

 California Coastal Commission

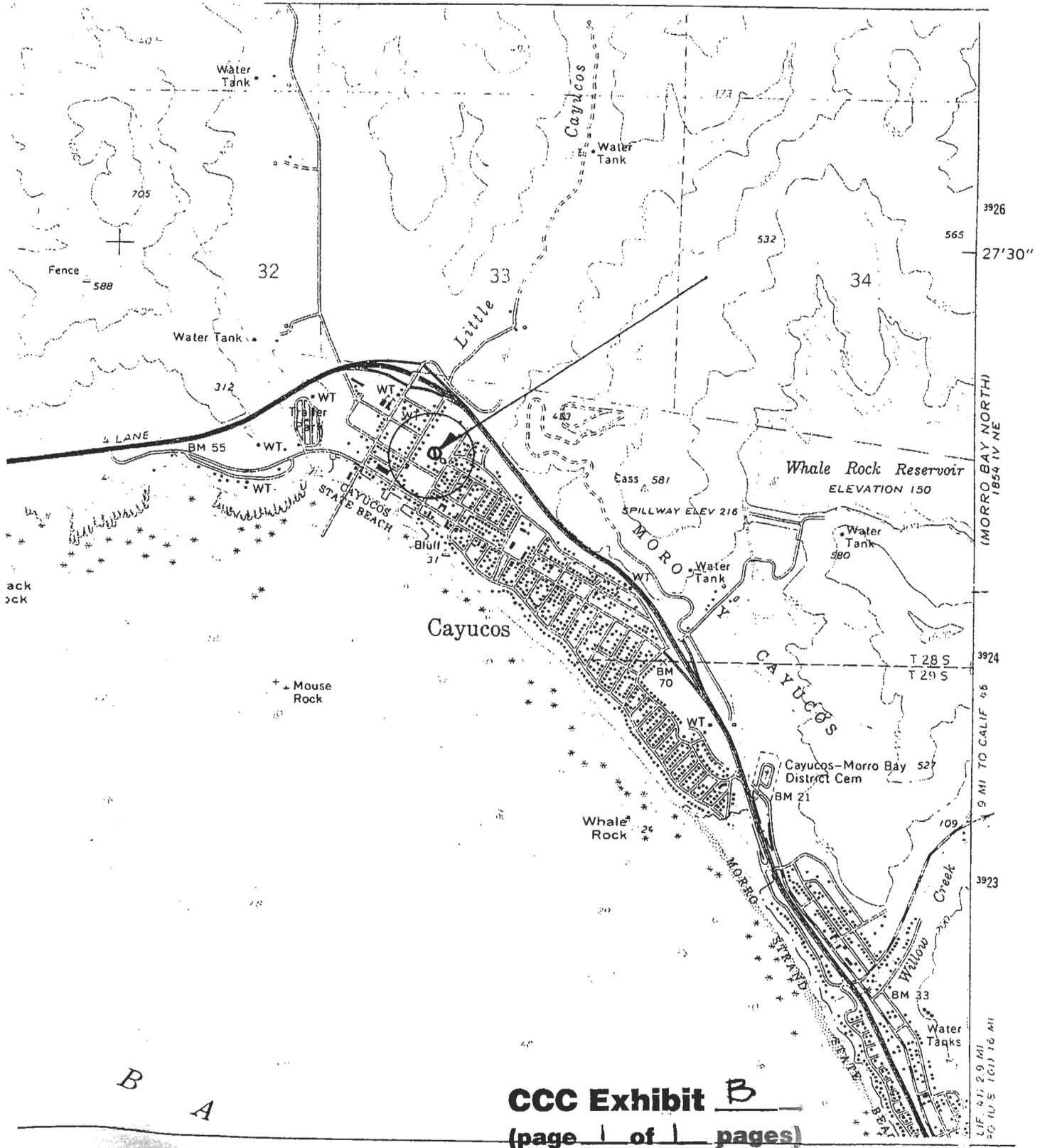
LOCATION MAP



County of San Luis Obispo

Sheet 3 of 5

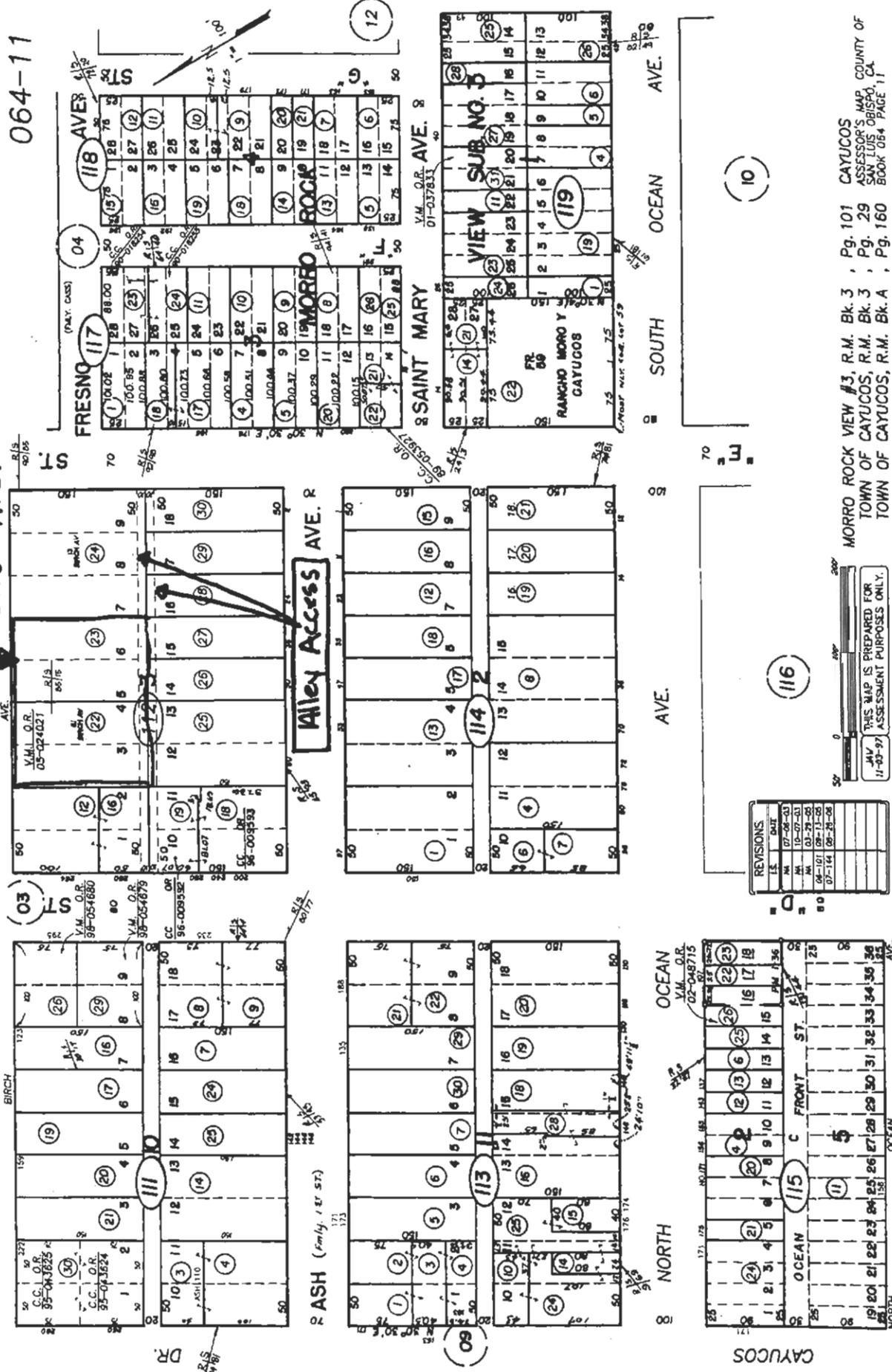
CCC Exhibit A
 (page 1 of 1 pages)



CCC Exhibit B
(page 4 of 4 pages)

Project Site

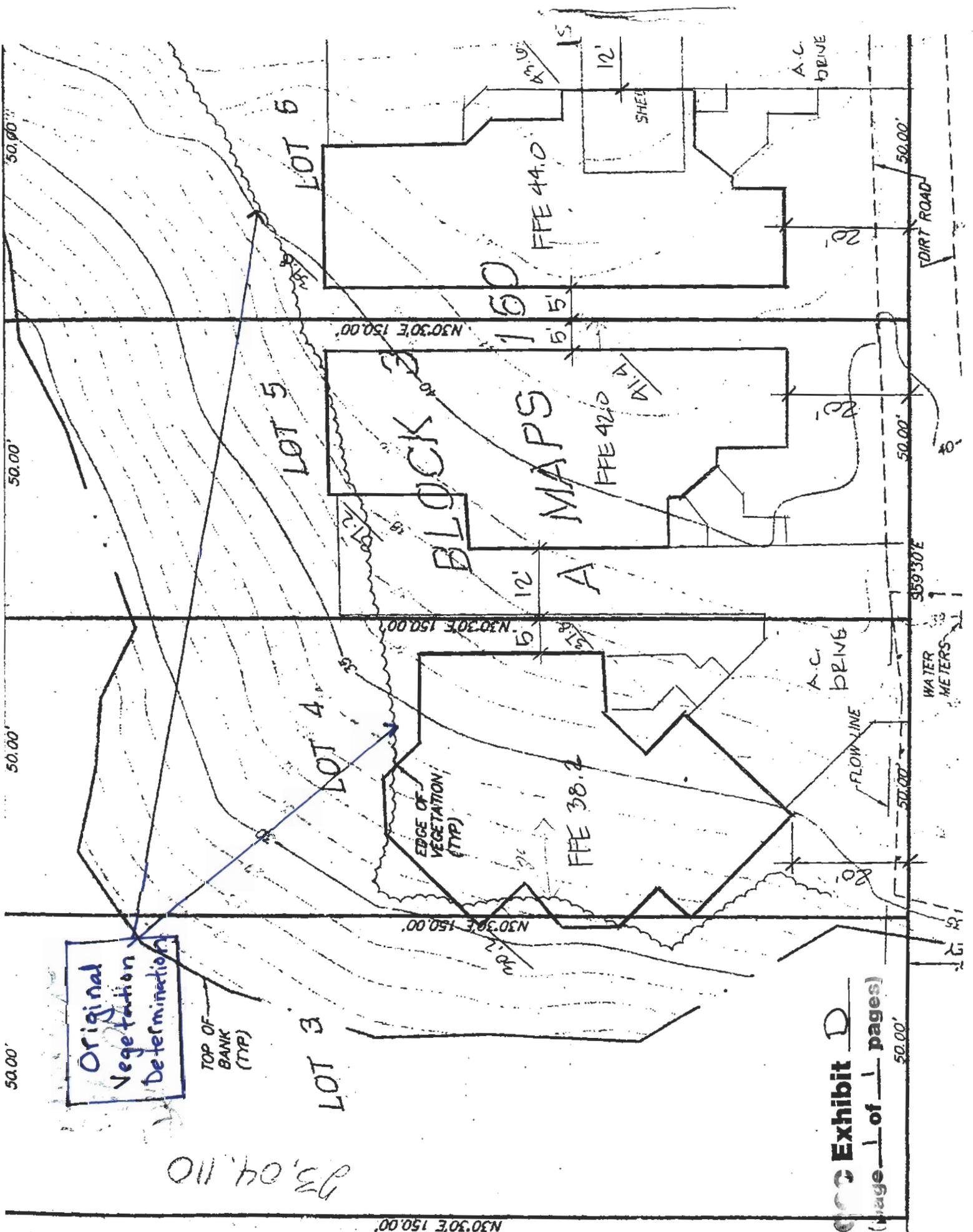
Birch Ave.



REVISIONS	DATE
1	07-06-03
2	10-07-03
3	03-27-05
4	09-14-05
5	09-24-05

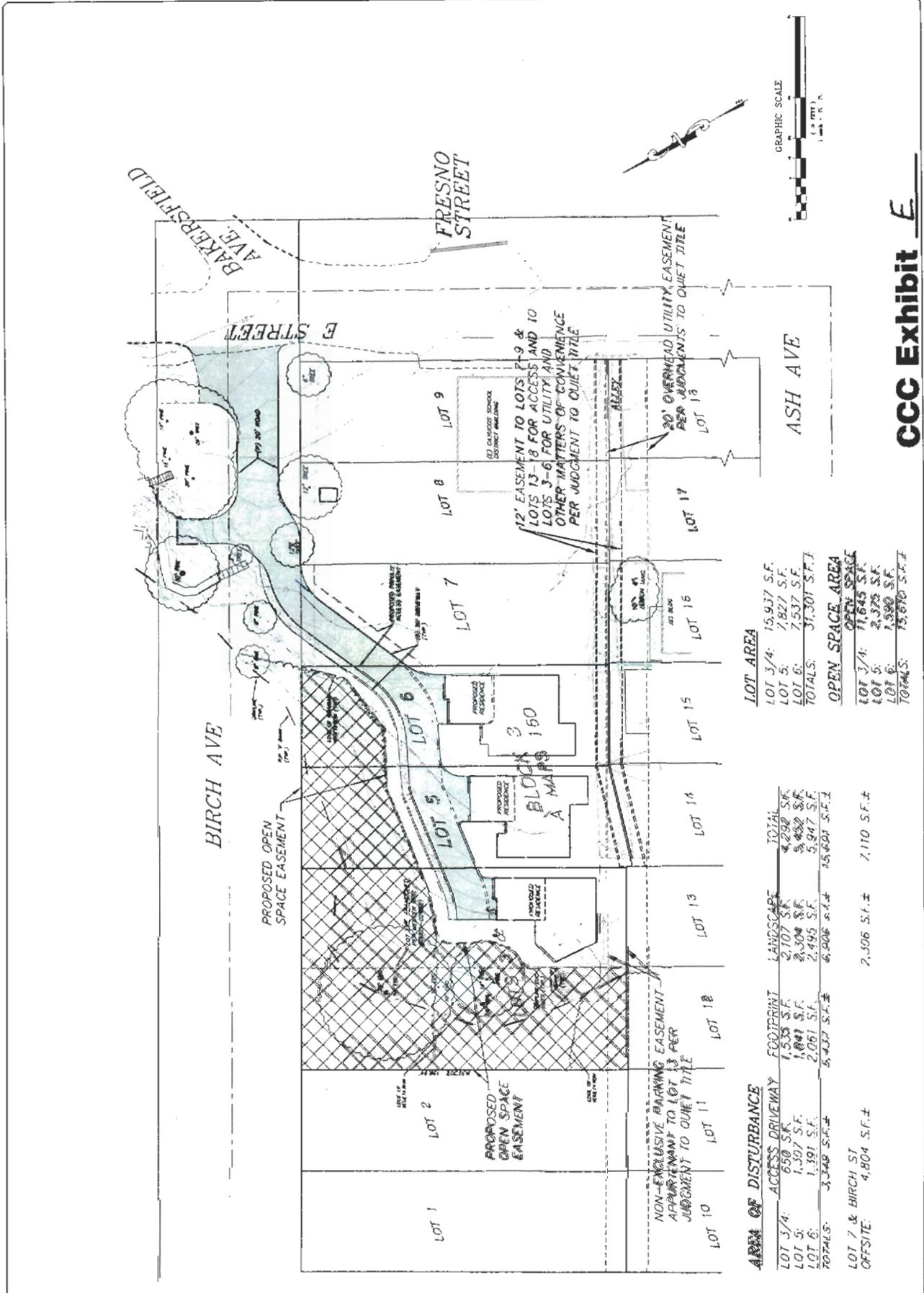
THIS MAP IS PREPARED FOR
ASSESSMENT PURPOSES ONLY.

MORRO ROCK VIEW #3, R.M. Bk. 3 ; Pg. 101
TOWN OF CAYUCOS, R.M. Bk. 3 ; Pg. 29
TOWN OF CAYUCOS, R.M. Bk. A ; Pg. 160



PL 100
 THE PLANNING BOARD
 CITY OF SACRAMENTO
 1000 J STREET, SACRAMENTO, CA 95811
 TEL: (916) 441-2200
 FAX: (916) 441-2201
 WWW.CITYOFSA.COM

DATE: 01/09/07
 SCALE: 1" = 20'
 DRAWN: MWDW
 DATE: 11/07/05
 PROJECT: 10027/SP-00-01
 SHEET: 1



LOT AREA	
LOT 3/4:	15,937 S.F.
LOT 5:	7,827 S.F.
LOT 6:	7,537 S.F.
TOTALS:	31,301 S.F.
OPEN SPACE AREA	
LOT 3/4:	11,645 S.F.
LOT 5:	2,378 S.F.
LOT 6:	1,990 S.F.
TOTALS:	15,970 S.F.

AREA OF DISTURBANCE		
LOT 3/4:	ACCESS DRIVEWAY	TOTAL
LOT 5:	650 S.F.	2,107 S.F.
LOT 6:	1,397 S.F.	2,304 S.F.
TOTALS:	3,348 S.F.±	6,406 S.F.±
LOT 7 & BIRCH ST OFFSITE:	4,804 S.F.±	2,506 S.F.±
		7,110 S.F.±



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

**FINAL LOCAL
ACTION NOTICE**
REFERENCE # 3-SLO-07-146
APPEAL PERIOD 4/27-5/10/07

RECEIVED

APR 26 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

April 12, 2007

Slo Land Corporation
P.O. Box 228
Cayucos, CA 93430

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: April 6, 2007

SUBJECT: SLO LAND CORP. – County File Number: D020030P
Minor Use Permit / Coastal Development Permit
DOCUMENT NO. 2007-046

LOCATED WITHIN COASTAL ZONE: ~~YES~~

The above-referenced application was approved by the Hearing Officer, based on the approved Findings and Conditions, which are attached for your records. This Notice of Final Action is being mailed to you pursuant to Section 23.02.033(d) of the Land Use Ordinance.

This action is appealable to the Board of Supervisors within 14 days of this action. If there are Coastal grounds for the appeal there will be no fee. If an appeal is filed with non-coastal issues there is a fee of \$623.00. This action may also be appealable to the California Coastal Commission pursuant to regulations contained in Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal; criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission 10 working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhaustion of appeals at the county level is required prior to appealing the matter to the California Coastal Commission. This second appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (831) 427-4863 for further information on their appeal procedures.

CCC Exhibit F
(page 1 of 9 pages)

If the use authorized by this Permit approval has not been established or substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

976 OSOS STREET, ROOM 300 SAN LUIS OBISPO CALIFORNIA 93408 (805) 781-5600

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six (6) months or conditions have not been complied with, such Permit approval shall become void.

If you have questions regarding your project, please contact your planner at (805) 781-5600. If you have any questions regarding these procedures, please contact me at (805) 788-2947.

Sincerely,

Nicole Retana

NICOLE RETANA, SECRETARY
PLANNING DEPARTMENT HEARINGS

(Planning Department Use Only)

Date NOFA copy mailed to Coastal Commission: April 23, 2007

Enclosed: X Staff Report
 X Findings and Conditions

EXHIBIT A - FINDINGS

Environmental Determination

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on February 1, 2007 for this project. Mitigation measures are proposed to address air quality, biological resources, geology, cultural resources, aesthetics, water and land use and are included as conditions of approval.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the new residences will not conflict with the surrounding lands and uses.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is an allowed use and will not conflict with the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on a (local) road constructed to a level able to handle any additional traffic associated with the project

Coastal Access

- G. The project site is not located between the first public road and the ocean, therefore, the proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act

Sensitive Resource Area

- H. As conditioned, the development will not create significant adverse effects on the natural features (Coastal Stream) of the site or vicinity that are the basis for the Sensitive Resource Area designation, and will preserve and protect such features through site design because the project includes measures to protect the habitat.
- I. Natural features and topography have been considered in the design and siting of all proposed physical improvements and setbacks are adequate to preserve creek habitat.
- J. The proposed clearing of topsoil, trees, is the minimum necessary to achieve safe and convenient access and siting for the project, and will not create significant adverse effects on the identified sensitive resource.

- K. The soil and subsoil conditions are suitable for any proposed excavation and site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.

Riparian setback adjustment findings - Streams and Riparian Vegetation

- L. The proposed project structures are sited outside of a 30 foot setback, as measured from the trunk of the large eucalyptus tree, and no vegetation modification and pruning or tree removal is allowed, with the exception of one low hanging later limb that can be pruned per the pruning specifications. The structures are located outside of the required 20 foot riparian setback, and the setback is adjusted to 10 feet from riparian vegetation for the access road only. The alternative locations and routes were evaluated and determined to be less desirable and because the driveway gives additional creek setback for the structures. Erosion and sedimentation control measures are required.
- M. Adverse environmental effects have been mitigated to the maximum extent feasible.
- N. The adjustment to the riparian setback to 10 feet is for the access road which provides sufficient structure setback (at 20 feet) for maintaining riparian habitat and the eucalyptus trees of the Monarch butterfly feeding habitat.
- O. The adjustment is the minimum that would allow for the establishment of the new residences.

Archaeology findings

- P. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because the results of Phase II analysis suggest a late period habitation site and the project is conditioned for a Phase III Mitigation and Monitoring Plan.

EXHIBIT B - CONDITIONS OF APPROVAL

APPROVED DEVELOPMENT

1. This approval authorizes:
 - a. Grading for and construction of three new 2-story residences on 3 existing lots. A 2656 square foot residence with 550 square foot garage is proposed for merged Lots 3 and 4; a 2965 square foot residence with 528 square foot attached garage is proposed for Lot 5; and a 3102 square foot residence with a 540 square foot garage is proposed for Lot 6.
 - b. Construction of an access drive on Birch Avenue;
 - c. Access easement required on adjacent property
 - d. Grading with a total area of onsite disturbance is approximately 15,691 square feet and offsite disturbance is approximately 7100 square feet
 - e. An open space easement of approximately 15,610 square feet.

CONDITIONS REQUIRED TO BE COMPLETED AT THE TIME OF APPLICATION FOR CONSTRUCTION PERMITS

Site Development

2. Plans submitted shall show all development consistent with the approved site plan, floor plan, architectural elevations and revised landscape plan with the approved footprints..
3. The applicant shall submit plans for Birch Avenue access road to County Public Works for approval.
4. Show the limits 100 year floodway on the site plan and all development located outside of the floodway and submit to Public Works for approval.
5. The applicant shall provide details on any proposed exterior lighting, if applicable. The details shall include the height, location, and intensity of all exterior lighting. All lighting fixtures shall be shielded so that neither the lamp or the related reflector interior surface is visible from adjacent properties. Light hoods shall be dark colored.
6. Maintain all trees and riparian vegetation and no fireplaces are allowed in any of the structures.
7. Submit a color and materials board that blends the development with the surrounding area to Department of Planning and Building for approval.
8. Since smoke from fireplaces interfere with Monarch butterfly habitat, the Department of Planning and Building shall verify on plans that no fireplaces are allowed.

Fire Safety

9. All plans submitted to the Department of Planning and Building shall meet the fire and life safety requirements of the California Fire Code. Requirements shall include, but not be limited to those outlined in the Fire Safety Plan, prepared by the Cayucos Fire Department for this proposed project and dated August 29, 2002 and

CONDITIONS TO BE COMPLETED PRIOR TO ISSUANCE OF A CONSTRUCTION PERMIT

Access Easement

10. **Prior to issuance of a construction permit**, the applicant shall provide evidence of an access easement to Lots 3 and 4, Lot 5 and Lot 6, over the adjacent Lot 7 to the department of Planning and Building.

Open Space Easement

11. **Prior to issuance of a construction permit**, the applicant shall execute and record an open space easement, acceptable to County Counsel for creek habitat protection, for the Lots 3 and 4 (merged), and Lot 5, and Lot 6.

Erosion and Sedimentation Control and Drainage Plan

12. **Prior to issuance of a construction permit**, the applicant shall submit an Erosion and Sedimentation Control and Drainage Plan to Public Works for review and approval. The plan shall use sediment control measures to protect Little Cayucos Creek. Installation of erosion and sedimentation control devices shall be installed around the perimeter of the construction zone. No flows shall be directed to Cayucos Creek without NPDES permit.

Fees

13. **Prior to issuance of construction permits**, the applicant shall pay all applicable school and public facilities fees.

Cayucos Sanitary District

14. **Prior to issuance of construction permits**, the applicant shall provide to the Department of Planning and Building, a letter from Cayucos Sanitary District verifying all conditions of Cayucos Sanitary District, letter dated February 28, 2005 have been met, including but not limited to: Provide a title report from a title company authorized to do business in the State of California for all property in which sewer facilities and improvements intended to connect to the District's sewer system shall be installed, and shall obtain written authorization from all property owners identified therein for the installation of such sewer facilities and improvements. The applicant shall be responsible for all construction, repair and maintenance of any and all sewer lines, pipes, laterals, manholes, pumps, pumping systems, backflow devices, sump basins and associated appurtenances (collectively "sewer facilities") connecting to the District sewer line located in "E" Street, Cayucos, California and shall provide an annual independent certification by a licensed plumbing contractor certifying the satisfactory condition and operation of the subject sewer facilities. The applicant shall provide written recorded notice, in a form acceptable to the District, of this requirement to all of its heirs, assigns, grantees, and/or successors in interest.

Water Supply

15. **Prior to issuance of building permits**, the applicant shall submit a final will serve letter from Morro Rock Mutual Water Company to the Department of Planning and Building.

Biological Resources

16. **Prior to issuance of grading and/or construction permits**, the applicant shall retain an biological consultant approved by the County Planning and Building Department to monitor the implementation of the biological mitigation measures and erosion and sedimentation control measures during grading and construction activities. The biologist shall monitor the installation of fencing as per the approved construction plans and at a minimum, monitor the construction activities once per week and provide a summary report to the County Planning Department at the close of construction activities. If possible, construction activities shall be limited to the dry season (April through

October 15). If construction activities cannot take place during the dry season, the qualified biologist shall determine if additional erosion and sedimentation control measures are required. The biologist shall have the authority to halt construction activities if the mitigation measures are not properly implemented. The biologist shall coordinate with the County to resolve any problems or inconsistencies regarding the require mitigation measures.

18. The structures shall be setback a minimum of 20 feet from the edge of riparian vegetation and 30 feet from the trunk of the eucalyptus tree along the south bank of Little Cayucos Creek, and Birch Avenue extension driveway along the northern boundary of the property shall be setback 10 feet from the dripline of the riparian vegetation. No disturbance shall occur within the setback areas.
19. **Prior to issuance of construction permits**, the applicant shall submit an erosion and sedimentation control plan for review and approval by the department of planning and building. The plan shall utilize sediment control measures to protect Little Cayucos Creek. Installation of erosion/sediment control devices shall be installed around the perimeter of the construction zone.
20. **Prior to issuance of construction permits**, the applicant shall submit a drainage plan for review and approval by the planning and building department. The plan shall direct all potential pollutants from stormwater runoff away from Little Cayucos Creek.
21. **Prior to issuance of construction permits**, the applicant shall submit a landscaping plan including drought tolerance, native, and butterfly friendly landscaping for review and approval by the Department of Planning and Building.

Cultural Resources

22. **Prior to issuance of construction permit**, the applicant shall submit to the Environmental Coordinator (and possibly subject to peer review) for the review and approval, a detailed research design for a Phase III (data recovery) archaeological investigation. The Phase III program shall be prepared by a subsurface qualified archaeologist approved by the Environmental Coordinator. The consulting archaeologist responsible for the Phase III program shall be provided with a copy of the previous archaeological investigations (Bertrando; 2002, Lee; 2006), and shall be consistent with Phase III Mitigation & Monitoring Plan (Lee; 2006). The Phase III program shall include at least the following:

- A. Description of standard archaeological data recovery practices;
- B. Recommendation of sample size adequate to mitigate for impacts to archaeological site, including basis and justification of the recommended sample size. Sample size should be between 2-7% of the volume of disturbed area. If a lesser sample size is recommended, supporting information shall be presented that justifies the smaller sample size.
- C. Identification of location of sample sites/test units;
- D. Detailed description of sampling techniques and material recovery procedures (e.g. how sample is to be excavated, how the material will be screened, screen size, how material will be collected);
- E. Disposition of collected materials;
- F. Proposed analysis of results of data recovery and collected materials, including timeline of final analysis results;
- G. List of personnel involved in sampling and analysis.

Once approved, these measures shall be shown on all applicable plans and implemented during construction.

23. **Prior to issuance of construction permit**, the applicant shall submit to the Environmental Coordinator, a letter from the consulting archaeologist indicating that all necessary field work as identified in the Phase III program has been completed.
24. **Prior to issuance of construction permit**, the applicant shall submit a monitoring plan, prepared by a subsurface-qualified archaeologist, for the review and approval by the Environmental Coordinator. The monitoring plan shall include at a minimum:
 - A. List of personnel involved in the monitoring activities;
 - B. Description of how the monitoring shall occur;
 - C. Description of frequency of monitoring (e.g. full-time, part time, spot checking);
 - D. Description of what resources are expected to be encountered;
 - E. Description of circumstances that would result in the halting of work at the project site (e.g. What is considered "significant" archaeological resources?);
 - F. Description of procedures for halting work on the site and notification procedures;
 - G. Description of monitoring reporting procedures.

CONDITIONS TO BE COMPLETED DURING PROJECT CONSTRUCTION

Biological Resources

25. To reduce the likelihood of sedimentation to Little Cayucos Creek, all private and construction vehicle traffic should be limited to those areas away from the northern and eastern edges of the property, outside of the fenced areas.
26. Construction activities shall be limited to the dry weather season (April 15 thru October 15).
27. The applicant shall implement the erosion and sedimentation control plan.
28. The applicant shall implement the drainage plan.
29. The biological mitigation monitoring plan shall be implemented with on-site construction monitoring.
30. Landscaping in accordance with the approved landscaping plan shall be installed. All landscaping shall be maintained in a viable condition in perpetuity.
31. A monitoring report shall be submitted to the Planning and Building Department for review and approval.
33. The applicant shall provide Cayucos Sanitary District with a complete set of as-built plans and specifications for the subject sewer facilities.
34. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

Cultural Resources

35. **During all ground disturbing construction activities**, the applicant shall retain a qualified archaeologist (approved by the Environmental Coordinator) and Native American to monitor all earth disturbing activities, per the approved monitoring plan. If any significant archaeological resources or human remains are found, CCC work shall stop within the immediate vicinity (precise area to be determined by the archaeologist in the field) of the resource until such time as the resource can be

evaluated by an archaeologist and any other appropriate individuals. The applicant shall implement the mitigation as required by the Environmental Coordinator.

CONDITIONS TO BE COMPLETED PRIOR TO OCCUPANCY OR FINAL INSPECTION

Birch Avenue Access Drive and Fire Lane Signage

36. **Prior to final inspection**, the applicant shall provide to the Department of Planning and Building, evidence of a recorded maintenance agreement for Birch Avenue access driveway and "no parking (fire lane) signage" for Lots 3 and 4, Lot 5 and Lot 6.

Cultural Resources

37. **Upon completion of all monitoring/mitigation activities, and prior to occupancy or final inspection (whichever occurs first)**, the consulting archaeologist shall submit a report to the Environmental Coordinator summarizing all monitoring/mitigation activities and confirming that all recommended mitigation measures have been met. If the analysis included in the Phase III program is not complete by the time final inspection or occupancy will occur, the applicant shall provide to the Environmental Coordinator, proof of obligation to complete the required analysis.

Biological Resources

38. **Prior to final inspection or occupancy**, the applicant shall submit a biology monitoring report to the Environmental Coordinator for approval verifying completion of all necessary field work and monitoring.

Landscape

39. **Prior to final inspection**, the landscape shall be installed in accordance with the approved landscaping plan shall be installed. All landscaping shall be maintained in a viable condition in perpetuity.

Fire Safety

40. Which ever occurs first, the applicant shall obtain final inspection and approval from Cayucos Fire Department of all required fire/life safety measures.

ON-GOING CONDITIONS OF APPROVAL (VALID FOR THE LIFE OF THE PROJECT)

41. All landscape shall be maintained in viable condition in perpetuity
42. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
43. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863 FAX (831) 427-4877
www.coastal.ca.gov



COMMISSION NOTIFICATION OF APPEAL

DATE: May 11, 2007
TO: Matt Janssen, Permit Chief
County of San Luis Obispo, Planning & Building Department
976 Osos St., Room 300
San Luis Obispo, CA 93408
FROM: Steve Monowitz, District Manager
RE: **Commission Appeal No. A-3-SLO-07-024**

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: **D020030P**
Applicant(s): **S L O Land Corporation**
Description: **Construction of three new two-story single family residences and access improvements adjacent to Little Cayucos Creek.**
Location: **Birch Avenue & "E" Street (Estero planning area), Cayucos (San Luis Obispo County) (APN(s) 064-112-22, 064-112-23)**
Local Decision: **Approved w/ Conditions**
Appellant(s): **California Coastal Commission, Attn: Commissioner Mike Reilly; Commissioner Sara J. Wan**
Date Appeal Filed: **5/10/2007**

The Commission appeal number assigned to this appeal is A-3-SLO-07-024. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of San Luis Obispo's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Jonathan Bishop at the Central Coast District office.

cc: S L O Land Corporation

CCC Exhibit G
(page 1 of 6 pages)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 PHONE: (831) 427-4863
 FAX: (831) 427-4877



**APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT**

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

SECTION I. Appellant(s):

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

<u>Commissioner Sara J. Wan</u>	<u>Commissioner Mary K. Shallenberger</u>
<u>California Coastal Commission</u>	<u>California Coastal Commission</u>
<u>45 Fremont Street, Suite 2000</u>	<u>45 Fremont Street, Suite 2000</u>
<u>San Francisco, CA 94105</u>	<u>San Francisco, CA 94105</u>
	<u>Phone No. (415) 904-5200</u>

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Luis Obispo County

2. Brief description of development being appealed:

Construction of three new two-story single family residences and access improvements adjacent to Little Cayucos Creek.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

Birch Avenue & "E" Street, Cayucos APN(s) 064-112-022, 064-112-023

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
 b. Approval with special conditions: X
 c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-07-024
 DATE FILED: 5-10-2007
 DISTRICT: Central Coast

RECEIVED

MAY 10 2007

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST AREA

CCC Exhibit 9
(page 2 of 6 pages)

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

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

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other: _____

6. Date of local government's decision: April 6, 2007

7. Local government's file number: D020030P

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

SLO Land Corporation
P.O. Box 228
Cayucos, CA 93430

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

(1) Matt Janssen & Marsha Lee
SLO Planning & Building Department
967 Osos Street, Rm. 300, San Luis Obispo, CA 93408

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

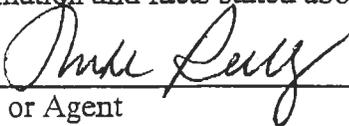
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: 
Appellant or Agent

Date: May 10, 2007

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

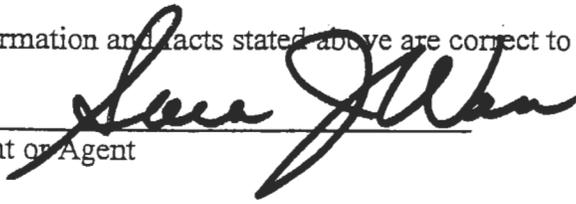
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See Attached.

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Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

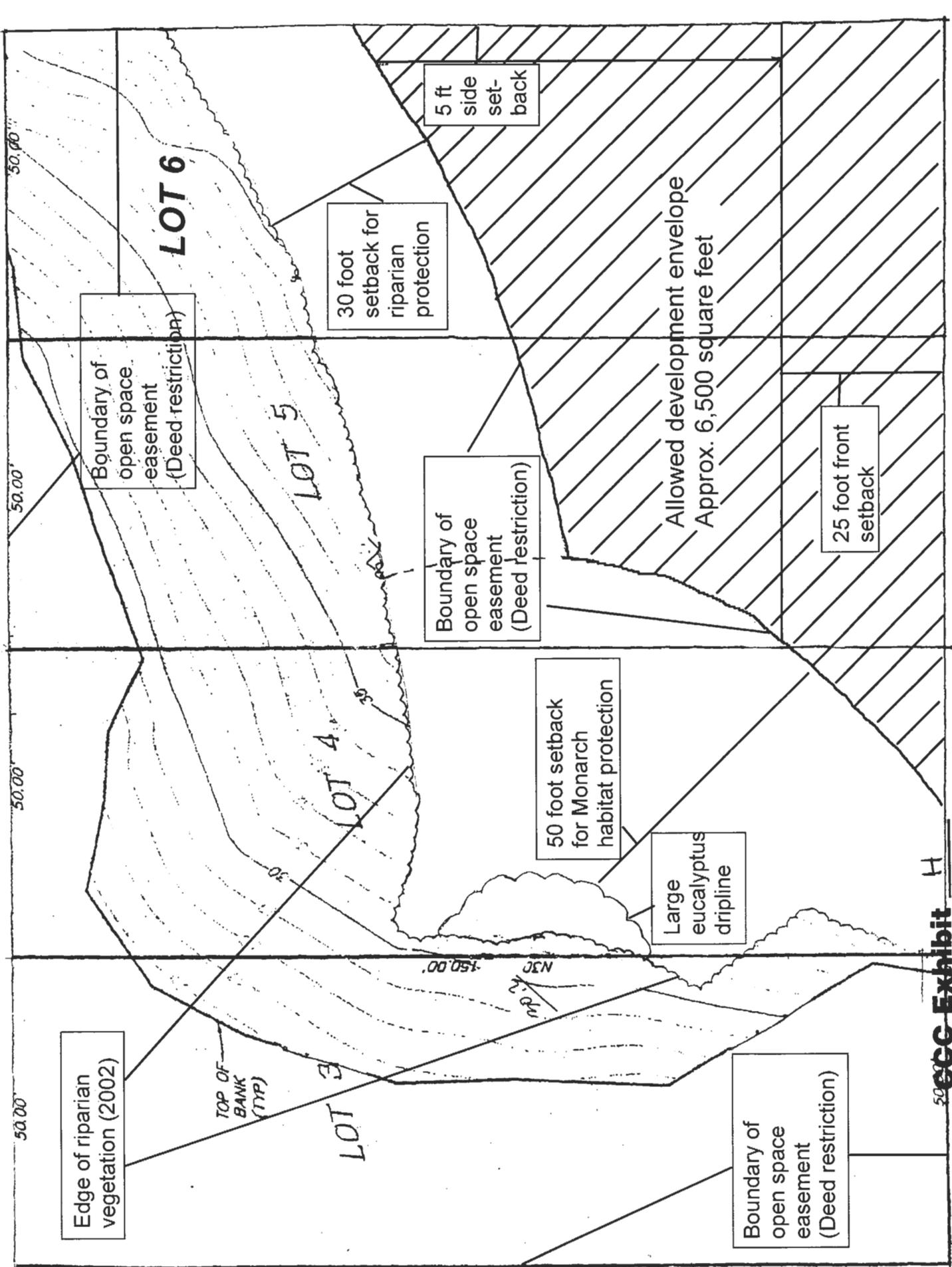
Reasons for Appeal: San Luis Obispo County Coastal Development Permit D020030P – (SLO Land Corporation)

San Luis Obispo County approved a proposal to construct three single-family residences adjacent to Little Cayucos Creek at the northwest corner of Birch Avenue and "E" Street, in the community of Cayucos, in the Estero Planning Area. The County approved project raises Local Coastal Program (LCP) conformance issues and questions as follows:

The LCP defines Little Cayucos Creek and its riparian corridor as a Sensitive Resource Area (SRA) and Environmentally Sensitive Habitat Area (ESHA) and requires its protection, including requiring minimum setbacks (including LCP Environmentally Sensitive Habitats Policies 1, 2, 20, 21, 28, 29, 35 and Coastal Zone Land Use Ordinance Sections 23.07.170-178). The project site also includes Monarch butterfly habitat that may also be considered ESHA. The approved project locates new development in close proximity to these sensitive habitat areas and it appears that the County's approval lacks adequate measures to avoid impacts and significant disruptions to the resources as required by the LCP, including a lack of appropriate setbacks.

In addition, the Estero Area Plan of the LCP includes a specific setback standard for projects located adjacent to Little Cayucos Creek. Development is to be set back a minimum of 20 feet from the creek, as measured from the outer limits of riparian vegetation. The minimum setback may be reduced to no less than 10 feet provided that certain findings are made (Combining Designation SRA Standard #1). The County approval is inconsistent with these setback requirements because it locates the driveway within 10 feet of riparian vegetation, and within 6 feet for the turf block apron associated with the driveway. Fill slopes to support the driveway approach appear even closer. Moreover, the required riparian habitat setback adjustment findings to allow a lesser than 20-foot minimum setback (CZLUO Section 23.07.174 et seq) made by the County do not appear to be supported by the evidence at this location. It appears that alternative development locations and related access routes are feasible and less environmentally damaging, and would still allow for the establishment of a principally permitted use on the site.

Questions are also raised surrounding multiple project elements shown on the County approved site plans, including: apparent discrepancies in riparian and related habitat mapping; apparent inaccuracies in the location of portions of the driveway approach (turf block apron and fill slopes) as they relate to identified setbacks, and; apparent encroachments of second-story overhangs and residential decking on lot 4 within the required setback area, which are not shown on the approved project plans. This lack of clarity in project detail also raises questions regarding the project's conformance with the LCP.



SCALE in ft

N30°30'E 150.00'

Edge of riparian vegetation (2002)

Boundary of open space easement (Deed restriction)

30 foot setback for riparian protection

5 ft side setback

Boundary of open space easement (Deed restriction)

50 foot setback for Monarch habitat protection

Large eucalyptus dripline

Allowed development envelope
Approx. 6,500 square feet

25 foot front setback

Boundary of open space easement (Deed restriction)

LOT 6

LOT 5

LOT 4

LOT 3

TOP OF BANK (TYP)



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

✓ *Frog* - March
April

VICTOR HOLANDA, AICP
DIRECTOR

BRYCE TINGLE, AICP
ASSISTANT DIRECTOR

ELLEN CARROLL
ENVIRONMENTAL COORDINATOR

FORREST WERMUTH
CHIEF BUILDING OFFICIAL

THIS IS A NEW PROJECT REFERRAL

DATE: August 22, 2002 - 3/8/05

TO: F+G

FROM: Coastal Team DO20030P/Anderson-Thomas
Project Name and Number

Development Review Section (Phone 781- 5183)

PROJECT DESCRIPTION: Construct three SFD. *Supplement*

Return this letter with your comments attached no later than: Sept 5, 2002

PART I IS THE ATTACHED INFORMATION ADEQUATE FOR YOU TO DO YOUR REVIEW?

YES (Please go on to Part II)
 NO (Call me ASAP to discuss what else you need. We have only 30 days in which we must accept the project as complete or request additional information.)

PART II ARE THERE SIGNIFICANT CONCERNS, PROBLEMS OR IMPACTS IN YOUR AREA OF REVIEW?

NO (Please go on to Part III)
 YES (Please describe impacts, along with recommended mitigation measures to reduce the impacts to less-than-significant levels, and attach to this letter)

CCC Exhibit I
(page 1 of 1 pages)

PART III INDICATE YOUR RECOMMENDATION FOR FINAL ACTION. Please attach any conditions of approval you recommend to be incorporated into the project's approval, or state reasons for recommending denial. IF YOU HAVE "NO COMMENT", PLEASE INDICATE OR CALL

March April

A 50' setback from the largest eucalyptus
will be needed to protect monarch habitat.

Protonal surveys shall be initiated for
California tree-legged frog.

3-8-05 Bob Stafford 528-8670
Date Name Phone

30' setback from eucalyptus ok as long as house built
in mirror image to that proposed on 5/17/05 (see attached map).

CENTRAL COAST ARCHAEOLOGY

ARCHAEOLOGICAL SURVEY-TESTING-MITIGATION • CULTURAL RESOURCE MANAGEMENT

Mr. Steve Miller c/o
Mr. John MacDonald
2813 Santa Barbara Ave.
Cayucos, CA. 93430

July 14, 2006

Subject: Phase III monitoring and mitigation plan for the M & R Investments Parcel, APN 064-112-002, at the intersection of E Street and Fresno Avenue in the Town of Cayucos, San Luis Obispo County, California.

Dear Mr. MacDonald:

Following are recommendations for archaeological monitoring and impact mitigation for the construction of three new homes on Lots 4, 5, and 6 of the M & R Investments Parcel in the Town of Cayucos. The subject property is part of archaeological site CA-SLO-2195, a prehistoric habitation deposit recorded in 2002 by Ethan Bertrando. This proposal addresses conditions of approval for a Minor Use Permit/Coastal Development Permit pending approval upon review of this mitigation plan.

ARCHAEOLOGICAL REQUIREMENTS IN CONDITIONS OF APPROVAL

Conditions of Approval includes a section entitled "Cultural Resources". This section lists a set of conditions for a Phase III program required by the San Luis Obispo County Environmental Coordinator. These conditions must be met prior to the issuance of a construction permit.

Conditions of Approval requires that prior to the issuance of construction permits, the applicant shall submit a monitoring plan prepared by a qualified subsurface archaeologist for the review and approval of the environmental coordinator, with a list of 7 required elements which must be included. They are paraphrased as follows:

- a. A description of standard archaeological data recovery practices;
- b. Recommendation of sample size adequate to mitigate impacts to the archaeological site, including basis and justification of the recommended sample size. San Luis Obispo County requires a 2-10% sample size;
- c. Identification of the location of the sample sites or test units;

P.O. Box 361 Cayucos, California 93430-0361
Phone/Fax 805.995.5053 Cell 805.235.5998

CCC Exhibit J
(page 1 of 6 pages)

- d. A detailed description of sampling techniques and material recovery procedures, including the excavation and collection process, type of screening, and screen size;
- e. Arrangements for final disposition of the collected materials;
- f. Analysis of the results of data recovery from the test, including a timeline for completion of the final report;
- g. A list of personnel involved in the sampling and analysis.

Conditions of Approval requires a letter from the consulting archaeologist to be submitted to the Environmental Coordinator verifying completion of all necessary field work.

Conditions of Approval requires the submission of a monitoring plan to be reviewed and approved by the Environmental Coordinator. This plan must contain the following elements:

- a. List of personnel involved in the monitoring activities;
- b. Description of how monitoring shall occur;
- c. Description of frequency of monitoring;
- d. Description of what resources are expected to be encountered;
- e. Description of circumstances that would result in the halting of work, including a definition of significant archaeological resources;
- f. Description of procedures for halting work on the site and notification procedures;
- g. Description of monitoring reporting procedures.

Conditions of Approval requires the applicant to retain a qualified archaeologist and Native American Monitor during all earth disturbing activities. It also requires work stoppage in the event of the discovery of human remains or significant archaeological resources.

Conditions of Approval requires the consulting archaeologist to submit a report to the Environmental Coordinator confirming that all mitigation measures have been met. This report must be completed prior to occupancy or final inspection, or if the analysis is not complete, the applicant will provide proof of the obligation (contract) to complete it.

BACKGROUND

The M & R Investments Parcel, Lots 3, 4, 5, and 6, APN 064-112-002, is located at the intersection of E Street and Fresno Avenue in the Town of Cayucos, San Luis Obispo County, California. The parcel covers an area approximately 150 feet by 200 feet and is characterized by a relatively flat plateau consisting of native and non-native grasses which slopes to the north towards the bank of Little Cayucos Creek. The banks of Little Cayucos Creek are thick with native Willow (*Salix* sp.) and Sycamore (*Platanus racemosa*) and introduced Cypress and Eucalyptus. In October 2002 a Phase I survey report was completed for the subject property (Bertrando 2002) in which the field investigation found evidence of a prehistoric archaeological site. Although the remains may be associated with CA-SLO-1914/H immediately north of the subject property

across Little Cayucos Creek, the remains have been recorded as a separate site designated CA-SLO-2195.

The initial Phase I cultural resource investigation (Bertrando 2002) identified shellfish remains including mussel (*Mytilus californianus*), black turban snail (*Tegula funebris*), and abalone (*Haliotis* sp.). In addition, several specimens of chipped stone debitage were also noted representing both Franciscan and Monterey chert. Soils were noted as being dark grayish brown to black characteristic of prehistoric midden deposits. As a result of the initial prehistoric cultural resources present and the subsequent site designation, it was required that CA-SLO-2195 be mitigated through the excavation and analysis of scientifically consequential information from the resource per CEQA and The County of San Luis Obispo guidelines.

PHASE II TEST

Phase II archaeological testing was carried out by Central Coast Archaeology from January 9 through 11, 2006 (Lee 2006). Playano Salinan Heritage Services provided a Native American Monitor from the Salinan Tribe. One 1 meter by 1 meter test unit was hand excavated in each of the lots proposed for development (Lots 4, 5, and 6). Soils were removed in 15 cm levels to a maximum depth of 45 cm. Excavated soils were processed with water through 1/8" mesh screens. Stratigraphic data revealed that cultural deposits ended at approximately 30 cm below the surface. Below 30 cm deposits are orange clay with no characteristic midden features. Deposits above the orange sands showed no stratigraphic variation. This was consistent in all three test units with the exception of much lower prehistoric cultural remains frequencies in Lot 4. Cultural materials include small fish and mammal bone, lithic debitage and tools, marine shells, and three *Olivella biplicata* (Purple Dwarf Olive Shell) disk beads. Modern refuse was also present in the sample.

Analysis of deposits from the test units collected during Phase II testing suggest a Late Period habitation site. Map 2 details the locations of test units in relation to the proposed building plan.

MITIGATION AND MONITORING PLAN

The following text describes a combined Phase III mitigation and monitoring plan designed to minimize impacts associated with the planned development of the subject property. Specific conditions of approval addressed by this plan are in brackets. Once footing trenches are laid out, but prior to mechanical excavation, archaeologist Sean A. Lee will hand excavate sections of footing trenches to sterile soils, approximately 30 cm. Work will be monitored by a Native American Monitor from the Salinan Tribe. Excavated soils will be processed as outlined below. This plan calls for a 5% + sample and 100% monitoring by a qualified archaeologist and Native American Monitor of all proposed excavation and ground disturbing activities [a,a,b,b,c,c,g].

Volumetric Samples

Areas that will be impacted by proposed construction will be throughout the perimeters of all three house-footing trenches. The building plan calls for excavation of standard 15" wide by 27" deep two-story footing trenches. Total volume of disturbed cultural material is approximately 12.2 cubic yards. A 5% + sample size would be 0.61 cubic meters [b].

Sampling Strategy

All materials will be excavated by hand to the depth of sterile soils, approximately 30 cm, collected in buckets, and water processed through 1/8" mesh screen [d]. The location of Phase III test units are indicated on Map 3 [c]. All materials will be given a preliminary examination and identification during processing and marked and bagged separately for further analysis at the lab. Lab processing includes grade (size) sorting, separation of stone, bone, shell, and other materials, weighing, measuring, and describing in a catalog. Samples of shell will be prepared for radiocarbon dating. Samples will be compared with the collection from the Phase II Test [d,f]. Materials will be bagged and labeled according to standard archaeological practice and returned to the property owner [e].

Description of Occurrence of Monitoring

Monitoring shall occur by a qualified subsurface archaeologist and Native American Monitor during any earth disturbing activities related with the excavation of new footings/foundations [b]

Description of Frequency of Monitoring

A qualified subsurface archaeologist and Native American Monitor shall be present full time during the excavation of new footings/foundations for the proposed new residences [c].

Description of Expected Resources

Based on data from the Phase II archaeological investigations, lithic debitage, bone, and shell may be encountered [d].

Circumstances that may Halt Work

Should any features be encountered such as intact hearths or burials, the excavation of new footings/foundations will be delayed while such features are fully recorded and documented, including sampling, sketches, photographs, stratigraphic profiling, and scientific measurements [e].

Description of Procedure for Halting Work

Should features be encountered that require the halting of work such as human remains, all work will stop in the immediate area and the archaeologist will notify the Sheriff-Coroner, San Luis Obispo County Planning Department, the Native American Heritage Commission, and the appropriate Native American Consultant [f].

Description of Monitoring Reporting Procedures

Following the completion of the excavations for the proposed new residences, the archaeologist will provide the building contractor and/or property owner with signed

notification of completion of archaeological monitoring. A follow-up letter verifying completion of archaeological monitoring will be provided to the client and SLO County Environmental Coordinator. Upon completion of mitigated Phase III testing and once radiocarbon dated samples have been returned to Central Coast Archaeology, a final report on mitigation and monitoring will be submitted to the client [g]. *+ copy to Env. Coord*

Should you have any questions regarding this proposal, please do not hesitate to call the office.

Sincerely,



Sean A. Lee
Archaeologist
Central Coast Archaeology

REFERENCES CITED

Bertrando, Ethan

2002 Cultural Resource Inventory of the M & R Investments Parcel, Lots 3, 4, 5, and 6 of Block 3 APN 064-112-002 Cayucos, CA. Report prepared at the request of John MacDonald, Cayucos, California.

Lee, Sean A.

2006 Archaeological Investigations At CA-SLO-2195, The M & R Investments Parcel, Lots 3, 4, 5, And 6 Of Block 3 APN 064-112-002 In The Town Of Cayucos, San Luis Obispo County, California. Report prepared at the request of Mr. John MacDonald, Cayucos, California.

ATTACHMENTS

Map 1. A portion of the USGS Cayucos, CA., 7.5' topographic quadrangle showing the area tested for cultural resources.

Map 2. Site map detailing proposed building footprints and locations of test units.

Map 3. Site map detailing location of Phase III test units.

5/14/07
J

124

1 KENNETH C. BORNHOLDT, SBN 42717
2 BORNHOLDT & ASSOCIATES
3 1035 Peach Street, Suite 202
San Luis Obispo, CA 93401
(805) 547-1500

FILED

JAN 03 2007

SAN LUIS OBISPO SUPERIOR COURT
BY Nancy G. Gaudin M
M Gaudin, Deputy Clerk

4 Attorneys for Defendants and Cross-Complainants
5 WILBUR W. HARTZELL, JR. and MAVIS M. HARTZELL,
as Trustees

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN LUIS OBISPO

10 M & R INVESTMENT COMPANY, INC., a)
Nevada corporation,)
11)
Plaintiff,)
12)

Case No. CV 040191
[Assigned for all Purposes to the
Honorable Roger T. Picquet]

13 vs.

14 WILBUR W. HARTZELL, JR. and MAVIS M.
15 HARTZELL, Trustees under Declaration of
Trust dated June 17, 1987; CHRISTOPHER
16 H. POPE; GRACE K. POPE; PEARL
17 CHARLOTTE SATTERBERG, Trustee of the
Satterberg Family Trust dated December 30,
1998; DANIEL CHIVENS and KRYSTALYN
18 CHIVENS, Trustees of the Chivens Family
Trust UTD [sic] January 31, 2000; CARL V.
19 NEGRANTI and MARY A. NEGRANTI,
Trustees of the Carl V. Negranti Family
20 Revocable Trust UDT November 20, 1992;
ALLAN HERSCHDERFER and DIANE
21 HERSCHDERFER, Trustees of The
Herschderfer Family Trust established
22 December 3, 2002; CAYUCOS
ELEMENTARY SCHOOL DISTRICT;
23 COUNTY OF SAN LUIS OBISPO; and all
persons unknown, claiming any legal or
24 equitable right, title, estate, lien or interest in
the property described in the complaint
adverse to Plaintiffs' title, or any cloud on
25 Plaintiffs' title thereto and DOES 1-20,
26 Defendants.

~~PROPOSED~~ CORRECTED
JUDGMENT TO QUIET TITLE

27 AND ALL RELATED CROSS-ACTIONS.
28

1 Judgment was previously entered by this Court on April 5, 2006.

2 The judgment as entered by the Court was recorded in the County Recorder's
3 Office of San Luis Obispo County, California on June 20, 2006 as Document
4 #2006043083 and on July 18, 2006 as Document # 2006049953.

5 After the Judgment was recorded, the parties discovered that the exhibits
6 containing the legal description and plat of the subject property were not attached and
7 the legal description was erroneous.

8 This Corrected Judgment is entered to correct the legal description and attach the
9 exhibits correctly describing the subject property for recordation by the parties to
10 supersede and replace the Judgment entered on April 5, 2006.

11 This Judgment is entered pursuant to the stipulation and settlement entered into
12 on February 18, 2005, before the above-entitled court by and between M&R
13 INVESTMENT COMPANY, INC.("M&R"), a Nevada corporation, through its president
14 Steve Miller, WILBUR W. HARTZELL, JR. and MAVIS M. HARTZELL(collectively
15 "HARTZELL"), as Trustees under Declaration of Trust dated June 17, 1987,
16 CHRISTOPHER H. POPE and GRACE K. POPE (collectively "POPE"), PEARL
17 CHARLOTTE SATTERBERG ("SATTERBERG"), as Trustee of the Satterberg Family
18 Trust dated December 30, 1998, DANIEL CHIVENS and KRYSTALYN CHIVENS
19 (collectively "CHIVENS"), as Trustees of the Chivens Family Trust UTD January 31,
20 2000, CARL V. NEGRANTI and MARY A. NEGRANTI (collectively "NEGRANTI"), as
21 Trustees of the Carl V. Negranti Family Revocable Trust UDT November 20, 1992,
22 ALLAN HERSCHDERFER and DIANE HERSCHDERFER (collectively
23 "HERSCHDERFER"), as Trustees of The Herschderfer Family Trust established
24 December 3, 2002, and the CAYUCOS ELEMENTARY SCHOOL
25 DISTRICT("DISTRICT"), through George Erdelyi, Superintendent, as ratified by the
26 Board of Trustees of the DISTRICT on March 4, 2005, (hereinafter collectively referred
27 to as "Parties"), in connection with a dispute over the legal status of that certain 20-foot
28 alley (the "Map Alley") running west from "E" Street to Little Cayucos Creek, between Ash

1 Avenue and Birch Avenue, in the unincorporated area of the County of San Luis Obispo
2 ("COUNTY"), as shown in Block 3 on the Map of the Town of Cayucos (the "Town Map")
3 recorded in Book A, Page 160 of Maps in the Official records of the COUNTY.

4 The court takes judicial notice of the fact that the COUNTY filed a Disclaimer of
5 any interest in and to the Map Alley in this action on February 18, 2005.

6 The court takes judicial notice of the fact that the DISTRICT filed a Cross-
7 Complaint to quiet its title to Lots 7, 8 and 9 in Block 3 of the Town Map ("DISTRICT
8 Property"), that the Plaintiff and Defendants named above have filed Disclaimers of any
9 interest in and to said DISTRICT Property in this action, the DISTRICT published the
10 summons on said Cross-Complaint and no parties have appeared in the action except
11 the Parties who filed Disclaimers.

12 The court takes judicial notice of the fact that HARTZELL filed a Cross-Complaint
13 in this action seeking to quiet title to the Map Alley centerline on the grounds the public
14 never accepted the offer to dedicate the Map Alley in the Town Map, HARTZELL
15 published the summons on said Cross-Complaint and no parties have appeared in the
16 action except the Parties.

17 WHEREAS, the Parties have stipulated and agreed that:

18 1. The offer to dedicate the Map Alley in the Town Map was never accepted by
19 the COUNTY and no public use occurred within a reasonable time after the offer was
20 made or within 25 years of when the offer was made.

21 2. None of the Parties owns any private easement for ingress or egress in the
22 Map Alley.

23 3. All Parties own to the centerline of the Map Alley in fee simple by an extension
24 of their respective north-south lot lines shown on the Town Map, subject to an easement
25 for overhead utilities in the Map Alley area on their respective lots. A dispute exists as
26 to the location of said centerline due to historic use in the area of the New Alley, as
27 defined herein.

28 4. HERSCHDERFER shall own in fee simple to the centerline of the Map Alley

1 adjacent to Lot 13 of the Town Map as the new northerly line of said lot, subject to an
2 easement for overhead utilities in the Map Alley area, and the other half of said Map Alley
3 area adjacent to Lot 13 is owned in fee simple by M&R, subject to the non-exclusive right
4 of HERSCHDERFER to park vehicles thereon subject to M&R's easement right to ingress
5 and egress to and from Lot 4 of the Town Map.

6 5. The DISTRICT owns fee simple title to Lots 7, 8 and 9 as three separate legal
7 parcels as shown on the Town Map ("the DISTRICT Property").

8 6. All Parties have agreed to the creation of a twelve (12) foot wide private alley
9 (the "New Alley") between their respective lots as legally described in the attached
10 Exhibit "A" and the attached plat marked Exhibit "B".

11 7. All Parties will own to the centerline of the New Alley in fee simple by an
12 extension of their north-south lot lines shown on the Town Map.

13 8. All Parties except M&R shall have the right of ingress and egress over and
14 across the New Alley, which right is appurtenant to the Parties' respective lots.

15 9. M&R shall own an easement for ingress and egress in the New Alley for
16 garbage services, utilities, other matters of convenience necessary to the M&R lot owners
17 on an occasional basis and deliveries only to its lots but not for parking in the New Alley.
18 Residents and guests of the M&R lots shall have no other right to use the New Alley for
19 ingress and egress to the M&R lots.

20 10. The DISTRICT shall offer to dedicate an easement for ingress and egress to
21 the COUNTY over that portion of the DISTRICT Property needed for the New Alley. In
22 the event that the COUNTY rejects such dedication offer, then the DISTRICT shall grant
23 an easement to all Parties as abutters to the New Alley for access to and from that
24 certain public street know as "E Street" in the Town of Cayucos under Education Code
25 Section 17556.

26 11. In consideration of the DISTRICT's conveyance described in Paragraph 10
27 above, HARTZELL, SATTERBERG, POPE, CHIVENS, NEGRANTI, and
28 HERSCHDERFER, as a group, agree to pay the DISTRICT sum of \$6,000.00 upon

1 completion of said conveyance.

2 NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED THAT:

3 1. The offer to dedicate the Map Alley in the Town Map was never accepted by
4 the COUNTY and no public use occurred within a reasonable time after the offer was
5 made or within 25 years of when the offer was made.

6 2. None of the Parties owns any private easement for ingress or egress in the
7 Map Alley.

8 3. All Parties own to the centerline of the Map Alley in fee simple by an extension
9 of their respective north-south lot lines shown on the Town Map, subject to an easement
10 for overhead utilities in the Map Alley area on their respective lots.

11 4. HERSCHDERFER shall own in fee simple to the centerline of the Map Alley
12 adjacent to Lot 13 of the Town Map as the new northerly line of said lot, subject to an
13 easement for overhead utilities in the Map Alley area, and the other half of said Map Alley
14 area adjacent to Lot 13 is owned in fee simple by M&R, subject to the non-exclusive right
15 of HERSCHDERFER to park vehicles thereon subject to M&R's easement right to ingress
16 and egress to and from Lot 4 of the Town Map.

17 5. The DISTRICT owns fee simple title to the DISTRICT Property.

18 6. All Parties have agreed to the confirmation of a twelve (12) foot wide private
19 alley (the "New Alley") as consistent with the historic use of the alley by them between
20 their respective lots as legally described in the attached Exhibit "A" and the attached plat
21 marked Exhibit "B".

22 7. All Parties will own to the centerline of the New Alley in fee simple by an
23 extension of their north-south lot lines shown on the Town Map.

24 8. All Parties except M&R shall have the right of ingress and egress over and
25 across the New Alley, which right is appurtenant to the Parties' respective lots.

26 9. M&R shall own an easement for ingress and egress in the New Alley for
27 garbage services, utilities, other matters of convenience necessary to the M&R lot owners
28 on an occasional basis and deliveries only to its lots but not for parking in the New Alley.

1 Residents and guests of the M&R lots shall have no other right to use the New Alley for
2 ingress and egress to the M&R lots.

3 10. The DISTRICT shall offer to dedicate an easement for ingress and egress to
4 the COUNTY over that portion of the DISTRICT Property needed for the New Alley. In
5 the event that the COUNTY rejects such dedication offer, then the DISTRICT shall grant
6 an easement to all Parties as abutters to the New Alley for access to and from that
7 certain public street know as "E Street" in the Town of Cayucos under Education Code
8 Section 17556.

9 11. In consideration of the DISTRICT's conveyance described in Paragraph 10
10 above, HARTZELL, SATTERBERG, POPE, CHIVENS, NEGRANTI, and
11 HERSCHDERFER, as a group, agree to pay the DISTRICT the sum of \$6,000.00 upon
12 completion of said conveyance.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that since this
14 Judgment does not include all of the terms and conditions of the settlement entered into
15 between the Parties on February 18, 2005, this Court shall retain jurisdiction of the
16 Parties and subject matter of this action to enforce all of the other terms and conditions
17 of the settlement.

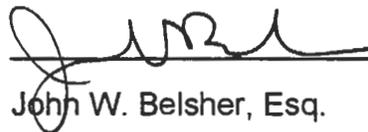
18 IT IS SO STIPULATED:

19 Dated:

BELSHER & BECKER

20

21


John W. Belsher, Esq.

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23

Attorneys for Plaintiff **M&R Investments**

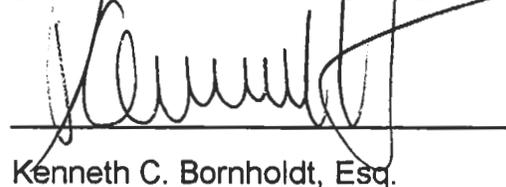
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Dated:

BORNHOLDT & ASSOCIATES

25

26


Kenneth C. Bornholdt, Esq.

27

28

Attorneys for Defendants **Wilbur W.**

1 Residents and guests of the M&R lots shall have no other right to use the New Alley for
2 ingress and egress to the M&R lots.

3 10. The DISTRICT shall offer to dedicate an easement for ingress and egress to
4 the COUNTY over that portion of the DISTRICT Property needed for the New Alley. In
5 the event that the COUNTY rejects such dedication offer, then the DISTRICT shall grant
6 an easement to all Parties as abutters to the New Alley for access to and from that
7 certain public street know as "E Street" in the Town of Cayucos under Education Code
8 Section 17556.

9 11. In consideration of the DISTRICT's conveyance described in Paragraph 10
10 above, HARTZELL, SATTERBERG, POPE, CHIVENS, NEGRANTI, and
11 HERSCHDERFER, as a group, agree to pay the DISTRICT the sum of \$6,000.00 upon
12 completion of said conveyance.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that since this
14 Judgment does not include all of the terms and conditions of the settlement entered into
15 between the Parties on February 18, 2005, this Court shall retain jurisdiction of the
16 Parties and subject matter of this action to enforce all of the other terms and conditions
17 of the settlement.

18 IT IS SO STIPULATED:

19 Dated:

BELSHER & BECKER

20
21 _____
22 John W. Belsher, Esq.

23 Attorneys for Plaintiff **M&R Investments**

24 Dated:

BORNHOLDT & ASSOCIATES

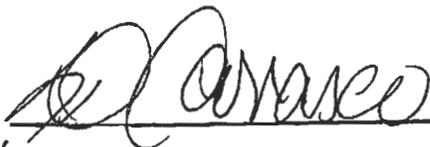
25
26 _____
27 Kenneth C. Bornholdt, Esq.

28 Attorneys for Defendants **Wilbur W.**

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Hartzell, Jr. and Mavis M. Hartzell,
Trustees under Declaration of Trust dated
June 17, 1987
OGDEN & FRICKS, LLP

Dated: 11/27/06


Roy E. Ogden, Esq.

Attorneys for **Pearl Charlotte Satterberg,**
Trustee of the Satterberg
Family Trust dated December 30, 1998
Attorneys for Defendants

Dated: _____
P. Terence Schubert, Esq.
Attorney for Defendants **Carl V. Negranti**
and Mary A. Negranti, Trustees of the Carl
V. Negranti Family Revocable Trust UDT
November 20, 1992; and
Allan and Diane Herschderfer, Trustees of
the Herschderfer Family Trust established
December 3, 2002 and **Daniel Chivens**
and Krystalyn Chivens, Trustees of the
Chivens Family Trust UTD January 31,
2000

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Hartzell, Jr. and Mavis M. Hartzell,
Trustees under Declaration of Trust dated
June 17, 1987
Dated: OGDEN & FRICKS, LLP

Roy E. Ogden, Esq.
Attorneys for Pearl Charlotte Satterberg,
Trustee of the Satterberg
Family Trust dated December 30, 1998
Attorneys for Defendants

P. Terence Schubert

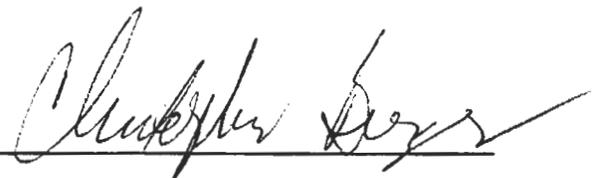
Dated: P. Terence Schubert, Esq.
Attorney for Defendants Carl V. Negranti
and Mary A. Negranti, Trustees of the Carl
V. Negranti Family Revocable Trust UDT
November 20, 1992; and
Allan and Diane Herschderfer, Trustees of
the Herschderfer Family Trust established
December 3, 2002 and Daniel Chivens
and Krystalyn Chivens, Trustees of the
Chivens Family Trust UTD January 31,
2000

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Dated: 11/14/06

SCHOOLS LEGAL SERVICE



Christopher P. Burger, Esq.
Attorneys for Defendant **Cayucos**
Elementary School District

Dated:

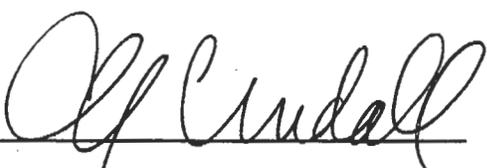
ADAMSKI, MOROSKI, MADDEN & GREEN

John E.D. Nicholson, Esq.

Attorneys for Defendants **Christopher H.**
Pope and Grace K. Pope

Judgment shall be so entered.

Dated: 1/3/07, ~~2006~~



Judge of the Superior Court

ACCESS EASEMENT

Legal Description

A portion of Lots 5 through 9 inclusive and Lot 14 in Block 3 of the Town of Cayucos, County of San Luis Obispo, State of California, according to that map entitled, "Map of the Subdivisions of the Rancho Moro Y Cayucos" filed in Book "A", at Page 160 of Maps in the office of the Recorder for said County, more particularly described as follows:

Commencing at the Northeast corner of said Lot 9, being the intersection of the Southwesterly line of the Birch Avenue (formerly 2nd Street) right-of-way with the Northwesterly line of the "E" Street right-of-way as shown on said map;

Thence, on the Southeasterly line of said Lot 9, South 30° 25' 45" West, 160.00 feet to the centerline of that 20 foot wide alley shown on said map;

Thence, North 30° 25' 45" East, 2.69 feet to the **True Point of Beginning**;

Thence, leaving the Southeasterly line of said Lot 9, on a line that lies 2.69 feet offset Northerly from and parallel with the centerline of said 20 foot wide alley, North 59° 26' 55" West, 199.38 feet;

Thence, North 72° 38' 43" West, 51.19 feet to an intersection with the northerly prolongation of the Northwesterly line of said Lot 14;

Thence, on the northerly prolongation of the Northwesterly line of said Lots 5 and 14, North 30° 31' 33" East, 12.32 feet;

Thence, leaving the Northwesterly line of said Lot 5, South 72° 38' 43" East, 49.27 feet to a point that lies 14.69 feet offset northerly from the centerline of said 20 foot wide alley;

Thence, on a line that lies 14.69 feet offset Northerly from and parallel with the centerline of said 20 foot wide alley, South 59° 26' 55" East, 200.24 feet to the Southeasterly line of said Lot 9;

Thence, on the Southeasterly line of said Lot 9, South 30° 25' 45" West, 12.00 feet to the Point of Beginning.

End Description

Prepared by:

Daniel S. Hutchinson

Daniel S. Hutchinson, PLS 5139
(License renewal date 06/30/07)

Date:

09/07/06

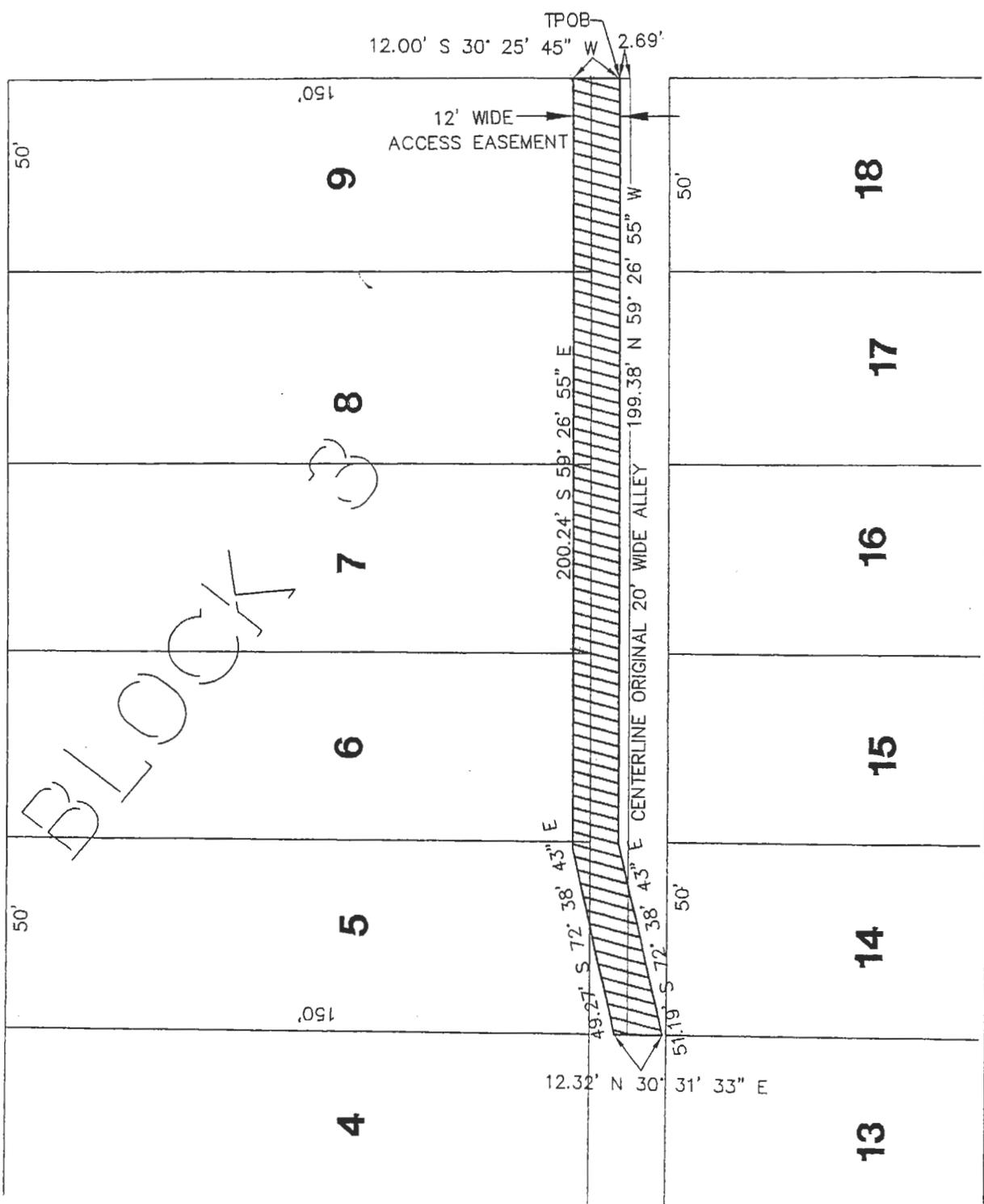


CCC Exhibit K
(page 11 of 21 pages)

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BIRCH AVENUE (FORMERLY 2ND STREET)

E STREET



0 20 40
1" = 40'
COC Exhibit K
(page 12 of 21 pages)

Cannon ASSOCIATES
ENGINEERS
PLANNERS
SURVEYORS

305 Pacific Street
San Luis Obispo, CA 93401
(805) 944-7407

THIS DOCUMENT WAS PREPARED BY CANNON ASSOCIATES (CA) AS AN INSTRUMENT OF PROFESSIONAL SERVICE AND SHALL REMAIN THE PROPERTY OF CA. THE RECIPIENT MAY MAINTAIN COPIES FOR INFORMATION AND REFERENCE IN CONNECTION ONLY WITH THIS SPECIFIC PROJECT. FURTHER, THE RECIPIENT RECOGNIZES THAT CHANGES OR MODIFICATIONS TO CA INSTRUMENTS OF PROFESSIONAL SERVICE INTRODUCED BY ANYONE OTHER THAN CA MAY RESULT IN ADVERSE CONSEQUENCES WHICH CA CAN NEITHER PREDICT NOR CONTROL. ACCEPTANCE OF THE DELIVERY OF THIS DOCUMENT CONSTITUTES AGREEMENT TO THESE TERMS AND CONDITIONS.

ACCESS EASEMENT		
PRTN LTS 5-9 & PRTN LT 14, BLK 3 TOWN OF CAYUCOS COUNTY OF SAN LUIS OBISPO, CALIFORNIA		
DRAWN BY	DATE	CA JOB NO.
RRF	04/21/05	040424
CHECKED BY	SCALE	SHEET
DSH	1" = 40'	1 OF 1

Exhibit "B"

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN LUIS OBISPO)

I, Sarah Flynn, am employed in the aforesaid county, State of California; I am over the age of 18 and not a party to the within action; my business address is 1035 Peach Street, Suite 202, San Luis Obispo, CA 93401.

On December 22, 2006, I served upon the interested party(ies) in this action the following described document(s): **[PROPOSED] CORRECTED JUDGMENT TO QUIET TITLE**

- PERSONAL DELIVERY:** by delivering a true copy thereof by hand to the person or office, as indicated, at the address(es) set forth below.
- MAIL:** by placing a true copy thereof enclosed in a sealed envelope(s), addressed as set forth below. I am "readily familiar" with this office's practice for the collection and processing of correspondence for mailing. Under that practice such envelope will be deposited with the United States Postal Service on this date with postage thereon fully prepaid at San Luis Obispo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- FACSIMILE:** by transmitting a true and correct copy of the document via facsimile to the person or office as indicated at the address(es) and telecopier number set forth below.
- MESSENGER:** by causing a true copy thereof to be delivered via messenger service at the address(es) set forth below.

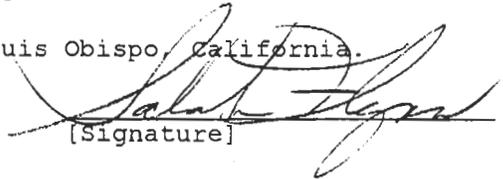
John W. Belsher, Esq. Belsher & Becker Attorneys at Law 412 Marsh Street San Luis Obispo, CA 93401	Christopher P. Burger Schools Legal Service 1300 17 th Street, 7 th Floor Bakersfield, CA 93301
Roy Ogden, Esq. Ogden & Fricks LLP 656 Santa Rosa Street Second Floor San Luis Obispo, CA 93401	John E. D. Nicholson, Esq. Adamski, Moroski Madden & Green, LLP P.O. Box 3835 San Luis Obispo, CA 93403-3835
P. Terence Schubert, Esq. 1254 Marsh Street San Luis Obispo, CA 93401	

- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made. **CCC Exhibit K (page 12 of 21) pages**
- State) I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on December 22, 2006 at San Luis Obispo, California.

Sarah Flynn

[Print Name]



[Signature]

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into effective this 18th day of February, 2005, by and between M&R INVESTMENT COMPANY, INC., a Nevada corporation ("M&R"), WILBUR W. HARTZELL, JR. and MAVIS M. HARTZELL, as Trustees under that certain Declaration of Trust dated June 17, 1987 (collectively referred to as "HARTZELL"), CHRISTOPHER H. POPE and GRACE K. POPE (collectively referred to as "POPE"), PEARL CHARLOTTE SATTERBERG, as Trustee of the Satterberg Family Trust u/d/t 12/30/98 ("SATTERBERG"), DANIEL CHIVENS and KRYSTALYN CHIVENS, as Trustees of the Chivens Family Trust u/d/t/ 1/31/00 (collectively referred to as "CHIVENS"), CARL V. NEGRANTI and MARY A. NEGRANTI, as Trustees of the Carl V. Negranti Family Revocable Trust u/d/t 12/20/92 (collectively referred to as "NEGRANTI"), ALLAN HERSCHDERFER and DIANE HERSCHDERFER, as Trustees of The Herschderfer Family Trust u/d/t 12/3/02 (collectively referred to as "HERSCHDERFER"), and the CAYUCOS ELEMENTARY SCHOOL DISTRICT ("DISTRICT"), collectively referred to herein as "Parties".

RECITALS

WHEREAS, M&R filed a Complaint in the Superior Court for the County of San Luis Obispo ("COUNTY"), Case No. CV 04191("Action"), against HARTZELL, POPE, SATTERBERG, CHIVENS, NEGRANTI, HERSCHDERFER (collectively referred to herein as "DEFENDANTS"), COUNTY and DISTRICT to quiet its title to certain real property in the County in a 20 foot alley ("Map Alley") shown on that certain Map of Cayucos recorded in Book A, Page 160 of Maps in the Official Records of County ("Cayucos Map"), as more particularly shown in yellow on the Canon & Associates survey attached hereto as Exhibit "A";

WHEREAS, the DEFENDANTS filed Cross-Complaints against M&R, COUNTY and DISTRICT to quiet their title in the Map Alley based on their historic use of a 12 foot alley ("Historic Alley") in a location different from the Map Alley, as more particularly shown in red on the attached Exhibit "A";

WHEREAS, the DISTRICT filed its Cross-Complaint against M&R and DEFENDANTS to quiet its title to Lots 7, 8 and 9 in Block 3 of the Cayucos Map ("DISTRICT Property"), as shown on the attached Exhibit "A";

WHEREAS, on February 18, 2005, the COUNTY filed a Disclaimer in the Action, in which it disclaimed any interest in the Map Alley; and

WHEREAS, on February 18, 2005, pursuant to California Code of Civil Procedure Section 664.6, the Parties entered into a settlement of said Action in open court in which they agreed to quiet the title of the respective Parties under certain terms and to give to each other general releases of all known and unknown claims arising out of the allegations in the Complaint and Cross-Complaints on file in said Action.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth and subject to full performance of all the other terms of the settlement entered into, the Parties agree as follows:

1. **Fee Title Quieted in DEFENDANTS.** The Parties agree that the fee simple title to each of the DEFENDANTS shall be quieted as follows and more particularly described in the attached Proposed Judgment to Quiet Title marked Exhibit "B"

1.1 HARTZELL shall retain their fence as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area.

1.2 POPE shall use the extension of the HARTZELL fence as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area.

1.3 SATTERBERG shall use her driveway bounded by her fence and short retaining wall as her new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area.

1.4 CHIVEN shall use the area between the end of the existing utility pole and the new SATTERBERG northerly lot line as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area;

1.5 NEGRANTI shall use the area from the existing utility pole down to a four foot border parallel with the Map Alley as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area; and

1.6 HERSCHDERFER shall use the centerline of the Map Alley adjacent to Lot 13 of the Cayucos Map as their new northerly lot line in fee, subject to an easement for overhead utilities in the Map Alley area and the other half the continued right to park subject to M&R's right to access Lot 4.

2. **Fee Title Quieted in DISTRICT.** The Parties agree that the fee simple title to the DISTRICT shall be quieted in and to the DISTRICT Property as more particularly described in the attached Exhibit "B".

2.1 The Parties agree to enter into a stipulation with the DISTRICT to file a Cross-Complaint to quiet its title to the DISTRICT Property in this Action and to file Disclaimers of any interest therein in the Action. The Parties further agree that the Proposed Judgment attached hereto as Exhibit "B" shall not be filed with the Court until after the DISTRICT has published the summons on said Cross-Complaint.

2.2 After Judgment to Quiet Title has been entered in said Action, the DEFENDANTS agree to cooperate with DISTRICT in processing applications for Certificates of Compliance with the COUNTY for its three lots.

3. **Fee Title Quieted in New Alley.** The Parties agree that the Historic Alley shall be realigned and relocated in accordance with a survey to be done by Canon & Associates which will be in the form of a legal description and plat more particularly described in the in the attached Exhibit B ("New Alley") as follows:

3.1 Each of the Parties shall own a fee interest in the New Alley measured from the boundary line of each lot owned by them adjacent to the New Alley to the centerline of the New Alley.

3.2 Each of the Parties except for M&R shall own an easement for ingress and egress in the New Alley appurtenant to their respective lots along the New Alley.

CCC Exhibit K
(page 16 of 21 pages)

3.3 M&R shall own an easement for ingress and egress in the New Alley for garbage services and deliveries only to its lots but not for parking in the New Alley. Residents and guests of the M&R lots shall have no right to use the New Alley for ingress and egress to the M&R lots.

3.4 The DEFENDANTS collectively agree to pay for the cost of a survey for the New Alley.

4. DISTRICT Agreement to Sell District Property for the Alley. The DISTRICT agrees to sell and convey to the DEFENDANTS and M&R up to a total of 1500 square feet of DISTRICT Property for an alley between the Parties' lots and access to the M&R lots from Birch Avenue for the consideration and terms set forth in Sections 5, 6 and 7 of this Agreement.

5. DEFENDANTS' Consideration to DISTRICT for New Alley. The DISTRICT agrees to offer to dedicate in fee to the COUNTY that portion of the DISTRICT property needed for the New Alley location. In the event the COUNTY rejects such offer of dedication, then the DISTRICT agrees to convey said property to the Parties in fee as set forth above in Section 3.1, subject to the easements set forth in Sections 3.2 and 3.3 above.

5.1 In consideration of the conveyance of the DISTRICT Property for the New Alley, the DEFENDANTS collectively agree to pay to the DISTRICT the sum of \$49.00 per square foot of DISTRICT Property consisting of a cash sum of \$6,000.00 and their agreement not to oppose the DISTRICT's quiet title action and cooperate as set for in Sections 2.1 and 2.2 above.

6. M&R Birch Avenue Project. M&R agrees to amend and diligently process in good faith its pending applications with the COUNTY (Application #D020030P) for development of the M&R lots 3, 4, 5 and 6 to provide for access to its proposed development from Birch Avenue as shown in the attached Triad/Holmes Assoc. survey marked Exhibit "C" ("Birch Avenue Project"). M&R agrees to not voluntarily change the route proposed for Birch Avenue and oppose any condition sought to be imposed by any public agency that would result in a change of such route. M&R agrees to process the Birch Avenue Project until the

agencies having jurisdiction over it have reached a final decision of approval or denial.

6.1 The DEFENDANTS agree to not oppose the Birch Avenue Project so long as M&R processes the applications with access from Birch Avenue in good faith. The DEFENDANTS are under no obligation to support the Birch Avenue Project.

6.2 In the event the Birch Avenue Project is denied and no environmental determination is certified by the COUNTY due solely to the location of the access from Birch Avenue, then M&R has the option to file a second application for the M&R Alley Project described in Section 7 below.

6.3 In the event the Birch Avenue Project is approved wherein a two-story house with a minimum driveway and without a garage with 1750 square feet on Lot 4 or a two-story house with 2500 square feet on each of Lots 5 and 6 on Exhibit "C" cannot be built due solely from the location of Birch Avenue, then M&R has the option to file a second application for the M&R Alley Project described in Section 7 below.

6.4 In the event the Birch Avenue Project is approved and M&R proceeds with development of its lots based on such approval, then M&R agrees to purchase and the DISTRICT agrees to sell at the rate of \$___.00 per square foot for the amount of DISTRICT Property needed to build the extension of Birch Avenue to the M&R lots.

7. M&R Alley Project. The Parties agree that if one of the two events described in Sections 6.2 or 6.3 occur, then M&R shall have the right to file and process a new application ("M&R Alley Project") with the County to develop its three lots using the alley for access in the location shown on the attached Exhibit "D" ("M&R Alley"). The occurrence of one of said events is a condition precedent to M&R proceeding with the M&R Alley Project.

7.1 The Parties agree that the DEFENDANTS can oppose the M&R Alley Project for any reason, and that the DEFENDANTS shall not be estopped from opposing such project on any and all grounds notwithstanding their non-opposition to the Birch Avenue Project as provided under Section 6.1 above.

7.2 In the event the M&R Alley Project is approved, then M&R agrees to purchase and the DISTRICT agrees to sell at the rate of \$62.00 per square foot for the amount of DISTRICT Property needed to expand the width of the New Alley to a total width of 18 feet. M&R shall pay for the cost of a survey for the M&R Alley.

8. **General Release.** The Parties hereto hereby agree to fully release and discharge each of the other Parties, and each of them, and their respective officers, agents, employees and representatives, from any and all claims, demands, damages, losses, liability, costs or causes of action arising out of or in connection with the allegations contained in the Complaint and Cross-Complaints on file in said Action, whether known or unknown.

8.1 The Parties each agree to bear their own attorneys fees and costs in connection with this Agreement and the Action.

9. **Waiver and Release of Unknown Claims.** All rights granted under Section 1542 of the California Civil Code are expressly waived by each of the Parties with respect to the releases made herein. Each of the Parties hereto expressly warrants to each of the other Parties that he, she and it have read and understand that Section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

9.1 The releases made herein operate as a release of future claims that may arise out of the allegations in the Complaint and Cross-Complaint in said Action whether the claims are currently known, unknown, seen or unforeseen. The Parties hereto expressly warrant to the other Parties that they understand and acknowledge the significance and consequences of this specific waiver of Section 1542 as to the releases given and hereby assume full responsibility for any future injury, damages, loss or liability that may occur after this Release is executed by them.

9.2 The Parties represent and warrant to each of the other Parties that they have consulted with and been advised by attorneys of their own selection with respect to the legal effect of the releases given by each of them in Sections 8 and 9 herein and intend to be bound by same.

10. **No Admission.** The entering into this Agreement does not constitute an admission of liability or fault by any of the Parties hereto.

11. **Attorneys Fees.** If any action at law or equity is commenced concerning this Agreement the prevailing Party shall be entitled to the payment of reasonable costs and attorneys' fees, in addition to any other relief which may be awarded.

12. **Authority.** The persons who are executing this Agreement on behalf of Parties hereto represent and warrant to each other and to the Parties hereto that they are the duly authorized and empowered to execute this Agreement and bind the Parties by their signatures.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be one agreement.

14. **Further Assurances.** The Parties hereto agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to fulfill and implement the terms of this Agreement.

15. **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

16. **Amendments.** The terms of this Agreement shall not be modified or changed except by an instrument in writing executed by each of the Parties hereto.

17. **Exhibits.** The Exhibits attached hereto are hereby incorporated herein and made a part hereof as if set forth in full.

18. Governing Law. This Agreement is entered into and shall be interpreted and construed under the laws of the State of California.

19. Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, assigns and successors-in-interest of the respective Parties hereto.

20. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto, and supersedes any prior written or oral agreement between said Parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the Parties hereto, relating to the subject matter hereof, which are not fully expressed in this Agreement.

21. Enforcement. The Parties acknowledge and agree that this Agreement is made and entered into pursuant to Section 664.6 of the California Code of Civil Procedure, and that they did request and the Court in said Action did agree to retain jurisdiction over the Parties to enforce the settlement entered into in Court until such time as all of the terms of this Agreement have been fully performed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the date first above written.

[SIGNATURE BLOCKS]

PL. SLO COUNTY
CLERK
2003 NOV -5 PM 3:30

Report on the
Proposed developments
of Lots 3, 4, 5 & 6 of Block 3 of Cayucos,
San Luis Obispo County California
Owners: Herfurth & Miller

CCC Exhibit L
(page 1 of 25 pages)

By Richard G. Little

2002/2003

REPORT OUTLINE

- INTRODUCTION
- BACKGROUND
- ENVIRONMENTAL CHARACTERISTICS OF SITE & MONARCH REQUIREMENTS
- METHOD AND MATERIALS:
- FIELD & HISTORICAL DATA
- RESULTS AND DISCUSSION
- MITIGATION:
- REFERENCES
- DESCRIPTION & PICTURES OF PROPOSED DEVELOPMENT OF LOTS 3, 4, 5 & 6 IN BLOCK 3

INTRODUCTION

The proposed development is located in Cayucos, San Luis Obispo County CA. in block 3 covering lots 3, 4, 5 & 6 which are located between Birch Avenue and E Street.

The purposes of this study is to evaluate a former overwintering Monarch butterfly site that was partially located on lot 3 of the lots proposed for development based on historical and present conditions at the site.

This report will use past and present information about the former overwintering site to determine the impact the proposed development will create. The report will also address if any and what kind of mitigation measures will be recommended.

BACKGROUND

Eucalyptus and Monterey pine groves along the California coastal regions are the locations that support overwintering sites of Monarchs. Environmental and climatic factors will determine the micro habitat present which will be the major factors deeming the suitability of a site. Climatic factors are factors such as specific temperature ranges, wind velocity, solar radiation, and humidity at the site. The climatic region inside the stand of trees that make up a Monarch site is often called the "microclimate." The microclimate that is found inside a Monarch habitat exist within a more restricted range then normally found outside of the site. This restricted range of climatic conditions that make up the microclimate at the grove will determine if the site is suitable for Monarchs and in what way. Species of trees, their size and clustering/density as well as other vegetation at the site will be the determining factors as to weather the site will offer the necessary conditions that will protect butterflies from wind and storms during the winter. The butterflies overwintering in these site during the winter will reach their peak numbers during this period. (Leong and Frey 1991)

ENVIRONMENTAL CHARACTERISTICS OF SITE & MONARCH REQUIREMENTS

Monarch overwintering sites will have a range of environmental requirements that usually only exist within those tree stand that will protect the Monarchs from the winter conditions which would be fatal if they were exposed to such conditions. The tree stand acts as a wind buffer. Monarch can not remain on trees if the wind velocity exceeds 2 meters/sec (Leong 1999). If the Monarch falls or are knocked off under such conditions when the temperatures are too low for flight, they can not recover to return to their roosting site in the trees, they can be killed by predators or other environmental factors. In this manner the site can protect the Monarch in a storm. Winter sites provide protection from freezing temperatures and gusty winds, and are generally associated with some source of free water such as a pond, stream or morning dew (Leong 1999) To be an successful overwintering site, the site must meet the Monarchs requirements of solar radiation, humidity, and temperature as well as food and water. The range of some of these environmental factors have been researched by Monarch Biologists over the years to determine what are necessary for Monarchs to survive. When one or more of the critical environmental factors exceed the Monarch survival range, that the site's value is degraded sometimes to the point of being of no use to Monarchs.

Non-native Eucalyptus and Monterey Pine trees are the preferred sites. We have lost many native pine trees to urbanization and now to Pitch Canker of Pines, Fusarium subglutinans (Wollenweb & Reinking) a fungus disease that is especially deadly to susceptible Monterey pine trees. The non-native Eucalyptus trees are also having major problems due to a number of serious insect pest that are new to California. Most of these new pests have come into California only in the last ten to fifteen years. The Eucalyptus trees were imported into California more then 150 years ago were pest free for most of this time. Because of these new pest it becomes difficult to protect individual trees from these pest. This is due to there being no natural biological controls agents to control these serious pest. The use if insecticides even if it were to work against these pests, it would be equally destructive or more so to the Monarchs we are trying to protect.

Another factor that Monarch Biologist have shown to be important to the suitability of the site is the vegetation characteristics other then the trees on which they may roost. Edge vegetation as this is often called by Monarch Biologist are small tree seedlings, low bushes and other plants some which may serve as food and/or water sources.

FIELD DATA & HISTORICAL DATA

The field data was generated for Herfurth & Miller during the winter of 2002/2003 by Kingston Leong. Much of the historical data was compiled by Kingston as well. All data was provided by Jim Herfurth and Steve Miller.

Field Data Winter 2002/2003

- Except for the last three winter seasons, the Cayucos winter site had supported large populations of overwintering butterflies each season for over twenty years.

- The degradation of this winter site seems associated with two residential homes (52 Birch Street) that were recently built on land northeast and adjacent to the historical aggregation trees. Construction of these homes required the removal of trees that once buffered winds from the northeast.
- This winter season, several northeast winds exceeding wind velocities of 2 m/sec were measured. Winds of this magnitude blew unobstructed through eucalyptus branches that had historically supported overwintering butterflies.
- Since the Cayucos winter site supported few roosting butterflies this season, there were very little biological activities (soaring, foraging for water and nectar, etc.) observed in the field south of the grove and surrounding area.
- On November 27, 2002 site visitation, 25 butterflies were observed at the end of D street and along Cypress Avenue feeding on Myoporum spp. flowers and on free water found in a drainage ditch. Due to the 25 butterflies centered in this area alone, the December 13, 2002 site visitation included a search at the end of D Street and along Cypress Avenue for possible winter aggregations on pine trees. No winter aggregation was found on these trees.
- Approximately 200 butterflies were observed clustering on eucalyptus foliage, at the northwestern section of the grove, during the October 24, 2002 site visitation. Their numbers declined sharply to 50 by October 31. A cluster of six butterflies was observed on eucalyptus foliage on the southwestern section by November 11 and none by November 27. Based on their population size and their short winter occupancy, it was concluded that the monarch butterflies were no longer using the Cayucos winter habitat as a climax site as they had done just a few years ago.
- Since this season's overwintering population at Cayucos winter site showed a decline from 200 butterflies to 0 by November 27, 2002, the field investigation of this study was terminated after the December 15 2002 sample.

Historical Data

- Historically, butterflies were commonly observed feeding on flowers of Blue gum eucalyptus, (*Eucalyptus globulus* Don), Queen Ann's Lace, and Willow (*Salix* spp) that grew within or adjacent to the field south of the grove. It was not uncommon to see the butterflies imbibing on morning dew on grass growing in the field south of the grove. This winter, the butterflies were more disperse and foraged a greater distance from the aggregation area. They were observed feeding on flowers of Ivy (*Hedera* sp.), 40 meters south west of the grove; on lantana flowers (*Lantana* sp.) at the corner of E Street and Ash; and on morning dew of lawn grasses of residential homes located along D, E and Ash Streets
- Prior to the building of the two residential homes northeast of the aggregation area, Mrs. Kaberline has enjoyed viewing clusters of overwintering butterflies from her kitchen window for over 20 years. According to her, their numbers varied each season between

20,000 to over 60,000 butterflies.

- In 1998-1999 winter season, I visually documented a winter population of 60,000 overwintering butterflies. Based on the population of 60,000 butterflies, the Cayucos wintering site falls within the select few (0.59%) of 300+ California's winter sites that recorded populations greater than 50,000 overwintering butterflies (Leong et al. 2003). It is not surprising, therefore, that Estero Area Planning Committee designated Cayucos wintering site as a significant habitat for overwintering butterflies (1999).

RESULTS AND DISCUSSION

Even though no significant numbers of Monarchs have been seen at this site for the last three years (Kingston field data) the fact remains that the site is still used by Monarchs and should be protected. The present usage based on Kingston's field data is a transitional one. This means that the trees and vegetation at the site are important to maintaining the site suitability even if its only as a feeding habit.

We can not undo the destruction of this former site that in past years was one of the major Monarch overwintering sites along this part of the California coast. However, neither Steve Miller or Jim Herfurth were responsible for the destruction of this site. The mitigation measures that should have been imposed due to this destruction is a past issue. The responsibility of Herfurth and Miller lies within the proposed development and any impacts this development will have on the existing vegetation and it's potential impact on any value as a Monarch site. Only a few of the major eucalyptus trees that make up the site are on the lots owned by the present owners which are under consideration for development, the rest of the trees are on lots owned by other property owners. Any serious attempt at rehabilitating this site would have to involve all of these other property owners. Such mitigation measures are beyond the legal reach of this report.

That so few eucalyptus are in this former overwintering site increases the risk that any rehabilitation could succeed. Eucalyptus trees in the costal SLO county areas and else where are under attack by several new exotic and serious eucalyptus tree pests. Most of these new pest are capable of killing healthy trees. These pests do not have any natural biological controls to keep them under a natural balance. If any one of them were to infest the few reminding eucalyptus trees at this site, they could be killed quickly. If this were to happen the site would most likely be severely degraded in its usefulness to Monarchs.

MITIGATION:

Mitigation measures imposed on the development should be as reasonably as possible directly related to and in "proportionality" of the impact the proposed development creates to the Monarch site.

While it might be possible to rehabilitate this former site, and make it more suitable, it would require a great amount of work in the form of vegetation management. It could be years before we would know if the rehabilitation attempt would succeed or not. It would also require giving up one or more lots in addition to the one already given up as well as a major financial

commitment and time on the part of the property owners. Surrounding property owners on whose property part of the Monarch site occupies would also have to be involved. Requiring the present owners to fund such a project is counter to the laws' requirement that any impact mitigation measures be proportional to the impact. The damage to this 'site' that has resulted in the site becoming unsuitable, occurred off site on lots owned by other property owners years ago. The present lot owners, who have owned the lot for only about a year or so, were not responsible nor did they have any control over those actions that occurred off site.

To preserve the habitat that is present in Lot 3 in perpetuity, Herfurth and Miller should create a conservation easement which would prevent any future development of this lot even though it is presently protected under the riparian/creek protection regulations. Even though the site has been degraded and may be suitable only as an autumnal site or transitional site it should still be protected because the site is suitable as a feeding site. Such feeding sites can provide a place for them to replenish their fat reserves before they move on to overwintering sites.

The impact of the proposed three single occupancy structures on the vegetation and any possible use by Monarch such as a feeding habitat by Monarch Butterflies can be mitigated in the following manner:

- No development should be permitted on lot 3. A conservation easement may be one way to provide the legal structure for preserving and managing this creek side habitat.
- Any development of a structure on lot 4 not be permitted to impact the existing tree canopy.
- Development of a single residential structure on lot 5 and 6 should not have any impact on the creek side vegetation zone providing the structure do not intrude into the creek protection zone.
- No vegetation modification such as pruning, attaching things to the trees or removal of trees in any of the four lots should be permitted. The exception would be the removal of poison oak plants adjacent to the homes. If there is significant die off of the tree stand or the under cover and surrounding vegetation in the stream zone, an Monarch Biologist should be consulted to determine what kind of vegetation should replace the dead vegetation. When possible the occupants should allow trees that die in the vegetation zone to remain unless the trees are deemed hazardous. Cavity-nesting birds and other wildlife use standing dead trees. The trees as they decompose will contribute to the vegetation growth that the site as well as provide wildlife habitats.
- Smoke should not be allowed to drift into Monarch habitats from 1 October to 1 April of each year or when the butterflies are present.
- No modifications of the terrain in the creek zone should be permitted by the occupants without prior consulting and permission of County Planning and with a Monarch Butterfly Biologist. This includes any trenching, digging, tunneling in or around the trees. Any grading either by addition or removal of soil that would create 'Root Zone' disturbances or change the existing drainage, runoff that would create puddling should not be permitted.

- Winter time activities should be such that they do not disturb any Monarch that may be using the site. The site usage normally would occur from Oct to March of each winter.
- No Pesticide or herbicide applications of any kind should be permitted in the creek/vegetation zone. For pest or disease problems, again a Monarch Biologist should be consulted.

While the mitigation measures are requiring the developers to basically to leave the vegetation as is and not to make any vegetation modifications the reality is that this will only work for so long. This is because no site is inert or unchanging, all will change in time and most likely in a manner as to cause the site to become more unsuitable for Monarchs. The developers and property owners should be encouraged to think long term and to work with a Monarch Biologist to try and keep the site as suitable to Monarchs as they reasonably can as long as they can.

REFERENCES & READINGS

- Brower, L. 1985. The yearly flight of the monarch butterfly, Pacific Discovery,
 Brower, L and S. B, Malcolm. 1989. Endangered Phenomena. Wings 14(.2):3-10.
 Leong, K. L. H, 1998. Restoration of an overwintering grove in Los Osos, San Luis Obispo County, California. Submitted for publication in the Proceedings of the North American Monarch Butterfly Conference. Morelia, Michoacan, Mexico.
 Leong,, K. L. H, E. O'Brien, K. Lowerisen and M. Colleran. 1995. Mating activity and status of overwintering monarch butterflies in central California. Ann. Entomol. Soc. Am. 88:45-50,
 Leong,, K, L. H. 1990. Micoenvironmental factors associated with the winter habitat of the monarch butterfly (Lepidoptera: Danaidae) in central California. Annals Entomol, Soc. Am. 83-906-.910,

DESCRIPTION & PICTURES OF PROPOSED DEVELOPMENT OF LOTS 3, 4, 5 & 6 IN BLOCK 3

- Picture 1: All four lots are shown in this picture. The black lines are the approximate property lines of each of the lots.
- Picture 2: This picture is an aerial overview of the lots proposed for development in Cayucos. The vegetation that makes up the creek zone and the monarch site can easily be seen to cover several different properties.
- Pictures 3-4: Shows the vegetation on the lots from different points to show the vegetation distribution.
- Picture 5: Shows the vegetation at the edge of lot 3 & 4 at ground level.

Picture 5:

Shows the vegetation at the edge of lot 3 & 4 at ground level.



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March 4, 2002

Mr. Steve Miller
55 Bakersfield Avenue
Cayucos, California 93430

Subject: Biological Assessment of Four Lots Located in Cayucos, San Luis Obispo County, California

Dear Mr. Miller:

At your request, Rincon Consultants, Inc. has completed an assessment of the existing biological resources and potential occurrences of special-status species in relation to the four lots that you are conducting due diligence on in the town of Cayucos. This letter report provides the results of our assessment.

STUDY AREA

The study area includes four 50 foot by 150 foot lots, including Lots 3, 4, 5, and 6 identified on the map provided by you, within the town of Cayucos in San Luis Obispo County, California. The lots are bordered on the north, northwest and northeast by Little Cayucos Creek, and bordered on the south, southwest and southeast by an alley, residential development and a small warehouse. A fence line clearly marked the border of the study area's southern boundary between Lots 6 and 7. The northern lot limits, however, were not clearly identified at the time of the site visit, and the northern extent of the study area was approximated as the banks of Little Cayucos Creek for the preparation of this letter report.

METHODOLOGY

Rincon Consultants' biologist, Kevin Merk, met with you on February 15, 2002 to review the four lots that were the focus of this assessment. A reconnaissance-level survey was then conducted on the four lots, as well as within the upstream and downstream riparian habitat associated with Little Cayucos Creek. The purpose of the survey was to generally characterize the existing biological resources on the four lots and identify any habitat that could support special-status species or otherwise be of concern to resource agencies. No specific surveys for special-status plant or animal species were conducted during this reconnaissance.

The following maps were used to characterize and map vegetation within the study area: 1) a map illustrating the property lines of the four lots that you provided; 2) the Cayucos U.S.G.S. 7.5-minute topographic quadrangle map; and 3) a topographic map of the four lots prepared by Triad Holmes. The reconnaissance survey also evaluated the onsite habitat types as potential habitat for special-status species known to occur in the Cayucos vicinity. The special-status species targeted during this reconnaissance were the Southern/Central Coast steelhead ESU (ecologically significant unit) (*Oncorhynchus mykiss irideus*, a federally threatened species), tidewater goby (*Eucyclogobius newberryi*, a federally endangered species), the federally threatened California red-legged frog (*Rana aurora draytonii*, CRLF), and the southwestern pond turtle (*Clemmys marmorata pallida*, a California species of concern.) In addition to these two species, our fieldwork also focused on whether suitable roosting habitat was present onsite for the monarch butterfly (*Danaus plexippus*). Information contained in this letter report is based on our field observations, knowledge of the area, and review of the California Department of Fish and Game's *Rarefind* Natural Diversity Database (CNDDDB 2002).

RESULTS AND DISCUSSION

Vegetation

Elements of two habitat types were observed on the four lots. These habitat types included: 1) Central Coast Arroyo Willow Riparian Forest; and 2) disturbed (or ruderal) annual grassland. Additionally, several large non-native blue gum eucalyptus (*Eucalyptus globulus*) and Monterey cypress (*Cupressus macrocarpa*) trees occur as a component of the riparian vegetation associated with Little Cayucos Creek. Classification of these habitat types or vegetation communities is based on Holland (1986), and was compared to Sawyer and Keeler-Wolf (1995) for consistency. The following discussion focuses on the habitat types delineated on the attached habitat map and briefly describes the existing conditions and potential occurrences of special-status species associated with each of these areas.

Central Coast Arroyo Willow Riparian Forest

This habitat type described by Holland corresponds to the Arroyo Willow Series as described by Sawyer and Keeler-Wolf. The riparian habitat was observed along the northern portions of Lots 3, 4, 5, and 6 (please see attached habitat map). Lot 3 extends below the top of bank towards the creek, and is almost entirely covered with riparian vegetation. This habitat type is characterized as an open to closed canopy of arroyo willows (*Salix lasiolepis*) growing on the banks, top of bank area, and channel bottom along Little Cayucos Creek. This habitat type is dominated by arroyo willow, but includes other native trees and shrubs typical to riparian habitats in the vicinity such as coast live oak (*Quercus agrifolia*) and toyon (*Heteromeles arbutifolia*). Several large, non-native blue gum eucalyptus, and Monterey cypress trees were also observed along the banks of Little Cayucos Creek in this vicinity. Additionally, large eucalyptus trees were observed both upstream and downstream from the study area.

The riparian understory on the study area is composed of woody and herbaceous native plants as well as invasive, exotic herbaceous species typical of disturbed natural areas along the urban interface in the Cayucos vicinity. Native understory species observed within the study area included California blackberry (*Rubus ursinus*), creek clematis (*Clematis ligusticifolia*), poison oak (*Toxicodendron diversilobum*), and coyote brush (*Baccharis pilularis* var. *consanguinea*). While a number of native plants occur within the on-site riparian habitat, non-native plants are the dominant component of the understory on the study area. Non-native species observed in this area, included periwinkle (*Vinca major*), English ivy (*Hedera helix*), nasturtium (*Tropaeolum majus*), and Kikuyu grass (*Pennisetum clandestinum*). Furthermore, pockets of seasonal wetlands and several small pools (less than 12-inches deep) occur in Little Cayucos Creek within the study area. The wetland areas are located within the active channel, and comingle with the riparian woodland. These wetland areas contained native hydrophytic (i.e.: water loving) vegetation in the active channel. Plants observed in this area included water cress (*Rorippa nasturtium-aquaticum*), Pacific oenanthe (*Oenanthe sarmentosa*), and common nutsedge (*Cyperus eragrostis*).

Riparian woodland communities provide habitat for a variety of songbirds including common yellowthroat (*Geothlypis trichas*), plain titmouse (*Baeolophus inornatus*), song sparrow (*Melospiza melodia*), as well as amphibians and reptiles such as the Pacific chorus frog (*Pseudacris regilla*) and western fence lizard (*Sceloporus occidentalis*). During the site visits, several red-tailed hawks (*Buteo jamaicensis*), red-shouldered hawks (*Buteo lineatus*), and numerous songbirds were observed perched in the blue gum eucalyptus and Monterey cypress trees in this area.

Ruderal/Disturbed Annual Grassland

The ruderal/disturbed annual grassland habitat type was the dominant habitat type observed within the study area. This habitat type was observed in the level, open areas within Lots 4, 5, and 6 inbetween the alley and the riparian vegetation in the northern portion of study area. These disturbed areas support a mixture of weedy species and non-native annual forbs and grasses that are likely the result of past and current vegetation management activities (i.e.: mowing). Dominant species in this habitat type included slender wild oats (*Avena barbata*), riggut brome (*Bromus diandrus*), red brome (*Bromus madritensis* ssp. *rubens*), English plantain (*Plantago lanceolata*), wild radish (*Raphanus sativa*), fennel (*Foeniculum vulgare*), and Bermuda buttercup (*Oxalis pes-caprae*). Generally, ruderal areas provide marginal habitat for wildlife, especially considering the study area's proximity to residential and other urban development.

Special Status Species

For the purpose of this letter report, special-status species are those plants and animals listed, proposed for listing, or candidates for listing as threatened or endangered by the U.S. Fish and Wildlife Service (USFWS) under the federal Endangered Species Act (ESA); those considered "species of concern" by the USFWS; those listed or proposed for listing as rare, threatened, or endangered by the California Department of Fish and Game (DFG) under the California Endangered Species Act (CESA); animals designated as "Species of Special

Concern" by the DFG; and plants occurring on lists 1B, 2, and 4 of the CNPS's Inventory of Rare and Endangered Vascular Plants of California (CNPS 1994).

Rincon Consultants biologist developed a target list of special-status plant and animal species that occur in the Cayucos vicinity based on our review of the CNDDDB, previous studies from the vicinity of the site, and other sources including our own knowledge of the area. Field reconnaissance to identify habitat types and an evaluation of the on-site soils helped refine the target list of species and focus our assessment of the actual or potential for occurrence of special-status species on the site.

The CNDDDB identified a number of special-status plant and animal species that occur in the Cayucos vicinity. However, a number of these species have specific habitat requirements such as coastal dunes, coastal strand, coastal scrub, serpentine outcrops, and creeks with perennial water flows that do not occur within the study area. As such, no special-status plant species, western snowy plover, California horned lizard, or Morro shoulderband snail are expected to occur within the study area. However, potential habitat for four of the special-status wildlife species identified in the CNDDDB, which includes the Southern/Central Coast steelhead ESU (ecologically significant unit), tidewater goby, California red-legged frog, and southwestern pond turtle, was observed on-site. Furthermore, a monarch butterfly over-wintering site that occurs on and adjacent to the study area has been documented in the CNDDDB.

Southern/Central Coast steelhead ESU and the tidewater goby are two listed species known to occur in coastal drainages in the Cayucos area (CNDDDB, 2002). The Southern/Central steelhead ESU occurs in coastal streams with suitable winter flows that contain appropriate substrate for spawning, and enough perennial water throughout the year or deep perennial pools to complete their two-year freshwater development before returning to the ocean. This ESU is known from the Pajaro River in the Monterey Bay Area south to, but not including the Santa Maria River. Tidewater goby is found in brackish water habitats along the California coast. This species typically occurs in shallow lagoons and lower stream reaches where they require fairly still but not stagnant water with high oxygen levels. Although the Little Cayucos Creek watershed is an ephemeral drainage system that only contains flowing water during the rain season, there is still potential for these two species to occur in the creek within the vicinity of the study area because there are no major obstructions between the Pacific Ocean and the study area. Furthermore, there are no recorded occurrences of these two species within Little Cayucos Creek. Should steelhead and tidewater goby exist within this watershed, they are likely present for only a portion of the year, and likely move upstream and downstream through the study area to areas of appropriate habitat. Therefore, Little Cayucos Creek within the study area does not appear to support suitable habitat for these species.

The CNDDDB contains a number of recorded occurrences of CRLF within an approximately 5-mile radius of the study area. The CRLF typically inhabits lowlands and foothills in or adjacent to permanent sources of deep water with dense shrubby or emergent riparian vegetation. This species usually requires 11 to 20 weeks of permanent water for larval development, and must have access to suitable aestivation habitat. While the USFWS has

identified CRLF critical habitat surrounding the town of Cayucos, the study area occurs outside of designated CRLF critical habitat (Federal Register, 50 CFR Part 17). During the survey, Rincon Consultants' biologist walked approximately 100 feet upstream and 100 feet downstream of the study area to assess the study area's potential to support this species. Little Cayucos Creek contained a small amount of flowing water at the time of the survey, and several small pools less than 12-inches deep were observed within the riparian corridor. No tadpoles or frogs were observed. Moreover, the small ephemeral pools do not appear to persist long enough to provide appropriate breeding habitat for the CRLF. However, potential foraging, dispersal, and aestivation habitat was observed for this species and includes the riparian habitat throughout the study area. While it is unlikely that the CRLF occurs within this lower reach of Little Cayucos Creek within the study area, there is still potential for this species to occur in the study area. This species cannot be dismissed from the study area without conducting the USFWS protocol-level surveys, which require two daytime and two nighttime surveys to be conducted during the period from May 1 to October 31.

The southwestern pond turtle occurs throughout perennial coastal drainages along California's central coast, and has similar habitat requirements as the CRLF. The CNDDDB contains recorded occurrences of this species in nearby watersheds, but does not contain any records of southwestern pond turtle within the Little Cayucos Creek watershed. Given the lack of perennial flowing water, it is unlikely that this species occurs in the vicinity of the study area. Potential dispersal and foraging habitat may be present within this drainage system, however, it is highly unlikely given the lack of suitable habitat (i.e.: perennial pools greater than 16-inches deep) west of Highway 1 that southwestern pond turtles inhabit this lower reach of Little Cayucos Creek.

The CNDDDB contains a recorded occurrence of Monarch butterflies over-wintering on blue gum eucalyptus and Monterey Cypress trees on and adjacent to the study area. The USFWS or CDFG does not list the Monarch butterfly as a special-status species, but it is listed by the CNDDDB as a species with a G4S3 ranking for wintering sites. This translates to a state rank of a California restricted range and rare for wintering sites for this species. Monarch butterfly wintering sites meet the definition of "rare" according to the California Environmental Quality Act (CEQA) Section 15380, and are therefore included in this analysis.

Monarch butterflies congregate in clusters in eucalyptus, Monterey cypress and pine trees with water and nectar sources nearby during fall and winter migration. It is during the winter roosting and clustering period that the habitat is protected. As previously stated, the CNDDDB documents an occurrence listing for Monarch over-wintering within the large blue gum eucalyptus and Monterey Cypress trees on and immediately adjacent to the study area. This occurrence has been known to support up to 60,000 butterflies during the over-wintering (or roosting) period. However, over-wintering has not occurred at this site for approximately three years (personal communication with Dr. Kingston Leong 2/25/02). Also, neighbors in the area have told us that they have not seen butterflies congregating in the area for approximately three to four seasons. None-the-less, this area still constitutes a potential habitat area for the Monarch butterfly on this portion of the Central Coast.

CONCLUSION

The study area contains two habitat types typical of the general area, including Central Coast Arroyo Willow Riparian Forest and ruderal or disturbed annual grassland. Riparian habitats, in general, are of special concern to the resource agencies due to the extensive loss of this habitat type in California. Any activity that would remove or otherwise alter riparian habitat is closely scrutinized by the resource agencies, and would require a Streambed Alteration Agreement from the DFG. Although no special-status species were observed during the February site visit, the aquatic and riparian habitat associated with Little Cayucos Creek could provide potential movement, foraging, dispersal and aestivation habitat for four special-status animal species, which include the southern/central steelhead ESU, tidewater goby, California red-legged frog, and southwestern pond turtle. Furthermore, a recorded Monarch butterfly wintering site is located in the large blue gum eucalyptus and Monterey cypress trees that occur on and just outside of the study area. While the monarch butterfly is not technically a special-status species, its wintering sites on the central coast of California are considered a significant biological resource under CEQA. The monarch wintering sites are considered sensitive habitat and any impacts to these wintering sites are typically determined as a significant impact under CEQA review.

LIMITATIONS, ASSUMPTIONS AND USER RELIANCE

This limited Biological Assessment was prepared for use solely and exclusively by Mr. Steve Miller. Mr. Miller has requested this assessment and may use it to provide information to satisfy regulatory agency requirements. No other use or disclosure is intended or authorized by Rincon, nor shall this report be relied upon or transferred to any other party without the express written consent of Rincon Consultants. Mr. Miller agrees to hold Rincon harmless for any inverse condemnation or devaluation of said property that may result if Rincon's report or information generated is used for other purposes. Also, this report is issued with the understanding that it is to be used only in its entirety.

This work has been performed in accordance with good commercial, customary, and generally accepted biological investigation practices conducted at this time and in this geographic area. The biological investigations are limited by the scope of work performed. The identification of potential special-status species habitat has been based on a suitability analysis level only and did not include definitive surveys for the presence or absence of the species that may be present. Definitive surveys for special-status wildlife and plant species generally require specific survey protocols requiring extensive field survey time to be conducted only at certain times of the year. No other guarantee or warranties, expressed or implied are provided.

The findings and opinions conveyed in this report are based on findings derived from a site reconnaissance, review of the California Natural Diversity Data base report, and specified information sources. This report is not intended as a comprehensive biological characterization and should not be construed as such. Standard data sources, such as the California Natural Diversity Data Base, relied upon during the completion of this type of



Mr. Steve Miller
Cayucos Property
Biological Assessment
Page 7 of 7

report may vary with regard to accuracy and completeness. Although Rincon believes the data sources are reasonably reliable, Rincon cannot and does not guarantee the authenticity or reliability of the data sources it has used. Additionally, pursuant to our contract, the data sources reviewed included only those that are practically reviewable without the need for extraordinary analysis.

We trust that this information will assist with your due diligence activities at this time. Please do not hesitate to call Kevin Merk if you have any questions or concerns.

Sincerely,

RINCON CONSULTANTS, INC.

Kevin Merk
Plant Ecologist

David K. Wolff
Manager, Biological Resources Group
Certified Professional Wetland Scientist

Attachment: Habitat Map

CCC Exhibit L
(page 15 of 25 pages)



For file
Bio

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April 2, 2004

Ms. Marcia Lee
San Luis Obispo Cour
Department of Planning and Building
County Government Center
San Luis Obispo, California 93408

Subject: Riparian Habitat Setback Evaluation for Lots 3, 4, 5 and 6 - Block 3 (Project Number D020030P), Cayucos, California

Dear Ms. Lee:

Rincon Consultants, Inc., at the request of Mr. Steve Miller and Ms. Gayla Smelzer, is amending our *Biological Assessment of Four Lots Located in Cayucos, San Luis Obispo County, California* (March 4, 2002) to provide the County of San Luis Obispo's Department of Planning and Building additional information regarding the riparian habitat associated with Little Cayucos Creek on the subject properties and our recommendation of an appropriate development setback distance from these resources.

In our biological assessment, we provided a detailed characterization of the riparian habitat associated with Little Cayucos Creek in the vicinity of the subject properties. The Little Cayucos Creek area in the town of Cayucos is a classic example of disturbed natural areas along the urban interface. The drainage feature has been altered from its natural state by development and subsequent human occupation of the area. Many of the existing homes and their associated structures are situated within the riparian habitat associated with Little Cayucos Creek. In areas devoid of riparian habitat, residences have been constructed within 20 feet from the creek's centerline. Areas currently devoid of riparian habitat were likely cleared during the construction of the homes or shortly following occupation. Furthermore, the understory of the riparian habitat in the vicinity of the four lots is dominated by non-native invasive plant species such as periwinkle (*Vinca major*), English ivy (*Hedera helix*), and Kikuyu grass (*Pennisetum clandestinum*).

Given the high level of disturbance the creek and its riparian habitat have experienced (i.e.: trimming/removal of riparian vegetation, encroachment of adjacent property owners, and predominance of invasive non-native plants within the riparian understory), we recommend a 20-foot setback from the edge of riparian vegetation or the top of bank of Little Cayucos Creek. This distance would be sufficient to ensure long-term protection of the creek and its associated biological resources, while allowing development of the subject properties.

I trust this information assists with the reporting requirements for the subject project at this time. Please call me directly if you have any questions or need any additional information. Thank you.

Sincerely,
RINCON CONSULTANTS, INC.

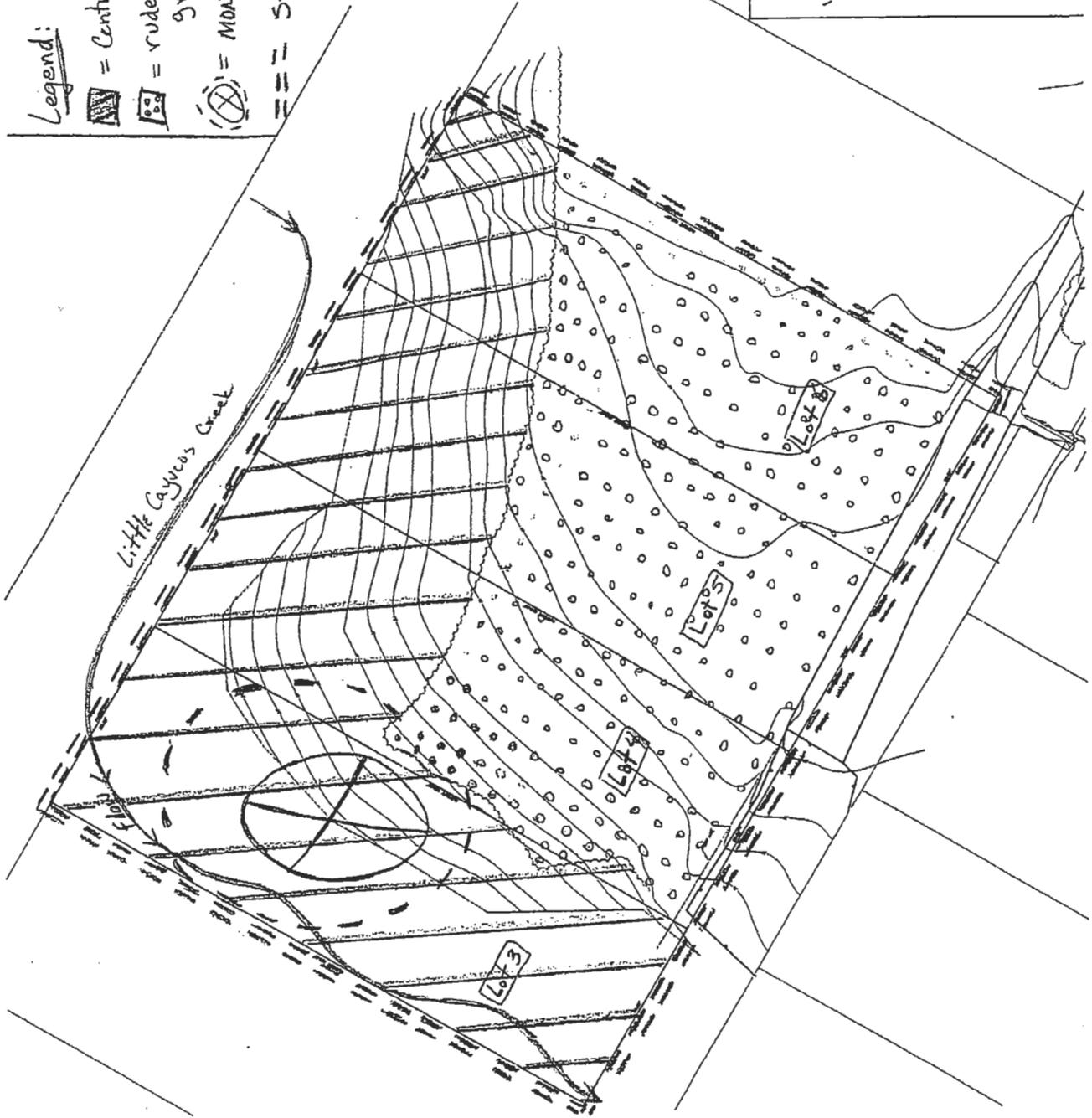
Kevin Merk
Senior Plant Ecologist

Attachment: *Habitat Map*
Updated Topographic Map with Setback

CCC Exhibit L
(page 16 of 25 pages)

Legend:

-  = Central Coast Arroyo Willow Riparian
-  = ruderal / disturbed Annual grassland
-  = MONARCH OVER-WINTERING SITE (approximate)
-  = STUDY AREA



Habitat Map
for

"the Miller Property"

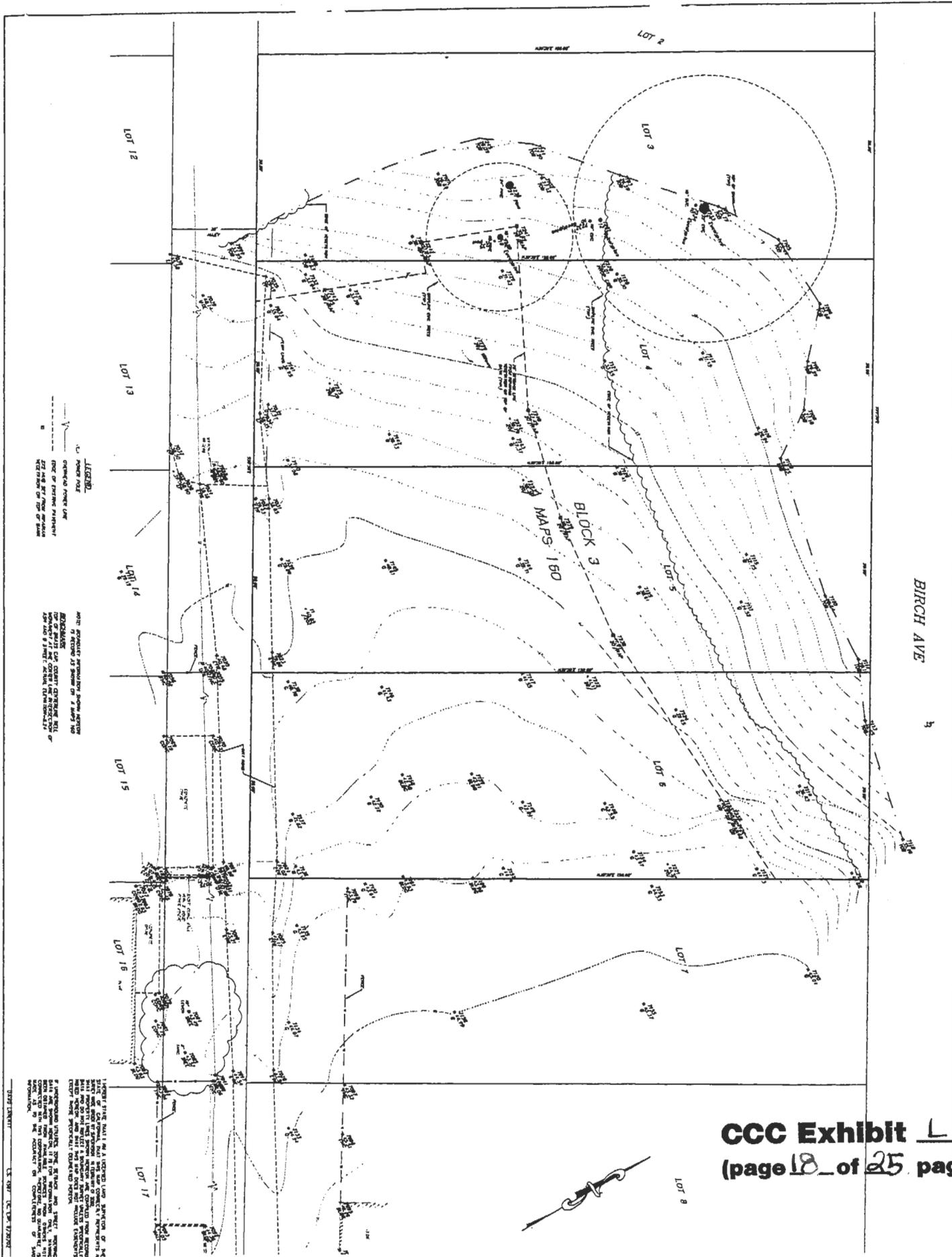
Coyucos, California



5/02

Rincon Consultants

Prepared by KM



BIRCH AVE

CCC Exhibit L
 (page 18 of 25 pages)

1. I HEREBY STATE THAT I AM A LICENSED LAND SURVEYOR OF THE STATE OF CALIFORNIA AND THAT I AM THE AUTHOR OF THE ABOVE MAP AND THAT I HAVE BEEN DULY QUALIFIED BY THE BOARD OF SUPERVISORS OF THE STATE OF CALIFORNIA TO PRACTICE AS A LAND SURVEYOR AND THAT I AM A MEMBER OF THE CALIFORNIA SOCIETY OF PROFESSIONAL LAND SURVEYORS.

2. I HEREBY STATE THAT I HAVE BEEN DULY QUALIFIED BY THE BOARD OF SUPERVISORS OF THE STATE OF CALIFORNIA TO PRACTICE AS A LAND SURVEYOR AND THAT I AM A MEMBER OF THE CALIFORNIA SOCIETY OF PROFESSIONAL LAND SURVEYORS.

3. I HEREBY STATE THAT I HAVE BEEN DULY QUALIFIED BY THE BOARD OF SUPERVISORS OF THE STATE OF CALIFORNIA TO PRACTICE AS A LAND SURVEYOR AND THAT I AM A MEMBER OF THE CALIFORNIA SOCIETY OF PROFESSIONAL LAND SURVEYORS.

DATE	1/25/13
BY	STEVE MILLER
CHECKED BY	GAYLA MILLER
SCALE	AS SHOWN
PROJECT	TOPOGRAPHIC SURVEY
LOT	LOTS 3, 4, 5, AND 6 - BLOCK 3, CAYUCOS
PREPARED FOR	STEVE AND GAYLA MILLER

TOPOGRAPHIC SURVEY
 LOTS 3, 4, 5, AND 6 - BLOCK 3, CAYUCOS
 PREPARED FOR STEVE AND GAYLA MILLER



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July 15, 2005
Job #05-B58180

Mr. Steve Miller
P.O. Box 228
Cayucos, California 93430

Subject: Results of the USFWS Protocol California Red-Legged Frog Surveys for the Cayucos Property, Cayucos, California

Dear Mr. Miller:

At your request, Rincon Consultants, Inc. conducted focused surveys for the Federally Threatened California red-legged frog (*Rana aurora draytonii*; CRLF) on four lots owned by you located in Cayucos, California. The surveys were conducted in accordance with the protocol developed by the United States Fish and Wildlife Service (USFWS) (*Guidance on Site Assessment and Field Surveys for California Red-legged Frogs, 1997*) to determine the presence or absence of this species from the project site. This letter report provides the results of our protocol surveys.

STUDY AREA DESCRIPTION

The study area includes four 50 foot by 150 foot lots located within the town of Cayucos, San Luis Obispo County, California (please see Figure 1). The four lots are shown as Lots 3, 4, 5, and 6 on the map provided by you and included as an attachment to this report (Triad Holmes, 2003). The lots are accessed by a small alley off of "E" Street and are bordered on the north by Little Cayucos Creek, to the south and southwest by an unnamed alley, to the east by undeveloped property and a small warehouse owned by the Cayucos Unified School District (identified as Lots 7 and 8), and to the west by residential development. Residential development more or less surrounds the study area, and Little Cayucos Creek flows in a primarily north to south direction through Lot 3.

Two habitat types, riparian and ruderal/disturbed annual grassland, were mapped on the study area during a biological assessment of the property in 2002 (Rincon Consultants, Inc.). An historic monarch butterfly (*Danaus plexippus*) overwintering site was also identified within Lot 3 in the study area, and was associated with a cluster of blue gum (*Eucalyptus globulus*) and Monterey cypress (*Cupressus macrocarpa*) trees. The site is relatively disturbed by past and present human activities in the area, and contains a number of weedy, invasive plant species in both the riparian and grassland habitat types. The riparian habitat in the study area consists primarily of arroyo willow (*Salix lasiolepis*) lining the Little Cayucos Creek corridor intermixed with blue gum and several large Monterey cypress trees. The understory of the riparian habitat is composed of non-native species such as periwinkle

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(*Vinca major*), English ivy (*Hedera helix*), nasturtium (*Tropaeolum majus*), Bermuda grass (*Cynodon dactylon*), and Kikuyu grass (*Pennisetum clandestinum*). Native plant species observed in the onsite riparian habitat included toyon (*Heteromeles arbutifolia*), coyote brush (*Baccharis pilularis* var. *consanguinea*), poison oak (*Toxicodendron diversilobum*), California blackberry (*Rubus ursinus*), and creek clematis (*Clematis ligusticifolia*). A small amount of wetland vegetation is also present along the low flow and adjacent overflow benches of the creek, and included water cress (*Rorripa nasturtium-aquatica*) and common nutsedge (*Cyperus eragrostis*). The onsite disturbed annual grassland is primarily dominated by Italian ryegrass (*Lolium multiflorum*), but also contains other introduced grasses such as ripgut brome (*Bromus diandrus*), red brome (*B. madritensis* ssp. *rubens*), and slender wild oats (*Avena barbata*). Fennel (*Foeniculum vulgare*) was also observed throughout the onsite grassland area.

Flowing water was observed within the study area at the time of the surveys, and consisted of an approximately three to five foot wide channel that ranged in depth from approximately two to six inches. Observable indicators of high flows during the 2004-2005 winter storm season were also present and included an ordinary high water mark well beyond the extent of the current low flow channel, drift lines on shrub and tree branches within the creek, and sediment and gravel deposition throughout the bed of the creek. A photo plate is included as an attachment to this report to illustrate the existing conditions of the site.

METHODOLOGY

The California Natural Diversity Database (CNDDDB 2005) was reviewed for CRLF occurrence data within 5-mile and 10-mile radii of the study area. The USFWS (pers. comm. with Ms. Julie Vanderweir, June 2005) and other knowledgeable individuals (pers. comm. with California State Parks Resource Ecologist Mr. Michael Walgren, June 2005) in the area were contacted regarding recent CRLF observations within the vicinity.

The CRLF protocol surveys for the Cayucos property were conducted in accordance with USFWS protocol (1997). The protocol requires an initial site assessment to determine whether or not suitable CRLF habitat is present. If suitable habitat is found, then field surveys including two daytime and two nighttime surveys separated by a minimum 24-hour period are required to follow the site assessment. Rincon Consultants' senior biologist, Kevin Merk, first identified potentially suitable habitat for the CRLF during general biological surveys of the study area in 2002. The primary goals of the general biological surveys in 2002 were to map the onsite habitat types, conduct a general floristic inventory, and evaluate the property's potential to support rare, threatened, or endangered plant or animal species. The 2002 investigation concluded that this lower reach of Little Cayucos Creek did not contain suitable breeding habitat for CRLF, but potential foraging, dispersal and aestivation habitat was present.

Focused surveys for the CRLF were conducted on May 24, 2005, and again on June 1, 2005 to determine this species presence/absence from the site. All areas of aquatic, wetland and riparian habitat on the project site were surveyed. The Little Cayucos Creek corridor was thoroughly traversed during the daytime surveys to determine if localized areas of ponding were present that were not observed during preliminary surveys of the site. Approximately

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(page of 2 - pages)



100 feet upstream and 100 feet downstream of the project site were included in the study area and were surveyed to ensure adequate coverage of the area. Additionally, vantage/observation points were selected during the nighttime surveys upslope from and within the creek to sit and listen for frog vocalizations and any signs of movement.

RESULTS

No CRLF individuals were observed on the Cayucos property study area during the protocol-level surveys conducted in late May and early June 2005. Aquatic habitat within the study area is confined to the portion of Little Cayucos Creek occurring on Lot 3 of the study area, and was determined to be of marginal to poor quality habitat for CRLF because pools of substantial depth (i.e.: 18-inches or deeper) were not present, flowing water was confined to an approximately two to five-foot wide low flow channel only several inches deep, and the low flow channel was choked with green algae. The only amphibian species observed during surveys of the study area was the Pacific chorus frog (*Hylla regilla*). Pacific chorus frog adults and tadpoles were directly observed and adults were heard vocalizing during the surveys (please see the attached survey data sheets). Therefore, the CRLF is highly unlikely to occur in the portion of Little Cayucos Creek within the study area.

The CNDDDB contains occurrence data of CRLF within a five-mile radius of the study area (please see attached CNDDDB Map). The closest known occurrence is located approximately 0.75 mile to the north of the site within Cayucos Creek north of Highway 1. Additional occurrences are located further southeast of the study area within Willow Creek and Toro Creek, as well as several small drainages in northern Morro Bay. The CRLF is known to occur throughout coastal Central California, but has been restricted significantly in its range, primarily from alteration of habitat. The CRLF is now restricted to drainages along the central coast region with occurrences extending southward into Ventura County. Preferred habitat of the CRLF is characterized by dense shrubby, or emergent riparian vegetation, such as arroyo willow, cattails (*Typha* spp.), and bulrushes (*Scirpus* spp.), associated with a perennial source of deep (typically greater than two feet), still or slow-moving (ponded) water. CRLF have also been found in unvegetated stock ponds near suitable habitat. The USFWS previously identified critical habitat for this species surrounding the town of Cayucos, but has since withdrawn this designation. The USFWS is currently revising critical habitat for the CRLF.

Aquatic, riparian and wetland habitat types occur within the portion of Little Cayucos Creek occurring within the study area. Although a perennial water source appears to be present in this drainage feature during years of normal to above average rainfall, there were no pools observed greater than six inches deep that would provide suitable CRLF breeding habitat or refuge from predators and humans known to frequent the area. Flowing water was observed ranging from two to four inches deep with many areas being only an inch or two deep. Little Cayucos Creek in the site vicinity and the associated wetland and riparian habitat types were thoroughly searched for the presence of CRLF. The onsite drainage feature was also observed from select vantage/observation points during the night surveys to inventory frog vocalizations and other animals using the site at night.

The site occurs in the middle of the town of Cayucos. While the CRLF is known to move over upland areas between suitable habitat, and there is a known CRLF occurrence record

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from just over a mile away from the site in Cayucos Creek further north of the Highway 1 overpass, the degree of hydrologic isolation of the subject property resulting from residential and urban development, and road construction, make it highly unlikely that CRLF would move onto the site. Unauthorized creekbank stabilization and ongoing vegetation management activities (i.e.: mowing and removal of vegetation within the creek corridor) on adjacent properties has lowered the habitat quality in the area, thereby reducing the likelihood of CRLF moving into this segment of Little Cayucos Creek and persisting. Densely matted algal growth throughout the water column further reduces the habitat quality of this segment of Little Cayucos Creek for native amphibians. Furthermore, Highway 1 forms a substantial barrier to larger aquatic organism movement onto the study area further lowering the potential that CRLF could occur on the subject properties during winter movement periods. Ultimately, the physical barriers and lack of a significant movement corridor connecting the site with known occurrences in the region does not appear to facilitate CRLF migration onto the subject property. Moreover, the proposed project as we understand will not occur within Lot 3 and would be situated in the disturbed annual grassland habitat type on Lots 4, 5, and 6, thereby, avoiding impacting any aquatic, riparian and wetland habitat types and any potential impacts to the CRLF.

CONCLUSION

No CRLF individuals were observed or heard vocalizing on the Cayucos property study area during the focused 2005 surveys for this species. Because deep pools of slow-moving water greater than two feet deep do not occur within the onsite portion of Little Cayucos Creek and the available aquatic habitat is restricted to a relatively narrow and shallow low-flow channel, the site cannot support the basic life history requirements of this highly aquatic species. Although a perennial source of fresh water appears to be present during years of average and above average rainfall within this portion of Little Cayucos Creek, suitable habitat, especially for CRLF breeding, was not present. Therefore, this species is highly unlikely to occur within the segment of Little Cayucos Creek within the study area, and is not expected to occur on the portions of the subject property proposed for development.

REFERENCES

- 1). California Department of Fish and Game, California Natural Diversity Data Base (Rarefind 2005). Computer listing and map locations of historic and current recorded occurrences of special-status species and natural communities of special concern for USGS 7.5 minute quadrangle maps: Cayucos and Morro Bay North.
- 2). Hayes, M. P. and M. R. Jennings. 1994. *Amphibian and Reptile Species of Special Concern in California*. California Department of Fish and Game, Rancho Cordova.
- 3). Holland, Robert F. 1986. *Preliminary Descriptions of the Terrestrial Natural Communities of California*. California Department of Fish and Game.
- 4). Hickman, James. 1993. *The Jepson Manual: Higher Plants of California*. University of California Press.



- 5). Sawyer, John and Todd Keeler-Wolf. 1995. *A Manual of California Vegetation*. California Native Plant Society.
- 6). Stebbins, Robert C. 1985. *A Field Guide to Western Reptiles and Amphibians*. Houghton Mifflin Company.
- 7). USFWS. 1997. *Guidance on Site Assessment and Field Surveys for California Red-legged Frogs*.

If you have any questions or need additional information regarding the findings in this letter please contact Kevin Merk directly. Thank you for the opportunity to provide additional environmental consulting services for this project.

Sincerely,

RINCON CONSULTANTS, INC.

Kevin Merk
Senior Biologist

Attachments: *Site Location Map*
 Site Topographic Map
 CNDDB Map
 CRLF Survey Data Sheets
 Photo Plate

CCC Exhibit 4
(page 23 of 25 pages)

597-0001

Kevin Mett

RECEIVED

JAN 08 2004

1 January 2004

Planning & Eng

Marsha Lee:

This letter is a follow up to our conversation this past week. I went out to the site in Cayucos in early Dec. Like the others you reported, I also saw some butterflies in and around the site. This is to be expected as the site is still an active feeding site. Kington's information given to Herfurth & Miller has indicated that this has been going on since the overwintering capability of the site was destroyed several years ago. This is also why I listed in the reports' 'Mitigation Section' that no vegetation modification should be permitted. Key parts of that section is copied below for your reference. Those in bold, are relevant to what we are discussing now in regards to the butterflies seen at the site. As long as no vegetation modifications are permitted (as stated in the report) the homes as planed should not have any adverse impact on the site as a feeding site. I hope this further clearfies what I saw during my visit. Thanks for letting me know about this and please let me know if you have any additional questions, I will be happy to help you.

FROM THE REPORT (PAGES 5-7)

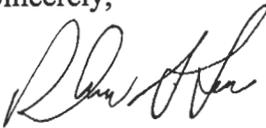
The impact of the proposed three single occupancy structures on the vegetation and any possible use by Monarch such as a feeding habitat by Monarch Butterflies can be mitigated in the following manner:

- No development should be permitted on lot 3. A conservation easement may be one way to provide the legal structure for preserving and managing this creek side habitat.
- **Any development of a structure on lot 4 not be permitted to impact the existing tree canopy.**
- Development of a single residential structure on lot 5 and 6 should not have any impact on the creek side vegetation zone providing the structure do not intrude into the creek protection zone.
- **No vegetation modification such as pruning, attaching things to the trees or removal of trees in any of the four lots should be permitted. The exception would be the removal of poison oak plants adjacent to the homes. If there is significant die off of the tree stand or the under cover and surrounding vegetation in the stream zone, an Monarch Biologist should be consulted to determine what kind of vegetation should replace the dead vegetation. When possible the occupants should allow trees that die in the vegetation zone to remain unless the trees are deemed hazardous. Cavity-nesting birds and other wildlife use standing dead trees. The trees as they decompose will contribute to the vegetation growth that the site as well as provide wildlife habitats.**
- Smoke should not be allowed to drift into Monarch habitats from 1 October to 1 April of each year or when the butterflies are present.

- **No modifications of the terrain in the creek zone should be permitted by the occupants without prior consulting and permission of County Planning and with a Monarch Butterfly Biologist. This includes any trenching, digging, tunneling in or around the trees. Any grading either by addition or removal of soil that would create 'Root Zone' disturbances or change the existing drainage, runoff that would create puddling should not be permitted.**
- Winter time activities should be such that they do not disturb any Monarch that may be using the site. The site usage normally would occur from Oct to March of each winter.
- No Pesticide or herbicide applications of any kind should be permitted in the creek/vegetation zone. For pest or disease problems, again a Monarch Biologist should be consulted.

While the mitigation measures are requiring the developers to basically to leave the vegetation as is and not to make any vegetation modifications the reality is that this will only work for so long. This is because no site is inert or unchanging, all will change in time and most likely in a manner as to cause the site to become more unsuitable for Monarchs. The developers and property owners should be encouraged to think long term and to work with a Monarch Biologist to try and keep the site as suitable to Monarchs as they reasonably can as long as they can.

Sincerely,



Richard Little

cc.

Jim Herfurth

Steve Miller



DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

Environmental Division

Date: February 1, 2005

Memorandum for Record

Subject: Review of the following three reports for the Hurfurth and Miller parcel map (D020030P):

"Report on the Proposed Developments of Lots 3, 4, 5 & 6 of Cayucos, San Luis Obispo County California, Owners Herfurth & Miller" conducted by Richard G. Little; "Biological Assessment of Four Lots Located in Cayucos, San Luis Obispo County, California" conducted by Rincon Consultants March 4, 2002; and "Riparian Habitat Setback Evaluation for Lots 3, 4, 5 and 6 – Block 3 (Project Number D020030P), Cayucos, California" conducted by Rincon Consultants, Inc. April 2, 2004.

I reviewed the biological reports for the Herfurth and Miller parcel map and have the following comments:

1. I agree that the April 2, 2004 report recommended a 20 ft setback from the edge of the riparian vegetation. If the eucalyptus and cypress trees extend beyond the edge of the riparian zone, then the setback should be 20 ft from the edge of the eucalyptus/cypress tree canopy.
2. I agree with all of Richard Little's recommendations, which should be incorporated into the Negative Declaration as conditions. These recommendations include no development on lot 3, locating the building envelope outside of the tree canopy on lot 4, no removal of trees on any of the lots, and others. The latter condition is important, since it has been shown that removal of trees surrounding the monarch habitat has resulted in decline of the over-wintering population. Further tree removal will only exacerbate the declining conditions.
3. Rincon Consultants recommended that protocol-level surveys for red-legged frog surveys be conducted. If project activities are to be conducted when the creek is dry, the surveys are probably not needed. However, if project activities will occur when the creek contains water, then protocol red-legged frog surveys should be conducted (especially if development on lot 3 occurs).

CCC Exhibit M
(page 1 of 1 pages)

Julie Eliason

**RECORDING REQUESTED BY
SAN LUIS OBISPO COUNTY**

WHEN RECORDED, RETURN TO:

Director of Planning & Building
County Government Center
San Luis Obispo, California 93408
ATTN: Jo S. Manson

APN(S): 084-112-002 Portion
PROJECT/PCL NO: M2002-124/1 FILE NO: S010322V

JULIE RODEWALD
San Luis Obispo County - Clerk/Recorder
Recorded at the request of
JE except TX & DSS

LO
3/28/2005
4:19 PM

DOC#: 2005024021



Titles: 1 Pages: 4
Fees 16.00
Taxes 0.00
Others 0.00
PAID \$16.00



NOTICE OF VOLUNTARY MERGER

The following real property and the MERGER thereof into the following configuration, described in Exhibit A, has been voluntarily requested on the part of all owners of interest in said real property (see RECORD OWNER(S) below), and agreed to on the part of the County of San Luis Obispo. The following real property and the merger thereof into ONE (1) PARCEL as of the date of recording of this document, has been determined to be in compliance with the applicable provisions of the Subdivision Map Act of the State of California and local ordinances enacted pursuant thereto. The parcel CAN NOT be sold in units other than as described herein without having complied with all requirements of the State Subdivision Map Act and the county's Real Property Division Ordinance. Said real property being described as:

As described in Exhibit A attached to this notice and incorporated herein as if set forth in full.

RECORD OWNER(S):

M and R Investment Company, Inc., a Nevada Corporation.

VICTOR HOLANDA
Director, Department of Planning and Building

By: Jo S. Manson
Jo S. Manson, Planner II

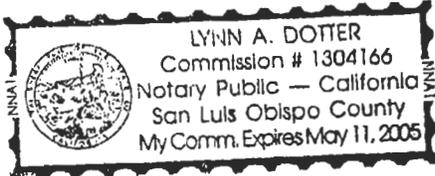
On this 25th day of March, in the year 2002,
before me, Lynn A. Dotter, Notary Public, personally

appeared Jo S. Manson,
personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Lynn A. Dotter
Notary Public
CCC Exhibit N
(page 1 of 4 pages)

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN LUIS OBISPO)



(SEAL)

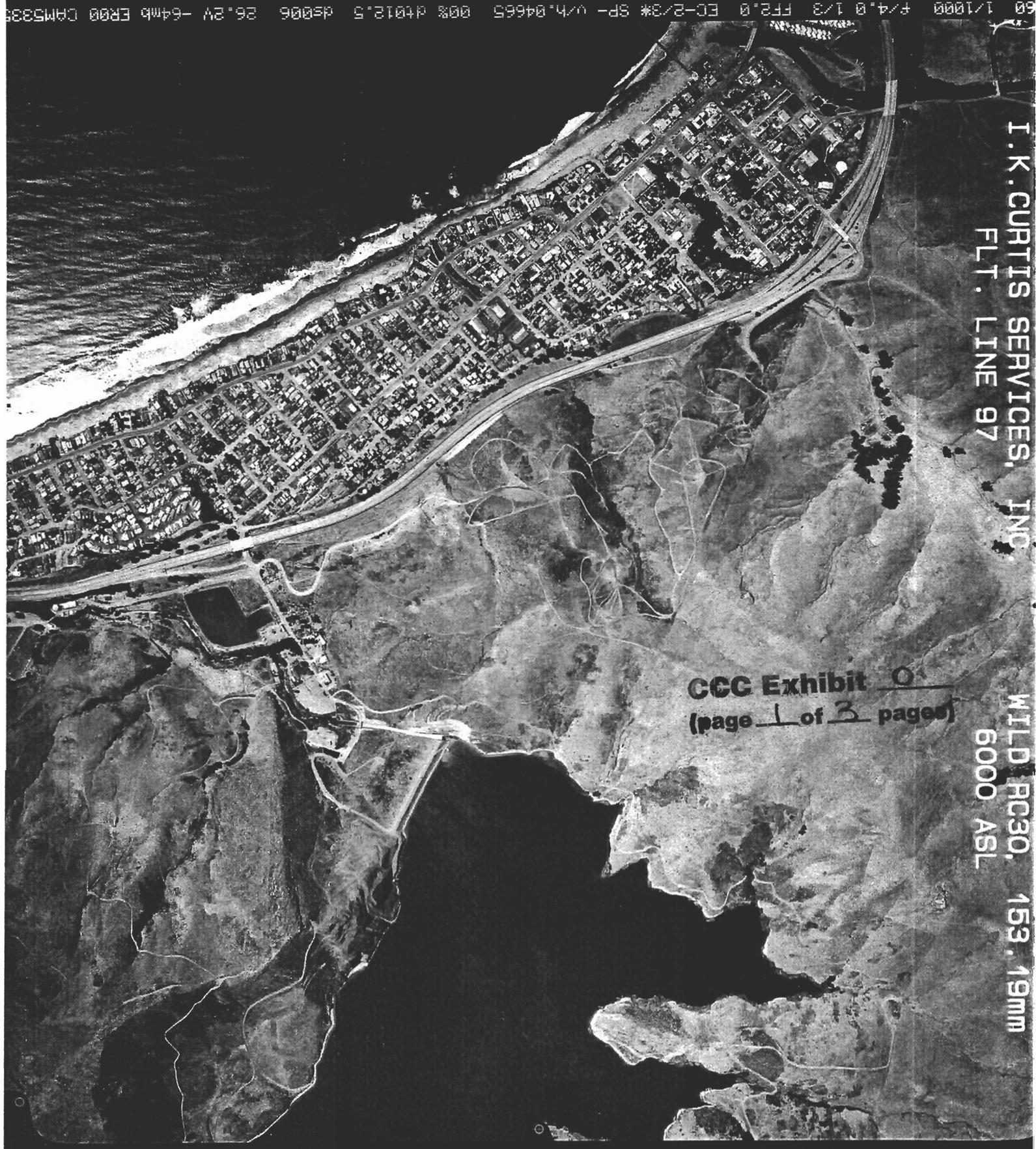
APN(S): 064-112-002 Portion
PROJECT NO: M2002-124

FILE NO: S010322V
PARCEL NO: 1

EXHIBIT A
Legal Description

Lots 3 and 4 in Block 3 of the Town of Cayucos, in the County of San Luis Obispo, State of California, according to map recorded September 22, 1875, in Book A, Page 160 of Maps, in the Office of the County Recorder of said County.

CCC Exhibit N
(page 2 of 4 pages)



I. K. CURTIS SERVICES, INC.
FLT. LINE 97

WILD RC30, 153.19mm
6000 ASL

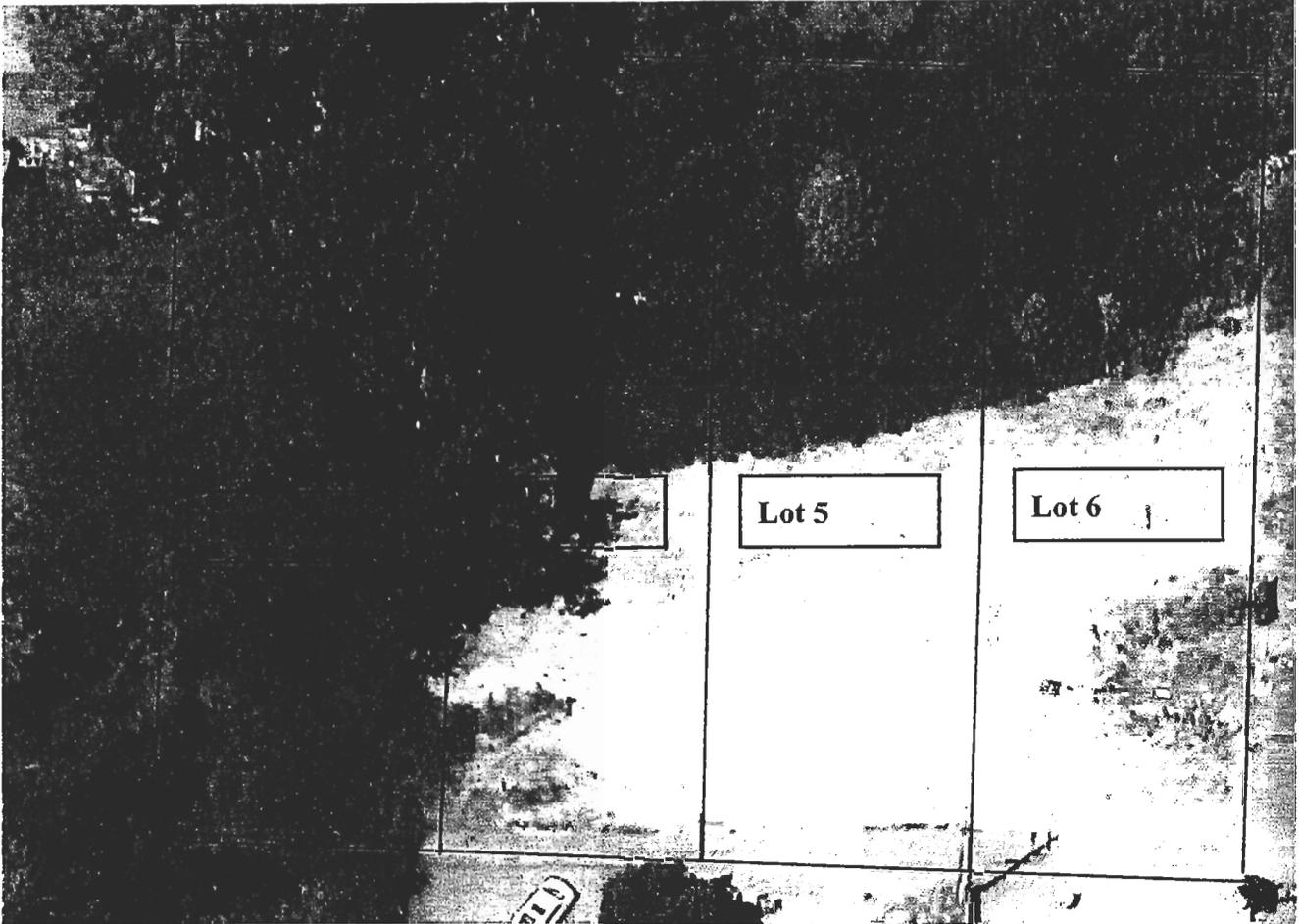
CCC Exhibit 0
(page 1 of 3 pages)

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Project Site

CCG Exhibit 0
(page 2 of 3 pages)



Picture 1:
All four lots are shown in this picture. The black lines are the approximate property lines.

CCC Exhibit 0
(page 3 of 3 pages)