

**CALIFORNIA COASTAL COMMISSION**

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**Filed:** March 20, 2006  
**Staff:** JVC/DR-SF  
**Staff Report:** April 26, 2006  
**Hearing Date:** May 11, 2006

# Th-13.5

**TO:** CALIFORNIA COASTAL COMMISSIONERS

**FROM:** PETER M. DOUGLAS, EXECUTIVE DIRECTOR

**SUBJECT:** STAFF RECOMMENDATION ON MINOR BOUNDARY ADJUSTMENT  
MBA NO. 01-2006, BABAEI/WHITEHEAD SUBDIVISION, NORTH  
MONTEREY COUNTY  
(For Commission consideration at its May 10-12, 2006 meeting)

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*This recommendation was developed by Jonathan Van Coops and Darryl Rance, Coastal Program Analysts, Mapping/GIS Unit, working under the direction of Susan Hansch, Chief Deputy Director and Manager - Technical Services Division.*

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## **STAFF NOTE**

### **PRC Section 30103(b)**

Section 30103(b) of the Coastal Act of 1976 provides for minor adjustments to the inland coastal zone boundary with certain limitations, to avoid bisecting a parcel or to conform the boundary to readily identifiable features. The relevant portion of that section states:

“...the Commission may adjust the inland boundary of the coastal zone the minimum landward distance necessary, but in no event more than 100 yards, or the minimum distance seaward necessary, but in no event more than 200 yards, to avoid bisecting any single lot or to conform it to readily identifiable natural or manmade features.”

The Commission has adopted regulations setting forth procedures for making minor adjustments to the coastal zone boundary. This request for adjustment is being processed in conformance with those adopted regulations. (14 CCR §13255.0 et seq.)

The primary purpose for minor boundary adjustments made under the provisions of Section 30103(b) of the Coastal Act is clarification of the coastal zone boundary location. The specific language of Section 30303(b) states that the Commission may adjust the boundary and there is no mandate to automatically alter the boundary. The regulations provide procedures for establishing when such adjustments are

possible, as well as where adjustments are desirable, and establish a two-step process of investigation. The first step determines whether the parcel is currently bisected by the boundary. The second step determines whether coastal resources would be affected by the adjustment or if coastal planning issues are present such that an adjustment could prejudice the resolution of those issues in the local coastal planning process. The minor boundary adjustment procedure contains no mechanism to resolve coastal resources or planning issues. If a boundary adjustment would affect coastal resources or involve coastal planning issues, the proper mechanism for resolution of those issues is either the coastal development permit process or local coastal planning process.

In order to approve a minor boundary adjustment, the Commission must make specific factual findings to support the following legal conclusions:

1. The adjustment conforms to the requirements of the Section 30103(b) of the Coastal Act; and
2. The adjustment will not interfere with the achievement of the policies of Chapter 3 of the Coastal Act, and will not prejudice the preparation of a local coastal program conforming to Chapter 3 of the Coastal Act. (14 CCR §13256.2)

### **CCR Section 13050.5**

In situations where property is bisected by the Coastal Zone Boundary, Section 13050.5 of the California Code of Regulations provides clarification of the Commission's jurisdiction regarding development projects. The specific language is set forth below:

Except for the following circumstances a coastal development permit shall only be required for a development or those portions of a development actually located within the coastal zone:

- (a) In the case of any division of land, a permit shall be required only for any lots or parcels created which require any new lot lines or portions of new lot lines in the coastal zone: in such instance, commission review shall be confined to only those lots or portions of lots located within the coastal zone.
- (b) In the case of any development involving a structure or similar integrated physical construction, a permit shall be required for any such structure or construction which is partially in and partially out of the coastal zone

Section 13050.5 establishes when a project that is bisected by the Coastal Zone Boundary requires a coastal development permit and the circumstances under which a land division of property bisected by the Coastal Zone Boundary requires a Coastal Development permit.

## **STAFF RECOMMENDATION**

The staff recommends that the Commission deny the proposed adjustment in the location of the coastal zone boundary with respect to the following Monterey County Assessor parcel APN 129-083-034 and recommends a NO vote on the following motion:

## **MOTION**

I move that the Commission approve the proposed adjustment in the location of the Coastal Zone with respect to Monterey County APN 129-083-034.

Failure of the above motion to pass will result in the adoption of the following resolution:

## **RESOLUTION**

The Commission hereby denies the proposed adjustment in the location of the Coastal Zone boundary with respect to Monterey County APN 129-083-034 on the grounds that the adjustment as proposed does not fully conform to the requirements of Section 30103(b) of the Coastal Act, would interfere with the achievement of the policies of Chapter 3 of the Coastal Act, and would prejudice the preparation of a local coastal program conforming to Chapter 3 of the Coastal Act.

## **FINDINGS AND DECLARATIONS**

### **1. Background**

This request, made by property owners Ron Whitehead and Hassan Babaei, together with the County of Monterey, is the 12<sup>th</sup> minor boundary adjustment request in the north Monterey County Coastal Zone since 1980, and the first such request since 1991. The Commission has previously considered and approved six minor boundary adjustment requests for the North Monterey County planning area during 1980-1991, while denying five requests in the North County area during that same period. The subject property is a rectangular shaped, undeveloped 35.18-acre parcel bisected by the Coastal Zone Boundary with approximately 4 acres along the western margins of the parcel located within the Coastal Zone. The proposed adjustment would move the boundary seaward approximately 180 to 220 feet to the western property line removing the parcel from the Coastal Zone in its entirety. (See Exhibit 6).

The property is situated at the top of a ridge above San Miguel Canyon Road with the majority of the area facing east, with slopes that range from 19% to 30%. The ridge in question defines the upper limit of the Elkhorn Slough Watershed and is coterminous with the Coastal Zone Boundary in this area. Protecting the Elkhorn Slough Watershed complex by ensuring coastal development review of land use decisions is the reason that the coastal zone boundary was placed here along the watershed boundary. The approximately 4-acre area that is proposed for removal from the coastal zone is located on the western (seaward) facing slope. The gentle to steeply rolling topography is vegetated with maritime chaparral, coastal scrub, Coast live oak, and Eucalyptus forest. The maritime chaparral and coastal scrub are primarily located on the western facing slope and within the approximately 4-acre area proposed for removal from the coastal zone.

Adjacent lands are zoned for rural and low-density residential uses with parcel sizes varying from less than an acre to over 50 acres in size. The surrounding Coastal Zone area affected by this action consists mostly of existing developed single family residential parcels, zoned Residential (1-10 acre minimum parcel size) in the County's LCP. Although the subject parcel is undeveloped at this time, a seven-lot subdivision has been approved by the County under the non-coastal provisions of the County's General Plan.

The Commission staff believes that the validity of the County's subdivision approval is uncertain because coastal development review is required, especially since the subdivision design calls for the placement of the main access road, building sites, and septic system envelopes for five of the seven-lots within the existing Coastal Zone portion of the property on the western (seaward) facing slope, and within the environmentally sensitive maritime chaparral habitat area. Coastal scrub habitat is also present in this area. Under CCR Section 13050.5, both the subdivision and the individual houses would require coastal development permits issued by the County but consistent with the adopted North County LCP.

## **2. Conformance to Section 30103(b) of the Coastal Act**

The proposed adjustment does not fully conform to the requirements of Section 30103(b) of the Coastal Act. As requested, the adjustment would involve one assessor's parcel, which is currently bisected by the boundary, however it would move the line from one readily identifiable location (the ridgeline and Elkhorn Slough watershed boundary) to another (the parcel boundary). The boundary is already at a readily identifiable location, designed to allow maximum protection of the environment and resources found adjacent to Elkhorn Slough.

An alternative adjustment landward to include the entire property within the Coastal Zone is not possible since it would require moving the boundary over 1000 feet to the east, well beyond the maximum allowable landward distance of 300 feet. There are no other alternative minor adjustments to the boundary either seaward or landward which would be consistent with the provisions of Public Resources Code Section 30103(b) and which would result in a more readily identifiable location for the coastal zone boundary.

Although the requested adjustment is technically within the maximum allowable range of adjustment (100 yards landward and 200 yards seaward), and meets the distance criteria for an allowable adjustment, because of the need to ensure all of the Elkhorn Slough watershed is managed and planned for in an integrated fashion, the Commission finds that the adjustment, as requested, conforms to the requirements of Section 30103(b) of the Coastal Act.

## **3. Previous Boundary Interpretations**

Although the official Coastal Zone Boundary adopted by the legislature in 1976 and by the Commission in 1977 has always followed the ridgeline and watershed boundary of Elkhorn Slough throughout this part of Monterey County, it was not until relatively recently that it became apparent that there were inconsistencies in the County's depiction of the Boundary on the County's adopted LCP maps and the Commission's depiction of the Boundary on the parcel-based version of the Post LCP Certification map (adopted December 10, 1987). At the time no large scale topographic maps were available with an

accurate parcel overlay, therefore, when compared to the record copy of the official 1:24,000 scale maps, both maps depict the boundary on the subject property in a somewhat generalized manner, the County map excluding the parcel entirely, and the Commission's Post LCP Certification map depicting a small area within the zone and the majority of the parcel outside of the zone. These maps were prepared over 20 years ago without benefit of modern digital cartographic techniques, but have been used routinely over the years whenever the need for a parcel-based version of the Coastal Zone boundary presented itself. All of the Commission's large-scale Post-LCP Certification Permit and Appeal Jurisdiction maps include the caveat that they are a representation of the Coastal Zone boundary and not meant to supersede the official maps adopted by the legislature and Commission.

According to information provided by the County, the current owners purchased the property in 1986, believing the parcel was outside the Coastal Zone. In 1990 they were given a standard subdivision application, which listed the zoning as "N-V 2.5 acre minimum building site," with no mention of the Coastal Zone Boundary. In 1996 they were given an updated application for a standard subdivision, which listed the current zoning as "LDR/5" (Low Density Residential, 5 acre minimum parcel size), and the area plan as "North County Area Plan," which covers the non-Coastal Zone portion of North County. An application for a seven-lot subdivision was submitted in 1998, processed by the County staff as a non-Coastal Zone project, and approved by the County in 1999.

The owners complied with all conditions of approval for the subdivision, and were awaiting acceptance of the final map, when they filed an application for a single family dwelling building permit. During the County's review of the application it was discovered that a portion of the property appeared to be within the Coastal Zone, and a request for a formal boundary determination was submitted to the Coastal Commission's Mapping/GIS unit in August of 2005. This official determination placed the coastal zone boundary line approximately 180 to 220 feet east of the western property line along the ridgeline and the Elkhorn Slough watershed boundary (see Exhibit 4). Because this determination readily identifies the boundary as pertains to the subject parcel, the Commission staff believes that for practical purposes, Coastal Commission Boundary Determination (BD) No. 29-2005 precludes the need for a minor coastal zone boundary adjustment on this property.

#### **4. Minor Boundary Adjustment Effects on Coastal Resources**

As mentioned above, the subject parcel is 35.18 acres in size and undeveloped at this time. The approximately 4-acre area that is proposed for removal from the coastal zone is located on the western (seaward) facing slope of the property, within the Elkhorn Slough watershed, and is vegetated primarily with eucalyptus trees, some areas being densely forested. In this case, the ridgeline defines and is coterminous with the upper limits of the Elkhorn Slough Watershed. Maritime chaparral is also present on the western face of the ridge, with patches of coastal scrub below. Scattered coast live oaks are also present. Maritime chaparral habitat is classified as sensitive habitat in the North County Land Use Plan and the Monterey County Coastal Implementation Plan. It is also listed as a special habitat by the California Department of Fish and Game Natural Diversity database. This community and the areas surrounding it are given high priorities for protection of existing natural values.

Although the subject parcel is presently undeveloped, a seven-lot subdivision has local approval under the non-coastal provisions of the County's General Plan. The subdivision design calls for the main access road, and the building and septic system envelopes for five of the seven lots to be located primarily on the western (seaward) facing slope and within the Coastal Zone portion of the property and within the

Elkhorn Slough Watershed. This is also the location of the maritime chaparral and coastal scrub habitat areas. The approval of this proposed minor boundary adjustment request, in conjunction with the previously approved seven-lot subdivision of the subject property will result in direct impacts to coastal resources on the affected parcel. If removed from the Coastal Zone, future development on the property would not be subject to the water quality protection and/or other coastal resource protection requirements contained in the North County LCP.

A critically important factor associated with adjusting the Coastal Zone Boundary seaward to exclude APN 129-083-034 is the presence of special and environmentally sensitive maritime chaparral habitat, as well as coastal scrub habitat areas, and the likelihood of damage or destruction of those habitats should the area be removed from the Coastal Zone. The precedent of using the minor boundary adjustment procedure anywhere to remove ESHA from the Coastal Zone also raises serious concerns. During the 29 years since 1977, the Commission has considered nearly 50 minor boundary adjustment requests (over 20% located in the north Monterey County area) and never made such an adjustment. The guiding principle has always been that if a boundary adjustment would affect coastal resources or involves coastal planning issues, the proper mechanism for resolution of those issues is either the coastal permit process or the LCP process and not the minor boundary adjustment procedure. To delete this area from the Coastal Zone would remove its protection from future changes regarding ESHA policies that could potentially be made to areas located outside the Coastal Zone.

Additionally, the County's Negative Declaration is mostly silent on the issues related to potable water supply for the proposed subdivision. According to the approved tentative tract map the water supply will be provided by the Central California Water Company, Inc., however, the tentative tract map indicates that the potable water well and water main are located on an adjacent property located to the west and within the Coastal Zone. It is not clear from the application if the proposed water system already exists or if plans for the water system are available. Presumably, the well and water main project would also require coastal development permit approval. Further, the County's environmental document does not discuss the impact of using well water from within the Coastal Zone to supply the subdivision, nor how it might affect domestic water supplies within the Coastal Zone. According to the Monterey County North county LCP periodic review, the U.S. Geological Survey, the California Department of Water Resources and the County have all stated that the groundwater basin in this area is presently over-drafted.

Monterey County Special Condition Nos. 19 through 22 for the tentative subdivision map address the issue of domestic water supply. However, the special conditions do not contain any mitigation measures for potential impacts to well water supply in the North County area.

Special Condition No. 26 of the Tentative Tract Map approval addresses the minimum water supply requirements for the North County Water District, stating:

Subdivider shall supply a 60,000-gallon water storage (flow rates of 1,000 gpm for buildings up to 3,600 square feet) or 90,000-gallon water storage (flow rates of 1,500 gpm) for building over 3,600 square feet.

The 7-lot tentative map approval staff report does not discuss the potential size of the single-family residences that are proposed for the 7-lot subdivision.

Special Condition No. 52 of the Tentative Tract Map approval attempts to address impacts to domestic water supply through a proposed future analysis, stating:

The applicant shall provide to the Water Resources Agency a water balance analysis describing the pre-development and post-development water use on the property. Any proposed increase in water use shall require the identification and implementation of mitigation measures, if feasible, by the applicant.

With this special condition, the County has essentially deferred analysis of both on-site water use and impacts to well water supplies in the Coastal Zone portion of the North County area. Mitigation measures are not identified and there is effectively no guarantee of mitigating potential impacts to water resources located in the Coastal Zone.

Approval of this proposed coastal zone boundary adjustment request, in conjunction with a previously approved 7-lot subdivision of the subject property, will result in direct impacts to coastal resources on both the subject parcel and other adjacent lands. The staff is recommending that the parcel (APN 129-083-034) remain bisected by the Coastal Zone Boundary as shown in Exhibit 4 and Exhibit 6.

#### **5. Minor Boundary Adjustment Effects on Public Access**

The subject property is located approximately 5 miles from the shoreline of Monterey Bay and approximately 2.5 miles from the Elkhorn Slough Estuarine Research Reserve and the shoreline of Elkhorn Slough. There are no opportunities for public access to or along the coast located in the immediate vicinity of the subject property, therefore the approval of this coastal zone boundary adjustment request will not affect public access to or along the coast.

#### **6. Achievement of Chapter 3 Policies and Local Coastal Program Preparation**

The adjustment recommended will interfere with the achievement of the Chapter 3 Policies of the Coastal Act or local coastal program preparation for this area. The adjustment, as requested, will remove areas that include environmentally sensitive habitat in the coastal zone thereby affecting their protection status as subject to Coastal Act Policies and in theory increasing the likelihood of adverse impacts to coastal resources. In addition, the County's Coastal ESHA policy has not been incorporated into the planning documents for the entire planning area of North Monterey County, meaning that those protections apply only to the area within the Coastal Zone at the present, and indicates increased potential impact of this minor boundary adjustment were it to be approved. With respect to LCP preparation, the Commission in 1982 certified the North County Land Use Plan Component of Monterey County's Local Coastal Program and the implementation component was certified in 1987. The County assumed coastal development permit review authority subsequent to those approvals.

Approval of this proposed coastal zone boundary adjustment request, in conjunction with the previously approved 7-lot subdivision for the subject property, would result in direct impacts to coastal resources on the affected parcel and on adjacent lands within the Coastal Zone.

Minor Boundary Adjustment Request No. 01-2006  
Babaei/Whitehead  
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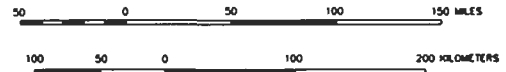
In conclusion, the Commission finds that the recommended adjustment will interfere with the achievement of the Coastal Act's Chapter 3 Policies and will prejudice the preparation or amendment of an LCP that conforms with Chapter 3 of the Coastal Act.



The Resources Agency  
California Coastal Commission

# STATE OF CALIFORNIA

Scale 1:5,000,000  
1 inch equals approximately 80 miles



1927 NAD. Albers equal area projection - standard parallels 29.5° and 45.5°.

## Location Map

MBA 01-2006  
Babaei/Whitehead  
Monterey County  
APN 129-083-034

MBA 01-2006



**MBA 01-2006**  
**APN 129-083-034**  
**Monterey County**

**Portion of Coastal Zone**  
**Boundary Map No. 77**  
**(Prunedale Quadrangle)**

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 COMMISSION

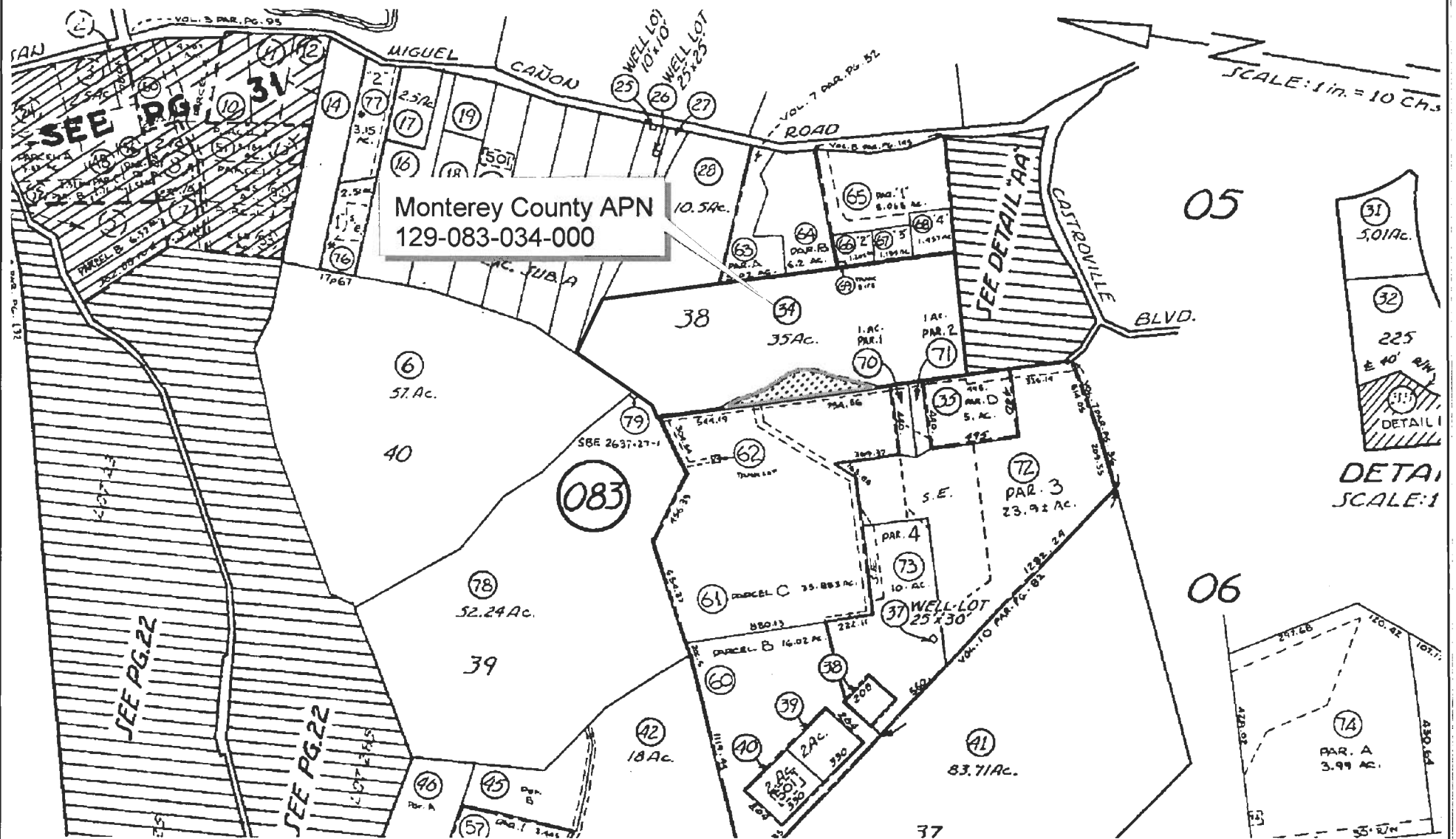
Technical Services Division

**For illustrative purposes only.**



**Exhibit 2**

DAR, 04/2006



MBA 01-2006  
APN 129-083-034  
Monterey County

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COASTAL  
COMMISSION

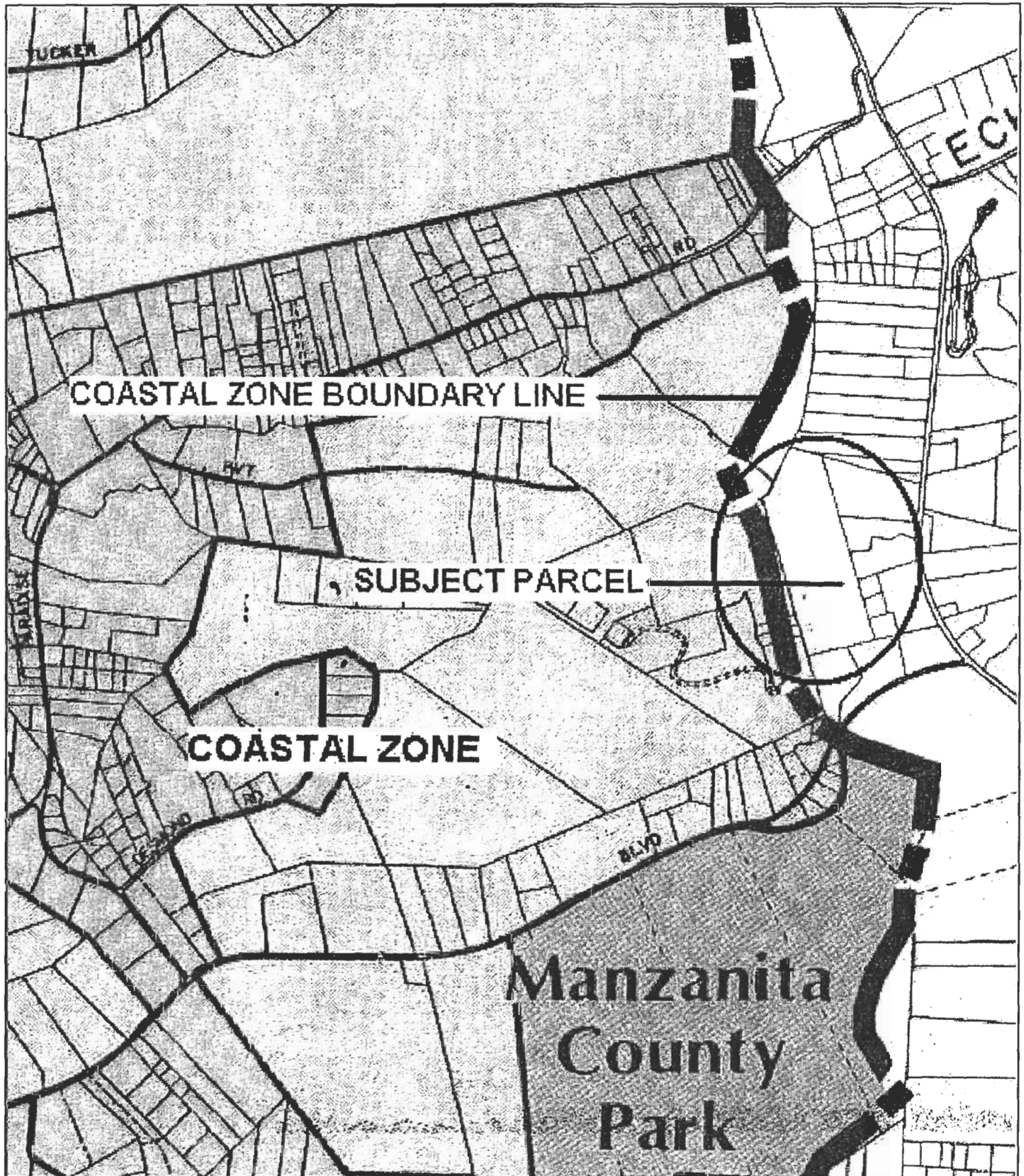
Technical Services Division

Portion of Monterey County APN Map Book 129, Page 083 showing area of subject property located within the Coastal Zone pursuant to County Zoning Map and adopted Post-Certification Map (produced by Monterey County)

For illustrative purposes only.

**Exhibit 3**  
DAR 04/2006





MBA 01-2006  
APN 129-083-034  
Monterey County

Portion of North Monterey County  
Land Use Plan Map showing generalized  
Coastal Zone Boundary and subject parcel

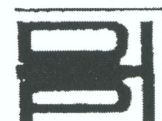
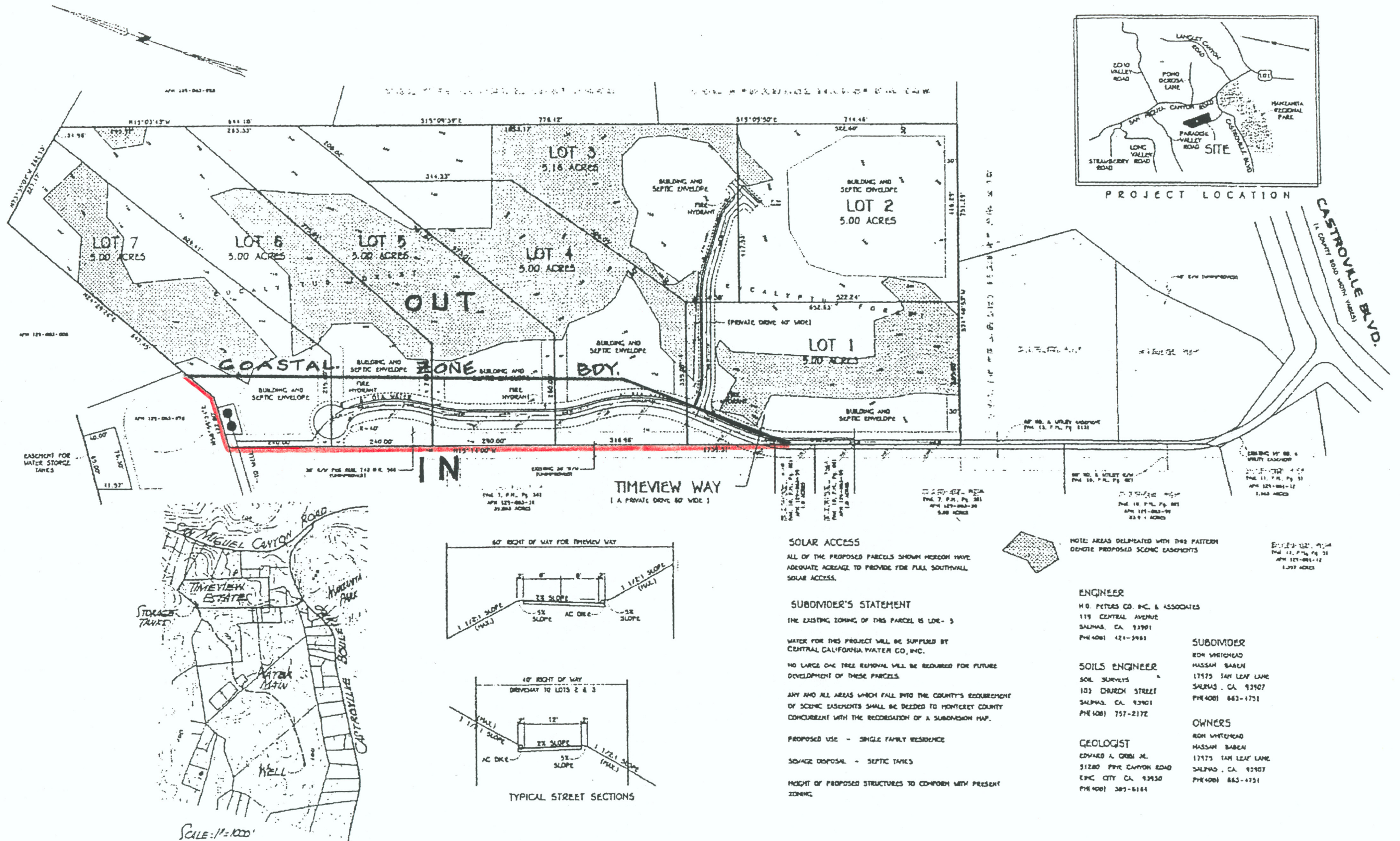
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**COASTAL**  
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Technical Services Division

For illustrative purposes only.



**Exhibit 5**





**H.D. PETERS & CO.**  
ENGINEERING - SURVEYING - LAND PLANNING



**MBA 01-2006**  
**APN 129-083-034**  
**Monterey County**

**TENTATIVE MAP**  
**TIMEVIEW ESTATES**  
ASSESSOR'S PARCEL NUMBER 129-083-034  
RANCHO BOLSA NUEVA Y HONDO COJO - MONTEREY COUNTY, CALIFORNIA

**PREPARED FOR**  
**HASSAN BABEAI**  
**& RON WHITEHEAD**

**SCALE: 1"=100' DRAWN: STAFF JOB NO. 3046**  
**DATE: MAY 98 DESIGNED: V.M. FILE: 129-083-034-DWG**

**SHEET**  
**1**  
**OF**  
**1**

**Timeview Estates Tentative Map**  
**showing Coastal Zone Boundary**  
**per Boundary Determination 29-2005**

**Applicant's Requested Adjustment**  
**For illustrative purposes only.**

**Exhibit 6**