

PRICE, POSTEL & PARMA LLP

ARTHUR R. GAUDI
JAMES H. HURLEY, JR.
J. TERRY SCHWARTZ
DAVID W. VAN HORNE
PETER D. SLAUGHTER
DOUGLAS D. ROSSI
ERIC P. HVOLBØLL
CRAIG A. PARTON
CLYDE E. WULLBRANDT
KENNETH J. PONTIFEX
CHRISTOPHER E. HASKELL
TIMOTHY E. METZINGER
TODD A. AMSPOKER
PENNY CLEMMONS
MARK S. MANION
MELISSA J. FASSETT
IAN M. FISHER
ANTHONY W. BAGNETTE
SHEREEF MOHARRAM
SAM ZODEH
JENNIFER K. HANRAHAN

COUNSELLORS AT LAW
200 EAST CARRILLO STREET, SUITE 400
SANTA BARBARA, CALIFORNIA
93101-2190

MAILING ADDRESS P. O. BOX 99
SANTA BARBARA, CA 93102-0099

TELEPHONE (805) 962-0011
FACSIMILE (805) 965-3978

OF COUNSEL
GERALD S. THEDE
DANIEL C. DAVID
SUSAN M. BASHAM

RETIRED PARTNERS
JOHN KERR WILSON
TERRY JOHN CONNERY
DAVID K. HUGHES

OUR FILE NUMBER

18842.1

August 4, 2006

BY HAND DELIVERY

Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Sperling Fence, Case No. 05CUP-00000-00046
Hearing Date: August 15, 2006
Appeal to the Board of Supervisors, County of Santa Barbara of
Denial by Montecito Planning Commission

Dear Members of the Board of Supervisors:

This office represents Peter V. Sperling, who brings this appeal, pursuant to Article IV, Section 35-489.3 of the Santa Barbara County Zoning Ordinance. Mr. Sperling appeared through counsel at the hearings of the Montecito Planning Commission ("MPC") on October 19 and November 16, 2005 concerning the above-captioned application. The MPC took final action to deny this application on November 16, 2005. The hearing on this appeal has been continued twice, and your Board is now scheduled to consider this project *de novo* on August 15, 2006.

Mr. Sperling asks the Board of Supervisors to approve his application for a Minor Conditional Use permit under Article IV, Section 35-455 of the County Zoning Ordinance to allow a fence ten (10) feet in height at or near the boundary of his property at 675 Picacho Lane. He also asks the Board of Supervisors to accept a CEQA Exemption pursuant to Section 15303(e) of the CEQA Guidelines and to conclude, based on the nature of the project, that no further action of the Montecito Board of Architectural Review ("MBAR") is needed in this case.

In brief, this project should be approved because the decision of the MPC was not in accord with the provisions and the purposes of Article IV of the County Zoning Ordinances and the Montecito Community Plan:

- Article IV, Section 35-455 specifically provides for the issuance of a Minor Conditional Use Permit for any fence greater than six feet in height in front, side, and rear setback areas, as well as within interior lot setback areas.

- As staff originally reported in its recommendation for approval of Mr. Sperling's application, "The height of the fence is not great enough to cause a visual impact that would harm the residential characteristics of the neighborhood."
- In expressing a preference for hedging rather than fencing, the MBAR did not appreciate the fact that, as the attached letter from Preservation Planning explains, the proposed fencing and plant material are entirely consistent with historic landscaping on this estate.
- Only a very short section of fencing will be located along a public roadway. As staff has noted in its Board Agenda Letter of July 7, 2006, only five feet of fencing and related landscaping will be visible from Picacho Lane. No public or private views will be impaired by the 10' fence. The Picacho Lane entrance to Las Tejas includes an historic gate and wall.

Moreover, in the months since the MPC took action, Mr. Sperling has responded to concerns raised by the MPC and MBAR:

- Mr. Sperling and his landscape architect have met with the neighbor to the south and addressed issues regarding trimming and thinning of trees along their common boundary, which will be accomplished when the fence is installed.
- Revised landscape plans, reduced prints of which are attached, complement and maintain the ambiance of the historic estate and detail plantings based on variations in existing vegetation and other factors, as suggested by the MBAR.

With this letter, we are attaching additional background information on the project and the proceedings to date (Attachment A), along with an expanded statement of Mr. Sperling's position on this appeal (Attachment B). We will attend the hearing on August 15 with Mr. Sperling, and we look forward to answering any questions you may have at that time.

Very truly yours,



Eric P. Hvolbøll
for PRICE, POSTEL & PARMA LLP

EPH:lkh
Enclosures

cc: Mr. and Mrs. Peter V. Sperling
Ms. Anne Almy, Planning & Development

Attachment A
Procedural and Substantive Background on Sperling Fence Project

Peter V. Sperling and Stephanie G. Sperling have owned the property at 675 Picacho Lane since 1997. The estate is known as "Las Tejas" ("the Tiles"), and it is one of Montecito's oldest estates. Originally the estate included 175 acres purchased in 1868 and farmed by W.A. Hayne, a confederate veteran who came from a prominent South Carolina family. Portions of the historical residence date from 1898, with substantial alterations to the façade and interior courtyard designed by George Washington Smith in 1926. The estate includes elaborate gardens designed by Helen Thorne, which are considered an important historic feature.

Unfortunately, by the time the Sperlings acquired the Las Tejas residence, much of the estate had been subdivided. The Sperlings have set about reassembling surrounding portions of the original estate. At present they own five contiguous parcels, and the entire estate measures approximately 20 acres. Most of the boundaries of these parcels are interior and not visible from the street. Two parcels are the subject of this application. Las Tejas is located in the 5-E-1 zone district.

When the Sperlings acquired the several parcels that make up the current Las Tejas, the boundaries of the estate were defined in various ways. The perimeters generally were fenced, but in some areas, the fences were outside setbacks from the property line, while in others the fencing was within the setback or along the property line. In others, fencing was on adjacent parcel(s). In some locations, a previous owner had installed a ten-foot black vinyl-covered chain link fence. Since many other residences in the neighborhood had 10' enclosures, the Sperlings did not realize at the time that 10' fencing within their setbacks required a Minor Conditions Use Permit.

In 2002, the Sperlings and their neighbor to the south applied for a lot line adjustment between their properties. The 10 foot fence sections came to light during the County's review of this lot line adjustment project, along with another alleged zoning violation concerning the number and types of pet animals kept at Las Tejas. The lot line adjustment was approved by the Montecito Planning Commission on August 18, 2004 (02LLA-00000-00019), conditioned upon abatement or legalization of the two alleged zoning violations. The Sperlings filed an application for a Minor Conditional Use Permit on or about July 11, 2004 seeking to legalize both violations. During the winter of 2004-05, the Sperlings relocated most of the pet animals and their pens. The County confirmed that the zoning violation associated with the animals was abated and no further action was needed. (*See Staff Report October 19, 2005.*)

While the fence portion of the Minor CUP application was pending, the Sperlings took a closer look at the irregularities in the boundary treatments at Las Tejas. They were particularly

concerned about reports of coyotes in the area because a coyote can surmount a 6' fence, and they wanted to forestall this threat to the safety of their animals. At least one section of 6' fencing at Las Tejas has evidence of animals scaling it. The Sperlings decided that the best result, in terms of both their safety concerns and aesthetics, would be a uniform 10' fence for the whole estate. Therefore they amended their proposed project to include not only legalization of existing sections of fence, but also the installation of new sections of 10 foot fencing to complete a 10-foot boundary enclosure. Some of the additional sections were proposed as upward extensions of existing 6 foot fencing, while others would involve new 10' fence sections.

The MBAR reviewed this project conceptually on September 12 and again on September 26, 2005. At the September 12 meeting, several members expressed the opinion that a 10-foot fence is extraordinary, and that the Sperlings had to "earn the right" to build such a fence or prove some "hardship." Staff reminded the MBAR, by memo dated September 26, that under Article IV, the question of whether the fence is appropriate to the site is to be decided in accordance with development standards as applied by the MPC, and there are no "hardship" or "earned right" criteria to be applied. Staff recommended that the MBAR should focus on landscaping and other design criteria specified in the Montecito Architectural Guidelines and Development Standards.

Both during our oral presentation to the MBAR and by letter, we expressed to the MBAR Mr. Sperling's complete willingness to work with the MBAR on any and all aesthetic and design issues that are within that Board's purview. At the second conceptual review, we presented a more detailed map showing all of the fence sections and their locations, along with proposed landscaping that included dense vines intended to weave through the fence and screen the fence from abutting properties, with varieties proposed for locations in shade and sun. These vines were specifically selected to blend with the existing and historic plantings. In addition, because of their fast-growing characteristics, they will quickly hide the fence. In addition, these vines will be easy to maintain. However, members of the MBAR continued to express their concern that the project included "too much" 10 foot fencing. The MBAR did not take action on the proposed design concept.

At the Montecito Planning Commission meeting of October 19, 2005, we presented the same detailed plan, fence design and landscaping proposal, reiterating Mr. Sperling's willingness to make further accommodations in landscaping to satisfy any aesthetic concerns of the MPC and the MBAR. At the conclusion of their deliberations, however, the MPC voted to deny the application and requested that staff prepare findings for denial. On November 16, 2005, the MPC adopted findings for denial.

This appeal was filed on November 28, 2005. Your Board initially set this a hearing on the appeal for February 21, 2006, but because of scheduling conflicts, and to provide additional

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August 4, 2006
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time for Mr. Sperling to work on alternative landscaping and address issues with one of his neighbors, the hearing was continued to July 25. A further brief continuance at the request of Planning Staff resulted in the rescheduling of the hearing for August 15, 2006.

Attachment B
Statement in Support of Appeal

The Montecito Planning Commission's decision to deny this application was not in accord with the provisions and the purposes of Article IV of the County Zoning Ordinances and the Montecito Community Plan. The MPC voted to deny the application based on a determination that the project cannot meet one of the nine findings required for a Conditional Use Permit pursuant to Section 35-483.8 of Article IV: "That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will be compatible with the surrounding area."

However, in its report dated October 7, 2005, *staff recommended approval of the project* based on, among other things, a finding that the project *would not be detrimental* to the health, safety, comfort, convenience, and general welfare of the neighborhood and *would be compatible* with the surrounding area because the project "will provide security for the Single Family Dwelling located on the site. Allowing a fence to remain on the property will not be detrimental to the general welfare of the surrounding area, as similar fences, walls, and gates are located on residential parcels along Picacho Lane and throughout the Montecito Planning area. Additional landscaping will be installed to screen the fence from view. Therefore, the project is consistent with this finding."

The MPC's findings contradicted its own staff's report, and the facts before the Commission supported adoption of this finding for approval. During its deliberations on October 19, members of the Commission discussed and took note of the fact that that fences typically are installed along boundary lines and that a 10' fence is not inconsistent with other fences in the area of Picacho Lane. The Commission also reviewed Mr. Sperling's plan for extensive landscaping and screening for the proposed fence. While Mr. Sperling had proposed vines as a preferred method of screening, Mr. Sperling stated, through counsel, that he remained willing to undertake whatever type of screening would satisfy the MPC's and MBAR's aesthetic concerns. He also expressed a willingness to address specific screening preferences of the owners of abutting properties. The MPC could have accepted the proposed finding or modified the recommended conditions of approval to require a different type of screening so that it could make the required finding at issue. Instead, the Commission simply voted to deny the application.

The MPC's decision was not consistent with the provisions and the purposes of Article IV of the County Zoning Ordinances and the Montecito Community Plan. The intent of the 5-E-1 Zone District is to protect the residential characteristics of an area and to promote a suitable environment for family life. As staff noted in its report of October 7, "[t]he fence would exceed the six foot maximum allowable height by a maximum of four feet. The height of the fence is

not great enough to cause a visual impact that would harm the residential characteristics of the neighborhood.”

Mr. Sperling’s request for a 10’ fence is consistent with the provisions and purposes of Article IV. It is entirely within the contemplation of Article IV that there may be circumstances where a fence exceeding 6’ in height near a boundary is warranted. Section 35-455 specifically provides for the issuance of a Minor Conditional Use Permit for any fence greater than six feet in height in front, side, and rear setback areas, as well as within interior lot setback areas. The mere fact that the ordinance allows for such fences, based on a discretionary determination of the MPC, indicates that there are some circumstances where such fencing should be considered. If the goal of the ordinance, or the definition of “neighborhood compatibility,” were to keep all fencing at a “typical” height, there would be no provision for such exceptions. On this particular estate, as staff has observed, the difference between six feet and ten feet in height is not so great as to cause any harm to the residential characteristics of the surrounding area. It is also necessary to keep coyotes off of the property.

The Montecito Community Plan describes Montecito as a “semi-rural residential area,” in which the preservation of extensive landscaping and “garden” atmosphere of the community is a goal. *Montecito Community Plan Update*, September 15, 1992, at 26. The plan also states as a goal the protection of “residential privacy.” Goal LU-M-1. The plan relies, in part, on Architectural Guidelines and Development Standards for implementation of its goals. Policy LU-M-1.1.

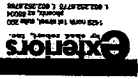
Contrary to the MPC’s findings or opinions concerning “typical” fencing or landscaping in Montecito, the Guidelines state that “[t]he unique quality of each site needs to be considered when designing projects. Careful considerations should be given to site specific qualities of natural topography, existing vegetation, drainage and site access.” *Architectural Guidelines May 16, 1996*, § III.D. Whether the proposed chain link fencing with dense vines is typical of the area or not, the Commission needed to consider the boundary treatment best-suited to this historic property comprising multiple parcels. Likewise, “neighborhood compatibility” is defined as “the relationship between surrounding structures and their settings so that the effect of all structures taken together is aesthetically pleasing, keeping the neighborhood in harmony and balance.” *Id.* § III.A. It does not mean that one standard is appropriate for every property, but that the overall effect is one of harmony.

The *Architectural Guidelines* contain no specific standards for fences. There is no reason why a 10’ black vinyl chain link fence should be less acceptable under community standards than any other type of fence. The *Guidelines* do rely upon landscaping as a means of making fences compatible with their surroundings. *See, e.g., Architectural Guidelines* §§ III.G.3.d,

III.G.3.d.iv. The Guidelines also emphasize that landscaping should be used to maximize privacy between adjoining properties. *Id.* § III.H.3.c.

The Sperlings want a 10' fence to protect their animals from coyotes and because of other privacy and aesthetic concerns. Their plans build upon the approach taken by estate's prior owner, an actress who, we believe, installed some of the existing 10 foot fencing. Surely the aesthetic effect of a consistent boundary treatment would be an improvement over the piecemeal effect of the present fencing, and with the proposed landscaping, a welcome improvement to this historically significant estate. Such actions are entirely consistent with the treatment of estate properties throughout Montecito and consistent with the provisions and purposes of both the Zoning Ordinance and the Montecito Community Plan, as reported by County Staff.

In summary, the MPC should have found that the project is compatible with its surroundings and will result in no detriment to the health, safety, comfort, convenience, and general welfare of the neighborhood. Accordingly, all required findings for approval may be made. Subject to modification of the project description to refer to the additional sections of fencing not included originally, Mr. Sperling remains willing to accept staff's original recommended Conditions of Approval in the staff report dated October 7, 2005, which include project-specific limitations on construction activity and exterior night lighting. He asks the Board of Supervisors to reverse the decision of the MPC denying this application and approve Case No. 05CUP-00000-00046, adopting the required findings as stated in the staff report of October 7, 2005, accepting the CEQA Exemption pursuant to Section 15303(e) of the CEQA Guidelines, with authorization of the filing of a Notice of Exemption, and concluding that no further action by the MBAR is necessary since all aesthetic and landscaping concerns that would otherwise be within the MBAR's purview have been addressed in this decision.



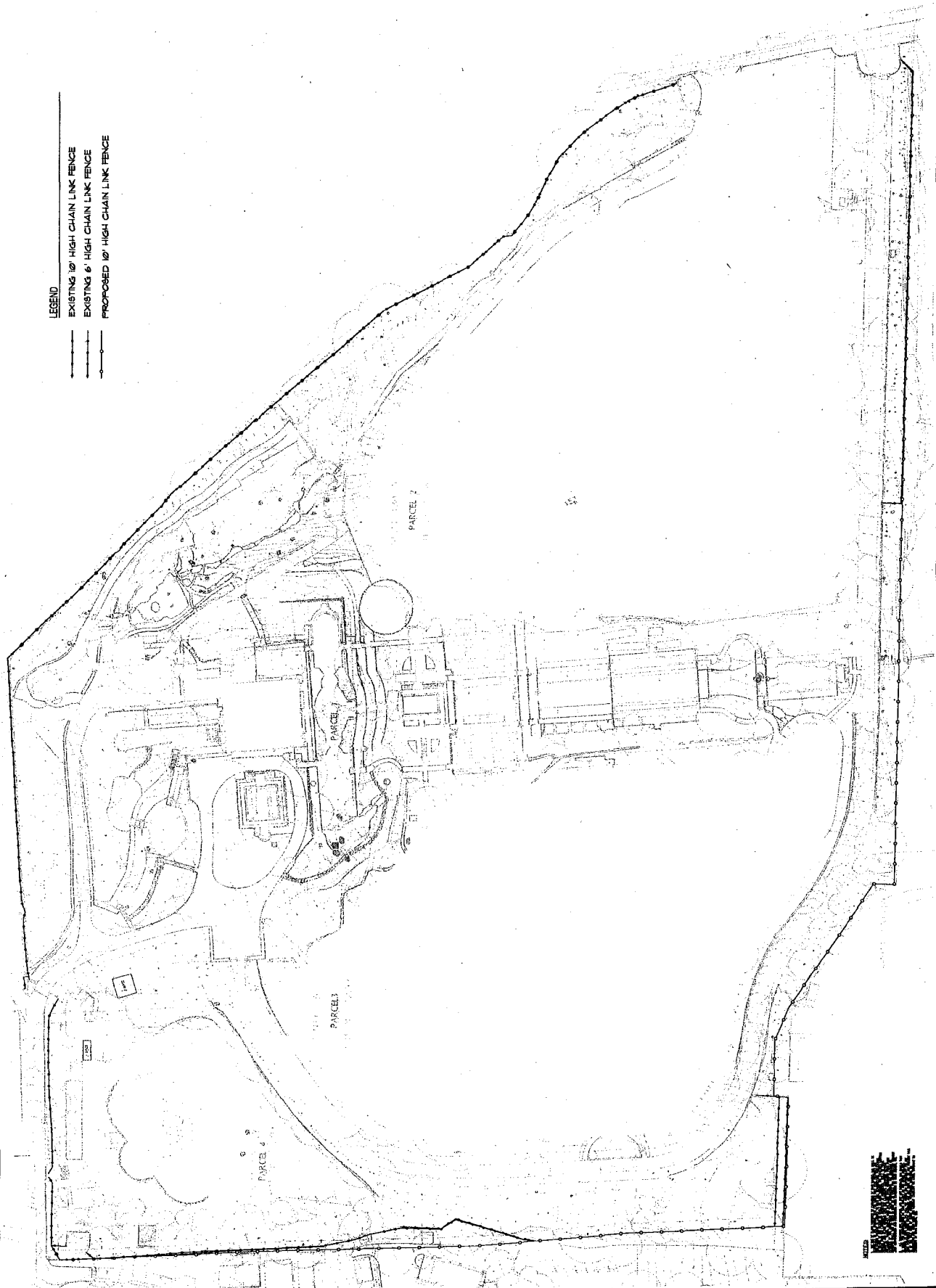
FENCING PLAN

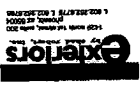
PROJECT: LAS TEJAS
SANTA BARBARA, CALIFORNIA

DATE	07-17-08
SCALE	NTS
DRAWN BY	TYPE
CHECKED BY	DATE
SHEET	L-1

LEGEND

- EXISTING 10' HIGH CHAIN LINK FENCE
- EXISTING 6' HIGH CHAIN LINK FENCE
- PROPOSED 10' HIGH CHAIN LINK FENCE





PLANTING PLAN

PROJECT: LAS TEJAS
SANTA BARBARA, CALIFORNIA

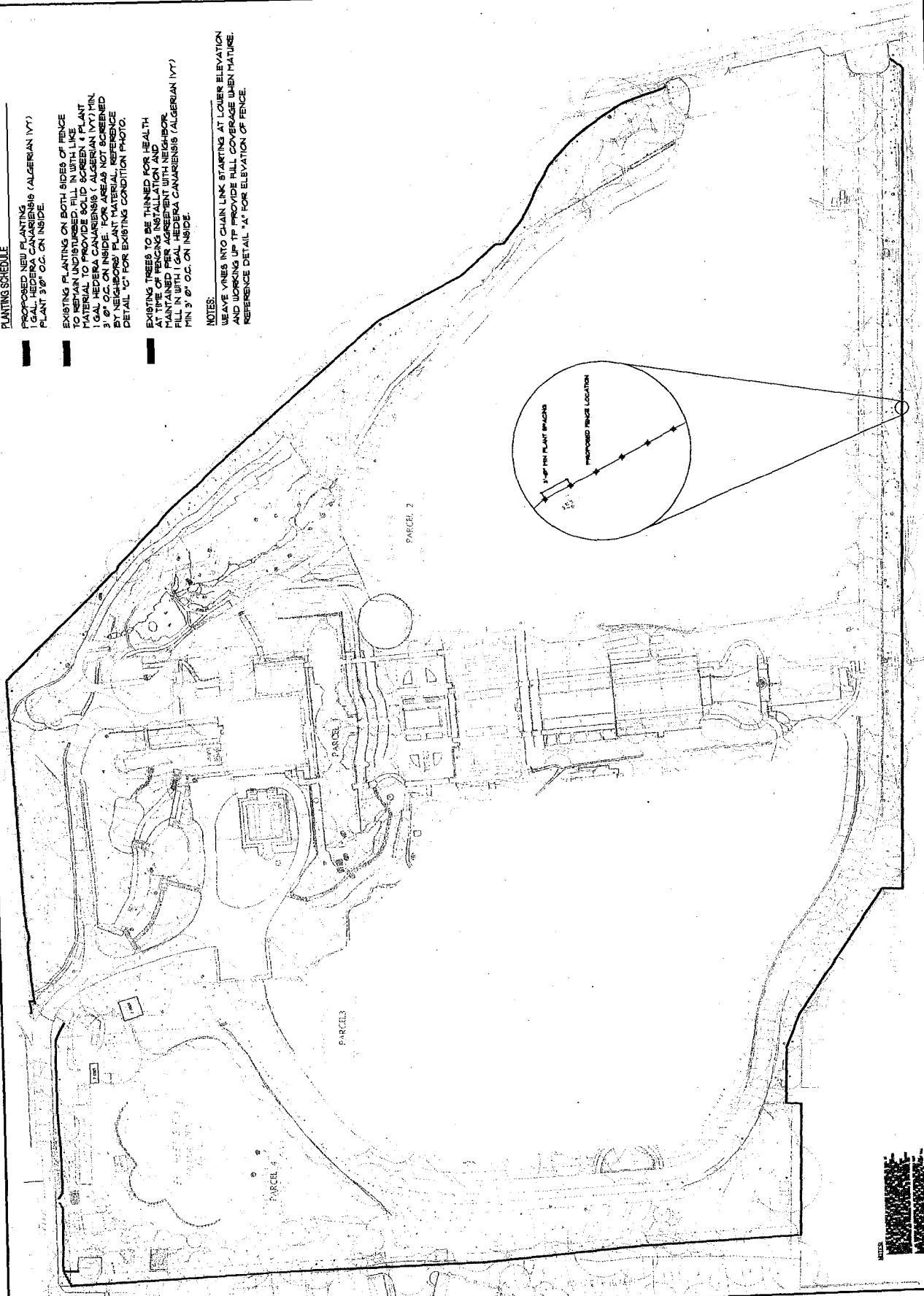
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CHECKED BY	TRB
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SCALE	1"=20'
DRAWN BY	DDW
CHECKED BY	TRB
DATE	05.17.08
SCALE	1"=20'
DRAWN BY	DDW
CHECKED BY	TRB

PLANTING SCHEDULE

- PROPOSED NEW PLANTING
1 GAL. HEDERA CANARIENSIS (ALGERIAN IVY)
PLANT 3'0" O.C. ON INSIDE.
- EXISTING PLANTING ON BOTH SIDES OF FENCE
TO REMAIN UNDISTURBED. FILL IN WITH LIVE
MATERIAL TO PROVIDE SOLID SCREENING. PLANT
1 GAL. HEDERA CANARIENSIS (ALGERIAN IVY) MIN.
3'0" O.C. ON INSIDE FOR AREAS NOT SCREENED
DETAIL 'C' FOR EXISTING PLANT MATERIAL. REFERENCE
DETAIL 'C' FOR EXISTING CONDITION PHOTO.
- EXISTING TREES TO BE THINNED FOR HEALTH
AT TIME OF FENCING INSTALLATION AND
MAINTAINED PER AGREEMENT WITH NEIGHBORS.
FILL IN WITH 1 GAL. HEDERA CANARIENSIS (ALGERIAN IVY)
MIN 3'0" O.C. ON INSIDE.

NOTES:

WEAVE VINES INTO CHAIN LINK STARTING AT LOWER ELEVATION
AND WORKING UP TO PROVIDE FULL COVERAGE WHEN MATURE.
REFERENCE DETAIL 'A' FOR ELEVATION OF FENCE.





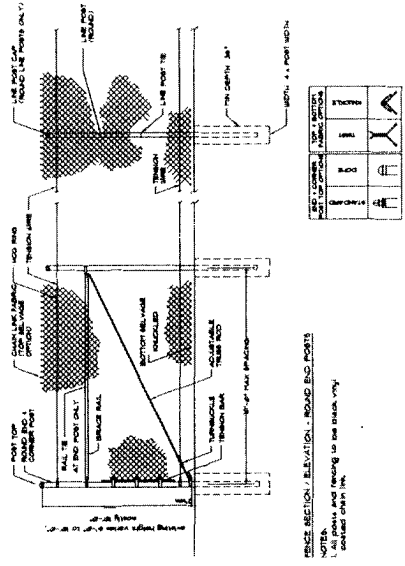
DETAILS

PROJECT: LAS TEJAS
 SANTA BARBARA, CALIFORNIA

REVISIONS

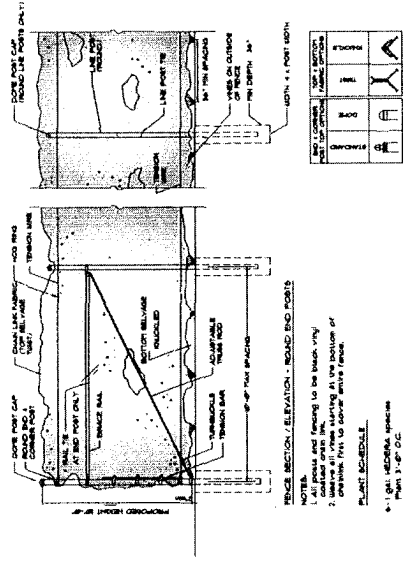
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 JOB#: 0000
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 CHECKED BY: CPM

SCALE: NTS
 SHEET: L-3



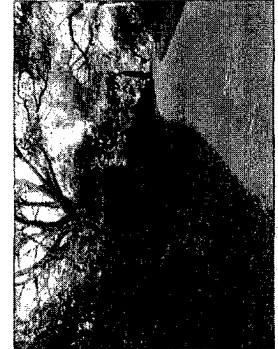
FENCE SECTION - ELEVATION - ROAD END POSTS
 NOTES:
 1. ALL POSTS AND RAILS TO BE BLACK VINYL
 2. BRACE TO BE 1/2" X 4" X 8' LGS.
 3. END POST TO BE 1/2" X 4" X 8' LGS.

A LAS TEJAS - PLANTING ON FENCE DETAIL
 NTS



FENCE SECTION - ELEVATION - ROAD END POSTS
 NOTES:
 1. ALL POSTS AND RAILS TO BE BLACK VINYL
 2. BRACE TO BE 1/2" X 4" X 8' LGS.
 3. END POST TO BE 1/2" X 4" X 8' LGS.

B LAS TEJAS - FENCE DETAIL
 NTS



C PHOTO OF PLANT MATERIAL ON FENCE
 NTS



PRESERVATION PLANNING ASSOCIATES

July 11, 2006

Mr. Steve Chase
Deputy Director, County Planning and Development
123 East Anapamu Street
Santa Barbara, CA 93102

*RE: Appeal of the Montecito Planning Commission finding for the Las Tejas perimeter fence
05CUP-00000-00046*

Dear Mr. Chase:

I am an architectural historian working within Santa Barbara County. I was hired by the applicant to determine what the historic fencing material was at the Las Tejas estate. Las Tejas is one of Montecito's oldest estates, built originally in 1898, and later altered by Francis W. Wilson in 1917 and George Washington Smith in 1926. The estate is renowned for its gardens, most of which were designed by Helen Thorne, who lived at the estate from 1917 to 1942. Gardening was Mrs. Thorne's passion, and she is reported to have planted many of the gardens of Las Tejas herself. Through her, in addition, the estate is linked to the Garden Club of America. She was very active in local garden club activities, and she is credited with starting a weekly garden tour for the public, where Las Tejas was featured prominently (Susan Basham, 2006).

Slides from the Smithsonian collection, "Archives of American Gardens" show three pertinent views from 1930 of the front entrance gates and the high fences running on either side of the entrance drive. These fences were metal, with ivy covering them (see attached Xerox copies of the Smithsonian slides). The Sperlings wish to recreate this historic landscape material in their proposed design for the perimeter fence at Las Tejas. The Montecito Planning Commission denied their request, stating that the proposed ivy was not compatible with the full hedge screening in Montecito. I would like to disagree, stating that because there was ivy on the fences during the 1930 period when Mrs. Thorne was leading gardening groups to her estate, the current proposal is compatible with the historic landscaping and therefore meets federal guidelines for assessing impacts from new projects on historic resources, the Secretary of the Interior's Standards. Conversely, pittosporum is not an appropriate hedging material for this historic estate.

Sincerely,


Alexandra C. Cole, Principal



1930 Archives of American gardens. Smithsonian
Las Tejas entry drive



1930 Archives of American gardens. Smithsonian
Las Tejas entry drive



1930 Archives of American gardens. Smithsonian
Las Tejas gate