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OUR FILE NUMBER
22025.1

October 30, 2009

HAND DELIVERY
Joseph Centeno, Chair
Supervisors, Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: 09APL-00000-00025
Sipple Appeal of Montecito Planning Commission Approval
Stone Landscaping, 660 Stonehouse Lane, Montecito

Dear Chair Centeno and Supervisors:

On November 3, 2009, your Board is scheduled to hear the appeal of Mr. and Mrs. Donald Sipple, challenging the July 22, 2009 decision of the Montecito Planning Commission ("MPC") to deny the Sipples' two earlier appeals and thereby uphold the decisions of the Montecito Board of Architectural Review ("MBAR") and Planning and Development to approve extensive landscape screening at the new residence of our clients, Douglas and Fiona Stone – landscaping that has been offered specifically to satisfy the Sipples. We urge you to deny the Sipples' appeal, as Planning Staff has recommended, and to grant de novo approvals of Case Nos. 06BAR-00000-00182 and 09LUP-00000-00166, including approval of the tree plan, attached as Exhibit A, as approved by the MPC.[1]

We would like to provide you with a brief summary of the history of this dispute and the Stones' efforts to satisfy the Sipples. The rear yard of the Sipple property on Romero Canyon Road is adjacent to the rear yard of the Stone property at 660 Stonehouse Lane. The two properties are divided by a wooden fence approximately six feet in height. Beginning in the 1940s the Stone property was part of a commercial avocado orchard and, when the Stones purchased it several years ago, the remnants of that orchard remained, although it had not been

[1] As indicated in the MPC's action letter dated July 28, 2009, attached to Staff's Agenda Letter, the MPC reviewed a schematic plan for seven Podocarpus trees (Exhibit G to this letter) and included as a condition of approval two additional Podocarpus meeting the specifications for seven other trees. All of these trees are shown on Exhibit A, which also shows existing conditions as discussed in this letter.

maintained or harvested commercially for a number of years. The aging trees were already beyond their productive lives and, had the orchard remained in commercial production, would have been removed and replaced with new stock. The Sipples, however, had grown accustomed to the undeveloped Stone property adjacent to their backyard and they enjoyed what remained of the declining orchard.

When the orchard property was subdivided in the 1990s, development envelopes were defined for single family residences on each parcel, including the Stones' property, and the only tree protections included on the subdivision map were for existing oak trees. The Stones' development envelope was set back 25 feet from each boundary line, including the common boundary with the Sipple property. The Stones applied in 2006 for a Land Use Permit to construct a new single family residence within their development envelope, which necessitated removal of most of the old avocado trees. Their approved landscape plan (attached as Exhibit B) showed five avocado trees in what remained of an orchard row, outside the development envelope and within the rear yard setback, with a notation "(E) [existing] avocados to remain." The development envelope immediately adjacent to the setback was intended to be the location of the Stones' swimming pool and so, in or about June 2008, as the contractor proceeded with grading in the development envelope, he overexcavated into the setback, removing three of the five avocado trees shown on the plan. The approved landscape plan (Exhibit B) also provided in Notation 6: "Plant material may be subject to change as per owner or landscape architect direction." Therefore the Stones and their architect and contractor did not anticipate controversy from the removal of the three old trees, which were well past their productive lives.

However, on December 19, 2008, apparently responding to the Sipples' complaints, Planning and Development issued a notice of a zoning violation (attached as Exhibit C), claiming that the tree removal was a zoning violation because they were "included in the landscape planting plan." Planning and Development offered two "paths" to correct the violation. The first was pragmatic: "simply replant five[2] screen trees in approximately the same location as shown on the approved LUP plans." The second, more involved method was to propose and receive revised final approval from the MBAR on an alternative screening plan. While the Stones did not believe they had created a zoning violation in the first place, they wanted to move forward with their project without delay and so responded by implementing the first option, planting three 36" box Haas avocados in approximately the same locations as the trees that had been removed. These trees were planted in January 2009 after two on-site consultations with Staff in which Staff approved both the trees and their locations.

Apparently the Sipples were still unhappy, claiming that the three healthy trees were inadequate to obscure their view of the Stones' residence. After several additional site visits,

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[2] While P&D referred to "five" trees, in fact only three were removed from the row of five, leaving the trees at either end of the row as shown on the approved plan (Exhibit B).

Planning Staff inexplicably concluded that they were unsure how many trees had been in the setback area before the removal and so advised the Stones that to clear the zoning violation they would need to meet a different standard. They would be required to install plantings that would provide "adequate screening in a reasonable time." Thus ensued a process in which the Stones have endeavored at each turn to understand the Sipples' concerns and to enhance the screening in a way that would meet the standard articulated by Planning and Development. Because this is a subjective standard, however, each proposal has been met with a subjective rejection from the Sipples.

During this same time period the Stones were pursuing a Recorded Map Modification to establish the location of their swimming pool, illustrated schematically in the approved landscape plan (Exhibit B). When the Sipples remained unsatisfied with the three new avocado trees, Staff advised the Stones to pursue a revision to their original landscape plan concurrently with pursing the Recorded Map Modification. Ultimately the Recorded Map Modification was denied because of the purported outstanding zoning violation, but on April 20, 2009, the MBAR approved a revised landscape plan (06BAR-00000-00182).

The MBAR recommended adding three more avocado trees in a second row, staggered with the trees already planted to create a more dense effect, along with a Pittosporum hedge. The three additional trees were proposed to be located within the development envelope. (Attached Exhibit D) While the Stones were not eager to have trees planted within the development envelope, they expected that the pool would be located in the southwest corner and the additional screening would not compromise their use of their property. However, after the Recorded Map Modification was denied, the Stones decided to relocate the pool to the northwest corner of the property and they want to reserve the southwest corner for a grassy play area for their children. Thus their acceptance of the plan preferred by the MBAR was never more than reluctant and based upon a prior intended use of that area. They agreed to the MBAR plan because they expected that it would satisfy the Sipples. The Sipples appealed the MBAR approval nevertheless, along with Planning and Development's Land Use Permit (09LUP-00000-00166) issued for implementation of the MBAR plan.

Staff provided a thorough analysis for the MPC in advance of its May 27, 2009 hearing on the Sipple appeals 09APL-00000-00013 and -00014, responding to each of the Sipples' issues on appeal and recommending denial of these appeals. A copy of Staff's analysis is included in your agenda packet, and the Stones' letter to the MPC responding to Staff's analysis is attached to this letter as Exhibit E. On May 27, 2009, several MPC members were ready to take action to deny the appeals. Ultimately, however, the MPC continued the hearing, based upon the recommendation of Commissioner Gottsdanker that the parties consider a revised plan for a Podocarpus tree hedge entirely in the setback area to replace the new avocado trees.

The events occurring between May 27 and the MPC's continued hearing on July 22, 2009 are summarized in our letter to the MPC dated July 17, 2009, a copy of which is attached as Exhibit F. The Stones, working with their architect Bob Easton and consulting arborist Duke McPherson, developed a plan that met the Sipples' demands to the greatest extent feasible. That schematic plan, attached to our letter and illustrated separately as (Exhibit G), showed seven Podocarpus trees measuring 16 to 17 feet in height, with a width of 5 to 6 feet at the widest point, concentrated in the area where the three avocados had been removed and later replaced. The plan showed the plantings outside the critical root zones of existing oak trees – another concern of the Sipples – and located nine feet apart to allow for additional growth. In effect, the Podocarpus would form an immediate hedge, and the Stones confirmed that trees of the appropriate size are available from a nearby nursery.

Because the Sipples argued for still more immediate screening, the MPC approved the schematic plan with a requirement that two more trees be added north of those shown on the plan. Exhibit A to this letter is Mr. Easton's plan showing the nine Podocarpus trees in their intended approximate locations. The Sipples nevertheless appealed the MPC approval.

The Stones replaced three old avocado trees with three new ones. In an apparently futile effort to satisfy the Sipples, they agreed at the MBAR to three more avocado trees and a hedge. At the MPC they agreed to remove the new avocado trees and install seven Podocarpus to the Sipples' specifications. When the MPC asked for more Podocarpus, the Stones agreed. Nevertheless, the Sipples remain unsatisfied.

The Sipples apparently believe they are entitled to screening that would completely obscure their view of the new Stone residence. Nothing in the Montecito Architectural Guidelines and Development Standards requires a property owner to install screening so dense as to conceal his structures from his neighbors. The Guidelines define "privacy" as "the enjoyment of an individual property where visual intrusion has been minimized." Guideline C.3.a states: "Structures should be located and designed to avoid placement of windows, decks, and balconies which look directly onto private areas of adjacent properties." Guideline H.3.c, concerning landscaping, states that privacy between adjoining properties "should be maximized." In short, privacy as defined and illustrated in the Guidelines is protection from an intrusive view from a new structure into adjacent property.

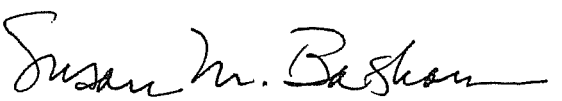
While the Sipples initially complained that it may be possible for someone standing on the balcony of one wing of the Stones' second floor to see into their yard, their principal concern always has been that the Stone residence is a visual intrusion that they do not want to see from their own yard. It is impossible to know whether the three old avocado trees obscured the view in either direction. However, we know that three avocado trees were removed and three avocado trees were replaced with the largest specimens readily available and approved by Planning and

Development. Such in-kind replacement is customary in the County and should be all that is expected of the Stones. The MBAR approved the Stones' original landscape plan in 2006 as meeting the Guidelines and the Sipples did not protest it then. Their retributive demands for more screening, with one demand building on another, obscure the fact that nothing entitles them to more screening than was in place before the three trees were removed. They have no private view easement, and the Stones' approved residence is entirely consistent with the scale and character of residences in the neighborhood.

Ironically, while the Sipples have pursued one appeal after another, the three avocado trees originally planted in direct response to direction from Planning and Development have continued to thrive and are now over 12 feet tall. They already replicate the screening provided by the three aging and unhealthy trees that were removed. The installation of nine Podocarpus trees so close together as to form an instant hedge virtually guarantees that within a few years the trees will become too crowded to be healthy. Yet this is what the Sipples want, and the Stones are willing to remove the healthy avocado trees and install the nine tree Podocarpus hedge as shown in Exhibit A because they want this matter to be resolved.

The MPC reached a reasonable conclusion on July 22, 2009, approving a nine tree plan that addressed all of the concerns raised by the Sipples in their prior appeals. In agreeing to plant the maximum number of Podocarpus trees that reasonably may be placed in the location where the three avocado trees were removed, the Stones have provided landscape screening for the Sipples to the maximum extent feasible. After many months of effort, it has become apparent that the Sipples will not be satisfied by any reasonable approach to replacing three aging avocado trees. The Stones meanwhile have endured costs and delays for a year, and it is time for the County to provide the zoning clearance they should have had in January 2009 while relieving them of costs associated with this unnecessary process. We ask you to accept Staff's recommendations, denying the Sipple appeal and approving the landscape screening plan approved by the Montecito Planning Commission.

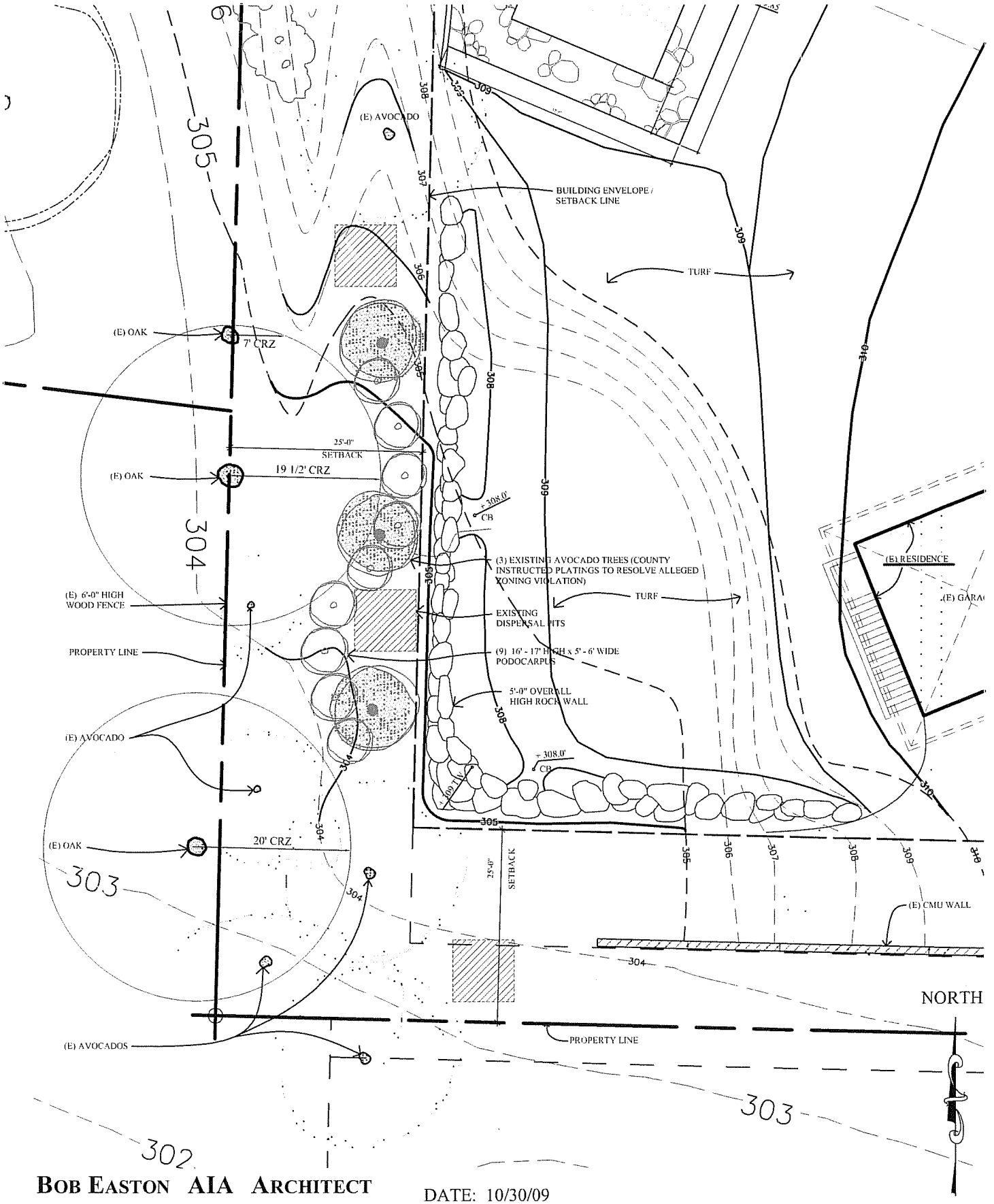
Very truly yours,



Susan M. Basham
for PRICE, POSTEL & PARMA LLP

SMB:lkh
Enclosures (Exhibits A-G)

cc: Douglas and Fiona Stone



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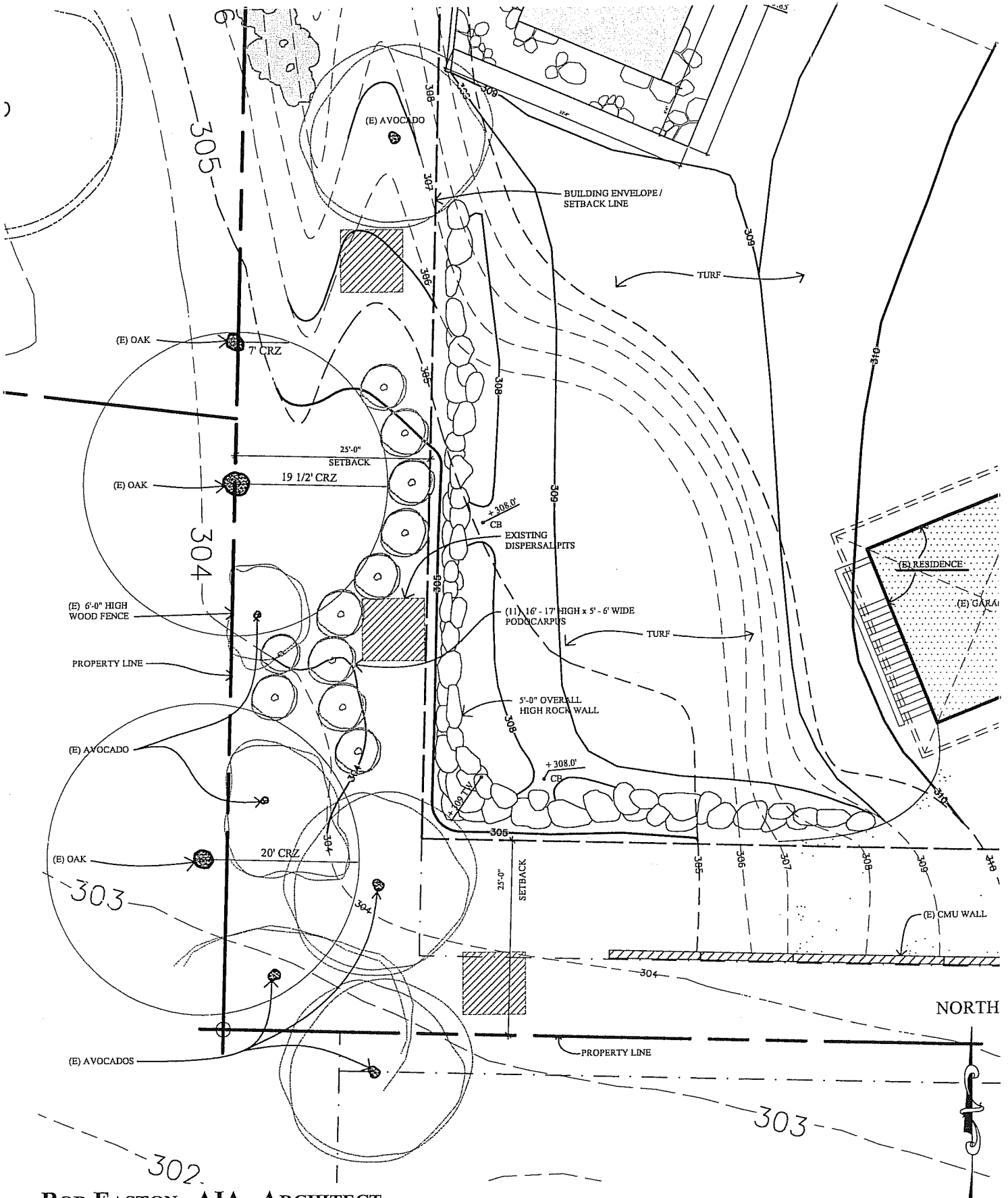
MONTECITO, CA 93108
805 969 5051
FAX 805 969 3292

DATE: 10/30/09

SITE PLAN

SCALE: 1/16"=1'-0"

GRAPHIC SCALE
0 8' 16'



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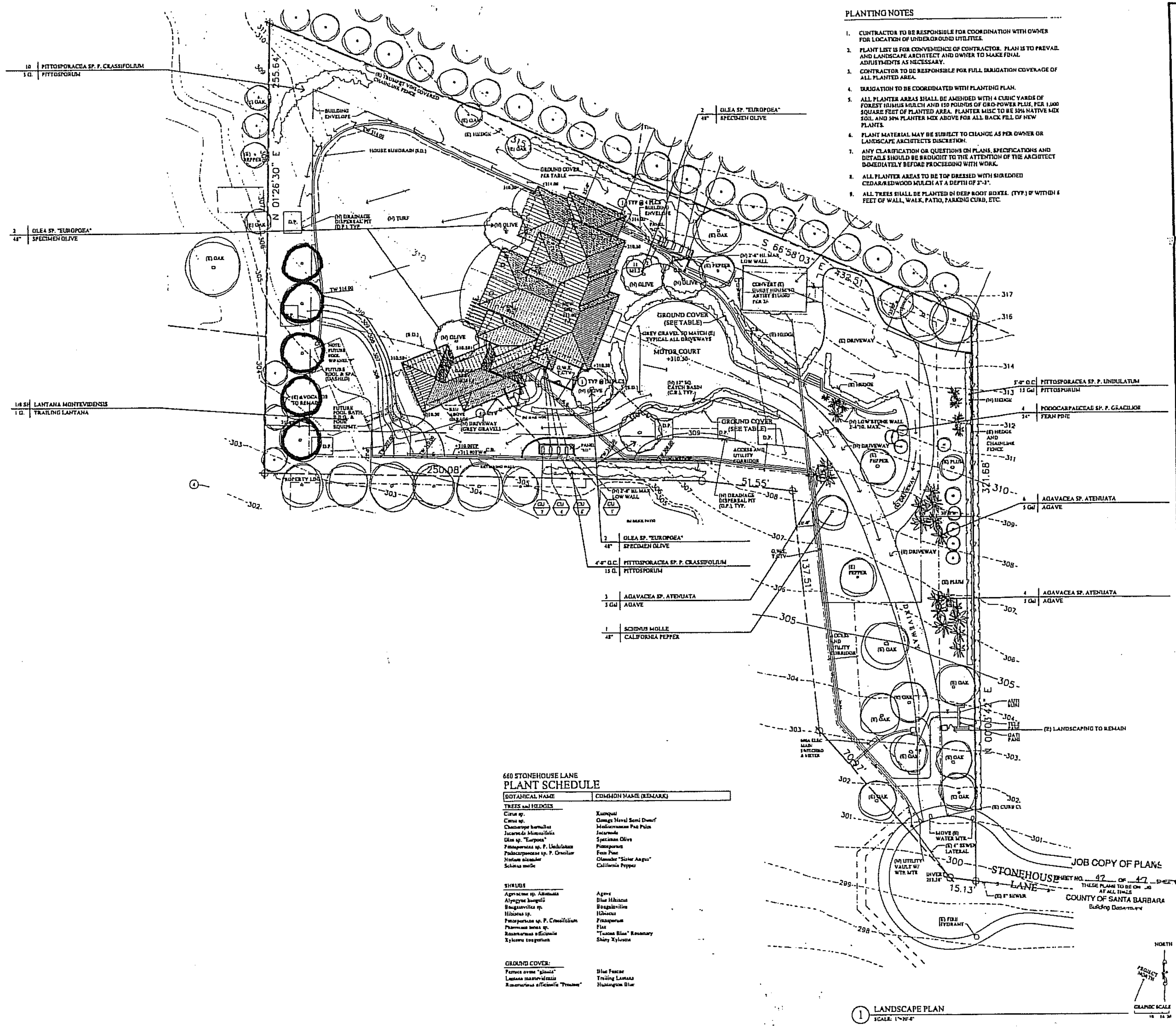

1 LANDSCAPE PLAN
SCALE: 1"=20'-0"

PLANTING NOTES

1. CONTRACTOR TO BE RESPONSIBLE FOR COORDINATION WITH OWNER FOR LOCATION OF UNDERGROUND UTILITIES.
2. PLANT LIST IS FOR CONVENIENCE OF CONTRACTOR. PLAN IS TO PREVAIL AND LANDSCAPE ARCHITECT AND OWNER TO MAKE FINAL ADJUSTMENTS AS NECESSARY.
3. CONTRACTOR TO BE RESPONSIBLE FOR FULL IRRIGATION COVERAGE OF ALL PLANTED AREA.
4. IRRIGATION TO BE COORDINATED WITH PLANTING PLAN.
5. ALL PLANTER AREAS SHALL BE AMENDED WITH 4 CUBIC YARDS OF FOREST HUMUS MULCH AND 150 POUNDS OF GRO-POWER PLUS, PER 1,000 SQUARE FEET OF PLANTED AREA. PLANTER MISC TO BE 50% NATIVE MIX SOIL AND 50% PLANTER MIX ABOVE FOR ALL BACK FILL OF NEW PLANTS.
6. PLANT MATERIAL MAY BE SUBJECT TO CHANGE AS PER OWNER OR LANDSCAPE ARCHITECTS DISCRETION.
7. ANY CLARIFICATION OR QUESTIONS ON PLANS, SPECIFICATIONS AND DETAILS SHOULD BE BROUGHT TO THE ATTENTION OF THE ARCHITECT IMMEDIATELY BEFORE PROCEEDING WITH WORK.
8. ALL PLANTER AREAS TO BE TOP DRESSED WITH SHREDDED CEDAR/REDWOOD MULCH AT A DEPTH OF 2"-3".
9. ALL TREES SHALL BE PLANTED IN DEEP ROOT BOXES. (TYP.) IF WITHIN 5 FEET OF WALL, WALK, PATIO, PARKING CURB, ETC.

660 STONEHOUSE LANE

PLANT SCHEDULE

BOTANICAL NAME	COMMON NAME (REMARK)
TREES and HEDGES	
Citrus sp.	Kumquat
Citrus sp.	Orange Navel Semi Dwarf
Chamaerops humilis	Mediterranean Fan Palm
Jacaranda Mimosifolia	Jacaranda
Olea sp. "Europea"	Specimen Olive
Pittosporacea sp. P. Undulatum	Pittosporum
Podocarpaceae sp. P. Gracilior	Fern Pine
Nerium oleander	Oleander "Sister Agnes"
Schinus molle	California Pepper
SHRUBS	
Agavaceae sp. Attenuata	Agave
Alyogyne huegelii	Blue Hibiscus
Bougainvillea sp.	Bougainvillea
Hibiscus sp.	Hibiscus
Pittosporaceae sp. P. Crassifolium	Pittosporum
Phormium tenax sp.	Flax
Rosmarinus officinalis	"Tuscan Blue" Rosemary
Xylosma congestum	Shiny Xylosma
GROUND COVER:	
Festuca ovina "glauca"	Blue Fescue
Lantana montevidensis	Trailing Lantana
Rosmarinus officinalis "Prostrata"	Huntington Blue

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Proposed Residence for:
STONE RESIDENCE
660 Stonehouse Lane
Santa Barbara, CA 93108

SHEET TITLE: LANDSCAPE PLAN

DATE: 12-19-06

REVISIONS: 02-05-07

JOB NUMBER

SHEET NUMBER: L1

1

County of Santa Barbara
Planning and Development

John Baker, Director
Dianne Black, Director Development Services
John McInnes, Director Long Range Planning

December 19, 2008

Douglas and Fiona Stone
9665 Wilshire Blvd Suite 500
Beverly Hills, CA 90212

Re: Violation of County Code Chapter 35 (Zoning), APN 155-060-028, 660 Stonehouse Lane

Dear Mr. and Mrs. Stone:

As we have discussed, Planning & Development received complaints regarding a possible zoning violation that occurred in June of this year on your property at 660 Stonehouse Lane. The alleged violation was twofold and entailed 1) unpermitted grading for a pool as well as earth disturbance outside of the designated building envelope, and 2) removal of five screen trees along the west property line (labeled "(E) avocados to remain"), included in the landscape planting plan approved in association with the active Land Use Permit for your new house and accessory structures, 05LUP-00000-00704. Upon investigation and following consultation with County Counsel, we have determined that both of these actions were zoning violations.

Thank you for resolving the pool and earth disturbance component of the June 2008 violation. The unpermitted removal of five screen trees, however, remains unresolved and we have opened up a zoning violation case, 08ZEV-00000-00246. All staff time expended to resolve/abate the violation will be charged to you at an hourly rate of $132.00 per hour. This includes research, correspondence, site visits, etc. You have the right to object to these charges by filing a request for a hearing with the Department of Planning & Development within 10 days from receipt of the billing statement (mailed upon closure of enforcement case) pursuant to §35.498.070.E (Hearing on objections) of the Santa Barbara County Montecito Land Use & Development Code. Unappealed 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 §35.498.070.E.6 of the Santa Barbara County Montecito Land Use & Development Code. Additionally, as provided for within Section 35.498.080, if a permit is required to cure a 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.

Our administrative practice on zoning violations is to provide a permit path, insofar as we can, to rectify the situation. We see two ways in which the unpermitted removal of five screen trees can be resolved. First, the property owner could simply replant five screen trees in approximately the same location as shown on the approved LUP plans. Please note that the locations of the new trees would have to be outside of the critical root zone of the adjacent oak trees, consistent with your arborist's November 4, 2008, recommendations, to ensure consistency with Montecito Community Plan policies providing protection, to the maximum extent feasible, of existing oaks (please see list of policies

below). Notation 6 on the approved LUP plans states "Plant material may be subject to change as per owner or landscape architect direction"; hence the replacement screen trees do not need to be avocados. If the trees to be installed are not avocados, however, plans would need to be reviewed by Planning and Development with the chair of the Montecito Board of Architectural Review (MBAR) and approval of a revised Land Use Permit would need to be issued. Replacement plantings would need to be installed prior to occupancy clearance on the new house and associated accessory structures.

The second way to resolve the violation would be to propose and receive revised final approval from the MBAR on an alternative screening plan. MBAR review would be fully noticed to allow your neighbors input on the plan.

Montecito Community Plan Tree Protection Policies: Please see the following policies relating to oak tree protection:

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.*

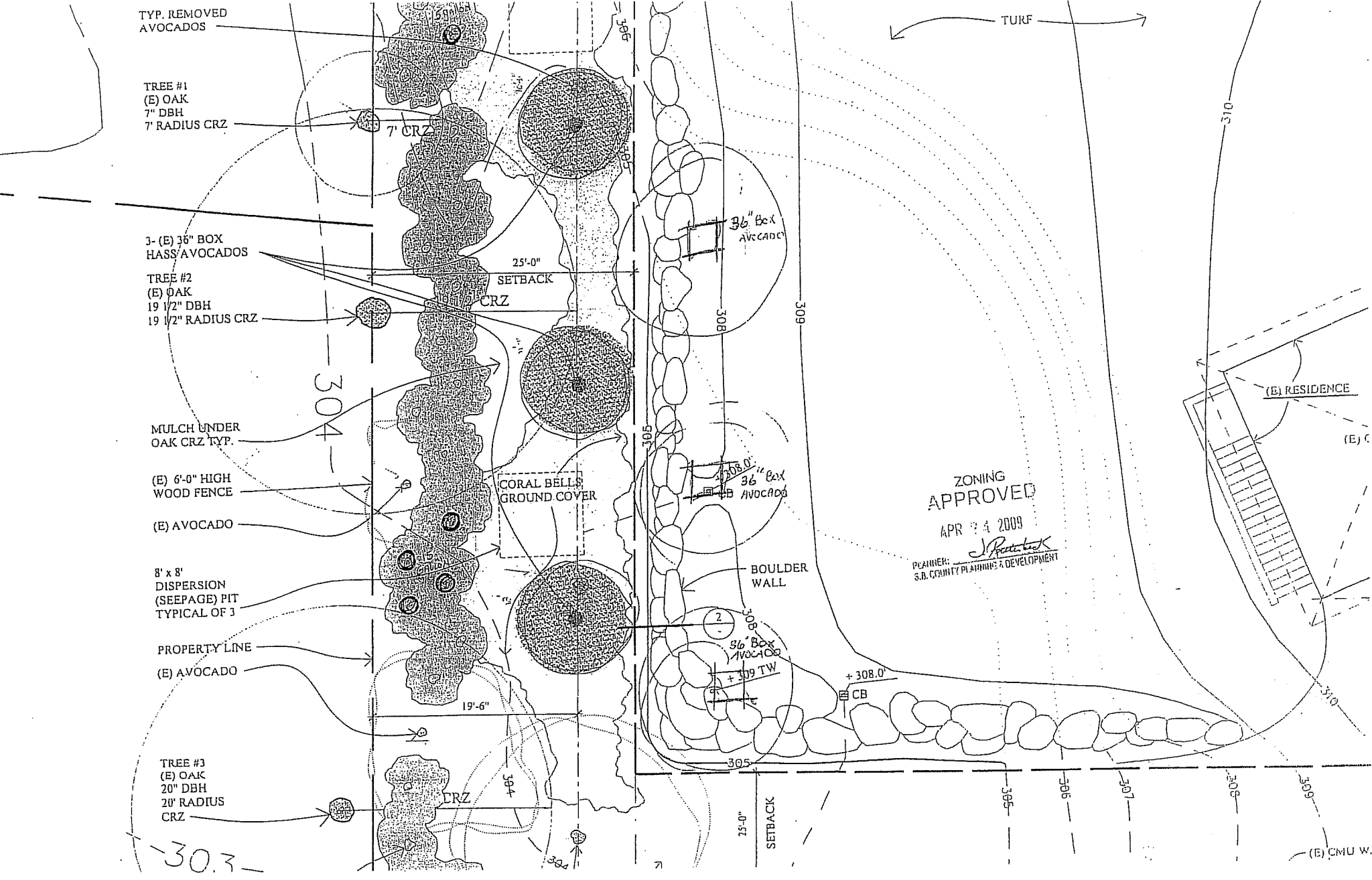
- *Site plans should demonstrate a diligent effort to retain as many "significant trees" as possible. Note: "Significant Tree" means any tree which is in good health and is more than 12 inches in diameter as measured 4 feet 6 inches above the root crown. Any tree of the Quercus (oak) genus which is in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

Please let us know how you would like to proceed and we will work with you to resolve this outstanding issue.

Sincerely

Holly Bradbury, Planner (805) 407-7831

cc:
Anne Almy, Supervising Planner
Bob Easton AIA Architect, 1486 East Valley Road, Santa Barbara, CA 93108
Susan Petrovich, **Brownstein Hyatt Farber Schreck, LLP**, 21 East Carrillo Street , Santa Barbara, CA 93101
Joyce and Don Sipple
Seth Shank, Permit Compliance
Mary McMaster, County Counsel
Kimberley McCarthy, Enforcement
07LUP-00000-000453, 08RMM-00000-00453, Case File



Reduced Site Plan, dated April 10, 2009

PRICE, POSTEL & PARMA LLP

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OUR FILE NUMBER

May 22, 2009

HAND DELIVERY

Michael Phillips, Chair
Commissioners, Montecito Planning Commission
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

Re: Sipple Appeals 09APL-00000-00013 and 09APL-00000-00014

Dear Chair Phillips and Commissioners:

Douglas and Fiona Stone, who are in the process of completing construction of their new home at 660 Stonehouse Lane, Montecito, have asked us to assist them in resolving matters that are the subject of the above-referenced appeals, scheduled for hearing before your Commission on May 27, 2009. While our representation commenced after all of the decisions now at issue had been made, we have endeavored to understand both Staff's position and the concerns raised by the appellants, Donald and Joyce Sipple. We appreciate Staff's willingness to explore these matters with us when relatively little time remains before your hearing.

The Stones find themselves in a situation that, despite best intentions of Staff, has become unnecessarily complicated. On December 19, 2008, the County issued a notice of zoning violation, attached as Exhibit A, advising Mr. Stone that the removal of certain avocado trees on his property constituted a zoning violation because those specific trees had been identified on the landscape plan associated with the Land Use Permit (LUP) for his residence as "trees to remain."[1] Staff advised in its letter that he had two options for removing the violation.

[1] We do not concede that the tree removal constituted a zoning violation, since a notation on the landscape plan is merely an expression of intent. There was no condition of approval associated with the Land Use Permit requiring specific avocado trees to remain, nor were these trees identified as "protected" on the tree protection plan required under the Land Use Permit. In fact, the approved landscape plan anticipated that the owner and landscape architect would make adjustments as necessary. However, we accept that the County's issuance of a notice of zoning violation was the event that precipitated the two actions now on appeal.

One was simple and pragmatic – "simply replant five screen trees in approximately the same location as shown on the approved LUP plans" but outside the critical root zone of adjacent oak trees. Staff noted that the replacement trees could be other than avodados, since the approved LUP plan included a notation that "[p]lant material may be subject to change as per owner or landscape architect direction," but trees other than avocados would require review by Planning and Development with the Chair of the MBAR. The other was more complicated – pursue approval from the MBAR on an alternative screening plan.[2]

After some discussion and site visits, it was agreed that three trees identified in one row on the plan had been removed, while several other avocado trees remained in the area. Under Staff direction, Mr. Stone complied by replacing the three avocado trees with 36" box specimens, and Staff approved their locations in approximately the same locations where the removed trees had stood. The Sipples, however, were not satisfied, claiming that the lost screening was more extensive than the three trees, and Staff recommended that Mr. Stone pursue the second option, seeking further MBAR review under 06BAR-00000-00182 and the issuance of a new land use permit for installation of replacement landscaping under 09LUP-00000-00166 (and, at the same time, giving his neighbors an opportunity to participate in a process where their concerns would be addressed by the decision-making bodies who had approved the residential project with the original landscape plan).

The MBAR approved revisions to the landscape plan that included both the three replacement avocado trees and additional landscaping requirements in an attempt to satisfy the Sipples, including the installation of another row of three avocado trees in 36 inch boxes and a Pittosporum hedge along the Sipple fence composed of 30 plants, with 23 in 5 gallon containers in the critical root zones of the existing oaks and 7 in 15 gallon containers outside the critical root zones. The MBAR noted that it will be several years before this screening grows to substantial size. In issuing a Land Use Permit for this installation, Planning and Development incorporated all of the MBAR recommendations. Since Mr. Stone already had completed the replacement of trees to clear the zoning violation, he disagreed with the request that he modify his landscaping plan more extensively, but was prepared to accept the decision of the MBAR in the interest of meeting his neighbor's concerns and putting the entire matter to rest.

The Sipples nevertheless remain unsatisfied. In their appeal they have rejected the MBAR's proposed additional landscaping and are demanding instead the installation of mature oaks to establish instant screening, which is well beyond the scope of original approved landscape plan and certainly beyond the scope of the alleged zoning violation. They have vowed

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[2] While Staff has presumed that the MBAR's 2006 finding concerning adequate screening relied upon the avocado trees that later were removed, in fact there is substantial vegetation in the same area, raising doubt that the avocados were ever considered "screen trees." In any event, as discussed in this letter, the loss of these particular trees has not created a void in screening.

to continue their appeals, thereby preventing Mr. Stone from clearing his zoning violation and, as a consequence, preventing him from receiving a certificate of occupancy for his new home, which is almost complete.

When Mr. Stone replaced the three avocado trees he had removed, he met the County's requirement for removal of the zoning violation as stated in its letter dated December 19, 2008. Therefore, in our view, the two applications and actions that have given rise to the Sipple appeals were unnecessary. Mr. Stone requests that the Commission make a determination that he has achieved full compliance with County zoning and the zoning violation should be cleared, with no additional action needed, making the actions on appeal, and the appeals themselves, moot. Should the Commission determine that the additional MBAR review and issuance of a Land Use Permit were a necessary course of action for removal of the zoning violation, Mr. Stone asks the Commission to accept Staff's recommendations in the Staff Report prepared for your hearing, deny the two Sipple appeals, and uphold the approval actions taken by the MBAR under 06BAR-00000-00182 and by Planning and Development under 09LUP-00000-00166.

In its Report, Staff has provided a thorough analysis of each of the policies and standards cited by the Sipples in their appeal letter. Mr. Stone agrees with Staff's overall conclusion and in part with Staff's analysis, and we will not address the areas of agreement. We offer, however, additional analysis and differing conclusions on several of the Appellants' issues enumerated in the Staff Report.

Issue #1: Policies and standards protective of "specimen" or "significant" trees are inapplicable because the subject avocado trees do not meet the cited definitions.

The Sipples argue that the removed avocado trees were "specimen trees" protected under Montecito Community Plan policies and development standards. Specifically, they assert that these trees met the definition of "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 historical value, or are unique due to species type or location shall be preserved to the maximum extent feasible." (Policy BIO-M-1.15) Apparently they are asserting that the tree removal constituted more than a zoning violation because it involved trees protected under this policy. We disagree.

The Stone property is located in an area that once was an avocado orchard. The previous owner and subdivider of the property, Steve Decker, has stated that the orchard was originally planted in the 1940s. From the time of his purchase in 1987 he allowed the orchard to decline, rarely irrigating it or harvesting a crop. The Sipples purchased their home in 1997, well after Mr. Decker had begun processing his subdivision (Tract No. 14,232), which was recorded in the same year. The land was further subdivided in 2001 (Tract No. 14,496 Phase II), creating the

parcel later purchased by the Stones. By that time many trees on the Stone parcel had died and had been removed.

Fruit trees are grown in orchards to be crop-producing. According to George E. Goodall, an expert on the California avocado industry, "The lower estimate of useful life that might be encountered when risks of loss are high would be 15 years, an average range of productive life would be 20 to 30 years and an upper estimate that might be reached under favorable conditions would be 40 years."[3] The trees on the Stone property and adjacent parcel are at least 60 years old and clearly are past their economically useful life. Therefore, if the orchard had remained in active production, the Sipples would have been living next to an orchard in which the trees would have been removed and replaced periodically. They had no reasonable basis to expect that they would always have a mature orchard beyond their fence.

The remaining avocado trees planted in rows on the Stone property, parallel to the Sipple fence, were old and senescent trees planted 24' on center – the continuation of one or two rows of trees extending from the adjacent parcel. There is nothing uniquely aesthetic or scenic about common orchard trees, notwithstanding the Sipples' alleged affection for them. The fact that these trees were "mature" does not entitle them to protected status as "specimen" trees. Moreover, the trees that were removed, presuming comparability with those that remain, were approximately 8" to 11" DBH and approximately 15 feet in height – clearly below the standard asserted by the Sipples under Section II.D.3 of the Guidelines, which defines a "significant tree" as "more than 12 inches in diameter as measured 4 feet 6 inches above the root crown." However, it is difficult to take any measurement more than four feet above the ground because these are fruit trees that were grafted below that level. The trees have not grown straight, and their trunks above the graft are irregular.

With due respect to Staff's attempt to apply the definition of a specimen tree to avocados, there is nothing in this definition that suggests it was intended to apply to crop-bearing fruit trees. In fact, in at least one situation, your Commission, based upon Staff's recommendation, interpreted this definition so narrowly as to conclude that a grove of 100 year old skyline cypress trees that were important historically to an entire neighborhood were not within the definition (05BAR-00000-00300, Kogevinas Additions, 171 Olive Mill Lane). If those trees, which had all of the characteristics of specimen trees, did not fit within the definition, then surely three avocado trees that were part of a crop-bearing orchard, planted for utilitarian purposes, cannot be within it.

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[3] Goodall, G.E., T.M. Little, R.C. Rock, R.G. Platt and A.D. Reed, "Useful Life of Avocado Trees in Commercial Orchards in California." California Avocado Society Yearbook, 54:33-36, 1971.

Issues #s 2, 3, and 8: The Sipples' opportunity to challenge the design and placement of the Stone residence expired in 2006.

Appellants, in effect, are challenging the whole of the Stones' residential project as being inconsistent with the good neighbor policies stated in the Montecito Architectural Guidelines and Development Standards, the purposes of the Guidelines, and the map conditions for the Cross Creek Ranch subdivision. Staff has stated that the initial approval in 2006 included findings that the project was in full compliance with all policies, development standards, design guidelines, and the Tract Map. If the Sipples were concerned, for example, with the placement of the residence or the site layout or the design methods, they could have challenged the project in 2006. The MBAR reviewed and approved the project under these standards – a project that included the removal of a number of trees to accommodate the structures. The only, very narrow issue before the MBAR in 2009 was removal of a zoning violation and a determination of whether the replacement landscaping was sufficient to maintain consistency with the original approved plan.

Issue #7: The Sipples have not "lost all privacy" as a result of the removal of the three avocado trees.

One would think, from the Sipples' statements, that there is no vegetation whatsoever between the Stone property and the Sipple property. In fact, the area in question has substantial vegetation, including several remaining mature avocados on the Stone property, two mature oaks on the property line between the two properties, and numerous plantings on the Sipple property, including a medium-sized deciduous tree between the two oaks. In fact, the oaks are so large that two of the existing avocado trees are shaded and compromised. The screening is substantial, and the three replacement avocado trees are already over 10 feet in height. Moreover, the garage and ARSU of the Stone residence are approximately 70 feet from the fence that divides the Sipple and Stone properties, and the Sipple residence is a considerable distance beyond the fence. If the Sipples have chosen not to install landscaping around their swimming pool, it is not their neighbors' responsibility to screen their view of the pool. Mature avocado trees, spaced 24 feet on center, would not provide a full vegetative buffer under any circumstances, but the replacement trees and existing vegetation provide the Sipples with adequate privacy even without the additional landscaping approved by the MBAR.

Issue #10: The Sipples' demand for installation of "mature oaks" at the "same elevation as the finished floor" of the Stone residence is both unfounded and infeasible.

As Staff has stated, applicable policies and development standards "do not provide a nexus for requiring oak trees as a replacement to avocado trees nor is it the County's standard

practice to require installation of fully mature plant materials to replace those lost." In fact, the replacement trees have been planted at the same elevation as the removed trees, and they are fast approaching the height of the removed trees. A demand that the Stones plant mature trees at the same elevation as their residence would require plantings very close to the residence (impermissible for fuel management purposes) and within the building envelope, which would be inconsistent with the approved landscape plan. In short, there is no justification for requiring plantings at an elevation different from the setback area. However, Mr. Stone is amenable to the deletion of the Pittosporum hedge, as the Sipples request.

In summary, Douglas and Fiona Stone simply want to complete their home and begin living in it. They have done everything asked of them by the County, including compliance with stated requirements for removal of a zoning violation and agreement to install additional landscaping as requested by the MBAR, all in response to the concerns expressed by the Sipples. The Sipples have seized the opportunity presented by the County's notice of zoning violation to demand additional screening and revisions to the Stone project that are well beyond its original scope. For these reasons, we ask that the Commission determine that the zoning violation has been cleared with no further approvals necessary or, in the alternative, to deny the appeals and uphold the two approval actions consistent with Staff's recommendations.

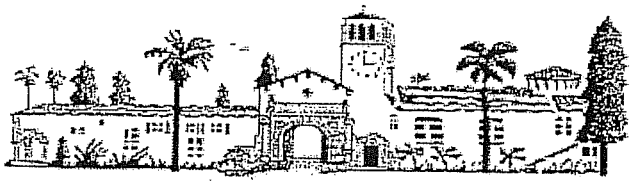
We plan to attend the hearing on May 27, 2009 and look forward to your discussion.

Very truly yours,

Susan M. Basham
for PRICE, POSTEL & PARMA LLP

SMB:lkh
Enclosure

cc: Douglas Stone



County of Santa Barbara
Planning and Development

John Baker, Director

Dianne Black, Director Development Services

John McInnes, Director Long Range Planning

December 19, 2008

Douglas and Fiona Stone
9665 Wilshire Blvd Suite 500
Beverly Hills, CA 90212

Re: Violation of County Code Chapter 35 (Zoning), APN 155-060-028, 660 Stonehouse Lane

Dear Mr. and Mrs. Stone:

As we have discussed, Planning & Development received complaints regarding a possible zoning violation that occurred in June of this year on your property at 660 Stonehouse Lane. The alleged violation was twofold and entailed 1) unpermitted grading for a pool as well as earth disturbance outside of the designated building envelope, and 2) removal of five screen trees along the west property line (labeled "(E) avocados to remain"), included in the landscape planting plan approved in association with the active Land Use Permit for your new house and accessory structures, 05LUP-00000-00704. Upon investigation and following consultation with County Counsel, we have determined that both of these actions were zoning violations.

Thank you for resolving the pool and earth disturbance component of the June 2008 violation. The unpermitted removal of five screen trees, however, remains unresolved and we have opened up a zoning violation case, 08ZEV-00000-00246. All staff time expended to resolve/abate the violation will be charged to you at an hourly rate of $132.00 per hour. This includes research, correspondence, site visits, etc. You have the right to object to these charges by filing a request for a hearing with the Department of Planning & Development within 10 days from receipt of the billing statement (mailed upon closure of enforcement case) pursuant to §35.498.070.E (Hearing on objections) of the Santa Barbara County Montecito Land Use & Development Code. 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 §35.498.070.E.6 of the Santa Barbara County Montecito Land Use & Development Code. Additionally, as provided for within Section 35.498.080, if a permit is required to cure a 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.

Our administrative practice on zoning violations is to provide a permit path, insofar as we can, to rectify the situation. We see two ways in which the unpermitted removal of five screen trees can be resolved. First, the property owner could simply replant five screen trees in approximately the same location as shown on the approved LUP plans. Please note that the locations of the new trees would have to be outside of the critical root zone of the adjacent oak trees, consistent with your arborist's November 4, 2008, recommendations, to ensure consistency with Montecito Community Plan policies providing protection, to the maximum extent feasible, of existing oaks (please see list of policies

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Energy, Administration
123 E. Anapamu Street
Santa Barbara, CA 93101
Phone: (805) 568-2000
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Santa Barbara, CA 93101
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Building & Safety
185 West Hwy 246, Ste 101
Buellton, CA 93427
Phone: (805) 686-5020
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Development Review
Building & Safety
Agricultural Planning
624 W. Foster Road
Santa Maria, CA 93455
Phone: (805) 934-6250
FAX: (805) 934-6258

below). Notation 6 on the approved LUP plans states "Plant material may be subject to change as per owner or landscape architect direction"; hence the replacement screen trees do not need to be avocados. If the trees to be installed are not avocados, however, plans would need to be reviewed by Planning and Development with the chair of the Montecito Board of Architectural Review (MBAR) and approval of a revised Land Use Permit would need to be issued. Replacement plantings would need to be installed prior to occupancy clearance on the new house and associated accessory structures.

The second way to resolve the violation would be to propose and receive revised final approval from the MBAR on an alternative screening plan. MBAR review would be fully noticed to allow your neighbors input on the plan.

Montecito Community Plan Tree Protection Policies: Please see the following policies relating to oak tree protection:

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".*

Please let us know how you would like to proceed and we will work with you to resolve this outstanding issue.

Sincerely

Holly Bradbury, Planner (805) 407-7831

cc:
Anne Almy, Supervising Planner
Bob Easton AIA Architect, 1486 East Valley Road, Santa Barbara, CA 93108
Susan Petrovich, **Brownstein Hyatt Farber Schreck, LLP**, 21 East Carrillo Street , Santa Barbara, CA 93101
Joyce and Don Sipple
Seth Shank, Permit Compliance
Mary McMaster, County Counsel
Kimberley McCarthy, Enforcement
07LUP-00000-000453, 08RMM-00000-00453, Case File

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OUR FILE NUMBER

22025.1

July 17, 2009

HAND DELIVERY

Michael Phillips, Chair
Commissioners, Montecito Planning Commission
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

Re: Sipple Appeals 09APL-00000-00013 and 09APL-00000-00014

Dear Chair Phillips and Commissioners:

On May 27, 2009, your Commission heard the above-referenced appeals of Douglas and Fiona Stone's approved revised landscaping plan – a plan for screening to benefit the neighboring Sipple property that was reviewed extensively by the MBAR in a process that Planning and Development staff intended would give the Sipples an opportunity for input. The appeals were continued to July 22, 2009, with your expectation that the parties would endeavor to reach agreement on further revisions to the landscaping plan during the intervening weeks. We would like to provide a brief report on what has occurred.

As you may recall, this matter arose from staff's determination in December 2008 that the removal of several avocado trees during construction on the Stone property constituted a zoning violation. Staff advised the Stones in writing that replacement of the trees would clear the violation, and the Stones replaced the trees with three 36" container avocados, located approximately where three trees had been removed. However, the Sipples were not satisfied and, through a series of meetings and other communications, apparently convinced staff that perhaps there had been more screening on the site than Bob Easton, the Stones' architect, had illustrated on their approved landscape plan. Acceding to the Sipples' demands, staff determined that the Stones needed to do more than replace the three avocado trees to clear the purported zoning violation – they needed instead to provide "adequate screening in a reasonable time." Thus ensued the process of revising the landscape plan, culminating in MBAR approval and issuance of a new land use permit – the matters now on appeal.

Staff has recommended denial of the Sipple appeals. While some of you were ready to take action on May 27, ultimately you continued the hearing with agreement from the Sipples and Stones to participate in an effort to come to agreement through a process that was initiated by Steve Decker during a hearing recess. Mr. Decker is a neighbor of both parties and the original subdivider of the Stone property. Following the suggestions of Commissioner Gottsdanker, Mr. Decker agreed to investigate the availability of Podocarpus as replacement screening and to act as an intermediary to bring the parties together. Mr. Decker proceeded to research Podocarpus immediately after the hearing. He provided his information to Bob Easton and presented a modified plan to the parties. However, the Sipples instructed their attorney not to talk with Mr. Decker.

Representatives of the parties then met on site on July 1, with visits to both the Sipple property and the Stone property. As a result of that meeting, which included the Sipples' consulting arborist, Bill Spiewak, and their attorney, Susan Petrovich, we understood the Sipples' current criteria for "adequate screening in a reasonable time" and Mr. Stone agreed to try to meet them. Despite continued resistance from the Sipples each time we have attempted to communicate with their attorney, we have proceeded, working with Douglas Stone, Bob Easton, and consulting arborist Duke McPherson, to develop a plan that meets each of the Sipples' criteria to the greatest extent possible.

The enclosed drawing represents the Stones' proposed revised landscaping. It accomplishes the following, all in accordance with the Sipples' preferences:

- Podocarpus gracilior trees are 16' to 17' in height with "heads" of 6' to 7' in width. These are available through Ventura County Nursery. Photographs provided by the nursery also are included.

- The Podocarpus are to be planted entirely outside the critical root zones of existing oak trees.

- The Podocarpus are to be planted in an undulating row between the two remaining avocado trees, replacing the three avocados that were removed while avoiding both the CRZs and the dispersal pits. As the Sipples requested, the trees will be placed between an existing "southerly oak" on the Sipple property and a "northerly avocado" on the Stone property.

- The Podocarpus will be spaced nine feet apart, which allows for additional growth between the heads but provides immediate screening. A total of seven trees adequately fills the space.

We also include a line of sight drawing prepared by Bob Easton, which illustrates the view from the Sipple property at two viewing points established by the parties during the July 1 site visit. The closest element of the Stone residence is 81 feet from the common boundary line and 171 feet from the closest viewing point on the Sipple property. As you can see, the Podocarpus at the specified height and in the specified location will intercept the line of sight from the Sipple property on the day they are planted and will immediately block the view of the Stone residence to the eaves.

To meet the Sipples' demands, Mr. and Mrs. Stone will have to remove the three new avocado trees, planted at County direction at a cost of several thousand dollars, which already have reached a height of approximately 12 feet. From the Stones' viewpoint, these plantings fully satisfied staff's stated requirement for removal of the purported zoning violation. They do not accept staff's later assertion of a different criterion for removal of the violation – one designed to satisfy the Sipples. The Stones are comfortable with the three new fruit-bearing trees and have considered Podocarpus only because the Sipples expressed a preference for the screening that Podocarpus may provide.

In agreeing to prepare a plan showing a Podocarpus "hedge," the Stones asked the Sipples for a universal settlement of their dispute and a release of claims. To date, the Sipples have refused even to entertain the possibility of entering into a settlement as part of establishing screening acceptable to them. Several of you expressed concern that this matter should be resolved by your Commission and should not go to the Board of Supervisors on further appeal. Mr. and. Mrs. Stone share your concern and recognizes in the Sipples' refusal to enter into a settlement their reservation of an opportunity to appeal your action to the Board of Supervisors, along with appeals of any other aspect of the Stone project, including the pending plans for the Stone swimming pool. With this lack of finality, the Stones cannot commit to replacement of the new avocado trees with an entirely different landscaping scheme designed to satisfy the Sipples, whether in accordance with the MBAR approved revisions or the revisions we present here. To do so would mean committing to the expenditure of many more thousands of dollars on landscaping that future reviewing bodies, including the courts, could determine should be replaced with yet another form of screening. It is hard to imagine that any reasonable person would expect them to make such an investment.

In summary, while we continue to maintain that the Stones met staff's requirement for removal of the purported zoning violation by replacing three avocado trees, and we reserve their right to advance this position in any future proceedings, the Stones nevertheless have done everything possible to meet the evolving and sometimes conflicting demands of the Sipples. If we are able to report on July 22 that the Sipples have agreed to a settlement that is acceptable to the Stones, we will ask you to deny the appeals and approve the revised landscaping in

accordance with the enclosed plan. If not, we will ask that you continue the hearing so that we may continue to work on resolution of these issues.

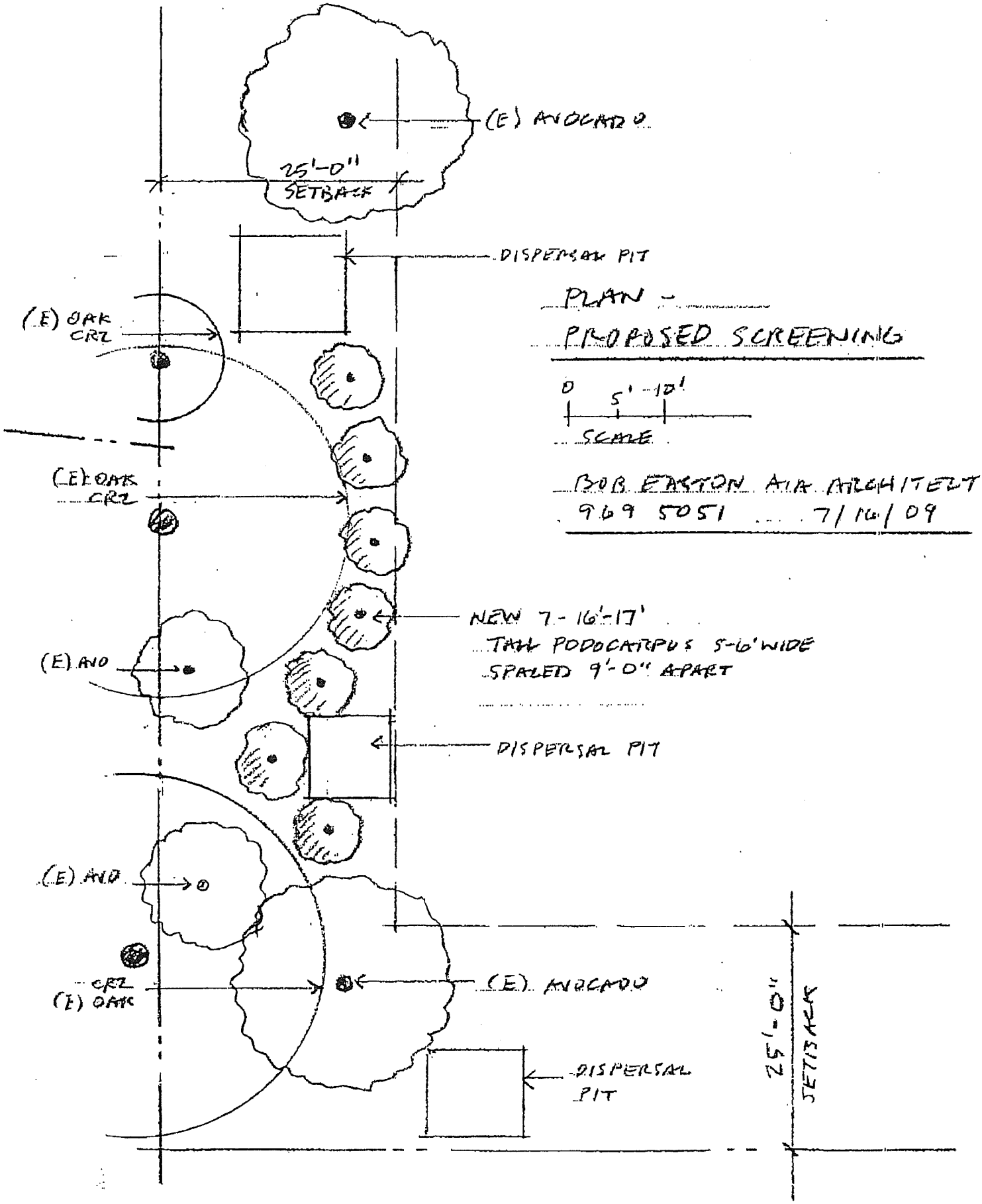
We look forward to attending the hearing on July 22.

Very truly yours,

Susan M. Basham
for PRICE, POSTEL & PARMA LLP

SMB:lkh
Enclosures

cc: Douglas Stone



PLAN -

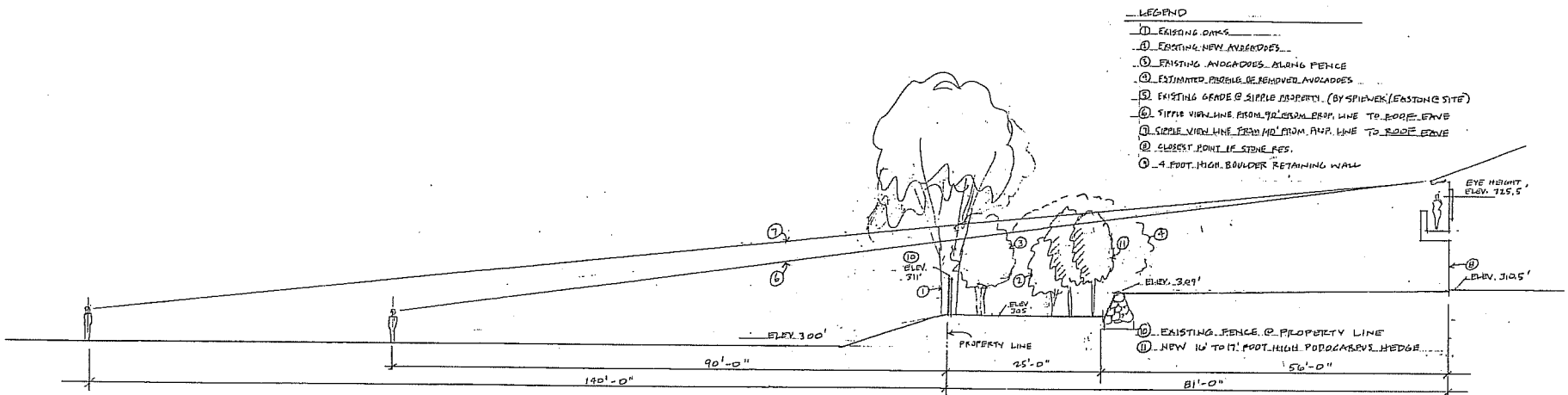
PROPOSED SCREENING

0 5' 10'

SCALE

BOB EASTON AIA ARCHITECT

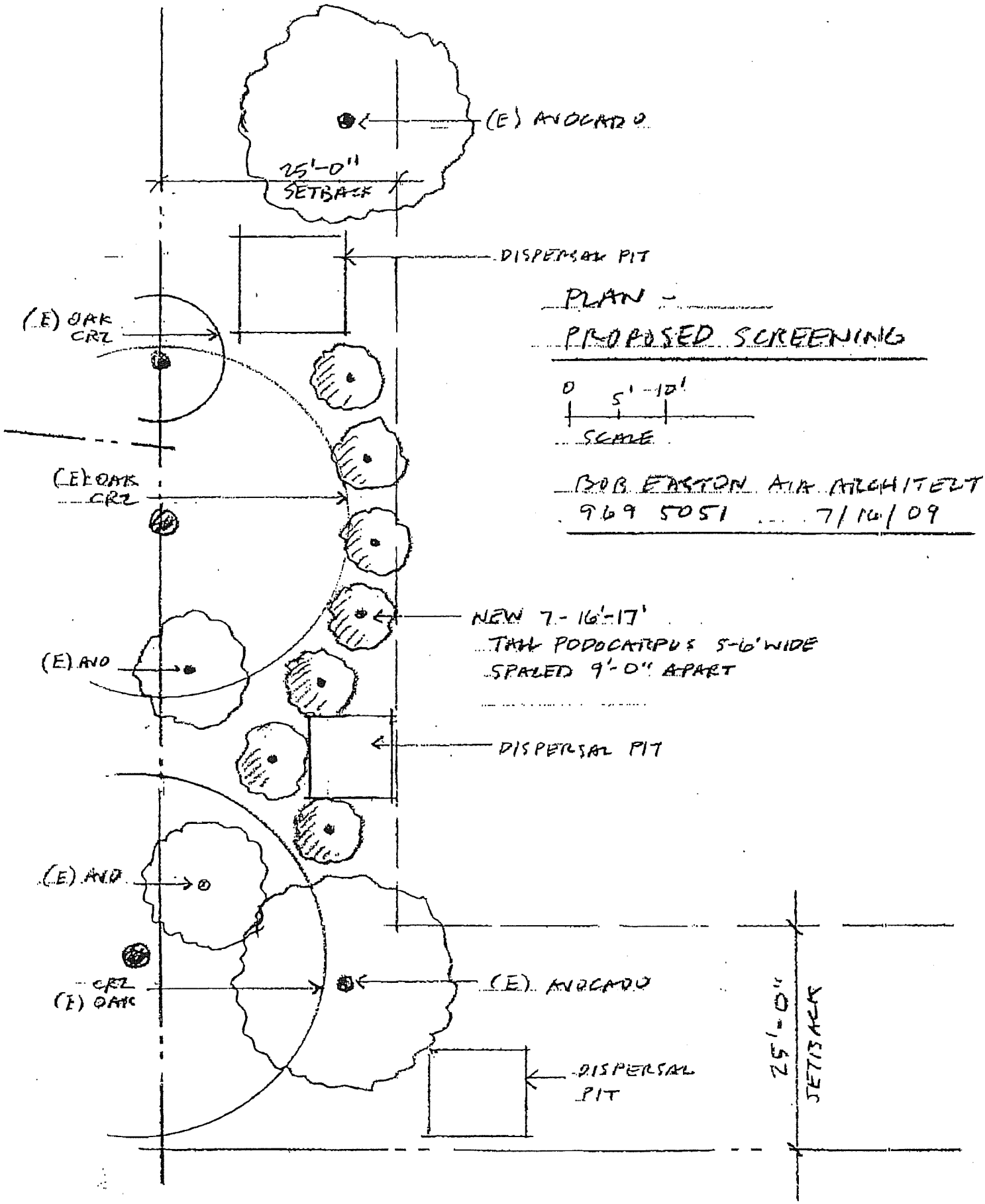
969 5051 ... 7/16/09



SECTION 1/8" = 1'-0"

REVISED 6/1/09 6/2/09 7/16/09

B.P.B. EASTON AIA ARCHITECT 969-5051



PLAN -

PROPOSED SCREENING

0 5' 10'

SCALE

BOB EASTON AIA ARCHITECT

969 5051 ... 7/16/09