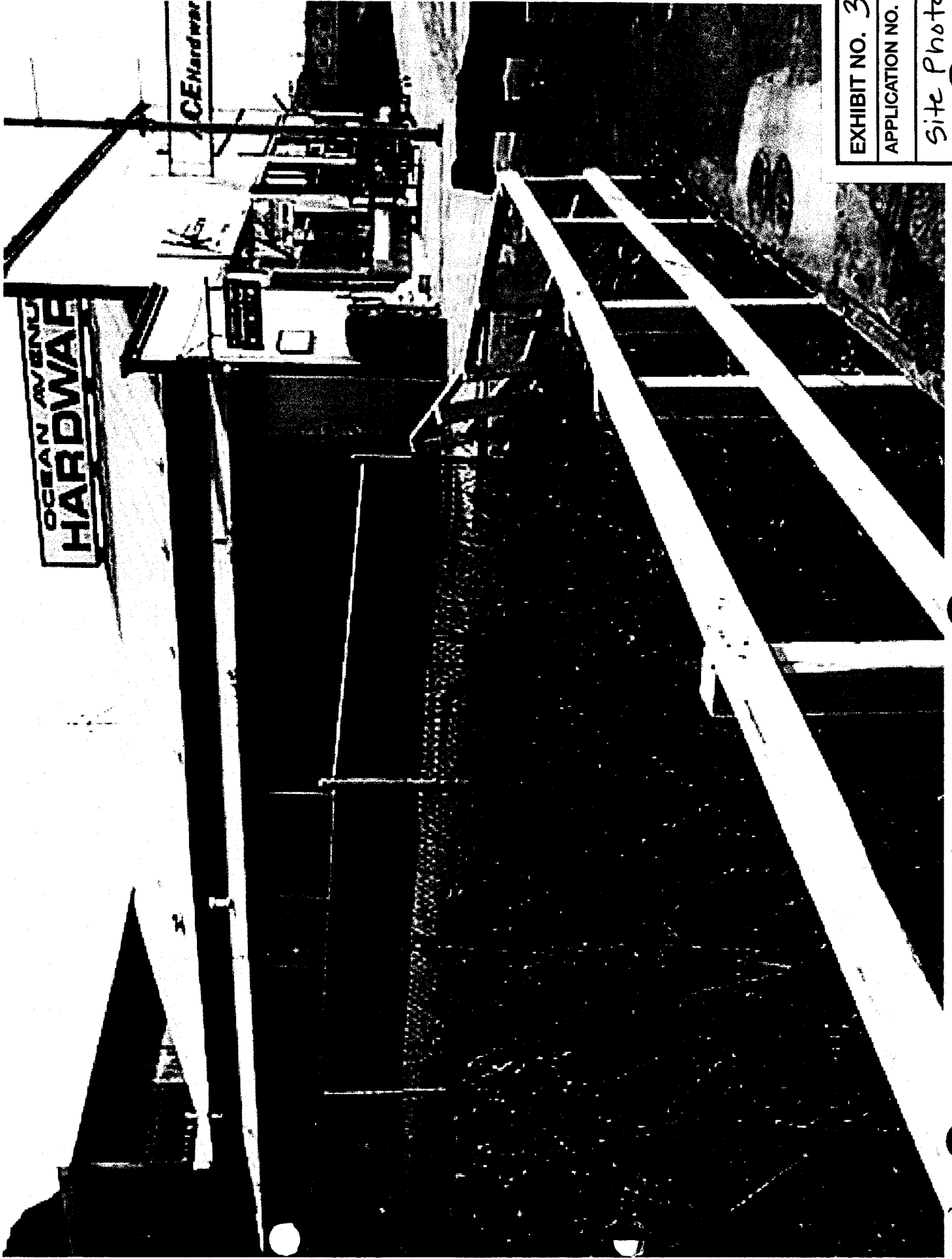
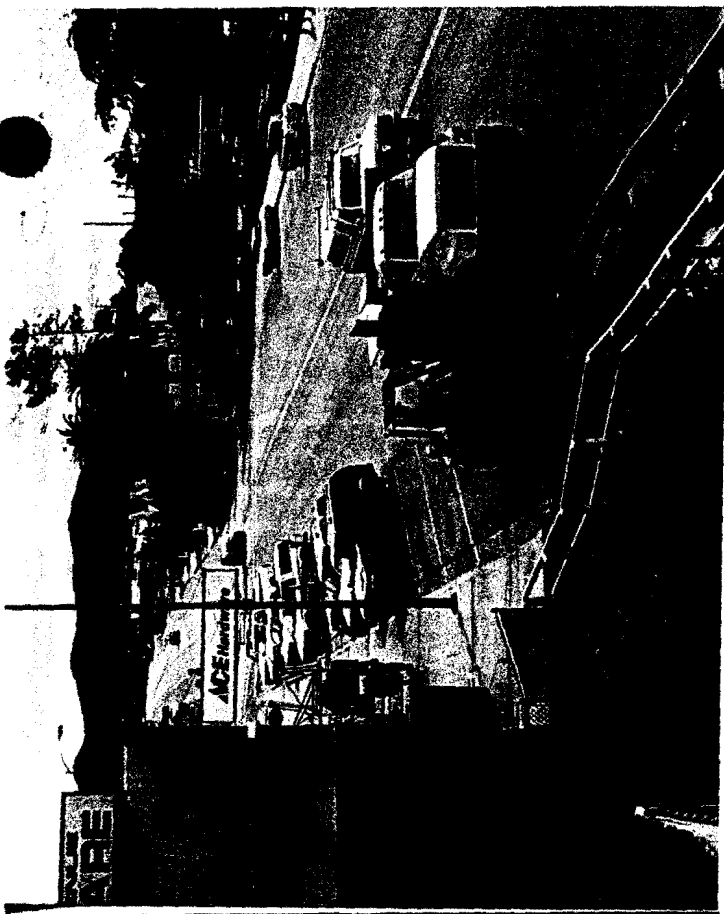


EXHIBIT NO. 3

APPLICATION NO.

Site Photos



Planning Commission

3/23/00

Exhibit 3
(7 of 8)

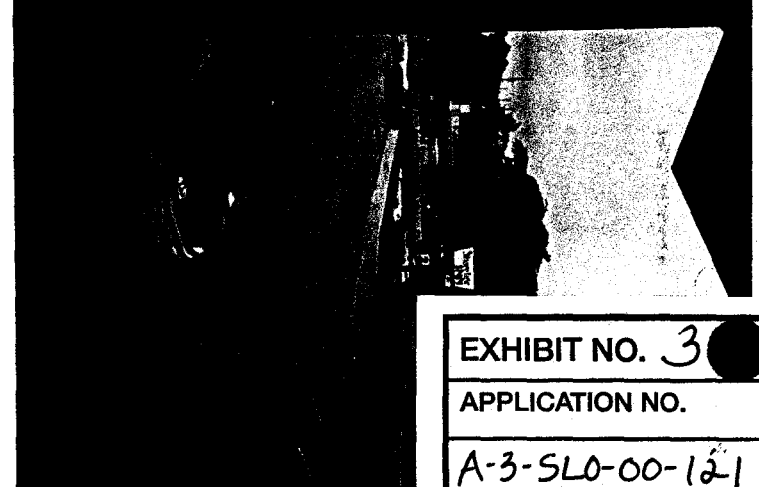
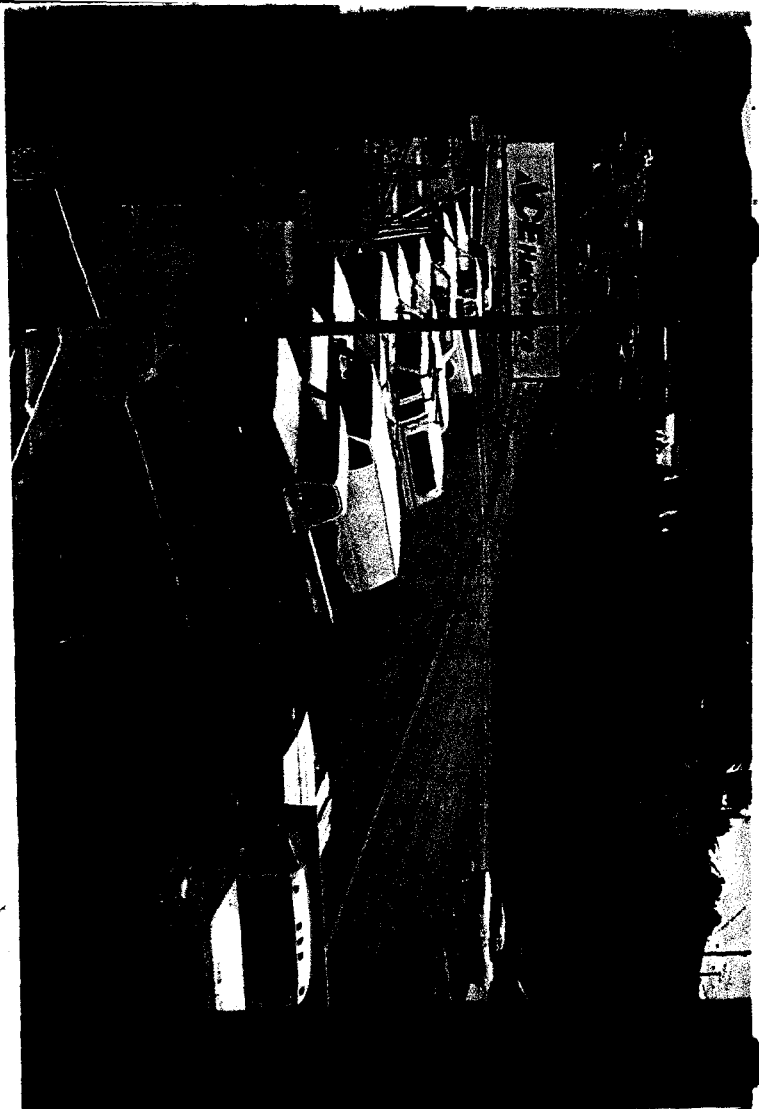


EXHIBIT NO. 3
APPLICATION NO.
A-3-SLO-00-121
(8 of 8)

Planning Commission 3/23/00

STATE OF CALIFORNIA - THE RESOURCES AGENCY

Gray Davis, Governor

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4843

RECEIVED

AUG 14 2000

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTCALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

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

Ruel J. Czach

P.O. Box 171

Cayucos, CA 93430

(805) 995-3502

Zip

Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port government:
San Luis Obispo County

2. Brief description of development being appealed:

Development Plan/Coastal Development Permit (D990094D) for
outdoor storage of merchandise in association with an existing
hardware store, located at 36 North Ocean Avenue in Cayucos;
2nd District.

3. Development's location (street address, assessor's parcel number, cross street, etc.):
36 North Ocean Avenue, Between D and E Streets in downtown
Cayucos (APN#064-114-008)

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: A-3-SLO-00-121
DATE FILED: 8/14/2000
DISTRICT: Central Coast

Appellant's Contentions
Exhibit 4
(1 of 11)

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: July 18, 2000

7. Local government's file number: D99094D

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:

Tom and Karen Hogan

36 North Ocean Avenue

Cayucos, CA 93430

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

(1) Louise Fontaine

61 Acacia

Cayucos, CA 93430

(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.

Exhibit 4
(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.)

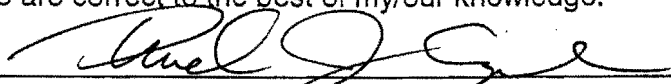
see attached reasons for appeal

(8 page Appeal of Ordinance Violations of Un-Permitted
Construction and Proposed Use at Ocean Avenue Hardware
Store in Cayucos)

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 8-8-00

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.

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Signature of Appellant(s)

Date _____

August 8, 2000

APPEAL OF ORDINANCE VIOLATIONS OF UN-PERMITTED CONSTRUCTION AND PROPOSED USE AT OCEAN AVENUE HARDWARE STORE IN CAYUCOS

I have found 37 sections of our county's Coastal Zone Land Use Ordinance, 18 policies of the Coastal Plan Policies, 3 sections of the Estero Area Plan, and 2 standards in the Framework for Planning that have been or will be violated by approval of this proposal.

I have divided the ordinance violations into five areas, visitor-serving conflict, parking violations/visitor-serving conflict, violations of sensitive resource area/environmentally sensitive habitats, previous violations of the Land Use Ordinance, and how the proposed use violates the Land Use Ordinance.

VISITOR-SERVING CONFLICTS

This proposed outdoor storage area was recently used as an industrial use, a lumber yard, and this use is not an allowed use at this location. This use also created a noise problem and directly impacts an adjacent visitor-serving use. This use needs to provide the wood fence and landscaping that are required in our ordinances.

- a. The noise generated from the sawing of lumber exceeds the noise level standard and shall not be permitted according to the Noise Element. The proposed project fails to meet Policies 3.3.1, 3.3.4, 3.3.5 and 3.3.6. "New development of noise-sensitive land uses shall not be permitted where the noise level due to existing stationary noise sources will exceed the noise level standards..." and "SLO County shall consider implementing mitigation measures where existing noise levels produce significant noise impacts to noise-sensitive land uses...."
- b. This project violates the Framework for Planning part of the Local Coastal Program relating to Visitor-Serving Priority Areas. This project ignores the visitor-serving restaurant facility directly across that creek that serves visitors to the coast. The sawing of lumber directly impacts the visitor-serving priority "to protect and enhance public opportunities for coastal recreation" and to give priority to visitor-serving uses over non-visitor serving uses. Policy 2 for recreation and visitor-serving facilities again states that visitor-serving facilities shall have priority over non-visitor serving.
- c. Outdoor sales lots, such as is proposed, are subject to the CZLUO ordinances and site design standards in section 23.08.144. In subsection (2) the ordinance says that all property lines are to be screened with a 6-foot high solid wall or fence. The applicant has only mentioned the visual screening aspect of the fence, where the noise-shielding aspect of a solid wood fence is very important considering the restaurant and office uses adjacent to the proposed use.

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PARKING VIOLATIONS/ VISITOR-SERVING CONFLICT

This permit not only requests approval for this new use but also is asking that the owners be exempt from previously required parking spaces from past permit requirements and for parking spaces which should be required for all the illegal and non-permitted uses which have been added in recent years. This is the second largest building in Cayucos, one of the most popular places for residents to shop and they are not providing a single parking space!

The side of the lot, where these applicants are proposing this new use, has traditionally been used for parking for customers as well as the owners and employees of some of these businesses until this applicant recently expanded his business without a permit. The two past permits for expansions in 1970 and 1974 both state that this area is designated to be used for parking. The permit application in 1970 for adding enclosed storage space says that the owner is providing approximately 30 parking spaces for the Hardware Store and the new storage. The permit application in 1974 for adding more enclosed storage area and a residence above says that the owner is providing 2 additional parking spaces for the residence in this same area.

According to the Land Use Ordinance, the permit in 1970 would have required 10 parking spaces for the existing store and new storage area. The permit in 1974 would have required 7 new parking spaces for the new storage area and residence above. This adds up to 17 parking spaces required for both of those permits.

In the last five to fifteen years, I have witnessed this owner and the previous owners constructing and adding several new businesses and changing what was interior storage area into retail sales area. An additional retail store, Dolphin T-Shirts, a real estate office, Dale Kaiser Real Estate, two accounting businesses, Accurate Accounts and Kitty Hennigh, and additional office space has been added. An outside area of 1620 square feet on the south side was enclosed. Much of the interior storage or warehouse areas have been opened up to the hardware store and made into retail sales area. I assumed that the owner had obtained permits and I was surprised to find that all of these additions were done without applying for or obtaining the proper permits.

The LUO says that a minimum of two parking spaces is required for each service or retail use which means that 6 to 10 spaces are required for these un-permitted additions. The outside area that was enclosed requires 3 parking spaces. The interior storage area, or warehouse area as it was called in the 1974 permit, which was turned into retail sales area requires 9 parking spaces. 19 to 22 additional parking spaces would have been required of this property had the owners applied for the proper permits as all other law-abiding property owners have.

The side of the lot, where these owners have installed yet another un-permitted use, the outside storage, should be used for the required parking that is needed for all the "bootlegged" additions and businesses that have been added over the last several years, after the riparian area has been restored. This owner is responsible for providing the 36 to 40 parking spaces the LUO requires. This property owner is taking away parking for adjacent businesses and all the many visitors to our coastal community. This application is a direct violation of the visitor-serving priority of the Coastal Act and many of the LUO ordinances.

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- a. This project does not meet CZLUO ordinances 23.08.144(ii) for parking requirements for sales lots. The ordinance says that sales lots are subject to this ordinance and this proposal does not meet this requirement.
- b. This project does not meet CZLUO ordinances 23.04.162(g) for nonconforming off-street parking requirements. "A new allowable use may be established or an existing allowable use may be expanded only after the requirements for off-street parking have been met for the existing structure, as well as for any expansion."
- c. This project does not meet CZLUO ordinances 23.09.036b. for nonconforming parking, where it says that "expansion may occur if parking is provided". This proposal does not provide any parking.
- d. This project does not meet CZLUO ordinances 23.04.1164 for parking design standards nor does it meet 23.01.166 for required number of parking spaces. It also does not meet ordinances 23.04.168 for parking lot construction standards or 23.04.180 for landscaping, screening and fencing.

ORDINANCE VIOLATIONS OF SENSITIVE RESOURCE AREA/ENVIRONMENTALLY SENSITIVE HABITATS

This proposed use needs to meet the ordinances and standards associated with Environmentally Sensitive Habitats, the riparian vegetation along the creek has been altered and needs to be restored, a structure has been constructed in the creek and needs to be removed, and required fencing needs to be provided. This applicant removed a wooden fence, cut down a swath of 10 to 15 feet of riparian vegetation, built an inadequate 2 to 5 foot high retaining wall along the 150 foot depth of the lot, and placed an chain link fence above the retaining wall. 9 county ordinances were violated and seventeen Policies in the County Coastal Plan Policies were ignored.

- a. This project does not meet CZLUO ordinances 23.07.160 through 23.07.176, Sensitive Resource Areas, Streams and Riparian Vegetation and Terrestrial Habitat Protection. The outdoor use area needs to be sited so as to protect the adjacent riparian area and coastal stream.
- b. Section 23.07.164 SRA Permit and Processing Requirements were not followed in the application for this permit. This development does not "preserve and protect such features" it removed them and filled part of the creek. The "natural features and topography" have not been considered in the design and siting of all proposed physical improvements. The clearing of trees and filling of a creek side habitat did create a significant adverse affect on the identified sensitive resource. The project was not designed to prevent sedimentation of the stream, in fact a code enforcement officer of the county found that the improvements would fail and allow additional sedimentation to the stream.

- c. Section 23.07.160 Minimum Site Design and Development Standards were not followed. The ordinance says that "all uses within a Sensitive Resource Area shall conform to the following standards: (c) Construction and landscaping activities shall be conducted to not degrade....perennial watercourses within an SRA through filling.... This applicant has placed about 2000 cubic feet of fill in this creek and built a retaining wall 150 feet long.
- d. Section 23.07.170 Environmentally Sensitive Habitats says that the provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an ESH....shall include a report by a biologist....that evaluates the impacts and restoration of the damaged habitats, evaluates development proposed adjacent to an ESH including noise, sediment and other potential disturbances, and verifies that the applicable setbacks are adequate to protect the habitat or recommends greater, more appropriate setbacks. This creek is home to many animals including a major roosting area for the Great White Egrets only a few feet away. It may be or have been a habitat for the steelhead trout and other endangered species. This section also specifies development standards for environmentally sensitive habitats, which have not been met in this development plan.
- e. Section 23.07.174 Streams and Riparian Vegetation requirements have not been met with this development plan in several areas. Section 23.07.174 (a.) says "development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat."
- f. Section 23.07.174 (d) says "new development shall be setback from the upland edge of the riparian vegetation a minimum of 50 feet". Instead of setting the new development back from the riparian vegetation, this applicant has cut about 10 to 15 feet of vegetation away.
- g. Section 23.07.174 (d)(1) "Permitted uses within the setback" says that these uses are limited and does not include this use unless certain required findings are met.
- h. Section 23.07.174 (d)(2) "Riparian habitat setback Adjustment" "in no case shall a structure be allowed closer than 10 feet from a stream bank." This project does not meet either standard but if the 10 feet is used, as county staff is suggesting, it is only allowed if four strict findings are met and they have not been met. Under the ordinances, a retaining wall is a structure and a fence is a structure. The combined height of this structure cannot be more than 6 feet, just as a house built on a foundation includes the height of both the foundation and the house when calculating the height of the structure.
- i. Section 23.07.174 (e.) says, "cutting or alteration of natural vegetation that protects a riparian habitat shall not be permitted". The owners have already removed a considerable swath, of about 10 to 15 feet wide, of native willow trees in their previously non-permitted expansion of their business.

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- j. Section 23.07.17 "Terrestrial Habitat Protection" is in place to specifically preserve and protect rare and endangered species by preserving their habitats. This riparian vegetation that the applicant removed is part of their habitat. The very loud noise from power saws cutting wood and the disturbance from the lumberyard vehicles also disturb this habitat. Specifically the forklift constantly moving materials onto the lot, over to the saw and then onto waiting trucks.

This property owner is totally ignoring the Coastal Plan Policies adopted by this County and the California Coastal Act's environmental protections. This proposal ignores the whole chapter in the Coastal Plan Policies on Environmentally Sensitive Habitats and most of the policies established to protect them.

- a. Policy 1, which says that "New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet...) shall not significantly disrupt the resource." The cutting down of many riparian trees and the filling of the creek is a direct disruption of this habitat.
- b. Policy 2, which says, "As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides the maximum feasible mitigation measures and a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate." None of these have been done by the applicant or were required by the County Planning Commission in direct conflict with this policy and the County Land Use Ordinance.
- c. Policy 5, which says, "The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored. This project also does not meet the criteria of Policy 11, 15, and 16.
- d. Policy 18, 19, 21, 23, 24, and 26 in relationship to Coastal Streams, which say that "Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved" and "Cutting or alteration of naturally occurring vegetation that protects riparian habitat is not permitted" and "a buffer zone shall be maintained in natural condition along the periphery of all streams."
- e. This project is in an area of Visual and Scenic Resources, which include sensitive habitats, and is ignoring Policies 2, 5, 6 and 7 which says among other things that "sensitive habitats are to be preserved and protected." and "The location and design of new development shall minimize the need for tree removal."

PREVIOUS VIOLATIONS OF LAND USE ORDINANCES

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The owner needs to apply for permits and meet all the applicable building and planning code requirements for all the other bootlegged uses that have been placed in this building during the last 10 years or so before a the new proposed use is approved. These codes are in place to protect the health, welfare and safety of the public and these codes should be enforced for this project as they have for all other projects.

Several additions have been added to this building that may be inadequate or defective construction. As an example, the electrical work could be inadequate and cause a fire. The un-permitted work was completed without building a fire-rated wall on the property line so a fire could spread to adjacent buildings. Also this construction needs to meet earthquake standards or the falling building could crush people during an earthquake. One of the purposes of the Land Use Ordinance is to protect the public's safety.

Again the previous owner, Jim Pierce, testified "the building has been the same since the 1970's". This is absolutely not true. I have witnessed many of the additions and revisions to this building and assumed that the owner had obtained the proper permits. After I complained about the fill being placed in the creek, the county staff informed me that no permits had been issued on this building since 1974 even though I witnessed many of these revisions taking place in the last fifteen years. These un-permitted additions and revisions to previous use were clearly undertaken after the adoption of the Local Coastal Plan and need the proper permits.

- a. Section 23.01.030e(1)(vi) that says any construction, expansion or alteration of such uses after the effective date of this title...shall be done in accordance with all applicable provisions of this title, or any conditions of approval adopted with the original entitlement, whichever is more restrictive." This project illustrates two codes being ignored. First, that there was much previous work done, in which the owner never applied for the proper permits or followed the proper code provisions. Second, that two previous entitlements, the permit allowing a proposed warehouse for storage and the construction of a residence above the existing hardware store, are being ignored and the parking areas submitted as part of those projects have not been restored to that use as was issued in that permit.
- b. Section 23.01.031 that says "no person shall establish, construct, alter or replace any use of land, structure or building without first obtaining all permits required by... applicable sections of this title." ." This property owner and previous owners have ignored this and many other sections of the Land Use Ordinance and the Uniform Building Code by bootlegging in businesses and enclosing space previously used for outdoor storage without a permit.
- c. Section 23.01.033b, 23.01.033c, 23.01.033d, and 23.01.033e, which say that the project must satisfy the standards of the Land Use Element, combining designation planning area standards, the policies, programs and standards contained in the Local Coastal Plan Policy Document, and all implementing regulations adopted as part of the Local Coastal Program."

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- d. Section 23.01.034a, which says that "no use of land, buildings, or division of land shall be established and no use of land or buildings...shall be approved unless the proposed land use, building, or parcels satisfy all applicable requirements of this code."
- e. Section 23.01.034b. which says that "All uses of land, buildings and bodies of water established constructed, altered or replaced after the adoption of this title shall at all times be operated, conducted and maintained in a manner consistent with all applicable provisions of this code."
- f. Section 23.01.034c. which says that "no application for a land use permit...shall be approved where applicable provisions of ...this code...except where the application incorporates measures proposed by the applicant to correct the violation, and correction will occur before establishment of the new proposed use...."
- g. Section 23.01.038, which says that "Any permit application or request ...shall be accompanied by the required filing fee at the time of submittal." In order to correct all the many previous violations of the codes, such as the many building permits, which were never applied for, the applicant needs to provide the required permit and accompanying school fees with this application.
- h. Section 23.01.039 which says that "It is unlawful for any person to erect, construct, enlarge, alter, repair, move, use, occupy or maintain any building, structure, equipment, or portion thereof in the County of San Luis Obispo or cause the same to be done contrary or in violation of any provision of this title or any provisions of the codes, rules or regulations adopted in this title. No person shall violate any of the provisions, or fail to comply with any of the requirements of this title." This owner and the previous owners of this property have repeatedly violated the laws of this county by ignoring the multitude of sections of adopted ordinances relating to building and land uses.
- i. Section 23.02.028, which says, "Proposed new uses of existing buildings and other activities are in compliance with this title and the Local Coastal Program." According to Planning staff, zoning clearance applications have not been filed for several new businesses and the applications for those businesses need to meet the criteria for approval of all licenses, Section 23.02.028(2).
- j. Since no building permit was obtained the structure does not meet all the applicable requirements of Title 19, Section 23.02.028(2)(ii). In addition the "bootlegged" businesses do not meet the requirements of Section 23.02.028(3), relating to the re-use of an existing structure.

PROPOSED USE VIOLATES LAND USE ORDINANCES

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This proposed outdoor storage area was recently used as a.. industrial use, a lumber yard, and this use is not an allowed use at this location. This use needs to provide the wood fence and landscaping that are required in the ordinances. The applicant has stated that the outdoor use he proposes has always been on this lot and this is not the case. There was never a lumberyard use on this side of this lot, except for an occasional temporary storage of materials, until about 18 months ago. The applicant has opened up walls, without any permit, and added power saws, which were never on this side of this lot.

- a. Section 23.01.033 and 23.01.033a. says that "No new use of land.... shall be established, and no application for such use, land division or other permit required pursuant to this title shall be approved, unless the proposed use or division is determined to be allowable in the land use category where the proposed site is located..." This project is located in a commercial zoning, lumber and wood products are allowed in an industrial zoning only.
- b. Outdoor sales lots, such as is proposed, are subject to the CZLUO ordinances and site design standards in section 23.08.144 and 23.04.190. In Section 23.04.144 subsection (2) the ordinance says that all property lines are to be screened with a 6-foot high solid wall or fence. The fence is needed both for the visual screening aspect of the fence and for noise shielding. The noise-shielding aspect of a solid wood fence is very important considering the restaurant, retail and office uses adjacent to the proposed use.
- c. This use is also required to have a landscaping strip to visual shield the storage use from the street as per Sections 23.08.144 and 23.04.186

Summary

This property owner is ignoring 37 sections of our county's Coastal Zone Land Use Ordinance, 18 policies of the Coastal Plan Policies, 3 sections of the Estero Area Plan, and 2 standards in the Framework for Planning in this proposal. I ask you, our state Coastal Commission, to take issue with such a blatant disregard of the California Coastal Act and the Local Coastal Plan. It is a great disservice, to the residents and property owners of this county and this state, to allow this owner to disregard of the laws and ordinances set in place by the people of this state to protect the coastal environment. Thank you for your attention to these concerns.

Please note that I have photos, maps, and diagrams to clarify all the ordinance violations. I am also in the process of obtaining additional information that I am researching at this time. I will be sending you these documents and any additional information to you before the hearing. If you need any of this information at this time or when you are preparing the staff report, please contact me and I will send it to you. I am available to answer any questions or discuss any issues from 10 am to 5 pm at 805-995-3502.


Ruel J. Czach

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Riparian Vegetation of Little Cayucos Creek Next to Ocean Avenue Hardware Cayucos, CA 93430

Prepared for:

**Tom and Karen Hogan, Owners
Ocean Avenue Hardware
36 No. Ocean Avenue
Cayucos, CA 93430**

Prepared By

**V. L. Holland, Ph.D.
Plant and Restoration Ecologist
1697 El Cerrito CT.
San Luis Obispo, CA 93401**

June 9, 2000

**Exhibit 5
Botanical Report
(1 of 5)**

Handwritten initials: V. L. Holland

INTRODUCTION

The Ocean Avenue Hardware store is located at 36 North Ocean Avenue, Cayucos, California. Little Cayucos Creek flows along the northern boundary of the site and then through culverts under Ocean Avenue to the ocean. The owners have recently replaced an old wooden fence that occurred along the edge of the creek's riparian vegetation with a small wooden retaining wall and a chain link fence. The old fence was an open wooden fence in the front half of the lot and a solid wooden fence in the back of the lot. The solid wooden fence was falling into the riparian area and needed to be replaced (see attached photographs). The entire wooden fence was removed and has been replaced by chain link fence, which appears to be stable and properly installed, although I do not claim to be an expert on fences. The new fence and retaining wall is in the same location as the old fence except for a small section nearest Ocean Avenue. In this small area the retaining wall and fence ranges from 1-4 feet closer to the riparian vegetation; however, there were no signs that any significant riparian vegetation was removed in this area. No heavy equipment was used to put in the new fence. The holes for the posts were hand dug. No willow trees were removed with the installation of the new fence; however, the owners did prune willow branches that had grown over the fence and over their driveway.

This section of Little Cayucos Creek has cut a rather narrow channel that has steep banks on both sides of the channel. The Way Station Building, on the north side of the creek, is built right on the top of the steep creek bank just above the creek channel. On the south side, where Ocean Avenue Hardware is located, there is a small, slightly sloping terrace covered by a dense thicket of *Salix lasiolepis* (arroyo willows) that separates the fence from the top of the steep creek bank. The purpose of my study is to examine the riparian vegetation along this section of the creek and to evaluate the impacts of the new fence on the riparian vegetation and on the creek. I also read the appeal submitted by Mr. Ruel J. Czach and have addressed some of the concerns expressed in the appeal.

RIPARIAN WOODLAND

Waterways such as Little Cayucos Creek often support communities of hydrophytic trees, shrubs and herbs. These communities form narrow to locally broad corridors of dense woodland vegetation. The lateral extent of the woodland depends on the size and nature of the creek banks, the amount of water carried and on the depth and lateral extent of the subterranean aquifers. Many of the plant species found in riparian habitats are restricted to the flood plain, banks of streams, drainage channels, and other areas where they have access to a shallow water table. Most of the trees and shrubs of the riparian corridors are winter deciduous plants that require a permanent water supply.

When creeks such as the Little Cayucos Creek flow through urban areas, it not uncommon to find a mixture of native plants, introduced weeds, and various ornamentals in the riparian zone along the creeks. This is the case with the subject site. The small sloping

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terrace that extends from the top of the creek bank to the Ocean Avenue Hardware fence line has a thick stand of *Salix lasiolepis* (arroyo willow) with a dense understory of native, introduced, and ornamental shrubs, vines, and herbs. The ornamentals have escaped from the surrounding landscaped areas and have become established along the creek. Sometimes homeowners plant various ornamentals along creeks as well. In addition, various introduced plants often invade urban creeksides and become integrated into the riparian vegetation along creeks.

Each year during the wet season the rapid flow of water down this narrow creek channel of the Little Cayucos Creek has formed a narrow creek channel with steep banks that have little vegetation. The creek channel itself is gravelly and rocky and supports little to no vegetation. It is likely that during the dry season (summer) some herbaceous plants do get established in the channel as waifs but are washed away each winter during high water flow.

Numerous arroyo willow trees cover the flat to slightly sloping terrace adjacent to Ocean Avenue Hardware. These trees are well developed that range from about 2 inches to 12 inches in trunk diameter. There are some bushy arroyo willows near the bridge (see attached photographs). The only other tree found along this section of the creek was a small *Cupressus macrocarpa* (Monterey cypress) that has been planted or has invaded the riparian area near the bridge. The understory is quite an assortment of native, introduced, and ornamental herbs, vines, and shrubs. The common garden escape *Tropaeolum majus* (Nasturtium) is one of the dominant plants in the understory and covers much of the terrace. Other garden escapes in the understory are *Zantedeschia aethiopica* (Calla-lily), *Hedera helix* (English ivy), *Impatiens* sp. (impatiens), *Ipomoea* sp. (morning glory), *Vinca major* (periwinkle), *Centranthus ruber* (centranth), and *Rubus procerus* (Himalayan blackberry). The native blackberry (*Rubus ursinus*) is also common in the understory. Other plants in the understory include the following:

<i>Agrostis viridis</i>	water bentgrass
<i>Anagallis arvensis</i>	scarlet pimpernel
<i>Avena</i> spp.	wild oats
<i>Bromus diandrus</i>	ripgrut brome grass
<i>Bromus carinatus</i>	perennial brome grass
<i>Bromus</i> spp.	brome grasses
<i>Calystegia macrostegia</i>	morning glory
<i>Cirsium</i> sp.	thistle
<i>Epilobium watsonii</i>	willow herb
<i>Erodium</i> spp.	filarees
<i>Foeniculum vulgare</i>	fennel
<i>Hordeum marinum</i>	foxtail grass
<i>Lobularia maritima</i>	sweet alyssum
<i>Lolium perenne</i>	annual ryegrass
<i>Lythrum hyssopifolia</i>	loosestrife
<i>Malva nicaeensis</i>	mallow
<i>Medicago polymorpha</i>	bur clover
<i>Pennisetum clandestinum</i>	kikuyu grass
<i>Polypogon interruptus</i>	interrupted polypogon
<i>Polypogon monspeliensis</i>	rabbitfoot grass
<i>Oxalis pescaprae</i>	Bermuda-buttercup
<i>Raphanus sativa</i>	wild radish
<i>Senecio mikanioides</i>	german-ivy
<i>Silybum maritimum</i>	milk thistle
<i>Sonchus asper</i>	prickly sow thistle
<i>Sonchus oleraceus</i>	common sow thistle

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It should be noted that *Senecio mikanioides* (German-ivy) and *Hedera helix* (English ivy) are noxious weeds of riparian zones, and although they are very difficult weeds to control, eradication or at least control efforts should be attempted.

On the opposite side of the creek, the Way Station Building was built right on the top of the creek channel. There is little riparian vegetation on this side compared to the Ocean Avenue Hardware side of the creek; however the German-ivy and English ivy were noted growing on the bank and into the trees along this side of the creek.

RARE AND ENDANGERED SPECIES

No rare and/or endangered plant species were found on the site, and none have been reported in this riparian area.

IMPACTS AND MITIGATION MEASURES

I have read the appeal submitted by Mr. Ruel J. Czach and some of the concerns regarding the riparian habitat are addressed below.

In paragraph 1 of his appeal, Mr. Czach states that "riparian vegetation along the creek has been altered and needs to be restored, a structure has been constructed in the creek and needs to be removed, and required fencing needs to be provided." In paragraph 2 Mr. Czach states that "the applicant removed the fence, cut down a swath of 10 to 15 feet of riparian vegetation, built an inadequate 2 to 4 foot high retaining wall along the 150 foot depth of the lot, and placed an inadequate chain link fence above the retaining wall." In paragraph 4 Mr. Czach states that "the outdoor use area needs to be sited so as to protect the adjacent riparian area and coastal stream." In paragraph 5, Mr. Czach again expresses concern that the creekside habitat has been filled, that willow trees have been cleared, that the natural features and topography have not been considered during the replacement of the fence, and that the project (replacing the fence) is not designed to prevent sedimentation of the stream. In paragraphs 7 to 10 Mr. Czach expresses concern about the setback from the creek and the riparian vegetation. With these concerns in mind, I walked the length of this section of the creek, carefully examined the existing conditions, and looked for evidence of past disturbances. My findings and evaluation is discussed below.

I found no evidence that the riparian vegetation had been significantly altered during the installation of the new fence. I saw no indication that a swath of 10 to 15 feet of riparian vegetation had been removed or that any willow trees were cut down. In fact, there appear to be mature willow trees growing within 10 to 15 feet of the fence. I did not see any tree stumps or signs of tree removal. The photographs taken before and after the fence replacement of the riparian woodland seem to verify that no significant disturbance to the riparian woodland vegetation occurred (see attached photos). The owners did say that they had pruned some of the willow branches that hung over the fence. I do not know if any other pruning has occurred in the past, but there were no signs of any damage to the willow trees, which appeared very healthy.

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There are no structures or signs of structures in the creek or in the riparian woodland along the creek. The only new structure I saw was the new retaining wall and chain link fence that was placed in the exact location of the old fence except for the small section near the bridge that I discussed earlier (see attached photographs). While I saw only photos of the old fence (which are attached), it appears that the new fence is a great improvement and protects the creek and riparian area better than the old fence. The retaining wall appears stable and well constructed. The retaining wall helps stabilize the slope and prevents erosion along the fence line. It projects a few inches above the driveway so that run-off of water and sediments into the riparian zone from the driveway is reduced. The old open wooden fence did not appear to have such a retaining wall to reduce run-off into the riparian zone.

The old fence was an open wooden fence in the front half of the lot and a solid wooden fence in the back of the lot. While the chain link fence is not solid (which seems to be of concern although half of the old fence was also open), the owners are growing morning glory vines on a portion of the fence, which does block viewing through the fence (see attached photos). Perhaps the owners could plant dense vines like morning glory the length of the fence to block the view if appropriate and necessary.

In regards to the setback from the creek and the riparian vegetation, it should be noted that the buildings along this section of Little Cayucos Creek are historical and have been in this location for a long time. The fact is that the Way Station Building across the creek from Ocean Avenue Hardware sits right on top of the creek bank and thus has displaced all riparian woodland vegetation in that area. The Ocean Avenue Hardware site does have a setback from the creek and the creek bank in that there is a small terrace covered by a dense growth of arroyo willows with a lush understory of herbs, vines, and shrubs as discussed previously. However, the willows have grown and the edge of the willow canopy is along the fence line. Obviously it would not be possible to adhere strictly to a 50 foot setback on this site without major modifications as it would be impossible for the Way Station Building on the other side of the creek to adhere to a 50 foot setback. As long as proper precautions are taken to prevent contaminants such as petroleum products, herbicides, and pesticides from entering the creek, I do not think it is necessary to change the existing setback.

The major problem I noted with the riparian vegetation along this section of the creek is not the new fence but rather the presence of the noxious weeds German-ivy and English ivy. The owners of Ocean Avenue Hardware and the owners of the Way Station Building site may wish to exercise some controls over the spread of these weeds into the riparian area and into the tree canopies. They can spread and displace existing vegetation, which would be harmful to the diversity and integrity of the riparian woodland along the creek.

In summary, I found no evidence that the owners have done anything more than replace and old wooden fence with a new retaining wall and chain link fence. The new fence, in my opinion, offers an improvement in that it protects the riparian zone more than the old fence. I think the existing setback is adequate especially considering that the other side of the creek has a building right on the top of the creek bank.

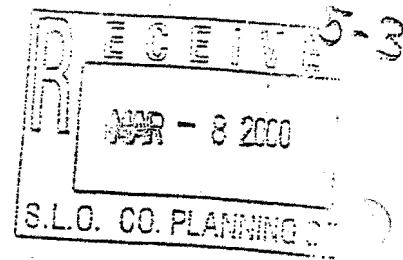
Exhibit 5
(5 of 5)

C-1
A



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
VENTURA FIELD OFFICE
2151 ALESSANDRO DRIVE, SUITE 255
VENTURA, CALIFORNIA 93001



March 7, 2000

Office of the Chief
Regulatory Branch

Ms. Lauren Lajoie
County of San Luis Obispo
Department of Planning and Building
County Government Center
San Luis Obispo, California 93408

Dear Ms. Lajoie:

Reference is made to your letter (No. 200000868-TW) dated February 25, 2000 in which you inquired as to whether a permit was required from the Corps of Engineers for the construction of a retaining wall along Little Cayucos Creek at 36 Ocean Avenue in Cayucos, San Luis Obispo County, California.

On March 2, 2000, a representative of the Corps of Engineers visited the project site. The site visit revealed that the retaining wall was constructed above wetlands adjacent to the high tide line and above the mean high water mark of Little Cayucos Creek. We have determined the project did not discharge dredged or fill material into a water or navigable water of the United States or an adjacent wetland. As such, the project was not subject to our jurisdiction under Section 404 of the Clean Water Act or Section 10 of the River and Harbor Act, and a permit was not required from our office.

The receipt of your letter is appreciated. If you have any questions, please contact me at (805) 641-2935.

Sincerely,

Tiffany A. R. Welch

Tiffany A. R. Welch
Senior Project Manager
North Coast Section
Regulatory Branch

Exhibit 6
A-3-SLO-00-121

C-10
172

Exhibit B
D990094D - Conditions

Approved Development

1. This approval authorizes the use of approximately 6,400 square foot of outdoor building material sales activity and storage in association with the existing hardware store.

This approval also authorizes the continued use of an approximately 250 square foot retail space and 2 offices approximately 200 square feet each.

2. **Prior to issuance of a construction permit**, the applicant shall submit a revised floor plan indicating the location of the existing offices and retail space.
3. Site development shall be consistent with the approved site plan and revised floor plan.
4. **Within 90 days of the effective date of this permit**, the applicant shall obtain the necessary grading and building permits.

Riparian Setback

5. The cutting or alteration of riparian vegetation is prohibited.

Exhibit 7
County's Conditions

RECEIVED

SEP 11 2000

Cayucos

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

CITIZENS ADVISORY COUNCIL

P.O. BOX 781 • CAYUCOS, CA 93430

September 7, 2000

Ms. Renee Brooke
California Coastal Commission
Central Coast Area Office
725 Front St., Suite 3000
Santa Cruz, CA 95060

RE: Appeal of Hogan Development Plan, Cayucos, San Luis Obispo County
A-3-SLO-00-121

Dear Ms. Brooke:

The Cayucos Citizens Advisory Council considered the appeal noted above at our regular meeting of September 6, 2000. After public discussion, the Council voted to endorse the approvals granted by our County Planning Commission and Board of Supervisors (vote count: 11 for, 1 opposed, 2 abstentions). We believe the extensive public hearing process has identified and properly addressed all issues of concern to the community. Public comment at our Council meetings has been overwhelmingly in support of this project. This appeal should be denied.

Thank you for the opportunity to comment on this matter. If you have any questions, please don't hesitate to contact me at 805-995-3059.

Sincerely yours,

Bruce S. Gibson

Bruce S. Gibson
Vice President

Correspondence
Exhibit 8
(1 of 5)



Encino Grande Ranch

RECEIVED

SEP 11 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Grace Crittenden

1410 Cottontail Creek Rd.
Cayucos, CA 93430

805-995-3059 / Fax 805-995-1012

September 7, 2000

Ms. Renee Brooke
California Coastal Commission
Central Coast Area Office
725 Front St., Suite 3000
Santa Cruz, CA 95060

RE: Appeal of Hogan Development Plan, Cayucos, San Luis Obispo County
A-3-SLO-00-121

Dear Ms. Brooke:

I believe the appeal noted above should be denied on the following grounds:

- 1) Mr. Czach's claims of environmental damage have been conclusively refuted by county planning staff, a professional biologist, and the responsible state and federal agencies (California Dept. of Fish and Game, US Fish and Wildlife Service, and the Army Corps of Engineers).
- 2) In numerous public hearings, Mr. Czach is the only person to claim the Ocean Ave. Hardware operation conflicts with visitor-serving uses. His architectural business adjacent to the project is clearly not visitor-serving. Operators of the nearby restaurant he references are not appealing this project.
- 3) Parking arrangements for this project are adequate: The hardware store has been identified as a necessary community resource and has operated without on-site parking for as long as anyone can remember. The operation does not cause parking problems in Cayucos.

Mr. Czach has not substantiated the claims he makes in his appeal. Further, he has not raised any substantial issues of threat to coastal resources. I hope this appeal can be denied as expeditiously as possible. Thank you for the opportunity to comment on this matter.

Sincerely yours,

Grace Crittenden

Exhibit 8
(2 of 5)

Ruel J. Czach
P.O. Box 171
Cayucos, Ca. 93430
(805) 995-3502

RECEIVED

SEP 11 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

September 8, 2000

California Coastal Commission
Attn: Renee Brooke
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Appeal of Coastal Permit decision by Local Government, Hogan – D99094D

Renee,

I wanted to update you on the Cayucos Citizens Advisory Council action on the above permit. The CCAC had an item placed on our agenda, at the last minute, for our meeting last Wednesday night labeled "discussion of Coastal Commission request for comments re. Tom & Karen Hogan, Ocean Avenue Hardware development plan" (see copy of agenda included). I talked to Laurie Niblock, the CCAC president, a couple of days before the meeting about the item before hand and she said it was just a discussion about whether the council should put the item on the next agenda for discussion. There was no public notice that the council would be voting on the issues involved in this proposal and no discussion took place concerning the issues.

When this item came before the CCAC at our March meeting, I made the motion to discuss the proposal. This motion was voted down by the CCAC due to Bruce Gibson's comments that it was not an item of significant impact to the community.

When the item came up for comment last Wednesday, I made the motion to discuss this item in detail at our next meeting. My motion received no second. Then a council member made the motion that the CCAC not discuss the proposal. Bruce Gibson convinced that member and the second to change the motion to "supporting the Board of Supervisor's action on this proposal". Bruce Gibson characterized the proposal as an approval of an existing use only and then limited my comments to only 5 minutes to present the violations of 37 sections of the land use ordinance and how these violations came

Needless to say, I was not prepared to present all the information necessary for the council members to even understand what 37 ordinances had been violated. I have maps, photographs and charts explaining some of this information and I was not given the opportunity. The CCAC is made up of regular citizens, most of whom are not at all familiar with land use ordinances. I could not even present and explain one violation in 5 minutes! I took about 2 or 3 minutes to outline the areas of violation and passed out a sheet listing all the violations, which I assumed would be read for discussion at the next meeting. The council members did not even have enough time to read the sheet let alone have any relevant discussion of the issues.

Exhibit 8
(3 of 5)

When one member brought up the fact that the board of supervisor's included approval of parking for the bootlegged businesses in their approval, she was cut off from discussing that issue before she understood what it meant. Bruce Gibson characterized the proposal as "only asking for approval of an existing use". This is a gross misstatement of the issues involved.

What I have seen in every public hearing is an arrogant sense of intimidation toward my bringing up these issues for discussion. This is a popular business in our community and that seems to mean to many that its popularity preclude relevant discussion of the issues involved in this proposal. The final vote for the motion was about 9 for, 1 against, 2 abstentions and my decision not to vote on the item. I decided not to vote on the item since it was next door to my office.

The sense of intimidation by the owner of the hardware store and the supporters he brought to the meeting was emphasized by their decision to all wear blue shirts and sit in the front rows. This was not a fair hearing of this item, the item was not properly agendized for discussion, and no actual discussion took place of the issues involved. I do hope the Coastal Commission and the Commission staff will look at the issues objectively and fairly.

Thank you for your consideration of this matter,



Ruel J Czach

CAYUCOS CITIZENS ADVISORY COUNCIL
AGENDA FOR THE MEETING SEPTEMBER 6, 2000
7:00 PM, VET'S HALL

1. CALL TO ORDER

Pledge of allegiance
Roll Call
Minutes of 8/02/00

Treasurer's Report
Announcements
Correspondence

2. COMMUNITY ORGANIZATION REPORTS: Art Association, Boy Scouts, Cayucos Beautiful, Cayucos First, Cayucos Heritage, Cayucos Historical Project, Cayucos Land Conservancy, Cayucos Property Owners Association, Chamber of Commerce, Friends of the Library, Garden Club, Greenways Committee, Lions, Lioness, Mural Society, Schools/PTA, Seniors, Trees for Cayucos.

3. PUBLIC COMMENTS (3 minute limit, once per individual).

4. Lt. BASTI'S COMMENTS.

5. MR. JOE METTE, STATE PARKS, COMMENTS

6. SUPERVISOR BIANCHI'S COMMENTS.

7. OLD BUSINESS

8. NEW BUSINESS

- Discussion of Coastal Commission's request for comments re. Tom & Karen Hogan, Ocean Avenue Hardware development plan
- Presentation by Mr. Dana Lilley, Housing and Economic Development Department, SLO County reg. Redevelopment study.
- Presentation by Mr. Doug Bird, County Engineering regarding CSA10A retrofit program.

9. COMMITTEE REPORTS.

- (a) Bylaws Committee
- (b) Community Design Plan Committee
- (c) Public Safety Committee
- (d) Land Use Committee
- (e) Recreational Planning Committee
- (f) Utilities Committee

SET UP (6:30 PM), Refreshments, Set Up and Tear Down by Precinct 4
(Pati Hutchinson, Roly Hutchinson)

WEB ADDRESS: www.Cayucos.org, scroll down to CCAC and double click. Agenda and minutes are posted one week prior to meetings.

Exhibit 8
(5 of 5)

Ruel J. Czach
P.O. Box 171
Cayucos, Ca. 93430
(805) 995-3502

RECEIVED

October 24, 2000

OCT 30 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
Attn: Renee Brooke
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Response to staff report: Hogan – D99094D

Honorable Coastal Commissioners,

I would like to give you some idea of who I am and why I have an interest in this matter. I have been a licensed architect with my business in the community for over 14 years. I have been elected to the Cayucos Citizens Advisory Council and served on the Council for over 10 years, longer than any other member of the Council. I have been elected vice-president, treasurer and land use committee chairman several times. I am a member of the executive board of the Cayucos Land Conservancy and served as their Chief Financial Officer.

I have worked for over 12 years on the preservation of the 4½ miles of coastal terrace north of Cayucos that is now owned by California State Parks with a land conservation easement to the Cayucos Land Conservancy. I am president of Trees for Cayucos, which has planted almost 2 trees along the Highway One corridor. I am a member of the Cayucos Chamber of Commerce, the Nature Conservancy, the Sierra Club, the Surfrider Foundation, Friends of the Cayucos Library, Cayucos First, and Cayucos Beautiful. Finally, my office is located directly across the creek from the hardware store.

I have enclosed a packet of 40 pages of photographs, maps, diagrams and lists that explain in pictures and condensed form supporting information for my appeal. I will reference these pages throughout this letter so that you can follow along using these supporting documents. On page 1, I have listed the 3 issues I feel are the major reasons for this appeal and all the supporting evidence follows in the packet.

SENSITIVE RESOURCE AREA

This creek is a special coastal environment and includes a small estuary that opens on to the beach and the ocean. The Hardware Store is about 200 feet from the shoreline. See photos pages 2,3, & 4 that were taken from the same location, my office, and show the relationship of the hardware store to the shoreline, estuary and creek.

On page 5, this photo shows the Hogan's contractor and dump truck that dumped the fill into the creek on the day it was dumped. I personally witnessed 2 truckloads of fill material brought in and I was not present the whole day. The existing fence was taken down just before the fill was brought in. The Commissioners need to understand why I am appealing this proposal and, because the Hogan's contractor did the work in hiding on a holiday weekend, why there are not more witnesses to the actions and therefore not more appellants. **The vegetation in the creek was cut down and removed and the wood retaining wall was built before the fence was taken down.** In other words, this work was done hidden on one side behind a six-foot high wooden fence and hidden on the other side by the riparian vegetation in Little Cayucos Creek.

As you can see also from this photo on page 5, I was able to view the work because my office has windows looking directly into the creek. I witnessed the vegetation removal, construction of a failing, non-permitted wood retaining wall and the placement of many cubic yards of fill. The fence was not removed until just before the fill was placed thus hiding the work from public view. **This part of the area the Hogan's are asking for this new use had never previously been used for material storage because it was down below the creek bank behind a 6-foot high wood fence.**

In any case, the Land Use Ordinance says that development shall be setback a minimum of 20 feet from the bank of Little Cayucos Creek, see page 6. The Coastal Commission and the San Luis Obispo County Planning Department have defined "development" as any type of "retaining wall" or any type of "fence" on the oceanfront coastal bluffs. This is development in a riparian corridor and a sensitive habitat area. As you can see from the photograph on page 7, this is a wonderful and beautiful coastal stream habitat. This photograph was taken directly adjacent to where the fill and new retaining wall were placed in the creek. This is a turtle and frog habitat, which may include the rare and endangered species of the red-legged frog and the western pond turtle, and herons and egrets are often found feeding in the creek bed and the estuary.

The map on page 8 shows the sensitive habitats, adjacent to the hardware store, that are impacted by the removal of the riparian vegetation and excess noise from the sawing of lumber. Every foot of riparian vegetation is part of a buffer that protects these habitats. The Hogan's have removed a swath of about 10 to 15 feet of the riparian vegetation. The night herons roost every day less than 50 feet from the hardware store property. The egrets roost in the trees about 100 feet away for 10 months out of the year, see page 9. This is a long-standing well-established roosting habitat for the egrets. The monarch butterflies also have a well-established over-wintering habitat that contained over 60,000 butterflies as counted two years ago. Kingston Leong, an entomologist who teaches at Cal Poly, stated that this was the second largest butterfly habitat in the county that year.

It is one of the special wonders of nature and Cayucos to experience the monarch butterflies in Little Cayucos Creek as they hang from the branches of trees in clusters of thousands. Then to enjoy the butterflies as they fly between flowers in the gardens of the outdoor dining area of the restaurant across from the hardware store. It is another natural wonder to observe after sunset as between 20 and 60 egrets float in and land in their roosting trees. They are so graceful in the air and then land delicately on a very thin eucalyptus branches, about 60 feet in the air, jostling with neighboring egrets for their evening perch. Then right at dusk, the night herons fly out of their daytime roosting perches in the Monterey cypress tree in Little Cayucos Creek. Floating soundlessly overhead, their wings just starting to beat out a rhythm as they head toward their night feeding spots. I am available to give a tour of any of these sites to the staff or commissioners, please call me if you are in the neighborhood.

This wildlife deserves protection, as does the habitat for frogs and turtles, some of which may be rare and endangered species, and has been known in the past as a stream that the steelhead trout migrate up. The LUO for Environmentally Sensitive Habitats, Streams and Riparian Vegetation, Terrestrial Habitat Protection, and Marine Habitats, see pages 10 to 15, stress that **"a land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall include a report from a biologist...that evaluates the impact development will have on the habitat, and whether the development will be consistent with the biological continuance of the habitat...recommend conditions of approval for the restoration of damaged habitats...identify significant negative impacts from noise, sediment and other potential disturbances...verifies the applicable setbacks from the habitat area....adequate to protect the habitat or recommends greater, more appropriate setbacks."**

This biological study is meant to take place before any work is undertaken, partially to identify rare and endangered species habitats, and may be the reason the Hogan's chose to ignore the requirement of obtaining a permit before they began the work. Looking at the photograph on page 16, which was taken the day the fence was removed and the creek bank filled in, shows the extent of the damage to the riparian habitat. This photograph shows one of the old fence posts at the back of the lot and the location the fence used to be at the front of the lot. It also illustrates quick, shoddy workmanship in erecting the wood retaining wall.

I do not think it is wise for you or your staff to rely on a biology report, purchased by the Hogan's, when the biologist did not even see the site until about a year after work was done and the base of any trees or shrubs removed are either long gone or covered by up to five feet of fill. I witnessed the chain saw cutting and removal of the trees and vegetation the day it was done. I watched as whole willow trees were felled by chain saw in the riparian area. I watched as dump truck loads of fill were brought in and placed in the creek below the top of the bank.

There are eight creeks which flow into the ocean in the Cayucos area, three of which flow directly through our town and two which are right downtown. The creek adjacent to the hardware store is one of these in the downtown, Little Cayucos Creek. Historically, these eight creeks and their estuarine, the small estuaries where they flow into the ocean, and the coastal bluffs have been used as dumpsites.

Every one of the eight creeks has been used as a dump, usually at regular intervals along its length to the ocean. I live directly adjacent to an old dumpsite on Little Cayucos Creek and I have witnessed this very same contractor, who filled the creek by the hardware store, dumping excess material from his backhoe business into this creek. Two lifetime residents of Cayucos summed it up in their testimony "this man put some dirt in the creek, so what?" and "there are much more blatant infringements to the creeks".

I have become concerned about the health of these creeks and their affect on the ocean environment during the last ten years but especially since I attended the Second Annual Urban Streams Conference held in San Luis Obispo in 1998. Many in the community, especially the local earthmoving contractors, are watching the outcome of this appeal to see if it is "business as usual" with the creeks. They want to know if they can continue to use the creeks as dumps for excess trash, fill dirt, old concrete, etc. that they save money by dumping locally.

When I took part in a recent beach cleanup day on Cayucos beach, the very worst source and amount of trash came from plastic irrigation hose that had been dumped in the creeks upstream and washed down during the winter storms. Dumping and filling of the streams has a direct impact on the coastal beaches and the riparian and marine environments. Since this appeal is such a high-profile action in our community, it would do a lot of good for our coastal environment to send a message that this type of disregard for our creeks is no longer acceptable.

The San Luis Obispo County building inspector, Matt Varvel, who came out to view the non-permitted work after I called the building department about the work wrote in his report, see the staff report on page 17, that he **"viewed the site and noted the retaining wall is failing"** and **"engineered retaining wall is necessary to correct the problem"**. This failing wall will at some time cause an impact of additional sedimentation in the creek as well as possibly releasing toxic building materials such as fertilizer or mortar that is stored above the failing wall.

The photograph on page 18 shows construction materials stored directly over the leaning wood retaining wall. As an architect who is licensed to and practices structural engineering, I can verify that this wall is inadequate and does not meet any of the Uniform Building Code requirements for such construction.

The county planning staff in the staff report to the planning commission, page 19, also requested submission of a new site plan indicating the location of the required visual screening and new fence, reduce the visibility of the outdoor area from Ocean Avenue, (erect) screening a minimum of 6 feet high and located no closer than 5 feet from the front property, and **"within 90 daysthe applicant shall remove the existing fence and install a new solid wooden fence at least 10 feet from the top of the creek bank."** Again, the LUO ordinance states specifically that a 20-foot setback shall be maintained from the riparian vegetation in Little Cayucos Creek.

VISITOR-SERVING CONFLICTS

Under the staff report section on visitor-serving conflicts, your staff says that because they have not received any complaints from neighboring business owners regarding the excessive noise that there is no substantial issue raised. I am a neighboring business owner and I have complained. **The neighboring restaurant owners filed for bankruptcy before the first hearing at the planning commission and have been put out of business, at least partially, by the excessive wood-sawing noise from the lumberyard use.** Needless to say the previous restaurant owners have been too busy dealing with their bankruptcy to join in this appeal. A new restaurant has just opened this week, and since the Hogan's have not been sawing wood since my appeal, they have had no complaint to make.

If you will look at photograph on page 20, which was taken through the riparian vegetation in summer, the building materials are visible. The photograph on page 21 shows the garden dining area of the restaurant across the creek and the building material storage is still partially visible. In winter this becomes clearly visible to the people trying to enjoy a nice dining experience. Is this an appropriate use adjacent to a significant environmentally sensitive habitat and a visitor-serving use such as this restaurant? The photograph on page 22 shows a lumber truck backing unloading materials with a forklift and blocking the roadway. This restaurant serves visitors and locals alike and the dining experience would be much more pleasant without having to look at piles of lumber being fork-lifted off and onto trucks and having to hear the high-pitched sawing of wood.

As Tom Hogan testified at a hearing, the hardware store "has milled lumber for people" and since this appeal "we have taken away the mass of lumber". He also testified at hearing that their saws were never in the open in the past but he recently opened them to the outside by adding a sawing room with a large door that is kept open facing the creek, the restaurant and my office. This room is now a sound chamber pushing the saw noise directly at the creek and our adjacent businesses. The saws that the Hogan's or the previous owner has testified "have always been there" have historically been located inside the shed on the other side of the property not in the current location and not with the added sound-chamber effect. **Please condition any outdoor use to exclude the use of saws open to the exterior, especially open to these environmentally sensitive creek habitats and the restaurant dining.**

According to the staff report the new use the Hogan's are asking you to approve is considered to be "Building Materials and Hardware" rather than a "Sales Lot" or a "Storage yard". Ordinance 23.08.203 (see page 23) – Building Materials and Hardware states; **"Enclosure required. In the Commercial Retail category, all building materials sales activities and storage are to be enclosed within a building."** This ordinance makes a lot of sense for commercial retail areas and should especially be required in this case where this use is proposed to be located in a central business district with a visitor-serving overlay, next to a major visitor-serving use, and a very special sensitive habitat area.

HISTORY OF ADDING NON-PERMITTED USES

The hardware store owners, including the Hogan's, have a history of changing the land use and modifying their building without permits. The photograph on page 24 shows from Ocean Avenue several of the businesses and enclosures that have been bootlegged in without proper permits. These additions could have been done in a very unsafe manner that is a potential hazard to public safety since they have not had proper inspections before or during construction.

The diagram on page 25 shows the extent of the hardware store building in 1970. At that time the owner received permission to the expand the hardware business by providing 30 parking spaces in the exact area the Hogan's are now asking for a new use. The diagram on page 26 shows the extent of the "bootlegged" additions to the hardware store today, added without any of the proper permits required. As you can see **there has been an extensive history of ignoring any type of building planning ordinance by the owners of this building.** The Hogan's are now asking that you allow these non-permitted uses and this latest non-permitted use also. I hope you will agree with me that we should not be rewarding building owners for installing illegal and unsafe additions to their buildings without the proper permits and without paying the same fees, including school fees, as all the other building owners who follow the laws of our county and this state.

The rough sketches on pages 27 and 28 are copies of the last permits on file at the county planning department. The first one is from the 1970 permit for the business expansion and the second one is the 1974 permit for a residence on the back of the lot. The permit for the residence also designates the area that the Hogan's are now asking for this new use, to be used for parking for the residence and the hardware store. **Both the 1970 and the 1974 building permits designate this area as parking not as a place to store or sell building or hardware materials.**

These bootlegged businesses and the hardware store compete with visitors for parking since the owners and employees of these business all park on Ocean Avenue, see photograph on page 29. The photographs on page 30 and 31 show how beach users compete for parking with these businesses. Providing parking is one of the only ways to provide access to the beach for visitors. As you are well aware of, without adequate parking people cannot visit and enjoy our beaches.

The diagram on page 32 shows the hardware store lot and the adjacent commercial retail lots with the parking that has been provided or required for the each lot. **The hardware store building is the 2nd largest commercial building in Cayucos and provides no parking for employees or customers.** Even a much older building than the hardware store, the Way Station building, built in 1876, provides 15 parking spaces. Two recently approved projects that have been before the Coastal Commission have been asked to provide 35 and 42 parking spaces. These are on lots the same size as the hardware store and again, the hardware store building does not provide even one parking space.

The photograph on page 33 shows that some of the hardware store buildings employees park in front of the vacant lot next door, as they do every day. These business owners say that there is no problem with parking, but look at the sketch on page 34 to see what is planned to be built on this lot. The sketch illustrates the Ocean Avenue elevation of the three large commercial buildings planned for this lot. On the vacant lot across the street from this is planned the largest hotel in Cayucos. In the near future there will be no parking left for visitors after these new buildings are built and if the hardware store doesn't provide the parking it is required to for the owners and employees of its businesses.

The Cayucos downtown has a major parking problem that is only getting worse every year. The photograph on page 35 shows the parking situation looking north from my office. The letter on page 36 is a recent one of several from the Cayucos Chamber of Commerce to all downtown businesses, again asking for help with the parking situation. In order for visitors to come to enjoy our beaches and locals to be able to find parking for service businesses, each business needs to provide some share of the parking. The hardware store building and all the expansions and businesses that have been added need to provide some parking or these non-permitted uses need to be removed.

I have provided a list of recommended conditions to place on this property on page 37. Restoration and protection of the sensitive habitat areas is very important both for the wildlife here and to send a message to all property owners along the 8 creeks throughout Cayucos. Everyone needs to understand the value of these riparian resources for wildlife and for water quality.

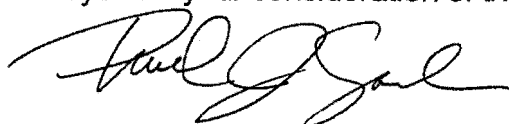
A solid wood fence should be provided to protect the habitats from noise and disturbances. It will also provide protection for the visitor-serving use of the restaurant and outdoor dining area. Use of any saws open to the outdoors should be prohibited for the same reasons. The riparian area should be replanted with the original native willow trees and drainage facilities should be provided to remove any pollutants before reaching the creek.

To protect the public's access to the beach, parking spaces should be provided for all the businesses and building expansions that have not been permitted. This is in addition to the parking spaces that were required from previous permit applications and approvals. If more parking area is needed, some of the structures erected without permits should be removed to allow for the required amount of parking necessary for the remaining uses. This parking should have a landscaped area separating it from the street.

Lastly, the remaining non-permitted businesses and additions to this building should be required to apply for the proper building permits. These structures need to be inspected to see that they do not present a hazard to the public's safety and welfare. These additional structures need to be brought up to current building codes to protect both the public safety and the safety of buildings on adjacent lots.

I included pages 38 and 39 to give you an idea of some of the misleading and insightful testimony given at the public hearings on this proposal. I am only asking you to uphold the certified local coastal plan ordinances and policies that all property owners are asked to follow and are good for our community and our coastline.

Thank you for your consideration of this matter.



Ruel J. Czach

EXHIBIT 9: ADOPTED SUBSTANTIAL ISSUE DETERMINATION OF OCTOBER 12, 2000.

1. SUMMARY OF APPELLANTS' CONTENTIONS

Please see Exhibit 5 for the full texts of the appeals.

The appellant alleges that the project violates 37 Coastal Zone Land Use Ordinances (CZLUO) 18 Local Coastal Plan Policies, 3 Estero Area Plan Standards, and 2 standards in the LCP's Framework for Planning. Issues raised include the approval of a new outdoor storage use, non-permitted additions and modifications to a previous use, degradation of adjacent visitor-serving uses, violation of a noise ordinance, alteration of riparian vegetation, non-permitted construction in a sensitive resource area and lack of adequate fencing, landscaping and parking.

I. LOCAL GOVERNMENT ACTION

On March 23, 1999, the San Luis Obispo County Planning Commission conditionally approved Coastal Development Permit D990094D for the proposed development. This decision was appealed to the Board of Supervisors by Ruel J. Czach. On July 18, 2000, the Board of Supervisors denied the appeal, which upheld the conditional approval of CDP D990094D. See Exhibit 7 for the County's conditions of approval.

II. STANDARD OF REVIEW FOR APPEALS

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



California Coastal Commission

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.

III. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-00-121 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a NO vote. Passage of this motion will result in upholding the County’s action on this project. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-SLO-00-121 presents a substantial issue with respect to the grounds on which the appeals have been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

IV. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

The appellant alleges that the project degrades adjacent visitor-serving uses, violates a noise ordinance, alters riparian vegetation, and allows construction in a sensitive resource area, and lacks adequate screening, landscaping and parking. Due to the large number of LCP Policies and CZLUO Standards raised by the appellant in his contentions of appeal, the following analysis of Substantial Issue is divided into major issue areas. Please see Exhibit 4 for the full text of the appeal.

A. Project Location and Description

The project site is located at 36 North Ocean Avenue, within the Central Business District of the community of Cayucos, San Luis Obispo County. The existing on-site structure, which is set back approximately 30 feet from the top of the creek bank (Little Cayucos Creek), contains the hardware store, a small retail space, offices, and a single family residence. The outdoor storage area, subject to approval of this coastal development permit, extends from the northern edge of the existing structure to the top of the creek bank (see Exhibit 2 for project plans). This area has been used for material storage and informal parking for at least 40 years and does not contain any native vegetation.



Nonetheless, the County determined that a coastal development permit was necessary to recognize and authorize the continued use of this portion of the site for outdoor storage of building materials.

The proposed project involves the permitting of the existing outdoor building material storage area associated with the existing hardware store and the establishment of 250 square feet of retail space, and two offices approximately 200 square feet each within the same structure. In addition, the project involves the previous replacement of an existing wooden fence with a chain link fence and associated retaining wall. The fence, located on the northwestern property line, is contiguous with the top of the creek bank. The property on the north side of the creek contains the Way Station Building, which is located right on the top of the creek bank (see Exhibit 3).

B. Definitions

Prior to analyzing the appellant's contentions of appeal, it's important to understand the distinction between the LCP definitions of "Building Materials and Hardware" and "Storage Yard and Sales Lot."

***Building Materials and Hardware:** Retail trade establishments primarily engaged in selling lumber and other building materials including paint, wallpaper, glass, hardware, nursery stock, lawn and garden supplies. Includes all such stores selling to the general public, even if contractor sales account for a larger proportion of total sales. Also includes incidental retail ready-mix concrete operations.*

***Storage Yards and Sales Lots:** Service establishments primarily engaged in the outdoor storage of motor vehicles, construction equipment, materials or supplies, farm machinery or industrial supplies on a lot or portion of a lot greater than 200 square feet. Sales lots consist of any outdoor sales area for permanent display of motor vehicles, recreational vehicles, mobilehomes, construction equipment, farm machinery or other heavy equipment; outdoor equipment rental yards (not including recreational equipment rental, which is included under "Outdoor Sports and Recreation"); large scale temporary or permanent outdoor sales activities such as swap meets and flea markets; or livestock auctions and sales. Also includes retail ready-mix concrete operations which are incidental to an outdoor equipment rental yard.*

Based on these definitions, the existing Ocean Avenue Hardware store is best defined as a Building Materials and Hardware land use because the business is "primarily engaged in selling lumber and building supplies" and the outdoor storage area is subordinate to the primary use of the land. Thus, it is best considered to be a part of the hardware store and not a Storage Yard or Sales Lot.

C. Visitor-Serving Conflicts

The appellant contends that the sawing of lumber in the outdoor storage area exceeds noise level standards and is inconsistent with policies of the Noise Element (Policies 3.3.1, 3.3.4, 3.3.5, and



3.3.6). Although this contention may be relevant in terms of potential impacts on surrounding habitat areas, the Noise Element of the San Luis Obispo General Plan is not a part of the certified Local Coastal Program. Thus, these particular policies cited in the appellant's contentions of appeal are not a basis for substantial issue determination.

Second, the appellant alleges that activities taking place in the outdoor storage area impact the visitor-serving use (restaurant) across the creek. He states that, "the sawing of lumber directly impacts the visitor-serving priority 'to protect and enhance public opportunities for coastal recreation' and to give priority to visitor-serving uses over non-visitor-serving uses," as stated in the LCP's Framework for Planning. Specifically, the appellant cites the following LCP Policy regarding recreation and visitor-serving facilities:

Policy 2 for Recreation and Visitor-Serving Facilities - Priority for Visitor-Serving Facilities: Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry.... All uses shall be consistent with protection of significant coastal resources.

The appellant raises this Policy in regards to a potential land use conflict (i.e. sawing of lumber potentially disturbing a nearby restaurant); however, the hardware store and associated outdoor storage area are allowable uses within the Commercial Retail land use category. Second, staff has received no complaints from neighboring residents or business owners regarding excessive noise from the outdoor storage area. Therefore, no substantial issue is raised by this contention of the appeal.²

Finally, the appellant claims that the proposed outdoor storage area, is inconsistent with the LCP standard regarding screening:

CZLUO Section 23.04.190 – Fencing and Screening: Standards for fencing and screening are established by this section to protect uses from intrusion, to protect the public from uses that may be hazardous, and to increase compatibility between different land uses by visual screening.

a(3) Outdoor storage: To be screened on all sides by a solid wall or fencing.

Although the project is technically inconsistent with this standard because the applicants were not required to enclose the outdoor storage area with a solid wall or fencing, as required by CZLUO Section 23.04.190, this concern does not rise to the level of substantial issue.

² The LCP defines the manufacturing and processing of wood products as a Lumber and Wood Products land use which is not allowed in the Commercial Retail land use category. Therefore, to the extent that the sawing of lumber that may constitute "manufacturing and processing of wood" is taking place on-site, it may raise an issue for County code enforcement.



The appellant also claims that the project is inconsistent with CZLUO Section 23.08.144 (Sales Lots and Swap Meets) regarding screening; however, as stated previously, the hardware store and outdoor storage area are considered a Building Materials and Hardware land use and not a Sales Lot or a Swap Meet. Therefore, CZLUO Section 23.08.144 is not applicable in this case and should not be used to determine substantial issue.

D. Parking

The appellant alleges that the proposed project is inconsistent with several Sections of the CZLUO because no off-street parking is currently provided, nor is it proposed as part of the project approved by the County. Those ordinances applicable to this project are discussed below.

CZLUO Section 23.04.162 – Off-Street Parking Required:

g. Nonconforming parking. Where an existing development is nonconforming as to the off-street parking requirements of this chapter, a new allowable use may be established or an existing allowable use may be expanded only:

(1) After the requirements for off-street parking have been met for the existing structure, as well as for any expansion; or

(2) As allowed by Section 23.09.036 (Nonconforming Parking).

CZLUO Section 23.04.166c – Required Number of Parking Spaces:

(7) Retail Trade Uses: Parking required for a retail use is to be a minimum of two spaces for each use or tenancy, except where more spaces are required as follows:

Building Materials and Hardware: 1 per 500 square feet of floor area, 1 per 3,000 square feet of outdoor use area.

General Merchandise Stores: 1 per 300 square feet of sales area.

(8) Offices: 1 space per 200 square feet of floor area.

CZLUO Section 23.09.036 – Nonconforming Parking: *Where a site is nonconforming only as to off-street parking, a new or additional allowable use may be established on the site or an existing allowable use may be expanded only after the requirements of this title for off-street parking have been met for both the existing structure and the expansion, except as follows:*

b. Expansion of existing use. An approved use may be expanded on a site with nonconforming parking only where the nonconformity is corrected, except in a central business district where such expansion may occur if parking is provided as required by Sections 23.04.160 et seq. for the area of expansion only.

The current uses on-site include two offices (totaling approximately 400 square feet), a retail space (approximately 250 square feet), a single family dwelling, and a hardware store with approximately



8,500 square feet of indoor sales area and 6,400 square feet of outdoor storage area. Based on these uses and a shared on-site parking space adjustment (20% reduction), a minimum of 23 off-street parking spaces should be provided. Currently, no off-street parking spaces are provided by the uses on the site, which is inconsistent with CZLUO Section 23.04.166c and decreases the amount of available parking for visitor-serving uses. Additionally, the County's approval of the outdoor storage area constituted an expansion of the Building Materials and Hardware use, and no off-street parking spaces were required at that time, inconsistent with CZLUO Sections 23.04.162 and 23.06.036. Given this, the project is also inconsistent with CZLUO Section 23.04.164 and 23.04.168 regarding parking lot design and construction standards. **Thus, a substantial issue is raised by these contentions of the appeal.**

The appellant also raises question to the project's consistency with CZLUO Section 23.08.144(ii) regarding design standards for Sales Lots and Swap Meets. This standard does not apply to outdoor storage areas and therefore, cannot be used to determine substantial issue.

E. Environmentally Sensitive Habitats

The appellant alleges that the proposed project is inconsistent with several LCP Policies and Ordinances regarding Environmentally Sensitive Habitats. Those ordinances applicable to a finding of substantial issue are discussed in further detail below.

***Policy 1 for Environmentally Sensitive Habitats:** New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resource shall be allowed within the area.*

***Policy 5 for Environmentally Sensitive Habitats:** Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored.*

***Policy 16 for Environmentally Sensitive Habitats:** For buffers less than 100 feet...mitigation measures to ensure wetland protection shall be required, and shall include (where applicable) vegetative screening, landscaping with native vegetation, drainage controls and other such measures....*

***CZLUO Section 23.04.180 – Landscape, Screening and Fencing:** The purpose of landscape, screening and fencing standards are to: provide areas which can absorb rainfall to assist in reducing storm water runoff; control erosion; preserve natural resources; promote, preserve and enhance native plant species; reduce glare and noise; enhance the appearance of structures and property; and to provide visual privacy...*



CZLUO Section 23.07.164 – SRA Permit and Processing Requirements:

e. Required Findings: Any land use permit application within a Sensitive Resource Area shall be approved only where the Review Authority can make the following findings:

- (1) The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.*

CZLUO Section 23.07.170 – Environmentally Sensitive Habitats:

d. Development standards for environmentally sensitive habitats:

- (1) New development within or adjacent to the habitat shall not significantly disrupt the resource.*
- (3) Where feasible, damaged habitats shall be restored as a condition of development approval.*

CZLUO Section 23.07.172 – Wetlands

d. Wetland Setbacks

- (1) Permitted uses within wetland setbacks: Within the required setback buffer, permitted uses are limited to passive recreation, educational, existing non-structural agricultural development in accordance with best management practices, utility pipelines, drainage and flood control of facilities, bridges and road approaches to bridges to cross a stream and roads...*

CZLUO Section 23.07.174 – Streams and Riparian Vegetation:

a. Development adjacent to a coastal stream. Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat.

d. Riparian Setbacks

- (1) Permitted uses within the setback: Permitted uses are limited to those specified in Section 23.07.172d(1), provided that the findings required can be made.*
- (2) Riparian habitat setback adjustment: The minimum riparian setback may be adjusted through Minor Use Permit approval, but in no case shall structures be allowed closer than 10 feet from a stream bank, and provided that the following findings can first be made:*
 - (i) Alternative locations and routes are infeasible or more environmentally damaging; and*
 - (ii) Adverse environmental effects are mitigated to the maximum extent feasible*



- (iii) The adjustment is necessary to allow a principal permitted use of the property and redesign of the proposed development would not allow the use with the standard setbacks; and*
- (iv) The adjustment is the minimum that would allow for the establishment of a principal permitted use.*

According to the appellant, an existing wooden fence located at the edge of the outdoor storage area was removed, a 10 to 15-foot swath of riparian vegetation along the creek was removed, and a retaining wall and chain link fence were installed to replace the existing wooden fence (see photos in Exhibit 3). In response to the appellant's contentions during the local appeal process, the applicant had a Plant and Restoration Ecologist (V.L. Holland, Ph.D) perform a biological assessment of the riparian area. The botanical report, attached as Exhibit 5, examined the riparian vegetation along this particular section of Little Cayucos Creek and evaluated the impacts of the new fence on the riparian vegetation and the creek. According to this report, there is no evidence that the riparian vegetation had been significantly altered during the installation of the new fence and no indication that a swath of 10 to 15 feet of riparian vegetation had been removed. Holland further indicates that no willow trees were removed with the installation of the new fence; however, the landowners did prune willow branches that had grown over the fence and driveway.

The biologist states that the new fence and retaining wall are in the same location as the old fence except for a small section near Ocean Avenue, where it ranges from one to four feet closer to the riparian vegetation. The report indicates that there are no signs that riparian vegetation was removed during the fence replacement, the new fence protects the riparian zone, the retaining wall helps stabilize the slope and prevents erosion along the fence line, and the existing setback is adequate as long as proper precautions are taken to prevent contaminants such as petroleum products, herbicides, and pesticides from entering the creek. Additionally, the County staff indicated that the United States Fish and Wildlife Service (USFWS), Department of Fish and Game (DFG), and Army Corps of Engineers were contacted, and all indicated that no permit was needed from their agencies, as the project did not affect the creek.

However, the project appears to be inconsistent with CZLUO Sections 23.04.180, 23.07.164, 23.07.170, and 23.07.174a because although no riparian vegetation was removed or damaged during the installation of the fence, the continued use of the outdoor storage area, without adequate Best Management Practices, may adversely impact the creek environment. Secondly, the project is inconsistent with CZLUO Sections 23.07.172 and 23.07.174d because the outdoor storage area and new fence are located closer than 10 feet from the stream bank and are not permitted uses within a riparian setback area. Finally, the project appears to be inconsistent with Policies 1, 5, 16, and 18, 19, and 21 (implemented as CZLUO Section 23.07.174) for ESH regarding the protection of coastal streams because adequate Best Management Practices were not incorporated into the County's approval. **Thus, a substantial issue is raised by these contentions of appeal.**

The following additional standards are also raised by the appellant; however, these concerns do not rise to the level of a substantial issue (please see Exhibit 4 for the full text of the appeal). CZLUO



Section 23.07.166 and Policies 11 and 23 for ESH regarding streambed alterations and filling of a perennial watercourse do not raise a substantial issue because the DFG and USFWS concluded that the project did not adversely affect the creek, and the Army Corps concluded that the project did not place fill material into the creek (see Exhibit 6 for Army Corps letter). CZLUO Section 23.07.170 and Policy 2 for Environmentally Sensitive Habitats regarding the preparation of a biology report do not raise a substantial issue because a report addressing the potential impacts to the riparian vegetation of Little Cayucos Creek was prepared and concluded that the continued use of the area adjacent to the creek will not significantly disrupt the resource.

Policy 26 for ESH (implemented as CZLUO Section 23.07.174d) requiring a riparian setback of 50 feet within urban areas and Policy 15 for ESH (implemented as CZLUO Section 23.07.172) regarding a wetland buffer of 100 feet are not applicable to this project because a more specific setback from Little Cayucos Creek (20 feet) is established by a Planning Area Standard (the LCP states that a Planning Area Standard supersedes a CZLUO standard). Policy 24 for ESH (implemented as CZLUO Section 23.07.174e) and CZLUO Section 23.07.176 regarding alteration of riparian vegetation and protection of terrestrial habitat do not raise a substantial issue because the biology report concludes that no willows were removed and that riparian vegetation had not been significantly altered during the installation of the new fence. Additionally, because no vegetation was removed during the fence installation, Policies 5 and 7 for Visual and Scenic Resources are not applicable in determining whether a substantial issue exists.

F. Site Development/Procedures

The appellant alleges that the proposed project is inconsistent with several LCP Ordinances regarding the proposed site development and permitting procedures. The following standard is applicable in determining substantial issue:

***CZLUO Section 23.04.186 – Landscape Plans:** The purpose of a landscape plan is to delineate the outdoor space including site development, earthworks, drainage, planting, irrigation and site details....*

***a. Where required:** Landscape plans are required to accompany all applications for land use permit approval where required by Section 23.04.182 (applies landscape standards to development projects within the Commercial Retail land use category)...*

Although the project is technically inconsistent with this standard because the applicants were not required to submit a landscape plan, as required by CZLUO Section 23.04.186, this concern does not rise to the level of substantial issue.

The appellant also raises the following issues in his contentions of appeal; however, these concerns do not rise to the level of a substantial issue (please see Exhibit 4 for the full text of the appeal). Policy 2 and 6 for Visual and Scenic Resources regarding the protection of major public view corridors and preservation of the scale and architectural style of the community do not raise a



substantial issue because the project site is an infill lot, developed similar in scale and style to existing commercial development within the Central Business District of Cayucos.

Additionally, the appellant raises a multitude of CZLUO Sections relating to the applicability of, and general compliance with, the CZLUO as a whole (see Exhibit 4 for full text of appeal). For example, he cites CZLUO Section 23.01.034a, which states that "no use of land, buildings, or division of land shall be established and no use of land or buildings...shall be approved unless the proposed land use, building, or parcels satisfy all applicable requirements of this code." Contentions such as these, although relevant in terms of whether the project complies with the objectives of the CZLUO, are general in nature and thus, do not rise to the level of substantial issue.



