TU 11c

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

RECORD PACKET COPY

Filed: 2/19/03
49th Day: waived
Staff: LKF-V
Staff Report: 9/18/03
Hearing Date: 10/7-10/10/03

STAFF REPORT: APPEAL DE NOVO REVIEW

LOCAL GOVERNMENT: City of Carpinteria

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-CPN-03-016

APPLICANT: Louis Carnevale

AGENT: Jan Hochhauser

APPELLANT: Carpinteria Creek Foundation

PROJECT LOCATION: Corner of Carpinteria Avenue, Arbol Verde Street and Concha Loma Drive in the City of Carpinteria, Santa Barbara County.

PROJECT DESCRIPTION: Construction of a two-story 1,695 sq. ft. single family home with attached 512 sq. ft. garage/workshop, porch, driveway, split-rail fence, garden wall, sidewalk, drainage structures, vegetated bio-swale, restoration of riparian habitat, and 464 cu. yds. of grading (308 cu. yds. cut, 156 cu. yds. fill).

SUBSTANTIVE FILE DOCUMENTS: City of Carpinteria Local Coastal Program, Final Environmental Impact Report, Carnevale Duplex Project, May 2002; Draft Environmental Impact Report, Carnevale Duplex Project, February 2002; City of Carpinteria Final Development Plan 99-881-DP/CDP (City Council Approval dated January 27, 2003); Memorandum from John Dixon, Ph.D., Staff Ecologist to Lillian Ford, re: Habitat Buffer at Carnevale Property, May 8, 2003.

SUMMARY OF STAFF RECOMMENDATION

The Commission found that this appeal raised substantial issue at its June 13, 2003 hearing. Staff recommends that the Commission approve the proposed project with ten (10) special conditions regarding conformance with geologic recommendations, landscaping and erosion control plans, restoration/revegetation plan, drainage and polluted runoff control plan, removal of excess graded material, assumption of risk, lighting restrictions, future development restriction, deed restriction, and the incorporation of the City of Carpinteria's conditions of approval. As conditioned, adverse impacts to coastal resources will be minimized, consistent with the applicable policies of the City of Carpinteria's Local Coastal Program (LCP).

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No. A-4-CPN-03-016 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Local Coastal Program for the City of Carpinteria and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

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

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

III. SPECIAL CONDITIONS

1. Plans Conforming to Geologic Recommendations

All recommendations contained in the report prepared by Pacific Materials Laboratory ("Preliminary Foundation Investigation," Pacific Materials Laboratory, November 15, 1999) shall be incorporated into all final design and construction including foundations, grading, drainage, and additional investigations. Final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to the issuance of the Coastal Development Permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require an amendment to the permit or a new Coastal Development Permit.

2. Landscaping and Erosion Control Plans

Prior to issuance of the Coastal Development Permit, the applicants shall submit landscaping and erosion control plans prepared by a licensed landscape architect or qualified resource specialist for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting geologist to ensure that the plans are in conformance with the consultant's recommendations. The plans shall incorporate the following criteria:

A) Landscaping Plan

1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within sixty (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native, drought resistant plants, consistent with the Restoration/Revegetation Plan submitted pursuant to **Special Condtiion Three (3)** of this permit. Invasive, non-indigenous plant species that tend to supplant native species shall not be used.

2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species consistent with the Restoration/Revegetation Plan submitted pursuant to **Special Condition Three (3)** of this permit. Such planting shall be adequate to provide ninety (90) percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.

4) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.

5) The Permittees shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the Coastal Development Permit, unless the Executive Director

determines that no amendment is required. The final plan shall be consistent with the restoration/revegetation plan required by **Special Condition Four (4)** below.

6) The use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance shall be prohibited, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.

B) Interim Erosion Control Plan

1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas, and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

2) The plan shall specify that should excavation or grading take place during the rainy season (November 1 – March 31), the applicants shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.

3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than thirty (30) days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils, and cut and fill slopes with geotextiles, mats, sand bag barriers, and/or silt fencing; and temporary drains, swales, and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring

Five years from the date of the receipt of the certificate of occupancy for the residence, the applicants shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants (or successors in interest) shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Restoration / Revegetation Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final restoration plans. The plan shall include a landscaping and erosion control plan prepared by a qualified habitat restoration consultant. The landscaping and erosion control plan shall make use of no permanent irrigation systems. The landscaping and erosion control plan shall be reviewed and approved by the consulting civil and geotechnical engineers to ensure that the plan is in conformance with the applicable recommendations regarding slope stability. The restoration and revegetation plan shall include, but not be limited to, the following criteria:

(a) A revegetation program, prepared by a qualified habitat restoration consultant, that utilizes only native riparian plant species that are consistent with the surrounding native plant community. The plan shall specify the preferable time of year to carry out the restoration and describe the supplemental watering requirements that will be necessary, including a detailed irrigation plan. The plan shall also specify performance standards to judge the success of the restoration effort. The revegetation plan shall identify the species, location, and extent of all plant materials and shall use a mixture of seeds and container plants to increase the potential for successful revegetation. The plan shall include a description of technical and performance standards to ensure the successful revegetation of the restored slope. A temporary irrigation system may be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil and geotechnical engineers, but in no case shall the irrigation system be in place longer than two (2) years.

(b) The restoration plan shall be implemented within three hundred and sixty (360) days of the issuance of this permit. Revegetation shall provide ninety percent (90%) coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. The Executive Director may extend this time period for good cause. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements.

(c) A monitoring program, prepared by a qualified environmental resource specialist. The monitoring program shall demonstrate how the approved revegetation and restoration performance standards prepared pursuant to section (b) above shall be implemented and evaluated for compliance with this Special Condition. The program shall require the applicant to submit, on an annual basis for a period of five years (no later than December 31st each year), a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the restoration plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the plantings. If these inputs are required beyond the first four (4) years, then the monitoring program shall be extended for a sufficient length of time so that the success

and sustainability of the project is ensured. Successful site restoration shall be determined if the revegetation of native plant species on-site is adequate to provide ninety percent (90%) coverage by the end of the five (5) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation.

(d) At the end of the five year period, a final detailed report shall be submitted, for the review and approval of the Executive Director, that indicates whether the on-site landscaping is in conformance with the revegetation / restoration plan approved pursuant to this Special Condition. The final report shall include photographic documentation of plant species and plant coverage. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental restoration program to compensate for those portions of the original plan that were not successful. The revised, or supplemental, restoration program shall be processed as an amendment to this Coastal Development Permit.

4. Drainage and Polluted Runoff Control Plan

Prior to issuance of the Coastal Development Permit, the applicants shall submit, for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with engineering geologist's recommendations. In addition to the above specifications, the plan shall be in substantial conformance with the following requirements:

(a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate, or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, one (1) hour runoff event, with an appropriate safety factor, for flow-based BMPs.

(b) Runoff shall be conveyed off site in a non-erosive manner.

(c) Energy dissipating measures shall be installed at the terminus of outflow drains.

(d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned, and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage, filtration structures, or other BMPs fail or result in increased erosion, the applicants, landowner, or successor-in-interest shall be responsible for any necessary repairs to the drainage, filtration system, and BMPs and restoration of any eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicants shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new Coastal Development Permit is required to authorize such work.

5. Removal of Excess Graded Material

The applicant shall remove all excess graded material to an appropriate disposal site located outside of the Coastal Zone. Prior to the issuance of the coastal development permit, the applicants shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

6. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, earthquake, erosion, flooding, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

7. Lighting Restrictions

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
2. Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

8. Future Development Restriction

This permit is only for the development described in coastal development permit A-4-CPN-03-016. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by coastal development permit A-4-CPN-03-016. Accordingly, any future

improvements to the single family residence authorized by this permit, shall require an amendment to Permit A-4-CPN-03-016 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. Deed Restriction

Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, , modification, or amendment thereof, remains in existence on or with respect to the subject property.

10. City of Carpinteria's Conditions

The applicant shall comply with all of the City's conditions attached to the City of Carpinteria approval of 99-881-DP/CDP as shown in **Exhibit 1, sub-exhibit 2**. Prior to the issuance of Coastal Development Permit A-4-CPN-03-016, the applicant shall submit evidence of such condition compliance for the review and approval of the Executive Director. Should any conflict arise between the City's conditions of approval and Special Conditions 1 – 9 set forth above, Special Conditions 1 – 9 shall prevail and shall supercede the conflicting requirement(s) of the City's condition(s).

The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans as described in this staff report shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicant proposes to construct a two-story 1,695 sq. ft. single family home with attached 512 sq. ft. garage/workshop, porch, driveway, 40 foot long split-rail fence, 176 foot long, maximum two foot high garden wall, five foot wide sidewalk, drainage structures, vegetated bio-swale, restoration of riparian habitat, and 464 cu. yds. of grading (308 cu. yds. cut, 156 cu. yds.

fill) **(Exhibit1, sub-exhibits 4 - 8)**. The footprint of the residence, including driveway and porch (but excluding landscaping, fence, wall, sidewalk, and drainage structures) is 2,914 sq. ft. (.07 acre, or 15% of the total parcel).

The project site is a 0.45 acre parcel located south of Carpinteria Avenue at the entrance to the Concha Loma residential neighborhood. The parcel is bisected by Carpinteria Creek, which gently descends through the property in a southwesterly direction. The eastern portion of the parcel is nearly level and contains disturbed ruderal grassland and some non-native trees along Arbol Verde Street. West of this area, the site slopes gently toward the southeastern bank of the creek and the creek bed below.

The sloping area and southeastern bank of the creek contains riparian woodland habitat, including mature stands of California Sycamore (*Platanus racemosa)* and Arroyo Willow (*Salix lasiolepis*). The woodland understory is disturbed and contains many non-native species. The creek and riparian woodland is home to special status wildlife, including Steelhead trout (*Oncorhyncus mykiss*), Tidewater goby (*Eucyclogobius newberryi*), Monarch butterfly (*Danaus plexippus*), and Cooper's hawk (*Accipiter cooperii*). The riparian canopy extends past the top of bank an average of approximately 50 feet, although portions of the woodland extend as little as 2 feet and as much as 80 feet. Carpinteria Creek and the surrounding riparian habitat is designated Environmentally Sensitive Habitat Area (ESHA). The remainder of the parcel consists of disturbed ruderal grassland. An informal footpath crosses the property, and is used as a "shortcut" from Carpinteria Avenue to a dirt flood control access way that leads to the creek bottom in the southwestern portion of the site.

The parcel is zoned Planned Residential Development (PRD-15) in the City's certified Local Coastal Program (LCP). The PRD-15 zone designation allows for a maximum of 15 units per acre or 1 unit per 2,904 sq. ft. of gross land area, which would allow a base buildout of 6 units. The site is also located within the Environmentally Sensitive Habitat Area (ESH) Overlay District, which requires a minimum 20 foot buffer strip from the top of stream banks and limits development within stream corridors to projects whose primary purpose is improvement of fish and wildlife habitat, flood control, bridges, and pipelines where no alternative route is feasible. In addition, the site is located within the 100-year floodplain of Carpinteria Creek, and has been designed to meet applicable design and finished floor elevation standards.

The project applicant unsuccessfully pursued City approval for two previous development proposals for the site, including a 1988 proposal to construct an approximately 6,000 sq. ft. mixed use building, and a 1990 proposal to build an approximately 7,700 sq. ft. three-unit condominium. Both of the proposals would have required clearance of riparian habitat and channelization of the creek bank. The parcel has also been the subject of a campaign to preserve the site as a public park. In 1995, community members, including the Concha Loma / Arbol Verde neighborhood and the Carpinteria Creek Committee, petitioned the City to acquire the site for a public park, and by 1999, when the current proposal was submitted, had raised approximately $46,000 dollars towards the purchase price of the property.

In June 1999, the applicant submitted a proposal to the City of Carpinteria to build an approximately 3,500 sq. ft. duplex on the subject site. A Mitigated Negative Declaration (MND) was prepared for the project and as a result the project was reduced to incorporate mitigation measures, including a 10 foot setback from the riparian habitat (excluding the willow copse). Upon review of the MND, the Planning Commission determined that preparation of a full EIR was necessary to evaluate the environmental impacts of the proposed project. A Draft EIR was published in February 2002, and a Final EIR in May 2002. The Final EIR was certified by the

Planning Commission in July 2002. To comply with additional mitigation measures provided in the Final EIR, the applicant further reduced the project to allow for a 20 foot setback from the riparian dripline, as shown in the Final EIR. The applicant abandoned the duplex proposal and instead proposed construction of a 2,207 sq. ft. single family residence.

On November 4, 2002, the City of Carpinteria Planning Commission approved a Development Plan for the construction of the Carnevale Residential Project as described in this report. The Planning Commission's decision was appealed to the Carpinteria City Council by the Carpinteria Creek Foundation. On January 27, 2003, the City Council granted the appeal for the limited purpose of modifying an addendum to the project Final EIR, adopting additional findings, and adding a condition of approval to prohibit hard banking of the creek on the property. The City Council denied the remainder of the appeal and approved the project via Resolution No. 4771. The resolution and conditions of approval are attached as **Exhibit 1, sub-exhibit 2**.

Standard of Review

On August 6, 2002 the Commission approved an amendment for an updated Land Use Plan for the City of Carpinteria LCP. The amendment was certified by the Commission on April 10, 2003. Although many of the LUP policies became effective upon certification, many others, including those concerning protection of creek corridors, will only become effective once necessary amendments are made to the City's Implementation Program (IP). In this case, the applicable policies are those included in the previously certified City of Carpinteria LCP (as certified on January 22, 1980 and subsequently amended). Conversely, many of the policies included in the previously certified City of Carpinteria LCP have been superceded by the new policies that became effective upon recent Commission certification of the LUP amendment. Thus the standard of review for the proposed project includes policies from both the previously certified City of Carpinteria LCP and the recent LUP update. These policies are listed at the beginning of Sections B through E below.

B. Hazards and Geologic Stability

The proposed development is located on the 100-year flood plain of Carpinteria Creek, and in an area of the City of Carpinteria that is subject to seismically induced hazards and fire. In addition, the proposed project site contains the steep southeastern bank of Carpinteria Creek, which is vulnerable to erosion. The City of Carpinteria Local Coastal Program (LCP) contains the following development policies related to hazards that are applicable to the proposed development:

Section 30253 of the Coastal Act, which is incorporated as part of the Carpinteria LCP, states in pertinent part that new development shall:

> ***(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
>
> ***(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

In addition, the following LUP policies are applicable in this case:

3-8 *Applications for grading and building permits, and applications for subdivision shall be reviewed for adjacency to threats from, and impact of geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report may be required. Mitigation measures shall be applied where necessary.*

3-14 *All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural landforms and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development as evidenced by competent soils, geology, and hydrology investigation and reports shall remain in open space.*

3-15 *For necessary grading operations, the smallest practical area of land shall be exposed at any one time during the development phase, and the length of exposure shall be kept to the shortest practicable amount of time. The clearing of land shall be avoided during the winter rainy season and all measures for removing sediments and stabilizing slopes shall be in place before the beginning of the rainy season.*

3-16 *Sediment basins (including debris basins, desilting basins, or silt traps) shall be required in conjunction with the initial grading operations and maintained throughout the development process. All sediment shall be retained on site unless removed to an appropriate disposal location.*

3-17 *Temporary vegetation, seeding, mulching, or other suitable stabilization method shall be used to protect soils subject to erosion that have been disturbed during grading or development. All cut and fill slopes in a completed development shall be stabilized immediately with planting of native annual grasses and shrubs, or appropriate non-native plants with accepted landscaping practices.*

3-18 *Provision shall be made to conduct surface runoff waters that will occur as a result of development to storm drains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development.*

OSC-6f *Carry out and maintain all permitted construction and grading within stream corridors in such a manner so as to minimize impacts on biological resources and water quality such as increased runoff, creek bank erosion, sedimentation, biochemical degradation, or thermal pollution.*

S-1 *Minimize the potential risks and reduce the loss of life, property and the economic and social dislocations resulting from earthquake (rupture or shaking) and liquefaction in the planning area and from seismically-induced tsunamis.*

S-4 *Minimize the potential risks and reduce the loss of life, property and the economic and social dislocations resulting from flooding.*

S-4a *All new development proposed in the 100-year floodplain must adhere to the County of Santa Barbara Floodplain Management Ordinance, Chapter 15-A of the County Code.*

S-4, IM10 ***Compliance with the City's Floodplain Management Measures will be required prior to issuance of building permits for any type of individual development project proposed in the 100-year floodplain.***

S-5 ***Minimize the potential risks and reduce the loss of life, property and the economic and social dislocations resulting from urban and wildland fires.***

S-5a ***All new structures must adhere to the Carpinteria-Summerland Fire Protection District Ordinance and the Santa Barbara County Fire Department Ordinances, where applicable.***

S-5b ***All new structures, whether inside or outside the urban limit zone, must adhere to the city Fire Sprinkler Ordinance.***

The Carpinteria LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazards. In addition, the LCP includes measures to prevent erosion that may be caused by development.

As noted above, the proposed project site is subject to flood, fire, and geologic hazards. In accordance with Policy 3.8 of the Carpinteria LCP, the applicant has submitted a geologic report on the site ("Preliminary Foundation Investigation," Pacific Materials Laboratory, November 15, 1999). The report indicates that the site is subject to liquefaction and recommends that final grading and foundation plans reflect a detailed evaluation of the liquefaction potential. The report provides an interim recommendation that the structure be founded on deep piles.

In discussing the use of deep pile foundations, the report concludes:

> ***Such construction is common and will mitigate the liquefaction potential, therefore, feasibility of developing this site from a geotechnical engineering standpoint is favorable.***

Therefore, based on the recommendations of the applicant's geologic consultants, the proposed development is consistent with the geologic safety requirements of the Carpinteria LCP, so long as the geologic consultant's recommendations are incorporated into the final project plans and designs. Therefore, it is necessary to require the applicant to submit final project plans that have been certified in writing by the geologic consultant as conforming to all recommendations of the consultant, in accordance with **Special Condition One (1)**.

As noted above, the proposed project site is also subject to hazards from flood and fire. The City of Carpinteria has found that the proposed project meets all flood control standards, and has included, as conditions of local approval, requirements to ensure that the project complies with all applicable fire safety ordinances.

However, the Commission recognizes that development, even as designed and constructed to incorporate all recommendations of the geologic consultants, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

The Commission finds that due to the possibility of erosion, liquefaction, flooding, earthquake, and fire, the applicants shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicants to waive any claim of liability against the Commission, its employees, and agents, for damage to life or property that may occur as a result of the permitted development. The applicants' assumption of risk, as required by **Special Condition Six (6)**, when executed and recorded on the property deed, will show that the applicants are aware of and appreciate the nature of the hazards associated with development of the site, and that may adversely affect the stability or safety of the proposed development.

For these reasons, therefore, the Commission finds that as conditioned by **Special Condition One (1)** and **Special Condition Six (6)**, the proposed project is consistent with the Carpinteria LCP's policies for the minimization of risks resulting from hazards.

Erosion

The Carpinteria LCP contains policies for the prevention of erosion that may be caused by development. As noted above, the project site is bisected by Carpinteria Creek, and includes the creek's steep southeastern bank as well as more gentle slopes above the bank. Drainage from the site flows down the bank, as well as down a rough flood control access path that traverses the bank, into the creek.

As noted above, the applicant proposes to construct a two-story, 1,695 sq. ft. single family home with attached 512 sq. ft. garage/workshop, porch, driveway, split-rail fence, garden wall, sidewalk, drainage structures, vegetated bio-swale, restoration of riparian habitat, and 464 cu. yds. of grading (308 cu. yds. cut, 156 cu. yds. fill). In total, the project will result in additional impervious surface area on the site, increasing both the volume and velocity of storm water runoff. Unless surface water is controlled and conveyed off of the site in a non-erosive manner, this runoff will result in increased erosion on and off the site.

Uncontrolled erosion leads to sediment pollution of downgradient water bodies. Surface soil erosion has been established by the United States Department of Agriculture, Natural Resources Conservation Service, as a principal cause of downstream sedimentation known to adversely affect riparian and marine habitats. Suspended sediments have been shown to absorb nutrients and metals, in addition to other contaminants, and transport them from their source throughout a watershed and ultimately into the Pacific Ocean. The construction of single family residences in sensitive watershed areas has been established as a primary cause of erosion and resultant sediment pollution in coastal streams.

In order to ensure that erosion and sedimentation from site runoff are minimized, the Commission requires the applicant to submit a drainage plan, as defined by **Special Condition Four (4)**. **Special Condition Four (4)** requires the implementation and maintenance of a drainage plan designed to ensure that runoff rates and volumes after development do not exceed pre-development levels and that drainage is conveyed in a non-erosive manner. Fully implemented, the drainage plan will reduce or eliminate the resultant adverse impacts to the water quality and biota of coastal streams. This drainage plan is fundamental to reducing on-site erosion and the potential impacts to coastal streams. Additionally, the applicant must monitor and maintain the drainage and polluted runoff control system to ensure that it continues to function as intended throughout the life of the development.

In addition, the Commission finds that temporary erosion control measures implemented during construction and excavation on the slope will also minimize erosion and enhance site stability. **Special Condition Two (2)** therefore requires the applicant to implement interim erosion control measures should grading take place during the rainy season. Such measures include stabilizing any stockpiled fill with geofabric covers or other erosion-controlling materials, installing geotextiles or mats on all cut and fill slopes, and closing and stabilizing open trenches to minimize potential erosion from wind and runoff water.

The Commission also finds that landscaping of disturbed areas on the subject site will reduce erosion and serve to enhance and maintain the geologic stability of the site, provided that minimal surface irrigation is required. Therefore, **Special Condition Two (2)** requires the applicant to submit landscaping plans, including irrigation plans, certified by the consulting geologists as in conformance with their recommendations for landscaping of the project site. **Special Condition Two (2)** also requires the applicant to utilize and maintain native and noninvasive plant species consistent with the Restoration/Revegetation Plan submitted pursuant to **Special Condtiion Three (3)** of this permit.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foliage weight. The Commission finds that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that the use of such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native, invasive species and therefore aid in preventing erosion.

In addition, the use of invasive, non-indigenous plant species tends to supplant native species. Increasing urbanization in this area has caused the loss or degradation of major portions of the native habitat and loss of native plant seed banks through grading and removal of topsoil. Moreover, invasive groundcovers and fast growing trees that originate from other continents that have been used as landscaping in this area have invaded and seriously degraded native plant communities adjacent to development. Such changes have resulted in the loss of native plant species and the soil retention benefits they offer.

In the case of the subject site, much of the riparian understory consists of non-native and invasive species, including red brome (*Bromus madritensis*), ripgut brome (*Bromus diandrus*), black mustard (*Brassica nigra*), bull mallow (*Malva nicaeensis*) and nasturtium (*Tropaeolum majus*). The applicant proposes to remove non-native and invasive species from the riparian understory and revegetate this area with native species. Restoration of the riparian understory with native plant species will serve to minimize erosion on the subject site. Therefore, in order to ensure that the proposed restoration is implemented in a way that reduces the potential for erosion, **Special Condition Three (3)** requires the applicants to submit, for the review and approval of the Executive Director, a restoration/revegetation plan prepared by a qualified habitat restoration consultant. In order to further ensure site stability and erosion control, **Special Condition Two (2)** requires the disturbed and graded areas of the site to be landscaped with appropriate native plant species, consistent with the Restoration/Revegetation Plan submitted pursuant to **Special Condition Three (3)**.

The applicant proposes to cut 308 cu. yds. of earth on the site, and utilize 156 cu. yds. as fill, thus producing 152 cu. yds. of excess graded material. The Commission finds that stockpiling excavated material may contribute to increased erosion at the site. The Commission also notes that additional landform alteration would result if the excavated material were to be collected

and retained on site. In order to ensure that excavated material will not be stockpiled on site and that landform alteration is minimized, **Special Condition Five (5)** requires the applicant to remove all excess graded material from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit.

Finally, in order to ensure that any future site development is reviewed for its potential to create or contribute to erosion, the Commission finds it necessary to impose **Special Condition Eight (8)**, which requires the applicants to obtain a coastal development permit for any future development on the site, including improvements that might otherwise be exempt from permit requirements. In addition, **Special Condition Nine (9)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

C. Water Quality

New development has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources.

The Carpinteria LCP provides for the protection of water quality. Carpinteria LCP policies require that new development minimize sedimentation and contamination of surface waters, and include drainage devices that are designed to accommodate increased runoff due to development. The LCP also provides policies for the protection of stream corridors, which are discussed in further detail in Section D., Sensitive Habitat.

Section 30231 of the Coastal Act, which is incorporated as a policy of the Carpinteria LCP, states that:

> ***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.***

In addition, the following water quality LCP policies are applicable in this case:

> ***3-18*** ***Provision shall be made to conduct surface runoff waters that will occur as a result of development to stormdrains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development.***
>
> ***3-19*** ***Degradation of the water quality of groundwater basins nearby streams or wetlands shall not result from development of the site. Pollutants such as chemicals, fuels, lubricants, raw sewage and other harmful waste shall not be discharged into or alongside coastal streams or wetlands during construction.***

OSC-6f ***Carry out and maintain all permitted construction and grading within stream corridors in sucha manner so as to minimize impacts on biological resources and water quality such as increased runoff, creek bank erosion, sedimentation, biochemical degradation, or thermal pollution.***

OSC-10 ***Conserve all water resources, and protect the quality of water.***

OSC-10a ***Minimize the erosion and contamination of beaches. Minimize the sedimentation, channelization and contamination of surface water bodies.***

As described in detail in the previous sections, the applicant proposes to construct a two-story, 1,695 sq. ft. single family home with attached 512 sq. ft. garage/workshop, porch, driveway, split-rail fence, garden wall, sidewalk, drainage structures, vegetated bio-swale, restoration of riparian habitat, and 464 cu. yds. of grading (308 cu. yds. cut, 156 cu. yds. fill).

The proposed development will result in an increase in impervious surface at the subject site, which in turn decreases the infiltrative function and capacity of existing permeable land on site. Reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water quality protection policies of the Carpinteria LCP, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

For design purposes, with case-by-case considerations, post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. The Commission finds that sizing post-construction

structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Four (4)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

In order to further minimize the potential for chemical pollution of Carpinteria Creek and downstream waters, **Special Condition Two (2)** also prohibits the use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.

Furthermore, erosion control measures implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. In addition, Commission review of any future development on the site is necessary to ensure that any additional development is consistent with the water quality protection policies of the Carpinteria LCP. Therefore, the Commission finds, as detailed in Section B. above, that **Special Conditions Two (2), Three (3), Five (5), Eight (8),** and **Nine (9)** are necessary to ensure the proposed development will not adversely impact coastal waters.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of the Carpinteria LCP.

D. Environmentally Sensitive Habitat

The Carpinteria LCP provides numerous policies for the protection of environmentally sensitive habitat areas (ESHA). The LCP requires site inspection and habitat mapping, performed by a qualified biologist, of all areas within 250 feet of the ESHA overlay boundary. The LCP requires that the natural qualities of creeks and riparian habitat be protected, and that native plant communities be preserved and enhanced. The LCP prohibits activities that could damage or destroy ESHA.

The Carpinteria LCP contains the following development policies related to protection of ESHA that are applicable to the proposed development:

Section 30231 of the Coastal Act, which is incorporated as part of the Carpinteria LCP, states:

> ***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.***

Section 30240 of the Coastal Act, which is incorporated as part of the Malibu LCP, states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30107.5 of the Coastal Act defines an environmentally sensitive area as:

> ***"Environmentally sensitive area" means any area in which 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 be easily disturbed or degraded by human activities and developments.***

In addition, the following LCP policies are applicable in this case:

9-1 ***All parcels designated by the Habitat Area Overlay as shown on the land use maps and parcels within 250 feet of the boundary of such a designation shall be subject to a site inspection by a qualified biologist, to be selected jointly by the City and the applicant. All development plans, grading plans, etc., for these areas shall show the precise location of the habitat(s).***

9-2 ***Prior to issuance of a development permit, all projects shall be found to be in compliance with all applicable habitat protection policies of the land use plan (Policies 9-1 to 9-20).***

9-14 ***When sites are graded or developed, areas with significant amounts of native vegetation shall be preserved. All development shall be sited, designed, and constructed to minimize impacts of grading, paving, construction of roads or structures, runoff, and erosion on native vegetation. In particular, grading and paving shall not adversely affect root zone aeration and stability of native trees. (See also Policies 3-13 to 3-19).***

9-15 ***The minimum buffer strip for natural streams within the City shall be 20 feet from the top of the bank. These minimum buffers may be adjusted by the City on a case-by-case basis after investigation of the following factors:***

- ***a. soil type and stability of the stream corridor***
- ***b. how surface water filters into the ground***
- ***c. types and amount of riparian vegetation and how such vegetation contributes to soil stability and habitat value***
- d. ***slopes of the land on either side of the stream***
- ***e. location of the 100 year floodplain boundary***

9-16 ***No structures shall be located within the stream corridor except: developments where the primary function is the improvement of fish and wildlife habitat; dams; structures necessary for flood control purposes; bridges, when supports are located outside the critical habitat; and pipelines, when no alternative route is feasible.***

9-17	*All development, including dredging, filling, grading, within stream corridors, shall be limited to activities necessary for flood control purposes, bridge construction, water supply projects, or laying of pipelines, when no alternative route is feasible. When such activities require removal of riparian plant species, re-vegetation with local native plants shall be required. Minor clearance of vegetation may be permitted for hiking/biking and equestrian trails.*
9-21	*No development or substantial alteration of natural stream corridors shall be permitted unless the City finds that such action is necessary to protect existing structures and that there are no less environmentally damaging alternative. Where development or alteration is permitted, best mitigations feasible shall be a condition of approval.*
CD-11	*Development should fit quietly into the area's natural and introduced landscape, deferring to open spaces, existing natural features and native and sensitive habitats.*
CD-11a	*Landscape planning shall be respectful of the natural character of the City and enhance existing native plant communities and environmentally sensitive habitat areas.*
CD-12	*Ensure that lighting of new development is sensitive to the character and natural resources of the City and minimizes photopollution to the maximum extent feasible.*
OSC-1	*Protect, preserve, and enhance local natural resources and habitats.*
OSC-1a	*Protect Environmentally Sensitive Habitat Area(s) (ESHA) from development and maintain them as natural open space or passive recreational areas.*
OSC-1b	*Prohibit activities, including development, that could damage or destroy biological resource areas.*
OSC-1, IM1	*In addition to the policies and implementation measures herein, utilize the California Environmental Quality Act (CEQA) to identify and avoid or reduce potential impacts to air and water quality, environmentally sensitive habitats, riparian habitats, marine plants and animals, and other environmental resources.*
OSC-1, IM6	*Determine appropriate methods for the preservation of sites that include ESHA. These methods may include land purchase, tax relief, purchase of development rights, or other methods. Where these methods are not feasible, the city should ensure through permit review that development does not result in any significant disruption of habitat identified on a site or on adjacent sites.*
OSC-6	*Preserve the natural environmental qualities of creekways and protect riparian habitat.*
OSC-6a	*Support the preservation of creeks and their corridors as open space, and maintain and restore riparian habitat to protect the community's water quality, wildlife diversity, aesthetic values, and recreation opportunities.*

OSC-6f ***Carry out and maintain all permitted construction and grading within stream corridors in sucha manner so as to minimize impacts on biological resources and water quality such as increased runoff, creek bank erosion, sedimentation, biochemical degradation, or thermal pollution.***

OSC-7 ***Conserve native plant communities.***

As noted above, the applicants propose to construct a two-story, 1,695 sq. ft. single family home with attached 512 sq. ft. garage/workshop, porch, driveway, split-rail fence, garden wall, sidewalk, drainage structures, vegetated bio-swale, restoration of riparian habitat, and 464 cu. yds. of grading (308 cu. yds. cut, 156 cu. yds. fill). The proposed development is located adjacent to Carpinteria Creek and surrounding riparian habitat which are designated an Environmentally Sensitive Habitat Area (ESHA).

All proposed development is located outside of the ESHA, with the exception of the habitat restoration and an approximately 18 foot length of the 42 inch high split rail fence. (The applicant previously proposed, and received City approval to construct an approximately 80 foot long, 6 inch underground stormwater drainpipe, and an approximately 15 sq. ft. rip-rap energy dissipater within the stream corridor; the applicant now proposes to construct an alternative drainage system outside of the stream corridor.) In addition, an approximately 22 foot length of the fence is located within the 20 foot buffer surrounding the riparian dripline.

The primary function of the fence is to prevent trespass onto the property and human disturbance of the riparian woodland adjacent to Carpinteria Avenue, and thus to improve wildlife habitat consistent with LCP Policy 9-16. Similarly, the purpose of the proposed habitat restoration is the improvement of wildlife habitat. Although the fence does not require ESHA in order to function, and is therefore not a resource dependent use, its minimal footprint, potential benefits to ESHA quality, and negligible adverse impacts make construction of the fence consistent with Section 30240 of the Coastal Act, as incorporated in the Carpinteria LCP, and with the other ESHA protection policies of the Carpinteria LCP.

As noted above, the project site is a 0.45 acre parcel located south of Carpinteria Avenue bounded on three sides by Carpinteria Avenue and two residential streets, Arbol Verde Street and Concha Loma Drive. The parcel is bisected by Carpinteria Creek, which gently descends through the property in a southwesterly direction. The eastern portion of the parcel is nearly level and contains disturbed ruderal grassland and some non-native trees along Arbol Verde Street. West of this area, the site slopes gently toward the southeastern bank of the creek and the creek bed below.

The sloping area and southeastern bank of the creek contains riparian woodland habitat, including mature stands of California Sycamore (*Platanus racemosa)* and Arroyo Willow (*Salix lasiolepis*). The woodland understory is disturbed and contains many non-native species. The creek and riparian woodland is home to special status wildlife, including Steelhead trout (*Oncorhyncus mykiss*), Tidewater goby (*Eucyclogobius newberryi*), Monarch butterfly (*Danaus plexippus*), and Cooper's hawk (*Accipiter cooperii*). The riparian canopy extends past the top of bank an average of approximately 50 feet, although portions of the woodland extend as little as 2 feet and as much as 80 feet. An informal footpath crosses the property at the southeastern limit of the riparian habitat, and is used as a "shortcut" from Carpinteria Avenue to a dirt flood control access way that leads to the creek bottom in the southwestern portion of the site.

The proposed project provides for a minimum 37 foot setback from the top of the stream bank, extending to an average of 55 feet from the top of bank in the center of the parcel, and up to 125 feet in the southern part of the parcel. As shown on the plans approved by the City of Carpinteria, the project provides for a 20 foot setback from the dripline of riparian vegetation, which includes California Sycamore (*Platanus racemosa*) and Arroyo Willow (*Salix lasiolepis*).

As noted above, LCP Policy 9-15 requires a minimum setback of 20 feet from the top of bank of streams, which may be adjusted based on soil type, stability of the stream corridor, surface water infiltration, type and amount of riparian vegetation and its contribution to soil stability and habitat value, slope characteristics, and location of the 100 year flood plain boundary. Using these criteria, the City recommended a 10 foot setback from the riparian dripline. Subsequent to publication of the Final EIR, the project applicant increased the setback to 20 feet from the riparian dripline in order to comply with recommended mitigation measures. The approved project setback is approximately 37 to 125 feet from the top of bank of stream, thus providing a buffer that is significantly larger than the minimum required under LCP Policy 9-15. Furthermore, LCP Policy 9-15 states that the minimum buffer *may* be adjusted by the City on a case-by-case basis, but does not *require* such adjustments to be made.

Application of a 20 foot setback was consistent with statements, made by biologists Darlene Chirman (consultant for the appellants), Mark Holmgren, and Dr. Thelma Schmidhauser in correspondence to the City, that a 20 foot setback was necessary to avoid significant impact to the riparian habitat. Other biologists, including Lawrence Hunt and Rachel Tierney (consultants for the project applicants), and Vince Semonsen, the City Biologist, had concluded that a 10 foot setback from the riparian dripline was adequate to prevent significant impacts.

More recently, the location of the riparian dripline, due to growth of vegetation following the establishment of the 20 foot setback, has been disputed by the applicant and appellants, and the findings of numerous biologists who have examined the site at the request of either side. The appellants contend that a 20 foot setback from the current dripline is necessary to avoid significant impact to the stream corridor. The applicant contends that the current setback is adequate despite growth of the canopy, which is a predictable and desirable result of the passage of time during the approval process. (The dispute regarding the setback is further discussed in Section F. of the May 23, 2002 staff report on the appeal. Primary documents and correspondence are included as exhibits to the May 23, 2002 report, which is attached as **Exhibit 1** of this report).

In order to independently assess the current location of the riparian dripline, Commission staff requested a survey of the dripline be prepared by a licensed surveyor, with the participation of representatives of the applicant and the appellants, as well as Commission staff. The survey, conducted on July 2, 2003 by L. P. Cook & Company, indicates that the growth of riparian vegetation, including California Sycamore (*Platanus racemosa*) and Arroyo Willow (*Salix lasiolepis*), has reduced the setback to approximately 10 feet in some locations. Following publication of the new dripline survey, a qualitative assessment of the areas of new growth was undertaken by representatives of the applicant (including biologist Lawrence Hunt), the appellants, and Commission staff.

Commission staff biologist Dr. John Dixon has reviewed the biological reports and assessments submitted for the project. In a memorandum dated May 8, 2003, Dr. Dixon addressed the setback issue:

> ***In general, I think a 100-foot buffer, measured from the bank of the stream or the edge of riparian vegetation, whichever is greater, should be the default standard for natural streams. However, in urbanized areas, such a wide buffer is often not feasible and often does not make good ecological sense due to the presence of existing development. A wide buffer for a particular property is unlikely to perform a protective function proportional to its width if the adjacent or nearby parcels have development much closer to the stream. In the case of Carpinteria Creek, there are structures present that are within 15-20 feet of the creek bank and within 5 feet of the riparian canopy, according to the final EIR (p. 386)....In view of the existing urban constraints, the opponents to earlier project designs generally recommended that the development be set back at least 50 feet from the bank of Carpinteria Creek and at least 20 feet from the dripline of the riparian vegetation...***

In the May 8, 2003 memorandum, Dr. Dixon analyzed the likely impact of the project on the riparian ESHA as mapped by Lawrence Hunt, consulting biologist to the project applicants, in May 2003. Mr. Hunt noted nine branches, ranging in size from 0.5 to 1.25 inches in diameter, extending approximately 5 to 6 feet beyond the mapped canopy. Based on this information, Dr. Dixon concluded:

> ***If Hunt's recent estimate is accurate, the actual change in canopy is due to some 9 small tree branches extending 5 or 6 feet into the previously established buffer. The resultant marginal increase in the environmental impact of the development due to such change in vegetation is not likely to be significant.***

In addition, at Dr. Dixon's request the canopies in question were surveyed on July 2, 2003. Dr. Dixon's previous memo and the memo containing his response to the survey results are included as **Exhibit 5** of this staff report.

Following the July 2, 2003 survey of the dripline, Dr. Dixon reviewed the new survey and related information, and concluded that

> ***The current mapped dripline appears to be qualitatively the same as was described in the various letters and reports I cited in my May 8, 2003 memo.... The locations where the willows and sycamores have grown since the mapping effort of a few years ago is somewhat different than recently estimated by the various parties, but the amount of increase appears to be about the same as was estimated by Clark in November 2002. The current distance from the surveyed dripline to the eaves of the proposed residence appear to vary from a bit over 20 feet to about ten feet. There is nothing in the new information that would cause me to change the opinions contained in my earlier memo.***

As concluded by Dr. Dixon, increasing the setback would not provide significantly greater protection for the riparian ESHA. Therefore, alternative design measures such as reduction in the size of the residence would not significantly reduce impacts on ESHA. Similarly, no alternative location for the residence exists that would reduce impacts on ESHA. The proposed residence is located on a level area of the site containing non-native ruderal grasses. This area is immediately adjacent to Arbol Verde Street and Concha Loma Drive, and is the only part of the site that is not located in ESHA.

Although no siting or design measures exist that would significantly reduce impacts on ESHA, additional actions can be taken to minimize adverse impacts to ESHA. The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by

new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Carpinteria area.

In the case of the subject site, much of the riparian understory consists of non-native and invasive species, including red brome (*Bromus madritensis*), ripgut brome (*Bromus diandrus*), black mustard (*Brassica nigra*), bull mallow (*Malva nicaeensis*) and nasturtium (*Tropaeolum majus*). The applicant proposes to remove non-native and invasive species from the riparian understory and revegetate this area with native species. Restoration of the riparian understory with native plant species will serve to enhance and protect the native riparian habitat if appropriatey implemented. Therefore, in order to ensure that the proposed restoration is implemented in a way that minimizes impacts to the riparian ESHA, **Special Condition Three (3)** requires the applicants to submit, for the review and approval of the Executive Director, a restoration/revegetation plan prepared by a qualified habitat restoration consultant. In order to further adverse effects to the adjacent riparian habitat, **Special Condition Two (2)** requires the disturbed and graded areas of the site to be landscaped with appropriate native plant species, consistent with the Restoration/Revegetation Plan submitted pursuant to **Special Condition Three (3)**. In order to minimize the potential for chemical pollution of Carpinteria Creek, **Special Condition Two (2)** also prohibits the use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.

Furthermore, drainage and erosion control measures implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to the riparian ESHA during construction and in the post-development stage. In addition, Commission review of any future development on the site is necessary to ensure that any additional development is consistent with the ESHA protection policies of the Carpinteria LCP. Therefore, the Commission finds, as detailed in Section B. above, that **Special Conditions Two (2), Three (3), Four (4),** and **Five (5)** are necessary to ensure the proposed development will not adversely impact coastal waters.

In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Seven (7)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward in order to minimize the impacts of unnatural light sources on sensitive wildlife species.

Finally, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the ESHA protection policies of the Carpinteria LCP, **Special Condition Eight (8)**, the future development restriction, has been required. Finally, **Special Condition Nine (9)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the ESHA protection provisions of the Carpinteria LCP.

E. Visual Resources

The Carpinteria LCP provides for the protection of visual resources, including coastal streams. The LCP requires that new residential development on or adjacent to streams be sited and designed to prevent adverse impacts on the visual quality of the resource. In addition the LCP policies require that new development be compatible with the scale and character of surrounding development, and the city's "small beach town" image.

Section 30251 of the Coastal Act, which is incorporated as a policy of the Carpinteria LCP, states that:

> ***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.***

In addition, the following LCP policies are applicable in this case:

4-1 ***Broad unobstructed views from the nearest public street to the ocean, including but not limited to Linden Avenue, Bailard Avenue, Carpinteria Avenue, and U.S. 101, shall be preserved to the extent feasible. In addition, new development that is located on or adjacent to bluffs, beaches, or streams, or adjacent to Carpinteria Marsh shall be designed and sited to prevent adverse impacts on the visual quality of these resources. To preserve views and protect these visual resources, new development shall be subject to all of the following measures:***

- ***(a) Provision for clustering development to minimize alterations to topography or to avoid obstruction of views to the ocean.***
- ***(b) Height restrictions to avoid obstruction of existing views of the ocean from the nearest public street.***
- ***(c) In addition to the bluff setback required for safety (Policy 3-4), additional bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures shall be set back from the bluff edge sufficiently far to insure that the structure does not infringe on views from the beach except in areas where existing structures already impact public views from the beach. In such cases, the new structure shall be located no closer to the bluff's edge than the adjacent structures.***
- ***(d) Special landscaping requirements to mitigate visual impacts.***

CDS5-1 ***Preserve and strengthen the visual and physical connections between the (Concha Loma) subarea, the beach, the downtown and other neighborhoods and districts in the city.***

CD-1 ***The size, scale, and form of buildings, and their placement on a parcel should be compatible with adjacent and nearby properties, and with the dominant neighborhood or district development pattern.***

CD-3 ***The design of the community should be consistent with the desire to protect views of the mountains and the sea (California Coastal Act of 1976 Section 30251).***

CDS5-3 ***Ensure that new development is sensitive to the scale and character of existing neighborhoods, and consistent with the city's "small beach town" image.***

OSC-13 ***Preserve Carpinteria's visual resources.***

The proposed project is located adjacent to Carpinteria Avenue, at the entrance to the Concha Loma neighborhood. A multi-story office building is located across Arbol Verde Street to the east of the project site. One story multi-family and single family residences are located south of the subject site, across Concha Loma Drive. The neighborhood south of Concha Loma Drive was developed in the 1950s and consists largely of one-story single family residences from that era, with an average lot size of approximately .20 acre, and an average floor area of approximately 1,350 sq. ft. However, some of the residences have been converted to multi-family units, and several small apartment complexes are clustered along Concha Loma Drive east of Arbol Verde Street.

The square footage of the proposed residence is approximately 1/3 larger than most nearby single family residences; however, given its location on the periphery of the neighborhood, adjacent to a large office building and in proximity to the row of apartment buildings along Concha Loma Drive, the proposed residence is consistent with the heterogeneous nature of surrounding development. In addition, while the proposed residence includes a 265 sq. ft. second story, the maximum height of the structure is approximately 19 feet, a modest increase in height over that of nearby single family residences.

The project site currently affords views of riparian vegetation, including the scenic sycamore canopy, from Carpinteria Avenue, Arbol Verde Street and Concha Loma Drive. Carpinteria Creek is visible from the Carpinteria Avenue bridge. The proposed residence will be located on the eastern portion of project site, at the intersection of Arbol Verde and Concha Loma Drive. The proposed residence will have no impact on views of the stream itself. The proposed residence will not significantly impact views of the riparian vegetation as seen from Carpinteria Avenue, the main public thoroughfare adjacent to the site. The proposed residence will impact views of the riparian vegetation as seen by westbound traffic on Concha Loma Drive, and from northbound and southbound traffic on Arbol Verde Street. Specifically the residence will block views of the lower approximately 10 to 20 feet of riparian vegetation, including the northernmost willow copse, while leaving the upper half of the sycamore canopy visible.

Commission staff has considered whether alternative proposals for residential development on the subject site exist that would significantly reduce the visual impacts of the project. Given the constraints of the subject site, particularly the requirement for an adequate setback to reduce

impacts to the riparian corridor, no alternative location exists on the subject site. Similarly, design changes, such as reduction in the size of the house or elimination of the 265 sq. ft. second story, would not significantly decrease impacts on views of the riparian canopy.

However, measures can be taken to minimize the visual impacts of the project. Restrictions on the use of outdoor night lighting will help to ensure that the proposed project is sensitive to the character of the adjacent natural area and surrounding neighborhood. Therefore, **Special Condition Seven (7)** restricts the use of outdoor night lighting to the minimum necessary for safety purposes. Visual impacts can be further minimized by the implementation of a landscape plan that employs a native plant palette consistent with the existing riparian canopy, as required by **Special Condition Two (2)**. The Commission also notes that visual impacts will be further mitigated by the implementation of erosion control measures, as required by **Special Conditions Two (2)**, **Three (3)**, **Four (4)**, and **Five (5)**. Implementation of the requirements of these conditions will ensure that the adverse visual effects of obtrusive non-native landscaping and uncontrolled erosion are avoided.

In addition, to ensure that future development of the site is reviewed for potentially adverse effects on coastal visual resources, the Commission finds it necessary to impose **Special Condition Eight (8)**, which requires the applicants to obtain a coastal development permit for any future development of the site, including improvements that might otherwise be exempt from coastal permit requirements. Finally, **Special Condition Nine (9)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In summary, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of the Carpinteria LCP.

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmentally 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 available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consi stent with CEQA and the policies of the Coastal Act.

Fr 21.5a

STATE OF CALIFORNIA – THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

Filed: 2/19/03
49th Day: 4/09/03
180th Day: 8/18/03
Ventura District Staff
Staff Report: 5/23/03
Hearing Date: 6/13/03

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Carpinteria

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-CPN-03-016

APPLICANT: Louis Carnevale

APPELLANT: Carpinteria Creek Foundation

PROJECT LOCATION: Corner of Carpinteria Avenue, Arbol Verde Street and Concha Loma Drive in the City of Carpinteria, Santa Barbara County.

PROJECT DESCRIPTION: Construction of a 2,207 sq. ft. two story single family home with attached garage/workshop, porch, driveway, fence, garden wall, sidewalk, drainage structures, vegetated bio-swale, restoration of riparian habitat, and 464 cu. yds. of grading (308 cu. yds. cut, 156 cu. yds. fill).

SUBSTANTIVE FILE DOCUMENTS: City of Carpinteria Local Coastal Program, Final Environmental Impact Report, Carnevale Duplex Project, May 2002; Draft Environmental Impact Report, Carnevale Duplex Project, February 2002; City of Carpinteria Final Development Plan 99-881-DP/CDP (City Council Approval dated January 27, 2003); Memorandum from John Dixon, Ph.D., Staff Ecologist to Lillian Ford, re: Habitat Buffer at Carnevale Property, May 8, 2003.

SUMMARY OF STAFF RECOMMENDATION
SUBSTANTIAL ISSUE DOES EXIST

Staff recommends that the Commission determine that **substantial issue** exists with respect to the grounds on which the appeal has been filed. The motion for substantial issue are found on **page 4**.

EXHIBIT NO. 1
APPLICATION NO. Carnevale
A-4-CPN-03-016
S/ Staff Report

The appeal contends that the Carnevale Residential Project, as approved by the City, is inconsistent with the City's LCP in regard to protection of riparian ESHA and visual resources. The appeal specifically contends that (1) the approved setback from the riparian dripline is inadequate to prevent significant impacts to ESHA; (2) the project includes non-resource dependent development within ESHA; and (3) the project is not sited and designed to prevent adverse impacts to the visual quality of Carpinteria Creek.

Staff recommends that the Commission determine that substantial issue exists in regard to the construction of a stormwater drainage system, a non-resource dependent use, within ESHA.

I. APPEAL JURISDICTION

The project site is a 0.45 acre parcel located on the south side of Carpinteria Avenue, on the west side of Arbol Verde Street, and on the north side of Concha Loma Drive in the City of Carpinteria, Santa Barbara County. The Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction map certified for the City of Carpinteria (adopted November 17, 1983) indicates that the appeal jurisdiction for this area extends 100 feet from each bank of Carpinteria Creek. In addition, Section 30603 of the Coastal Act states, in part, that an action taken by a local government on a coastal development permit application may be appealed to the commission if the development approved is within 100 feet of any wetland, estuary, or stream. Carpinteria Creek traverses the northwest portion of the subject site from west to east, and all but the extreme southeast corner of the lot is located within 100 feet of the top of the creek's southeast bank. As such, nearly all portions of the development are located within the appeal jurisdiction of the Commission and accordingly, the City's action to approve the permit is appealable.

The Carnevale project includes, at a minimum, the following development within 100 feet of Carpinteria Creek: a) a 2,207 sq. ft. two story single family home with attached garage/workshop, porch, and driveway; b) 464 cu. yds. of grading; c) a stormwater filter, drainage pipe and approximately 15 sq. ft. rip-rap energy dissipator; d) a 42 inch high, 40 ft. long split rail wooden fence and 176 foot long, maximum 2 foot high garden wall; e) restoration of riparian habitat southeast of Carpinteria Creek; f) construction of a vegetated bio swale; and f) construction of a 5 foot wide sidewalk. Because the property includes areas within 100 feet of a creek, if the Commission finds that the appeal raises a substantial issue, the City's action of approving a CDP authorizing construction of the project would be subject to Commission review de novo.

A. Appeal Procedures

The Coastal Act provides that after certification of Local Coastal Programs, a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments

must provide notice to the Commission of its coastal permit actions. During a period of 10 working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

Appeal Areas

Under Section 30603 of the Coastal Act, development approved by a local government may be appealed to the Commission if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of any wetland, estuary, or stream. Further, any development approved by a local County government that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission, irrespective of its geographic location within the coastal zone. Finally, development that constitutes major public works or major energy facilities may also be appealed to the Commission.

Grounds for Appeal

The grounds for appeal of development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code (Section 30603[a][4] of the Coastal Act).

Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or its representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

De Novo Review Hearing

If a substantial issue is found to exist, the Commission will consider the City's action de novo. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing, or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in

conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

B. Local Government Action and Filing of Appeal

Commission staff received a Notice of Final Action for a Coastal Development Permit (Case No. 99-881-DP/CDP) issued by the City for the construction of the new single family residence on February 3, 2003. Following receipt of the Notice of Final Action, a 10 working day appeal period was set and notice provided beginning February 4, 2003 and extending to February 19, 2003.

An appeal of the City's action was filed by the Carpinteria Creek Foundation, during the appeal period, on February 19, 2003. Commission staff notified the City, the applicant, and all interested parties that were listed on the appeal.

C. April 10, 2003 Commission Meeting

Public hearing and Commission action on the appeal was scheduled for the April 10, 2003 Commission meeting. At the hearing, the project applicants requested a continuance, and the Commission opened the hearing and took testimony on whether a continuance should be granted. Hearing no objections to the applicants' request, the Commission granted the continuance, and the project applicants signed a statement waiving the 49-day requirements of Public Resources Code Sections 30621 and 30622.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: ***I move that the Commission determine that Appeal No. A-4-CPN-03-016 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.***

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-CPN-03-016 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of

the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Standard of Review

On August 6, 2002 the Commission approved an amendment for an updated Land Use Plan for the City of Carpinteria LCP. The amendment was certified by the Commission on April 10, 2003. Although many of the LUP policies became effective upon certification, many others, including those concerning protection of creek corridors, will only become effective once necessary amendments are made to the City's Implementation Program (IP). Because the amended LUP has not yet been certified, the standard of review for this appeal is the current certified City of Carpinteria LCP (as certified on January 22, 1980 and subsequently amended).

B. Background

The project site is a 0.45 acre parcel located south of Carpinteria Avenue at the entrance to the Concha Loma residential neighborhood. The northwest portion of the parcel contains the bed and southeastern bank of Carpinteria Creek, the latter of which contains riparian woodland habitat, including mature stands of California Sycamore (*Platanus racemosa)* and Arroyo Willow (*Salix lasiolepis*). The woodland understory is disturbed and contains many non-native species. The creek and riparian woodland is home to special status wildlife, including Steelhead trout (*Oncorhyncus mykiss*), Tidewater goby (*Eucyclogobius newberryi*), Monarch butterfly (*Danaus plexippus*), and Cooper's hawk (*Accipiter cooperii*). The riparian canopy extends past the top of bank an average of approximately 45 feet, although portions of the woodland extend as little as 2 feet and as much as 70 feet. Carpinteria Creek and the surrounding riparian habitat is designated Environmentally Sensitive Habitat Area (ESHA). The remainder of the parcel consists of disturbed ruderal grassland. An informal footpath crosses the property, and is used as a "shortcut" from Carpinteria Avenue to a dirt flood control access road that leads to the creek bottom in the southwestern portion of the site.

The parcel is zoned Planned Residential Development (PRD-15) in the City's certified Local Coastal Program (LCP). The PRD-15 zone designation allows for a maximum of 15 units per acre or 1 unit per 2,904 sq. ft. of gross land area, which would allow a base buildout of 6 units. The site is also subject to the Environmentally Sensitive Habitat Area (ESH) Overlay District, which requires a minimum 20 foot buffer strip from the top of stream banks and limits development within stream corridors to projects whose primary purpose is improvement of fish and wildlife habitat, flood control, bridges, and pipelines where no alternative route is feasible. In addition, the site is subject to the Flood Hazard (FH) Overlay District, which requires creek setback and finished floor elevation standards.

The project applicant has unsuccessfully pursued City approval for two previous development proposals for the site, including a 1988 proposal to construct an approximately 6,000 sq. ft. mixed use building, and a 1990 proposal to build an approximately 7,700 sq. ft. three-unit condominium. Both of the proposals would have required clearance of riparian habitat and channelization of the creek bank. The parcel has also been the subject of a campaign to preserve the site as a public park. In 1995, community members, including the Concha Loma / Arbol Verde neighborhood and the Carpinteria Creek Committee, petitioned the City to acquire the site for a public park, and by 1999, when the current proposal was submitted, had raised approximately $46,000 dollars towards the purchase price of the property.

C. City Approval

In June 1999, Louis Carnevale submitted a proposal to the City of Carpinteria to build an approximately 3,500 sq. ft. duplex on the subject site. A Mitigated Negative Declaration (MND) was prepared for the project and as a result the project was reduced to incorporate mitigation measures, including a 10 foot setback from the riparian habitat (excluding the willow copse). Upon review of the MND, the Planning Commission determined that preparation of a full EIR was necessary to evaluate the environmental impacts of the proposed project. A Draft EIR was published in February 2002, and a Final EIR in May 2002. The Final EIR was certified by the Planning Commission in July 2002. To comply with additional mitigation measures provided in the Final EIR, the applicant further reduced the project to allow for a 20 foot setback from the riparian dripline, as shown in the Final EIR. The applicant abandoned the duplex proposal and instead proposed construction of a 2,207 sq. ft. single family residence.

On November 4, 2002, the City of Carpinteria Planning Commission approved a Development Plan for the construction of the Carnevale Residential Project as described in this report. The Planning Commission's decision was appealed to the Carpinteria City Council by the Carpinteria Creek Foundation. On January 27, 2003, the City Council granted the appeal for the limited purpose of modifying an addendum to the project Final EIR, adopting additional findings, and adding a condition of approval to prohibit hard banking of the creek on the property. The City Council denied the remainder of the appeal and approved the project via Resolution No. 4771. The resolution and conditions of approval are attached as **Exhibit 2**.

D. Project Description

The action undertaken by the City in CDP No. 99-881-DP/CDP, and subject to appeal, is the City's approval of a development permit and coastal development permit for construction of a 2,207 sq. ft. two story single family home with attached garage/workshop, porch, driveway, 40 foot long split rail fence, 176 ft. long, max. 2 ft. high garden wall, five foot wide sidewalk, drainage structures, vegetated bio-swale, restoration of riparian habitat, and 464 cu. yds. of grading (308 cu. yds. cut, 156 cu. yds.

fill) at the intersection of Carpinteria Avenue, Arbol Verde Street and Concha Loma Drive in the City of Carpinteria. This project is referred to as the Carnevale Residential Project elsewhere in this report.

The footprint of the residence, including driveway and porch (but excluding landscaping and sidewalk, and drainage structures) is 2,914 sq. ft. (.07 acre, or 15% of the total parcel).

Project plans are attached to this report as **Exhibit 4**.

E. Appellants' Contentions

The appeal filed by the Carpinteria Creek Foundation is attached as **Exhibit 1**. The appellants contend that the Carnevale Residential Project, as approved by the City, is inconsistent with the City's LCP in regard to protection of riparian ESHA and visual resources. The appellants specifically maintain that the approved setback from the riparian dripline is inadequate to prevent significant impacts to ESHA, and therefore violates LCP Policies 1-1 (which incorporates Chapter Three of the Coastal Act, including Section 30240 for the protection of ESHA) and 9-15 (which provides ESHA setback standards). The appellants further contend that the project includes non-resource dependent development within ESHA, in violation of LCP Policy 1-1, as well as of LCP Policies 9-16 and 9-17 (which limit development in stream corridors). Lastly, the appellants assert that the project is not sited and designed to prevent adverse impacts to the visual quality of Carpinteria Creek, in violation of LCP Policy 4-1.

F. Analysis of Substantial Issue

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants.

Section 30603 provides:

> ***The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division. (Section 30603(b)(1)).***

Section 30625 (b) provides:

> ***The commission shall hear an appeal unless it determines the following:***
>
> ....
>
> ***(2) With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. (Section 30625(b)(2).***

Therefore, the grounds for an appeal of the CDP are limited to an allegation that the development approved under CDP No. 99-881-DP/CDP does not conform to the City of Carpinteria's certified LCP or public access policies of the Coastal Act. The appeal alleges that the approved development does not comply with the ESHA and visual resource protection policies of the City of Carpinteria LCP. The Commission finds that a substantial issue exists with respect to the grounds on which the appeal has been filed for the specific reasons discussed below.

Protection of Riparian ESHA

The appellants contend that (1) the approved setback from the riparian dripline is inadequate to prevent significant impacts to ESHA; and (2) the project includes non-resource dependent development within ESHA. These two claims are discussed in turn below.

Creek Setback

The appellants assert that the Carnevale Residential Project does not conform to the following policies of the City of Carpinteria LCP:

LCP Policy 1-1, which states:

> *The City shall adopt the policies of the Coastal Act (Public Resources Code Sections 30210 through 30263) as the guiding policies of the land use plan.*

Section 30240 of the Coastal Act, which is incorporated by reference in LCP Policy 1-1 and states:

> *(a) **Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.***
>
> *(b) **Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.***

City of Carpinteria LCP Policy 9-15, which states:

> ***The minimum buffer strip for natural streams within the City shall be 20 feet from the top of the bank. These minimum buffers may be adjusted by the City on a case-by-case basis after investigation of the following factors:***
>
> ***a. soil type and stability of the stream corridor;***
> ***b. how surface water filters into the ground;***
> ***c. types and amount of riparian vegetation and how such vegetation contributes to soil stability and habitat value;***
> ***d. slopes of the land on either side of the stream; and***
> ***e. location of the 100-year flood plain boundary.***

The approved project site is a 0.45 acre parcel bounded on three sides by Carpinteria Avenue and two residential streets, Arbol Verde Street and Concha Loma Drive. Carpinteria Creek runs from west to east through the northwest portion of the site, and riparian vegetation extends southeasterly from the top of bank. The extent of riparian vegetation generally increases from north to south, from less than two feet from top of bank in the northern part of the parcel, to approximately 35 feet in the center of the parcel, and up to 70 feet in the southern part of the parcel. The project provides for a minimum 37 foot setback from the top of the stream bank, extending to an average of 55 feet from the top of bank in the center of the parcel, and up to 125 feet in the southern part of the parcel. As shown on the approved plans, the project provides for a 20 foot setback from the dripline of riparian vegetation, which includes California Sycamore (*Platanus racemosa*) and Arroyo Willow (*Salix lasiolepis*).

The 20 foot setback was established in lieu of an earlier proposed 10 foot setback in order to comply with mitigation measures included in the project EIR. Application of a 20 foot setback was consistent with statements, made by biologists Darlene Chirman (consultant for the appellants), Mark Holmgren, and Dr. Thelma Schmidhauser in correspondence to the City, that a 20 foot setback was necessary to avoid significant impact to the riparian habitat. Other biologists, including Lawrence Hunt and Rachel Tierney (consultants for the project applicants), and Vince Semonsen, the City Biologist, had concluded that a 10 foot setback from the riparian dripline was adequate to prevent significant impacts.

The appellants contend that the 20 foot setback is measured from the dripline as it existed in 1999, and that, due to growth of the riparian vegetation, the setback from the current dripline is only 9 to 13 feet. The appellants assert that under CEQA guidelines, the dripline should have been established at the time of the Notice of Preparation of the Draft Environmental Impact Report (EIR) for the project, which was in June 2001.

The January 27, 2003 staff report on the project states that Rincon Consultants, Inc. resurveyed the site and confirmed the location of the dripline in October 2001, as noted in the certified Final EIR for the project. The report thus maintains that the dripline as shown on the approved plan provides an appropriate baseline from which to measure the 20 foot setback. The January 27, 2003 staff report further notes that City staff had recently measured the distance between the willow dripline on site and story poles demarking the footprint of the residence, and found the distance to be between 13 and 19 feet. In addition, the report notes that the City Biologist has determined that the current setback is adequate to reduce impacts to riparian habitat to a less than significant level, and notes that the setback was increased from 10 to 20 feet in part to provide sufficient area to accommodate the growth of vegetation.

Most recently, on May 6, 2003, Lawrence Hunt, consulting biologist to the project applicants, visited the site and measured nine branches, ranging in size from 0.5 to 1.25 inches in diameter, extending approximately 5 to 6 feet beyond the mapped canopy.

As noted above, LCP Policy 9-15 requires a minimum setback of 20 feet from the top of bank of streams, which may be adjusted based on soil type, stability of the stream corridor, surface water infiltration, type and amount of riparian vegetation and its contribution to soil stability and habitat value, slope characteristics, and location of the 100 year flood plain boundary. Using these criteria, the City recommended a 10 foot setback from the riparian dripline. Subsequent to publication of the Final EIR, the project applicant increased the setback to 20 feet from the riparian dripline. The approved project setback is approximately 37 to 125 feet from the top of bank of stream, thus providing a buffer that is significantly larger than the minimum required under LCP Policy 9-15. Furthermore, LCP Policy 9-15 states that the minimum buffer *may* be adjusted by the City on a case-by-case basis, but does not *require* such adjustments to be made. Given that the project setback significantly exceeds the minimum required under LCP Policy 9-15, and that the policy does not require that minimum to be exceeded under any circumstance, the appeal does not raise a substantial issue regarding conformance with LCP Policy 9-15.

LCP Policy 1-1 incorporates Section 30240 of the Coastal Act, which requires ESHA to be protected against any significant disruption of habitat values, and requires adjacent development to be sited and designed to prevent impacts that would significantly degrade ESHA. As discussed above, the setback between the current riparian dripline and the approved residence is between 9 and 19 feet, with differing measurements being noted by City staff and appellants, and the most recent measurement, performed by Lawrence Hunt, consulting biologist to the project applicants, recording nine branches, ranging in size from 0.5 to 1.25 inches in diameter, extending approximately 5 to 6 feet beyond the mapped canopy. Several biologists have stated that a 20 foot setback from riparian vegetation is necessary to protect habitat resources. Other biologists have determined that extension of the setback from 10 feet to 20 feet would not significantly change impacts to the riparian ESHA.

Commission staff biologist Dr. John Dixon has reviewed the biological reports and assessments submitted for the project. In a memorandum dated May 8, 2003, Dr. Dixon addressed the setback issue:

> ***In general, I think a 100-foot buffer, measured from the bank of the stream or the edge of riparian vegetation, whichever is greater, should be the default standard for natural streams. However, in urbanized areas, such a wide buffer is often not feasible and often does not make good ecological sense due to the presence of existing development. A wide buffer for a particular property is unlikely to perform a protective function proportional to its width if the adjacent or nearby parcels have development much closer to the stream. In the case of Carpinteria Creek, there are structures present that are within 15-20 feet of the creek bank and within 5 feet of the riparian canopy, according to the final EIR (p. 386)....In view of the existing urban constraints, the opponents to earlier project designs generally recommended that the development be set back at least 50 feet from the bank of Carpinteria Creek and at least 20 feet from the dripline of the riparian vegetation...***

Assuming, for the sake of analysis, that the 20 foot setback from the October 2001 riparian dripline was adequate, Dr. Dixon analyzed the likely impact of the project on the riparian ESHA as currently mapped, and concluded

> ***If Hunt's recent estimate is accurate, the actual change in canopy is due to some 9 small tree branches extending 5 or 6 feet into the previously established buffer. The resultant marginal increase in the environmental impact of the development due to such change in vegetation is not likely to be significant.***

Dr. Dixon's memo is included as **Exhibit 5** of this staff report.

As concluded by Dr. Dixon, increasing the setback would not provide significantly greater protection for the riparian ESHA. Therefore, inadequate basis exists to determine that the approved project substantially conflicts with the requirements of LCP Policy 1-1. Therefore, the appeal does not raise a substantial issue regarding conformance with either LCP Policy 9-15 or LCP Policy 1-1.

Development within ESHA

The appellants assert that the Carnevale Residential Project does not conform to the following policies of the City of Carpinteria LCP:

LCP Policy 1-1, which states:

> *The City shall adopt the policies of the Coastal Act (Public Resources Code Sections 30210 through 30263) as the guiding policies of the land use plan.*

Section 30240 of the Coastal Act, which is incorporated by reference in LCP Policy 1-1 and states:

> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
>
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

LCP Policy 9-16, which states:

> ***No structures shall be located within the stream corridor except: developments where the primary function is the improvement of fish and wildlife habitat; dams; structures necessary for flood control purposes; bridges, when supports are located outside the critical habitat; and pipelines, when no alternative route is feasible.***

LCP Policy 9-17, which states:

All development, including dredging, filling, and grading, within stream corridors shall be limited to activities necessary for flood control purposes, bridge construction, water supply projects, or laying of pipelines, when no alternative route is feasible. When such activities require removal of riparian plant species, re-vegetation with local native plants shall be required. Minor clearing of vegetation shall be permitted for hiking and equestrian trails.

The project includes structural development within the canopy of riparian vegetation on the site, including an approximately 18 foot length of a 42 inch high split rail fence, an approximately 80 foot long, 6 inch underground stormwater drainpipe, and an approximately 15 sq. ft. rip-rap energy dissipator. In addition, an approximately 22 foot length of the fence and 28 foot length of the drain pipe is located within the 20 foot buffer from the riparian dripline. The lower 43 feet of the drain pipe is located adjacent to the footprint of the flood control access road that leads to the creek bed. The energy dissipator is located at the bottom of the pipe, adjacent to the access road and below the top of the creek bank. The fence is intended to prevent trespass onto the property and into the ESHA, and the storm water structures are intended to transport runoff from the project into the stream in a non-erosive manner.

The appellants contend that the fence and stormwater structures are non-resource dependent uses that do not fall within any the development categories allowed under LCP Policies 9-16 and 9-17. However, the primary function of the fence is to prevent human disturbance of the riparian woodland adjacent to Carpinteria Avenue, and thus to improve wildlife habitat consistent with LCP Policy 9-16. Therefore, approval of the proposed fence does not raise a substantial issue as to conformity with LCP Policies 9-16 and 9-17. Although the fence does not require ESHA in order to function, and is therefore not a resource dependent use, its minimal footprint, potential benefits to ESHA quality, and negligible adverse impacts do not raise a substantial issue as to conformity with Section 30240 of the Coastal Act, as incorporated in LCP Policy 1-1.

Even if it is assumed that the purpose of the stormwater system is to enhance the quality of water entering Carpinteria Creek, and therefore its primary purpose is the improvement of fish and wildlife habitat, LCP Policy 9-16 only allows pipelines to be located within stream corridors when no alternative route is feasible. In the case of the proposed project, alternatives to locating the proposed pipeline within the stream corridor do exist.

One alternative is to direct runoff into a filtration system and allow the filtered water to flow from the site onto Concha Loma Avenue. Contrary to conclusions made in the previous staff report, if filtration is provided, water flowing from the site would contribute no pollutants to stormwater flows on Concha Loma Avenue, and would not increase the volume or velocity of stormwater flows such that pollutants on the road would be more readily transported into the stormdrain system. Other alternatives, such as constructing vegetated swales to direct runoff towards the riparian area in a non-erosive manner, may also be feasible.

The proposed stormwater system is not a resource dependent use, in that it does not require ESHA in order to function. Construction of the pipeline and energy dissipator would involve trenching and construction within the riparian ESHA and on the banks of the creek, and the placement of a permanent structure on the creek bank. Furthermore, the drainage system would release runoff directly onto the creek bank, thereby increasing the risk of erosion and introduction of household pollutants should the system be poorly maintained or fail. For these reasons, allowing construction of the pipeline and energy dissipator within the riparian ESHA when alternative locations exist would also be inconsistent with Section 30240 of the Coastal Act.

Therefore, for the reasons stated above, the appeal does raise a substantial issue regarding conformance with LCP Policies 1-1, 9-16, and 9-17.

Protection of Visual Resources

The appellants assert that the Carnevale Residential Project does not conform to the following policy of the City of Carpinteria LCP:

LCP Policy 4-1, which states:

> *Broad unobstructed views from the nearest public street to the ocean, including but not limited to Linden Avenue, Bailard Avenue, Carpinteria Avenue, and U.S. 101, shall be preserved to the extent feasible. In addition, new development that is located on or adjacent to bluffs, beaches, or streams, or adjacent to Carpinteria Marsh shall be designed and sited to prevent adverse impacts on the visual quality of these resources. To preserve views and protect these visual resources, new development shall be subject to all of the following measures:*
>
> *(a) Provision for clustering development to minimize alterations to topography or to avoid obstruction of views to the ocean.*
> *(b) Height restrictions to avoid obstruction of existing views of the ocean from the nearest public street.*
> *(c) In addition to the bluff setback required for safety (Policy 3-4), additional bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures shall be set back from the bluff edge sufficiently far to insure that the structure does not infringe on views from the beach except in areas where existing structures already impact public views from the beach. In such cases, the new structure shall be located no closer to the bluff's edge than the adjacent structures.*
> *(d) Special landscaping requirements to mitigate visual impacts.*

Although LCP Policy 4-1 provides no specific standards for protection of stream views, it does require new development located adjacent to streams to be designed and sited to prevent adverse impacts on the visual quality of streams. The LCP defines streams as

> *watercourses, including major and minor streams, drainageways, and small lakes, ponds, and marshy areas through which streams pass.*

The project site currently affords views of riparian vegetation, including the scenic sycamore canopy, but does not afford views of the stream, as defined by the LCP, from any public vantage point. The project will have minimal impact on views of the riparian vegetation adjacent to the stream; however, it will not impact views of the stream itself. Therefore, the appeal does not raise a substantial issue regarding conformance with LCP Policy 4-1.

In summary, for the reasons discussed above, the Commission finds that the appeal does not raise a substantial issue regarding whether the City decision to approve CDP No. 99-881-DP/CDP conforms to the LCP or applicable provisions of the Coastal Act.

G. Conclusion

For the reasons discussed above, substantial issue is raised with respect to the conformity of the project in regards to the ESHA protection policies of the City of Carpinteria LCP. Therefore, the Commission finds that the appeal filed by the Carpinteria Creek Foundation does raise a substantial issue as to the City's application of the policies of the LCP in approving CDP 99-881-DP/CDP.

EXHIBIT 1

Appeal No. A-4-CPN-03-016

(32 pages, including attachments)

STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

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

Carpinteria Creek Foundation
P.O. Box 1128
Carpinteria, CA 93014 (805) 684-2246
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Carpinteria

2. Brief description of development being appealed: Carnevale Residential Project
1,695 sf single family residence
adjacent to Carpinteria Creek

3. Development's location (street address, assessor's parcel no., cross street, etc.): APN 001-070-031
S of Carpinteria Ave., W of Arbol Verde, N of Concha Loma

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: DP/CDP

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-4-CPN-03-016

DATE FILED: 2/19/03

DISTRICT: _____

H5: 4/88

RECEIVED
FEB 19 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

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

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

a. __Planning Director/Zoning Administrator

b. _X_City Council/Board of Supervisors

c. __Planning Commission

d. __Other_____

6. Date of local government's decision: January 27, 2003

7. Local government's file number (if any): 99-881-DP/CDP

SECTION III. Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:
Louie Carnevale
4867 Sandyland Rd.
Carpinteria, CA 93013

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

(1) See Attachment B

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

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

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

See Attachment A, summarized below:

1. Development adjacent to ESHA is not sited and designed to prevent significant impacts in violation of LCP Policies 1-1, and 9-15.

2. The approved project includes non-resource-dependent development in ESHA in violation of LCP Policy 1-1, 9-16.& 17.

3. The approved project is not sited and designed to prevent adverse visual impacts in violation of LCP Policy 4-1.

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.

Please send all correspondence to:

Environmental Defense Ctr
906 Garden St
Santa Barbara, CA 93101

Signature of Appellant(s) or Authorized Agent

Date February 18, 2003

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

Section VI. Agent Authorization

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

Bob Hansen, Secretary, CCF
Signature of Appellant(s)

Date February 19, 2003

Attachment A

APPEAL TO CALIFORNIA COASTAL COMMISSION BY CARINTERIA CREEK FOUNDATION OF CARPINTERIA CITY COUNCIL'S APPROVAL OF PROJECT NO. 99-881-DP/CDP (APN 001-070-031) CARNEVALE RESIDENTIAL

On behalf of the Carpinteria Creek Foundation ("CCF"), the Environmental Defense Center ("EDC") submits this appeal of the City of Carpinteria's ("City") approval of the Carnevale Residential Project based on alleged violations of the City's certified Local Coastal Program ("LCP"). In bringing this appeal, the goal of the CCF is to ensure protection of Carpinteria Creek consistent with the requirements of the City's LCP and the California Coastal Act, Cal. Pub. Res. Code §§ 30000 *et seq*. Carpinteria Creek is one of the region's largest and most biologically diverse perennial streams and one of only several steelhead runs along California's South Central Coast.

We bring this appeal pursuant to the California Coastal Act, which allows any person to appeal a final action taken by a local government on a coastal development permit application. Pub. Res. Code § 30603(a). The Carpinteria City Council approved a CDP for the Carnevale Residential Project on January 27, 2003, and submitted its Notice of Final Action to the Coastal Commission on February 3, 2003. However, the City failed to comply with the requirements of the LCP by approving development too close to Environmentally Sensitive Habitat Areas("ESHA") to avoid substantial disruption of the riparian habitat values. The approved project also includes development in the ESHA that is not dependent on the ESHA and that could feasibly be located outside of it. In addition, project approval will obstruct public views of Carpinteria Creek in violation of the plain language of the LCP.

In submitting this appeal, CCF urges the Commission to modify the Carnevale Residential Project in the following manner so as to comply with the resource protection provisions of the Coastal Act and LCP:

1) an increased creek setback of at least 20 feet from the current riparian dripline (or whatever distance is necessary to avoid a significant impact);
2) relocation of the fence, storm drain and energy dissipater from the ESHA and buffer;
3) prohibition on development, including grading, decks and patios, in the riparian buffer;
4) controls on lighting adjacent to the riparian buffer; and
5) reasonable design modifications to further minimize blockages of public views of Carpinteria Creek.

Specifically, CCF's appeal is based on the following:

I. The residential development adjacent to ESHA is not sited and designed to prevent impacts which would significantly degrade the habitat and as a result the project is inconsistent with City LCP Policies 1-1 and 9-15.

As approved, the Carnevale Residential Project is set back less than 20 feet from the riparian dripline of Carpinteria Creek. Substantial evidence in the record, including fact-based testimony by several biologists (Darlene Chirman, Mark Holmgren and Dr. Thelma Schmidhauser), illustrates that a setback of less than 20 feet from the riparian dripline will result in a significant impact to the riparian habitat. (See Attachment #1) The LCP requires setbacks from ESHAs sufficient in size to prevent significant impacts to ESHA. The approved project results in a significant impact to the riparian habitat and the approval therefore conflicts with the LCP.

Under the Coastal Act, "Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas." Pub. Res. Code § 30240(b). To ensure consistency between the LCP and the Act, the City's LCP Policy 1-1 incorporates verbatim the Coastal Act's provisions, including Section 30240(b) as "the guiding policies of the land use plan." Therefore, to comply with the LCP, the project must comply with Section 30240(b) of the Act and thus must be sited a sufficient distance from the riparian ESHA (i.e. riparian dripline) to prevent significant impacts.

The certified EIR states that the project will result in a significant habitat impact unless it maintains a minimum 20-foot setback from the dripline. However, the City has applied this setback to the dripline location as of 1999 rather than to a more current dripline location. The riparian vegetation is growing out from the creek, so use of the 1999 dripline location results in a setback of approximately 10 instead of 20 feet. Substantial evidence in the form of written and spoken testimony from the CCF's biologists support the conclusion that a minimum 20-foot setback (from 2001 dripline location) is needed to avoid significant impacts to the creek and ESHA. The approved building is set back only half this distance from the current dripline, and the dripline was not specifically remapped in 2001[1].

Based on the evidence in the record including the certified EIR, this setback of less than 20 feet will result in a significant impact to the ESHA. Since the LCP and Coastal Act require that development adjacent to ESHAs "shall be sited and designed to prevent impacts which would significantly degrade those areas," the project violates the LCP and Coastal Act.

[1] The CCF reports that the dripline had grown out between 1999 and October 2001, a rainy period, however the City's assertion is that the dripline did not grow out between 1999 and October 2001, but has grown out approximately 10 feet since, during a period of very low rain fall. The CCF contends that the dripline should have been remapped in 2001 during EIR preparation and that the 20-foot minimum setback should have been measured from the 2001 dripline location. In fact, the California Environmental Quality Act guidelines require that the baseline be measured at the time of publication of the Notice of Preparation. *See* CEQA Guidelines § 15125.

In addition, the Project's proximity to Carpinteria Creek also violates LCP Policy 9-15. This policy requires a minimum buffer of *20 feet from the top of bank* which can be adjusted after consideration of five factors: soil type and stability of stream, how surface water filters into the ground, types of riparian vegetation and habitat value, slopes and extent of 100-year flood plain. The City did not specifically consider the 100-year flood plain and how water filters into the ground when it decided the setback of *20 feet from the 1999 dripline* (10 feet from the current dripline) was adequate.[2]

II. The approved project includes non-resource-dependent development in the ESHA, which could be avoided, and therefore the project is inconsistent with the City's LCP Policies 1-1, 9-16, and 9-17.

The City's LCP requires that all uses that are not dependent on being located in the ESHA must avoid the ESHA. The fence, storm drain and energy dissipater[3] are not dependent on the resources of the ESHA or being located within it but were nonetheless approved in violation of the LCP. Therefore, the City's approval of the project with the fence, storm drain, and energy dissipater in the ESHA is inconsistent with the Coastal Act and LCP.

First, siting the storm drain, fence, and energy dissipater in ESHA violates the City's LCP Policy 1-1, which states that "The City shall adopt the policies of the Coastal Act (Public Resources Code Sections 30210 through 30263) as the guiding policies of the land use plan." The Carnevale Residential Project violates several provisions of the Coastal Act as incorporated into the City's LCP. First, Coastal Act § 3[illegible] states that: "Environmentally sensitive habitat areas and parks shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." (Emphasis added.) Second, LCP Policy 9-16 states that: "No structures[4] shall be located within the stream corridor[5] except: developments where the primary purpose is improvement of fish and wildlife habitat; dams; structures necessary for flood control purposes; bridges, where supports are located outside the critical habitat; and pipelines, when no alternative route is feasible." Lastly, LCP Policy 9-17 states that: "All development …within stream corridors shall be limited to activities necessary for flood control purposes, bridge construction, water supply projects, or laying of pipelines, when no alternative route is feasible …"

---

[2] The project is setback more than 20 feet from the top of bank, however, CCF asserts that, based on biological evidence in the record, a larger setback is needed to prevent a significant disruption to the ESHA.

[3] The City added a condition to the project requiring an alternative location for the storm drain and energy dissipater to avoid the flood control access ramp, but did not require these developments to be located out of the ESHA.

[4] The City's Municipal Code defines "structures" and this definition includes fences, storm drains and energy dissipaters.

[5] The LCP defines stream corridor as "a stream and its minimum prescribed buffer strip." (Carpinteria City LCP Section 3.9)

The project includes a fence (primarily on public City property associated with the Carpinteria Avenue Right-of-Way) located within the ESHA and "stream corridor" as defined by the existing LCP. The fence can feasibly be located outside of the ESHA and in fact would better fulfill its stated intent to protect the habitat from human intrusion if it was outside of, rather than within, the ESHA and buffer. The fence is not necessary for flood control, and is not a water supply project or a bridge. Construction of the fence would require trimming of sycamore and willow trees and digging of post holes, which could impact roots of the riparian trees according to written testimony by Dr. Schmidhauser. Moreover, the fence could feasibly be located outside of the ESHA and buffer, or could be eliminated from the project to comply with the LCP. Therefore, approval of this project with the fence in the stream corridor and ESHA violates LCP Policies 9-15, 9-16 and 9-17 and Coastal Act § 30240(a) as incorporated into the LCP by Policy 1-1.

The approved project also includes a storm drain with an energy dissipater at its terminus near the stream bed as depicted in the project plans. The City conditioned the project to require consideration of alternatives to the storm drain location that could avoid the significant trenching and energy dissipater construction on the flood control access ramp but *did not require avoidance of the ESHA*. In this situation, a storm drain is not "necessary for flood control purposes" because runoff from this one house would be minimal according to City Public Works Director Steve Wagner's comments to the Planning Commission.

The storm drain and energy dissipater are not dependent on being in the ESHA because they can feasibly be located outside of the ESHA or eliminated from the project. Mr. Wagner described a specific alternative to the storm drain and energy dissipater that would locate them outside of the ESHA. EDC and the CCF also described a feasible alternative for these facilities that would avoid trenching and construction in the ESHA. The CCF recommended to the City that the storm drain (with the storm drain filter[*]) terminate outside of the ESHA to comply with the LCP, to avoid incompatible trenching and construction in the ESHA and to allow runoff to filter through and recharge the ESHA. By failing to specify that these developments must be located out of the ESHA and buffer, the City's approval of the project violated the LCP Policies 9-15, 9-16 and 9-17, and Coastal Act Section 30240(b) as incorporated in Policy 1-1.

III. The project is not sited and designed to prevent adverse impacts on the visual quality of Carpinteria Creek, in violation of LCP Policy 4-1.

According to the certified EIR and other evidence in the administrative record for the Carnevale Project, the approved project will adversely affect the visual qualities of the creek including views from public roads. Alternative designs, including a one-story house, could have lessened the adverse view blockage impact. By failing to employ conditions to minimize the view blockage, the City's approval of the project violates the LCP and should be reversed.

---

[*] The City failed to impose conditions requiring maintenance of the storm drain filter so that it remains effective during the project life.

LCP Policy 4-1 states that "development that is located adjacent to bluffs, beaches or streams ... shall be designed and sited to prevent adverse impacts on the visual qualities of these resources." However, as approved, the Carnevale Project would block substantial public views of Carpinteria Creek and its associated riparian vegetation from Concha Loma, Arbol Verde, and Carpinteria Avenue. Testimony from neighbors, evidence from Peggy Oki (an artist with experience in producing architectural sketches), and a 10-31-02 letter from Al Clark identify the adverse view blockages. Ms. Oki's testimony quantifies this impact, which the certified EIR identifies as *adverse*.

Under LCP Policy 4-1, *adverse* impacts to visual qualities of creeks need not be *significant* in order for an inconsistency with the policy to be identified. According to the plain language of the policy, developments must be designed and sited to prevent all adverse impacts on the visual resources of creeks. In this case, while preventing *all* adverse impacts to visual resources of the onsite creek may not be feasible, the *impacts to the creek's visual qualities can feasibly be lessened through design modifications*. However, the City did not act to minimize the adverse impacts to visual qualities by modifying the project design and therefore the approval violated LCP Policy 4-1.

IV. Relief Sought

CCF's appeal issues can be resolved in the following way through agreement with the applicant prior to the appeal or as suggested modifications proposed by the Coastal Commission to the City and applicant to ensure consistency with the LCP.

1. Require 20-foot buffer between the residential development, including eaves, and the current riparian dripline.
2. Eliminate fence, storm drain and energy dissipater from ESHA and 20-foot buffer.
3. Reduce blockages of public views of the Carpinteria Creek ESHA.
4. Prohibit construction of patio, deck, stairs or other developments in riparian ESHA buffer.
5. Prohibit internal and external lighting which could spill into the Carpinteria Creek ESHA.

ATTACHMENT #1

DARLENE CHIRMAN
Biological Consulting

39 San Marcos Trout Club
Santa Barbara, CA 93105

(805)692-2008
FAX 967-2380

e-mail: dchirman@rain.org

May 29, 2001

City of Carpinteria
Planning Commission
5775 Carpinteria Avenue
Carpinteria, CA 93013

RE: Project 99-881-DP Duplex
Louie Carnevale

Honorable Commissioners:

I have been retained by the Carpinteria Creek Foundation to prepare an evaluation of the potential for environmental impacts as a result of the proposed Carnevale project (Project 99-881-DP). I have attached a current copy of my resume for your convenience and reference (*See* Exhibit 1). This report addresses the adequacy of the creek setback (i.e., buffer) to protect Environmentally Sensitive Habitat ("ESH") of Carpinteria Creek from the impacts of the proposed development of a duplex on Arbol Verde and Concha Loma in Carpinteria. The parcel straddles Carpinteria Creek, with development proposed for the portion of the parcel east of the creek. Please refer to my letter of March 20, 2000, (*See* Exhibit 2), for additional comments related to the project.

I re-surveyed the property on May 21, 2001, to evaluate the latest development proposal and its potential impacts to the existing riparian vegetation and the habitat value it provides.

The ESH extends to the dripline of the canopy trees, which is primarily Western Sycamore (*Platanus racemosa*), and some Arroyo willow (*Salix lasiolepis*) near the northern boundaries of the property. I recommend a 20-foot buffer from ESH to protect the biological resources on the site. I noted that some Arroyo willow branches have been pruned, reducing the extent of the ESH adjacent to the development area. The dead branches were left on the ground; according to Carpinteria Creek Committee members, this pruning occurred in February of this year.

Carpinteria Creek is a perennial water source, providing high wildlife value. In 2000, a federally endangered steelhead (*Oncorynchus mykiss*) was recorded in the creek on or adjacent to the project site. *See* Exhibit 3. The creek and its riparian habitat were recently designated as Critical Habitat for Steelhead by the National Marine Fisheries Service. *See* Exhibit 4. The 1991 Riparian Habitat Study notes the "Carpinteria Creek, extending from Carpinteria Avenue to the ocean, supports the single most significant riparian habitat for birds in southern Santa Barbara County (Lehman, 1991)." The multistory canopy development is a major contributor to the high biodiversity–the Sycamore canopy trees, the Arroyo willow, and the ground cover species such as California blackberry, Mugwort, and Poison oak. This site is a link of riparian corridor connected to the much wider riparian area north of Carpinteria Street. The Arroyo willow is a critical component of ESH, as habitat for such species as the endangered Willow Flycatcher, which has been observed in the Carpinteria Creek corridor near the site (pers. comm. R. Hansen). According to UCSB Ornithologist Mark Holmgren, this is most likely the migrating mountain race of

Willow Flycatcher, *Empidonax traillii brewsteri*, which is endangered at the Federal and State levels. For these reasons, Carpinteria Creek and its associated riparian vegetation are ESH.

In order to avoid significant direct biological impacts to the ESH, no development should occur within this ESH: no fill or retaining walls, or parking areas should be allowed within this zone. A buffer extending outward from the existing native riparian vegetation provides protection from disturbance to the vegetation, for its wildlife inhabitants, and allows for biofiltration of run-off to protect the water quality of Carpinteria Creek. The proposed 10-foot buffer is inadequate in that it is only a 10-foot setback from the Sycamore tree canopy and does not include the willow copse. The Coastal Act and City LCP require a setback adequate to prevent significant disruption of the ESH. A minimum 20-foot setback from the ESH (e.g., from the sycamore and willow driplines) is necessary to avoid significant indirect impacts to the ESH and thus to comply with the LCP and the Coastal Act.

The applicant has mapped and offered a "10-foot setback from the tree canopy". However, the eaves, which appear to be approximately 3 feet wide from the plans, encroach into this buffer in three places. This encroachment can significantly alter the ability of the buffer to function as a biofilter and wildlife corridor.

The Arroyo willow is a significant component of ESH. When the 10-foot setback is modified to include Sycamore *and* willow, the covered patio and additional eaves encroach on the 10-foot buffer. I estimate less than 3 feet would separate the willows from the patio roof. This is inadequate protection of ESH. This porch would be approximately 25 feet from top-of-bank, the narrowest setback of the development.

The City's existing LCP provides for a *minimum* setback of 20 feet from the top-of-bank of Carpinteria Creek. Under Policy 9-15, this minimum setback can be adjusted upwards on the basis of five specific factors. Given the 25-30 feet of existing riparian vegetation ESH beyond the top of the bank and the sensitivity of Carpinteria Creek, and the fact that most of the site is located in the 100-year flood plain, the setback must include a minimum 20-foot buffer from the outermost edge of this native vegetation to avoid potentially significant environmental impacts. The setback should be a minimum of 20 feet from the willow and sycamore dripline.

The County Flood Control District's recommendation for the 1992 development proposal at this site, which was denied due to an insufficient creek setback, was a 50-foot setback from the top-of-bank, or 25 feet if the creekbank is hard-banked. The latter is not an option, according to LCP Policy 9-20 and the February 2000 designation by the National Marine Fisheries Service of Carpinteria Creek as Critical Habitat for Steelhead. The updated Biological Review states that the "revised project proposes to construct a significantly smaller structure, and located this structure farther back from the creek, so as not to require bank stabilization." However, the proposed setback is *not* 50-feet from top-of-bank, as recommended by the Flood Control District without bank stabilization. At the narrowest point, the development is 25 feet from top-of-bank.

A biologically sufficient buffer from the dripline of the existing sycamores and willows is 50 feet. This is consistent with the City's soon to be adopted LCP policies. While this project was submitted prior to the LCP revision, the revised LCP illustrates that the City acknowledges the deficiency of its existing LCP creek setback policy. The need to protect the ESH riparian corridor and a buffer area is codified by Section 30240 the Coastal Act, which states that:

"(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

"(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas."

The City's current draft LCP proposes a 50-foot setback from the top-of-bank or existing riparian vegetation, whichever is greater. That same 50-foot setback is also the standard in both the Goleta and Montecito Community Plans for urban areas.

Based on my biological expertise, I recommend a 20-foot buffer from existing riparian vegetation or a 50-foot buffer from the top-of-bank. This is necessary to avoid significant impacts to Carpinteria Creek, and allows reasonable use of the parcel while protecting the biological resources. The 20-foot buffer (from the sycamore and willow driplines) may be the appropriate location for a pervious-surfaced trail. Given the need to elevate the residential level approximately 2 feet above current grade with some backfilling against the foundation, the proposed 3-to-10-foot setback is inadequate to protect the adjacent ESH both during construction and for the life of the project. The recommended 20-foot setback would allow reasonable use of the site while avoiding significant impacts to the creek and ESH.

In summary, the project as proposed may have significant adverse impacts to the Environmentally Sensitive Habitat along Carpinteria Creek – the water quality, the existing native riparian trees, understory shrubs and groundcover, and the wildlife habitat provided by this plant community. I recommend a 20-foot setback from existing riparian vegetation – the willows as well as the canopy trees, as a compromise to allow use of the property while avoiding these impacts.

Sincerely,

Darlene Chirman

Darlene Chirman
Biologist

Enclosures: Exhibits 1, 2, 3, 4

Copies:
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101

Carpinteria Creek Committee
P.O. Box 1128
Carpinteria, CA 93124-1128

DARLENE CHIRMAN
Biological Consulting

39 San Marcos Trout Club
Santa Barbara, CA 93105

(805)692-2008
FAX 967-2380

e-mail: dchirman@rain.org

April 2, 2002

Paul Kermoyan
City of Carpinteria
Community Development Department
5775 Carpinteria Avenue
Carpinteria, CA 93013

RE: CARNEVALE DUPLEX DRAFT EIR

Dear Mr. Kermoyan:

I am a biologist retained by the Carpinteria Creek Foundation to comment on the draft EIR for the Carnevale Duplex Project. I have attached a copy of my current resume for reference. This letter primarily addresses the adequacy of the draft EIR in evaluating the proposed buffer for Carpinteria Creek and associated riparian vegetation, as proposed in the development plan for a residential duplex unit on the property. I have previously commented on the Mitigated Negative Declaration, which was deemed inadequate; the Carpinteria City Council requested the preparation of this EIR.

EIR Focus

When it directed the Planning Department to prepare an EIR for this project in June 2001, the Carpinteria City Council specifically requested that AF

buffer functions, flooding, biology, and effect of eaves be addressed by the EIR. None of these were adequately evaluated by the draft EIR.

Buffer Functions

The term *riparian* is defined as the "bank of a stream". The riparian zone generally has higher primary productivity than the adjacent upland system. Most research has addressed the water quality maintenance function of vegetated streamside buffers, filtering sediment, nutrients, pesticides and bacteria (Lowrance et al, 1985). Numerous factors influence the buffer effectiveness, including slope, soil hydrologic properties, topographic roughness, and vegetation. In riparian forests buffers of 15-80 meters (50-267 feet) adequately protect water quality (Phillips, 1989). Streamside vegetation provides shade and "a bank-stabilizing force to prevent excessive sedimentation and to intercept pollutants" (Mahoney and Erman, 1984). They state that streams in forest systems with bufferstrips wider than 30 meter (100 feet) had invertebrate communities no different than control streams; water quality was generally maintained with 10-20 meter buffers (33-67 feet). AG

The dEIR does not look at factors at the project site that could affect the width of buffer needed to protect the stream water quality.

Buffer zone *outside* the riparian vegetation

"Buffer zones of less valued habitat can be retained around areas considered more valuable, for example, breeding areas or communities that are sensitive or species rich. They form a spatial shield around these priority areas" (Peck, 1998). The example given is a *half-mile* buffer of upland vegetation around Pinhook Swamp. The width needed to protect environmentally sensitive habitat is not known; Peck states this is due to our limited knowledge of biodiversity, and it is "therefore prudent to err on the conservative side, that is, to leave more than the absolute minimum amount of space." Much of the literature on buffer zones focuses on maintaining water quality, however, Peck states "we might consider which vulnerable habitats or species were located near the periphery of the reserve, and so could benefit from a buffer zone."

AH

Migratory bird species use the Carpinteria Creek riparian corridor extensively, including the endangered Willow Flycatcher. The 1991 Riparian Habitat Study notes that "Carpinteria Creek, extending from Carpinteria Avenue to the ocean, supports the single most significant riparian habitat for birds in southern Santa Barbara County" (Lehman, 1991). A buffer from the riparian vegetation, *including the Arroyo willow,* is needed to ensure the project does not significantly impact the biological riparian resources. In this urban setting, ½ mile or 100 feet of buffer is not consistent with use of the property, but 20 feet is. I recommend a 20-foot setback from the dripline, including the willow copse, to protect the riparian vegetation and the wildlife, which depends on it for food, cover and nest sites.

Riparian vegetation depends on the supplemental water that drains from adjacent land to the creek—both surface and sub-surface flow. This flow is interrupted and diverted by the proposed development—the run-off from the building and the eaves are diverted and do not reach the riparian vegetation. This could cause significant detrimental impacts to the long-term health and survival of the existing Sycamore and willow tree cover and other riparian vegetation. A 20-foot setback could minimize these impacts; while this is *minimal*, it would allow use of the constrained site.

The height of the building will significantly decrease light reaching the willow thicket. With the smallest buffer in the area from the porch/eaves in this area, I estimate 0-7 feet of buffer, not the minimum of 10 feet described in the dEIR. This will reduce the growth, vigor and regeneration of the willow copse, which is an integral part of the Environmentally Sensitive Habitat. Willows can grow in shade, but are less vigorous.

According to neighbors with whom I have spoken, trimming back of the Western sycamore and/or the Arroyo willow occurred in 1991, 2001 and 2002. This suggests that the roots extend further than the present dripline of the trees, and the buffer zone is needed to be adequate to protect the root zone of the trees. Twenty feet from the dripline is the setback is my recommendation.

Impact of eaves

The impacts of the eaves, estimated from the drawings to have 3 feet of overhang, are not addressed whatsoever in the dEIR. The buffer, described in the project and the EIR, is ostensibly 10 feet wide, but is measured from the foundation. For purposes of hydrology and shading impacts, the buffer should be measured from the roof overhang. As noted in my letter of May 29, 2001, the eaves encroach into the "10-foot setback from the tree canopy" in three places. The eaves capture and divert rainfall away from the buffer zone and extend the shading zone. The City Council specifically requested that the dEIR address the impacts of the eaves, and the dEIR fails to do so. Ultimately, the eaves decrease the proposed buffer, and because they are not addressed in the dEIR, their impact on drainage and shading is not evaluated or known. AI

Impact GEO-2

The dEIR states that "The presence of a high groundwater table and sandy soil on the project site indicates the potential for liquefaction to occur in the event of seismic groundshaking" with attendant vertical settlement and lateral spread. This Class II impact is considered mitigable by the dEIR. A proposed mitigation should a liquidifaction study deem them necessary, is: "drainage to lower the groundwater table to below the liquefiable soils". The impact of this geological protection measure on the hydrology of the adjacent riparian vegetation is not addressed in the dEIR. The riparian vegetation persists in part because of the high water table, as reported in the document. If this is drained, it could jeopardize the health of the riparian vegetation. The width of the buffer zone could be critical under these conditions, but I don't know if the formulae are available to calculate the buffer width needed to prevent negative impacts to the Environmentally Sensitive Habitat. The dEIR fails to evaluate the impact on the riparian zone should this geological mitigation be implemented. AJ

Should lateral spread occur, the area most in jeopardy would be the bank currently showing erosion (near the bridge), where the narrowest setback from the top-of-bank is proposed at 27 feet. This could result in demands for hard-bank protection after approval and construction of the project. A major reason for a 50-foot setback requirement from the top-of-bank, is to preclude this scenario.

Creek systems are naturally dynamic. We can expect some bank erosion and some aggradation or deposition of sediments. This creek meander should be allowed to occur, and can do so with adequate setbacks for development.

Evaluation of Alternatives

The no-project alternative is stated to be the Environmentally Superior Alternative, although the dEIR recognizes that this would not protect the site from future development. Alternative 4, the Public park/open space alternative includes habitat restoration but potential increased public access to the creek could further degrade the habitat value, according to the dEIR. However, a site-specific habitat restoration plan could limit public access points to the AK

creek so that the habitat could be improved with some limited public access to the creek, such as at the site of the current Flood Control access route.

Alternative 2 evaluates a project reduced by 15% with a minimum of 50-feet setback. According to the dEIR, this would comply with Implementation Measure 23 of the 2001 General Plan/Local Coastal Plan (yet to be approved by the Coastal Commission). However, the dEIR states the policy on page 4.1-7:

> *A setback of 50 feet from top of bank of creeks or existing edge of riparian vegetation (dripline) whichever is further...*

Alternative 3 evaluates a reduced project meeting the 20-foot dripline setback; this would require a project 33% smaller than currently proposed, but still allowing reasonable use of the property. The dEIR states this would be superior to the proposed project, especially where the proposed building is less than 50 feet from the top of bank. However, the dEIR erroneously concludes that the proposed project adequately mitigates any significant impacts to the biologically resources. In fact, it does not address several issues raised above. **In my professional opinion, Alternative 3 is required to reduce or eliminate significant impacts to the riparian vegetation and biological resources.**

Impact BIO-2

The impacts of project implementation—construction and habitat restoration—to the Environmentally Sensitive Habitat is considered Class II, *significant but mitigable.* The mitigations are all related to short-term impacts, and the long-term impacts of having a building and its occupants right up against the willow copse and 7-10 feet from the Sycamore are not addressed.

AL

Summary

The dEIR does not adequately evaluate the impacts of the project to the Environmentally Sensitive Habitat, and does look at the factors that affect the width of a buffer zone required to minimize disruption to the hydrology of the riparian zone and disturbance to its wildlife inhabitants.

AM

Each of the Alternatives would be Environmentally Superior to the Proposed Project. The No Project Alternative would retain the current conditions. I would *not* concur that this is the Environmentally Superior Alternative, given the invasive plant species in the understory, current human impact of the trail and creek access, and it would not preclude future development of the site. Alternative 4, the Public Park/Open Space alternative is stated to include habitat restoration of the riparian corridor. A habitat restoration plan *can* incorporate controlled access to the creek or in/adjacent to the riparian corridor, eg. restrictions on ingress, and relocation of the trail further from the dripline. Thus **Alternative 4, in my opinion, is the Environmentally Superior Alternative.**

However, this would not meet the applicant's objectives for a residential development on his property. A project that allows for some development on the parcel, but protects the biological resources is sought. Alternative 2, would allow a project with a minimum 50-foot creek setback would have fewer impacts than the proposed project. However it would not meet Implementation Measure 23 setback requirements, which is *50 feet from the creek top-of-bank or 50 feet from existing riparian vegetation, whichever is greater*. Where the existing riparian vegetation is greater than 50 feet, as near the Western Sycamore, significant impacts could occur if no setback beyond the dripline is provided. Alternative 3, a project meeting a 20-foot dripline setback, *which needs to include the dripline of the willow copse*, would protect the riparian vegetation and other biological resources from significant impacts, as noted above. Thus, Alternative 3 is recommended in that is allows for a development project, albeit approximately 33% smaller than the proposed project, while avoiding significant impacts to biological resources.

AN

Sincerely,

Darlene Chirman

Darlene Chirman
Habitat Restoration Ecologist

REFERENCES

Lowrance, Richard, Ralph Leonard, and Joseph Sheridan. Managing riparian ecosystems to control nonpoint pollution. Journal of Soil and Water Conservation, Jan-Feb. 1985 pp 87-91

Mahoney, Don L. and Don C. Erman. The role of streamside bufferstrips in the ecology of aquatic biota. California Riparian Systems: Ecology, Conservation and Productive Management, R.E. Warner and M. Hendrix, Ed. 1984: pp 168-176. University of California Press.

Peck, Sheila. Planning for Biodiversity: Issues and Examples. 1998. Island Press.

Phillips, Jonathon D. Nonpoint source pollution control effectiveness of riparian forests along a coastal plain river. Journal of Hydrology 110 (1989): 231-237---

DARLENE BRANSTROM CHIRMAN

39 San Marcos Trout Club
Santa Barbara, CA 93105

(805)692-2008
FAX 967-2380

e-mail: dchirman@rain.org

My professional focus is habitat restoration/enhancement.

EDUCATION

1994 M.S. Ecology, Conservation Biology emphasis
University of California at Davis
Master's Thesis: "Nutrient dynamics during establishment of understory woody species in California Central Valley riparian habitats"

1991 B.S. Wildlife Biology; minor in Botany
University of California at Davis
Highest honors; Departmental Citation, Wildlife & Fisheries Biology

1973 Associate Degree in Nursing. Santa Barbara City College

PROFESSIONAL EXPERIENCE

1998-present DARLENE CHIRMAN BIOLOGICAL CONSULTING
Project management for habitat restoration projects; habitat restoration planning. Clients include Santa Barbara Audubon, Community Environmental Council, Land Trust of Santa Barbara County, Santa Barbara County Parks, and University of California at Santa Barbara

1997 Contract work with Biological Consulting firms, Santa Barbara.
Monitoring revegetation sites

1994-96 Project Coordinator, Cosumnes Flooding and Plant Competition Experiment.
Joint project University of California at Davis & The Nature Conservancy.
Research site: Cosumnes River Preserve, Galt, California

1991-93 Departmental research assistant. Land, Air and Water Resources Department
University of California at Davis

1973-85 Registered nurse, primarily at the Rehabilitation Institute at Santa Barbara

RELEVANT VOLUNTEER ACTIVITIES

1999-present Santa Barbara County Task Force, Southern California Wetland Recovery Project

1996-present Santa Barbara Audubon Society. Conservation Committee. Current President of Board of Directors. Representative on Goleta Slough Management Committee

Thelma Schmidhauser, Ph.D.
726 Arbol Verde Street
Carpinteria, CA 93013

March 29, 2002

To: Steven Velyvis, Staff Attorney and Brian Trautwein, Environmental Analyst at EDC

RE: Draft EIR for Carnevale Duplex Pr oject, Development Proposal 99-881DP

Dear Msr. Velyvis and Trautwein:

This letter confirms my oral testimony to the Carpinteria City Planning Commission on June 12, 2001 in the matter of the Carnevale Development Proposal. I have reviewed the section on biological resources in the draft EIR and I continue to find the riparian setback to be inadequate to avoid a significant adverse effect on the riparian trees and habitat. I recommend a buffer of at least 20-ft. from dripline of sycamores and willow copse. I therefore submit these written comments for the public record. AO

I have a doctorate degree from the University of Virginia at Charlottesville and, while there, was involved in botanical research at an experimental station that is now the State Arboretum of Virginia. My testimony deals with the rationale and need for a minimum 20- foot setback from the riparian vegetation's dripline.

The rationale for a 20-foot setback from the dripline of riparian vegetation is not arbitrary. It is based on sound evidence and the basic principles of botany. AP

The roots that most people associate with mature trees are the huge roots that anchor the trees. People sit on, stand or walk on these without any apparent damage to the tree. But these are not the roots that nourish the tree. To find these one must go down and outward from the main trunk. Roots as they grow down and outward decrease in size and circumference until they are so fine that they are aptly termed "root hairs". Through these slender filaments the tree takes up water and minerals by the process of osmosis, the diffusion of fluids through the cell walls. The transmission of nutrients and water from one cell to the next continues from root tip to the crown of the tree. This is a very delicate process, one that is liable to suffer both from excavation around the trees, which could damage these fine roots, and compaction of the earth above the roots which would impede the percolation of rain water down to the roots. AQ

Using the dripline as the buffer line, such as in the proposed willow protection, does not take into account that the area covered by the underground root system may extend beyond the dripline. Trees are living things and as such respond to their environment. If a tree is stressed by drought, its crown may be reduced to conserve moisture while its

roots extend their area to find all available moisture. In this example, the tree's feeder roots would extend well beyond the crown and its dripline.

The apparent pruning of the subject sycamore trees' eastern branches in past years and the reduction in the willows by apparent pruning in 2001 and, more recently, by accidental pruning by the city has reduced the extent of the dripline in this direction. The vitally important feeder root perimeter probably extends well beyond the current dripline. An additional buffer area is therefore needed to adequately protect these trees and their life giving feeder roots.

A 10-foot buffer from the sycamore trees is not adequate to protect the root systems of the riparian vegetation. Further, the project provides no dripline protection for the willows and doesn't consider that overhangs (eaves) actually further reduce the buffer. Willows are an important riparian species and also require protection. The construction and development activities will extend beyond and below the actual footprint of the building. Feeder roots can be damaged by activities such as trenching, grading etc. Roof overhang can rob the vegetation of its natural supply of water from rainfall. Water moves perpendicularly down through the soil not laterally so any ground covered by overhang will remain dry. Therefore 20 feet should be considered a minimum setback from the dripline, including the willows, to avoid a significant impact to the trees and riparian habitat (which is considered Environmentally Sensitive Habitat under the city of Carpinteria LCP). Alternative # 3 from the EIR would reduce or avoid this impact and should be selected

AR

To lose these trees now or as a result of slow deterioration brought on by adjacent development would be a tragedy. The trees and riparian habitat of Carpinteria Creek are assets to the community and can be adequately protected with a minimum 20-foot setback
from the dripline of the riparian vegetation in which setback no grading or development is allowed.

Thank you for your consideration.

Sincerely,

Thelma Schmidhauser

Thelma Schmidhauser, Ph.D.

October 29, 2002

To: City of Carpinteria Planning Commission

RE: Draft EIR for Carnevale Duplex Project, Development Proposal 99-881DP

Dear Commissioners:

I have a doctorate degree in Biology from the University of Virginia and was involved in botanical research there. On June 12, 2001 I provided oral testimony and on March 15, 2002 I provided written testimony with respect to the need for a minimum 20' setback from dripline in the matter of the Carnevale Development Proposal. I recommended that distance as an absolute minimum riparian setback in order to avoid a significant adverse effect on the riparian trees and habitat.

My prior testimony provided the rational and need for a minimum 20-foot setback from riparian vegetation's dripline and my credentials and c.v. to provide such expert testimony were also given to the City.

As I earlier testified, rational for a 20' setback from the dripline of riparian vegetation is not arbitrary. It is backed by sound, substantial evidence and a basic principle of botany. It is based on the uptake of water and nutrients by cell to cell transfer..

I also testified that recent near-drought conditions have likely induced feeder roots of the riparian vegetation to extend well beyond the dripline in search of moisture. I also testified that apparent pruning of the subject sycamore trees' eastern branches in past years and by e reduction in the willows by apparent pruning in 2001, and recently accidentally by the City, has likely reduced the extent of the dripline in this direction. Both of these factors strongly suggest that the vitally important feeder root perimeter extends well beyond the current dripline, and that an additional buffer area is therefore necessary to adequately protect the trees and habitat from significant degradation.

As I stated in my March 15, 2002 letter: "A 10-foot buffer from the sycamore trees is not adequate to protect the root systems of the riparian vegetation.... The construction and development activities will extend beyond and below the actual footprint of the building and feeder roots could be easily damaged by activities of trenching, grading, etc.

Therefore, 20 feet should be considered a minimum setback from the dripline, including the willow, to avoid a significant impact to the trees and sensitive riparian habitat." Trenching for the storm drain right in the middle of the sycamores poses similar impacts and should be avoided if there is an alternative means of drainage.

I was therefore gratified that the Planning Commission decided to use a minimum 20' dripline setback at their June 2, 2002 meeting and re-affirmed that at their July 3, 2002 certification of the EIR.

However, the project as recently staked for consideration by the ARB had a substantially less than 20' setback. This is based on my causal observation of the setback distances as staked and by the measurement of the actual 20,' as measured by the Creek Committee during the period that the project was staked. I understand that the applicant is using a dripline mapped in November of 1999. I also understand that the City should have re-mapped the dripline on June 9, 2001, under CEQA, as the legal baseline.

My expert opinion as provided to you on March 15, 2002 is that a 20' setback was required AT THAT TIME in order to prevent an adverse impact on the life of the trees. It is my further opinion that the November 1999 dripline mapping is out of date, in terms of the extent of biological resources at the site at the time of my testimony, and will not provide adequate protection to prevent an adverse impact to the biological resources. I recommend that a 20' setback measured from the edge of the current extent of riparian vegetation should be required since the November 1999 measurement does not provide adequate protection and the City did not re-map the dripline in July of 2001.

As I state in my earlier letter: "To lose these trees immediately or as a result of slow deterioration brought on by adjacent development would be a tragedy and a significant impact that can be avoided. The trees and riparian habitat of Carpinteria Creek are assets to the community and can be adequately protected with a minimum 20-foot setback from the dripline of the riparian vegetation in which grading and other development is prohibited."

Thank you for your consideration.

Sincerely,

Thelma Schmidhauser, P.h.D.

42

STATE OF CALIFORNIA-THE RESOURCES AGENCY GRAY DAVIS, Governor

DEPARTMENT OF FISH AND GAME
South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
FAX (858) 467-4239

Flex your POWER

April 5, 2002

Paul Kermoyan
City of Carpinteria
5775 Carpinteria Ave.
Carpinteria, CA 93013-2697

Draft Environmental Impact Report for the Carnevale Project SCH # 2001071059, Santa Barbara County

Dear Mr. Kermoyan,

The Department of Fish and Game (Department), has reviewed the Draft Environmental Impact Report (DEIR) for impacts to biological resources. The proposed project consists of construction of a residence on an approximately one-half acre property located along Carpinteria Creek (creek) at the intersection of Concha Loma Dr. and Arbol Verde St. in Carpinteria. Special status species which have the potential to be impacted by the project include the Federally Endangered southern steelhead (*Oncorhynchus mykiss*) and tidewater goby (*Eucyclogobius newberryi*), the Federal and State Endangered southwestern willow flycatcher (*Empidonax traillii extimus*) and least Bell's vireo (*Vireo bellii pusillus*), the State Endangered western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), and the State Special Concern Species southwestern pond turtle (*Clemmys marmorata pallida*), two-striped garter snake (*thamnophis hammondii*), Cooper's hawk (*Accipiter cooperi*), sharp-shinned hawk (*Accipiter striatus*), and yellow warbler (*Dendroica petechia brewsteri*).

The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (CEQA Guidelines §15386) and pursuant to our authority as a Responsible Agency (CEQA Guidelines §15381) over those aspects of the proposed project that come under the purview of the Fish and Game Code Section 1600 et seq.:

Streambed Alteration Permitting

The Department requires a Streambed Alteration Agreement (SAA), pursuant to Section 1600 of the Fish and Game Code, prior to any direct or indirect impact to a lake or stream bed, bank or channel or associated riparian resources. The proposed project includes a minimum 27-foot setback from the top of the creek bank, with a 10-foot setback from the riparian zone dripline. The 10-foot dripline setback excludes a willow copse adjacent to an

unauthorized central path. The Department emphasizes that, in order to protect the resources found in Carpinteria Creek, substantial revisions to the proposed project may be required in the SAA, including a dripline setback to include the willow copse.

Mitigation Measures

The Department supports the mitigation measures contained in Section 4.4 of the DEIR and recommends their adoption, including the recommended restoration plan attached.

B

Bird Nesting Avoidance - Mitigation measure BIO-2(a) on page 4.4-18 of the DEIR restricts restoration activities within the creek riparian areas to between November 1st and April 15th. However, the Department recommends project activities take place outside of the breeding bird season of March 1st to August 15th to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). We do not believe the restoration activities will have a significant impact on migrating birds, and therefore recommend the dates in BIO-2(a) be changed to between August 16th and February 28th. If project activities cannot avoid the breeding bird season, nest surveys should be conducted and active nests should be avoided and provided with a minimum buffer as determined by a biological monitor (the Department recommends a minimum 500 foot buffer for all active raptor nests).

C

Lighting - The proposed restoration plan recommends outdoor night lights be directed away from the riparian zone. The Department also recommends any artificial night lighting be shielded or hooded so that light is directed to the ground. In addition, recent research indicates some types of light are less harmful to wildlife. In some studies, low-pressure sodium lights exhibit the least overall damage to wildlife. The Department therefore recommends the use of low-pressure sodium outdoor lights to reduce impacts to wildlife.

Thank you for this opportunity to provide comment. Questions regarding this letter and further coordination on these issues should be directed to Mr. Martin Potter, Wildlife Biologist, at (805) 640-3677.

Sincerely,

Martin Potter

For Ms. Morgan Wehtje
Environmental Scientist IV

cc: Mr. Martin Potter
Department of Fish and Game
Ojai, California

44

Mark A. Holmgren, Biologist
P.O. Box 13862
Santa Barbara, California 93107

Paul Kermoyan, AICP
Community Development Department
City of Carpinteria
5775 Carpinteria Ave.
Carpinteria, California 93013

14 April 2002

Regarding: Carnevale Duplex Project, Draft Environmental Impact Report (Feb 2002)

Dear Mr. Kermoyan:

I offer my comments independent of any of the invested parties in support for or in opposition to the Carnevale Duplex Project. My participation arises from my concern for the value of this section of Carpinteria Creek relative to that of similar riparian habitats in coastal Santa Barbara Co. I have examined the animal (principally avian) activities in this section of Carpinteria Creek over 17 years. My monitoring efforts combined with my casual bird observations in coastal creeks from Ventura County to San Luis Obispo County have provided factual data and impressions that form the basis for my evaluation of the compatibility of the proposed project with the policies of the City's LCP and other regulatory guidance. A

For nearly 15 years I have worked in riparian systems in southern California with emphasis on endangered bird species issues and riparian habitat choice by birds. During this period, I have studied Southwestern Willow Flycatcher in Santa Barbara Co. and Least Bell's Vireos in Ventura County. Since 1995, I have led a team of researchers on studies of riparian birds on Vandenberg Air Force Base. I have served as the Associate Director of UCSB's Museum of Systematics and Ecology since 1984.

Summary of My Comments

My evaluation of the Project description and information presented in DEIR indicates an encroachment into an Environmentally Sensitive Habitat Area (ESHA) and its buffer, immediate and long-term impacts to the persistence of the ESHA and to the animals supported in the project area, and inconsistencies with existing LCP policies. Assumptions concerning the role of this ecosystem in its regional context are in error. Mitigations designed to reduce impacts are misguided and inadequate to offset the impacts acknowledged in the DEIR. This preferred project alternative is unsupported and results in significant impacts that could be feasibly mitigated. Alternative 3 recognizes the biological realities of the support system on the site and is preferred to the present project. Offsite mitigation, in addition to a larger riparian setback, may be needed to achieve full compliance with LCP policies. B

The Riparian System

Background. In semi-arid, coastal California, riparian ecosystems affect a very large portion of the animals living not only in riparian, but also in scrub, chaparral, oak woodland, beach, and even those in human-dominated environments. The nature and timing of the support provided to animals by riparian habitats is incredibly varied and extensive. Where their wetland features are persistent, riparian habitats are the most productive terrestrial habitats in our region. Considering their rarity and the extent of conversion and compromise that has occurred in all drainages, those remaining intact perennially wet habitat patches, despite draining, ditching, and drafting, have become even more valuable and they merit the maximum protection possible.

Although moderately degraded, the lowest one-half mile section of Carpinteria Creek is an outstanding example of old growth riparian with perennial flow. It is perhaps the very best that remains embedded within any of our local urban environments. The nearest remaining local creek of comparable support value to birds is Rincon Creek to the east. No creek in Santa Barbara and only the junction of Atascadero and San Antonio creeks in Goleta are similar to lower Carpinteria Creek in the extent of support they provide to animal communities. Carpinteria Creek is unique among our local riparian systems.

Processes that Sustain the Ecosystem. The Carnevale section of Carpinteria Creek is an important section of old-growth riparian. The trees are healthy and the animal species support is extensive. In seasonally arid environments especially, the majority of a tree or shrub is in its underground root system, which extends to and beyond the circumference of the crown. The health of the sycamore and willow trees at Carnevale is tied to access by their root systems to water and nutrients in the soil. The leaves of the crown of these trees serve to refocus water from fog to the ground at the drip line. The ground and the trees' root systems are thereby hydrated outside of the rainy season. Additionally, groundwater recharge from rains in uplands seep towards the creek after the wet season and this contributes to the health, productivity, and animal support from these trees. Therefore, the integrity of the root systems is critical to the services the trees provide. The unimpeded seepage pattern of groundwater following rains is especially important for replacement sapling trees as they mature.

Ecosystem Support for Birds. The activities conducted by birds at the Carnevale site in lower Carpinteria Creek includes foraging for insects, seeds, and plant materials; nest construction in and immediately outside of the riparian vegetation; gathering of nesting materials; mating; communal roosting; bathing; and refuge. Carpinteria Creek works throughout the year for animals including birds. However, if measured by the number of species and individual animals served, migrant species and over wintering birds derive the greatest benefits. Therefore, riparian protection must be as strong during the two migratory periods (August to November and April to May) and in winter (November to 15 March) as in the breeding season.

Environmentally Sensitive Habitat Areas

The ESHA Map. This DEIR provides no map showing the ESHA boundary. This makes the task of reviewing the project, in light of its emphasis on protection of ESHA, very difficult. Nevertheless, statements in the EIR (e.g., on page 3-1) suggest that 2/3 of the project area is within ESHA. From this statement and others, and for the purposes of my discussion, I assume that the ESHA border roughly corresponds to the Sycamore drip line. F

Areas Acknowledged as Environmentally Sensitive Habitat Tend to Exclude the Ecotone[1]. The DEIR speaks of the ESHA as consisting of freshwater marsh and riparian woodland. A large number of species that use the habitat are principally using the aerial or terrestrial habitats beyond the edge of the vegetation (see Addendum A). For example, one neotropical migrant bird, Willow Flycatcher (Empidonax traillii) uses Carpinteria Creek (including the Carnevale site) during migration in spring, early summer, and late summer. Typically, individuals perch near the outer edge of the vegetation and sally outward up to 40' from the outer edge of the riparian. Without the ecotone - in this area that is where the aerial and riparian vegetated environment meet -- Willow Flycatchers would not be able to use the riparian zone. Thus, the riparian ESHA provides ecosystem support in the ecotone for many species. This understanding is seldom reflected when it comes to mapping ESHA. G

Project Impacts

According to the DEIR, the 10' setback is sufficient to accommodate ESHA. However, Addendum A shows that many species conduct sensitive activities in the area beyond the canopy edge. Even if we place the ecotone within the buffer, that buffer proposed for Carnevale is inadequate to service the needs of many species that rely on the riparian area. Ideally, the setback from the riparian needs to be at least 50' to accommodate and provide buffer for the riparian and the ecotone. In the case of Carnevale, the exigencies of this matter may require some compromise, but the proposed setback is insufficient. H

Creek Hardbanking. The project has the potential to encourage several deleterious actions that affect the downstream riparian habitat and creek side properties. Being in the flood plain, the Carnevale site is prone to flooding and property damage. Although hardbanking is not proposed here, in the years to come an argument could be made that hardbanking or sandbagging is needed to allow the owner to protect his property. Either kind of long-term artificial berm would obliterate the wetland features of the site, obviate natural regeneration I

---

[1] Two definitions of 'ecotone' follow:

A transition zone: a region of overlapping [organismal] associations, as that between adjacent habitats or ecosystems. (Little and Jones, 1980. A Dictionary of Botany. Van Nostrand Reinhold Company, New York)

A transition zone between two distinct habitats that contains species from each area, as well as organisms unique to it. (Harcourt Dictionary of Science and Technology (http://www.harcourt.com/dictionary/def/3/3/5/9/3359200.html))

in the ESHA, and greatly undermine the subsurface processes that sustain the riparian habitat. Furthermore, because artificial berms refocus high energy water flow downstream, the potential for scouring the banks downstream may result in erosion and damage to other properties. This is why policies that encourage or require adequate setbacks are implemented. The Department of Fish and Game has stated similar concerns on these issues. The City of Carpinteria is allowing an action that is likely to necessitate future hardbanking and to incur public expenditures for future work by the Flood Control District. LCP Policy 3-12 prohibits this kind of action. It would be useful if the Final EIR could address this issue fully.

Construction Impacts

The EIR does not adequately demonstrate that construction impacts would not occur in or would protect the ESHA. Surface damages are easily mitigible, but damage to roots (previously mentioned) and disruption to ecosystem support during the season that is so important for many animals is not discussed. J

The proposed timing of construction (1 November to 15 April) is inappropriate because the special role that distinguishes this ecosystem - its support for so many over wintering and migratory bird species, including Endangered and Special Status species - is expressed most fully at this time. Because more bird species and individuals use this section of the creek in winter and in migration, construction during this period may have a proportionately larger impact on the system than if conducted at other times. For example, Cooper's Hawk winters and breeds here. Pairs establish breeding territories often by late March; Yellow Warblers are on territory and nest building by 10 April; Sharp-shinned Hawk may be present throughout this period; and Warbling Vireo is passing through in great numbers from late March through and after 15 April. The wisdom of deferring construction to 1 November to 15 April period needs to be reassessed.

Mitigation Impacts

Mitigation measure GEO-2(a) suggests the need to offset liquefaction, which could involve dewatering and soil densification. These are severe actions that directly oppose the long-term survival of riparian vegetation and future vegetation regeneration. They are in themselves significant impacts that would require analysis and, if possible, mitigation. Additionally, dewatering and soil densification may reduce the soil cohesion presently provided by root systems, thereby increasing the likelihood of erosion on the site. Although these actions are conditioned upon a liquefaction study, their impacts should be assessed in the DEIR. K

Final Comments

The long-term impacts are more important than construction impacts. Placement of structures and human activities so close to the critical riparian vegetation will eliminate much of the support function currently provided here even if revegetation with native plants are installed after construction. Much of the discussion under Impact BIO-2 (p. 4.4-15 through 18) L

contains improper assumptions, errors, and omissions. Examples in addition to those mentioned above are:

- The value of this portion of the Carpinteria Creek ecosystem at a regional level is miscalculated.
- Although the vegetation composition may move towards native species and greater area coverage by plants, the benefits conferred to insects, mammals, and birds in the form of ecosystem support are greatly reduced by the presence of humans and their artifacts.
- The persistent presence of humans and habitations is far more disruptive to the use of this site by sensitive animal species than is occasional access by people through ESH.
- Failure to recognize that ecosystem support for many animals is provided in the ecotone and that ecotone is not adequately protected.

The loss of groundwater recharge; the deflection of runoff to the creek thereby increasing the volume of flowing water downstream; the increase in erosion potential; and the disruption of root systems reflect a project not only damaging to the project site, but one with degrading and costly effects to the larger ecosystem.

The effects of this project may not be mitigable with onsite actions alone, though a larger buffer may accommodate the ecotone and reduce significant impacts. I suggest that Alternative 3 be the preferred project and that meaningful offsite mitigation be combined with onsite actions to bring this project close to compliance with LCP policies.

Thank you for the opportunity to comment on the Carnevale Duplex Project Draft EIR.

Sincerely,

Mark A. Holmgren, Biologist

attachments: Addendum A and Curriculum Vitae

ATTACHMENT B

List of Interested Persons

Priscilla Whittaker
5654 Canalino Dr.
Carpinteria, CA 93013

Muriel Purcell
5576 Calle Ocho
Carpinteira, CA 93013

Alison Johnson & Bob Hoisch
501 Concha Loma
Carpinteria, CA 93013

Ann Matson
436 Arbol Verde
Carpinteira, CA 93013

Linda Adams
5518 Canalino
Carpinteria, CA 93013

Amrita Salm
797 Arbol Verde
Carpinteria, CA 93013

Dana Enlow
5542 Canalino
Carpinteria, CA 93013

Nancy Van Antwerp
612 Olive St.
Carpinteria, CA 93013

Susee-Smith Youngs
557 Arbol Verde
Carpinteria, CA 93013

Christie & Jason Tarman
512 Arbol Verde
Carpinteira, CA 93013

Herb Reno
560 Concha Loma
Carpinteria, CA 93013

Jennifer McCurry
810 Arbol Verde
Carpinteria, CA 93013

Gene & Carrie Wanek
480 Arbol Verde
Carpinteria, CA 93013

Caroline Kuizenga
5578 Retorno
Carpinteria, CA 93013

Barbara Cole
485 Arbol Verde
Carpinteira, CA 93013

Karin Rodriguez
5455 8th St. # 57
Carpinteria, CA 93013

John & Mary Anderson
595 Calle Dia
Carpinteria, CA 93013

John C. Fisher
600 Arbol Verde
Carpinteria, CA 93013

Marca Rowley
5455 8th St. # 43
Carpinteria, CA 93013

Doris La Marr
524 Arbol Verde
Carpinteria, CA 93013

Ron Freeland
5111 Calle Arena
Carpinteria, CA 93103

Steve Resnik
4867 Sandyland Rd.
Carpinteria, CA 93013

Louis Carnevale
4867 Sandyland Rd.
Carpinteria, CA 93013

Chip Wullbrandt
Price, Postel & Parma
200 E. Carrillo St., Ste. # 400
Santa Barbara, CA 93101

Diane Napolean
DNA
4705 Aragon
Carpinteria, CA 93013

Carpinteria Valley Association
PO Box 27
Carpinteria, CA 93013

Brad & Jeanne Sullivan
946 Concha Loma Dr.
Carpinteria, CA 93013

Jonathan Chapman
4297 Carpinteria Ave., # 10
Carpinteria, CA 93013

Tim Richards
4412 B Catlin Circle
Carpinteria, CA 93013

Hochhauser Blatter
Architecture & Planning
123 E. Arrellaga St.
Santa Barbara, CA 93101

Carpinteria Creek Committee
PO Box 1128
Carpinteria, CA 93013

Suzette Doubek
586 Arbol Verde
Carpinteria, CA 93013

Reggie Hepp
367 Calle Rey Mar
Carpinteira, CA 93013

Susan Allen
790 Arbol Verde
Carpinteria, CA 93013

Laurie Bryant
537 Arbol Verde
Carpinteria, CA 93013

Frances M. Morris
538 Maple
Carpinteria, CA 93013

Karl Widner
830 Arbol Verde
Carpinteria, CA 93013

Current Resident
436 Arbol Verde
Carpinteria, CA 93013

Whitney Abbot
3898 Via Real
Carpinteria, CA 93013

Peggy Oki
5966 Via Real # 3
Carpinteria, CA 93013

Jessie E. Salvador
549 Arbol Verde
Carpinteria, CA 93013

Jens & Ellen Pedersen
770 Arbol Verde
Carpinteria, CA 93013

Dave and Louise Moore
532 Arbol Verde
Carpinteria, CA 93013

Janet Blackwell
5632 Canalino
Carpinteria, CA 93013

Rachel Tierney
PO Box 1113
Santa Barbara, CA 93102

Carol Smith Tokar
5630 Fiesta Dr.
Carpinteria, CA 93013

John Berberet
477 Concha Loma
Carpinteria, CA 93013

Catherine & Julie Esch
455 Arbol Verde
Carpinteria, CA 93013

Doris Floyd
5538 Calle Arena
Carpinteria, CA 93013

Lawrence Hunt
5290 Overpass Rd, Suite 108
Santa Barbara, CA 93111

Ken Marshall
Dudek Associates
621 Chapala St.
Santa Barbara, CA 93013

Marilynn Ethier
546 Arbol Verde
Carpinteria, CA 93013

Mark Holmgren
PO Box 13862
Santa Barbara, CA 93107

Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101

EXHIBIT 2

City of Carpinteria
City Council Resolution No. 4771
dated January 27, 2003

with revised conditions of approval

(14 pages)

RESOLUTION NO. 4771

A RESOLUTION OF THE CITY OF CARPINTERIA CITY COUNCIL GRANTING THE APPEAL OF THE CARPINTERIA CREEK FOUNDATION REGARDING THE DEVELOPMENT OF A SINGLE FAMILY DWELLING ON PROPERTY LOCATED AT THE CORNER OF CARPINTERIA AVENUE AND ARBOL VERDE STREET FOR THE LIMITED PURPOSE OF MODIFYING THE ADDENDUM TO THE FINAL EIR, ADOPTIONG CERTAIN ADDITIONAL FINDINGS, AND IMPOSING AN ADDITIONAL CONDITION OF APPROVAL, AND DENYING THE REMAINDER OF THE APPEAL, THEREBY AFFIRMING THE PLANNING COMMISSION'S DECISION TO APPROVE DEVELOPMENT PLAN /COASTAL DEVELOPMENT PLAN PERMIT 99-881-DP/CDP

WHEREAS, on November 4, 2002 at a properly noticed public hearing, the Carpinteria Planning Commission considered an application filed by Mr. Louis Carnevale for a Development Plan Permit and a Coastal Development Plan Permit and an Addendum to the project EIR; and

WHEREAS, the Planning Commission reviewed the policies of the General Plan and Local Coastal Plan, standards of the Zoning Ordinance, and the impact analysis contained in the project EIR and EIR Addendum; and

WHEREAS, the Planning Commission made the appropriate and necessary findings approving the Development Plan Permit and the Coastal Development Plan Permit and the EIR Addendum; and

WHEREAS, the Carpinteria Creek Foundation filed an appeal of the Planning Commission's decision on November 13, 2002; and

WHEREAS, the City Council has conducted a properly noticed public hearing on January 27, 2003 and received public comment regarding this matter and has provided the Carpinteria Creek Foundation an opportunity to present evidence on this matter; and

WHEREAS, at the City Council meeting the applicant volunteered to accept a condition of approval for the proposed project that prohibits any future hard banking of the Carpinteria Creek on the property.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Carpinteria that:

1. The City Council grants the appeal for the limited purpose of modifying the EIR Addendum, adopting certain additional findings and imposing an additional condition of approval, and denies the remainder of the appeal thereby affirming

the Planning Commission's decision to approve Development Plan and Coastal Development Plan Permit No. 99-881-DP/CDP.

2. The City Council hereby adopts the updated Addendum dated January 27, 2003 to the Final EIR.
3. The City Council affirms the findings adopted by the Planning Commission with the limited exception of the utilization of the November 4, 2002 Addendum to the Final EIR, which is now replaced with the updated Addendum dated January 27, 2003.
4. The City adopts the findings of consistency with Local Coastal Plan policies as set forth in the certified Final Environmental Impact Report, as supported by the actions of the Carpinteria Architectural Board of Review and of the Carpinteria Planning Commission and evidence presented by City staff.
5. The City Council finds that the project is consistent with all relevant Local Coastal Plan policies including, but not limited to, LCP Policy 4-1 as the project does not create an adverse impact on the visual quality of Carpinteria Creek due to the location, size, height and placement of the proposed development in relation to the Creek and public view corridors.
6. The City Council imposes an additional condition of approval for the proposed project, which shall be Condition No. 68 and shall read: "Applicant shall submit a covenant that shall prohibit the hard banking of any creek bank on the property, which shall be acceptable to the City Attorney, and will be recorded with Santa Barbara County Recorder upon approval by the City Attorney."
7. The City Council denies the appeal for all other purposes and approves Development Plan/Coastal Development Plan permit 99-881-DP/CDP with conditions.

PASSED, APPROVED AND ADOPTED this 27th day of January 2003, by the following called vote:

AYES: COUNCILMEMBER:

NOES: COUNCILMEMBER:

ABSENT: COUNCILMEMBER:

_____
Mayor, City of Carpinteria

ATTEST:

_____
City Clerk, City of Carpinteria

I hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 27th day of January 2003.

_____

City Clerk, City of Carpinteria

APPROVED AS TO FORM:

_____

City Attorney

EXHIBIT D: REVISED CONDITIONS OF APPROVAL (Carnevale)

The Conditions set forth in this permit affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed shall be binding upon and inure to the benefit of the owner (applicant, developer), his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on the owner (applicant, developer) by this permit.

COMMUNITY DEVELOPMENT DEPARTMENT

1. This Development Plan and Coastal Development Permit approval is restricted to APN 001-070-031, located at the corner of Carpinteria Avenue, Arbol Verde Street and Concha Loma Drive and is for the construction of a single-family residence.

2. The conditions of this approval supercede all conflicting notations, specifications, dimensions, and the like which may be shown on submitted plans.

3. All buildings, roadways, parking areas, landscaping and other features shall be located substantially as shown on the attached exhibits.

4. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitations period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.

5. Water conserving fixtures shall be utilized on all faucets, sinks, water closets and other water outlets throughout the project to reduce water demands.

6. All requirements of the City of Carpinteria and any other applicable requirements of any law or agency of the State and/or any government entity or District shall be met.

7. The applicant agrees to pay any and all City costs, permits, attorney's fees, engineering fees, license fees and taxes arising out of or concerning the proposed project, whether incurred prior to or subsequent to the date of approval and that the City's costs shall be reimbursed prior to this approval becoming valid. In addition,

the applicant agrees to indemnify the City for any and all legal costs in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City's defense of the approval of the project.

8. The standards defined within the City's adopted model Building Codes (UBC; NEC; UMC; UFC; UPC; UHC) relative to the building and occupancy shall apply to this project.

9. Any minor changes may be approved by the City Manager and/or Community Development Director. Any major changes will require the filing of a modification application to be considered by the Planning Commission.

10. Unless the use is inaugurated not later than twelve (12) months after the date of approval, the approval shall automatically expire on that date. The Planning Commission may grant an extension for good cause shown by the applicant if the following findings can be made:

    a. there have been no changes in the proposed site plans and;
    b. there have been no changes in the adjacent areas and;
    c. the permittee had diligently worked toward the inauguration of the use.

11. No building permits shall be issued for this project prior to meeting all required terms and conditions listed herein.

12. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

13. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

14. If, at any time, the City or Planning Commission determine that there has been, or may be, a violation of the findings or conditions of this Development Plan, or of the Municipal Code regulations, a public hearing may be held before the Planning Commission to review this permit. At said hearing, the Planning Commission may add additional conditions, or recommend enforcement actions, or revoke the permit entirely, as necessary to ensure compliance with the Municipal Code, and to provide for the health, safety, and general welfare of the City.

15. In accordance with Chapter 15.80 of the Carpinteria Municipal Code, the applicant shall pay a development impact fee to the City prior to issuance of a building permit. The amount of the fee shall be that in effect at the time of building permit issuance.

16. Any and all damage or injury to public property resulting from this development, including without limitation, City streets, shall be corrected or result in being repaired and restored to its original or better condition.

17. No construction-related debris (mud, dust, paint, lumber, rebar, etc.) shall leave the project site unless transported to an approved disposal site. During the construction period, washing of concrete, paint, and/or equipment shall be allowed only in areas where polluted water and materials can be contained for subsequent removal from the site.

18. Prior to issuance of a building permit, an offer of dedication of an easement to the Santa Barbara County Flood Control District shall be made for the purpose of maintaining adequate access to the Carpinteria Creek. Evidence of the offer of dedication shall be submitted to the Community Development Department prior to the issuance of a Building Permit. If the easement is to be provided, it must be recorded prior to occupancy of the residence.

ENVIRONMENAL REVIEW

19. Design and construction of the ~~duplex~~ single-family dwelling shall be structurally engineered to withstand the expected ground acceleration that may occur at the project site (as determined above). The design shall take into account the soil type, potential for liquefaction, and the most current and applicable seismic attenuation methods available. All on-site structures shall comply with applicable methods of the Uniform Building Code and the California Building Code.

20. During grading and construction activities on the project site, a geotechnical or engineering professional shall be present to ensure adherence to the final design recommendations pertaining to seismic safety as set forth by the engineer.

21. If evidence of a fault splay is found on the project site through site preparation activities, a thorough fault investigation shall be required and all recommendations contained therein shall be implemented.

22. A quantitative liquefaction study shall be performed in order to determine the magnitude of potential settlement and the appropriate grading and foundation requirements for the proposed project. The study shall be reviewed and approved by the City Engineer and Public Works Director, and all recommendations of the study shall be incorporated into project design. Suitable measures to reduce potential impacts relating to liquefaction may include, but are not limited to, the following: specialized design of foundations by a structural engineer; removal or treatment of liquefiable soils to reduce the potential for liquefaction; or in-situ densification of soils.

23. All foundations and slab-on-grade locations shall be designed according to industry standards by a civil/structural engineer to withstand the expected settlement, or the site shall be graded in such a manner as to address the condition.

24. During grading activities on-site, a geotechnical or engineering professional shall be present to ensure adherence to the recommendations regarding liquefaction, soil settlement, and lateral spread set forth by the civil/structural engineer.

25. The following measures are recommended to be included within the restoration/landscape/grading plans to be approved by the City:

    a) Use of 6-foot high chain link fencing at the riparian setback line to clearly identify where site grading is to occur and to limit development to this area. Fencing shall be left in place until completion of all development has concluded and a final inspection has been completed;

    b) Notification of City staff prior to grading to arrange a City inspector onsite during grading activities;

    c) Identification and storage of restoration materials, debris, and construction waste outside of the restoration areas;

    d) Appropriate training and supervision of construction/restoration crews by a qualified biologist or landscape architect to ensure that only the intended exotic vegetation is removed;

    e) Approval of herbicide treatments methods proposed for the control of specific exotic plants;

    f) Use of Best Management Practices (BMPs) to avoid secondary impacts to water quality and associated biological resources within Carpinteria Creek;

    g) Identify performance criteria for restoration/landscaping activities (the performance criteria listed in the May 18, 2001 Carnevale Development Plan Carpinteria Creek Restoration prepared by Rachel Tierney Consulting shall provide the minimum standards for the final restoration plan);

    h) The City Biologist shall ~~M~~monitor the restoration/landscaping effort on an annual basis for a period of at least three years to ensure that it continues to comply with the requirements of these conditions.~~(identify who is to check on the success of the revegetation plan, and how frequently~~;

    i) Retain a qualified arborist onsite during grading. If tree root exposure with the potential to adversely affect the health of native trees occurs during grading, onsite grading activity shall halt until the roots have been appropriately treated in accordance with the recommendations of the arborist. If treatment of tree roots

is necessary, a subsequent arborist report shall be submitted to the City to certify completion of work;

j) Contingency planning (if the effort fails to reach the performance criteria, identify the remediation steps need to be taken); and

k) Irrigation method/schedule (identify how much water is needed, where, and for how long).

26. No species identified as invasive on the CNPS, Channel Islands Chapter Invasive Plants List (1997) shall be utilized in the restoration landscape plans and all landscaping plans shall be prepared and approved by the City.

27. Restoration activities within the riparian areas onsite shall occur between November 1st and April 15th in order to avoid impacts to special-status birds such as the Cooper's hawk, yellow warbler, sharp-shinned hawk, white tailed kite, western yellow-billed cuckoo, least Bell's vireo, and southwestern willow flycatcher that may breed or forage onsite during nesting or migration periods.

28. The portions of the stormwater infrastructure proposed to be located within the ESH shall be installed between August 16th and February 28th in order to avoid impacts to special-status birds such as the Cooper's hawk, yellow warbler, sharp-shinned hawk white tailed kite, western yellow-billed cuckoo, least Bell's vireo, and southwestern willow flycatcher that may breed or forage onsite during nesting or migration periods. If construction activities cannot avoid the breeding bird season, nest surveys shall be conducted and active nests shall be avoided with a minimum buffer as determined by a biological monitor.

29. Installation of the proposed stormwater infrastructure shall avoid impacting mature native shrubs and trees within the ESH, including tree roots. When feasible, rocks and other material shall be hand placed in order to minimize impacts. Areas of ground disturbance shall be revegetated using native plants as outlined in the restoration/landscape plan to be reviewed and approved by the City.

30. The proposed project shall utilize low-wattage incandescent outdoor lighting. Outdoor lights shall be shielded and hooded to prevent light spillover into the riparian corridor.

ADDITIONAL ENVIRONMENTAL CONDITIONS

31. Prior to the issuance of a grading permit for the project, the proposed grading plan shall be revised to indicate that the temporary chain link construction fence is to be located along the "20-foot dripline" setback line that is depicted on the project's site plan/grading plan.

32. Prior to the issuance of a grading permit for the project, the timing restrictions that were identified by the project EIR for on-site riparian restoration and storm water infrastructure construction activities shall be included on the project's site plan/grading plan.

33. Prior to the issuance of a grading permit for the project, a lighting plan that complies with the requirements identified by the project EIR shall be submitted to the Community Development Director for review and approval.

34. All trenching that is to be conducted for the installation of utilities, drainage or other improvements, and that is located beneath the dripline of an on-site sycamore tree, shall be conducted using hand tools. The requirements of EIR mitigation measure BIO-1 (a) 9, which requires that an arborist supervise on-site grading, shall also apply to on-site trenching activities.

ARCHITECTURAL REVIEW

35. Prior to the issuance of any building permits, the applicant shall:

a. Submit final plans to the City for review by the Architectural Review Board. Final plans shall include but not limited to complete construction drawings and details concerning lighting, colors and exterior materials, landscaping and irrigation. The proposed project floor plans shall also be revised to remove the wall that is depicted between the garage and the breakfast nook area.

b. Submit a final landscape/restoration plan for review by the Architectural Review board. The landscaping and irrigation plans submitted shall be prepared by a State licensed landscape architect or similar professional as determined appropriate by the ARB.

c. The applicant shall post a landscape maintenance bond equaling $500.00, or $.03 per square foot of landscape area, whichever is greater and;

i. The landscaping shall be maintained in good condition for three (3) years, at which time the bond will be released;

ii. Landscaping shall be drought resistant, low water-use species;

iii. Where feasible, locally adapted native plants shall be required;

iv. Prior to occupancy all landscaping and planting shall be installed.

v. A raised six-inch curb shall protect all landscaped areas located within parking areas;

vi. Any curb carrying water along its face shall be curb and gutter;

vii. Specimen trees shall be appropriate to the site and shall be maintained in good condition so as to attain a full and healthy mature appearance.

viii. The removal, topping of or otherwise interference with the specimen tree(s) ability to continue its growth and attain full maturity shall be

a violation of these conditions of approval and shall require replacement of the damaged tree.

h. Street trees shall be planted in conformance with the City Street Tree Policy or, upon determination and approval of the City Manager, that prior to the issuance of any building permits the applicant post a cash surety in an amount commensurate with the number and type of trees as specified on the Landscape Plan or adopted Street Tree Plan. This surety shall be equivalent to the cost of in place landscape development.

i. All materials and colors used in construction and all landscape materials shall be as represented to or as specified by the Architectural Review Board and any deviation will require the express approval of the Board.

j. A lighting plan shall be submitted. Exterior lighting shall be low level and designed (through appropriate fixture type, location, etc.) in such a manner that direct lighting or glare will affect adjacent properties, public streets or walkways, or the adjacent riparian habitat.

k. Sidewalk improvements shall be revised to include a parkway adjacent to the curb for consistency with the parkway/sidewalk system in the neighborhood.

CARPINTERIA/SUMMERLAND FIRE PROTECTION DISTRICT

36. Prior to rough framing sign off, it is recommended (not required) that the new building be protected by an approved automatic fire sprinkler system. If the applicant chooses to install fire sprinklers, plans for the sprinkler system shall be designed by a qualified person and submitted to the Fire District for approval.

37. Building numbers (minimum 3" high on a contrasting background) shall be visible from the street.

38. Prior to occupancy, State Fire Marshal approved smoke detectors must be installed in accordance with the County Code.

39. The use of wood shingles, wood shake or any other wooden material for roof covering is prohibited in all areas for new construction.

40. Pursuant to Chapter 15, Article III "A" of the Santa Barbara County Code, the applicant will be required to pay a fee, PRIOR TO THE ISSUANCE OF A "CERTIFICATE OF OCCUPANCY", for the purpose of mitigating the increased fire protection needs generated by the development. The amount of the fee is thirty-two cents ($.32) per square foot of floor space.

CARPINTERIA SANITARY DISTRICT

41. The owner of record, or authorized designee, shall obtain all necessary permits from the Carpinteria Sanitary District (CSD) prior to construction and/or final connection to the District's system.

42. CSD personnel must inspect and approve the installation of the sewer service/lateral line and the final connection to the sewer main prior to backfill. A cleanout is required at the property line.

43. A Development Impact Fee shall be charged for each newly constructed "equivalent dwelling unit" (EDU).

44. A six-inch lateral is required unless a variance for a four-inch lateral is requested in writing from the applicant.

CARPINTERIA VALLEY WATER DISTRICT

45. Required Capital Cost Recovery Fees and Installation Fees shall be paid to the Water District prior to the provision of water service.

ENGINEERING

46. The applicant shall submit grading and street improvement plans prepared by a California Registered Civil Engineer. Said plans shall include but not be limited to street, utility, and storm drain improvements and shall be submitted to the Community Development Department for review and approval prior to issuance of a building permit.

47. An engineering cost estimate shall be submitted with the grading and improvement plans. Each page of the cost estimate shall be signed and stamped by the applicant's engineer.

48. Prior to issuance of building permits, faithful performance and labor and material bonds (each to be 100% of the City Engineer's estimate) shall be filed with the City to cover all public improvements and any on-site grading and retaining walls. A cash deposit in the amount of 10% of the bond amount shall be submitted with each bond.

49. Development shall be undertaken in accordance with conditions and requirements of the State of California Regional Water Quality Control Board. Project Grading and Storm Drain Improvement Plans shall identify and incorporate Best Management Practices appropriate to the uses conducted on-site and during construction to effectively mitigate storm water pollution.

50. At the time of acceptance of improvements, the applicant shall submit a set of "Record Drawings" showing the work as built. The "Record Drawings" shall be the original construction tracings or permanent mylar copies of a quality acceptable to the City Engineer.

51. Prior to occupancy of the project, all new and existing services shall be underground and completed prior to any paving required for the project. No new utility poles shall be installed.

52. Existing overhead transmission and distribution lines located along the edges of the property shall be placed underground. The undergrounding shall extend along the project street frontage to the nearest utility pole(s) outside of the project limits. Feed pints shall be as approved by the City Engineer. All costs for undergrounding existing utility lines and service laterals shall be borne by the applicant.

53. Easements for utilities shall be described on the plans.

54. Frontage improvements, including curb, gutter, sidewalk, paving, street lights, fire hydrants, street signs and other facilities as determined by the Planning Commission, are to be installed in conformance with the standards, specifications, and policies of the City. Unless otherwise specified, the City utilizes the County of Santa Barbara Engineering Standards.

55. Paving and curbs and gutters shall transition into existing improvements as required by the City Engineer.

56. A Street Construction and/or Excavation Permit must be obtained from the City Engineer prior to any construction in the street right-of-way.

57. All street improvements shall be completed to the satisfaction of the City Engineer prior to the issuance of a Certificate of Occupancy by the Community Development Department.

58. Prior to the release of any securities, a Notice of Completion for all public improvements shall be accepted by the City Council.

59. All streetlights shall be installed behind the sidewalk unless authorized by the City Engineer.

60. At the time that Improvement Plans and/or Grading Plans are submitted for review and approval by the City Engineer, two copies of a Soils Report, prepared by a California Registered Geologist or Soils Engineer, shall be submitted to the Community Development Department. The Report shall address soils engineering and compaction requirements, R-values, and other sols and geology related issues and shall contain recommendations as to foundation design, retaining wall design, and paving sections, where applicable for the project.

61. Hydrology/hydraulic calculations shall be submitted by the applicant's engineer determining the adequacy of the proposed drainage system and the adequacy of the existing downstream system. A rainfall frequency of twenty-five (25) years shall be used for sizing piping and inlet structures. If no overland escape is available, 100-

year flows shall be used as the basis of design. Santa Barbara County Engineering Design Standards shall be used. Easements required for drainage shall be described and shown on the Improvement Plans.

62. Prior to performing any grading, the developer shall obtain a Grading Permit from the City Engineer, in accordance with Chapter 8.36 of the Carpinteria Municipal Code, and pay the required grading permit deposits/fees.

63. An erosion and Sediment Control Plan must be prepared and submitted to obtain the necessary Grading Permit from the City Engineer prior to any grading activity.

AUTHORIZATION TO PROCEED

64. Written authorization to proceed and consent to conditions of approval by the legal owner of the property shall be provided to the City prior to building permit issuance.

ADDITIONAL PLANNING COMISSION CONDITIONS

65. Prior to receiving Certificate of Occupancy for the proposed residence, the applicant will record these conditions of approval in the Office of the County Recorder for the County of Santa Barbara.

66. Sidewalk improvements on the Conch Loma side of the project site will terminate at the 20-foot dripline buffer as indicated on the project plans.

67. The applicant will work with the City Public Works Department and the City Biologist to relocate the drainage and energy dissipater to a location that will not interfere with the existing County Flood Control access ramp.

68. Applicant shall submit a covenant that shall prohibit the hard banking of any creek bank on the property, which shall be acceptable to the City Attorney, and will be recorded with the Santa Barbara County Recorder upon approval by the City Attorney.

Approved by the Planning Commission on November 4, 2002.

_____

Chairman of Planning Commission Date

_____

Secretary of Planning Commission Date

I HAVE READ AND UNDERSTOOD, AND I WILL COMPLY

WITH ALL ABOVE STATED CONDITIONS OF THIS PERMIT

_____

Property Owner Date

EXHIBIT 3

City of Carpinteria
Staff Report
for January 27, 2003 City Council Meeting

(9 pages, exhibits not included)

File Copy

AGENDA SECTION PUBLIC HEARINGS
AGENDA ITEM # 6
REPORT # 03-5

STAFF REPORT
COUNCIL MEETING DATE:
January 27, 2003

ITEM FOR COUNCIL CONSIDERATION:

An appeal of the Planning Commission approval of a Development Plan/Coastal Development Permit granted for a 1,695 square foot single-family residence, located south of Carpinteria Avenue, west of Arbol Verde Street and north of Concha Loma Drive. Project No. 99-881-DP/CDP. APN 001-070-031.

Report prepared by: Paul Kermoyan, AICP, Community Development Director

Department: Community Development

Signature

Reviewed by: David Durflinger, City Manager

City Manager _____
Signature

STAFF RECOMMENDATION:

Grant the appeal for the limited purpose of amending the Addendum to the Final EIR and affirm the remainder of the Planning Commission's decision to approve project No. 99-881-DP/CDP with conditions.

I. BACKGROUND:

The project site is an irregularly shaped 19,600 square foot (0.45 acre) parcel located on the southern side of Carpinteria Avenue. Carpinteria Creek is located along the northern portion of the property. Due to the sensitive biological resources that are present in and adjacent to the creek, much of the western half of the property has an "Environmentally Sensitive Habitat Area" (ESHA) overlay zoning designation. The central and western portions of the site contain riparian woodland habitat and the northwestern corner of the site contains freshwater marsh habitat. Both of these habitat areas contain a variety of sensitive plant and animal species. The eastern portion of the project site is occupied by non-native annual grassland, which generally has a low biological value. A dirt path extends across the center of site in a north to south direction.

In addition to the current proposal, the project applicant (Louie Carnevale) had submitted two previous development plans for the project site. A 1988 proposal consisted of a mixed-use

building over 6,000 square feet with a parking lot and retaining wall abutment at the creek's edge. The 1990 proposal consisted of a three-unit condominium project of approximately 7,714 square feet that also involved substantial improvements to the creek's bank. Both projects would have required the removal of substantial amounts of vegetation and channelization of the creek's southeast bank. Both project were ultimately denied by the City, primarily because of impacts to Carpinteria Creek.

The current project was initially submitted in 1999 as a duplex with the structure's most northwestern edge located at the periphery of the riparian habitat. Through the project's original environmental review process, an environmental assessment was prepared by the City Biologist and staff to determine appropriate creek protection measures. A Mitigated Negative Declaration (MND) was prepared and several of its mitigation measures required site design changes. As a result, the project was reduced in size to maintain a 10-foot setback from the edge of the riparian habitat, excluding the willows where a 5-foot setback would have existed.

When the Planning Commission reviewed the MND, it determined that an EIR should have been prepared for the project, primarily to address the potential for the project to result in significant impacts to the biological resources of Carpinteria Creek. Preparation of the EIR began in June 2001, and it was certified by the Planning Commission on July 1, 2002. To comply with the EIR's mitigation measures to reduce environmental impacts, the project was revised to maintain a 20-foot setback from the riparian habitat including the willows. The project presently consists of a two-story, 1,695 square foot (total living area) single-family dwelling. The total developed area (including the garage, paving and porches) on the project site would be 2,914 square feet, which is approximately 15% of the total project site area.

On July 11, 2002, the Environmental Defense Center (EDC) appealed the Commission's decision to certify the Final EIR (Exhibit J). The appeal was withdrawn on July 31, 2002 as the appellant decided to concentrate on resolving its remaining concerns with the project as redesigned and submitted to the Planning Commission (Exhibit K).

The Architectural Review Board (ARB) reviewed the most recent project plans on October 17, 2002, and recommended that the Planning Commission approve the project. In general, the ARB was complimentary of the proposed project's design.

At their November 4, 2002 hearing, the Planning Commission approved the proposed project along with an Addendum to the project EIR. In approving the project, the Planning Commission added several conditions of approval, including requirements that:

- The conditions of approval be recorded with the County Recorder's Office to alert future property owners of project site maintenance and other requirements;
- The proposed sidewalk improvements along Concha Loma Drive not extend into the designated ESHA area; and
- The applicant work with the City Public Works Department and City Biologist to relocate proposed storm water drain line and energy dissipater so as not to interfere with the existing County Flood Control access ramp that leads to Carpinteria Creek.

The Addendum to the project EIR was prepared to reflect project design changes made after the Planning Commission certified the EIR and to confirm the environmental conditions at the project site. The design changes include changing the proposed residence from a duplex to a single family dwelling; reducing the size and height of the structure; eliminating two parking spaces; and increasing the setback from Carpinteria Creek from 10 to 20 feet. Changes in the environmental conditions consist of the growth of riparian vegetation (willow and sycamore trees), which is expected for any healthy system. The EIR Addendum concluded that the

proposed design changes and changes in environmental conditions at the project site did not result in new significant impacts or a substantial increase in the severity of the impacts that were not previously identified and evaluated in the Final EIR.

Additional information regarding project design review by the ARB and Planning Commission, and the environmental review are provided in the November 4, 2002 Planning Commission Staff Report (Exhibit B).

II. APPEAL:

On November 13, 2002, the Environmental Defense Center behalf of the Carpinteria Creek Foundation ("Foundation"), appealed the Planning Commission's approval of the proposed project. On December 5, 2002, the Foundation submitted its own letter, expanding on some of the issues raised in EDC's appeal letter. The appeal letters identify ten issues of concern on which this appeal is based (see Exhibit C). The concerns of the Foundation, and staff's response to each appeal issue, are discussed below.

1. **An incorrect environmental baseline was used in evaluating the impacts of the project to riparian vegetation. Therefore, the project would result in a significant impact to riparian habitat.**

This issue raised by the appellant is related to the Planning Commission's certification of the Final EIR for the Carnevale project. Appellant initially filed a timely, written appeal of the Planning Commission's certification of the Final EIR; however, the appellant then formally withdrew its appeal. (See Exhibits J and K). Therefore, no appeal lies as to either the Final EIR or the environmental baseline issue raised by the appellant. However, for the benefit of the Council and in the interest of informing the public, this report explains the City's selection of the appropriate environmental baseline for purposes of environmental review.

The proposed project plans depict the location of the riparian habitat on the project site. The dripline of the riparian habitat was first delineated in 1999 as part of the preparation of the Mitigated Negative Declaration ("MND"). The riparian dripline was established by surveying the location of the dripline created by the sycamore and willow trees. Due to concerns expressed by the public as to the accuracy of the survey, the City Biologist and members of the Carpinteria Creek Foundation were present when the survey was prepared.

After the Planning Commission considered the MND, it determined that an EIR was required. The City hired Rincon Consultants to assist in the preparation of the EIR. On July 9, 2001, the City issued a Notice of Preparation for the EIR. On October 19, 2001, Rincon Consultants went to the project site and re-surveyed the entire area, including the riparian habitat dripline. The Final EIR, at page 4.4-2, acknowledges Rincon's re-survey of the property as follows:

> *"The project area was surveyed by Rincon Consultants on October 19, 2001 to assist in the peer review of the existing biological assessments for the proposed project...and assess the potential impacts on biological resources onsite related to project development. Vegetation and habitat types identified in the Hunt and Tierney (November 5, 1999) and Chirman (May 29, 2001) studies and as mapped by Hochhauser Blatter (October, 2001) were reviewed and confirmed by Rincon Consultants. Vegetation and wildlife observed during the onsite survey were documented."* (Final EIR, July 2002, Page 4.4-2).

The City's environmental consultants have provided a letter reconfirming that although previous surveys and biological studies were used as references for the preparation of the EIR analysis, the consultants' biologists conducted independent surveys and analysis in conjunction with preparation of the EIR. This confirmation letter is attached as Exhibit D.

Just before the November 4, 2002 Planning Commission hearing, the Foundation claimed that the Final EIR failed to properly delineate the riparian dripline and, therefore, violated CEQA. City staff was unable to contact Rincon Consultants prior to the November 4th meeting and could not confirm the date of the re-survey. Without this information, staff responded to the Foundation's concerns relying on the information provided by the Foundation that the riparian dripline had not been re-surveyed after 1999. At the Planning Commission hearing, staff stated that the 1999 survey satisfied CEQA requirements because it occurred at the beginning of the environmental review process. The Foundation contended that CEQA requires that the environmental baseline be set after the Notice of Preparation is issued. Given the plain language of the Final EIR and the confirming letter from Rincon Consultants, it is clear that the Final EIR used an environmental baseline set on October 19, 2001, after the issuance of the Notice of Preparation. Thus, the environmental baseline is consistent with the Foundation's interpretation of CEQA.

The EDC and the Foundation also contend that the project site, the proposed project would provide only a 9-foot setback from the riparian vegetation dripline due to vegetation growth over the past year, which would result in a significant impact to the riparian habitat. Staff disagrees with these measurements. Measurements recently taken by staff at the project site after the applicant staked the footprint of the proposed residence indicated that the setback between the structure and the willow trees as they currently exist would range between 13 and 19 feet. For purposes of identifying significant impacts, CEQA requires that the project be reviewed based upon the physical conditions in place at the time the environmental baseline is set. (CEQA Guidelines § 15125(a).) While the riparian habitat may have grown during the review of this project, CEQA essentially freezes in place the physical conditions as of the setting of the environmental baseline and the City must review the project based on these conditions. The fact that the riparian habitat has expanded during consideration of the project does not affect the Final EIR's conclusions as to significant impacts.

2. **The setback that would be provided from the riparian vegetation that exists on the project site is not adequate to reduce project-related impacts to riparian habitat to a less than significant level.**

This issue raised by the appellant is related to the Planning Commission's certification of the Final EIR for the Carnevale project. Appellant initially filed a timely, written appeal of the Planning Commission's certification of the Final EIR; however, the appellant then formally withdrew its appeal. (See Exhibits J and K). Therefore, no appeal lies as to either the Final EIR or the environmental baseline issue raised by the appellant. However, for the benefit of the Council and in the interest of informing the public, this report explains the City's selection of the appropriate environmental baseline for purposes of environmental review.

The Foundation contends that if a setback of at least 20 feet were not provided between the proposed residence and the edge of the riparian vegetation, as it existed when the Notice of Preparation was published, the proposed development would result in a significant environmental impact.

As the Final EIR and letter from Rincon indicate, the edge of riparian vegetation used in the Final EIR to create the riparian buffer was originally delineated in 1999 and resurveyed and confirmed as accurate in 2001 at the time the NOP was published.

The growth of the willow and sycamore trees that has occurred since the environmental baseline conditions were established has not substantially altered the environmental conditions that exist on the project site, or substantially increased the potential for the project to result in significant environmental impacts. The City's Biologist has reviewed the proposed project plans and the conditions that currently exist at the project site, and determined that the 20-foot setback is adequate to reduce potential riparian habitat impacts to a less than significant level. The City Biologist also noted that one of the reasons the setback area was increased from the original proposal of 10 feet to 20 feet was to provide sufficient area to accommodate the growth of the vegetation.

The EIR mitigation measure that requires the provision of a 20-foot setback between riparian vegetation and the proposed residence was based on expert testimony that was provided to the Planning Commission (Chirman, May 2001; Schmidhauser, May 2001; and Holmgren, April 2002). It should also be noted that other expert testimony that was provided (Hunt, June 2001; Semonsen, June 2001; and Tierney, June 2001) concluded that the setback proposed by the City (20 feet from the riparian vegetation) is not significantly different compared to a 10-foot riparian dripline buffer, and that the proposed project would be generally beneficial to biological resources within the environmentally sensitive habitat area due to the habitat restoration and decreased public access (Final EIR, July 2002, Page 4.4-16).

As noted earlier, for purposes of CEQA, significant impacts are determined based on the physical conditions at the time an environmental baseline is set. In this case, the environmental baseline was set on October 19, 2001 and, therefore, additional growth of the riparian vegetation does not create a new significant impact.

3. The project would result in development within the Environmentally Sensitive Habitat Area (ESHA) that exists on the project site and is therefore inconsistent with the City's Local Coastal Plan and the Coastal Act.

The Foundation contends that the installation of a proposed fence, storm drain and storm water discharge energy dissipater would be inconsistent with the requirements of the City's Local Coastal Plan.

The project includes the installation of a fence that would extend northward from the project site's northern property line towards Carpinteria Avenue. This section of the fence is located within the right-of-way area for Carpinteria Avenue, and is also within the designated ESHA for Carpinteria Creek. The fence has been proposed to limit access to Carpinteria Creek and the adjacent ESHA, which has historically occurred due to its proximity to Carpinteria Avenue. The proposed fence would be 42 inches high and of a split rail design. This type of fence would not obstruct wildlife and would not interfere with the passage of drainage water.

The Municipal Code requirements for the "ESHA Overlay District" are consistent with the requirements of the Coastal Act and allow structures to be developed in a native plant community ESHA area when the construction minimizes impacts from "grading, paving, construction of roads or structures, runoff and erosion on native vegetation" (Chapter 14.42). The proposed fence benefits the ESHA in that it would minimize impacts to the ESHA by discouraging access from Carpinteria Avenue to the ESHA. The fence would protect the ESHA from degradation and allow for the restoration of this habitat. The fence would not result in significant disruption of the habitat value provided by the area adjacent to the creek and would be consistent with the Municipal Code requirements. Therefore, the fence is consistent with the Coastal Act and LCP Policy 9-16. The minimal disturbance to the ESHA area during the installation of the fence, the open design of the fence, and the potential for the fence to

discourage trespass and human disturbance into the ESHA, provide beneficial reasons to support fence installation

The proposed storm drain and energy dissapater are necessary to regulate drainage off the property. At the Planning Commission hearing, Steve Wagner, City Public Works Director, discussed the need for the storm drain and energy dissipater in order to prevent uncontrolled runoff into Carpinteria Creek. The placement of these flood control measures within the ESHA is consistent with LCP 9-16, which provides for such measures.

As presently proposed, the project includes the installation of a new storm water drain line along an existing Santa Barbara County Flood Control District access that leads to Carpinteria Creek. To minimize the potential for significant erosion impacts associated with the discharge of water into the creek, the project also includes the installation of rock riprap within the creek. To avoid potential conflicts between the proposed drain line location and the Flood Control access, the Planning Commission imposed the following condition of approval on the proposed project:

"*The Applicant will work with the City Public Works Department and the City Biologist to relocate the drainage and energy dissipater to a location that will not interfere with the existing County Flood Control access ramp.*"

It is the intent of this condition to modify the project so that the drainage that would have been discharged from the project site directly into the creek would instead be conveyed to Concha Loma Drive and then to the creek through an existing drainage swale and outlet. The implementation of this condition of approval would avoid the need to place any new drainage related structures in or adjacent to Carpinteria Creek.

4. The project would adversely affect the visual qualities of Carpinteria Creek.

The foundation and EDC claim that the project violates LCP Policy 4-1 because the project significantly impacts views of Carpinteria Creek. The Foundation claims that the ARB, Planning Commission and City staff have wholly ignored this issue.

The ARB, the Planning Commission, and City staff have thoroughly considered the potential visual impacts associated with this project and the applicable LCP policies. The ARB discussed at great length the potential loss of views. The ARB concluded that the existing views of the creek are already obstructed by the riparian vegetation and the proposed structure covers such a small portion of the project site that any loss of views could not be considered "significant" as required by the City's CEQA thresholds of significance. The ARB minutes are attached for the Council's review and reflect the ARB's extended discussion of aesthetic and visual impacts.

The Planning Commission also considered the potential visual impacts. The Commission heard and considered public testimony regarding the loss of creek views. During the Commission's deliberations, several of the Commissioners specifically discussed the visual impacts associated with the project and concluded that they did not rise to the level of "significant." The Planning Commission minutes are attached for the Council's review. City staff also addressed potential visual and aesthetic impacts through its staff reports, the MND, and the Final EIR. Staff concluded that the project does not create a significant impairment of views to Carpinteria Creek and, therefore, the project does not violate LCP Policy 4-1. The MND and Final EIR also reach the same conclusion. Finally, staff has visited the project site on numerous occasions with the project footprint and story poles in place. Based on these site visits, staff concludes that the project is consistent with LCP Policy 4-1 and does not significantly impair views.

5. Access to and along Carpinteria Creek would be diminished by the project.

The Foundation argues that the project violates LCP Policy 7-20 because it terminates a trail that has been used by the public for several years. LCP Policy 7-20 states, "In areas where it is established that the public has acquired right of access through use, custom, or legislative authorization, new development shall not interfere with or diminish such use." The foundation claims that since the trail has been used as a short cut for several years, allowing the applicant to cut off access violates Policy 7-20. Here, the public has not established that it has acquired a "right" to access the Carnevale's property. A right to access private property is establish by the courts, not the City. There has been no showing that the public has acquired such a right over the Carnevale property. If the public wishes to perfect such a right, it may petition the court, however, it is not up to the city to make such a determination and require that Mr. Carnevale give up a portion of his land for public use.

6. The Planning Commission's action violates state law in terms of the preparation of the biological survey and development in an ESH (trenching and fence).

A response to this issue is addressed in items 1 and 3 above. Contrary to the Foundation's letter, staff and the Planning Commission discussed in great detail the baseline data issue and the Planning Commission determined that the baseline was correctly established. After the Planning Commission's December 9, 2002 meeting, the City's environmental consultant confirmed that a resurvey of the baseline data was in fact performed as identified in the Final EIR.

7. Approval of the project could lead to hardbanking of Carpinteria Creek.

The Foundation references a 1990 letter from the County Flood Control District where the District provided comments on an earlier project that necessitated greater setbacks from the Creek's top of bank than the project provided. The 1990 project, however, was a much different project than the current proposal and involved substantial development in the riparian habitat and up to the creek's banks.

In terms of the current project, the County Flood Control District was noticed on three occasions (application filing, MND notice, EIR notice)and elected not to provide comments to the City. In addition, the City's Engineer has reviewed the project and determined that it complies with Federal Emergency Management Agency (FEMA) regulations in terms of development within a flood zone. Because the project as proposed has been found to comply with all FEMA and flood control regulations, staff finds no reason to believe that hardbanking will be required in the future.

8. The project will violate Local Coastal Plan Policy 4-1 which protects views to streams.

The Foundation states an opinion that the project should be sited to prevent adverse impacts on views and references Coastal Act and LCP policies to this regard. A project's potential to obstruct views is covered under the City's CEQA Threshold Guidelines as well as Chapter 3.4 of the City's Local Coastal Plan. The issue raised, therefore, relates specifically to environmental and developmental review processes. As discussed in the Final EIR, the City's CEQA Threshold Guidelines were used to prepare the EIR. It was concluded that the project would not create substantial adverse impacts to the visual qualities of the creek. In addition, the City's Architectural Review Board (ARB) reviewed the project and concluded that the visual qualities of the site will not be undermined by the project. Based on the findings of the Final EIR and the recommendation of the ARB, the Planning Commission found the project consistent with Chapter 3 policies of the Coastal Act.

9. The location of a fence within the ESH violates Local Coastal Plan Policy 9-16 and 7-20.

A response to this issue is addressed in item 3 above.

Modification of EIR Addendum

Based on the recent confirmation by Rincon Consultants regarding the re-surveying of the riparian habitat, staff recommends modifying the Addendum to the EIR as approved by the Planning Commission. The Addendum was prepared and approved under the assumption that the riparian habitat had been surveyed in 1999; however, the Addendum should be updated to reflect the October 19, 2001 re-survey of the site. The proposed Addendum is attached to the Resolution (Exhibit A).

III. POLICY:

The proposed project site is zoned "Planned Residential Development – 15 Units per acre (PRD-15). The proposed project would result in the development of one single-family dwelling unit, which is a permitted use in the PRD-15 zone. As proposed, only 15% of the project site would be used for development and impacts to the sensitive biological resources of the site have been reduced to a less than significant level. Additional restrictions regarding the development of the property would have the potential to raise issues related to the reasonable use of the property by the owner and a potential "taking" of the property by the City.

IV. LEGAL ISSUES:

The City is processing the appeal consistent with Carpinteria Municipal Code regulations set forth in Chapter 14.78.

V. ALTERNATIVE OPTIONS:

1. Consistent with Carpinteria Municipal Code § 14.78.040 (5), approve the action of the Planning Commission and deny the appeal (Staff's recommendation).

2. Grant the appeal, in whole or in part, and take appropriate action.

VI. PRINCIPAL PARTIES EXPECTED AT MEETING:

1. Mr. Brian Trautwein, Representative of the Foundation
2. Other Representatives of the Foundation
3. Mr. Jan Hochhauser, Project Architect

VII. ATTACHMENTS:

Exhibit A – City Council Resolution No. 4771
Exhibit B – Planning Commission report, November 4, 2002
Exhibit C – Appeal Letter from EDC, November 13, 2002
Exhibit D – Letter from Rincon Consultants, November 20, 2002
Exhibit E – Letter from Jan Hochhauser requesting a continuance

Exhibit F – ARB minutes (September 14, October 14, 1999; December 14, 2000; February 27, 2001; October 17, 2002)
Exhibit G – Planning Commission Minutes (March 4, June 3, July 1, November 4, 2002)
Exhibit H – Mitigated Negative Declaration
Exhibit I – Letter from the Carpinteria Creek Foundation, December 5, 2002
Exhibit J – Appeal of EIR certification, dated July 11, 2002
Exhibit K – Withdraw of appeal of EIR certification, dated July 31, 2002
Exhibit L – Final Environmental Impact Report (previously distributed to the Council)

EXHIBIT 4

Project Plans

Page 1: Site Plan

Page 2: Landscape/Restoration Plan

Page 3: Plan Details

Page 4: Floor Plan

Page 5: Southeast and Southwest Elevations

Page 6: Northwest and Northeast Elevations

Page 7: Sections

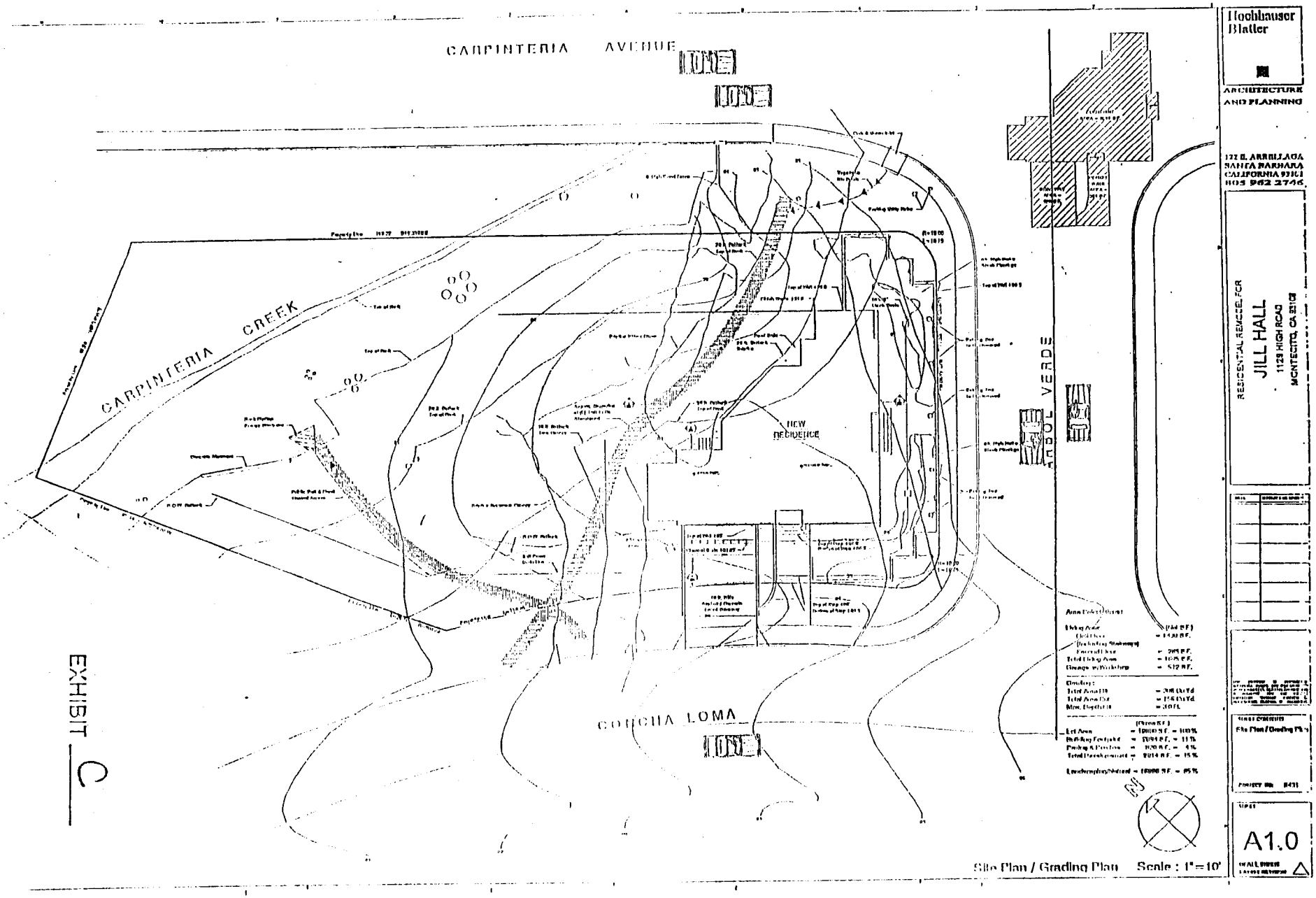
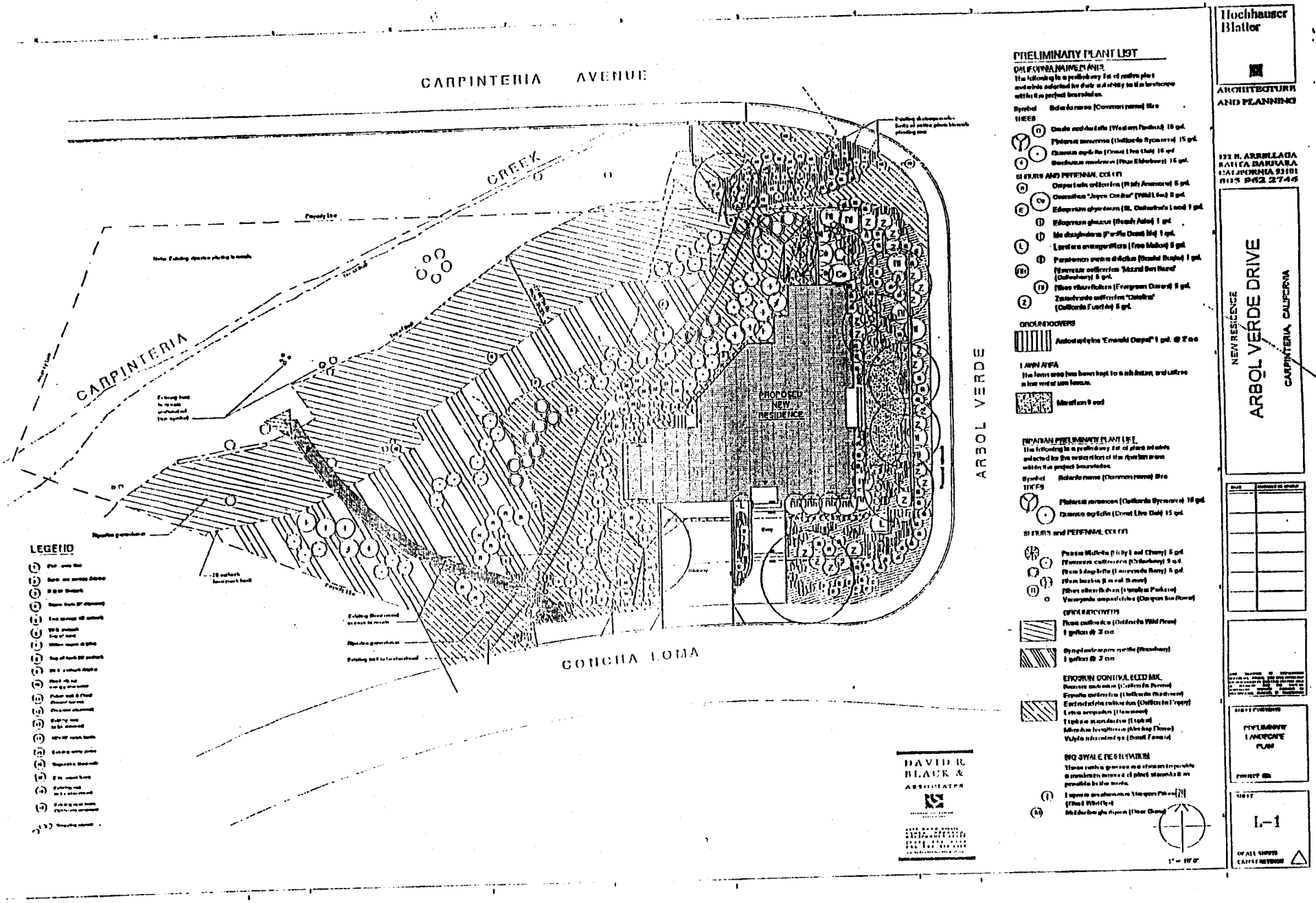
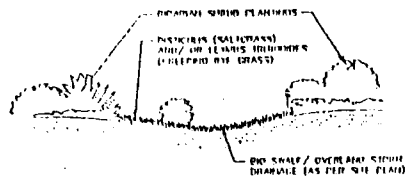


EXHIBIT C

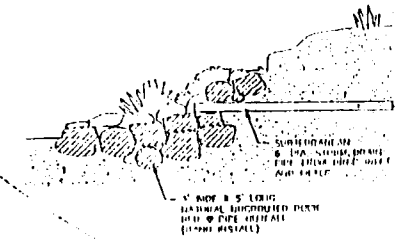
Ex4-1


CARPINTERIA AVENUE
CREEK
CARPINTERIA
PROPOSED NEW RESIDENCE
ARBOL VERDE
CONCHA LOMA
LEGEND
PRELIMINARY PLANT LIST
CALIFORNIA NATIVE PLANTS
TREES
SHRUBS AND PERENNIAL COLOR
GROUNDCOVERS
LAWN AREA
RIPARIAN PRELIMINARY PLANT LIST
SHRUBS and PERENNIAL COLOR
GROUNDCOVERS
EROSION CONTROL SEED MIX
BIO SWALE RESTORATION
DAVID R. BLACK & ASSOCIATES
Hochhauser Blatter
ARCHITECTURE AND PLANNING
172 N. ARRELLAGA
SANTA BARBARA
CALIFORNIA 93101
805 962 2746
NEW RESIDENCE
ARBOL VERDE DRIVE
CARPINTERIA, CALIFORNIA
PRELIMINARY LANDSCAPE PLAN
L-1

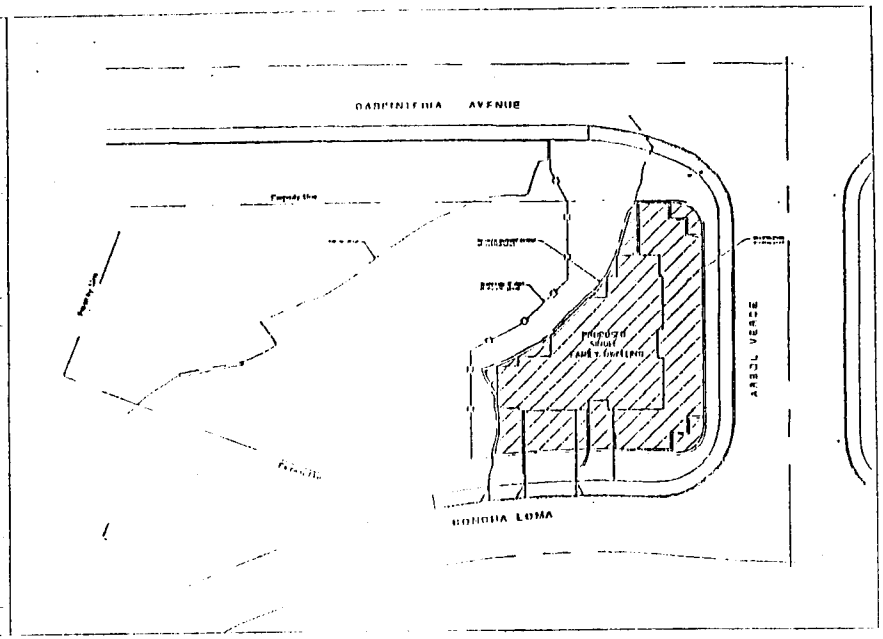
Ex4-2



BIO SWALE SECTION | SCALE: NTS | 10



STORM DRAINAGE RIP RAP OUTLET | SCALE: NTS | 10



DEVELOPMENT REQUIREMENTS

N

1" = 20'-0"

Hochhauser Blatter

ARCHITECTURE AND PLANNING

123 E. ARRELLAGA
SANTA BARBARA
CALIFORNIA 93101
805 962 2746

RESIDENTIAL REMODEL FOR

JILL HALL

1123 HIGH ROAD

MONTECITO, CA 93108

SHEET CONTENTS

Details
Development
Requirements

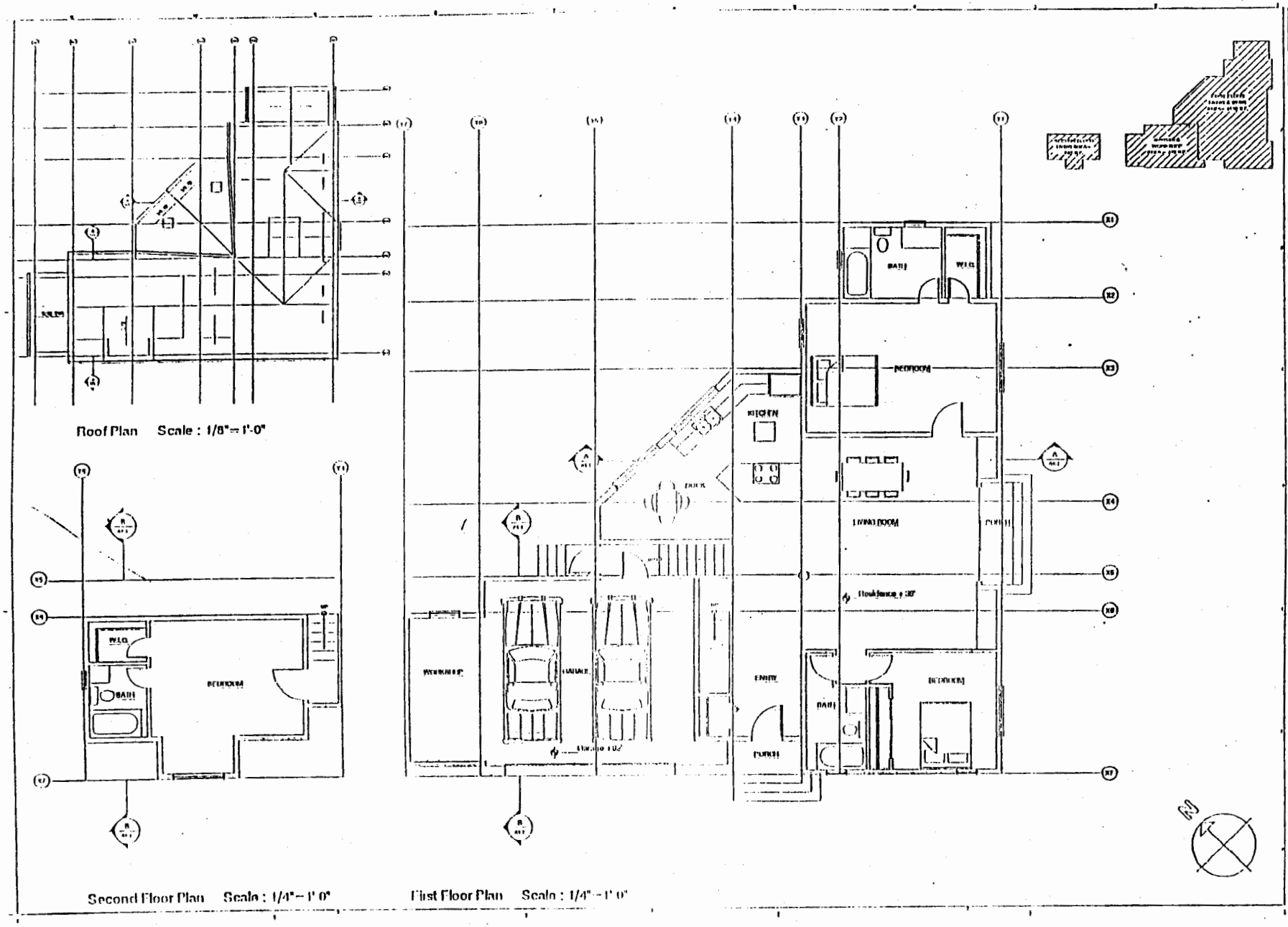
PROJECT NO. 9431

SHEET

D-1

ALL SHEETS LATEST REVISION

Ex 4-3



Hochhauser Blatter

ARCHITECTURE AND PLANNING

112 E. ARRELLAGA
SANTA BARBARA
CALIFORNIA 93101
805 962 2744

RESIDENTIAL REMODEL FOR

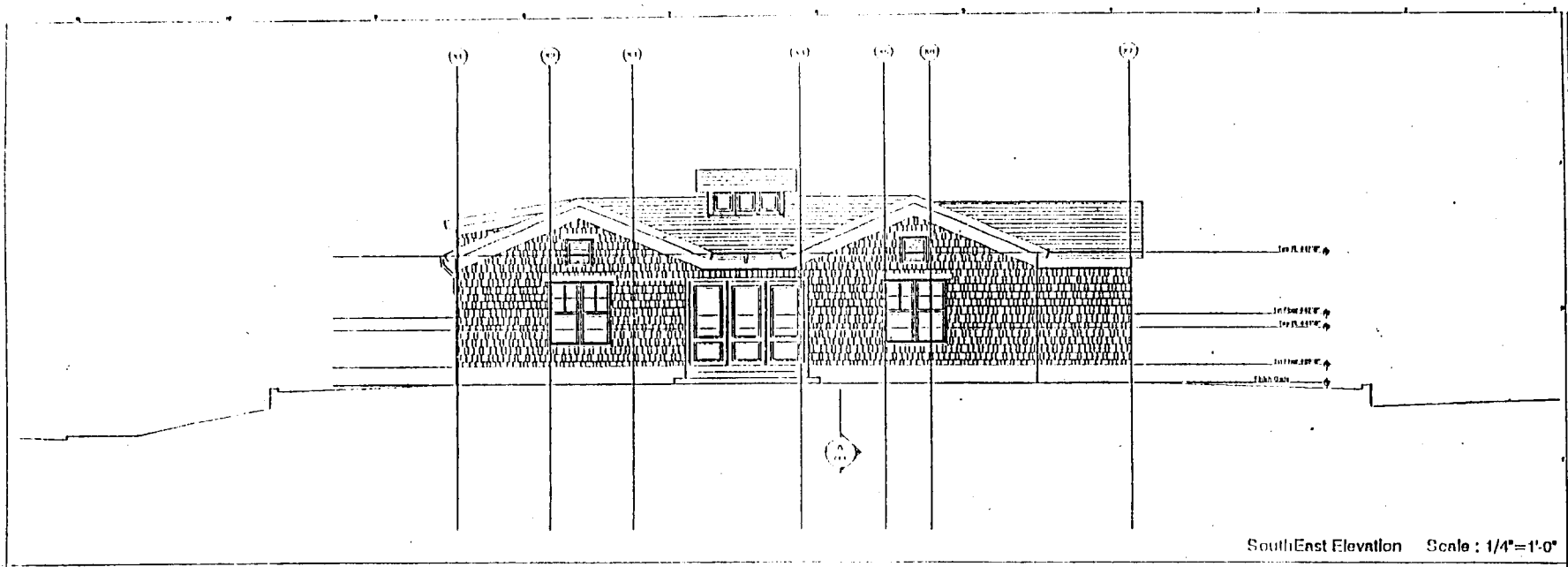
JILL HALL

1129 HIGH ROAD
MONTECITO, CA 93108

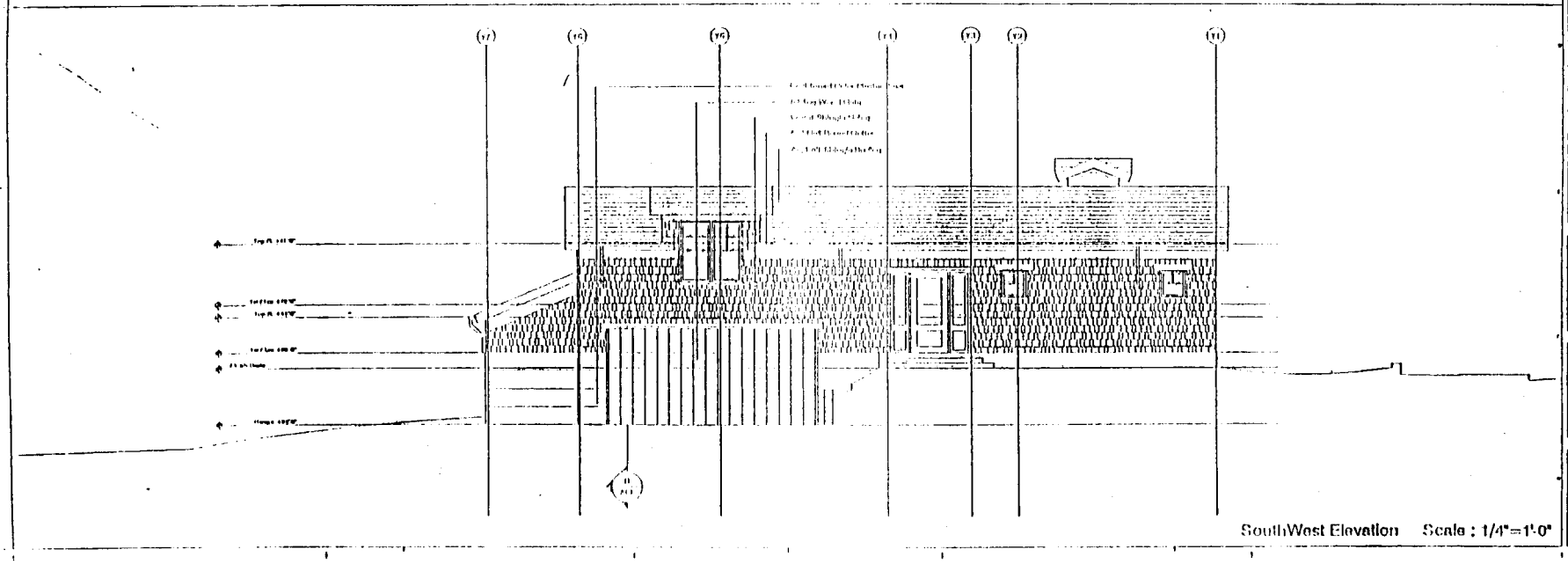
Floor Plan

A2.1

EX4-4



SouthEast Elevation Scale : 1/4"=1'-0"



SouthWest Elevation Scale : 1/4"=1'-0"

Hochhauser Blatter

ARCHITECTURE AND PLANNING

122 E. ARRELLAGA
SANTA BARBARA
CALIFORNIA 93101
805 962 2746

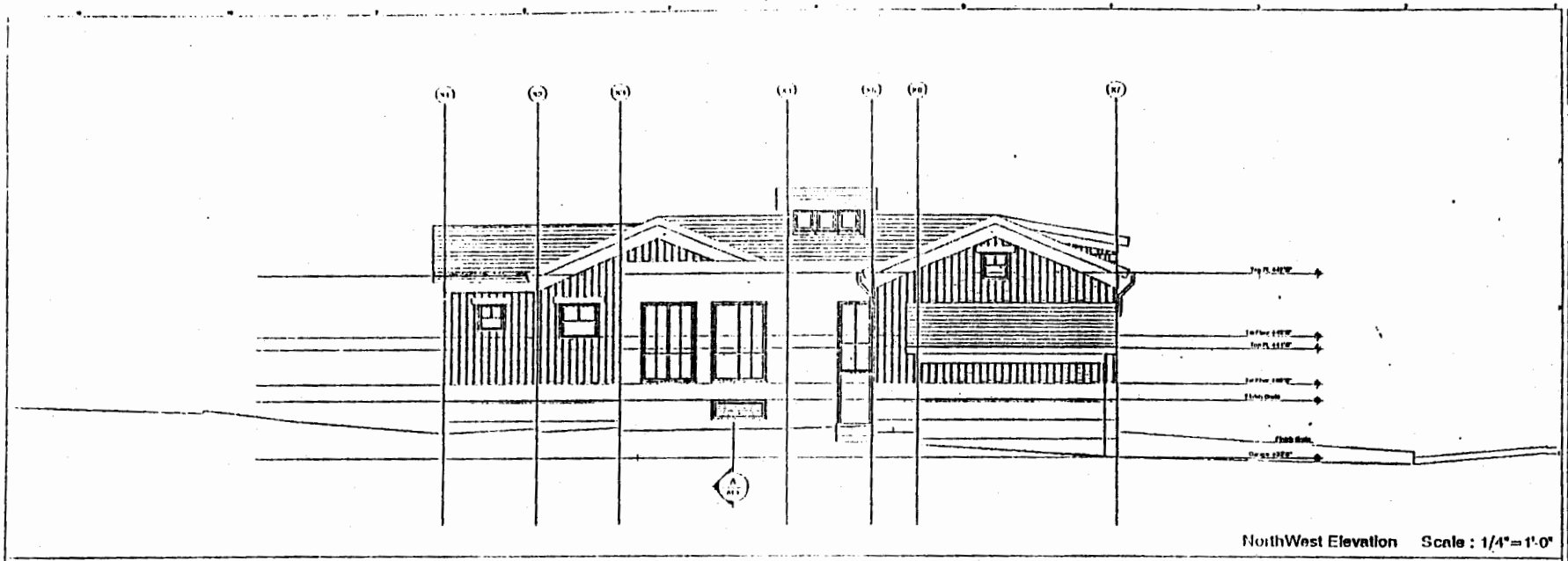
RESIDENTIAL REMODEL FOR
JILL HALL
1129 HIGH ROAD
MONTECITO, CA 93108

SHEET CONTENTS
SouthWest & SouthEast Elevations

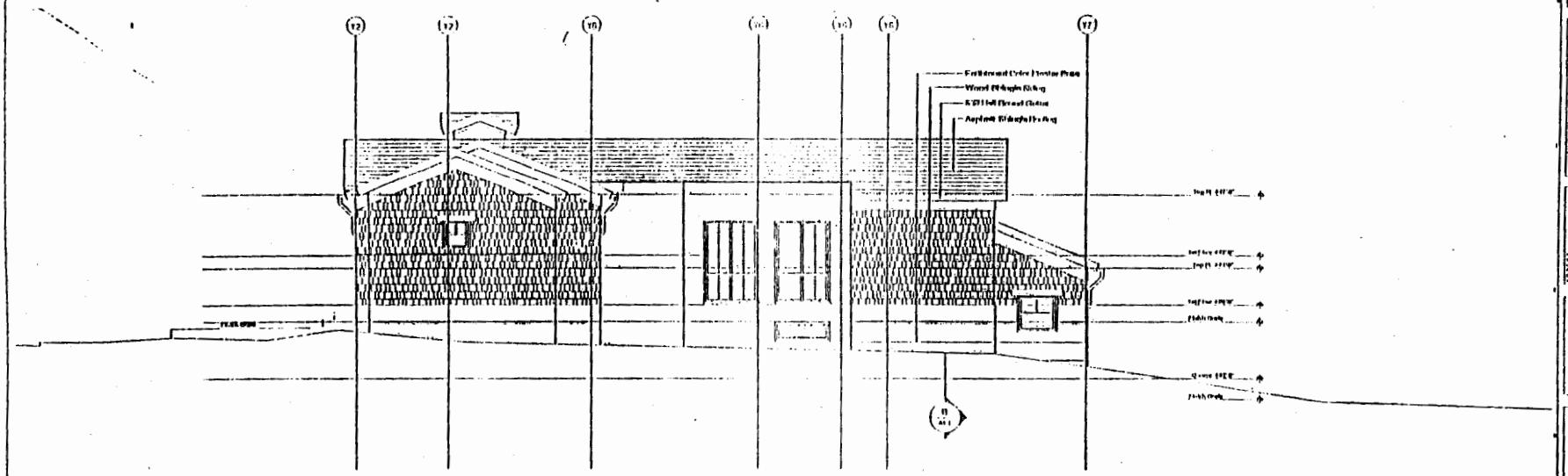
PROJECT NO. 8431

A3.1

Ex4-5



NorthWest Elevation Scale : 1/4"=1'-0"



NorthEast Elevation Scale : 1/4"=1'-0"

Hochhauser Blatter

ARCHITECTURE AND PLANNING

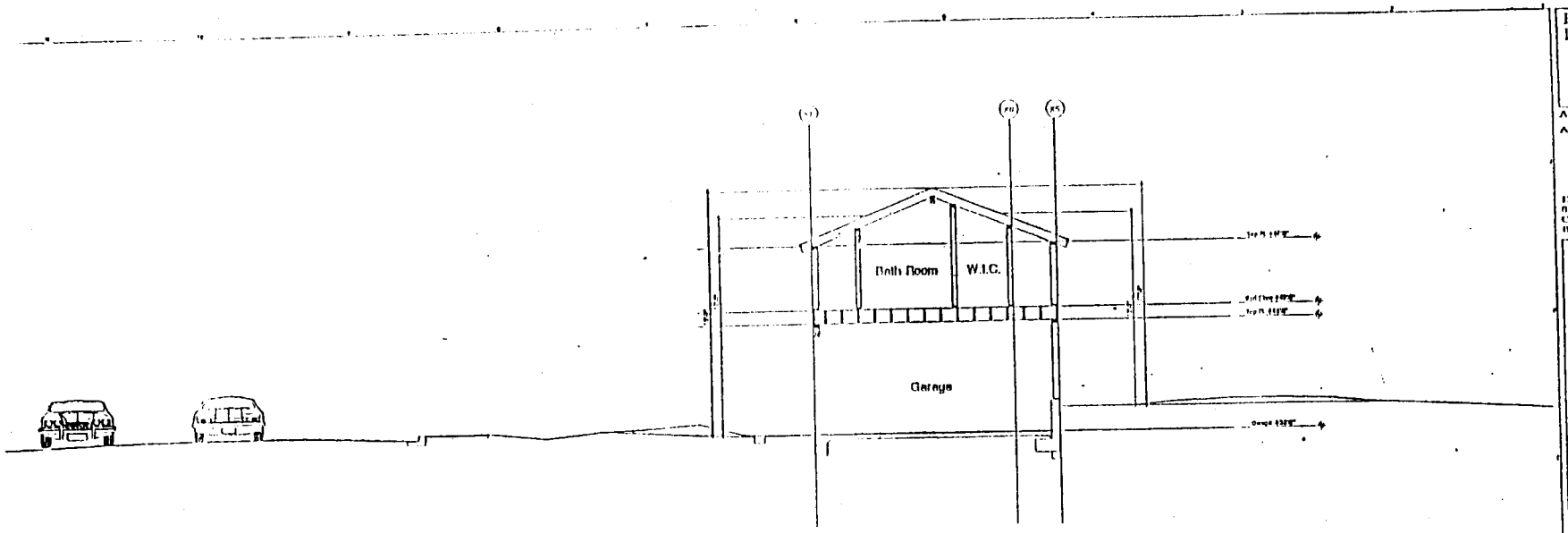
173 E. ARRELLAGA
SANTA BARBARA
CALIFORNIA 93101
805 962 2746

RESIDENTIAL REMODEL FOR
JILL HALL
1123 HIGH ROAD
MONTECITO, CA 93108

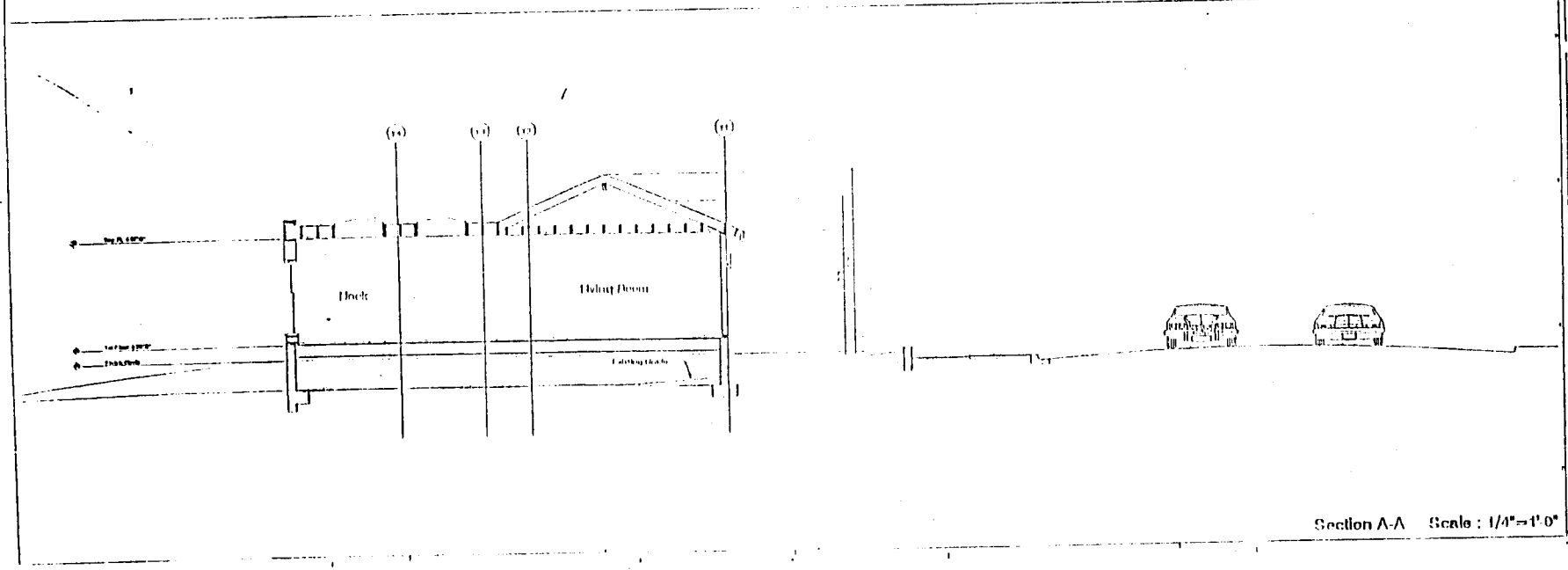
NorthWest & NorthEast Elevations

A3.2

EX4-6



Section B-B Scale : 1/4"=1'-0"



Section A-A Scale : 1/4"=1'-0"

Hoehlmuser Blatter

ARCHITECTURE AND PLANNING

172 E. ARRELLAGA
SANTA BARBARA
CALIFORNIA 93101
805 962 2746

RESIDENTIAL REMODEL FOR

JILL HALL

1129 HIGH ROAD
MONTECITO, CA 93108

SHEET CONTENTS
Section A & B

PROJECT NO. 9131

SHEET

A4.1

OF ALL SHEETS
LATEST REVISION

EXH-7

EXHIBIT 5

Memorandum
from Staff Ecologist John Dixon, Ph.D.
to Lillian Ford
Re: Habitat Buffer at Carnevale Property

May 8, 2003

(5 pages)

STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist

TO: Lillian Ford

SUBJECT: Habitat Buffer at Carnevale Property

DATE: May 8, 2003

Documents Reviewed:

11/05/99. Hunt, L.E. and R. Tierney (Consulting Biologists to L. Carnevale). Updated biological review of the Arbol Verde Project, City of Carpinteria, Santa Barbara County.

03/20/00. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to David Durflinger (City of Carpinteria) re buffer issues and recommending no development within the riparian dripline.

05/18/01. R.Tierney (Consulting Biologist to L. Carnevale). Letter to Jan Hochhauser (Hochhauser and Blatter) re restoration plan.

05/29/01. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to Letter to City of Carpinteria Planning Commission re buffer issues, recommending minimum of 20 feet from riparian dripline.

05/31/01. R. Tierney (per J. Hochhauser; document without cover page or other identification of authorship). Arbol Verde Restoration Notes.

06/01/01. J. Hochhauser (Hochhauser and Blatter). Letter to City of Carpinteria Planning Commission re D. Chirman letter of 5/29/01.

06/02/01. R.Tierney (Consulting Biologist to L. Carnevale). Letter to City of Carpinteria Planning Commission re D. Chirman letter of 5/29/01.

06/04/01. V. Semonsen (Consulting Biologist to City Carpinteria). Letter to Dave Durflinger (City of Carpinteria) re process for establishing a riparian buffer.

06/04/01. V. Semonsen (Consulting Biologist to City Carpinteria). Letter to Dave Durflinger (City of Carpinteria) re D. Chirman letter of 05/29/01.

06/04/01. L.E. Hunt. Letter to City of Carpinteria Planning Commission re character of Carpinteria Creek and response to D. Chirman letter of 05/29/01.

06/12/01. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to City of Carpinteria Planning Commission re buffer issues.

02/02. City of Carpinteria. Carnevale duplex project draft environmental impact report.

04/02/02. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to Paul Kermoyan (City of Carpinteria) re buffer issues and recommending Alternative 3 of the EIR.

04/04/02 S. Anderson (Carpinteria Creek Foundation). Letter to City of Carpinteria Planning Commission re buffer issues

04/05/02. M. Wehtje (CDFG). Letter to Paul Kermoyan (City of Carpinteria) re draft EIR and mitigation measures.

04/09/02. L. Hunt (Consulting Biologist to L. Carnevale). Letter to Paul Kermoyan (City of Carpinteria) re draft EIR.

04/11/02. R.Tierney (Consulting Biologist to L. Carnevale). Letter to Jan Hochhauser (Hochhauser and Blatter) re T. Schmidhauser letter of 03/29/02.

04/12/02. L. Hunt (Consulting Biologist to L. Carnevale). Letter to Jan Hochhauser (Hochhauser and Blatter) re other projects where encroachment of willows was permitted by CDFG.

04/14/02. M. Holmgren (Biologist). Letter to Paul Kermoyan (City of Carpinteria) re draft EIR recommending Alternative 3.

04/26/02 P. Rogers (Arborist, Poly Associates). Letter to Jamie King (Rincon) re potential impacts of construction on riparian trees.

05/02. City of Carpinteria and Rincon. Carnevale duplex project final environmental impact report. Responses to comments on the draft EIR.

05/02/02. D. Gress (Arborist). Letter to Hochhauser and Blatter re protective setback from riparian vegetation.

05/29/02. T. Schmidhauser (Biologist). Letter to Steven Velyvis and Brian Trautwein (Environmental Defense Center) re buffer issues, recommending 20 feet from riparian dripline.

06/03/02. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to City of Carpinteria Planning Commission re draft EIR and buffer issues.

07/01/02. R. Tierney. Letter to Jan Hochhauser (Hochhauser and Blatter) re HGM assessment of Carpinteria Creek.

10/30/02. V. Semonsen. Letter to Paul Kermoyan (City of Carpinteria) re position of riparian dripline.

11/04/02. A. Clark. Letter to Carpinteria Planning Commission re position of riparian dripline.

11/20/02. J. Power (Rincon). Letter to Paul Kermoyan (City of Carpinteria) re appeal of EIR certification and date of dripline measurement.

01/27/03. City of Carpinteria, City Council Staff. Staff report re appeal of the Planning Commission approval of Carnevale project (99-881-DP/CDP), including discussion of measured position of the riparian dripline.

03/08/03. T. Schmidhauser (Biologist) Letter to California Coastal Commission re position of riparian dripline and buffer requirements.

03/26/03. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to California Coastal Commission re appeal issues.

03/28/03. J. Studarus (Conception Coast Project). Letter to California Coastal Commission re buffers to protect Carpinteria Creek steelhead habitat.

04/04/03. W. Ferren (UCSB Museum of Systematics and Ecology). Letter to California Coastal Commission re appeal issues.

04/08/03. J. Kuyper (Environmental Defense Center). Letter to California Coastal Commission re appeal issues.

04/15/03. J. Hochhauser (Hochhauser and Blatter). Letter to John Dixon (CCC) re buffer issues, and transmittal of documents.

05/03/03. J. Hochhauser (Hochhauser and Blatter). Letter to John Dixon (CCC) re W. Ferren letter of 04/04/03.

05/06/03. L. Hunt (Consulting Biologist to L. Carnevale). Letter to John Dixon (CCC) re W. Ferren letter of 04/04/03.

There seems to be a consensus among the various commentators that Carpinteria Creek and its associated riparian habitat is extremely valuable to a variety of species and meets the standard for ESHA under the Coastal Act and the Local Coastal Program. The boundary of the ESHA is defined by the outer edge of the riparian vegetation. The major resource issue that has been raised in connection with the proposed project is that of adequate habitat buffers, that is to say, the distance the development should be set back from the ESHA boundary.

In general, I think a 100-foot buffer, measured from the bank of the stream or the edge of riparian vegetation, whichever is greater, should be the default standard for natural streams. However, in urbanized areas, such a wide buffer is often not feasible and often does not make good ecological sense due to the presence of existing development. A wide buffer for a particular property is unlikely to perform a protective function proportional to its width if the adjacent or nearby parcels have development much closer to the stream. In the case of Carpinteria Creek, there are structures present that are within 15-20 feet of the creek bank and within 5 feet of the riparian canopy, according to the final EIR (p. 366). This problem was recognized in most of the documents cited above. Although bigger is generally better, the issue at hand is how large a buffer is necessary to prevent significant environmental impacts due to the proposed residential development at the subject property. In view of the existing urban constraints, the opponents to earlier project designs generally recommended that the development be set back at least 50 feet from the bank of Carpinteria Creek and at

least 20 feet from the dripline of the riparian vegetation, which in this case is represented by sycamores and willows.

Apparently as a result of recommendations generated by the CEQA process, the design was altered and the set back was increased. As currently proposed, about half the residential footprint is greater than 50 feet from the stream bank and about half the footprint is between 40 and 50 feet distant. The footprint of the residence, as measured from the eave of the roof (J. Hochhauser personal communication on May 8, 2003), is also set back 20 feet from the dripline of riparian vegetation, as measured on October 19, 2001. Presumably, the currently proposed setback would have satisfied the concerned parties at that time. However, between then and now, the trees have grown.

In fall 2002, Semonsen (10/30/02) estimated that the riparian canopy had increased 5-7 feet and Clark (11/04/02) estimated that the project setback had been reduced to 9-17 feet (a canopy increase of 3-11 feet). In January 2003, City staff (01/19/03) reported that due to recent growth the current setback is 13-19 feet (a canopy increase of 1-7 feet). Ferren (04/04/03) asserted that the current setback is 9-17. It is not clear if this estimate was based on his own observations when he visited the site on March 31, 2003 or on the estimates of others (perhaps Clark). According to City Council staff, the Environmental Defense Center and the Carpinteria Creek Foundation assert that the current setback is as small as 9 feet. Hunt (05/06/03) visited the site on May 06, 2003 and characterized the riparian canopy that has encroached into the original 20-foot setback as follows, "...this growth consists of three willow branches up to 1.25 inches in diameter in the southernmost area and six sycamore branches up to 0.5 inches in diameter in the northernmost area that extend no more than five or six feet beyond the mapped canopy."

What is the ecological significance of these changes? For the sake of analysis, I will assume that a 20-foot setback from riparian canopy is adequate in this setting and, therefore, that the current project design would not have had a significant environmental impact had it been constructed in October 2001. Then, the question is "What impact is the project likely to have as a result of the growth of the riparian trees?" Species at risk include aquatic organisms, birds, and plants. According to Tierney (04/11/02), "[t]he National Marine Fishery (sic) Service (NMFS)...stated that a formal consultation would not be required for this project because they could see no potential significant impacts to the aquatic habitat, including steelhead resulting from the project (Darren Brumback, June 2, 2001)." If the project that was on the table in early 2001 would have no significant impacts on the aquatic habitat, the current design would have even less and such impacts would not be made more likely by a modest growth in the riparian canopy. It is also not obvious how birds would be affected negatively. If, for example, the house had been built in fall 2001, and the riparian canopy subsequently grew larger, would one expect a decline in bird use? On the contrary, the additional canopy would likely have an additional buffering effect for most species. The one group of birds that might be locally affected would be species that prefer the ecotone, or canopy edge. The attractiveness of that portion of the habitat would likely decrease as it grew closer to a source of disturbance. The organisms most likely to be affected by the change in

canopy are the individual sycamores and willows themselves. The expansion of the dripline is probably accompanied by a roughly concomitant expansion of the fine root system, putting the latter at some increased risk of disturbance due to the proximity of development. The ecological affect of development will be negative as detailed by Schmidhauser (03/29/02). However, I think that the probability of a measurable decrease in growth rate or an increase in the likelihood of mortality due to the changed canopy configuration since fall 2001 is small due to the small increase in the proportion of roots that are at risk from the development. The arborists that were consulted thought that the project would not have significant adverse affects on the sycamores and willows (Rogers 04/26/02; Gress 05/02/02). Gress (05/02/02) recommended a setback of 6 feet beyond the dripline, which still exists. The understory vegetation within the buffer is highly disturbed and, in any event, impacts of the development to that vegetation layer are unlikely to be affected by a change in the extent of the riparian canopy.

If Hunt's recent estimate is accurate, the actual change in canopy is due to some 9 small tree branches extending 5 or 6 feet into the previously established buffer. The resultant marginal increase in the environmental impact of the development due to such a change in vegetation is not likely to be significant. On the other hand, it is certainly the case that if this project were newly presented to staff and the Commission, the buffer analysis would be based on the current position of the riparian dripline, which apparently has not been mapped. Rough estimates of the range of distances from the dripline to the development would not be adequate. To put this problem in perspective, the differences in the estimates of canopy position presented above are probably well within the expected error of such estimates. Where a few feet make a difference, the position of the dripline would have to be mapped using surveying techniques.

EXHIBIT 6
Correspondence to Commission

Item 1:	Carpinteria Creek Foundation, February 24, 2003	11 pages
Item 2:	Linda Adams, March 10, 2003	1 page
Item 3:	Brad and Jeanne Sullivan, March 12, 2003	2 pages
Item 4:	Doris La Mar, March 8, 2003	1 page
Item 5:	Karen Friedman, March 10, 2003	1 page
Item 6:	Angelica Centina, March 1, 2003	1 page
Item 7:	Jennifer McCurry, March 8, 2003	1 page
Item 8:	Ann Matson, March 4, 2003	1 page
Item 9:	Priscilla Pearce Whittaker, March 7, 2003	1 page
Item 10:	Suzette Doubek, March 3, 2003	4 pages
Item 11:	Laurie A. Bryant, March 4, 2003	1 page
Item 12:	Doris Floyd, March 7, 2003	1 page
Item 13:	Reggie Hepp, March 8, 2003	1 page
Item 14:	Marca Rowley, March 10, 2003	2 pages
Item 15:	Carol Smith Tokar, March 3, 2003	1 page
Item 16:	Susan Allen, March 15, 2003	1 page
Item 17:	Christie Tarman, March 5, 2003	1 page
Item 18:	Thelma Schmidhauser, Ph.D, March 8, 2003	2 pages
Item 19:	Catherine Esch, March 7, 2003	1 page
Item 20:	Janet Blackwell, March 9, 2003	1 page
Item 21:	Jens Pedersen, March 10, 2003	2 pages
Item 22:	C. Kathleen Lord, March 15, 2003	9 pages
Item 23:	Alison Johnson, March 11, 2003	1 page
Item 24:	Lynne and Karl Widiner, March 16, 2003	1 page

(continued on next page)

Item 25: Nancy O. Van Antwerp, March 17, 2003	1 page
Item 26: Conception Coast Project, March 28, 2003	1 page
Item 27: Robert E. Prussing, March 26, 2003	1 page
Item 28: Al Clark, April 4, 2003	1 page
Item 29: Wayne R. Ferren, April 4, 2003	2 pages
Item 30: Environmental Defense Center, March 27, 2003	8 pages
Item 31: Paul Kermoyan, City of Carpinteria, April 3, 2003	2 pages
Item 32: Environmental Defense Center, April 8, 2003	1 page
Item 33: Lawrence E. Hunt to Commission Staff Ecologist John Dixon, May 6, 2003	5 pages

CARPINTERIA
CREEK
FOUNDATION
P.O.BOX 1128 CARPINTERIA CA 93014

RECEIVED
FEB 26 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

February 24, 2003

California Coastal Commission:

This letter is in regards to the appeal brought to the California Coastal Commission by the Carpinteria Creek Foundation of the Carpinteria City Council approval (final action by City Council on 1-27-03, NOFA date 2-3-03) of the Carnevale Residential Project based on alleged violations of the LCP of Project No. 99-881-DP/CDP (APN 001-070-031). Attached to this letter is evidence in support of the Foundation's appeal related to the approval's violation of LCP 4-1.

1. The first letter is from the Foundation's View Expert, Ms. Peggy Oki. This letter validates the significance of the present views and quantifies the extent of view blockage that will result from the project as estimated from three public viewing areas and provides photographic simulation and plan diagram estimation's of view blockage. Ms. Oki found these view blockages to be significant and in violation of LCP Policy 4-1.

This letter was provided to the Planning Commission for its decision in November of 2002 but was not provided by staff to the City Council for it's deliberation on the Foundation's appeal hearing on 1/27/03. Further, the mayor limited the Foundation's presentation. These 20 minutes were occupied by the EDC and Foundation presenters on issues of creek setback and development in ESHA and time did not permit discussion of further issues or testimony by the Foundation's aesthetics team.

2. The second letter is from Mr. Al Clark of the Foundation. Please refer to the section under "Aesthetics." This section provides an analysis of the City's review process with regards to Policy 4-1.

The Foundation does not contend that the City did not consider view issues. Indeed, the certified EIR states that this impact is *adverse*. There was also discussion in staff reports and at the ARB and Planning Commission levels. However, the Foundation contends that the staff did not address LCP Policy 4-1 conformance or inconsistency and did not lead these decision making bodies through the process of identifying the relevance and extent of view blockages, as is laid out in the City's CEQA Threshold Guidelines. Staff could have made an analysis similar to that of Ms. Oki as a basis for the Board and Commission's decisions but did not.

Ex. 6 - ITEM 1

The City's adopted Threshold Guidelines charges the ARB as the final arbiter of aesthetics issues. During the October 17, 2002 ARB hearing the Foundation queried Board members if they were familiar with LCP Policy 4-1 and the City's adopted Threshold Guidelines. This is reflected in the minutes at the bottom of page 4. The ARB members responded that they were not familiar with these. Staff's response was that when new Board members are sworn in they are provided with copies of City's relevant polices, etc. and it is up to the Board members to become familiar with them. The Foundation's contention was that if the EIR identified this impact as severe then the staff should have provided some analysis of the issue. They did not.

Thank you for your consideration of this evidence.

Sincerely,

Al Clark
Foundation Board Member

November 4, 2002

Carpinteria Planning Commission

RE: Carnevale

Honorable Commissioners:

I am a long time resident and professional artist in Carpinteria. By virtue of my profession I am qualified to comment on the aesthetics issues I have passed by the Carnevale property regularly for the past fifteen 15 years. I also have graphic arts experience and know the value of graphic arts in presentations.

The views from the three most accessible perspectives around the property have long been enjoyed by me. These views are of the stream, the canopy of riparian trees, the under story and the open space. I have been very concerned over the loss of aesthetic quality that would come with the development of this property.

LCPA Policy 4-1 states that projects should be sited to protect views to mountains, ocean, and streams. The proposed project, however, will obstruct most creek, open space and under story views. The Carpinteria CEQA Threshold Guidelines call creeks "valuable as visual, recreational, and open space area." These guidelines consider a Substantial" view impairment to be significant.

Your staff report attempts to make three arguments regarding loss of views.

1. Development fills only "a small portion of the site (approximately 15%) of the site... and views of the... vegetation would be retained and available...." This is an analysis for density but not for view blockage. It is not the amount of development that is so important but the placement of it. If a narrow wall is placed directly in front of the object to viewed the wall itself it may only occupy a small area in terms of square footage but it can obstruct all of the viewed object.
   The CEQA Threshold Guidelines state that "view impairment would be considered "extensive" when the overall scenic quality of a resource is changed; for example, from an essentially natural view to a largely man-made appearance. This site has never been developed and the proposed project will change it from natural view to one that is largely dominated by a habitational structure.

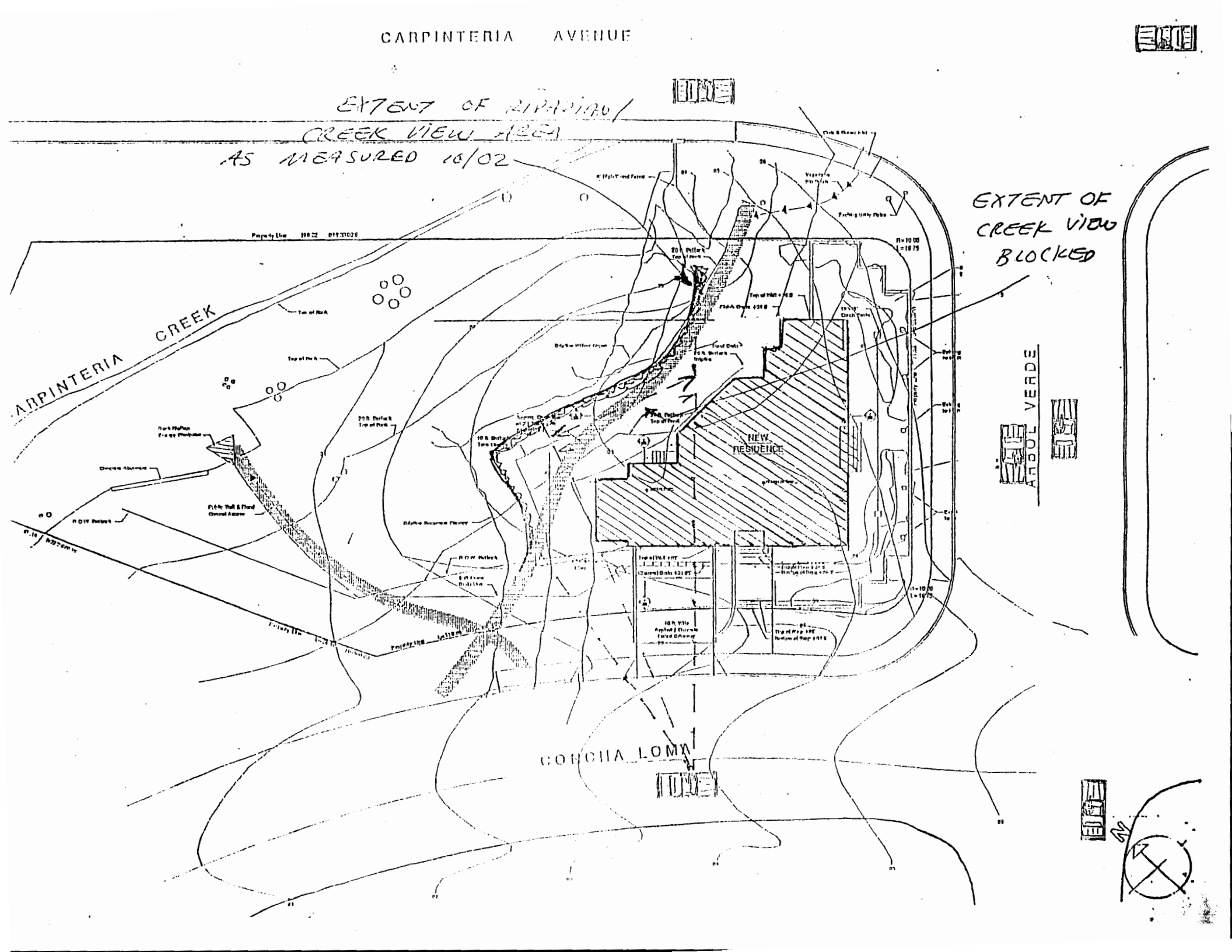
2. The ARB concluded "that views from the surrounding streets do not provide views of the creek." This implies that only views of the water or the creek bed are valuable. However, the LCP and the Guidelines protect views to the creeks as open space from roads that do not normally have views of the actual creek bed.

3. The staff report concludes that the ARB "found the project would not cause substantial view impairment." The attached plan is a crude sketch showing view perspectives of the riparian open space area from three roadways. Note the line of sight views from three perspectives of cars driving on public roads. These are

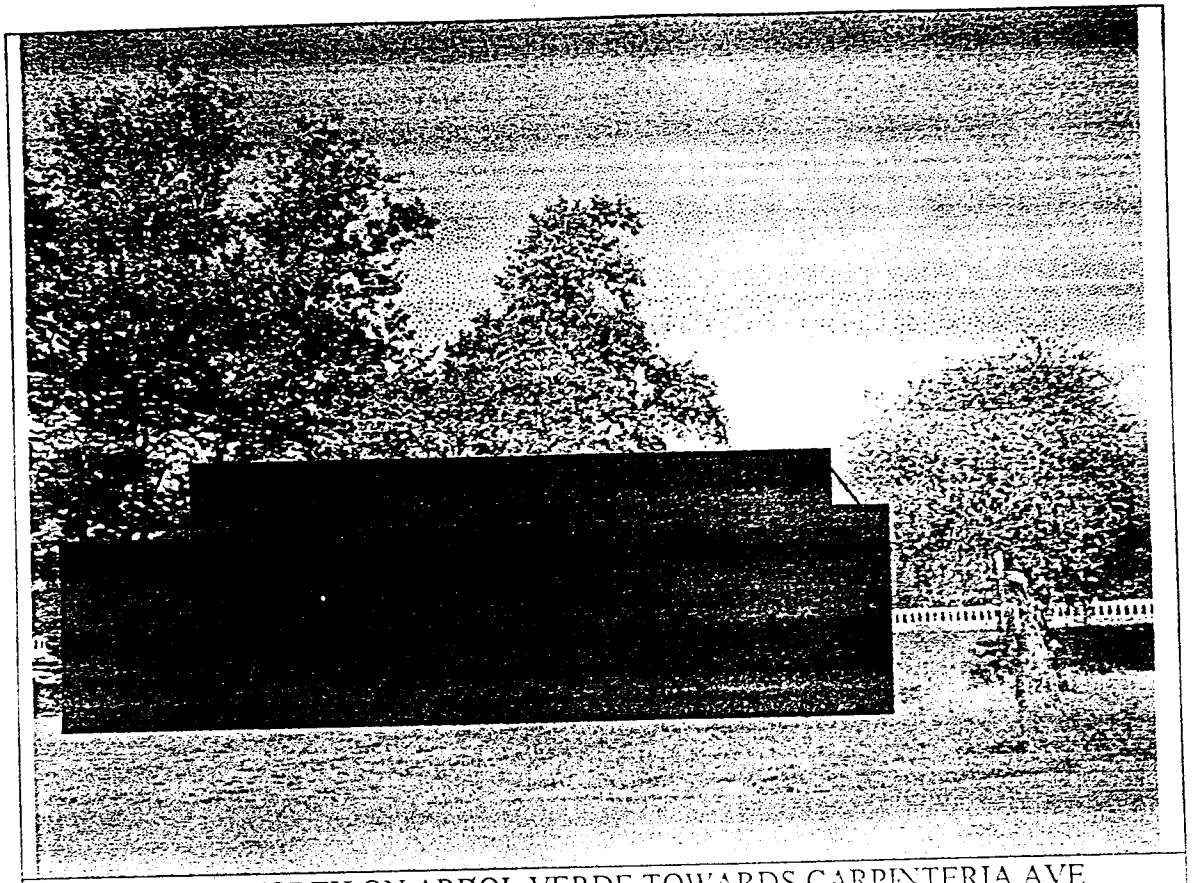
indicated by dashed lines from the cars. From Carpinteria Ave., driving west, the view blockage of the structure is about 40 % (the 3.5' high fence may add some additional blockage but was not included in the calculation. The perspective from Arbol Verde exiting the neighborhood is blocked approximately 79 % while the view from Concha Loma exiting the neighborhood is blocked 86 %. These are all substantial impairments.

Though there is a proposal to mitigate view blockage with some creek restoration, I believe that the loss of the under story views is unmitigable. To restore the creek is an action that I strongly support but not at the cost of losing the aesthetics. Accurate graphic representations of the view blockage should be brought back before the Commission to aid in evaluating view blockage and for re-siting of the project to remove the substantial blockages, as is required under LCP Policy 4-1.

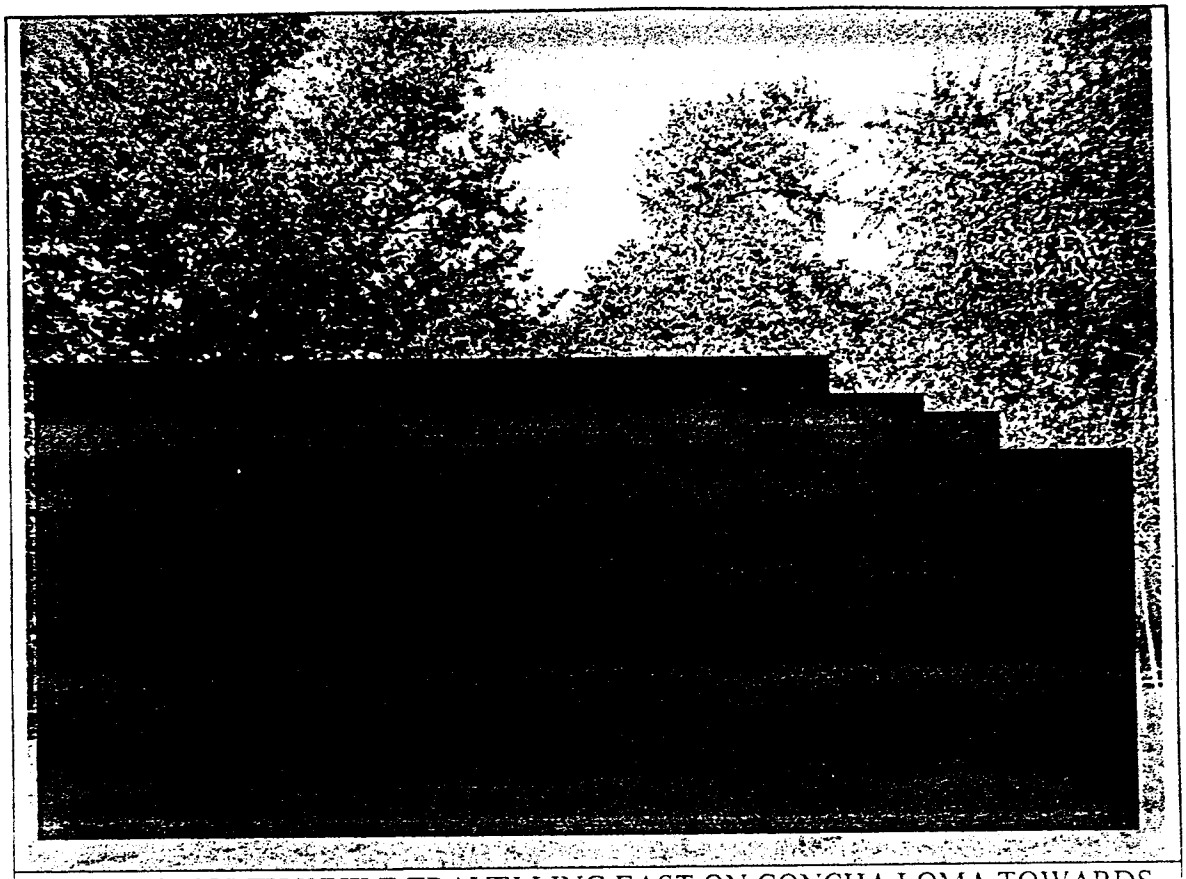
Peggy Oki
5966 Via Real # 3


CARPINTERIA AVENUE
EXTENT OF RIPARIAN/
CREEK VIEW AREA
AS MEASURED 10/02
EXTENT OF
CREEK VIEW
BLOCKED
CARPINTERIA CREEK
NEW
RESIDENCE
ARBOL VERDE
CORCHA LOMA

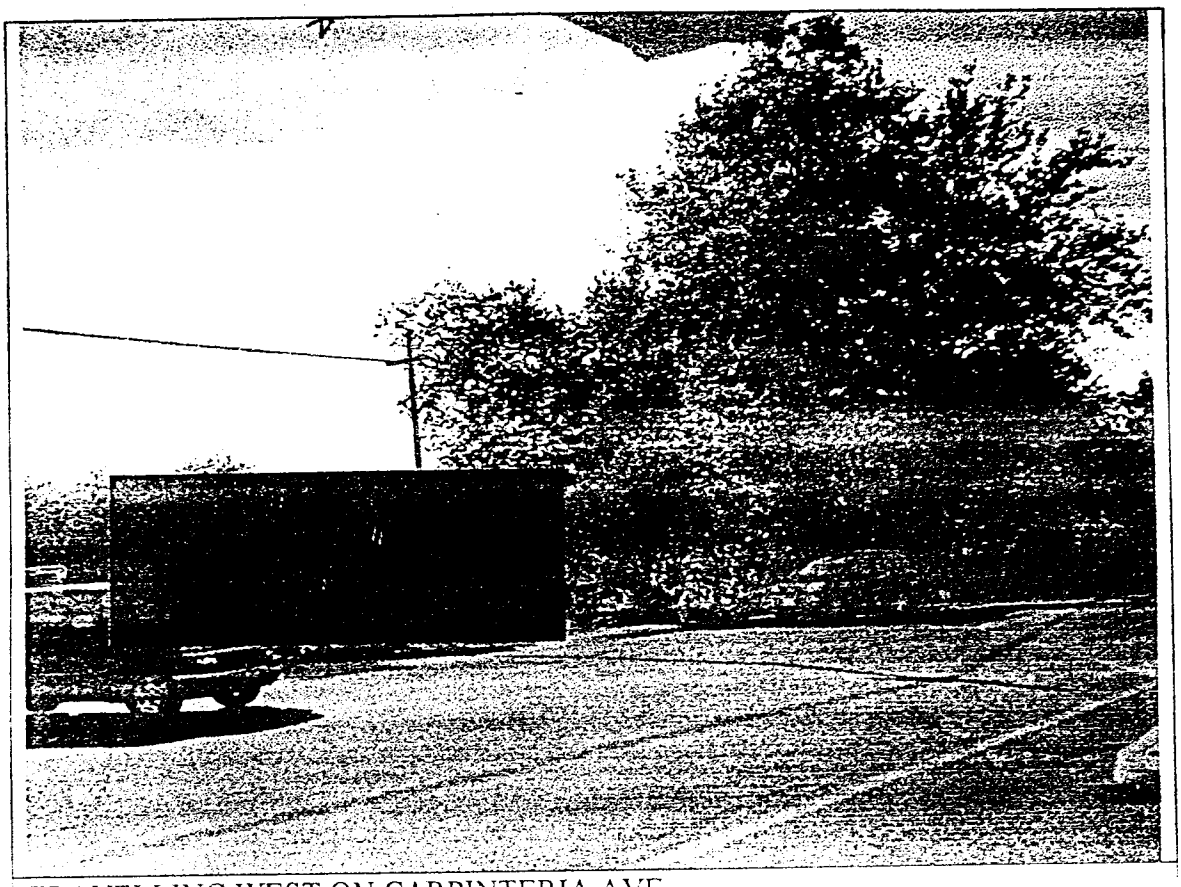
ESTIMATED VIEW BLOCKAGE FROM THREE PUBLIC AREAS BY FILLING IN AREAS STAKED BY ARCHITECT



TRAVELLING NORTH ON ARBOL VERDE TOWARDS CARPINTERIA AVE.



LOOKING NORTH WHILE TRAVELLING EAST ON CONCHA LOMA TOWARDS ARBOL VERDE



TRAVELLING WEST ON CARPINTERIA AVE.

Linda Adams
5518 Canalino Drive
Carpinteria, California 93013

RECEIVED
MAR 1 2 2003
CALIFORNIA
COASTAL COMMISSION

3/10/03

To: California Coastal Commission

Re: Appeal by Carpinteria Creek Foundation to overturn City's approval of the Carnevale Project in Carpinteria, CA.

I believe the approval violated the City's LCP because:
1. The creek setback (<10 feet) is inadequate to protect the riparian habitat (ESHA) as required by the city's LCP.
2. The planned fence, storm drain and energy dissipater, located in the ESHA, will damage the ESHA.
3. Project blocks important and protected public views of Carpinteria Creek.

Thank you for your consideration.

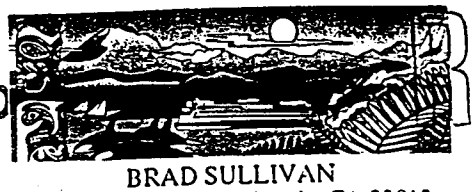
Linda Adams
Phone 805-684-1623

Cc: EDC, Santa Barbara

RECEIVED
MAR 1 3 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Ex6 - ITEM 2

RECEIVED
MAR 1 4 2003
CALIFORNIA
COASTAL COMMISSION



BRAD SULLIVAN
5586 Calle Ocho, Carpinteria, CA 93013

RECEIVED
MAR 1 7 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

(1)

3/12-03

California Coastal Commission:

I am writing regarding an appeal, File # 99-881-DP/CDP filed by the Carpinteria Creek Foundation against the Carnevale Residential Project, 1,695 sf two story residence adjacent to the Carpinteria Creek. The assessors parcel # is APN 001-070-031 and it is located on the SW corner of Carpinteria Ave. & Arbol Verde.

I feel the approval by the City of Carpinteria of this project is in direct violation of our city's Local Coastal Plan because the creek setback of less than 10 feet is not sufficient to protect the riparian habitat. This is an environmentally sensitive habitat area according to our city's Local Coastal Plan.

The fence, storm drain, and energy dissipater located within this environmentally sensitive area will be damaging to same. I feel it should be located outside of same area.

This project also blocks important and protected public views of our creek. This is a particularly sensitive issue on a personal level. I am the owner

Ex A - ITEM 2

BRAD SULLIVAN
5586 Calle Ocho, Carpinteria, CA 93013

(2)

3-12-03

of the house directly across the street from this project. Our views of the trees, creek, and mountains will be forever blocked by this large, tall, and imposing two story building. We are the only homeowners directly effected by this development and I feel our property value will definitely suffer. Other than our home, this property is surrounded by an office building and rentals. This is the gateway to our residential neighborhood, and a large two story building sets a precedent for others to follow suit. Soon our small beach community will look like Santa Monica and lose its special charm.

It is unfortunate Mr. Carnevale refuses to sell his small lot to the community at fair market value so we may convert a vacant lot into a riparian park for all to enjoy. I feel that would be the best solution for all concerned.

Sincerely,

Brad + Jeanne Sullivan

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 8, 2003

Coastal Commission
45 Fremont Street, Suite # 2000
San Francisco, CA 94105-2219

Re: Carpinteria Creek Foundation Appeal of Carnevale

Dear Commissioners:

I am concerned about the loss of views to the mountains and creek trees and bushes associated with this proposal. These views are unique to our neighborhood and for the rest of the town.

I am also concerned about the health of the creek and vegetation as this building is too close to the riparian area.
The two story structure at the entrance to the neighborhood will set a precedent that will negatively effect our neighborhood and life style.

The project has inadequate parking. The project will negatively impact street parking which is already bad. Cars from the intersection are already parked down Arbol Verde.

The building should be re-sited to protect the creek and the public views.

Regards,

Doris LaMar

Doris LaMar
524 Arbol Verde

EX. 5 - ITEM 4

RECEIVED
MAR 18 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 10, 2003

Coastal Commission
45 Fremont Ave., Ste. 2000
San Francisco, CA 94105-2219

Re: Carpinteria Creek Foundation Appeal of Carnevale

Dear Members:

The City failed to properly analyze loss of important views to the creeks and mountains from our neighborhood and the public streets. The structure is too tall and too close to the creek. It could be reduced and still be in character with the rest of the neighborhood.

The two story aspect of the structure would not only block our views of this unique riparian habitat but also create traffic safety issues with proposed driveway location.

The structure should stay further away from the creek and respect wildlife habitat values and retain views. The Planning Commission made findings for a 50' setback from top of bank here in the early 1990s. The experts testified and the EIR concluded that at least a 20' from riparian dripline was needed. Why did the City approve something less, especially when their new General Plan proposes a large setback for all creekside development?

Thank you for your consideration,

Karen Friedman
Carpinteria, CA

Ex. 6 - ITEM 5

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 1, 2003

California Coastal Commission
45 Fremont St., # 2000
San Francisco, CA 94105-2219

Re: Appeal of City of Carpinteria 99-881-DP/CDP (Carnevale)

The City failed to do a proper traffic analysis for this project. As available parking disappears from this area as a result of this project and as the project brings its own parking impacts, on-street parking will get backed up down Arbol Verde. This will further complication the traffic situation at the southeast corner of the project as motorists enter and exit the project parking garage.

The structure will block the view of the many school children and other pedestrians crossing Arbol Verde at Concha Loma from the neighborhood and apartment buildings on their way to school, etc. at busy times of the day.

This project will also block our view of the beautiful creek area and will have a negative impact on our quality of life, both from traffic and loss of views.
Thanks you,

Angelica Centina

Angelica Centina
916 Linden Ave.

March 8, 2003

Coastal Commission
45 Fremont Street, Suite # 2000
San Francisco, CA 94105-2219

Re: Carpinteria Creek Foundation Appeal of Carnevale

Dear Commissioners:

The City approval failed to consider loss of important and unique views of the specimen sycamore trees and other beautiful creek vegetation on this site. These views are of importance and significance to all the neighbors (at least 125 houses) in the neighborhood while walking or driving on Arbol Verde and Concha Loma and to other locals and visitors who see the views from Carpinteria Avenue.

The City failed to adequately analyze the potential for land use conflicts in terms of not hard banking of Carpinteria Creek. Nobody except the property owner wants this creek hard banked. The creek is also protected from hard banking in the LCP but the LCP could permit it to happen if he is allowed to build too close to the creek on soils that the EIR has indicated are poorly consolidated.

The City does not adequately analyze Land Use incompatibility issues regarding the long term planning desires and intentions of the neighbors. The proposed structure is two stories, will appear massive, and will set a dangerous precedent for the neighborhood. This will be in conflict with the long expressed desires and intentions to keep the area to one story and to keep structures appropriate to the size of the existing. This building will be inconsistent with the "small town" feeling of the neighborhood.

The long horizontal building will also block views of oncoming traffic. This is already a difficult traffic intersection because there are actually two intersections very close to each other. A lot of pedestrians cross Arbol Verde and their line of sight of cars will be completely obstructed. Why didn't the City analyze this problem?

Sincerely,

Jenifer McCurry

Jenifer McCurry
810 Arbol Verde

Ex F - ITEM 7

March 4, 2003

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
45 Fremont St., Ste. 2000
San Francisco, CA 94105-2219

Carnevale Appeal

I am very concerned about the development in the riparian area, especially with the excavation for the parking garage and the necessity for deep foundation (caissons). These excavations will destroy many tree roots and we may lose those trees. This riparian area is just too sensitive for a building this close to it.

The EIR indicated that a 20' riparian buffer was needed but he Carpinteria City Council approved one that is substantially less. The experts testified that the buffer was important to protect the life of the existing trees. The building will also block our views to the creek as we pass by.

Sincerely,

Ann Matson

Ann Matson
436 Arbol Verde

RECEIVED
MAR 18 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 7, 2003

California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA 94105-2219

Re: Appeal of Carnevale

Dear Coastal Commission:

I have lived here for 32 years and have come to truly appreciate the neighborhood and the creek that lies near the entrance to the neighborhood. The creek here is a true "jewel."

As a former board member of the Carpinteria Creek Committee I understand the need to expand the riparian buffer on this piece of property. While the 1980 LCP allows for a "minimum" of 20' from top of bank, it also allows for extending that buffer based on five factors. I believe the property meets most of those criteria. The City has already recognized that 20' is an inadequate buffer. That is why they have approved the new General Plan that provides for a larger setback. Further, they certified an EIR with a 20' from dripline setback for this project.

The views of the specimen sycamore trees and riparian understory on this property is magnificent. This proposal would obliterate views of and access to the creek at this location. AS equally important, it risks changing our neighborhood by setting a precedent for larger structures. Because this site is at the gateway to our neighborhood, it is high profile and what happens there will be influential in the future for both Concha Loma and the Arbol Verde areas. This approval could set a dangerous precedent for further view blockage. Existing single story houses along the creek could now be encouraged to come forward with large, two story remodel projects. It is a sensitive location.

Having studied this site I know it is feasible to design and build a structure that blocks less views and the City should have analyzed that properly.

Sincerely,

Priscilla Pearce Whittaker

Priscilla Pearce Whittaker
5654 Canalino Dr.

Ex6 - ITEM 9

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 3, 2003

California Coastal Commission
45 Fremont Street, Suite # 2000
San Francisco, CA 94105-2219

Re: Carpinteria Creek Foundation Appeal of Carnevale

Dear California Coastal Commissioners:

The City's approval of the Carnevale Project violated Carpinteria's adopted LCP Policy 4-1 because the project blocks protected and important public access to the creek, riparian corridor and vegetative understory. This blockage could have been reduced by a smaller project that was also pulled further back from the creek.

Additionally the City's approval of a creek setback that ranges from nine feet to seventeen feet is inadequate to protect the riparian habitat. Further, development of the storm drain and energy dissipater in the ESHA will also adversely affect the habitat and is inconsistent with LCP Policies.

At several Planning Commission hearings and during the EIR I testimony in written and oral forms which provided market real estate data on current selling prices to provide hard evidence that a smaller project was both feasible and comparable with current neighborhood values (as well as compatibility). The City could have used this evidence to justify their not having to violate the LCP, but they chose not to do so. I have attached my most recent letter to the Planning Commission dated June 3, 2002.

Sincerely,

Suzette Doubek
586 Arbol Verde

Ex. 6 - ITEM 10

June 3, 2002

Planning Commission
City of Carpinteria

Re: Feasibility of Carnevale Duplex Alternatives

I submitted comment letter # 7 to the EIR regarding feasibility of alternative projects. That letter # 7 on page 39 of the "Responses to Comments." I am submitting this letter tonight to "reply to the responses" to my comments and to update the market data I provided in the earlier letter.

My April 29 letter presents factual evidence that Alternative #3, is reasonable because the size of that alternative is consistent with the average size of residential structures found on the Concha Loma corridor. I also provided evidence in the form of 7 examples that Alternative # 3 is economically feasible, based upon the selling prices of recent properties in the neighborhood. Alternative # 3 would provide at least a 100% increase in buffer from 10' to 20' for the sycamores and would provide some buffer for the willows, as well. The EIR admits that Alternative # 3 best meets the objectives of the EIR. There is abundant scientific evidence in your record from Doctor Thelma Schmidhauser, Darlene Chirman, Mark Holmgren, The Carpinteria Creek Foundation and Daniel Wilson, and the EDC that the project would cause significant adverse impacts. There is also evidence that an increased buffer would lessen those impacts to less than significant.

Response #s 7B and 7C state that only the applicant can determine whether Alternative # 3 would be feasible. In response 7D the preparer appears to agree with my feasibility analysis. However, the preparer continues to compare the project to the medical building. The applicant's proposal is compared to the medical building to justify a larger structure. This comparison insults our intelligence. The preparer also attempts to defend the use of the medical building in response # 10A, on p. 58, by saying that the applicant's lot is "transitional." I would like to point out that the zoning and land use for the medical building is "commercial" and the applicant's zoning and proposed use is "residential." The applicant should be compatible with the adjacent similar land use and zoning. This should not be a difficult concept to grasp!!!!!! Why do we have to keep dealing with it? I would also like to point out that residential land use east of the property is NOT all multi-tenant. The closest land use to the subject property east and south along Concha Loma are single family residences.

My understanding of the law is that the City, and not the applicant must make the final determination of feasibility. Otherwise, this would jeopardize the constitutional rights of citizens to plan for their community. If it were up to the applicant he could say that "only six units would pencil out" and we would have to accept that even though that would obliterate the creek. The City needs to base its determination about feasibility and takings on financial evidence.

Remember, you have factual biological evidence in your record that shows:

1. There will be a significant adverse effect without a larger buffer and that
2. The City cannot approve a setback that violates the Coastal Act and LCP where a larger setback is feasible.

Jan Hochhauser, the applicant's architect, asserts in letter # 47 on page 387 that Alternative # 3 would not be economically feasible. Mr. Hochhauser complains that only a single family residence would be possible with alternative # 3. The EIR already admits that Alternative # 3 best meets project objectives. Hochhauser cites land acquisition costs of $200,000, permit fees of $75,000 and $120 per square foot for the structure and $60 per square foot for the garage. The applicant may be happy to know that construction costs would decrease with:

1. A smaller structure
2. A structure that did not need a deep foundation with caissons if it were further from the flood zone
3. One that needed a smaller garage, such as in the single family residence alternative mentioned by the architect.

The average selling price of valid examples that I submitted in April was $596,500 per unit. Admittedly, these are all single family residences but they are also:

1. 40 years or more old and do not have visual upgrades
2. Smaller
3. Do not have desirable creekside settings.

To update this evidence I would like to report on two recent sales in the neighborhood in May, 2002. These are:

1. 797 Arbol Verde sold for $663,000 and
2. 5570 Calle Ocho sold for $749,000.

The average of these two recent sales is $706,500 and these are also 40 + years old and are not a desirable creekside setting.

Based upon my evidence and analysis, Alternative # 3 is both reasonable and feasible. It:

1. Does not result in a takings
2. Better meets the objectives of the EIR, as is already admitted by the preparers
3. Reduces the significant biological effects, as indicated by your expert witness testimony.

Housing prices in Carpinteria recently have realized full financial value and the evidence now strongly shows that a single-family residence at the applicant's parcel is now very feasible. This alternative would not only reduce significant biological effects but also would reduce traffic, land use compatibility, and aesthetic impacts. I believe that if the Planning Commission examines my evidence you will vote for Alternative # 3 and a single family residence. I personally would like to see the applicant sell this property to the community for a fair market price.

Sincerely,

Suzette Doubek
586 Arbol Verde

RECEIVED
MAR 18 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DIST

March 4, 2003

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Carpinteria Creek Foundation appeal

Dear Commissioners:

We find the property at the corner of Arbol Verde and Concha Loma to be a wonderful place at the entrance to the neighborhood the way it is now. We walk along the footpath with our children. It's a family recreational outing involving the donut shop and the creek. We do not find the area to be degraded, but beautiful. There will be more trash associated with the house than as it is now.

The experts have told us that at least a 20' from edge of dripline setback is required to avoid a significant impact but the City has approved a setback that is only 9 to 17.' We fear this will have a detrimental impact on the creek and creatures that use the area as habitat. The excavation of the drainage line will also put the beautiful sycamore trees at great risk of dying because the trenching, etc. is in to the roots.

Sincerely,

Laurie A. Bryant
537 Arbol Verde

EX 6 - ITEM 11

RECEIVED
MAR 18 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 7, 2003

Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Carnevale

Dear Commissioners:

I think this project is a disaster for the creek. Not only is it built right up against the riparian vegetation that we thought was protected but the "re-vegetation" is a smoke screen. Who is going to maintain it? The tenants? Hardly! No, they are just going to whack it back when it grows too close to their house.

This is an impossible site to develop and the community wants the creek and existing public views preserved.

Sincerely,

Doris Floyd

Doris Floyd
5538 Calle Arena

Ex. 6 - ITEM 12

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 8, 2003

California Coastal Commission
45 Fremont Street, Ste. 2000
San Francisco, CA 94105-2219

Re: Appeal of Carpinteria's Approval Carnevale

Dear Coastal Commissioners:

This project is large and massive and is close to the creek and will effectively block all of our views of the creek, both on the way in and out of the neighborhood. This creek view, I understand, is protected by the LCP, and is an important aesthetic component to our quality of life for the community as it gives the area a rural feeling with the unobstructed views of trees and bushes.

The development is inconsistent with proper riparian buffers identified by biological experts and may be precedent setting for future creekside re-development.

I believe these impacts can be somewhat mitigated by a reduced size project that is located further from the creek. I also believe that a smaller building could pencil out for the property owner.

Sincerely,

Reggie Hepp
767 Calle Rey Mar

EX. 6 - ITEM 13

RECEIVED
MAR 18 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 10, 2003

Coastal Commission
45 Fremont Ave., Suite. # 2000
San Francisco, CA 94105-2219

Re: Carnevale Appeal

Dear Commissioners:

At the Planning Commission meeting of June 12, 2001 Dr. Thelma Schimdhauser testified that the dripline of a riparian tree does not always indicate the extent of the feeder roots underground. She provided an example of the top of the tree retreating and the roots enlarging during a dry period.

I have walked and driven by this property for more than ten years in order to enjoy the unobstructed beauty of the creek. My observations suggest another example of how the canopy of the tree may belie the actual extent of the feeder roots: when the foliage that constitutes the dripline is physically removed.

This occurred several times on the Carnevale property during the ownership of Mr. Carnevale. In 1991 the property owner directed arborists to remove a 40' long limb of the specimen sycamore tree. That tree must be 150 - 200 years old and is a beautiful gateway to the neighborhood. That limb grew diagonally from the trunk eastward and up into the air. It would have extended the dripline for buffer determination at least 20' further than the currently surveyed dripline. Coincidentally, this limb grew right where it conflicted with the project footprint as it was proposed at the time.

While the developer now gets credit for buffer determination from the new dripline my point is that the old dripline is more indicative of the extent of roots underground. If excavation for the foundation occurs at a 10' setback, as the City has now approved, then the odds are 100% that major roots and extensive feeder roots will be cut and killed. We risk losing this tree that is important to the neighborhood, the riparian habitat and bank stability with this setback.

Additionally, in early 2001 the property owner again trimmed two to three feet of willows at the northwest corner and right at the point where it conflicts with his current project. Photographic evidence was provided to the City and verified by a biologist, Darlene Chirman, who testified at the Planning Commission hearing. This same exact area was also herbicided in May of 2001. This section of the riparian forest had more difficulty leafing out that year and there was a definite effect on the growth of the plants.

On March 12, 2001 the City of Carpinteria struck and broke off a 12′ long, 4″ diameter section of willow at this exact same northwest corner while they were mowing on private property (?). The City employee said it was done to clear the dirt footpath that is used by myself and by the public to enjoy the riparian views and as a shortcut but most of the mowing occurred well away form the actual trail that we use.

These are four examples of non-permitted environmental damage that altered the setback, as measured on the top of the ground, to the developer's advantage. There is evidence of all these events in the City's record on this project.

However, this destruction of habitat suggests that the extent of feeder roots is greater than the canopy visible today. Therefore, the riparian setback should be should be calculated more to coincide with the historical evidence of where the feeder roots can be predicted to be, before the dripline was drastically changed, not the visual dripline that can be observed today.

Excavation within 10′ of the riparian vegetation is highly likely to result in extensive damage to the feeder root system and potential loss of these important trees, per the expert testimony. The buffer should be at least 20′ from the dripline, as recommended by the Foundation's biological experts.

Very Truly Yours,

Marca L Rowley

Marca Rowley
5455 Eight ST., # 43

March 3, 2003

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Carnevale duplex

Dear Coastal Commission:

I am strongly opposed to a two story structure at this location!! Anything built here should be consistent with the aesthetic standard of our neighborhood. The City has significantly reduced the height and mass of other structures recently proposed along this street. Why not on this one? This structure is too large for the site. A two story building will block views to the creek and mountains beyond form the public street and this blockage could be reduced if the structure were one story and pulled back away from the creek.

I am also very concerned about the building's encroachment on the riparian area. I believe that the Planning Commission should stick to the 50' setback that it had findings for in 1992 in order to protect the creek habitat and to preserve our views to this beautiful area.

Sincerely,

Carol Smith Tokar

Carol Smith Tokar
5630 Fiesta

EX. 6- ITEM 15

RECEIVED
MAR 18 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 15, 2003

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Attention: Commission

Subject: Carpinteria Creek Foundation Appeal

I support the Carpinteria Creek Foundation appeal and urge the Commission to grant the requested relief.

Carpinteria Creek is a magnificent coastal asset, and the proposed project is located squarely on virtually the only publicly accessible and visible site in the City—the corner of Carpinteria Avenue and Arbol Verde. Tens of thousands of motorists and hundreds of pedestrians pass by daily. It is imperative that the aesthetic and biologic qualities of the creek be fully protected.

It is my belief that the Carpinteria City Council has in effect been "worn down" by the multiple excessively large projects proposed for this sensitive site. The current proposal is still too large for the site, though admittedly "smaller" than previous proposals. That fact, however, is no basis for concessions on the fundamental LCP policies which must be implemented. In particular, the creek setback at 20 feet is much too small, and is not correctly implemented at any event. Further, the aesthetic impacts grossly unmitigated. Indeed, in my view under the LCP visual impacts are clearly Class I, and should have required both greater mitigation and a statement of overriding considerations.

Please review the issues presented by appellant carefully and grant this appeal.
Sincerely,

Susan Allen

Susan Allen
790 Arbol Verde
Carpinteria, CA 93013

(805) 684-1217
email dlssallen@aol.com

EX. 6-ITEM 16

RECEIVED
MAR 18 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 5, 2003

To: California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

Re: Carnevale Appeal

Dear Commissioners:

I am writing in support of the Carpinteria Creek Foundation and EDC's appeal of the City of Carpinteria's approval of the Carnevale Development proposal (99-881-DP/CDP) of January 27, 2003.

I have been following this development process for several years and believe that the approved project violates the City's adopted Local Coast Plan. Specifically, the approved project is sited adjacent to ESHA so that it will not prevent adverse impacts to the riparian corridor in violation of LCP Policies 1-1 and 9-15. The approved project is also not resource-dependent in ESHA in violation of LCP Policy 1-1, 9-16, and 9-17. Lastly, the approved project is note sited and designed to prevent adverse visual impacts in violation of LCP Policy 4-1.

I believe the project could be re-sited to avoid these LCP inconsistencies and still result in a feasible project and urge the Coastal Commission to make findings in this regard .

Sincerely, Christie A. Tarman

Christie Tarman
512 Arbol Verde
Carpinteria, CA 93013

EXB – ITEM 17

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 8, 2003

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Appeal of City of Carpinteria's Approval of Development Proposal 99-881DP (Carnevale)

Dear Coastal Commissioners:

Dear Commissioners:

I have a doctorate degree in Biology from the University of Virginia and was involved in botanical research there. On June 12, 2001 I provided oral testimony and on March 15, 2002 I provided written testimony, boith to the City of Carpinteria's Planning Commission, with respect to the need for a minimum 20' setback from dripline in the matter of the Carnevale Development Proposal. I recommended that distance as an absolute minimum riparian setback in order to avoid a significant adverse effect on the riparian trees and habitat. My expert opinion as provided on March 15, 2002 is that a 20' setback was required AT THAT TIME in order to prevent an adverse impact on the life of the trees

My prior testimony provided the rational and need for a minimum 20-foot setback from riparian vegetation's dripline and my credentials and c.v. to provide such expert testimony were also given to the City.

As I earlier testified, rational for a 20' setback from the dripline of riparian vegetation is not arbitrary. It is backed by sound, substantial evidence and a basic principle of botany. It is based on the uptake of water and nutrients by cell to cell transfer.

I also testified that recent near-drought conditions have likely induced feeder roots of the riparian vegetation to extend well beyond the dripline in search of moisture. I also testified that apparent pruning of the subject sycamore trees' eastern branches in past years and by e reduction in the willows by apparent pruning in 2001, and recently accidentally by the City, has likely reduced the extent of the dripline in this direction. Both of these factors strongly suggest that the vitally important feeder root perimeter extends well beyond the current dripline, and that an additional buffer area is therefore necessary to adequately protect the trees and habitat from significant degradation.

As I stated in my March 15, 2002 letter: "A 10-foot buffer from the sycamore trees is not adequate to protect the root systems of the riparian vegetation.... The construction and development activities will extend beyond and below the actual footprint of the building and feeder roots could be easily damaged by activities of trenching, grading, etc.

EX5 - ITEM 18

Therefore, 20 feet should be considered a minimum setback from the dripline, including the willow, to avoid a significant impact to the trees and sensitive riparian habitat." Trenching for the storm drain right in the middle of the sycamores poses similar impacts and should be avoided if there is an alternative means of drainage.

I was therefore gratified that the Planning Commission decided to use a minimum 20' dripline setback at their June 2, 2002 meeting and re-affirmed that at their July 3, 2002 certification of the EIR.

However, the project was staked for consideration by the ARB in October of 2002 had a substantially less than 20' setback. This is based on my causal observation of the setback distances as staked and by the measurement of the actual 20,' as measured by the Creek Committee during the period that the project was staked. I understand that the applicant is using a dripline mapped in November of 1999. I also understand that the City should have re-mapped the dripline on June 9, 2001, under CEQA, as the legal baseline.

My expert opinion as provided on March 15, 2002 is that a 20' setback was required AT THAT TIME in order to prevent an adverse impact on the life of the trees. It is my further opinion that the November 1999 dripline mapping is out of date, in terms of the extent of biological resources at the site at the time of my testimony, and will not provide adequate protection to prevent an adverse impact to the biological resources. I recommend that a 20' setback measured from the edge of the current extent of riparian vegetation should be required since the November 1999 measurement does not provide adequate protection and the City did not re-map the dripline in July of 2001.

As I state in my earlier letter: "To lose these trees immediately or as a result of slow deterioration brought on by adjacent development would be a tragedy and a significant impact that can be avoided. The trees and riparian habitat of Carpinteria Creek are assets to the community and can be adequately protected with a minimum 20-foot setback from the dripline of the riparian vegetation in which grading and other development is prohibited."

Thank you for your consideration.

Sincerely,

Thelma Schmidhauser

Thelma Schmidhauser, P.h.D.
726 Arbol Verde Street
Carpinteria ,CA 93013

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 7, 2003

Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Carpinteria Creek Foundation Carnevale Appeal

I am concerned about the loss of spectacular views now available on this property. I live in the neighborhood and I drive out of and into the neighborhood several times a day. When doing so, I always enjoy the views of the creekside trees and the shrubs and bushes under the trees. This is an important scenic vista for our neighborhood.

We thought that the ARB had made this a one-story building but the City approved one with two stories. The proposed building will block many of the views of the mountains. Part of the trade-off for the supposed "one-story" was a more horizontal look. The footprint is now a lot larger and blocks more horizontal views but unfortunately we now lose the vertical AND the horizontal view impacts. The development will block our view of most of the beautiful large trees and almost all of the shrubs and bushes along the top of the creek. This is a long, horizontally oriented building situated parallel to the creek. It is elevated on fill dirt that will further obstruct horizontal views of the creek. When this building is built, those views of the creek, trees and the historic bridge over Carpinteria Avenue will be lost forever. A view of a building is no substitute for a view of nature. We won't be able to see the new landscaping because the building will be so close to them. In fact, the proposed landscaping will also block views to the natural riparian vegetation.

A small building that was not so close to the creek would retain some of the views that are proposed to be lost because you could see around the sides of the building as you entered and exited the neighborhood.

The City should really buy the property and preserve it as a park. That is what a lot of the citizens want.

Sincerely,

Catherine Esch

Catherine Esch
455 Arbol Verde

Ex. 6.- ITEM 19

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 9, 2003

Coastal Commission
45 Fremont Ave., Suite. # 2000
San Francisco, CA 94105-2219

Re: Appeal of Carpinteria's Approval of Carnevale

The City should not have approved this project that blocks protected and important views to the creek.

I am also very concerned about the inadequate protection that is being provided to the creek environment because the building setback of less than 10' at the narrowest is inadequate to protect the riparian habitat.

Sincerely,

Janet Blackwell

Janet Blackwell
5632 Canalino

Ex. 6- ITEM 20

RECEIVED
MAR 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 10, 2003

California Coastal Commission
45 Fremont Ave., Ste. # 2000
San Francisco, CA 94105-2219

Re: Carpinteria Creek Foundation Appeal of Carnevale

Valued Commissioners:

The City of Carpinteria failed to properly analyze the impacts of aesthetics and view blockage in terms of their own Local Coastal Plan. The beautiful and unobstructed views of the stream bank, large specimen sycamore trees, and mountains is unique to this area and should be preserved, as is required in the LCP . I am an artist and have shown my work extensively both in this country and abroad. I can tell you that these views have great aesthetic and artistic values. They are an inspiration to me!!

These views are currently available to all residents in the neighborhood as well as to persons traveling west on Carpinteria Avenue. The site is not only the gateway to our neighborhood but also to our town. Do I need to tell you that these views are protected by the City's 1980 LCP Policy 4-1? The EIR, Planning Commission, ARB and City Council didn't even bother to look at that policy. I did. Talking about creeks, among other important views, It says that buildings "shall be sited and designed to protect these views." This project will completely block all of our views and this unique area will be lost to us forever. The City process should have at least addressed that should discus that and do an analysis of possible view blockage.

The view mitigations int he EIR don't cut it. What possible mitigation can there be other than to follow policy 4-1? The City could have moved the building away from the creek and make it smaller so we can still enjoy

our views. This is what is required in 4-1. The City didn't do it. They violated 4-1, plain and simple.

I also listened tot he extensive testimony of the three biologists who said that a 20' from dripline buffer was required. The City didn't go along with that, either.

Sincerely,

Jens Pedersen

Jens Pedersen
770 Arbol Verde

RECEIVED
MAR 1 8 2003
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 15, 2002

To: California Coastal Commission
RE: Carnevale appeal

Dear Commissioners:

Attached please find and read two of my letters to the Carpinteria Planning Commission on the subject of blockage of public views by the approved project. In these two letters I present my qualifications to testify as an expert before the Planning Commission on the area of aesthetics. I describe the quality and value of the aesthetic experience afforded by the existing views : Define the public areas from which the views will be blocked, the extent of blockage and the loss that will result: Note the existing protection of these views provided to the community through our LCP in LCP Policy 4-1: And, discuss the project mitigations related to views and how they are inconssitent with Policy 4-1. LCP Policy 4-1 requries that a project be designed and sited to prevent adverse impacts on the visual quality of the creek. I further recommend alternative mitigations, including making the project smaller and moving it away from the creek in order to maximize preservation of protected views, prevent or eliminate adverse impacts, and make the project somewhat conistent with policy 4-1.

City staff, the Architecural Review Board, the Planning Commission and the City Council chose to dismiss the issue of view blockage/ aesthetics. They did not perform a serious analysis of LCP Policy 4-1. They did not attempt to design or site the project to prevent adverse impacts on view blockage. And, they did not evaluate the adequacy of the environmental analysis in terms of the City's own adopted CEQA Threshold guidelines on aesthetics.

I forward these letters on to your Commission during the appeal process in hope that you will consider their content in your review of the City's decision and the Carpinteria Creek Foundations' contention that the project, as approved, is inconsistent with LCP Policy 4-1.

Sincerely,

C. Kathleen Lord

C. Kathleen Lord
5588 Calle Ocho
Carpinteria, Ca 93013

October 29, 2002

To: Carpinteria Planning Commission
Re: Proposed Carnevale Residence @ Arbol Verde/Concha Loma/Carp. Ave.

Dear Commissioners,

First I would like to clarify why I continue to address you on the various projects proposed for this creek side property. I grew up in Los Angeles. As a young child I never walked alongside a creek, nor in its bed. I never heard the loud roar of frogs, nor their abrupt silence in the presence of my little feet. I never smelled the difference between clear & brackish waters. I never saw polliwogs, dragonflies and water spiders. I never ate sandwiches made with watercress collected in a creek.

For eighteen years I have lived in the Concha Loma neighborhood. I have walked the path beside the willows and sycamores. My children, as children, have experienced that which I was deprived of. As a mother, I have walked this path, holding the toddlers' hand, watching the 6 year old scamper in front of us. Together, we have heard the frogs. We have come upon a garter snake, crossing our path. We have felt this incredible rush of heightened energy, this excitement of surprize and discovery as Nature reveals its miraculous complexity to the likes of our little trio of a family. Together, collectively and singularly, we continue to remember in vivid detail this moment. We freeze in stillness, look in wonder. We watch that long body devide dust and curve into tall grass. I marvel at the feeling of the energy flowing through the toddlers' hand and in to mine, through the 6 year -olds' sparkling eyes and in to mine, through the snakes' movement to we three, and through the dust to us all..... the energy is still with us.

Traditional food is one source of energy for humans. Creativity is another source of energy, Spirituality, another. Natures' aesthetic experience is yet another.

There is a special energy flowing through the human body. Nature can be a door to that energy. This property, its natural aesthetic, the views across it for the hundreds who pass by daily, the experiences within for the countless families and individuals enjoying the tiny meadow and the path at the riparian edge, has been a door to that energy for many years. It appears we are about to close that door.

"Views to streams" are protected by LCPA Policy 4-1 and through CEQA thresholds for Aesthetics. Yet the ARB failed to consider these protections in its recent hearing on this project. Thus, this task is before you.

I am qualified to evaluate the natural aesthetics of the Arbol Verde site and the project impacts. I have a BFA from UCSB and did graduate work at University of Guanaguato, Mexico. I have worked as an artist and a residential designer, and have served on the Carpinteria ARB.

Our LCPA protects public views to the ocean, mountains and streams because it is documented that these views encompass a dynamic beauty which psychologically feeds our souls, sparks our creativity, defines our shared physical space, and unites us with the dualism of finite and infinite time.

One of the three ARB members reviewing the latest version of the project proclaimed that there is no view of the creek from the roads or walkways surrounding this parcel. I disagree. I know I have seen the creek waters from those vantage points. I've seen the sparkle of the winter sun on their surface. I've seen the mud color running vivid brown on a gray

storming day. I've made an instantaneous check on the height of the rising waters as rains pour day after day.

This same ARB member suggests that we should not be noticing the waters or looking at the sycamore trees as we drive. Working in visual arts, I'm certain he knows the magnitude of human peripheral vision, can recall the advertisements on LA billboards and recognizes the impact visual stimuli along a road or sidewalk has upon the traveler. We don't have tunnel vision, and for that reason we resist the attempt to tunnelize the entry to our neighborhood.

The general public driving and walking west on our major thoroughfare, Carpinteria Ave., enjoys the beautiful unobstructed 125' view of the Carpinteria Creek's natural riparian understory and the creek bed tucked within. The seasonal differences in the sycamore, willow, and sumac foliage display the gradual, ever-changing beauty of our natural environment. In the fall, the leaves from the sycamore trees blanket the ground in gold and orange. In winter, the low angled sun directs our eyes through the barren willow and sycamore branches to the periodic rising storm waters in the creek itself; to the architectural beauty of the historic (1936 WPA) car bridge; and beyond to the rocks and foliage on the opposite bank of the creek. With spring comes the vivid greed of renewed understory as willows sporadically display their new growth and the myriad of small birds among their branches. In summer, dry earth contrasts with red sumac leaves. These view experiences (and the thoughts and responses they evoke in individuals passing by) will be 90% lost with the grade fill and construction of the residence. Loss of these views is a class A, Significant, Unmitigable Impact.

To the credit of the developer and Planning Commissioners, the fence proposed on the Carpinteria Ave. side of the project has been reduced to a 3' high post and rail, open fence which gives the public the little glimpse of the full height of the creek habitat, between the structure and the historic car bridge.

The same seasonal views of the sycamores (from their emergence from the earth to their sky backed apex), the riparian understory, the creek bed and bridge, plus the mountain views are similarly experienced by hundreds of people traveling along Arbol Verde and Concha Loma. In terms of lineal length, about 90% of those views will be lost with the grade fill and residence construction. The loss of these views is again a class A, Significant Impact which the EIR concludes will be mitigated by riparian revegetation.

Consider that a whole cake represents the whole view. If you take away ninety percent of the cake and add a cherry to the remaining portion, have you lost nothing? If you take away ninety percent of the view and add some plants to the remaining portion, have you lost nothing? The proposed mitigation renders the lose of views as a Class A, Significant, Unmitigated Impact.

Out-of-staters think California doesn't have seasons. Perhaps it's because all the native, seasonally changing pockets of nature have been sacrificed, lost to man-made landscapes and buildings?

The ARB did not analyze the project relative to Aesthetics, protected views, and loss of views. The project before you should be tweaked a bit, here and there to maximize the protected views to the creek and the riparian corridor.

1. With respect to the garage, eliminating the second story, maintaining a typical 8 foot ceiling, and reducing the ridge height will open views of the riparian habitat to people viewing from both the Arbol Verde and Concha Loma areas.
2. Removing the "workshop" will enhance the views of the giant sycamore, and pull the

footprint of the garage 7 1/2 further back giving the tree a little more breathing room. This also pulls the structure off the historic footpath, rendering the path useable in perpetuity, not unlike the paths along the creek at Singing Springs just down creek.

3. Opening the sides of the garage, making it more like a covered carport will allow both the views, and the flood waters to flow through to Arbol Verde, and Concha Loma. This is more in line with what the ARB first suggested for the garage area.

4. The 3 to 4 feet of fill extending beyond the footprint of the actual living space of the residence, that is in the adjoining garden and yard areas, will result in blocking otherwise open views to the creek. The yard fill should be eliminated.

Historic recognition by the community, council and staff (over the past 12 years at least) of the unique aesthetic importance of this parcel has resulted in the perception of this parcel as an unofficial riparian park. City Manager Paul Marangella worked diligently with Mr. Carnevale to find an alternative development site. Mr. Marangella recognized the importance of the views to and within this parcel, earmarking its best use as a "pocket park". The Vision 2020 Document acknowledges the same goal.

Once again attached is the front page of the Coastal View, Vol. 7, No. 24, dated March 29-April 4, 2001 featuring the City of Carpinteria Plan for VIA REAL PARK. In this plan Carpinteria Creek is a featured element with a pedestrian trail at the edge of the riparian corridor (similar to our existing historic footpath along the same creek at the Carnevale property). One council person I spoke with said that this was the CalTrans Plan so could not be compared to the Carnevale Property, inferring perhaps that CalTrans has more power and money for parks than does the City of Carpinteria. However, also on file at the City is the pending Creekwood Development Plan which features in the name and project design, the same Carpinteria Creek. Just across Carpinteria Ave. from the Carnevale property the public views to the creek were protected through the construction of the bike and pedestrian trial along the riparian corridor. These are three examples, which attest to the commitment to Aesthetics through preservation of views to Carpinteria Creek on the Northeast side of Carpinteria Ave.

My kids have special kid memories of Carpinteria Creek. Coming together as young adults they share creek tales. They've grown up with the concept and knowledge of riparian. They've grown up experiencing and respecting the complex power of natural beauty.

There is a special energy flowing through the human body. Nature can be a door to that energy. Building on this parcel will essentially close this door, shut us off from this energy. We must keep this door to beautiful Carpinteria Creek open as wide as possible.

As a precedent, ignoring Aesthetics and allowing public views to be obstructed to the degree to which this project blocks views can have detrimental effects up and down Carpinteria Creek.

Please do all you can to protect the Aesthetics (preserved public views and experiences inherent in those views) on the South/West side of Carpinteria. Our neighborhood is old, but it is charming, and many residents highly value the natural beauty of the Carpinteria Creek, so publicly visible at this Arbol Verde/Concha Loma/Carpinteria Ave. location. This parcel is in many ways the "front door" to Carpinteria Creek. Once a structure blocks the views to the creek, many people will no longer have knowledge of, or even realize such a beautiful natural creek passes through our town.

C Kathleen Lord

C. Kathleen Lord
5588 Calle Ocho, Carp. Ca 93013

March 19, 2002
To: Planning Commission
Re: Carnevale #99-881-DP (EIR)

The EIR study 5.10 AESTHETICS is inaccurate and inadequate. Our LCPA specifically protects public views to streams.

"Policy 4-1: Broad unobstructed views from the nearest public street to the ocean, including but not limited to Linden Avenue, Bailard Avenue, Carpinteria Avenue, and U.S. 101, shall be preserved to the extent feasible. In addition, new development that is located on or adjacent to bluffs, beaches, or streams, or adjacent to Carpinteria Marsh shall be designed and sited to prevent adverse impacts on the visual quality of these resources. To preserve views and protect these visual resources, new development shall be subject to all of the following measures....."

Quickly note definitions: AESTHETIC- 1. Of or relating to the beauty in art, nature, etc. AESTHETICS-1. The study or theory of beauty and of the psychological responses to it. 2. Study of the mental and emotional responses to the beauty in art, nature, etc.

Our LCPA protects public views to the ocean, mountains and streams because it is documented that these views encompass a dynamic beauty which psychologically feeds our souls, sparks our creativity, defines our shared physical space, and unites us with the dualism of finite and infinite time.

Presently the general public driving and walking west on our major thoroughfare, Carpinteria Ave., enjoys the beautiful unobstructed 125' view of Carpinteria Creek's natural riparian understory and the creek bed tucked within. The seasonal differences in the sycamore, willow and sumac foliage display the gradual, ever-changing beauty of our natural environment. In the fall, the leaves from the sycamore trees blanket the ground in gold and orange. In winter, the low angled sun directs our eyes through the barren willow and sycamore branches to the periodic rising storm waters in the creek itself; to the architectural beauty of the historic (1936 WPA) car bridge; and beyond to the rocks and foliage on the opposite bank of the creek. With spring comes the vivid green of renewed understory as willows sporadically display their new growth and the myriad of small birds among their branches. In summer dry earth contrasts with red sumac leaves. These seasonal views are presently experienced by hundreds of people daily. These view experiences (and the thoughts and responses they evoke in individuals passing by) will be totally eliminated with the construction of the duplex and the fencing in the city right of way adjacent to the bridge. Loss of these protected views is a class A Significant, Unmitigable Impact.

Much the same seasonal views of the sycamores (from their emergence from the earth to their sky backed apex), the riparian understory, the creek bed and bridge plus the mountain views are similarly experienced by hundreds of people traveling along Arbol Verde and Concha Loma. In terms of lineal length about ninety percent of that view will be lost with the construction of the duplex and fence. Loss of these protected views is again a class A Significant Impact.
The EIR states that riparian revegetation mitigates that loss but I disagree with the logic. Say a whole cake represents the whole view.
If you take away ninety percent of the cake and add a cherry to the remaining portion, have you lost nothing? If you take away ninety percent of the view and add some

plants to the remaining portion, have you lost nothing? The proposed mitigation is inadequate relative to the loss.

A more intimate and detailed view experience of the riparian habitat exists along the historic footpath where many people, young and old, stop to contemplate the beauty of the creek ecosystem. One's senses are heightened as the view becomes something we can see with our eyes, ears (hearing the sounds of the water, frogs, birds, and breezes the riparian branches), nose (smelling the fragrances of the waters, foliage and soil), and fingers (touching crisp leaves and cool sandy soil). Walking the footpath which is set back from the three roads and the houses, one can focus on the creek, and step back into rural time, step away from the urban neighborhood. The construction of the duplex, the fence, and the parking as proposed will eliminate the historic public footpath along the outside edge of the riparian corridor and the recreational viewing along that path. The proposed mitigation is the use by the public of the Flood Control Easement to view the creek and the enhanced vegetation of the creek bank. The Flood Control Easement penetrates the riparian corridor, and thus the general public is being directed into the environmentally sensitive habitat, which may well have a negative impact on the creek ecosystem, like indirectly encouraging the public to walk in the creekbed itself. This will be the only remaining point at which the public will be able to intimately view the creek waters, understory and "enhanced vegetation". The rural atmosphere existing at the public footpath will be eliminated. The duplex, parking, retaining walls and fences will shadow the Flood Control Easement and the new use public access and viewing of the riparian corridor. Loss of the rural visual quality and the intimate lineal view experience along the public footpath, both are Significant Negative Aesthetic Impacts. Revegetation alone can not mitigate the loses.

Until the EIR analysis of AESHETIC impacts evaluates the mitigative potential and consequences of design change scenarios such as....

1. Eliminating the fence perpendicular to the Carp. Ave. bridge in City right of way
2. Eliminating the retaining walls and fences extending out from & around the duplex and parking area
3. Reducing or eliminating the building footprint of the duplex
4. Reducing the height of the duplex
5. Pulling the project back from the historic public footpath

.....in various proportions and configurations in order to best preserve our protected public views, it is inadequate and fails to adhere to CEQA thresholds for Aesthetics and LCPA Policy 4-1.

Historic recognition by the community, council and staff (over the past 12 years at least) of the unique aesthetic importance of this parcel has resulted in the perception of this parcel as an unofficial riparian park. City Manager Paul Marangella worked diligently with Mr. Carnevale to find an alternative development site. Mr. Marangella recognized the importance of the views to and within this parcel earmarking its best use as a "pocket park". The Vision 2020 Document acknowledges the same goal.

Attached is the front page of the Coastal View, Vol. 7, No. 24, dated March 29-April 4, 2001 featuring the City of Carpinteria Plan for VIA REAL PARK. In this plan Carpinteria Creek is a featured element with a pedestrian trail at the edge of the riparian corridor (similar to our existing historic footpath along the same creek at the Carnevale property). Also on file at the City is pending the Creekwood Development Plan which features in name and project design, the same Carpinteria Creek. Just across Carpinteria Ave. from the Carnevale property the

public views to the creek were protected through the construction of the bike and pedestrian trail along the riparian corridor. These are three examples, which attest to the City's commitment to Aesthetics through preservation of views to Carpinteria Creek on the Northeast side of Carpinteria Ave.

I find it difficult to understand how Aesthetics (preserved public views) on the South/West side of Carpinteria can be essentially ignored and "swept behind the building" so to speak in this EIR. Our neighborhood is old, but it is charming, and many residents highly value the natural beauty of the Carpinteria Creek, so publicly visible at this location alone.

Perhaps this is the case of a double standard, but as a precedent, ignoring Aesthetics and allowing protected public views to be obstructed to the degree to which this project blocks views can have detrimental effects up and down Carpinteria Creek.

Sincerely,

C.K. Lord

C. KATHLEEN LORD
5588 CALLE OCHO
CARP. CA 93013

New high school feature

***HITCHIN' A RIDE**, News from Carpinteria High School for and by students, makes its debut in this very paper. See the pull out section.*

Serving Carpinteria Valley since 1994

www.coastalview.com

COASTAL VIEW

Carpinteria, California • Circulation: 6,000 • Vol. 7, No. 24 March 29 - April 4, 2001

Water quality testing

Carpinteri ... by
testing at ... a
record. The ... st
to city heat ...

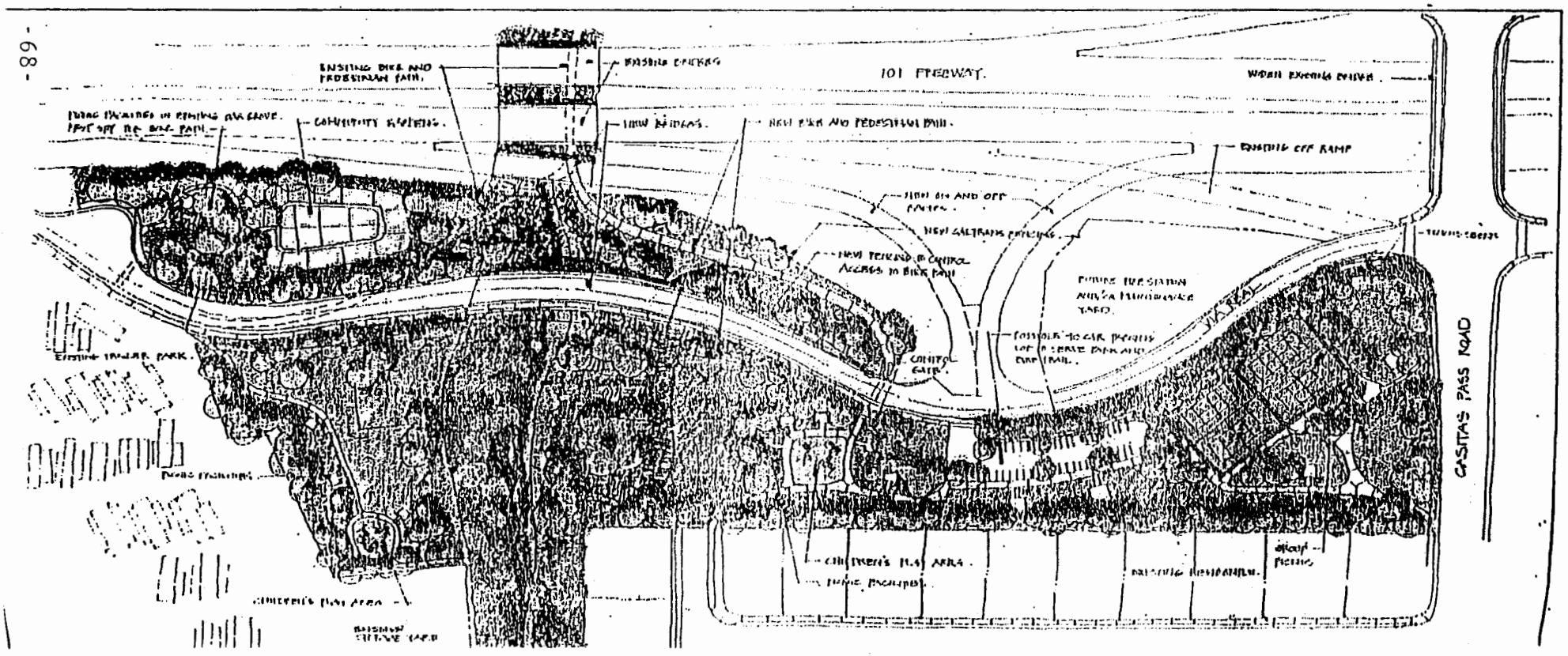
Those wild h...

Meredith ... "
Wayne Fer ... ir
work. Page ...

Pg. #5 of 9

Moratorium could face a lawsuit

The City Council extended a moratorium on further developments of wireless communications towers in the city even after being tacitly threatened to be sued. Page 7.



Conceptual drawing shows new park along Via Real/

Via Real link up from Baillard to Casitas Pass Road could be complete by 2006

By Gary A. Schlueter

The long awaited extension of Via Real over Carpinteria Creek could become a reality in the next five years, good lord willin' and the creek don't rise. Actually, this multi-jurisdictional project came to the public's eye last year when the city of Carpinteria notified a long list in locals interested in the project.

Since Via Real runs past three sizable mobile home parks, Steve Wagner, public works director for Carpinteria, said they had quite a turn-out. Then in mid-March the city held a public meeting at San Rogue Mobile Home Park where two hot topics were the Via Real extension and a new park being planned next to San Roque.

Development of the neighborhood park next to San Rogue Park is part of this Via Real extension. The park would have play areas, a tot lot, an open field for soccer or other sports and creek corridors. Its eventual shape will depend on the final alignment of the Via Real creek overpass.

A conceptual drawing shows the park extending on both sides of Carpinteria Creek along the proposed extension of Via Real. It is far larger than originally envisaged by Matt Roberts, Carpinteria's Parks and Recreation director, when he began the process of creating this park for the residents of the San Rogue.

Included in the conceptual plan are tennis courts on the site of what is now the Whitney house, a parking area and another place for the bike trail to cross under the freeway. There are picnic areas scattered around the park and a community garden on the high grounds outside the entrance of San Rogue MHP.

According to the drawing, vehicular access to this new park would be along Via Real and on Casitas Pass Road.

The Via Real extension is in the conceptual stage. "Caltrans is in the process of doing several related environmental studies," Wagner said. The intention is to release a draft Environmental Impact Report for public review and comment. "Based on that public input, we would further refine the design," he said.

Looking at the long-range schedule, Wagner said, "Construction looks like no earlier than 2003 or 2004. "We're seeing the schedule slide already because of the complex environmental studies that are going on."

See VIA REAL Continued on page 17

Memorial Stadium goal reached

The Building a New Tradition Capital Campaign has reached its $1.25 million goal. Over 500 donors, comprised of individuals, businesses, organizations, and foundations, have contributed $1,263,452 to push the campaign over by $13,152.

Campaign Steering Committee Chairperson George Bliss and Campaign General Chair Chuck Thompson stated that the beautiful new stadium was made possible through the many generous contributions received from local residents. Both believe that the 'spirit of community' was the driving force that allowed the goal to be achieved.

The funds will be used to construct a restroom/concession facility, home bleachers, press box, and for the design and planning of a memorial in remembrance of those Carpinteria High alumni who have died in the service of their country. The restroom/concession building will be the next phase of the stadium project to be built, with completion date anticipated to be the last week in August.

All campaign committee members, over 80 strong, will be invited to a celebration, planned for the last week of April, to recognize and thank them for their efforts in achieving the campaign's goal.

Campaign donations are still being accepted. Anyone who has given $1,000. or more will have their name or that of a loved one, permanently inscribed on a beautiful "Donor Wall," which will be lo- eria
cated at th
Valley Me
Anyone na-
tion can co igr
Director, a
Thomp the
community om-
mended fo the
sports facil e of
all ages for

Pg. #6 of 9

COMMUNITY CALENDAR

MARCH 11, 2003

CALIFORNIA COASTAL COMMISSION
89 S. CALIFORNIA ST.
SECOND FLOOR
VENTURA, CA 93001

RECEIVED
MAR 19 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

DEAR COMMISSION:

FIRST OF ALL, THANK YOU FOR ALL THE EFFECTIVE AND DIFFICULT WORK YOU DO PROTECTING OUR PRECIOUS COASTLINE.

I AM WRITING AS A CONCERNED CITIZEN OF CARPINTERIA REGARDING THE CARNEVALE RESIDENTIAL PROJECT IN CARPINTERIA. I BELIEVE THE CITY'S APPROVAL VIOLATED SEVERAL LAWS:

1. THE CREEK SETBACK IS NOT ADEQUATE TO PROTECT THE RIPARIAN HABITAT — AN ENVIRONMENTALLY SENSITIVE HABITAT AREA.

2. THE FENCE, STORM DRAIN AND ENERGY DISSIPATER ARE LOCATED WITHIN THIS E.S.H.A.

3. THE CITY-APPROVED PROJECT BLOCKS IMPORTANT AND PROTECTED PUBLIC VIEWS OF CARPINTERIA CREEK.

THANK YOU FOR YOUR KIND ATTENTION TO THIS IMPORTANT MATTER.

SINCERELY,

Alison Johnson

ALISON JOHNSON
501 CONCHA LOMA DR.
CARPINTERIA, CA 93013
805. 566. 5312

EX. 6 - ITEM 23

830 Arbol Verde
Carpinteria CA 93013

RECEIVED
MAR 20 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RECEIVED
MAR 19 2003
CALIFORNIA
COASTAL COMMISSION

March 16, 2003

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Carpinteria Creek Foundation appeal of Carpinteria City Council's approval of Project No. 99-881-DP/CDP (APN 001-070-031) Carnevale Residential

Dear California Coastal Commission;

My husband & I are deeply concerned over the total height of this structure & set back requirements from the Carpinteria creek approved by our Carpinteria City Council. The 2 story building & overall total height severely block the pristine view enjoyed by so many Carpinterians & visitors.

We are concerned that the approved minimum set back from Carpinteria Creek will not satisfactorily permit the environmentally sensitive habitat areas to be preserved.

By permitting encroachment into this sensitive area & 2 stories, standards will be set for others in the future to overbuild & permanently destroy our ESHA & wonderful view.

Carpinteria Creek & its surroundings need to be preserved & protected. Please help.

Sincerely

Lynne Widiner K. Widiner

Lynne Widiner Karl Widiner

Ex.5- ITEM 24

709 Olive Ave.
Carpinteria, CA 93013
March 17, 2003

RECEIVED
MAR 19 2003
CALIFORNIA
COASTAL COMMISSION

To: California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Appeal of Carnevale Development

To Whom It May Concern:

I am writing in support of of Environmental Defense Center's appeal on behalf of the Carpinteria Creek Foundation.

As a long-time resident of Carpinteria I am very concerned that approval of the Carnevale Project will be in violation of the City's LCP since the creek setback—at less than ten feet(!)—is inadequate to protect this Sensitive Habitat Area.

I have enjoyed this Creek for many years…it is a fragile, living organism, and—unfortunately—dependent on us humans to maintain its viability.

Although I do not live in the immediate area, I walk by this property nearly every day, enjoying its views and proximity to the creek.

When such a large number of people in Carpinteria have voiced opposition to this project, there is cause for concern—and review!

Thank you.
Sincerely,

Nancy O. VanAntwerp

Nancy O. VanAntwerp

Cc: Environmental Defense Center
906 Garden St.
Santa Barbara, CA 93101

RECEIVED
MAR 20 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

CONCEPTION COAST PROJECT
3887 STATE STREET SUITE 24
SANTA BARBARA, CA 93105
(805) 687-2073
(805) 687-5103 (FAX)
CCP@CONCEPTIONCOAST.ORG
WWW.CONCEPTIONCOAST.ORG

RECEIVED
APR 01 2003
CALIFORNIA
COASTAL COMMISSION

3/28/03

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Carnevale Residential Project, Carpinteria, Ca.

Dear California Coastal Commission,

I am writing on behalf of Conception Coast Project, a nonprofit organization, dedicated to protecting and restoring the natural heritage of our region through long-term planning and community involvement. We are concerned with the passage of the Carnevale Residential Project in Carpinteria.

Our organization sees Carpinteria Creek as a crucial creek for federally endangered steelhead (*O. mykiss*). Conception Coast Project recently finished a report that identified the most important watersheds for steelhead in the South Coast of Santa Barbara County. Carpinteria Creek was ranked first because of its quality and quantity of habitat as well as current and historic documentation of steelhead. Sacrifices and extra effort need to be made to ensure that steelhead are protected in this area.

We are concerned with the approval of the project due to its proximity to Environmentally Sensitive Habitat Areas. We believe that is feasible to have this project completed with proper mitigation in order to maintain the integrity of Carpinteria Creek. Proper setbacks need to be implemented in order ensure that negative impacts do not affect Carpinteria Creek.

If you would like more information about the importance of Carpinteria Creek, feel free to view our website at www.conceptioncoast.org which has our steelhead report. You may also contact me at studarus@conceptioncoast.org.

Thank you for your time,

James Studarus
Operations Manager

RECEIVED
APR
CALIF
COASTAL C
SOUTH CENTRAL

EX. 6. ITEM 26

ROBERT E. PRUSSING
4740A 8TH ST.
CARPINTERIA, CA 93013
(805) 566-5389

RECEIVED
APR 2 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 26, 2003

RECEIVED
MAR 28 2003
CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
45 Freemont Street
San Francisco, CA 94105-2219

Re: Appeal No. A-4-03-16 (Carnevale, Carpinteria)

Dear Madam or Sir:

I am a resident of Carpinteria, California, and I am writing in support of the above-referenced appeal, filed by the Carpinteria Creek Foundation.

Based on what I am informed, I believe that approval of the subject project violated the City of Carpinteria's Local Coastal Plan because:

1. The Creek setback is inadequate to protect the riparian habitat ("ESHA");
2. The fence, storm drain, and energy dissipater located in the ESHA will damage the ESHA, and could be located outside of it; and,
3. The project will block protected public views of the Creek.

I thank you for your attention to this matter, and should you have any questions, or if I may be of any assistance, please do not hesitate to contact me.

Very Truly Yours,

Robert E. Prussing

cc: Environmental Defense Center

Ex. 6, ITEM 27

Al Clark

RISK CONSULTING

AL CLARK, MA, CSP

5588 CALLE OCHO
CARPINTERIA, CA 93013
(805) 684-2248
al.clark@juno.com

April 4, 2003

RECEIVED
APR 7 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Chairman Mike Reilly
California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

Re: A-4-CPN-03-016
Agenda Item No.: Th 8a

Honorable Chair Reilly and Coastal Commissioners:

I was asked by the Carpinteria Creek Foundation to measure the distance from the proposed "Carnevale" structure, as staked by the applicant's representative, to the edge of existing riparian vegetation.

The measurements were made on October 7, 2002 and photographs of the staking were also made. I employed a Rolatape Model # MM45 instrument for performing measurements. I have used this device professionally for 15 years. I am contracted to perform measurements of structures and real property areas for the purposes of insurance valuations and verification of clearances and setbacks from exposures and hazards.

I followed my standard protocol which is to triple-measure each point. These measurements were then verified with a metal tape. My findings were provided on the project site plan to the City's Administrative Record. They show the effective setback on October 7, 2002 to range between 9' to 13' near the willows area and 14' to 15' at the sycamores.

Respectfully,

Al Clark, CSP

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO SANTA BARBARA • SANTA CRUZ

DEPARTMENT OF ECOLOGY, EVOLUTION & MARINE BIOLOGY
PHONE: (805) 893-3511
FAX: (805) 893-4724

SANTA BARBARA, CALIFORNIA 93106-9610

April 4, 2003

California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: Carnevale Property, Carpinteria, CA: Appeal No. A-4-CPN-03-016

Dear Commissioners:

I write in support of substantial issues raised concerning potential impacts to the riparian canopy from construction of the proposed Carnevale Property in the City of Carpinteria, Santa Barbara County. I am a biologist at the University of California, Santa Barbara, with 25 years of experience regarding the ecology and restoration of California wetlands. This property includes a portion of Carpinteria Creek immediately south of Carpinteria Avenue, which is an important element of the continuous riparian canopy that extends along lower Carpinteria Creek to its estuary. I am familiar with the site, and I examined environmental conditions there as recently as 31 Mar 2003. The east bank along the edge of the proposed development envelope is characterized by riparian woodland vegetation composed of mature Western Sycamores with an understory of Arroyo Willow; native vines and shrubs including Virgin's Bower, Coastal Morning-glory, California Blackberry, and Poison Oak; and various herbaceous plants including native species such as Giant Horsetail, Giant Ryegrass, and Mugwort.

This riparian vegetation is a type of California wetland and is an identified Environmentally Sensitive Habitat that has many important ecosystem functions including the major categories of hydrology (e.g., bank stabilization), water quality (e.g., stream temperature maintenance), food chain support (e.g., leaf litter), and habitat (e.g., riparian dependent birds). To protect and preserve the wetland and its many functions, I support the proposed buffer setback of 20 ft beyond the current drip line of the riparian canopy. Although there is some disagreement on the amount of buffer that might be a desired minimum, and I have reviewed the reports containing these different points of view (e.g., Holmgren, Chirman, Schimdthauser, Hunt, and Tierney), it is clear that the Coastal Act Guidelines suggest 100 ft would be the appropriate minimum. Thus as a proposed minimum, 20 ft does not constitute an unreasonable request, but actually is at the low end of modern thinking regarding set backs along creeks (50 ft from riparian canopy is a desirable policy standard). Anything less than the proposed 20 ft may begin to compromise the integrity of the riparian vegetation and its functions and would provide less of an opportunity for continued growth of the vegetation and for potential restorative actions. Even the proposed amendments to the LCP for the City of Carpinteria, which are to be reviewed by the Commission in April, contain a draft policy requiring a 50 ft buffer from the riparian canopy drip line where feasible.

The appeal of the City's decision to approve the proposed residential project is based upon the measurement of the proposed setback. The measurement of this setback from the riparian canopy should be based upon conditions present at the site at the time the City considered the project.

EX. 6, ITEM 29

The City's decision, however, was based upon measurements of the riparian canopy that were several years old. The issue is not about the proposed width of the buffer (all parties are now apparently in agreement on the proposed 20 ft minimum), but rather on the date the width was measured. At this current time, the width is 9-13 ft from the canopy drip line instead of the agreed upon 20 ft, because the canopy of the trees has grown since the date it was measured. This growth provides additional evidence of the importance for a set back of sufficient size to accommodate natural expansion of the habitat. This newly measured buffer set back, now less than 20 ft, is not consistent with the intent of the City's approved set back of 20 ft and is not consistent with the soon to be certified policy in the City's LCP amendment also to be heard by the Coastal Commission next week.

In other matters related to the Carnevale Property, I support the relocation of fence posts outside the buffer set back to provide an accurate delineation of the buffer and to avoid potential impacts to riparian vegetation as a result of installation of the posts and as a result of leaving some of the buffer outside the fence line. I also support review of the proposed culvert, which will direct additional storm water runoff into Carpinteria Creek, and the proposed riprap that will serve as an energy dissipater. Currently, storm water moves passively from Carpinteria Ave. onto the property but moves in a partially directed manner from Concho Loma into a poorly maintained ditch and culvert to Carpinteria Creek. Additional runoff from the project and more directed flows from Concho Loma may impact the riparian corridor and creek bank and bed without careful consideration of the route, its maintenance, and destination of the water. I am not convinced there is enough detail on the design of storm water conveyance structures to understand the intent of the modifications.

I request that the Commission consider the substantial issues that are raised in relationship to the appeal. Although the staff recommendation is that substantial issues do not exist to support an appeal, I conclude otherwise and thus support a determination that sufficient substantial issues have been raised to require review of the Commission's previous findings.

Thank you for considering my comments. Please contact me if I can be of further assistance in this matter.

Sincerely,

Wayne R. Ferren Jr.
Executive Director
UCSB Museum of Systematics and Ecology

RECEIVED
APR 2 2003
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST DISTRICT

March 27, 2003

E.D.C.
ENVIRONMENTAL DEFENSE CENTER

Chairman Mike Reilly
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Appeal by Carpinteria Creek Foundation of City of Carpinteria's Issuance of a Coastal Development Permit for the Carnevale Residential Project; Project No. 99-881-DP/CDP (APN 001-070-031)

Honorable Chair Reilly and Coastal Commissioners:

The Environmental Defense Center (EDC) is a non-profit, public interest environmental law firm. We represent the Carpinteria Creek Foundation in its appeal of the City of Carpinteria's approval of the Carnevale Residential Development, located just feet from the ecologically sensitive habitat of Carpinteria Creek. The appeal is based on alleged inconsistencies between the City's Local Coastal Plan (LCP) and the City's approval of the project. This letter presents additional evidence supporting the appeal. Specifically, the attachment to this letter describes the impacts caused by approved development in the Environmentally Sensitive Habitat Area (ESHA) and by the inadequacy of the development's setback to the adjacent riparian ESHA, and identifies related LCP Policy inconsistencies.

As noted in the Foundation's appeal and the biological reports attached thereto, our client presented substantial evidence to the City that the project was located too close to the creek to avoid substantial disruption of the riparian habitat's values and functions. In response, the City prepared and certified an EIR that included a mitigation measure requiring a 20-foot setback from the riparian dripline. Accordingly, the project was revised to incorporate this 20-foot setback requirement, but the City measured the 20-foot setback based on the dripline as it existed in 1999. Since that time, the dripline has expanded considerably, and as a result, the project is now located a mere 9 feet from the riparian dripline at its closest point.

The attached 3-26-03 letter from Darlene Chirman Biological Consulting augments and clarifies previously submitted biological reports that identified a minimum 20-foot riparian setback as necessary to avoid a significant impact. This newest Chirman report specifies that a 20-foot setback from the existing riparian dripline is required to avoid a significant impact to the riparian habitat and to Carpinteria Creek, the City's largest stream and last steelhead run. This information supports the Foundation's appeal and its assertion that the project violates the LCP and Coastal Act by failing to adequately buffer the ESHA to avoid substantial habitat impacts.

In addition, the attached report from Chirman identifies impacts associated with the fence, storm drain and energy dissipater that were approved within the riparian ESHA. The Foundation's biologist refers to feasible alternatives that would locate these facilities

906 Garden Street
Santa Barbara, CA 93101
Phone (805) 963-1622
FAX (805) 962-3152
edc@rain.org

2021 Sperry Avenue, Suite 18
Ventura, CA 93003
Phone (805) 677-2570
FAX (805) 677-2577
edcvent@west.net

861 Osos Street, Suite A
San Luis Obispo, CA 93401
Phone (805) 781-9932
FAX (805) 781-9384
edcmal@west.net

Ex. 6, ITEM 30

primarily or entirely outside of the ESHA to avoid impacts to the riparian habitat and creek. As described in the appeal, the Coastal Act and LCP severely restrict what uses are allowed in ESHAs and limit them to uses that are dependent on the resources of the ESHA and that do not result in significant impacts. The fence, storm drain and energy dissipater are not dependent on being located in the ESHA and may significantly impact them. The administrative record for this project includes descriptions of feasible alternatives, including a feasible alternative storm water conveyance strategy described by the City's Public Works Department Director, Steve Wagner.

In closing, the attached report by Chirman provides additional evidence supporting the Foundation's claims that development within and adjacent to the riparian ESHA violates the City's LCP as well as the Coastal Act. It supports a finding that the Foundation's appeal raises substantial issues with regards to the City's failure to properly administer its LCP. Further, it provides justification for the Commission to ultimately require a larger creek setback and relocation of developments from within the ESHA.

Thank you for your careful attention to this submittal and to the Foundation's appeal.

Sincerely,

Jeff Harper
Legal Analyst

Brian Trautwein
Environmental Analyst

cc: Carpinteria Creek Foundation

Printed on 100% Post-consumer Recycled Paper

DARLENE CHIRMAN
Biological Consulting

39 San Marcos Trout Club
Santa Barbara, CA 93105

(805)692-2008
FAX 967-2380

e-mail: dchirman@rain.org

RECEIVED
APR 2 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 26, 2003

California Coastal Commission
89 South California Street, Second Floor
Ventura, CA 93001

RE: Appeal of City of Carpinteria of Development Proposal 99-881-DP/CDP Carnevale Residential Project

Dear Commissioners:

I am a biologist retained by the Carpinteria Creek Foundation to comment on the Appeal to the California Coastal Commission of the approval of Carnevale Duplex Project by the City of Carpinteria under their Local Coastal Plan. I support the Appeal based on negative impacts to the Environmentally Sensitive Habitat Area (ESHA) of Carpinteria Creek from the project as approved by the City. I specialize in habitat restoration in creeks and wetlands, and am a member of the Santa Barbara Task Force for the Southern California Wetland Recovery Project. I testified and submitted written comments during the review process with the City of Carpinteria, and I believe you have copies of my written testimony; attached is my resume.

I would urge you to uphold the appeal submitted by the Carpinteria Creek Foundation. In my professional opinion, the Carpinteria City's approval of a duplex on parcel APN 001-070-031 does not adequately address the significant impacts of the proposed project to biological resources. This is a violation of the Local Coastal Plan and Coastal Act.

Buffer Functions and Width

The first issue I wish to address is the buffer of the Carpinteria Creek riparian ESHA. As a compromise, given the small area of buildable space on the lot, I supported a 20-foot buffer from the dripline of the Sycamore canopy trees and willow copse on the property. The City approved a 20-foot buffer but used a mapped 1999 dripline as baseline. Written testimony has been submitted by Mr. Al Clark to demonstrate that the trees have grown considerably in the intervening time, and as of October 7, 2002, this results in an effective setback of only 9-13 feet near the willows, and 14-15 feet at the sycamores. Such temporal changes demonstrate the inadequacy of the proposed buffer width.

The term *riparian* is defined as the "bank of a stream". The riparian zone generally has higher primary productivity than the adjacent upland system. Most research has addressed the

15.

water quality maintenance function of vegetated streamside buffers, filtering sediment, nutrients, pesticides and bacteria (Lowrance et al, 1985). Numerous factors influence the buffer effectiveness, including slope, soil hydrologic properties, topographic roughness, and vegetation. In riparian forests buffers of 15-80 meters (50-267 feet) adequately protect water quality (Phillips, 1989). Streamside vegetation provides shade and "a bank-stabilizing force to prevent excessive sedimentation and to intercept pollutants" (Mahoney and Erman, 1984). They state that streams in forest systems with bufferstrips wider than 30 meter (100 feet) had invertebrate communities no different than control streams; water quality was generally maintained with 10-20 meter buffers (33-67 feet). The width of buffer needs to be adequate to protect the stream water quality and the habitat function of the riparian vegetation.

I have reviewed the California Coastal Commission's Statewide Interpretive Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas, adopted 2/4/1981. The buffer area provides "open space between the development and the environmentally sensitive habitat area. The existence of this open space ensures that the type and scope of development proposed will not significantly degrade the habitat area (as required by Section 30240)." As described in this document, the appropriate width of buffer is based on factors such as the biological significance of the adjacent lands, sensitivity of species to disturbance, and the susceptibility of the parcel to erosion. The Guidelines conclude that "The buffer area should be a minimum of 100 feet for small projects on existing lots (such as one single family home ...) unless the applicant can demonstrate that 100 feet is unnecessary to protect the resources of the habitat area." "For a stream or river, the buffer area should be measured from the landward edge of the riparian vegetation or the top edge of the bank (e.g. channelized streams," according to the Guidelines.

"Buffer zones of less valued habitat can be retained around areas considered more valuable, for example, breeding areas or communities that are sensitive or species rich. They form a spatial shield around these priority areas" (Peck, 1998). The example given is a *half-mile* buffer of upland vegetation around Pinhook Swamp. The width needed to protect environmentally sensitive habitat is not known; Peck states this is due to our limited knowledge of biodiversity, and it is "therefore prudent to err on the conservative side, that is, to leave more than the absolute minimum amount of space." Much of the literature on buffer zones focuses on maintaining water quality, however, Peck states "we might consider which vulnerable habitats or species were located near the periphery of the reserve, and so could benefit from a buffer zone."

Migratory bird species use the Carpinteria Creek riparian corridor extensively, including the endangered Willow Flycatcher. The 1991 Riparian Habitat Study notes that "Carpinteria Creek, extending from Carpinteria Avenue to the ocean, supports the single most significant riparian habitat for birds in southern Santa Barbara County" (Lehman, 1991). A buffer from the riparian vegetation, including the Arroyo willow, is needed to ensure the project does not significantly impact the biological riparian resources. In this urban setting, ½ mile or 100 feet of buffer (measured from the riparian vegetation) would preclude development of the property, but a setback of 20 feet from the currently existing riparian dripline is feasible, although minimal. I recommend a 20-foot setback from the current dripline, including the willow copse, to protect the riparian vegetation and the wildlife, which depends on it for food, cover and nest sites.

The bank of Carpinteria Creek is currently showing erosion (near the bridge), where the narrowest setback from the top-of-bank is proposed. This could result in demands for hard-bank protection after approval and construction of the project. Another reason for an adequate setback is to preclude this scenario. Creek systems are naturally dynamic. We can expect some bank erosion and some aggradation or deposition of sediments. This creek meander should be allowed to occur, and can do so with adequate setbacks for development.

The Coastal Commission has recently approved changes to Carpinteria's Local Coastal Plan which sets the standard: *A setback of 50 feet from top of bank of creeks or existing edge of riparian vegetation (dripline) whichever is further...* Although this project was submitted for review to the city before that

policy was in force, it clearly demonstrates the recognition of the need for a setback greater than that approved for this project by the City of Carpinteria in order to protect the ESHA from significant disruption.

Development in ESHA

The Appeal also states that the project as approved includes non-resource-dependent development in ESHA, in violation of LCP Policies 1-1, 9-16, and 9-17. A storm drain and energy dissipater and a fence are located within ESHA, and modifications are feasible which would lessen the impact to ESHA.

The storm drain and energy dissipater are proposed to address concentration of storm runoff resulting in the development of the property. However, there are alternatives that have been suggested which should be implemented which would reduce negative impacts to ESHA. The runoff could be dispersed for overland sheet flow or subsurface flow, with the use of a French drain. This option would retain the runoff as a supplemental water source to the riparian vegetation, as is currently the case. Riparian vegetation in our dry climate depends on supplemental water of the creek and runoff to the creek for survival. Another alternative has been suggested by the former Public Works Director of Carpinteria, Steve Wagner. If the site runoff were directed to the street, it could then be diverted to an existing vegetated swale before it enters Carpinteria Creek. Possibly a swale could be created on site in the buffer area, which would serve this purpose and retain the water for the native riparian vegetation on site without damaging trenching within the riparian ESHA.

A fence is proposed from the eastern end of the Carpinteria Ave. within ESHA and the buffer. The stated purpose of this fence is to keep people out of the riparian corridor. However, disturbance of the ESHA, and required trimming of the native vegetation for installation of the posts and the fencing can be minimized by realignment of the fence toward Arbol Verde Road to the east. This would be consistent with the Commission's June 15, 1984 Procedural Guidance for the Review of Wetland Projects which states: "If the adjacent use includes residential areas, the buffer must include a fence ... to control entry of domestic animal and humans."

Summary

The Carnevale Duplex project as approved by the City of Carpinteria violates their Local Coastal Plan, and does not adequately prevent negative impacts to the Environmentally Sensitive Habitat Area of Carpinteria Creek. A wider buffer zone *a minimum of 20* feet from the current riparian dripline is required to minimize disruption to the hydrology of the riparian zone and disturbance to its wildlife inhabitants. Modifications to the stormwater management and realignment of the fence proposed in ESHA are feasible and should be required to protect the riparian vegetation and other biological resources from significant impacts. I urge you to uphold the Appeal and require modification of the project to comply with the Coastal Act and Local Coastal Plan.

Sincerely,

Darlene Chirman

Darlene Chirman
Habitat Restoration Ecologist

Attachment: Resume

Copy:
Carpinteria Creek Foundation

REFERENCES

Lehman, Paul. The Birds of Santa Barbara County, California. Vertebrate Museum, University of California at Santa Barbara, 1994.

Lowrance, Richard, Ralph Leonard, and Joseph Sheridan. Managing riparian ecosystems to control nonpoint pollution. Journal of Soil and Water Conservation, Jan-Feb. 1985 pp 87-91

Mahoney, Don L. and Don C. Erman. The role of streamside bufferstrips in the ecology of aquatic biota. California Riparian Systems: Ecology, Conservation and Productive Management, R.E. Warner and M. Hendrix, Ed. 1984: pp 168-176. University of California Press.

Peck, Sheila. Planning for Biodiversity: Issues and Examples. 1998. Island Press.

Phillips, Jonathon D. Nonpoint source pollution control effectiveness of riparian forests along a coastal plain river. Journal of Hydrology 110 (1989): 231-237

DARLENE BRANSTROM CHIRMAN

39 San Marcos Trout Club
Santa Barbara, CA 93105

(805)692-2008
FAX 967-2380

e-mail: dchirman@rain.org

My professional focus is habitat restoration/enhancement.

EDUCATION

1994 M.S. Ecology, Conservation Biology emphasis
University of California at Davis
Master's Thesis: "Nutrient dynamics during establishment of understory woody species in California Central Valley riparian habitats"

1991 B.S. Wildlife Biology; minor in Botany
University of California at Davis
Highest honors; Departmental Citation, Wildlife & Fisheries Biology

1973 Associate Degree in Nursing. Santa Barbara City College

PROFESSIONAL EXPERIENCE

1998-present **DARLENE CHIRMAN BIOLOGICAL CONSULTING**
Project management for habitat restoration projects; habitat restoration planning. Clients include Santa Barbara Audubon, Community Environmental Council, Land Trust of Santa Barbara County, Santa Barbara County Parks, and University of California at Santa Barbara

Project examples:

2002-present Devereux Slough North Shore Restoration Project. Santa Barbara Audubon Society, Habitat Restoration Plan and Project Manager. Funded by Wetland Recovery Project

2002-present Arroyo Hondo Preserve Riparian Restoration Project. Land Trust of Santa Barbara County.

2001-present San Jose Creek Restoration Plan and Monitoring. Community Environmental Council.

1998-2003 Goleta Slough Habitat Restoration and Enhancement Project. Santa Barbara Audubon Society; Contract Project Manager. Funded by Coastal Resource Grant Program, Coastal Resource Enhancement Fund

1998 Cieneguitas Creek Restoration Project, Revegetation Plan. Hope School District and La Cumbre Mutual Water Company

1994-96 Project Coordinator, Cosumnes Flooding and Plant Competition Experiment. Joint project University of California at Davis & The Nature Conservancy. Research site: Cosumnes River Preserve, Galt, California

1973-85 Registered nurse, primarily at the Rehabilitation Institute at Santa Barbara

RELATED VOLUNTEER ACTIVITIES

1999-present Santa Barbara County Task Force, Southern California Wetland Recovery Project

1996-present Santa Barbara Audubon Society. Conservation Committee. Current President of Board of Directors. Representative on Goleta Slough Management Committee

CITY of CARPINTERIA, CALIFORNIA

RECEIVED
APR 7 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

April 3, 2003

Members of the City Council
Richard Weinberg, *Mayor*
Donna Jordan, *Vice Mayor*
J. Bradley Stein
Michael Ledbetter
Gregory Gandrud

California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: Appeal No. A-4-CPN-03-016
Louis Carnevale

Honorable Chair and Commissioners:

On January 27, 2003, the City of Carpinteria City Council upheld a Planning Commission decision to approve Project No. 99-881-DP/CDP, Mr. and Mrs. Carnevale's request for a Coastal Development Permit to construct a single-family residence located on a vacant parcel at the intersection of Carpinteria Avenue and Arbol Verde Street. On February 20, 2003, the City received notification from the California Coastal Commission Ventura Office indicating that the Carpinteria Creek Foundation filed an appeal of the City's action. This letter is submitted to support your staff's recommendation that the appeal should be rejected based on No *Substantial Issue*.

The City of Carpinteria and more notably, the City Council, has been recognized as being extremely environmental conscientious on all land use decisions. The coastal resources within the City and greater Carpinteria Valley are highly cherished and viewed important, not only because the Coastal Act mandates their preservation, but because the City Council believes that it is these resources that makes Carpinteria one of the few coastal cities that has preserved its small town community image. This mindset and attitude of coastal resource preservation was recently recognized by the Coastal Commission last August when the General Plan/Local Coastal Plan update was conditionally approved.

In reviewing the subject project, these values and beliefs were applied heavily resulting in the rejection of a Mitigated Negative Declaration, the preparation of an Environmental Impact Report, and a substantial downsizing of the project. The Planning Commission and Council believed that the only way to determine if the project would be sited and designed to prevent impacts, which would significantly degrade environmentally sensitive habitat areas, was through the preparation of an Environmental Impact Report (EIR). An EIR was prepared with mitigation measures necessary to preserve the site's coastal resources resulting in a creek buffer determination of 20 feet from the surveyed dripline of the riparian vegetation. This results in a minimum 37-foot setback from the

5775 CARPINTERIA AVENUE • CARPINTERIA, CALIFORNIA 93013-2697 • (805) 684-5405 • Fax (805) 684-5301 • www.ci.carpinteria.ca.us

EX. 6, ITEM 31

top of creek bank to a maximum 125 feet. Because this setback substantially altered the buildable area of the site, the project was downsized from a duplex to a single-family residence.

The City is disappointed that the Carpinteria Creek Foundation and the Environmental Defense Center, who we partnered in developing Local Coastal Plan policy for creek protection, believes that the City's decision is inconsistent with the high standards set for environmental protection by the community. The City respectfully requests that the Coastal Commission look at the record as a whole and supports your staff's recommendation that no substantial issue exists to hear the appeal.

Respectfully Submitted,

Paul Kermoyan, AICP
Community Development Director

cc: Honorable Mayor and City Council
David Durflinger, City Manager

April 8, 2003

Honorable Commissioners
California Coastal Commission
45 Fremont Street Suite 2000
San Francisco, CA 94105-2219

Re: Addendum to Carnevale Residential Project Appeal Letter: Inconsistency with Carpinteria LCP Policy 2-26

Dear Honorable Commissioners:

The Environmental Defense Center ("EDC") is a nonprofit, public interest law firm that represents the Carpinteria Creek Foundation on issues related to the Carnevale Residential Project. In our appeal to the Commission, we outlined several inconsistencies between the project and the LCP, including an inadequate setback from Carpinteria Creek and development in the ESHA.

These inconsistencies are further evidenced by the City of Carpinteria LCP Policy 2-26, which states:

> All development...adjacent to areas designated on the land use plan maps as habitat areas...shall be regulated to *avoid adverse impacts on habitat resources.* Regulatory measures include...setbacks [and] buffer zones...

The Carnevale Residential Project is inconsistent with LCP Policy 2-26 because it has an inadequate setback from Carpinteria Creek and surrounding riparian vegetation, and because it requires construction of a storm drain, energy dissipater, and fence inside the ESHA. Several experts documented such impacts in letters submitted to the Commission, including Wayne Ferrin (letter dated April 4, 2003), Darlene Chirman (letter dated March 26, 2003), and Thelma Schmidhauser (letter dated October 29, 2002). Thus, the Carnevale Residential Project as approved does not "avoid adverse impacts on habitat resources" as required by LCP Policy 2-26.

Due to this and other inconsistencies between the Carnevale Residential Project and the Carpinteria LCP, we urge the Commission to find substantial issue with our appeal. Thank you for your consideration.

Sincerely,

Jeff Kuyper
Legal Analyst

cc: Coastal Commission Staff

906 Garden Street, Santa Barbara, CA 93101 Phone (805) 963-1622 FAX (805) 962-3152
2021 Sperry Avenue, Suite 18, Ventura, CA 93003 Phone (805) 677-2570 FAX (805) 677-2577
www.edcnet.org

Printed on Recycled Paper

EX. 6, ITEM 32

Lawrence E. Hunt
Consulting Biologist

Dr. John Dixon, Staff Biologist
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

6 May 2003

Re: Response to Ferren's Letter on Proposed Single-Family Residential Development Project, Carnevale Parcel, Carpinteria, California: Appeal No. A-4-CPN-03-016

Dear Dr. Dixon,

Mr. Jan Hochhauser of Hochhauser-Blatter Architecture and Planning, the architect and planner for this project, has requested that I respond to a Mr. Wayne Ferren's letter to the Commission, dated 4 April 2003. I have known Mr. Ferren personally and professionally for almost 20 years and highly regard his opinions and ethics. However, I do not agree with his characterization of the existing condition of the site, or with his assessment that substantial biological issues remain in this proposed project.

The Carnevale parcel occupies a small parcel bordered on three sides by streets and on the fourth side by Carpinteria Creek. The lower reach of Carpinteria Creek is an important local and regional resource, especially for migratory birds, by virtue of its dense, diverse riparian canopy close to the ocean. However, roadway bridges, utility lines, flood control activities, unrestricted human access, and residential development has significantly degraded the reach of Carpinteria Creek adjacent to and immediately upstream and downstream from the subject parcel. Consequently, Mr. Ferren's characterization of the riparian vegetation east of Carpinteria Creek in paragraph 1 of his letter is misleading. A canopy of western sycamore covers a large portion of the site east of the creek, but the understory is highly disturbed. A native understory, actually consisting of approximately 80% native and 20% non-native cover, is distributed only as a narrow band along the top-of-bank of the creek. Copses of arroyo willow form a native understory at two or three distinct locations (see attached figure), however, much of the ground cover beneath the willow copse in the northeastern portion of the parcel consists of brome grasses and mallow. **Ruderal, non-native vegetation easily covers 70% of the ground surface east of the creek.** There is no shrub understory; ground cover vegetation is ruderal, consisting entirely of non-native, invasive species, such as bull mallow, brome grasses, mustard, ox-tongue, and nasturtium.

Mr. Ferren states in paragraph 3 on p. 2 that, "At this current time, the width [of the riparian drip line buffer] is 9-13 ft from the canopy drip line instead of the agreed upon 20 ft, because the canopy of the trees has grown since the date it was measured." The attached map highlights the two areas where this growth has occurred. **Based on observations I made this morning, this growth consists of three willow branches up**

EX. 6. ITEM 33

to 1.25 inches in diameter in the southernmost area and six sycamore branches up to 0.5 inches in diameter in the northernmost area that extend no more than five or six feet beyond the mapped canopy. Please note that the proposed development will not touch this vegetation, only that, because vegetative growth has occurred since the drip line was surveyed and the 20-foot setback was certified, small limbs now extend into the 20-foot development setback. **This new growth represents less than 1% of the riparian canopy east of the creek on the parcel and less than 0.5% of the total canopy of these trees.** Mr. Ferren's statement that the project is now encroaching 7-11 feet into the 20-foot setback is based on the growth of a few small limbs that represent a tiny fraction of the overall canopy. I agree with Mr. Ferren's statement that, "This growth provides additional evidence of the importance for a set back of sufficient size to accommodate natural expansion of the habitat". The 20-foot buffer, based on the certified drip line, will provide that margin for growth.

The attached figure shows existing power lines running in an east to west direction south of Carpinteria Avenue through the existing sycamore and black cottonwood canopy. Please note that the power company routinely trims branches around these lines. The project before you will not disturb existing native riparian vegetation.

I have stated in several previous letters on this project that I cannot defend, on a biological basis, the premise that a 20-foot buffer will provide significantly greater protection to biological resources on this parcel than a 10-foot buffer or a 25-foot buffer. Intuitively, larger buffers seem to be "better" than smaller buffers. But in this case, the very small degree of encroachment into the 20-foot buffer realized by natural growth of the vegetation into this area since the canopy drip line was surveyed and certified, will be offset many times over by the riparian restoration effort funded by the parcel owner. Please note on the accompanying figure that the parcel boundaries extend west of Carpinteria Creek and that this area too will be restored and revegetated.

Storm water runoff from Carpinteria Avenue currently enters the north end of the site and flows unimpeded into the creek. Runoff from the project footprint and these other sources will be directed and dissipated by a vegetated swale and rip-rapped energy dissipator before entering the creek. Certainly this is an improvement over the existing situation.

I do not agree that substantial biological issues still remain to support an appeal of the project. In the 12 years (incredible!) that I have been involved with this small project, it has evolved from a multi-story, multi-unit condominium development that covered much of the parcel and called for stabilizing the east and west banks of Carpinteria Creek, to a single-story, single-family residence that occupies less than 20% of the parcel, establishes a 20-foot setback from the certified riparian drip line, and restores and revegetates riparian habitat on the remaining 80% of the parcel. This will significantly improve wildlife habitat quality over existing conditions on the parcel by increasing species and

Hunt & Associates
Biological Consulting Services
5290 Overpass Road, Suite 108
Santa Barbara, California 93111
(805) 967-8512 (phone) (805) 967-4633 (fax)
e-mail: anniella@silcom.com

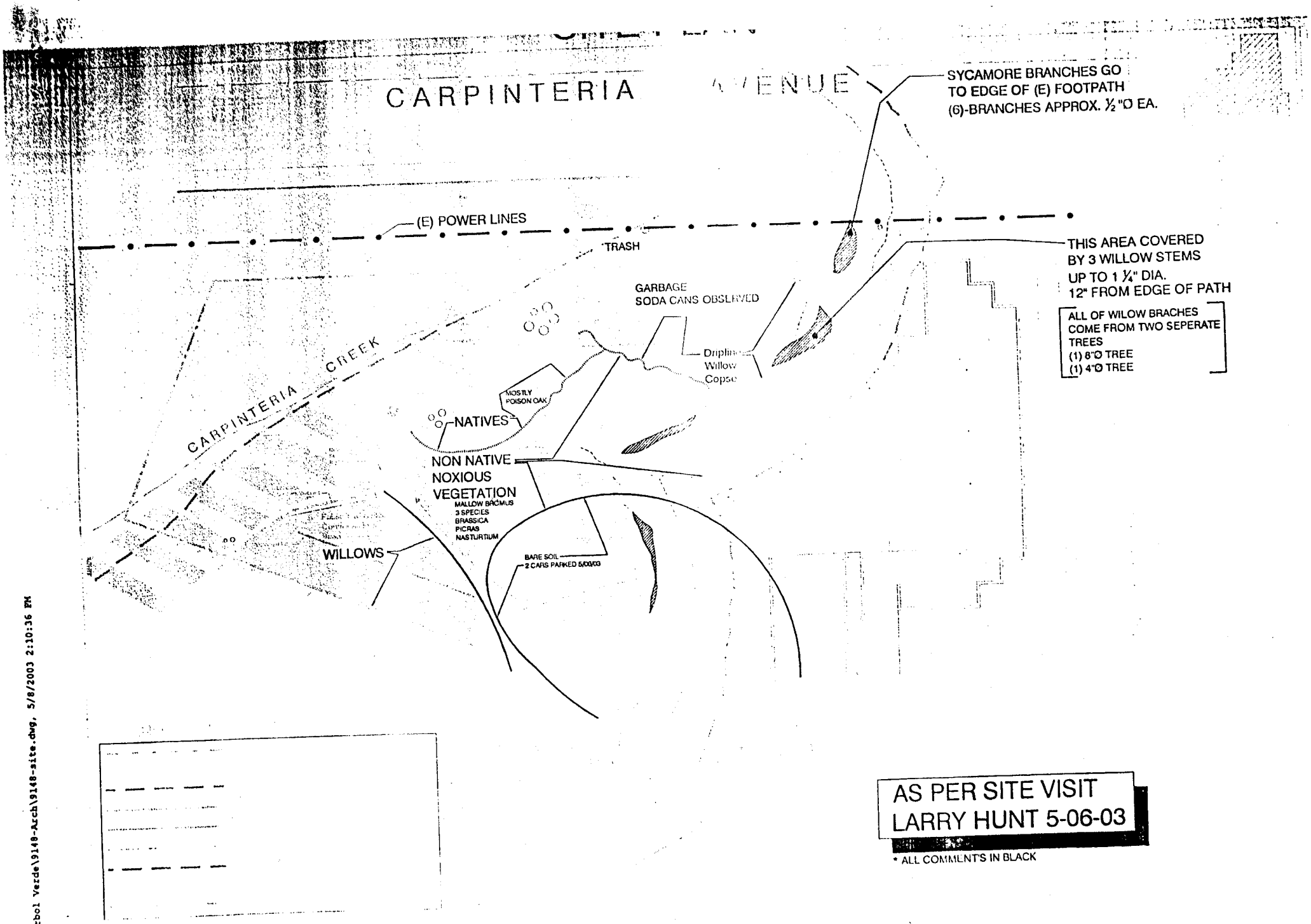
structural diversity of the understory and ground cover, controlling non-native vegetation, and restricting human access to the creek and riparian corridor.

Thank you for your time and consideration. Please call me if I can provide additional information.

Sincerely,

Lawrence E. Hunt

Hunt & Associates
Biological Consulting Services
5290 Overpass Road, Suite 108
Santa Barbara, California 93111
(805) 967-8512 (phone) (805) 967-4633 (fax)
e-mail: anniella@silcom.com



8 Arbol Verde\9148-Arch\9148-site.dwg, 5/8/2003 2:10:36 PM

SITE PHOTOS

VIEW LOOKING SOUTH ACROSS SITE SHOWING
(E) FOOTPATH AND WILLOW
NON -NATIVE TREE IN FOREGROUND

VIEW TO SITE FROM EAST SHOWING
SURROUNDING STREETS

VIEW ACROSS SITE FROM SOUTH SHOWING
BARE SOIL, RUDERAL GRASSLAND, AND
WILLOW COPSE. STAKES INDICATE CORNERS
OF PROPOSED HOUSE

Hochhau
Blatter
ARCHITECT
AND PLANN
122 E. ARRELL
SANTA BARB
CALIFORNIA
805 962 2

SINGLE FAMILY RESIDENCE FOR
L. CARNEVALE
CARPINTERIA

PH

Hochhauser Blätter

ARCHITECTURE AND PLANNING

RECEIVED
JUL 29 2003
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

MEMORANDUM
TO: LILLIAN FORD / CALIFORNIA COASTAL COMMISSION
FROM : JAN R. HOCHHAUSER
RE: CARNEVALE / A-4-CPN-03-016
DATE: JULY 24 2003

Lillian, the following points we believe are germane to an accurate representation of the history and facts concerning the subject project which was approved by the City of Carpinteria and then appealed to the CCC. The following will also in part be a response to the most recent correspondence from Brian Trautwein and Jeff Kuyper of the Environmental Defense Center. Also, we believe many of the following points should be included in your staff report to the Commission as they may further communicate the exact nature of the setting, additional data about the substance and history of the appeal, and reinforce CCC staff's determinations on policy analysis.

1. The degraded nature and non-native vegetation existing across much of the setting was further corroborated by our recent site visit [attended by Larry Hunt , Robert Hansen, Jan R. Hochhauser and Lillian Ford]. At that visit the exact nature of the growth of the Sycamore and Willow dripline was characterized. The understory of all of the subject vegetation was degraded and consisted of non-native deleterious species. There was no new growth of native species coming out of the ground. Please see Larry Hunt's e-mail to you of 7/15/03 (copy attached).

2. The impacts of human tresspass to the creek corridor were further evidenced by our discovery of the makeshift shelter along the north side of the flood control access road and the "outdoor toilet" behind the boulder in the access road. Please see jpeg images no.17 and no.18 that were recently e-mailed to you.

3. I am sorry to be so redundant on this point, but it is very hard to not conclude that the project description with removal of all non-native species, the complete bonded and monitored vegetative restoration, the elimination of the public footpath with the split rail fence, and the stewardship of a private homeowner will deliver beneficial effects. Therefore, given the specifics of this site and context, the project when compared to the existing setting and impacts, in fact reduces impacts and complies with the intent of both 2-26 and 9-15.

4. The project opponents, did not appeal the E.I.R. which was certified in July 2002 three years after the original environmental baseline mapped in 1999 [Rincon consultants, the EIR preparer resurveyed the dripline in 2001 after the NOP was issued]. In fact, all of the appellant's biologists opined for EIR alternative no.3 as recently as June of 2002 graphic and text format referenced the

122 E. ARRELLAGA ST.
SANTA BARBARA
CALIFORNIA
93101
805 962 2746
FAX 962 4984
admin@hbarchitects.com
www.hbarchitects.com

EXHIBIT NO. 2
APPLICATION NO. Carnevale
A-4-CPN-03-016
Correspondence

baseline. Brian Trautwein's original letter appealing the Planning Commissions certification of the EIR [July 11, 2002] and his letter withdrawing that appeal [July 31, 2002] never even mentioned the growth of the original dripline as an issue. Only after a smaller project that was set back 20ft. from the baseline [consistent with EIR alternative no.3] was approved by the Planning Commission did a new appeal surface assailing the project's footprint. Is it not reasonable to presume that a qualified biologist would have to know that a dripline is not a static thing, and willows in particular can exhibit rapid growth. All this being said, I have repeatedly made the point, that the end state project which was championed by the appellant's biologists is the one before the CCC today and the growth of branches into the zone between the baseline and the approved footprint is completely consistent with the approved project description in its thorough re-vegetation of this subject area. Given my points 1,2,and 3 above, it is implausible that the appellant's claims have any validity to elevate matters to a conclusion of adverse impacts.

5. It must be noted that the same Sycamore trees that generate a dripline on the Carnevale site also extend out over Carpinteria Ave. and Concha Loma. Given the fact that the dripline is utilized to define the ESHA, one has to acknowledge that in characterizing this particular setting, the ESHA and subject vegetation is being continually violated by vehicular traffic on the public roads. Furthermore, the trees extending over Carpinteria Ave are regularly pruned to maintain headroom clearance and powerline conflicts. There is no record of either the Environmental Defense Center or the Carpinteria Creek Foundation taking issue with this pruning or the violation of dripline. The approved Carnevale project is setback from all of this subject vegetation and does not propose any cutting or changes to it.

6. Santa Barbara County Flood Control maintains the right to regularly access the Carpinteria Creek with heavy grading equipment via the access road on the Carnevale property. During their maintenance operations with this heavy equipment there is an inevitable trampling and disturbance of the native vegitation [willows included]. A negative declaration was prepared and certified for these maintenance activities. Again, the Carnevale project does not propose to touch any of the existing native vegetation.

7. Mr. Trautwein's assertion that the willows "have been pruned various times in recent years" is unsubstantiated, as the City, in an April 2002 memo to the Carpinteria City Council, documents that in a single incident only a single willow limb had been accidentally removed by a City Public works employee and there was no material affect on the ESHA. Please see point 6 above.

8. Finally, we think it appropriate that the staff report address the City's requirement to incorporate a two car garage in the area defined by the zoning setbacks and the setback from the creek and vegetation. If the appellant's 20 ft. setback from the dripline re-surveyed and mapped this July 2003 is utilized it would only permit a realistic footprint for habitable space of approximately 678 sq. ft.

Ms. Ford,

Here is my assessment of the vegetative conditions beneath the new canopy growth on the property, as documented by the new survey conducted by Hochhauser and Blatter Architects. You have a copy of the new survey map showing the various changes in canopy growth:

a. Sycamore growth: Growth consists of extension of a few small branches; canopy is at least 40 feet above ground; ground conditions beneath extension are non-native, ruderal weeds (red brome, filaree, ox-tongue, bull mallow, etc.), with no native vegetation.

b. Willow growth: Growth consists of extension of branches several feet beyond previously surveyed canopy limit, but growth is lateral from existing stems and branches well within the old limit; no new willow stems; ground cover beneath new growth is non-native, ruderal vegetation (red brome, rip-gut brome, wild oats, Italian rye, white sweet clover, vetch, mustard, ox-tongue, bull mallow, etc.).

The revegetation plan proposed for this project will not affect any native trees, including the new growth documented on the updated survey map. Rather, the non-native vegetation that completely covers the ground beneath the riparian canopy will be removed and replaced with a variety of native, locally-occurring trees and shrubs. This will significantly increase the attractiveness and value of vegetation in this area to wildlife from its currentlyd degraded condition.

Thank you for meeting us on-site last Friday. Please call me if you have any questions or need additional information.

Lawrence E. Hunt
Hunt & Associates Biological Consulting Services
5290 Overpass Road, Suite 108
Santa Barbara, California 93111

(805) 967-8512 (phone)
(805) 967-4633 (fax)

MEMORANDUM
TO: LILLIAN FORD CCC
FROM: JAN R. HOCHHAUSER
DATE :7 08 2003
RE: CARNEVALE / A-4-CPN –03-016

THE PROJECT BEFORE THE CCC TODAY IS CONSISTENT WITH ALTERNATIVE NO. 3 IN THE CERTIFIED EIR.

ALL OF THE BIOLOGISTS COMMENTINGON THE E IR ON BEHALF OF THE APELLANTS HAVE OPINED IN WRITING THAT THE PROJECT AND 20FT. BUFFER AS DESCRIBED AND MAPPED IN EIR ALTERNATIVE NO. 3 MITIGATES SIGNIFICANT EFFECT. [*CHIRMAN MAY 29 2001,APRIL 2,2002 – SCHMIDHAUSER MARCH 29,2002- HOLMGREN APRIL 14, 2002*]

ALL OF THE OTHER BIOLOGISTS , THE APPLICANT'S , THE CITY'S AND THE EIR PREPARERS, HAVE OPINED THAT A 10 FT. SETBACK WITH THE VEGETATIVE RESTORATION WOULD RESULT IN A CUMMULATIVE BENNEFICIAL EFFECT ON BIOLOGICAL RESOURCES.

THEREFORE, ALL BIOLOGISTS CONCURR THAT A PROJECT CONSISTENT WITH EIR ALTERNATIVE NO.3 WILL AT A MINIMUM MITIGATE SIGNIFICANT EFFECT.

THE PROJECT PROPOSES A COMPREHENSIVE VEGETATIVE RIPARIAN RESTORATION BETWEEN THE PROPOSED FOOTPRINT AND THE CREEK BANK, WHICH INCLUDES ALL OF THE BUFFER AREA. ALL NON NATIVES WILL BE REMOVED AND NEW PLANTINGS IMPLEMENTED AS PER THE APPROVED RESTORATION PLAN. THE SUBJECT RESTORATION AREA WILL BE PROTECTED FROM THE IMPACTS OF HUMAN TRESSPASS, AS THE AREA WILL BE FENCED AND THE PUBLIC FOOPATH ELIMINATED.

THE GROWTH OF THE SYCAMORE AND WILLOW BRANCHES BEYOND THE MAPPED EIR BASELINE INTO THE BUFFER [*AS MAPPED BY LICENSED SURVEYOR 7 02 03*] IS CONSISTENT WITH THE APPROVED PROJECT DESCRIPTION AS THIS AREA IS DESCRIBED TO BE FULLY REVEGETATED. ALL BIOLOGISTS WOULD HAVE TO RECOGNIZE THAT THE EXISTING VEGETATION WOULD GROW. THE NEW GROWTH AS MAPPED ONLY CONTRIBUTES TO WHAT THE PROJECT PROPOSES TO DO IN ITS IMPLEMENTATION OF THE RESTORATION AND LANDSCAPE PLAN.

THEREFORE THE END-STATE PROJECT INTERFACED WITH THE CURRENT SITE CONDITIONS IS STILL COMPLETELY CONSISTENT WITH WHAT THE APPELLANT'S BIOLOGISTS OPINED FOR WHEN THEY CHAMPIONED ALTERNATIVE NO. 3 IN THE EIR.

ONE WOULD HAVE TO CONCLUDE , THAT **THERE IS NO LOGICAL BASIS TO FIND THAT THE PROJECT BEFORE THE CCC TODAY IS MATERIALLY OR SIGNIFICANTLY DIFFERENT FROM THE PROJECT ALL BIOLOGISTS [*PRO AND CON*] FOUND ACCEPTABLE, DUE TO THE FACT SOME BRANCHES OF VEGETATION HAVE GROWN INTO AN AREA THAT HAS A NON-NATIVE DEGRADED UNDERSTORY AND IS PROPOSED TO BE REVEGETATED.**

MEMORANDUM
TO: LILLIAN FORD CCC
FROM: JAN R. HOCHHAUSER
DATE :7 09 2003
RE: CARNEVALE / A-4-CPN –03-016

LILLIAN, I AM REITERATING THE CITY OF CARPINTERIA'S ZONING ORDINANCE REQUIREMENT THAT A TWO CAR GARAGE BE PROVIDED WITHIN AN AREA DEFINED BY THE STANDARD FRONT YARD SETBACKS AS PART OF ANY SINGLE FAMILY RESIDENTIAL PROJECT ON THE CARNEVALE SITE.

FURTHERMORE , THE LOCATION OF A GARAGE STRUCTURE AND ITS APPURTENENT BACKOUT DRIVEWAY APRON ON THE SUBJECT SITE IS FURTHER CONSTRAINED BY THE PROXIMITY OF THE INTERSECTION OF ARBOL VERDE STREET AND CONCHA LOMA DRIVE.

THE ABOVE CAN BE CONFIRMED BY PAUL KERMOYIN , DIRECTOR OF THE CITY OF CARPINTERIA'S PLANNING AND DEVELOPMENT DEPARTMENT.

Hochhauser Blatter

ARCHITECTURE AND PLANNING

FAX TRANSMITTAL COVERSHEET

DATE: June 11, 2003
TO: Lillian Ford/ California Coastal Commission

PHONE: 805 585 1800
FAX: 805 641 1732

FROM: Jan Hochhauser
COMPANY: Hochhauser Blatter
PHONE: 805-962-2746
FAX: 805-962-4984

TOTAL PAGES SENT INCLUDING COVER: 2

Lillian, Please find attached letter from City of Carpinteria permitting removal of the drain line and energy dissipater from the ESHA. This in fact makes the only item raising a Substantial Issue in the report practically moot. Please forward to Chuck Daum as discussed.

Thanks, Jan

RECEIVED
JUN 12 2003
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

122 E. ARRELLAGA ST.
SANTA BARBARA, CA
93101
805.962.2746

FR 21.5

CITY of CARPINTERIA, CALIFORNIA

June 11, 2003

Members of the City Council

Richard Weinberg, *Mayor*
Donna Jordan, *Vice Mayor*
J. Bradley Stein
Michael Ledbetter
Gregory Gandrud

Mr. Jan Hochhauser
122 E. Arrellaga Street
S.B. 93101

RE: Carnevale Drainage

Dear Mr. Hochhauser:

In accordance with Condition 67 of City Council Resolution No. 4771, the City Engineer and Biologist have reviewed your proposal to remove the riprap dissipater from the environmentally sensitive habitat area. Your alternate proposal to allow the drainage to be handled by sheet flowing through a bio-swale. has been determined to be an acceptable alternative and consistent with the original approval by the City.

Should you have any questions or comments, please contact me at 684-5405 x414, or Dave Durflinger at 684-5405 x400.

Sincerely,

Bill Hatcher
Principal Planner

C: Dave Durflinger, City Manager
Paul Kermoyan, Community Development Director

5775 CARPINTERIA AVENUE • CARPINTERIA, CALIFORNIA 93013-2697 • (805) 684-5405 • Fax (805) 684-5304

Hochhauser Blatter

ARCHITECTURE AND PLANNING

FAX TRANSMITTAL COVERSHEET

DATE: June 10, 2003
TO: Lillian Ford/ California Coastal Commission

PHONE: 805 585 1800
FAX: 805 641 1732

FROM: Jan Hochhauser
COMPANY: Hochhauser Blatter
PHONE: 805-962-2746
FAX: 805-962-4984

TOTAL PAGES SENT INCLUDING COVER: 4

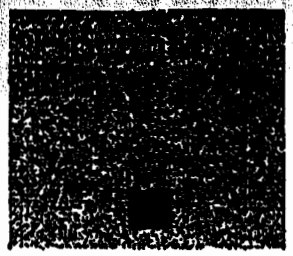
Lillian, Please find my letter which responds to the assertions made by Mr. Trautwein in his May 23 letter to you. I hope it is helpful.

As per our discussion, we are planning on meeting you and Dr. Dixon on the subject site Monday, June 16 @ 8:30 am. It is our understanding that a person representing the appellants will also be present.

Thanks, Jan

RECEIVED
JUN 10 2003
CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

122 E. ARRELLAGA ST.
SANTA BARBARA, CA
93101
805.962.2746
FAX 962.4984



ARCHITECTURE
AND PLANNING

June 9 2003

Lillian Ford
California Coastal Commission
89 S. California Street, Suite 200
Ventura, California 93001
Fax : (805) 641 1729

Re: Appeal no. A-4-CPN-03 -016 / Carnevale

Dear Lillian,

I am writing this letter in response to Mr. Trautwein's May 23 letter where he attempts to assert flaws in Dr. John Dixon's memo and conclusions reached by Coastal Commission staff in their review of the issues concerning this appeal.

As you can well imagine we are pleased that Dr. Dixon's memorandum is consistent with the findings and conclusions reached by the project biologists, Lawrence Hunt and Rachel Tierney, the City's biologist Vince Simenson, the certified EIR prepared for the project and those of both the City of Carpinteria's Planning Commission and its City Council.

This letter is intended to help provide additional support for Staff's findings which are now documented in the report for the Substantial Issue hearing scheduled for June 13.

Size of the Riparian Setback. Mr. Trautwein in the 2nd paragraph of his letter makes mention of the "unusually small riparian setback". I believe it useful to consider the very constrained nature of this property in order to properly evaluate the extent and nature of the setback from riparian vegetation. The current and applicable LCP does not specify any particular setback from riparian vegetation. The LCP does specify a 20 foot setback from the top of bank, and the project more than complies with this. Furthermore, the setback from the edge of riparian vegetation is in fact a rather extensive portion of the site area, the result of which is a residual building footprint [pushed up against the required zoning/ right of way setbacks] which constitutes only 11% of this very small parcel. As it has been said before, there simply is nowhere else to go.

Compliance with LCP Habitat Policies. With regard to Mr. Trautwein's claim that Dr. Dixon's memo fails to consider Policy 2-26 of the Local Coastal Plan, a careful reading of 2-26 leads one directly to section 3.9 for evaluation of policies concerning specific habitat areas. There has never been any dispute that the area of the riparian vegetation is ESHA, and the language of 3.9 would apply. In fact it has been repeatedly referenced in all of the appellant's written appeal forms, letters and memoranda throughout this extraordinarily long process. Furthermore, we completely support Dr. Dixon's conclusions on the basis that this setting is already being significantly impacted by a number of existing factors, all of which are well documented and made plain by a simple visit to the site. The proposed and approved project will serve to ameliorate and in fact eliminate many of these impacts

122 E. ARRELLAGA ST.
SANTA BARBARA
CALIFORNIA
93101
805 962 2746
FAX 962 4984
admin@hharchitects.com
www.hharchitects.com

Removal of Storm Drain and Rock Rip-Rap Energy Dissipator. With regard to the storm drain and rock rip-rap energy dissipater mentioned on page 3 of Mr. Trautwein's letter, we would like you to know that while we disagree with Staff's assertion that this raises a Substantial Issue, we have already made plans to remove this component from the project description. It is worth mentioning, that condition no. 67 of the City's conditions of approval for this project make some provision for relocation of this nominal feature. We do agree with Coastal Commission Staff on the split rail fence and also believe it contributes significantly to control the impacts of human trespass within the ESHA. Its location as a natural extension of the Carpinteria Ave. bridge's guardrail is both logical and effective in its purpose.

I am hopeful that the above is useful to Staff in their evaluation and preparation of a response to Mr. Trautwein's letter. Mr. Trautwein states in the conclusion of his letter that the " evidence clearly shows that the development will adversely affect the ESHA". In point of fact, there is nothing about the evidence submitted that facilitates a rational conclusion that the proposed project will now cross some specific scientific threshold and create significant adverse impacts that violate the policies established in the Local Coastal Plan.

Respectfully,

Jan R. Hochhauser A.I.A.
Project Architect

cc. Commissioners
Dr. John Dixon
Lawrence Hunt
Steve Kaufmann
Louis Carnevale

Hochhauser Blatter

ARCHITECTURE AND PLANNING

FAX TRANSMITTAL COVERSHEET

DATE: May 21, 2003
TO: Lillian Ford/ California Coastal Commission

PHONE: 805 585 1800
FAX: 805 641 1732

RECEIVED
MAY 22 2003
CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

FROM: Jan Hochhauser
COMPANY: Hochhauser Blatter
PHONE: 805-962-2746
FAX: 805-962-4984

TOTAL PAGES SENT INCLUDING COVER: 3

Lillian, Please find alternative plan for storm drainage. In this revision all collected storm water would be run through the filter then across the driveway to a surface swale. A portion of this swale could be vegetated as a bio swale. It would then, following natural topography, leave the property , flow parallel to Concha Loma [in the unimproved right of way], and then across the adjacent property towards the creek.

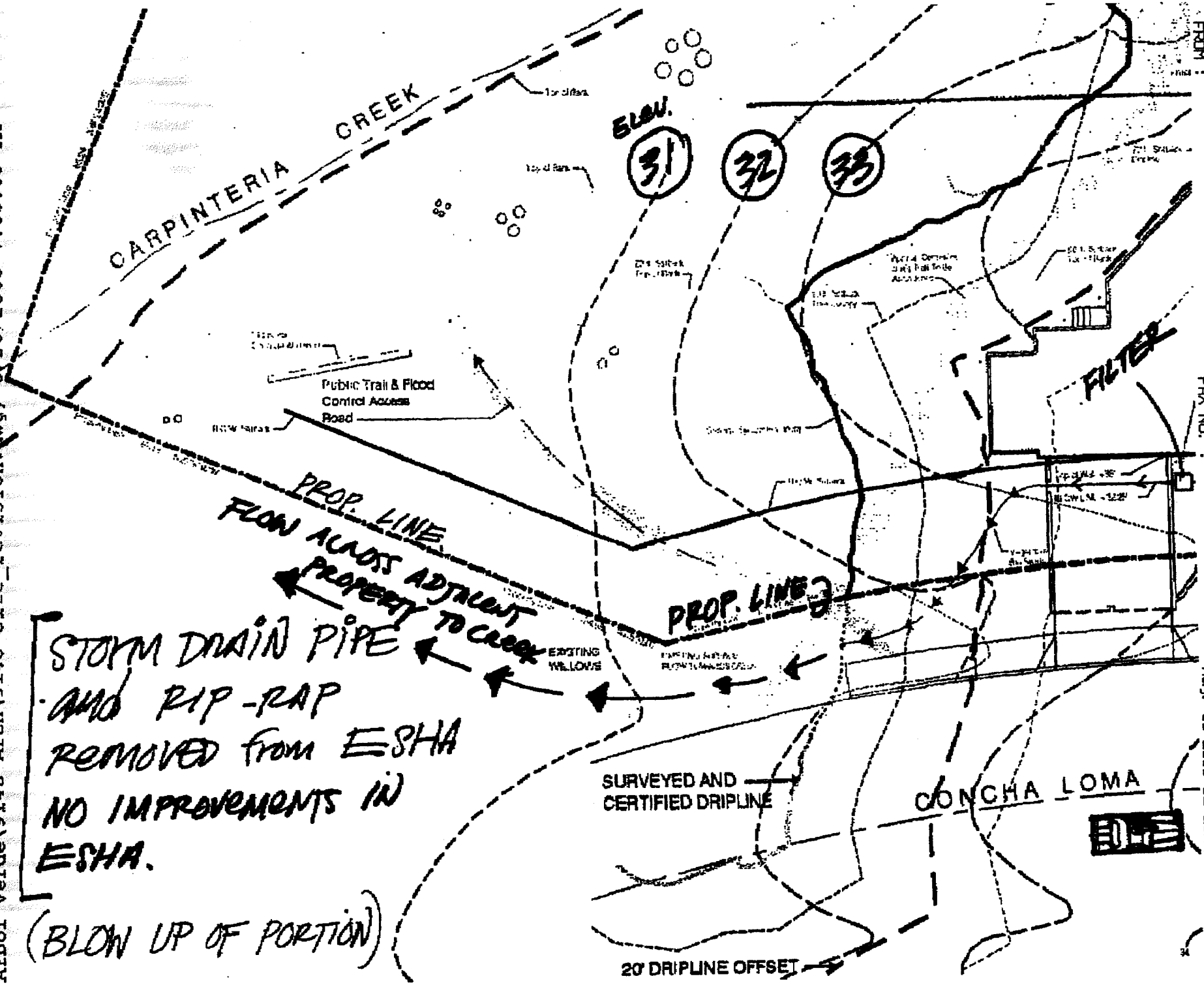
To keep surface flow entirely on the property would require the grading of a swale in the ESHA [*please note the existing contours and the direction water would flow*].

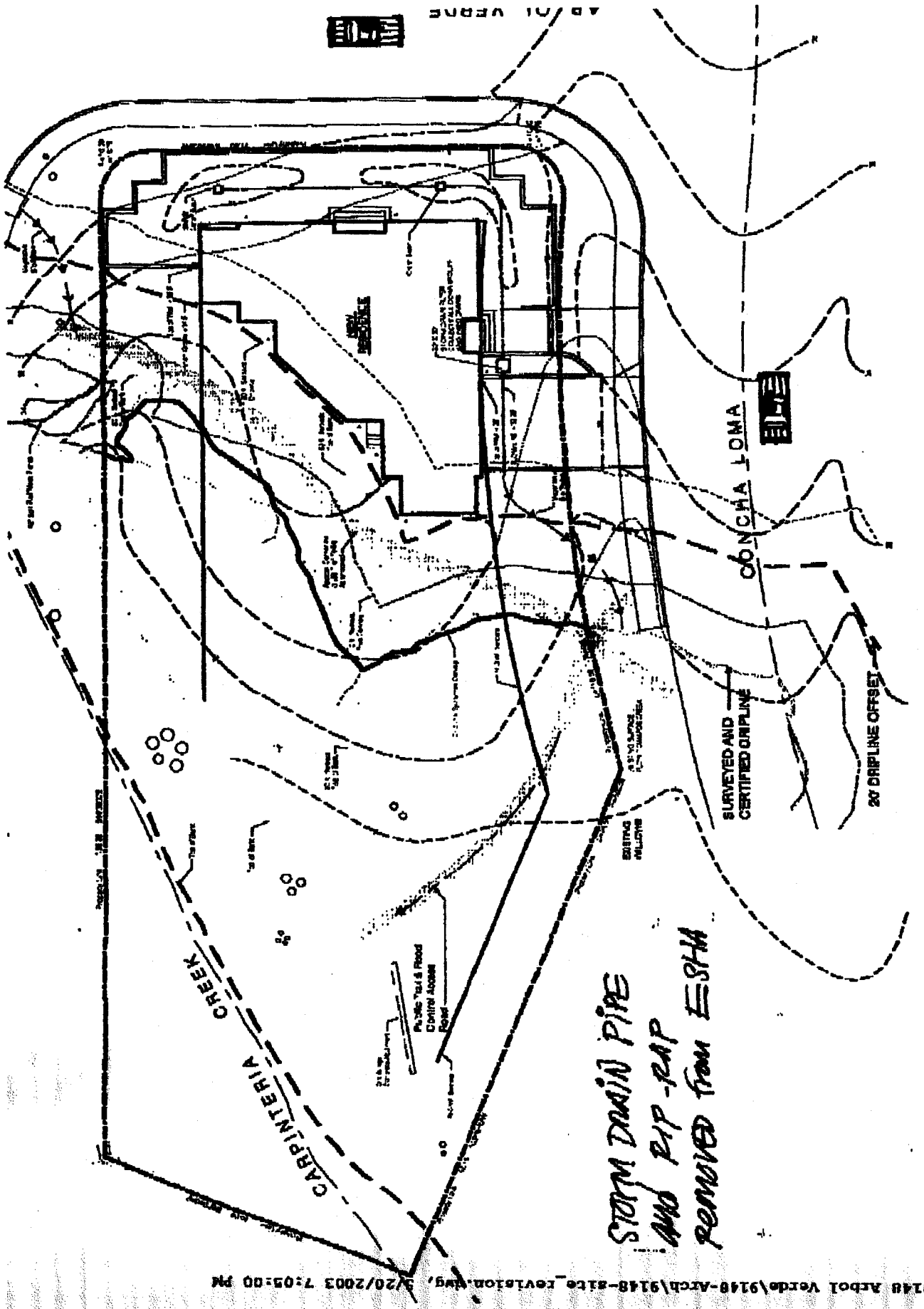
Any other alternative which avoids any disturbance under the dripline would have to deliver storm water to the roadway which I believe would contaminate it before it is ultimately delivered to the creek anyway.

Also, I think it is important to remember that this project is so small that the quantities of storm water are virtually negligible.

Please call to discuss. Thanks, Jan

122 E. ARRELLAGA ST.
SANTA BARBARA, CA
93101
805.962.2746
FAX 962 4984


CARPINTERIA CREEK
ELEV.
31
32
33
Public Trail & Flood Control Access Road
FILTER
PROP. LINE
FLOW ACROSS ADJACENT PROPERTY TO CREEK
PROP. LINE
EXISTING WILLOWS
STORM DRAIN PIPE AND RIP-RAP REMOVED from ESHA
NO IMPROVEMENTS IN ESHA.
(BLOW UP OF PORTION)
SURVEYED AND CERTIFIED DRIPLINE
CONCHA LOMA
20' DRIPLINE OFFSET


CONCHA LOMA
CARPINTERIA CREEK
SURVEYED AND CERTIFIED DRIPLINE
20' DRIPLINE OFFSET
STORM DRAIN PIPE AND RIP-RAP REMOVED FROM ESHA

May 5, 2003

RECEIVED
MAY 12 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Mr. John Dixon
Staff Ecologist / Biologist
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, Ca. 94105-2219

Re: A-4-CPN-03-016 (Louis Carnevale)

Dear Dr. Dixon:

Thank you for taking my call last week. I appreciate your telling me about the letter submitted by Wayne Ferren. I have obtained a copy of the letter and reviewed it with Larry Hunt and Rachel Tierney. I am enclosing a separate report from Larry Hunt, including a graphic and some additional photographs. In addition, I wanted to offer my own thoughts in response to Mr. Ferren's letter.

I am a bit troubled by the inconsistency of opinion offered on the setback issue. It is not clear to me that Mr. Ferren is intimately familiar with the Carnevale site or the development, as approved by the City after wholesale revisions which maximize ESHA protection, while leaving the applicant the most minimal single-family residence that can be built on the remainder of the site.

The first paragraph of Mr. Ferren's letter describes the subject site but notes only the native species that are present. The letter fails to point out that the subject riparian environment is highly degraded and has a number of non-native deleterious species. This is well documented in the EIR prepared for this small residential project, as well as the Staff Report, which noted that the woodland understory is disturbed and contains many non-native species and that a sizeable portion of the property consists of disturbed ruderal grassland. In addition, the lot itself is bordered on three sides by high-traffic volume streets and currently allows uncontrolled pedestrian access to the riparian corridor and Creek.

The second paragraph of Mr. Ferren's letter asserts that "anything less than a 20ft. buffer may compromise the integrity of the riparian vegetation". This is addressed below and also by Larry Hunt. But, again, among other factors, the fact that the integrity of this vegetation is already compromised has been overlooked. This is noted in the EIR, in the context of its conclusion that a smaller, 10-foot setback is adequate: "... Rincon has independently concluded that there would be no significant difference in potential impacts to biological resources between a 10- and 20-foot setback from the riparian dripline. Also, the benefit associated with the extensive habitat restoration proposed onsite more than offsets

the difference in the 10-foot wide strip within the highly disturbed ruderal/annual grassland habitat and the edge of a small willow copse."

It is important to underscore that the LCP does not currently specify any particular dripline setback. The LCP specifies a 20 foot setback from the top of the bank, but, as the Staff Report explains, the project more than exceeds this. While we acknowledged that, generally, larger setbacks are preferable, it is not required on this particular site, given the current degraded nature of the site and other constraints of the site, the close proximity of adjacent roads, the bridge and accompanying vehicular traffic, and the pedestrian footpath that presently runs through the site. It would be difficult to conclude that additional setback (assuming there was even any more room to provide it) would be significantly better than that proposed. Indeed, the project eliminates the impacts of the pedestrian footpath, fully restores the entire zone between the base of the building and the toe of bank, including replacement of all non-native plants with native plants, and controls negative intrusion by human trespass. Also, the building, which has a finished floor about four feet above natural grade, has no useable indoor/outdoor interface on its creek side elevation, and thus serves to buffer the riparian zone from surrounding offsite impacts [the City's conditions of approval prevent any and all development/ utilization between the building and creek]. It is for this reason that the Draft EIR concluded that the project would provide a cumulative beneficial effect on the biology of the setting. As explained in the EIR: ". . . modification/conversion of the disturbed ruderal/grassland habitat would result in a net beneficial effect to the biological resources onsite by replacing low-quality disturbed ruderal/grassland habitat with a higher quality native and non-invasive vegetation that would experience less disturbance."

The third paragraph of Mr. Ferren's letter incorrectly suggests that the City's approval on the basis that the certified dripline was out of date. In fact, the EIR consultant re-established and certified the dripline at the notice of preparation and the nominal growth was acknowledged and discussed when the City denied the appeal and approved the project this year. The letter is also incorrect when it says the current width from dripline is 9-13 ft. The City staff report of January 27 of this year impartially documents the width as 13-19 ft. But, most importantly, this represents only a deminimis part of the riparian vegetation on the property. In fact, the growth of vegetation at issue occurs in only a few limited willow and sycamore branches but, is by no means reflective of the majority of the canopy. It is also worth mentioning, that much of the proposed building footprint is in fact more than 20 feet from the mapped baseline [the building layout is a rational construction of straight lines and angles- this is evident on the site plan graphic] and only some building corners and very limited surfaces approach the setback. This is never addressed by the opponents or by Mr. Ferren, but is explained in the attached letter from

Larry Hunt to provide a better context for the issue. Moreover, the entire understory remains degraded and is subject to continued abuse.

Further, the 3rd paragraph of the letter, Mr. Ferren implies that what the City approved is an ever changing setback from a dynamic dripline. Clearly, this is not the case. The City established a baseline for environmental review and evaluation of the project. The project describes a full blown vegetative riparian restoration and the removal of all non-native species and growth of both the existing and newly planted flora was and is fully anticipated. The project before the Commission today is completely consistent with what was intended both at the time of approval and into the future.

Finally, in both the 2nd and 3rd paragraphs of the letter, Mr. Ferren notes out future standards for setbacks which are proposed to be adopted "where feasible". However, I thought it might be instructive to enclose a letter Mr. Ferren prepared in the Mission Creek / Ortega Street case. There, he opined favorably for the project in spite of a much more significant violation of actual setback from the top of bank. In that case he cited the "overall result of many elements of this project will be the completion of a model for development along Mission Creek, regardless of whatever setbacks might become future policy". It is worth nothing that based on an accurate application of the policy to which he referred, that project encroached to within 11 feet from the top of bank when current policy required a 25-foot setback. The same thinking that led Mr. Ferren to his conclusion regarding the Mission Creek / Ortega matter applies with even more force here. Our subject project, with its many protective and restorative elements as required by the City, is inarguably a model for development along Carpinteria Creek, especially at this constrained urban infill location.

Mr. Ferren's comments about the fence posts seem to ignore their proposed location relative to the existing bridge railing. The idea is that joining the proposed split rail fence to the bridge railing will complete an effective barrier to human intrusion into the restoration and allow it to flourish. It must be reiterated that the bridge and the roadway already exist under the canopy of subject trees. The ground at this location is thoroughly trampled upon, degraded from a habitat standpoint and cannot possibly be impacted by the installation of a few wood posts which serve to protect the habitat.

As recognized by Coastal Commission staff, the storm water generated by this very small project is deminimis and it is run through a filter before being delivered to the creek via a natural rock rip-rap. As stated in the staff report this would improve water quality compared to the alternatives.

Should you have any questions on which we might provide further input, please do not hesitate to contact Larry Hunt or me.

Sincerely,

Jan R. Hochhauser A.I. A.

Enclosures: Letter from Lawrence E. Hunt/attachments

cc: Lawrence E. Hunt / Hunt and Associates
Rachel Tierny / Rachel Tierny Consulting
Lillian Ford w/ enclosures
Louis Carnevale

FERREN LETTER
RE: SUBSTANDARD SETBACKS
ON MISSION CREEK

DISTRIBU TO: DATE: 11/21/02
PLANNING COMMISSION (7)
JAN HUBBELL, SR. PLANNER
STEVE WILEY, ASST. CITY ATTY.
L. CASE PLANNER APPLICANT('S) AGENT
PC SECRETARY

19 November 2002

RECEIVED

NOV 21 2002

CITY OF SANTA BARBARA
PLANNING DIVISION

Mr. Brian Barnwell, Chair
Santa Barbara City Planning Commission
City of Santa Barbara Planning Department
630 Garden Street
Santa Barbara, CA 93101

Dear Chair Barnwell and Commissioners:

I write in support of the application by Susan Van Atta and Ken Radtkey for a determination of consistency with development standards pertaining to Mission Creek, per construction of their residence at 318 W. Ortega Street. I am a member of the City's Creek Restoration and Water Quality Improvement Citizen's Advisory Committee, and I am a University biologist who has studied our local streams and wetlands for over twenty years. I write to you at this time, however, principally as a friend and colleague of Susan and Ken, and as a concerned citizen regarding policy, process, and fairness.

Susan and Ken received permits and began construction on their house in February 2001. They have been unable to complete construction due to issues related to setbacks along Mission Creek, which had previously been determined by City staff as appropriate and consistent with City policy. I am on record at a joint meeting of the Commission and Committee supporting a revision of City policy that would increase the setback to 50 feet from top of creek banks, which is a common standard elsewhere and one with important environmental merit. However, this is not the current policy in Santa Barbara. Because the City issued permits for construction and determined that the location and design of this residence was consistent with policy, and did not cause environmental impacts, it seems that a fair and equitable process has already taken place. In contrast, to halt construction for a period approaching two years since it was initiated is not a sign of reasonable process. Such is the situation the City finds itself in today.

This dilemma might be explainable if the applicants had purposefully violated a City ordinance, but not only have they followed policy and process with staff blessings, Susan and Ken are renowned for their environmental approach to design and development. As award winning professionals, they have made many valuable contributions to this community and are excellent examples of the kind of individuals who will be active participants in the stewardship of Mission Creek and its resources. I am honored to have had the opportunity to participate with them in several local design, restoration, planning, and management projects. They are always exemplary in their attention to environmental sensitivity.

I have examined the parcel in question and the plans for the residence and landscaping. As part of the planned approach, exotic species including a large Blue Gum will be removed and replaced with plants native to the riparian corridor of Mission Creek. Bioswales will be installed to treat roof runoff, and pervious surfaces would be used at various locations on the property. In a related matter, the proposed Mission Creek enhancement project would move the existing channel somewhat toward the opposite bank, providing a greater setback along the creek where the new residence would exist. The overall result of the many elements of this project will be the completion of a model for development along Mission Creek, regardless of whatever setbacks might become future policy.

The staff report recommends approval of the project. Applicants for projects along Mission Creek should be encouraged to use innovative approaches to restore and enhance this urban stream so that future generations will be able to enjoy the areas that are accessible and view the riparian corridor with community pride. New projects should reflect creative design elements such as those employed by Susan and Ken for their residence and landscaping. This project can be the beginning of the long awaited effort to improve the urban reach of this important creek. Furthermore, the attention their application is receiving has focused all interested parties on the need for new, clear, and considerably improved creek policies, as well as a reasonable mechanism to implement them, and a planning process that encourages responsible and environmentally sensitive development.

Thank you for considering my comments. I encourage you to review the application with great sincerity. I think the outcome of approval will be an important step towards creating new standards for development along Santa Barbara's urban creeks. Please contact me if I can be of any assistance in this or related matters.

Sincerely,

Wayne R. Ferren Jr.
120-B W. Islay Street
Santa Barbara, CA 93101
805-569-0649
wrfjr1@cox.net

ENVIRONMENTAL DEFENSE CENTER

RECEIVED
JUL 29 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 25, 2003

Lillian Ford
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Re: Evidence of Inadequate ESHA Setback - Carnevale Residential Project, Carpinteria

Dear Ms. Ford:

The Environmental Defense Center (EDC) represents the Carpinteria Creek Foundation (CCF) in its efforts to protect the City of Carpinteria's largest stream and last remaining steelhead run. CCF appealed the City's approval of the Carnevale Residential Project because the project, located only 10-feet from the riparian ESHA, would significantly degrade the riparian habitat and creek in violation of the LCP and Coastal Act.

Four reputable biologists retained by CCF concur that the setback would have to be increased from the current 10 feet to at least 20 feet from the ESHA dripline to sufficiently protect the ESHA as required by the LCP and Coastal Act. (Wayne Ferren, April 4, 2003; Mark Holmgren, April 14, 2002; Darlene Chirman, March 26, 2003; Dr. Thelma Schmidhauser, October 29, 2002)

In addition, the project's EIR, certified this year, supports CCF's position that the setback violates the LCP and Coastal Act. The EIR concludes that:

> "Unless the building setback from the edge of the Carpinteria Creek riparian canopy is increased to 20 feet or more, the impact to riparian resources is considered Class I, unavoidably significant." (See attached EIR pages 4.4-15 – 4.4-19.)

In fact, the recently updated Carpinteria City LCP, approved by the Coastal Commission (awaiting final implementation by the City) will require new developments to be set back a minimum of 50 feet from the top of adjacent creek banks or from the edge of the adjacent riparian vegetation, whichever is greater.

As mapped for the Commission on July 2, 2003, the project is located only 10 feet from the creek's riparian canopy ESHA. Given the EIR's and biologists' conclusion, the setback approved by the City is inadequate to avoid a significant impact, and this violates Coastal Act Section 30240(b) (incorporated into the LCP by LCP Policy 1-1), which requires developments to be sited and designed such that they will not cause *significant* disruption of an ESHA.

906 Garden Street, Santa Barbara, CA 93101 Phone (805) 963-1622 FAX (805) 962-3152
2021 Sperry Avenue, Suite 18, Ventura, CA 93003 Phone (805) 677-2570 FAX (805) 677-2577
www.edcnet.org
Printed on Recycled Paper

The LCP is even stronger than Section 30240(b) of the Coastal Act as noted in previous correspondence (EDC letter dated July 9, 2003). Policy 2-26 plainly requires that new development be set back from habitat areas far enough to avoid any *adverse* impact. The standard of review is the stricter LCP. However, even if the standard required avoidance of significant impacts, the project should be denied or moved away from the ESHA by at least an additional 10 feet because the evidence illustrates that the project will also result in *significant* adverse impacts to the ESHA.

Sincerely,

Brian Trautwein

Brian Trautwein
Environmental Analyst

cc: California Coastal Commission
Carpinteria Creek Foundation

Printed on 100% Post-consumer Recycled Paper

necessary, a subsequent arborist report shall be submitted to the City to certify completion of work;

10) Contingency planning (if the effort fails to reach the performance criteria, identify the remediation steps need to be taken); and
11) Irrigation method/schedule (identify how much water is needed, where, and for how long).

As discussed in detail in Section 4.3, *Hydrology and Water Quality*, and above in Measure B-1(a), use of Best Management Practices (BMPs) would be required in order to minimize impacts to surface water quality, and thus common and special-status vegetation and wildlife, within the adjacent Carpinteria Creek. No additional mitigation for secondary impacts to water quality is required.

The following mitigation is recommended to reduce impacts to the extent feasible associated with use of invasive nonnative species in the landscape palette.

BIO-1(b) No species identified as invasive on the CNPS, Channel Islands Chapter *Invasive Plants List* (1997) shall be utilized in the restoration landscape plans and all landscaping plans shall be prepared and approved by the City.

Significance After Mitigation. Less than significant.

Impact BIO-2 **Project implementation would affect existing riparian habitat onsite, which is considered an Environmentally Sensitive Habitat (ESH) by the City of Carpinteria. CDFG jurisdictional areas within the ESH would also be affected. Unless the building setback from the edge of the Carpinteria Creek riparian canopy is increased to 20 feet or more, the impact to riparian resources is considered Class I, *unavoidably significant*.**

According to Policy 9-15 of the certified City of Carpinteria Coastal Plan (1980), to protect biological resources associated with creeks, the minimum setback for structures along natural drainages is 20 feet as measured from the top of bank. Using the criteria identified in this policy and Chapter 14.42 of the Carpinteria Municipal Code, City staff recommended a more conservative setback of approximately 10 feet beyond the existing riparian dripline in order to avoid impacts to biological productivity, water quality, and hydrology. As a result, the proposed residence would be located on average 47 feet from the top of bank, and range from approximately 27 to 110 feet from the top of bank. Near Carpinteria Avenue the 10-foot setback from the riparian dripline excludes a small willow copse located in the northeast portion of the project site in order to account for the irregular shape of the parcel (Semenson, 2001).

There has been some controversy regarding the adequacy of the 10-foot setback from riparian dripline to protect biological resources within the ESH onsite. Some of the expert opinions received on the Mitigated Negative Declaration for the proposed project have suggested that an increased setback from the creek is required to adequately protect the biological resources onsite (Chirman, May 2001; EDC, June 2001; Carpinteria Creek Foundation, June 2001; and also public

comments, please see Appendix B). Specifically, Darlene Chirman, Biologist retained by the Carpinteria Creek Foundation stated in a letter dated May 29, 2001 that a 50-foot buffer from the creek top-of-bank or a 20-foot buffer from the riparian dripline, including the willow copse, would be required to avoid significant impacts to biological resources onsite. The EDC has reiterated this recommendation, based in part on Chirman's findings. Other expert opinions (Hunt, June 2001; Semonsen, June 2001; Tierney, June 2001) on the potential project impacts to biological resources onsite have concluded that the setback proposed by the City is not significantly different compared to the 10-foot riparian dripline buffer and that the proposed project would be generally beneficial to biological resources within the ESH due to the habitat restoration and decreased public access. These same opinions were reiterated in comments on the Draft EIR.

Pursuant to Local Coastal Plan policy 9-15, the minimum 20 foot buffer strip from natural streams may be adjusted based on 1) soil type and stability of the stream corridor; 2) how surface water filters into the ground; 3) types and amount or riparian vegetation and how such vegetation contributes to soil stability and habitat value; 4) slopes of the land on either side of the stream; and 5) location of the 100-year flood plain boundary. Although several biologists have stated that a 10-foot buffer from the edge of the riparian canopy would avoid significant impacts to the ESH, evidence submitted into the record reveals that a greater setback is needed. Ms. Darlene Chirman, a conservation biologist, submitted a May 29, 2001 letter which states that a 20-foot setback is necessary to avoid significant indirect impacts to the ESH. This is because 25 to 30 feet of the existing riparian vegetation extends beyond the creek's top of bank, the creek is a sensitive resource, and most of the site is located within a 100-year flood plain. Ms. Chirman also states that a 20-foot setback is required to provide protection from disturbance to riparian vegetation and its wildlife inhabitants, and to allow for biofiltration of run-off to protect the water quality of the creek.

Ms. Chirman's position is also supported by Ms. Thelma Schmidhauser, Ph.D., who has also stated that a 20-foot setback from the riparian vegetation is needed to protect the important feeder roots and root hairs that extend well beyond the dripline of the trees. Her May 29, 2002 letter also states that 20 feet should be the minimum setback from the dripline, including the willows, to avoid a significant impact to the trees and riparian habitat.

Finally, Mr. Mark Holmgren, biologist, noted in his April 14, 2002 letter that the project site is home to numerous migratory birds. According to Mr. Holmgren, placement of structures within 10 feet of the riparian dripline would eliminate much of the much needed support function currently provided to the riparian habitat. Mr. Holmgren also states that placement of structures as currently proposed would deflect runoff to the creek, thereby increasing erosion potential and disrupting riparian root systems. Mr. Homgren concludes that the 20 foot from dripline setback proposed in Alternative 3 is appropriate.

Based upon this expert testimony, it has been determined that the proposed 10-foot setback from the riparian canopy is inadequate to avoid potentially significant impacts to the riparian corridor and that a 20-foot setback from the riparian canopy is needed to avoid these significant impacts. Therefore, outside of increasing the building setback to 20 feet from the edge of the riparian canopy, the project's impact to the creek and associated ESH is classified as unavoidably significant. It should be noted that Section 6.0, *Alternatives*, presents a project alternative

(Alternative 3) that provides a 20-foot from dripline setback that would avoid this significant impact.

A second controversy of the proposed project is whether the proposed setback is in conformance with the existing City ESH policies. This issue is discussed in detail in Section, 4.1, *Land Use and Policy Consistency*. It should be noted that the City approved an updated and combined General Plan (GP) and Local Coastal Plan (LCP) in April 2001, but it is currently under review by the Coastal Commission and therefore not formally in effect. The 2001 GP/LCP identifies Implementation Measure 23 under Objective OSC-6, which would require a setback of 50 feet from top of creek bank or from the riparian dripline, whichever is greater. As the updated GP/LCP has not yet received approval from the California Coastal Commission, the 1986 General Plan and 1980 Local Coastal Plan are still the governing documents in the City. The proposed 10-foot setback from the riparian dripline exceeds the minimum setback requirement of the 1980 LCP; however, because it has been determined that the project may have unavoidably significant impacts to the creek, the project could be considered inconsistent with the LCP objectives of protecting riparian resources.

As discussed in the Setting, much of the riparian habitat onsite within the ESH is degraded due to the large expanse of exotic species in the understory. Project development would modify approximately 10,574 square feet of this area by restoring the disturbed riparian woodland habitat east of the existing flood control access and south of Carpinteria Creek from the toe of the southern bank to the edge of the riparian dripline. This would include areas along the bank of Carpinteria Creek within the jurisdiction of CDFG, but outside of the Corps jurisdictional areas within the creek bed. Restoration of the existing degraded riparian habitat would increase the quality of onsite vegetation as wildlife habitat. However, as discussed above, it has been determined that the improvement in habitat value associated with the proposed restoration program would not offset the negative effects associated with the proposed minimum 10-feet from riparian dripline structural setback.

The restoration of riparian areas could result in potential secondary impacts to biological resources onsite similar to those described under Impact Measure BIO-1. This could occur through direct disturbance of existing native vegetation during restoration, construction of the stormwater facilities, or misapplication of herbicide. Nesting and foraging of special-status birds onsite could be directly affected during restoration activities. Temporary construction impacts to riparian habitats, jurisdictional areas, and special status wildlife within Carpinteria Creek could potentially occur through impacts to surface water quality both onsite and downstream as a result of soil disturbance and subsequent erosion. Inclusion of invasive nonnative plant species in the palette for the landscaped areas could also result in long-term indirect impacts to riparian areas.

Several infrastructure elements have been proposed either within or adjacent to the ESH to control the quality and velocity of storm water running into Carpinteria Creek (refer to Figure 2-6 in Section 2.0, *Project Description*). All are located outside of the creek top of bank. As discussed in more detail in Section 4.3, *Hydrology and Water Quality*, these elements include a bioswale located along the eastern portion of the site that is intended to capture stormwater that currently flows off of Carpinteria Avenue, onto the project site, and down into Carpinteria Creek. A filter system has been proposed adjacent to and down gradient from the proposed driveway off of Concha Loma

Drive and would filter contaminants that would collect in this area and could runoff into the ESH during storm events. An energy dissipater consisting of a three foot wide by five foot long pile of rock riprap would be located at the terminus of the filter's outfall pipe positioned near the eastern edge of the project site within the ESH. The dissipater would slow the speed of water exiting the pipe and thereby minimize erosion of onsite soils, and thus the release of sediments into Carpinteria Creek. As a result, secondary impacts to riparian vegetation, jurisdictional areas, and common and special-status biological resources associated with the proposed stormwater infrastructure would be reduced to a less than significant level.

Mitigation Measures. Mitigation Measure BIO-1(a) above requires City approval of the restoration/landscape/grading plans prior to project development. CDFG is anticipated to require a Streambed Alteration Agreement for restoration activities within their jurisdiction. Implementation of the recommendations of the City and CDFG would reduce direct and indirect impacts to biological resources within the ESH to the degree feasible.

The following mitigation would be required to reduce potential impacts during construction on special-status bird species that may utilize the existing riparian areas onsite.

BIO-2(a) **Special-Status Birds.** Restoration activities within the riparian areas onsite shall occur between November 1st and April 15th in order to avoid impacts to special-status birds such as the Cooper's hawk, yellow warbler, sharp-shinned hawk, white tailed kite, western yellow-billed cuckoo, least Bell's vireo, and southwestern willow flycatcher that may breed or forage onsite during nesting or migration periods.

Secondary impacts to native riparian habitat and associated special-status wildlife could potentially occur during the placement of the energy dissipater and associated storm drain within the ESH. Although these structures are anticipated to be placed so that they do not disturb existing vegetation and associated wildlife, mitigation is provided to minimize the potential for impacts during construction.

BIO-2(b) **Construction Scheduling.** The portions of the stormwater infrastructure proposed to be located within the ESH shall be installed between August 16th and February 28th in order to avoid impacts to special-status birds such as the Cooper's hawk, yellow warbler, sharp-shinned hawk white tailed kite, western yellow-billed cuckoo, least Bell's vireo, and southwestern willow flycatcher that may breed or forage onsite during nesting or migration periods. If construction activities cannot avoid the breeding bird season, nest surveys shall be conducted and active nests shall be avoided with a minimum buffer as determined by a biological monitor.

BIO-2(c) **Infrastructure Installation.** Installation of the proposed stormwater infrastructure shall avoid impacting mature native shrubs and trees within the ESH, including tree roots. When feasible, rocks and other material shall be hand placed in order to minimize impacts. Areas of ground disturbance shall be revegetated using native plants as outlined in the restoration/landscape plan to be reviewed and approved by the City.

BIO-2(d) **Lighting.** The proposed project shall utilize low-pressure sodium outdoor lighting. Outdoor lights shall be shielded and hooded to prevent light spillover into the riparian corridor.

The potential secondary impacts of the inclusion of invasive species within the restoration/ landscape palette would be mitigated by Measure BIO-1(b) above. No additional mitigation is required.

Significance After Mitigation. The mitigation outlined above would reduce the project's direct and indirect impacts to biological resources onsite due to alteration of riparian habitat within the ESH to the degree feasible given the design and siting of the proposed structure. However, it has been determined that, outside of the increasing the building setback to 20 feet or more from the edge of the riparian canopy, the project's impact to the biological resources of Carpinteria Creek, including riparian tree species, would remain unavoidably significant. It should again be noted that Alternative 3 in Section 6.0 would avoid this significant impact by increasing the building setback to a minimum of 20 feet from the edge of the riparian canopy.

c. Cumulative Impacts. The proposed project would include the removal of nonnative plant species, reduction in ESH access, maintenance of a setback, and the planting of additional native vegetation. These changes could improve the quality of habitat for common and special-status vegetation and wildlife onsite. Although the project proposal includes elements that may improve the quality of the habitat, the location of the development at 10 feet from the edge of the riparian habitat would have the potential to significantly affect biological resources. Outside of increasing the building setback to a minimum of 20 feet from the edge of the Carpinteria Creek riparian canopy, the project would have unavoidably significant impacts to riparian biological resources. However, no other developments are currently proposed along Carpinteria Creek and it is anticipated that future development would be required to comply with City creek setback policies, including the 50-foot setback requirement of Implementation Measure 23. Therefore, significant cumulative impacts to the creek are not anticipated.

906 Garden Street
Santa Barbara, CA 93101
Phone (805) 963-1622
FAX (805) 962-3152
edc@edcnet.org

2021 Sperry Avenue, Suite 18
Ventura, CA 93003
Phone (805) 677-2570
FAX (805) 677-2577
edcvent@west.net

ENVIRONMENTAL DEFENSE CENTER

RECEIVED
JUL 23 2003
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

www.edcnet.org

FAX TRANSMISSION COVER SHEET

DATE 7/23/03 TIME 4:00 # of PAGES including cover 6

TO: Lillian Ford
FAX # 641 ~~729~~ 1732
PHONE #

FROM: Brian Trautwein
FAX # (805) 962-3152
PHONE # (805) 963-1622 ext.

MESSAGE: Please note & refer to in staff report - EIR concludes 20' setback needed to avoid subst. impact to ESHA. Dripline has moved, but scientific justification for 20-foot dripline setback remains valid. - BT

PRIVACY NOTICE

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable state or federal law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

If you receive this communication in error, please notify us immediately and return the original message to us via regular U.S. Mail. You will be reimbursed for any expenses incurred in returning this message.

IF DOCUMENT IS NOT RECEIVED COMPLETE AND IN GOOD CONDITION, PLEASE CALL (805) 963-1622 AS SOON AS POSSIBLE.

necessary, a subsequent arborist report shall be submitted to the City to certify completion of work;

10) Contingency planning (if the effort fails to reach the performance criteria, identify the remediation steps need to be taken); and

11) Irrigation method/schedule (identify how much water is needed, where, and for how long).

As discussed in detail in Section 4.3, *Hydrology and Water Quality*, and above in Measure B-1(a), use of Best Management Practices (BMPs) would be required in order to minimize impacts to surface water quality, and thus common and special-status vegetation and wildlife, within the adjacent Carpinteria Creek. No additional mitigation for secondary impacts to water quality is required.

The following mitigation is recommended to reduce impacts to the extent feasible associated with use of invasive nonnative species in the landscape palette.

BIO-1(b) No species identified as invasive on the CNPS, Channel Islands Chapter *Invasive Plants List* (1997) shall be utilized in the restoration landscape plans and all landscaping plans shall be prepared and approved by the City.

Significance After Mitigation. Less than significant.

Impact BIO-2 **Project implementation would affect existing riparian habitat onsite, which is considered an Environmentally Sensitive Habitat (ESH) by the City of Carpinteria. CDFG jurisdictional areas within the ESH would also be affected. Unless the building setback from the edge of the Carpinteria Creek riparian canopy is increased to 20 feet or more, the impact to riparian resources is considered Class I, *unavoidably significant*.**

According to Policy 9-15 of the certified City of Carpinteria Coastal Plan (1980), to protect biological resources associated with creeks, the minimum setback for structures along natural drainages is 20 feet as measured from the top of bank. Using the criteria identified in this policy and Chapter 14.42 of the Carpinteria Municipal Code, City staff recommended a more conservative setback of approximately 10 feet beyond the existing riparian dripline in order to avoid impacts to biological productivity, water quality, and hydrology. As a result, the proposed residence would be located on average 47 feet from the top of bank, and range from approximately 27 to 110 feet from the top of bank. Near Carpinteria Avenue the 10-foot setback from the riparian dripline excludes a small willow copse located in the northeast portion of the project site in order to account for the irregular shape of the parcel (Semenson, 2001).

There has been some controversy regarding the adequacy of the 10-foot setback from riparian dripline to protect biological resources within the ESH onsite. Some of the expert opinions received on the Mitigated Negative Declaration for the proposed project have suggested that an increased setback from the creek is required to adequately protect the biological resources onsite (Chirman, May 2001; EDC, June 2001; Carpinteria Creek Foundation, June 2001; and also public

comments, please see Appendix B). Specifically, Darlene Chirman, Biologist retained by the Carpinteria Creek Foundation stated in a letter dated May 29, 2001 that a 50-foot buffer from the creek top-of-bank or a 20-foot buffer from the riparian dripline, including the willow copse, would be required to avoid significant impacts to biological resources onsite. The EDC has reiterated this recommendation, based in part on Chirman's findings. Other expert opinions (Hunt, June 2001; Semonsen, June 2001; Tierney, June 2001) on the potential project impacts to biological resources onsite have concluded that the setback proposed by the City is not significantly different compared to the 10-foot riparian dripline buffer and that the proposed project would be generally beneficial to biological resources within the ESH due to the habitat restoration and decreased public access. These same opinions were reiterated in comments on the Draft EIR.

Pursuant to Local Coastal Plan policy 9-15, the minimum 20 foot buffer strip from natural streams may be adjusted based on 1) soil type and stability of the stream corridor; 2) how surface water filters into the ground; 3) types and amount or riparian vegetation and how such vegetation contributes to soil stability and habitat value; 4) slopes of the land on either side of the stream; and 5) location of the 100-year flood plain boundary. Although several biologists have stated that a 10-foot buffer from the edge of the riparian canopy would avoid significant impacts to the ESH, evidence submitted into the record reveals that a greater setback is needed. Ms. Darlene Chirman, a conservation biologist, submitted a May 29, 2001 letter which states that a 20-foot setback is necessary to avoid significant indirect impacts to the ESH. This is because 25 to 30 feet of the existing riparian vegetation extends beyond the creek's top of bank, the creek is a sensitive resource, and most of the site is located within a 100-year flood plain. Ms. Chirman also states that a 20-foot setback is required to provide protection from disturbance to riparian vegetation and its wildlife inhabitants, and to allow for biofiltration of run-off to protect the water quality of the creek.

Ms. Chirman's position is also supported by Ms. Thelma Schmidhauser, Ph.D., who has also stated that a 20-foot setback from the riparian vegetation is needed to protect the important feeder roots and root hairs that extend well beyond the dripline of the trees. Her May 29, 2002 letter also states that 20 feet should be the minimum setback from the dripline, including the willows, to avoid a significant impact to the trees and riparian habitat.

Finally, Mr. Mark Holmgren, biologist, noted in his April 14, 2002 letter that the project site is home to numerous migratory birds. According to Mr. Holmgren, placement of structures within 10 feet of the riparian dripline would eliminate much of the much needed support function currently provided to the riparian habitat. Mr. Holmgren also states that placement of structures as currently proposed would deflect runoff to the creek, thereby increasing erosion potential and disrupting riparian root systems. Mr. Homgren concludes that the 20 foot from dripline setback proposed in Alternative 3 is appropriate.

Based upon this expert testimony, it has been determined that the proposed 10-foot setback from the riparian canopy is inadequate to avoid potentially significant impacts to the riparian corridor and that a 20-foot setback from the riparian canopy is needed to avoid these significant impacts. Therefore, outside of increasing the building setback to 20 feet from the edge of the riparian canopy, the project's impact to the creek and associated ESH is classified as unavoidably significant. It should be noted that Section 6.0, *Alternatives*, presents a project alternative

(Alternative 3) that provides a 20-foot from dripline setback that would avoid this significant impact.

A second controversy of the proposed project is whether the proposed setback is in conformance with the existing City ESH policies. This issue is discussed in detail in Section, 4.1, *Land Use and Policy Consistency*. It should be noted that the City approved an updated and combined General Plan (GP) and Local Coastal Plan (LCP) in April 2001, but it is currently under review by the Coastal Commission and therefore not formally in effect. The 2001 GP/LCP identifies Implementation Measure 23 under Objective OSC-6, which would require a setback of 50 feet from top of creek bank or from the riparian dripline, whichever is greater. As the updated GP/LCP has not yet received approval from the California Coastal Commission, the 1986 General Plan and 1980 Local Coastal Plan are still the governing documents in the City. The proposed 10-foot setback from the riparian dripline exceeds the minimum setback requirement of the 1980 LCP; however, because it has been determined that the project may have unavoidably significant impacts to the creek, the project could be considered inconsistent with the LCP objectives of protecting riparian resources.

As discussed in the Setting, much of the riparian habitat onsite within the ESH is degraded due to the large expanse of exotic species in the understory. Project development would modify approximately 10,574 square feet of this area by restoring the disturbed riparian woodland habitat east of the existing flood control access and south of Carpinteria Creek from the toe of the southern bank to the edge of the riparian dripline. This would include areas along the bank of Carpinteria Creek within the jurisdiction of CDFG, but outside of the Corps jurisdictional areas within the creek bed. Restoration of the existing degraded riparian habitat would increase the quality of onsite vegetation as wildlife habitat. However, as discussed above, it has been determined that the improvement in habitat value associated with the proposed restoration program would not offset the negative effects associated with the proposed minimum 10-feet from riparian dripline structural setback.

The restoration of riparian areas could result in potential secondary impacts to biological resources onsite similar to those described under Impact Measure BIO-1. This could occur through direct disturbance of existing native vegetation during restoration, construction of the stormwater facilities, or misapplication of herbicide. Nesting and foraging of special-status birds onsite could be directly affected during restoration activities. Temporary construction impacts to riparian habitats, jurisdictional areas, and special status wildlife within Carpinteria Creek could potentially occur through impacts to surface water quality both onsite and downstream as a result of soil disturbance and subsequent erosion. Inclusion of invasive nonnative plant species in the palette for the landscaped areas could also result in long-term indirect impacts to riparian areas.

Several infrastructure elements have been proposed either within or adjacent to the ESH to control the quality and velocity of storm water running into Carpinteria Creek (refer to Figure 2-6 in Section 2.0, *Project Description*). All are located outside of the creek top of bank. As discussed in more detail in Section 4.3, *Hydrology and Water Quality*, these elements include a bioswale located along the eastern portion of the site that is intended to capture stormwater that currently flows off of Carpinteria Avenue, onto the project site, and down into Carpinteria Creek. A filter system has been proposed adjacent to and down gradient from the proposed driveway off of Concha Loma

Drive and would filter contaminants that would collect in this area and could runoff into the ESH during storm events. An energy dissipater consisting of a three foot wide by five foot long pile of rock riprap would be located at the terminus of the filter's outfall pipe positioned near the eastern edge of the project site within the ESH. The dissipater would slow the speed of water exiting the pipe and thereby minimize erosion of onsite soils, and thus the release of sediments into Carpinteria Creek. As a result, secondary impacts to riparian vegetation, jurisdictional areas, and common and special-status biological resources associated with the proposed stormwater infrastructure would be reduced to a less than significant level.

Mitigation Measures. Mitigation Measure BIO-1(a) above requires City approval of the restoration/landscape/grading plans prior to project development. CDFG is anticipated to require a Streambed Alteration Agreement for restoration activities within their jurisdiction. Implementation of the recommendations of the City and CDFG would reduce direct and indirect impacts to biological resources within the ESH to the degree feasible.

The following mitigation would be required to reduce potential impacts during construction on special-status bird species that may utilize the existing riparian areas onsite.

BIO-2(a) **Special-Status Birds.** Restoration activities within the riparian areas onsite shall occur between November 1st and April 15th in order to avoid impacts to special-status birds such as the Cooper's hawk, yellow warbler, sharp-shinned hawk, white tailed kite, western yellow-billed cuckoo, least Bell's vireo, and southwestern willow flycatcher that may breed or forage onsite during nesting or migration periods.

Secondary impacts to native riparian habitat and associated special-status wildlife could potentially occur during the placement of the energy dissipater and associated storm drain within the ESH. Although these structures are anticipated to be placed so that they do not disturb existing vegetation and associated wildlife, mitigation is provided to minimize the potential for impacts during construction.

BIO-2(b) **Construction Scheduling.** The portions of the stormwater infrastructure proposed to be located within the ESH shall be installed between August 16th and February 28th in order to avoid impacts to special-status birds such as the Cooper's hawk, yellow warbler, sharp-shinned hawk white tailed kite, western yellow-billed cuckoo, least Bell's vireo, and southwestern willow flycatcher that may breed or forage onsite during nesting or migration periods. If construction activities cannot avoid the breeding bird season, nest surveys shall be conducted and active nests shall be avoided with a minimum buffer as determined by a biological monitor.

BIO-2(c) **Infrastructure Installation.** Installation of the proposed stormwater infrastructure shall avoid impacting mature native shrubs and trees within the ESH, including tree roots. When feasible, rocks and other material shall be hand placed in order to minimize impacts. Areas of ground disturbance shall be revegetated using native plants as outlined in the restoration/landscape plan to be reviewed and approved by the City.

BIO-2(d) **Lighting.** The proposed project shall utilize low-pressure sodium outdoor lighting. Outdoor lights shall be shielded and hooded to prevent light spillover into the riparian corridor.

The potential secondary impacts of the inclusion of invasive species within the restoration/ landscape palette would be mitigated by Measure BIO-1(b) above. No additional mitigation is required.

Significance After Mitigation. The mitigation outlined above would reduce the project's direct and indirect impacts to biological resources onsite due to alteration of riparian habitat within the ESH to the degree feasible given the design and siting of the proposed structure. However, it has been determined that, outside of the increasing the building setback to 20 feet or more from the edge of the riparian canopy, the project's impact to the biological resources of Carpinteria Creek, including riparian tree species, would remain unavoidably significant. It should again be noted that Alternative 3 in Section 6.0 would avoid this significant impact by increasing the building setback to a minimum of 20 feet from the edge of the riparian canopy.

c. Cumulative Impacts. The proposed project would include the removal of nonnative plant species, reduction in ESH access, maintenance of a setback, and the planting of additional native vegetation. These changes could improve the quality of habitat for common and special-status vegetation and wildlife onsite. Although the project proposal includes elements that may improve the quality of the habitat, the location of the development at 10 feet from the edge of the riparian habitat would have the potential to significantly affect biological resources. Outside of increasing the building setback to a minimum of 20 feet from the edge of the Carpinteria Creek riparian canopy, the project would have unavoidably significant impacts to riparian biological resources. However, no other developments are currently proposed along Carpinteria Creek and it is anticipated that future development would be required to comply with City creek setback policies, including the 50-foot setback requirement of Implementation Measure 23. Therefore, significant cumulative impacts to the creek are not anticipated.

ENVIRONMENTAL DEFENSE CENTER

RECEIVED
JUL 1 8 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

July 15, 2003

Lillian Ford
California Coastal Commission
89 S. California Street
Ventura, CA 93001

Re: Carnevale Residential; Map of Current Buffer and Depiction of Willow Trees

Dear Lillian,

As a follow up to our conversation during the July 11 2003 site visit, please find the enclosed map of the horizontal willow trunks at the Carnevale site. The map was prepared by Bob Hansen of the Carpinteria Creek Foundation. This depiction of the willow trunks is overlaid upon a copy of map provided on July 11, 2003 by Jan Hochhauser, the applicant's representative.

Please note that the two largest willows that create the riparian ESHA dripline are significant in size: approximately 35 - 45 feet from their trunks to their dripline location. This is worth noting because during the July 2, 2003 site visit, Mr. Hochhauser attempted to characterize the willow vegetation that constitutes the area where the dripline has grown out since the site was last mapped in 1999 as insignificant. On the contrary, this vegetation constitutes the current baseline conditions and represents the outer edge of the ESHA. Moreover, these willows are not small saplings growing near the riparian dripline. They are significant horizontally-growing trees rooted on and near the top of the bank approximately 35 to 45 feet from their dripline.

In addition, these willows have been pruned various times in recent years, including a documented pruning by City staff that was later acknowledged as a mistake by the City. These incidents have reduced the extent of the dripline. Nonetheless, as depicted on the enclosed map, the willows are significant trees and important portions of the riparian ESHA.

In an April 14, 2002 letter to the City of Carpinteria regarding this project, one of the Creek Foundation's four biologists, Mark Holmgren, characterizes the outer edge of the Carpinteria Creek riparian habitat as important for birds including the Willow Flycatcher. This "ecotone" environment – the edge of the riparian corridor - is essential for ecosystem support and to support birds such as the Willow Flycatcher. Thus, the outer edge of the current riparian ESHA should not be characterized as insignificant.

Sincerely,

Brian Trautwein

Brian Trautwein,
Environmental Analyst

906 Garden Street, Santa Barbara, CA 93101 Phone (805) 963-1622 FAX (805) 962-3152
2021 Sperry Avenue, Suite 18, Ventura, CA 93003 Phone (805) 677-2570 FAX (805) 677-2577
www.edcnet.org

Printed on Recycled Paper

RECEIVED
JUL 16 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

ENVIRONMENTAL DEFENSE CENTER

July 9, 2003

Lillian Ford
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001-2801

Re: Carnevale Residential Project, Santa Barbara Co. (Appeal No. A-4-CPN-03-016); Interpretation of Policy 2-26

Dear Ms. Ford:

The Environmental Defense Center represents the Carpinteria Creek Foundation ("CCF") in its appeal of the Carnevale Residential Project in the City of Carpinteria ("City"). This appeal is based in part on an inadequate setback from the riparian habitat of Carpinteria Creek, the City's largest and most ecologically important stream.

In June 2003, the Commission found that CCF's appeal raised a substantial issue with regards to the development of a storm drain in the ESHA, but found CCF did not raise a substantial issue with regards to the inadequacy of the buffer pursuant to the City's LCP Policy 2-26. Specifically, Policy 2-26 states that

> All development...adjacent to areas designated on the land use plan maps as habitat areas...or contiguous to coastal waters, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measures include but are not limited to setbacks, buffer zones....

In the June 2003 staff report addendum, staff used language from LCP Policy 9-15 and Coastal Act § 30240(b) to interpret the term "adverse impacts" in LCP Policy 2-26 as meaning "significant adverse impacts." **We believe that Commission staff improperly interpreted Policy 2-26 in its June 2003 staff report, and hope that staff will consider the following alternative interpretation when drafting the staff report for the August 2003 de novo hearing.**

I. Commission staff must interpret Policy 2-26 and Policy 9-15 in a way that gives effect and meaning to both policies.

Policy 2-26 requires setbacks from riparian habitat areas such as Carpinteria Creek *in order to avoid adverse impacts*. The City's LCP Policy 9-15 also addresses setbacks, and states that "[t]he *minimum* buffer strip for natural streams within the City shall be 20 feet from the top of the bank," (emphasis added).

In their report, Commission staff concludes that Policy 9-15 "more specifically define[s] the intent of Policy 2-26." Thus, staff suggests that since the City-approved setback complies with Policy 9-15, it also complies with the "adverse impacts" standard of Policy

906 Garden Street, Santa Barbara, CA 93101 Phone (805) 963-1622 FAX (805) 962-3152
2021 Sperry Avenue, Suite 18, Ventura, CA 93003 Phone (805) 677-2570 FAX (805) 677-2577
www.edcnet.org

Printed on Recycled Paper

2-26. However, **staff's interpretation renders Policy 2-26 meaningless**, since compliance with Policy 9-15 (20-foot setback) would always ensure compliance with Policy 2-26 (avoid adverse impacts). Commission staff cannot interpret one LCP policy in a way that deprives another LCP policy of all meaning. Courts have consistently recognized that "[i]t is a cardinal rule of statutory construction that in attempting to ascertain the legislative intention effect should be given, whenever possible, to the statute as a whole and to every word and clause thereof, leaving no part of the provision useless or deprived of meaning." California Ass'n of Psychology Providers v. Rank, 51 Cal.3d 1 (1990), *citing* Weber v. County of Santa Barbara, 15 Cal.2d 82, 86 (1940), *codified in* Cal. Civ. Code § 1858 ("where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.")

With these rules in mind, we believe that the following interpretation gives the proper effect to *both* Policy 9-15 and Policy 2-26. **Twenty feet from top of bank is the *minimum* creek buffer allowed under Policy 9-15, but it can be larger in certain circumstances. Policy 2-26 provides guidance as to when the buffer *must* be larger – it must be larger than 20 feet if needed to avoid an adverse impact to riparian habitats.**

II. If the City meant to include the word "significant" in Policy 2-26, then it would have explicitly done so. Instead, the City intended to prohibit all "adverse impacts," not just significant ones.

In their report, Commission staff cite to Coastal Act § 30240(b) as guidance in interpreting LCP Policy 2-26. Coastal Act § 30240(b) states that "[d]evelopment in areas adjacent to environmentally sensitive habitat areas...shall be sited and designed to prevent impacts which would *significantly* degrade those areas," (emphasis added). Staff concludes, without any supporting analysis, that since Policy 2-26 is intended to carry out § 30240(b), then "it is appropriate to interpret 'adverse impacts' as meaning 'significant adverse impacts.'"

Staff's interpretation violates long-standing rules of statutory construction. If the City of Carpinteria intended to use the term "adverse impacts" as meaning "significant adverse impacts," then the City would have originally included the term "significant" into LCP Policy 2-26. However, the term "significant" is notably absent from Policy 2-26, suggesting that **the City, in adopting its LCP, intended that whenever feasible, *all* adverse impacts be avoided, not just the significant ones**.

Courts would not approve of the Commission's insertion of the term "significant" into LCP Policy 2-26, and consistently hold that "[i]t is long recognized that in interpreting policies, one may not rewrite statutes to supply omitted terms or to conform to an assumed, unexpressed legislative intent." Warmington Old Town Associates v. Tustin Unified School District, 101 Cal.App.4th 840 (2002), *citing* Western/California, Ltd. v. Dry Creek Joint Elementary School Dist., 50 Cal.App.4th at 1461, 1488 (1996). Furthermore, Commission staff "is not authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an assumed intention which does

not appear from its language." Napa Valley Wine Train, Inc. v. Public Untilities Com., 50 Cal.3d 370, 381 (1990), *citing* People v. One 1940 Ford V-8 Coupe, 36 Cal.2d 471, 475 (1950). These rules are codified in Cal. Civ. Code § 1858, which states that in interpreting the language of statutes, one must not "insert what has been omitted."

Finally, **when the City intended to include the term "significant" and other qualifiers in its LCP policies, it explicitly did so**. For example, Policy 9-11 requires seawalls to "avoid *significant* rocky points." Policies 6-5 and 6-6 require oil pipelines to be routed to "avoid *important* coastal resources." Policy 6-7 references routing of pipelines through "areas of *significant* coastal resource value." Policy 7-16 gives priority to recreational uses on oceanfront lands that do not require "*extensive* alteration of the natural environment," and discourages those uses requiring "*substantial* alteration." Finally, Policy 8-2 prevents agricultural conversion unless agricultural use of the land is "*severely* impaired." If the City had intended to limit Policy 2-26 by inserting the term "significant," then it would have clearly said so. *See* Tiernan v. Trustees of Cal. State University & Colleges, 33 Cal.3d 211, 219 (1982).

III. When policies within the LCP overlap, the most protective policy takes precedence.

In its report, Commission staff outline several overlapping and conflicting policies that guide setback requirements in riparian habitats, including LCP Policies 2-26, 9-15 through 9-17, and Coastal Act § 30240(b). To resolve these conflicts, **the City's LCP requires that staff apply the policy which is most protective of coastal resources.**

Specifically, LCP Policy 1-2 states that "[w]here policies within the land use plan overlap, the policy which is the most protective of resources i.e., land, water, air, etc., shall take precedence." Clearly, the most protective standard is that which requires the avoidance of *any* "adverse impact" as set forth in Policy 2-26. Any less-stringent policies, such as that set forth in Policy 9-15 (which, under staff's interpretation, could allow development even if it would result in "adverse impacts"), do not apply when they overlap with the more-stringent Policy 2-26.

Similarly, Policy 1-2 requires that Policy 2-26 take precedence over Coastal Act § 30240 because the Coastal Act provision is less protective of coastal resources. The City incorporated all Coastal Act provisions as guiding policies of its LCP under Policy 1-1. Thus, under Policy 1-2, **if any Coastal Act provision (such as § 30240(b)) incorporated into the City's LCP is less protective of resources than other LCP policies (such as Policy 2-26), then the more stringent LCP policy prevails**.

IV. Coastal Act § 30240(b) may serve as guidance for LCP Policy 2-26, but the Commission's own interpretive documents require riparian buffers much larger than 20 feet.

Even if staff's interpretation is correct and Coastal Act § 30240(b) holds precedence over the City's LCP policies, then staff failed to evaluate the Commission's interpretive

guidance documents. For instance, the Statewide Interpretive Guidelines for Wetlands and Other Wet Environmentally Sensitive Habitat Areas (approved by the Commission on Feb. 4, 1981) states that the buffer area adjacent to ESHAs

> should be a *minimum of 100 feet for small projects on existing lots (such as one single family home* or one commercial office building) unless the applicant can demonstrate that 100 feet is unnecessary to protect the resources of the habitat area. If the project involves substantial improvements ... a much wider buffer should be required.

(Emphasis added.) In addition, the Coastal Commission Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone (issued on June 15, 1994) states that "the CCC has typically required...*50 foot buffers for riparian areas*," (emphasis added). Therefore, **if Coastal Act § 30240(b) controls, then a 50-100 foot setback, as set forth in the Commission's own guidance documents, would apply to the Carnevale site.** While such a large setback may not be feasible at the Carnevale project site, the City-approved setback currently measures only *10-15 feet*, which is substantially less than the Commission's guidance documents.

V. The majority of scientific evidence supports a larger riparian setback.

Regardless of whether the correct standard is avoidance of an *adverse impact* pursuant to LCP Policy 2-26 or avoidance of a *significant adverse impact* pursuant to Coastal Act § 30240(b), the majority of scientific evidence supports a larger setback to comply with both standards.

The project's Environmental Impact Report found that a minimum 20-foot setback is necessary to avoid a *significant* adverse impact. Four biologists found that a setback of at least 20 feet from the current riparian dripline is necessary to avoid *adverse* ESHA impacts. Letter from Wayne Ferren, Executive Director, UCSB Museum of Systematics and Ecology to California Coastal Commission, dated April 4, 2003; Letter from Darlene Chirman, Ecologist to California Coastal Commission, dated March 26, 2003; Letter from Thelma Schmidhauser, Ph.D., Biologist to California Coastal Commission, dated March 8, 2003; and Letter from Mark Holmgren, Biologist to Paul Kermoyan, City of Carpinteria, dated April 14, 2002. Three biologists even concluded that a minimum 20-foot setback is necessary to avoid *significant* impacts to the ESHA. *See* Holmgren, Chirman, and Schmidhauser, *supra.*

Thus, the evidence suggests that a larger setback is needed to comply with the LCP and Coastal Act regardless of the standard of review relied upon.

VI. Conclusion

We respectfully disagree with Commission staff's interpretation of Policy 2-26 because it replaces the high standard under LCP Policy 2-26 with relatively lower standards under different provisions of the LCP and the Coastal Act. **When properly read together,**

LCP Policies 2-26 and 9-15 require a minimum 20-foot buffer for all development, or larger if this minimum buffer still results in adverse impacts. In addition, the Commission's guidance documents relating to Coastal Act § 30240(b) support riparian setbacks ranging from 50 feet to a minimum of 100 feet for projects such as single family homes.

We believe that the Coastal Commission should require the largest feasible setback for this project under LCP Policy 2-26. Currently, the project is set back only about 10 feet from the riparian edge in several locations, and can feasibly be reduced in size to protect Carpinteria Creek habitat and neighborhood compatibility while ensuring the developer a reasonable economic return on the property.

Sincerely,

Jeff Kuyper
Legal Analyst

Brian Trautwein
Environmental Analyst

cc: Chuck Damm, Senior Deputy Director, California Coastal Commission
Al Clark, President, Carpinteria Creek Foundation
file

RECEIVED
JUN 0 2 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Date: May 30, 2003
From: Brian Trautwein, Environmental Defense Center
To: Mike Reilly, Chair, California Coastal Commission
Re: Appeal No. A-4-CPN-03-016, Carpinteria Creek Foundation Appeal of City of Carpinteria Approval of Carnevale Residential Project

The Environmental Defense Center represents the Carpinteria Creek Foundation (CCF) regarding the Carnevale Residential Project in Carpinteria. CCF appealed this issue on the grounds that the City violated its LCP by: 1) approving development adjacent to Carpinteria Creek's riparian ESHA without a setback adequate to protect the sensitive habitat, 2) approving trenching and construction of a storm drain, energy dissipater and fence in the riparian ESHA when alternatives were available, 3) approving a project that blocks scenic public views of the creek, and 4) approving a project that it out of scale with the existing neighborhood.

Since the postponement of the April 2003 Substantial Issue Hearing on CCF's appeal, the Commission's biologist, Dr. John Dixon reviewed the biological information and prepared a memo dated May 8, 2003. This memo concludes that the difference between the City-approved creek setback (roughly 10-feet from the riparian dripline at time of approval) and the setback CCF's biologists believe is necessary to protect the ESHA from significant damage (20-foot from riparian dripline at time of approval) is not significant. Dr. Dixon concluded that the City-approved setback does not cause a *significant* impact to the ESHA.

Notwithstanding CCF's biologists' opinion that the approved setback would result in *significant adverse impacts* to the ESHA, the standard of review for finding Substantial Issue on this point (LCP Policy 2-26) is whether or not the development is sited far enough from the ESHA to *avoid adverse* impacts to the ESHA. This standard for ESHA protection is higher than that found in the Coastal Act (PRC Section 30240(b)), which requires development to be sited to avoid a significant disruption of the habitat. We believe Commission staff relied on the Coastal Act standard rather than utilizing the plain language of LCP Policy 2-26[1] – the correct standard. <u>The standard of review for Substantial Issue findings is whether or not the LCP policies were adhered to, and LCP Policy 2-26 clearly requires setbacks large enough to avoid any adverse impact to the habitat</u>.

Commission staff's recommendation is to find Substantial Issue on only one of CCF's two habitat-related appeal claims: that development of the storm drain, energy dissipater and fence in the ESHA violates the LCP. However, we believe that the Commission should also find that development adjacent to the ESHA will adversely affect the ESHA in violation of LCP

[1] LCP Policy 2-26 states: "All development … adjacent to areas designated on the land use plan maps as habitat areas *shall be regulated to avoid* ***adverse impacts*** *on habitat resources*. Regulatory measures include …setbacks [and] buffer zones…" (Emphasis added.)

906 Garden Street, Santa Barbara, CA 93101 Phone (805) 963-1622 FAX (805) 962-3152
2021 Sperry Avenue, Suite 18, Ventura, CA 93003 Phone (805) 677-2570 FAX (805) 677-2577
www.edcnet.org
Printed on Recycled Paper

Policy 2-26. The evidence in the record, including the City-certified EIR, supports CCF's claim that the setback is too small to protect the riparian ESHA from adverse impacts. This is inconsistent with Policy 2-26. The inadequate ESHA setback is an important and valid appeal claim and the Commission should find that the CCF's appeal raises Substantial Issue because the development was approved too close to the ESHA to avoid adverse impacts to it.

In closing we request that the you review the enclosed material summarizing and clarifying CCF's appeal issues and that you find that CCF has raised a Substantial Issue with regards to LCP Policy 2-26 (development adjacent and too close to ESHA to avoid adverse impacts) as well as with regards to the LCP Policies and Coastal Act Section that prohibit certain developments in ESHA.

We would very much like to meet with you prior to the June hearing on this matter, and will call to in order to discuss this possibility. Thank you for your attention to our appeal issues.

cc: Commissioners and Staff

RECEIVED
MAY 2 7 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

May 23, 2003

Lillian Ford
California Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001
FAX: (805) 641-1729

Re: Appeal No. A-4-CPN-03-016; Carpinteria Creek Foundation Appeal of City of Carpinteria's Approval of the Carnevale Residential Project; Substantial Issue Staff Recommendation

Dear Lillian:

As you know, the Environmental Defense Center represents the Carpinteria Creek Foundation in its appeal of the City of Carpinteria's approval of the Carnevale Residential Project just feet from the well developed riparian corridor along Carpinteria Creek. On behalf of our client, thank you for providing the 5-8-03 memo from Commission's biologist, Dr. John Dixon regarding the biological issues raised by our client's appeal of the Carnevale Residential Project.

We have reviewed the memo and determined that it contains significant flaws that we believe substantially affect its conclusion regarding the adequacy of the riparian buffer pursuant to the City's certified LCP. Below we summarize our concerns regarding the memo and request that the Commission staff generate an addendum to the staff report recommending that the Commission find that the CCF's appeal raises a substantial issue with regards to the unusually small riparian setback.

1. **The memo fails to consider the high standard set by Policy 2-26 which prohibits projects adjacent to ESHA from causing adverse impacts to the habitat.**

The standard of review for determining Substantial Issue is the City's compliance with its LCP, which requires a buffer size adequate to prevent *adverse impacts* to the ESHA, but Dr. Dixon's memo uses a higher standard of review: whether or not the buffer size is adequate to prevent a *significant adverse impact*.

The City's Local Coastal Plan Policy 2-26 requires that development adjacent to ESHA must not result in an adverse impact to the habitat. "All development ... adjacent to areas designated on the land use plan maps as habitat areas *shall be regulated to avoid* ***adverse impacts*** *on habitat resources*. Regulatory measures include ...setbacks [and] buffer zones..." (Emphasis added.)

The setback is insufficient to prevent adverse impacts to the creek habitat according to the Biological Resources Section of the City-certified EIR. In fact, according to CCF's biologists,

906 Garden Street, Santa Barbara, CA 93101 Phone (805) 963-1622 FAX (805) 962-3152
2021 Sperry Avenue, Suite 18, Ventura, CA 93003 Phone (805) 677-2570 FAX (805) 677-2577
www.edcnet.org

Printed on Recycled Paper

RECEIVED
APR 2 2003
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

E.D.C.
ENVIRONMENTAL
DEFENSE CENTER

March 27, 2003

Chairman Mike Reilly
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Appeal by Carpinteria Creek Foundation of City of Carpinteria's Issuance of a Coastal Development Permit for the Carnevale Residential Project; Project No. 99-881-DP/CDP (APN 001-070-031)

Honorable Chair Reilly and Coastal Commissioners:

The Environmental Defense Center (EDC) is a non-profit, public interest environmental law firm. We represent the Carpinteria Creek Foundation in its appeal of the City of Carpinteria's approval of the Carnevale Residential Development, located just feet from the ecologically sensitive habitat of Carpinteria Creek. The appeal is based on alleged inconsistencies between the City's Local Coastal Plan (LCP) and the City's approval of the project. This letter presents additional evidence supporting the appeal. Specifically, the attachment to this letter describes the impacts caused by approved development in the Environmentally Sensitive Habitat Area (ESHA) and by the inadequacy of the development's setback to the adjacent riparian ESHA, and identifies related LCP Policy inconsistencies.

As noted in the Foundation's appeal and the biological reports attached thereto, our client presented substantial evidence to the City that the project was located too close to the creek to avoid substantial disruption of the riparian habitat's values and functions. In response, the City prepared and certified an EIR that included a mitigation measure requiring a 20-foot setback from the riparian dripline. Accordingly, the project was revised to incorporate this 20-foot setback requirement, but the City measured the 20-foot setback based on the dripline as it existed in 1999. Since that time, the dripline has expanded considerably, and as a result, the project is now located a mere 9 feet from the riparian dripline at its closest point.

The attached 3-26-03 letter from Darlene Chirman Biological Consulting augments and clarifies previously submitted biological reports that identified a minimum 20-foot riparian setback as necessary to avoid a significant impact. This newest Chirman report specifies that a 20-foot setback from the **existing** riparian dripline is required to avoid a significant impact to the riparian habitat and to Carpinteria Creek, the City's largest stream and last steelhead run. This information supports the Foundation's appeal and its assertion that the project violates the LCP and Coastal Act by failing to adequately buffer the ESHA to avoid substantial habitat impacts.

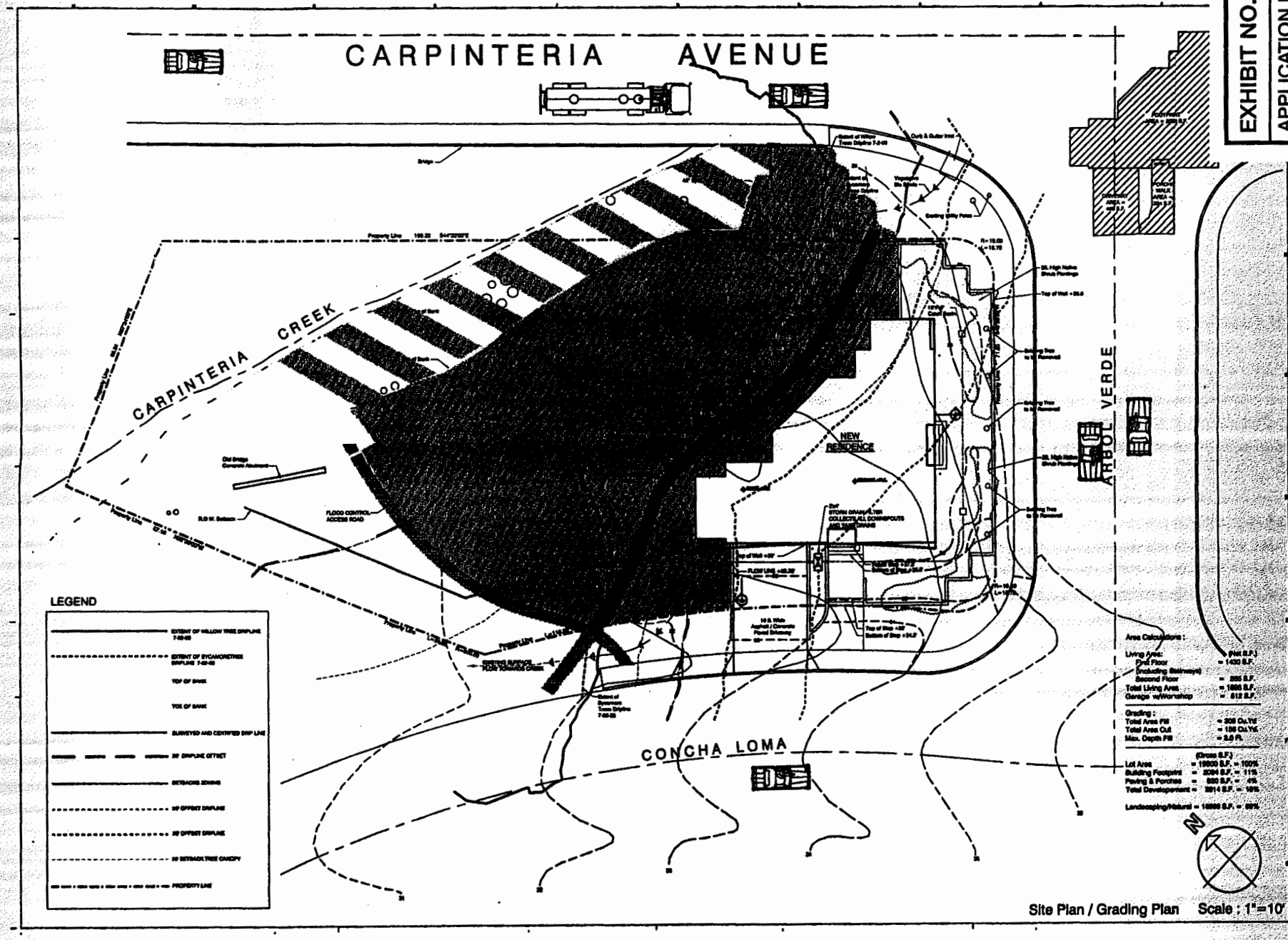
In addition, the attached report from Chirman identifies impacts associated with the fence, storm drain and energy dissipater that were approved within the riparian ESHA. The Foundation's biologist refers to feasible alternatives that would locate these facilities

906 Garden Street
Santa Barbara, CA 93101
Phone (805) 963-1622
FAX (805) 962-3152
edc@rain.org

2021 Sperry Avenue, Suite 18
Ventura, CA 93003
Phone (805) 677-2570
FAX (805) 677-2577
edcvent@west.net

864 Osos Street, Suite A
San Luis Obispo, CA 93401
Phone (805) 781-9932
FAX (805) 781-9384
edcmal@west.net

EXHIBIT NO. 3
APPLICATION NO. Carnevale
A-4-CM-03-016
Site plan



G:\9148 Azbol Verde\9148-Arch\9148-site_sheetdrain.dwg, 7/11/2003 3:38:51 PM

1256.00M

Drip line of Sycamores extends to centerline of Carpinteria Ave.

CARPINTERIA AVENUE

SIDEWALK ON BRIDGE

Property Line

Top of Bank

Trunk out of ground

Trunk in the ground

Extent of Willow Drip Line 7-2-03

No root structure, horizontal branches only cables from native trees

Sycamore Drip Line 7-2-03

Broken willow limb lying on the ground 7-2-03

PINE BRANCHES IN EXCESS OF 40 FT. ABOVE GROUND

Extent of Sycamore trees Drip Line 7-2-03

ARBOL VERDE STREET

CONCHA LOMA DRIVE

PAVED ROAD WAY

Revised 7-2-03 locate drip lines again

L.P. COOK & COMPANY, Inc.
Land Surveying, Mapping & Digital Graphics
1029 State Street
Santa Barbara, CA 93101
(805) 968-5105

TOPOGRAPHICAL SURVEY OF A PORTION OF APN 001-070-31 IN CARPINTERIA, CALIF. FOR: LOLA CARNEVALE

1" = 10'
L.P.C.
L.P.C.
9-3-99
1256.00M

EXHIBIT NO. 4
APPLICATION NO. Carnevale
A-4-CPN-03-016
July 2, 2003
DRIPLINE SURVEY

STATE OF CALIFORNIA—THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Melanie Hale

SUBJECT: Habitat Buffer at the Carnevale Property

DATE: September 15, 2003

Documents cited:

May 8, 2003. J. Dixon (CCC) memorandum to L. Ford (CCC) re "Habitat Buffer at Carnevale Property."

July 9, 2003. Hochhauser Blatter Architecture and Planning. Site plan / grading plan for one story residence for L. Carnevale showing surveyed location of the riparian dripline on July 2, 2003.

In my May 8, 2003 memorandum to Lillian Ford, I concluded that a single family residence in the proposed location would not have a significantly greater ecological impact on Carpinteria Creek and its associated riparian vegetation subsequent to the willow and sycamore branches growing closer to the footprint of the house than before when that vegetation was 20 feet distant. However, I also suggested that is was important to have a certified surveyor determine the actual position of the riparian dripline, as agreed upon by the various interested parties, so as to put an end to a potentially interminable discussion of the actual width of the potential habitat buffer. Such a survey has been completed and it appears that the distance between the dripline and the proposed residential footprint varies from about 10 feet to about 22 feet, which is about the same as estimated by Al Clark on October 15, 2002 (9-17 ft). The major vegetative change was the growth of willows in the middle 35 feet or so of the buffer adjacent to the rear of the proposed residence. For about 30 feet, the willows are between 10 and 15 feet from the residential footprint.

I have not altered my opinion regarding the residual change in ecological impact of the proposed residence following the growth of the willow and sycamore branches. Furthermore, regardless of where a building is constructed on this property, in time the riparian vegetation will grow close to the building. Wherever a residence is located on this property, it will have some ecological impact due to the increased human presence. This will be mitigated by restoration of the habitat buffer and by the future growth of the riparian vegetation. In order to prevent the use of the restored habitat buffer as outdoor living space associated with the residence, I recommend that the buffer area be fenced and that any rear entr situated in such a way as to direct foot-traffic away from the buffer.

Page 1 of

EXHIBIT NO. 5
APPLICATION NO.
A-4-CPN-03-016
Commission Biologist
RE: Carnevale Sum

STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist

TO: Lillian Ford

SUBJECT: Habitat Buffer at Carnevale Property

DATE: May 8, 2003

Documents Reviewed:

11/05/99. Hunt, L.E. and R. Tierney (Consulting Biologists to L. Carnevale). Updated biological review of the Arbol Verde Project, City of Carpinteria, Santa Barbara County.

03/20/00. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to David Durflinger (City of Carpinteria) re buffer issues and recommending no development within the riparian dripline.

05/18/01. R.Tierney (Consulting Biologist to L. Carnevale). Letter to Jan Hochhauser (Hochhauser and Blatter) re restoration plan.

05/29/01. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to Letter to City of Carpinteria Planning Commission re buffer issues, recommending minimum of 20 feet from riparian dripline.

05/31/01. R. Tierney (per J. Hochhauser; document without cover page or other identification of authorship). Arbol Verde Restoration Notes.

06/01/01. J. Hochhauser (Hochhauser and Blatter). Letter to City of Carpinteria Planning Commission re D. Chirman letter of 5/29/01.

06/02/01. R.Tierney (Consulting Biologist to L. Carnevale). Letter to City of Carpinteria Planning Commission re D. Chirman letter of 5/29/01.

06/04/01. V. Semonsen (Consulting Biologist to City Carpinteria). Letter to Dave Durflinger (City of Carpinteria) re process for establishing a riparian buffer.

06/04/01. V. Semonsen (Consulting Biologist to City Carpinteria). Letter to Dave Durflinger (City of Carpinteria) re D. Chirman letter of 05/29/01.

06/04/01. L.E. Hunt. Letter to City of Carpinteria Planning Commission re character of Carpinteria Creek and response to D. Chirman letter of 05/29/01

06/12/01. D. Chirman (Consulting Biologist to Carpinteria Creek Foundat City of Carpinteria Planning Commission re buffer issues.

EXHIBIT NO. 5
APPLICATION NO.
A-4-CPN-03-016
Carnevale

02/02. City of Carpinteria. Carnevale duplex project draft environmental impact report.

04/02/02. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to Paul Kermoyan (City of Carpinteria) re buffer issues and recommending Alternative 3 of the EIR.

04/04/02 S. Anderson (Carpinteria Creek Foundation). Letter to City of Carpinteria Planning Commission re buffer issues

04/05/02. M. Wehtje (CDFG). Letter to Paul Kermoyan (City of Carpinteria) re draft EIR and mitigation measures.

04/09/02. L. Hunt (Consulting Biologist to L. Carnevale). Letter to Paul Kermoyan (City of Carpinteria) re draft EIR.

04/11/02. R.Tierney (Consulting Biologist to L. Carnevale). Letter to Jan Hochhauser (Hochhauser and Blatter) re T. Schmidhauser letter of 03/29/02.

04/12/02. L. Hunt (Consulting Biologist to L. Carnevale). Letter to Jan Hochhauser (Hochhauser and Blatter) re other projects where encroachment of willows was permitted by CDFG.

04/14/02. M. Holmgren (Biologist). Letter to Paul Kermoyan (City of Carpinteria) re draft EIR recommending Alternative 3.

04/26/02 P. Rogers (Arborist, Poly Associates). Letter to Jamie King (Rincon) re potential impacts of construction on riparian trees.

05/02. City of Carpinteria and Rincon. Carnevale duplex project final environmental impact report. Responses to comments on the draft EIR.

05/02/02. D. Gress (Arborist). Letter to Hochhauser and Blatter re protective setback from riparian vegetation.

05/29/02. T. Schmidhauser (Biologist). Letter to Steven Velyvis and Brian Trautwein (Environmental Defense Center) re buffer issues, recommending 20 feet from riparian dripline.

06/03/02. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to City of Carpinteria Planning Commission re draft EIR and buffer issues.

07/01/02. R. Tierney. Letter to Jan Hochhauser (Hochhauser and Blatter) re HGM assessment of Carpinteria Creek.

10/30/02. V. Semonsen. Letter to Paul Kermoyan (City of Carpinteria) re position of riparian dripline.

11/04/02. A. Clark. Letter to Carpinteria Planning Commission re position of riparian dripline.

11/20/02. J. Power (Rincon). Letter to Paul Kermoyan (City of Carpinteria) re appeal of EIR certification and date of dripline measurement.

01/27/03. City of Carpinteria, City Council Staff. Staff report re appeal of the Planning Commission approval of Carnevale project (99-881-DP/CDP), including discussion of measured position of the riparian dripline.

03/08/03. T. Schmidhauser (Biologist) Letter to California Coastal Commission re position of riparian dripline and buffer requirements.

03/26/03. D. Chirman (Consulting Biologist to Carpinteria Creek Foundation). Letter to California Coastal Commission re appeal issues.

03/28/03. J. Studarus (Conception Coast Project). Letter to California Coastal Commission re buffers to protect Carpinteria Creek steelhead habitat.

04/04/03. W. Ferren (UCSB Museum of Systematics and Ecology). Letter to California Coastal Commission re appeal issues.

04/08/03. J. Kuyper (Environmental Defense Center). Letter to California Coastal Commission re appeal issues.

04/15/03. J. Hochhauser (Hochhauser and Blatter). Letter to John Dixon (CCC) re buffer issues, and transmittal of documents.

05/03/03. J. Hochhauser (Hochhauser and Blatter). Letter to John Dixon (CCC) re W. Ferren letter of 04/04/03.

05/06/03. L. Hunt (Consulting Biologist to L. Carnevale). Letter to John Dixon (CCC) re W. Ferren letter of 04/04/03.

There seems to be a consensus among the various commentators that Carpinteria Creek and its associated riparian habitat is extremely valuable to a variety of species and meets the standard for ESHA under the Coastal Act and the Local Coastal Program. The boundary of the ESHA is defined by the outer edge of the riparian vegetation. The major resource issue that has been raised in connection with the proposed project is that of adequate habitat buffers, that is to say, the distance the development should be set back from the ESHA boundary.

In general, I think a 100-foot buffer, measured from the bank of the stream or the edge of riparian vegetation, whichever is greater, should be the default standard for natural streams. However, in urbanized areas, such a wide buffer is often not feasible and often does not make good ecological sense due to the presence of existing development. A wide buffer for a particular property is unlikely to perform a protective function proportional to its width if the adjacent or nearby parcels have development much closer to the stream. In the case of Carpinteria Creek, there are structures present that are within 15-20 feet of the creek bank and within 5 feet of the riparian canopy, according to the final EIR (p. 366). This problem was recognized in most of the documents cited above. Although bigger is generally better, the issue at hand is how large a buffer is necessary to prevent significant environmental impacts due to the proposed residential development at the subject property. In view of the existing urban constraints, the opponents to earlier project designs generally recommended that the development be set back at least 50 feet from the bank of Carpinteria Creek and at

Ex 5
18 of 45

least 20 feet from the dripline of the riparian vegetation, which in this case is represented by sycamores and willows.

Apparently as a result of recommendations generated by the CEQA process, the design was altered and the set back was increased. As currently proposed, about half the residential footprint is greater than 50 feet from the stream bank and about half the footprint is between 40 and 50 feet distant. The footprint of the residence, as measured from the eave of the roof (J. Hochhauser personal communication on May 8, 2003), is also set back 20 feet from the dripline of riparian vegetation, as measured on October 19, 2001. Presumably, the currently proposed setback would have satisfied the concerned parties at that time. However, between then and now, the trees have grown.

In fall 2002, Semonsen (10/30/02) estimated that the riparian canopy had increased 5-7 feet and Clark (11/04/02) estimated that the project setback had been reduced to 9-17 feet (a canopy increase of 3-11 feet). In January 2003, City staff (01/19/03) reported that due to recent growth the current setback is 13-19 feet (a canopy increase of 1-7 feet). Ferren (04/04/03) asserted that the current setback is 9-17. It is not clear if this estimate was based on his own observations when he visited the site on March 31, 2003 or on the estimates of others (perhaps Clark). According to City Council staff, the Environmental Defense Center and the Carpinteria Creek Foundation assert that the current setback is as small as 9 feet. Hunt (05/06/03) visited the site on May 06, 2003 and characterized the riparian canopy that has encroached into the original 20-foot setback as follows, "...this growth consists of three willow branches up to 1.25 inches in diameter in the southernmost area and six sycamore branches up to 0.5 inches in diameter in the northernmost area that extend no more than five or six feet beyond the mapped canopy."

What is the ecological significance of these changes? For the sake of analysis, I will assume that a 20-foot setback from riparian canopy is adequate in this setting and, therefore, that the current project design would not have had a significant environmental impact had it been constructed in October 2001. Then, the question is "What impact is the project likely to have as a result of the growth of the riparian trees?" Species at risk include aquatic organisms, birds, and plants. According to Tierney (04/11/02), "[t]he National Marine Fishery (sic) Service (NMFS)...stated that a formal consultation would not be required for this project because they could see no potential significant impacts to the aquatic habitat, including steelhead resulting from the project (Darren Brumback, June 2, 2001)." If the project that was on the table in early 2001 would have no significant impacts on the aquatic habitat, the current design would have even less and such impacts would not be made more likely by a modest growth in the riparian canopy. It is also not obvious how birds would be affected negatively. If, for example, the house had been built in fall 2001, and the riparian canopy subsequently grew larger, would one expect a decline in bird use? On the contrary, the additional canopy would likely have an additional buffering effect for most species. The one group of birds that might be locally affected would be species that prefer the ecotone, or canopy edge. The attractiveness of that portion of the habitat would likely decrease as it grew closer to a source of disturbance. The organisms most likely to be affected by the change in

Ex. 5/5. 50/5