

**CALIFORNIA COASTAL COMMISSION**

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

**W9c****RECORD PACKET COPY**

Filed:	10/27/99
49th day:	12/15/99
180 <sup>th</sup> day:	04/24/00
Staff:	SM
Staff report:	01/27/00
Hearing date:	02/16/00
Commission Action:	
Open & Continue:	12/09/99

**APPEAL: SUBSTANTIAL ISSUE DETERMINATION**

**Appeal Number**..... A-3-SLO-99-083  
**Local Government**..... San Luis Obispo County  
**Decision** ..... Approved with conditions, 9/17/99  
**Applicant**..... A.J. Wright  
**Agent**..... Jeff Edwards  
**Appellants** ..... Commissioners Potter and Nava  
**Project Location** ..... Three acre site on the northwest Corner of Santa Ynez Avenue and Mountain View, Los Osos, San Luis Obispo County; APN 074-223-004  
**Project Description**..... After-the-fact approval for grading and vegetation removal; construction of twelve one-story storage buildings totaling 60,000 square feet, with associated paving, parking, landscaping, and street improvements; mitigation for vegetation removal consisting of the purchase and restoration of 1.79 acres of coastal scrub habitat, financing an additional 0.35 acres of habitat acquisition, and placing 0.15 acres of the site in an open space easement.  
**File Documents** ..... San Luis Obispo County certified Local Coastal Program; San Luis Obispo County's Administrative Record for Minor Use Permit D9800854P; *U.S. Fish and Wildlife Service v. A.J. Wright*, INV 107002158 - Settlement Agreement; U.S. Fish and Wildlife Service Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, California, September 1998

**Staff Recommendation**.. **SUBSTANTIAL ISSUE**

**Executive Summary**

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed, and then continue the *de novo* hearing, to allow staff to work with the applicant on a project alternative that complies with the provisions of the San Luis Obispo County Local Coastal Program (LCP) protecting environmentally sensitive habitats.



California Coastal Commission

February, 16 2000 Meeting in Oceanside

Staff: SM Approved by: C.F.L. 1/27/00

**Application A-3-SLO-99-083 Staff Report**  
Wright Storage & Grading

The project involves the construction of a mini storage facility on a 3-acre site in the town of Los Osos that was previously cleared of vegetation and graded without the necessary coastal development permits. Approximately 2.14 acres of coastal scrub vegetation, which provided habitat for the federally endangered Morro shoulderband snail, was lost as a result of the previously completed grading. This habitat qualifies as an Environmentally Sensitive Habitat Area (ESHA) under the LCP.

The Coastal Development Permit approved by San Luis Obispo County on September 17, 2000 authorized the previously completed grading and vegetation removal "after-the fact", and permitted the construction of twelve one-story storage buildings that will have a total footprint of 60,000 square feet. The storage project includes paving the area surrounding the buildings, on which 59 parking spaces will be provided, and the installation of landscaping and street improvements along the east, west, and south perimeters of the property. 0.15 acres along the site's northern boundary, which had not been graded, will be placed in an open space easement.

As mitigation for the loss of snail habitat, the applicant entered into a Settlement Agreement with the U.S. Fish and Wildlife Service (attached as Exhibit E), the provisions of which are reflected in the County's conditions of approval of the storage project (attached as Exhibit D). In summary, the applicant has agreed to purchase and convey to State Parks a 1.79 acre site that FWS has determined to have equivalent snail habitat; conduct habitat restoration and three years of monitoring on the 1.79 acre site; pay \$17,500 for purchase of 0.35 acres or more of snail habitat by the Trust for Public Land; record an open space easement over the 0.15 acres of ungraded area remaining on the project site; and pay \$7,000 in settlement fees to FWS. Both the applicant and the U.S. Fish and Wildlife Service have expressed concern that should the Commission prohibit the construction of the storage project, or require substantial revisions, that the mitigation for the loss of habitat, as embodied in the Settlement Agreement, could be jeopardized.

Because the County approved the grading of the coastal scrub habitat after-the-fact, the Commission must evaluate the project as if the habitat was still existing. As discussed in detail in these findings, the County approval of the grading of 2.14 acres of sensitive habitat and the storage facility is inconsistent with the certified LCP policies concerning protection of Environmentally Sensitive Habitat (ESHA). Thus, a clear substantial issue is raised by the appeal.

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## I. SUMMARY OF APPELLANT'S CONTENTIONS

Appellants contend in full (see Exhibit C):

This project involves the construction of a storage facility that would cover almost all of the 3-acre site with buildings and pavement. At least 2.14 acres of the site previously supported coastal scrub vegetation that provided habitat for the Morro shoulderband snail (listed as endangered under the federal Endangered Species Act). All 2.14 acres of this vegetation was removed in 1998 as a result of grading activities that did not receive the required Coastal Development Permit review and approval<sup>1</sup>. The after-the-fact approval of this grading, and the authorization to construct a storage facility on this sensitive site, is inconsistent with the following provisions of the San Luis Obispo County Local Coastal Program:

- Policy 1 for Environmentally Sensitive Habitats prohibits new development within environmentally sensitive habitats that would significantly disrupt the resource, and limits new development in such areas to those that are dependent upon the resource. In this case, the project involves a non-dependent use that significantly disrupts habitat for the Morro shoulderband snail, a species listed as endangered under the Federal Endangered Species Act, through the removal of 2.14 acres of coastal scrub habitat.
- Policy 2 for Environmentally Sensitive Habitats requires that new development be consistent with the biological continuance of sensitive habitats, not have a significant adverse impact, and provide the maximum feasible mitigation. In this case, the project involves the removal of 2.14 acres of sensitive coastal scrub habitat that may have a significant adverse impact on rare plants and animals, and may threaten the biological continuance of the Morro shoulderband snail. In addition, the proposed off-site mitigation of acquiring an equivalent amount of potential snail habitat as that removed by the project may not represent the maximum feasible mitigation.
- Coastal Zone Land Use Ordinance (CZLUO) 23.07.164 allows new development in a sensitive resource areas only when certain findings can be made. These include that there will be no significant adverse effect; natural features and topography have been considered in the design and siting; clearing of topsoil, trees, and other features is the minimum necessary; and, soil constraints and drainage have been appropriately addressed. In this case, the project does not minimize the removal of coastal scrub habitat supporting the Morro shoulderband snail.
- CZLUO Section 23.07.176 protects rare and endangered species of terrestrial plants and animals by preserving their habitat, and requires new development to be sited to minimize the disruption of habitat. The proposed project is inconsistent with these

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<sup>1</sup> The current project includes mitigation for these impacts through the acquisition of 2.14 acres of potential Morro shoulderband snail habitat off-site.



**Application A-3-SLO-99-083 Staff Report**  
Wright Storage & Grading

requirements because, as noted above, it does not minimize the removal of coastal scrub habitat supporting the Morro shoulderband snail.

- Alternative allowable uses, which have a smaller footprint, appear to be feasible and would better comply with the LCP provisions cited above.

## **II. LOCAL GOVERNMENT ACTION**

The Coastal Development Permit approved by San Luis Obispo County on September 17, 2000 authorized the previously completed grading and vegetation removal "after-the fact", and permitted the construction of twelve one-story storage buildings that will have a total footprint of 60,000 square feet. The storage project includes paving the area surrounding the buildings, on which 59 parking spaces will be provided, and the installation of landscaping and street improvements along the east, west, and south perimeters of the property. 0.15 acres along the site's northern boundary, which had not been graded, will be placed in an open space easement (see Exhibit D).

## **III. APPEAL PROCEDURES**

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the first public road and the sea.



#### IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

**MOTION:** *I move that the Commission determine that Appeal No A-3-SLO-99-83 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION:**

Staff recommends a NO vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission hereby finds that Appeal No. *A-3-SLO-99-83* presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

#### V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS

##### A. Project Location and Description

The project involves the construction of a mini storage facility on a 3-acre site in the town of Los Osos that was previously cleared of vegetation and graded without the necessary coastal development permits<sup>2</sup>. The site is located on the northwest Corner of Santa Ynez Avenue and Mountain View, Los Osos, San Luis Obispo County (APN 074-223-004) (see Exhibit A).

Approximately 2.14 acres of coastal scrub vegetation, which provided habitat for the federally endangered Morro shoulderband snail, was lost as a result of the previously completed grading.

The Coastal Development Permit approved by San Luis Obispo County on September 17, 2000 authorized the previously completed grading and vegetation removal "after-the fact", and permitted the construction of twelve one-story storage buildings that will have a total footprint of 60,000 square feet. The storage project includes paving the area surrounding the buildings, on which 59

<sup>2</sup> The property owner obtained a grading permit from San Luis Obispo County in July 1998 for the stockpiling of 100 cubic yards of soil on the property. No coastal development permit was issued or noticed for the stockpile project, and the grading and vegetation removal that was subsequently completed greatly exceeded the extent of development authorized by the grading permit.



**Application A-3-SLO-99-083 Staff Report**  
Wright Storage & Grading

parking spaces will be provided, and the installation of landscaping and street improvements along the east, west, and south perimeters of the property. With the approved project, at least 80% of the site or 2.4 acres will be covered with impermeable surface. A 0.15 acre strip along the site's northern boundary, which was not previously graded, will be placed in an open space easement.

**B. Conformance with LCP Standards**

Appellants challenge the consistency of the County-approved project with the following environmentally sensitive habitat policies of the certified LCP of San Luis Obispo County:

***Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats***  
*New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

***Policy 2: Permit requirement***  
*As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170-178 OF THE CZLUO.]*

Appellants also allege project inconsistencies with Coastal Zone Land Use Ordinance (CZLUO) 23.07.164, which allows new development in a sensitive resource areas only when certain findings can be made. These include that there will be no significant adverse effect; natural features and topography have been considered in the design and siting; clearing of topsoil, trees, and other features is the minimum necessary; and, soil constraints and drainage have been appropriately addressed (see Exhibit C for full text).

Finally, Appellants contend that the project is inconsistent with CZLUO Section 23.07.176, which implements Policies 1 and 2 and protects rare and endangered species of terrestrial plants and animals by preserving their habitat, and requires new development to be sited to minimize the disruption of habitat.

**Analysis**

Because the County approved the grading of the coastal scrub habitat after-the-fact, the Commission must evaluate the project as if the habitat was still existing on the ground. As discussed in detail below, the County approval of the grading of 2.14 acres of sensitive habitat and the storage facility is



**Application A-3-SLO-99-083 Staff Report**  
Wright Storage & Grading

inconsistent with the certified LCP policies concerning protection of Environmentally Sensitive Habitat (ESHA). Thus, a clear substantial issue is raised by the appeal.

There is no question that the project approved by the County involves development within an ESHA. (see Exhibit F for the Biological Site Assessment). The approved project includes both an after-the-fact approval for 2.14 acres of grading that removed habitat for the endangered Morro Shoulderband Snail (*Helminthoglypta walkeriana*) and approval of 60,000 square feet of storage facility to be sited on the former habitat (see Exhibit B for before and after photos). The Snail has been listed as endangered since December of 1994. It occurs in coastal dune and scrub communities and is associated with shrubs such as mock heather and buckwheat. The Snail has also been found under mats of non-native fig-marigold (iceplant). According to the U.S. Fish and Wildlife Recovery Plan for the Snail, the species is threatened by habitat destruction due to increasing development and invasion of non-native plant species such as veldt grass. Other possible threats include competition for resources with the non-native brown garden snail; extinction due to populations being small and isolated; use of pesticides; and introduction of non-native predatory snails.<sup>3</sup>

The response of the U.S. Fish and Wildlife to the applicant's grading is indicative of the significance of the habitat loss in this case. As mitigation for the loss of snail habitat, the applicant has entered into a Settlement Agreement with the U.S. Fish and Wildlife Service (attached as Exhibit D), the provisions of which are reflected in the County's conditions of approval of the storage project (attached as Exhibit D). In summary, the applicant has agreed to purchase and convey to State Parks a 1.79 acre site that FWS has determined to have equivalent snail habitat; conduct habitat restoration and three years of monitoring on the 1.79 acre site; pay \$17,500 for purchase of 0.35 acres or more of snail habitat by the Trust for Public Land; record on open space easement over the 0.15 acres of ungraded area remaining on the project site; and pay \$7,000 in settlement fees to FWS. The purchase of the 1.79 and 0.35 acres of habitat provide the equivalent of 1:1 off-site mitigation for the graded habitat.

It should be noted that both the applicant and the U.S. Fish and Wildlife Service have expressed concern that should the Commission prohibit the construction of the storage project, or require substantial revisions, that the mitigation for the loss of habitat, as embodied in the Settlement Agreement, could be jeopardized.

Following Coastal Act Policy 30240, ESHA Policy 1 specifically prohibits new development within environmentally sensitive habitats that would significantly disrupt the resource, and limits new development in such areas to those that are dependent upon the resource. In this case, the approved project involves an after-the-fact approval of grading that greatly exceeded the original County grading permit for 100 cubic yards of stockpiled material.<sup>4</sup> In addition, the County approved a

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<sup>3</sup> See U.S. Fish and Wildlife, *Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County*, September, 1998.

<sup>4</sup> It should also be noted this grading permit did not receive a coastal development permit until the County's after-the-fact approval.



## Application A-3-SLO-99-083 Staff Report

Wright Storage & Grading

60,000 square foot storage facility for the site. Neither the grading nor the storage facility are resource dependent uses as required by Policy 1. Further, the development activity has clearly and significantly disrupted the habitat for the Morro shoulderband snail through the removal of 2.14 acres of coastal scrub habitat.

In addition, ESHA Policy 2 requires that new development be consistent with the biological continuance of sensitive habitats, not have a significant adverse impact, and provide the maximum feasible mitigation. Again, in this case, the project involves the removal of 2.14 acres of sensitive coastal scrub habitat that may have a significant adverse impact on rare plants and animals, and may threaten the biological continuance of the Morro shoulderband snail. Although the Fish and Wildlife Service has entered into a settlement agreement with the applicant, the proposed off-site mitigation of acquiring an equivalent amount of potential snail habitat as that removed by the project may not represent the maximum feasible mitigation.<sup>5</sup>

Similarly, the proposed project is also inconsistent with the requirements of the cited LCP ordinances because, as noted above, it does not minimize the removal of coastal scrub habitat supporting the Morro shoulderband snail.

Overall, there is no doubt that the County-approved project raises a substantial issue with respect to compliance with the ESHA policies and ordinances of the certified LCP. The Commission therefore must take jurisdiction of the coastal development permit to allow staff to work with the applicant on a project alternative that complies with the provisions of the San Luis Obispo County Local Coastal Program (LCP) protecting environmentally sensitive habitats.

## VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

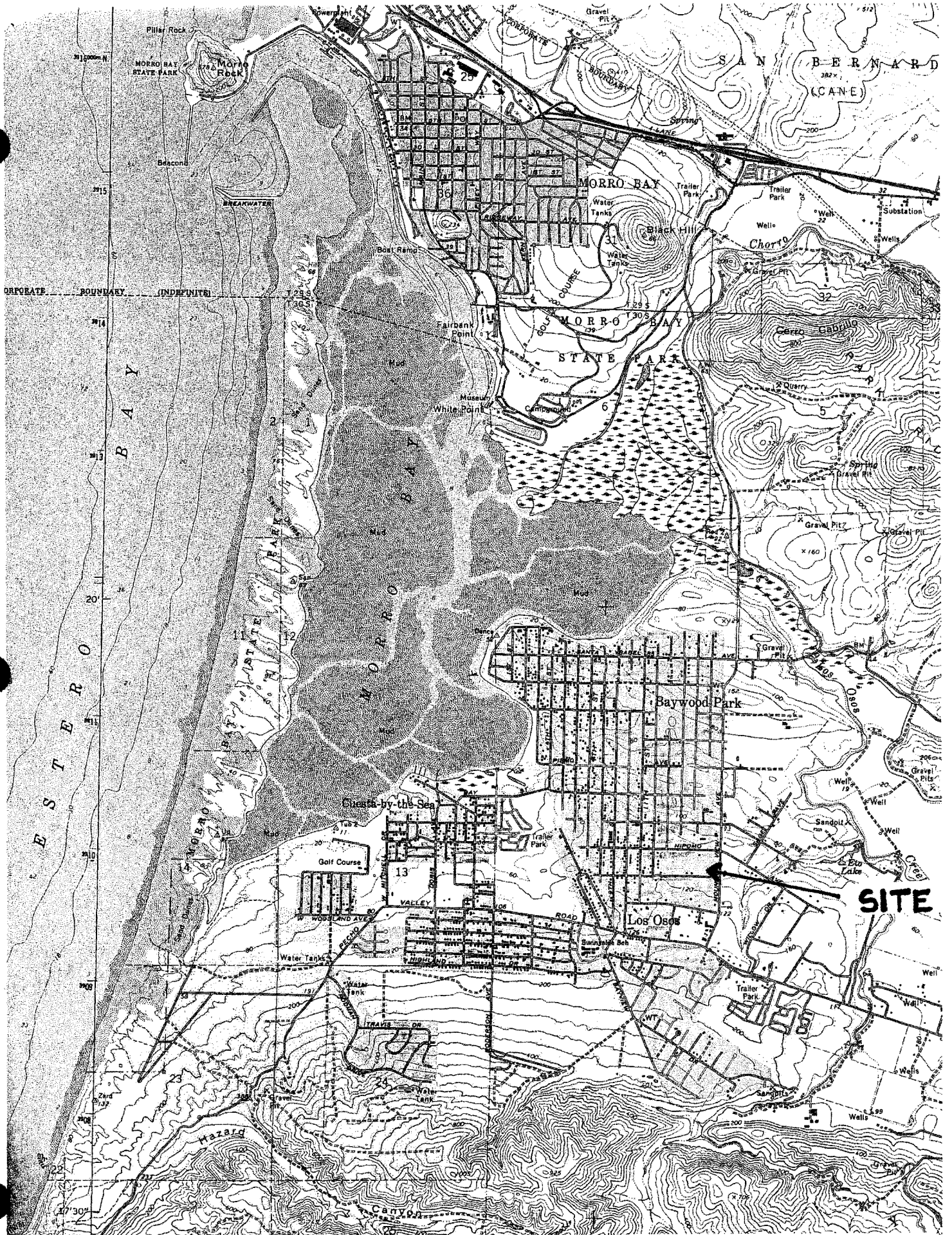
Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse effect that the project may have on the environment. The County of San Luis Obispo certified a Negative Declaration for the project on December 19, 1997. With respect to the appealed project, the Commission's review of this appeal has identified environmental impacts that have not been appropriately resolved by the project and the County's conditions of approval. Thus, the project may have any significant adverse impact on the environment within the meaning of the California Environmental Quality Act.

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<sup>5</sup> For example, in the case of the proposed Los Osos Sewer Treatment plant, staff has been recommending a mitigation ratio of 4:1 for coastal scrub habitat.







A-3-SLO-99-83

Exhibit A  
(1 of 3)

Vicinity Map

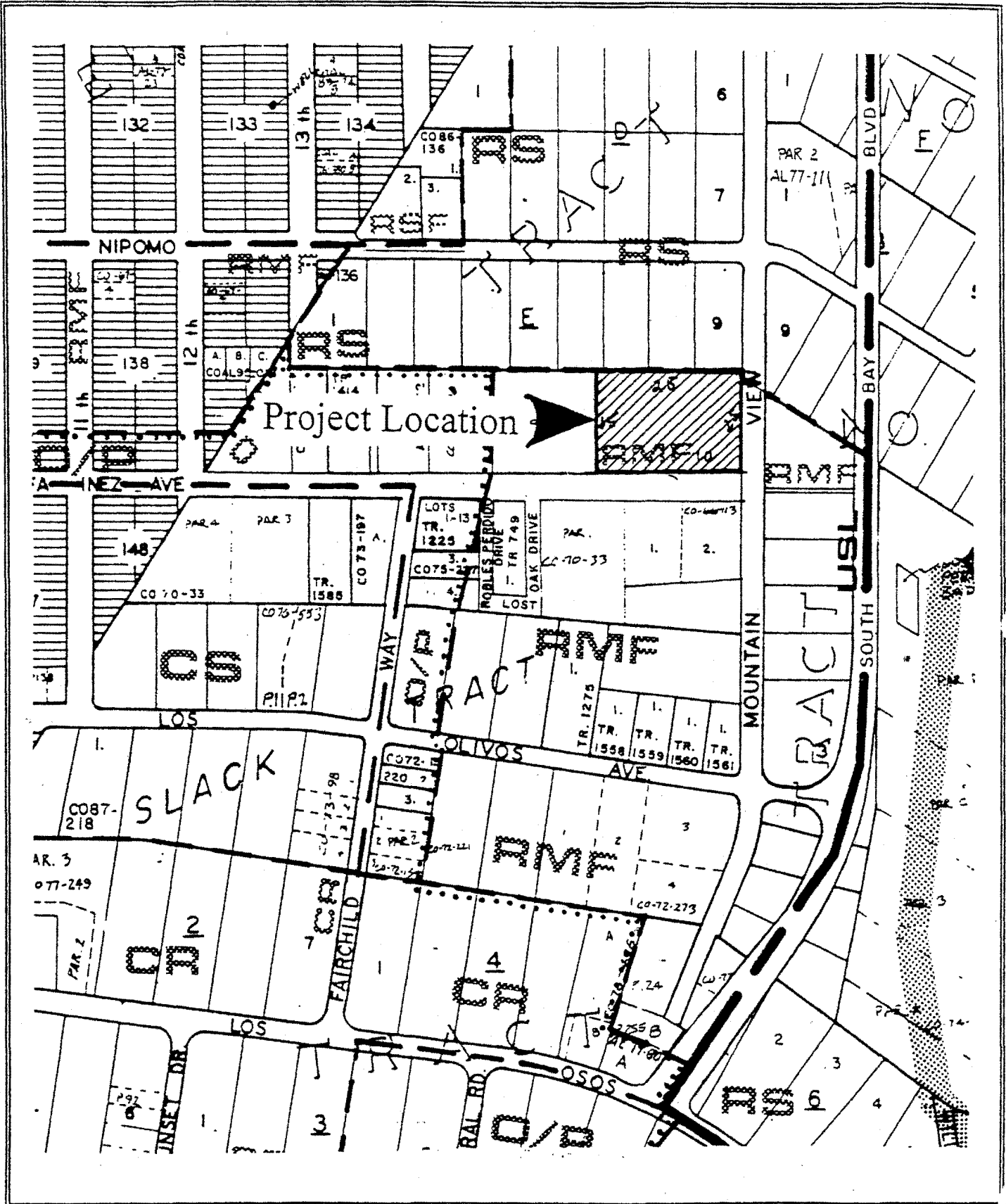


Exhibit B  
LAND USE CATEGORY MAP

WRIGHT MINOR USE PERMIT  
(D980085P)

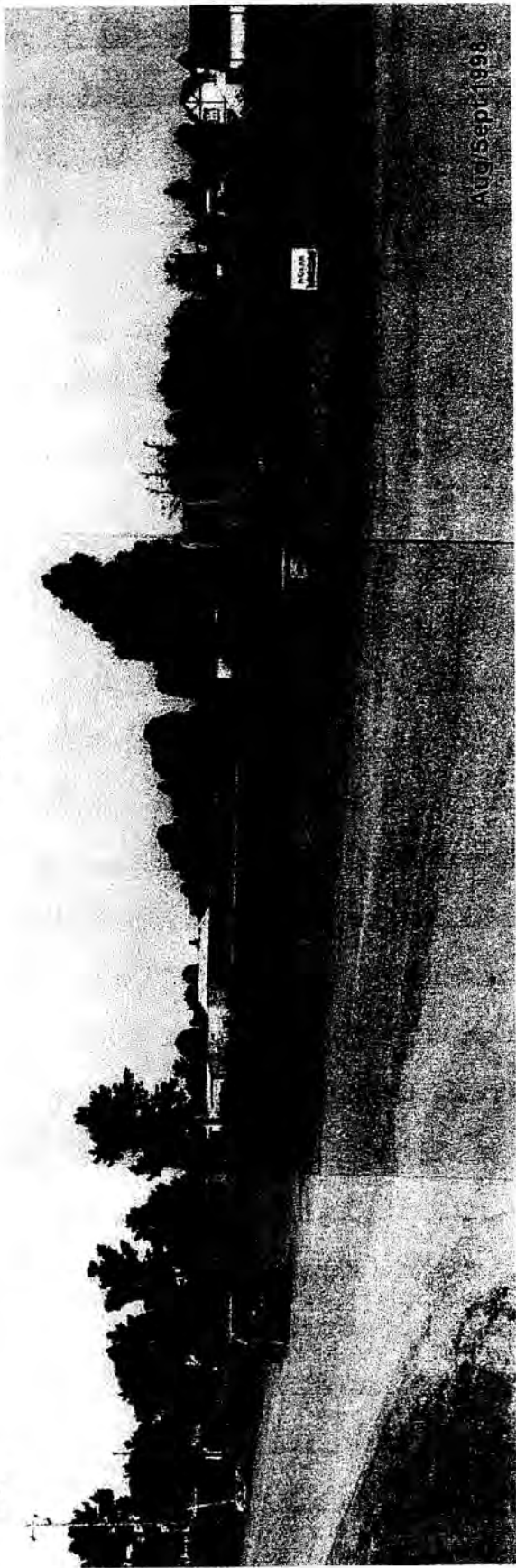
Exhibit A  
(2 of 3)





Wright Parcel (before vegetation removal and grading)

Exhibit B - Site Photos  
(1 of 3)



Wright Parcel (after vegetation removal and grading)



Exhibit B  
(2 of 3)



After Grading (looking North)



After Grading (looking South)



After Grading (looking West)

Exhibit B  
(3 of 3)

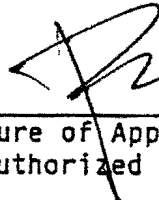
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(see attached)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

SECTION V. Certification

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



\_\_\_\_\_  
Signature of Appellant(s) or  
Authorized Agent

Date October 27, 1999

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Exhibit C  
(1 of 3) Date \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(see attached)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

SECTION V. Certification

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

Dave Potter  
Signature of Appellant(s) or  
Authorized Agent

Date 10/27/99

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Exhibit C  
(2 of 3) Date \_\_\_\_\_



**CALIFORNIA COASTAL COMMISSION**CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060

7-4863

**Reasons for Appeal: A.J. Wright Storage Facility, Los Osos (San Luis Obispo County Coastal Development Permit D980085P)**

This project involves the construction of a storage facility that would cover almost all of the 3-acre site with buildings and pavement. At least 2.14 acres of the site previously supported coastal scrub vegetation that provided habitat for the Morro shoulderband snail (listed as endangered under the federal Endangered Species Act). All 2.14 acres of this vegetation was removed in 1998 as a result of grading activities that did not receive the required Coastal Development Permit review and approval<sup>1</sup>. The after-the-fact approval of this grading, and the authorization to construct a storage facility on this sensitive site, is inconsistent with the following provisions of the San Luis Obispo County Local Coastal Program:

- Policy 1 for Environmentally Sensitive Habitats prohibits new development within environmentally sensitive habitats that would significantly disrupt the resource, and limits new development in such areas to those that are dependent upon the resource. In this case, the project involves a non-dependent use that significantly disrupts habitat for the Morro shoulderband snail, a species listed as endangered under the Federal Endangered Species Act, through the removal of 2.14 acres of coastal scrub habitat.
- Policy 2 for Environmentally Sensitive Habitats requires that new development be consistent with the biological continuance of sensitive habitats, not have a significant adverse impact, and provide the maximum feasible mitigation. In this case, the project involves the removal of 2.14 acres of sensitive coastal scrub habitat that may have a significant adverse impact on rare plants and animals, and may threaten the biological continuance of the Morro shoulderband snail. In addition, the proposed off-site mitigation of acquiring an equivalent amount of potential snail habitat as that removed by the project may not represent the maximum feasible mitigation.
- Coastal Zone Land Use Ordinance (CZLUO) 23.07.164 allows new development in a sensitive resource areas only when certain findings can be made. These include that there will be no significant adverse effect; natural features and topography have been considered in the design and siting; clearing of topsoil, trees, and other features is the minimum necessary; and, soil constraints and drainage have been appropriately addressed. In this case, the project does not minimize the removal of coastal scrub habitat supporting the Morro shoulderband snail.
- CZLUO Section 23.07.176 protects rare and endangered species of terrestrial plants and animals by preserving their habitat, and requires new development to be sited to minimize the disruption of habitat. The proposed project is inconsistent with these requirements because, as noted above, it does not minimize the removal of coastal scrub habitat supporting the Morro shoulderband snail.
- Alternative allowable uses, which have a smaller footprint, appear to be feasible and would better comply with the LCP provisions cited above.

<sup>1</sup> The current project includes mitigation for these impacts through the acquisition of 2.14 acres of potential Morro shoulderband snail habitat off-site.



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

CEIVED

OCT 13 1999

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

FINAL LOCAL  
ACTION NOTICE

REFERENCE # 3-SLO-99-148  
APPEAL PERIOD 10/14 - 10/27/99

VICTOR HOLANDA, AICP  
DIRECTOR

BRYCE TINGLE, AICP  
ASSISTANT DIRECTOR

ELLEN CARROLL  
ENVIRONMENTAL COORDINATOR

BARNEY MCCAY  
CHIEF BUILDING OFFICIAL

PATRICK BRUN  
ADMINISTRATIVE SERVICE OFFICER

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: SEPTEMBER 17, 1999

SUBJECT: A. J. WRIGHT/D980085P

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced application was approved on SEPTEMBER 17, 1999 by the Administrative Hearing Officer.

If you are dissatisfied with any aspect of this approval, you have the right to appeal the decision to the Board of Supervisors. The appeal must be filed within 14 days of the date of the decision using the form provided by the Planning Department along with the appropriate fee of \$ 474.00. Appeals may not require a fee if the grounds for appeal are certain coastal related issues (Pursuant to Coastal Zone Land Use Ordinance 23.01.043d). We strongly recommend that you contact the county Department of Planning and Building to obtain the appeal form and information handout explaining the rights of appeal. The appeal to the Board of Supervisors must be made to the Planning Commission Secretary, Department of Planning and Building.

This action is also appealable to the California Coastal Commission pursuant to Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission 10 working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhibit D - County's Decision  
(1 of 8)

Exhaustion of appeals at the County level is required prior to appealing the matter to the California Coastal Commission. The appeal to the California Coastal Commission must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (408) 427-4863 for further information on appeal procedures.

If you have questions regarding your project, please contact your planner, MATT JANSSEN, at (805) 781-5600. If you have any questions regarding these procedures, please contact me at (805) 781-5612.

Sincerely,

*Eleanor Porter by jpr*

Eleanor Porter, Secretary  
MINOR USE PERMITS

---

(Planning Department Use Only)

Date NOFA original to applicant SEPTEMBER 17, 1999

Mailed    Hand-delivered

Date NOFA copy mailed to Coastal Commission: October 4, 1999

Enclosed:

Staff Report  
 Resolution  
 Findings and Conditions

Exhibit D  
(2 of 8)



DEPARTMENT OF PLANNING AND BUILDING

TENTATIVE NOTICE OF ACTION

APPROVAL DATE: September 17, 1999

SUBJECT: MINOR USE PERMIT D980085P - WRIGHT/MORRO BAY MINI STORAGE

DESCRIPTION OF PROJECT - The proposed project is a request to grade for and construct a mini storage facility. The facility consists of twelve individual buildings, an entrance driveway, and parking on a 3 acre parcel. The project will occur in two phases; each phase equal to approximately half of the total project.

LOCATION OF PROJECT - The project is located on the northwest corner of the intersection of Mountain View Drive and Santa Ynez Avenue, in the community of Los Osos. Supervisorial District No. 2

RELATIONSHIP TO APPLICABLE LAND USE ELEMENT & ORDINANCE POLICIES

Land Use Category: Residential Multiple Family

Combining Des: Local Coastal Plan, Archaeologically Sensitive

Planning Area Standards: Building Design Guidelines (South Bay Urban Area Standards; p8-33)

Land Use Ordinance Standards: Section 23.04.100-(Setbacks)

Section 23.04.166-(Required Number of Parking Spaces)

Section 23.04.186-(Landscape Plans)

Section 23.04.190-(Fencing and Screening)

Section 23.04.310-(Signs Allowed)

Section 23.05.040-(Drainage)

Section 23.05.106-(Curbs, Gutters, and Sidewalks)

Section 23.07.104-(Archaeologically Sensitive Areas)

Section 23.07.120-(Local Coastal Plan)

Section 23.08.402-(Warehousing)

Does the project conform to the Land Use Ordinance Standards: Yes

ENVIRONMENTAL DETERMINATION

A Mitigated Negative Declaration was issued and proposed for the project on July 30, 1999.

RECOMMENDATION  
Approval with conditions

Exhibit D  
(3 of 8)

## DISCUSSION

### Environmental Review

The applicant is proposing to construct a mini storage facility consisting of twelve separate buildings, an entrance driveway, and parking on a 3 acre site. The project will occur in two phases; each phase equal to approximately half of the total project.

The project site was the subject of controversy surrounding the issuance of a "stockpile" permit. The applicant received a permit from the County to stockpile soil at the project site. During the placement of soil on the property, approximately 2.14 acres of coastal scrub habitat was lost. The value of the biological habitat at the site was not surveyed prior to the spreading of the soil. However, a biological assessment was performed "after-the-fact" and the site was determined to habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*). This species is listed as endangered under the federal Endangered Species Act.

After several communications with the United States Fish & Wildlife Service (the Service), the applicant has agreed to a mitigation plan for the loss of habitat (see Biological Resources; Conditions of Approval). The mitigation was developed by the Service and put into Developer's Statement by the County Environmental Division. The applicant signed the Developer's Statement and has thereby incorporated the measures into the project description.

The project has resulted in the loss of 2.14 acres of coastal scrub and snail habitat. The mitigation plan for the impacts to the snail habitat includes the purchase of 1.79 acres of potential snail habitat (to be donated to, and managed by, an appropriate agency), and direct financial compensation for the remaining 0.35 acres of area disturbed. The purchase of 1.79 acres, in combination with the direct compensation for an additional 0.35 acres, will result in a 1:1 replacement ratio for the 2.14 acres of coastal scrub and snail habitat lost as a result of the grading for the project.

Approximately 0.15 acres of potential snail habitat on the northern property line of the project site will be maintained in its natural state (this area measures approximately 20' x 300' for a total of approximately 6,000 square feet). This area will be maintained in perpetuity with the recordation of an Open Space Easement with the county.

### Planning

The project site fronts on Mountain View Drive. Therefore, the side setback (on Santa Ynez Avenue) needs to comply with the "key" lot setback rule (CZLUO 23.04.110 b,3) which states; *"a corner lot adjacent to a key lot is to be provided a side setback equal to one-half the depth of the required front setback of the key lot..."*. To comply with this section of the Ordinance, the setback on Santa Ynez Avenue will need to be at least 12.5 feet (one-half of 25').

The applicant has indicated several trees are to be planted along the northern boundary line between the buildings and the properties to the north. Normally, this type of landscape "buffer" is required for this type of project. However, because the northern boundary of the property is the area to be preserved for potential snail habitat, no artificial landscaping can occur there. Landscaping will be required for the remaining three sides of the project.

Exhibit D  
(4 of 8)

## FINDINGS

- A. The proposed project or use is consistent with the land use element of the general plan because the use is an allowable use under Table O of the Land Use Element and is consistent with all other General Plan policies.
- B. The proposed project or use satisfies all applicable provisions of the Title 23 of San Luis Obispo County Code.
- C. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or detrimental or injurious to property or improvements in the vicinity of the use because the project will meet all Ordinance and Building Code requirements designed to address health, safety, and welfare concerns.
- D. That the proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because two mini-storage facilities exist across the street in the Residential Multiple Family land use category in the community of Los Osos.
- E. That the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because Santa Ynez Avenue and Mountain View Drive are capable of carrying the additional traffic generated by this use.
- F. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project is not adjacent to the coast and the project will not inhibit access to coastal waters and recreation areas.
- G. The project design and development incorporates adequate measures to ensure protection of significant archaeological resources.
- H. On the basis of the Initial Study and all comments received, there is no substantial evidence that the project will have a significant effect on the environment.

## TENTATIVE DECISION

This tentative decision will become the final action after both the County 14-day appeal period and the Coastal Commission 10-day appeal period have run. This time frame is approximately one month after the date of this staff report.

Report prepared by: Matt Janssen, Environmental Specialist

Exhibit D  
(5 of 8)

## CONDITIONS OF APPROVAL

### Approved Development

1. A mini-storage facility consisting of:
  - a. Twelve one-story buildings (with a maximum height of 16'9") totaling approximately 60,000 square feet,
  - b. An entrance driveway, and
  - c. Fifty-nine total parking spaces (including four standard spaces, one handicapped spaces, and fifty-four parallel short term spaces)

### Signs

2. **Prior to the issuance of any construction permits**, the applicant shall prepare a comprehensive sign plan delineating the location and size of all proposed signs for review and approval of the Planning Department. The sign plan shall be in conformance with Section 23.04.310 of the CZLUO. Signing is limited to a maximum aggregate area of 100 square feet.

### Landscaping

3. **Prior to the issuance of any construction permits**, the applicant shall submit landscape, irrigation and landscape maintenance plans in accordance with Section 23.04.180 through 23.04.186 of the Coastal Zone Land Use Ordinance to the Planning Department for review and approval. Plans shall include location, species, and container size of all proposed plant materials and method of irrigation. All proposed plant material shall be of a drought tolerant variety and be sized to provide a mature appearance within three years of installation.
4. Landscaping in accordance with the approved plans shall be installed or bonded for **prior to final building inspection**. If bonded for, landscaping shall be installed within 90 days after final inspection of each phase and thereafter maintained in a viable condition on a continuing basis.

### Drainage

5. **Prior to the issuance of any construction permit (grading included)**, the applicant shall submit a drainage plan to be reviewed by the Engineering Department.
6. **Curb, gutter, and sidewalk** improvements are to be constructed as required by the Coastal Zone Land Use Ordinance (23.05.106c). Improvements are required along the entire street frontage of the site, and also along the street frontage of any adjoining lots in the same ownership as this site.

Exhibit D  
(6 of 8)

Archaeological Resources

7. In the event that archaeological resources are unearthed or discovered during any construction activities, the following standards apply:
  - a. Construction activities shall cease, and the Planning Department shall be notified so that the extent and location of discovered material may be recorded by a qualified archaeologist, and disposition of artifacts may be in accordance with state and federal law.
  - b. In the event archaeological resources are found to include human remains, or in any other case when human remains are discovered during construction, the County Coroner is to be notified in addition to the Planning Department to the proper disposition may be accomplished.

Fences

8. **Prior to final inspection**, the applicant shall install six foot high fencing or screening along the interior property lines. Fencing within the front setback is limited to three feet in height.

Biological Resources

9. The 2.14 acres of coastal dune scrub/snail habitat shall be replaced at a 1:1 ratio using a combination of the following methods:
  - a. 1.79 acres of property with equivalent habitat value (or potential habitat determined acceptable by the US Fish & Wildlife Service) outside the urban reserve line shall be purchased by the applicant for conveyance to an appropriate public agency or non-profit organization. The property shall be used specifically for the long term preservation of snail habitat. The applicant shall be responsible for habitat restoration and three years of maintenance on this property. A Habitat Restoration Plan shall be prepared and submitted to the US Fish & Wildlife Service for review and approval by the prior to implementation. The Plan shall be prepared by a qualified individual, as approved by the Environmental Coordinator. The applicant shall submit habitat restoration monitoring reports on an annual basis for each of the three years of restoration. These monitoring reports shall be prepared by a qualified individual, as approved by the Environmental Coordinator,  
  
and
  - b. 0.35 acres of habitat will be compensated for by the applicant through direct financial donation to the US Fish & Wildlife Service land acquisition designee. The Service is responsible for determining the amount of the final assessment for financial compensation. These funds will be used by the Service land acquisition designee to purchase property or habitat restoration for the long term preservation of snail habitat.

Exhibit D  
(7 of 8)



10. **Prior to issuance of construction permits**, the applicant will record an Open Space Easement over the approximately 0.15 acre area along the northern boundary of the project site not previously graded by the applicant (shown as "area not graded" in Figure 3; Wright Property Biological Assessment/Morro Group; 2/10/99). This area measures approximately 20' x 300' for a total of approximately 6,000 square feet. In addition:
  - a. This area shall remain undisturbed in perpetuity.
  - b. Any use other than undisturbed habitat (or habitat restoration) proposed on the 0.15 acre area shall be subject to review and approval of the US Fish & Wildlife Service.
  - c. Stockpiling, deposition of trash, storage of materials, parking, vehicle turnaround, or any other activity that may result in a take of the Morro shoulderband snail or may adversely affect the ability of the 0.15 acre area to support the snail is prohibited.
11. **During construction activities**, any Morro shoulderband snails that are subsequently found anywhere on the property shall result in all activities on the property being suspended. After discovery, the applicant is responsible for contacting the US Fish & Wildlife Service. The Service will assess any potential impacts and the need for compliance with the Endangered Species Act. The applicant will implement additional mitigation recommended by the Service, as required by the Environmental Coordinator.
12. **Prior to issuance of construction permits**, the applicant will provide adequate evidence that the US Fish & Wildlife Service is satisfied with the methods of mitigation and has received the direct financial habitat compensation for the 0.35 acre portion of the mitigation.

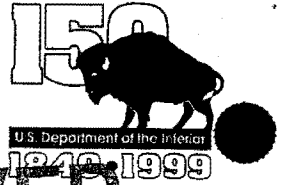
Miscellaneous

13. **Prior to the issuance of any permit**, the applicant shall obtain an encroachment permit from the Engineering Department for all improvements within the right-of-way.

TG/CL/DSL/SM



United States Department of the Interior



OFFICE OF THE SOLICITOR  
San Francisco Field Office  
600 Harrison Street, Suite 545  
San Francisco, California 94107-1373

RECEIVED

IN REPLY REFER TO:

November 1, 1999

NOV 03 1999

Steve Monowitz  
California Coastal Commission  
Central Coast Area Office  
725 Front St., Suite 300  
Santa Cruz, CA 95060

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

RE: U.S. Fish and Wildlife Service v. A.J. Wright, INV 107002158 - Settlement Agreement

Dear Mr. Monowitz:

Attached is a copy of the signed settlement agreement in the above-referenced matter. As we discussed on the telephone this morning, the settlement agreement adequately compensates for take of endangered species on the property, and also includes an additional payment in lieu of a civil penalty. We have just learned that the Coastal Commission has some concerns about the proposed project.

Because Mr. Wright entered into the settlement agreement based upon the understanding that the project would proceed, implementation of the agreement has been delayed pending resolution of issues with the Coastal Commission. It is my hope that such issues can be resolved as quickly as possible so that mitigation can be assured.

If you have any questions, please call me at (415) 427-1465.

Sincerely,

Ralph G. Mihan  
Field Solicitor  
Pacific Southwest Region

By:

*Robin Kohn Glazer*  
Robin Kohn Glazer  
Assistant Field Solicitor

Enclosure

cc: (w/o encl.)  
SRA, LE, FWS, Torrance  
Field Supervisor, FWS, Ventura

Settlement Agreement  
Exhibit E  
(1 of 7)

SETTLEMENT AGREEMENT  
BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE  
AND MORRO BAY MINI STORAGE, INC.,  
MR. A.J. WRIGHT, VICE PRESIDENT

WHEREAS, Morro Bay Mini Storage, Inc. ("MBMS, Inc."), a Missouri Corporation, is the fee title owner of approximately three acres of property at the intersection of Mountain View Avenue and Santa Ynez Avenue in Los Osos, San Luis Obispo County, California, APN 074-223-004 ("Property"); and

WHEREAS, the Morro shoulderband snail (Helminthoglypta walkeriana) ("Snail"), has been listed as an endangered species under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., 50 C.F.R. Part 17, since December 15, 1994; and

WHEREAS, on July 27, 1998, Mr. A.J. Wright, vice-president of MBMS, Inc., did obtain a permit (B972324-001) from the County of San Luis Obispo authorizing the stockpiling of 100 cubic yards of soil on the Property. Although such permit was listed under the County's "grading permit" category, it did not authorize future grading or vegetation removal; and

WHEREAS, the U.S. Fish and Wildlife Service ("FWS") alleges that on or before August 24, 1998, MBMS, Inc., by and through its agents, employees or officers, including Mr. A.J. Wright, graded and removed vegetation on the Property, thereby causing the take of Snails on the Property in violation of the ESA; and

WHEREAS, the FWS and MBMS, Inc. wish to resolve the current dispute over this alleged violation of the ESA in a timely manner; and

WHEREAS, FWS recognizes that the terms of this Agreement will adequately mitigate any potential past take of the Snail on the Property;

NOW, THEREFORE, IT IS HEREBY AGREED by and between FWS and MBMS, Inc. as follows:

TERMS AND CONDITIONS

1. FWS agrees, based upon MBMS Inc.'s satisfactory completion of this Agreement:
  - A. Not to pursue the imposition of a civil penalty against MBMS, Inc. in connection with this matter; and
  - B. To work cooperatively and in good faith with MBMS Inc. the completion of MBMS Inc.'s obligations under this Agreement.
  - C. To consult pursuant to Section 7 of the ESA, 16 U.S.C. §

Exhibit E  
(2 of 7)

1536(a)(2), and prepare, at its own expense, a Biological Opinion ("BO"), that sets forth the terms and conditions for future incidental take of the Snail on the Mitigation Site as a result of implementation of the restoration and monitoring Plan, as defined in Section 2.B.1) and 2) below. Such BO shall be attached, when completed, as Attachment A.

2. In consideration of FWS's agreement not to pursue a civil penalty against MBMS, Inc., MBMS, Inc. agrees to:

A. Pay a settlement amount of \$ 7,000.00 by October 29, 1999, relating to the investigation by FWS law enforcement in this matter (INV 107002158). Payment shall be made by certified check or money order payable to "The U.S. Fish and Wildlife Service." Payment should be sent to:

Office of the Solicitor  
600 Harrison Street, Suite 545  
San Francisco, California 94107-1373

B. Conduct the following mitigation measures to compensate for loss of the species and its habitat in connection with this matter:

1) Purchase a 1.79 acre site (Block M.1 of the town of El Moro, California; APN 038-721-014) which the FWS has determined to have equivalent habitat value for the Snail ("Mitigation Site"). Convey such Mitigation Site to the California State Parks Department (or another entity acceptable to the FWS) by October 1, 1999. The property shall be used specifically for the preservation in perpetuity of Snail habitat.

2) Conduct habitat restoration and three years of monitoring to FWS on the 1.79 acre Mitigation Site, after preparation of and in compliance with a habitat restoration and monitoring plan ("Plan"). The Plan shall be reviewed and approved by the FWS prior to implementation, shall be consistent with the terms of the BO, and shall include provisions for reporting results of implementation of the Plan to FWS. Access to the Mitigation Site for review of restoration and monitoring efforts shall be granted to the FWS upon request.

3) Comply with the terms and conditions of the BO, which shall include, but not be limited to, a provision ensuring that a qualified biologist provide monitoring of restoration activities and proper education and training to individuals conducting restoration work on the 1.79 acre Mitigation Site.

4) Pay \$ 17,500.00 into an escrow account by October 29, 1999 to be used by the Trust for Public Land (or other entity acceptable to the FWS) for purchase of 0.35 acres or more of habitat to be preserved in perpetuity for the Snail.

5) Record an Open Space Easement over the approximately 0.15 acre ungraded area along the northern boundary of the Property, as required by the County of San Luis Obispo. Such Open Space Easement shall prohibit stockpiling, deposition of trash or other items and use of the area for parking or vehicle turnaround, or any other actions that would result in take of the Snail or would adversely affect the ability of the 0.15 acre area to support the species. Any disturbance to the 0.15 acre area shall be subject to review by the FWS.

3. General Provisions:

A. The effective date ("Effective Date") of this Agreement shall be the date on which all parties have signed the Agreement.

B. If MBMS, Inc. fails to fully perform its obligations under this Agreement, this Agreement may be terminated by FWS, in which event MBMS, Inc. shall be released from any obligation hereunder and FWS may institute formal civil penalty proceedings against Respondent.

C. The provisions of this Agreement shall apply to and be binding upon the parties hereto and their respective successors and assigns.

D. This Agreement is a settlement for potential past take of the Snail on the Property and does not authorize take of the Snail on the Property after the Effective Date of this Agreement.

E. Any notice, delivery or other communication provided for, required or arising under this Agreement shall be in writing and shall be sent to the signatories at the addresses listed below. Correspondence to the FWS shall be sent to:

Field Supervisor  
Ventura Field Office  
2493 Portola Road, Suite B  
Ventura, CA 93003

F. This written Agreement is the final and sole agreement between the parties. Any modifications of this agreement shall be in writing and duly executed by the parties.

G. This Agreement shall be signed in Counterparts.

Date: 9/1/99



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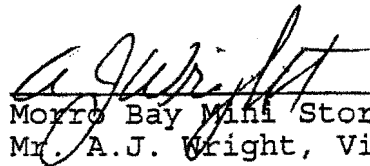
Robin Kohn Glazer  
Assistant Field Solicitor  
U.S. Department of the Interior

Date:

Diane K. Noda  
Diane Noda  
Field Supervisor  
U.S. Fish and Wildlife Service  
Ventura Field Office

Date:

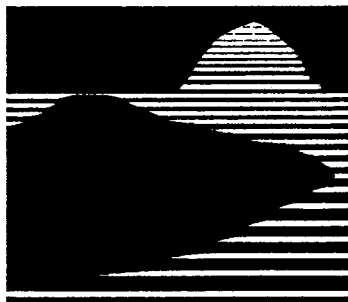
9-10-99



Morro Bay Mini Storage, Inc.  
Mr. A.J. Wright, Vice President  
775 Center Court  
Morro Bay, CA 93442



**Wright Property  
Biological Assessment**



**MORRO  
GROUP, INC.**

**ENVIRONMENTAL  
SERVICES**

Exhibit F - Biological Assessment  
(1 of 18)

2.11.99

**Wright Property  
Biological Assessment**

**Submitted to:**  
Mr. A.J. Wright  
775 Center Court  
Morro Bay, CA 93442

**Prepared by:**  
Morro Group, Inc.  
1422 Monterey Street, Suite C200  
San Luis Obispo, CA 93401  
805/543.7095  
Fax/543.2367

**Submitted:**  
February 10, 1999

Exhibit F  
(2 of 18)

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## I. INTRODUCTION

This biological assessment has been prepared at the request of Mr. A.J. Wright of Morro Bay, California. Mr. Wright contacted Morro Group, Inc. to prepare a biological assessment on a parcel located in the community of Los Osos in order to fulfill a requirement set forth by the County of San Luis Obispo Department of Planning and Building. The County requested the assessment upon learning the subject parcel had been cleared several months previous by Mr. Wright under a previously issued "stockpiling" permit and as part of the processing of a current land use permit request for a mini-storage facility.

The property is located within a known biologically sensitive region and known habitat for sensitive and endangered species such as the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*). Prior to clearing under the stockpiling permit, the property consisted of an unknown quantity of coastal dune scrub which is habitat for the Morro shoulderband snail. This biological assessment is an "after-the-fact" assessment of biological resources and has been prepared based primarily on the review of an aerial photograph of the project site. Additionally, two field visits were conducted by Morro Group biologists to assess and analyze an area of the subject property not cleared under the stockpiling permit. Morro Group also conducted interviews with Ms. Kate Symonds of the United States Fish and Wildlife Service (USFWS) and Mr. Bill Talkin (USFWS Special Investigator), and the property owner in order to piece together information regarding the extent of biological resources located on the subject parcel.

### A. Project Location

The subject property is located at the northwest corner of Santa Ynez Avenue and Mountain View Drive in the community of Los Osos (refer to Figures 1 and 2). The site was and is relatively level and consists of a loamy sand soil characteristic to old dunes. A majority of the 3-acre site is currently void of vegetation (approximately 2.84 acres) with the exception of an approximate 0.15 acre area that forms a strip along the entire northern boundary of the site (refer to Figures 3 and 4).

### B. Project Background

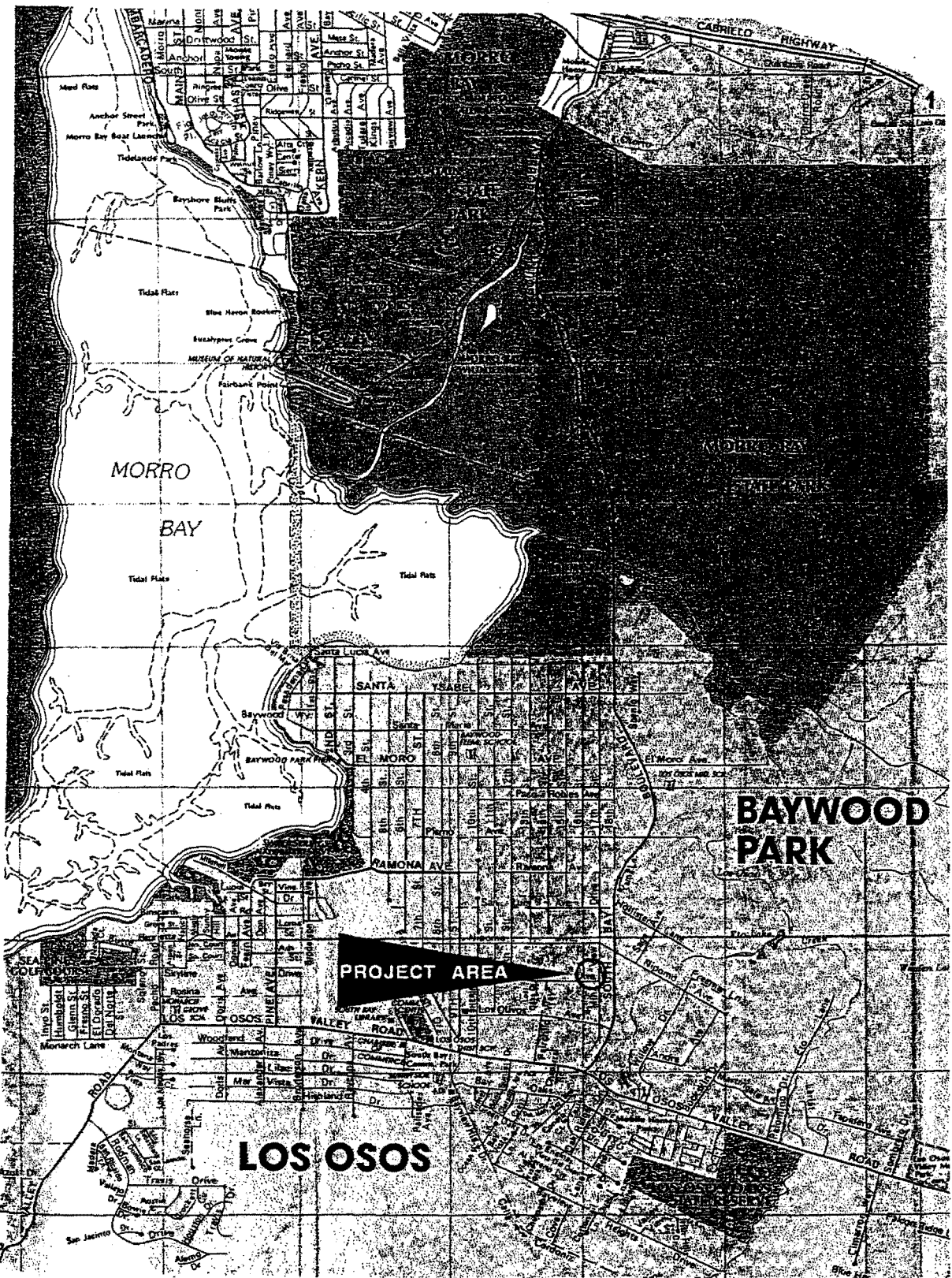
As described above, Mr. Wright cleared the property of central coastal scrub upon receiving a stockpiling permit from the County of San Luis Obispo. Subsequently, he applied for a Minor Use Permit to construct a mini-storage facility on the subject property. During the later permit process, the County Department of Planning noted removal of coastal dune scrub habitat and specifically, removal of habitat for the endangered Morro shoulderband snail.

When potential impacts to endangered species are proposed to occur as a result of a project or if they occur without a permit, the issue of appropriate forms of mitigation for impacts to the species falls within the authority of the USFWS. The USFWS is the implementing agency for the Endangered Species Act (ESA). Additionally, if impacts to endangered species occur prior to

issuance of an ESA permit, the USFWS will conduct an investigation into the issue of whether impacts to endangered species occurred knowingly or whether it was a case of an uninformed mistake. The outcome of such an investigation has a bearing on the form and level of mitigation required for impacts to the snail. Currently, an investigation is being conducted by the USFWS into events surrounding un-permitted impacts to the Morro shoulderband snail on the subject property.

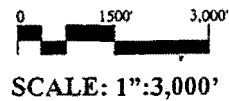
Through phone conversations with those involved in review of the project site shortly after clearing (i.e., the above referenced USFWS representatives), Morro Group learned that Morro shoulderband snail shells had been found on the site after clearing had occurred. Additionally, Morro Group biologists noted presence of a live *H. walkeriana* near a remnant brush and soil pile located near the northwest corner of the site.

It is clear that the subject property supported suitable habitat for the endangered Morro shoulderband snail. However, it is unclear as to the quantity of habitat that was present on the site prior to clearing for stockpiling purposes. The primary purpose of this biological assessment is to determine the quantity of habitat that may have been present so that appropriate recommendations for mitigation of endangered species impacts can be made by the appropriate regulatory agency (i.e., USFWS).



**WRIGHT BIOLOGICAL ASSESSMENT**

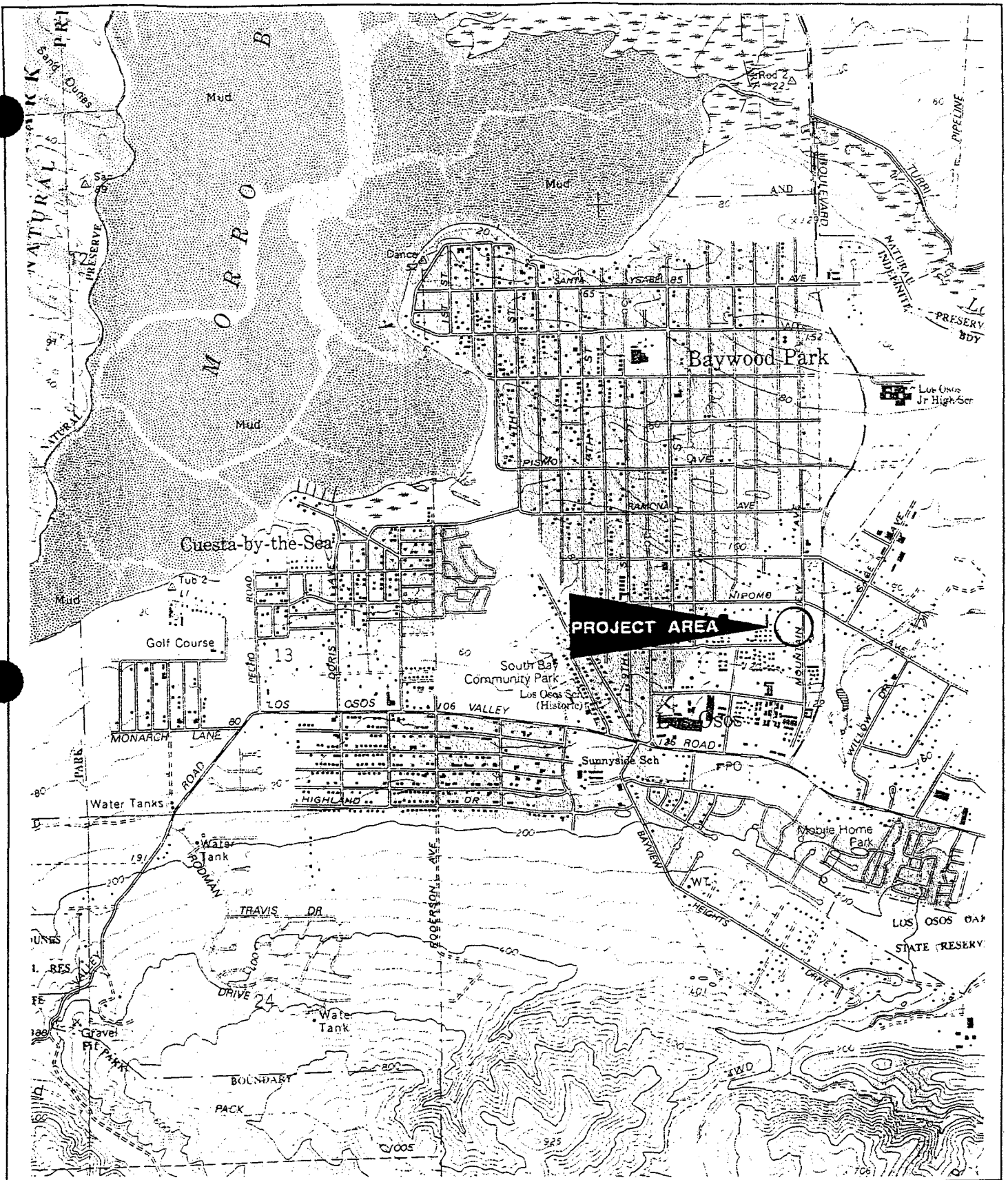
**Project Vicinity Map**  
**Source: Compass Maps**



**Figure 1**



*Exhibit F*  
*(6 of 18)*



**WRIGHT BIOLOGICAL ASSESSMENT**

**Figure 2**

**Project Location Map**  
 Source: USGS, Morro Bay South Quadrangle



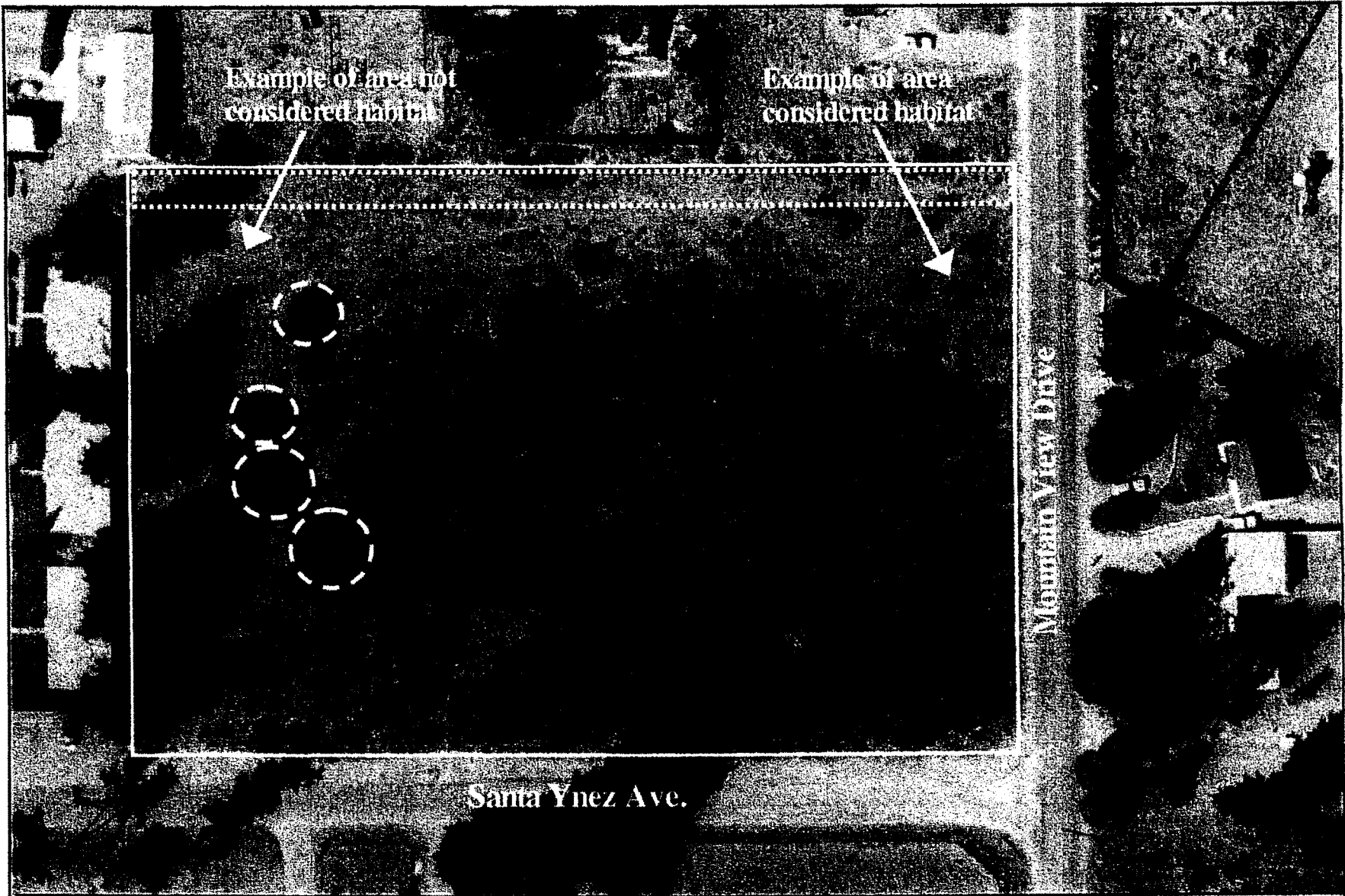
SCALE: 1:24,000



**NORTH**

*Exhibit F  
 (7 of 18)*

Exhibit F  
(8 of 18)



Property Line



Area not graded



Oak Tree Canopy

**WRIGHT BIOLOGICAL ASSESSMENT**

Aerial Photo: Golden State Aerial Surveys

Photo Date: October 13, 1995

Scale: 1" = Approx. 75'



**FIGURE 3**





Photo No. 1:  
Project site, viewing  
in a southwesterly  
direction. Ungraded  
portion of the site  
located in lower left  
corner of the photo  
with cleared area of  
site located in back-  
ground. Photo taken  
January 21, 1999.

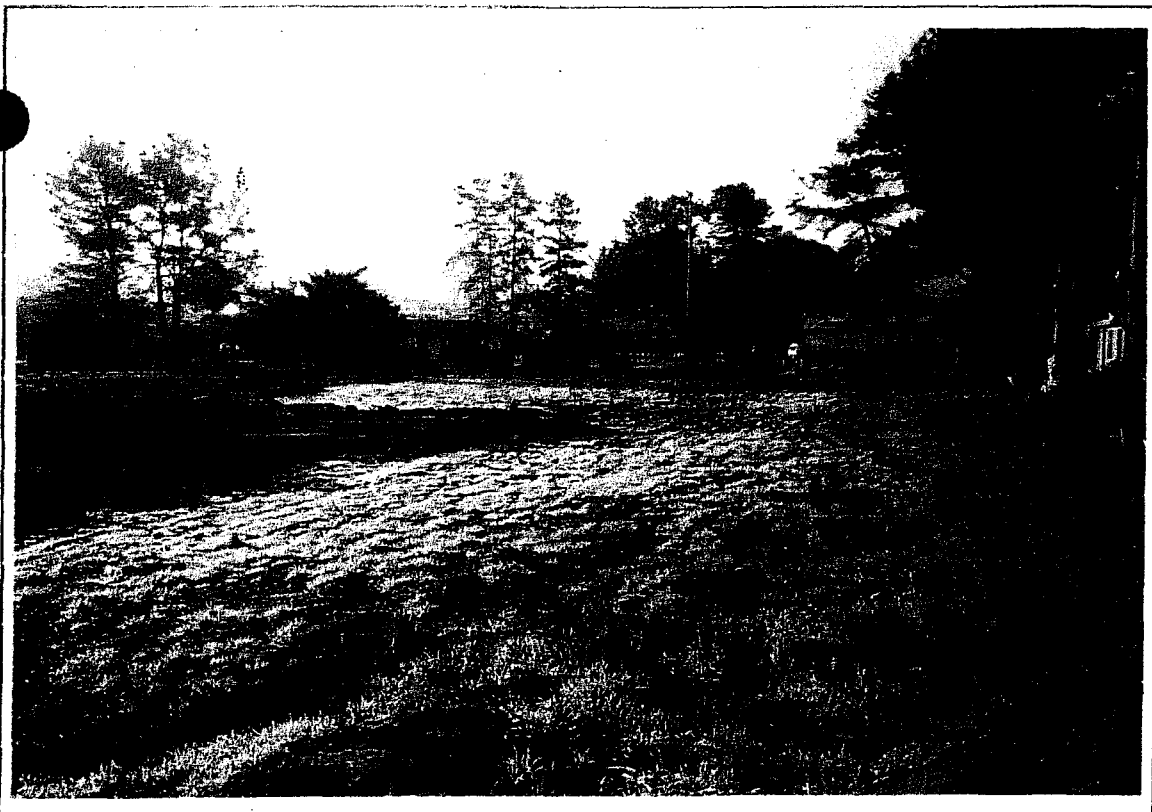


Photo No. 2:  
Project site, photo  
taken from north-  
west corner of the,  
viewing south.  
Note stockpiled soil  
located in left of  
photo. Photo taken  
January 21, 1999.

FIGURE 4  
WRIGHT BIOLOGICAL ASSESSMENT  
Project Site Photos

Exhibit F  
(9 of 18)

## II. ENVIRONMENTAL SETTING

Due to fact the property had been cleared prior to conducting the biological assessment, Morro Group's primary task was to make a "most accurate estimate" of the quantity and composition of central coastal scrub habitat which existed on the site prior to clearing. An analysis of the aerial photo shown in Figure 3 was made to piece together the probable extent and quantity of previous habitat present on the site. Previous biological assessments conducted on nearby parcels were used as qualitative data for the subject parcel's biological resource composition. The following is a description of the likely vegetative and wildlife composition prior to clearing.

### A. Vegetation

Several vegetation types and plant associations may have been identified within the subject property and are illustrated in Figure 3. The following discussion focuses only on those plant communities thought to have been located within the subject property that are considered sensitive or have potential to provide important habitat for various special-status species identified in this section. The major plant communities likely identified within the subject property and characterized in this section includes central coastal scrub.

#### 1. Central Coastal Scrub

Of the natural vegetation appearing in photographs of the property, a majority could be classified as **central coastal scrub**, based on community structure and composition (Holland, 1986). An example of this habitat can still be found on the subject property along the northern boundary. As illustrated in Figure 3, central coastal scrub within the vicinity of the property was most well-developed in the southern and central areas of the site. The structure and composition of this community was likely highly variable, however, in most areas it appears that coyote brush (*Baccharis pilularis*) occurred as the dominant species, and often occurred as the sole shrub species within the community. In areas dominated by this species, the canopy cover was moderately closed, and shrub height was typically over 2 meters. Other species that likely occurred on the site are dune lupine (*Lupinus chamissonis*), California poppy (*Eschscholzia californica* var. *californica*), wedgeleaf horkelia (*Horkelia cuneata* ssp. *cuneata*), cudweed-aster (*Lessingia filaginifolia*), California coffeeberry (*Rhamnus californica*), black sage (*Salvia mellifera*), chamise (*Adenostoma fasciculatum*), and heather goldenbush (*Ericameria ericoides*).

In addition, the property owner has stated that there had been seven coast live oaks on the property of approximately 4 inches in diameter. The location of the canopy of these oaks is shown on Figure 3.

Some portions of the central coastal scrub communities of the subject property appear to exhibit low species diversity and may have contained substantial coverage of veldt grass (*Ehrharta calycina*), an invasive exotic plant species. In some locations, veldt grass may have occurred as the sole or dominant species.

## B. Wildlife

Natural habitats of the subject property likely provided suitable habitat for a variety of vertebrate species, and may have been frequented by various species. Larger mammals such as raccoon (*Procyon lotor*) and opossum (*Didelphis virginiana*) may have visited the property on periodic basis for foraging purposes. Central coastal scrub communities of the property likely supported a variety of small mammal species such as Botta's pocket gopher (*Thomomys bottae*), California mouse (*Peromyscus californicus*), and western harvest mouse (*Reithrodontomys megalotis*). Bird species that are expected to have occurred in, or frequented, central coastal scrub habitats of the subject property included California towhee (*Pipilo crissalis*), rufous-sided towhee (*Pipilo erythrophthalmus*), white-crowned sparrow (*Zonotrichia leucophrys*), wrenit (*Chamaea fasciata*), California thrasher (*Toxostoma redivivum*), and scrub jay (*Aphelocoma coerulescens*). Lizards such as western fence lizard (*Sceloporus occidentalis*) and southern alligator lizard (*Gerrhonotus multicarinatus*) are also expected to have occurred within coastal scrub and adjacent grassland habitats of the property.

Raptors, such as red-tailed hawk (*Buteo jamaicensis*), white-tailed kite (*Elanus caeruleus*), barn owl (*Tyto alba*), and American kestrel (*Falco sparverius*), commonly use open grassland areas extensively for foraging purposes, and although open grassland habitats of the subject property were limited, raptors such as these would have been expected to forage within various habitats of the property on a periodic basis.

## C. Special-Status Species

Special-status species are plants and animals that are either listed as endangered or threatened under the Federal or California Endangered Species Act, considered rare under the California Native Plant Protection Act, or considered rare (but not legally listed) by resources agencies, professional organizations, and the scientific community. For the purposes of this biological resources assessment, special-status species are defined below in Table 1.

**Table 1. Definitions of Special-Status Species**

### Special-Status Plant Species

- Plants listed or proposed for listing as threatened or endangered under the Federal Endangered Species Act (50 CFR 17.12 for listed plants and various notices in the Federal Register for proposed species).
- Plants that are Category 1 candidates for possible future listing as threatened or endangered under the Federal Endangered Species Act (55 CFR 6184, February 21, 1990).
- Plants that meet the definitions of rare or endangered species under the CEQA (*State CEQA Guidelines*, Section 15380).
- Plants considered by the CNPS to be "rare, threatened, or endangered" in California (Lists 1B and 2 in Skinner and Pavlik, 1994).
- Plants listed by CNPS as plants about which we need more information and plants of limited distribution (Lists 3 and 4 in Skinner and Pavlik, 1994).
- Plants listed or proposed for listing by the State of California as threatened or endangered under the California Endangered Species Act (14 CCR 670.5).

**Table 1 (con't.). Definitions of Special-Status Species**

- Plants listed under the California Native Plant Protection Act (California Fish and Game Code 1900 et seq.).
- Plants considered sensitive by other federal agencies (i.e., U.S. Forest Service, Bureau of Land Management), state and local agencies or jurisdictions.
- Plants considered sensitive or unique by the scientific community or occurring at the limits of its natural range (*State CEQA Guidelines*, Appendix G).

**Special-Status Wildlife Species**

- Animals listed or proposed for listing as threatened or endangered under the Federal Endangered Species Act (50 CFR 17.11 for listed animals and various notices in the Federal Register for proposed species).
- Animals that are Category 1 candidates for possible future listing as threatened or endangered under the Federal Endangered Species Act (54 CFR 554).
- Animals that meet the definitions of rare or endangered species under the CEQA (*State CEQA Guidelines*, Section 15380).
- Animals listed or proposed for listing by the State of California as threatened and endangered under the California Endangered Species Act (14 CCR 670.5).
- Animal species of special concern to the CDFG (Remsen, 1978 for birds; Williams, 1986 for mammals).
- Animal species that are fully protected in California (California Fish and Game Code, Section 3511 [birds], 4700 [mammals], and 5050 [reptiles and amphibians]).

The Federal Endangered Species Act (ESA) of 1973 (50 CFR 17) provides legal protection for plant and animal taxa that are in danger of extinction, and classified as either threatened or endangered under the ESA. The ESA requires Federal agencies to make a finding on all Federal actions, including the approval by an agency of a public or private action, such as the issuance of a Corps permit under Section 404 of the Clean Water Act, as to the potential to jeopardize the continued existence of any listed species potentially impacted by the action. Section 9 of the ESA prohibits the "take" of any member of a species listed as threatened or endangered.

Based on information obtained through review of existing literature and previous searches of the CNDDB, a preliminary list was compiled of special-status species that had the potential to occur in the vicinity of the subject property. Table 2 identifies the name and legal status of special-status species either reported from the general vicinity or those species expected to have occurred within the property based on the presence of suitable habitat.

Table 2. Special-Status Plants and Animals Reported From  
the Vicinity of the Wright Property

<u>Scientific Name</u>	<u>Common Name</u>	<u>Legal Status<sup>2</sup></u> Federal/State/Other
<u>Plants</u>		
<i>Arctostaphylos cruzensis</i>	Arroyo de la Cruz manzanita	SSC/--/CNPS List 1B
<i>Arctostaphylos morroensis</i>	Morro manzanita	FT/--/CNPS List 1B
<i>Chorizanthe pungens</i> var. <i>pungens</i>	Monterey spineflower	FT/--/CNPS List 1B
<i>Erigeron blochmaniae</i>	Blochman leafy daisy	--/--/CNPS List 1B
<i>Erysimum capitatum</i> ssp. <i>lompocense</i>	San Luis Obispo wallflower	--/--/CNPS List 4
<i>Monardella undulata</i>	Curly- leaved monardella	--/--/CNPS List 4
<i>Prunus fasciculata</i> var. <i>punctata</i>	Sand almond	--/--/ CNPS List 4
<u>Wildlife</u>		
<i>Helminthoglypta walkeriana</i>	Morro shoulderband snail	FE/--/--
<i>Icaricia icariodes</i> ssp. <i>moroensis</i>	Morro blue butterfly	SSC/--/--
<i>Anniella pulchra</i> ssp. <i>nigra</i>	Black legless lizard	FPE/CSC/--
<i>Dipodomys heermanni</i> ssp. <i>morroensis</i>	Morro Bay kangaroo rat	FE/SE/--
<u>Status Codes:</u>		
<u>Plants:</u>		<u>Wildlife:</u>
SSC: Federal Species Special Concern		ST: State-listed threatened
- Former candidate species.		CSC: California State Species of Special Concern
<u>California Native Plant Society (CNPS):</u>		SSC: Federal Species of Special Concern - Former candidate species
List 1B = rare, threatened, or endangered in California and elsewhere.		
List 4 = plants of limited distribution - a watch list.		

\*: Species that are biologically rare, restricted in distribution, declining throughout their range, or closely associated with a habitat that is declining throughout California.

### 1. Plants

Based on results of the literature and field surveys, several species were determined to have had the potential to occur within the general vicinity of the Wright property. However, field surveys could not be conducted and associated occurrences within property boundaries could not be confirmed. The distribution, preferred habitats, and potential for occurrence of various identified special-status species are described below.

#### a. Arroyo de la Cruz manzanita (*Actostaphylos cruzensis*)

Arroyo de la Cruz manzanita occurs in a variety of habitats including, but not limited to, chaparral, and coastal scrub communities (Skinner and Pavlik, 1994). This species is documented as occurring in the vicinity of Hollister Peak, along Los Osos Mesa, and in Montana de Oro State Park. It is not expected that coastal scrub communities of the subject property could have supported individuals of this species.

b. Morro manzanita (*Arctostaphylos morroensis*)

Morro manzanita occurs in chaparral, cismontane woodland, coastal dune, and coastal scrub communities (Skinner and Pavlik, 1994). This species has been documented as occurring in scattered locations extending from Morro Bay to Hazard Canyon. It is not expected that coastal scrub communities of the subject property could have supported individuals of this species.

c. Monterey spineflower (*Chorizanthe pungens* var. *pungens*)

This annual herb occurs primarily in coastal dune and coastal scrub communities (Skinner and Pavlik, 1994). Monterey spineflower has been reported from various locations within the Morro Bay and Los Osos areas, including an undeveloped property located in the vicinity of the property (Fugro West, Inc., 1997). It is expected that coastal scrub communities of the subject property could have supported individuals of this species.

d. Blochman leafy daisy (*Erigeron blochmaniae*)

This perennial herb occurs in coastal dune habitats of Santa Barbara and San Luis Obispo counties (Skinner and Pavlik, 1994). Blochman leafy daisy has been reported from a variety of areas along the southern end of Morro Bay, including the undeveloped property located directly southeast of the subject property. It is expected that coastal scrub habitats of the subject property could have supported individuals of this species.

e. San Luis Obispo wallflower (*Erysimum capitatum* spp. *lompopense*)

This perennial herb occurs in chaparral and coastal scrub communities located on sandy substrates (Skinner and Pavlik, 1994). San Luis Obispo wallflower has been reported from scattered locations throughout the Los Osos and Baywood park areas (Fugro West, Inc., 1997). The typical flowering period of this species is February through May. It is expected that coastal scrub habitats of the subject property could have supported individuals of this species.

f. Curly-leaved monardella (*Monardella undulata*)

Curly-leaved monardella is an annual herb that occurs in a variety of habitats including chaparral, coastal dune, and coastal scrub (Skinner and Pavlik, 1994). Within San Luis Obispo County, this species has been reported in various locations from the southern side of Morro Bay to Price Canyon (Fugro West, Inc., 1997). It is expected that coastal scrub habitats of the subject property could have supported individuals of this species.

g. Sand almond (*Prunus fasciculata* var. *puncatata*)

Sand almond is a deciduous shrub that occurs in maritime chaparral, cismontane woodland, coastal dune, and coastal scrub communities with sandy substrates (Skinner and Pavlik, 1994). Within San Luis Obispo County, sand almond primarily occurs along the south side of Morro Bay and on the Nipomo Mesa. It is expected that coastal scrub habitats of the subject property could have supported individuals of this species.

## 2. Wildlife

### a. Morro shoulderband snail (*Helminthoglypta walkeriana*)

The Morro shoulderband snail is restricted to sandy soils of coastal dune and coastal scrub communities near Morro Bay. In 1985 Roth found that the geographic limits of this species generally coincided with the limits of stabilized, vegetated, dune habitats located east, southeast, and south of Morro Bay. Morro shoulderband snail has been found to be closely associated with several species of shrubs including mock heather (*Ericameria ericoides*), seaside golden yarrow (*Eriophyllum staechadifolium*), deerweed (*Lotus scoparius*), sand almond, and with the introduced ice plant; however, Morro shoulderband snail is found most frequently within mock heather (Roth 1985). Other plants that commonly occur in areas occupied by this species include black sage, dune buckwheat (*Eriogonum parvifolium*), California sagebrush, dune lupine, and croton (Roth, 1985). Typically, shrubs where live snails have been found exhibit a dense, low growth structure and have ample contact with the ground.

Coastal scrub communities of the subject property contained habitat considered suitable for the federal endangered Morro shoulderband snail. During the field survey of the Wright property, numerous empty shells of Morro shoulderband snail were found within cleared areas and a live snail was observed within the brush and soil pile on the northwest corner of the parcel.

### b. Morro blue butterfly (*Icaricia icariodes* ssp. *moroensis*)

The Morro blue butterfly has been documented as occurring within the Los Osos area, in association with its host plant, the dune lupine. Although there have been conflicting accounts regarding this butterfly's status within the area, recent studies document sightings of Morro blue butterfly on dune lupine within the vicinity of the Wright property (Fugro West, Inc., 1997). Coastal scrub communities once found on the subject property are therefore expected to have provided potentially suitable habitat for this species of butterfly.

### c. Black legless lizard (*Anniella pulchra nigra*)

The black legless lizard primarily occurs in areas containing sandy or loose organic soils, where abundant leaf litter is present. In addition, this subspecies is most frequently found in areas where dune lupine and heather goldenbush occur as dominant plants (CNDDDB, 1995). The black legless lizard is very secretive in its habits, foraging primarily at the base of shrubs and just below the surface of leaf litter or sandy soil substrate (Zeiner et al., 1988). Little is known about the status and distribution of this lizard within the vicinities of Los Osos and Morro Bay. Based on the absence of information regarding the distribution of this species, it should be assumed that black legless lizard could have occurred in coastal scrub habitats located in the vicinity of the Wright property.

### d. Morro Bay kangaroo rat (*Dipodomys heermanni* ssp. *morroensis*)

Suitable habitat for the Morro Bay kangaroo rat consists of Coastal Dune Scrub or Coastal Sage Scrub habitats occurring on a sandy soil substrate. Within areas considered to contain optimum

habitat for Morro Bay kangaroo rat, characteristic shrubs rarely exceed three feet in height (Roest, 1982).

A survey of parcels located in the vicinity of the subject property was conducted by Michael O'Farrel in 1996, in addition to several other sites located in the vicinity. Surveys yielded no capture or sign of kangaroo rat. In addition, O'Farrel (1996) indicated that all sites surveyed are no longer suitable for occupation by the species due in part to site conditions being consistent with habitat that has reached seral conditions, and to the sites' close proximity to existing development. Based on the result of the identified survey at the adjacent sites, the likely composition of natural vegetation once found at the subject property, and the density and height of the shrubs once present on site, it is expected that occurrence of Morro Bay kangaroo rat within the site was unlikely.

### III. IMPACTS

It has been established, based on aerial photo review, personnel accounts and an after-the-fact review of the site, that the subject property once consisted of central coastal scrub. The quantity of scrub was determined through review of a low level aerial photograph and verification of aerial findings through comparison to the un-graded portion of the project site. A discussion of results of this analysis are as follows:

#### A. Aerial Photo Review Considerations and Results

The key component of this analysis was review of an aerial photograph of the project site, taken in October 1995. The scale of the photograph is approximately 1" = 75' and is shown in Figure 3. The aerial photograph provided is the only tool available in determining the quantity of central coastal scrub existing prior to clearing. A shrub-by-shrub analysis of the quantity of habitat shown in the aerial was determined to be infeasible due to the following factors:

- Several large Monterey pine trees along the western boundary (off-site) form 0.22 acre of shadows on the ground in the western portion of the photo. It is impossible to determine the type of vegetative cover located in this area prior to clearing.
- Several oak trees existed on the site prior to clearing. Although Morro shoulderband shells have been noted in oak duff in other occasions, this is not usually considered suitable habitat due to the lack of central coastal scrub habitat below the oak canopy.
- The aerial photograph was taken on October 13, 1995, near the end of the dry season. Some areas on the photo appear to consist of small coastal scrub bushes but are difficult to identify due to the faded grey-green or dark appearance of the scrub which occurs at this time of year. Additionally, in late summer remaining leaves can become partially covered in dust which disguises the true color of small, isolated shrubs and plants as seen from an aerial photo.



- It is possible that because the photo was taken three years before clearing occurred, the vegetation may have changed to a certain degree. Previous wet winters could have added to the plant diversity or density; whereas, increased foot traffic or other uses may have contributed to the reduction of habitat shown in the photo.
- The resolution of the photo is not high quality and the graininess contributes to the challenge of identifying central coastal scrub. This is an important factor in that for species such as the Morro shoulderband snail, one bush can be considered habitat.

Therefore, a more generalized approach was taken and based on the above factors, estimates of habitat quantity have been made within a range. The results of this analysis are as follows:

## B. Results

The subject property totals 2.99 acres of which an approximate 0.15 acre strip along the northern boundary was not cleared (refer to Figure 3). The 0.15 acre strip was not included in the aerial photo habitat analysis. It is the opinion of the Morro Group that of the remaining 2.84 acres of cleared land, approximately 75% (+/- 5%) consisted of central coastal scrub. Seventy-five percent, plus or minus five percent equates to a range of 1.99 to 2.27 acres.

For the sake of comparison, of the remnant 0.15 acre portion of the parcel left undisturbed, approximately 20% would be considered central coastal scrub.

## IV. MITIGATION MEASURE RECOMMENDATIONS

Prior to initiation of this report, the County of San Luis Obispo stated a need for mitigation measure recommendations associated with impacts to biological resources located on the subject property prior to clearing. The primary impact associated with the clearing has been described above as the removal of central coastal scrub and associated impacts to the endangered Morro shoulderband snail. Secondary impacts requiring mitigation would be the impacts to removal of oak trees.

Due to the fact that the USFWS is currently conducting an investigation into whether Mr. Wright had previous knowledge of the presence of endangered species habitat on the subject prior to conducting clearing operations, Morro Group is not in a position to recommend mitigation measures pertaining to these impacts. The USFWS states that the level of mitigation eventually required by their agency under the ESA will depend to a large extent on the results of the investigation. Therefore, with respect to Morro shoulderband snail and central coastal scrub impacts, the County should condition the proposed project to implement measures recommended by the USFWS. Impacts to oak trees should be mitigated by applying standard County mitigation ratios and implementation measures.

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