

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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RECORD PACKET COPY

W-23

TO: COMMISSIONERS AND INTERESTED PARTIES

FROM: Peter Douglas, Executive Director
Tami Grove, Deputy Director
Charles Lester, Coastal Program Manager *DJA*
2/30/01

SUBJECT: A.J. Wright, A-3-SLO-99-083. Action to set aside prior actions on appeal A-3-SLO-99-083 (San Luis Obispo County coastal development permit no. D980085P) authorizing construction of a mini storage facility on Santa Ynez Avenue in Los Osos consisting of 12 individual buildings, an entrance driveway and parking, and removal after-the-fact of 2.14 acres of coastal dune scrub that is habitat for the endangered Morro shoulderband snail.

Staff Summary

Commission staff recommends that the Commission set aside its prior actions on appeal of a San Luis Obispo County coastal development permit in light of a trial court decision ordering such action. The San Luis Obispo County coastal development permit (CDP) authorized construction of storage facilities and after-the-fact approval of grading of coastal dune scrub on a site on Santa Ynez Avenue in Los Osos. Two Commissioners appealed the permit and the Commission agreed the appeal raised a substantial issue with respect to the grounds on which it was filed.

After a *de novo* hearing on May 11, 2000, the Commission approved a substantially scaled down version of the project and required restoration of the remainder of the site as well as off-site mitigation and restoration to address the loss of coastal dune scrub, which had been habitat for the Morro shoulderband snail. These findings are attached as Exhibit 1. Morro Bay Mini Storage, Inc. subsequently filed litigation in San Luis Obispo Superior Court challenging the Commission's actions on the appeal

In February 2001, the San Luis Obispo Superior Court ordered the Commission to set aside its *de novo* approval of the permit and to reinstate the County permit.

In the closed session of the August, 2001 Commission meeting, the Commission voted not to appeal the trial court decision. Accordingly, staff recommends that the Commission take action to set aside its prior actions on appeal of the County's permit.

I. Motions and Resolutions

a. Motion to Set Aside Prior Actions

I move that the Commission set aside its prior actions on appeal of San Luis Obispo County coastal development permit no. D980085P so that the local permit becomes final and effective.

b. Recommendation to Set Aside Prior Actions

Staff recommends a **YES** vote. Passage of this motion will result in the set aside of the Commission's approval of coastal development permit no. A-3-SLO-99-083 authorizing the construction of a storage facility on 0.9 acres of the site and after-the-fact removal of 2.14 acres of coastal dune scrub habitat at Santa Ynez Avenue in Los Osos. As a result, San Luis Obispo County coastal development permit no. D980085P authorizing construction of a mini storage facility on 2.14 acres consisting of 12 individual buildings, entrance driveway and parking, and removal after-the-fact of 2.14 acres of coastal dune scrub habitat will become final and effective.

c. Resolution to Set Aside Prior Actions

The Commission hereby sets aside its prior actions on the appeal of San Luis Obispo County coastal development permit no. D980085P (numbered as Commission Appeal A-3-SLO-99-083). This will cause the County's coastal development permit to become final and effective.

II. Findings and Declarations

On September 17, 1999, San Luis Obispo County approved coastal development permit (CDP) no. D980085P for the construction on Santa Ynez Avenue in Los Osos (APN 074-223-004) of a mini storage facility consisting of 12 individual buildings, an entrance driveway and parking, and after-the-fact authorization to grade 2.14 acres of the site. Prior to the grading, the site had contained coastal dune scrub, which is habitat for the endangered Morro Shoulderband snail.

Two Commissioners appealed the County CDP, and on October 27, 1999, the Commission found that the appeal raised a substantial issue with respect (APN 074-223-004) to the grounds for appeal. Following a *de novo* hearing on May 11, 2000, the Commission approved CDP no. A-3-SLO-99-083 for 1 storage facility to cover no more than 0.9 acres of the site. These Findings are attached as Exhibit 1. To mitigate for the loss of coastal dune habitat, the Commission required that most of the remainder of the site be restored and protected from further development, and that the applicant purchase and restore off-site property.

On July 8, 2000, Morro Bay Mini Storage, Inc. filed litigation challenging the Commission's actions on the appeal in the San Luis Obispo County Superior Court (Morro Bay Mini Storage, Inc. v. California Coastal Commission, Case No. CV 000578). In February, 2001, the trial court ordered the Commission to set aside its approval of CDP no. A-3-SLO-99-083 and to reinstate the local CDP approved with conditions by San Luis Obispo County on September 17, 1999. The local CDP requires Morro Bay Mini Storage, Inc. to implement a settlement agreement with the U.S. Fish and Wildlife Service as mitigation for the destruction of habitat of the endangered Morro shoulderband snail.

In the closed session of the August, 2001 Commission meeting, the Commission voted not to appeal from the trial court decision. Accordingly, in order to comply with the court order, the Commission must set aside its approval of CDP no. A-3-SLO-99-083, and reinstate San Luis Obispo County CDP no. D980085P. Therefore, for the reasons set forth in the trial court's decision, the Commission sets aside its actions on appeal no. A-3-SLO-99-083. As a result of setting aside its actions on the appeal, the County CDP will become final and effective.



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Open & Continue: 12/09/99
Substantial Issue: 02/16/00

REGULAR CALENDAR:
COASTAL DEVELOPMENT PERMIT ADOPTED

Application NumberA-3-SLO-99-083
Applicant.....A.J. Wright
AgentJeff Edwards
Project LocationThree acre site on the northwest Corner of Santa Ynez Avenue and Mountain View, Los Osos, San Luis Obispo County; APN 074-223-004
Project DescriptionAfter-the-fact approval for grading and vegetation removal; construction of twelve one-story storage buildings totaling 60,000 square feet, with associated paving, parking, landscaping, and street improvements, for a total site coverage of approximately 2.85 acres; mitigation for vegetation removal consisting of the purchase and restoration of 1.79 acres of coastal scrub habitat, financing an additional 0.35 acres of habitat acquisition, and placing 0.15 acres of the site in an open space easement.
Local ApprovalsThe Minor Use Permit/Coastal Development Permit required for the grading, vegetation removal, and storage project was approved by San Luis Obispo County on September 17, 1999
File DocumentsSan Luis Obispo County certified Local Coastal Program; San Luis Obispo County's Administrative Record for Minor Use Permit D9800854P; U.S. Fish and Wildlife Service v. A.J. Wright, INV 107002158 - Settlement Agreement; U.S. Fish and Wildlife Service Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California, September 1998; Baywood and Los Osos Conservation Plan, The Land Conservancy of San Luis Obispo, July 1998; Los Osos/Baywood Park Greenbelt Conservation Plan, prepared for the Land Conservancy of San Luis Obispo by Jones & Stokes Associates, Inc., February 7, 1997

Staff Recommendation ..Approval with Conditions



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Staff: SM Approved by:

Executive Summary

The proposed project involves construction of a mini storage facility on a 3-acre site in the town of Los Osos, and "after-the fact" approval of grading and vegetation removal that previously occurred without the necessary coastal development permit. Approximately 2.14 acres of coastal scrub vegetation, which provided habitat for the federally endangered Morro shoulderband snail and qualifies as an Environmentally Sensitive Habitat Area (ESHA) under the LCP, was lost as a result of this grading.

The Coastal Development Permit approved by San Luis Obispo County on September 17, 2000 authorized the previously completed grading and vegetation removal, and permitted the construction of twelve one-story storage buildings that will have a total footprint of 60,000 square feet (1.4 acres). The project also includes paving the area surrounding the buildings, on which 59 parking spaces will be provided, and the installation of landscaping and street improvements along the east, west, and south perimeters of the property. 0.15 acres along the site's northern boundary, which had not been graded, will be placed in an open space easement.

As mitigation for the loss of snail habitat, and to resolve an apparent violation of the federal Endangered Species Act, the applicant entered into a Settlement Agreement with the U.S. Fish and Wildlife Service (attached as Exhibit E). The provisions of this Agreement are reflected in the County's conditions of approval of the storage project (attached as Exhibit D). In summary, the applicant has agreed to purchase and convey to State Parks a 1.79 acre site that the U.S. Fish and Wildlife Service (USFWS) has determined to have equivalent snail habitat; conduct habitat restoration and three years of monitoring on the 1.79 acre site; pay \$17,500 for purchase of 0.35 acres or more of snail habitat by the Trust for Public Land; record an open space easement over the 0.15 acres of ungraded area remaining on the project site; and pay \$7,000 in settlement fees to USFWS.

The proposed project and associated Settlement Agreement are inconsistent with LCP ESHA policies for numerous reasons. First, ESHA Policy 1 reflects Coastal Act Section 30240 by limiting development within ESHA to uses that are dependent on the resource and prohibiting significant disruptions to ESHA. A storage facility is clearly not a use that is dependent upon being located in a sensitive habitat area, and the removal of over 2 acres of sensitive habitat to accommodate such a use represents a significant disruption.

Second, ESHA Policy 2 requires development in or near sensitive habitats to be consistent with the biological continuance of the habitat. The project will permanently remove approximately 2 acres of sensitive habitat, in exchange for the acquisition and protection of an equivalent amount of existing habitat at an off site location. This represents a net reduction in habitat available to support the biological continuance and recovery of the Morro shoulderband snail.



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Third, ESHA Policy 2 also requires development within and adjacent to ESHA to provide the maximum feasible mitigation. In this case, maximum feasible mitigation would include preserving/restoring as much of the sensitive habitat that existed on the site as possible, while still allowing for a reasonable economic use. No on site restoration is included in the proposed project, and the development of a storage facility involves an excessive amount of site coverage and habitat removal that is not necessary to allow for an economic use.

Given these inconsistencies, staff is recommending approval of a reduced project that complies with LCP ESHA policies and would still allow a reasonable economic use on the site. This involves restoring the habitat that previously existed on the site, and allowing a smaller storage facility, or alternative economic use, to be established on a portion of the site equivalent to the area that was not originally ESHA (approximately 1 acre). It also includes implementation of the Settlement Agreement with USFWS in order to mitigate for the temporary loss of habitat associated with the previous vegetation removal, account for the uncertain success of on-site restoration, and address the reduced value of the on-site habitat that will result from the new development.

It is noted that both the applicant and the U.S. Fish and Wildlife Service have expressed concern that should the Commission prohibit the construction of the storage project, or require substantial revisions, that the mitigation for the loss of habitat, as embodied in the Settlement Agreement, could be jeopardized. In fact, the applicant's representative has indicated that should the Commission adopt the staff recommendation, the project will be withdrawn and the Settlement abandoned (please see Exhibit I). This would necessitate enforcement action by the Commission and the U.S Fish and Wildlife Service to resolve the loss of habitat that resulted from the previous grading. While this may not be a desirable outcome, Commission staff believes the recommended approach is the one most consistent with the San Luis Obispo County certified LCP.

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I. Staff Recommendation On Coastal Development Permit

Staff recommends that the Commission, after the public hearing, approve the permit subject to the conditions below.

MOTION. Staff recommends a "YES" vote on the following motion:

I move that the Commission APPROVE Coastal Development Permit A-3-SLO-99-83 subject to the conditions below.

RESOLUTION.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development, as conditioned, will be in conformity with the San Luis Obispo County certified Local Coastal Program, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

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 this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.



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7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Scope of Permit/Revised Plans. This permit authorizes the construction of a one-story storage facility and related parking and circulation areas, and appropriate habitat setbacks, on a 0.86 acre (37,462 square foot) portion of the site. The remainder of the site (2.14 acres) shall be restored to coastal dune scrub habitat pursuant to Special Conditions 3 and 4 below. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for Executive Director review and approval, revised plans for the storage facility that achieves these objectives. The applicant may pursue an alternative use of the 37,462 square foot developable portion of the site, in coordination with the required habitat restoration and applicable provisions of the San Luis Obispo County Local Coastal Program, by applying for and obtaining an amendment to this Coastal Development Permit
2. Compliance with Local Conditions of Approval. All Conditions of Approval adopted by San Luis Obispo County on September 17, 1999 adopted pursuant to an authority other than the Coastal Act (attached as Exhibit D), continue to apply to the project, with the following exceptions:
 - a. Condition 1 is no longer applicable, as the scope of the project has been revised by Special Condition 1, above; and,
 - b. Condition 9, requiring the replacement of habitat at a 1:1 ratio, is replaced by Special Condition 4, below.
3. Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, AND WITHIN 180 DAYS OF THE COMMISSIONS ACTION, the applicant shall finalize, execute, and record, in a form and content acceptable to the Executive Director, a Deed Restriction over 2.14 acres of the project site that limits the use of this area to the restoration and preservation of coastal dune scrub habitat. The Deed Restriction shall also identify the on-site habitat restoration, monitoring, and maintenance requirements contained in Special Condition 4, below. The portion of the project site subject to the Deed Restriction shall be oriented to maximize the habitat value of the required restoration, in accordance with the Habitat Restoration Plan required by Special Condition 4. The Deed Restriction shall include legal descriptions of the parcel being restricted, as well as the restricted area, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the Deed Restriction. This Deed Restriction shall not be invalidated or changed without a Commission amendment to this coastal development permit.
4. Habitat Restoration. The applicant shall be responsible for restoring and protecting coastal dune scrub habitat on 2.14 acres of the project site, and on the 1.79 acres off-site mitigation area specified



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in the USFWS Settlement Agreement (attached as Exhibit E), according to a three step process involving: 1) development and approval of a habitat restoration and management plan; 2) initiation of off-site habitat restoration and maintenance activities prior to the commencement of project construction, and on-site restoration prior to occupancy of the storage units (or other approved development); and, 3) the implementation of a 5 year monitoring a maintenance program concluding in a report to the Executive Director identifying any remedial actions and additional monitoring and maintenance that may be necessary to achieve restoration success.

a. Habitat Restoration and Management Plan. PRIOR TO THE ISSUANCE OF THE PERMIT, AND WITHIN 180 DAYS OF THE COMMISSIONS ACTION, the applicant shall submit, for Executive Director review and approval, a habitat restoration and monitoring plan for the 2.14 acres of the site that must be restored to coastal dune scrub habitat, as well as the 1.79 acre off-site mitigation area required by County Condition 9 and the Settlement Agreement with the U.S. Fish and Wildlife Service (attached as Exhibit E). The Habitat Restoration and Monitoring Plan shall identify the portion of the project site that is best suited for habitat restoration, and shall provide detailed plans, performance standards, implementation and monitoring schedules, and remedial actions that will be used to restore and protect coastal scrub habitat at both sites. These shall include, but may not be limited to:

- 1) landscape plans that identify specific habitat restoration objectives, such as plant cover, species diversity, and elimination of exotic invasive species;
- 2) an implementation and monitoring schedule covering a five year period commencing with the first phase of habitat restoration. The schedule shall identify specific site preparation, landscape installation, and maintenance provisions that will be implemented throughout the five year period, and shall provide for a monitoring frequency of one inspection every four months; and,
- 3) the names and qualifications of the biologist that will supervise all restoration and monitoring and maintenance activities.

Submission of this plan shall be accompanied by written evidence that it has been reviewed and approved by the U.S. Fish and Wildlife Service, or evidence that such approvals are not required.

b. Timing. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OF THE APPROVED STORAGE FACILITY OR OTHER STRUCTURAL DEVELOPMENT APPROVED THROUGH AN AMENDMENT TO THIS PERMIT (see Special Condition 1), AND WITHIN ONE YEAR OF THE COMMISSIONS ACTION, the applicant shall submit, for Executive Director Review and Approval, evidence that off-site habitat restoration and protection measures have been initiated in accordance with the approved restoration plan. Said evidence shall include, at a minimum: written evidence from the that U.S. Fish and Wildlife Service that the provisions of the Settlement Agreement have been satisfied; and, photographs and other



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documentation showing that the initial removal of exotic species and the installation of any landscaping called for in the approved restoration plan has been completed.

PRIOR TO THE OCCUPANCY OF ANY OF THE STORAGE UNITS OR OTHER STRUCTURE APPROVED THROUGH AN AMENDMENT TO THIS PERMIT, AND WITHIN ONE YEAR OF THE COMMISSION'S ACTION, the applicant shall submit, for Executive Director review and approval, evidence that on-site habitat restoration has commenced on the 2.14 acre open space easement area. Said evidence shall include, at a minimum, photographs and other documentation confirming that site preparation and landscape installation measures prescribed by the approved restoration plan have been successfully completed.

- c. Remedial Actions. AT THE CONCLUSION OF THE FIVE YEAR MAINTENANCE AND MONITORING PERIOD, the permittee shall submit, for Executive Director review and approval, a report which either: documents the successful establishment of the approved habitat restoration plan; or, provides for an extended monitoring and maintenance program, including appropriate corrective actions, which shall be implemented until the approved habitat restoration plan has been successfully established to the satisfaction of the Executive Director.
5. Condition Compliance. The applicant shall satisfy all requirements of the above conditions within the specified timeframes unless extended by the Executive Director for good cause. 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. Findings and Declarations

A. Project Location, Description, and Background

The project involves the construction of a mini storage facility on a 3-acre site in the town of Los Osos, designated for residential multi-family development. The site was previously cleared of vegetation and graded without the necessary coastal development permit. The site is located on the northwest Corner of Santa Ynez and Mountain View Avenues, in the urban area of Los Osos, San Luis Obispo County (APN 074-223-004) (see Exhibit A). Approximately 2.14 acres of coastal scrub vegetation, which provided habitat for the federally endangered Morro shoulderband snail, was lost as a result of the previously completed grading.

The property owner graded and grubbed the site during the summer of 1998, after obtaining a grading permit for the stockpiling of 100 cubic yards of soil on the property from the County. No coastal development permit was issued or noticed for the stockpile project, nor was a Final Local Action Notice received by the Commission, and the grading and vegetation removal that was subsequently completed greatly exceeded the extent of development authorized by the grading permit. According to a letter from the County Building Department, a County building and grading inspector was asked by the applicant if the entire site could be grubbed while the contractor was mobilized. The letter states "[t]he reply from



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the inspector was that he didn't see any problem in preparing the site to that extent. Mr. Wright believed that this was proper authorization to perform the work that was completed." (Entire letter attached as Exhibit G).

Subsequent to the grading and vegetation removal, the property owner applied for a permit from San Luis Obispo County to construct a mini-storage facility on the site. During the processing of this application, the USFWS was informed of the vegetation removal. USFWS staff inspected the site in September 1998, and found several shells of the federally endangered Morro shoulderband snail. A biological assessment also found such shells, as well as a live Morro shoulderband snail within the brush and soil pile on the northwest corner of the parcel.¹

In response to the violation of Section 9 of the federal Endangered Species Act, and in lieu of a Notice of violation and civil penalty, USFWS and the applicant negotiated a settlement agreement which is attached to this report as Exhibit E. In summary, the applicant has agreed to purchase and convey to State Parks a 1.79 acre site that the U.S. Fish and Wildlife Service (USFWS) has determined to have equivalent snail habitat; conduct habitat restoration and three years of monitoring on the 1.79 acre site; pay \$17,500 for purchase of 0.35 acres or more of snail habitat by the Trust for Public Land; record an open space easement over the 0.15 acres of ungraded area remaining on the project site; and pay \$7,000 in settlement fees to USFWS.

On September 17, 2000, San Luis Obispo County approved a Minor Use Permit/Coastal Development Permit that authorized the previously completed grading and vegetation removal "after-the fact", and permitted the construction of twelve one-story storage buildings that will have a total footprint of 60,000 square feet. The locally approved storage project also includes paving the area surrounding the buildings, on which 59 parking spaces will be provided, and the installation of landscaping and street improvements along the east, west, and south perimeters of the property. Approximately 80% of the site (2.4 acres) will be covered with impermeable surface. As mitigation for the loss of coastal dune scrub habitat, the County's conditions of approval call for implementation of the Settlement Agreement reached between the applicant and USFWS.

This approval was appealed by Commissioners Potter and Nava, and the Commission determined that the appeal raised a substantial issue on February 16, 2000. Since that time, staff has attempted to work with the applicant to identify a project alternative that would comply with LCP requirements calling for the protection of sensitive habitats and still allow for an economic use on the project site. Staff has been unable, however, to come to agreement with the applicant on what such an alternative entails, as discussed in the following findings.

¹ April 13, 2000 letter from USFWS, attached as Exhibit H.



B. Environmentally Sensitive Habitat Areas (ESHA)

1. LCP Requirements:

ESHA Policy 1: Land Uses Within or Adjacent to 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 resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

ESHA Policy 2: Permit Requirement

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: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170-178 OF THE CZLUO.]

ESHA Policy 27: Protection of Terrestrial Habitats

Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.

Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Policy 28: Protection of Native Vegetation

Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Policy 33: Protection of Vegetation

Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed



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to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Ordinance 23.07.160: Sensitive Resource Area (SRA):

The Sensitive Resource Area combining designation is applied by the Official Maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources. The purpose of these combining designation standards is to require that proposed uses be designed with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act...

Ordinance 23.07.170: Environmentally Sensitive Habitats:

The provisions of this section apply to development proposed within or adjacent to (within 100 feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title², and as mapped by the Land Use Element combining designation maps³.

a. Application content. *A land use permit application for a project on a site located within or adjacent to an Environmentally Sensitive Habitat shall also include a report by a biologist approved by the Environmental Coordinator that:*

- (1) Evaluates the impact the development may have on the habitat, and whether the development will be consistent with the biological continuance of the habitat. The report shall identify the maximum feasible mitigation measures to protect the resource and a program for monitoring and evaluating the effectiveness of the mitigation measures.*
- (2) Recommends conditions of approval for the restoration of damaged habitats, where feasible.*
- (3) Evaluates development proposed adjacent to environmentally sensitive habitats to identify significant negative impacts from noise, sediment and other potential disturbances that may become evident during project review.*
- (4) Verifies that applicable setbacks from the habitat area required by Sections 23.07.170 to 23.07.178 are adequate to protect the habitat or recommends greater, more appropriate setbacks.*

b. Required findings: *Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:*

- (1) There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.*
- (2) The proposed use will not significantly disrupt the habitat.*

c. Land divisions: *No division of a parcel containing an Environmentally Sensitive Habitat shall be permitted unless all proposed building sites are located entirely outside of the applicable minimum*

² Ordinance 23.11.030 defines Environmentally Sensitive Habitats as "A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations".

³ The combining designation map does not map the project site as a Sensitive Resource Area. However, the Commission considers resources as they exist on the ground, rather than areas delineated on a map, in determining whether an area qualifies as an Environmentally Sensitive Habitat. See, for example, the Commission's consideration of the proposed Los Osos Wastewater Treatment Project (Coastal Development Permit File No. A-3-SLO-97-40).



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setback required by Sections 23.07.172 through 23.07.178. Such building sites shall be designated on the recorded subdivision map.

d. Development standards for environmentally sensitive habitats:

- (1) New development within or adjacent to the habitat shall not significantly disrupt the resource.
- (2) New development within the habitat shall be limited to those uses that are dependent upon the resource.
- (3) Where feasible, damaged habitats shall be restored as a condition of development approval.
- (4) Development shall be consistent with the biological continuance of the habitat.
- (5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provisions of Section 23.05.034c (Grading Standards).

Ordinance 23.07.176: Terrestrial Habitat Protection:

The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.

- a. **Protection of vegetation.** Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.
- b. **Terrestrial habitat development standards:**
 - (1) **Revegetation.** Native plants shall be used where vegetation is removed.
 - (2) **Area of disturbance.** The area to be disturbed by development shall be shown on a site plan. The area in which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.
 - (3) **Trails.** Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.

2. Analysis:

Background

The complex problems raised when environmentally sensitive habitats are found on private property within urban areas are familiar issues to the Commission. The urban area of Los Osos, San Luis Obispo County, is one of the areas where such issues are increasingly being encountered. As the Commission may recall from its consideration of the Los Osos Wastewater Treatment Project (A-3-SLO-97-40) and other recent appeals, many vacant parcels within the Los Osos urban area support sensitive coastal dune scrub habitats that support rare and threatened species, such as the federally endangered Morro shoulderband snail.

In dealing with such situations, the typical approach is to ensure that new development avoids the disruption of sensitive habitats to the greatest degree feasible. At the same time, a reasonable economic use of the property must be accommodated when an applicant can demonstrate that they have a legitimate economic backed expectation for such a use. To mitigate the impacts of such development, a



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combined approach of protecting the remaining habitat, and acquiring and protecting a type and amount of off-site habitat equivalent to the footprint of the development, is usually required. This has been the Commission's practice in subdivided areas within the Del Monte and Asilomar Dunes of Monterey County, as well as in other areas of the coastal zone previously designated for development but currently known to contain sensitive habitats.

In some instances, however, alternative approaches may be warranted. Such may be the case in Los Osos, where questions are raised regarding the long term viability of the remnant fragments of what was once a diverse natural dune system which remain in the urban core. Rather than protecting such fragments, some have argued that effective protection of this unique ecosystem could be better achieved by allowing for development to occur in such areas. In return, developers would provide for the acquisition of potentially higher quality habitat that is better connected to other habitats and that is also threatened by development. The sum result theoretically would be a larger aggregation of better functioning habitat.

Clearly, the pursuit and implementation of such an approach must be accompanied by detailed planning and biological assessments that ensure it will effectively preserve and enhance the biological productivity and continuance of the unique and sensitive native habitats. Questions regarding the long term viability of remaining habitats within urban areas, actual threats to habitat from development within proposed mitigation areas, and appropriate mitigation ratios are just some of the issues that need to be resolved before it can be concluded that off-site mitigation will effectively achieve compliance with Coastal Act requirements.

In Los Osos, various efforts including, but not limited to the Baywood and Los Osos Conservation Plan (also known as the "Greenbelt Plan"), and the Estero Area Plan Update, are attempting to resolve these issues. While there are many environmentally beneficial aspects of both of these plans, to date they have not been accompanied by the detailed analysis described above that would be necessary to incorporate the off-site mitigation approach into the LCP. Commission staff is currently working with the involved parties to determine the best method of protecting dune habitat in Los Osos, and, in this regard, has recently provided detailed comments to San Luis Obispo County regarding the Draft Estero Area Plan Update. Staff has also expressed interest in working with the U.S. Fish and Wildlife Service to develop habitat recovery programs that could support the development of such long range LCP planning solutions to the problems associated with adequately protecting sensitive species.

In the mean time, the San Luis Obispo County LCP, as currently certified, provides the standards of review for new development in Los Osos. As detailed below, a strict interpretation of the LCP's ESHA provisions calls for the protection of all sensitive habitat areas, including those fragments which remain in the urban area of Los Osos.

This project exemplifies the difficult issues raised by the circumstances described above, with the added problem that some of the development has already occurred without the necessary coastal development permit. As previously described, the site was graded and cleared of vegetation without the required



Application A-3-SLO-99-083 Staff Report

Wright Storage & Grading

permits. Approximately 2.14 acres of coastal scrub vegetation, which provided habitat for the federally endangered Morro shoulderband snail and qualifies as an Environmentally Sensitive Habitat Area (ESHA) under the LCP, was lost as a result of this grading

The Site Contains ESHA

There is no question that the project approved by the County involves development within an ESHA (see Exhibit F for the Biological Site Assessment). Prior to the grading and vegetation removal conducted in 1998, the site supported coastal scrub vegetation that provided habitat for the Morro shoulderband snail, which has been listed as endangered since December of 1994. According to the U.S. Fish and Wildlife Recovery Plan, this species is threatened by habitat destruction due to increasing development and invasion of non-native plant species such as veldt grass. Other threats include competition for resources with the non-native brown garden snail; extinction due to populations being small and isolated; use of pesticides; and introduction of non-native predatory snails.⁴ The response of the U.S. Fish and Wildlife to the applicant's grading is indicative of the significance of the habitat loss in this case. The site clearly meets the LCP's definition of an ESHA, as it provided habitat for rare animal life that could easily be disturbed or degraded by human activities and development.

The Project is not an Allowable Use in ESHA

ESHA Policy 1 reflects Coastal Act Section 30240 by limiting development within ESHA to uses that are dependent on the resource and prohibiting significant disruptions to ESHA. Similarly, ESHA Policy 27 states "[o]nly uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site". Section 23.07.170 also prohibits any development, except that which is dependent on the resource, within ESHA. A storage facility is clearly not a use that is dependent upon being located in a sensitive habitat area.

In addition, the project has not been designed to protect ESHA, as required by Policies 28 and 33, as well as Section 23.07.176 of the CZLUO. The proposed development will consume approximately 2.84 acres of the 3 acre site. This is an excessive amount of site coverage given the sensitive nature of the habitat it supported. According to the Biological Assessment attached as Exhibit F, an analysis of aerial photographs and site conditions conducted after the grading incident concluded that between 1.99 and 2.27 acres of the site consisted of coastal scrub habitat. Thus, it is possible to accommodate a reasonable economic use on the portion of the site that did not constitute ESHA. Such alternatives include a smaller storage facility, or residential development once the necessary public services become available.

⁴ See U.S. Fish and Wildlife, *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County*, September, 1998.



The Project Significantly Disrupts ESHA

ESHA Policy 2 requires development in or near sensitive habitats to be consistent with the biological continuance of the habitat. This policy, as well as Sections 23.07.170 of the CZLUO, specifically requires demonstration 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.

The project will permanently remove more than 2 acres of sensitive habitat. This clearly represents a significant disruption to the sensitive habitat that existed on the site, and will preclude its biological continuance.

Maximum Feasible Mitigation Has Not Been Provided

ESHA Policy 2, as well as Section 23.07.170 of the CZLUO, require development within and adjacent to sensitive habitats to provide the maximum feasible mitigation. The overall objective of such mitigation is first to ensure that impacts to sensitive habitats are kept to the absolute minimum, and second, to ensure that unavoidable impacts to sensitive habitats are offset through the replacement and/or protection of an equivalent type and quality of habitat.

In this case, the project has not provided maximum feasible mitigation, because it has not minimized the amount of habitat disruption to the greatest degree possible. Nor has it provided for the restoration of the habitat that was destroyed without the necessary permits. Thus, the conditions of approval require the replacement of the pre-existing habitat, and limit new development to the area of the site that did not support sensitive habitat.

The on-site mitigation and reduction in development required by the conditions will not, however, adequately compensate for the impacts to sensitive habitats that occurred as a result of the previous grading for three reasons.

First, it can not be expected that restoration efforts will be completely successful at achieving the natural habitat values that previously existed on the site. There are numerous variables that can affect the success of this restoration. For example, the grading that occurred may have removed topsoil needed to support native vegetation, and altered small-scale topographical features needed to support the diverse assemblage of plants and animals that make up a healthy coastal scrub ecosystem. Other factors include variable success rates of restoring different species of coastal scrub vegetation, and the unknown ability of the shoulderband snail to re-establish a healthy and viable population within the restoration area. While the conditions of approval seek to facilitate the success of the on-site restoration effort through a comprehensive monitoring and maintenance program, many of these variables are beyond human control.

Second, the new development that will take place on the site will diminish the quality and biological productivity of the restoration area. Edge effects of the development such a noise,



Application A-3-SLO-99-083 Staff Report
Wright Storage & Grading

light, litter, automobile exhaust, and other aspects of intensified human use adjacent to the restoration area will limit the ability of restoration efforts to create a habitat area that is as biologically productive as the habitat that previously existed.

Third, the on-site restoration does not compensate for the temporary loss of habitat since grading occurred and until restoration is completed. Given the endangered status of the Morro shoulderband snail, such impacts, although temporary, can have significant adverse impacts on the ultimate survival and recovery of this species.

* Off-site mitigation, such as that required by the USFWS and the County approval, also does not provide adequate mitigation to effectively offset the impact of the development on sensitive habitats in and of itself. The proposed mitigation area of 1.79 acres, combined with the money contributed to the future purchase of an additional 0.35 acre of habitat, is intended to protect an amount of habitat that was lost as a result of the previous grading. Given the fact that the off-site mitigation areas represent existing habitat areas, the sensitive habitat that was lost at the project site represents a net reduction in the habitat available to support the biological continuance and recovery of the Morro shoulderband snail.

Along these lines, it is inappropriate to assume that without the proposed off-site mitigation, the habitat values of the entire off-site mitigation area would be lost. Any development proposed in this area, if it was not acquired for mitigation purposes, would still need to conform to the provisions of the LCP protecting sensitive habitats. As is the case with this project for the construction of storage units, the application of these provisions would limit the amount of new development on the mitigation site, and call for the protection and preservation of the surrounding habitat.

In light of these facts, a combined approach of on-site and off-site mitigation is needed to restore and protect an amount of sensitive habitat equivalent to that which was removed from the project site and to mitigate for the project impacts discussed above. As required by the conditions of approval, 2.14 acres of the project site must be restored and protected as coastal dune scrub habitat. The conditions also require implementation of the USFWS Settlement Agreement, which will protect and additional 2.14 acres of coastal scrub habitat at off-site locations. This will achieve a 2:1 mitigation to impact ratio, which, as detailed above, is needed to account for the diminished quality and biological productivity of the restoration area, the temporary loss of sensitive habitats, and the fact that the off-site mitigation areas represent existing habitat.

This mitigation package represents the Commission's best estimation of what is required to off-set and mitigate the habitat that was lost as a result of previous grading activities that occurred on the project site without the necessary permits. While this extent of mitigation appears to be adequate in this case, it is noted that in processing the coastal development permit application for the Los Osos Wastewater Treatment Project, Commission staff recommended that the loss of coastal scrub habitat be mitigated at a 4:1 ratio. The higher mitigation ratio recommended in that instance was a result of the fact that the impacted habitat was of higher quality, and better connected to other habitat, than the habitat that will be impacted by this project.



3. Conclusion:

The project, as proposed, is inconsistent with applicable provisions of the LCP protecting ESHA because it is not an allowable use within such area, will degrade the habitat and eliminate its biological productivity, and does not provide adequate mitigation. In order to achieve LCP consistency, conditions have been attached to the permit that require that the development be reduced and combined with mitigation measures necessary to establish and protect a type and amount of habitat equivalent to that which has been lost as a result of the project.

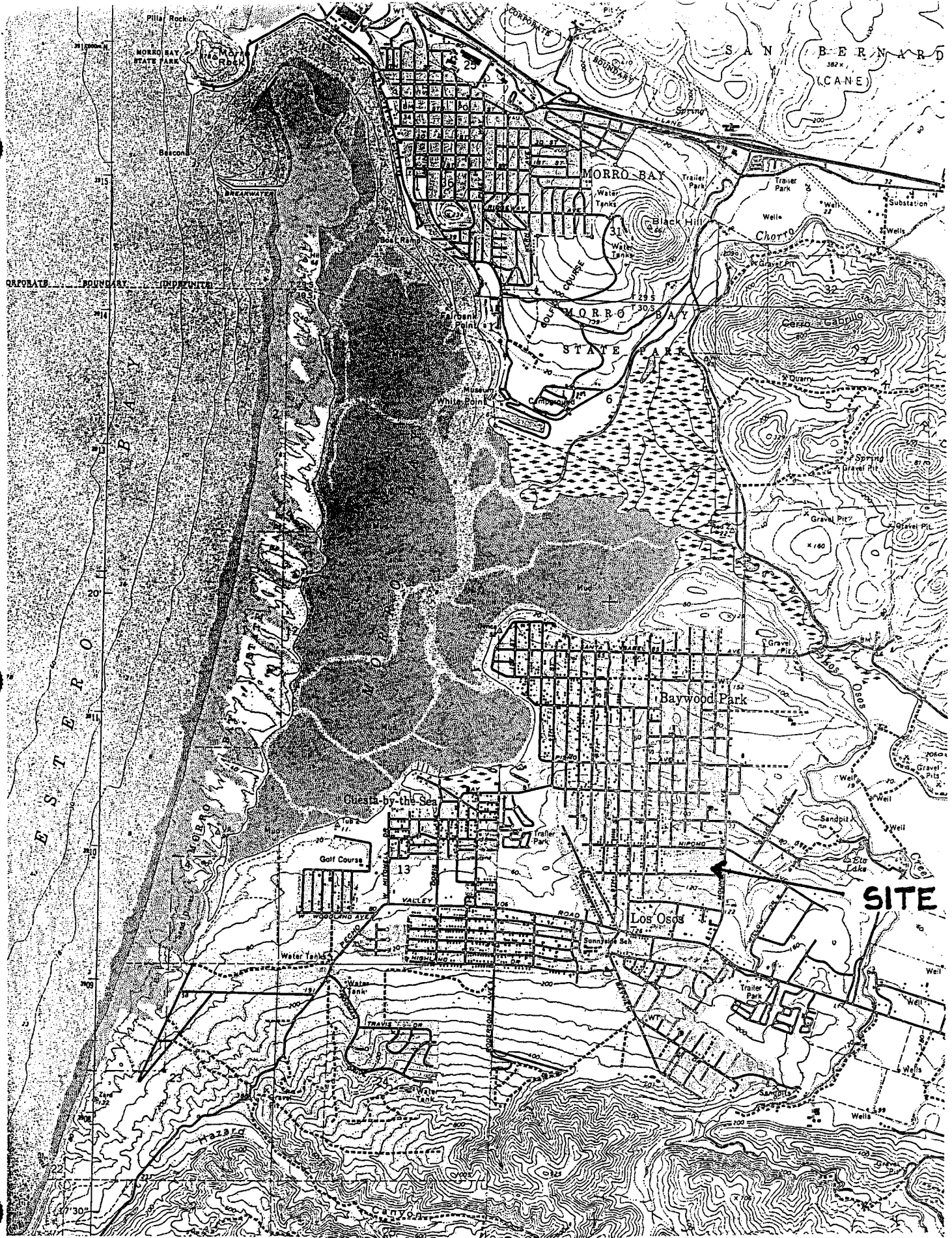
C. Violation Finding

The applicant has performed grading and vegetation removal on 2.84 acres of the project site without first obtaining a coastal development permit. Consideration of this application by the Commission has been based solely upon the applicable policies of the San Luis Obispo County Local Coastal Program. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit. As detailed in the previous findings, the conditions of approval attached to this permit seek to offset the adverse impacts that the grading and vegetation removal has had on coastal resources.

VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment. The County of San Luis Obispo certified a Negative Declaration for the project on December 19, 1997. However, the Commission's review of this project has identified environmental impacts that have not been appropriately resolved by the project and the County's conditions of approval. Thus, the Commission has attached additional conditions of approval to the project intended to prevent the project from having a significant adverse impact on the environment within the meaning of the California Environmental Quality Act.





A-3-SLO-99-83

Exhibit A
(1 of 3)

Vicinity Map

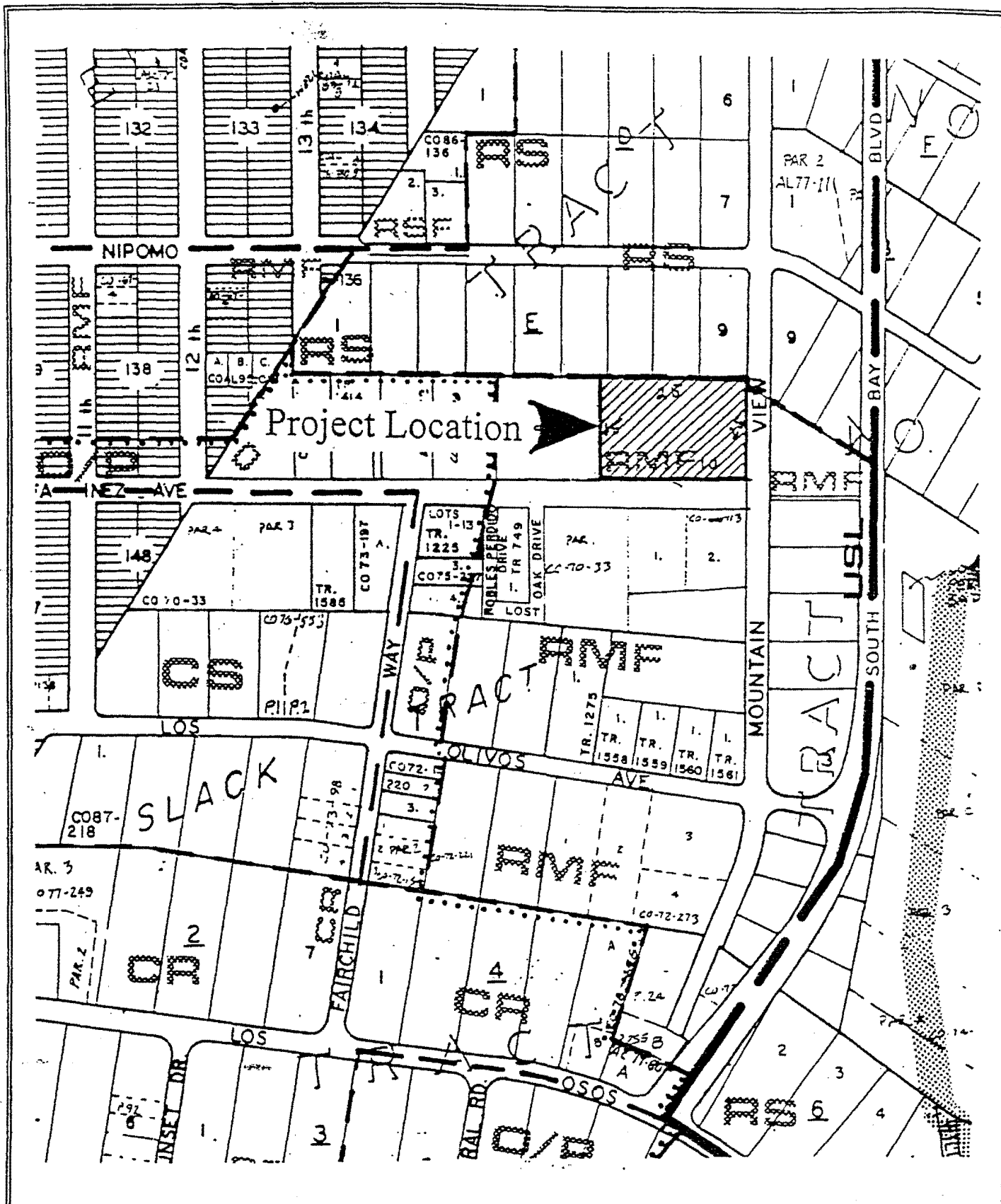
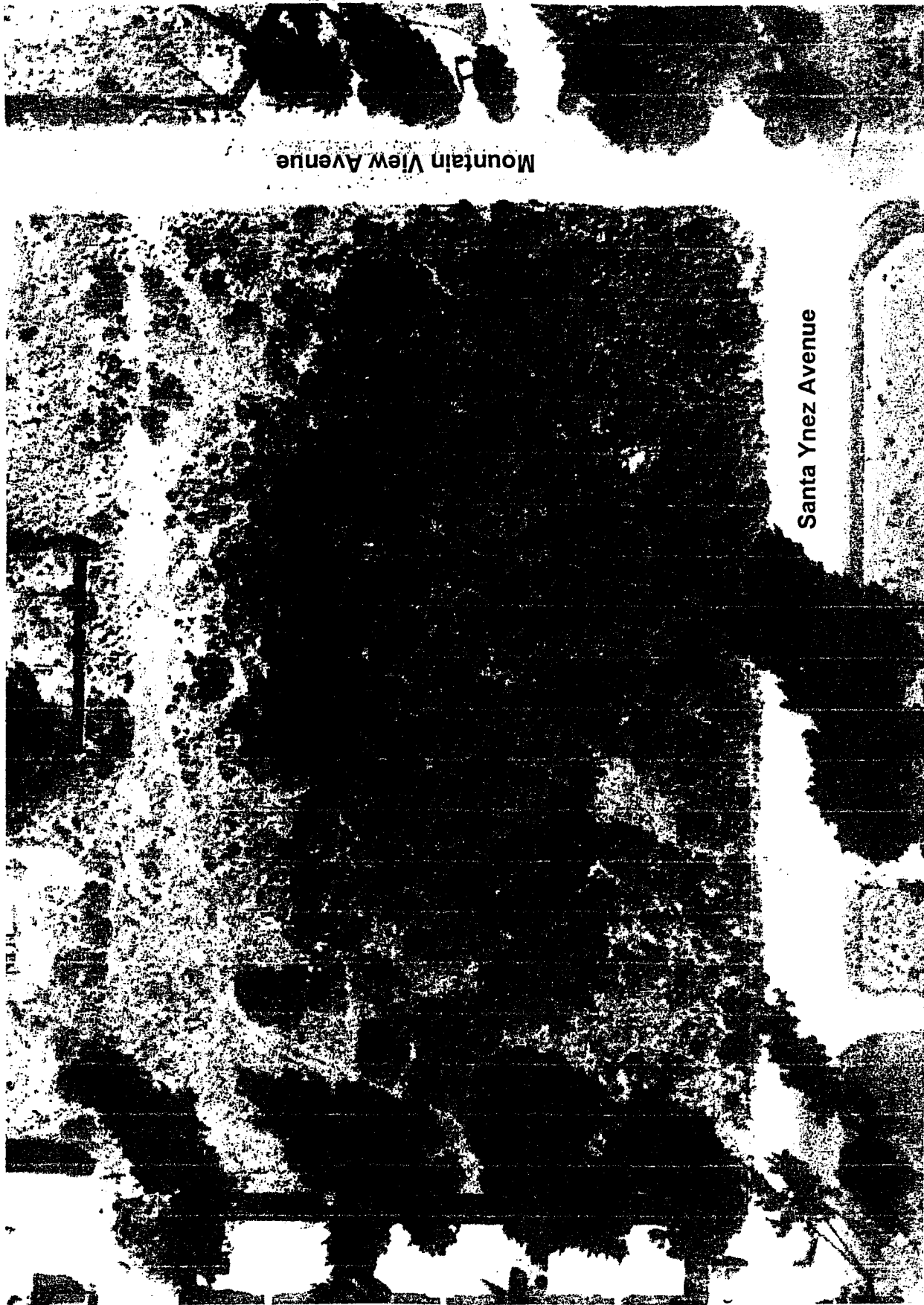


Exhibit B
LAND USE CATEGORY MAP

WRIGHT MINOR USE PERMIT
(D980085P)

Exhibit A
(2 of 3)



Wright Parcel (before vegetation removal and grading)

Exhibit B - Site Photos
(1 of 3)



Wright Parcel (after vegetation removal and grading)

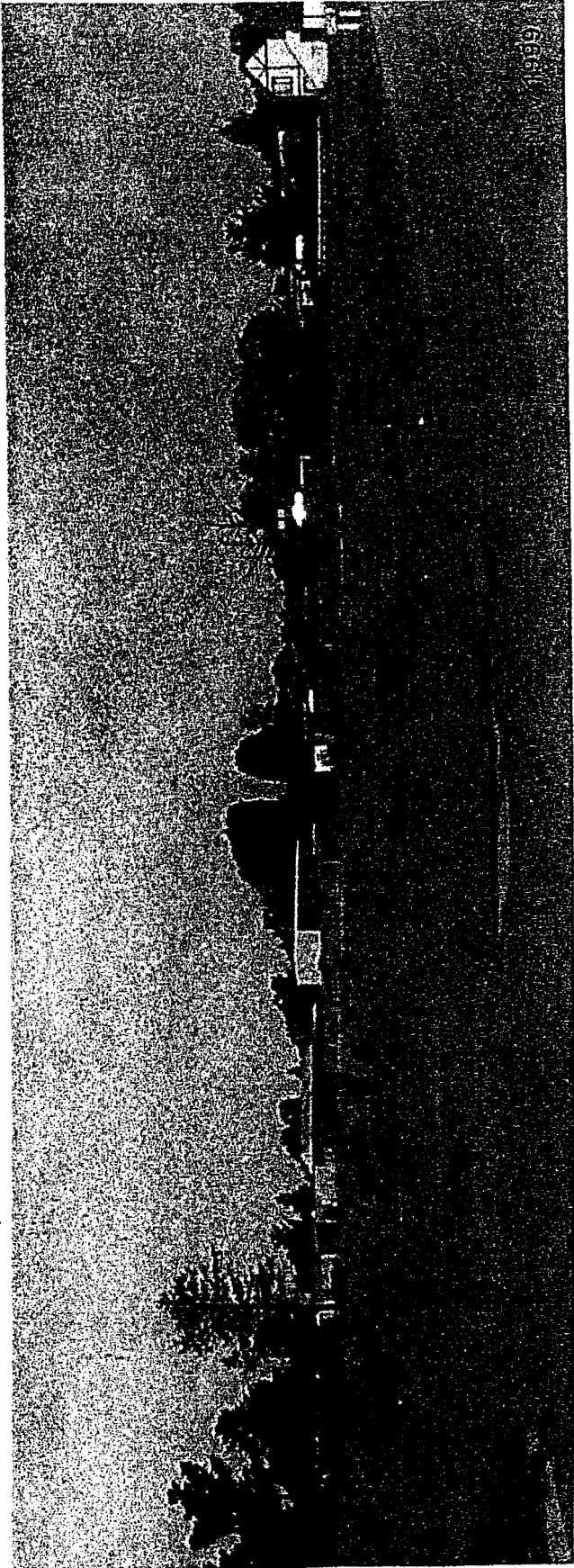
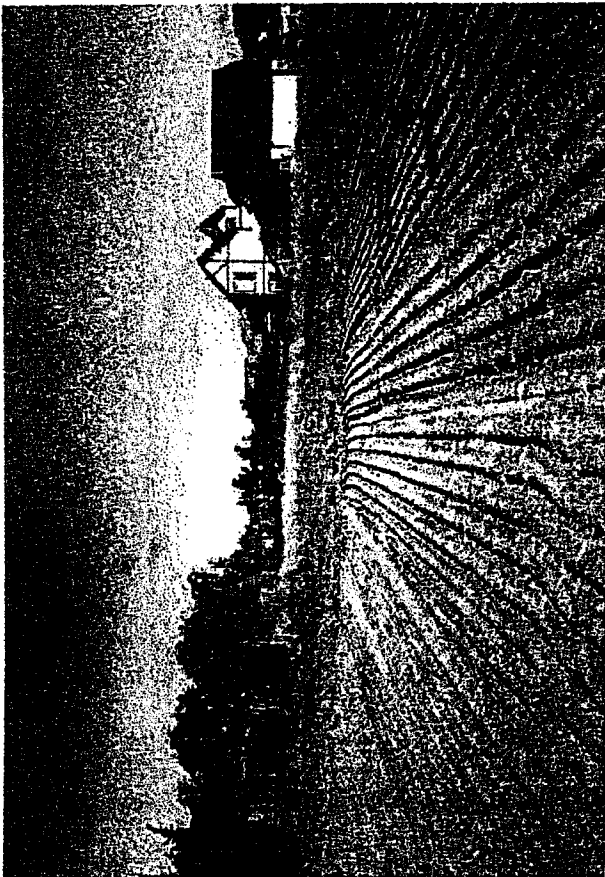


Exhibit B
(2 of 3)



After Grading (looking South)



After Grading (looking North)



After Grading (looking West)

Exhibit B
(3 of 3)

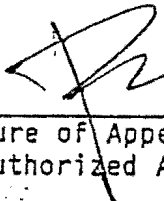
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

(see attached)

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 October 27, 1999

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Exhibit C
(1 of 3)

Date _____

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)

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.

Dave Potter
Signature of Appellant(s) or
Authorized Agent

Date 10/27/99

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Exhibit C
(2 of 3) Date _____

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

27-4863

**Reasons for Appeal: A.J. Wright Storage Facility, Los Osos (San Luis Obispo County Coastal Development Permit D980085P)**

This project involves the construction of a storage facility that would cover almost all of the 3-acre site with buildings and pavement. At least 2.14 acres of the site previously supported coastal scrub vegetation that provided habitat for the Morro shoulderband snail (listed as endangered under the federal Endangered Species Act). All 2.14 acres of this vegetation was removed in 1998 as a result of grading activities that did not receive the required Coastal Development Permit review and approval¹. The after-the-fact approval of this grading, and the authorization to construct a storage facility on this sensitive site, is inconsistent with the following provisions of the San Luis Obispo County Local Coastal Program:

- Policy 1 for Environmentally Sensitive Habitats prohibits new development within environmentally sensitive habitats that would significantly disrupt the resource, and limits new development in such areas to those that are dependent upon the resource. In this case, the project involves a non-dependent use that significantly disrupts habitat for the Morro shoulderband snail, a species listed as endangered under the Federal Endangered Species Act, through the removal of 2.14 acres of coastal scrub habitat.
- Policy 2 for Environmentally Sensitive Habitats requires that new development be consistent with the biological continuance of sensitive habitats, not have a significant adverse impact, and provide the maximum feasible mitigation. In this case, the project involves the removal of 2.14 acres of sensitive coastal scrub habitat that may have a significant adverse impact on rare plants and animals, and may threaten the biological continuance of the Morro shoulderband snail. In addition, the proposed off-site mitigation of acquiring an equivalent amount of potential snail habitat as that removed by the project may not represent the maximum feasible mitigation.
- Coastal Zone Land Use Ordinance (CZLUO) 23.07.164 allows new development in a sensitive resource areas only when certain findings can be made. These include that there will be no significant adverse effect; natural features and topography have been considered in the design and siting; clearing of topsoil, trees, and other features is the minimum necessary; and, soil constraints and drainage have been appropriately addressed. In this case, the project does not minimize the removal of coastal scrub habitat supporting the Morro shoulderband snail.
- CZLUO Section 23.07.176 protects rare and endangered species of terrestrial plants and animals by preserving their habitat, and requires new development to be sited to minimize the disruption of habitat. The proposed project is inconsistent with these requirements because, as noted above, it does not minimize the removal of coastal scrub habitat supporting the Morro shoulderband snail.
- Alternative allowable uses, which have a smaller footprint, appear to be feasible and would better comply with the LCP provisions cited above.

¹ The current project includes mitigation for these impacts through the acquisition of 2.14 acres of potential Morro shoulderband snail habitat off-site.



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

OCT 13 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RECEIVED
FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-SLO-99-148
APPEAL PERIOD 10/14 - 10/27/99

VICTOR HOLANDA, AICP
DIRECTOR

BRYCE TINGLE, AICP
ASSISTANT DIRECTOR

ELLEN CARROLL
ENVIRONMENTAL COORDINATOR

BARNEY MCCAY
CHIEF BUILDING OFFICIAL

PATRICK BRUN
ADMINISTRATIVE SERVICE OFFICER

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: SEPTEMBER 17, 1999

SUBJECT: A. J. WRIGHT/D980085P

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced application was approved on SEPTEMBER 17, 1999 by the Administrative Hearing Officer.

If you are dissatisfied with any aspect of this approval, you have the right to appeal the decision to the Board of Supervisors. The appeal must be filed within 14 days of the date of the decision using the form provided by the Planning Department along with the appropriate fee of \$ 474.00. Appeals may not require a fee if the grounds for appeal are certain coastal related issues (Pursuant to Coastal Zone Land Use Ordinance 23.01.043d). We strongly recommend that you contact the county Department of Planning and Building to obtain the appeal form and information handout explaining the rights of appeal. The appeal to the Board of Supervisors must be made to the Planning Commission Secretary, Department of Planning and Building.

This action is also appealable to the California Coastal Commission pursuant to Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission 10 working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhibit D - County's Decision
(1 of 8)

California Coastal Commission
Exhibit 1 Page 26 of 70

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO • CALIFORNIA 93408 • (805)781-5600 • 1-800-834-4636

EMAIL: ipcoplmg@slonet.org • FAX: (805)781-1242 • WEBSITE: <http://www.slonet.org/vv/ipcoplmg>

Exhaustion of appeals at the County level is required prior to appealing the matter to the California Coastal Commission. The appeal to the California Coastal Commission must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (408) 427-4863 for further information on appeal procedures.

If you have questions regarding your project, please contact your planner, MATT JANSSEN, at (805) 781-5600. If you have any questions regarding these procedures, please contact me at (805) 781-5612.

Sincerely,

Eleanor Porter by pm

Eleanor Porter, Secretary
MINOR USE PERMITS

(Planning Department Use Only)

Date NOFA original to applicant SEPTEMBER 17, 1999

Mailed Hand-delivered

Date NOFA copy mailed to Coastal Commission: October 4, 1999

Enclosed: Staff Report
 Resolution
 Findings and Conditions



DEPARTMENT OF PLANNING AND BUILDING

TENTATIVE NOTICE OF ACTION

APPROVAL DATE: September 17, 1999

SUBJECT: MINOR USE PERMIT D980085P - WRIGHT/MORRO BAY MINI STORAGE

DESCRIPTION OF PROJECT - The proposed project is a request to grade for and construct a mini storage facility. The facility consists of twelve individual buildings, an entrance driveway, and parking on a 3 acre parcel. The project will occur in two phases; each phase equal to approximately half of the total project.

LOCATION OF PROJECT - The project is located on the northwest corner of the intersection of Mountain View Drive and Santa Ynez Avenue, in the community of Los Osos. Supervisorial District No. 2

RELATIONSHIP TO APPLICABLE LAND USE ELEMENT & ORDINANCE POLICIES

Land Use Category: Residential Multiple Family

Combining Des: Local Coastal Plan, Archaeologically Sensitive

Planning Area Standards: Building Design Guidelines (South Bay Urban Area Standards: p8-33)

Land Use Ordinance Standards: Section 23.04.100-(Setbacks)

Section 23.04.166-(Required Number of Parking Spaces)

Section 23.04.186-(Landscape Plans)

Section 23.04.190-(Fencing and Screening)

Section 23.04.310-(Signs Allowed)

Section 23.05.040-(Drainage)

Section 23.05.106-(Curbs, Gutters, and Sidewalks)

Section 23.07.104-(Archaeologically Sensitive Areas)

Section 23.07.120-(Local Coastal Plan)

Section 23.08.402-(Warehousing)

Does the project conform to the Land Use Ordinance Standards: Yes

ENVIRONMENTAL DETERMINATION

A Mitigated Negative Declaration was issued and proposed for the project on July 30, 1999.

RECOMMENDATION
Approval with conditions

Exhibit D
(3 of 8)

DISCUSSION

Environmental Review

The applicant is proposing to construct a mini storage facility consisting of twelve separate buildings, an entrance driveway, and parking on a 3 acre site. The project will occur in two phases; each phase equal to approximately half of the total project.

The project site was the subject of controversy surrounding the issuance of a "stockpile" permit. The applicant received a permit from the County to stockpile soil at the project site. During the placement of soil on the property, approximately 2.14 acres of coastal scrub habitat was lost. The value of the biological habitat at the site was not surveyed prior to the spreading of the soil. However, a biological assessment was performed "after-the-fact" and the site was determined to habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*). This species is listed as endangered under the federal Endangered Species Act.

After several communications with the United States Fish & Wildlife Service (the Service), the applicant has agreed to a mitigation plan for the loss of habitat (see Biological Resources; Conditions of Approval). The mitigation was developed by the Service and put into Developer's Statement by the County Environmental Division. The applicant signed the Developer's Statement and has thereby incorporated the measures into the project description.

The project has resulted in the loss of 2.14 acres of coastal scrub and snail habitat. The mitigation plan for the impacts to the snail habitat includes the purchase of 1.79 acres of potential snail habitat (to be donated to, and managed by, an appropriate agency), and direct financial compensation for the remaining 0.35 acres of area disturbed. The purchase of 1.79 acres, in combination with the direct compensation for an additional 0.35 acres, will result in a 1:1 replacement ratio for the 2.14 acres of coastal scrub and snail habitat lost as a result of the grading for the project.

Approximately 0.15 acres of potential snail habitat on the northern property line of the project site will be maintained in its natural state (this area measures approximately 20' x 300' for a total of approximately 6,000 square feet). This area will be maintained in perpetuity with the recordation of an Open Space Easement with the county.

Planning

The project site fronts on Mountain View Drive. Therefore, the side setback (on Santa Ynez Avenue) needs to comply with the "key" lot setback rule (CZLUO 23.04.110 b,3) which states; *"a corner lot adjacent to a key lot is to be provided a side setback equal to one-half the depth of the required front setback of the key lot..."*. To comply with this section of the Ordinance, the setback on Santa Ynez Avenue will need to be at least 12.5 feet (one-half of 25').

The applicant has indicated several trees are to be planted along the northern boundary line between the buildings and the properties to the north. Normally, this type of landscape "buffer" is required for this type of project. However, because the northern boundary of the property is the area to be preserved for potential snail habitat, no artificial landscaping can occur there. Landscaping will be required for the remaining three sides of the project.

Exhibit D
(4 of 8)

FINDINGS

- A. The proposed project or use is consistent with the land use element of the general plan because the use is an allowable use under Table O of the Land Use Element and is consistent with all other General Plan policies.
- B. The proposed project or use satisfies all applicable provisions of the Title 23 of San Luis Obispo County Code.
- C. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or detrimental or injurious to property or improvements in the vicinity of the use because the project will meet all Ordinance and Building Code requirements designed to address health, safety, and welfare concerns.
- D. That the proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because two mini-storage facilities exist across the street in the Residential Multiple Family land use category in the community of Los Osos.
- E. That the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because Santa Ynez Avenue and Mountain View Drive are capable of carrying the additional traffic generated by this use.
- F. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project is not adjacent to the coast and the project will not inhibit access to coastal waters and recreation areas.
- G. The project design and development incorporates adequate measures to ensure protection of significant archaeological resources.
- H. On the basis of the Initial Study and all comments received, there is no substantial evidence that the project will have a significant effect on the environment.

TENTATIVE DECISION

This tentative decision will become the final action after both the County 14-day appeal period and the Coastal Commission 10-day appeal period have run. This time frame is approximately one month after the date of this staff report.

Report prepared by: Matt Janssen, Environmental Specialist

Exhibit D
(5 of 8)

CONDITIONS OF APPROVAL

Approved Development

1. A mini-storage facility consisting of:
 - a. Twelve one-story buildings (with a maximum height of 16'9") totaling approximately 60,000 square feet,
 - b. An entrance driveway, and
 - c. Fifty-nine total parking spaces (including four standard spaces, one handicapped spaces, and fifty-four parallel short term spaces)

Signs

2. **Prior to the issuance of any construction permits**, the applicant shall prepare a comprehensive sign plan delineating the location and size of all proposed signs for review and approval of the Planning Department. The sign plan shall be in conformance with Section 23.04.310 of the CZLUO. Signing is limited to a maximum aggregate area of 100 square feet.

Landscaping

3. **Prior to the issuance of any construction permits**, the applicant shall submit landscape, irrigation and landscape maintenance plans in accordance with Section 23.04.180 through 23.04.186 of the Coastal Zone Land Use Ordinance to the Planning Department for review and approval. Plans shall include location, species, and container size of all proposed plant materials and method of irrigation. All proposed plant material shall be of a drought tolerant variety and be sized to provide a mature appearance within three years of installation.
4. Landscaping in accordance with the approved plans shall be installed or bonded for **prior to final building inspection**. If bonded for, landscaping shall be installed within 90 days after final inspection of each phase and thereafter maintained in a viable condition on a continuing basis.

Drainage

5. **Prior to the issuance of any construction permit (grading included)**, the applicant shall submit a drainage plan to be reviewed by the Engineering Department.
6. **Curb, gutter, and sidewalk** improvements are to be constructed as required by the Coastal Zone Land Use Ordinance (23.05.106c). Improvements are required along the entire street frontage of the site, and also along the street frontage of any adjoining lots in the same ownership as this site.

Exhibit D
(6 of 8)

Archaeological Resources

7. In the event that archaeological resources are unearthed or discovered during any construction activities, the following standards apply:
 - a. Construction activities shall cease, and the Planning Department shall be notified so that the extent and location of discovered material may be recorded by a qualified archaeologist, and disposition of artifacts may be in accordance with state and federal law.
 - b. In the event archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the County Coroner is to be notified in addition to the Planning Department to the proper disposition may be accomplished.

Fences

8. **Prior to final inspection**, the applicant shall install six foot high fencing or screening along the interior property lines. Fencing within the front setback is limited to three feet in height.

Biological Resources

9. The 2.14 acres of coastal dune scrub/snail habitat shall be replaced at a 1:1 ratio using a combination of the following methods:
 - a. 1.79 acres of property with equivalent habitat value (or potential habitat determined acceptable by the US Fish & Wildlife Service) outside the urban reserve line shall be purchased by the applicant for conveyance to an appropriate public agency or non-profit organization. The property shall be used specifically for the long term preservation of snail habitat. The applicant shall be responsible for habitat restoration and three years of maintenance on this property. A Habitat Restoration Plan shall be prepared and submitted to the US Fish & Wildlife Service for review and approval by the prior to implementation. The Plan shall be prepared by a qualified individual, as approved by the Environmental Coordinator. The applicant shall submit habitat restoration monitoring reports on an annual basis for each of the three years of restoration. These monitoring reports shall be prepared by a qualified individual, as approved by the Environmental Coordinator,

and
 - b. 0.35 acres of habitat will be compensated for by the applicant through direct financial donation to the US Fish & Wildlife Service land acquisition designee. The Service is responsible for determining the amount of the final assessment for financial compensation. These funds will be used by the Service land acquisition designee to purchase property or habitat restoration for the long term preservation of snail habitat.

Exhibit D
(7 of 8)

10. **Prior to issuance of construction permits**, the applicant will record an Open Space Easement over the approximately 0.15 acre area along the northern boundary of the project site not previously graded by the applicant (shown as "area not graded" in Figure 3; Wright Property Biological Assessment/Morro Group; 2/10/99). This area measures approximately 20' x 300' for a total of approximately 6,000 square feet. In addition:
 - a. This area shall remain undisturbed in perpetuity.
 - b. Any use other than undisturbed habitat (or habitat restoration) proposed on the 0.15 acre area shall be subject to review and approval of the US Fish & Wildlife Service.
 - c. Stockpiling, deposition of trash, storage of materials, parking, vehicle turnaround, or any other activity that may result in a take of the Morro shoulderband snail or may adversely affect the ability of the 0.15 acre area to support the snail is prohibited.
11. **During construction activities**, any Morro shoulderband snails that are subsequently found anywhere on the property shall result in all activities on the property being suspended. After discovery, the applicant is responsible for contacting the US Fish & Wildlife Service. The Service will assess any potential impacts and the need for compliance with the Endangered Species Act. The applicant will implement additional mitigation recommended by the Service, as required by the Environmental Coordinator.
12. **Prior to issuance of construction permits**, the applicant will provide adequate evidence that the US Fish & Wildlife Service is satisfied with the methods of mitigation and has received the direct financial habitat compensation for the 0.35 acre portion of the mitigation.

Miscellaneous

13. **Prior to the issuance of any permit**, the applicant shall obtain an encroachment permit from the Engineering Department for all improvements within the right-of-way.

Exhibit D
(8 of 8)



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF THE SOLICITOR
San Francisco Field Office
600 Harrison Street, Suite 545
San Francisco, California 94107-1373



RECEIVED

November 1, 1999

NOV 03 1999

Steve Monowitz
California Coastal Commission
Central Coast Area Office
725 Front St., Suite 300
Santa Cruz, CA 95060

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RE: U.S. Fish and Wildlife Service v. A.J. Wright, INV 107002158 - Settlement Agreement

Dear Mr. Monowitz:

Attached is a copy of the signed settlement agreement in the above-referenced matter. As we discussed on the telephone this morning, the settlement agreement adequately compensates for take of endangered species on the property, and also includes an additional payment in lieu of a civil penalty. We have just learned that the Coastal Commission has some concerns about the proposed project.

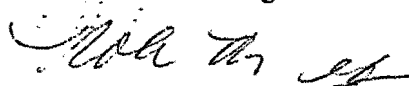
Because Mr. Wright entered into the settlement agreement based upon the understanding that the project would proceed, implementation of the agreement has been delayed pending resolution of issues with the Coastal Commission. It is my hope that such issues can be resolved as quickly as possible so that mitigation can be assured.

If you have any questions, please call me at (415) 427-1465.

Sincerely,

Ralph G. Mihan
Field Solicitor
Pacific Southwest Region

By:


Robin Kohn Glazer
Assistant Field Solicitor

Enclosure

cc: (w/o encl.)
SRA, LE, FWS, Torrance
Field Supervisor, FWS, Ventura

Settlement Agreement
Exhibit E
(1 of 7)

SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE
AND MORRO BAY MINI STORAGE, INC.,
MR. A.J. WRIGHT, VICE PRESIDENT

WHEREAS, Morro Bay Mini Storage, Inc. ("MBMS, Inc."), a Missouri Corporation, is the fee title owner of approximately three acres of property at the intersection of Mountain View Avenue and Santa Ynez Avenue in Los Osos, San Luis Obispo County, California, APN 074-223-004 ("Property"); and

WHEREAS, the Morro shoulderband snail (Helminthoglypta walkeriana) ("Snail"), has been listed as an endangered species under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., 50 C.F.R. Part 17, since December 15, 1994; and

WHEREAS, on July 27, 1998, Mr. A.J. Wright, vice-president of MBMS, Inc., did obtain a permit (B972324-001) from the County of San Luis Obispo authorizing the stockpiling of 100 cubic yards of soil on the Property. Although such permit was listed under the County's "grading permit" category, it did not authorize future grading or vegetation removal; and

WHEREAS, the U.S. Fish and Wildlife Service ("FWS") alleges that on or before August 24, 1998, MBMS, Inc., by and through its agents, employees or officers, including Mr. A.J. Wright, graded and removed vegetation on the Property, thereby causing the take of Snails on the Property in violation of the ESA; and

WHEREAS, the FWS and MBMS, Inc. wish to resolve the current dispute over this alleged violation of the ESA in a timely manner; and

WHEREAS, FWS recognizes that the terms of this Agreement will adequately mitigate any potential past take of the Snail on the Property;

NOW, THEREFORE, IT IS HEREBY AGREED by and between FWS and MBMS, Inc. as follows:

TERMS AND CONDITIONS

1. FWS agrees, based upon MBMS Inc.'s satisfactory completion of this Agreement:

A. Not to pursue the imposition of a civil penalty against MBMS, Inc. in connection with this matter; and

B. To work cooperatively and in good faith with MBMS Inc. the completion of MBMS Inc.'s obligations under this Agreement.

C. To consult pursuant to Section 7 of the ESA, 16 U.S.C. §

Exhibit E
(2 of 7)

1536(a)(2), and prepare, at its own expense, a Biological Opinion ("BO"), that sets forth the terms and conditions for future incidental take of the Snail on the Mitigation Site as a result of implementation of the restoration and monitoring Plan, as defined in Section 2.B.1) and 2) below. Such BO shall be attached, when completed, as Attachment A.

2. In consideration of FWS's agreement not to pursue a civil penalty against MBMS, Inc., MBMS, Inc. agrees to:

A. Pay a settlement amount of \$ 7,000.00 by October 29, 1999, relating to the investigation by FWS law enforcement in this matter (INV 107002158). Payment shall be made by certified check or money order payable to "The U.S. Fish and Wildlife Service." Payment should be sent to:

Office of the Solicitor
600 Harrison Street, Suite 545
San Francisco, California 94107-1373

B. Conduct the following mitigation measures to compensate for loss of the species and its habitat in connection with this matter:

1) Purchase a 1.79 acre site (Block M.1 of the town of El Moro, California; APN 038-721-014) which the FWS has determined to have equivalent habitat value for the Snail ("Mitigation Site"). Convey such Mitigation Site to the California State Parks Department (or another entity acceptable to the FWS) by October 1, 1999. The property shall be used specifically for the preservation in perpetuity of Snail habitat.

2) Conduct habitat restoration and three years of monitoring to FWS on the 1.79 acre Mitigation Site, after preparation of and in compliance with a habitat restoration and monitoring plan ("Plan"). The Plan shall be reviewed and approved by the FWS prior to implementation, shall be consistent with the terms of the BO, and shall include provisions for reporting results of implementation of the Plan to FWS. Access to the Mitigation Site for review of restoration and monitoring efforts shall be granted to the FWS upon request.

3) Comply with the terms and conditions of the BO, which shall include, but not be limited to, a provision ensuring that a qualified biologist provide monitoring of restoration activities and proper education and training to individuals conducting restoration work on the 1.79 acre Mitigation Site.

4) Pay \$ 17,500.00 into an escrow account by October 29, 1999 to be used by the Trust for Public Land (or other entity acceptable to the FWS) for purchase of 0.35 acres or more of habitat to be preserved in perpetuity for the Snail.

5) Record an Open Space Easement over the approximately 0.15 acre ungraded area along the northern boundary of the Property, as required by the County of San Luis Obispo. Such Open Space Easement shall prohibit stockpiling, deposition of trash or other items and use of the area for parking or vehicle turnaround, or any other actions that would result in take of the Snail or would adversely affect the ability of the 0.15 acre area to support the species. Any disturbance to the 0.15 acre area shall be subject to review by the FWS.

3. General Provisions:

A. The effective date ("Effective Date") of this Agreement shall be the date on which all parties have signed the Agreement.

B. If MBMS, Inc. fails to fully perform its obligations under this Agreement, this Agreement may be terminated by FWS, in which event MBMS, Inc. shall be released from any obligation hereunder and FWS may institute formal civil penalty proceedings against Respondent.

C. The provisions of this Agreement shall apply to and be binding upon the parties hereto and their respective successors and assigns.

D. This Agreement is a settlement for potential past take of the Snail on the Property and does not authorize take of the Snail on the Property after the Effective Date of this Agreement.

E. Any notice, delivery or other communication provided for, required or arising under this Agreement shall be in writing and shall be sent to the signatories at the addresses listed below. Correspondence to the FWS shall be sent to:

Field Supervisor
Ventura Field Office
2493 Portola Road, Suite B
Ventura, CA 93003

F. This written Agreement is the final and sole agreement between the parties. Any modifications of this agreement shall be in writing and duly executed by the parties.

G. This Agreement shall be signed in Counterparts.

Date:

9/1/99



Robin Kohn Glazer
Assistant Field Solicitor
U.S. Department of the Interior

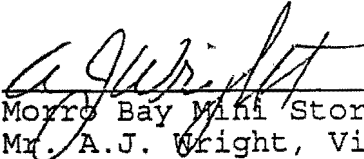
Exhibit E
(5 of 7)

Date:

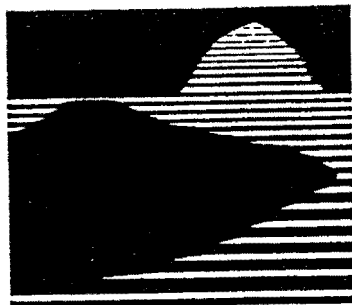
Diane K Noda
Diane Noda
Field Supervisor
U.S. Fish and Wildlife Service
Ventura Field Office

Date:

9-10-99


Morro Bay Mini Storage, Inc.
Mr. A.J. Wright, Vice President
775 Center Court
Morro Bay, CA 93442

**Wright Property
Biological Assessment**



**MORRO
GROUP, INC.**

**ENVIRONMENTAL
SERVICES**

Exhibit F - Biological Assessment
(1 of 18)

2.16.99

**Wright Property
Biological Assessment**

Submitted to:
Mr. A.J. Wright
775 Center Court
Morro Bay, CA 93442

Prepared by:
Morro Group, Inc.
1422 Monterey Street, Suite C200
San Luis Obispo, CA 93401
805/543.7095
Fax/543.2367

Submitted:
February 10, 1999

Exhibit F
(2 of 18)

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I. INTRODUCTION

This biological assessment has been prepared at the request of Mr. A.J. Wright of Morro Bay, California. Mr. Wright contacted Morro Group, Inc. to prepare a biological assessment on a parcel located in the community of Los Osos in order to fulfill a requirement set forth by the County of San Luis Obispo Department of Planning and Building. The County requested the assessment upon learning the subject parcel had been cleared several months previous by Mr. Wright under a previously issued "stockpiling" permit and as part of the processing of a current land use permit request for a mini-storage facility.

The property is located within a known biologically sensitive region and known habitat for sensitive and endangered species such as the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*). Prior to clearing under the stockpiling permit, the property consisted of an unknown quantity of coastal dune scrub which is habitat for the Morro shoulderband snail. This biological assessment is an "after-the-fact" assessment of biological resources and has been prepared based primarily on the review of an aerial photograph of the project site. Additionally, two field visits were conducted by Morro Group biologists to assess and analyze an area of the subject property not cleared under the stockpiling permit. Morro Group also conducted interviews with Ms. Kate Symonds of the United States Fish and Wildlife Service (USFWS) and Mr. Bill Talkin (USFWS Special Investigator), and the property owner in order to piece together information regarding the extent of biological resources located on the subject parcel.

A. Project Location

The subject property is located at the northwest corner of Santa Ynez Avenue and Mountain View Drive in the community of Los Osos (refer to Figures 1 and 2). The site was and is relatively level and consists of a loamy sand soil characteristic to old dunes. A majority of the 3-acre site is currently void of vegetation (approximately 2.84 acres) with the exception of an approximate 0.15 acre area that forms a strip along the entire northern boundary of the site (refer to Figures 3 and 4).

B. Project Background

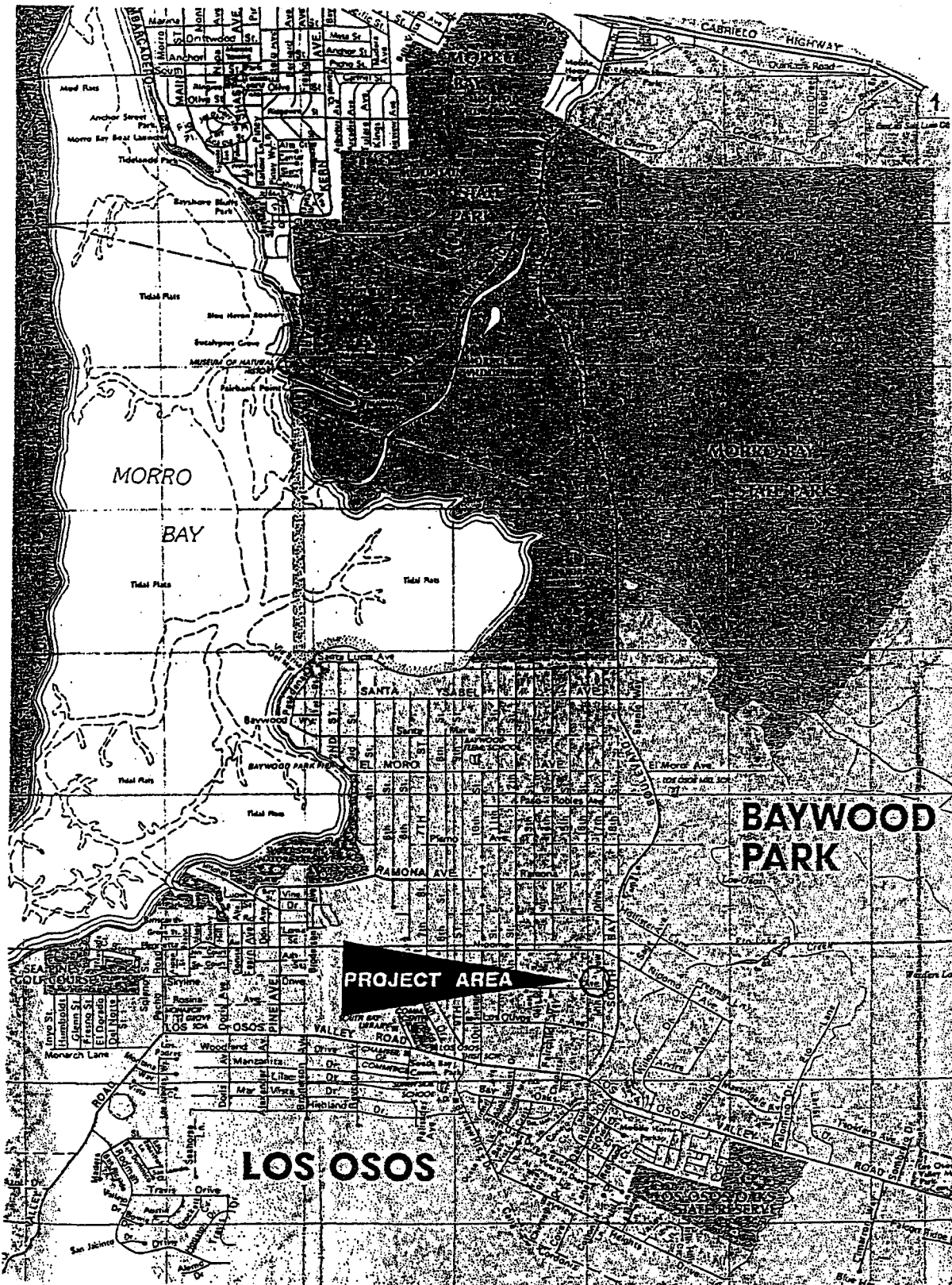
As described above, Mr. Wright cleared the property of central coastal scrub upon receiving a stockpiling permit from the County of San Luis Obispo. Subsequently, he applied for a Minor Use Permit to construct a mini-storage facility on the subject property. During the later permit process, the County Department of Planning noted removal of coastal dune scrub habitat and specifically, removal of habitat for the endangered Morro shoulderband snail.

When potential impacts to endangered species are proposed to occur as a result of a project or if they occur without a permit, the issue of appropriate forms of mitigation for impacts to the species falls within the authority of the USFWS. The USFWS is the implementing agency for the Endangered Species Act (ESA). Additionally, if impacts to endangered species occur prior to

issuance of an ESA permit, the USFWS will conduct an investigation into the issue of whether impacts to endangered species occurred knowingly or whether it was a case of an uninformed mistake. The outcome of such an investigation has a bearing on the form and level of mitigation required for impacts to the snail. Currently, an investigation is being conducted by the USFWS into events surrounding un-permitted impacts to the Morro shoulderband snail on the subject property.

Through phone conversations with those involved in review of the project site shortly after clearing (i.e., the above referenced USFWS representatives), Morro Group learned that Morro shoulderband snail shells had been found on the site after clearing had occurred. Additionally, Morro Group biologists noted presence of a live *H. walkeriana* near a remnant brush and soil pile located near the northwest corner of the site.

It is clear that the subject property supported suitable habitat for the endangered Morro shoulderband snail. However, it is unclear as to the quantity of habitat that was present on the site prior to clearing for stockpiling purposes. The primary purpose of this biological assessment is to determine the quantity of habitat that may have been present so that appropriate recommendations for mitigation of endangered species impacts can be made by the appropriate regulatory agency (i.e., USFWS).



WRIGHT BIOLOGICAL ASSESSMENT

Project Vicinity Map
 Source: Compass Maps

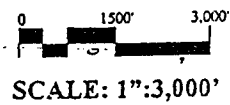
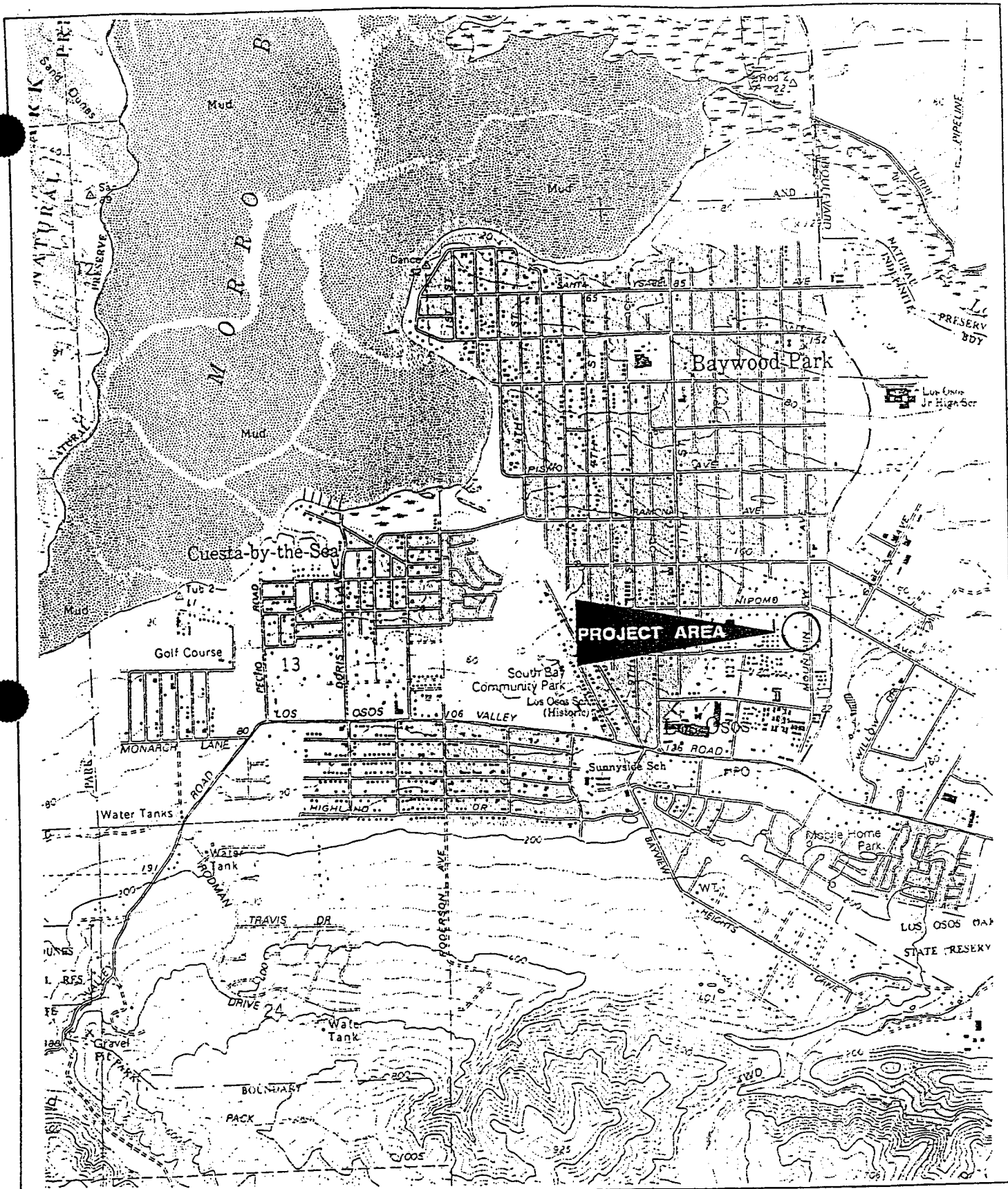


Figure 1



Exhibit F
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WRIGHT BIOLOGICAL ASSESSMENT

Figure 2

Project Location Map
 Source: USGS, Morro Bay South Quadrangle



SCALE: 1:24,000

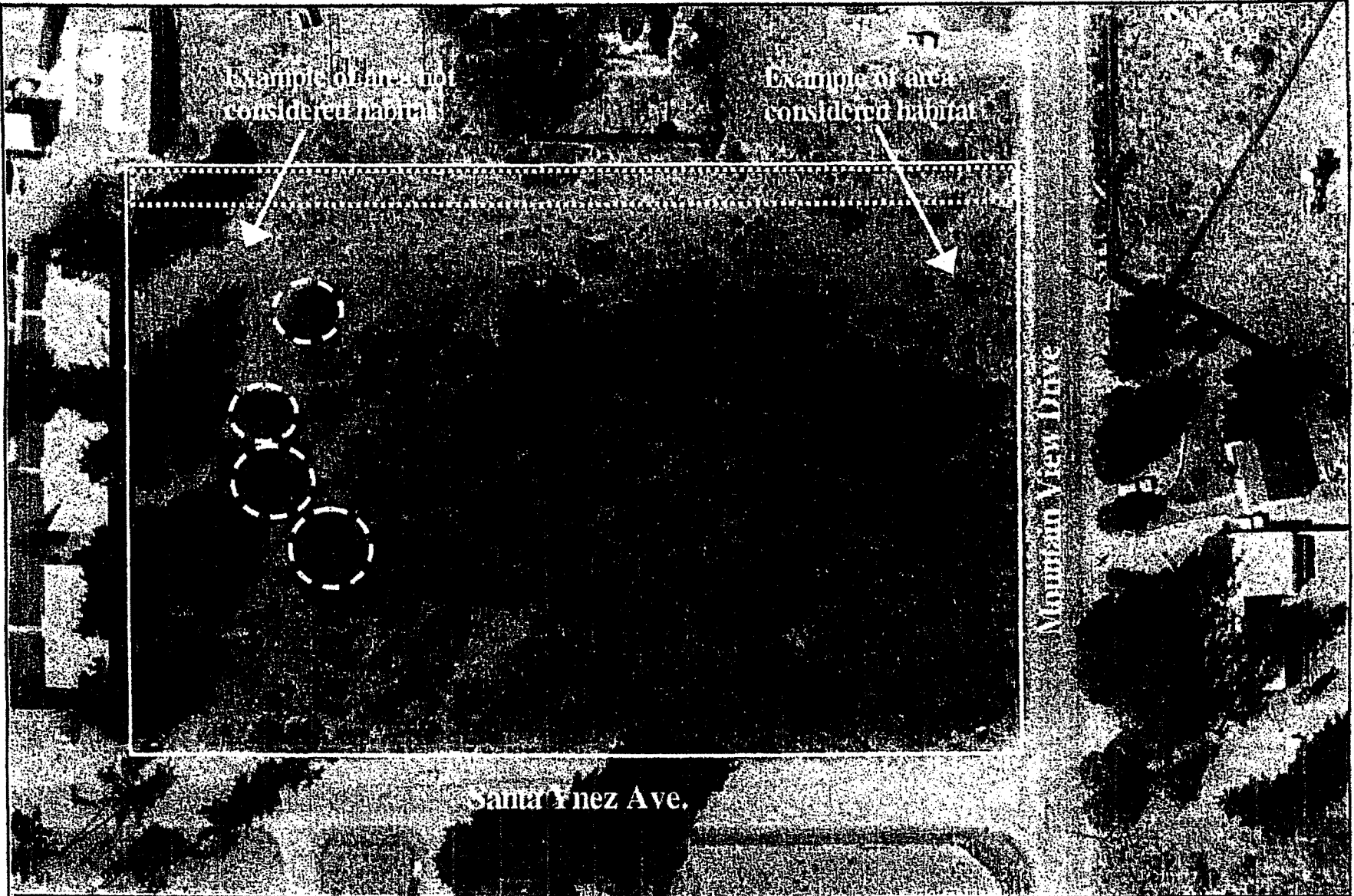





NORTH

Exhibit F
 (7 of 18)

Exhibit F
(8 of 18)

California Coastal Commission
Exhibit 1 Page 48 of 70



	Property Line
	Area not graded
	Oak Tree Canopy

WRIGHT BIOLOGICAL ASSESSMENT

Aerial Photo: Golden State Aerial Surveys
Photo Date: October 13, 1995
Scale: 1" = Approx. 75'



FIGURE 3



Photo No. 1:
Project site, viewing
in a southwesterly
direction. Ungraded
portion of the site
located in lower left
corner of the photo
with cleared area of
site located in back-
ground. Photo taken
January 21, 1999.

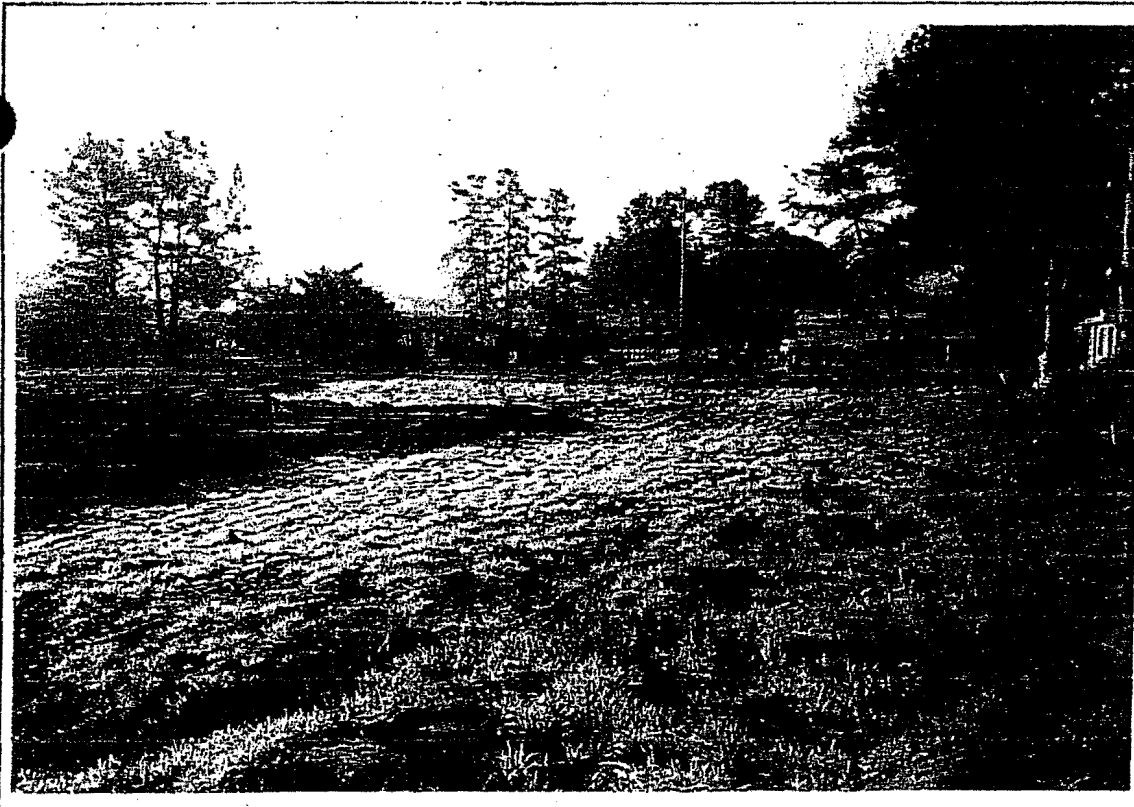


Photo No. 2:
Project site, photo
taken from north-
west corner of the,
viewing south.
Note stockpiled soil
located in left of
photo. Photo taken
January 21, 1999.

FIGURE 4
WRIGHT BIOLOGICAL ASSESSMENT

Project Site Photos

California Coastal Commission
Exhibit 1 Page 49 of 70

Exhibit F
(9 of 18)

II. ENVIRONMENTAL SETTING

Due to fact the property had been cleared prior to conducting the biological assessment, Morro Group's primary task was to make a "most accurate estimate" of the quantity and composition of central coastal scrub habitat which existed on the site prior to clearing. An analysis of the aerial photo shown in Figure 3 was made to piece together the probable extent and quantity of previous habitat present on the site. Previous biological assessments conducted on nearby parcels were used as qualitative data for the subject parcel's biological resource composition. The following is a description of the likely vegetative and wildlife composition prior to clearing.

A. Vegetation

Several vegetation types and plant associations may have been identified within the subject property and are illustrated in Figure 3. The following discussion focuses only on those plant communities thought to have been located within the subject property that are considered sensitive or have potential to provide important habitat for various special-status species identified in this section. The major plant communities likely identified within the subject property and characterized in this section includes central coastal scrub.

1. Central Coastal Scrub

Of the natural vegetation appearing in photographs of the property, a majority could be classified as **central coastal scrub**, based on community structure and composition (Holland, 1986). An example of this habitat can still be found on the subject property along the northern boundary. As illustrated in Figure 3, central coastal scrub within the vicinity of the property was most well-developed in the southern and central areas of the site. The structure and composition of this community was likely highly variable, however, in most areas it appears that coyote brush (*Baccharis pilularis*) occurred as the dominant species, and often occurred as the sole shrub species within the community. In areas dominated by this species, the canopy cover was moderately closed, and shrub height was typically over 2 meters. Other species that likely occurred on the site are dune lupine (*Lupinus chamissonis*), California poppy (*Eschscholzia californica* var. *californica*), wedgeleaf horkelia (*Horkelia cuneata* ssp. *cuneata*), cudweed-aster (*Lessingia filaginifolia*), California coffeeberry (*Rhamnus californica*), black sage (*Salvia mellifera*), chamise (*Adenostoma fasciculatum*), and heather goldenbush (*Ericameria ericoides*).

In addition, the property owner has stated that there had been seven coast live oaks on the property of approximately 4 inches in diameter. The location of the canopy of these oaks is shown on Figure 3.

Some portions of the central coastal scrub communities of the subject property appear to exhibit low species diversity and may have contained substantial coverage of veldt grass (*Ehrharta calycina*), an invasive exotic plant species. In some locations, veldt grass may have occurred as the sole or dominant species.

B. Wildlife

Natural habitats of the subject property likely provided suitable habitat for a variety of vertebrate species, and may have been frequented by various species. Larger mammals such as raccoon (*Procyon lotor*) and opossum (*Didelphis virginiana*) may have visited the property on periodic basis for foraging purposes. Central coastal scrub communities of the property likely supported a variety of small mammal species such as Botta's pocket gopher (*Thomomys bottae*), California mouse (*Peromyscus californicus*), and western harvest mouse (*Reithrodontomys megalotis*). Bird species that are expected to have occurred in, or frequented, central coastal scrub habitats of the subject property included California towhee (*Pipilo crissalis*), rufous-sided towhee (*Pipilo erythrophthalmus*), white-crowned sparrow (*Zonotrichia leucophrys*), wrentit (*Chamaea fasciata*), California thrasher (*Toxostoma redivivum*), and scrub jay (*Aphelocoma coerulescens*). Lizards such as western fence lizard (*Sceloporus occidentalis*) and southern alligator lizard (*Gerrhonotus multicarinatus*) are also expected to have occurred within coastal scrub and adjacent grassland habitats of the property.

Raptors, such as red-tailed hawk (*Buteo jamaicensis*), white-tailed kite (*Elanus caeruleus*), barn owl (*Tyto alba*), and American kestrel (*Falco sparverius*), commonly use open grassland areas extensively for foraging purposes, and although open grassland habitats of the subject property were limited, raptors such as these would have been expected to forage within various habitats of the property on a periodic basis.

C. Special-Status Species

Special-status species are plants and animals that are either listed as endangered or threatened under the Federal or California Endangered Species Act, considered rare under the California Native Plant Protection Act, or considered rare (but not legally listed) by resources agencies, professional organizations, and the scientific community. For the purposes of this biological resources assessment, special-status species are defined below in Table 1.

Table 1. Definitions of Special-Status Species

Special-Status Plant Species

- Plants listed or proposed for listing as threatened or endangered under the Federal Endangered Species Act (50 CFR 17.12 for listed plants and various notices in the Federal Register for proposed species).
- Plants that are Category 1 candidates for possible future listing as threatened or endangered under the Federal Endangered Species Act (55 CFR 6184, February 21, 1990).
- Plants that meet the definitions of rare or endangered species under the CEQA (*State CEQA Guidelines*, Section 15380).
- Plants considered by the CNPS to be "rare, threatened, or endangered" in California (Lists 1B and 2 in Skinner and Pavlik, 1994).
- Plants listed by CNPS as plants about which we need more information and plants of limited distribution (Lists 3 and 4 in Skinner and Pavlik, 1994).
- Plants listed or proposed for listing by the State of California as threatened or endangered under the California Endangered Species Act (14 CCR 670.5).

Table 1 (con't.). Definitions of Special-Status Species

- Plants listed under the California Native Plant Protection Act (California Fish and Game Code 1900 et seq.).
- Plants considered sensitive by other federal agencies (i.e., U.S. Forest Service, Bureau of Land Management), state and local agencies or jurisdictions.
- Plants considered sensitive or unique by the scientific community or occurring at the limits of its natural range (*State CEQA Guidelines*, Appendix G).

Special-Status Wildlife Species

- Animals listed or proposed for listing as threatened or endangered under the Federal Endangered Species Act (50 CFR 17.11 for listed animals and various notices in the Federal Register for proposed species).
- Animals that are Category 1 candidates for possible future listing as threatened or endangered under the Federal Endangered Species Act (54 CFR 554).
- Animals that meet the definitions of rare or endangered species under the CEQA (*State CEQA Guidelines*, Section 15380).
- Animals listed or proposed for listing by the State of California as threatened and endangered under the California Endangered Species Act (14 CCR 670.5).
- Animal species of special concern to the CDFG (Remsen, 1978 for birds; Williams, 1986 for mammals).
- Animal species that are fully protected in California (California Fish and Game Code, Section 3511 [birds], 4700 [mammals], and 5050 [reptiles and amphibians]).

The Federal Endangered Species Act (ESA) of 1973 (50 CFR 17) provides legal protection for plant and animal taxa that are in danger of extinction, and classified as either threatened or endangered under the ESA. The ESA requires Federal agencies to make a finding on all Federal actions, including the approval by an agency of a public or private action, such as the issuance of a Corps permit under Section 404 of the Clean Water Act, as to the potential to jeopardize the continued existence of any listed species potentially impacted by the action. Section 9 of the ESA prohibits the "take" of any member of a species listed as threatened or endangered.

Based on information obtained through review of existing literature and previous searches of the CNDDB, a preliminary list was compiled of special-status species that had the potential to occur in the vicinity of the subject property. Table 2 identifies the name and legal status of special-status species either reported from the general vicinity or those species expected to have occurred within the property based on the presence of suitable habitat.

Table 2. Special-Status Plants and Animals Reported From
the Vicinity of the Wright Property

<u>Scientific Name</u>	<u>Common Name</u>	<u>Legal Status^a</u> Federal/State/Other
<u>Plants</u>		
<i>Arctostaphylos cruzensis</i>	Arroyo de la Cruz manzanita	SSC/--/CNPS List 1B
<i>Arctostaphylos morroensis</i>	Morro manzanita	FT/--/CNPS List 1B
<i>Chorizanthe pungens</i> var. <i>pungens</i>	Monterey spineflower	FT/--/CNPS List 1B
<i>Erigeron blochmaniae</i>	Blochman leafy daisy	--/--/CNPS List 1B
<i>Erysimum capitatum</i> ssp. <i>lompopense</i>	San Luis Obispo wallflower	--/--/CNPS List 4
<i>Monardella undulata</i>	Curly- leaved monardella	--/--/CNPS List 4
<i>Prunus fasciculata</i> var. <i>punctata</i>	Sand almond	--/--/ CNPS List 4
<u>Wildlife</u>		
<i>Helminthoglypta walkeriana</i>	Morro shoulderband snail	FE/--/--
<i>Icaricia icariodes</i> ssp. <i>moroensis</i>	Morro blue butterfly	SSC/--/--
<i>Anniella pulchra</i> ssp. <i>nigra</i>	Black legless lizard	FPE/CSC/--
<i>Dipodomys heermanni</i> ssp. <i>moroensis</i>	Morro Bay kangaroo rat	FE/SE/--

Status Codes:Plants:

SSC: Federal Species Special Concern
- Former candidate species.

California Native Plant Society (CNPS):

List 1B = rare, threatened, or endangered in California and elsewhere.
List 4 = plants of limited distribution - a watch list.

Wildlife:

ST: State-listed threatened
CSC: California State Species of
Special Concern
SSC: Federal Species of Special
Concern - Former candidate
species

*: Species that are biologically rare, restricted in distribution, declining throughout their range, or closely associated with a habitat that is declining throughout California.

1. Plants

Based on results of the literature and field surveys, several species were determined to have had the potential to occur within the general vicinity of the Wright property. However, field surveys could not be conducted and associated occurrences within property boundaries could not be confirmed. The distribution, preferred habitats, and potential for occurrence of various identified special-status species are described below.

a. Arroyo de la Cruz manzanita (*Actostaphylos cruzensis*)

Arroyo de la Cruz manzanita occurs in a variety of habitats including, but not limited to, chaparral, and coastal scrub communities (Skinner and Pavlik, 1994). This species is documented as occurring in the vicinity of Hollister Peak, along Los Osos Mesa, and in Montana de Oro State Park. It is not expected that coastal scrub communities of the subject property could have supported individuals of this species.

b. Morro manzanita (*Arctostaphylos morroensis*)

Morro manzanita occurs in chaparral, cismontane woodland, coastal dune, and coastal scrub communities (Skinner and Pavlik, 1994). This species has been documented as occurring in scattered locations extending from Morro Bay to Hazard Canyon. It is not expected that coastal scrub communities of the subject property could have supported individuals of this species.

c. Monterey spineflower (*Chorizanthe pungens* var. *pungens*)

This annual herb occurs primarily in coastal dune and coastal scrub communities (Skinner and Pavlik, 1994). Monterey spineflower has been reported from various locations within the Morro Bay and Los Osos areas, including an undeveloped property located in the vicinity of the property (Fugro West, Inc., 1997). It is expected that coastal scrub communities of the subject property could have supported individuals of this species.

d. Blochman leafy daisy (*Erigeron blochmaniae*)

This perennial herb occurs in coastal dune habitats of Santa Barbara and San Luis Obispo counties (Skinner and Pavlik, 1994). Blochman leafy daisy has been reported from a variety of areas along the southern end of Morro Bay, including the undeveloped property located directly southeast of the subject property. It is expected that coastal scrub habitats of the subject property could have supported individuals of this species.

e. San Luis Obispo wallflower (*Erysimum capitatum* spp. *lompocense*)

This perennial herb occurs in chaparral and coastal scrub communities located on sandy substrates (Skinner and Pavlik, 1994). San Luis Obispo wallflower has been reported from scattered locations throughout the Los Osos and Baywood park areas (Fugro West, Inc., 1997). The typical flowering period of this species is February through May. It is expected that coastal scrub habitats of the subject property could have supported individuals of this species.

f. Curly-leaved monardella (*Monardella undulata*)

Curly-leaved monardella is an annual herb that occurs in a variety of habitats including chaparral, coastal dune, and coastal scrub (Skinner and Pavlik, 1994). Within San Luis Obispo County, this species has been reported in various locations from the southern side of Morro Bay to Price Canyon (Fugro West, Inc., 1997). It is expected that coastal scrub habitats of the subject property could have supported individuals of this species.

g. Sand almond (*Prunus fasciculata* var. *puncatata*)

Sand almond is a deciduous shrub that occurs in maritime chaparral, cismontane woodland, coastal dune, and coastal scrub communities with sandy substrates (Skinner and Pavlik, 1994). Within San Luis Obispo County, sand almond primarily occurs along the south side of Morro Bay and on the Nipomo Mesa. It is expected that coastal scrub habitats of the subject property could have supported individuals of this species.

2. Wildlife

a. Morro shoulderband snail (*Helminthoglypta walkeriana*)

The Morro shoulderband snail is restricted to sandy soils of coastal dune and coastal scrub communities near Morro Bay. In 1985 Roth found that the geographic limits of this species generally coincided with the limits of stabilized, vegetated, dune habitats located east, southeast, and south of Morro Bay. Morro shoulderband snail has been found to be closely associated with several species of shrubs including mock heather (*Ericameria ericoides*), seaside golden yarrow (*Eriophyllum staechadifolium*), deerweed (*Lotus scoparius*), sand almond, and with the introduced ice plant; however, Morro shoulderband snail is found most frequently within mock heather (Roth 1985). Other plants that commonly occur in areas occupied by this species include black sage, dune buckwheat (*Eriogonum parvifolium*), California sagebrush, dune lupine, and croton (Roth, 1985). Typically, shrubs where live snails have been found exhibit a dense, low growth structure and have ample contact with the ground.

Coastal scrub communities of the subject property contained habitat considered suitable for the federal endangered Morro shoulderband snail. During the field survey of the Wright property, numerous empty shells of Morro shoulderband snail were found within cleared areas and a live snail was observed within the brush and soil pile on the northwest corner of the parcel.

b. Morro blue butterfly (*Icaricia icariodes* ssp. *moroensis*)

The Morro blue butterfly has been documented as occurring within the Los Osos area, in association with its host plant, the dune lupine. Although there have been conflicting accounts regarding this butterfly's status within the area, recent studies document sightings of Morro blue butterfly on dune lupine within the vicinity of the Wright property (Fugro West, Inc., 1997). Coastal scrub communities once found on the subject property are therefore expected to have provided potentially suitable habitat for this species of butterfly.

c. Black legless lizard (*Anniella pulchra nigra*)

The black legless lizard primarily occurs in areas containing sandy or loose organic soils, where abundant leaf litter is present. In addition, this subspecies is most frequently found in areas where dune lupine and heather goldenbush occur as dominant plants (CNDDDB, 1995). The black legless lizard is very secretive in its habits, foraging primarily at the base of shrubs and just below the surface of leaf litter or sandy soil substrate (Zeiner et al., 1988). Little is known about the status and distribution of this lizard within the vicinities of Los Osos and Morro Bay. Based on the absence of information regarding the distribution of this species, it should be assumed that black legless lizard could have occurred in coastal scrub habitats located in the vicinity of the Wright property.

d. Morro Bay kangaroo rat (*Dipodomys heermanni* ssp. *moroensis*)

Suitable habitat for the Morro Bay kangaroo rat consists of Coastal Dune Scrub or Coastal Sage Scrub habitats occurring on a sandy soil substrate. Within areas considered to contain optimum

habitat for Morro Bay kangaroo rat, characteristic shrubs rarely exceed three feet in height (Roest, 1982).

A survey of parcels located in the vicinity of the subject property was conducted by Michael O'Farrel in 1996, in addition to several other sites located in the vicinity. Surveys yielded no capture or sign of kangaroo rat. In addition, O'Farrel (1996) indicated that all sites surveyed are no longer suitable for occupation by the species due in part to site conditions being consistent with habitat that has reached seral conditions, and to the sites' close proximity to existing development. Based on the result of the identified survey at the adjacent sites, the likely composition of natural vegetation once found at the subject property, and the density and height of the shrubs once present on site, it is expected that occurrence of Morro Bay kangaroo rat within the site was unlikely.

III. IMPACTS

It has been established, based on aerial photo review, personnel accounts and an after-the-fact review of the site, that the subject property once consisted of central coastal scrub. The quantity of scrub was determined through review of a low level aerial photograph and verification of aerial findings through comparison to the un-graded portion of the project site. A discussion of results of this analysis are as follows:

A. Aerial Photo Review Considerations and Results

The key component of this analysis was review of an aerial photograph of the project site, taken in October 1995. The scale of the photograph is approximately 1" = 75' and is shown in Figure 3. The aerial photograph provided is the only tool available in determining the quantity of central coastal scrub existing prior to clearing. A shrub-by-shrub analysis of the quantity of habitat shown in the aerial was determined to be infeasible due to the following factors:

- Several large Monterey pine trees along the western boundary (off-site) form 0.22 acre of shadows on the ground in the western portion of the photo. It is impossible to determine the type of vegetative cover located in this area prior to clearing.
- Several oak trees existed on the site prior to clearing. Although Morro shoulderband shells have been noted in oak duff in other occasions, this is not usually considered suitable habitat due to the lack of central coastal scrub habitat below the oak canopy.
- The aerial photograph was taken on October 13, 1995, near the end of the dry season. Some areas on the photo appear to consist of small coastal scrub bushes but are difficult to identify due to the faded grey-green or dark appearance of the scrub which occurs at this time of year. Additionally, in late summer remaining leaves can become partially covered in dust which disguises the true color of small, isolated shrubs and plants as seen from an aerial photo.

- It is possible that because the photo was taken three years before clearing occurred, the vegetation may have changed to a certain degree. Previous wet winters could have added to the plant diversity or density; whereas, increased foot traffic or other uses may have contributed to the reduction of habitat shown in the photo.
- The resolution of the photo is not high quality and the graininess contributes to the challenge of identifying central coastal scrub. This is an important factor in that for species such as the Morro shoulderband snail, one bush can be considered habitat.

Therefore, a more generalized approach was taken and based on the above factors, estimates of habitat quantity have been made within a range. The results of this analysis are as follows:

B. Results

The subject property totals 2.99 acres of which an approximate 0.15 acre strip along the northern boundary was not cleared (refer to Figure 3). The 0.15 acre strip was not included in the aerial photo habitat analysis. It is the opinion of the Morro Group that of the remaining 2.84 acres of cleared land, approximately 75% (+/- 5%) consisted of central coastal scrub. Seventy-five percent, plus or minus five percent equates to a range of 1.99 to 2.27 acres.

For the sake of comparison, of the remnant 0.15 acre portion of the parcel left undisturbed, approximately 20% would be considered central coastal scrub.

IV. MITIGATION MEASURE RECOMMENDATIONS

Prior to initiation of this report, the County of San Luis Obispo stated a need for mitigation measure recommendations associated with impacts to biological resources located on the subject property prior to clearing. The primary impact associated with the clearing has been described above as the removal of central coastal scrub and associated impacts to the endangered Morro shoulderband snail. Secondary impacts requiring mitigation would be the impacts to removal of oak trees.

Due to the fact that the USFWS is currently conducting an investigation into whether Mr. Wright had previous knowledge of the presence of endangered species habitat on the subject prior to conducting clearing operations, Morro Group is not in a position to recommend mitigation measures pertaining to these impacts. The USFWS states that the level of mitigation eventually required by their agency under the ESA will depend to a large extent on the results of the investigation. Therefore, with respect to Morro shoulderband snail and central coastal scrub impacts, the County should condition the proposed project to implement measures recommended by the USFWS. Impacts to oak trees should be mitigated by applying standard County mitigation ratios and implementation measures.

VII. REFERENCES

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- Zeiner, David C., William Laudenslayer, Jr., and Kenneth E. Mayer, editors. 1990. California's Wildlife Volume II: Birds. California Department of Fish and Game. Sacramento, California.

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- Symonds, Kate. January 1999. United States Fish and Wildlife Service. Biologist. Ventura, CA.
- Talkin, Bill. January 1999. Department of the Interior: US Fish and Wildlife Service, Division of Law Enforcement.

1G/CL/LL/SM



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

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FEB 02 2000
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CALIFORNIA
CALIFORNIA
COMMISSION
CENTRAL COAST AREA

California Coastal Commission
CENTRAL COAST DISTRICT OFFICE
725 Front Street, Suite 300
Santa Cruz, CA 95060

VICTOR HOLANDA, AICP
DIRECTOR

BRYCE TINGLE, AICP
ASSISTANT DIRECTOR

ELLEN CARROLL
ENVIRONMENTAL COORDINATOR

BARNEY MCCAY
CHIEF BUILDING OFFICIAL

PATRICK BRUN
ADMINISTRATIVE SERVICE OFFICER

Attention: Steve Monowitz

Subject: A.J. Wright/Main Mini-Storage, Los Osos

Dear Mr. Monowitz,

I understand your office is reviewing the above referenced project. An element of the project includes an "as built" permit for certain site preparation and grading that occurred prior to being reviewed by your office. I looked into the facts surrounding the subject matter and concluded the following: On, or about July, 27th 1998 Mr. Wright was issued construction permit #B972324 for grading and stockpiling of 100 cubic yards of soil at the Northwest corner of Santa Ynez Avenue and Mountain View Drive in Los Osos. The site preparation began shortly following the permit issuance which initially included the clearing or grubbing of an area for the fill material. Other site work included the removal of substantial quantities of debris such as discarded furniture, couches, appliances, dozens of tires and miscellaneous trash.

As the site work commenced, Gordy Owen, the building and grading inspector, was asked by Mr. Wright if the entire site could be grubbed while the contractor was mobilized. The reply from the inspector was that he didn't see any problem in preparing the site to that extent. Mr. Wright believed that this was proper authorization to perform the work that was completed.

Mr. Wright has processed many permits through our department over the last 20 years and I have found him to be straightforward during the permit process and subsequent inspections. It is my opinion that this situation seems to be the result of a misunderstanding by the inspector rather than an overt disregard for county regulations by Mr. Wright.

Sincerely,

Barney McCay

Barney McCay
Chief Building Official

EXHIBIT NO. G
APPLICATION NO. A-3-SLO-99-83
Letter from County



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

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APR 17 2000

April 13, 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Steve Monowitz
California Coastal Commission
Central Coast Area Office
725 Front Street, Suite 300
Santa Cruz, California 95060

Subject: Settlement Agreement with Morro Bay Mini Storage, Inc.

Dear Mr. Monowitz:

We are responding to a series of questions that you have raised regarding issues involving the storage facility proposed by Morro Bay Mini Storage, Inc. (MBMS) in the community of Los Osos. The U.S. Fish and Wildlife Service (Service) and the U.S. Department of the Interior's Office of the Solicitor recently negotiated a settlement agreement with MBMS for an alleged violation of section 9 of the Endangered Species Act of 1973, as amended, (Act) at the proposed project site. A.J. Wright, the vice-president of MBMS, decided to defer signing the settlement agreement pending the outcome of an upcoming hearing by the California Coastal Commission (Commission) on the proposed storage facility project. The questions that you raised to us deal with the mitigation that was negotiated for the alleged section 9 violation and that is the basis for the settlement agreement. We are providing you background information and answers to your four questions to assist the Commission in making a determination on the proposed storage facility project.

Background

Mr. Wright obtained a stockpiling permit on July 27, 1998, from the County of San Luis Obispo Department of Planning and Building (County) for the property located on the east side of the intersection of Santa Ynez Avenue and Mountain View Drive, just west of South Bay Boulevard, in the community of Los Osos. The property is about 3 acres in size. The permit authorized fill from another site in Los Osos to be stockpiled on the MBMS property. It did not authorize building on the site. Mr. Wright cleared the property of central coastal scrub upon receiving the stockpiling permit from the County. Subsequently, he applied for a minor use permit from the County to construct a mini-storage facility on the property. While processing this permit, the County noted the removal of coastal dune scrub habitat including possible habitat for the endangered Morro shoulderband snail (*Helminthoglypta walkeriana*). On August 20, 1998, the Morro Group, Inc informed us about this grading incident.

EXHIBIT NO. H, p.1

APPLICATION NO.
A-3-SLO-99-83
JS FWS Letter

In early September 1998, our staff and a Service law enforcement officer toured the property and found several shells of the Morro shoulderband snail. While conducting a biological assessment, the Morro Group, Inc., also found numerous empty shells of Morro shoulderband snail within cleared areas and a live Morro shoulderband snail within the brush and soil pile on the northwest corner of the parcel. On February 19, 1999, the County suspended processing Mr. Wright's application for a building permit pending the outcome of the Service's investigation of whether the grading resulted in the take of the Morro shoulderband snail, which would be a violation of section 9 of the Act.

In lieu of a Notice of Violation and civil penalty, the Service and MBMS reached a settlement agreement. The Service believes that the terms of the agreement will adequately mitigate any potential past take of the Morro shoulderband snail on the MBMS property. As part of settlement, the Service agreed not to pursue the imposition of civil penalty against MBMS; to work cooperatively and in good faith with MBMS; and to consult pursuant to section 7 of the Act. MBMS agreed to pay a settlement in amount of \$7,000 relating to the investigation by Service law enforcement in this matter. In addition, MBMS agreed to compensate for loss of the Morro shoulderband snail and its habitat by purchasing 1.79-acre site as mitigation, conduct habitat restoration and three years of monitoring at this site, and pay \$17,500 into an escrow account to be used for purchase of 0.35 acre or more of habitat to be preserved in perpetuity for the Morro shoulderband snail. Additionally, the remaining 0.15 acre of ungraded area on the MBMS property would be recorded as an open space easement as required by the County.

Prior to the clearing that occurred under the stockpiling permit, the property contained some coastal dune scrub which is habitat for the Morro shoulderband snail. Currently, 2.84 acres of the 3-acre site are devoid of vegetation. A remaining 0.15 acre of vegetation forms a strip along the entire northern boundary of the site. No biological surveys were done of the property prior to clearing. This lack of information makes determining the habitat quality for the Morro shoulderband snail on the property prior to clearance difficult. However, our staff did visit the property prior to clearance on or about May 6, 1997, for another purpose but did note that it supported a mixture of coastal dune scrub, coyote bush scrub and non-native veldt grass, components of habitat that are known to support the Morro shoulderband snail. Our biologist also found a live Morro shoulderband snail at the property during this visit.

Using an October 1995 aerial photo review, personnel accounts, and after-the-fact review of the site, the Morro Group, Inc. was able to make an assessment of what the habitat was like before it was cleared. Based on its assessment, the Morro Group, Inc. estimated that approximately 75% (+/- 5%) of the 2.84 acres consisted of central coastal scrub. Seventy-five percent (+/- 5%) equates to a range of 1.99 to 2.27 acres. Approximately 20% of the remnant 0.15 acre is central coastal scrub.

Question #1: Why was a 1:1 ratio for mitigation acres to disturbed acres used instead of higher ratio?

The 1:1 mitigation ratio is what we negotiated for the settlement agreement, and we feel satisfied

A-3-SLO-99-83
Exhibit H, p.2

that it is appropriate. The cleared lot is in a developed neighborhood and is surrounded by roads and houses. The mitigation lands are of much higher quality and occur adjacent to protected lands. In addition, this is consistent to a settlement on a similar violation in Los Osos.

Question #2: Can the original project site be restored to snail habitat?

We are uncertain whether the project site could be successfully restored. Even if it was restored, the property might not sustain a population of the Morro shoulderband snail in the long term because it is small and isolated, close to existing development, and not connected to other suitable habitat. The habitat on this property was of minimal biological value to the Morro shoulderband snail because it was not connected to habitat on other protected parcels. The quality of habitat for the Morro shoulderband snail at the mitigation site is more beneficial to the conservation of the snail than the original project site because of its connectivity to other suitable snail habitat.

Question #3: What is the quality of the mitigation land and why was it chosen?

We have determined that the proposed 1.79-acre mitigation site (Block M.1 of the town of El Morro, California; APN 038-721-014) has at least the equivalent habitat value for the Morro shoulderband snail as the cleared property prior to disturbance. The proposed mitigation site is located within one of the four key conservation planning areas as identified in the recovery plan for the Morro shoulderband snail. One of the criteria in the recovery plan for ultimately downlisting the Morro shoulderband snail requires all four conservation planning areas to be secured and protected. In addition, the mitigation site is also located within the Los Osos /Baywood Park greenbelt area and contains great diversity of high-quality habitats and plant communities. The greenbelt lands have connectivity with other locally protected open space areas. Protecting the proposed mitigation site is also important because it could be developed in the future.

Our intention is to convey this mitigation site to the California Department of Parks and Recreation. The property shall be used specifically for the preservation, in perpetuity, of Morro shoulderband snail habitat. Although, the mitigation site has some veldt grass, it is connected on two sides to protected land that are part of a recovery planning area for the Morro shoulderband snail. The State Park will conduct habitat restoration and three years of monitoring on the 1.79-acre mitigation site.

Additionally, MBMS would pay \$17,500 into an escrow account to be used by the Trust for Public Lands for the purchase of 0.35 acre or more of habitat to be preserved in perpetuity for the Morro shoulderband snail. The location of the 0.35 acre has not been determined but will also occur within the "greenbelt".

Question #4: What is the likelihood that the mitigation land would be developed?

The mitigation site is currently zoned as residential. Protecting it as Morro shoulderband snail

habitat is part of the overall strategy to recover the species by securing lands that could be developed. It also compliments the ongoing land conservation by state and federal agencies and private non-profits to implement the "greenbelt" plan. In addition, the protection of this site could potentially halt paving a road across habitat on the neighbor's property (Hord's conservation easement).

We appreciate the opportunity to answer these questions. If you need any other assistance, please write, e-mail or call me. My e-mail address is Ron_Popowski@fws.gov. I use a text telephone due to my deafness. To contact me, please use the Relay Service according to the following protocol:

- 1) Dial the Relay Service at: 1 (888) 877-5379
- 2) Give the operator my phone number: (805) 644-7265
- 3) Once you are connected to me, speak to the operator as if you were speaking to me.
(The operator will type what you say for me and tell you what I typed in response)
- 4) Thank you for your cooperation in this process.

Sincerely,



Diane K. Noda
Field Supervisor

*acting
for*

A-3-540-99-83
Exhibit H, p.4

J.H. EDWARDS CO.

A REAL PROPERTY CONCERN

March 24, 2000

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MAR 28 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
CENTRAL COAST DISTRICT OFFICE
725 Front Street, Suite 300
Santa Cruz, CA 95060

Subject: A-3-SLO-99-083

Attention: Steve Monowitz, Coastal Planner

Dear Mr. Monowitz:

As you know, the above referenced project consists of a mini-storage facility on an approximately three acre site in the urban core of Los Osos. The project received a Minor Use Permit approval from San Luis Obispo County on September 17, 1999. The subject property is owned by Morro Bay Mini Storage, Inc. and the vice-president is A.J. Wright. I am writing on behalf of Mr. Wright and Morro Bay Mini Storage, Inc. It is now been almost six (6) months since the county approval and the intentions of your staff and the commission remain unclear. A protracted review and consideration by your agency is devastating to my client.

I understand you are attempting to secure additional information from the Fish & Wildlife field office in Ventura. I have offered to assist your office and the field office in connection with whatever additional information is needed. Furthermore, I understand you are in receipt a letter written to you by Mr. Barney McCay, the Chief Building Official for San Luis Obispo County, which in pertinent part indicates Mr. Wright had prior authorization from the county to perform site work on the subject property.

Your agency has raised questions about the adequacy of the mitigation for the projects impacts to 2.14 acres of central dune scrub habitat and the Morro shoulderband snail, a federally endangered species. Specifically, your agency has challenged the detailed mitigation plan as outlined in an agreement with the United States Department of the Interior (DOI) concerning the ex post facto grading permit. This agreement was voluntarily entered into by the property owner, notwithstanding the fact all site work was done with prior authorization by the County of San Luis Obispo.

The agreement reached with the federal government more than compensates for the removal of site vegetation including any habitat value it may have represented both qualitatively and quantitatively. The quality of the vegetation on the subject property was marginal as indicated in the biological assessment prepared by the Morro Group, Inc. for the property. The habitat value of the site vegetation was limited due to veldt grass infestation and the enormous amount of trash and other debris littering the site, not to mention the fact the site is entirely surrounded by development.

P.O. Box 6070 • Los Osos, CA 93412 • Tel: (805) 528-1567 • Fax: (805) 528-4473 • Email: jhe.rea

ACQUISITION • MARKETING • LAND USE • EXCHANGE

California Coastal Commission
Exhibit 1 Page 64 of 70

EXHIBIT NO. I, P.
APPLICATION NO. A-3-SLO-99-83
Ltr. from Applicant's Representative

As you know, the 1.79 acre mitigation parcel has been purchased and an escrow is pending to transfer title to the California Department of Parks & Recreation. The land is located in an area that represents high quality habitat, particularly for the Morro shoulderband snail. This site is included in a key conservation planning area as identified by the federally approved Recovery Plan for the Morro shoulderband snail. In fact, this dedication would add to about 30 acres, in two parcels and one conservation easement, that recently came into public ownership. These parcels and the subject mitigation parcel combined represent the beginning of a "green belt" as envisioned by the community to establish an urban boundary. The conservation planning areas are proposed to serve multiple species including the Morro shoulderband snail and supported by the California Coastal Conservancy, Department of Fish & Game the U.S. Fish & Wildlife Service and the Bureau of Land Management. The mitigation site also provides an important link or wildlife corridor to other parcels surrounding the mitigation site. Please see the letter from Jones & Stokes of today's date which addresses the history of the greenbelt plan and the related biological aspects.

The mitigation site has certain development potential which includes the construction of a single-family home. In addition to the residence, access and utility extensions would be needed over a distance of 330 feet, precipitating further potential impacts. The current market demand for residential homesites in the community is very strong. Also, because of the parcel size and location it would attract numerous potential purchasers. If the site is in public ownership all of the associated impacts would be avoided and a valuable contribution to the Los Osos/Baywood Park Greenbelt and Conservation area would be accomplished.

The agreement entered into with (DOI) including the payment of an in-lieu fee for .35 acres ($1.79 + .35 = 2.14$), once fulfilled will achieve a high level of mitigation for any and all lost flora and fauna and is consistent with the local community desire to establish a greenbelt and conservation area for multiple species habitat around the edge of the urban area. Notwithstanding this fact, the project proponent is not able to allow the subject development to be further delayed. Consequently, I wish to inform you that, in the event the subject appeal is not fully resolved by the May meeting of the commission, the project will be withdrawn. This outcome would be regrettable for all parties, however my client is left with no other choice. The opportunity to place a key parcel into public ownership would be lost for the foreseeable future. I hope you are able to appreciate this. As you know, on behalf of my client, I have attempted to work with your agency since your appeal was initiated, with very little to show for the substantial effort.

A-3-560-99-83
Exhibit I, p. 2

It is unfortunate that your agency was not involved with the formulation of the greenbelt plan which has occurred over the last five years. However, please be aware much effort and coordination went into the plan preparation. It is my hope your agencies concerns will now be allayed given the documentation you are in receipt of.

In closing, I will look forward to working with staff in an effort to allow the mini-storage project to proceed thus preserving the existing mitigation agreement. Please feel free to contact me with any questions you may have.

Sincerely,



Jeffrey H. Edwards

c- A.J. Wright

Larry Bradfish, Assistant Field Solicitor

U.S. Department of the Interior

Cathy McCalvin, Division Chief

U.S. Fish & Wildlife Service-Ventura Field Office

A-3-SLO-99-83
Exhibit I, p.3



Jones & Stokes

March 23, 2000

Mr. Steve Monowitz
California State Coastal Commission
725 Front St.
Suite 300
Santa Cruz, California
95060

RECEIVED

MAR 27 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Mitigation and conservation strategy for the Morro Bay Mini Storage, Inc., project impacts, Los Osos, CA.

Dear Mr. Monowitz:

Mr. Jeff Edwards, the agent for Morro Bay Mini Storage, Inc., has requested that we provide you with some information on the use of off-site mitigation for impacts to the federally-listed Morro Shoulderband snail and coastal dune scrub habitat in Los Osos, San Luis Obispo County, California.

It is our understanding that the proposed development site includes a 2.95-acre property located on the northwest corner of Santa Ynez and Mountain View, in Los Osos, CA (see attached map). According to Mr. Edwards, the site has been graded. It has been determined that 2.14 acres of property was coastal dune scrub and habitat for the Morro shoulderband snail. Therefore, the mitigation of 2.14 acres of habitat is the key issue.

Background on Conservation Biology Strategies for Los Osos

As part of a conservation planning effort initiated by local environmental interests, the Land Conservation of San Luis Obispo obtained funding from the California Coastal Conservancy to develop a conservation plan for Los Osos (Land Conservancy of San Luis Obispo 1998, copy attached). It was hoped that this planning effort could result in a conservation agreement as proposed by the Land Conservancy, or as a basis for future conservation. The conservation planning effort included an active technical advisory committee (see attached list of participants). Monthly meetings were held during 1995 through February 1997 to evaluate available information and key conservation issues for the area.

The consulting firm of Jones & Stokes in Sacramento, CA was retained by the Land Conservancy to conduct baseline biological studies in the Los Osos area during 1996. Based on our biological findings we prepared a report (Jones & Stokes Associates 1997, attached) that included an ecological evaluation of habitat and plant communities, and information of the known special status species. The report also made specific recommendations for a conservation strategy to protect the remaining higher quality lands in Los Osos. Acting as project manager

California Coastal Commission
Exhibit 1 Page 67 of 70

2600 V Street • Sacramento, CA 95818-1914 • tel. 916 737.3000 • fax 916

www.jonesandstokes.com

EXHIBIT NO. J, p.1
APPLICATION NO. A-3-SLO-99-83
Ltr. from Jones & Stokes

and senior conservation biologist/ecologist, I was personally involved in gathering the biological information and preparing the report for the Land Conservancy. As you will see from the report and included maps, we strongly felt that the area in the Los Osos/Baywood Park that was mapped as the "greenbelt" included areas having the best opportunity for future preservation. The reasoning for identifying the greenbelt lands was due to the presence of special status species, great diversity of high-quality habitats and plant communities, and lands having connectivity with previously protected areas including Montana del Oro State Park and other locally protected open space areas.

Since the release of the Land Conservancy's conservation plan report for Los Osos state and federal agencies, including the California Coastal Conservancy, Department of Fish and Game, California Department of Parks and Recreation, U.S. Fish and Wildlife Service, and the Bureau of Land Management have worked to help implement the greenbelt plan. Much of the implementation has been coordinated with the Trust for Public Land.

As part of the federal Endangered Species Act section 10(a) process Habitat Conservation Plans (HCP), Jones and Stokes prepared documents for two projects in Los Osos, the Los Osos Center and the Hord single family residence (which included on-site mitigation within the greenbelt) during 1998 and 1999. The Los Osos Center, which is located outside the greenbelt (see map) required off-site mitigation. The mitigation was accomplished by contributing to a 15-acre parcel in east Los Osos purchased by the Trust for Public Land. The HCPs and establishment of a mitigation bank were very important projects that helped move forward permanent protection of Morro shoulderband snail and other special status species habitat in the Los Osos greenbelt.

Ongoing land conservation by state and federal agencies and private non-profits will continue to provide significant implementation of the greenbelt plan. Also, the participation of projects outside the greenbelt will help implement the greenbelt and help compliment the agency funding for the greenbelt. The participation of projects outside the greenbelt area needing mitigation is extremely important to help the conservation plan. All the participants in the original greenbelt technical advisory committee agreed that development outside the greenbelt should have coordinated mitigation that would be used to increase greenbelt preservation. Therefore, on-site mitigation outside the greenbelt is not recommended due to the general lower habitat quality, smaller parcel sizes, and lack of connectivity to the larger long-term existing preserve areas.

The Morro Bay Mini Storage, Inc. proposed project should make all attempts to do off-site mitigation and participate in the established conservation planning effort. The purchase of the 1.79 acres of coastal dune scrub habitat containing Morro shoulderband snail on the east side of the Hord preserve and south of the Trust for Public Land and BLM preserve is an important addition to the greenbelt. This land will ensure that the 3 acres of Hord on-site preserve is directly connected to other protected lands increasing the amount of contiguous habitat in the greenbelt (see attached maps). The balance of the mitigation needed, which is 0.35 acres of habitat, that is not mitigated by the 1.79-acre parcel will be mitigated in a bank or program participating in the greenbelt. This mitigation has been agreed to with the U.S. Fish and Wildlife

Service.

At this time I know of no reason to attempt to protect small parcels of low quality land within the main Los Osos development area outside the greenbelt. Current county planning continues to try to obtain funding for a regional multispecies HCP that would essentially form a legal policy of development outside the greenbelt and conservation and mitigation to occur within the greenbelt.

I believe the Morro Bay Mini Storage participation in the greenbelt is the best opportunity at this time and it is consistent with U.S. Fish and Wildlife Services recovery planning efforts and recommendations for the Morro shoulderband snail, other species in the region, and preservation of coastal dune scrub.

I would be happy to discuss the information with you if you have any questions.

Sincerely,



Niall McCarten, Ph.D.
Senior Conservation Biologist

cc: Morro Bay Mini Storage, Inc.
Mr. Jeff Edwards
Mr. Ron Popowski, U.S. Fish & Wildlife Service

attachments:

Baywood and Los Osos Conservation Plan, Land Conservancy of San Luis Obispo
Los Osos/Baywod Park Greenbelt Conservation Plan, Jones & Stokes Associates
Habitat and Conservation Map

