SANTA BARBARA MONTECITO PLANNING COMMISSION
Staff Report for the Bagdasarian-Karman Appeal of the P&D Director's Denial of 09LUP-00000-00256

Hearing Date: October 27, 2010
Staff Report Date: October 8, 2010
Case No.: 10APL-00000-00016

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Environmental Document: Exemption §15270

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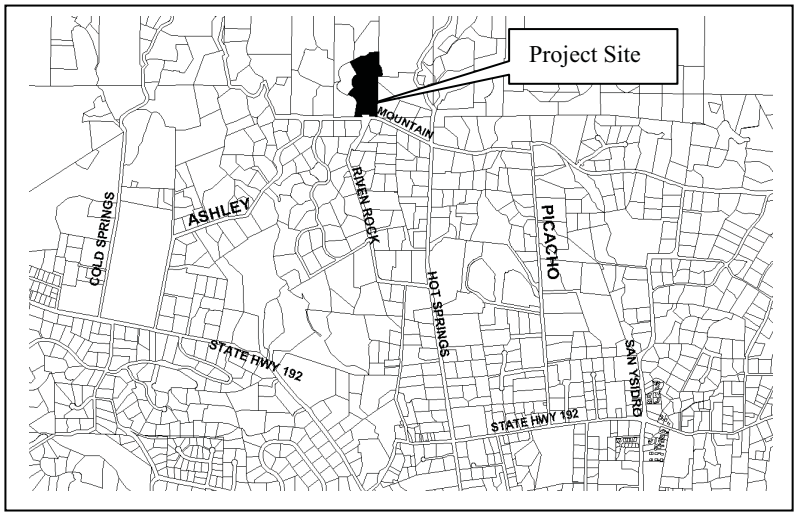

This site is identified as Assessor Parcel Number 011-020-034 and 011-020-042, located north of East Mountain Drive and along Hot Springs Creek and tributary, known as 1192 and 1194 East Mountain Drive, Montecito, First Supervisorial District.

LUP Denied: July 26, 2010
Appeal Filed: August 5, 2010

1.0 REQUEST

Hearing on the request of Ginger Andersen, Penfield & Smith, agent for the owners/appellants, Ross Bagdasarian and Janice Karman, to consider Case No. 10APL-00000-00016, [appeal filed on August 5, 2010] to consider the Appeal of the Director's decision to deny 09LUP-00000-00256, in compliance with Chapter 35.492 of the Montecito Land Use and Development Code on property located in the 3-E-1 Zone; and to determine denial of the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15270 of the State Guidelines for Implementation of CEQA. The application involves AP Nos. 011-020-034 and 011-020-042, located at 1192 and 1194 East Mountain Drive, in the Montecito area, First Supervisorial District.

2.0 RECOMMENDATION AND PROCEDURES

Follow the procedures outlined below and deny the applicant's appeal, Case No. 10APL-00000-00016, of the P&D Director's decision to deny Case No. 09LUP-00000-00256, and deny the project, Case No. 09LUP-00000-00256, *de novo* based upon the project's inconsistency with the Comprehensive Plan, including the Montecito Community Plan, and the inability to make the required findings.

Your Commission's motion should include the following:

1. Deny the appeal, Case No. 10APL-00000-00016, thereby upholding the P&D Director's denial of Case No. 09LUP-00000-00256;

2. Make the required findings for denial of the project specified in Attachment A of this staff report, including CEQA findings;

3. Determine the denial of the project is exempt from CEQA pursuant to Section 15270 of CEQA, as specified in Attachment B;

4. Deny, *de novo,* the project Case No. 09LUP-00000-00256.

Refer back to staff if the Montecito Planning Commission takes other than the recommended action for appropriate findings, conditions and CEQA review.

3.0 JURISDICTION

This project is being considered by the Montecito Planning Commission based on Montecito Land Use and Development Code Section 35.492.040.A.3.d, which states that any decision of the Director to approve, conditionally approve or deny an application for a Land Use Permit may be appealed to the Montecito Planning Commission.

4.0 ISSUE SUMMARY AND BACKGROUND INFORMATION

Planning and Development received a complaint on February 10, 2009, regarding vegetation removal, grading and construction activities occurring within the sensitive riparian habitat associated with Hot Springs Creek and its tributary. P&D staff, including Biologist Melissa Mooney and Grading Inspector Tony Bohnett investigated the complaint with site visits on March 3, 2009 and March 16, 2009.

On April 8, 2009, P&D determined that a zoning violation had occurred for the unpermitted grading and construction of two bridges and retaining walls, and riparian vegetation removal within Environmentally Sensitive Habitat (ESH) (Case No. 09ZEV-00000-00042 & 09ZEV-00000-00115). A building violation case number (Case No. 09BDV-00000-00021) was also

assigned to the property because the development requires a grading permit. The unpermitted work was done to establish a new lawn area on the estate. P&D advised the property owner that:

> *... affirmative findings of consistency with all applicable policies and ordinance requirements to grant after the fact approval for the entirety of the development would be difficult to support given the inherent conflict with policies that protect native vegetation and environmentally sensitive habitats.*[1]

In the letter, P&D directed the landowner to focus on providing plans for a restoration program. Instead, the applicant requested after-the-fact approval for all of the unpermitted grading, structures, ESH removal and new landscaping. Due to inconsistency with applicable policies and development standards P&D denied the permit.

As documented by the P&D Biologist,[2] and based, in part, on data presented in the Tierney report, the unpermitted development resulted in the loss of approximately 1.1 acres of riparian habitat, including the removal of at least 11 Coast Live Oak trees, impacts to at least six (and perhaps 12) of the remaining oaks, and removal of six Western Sycamore trees. All overstory and understory vegetation was removed; the site was then graded for construction of a hard bank along the seasonal tributary of Hot Springs Creek. The unpermitted work also includes other at grade rock walls and patios adjacent to the top-of-bank of Hot Springs Creek itself. Twelve tree wells were constructed around remaining native trees (sycamores and coast live oaks), a large irrigated lawn and a nonnative *Myoporum* hedge were installed along the newly graded top-of-bank of Hot Springs Creek and its tributary, and two pedestrian footbridges were constructed across the tributary. The remaining native trees, which are part of the disturbed ESH, were heavily pruned. Installation of the structures and landscaping (0.5 to 0.7 acres of irrigated lawn and approximately 300 linear feet of hedge) in this ESH area resulted in conversion of an environmentally sensitive habitat, comprising a functioning riparian system, to estate manicured landscaping, which has relatively little value for wildlife.

Over the course of the following year P&D staff, including the Department's biologist, Melissa Mooney, conducted site visits, met with the applicant's representatives, reviewed the June 15, 2009, biological assessment prepared by the applicant's biologist, Rachel Tierney, project plans, and supplementary information including historic aerial photos of the site, maps, and planning documents. At all times during the process, P&D advised the applicant of the difficulty in achieving approval of the full scope of the as-built project, but offered them the opportunity to revise the project to both reduce the scope of the structural development to that which could be fairly argued, is necessary for reasonable use of the parcel and provide substantiation for that argument, and to significantly increase restoration to comply with the Montecito Community Plan ESH protection policies and development standards. After several attempts, the applicant's final submittal on June 30, 2010, still did not achieve these goals. Therefore, on July 26, 2010, consistent with the applicants' interest in pursuing their administrative options to legalize the

[1] P&D Letter to Bagdasarian-Karman Family Trust, April 8, 2009 (Attachment E).
[2] Memo from P&D Biologist Melissa Mooney to Planner Julie Harris, dated November 19, 2009. Peer Review of "Biological Assessment and Impact analysis, 1192 East Mountain Drive" prepared by Rachel Tierney, June 15, 2009 (Attachment G).

unpermitted development, P&D denied the LUP based upon the inability to make the required findings for approval.

Findings for denial are provided in Attachment A of this staff report. Of primary importance is the inability to find the project consistent with Montecito Community Plan Policy BIO-M-1.7, which prohibits structures within a riparian corridor. The policy allows for limited exceptions for certain uses and structures (such as trails or flood control projects) or when the policy would preclude reasonable development of a parcel. However, the proposed project does not qualify for any of these limited exceptions because it is not one of the limited allowed uses such as a trail or flood control project and reasonable use and development is already established on the parcels. In addition, the proposed project is inconsistent with additional Montecito Community Plan ESH policies and development standards, and several Land Use Element and Flood Hazard Area policies, as well as the ESH Overlay and Flood Hazard Overlay provisions of the Montecito Land Use and Development Code (MLUDC). Please refer to Section 7.2 of this staff report for a complete policy analysis and Section 7.3 for a complete analysis of inconsistencies with the MLUDC.

On August 5, 2010, the applicant timely appealed P&D's LUP denial (Attachment D of this staff report provides the appeal letter and application package). Included with the appeal submittal was: (1) a response to County Peer Review prepared by Rachel Tierney dated January 6, 2009 [sic.]; (2) the arborist report prepared by David Gress dated May 25, 2010; and (3) a revised biological assessment prepared by Rachel Tierney, dated May 25, 2010.[3] The applicant's primary appeal issue is based on a disagreement with P&D staff that the unpermitted grading, development and vegetation removal occurred within ESH.

Staff has carefully reviewed the applicants' grounds for the appeal, the arborist's report, and the revised biological assessment, has made an additional site visit (September 24, 2010), and maintains that the area of disturbance was located in the previously intact riparian corridors of Hot Springs Creek and its tributary, and that therefore, all of the policies and development standards reviewed and discussed in the findings of denial for Case No. 09LUP-00000-00256 apply (refer to Section 7.0 of this staff report for a complete discussion of Montecito Community Plan policy and MLUDC inconsistencies, which form the basis for the findings of denial).

The additional issues raised and information provided by the applicant/appellant in the appeal submittal are not sufficient to change the conclusions of this analysis but to focus it. Therefore, staff recommends that your Commission deny the appeal, Case No. 10APL-00000-00016, thereby upholding the P&D Director's denial, and deny, *de novo,* the Land Use Permit, Case No. 09LUP-00000-00256.

Finally, a portion of the habitat removal occurred on the adjacent property to the east. After receiving the Notice of Violation, the applicant/appellant submitted an application for a Lot Line Adjustment (LLA) on April 15, 2009, to adjust the boundaries between his property and the

[3] Neither the Tierney response dated January 6, 2009 nor the Tierney revised biological assessment dated May 25, 2010, had been previously submitted to the County.

adjacent property to the east. The proposed LLA would adjust the boundaries such that all of the habitat removal, grading and construction on the adjacent lot would become a part of the appellant's property. Upon learning that the activities were a zoning violation, the owner of the adjacent lot and party to the proposed LLA, Mr. Michael Bonsignore, contacted staff to state that he had been aware of the activities for a couple of years but was unaware they required County permits. He had been in negotiations with the applicant/appellant to seek redress for the work that had occurred on his property without his permission, which resulted in the LLA application submittal. Processing of the LLA is on hold pending abatement of the zoning violation because the findings for approval of a LLA specifically require a finding that no zoning violation exists on the subject properties.

5.0 PROJECT INFORMATION

5.1 Site Information

Site Information	
Comprehensive Plan Designation	Urban, Montecito Community Plan Area, Semi-Rural Residential-0.33 (0.33 units per acre or 1 unit per 3 acres) Environmentally Sensitive Habitat Overlay Flood Hazard Overlay
Ordinance, Zone	Montecito LUDC, Residential 3-E-1
Site Size	APN 011-020-034: 3.23 acres (gross), 2.93 acres (net) APN 011-020-042: 4.91 acres (gross and net)
Present Use & Development	Residential estate development on both lots. Two separate legal lots but currently functioning as one large estate.
Surrounding Uses/Zone(s)	*North:* Residential / 3-E-1 *South:* Residential / 2-E-1 *East:* Residential / 2-E-1, Hot Springs Trail *West:* Residential / 3-E-1
Access	East Mountain Drive
Other Site Information	Hot Springs Creek and tributary cross the site with the confluence at the south end of the property. Hot Springs Trail crosses the southeast corner of the property.
Public Services	Water Supply: Montecito Water District Sewage: Montecito Sanitary District Fire: Montecito Fire Protection District

5.2 Setting

The unpermitted grading, construction and riparian vegetation removal occurred within previously intact Environmentally Sensitive Habitat of Hot Springs Creek and a tributary, as determined by P&D's staff biologist, based upon evidence in the record including site

investigations and review of historic aerial photos and planning documents (please refer to Attachment H).

5.3 Project Description[4]

Ginger Andersen, agent for the owners Ross Bagdasarian and Janice Karman, requests approval of a Land Use Permit to abate Zoning Violation 09ZEV-00000-00042 (for APN 011-020-042) and 09ZEV-00000-00115 (for APN 011-020-034). The unpermitted activities include grading and construction of two pedestrian bridges within a tributary of Hot Springs Creek (on and below the top of bank), approximately 792 linear feet of retaining walls approximately four to six feet high (approximately 410 linear feet lining the east bank of the tributary to Hot Springs Creek), removal of an estimated 11 mature Coast Live Oak trees *(Quercus agrifolia),* impacts to at least six of the remaining oaks, and removal of six Western Sycamore trees *(Platanus racemosa)*, construction of 12 tree wells, numerous at grade stone borders and patios, installation of 0.5 to 0.7 acres of irrigated lawn, and installation of approximately 300 linear feet of a *Myoporum* hedge, a nonnative plant material along the top of the west bank of Hot Springs Creek. All development occurred within Environmentally Sensitive Habitat (ESH). The removal of approximately 1.1 acres of the riparian ESH, including the trees as well as understory vegetation, occurred to support the grading, structural development, and installation of the relatively level, irrigated lawn.

The applicant requests after-the-fact approval of the Land Use Permit to keep all of the structures and the majority of the lawn. In addition, the proposal includes partial habitat restoration (specifically, removal of an undetermined amount of *Arundo donax* within a larger 0.40-acre area Hot Springs Creek, sycamore/oak woodland restoration in 0.22 acres of the southeast corner of the lot, and weed removal and native planting along the banks of the tributary below the wall) and landscaping with native plants, not all of which are locally occurring, within the creeks' banks, around the margins of the lawn, and within an area used for stockpiling of rock in the southeast corner of the site.

The applicant also removed a portion of ESH (approximately 0.13 acres) from the adjacent property to the east, as noted in the issue summary, without the consent of the neighboring property owner. The applicant does not propose to restore this area.

6.0 APPEAL ISSUE DISCUSSION

In submitting the appeal, the applicant/appellant raised the following issues. Each issue is quoted from the appeal, and followed by staff's analysis and discussion. A copy of the submitted appeal is included as Attachment D to this staff report.

[4] The project description has been modified slightly. Rachel Tierney's original report, on which the original project description relied, was unclear. Subsequent review of her revised report (dated May 25, 2010, and submitted August 5, 2010) in conjunction with the arborist's report by David Gress, which she references, clarifies her documentation of direct removal of at least 11 oaks with Mr. Gress stating that at least six of the remaining oaks are impacted by the unpermitted development.

1. *The decision of the Planning & Development Director (the "Director's decision") regarding the extent and limits of the environmentally sensitive habitat ("ESH") on Appellant's property and the total amount of habitat removal is erroneous and not supported by substantial evidence in the record. Moreover, there is a disagreement among experts as to the limit of the ESH and the amount of habitat removal. The Montecito Community Plan ("MCP") mapping of the ESH is associated with Hot Springs Creek, not the secondary drainage around which the walls and bridges were installed. The Director's decision erroneously interprets the entire project site as ESH with no substantial evidence to support said interpretation. Appellant retained Rachel Tierney, a qualified biologist who concluded that the secondary drainage where the walls and bridges were installed "is separate from the main channel and is not mapped as ESH in the MCP."*

It is true that a portion of the current alignment of the tributary drainage in the area of this unpermitted development is not mapped ESH in the Montecito Community Plan. However, as discussed in the findings of denial for 09LUP-00000-00256, and reiterated in Section 7.3 of this staff report, Section 35.428.040.B. of the Montecito LUDC describes the applicability of the ESH Overlay. First, it states that the zoning map is a guide to determining whether the ESH Overlay applies. Further, it states that if ESH is found upon an investigation of a site including a habitat area that does not have an ESH overlay designation, then the provisions of the Overlay would apply; conversely, if ESH is not found, even where ESH is mapped, then the provisions of the Overlay would not apply. The actual extent and location of ESH is determined during project specific review associated with a development application.

In this case, development occurred without permits and the removal of ESH occurred in conjunction with this unpermitted development. Since evaluation of the location and extent of the ESH did not occur prior to its removal, grading, and development, and because the development constitutes a zoning violation, the County applies the applicable policies and ordinance standards to the previous condition to determine the location and extent of the ESH after the fact, as if the development and associated ESH removal had not occurred.

The determination of the extent of the ESH was made by P&D based on substantial evidence in the record. The following substantial evidence for the determination of ESH was identified and discussed in the findings for denial for 09LUP-00000-00256:

- Site visits conducted by the P&D Staff Biologist Melissa Mooney on March 3, 2009, and August 5, 2009 confirming the presence of coast live oaks and re-sprouting oaks and western sycamores within the tributary and Hot Springs Creek on the subject parcel;
- Site visit by P&D Project Manager Julie Harris August 5, 2009, observing one willow re-sprouting in the tributary;
- Consultation with California Department of Fish and Game Environmental Scientist Natasha Lohmus;
- Montecito Community Plan Biological Habitat Map and ESH Overlay map**;**

- Historic aerial photo imagery dating back to 1994, specifically the years 2001 and 2004, showing the presence of a closed canopy of sycamore and oak trees in the tributary and Hot Springs Creek (see Attachment H Historic Aerial Photographs);
- USGS 1:24,000-scale topographic map (Santa Barbara quadrangle) showing the tributary as an intermittent blue-line stream;
- USFWS NWI Wetland Maps;
- County Flood Control Map (Montecito area, Sheet 23, showing topography of the tributary and Hot Springs Creek);
- CDFG CNDDB Biogeographic Data Branch reports; and
- Melissa Mooney's Peer Review dated November 19, 2009 of "Biological Assessment and Impact Analysis, 1192 East Mountain Drive" prepared by Rachel Tierney, June 15, 2009, and attachments thereto (listed above), providing an analysis of the setting and the impacts of the subject violation.

The peer review memo with its attachments was provided to the applicant/appellant and his representatives in a letter dated December 23, 2009 (see Attachment G of this staff report).

In her June 15, 2009, assessment, Ms. Tierney reports six felled Western Sycamore trees, confirmed by staff on the August 5, 2009 site visit, who also observed one felled willow tree. Staff observed all seven trees re-sprouting from cut stumps within the top-of-bank of the tributary to the main branch of Hot Springs Creek. A subsequent site visit on September 24, 2010, in preparation for this staff report, provided additional evidence to support P&D's original conclusion that the project occurred within a riparian ESH. Observations at this site visit confirmed the presence of the previously identified re-sprouting oaks and sycamores, and documented additional new recruits of sycamores and oaks within the tributary, at least three new willow recruits, as well as mugwort. Sycamores and willows are tree (and shrub) species indicative of streams, drainages, and riparian habitat.[5,6] Mugwort is a mesic species that requires moderate amounts of water and is indicative of riparian habitat and wetlands.[7]

Coast Live Oak trees, while not always indicative of a riparian habitat, are commonly found within riparian areas interspersed with sycamores.[8] Numerous oaks were cleared from the site to accommodate the development, including the irrigated lawn. Ms. Tierney estimates that 11 oaks were removed and four more impacted by the development; Mr. Gress reports six of the

[5] Holland, Robert F. 1986. *Preliminary Descriptions of the Terrestrial Natural Communities of California.* CA Dept. of Fish and Game, October 1986.
[6] Sawyer, John O., Todd Keeler-Wolf, and Julie M. Evens. 2009. *A Manual of California Vegetation, Second Edition*. California Native Plant Society in collaboration with California Dept. of Fish and Game. Sacramento, CA. p. 212.
[7] Reed, Porter B. Jr. 1988. National List of Plant Species that Occur in Wetlands: National Summary (California (Region 0)). U.S. Fish Wildl. Serv. Biol. Rep. 9=88(24). 244 pp. The reference identifies mugwort as FACW (Facultative Wetland) – usually occurs in wetlands (estimated probability 67% -99%), but occasionally found in non-wetlands.
[8] Sawyer, John O., Todd Keeler-Wolf, and Julie M. Evens. 2009. *A Manual of California Vegetation, Second Edition*. California Native Plant Society in collaboration with California Dept. of Fish and Game. Sacramento, CA. p. 214.

remaining oaks have been impacted by the unpermitted development due to significant grade changes over 25% of the trees' critical root zones (i.e., the trees' canopy drip lines plus five ft.). However, the County assesses impacts to individual oak trees based on encroachment of development and irrigation within 20% or more of the root zone. Based on this criterion and Mr. Gress' data, an additional six oaks have been impacted for a total of 12 oaks impacted by this project.

Aerial photographs dating back to 1998 clearly demonstrate the presence of a closed oak/sycamore canopy over both the main branch of Hot Springs Creek and the west tributary with a small area (approximately 0.19 acres – area estimated using Photomapper measure tool) clear of trees in between. Older imagery shows this clear area to have been present as far back as 1998. However, in 1994 the entire area was covered by tree canopy. Based on this photographic history and 2009/2010 site visits documenting the presence of sycamores and willows re-sprouting in the tributary, the ESH clearly covered the entire area from and including the tributary on the west, to and including the main branch on the east.

2. *The Director's decision mandating the removal of the walls and bridges would cause substantially more disturbance than leaving said walls and bridges intact and implementing Appellant's proposed restoration Plan. Appellant retained David Gress, a qualified arborist, who opined that "removing the completed rock features of the project could result in greater damage to the trees and is not recommended. Alternative measures can be taken to minimize the impacts from development."*

In his report dated May 25, 2010, Mr. Gress did not present any evidence to support his conclusion that removal of the walls and bridges would cause substantially more disturbance than leaving them in place. Regardless, the overarching consideration is that the structures and fill were installed without permits within a riparian ESH, and approval of these structures cannot be granted due to the policy and development code inconsistencies discussed in the original findings for denial of 09LUP-00000-00256, as refined by further applicant submittals and included herein, most importantly Montecito Community Plan Policy BIO-M-1.7. The remaining trees assessed by Mr. Gress have already been impacted by the unpermitted development, fill and irrigated lawn. Removal of the unpermitted structures would be part of an overall ESH restoration plan that has yet to be developed. Any restoration plan that could be found consistent with these policies and development standards would ensure that removal of structures, and artificial fill occurs with the most effective tree protection measures incorporated during restoration activities.

3. *Appellant's proposed Restoration Plan incorporates input from a local professional horticulturist, biologist, and an arborist. These professionals collectively opine that the Restoration Plan would be beneficial over baseline conditions. The Appellant's proposed Restoration Plan would include removal of invasive exotic Arundo donax [of an undetermined amount] in the Hot Springs Creek corridor. Appellant's proposed Restoration Plan was initially very positively received by Planning & Development Staff in verbal communications with Appellant's development team.*

For the purpose of abating a zoning violation of this kind, the County looks to the conditions on the site prior to the unpermitted development activities (i.e., the closed canopy conditions of the ESH). Thus, the purpose of the restoration plan should be to restore the native riparian habitat that existed prior to the commencement of the unpermitted activities, with the goal of returning the riparian corridor to its natural state and functions, including habitat for native fauna especially birds, reptiles and amphibians. Previously, an intact riparian tree canopy covered the tributary at the project site and provided a contiguous habitat and wildlife corridor from its upstream reaches to its confluence with the main branch of Hot Springs Creek. While the applicant's submitted restoration plan may be an improvement over the conditions on the ground today, the proposed plan does not meet the restoration goals of restoring the site to its pre-existing condition.

P&D Biologist Melissa Mooney reviewed the Bagdasarian appeal and Ms. Tierney's revised *Biological Assessment and Impact Analysis*, dated May 25, 2010. Ms. Mooney notes that few changes were made to the report in response to the county's peer review, and the only substantial change was the acknowledgment of a 3:1 restoration that would require 3.31 acres of restoration (i.e., to mitigate for a loss of 1.1 acres of ESH). The County's calculation of impacts (1.1 acres) is based on the data in Table 4 of the Tierney report: 0.56 acres in the main drainage was converted to lawn (page 23, column 3), and 0.51 acres was affected in the secondary drainage (page 24, column 2, adding 0.46 and 0.05 = 0.51). Therefore, the total impacted acreage is, at a minimum, 1.07, or 1.1 acres (0.56 + 0.51). No figures are included in either version of the Tierney report showing the areas of impact as detailed in Table 4.

The proposed restoration plan appears to include some positive restoration components, including native plant and tree restoration in the former rock stockpile area at the southeast corner of the lot just east of the creek confluence, removal of the invasive plant *Arundo donax* in the main branch of Hot Springs Creek and the confluence,[9] and the planting of native species within the tributary. However, the restoration plan does not include removal of any of the unpermitted structures or irrigated lawn or restoration of any of the grade to its pre-existing condition, nor does it propose to restore more than 0.25 acres of ESH that was directly impacted by the unpermitted development. The proposed plan would only remove the margins of the irrigated lawn and replace it with a large variety of nominally native plant species, including species not native to this part of California or South Coast riparian areas (e.g., California buckeye, *Ceanothus maritimus,* Western redbud),[10] that appears to be designed as a decorative landscape. According to the applicant's restoration plan, most of the irrigated lawn would remain. Implementation of the applicant/appellant's plan would result in a net loss of ESH. Therefore, staff concludes that the proposed restoration plan does not meet the purpose of restoration of a riparian Environmentally Sensitive Habitat.

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[9] *Arundo donax* does not infest the entire 0.40 acres to be restored in Hot Springs Creek, as reported in the Tierney report. Restoration of the creek within this area would benefit not only from removal of the *Arundo* but other weedy species that occur in the creek as well, including fennel *(Foeniculum vulgare)*, which is developing a strong infestation, among other weeds.

[10] Smith, Clifton F. 1998. *A Flora of the Santa Barbara Region, California.* Second Edition.

As always when the project is the abatement of a zoning violation, staff tries to work collaboratively with applicants to reach a positive permitting outcome. However, initial positive responses upon receiving a submittal do not replace in-depth review of a proposal. The determination that the restoration plan was not adequate was made after in-depth review of the plan by P&D staff including the staff biologist.

4. *Appellant's proposed Restoration Plan would not only decrease the amount of remaining lawn, but would restore a great amount of area around the existing walls and bridges.*

See response to item 3 above. Additionally, the area of irrigated lawn to be removed is not reported or defined on project plans. Based on the proposed restoration data (see Figure 4 of Ms. Tierney's report dated May 25, 2010), only approximately 0.25 acres of the ESH that was actually disturbed by the unpermitted activities are proposed to be restored (i.e., planting of native plant species). The remainder of onsite restoration is proposed for the rock stockpile area (0.22 acres not included in the documented 1.1 acres of lost or disturbed ESH), where the majority of replacement oaks and sycamores is proposed, and the main branch and confluence of Hot Springs Creek where no disturbance occurred (removal of the weed, *Arundo donax,* which has invaded an undetermined portion but not the entire 0.40-acre area proposed for weed removal).

5. *Appellant's proposed plant palette for the Restoration Plan was carefully selected by a local qualified horticulturalist and includes a number of local native plants.*

The plant palette for a habitat restoration would by definition include nothing but local native plant species and the proposed plant species must be appropriate to the habitat to be restored. Habitat restoration is not the planting of any native species and/or the creation of a native plant garden; it is the restoration of a habitat using local plant species that would occur within that habitat naturally to meet certain predetermined objectives.[11] These objectives might include, for example: (1) to restore the tree canopy lost in the area between the tributary and Hot Springs Creek by approximately 50% over pre-disturbance conditions; and/or (2) to provide a 50% increase in density of the understory habitat within the disturbed area; and/or (3) to restore the amounts and types of species that were present in the area before the disturbance. It appears from the submitted plans that a large, unspecified area of irrigated lawn is proposed to be retained with a broad selection of native plants to create what appears to be a decorative landscape with natives rather than riparian habitat restoration, including California natives that are not endemic to this locale (e.g. California buckeye, Western redbud and *Ceanothus maritimus*).

6. *Appellant retained David Gress, a qualified arborist, and has consented to his recommendation to replant a total of more than fifty (50) Coast Live Oak saplings and eighty (80) California Sycamores to mitigate the impacts of development.*

[11] MLUDC Subsection 35.428.040.K.5 specifically requires the use of "native species that would normally occur at the site prior to disturbance" in a restoration plan.

Coast Live Oak *(Quercus agrifolia)* and Western Sycamore (*Platanus racemosa,* also commonly referred to as California Sycamore) are appropriate to an adequate restoration plan in the disturbed area, as these were the tree species that existed prior to the disturbance. Willows should also be included in an adequate restoration plan for this area. A 10:1 replacement ratio, which is the standard for tree replacement in a habitat restoration plan,[12] would result in a need for 170 Coast Live Oaks (11 removed, at least six adversely impacted, according to Mr. Gress) and 60 Western Sycamores (six removed).

7. *Appellant's proposed Restoration Plan would implement thirteen (13) additional tree protection measures to protect and enhance oaks and sycamores on the Project site.*

The thirteen tree protection measures are listed in the arborist's report, dated May 25, 2010. The measures include several intended to protect remaining trees from further damage in order to complete construction per the applicant's proposed project. Other measures are proposed to mitigate the impacts of the already constructed tree wells, including measures 1, 2, and 4. These measures propose to adjust irrigation to prevent water from contacting oak tree trunks and entering tree wells, install drain pipes in the tree wells for oaks #8 and #18, and provide annual inspections by a certified arborist of those oak trees that have soil/fill impacting more than 25% of the critical root zone. In the event that this appeal is granted, P&D would recommend having peer review for the adequacy of the 13 recommended tree protection measures.

8. *The benefits of the amount of off-site restoration that could be achieved with in-lieu fees exceed the benefit of removing the walls and bridges and limiting restoration to Appellant's property. Moreover, the walls are less than six (6) feet in height. The Montecito Land Use & Development Code does not require permits for walls under six (6) feet when they are not located in an ESH.*

Montecito Community Plan Development Standard BIO-M-1.6.2 and MLUDC Subsection 35.428.040.K.5 require mandatory onsite restoration for any project disturbed buffer or riparian vegetation within a creek. The applicant/appellant's proposed plan does not maximize the restoration opportunities available onsite. Onsite restoration opportunities include restoring the area between Hot Springs Creek and the tributary, now covered by lawn, artificial fill and retaining walls, and areas upstream of the tributary adjacent to the main residence. As recently as 2009, this upstream area still had mature tree canopy with an understory of nonnative plants, which could benefit from restoration. Reconnecting the riparian corridor both upstream and downstream of the proposed project site would restore a contiguous wildlife corridor along the tributary to the confluence with Hot Springs Creek, which is a goal of the restoration.

The County does not have an in-lieu fee program to which the applicant could contribute. The appellant states on page 11 of the appeal that he has had preliminary discussions with the Land Trust for Santa Barbara County and the Carpinteria Creek Watershed Coalition to pay in lieu

[12] County of Santa Barbara Planning and Development. *A Planner's Guide to Conditions of Approval and Mitigation Measures.* Published December 2002, Revised June 2010. The original manual was first printed May 5, 1994.

fees to support riparian habitat restoration elsewhere; however, no plan or specifics were submitted. Absent any specific offsite restoration plan or program, a conclusion that the benefits of offsite restoration would exceed the benefits of removing the walls and bridges and restoring riparian habitat on the site cannot be determined. Furthermore, without substantial onsite restoration, there would be no habitat restoration benefit to the Hot Springs Creek watershed, where the riparian ESH was removed.

Regarding MLUDC permitting requirements, as stated by the County Grading Inspector in Correction Notice 20028, issued on March 16, 2009, a grading permit is required. Pursuant to Section 14-6(a) of the County Grading Ordinance a grading permit is required when fill exceeds three (3) feet in vertical distance from the natural contour of the land. When a grading permit is required, a Land Use Permit (LUP) is also required, regardless of the ESH Overlay designation. Specifically, MLUDC Subsection 35.420.040.B.1.e states that grading is exempt from LUP requirements when a permit is not required by County Code Chapter 14 (i.e., the Grading Ordinance). The highest retaining wall is approximately 5'9" high and the deepest tree well approximately three feet deep and these walls hold back at least three vertical feet of artificial fill. Therefore, a grading permit is required (reconfirmed by personal communication with Tony Bohnett, Grading Inspector, September 16, 2010) and thus, so is a LUP.

9. *Early meetings between the Appellant and Appellant's agents and the County led the Appellant to believe that additional time and money put toward a restoration could result in an after-the-fact approval by the County.*

As stated in the Issue Summary of this staff report, from the time the zoning violation was determined, P&D staff have reiterated that approval of any project except full restoration with removal of the unpermitted structures would be difficult to achieve given the policies and provisions of the Montecito Community Plan and the MLUDC. However, staff offered the applicant's team the opportunity to propose an alternative, provided they could demonstrate how the development would be consistent with policies, in combination with restoration. The applicant/appellant chose to pursue permitting of all of the unpermitted structures rather than structure removal and habitat restoration. Although the revised restoration plan is a step in the right direction with regards to restoration plantings and removal of some (but not all) of an unspecified area of irrigated lawn around the lawn's periphery, the proposed retention of all of the structural development, the lawn and the artificially created grade are not allowable uses within a riparian corridor/ESH nor has the applicant demonstrated how this development could be found consistent with MCP Policy BIO-M-1.7 and MLUDC Subsection 35.428.040.K.2.

As stated in Appeal Issue #1, the appellant simply disagrees that the area of project disturbance occurred within a riparian corridor/ESH. The arguments they present in their rebuttal to P&D's findings for denial are not supported by the evidence on the record. As stated by P&D in its original peer review of the restoration plan, in the findings for denial and in this staff report, the evidence clearly demonstrates that the unpermitted development occurred within riparian ESH.

7.0 PROJECT ANALYSIS

7.1 Environmental Review

A Notice of Exemption from CEQA pursuant to CEQA Guidelines Section 15270 has been prepared because staff recommends denial of the applicant's appeal and *de novo* denial of the Land Use Permit request to retain all of the unpermitted grading and structures. Therefore, because the project is a denial, this statutory CEQA exemption would apply. See Attachment B.

7.2 Comprehensive Plan Consistency

The following policy consistency analysis is the basis for the findings of denial for 09LUP-00000-00256. The project, as proposed, cannot be found consistent with these policies.

REQUIREMENT	DISCUSSION
Montecito Community Plan Policy BIO-M-1.7: *No structures shall be located within a riparian corridor except: public trails that would not adversely affect existing habitat; dams necessary for water supply projects; flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety, other development where the primary function is for the improvement of fish and wildlife habitat and where this policy would preclude reasonable development of a parcel. Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.*	**Inconsistent:** The proposed project includes the following structures within a riparian corridor, specifically within a seasonal tributary of Hot Springs Creek: approximately 410 linear feet of site and retaining walls, 12 tree wells around native trees, and two pedestrian bridges to access a portion of the property. None of the structures qualify as any of the structures allowed by this policy. This policy only allows bridges when no alternative route or location is feasible and when the bridge support structures are located outside of the critical habitat. In this case, the bridges' support structures are located within the banks of the creek within an area of riparian habitat that was removed to accommodate the unpermitted development. Furthermore, the applicant has not clearly established the need for footbridges to access this portion of the property. Both of the lots on which this development was constructed are already fully developed with typical estate development including single family dwellings on each lot, several accessory structures and uses, and formal landscaping and lawn. The unpermitted development is not necessary to achieve reasonable use of the parcels as reasonable use is had, and sufficient land is available to support additional development or

REQUIREMENT	DISCUSSION
	redevelopment on both lots without encroaching into the riparian corridor along the tributary and the main channel of Hot Springs Creek. Therefore, as none of the structures qualify as any of the structures allowed by this policy, the proposed project is inconsistent.
Montecito Community Plan Policy BIO-M-1.3: *Environmentally Sensitive Habitat (ESH) areas within the Montecito Planning Area shall be protected, and where appropriate, enhanced.* ***Montecito Community Plan Development Standard BIO-M-1.3.1:*** *All applicants proposing new development within 100 feet of an Environmentally Sensitive Habitat (ESH) shall be required to include setbacks or undeveloped buffer zones from these habitats as part of the proposed development except where setbacks or buffer zones would preclude reasonable development of the parcel. In determining the location, width and extent of setbacks and buffer zones, staff shall refer to the Montecito Biological Resources Map as well as other available data (e.g., maps, studies, or observations). If the project would result in potential disturbance to the habitat, a restoration plan shall be required. When restoration is not feasible onsite, offsite restoration may be considered.* ***Montecito Community Plan Development Standard BIO-M-1.3.2:*** *In the event that activities considered to be zoning violations result in the degradation of an Environmentally Sensitive Habitat (ESH), the applicant shall be required to prepare and implement a habitat restoration plan.*	**Inconsistent.** The policies and development standards of the Montecito Community Plan herein were adopted in 1992 to protect riparian corridors, which are by definition environmentally sensitive habitat, from impacts associated with development. Specific protections are required pursuant to these policies beginning with prohibitions on development within the ESH itself as well as within ESH buffers. The policies and development standards also require restoration of the ESH when and where damage has occurred. As mentioned above, none of the structural development included in this project is allowed within the riparian corridor pursuant to Montecito Community Plan Policy BIO-M-1.7. Furthermore, the unpermitted development is inconsistent with all of the policies and development standards cited herein, as discussed below. The project is located partially in an area mapped ESH and partially in an area not previously mapped as ESH. The gross scale of ESH mapping as part of the Community Plan necessitates site specific biological resources analysis associated with each particular project. In the instant case, following site visits, review of reports, historic aerial photographs and additional relevant documents, the P&D Biologist, Melissa Mooney, confirmed that both the main stream and its tributary, as well

REQUIREMENT	DISCUSSION
Degraded or disturbed portions of an ESH area outside of any formal landscaping plan shall be restored with appropriate native species to offset increased development and increased human and domestic animal presence.	as the area in between, constitutes riparian ESH[13] (Attachment G). The project does not include any setbacks from the creek (and in fact is constructed within the creek) and does not provide undeveloped buffer zones.
Montecito Community Plan Policy BIO-M-1.6: *Riparian vegetation shall be protected as part of a stream or creek buffer. Where riparian vegetation has previously been removed, (except for channel cleaning necessary for free-flowing conditions as determined by the County Flood Control District) the buffer shall allow the reestablishment of riparian vegetation to its prior extent to the greatest degree possible. Restoration of degraded riparian areas to their former state shall be encouraged.*	The unpermitted development was reported to the County by the California Department of Fish & Game, which itself was notified by a member of the public using the adjacent public trail (Hot Springs Trail). P&D staff confirmed that a Land Use Permit for the structures and grading would have been required for the development activities; therefore, the activities constitute a zoning violation. As the zoning violation constitutes near complete removal of the ESH, a restoration plan for the entire impacted area is required.
Montecito Community Plan Development Standard BIO-M-1.6.1: *Riparian protection measures shall be based on a project's proximity to riparian habitat and the project's potential to directly or indirectly damage riparian habitat through activities related to a land use permit or coastal development permit such as grading, brushing, construction, vehicle parking, supply/equipment storage, or the proposed use of the property. Damage could include, but is not limited to, vegetation removal/disturbance, erosion/sedimentation, trenching, and activities which hinder or prevent wildlife access and use of habitat. Prior to initiation of any grading or development activities associated with a Land Use or Coastal Development Permit, a temporary protective fence shall be installed along the outer buffer boundary at the applicant's expense, unless the County finds*	The proposed project does not include an adequate habitat restoration plan. Instead, the proposal seeks validation of the unpermitted grading, the as-built structures, and riparian ESH clearance to support a manicured lawn, in exchange for the introduction of a decorative landscape with a native plant palette (including plant species not native to the local area such as California buckeye, western redbud and *Ceanothus maritimus*) into the ESH as well as 0.62 acres of habitat restoration/weed removal elsewhere on the property and an undetermined area off site. Specifically, based on Figure 4 from Ms. Tierney's revised biological assessment (submitted August 5, 2010), only approximately 0.25 acres of the 1.1 acres of ESH that was disturbed would be restored onsite. The remainder of onsite restoration is proposed for the rock stockpile area (0.22

[13] Memo from P&D Biologist Melissa Mooney to Planner Julie Harris, dated November 19, 2009. Peer Review, "Biological Assessment and Impact analysis, 1192 East Mountain Drive" prepared by Rachel Tierney, June 15, 2009.

REQUIREMENT	DISCUSSION
that this measure is not necessary to protect biological resources (i.e., due to topographical changes or other adequate barriers). Storage of equipment, supplies, vehicles, or placement of fill or refuse, shall not be permitted within the fenced buffer region. ***Montecito Community Plan Development Standard BIO-M-1.6.2:*** *On-site restoration of any project-disturbed buffer or riparian vegetation within creeks in the Montecito Planning Area shall be mandatory. A riparian revegetation plan, approved by the County, shall be developed by a County approved biologist (or other experienced individual acceptable to the County) and implemented at the applicant's expense. The revegetation plan shall use native species that would normally occur at the site prior to disturbance. The plan shall contain planting methods and locations, site preparation, weed control, and monitoring criteria and schedules.*	acres), which was not part of the documented 1.1 acres of disturbed ESH, and the main branch and confluence of Hot Springs Creek (0.40 acres of *Arundo donax* removal)[14], where no project disturbance occurred. Rather than restore the impacted habitat onsite, as well as additional disturbed habitat available for restoration upstream along the tributary, and habitat directly disturbed by the applicant/appellant on the neighboring property, as required by policy, the applicant/appellant requests approval to pay in-lieu mitigation fees for creek restoration elsewhere on the South Coast. The proposed retention of the formal irrigated lawn and access via the pedestrian bridges indicate intentions to intensify human use within this ESH area. Intensification of human activity within the ESH will adversely affect its value to wildlife. The closed tree canopy that previously existed between the two creek channels prior to the unpermitted work is also not proposed to be restored. Closed canopy riparian habitats provide safe wildlife corridors and connectivity between different habitat areas. The removal of the riparian habitat along the length of the tributary in the project area fragments the corridor provided by the tributary, breaking up the connectivity between the intact riparian habitat upstream and downstream of the project area. The lawn does not provide the connectivity between the two creek channels provided by the closed canopy of native trees. Therefore, as proposed, the restoration plan would not restore the functions of an intact riparian habitat corridor. Finally, the current restoration plan does not propose to restore the ESH vegetation removed from the neighbor's lot without his permission.

[14] *Arundo donax* does not infest the entire 0.40 acres, but rather a much smaller match of an undefined area and scattered individuals.

REQUIREMENT	DISCUSSION
	Grading activities, movement and storage of construction vehicles and stockpiling of rocks and construction materials occurred throughout the ESH area. Inconsistent with the ESH policies and development standards, all construction and grading occurred without any protection measures in place. The damage to the ESH has already occurred but that does not justify 1) allowing the unpermitted development to remain, or 2) foregoing adequate habitat restoration. The development constitutes a zoning violation; it is development that is not allowed by policy within ESH riparian corridors, and adequate restoration has not been proposed. Therefore, the proposed project is not consistent with these policies and development standards.
Montecito Community Plan Policy BIO-M-1.15: *To the maximum extent feasible, specimen trees shall be preserved. Specimen trees are defined for the purposes of this policy as mature trees that are healthy and structurally sound and have grown into the natural stature particular to the species. Native or non-native trees that have unusual scenic or aesthetic quality, have important historic value, or are unique due to species type or location shall be preserved to the maximum extent feasible.* ***Montecito Community Plan Development Standard BIO-M-1.15.1:*** *All existing specimen trees shall be protected from damage or removal by development to the maximum extent feasible.* ***Montecito Community Plan Policy BIO-M-1.16:*** *All existing native trees regardless of size that have biological value shall be preserved to the maximum extent feasible.*	**Inconsistent:** The policies and development standards herein call for the protection of specimen and native trees, especially oak trees. The purpose of these policies is to allow development to move forward with special care taken to protect these trees during the planning and construction phases (i.e., careful siting of new development with implementation of tree protection measures) so that the long term health of the trees will not be adversely impacted by new development. At least 11 Coast Live Oaks and six Western Sycamores were removed to accommodate the applicant's structural development, grading and irrigated lawn. P&D's staff biologist documented 12 tree wells constructed around remaining native trees. The project's arborist assessed the health of 21 Coast Live Oaks and one Western Sycamore remaining on the property that were directly affected by the recent unpermitted grading and construction activities (i.e., construction within the critical root zone – below the canopy drip line plus

REQUIREMENT	DISCUSSION
Montecito Community Plan Development Standard BIO-M-1.16.1: *Where native trees of biological value may be impacted by new development (either ministerial or discretionary), a Tree Protection Plan shall be required. The decision to require preparation of a Tree Protection Plan shall be based on the location of the native trees and the project's potential to directly or indirectly damage the trees through such activities as grading, brushing, construction, vehicle parking, supply/equipment storage, trenching or the proposed use of the property. The Tree Protection Plan shall be based on the County's existing Tree Protection Plan standards and shall include a graphic depiction of the Tree Protection Plan elements on final grading and building plans (Existing landscaping plans submitted to County Board of Architectural Review (BAR) may be sufficient). A report shall be prepared by a County approved arborist/biologist which indicates measures to be taken to protect affected trees where standard measures are determined to be inadequate. If necessary, an appropriate replacement/replanting program may be required. The Tree Protection Plan shall be developed at the applicant's expense. The plan shall be approved by RMD prior to issuance of a Land Use or Coastal Development Permit.* ***Montecito Community Plan Policy BIO-M-1-1.17:*** *Oak trees, because they are particularly sensitive to environmental conditions, shall be protected to the maximum extent feasible. All land use activities, including agriculture shall be carried out in such a manner as to avoid damage to native oak trees.*	five feet). The arborist indicates that at least six of the remaining oaks are adversely impacted by the tree wells and retaining walls based on encroachment into the critical root zone of at least 25%.[15,16] The development was not carried out in such a manner as to avoid or minimize damage to the native oaks and sycamores. Tree protection measures were not implemented during construction; construction vehicles were operated under tree canopies and sandstone boulders were stockpiled below tree canopies. The arborist also reports that the remaining trees, which were pruned, were thinned too much. The proposed restoration plan would replace the removed trees within the rock stockpile area in the southeast corner of the lot (near the Hot Springs Creek trailhead) rather than in the locations from which they were removed (i.e., along the tributary and in the area between the tributary and main branch). Apart from a general note listing oaks and sycamores on the plant list, tree replacement for both the removed trees and the existing but impacted trees identified by the arborist has not been incorporated into the restoration plan. Therefore, as none of these policies and development standards were followed during construction, and as the proposed restoration plan is inadequate, the proposed project is not consistent with the policies cited herein.
Land Use Element Hillside and Watershed	**Inconsistent:** The project was not designed to

[15] Arborist Report, dated May 25, 2010, prepared by David R. Gress, Consulting Arborist.
[16] Based on the County's standard of impact to trees of encroachment into 20% of the drip line plus five feet, and Mr. Gress' data, twelve oaks have been impacted.

REQUIREMENT	DISCUSSION
Protection Policy 1: *Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.* ***Land Use Element Hillside and Watershed Protection Policy 2:*** *All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.*	fit the site topography. Grading and retaining walls were constructed within a stream corridor to support fill (up to 5 ½ ft. in some locations based on the tallest retaining wall), which was used to create a relatively level, irrigated lawn. The project does not preserve natural features (i.e., natural stream banks) or native vegetation and at least 17 mature native trees were removed. Grading occurred to support construction of structures that are not allowed in stream corridors (pursuant to Montecito Community Plan Policy BIO-M-1.7, cited above) and that resulted in removal of, and impacts to, riparian ESH. Additionally, the two bridges were constructed within the stream corridor below the top of bank without any hydrologic analysis to determine whether the bridges are appropriately located or built at the appropriate heights and structural specifications for flood water passage. Therefore, the project is not consistent with these policies.
Land Use Element Flood Hazard Area Policy 1. *All development, including construction, excavation, and grading, except for flood control projects and non-structural agricultural uses, shall be prohibited in the floodway unless off-setting improvements in accordance with HUD regulations are provided. If the proposed development falls within the floodway fringe, development may be permitted, provided creek setback requirements are met and finish floor elevations are above the projected 100-year flood elevation, as specified in the Flood Plain Management Ordinance.* ***Land Use Element Flood Hazard Area Policy 2.*** *Permitted development shall not cause or contribute to flood hazards or lead to*	**Inconsistent:** P&D staff consulted with the Flood Control District on June 21, 2010.[17] The Flood Control District determined that at a minimum the Flood Plain Management Ordinance (Chapter 15A of the County Code) applies to the southern end of the property, where the south bridge is located, because this area is mapped as floodway. It is also likely that Chapter 15A would apply to the north bridge. Photos demonstrate that the bridges have not been designed or constructed consistent with the Chapter 15A. As built, both bridges are located below the top of bank of the tributary and could be impacted by heavy debris flows, which could knock out either or both bridges and cause or contribute to flood hazards downstream. The Hot Springs Creek watershed, which includes the tributary,

[17] Personal communication with Flood Control District staff Nick Bruckbauer and Mike Parker, June 21, 2010.

REQUIREMENT	DISCUSSION
expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc. ***Montecito Community Plan Policy FD-M-2.1:*** *Development shall be designed to minimize the threat of on-site and downstream flood potential and to allow recharge of the groundwater basin to the maximum extent feasible.*	can generate heavy debris flows including rock and boulder debris. The bridges do not appear to be constructed to withstand such debris flows.[18] Of the two pedestrian bridges, the south bridge and its footings are constructed entirely within the floodway. A hydrologic analysis using the HEC-2 model is required to specifically determine the base flood elevation and the bridge must be constructed at a minimum elevation of two feet above the base flood elevation. Although the north bridge is not located within the mapped floodway or floodplain it is located below the top of bank within the channel. Therefore, an analysis is also required to determine the base flood elevation and the height above it at which the bridge must be constructed.

7.3 Zoning: Montecito Land Use and Development Code Compliance

The following MLUDC compliance analysis attributed to the basis for the findings of denial by the P&D Director. The project, as proposed, does not comply with these MLUDC requirements.

Section 35.428.040.A. Purpose and intent. *The Environmentally Sensitive Habitat Area (ESH) overlay zone is applied to areas with unique natural resources and/or sensitive animal or plant species, where existing and potential development and other activities may despoil or eliminate the resources. This overlay zone is intended to:*

1. *Protect and preserve specified areas in which plant or animal life or their habitats are either rare or especially valuable because of their role in the ecosystem, and that could be easily disturbed or degraded by human activities and developments; and*
2. *Ensure that each project permitted in the overlay zone is designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.*

Section 35.428.040.B. Applicability.

1. ***Determination of applicability.*** *The zoning map shall guide determining whether this overlay zone applies to any area of land or water. If a particular lot or lots within an ESH overlay zone*

[18] *ibid.*

are determined by the Director not to contain the pertinent species or habitat, the regulations of this overlay zone shall not apply.

2. ***Identification of newly documented sensitive habitat areas.*** *If an environmentally sensitive habitat area is identified by the Director to be located on site during permit application review, but the habitat area does not have an ESH overlay designation, the applicable requires of Subsection C through Subsection O below shall apply.*

As stated in the ESH Overlay, cited above, the overlay is applied to areas with unique natural resources and/or sensitive animal or plant species, and where development or other activities may harm the resources. The Overlay was adopted in 1992 with approval of the Montecito Community Plan and incorporated into the Montecito Zoning Ordinance (now known as the MLUDC). The adopted overlay zoning map serves as a guide to landowners and County planners to be aware of ESH at a given site but is not the only determining factor. The actual extent and location of ESH is determined during review of a development application where the focus is at a site specific level.

The project is located partially in an area mapped ESH and partially in an area not previously mapped as ESH. The gross scale of mapping ESH as part of the Community Plan necessitates site specific biological resources analysis associated with each particular project. In the instant case, because the development constitutes a zoning violation, the County must determine the location and extent of the ESH after the fact, as if the development and associated ESH removal had not occurred, and apply applicable policies and ordinance standards to that previous condition.

Following site visits, review of reports, historic aerial photographs, and additional relevant documents listed in Section 6.0, the P&D Biologist, Melissa Mooney, confirmed that both the main stream and its tributary, as well as the area in between, constitutes riparian ESH.[19] As discussed in greater detail in Sections 6.0 and 7.2 of this staff report, staff determined the unpermitted development activities occurred within riparian ESH; therefore, the MLUDC requirements of the ESH Overlay apply to the project.

Subsection 35.428.040.K.2. Prohibition on development within a riparian corridor. *No structure shall be located within a stream corridor except:*

a. *Public trails that would not adversely affect existing habitat;*
b. *Dams necessary for water supply projects;*
c. *Flood control projects where no other method for protecting existing structures in the floodplain is feasible, and where the protection is necessary for public safety;*
d. *Other development where the primary function is for the improvement of fish and wildlife habitat; and*
e. *Within the Inland area, other development where this requirement would preclude reasonable development of a lot.*

[19] Memo from P&D Biologist Melissa Mooney to Planner Julie Harris, dated November 19, 2009. Peer Review, "Biological Assessment and Impact analysis, 1192 East Mountain Drive" prepared by Rachel Tierney, June 15, 2009.

Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.

Inconsistent: The proposed project includes the following structures within a riparian corridor, specifically within a seasonal tributary of Hot Springs Creek: approximately 410 linear feet of site and retaining walls, 12 tree wells around native trees, and two pedestrian bridges to access a portion of the property. None of these structures are allowed by this MLUDC development standard. This development standard only allows bridges when no alternative route or location is feasible and when the bridge support structures are located outside of the critical habitat. In this case, the bridges' support structures are located within the banks of the creek and not outside the critical habitat, as required by the development standard. Furthermore, the applicant has not clearly established that this portion of the property is necessary to access by either of the two pedestrian footbridges crossing the seasonal tributary of Hot Springs Creek. Both of the lots on which this development was constructed are already fully developed with typical estate development including single family dwellings on each lot, several accessory structures and uses, and formal landscaping and lawn. The unpermitted development was not necessary to achieve reasonable use of the parcels as reasonable use is had, and sufficient land is available to support additional development or redevelopment on both lots without encroaching into the riparian corridor along the tributary and the main channel of Hot Springs Creek. Therefore, as none of the structures qualify as any of the structures allowed by this development standard, the proposed project is inconsistent.

Subsection 35.428.040.K.4. Riparian protection measures - Inland area. *Riparian protection measures shall be based on the project's proximity to riparian habitat and the project's potential to directly or indirectly damage riparian habitat through activities related to a Land Use Permit such as grading, brushing, construction, vehicle parking, supply/equipment storage, or the proposed use of the property. Damage could include vegetation removal/disturbance, erosion/sedimentation, trenching, and activities which hinder or prevent wildlife access and use of habitat. Prior to issuance of a Land Use Permit, the applicant shall include a note on the grading and building plans stating the following riparian habitat protection measures:*

a. A setback of 50 feet from either side of top-of-bank of the creek, that precludes all ground disturbance and vegetation removal; and

b. That protective fencing shall be installed along the outer buffer boundary at the applicant's expense prior to initiation of any grading or development activities associated with a Land Use Permit. Storage of equipment, supplies, vehicles, or placement of fill or refuse, shall not be permitted within the fenced buffer region.

Inconsistent: This development standard calls for protection measures to be placed on a project, particularly during construction, and to be based on the project's proximity to riparian habitat. The project is located within coast live oak riparian habitat, which was removed for unpermitted grading and construction and construction activities**.** Approximately 1.1 acres of primarily riparian vegetation, mapped as ESH, including at least 11 oak and six sycamore trees were removed from within the creeks and the upland area between the two creeks to construct a relatively level irrigated lawn. The applicant proposes to keep most of the irrigated lawn and all of the unpermitted development, including that which was constructed within the creek itself.

The fact that the damage has already occurred does not justify allowing the unpermitted development to remain. As no protection measures or buffers were applied to the project, it is not consistent with this subsection of the MLUDC.

Subsection 35.428.040.K.5. Onsite restoration required - Inland area. *Onsite restoration of any project-disturbed buffer or riparian vegetation within a creek shall be mandatory. A riparian revegetation plan, approved by the Director, shall be developed by a County approved biologist (or other experienced individual acceptable to the Director) and implemented at the applicant's expense. The revegetation plan shall use native species that would normally occur at the site prior to disturbance. The plan shall contain planting methods and locations, site preparation, weed control, and monitoring criteria and schedules.*

Inconsistent: The current project does not propose to restore the full extent of the riparian ESH vegetation that was removed or disturbed. The restoration plan proposes to retain all of the structural development and most of the lawn with native shrub plantings around the perimeter of the lawn; the proposed restoration plan does not reestablish the functions and values of a closed canopy and undisturbed riparian habitat, and consists of a decorative landscape of California native plants, including some that would not normally occur at the site prior to disturbance (California buckeye, Western redbud and *Ceanothus maritimus*). Therefore, the proposed project is not consistent with this development standard.

Subsection 35.428.050.C.1. Referral and determination. *Prior to the approval of a ... Land Use Permit (Section 472.110) ... all development subject to the FA [Flood Hazard] overlay zone shall be referred to the Flood Control District for a determination as to whether the development is subject to the requirements of County Code Chapter 15A. If the Flood Control District determines that the proposed development is subject to Chapter 15A, the development shall comply with the requirements of Chapter 15A.*

Inconsistent: P&D staff consulted with the Flood Control District on June 21, 2010.[20] The Flood Control District determined that at a minimum the Flood Plain Management Ordinance (Chapter 15A of the County Code) applies to the southern end of the property, where the south bridge is located, because this area is mapped as floodway. It is also likely that Chapter 15A would apply to the north bridge. Photos of the bridges indicate that as built they would not comply with the minimum requirements of Chapter 15A, which require the lowest soffit of the bridge to be located two feet above the base flood elevation. A hydrologic analysis using the HEC-2 model is required to specifically determine the base flood elevation and the bridges must be constructed at a minimum elevation of two feet above the base flood elevation. Although the north bridge is not located within the mapped floodway or floodplain it is located below the top of bank within the channel. Therefore, a model analysis is also required to determine the base flood elevation and the height above it at which the bridge must be constructed. Because the bridges are constructed below the creek bank it is highly unlikely that they would comply with the requirements of Chapter 15A. Thus, the project, as built, it does not comply with this subsection of the MLUDC.

7.4 Subdivision/Development Review Committee

[20] Personal communication with Flood Control District staff Nick Bruckbauer and Mike Parker, June 21, 2010.

Review by the Subdivision/Development Review Committee was not required because the project is the request for a Land Use Permit. However, staff consulted with the Flood Control District who reviewed the location of the bridges (one is located within the floodway and both are constructed below the top-of-bank) and photos of the bridges. The Flood Control District determined that, as built, the bridges do not comply with the County Flood Plain Management Ordinance. Should your commission take any action other than denial, *de novo*, of 09LUP-00000-00256, any further effort to approve the bridges would require the preparation of a hydrologic analysis, as discussed above and further review by the Flood Control District.

7.5 Design Review

With the consent of the applicant, the Montecito Board of Architectural Review did not review the project on July 26, 2010, given P&D's decision to move forward with denial of the LUP.

7.6 Montecito Growth Management Ordinance (MGMO)

The project does not involve the development of a new single family dwelling on a vacant parcel; therefore, the MGMO does not apply.

8.0 APPEALS PROCEDURE

The action of the Montecito Planning Commission may be appealed to the Board of Supervisors within 10 calendar days of said action. The appeal fee to the Board of Supervisors is $643.

ATTACHMENTS

A. Findings for Denial
B. CEQA Exemption
C. Site Plans (Penfield & Smith and Appleton & Associates)
D. Copy of Filed Appeal (including application, letter and exhibits)
E. April 8, 2009, Zoning Violation Letter
F. Initial Feedback Letter
G. P&D Letter to Applicant dated December 23, 2009, with Peer Review Memo and Exhibits
H. Historic Aerial Photographs
I. Site Photos

ATTACHMENT A: FINDINGS FOR DENIAL

Case No. 09LUP-00000-00256 / 10APL-00000-00016
October 27, 2010

1.0 CEQA FINDINGS

The Montecito Planning Commission finds that the proposed project is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270. Please see Attachment B, Notice of Exemption.

2.0 ADMINISTRATIVE FINDINGS

2.1 LAND USE PERMIT FINDINGS

2.A. Findings required for all Land Use Permits. In compliance with Subsection 35.472.110.E.1 of the Montecito Land Use and Development Code, prior to the approval or conditional approval of an application for a Land Use Permit the review authority shall first make all of the following findings:

2.A.1. The proposed development conforms:

2.A.1.a. To the applicable provisions of the Comprehensive Plan, including the Montecito Community Plan.

The development as installed and the proposal to keep the structural development, conduct some restoration, and install native landscaping around the site/retaining walls and the perimeter of the lawn do not conform to applicable provisions of the Comprehensive Plan. As discussed in Section 7.2 of the staff report dated October 8, 2010, and herein incorporated by reference, the project is inconsistent with policies and development standards of the Montecito Community Plan (MCP), adopted in 1992, to protect riparian environmentally sensitive habitats, oaks and other native trees, and is inconsistent with additional policies of the MCP and Land Use Element related to grading and flood hazards. Therefore, because the project is not consistent with these policies and development standards the project does not conform to the applicable provisions of the Comprehensive Plan, including the Montecito Community Plan, and this finding cannot be made.

2.A.1.b. With the applicable provisions of this Development Code [MLUDC] or falls within the limited exception allowed in compliance with Chapter 35.491 (Nonconforming Uses, Structures, and Lots).

The proposed development does not fall within the limited exception allowed under Chapter 35.491 of the Montecito Land Use and Development Code (MLUDC). As discussed in Section 7.3 of the staff report dated October 8, 2010, and herein incorporated by reference, the proposed project does not comply with the applicable provisions and development standards of the MLUDC that apply to development proposed on property subject to the Environmentally

Sensitive Habitat (ESH) Overlay and the Flood Hazard Overlay. Therefore, because the project does not comply with the applicable provisions and development standards, this finding cannot be made.

2.A.2. The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement fees and processing fees have been paid. This Subsection shall not be interpreted to impose new requirements on legal nonconforming uses and structures in compliance with Chapter 35.491 (Nonconforming Uses, Structures, and Lots).

The unpermitted activities and structures constitute a zoning violation and because they are not consistent with the Comprehensive Plan (including the Montecito Community Plan) or the Montecito Land Use and Development Code (MLUDC) they cannot be approved. Therefore, the subject property is not in compliance with all laws, regulations and rules of the MLUDC and this finding cannot be made.

2.B. Additional finding required for sites zoned Environmentally Sensitive Habitat (ESH) Overlay. In compliance with Subsection 35.428.040.C.3 of the Montecito Land Use and Development Code, prior to the issuance of a Land Use Permit for development located on sites designated with the ESH Overlay the review authority shall first find that the proposed development meets all applicable development standards in Subsection 35.428.040.D through Subsection 35.428.040.O.

The area of the unpermitted development is located within a mapped ESH Overlay for riparian habitat, confirmed by P&D Biologist (Melissa Mooney, memo to Julie Harris, dated November 19, 2009 and reconfirmed upon review of applicant appeal submittal information and subsequent site visit on September 24, 2010). Thus, the development standards of MLUDC Subsection 35.428.040.K apply. As discussed in detail in Section 7.3 of the staff report dated October 8, 2010, and herein incorporated by reference, the project does not comply with the applicable development standards of this Subsection, specifically Subsections 35.428.040.K.2, 35.428.040.K.4 and 35.428.040.K.5. Therefore, this finding cannot be made.

ATTACHMENT B: CEQA NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Julie Harris, Planning & Development

The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County Guidelines for the implementation of CEQA.

APN: 011-020-034 and 011-020-042 **Case No.:** 10APL-00000-00016
09LUP-00000-00256

Location: North of East Mountain Drive and along Hot Springs Creek and tributary, known as 1192 and 1194 East Mountain Drive,Montecito

Project Title: Bagdasarian-Karman Unpermitted Bridges, Retaining Walls, Site Alterations

Project Description: Ginger Andersen, agent for the owners Ross Bagdasarian and Janice Karman, requests approval of a Land Use Permit to abate Zoning Violation 09ZEV-00000-00042 (for APN 011-020-042) and 09ZEV-00000-00115 (for APN 011-020-034). The unpermitted activities include grading and construction of two pedestrian bridges within a tributary of Hot Springs Creek (on and below the top of bank), approximately 792 linear feet of retaining walls approximately four to six feet high (approximately 410 linear feet lining the east bank of the tributary to Hot Springs Creek), removal of an estimated 11 mature Coast Live Oak trees *(Quercus agrifolia),* impacts to at least six of the remaining oaks, and removal of six Western Sycamore trees *(Platanus racemosa)*, construction of 12 tree wells, numerous at grade stone borders and patios, installation of 0.5 to 0.7 acres of irrigated lawn, and installation of approximately 300 linear feet of a *Myoporum* hedge, a nonnative plant material along the top of the west bank of Hot Springs Creek. All development occurred within Environmentally Sensitive Habitat (ESH). The removal of approximately 1.1 acres of the riparian ESH, including the trees as well as understory vegetation, occurred to support the grading, structural development, and installation of the relatively level, irrigated lawn.

The applicant requests after-the-fact approval of the Land Use Permit to keep all of the structures and the majority of the lawn. In addition, the proposal includes partial habitat restoration (specifically, removal of an undetermined amount of *Arundo donax* within a larger 0.40-acre area Hot Springs Creek, sycamore/oak woodland restoration in 0.22 acres of the southeast corner of the lot, and weed removal and native planting along the banks of the tributary below the wall) and landscaping with native plants, not all of which are locally occurring, within the creeks' banks, around the margins of the lawn, and within an area used for stockpiling of rock in the southeast corner of the site.

The applicant also removed a portion of ESH (approximately 0.13 acres) from the adjacent property to the east without the consent of the neighboring property owner. The applicant does not propose to restore this area.

Name of Public Agency Approving Project: County of Santa Barbara
Name of Person or Agency Carrying Out Project: Ginger Andersen, agent for owners Ross Bagdasarian and Janice Karman

Exempt Status: (Check one)
_____ Ministerial
__√__ Statutory Exemption
_____ Categorical Exemption
_____ Emergency Project
_____ Declared Emergency

Cite specific CEQA and/or CEQA Guideline Section: 15270

Reasons to support exemption findings: This exemption applies to projects which are disapproved. As discussed in Sections 7.2 and 7.3 of the staff report dated October 8, 2010, (herein incorporated by reference), and the findings in Attachment A of the staff report dated October 8, 2010 (herein incorporated by reference) the proposed project is not consistent with the adopted General Plan, including the Montecito Community Plan and the Montecito Land Use and Development Code. Therefore, the project cannot be approved and this exemption from CEQA applies.

Lead Agency Contact Person: Julie Harris Phone #: (805) 568-3518

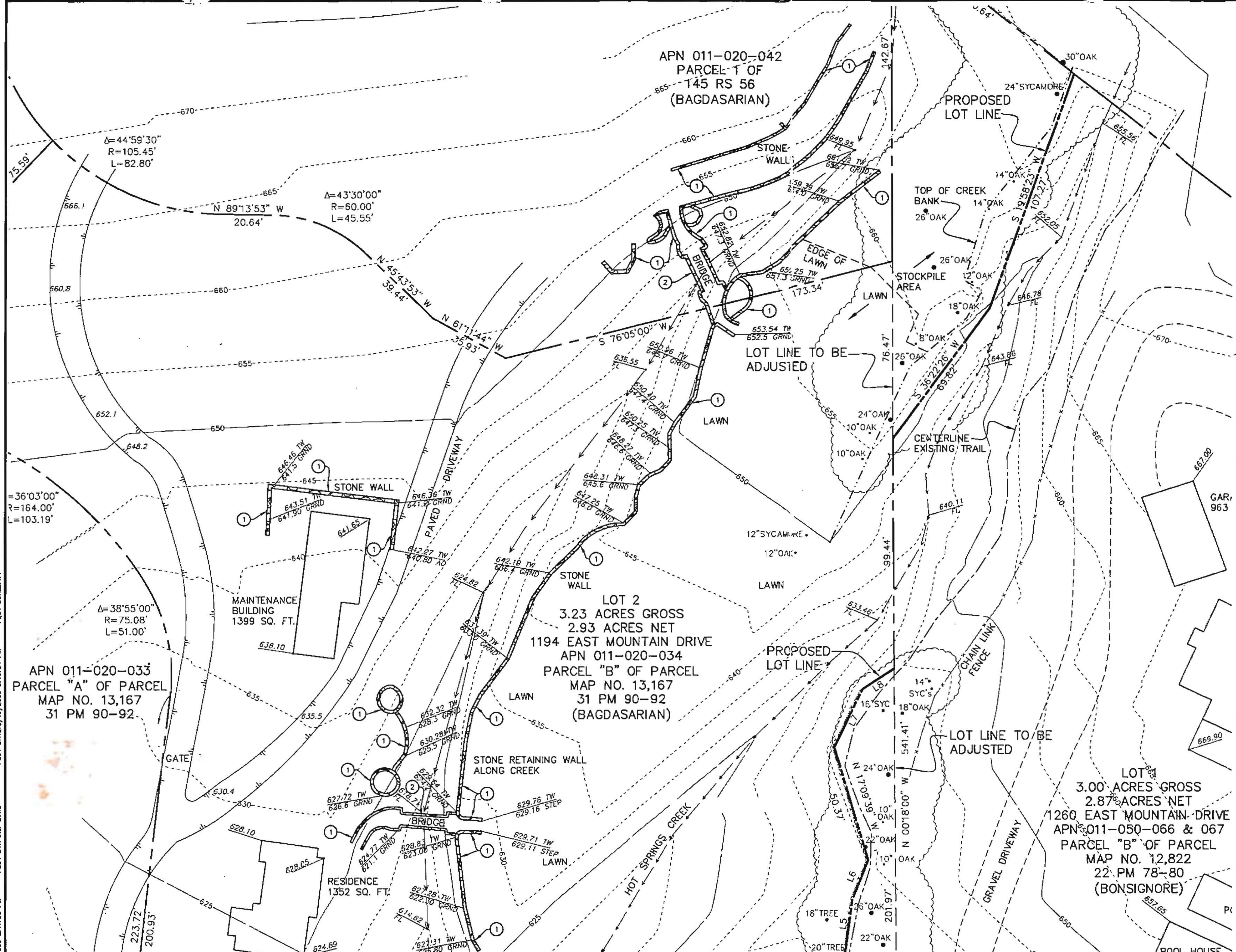
Department/Division Representative: _____ Date: _____

Acceptance Date: _____

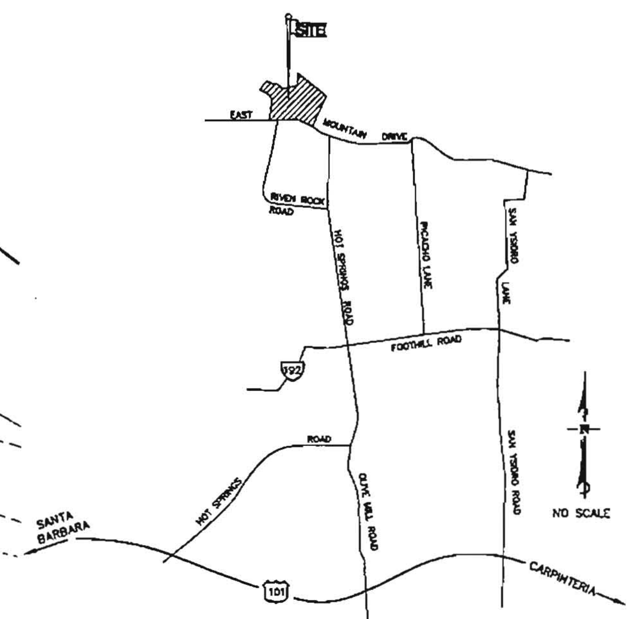
distribution: Hearing Support Staff

Project file
Date Filed by County Clerk: _____.

ATTACHMENT C



VICINITY MAP:



SURVEYOR'S NOTES:

1. TOPOGRAPHIC MAPPING

THE TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED UPON FIELD SURVEYS CONDUCTED BY PENFIELD AND SMITH IN JULY, 2007, AND IN JANUARY, 2009, AND HAS BEEN COMPILED AT A SCALE OF 1 INCH = 30 FEET, WITH A CONTOUR INTERVAL OF 5 FEET. THE VERTICAL DATUM IS NAVD 88, BASED UPON GPS TIES TO STATION "P&S01" PER RECORD OF SURVEY BOOK 170, PAGES 1 AND 2, FILED IN THE OFFICE OF THE SANTA BARBARA COUNTY RECORDER.

2. BOUNDARY INFORMATION

THE BOUNDARY AND INFORMATION SHOWN HEREON HAS BEEN COMPILED FROM RECORD PER PARCEL MAP NOS. 13,167 AND 12,822, RECORDED IN THE OFFICE OF THE SANTA BARBARA COUNTY RECORDER IN BOOK 31, PAGES 90-93, AND BOOK 22, PAGES 78-80, OF PARCEL MAPS, RESPECTIVELY. THE RECORD BEARINGS PER PARCEL MAP 12,822 HAVE BEEN ROTATED 0°14'41" COUNTER-CLOCKWISE FOR THE PURPOSES OF THIS COMPILATION. THIS MAP DOES NOT REPRESENT A BOUNDARY ESTABLISHMENT SURVEY.

THIS MAP WAS PREPARED IN CONJUNCTION WITH PRELIMINARY TITLE REPORTS ISSUED BY CHICAGO TITLE COMPANY AS ORDER NOS. 09-77501386-AM AND 09-77501388-AM, DATED FEBRUARY 5, 2009. SAID REPORTS ARE PRESUMED TO BE COMPLETE AND ACCURATE. PENFIELD AND SMITH DOES NOT WARRANT THE COMPLETENESS OR ACCURACY OF SAID REPORTS.

WALL CONSTRUCTION NOTES:

(1) RETAINING WALL CONSTRUCTED PER DETAILS "A", "B", "C", AND "D" ON SHEET 2.

(2) BRIDGE CONSTRUCTED PER DETAILS "E" AND "F" ON SHEET 2.

NO.	DATE	REVISIONS	APPD.
1	5/20/09	BUILDING AND SAFETY SUBMITTAL REQUEST	

Penfield & Smith
Engineering · Surveying · Planning · Construction Management ·
111 East Victoria Street, Santa Barbara, CA 93101
Phone: (805) 963-9532 Fax: (805) 966-9801

DESIGN: PAS CHECKED: ______
PETE A. SILVIA DATE: ______
PROJECT ENGINEER
R.C.E. 70,435 (EXP. 9-30-10)

REGISTERED PROFESSIONAL ENGINEER PETER A. SILVIA NO 70435 EXPIRES 9/30/10 CIVIL STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA
REVIEWED BY:
SIGNATURE DATE

BRIDGES & RETAINING WALL LAYOUT
BAGDASARIAN AS-BUILT BRIDGES & RETAINING WALLS
1192 EAST MOUNTAIN DRIVE
MONTECITO, CA.

P&S PROJECT NO. 17936.02
SHEET 1 OF 2
PLAN DATE MAY, 2009

36-ENG SAVE DATE: 5/19/2009 2:11:50 PM PLOT BY: Peter Silva PLOT DATE: 5/19/2009 3:19:34 PM PLOT SCALE: 1:1

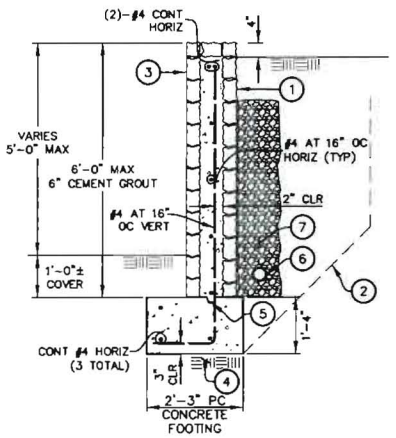
DRAWING: r:\acad\work\17936\17936details.dwg

GENERAL NOTES:

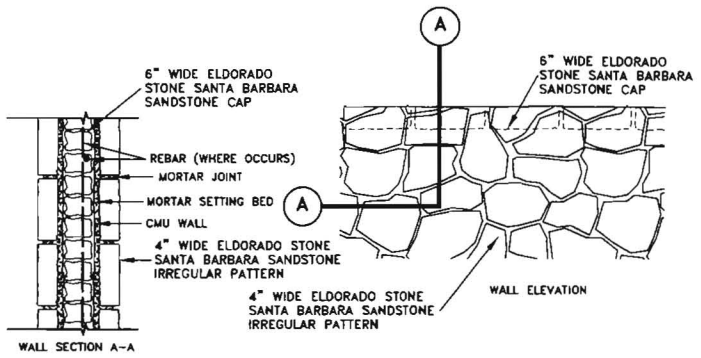
1. THE DETAILS SHOWN HEREIN ARE ASSUMED "AS-BUILT" SECTIONS PER CONVERSATIONS WITH THE OWNER AND PHOTOGRAPHS TAKEN DURING A FIELD VISIT ON APRIL 3, 2009.
2. PENFIELD & SMITH CANNOT WARRANT THE COMPLETENESS OF THE DETAILS SHOWN AND SHALL NOT BE HELD RESPONSIBLE FOR THEIR ACCURACY.

WALL CONSTRUCTION NOTES:

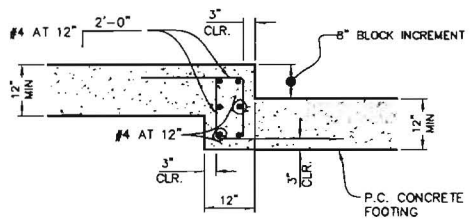
1. CONSTRUCT WATERPROOFING AT BACK OF WALL.
2. CONSTRUCT GRANULAR NON-EXPANSIVE BACKFILL COMPACTED TO A MINIMUM 90% RELATIVE COMPACTION (UNLESS NOTED OTHERWISE) AT A 1:1 SLOPE FROM BOTTOM OF FOOTING TO A HORIZONTAL DISTANCE NO LESS THAN 60% OF RETAINED SOIL HEIGHT.
3. CONSTRUCT 4" WIDE SANTA BARBARA SANDSTONE VENEER WITH IRREGULAR PATTERN PER DETAILS "B" AND "D", THIS SHEET.
4. UNDISTURBED ORIGINAL GROUND OR SUBGRADE COMPACTED TO 90% RELATIVE COMPACTION.
5. CONSTRUCT 2x KEYWAY AT CONCRETE CONSTRUCTION JOINTS.
6. CONSTRUCT CONTINUOUS 4-INCH PERFORATED PIPE AT TOP OF FOOTING AND DRAIN TO DAYLIGHT.
7. CONSTRUCT MINIMUM 12" WIDE FILTER FABRIC WRAPPED GRAVEL COLUMN AT BACK OF WALL TO WITHIN 12" OF FINISH SURFACE BEHIND WALL.



TYPICAL RETAINING WALL SECTION (A/2)
SCALE: 1" = 2'

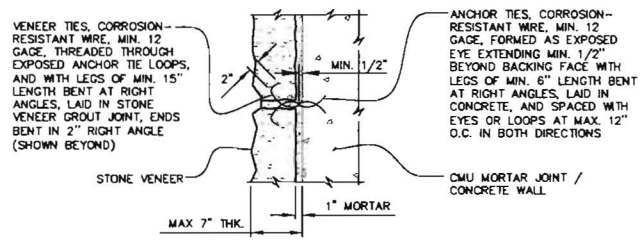


WALL STONE FINISH DETAIL (B/2)
SCALE: N.T.S.



NOTE: REINFORCEMENT SHOWN IS IN ADDITION TO THAT SHOWN IN THE WALL DETAIL(S).

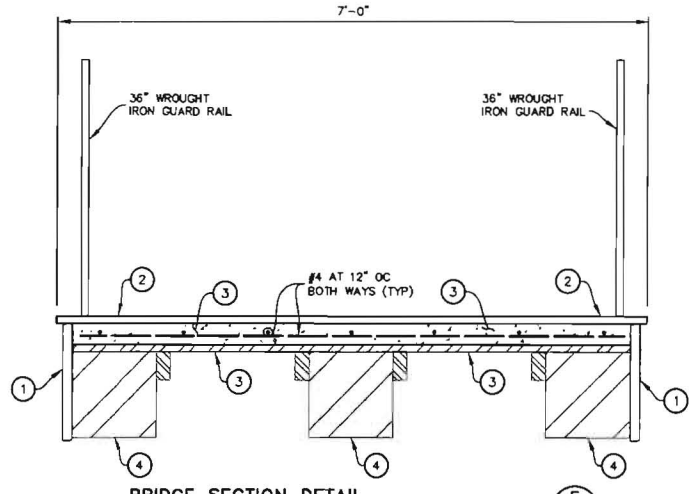
TYPICAL SPREAD FOOTING STEP DETAIL (C/2)
SCALE: N.T.S.



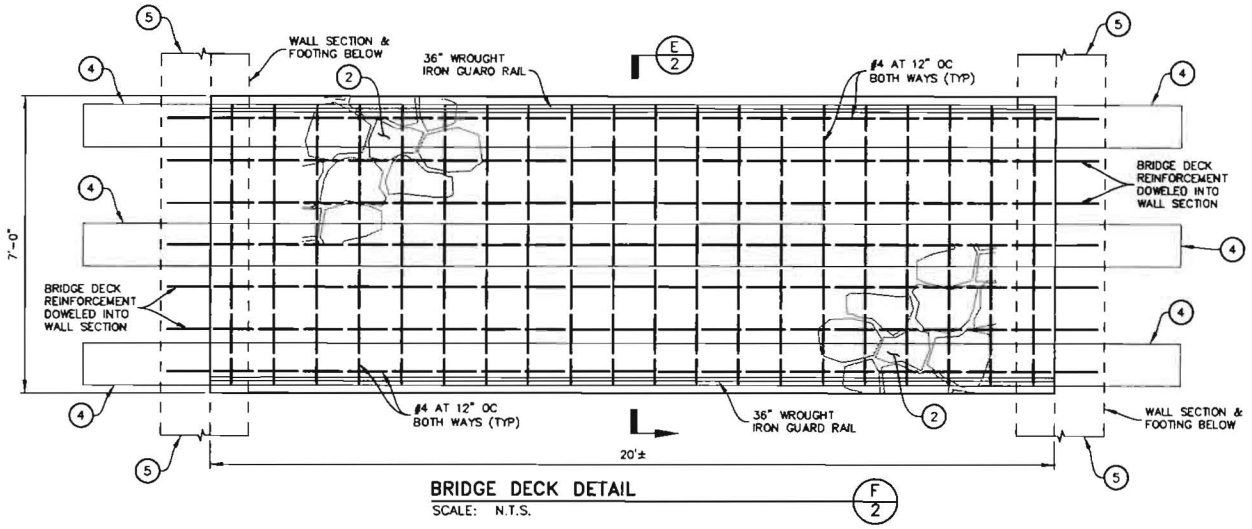
TYPICAL STONE VENEER ATTACHMENT DETAIL (D/2)
SCALE: N.T.S.

BRIDGE CONSTRUCTION NOTES:

1. CONSTRUCT 2" WIDE SANTA BARBARA SANDSTONE VENEER WITH SAME IRREGULAR PATTERN PER DETAIL "B", THIS SHEET.
2. CONSTRUCT 1" THICK FLAGSTONE WITH SAME IRREGULAR PATTERN PER DETAIL "B", THIS SHEET.
3. CONSTRUCT 3" THICK CEMENT GROUT ABOVE 1" THICK PLYWOOD.
4. CONSTRUCT 12"X12" WOOD BEAMS. EMBED 36" INTO BRIDGE ABUTMENTS.
5. BRIDGE ABUTMENTS PER WALL DETAILS THIS SHEET.



BRIDGE SECTION DETAIL (E/2)
SCALE: N.T.S.



BRIDGE DECK DETAIL (F/2)
SCALE: N.T.S.

WALL PHOTOS

BRIDGE PHOTOS

NO.	DATE	REVISIONS	APPD.
1	5/20/09	BUILDING AND SAFETY SUBMITTAL REQUEST	

Penfield & Smith
Engineering · Surveying · Planning · Construction Management
111 East Victoria Street, Santa Barbara, CA 93101
Phone: (805) 963-9532 Fax: (805) 966-9801

DESIGN PAS CHECKED
PETE A. SILVIA DATE:
PROJECT ENGINEER
R.C.E. 70,435 (EXP. 9-30-10)

REGISTERED PROFESSIONAL ENGINEER · PETER A. SILVIA · NO 70435 · Expires 9/30/10 · CIVIL · STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA
REVIEWED BY:
SIGNATURE DATE

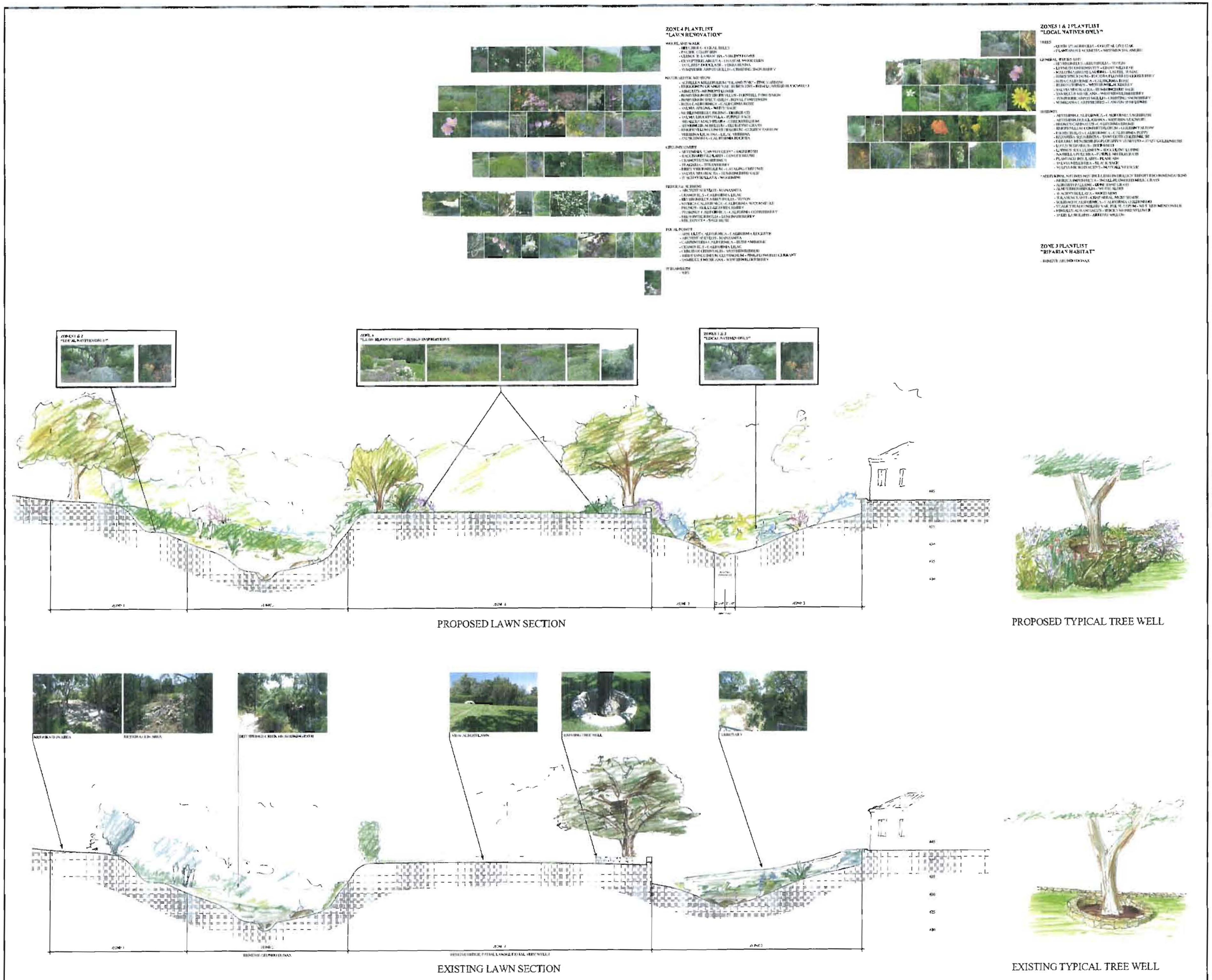
BRIDGE & RETAINING WALL DETAILS
BAGDASARIAN AS-BUILT BRIDGES & RETAINING WALLS
1192 EAST MOUNTAIN DRIVE
MONTECITO, CA

P&S PROJECT NO. 17936.02
SHEET 2 OF 2
PLAN DATE MAY, 2009

PLOT SCALE:1:1 PLOT DATE:5/19/2009 3:20:19 PM PLOT BY:Peter Silvia 36-ENG SAVE DATE: 5/19/2009 2:11:50 PM
DRAWING:r:\acad\work\17936\17936detail.dwg

KEY PLAN

A1.2		Project Name Enter address here	SITE RESTORATION	Appleton & Associates, INC ARCHITECTS 117 W. Micheltorena St. Santa Barbara, CA 93101 FAX



SITE SECTIONS

Restoration
1192 East Mountain Dr.
Montecito, CA 93108

Appleton & Associates, Inc
ARCHITECTS
317 W. Micheltorena St.
Santa Barbara, CA 93101
805 965-0304
FAX 805 560-8815

A1.4

ATTACHMENT D

PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: 1192 and 1194 East Mountain Drive, Montecito, California

ASSESSOR PARCEL NUMBER: APN 011-020-034 & 011-020-042

PARCEL SIZE (acres/sq.ft.): Gross 3.23 acres Net 2.93 acres

COMPREHENSIVE/COASTAL PLAN DESIGNATION: SRR-0.33 ZONING: 3-E-1

Are there previous permits/applications? ☐no ☒yes numbers: 09LUP-00000-00256; Related Case No. 09ZEV-00000-00042; 09ZEV-00000-00115

(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? ☐no ☐yes numbers:

1. **Appellant:** Ross Bagdasarian, Jr. & Janice F. Karman Phone: (805) 969-3349 FAX:

Mailing Address: 1192 East Mountain Drive, Montecito, CA 93108 E-mail:
Street City State Zip

2. **Owner:** Ross Bagdasarian, Jr. & Janice F. Karman Phone: (805) 969-3349 FAX:

Mailing Address: 1192 East Mountain Drive, Montecito, CA 93108 E-mail:
Street City State Zip

3. **Agent:** Ginger Andersen, Penfield & Smith Phone: (805) 963-9532 ext. 182 FAX: (805) 966-9801

Mailing Address: 111 E. Victoria Street, Santa Barbara, CA 93101 E-mail: gca@penfieldsmith.com
Street City State Zip

4. **Attorney:** Richard C. Monk, Hollister & Brace Phone: (805) 963-6711 FAX: (805) 965-0329

Mailing Address P. O. Box 630, Santa Barbara, CA 93102 E-mail: rcmonk@hbsb.com
Street City State Zip

10APL-00000-00016 JNTY USE ONLY

Case Number BAGDASARIAN-KARMAN SITE ALT/RET WAL
Supervisorial 1192 E MOUNTAIN DR 8/5/10
Applicable Zo
Project Plann SANTA BARBARA 011-020-042
Zoning Designation

Companion Case Number:
Submittal Date:
Receipt Number:
Accepted for Processing
Comp. Plan Designation

COUNTY OF SANTA BARBARA APPEAL TO THE :

_____ **BOARD OF SUPERVISORS**

__X__ **PLANNING COMMISSION:** _____**COUNTY** __X__ **MONTECITO**

RE: Project Title Bagdasarian/Karman Site Alterations, Retaining Walls, Bridges

Case No: 09LUP-00000-00256

Date of Action: July 26, 2010

I hereby appeal the _____approval _____approval w/conditions __X__denial of the:

_____Board of Architectural Review – Which Board? _____

_____Coastal Development Permit decision

__X__Land Use Permit decision

_____Planning Commission decision – Which Commission? _____

__X__Planning & Development Director decision

_____Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

__X__ Applicant

_____ Aggrieved party – if you are not the applicant, provide an explanation of how you are and "aggrieved party" as defined on page two of this appeal form:

_____

_____

_____

_____

_____

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

See Appeal Grounds attached hereto as Exhibit "A", and incorporated herein by reference.

Specific conditions imposed which I wish to appeal are (if applicable):

a. _____

b. _____

c. _____

d. _____

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Print name and sign – Firm — Date

Print name and sign - Preparer of this form — Date

Ross Bagdasarian — 8/5/10

Print name and sign - Applicant — Date

Ginger Andersen, MCRP AICP
Penfield & Smith — 8/5/10

Print name and sign - Agent — Date

Ross Bagdasarian and Janice Karman — 8/5/10

Print name and sign - Landowner — Date

Richard C. Monk, Attorney at Law - Hollister & Brace

Print name and sign- — Date

EXHIBIT "A"

APPEAL GROUNDS

1. The decision of the Planning & Development Director (the "Director's decision") regarding the extent and limits of the environmentally sensitive habitat ("ESH") on Appellant's property and the total amount of habitat removal is erroneous and not supported by substantial evidence in the record. Moreover, there is a disagreement among experts as to the limit of the ESH and the amount of habitat removal. The Montecito Community Plan ("MCP") mapping of the ESH is associated with Hot Springs Creek, not the secondary drainage around which the walls and bridges were installed. The Director's decision erroneously interprets the entire project site as ESH with no substantial evidence to support said interpretation. Appellant retained Rachel Tierney, a qualified biologist who concluded that the secondary drainage where the walls and bridges were installed "is separate from the main channel and is not mapped as ESH in the MCP." **Exhibit No. 1**

2. The Director's decision mandating the removal of the walls and bridges would cause substantially more disturbance than leaving said walls and bridges intact and implementing Appellant's proposed restoration Plan. Appellant retained David Gress, a qualified arborist, who opined that "removing the completed rock features of the project could result in greater damage to the trees and is not recommended. Alternative measures can be taken to minimize the impacts from development." **Exhibit No. 2**

3. Appellant's proposed Restoration Plan incorporates input from a local professional horticulturist, biologist, and an arborist. These professionals collectively opine that the Restoration Plan would be beneficial over baseline conditions. The Appellant's proposed Restoration Plan would include removal of invasive exotic *Arundo donax* in the Hot Springs Creek corridor. Appellant's proposed Restoration Plan was initially very positively received by Planning & Development Staff in verbal communications with Appellant's development team.

4. Appellant's proposed Restoration Plan would not only decrease the amount of remaining lawn, but would restore a great amount of area around the existing walls and bridges.

5. Appellant's proposed plant palette for the Restoration Plan was carefully selected by a local qualified horticulturist and includes a number of local native plants.

6. Appellant retained David Gress, a qualified arborist, and has consented to his recommendation to replant a total more than fifty (50) Coast Live Oak saplings and eighty (80) California Sycamores to mitigate impacts of the development.

7. Appellant's proposed Restoration Plan would implement thirteen (13) additional tree protection measures to protect and enhance oaks and sycamores on the Project site.

8. The benefits of the amount of off-site restoration that could be achieved within-lieu fees exceed the benefit of removing the walls and bridges and limiting restoration to Appellant's property. Moreover, the walls are less than six (6) feet in height. The Montecito Land Use & Development Code does not require permits for walls under six (6) feet when they are not located in an ESH.

9. Early meetings between the Appellant and Appellant's agents and the County led the Appellant to believe that additional time and money put toward restoration could result in an after-the-fact approval by the County.

The following policies were addressed in the Director's Denial. The Appellant's responses are as follows:

(BIO-M-1.7) *Structures within riparian habitat. No structure shall be located within a riparian corridor except public trails that would not adversely affect existing habitat; dams necessary for water supply projects; flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety; or other development where the primary function is for the improvement of fish and wildlife habitat and where this requirement would preclude reasonable development of a lot. Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.*

35.428.040.K.2. *Prohibition on development within a riparian corridor. No structure shall be located within a stream corridor except:*
a. Public trails that would not adversely affect existing habitat;
b. Dams necessary for water supply projects;
c. Flood control projects where no other method for protecting existing structures in the floodplain is feasible, and where the protection is necessary for public safety;
d. Other development where the primary function is for the improvement of fish and wildlife habitat; and
e. Within the Inland area, other development where this requirement would preclude reasonable development of a lot.

Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.

Response As reported in Ms. Tierney's *Biological Assessment and Impact Analysis for 1192 East Mountain Drive*, (Exhibit No. 3 hereto) "The secondary drainage, with the exception of the extreme southern and northern extremities of the property, is not included within the ESH designation. In 2001, as in present time, this feature does not exhibit the characteristics of a "riparian woodland corridor" for the following reasons. The size of the drainage signifies that its capacity remains very low compared to the main fork. Secondly, vegetation, including non-native grasses and other decidedly upland plants, had matured within the lowest part of the bed, suggesting that the drainage may only carry flows on a very occasional basis and possibly only on very wet years. This section is also not identified as ESH on the County Map (Figure 21, County of Santa Barbara, 1992), which is in agreement with this interpretation of the drainage not being high quality habitat at the time the map was created (1992)." Based on this interpretation, the structures are not within the Riparian corridor.

The implementation of the proposed Restoration Plan, shown graphically in the Appleton & Associates Restoration plan sets dated June 8 , 2010, and discussed in Rachel Tierney's *Biological Assessment and Impact Analysis for 1192 East Mountain Drive* (Exhibit No. 3 hereto) and supplemented by Dave Gress' *Arborist Report: Bagdasarian/Karman Site Alterations* (Exhibit No. 2 hereto) will enhance the riparian functioning of the affected area as well as improve habitat value as mentioned in item 35.428.040.K.2.d above, along both Hot Springs Creek and the secondary drainage.

With the suggested plantings of the Gress and Tierney reports mentioned above, approximately 200 new Coast Live Oak and California Sycamore trees will be planted, for a net benefit over previous conditions totaling approximately 150 new saplings and trees. Additionally, as part of the restoration plan, the owner proposes to restore 0.87 acres on the site and contribute $35,000 per acre of in-lieu fees for offsite restoration. This plan will result in a net benefit to both the subject parcel and another site(s). Removal of the walls and bridges would introduce additional disturbance to the area, and work conversely to the stated goal of "minimiz[ing] impact to the greatest extent."

35.428.040.K.4 *Riparian protection measures - Inland area. Riparian protection measures shall be based on the project's proximity to riparian habitat and the project's potential to directly or indirectly damage riparian habitat through activities related to a Land Use Permit such as grading, brushing, construction, vehicle parking, supply/equipment storage, or the proposed use of the property. Damage could include vegetation removal/disturbance, erosion/sedimentation, trenching, and activities which hinder or prevent wildlife access and use of habitat. Prior to issuance of a Land Use Permit, the applicant shall include a note on the grading and building plans stating the following riparian habitat protection measures:*

a. A setback of 50 feet from either side of top-of-bank of the creek, that precludes all ground disturbance and vegetation removal; and

b. That protective fencing shall be installed along the outer buffer boundary at the applicant's expense prior to initiation of any grading or development activities associated with a Land Use Permit. Storage of equipment, supplies, vehicles, or placement of fill or refuse, shall not be permitted within the fenced buffer region.

BIO-M-1.3.1 *Setback or buffer required. An applicant proposing new development within 100 feet of an ESH, shall include setbacks or undeveloped buffer zones from the habitat area as part of the proposed development, except where setbacks or buffer zones would preclude reasonable development of the lot. In determining the location, width and extent of setbacks and buffer zones, the Department shall refer to the Montecito Biological Resources Map as well as other available data (e.g., maps, studies, or observations). If the project would result in potential disturbance to the habitat, a restoration plan shall be required. When restoration is not feasible onsite, offsite restoration may be considered.*

(BIO-M-1.6) *Buffer requirement. Riparian vegetation shall be protected as part of a stream or creek buffer. Where riparian vegetation has previously been removed (except for channel cleaning necessary for free-flowing conditions as determined by the Flood Control District), the buffer shall allow the reestablishment of riparian vegetation to its prior extent to the greatest degree possible. The restoration of degraded riparian areas to their former state shall be encouraged.*

(BIO-M-1.3.2) *Habit Restoration Plan for zoning violations. If a zoning violation results in the degradation of an ESH, the applicant shall be required to prepare and implement a habitat restoration plan. Degraded or disturbed portions of an ESH area outside of a formal landscaping plan shall be restored with appropriate native species to offset increased development and increased human and domestic animal presence.*

35.428.040.K.5. *Onsite restoration required - Inland area. Onsite restoration of any project-disturbed buffer or riparian vegetation within a creek shall be mandatory. A riparian revegetation plan, approved by the Director, shall be developed by a County approved biologist (or other experienced individual acceptable to the Director) and implemented at the applicant's expense. The revegetation plan shall use native species that would normally occur at the site prior to disturbance. The plan shall contain planting methods and locations, site preparation, weed control, and monitoring criteria and schedules.*

Response As noted in Rachel Tierney's response to Melissa Mooney's comments, the secondary drainage is not mapped ESH area. As shown in Ms. Tierney's response, the walls and bridges appear to be more than 50 feet from the edge of the ESH associated with Hot Springs Creek.

As observed by Ms. Tierney in the *Biological Assessment and Impact Analysis for 1192 East Mountain Drive* (Exhibit No. 3 hereto) , "there were no impacts to the main fork of Hot Springs Creek, other than loss of adjacent trees." Tree replacement is proposed in both Ms. Tierney's concept restoration plan as part of that report, as well as by Mr. Gress in his *Arborist Report: Bagdasarian/Karman Site Alterations*. Additionally, a Restoration plan for the entire area of disturbance has been proposed to the County to mitigate impacts to trees and apparent loss of ESH during installation of a portion of the lawn area. Ms. Tierney used the Montecito Biological Resources Map as suggested by this policy and aerial photo interpretation to support her conclusion.

As part of the overall Restoration Plan, the Appellant proposes to restore 0.87 acres on the site through planting of trees, removal of non-native mustards, thistles and Arundo and hydroseed a variety of oak woodland species including California Poppy, Purple needlegrass, California Sagebrush, and mugwort amongst others. The plan treats the restoration area in three zones: Zone 1 being a triangle section of the property in the southeast corner of the property for "Local native restoration"; Zone 2 for native restoration located along the secondary drainage; and Zone 3 for riparian restoration along Hot Springs Creek, and a lawn renovation in the area of the existing lawn.

The locally native restoration areas (Zones 1 and 2) would include planting of the coast live oaks and western sycamores, as well as use of species such as toyon, wild rye, sumac, California rose, western blackberry, hummingbird sage, creeping snowberry, California sagebrush, California poppy, deer weed, coast goldenbush, black sage and purple needlegrass amongst others.

In Zone 3, Hot Springs Creek and its banks, the Restoration Plan includes removal of the highly invasive, non-native Arundo donax.

The lawn renovation area would be renovated to include several elements and a plant palette appropriate for the site as proposed by Carol Bornstein with collaboration from Rachel Tierney. First, a 'woodland walk' including such plants as the Pacific Coast iris, coral bells, virgins bower, coastal wood fern, yerba Buena and creeping snowberry. Second, a naturalistic meadow with plants such as white sage, monkeyflower, pink yarrow, deergrass, purple sage, blue-eyed grass and the like. Third, groundcovers would be incorporated including canyon grey sagebrush, coyote brush, strawberry, hummingbird sage and woodmint. Hedges and Screens would also be incorporated including plants such as California Lilac, Toyon, California wax murtle, coffeeberry, lemonadeberry and sage brush. Focal points would include California buckeye, bush anemone, California lilac, western redbud and western elderberry amongst others.

In addition to the onsite restoration proposed, offsite restoration is also proposed for over an acre of area. The proposed fee amount as proposed in Ms. Tierney's *Biological Assessment and Impact Analysis for 1192 East Mountain Drive* is ($35,000/acre) and "is based upon the compensation costs that would otherwise be necessary to restore, enhance, create or preserve habitat with similar functions or values to the one effected." The Appellant has had preliminary discussions with both the Land Trust for Santa Barbara and The Carpinteria Creek Watershed Coalition. According to Ms. Tierney's report, "both organizations have experience with this form of funding and both have upcoming restoration projects within riparian woodland habitats."

BIO-M-1.15, BIO-M-1.15.1) *Specimen tree preservation. Specimen trees shall be preserved to the maximum extent feasible. For the purposes of this requirement, specimen trees are defined as mature trees that are healthy and structurally sound, and have grown into the natural stature particular to the species. Native or non-native trees that have unusual scenic or aesthetic quality, have important historic value, or are unique due to species type or location shall be preserved to the maximum extent feasible.*

(BIO-M-1.16) *Native tree preservation. All existing native trees that have biological value shall be preserved to the maximum extent feasible, regardless of their size.*

(BIO-M-1.17) *Oak tree protection. Oak trees shall be protected to the maximum extent feasible, because they are particularly sensitive to environmental conditions. All land use activities, including agriculture shall be carried out in a manner to avoid damage to native oak trees. The regeneration of oak trees shall be encouraged.*

Response As previously mentioned, David Gress a local qualified Arborist prepared a report including recommendations for tree replacement and additional protection measures for the remaining tress on site (Exhibit No. 2 hereto). His professional opinion is that "removing the completed rock features of the project could result in greater damage to the trees and is not recommended. Alternative measures can be taken to minimize the impacts from development." Approximately 200 trees will be replanted between those proposed as mitigation for trees lost per

Rachel Tierney's *Biological Assessment and Impact Analysis for 1192 East Mountain Drive* (Exhibit No. 3 hereto) and those recommended to be planted as mitigation for impacts to remaining trees on site by Mr. Gress. In addition to those approximately 200 trees, Mr. Gress outlined, and Appellant consented to conform to an additional 13 tree preservation techniques to "minimize the disturbance and impact to the [remaining] trees" and "for the maintenance and preservation of the trees and any additional work on the project if permitted." Thus, an approval of the project would result in a great deal of new plantings and protection of trees.

Land Use Element Hillside and Watershed Protection Policies

1. Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.

2. All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.

Response Pre-project topographical information is limited and of poor quality, therefore the total amount of grading to achieve the current topography is unknown. Generally speaking however, the grading that would have occurred to create the flat lawn area consisted, by the Appellant's account, of removing large boulders and largely keeping the existing contours. The walls and bridges were installed along the slopes of an existing secondary drainage, and therefore the amount of grading associated with their construction is reported to have been minimal. In order to remove the subject structures however, a great deal of additional disturbance would need to occur which would further alter the site topography.

Flood Hazard Area Policies

The intent of the Flood Hazard Area policies is to avoid exposing new developments to flood hazards and reduce the need for future flood control protective works and resulting alteration of stream and wetland environments by regulating development within the 100 year flood plain.

1. All development, including construction, excavation, and grading, except for flood control projects and non-structural agricultural uses, shall be prohibited in the floodway unless off-setting improvements in accordance with HUD regulations are provided. If the proposed development falls within the floodway fringe, development may be permitted, provided creek setback requirements are met and finish floor elevations are above the projected 100-year flood elevation, as specified in the Flood Plain Management Ordinance.

2. Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds for flood control works, i.e., dams, stream channelizations, etc.

C. Permit and processing requirements.

1. Referral and determination. Prior to the approval of a Coastal Development Permit (Section 35.472.050) or Land Use Permit (Section 35.472.110) or a Zoning Clearance in compliance with Section 35.472.190 (Zoning Clearances), all development subject to ***the FA overlay zone*** *shall be*

referred to the Flood Control District for a determination as to whether the development is subject to the requirements of County Code Chapter 15A. If the Flood Control District determines that the proposed development is subject to Chapter 15A, the development shall comply with the requirements of Chapter 15A. If the Flood Control District determines that the proposed development is not subject to Chapter 15A, the development is exempt from the requirements of Chapter 15A.

Response While the Hot Springs Creek watershed may "generate heavy debris flows," the upstream section of the secondary drainage does not appear connected to Hot Springs Creek, and as reported by the Appellant, does not experience a large amount of stormwater or debris even in heavy rainfall events. The secondary drainage and Creek do connect only at the confluence at the very southern edge of the property at the culvert under East Mountain Drive. Ms. Tierney's Exhibit contained within the response to Ms. Mooney's comments (Exhibit No. 1 hereto) indicate that a connection between the secondary drainage and Hot Springs Creek at the northern end of the property as shown on the County's mapping does not exist.

The Director's Findings note that Staff discussed the project with the Flood Control District on June 21, 2010 a little over one month before the Director Denied the project. The Appellant was not notified of that communication until the Appellant's failed Montecito Board of Architectural Review meeting and receipt of the Director's Denial on July 26, 2010. In addition, flood control issues were not communicated by the County to the Appellant in their previous correspondences. The Appellant requests the opportunity to discuss the project with the Flood Control.

Montecito Community Plan Policy FD-M-2.1

Groundwater recharge. Development shall be designed to minimize the threat of onsite and downstream flood potential and to allow recharge of the groundwater basin to the maximum extent feasible.

Response It is unlikely that the walls or bridges have an impact on groundwater recharge. Further, with the removal of invasive exotics proposed for Hot Springs Creek, native species will be able to establish in their place, improving the stream health and functioning and likely benefiting downstream water quality as it relates to erosion and sediment load of stormwater.

Further, and as stated above, the upstream section of the secondary drainage does not appear to be connected to Hot Springs Creek, and as reported by the Appellant, does not experience a large amount of stormwater or debris even in heavy rainfall events. The secondary drainage and Creek connect only at the confluence at the very southern edge of the property at the culvert under East Mountain Drive. Ms. Tierney's Exhibit contained within the response to Ms. Mooney's comments (Exhibit No. 1 hereto) indicate that a connection between the secondary drainage and Hot Springs Creek at the northern end of the property as shown on the County's mapping does not exist.

35.428.040 *- Environmentally Sensitive Habitat (ESH) Overlay Zone*

A. Purpose and intent. The Environmentally Sensitive Habitat Area (ESH) overlay zone is applied to areas with unique natural resources and/or sensitive animal or plant species, where existing and potential development and other activities may despoil or eliminate the resources. This overlay zone is intended to:

1. Protect and preserve specified areas in which plant or animal life or their habitats are either rare or especially valuable because of their role in the ecosystem, and that could be easily disturbed or degraded by human activities and developments; and
2. Ensure that each project permitted in the overlay zone is designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.

B. Applicability.
1. Determination of applicability. The zoning map shall guide determining whether this overlay zone applies to any area of land or water. If a particular lot or lots within an ESH overlay zone are determined by the Director not to contain the pertinent species or habitat, the regulations of this overlay zone shall not apply.

2. Identification of newly documented sensitive habitat areas. If an environmentally sensitive habitat area is identified by the Director to be located onsite during permit application review, but the habitat area does not have an ESH overlay zone designation, the applicable requirements of Subsection C through Subsection O below, shall apply. The Director will periodically update the zoning map to apply the ESH overlay zone to the new habitat areas and applicable setback areas (including the 250-foot area around the habitat).

Response As previously discussed, the Appellant and their agents disagree with the extent of the ESH as determined by the Director. As noted in Rachel Tierney's response to Melissa Mooney's comments, the secondary drainage is not mapped ESH area. As shown in Exhibit 1 of Ms. Tierney's response, the walls and bridges appear to be more than 50 feet from the edge of the ESH associated with Hot Springs Creek. Exhibit 1 attached to Ms. Tierney's response shows this graphically. According to Ms. Tierney's conclusions, the total amount of area converted to lawn after installation of the walls and bridges that could be considered ESH was 0.1 acres. Additionally, this project has benefited in that more specific information of the property and location of ESH is now available from site –specific investigation.

For all the reasons set forth above, the Director's decision is erroneous and constitutes an abuse of discretion because said decision is not supported by the findings and the findings are not supported by the evidence and therefore said decision constitutes an unfair and impartial hearing.

RACHEL· TIERNEY

CONSULTING

RECEIVED
AUG 05 2010
SANTA BARBARA COUNTY
PLANNING & DEVELOPMENT

January 6, 2009

Response to County Biologist (Melissa Mooney) Memorandum dated 11/19/2009

Regarding: Biology Assessment and Impact Analysis (June 15, 2009)
1192 Mountain Drive (Bagdasarian/Karmen property)

Melissa's main points revolve around 2 issues:

1) **The location of the ESH, as determined in my report.** (See Co. biologist discussion item 2, bottom of page 3, under *Contents of Biological Surveys*)

2) **The way the total area of restoration needed for mitigation was calculated.** (See Co. biologist discussion item 5, bottom of page 4, under *Contents of Biological Surveys*)

1) **<u>The location of ESH before the "project" [1], as determined in my report</u>**

Vegetation in 2009 and 2001 is illustrated in Figure 2 (page 11 of Bio report). To determine the location of ESH before the project, I included the entire creek from bank to bank plus any *riparian habitat* (Ca. Sycamore-CLO) extending over the top of bank. (This is how I originally mapped the ESH areas for the MCP in 1991).

I mapped the identical vegetation for 2009. I determined how much of the ESH in 2001 (before the "project") was removed by 2009, which was very little (4,474 sq ft). All of this area was situated outside of the top of bank. I also included any buffer (measure 50 feet from the top of bank) that was removed (20,000 sq ft). These areas are listed in Table 4 (page 23).

[1] The year 2001 was picked as a point of reference because this was the first year the "project", or the development in this area appeared in the aerials.

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The County maintains that the entire site was ESH. I believe my interpretation is accurate. My interpretation closely matches the ESH mapped in the MCP. Figure 1 shows the creek and tributary as it is illustrated in the MCP (and the USGS). This figure also shows the actual location of the drainage in question. The drainage in question is *not* the tributary that is included as ESH in the MCP. This drainage is not part of the creek until it's confluence with the main channel at E. Mountain Drive. It is separate from the main channel *and it is not mapped as ESH in the MCP.* The vegetation mapped from the 2001 aerial aligns with this interpretation.

2) The way the total area of restoration needed for mitigation was calculated.

The County says the area of restoration required by the CDFG and the County (which I maintain is separate and does not overlap – see the map attached to this memo) cannot be satisfied concurrently. This may be more problematic to defend.

I maintain that the County, but not the CDFG, regulates the habitat disturbed along the main fork of the creek. Because disturbance is entirely outside of the top of bank, CDFG would not have jurisdiction over this area.

I also maintain that the habitat disturbed within the secondary drainage is regulated by the CDFG, that it is not ESH nor is it within the ESH buffer. The two disturbance areas are distinct. I concluded that the mitigation required by the County would satisfy the amount of mitigation required by the CDFG, which is slightly less then that required for the County (1.68 acres versus 1.63 acres). I did not add them together.

Other Discrepancies under "Additional Comments" page 5:

1) Seems to be simple misunderstanding of my tables and figures and one typo on my part.

2) Co. says that the current classification of ruderal (weedy) and ornamental for vegetation currently within secondary drainage, is not correct because: a) oaks were present in this drainage in 2001, b) riparian vegetation is located upstream of the drainage and c) one cut sycamore was noted during the site visit.

I do not understand why the conditions *upstream and in a separate tributary system* are used to analysis present vegetation in this drainage, and also why conditions in 2001 can be used to influence the current condition. [2]

[2] Vegetation in 2001 in this area is identified as oak forest and individual trees. I maintain that the oaks, with the exception of two small trees seen in the 2001 aerial, which may be shrubs and not oaks, are located well outside of the top of bank. The tree canopies overhang the bank more in 2001 then in 2008 (see Figure 3), but they are not in the drainage.

I believe the vegetation within the secondary drainage is correctly identified as "ruderal and ornamental," because the dominant species (or percent cover) is made up of weeds and garden escapes. Some planted ornamentals are also present. If the channel has a few small oak trees and one sycamore with no native understory this would not change the vegetation description, which is *overwhelmingly* dominated by non-natives. I was not aware of the cut sycamore mentioned in the memo.

3) Similar to item 1. I can add County mapped ESH to both figures and it will support my findings.

4) ESH and CDFG jurisdictions do not necessarily overlap, as CDFG will take jurisdiction over all drainages. The County ESH description includes drainages with riparian vegetation. I maintain that the secondary drainage, with the exception of the extreme northern and southern limits, did not, and do not, have riparian vegetation. The extreme northern and southern limits are included in the calculation for ESH and buffer.

5) no comment

6) See discussion in #1 on page 1 of this Memo. The secondary drainage is *not* mapped as a blue line steam.

7) no comment

8) no comment

9) and 10) See discussion in item 2, above.

11) no comment.

Also: County letter asks for 10:1 tree replacement. I had 3:1 using 24 inch boxed trees. The fewer, large tree has been exchanged for a greater number of smaller trees.

Exhibit 1


2008
Tributary connection shown in MCP – this section is not present
50'
50'
ESH mapped in Bio. Assessment. Follows ESH mapped in MCP.

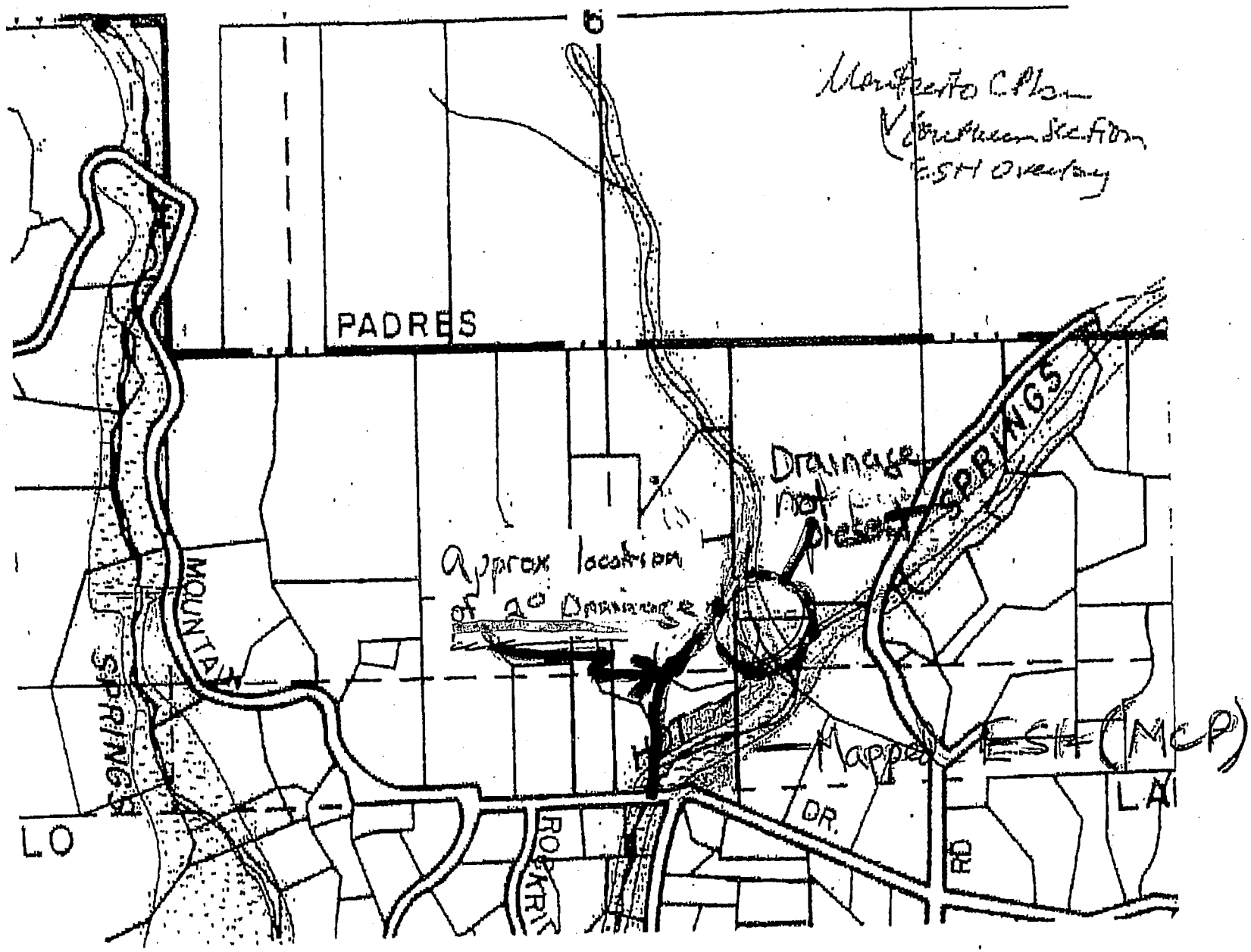


Exhibit 2

MCP mapped ESH

#2

ARBORIST REPORT

Bagdasarian/Karman Site Alterations
Case No. 09LUP-00000-0025 and
Case No. 09ZEV-00000-00042

1192-1194 EAST MOUNTAIN DRIVE
MONTECITO, CALIFORNIA

May 25, 2010

PREPARED FOR:

Ross Bagdasarian
1192 East Mountain Drive
Montecito, CA 93108

PREPARED BY:

David R. Gress, Consulting Arborist
P.O. Box 5086
Santa Barbara, CA 93150
(805) 969-5293

ARBORIST REPORT

1192-1194 EAST MOUNTAIN DRIVE, MONTECITO, CA 93108

May 25, 2010

1.0 INTRODUCTION/SCOPE

This report has been prepared to assess the potential impacts the after-the-fact project will have on all protected and specimen trees located within or near the project area, including all grading, walls, and landscaping.

The report includes all of the following:

a. An inventory of the affected trees.

b. Numbering of trees inventoried, showing trees and their corresponding numbers on the site plan.

c. Current health of the trees inventoried with Diameter Breast Height (DBH at 54"above ground) for each tree. If the tree is in a diseased state, suspected Disease is given.

d. The percentage of the "dripline + 5 feet" impacted by the after-the-fact development measured and shown on site plan.

e. Assessment of all apparent or foreseeable effects that the after-the-fact development had, or may have, on the protected trees. Proposed measures to minimize disturbance to the trees from this development.

PROJECT DESCRIPTION

The project involved: a) the grading and leveling of a 31,864 square foot irrigated lawn area and; b) and the construction of rock walls, tree wells and two (2) pedestrian bridges.

Within the project area there are twenty-one (21) Coast Live Oaks (*Quercus agrifolia*) and one (1) California Sycamore, that have had grading and rock walls, wells and/or pedestrian bridges constructed within the trees' critical root zones (dripline +5 feet). There were also six (6) California Sycamores (*Platanus racemosa*) in the drainage area that appear to have been cut down within the last year and resprouting with multiple vigorous shoots..

There are eight (8) Coast Live Oak trees located within or adjacent to the project area that have had rock work constructed within the trees' CRZ as part of the original landscaping of the residential construction on the property approximately 20 years ago, and therefore, not included this study and report.

2.0 TREE INVENTORY AND ASSESSMENT

The tree inventory and assessment was made on 9/8 and 9/9/09, and include the 21 Coast Live Oaks (*Quercus agrifolia*) and 1 California Sycamore (*Platanus racemosa*) that are in the project area. Six (6) sycamores had been cut down were counted. and the health of the new shoots assessed.

The trees have been numbered and located on the attached site plan.

The inventory includes:

- Diameter of the tree trunks at 54 inches above the ground.
- Assessment and rating of the trees for health, structure and aesthetic contributions. Rated 1-5, with 5 being the best.
- An estimate of the percentage of the Critical Root Zone ("CRZ" – dripline+5 ft.) impacted by the project. The work that was completed about 20 years ago has not been included in the estimate.
- Assessment of general condition of the trees and the presence of insects and diseases.
- Assessment of the apparent and foreseeable effects that the after-the-fact development has had or may have on the protected trees.

The Tree Inventory data is presented in **Appendix A.**

GENERAL TREE ASSESSEMENT

The larger oak trees (24 +in. diameter) in the inventory are estimated to be at least 100 years old. The bark and large limbs of the older trees exhibit the effects of fire from Coyote Fire (1964). These effects include abnormal bumps on the bark and old scar damage on the undersides of large limbs.

The trees have had a thorough pruning within the last year. The trees appear to have been thinned too much, based on the new sprout growth originating on trunks and larger limbs. The new growth appeared to be healthy and should be allowed to fill in the canopy for 2-3 years before any being pruned again.

The root collars and areas around the base of the trunks have been maintained to be free of weeds and are mulched.

3.0 TREE IMPACT ASSESSMENT

The 3 potential impacts to the protected trees from the after-the-fact development. include:

1. Grading cuts and fill soil within critical root zones(CRZ) .
2. Construction of rock walls, wells and bridges.
3. Irrigation within the root collar areas.

GRADING CUTS AND FILL SOIL

The impacts from grading cuts and fill soil within the critical root zones relate directly to the amount and location of the grade changes that were made. The percentage of CRZ area that experienced significant grade changes was estimated to determine the possible current and long-term impacts to the trees. Significant grade changes over 25% of the CRZ are normally considered a potential threat to the normal health and longevity of the trees and therefore would require mitigation.

The soil conditions of the site also have a major influence on the degree of impact from these grade changes. The soil on the site is a transition from the Milpitas fine sandy loam to Maymen fine sandy loam. This soil is comprised of a sandy loam soil and subsoil with increased rock to a depth of 24 inches. The lower subsoil is comprised of various sized sandstone with massive sandstone bedrock. The soil type is important because it allows for excellent drainage and water percolation. These soil characteristics would mitigate some of the negative impacts of oxygen deprivation and poor drainage normally associated with fill over tree roots.

The rock tree wells and walls were constructed to maintain the natural grade within 2-3 feet of the tree trunks. This is beneficial to preserving tree health because it prevents soil from coming into contact with the lower trunk and root collar. When this happens, in conjunction with high soil moisture, the result is a combination of root fungus (Phytophthora) proliferation and anaerobic bacteria that will rot the bark and cambium tissue and effectively girdle the tree.

The soil conditions on the site and the construction of tree wells would explain the continued survival and good health of the 8 trees that had fairly significant grade changes within the trees' CRZ over 20 years ago. It is not uncommon for oak trees to retain a healthy appearance while having root decay from fill soil, especially in irrigated conditions. The trees can have healthy foliage up until the weakened roots fail and the tree falls. The trees should be inspected annually for root collar decay to ensure the safety of the trees where significant fill grade changes exceed 25% if the CRZ.

Since the longer term impacts from grade changes and fill that exceed 25% of the CRZ are likely to result in reduced tree longevity, for the purposes of this report this percentage will be the threshold for recommending mitigation for trees with these impacts.

ROCK WALLS/TREE WELLS/BRIDGE CONSTRUCTION

The rock work completed to date consists of rock walls, tree wells and foot bridges in close proximity to 21 oak trees. Most of this work was done by hand by the onsite staff. These structures have setbacks from the tree trunks that range from 24 to 48 inches. Normally the recommended setback would be much greater, depending on the size of the trees.

The trenching required for the construction of these features would have required the cutting of some tree roots. While it appears that care was taken to not injure the trees in the construction process, root loss within the CRZ is inevitable and was estimated as part of the percentage of impact to the CRZ in the tree assessment.

IRRIGATION WITHIN TREE ROOT COLLAR AREAS

The oak trees adjacent to the lawn area are impacted by the sprinkler irrigation installed in the lawn. While some irrigation can be beneficial during drought conditions, there is a danger of activating the oak root fungus (Phytophthora) in the soil. This is a particular problem when the spray from the sprinklers hits any portion of the trunk or root collar. It is therefore vitally important to design and adjust the sprinklers so that the spray is outside the tree wells and at least 3 feet from the root collar of the trees. The soil conditions on the site offer more favorable conditions for irrigation, however, the risk of oak root fungus becoming active increases with regular summer irrigation in the CRZ.

IMPACT SUMMARY

Based on the field survey, there are twenty-one (21) Coast Live Oak trees and one (1) California Sycamore in the project area. In addition there were six (6) small (<6 inch diameter) California Sycamores that were cut down and are resprouting in or near the secondary drainage area. The critical root zones of six (6) of the oaks had percentage impacts of 25% or greater. This degree of soil disturbance could result in health and structural problems and could shorten the expected longevity of the trees.

Mitigation for the six (6) impacted oak trees and six (6) sycamore trees that were cut should conform to the standard County mitigation for removal of protected trees. This mitigation is normally replanting with 10 sapling trees from local seed sources for each tree being mitigated. All mitigation planting should be done in conjunction with the riparian habitat mitigation plan.

Removing the completed rock features of the project could result in greater damage to the trees and is not recommended. Alternative measures can be taken to minimize the impacts from the development.

MITIGATION RECOMMENDATIONS

The following mitigation recommendations are for the 6 Coast Live Oak trees that had impacts of 25% or greater to the critical root zones, and 6 California Sycamores that were removed. It does not include the 11 removed oak trees that were referenced in the Biological Assessment and Impact Analysis by Rachel Tierney dated 6/15/09.

TREE PLANTING MITIGATION

Species	#Mitigated	Replanting Requirements
Coast live oak (*Quercus agrifolia*)	6	60 saplings(1gal.)
California Sycamore (*Platanus racemosa*)	6	60 saplings(1 gal.).

All trees to be propagated from local seed sources.

TREE PRESERVATION

The following mitigation recommendations are made to: a) provide measures to minimize the disturbance and impact to the trees; and, b) provide recommendations for the maintenance and preservation of the trees and any additional work on the project if permitted.

1) Adjust all sprinkler irrigation so that water does not hit any oak tree trunks or come within the oak tree wells. Water spray should be a minimum of 36 inches from oak tree trunks.
2) Install drain pipes in the downhill side of the rock tree wells around trees #8 and #18. The drain should be installed so that water will drain out of the tree well and discharge from the bottom of the rock wall.
3) Any new tree pruning should be done in a manner that maintains even foliage cover and shade for large limbs and trunks. No more than 20% of live foliage should be removed from an oak tree in any given year, unless necessary for tree safety. All pruning work should be performed by a licensed commercial tree company/individual approved and directed by a Certified Arborist.
4) All oak trees that have fill soil and impacts exceeding 25% of the CRZ should be inspected annually by a Certified Arborist to determine the condition of the root collar and structural support of the tree.
5) All further work within the Critical Root Zones (CRZ) of existing oak trees should be performed only as approved or directed by a Certified Arborist.

6) Any oak tree roots encountered in digging and trenching that are one inch or greater should be cleanly cut. Excavation within the drip line of oak trees should be performed with hand tools.
7) Prior to beginning the completion of the wall project, temporary protective fencing shall be installed at least 5-feet outside the CRZ of oak tree #15, as feasible, to the satisfaction of the Project Arborist. All construction activity shall be prohibited within the fenced area.
8) Fencing should remain in place throughout the wall construction, except as allowed temporarily by the Project Arborist for necessary work or access.
9) No impervious surfacing should be placed within the CRZ of oak trees, except as approved in project plans.
10) Where vertical excavations and trenching exposes tree roots, the exposed face of the trench should be covered with burlap and kept damp to limit desiccation of the root zone until permanent backfill is placed.
11) The Project Arborist should direct the removal of invasive plants within 4 feet of any oak tree trunks and make sure that the root collars of the trees remain clear and uncovered. New landscaping and irrigation should not be placed in these cleared areas to prevent crown rot and root fungus diseases.
12) A Certified Arborist should work with the designated landscape maintenance person to provide on-going tree protection throughout the duration of the project phases. The primary focus of tree protection maintenance on site will be checking the protective barrier fencing. Other maintenance activities to maintain the health and vigor of the existing site trees will be directed by the Project Arborist, including irrigation, fertilization, and pest control, if necessary.
13) A Certified Arborist should be present during the course of any grading, or excavation in the CRZ of protected trees.

DEFINITIONS

"Canopy" – the entire extent of tree branches and foliage
"Dripline" - the outer edge of a tree's branching and foliage at ground level.
"Critical Root Zone" (CRZ) – The area within the tree's dripline plus 5 feet extending beyond the dripline.

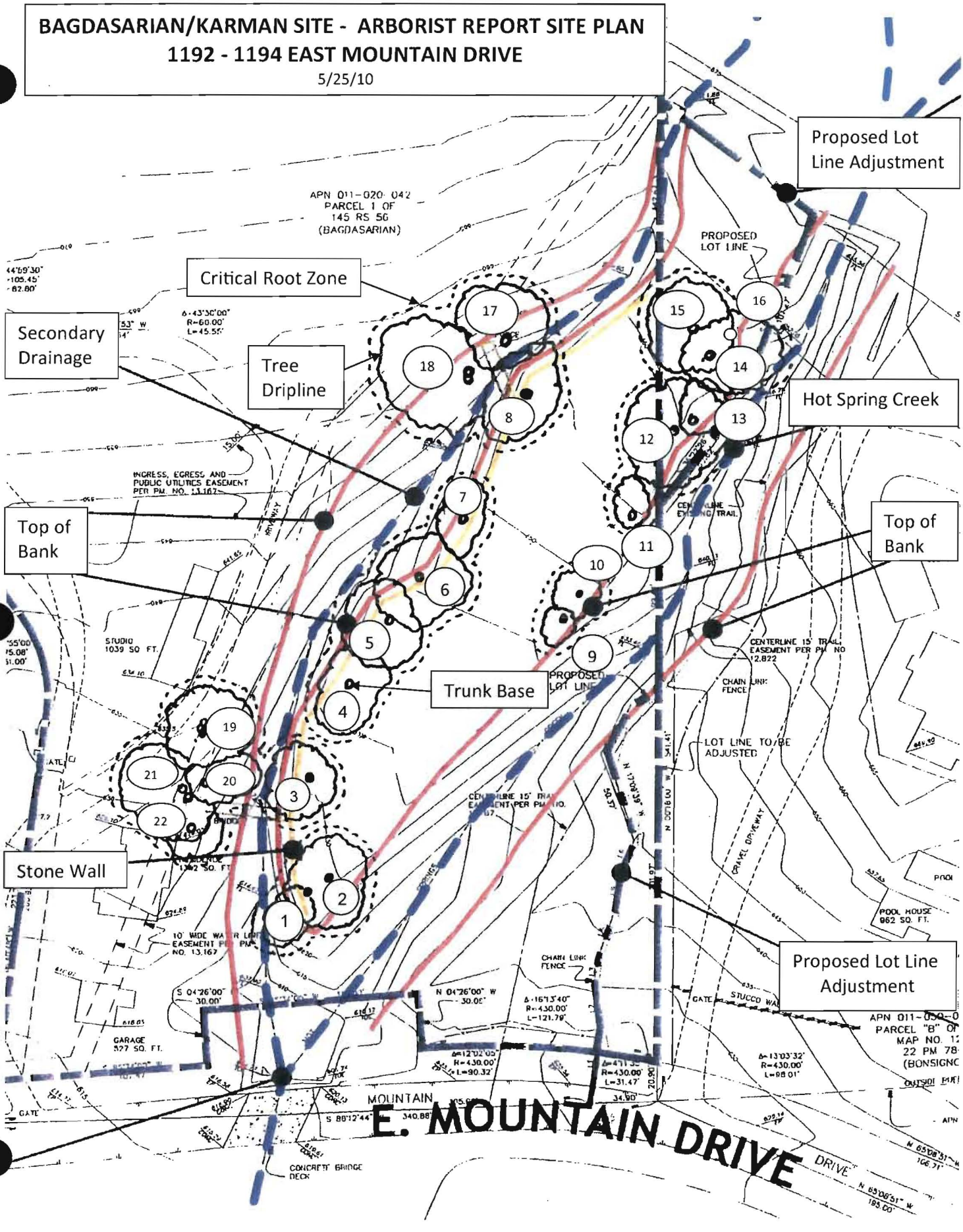
David R. Gress, Certified Arborist WE-0500A

APPENDIX A

TREE INVENTORY - Bagdasarian/Karman Site - 1192 & 1194 East Mountian Drive								5/25/10
				RATINGS			NEW	
TREE NO.	SPECIES	TRUNKS(S)	TRUNK DIA(S).	HEALTH	STRUCTURE	AESTHETICS	%CRZ IMPACTED	COMMENTS
1	Quercus agrifolia	1	17"	4	2	3	5%	
2	Quercus agrifolia	1	18"	4	4	4	5%	
3	Quercus agrifolia	1	24"	4	4	4	60%	
4	Quercus agrifolia	1	24"	4	4	4	50%	
5	Quercus agrifolia	1	22"	3	2	3	20%	Large trunk wound & cavity
6	Quercus agrifolia	1	24"	3	2	4	5%	Old root collar decay (25%)
7	Quercus agrifolia	1	20"	4	4	4	10%	
8	Quercus agrifolia	1	34"	4	4	4	40%	
9	Quercus agrifolia	1	14"	4	4	3	<5%	
10	Platanus racemosa	1	14"	4	3	3	<5%	Minor decay at trunk base
11	Quercus agrifolia	1	14"	4	4	4	5%	
12	Quercus agrifolia	1	28"	4	4	4	5%	
13	Quercus agrifolia	1	8"	3	2	2	0%	
14	Quercus agrifolia	1	28"	4	3	4	50%	
15	Quercus agrifolia	1	30"	4	4	4	50%	
16	Quercus agrifolia	1	6"	2	3	2	20%	
17	Quercus agrifolia	1	30"	4	4	4	60%	
18	Quercus agrifolia	2	24", 28"	4	4	4	20%	
19	Quercus agrifolia	4	16",12",12",8"	4	4	4	15%	
20	Quercus agrifolia	1	20"	4	3	4	20%	
21	Quercus agrifolia	2	22", 17"	4	4	4	20%	
22	Quercus agrifolia	1	18"	4	4	4	20%	

SIX (6) OAK TREES WITH 25% OR GREATER IMPACT TO CRZ: #3, #4, #8, #14, #15, #17

BAGDASARIAN/KARMAN SITE - ARBORIST REPORT SITE PLAN
1192 - 1194 EAST MOUNTAIN DRIVE
5/25/10



#3

BIOLOGICAL ASSESSMENT AND IMPACT ANALYSIS

1192 East Mountain Drive Montecito, California

May 25, 2010

Prepared by:

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P. O. Box 1113
Santa Barbara, CA 93102
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TABLE OF CONTENTS

1.0 INTRODUCTION

1.1 PURPOSE AND SCOPE OF THIS REPORT

Preparation of this report is a result of non-permitted work adjacent to Hot Springs Creek at 1192 East Mountain Drive, Montecito, California. A Correction Notice, issued on March 16, 2009, stopped all work until a valid land use and grading permit could be obtained. The non-permitted work entailed creating a 31,864 square foot (0.73 acres) irrigated lawn between the main branch of Hot Spring Creek and a secondary, western fork. The area was apparently grubbed, graded and leveled. Rocks from the site were used to construct a vertical wall lining both banks of the secondary fork, two pedestrian bridges across this drainage, and several stone-lined tree-wells and tree retaining walls.

The Montecito Community Plan (Santa Barbara County 1992) outlines specific goals and policies designed to protect important resources, or Environmentally Sensitive Habitat (ESH), within the planning area. One of the resources included within the ESH designation is "riparian woodland corridors" a habitat that is present along Hot Spring Creek.

The primary purpose of this study is the following:

1. Establish the original location of the ESH boundary prior to the non-permitted work near the creek and the secondary drainage.

2. Determine the extent of disturbance to ESH or buffer vegetation. Determine if any part of the non-permitted conversion of habitat to irrigated lawn is located within areas that were previously part of the ESH or the buffer.

3. Calculate the acreage required for mitigation of disturbed habitat. Locate potential onsite restoration areas and off-site in-lieu fee mitigation depositories.

This report also includes an assessment of biological resources occurring within and around the site, a discussion regarding the potential of sensitive plants and animals occurring within the area and an evaluation of the affects of the project on these resources.

1.2 PERSONNEL, SURVEY DATES, METHODS AND NOMENCLATURE

Personnel and Survey Dates: Rachel Tierney conducted ground surveys on February 17 and 18, March 3 and 12, May 22 and June 3, 2009. The focus of the surveys was the area of recent non-permitted work: east of the secondary drainage to Hot Springs Creek, from the eastern property line to the southern property line. The secondary drainage was walked from the eastern edge of the property to East Mountain Drive, where it converges with the main branch of Hot Springs Creek. Surveys of the main branch of the creek were made at several locations along the eastern property boundary. An area for potential restoration located in the southwestern portion of the site was also visited.

Paul Collins conducted a brief survey of Hot Springs Creek on June 3, 2009 to identify any potential red-legged frog habitat.

Methods: Color aerial photographs from 2001 through 2008 (April 17, 2001; May 20, 2003; September 6, 2005 and April 15, 2008) were viewed to determine changes to vegetation and or other features in the area of non-permitted activities. All photographs were enlarged to 1" = 50 feet scale and where of excellent clarity.

Vegetation Maps A comparison of the 2008 aerial and current conditions (individual trees and ground cover) was made in the field. Each tree along the top of bank of Hot Springs Creek (and thus the actual border of the current riparian canopy) was compared with the 2008 aerial. All trees along the secondary drainage were likewise marked on the 2008 aerial. All differences were noted on a topographic map. After this assessment, a vegetation map of the current condition could be made using the 2008 aerial. Vegetation was likewise map from the 2001 aerial.

Changes in Vegetation To determine if any changes occurred within the general area of non-permitted work between 2008 and the present, the canopy cover noted in the 2008 aerial photograph was compared to vegetation in the 2001 aerial.[1] A clear plastic overlay of the 2008 trees and plant community distribution was then placed over the 2001 aerial. A light table was used to help identify any trees or other vegetation "textures" that were missing or altered in any of the later aerial photographs. Changes in vegetation were highlighted on the aerials and shown on the vegetation maps.

Location of Pre-Project ESH The location of the ESH prior to disturbance was determined by the location of the riparian community in the 2001 aerial.

[1] The 2001 aerial were chosen because no work in the area was evident in that photograph. A later aerial could have also been used.

Aquatic Survey: A site visit was made by Paul Collins the morning of June 3, 2009 between 8:30 and 10:00 am to examine standing pools of water present along the reach of Hot Springs Creek that borders the eastern side of the Project site. The reach of this creek from its junction with Mountain Drive to the northern edge of the project site was examined during this site visit. All pooled water present along this reach of Hot Springs Creek was carefully examined for the presence of amphibian larvae and for aquatic dependent reptiles. A long-handled dip net was used to sample tadpoles observed in the deeper pools to determine the species of frogs that were present along this reach of the creek.

Nomenclature for plants follows the Jepson Manual (Hickman 1993). Habitat or plant community classification follows the system described in A Manual of California Vegetation (Sawyer Keeler-Wolf, 1995) and a community treatment produced by the California Department of Fish and Game (CDFG, 2003). Nomenclature for wildlife follows Jennings (1987) for reptiles and amphibians, Baker et al. (2003) for mammals, and American Ornithologists' Union (1982) with its more recent supplements for birds.

2.0 ENVIRONMENTAL SETTING

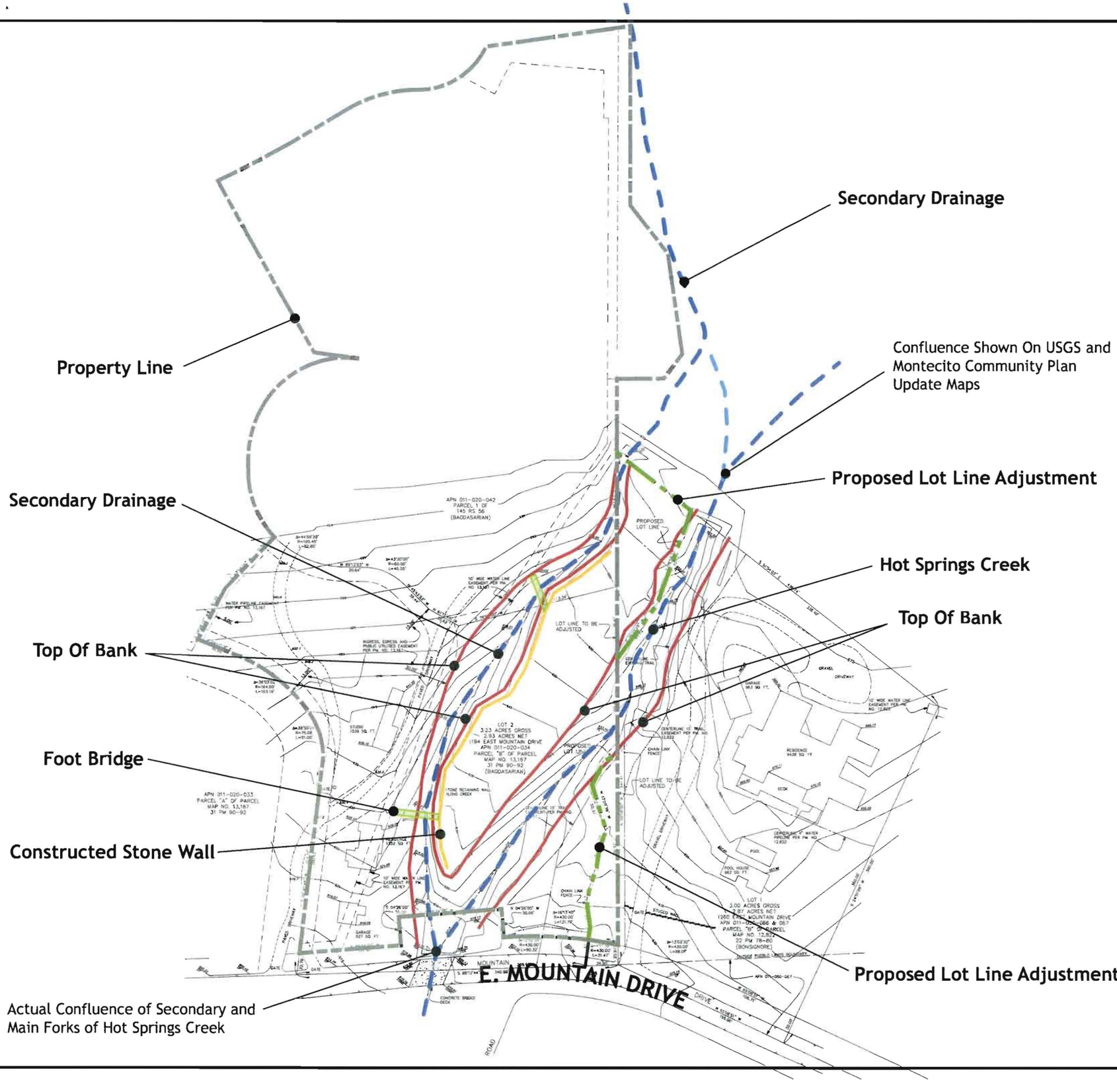
2.1 CHARACTERISTICS OF THE SURROUNDING AREA

The parcel is located in the lower foothills of Montecito within the urban boundary. The Los Padres National Forest boundary lies north of the site.

Hot Springs Creek, including Cold Springs Creek, its western fork, and Montecito Creek, (the lower reach) is one of the five main drainages with the planning area, along with Sycamore, Oak, San Ysidro, and Romero Creeks. Hot Springs Creek collects flows from the foothills surrounding Montecito Peak, converging with Cold Springs Creek between Ashley and Sycamore Canyon Roads, where it is renamed Montecito Creek. Flows then continue south under East Valley Road to the Pacific Ocean. The entire Montecito/Cold Springs/Hot Springs Creek system of the Santa Ynez Mountains drains 3,890 acres (Santa Barbara Flood Control District, 2007).

2.2 SITE DESCRIPTION

The site consists of two parcels (APN's 011-020-042 and 011-020-034) totaling 7.9 acres. A lot line adjustment is planned to minimally alter the boundary along the western border. This adjustment is shown in all Figures and are included in the calculations for impacts and mitigations.



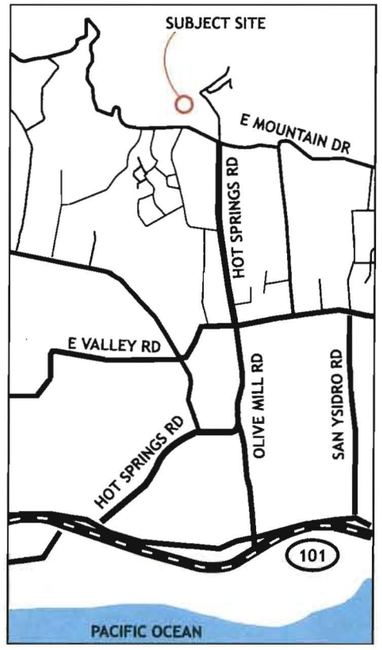


Figure 1: Site and Vicinity Map

1192 East Mountain Drive
Montecito California

June 15, 2009

RACHEL TIERNEY CONSULTING

With the exception of the area east of the secondary drainage, all parts of the property are fully developed containing a residence, guesthouse, tennis court and extensive landscaping.

Elevations range from about 600 feet above sea level to 750 feet above sea level. Hot Springs Creek, running along the eastern boundary, typically contains seasonal flows that create pools with an abundance of clear flowing water during winter and spring months. These pools become stagnant and dry up in most locations during the summer months (a large pool located just north of East Valley Road may retain water all summer). Substrata vary from small cobbles up to very large boulders, creating pools and riffles, which were seen along this reach of the creek. The creek was running at the time of the February and
March early surveys but had ceased flowing in May and June.

The secondary and main fork of Hot Springs Creek converge immediately north of East Mountain Drive, forming a narrow "peninsula" where the lawn was installed (See Figure 1). Interestingly, on the USGS (Santa Barbara Quadrangle) and on the county's ESH Map, this confluence is shown converging further upstream just east of the property line and adjacent to the tennis court. (Figure 21: Montecito Community Plan, Santa Barbara County, 1992).

Soils in the area consist of Milpitas stony fine sandy loam (United States Department of Agriculture, 1981). Unlike many situations along major creeks, this particular soil profile does not flank the stream, following along the meander, but covers a large (about 300 acres), almost circular area that spans from Montecito Creek to Oak Creek and from just north of East Valley Road to north of East Mountain Drive.

The soil is extensive on "terraces dissected by drainages" with a surface layer of fine sandy loam and loam to about 24 inches followed by a clay subsurface layer. Surface and subsurface layers contain water-rounded cobbles, stones and boulders (6 inches to 8 feet in diameter), possibly a remnant of prehistoric floodplains.

3.0 PLANT AND WILDLIFE RESOURCES

This section describes the plants and animals found onsite or, in the case of animals, expected to use the site and neighboring parcels. Only the plant communities located within the area of the recent non-permitted activities are addressed.

A list of **sensitive plant species** potentially occurring on site was compiled by conducting a search of all records of sensitive species contained by the California Native Plant Society, including State and Federally-listed species, for the USGS quadrangle where the site is located (Santa Barbara) and a nearby quadrangle (Carpinteria). Plants that are restricted to habitats that are not found on site, such as beachfront dunes or estuaries, were omitted from

this list. The current California Natural Diversity Database (CNDDB) records for the Santa Barbara and Carpinteria quadrangles are also included. Again, those species that are restricted to habitats not found on site are omitted from this list. The preliminary research provided a list of sensitive species that may occur within the project site.

Information pertaining to the distribution of **sensitive wildlife** on, and in the immediate vicinity of, the property was obtained from a variety of sources: (1) Previous studies from the project area; (2) the California Natural Diversity Database (CNDDB); and (3) sensitive wildlife databases maintained at the Santa Barbara Museum of Natural History (SBMNH).

3.1 PLANT COMMUNITIES

Plant communities or vegetation types found on the site in 2001 and currently are classified under two systems, which are listed in Table 1 and mapped on Figure 2. The division between

TABLE 1: PLANT COMMUNITIES: COMPARISON OF TWO CLASSIFICATION SYSTEMS

A Manual of California Vegetation (Sawyer and Keeler-Wolf, 1995)	**California Terrestrial Natural Communities (CDFG, 2003)**
Arroyo Willow Series	*Black Cottonwood / Willow Riparian Forest #61.320.00*
California Sycamore series	*California Sycamore – Coast Live Oak Forest (#61.312.01)*
Coast Live Oak	*Coast Live Oak, Individual Trees (#71.060.00)*
Secondary Drainage:	**No Corresponding Natural Plant Community**

each community is not always distinct. Plant species identified onsite are listed in the community description. The plant community identified as "non-native grassland within the peninsula in the 2001 aerial is not included in the community discussion since the vegetation type cannot be verified.

Arroyo Willow Series
Black Cottonwood / Willow Riparian Forest

As the name implies, black cottonwoods (*Populus balsamifera*), red and arroyo willow (*Salix laevigata; S. lasiolepis)* dominant in the tree canopy layer of this community. These species are located in a narrow line immediately adjacent to the active Hot Springs Creek stream channel.

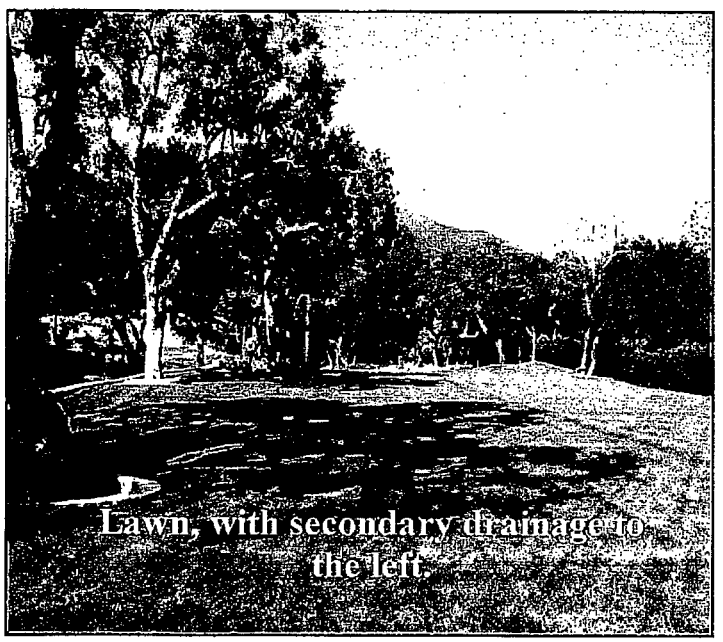
Dominant understory species are western bracken fern (*Pteridium aquilinum*), mugwort (*Artemisia douglasiana),* and poison oak (*Toxicodendron diversilobum*). A common weed along Montecito creeks, and a native of Mexico, ironweed (Ageratina adenophora), is abundant on the lower banks and near the invert. In some locations along this stretch of the creek, black cottonwood and arroyo willow approach the top of bank.

California Sycamore Series
California Sycamore/ Coast Live Oak Forest

Coast live oaks (*Quercus agrifolia*) and California sycamore (*Platanus racemosa*) are found on the upper banks of Hot Springs Creek at this location. Dominant understory species noted were mugwort (*Artemisia douglasiana*), poison oak (*Toxicodendron diversilobum*), western bracken fern (*Pteridium aquilinum*), lemonadeberry (*Rhus integrefolia)*, canyon sunflower (*Venegasia carpesioides*) and the invasive German ivy (*Senecio mikanioides*). Non-native *Pittosporum* and *Eucalyptus* are scattered. A twenty-foot diameter cluster of the highly invasive giant reed (*Arundo donax*) is established in the western bank just outside of the property

boundary, and several smaller clusters were noted downstream. A hedge of *Myoporum*, and introduced ornamental, is planted along the top of bank.

Coast Live Oak, Individual Trees


Lawn, with secondary drainage to the left

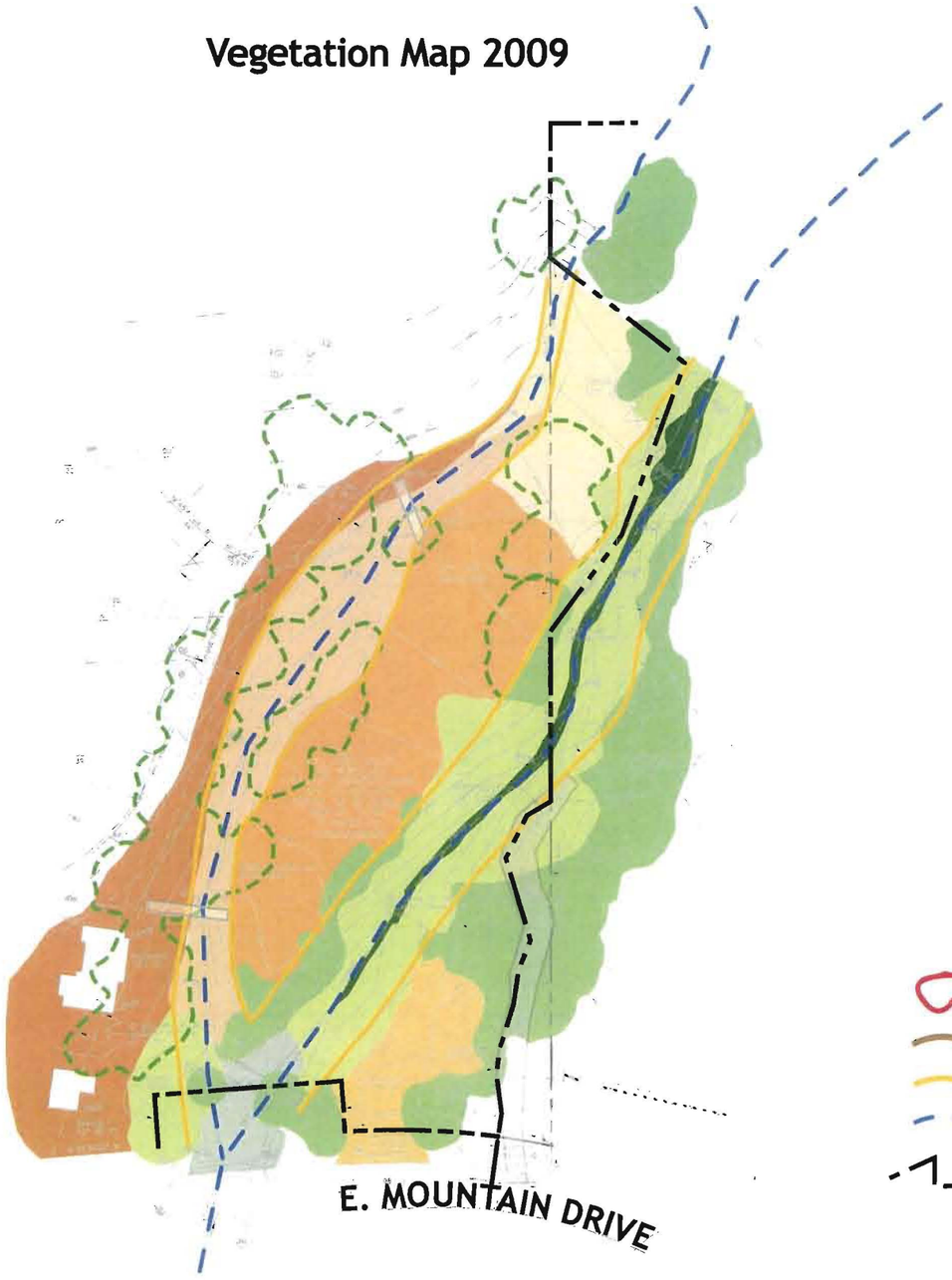
Coast live oak (*Quercus agrifolia*) trees are studded along the edge of the installed lawn as well as on the mid- to top of bank of the secondary drainage. These trees are pruned, healthy and well balanced. Tree wells (for surrounding grade increases) or retaining walls (for surrounding grade reductions) were recently installed around a number of the mature oaks. Little natural understory is present. Several oaks along the main branch of Hot Spring Creek extend into the lawn.

Secondary Drainage: Ruderal and Ornamental Plantings

The general appearance of this feature is a half landscaped, weedy dry creek bed. This grouping does not lend itself to any classification alliance. Non-permitted improvements to the upper bank include a vertical rock wall on sections of both side of the drainage and two pedestrian bridges.

Vegetation within the secondary drainage is a mixture of planted ornamental, woody groundcover, invasive groundcover and common weeds often seen on

Vegetation Map 2009



LEGEND

NATURAL PLANT COMMUNITIES

Coast Live Oak

- Forest and Individual Trees
- Heavily Pruned (2009)

Riparian

- California Sycamore - Coast Live Oak
- Black Cottonwood - Willow (estimate for 2001)
- Scoured Bed

- Non-Native Grassland
- Landscape
- Ruderal with Minor Ornamental Planting
- Bare Ground
- Irrigated Lawn
- Rock Stockpile Area

- Trees Removed Since 2009
- Location of ESH
- Top Of Bank
- Flow Line
- Property Line
- Trail Easement

0 25′ 50′ 100′ 150′ 200′

SCALE

N

Vegetation Map 2001

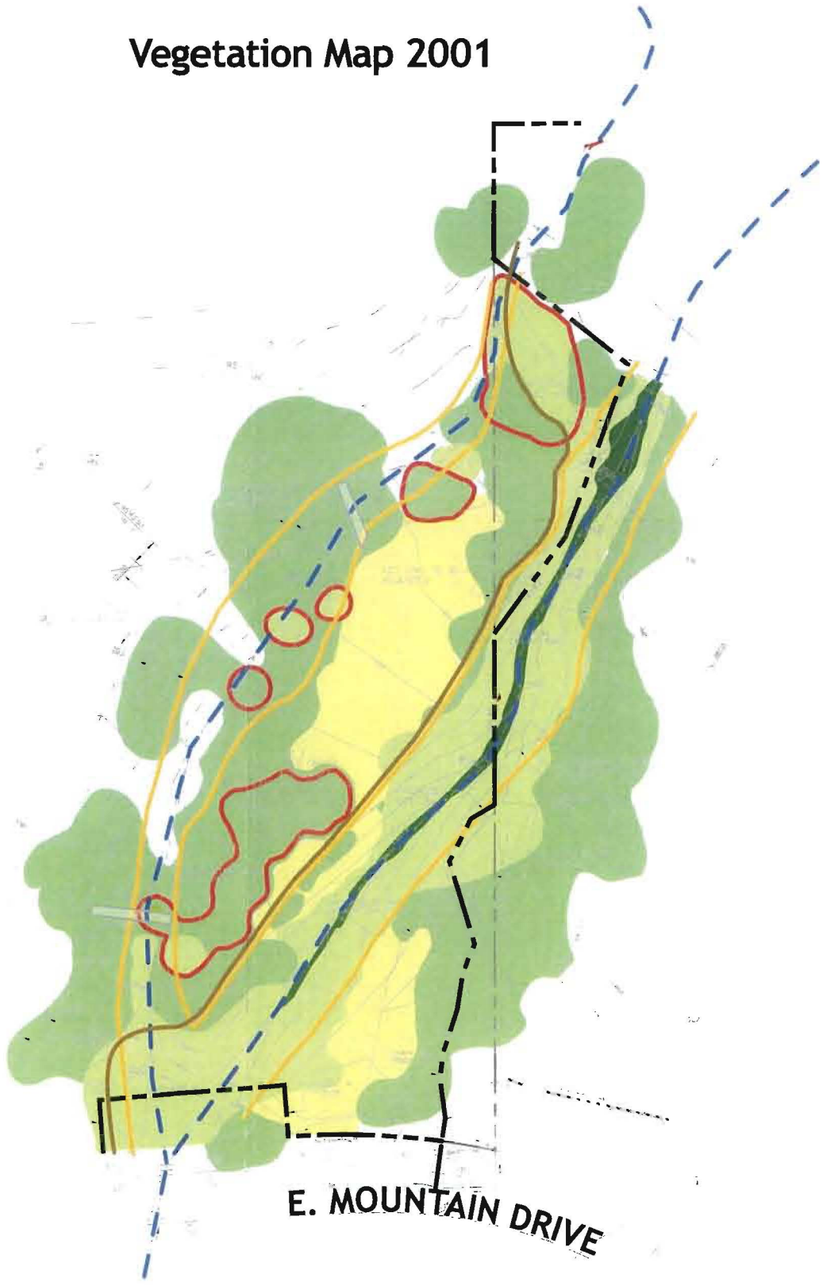


Figure 2: Vegetation

1192 East Mountain Drive
Montecito California

June 15, 2009

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disturbed banks. A few native tree saplings and occasional native shrubs from various natural plant communities were also noted. Planted species along the mid and upper banks include a low *Ceanothus* cultivar and possibly *Dimorphotheca sp,*. Invading ground covers are periwinkle (*Vinca major*), garden nasturtium, ornamental morning glory (*Ipomoea* sp.), bindweed (*Convolvulus arvensis*) and English ivy (*Hedera helix*). Other weedy species noted are fennel (*Foeniculum vulgare*), sweet alyssum (*Lobularia maritima*), umbrella plant (*Cyperus alternifolius*) and yellow clover (*Melilotus officinalis*).

Several small saplings of coast live oak and California sycamore were seen at the invert of the bed, as were small pepper trees (*Schinus molle*). Non-native annual grasses (*Bromus, Avena*) were common throughout. Native species were limited to occasional California blackberry, coyotebrush (*Baccharis pilularis*), mugwort and hummingbird sage (*Salvia spathacea*).

3.2 WILDLIFE

Wildlife Within Hot Springs Creek and the Adjacent Riparian Habitat

The creek and adjacent vegetation provide a mix of shaded and unshaded areas, along with good cover in the form of creekside vegetation. Water was running at the time of the earliest field surveys and there were occasional pools up to several feet deep. Hot Spring Creek provide breeding and foraging habitat for a number of amphibians and reptiles such as Pacific treefrog and California treefrog. Other amphibians and reptiles expected to frequent understory found under riparian woodland that borders Hot Springs Creek include black-bellied slender salamander, ensatina, arboreal salamander, western fence lizard, western skink, southern alligator lizard, ringneck snake, mountain kingsnake, and western rattlesnake (Collins 2008).

The woodland that borders Hot Springs Creek is frequented by a wide diversity of birds that utilize this area for nesting, perching and foraging. Birds that are expected to use this habitat include Cooper's hawk, red-tailed and red-shouldered hawks, mourning dove, band-tailed pigeon, great horned owl, northern

pygmy-owl, Anna's hummingbird, black-chinned hummingbird, acorn woodpecker, hairy woodpecker, Nuttall's woodpecker, olive-sided flycatcher, western wood-pewee, Pacific-slope flycatcher, black phoebe, American crow, western scrub-jay, violet-green swallow, oak titmouse, bushtit, canyon wren, house wren, American robin, hermit thrush, warbling vireo, orange-crowned warbler, yellow warbler, yellow-rumped warbler, common yellowthroat, Wilson's warbler, black-headed grosbeak, spotted towhee, song sparrow, dark-eyed junco, and house finch (Collins 2008).

Mammals that frequent the understory of riparian woodlands include: Virginia opossum, ornate shrew, broad-footed mole, brush rabbit, Botta's pocket gopher, deer mouse, California mouse, big-eared woodrat, coyote, northern raccoon, striped skunk, bobcat, and mule deer. In addition to providing habitat, the riparian zone along Hot Springs Creek also serves as a travel corridor for a number of larger mammals such as Virginia opossum, coyote, bobcat, mountain lion, black bear, striped skunk, northern raccoon, ringtail, and mule deer. Species move up and down this creek corridor as they disperse from scrub and woodland habitats found along the south facing slopes of the Santa Ynez Mountains down into urban and oak woodlands found in the greater Montecito area (Collins, 2008).

3.3 SENSITIVE PLANTS AND ANIMALS

For the purposes of this analysis, a "sensitive biological resource" refers to any rare, threatened, or endangered plant or animal species, or those species considered regionally declining by local authorities. Habitats are also considered sensitive if they exhibit a limited distribution, have high wildlife value, contain sensitive species, or are particularly susceptible to disturbance. The potential for occurrence of sensitive resources is based on site characteristics and the known regional distribution and habitat affinities of the species.

3.3.1 SENSITIVE PLANTS

A list of sensitive plant species recorded within the California Natural Diversity DataBase (CNDDB) and the California Native Plant Society database, List 1 through 4, for the Santa Barbara and Carpinteria USGS quadrangles appears in Table 2.

Table 2: Sensitive Plants
(CNDDB 2009; CNPS List 1-3, 2009; Santa Barbara and Carpinteria Quadrangles)

Scientific	Family	Life form	Blooming	Communities	CNPS	Expected? Known within 5 miles of Project Vicinity?
Atriplex coulteri (Coulter's saltbush)	Chenopodiaceae	Perennial herb	Mar -Oct	Coastal scrub; Valley and foothill grassland	List 1B	Not expected in the area of development.
Baccharis plummerae (Plummer's baccharis)	Asteraceae	Lanky shrub	Aug-Oct	Shaded canyons and Riparian woodlands.	List 4	CNPS Data Base record for Santa Barbara County. Known both east and west of site outside of a 5 mile radius (per. ob.)
Calochortus catalinae (Catalina mariposa lily)	Liliaceae	Perennial herb (bulb)	Apr-May	Coastal scrub; Valley and foothill grassland	List 4	Not expected in the area of development.
Calochortus weedii var. vestus (Late-flowering mariposa lily)	Liliaceae	Perennial herb (bulb)	Jun-Apr	Chaparral; Cismontane woodland; Riparian woodland	List 1B	CNDDB record within a I mile radius centered 1.5 miles east of site. Also 3 miles west of site.
Caulanthus californicus (California jewelplant)	Brassicaceae	Annual	Feb-May	Grassland	List 1B	Not expected in the area of development.
Centromadia parryi ssp. australis (southern tarplant)	Asteraceae	Annual	May-Nov	Grasslands	List 1B	Not expected in the area of development.
Chorizanthe polygonoides var. longispina (Long-spined spineflower)	Polygonaceae	Annual	Apr-Jul	Chaparral; Coastal scrub, Grassland	List 1B	Not expected in the area of development.
Delphinium umbraculorum (Umbrella spinelower)	Ranunculaceae	Perennial herb	Apr-Jun	Cismontane woodland	List 1B	CNDDB record located 5 miles northwest of site.
Fritillaria ojaiensis (Ojai fritillary)	Liliaceae	Perennial herb (bulb)	Feb-May	Broadleaf forest; Chaparral	List 1B	CNPS Data Base record for Santa Barbara County.
Galium cliftonsmithii (Santa Barbara bedstraw)	Rubiaceae	Trailing subshrub	Apr-Jun	Chaparral; Cismontane woodland	List 4	CNPS Data Base record for Santa Barbara County.
Horkelia cuneata ssp. puberula (Mesa horkelia)	Rosaceae	Perennial herb	Feb-Jul(Sept)	Chaparral; Cismontane woodland; Coastal scrub	List 1B	CNDDB record within a I mile radius centered 1.5 miles east of site.
Lasthenia conjugens (Contra Costa goldfields)	Asteraceae	Perennial herb	Mar-Jun	Cismontane woodland; Grassland	List 1B	Not expected in the area of development.
Scientific	**Family**	**Life**	**Blooming**	**Communities**		**Expected?**

		form			CNPS	Known within 5 miles of Project Vicinity?
Layia heterotricha (Pale yellow Layia)	Asteraceae	Annual	Mar-Jun	Cismontane woodland; Coastal scrub; Grassland	List 1B.	Not expected in the area of development .
Lonicera subspicata var. subspicata (Santa Barbara honeysuckle)	Caprifoliaceae	Trailing shrub	May-Aug (Dec-Feb)	Chaparral; Cismontane woodland; Coastal scrub	List 1B	Very common in coastal areas of Santa Barbara County. Not seen during survey. CNDDB record within a I mile radius centered 1.5 miles east of site.
Micropus amphibolus (Mt. Diablo cottonweed)	Asteraceae	Annual	Mar-May	Broadleaf forest; Chaparral; Cismontane woodland; Grassland	List 3	Not expected in the area of development.
Monolopia congdonii (San Joaquin woolythreads)	Asteraceae	Annual	Feb-May	Grassland	List 1B	Not expected in the area of development.
Pseudognaphalium leucocephalum (White rabbit tobacco)	Asteraceae	Perennial herb	Aug-Nov (Jul-Dec)	Chaparral; Coastal scrub, Grassland; Riparian woodland	List 2	Not expected in the area of development
Ribes amarum var. hoffmannii (Hoffmann's gooseberry)	Grossulariaceae	Perennial deciduous shrub	Mar-Apr	Chaparral; Riparian woodland	List 3	Known from Oak Creek ½ mile east of site (per. ob.)
Sanicula hoffmannii (Hoffman's sanicle)	Apiaceae	Perennial herb	Apr - Jun	Shaded woodlands	List 4	Known from Rattlesnake and Mission Canyons
Thelypteris puberula var. sonorensis (Sonoran maiden fern)	Thelypteridaceae	Fern	Jan - Sept	Meadows, seeps, streams	List 2	CNDDB record within a I mile radius centered 3 miles east of site (Romero Canyon?).

California Native Plant Society

List 1A: Plant Presumed Extinct in California
List 1B: Plants Rare, Threatened or Endangered in California or Elsewhere
List 2: Plants Rare in California but More Common Elsewhere
List 3: Plants About Which More Information is Needed - A Review List
List 4: Plants of Limited Distribution - A Watch List

Plants that are restricted to habitats that are not found on site, such as beachfront dunes, estuaries, or chaparral were omitted from this list.

No plant that is either listed or a candidate for listing under the State or Federal Endangered Species Act has been found within the project site region, or is expected to occur onsite or in the area.

3.3.2 SENSITIVE ANIMAL SPECIES

A detailed discussion of sensitive animals that may use the site or nearby areas is contained in Appendix A. A summary of that information is found in Table 3.

3.3.3 WILDLIFE OF FRESHWATER STREAMS

Hot Springs Creek stream maintains an intermittent flow along the reach that borders the property and appears to dry up during below normal rainfall years. The floor of this drainage has a rock-boulder and cobble substrate that results in the development of small to medium-sized (0.5-2.5 feet deep) sour pools. The lower third of this stream segment was dry at the time of the site visit while the upper two thirds of this stream segment had a shallow freshwater flow present. Standing pools of freshwater that were present along the floor of this creek segment during the site visit were only 0.5 to 1.5 feet deep. In wet years this stream maintains a surface flow even through the summer and fall dry season. The only aquatic dependent wildlife species observed in Hot Springs Creek adjacent to the project site during the field survey was Pacific-Chorus Frog (*Pseudacris regilla*). All tadpoles seen and examined were of this widely distributed species. No adult or larvae of Coast Range Newts (*Taricha torosa*) or large-sized Ranid tadpoles (e.g. 2.5-3.5 inches in length) were seen in any freshwater pools present along this reach of Hot Springs Creek. The largest tadpoles were 1.5 inches in total length, which is well within the size range for Pacific and California Chorus Frogs (*P. regilla and P. cadaverina*). All tadpoles captured during this survey were from Pacific Chorus Frogs. No turtles or snakes were seen during the field survey.

No special status wildlife species were observed during the field reconnaissance survey nor were any documented records found of sensitive wildlife for the immediate vicinity of the project site. However, several sensitive aquatic dependent wildlife species are expected to occur in Hot Springs Creek including Coast Range Newts (*Taricha torosa*), California Red-legged Frog (*Rana aurora draytonii*), Southwestern Pond Turtle (*Clemmys marmorata*), and Two-striped Garter Snake (*Thamnophis hammondii*) (Santa Barbara Museum of Natural History 2009, Storrer 2005, Tierney and Storrer 1990).

Table 3: Special-Status Animals Expected to Occur in the Project Area

Common Name	Scientific Name	Special Status	Potential of Occurrence On Site
FISH			
Steelhead rainbow trout	*Oncorhynchus mykiss*	CSC/FE	Low. Barrier occurs south of Mountain Drive.
AMPHIBIANS			
California red-legged frog	*Rana aurora draytonii*	CSC/FT	Low. Survey conducted on-site found no appropriate habitat, although this species is known to occur in Hot Springs /Cold Spring Creek area and Cinqfoil Creek. May occur upstream.
Coast Range Newt	(*Taricha torosa*)	CSC/None	Likely Known to occur in a number of perennial creeks in the Montecito area, including Hot Springs Creek. May occur upstream.
REPTILES			
Southwestern pond turtle	*Clemmys (=Emmys) marmorata pallida*	CSC/None	Moderate Known to occur in a number of creeks in the Montecito area upstream.
Two-striped garter snake	*Thamnophis hammondii*	CSC/None	Likely Known to occur in a number of perennial creeks in the Montecito area, including Hot Springs Creek. May occur upstream.
BIRDS			
Cooper's hawk	*Accipiter cooperii*	Local Concern	High Known to nest in several wooded canyons in Montecito
Warbling vireo	*Vireo gilvus*	Local Concern	High Known to occur along Hot Springs Creek.
Yellow warbler	*Dendroica petechia brewsteri*	CSC/None	High Known to occur along Hot Springs Creek

Status Codes

FE = Listed as "Endangered under the Federal Endangered Species Act

FT= Listed as "Endangered under the Federal Endangered Species Act

CSC = CDFG California Special Concern Species

4.0 PROJECTS IMPACTS ON PRE-EXISTING CONDITIONS

4.1 REGULATORY SETTING

4.1.1 Montecito Community Plan Policy Overview

The following biological policies and development standards are drawn from the Montecito Community Plan (Santa Barbara County, 1992). These policies were created to protect sensitive habitat such as streams and native trees and provide a basis of the county's policies.

Environmentally Sensitive Habitat (ESH) overlay for riparian woodland corridors.

Policy BIO-M-1.1 Designate and provide protection to important or sensitive environmental resources and habitats in the inland portion of the Montecito Planning Area (MPA).

Policy BIO-M-1.3 ESH areas within the MPA shall be protected, and where appropriate enhanced.

Dev. Standard BIO-M-1.3.1 All applicants proposing new development within 100 feet of an ESH shall be required to include setbacks or undeveloped buffer zones from these habitats as part of the proposed development of the parcel. In determining the location, width and extent of setbacks and buffer zones, staff shall refer to the Montecito Biological Resources map as well as other available data (e.g., maps, studies, or observations).

If the project would result in potential disturbance to the habitat, a restoration plan shall be required. When restoration is not feasible onsite, off-site restoration maybe considered.

Policy BIO-M-1.8 The minimum buffer strip for development near streams and creeks in Rural Areas is 100 feet from top of bank and for streams in Urban Areas, 50 feet[2]. The buffer area shall be indicated on all grading plans. All ground disturbance and vegetation removal shall be prohibited in the buffer area.

Individual Coast Live Oaks

Policy BIO–M-1-15 To the maximum extent feasible, specimen (mature healthy) trees shall be preserved.

[2] The subject property is located in the Urban Area of the Montecito Planning Area.

Policy BIO–M-1-16 To the maximum extent feasible, all existing native trees shall be preserved.

Dev Standard BIO-M-1.16.1 Where native trees of biological value may be impacted by new development, a tree protection Plan shall be required.

Policy BIO –M-1-17 Oak trees shall be protected to the maximum extent feasible.

4.1.2 County and State Oversight of Resources

Habitat: Riparian

Black Cottonwood / Willow Riparian Forest
California Sycamore – Coast Live Oak Forest

Riparian vegetation is important on a regional basis and is particularly sensitive to disturbance. All riparian habitats support the highest diversity and abundance of wildlife. This is due in part to the complex nature of this community. The area closest to the actively running stream, in this case, the Black Cottonwood / Willow Riparian Forest, anchors the bank and protects the creek from excess pollution loading, erosion and the subsequent loss of healthy downstream pool and riffle structure. The tree canopy on the bank shades flowing water and reduces water temperature. Protruding roots and fallen branches along the stream edge provides refuge for aquatic species from predators and fast currents. Many species of wildlife that live in other vegetation communities visit the stream to drink or feed.

Regulation

State: Pursuant to Section 1602.2 of the Fish and Game Code, the CDFG has jurisdiction over activities that affect the "bed, channel, or bank of any river, stream, or lake that has or benefits fish or wildlife". At this particular site, work within the secondary drainage (rock walls, pedestrian bridges, and ornamental plantings within the drainage would trigger the need for a retroactive Agreement.

County The eastern portion of the site is identified as an Environmental Sensitive Habitat (ESH) area, in the Montecito Community Plan Update (and is identified on the Biological

Resources Map, Figure 21) due to the presence of Hot Springs Creek and associated riparian vegetation (Santa Barbara County, 1992).

Setbacks: The Montecito Community Plan calls for a *minimum* 50-foot setback (buffer) from the top of bank of streams within the Urban Area. (Policy Bio-M-1.8). There has been some ongoing confusion as to whether the setback from ESH is set at 50 feet from the top of bank or 50 feet from the outer edge of the riparian canopy.

Habitat: Coast Live Oak (*Quercus agrifolia*): Individual trees

Oak habitats and individual trees are protected by the County of Santa Barbara (Santa Barbara County, 1992). Oaks are very slow growing, long-living trees that are sensitive to alterations in their immediate environment. Utilization of oak as a fuel source and as prime agricultural land began early after European colonization. Since then, many of the oak resources have been removed for agriculture and urban development. It appears that throughout California, the establishment of new individuals within a stand is below that required for stand maintenance. Although the causes are not fully understood, grazing practices and competition with non-native understory species may be contributing to a decline in oak recruitment.

The understory of oaks, comprised of native shrubs, vines and herbaceous perennial and annual species, provides additional food and cover for wildlife. It is the combination of the oak trees and understory resources that, together, provide a complex habitat for wildlife with cover, nesting and den sites, food, and shade.

The understory shrubs and broadleaf native herbs are not present at this site. Individual oaks dot the edges of the lawn and line the secondary drainage. These mature trees continue to provide roosting and nesting habitat for wildlife.

State: CDFG jurisdiction under Section 1602.2 of the Fish and Game Code includes streamside (riparian) habitat on top of banks as well as the drainage itself, which includes the adjacent coast live oak trees.

County: Removal of mature coast live oak trees within ESH and ESH buffer requires mitigation typically set at 10:1 replacement ratio.

4.2 LOCATION OF ESH/BUFFER AND VEGETATION CHANGES RESULTING FROM NON-PERMITTED ACTIVITIES

Aerial photographs from 2001 through 2008[3] were viewed to confirm the condition of the drainages and surrounding areas prior to the recent work in this area. Comparing the 2008 aerial with individual tree and other habitat in the field created a map of current vegetation. Ground surveys also helped identify "textures "of particular trees to enable a more accurate detection of species on the photographs. A vegetation map of 2001 was created from an aerial of that year. Any changes (removal of vegetation) from 2001 to the present were determined by comparing the two vegetation maps. (See Methods Section 1.2).

4.2.1 Where is the Pre-Violation Location of the ESH and Buffer

The Montecito Community Plan Update, Biological Resources Map, Figure 21 (County of Santa Barbara 1992), identifies the general location of ESH boundaries within the planning area. However, the scale of the map in the Community Plan precludes its use without field confirmation of exact boundaries. For the purpose of this report, the location of the edge of the riparian canopy, as shown on the 2001 aerial determined the pre-violation boundary of the ESH.

Main Branch: The location of the riparian woodland corridor (and thus ESH) in the area of the grading violation prior to any work associated with the project can be seen in Figure 2: Vegetation Map (2001). The western edge of the California Sycamore – Oak (a riparian plant community) in 2001 would delineate the original western boundary of ESH. This delineation is also mapped in Figure 3: Aerial Photograph Comparison of ESH and Buffer.

Secondary Drainage: The secondary drainage, with the exception of the extreme southern and northern extremities of the property, is not included within the ESH designation. In 2001, as in present time, this feature does not exhibit the characteristics of a "riparian woodland corridor" for the following reasons. The size of the drainage signifies that it's capacity remains very low compared to the main fork. Secondly, vegetation, including non-native grasses and other decidedly upland plants, had matured within the lowest part of the bed, suggesting that the drainage may be only carry flows on a very occasional basis and possibly only on very wet years. This section is also not identified as ESH on the County Map (Figure 21, County of Santa Barbara, 1992), which is in agreement with this interpretation of the drainage not being high quality habitat at the time the map was created (1992).

[3] The dates the photographs were flown are: April 17, 2001; May 20, 2003; September 6, 2005 and April 15, 2008.

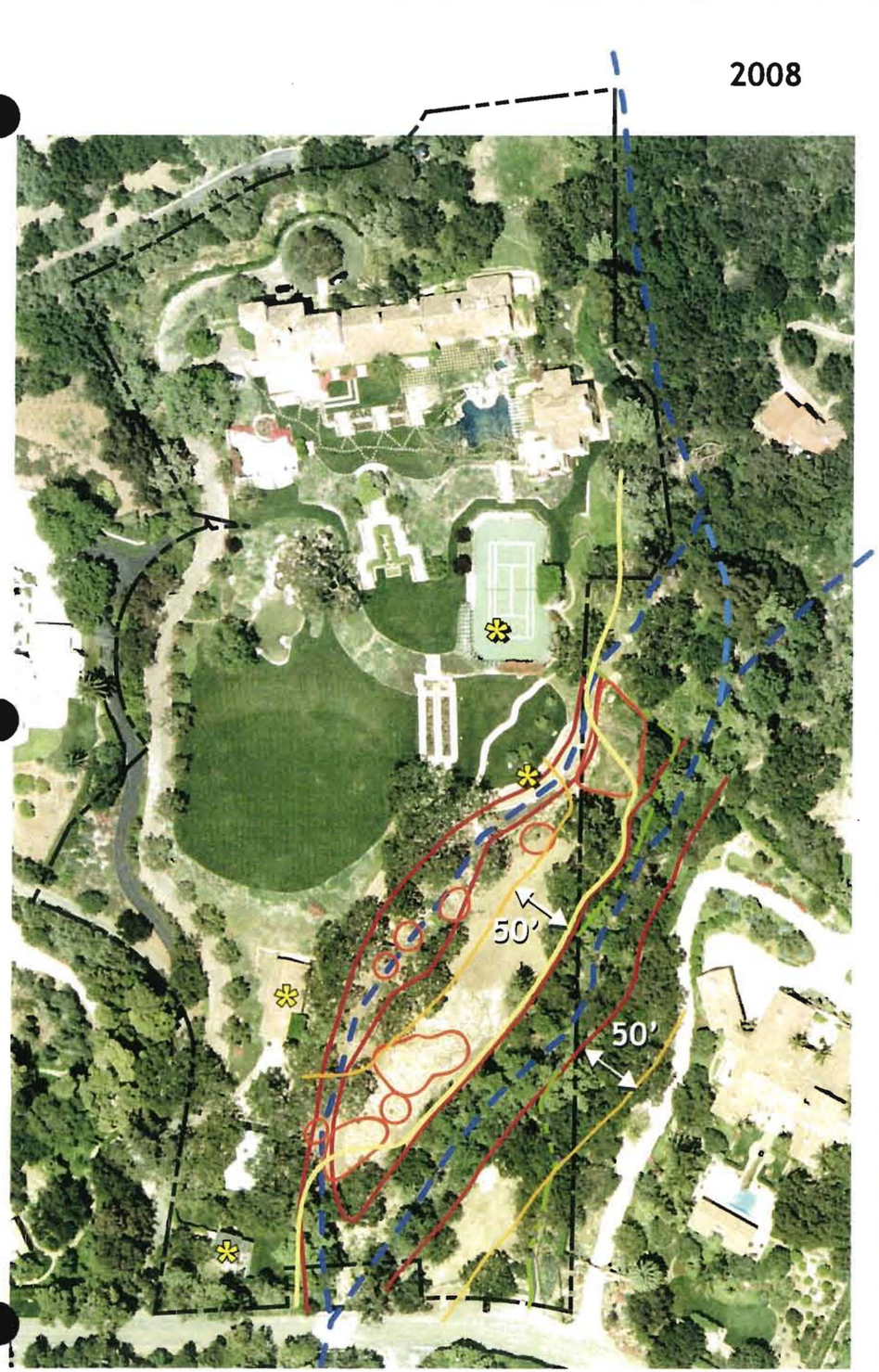
The pre-violation ESH boundary identified for this report crosses over to the secondary drainage just south of the eastern property line, close to where the two forks converse (See Figure 3). The 2001 aerial displays sycamore-oak woodland at this location, and although much of it is now removed, some remnant of the habitat is discernable in the 2008 photograph.

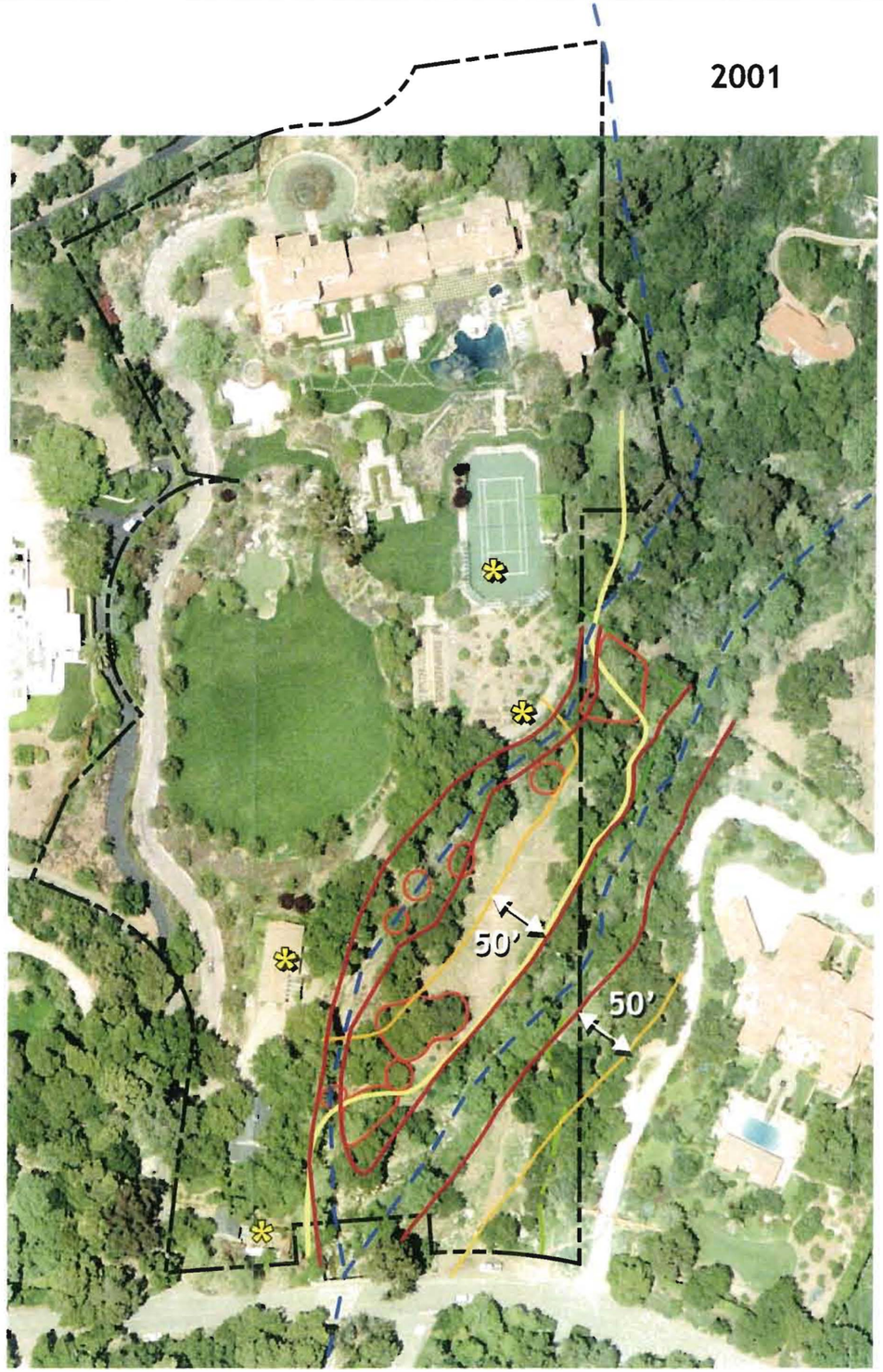
Presently the understory immediately adjacent to the small drainage at this point still contains a high number of native (but overwhelmingly upland) species from this point upstream. typically found flanking ephemeral streams. These include [coast live oak, lemonadeberry, mountain mahogany (*Cercocarpus betuloides*), mugwort and canyon sunflower. Downstream at this time, the secondary drainage is devoid of most native understory and also appears more barren from aerial views.

Buffer: The buffer, also illustrated in Figure 3, is measured 50 feet from the top of bank in section of the creeks where the ESH applies. In some places this buffer would encompass areas of the property that were developed prior to September 15, 1992, the date the Montecito Community Plan was ratified. Development within the buffer would not be subject to the Plan policies. These buffer areas are omitted on Figure 3. The confusion over whether or not the setback is measured from the top of bank or the edge of the riparian canopy is a moot point in this situation, as the position of the buffer in either case would overlap.

4.2.2 What are the Vegetation Changes Resulting From Non-Permitted Activities

To determine if any changes (losses) to vegetation occurred within the general area of non-permitted work, the presence of canopy cover noted in the 2008 aerial photograph was compared to individual trees and other vegetation the field. Each tree along the top of bank of Hot Springs Creek (and thus the actual border of the current riparian canopy) was compared with the 2008 aerial. All trees along the secondary drainage were likewise marked on the 2008 aerial. A clear plastic overlay of the existing trees was then made and compared to the 2001 aerial. A light table was used to help identify any trees or other vegetation "textures" that were missing or altered in the latter aerial photographs.





LEGEND

- Location of ESH
- Location of 50' Buffer (Buffer not extended into area developed prior to Montecito Community Plan)
- Flow Line
- Top of Bank
- Property Line
- Trees Removed Between 2001 and 2009
- Structures west of secondary drainage developed prior to Montecito Community Plan Update (1992)

0 25' 50' 100' 150' 200'

SCALE

N

Figure 3: 2001 and 2008 Aerial Photographs Comparison of ESH and Buffer

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Montecito California

June 15, 2009

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Onsite changes in vegetation were noted in the southern portion of the "peninsula" and in the northern extent of the eastern property line (See Figures 2 and 3). The vegetation converted to lawn or removed for other reasons since 2001 can be seen in Figure 3.

Other impacts include rock walls and two pedestrian bridges that were constructed along the upper banks of the secondary drainage. Comparisons of aerial photographs from 2001 suggest that several small trees (or shrubs?) were removed from the drainage. Ornamental species have been planted in limited areas.

Partial tree wells were placed around a number of mature oak trees along the upper banks of the secondary drainage. Changes in grade required deep wells built around two coast live trees[4] and circular retaining walls (which cut off all feeding roots) around two additional large oak trees. A discussion of potential impacts to and mitigation for existing oak trees are covered in the Arborist Report (D. Gress, 2010).

5.0 IMPACT SUMMARY AND CONCEPTUAL MITIGATION PLAN

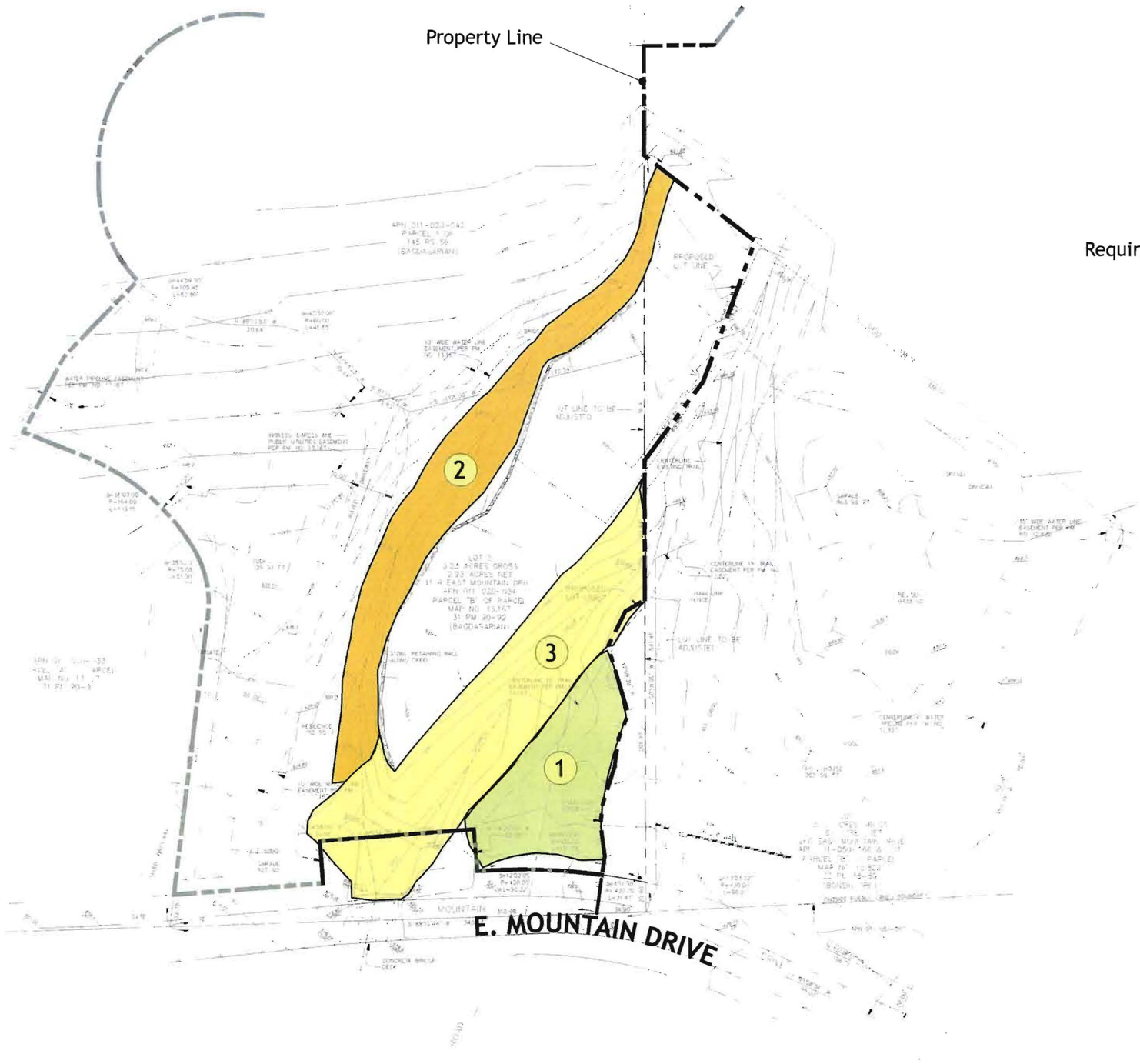
5.1 IMPACT SUMMARY AND MITIGATION REQUIREMENTS

Impacts of concern to the County and to the California Department of Fish and Game (CDFG) are listed separately in Table 4. In some cases they overlap. Under the County impacts are the acreage of ESH and buffer converted into lawn (0.56 acres) and the number of coast live oaks and California sycamores removed within these sensitive areas. Listed under the CDFG summary are number of trees removed since 2001 (identical to the number in the County tally) and disturbance to the secondary drainage.[5]

Due to differences in mitigation ratios, "temporary" and "permanent" impacts were separated. Mitigation requirements were calculated using standard ratios for each agency.

[4] By the owners account, several oak trees located east of the utility building south of the guest house have had these wells for over ten years. These trees are flourishing.

[5] There were no impacts to the main fork of Hot Springs Creek, other than loss of adjacent trees



Available On-Site Restoration Areas

1. Disturbed Rock Stockpile Area	0.22 acres
2. Secondary Drainage	0.25 acres
3. Main Fork of Hot Springs Creek	0.40 acres
Total Mandatory Mitigation	1.68 acres
Available For On-Site Restoration	-0.87 acres
Required Off Site Mitigation Area or "In-Lieu Fee"	0.81 acres

N

0 25′ 50′ 100′ 150′ 200′

SCALE

Figure 4: Restoration Areas

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June 15, 2009

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5.2 CONCEPTUAL MITIGATION PLAN

Mitigation requirements are presented in Table 4. A total of **3.31 acres** of restored riparian or oak habitat is required to mitigate disturbance or loss of ESH, buffer and impacts to the secondary drainage (See Table 4). A combination of on-site restoration and off-site "in-lieu fee" mitigation is suggested.

Restoration Areas Available Onsite - about 0.87 acres

Figure 4 identifies the three on-site restoration areas.

1. Disturbed Rock Stockpile Area (0.22 acres)

Current Condition

Rocks removed from the "peninsula" not used to construct the wall along the secondary drainage were stockpiled in an area adjacent to the Hot Springs Creek trail easement in the southeastern portion of the property. Most of the remaining rock has been removed, leaving a bare opening within an oak and sycamore forest. Little understory is now present around the peripheral woodland of the stockpile area and mustards and some thistle are established.

Conceptual Restoration Plan: California Sycamore – Oak Woodland

- The site would be used to plant the required replacement trees (33 15-gallon coast live oaks and 18 California sycamore saplings, all grown from locally collected stock.

- Understory species would be planted under the existing woodland.

- Preliminary species list:

  California Rose (*Rosa californica*)
  California blackberry (*Rubus ursinus*),
  Fuchsia Flowered Gooseberry (*Ribes speciosum*)
  Snowberry (*Symphoricarpos mollis*)
  Mexican elderberry (*Sambucus mexicana*)
  Laurel sumac (*Rhus laurina)*
  Toyon (*Heteromeles arbutifolia*)
  Wild Ryegrass (*Leymus condensatus*)
  Hummingbird Sage (*Salvia spathacea*)
  Canyon Sunflower *(Venegasia carpesioides*

- Remove non-native mustards and thistles and manage for weeds throughout monitoring period.

- Seed bare ground (with no duff now present) with native mix:

SEED MIX FOR SYCAMORE – OAK WOODLAND

MIN. PURITY & GERMINATION	LBS/ACRE	SPECIES
30/60	2	Yarrow (*Eriophyllum confertiflorum*)
75/75	2	California Poppy (*Eschscholzia californica*)
95/85	4	Succulent Lupine (*Lupinus succulentus*)
NAN.	4	Mugwort (*Artemisia douglasiana*
85/30	30	Plantain (*Plantago insularis*)
95/85	2	Purple needlegrass (*Nassella pulchra)*
95/80	10	California Brome (*Bromus carinatus*)
95/85	8	Nuttall's Fescue (*Vulpia microstachys*)
50/70	3	Sawtooth Goldenbush (*Hazardia squarrosus*)
15/50	3	California Sagebrush (*Artemisia* californica)
50/70	3	Coast Goldenbush (*Haplopappus venetus*)
90/60	3	Deerweed (*Lotus scoparius*)
70/50	3	Black Sage (*Salvia mellifera)*
TOTAL	77 LBS/AC	

GENERAL HYDROSEED SPECS

Two Step Application (to keep seed in touch with soils and protect from birds)

- Apply seed mix with 500 lbs per acre "Hydropost" (75%) and fiber mulch (25%).
- Apply second coat (without seed) of 1,500 lbs per acre "Hydropost" (75%) and fiber mulch (25%) plus 150 lbs/acre tackifier.

2. Secondary Drainage (0.25 acres)

Current Condition

The narrow open drainage contains a thick cover of invasive ground cover with some ornamental woody ground cover. A few native tree saplings and occasional native shrubs from various natural plant communities were also noted [California blackberry, coyotebrush (*Baccharis pilularis*), mugwort and hummingbird sage *(Salvia spathacea)*]. Planted species along the mid and upper banks include a low *Ceanothus* cultivar and possibly *Dimorphotheca sp;* Invading ground covers are periwinkle (*Vinca major*), garden nasturtium, ornamental morning glory (*Ipomoea* sp.), bindweed (*Convolvulus arvensis*) and English ivy (*Hedera helix*). Other weedy species noted are fennel (*Foeniculum vulgare*), sweet alyssum (*Lobularia maritima*), umbrella plant (*Cyperus alternifolius*) and yellow clover *(Melilotus officinalis*) with non-native annul grasses (*Bromus, Avena)* were common throughout. Mature, heavily pruned coast live oaks overhang from upper slopes.

Conceptual Restoration Plan

- Remove all invasive weeds and ornamentals, including planted and naturalized species.

- Line banks, starting about 3 feet up from low point of bed, with native species. Any species listed above could be used.

3. Main Fork of Hot Springs Creek (0.40 acres)

Current Condition: The stretch of Hot Spring Creek above East Mountain Drive is a well preserved perennial stream with a healthy multi-layered vegetation structure. Restoration opportunities are limited to removal of *Arundo donax,* a highly invasive large grass that increases flood and fire hazards. No other restoration opportunities are available.

Conceptual Restoration Plan: Several methods using herbicides are used to remove *Arundo.* All require several years of follow-up treatments. The employment of a professional outfit, with experience in *Arundo* removal, is recommended. Techniques include a fall-period foliar spray followed by spring biomass removal and "cut and daub" in which the tall grass is cut to a few feet in height and then each plant is painted with a strong herbicide solution.

Remainder of Required Mitigation: Off-Site or "In-Lieu Fee" Mitigation

An "in-lieu fee program may occur in circumstances where on-site mitigation is not available. The permittee provides funds to a single sponsor, generally a public agency or non-profit organization in-lieu of on-site mitigation. The sponsor is then required to conduct the compensatory mitigation. In this case, the remaining amount of required mitigation acreage, about **2.44 acres,** would be purchased in lieu of on-site restoration.

The fee amount ($35,000/acre) is based upon the compensation costs that would otherwise be necessary to restore, enhance, create or preserve habitat with similar functions or values to the one effected. The fee is banked in an account to be managed by the agency that will be overseeing the project.

Discussions with two agencies regarding the potential use of funding for sites are in the preliminary stages: The Land Trust for Santa Barbara and The Carpinteria Creek Watershed Coalition. Both organizations have experience with this form of funding and both have upcoming restoration projects within riparian woodland habitats.

The Land Trust for Santa Barbara acquires and protects land with natural, agricultural, scenic, recreational and/or historical significance through fair market transactions. In 1997, the Land Trust accepted a conservation easement on the San Ysidro Oak Woodland, a 44-acre Open Space Preserve created when the Ennisbrook subdivision was proposed in Montecito. It contains an extensive oak woodland and Monarch butterfly eucalyptus grove along San Ysidro Creek. A potential project for the "in–lieu fee" mitigation would be slated to fund additional restoration (planting and weed control) within this Open Space.

The Carpinteria Creek Watershed Coalition was founded in 2001 to improve conditions that will allow healthy steelhead stocks to recover in the creek. Projects completed to date include *Arundo* treatment, wire revetment and bank repair and removal of four steelhead barriers. The area surrounding the removed fish barriers has not yet been restored. A potential project for funding with an "in-lieu fee" mitigation would be soil stabilization, revegetation and monitoring in these four areas.

TABLE 4: Summary of Impacts and Mitigation Requirements - HABITAT *RESTORATION* SANTA BARBARA COUNTY AND CDFG			
SANTA BARBARA COUNTY REQUIREMENTS	**QUANTITY**	**TOTAL IMPACT**	**MITIGATION**
ESH and Buffer Converted to Lawn Conversion of ESH to Lawn Conversion of Buffer to Lawn Total Impacts to ESH and Buffer	4,474 sq. ft. 20,000 sq. ft.	24,474 sq. ft. = **0.56 acre**	0.56 acres of ESH and buffer X 3 = **1.68 acres**
CDFG REQUIREMENTS	**QUANTITY**	**MITIGATION**	**CDFG REQUIREMENTS**
Impacts to Secondary Drainage Degradation of Habitat (Temporary Impact) Rock Wall (Permanent impact) Total Impacts to Secondary Drainage	20,038 sq. ft. = 0.46 acres 550 feet length X 4 feet bank = 2,200 sq. ft. = 0.05 ac	3:1 Replacement for Temporary Impacts 0.46 acres X 3 = **1.38 acres** 5:1 Replacement for Permanent Impacts 0.05 acres X 5 = **0.25 acres**	**Impacts to Secondary Drainage** **1.38 acre** (temporary impact mitigation)+ **0.25 acre** (permanent impact mitigation) = **1.63 acre**
TOTAL REQUIRED MITIGATION			**1.63 ac.+ 1.68 ac. = 3.31 acres**

TABLE 4: Summary of Impacts and Mitigation Requirements - Native *Tree Removal and Restoration* SANTA BARBARA COUNTY AND CDFG (Continued)

Approximate Number of Trees Removed Within the Vicinity of the ESH, Buffer and Secondary Drainage	Number Removed	Mitigation ratio and replacement size	Replacement number
Coast Live Oaks			
Coast live oaks removed from ESH	2		
Coast live oaks removed from buffer	6		
Oaks removed outside of ESH and buffer	3		
Potentially impacted outside of ESH and buffer[6]	See below		
Total Number of Impacted Coast Live Oaks	11 oaks	3:1 replacement (15-gallon)	**33 oaks**
California Sycamores			
California sycamores removed from ESH	4		
California sycamores removed from buffer	2		
Total Number of Impacted California Sycamores	6 Sycamores	3:1 replacement	**18 sycamores**

[6] *Potential* impacts from construction of tree wells and tree retaining walls are addressed in the arborist report (D. Gress, 2010).

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APPENDIX A: Sensitive Animal Discussion

FISH

Steelhead rainbow trout (Oncorhynchus mykiss)
State/Federal Status: CSC/FE

National Marines Fishery Service identified the south coast, including Montecito Creek, as "critical habitat" for steelhead in 2005. Steelhead were once abundant in coastal streams and rivers from Alaska southward to Baja California. They use nearly every accessible California coastal waterway. However, water diversion, stream channelization and other water reclamation activities have virtually eliminated steelhead runs from coastal streams south of San Luis Obispo County in California.

Coastal rainbow trout exhibit two life history strategies: resident rainbow trout, which live their entire lives in freshwater, and the anadromous steelhead, which mature in the ocean and spawn in freshwater. It is common to find populations exhibiting both life history strategies within the same river system. Adult rainbow trout are typically smaller than adult steelhead.

The southern California form is a winter-run species. During the winter, when freshwater outflows from the river are sufficient to breach estuarine sandbars and maintain an open channel to the ocean adults ascend the river to spawn. This typically occurs between December and May. After spawning, most adults return to the ocean. Hatchling steelhead emerge from the spawning gravels in March and April after an incubation period of 19-80 days depending on water temperature. Juvenile steelhead typically spend one year in the river, although some may remain for up to four years. They migrate back to the ocean during periods of high flow in winter and spring where they remain for 1-2 years.

Occurrence in the project area: Historic runs of anadromous trout are reported from upstream Montecito Creek. A 2002 report, prepared for the Conception Coast Project and with funding from the California Department of Fish and Game and W.P. McCaw Foundation, noted that the Santa Barbara Flood Control Channel (debris dam) at Montecito Creek near Cass Dorinda is a "keystone barrier.," and was high on their list of regional priorities for implementing upstream steelhead passage projects (Stoecker Ecological, 2002).

Rainbow trout have been reported in Cold Springs Creek. However, it is not certain whether these are anadromous. "Steelhead," were reported in a 2007 maintenance report from the Santa Barbara Flood Control District just north of the barrier. These were also most likely not anadromous due to the barrier to ocean travel.

AMPHIBIANS

California red-legged frog (Rana aurora draytonii)
State/Federal Status: CSC/FT

This frog has been recently listed as threatened by the USFWS because of extensive loss of populations due to habitat alteration and the introduction of non-native, predatory fishes and amphibians. The California red-legged frog has sustained a 70 percent reduction in its geographic range in California as a result of several factors acting singly or in combination (Jennings et al. 1992). Monterey (32), San Luis Obispo (36) and Santa Barbara (36) counties support the greatest number of currently occupied drainages.

The California red-legged frog is the largest native frog in the western United States. It ranges in length from 4 to 13 centimeters (1.5 to 5.1 inches) (Stebbins 1985). The abdomen and hind legs of adults are largely red; the back is characterized by small black flecks and larger irregular dark blotches with indistinct outlines on a brown, gray, olive, or reddish background color.

The California red-legged frog occupies a fairly distinct habitat, combining both specific aquatic and riparian components. The largest densities of California red-legged frogs are associated with deep-water pools with dense stands of overhanging willows (*Salix* spp.) and an intermixed fringe of cattails (*Typha latifolia*) (Jennings 1987). Well-vegetated terrestrial areas within the riparian corridor may provide important sheltering habitat during winter. California red-legged frogs estivate in small mammal burrows and moist leaf litter as far as 100 feet from water in adjacent dense riparian vegetation (Jennings and Hayes 1994).

Occurrence in the project area: Red legged frogs were found in August, 2002 within Cinquefoil Creek, a small drainage with a series of small to medium sized man-made ponds (CNDDB, 2008). This location is situated about 1/3 mile north of the confluence of Cold and Hot Springs Creek and 1/3 of a mile south of the project site. The stretch of creek adjacent to the site is not expected to provide summer habitat: flowing water would taper off and pools would dry up most years in late spring or early summer. However, red-legged frogs are known to travel overland during winter migration periods over ½ mile (Bulgera, 2003). Red-legged frogs may frequent this area of the creek system during the wet winter months.

Coast Range Newt (*Taricha torosa torosa*)
State/Federal Status: CSC /None

The coast range newt is a California Department of Fish and Game "Species of Special Concern". During the dry season of the year, from April through September, coast range newts are confined to deeper pools and ponds along perennial segments of south coast streams. It is during this time of year that newts mate and that their aquatic larvae develop. By late September the larvae metamorphose into miniature adults and follow the adults into terrestrial habitats that surround the breeding pools. They spend the wet months of the year, November through March, foraging in the understory of chaparral and oak woodlands that occur within 0.5 mile of their breeding sites. During this time of the year adults tend to spend the daylight hours in subterranean refuges and emerge at night following rains to feed. Newts will seek cover under rocks, logs or in mammal burrows, rock fissures, or man-made structures such as wells (Zeiner et al., 1988; Stebbins, 1985).

Although widespread in California, they have been declining in southern Santa Barbara County and are now confined to the upper reaches (higher gradient segments) of perennial drainages along the north and south facing slopes of the Santa Ynez Mountains. In the past, this species occurred along the lengths of most perennial streams on the south coast from sea level to near their headwaters. Today, primarily as a result of increased siltation from orchards and other developments, urban developments adjacent to streams, and Flood Control channel clearing activities, coast range newts are now rare along the coastal plain segments of perennial streams. Most newt populations are now confined to deeper pools in the upper reaches of perennial streams located on U. S. Forest Service lands in southern Santa Barbara County.

Occurrence in the project area: Coast range newts have been observed in upper San Jose, Maria Ygnacio, Mission, Rattlesnake, Cold Springs, Hot Springs, and San Ysidro Creeks, and in Lillington Canyon and Rincon Creek behind Carpinteria (SBMNH Sensitive Wildlife sighting database, Tierney and Storrer, 1990). Newts are expected to occur in deeper pools found in Hot Springs Creek. This stretch of the creek would not provide the perennial ponds needed during the summer months.

Southwestern Pond Turtle (*Clemmys (=Emmys) marmorata pallida*)
State/Federal Status: CSC/None

The southwestern pond turtle is a California Department of Fish and Game "Species of Special Concern." This turtle occurs throughout southern California, including parts of the Mojave Desert (Stebbins, 1985). They are a freshwater aquatic turtle that frequents slow-moving water in creeks, streams, rivers, ponds, reservoirs, lakes, and marshes. Their preferred habitat

includes standing or slow-moving water that forms pools at least 1 meter deep and 2 meters in diameter along with some sort of bank cover, such as vegetation, tree roots, or rip rap boulders (Holland 1991; Rathbun et al., 1992). Pond turtles also require basking sites to haul out onto, such as emergent vegetation, rocks, logs, or mud banks (Holland 1991; Rathbun et al., 1992). Although they are mostly aquatic, pond turtles do move to upland areas for egg laying in the spring and overwinter in underground burrows in adjacent upland habitats. In Santa Barbara County, this species appears to prefer quiet backwater in lakes, ponds, and low-flowing streams and creeks, which have a dense growth of aquatic vegetation, a diverse aquatic invertebrate fauna, and protected basking sites.

During the past century western pond turtles have been extirpated from many areas of Santa Barbara County due to loss of habitat, habitat fragmentation with its concomitant effects on population survivability, over exploitation, spread of exotic predators such as bullfrogs and large mouth bass, and pollution. Groundwater pumping and water diversions for urban and agricultural uses, channelization of water courses for flood control, and urban and agricultural expansion have eliminated a substantial amount of western pond turtle habitat, especially deep perennial pools. Conversion and/or alteration of lands that border streams, rivers and/or ponds where pond turtles occur have also contributed to the decline of this species. Western pond turtles are known to move up to 0.3 miles from streams to lay their eggs (Rathbun et al., 1992). With western pond turtles requiring a long, relatively wide corridor (e.g. 0.30 mile on each side of a water course) of undisturbed habitat for successful oviposition and incubation (Rathbun et al., 1992), the reason for this species being classified a "Species of Special Concern" becomes clear.

Historically, western pond turtles probably occurred along most watercourses and back-water areas of estuaries in central and southern California. Today, the primary habitats for this species are small-to-medium sized streams in foothill areas, man-made ponds, and modified watercourses such as canals and reservoirs (Jennings et al., 1992). Pond turtles have been recorded from a number of perennial streams along the south coast of Santa Barbara County between Canada del Cojo and Rincon Creek (SBMNH sensitive wildlife specimen and sighting database). Pond turtles are also abundant in the City of Santa Barbara in Laguna Channel, a highly altered conduit that runs from East Yanonali Street to Cabrillo Boulevard.

Occurrence in the project area: The nearest extant locales to the project site for this species are in deep perennial pools of Cold Springs Creek above Mountain Drive (Tierney and Storrer, 1990), in Carpinteria Creek downstream of Foothill Road, and along Rattlesnake Creek (SBMNH sensitive wildlife specimen and sighting record database). This species is expected to occur in perennial sections along Hot Springs Creek north of the project area.

Two-striped Gartersnake (Thamnophis hammondii)
State/Federal Status: CSC/None

Two-striped gartersnakes occur in perennial streams, ponds and lake margins from about Salinas in Monterey County south into Baja California (Stebbins, 1985). Historically they were widely distributed throughout southern California occurring along most streams and rivers in the region. However, during the past 50 years, its populations have declined dramatically throughout central and southern California due primarily to degradation, loss and fragmentation of instream freshwater habitat from flood maintenance practices and developments, and increased predation from introduced predators, such as bullfrogs and largemouth bass. Today this species tends to be confined to the higher gradient segments of streams along the south coast. This species is a CDFG "Species of Special Concern" and does not have any other state or federal listing status.

This highly aquatic species prefers semi-permanent and permanent freshwater and is generally found near permanent water such as along streams that have rocky beds bordered by riparian woodlands or other streamside growth (Stebbins, 1985). This gartersnake also utilizes stock ponds, lakes, reservoirs, and other man-made water sources. It appears to prefer deep, relatively slow-moving waters in small coastal streams that have a plentiful supply of prey such as tadpoles, frogs, or fish. This gartersnake is active from late February through September with peak activity occurring in June (DeLisle et al., 1986). Mating occurs from March through April with a single litter of up to 25 young born during August and September (Stebbins, 1985). By late September this species enters hibernation, generally retreating into rock crevices and animal burrows that are located out of reach of high winter floods. Two-striped gartersnakes feed on a wide variety of vertebrate prey including tadpoles, frogs, fish, fish eggs, earthworms, and small mammals (Stebbins, 1954; 1985).

Occurrence in the project area: Two-striped gartersnakes have been reported from the upper reaches of many of the perennial streams found along the south coast of Santa Barbara County. In the project area, this species has been recorded from upper Mission, Rattlesnake, Cold Springs, Hot Springs, San Ysidro and Carpinteria Creeks (SBMNH sensitive wildlife specimen and sighting database). There are two records on the CNDDB : one in Rattlesnake Canyon 2.75 miles to the northeast and one in San Ysidro Canyon 3.5 miles north northwest of the site. This snake is expected to occur along Hot Springs Creek upstream of the site and may frequent the riparian area onsite.

Cooper's Hawk (*Accipiter cooperi*)
Status: Local Concern

Although Cooper's hawks were not included on a recent update Bird Species of Special Concern in California report (Shuford and Gardali 2008), they are considered to be of local concern by regional wildlife biologists based on their restricted breeding distribution in Santa Barbara County.

According to Lehman (1982, 1994), Cooper's hawks are an uncommon to fairly common transient and winter visitor to wooded habitats throughout Santa Barbara County. Along the South Coast they are an uncommon localized breeder principally in foothill canyons (Lehman 1994). The largest number of Cooper's hawks occurs during the fall and early winter (September-January), when fall migrants arrive to winter in Santa Barbara County (Lehman 1994). During this time of year they can be found in a variety of wooded habitats, including oak, riparian, and urban woodlands. During the breeding season Cooper's hawks tend to be associated with oak and riparian woodlands in foothill canyons along the south-facing slopes of the Santa Ynez Mountains. Prior to the 1950s, Cooper's hawks were much more widespread as a breeder in lowlands of Santa Barbara County, with confirmed breeding records from Carpinteria, Cold Springs Canyon, Montecito, Santa Barbara, and northern Goleta (Lehman 1994). During the past two decades, Cooper's hawks appear to have begun to adapt to South Coast urban woodlands (eucalyptus), where they have recently been reported to have nested in the Montecito area (J. Lentz pers. comm.).

Occurrence in the project area: There are a number of recent breeding records for Cooper's Hawks in the Montecito area (Watershed Environmental 2005). During the summer of 1994, Cooper's Hawks were suspected to have nested above Mountain Drive in Coyote and San Ysidro Canyons (SBMNH sensitive wildlife specimen and sighting database). In the spring of 1997, a pair of Cooper's Hawks was observed in San Ysidro Canyon (SBMNH sensitive wildlife specimen and sighting database) and adults were seen exhibiting breeding behavior along Bella Vista Drive in Montecito (J. Lentz pers. comm.). In 2001 Cooper's Hawks nested in eucalyptus in Romero Canyon at the junction of Bella Vista Rd, off Mountain Drive in Montecito, and in a sycamore tree near Riven Rock Road off Hot Springs Canyon (J. Lentz pers. comm.). A juvenile was observed on August 13, 1999 in Romero Canyon (J. Lentz pers. comm.), which suggests that the species bred successfully at this location. In the spring of 2004 Cooper's Hawks nested in an unnamed arroyo off Hyde Rd near 215 Mountain Drive, approximately 300 yards from the northwest corner of the Westmont Campus property line (S. Hill and B. Reitherman pers. comm.). Adult Cooper's Hawks were reported in the general vicinity of the 2004 nest site in spring 2005 but an active nest was not located (B. Reitherman pers. comm.).

These recent records suggest that Cooper's Hawks are nesting in woodlands found in the Montecito area and as such should be expected to also occur along Hot Springs Creek in the vicinity of the proposed project site. Most of the recent confirmed nesting records in the Montecito Planning Area are of birds that have nested in eucalyptus trees (J. Lentz pers. comm..). No Cooper's hawks were observed at the project site during the March 2008 field survey. However, they are expected to forage in riparian and oak woodlands on this property and may occasionally use trees that border Hot Springs Creek for roosting and possibly even nesting.

Warbling Vireo (*Vireo gilvus*)
Status: Local Concern

The Warbling Vireo is a species of local concern, which has no federal or state status. Prior to the 1950's, this species was a common nester throughout much of California (Grinnell and Miller, 1944; Willett, 1933). Today it is a very uncommon to rare localized breeder along the South Coast and a rather common breeder along the North Coast of Santa Barbara County (Lehman, 1982; 1994). Loss of requisite oak-riparian woodland breeding habitat along with heavy nest parasitism by brown-headed cowbirds (*Molothrus ater*) are thought to be the primary factors responsible for the decline in warbling vireo populations in southern California (Garrett and Dunn, 1981; Lehman, 1982).

Occurrence in the project area: In Santa Barbara County, warbling vireos are an uncommon to locally common summer resident breeder (Lehman, 1982). They reside in riparian and oak-riparian woodlands and are known to nest along many of the region's coastal streams. Warbling vireos are also known to nest along many of the larger streams in the South Coast Region (Lehman, 1982; Tierney and Storrer, 1990). In the project area, it has been reported nesting in upper Mission and Rattlesnake Creeks, in Montecito, and along Carpinteria and Rincon Creeks (Lehman 1982, 1994). Tierney and Storrer (1990) reported that it probably nests along most of the perennial streams in the Montecito Planning area. This species was heard upstream of the project site last year and probably nests in suitable oak and oak-riparian woodland habitat found along Hot Springs Creek in the project area (Tierney, 2008). It is also expected to forage in oaks on this property during migration.

Yellow Warbler (*Dendroica petechia*)
State/Federal Status: CSC/None

The yellow warbler is a CDFG Species of Special Concern (Shuford and Gardali 2008) and is considered by local wildlife biologists to be of local concern. The yellow warbler has declined regionally in the same manner as the warbling vireo, although not to the same degree (Lehman, 1982; 1994). Yellow warblers are a common spring and fall migrant in wooded and brushy habitats in the Santa Barbara Region (Lehman, 1982). They are an uncommon to locally common summer visitor to well-developed riparian woodlands in the Santa Barbara Region.

Occurrence in the project area: This species is known or expected to nest in small numbers in riparian woodlands along some of the larger perennial streams on the south coast such as Mission, Rattlesnake, Montecito, Oak, Romero, San Ysidro, and Carpinteria Creeks (Lehman 1994; Tierney and Storrer, 1990). This species was heard upstream of the project site last year. Yellow warbler are known to nest in willow-cottonwood vegetation as well as other habitat (Shuford and Gardali, 2008)., which occurs within the project site (Tierney, 2008). Yellow Warblers are also expected to forage during spring and fall migration in woodland habitats found on the Hot Springs project site.

ATTACHMENT E

County of Santa Barbara
Planning and Development

John Baker, Director

Dianne Black, Director Development Services

John McInnes, Director Long Range Planning

April 8, 2009

Bagdasarian-Karman Family Trust
1192 E. Mountain Drive
Santa Barbara, CA 93108

Re: Violation of County Code Chapter 35 (Zoning), APN 011-020-042, 1192 E. Mountain Drive

Dear Property Owner(s):

On February 10, 2009, Planning & Development received a complaint regarding vegetation removal, grading and construction activities (retaining walls and two bridges crossing a tributary of Hot Springs Creek) occurring within sensitive habitats located adjacent to Hot Springs Creek.

On March 3, 2009, Planning & Development's staff biologist and Natasha Lohmus from the California Department of Fish & Game met with your agent Chris Minks and biologist Rachael Tierney on site to evaluate the scope of the activities and potential impacts to the environmentally sensitive habitat. Based on information obtained during the site investigation a determination was made that the grading and construction of the retaining walls and bridges required permits pursuant to the requirements of the Santa Barbara County Montecito Land Use & Development Code as well as County Code Chapter 10 (Grading).

Therefore, the unpermitted activities constitute a violation of County Code Chapter 35 (Zoning). To abate the zoning violation, approval of a Land Use Permit must be obtained. Subsequent Building Permits will be required to address violations of the County's Grading Ordinance.

(2) Bio (2) plan sets

Please note that affirmative findings of consistency with all applicable policies and ordinance requirements to grant after the fact approval for the entirety of the "development" would be difficult to support given the inherent conflict with policies that protect native vegetation and environmentally sensitive habitats. Therefore, the Land Use Permit application should describe the unpermitted grading and development, the impacts to the environmentally sensitive habitat and focus on providing a restoration program. I am aware that Rachel Tierney has been hired to address these issues and is working with Ms. Mooney and Ms. Lohmus to prepare a restoration plan that addresses these issues. Ms. Tierney's analysis and report will be extremely valuable in reaching an appropriate resolution of the violations. Please submit a complete Land Use Permit application package which includes Ms. Tierney's Biological report on or before **May 1, 2009.**

Development Review
Building & Safety
Energy, Administration
123 E. Anapamu Street
Santa Barbara, CA 93101
Phone: (805) 568-2000
FAX: (805) 568-2030

Long Range Planning
30 E. Figueroa St, 2nd Floor
Santa Barbara, CA 93101
Phone: (805) 568-3380
FAX: (805) 568-2076

Building & Safety
185 West Hwy 246, Ste 101
Buellton, CA 93427
Phone: (805) 686-5020
FAX: (805) 686-5028

Development Review
Building & Safety
Agricultural Planning
624 W. Foster Road
Santa Maria, CA 93455
Phone: (805) 934-6250
FAX: (805) 934-6258

Please be advised that as a violation was identified, an enforcement case was opened on the property and all staff time expended by Planning & Development staff to resolve/abate the violation will be charged to the owner of record at the hourly rate in effect at the time. The current rate as adopted by the Board of Supervisors is $134.54 per hour. This includes research, correspondence, site visits, etc. When assessed, the owner will have the right to object to these charges by filing a Request for Hearing with the Department of Planning & Development within 10 days from receipt of the billing statement (mailed upon closure of enforcement case) pursuant to §35-185.6 of the Article II Zoning Ordinance. Unappealled or upheld processing fees can be recovered in a civil action or by recording a lien against the property pursuant to the requirements and procedures detailed in §35-185.6.6 of the Article II Zoning Ordinance. Additionally, as a permit is required to cure the verified violation, a permit processing penalty fee equal to double the permit cost (up to $2,000.00) will be assessed pursuant to the Board of Supervisor's currently adopted Fee Schedule.

Sincerely,

Kimberley McCarthy

Kimberley McCarthy, Enforcement Planner
Building & Safety Division, Zoning Enforcement

(805) 568-2005
kheaton@co.santa-barbara.ca.us

xc: California Department of Fish & Game, Attn Natasha Lohmus, 1933 Cliff Drive, Suite 9, Santa Barbara, CA 93109
Melissa Mooney, Planner Development Review – North

PLANNING AND DEVELOPMENT
BUILDING AND SAFETY DIVISION
COUNTY OF SANTA BARBARA

20028

SANTA BARBARA 568-3030 | BUELLTON 686-5020 | SANTA MARIA 934-6230

CORRECTION NOTICE

INSPECTIONS: 568-3118

Name Attention: Mines

Address 1192 Mountain

Permit No.

I have this day inspected this structure/grading and the following corrections have been noted.

Stop All Work Near Creek NOT Associated w/ A VALID S.B. County Land Use permit & Grading permit.

Submit for and obtain The appropriate Land Use permit / Grading permits)

Please Call if you have any Questions (805)
Tony Bohnett - 568-3114

May require a permit from State of Ca. Fish & Game

Corrections shall be made within 20 day(s).
Please call for re-inspection when the above corrections have been made.

Tony Bohnett
Inspector

3-14-09
Date

DO NOT REMOVE THIS CARD

ATTACHMENT F

County of Santa Barbara
Planning and Development
John Baker, Director
Dianne Black, Director Development Services
Derek Johnson, Director Long Range Planning

July 9, 2009

Ms. Ginger Andersen
Penfield & Smith
111 E. Victoria Street
Santa Barbara, CA 93101

RE: Initial Feedback Letter - Bagdasarian/Karman Site Alterations, Retaining Walls, Bridges 1192 and 1194 East Mountain Drive
Case No. 09LUP-00000-00256 and 09ZEV-00000-00042
APN 011-020-034 & 011-020-042

Dear Ms. Andersen:

Thank you for the June 24, 2009 application submittal for a Land Use Permit to correct the Zoning Violation 09ZEV-00000-00042 and allow for after-the-fact site grading and construction of retaining walls and two pedestrian bridges along streams and within Environmentally Sensitive Habitat. The purpose of this letter is to inform you that we have received your submittal and that a copy of the "Biological Assessment and Impact Analysis" prepared by Rachel Tierney has been forwarded to P&D's staff biologist for peer review. Upon completion of this review, P&D may request submittal of additional information for processing and review of the proposed project. However, at this time, please submit the following:

1. **Arborist Report.** Please provide an arborist report detailing the potential effects the proposed project will have on all protected (Coast Live Oak, California Sycamore and other native trees) or specimen trees located within or near the area of the after-the-fact development (grading, tree wells, retaining walls, irrigated lawn). Additionally, this report must be prepared by a County-qualified arborist and must include the information listed below:
   a. An inventory of the affected trees.
   b. Number or otherwise ID the trees inventoried, and show trees and their corresponding numbers on a site plan.
   c. Current health of trees inventoried with Diameter at Breast Height (DBH at 54" above the ground) for each tree. If a tree is in a diseased state the suspected disease.
   d. Determine the percentage of the "dripline + five feet" affected by the after-the-fact development. Also show this on the site plan.
   e. Address all apparent or foreseeable effects that the after-the-fact development had, or may have, on the protected trees. Propose measures to minimize disturbance to the trees from this development.

Our initial review is based on the following project description, which may be further amended based upon additional information:

The project is for an after-the-fact Land Use Permit to correct Zoning Violation 09ZEV-00000-00042 that resulted in grading and construction of approximately 792 linear feet of four to five-foot high retaining walls (approximately 405 linear feet along a tributary to Hot Springs Creek) and two pedestrian bridges within Environmentally Sensitive Habitat (ESH), removal of an estimated 15 mature Coast Live Oak trees and six California Sycamore trees, construction of walled tree wells, and installation of 0.73 acres of irrigated lawn within ESH and the ESH buffer. The parcel is served by the Montecito Water District and the Montecito Fire Protection District with sanitary disposal by private septic system. Access will continue to be provided off of East Mountain Drive. The affected property includes two parcels owned by the applicant of 3.23 acres and 4.91 acres (gross) and zoned 3-E-1 shown as Assessor's Parcel Number 011-020-034 & 011-020-042 located at 1192 and 1194 East Mountain Drive in the Montecito Area, First Supervisorial District.

Please review this description carefully. If you believe the project description is incorrect or does not include components that you intend to include as part of the project, please contact us as soon as possible.

Project Cost Estimate

Based upon our preliminary review, we estimate that processing of your project will require approximately 55 planner hours including review by P&D's staff biologist. There are also fees for noticing and other costs for a total estimate of $10,000 to complete P&D's action on the application as submitted, including time spent to date. Please refer to the enclosed Project Cost Estimate Worksheet for additional detail on this estimate. If unforeseen circumstances arise and we feel the cost estimate may be exceeded, we will inform you. Any security deposit balance remaining at completion of case processing will be refunded.

Starting next month, you will receive a monthly invoice for all unpaid charges on your account. You will be required to pay the invoice within 25 days. Non-payment of an invoice will result in staff stopping work and possible denial of the project.

Advisory Information

Based on our preliminary review of your application, we offer the following advisory statements:

1. A Lot Line Adjustment application has been filed that would result in the transfer of what might be an affected area of APN 011-050-066 (the Bonsignore property located at 1260 East Mountain Drive) to the Bagdasarian lot APN 011-020-034 (Case No. 09LLA-00000-00003). As part of the review staff will also need to determine whether any Zoning Violation occurred on APN 011-050-066.

2. **Minimization of Grading.** County policy requires that development minimize cut and fill and be designed to fit site topography and geology, and preserve natural landforms. Of particular relevance are the following:

   Land Use Element Hillside and Watershed Protection Policy 1: *Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.*

   Land Use Element Hillside and Watershed Protection Policy2: *All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.*

   As constructed, the proposed project does not appear to be consistent with these policies. As determined by the Zoning Violation case 09ZEV-00000-00042, the site has been graded and native vegetation removed (particularly mature Coast Live Oaks and California Sycamores) to construct a retaining wall and two bridges, and install a 0.73-acre irrigated lawn, all without required permits.

3. **Environmentally Sensitive Habitat (ESH). The following ESH Overlay Development Standards and Montecito Community Plan policies protecting ESH apply to the subject parcel:**

   Montecito Land Use & Development Code Subsection 35.428.040.K. Development Standards - Streams

   *1. **Stream habitat buffer.** The minimum buffer strip for development near streams and creeks in Rural Areas as designated on the Comprehensive Plan maps shall be presumptively 100 feet from the top of bank and 50 feet for streams in Urban Areas as designated on the Comprehensive Plan maps. These minimum buffers may be adjusted upward or downward on a case-by-case basis but within the Inland area the buffer shall not preclude reasonable development of a lot. To protect the biological productively and water quality of streams, each buffer shall be established based on an investigation of the following factors, and after consultation with the California Department of Fish and Game and California Regional Water Quality Control Board:*

   a. Soil type and stability of stream corridors;

   b. How surface water filters into the ground;

   c. Slope of land on either side of the stream;

   d. Location of the 100-year flood plain boundary; and

   e. Consistency with adopted plans, particularly Biology/Habitat policies of the Montecito Community Plan.

   Within the Coastal Zone, riparian vegetation shall be protected and shall be included in the buffer and where riparian vegetation has previously been removed, except in association with channelization, the buffer shall allow for the re-establishment of riparian vegetation to its prior extent to the greatest degree possible.

   *2. **Prohibition on development within a riparian corridor.** No structure shall be located within a stream corridor except:*

a. Public trails that would not adversely affect existing habitat;

b. Dams necessary for water supply projects;

c. Flood control projects where no other method for protecting existing structures in the floodplain is feasible, and where the protection is necessary for public safety;

d. Other development where the primary function is for the improvement of fish and wildlife habitat; and

e. Within the Inland area, other development where this requirement would preclude reasonable development of a lot.

Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alterative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.

*3. **Limitation on development, revegetation required.** All development, including dredging, filling, and grading within stream corridors shall be limited to activities necessary for the construction of uses specified in Subsection K.2 (Prohibition on development within a riparian corridor) above.*

*b. **Development within the Inland area.** Development within the Inland area shall be in compliance with the following:*

(1) When development requires the removal of riparian plant species, re-vegetation with local native plants shall be required on both banks and extending outward 25 feet from each top of bank, except where it would preclude reasonable development of a lot.

*4. **Riparian protection measures - Inland area.** Riparian protection measures shall be based on the project's proximity to riparian habitat and the project's potential to directly or indirectly damage riparian habitat through activities related to a Land Use Permit such as grading, brushing, construction, vehicle parking, supply/equipment storage, or the proposed use of the property. Damage could include vegetation removal/disturbance, erosion/sedimentation, trenching, and activities which hinder or prevent wildlife access and use of habitat. Prior to issuance of a Land Use Permit, the applicant shall include a note on the grading and building plans stating the following riparian habitat protection measures:*

a. A setback of 50 feet from either side of top-of-bank of the creek, that precludes all ground disturbance and vegetation removal; and

b. That protective fencing shall be installed along the outer buffer boundary at the applicant's expense prior to initiation of any grading or development activities associated with a Land Use Permit. Storage of equipment, supplies, vehicles, or placement of fill or refuse, shall not be permitted within the fenced buffer region.

(1) This measure may be modified or deleted in the event that the Director finds that it is not necessary to protect biological resources (e.g., due to topographical changes or other adequate barriers).

*5. **Onsite restoration required - Inland area.** Onsite restoration of any project-disturbed buffer or riparian vegetation within a creek shall be mandatory. A riparian revegetation plan, approved by the Director, shall be developed by a County approved biologist (or other experienced individual acceptable to the Director) and implemented at the applicant's expense. The revegetation plan shall use native species that would normally occur at the site prior to disturbance. The plan shall contain planting methods and locations, site preparation, weed control, and monitoring criteria and schedules.*

MCP ESH policies

Policy BIO-M-1.3: Environmentally Sensitive Habitat (ESH) areas within the Montecito Planning Area shall be protected, and where appropriate, enhanced.

Development Standard BIO-M-1.3.1: All applicants proposing new development within 100 feet of an Environmentally Sensitive Habitat (ESH, shall be required to include setbacks or undeveloped buffer zones from these habitats as part of the proposed development except where setbacks or buffer zones would preclude reasonable development of the parcel. In determining the location, width and extent of setbacks and buffer zones, staff shall refer to the Montecito Biological

Resources Map as well as other available date (e.g., maps, studies, or observations).If the project would result in potential disturbance to the habitat, a restoration plan shall be required. When restoration is not feasible onsite, offsite restoration may be considered.

Development Standard BIO-M-1.3.2: *In the event that activities considered to be zoning violations result in the degradation of an Environmentally Sensitive Habitat (ESH), the applicant shall be required to prepare and implement a habitat restoration plan. Degraded or disturbed portions of an ESH area outside of any formal landscaping plan shall be restored with appropriate native species to offset increased development and increased human and domestic animal presence.*

Development Standard BIO-M-1.3.3: *Landscaping which includes invasive species shall be prohibited in or near Environmentally Sensitive Habitat (ESH) areas. The California Native Plant Society publishes a list of invasive species to which the applicant may refer. Landscaping in ESH areas shall include compatible native species.*

Policy BIO-M-1.6: *Riparian vegetation shall be protected as part of a stream or creek buffer. Where riparian vegetation has previously been removed, (except for channel cleaning necessary for free-flowing conditions as determined by the County Flood Control District) the buffer shall allow the reestablishment of riparian vegetation to its prior extent to the greatest degree possible. Restoration of degraded riparian areas to their former state shall be encouraged.*

Development Standard BIO-M-1.6.1: *Riparian protection measures shall be based on a project's proximity to riparian habitat and the project's potential to directly or indirectly damage riparian habitat through activities related to a land use permit or coastal development permit such as grading, brushing, construction, vehicle parking, supply/equipment storage, or the proposed use of the property. Damage could include, but is not limited to, vegetation removal/disturbance, erosion/sedimentation, trenching, and activities which hinder or prevent wildlife access and use of habitat. Prior to initiation of any grading or development activities associated with a Land Use or Coastal Development Permit, a temporary protective fence shall be installed along the outer buffer boundary at the applicant's expense, unless the County finds that this measure is not necessary to protect biological resources (i.e., due to topographical changes or other adequate barriers). Storage of equipment, supplies, vehicles, or placement of fill or refuse, shall not be permitted within the fenced buffer region.*

Development Standard BIO-M-1.6.2: *On-site restoration of any project-disturbed buffer or riparian vegetation within creeks in the Montecito Planning Area shall be mandatory. A riparian revegetation plan, approved by the County, shall be developed by a County approved biologist (or other experienced individual acceptable to the County) and implemented at the applicant's expense. The revegetation plan shall use native species that would normally occur at the site prior to disturbance. The plan shall contain planting methods and locations, site preparation, weed control, and monitoring criteria and schedules.*

Policy BIO-M-1.7: *No structures shall be located within a riparian corridor except: public trails that would not adversely affect existing habitat; dams necessary for water supply projects; flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety, other development where the primary function is for the improvement of fish and wildlife habitat and where this policy would preclude reasonable development of a parcel. Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.*

Policy BIO-M-1.8: *The minimum buffer strip for development near streams and creeks in Rural Areas shall be presumptively 100 feet from top of bank and for streams in Urban Areas, 50 feet. These minimum buffers may be adjusted upward or downward on a case-by-case basis but shall not preclude reasonable development of a parcel. The buffer shall be established based on an investigation of the following factors and after consultation with the Department of Fish and Game and Regional Water Quality Board in order to protect the biological productivity and water quality of streams:*

1. *soil type and stability of stream corridors;*
2. *how surface water filters into the ground;*
3. *slope of the land on either side of the stream;*

4. location of the 100 year flood plain boundary; and

5. consistency with adopted plans, particularly Biology/Habitat policies.

The buffer area shall be indicated on all grading plans. All ground disturbance and vegetation removal shall be prohibited in the buffer area.

The "Biological Assessment and Impact Analysis" prepared by Rachel Tierney is currently undergoing peer review by the P&D staff biologist and the project planner, along with the unpermitted development in general, for consistency with the ESH Overlay development standards and community plan policies. Upon completion of this initial review, staff will provide you with further information, and as stated in the opening paragraph of this letter, will inform you if additional information must be submitted to process the LUP application.

4. **Protection of Native and Specimen Trees.** The Montecito Community Plan and Montecito Architectural Guidelines contain several policies providing protection for both native and specimen trees, including the following:

Montecito Community Plan Policies

Policy BIO-M-1-1.17: Oak trees, because they are particularly sensitive to environmental conditions, shall be protected to the maximum extent feasible. All land use activities, including agriculture shall be carried out in such a manner as to avoid damage to native oak trees.

Policy BIO-M-1.16: All existing native trees regardless of size that have biological value shall be preserved to the maximum extent feasible.

Development Standard BIO-M-1.16.1: Where native trees of biological value may be impacted by new development (either ministerial or discretionary), a Tree Protection Plan shall be required. The decision to require preparation of a Tree Protection Plan shall be based on the location of the native trees and the project's potential to directly or indirectly damage the trees through such activities as grading, brushing, construction, vehicle parking, supply/equipment storage, trenching or the proposed use of the property. The Tree Protection Plan shall be based on the County's existing Tree Protection Plan standards and shall include a graphic depiction of the Tree Protection Plan elements on final grading and building plans (Existing landscaping plans submitted to County Board of Architectural Review (BAR) may be sufficient). A report shall be prepared by a County-approved arborist/biologist which indicates measures to be taken to protect affected trees where standard measures are determined to be inadequate. If necessary, an appropriate replacement/replanting program may be required. The Tree Protection Plan shall be developed at the applicant's expense. The plan shall be approved by RMD prior to issuance of a Land Use or Coastal Development Permit.

Policy BIO-M-1.15: To the maximum extent feasible, specimen trees shall be preserved. Specimen trees are defined for the purposes of this policy as mature trees that are healthy and structurally sound and have grown into the natural stature particular to the species. Native or non-native trees that have unusual scenic or aesthetic quality, have important historic value, or are unique due to species type or location shall be preserved to the maximum extent feasible.

Development Standard BIO-M-1.15.1: All existing specimen trees shall be protected from damage or removal by development to the maximum extent feasible.

Montecito Architectural Guidelines & Development Standards

Residential projects should be designed to preserve significant and unique vegetation groupings which contribute to the character and the site of the neighborhood.

Site plans should demonstrate a diligent effort to retain as many "significant trees" as possible. Note: "Significant Tree" means any tree which is in good health and is more than 12 inches in diameter as measured 4 feet 6 inches above the root crown. Any tree of the Quercus (oak) genus which is in good health and is more than 6 inches in diameter as measured 4 feet 6 inches above the root crown is considered a "significant tree".

The "Biological Assessment and Impact Analysis" prepared by Rachel Tierney indicates that at least 15 mature Coast Live Oaks and six California Sycamores were removed to construct the retaining wall and create the 0.73-acre irrigated lawn. The tree replacement plan proposed by Rachel Tierney is currently undergoing review. Additionally, an unknown (at this time) number of other trees have been impacted by the construction of tree wells very near the trunks of these trees, well within the critical root zones.

5. **Montecito Board of Architectural Review (MBAR).** The proposed project is subject to review and approval by the BAR as it included after-the-fact structural development that is not exempt. *Note*: The P&D planner must receive any revised plans by **Monday at 12:00 pm** one week prior to the date of your requested MBAR meeting in order to review the revisions and authorize action on your case. Only those plans received by this date in advance of the hearing and authorized by the planner will be reviewed at the MBAR hearing. If revisions are not submitted at least one week in advance the item may be withdrawn from the hearing agenda. Please, always remember to submit two sets of *folded* plans to the assigned planner.

6. **Montecito Water District Certificate of Water Service Availability.** Montecito Water District (MWD) requires that any use of land that requires a permit or approval by the County of Santa Barbara shall require a Certificate of Water Service Availability (CWSA) issued by the MWD. Please contact Tom Mosby of the MWD at 969-2271 to start the application process. The proposal includes 0.73 acres of irrigated lawn, which must be included accounted for in the MWD's Certificate.

We encourage you to address these issues as early in the process as possible. Please call me within the next week to discuss these changes to the project if you have any questions or concerns. If possible, I would like to schedule a site visit during the week of July 20th, if you are available. Please feel free to contact me by phone or email, or call to schedule an appointment to see me in person. I look forward to working with you on this project.

Sincerely,

JULIE L. HARRIS, Planner III
Development Review South Division
Phone: (805) 568-3518
Email: jharris@co.santa-barbara.ca.us

cc: Case file (to Planner w/enclosure)
Mr. Ross Bagdasarian, 1194 East Mountain Drive, Montecito CA 93108 (w/enclosure)
June Pujo, P&D Supervising Planner
Melissa Mooney, P&D Biologist
Tony Bohnett, P&D Grading Inspector [South]
Kimberley McCarthy, P&D Enforcement

Enclosure:
Cost Estimate Worksheet

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County of Santa Barbara
Planning and Development

ATTACHMENT G

Glenn S. Russell, Ph.D., Director
Dianne Black, Director of Development Services
Derek Johnson, Director of Long Range Planning

December 23, 2009

Ms. Ginger Andersen
Penfield & Smith
111 E. Victoria Street
Santa Barbara, CA 93101

RE: Second Feedback Letter
Bagdasarian/Karman Site Alterations, Retaining Walls, Bridges
1192 and 1194 East Mountain Drive
Case No. 09LUP-00000-00256 and 09ZEV-00000-00042
APN 011-020-034 & 011-020-042

Dear Ms. Andersen:

The purpose of this letter is to provide feedback on the "Biological Assessment and Impact Analysis", dated June 15, 2009, prepared by Rachel Tierney Consulting, and to outline the options available for addressing the Zoning Violation 09ZEV-00000-00042. We regret that it has taken the County an extended time to respond to your submittal. Our goal was to provide a thoughtful, scientific and professional analysis of your project. Unfortunately, the contraction of our department and internal coordination had an adverse effect on our processing timelines. The response contained herein is, however, well-considered.

This zoning violation constitutes the unpermitted construction of retaining walls in and along the banks of a tributary stream of Hot Springs Creek, the construction of two pedestrian bridges and at least 12 tree wells around native oaks, associated grading and removal of approximately 1.1 acres of mapped riparian Environmentally Sensitive Habitat (ESH), established in 1992 with adoption of the Montecito Community Plan, including at least 11 native oaks and six sycamore trees,[1] and the associated installation of irrigated lawn within the ESH.

P&D's staff biologist Melissa Mooney completed review of the Tierney report (see enclosed peer review memo) and on December 2, 2009 staff consulted with California Fish and Game (CDFG) Environmental Scientist, Natasha Lohmus, for input on the area of disturbance within CDFG jurisdiction to ensure consistent direction to the applicant. While CDFG's jurisdiction is limited to disturbance within the creek and the riparian zone along its banks, the County's jurisdiction extends across the entire area of disturbance.

P&D and CDFG concur that riparian habitat restoration is required due to the impacts to native and riparian vegetation resulting from the construction of retaining walls, tree wells and bridges, installation of the irrigated lawn and associated removal of native riparian vegetation, oaks and sycamores.

[1] Tierney, Rachel. *Biological Assessment and Impact Analysis*. June 15, 2009.

Development Review
Building & Safety
Energy, Administration
123 E. Anapamu Street
Santa Barbara, CA 93101
Phone: (805) 568-2000
FAX: (805) 568-2030

Long Range Planning
30 E. Figueroa St, 2nd Floor
Santa Barbara, CA 93101
Phone: (805) 568-3380
FAX: (805) 568-2076

Development Review
Building & Safety
Agricultural Planning
624 W. Foster Road
Santa Maria, CA 93455
Phone: (805) 934-6250
FAX: (805) 934-6258

The property owner has two options:

1. Remove the unpermitted development and restore riparian habitat at a 3:1 ratio as applied to the area of disturbance, including the area cleared of former ESH. This ratio is based upon consideration of impacts as temporary. The removal of approximately 1.1 acres of riparian habitat has been documented. Because 1.1 acres of habitat was disturbed or lost, 3.3 acres of riparian habitat restoration would be required. Removal and restoration of the newly installed, irrigated lawn will be required to meet the onsite restoration requirement.

2. Pursue a Land Use Permit approval for the unpermitted development and restore habitat. Please note, CDFG has informed the County that if any development is allowed to remain a 5:1 restoration would be required for the acreage of permanent habitat loss. A 3:1 ratio would be used to calculate the remainder of required restoration.

   Please be advised that approval of such a permit is highly unlikely due to the inability to make findings of consistency with Montecito Community Plan and Montecito Land Use & Development Code policies and development standards. See Advisory # 1 below.

In either case, P&D and CDFG agree that onsite restoration will be required. Should the final area of required restoration exceed the area onsite available for restoration, CDFG has indicated to the County that the remaining restoration requirement can be satisfied through the payment of mitigation fees to the South Coast Habitat Restoration, which is currently conducting a steelhead habitat creek restoration project along Carpinteria Creek.

Mitigation is required with either option to address the loss of native trees. Both the County and CDFG require mitigation for impacted oak and sycamore trees at a 10:1 replacement ratio, i.e., for each oak and sycamore removed or impacted, ten must be planted. This is the standard accepted replacement ratio for impacted native trees. At a minimum, Ms. Tierney reported a loss of, or impact to, at least 15 Coast Live Oaks (11 removed and four others impacted) and six Western Sycamores, which would require the planting of 150 oaks and 60 sycamores. This tree replacement mitigation should be accommodated as part of the onsite areal restoration requirement.

Finally, an unpermitted earthen berm located at the north end of the tributary creek, which appears to have been used for vehicular access, will need to be removed and the channel restored to allow natural flow through the tributary.

P&D's requirement for onsite restoration is based upon the following Montecito Community Plan and Montecito Land Use & Development Code policies and development standards:

Montecito Community Plan Development Standard BIO-M-1.6.2: On-site restoration of any project-disturbed buffer or riparian vegetation within creeks in the Montecito Planning Area shall be mandatory. A riparian revegetation plan, approved by the County, shall be developed by a County approved biologist (or other experienced individual acceptable to the County) and implemented at the applicant's expense. The revegetation plan shall use native species that would normally occur at the site prior to disturbance. The

plan shall contain planting methods and locations, site preparation, weed control, and monitoring criteria and schedules.

Montecito Land Use & Development Code Subsection 35.428.040.K. Development Standards - Streams Subsection 35.428.040.K.5: Onsite restoration required - Inland area. Onsite restoration of any project-disturbed buffer or riparian vegetation within a creek shall be mandatory. A riparian revegetation plan, approved by the Director, shall be developed by a County approved biologist (or other experienced individual acceptable to the Director) and implemented at the applicant's expense. The revegetation plan shall use native species that would normally occur at the site prior to disturbance. The plan shall contain planting methods and locations, site preparation, weed control, and monitoring criteria and schedules.

Montecito Community Plan Development Standard BIO-M-1.3.2: In the event that activities considered to be zoning violations result in the degradation of an Environmentally Sensitive Habitat (ESH), the applicant shall be required to prepare and implement a habitat restoration plan. Degraded or disturbed portions of an ESH area outside of any formal landscaping plan shall be restored with appropriate native species to offset increased development and increased human and domestic animal presence.

Montecito Community Plan Development Standard BIO-M-1.3.3: Landscaping which includes invasive species shall be prohibited in or near Environmentally Sensitive Habitat (ESH) areas. The California Native Plant Society publishes a list of invasive species to which the applicant may refer. Landscaping in ESH areas shall include compatible native species.

Advisory Information

Based on our additional review of your application, we offer the following advisory statements:

1. **Environmentally Sensitive Habitat (ESH) – Riparian Habitat and Streams.** When the MCP was adopted in 1992 and the ESH Overlay was applied to Hot Springs Creek and its tributary, the subject parcels were already developed with residences, accessory structures, lawn and landscape. Archival photos available at P&D demonstrate that in 1994 the main branch of Hot Springs Creek, the tributary, and the area in between (now an irrigated lawn) were completely covered with tree canopy. Compared with later aerial photos, which show a successive thinning of the canopy and tree removal, and current biological information, it is clear that riparian habitat existed across the project area before the zoning violation occurred and would qualify as riparian ESH. Through review of the historic aerial photos and on site investigation, the County has concluded that the area of disturbance was properly mapped as ESH.

   A further analysis of ESH policies and development standards is not complete without consideration of the following:

   MLUDC Section 35.428.040 – Environmentally Sensitive Habitat (ESH) Zone

   Section 35.428.040.A. Purpose and intent. The Environmentally Sensitive Habitat Area (ESH) overlay zone is applied to areas with unique natural resources and/or sensitive animal or plant species, where existing and potential development and other activities may despoil or eliminate the resources. This overlay zone is intended to:

1. *Protect and preserve specified areas in which plant or animal life or their habitats are either rare or especially valuable because of their role in the ecosystem, and that could be easily disturbed or degraded by human activities and developments; and*

2. *Ensure that each project permitted in the overlay zone is designed and carried out in a manner that will provide maximum protection to sensitive habitat areas.*

Section 35.428.040.B. Applicability.

1. ***Determination of applicability.*** *The zoning map shall guide determining whether this overlay zone applies to any area of land or water. If a particular lot or lots within an ESH overlay zone are determined by the Director not to contain the pertinent species or habitat, the regulations of this overlay zone shall not apply.*

2. ***Identification of newly documented sensitive habitat areas.*** *If an environmentally sensitive habitat area is identified by the Director to be located on site during permit application review, but the habitat area does not have an ESH overlay designation, the applicable requires of Subsection C through Subsection O below shall apply.*

The Montecito Community Plan and the Montecito Land Use & Development Code include numerous policies and development standards that call for the protection of ESH areas, including riparian habitat and streams. These policies and development standards include specific prohibitions on development within ESH areas, stream corridors and their buffers, along with allowances for limited development when application of the policies and development standards would not allow reasonable use of the parcel. Reasonable use of the property is currently found in the single family dwellings on each lot. The most relevant of the policies and development standards include the following:

Montecito Community Plan (MCP)

Policy BIO-M-1.3: *Environmentally Sensitive Habitat (ESH) areas within the Montecito Planning Area shall be protected, and where appropriate, enhanced.*

Development Standard BIO-M-1.3.1: *All applicants proposing new development within 100 feet of an Environmentally Sensitive Habitat (ESH) shall be required to include setbacks or undeveloped buffer zones from these habitats as part of the proposed development except where setbacks or buffer zones would preclude reasonable development of the parcel. In determining the location, width and extent of setbacks and buffer zones, staff shall refer to the Montecito Biological Resources Map as well as other available date (e.g., maps, studies, or observations). If the project would result in potential disturbance to the habitat, a restoration plan shall be required. When restoration is not feasible onsite, offsite restoration may be considered.*

Policy BIO-M-1.6: *Riparian vegetation shall be protected as part of a stream or creek buffer. Where riparian vegetation has previously been removed, (except for channel cleaning necessary for free-flowing conditions as determined by the County Flood Control District) the buffer shall allow the reestablishment of riparian vegetation to its prior extent to the greatest degree possible. Restoration of degraded riparian areas to their former state shall be encouraged.*

Development Standard BIO-M-1.6.1: *Riparian protection measures shall be based on a project's proximity to riparian habitat and the project's potential to directly or indirectly damage riparian habitat through*

activities related to a land use permit or coastal development permit such as grading, brushing, construction, vehicle parking, supply/equipment storage, or the proposed use of the property. Damage could include, but is not limited to, vegetation removal/disturbance, erosion/sedimentation, trenching, and activities which hinder or prevent wildlife access and use of habitat. Prior to initiation of any grading or development activities associated with a Land Use or Coastal Development Permit, a temporary protective fence shall be installed along the outer buffer boundary at the applicant's expense, unless the County finds that this measure is not necessary to protect biological resources (i.e., due to topographical changes or other adequate barriers). Storage of equipment, supplies, vehicles, or placement of fill or refuse, shall not be permitted within the fenced buffer region.

Policy BIO-M-1.7: No structures shall be located within a riparian corridor except: public trails that would not adversely affect existing habitat; dams necessary for water supply projects; flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety, other development where the primary function is for the improvement of fish and wildlife habitat and where this policy would preclude reasonable development of a parcel. Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.

Montecito Land Use & Development Code (MLUDC) Subsection 35.428.040.K. Development Standards - Streams

*2. **Prohibition on development within a riparian corridor.** No structure shall be located within a stream corridor except:*

a. Public trails that would not adversely affect existing habitat;

b. Dams necessary for water supply projects;

c. Flood control projects where no other method for protecting existing structures in the floodplain is feasible, and where the protection is necessary for public safety;

d. Other development where the primary function is for the improvement of fish and wildlife habitat; and

e. Within the Inland area, other development where this requirement would preclude reasonable development of a lot.

Culverts, fences, pipelines, and bridges (when support structures are located outside the critical habitat) may be permitted when no alterative route/location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.

*3. **Limitation on development, revegetation required.** All development, including dredging, filling, and grading within stream corridors shall be limited to activities necessary for the construction of uses specified in Subsection K.2 (Prohibition on development within a riparian corridor) above.*

*b. **Development within the Inland area.** Development within the Inland area shall be in compliance with the following:*

(1) When development requires the removal of riparian plant species, re-vegetation with local native plants shall be required on both banks and extending outward 25 feet from each top of bank, except where it would preclude reasonable development of a lot.

4. Riparian protection measures - Inland area. Riparian protection measures shall be based on the project's proximity to riparian habitat and the project's potential to directly or indirectly damage riparian habitat

through activities related to a Land Use Permit such as grading, brushing, construction, vehicle parking, supply/equipment storage, or the proposed use of the property. Damage could include vegetation removal/disturbance, erosion/sedimentation, trenching, and activities which hinder or prevent wildlife access and use of habitat. Prior to issuance of a Land Use Permit, the applicant shall include a note on the grading and building plans stating the following riparian habitat protection measures:

a. *A setback of 50 feet from either side of top-of-bank of the creek, that precludes all ground disturbance and vegetation removal; and*

b. *That protective fencing shall be installed along the outer buffer boundary at the applicant's expense prior to initiation of any grading or development activities associated with a Land Use Permit. Storage of equipment, supplies, vehicles, or placement of fill or refuse, shall not be permitted within the fenced buffer region.*

(1) This measure may be modified or deleted in the event that the Director finds that it is not necessary to protect biological resources (e.g., due to topographical changes or other adequate barriers).

In order to approve a Land Use Permit for the retaining walls, tree wells and bridges, the County must find that the project is consistent with all applicable policies and development standards of the County's Comprehensive Plan, which includes the Montecito Community Plan and the Montecito Land Use & Development Code (MLUDC Subsection 35.472.110.E.1.a. – Findings for approval of a Land Use Permit). Review of the proposed project, including the proposed restoration provided by Rachel Tierney Consulting, against the policies as a whole indicates that the proposed project is inconsistent with the Comprehensive Plan.

More specifically, MCP Policy BIO-M-1.7 and MLUDC Subsection 35.428.040.K.2 prohibit within a stream corridor the kind of development that has occurred on this property because all of the structural development occurred within the stream corridor and none of it constitutes the limited development that is allowed. These policies state that the only instance in which they would not apply is where the policy would preclude reasonable use of a parcel. The two parcels on which this unpermitted development occurred are already fully developed with single family dwellings, accessory structures, and extensive irrigated lawn and formal landscaping, which together establish reasonable use of both parcels. The construction of the bridges, retaining walls, tree wells and the installation of additional irrigated lawn, which included fill to create a level lawn area, are not necessary to establish reasonable use. Therefore, the unpermitted development appears inconsistent with these policies.

2. **Protection of Native and Specimen Trees.** The Montecito Community Plan and Montecito Architectural Guidelines also contain several policies providing protection for both native and specimen trees, including the following:

Montecito Community Plan Policies

Policy BIO-M-1-1.17: Oak trees, because they are particularly sensitive to environmental conditions, shall be protected to the maximum extent feasible. All land use activities, including agriculture shall be carried out in such a manner as to avoid damage to native oak trees.

Policy BIO-M-1.16: All existing native trees regardless of size that have biological value shall be preserved to the maximum extent feasible.

Development Standard BIO-M-1.16.1: Where native trees of biological value may be impacted by new development (either ministerial or discretionary), a Tree Protection Plan shall be required. The decision to require preparation of a Tree Protection Plan shall be based on the location of the native trees and the project's potential to directly or indirectly damage the trees through such activities as grading, brushing, construction, vehicle parking, supply/equipment storage, trenching or the proposed use of the property. The Tree Protection Plan shall be based on the County's existing Tree Protection Plan standards and shall include a graphic depiction of the Tree Protection Plan elements on final grading and building plans (Existing landscaping plans submitted to County Board of Architectural Review (BAR) may be sufficient). A report shall be prepared by a County approved arborist/biologist which indicates measures to be taken to protect affected trees where standard measures are determined to be inadequate. If necessary, an appropriate replacement/replanting program may be required. The Tree Protection Plan shall be developed at the applicant's expense. The plan shall be approved by RMD prior to issuance of a Land Use or Coastal Development Permit.

Policy BIO-M-1.15: To the maximum extent feasible, specimen trees shall be preserved. Specimen trees are defined for the purposes of this policy as mature trees that are healthy and structurally sound and have grown into the natural stature particular to the species. Native or non-native trees that have unusual scenic or aesthetic quality, have important historic value, or are unique due to species type or location shall be preserved to the maximum extent feasible.

Development Standard BIO-M-1.15.1: All existing specimen trees shall be protected from damage or removal by development to the maximum extent feasible.

Montecito Architectural Guidelines & Development Standards

Residential projects should be designed to preserve significant and unique vegetation groupings which contribute to the character and the site of the neighborhood.

Site plans should demonstrate a diligent effort to retain as many "significant trees" as possible. Note: "Significant Tree" means any tree which is in good health and is more than 12 inches in diameter as measured 4 feet 6 inches above the root crown. Any tree of the Quercus (oak) genus which is in good health and is more than 6 inches in diameter as measured 4 feet 6 inches above the root crown is considered a "significant tree".

The "Biological Assessment and Impact Analysis" prepared by Rachel Tierney indicates that at least 11 mature Coast Live Oaks and six California Sycamores were removed to construct the retaining wall and create the 0.73-acre irrigated lawn, and four oaks were impacted by tree wells. As stated above, minimum restoration requirements would dictate the planting of 150 oaks and 60 sycamores. These replacement trees can be incorporated into the overall riparian habitat restoration plan.

3. A Lot Line Adjustment application (Case No. 09LLA-00000-00003) has been filed that would adjust the boundary between APN 011-050-066 (the Bonsignore property located at 1260 East Mountain Drive) and the Bagdasarian lot APN 011-020-034. Upon review of the Tierney report, coupled with air photo interpretation and staff site visits, it is clear that removal of native and riparian vegetation also occurred on the Bonsignore property between 2002 and 2008. The proposed Lot Line

Adjustment (LLA) would transfer the land in this area from the Bonsignore property to the Bagdasarian property. The application for the LLA remains incomplete; however, the findings for approval of the LLA cannot be made until the Zoning Violation is abated. Section 21-93 of Chapter 21, the County's Subdivision Regulations, requires the following finding:

> *A Lot Line Adjustment application shall only be approved provided the following findings are made:*
>
> *...5. The subject properties are in compliance with all laws, rules and regulations pertaining to zoning uses, setbacks and any other applicable provisions of this Article or the Lot Line Adjustment has been conditioned to require compliance with such rules and regulations and such zoning violation fees imposed pursuant to applicable law have been paid. (Section 21-93.a.5)*

4. **Grading Permit Required.** Should the applicant choose to pursue application for a Land Use Permit for the retaining walls and bridge and if a Land Use Permit were approved to allow the retaining walls, tree wells and bridges to remain, a follow-up Grading Permit would be required. Pursuant to the County Grading Ordinance, a Grading Permit is required for any retaining wall greater than four feet in height. Because the bridges are for pedestrians only, they could be incorporated into the Grading Permit. Please be advised that as a part of the permitting process, x-rays and/or other investigations may be required by the P&D Building & Safety Division during its permit review in order to determine the stability and soundness of the structures. Areal extent of the grading along with quantity of cut and fill must also be provided, for both a Land Use Permit and the Grading Permit.

5. **Minimization of Grading.** County policies require that development minimize cut and fill and be designed to fit site topography and geology, and preserve natural landforms. Of particular relevance are the following:

   Land Use Element Hillside and Watershed Protection Policy 1: *Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.*

   Land Use Element Hillside and Watershed Protection Policy 2: *All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.*

   As constructed, the proposed project does not appear to be consistent with these policies. The project has not been designed to fit the site topography as it consists of retaining walls within a stream corridor that support fill, which appears to have been used to create a level irrigated lawn. The project does not appear to have preserved natural features, landforms or native vegetation.

6. **Montecito Board of Architectural Review (MBAR).** If the owner chooses to pursue permitting of the unpermitted structures, then the proposed project is subject to review and approval by the MBAR

as the after-the-fact structural development and associated landscaping are not exempt from design review. In this instance the applicant must submit an application for MBAR review.

7. **Montecito Water District Certificate of Water Service Availability.** Montecito Water District (MWD) requires that any use of land that requires a permit or approval by the County of Santa Barbara shall require a Certificate of Water Service Availability (CWSA) issued by the MWD. Be advised that a primary concern of the MWD is the amount of water used for landscaping. Pursuant to MWD's Ordinance 89, the water allocation will be based upon historic use between 2005 and 2008 before installation of the new irrigated lawn was complete. Please contact Tom Mosby of the MWD at 969-2271 to start the application process. The proposal includes 0.73 acres of irrigated lawn, which must be accounted for in the MWD's Certificate.

8. In the Initial Feedback Letter dated July 9, 2009, staff requested submittal of an arborist report. To date, P&D has not received one. If the applicant chooses to pursue a Land Use Permit approval for the unpermitted structural development then an arborist report is still required, particularly to further quantify the effects of the unpermitted structures and the new irrigation regime on the health of the remaining oaks, including those along the top of bank of the main branch of Hot Springs Creek, as well as providing a more complete inventory of affected trees to confirm the number of trees to be mitigated. The report should include a definitive analysis of the number of other trees have been impacted by 1) the construction of tree wells within the critical root zones, 2) the fill that has been placed on top of these roots to support a level lawn, and 3) the increased irrigation regime associated with the new lawn and its effect on remaining oak trees. If the applicant chooses to remove the unpermitted structures, lawn, etc. and restore the site then the arborist report would no longer be required. The original request is recited below.

Arborist Report. Please provide an arborist report detailing the potential effects the proposed project will have on all protected (Coast Live Oak, California Sycamore and other native trees) or specimen trees located within or near the area of the after-the-fact development (grading, tree wells, retaining walls, irrigated lawn). Additionally, this report must be prepared by a County-qualified arborist and must include the information listed below:

a. An inventory of the affected trees.
b. Number or otherwise ID the trees inventoried, and show trees and their corresponding numbers on a site plan.
c. Current health of trees inventoried with Diameter at Breast Height (DBH at 54" above the ground) for each tree. If a tree is in a diseased state, indicate the suspected disease.
d. Determine the percentage of the "dripline + five feet" affected by the after-the-fact development. Also show this on the site plan.
e. Address all apparent or foreseeable effects that the after-the-fact development had, or may have, on the protected trees. Propose measures to minimize disturbance to the trees from this development.

Revised Project Cost Estimate

Based on additional information, we have revised our original estimate of the cost of processing the permit application for your project. The original estimate included a total of 55 planner hours to process the permit application, resulting in a total estimate of $10,000 including noticing fees and other costs.

Due to additional research, site visits and complex biological issues, resulting in additional review time, we have revised our estimate to complete P&D's action on the application as submitted. As the enclosed Project Cost Estimate shows in greater detail, we estimate that processing of your permit application will require a total of 94 planner hours, resulting in a total estimated cost of $16,000. This revised estimate includes all time spent to date (approximately 77 hours) as well as noticing fees and other costs.

You will continue to receive a monthly invoice for all unpaid charges on your account. Payment of invoices is required within 25 days. Non-payment of an invoice will result in staff stopping work, possible denial of the project and/or referral of the case back to Zoning Enforcement for further action. Any remaining security deposit balance will be refunded at completion of case processing.

We encourage you to address these issues as soon as possible and inform us of the applicant's choice. Please feel free to contact me by phone or email if you have any questions or concerns or if you would like to schedule a meeting with me and my supervisor, Anne Almy, to discuss this letter.

Sincerely,

JULIE L. HARRIS, Planner III
Development Review South Division
Phone: (805) 568-3518
Email: jharris@co.santa-barbara.ca.us

Enclosure:
Memo from Melissa Mooney to Julie Harris, dated November 19, 2009
Revised Cost Estimate Worksheet

cc: Case file 09LUP-00000-00256 (to Planner w/enclosure)
Case file 09LLA-00000-00003 (to Planner w/enclosure)
Mr. Ross Bagdasarian, 1194 East Mountain Drive, Montecito CA 93108 (w/enclosure)
Anne Almy, P&D Supervising Planner
Melissa Mooney, P&D Biologist
Tony Bohnett, P&D Grading Inspector
Kimberley McCarthy, P&D Enforcement (Case file 09ZEV-00000-00042)
Natasha Lohmus, Environmental Scientist, California Department of Fish and Game, 1933 Cliff Drive, Suite 9, Santa Barbara, CA 93109
Montecito Water District
Montecito Association

COUNTY OF SANTA BARBARA
PLANNING AND DEVELOPMENT DEPARTMENT
MEMORANDUM

To: Julie Harris, Planner

From: Melissa Mooney, P&D Biologist

Date: November 19, 2009

Re: Peer Review, "Biological Assessment and Impact Analysis, 1192 East Mountain Drive" prepared by Rachel Tierney, June 15, 2009

Cc: 09LUP-00000-00256; 09ZEV-00000-00042; 09LLA-00000-00003

SUMMARY

This memo provides the requested peer review of a Biological Report prepared by Rachel Tierney Consulting, dated June 15, 2009. The report was prepared for the Bagdasarian project, located at 1192 East Mountain Drive (APN's 011-020-042 and 034) in the Montecito Community Plan Area. The project is a request to abate a zoning violation by: (1) approving as-built bridges and retaining walls; (2) conducting limited restoration activities on 0.87 acres of the two subject parcels (secondary drainage, main fork and rock stockpile area); and (3) contributing to an "in-lieu" fee program for 0.81 acres at $35,000/acre (total mitigation 1.68 acres) The Tierney report delineates and concludes that pre-disturbance Environmentally Sensitive Habitat (ESH) was present in Hot Springs Creek, but not in the "secondary drainage,", and that only 0.56 acres of habitat require mitigation (0.56 x 3 = 1.68 acres). Montecito Community Plan policies protect ESH from certain disturbances. I believe the arguments supporting the above ESH conclusion are weak. The report miscalculates and underestimates impacts, and there is an inherent assumption that the lawn, bridges, and retaining walls will be left in place. I believe the evidence supports the argument that the secondary drainage should be regarded as ESH for purposes of impact calculation and mitigation, and that at least 1.07 acres were disturbed and require mitigation. At a 3:1 ratio, compensatory mitigation would require approximately 3.31 acres. These acreages are discussed further in item 5 below. As we have discussed, mitigation could also take the form of removal of some or all of the as-built structures.

The Biology Report should be revised to reflect the comments below.

BACKGROUND

The potential violation was reported on February 10, 2009.

I visited the site on March 3, 2009 with Natasha Lohmus and Rachel Tierney. On April 2, 2009, I prepared a report documenting the results of my site visit. I concluded that "an approximate 1-acre area" had been affected, and recommended that a biological report and Restoration Plan be prepared.

On July 5, 2009, P&D received the Tierney biological report. On August 5, 2009 you and I again visited the site.

PEER REVIEW SUMMARY

Technically, the Tierney report supplies all the necessary biological report requirements, as detailed in Appendix A of the County's Environmental Thresholds and Guidelines Manual. However, in my opinion, the analysis in the report is questionable in the following areas:

- It leaves out critical information regarding the pre-disturbance conditions on site;
- It contains erroneous and confusing impact calculations based on the false assumption that impacts to biological resources depend on who has jurisdiction, the County or CDFG; resulting in an underestimation of impacts; and
- It contains an unclear comparison of pre-and post-disturbance conditions.

Estimating impacts to pre-existing resources after disturbance is always difficult. In this case, it is even more so, since the Montecito Community Plan mapping is at such a small scale that small errors (the location of the tributary's confluence with Hot Springs Creek) are magnified. Based on the analysis below, I believe this unpermitted development has resulted in the permanent loss of 1.07 acres of riparian vegetation, mapped as ESH, and including at least 15 oak and 6 sycamore trees. It is clear that installation of structures (bridges and retaining walls) and landscaping in this ESH area has resulted in a conversion of an environmentally sensitive area from intact riparian habitat to developed landscaping, which has relatively little value for wildlife.

The restoration proposed covers: (1) the rock stockpile area on site (0.22 acres); (2) the secondary drainage on site (0.25 acres); (3) the main fork of Hot Springs Creek (0.40 acres); (4) off-site or in-lieu fee equivalent to 0.81 acres; and (5) leaving the structures and the lawn between the two drainages in place. The lawn area appears to be approximately 0.5 -0.7 acres in size. The total on-site proposed restoration would be 1.68 acres. This restoration is based upon a flawed impact analysis as detailed below in "Detailed Comments."

Other options are available to the County, including, in order of preference from a biological standpoint:

1. Removal of all structures (retaining walls and bridges), the lawn, and restoration with a goal of restoring pre-disturbance conditions;
2. Removal of the lawn, or some portion thereof, but not the retaining walls or bridges, and restoration of the lawn and the creek areas;
3. No removal of structures and approval of the above-proposed restoration and in-lieu fee to CDFG; or
4. Defer to CDFG for all mitigation.

It is my understanding that P&D has determined that the rock retaining walls and at least one of the bridges would need to be removed as mitigation. In addition, the riparian corridors of both the main fork of Hot Springs Creek and the secondary drainage, in addition to the lawn area, would require restoration. The report should be revised to reflect the County's direction.

DETAILED COMMENTS

Below is a detailed listing of where the subject biological report meets or fails to meet the Santa Barbara County biological report standards.

Prior to conducting my peer review, I reviewed the following information:

- *Montecito Community Plan (MCP) Biological Habitat Map* (Planning and Development October, 1992, Exhibit 1). The tributary and the Main Branch of Hot Springs Creek are both mapped as "Riparian." Downstream of Mountain Drive, below the southern edge of the parcel, Hot Springs Creek is mapped as "Disturbed Riparian."
- *Montecito Community Plan Environmentally Sensitive Habitat (ESH) Overlay, Southern Section* (Planning and Development, January 2, 1998, Exhibit 2). The tributary and Hot Springs Creek are mapped as ESH.
- *USGS 1:24,000 topographic map (*Santa Barbara quadrangle, Exhibit 3). The tributary and Hot Springs Creek are mapped as intermittent blue-line streams.
- *USFWS 1994 NWI Wetland maps* (Santa Barbara USGS 1:24,000 quadrangle, Exhibit 4). Hot Springs Creek is mapped as "PFOA," Palustrine system, forested class, with a temporarily flooded water regime. The tributary is not characterized.
- *Photomapper* aerial images of the site (2008, 2006, 2004, 2002, 2000).
- *CDFG CNDDB Biogeographic Data Branch reports* for Santa Barbara quadrangle (Government version dated March 1, 2009);
- *Santa Barbara County Flood Control Map,* (Montecito Area, Exhibit 5).
- *Conceptual Site Plans* for As-built Bridges and Retaining Walls dated May 20, 2009 (Rec'd July 8, 2009).

Biological Report Consistency with County Biological Survey Guidelines

The county's Guidelines for reports are contained in Appendix A (Section B) of the County's "Environmental Thresholds and Guidelines Manual" (County of Santa Barbara, 2002). The elements listed below are required by the Guidelines. Where the subject report meets these guidelines, this is noted. If the subject report does not meet the requirement, this too is noted, and suggestions for additional information are included.

Guidelines and Goals of the Biological Survey (Appendix A, Page A-10)

1. Investigations should be conducted at the proper season and time of day.
2. Investigations should be both predictive in nature and based upon field inspection.
3. Investigations should be conducted in such a manner that they are consistent with conservation ethics.
4. Investigations should be conducted using systematic field techniques in all habitats of the site.
5. Investigations should be well-documented. Field Survey forms must be completed and sent to the CNDDB.

The biologist visited the site seven times between February and June of 2009. In general, the report meets the above guidelines.

Contents of the Biological Surveys (Appendix A, Page A-11)

1. A detailed map of the project regional location and specific study area. *Supplied.*
2. A written description of the biological setting, referencing the plant community and a detailed map of the vegetation and/or animal habitat areas. *Maps are supplied based on the site visits, but because the MCP maps are not supplied, the report does not present the pre-disturbance situation completely. As mentioned*

above, the MCP "Biological Habitat Map" shows the tributary[1] and the main stem of Hot Springs Creek as riparian habitat. The MCP ESH Overlay maps both the tributary and the main stem as ESH and applies the required buffers to both. Unfortunately, these maps and the U.S. Geological Survey 1:24,000-scale map appear to be inaccurate as to where the tributary and the main stem of Hot Springs Creek converge. As can be seen on the Santa Barbara County Flood Control topographic map (Exhibit 5), and in the photographs (attached as Exhibit 6, figure 6-1), the tributary and the main stem of Hot Springs Creek actually converge just upstream of Mountain Drive. This issue of the inaccurate convergence is acknowledged in the report, but the report then assumes that the tributary area between the two "convergence areas" is not ESH. I take the alternative view that the tributary, as a blue-line stream containing oak and sycamore trees, and as mapped ESH on the County's ESH Overlay, was riparian ESH pre-disturbance, and should be included in the impact calculation, regardless of where the convergence is actually located.

3. A detailed description of the survey methodology. *Supplied. Seven site visits and literature review, aerial photo-interpretation, mapping, and dip-net surveys for amphibians were performed. Protocol-level surveys for CA RLF were not done, but were not requested.*
4. The dates and times of field visits. *Supplied.*
5. An assessment of all potential direct and indirect impacts. *Supplied, but does not clearly reflect the totality of the impacts. Based on my site visit, and this report, I estimate that at least 1.07 acres (and possibly more) of streamside habitat (ESH and ESH buffer) has been affected by the activities on site. The report concludes that 0.51 acres were impacted in the Secondary drainage, and 0.56 acres of ESH were affected in the Main Branch of Hot Springs Creek (actually within the ESH buffer). However, the report differentiates between CDFG and County impacts, and does not total the two affected areas, which is required to arrive at an accurate figure regarding impacts. It then selects only one impacted acreage (0.56), and applies a 3:1 ratio, which results in a mitigation requirement of 1.68 acres, when in reality, the total impacts are 1.07 acres (0.56 + 0.51), resulting in a mitigation requirement (at a 3:1 ratio) of approximately 3.31 acres. Therefore, the total affected acreage for mitigation (1.68 acres) is not accurate. The report neglects to correctly add the impacted areas, and mistakenly addresses mitigation of 1.68 acres. Furthermore, in my opinion, as discussed above in item 2, the report does not accurately reflect the ESH mapping in the area.*
6. A discussion of the status, distribution, and habitat affinities of all special status species. *Supplied.*
7. A discussion of the quality of the habitat. *Supplied but subject to alternative interpretation. See below.*
8. Recommended mitigation measures to reduce impacts. *Supplied, but incomplete as discussed in item 5 above.*
9. Suggestions for monitoring and evaluating the effectiveness of the mitigation measures. *Not Supplied. This could be added as performance criteria in the Restoration Plan.*
10. (If necessary) Solutions, which, when feasible, work toward regional protection of the resources. *Supplied.*
11. (If necessary) Recommended methods for restoration of damaged habitats. *Supplied in the form of a proposal for restoration of: (1) 0.22 acres of an old*

[1] The biological report refers to the tributary as the "secondary drainage."

rock stockpile area; (2) 0.25 acres of the secondary drainage by weed removal and "lining the banks with natives;" (3) removing Arundo donax, an invasive species, from the main branch of Hot Springs Creek; and (4) contributing to an "in-lieu" fee program. The project, and thus the report, does not propose removing any of the structures or landscaping from the areas where they were installed.

12. (If necessary) A list of all special status species observed or expected to occur on site. *Supplied.*
13. Copies of all CNDDB special status species and natural community field survey forms. *Not necessary since no sensitive species or communities were observed.*
14. The name(s) of the field investigator(s). *Supplied.*
15. A list of references cited, persons contacted, herbaria and museums visited, and the location of voucher specimens. *Supplied.*

ADDITIONAL COMMENTS

1. Page 6. Section 3.1. *Unclear and Conflicting Analysis of Pre- and Post-Disturbance Plant Communities*. In my opinion, this section does not clearly represent the pre-disturbance plant communities on site. Figure 2 compares 2001 and 2009, but the text appears to be based on the present vegetation. Table 1 compares two classification systems, not pre- and post-disturbance. It is not clear what the timeframe is. A more accurate picture would result from listing the communities present in both the secondary drainage and the Main Branch of Hot Springs Creek in both 2001 and 2009. Perhaps I'm misinterpreting something, but I don't understand how the same plant communities can be present "in 2001 and currently," when Figure 2 shows two completely different vegetation maps. Again, I'm of the opinion that the secondary drainage (the tributary) contained sycamore- coast live oak riparian prior to the as-built work, not "no corresponding natural plant community." This conclusion is based on the presence of these trees in aerial photographs prior to the disturbance (see Exhibit 7), and the MCP community plan mapping as riparian (see Exhibit 1). Perhaps the secondary drainage could be considered "no corresponding natural plant community" in 2009, but that is not what the text indicates. Finally, it is not clear why the year 2001 was selected as the end point for aerial photo review. Presumably, it is because this date most accurately reflects the pre-disturbance conditions. However, the year 2004 could just as easily have been used, as it appears, based on my review of aerials, that most of the tree removal occurred after 2004. Based on the 2008 aerial showing rock piles in the area where there is now a lawn, it is fairly clear that some work was being conducted in 2008, and that the lawn was created after 2008. *Recommendation: Clarify tables, text, and figures and indicate the rationale for using 2001.*

2. Page 8. *Classification of Secondary Drainage as Ruderal Unsupported.* In the aerials from 2001 that are supplied, it is evident that both coast live oaks and sycamores were present in the secondary drainage prior to the as-built work, and both of these tree species occur up and downstream. During my site visit, I noted one sycamore in the secondary drainage that appeared to have been cut at the base. Resprouts were present, but dying, possibly due to herbicide spraying. Therefore, it is not clear why this area is classified as "ruderal and ornamental." *Recommendation: Clarify if Section 3.1 is intended to reflect the current conditions or the 2001 conditions.*

3. *Unclear and Conflicting Graphics for Pre- and Post-Disturbance Analysis.* Figure 2 contains errors and does not clearly label Environmentally Sensitive Habitat pre- and post-disturbance, as the report is intended to do. The Legend appears to apply to both maps, but clearly some categories apply to 2009, and some apply to 2001. "Trees removed since 2009" should be "...since 2001." "Vegetation Map 2001" appears to show mapped ESH, but it is not clear why the secondary drainage is not included, when it clearly included sycamores in 2001. "Location of ESH" could be more thoroughly explained – I assume it means pre-disturbance as determined by the biologist, but this should be clarified and made explicit. I would add SB County mapped ESH either on this figure, or as a separate figure in the report. Again, looking at the 2001 figure, it is evident that both sycamores and coast live oaks were present in the Secondary drainage. I believe extending the study area (and the map) further upstream and downstream would provide a more landscape level view of the area, and would result in the conclusion that the secondary drainage should be considered ESH prior to the as-built work. *Recommendation: Separate Figure 2 into two figures, each with its own legend. Clarify and/or explain what "location of ESH" means in the legend. Fix dates. Add mapped ESH and show what ESH might have been in 2001, pre-disturbance.*

4. Page 17, Section 4.1.2. *Regulation Section Incomplete.* This section presents "regulation" for habitats identified as "Riparian" and "Individual Trees." However, the County policies are not stated or represented accurately. Referencing the County's ESH map (Exhibit 2 attached to this memo) and the MCP policies, specifically Policy BIO-M-1.3, which protects ESH from development, would be appropriate. In this section, the report states that the secondary drainage is clearly under CDFG jurisdiction, so again, it is unclear why this area was not considered ESH on Figure 2 (prior to disturbance). *Recommendation: Reference the County's ESH map (Exhibit 2 attached to this memo) and the MCP policies, specifically Policy BIO-M-1.3, which protects ESH from development.*

5. On page 18, last paragraph. *Oak Tree Mitigation.* The statement that removal of oak trees requires mitigation is not entirely true. This may be true in the coastal zone, but mitigation is only required in the inland area if the removal is associated with development, which in the instant case, it is.

6. Section 4.2. *Minimal evidence to Support Location of ESH and ESH buffer.* This is the most critical section of the report, and the conclusion has been discussed above in comments 2 and 5 above. In this section, the reasons for not designating the secondary drainage as ESH are given as (1) the low capacity of the drainage; (2) infrequent flows; and (3) the lack of high quality habitat. Minimal, if any, data is supplied to support these conclusions, and it does not reflect that fact that the secondary drainage is a mapped blue-line stream over which CDFG has exerted jurisdiction under the Fish and Game Code, and for which they are requiring mitigation. I believe that the County ESH map is misinterpreted, and that ESH applies to both the secondary drainage and the main stem of Hot Springs Creek. Buffers as required by policy should be applied to both. *Recommendation: Make objective statements of fact about the secondary drainage pre-and post-disturbance. This point may simply remain in dispute.*

7. Page 20, Section 4.2.2. *Unclear Analysis of Vegetation Changes*. This section does not clearly state what the vegetation changes are; it merely tells the reader to review Figure 3. The text on page 20 should clearly state that: (1) at least 15 oaks and 6 sycamore trees were removed; and (2) approximately 1.07 acres of streamside habitat, ESH buffer, and possibly ESH have been affected by the as-built work. In addition, the number of trees indirectly affected (i.e., by wells, etc.) should be given. Alternatively, an arborist could be consulted. *Recommendation: Make objective statements of fact describing the vegetation changes.*

8. Page 22, Section 5.0. *Impact Summary*. The estimated acreage areas should be shown on Figure 3 and 4, and the method of calculation should be indicated.

9. Page 23 and 24, Table 4. *Incomplete Impact Calculation*. As stated above, the Table should clarify impacts and mitigation as: (1) the Main Drainage (page 23); (2) the Secondary Drainage (page 24); and (3) the total impact acreage on the site. Page 23 appears to summarize County "requirements," and page 24 appears to summarize CDFG "requirements," and no total impact acreage is presented. It is not clear if, for example, the 15 trees on page 23 are the same 15 trees referred to on page 24. The important point here is what the total impacts on site are, not who has jurisdiction. Both the County and CDFG have jurisdiction. This table is confusing to say the least. *Recommendation: Clarify the table as mentioned above by reorganizing it to show total impacts and total mitigation by plant community. Show jurisdictional areas on Figure 4.*

10. Page 25, Section 5.2. *Conceptual Mitigation Plan Based on Incomplete Calculations*. Again, as discussed above, this section is based on the assumption that only 0.56 acres would be mitigated. I believe this is an erroneous assumption, and that the impacted acreage is 1.07 acres at a minimum. At a 3:1 replacement ratio, approximately 3.31 acres of mitigation is required. *Recommendations: The Plan should be rewritten to address this acreage. In addition to those already in the plan, the following ideas for restoration could be explored: (1) removing the Myoporum hedge on the western bank of Hot Springs Creek (the eastern edge of the "lawn" area) and replacing it with natives over time; (2) planting native trees within 25 feet of the top-of-bank of each creek; (3) removing the rows of rocks piled up along Hot Springs Creek; (4) allowing the sycamores in the secondary drainage to recover; and (5) restricting any further native vegetation removal within the tributary or Hot Springs Creek. The location and approximate size of the Arundo donax patch should also be shown on the restoration figures (Figure 4).*

11. Page 28. *Santa Barbara County has minimal provisions for implementing off-site or "In-lieu Fee" Mitigation*. As you know, this is not a typical approach used by Santa Barbara County. Let's discuss this and the general approach to mitigation/restoration on this site as soon as possible.

EXHIBITS

1. Montecito Community Plan Biological Habitat Map
2. Montecito Community Plan ESH Overlay, Southern Section

3. USGS 1:24,000 topographic map, Santa Barbara quadrangle
4. USFWS National Wetlands Inventory Map
5. Santa Barbara County Flood Control Topographic Map of Site
6. Photographs showing the Confluence of Hot Springs Creek and the tributary (secondary drainage).
7. Aerial Photographs, 2004 and 2008.

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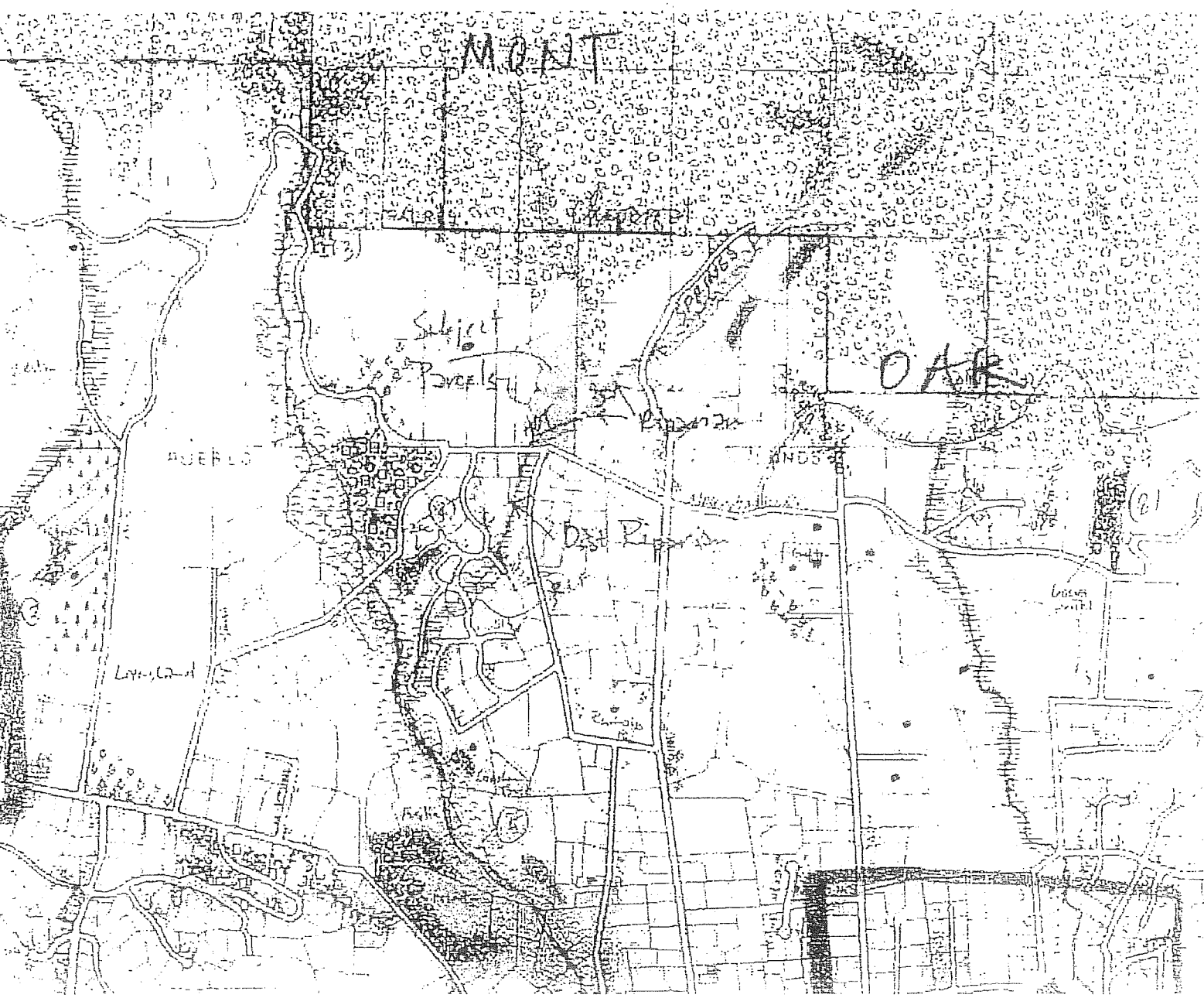
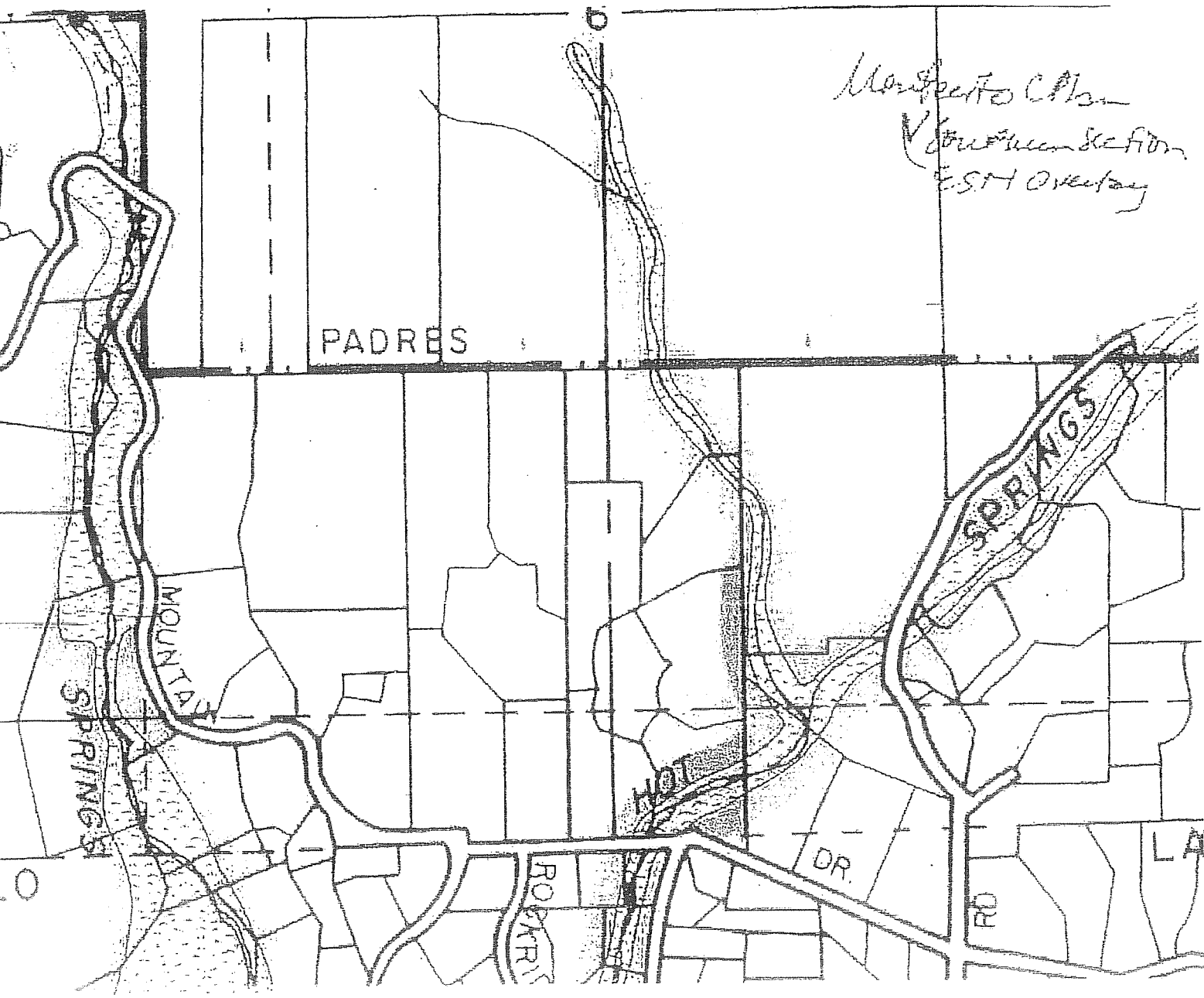


Exhibit 1



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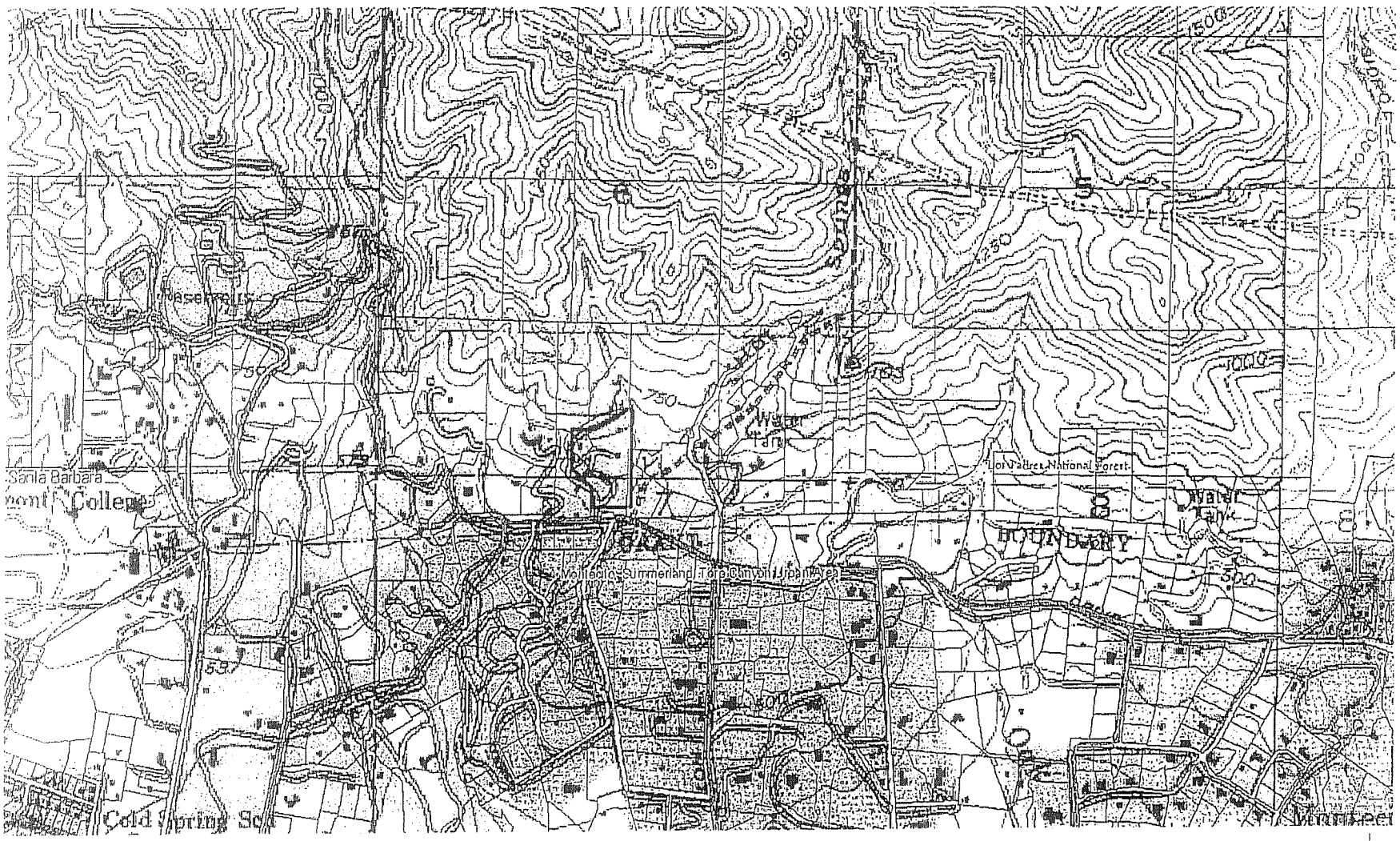


Exhibit 3. USGS 1:24,000-scale topographic map with Bagadasarian site outlined in red. Note blue-line creeks on east side of parcel.

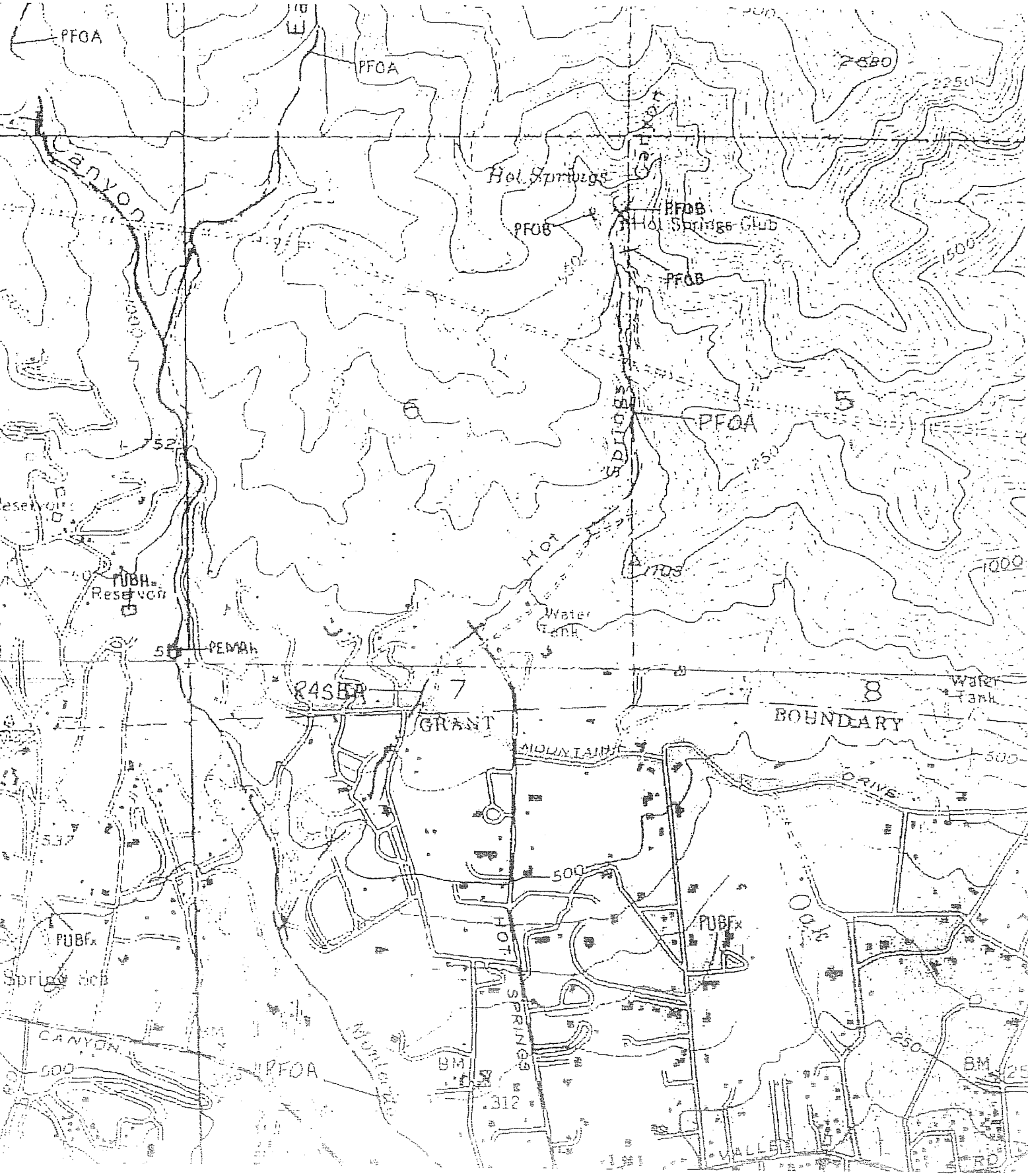


Exhibit 4

NWI Wetlands

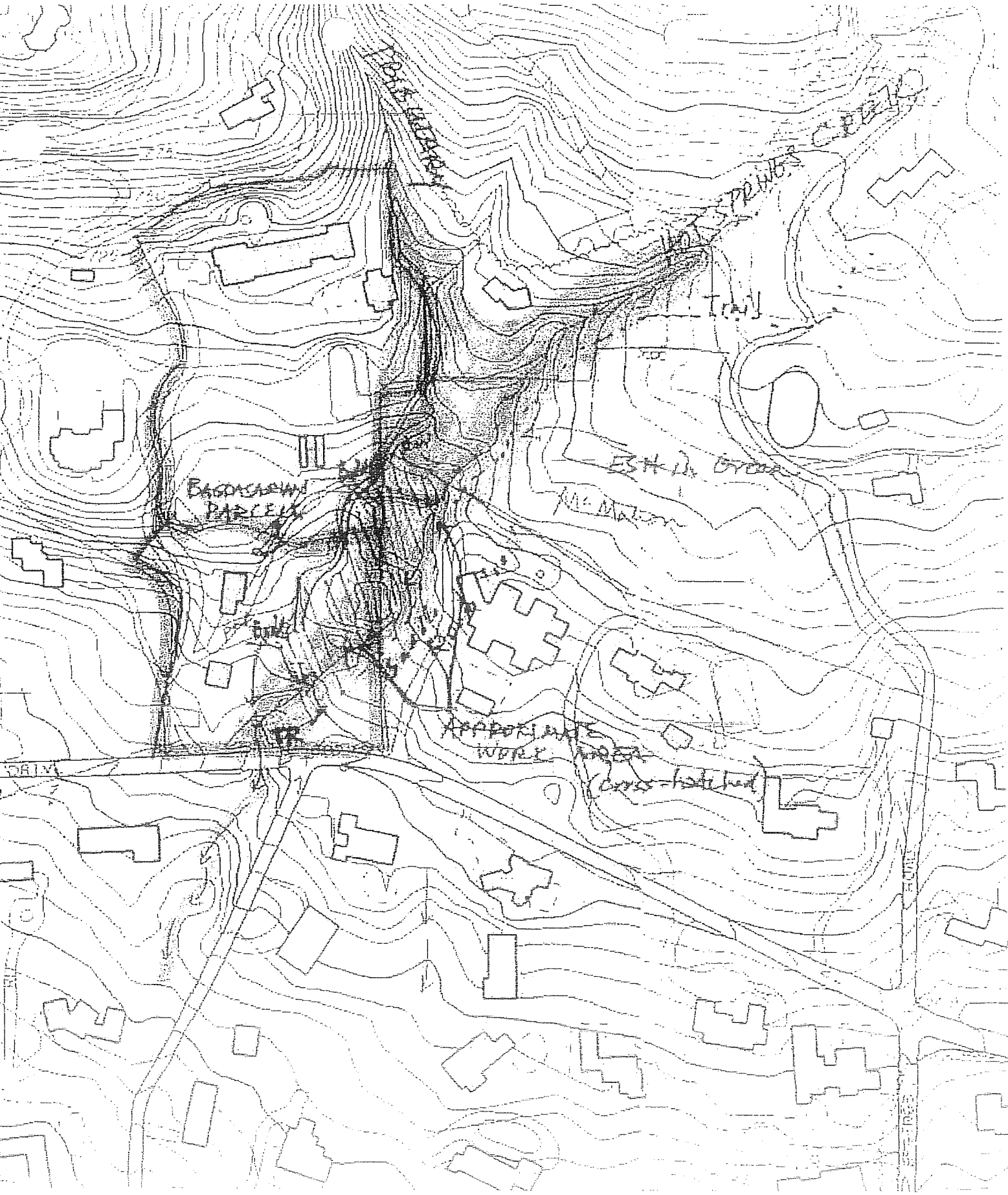


Exhibit 5

Exhibit 6a. Confluence of Hot Springs Creek and Secondary Drainage (tributary) just N of Mountain Drive. View North. Note bridge structure on left. Photo taken by Melissa Mooney March 3, 2009.

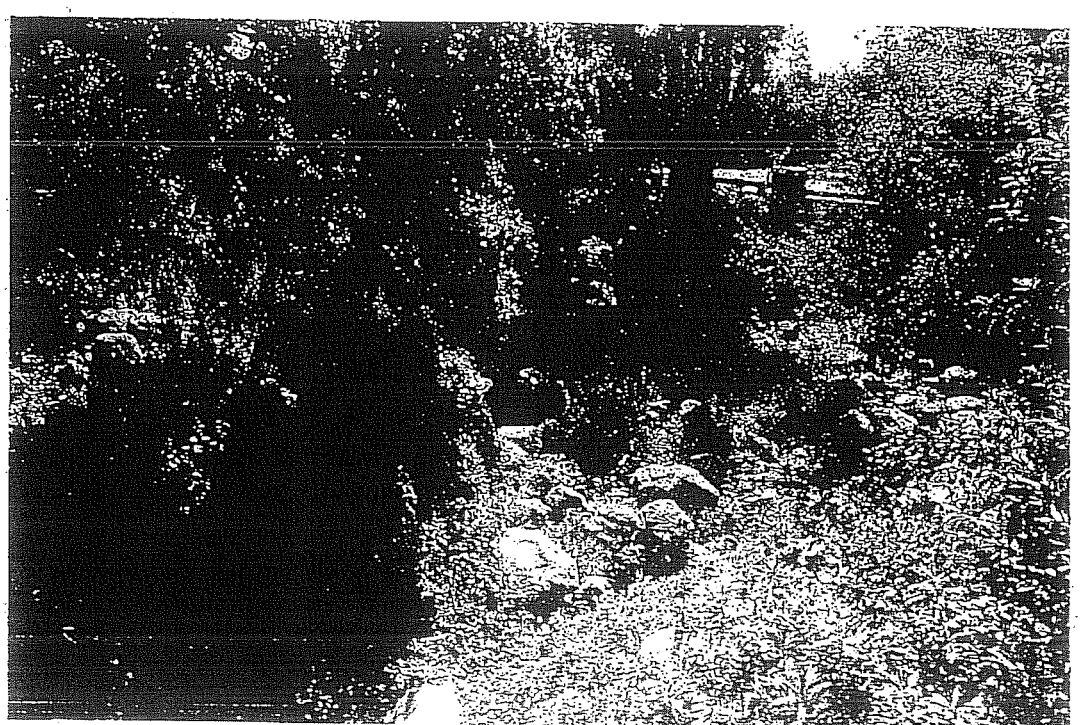
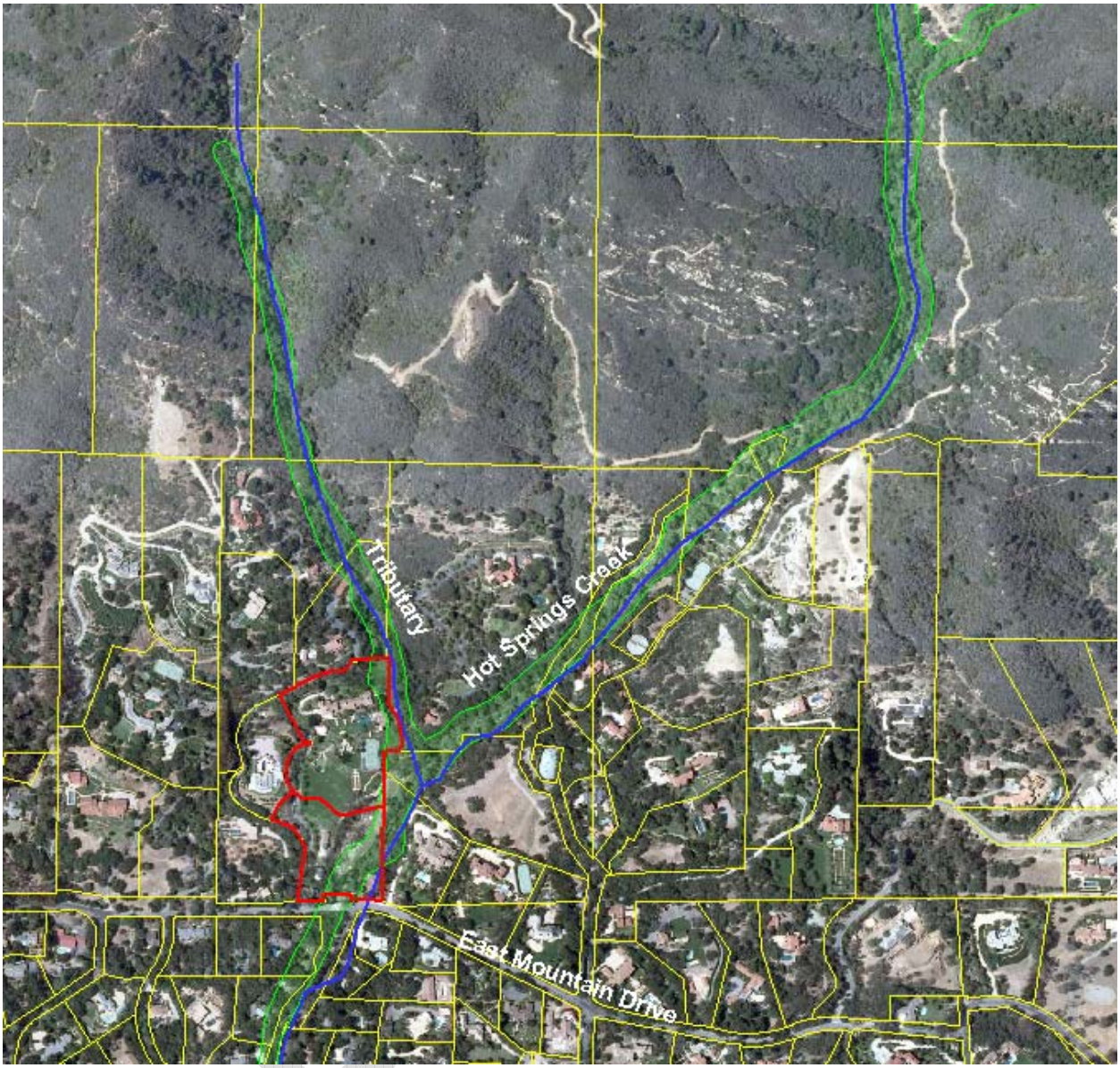


Exhibit 6b. Confluence of Hot Springs and Secondary Drainage, view southeast. Note proximity of Mountain Drive. Photograph taken by Melissa Mooney March 3, 2009.

Exhibit F - Aerial Photo 2004

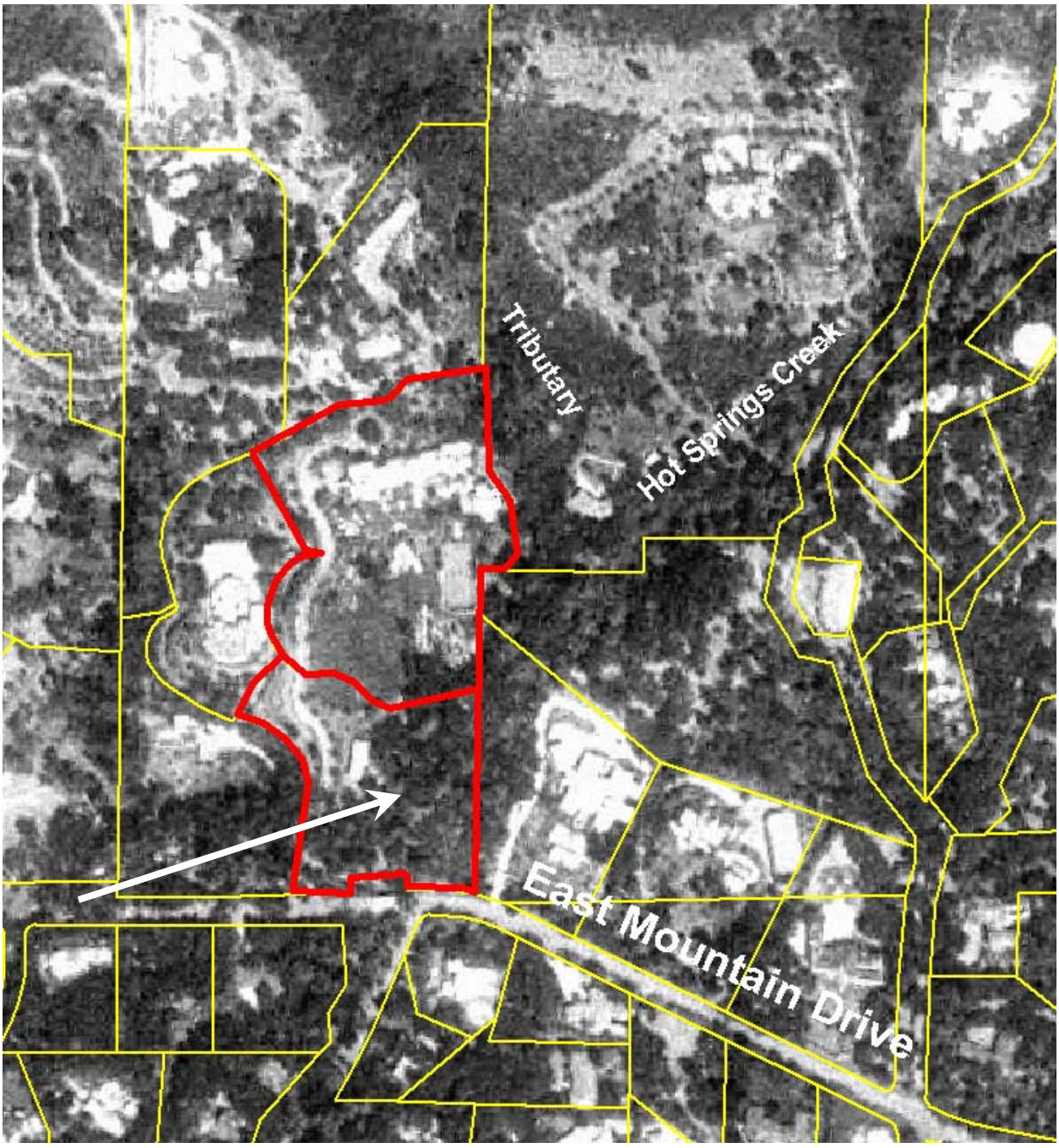
Exhibit F

ATTACHMENT H – HISTORIC AERIAL PHOTOS



2008 Aerial Photo of Bagdasarian Property and Creek System Overview – The source for the blue line representing Hot Springs Creek and its tributary is the USGS 7.5 minute quadrangle topographic maps. The green shading represents the County's mapped ESH. The site is outlined in red. Note that the tributary in question is a significant tributary to Hot Springs Creek and that ESH mapping in 1992 encompassed the entire tributary.

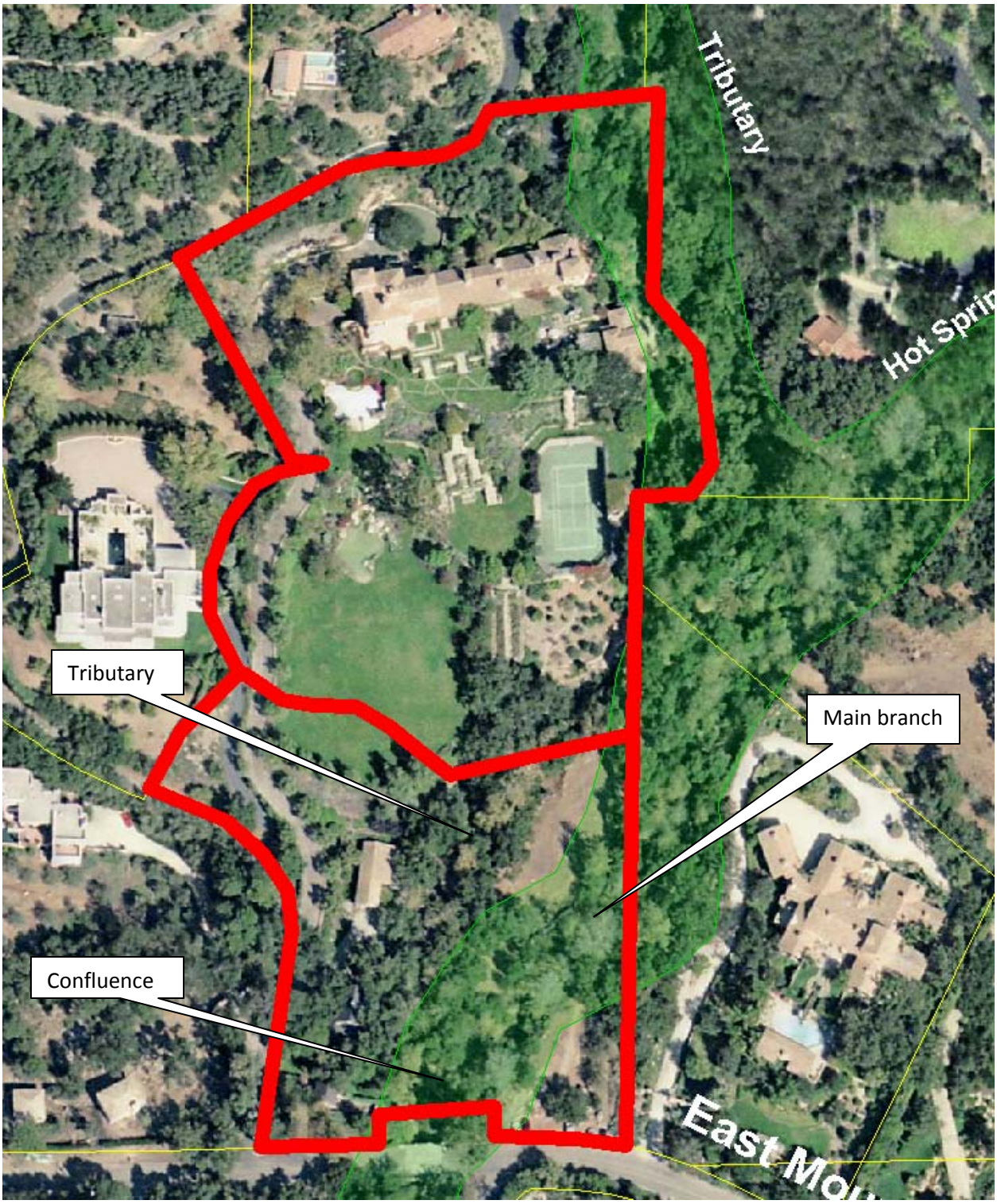
The following series of photos are from the County's Photomapper program. Beginning in 1994 and ending in 2008. Please note the resolution of older photos is not as sharp. Air photos were taken during different times of the year, which accounts for different colors in vegetation and in some circumstances, bare tree canopies.



1994 Aerial Photo of Bagdasarian Property – Note the solid vegetation canopy covering both the main branch of Hot Springs Creek and the tributary especially in the area in which the construction of the retaining walls, bridges and tree wells, and lawn installation occurred.

1998 Aerial Photo of Bagdasarian Property – Note the apparent change in vegetation cover on the peninsula between the tributary and the main branch of Hot Springs Creek, as well as in the southeast corner. The southeast corner is the area that has been used as a stockpile area. The southeast corner and the small cleared area in the peninsula remain relatively clear of tree canopy from this time forward. The tree canopy over the tributary remains intact.

2002 Aerial Photo of Bagdasarian Property with ESH Overlay – Riparian tree canopy coverage over the main branch, tributary and confluence is similar to 1998. This is the first aerial photo for which the mapped ESH Overlay is available, shown by green lines. Note the full tree canopy cover on the adjacent properties to the east.



2004 Aerial Photo of Bagdasarian Property with ESH Overlay – Again, note little to no change to the riparian tree canopy.

2006 Aerial Photo of Bagdasarian Property with ESH Overlay – Note vegetation along the tributary is thinner than in previous years and the shape of the cleared area on the peninsula appears larger.

2008 Aerial Photo of Bagdasarian Property – Work is apparently underway on the peninsula between the creek channels. Construction and stockpiles of rock are visible. Notice construction on the neighbors' property to the east and apparent tree removal. Refer to Attachment I for more recent photos from the ground.

ATTACHMENT I – SITE PHOTOS

August 5, 2009 – Looking south at the tributary and the unpermitted development (walls, bridges) and lawn. Note re-sprouting sycamores, north bridge down in the creek channel and existing permitted buildings on the south lot in the background. Note dirt roadway built across the tributary channel in foreground.

August 5, 2009 – North bridge over tributary, retaining wall, tree well around oak. Note the sycamores re-sprouting in creek.

August 5, 2009 – At north bridge, new retaining walls, tree wells around oaks.

August 5, 2009 – South end of lawn and retaining wall on tributary, just north of confluence.