

In the matter of the application of
Kathleen M. Collard & C Donald Bauer (PLN070560)

FINDINGS & DECISION

for a **Use Permit** in accordance with Title 21 (Zoning) Chapter 21.74 (Use Permits) of the Monterey County Code, Permit to rectify Code Enforcement Case CE060372 for the removal of six protected oak trees. The property is located at 27475 Vista Del Toro, Salinas, Toro Area Plan, and came on regularly for hearing before the Zoning Administrator on July 10, 2008.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. FINDING: CONSISTENCY – The project, as described in Condition No. 1 and as conditioned, conforms to the policies, requirements, and standards of the Monterey County General Plan, Toro Area Plan, Toro Area Plan Inventory and Analysis, and the Monterey County Zoning Ordinance (Title 21), which designates this area as appropriate for development.

EVIDENCE: (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of applications. No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

(b) The property is located at 27475 Vista Del Toro, Salinas (Assessor's Parcel Number 416-391-047-000 & 416-391-048-000), Toro Area. The parcel is zoned Resource Conservation with Building Site and Design Control zoning district overlays or "RC-B-8-D" which allows residential development.

(c) Design Control or "D" zoning requires design review of structures to assures the protection of the public viewshed, neighborhood character, and the visual integrity of certain developments without imposing undue restrictions on private property. The construction of structures is not part of the subject application and therefore a Design Approval application is not incorporated.

(d) The regulations for the Preservation of Oak and Other Protected Trees as provided at Section 21.64.260.D of the Monterey County Zoning Ordinance (Title 21) requires a Use Permit for the removal of more than three protected trees. As such, a Use Permit is incorporated into the project to allow the de facto removal of six protected oak trees. See Finding No. 3.

(e) The project was not reviewed by the Toro Land Use Advisory Committee (LUAC). This application consists of a Use Permit for de facto oak tree removal to rectifying Code Enforcement activities (Code Enforcement File No. CE060372). No new development or additional oak tree is requested in this application.

(f) The project planner conducted a site inspection on January 29, 2008 to verify that the project on the subject parcel conforms to the plans listed above.

(g) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project File PLN070560.

2. **FINDING: SITE SUITABILITY** – The site is physically suitable for the use proposed.

EVIDENCE: (a) The project has been reviewed for site suitability by the following departments and agencies: RMA - Planning Department, Salinas Rural Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development.

(b) A Tree Assessment Forest Management Plan (FMP) was prepared for this project by Frank Ono, Forester, Pacific Grove, CA, dated July 10, 2007 (Monterey County RMA – Planning Department, Library No. LIB0080273).

(c) Staff conducted a site inspection on January 29, 2008 to verify that the site is suitable for this use.

(d) Materials in Project File PLN070560.

3. **FINDING: TREE REMOVAL** – The project, as conditioned, is consistent with the regulations for Preservation of Oak and Other Protected Trees, Section 21.64.260.D of the Monterey County Zoning Ordinance (Title 21). The Zoning Administrator finds:

1. The proposed tree removal is the minimum required under the circumstances of the case.
2. The proposed tree removal will not involve a risk of environmental impacts.
3. The tree is diseased, injured, in danger of falling too close to existing or proposed structures, creates unsafe vision clearance, or is likely to promote the spread of insects or disease.

EVIDENCE: (a) This application requests a Use Permit to rectify a pending code violation for the removal of oak trees, which involves Assessor's Parcel Numbers 416-391-048-000 and 416-391-067-000. Assessor's Parcel Number 416-391-048-000 is the property owned by the Applicants, Donald Bauer and Kathleen Collard, and 416-391-067-000 (a well lot) is owned by the Vista Del Toro Property Owners Association. The subject oak tree removal occurred exclusively on the applicant's property. According to the property owner, the oak trees were removed to provide access to the well lot for the replacement of water tanks. According to the Parcel Map recorded at the Monterey County Recorder's Office at Volume 9 of Parcel Maps, page 209 (Exhibit K of the July 10, 2008 Zoning Administrator Staff Report), a designated access easement for the well tanks was recorded for the subdivision. This easement correspondence with the driveway for the residence located on Assessor's Parcel Number 416-391-048-000. In addition, the replacement of the water tanks is the responsibility of the property owners of the well lot, the Vista Del Toro Property Owners Association. Correspondence received attached as Exhibit L of the July 10, 2008 Zoning Administrator Staff Report, indicates that the subject tree removal occurred independent of the Vista Del Toro Property Owners Association authorization.

(b) Section 21.64.260.F.3 of the Monterey County Zoning Ordinance (Title 21) exempts permit requirements for "tree removal for construction of structures, roads, and other site improvements included in an approved subdivision, Use Permit, or similar discretionary permit." According to the property owner, the tree removal had occurred in order to replace existing water tanks on a water tank lot, as designated by the subdivision's tentative map, and therefore the removal of the oak trees was required to access the water tank lot. The file was referred to the RMA - Planning Department for further research. After researching the Vista del Toro subdivision approval (Planning Department File No.

MS-986, attached as Exhibit J of the July 10, 2008 Zoning Administrator Staff Report) the Zoning Administrator determined that Vista del Toro is an approved subdivision required to supply 1,000-gallons of water storage for each lot (see condition of approval no. 2 of Resolution No. MS-986), and that the exemption as provided at Section 21.64.260.F.3 of the Monterey County Zoning Ordinance (Title 21) would apply if needed for the original subdivision improvements. Subsequent tree removal for the tank replacement is subject to existing regulations.

- (c) A letter dated May 24, 2001 from the Environmental Health Division to Vista del Toro Mutual Water Company care of Paul Ulrich requests that the water tanks be replaced on Assessor's Parcel Number 416-391-067-000. According to County records, the Vista del Toro Mutual Water Company is the appropriate authority to replace the water tanks for the subdivision. In a letter dated, October 31, 2007, the Planning Department requested additional information from the property owners in an effort to support a nexus between the tree removal and direction by the Vista del Toro Mutual Water Company and the application of the aforementioned exemption. The additional information requested consisted of (1) A letter from the President or Vice President of the Vista del Toro Mutual Water Company authorizing Don Bauer to replace the water tanks on behalf of the water company; and (2) a copy of the Vista del Toro Mutual Water Company Articles of Incorporation. The property owners were unable to produce this information and applied for the subject Use Permit on February 21, 2008. No activities are proposed outside the scope of what is needed to clear this property of the pending Code Enforcement violation.
- (d) The trees have already been removed. However, a Use Permit is required to clear the pending code enforcement violation. Considering that the subject application does not request the removal of additional oaks and other protected trees, implementation of conditions of approval, specifically Condition No. 8 requiring reforestation, will abate the violation.
- (e) A Tree Assessment Forest Management Plan (FMP) prepared for this project by Frank Ono, Forester, Pacific Grove, CA, dated July 10, 2007 (Monterey County RMA – Planning Department, Library No. LIB0080273) prescribes a reforestation program to remedy the violation. The program includes a 3:1 replacement ratio for removed and severely pruned oak trees and monitoring for a period of 5 years. The Zoning Administrator finds that by implementing the reforestation plan as prescribed by the FMP (Condition No. 8) the property will comply with County Code.
- (f) Restoration of the property was determined to be infeasible pursuant to the testimony of Donald Bauer at the July 10, 2008 Zoning Administrator hearing.
- (g) The application, project plans, and related support materials submitted by the project applicant to the Monterey County Resource Management Agency - Planning Department for the proposed development found in Project File PLN070560.
- (h) Staff's review of the development application during site visit on January 29, 2008 concluded that the removal could not involve a risk of adverse environmental impacts.

4. FINDING: CEQA (Exempt): - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

EVIDENCE: (a) California Environmental Quality Act (CEQA) Guidelines Section 15333, categorically exempts projects, not exceeding 5 acres in size, that assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife.

(b) No adverse environmental effects were identified during staff review of the development

application during a site visit on January 29, 2008.

- (c) A Tree Assessment Forest Management Plan (FMP) prepared for this project by Frank Ono, Forester, Pacific Grove, CA, dated July 10, 2007 (Monterey County RMA – Planning Department, Library No. LIB0080273) prescribes a reforestation program to remedy the violation. The program includes a 3:1 replacement ratio for removed and severely pruned oak trees and monitoring for a period of 5 years (Condition No. 8).

5. FINDING: NO VIOLATIONS - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property. Zoning violation abatement costs, if any, have been paid.

- EVIDENCE:**
- (a) On October 27, 2007, the County received a complaint regarding tree removal on the subject parcels. Upon investigating the alleged removal, Code Enforcement staff sent a Notice of Violation letter via certified mail to the property owners on December 26, 2006. The Violation Notice, (attached as Exhibit H of the July 10, 2008 Zoning Administrator Staff Report) states a violation of Section 21.84.040.A of the Monterey County Zoning Ordinance (Title 21) for: "Three (3) oaks trees removed, one (1) oak tree severely pruned and two (2) oak trees with more than 30% of the canopy removed with benefit of prior approval, contrary to Monterey County Code Chapter 21.64.260(C.1) (D.1)." Furthermore, the notice required that the property owner apply for the necessary permits to abate the violation within one month (January 29, 2007) to avoid the invocation of administrative procedures should the violation continue to exist after that date. On December 29, 2007, Code Enforcement staff determined and notified the property owners that the appropriate permit to remedy the violation is a Use Permit as the number of trees removed and severely pruned exceeds three.
 - (b) The Applicants have applied for this Use Permit for the removal of three or more protected oak trees to comply with the regulations governing the Protection of Oaks and Other Protected trees pursuant to Section 21.64.260 of the Monterey County Zoning Ordinance (Title 21) and to remedy Code Enforcement File No. CE060372.
 - (c) Staff conducted a site inspection on January 29, 2008 to verify that the subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's Zoning Ordinance (Title 21).
 - (d) Application, plans, and related support materials found in Project File PLN070560.

6. FINDING: HEALTH AND SAFETY - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

EVIDENCE: Preceding Findings 1 and 2 and supporting evidence.

7. FINDING: APPEALABILITY - The decision on this project is appealable to the Planning Commission.

EVIDENCE: Section 21.80.040.B Monterey County Zoning Ordinance (Title 21).

DECISION

THEREFORE, it is the decision of the Zoning Administrator that said application for a Use Permit be granted as shown on the attached sketch, and subject to the attached conditions.

PASSED AND ADOPTED this 10th day of **July, 2008**.



MIKE NOVO, ZONING ADMINISTRATOR

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON **JUL 28 2008**

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE SECRETARY TO THE PLANNING COMMISSION ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE **AUG - 7 2008**

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County RMA - Planning Department and RMA - Building Services Department offices in Salinas.

2. This permit expires two years after the above date of granting thereof unless construction or use is started within this period.

**Monterey County Resource Management Agency
Planning Department
Condition Compliance and/or Mitigation Monitoring
Reporting Plan**

Project Name: Bauer Kathleen M Collard & C Donald (JT Ten)

File No: PLN070560

APN: 416-391-048-000

Approved by: Zoning Administrator

Date: July 10, 2008

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

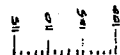
<i>Permit Cond. Number</i>	<i>Mitig. Number</i>	<i>Conditions of Approval and/or Mitigation Measures and Responsible Land Use Department</i>	<i>Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.</i>	<i>Responsible Party for Compliance</i>	<i>Timing</i>	<i>Verification of Compliance (name/date)</i>
1.		PD001 - SPECIFIC USES ONLY This Use Permit (PLN070560) rectifies Code Enforcement Case CE060372 for the removal of six protected oak trees. The property is located at 27475 Vista Del Toro, Salinas (Assessor's Parcel Number 416-391-048-000), Toro Area Plan. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of the RMA - Planning Department. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless otherwise stated	

		conditions and mitigation measures are properly fulfilled. (RMA - Planning Department)				
2.		PD002 - NOTICE-PERMIT APPROVAL The applicant shall record a notice, which states: "A permit (Resolution 070560) was approved by the Zoning Administrator for Assessor's Parcel Number 416-391-048-000 on July 10, 2008. The permit was granted subject to 7 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department." Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use. (RMA - Planning Department)	Proof of recordation of this notice shall be furnished to the RMA - Planning Department.	Owner/ Applicant	Prior to the issuance of grading and building permits or commencement of use.	
3.		PD004 - INDEMNIFICATION AGREEMENT The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon	Submit signed and notarized Indemnification Agreement to the Director of RMA – Planning Department for review and signature by the County. Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA – Planning Department.	Owner/ Applicant	Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable	

		<p>demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. (RMA - Planning Department)</p>				
4.		<p>PD016 – NOTICE OF REPORT Prior to issuance of building or grading permits, a notice shall be recorded with the Monterey County Recorder which states: "A Tree Assessment Forest Management Plan (FMP) report has been prepared for this parcel by Frank Ono, Forester, dated July 10, 2007 and is on record in the Monterey County RMA - Planning Department , Library No. LIB0080273. All development shall be in accordance with this report." (RMA – Planning Department)</p>	<p>Proof of recordation of this notice shall be furnished to the RMA - Planning Department.</p>	Owner/ Applicant	Prior to the issuance of grading and building permits.	
5.		<p>PD033 - RESTORATION OF NATURAL MATERIALS Upon completion of the development, the area disturbed shall be restored to a condition to correspond with the adjoining area, subject to the approval of the Director of the RMA - Planning Department. Plans for such restoration shall be submitted to and approved by the Director of the RMA - Planning Department prior to commencement of use. (RMA – Planning Department)</p>	<p>Submit restoration plans to the RMA - Planning Department for review and approval.</p>	Owner/ Applicant	Prior to commencement of use.	
6.		<p>PDSP001 – ON-SITE TREE REPLACEMENT (NON-STANDARD) The Monterey County Regulations for the Preservation of Oak and Other Protected Trees, Section 21.64.260.D.4 of the Zoning Ordinance (Title 21), requires the applicant to relocate or replace each removed protected tree. The Arborist's Report prepared for this project by Frank Ono</p>	<p>Schedule an on-site inspection and/or submit photos of the trees on the property to the RMA – Planning Department after construction to document that tree protection has been successful or if follow-up remediation or additional permits are required.</p>	Owner/ Applicant	Prior to final inspection	

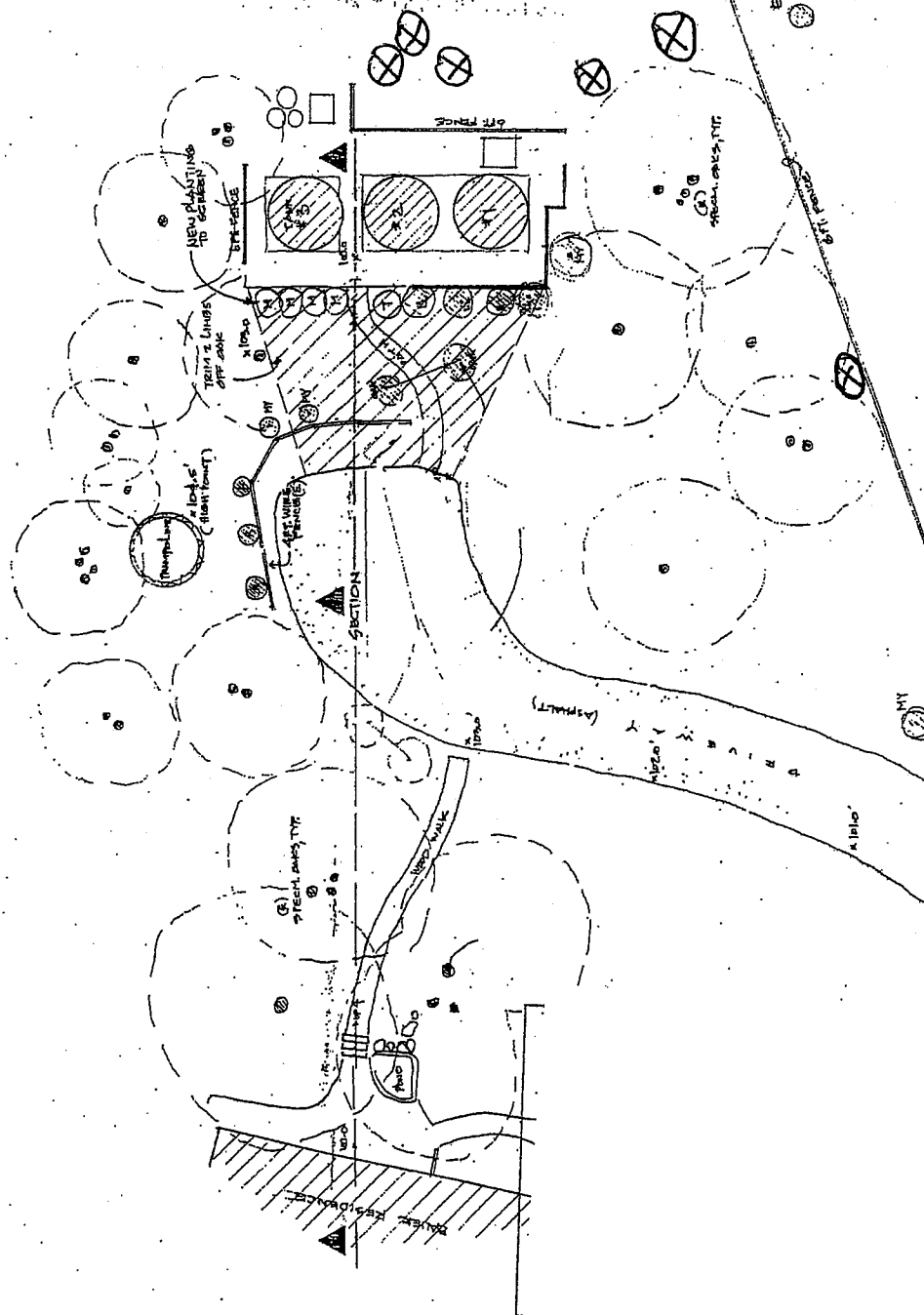
		Consulting, dated July 10, 2007 on record in the Monterey County RMA - Planning Department, Library No. LIB080273 confirms that replacement is appropriate for the subject property. Therefore, the property owner shall plant fifteen 5-gallon sized Valley oaks of local genetic stock on-site at a location as prescribed by a registered forester or arborist. Trees of local genetic stock are available at local nurseries. (RMA – Planning Department)				
7.		PDSP002 – REFORESTATION PROGRAM (NON-STANDARD) The applicant shall replant 15 trees. All non-landmark oak trees removed as a result of the project at a 3:1 replacement ratio. All trees shall be replaced in on-site areas suitable for supporting oak species as determined by a qualified forester or arborist. The minimum replacement size shall be 5 gallons or greater. Nursery and/or field propagation of oak seedlings are preferred. The reforestation program shall include a monitoring element that guarantees a success period of not less than 5 years after planting and a success ratio threshold of no less than 90%. Each year for five years, a report shall be prepared by a registered forester or arborist and submitted to the Planning Department for review and approval of the Director of Planning describing reforestation activities conducted during the year and shall describe success rates and corrective measures provided to adjust program based on earlier successes or failures. This condition shall cease once the required number of replacement trees have passed the five-year anniversary completion date required for plant success. (RMA – Planning Department)	Plant trees within nine (9) months of project approval.	Owner/ Applicant	Within 9 months.	
			The applicant shall provide evidence each year for five years that tree planting has been successful.	Owner/ Applicant	Every year for 5 years after successful tree planting	
			If a success ratio threshold of no less than 90% is not achieved at year 5, a report shall be submitted providing corrective measures to adjust program based on earlier successes or failures until a 90% success ratio threshold is achieved.	Owner/ Applicant	At year 5.	

END OF CONDITIONS



NEW GREEN PLANTINGS

SECTION 1" - 10'-0"



PLAN : 14 = 10' - 0"

EXISTING (E) PLANTS:

B	BAY
L	LAUNDRER
L	LEPID. LAETUM
L	LY
M	MYRORIUM
R	ROSEMARY TORCAN BLUE
W	WILLOW
ALL	CITRUS AGRICOLA

ALL NEW AND EXISTING PLANTS SHALL BE
DEEP LOCATED AER. AIR SPRITERS TO BE
PLANT, 2 IN. BENTERS TO ALL OTHER PLANTS
SHOWN ABOVE. 1/2 BENTERS LINE CONNECTED
TO 3/4" ATMOSPHERIC BLANK WITH DSG FLOER.
MAN LINE TO BE SAID P.C. 1" WITH 3/4" INLET
WELDED BLANK, THEN CONNECTED TO P.C. W/ 3/4" INLET
WELDED P.C. CONTROL WITH TAP AFTER.

1956 SUBSTITUTED NATIVE PLANTS:
RIBES INTENSICOLOR,
GARCIA ELLIPICA

	NAME	CITY	STATE
M.	DONALD MARIE	A - 198-	
T.	EMILIA CALIFORNICA	1 - 158-	
	HETEROMERIS ARISTATA		

1. *Phragmites australis* (Cav.) Trin. ex Steud.

100

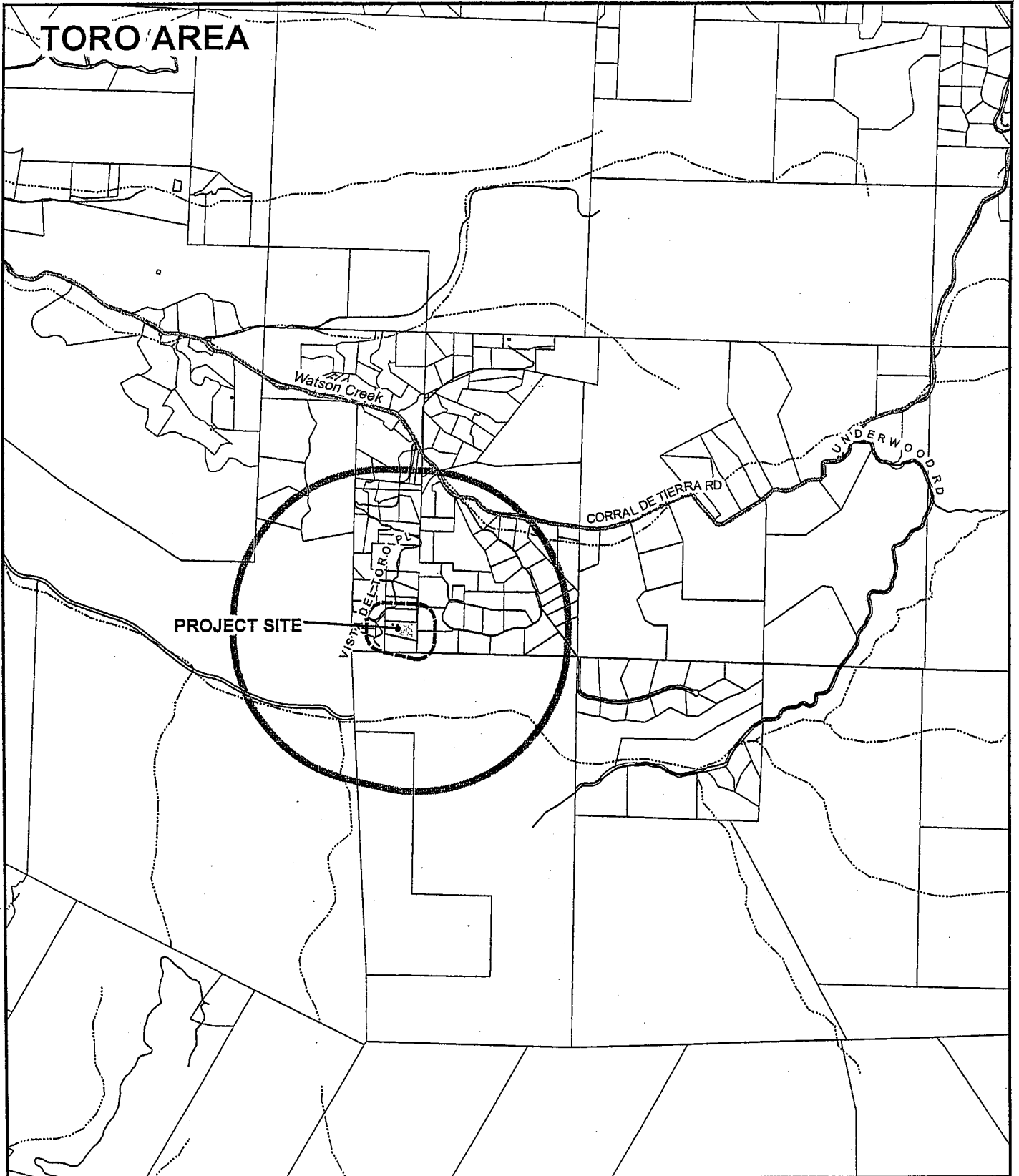
12-21-80

Ulysses
1911-12

1957



TORO AREA



APPLICANT: BAUER

APN: 416-391-047-000 & 416-391-048-000

FILE # PLN070560



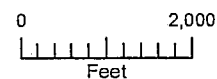
300' Limit



2500' Limit



City Limits



PLANNER: MANGUERRA