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Filed: June 25, 2003
49th Day: Waived
Staff: CLK – SF
Staff Report: October 22, 2003
Hearing Date: November 7, 2003

STAFF REPORT – APPEAL
SUBSTANTIAL ISSUE

APPEAL NO.: **A-2-03-24**

APPLICANTS: **David Hodge**

LOCAL GOVERNMENT: **San Mateo County**

ACTION: Approval with Conditions.

PROJECT LOCATION: 198 Coronado Avenue, San Mateo County
APN 048-013-580

PROJECT DESCRIPTION: Construction of a 1,975-square-foot, three-story single-family residence on a 4,400-square-foot non-conforming parcel.

APPELLANTS: Ric Lohman
Barbara K. Mauz

SUBSTANTIVE FILE DOCUMENTS:

LSA 2003. LSA, Associates, Da Rosa Property Biological Resources Assessment, March 26, 2003.

WRA 2003. Wetlands Research Associates, San Mateo County Local Coastal Program Wetland Delineation Study, January 2003.

1.0 STAFF RECOMMENDATION

No Substantial Issue

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

Motion

I move that the Commission determine that Appeal No. A-2-SMC-03-024 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue

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

Resolution to Find No Substantial Issue

The Commission finds that Appeal No. A-2-SMC-03-024 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

2.0 PROJECT SETTING AND DESCRIPTION

2.1 Project Location and Site Description

The approved development is located on a 4,400-square-foot non-conforming parcel located at 198 Coronado Avenue, in the unincorporated Miramar area of San Mateo County. The property is zoned R-1/S-94/DR/CD (Single-Family Residential/10,000-square-foot minimum parcel size/Design Review/Coastal Development). The site is located within the partially built-out Shore Acres Subdivision, which appears on a map recorded in 1905 (Exhibits 1-3).

The northern property boundary abuts Coronado Avenue, an existing road. The lot to the west of the project site (048-013-240) is developed with an existing multi-family condominium project functioning as bed and breakfast establishment (the Landis Beach Luxury Inn), and a new single-family residence is currently under construction on the lot bordering the project site to the south (048-013-280). (Exhibit 3). The neighboring property to the east (048-013-580) is vacant. (Exhibit 3.) A county-approved coastal development permit for a single-family residential development on this vacant parcel has also been appealed to the Coastal Commission (A-2-SMC-01-032 Da Rosa) and the de novo portion of the appeal hearing will occur on a future date.[1]

[1] On January 9, 2002, the Commission found substantial issue on Appeal A-2-SMC-01-032 (Da Rosa), and found that additional information related to wetlands, lot legality and a takings analysis were required prior to de novo review of the proposed development. Because the identified information and analysis remains outstanding, a de novo hearing has yet to be scheduled on this project.

A review of the chain of title information for the Hodge parcel that is contained in the record reveals that between 1905 and 1969, the Hodge parcel, depicted as parcel 21 on the Shoreacres Subdivision Map, was conveyed together with the vacant Da Rosa parcel, i.e. Parcel 20 depicted immediately to the east of the Hodge parcel on the Shoreacres Subdivision Map. (Exhibit 3.) The Hodge parcel and the DaRosa parcel were not conveyed together after 1969. Between 1954 and 1999, the Hodge parcel was conveyed together with another contiguous parcel, the developed parcel to the south of the Hodge parcel, i.e. parcel 9 on the Shoreacres Subdivision Map. (Exhibit 3). The Hodge parcel and Parcel 9 were not conveyed together between 1905 and 1954. Accordingly, since the Hodge parcel first appeared on the 1905 Shoreacres Subdivision Map, it has been conveyed separately from both the undeveloped DaRosa parcel immediately to the east and the developed parcel 9 immediately to the south. The Hodge parcel was never conveyed together with the Bed and Breakfast property to the west.

The project site is level and does not contain environmentally sensitive habitat (WRA 2003). However, a small wetland has been delineated approximately 50 feet to the east of the project site on the adjacent Da Rosa parcel (LSA 2003).

2.2 Project Description

The approved development consists of a 1,975-square-foot, 27-foot-high single-family residence, comprised of two floors of living space over a 378-square-foot garage and 200 square feet of storage on the ground floor (Exhibits 4-6). Access to the site is provided by Coronado Avenue, an existing street that abuts the site to the north, and the development has approved public sewer and water service connections.

3.0 APPEAL PROCESS

3.1 Local Government Action

On November 7, 2002, the San Mateo County Zoning Hearing Officer approved a coastal development permit for the above-described development.

On November 26, 2002, Robert Lamar, Nicholas Licato, Ric Lohman, and Barbara Mauz filed an appeal of this approval with the San Mateo County Planning Commission.

On April 9, 2003, the Planning Commission granted the appeal and denied the permit application.

On April 15, 2003, the applicant appealed the Planning Commission denial to the San Mateo County Board of Supervisors.

On June 10, 2003, the Board of Supervisors granted the applicant's appeal, overturned the Planning Commission's denial, and approved a coastal development permit for the project.

3.2 Filing of Appeal

On June 12, 2003, the Commission received notice of the County's final action approving a coastal development permit for the project. The Commission's appeal period commenced the following working day and ran for ten working days thereafter (June 13 through June 26, 2003). On June 26, 2003, within the 10-working day appeal period, the Commission received an appeal

of the County's approval from Barbara K. Mauz and Ric Lohman.[2] Following receipt of this appeal, the Commission mailed a notification of appeal to the County and the applicant.

Pursuant to Section 30261 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. The 49th day from the appeal filing date was August 14, 2003. On July 15, 2003, the applicant waived the right to a hearing within 49 days after the date that the appeal was filed to allow additional time to discuss the project with Commission staff.

3.3 Appeals Under the Coastal Act

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff; or in a sensitive coastal resource area or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Developments that constitute a major public works or a major energy facility may be appealed, whether they are approved or denied by the local government.

The approved development is located within 300 feet of top of the seaward face of a coastal bluff, within 100 feet of a wetland, and is not considered the principle permitted use under the County's certified LCP because it is proposed to be undertaken on a non-conforming parcel and requires the issuance of a use permit. The approved development thus meets the Commission's appeal criteria in Section 30603 of the Coastal Act. Pursuant to Section 30603 of the Coastal Act, an appeal for development in this location is limited to the allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. In this case, because the staff is recommending no substantial issue, the Commission will 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 eligible to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it is determined that the project raises no substantial issue, the Commission will conduct a

[2] The Commission also received a second appeal from Nicholas Licato on June 30, 2003. Because it was received after the close of the 10-working day appeal period, this appeal was not timely filed. By letter dated July 2, 2003, Mr. Licato subsequently withdrew his appeal.

full de novo public hearing on the merits of the project at the same or subsequent hearing. If the Commission conducts a de novo hearing on the appeal, the applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program.

3.4 Standard of Review

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

> *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.*

The term *substantial issue* is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Commission Regulations, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

If the Commission chooses not to hear an appeal, appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

4.0 SUBSTANTIAL ISSUE ANALYSIS

Appellants' Contentions

The appeal includes the following contentions (see Exhibit 7):

1. The approved development is inconsistent with LUP Policy 1.5b because it exceeds the density allowable under the zoning designation for the site.
2. The approved development is inconsistent with LUP Policy 1.20, which requires consolidation of contiguous substandard lots located in the Miramar area when such lots are held in common ownership.
3. The County erred in making the required finding that all opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible.

4. "[T]he most recent court case on the development rights of antiquated lots (Gardner) does not support granting such rights to this lot without first evaluating the legality of the lot according to modern standards."
5. The approved development would have visual impacts in conflict with LUP Policies 8.5, 8.11, and 8.13.
6. The approved development is inconsistent with LUP Policies 7.1, 7.3, 7.4, 7.5, 7.7-7.19, 7.32-7.36, 7.43, and 7.44, related to protection of sensitive habitat areas, wetlands, and riparian areas.
7. The approved development is inconsistent with LUP Policies 2.5-2.7, 2.8a, 2.9-2.13, 2.48, 2.49, 2.52, 2.53, and 2.57c related to public infrastructure due to unacceptable levels of traffic congestion on Highways 1 and 92.
8. "There are also harmful financial implications for the Coastal Zone in that the County has not collected any regional traffic mitigation fee for the proposed development."
9. The action of the Board of Supervisors overturning the Planning Commission denial was improper "because no error was considered or found in the Planning Commission's decision to deny the project."
10. "[T]imely public input was not conveyed to board members or made part of the record, despite public requests to do so."
11. "The public was not accorded a meaningful hearing by the BOS..."

4.1 Appellants Contentions that Raise No Substantial Issue

4.1.1 Development of Non-Conforming Parcels

The project site is a 4,400-square-foot non-conforming parcel where the minimum parcel size under the applicable zoning is 10,000 square feet. The appellants contend that the approved development is inconsistent with LUP Policies 1.5b and 1.20, which state:

1.5 Land Uses and Development Densities in Urban Areas

...

b. Permit in urban areas land uses designated on the Land Use Plan Maps and conditional uses up to the densities specified in Tables 1.2 and 1.3. The use and amount of development allowed on a parcel, including parcels in areas designated "General Open Space," "Agriculture," or "Public Recreation-Community Park" on the General Plan Land Use Map within the urban boundary in the Coastal Zone, shall be limited to the uses and to the amount, density and size of development permitted by the Local Coastal Program, including the density credit requirements of Policy 1.8c. and Table 1.3.

1.20 Lot Consolidation

According to the densities shown on the Land Use Plan Maps, consolidate contiguous lots, held in the same ownership, in residential subdivisions in Seal Cove to minimize risks to life and property and in Miramar to protect coastal views and scenic coastal areas.

At the time of the County's action on the approved development, the project site, APN 048-013-580, was not held in common ownership with any contiguous lots. Therefore, the Commission

finds that there is no substantial issue concerning the conformity of the approved development with LUP Policy 1.20.

Section 6133 of the County's Zoning Code governs the development of non-conforming parcels. Zoning Code Section 6133.3.b(1)(b) states:

> Proposed development on any unimproved non-conforming parcel that does not conform with the zoning regulations in effect shall require the issuance of a use permit.

Pursuant to Section 6133.3.b(3), a use permit for the development of a non-conforming parcel may be issued subject to the following findings:

> (a) The proposed development is proportioned to the size of the parcel on which it is being built,
>
> (b) All opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible,
>
> (c) The proposed development is as nearly in conformance with the zoning regulations currently in effect as is reasonably possible,
>
> (d) The establishment, maintenance, and/or conducting of the proposed use will not, under the circumstances of the particular case, result in a significant adverse impact to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in the said neighborhood, and
>
> (e) Use permit approval does not constitute a granting of special privileges.

The County's action on the approved coastal development permit occurred along with the approval of a use permit, and the County's findings of approval to support the issuance of the approved use permit include each of the required findings above. However, the appellants maintain that the County erred in determining that all opportunities to acquire additional contiguous land in order to achieve conformity were investigated and proven to be infeasible.

There is only one undeveloped parcel owned by Thomas Da Rosa, depicted on Exhibit 3 as Parcel 20- APN 048-013-580, that immediately borders the project site to the east. The other immediately adjacent parcels are developed. The Planning Commission's denial of the permit application was based on the finding that the applicant had not provided tangible evidence that all opportunities to acquire additional contiguous land in order to achieve conformity were investigated and proven to be infeasible.

In his written appeal of the Planning Commission denial, the applicant states:

> *"We have demonstrated there are no options for merger of lots. Our parcel is surrounded by development. To the west is Landis Beach Luxury Inn, to the south, 111 Cortez, is a home currently under construction and to the east is a parcel with a pending CDP application under consideration by the California Coastal Commission. This lot is owned by Thomas Da Rosa and he has clearly stated he is not interested in selling his lot. Like myself he would like to build a home for himself and his family."* (See Exhibit 8.)

On the basis of this statement, a letter from the applicant's real estate broker, and the applicant's testimony during the appeal hearing, the Board of Supervisors reversed the Planning Commission's determination that the applicant had not provided tangible evidence that all opportunities to acquire additional contiguous land in order to achieve conformity were investigated and proven to be infeasible. The appellants have not submitted documentation demonstrating that opportunities do exist to acquire additional contiguous land.

In determining whether the appellants' contentions concerning development of non-conforming parcels raises a substantial issue, the Commission considers the degree of factual and legal support for the County's decision that the development is consistent with the certified LCP. The Commission finds that the County relied on specific evidence contained in the local administrative record as described above to support its determination that all opportunities to acquire additional contiguous land in order to achieve conformity were investigated and proven to be infeasible. All of the properties immediately adjacent to the Hodge parcel are either developed or in the process of obtaining development permits. Conversely, the Commission finds no evidence in the record to support the appellants' position that any property located adjacent to the project site is in fact available for acquisition by the applicant.

Therefore, the Commission finds that the appeal raises no substantial issue with respect to the conformity of the approved development with the policies of the San Mateo County LCP regarding the development of non-conforming parcels because the County relied on specific evidence contained in the local record to support its determination that opportunities to acquire contiguous land were infeasible.

4.1.2 Lot Legality

As noted above, the appellants' contend that:

> *"[T]he most recent court case on the development rights of antiquated lots (Gardner) does not support granting such rights to this lot without first evaluating the legality of the lot according to modern standards."*

The Commission notes that the above contention does not identify an inconsistency of the approved development with the standards set forth in the certified LCP or the public access policies of the Coastal Act. However, as the question of whether or not a project site is a legally developable lot is fundamental to consideration of any coastal development permit application, even though the appellants failed to allege how the approved development is inconsistent with a specific LCP policy, the Commission will evaluate whether this contention raises a substantial issue.

As a preliminary matter, the Commission also notes that there are two distinct ways to subdivide property in California: (1) by a subdivision map that is properly prepared, approved and recorded pursuant to the requirements of the subdivision map; and (2) through conveyance. Prior to 1893, subdivision maps were regularly recorded in California but there was no statutory regulation of this practice. In 1893, the first California statute addressing subdivision maps came into existence. A lot is legal under the Subdivision Map Act if: (1) it was lawfully created in accordance with the law in effect when it was created and has not been subsequently merged or altered; or (2) it was unlawfully created but was subsequently legalized by the Subdivision Map Act and was not thereafter merged or altered. There are several ways a lot can be subsequently legalized by the Subdivision Map Act. For example, Sections 66499.30 and 66451.10 of the Subdivision Map Act grandfather older lots in specified circumstances. Section 66412.6(a) of the Subdivision map Act creates a presumption that any parcel created prior to March 4, 1972 shall be conclusively presumed to have been lawfully created if at the time of creation of the parcel there was compliance with any local ordinance in effect which regulated divisions of land creating fewer than five parcels. San Mateo County first adopted their local ordinance in 1945.

Since 1945, San Mateo County has required parcel maps to legalize land divisions involving fewer than five parcels.

In this case, it appears that the appellants believe that the Hodge parcel was neither lawfully created or subsequently legalized by the Subdivision Map Act. The project site is identified as Lot 21, Block 7 of the Shore Acres Subdivision recorded on December 18, 1905 (Exhibit 9). An unresolved legal controversy exists concerning the legal validity of parcels created by recordation of a subdivision map in California during the period between 1893 and 1929. Consistent with the appellants' assertion, the California Coastal Commission, the California State Association of Counties, and the California League of Cities have previously filed *Amicus* Briefs regarding recognition of antiquated subdivisions stating that lots in antiquated subdivisions do not qualify as legal because they have never been the subject of local regulation as to design and improvement, which regulatory authority was first granted effective August 14, 1929. Previous County/City *Amicus* Briefs on this issue also took the position that the mere recordation of a map in the Recorder's Office did not create legal parcels and that for a map recorded prior to August 14, 1929, it took the additional act of transferring a lot shown on the map into ownership separate from the ownership of the surrounding lots in order to create a separate legal parcel for land use purposes.

The reasoning behind the position taken by the Commission and the County/City *Amicus* Briefs is that it was not until the 1929 Act that a local government had any authority to approve, conditionally approve, or deny a subdivision map proposal submitted for recordation. The 1929 Act is the first law to require review of a subdivision by local government under a law "regulating the design and improvement of subdivisions," the phrase used in present day Government Code Section 66499.30(d) to identify subdivisions which are entitled to be grandfathered as legally completed.

In contrast to this position, the County of San Mateo and the applicant take the position that the Hodge lot is legal because it appears on a map recorded in the San Mateo County recorder's officer in 1905 and complies with the version of the Map Act then in effect (Exhibit 10).

The California Supreme Court decision that the appellants cite, *Gardner v. County of Sonoma,* (2003) 29 Cal.4th 990, does not resolve the controversy between the appellants and the applicant. In *Gardner*, the California Supreme Court held unanimously that its review of the Subdivision Map Act and the relevant case law led it to conclude that a map recorded before 1893 did not establish or create legally cognizable subdivisions for purposes of the Subdivision Map Act, notwithstanding the map's claimed accuracy and its inclusion in an 1877 atlas. That is, antiquated subdivision maps, recorded in the absence of an applicable subdivision statute, ordinance, or regulation, do not in themselves establish subdivisions or create legal parcels that mandate the issuance of certificates of compliance for the subdivided parcels that they depict. In a footnote, the court left open the question of whether maps filed before 1929 can create legal lots. As discussed above, this date is significant because not until the 1929 amendments to the Subdivision Map Act did cities and counties receive authority to regulate subdivisions. As stated in a footnote 7 of the decision:

> 7 Certain amici curiae in support of the County assert that only maps recorded under the 1929 predecessor to the Map Act or subsequent map statutes legally created parcels. (Stats. 1929, ch. 837, pp. 1790-1805; *Hays, supra,* 217 Cal.App.3d at p. 289.) Conversely, the California Attorney General has

> opined that maps recorded under earlier predecessor statutes to the Act should also be deemed to create parcels (74 Ops.Cal.Atty.Gen. 105 (1991). We need not resolve that dispute in this case, for the map at issue here predates the earliest predecessor statute enacted in 1893. [Emphasis added.]

Given that the law is unresolved concerning the creation of parcels by maps recorded between 1893 and 1929, in this particular case, the Commission chooses not to definitively determine whether or not the subject parcel, appearing on a map recorded in 1905 is a legal parcel. For the reasons discussed below, the Commission exercises its discretion and finds that even though an issue is raised, the local government's approval does not raise a substantial issue of conformity of the approved development with the coastal resource protection and public access policies of a certified LCP and/or the Coastal Act, based on the facts of this particular case.

In determining whether the appellants' contention that the project site was not legally created raises a substantial issue, the Commission considers, in part: (1) the extent and scope of the approved development; (2) the factual and legal support for the County's approval; (3) the significance of the coastal resources affected by the development; and (4) the precedential value of the local government's decision for future interpretation of its LCP.

Regarding the extent and scope of the approved development, The County approved one 1,975-square-foot single-family residence within Block 7 of the Shore Acres subdivision. There are other intermittent single-family residences along Coronado, north and east of the project site. The parcel to the south (Parcel 9, APN 048-013-280) has an approved coastal development permit and a building permit was issued earlier this year. The parcel immediately to the west of the project site is developed with the Landis Beach Bed and Breakfast. The Da Rosa parcel immediately to the east is the only undeveloped parcel remaining immediately adjacent to the project site. (Exhibit 3.) (Parcel 20, APN 048-013-580)

Regarding the factual and legal support for the County's approval, the appellants suggest that the Hodge parcel and the Da Rosa parcel should be considered as one legal parcel because they have been conveyed together throughout the years. However, the Hodge parcel was conveyed separately from the Da Rosa parcel by grant deed on October 15, 1969, prior to 1972 when parcels maps were required by the Subdivision Map Act and prior to the effective date of the Coastal Zone Conservation Act. Although the Hodge parcel is not entitled to the presumption of legality afforded parcels under 66412.6(a) of the Subdivision Map Act because the Hodge parcel did not obtain a parcel map as required by the local subdivision ordinance, the fact that the Hodge parcel was conveyed separately prior to 1972 significantly detracts from any argument suggesting the merger of the Hodge and Da Rosa parcels to form one 8,800-square-foot non-conforming parcel and the development of one single-family residence on the combined parcels instead of two if the parcels are not combined. Regarding the significance of the coastal resources affected by the approved development, the project site does not contain any wetlands, riparian areas, or other environmentally sensitive habitat areas. Although a small (approximately 20-square-foot) wetland has been delineated on the adjacent (Da Rosa) parcel, the California Department of Fish and Game has determined that the approved development would not adversely affect wetland resources on the adjacent parcel consistent with the wetland buffer requirements of the LCP. Also, the project site involves the construction of one house and there are no trails on the site or other evidence that the public has used the property to access the coast. As such, the approved development would not significantly affect coastal resources or public access.

Regarding the precedential value of the local government's decision for future interpretation of its LCP, the County record indicates that County staff completed a survey of all single-family residence in the immediate vicinity of the proposed project along Coronado and Cortez Avenues and found that the County had already approved nine other single-family residences. An aerial review of Block 7, the Block of the Shore Acres subdivision in which Lot 20 is located, indicates that approximately half of the 21 lots contained in Block 7 are already developed (Exhibit 11). In addition, as discussed above, certain of the remaining half, although not yet developed, have already received development approvals.

Other circumstances surrounding the conveyance of the Hodge parcel are also unique. In addition to the fact that the Hodge parcel was, prior to 1972, conveyed separately from the only undeveloped lot immediately adjacent to the Hodge parcel, the Hodge parcel has also been previously treated as a separate parcel from the adjacent parcel it had been conveyed along with between 1954 and 1999. The Hodge parcel, parcel 21, was conveyed along with parcel 9, the parcel immediately south of the Hodge parcel between 1954 and 1999. The two parcels were not conveyed together between 1905 and 1954. As stated above, Parcel 9 is currently being developed based on a coastal development permit approved by the County on February 28, 2001. A building permit to begin construction on Parcel 9 was issued on January 9, 2003. It appears a CDP was issued for the house on Parcel 9 because Parcel 9 was considered a separate legal parcel from Parcel 20. This local CDP was not appealed to the Commission. In any event, now that parcel 9 has been approved for development, parcel 9 is entitled to a certificate of compliance pursuant to Govt. Code section 66499.35.

Because the approved development: (1) is minor in extent and scope; (2) would not significantly affect coastal resources or public access; (3) involves one block of an area that is already substantially developed; (4) would be undertaken on a parcel that has been conveyed separately from the only adjacent undeveloped parcel prior to 1972; and (5) would be undertaken on a parcel that was considered separate from another adjacent developed parcel at the time the adjacent developed parcel received a CDP, the Commission finds that the appellants' contention that the project site is not a legally created parcel raises no substantial issue of conformity with policies of the certified LCP.

4.1.3 Visual Resources

The appellants contend that the approved development would have visual impacts in conflict with LUP Policies 8.5, 8.11, and 8.13. These policies state:

8.5 **Location of Development**

a. Require that new development be located on a portion of a parcel where the development (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall. Where conflicts in complying with this requirement occur, resolve them in a manner which on balance most protects significant coastal resources on the parcel, consistent with Coastal Act Section 30007.5.

...

b. Require, including by clustering if necessary, that new parcels have building sites that are not visible from State and County Scenic Roads and will not significantly impact views from other

public viewpoints. If the entire property being subdivided is visible from State and County Scenic Roads or other public viewpoints, then require that new parcels have building sites that minimize visibility from those roads and other public viewpoints.

8.11 Definition of Urban

Define urban areas and rural service centers in accordance with the Locating and Planning New Development Component Policies 1.3 and 1.10.

8.13 Special Design Guidelines for Coastal Communities

The following special design guidelines supplement the design criteria in the Community Design Manual:

a. Montara-Moss Beach-El Granada
...
b. Princeton-by-the-Sea
...
c. San Gregorio
...
d. Pescadero
...

LUP Policy 8.5a regarding locating development on the portion of the project site in a manner that best minimizes the visual impacts of the development is an important policy in cases where siting alternatives are available to reduce visual impacts. For example, where development can be sited in an area on a parcels where it would be screened by landforms or significant stands of existing vegetation, LUP Policy 8.5a would require consideration of such alternatives. The approved development is located on a level 4,400-square-foot parcel with no trees and no significant stands of vegetation. Because of the small size of the parcel and required property line setbacks, little or no adjustment of the location of the approved development is feasible. Moreover, no adjustment of the location of the development would materially affect the visual impacts of the development. Therefore, the Commission finds that the appeal raises no substantial issue concerning the conformity of the approved development with LUP Policy 8.5a.

LUP Policy 8.5b requires that new parcels are designed to provide building sites that are not visible from State and County Scenic Roads. As stated above, the project site is contained within Block 7 of an area that is predominantly built out and/or has received development approval.

LUP Policy 8.11 is the LCP definition of the term *urban,* not a development standard per se. As such, the Commission finds that the appeal raises no substantial issue concerning the conformity of the approved development with LUP Policy 8.11.

LUP Policy 8.13 established special design guidelines for Montara, Moss Beach, El Granada, Princeton-by-the-Sea, San Gregorio, and Pescadero. The approved development is not located in any of these communities. Therefore, LUP Policy 8.13 is not applicable to the approved development. Therefore, the Commission finds that the appeal raises no substantial issue concerning the conformity of the approved development with LUP Policy 8.13.

In its findings for approval of the project, the Board of Supervisors determines that the approved development would not impact public views of the coast because such views are already obscured by existing development immediately to the west (seaward) of the project site. The

appeal does not question this finding or establish that the approved development would in fact interfere with the public's view of the coast. For these reason and the reasons stated above, the Commission finds that the appeal raises no substantial issue with respect to the conformity of the approved development with the visual resource protection policies of the San Mateo County LCP.

4.1.4 Sensitive Habitat, Wetlands, and Riparian Areas

The appellants contend that the approved development is inconsistent with LUP Policies 7.1, 7.3, 7.4, 7.5, 7.7-7.19, 7.32-7.36, 7.43, and 7.44. These policies are related to protection of sensitive habitat areas, wetlands, and riparian areas. The only support offered in the appeal for this contention is the statement that:

> *"There is standing water and therefore possible special habitat on lots adjacent to the subject lot, for which no credible analysis has been conducted. There is also no analysis of the cumulative effect that other development on numerous substandard lots in Miramar is having on the wetland and habitat resources that surround the subject lot."*

The administrative record for the County's action on the approved development includes a wetland delineation study of the project site (WRA 2003). The study concludes:

> *"No potential San Mateo County LCP wetland areas were identified within the Study Area. Most of the site was determined to be previously filled upland vegetated by non-native facultative and upland species. A slightly lower area in the back (SE) portion of the Study Area had observable surficial ponding; however, this area was not determined to be a wetland due to its lack of wetland vegetation, absence of hydric soils, and temporary hydrologic conditions.*

There is no evidence in the local administrative record or the appeal contradicting the characterization of the project site contained in the wetland delineation study.

Although not specifically discussed or elaborated, the appeal also generally contends that the approved development is inconsistent with LUP Policy 7.18, which establishes the LCP wetland buffer standards as follows:

> **7.18 Establishment of Buffer Zones**
>
> Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only where (1) no alternative development site or design is possible; and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem. [Emphasis added.]

As discussed above, a small wetland, approximately 20 square feet in area, has been identified on the adjacent Da Rosa parcel (LSA 2003). The approved development is located 51 feet from this wetland in conflict with the standard 100-foot wetland buffer required by LUP Section 7.18. However, LUP Section 7.18 provides that this buffer distance may be reduced to no less than 50 feet where (1) no alternative development site or design is possible, and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game.

In support of its approval of the project, the County found that:

> *No alternative location exists for the proposed residence, as the project site is 40 feet wide and the zoning requires 10-foot setbacks. Due to the lot size and these zoning requirements, the applicants are limited to a 20-foot wide buildable area and have no option for relocating the proposed development further away from the wetland."*

There is no evidence in the record that contradicts this finding and the appeal does not contend that an alternative development site or design is possible that would minimize the encroachment of the approved development within the wetland buffer.

In addition, the California Department of Fish and Game has reviewed the project and has determined that a 50-foot buffer is adequate to protect wetland resources, stating:

> *"The information provided is satisfactory for DFG to conclude that the alternative setback of 50 feet is adequate to protect wetland resources based on the size, quality, and overall site and vicinity conditions."* (Exhibit 12)

Taking into consideration the degree of factual and legal support for the County's action, the Commission finds that the appeal raises no substantial issue concerning the conformity of the approved development to the wetland, riparian area, and sensitive habitat policies of the San Mateo County LCP.

4.1.5 Cumulative Traffic Impacts

The appellants contend that the approved development is inconsistent with LUP Policies 2.5-2.7, 2.8a, 2.9-2.13, 2.48, 2.49, 2.52, 2.53, and 2.57c due to unacceptable levels of traffic congestion on Highways 1 and 92.

Of the LUP policies cited above, only Policies 2.8a and 2.10 are relevant to the review of the approved development. The remaining policies are related to planning and development of new and expansion of existing public works facilities, and do not form the standard of review for residential development. The full text of these policies is contained in Appendix B.

LUP Policies 2.8a and 2.10 state:

2.8 Reservation of Capacity for Priority Land Uses

a. Reserve public works capacity for land uses given priority by the Local Coastal Program as shown on Table 2.7 and Table 2.17. All priority land uses shall exclusively rely on public sewer and water services.

2.10 Growth Management

After Phase I sewer and substantial water supply facilities have both been provided, limit building permits for the construction of non-priority residential land uses in the Mid-Coast in accordance with the policies of the Locating and Planning New Development Component.

As stated in the appeal, the Commission has found that the regional transportation infrastructure serving the San Mateo County Mid-Coast area (i.e., Highways 1 and 92) is overburdened and therefore lacks sufficient capacity to provide adequate service for new development. Based on these findings, the Commission in two prior actions has required retirement of development rights of existing lots in the region as mitigation for new residential subdivisions in Half Moon

Bay (Pacific Ridge and Beachwood). In both of these cases, the Commission found that the retirement of existing development rights was necessary to mitigate the regional cumulative traffic impacts resulting from the creation of new development rights in the region as a consequence of these new subdivisions of unsubdivided land.

The approved development comprises infill development on an existing parcel. Since traffic volumes on Highways 1 and 92 already exceed capacity at numerous bottleneck sections in the region, all development, including infill, that generates additional demand on the area's highways will result in cumulative traffic impacts that interfere with the public's ability to access the coast. Therefore, the appeal raises an issue of conformity of the approved project with the access policies of the certified LCP.

For the reasons discussed below, at this time, the Commission exercises its discretion and finds that even though an issue is raised, the local government's approval does not raise a substantial issue of conformity of the approved development with the public access policies of a certified LCP and/or the Coastal Act, based on the facts of this particular case.

In determining whether the appellants' contention regarding cumulative traffic impacts raises a substantial issue, the Commission considers, in part: (1) the extent and scope of the approved development, (2) the significance of the coastal resources affected by the development, and (3) the precedential value of the local government's decision for future interpretation of its LCP.

Regarding the extent and scope of the approved development, the County's approval extends to one 1,975-square-foot single-family residence within Block 7 of the Shore Acres subdivision, a partially developed subdivision. Neither the Commission nor the County have previously required retirement of development rights for infill development on existing lots in the San Mateo County Mid-Coast area. To date, this requirement has only been imposed on new subdivisions that substantially affect coastal resources and significantly increase the development potential in the area by creating new legal lots.

Regarding the significance of the coastal resources affected by the development, as discussed above, the project site does not contain any wetlands, riparian areas, or other environmentally sensitive habitat areas. Although a small (approximately 20-square-foot) wetland has been delineated on the adjacent (Da Rosa) parcel, the California Department of Fish and Game has determined that the approved development would not adversely affect wetland resources on the adjacent parcel consistent with the wetland buffer requirements of the LCP. Also, the project site involves the construction of one house and there are no trails on the site or other evidence that the public has used the property to access the coast. As such, the approved development would not significantly affect coastal resources or public access.

Regarding the precedential value of the local government's decision for future interpretation of its LCP, as discussed above, the County record indicates that County staff completed a survey of all single-family residence in the immediate vicinity of the proposed project along Coronado and Cortez Avenues and found that the County had already approved nine other single-family residences. An aerial review of Block 7, the Block of the Shore Acres subdivision in which Lot 20 is located, indicates that approximately half of the 21 lots contained in Block 7 are already developed (Exhibit 11). In addition, certain of the remaining half, although not yet developed, have already received development approvals.

Within the context of the current County and Commission response to the traffic issue to date, and because the approved development: (1) is minor in extent and scope; (2) would not significantly affect coastal resources or public access; (3) involves one block of an area that is already substantially developed; (4) would be undertaken on a parcel that has been conveyed separately from the only adjacent undeveloped parcel prior to 1972; and (5) would be undertaken on a parcel that was considered separate from another adjacent developed parcel at the time the adjacent developed parcel received a CDP, the Commission finds that the appellants' contention regarding significant cumulative traffic impacts raises no substantial issue of conformity with policies of the certified LCP.

4.2 Appellants Contentions that Raise Invalid Grounds for Appeal

The appellants contend:

> *"There are also harmful financial implications for the Coastal Zone in that the County has not collected any regional traffic mitigation fee for the proposed development."*
>
> *"The action of the Board of Supervisors overturning the Planning Commission denial was improper "because no error was considered or found in the Planning Commission's decision to deny the project."*
>
> *"[T]imely public input was not conveyed to board members or made part of the record, despite public requests to do so."*
>
> *"The public was not accorded a meaningful hearing by the BOS..."*

Coastal Act Section 30603(b)(1) states:

> The grounds for an appeal [of a local government action approving a coastal development permit] 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.

None of the contentions cited above constitute a valid ground for appeal of the coastal development permit because they do not include an allegation that the approved development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act.

APPENDIX A
Cited San Mateo County LCP Policies

Land Use Plan Policies

1.5 Land Uses and Development Densities in Urban Areas

b. Permit in urban areas land uses designated on the Land Use Plan Maps and conditional uses up to the densities specified in Tables 1.2 and 1.3. The use and amount of development allowed on a parcel, including parcels in areas designated "General Open Space," "Agriculture," or "Public Recreation-Community Park" on the General Plan Land Use Map within the urban boundary in the Coastal Zone, shall be limited to the uses and to the amount, density and size of development permitted by the Local Coastal Program, including the density credit requirements of Policy 1.8c. and Table 1.3.

1.20 Lot Consolidation

According to the densities shown on the Land Use Plan Maps, consolidate contiguous lots, held in the same ownership, in residential subdivisions in Seal Cove to minimize risks to life and property and in Miramar to protect coastal views and scenic coastal areas.

2.5 Review of Public Works Projects

a. Require implementation in the Coastal Zone of Sections 65401, 65402 and 65403 of the Government Code which require all governmental bodies, including special districts, to submit to the Planning agency a list of the proposed public works recommended for planning or construction during the ensuing fiscal year. Require in the Coastal Zone that State agencies also fulfill this requirement. Require that the Planning Commission review these lists for conformance with the Local Coastal Program.

b. Require that each governmental body in the Coastal Zone, including special districts and State agencies, prepare five (5) year Capital Improvement Programs as allowed by Section 65403 of the Government Code. Require that the Planning Commission review these Capital Improvement Programs for conformance with the Local Coastal Program.

***2.6 Capacity Limits**

Limit development or expansion of public works facilities to a capacity which does not exceed that needed to serve buildout of the Local Coastal Program.

2.7 Phased Development of Public Works Facilities

Require the phased development of public works facilities in order to insure that permitted public works capacities are limited to serving needs generated by development which is consistent with the Local Coastal Program policies.

2.8 Reservation of Capacity for Priority Land Uses

a. Reserve public works capacity for land uses given priority by the Local Coastal Program as shown on Table 2.7 and Table 2.17. All priority land uses shall exclusively rely on public sewer and water services.

2.9 Phase I Capacity Limits

Based the first phase capacity of public works facilities on documentable and short-term need (approximately 20 years or less) consistent with the Local Coastal Program. Monitor the needs of existing land uses and use these results and the existing and probable future capacity of related public works and services to document the need.

2.10 Growth Management

After Phase I sewer and substantial water supply facilities have both been provided, limit building permits for the construction of non-priority residential land uses in the Mid-Coast in accordance with the policies of the Locating and Planning New Development Component.

2.11 Monitoring of Phase I

a. Require that public agencies, utilities or special districts monitor the needs of land uses for public works capacity during Phase I.

b. Notify affected public agencies, utilities and special districts of the requirements for monitoring included in this plan.

2.12 Timing and Capacity of Later Phases

a. Use the results of Phase I monitoring to determine the timing and capacity of later phase(s).

b. Guide timing by allowing later phase(s) to begin when Phase I capacity has been or will be consumed within the time period required to construct additional capacity.

c. Establish the capacity by: (1) estimating the capacity needed to serve the land use plan at buildout, (2) considering the availability of related public works to establish whether capacity increases would overburden the

existing and probable future capacity of other public works and (3) considering the availability of funds.

d. Require every phase to go through the development review process.

2.13 Coordination with the City of Half Moon Bay

Coordinate with the City of Half Moon Bay's certified Local Coastal Program to take into consideration the policies of the City's LCP when determining: (1) Phase I sewer capacity and (2) when and how much to increase the capacity of all public works facilities after Phase I.

ROADS

The County will:

2.48 Capacity Limits

a. Limit expansion of roadways to capacity which does not exceed that needed to accommodate commuter peak period traffic when buildout of the Land Use Plan occurs.

b. Use the requirements of commuter peak period traffic as the basis for determining appropriate increases in capacity.

2.49 Desired Level of Service

In assessing the need for road expansion, consider Service Level D acceptable during commuter peak periods and Service Level E acceptable during recreation peak periods.

2.52 Phase I Monitoring

a. Require during Phase I that CalTrans monitor peak commuter period traffic and submit data reports to the County on the results of this monitoring, as a basis for documenting the need for increased roadway capacity, when a permit application is submitted.

b. Monitor the number and rate of new residential construction, particularly in the rural Mid-Coast.

2.53 Timing and Capacity of Later Phases

a. Use the results of Phase I monitoring to determine the timing and capacity of later phase(s).

b. Guide timing by allowing later phase(s) to begin when Phase I road capacity has been consumed or when actual traffic development shows that road capacities should be expanded.

c. Establish the capacity by: (1) estimating the road capacity needed to serve the land use plan at buildout, (2) considering the availability of related public works and whether expansion of the road capability would overburden the existing and probable future capacity of other public works, (3) considering the availability of funds and (4) demonstrating that basic levels of transit service have been met and the proposed improvement will not result in reduced transit patronage.

2.57 Protecting Road Capacity for Visitors Through Transportation System Management Techniques

c. Monitor the peak recreation period traffic to determine whether the above techniques are successful and whether new residential development is consuming road capacity needed for visitors.

***7.1 Definition of Sensitive Habitats**

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.

Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.

***7.3 Protection of Sensitive Habitats**

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.

b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

***7.4 Permitted Uses in Sensitive Habitats**

a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33, and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.

b. In sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife and State Department of Fish and Game regulations.

7.5 Permit Conditions

a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.

b. When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.

RIPARIAN CORRIDORS

The County will:

7.7 Definition of Riparian Corridors

Define riparian corridors by the "limit of riparian vegetation" (i.e., a line determined by the association of plant and animal species normally found near streams, lakes and other bodies of freshwater: red alder, jaumea, pickleweed, big leaf maple, narrow-leaf cattail, arroyo willow, broadleaf cattail, horsetail, creek

dogwood, black cottonwood, and box elder). Such a corridor must contain at least a 50% cover of some combination of the plants listed.

7.8 Designation of Riparian Corridors

Establish riparian corridors for all perennial and intermittent streams and lakes and other bodies of freshwater in the Coastal Zone. Designate those corridors shown on the Sensitive Habitats Map and any other riparian area meeting the definition of Policy 7.7 as sensitive habitats requiring protection, except for manmade irrigation ponds over 2,500 sq. ft. surface area.

7.9 Permitted Uses in Riparian Corridors

a. Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.

b. When no feasible or practicable alternative exists, permit the following uses: (1) stream dependent aquaculture, provided that non-stream dependent facilities locate outside of corridor, (2) flood control projects, including selective removal of riparian vegetation, where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, (3) bridges when supports are not in significant conflict with corridor resources, (4) pipelines, (5) repair or maintenance of roadways or road crossings, (6) logging operations which are limited to temporary skid trails, stream crossings, roads and landings in accordance with State and County timber harvesting regulations, and (7) agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels.

7.10 Performance Standards in Riparian Corridors

Require development permitted in corridors to: (1) minimize removal of vegetation, (2) minimize land exposure during construction and use temporary vegetation or mulching to protect critical areas, (3) minimize erosion, sedimentation, and runoff by appropriately grading and replanting modified areas, (4) use only adapted native or non-invasive exotic plant species when replanting, (5) provide sufficient passage for native and anadromous fish as specified by the State Department of Fish and Game, (6) minimize adverse effects of waste water discharges and entrainment, (7) prevent depletion of groundwater supplies and substantial interference with surface and subsurface waterflows, (8) encourage

waste water reclamation, (9) maintain natural vegetation buffer areas that protect riparian habitats, and (10) minimize alteration of natural streams.

7.11 Establishment of Buffer Zones

a. On both sides of riparian corridors, from the "limit of riparian vegetation" extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.

b. Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams.

c. Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point except for manmade ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.

7.12 Permitted Uses in Buffer Zones

Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors, (2) residential uses on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists, (3) in Planned Agricultural, Resource Management and Timber Preserve Districts, residential structures or impervious surfaces only if no feasible alternative exists, (4) crop growing and grazing consistent with Policy 7.9, (5) timbering in "streamside corridors" as defined and controlled by State and County regulations for timber harvesting, and (6) no new residential parcels shall be created whose only building site is in the buffer area.

7.13 Performance Standards in Buffer Zones

Require uses permitted in buffer zones to: (1) minimize removal of vegetation, (2) conform to natural topography to minimize erosion potential, (3) make provisions (i.e., catch basins) to keep runoff and sedimentation from exceeding pre-development levels, (4) replant where appropriate with native and non-invasive exotics, (5) prevent discharge of toxic substances, such as fertilizers and pesticides, into the riparian corridor, (6) remove vegetation in or adjacent to manmade agricultural ponds if the life of the pond is endangered, (7) allow dredging in or adjacent to manmade ponds if the San Mateo County Resource Conservation District certified that siltation imperils continued use of the pond for agricultural water storage and supply, and (8) require motorized machinery to be kept to less than 45 dBA at any wetland boundary except for farm machinery and motorboats.

WETLANDS

The County will:

7.14 Definition of Wetland

Define wetland as an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and manmade impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernally wet areas where the soils are not hydric.

In San Mateo County, wetlands typically contain the following plants: cordgrass, pickleweed, jaumea, frankenia, marsh mint, tule, bullrush, narrow-leaf cattail, broadleaf cattail, pacific silverweed, salt rush, and bog rush. To qualify, a wetland must contain at least a 50% cover of some combination of these plants, unless it is a mudflat.

7.15 Designation of Wetlands

a. Designate the following as wetlands requiring protection: Pescadero Marsh, Pillar Point Marsh (as delineated on Map 7.1), marshy areas at Tunitas Creek, San Gregorio Creek, Pomponio Creek and Gazos Creek, and any other wetland meeting the definition in Policy 7.14.

b. At the time a development application is submitted, consider modifying the boundary of Pillar Point Marsh (as delineated on Map 7.1) if a report by a qualified professional, selected jointly by the County and the applicant, can demonstrate that land within the boundary does not meet the definition of a wetland.

7.16 Permitted Uses in Wetlands

Within wetlands, permit only the following uses: (1) nature education and research, (2) hunting, (3) fishing, (4) fish and wildlife management, (5) mosquito abatement through water management and biological controls; however, when determined to be ineffective, allow chemical controls which will not have a significant impact, (6) diking, dredging, and filling only as it serves to maintain existing dikes and an open channel at Pescadero Marsh, where such activity is

necessary for the protection of pre-existing dwellings from flooding, or where such activity will enhance or restore the biological productivity of the marsh, (7) diking, dredging, and filling in any other wetland only if such activity serves to restore or enhance the biological productivity of the wetland, (8) dredging manmade reservoirs for agricultural water supply where wetlands may have formed, providing spoil disposal is planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation, and (9) incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

7.17 Performance Standards in Wetlands

Require that development permitted in wetlands minimize adverse impacts during and after construction. Specifically, require that: (1) all paths be elevated (catwalks) so as not to impede movement of water, (2) all construction takes place during daylight hours, (3) all outdoor lighting be kept at a distance away from the wetland sufficient not to affect the wildlife, (4) motorized machinery be kept to less than 45 dBA at the wetland boundary, except for farm machinery, (5) all construction which alters wetland vegetation be required to replace the vegetation to the satisfaction of the Planning Director including "no action" in order to allow for natural reestablishment, (6) no herbicides be used in wetlands unless specifically approved by the County Agricultural Commissioner and State Department of Fish and Game, and (7) all projects be reviewed by the State Department of Fish and Game and State Water Quality Board to determine appropriate mitigation measures.

7.18 Establishment of Buffer Zones

Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only where (1) no alternative development site or design is possible; and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem.

7.19 Permitted Uses in Buffer Zones

Within buffer zones, permit the following uses only: (1) uses allowed within wetlands (Policy 7.16) and (2) public trails, scenic overlooks, and agricultural uses that produce no impact on the adjacent wetlands.

RARE AND ENDANGERED SPECIES

The County will:

7.32 Designation of Habitats of Rare and Endangered Species

Designate habitats of rare and endangered species to include, but not be limited to, those areas defined on the Sensitive Habitats Map for the Coastal Zone.

7.33 Permitted Uses

a. Permit only the following uses: (1) education and research, (2) hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat, and (3) fish and wildlife management to restore damaged habitats and to protect and encourage the survival of rare and endangered species.

b. If the critical habitat has been identified by the Federal Office of Endangered Species, permit only those uses deemed compatible by the U.S. Fish and Wildlife Service in accordance with the provisions of the Endangered Species Act of 1973, as amended.

7.34 Permit Conditions

In addition to the conditions set forth in Policy 7.5, require, prior to permit issuance, that a qualified biologist prepare a report which defines the requirements of rare and endangered organisms. At minimum, require the report to discuss: (1) animal food, water, nesting or denning sites and reproduction, predation and migration requirements, (2) plants life histories and soils, climate and geographic requirements, (3) a map depicting the locations of plants or animals and/or their habitats, (4) any development must not impact the functional capacity of the habitat, and (5) recommend mitigation if development is permitted within or adjacent to identified habitats.

7.35 Preservation of Critical Habitats

Require preservation of all habitats of rare and endangered species using criteria including, but not limited to, Section 6325.2 (Primary Fish and Wildlife Habitat Area Criteria) and Section 6325.7 (Primary Natural Vegetative Areas Criteria) of the Resource Management Zoning District.

7.36 San Francisco Garter Snake

a. Prevent any development where there is known to be a riparian or wetland location for the San Francisco garter snake with the following exceptions: (1) existing manmade impoundments smaller than one-half acre in surface, and (2) existing manmade impoundments greater than one-half acre in

surface providing mitigation measures are taken to prevent disruption of no more than one half of the snake's known habitat in that location in accordance with recommendations from the State Department of Fish and Game.

b. Require developers to make sufficiently detailed analyses of any construction which could impair the potential or existing migration routes of the San Francisco garter snake. Such analyses will determine appropriate mitigation measures to be taken to provide for appropriate migration corridors.

UNIQUE SPECIES

The County will:

7.43 Designation of Habitats of Unique Species

Designate habitats of unique species to include, but not be limited to, those areas designated on the Sensitive Habitats Map for the Coastal Zone.

7.44 Permitted Uses

Permit only the following uses: (1) education and research, (2) hunting, fishing, pedestrian and equestrian trails that have no adverse impact on the species or its habitat, and (3) fish and wildlife management to the degree specified by existing governmental regulations.

8.5 Location of Development

a. Require that new development be located on a portion of a parcel where the development (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall. Where conflicts in complying with this requirement occur, resolve them in a manner which on balance most protects significant coastal resources on the parcel, consistent with Coastal Act Section 30007.5.

Public viewpoints include, but are not limited to, coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches.

This provision does not apply to enlargement of existing structures, provided that the size of the structure after enlargement does not exceed 150% of the pre-existing floor area, or 2,000 sq. ft., whichever is greater.

This provision does not apply to agricultural development to the extent that application of the provision would impair any agricultural use or operation on the parcel. In such cases, agricultural development shall use appropriate building materials, colors, landscaping and screening to eliminate or minimize the visual impact of the development.

b. Require, including by clustering if necessary, that new parcels have building sites that are not visible from State and County Scenic Roads and will not significantly impact views from other public viewpoints. If the entire property being subdivided is visible from State and County Scenic Roads or other public viewpoints, then require that new parcels have building sites that minimize visibility from those roads and other public viewpoints.

STRUCTURAL AND COMMUNITY FEATURES--URBAN AREAS AND RURAL SERVICE CENTERS

8.11 Definition of Urban

Define urban areas and rural service centers in accordance with the Locating and Planning New Development Component Policies 1.3 and 1.10.

8.13 Special Design Guidelines for Coastal Communities

The following special design guidelines supplement the design criteria in the Community Design Manual:

a. Montara-Moss Beach-El Granada

(1) Design structures which fit the topography of the site and do not require extensive cutting, grading, or filling for construction.

(2) Employ the use of natural materials and colors which blend with the vegetative cover of the site.

(3) Use pitched, rather than flat, roofs which are surfaced with non-reflective materials except for the employment of solar energy devices.

(4) Design structures which are in scale with the character of their setting and blend rather than dominate or distract from the overall view of the urbanscape.

(5) To the extent feasible, design development to minimize the blocking of views to or along the ocean shoreline from Highway 1 and other public viewpoints between Highway 1 and the sea. Public viewpoints include coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches. This provision shall not apply in areas west of Denniston Creek zoned either Coastside Commercial Recreation or Waterfront.

(6) In areas east of Denniston Creek zoned Coastside Commercial Recreation, the height of development may not exceed 28 feet from the natural or finished grade, whichever is lower.

b. Princeton-by-the-Sea

(1) Commercial Development

Design buildings which reflect the nautical character of the harbor setting, are of wood or shingle siding, employ natural or sea colors, and use pitched roofs.

(2) Industrial Development

Employ architectural detailing, subdued colors, textured building materials, and landscaping to add visual interest and soften the harsh lines of standard or stock building forms normally used in industrial districts.

c. San Gregorio

Encourage new buildings to incorporate traditional design features found in the San Gregorio House and other houses in the community, i.e., clean and simple lines, steep roof slopes, placement of windows and doors at regular intervals, doors and windows of equal proportions, and wood construction. Require remodeling of existing buildings to retain and respect their traditional architectural features, if any.

d. Pescadero

Encourage new buildings to incorporate architectural design features found in the historic buildings of the community (see inventory listing), i.e., clean and simple lines, precise detailing, steep roof slopes, symmetrical relationship of windows and doors, wood construction, white paint, etc. Require remodeling of existing buildings to retain and respect their traditional architectural features, if any.

ZONING CODE POLICIES

SECTION 6133. NON-CONFORMING PARCELS.

1. Continuation of Non-Conforming Parcels. A non-conforming parcel may continue as a separate legal parcel, subject to the merger provisions of the County Subdivision Regulations, and compliance with all other provisions of this Chapter.

2. Enlargement of Non-Conforming Parcels. A non-conforming parcel may be enlarged through the addition of contiguous land by lot line adjustment, lot consolidation, merger, or resubdivision, provided that the enlargement does not create nonconformities on adjoining property.

3. Development of Non-Conforming Parcels

   a. Development Not Requiring Use Permit

      (1) Unimproved Non-Conforming Parcel. Development of an unimproved non-conforming parcel may occur without the issuance of a use permit when any of the following circumstances ((a), (b), (c), or (d) below) exist:

Required Minimum Parcel Size	Actual Non-Conforming Parcel Size
(a) 5,000 sq. ft. (area)	≥3,500 sq. ft. (area)
(b) 50 ft. (width)	≥35 ft. (width)
(c) >5,000 sq. ft. (area)	≥5,000 sq. ft. (area)
(d) ≥50 ft. (width)	≥50 ft. (width)

      Proposed development on the unimproved non-conforming parcel shall conform with the zoning and building code regulations currently in effect.

      (2) Improved Non-Conforming Parcel. Development of an improved nonconforming parcel may occur without requiring the issuance of a use permit provided that the proposed development conforms with the zoning and building code regulations currently in effect.

   b. Development Requiring a Use Permit

      (1) Unimproved Non-Conforming Parcel

(a) Development of an unimproved non-conforming parcel shall require the issuance of a use permit when any of the following circumstances ((a), (b), (c), or (d)) exist:

Required Minimum Parcel Size	Actual Non-Conforming Parcel Size
(a) 5,000 sq. ft. (area)	<3,500 sq. ft. (area)
(b) 50 ft. (width)	<35 ft. (width)
(c) >5,000 sq. ft. (area)	<5,000 sq. ft. (area)
(d) ≥50 ft. (width)	<50 ft. (width)

(b) Proposed development on any unimproved non-conforming parcel that does not conform with the zoning regulations in effect shall require the issuance of a use permit

(2) Improved Non-Conforming Parcel. Proposed development on an improved non-conforming parcel, that does not conform with the zoning regulations currently in effect, shall require the issuance of a use permit.

(3) Use Permit Findings. As required by Section 6503, a use permit for development of a non-conforming parcel may only be issued upon making the following findings:

a. The proposed development is proportioned to the size of the parcel on which it is being built,

b. All opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible,

c. The proposed development is as nearly in conformance with the zoning regulations currently in effect as is reasonably possible,

d. The establishment, maintenance, and/or conducting of the proposed use will not, under the circumstances of the particular case, result in a significant adverse impact to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in the said neighborhood, and

(e) Use permit approval does not constitute a granting of special privileges.

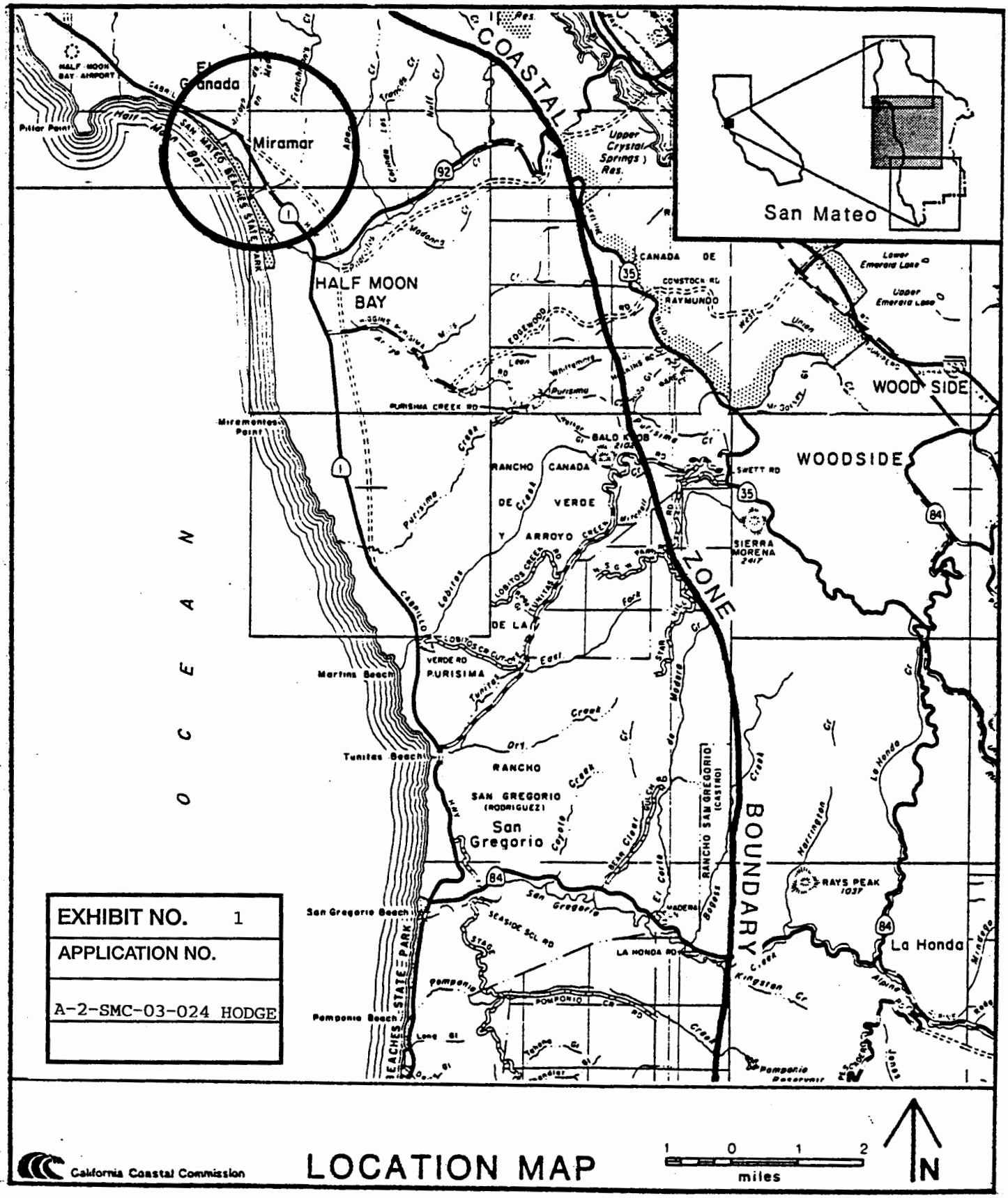


EXHIBIT NO. 1
APPLICATION NO.
A-2-SMC-03-024 HODGE

California Coastal Commission

LOCATION MAP

County of San Mateo

Hodge House 198 Coronado Avenue Parcel: 048 013 580 6/10/03

EXHIBIT NO. 2
APPLICATION NO.
A-2-SMC-03-024 HODGE

2

Hodge House 198 Coronado Avenue Parcel: 048 013 580 6/10/03

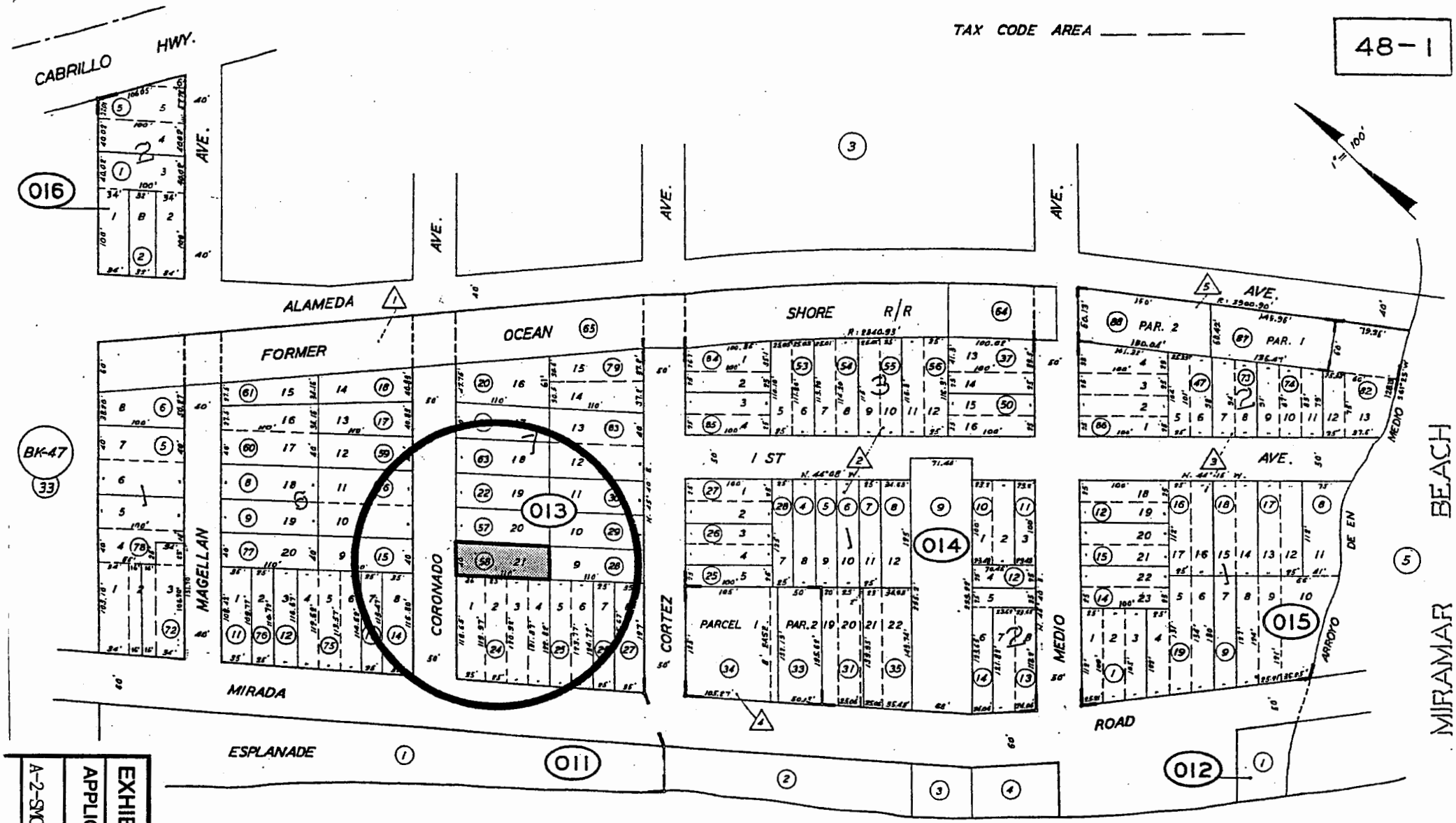
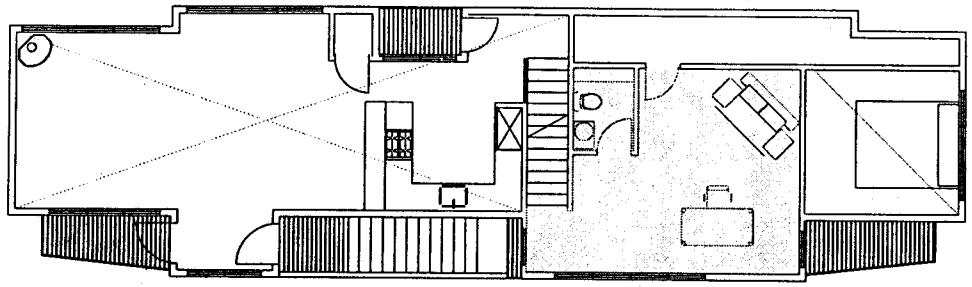


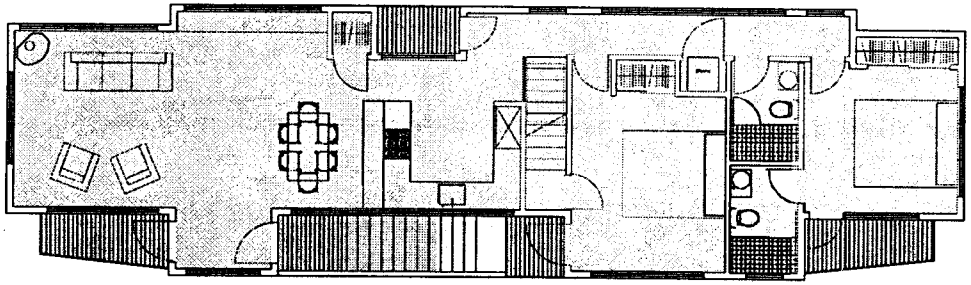
EXHIBIT NO. 3
APPLICATION NO.
A-2-SMC-03-024 HODGE

Hodge House 198 Coronado Avenue

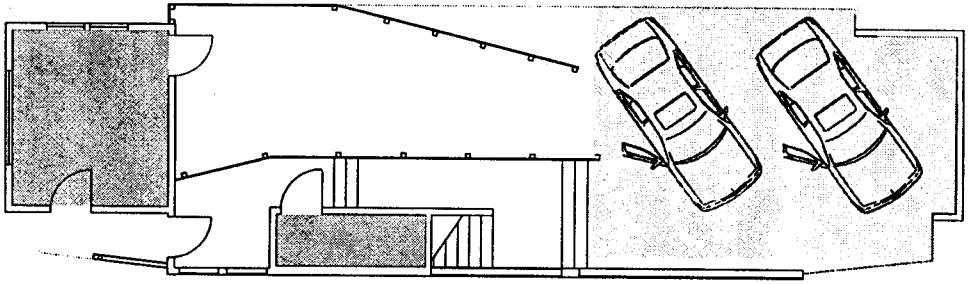
Parcel: 048 013 580 6/10/03



3rd floor



2nd floor



1st floor

Total: 1975 sq.ft

EXHIBIT NO. 4

APPLICATION NO.

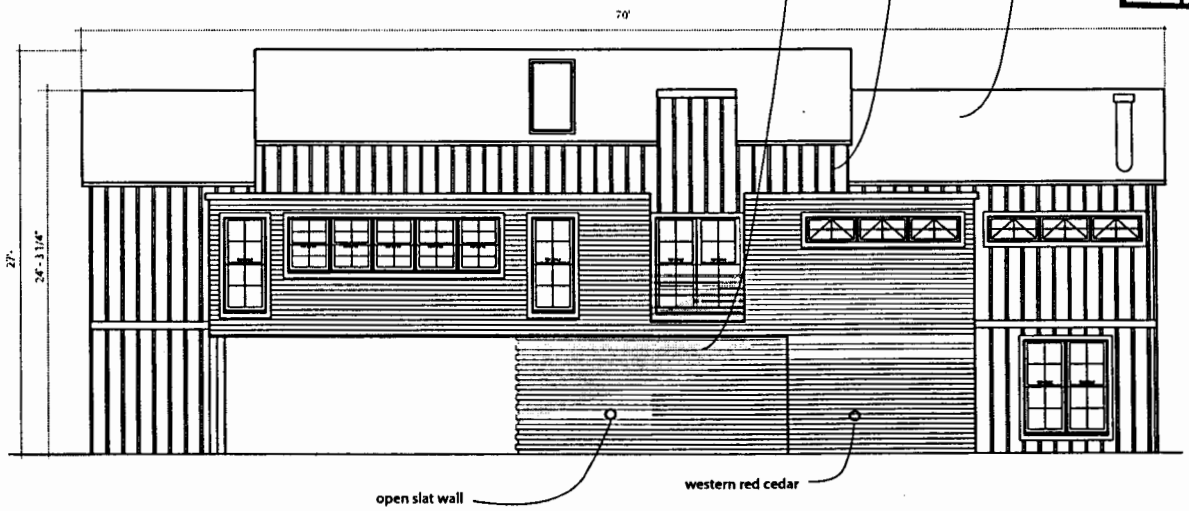
A-2-SMC-03-024 HODGE

EARTH TONE EXTERIOR COLORS

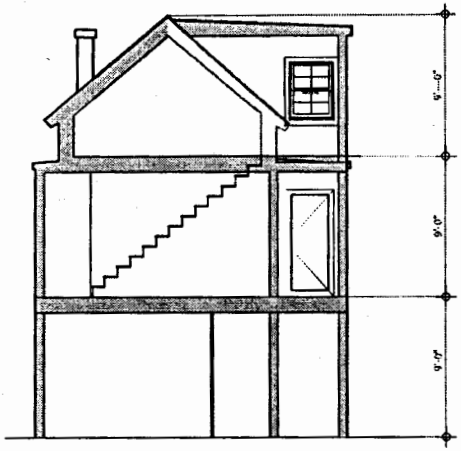
Approximate color palette

7.1 SouthEast exterior elevation

7.2 NorthEast exterior elevation

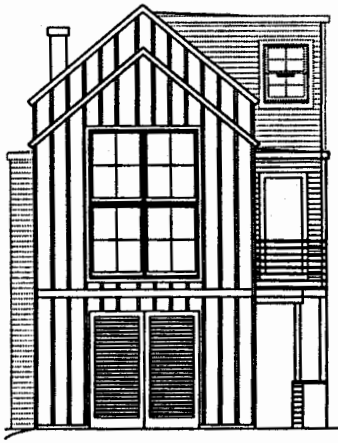


6.1 Section



1' UNDER THE HEIGHT LIMIT

6.2 NorthWest exterior elevation



6.3 SouthWest exterior elevation

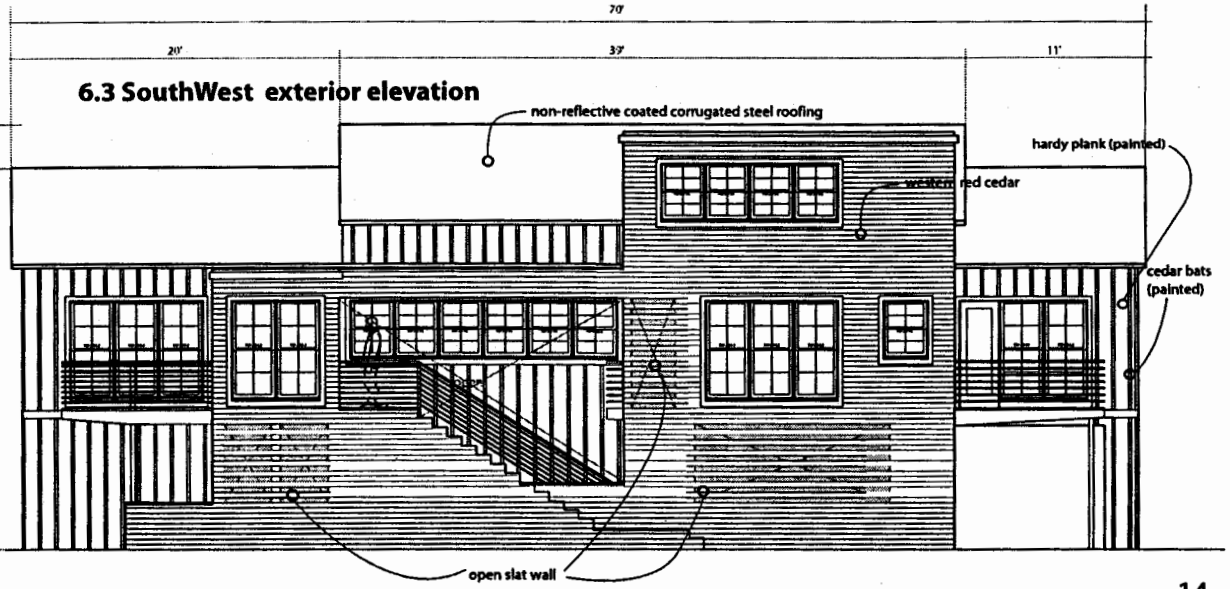


EXHIBIT NO. 6
APPLICATION NO.
A-2-SMC-03-024HODGE

EXHIBIT NO. 7
APPLICATION NO.
A-2-SMC-03-024 HODGE
(Page 1 of 4 pages)

June 25, 2003

California Coastal Commission
C/O Chris Kern/Chanda Meek
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Application No. 2-SMC-02-081 – Local Permit #: PLN2000-00676 - Applicants: David & Hijin Hodge
Location: 198 Coronado Ave., W. Miramar–APN: 048-013-580 – Requested CDP, Use Permit & Design Review Approvals
Description: To allow the construction of a new 1,975 sq.ft. single-family residence with an additional 193 sq.ft. of deck space on a 4,400 sq.ft. Non-Conforming Parcel

INTRODUCTION:

The primary entitlement sought is a CDP. Award of a CDP requires compliance with the County's LCP policies and maps, plus compliance with the procedural requirements of administrative law.

Since the proposed project is representative of thousands of substandard lots from hundred-year old "paper" subdivisions, its resolution has implications far beyond the present case.

LCP policies require compliance with zoning, the protection of Coastal Resources, and the protection of public access to the Coastal Zone. Administrative law requires that discretion cannot be abused or arbitrary, and it must be based on substantial evidence, not opinion, convenience or past practice.

On all counts, the proposed project fails to meet the above criteria, as detailed in the record thus far and summarized below, which is also submitted for the record.

SUBSTANDARD LOTS PRESENT CHRONIC LCP PROBLEMS AND NEED REGULATION:

The County admits that the building site (4,400 sq.ft.) does not conform to the minimum lot size requirements for the zone it occupies (10,000 sq.ft.). Unless special conditions are met under an applicant's burden of proof, granting a CDP violates LCP Policy 1.5b and also LCP Policy 1.20 under "Growth Management" – Lot Consolidation which reads: "According to the densities shown on the Land Use Maps (in this case Medium Low), consolidate contiguous lots, held in the same ownership, in residential subdivisions in Seal Cove to minimize risks to life and property and in Miramar to protect Coastal Views and Scenic Coastal Areas". This is not being done (See Exhibit 1 – Chain of Title for Escrow Exhibit B). Exhibit B in this report shows that Lot 21 now owned by Mr. Hodge was always owned and swapped along with the lot behind it – Lot 9 by the same inter-married parties from April 16, 1948 until these two lots were sold to Coastal Lots Golden Gate Associates in December of 1994. There was obviously ample time for the original owners who most probably also owned adjacent substandard lots to comply with LCP Policy 1.20.

Since discretion is by definition case-specific, it is irrelevant to this application that the County has previously and routinely approved development on other such non-conforming lots. Current boards are simply not bound by past decisions that have different circumstances or were uninformed.

In its review of LCP changes proposed as a result of the County's response to the Coastal Protection Initiative of a few years ago, the Coastal Commission has already rejected the County's proposed plan to manage development of small scale lots by granting them full scale development rights. Allowing the County to continue its present interim policy of granting full-scale development rights to each individual applicant is an ad hoc implementation of what the Commission has already rejected.

The County's requirement that the applicant made a good faith attempt to acquire more land and make the lot conforming is too easily met because there is no evaluation of alternatives or whether the attempt was in fact a good faith one. The County Planning Commission in fact found no evidence that such an attempt had been made and thus denied the CDP. On the contrary, the record of the subject lot having been split off from another in recent years shows a systematic effort by speculators to increase the number of substandard building sites, and thus the number of future LCP problems, even for conforming lot owners. (See forewarnings regarding the magnitude of uncertainty regarding splits of these substandard lots by Jack Liebster, Coastal Commission Analyst, now Half Moon Bay's new Planning Director, who wrote about this in the Staff Report for Appeal A-1-SMC-99-014 regarding the split up of contiguous lots that resulted in the 25' wide substandard lot at 910 Ventura in El Granada – pp. 3 through 5 in letter written by Barbara K. Mauz for the June 10, 2003 Board of Supervisors hearing regarding Hodge – found in Exhibit 2 – "Appellant's Letters.")

Continued .....

Relative to applicant claims of being entitled to a CDP for this project, the fact that lots were subdivided 100 years ago and subsequently rearranged or split, does not in itself confer the right to receive a CDP, which is based on review criteria protective of public, as opposed to private interests. Even the Subdivision Map Act, which protects private interests in subdivided land, makes itself subject to "other state law". Here, the County LCP is clearly the local manifestation of state law because without Coastal Commission certification that it complies with the Coastal Act, it would have no legal effect, and the Commission would have sole land use jurisdiction. Finally, the most recent court case on the development rights of antiquated lots (Gardner) does not support granting such rights to this lot without first evaluating the legality of the lot according to modern standards.

PROPOSED PROJECT DOES NOT COMPLY WITH LETTER OR INTENT OF LCP POLICIES:

County LCP policies protective of Coastal Resources such as public views, stream, wetlands, special habitat and public access are violated by the proposed project.

Public views are not restricted in the LCP to views from officially designated Coastal Access routes like SRs 1 and 92, but rather include views from anywhere the public has a right to be, which includes public streets, easements and informal trails. Moreover, the public includes Coastside residents, as well as visitors. The odd geometry and dimensions of the proposed house obviously add to further deterioration of public views from all sides of the property. Moreover, anyone traveling on Coastal Access SR1 in El Granada can see the gradual obliteration of a classic "blue water view" in the Miramar area by incremental development of numerous full size houses on substandard lots. Such development violates LCP Policies 8.5, 8.11 and 8.13.

The wetland and habitat protections include protecting such resources on the subject lot as well as protecting adjacent resources from further disturbance. Identification, mapping and protection of wetlands and special habitat is in this case required by County LCP Policies (7.1, 7.3, 7.4, 7.5, 7.7-7.13, 7.14-7.19, 7.32-7.36, 7.43 and 7.44). Resources are to be identified, mapped and protected from development regardless of the County's failure to systematically survey and map its coastal resources, and its preference to let the applicant's consultants decide if coastal resources are present at the time of CDP application. There is standing water and therefore possible special habitat on lots adjacent to the subject lot, for which no credible analysis has been conducted. There is also no analysis of the cumulative effect that other development on numerous substandard lots in Miramar is having on the wetland and habitat resources that surround the subject lot.

Half Moon Bay for example, has been proactive in identifying, mapping and protecting coastal resources under its own LCP for adjacent land, partnering in one case with the Coastal Conservancy to independently survey a 32 acre coastal terrace (similar location, topography and vegetation as the subject property of this appeal) on which 17 pocket wetlands were eventually found.

The piecemeal development of substandard lots is incrementally adding commuter traffic to a situation where SRs 1 and 92 already operate during peak hours at an unacceptable service level of F. This has obvious safety implications because, according to studies by CCAG and the County's Office of Emergency Response, the Coastside already lags most if not all of the other 20 cities of the County in terms of emergency vehicle response time. Granting a CDP for a project like this, which represents development expectations and at least 2 commuter cars for each of thousands of other substandard lots, violates LCP Policies 2.5-2.7, 2.8a, 2.9-2.13, 2.48, 2.49, 2.52, 2.53, and 2.57c. (Also, please refer to Half Moon Bay Resolution C-01-02 – Declaration of Emergency re: Implementation of 1% Growth Rate with Findings Justifying the Determination which was renewed for 2003 in Exhibits 1, 2 & 3 contained in the appellant's original Planning Commission appeal regarding the Hodge project which is at the back of Exhibit 2 – "Appellant's Letters".)

There are also harmful financial implications for the Coastal Zone in that the County has not collected any regional traffic mitigation fee for the proposed development. Such a fee was recently authorized by the County's congestion management agency (CCAG), and local jurisdictions can apply it to single houses if highway service is already unacceptable, as CCAG has documented in its Alternatives Report of 7/97 (previously used by the Commission in its deliberations regarding Pacific Ridge and Beachwood proposed projects in Half Moon Bay. County insistence that such fees are not triggered for development producing less than 100 peak hour car trips belies the fact that the incremental impact from developing thousands of single substandard lots on the Mid-Coast will eventually swamp Coastside highways and thus defeat the whole public purpose of the regional traffic mitigation fee, not to mention the public access purposes of the Coastal Act. A clear underlying intent of the LCP planning process, which is stated in the Coastal Act itself, is to produce an economically viable and sustainable Coastal Zone. The less development pays its own way, the less likely such an economy becomes, because either too many public resources are required to subsidize development, or services levels will have to deteriorate.

PRIOR ADMINISTRATIVE RECORD IS VOLUMINOUS AND RELEVANT:

The County's administrative record of this appeal already contains voluminous information supporting denial of this and similar projects until the substandard lot issue is resolved by the County to the Commission's satisfaction. Even though the Commission may hear this issue de novo, that does not prevent the existing record from informing the Commission's decision, which is hereby requested. The alternative is to rely on repopulation of the record by development interests, who profit from CDPs and would not be allowed to vote on this issue, even if they were Commission members.

Key portions of public input are provided here as Exhibit 3.

PROCEDURAL ISSUES:

If the Board of Supervisor's (BOS) appeal was heard on the record, their decision was improperly made because no error was considered or found in the Planning Commission's decision to deny the project. If the BOS decision was de novo, there was no consideration of the entire record, but rather of only one finding that the Planning Commission had made; namely, whether substantial evidence existed to show a good faith attempt by the applicant to cure the non-conformity with zoning standards.

Regardless of how the County decided the issue, timely public input was not conveyed to board members or made part of the record, despite public requests to do so. This input included information demonstrating the improper split of the subject land into 2 Non-Conforming lots in 1999. **See Exhibit 4 fr. Chain of Title Rpt. Showing illegal split of Hodge lot, 21, from lot 9 behind it in 1999; the Hodge lot, 21, will require a separate CDP in order for it to be legalized.**

Also, see appellant, Ric Lohman's two letters (Exhibit 5) which contain vital information regarding the tremendous increase in density in Miramar as a result of substandard lot projects such as the Hodge project; these letters that assisted the Planning Commissioner's in making their decision at the original hearing and again at the re-hearing were LEFT OUT of the Staff Report for the BOS hearing thus, the Supervisors were deprived of this same relevant information.

We are also enclosing the audiotape of the Planning Commission's original hearing on our appeal of the Hodge project and of the re-hearing where all members were present and the decision to uphold the appellant's appeal and deny the Hodge project was made for a second time. We request that Coastal Commission Staff listen carefully to the testimony presented, Planning Commissioner's deliberations and their decision and then take this information into consideration regarding determinations regarding this appeal. Please pay special attention to Commissioner David Bomberger's comments – they are very telling.

The public was not accorded a meaningful hearing by the BOS, proof of which is the total disconnect between numerous documentation and facts presented in public input and the BOS rationale that rested solely on an impression that the applicant did everything right and was entitled to develop this property.

CONCLUSION:

The thousands of substandard lots in play on the San Mateo County Coastside means that resolution of the substandard issue has tremendous impact on whether the intent of the Coastal Act can ever be realized here. Ignoring the problem with the County's piecemeal approach of routinely approving even severely non-conforming projects will only create more uncertainty for applicants, more loss of County credibility to enforce an LCP, and more calls for state intervention.

A recent Coastal Commission recommendation (See CC Memo dated May 27, 2003 - Exhibit 6) made to Half Moon Bay's interim Planning Director with regard to their LCP Update states: "Require a "takings analysis" for any development proposed on a substandard lot to determine if the property owner has a reasonable investment backed expectation to use the property as proposed. In some cases (or perhaps many), the City may not be required to approve construction of SFRs on these lots to avoid a taking."

And,

"The implementation measures for Measure D should give first priority to development of existing infill lots nearest the downtown core that meet all applicable zoning standards. SUBSTANDARD LOTS SHOULD BE THE LAST IN LINE FOR ALLOCATIONS."

The Mid-Coast is four short miles north of Half Moon Bay – shouldn't these same considerations apply to the Mid-Coast in the County's "LCP Update"? The County is NOT dealing with the substandard lot problems in its "LCP Update" which is a total fraud because ALL of the assumptions made as to road expansion projects, water transmission line expansions, park/rec. needs, additional school facilities, etc. for the Mid-Coast were based upon the out-dated, over-estimated LCP Buildout Numbers from the 1980's where the hundreds if not thousands of substandard lots are not even represented!

These erroneous LCP Buildout Numbers along with the County's growth rate need to be vastly decreased and the County's assumptions made in their "LCP Update" also need to be corrected. (See Exhibit 7 – Half Moon Bay's Letter & Comments regarding the County's "LCP Update" for the Mid-Coast which is within Half Moon Bay's sphere of influence; they are concerned because of all of the negative impacts that would be a likely result of over-building in the Mid-Coast.)

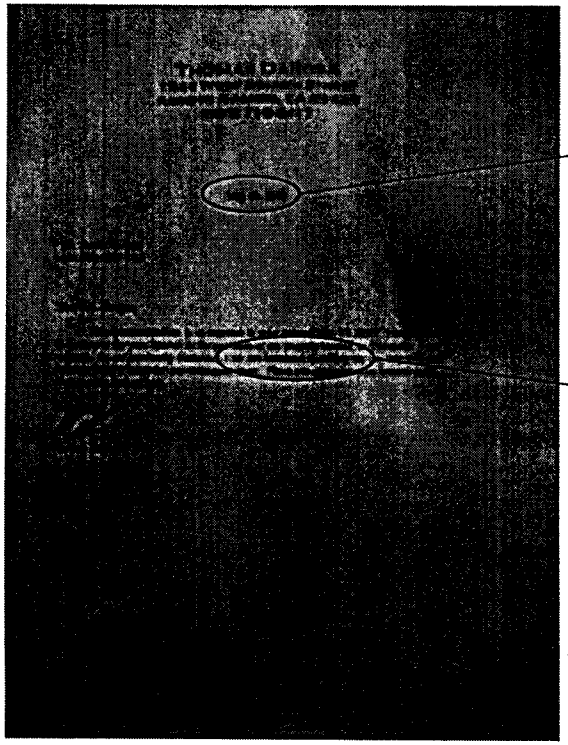
The Coastal Zone and the public deserve a more integrated approach to what is happening here. Since the County's Coastal Zone includes thousands of substandard lots, and the County has shown no commitment to seriously merge or otherwise regulate them, the alternative to denying a CDP for this project is to let Coastal Resources continue to die the death of a thousand cuts.

We ask that you make the substandard lot issues in our appeal and appeal materials be determined a "Substantial Issue" and, that you send a clear message to the County to prevent a death as described above from happening. A CDP denial will finally spur the County to put its substandard house in order. It can be done. A Proportionality Rule for example, was approved by the Commission for nearby Half Moon Bay – See Exhibit 8. By removing incentives to cram oversized commuter houses on substandard lots, the Rule provides reasonable use, decreases squabbles and appeals, and creates affordable housing opportunities. These all further the public purposes of the Coastal Act and would likely be preferable to all sides compared to the current state of unresolved controversy over the recurring substandard lot issue.

Thank you,

Barbara K. Mauz & Ric Lohman, Appellants

Attached – Exhibits 1 through 8



May 19, 2002

Dear Mr. Hodge,

This communication is in response to your letter of May 15th, 2003. I would like to thank you for your interest in the purchase of my property located on Coronado Avenue. As we have previously discussed, I am not interested in selling my lot. My Wife and I plan to build a home for our retirement there. Thank you again for interest and wish you the best of luck.

Sincerely,

Signed

Thomas DaRosa

EXHIBIT NO. 8
APPLICATION NO.
A-2-SMC-03-024 HODGE

FTGIS 2GFP

Order No. 295589 Ref No. Guarantee No.

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, AND SUBJECT TO THE FURTHER EXCLUSION AND LIMITATION THAT NO GUARANTEE IS GIVEN NOR LIABILITY ASSUMED WITH RESPECT TO THE IDENTITY OF ANY PARTY NAMED OR REFERRED TO IN SCHEDULE A OR WITH RESPECT TO THE VALIDITY, LEGAL EFFECT OR PRIORITY OF ANY MATTER SHOWN THEREIN,

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

a Corporation, of Minneapolis, Minnesota, herein called the Company

GUARANTEES

the Assured named in Schedule A against actual monetary loss or damage not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Corporation
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By: President

Attest: Secretary

Countersigned:

By
Validating Officer

EXHIBIT NO. 9
APPLICATION NO.
A-2-SMC-03-024 HODGE
(Page 1 of 5 pages)

CLTA Guarantee Face Page (Rev 6-6-92)

SCHEDULE A

Assured: David N. Hodge

Your Reference: Our No. 295589

Liability: $ 1,000.00 Fee: $ 700.00

Dated: January 3, 2002

The assurances referred to on the face page are:

That, according to those public records which, under the recording laws, impart constructive notice of matters relating to the interest, if any, which was

acquired by David N. Hodge

pursuant to a grant deed recorded September 8, 1999, serial no. 1999-152945 in and to the land described as follows:

See Exhibit "A"

Only the following matters appear in such records subsequent to December 18, 1905

See Exhibit "B"

This Guarantee does not cover taxes, assessments and matters related thereto.

and references conveyance documents only.

EXHIBIT "A"

The land referred to is situated in the State of California, County of San Mateo, in the unincorporated area, and is described as follows:

LOT 21, BLOCK 7, as delineated upon that certain Map entitled "SHORE ACRES, HALF MOON BAY, CAL. FIRST ADDITION TO THE CITY OF BALBOA", filed for record in the Office of the Recorder of the County of San Mateo, State of California, on December 18th, 1905 in Book "B" of Original Maps, at Page 12, and copied into Book 3 of Maps at Page 95.

A.P.N. 048-013-580 J.P.N. 048-001-013-58

Exhibit "B"

Map of Shore Acres, filed December 18, 1905 in Book 3 of Maps at Page 95, James Brown, owner

Document: Deed
Grantor: James Brown
Grantee: Eldora Brown
Recorded: March 21, 1919, Book 280 of Deeds, Page 165

Document: Conveyance
Grantor: A. McSweeney, Tax Collector
Grantee: State of California
Recorded: August 24, 1932, Book 599, Page 49

Document: Deed
Grantor: Dotte S. McGilvray, Executrix
Grantee: N.K. Specht
Recorded: November 9, 1932, Book 575, Page 419

Document: Deed
Grantor: Charles Carpy
Grantee: N.K. Specht
Recorded: November 9, 1932, Book 575, Page 420

Document: Deed
Grantor: La Vernia Specht and Marie S. O'Donnell
Grantee: Thomas J. Callan and Bridgie E. Callan
Recorded: April 16, 1948, Book 1441, Page 441

Document: Decree
Grantor: Dotte S. McGilvray, Executrix
Grantee: Charles C. Carpy and N.K. Specht
Recorded: July 23, 1948, Book 1553, Page 460

Document: Judgment
Grantor: Hugh L. Graham, et al
Grantee: Thomas J. Callan and Bridgie E. Callan
Recorded: October 4, 1948, Book 1472, Page 69

Document: Gift Deed
Grantor: Thomas J. Callan and Bridgie E. Callan
Grantee: Mary Colter MacDonald, Michael Carter Callan, Helen Josephine Carey, Martha Elizabeth Bishop, Thomas Joseph Callan, Jr.
Recorded: December 30, 1954, Book 2717, Page 494

Document: Grant Deed
Grantor: Thomas Joseph Callan, Jr.
Grantee: Thomas J. Callan, Jr. and Gladys Ann Callan, Co-Trustees
Recorded: October 6, 1966, Book 5223, Page 476

Document: Grant Deed
Grantor: Michael C. Callan
Grantee: Michael C. Callan, Trustee
Recorded: October 13, 1966, Book 5226, Page 203

Document: Grant Deed
Grantor: Mary Colter MacDonald, et al
Grantee: Michael C. Callan, Trustee
Recorded: October 15, 1969, Book 5702, Page 157

Document: Grant Deed
Grantor: Mary Colter Callan McDonald, et al
Grantee: Michael C. Callan, Trustee
Recorded: December 17, 1970, Book 5874, Page 17

Document: Grant Deed
Grantor: Thomas Joseph Callan, Jr. and Gladys Ann Callan, Co-Trustees
Grantee: Michael C. Callan, Trustee
Recorded: December 21, 1970, Book 5875, Page 133

Document: Corporation Quitclaim Deed
Grantor: B.M.C. Development Corporation
Grantee: Michael C. Callan, Trustee
Recorded: June 29, 1979, Reel 7862, Image 455

Document: Grant Deed
Grantor: Michael C. Callan, Trustee
Grantee: Michael C. Callan Jr., James Callan, Pamela Callan, John T. Callan
Recorded: May 18, 1993, serial no. 93080667

Document: Grant Deed
Grantor: Michael C. Callan, Trustee
Grantee: Michael C. Callan Jr., James Callan, Pamela Callan, John T. Callan
Recorded: December 31, 1993, serial no. 93234505

Document: Grant Deed
Grantor: Michael C. Callan, Jr., et al
Grantee: San Mateo Land Exchange
Recorded: June 11, 1994, serial no. 94004442

Document: Quitclaim Deed
Grantor: John T. Callan
Grantee: San Mateo Land Exchange
Recorded: December 9, 1994, serial no. 94185706

Document: Quitclaim Deed
Grantor: Pamela Callan, et al
Grantee: San Mateo Land Exchange
Recorded: December 9, 1994, serial no. 94185707

Document: Grant Deed
Grantor: Michael C. Callan and Lorraine Day Callan, and San Mateo Land Exchange
Grantee: Coastal Lots Goden Gate Associates
Recorded: December 9, 1994, serial no. 94185708

Document: Grant Deed
Grantor: Coastal Lots Golden Gate Associates
Grantee: David N. Hodge
Recorded: September 8, 1999, serial no. 1999-152945

McCracken, Byers & Haesloop LLP

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Jill Briggs

September 10, 2003

Ann Cheddar, Esq.
Staff Counsel
California Coastal Commission
North Central Coast District Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Appeal of proposed coastal development permit for David and Hi-Jin Hodge
Appeal No. A-2-SMC-03-024

Dear Ann:

As you know this office represents David and Hi-Jin Hodge. It was a pleasure to discuss this matter with you the other day.

On June 10, 2003, the County of San Mateo ("County") Board of Supervisors approved a use permit, coastal development permit, and design review to allow the Hodges to construct a 1,975 square foot house at 198 Coronado Avenue in unincorporated San Mateo county. When the County reviewed this matter, an allegation was made that somehow the parcel upon which the Hodges were proposing to build their home, known as APN 048-013-580, was "illegal." This allegation was not actively argued by the opponents of the project before the County Board of Supervisors. Since the County has approved numerous houses within that subdivision, the County discounted the allegation. You have asked me to furnish a legal opinion demonstrating that this parcel is legal. This constitutes that opinion.

As you know, the first Map Act Statute was passed by the California legislature on March 9, 1893. I have attached a copy of that statute as Exhibit A to this letter. The 1893 Map Act Statute establishes a process for dividing property, reserving streets and other areas for public use and denominating the lots. In order to have a map meet the requirements of the 1893 Map Act Statute, the map must be acknowledged and certified by the proprietor and filed in the office of the County Recorder. The Hodges' parcel today is a lot in an otherwise developed subdivision. The lot that the Hodges own is presently described as follows:

EXHIBIT NO. 10
APPLICATION NO.
A-2-SMC-03-024 HODGE
(Page 1 of 3 pages)

> Lot 21 in Block 7 as shown on that certain map entitled "SHORE ACRES HALF MOON BAY, CAL. FIRST ADDITION TO THE CITY OF BALBOA", filed in the office of the County Recorder of San Mateo County, State of California, on December 18, 1905 in Book "B" of Original Maps at page (s) 12 and copied into Book 3 of Maps at page 95.
> A.P. No.: 048-013-580 JPN 048 001 013 58 A

You will see that this is the same lot which is in the SHORE ACRES HALF MOON BAY, CAL. FIRST ADDITION TO THE CITY OF BALBOA recorded in the office of the County of San Mateo Recorder at Book 3, Page 95 of the Official Book of Maps on December 18, 1905. I have enclosed a copy certified by County of San Mateo Recorder Warren Slocum dated September 8, 2003 of the actual 1905 map. This certified copy, which I have attached as Exhibit B to this letter, shows the specific Hodge lot. As you can see, it is in Section 7 of the subdivision and it is Lot 21. You will see that the map has been signed and acknowledged by the proprietor as required by Section 2 of the 1893 Map Act Statute and that the map has been recorded in the office of the County Recorder as required by Section 3 of the 1893 Map Act Statute. As noted legal author Daniel Curtin states in his book 2003 Subdivision Map Act Manual (Solano Press) on page 75:

> If a map was filed after the first Map Act was enacted in 1893, one must compare the map with the requirements of the version of the Map Act then in effect to determine if the map created legal lots. Gov't Code §§ 66451.10, 66499.30; 74 Ops. Cal. Atty. Gen. 149 (1991).

As the analysis demonstrates, this map complies with the 1893 Map Act Statute and all the parcels are hence legal.

You had requested that I review the case of *Gardner v. County of Sonoma* (2003) 29 Cal.4th 1990. I am familiar with that case. It is actually included in the syllabus that I am preparing for the course that I am teaching on October 13, 2003 "Land Use Law Update in California" sponsored by NBI in San Jose, California. A courtesy enrollment form is enclosed. The *Gardner* case deals with the issue of antiquated subdivisions that predate the 1893 Map Act Statute. The subdivision map in the*Gardner* case was recorded in 1865 prior to the first Map Act. In *Gardner*, the Supreme Court ruled that lots in the subdivision in *Gardner* did not qualify as legal parcels because there was not a recorded final map, parcel map, official map or approved certificate of exemption. Obviously, that is not the case here. Since this map complies with the 1893 Act, it is legal. You might note that numerous parcels have been developed in this area. This is an area that has been subdivided and there are houses neighboring my client's property. The property appears to have transferred approximately 22 times since it was first subdivided.

Finally, there has never been a notice of merger filed on the property. You can see this by reviewing the title report attached as Exhibit C.

Clearly, the Hodges' parcel is legal.

If you have any questions, please do not hesitate to call.

Sincerely,

McCRACKEN, BYERS & HAESLOOP LLP

David J. Byers

DAVID J. BYERS, ESQ.

cc: Chris Kern - Coastal Commission
David and Hi-Jin Hodge

Hodge House 198 Coronado Avenue Parcel: 048 013 580 6/10/03

RECENT CONSTRUCTION

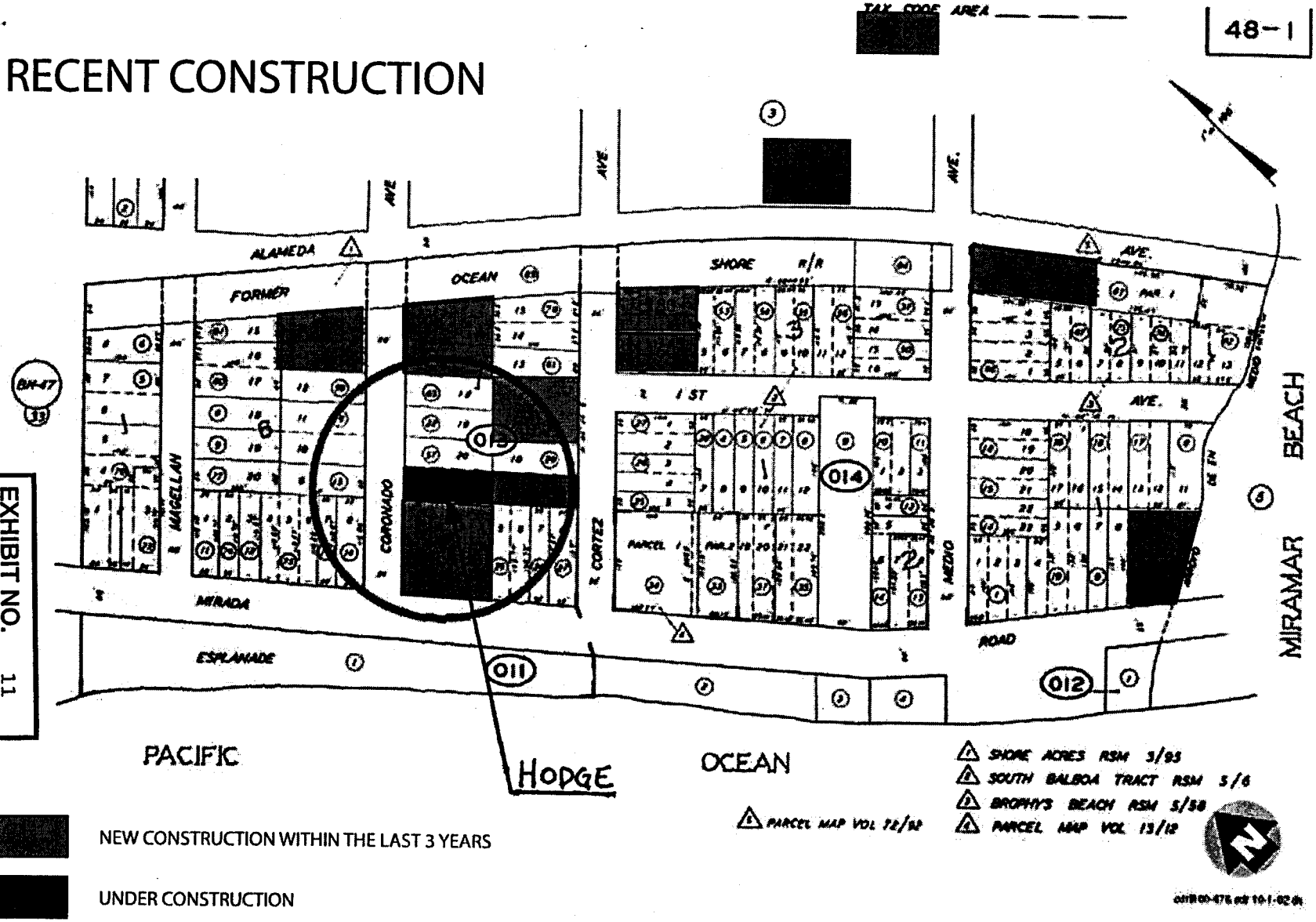

EXHIBIT NO. 11
APPLICATION NO.
A-2-SMC-03-024 HODGE

State of California

Memorandum

Flex Your Power

To: Chris Kern
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Via fax (415) 904-5400

Date: September 29, 2003

From: **Robert W. Floerke, Regional Manager**
Department of Fish and Game - Central Coast Region, Post Office Box 47, Yountville, California 94599

Subject: Proposed Hodge House, 198 Coronado Avenue, Miramar Area, San Mateo County

The Department of Fish and Game (DFG) is responding to a letter dated August 28, 2003 from David J. Byers, Esq., representing Mr. David Hodge and his property at 198 Coronado Avenue in San Mateo County. Mr. Scott Wilson, Habitat Conservation Supervisor, spoke with Mr. Hodge and yourself regarding this project. The project involves the construction of a single family residence and its potential impacts on adjacent wetlands. DFG personnel did not visit the project due to limited staffing, but we are providing our input on this project based on a review of the documentation provided and the above communication.

The information provided is satisfactory for DFG to conclude that the alternative setback of 50 feet is adequate to protect wetland resources based on wetland size, quality, and overall site and vicinity conditions. If you have any other questions, please contact Mr. Wilson at (707) 944-5584.

cc: David Hodge
228 Kelly Avenue
Half Moon Bay, CA 94019
Via fax (650) 726-4229

EXHIBIT NO. 12
APPLICATION NO.
A-2-SMC-03-024 HODGE