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Staff report approved by:	D.Carl
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APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal numberA-3-SLO-06-043, SDS Family Trust

Applicant.....SDS Family Trust

AppellantsCommissioners Sara Wan and Mike Reilly, Sierra Club (Santa Lucia Chapter), and Surfrider Foundation (San Luis Bay Chapter).

Local governmentSan Luis Obispo County

Local decisionApproved by San Luis Obispo County on June 6, 2006 (Coastal Development Permit (CDP) DRC2004-00125).

Project locationSeaward side of Highway 1 along the Harmony Coast (between Cayucos and Cambria) approximately one mile south of the town of Harmony in unincorporated San Luis Obispo County.

Project description.....Construction of a 4,576 square foot barn and elimination of an existing required coastal accessway.

File documents.....San Luis Obispo County CDP files for CDPs DRC2004-00125 and D010354P; San Luis Obispo County certified Local Coastal Program (LCP).

Staff recommendation ...**Substantial Issue Exists; Denial in part, Approval with Conditions in part**

A. Staff Recommendation

1. Summary of Staff Recommendation

San Luis Obispo County approved a coastal development permit (CDP) authorizing the construction of a 4,576 square-foot barn and the removal of a requirement for a lateral public access trail easement that was associated with a previous CDP associated with the property. The County-approved project is located on a 400-acre parcel west of Highway 1, in a rural agricultural area of San Luis Obispo County's North Coast between Cayucos and Cambria, known locally as the Harmony Coast. The appellants contend that the applicant has undertaken the development authorized by, and thus enjoyed the benefits of the prior CDP, with the result that the conditions of that approval, including the condition that requires a lateral public access trail easement offer to dedicate (OTD), are binding on the applicant and



may no longer be challenged. The appellants further contend that the County's action eliminating the required lateral public access trail easement is inconsistent with the LCP and the Coastal Act's public access and recreation policies.

Staff recommends that the Commission find that the appeal raises a substantial issue (and thus take jurisdiction over the subject CDP); that the portion of the project eliminating the lateral public access trail easement be denied (based on Coastal Act and LCP-inconsistent adverse impacts to public recreational access); and that the portion of the project associated with the barn be approved with special conditions designed to address adverse coastal resource impacts (primarily in terms of visual and agricultural impacts) and to bring the project into conformity with the LCP and the Coastal Act's public access and recreation policies.

On May 7, 2002, the applicant's predecessor in ownership sought a CDP (CDP-1) to redevelop an existing uninhabitable residence. The proposed redevelopment included, among other things, construction of a new porch/utility/bath area, installation of a new septic tank and leach field, and connecting the residence to an existing agricultural well. Sometime thereafter, the applicant's predecessor in ownership initiated redevelopment of the residence. On March 30, 2003, the property ownership was transferred to SDS Family Trust, the current property owner and applicant, who took over the CDP-1 application. CDP-1 was subsequently approved on March 19, 2004 and exercised at that time. CDP-1 included a condition that the applicant record an OTD for a lateral public access trail easement across the shoreline portion of the property as required by the LCP, in part based on the County's finding that such requirement was necessary to offset impacts associated with the change in intensity of use proposed. The applicant did not appeal CDP-1 pursuant to LCP Coastal Zone Land Use Ordinance (CZLUO) Section 23.01.042, nor challenge the conditions through judicial means pursuant to CZLUO Section 23.01.080 or otherwise.¹

On December 10, 2004, after a substantial portion of the project had been constructed, the applicant applied for a second CDP (CDP-2) which included a proposal to construct a new 4,576 square foot barn and to remove the lateral public access trail easement condition associated with CDP-1. Because CDP-1 had been exercised and its terms and conditions were final (i.e., there was no challenge pursuant to the avenues for challenge afforded the applicant), the portion of the application associated with the lateral access easement condition was an application to eliminate an existing required public accessway along the shoreline. On March 17, 2005, the County Planning Commission approved CDP-2 authorizing the barn and re-authorizing the house redevelopment,² with a condition reducing the lateral public access trail easement to the portion of property known as China Harbor (rather than along the entire length of

¹ CZLUO Section 23.01.042 requires that an appeal be filed within fourteen days of the decision that is the subject of the appeal. CZLUO Section 23.01.080 requires court actions or proceedings involving the review of permits to be filed within ninety days after the decision becomes final.

² Because the house redevelopment had already been permitted and was substantially constructed pursuant to CDP-1, the "reauthorization" component of CDP-2 was unnecessary, as it approved the same development that was approved through CDP-1, but it did not replace or undo the approval granted through CDP-1, which had already by this time been effected through development associated with it. As a result, the effect of "reauthorization" through CDP-2 is meaningless to the questions associated with CDP-2.



the property). The applicant appealed the permit based on this Planning Commission remedy, seeking instead full removal of all conditions related to public access. On June 6, 2006, the County Board of Supervisors sided with the applicant and eliminated the existing public accessway along the one-mile shoreline of the property altogether (i.e., the accessway previously required by CDP-1), while also approving the barn reconstruction.³ The County's decision on CDP-2 was appealed to the Commission.

The County's decision on CDP-2 is inconsistent with the LCP and the Coastal Act's access and recreation policies (i.e., the standard of review) because it removes an existing public accessway along one-mile of shoreline in an area, the Harmony Coast, where such recreational access opportunities are extremely limited. Such a decision does not provide for or maximize public recreational access opportunities, interferes with the public's right to access the sea, does not protect recreational and visitor-serving no-cost facilities, does not protect upland/oceanfront land for recreational use and activities (e.g., kayaking and small craft access at China Harbor), and does not give priority to this existing recreational facility inconsistent with the Coastal Act's access and recreation policies and the LCP. In addition, the accessway provides critical coastal views and visual access to a portion of the coast which has significant visual resources and unique cultural and historic resources, and eliminating it is inconsistent with LCP viewshed policies. The proposed project's impacts on public recreational access and public views are especially significant given that the existing public accessway is located in a highly scenic and rural area of San Luis Obispo County that has been explicitly designated in the LCP as a sensitive resource area (SRA) and a critical viewshed precisely because of its access and viewshed attributes.

Accordingly, staff recommends that the Commission deny a CDP for the portion of the proposed development that would remove the existing public accessway

With respect to the proposed barn, it has the potential to cause coastal resource impacts, including primarily those related to public views and agricultural protection. Staff recommends conditions to ensure that the barn is sited and designed to reflect a rural agricultural barn design that can effectively blend with the surrounding area, and to ensure that it is used only for agricultural uses. Additional conditions are recommended to ensure that violations are resolved (including ensuring that the lateral public access trail easement associated with CDP-1 is properly recorded, thus resolving potential public recreational access issues), and that appropriate notice is provided regarding the CDP terms and conditions via recorded deed restriction. As conditioned, the barn will be in conformity with the applicable policies of the LCP and the Coastal Act.

Staff thus recommends that the Commission approve, with conditions, a CDP for the portion of the proposed development that would allow for the barn.

³ It appears that the County should have processed CDP-2 as an amendment to CDP-1, rather than as new development, as it is unclear how it could remove a condition of approval of a prior permit through a new permit action. CDP-1 is still valid and in effect, so the mechanism for removing a condition of that approval should have been an amendment to that permit. Staff is recommending denial of this portion of CDP-2, however, so this procedural concern is not significant if the Commission follows the staff recommendation.



The three motions necessary to effect the staff recommendation are found immediately below.

2. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action.

Motion. I move that the Commission determine that Appeal Number A-3-SLO-06-043 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act. I recommend a no vote.

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

Resolution to Find Substantial Issue. The Commission hereby finds that Appeal Number A-3-SLO-06-043 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

3. Staff Recommendation on CDP Application

Staff recommends that the Commission (a) **deny** the portion of the proposed development that would remove the existing accessway, and (b) **approve**, subject to conditions, the portion of the proposed development that would allow for the barn. The Commission needs to make two motions and take two votes to act on this recommendation.

A. Denial In Part (Denial of Elimination of the Existing Accessway)

Staff recommends a **NO** vote on the motion below. Failure of this motion will result in denial of a coastal development permit for the portion of the proposed development that would remove the existing accessway and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion (1 of 2). I move that the Commission approve Coastal Development Permit Number A-3-SLO-06-043 for the portion of the proposed development that would remove the existing accessway as proposed by the Applicant. (Staff recommends a no vote.)

Resolution to Deny a Coastal Development Permit In Part. The Commission hereby denies a coastal development permit for the portion of the proposed development that would remove the existing accessway on the grounds that the development will not conform with the policies of the San Luis Obispo Local Coastal Program, and that it is located between the sea and the first



public road nearest the shoreline and it will not conform with the access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit for this portion of the proposed development would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

B. Approval In Part (Approval of Barn Improvements)

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in approval of a coastal development permit for the portion of the proposed development that would allow for the barn, as conditioned, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion (2 of 2). I move that the Commission approve Coastal Development Permit Number A-3-SLO-06-043 for the portion of the proposed development that would allow for the barn pursuant to the staff recommendation. (Staff recommends a yes vote.)

Resolution to Approve a Coastal Development Permit In Part. The Commission hereby approves a coastal development permit for the portion of the proposed development that would allow for the barn on the grounds that the development as conditioned, will be in conformity with the policies of the San Luis Obispo County Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the coastal development permit for this portion of the proposed development complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

Report Contents

A. Staff Recommendation.....	1
1. Summary of Staff Recommendation.....	1
2. Staff Recommendation on Substantial Issue.....	4
3. Staff Recommendation on CDP Application.....	4
B. Findings and Declarations	6
1. Project Setting.....	6
2. San Luis Obispo County CDP Approval	8
3. Appeal of San Luis Obispo County CDP Approval	12
4. Substantial Issue Determination	14
5. Coastal Development Permit Determination	15



- A. Elimination of the Existing Accessway16
- B. New Barn20
- 6. Coastal Development Permit Conditions of Approval29
 - A. Standard Conditions.....29
 - B. Special Conditions29
- C. Exhibits
 - Exhibit 1: Location Maps
 - Exhibit 2: Photos of the Residence
 - Exhibit 3: Photo of China Harbor
 - Exhibit 4: San Luis Obispo County CDP Approval (File Number DRC2004-00125) (CDP-2)
 - Exhibit 5: San Luis Obispo County CDP Approval (File Number D010354P) (CDP-1)
 - Exhibit 6: Appeals of County CDP-2 Decision
 - Exhibit 7: Photo of Previous Barn
 - Exhibit 8: Barn Visual Simulations
 - Exhibit 9: Barn Plans

B. Findings and Declarations

The Commission finds and declares as follows:

1. Project Setting

A. Regional Setting

The project is located in northern San Luis Obispo County along the Harmony Coast, an area extending roughly 15 miles between the unincorporated coastal communities of Cayucos through to Cambria (see Exhibit 1). The Harmony Coast area was originally inhabited by the Chumash people; Native Americans who lived along the Central and Southern California coastline from approximately 9,000 B.C. until their population began to decline around the time of the Spanish settlement. The Chumash people were a hunter-gatherer society that regularly navigated the ocean on *tomols* (plank boats) used for whale hunting and trade. Although the exact cause of their decline is the subject of some academic dispute, the Chumash were eventually decimated by European diseases such as influenza and small pox for which they had no immunities. From around 1820 through 1863, the subject property and surrounding areas were used by Mission San Miguel, and later by a private Mexican landowner, for grazing livestock. In approximately 1863 the area became available for purchase, pre-emption and homesteading pursuant to the Land Act of 1851. Around this time, the Harmony area was settled by Swiss dairy farmers who developed a productive creamery and dairy co-op. The creamery produced clarified butter made in the classic Swiss style and was known statewide for its perfect golden yellow color and extended shelf life. Eventually, increased grazing land fees and competition in the industry led to the eventual collapse of the Harmony Valley Dairy Co-op around 1955. Since then, although the town of Harmony has dwindled in size, it still provides a vibrant base for the area as a whole, including accommodating a few retail



artisan shops and a winery that provide the only visitor-serving commercial facilities along this mostly undeveloped coastal area.

The Harmony Coast area is well known for its mild year-round climate, rugged coastal vistas, and unique natural, cultural and recreational features. The Harmony Coast area is traversed by Highway One along the inland flank of the coastal range, which provides a public viewshed that is still agrarian and largely undeveloped – and oftentimes spectacular in its natural beauty, including both low and high rolling mountainous areas extending on both sides of the road framed in certain areas by large flatter plains. Really, the experience wending along Highway One through the Harmony Coast can take the visitor back to a time when large portions of California’s coastal area were largely undeveloped like this area still is, and is evocative of a simpler time. Within this rural, pastoral setting, the area also supports a vibrant if low-key tourist industry sustained by this overall setting. Its location between the towns of Cayucos and Cambria, which provide jumping off points for exploration, and its abundance of ocean-based recreational activities, including surfing, diving, kayaking and fishing, all play off the stunning coastal scenery and rich ecological resources. With the recent State Parks acquisition of Harmony Headlands State Park, and recent CDP requirements for coastal accessways nearby,⁴ access to the coastal portion of this area seaward of the Highway, including visual access to the immediate shoreline, will soon be enhanced where little was available before.

B. Project Location

The proposed project is located on a 400-acre property⁵ approximately one-mile north of Villa Creek Road that is accessed by a private gated road which is directly off of Highway 1 (see Exhibit 1). The site is part of what is at times referred to as the South Ranch (an area of approximately 550 acres) and was originally part of the larger Rancho San Geronimo. The properties that made up the South Ranch were given certificates of compliance by the County and auctioned in the early 1990s. The northern portion of the property is characterized by gently rolling hills that extend to the south toward a steep ridge. Just beyond the ridge is a relatively flat marine terrace that ends abruptly at the coastal bluff, generally dropping near vertically approximately 25 to 50 feet down to the immediate shoreline and Pacific Ocean. The base of the bluff is characterized by a rocky shoreline area and tidepools along the upcoast portion of the property, and by a small beach area along the downcoast portion of the property (see Exhibit 3). This beach area is known as China Harbor, an approximately half-mile long, south-facing pocket beach with a rich cultural history. Its significance and history is perhaps best summarized by the text on a bronze plaque monument located on the bluff overlooking the beach:⁶

⁴ Including lateral public trail access on the subject site per the prior CDP approved by the County in 2004 (CDP D010354P) and lateral public trail access associated with the Schneider CDP just downcoast approved by the Coastal Commission in January 2008 (CDP A-3-SLO-00-040).

⁵ Consisting of three APNs (046-082-005, 046-082-010, and 046-082-011).

⁶ The plaque is located on the subject property. In her seminal work “The Chinese In America: A History From Gold Mountain To The New Millennium” (copyright 2002 by AltaMira Press), Susie Lan Cassel describes the cultural significance of China Harbor and this plaque as follows: “These few words sum up the true history of the region, commemorating seaweed folks as well. But history books in libraries and in schools, distorted by discrimination, often



China Harbor has seen the likes of the Chumash and Spanish explorers, Swiss/Italian dairy farmers, rum runners, and cattle ranchers. During prohibition, the secluded harbor was a drop-off point for liquor smugglers. China Harbor is reported to have received its name from the Chinese immigrants, who worked the mines, railroads, and ranches and settled along the coast between Cayucos and San Simeon as seaweed farmers. The last of these seaweed farmers, How Wong resided immediately South of China Harbor and farmed the sea until about 1975.

The property is located in an area that remains largely undeveloped. It is upcoast of Estero Bluffs State Park and The Abalone Farm, a large commercial abalone facility located on the terrace about 1.5 miles downcoast of the subject site. Nearby, two outbuildings are located on the terrace of the Pierson property, approximately one mile downcoast of the project site: one is an old coast guard shack that is being maintained by the property owner, and the other is a dilapidated shack that had been used by a seaweed farmer. There is also an abandoned motor home parked in the area, which appears to be on the Stubbs property, a coastal inholding surrounded on three sides by the subject property and on the seaward side by the ocean. And finally, the property is located just downcoast of Harmony Headlands State Park, with which it shares a common border extending roughly a mile from the Pacific to near Highway One inland. (See Exhibit 1 for an annotated map of the area.)

The accessway portion of the proposed project is located along the immediate shoreline, including along China Harbor. This area of the property, including along the marine terrace area and immediate shoreline, is undeveloped, other than the aforementioned plaque. The residential/barn portion of the proposed project is located on the northern portion of the property inland of the coastal ridge and in view of Highway One. In addition to the existing farm house (see also below), the remains of the old barn, some scattered minor structures, and older ranch roads can all be found on the project site. There is evidence that the site, particularly portions of the marine terrace, was at one time plowed and used as cropland.

2. San Luis Obispo County CDP Approval

A. CDP D010354P (CDP-1)

On May 7, 2002, the previous property owner, Walton Emmick applied for a permit seeking authorization to redevelop the farm house on the site (County CDP application number D010354P – hereafter “CDP-1”). The development proposed under CDP-1 included significant interior and exterior renovations to make the farm house habitable, installation of a new septic system, connecting the house to an existing agricultural well, and improving the driveway. After applying for this permit (but prior to its approval) Emmick also applied for, and received, two building permits for additional farm house restoration activities from the County.⁷ A few months later, Emmick sought and obtained an emergency CDP from the County to install an agricultural well for livestock adjacent to the residence as a

omitted the Chinese presence and contribution. *Unfortunately, the plaque is located on private ground that is inaccessible to the public.*” (emphasis added)

⁷ San Luis Obispo County Building Permit number C6843 to repair dry rot and to reroof (approved June 10, 2002) and number C6889 to repair a deck (approved June 13, 2002).



temporary measure.⁸ A follow-up CDP to permanently recognize the well improvements installed under emergency authorization was approved by the County on November 1, 2002.⁹

At some point during the restoration work Emmick was undertaking pursuant to the 2002 building permits, the County building inspector notified Emmick that the work that was being performed was not yet authorized under then pending CDP-1, and asked Emmick to stop work pending approval of CDP-1. According to the County record for CDP-1, no official stop work order was issued because Emmick voluntarily stopped construction activities when notified to wait by the County. On March 30, 2003, the property ownership was transferred to SDS Family Trust, the current property owner and applicant, who took over Emmick's application and continued to pursue CDP-1. On March 19, 2004, the County approved CDP-1. The County's CDP report acknowledged that some work had occurred under the separately issued building permits, including construction of a new foundation. The County's CDP authorized some of the work that had already taken place pursuant to these building permits, as well as some development that had not yet taken place. All told, CDP-1 authorized: interior alterations and restorations; window replacement; exterior materials replacement (including siding, stairs, railing, porches, trim and roofing); porch/utility/bath area demolition and reconstruction; new septic tank and leach field installation; residential connection to make use of existing agricultural well; and driveway improvements.

In approving CDP-1, the County required the applicant to record a lateral public access trail easement across the shoreline portion of the property, in part based on a finding that such requirement was necessary to offset impacts associated with the change in intensity of use proposed (including because the farm house structure had been vacant for several years and was uninhabitable, and was going to be improved and it and the site more intensely used as a result of the CDP). Specifically, condition 5 of CDP-1 required the applicant to record an offer to dedicate a lateral public access trail easement along the property (about one-mile of trail area) prior to the start of construction. The lateral access easement condition stated:

Prior to issuance of construction permits or the start of any construction activity, the applicant shall record a lateral access easement pursuant to 23.04.420(d)(3).

Section 23.04.420(d)(3) of the CZLUO states:

Lateral access dedication: *All new development shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than 25 feet, lateral access shall extend from the mean high tide to the toe of the bluff. Where the area between the mean high tide line (MHTL) and the toe of the bluff is constrained by rocky shoreline or other limitations, the County shall evaluate the safety and other constraints and whether alternative siting of accessways is appropriate. This consideration*

⁸ Emergency CDPs temporarily authorize development that must be limited to that which is necessary to abate the emergency. If a property owner subsequently wants the emergency development to be permanently recognized, then they are required to obtain a follow-up "regular" CDP.

⁹ San Luis Obispo County CDP number D020100P.



would help maximize public access consistent with the LCP and the California Coastal Act.

The subject property includes approximately one-mile of immediate shoreline in two discontinuous segments, roughly equal in length, that frame a separately owned property not owned by the applicant (APN 046-082-06, Stubbs property – see Exhibit 1). The downcoast (or southeastern) half of the property’s coast contains the sandy beach at China Harbor, and the upcoast (or southwestern) remainder of the property’s coast is generally constrained by rocky shoreline and steep bluffs. The County’s condition required a lateral public access trail easement along the full shoreline length of the Applicant’s property. Thus, this required lateral public access trail easement includes both the inland 25 feet of the sandy beach along China Harbor and a 25-foot wide easement along the remainder of the property that connects to the beach area. In terms of the former, this is a sandy beach area explicitly referenced by Section 23.04.420(d)(3). In terms of the latter, the remainder of the site does not include sandy beach and the area at the toe of the bluff is constrained by rocky shoreline and other limitations, thus an alternative access dedication is required per Section 23.04.420(d)(3) to maximize public access. Public access must also be maximized with respect to the sandy beach easement area, to address times when this area is unavailable due to high tides or other factors.¹⁰ Although some discretion is built into Section 23.04.420(d)(3) for the County to identify appropriate accessway siting in this respect, that discretion is tempered by the additional requirement in Section 23.04.420(d)(3) to exercise that discretion in such a way as to “help maximize public access consistent with the LCP and the California Coastal Act”. In this case, the most logical lateral public access trail easement per the County’s condition and LCP Section 23.04.420(d)(3) would include both 25 feet of sandy beach at the toe of the bluff and, to address the portions of the property that have no available beach and times when the beach is unavailable, an additional 25 feet¹¹ of blufftop area¹² with connections, as necessary, to line up with other accessways up and down coast.¹³ Thus, and consistent with the Coastal Act and LCP intent to maximize public recreational access opportunities, CDP-1 required such an accessway.

¹⁰ Including to address property ownership issues associated with the beach itself in terms of the meandering nature of the MHTL, and potential prescriptive rights associated with historic public beach use.

¹¹ Although Section 23.04.420(d)(3) does not specify a width for the alternative easement area, it is logical to presume that the intent is to provide 25 feet for such lateral access area per the express premise of this section itself (i.e., “All new development shall provide a lateral access dedication of 25 feet of dry sandy beach [or alternative area when this area is not available] available at all times during the year”). It seems reasonable to presume that the built-in discretion of this section could allow a lesser alternate easement area width based on case-specific circumstances indicating that a lesser width would still “help maximize public access consistent with the LCP and the California Coastal Act”, but it also seems reasonable to presume that the construct of this section sets out a rebuttable presumption that the entirety of the easement area be 25 feet wide to accomplish its stated purpose. The County’s record does not include analysis of a narrower width nor potential reasons supporting a narrower width. Therefore, the width of the lateral public access trail easement should be 25 feet.

¹² The County’s record in considering CDP-2 (see below) clearly indicates that the County considered the accessway in question to include both the beach and the inland area inasmuch as the CDP-2 Board staff report evaluated an alternative (not ultimately approved by the Board) to eliminate existing access on the bluff in order to leave only the access at the beach at China Beach. In other words, the underlying premise at the Board was that the lateral public access trail easement along the property included both inland and sandy beach segments.

¹³ For example, such an easement area may include an inland component to match up to a public accessway along an inland alignment.



The applicant did not appeal the County's action on the CDP (including the lateral public access trail easement condition) within the prescribed 14-day appeal period locally (pursuant to CZLUO Section 23.01.042), did not appeal the County's CDP action to the County Board of Supervisors or the Coastal Commission (pursuant to Coastal Act Section 30603 and CZLUO Sections 23.01.042 and 23.01.043), and did not seek judicial review of the County's action otherwise.

The applicant immediately exercised CDP-1, both through development then existing at the time of CDP approval that CDP-1 authorized after-the-fact,¹⁴ and, according to the County record, through construction activities after CDP-1 was approved. As a result, along with reaping the benefits of CDP-1 in this respect, the applicant also encumbered the land with the burdens of CDP-1, including with respect to its terms and conditions, and including with respect to the required lateral public access trail easement. In other words, CDP-1 required a significant public accessway along the shoreline pursuant to the required lateral public access trail easement. The applicant's failure to timely challenge the lateral access condition in CDP-1 effectively waives its right to seek judicial review of the condition imposing this requirement. (*Serra Canyon Co. v. California Coastal Com.* (2004), 120 Cal.App.4th 663, 668). Thus, this accessway must be considered an existing public accessway (hereafter "existing public accessway").

B. CDP DRC2004-00125 (CDP-2)

On December 10, 2004 (nearly nine months after approval of CDP-1), the applicant applied for another CDP (County CDP application number DRC2004-00125 – hereafter "CDP-2"), which sought approval to construct a new 4,576 square foot barn and to modify CDP-1 to "undo" the previously required lateral access easement associated with CDP-1. Because CDP-1 had been exercised and its terms and conditions were final (i.e., there was no challenge pursuant to the avenues for challenge afforded the applicant), the portion of the application associated with the lateral access easement condition was an application to eliminate an existing public accessway along the shoreline.

On March 17, 2006, the County Planning Commission approved CDP-2, including modifying the requirements for the lateral access easement associated with CDP-1 so as to require the recordation of an easement for just the portions of the property that have "25 feet of dry sandy beach" and the areas from the mean high tide line to the toe of the bluff in China Harbor. The Planning Commission also approved the barn and re-authorized the house redevelopment.¹⁵ The staff report to the Planning Commission states: "D010354P required that the applicants provide lateral access along the entire length of the property fronting the ocean for public beach access." It goes on to state: "[The proposed] project includes minor remodeling of an existing home including a new septic system, and rebuilding a barn that

¹⁴ In other words, CDP-1 authorized both certain development already completed or underway at the time of the decision, and also development contemplated but not then completed or underway. As a result, CDP-1 was immediately exercised upon approval based on the already completed/underway components.

¹⁵ Because the house redevelopment had already been permitted and was substantially constructed pursuant to CDP-1, the "reauthorization" component of CDP-2 was unnecessary and did not somehow replace or undo the initial CDP-1 action which had already by this time been effected through development associated with it. As a result, the effect of "reauthorization" through CDP-2 is meaningless to the questions associated with CDP-2.



had been destroyed due to age and weather. Staff feels that this project does not warrant the requirement for full lateral access because it does not change the historic use of the property, and does not increase the number of structures on the site. However staff does feel that because the remodel of the home includes a new septic system, and the barn is going to be replaced, some access should be provided. Therefore, staff is requiring that the applicants provide lateral access along the portion of their coastline that contains dry sandy beach.” In short, this CDP-2 approval eliminated the blufftop portions of the then existing public accessway associated with CDP-1, and resulted in a lesser version of access along the shoreline limited to China Harbor beach, when sandy beach is available.¹⁶ The applicant appealed the Planning Commission’s approval of CDP-2 to the County Board of Supervisors.

Subsequently, on June 6, 2006, the Board approved CDP-2. The staff report to the Board states: “To meet the intent of [the access condition of CDP-1], the landowner would need to record an OTD for the lateral access for the entire length of the shoreline ownership (approximately 1 mile)...staff acknowledges that having too much coastal access to this property may lead to adverse impacts on sensitive coastal resources and the existing agricultural operation. With that in mind, staff feels that retaining condition no. 8 to require the recordation of an OTD for just the portions of the property that have ‘25 feet of dry sandy beach’ and areas from the mean high tide line to the toe of the bluff in China Harbor is the proportional level of access to the site.” Contrary to their staff’s recommendation, the Board’s approval modified the Planning Commission’s approval and, as proposed by the applicant, eliminated the existing public accessway along the one-mile shoreline of the property altogether (i.e., the accessway previously required by CDP-1), while also approving the barn reconstruction.¹⁷ Thus, the proposed project in this case, and what is before the Commission, is the project that was approved by the Board in June 2006. Namely, the proposed project would allow for construction of a 4,576 square foot barn, elimination of the existing public accessway along the shoreline at this property, and it unnecessarily re-authorizes the same development approved through CDP-1, as noted above. See Exhibit 9 for plans related to the barn, and see Exhibit 1 for a map of the property and the approximate location of the existing public accessway. See Exhibit 4 for the County’s adopted findings, conditions, and related materials supporting their CDP action.

Notice of the County Board of Supervisor’s action on CDP-2 was received in the Coastal Commission’s Central Coast District Office on Monday July 3, 2006. The Coastal Commission’s ten-working day appeal period for this action began on July 5, 2006¹⁸ and concluded at 5 p.m. on Tuesday July 18, 2006. Three valid appeals were received during the appeal period (see below).

3. Appeal of San Luis Obispo County CDP Approval

A. Appeal Procedures

¹⁶ Id (sandy beach area not always available).

¹⁷ Id (house construction reauthorized as well)

¹⁸ July 4, 2006 was a State holiday (not a working day) and thus the appeal period commenced on the following day (July 5, 2006).



Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or, (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This project is appealable because it is located within a sensitive coastal resource area, it is located between the sea and the first public road paralleling the sea, and includes development that is located within 300 feet of the top of the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP and/or to the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo CDP hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing and ultimately approves a CDP for a project, the Commission must find that the proposed development is in conformity with the certified LCP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. This project is located between the nearest public road and the sea, and thus this additional finding would need to be made if the Commission approves a project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo CDP determination stage of an appeal.

B. Summary of Appeal Contentions

The appellants (Coastal Commissioners Sara Wan and Mike Reilly, the Sierra Club (Santa Lucia Chapter), and the Surfrider Foundation (San Luis Bay Chapter)) contend that the County-approved project raises issues with respect to the project’s conformance with core LCP and Coastal Act policies related to public access. Specifically, all of the appellants contend that the County’s action does not maximize public access opportunities and interferes with the public’s right to travel to and along the coast inconsistent with the Coastal Act and the LCP. See the appellants’ complete appeal documents in Exhibit 5.



4. Substantial Issue Determination

As discussed below, the Commission finds that the County approved project raises substantial issues of conformity with the San Luis Obispo County LCP and the public access policies of the Coastal Act. Section B.5 of this report, Coastal Development Permit Determination, provides further details concerning these Substantial Issue Determination findings, and these Coastal Development Permit Determination findings are incorporated in full herein by reference.

A. Applicable Policies¹⁹

The California Constitution²⁰ and the federal Coastal Zone Management Act²¹ mandate the protection and enhancement of public access to and along California's coastline. The Coastal Act redoubles these protections, including mandating that public recreational access opportunities to and along the California coastline be maximized (Coastal Act Section 30210).²² Coastal Act Section 30211 further requires that development not interfere with public access, including explicitly existing public access such as the existing public accessway that is central to this case. Coastal Act Section 30212 and LCP Shoreline Access Policy 2 (as implemented by CZLUO Section 23.04.420) also require that maximum vertical and lateral public access be provided in new development projects. Similarly, Coastal Act Section 30220 protects coastal areas suited for water-orientated recreational activities specifically for such uses; Section 30221 protects oceanfront land for recreational use; Section 30222 gives priority to visitor-serving commercial facilities designed to enhance recreational use on private land; Section 30223 requires that upland areas necessary to support coastal recreation be reserved for such uses; and Section 30224 encourages increased recreational boating. Finally, LCP Recreation Policies 1 and 2 protect and encourage visitor-serving recreational uses. In short, the Coastal Act and the LCP require that existing recreational access opportunities be both protected and maximized.

B. Analysis

Public access along the Harmony Coast has historically been extremely limited. Although the public has

¹⁹ See Coastal Development Permit Determination findings that follow for text of referenced policies.

²⁰ Section 4 of Article X of the California Constitution provides: "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof."

²¹ The federal Coastal Zone Management Act requires its State partners to "exercise effectively [its] responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone" (16 U.S.C. Section 1452(2)) so as to provide for "public access to the coasts for recreational purposes." (Section 1452(2)(e))

²² Coastal Act Section 30210 direction to maximize access represents a different threshold than to simply provide or protect such access, and is fundamentally different from other like provisions in this respect. In other words, it is not enough to simply provide access to and along the coast, and not enough to simply protect access, rather such access must also be maximized. This terminology distinguishes the Coastal Act in certain respects, and provides fundamental direction with respect to projects along the California coast that raise public access issues, like this one.



long been able to traverse through the area on Highway One, there has historically been very limited access seaward of the Highway. Given the orientation of Harmony Coast topography where Highway One is generally in a low valley between the slopes extending toward the ocean and the slopes extending inland of the Highway, public access has generally been separated from the immediate shoreline and views of it and the ocean. The recent State Parks acquisition of Harmony Headlands State Park will provide more direct access in this respect, but the Park is only a small inholding in comparison to surrounding privately owned lands. Recent coastal permitting decisions, such as those associated with the applicant's CDP-1, have proven critical to establishing legally recognized public accessways along the ocean side of the Harmony Coast. For example, in the immediate area, the Commission recently required a public trail easement that extends along the ridge across a 40-acre parcel located just downcoast of this site.²³ Similarly, the existing public accessway on the subject property represents one-mile of public access along the immediate shoreline, and provides connectivity to the beach (and ocean access) at China Harbor. This existing public accessway at the subject site is the only immediate shoreline accessway along the stretch of Harmony Coast where the Highway is located inland of the coastal range. As such, its importance for public access, and particularly access directly to the ocean at China Harbor, is heightened.

The County's approval of CDP-2 eliminates this existing public accessway on the subject property. Thus, this action does not protect existing public access, it does not provide access, and it most certainly does not maximize access as required by the Coastal Act's access policies and the LCP. It likewise does not protect nor prioritize this oceanfront land and existing accessway for its ability to accommodate access to water-orientated and other recreational uses and activities, including boating (e.g., kayaking and small craft access at China Harbor). The County's action is inconsistent with the Coastal Act and the LCP's public access and recreation policies. Therefore, the Commission finds that **a substantial issue** exists with respect to the County-approved project's conformance with the certified San Luis Obispo County LCP and the Coastal Act's access policies and takes jurisdiction over the CDP application for the proposed project.

5. Coastal Development Permit Determination

The standard of review for this CDP application are the San Luis Obispo County LCP and the public access and recreation policies of the Coastal Act. All Substantial Issue Determination findings above are incorporated herein by reference. These findings are organized in two parts: (a) the proposed elimination of the existing public accessway; and (b) the proposed new barn and related improvements. The Commission does not address here the re-authorization of the development approved through CDP-1, as its approval, as conditioned, is consistent with the applicable standard of review, and the approval in CDP-1 is still valid, so there is no need for the Commission to re-evaluate that approval at this time. As described below, the elimination of the existing public accessway cannot be approved under the Coastal Act and the LCP and must therefore be denied, and the barn and related improvements can only be approved provided conditions are applied to ensure that such development appropriately and seamlessly

²³ CDP A-3-SLO-00-040 (Schneider SFD), approved January 10, 2008.



blends into the public viewshed, and protects against potential adverse impacts to agricultural lands.

A. Elimination of the Existing Accessway

1. Applicable Policies

As indicated above, protection and provision of maximum public access and recreation opportunities is a fundamental Coastal Act objective and requirement. The Act speaks to the need to maximize public access to and along the coast, and prohibits development from interfering with existing public access. The Act also protects recreational opportunities and land suitable for recreational use. Applicable policies include:

***Section 30210.** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

***Section 30211.** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

***Section 30212.** (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

***Section 30220.** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

***Section 30221.** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

***Section 30222.** The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

***Section 30223.** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

***Section 30224.** Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected*



water areas, and in areas dredged from dry land.

The LCP also protects public recreational access and public views. The area in question is also located within the Ocean Shoreline SRA (Sensitive Resource Area) and Critical Viewshed identified in the Estero Area Plan, which includes amplified protection in this respect for this area. The LCP states as follows:

Access Policy 2. *Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development...*

Recreation Policy 1. *Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means.*

Recreation Policy 2. *Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222.*

The Estero Area Plan (pages 6-6 and 6-7): Ocean Shoreline SRA and Critical Viewsheds. *These sensitive, largely undeveloped ocean shoreline areas include the coastal terraces and shoreline between Point Estero and Cayucos, between Cayucos and the city of Morro Bay, and along Montaña de Oro State Park. Also included the Morro Bay Sand Spit (discussed separately in this section). In general, concerns include maintaining open views of the shoreline and ocean from Highway 1, providing additional public recreation and maintaining maximum public access to the immediate shoreline.*

The SRA and Critical Viewshed west of Cayucos consists of the entire coastal terrace on the ocean side of Highway 1, extending from the Cayucos urban reserve line west to the Planning Area boundary. The purpose of the SRA standards for this area is to protect views of the shoreline, bay and ocean, and to protect marine mammals and sensitive plants.”

Scenic and Visual Resources Policy 1: Protection of Visual and Scenic Resources. *Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved and protected, and in visually degraded areas restored where feasible.*

Scenic and Visual Resources Policy 2: Site Selection for New Development. *Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas.*

2. Analysis

As indicated above, the project includes a proposal to eliminate an existing public accessway which was required by the County pursuant to CDP-1. This existing accessway is located along the largely undeveloped Harmony Coast, which, as described above, has historically had limited public access



opportunities. The accessway includes approximately a half-mile stretch along the beach and bluffs at China Harbor, a secluded harbor with a rich history, which provides visitor-serving recreational opportunities for beach users and boaters, as well as general public recreational access and historic interpretation.²⁴ The existing accessway also includes another half-mile or so of blufftop access upcoast of China Harbor (again, see Exhibit 1). The existing accessway area provides critical shoreline access, as well as expansive views of China Harbor, the undeveloped rocky shoreline, the Cayucos shoreline extending down through and including Morro Rock, and the Pacific Ocean.

The proposal to eliminate this important and valuable existing public accessway cannot be found consistent with the public access and recreation policies of the Coastal Act and the certified LCP, and cannot be found consistent with the LCP's viewshed protection provisions.

The removal of the existing public accessway would not provide for or maximize public recreational access opportunities, would interfere with the public's right to access the sea, would not protect recreational and visitor-serving no-cost facilities, would not protect upland/oceanfront land for recreational use, and would not give priority to this existing recreational facility inconsistent with Coastal Act Sections 30210, 30211, 30212, 30221, 30222, and 30223, LCP Access Policy 2, LCP Recreation Policies 1 and 2, and the LCP's Estero Area Plan. In addition, the accessway provides critical coastal views and visual access to a portion of the coast which has significant visual resources and unique cultural and historic resources, and eliminating it would be inconsistent with LCP viewshed policies, including Estero Area Plan requirements protecting views of the shoreline, bay and ocean, and LCP Scenic and Visual Resource Policies 1 and 2 requiring development to protect scenic vistas and views to and along the ocean and scenic coastal areas. The proposed project's impacts on public recreational access and public views are especially significant given that the existing public accessway is located in a highly scenic and rural area of San Luis Obispo County that has been explicitly designated in the LCP's area plan as a sensitive resource area (SRA) and a critical viewshed precisely because of its access and viewshed attributes. Eliminating this existing public accessway would also be prima facie inconsistent with this SRA and critical viewshed designation. Finally, eliminating the existing public accessway would remove the existing visitor-serving recreational opportunities it provides, including the viewing and hiking opportunities of the accessway area itself as well as access to and from the ocean at China Harbor for water-orientated recreational activities, inconsistent with Coastal Act Sections 30220 and 30224 and each of the aforementioned LCP requirements (LCP Access Policy 2, Recreation Policies 1 and 2, and the LCP's Estero Area Plan).

Therefore, the Commission finds that the proposal to eliminate the existing public accessway is inconsistent with the public access and recreation policies of the Coastal Act and the certified LCP, and denies a coastal development permit for the portion of the proposed development that would remove the existing public accessway.

3. California Environmental Quality Act (CEQA)

²⁴ On the latter, the existing bronze plaque monument located on the bluff overlooking the beach provides information and interpretation on the area's rich history, and CDP-1 provides the only access to the monument location.



Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] *A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ...*(b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. *(a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA.

San Luis Obispo County, acting as the lead agency for this project with respect to CEQA, found the project to be categorically exempt from CEQA under the provisions of the CCR, title 14, section 15303 (class 3), when they approved the project on June 6, 2006. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA.

The preceding findings have discussed the relevant coastal resource issues raised by the portion of the proposed project associated with removal of the existing public accessway. All public comments received to date regarding this component of the proposed project have been addressed in the findings above. All above Substantial Issue Determination and Coastal Development Permit Determination findings are incorporated herein in their entirety by reference. As detailed in the findings above, this portion of the proposed project would have significant adverse effects on the environment, as that term is understood in a CEQA context. This portion of the proposed project would be inconsistent with the public access and recreation policies of the Coastal Act and the certified San Luis Obispo County LCP.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if this portion of the project were approved as proposed. Accordingly, the Commission's denial of this portion of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.



B. New Barn

1. Applicable Policies

A. Public Views

The LCP clearly identifies visual resource protection, including specifically along the Harmony Coast, as a significant and important component to protecting the significant public viewsheds of the County's coastal zone, particularly those of its rural areas and designated sensitive areas. A major premise of the LCP is to ensure preservation and enhancement of the coast's scenic beauty and natural appearance. LCP policies that address the protection of public views and visual/scenic resources include:

Scenic and Visual Resources Policy 1: Protection of Visual and Scenic Resources. *Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved and protected, and in visually degraded areas restored where feasible.*

Scenic and Visual Resources Policy 2: Site Selection for New Development. *Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created "pockets" to shield development and minimize visual intrusion.*

Scenic and Visual Resources Policy 4: New Development in Rural Areas. *New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited.*

Estero Area Plan (pages 6-6 and 6-7): Ocean Shoreline SRA and Critical Viewsheds. *These sensitive, largely undeveloped ocean shoreline areas include the coastal terraces and shoreline between Point Estero and Cayucos, between Cayucos and the city of Morro Bay, and along Montaña de Oro State Park. Also included the Morro Bay Sand Spit (discussed separately in this section). In general, concerns include maintaining open views of the shoreline and ocean from Highway 1, providing additional public recreation and maintaining maximum public access to the immediate shoreline.*

The SRA and Critical Viewshed west of Cayucos consists of the entire coastal terrace on the ocean side of Highway 1, extending from the Cayucos urban reserve line west to the Planning Area boundary. The purpose of the SRA standards for this area is to protect views of the shoreline, bay and ocean, and to protect marine mammals and sensitive plants."

Section 23.04.210. *The following standards apply within Critical Viewsheds, Scenic Corridors and Sensitive Resource Area (SRA) Combining Designations that are intended to protect visual*



resources, as identified in this title, the Official Maps, Part III of the Land Use Element, or the area plans of the Local Coastal Plan. ...

c. *Standards for Critical Viewsheds and SRAs for protection of visual resources. The following standards apply within areas identified as Critical Viewsheds or SRAs in the area plans for protection of visual resources.*

(1) *Location of development. Locate development, including, but not limited to primary and secondary structures, accessory structures, fences, utilities, water tanks, and access roads, in the least visible portion of the site, consistent with protection of other resources. Emphasis shall be given to locations not visible from major public view corridors. Visible or partially visible development locations shall only be considered if no feasible non-visible development locations are identified, or if such locations would be more environmentally damaging. New development shall be designed (e.g., height, bulk, style, materials, color) to be subordinate to, and blend with, the character of the area. Use naturally occurring topographic features and slope-created "pockets" first and native vegetation and berming second, to screen development from public view and minimize visual intrusion.*

(2) *Structure visibility. Minimize structural height and mass by using low-profile design where feasible, including sinking structures below grade. Minimize the visibility of structures by using design techniques to harmonize with the surrounding environment. ...*

Section 23.07.164(e). *Any land use permit application within a Sensitive Resource Area shall be approved only where the Review Authority can make the following required findings:*

- 1) *The development will not create significant effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.*
- 2) *Natural features and topography have been considered in the design and siting of all proposed physical improvements.*
- 3) *Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures and will not create significant adverse effects on the identified sensitive resource.*
- 4) *The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.*

B. Agriculture

LCP agricultural policies applicable to the subject site include:

Agriculture Policy 1...*Prime agricultural land shall be maintained, in or available for,*



agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.

Other lands (non-prime) suitable for agriculture shall be maintained in or available for agricultural production unless: 1) continued or renewed agricultural use is not feasible; or 2) conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development; and 3) the permitted conversion will not adversely affect surrounding agricultural uses.

...

Permitted Uses on Non-Prime Agricultural Lands. Principal permitted and allowable uses on non-prime agricultural lands are designated on Coastal Table O - Allowable Use Chart in Framework for Planning Document. These uses may be permitted where it can be demonstrated that no alternative building site exists except on non-agricultural soils, that the least amount on non-prime land possible is converted and that the use will not conflict with surrounding agricultural lands and uses.

Agriculture Policy 4. *A single-family residence and any accessory agricultural buildings necessary to agricultural use shall, where possible, be located on other than prime agricultural soils and shall incorporate whatever mitigation measures are necessary to reduce impacts on adjacent agricultural uses.*

Section 23.08.041. a. Limitation on use. *It shall be unlawful and a violation of this code for any person to use any structure approved pursuant to this section as an agricultural accessory structure (e.g., a barn, shop, etc.) for residential purposes without first securing a land use permit for residential use and thereafter obtaining a construction permit. The construction permit shall be required for the entire structure if it was constructed as an exempt agricultural building pursuant to Land Use Ordinance Section 22.01.031f before the effective date of this title, and in any case for any changes to the structure proposed by the applicant and/or necessary to satisfy the requirements of Title 19 of this code (Building and Construction Ordinance) for a dwelling. ...*

C. ESHA

The LCP (CZLUO Section 23.11.030) defines “Environmentally Sensitive Habitat” as:

A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. They include, wetlands,



coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations.

The LCP also contains the following provisions relevant to the protection of environmentally sensitive habitats:

Environmentally Sensitive Habitats Policy 1. *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.*

Environmentally Sensitive Habitats Policy 18. *Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.*

CZLUO Section 23.07.174 provides, in relevant part:

23.07.174 - Streams and Riparian Vegetation. *Coastal streams and adjacent riparian areas are environmentally sensitive habitats. The provisions of this section are intended to preserve and protect the natural hydrological system and ecological functions of coastal streams.*

- a. Development adjacent to a coastal stream. Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat. ...*
- d. Riparian setbacks: New development shall be setback from the upland edge of riparian vegetation the maximum amount feasible. In the urban areas (inside the URL) this setback shall be a minimum of 50 feet. In the rural areas (outside the URL) this setback shall be a minimum of 100 feet. A larger setback will be preferable in both the urban and rural areas depending on parcel configuration, slope, vegetation types, habitat quality, water quality, and any other environmental consideration. These setback requirements do not apply to non-structural agricultural developments that incorporate adopted nest management practices in accordance with LUP Policy 26 for Environmentally Sensitive Habitats. ...*

D. Other

The LCP includes specific direction in terms of considering CDP applications where violations exist. In this case, certain conditions of CDP-1 (including recordation of the easement for the existing public accessway) were not met and a violation exists in relation to consideration of CDP-2, thus, these provisions are relevant to this application. In short, according to the County LCP, violations must be rectified as part of applications for development. CZLUO Section 23.01.034(c) states:

Compliance with applicable provisions of this title and code is required as follows:...Application where violation exists. No application for land use permit, construction permit or land division shall be approved where an existing land use, building or parcel is being maintained in violation



of any applicable provisions of the Subdivision Map Act, this code or any condition of approval of a land use permit, except where the application incorporates measures proposed by the applicant to correct the violation, and correction will occur before establishment of the new proposed use, or recordation of a final or parcel map in the case of a land division or the permit is necessary to maintain the health and/or safety of the occupants.

As a result, the current CDP application before the Commission cannot be approved unless and until it incorporates measures to resolve the violation.²⁵

E. LCP Policy Summary

LCP Scenic and Visual Resources Policies 1, 2, 4, Estero Area Plan standards for this designated Ocean Shoreline SRA and Critical Viewshed area, and LCP standards for sensitive resource areas (CZLUO Section 23.07.164(e)) require new development to be sited and designed to protect unique and attractive features of the landscape, to minimize visibility in public view corridors, to be subordinate to and blend/harmonize with the character of the setting, to protect views to and along the ocean and scenic areas, and to maintain views of the shoreline from Highway One. In short, the LCP requires that development be sensitively sited and designed in recognition of coastal zone visual resource values in general, as well as in terms of the specific sensitive viewshed designation applied to the subject site.

The entire parcel is within the LCP designated Ocean Shoreline Sensitive Resource Area (SRA) due to the visual and scenic qualities of the undeveloped coastal terraces and rural hillsides between Cayucos and Point Estero. The SRA designation encompasses many miles of coastline here, and is evidence that the shoreline as a whole in this area is a valuable natural resource which is protected from visual impacts by the LCP. The Harmony coastline is characterized by windswept hills and wide coastal terraces dropping off dramatically to the rocky shores of the Pacific Ocean below. Because the surrounding Harmony Coast area is substantially undeveloped rural open space, any development in this area poses the potential for adverse impacts in terms of protecting the area's valuable scenic qualities; qualities of both state and regional importance.

Policy 2 for Visual and Scenic Resources addresses site selection for new development. The policy serves to protect the unique qualities of scenic areas and prohibits the siting of development, where possible, in areas visible from public view corridors, including scenic views from Highway One and other inland areas. This is particularly important in the Harmony Coast designated SRA area, which is explicitly protected against visual intrusion by the LCP.

²⁵ The Section 23.01.034(c) language only allows approval "where the application incorporates measures proposed by the applicant to correct the violation". Although this language indicates that an applicant must propose such measures to allow approval, the section is internally inconsistent if that is read to mean that such measures cannot be imposed by the decision making body. In other words, the clear purpose of the section is to rectify violations when applications involving violations are considered. If that were deemed to only be based on applicant-generated proposals, then it is more aptly characterized as a filing requirement for an application, and not as a decision criteria. The section clearly withholds approvals of applications, which necessarily refers to a decision making body taking action on an application already proposed and before the body. To narrowly interpret the section to be based only on applicant proposals and not also on decision making body requirements to rectify violations would limit its effectiveness and be contrary to its clear purpose.



LCP Agriculture Policies 1 and 4 generally protect agricultural lands for agricultural production, maintain prime agricultural land for agricultural production, and allow development on non-prime agricultural land only if it can be demonstrated that structures are sited to reduce negative impacts on adjacent agricultural uses. LCP Agriculture Policy 1 also limits the uses allowed on non-prime agricultural lands, and LCP Table O, which identifies these uses, indicates that accessory structures may be permitted with a special use permit. CZLUO section 23.08.041 prohibits using agricultural accessory structures for residential purposes.

Finally, LCP Environmentally Sensitive Habitats Policy 1 prohibits new development proposed within or adjacent to environmentally sensitive habitats from significantly disrupting the resource and LCP Environmentally Sensitive Habitats Policy 18 and CZLUO Section 23.07.174 protect coastal streams and adjoining riparian vegetation.

2. Analysis

The proposed barn has the potential to cause impacts related to public views, agriculture, and ESHA. In addition, the proposed barn raises questions regarding consideration of CDP applications where existing violations exist, reimbursement for application expenses, and effective notice of restrictions associated with CDPs that run with the land.

Views

The proposed barn would be highly visible from Highway 1, which, in the area of the project site, provides expansive views of gently rolling hillsides and grazing cattle, interspersed with low-density agricultural developments. The barn would be located at the site of a previous barn, which, according to the applicant, had been on the property for more than 100 years before collapsing in 2004.²⁶ The County estimates the previous barn had been 3,000 to 4,000 square feet in size, based on walking the perimeter of the old footings.²⁷ (see Exhibit 7 for a photo of the previous barn prior to its collapse).

Although the barn would be starkly visible in the public viewshed of Highway One, the proposed barn site is the most appropriate location for a barn because it is clustered near other development on the 400-acre property, approximately 120 feet from the existing farm house, and it would be accessed from the only existing driveway. The proposed barn site is also not located on prime soils, and, because this area was previously disturbed from the previous barn at the site, no major grading would be necessary. Although one way to address potential viewshed issues with the barn would be to move it to another location, moving the barn out of the public viewshed would require extensive grading (including for barn access roads), increased encroachment onto agricultural lands, and a different site could impact prime farmland. Thus, as long as the barn is made to fit seamlessly with the rural and agrarian Highway One viewshed at this location, the proposed barn site is appropriate under the LCP policies cited above.

In that respect, the barn has been designed based on details from historic barns in the area. It would

²⁶ Pat Molnar, SDS Family Trust Representative, China Harbor Ranch, Coastal Commission Appeal Analysis, December 1, 2006, Page 3.

²⁷ Email communication from Matt Janssen, SLO County Department of Planning and Building, May 15, 2006.



feature several architectural details that are common features of historic barns in the area including a clerestory, casement windows, wide window trim, board and bat siding, corrugated metal roofing, and widow's peaks on the roof (see Exhibit 9 for proposed details). In addition, it would be constructed of materials expected to blend visually with the surroundings, including the proposed unpainted wood siding and the corrugated metal roof that would be expected to patina over time. The applicant has provided several visual simulations of the proposed barn as it would be seen from Highway 1 (see Exhibit 8).

Although the proposed barn is located in the most appropriate site and it has been designed with architectural features and materials to blend with the rural character of the area, it would clearly be a very large structure that would be highly visible in the public viewshed. From comparison with the photos of the previous barn, it appears clear that the proposed barn would be larger and thus more potentially imposing in the viewshed than was the prior barn. Also, it appears that the previous barn did not have any windows, but the proposed barn would have numerous windows, increasing the visual impacts of the barn by allowing the potential for glare that could be seen from Highway 1. That said, agricultural barns are typically fairly large structures, and provided they are clearly barns (including due to application of the embellishments and details described above), even large barns can blend into the rural character of the area. In that sense, the project includes appropriate elements with respect to building forms and details, but the plans and visual simulations do not appear to clearly implement such proposed detailing (for example, the roof is in two pieces, and much of the exterior sheathing is unclear) and thus the proposal lacks sufficient definition to ensure that the end result appears reminiscent of historic barn structures appropriate for this area. The Commission is aware of the pitfalls – small and large – involved with ensuring a finished facade matches a design aesthetic, and such assurance is predicated on much of the surfacing detail that is thus far inadequately defined.

Therefore, to ensure consistency with the LCP visual resources policies cited above, Special Condition 2 requires the applicant to submit revised plans that ensure that the design and appearance of the barn reflects rural agricultural barn design theme consistent with the proposed detailing and is designed to blend with the surroundings (see Special Condition 2.a). This special condition limits the barn size to no larger than that proposed (i.e., it can be smaller), requires non-glare glass to minimize the visual impact of the proposed windows, and requires implementation of the design details proposed in such a way as to ensure historic barn accuracy.

Even as sited and designed, the barn will be visible in the protected public view corridor, and the above LCP policies dictate that such projects include screening landscaping using native vegetation that itself will not obstruct public views when it is mature. Thus, Special Condition 2.b requires implementation of a landscape plan based on the use of native shrubs and small trees adjacent to the barn to provide visual screening and softening of the view of such development as seen from Highway One.²⁸ In addition, and to protect against inappropriate nighttime view impacts, special conditions require that all lighting be

²⁸ Such landscaping is not intended to require a complete vegetative screen to completely hide the barn, rather such landscaping is intended to help soften and somewhat filter the barn from Highway One consistent with views of typical agricultural development in the area.



limited to the maximum degree possible while still providing adequate lighting for safety, and that all lighting be shielded and directed towards the ground (see Special Condition 2.c).

Agriculture

The barn would be located on non-prime farmland and would have four horse stalls, in addition to a horse grooming area, feeding area and storage areas. As proposed, the use of the barn and the proposed location would not conflict with the existing agricultural grazing operation. However, the proposed project does not include enforceable restrictions to ensure that the barn is maintained strictly as an agricultural barn. Therefore, to ensure that the barn remains an agricultural structure and is used for agricultural purposes only (as required by the LCP for it to qualify as an agricultural accessory structure, and therefore an allowed use, pursuant to Policy 1 and Table O), to ensure that the proposed development does not diminish the agricultural viability of the project site, and to maintain the maximum amount of agricultural land in agricultural production as required by Agricultural Policy 1, the barn cannot be used for anything other than agricultural uses. Thus, Special Condition 3 prohibits conversion of the barn to any non-agricultural related uses (including residences, residential accessory uses and garages), and requires that the barn be used solely for agricultural purposes.

ESHA

The proposed project is located adjacent to a designated coastal stream, which is a tributary to Ellyslly Creek and has been designated as a sensitive resource area (SRA). However, the proposed barn would be located more than 100 feet from the stream, and because it would be built at the site of the previous barn, no major grading would be required. Therefore, the project is consistent with the ESHA policies of the LCP.

Other Issues

Because the conditions of approval for CDP-1 were not satisfied as required, including perhaps most notably the condition requiring the recordation of the lateral public access trail easement prior to construction, a violation exists on this property. CZLUO Section 23.01.034(c) prohibits the approval of a CDP in this case unless it incorporates measures to resolve the violation. Therefore, given the existing violation, the Commission is unable to approve the application for construction of a new barn unless and until there is also a resolution to the violation. Thus, the Commission imposes Special Condition 1, requiring the applicant to provide proof of compliance with the conditions of CDP-1 prior to issuance of the permit.

Finally, to ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes an additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, any prospective future owner will receive constructive notice of the terms and conditions of this CDP, including the requirement to comply with the conditions of the County's CDP-1, and the prohibition on converting the barn to non-agricultural uses.



Conclusion

In summary, the Commission finds that, as conditioned, the barn portion of the proposed project would be consistent with the above cited visual, agricultural, ESHA, and other policies of the certified LCP. Special conditions have been incorporated to ensure that the barn is appropriately sited and designed and that it is used strictly for agricultural purposes. As conditioned, the barn structure should thus effectively harmonize with the uses and aesthetics of this rural and agrarian area, and protect the significant public viewshed at this location. Additional conditions ensure that violations are resolved (including the accessway recordation, thus resolving potential public recreational access issues), that the Commission is reimbursed for potential litigation-related application expenses, and that appropriate notice is provided regarding the CDP terms and conditions via deed restriction. The Commission finds that the proposed barn will be in conformity with the policies of the San Luis Obispo County Local Coastal Program and the public access and recreation policies of the Coastal Act.

3. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

San Luis Obispo County, acting as the lead agency for this project with respect to CEQA, found the project to be categorically exempt from CEQA under the provisions of the CCR, title 14, section 15303 (class 3), when they approved the project on June 6, 2006. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA.

This staff report has discussed the relevant coastal resource issues raised by the portion of the proposed project associated with proposed barn, and has identified appropriate changes to the project and associated mitigations that are necessary to reduce adverse coastal resource impacts to an insignificant level. All public comments received to date have been addressed in the findings above. All above Substantial Issue Determination and Coastal Development Permit Determination findings are incorporated herein in their entirety by reference.

The Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA. As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects that approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. If so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).



6. Coastal Development Permit Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Compliance with CDP-1.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval proof that the offer to dedicate (OTD) a lateral public access trail easement along the shoreline portion of the property as required by CDP D010354P has been recorded consistent with the terms and conditions of that permit (see Exhibit 5). Such proof shall include the recorded OTD document and a title report verifying its recordation, and shall include written evidence of review and approval by San Luis Obispo County.
2. **Revised Barn Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Revised Barn Plans to the Executive Director for review and approval. The Revised Plans shall be substantially in conformance with the proposed barn plans (see Exhibit 9) except that they shall be revised and supplemented to comply with the following requirements:
 - a. **Barn Design.** The design and appearance of barn shall reflect a rural agricultural barn theme (i.e., simple and utilitarian lines and materials, including use of unpainted wood board and bats, corrugated metal roofs, clerestories, casement windows, wide window trim, and widow's peaks on the roof, etc.). All windows shall be non-glare glass. The plans shall clearly identify all measures that will be applied to ensure such design aesthetic is achieved, and, at a minimum,



shall clearly identify all structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.). The maximum height of the barn structure shall be 28 feet, and the maximum footprint shall be 4,576 square feet.

- b. Landscaping.** Final Plans shall include landscape and irrigation parameters that shall identify all plant materials (size, species, quantity), all irrigation systems, and all proposed maintenance measures. All plant materials shall be native and non-invasive species selected to be complimentary with the mix of native habitats in the project vicinity, prevent the spread of exotic invasive plant species, and avoid contamination of the local native plant community gene pool. Landscaping (at maturity) shall also be capable of partial/mottled screening and softening the appearance of new development as seen from Highway One as much as possible. All landscaped areas on the project site shall be continuously maintained by the Permittee; all plant material shall be continuously maintained in a litter-free, weed-free, and healthy growing condition. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist.
- c. Lighting.** The plans shall indicate the location, type, and wattage of all interior and exterior light fixtures and include catalog sheets for each fixture. All lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Exterior lighting shall be limited to that which is necessary to illuminate the driveway, pathways, and entrance to the barn. All lighting shall be shielded to the maximum extent possible and be of the lowest intensity feasible in order to avoid artificial light pollution, particularly as seen from Highway One.

The Permittee shall undertake development in accordance with the approved Revised Barn Plans.

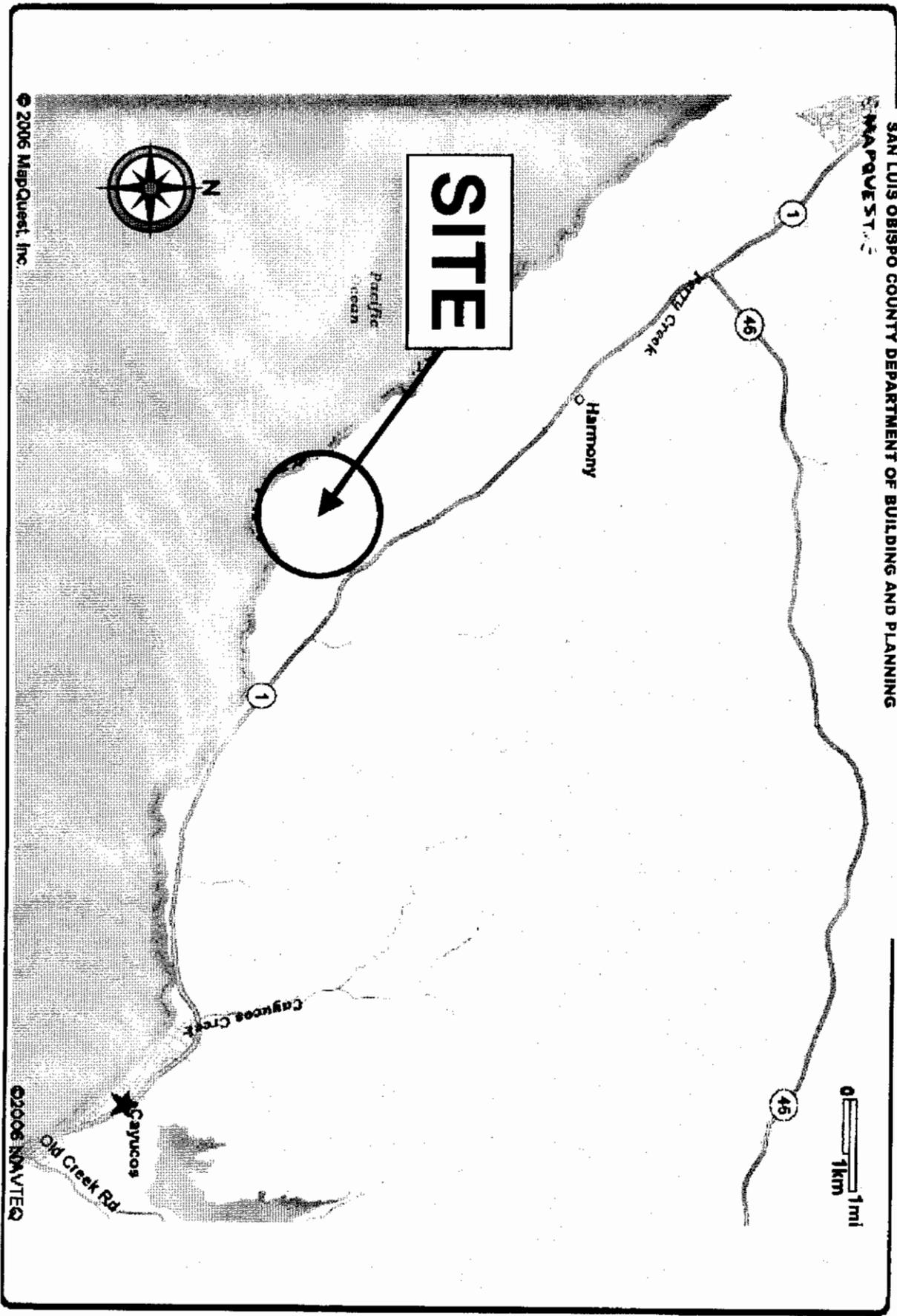
- 3. Use of the Barn.** The proposed agricultural barn may only be used for purposes accessory to agricultural activities on the property. The barn may not be used for any residential related purposes, and may not be converted to residential use, nor be modified to include any residential related facilities including, but not limited to, kitchens, cooking, or sleeping areas.
- 4. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the



event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. **County Conditions.** All conditions of approval of CDP DRC2004-00125 (see Exhibit 4) imposed on the project by San Luis Obispo County pursuant to an authority other than the California Coastal Act remain in effect.





CCC Exhibit 1
(page 1 of 3 pages)

A-3-S10-06-043 (SDS Trust)

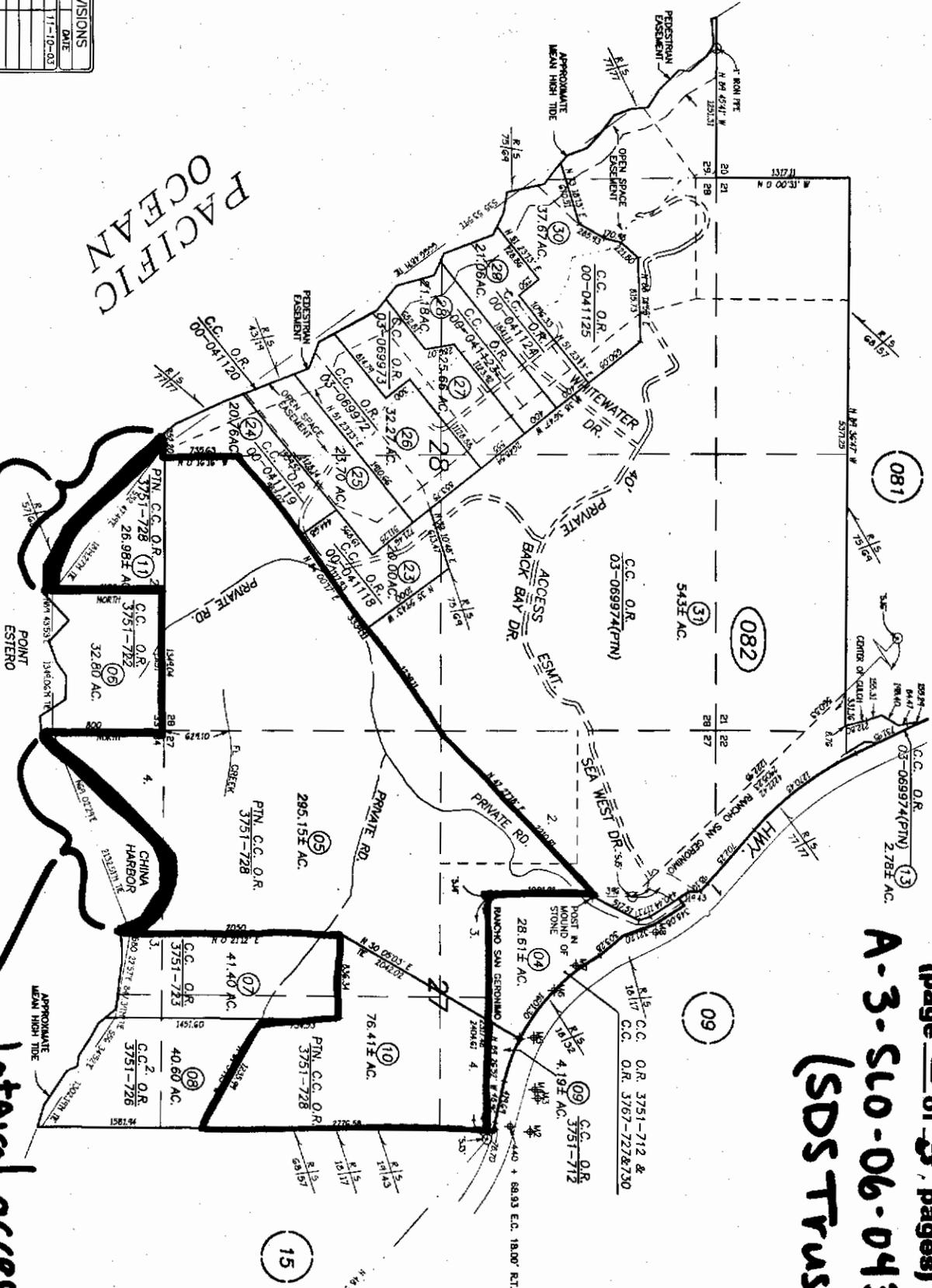
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REVISIONS	
L.S.	DATE
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SW THIS MAP IS PREPARED FOR
02/22/03 ASSESSMENT PURPOSES ONLY.

PACIFIC OCEAN



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T. 28 S. R. 9 E.; SECTION 27,28,33,34 M.D.B.M.

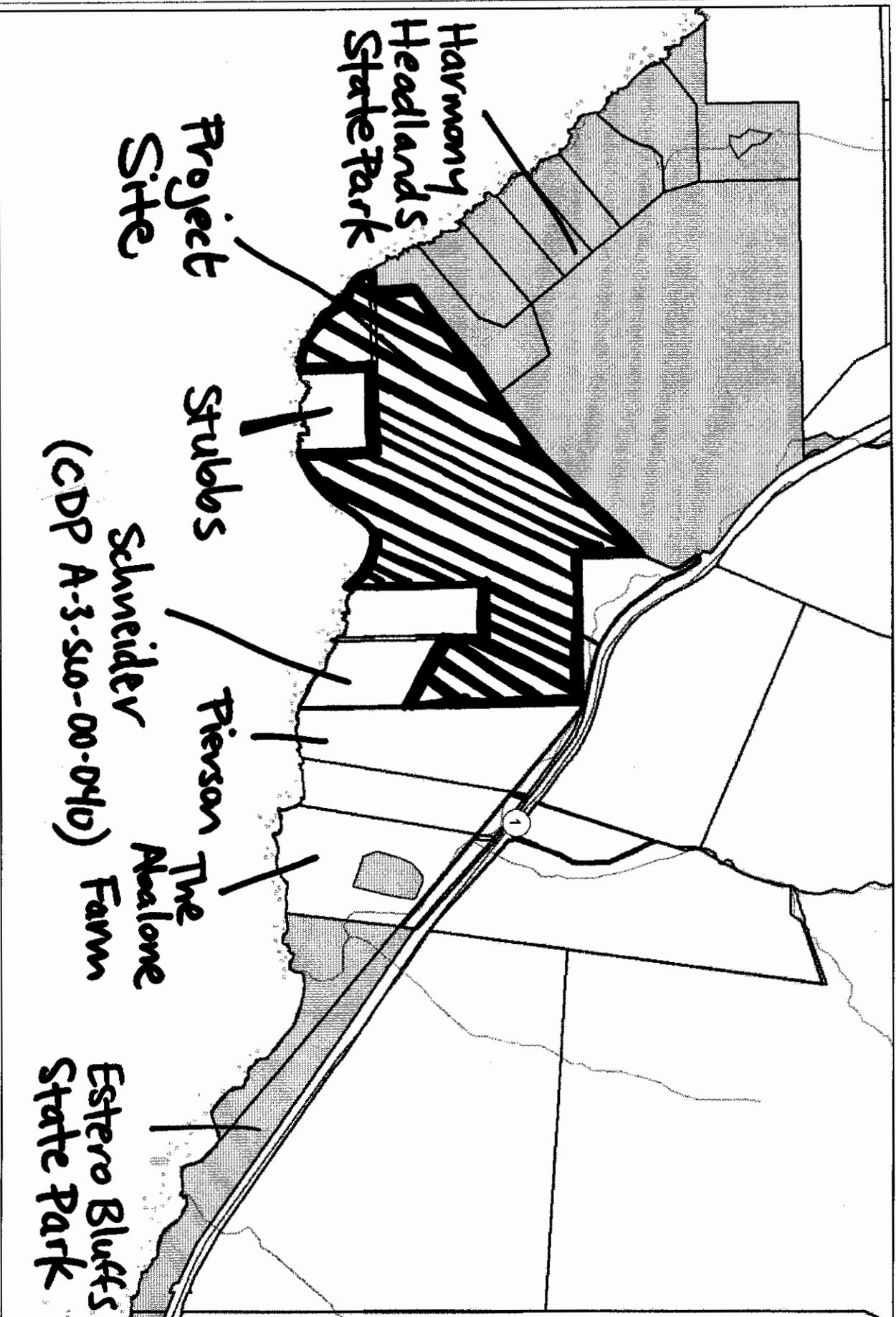
lateral access
required
pursuant to
County permit

ASSESSOR'S MAP COUNTY OF
SAN LUIS OBISPO, CA
BOOK 046 PAGE 082

CCC Exhibit 1
(page 2 of 3 pages)
A-3-SLO-06-043
(SDS Trust)

046-08

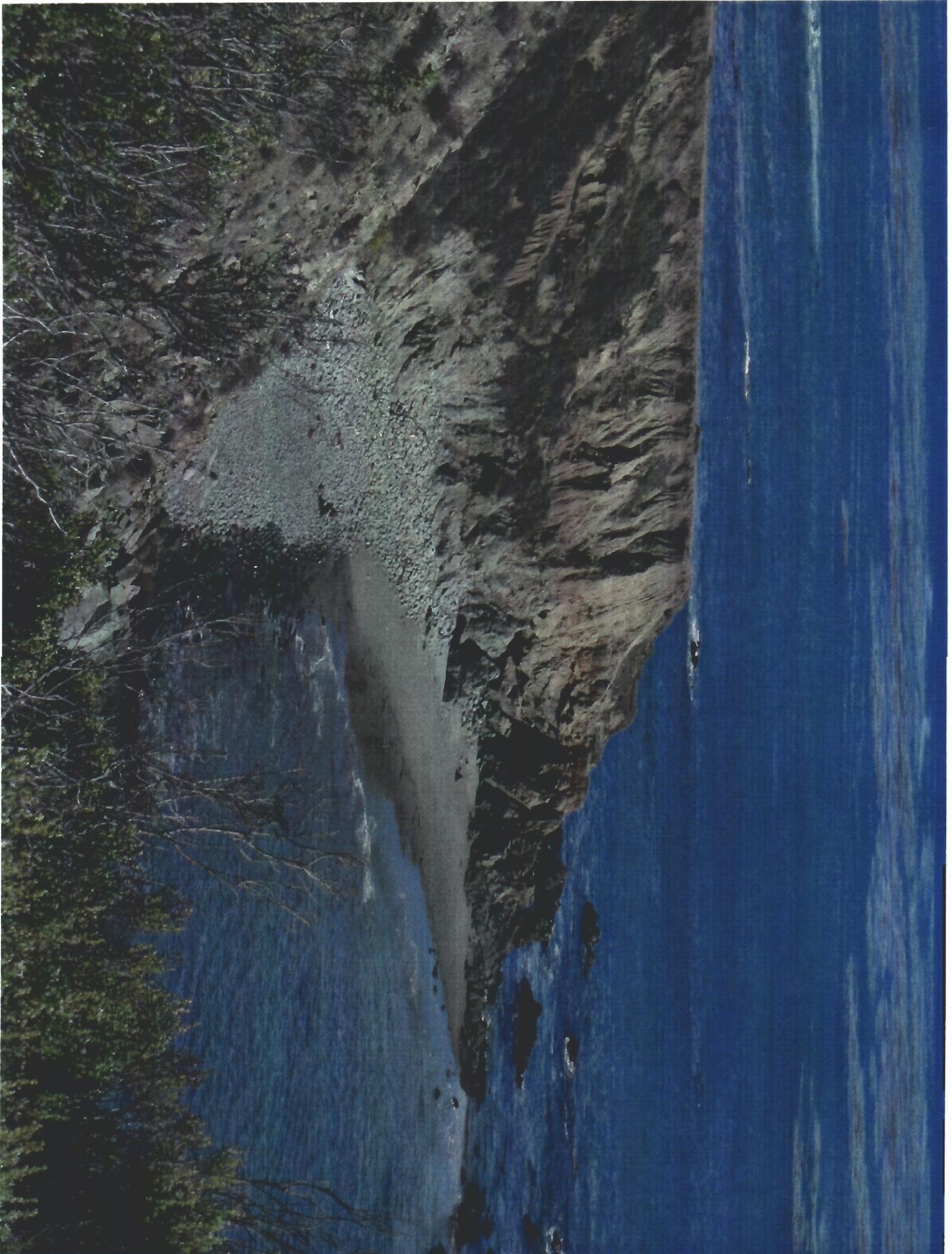
1" = 1000'



Locations approximate.
For illustrative purposes only.









SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

June 30, 2006

SDS Family Trust
PO Box 458
Sun Valley, CA 91353

FINAL LOCAL
ACTION NOTICE

REFERENCE # 3-SLO-06-290

APPEAL PERIOD 7/5/06-7/18/06

RECEIVED

JUL 03 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: Tuesday June 6, 2006

SUBJECT: SDS Family Trust Minor Use Permit/Coastal Development Permit DRC2004-00125 Board of Supervisors Appeal Hearing

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced application was approved by the San Luis Obispo County Board of Supervisors on the hearing date shown. A copy of the Resolution of approval, with final findings and conditions attached, is enclosed. The conditions of approval must be carried out as set forth in that document.

This action is appealable to the California Coastal Commission after their receipt of the Notice of Final Action. Contact the Commission's Santa Cruz Office at *(831) 427-4863 for further information on their appeal procedures.

If the use authorized by this Permit approval has not been established or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six (6) months or conditions have not been complied with, such Permit approval shall become void.

If you have any questions regarding these procedures, please contact me at (805) 788-2351.

Sincerely,

RYAN HOSTETTER
PROJECT PLANNER

cc. California Coastal Commission
Attn: Jonathan Bishop
725 Front Street Suite 300
Santa Cruz, CA 95060

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tues day June 6, 2006

PRESENT: Supervisors ~~Harry L. Ontz~~ Jerry Lenthall, James R. Patterson,
Chairperson K.H. 'Katcho' Achadjian

ABSENT: Supervisor Shirley Bianchi

RECEIVED

JUL 03 2006

RESOLUTION NO. 2006-208

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

RESOLUTION MODIFYING THE DECISION OF THE HEARING OFFICER AND
CONDITIONALLY APPROVING THE APPLICATION OF SDS FAMILY TRUST FOR
MINOR USE PERMIT/COASTAL DEVELOPMENT PERMIT DRC2004-00125

The following resolution is now offered and read:

WHEREAS, on March 17, 2005, the Zoning Administrator of the County of San Luis Obispo (hereinafter referred to as the "Hearing Officer") duly considered and conditionally approved the application of SDS Family Trust for Minor Use Permit/Coastal Development Permit DRC2004-00125; and

WHEREAS, SDS Family Trust has appealed the Hearing Officer's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on June 6, 2005, and a determination and decision was made on June 6, 2006; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be upheld in part and the decision of the Hearing Officer should be modified subject to the findings and conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

3. That this project is found to be categorically exempt from the California Environmental Quality Act under the provisions of the California Code of Regulations, title 14, section 15303 (class 3).

4. That the appeal filed by SDS Family Trust is hereby upheld in part, and the decision of the Hearing Officer is modified, and that the application of SDS Family Trust for Minor Use Permit DRC2004-00125 is hereby approved subject to the conditions of approval set forth in Exhibit B attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor Ovitt, seconded by Supervisor Lenthall, and on the following roll call vote, to wit:

AYES: Supervisors Ovitt, Lenthall, Patterson, Chairperson Achadjian

NOES: None

ABSENT: Supervisor Bianchi

ABSTAINING: None

the foregoing resolution is hereby adopted.

K.H. ACHADJIAN

Chairman of the Board of Supervisors

ATTEST:

JULIE L. RODEWALD
Clerk of the Board of Supervisors

By: VICKI M. SHELBY Deputy Clerk

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: [Signature]
Deputy County Counsel

Dated: May 23, 2006

EXHIBIT A - FINDINGS

CEQA Exemption

- A. A Class 3 Categorical Exemption was issued on February 15, 2006 (ED05-324) pursuant to CEQA Guidelines Section 15303 because the project is a minor remodel of an existing residence, construction of a new barn on slopes less than 10%, and the installation of a new septic system.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on a road constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act and Section 23.04.420 of the Coastal Zone Land Use Ordinance regarding vertical access because vertical access exists on the adjacent property to the north (State Parks property; Sea West Ranch).
- H. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act and Section 23.04.420 of the Coastal Zone Land Use Ordinance regarding lateral access. Lateral access is not required because there will be no additional structures constructed, there will be

no change in the historic use of the property, lateral access will interfere with agricultural use of the property, the proposed barn will be a replacement structure, and the value of the proposed improvements will be far less than the value of required lateral access such that there will be no nexus between the proposed improvements and the requirement for coastal access.

Archeological Sensitive Area

- I. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because a Phase I Archaeological Survey was prepared by Charles E. Dills on January 20, 1994. The survey found that no potentially significant cultural resources are present on the parcel.

Streams and Riparian Vegetation

- J. The project or use will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design, because the new facilities are located a minimum of 100 feet from the stream.
- K. Natural features and topography have been considered in the design and siting of all proposed physical improvements, because the proposed well has been designed and to minimize impacts to the stream and riparian vegetation.
- L. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.
- M. The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion and sedimentation of streams through undue surface runoff, because sedimentation and erosion control measures were put in place when the well site was prepared.
- N. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- O. The proposed use will not significantly disrupt the habitat.

EXHIBIT B - CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes:
 - a. the construction of a new 4,576 square foot barn, minor remodel of the existing residence which includes connection to an existing well and installation of a new septic system, and removal of the coastal access condition of approval from a previous Minor Use Permit (D010354P).
 - b. maximum height is 28' from average natural grade (maximum elevation of ridgeline or clearstory shall be 171').

Conditions required to be completed at the time of application for construction permits

2. Plans submitted shall show all development consistent with the approved site plan, floor plan, architectural elevations and landscape plan.
3. The applicant shall provide details on any proposed lighting within the barn. All exterior lighting shall be shielded with full cut-off shields so that no exposed bulbs (or portions of bulbs) are visible from Highway 1.

Fire Safety

4. All plans submitted to the Department of Planning and Building shall meet the fire and life safety requirements of the California Fire Code. Requirements shall include, but not be limited to those outlined in the Fire Safety Plan, prepared by the CDF/County Fire Department for this proposed project and dated March 16, 2005.

Services

5. The applicant shall submit evidence that there is adequate water to serve the proposal, on the site.
6. The applicant shall submit evidence that a septic system, adequate to serve the proposal, can be installed on the site.

Conditions to be completed prior to issuance of a construction permit

Fees

7. The applicant shall pay all applicable school and public facilities fees.

Conditions to be completed during project construction

Building Height

8. The maximum elevation of the barn is 171' feet to the top of the ridgeline (approximately 28' in height from average natural grade).
 - a. **Prior to any site disturbance**, a licensed surveyor or civil engineer shall stake the lot corners, building corners, and establish average natural grade and set a reference point (benchmark).
 - b. **Prior to approval of the foundation inspection**, the benchmark shall be inspected by a building inspector prior to pouring footings or retaining walls, as an added precaution.
 - c. **Prior to approval of the roof nailing inspection**, the applicant shall provide the building inspector with documentation that gives the height reference, the allowable height and the actual height of the structure. This certification shall be prepared by a licensed surveyor or civil engineer.

Conditions to be completed prior to occupancy or final building inspection /establishment of the use

9. Landscaping in accordance with the approved landscaping plan shall be installed or bonded for before final building inspection. If bonded for, landscaping shall be installed within 60 days after final building inspection. All landscaping shall be maintained in a viable condition in perpetuity.
10. The applicant shall obtain final inspection and approval from CDF of all required fire/life safety measures.
11. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

On-going conditions of approval (valid for the life of the project)

12. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
13. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.
14. The applicant shall as a condition of approval of this minor use permit at his sole expense, any action brought against the County of San Luis Obispo, its present or former officers, agents, or employees, by a third party challenging either its decision to approve this minor use permit or the manner in which the County is interpreting or enforcing the conditions of this minor use permit, or any other action by a third party relating to approval or implementation of this minor use permit. The applicant shall reimburse the County for any court costs and attorney fees that the County may be required by a court to pay as a result of such action, but such participation shall not relieve the applicant of his obligation under this condition.



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

TO: BOARD OF SUPERVISORS

FROM: RYAN HOSTETTER, CURRENT PLANNING

VIA: WARREN HOAG, DIVISION MANAGER, CURRENT PLANNING *WH*

DATE: JUNE 6, 2006

SUBJECT: HEARING TO CONSIDER AN APPEAL BY SDS FAMILY TRUST OF THE PLANNING DEPARTMENT HEARING OFFICER'S APPROVAL OF THEIR REQUEST FOR A MINOR USE PERMIT/COASTAL DEVELOPMENT PERMIT (DRC2004-00125) TO ALLOW THE CONSTRUCTION OF A NEW 4,576 SQUARE FOOT BARN, THE REMODELING OF AN EXISTING SINGLE FAMILY RESIDENCE, AND THE INSTALLATION OF A NEW SEPTIC SYSTEM FOR THE RESIDENCE. THE APPEAL IS A REQUEST TO REMOVE A COASTAL ACCESS CONDITION AND AMEND A CONDITION REGARDING OUTDOOR LIGHTING. SUPERVISORIAL DISTRICT 2.

RECOMMENDATION

Adopt the resolution modifying the decision of the hearing officer and conditionally approving the application of SDS Family Trust for Minor Use Permit/Coastal Development Permit DRC2004-00125 based on the findings in Exhibit A and the conditions in Exhibit B.

DISCUSSION

On March 17, 2006, a Minor Use Permit/Coastal Development Permit (MUP/CDP) was approved to allow the construction of a new 4,576 square foot barn, remodel of an existing residence, and revision of a coastal access condition placed on the property with a previous MUP/CDP (D010354P). The new barn is proposed to be located in the same location as a previous barn that has recently fallen down due to age, pilfering of wood siding, and weather. The location of the new barn will be approximately 120 feet southeast of the existing residence. The subject site is within the Agriculture land use category, located at 4510 Cabrillo Highway, approximately 1 mile south of the community of Harmony, on the west side of Highway 1, in the North Coast planning area.

On March 17, 2006, the Planning Department Hearing Officer approved the project, and immediately thereafter, department staff received an appeal by the applicant. The

primary reasons for the appeal were the coastal access condition and the outdoor lighting condition.

The following is a discussion of the two issues raised in the appeal.

APPEAL ISSUES

Issue #1 – Remove Coastal Access Condition (condition of approval #8)

Staff response:

The project was conditioned under prior Minor Use Permit/Coastal Development Permit (MUP/CDP) D010354P to record a lateral access easement for the property subject to the coastal access requirements of Section 23.04.420(d)(3) of the Coastal Zone Land Use Ordinance (CZLUO). Section 23.04.420(d)(3) of the CZLUO states:

Lateral access dedication: all new development shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year. Where topography limits the dry sandy beach to less than 25 feet, lateral access shall extend from the mean high tide line to the toe of the bluff. Where the area between the mean high tide line (MHTL) and the toe of the bluff is constrained by rocky shoreline or other limitations, the County shall evaluate the safety and other constraints and whether alternative siting of accessways is appropriate. This consideration would help maximize public access consistent with the LCP and California Coastal Act.

To meet the intent of this condition, the landowner would need to record an Offer to Dedicate (OTD) for the lateral access for the entire length of shoreline ownership (approximately 1 mile). The exact nature of the access would be based on the physical constraints at the site, and conflicts with existing approved uses. The landowner/appellant is currently in violation of this condition of approval because the OTD was supposed to be recorded "prior to the issuance of construction permits or the start of any construction activity", and the remodeling of the existing residence has begun (it has subsequently been temporarily suspended due to a stop work order). However, the county has not pursued resolution of the violation because the landowner filed an appeal of the project decision on the same day the MUP/CDP was approved (March 17, 2006).

While planning staff understands the applicant's desire to remove the coastal access condition in its entirety, staff feels that some level of coastal access is required because the installation of the new septic system and construction of the new barn constitute "development", and therefore trigger the coastal access requirements of Section 23.04.420 of the CZLUO. At the same time, we acknowledge that requiring coastal access along the entire coastal frontage of the parcel is not proportional to the

development proposed because the uses and resulting number of structures on the property remains consistent with the past hundred years. In addition, staff acknowledges that having too much coastal access to this property may lead to adverse impacts on sensitive coastal resources and the existing agricultural operation. With that in mind, staff feels that retaining condition no. 8 to require the recordation of an OTD for just the portions of the property that have "25 feet of dry sandy beach" and areas from the mean high tide line to the toe of the bluff in China Harbor is the proportional level of access to the site. The result of this new condition may only lead to very small sections of coastline being identified for a future easement (i.e. approximately 0.5 mile section of beach in China Harbor).

The OTD will be available for acceptance for 21 years. If, in that time, a public agency comes forward to accept the access easement area, the OTD will be recorded as a public access easement. If not, the OTD expires and the requirement is void.

Issue #2 – Modify or remove condition for outdoor lighting (condition of approval #3)

Staff Response:

Condition of Approval #3 reads as follows:

"The applicant shall provide details on any proposed lighting within the barn. There shall be no exterior lights attached to the barn, and no exterior lights attached to poles on the property. Exterior lighting shall be limited to a simple porch light at the single family residence only."

Staff agrees that a modification of this condition of approval is appropriate. The applicants would like to have outdoor lighting for safety proposes on and around the barn. The condition has been modified to read as follows:

"The applicant shall provide details on any proposed lighting within the barn. All exterior lighting on the property outside of the residence shall be on timers and/or sensors to allow for them to be shut off during late hours, and when there is no activity in the barn/ranch areas. All exterior lighting shall be shielded with full cut-off shields so that no exposed bulbs (or portions of bulbs) are visible from Highway 1."

OTHER AGENCY INVOLVEMENT

North Coast Advisory Council (NCAC): The NCAC was sent a referral for the proposed project, and they reviewed the project at their January 19, 2005 meeting. They recommended approval with no comments.

C-4

California Coastal Commission: The Coastal Commission was sent a referral for the subject project, and no response was received. The project is located in between the first public road and the ocean in the coastal zone which makes the project appealable to the Coastal Commission.

FINANCIAL CONSIDERATIONS

The required appeal fee was waived because the appeal listed "inconsistency with our Local Coastal Program" as one of the issues of appeal (pursuant to our adopted policy and procedure).

RESULTS

Denial of the appeal and approval of Minor Use Permit/Coastal Development Permit DRC2004-00125, will allow for the project to go forward and be constructed with limited coastal access on the property, and no outdoor lighting other than existing lighting on the home.

Approval of the appeal of the Minor Use Permit/Coastal Development Permit DRC2004-00125, would mean the project could move forward and be constructed with no coastal access requirement, and unlimited outdoor lighting of the site.

ATTACHMENTS

1. Resolution partially upholding the Hearing Officer's decision
2. Appeal form
3. Planning Department Hearing (PDH) staff report, with correspondence received at the from the March 17, 2006 PDH hearing

C-6
5

EXHIBIT A - FINDINGS

CEQA Exemption

- A. A Class 3 Categorical Exemption was issued on February 15, 2006 (ED05-324) pursuant to CEQA Guidelines Section 15303 because the project is a minor remodel of an existing residence, construction of a new barn on slopes less than 10%, and the installation of a new septic system.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on a road constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act and Section 23.04.420 of the Coastal Zone Land Use Ordinance regarding vertical access because vertical access exists on the adjacent property to the north (State Parks property; Sea West Ranch).

C-6

- H. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act and Section 23.04.420 of the Coastal Zone Land Use Ordinance regarding lateral access because requiring lateral access along the entire shoreline of the subject property may result in adverse impacts to the existing cattle grazing operations. Construction of the new barn, remodeling of the existing residence, and installation of a new septic system is a minor amount of new development for the subject property and the project has been conditioned to provide a proportional amount of limited lateral access (25 feet of dry sandy beach).

Archeological Sensitive Area

- I. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because a Phase I Archaeological Survey was prepared by Charles E. Dills on January 20, 1994. The survey found that no potentially significant cultural resources are present on the parcel.

Streams and Riparian Vegetation

- J. The project or use will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design, because the new facilities are located a minimum of 100 feet from the stream.
- K. Natural features and topography have been considered in the design and siting of all proposed physical improvements, because the proposed well has been designed and to minimize impacts to the stream and riparian vegetation.
- L. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.
- M. The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion and sedimentation of streams through undue surface runoff, because sedimentation and erosion control measures were put in place when the well site was prepared.
- N. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- O. The proposed use will not significantly disrupt the habitat.

C-6
17

EXHIBIT B - CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes:
 - a. the construction of a new 4,576 square foot barn, minor remodel of the existing residence which includes connection to an existing well and installation of a new septic system, and amendment of the coastal access condition of approval from a previous Minor Use Permit (D010354P).
 - b. maximum height is 28' from average natural grade (maximum elevation of ridgeline or clearstory shall be 171').

Conditions required to be completed at the time of application for construction permits

2. Plans submitted shall show all development consistent with the approved site plan, floor plan, architectural elevations and landscape plan.
3. The applicant shall provide details on any proposed lighting within the barn. All exterior lighting on the property outside of the residence shall be on timers and/or sensors to allow for them to be shut off during late hours, and when there is no activity in the barn/ranch areas. All exterior lighting shall be shielded with full cut-off shields so that no exposed bulbs (or portions of bulbs) are visible from Highway 1.

Fire Safety

4. All plans submitted to the Department of Planning and Building shall meet the fire and life safety requirements of the California Fire Code. Requirements shall include, but not be limited to those outlined in the Fire Safety Plan, prepared by the CDF/County Fire Department for this proposed project and dated March 16, 2005.

Services

5. The applicant shall submit evidence that there is adequate water to serve the proposal, on the site.
6. The applicant shall submit evidence that a septic system, adequate to serve the proposal, can be installed on the site.

Conditions to be completed prior to issuance of a construction permit

Fees

7. The applicant shall pay all applicable school and public facilities fees.

Coastal Access

8. **Prior to issuance of construction permits**, the applicant shall execute and record an offer of dedication for public access along the shoreline. The offer of dedication shall provide for lateral access of twenty-five (25) feet of dry sandy beach along the shore to be available at all times during the year, or from mean high tide to the toe of bluff (where there is no 25' of dry sandy beach), both of which are to be within the area known as China Harbor. The offer shall be in a form acceptable to County Counsel, and shall be approved by the Planning Director and the Executive Director of the California Coastal Commission.

Conditions to be completed during project construction

Building Height

9. The maximum elevation of the barn is 171' feet to the top of the ridgeline (approximately 28' in height from average natural grade).
- a. **Prior to any site disturbance**, a licensed surveyor or civil engineer shall stake the lot corners, building corners, and establish average natural grade and set a reference point (benchmark).
 - b. **Prior to approval of the foundation inspection**, the benchmark shall be inspected by a building inspector prior to pouring footings or retaining walls, as an added precaution.
 - c. **Prior to approval of the roof nailing inspection**, the applicant shall provide the building inspector with documentation that gives the height reference, the allowable height and the actual height of the structure. This certification shall be prepared by a licensed surveyor or civil engineer.

C-6
9

**Conditions to be completed prior to occupancy or final building inspection
/establishment of the use**

10. Landscaping in accordance with the approved landscaping plan shall be installed or bonded for before final building inspection. If bonded for, landscaping shall be installed within 60 days after final building inspection. All landscaping shall be maintained in a viable condition in perpetuity.
11. The applicant shall obtain final inspection and approval from CDF of all required fire/life safety measures.
12. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

On-going conditions of approval (valid for the life of the project)

13. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
14. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.

C-6
10

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

_____ day _____, 20__

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

**RESOLUTION MODIFYING THE DECISION OF THE HEARING OFFICER AND
CONDITIONALLY APPROVING THE APPLICATION OF SDS FAMILY TRUST FOR
MINOR USE PERMIT/COASTAL DEVELOPMENT PERMIT DRC2004-00125**

The following resolution is now offered and read:

WHEREAS, on March 17, 2005, the Zoning Administrator of the County of San Luis Obispo (hereinafter referred to as the "Hearing Officer") duly considered and conditionally approved the application of SDS Family Trust for Minor Use Permit/Coastal Development Permit DRC2004-00125; and

WHEREAS, SDS Family Trust has appealed the Hearing Officer's decision to the Board of Supervisors of the County of San Luis Obispo (hereinafter referred to as the "Board of Supervisors") pursuant to the applicable provisions of Title 23 of the San Luis Obispo County Code; and

WHEREAS, a public hearing was duly noticed and conducted by the Board of Supervisors on June 6, 2005, and a determination and decision was made on June 6, 2006; and

WHEREAS, at said hearing, the Board of Supervisors heard and received all oral and written protests, objections, and evidence, which were made, presented, or filed, and all persons present were given the opportunity to hear and be heard in respect to any matter relating to said appeal; and

WHEREAS, the Board of Supervisors has duly considered the appeal and finds that the appeal should be upheld in part and the decision of the Hearing Officer should be modified subject to the findings and conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, as follows:

1. That the recitals set forth hereinabove are true, correct and valid.
2. That the Board of Supervisors makes all of the findings of fact and determinations set forth in Exhibit A attached hereto and incorporated by reference herein as though set forth in full.

C-6
11

3. That this project is found to be categorically exempt from the California Environmental Quality Act under the provisions of the California Code of Regulations, title 14, section 15303 (class 3).

4. That the appeal filed by SDS Family Trust is hereby upheld in part, and the decision of the Hearing Officer is modified, and that the application of SDS Family Trust for Minor Use Permit DRC2004-00125 is hereby approved subject to the conditions of approval set forth in Exhibit B attached hereto and incorporated by reference herein as though set forth in full.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted.

Chairman of the Board of Supervisors

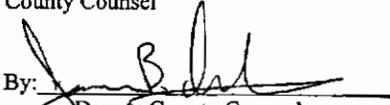
ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: 
Deputy County Counsel

Dated: May 23, 2006

C-6
12

STATE OF CALIFORNIA,)
)
County of San Luis Obispo) ss

I, _____, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this _____ day of _____, 2006.

County Clerk and Ex-Officio Clerk of the Board of Supervisors

(SEAL)

By: _____
Deputy Clerk

C-4
13

EXHIBIT A - FINDINGS

CEQA Exemption

- A. A Class 3 Categorical Exemption was issued on February 15, 2006 (ED05-324) pursuant to CEQA Guidelines Section 15303 because the project is a minor remodel of an existing residence, construction of a new barn on slopes less than 10%, and the installation of a new septic system.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on a road constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act and Section 23.04.420 of the Coastal Zone Land Use Ordinance regarding vertical access because vertical access exists on the adjacent property to the north (State Parks property; Sea West Ranch).

C-6

- H. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act and Section 23.04.420 of the Coastal Zone Land Use Ordinance regarding lateral access because requiring lateral access along the entire shoreline of the subject property may result in adverse impacts to the existing cattle grazing operations. Construction of the new barn, remodeling of the existing residence, and installation of a new septic system is a minor amount of new development for the subject property and the project has been conditioned to provide a proportional amount of limited lateral access (25 feet of dry sandy beach).

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Streams and Riparian Vegetation

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- M. The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion and sedimentation of streams through undue surface runoff, because sedimentation and erosion control measures were put in place when the well site was prepared.
- N. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- O. The proposed use will not significantly disrupt the habitat.

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 - b. maximum height is 28' from average natural grade (maximum elevation of ridgeline or clearstory shall be 171').

Conditions required to be completed at the time of application for construction permits

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Fire Safety

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Conditions to be completed during project construction

Building Height

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 - a. **Prior to any site disturbance**, a licensed surveyor or civil engineer shall stake the lot corners, building corners, and establish average natural grade and set a reference point (benchmark).
 - b. **Prior to approval of the foundation inspection**, the benchmark shall be inspected by a building inspector prior to pouring footings or retaining walls, as an added precaution.
 - c. **Prior to approval of the roof nailing inspection**, the applicant shall provide the building inspector with documentation that gives the height reference, the allowable height and the actual height of the structure. This certification shall be prepared by a licensed surveyor or civil engineer.

C-4
1/2
Exhibit 4
24 of 36

**Conditions to be completed prior to occupancy or final building inspection
/establishment of the use**

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C-6
18



Coastal Zone Appeal Application

San Luis Obispo County Department of Planning and Building

SLO CNTY

11001

NOTE: To appeal a Board of Supervisors decision you will need to obtain appeal forms from the California Coastal Commission - 725 Front Street, Suite 300 Santa Cruz, CA 95060 427-4863.

PROJECT INFORMATION

Type of permit being appealed:

- Plot Plan
 Minor Use Permit
 Development Plan
 Variance
 Land Division
 Lot Line Adjustment
 Other _____
 File Number: _____

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PLANNING/BUILDING
DEPT

The decision was made by:

- Planning Director
 Building Official
 Administrative Hearing Officer
 Subdivision Review Board
 Planning Commission
 Other _____
 Date the application was acted on _____

The decision is appealed to:

- Board of Construction Appeals
 Board of Handicapped Access
 Planning Commission
 Board of Supervisor

BASIS FOR APPEAL

Please note: An appeal must be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

- INCOMPATIBLE WITH THE LCP. The development does not conform to the standards set forth in the certified Local Coastal Program of the county for the following reasons (attach additional sheets if necessary)

Explain: _____

- INCOMPATIBLE WITH PUBLIC ACCESS POLICIES: The development does not conform to the public access policies of the California Coastal Act - Section 30210 et seq. Of the Public Resource Code (attach additional sheets if necessary)

Explain: There is no nexus for requiring coastal access. The condition requirement is not proportional to scope of the project.

Specific Conditions. The specific conditions that I wish to appeal that relate to the above referenced grounds for appeal are:

Condition Number	Reason for appeal (attach additional sheets if necessary)
#8	Remove coastal access condition
#3	Modify or remove condition for lighting

APPELLANT INFORMATION

Print name: Denise McLaughlan, Sandra Bowman Sharyn Schrick,
 Address: PO Box 458 Sun Valley CA 91353 Phone Number (daytime): 818 761 6245
Denise) highlandglen700@msn.com (Denise-cell 818 339 6582)

We are the applicant or an aggrieved person pursuant to the Coastal Zone Land Use Ordinance (CZLUO) and are appealing the project based on either one or both of the following grounds, as specified in the CZLUO and State Public Resource Code Section 30603 and have completed this form accurately and declare all statements made here are true.

Sharyn Schrick
Denise McLaughlan
 Signature Sandra Bowman

Pat Mulvan, Agent.

3/17/06
3/17/06
 Date 3/17/06

OFFICE USE ONLY	By: _____	C-4 19
Date Received: _____	Receipt No. (if applicable): _____	
Amount Paid: _____		

Revised 5/05/04/LF

Exhibit 4

26 of 36

A-3-SLO-06-043 (SDS Trust)



**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

4-1

Tentative Notice of Action

*Promoting the wise use of land
Helping build great communities*

MEETING DATE March 17, 2006 LOCAL EFFECTIVE DATE March 31, 2006 APPROX FINAL EFFECTIVE DATE April 21, 2006	CONTACT/PHONE Ryan Hostetter	APPLICANT SDS Family Trust	FILE NO. DRC2004-00125
SUBJECT Request by SDS Family Trust for a Minor Use Permit/Coastal Development Permit to allow the construction of a new 4,576 square foot barn, a minor remodel of the existing residence consisting of the connection to an existing well and installation of a new septic system, and the amendment of the lateral coastal access condition of approval from a previous Minor Use Permit (D010354P). The new barn is proposed to be located in the same location as a previous historic barn that had been destroyed due to weather and age. The location of the barn is approximately 120 feet to the east of the existing residence. The proposed barn will be visible from Highway 1 (the west side of the highway approximately 1 mile south of Harmony), and has been designed to be similar to the previous barn to reduce visual impacts from Highway 1. The project will result in the disturbance of approximately 4,576 square feet of a 400 acre parcel. The proposed project is within the Agriculture land use category and is located at 4510 Cabrillo Highway, approximately 1 mile south of the community of Harmony in the Estero planning area.			
RECOMMENDED ACTION Approve Minor Use Permit/Coastal Development Permit DRC2004-00125 based on the findings listed in Exhibit A and the conditions listed in Exhibit B			
ENVIRONMENTAL DETERMINATION A Class 3 Categorical Exemption was issued on February 15, 2006 (ED05-324).			
LAND USE CATEGORY Agriculture	COMBINING DESIGNATION Local Coastal Program/Flood Hazard/Streams and Riparian Vegetation/Sensitive Resource Area/Coastal Appealable Zone	ASSESSOR PARCEL NUMBER 046-082-010, 046-082-011, & 046-082-005	SUPERVISOR DISTRICT(S) 2
PLANNING AREA STANDARDS: None applicable <i>Does the project meet applicable Planning Area Standards: Yes - see discussion</i>			
LAND USE ORDINANCE STANDARDS: Local Coastal Program/Flood Hazard/Streams and Riparian Vegetation/Sensitive Resource Area/Coastal Appealable Zone, Archaeologically Sensitive Area <i>Does the project conform to the Land Use Ordinance Standards: Yes - see discussion</i>			
FINAL ACTION This tentative decision will become the final action on the project, unless the tentative decision is changed as a result of information obtained at the administrative hearing or is appealed to the County Board of Supervisors pursuant Section 23.01.042 of the Coastal Zone Land Use Ordinance; effective on the 10th working day after the receipt of the final action by the California Coastal Commission. The tentative decision will be transferred to the Coastal Commission following the required 14-calendar day local appeal period after the administrative hearing. The applicant is encouraged to call the Central Coast District Office of the Coastal Commission in Santa Cruz at (831) 427-4863 to verify the date of final action. The County will not issue any construction permits prior to the end of the Coastal Commission process.			

ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT:
 COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242

Exhibit 4
27 of 36

A-3-SLO-06-043 (SDS Trust)

4-2

EXISTING USES: House, cattle grazing	
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Agriculture, grazing operation <i>East:</i> Agriculture, grazing operation <i>South:</i> Agriculture, grazing operation <i>West:</i> Pacific Ocean	
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Agricultural Commissioner's Office, Cambria CSD, Cambria Fire, Cal Trans, Regional Water Quality Control Board, California Coastal Commission, and the North Coast Advisory Council	
TOPOGRAPHY: Site ranges from slightly to steeply sloping.	VEGETATION: Grasses, areas of riparian vegetation and coastal dune scrub
PROPOSED SERVICES: Water supply: On-site well Sewage Disposal: Individual septic system Fire Protection: CDF	ACCEPTANCE DATE: January 24, 2005

DISCUSSION

PROJECT HISTORY

This project as proposed includes the construction of a new barn in the same location as an old barn. The old barn fell down in 2004 because of age and weather. The project also includes the remodeling of the existing residence, and the removal of a coastal access requirement that was a condition of approval from a previous permit (D010354P). Permit D010354P included remodeling the existing 130 year old home, connecting the home to an existing well, and installation of a new septic system. This permit was approved on March 19, 2004.

A condition of approval for permit D010354P required that the applicants provide lateral access along the entire length of the property fronting the ocean for public beach access. Vertical access was not required because the site has been used for cattle grazing and dairy operations, and requiring vertical access to the beach could not only inhibit the existing agricultural operations on the site but possibly inhibit future agricultural operations as well. The applicants are requesting to remove the lateral access requirement (which was required with permit D010354P) with this Minor Use Permit/Coastal Development Permit.

Based on previous court cases (Nollan vs. Ca Coastal Commission 1988 & Dolan vs. the City of Tigard 1994), in order for an agency to require coastal access when an applicant develops their property there needs to be a nexus to require the access, and the access requirement should be proportional to the development proposal and change of intensity on the property. This project includes minor remodeling of an existing home including a new septic system, and rebuilding a barn that had been destroyed due to age and weather. Staff feels that this project does not warrant the requirement for full lateral access because it does not change the historic use of the property, and does not increase the number of structures on the site. However, staff does feel that because the remodel of the home includes a new septic system, and the barn is going to be replaced, some access should be provided. Therefore, staff is requiring that the applicants provide lateral access along the portion of their coastline that contains dry sandy beach. With this requirement there will be no conflict with the current agricultural activities or

C-4
 28

4-3

potential future agricultural uses on the property because the dry sandy beach areas on the property are not accessible by cattle.

PLANNING AREA STANDARDS: None Applicable

LAND USE ORDINANCE STANDARDS:

Local Coastal Plan/Coastal Appealable Zone: The project site is located within the California Coastal Zone as determined by the California Coastal Act of 1976 and is subject to the provisions of the Local Coastal Plan. Because this project is located between the ocean and the first public road it falls within the appealable development combining designation land use category. Therefore, any decision made by the county regarding this project's land use application may be appealed by the California Coastal Commission pursuant to Public Resources Codes Section 30603(a).

Flood Hazard: The area where construction activities will occur is outside the area of the property designated Flood Hazard.

Archaeologically Sensitive: The proposed project is located in an Archaeologically Sensitive Area. A Phase I Archaeological Survey was prepared by Charles E. Dills on January 20, 1994. The survey found that no potentially significant cultural resources are present on the parcel.

Sensitive Resource Area/Streams and Riparian Vegetation: A designated coastal stream is located on the property. It is an intermittent tributary to Ellysy Creek. The drainage supports minimal patchy riparian vegetation in areas with no riparian in the area near the existing residence. A large group of eucalyptus and Monterey cypress associated with the historic residence dominates the drainage in the area. The existing residence is located approximately 65 feet from the drainage. The new septic tank and leachfield are proposed to be setback in excess of 100 feet from the drainage. While the house does not meet the required 100 foot setback from coastal streams, the structure is a historic residence that has existed on the site for approximately 130 years and moving it is not necessary or reasonable at this time. The project proposes to restore the house to a habitable condition, but does not propose to expand or establish any new facilities that would not meet the setback.

Use of the well for residential purposes will increase the demand by approximately 1 acre foot per year (AFY). The use of a well to supply the one single family residence will be similar to the historic usage at the site (for approx. 130 years). In fact, the property was the site of an operating dairy for many years and the water demand of the proposed project will be significantly less than during the dairy operation.

COASTAL PLAN POLICIES: The project is consistent with the Coastal Plan Policies. The most relevant policies are discussed below.

Shoreline Access:

Policy 2: New Development. Vertical access is not required because existing cattle grazing operations may be adversely affected. While the site has been occupied for most of the past 130 years, the residence has been vacant for the past several years. Remodeling the existing residence, adding a bathroom and septic system, and replacement of the barn will add square footage to the property therefore limited lateral access along only the dry sandy beach is required.

Environmentally Sensitive Habitats:

Handwritten signature/initials

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Policy 1: Land Uses. The proposed project is consistent with this policy as the restoration of the existing structure will not significantly disrupt the habitat.

Policy 2: Permit Requirement. The proposed project is consistent with this policy because habitat values are minimal in the are of the project (due to over story of mature trees) and conditions have been included that will protect the stream/drainage area during construction and require some enhancement plantings. There will be no significant impact on sensitive habitats restoration of the residence is consistent with the biological continuance of the habitat.

Policy 18: Coastal Streams and Riparian Vegetation: The proposed project is consistent with this policy because the while the existing residence is approximately 65 feet from the stream, new facilities (e.g. septic and leach field) are greater than 100 feet from the stream..

Policy 19: Development in or Adjacent to a Coastal Stream: The proposed project is consistent with this policy because the new facilities will be sited and designed to prevent impacts to the coastal habitat. Sedimentation and erosion control measures were implemented to prevent erosion and runoff when the well was installed.

Coastal Watershed:

Policy 1: Preservation of Groundwater Basins. The proposed project is consistent with this policy because the well serving the project will result in withdrawal of approximately 1 acre foot per year, which is far less than withdrawals as a result of historic uses.

Policy 6: Priority for Agriculture Expansion. The proposed project is consistent with this policy because the residential use is within the historic ranch house area and will not interfere with the agricultural use (grazing) currently occurring on the property.

Does the project meet applicable Coastal Plan Policies: Yes, as conditioned

C-4
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4-5

COMMUNITY ADVISORY GROUP COMMENTS: None applicable to this site.

AGENCY REVIEW:

Public Works-"Recommend approval" 1/5/05

Ag Commissioner-"No Concerns" 2/2/06

CDF - See minor use plan fire letter in file dated 3/16/05

Cambria Community Services District - "Not in Cambria, no comment" 12/14/04

Cal Trans - None received as of 2/15/06

California Coastal Commission - None received as of 2/15/06

Regional Watery Quality Control Board - None received as of 2/15/06

LEGAL LOT STATUS:

The existing properties were legally created by a recorded map at a time when that was a legal method of creating lots.

Staff report prepared by Ryan Hostetter and reviewed by Matt Janssen

C-6
24

4-6

EXHIBIT A - FINDINGS

CEQA Exemption

- A. A Class 3 Categorical Exemption was issued on February 15, 2006 (ED05-324) pursuant to CEQA Guidelines Section 15303 because the project is a minor remodel of an existing residence and construction of a barn on slopes less than 10%.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on a road constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because vertical access is not required because existing cattle grazing operations may be adversely affected. Restoration of the ranch house and re-building the barn will add a minor amount of new construction and the project has been conditioned to provide a proportional amount of limited lateral access.

Archeological Sensitive Area

- H. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because a Phase I Archaeological Survey was prepared by Charles E. Dills on January 20, 1994. The survey found that no potentially significant cultural resources are present on the parcel.

Streams and Riparian Vegetation

- I. The project or use will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and

C-6
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will preserve and protect such features through the site design, because the new facilities are located a minimum of 100 feet from the stream

- J. Natural features and topography have been considered in the design and siting of all proposed physical improvements, because the proposed well has been designed and to minimize impacts to the stream and riparian vegetation.
- K. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.
- L. The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion and sedimentation of streams through undue surface runoff, because sedimentation and erosion control measures were put in place when the well site was prepared.
- M. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- N. The proposed use will not significantly disrupt the habitat.

C-6
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EXHIBIT B - CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes
 - a. the construction of a new 4,576 square foot barn, minor remodel of the existing residence which includes connection to an existing well and installation of a new septic system, and amendment of the coastal access condition of approval from a previous Minor Use Permit (D010354P).
 - b. maximum height is 28' from average natural grade (maximum elevation of ridgeline or clearstory shall be 171').

Conditions required to be completed at the time of application for construction permits

2. Plans submitted shall show all development consistent with the approved site plan, floor plan, architectural elevations and landscape plan.
3. The applicant shall provide details on any proposed lighting within the barn. There shall be no exterior lights attached to the barn, and no exterior lights attached to poles on the property. Exterior lighting shall be limited to a simple porch light at the single family residence only.

Fire Safety

4. All plans submitted to the Department of Planning and Building shall meet the fire and life safety requirements of the California Fire Code. Requirements shall include, but not be limited to those outlined in the Fire Safety Plan, prepared by the CDF/County Fire Department for this proposed project and dated March 16, 2005.

Services

5. The applicant shall submit evidence that there is adequate water to serve the proposal, on the site.
6. The applicant shall submit evidence that a septic system, adequate to serve the proposal, can be installed on the site.

Conditions to be completed prior to issuance of a construction permit

Fees

7. The applicant shall pay all applicable school and public facilities fees.

Coastal Access

8. The applicant shall provide a lateral access dedication of 25 feet of dry sandy beach available at all times during the year across APN 046-082-005 (pursuant to the requirements of Section 23.04.420 of the Coastal Zone Land Use Ordinance).

Conditions to be completed during project construction

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Building Height

9. The maximum elevation of the barn is 171' feet to the top of the ridgeline (approximately 28' in height from average natural grade).
 - a. **Prior to any site disturbance**, a licensed surveyor or civil engineer shall stake the lot corners, building corners, and establish average natural grade and set a reference point (benchmark).
 - b. **Prior to approval of the foundation inspection**, the benchmark shall be inspected by a building inspector prior to pouring footings or retaining walls, as an added precaution.
 - c. **Prior to approval of the roof nailing inspection**, the applicant shall provide the building inspector with documentation that gives the height reference, the allowable height and the actual height of the structure. This certification shall be prepared by a licensed surveyor or civil engineer.

Conditions to be completed prior to occupancy or final building inspection/establishment of the use

10. Landscaping in accordance with the approved landscaping plan shall be installed or bonded for before final building inspection. If bonded for, landscaping shall be installed within 60 days after final building inspection. All landscaping shall be maintained in a viable condition in perpetuity.
11. The applicant shall obtain final inspection and approval from CDF of all required fire/life safety measures.
12. The applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

On-going conditions of approval (valid for the life of the project)

13. This land use permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050 or the land use permit is considered vested. This land use permit is considered to be vested once a construction permit has been issued and substantial site work has been completed. Substantial site work is defined by Land Use Ordinance Section 23.02.042 as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade.
14. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building. If it is determined that violation(s) of these conditions of approval have occurred, or are occurring, this approval may be revoked pursuant to Section 23.10.160 of the Land Use Ordinance.

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SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

RECEIVED

APR 07 2004

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

March 24, 2004

Paul Shaner
P.O. Box 4722
SLO, CA 93403

**FINAL LOCAL
ACTION NOTICE**
REFERENCE # 3-SLO-04-118
APPEAL PERIOD 4/8-4/21/04

NOTICE OF FINAL COUNTY ACTION

HEARING DATE: March 19, 2004

SUBJECT: EMMICK/SDS FAMILY TRUST - County File No. -D010354P
DOCUMENT NO. 2004-054

LOCATED WITHIN COASTAL ZONE: YES

The above-referenced application was approved by the Hearing Officer, based on the approved Findings and Conditions, which are attached for your records. This Notice of Final Action is being mailed to you pursuant to Section 23.02.033(d) of the Land Use Ordinance.

This action is appealable to the Board of Supervisors within 14 days of this action, pursuant to Section 23.01.042 of the County Coastal Zone Land Use Ordinance. If there are Coastal grounds for the appeal there will be no fee. If an appeal is filed with non coastal issues there is a fee of \$474.00. This action may also be appealable to the California Coastal Commission pursuant to regulations contained in Coastal Act Section 30603 and the County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. The regulations provide the California Coastal Commission 10 working days following the expiration of the County appeal period to appeal the decision. This means that no construction permits can be issued until both the County appeal period and the additional Coastal Commission appeal period have expired without an appeal being filed.

Exhaustion of appeals at the county level is required prior to appealing the matter to the California Coastal Commission. This second appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz Office at (831) 427-4863 for further information on their appeal procedures.

If the use authorized by this Permit approval has not been established or if substantial work on the property towards the establishment of the use is not in progress after a period of twenty-four (24) months from the date of this approval or such other time period as may be designated through conditions of approval of this Permit, this approval shall expire and become void unless an extension of time has been granted pursuant to the provisions of Section 23.02.050 of the Land Use Ordinance.

If the use authorized by this Permit approval, once established, is or has been unused, abandoned, discontinued, or has ceased for a period of six (6) months or conditions have not been complied with, such Permit approval shall become void.

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

Sincerely,

Lona Franklin, Secretary
PLANNING DEPARTMENT HEARINGS

(Planning Department Use Only)

Date NOFA copy mailed to Coastal Commission: after April 3, 2004

Enclosed: X Staff Report
 X Findings and Conditions

EXHIBIT A - FINDINGS

CEQA Exemption

- A. The project qualifies for a Categorical Exemption (Class 1 and 31) pursuant to CEQA Guidelines Section 15301 and 15331.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on a road constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because vertical access is not required because existing cattle grazing operations may be adversely affected. Reestablishment of the residential use through restoration of the ranch house is considered a change in intensity of use and the project has been conditioned to provide lateral access.

Archeological Sensitive Area

- H. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because a Phase I Archeological Survey was prepared by Charles E. Dills on January 20, 1994. The survey found that no potentially significant cultural resources are present on the parcel.

Streams and Riparian Vegetation

- I. The project or use will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design, because the new facilities are located a minimum of 100 feet from the stream.
- J. Natural features and topography have been considered in the design and siting of all proposed physical improvements, because the proposed well has been designed and to minimize impacts to the stream and riparian vegetation.

- K. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.
- L. The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion and sedimentation of streams through undue surface runoff, because sedimentation and erosion control measures were put in place when the well site was prepared.
- M. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- N. The proposed use will not significantly disrupt the habitat.

EXHIBIT B - CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes the restoration and rehabilitation of the existing single family residence including:
 - a. Interior alterations and restorations;
 - b. Replacement of existing exterior windows on north and south elevations as shown on plans (Dec. 2002);
 - c. Replacement in kind of any deteriorated exterior materials including: siding, stairs, railing, porches, trim and roofing. Materials and dimensions shall match existing to the maximum extent feasible.
 - d. Demolition of porch/utility/bath area on west elevation;
 - e. Construct new porch/utility/bath area on west elevation as shown on plans (Dec. 2002);
 - f. Install new septic tank and leach field;
 - g. Connect residence to existing well
 - h. Improvement of driveway by minimal grading (no cut or fill) to accommodate CDF/County Fire standards and placement of dark (e.g. red rock, gravel) overlay material

Biological Resources

2. **Prior to construction of the septic tank and leachfield**, the applicant shall install construction barrier type fencing at the edge of the 100 foot setback from the creek. All construction activities, with the exception of use of the existing driveway, must take place outside of this 100 foot buffer from the creek. The fencing shall remain in place until completion of ground disturbing construction activities.
3. **Prior to final inspection**, the applicant shall provide a landscape/restoration plan for the area of the creek adjacent to the ranch house complex. The plan shall provide for native riparian plants and shall include fencing (if necessary) to protect from grazing as well and performance criteria.

Archaeological Resources

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

Coastal Access

5. Prior to the issuance of construction permits or the start of any construction activity, the applicant shall

record a lateral access easement pursuant to 23.04.420 (d)(3).

Fire Safety

6. **At the time of application of construction permits**, the applicant shall provide evidence of Fire Safety Plan review and compliance of the project with the Fire Safety Plan.

Miscellaneous

7. This permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050.



"Making a Difference"

COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT

RECEIVED

AUG 04 2006

Tentative Notice of Action

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

MEETING DATE March 19, 2004	CONTACT/PHONE Steven McMasters (805) 781-5096	APPLICANT Emmick/SDS Family Trust	FILE NO. D010354P
LOCAL EFFECTIVE DATE April 2, 2004			
APPROX FINAL EFFECTIVE DATE April 23, 2004			
SUBJECT Request by Walter Emmick/SDS Family Trust for to a Minor Use Permit/Coastal Development Permit to permit to restore an existing single family dwelling including connection to an existing well, and installation of new septic system. The project is located 4510 Cabrillo Highway, approximately 1 mile south of the community of Harmony in the Estero planning area.			
RECOMMENDED ACTION Approve Minor Use Permit/Coastal Development Permit D010354P based on the findings listed in Exhibit A and the conditions listed in Exhibit B.			
ENVIRONMENTAL DETERMINATION A Class 1 and 31Categorical Exemption was issued on February 23, 2004 (ED03-397).			
LAND USE CATEGORY Agriculture	COMBINING DESIGNATION LCP/FH/SRV/SRA/CAZ	ASSESSOR PARCEL NUMBER 046-082-005	SUPERVISOR DISTRICT(S) ① ② ③ ④ ⑤ All
PLANNING AREA STANDARDS: None Applicable <i>Does the project meet applicable Planning Area Standards: None Applicable</i>			
LAND USE ORDINANCE STANDARDS: LCP/FH/SRV/SRA/CAZ/AS <i>Does the project conform to the Land Use Ordinance Standards: Yes - see discussion</i>			
FINAL ACTION This tentative decision will become the final action on the project, unless the tentative decision is changed as a result of information obtained at the administrative hearing or is appealed to the County Board of Supervisors pursuant Section 23.01.042 of the Coastal Zone Land Use Ordinance; effective on the 10th working day after the receipt of the final action by the California Coastal Commission. The tentative decision will be transferred to the Coastal Commission following the required 14 calender day local appeal period after the administrative hearing. The applicant is encouraged to call the Central Coast District Office of the Coastal Commission in Santa Cruz at (831) 427-4863 to verify the date of final action. The County will not issue any construction permits prior to the end of the Coastal Commission process.			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

EXISTING USES: House, cattle grazing	
SURROUNDING LAND USE CATEGORIES AND USES: <i>North: Agriculture, grazing operation</i> <i>East: Agriculture, grazing operation</i> <i>South: Agriculture, grazing operation</i> <i>West: Pacific Ocean</i>	
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Cayucos Citizens Advisory Council, Public Works, Cayucos Sanitary District, RWQCB, California Coastal Commission	
TOPOGRAPHY: Nearly level to steeply sloping	VEGETATION: Grasses, areas of riparian vegetation and coastal dune scrub
PROPOSED SERVICES: Water supply: On-site well Sewage Disposal: On-site septic Fire Protection: CDF	ACCEPTANCE DATE: December 30, 2003

DISCUSSION

PROJECT HISTORY

The subject property has been the site of a residence and various agricultural operations for over 130 years. The existing ranch house dates to approximately the mid-1870s. The property has been the site of cattle grazing, and dairy operations. There are a series of agricultural outbuildings on the property in the vicinity of the ranch house. For many years the highly visible (from Highway 1) ranch complex, including a large historic barn has been a landmark along the Harmony coast section of Highway 1. The complex typified the historical use of the area and characterized the cultural landscape with which that section of Highway 1 is associated. Several years ago the barn collapsed after a series of large winter storms.

The County previously approved a separate Minor Use Permit/Coastal Development Permit (D000323P) for an agricultural well on this site to serve the existing cattle grazing operation and a future vineyard. The wellsites approved under D000323P were located on the east side of the property, near the residence and barn. This decision was appealed by the Coastal Commission based on concerns of impacts to sensitive resources downstream of the wellsite.

An emergency permit for an agricultural well to serve an existing cattle grazing operation was permitted under Emergency Permit (P020212E) on October 7, 2002, and the follow up Minor Use Permit/Coastal Development Permit (D020100P) was approved on March 21, 2003. The previously County approved Minor Use Permit/Coastal Development Permit D000323P, which was on appeal to the Coastal Commission, was withdrawn.

The subject project proposes to restore the existing approximately 130 year old residence to allow it to be occupied. This includes exterior restoration and a small addition, and interior restoration and alterations. Some of the work within the footprint of the existing structure, including installation of a new foundation has already occurred under separately issued building permits. The structure has been vacant for several years and due to weather, time and vandalism, the structure was severely degraded and uninhabitable. The proposed project would restore the residence by addressing structural and utility deficiencies and replacing rotted and degraded materials.

The old residence was historically served by a spring box. The applicant has requested as part of the application to connect the residence to the well installed and permitted under D020100P as a back-up water

supply. At the time of approval the well was limited to agricultural/grazing uses. In addition, a new septic tank and leach field will be installed to serve the rehabilitated residence.

PLANNING AREA STANDARDS: None applicable

LAND USE ORDINANCE STANDARDS:

Local Coastal Plan/Coastal Appealable Zone: The project site is located within the California Coastal Zone as determined by the California Coastal Act of 1976 and is subject to the provisions of the Local Coastal Plan. Because this project is located between the ocean and the first public road it falls within the appealable development combining designation land use category. Therefore, any decision made by the county regarding this project's land use application may be appealed by the California Coastal Commission pursuant to Public Resources Codes Section 30603(a).

Flood Hazard: The well site is outside the area of the property designated Flood Hazard.

Archaeologically Sensitive: The proposed project is located in an Archaeologically Sensitive Area. A Phase I Archaeological Survey was prepared by Charles E. Dills on January 20, 1994. The survey found that no potentially significant cultural resources are present on the parcel.

Sensitive Resource Area/Streams and Riparian Vegetation: A designated coastal stream is located on the property. It is an intermittent tributary to Ellysy Creek. The drainage supports minimal patchy riparian vegetation in areas with no riparian in the area near the existing residence. A large group of eucalyptus and Monterey cypress associated with the historic residence dominates the drainage in the area. The existing residence is located approximately 65 feet from the drainage. The new septic tank and leachfield are proposed to be setback in excess of 100 feet from the drainage. While the house does not meet the required 100 foot setback from coastal streams, the structure is a historic residence that has existed on the site for approximately 130 years. The project proposes to restore the house to a habitable condition, but does not propose to expand or establish any new facilities that would not meet the setback.

Use of the well for residential purposes will increase the demand by approximately 1 acre foot per year (AFY). The use of a well to supply the one single family residence will be similar to the historic usage at the site (for approx. 130 years). In fact, the property was the site of an operating dairy for many years and the water demand of the proposed project will be significantly less than during the dairy operation.

COASTAL PLAN POLICIES: The project is consistent with the Coastal Plan Policies. The most relevant policies are discussed below.

Shoreline Access: Policy 2: New Development. Vertical access is not required because existing cattle grazing operations may be adversely affected. While the site has been occupied for most of the past 130 years, the residence has been vacant for the past several years. Reestablishment of the residential use through restoration of the ranch house is considered a change in intensity of use and the project has been conditioned to provide lateral access.

Environmentally Sensitive Habitats:

Policy 1: Land Uses. The proposed project is consistent with this policy as the restoration of the existing structure will not significantly disrupt the habitat.

Policy 2: Permit Requirement: The proposed project is consistent with this policy because habitat values are minimal in the are of the project (due to over story of mature trees) and conditions have been included that will protect the stream/drainage area during construction and require some enhancement plantings. There will be no significant impact on sensitive habitats restoration of the residence is consistent with the biological continuance of the habitat.

Policy 18: Coastal Streams and Riparian Vegetation: The proposed project is consistent with this policy.

Exhibit 5

9 of 19

A-3-SLO-06-043 (SDS Trust)

because the while the existing residence is approximately 65 feet from the stream, new facilities (e.g. septic and leach field) are greater than 100 feet from the stream..

Policy 19: Development in or Adjacent to a Coastal Stream: The proposed project is consistent with this policy because the new facilities will be sited and designed to prevent impacts to the coastal habitat. Sedimentation and erosion control measures were implemented to prevent erosion and runoff when the well was installed.

Coastal Watershed: Policy 1: Preservation of Groundwater Basins. The proposed project is consistent with this policy because the well serving the project will result in withdrawal of approximately 1 acre foot per year, which is far less than withdrawals as a result of historic uses.

Policy 6: Priority for Agriculture Expansion. The proposed project is consistent with this policy because the residential use is within the historic ranch house area and will not interfere with the agricultural use (grazing) currently occurring on the property.

Does the project meet applicable Coastal Plan Policies: Yes, as conditioned

COMMUNITY ADVISORY GROUP COMMENTS: 'No need for additional comments'

AGENCY REVIEW:

Public Works - 'No concerns'

North Coast Advisory Council - No concerns

Cayucos Advisory Council - minimize disturbance

California Coastal Commission - Address ESHA and Coastal Watershed policies

RWQCB - No comment

Cayucos Sanitary District - Project not within District

Staff report prepared by Steven McMasters and reviewed by Matt Janssen

EXHIBIT A - FINDINGS

CEQA Exemption

- A. The project qualifies for a Categorical Exemption (Class 1 and 31) pursuant to CEQA Guidelines Section 15301 and 15331.

Minor Use Permit

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the project does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on a road constructed to a level able to handle any additional traffic associated with the project.

Coastal Access

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because vertical access is not required because existing cattle grazing operations may be adversely affected. Reestablishment of the residential use through restoration of the ranch house is considered a change in intensity of use and the project has been conditioned to provide lateral access.

Archeological Sensitive Area

- H. The site design and development incorporate adequate measures to ensure that archeological resources will be acceptably and adequately protected because a Phase I Archeological Survey was prepared by Charles E. Dills on January 20, 1994. The survey found that no potentially significant cultural resources are present on the parcel.

Streams and Riparian Vegetation

- I. The project or use will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design, because the new facilities are located a minimum of 100 feet from the stream
- J. Natural features and topography have been considered in the design and siting of all proposed physical improvements, because the proposed well has been designed and to minimize impacts to the stream and riparian vegetation.

- K. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.
- L. The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion and sedimentation of streams through undue surface runoff, because sedimentation and erosion control measures were put in place when the well site was prepared.
- M. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat.
- N. The proposed use will not significantly disrupt the habitat.

EXHIBIT B - CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes the restoration and rehabilitation of the existing single family residence including:
 - a. Interior alterations and restorations;
 - b. Replacement of existing exterior windows on north and south elevations as shown on plans (Dec. 2002);
 - c. Replacement in kind of any deteriorated exterior materials including: siding, stairs, railing, porches, trim and roofing. Materials and dimensions shall match existing of the maximum extent feasible.
 - d. Demolition of porch/utility/bath area on west elevation;
 - e. Construct new porch/utility/bath area on west elevation as shown on plans (Dec. 2002);
 - f. Install new septic tank and leach field;
 - g. Connect residence to existing well
 - h. Improvement of driveway by minimal grading (no cut or fill) to accomodate CDF/County Fire standards and placement of dark (e.g. red rock, gravel) overlay material

Biological Resources

2. **Prior to construction of the septic tank and leachfield**, the applicant shall install construction barrier type fencing at the edge of the 100 foot setback from the creek. All construction activities, with the exception of use of the existing driveway, must take place outside of this 100 foot buffer from the creek. The fencing shall remain in place until completion of ground disturbing construction activities.
3. **Prior to final inspection**, the applicant shall provide a landscape/restoration plan for the area of the creek adjacent to the ranch house complex. The plan shall provide for native riparian plants and shall include fencing (if necessary) to protect from grazing as well and performance criteria.

Archaeological Resources

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

Coastal Access

5. Prior to the issuance of construction permits or the start of any construction activity, the applicant shall

record a lateral access easement pursuant to 23.04.420 (d)(3).

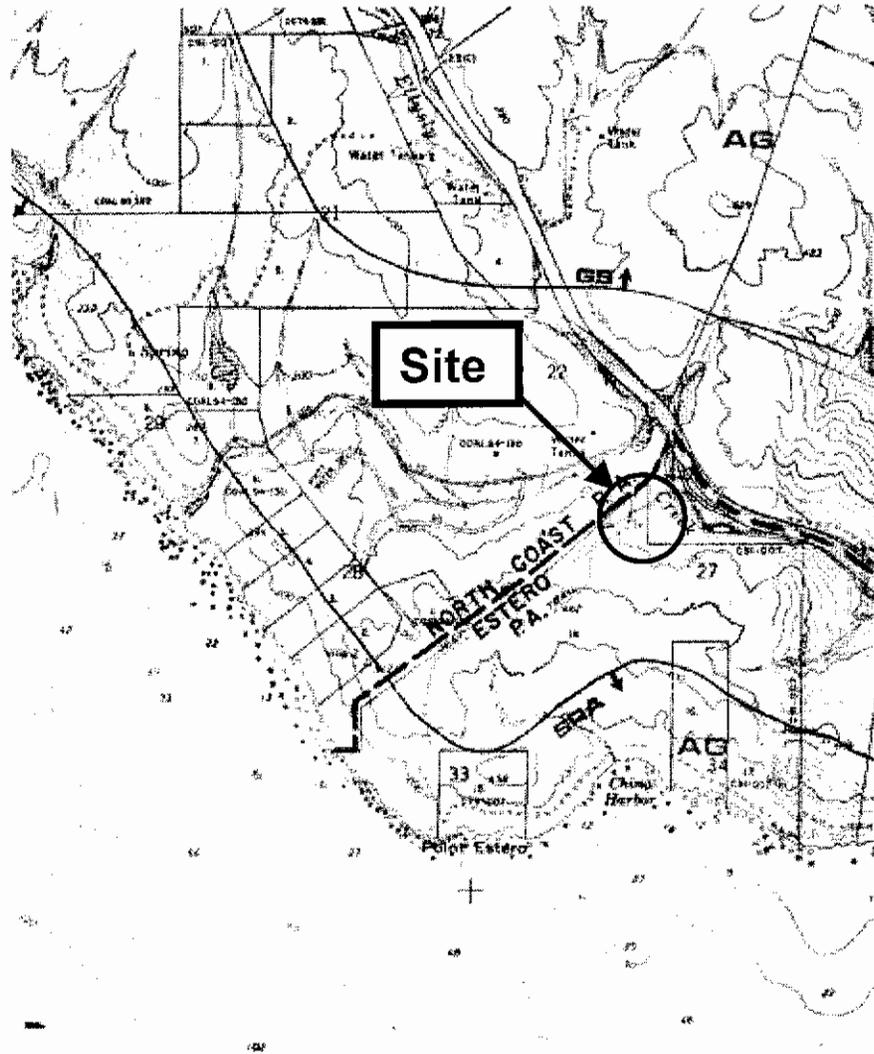
Fire Safety

6. **At the time of application of construction permits**, the applicant shall provide evidence of Fire Safety Plan review and compliance of the project with the Fire Safety Plan.

Miscellaneous

7. This permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050.

San Luis Obispo Department of Planning and Building



Project

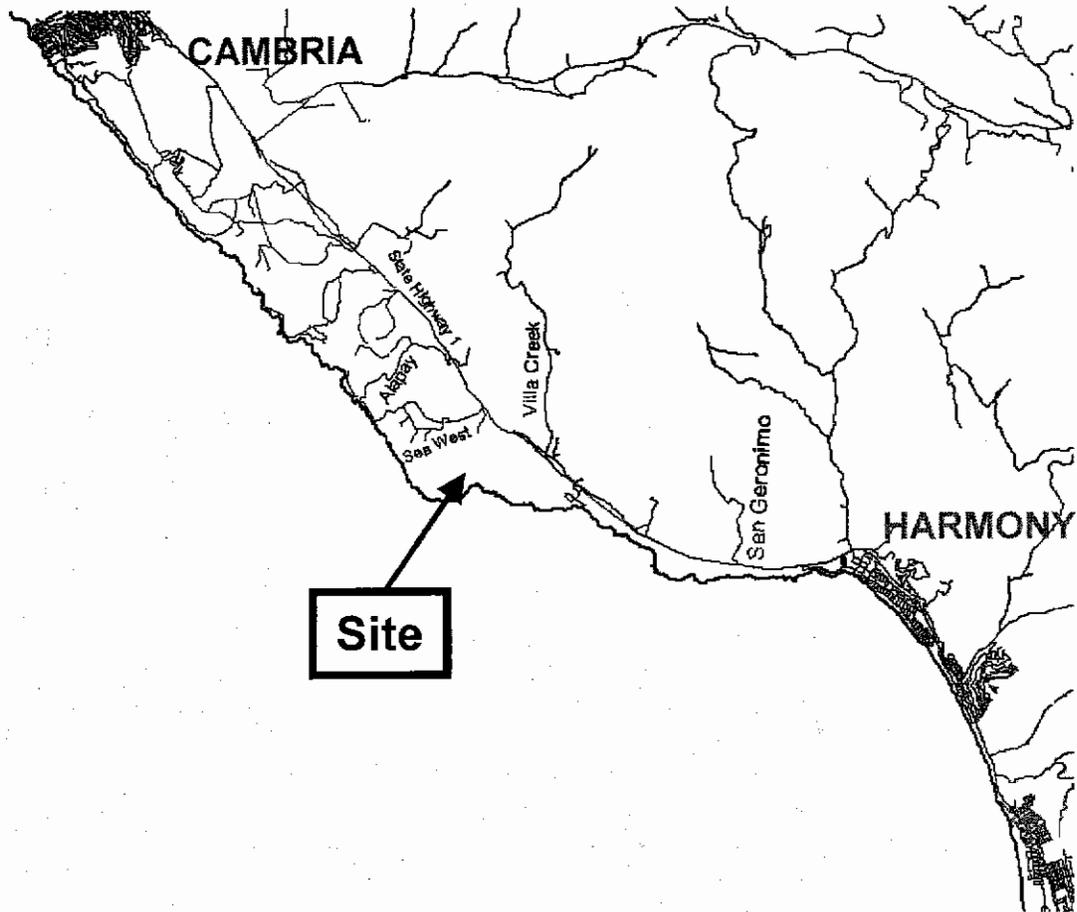
SDS Family Trust
Minor Use Permit
Project #: D010354P
APN #: 046-082-010 & 005



Exhibit

Land Use Map

San Luis Obispo Department of Planning and Building



Project

SDS Family Trust
Minor Use Permit
Project #: D010354P
APN #: 046-082-010 & 005



Exhibit

Vicinity Map

San Luis Obispo Department of Planning and Building

SHEET INDEX

A-1 SITE PLAN LEGAL DESCRIPTION
 VICTORY AND PROJECT DESCRIPTION
 A-2 LOCATION MAP
 A-3 FLOOR PLANS, ELEVATIONS, LANDING, WOODEN WALKWAY
 A-4 EXISTING AND PROPOSED CONSTRUCTION
 A-5 EXISTING AND PROPOSED CONSTRUCTION
 A-6 EXISTING AND PROPOSED CONSTRUCTION
 A-7 EXISTING AND PROPOSED CONSTRUCTION
 A-8 EXISTING AND PROPOSED CONSTRUCTION

LEGAL DESCRIPTION

ADDRESS: 8150 CARROLL HIGHWAY
 PARCELS: 046-082-010 & 005
 PORTION OF SECTION 27, T.2N. 35S. R.12E. S.10
 MOUNT DIABLO MOUNTAIN

PROJECT DATA

PROJECT NAME: EMICK RESIDENCE
 PROJECT NUMBER: 2018-001

PROJECT DESCRIPTION

Repair and renovation of existing residence.

GENERAL NOTES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA BUILDING CODE, UNLESS OTHERWISE SPECIFIED.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA ELECTRICAL CODE, UNLESS OTHERWISE SPECIFIED.
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA MECHANICAL CODE, UNLESS OTHERWISE SPECIFIED.
4. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA PLUMBING CODE, UNLESS OTHERWISE SPECIFIED.
5. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA FIRE CODE, UNLESS OTHERWISE SPECIFIED.

NEIGHBORHOOD MAP

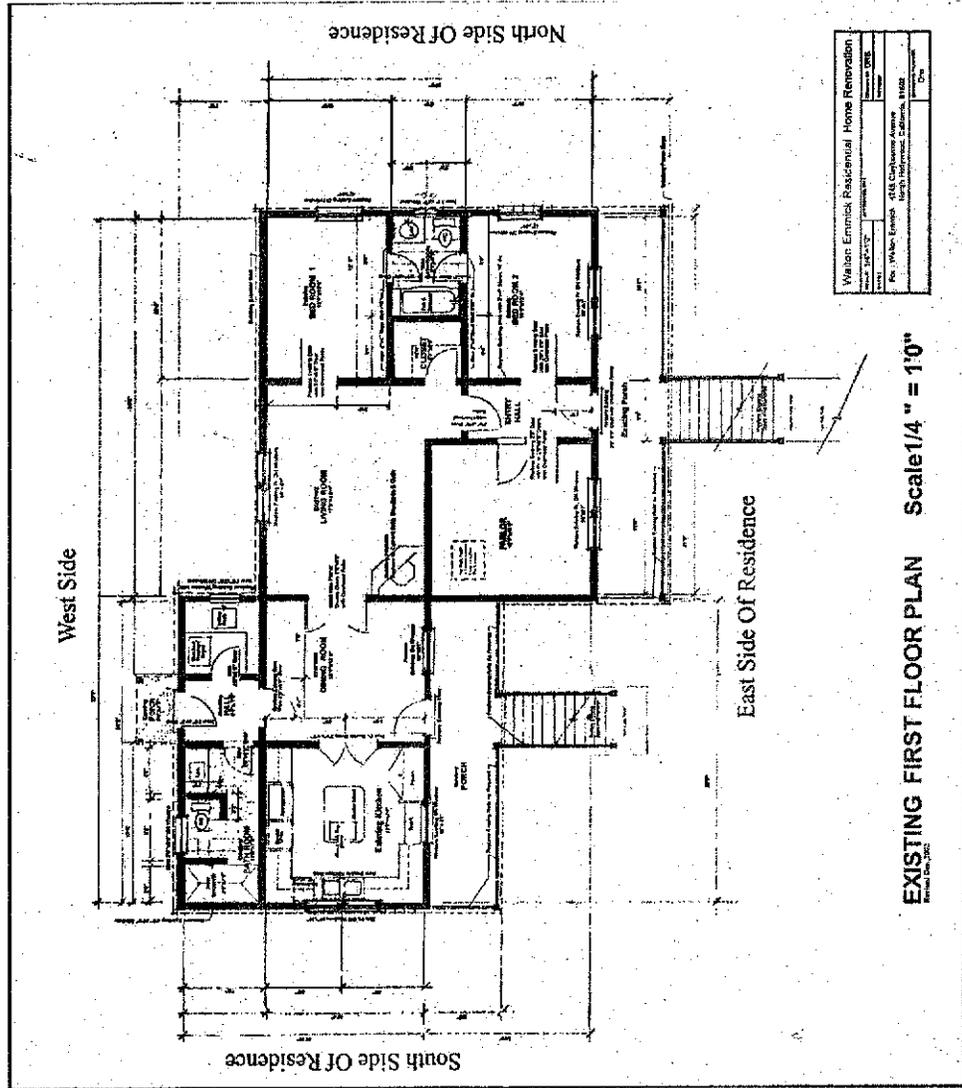
SITE PLAN

Project
 SDS Family Trust
 Minor Use Permit
 Project #: D010354P
 APN #: 046-082-010 & 005



Exhibit
 Site Plan

San Luis Obispo Department of Planning and Building



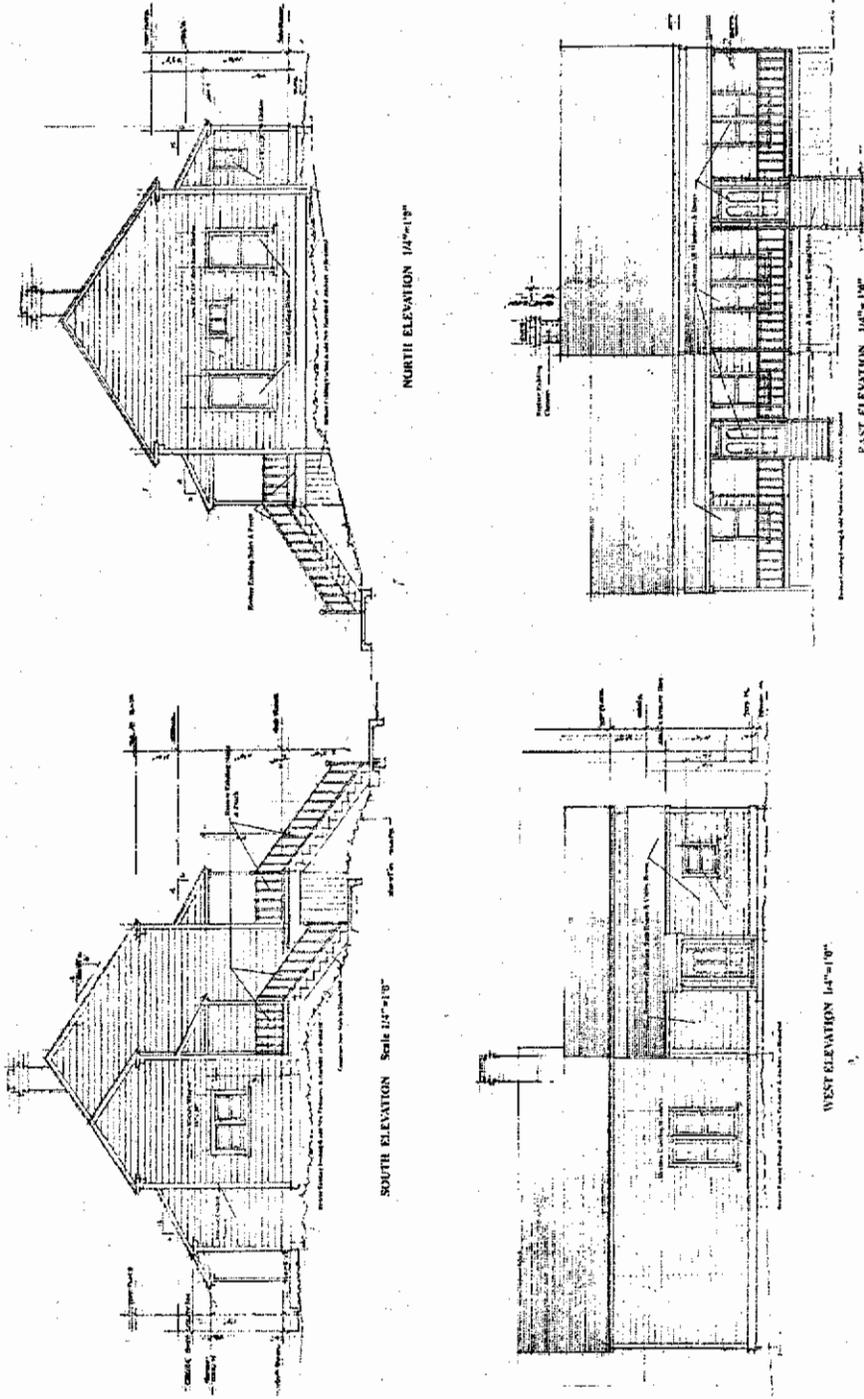
Project

SDS Family Trust
 Minor Use Permit
 Project #: D010354P
 APN #: 046-082-010 & 005



Exhibit

Floor Plan



Project

SDS Family Trust
Minor Use Permit
Project #: D010354P
APN #: 046-082-010 & 005



Exhibit

Elevation Plan

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863; fax (831) 427-4877
www.coastal.ca.gov



**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commsioner Sara Wan	Commissioner Mike Reilly
California Coastal Commission	California Coastal Commission
45 Fremont Street, Suite 2000	45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219	San Francisco, CA 94105-2219
(415) 904-5200	(415) 904-5200

SECTION II. Decision Being Appealed

- Name of local/port government: **San Luis Obispo County**
- Brief description of development being appealed:
Construction of a new 4,576 sq.ft. barn, minor remodel of the existing residence which includes connection to an existing well and installation of a new septic system, and removal of the coastal access condition from a previous coastal development permit (D010354P).
- Development's location (street address, assessor's parcel number, cross street, etc.):
West side of Highway 1, Harmony Coast, north of the town of Cayucos, San Luis Obispo County APN 064-414-029.
- Description of decision being appealed:
 - Approval; no special conditions: _____
 - Approval with special conditions: XX
 - Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-06-043
DATE FILED: Central Coast 7-18-06
DISTRICT: Central Coast

RECEIVED

JUL 18 2006

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Exhibit 6
Page 1 of 10
A-3-SLO-06-043 (SDS Family Trust)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

a. Planning Director/Zoning Administrator

c. Planning Commission

b. City Council/Board of Supervisors

d. Other: _____

6. Date of local government's decision: June 6, 2006

7. Local government's file number: DRC2004-00125

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

SDS Family Trust, P.O. Box 458, Sun Valley, CA 91353

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Matt Janssen, Chief of Permits,
San Luis Obispo County Planning & Building Dept.
County Government Center, San Luis Obispo, CA 93408

(2) _____

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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

See Attached.

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

SECTION V. Certification

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

Signed: Sara J. Wan
Appellant or Agent

Date: July 18, 2006

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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

See Attached.

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

SECTION V. Certification

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

Signed: *Theresa Ruff*
Appellant or Agent

Date: July 18, 2006

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

Reasons for Appeal: San Luis Obispo County Coastal Development Permit DRC2004-00125 (SDS Family Trust)

The County approved project is for development of a 4,576 square foot barn, minor remodel of an existing residence (including connection to an existing well and installation of a new septic system), and removal of the requirement for a lateral coastal access easement dedication contained in a previous coastal development permit (D010354P). The project is located on a 400-acre parcel west of Highway One, in a rural agricultural area of San Luis Obispo County's North Coast between Cayucos and Cambria known as the Harmony Coast. The permittee has undertaken the development authorized by, and thus has enjoyed the benefits of, D010354P, with the result that the conditions of that approval, including the condition that requires a public access OTD, are binding on the permittee and no longer subject to collateral challenge or attack.

Coastal Act Section 30210 requires that maximum public access opportunities be provided, consistent with public safety and the need to protect private property owners' rights and natural resource areas from overuse. Coastal Act Section 30211 requires that development not interfere with the public's right of access to the sea. Coastal Act Section 30212, and San Luis Obispo County LCP Shoreline Access Policy 2 (as implemented by Coastal Zone Land Use Ordinance Section 23.04.420), require that maximum vertical and lateral access be provided in new development.

The permit approved by San Luis Obispo County is inconsistent with these requirements because it removes an existing requirement for a public access offer to dedicate (OTD). Deletion of the access OTD does not maximize public access opportunities, and interferes with the public's right to travel to and along the coast, inconsistent with Coastal Act Sections 30210 and 30211. Deletion of the existing requirement for an access easement OTD also conflicts with Coastal Act Section 30212 and LCP Access Policy 2, requiring new development to provide public access.

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CALIFORNIA COASTAL COMMISSION

JUN 19 2006

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060-4508
VOICE (831) 427-4863 FAX (831) 427-4877

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: SANTA LUCIA CHAPTER of the SIERRA CLUB
Mailing Address: PO BOX 15755
City: SAN LUIS OBISPO Zip Code: 93406 Phone: 805-543-8717

SECTION II. Decision Being Appealed

- Name of local/port government:
SAN LUIS OBISPO COUNTY BOARD OF SUPERVISORS
- Brief description of development being appealed:
4,500 SF BARN, ENGINEERED SEPTIC SYSTEM,
HOUSE REMODEL. NO PUBLIC ACCESS IS BEING REQUIRED,
DESPITE ITS OCEAN-FRONT LOCATION + A KEY LINK IN THE
COASTAL TRAIL.
- Development's location (street address, assessor's parcel no., cross street, etc.):
W. SIDE OF HWY 1, HARMONY COAST, NORTH OF THE
TOWN OF CAYUCOS, IMMEDIATELY SOUTH OF SEA WEST RANCH (D.R.R.)
- Description of decision being appealed (check one.):
 Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

<u>TO BE COMPLETED BY COMMISSION:</u>	
APPEAL NO:	<u>A-3-SLO-06-043</u>
DATE FILED:	<u>7-18-06</u>
DISTRICT:	<u>Central Coast</u>

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

~~THE~~

BY UPHOLDING THE APPLICANT'S APPEAL, THE BOARD DELETED 2 SPECIAL CONDITIONS. ONE DEALT WITH SECURITY LIGHTING, THE OTHER WOULD HAVE REQUIRED A PUBLIC ACCESS OTD ALONG THE SHORELINE, 25' ABOVE THE MEAN HIGH TIDE.

BY DELETING THIS CONDITION, THE BOARD IGNORED LCP POLICIES REQUIRING PUBLIC ACCESS.

THIS PROPERTY IS ON CHINA HARBOR - AN AREA USED BY KAYAKERS, SURFERS + FISHERS. IT IS ADJACENT TO A STATE PARK, AND THE WHOLE HARMONY COAST IS A VITAL LINK IN THE CA.

COASTAL TRAIL. THE PROJECT SHOULD BE CONDITIONED TO REQUIRE A BLUFFTOP TRAIL ALIGNMENT FOR THE CCT, AS EVEN A 25' OTD WILL NOT MAKE PROVIDE ADEQUATE PUBLIC ACCESS AT HIGH TIDE.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors (APPEAL TO THE BOARD OF A HEARING OFFICER'S DETERMINATION)
- Planning Commission
- Other

6. Date of local government's decision:

6/6/06

7. Local government's file number (if any):

DRC 2004-00125

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

SDS FAMILY TRUST
PO BOX 458
SUN VALLEY CA 91353

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) FAT MOLNAR
1155 MONTECITO RD. CYN.
CAYUCOS CA 93430

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

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



Signature of Appellant(s) or Authorized Agent

Date: 6/16/06

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

Section VI. Agent Authorization

I/We hereby
authorize

_____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____



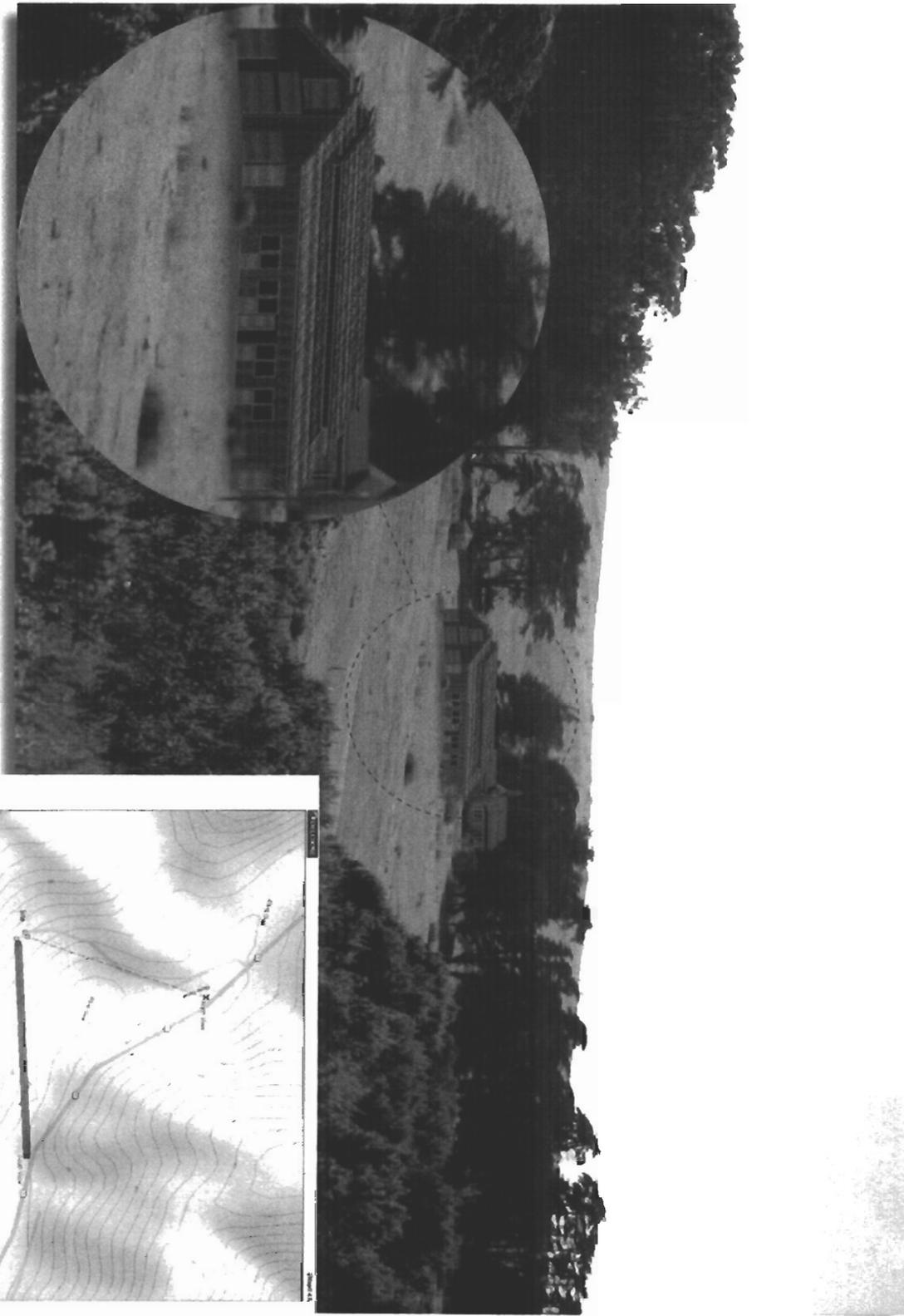
PROJECT

Minor Use Permit
SDS Family Trust – Ennick DRC2004-00125

EXHIBIT

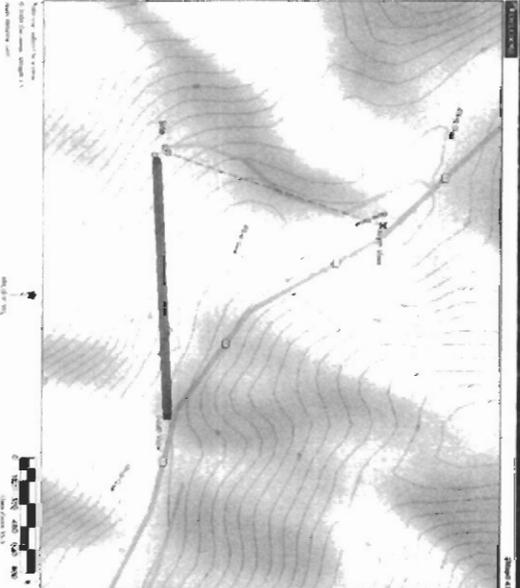
Old Barn





View From South

Elev: 56° N, 35° 28.399° W 120° 59.185°
McLaughlan Barn APN#: 013-171-008
Minor Use Permit #: DRC 2004-00125



PROJECT

Minor Use Permit
SDS Family Trust – Ennick DRC2004-00125



EXHIBIT

Site Photo – View from South



View From North

Elev: 71' N35° 28.640' W120° 59.454'
McLaughlan Barn APN#: 013-171-008
Minor Use Permit #: DRC 2004-00125

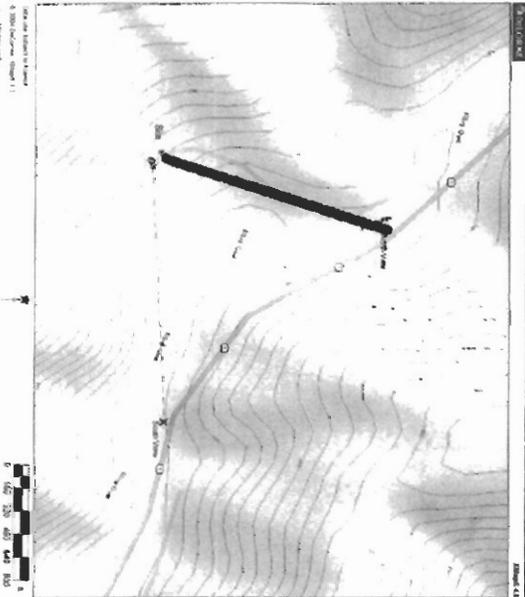
PROJECT

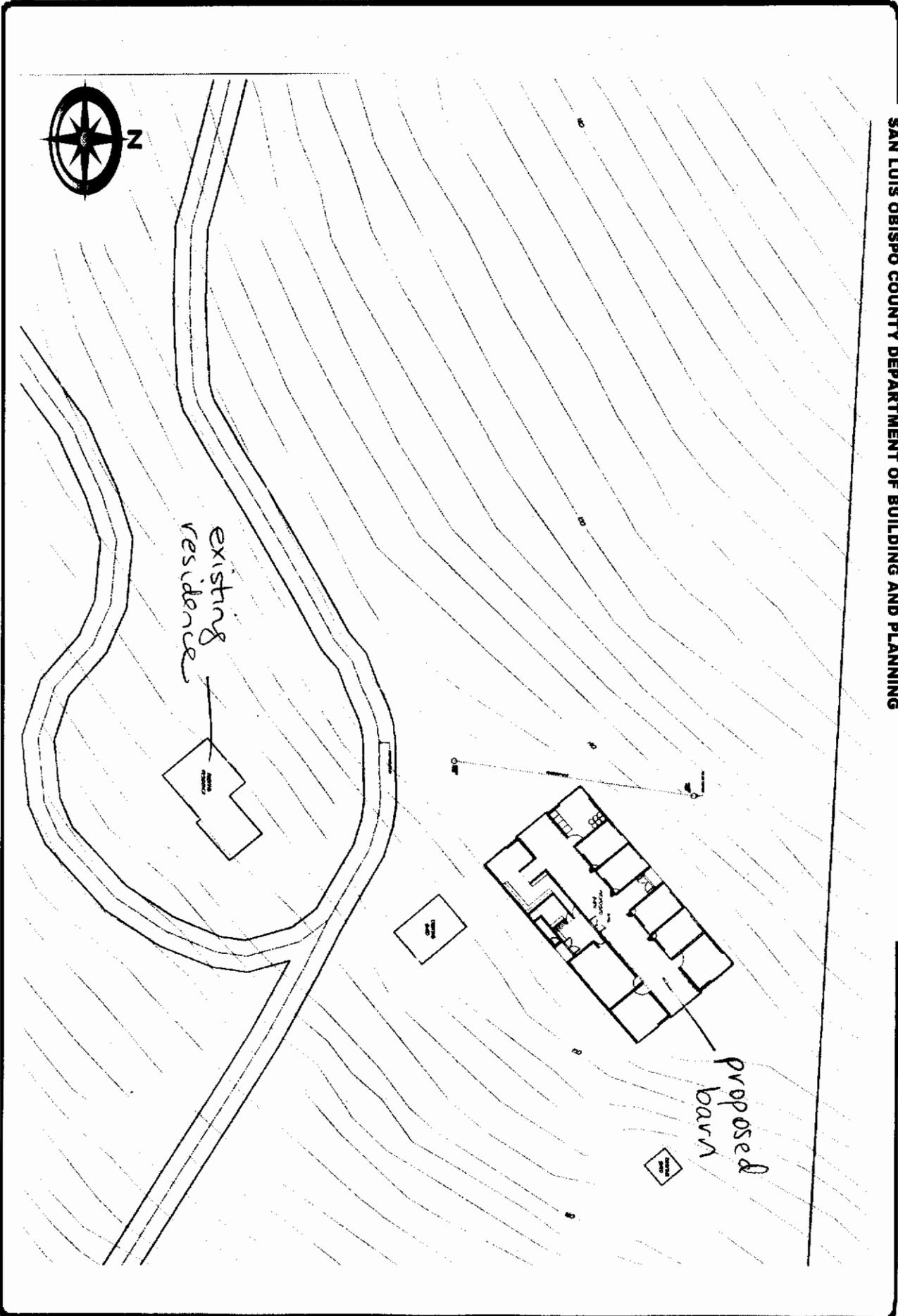
Minor Use Permit
SDS Family Trust – Ennick DRC2004-00125



EXHIBIT

Site Photo – View from North





PROJECT

Minor Use Permit

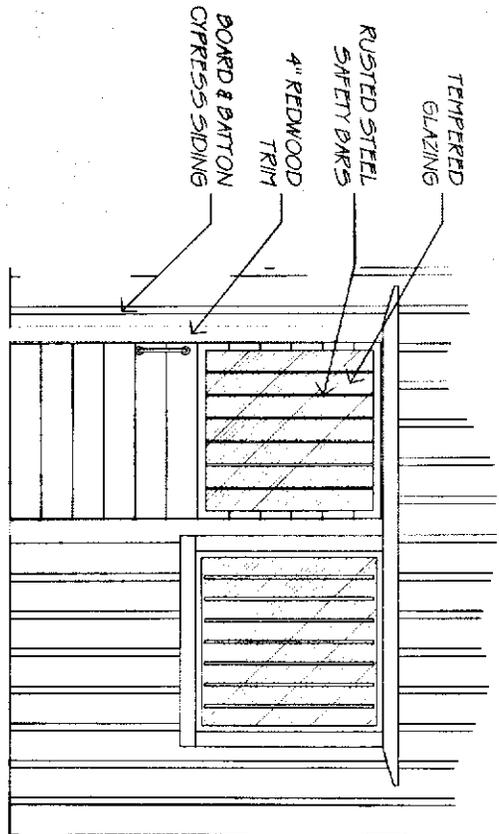
SDS Family Trust - Ennick DRC2004-00125



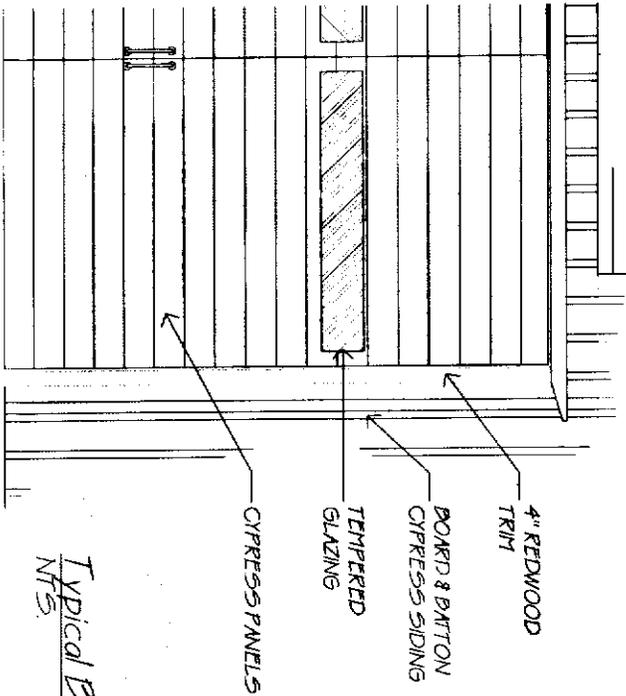
EXHIBIT

Site Plan-Barn

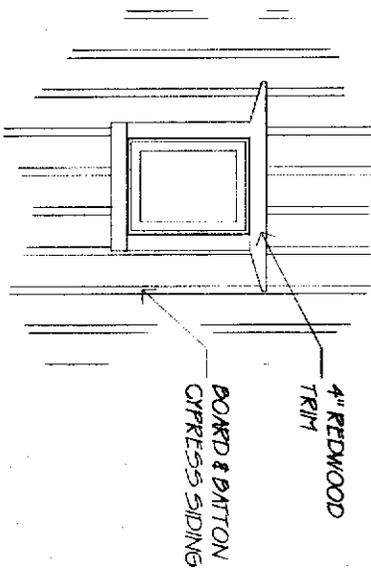
Fenestration Details



Typical Stall Door
NTS



Typical Barn Door
NTS



Typical Casement Window
NTS

PROJECT

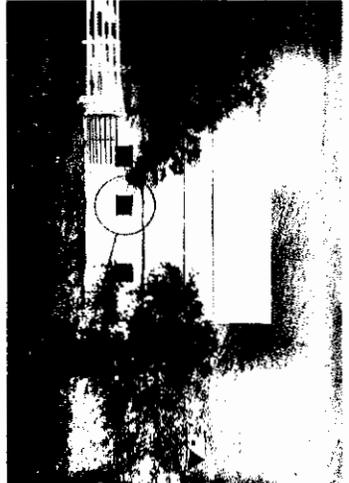
Minor Use Permit
SDS Family Trust – Ennick DRC2004-00125



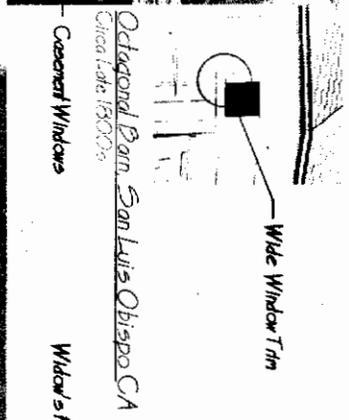
EXHIBIT

Fenestration Details

Precedents



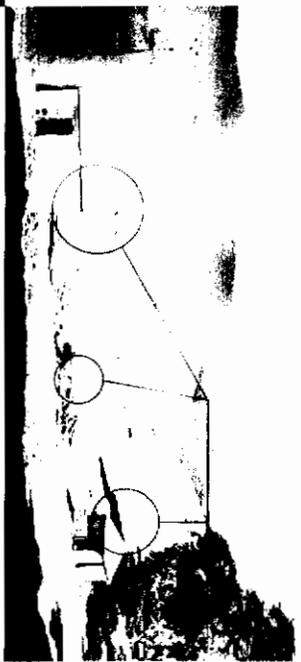
Apple Barn San Benito Valley CA Unknown



Octagonal Barn San Luis Obispo CA Circa Late 1800s
Wide Window Thin
Casement Windows
Widow's Peak



Los Osos Valley Road Barn San Luis Obispo CA Circa Late 1800s



Rusted Corrugated Metal Roofing to Match Existing Out-Buildings



McLaughlin Site Harmony CA Unknown
Chimney
Board & Baton Siding
Shannon Barn Santa Ynez Valley CA Circa 1800s

PROJECT

Minor Use Permit
SDS Family Trust - Ennick DRC2004-00125



EXHIBIT

Precedents