



County of Santa Cruz

PLANNING DEPARTMENT

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ALVIN D. JAMES, DIRECTOR

Agenda Date: June 18,2002

June 10,2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Appeals of Application #97-0770

Members of the Board:

Introduction

Two separate appeals have been filed regarding the Planning Commission's approval of Application 97-0770, the Pajaro River, Salsipuedes and Corralitos Creeks Management and Restoration Plan. One appeal was filed by the Monterey County Water Resources Agency (Attachment 1). The other appeal was made by William Parkin, attorney, on behalf of the Santa Cruz Group of the Sierra Club (Attachment 2).

County Code Chapter 18.10 specifies appeal procedures of Planning Commission decisions to your Board. In deciding whether to take jurisdiction of an appeal and grant further review, your Board evaluates information provided by the appellants to determine if any of the standards set forth in County Code Section 18.10.340 have been met. These criteria are:

- a. There was error or abuse of discretion on the part of the Planning Commission, Zoning Administrator or other officer;
- b. There was a lack of a fair and impartial hearing;
- c. The decision appealed from is not supported by the facts presented and considered at the time the decision appealed from was made;
- d. There is significant new evidence relevant to the decision which could not have been presented during the time the decision was made; or
- e. There is either error, abuse of discretion or some other factor which renders the act done or determination made unjustified or inappropriate.

County staff has reviewed both appeal letters and does not believe any of the above criteria have been met by either of the appeals submitted.

The Planning Commission's action to approve application #97-0770 on May 8,2002 came after several years of study and hearings on this project. As your Board is aware, the Zone 7 Board approved the Management and Restoration Plan for the Pajaro River in 1997. This approval

included selecting a preferred alternative from the four alternatives discussed in the Plan, directing County staff to conduct Environmental Review on the preferred alternative and to obtain the necessary permits to conduct the work. On April 9, 2002 the Zone 7 Board certified the EIR prepared for a slightly larger project (both Salsipuedes and Corralitos Creeks were included in the EIR as flood control work, similar to that proposed on the Pajaro, was also proposed on these two tributaries).

The project considered by the Planning Commission on May 8 was a Riparian Exception, Coastal Zone, and Grading Permit to conduct routine maintenance work along the three streams for flood control purposes and to provide certain biotic restoration activities as specified in the 1997 Plan. The following text of this letter is divided into two sections, each pertaining to the two separate appeal letters. Each issue is responded to directly following the issue raised.

Issues Contained in the Letter from Monterey County Water Resources Agency

1. The plan would result in an unacceptable and significant restriction and reduction on the flood carrying capacity in the area.

Response: The levees were constructed along the Pajaro River and Salsipuedes Creek by the U.S. Army Corps of Engineers in 1949 to provide flood protection up to a 50 year storm event. However, directly after the 1955 flood, when stream flows first overtopped the levees, the Corps downgraded the flood protection capability of the levee system. According to the analysis done in the EIR, allowing the Pajaro River to be retained in its natural condition without any flood maintenance activities would result in the levees providing protection up to a 20 year storm event. The project will increase that level of protection to a 31 storm event. Please refer to response to comment 12 for further information on this issue.

2. The Plan relies on manual vegetation management and maintenance which is ineffective, inefficient and overly costly.

Response: The Plan relies on a combination of manual and mechanical maintenance activities for flood protection and management. The most problematic sandbars and debris from flap gate channels will be removed by mechanical means with the maintenance vehicles stationed overhead to scoop the debris and sediment out of the channel and into dump trucks for disposal. The removal of vegetation with stem diameters greater than 3 inches will be done by hand operated chain saws. This is the method of vegetation removal that County Public Works crews use currently in the Pajaro River and Salsipuedes Creek. Commencing this work in June provides 19.5 weeks to complete the work prior to the October 15 cut off date. The Zone 7 budget has not been an impediment to funding this method of vegetation removal.

This method of vegetation removal has been used over the past three years under Riparian Exception Permit 98-0189 which expired in September 2001. During the past three summers Public Works crews have successfully removed larger woody vegetation using hand operated chain saws, beginning in the more thickly vegetated reaches of the streambed and banks and continuing in other reaches. An herbicide is applied to the remaining stems of the cut vegetation

to prevent re-growth. The cut stems are chipped with a mechanical chipper. Workers from the California Conservation Corps have been used to supplement the manpower of the regular Public Works maintenance personnel during this time. It is expected that supplemental manpower from the CCC and/or the County's Detention Facility will continue to be available in the future.

3. The Plan puts at **risk** implementation of a necessary 100 year flood protection plan.

Response: This comment is unclear as to which 100 year flood protection is being referred to or how another flood protection plan could be jeopardized. Therefore we are assuming this comment refers to the U. S. Army Corps of Engineers (Corps) sponsored future flood protection plan for the three subject streams. The Planning Commission's approval of Application 97-0770 does not affect planning efforts by the Counties of Santa Cruz and Monterey, the Corps, and other stakeholders on a future flood protection plan. Application 97-0770 was presented to the Commission as the interim plan to allow flood control work to occur each year until a more permanent plan, associated with the Corps project, is put into place. An interim plan is necessary, as the Corps sponsored planning efforts are continuing and a selected course of action and completion date for long-term flood control improvements are not known at this time.

4. The Plan constitutes environmental discrimination disfavorable to minorities and low income households where families reside and work within the area and the community Pajaro.

Response: This comment does not explain how the appellant believes the approval of implementation of Application 97-0770 will be discriminatory. Contrary to the comment, the implementation of the project will benefit residents with a wide range of incomes in both the Pajaro, Watsonville and Corralitos areas by providing increased flood protection along 12 miles of the Pajaro River, the entire 3 miles of Salsipuedes Creek and 8 miles of Corralitos Creek.

5. The Plan will prevent meeting and achieving FEMA flood protection standards.

Response: Please refer to the response to comment 3 above.

6. The Plan will usurp vast portions of agricultural land located within Monterey County.

Response: The project approved by the Planning Commission will not utilize any agricultural land or other land outside the confines of the levee system along the Pajaro River or the riparian corridor of Salsipuedes and Corralitos Creeks. The flood control work is based on removal of vegetation and sediment and related actions from within the riparian corridor and depositing the removed materials at the County landfill or other locations when requested by property owners (e.g. small amount of sediment placed on farmland as fill at owner's request).

7. The Plan exposes Monterey County and related agencies to claims and lawsuits as a result of flooding and associated natural events.

Response: It is unclear how the approval of Application 97-0770 will increase claims and lawsuits. Maintenance of the river channel and the streams is necessary in order to increase

capacity. The failure to approve a maintenance permit could increase liability risks rather than the reverse.

The Zone 7 Board has selected a project which provides the greatest protection from among the alternatives that are feasible, based on the EIR. The alternative which potentially provides greater flood protection (e.g. alternative 8) is infeasible based on the input by federal and State regulatory agencies, largely due to conflicts with the State and federal Endangered Species Acts (see response to #12 below). In addition, the approval of this Application does not prevent the County of Monterey or the Monterey Water Resources Agency from pursuing approval for alternative 8 or other plans and approvals for additional work on the Pajaro River. The Zone 7 Board is currently scheduled to consider a recommendation that Monterey assume the lead role on determining whether additional work could be permitted. This does not preclude the need for the current Application, since additional environmental work would be necessary to allow maintenance to proceed this summer.

8. The Plan provides inadequate consideration to necessary river bank maintenance and in-channel maintenance and maximum carrying capacity of the levee systems, in particular the Pajaro levee.

Response: The plan provided by Application 97-0770 provides routine maintenance work on both the stream bank and within the stream bed. These activities are described thoroughly in the EIR and the permit conditions that the Planning Commission approved for the project. These activities include removing all native woody vegetation (e.g. willows) with stem diameters greater than 3 inches from the stream bank outside of the Coastal Zone; removing all exotic vegetation; mowing and applying herbicide to grasses and weeds on levee slopes and stream corridor benches; removal of native woody vegetation from the streambed except for a 5 foot wide band of willows on each side of the low flow channel to comply with National Marine Fisheries Service (NMFS) requirements; periodic removal of sandbars within the most constrained flow area of the Pajaro River known as the "Salsipuedes confluence zone;" and removal of dead, downed and seriously leaning trees from the bank and streambed. A more detailed description of these activities is provided in condition I.C of the permit conditions approved by the Planning Commission (Attachment 3).

9. The Planning Commission decision was based upon deficiencies within the EIR, including that the EIR is in conflict with the Monterey County General Plan.

Response: This comment fails to say how the policies of the Monterey County General Plan are not met. Pages 37-38 and 63 of the EIR discuss the project's consistency with the Monterey County General Plan and concludes that the project is consistent with all applicable policies. This comment concerns the EIR which is not at issue here. The EIR was certified by Zone 7 in April and is now final.

10. The EIR is deficient in that it does not properly address the impact on low income housing in the community of Pajaro.

Response: See Response #9 above. It is noted, however that the appellant has confused the requirements of CEQA with those of the National Environmental Policy Act (NEPA). CEQA is the act that governs the preparation of EIRs. It does not require the "environmental justice" analysis that NEPA requires for the preparation of Environmental Impact Statements. The Initial Study checklist prepared as the first step in the CEQA Environmental Review of this project did consider the question: "Will the project result in the reduction of low/moderate income housing?" The Initial Study concluded the answer to this question was "no" since the project will not displace, demolish or otherwise remove low and moderate income housing for another use where this housing is located. When the checklist question is answered in the negative, there is no need to address the issue in an EIR.

The second step in the Environmental Review of this project was providing a Notice of Preparation (NOP) to all applicable public agencies including the County of Monterey. According to CEQA Guidelines 15082, the time for an agency to dispute the proposed scope of a pending EIR is during the NOP review period so the issue can be resolved prior to commencement of work on the EIR. The issue of low income housing was not raised by the appellant or any other Monterey County agency during the NOP period for this project. As a result, there is no need to provide this analysis in the EIR. Please also refer to the response to comment 4 above. Finally, as noted in the response to issue # 1 above, the project will result in an increased level of flood protection along the Pajaro River over that afforded by current conditions within the levee system.

- 11 The EIR is deficient in that it does not adequately address the current zoning designation of property lying on the Monterey County side of the Pajaro River.

Response: See Response #9 above. However, pages 38-40 and 63 discuss the project's consistency with Monterey County zoning regulations. The EIR does not identify the multitude of zoning designations for properties bordering the three project streams in either Santa Cruz or Monterey Counties, but rather discusses zoning regulations that apply to all zoning designations including those that govern environmentally sensitive habitats, water resources development standards and standards for diking, dredging and filling. The type of work proposed by Application 97-0770 is conditionally permitted in all zoning districts in each County. Therefore, identifying the various zoning districts in either County is not crucial to determining the effects of the activities proposed by Application 97-0770.

12. The EIR is deficient in that the Plan is inconsistent with the first listed objective of the Plan to "maintain the flood carrying capacity of the system." Table 3.8-1 in the EIR projects a reduction in flood carrying capacity ranging from 8-20% through reaches C-D for Alternative 6, the Mitigated Alternative.

Response: See Response #9 above. However, table 3.8-1 is presented in the Draft EIR (pages 135-139) and again with revisions in the Final EIR (pages 65-70). As can be seen on the last page of the table in both EIR volumes, the proposed project would reduce the hydraulic capacity of the river in reaches C-E by 8-11% and Reaches E-G by 12-18%, as compared to the 1996 condition of the Pajaro which was a cleared channel not, as alleged by the appellant, compared

to current conditions. Under a special permit exemption by the governor the Pajaro was cleared of most all of its vegetation in response to the 1995 flood. A very small amount of vegetation established itself by 1996 but more vegetation began to grow in the channel in successive years. The project will provide flood protection up to a 31 year flood event (revised from the 35 year flood event in the Draft EIR). This is similar to the flood protection that would be provided by the three other alternatives evaluated in Zone 7's 1997 Plan, which would provide flood protection up to a 29-32 year flood event. This level of protection is a substantial increase over the 20 year level of protection which the EIR states would occur if no maintenance project was implemented. (Alternative 7-the No Project Alternative).

Complete removal of all vegetation from the stream channel (Alternative 8 in the Final EIR table) would provide protection up to a 65 year storm. However, Alternative 8 has other impacts associated with it, including more stream bank erosion than the other seven alternatives evaluated in the EIR and loss of state and federally listed threatened and endangered species.

County staff's work on this project has included consultations and field visits with the State and federal agencies that administer the California and federal Endangered Species Acts. These agencies have informed staff that any plan similar to Alternative 8 would not be acceptable because of inconsistency with the Endangered Species Acts (Attachment 4). These agencies also have a role in the permits needed for the project at the State (Department of Fish and Game 1601 permit) and federal (U.S. Army Corps of Engineers 404 permit) level. It is exceptionally unlikely that either of these permits would be approved for a project which is similar in nature to Alternative 8 (see also, Response #7).

13. The EIR is deficient in that the proposed plan violates the Farmland Preservation Designation in the Monterey County General Plan.

Response: The project would occur on the Santa Cruz County side of the river, and with continuation of the existing agreement with Monterey County, provide flood control maintenance within the streambed located on both sides of the county boundary. No work by Zone 7 staff would occur on the stream bank, the levee benches, or the inner face of the levees in Monterey County. Any maintenance work at these areas would be the responsibility of the Monterey County Water Resources Agency. Therefore, because of its location the project would not introduce any activities or new uses on farmland in either Monterey or Santa Cruz Counties. Please refer to the responses to comments 9 and 11 above.

Issues Contained in the Letter from Bill Parkin for the Sierra Club

1. Approval of the project is in violation of Santa Cruz County General Plan policy 5.2.3 which requires "evidence of approval for development from the U.S. Army Corps of Engineers, California Department of Fish and Game and other federal and State agencies that may have regulatory authority over activities within riparian corridors and wetlands".

Response: The County's practice has been to issue Riparian Exception Permits conditional upon the applicant obtaining any necessary approvals from State and federal agencies prior to start of

work. As a practical matter, one of the permitting agencies must be the first to issue a permit. The County of Santa Cruz typically takes on this role since the County approval for these types of permits is typically quicker to obtain than associated permits from the California Department of Fish and Game or federal agencies, such as the Corps. The Commission's approval of Application 97-0770 includes Condition I.G which requires the Public Works Department to obtain the necessary State and federal approvals prior to the start of any work where approvals from these agencies are required. Written documentation of these approvals will be forwarded to County Planning for retention in the project's condition compliance file.

2. The Riparian Exception is so sweeping in scope, and provides such vague standards, that the permit allows indiscriminate destruction of riparian resources.

Response: Contrary to the appellant's statement, the various permit conditions set forth by the Commission establish specific standards for how work is to be conducted in the riparian corridors of the three streams in order to protect biotic resources. For example, Condition II.A limits all work to beyond the steelhead migration season of June 1-Oct 15. Many other Riparian Exceptions approved by the County allow work to begin on April 15. Conditions V.A. 1-4 limit where sand bar removal can occur and places environmental protections during the removal operations. Condition I.C places limits on the type of the management activities that can occur in reaches of the streams so that the removal of woody vegetation in Corralitos Creek and the reach of the Pajaro River downstream of Highway 1 (Coastal Zone reach) are limited to exotic vegetation and dead, downed and severely leaning trees. Conditions III.A and III.B require annual training of maintenance personnel in appropriate use of herbicides and how to identify the special statues animal species that inhabit the streams. A review of the permit conditions (Attachment 3) will show there are several more standards that apply to the flood control work. These Conditions of Approval comprise a comprehensive set of environmental protection standards governing maintenance work carried out by the County Public Works Department on the Pajaro River and Salsipuedes and Corralitos Creeks.

3. The proposal violates the California Coastal Act because it allows the destruction of environmentally sensitive habitat areas which are protected from development or destruction.

Response: Application 97-0770 proposes very limited work in the Coastal Zone portion of the project area. This is the reach of the Pajaro River downstream of Highway 1. The permit conditions limit work in this part of the river to the following:

- a. Removal of exotic vegetation;
- b. Removal of dead, downed and seriously leaning trees;
- c. Removal of sediment and debris from flap gate channels;
- d. Mowing of levee benches and slopes; and
- e. Application of herbicides to high weed growth on levee benches and slopes, where the herbicide will be limited to Round-up, which has been approved by the NMFS and the U.S. Fish and Wildlife Service.

Clearly, such limitations on maintenance work cannot be considered to be the destruction of environmentally sensitive habitat as alleged.

Most of the Coastal Zone portion of the river remains under the jurisdiction of the California Coastal Commission. The County must obtain a separate Coastal Zone Permit from that agency for the work described above within the Coastal Commission's jurisdictional area before most of this work can occur downstream of Highway 1. We understand that the Public Works Department has a permit application pending with the Coastal Commission.

4. The project violates the California Environmental Quality Act (CEQA) because the EIR fails to adequately provide detailed analysis of vegetation removal and its mitigations are too vague and uncertain.

Response: See Response #9 above. However, pages 16-20 of the Draft EIR provides a detailed description of where and how vegetation management is proposed to occur. This is followed by a 9 page table that provides this information again in tabular form along with identifying areas where biotic restoration would occur. The potential impacts of this proposed work on hydrology is provided on page 69 and 71-73 of the DEIR (Impacts H-1 and H-4). Potential impacts of the proposed work on biological resources is discussed on pages 103-111 (Impacts W-1, W-2, W-5, W-6, W-8, W-10 and W-12). Noise impacts of this proposed work is discussed on page 124 of the DEIR (Impact N-1). Visual impacts of vegetation removal is discussed on page 127 of the DEIR.

Where mitigations are necessary to resolve problems generated by impacts, they are discussed in the DEIR directly following the discussion of the impact. In addition, the issue of vegetation removal was discussed in several of the responses to comments letters in the Final EIR. All mitigation measures recommended in the EIR were adopted as permit conditions by the Planning Commission. The appellant fails to state why they believe the various mitigation measures are vague and uncertain. A review of the mitigation measures will show that they provide clear standards to govern the maintenance work. For example, Mitigation Measure W-8 specifies that the use of herbicides shall be limited to either Rodeo (aquatic vegetation) and Round-up (vegetation on channel banks and benches) and their use shall include worker training on proper application and safety techniques, an application period of July 1 to October 15, and use only when mowing is impractical to control vegetation. Similar details are provided in other mitigation measures pertaining to vegetation removal.

5. It violated CEQA by failing to perform adequate environmental review pertaining to cumulative impacts and fails to provide mitigations for identified cumulative impacts.

Response: See Response #9 above. However, Section 3.9.4 of the Draft EIR (pages 114-147) provides a discussion of cumulative impacts as required by CEQA. The purpose of this section of an EIR is to evaluate project impacts in conjunction with those generated by other projects in the vicinity of the project. The Draft EIR identified three specific projects which are proposed to occur on the project stream corridors (e.g. Corps sponsored future flood control project) and five types of general actions (City of Watsonville park and bicycle path improvements) that could add to (or decrease) impacts generated by Application 97-0770. Unlike cumulative analyses done for many other EIRs, none of the cumulative projects identified in the EIR for Application 97-0770

were far enough along in their planning process to provide a specific design proposal of these projects. As a result of the uncertain nature of these other projects, it would have been speculative to identify specific impacts or potential impacts expected to be generated by these projects. Since no cumulative impacts were identified in the EIR which exceeded a threshold of significance, no mitigation measures were included or warranted.

6. It fails to comply with all the provisions of the General Plan and County Code.

Response: This comment fails to explain why the appellant believes that the project does not comply with the County's General Plan or County Code. The EIR provides a detailed analysis of this issue on pages 35-37 and 43-48 and concludes that the project is consistent, consistent with mitigation or potentially consistent with all applicable General Plan policies and code regulations. The characterization of "potentially consistent" meant that a determination needed to be made by the decision-maker (e.g. Riparian Exception findings) before final consistency could be determined. The Planning Commission's findings included adoption of all mitigation measures as permit conditions that were necessary to make the project consistent with policies and regulations and a determination that the items identified as "potentially consistent" are items where consistency has been achieved.

Conclusion and Recommendation

Application 97-0770 is a maintenance program that necessarily must provide a balance between flood control activities and State and federally mandated protection of endangered species and related biotic resources that occur along the three project streams. The planning process for this project included the Zone 7 Board's work to develop the Pajaro River Management Plan. This Plan was developed with the participation of the County of Monterey and other interested parties. Following release of the Plan 1997 the County Public Works Department and Zone 7 staff submitted Application 97-0770 to the County Planning Department for Environmental Review and permit processing. Staff from both departments met repeatedly with representatives of the State and federal resource agencies to develop a program that would meet the requirements of these agencies while providing maximum feasible flood protection for residents in both Santa Cruz and Monterey Counties. The project approved by the Planning Commission provides that program.

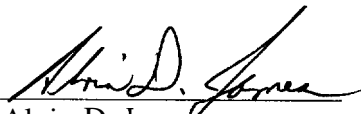
The two appeals to the Planning Commission's action represent differing points of view on what type of maintenance activities should occur along the three streams. The comments raised in the two appeal letters do not provide new information that could not have been known during the Planning Commission's consideration of the project, nor do they meet any of the other criteria contained in County Code Section 18.10.340 for your Board to take jurisdiction of this matter. Staff recommends that your Board decline to take jurisdiction of the appeals on Application 97-0770 and allow the Planning Commission's action approving Application 97-0770 with the conditions provided in Attachment 3 to be sustained.

On a related matter, one of the issues raised by the Monterey County Water Resources Agency was their desire to have Alternative 8, the mechanized clearing option presented in the final EIR, implemented. The EIR indicated that this alternative would provide 65 year flood protection, Zone 7

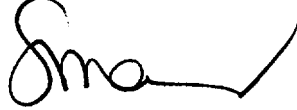
and Planning Department staff are currently working with the EIR consultant and Northwest Hydraulics to verify the accuracy of the level of flood protection afforded by this alternative. If this investigation results in a significant change to the level of flood protection attributable to Alternative 8, we will report these results to the Zone 7 Board of Directors along with any recommendations for appropriate action by that decision-making body.

It is therefore RECOMMENDED that your Board decline to take jurisdiction of the appeals submitted by the Monterey County Water Resources Agency or the Santa Cruz Group of the Sierra Club regarding the Planning Commission's approval of application 97-0770, a proposal to establish a maintenance program for the Pajaro River and Salsipuedes and Corralitos Creeks, based on the fact that the appellants have not established sufficient grounds for the Board to take jurisdiction for further review.

Sincerely,


Alvin D. James
Planning Director

RECOMMENDED:


Susan A. Mauriello
County Administrative Officer

Attachments: 1. Monterey County Water Resources Agency Letter of Appeal
2. Sierra Club Letter of Appeal
3. Permit Conditions adopted by the Planning Commission for
Application 97-0770
4. Letter from the NMFS dated February 14, 2000

cc: Curtis Weeks, MCWRA
Sally Reed, County of Monterey CAO
Bill Parkin, Sierra Club attorney
Tom Bolich, Public Works
County Counsel

MONTEREY COUNTY

ATTACHMENT 1



OFFICE OF THE COUNTY COUNSEL

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ADRIENNE M. GROVER
COUNTY COUNSEL

May 22, 2002

Honorable Jan Beautz
Chair, Board of Supervisors
Santa Cruz County
701 Ocean Street
Santa Cruz, California 95060

Re: Appeal of Planning Commission's decision of May 8, 2002, Item **H-3**,
Pajaro River Management and Restoration Plan granting certain Coastal Zone permits, grading
permits and riparian exception

Dear Chair Beautz and Members of the Board of Supervisors:

This letter will serve to notify the Board of Supervisors of Santa Cruz County that the Monterey County Water Resources Agency appeals the Santa Cruz County Planning Commission's approval and decision to implement: 1) the Pajaro River Management and Restoration Plan on 12 miles of the Pajaro River; 2) the Stream Bank Erosion Assessment Recommendations on 12 miles of the Pajaro River and all of Salsipuedes Creek; and 3) a management plan for the Salsipuedes Creek and 8 miles of Corralitos Creek.

Monterey County Water Resources Agency also appeals the granting of a Coastal Zone Permit, Grading Permit and riparian exception for this project. The project is located on the Pajaro River from the mouth upstream to Murphy's Crossing on Salsipuedes Creek from its confluence with the Pajaro River upstream to College Lake, and on Corralitos Creek from its confluence with Salsipuedes Creek upstream to Browns Valley bridge.

This appeal is based on the following issues:

The above plan and its objectives, if implemented, would adversely affect the environmental, business, property and community interest and uses by Monterey County residents, farmers and business owners along the lower Pajaro River corridor; in particular, the reach of the Pajaro River beginning at Murphy's Crossing and continuing westerly to the mouth of the river. This reach also includes the main stem reach of the Pajaro Levee system, built by the Army Corps of Engineers in 1949. Specifically, the plan is objectionable in that it:

1. would result in an unacceptable and significant restriction and reduction in the flood-carrying and prevention capacity in the area described above;

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2. relies upon manual vegetation management and maintenance which is ineffective, inefficient and overly costly;
3. puts at risk implementation of a necessary 100-year flood protection plan;
4. constitutes environmental discrimination disfavorable to minorities and low income households where families reside and work within the area, and the community of Pajaro;
5. will prevent meeting and achieving Federal Emergency Management Agency (FEMA) flood protection standards;
6. will usurp vast portions of agricultural land located within Monterey County;
7. exposes Monterey County and related agencies to claims and lawsuits as a result of flooding and associated natural events;
8. provides inadequate consideration to necessary river bank maintenance and in- channel maintenance and maximum carrying capacity of the levee system, in particular the Pajaro Levee;
9. the Planning Commission decision was based upon deficiencies within the Environmental Impact Report ("EIR") including:
 - a) the **EIR** is deficient in that it is in conflict with the Monterey County General Plan as adopted;
 - b) the EIR is deficient in that it does not properly address the impact on low income housing in the community of Pajaro;
 - c) the EIR is deficient in that it does not adequately address the current zoning designation of property lying on the Monterey County side of the Pajaro River;
 - d) the EIR is deficient in that the proposed Plan is inconsistent with the first listed primary objective of the Plan which is to "maintain the flood carrying capacity of the system." Table 3.8-1, Pajaro River Management and Restoration Plan Alternatives, Alternative-6, Mitigated Alternative, projects a reduction in flood carrying capacity ranging from eight (8) to twenty (20) percent through reaches C through G, as keyed to Figure 2.3-1 Project Area and is silent on the flood reduction impacts for reaches A and B. All other alternatives evaluated have similar adverse impacts to channel capacity. In 1998, existing capacity of the levee system was shown to be insufficient resulting in levee failure. Therefore, no project resulting in diminished capacity can be adequate; and

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e) the EIR is deficient in that the proposed plan violates the Farm Land Preservation Designation as set forth in the Monterey County General Plan.

The Monterey County Water Resources Agency fully supports and remains committed to providing proper flood control maintenance of the Pajaro River. It is because of this commitment that the Agency is concerned that the plan adopted by the Planning Commission is overly restrictive and will seriously hamper the installation and maintenance of future flood control efforts.

Very truly yours,

ADRIENNE M. GROVER
County Counsel


IRVEN L. GRANT
Deputy County Counsel

ILG:rsb

cc: Monterey County Board of Supervisors
Sally R. Reed
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PARALEGAL
Jana Rinaldi

May 21, 2002

HAND DELIVERED

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Re: Notice of Appeal of Planning Commission Decision
Application No. 97-0770;
Applicant, County of Santa Cruz Public Works and Zone 7

Dear Board of Supervisors:

This office submits the following Notice of Appeal on behalf of the Santa Cruz Group of the Sierra Club, appealing the decision of the Planning Commission to the Board of Supervisors concerning the approval of the above-referenced project. The Planning Commission approved the above referenced project on Wednesday, May 8, 2002. Thus, this appeal is timely filed pursuant to County Code.

The approval of the above-referenced project violates a number of provisions of the County Code and state law, which include, but are not limited to, the following:

1) Approval of the Project in Violation of Santa Cruz County General Plan Policy 5.2.3 which requires "evidence of approval for development from the U.S. Army Corps of Engineers, California Department of Fish and Game, and other federal or state agencies that may have regulatory authority over activities within riparian comdors and wetlands." This General Plan requirement is much more than a "consultation" requirement. The Planning Commission approved the project with mere consultation of the above referenced agencies. But, in order to grant a riparian exception, these authorities must first grant their approvals.

2) Approval of the riparian "exception" was hardly an exception at all. The exception is so sweeping in scope, and provides such vague standards, that the permit allows indiscriminate destruction of riparian resources.

3) The proposal violates the California Coastal Act because it allows the destruction of environmentally sensitive habitat areas ("ESHA"), which are protected from development or destruction.

4) Violation of the California Environmental Quality Act because the EIR fails to

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adequately provide detailed analysis of vegetation removal, and its mitigations are too vague and uncertain.

5) Violation of the California Environmental Quality Act by failing to perform adequate environmental review pertaining to, but not limited to, cumulative impacts and failing to provide mitigations for identified cumulative impacts; and,

6) Failure to comply with all provisions of the General Plan and the County Code.

For the foregoing reasons, the Planning Commission abused its discretion by failing to proceed in a manner required by law.

Thank you for your attention to this matter.

Very truly yours,



William P. Parkin

cc: Sierra Club

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Management and Restoration Plan for Pajaro River and Salsipuedes and Corralitos Creeks
Application 97-0770
Page 27

CONDITIONS OF APPROVAL

Pajaro River and Salsipuedes and Corralitos Creeks Management and Restoration Plan

Coastal Zone and Riparian Exception and Grading Permit No.: 97- 0770

Applicant and Property Owner. County of Santa Cruz Public Works Department and the County of Santa Cruz Flood and Water Conservation District (Zone 7) for all property owners within the project area.

Assessor's Parcel No. : Various

Property location and address: Property located on the following reaches of three stream corridors – a) Pajaro River from the river mouth 12 miles upstream to Murphy's Crossing; b) Salsipuedes Creek from its confluence with the Pajaro River upstream to College Lake; and c) Corralitos Creek from its confluence with the Pajaro River upstream 8 miles to Browns Valley bridge within the San Andreas, Pajaro Valley and Eureka Canyon planning areas.

EXHIBITS:

- A: Map of the Project Area, dated May 8, 2002
 - B: Stream Bank Erosion Assessment prepared by Northwest Hydraulics dated October 29, 1998.
 - C: Biological Assessment for the Pajaro River and Salipuedes and Corralitos Creeks, prepared by Harding ESE, dated September 11, 2001
 - D: Mitigation Monitoring and Reporting Program dated March 2002
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CONDITIONS:

I. GENERAL CONDITIONS AND APPROVALS

- A. This permit authorizes the flood control and biotic restoration maintenance activities within and adjacent to the riparian corridors of the reaches of the Pajaro River, Salsipuedes Creek and Corralitos Creek as mapped on Exhibit A for a 7-year period. Prior to the end of the 7-year period, the County Public Works Department shall apply for an amendment to this period to extend the time period if similar maintenance activities are desired on these three streams after May 22, 2009.
- B. Certain permit conditions that correspond to mitigation measures from the EIR are noted in italics with the number of the corresponding mitigation measure. As used in this permit, the term "applicant" and "the County of Santa Cruz Public Works Department" (County Public Works) are synonymous.
- C. This approval allows the following activities to occur in accordance with the limitations and conditions specified in this permit and its exhibits.

PAJARO RIVER

Coastal Zone Reach (from the river mouth to Highway 1)

<ul style="list-style-type: none"> • <u>Vegetation Removal</u> Removal of non-native invasive plants (e.g. arundo, acacia) Removal of native woody vegetation in the stream channel with stem diameters greater than 3 inches. Removal of both types of vegetation would be done by cutting at the base and hand applying the aquatic herbicide, Rodeo, at the base of each cut stem or trunk. (Native vegetation on the stream banks would not be removed). Removal of dead or downed trees out of the stream channel using heavy equipment that is stationed outside of the stream channel.
<ul style="list-style-type: none"> • <u>Vegetation Mowing</u> Mechanical mowing of herbaceous (grasses and similar plants) vegetation on levee slopes and the benches inside the levees.
<ul style="list-style-type: none"> • <u>Debris and Sediment Removal</u> Removal of debris and sediment from flap gate channels using vehicular equipment operating from

the top of the levee
<ul style="list-style-type: none"> <u>Herbicide Application</u> Application of Roundup-Pro herbicide to clear herbaceous vegetation from levee slopes and benches inside the levees according to conditions VI. B.1-3. Application of Rodeo only to the cut stems of woody vegetation with stem diameters greater than 3 inches on stream banks. Application of either herbicide of the cut stems of exotic woody plants, in accordance with conditions VI. B.1-2 and 4, where only Rodeo can be used on the stream banks.

PAJARO RIVER
 From Highway 1 to Murphy's Crossing

<ul style="list-style-type: none"> <u>Vegetation Removal</u> Removal of non-native invasive plants (e.g. arundo, acacia). Removal of all woody vegetation in the stream channel except for a 5-foot wide band of native vegetation on both sides of the low flow channel. Removal of all woody vegetation on the stream banks with stem diameters greater than 3 inches. Removal of all vegetation would be done by cutting at the base and hand applying herbicide at the base of each cut stem or trunk. The aquatic herbicide, Rodeo, would be used in the stream channel and banks. The herbicide, Roundup-Pro, would be used outside of the channel or banks according to conditions VI. B.1-3. Removal of dead or downed trees out of the stream channel using heavy equipment that is stationed outside of the stream channel.
<ul style="list-style-type: none"> <u>Vegetation Mowing</u> Mechanical mowing of herbaceous (grasses and similar plants) vegetation on levee slopes and the benches inside the levees.
<ul style="list-style-type: none"> <u>Debris and Sediment Removal</u> Removal of debris and sediment from flap gate channels using vehicular equipment operating from the top of the levee.

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| <ul style="list-style-type: none"> • <u>Sand Bar Removal</u>
Removal of accumulated sediment from the four sand bars within the "Salsipuedes Confluence Zone" as shown on Exhibit A according to the limitations described in Conditions V.A. 1-4. |
| <ul style="list-style-type: none"> • <u>Herbicide Application</u>
Same as within the Coastal Zone as described above. |

SALSIPUEDES CREEK
From the Pajaro River Confluence to Lakeview Road

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| <ul style="list-style-type: none"> • <u>Vegetation Removal</u>
Removal of non-native invasive plants (e.g. arundo, acacia). Removal of all woody vegetation in the stream channel. All emergent non-woody vegetation would remain. Removal of all woody vegetation on the stream banks with stem diameters greater than 3 inches, except for that vegetation along the toe of the stream bank. Woody vegetation on benches would also remain. Removal of all vegetation would be done by cutting at the base and hand applying herbicide at the base of each cut stem or trunk. The aquatic herbicide, Rodeo, would be used in the stream channel and banks. The herbicide, Roundup-Pro, would be used outside of the channel or banks according to conditions VI.B.1-3. Removal of dead or downed trees out of the stream channel using heavy equipment that is stationed outside of the stream channel. |
| <ul style="list-style-type: none"> • <u>Vegetation Mowing</u>
Mechanical mowing of herbaceous (grasses and similar plants) vegetation on levee slopes and the benches inside the levees. |
| <ul style="list-style-type: none"> • <u>Debris and Sediment Removal</u>
Removal of debris and sediment from flap gate channels using vehicular equipment operating from the top of the levee. |

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| <ul style="list-style-type: none"> • <u>Sand Bar Removal</u>
Removal of accumulated sediment from any sand bar according to the limitations described in Conditions V.A.1-4. |
| <ul style="list-style-type: none"> • <u>Herbicide Application</u>
Application of Roundup-Pro herbicide to clear herbaceous vegetation from levee slopes and benches inside the levees according to conditions VI.B.1-3. Application of Rodeo only to the cut stems of woody vegetation with stem diameters greater than 3 inches on stream banks. Application of either herbicide of the cut stems of exotic woody plants, in accordance with conditions VI.B.1-4, where only Rodeo can be used on the stream banks. |

SALSIPUEDES CREEK
From Lakeview Road to College Lake

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| <ul style="list-style-type: none"> • <u>Vegetation Removal</u>
Removal of non-native invasive plants (e.g. arundo, acacia). Removal of dead or downed trees out of the stream channel using heavy equipment that is stationed outside of the stream channel. Removal of any leaning tree that is determined will fall into the channel that season unless removed. |
| <ul style="list-style-type: none"> • <u>Vegetation Mowing</u>
Mechanical mowing of herbaceous (grasses and similar plants) vegetation on the levee slopes on the west side of the stream up to the Highway 152 bridge. All native vegetation on the east side of the stream would remain, except as specified above. |
| <ul style="list-style-type: none"> • <u>Debris and Sediment Removal</u>
Removal of debris and sediment from flap gate channels using vehicular equipment operating from the top of the levee. |

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|---|
| <ul style="list-style-type: none">• <u>Sand Bar Removal</u>
Removal of accumulated sediment from any sandbar according to the limitations described in Conditions V.A.1-4. |
| <ul style="list-style-type: none">• <u>Herbicide Application</u>
Application of Roundup-Pro herbicide to clear herbaceous vegetation from levee slopes and benches on the west side of the stream up to the Highway 152 bridge according to conditions VI.B.1-3. Application of Rodeo only to the cut stems of woody vegetation with stem diameters greater than 3 inches on stream banks. Application of either herbicide of the cut stems of exotic woody plants, in accordance with conditions VI.B.1-2 & 4, where only Rodeo can be used on the stream banks. |

CORRALITOS CREEK

From the highway 152 Bridge to the Browns Valley Bridge

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|---|
| <ul style="list-style-type: none">• <u>Vegetation Removal</u>
Removal of non-native invasive plants (e.g. arundo, acacia). Removal of dead or downed trees out of the stream channel using heavy equipment that is stationed outside of the stream channel. Removal of any leaning tree that is determined will fall into the channel that season unless removed. |
| <ul style="list-style-type: none">• <u>Debris and Plugs of Vegetation Removal</u>
Removal of debris and plugs of vegetation that block or divert stream flow using heavy equipment operating from outside of the stream channel. |

D. This permit requires the biotic restoration along the three streams as follows:

1. Pajaro River – Downstream of Highway 1
This reach of the river will be allowed to naturally establish and maintain a native riparian community. Vegetation removal is limited to that described in the table titled “Pajaro River – Coastal Zone Reach” in Condition I.C. (*Measure W-1*)
2. Pajaro River – Upstream of Highway 1

- a. Active planting of trees every **40** feet in a staggered non-linear fashion shall occur on all benches that are greater than 12 feet in width. The trees shall be the following mixed species: California sycamore, Black cottonwood, big leaf maple and box elder. To ensure that these trees will survive over the long-term and not contribute to bank instability during how flow events, no trees shall be planted closer than 8 feet from interface of the bench and top of channel bank. (*Measure G-5*)
- b. Establishment of willows and similar native vegetation on the stream banks, where removal is limited in this area to woody vegetation with stem diameters greater than 3 inches. (Refer to Table in Condition I.C).
- c. Establishment of a 5-foot wide band of willows on each side of the low flow channel. (Refer to Table in Condition I.C).

3. Salsipuedes Creek

- a. Natural establishment of willows and similar native vegetation at the toe of the stream banks, where removal is limited in this area to woody vegetation with stem diameters greater than 3 inches. (Refer to Table in Condition I.C).
- b. Natural establishment and retention of the trees and other vegetation on the entire east stream bank from Lakeview Road to the Highway 152 Bridge.
- c. Natural establishment of emergent herbaceous vegetation in the stream channel.

4. Corralitos Creek

This reach of the river will be allowed to naturally establish and maintain a native riparian community. Vegetation removal is limited to that described in the table titled "Corralitos Creek" in Condition I.C.

E. Biological Assessment

The implementation of all conditions of this permit shall be compatible with that described in Exhibit C (Biological Assessment) of this permit. Exhibit C shall be referred to when further information is needed regarding details of permit conditions that address mitigation of biological impacts.

F. Grading Approvals

1. This permit authorizes the removal of accumulated sediment from selected sand bars if the standards in Condition V.A. 1-4 are met.

2. Grading work for stream bank repairs shall utilize one of the 8 techniques provided in Exhibit B (Stream Bank Assessment). All repair work involving the grading of more than 100 cubic yards of earth, fills greater than 2 feet in depth or cuts greater than 5 feet in depth require a County Grading Permit. In this case Public Works shall make a permit application to County Planning at least 5 months prior to the scheduled commencement of work. The application shall include the submittal of Grading Plan that meet the grading standards specified in conditions V.B. 1-5 and V.C. 1-7.
 - G. The Public Works Department shall obtain the required permit approvals from the U.S. Army Corps of Engineers and the California Department of Fish and Game prior to commencing the work authorized by this permit.
 - H. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/owner shall:
 1. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 2. Pay an EIR filing fee of \$850.00 to the Clerk of the Board of the County of Santa Cruz as required by the California Department of Fish and Game mitigation fees program.
11. TIMING OF WORK
- A. Routine maintenance work (work not responding to a storm related emergency) shall be conducted during June 1 to October 15 each year, except for vegetation control and herbicide application described below. (*Measures G-10 and W-4c*)
 - B. Vegetation control work, including herbicide application, shall not be conducted before July 1 of that year to maximize the growth of vegetation for nesting birds and leave active nests undisturbed throughout the breeding season. (*Measure W-6*)

III. TRAINING AND SURVEYS TO BE COMPLETED PRIOR TO START OF ROUTINE WORK EACH SEASON

- A. Maintenance workers shall be briefed on the potential presence of California red-legged frog and western pond turtle in work areas and be informed of avoidance measures to be employed. (*Measure W-9b*)
- B. Maintenance workers that will handle herbicides shall be trained in its proper use and participate in annual review training sessions as describes in Condition IV.A.1.d below.
- C. Public Works shall have a qualified biologist conduct surveys for suitable Red-legged frog habitat 24 hours prior to vegetative clearing or levee work

and avoid identified suitable habitat areas from routine maintenance work.
(Measure W-9c)

- D. Prior to any modifications of the sandbar at the mouth of the Pajaro River, Public Works shall have a qualified biologist conduct surveys for the Western snowy plover to determine if this threatened bird species would be impacted. If present, impacts to the species shall be avoided by implementing the recommendations of the biologist during modification of the sandbar. (Measure W-11)

IV. BIOTIC MONITORING AND SURVEYS TO OCCUR DURING THE DRY SEASON EACH YEAR

- A. To minimize loss of beneficial in-stream habitat characteristics for steelhead, annual monitoring of the effectiveness of the vegetative buffer along the low flow channel shall be conducted by a qualified biologist hired by the Public Works Department. The results of the survey shall be submitted to County Public Works, County Planning, CDFG, USFWS, and NMFS prior to November 1 each year. Recommendations to correct identified problems shall be included in this report including that, which addresses Conditions IV.B-C below. (Measure W-2a)
- B. If the vegetation buffer is too sparse during some years to facilitate creation of a low flow channel as determined by the monitoring biologist, willow cuttings shall be planted along the low flow channel in the spring according to the recommendations of the biologist to enhance vegetation re-establishment. The success of this willow planting shall be evaluated in subsequent year biotic monitoring. (Measure W-2b)
- C. Water temperatures shall be monitored to document temperature patterns along the Pajaro River and Salsipuedes Creek and evaluate conditions for migrating smolts. (Measure W-2c)
- D. The benefit of re-vegetation to birds, including tree planting on Pajaro River benches, shall be monitored with yearly surveys over the course of five years following restoration. (Measure W-3)
- E. To determine if backwaters form, as anticipated, to benefit the red-legged frog and other species as a result of the established 5-foot vegetation buffer for the low channel, Public Works shall have a qualified biologist conduct annual for this purpose. If backwaters do not form, Public Works shall initiate a bullfrog eradication program on Hansen and Harkins Sloughs in accordance with recommendations of a biologist to carry out such a program to benefit area-wide populations of the red-legged frog. The effectiveness of the eradication program shall be monitored.
(Measure W-9d)
- F. The results of the surveys and monitoring for Conditions IV.A-E above shall be submitted to County Public Works, County Planning, CDFG, USFWS and NMFS prior to November 1 each year. Recommendations to correct

identified problems shall be included in this report. (*Measures W-2a, W-2b, W-2.c, W-3 and W-9d*)

V. GRADING STANDARDS

A. Sand Bar Removal

1. The removal of accumulated sediment from sand bars may occur without any further approvals if:
 - a. The sand bars are one of the four main sand bars within the Salsipuedes Confluence Zone of the Pajaro River. This is more precisely defined as the reach of the Pajaro beginning 500 feet upstream of the confluence with Salsipuedes Creek downstream to the Union Pacific Rail Road bridge (measured as 3,500 feet downstream of the confluence);
 - b. The sand bars are within Salsipuedes Creek downstream of the Highway 152 bridge;
 - c. Within the Pajaro, the sand bars exceed 4 feet in height above water level and 250 feet in length; and
 - d. All removed sediment is taken off site for proper disposal. (*Measure W-4d*)
2. This permit does not permit sandbar removal not meeting the standards stated above.
3. Measures shall be implemented to minimize turbidity in the low flow channel during any sand bar removal. (*Measure W-4b*)
4. A meandering low flow channel shall be maintained during sand bar removal or reconstructed immediately following in-channel work. (*Measure W-4d*)

B. Stream bank repair not exempt from a Grading Permit, as specified in Condition I.E.2 above shall obtain an approved Grading Permit from County Planning prior to conducting any work. An application for a Grading Permit shall be made at least 5 months prior to the scheduled start of work. The application shall include proposed grading plans that provide the following:

1. A plan view of the work site and a minimum of two cross-sections that are perpendicular to each other;
2. Contour lines that depict existing and proposed (post-grading) topography at the work site;

3. An erosion/sediment control plan that provide measures to control erosion and protect water quality both during construction/grading work and after all work has been completed as further described in Condition C.4 below (*Measures H-3 and G-2*);
 4. Any civil or geotechnical engineering reports or studies necessary for the adequate construction of the repair work; and
 5. A verbal description explaining how all applicable conditions of this permit will be complied with during construction.
- C. In addition to the grading plan specifications in Condition II.B, the design of stream bank repair shall include the following:
1. To prevent reduction of hydraulic capacity of project streams, bank protection measures shall not be constructed unless studies show that:
 - a. Hydraulic capacity would not be decreased below current (year 2001) capacity; and
 - b. Erosion is substantial enough to threaten the adjacent levee.These studies shall include:
 - a. A topographic survey of the Pajaro River and Salsipuedes Creek channels to establish baseline year (2002) bank topography information;
 - b. Field observation of the affected bank vicinity to determine if previous bank armoring exists;
 - c. Annual monitoring after significant storm events to determine the presence and rate of bank erosion;
 - d. Field measurements from new (damaged) toe of levee to compare to baseline (year 2002) conditions; and
 - e. Engineering analysis of channel capacity with proposed armoring in place (HEC-2 or HEC-RAS computer models) (*Measure H-2*)
 2. To prevent impacts on the Monterey County of the river, all bank repairs shall be designed to prevent substantial cross-channel deflection of stream flows that could cause stream bank erosion on the opposite stream bank. An engineering analysis shall be provided to demonstrate how this objective will

be accomplished. (*Measure G-4*)

3. To protect failures of new stream bank protection measures, the design of rock armoring and toe protection shall include measures to mitigate for flanking flows. (*Measure G-8*)
4. To prevent erosion problems up-stream and down-stream of stream bank repair sites, the design of bank protection shall consider the effects of adjacent areas and design features to reduce impacts to up- and down-stream adjacent areas. (*Measure G-9*)
5. Measures shall be implemented to minimize turbidity during any in-water construction. (*Measure W-4b*)
6. To reduce the potential for erosion and sedimentation in the adjacent river, the final design of proposed bank protection shall include preparation of an erosion control plan that incorporates requirements of the County of Santa Cruz Grading Ordinance, Erosion Control Ordinance, County Design Criteria, and the Construction Activities General Permit. The plan shall be reviewed and approved by County Planning and applicable regional and State agencies, when required, prior to the commencement of any construction activity. All provisions of the approved plan shall be followed during construction. (*Measure H-3*)
7. To compensate for the removal of fallen trees and other natural habitat features used by in-stream wildlife, the repair of any stream bank damage shall include the placement of large (3-foot) boulders or other structures anchored into the channel at the toe of the bank to create pools and escape cover for steelhead and other species. This feature and how it will be anchored, shall be shown on grading plans for bank repair work. (*Measure W-5a*)

VI. OPERATIONAL REQUIREMENTS

A. General Requirements

1. Public Works shall limit grading and similar activities to those that will generate less than 82 lbs/day of particulate matter (dust). To minimize dust generation and its effects on nearby residential and agricultural uses, the Public Works Department shall schedule grading and related maintenance activities so that a single area of less than one acre is being disturbed within a single workday. If this is not possible, then the grading site shall be watered with a spray truck constantly during the workday. (*Measure AQ-1*)

2. Equipment shall be outfitted with mufflers and their operation limited to the hours of 8 a.m. to 5 p.m. weekdays. If is determined that noise problems are occurring, the Public Works drainage maintenance supervisor shall be contacted by Planning staff to work out measures to minimize noise impacts. These measures shall be implemented before any maintenance activities resume at the problem area. (*Measure N-1*)
3. All vegetation planted for restoration and erosion control purposes shall be permanently maintained by Public Works crews as part of routine maintenance.

B. Use of Herbicides

1. To sustain non-toxic effects to aquatic wildlife, Rodeo and Roundup herbicides shall be applied in such a manner as to avoid over-spray or application of Roundup in or adjacent to surface water. These measures shall include:
 - a. Use of only Rodeo and Round-up herbicides at or below concentrations recommended by the manufacturer;
 - b. Use of Round-up for on-land application only;
 - c. Proper precautions to prevent accidental spills of the herbicide; and
 - d. Annual worker training of all maintenance workers that will work with herbicides in that year. Worker training shall include emphasizing spray and hand-painting techniques that target vegetation rather than water and other non-target areas and how to prevent accidental spills.
(*Measure H-4*)
2. Application of Roundup shall be limited to areas where vegetation cannot be effectively mowed to control growth.
(*Measure W-4*)
3. Application of Rodeo on cut stems or trunks shall be by hand-painting the herbicide on the cut with a brush; no spraying shall be conducted for this purpose.

C. Biotic Management During Routine Maintenance

1. To prevent accelerated erosion of repaired levee slopes, graded areas shall be re-vegetated prior to October 15 of the same

year that repair work occurred. (*Measure G-2*)

2. Fallen or leaning trees removed in all parts of Corralitos and Salsipuedes Creeks shall be cut into 3- to 4-foot sections and left in place. Their root structures shall also be left in place. These features will provide habitat for steelhead, western pond turtle, and California red-legged frog. (*Measure W-5b*)

D. Use of Equipment

1. Any maintenance equipment that is within or near a wetted channel will be inspected to be free of grease, oil, and fuel that could enter the watercourse. Heavy equipment will only cross a wetted channel in extreme cases. In all circumstances, when operating heavy equipment within or adjacent to the wetted channel, fuel and oil tanks/pans should be surrounded by secondary containment devices. Hydraulic oils will meet, at minimum, Environmental Protection Agency aquatic toxicity requirements and be biodegradable. (*Measure W-12*)

XII. MITIGATION MONITORING AND REPORTING PROGRAM

- A. The mitigation measures listed in Exhibit D of this permit have been incorporated into the conditions of approval for this project in order to mitigate or avoid significant effects on the environment. As required by Section 21081.6 of the California Public Resources Code, a monitoring and reporting program for the above mitigations is hereby adopted as a condition of approval for this project. This monitoring program is specifically described following each mitigation measure listed in Exhibit D. The purpose of this monitoring is to ensure compliance with the environmental mitigations during project implementation and operation. Failure to comply with the conditions of approval, including the terms of the adopted monitoring program, may result in permit revocation pursuant to Section 18.10.462 of the Santa Cruz County Code.
- B. There shall be an annual review of condition compliance and mitigation monitoring by the Planning Commission on or before January 15 each year after the County Public Works Department has submitted a progress report on condition compliance and mitigation monitoring to County Planning staff for review. Staff shall place the report on the consent agenda of the Planning Commission within 2 months of receipt of the report from the PVWMA. The report shall use Exhibit D as a guide to prepare the report so it is easy to discern the monitoring results of each individual permit condition that is derived from an EIR mitigation measure. The monitoring of other permit conditions shall also be provided in these reports in a format identical or similar to that provided for by Exhibit D for mitigation measures. Public Works shall submit their annual monitoring report to County Planning, CDFG, USFWS and NMFS by November 1 each year.
- B. Based on their review of the monitoring report and any supplemental

information from Planning staff and other agencies, the County Planning Commission shall make a determination each year regarding the success of implementing the project and the conditions of this permit. If the Commission believes that revisions to the permit conditions are necessary to address identified problems with implementation, the Commission shall schedule a public hearing to review the performance of the project during the previous year(s) and take action as permitting by Chapter 18.10 of the County Code.

Minor variations to this permit, which do not affect the overall concept or density, may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.



UNITED STATES DEPARTMENT OF COMMERCE 31
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
777 Sonoma Avenue, Rm 325
Santa Rosa, California 95404-6528

ATTACHMENT 4

February 14, 2000

F/SWR3:JEA

Mr. Joe Madruga
Monterey County Water Resources Agency
P.O. Box 930
Salinas, California 93902

Dear Mr. Madruga:

This letter is in regards to the joint agency meeting on December 13, 1999, in which we discussed the coordination of the Pajaro River maintenance activities of both Santa Cruz and Monterey Counties under a Habitat Conservation Plan (HCP). As you know, Santa Cruz County has been working closely with the National Marine Fisheries Service (NMFS) and has developed the Pajaro River Management Plan that addresses vegetation management within the river channel. Santa Cruz County is proposing to utilize hand clearing for vegetation management to maintain channel capacity during high flows. This approach clearly minimizes adverse impacts to listed species in the Pajaro River, including the threatened South-Central California Coast steelhead. NMFS appreciates Santa Cruz County's cooperation and efforts to modify their maintenance practices to minimize the potential take of salmonids under the Federal Endangered Species Act (ESA).

NMFS believes that Monterey County's proposal to include the use of mechanized clearing in the Pajaro River Management Plan is inconsistent with trying to conserve ESA listed salmonids. The use of bulldozers in the stream channel to clear vegetation exacerbates the problem of sandbar formation by increasing the width/depth ratio of the channel and decreasing the bedload transport rate of the river. As seen on the Salinas River, this practice could be adversely impacting the continued existence and recovery of steelhead and adversely affecting critical habitat.

In discussions with Colonel Grass of the U.S. Army Corps of Engineers (*Corps*), he agreed that mechanized clearing is not an acceptable solution for vegetation management. Presently, the Corps is studying long-term solutions for improving channel flowcapacity in the Pajaro River while improving anadromous fish habitat. It is our understanding that the Corps intends to proceed with this project in the near future, possibly within 3-5 years. In light of this information, NMFS recommends that Santa Cruz and Monterey Counties consult with NMFS on a short-term management plan for the Pajaro River which conserves listed species. NMFS is fully committed to cooperatively work with both counties to address the protection of private property and listed salmonids.



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ATTACHMENT 4

Long-term, NMFS encourages Monterey County to consider developing a multi-species HCP that would provide for the conservation of federally listed species and authorize incidental take for county management practices.

I look forward to working closely with You and the County of Santa Cruz on this project. If you have any questions, please contact Ms. Joyce Ambrosius at (707) 575-6064.

Sincerely,



Patrick J. Rutten
Northern California Supervisor
Protected Resources Division

cc: J. Lecky - NMFS
P. Cota-Robles - Co. of Santa Cruz
P. Coulston - CDFG, Monterey
P. Anderson - CDFG, Monterey
A. Orton-Palmer - USFWS, Ventura
K. Tschantz - Co. of Santa Cruz

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