

April 2, 2015

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

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APR - 6 2015

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Application No. A-3-SLO-98-061
Agenda Item No. Th13a

To Whom It May Concern,

We own a home at 1143 10th St., Los Osos, CA. Our home is the second home to the south of the proposed single-family residences proposed at 1111 and 1113 10th St. Since we are unable to attend the hearing scheduled for Thursday, April 16, 2015, we want to go on record as being opposed to this development for a number of reasons.

Firstly, the proposed development is in a sensitive habitat with protected pygmy oaks, madrone and other sensitive species. This project would adversely affect this habitat.

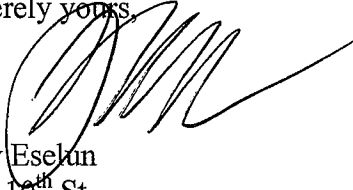
Secondly, the proposed development is located within an area which provides habitat and passageway around the estuary for deer, raccoon, rabbit, coyote, and a number of other creatures. It is immediately adjacent to the Elfin Forest which is protected habitat and the Morro Bay National Estuary. This project would adversely affect the animals and birds.

Thirdly, there is still no wastewater/sewer system in place to service the proposed project.

Lastly, there is inadequate water supply in Los Osos to support existing development, let alone any new development. Any new development must be curtailed until such time as the groundwater basin is stabilized and, if or when the California drought has ended.

We urge you to deny approval of this development. Thank you in advance for your consideration.

Sincerely yours,



Terry Eselun
1143 10th St.
Los Osos, CA 93402
714-271-0477
taeselun@yahoo.com

April 2, 2015

Re: Application No. A-3-SLO-98-061
Agenda Item No. Th13a
Carolyn Frank
Opposed to Project

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

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

To Whom It May Concern,

I've owned a home at 1135 10th St., Los Osos, CA for over 32 years. My home is directly adjacent to the proposed single-family residences proposed at 1111 and 1113 10th St. Since I am unable to attend the hearing scheduled for Thursday, April 16, 2015, I wanted to voice my opposition to this development.

Tenth Street is a dead end at my driveway. A pocket pump and electrical equipment has been installed at the street's terminus to service the proposed sewer system. This equipment is below ground and above ground making vehicle access to the proposed development impossible. I do not want any intrusion on or through my property for access to this proposed development.

Additionally, the proposed development would destroy sensitive habitat which is home to pygmy oaks, madrone, and other endangered species. It is also a thoroughway for animals and fowl that rely on the Morro Bay National Estuary for their survival.

Moreover, due to the ongoing drought and degradation of the Los Osos' aquifer from over pumping, there is not enough water to support the proposed development.

Please deny approval of this project. Thank you for your courtesy.

Sincerely yours,



Carolyn Frank
1135 10th St.
Los Osos, CA 93402
805-528-8578

1153 10th St.
Los Osos, CA 93402
April 3, 2015

John L. Fanselow
Regarding: : A-3-SLO-98-061
Opposed to Granting Application

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

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Gentlemen:

I am writing to endorse the California Coastal Commission's staff report of 3/26/2015, recommending the denial of Application Number: A-3-SLO-98-061. The applicant is Anthony Wolcott. I have read the entire staff report, including all of the attachments, and I concur in your staff's findings and recommendations.

The undeveloped parcels in question are a very important, environmentally sensitive habitat area, and also a very much needed buffer to protect the Morro Bay Elfin Forest and the Bay itself. The parcels themselves also serve as a wilderness bridge between the Elfin Forest and other wooded areas outside of the Elfin Forest, areas which are adjacent to Morro Bay itself. Furthermore, the proposed development will provide another unsupervised portal for inappropriate entrance into the wetlands portion of the Elfin Forest.

The staff report indicates that a total of 236 cubic yards of fill will be required and that approximately 20,873 square feet of the property will be disturbed. That disturbance will be very close to the Bay. Judging from the affects experienced with run-off from just the sewer development effort in Los Osos, such a large disturbed area so close to the Bay has major run-off pollution potential for the Bay. As it is, the Bay is under assault from upstream run-off. It needs no further contributions from ill-advised development.

At a time when severe water shortage problems are occurring throughout California, and in particular Los Osos is already very much over-subscribed in its use of its aquifer, extending the out-building of Los Osos to consume pristine environmentally important land is totally inappropriate. There are many vacant lots within the current build-out area of Los Osos that could be built upon. Since those in-fill lots have higher priority for water and sewer services than do the undeveloped build-out parcels, it makes no sense to add to our resource problems by expanding the resource service area to parcels such as this.

In summary, I hope that the Coastal Commission will concur with the denial recommendation of its staff with regard to this application.

Yours truly,



John L. Fanselow

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, California 95060

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CENTRAL COAST AREA

Applic: # A-3-SLO-98-061
Agenda # Th13a
Position: Against Development

Karen Muschenetz
1156 Ninth St.
Los Osos, California 93042

April 6, 2015

Re: Application Number: A-3-SLO-98-061
Agenda Item Number: Th13a

Dear Commissioners:

In 1973 my husband and I made the move out of Los Angeles to a little community called Los Osos of 2,500 people in order to raise our two children in a safer, cleaner environment. We loved the fact, too, that so much of the land was occupied by state parks and preserves. We had seen so much ill-planned and unrestrained growth in the San Fernando Valley where we had come from. But it didn't take us long to realize that this community could also suffer from a similar fate, so my husband, who happened to be a real estate broker with his own little office in Baywood, and I joined forces with many others to help preserve what we did have from future development. We were part of the group who helped preserve the Elfin Forest through SWAP and also worked on helping to get Morro Bay national estuary status. We were not just interested in preserving what we had for our sake or that of the community, but for the sake of the special animals and plants of the area who had no defenders of their territory but the humans who had moved here.

I still live in the same home, one now owned for 41 years, right off the water and at the very end of a strip of pygmy oaks which make up the Elfin Forest. Over time, I have seen the diminishing populations of wildlife here. Decades ago we often would have a covey of quail as large as a hundred bathing in the sand in front of our house. I now saw my very first quail of this year yesterday. Cottontail rabbits were also everywhere. I haven't seen one now in years. A colony of black-crowned night herons used to nest in the trees below. They, too, are long gone. But it is not only the human and especially cat stress on the animal population that is of concern to me, it is the stress on the trees and native plants from human encroachment. Though I am not an expert in the native plant field, I did work as one of a number of photographers on a very successful book called "California Native Plants for Your Garden". So I am especially sensitive to this issue. I see the encroachment all the time of alien plants into native plant territory. And, of course, they always manage to take over and smother

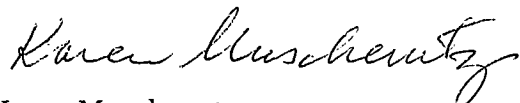
natives for space and resources. My neighbors and I are attempting to remove non-native plants, but it's quite a job and will take continuing vigilance in order for us to be successful.

But my biggest concern with vegetation is with the pygmy oaks that dot the bay front in this area west to Ninth Street. Over time I have seen firsthand how many of them have been cut down, legally or not, along the bay front to provide more view or space for people. I have also seen how the oaks get killed by water run-off from the streets because they are not used to handling so much moisture. This might really be an issue with this parcel under discussion. For the sake of the birds and small animals, I have tried to counter some of the oak destruction myself on my rather large piece of property by planting many, many young native oaks in an attempt to repopulate the land with some natives, but few have survived. And it takes a decade for the oaks to reach the size of a very small tree. Some of the older ones around here are well over 200 years old.

The property in question here is an area I am familiar with. In fact, one corner of it touches the very end of my property. This parcel is an especially valuable section of the waterfront here by the Elfin Forest. It contains many of the native plants that have been diminished greatly in numbers west of here by clearing or invasion by alien plants. I can just imagine what a sanctuary it is for the bird population due to its comparative lushness and remoteness from human interference. If you kayak on the bay by the Elfin Forest, you can see this parcel as a natural, undisrupted part of the Elfin Forest. There are animals such as coyotes and deer especially have lately been using the property in that area as a corridor to reach the westernmost section of the Elfin Forest on Ninth Street. It seems unusual to the neighbors and me to see them so often. I suspect they are searching more for food - plant or animal - due to the drought and its toll on the native habitat and its inhabitants in the Elfin Forest. When I took a walk the other day on the Elfin Forest preserve, the stands of oaks look like they normally would in November, with few signs of greenery to indicate we were in spring. I can only imagine what they will look like in summer, after months of no rain. These are signs we need to pay attention to. The environment and all its inhabitants are stressed now. I ask just how much value do we place on helping to maintain this special environment that we all care so much about?

So this parcel is a very special haven for native plants and animals. And since it provides a cohesive strip to the farthest reaches of the Elfin Forest, its usefulness as a corridor cannot be underestimated. I strongly recommend rejecting this project on these grounds.

Sincerely,



Karen Muschenetz
and family, Ingo and Ilona

April 6, 2015

From:

The Sakamoto Family
1138 9th St.
Los Osos, Calif. 93402

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APR 10 2015

CALIFORNIA
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To:

California Coastal Commission

Regarding:

Public Hearing Notice on Thursday April 16, 2015

Application Number **A-3-SLO-98-061**

Agenda Item Number: **Th13a**

Applicant: **Anthony Wolcott**

Hello, my name is David Sakamoto and I represent the Sakamoto family who live on the south side directly adjacent to the lot of the proposed housing (on 1111, 1113 10th St., Los Osos). We have lived on the property over 35 years and are opposed to the proposed construction of the 2 houses on the lot. Our property is setback from the wetlands and through the years we have done our part to keep the natural plants and animals which live in that area from being disrupted. By building a home which would essentially be built almost directly on top of the wetlands - it would most undoubtedly ruin the natural flow of the area and disrupt the natural wildlife. The visual of the wetlands within the bay would also be affected by having a house directly on the edge of the water line.

Furthermore, the public has long considered this area an extension of the Elfin forest and building on these lots will be viewed as an intrusion of the forest. The lot is part of the home to many different species of birds and small animals which make their way through and around the area. Throughout the years, I have personally witnessed herons, egrets, and hawks perched on the trees on that lot, as well as viewed deer, raccoons, possums, coyotes, making their way through the area. By building on these lots the wildlife would be displaced from their already shrinking homes and prevent their movement in and around the area.

We hope our concerns on this proposed construction have been heard. And we respectfully thank you very much for your consideration of our concerns of this matter.

Sincerely,



David Sakamoto and the Sakamoto family

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CALIFORNIA
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Th13a

Application No. A-3-SLO-98-061

Jim & Barbs Murray

Oppose

Jim & Barbs Murray
1138 Tenth St.
Los Osos, CA

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

April 2013 Agenda
Application No. A-3-SLO-98-061 (Wolcott, San Luis Obispo Co.)

We are against the proposed development of 1111 and 1113 Tenth St. in Los Osos. The California Coast Commission should not approve this project.

We live at 1138 Tenth St. We have lived here for nearly 20 years.

There are a number of reasons why this project should not be allowed to proceed:

- The environmental costs are unacceptable. The reconceived project moves the building footprints further into the wetlands. The placement of the structures will be closer to the eastern bay than any of the existing homes. The general health of the bay is in decline and this project would further aggravate a bad situation.
- The Los Osos CSD has implemented a Stage III Water Emergency. It may be years before the water emergency is resolved. It is ill advised to go ahead with a project that could be on an indefinite hold because of the water shortage. What might be viable today could fail that test in the future. The water problem needs to be resolved before any development is considered.
- Access and street parking are currently a problem on the north end of Tenth St. When the street was repaved during the sewer construction, the street got a little narrower and the traffic problems ratcheted up. Adding two more houses without consideration for how the additional traffic and parking will be handled will exacerbate this problem.
- The end of Tenth St. does not have a turnaround. Our driveway serves as the de facto turnaround. We are reluctantly willing to being a good neighbor for the existing homes, but there is a limit. Something has to be done about the turnaround issue before more houses are built at the end of the street.
- Currently, access to the Elfin Forest from Tenth St. is limited to those intrepid people who are willing to wade through poison oak and bushwhack to the forest proper.

Building a driveway on the public easement to the western boundary of the forest will make access much easier. This will increase traffic on Tenth St. and amplify the problems described in the prior two points.

- When the county installed the sewer on Tenth St., the placement of the pocket pump and controller made a straight extension of Tenth St. to the north problematic. Access to 1111 & 1113 is only possible by jury-rigging a driveway that uses the public easement to go around the pocket pump. Laterals were not installed for 1111 & 1113. Laterals were installed for the four vacant lots north of Santa Isabel and south of the current end of the street. With these actions, the county has strongly implied that it does not consider these parcels viable for development.

The original plot plan for Los Osos lays out streets and lots that are under water at high tide. Over the years there have been development schemes would have built roads and laid out building sites on the sand spit. There was a plan to build artificial islands in the bay and connect them with causeways. Fortunately, common sense and wise government policy prevented these types of developments and we are the benefactors.

The environmental and social costs of the proposed project are too high. We need to be good shepherds as were those who preceded us, so that residents who follow us can enjoy the bay and it's environment as we have. This project should not be approved.

Sincerely,

Jim & Barbs Murray

✓

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ACQUISITION MARKETING LAND USE REDEVELOPMENT

California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Wolcott
TH 13a
4/16/15

April 8, 2015

RE: A-3-SLO-98-06, Wolcott, 1111 & 1113 10th Street, Los Osos, CA

Ladies and Gentlemen,

I appreciate the opportunity to present the case and the facts associated with the above referenced application. Following consideration of the testimony, I respectfully request your commission tentatively approve the application, continue the matter and direct staff to return with revised findings.

FACTS NOT IN DISPUTE

1. CDP's 4-87-115 & 4-87-117 were revoked by the CCC November 15, 1988.
2. Development Plan/CDP/Variance was approved by SLO Co., May 12, 1998.
3. An Environmental Impact Report was Certified by SLO Co. May 12, 1998.
4. The Wolcott property consists of two (2) legal building sites in conformity with CZLUO Sec. 23.04.048 (lot consolidation).
5. The Wolcott lots lie within the Residential Single-Family Land Use Category.
6. The Wolcott lots lie within the Urban Services Line of the community of Los Osos.
7. The Wolcott lots lie within the Wastewater Service Area (aka Prohibition Zone) and has two (2) sewer lateral connections available.
8. The Wolcott lots lie within the Los Osos Community Services District water service area and have a valid Intent-to-Serve letter from the district for two (2) Residential Single-Family homes until July 11, 2016.
9. The Wolcott lots maintain two (2) building permits pending issuance by SLO Co. (1111 10th Street-PMT2002-17739 (aka 56541) & 1113 10th Street-PMT2002-16046 (aka 56590)).
10. The wastewater assessment is \$24,941.19 per single-family residence.

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Issue No. 1

Staff has asserted that the Commission's revocation of CDP's 4-87-115 & 4-87-117 by the CCC on November 15, 1988 had the effect, by operation of law, to extinguish the construction permits associated with the subject development. **THIS IS INCORRECT.**

Two (2) Chief Building Officials of the County of San Luis Obispo have concluded otherwise. Most recently, Cheryl Journey the current Chief Building Official indicated in a May 17, 2012 letter that "applications/permits associated with these parcels are valid." The letter goes on to state that this position is "Consistent with decisions made in 1994 and 2007..." (Staff Report Exhibit 5. Page 9 of 12). Additionally, the California Regional Water Quality Control Board (RWQCB), Central Coast Region, stated in a letter dated December 23, 1998 regarding the subject development, "You have provided (and San Luis Obispo County Department of Planning and Building has verified) documentation that permits for the Farbstein (Wolcott) Development Plans predate the 1988 deadline and have remained valid. Therefore, the project is not affected by the January 8, 1988 moratorium date." (Staff Report Exhibit 5. Page 6 of 12). The staff report clearly indicates that the CCC has no jurisdiction over San Luis Obispo County building permits (Title 19 of the County Code).

Issue No. 2

Staff has asserted that public services do not exist for the subject development. **THIS IS INCORRECT.**

Water: Please see Attachment 1; a valid Intent-to-Serve letter from the Los Osos Community Services District, dated December 18, 2014 which extended the effective date until July 11, 2016.

Wastewater: The project is exempt from the RWQCB septic system moratorium (Staff Report Exhibit 5. Page 6 of 12). Contrary to staff's assertion, the applicant has not excluded the use of septic systems as a method of sewage disposal for the proposed development. However, as a condition of approval, the applicant would agree to connect to the community wastewater system. The community sewer system has been installed and the subject properties each have a lateral connection available for service. The system is anticipated to be operational by April 2016. SLO Co. will require the payment of two assessments in cash (\$24,941.19 each) prior to connection. Given the history of the project, it was originally approved authorizing the use of septic systems as the method of sewage disposal. At this juncture, it would be impractical to construct septic systems only to abandon them concurrently with connection to the sanitary sewer.

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Issue No. 3

Staff has asserted that Los Osos Waste Water Project (LOWWP) Special Condition No. 6 precludes the development of the subject lots because they are vacant.

THIS IS INCORRECT.

LOWWP Special Condition No. 6 states:

Wastewater Service to Undeveloped Properties. Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats.

The application of Special Condition No. 6 to the subject proposal is misplaced for two reasons. One, Special Condition No. 6 must be construed in combination with LOWWP regular Condition No. 5. The two conditions are to be considered in concert and do not conflict with one another. In essence, if read together, the effect of the two conditions require a case-by-case analysis of the appropriateness of the proposed development.

LOWWP Regular Condition No. 5 states:

No Guarantees of Development Approvals. Approval of this permit, or any method of financing the project utilized by the County (e.g., the established assessment program), does not guarantee County approval of any new or intensified uses within the service area. All new development proposals must be reviewed for consistency with the San Luis Obispo County certified Local Coastal Program (and/or the California Coastal Act, as applicable); such review shall consider, among other issues, the environmental impacts of the new development, including the impacts associated with the installation of lateral connections necessary to tie into the approved collection system. Wastewater treatment service shall only be provided to developments that have obtained the required coastal development approvals in a manner consistent with such approvals. Prior to construction, the County shall prepare a public notice to all property owners of record within the service area that includes a copy of this condition, and an explanation of its effect upon the ability to obtain wastewater treatment service for future development.

Prior to the commencement of construction, said notice shall be mailed to all property owners within the service area, or noticed in three local newspapers and included in public information handouts provided by the County.

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The key issues related to Condition #5 are water availability and endangered species.

- The proposed Los Osos Habitat Conservation Plan (HCP) is a **voluntary** community-wide endangered species protection program. The purpose of the HCP is to preserve habitat and protect sensitive biological resources within the community of Los Osos while allowing for public and private development. The project has completed a protocol survey for Morro shoulderband snail and currently has requested a letter of concurrence from the U. S. Fish & Wildlife Service.
- The project will include participation in the San Luis Obispo County Planning and Building Department Plumbing Retrofit ordinance by offsetting its water use through the program. The ratio is 2:1 of water savings as compared to anticipated consumption.

Secondly, and more importantly, of the 701 vacant lots in the Prohibition Zone there are no other "vacant lots" that have the same factual backdrop and history as do the subject proposals. In other words, 699 vacant lots do not have the same facts as outlined above in "Facts Not in Dispute, 1-10."

Issue No. 4

Staff has asserted that the subject property lies within an Environmentally Sensitive Habitat Area (ESHA). The applicant would concur that the subject property, like other Bayfront properties in the community, maintain ESHA. The ESHA on the subject lots is confined to flora (Arroyo Willow and Coast Live Oak). No endangered fauna has been found on the property. The Morro Shoulderband snail (MSS) is known to occur in the project vicinity and is on the Federally Endangered list. A recent protocol survey for the MSS indicated an absence of the species.

It is routine for development proposed within an ESHA, that a Takings Analysis be performed by staff. Please see CCC Takings Information, Attachment 2. In May of 2013, at the request of staff, the applicant submitted Takings information. Please see Applicant Takings Information Questionnaire response, May 20, 2013, Attachment 3.

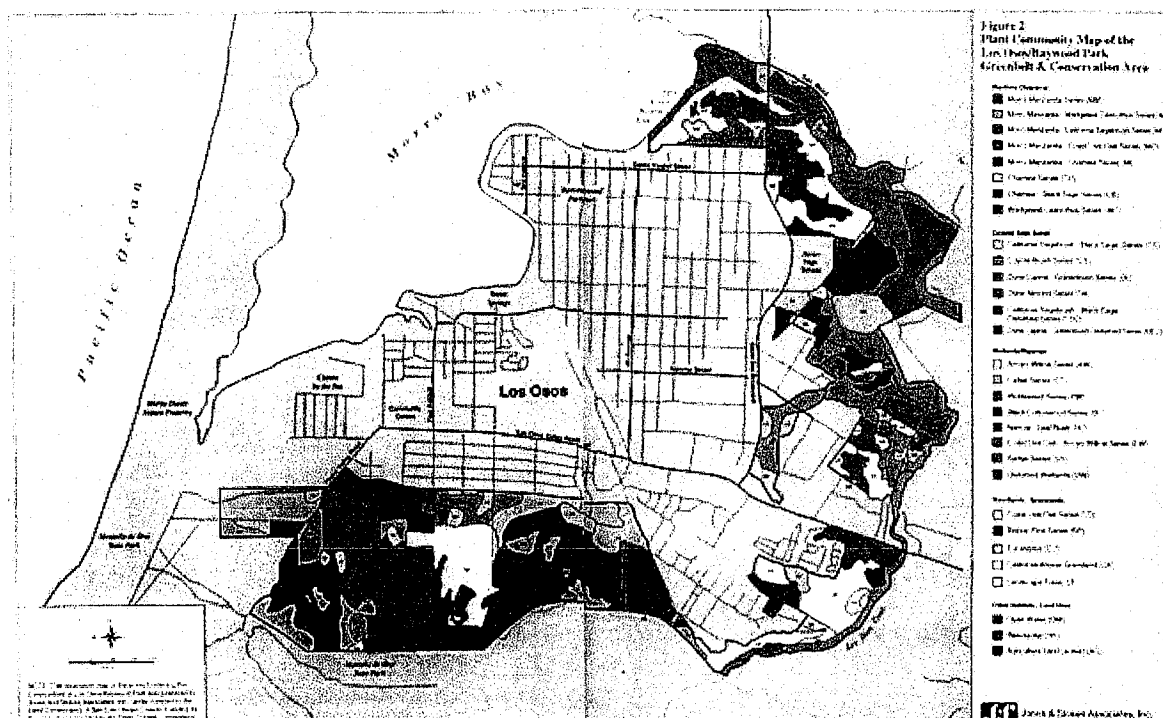
To date, no Takings Analysis has been performed by staff. Strict application of the ESHA protections and setbacks in this instant case is not authorized, because to do so would cause a regulatory taking for public use without the payment of just compensation in violation of Section 30010 of the Coastal Act as well as the California and United States Constitutions. A Takings Analysis is typically a routine function in similar cases, please see the attached examples.

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Additionally, since the mid-1990's the resources agencies, including the CCC, have worked with the community to establish a Greenbelt around the community of Los Osos. Presently, over 300 acres have been placed into permanent conservation and public ownership. This land is intended to be habitat for multiple species. The Greenbelt contains diverse habitats including Oak Woodlands, wetlands and riparian areas. The stated goal of the Greenbelt is to better manage multiple threatened and endangered species and to mitigate development that occurs in the urban area. The subject development lies within this urban area. There will be an open space dedication as a condition of approval.

The Los Osos/Baywood Park Conservation Plan land acquisition strategy:

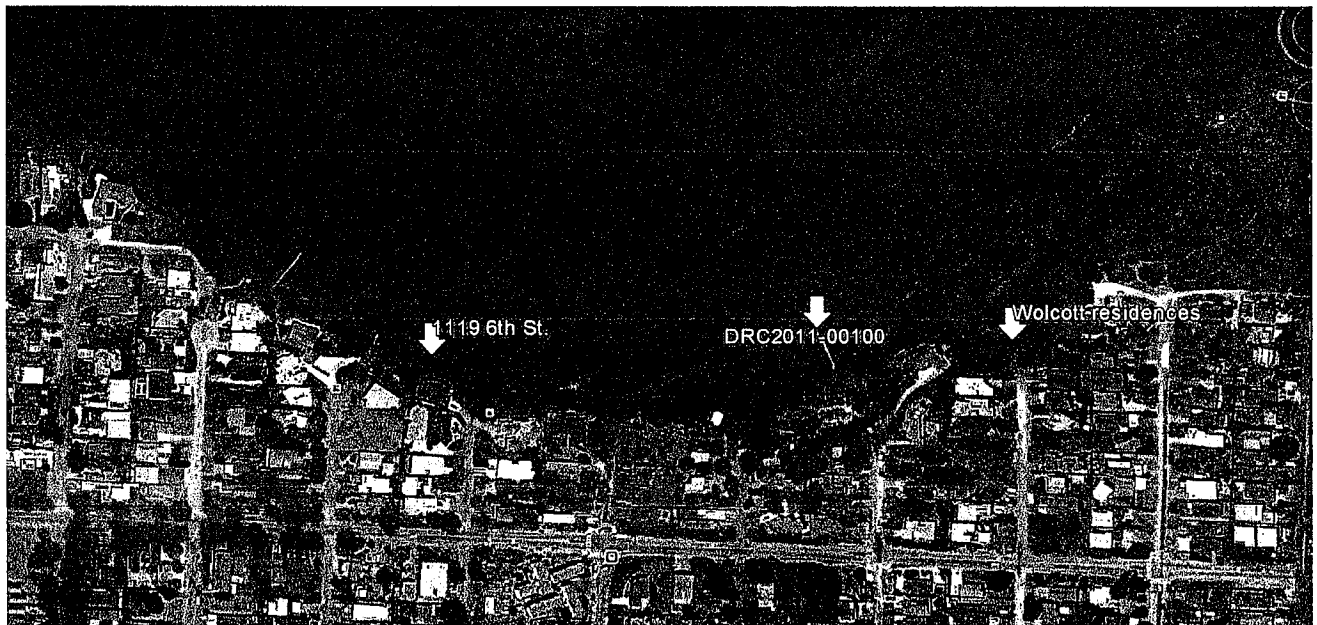
Urban expansion has now reached a critical point where several plants and animals unique to this area are now threatened with extinction. If these elements of our natural heritage are to be preserved, every reasonable effort must now be made to protect as much of the remaining undeveloped open land as possible. The complexity created by land ownership patterns that vary in size, zoning restrictions (as well as permitted density), and the status of development plans for individual parcels requires a mixture of implementation techniques. The primary emphasis needs to be placed on acquisition (in fee or easement) of as much land as possible. Acquisition, however, is not always possible. This may be due to lack of funding or the interests of individual land owners. Incentives are needed to encourage landowners to meet with the County and responsible agencies in advance of preparing final development plans -- to design projects that will not only protect sensitive areas but also allow for planned development. This is called a "partial development solution."



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Issue No. 5

Variances for the project were granted by the County of San Luis Obispo when it was considered and approved locally on May 12, 1998. A variance is the process by which an applicant can request deviation from the set of rules a jurisdiction applies to land use and land development, typically a zoning ordinance. The key finding to approving a variance is that, it shall not confer a benefit to the subject property that was not already enjoyed by similarly situated properties. In the instant case, the variance was granted to allow development in a riparian area (wetland) with no setbacks. Numerous residences along the Bayfront enjoy reduced or limited setbacks. In some cases vegetation type (wetland has not been considered when establishing setbacks from the bay). In some cases, including the instant case, a setback from the mean high-tide line as contained in the Certified LCP may be used as a measure of setback.



1119 6th Street; 19 foot setback from mean high tide, approved by CCC in 1984, pre-certified LCP. Coastal Act was standard of review.

1147 9th Street - DRC2-11-00100; major remodel/addition 2014 approved as consistent with the certified LCP.

1111 & 1113 10th Street - Wolcott; Variance approved in 1998. The standard of review is the certified LCP.

J. H. EDWARDS COMPANY
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Specializing in Water Neutral Development
ACQUISITION MARKETING LAND USE REDEVELOPMENT

Approval of A-3-SLO-98-061 (Wolcott) a coastal development permit for development of the two lots would be allowable based on a showing that either:

- (1) the proposed development is consistent with the LCP, or
- (2) development of the site in a manner that does not fully conform to the requirements of the LCP is necessary to avoid a regulatory taking pursuant to Section 30010 of the Coastal Act. If strict implementation of the restrictions in the LCP would cause a taking of property, these policies must not be applied and instead be implemented in a manner that will avoid this result (i.e. a takings). However, the applicant has provided the information (May 2013) to allow staff to complete a Takings Analysis to support an approval that would avoid a regulatory taking. To date, staff has failed to perform a Takings Analysis, as was represented by staff.

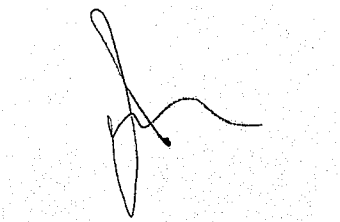
There has never been a lack of interest on the part of the applicant. It is disingenuous for staff to assert it has been entirely the applicants fault for the delay over the past fifteen years since the Substantial Issue determination by the Commission. I respectfully submit staff has been comparatively responsible in connection with the delays. For example, there has been significant staff turnover and there have been no less than three staff members assigned to this appeal. The "Great Recession" from 2008 to 2012 played a significant role as well. Finally, the change in ownership in 2009 contributed to some delays. Since 2012, the current applicant, Anthony Wolcott has worked diligently in an attempt to bring this matter to hearing. CCC staff requested and has received Intent-to-Serve letters and extensions from the water purveyor (LOCSD) in 2006, 2012 and 2014, yet has omitted them from the staff report.

It is staff that has avoided the central issue of a Takings Analysis and the question of a regulatory taking. Clearly a denial of the application deprives the owner of any viable economic use of his properties. A land use regulation or decision may cause a taking if it denies an owner all economically viable use of his or her land. (*Lucas v. South Carolina Coastal Council*). The applicant has provided substantial evidence that supports the availability of water and wastewater to the proposed development and therefore inadequate public services may not be used as grounds for denial of the application.

J. H. EDWARDS COMPANY
A REAL PROPERTY CONCERN
Specializing in Water Neutral Development
ACQUISITION MARKETING LAND USE REDEVELOPMENT

In conclusion, the applicant respectfully requests your Commission tentatively approve the subject application and continue the matter with direction to staff to return with revised findings for such approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Edwards", is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jeff Edwards

CC: Anthony Wolcott

Attachments:

1. LOCSD current Intent-to-Serve letter for water service.
2. CCC Takings Information
3. Applicant Takings Information Questionnaire response, May 20, 2013
4. Examples of staff Takings/ESHA Analyses



December 18, 2014

Jeff Edwards
J.H. Edwards Company
PO Box 6070
Los Osos, CA 93412

Subject: Time Extension for Intent-to-Serve, Wolcott Project
(APN numbers 038-052-001 and 038-052-026)

President

Vice President

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General Manager

Kathy A. Kivley

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Robert Lewin

Battalion Chief

Phill Veneris

Dear Mr. Edwards:

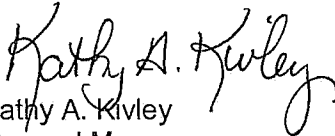
The purpose of this letter is to confirm the District's administrative extension of the above-reference Intent-to-Serve (ITS) letter, which was originally approved by the Board of Directors on July 11, 2013, as Resolution 2013-23. The information provided by your office confirms that progress has been made toward meeting the Special Conditions in the ITS, including the following activities:

1. Coastal Commission staff has communicated with the County of San Luis Obispo Planning and Building Department regarding the project.
2. The applicant has worked with the Coastal Commission staff to address Coastal Resource issues.
3. Coastal Commission staff is completing their analysis and staff report for the February 11-13, 2015 meeting in Pismo Beach.
4. The Coastal Commission is likely to take action on the project in February or continue it to a subsequent meeting date.

On behalf of the Los Osos Community Services District I wish to inform you the Intent to Serve has been extended for a period of two years, and will expire on **July 11, 2016**. Please let me know if you have any questions, or if you need more information.

Thank you very much for your patience during this process.

Sincerely,


Kathy A. Kivley
General Manager

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C: Rob Miller, District Engineer, Wallace Group
Michael W. Seitz, District Legal Counsel, Shipsey & Seitz

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
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Takings Information

In some cases, additional application information is needed regarding an applicant's investment-backed expectation (including, but not limited to, cases where development is proposed in environmentally sensitive habitat areas (such as coastal dunes and wetlands), other highly sensitive areas (such as the critical viewshed in Big Sur), high hazard areas, etc.

Background

If an applicant for a coastal development permit can demonstrate that he or she has a sufficient real property interest in the property to allow the proposed project, and that denial of the proposed project based on application of Coastal Act policies would deprive his or her property of all economically viable use, some development may be allowed even where a Coastal Act policy may otherwise prohibit it, unless the project would constitute a nuisance under State Law. A specific development proposal may still be denied, however, if a more modest alternative proposal could be approvable, and thus assure the property owner of some economically viable use. Any development approved pursuant to this provision must conform to all other applicable Coastal Act requirements.

Information Needed

Since the Coastal Commission must analyze whether its action in denying a permit application would constitute a taking, in order to comply with Section 30010 of the Coastal Act and the California and United States Constitutions, the application filing requirements shall include information about the nature of the applicants' property interest. When an application involves property in which development could potentially be completely prohibited (for example, because the property contains environmentally sensitive habitat areas, is located in the critical viewshed, is subject to coastal hazards, etc.), the applicant shall submit the following information as part of their coastal development permit application:

1. Date the applicant purchased or otherwise acquired the property, and from whom.
2. The purchase price paid by the applicant for the property.
3. The fair market value of the property at the time the applicant acquired it. Describe the basis upon which the fair market value is derived, including any appraisals done at the time.
4. Changes to general plan, zoning or similar land use designations applicable to the subject property since the time of purchase of the property. If so, identify the particular designation(s) and applicable change(s).
5. At the time the applicant purchased the property, or at any subsequent time, has the property been subject to any development restriction(s) (for example, restrictive covenants, open space easements, etc.), other than the land use designations referred to in question (4) above?

Takings Information

Page 2 of 2

6. Any changes in the size or use of the property since the time the applicant purchased it. If so identify the nature of the change, the circumstance and the relevant date(s).
7. If the applicant has sold or leased a portion of, or interest in, the property since the time of purchase, indicate the relevant date(s), sales price(s), rent assessed, and nature of the portion of interest sold or leased.
8. Is the applicant aware of any title report, litigation guarantee or similar document prepared in connection with all or a portion of the property? If so, provide a copy of each such document, together with a statement of when the document was prepared and for what purpose (e.g., refinancing, sale, purchase, etc.).
9. Has the applicant solicited or received any offers to buy all or a portion of the property since the time of purchase? If so, provide the approximate date of the offer and the offered price.
10. Identify, on an annualized basis for the last five calendar years, the applicant's costs associated with ownership of the property. These costs should include, but not necessarily be limited to, the following:
 - a. property taxes
 - b. property assessments
 - c. debt services, including mortgage and interest costs; and
 - d. operation and management costs;
11. Apart from any rent received from leasing all or a portion of the property (see question #7, above), does the applicant's current or past use of the property generate any income? If the answer is yes, list on an annualized basis for the past five calendar years the amount of generated income and a description of the use(s) that generates or has generated such income.

J. H. EDWARDS COMPANY
A REAL PROPERTY CONCERN

ATTACHMENT 3

California Coastal Commission
725 Front Street
Santa Cruz, CA

May 20, 2013

Attention: Daniel Robinson

RE: Wolcott
1111 & 1113 10th Street, Los Osos
A-3-SLO-98-061

Good morning Mr. Robinson,

Attached please find a response to the Takings Information questionnaire as it pertains to the Wolcott parcels in Los Osos.

It is my hope you have had the necessary time to review the files and are able to meet on Tuesday, May 28, 2013 in your offices in Santa Cruz. Mid-late morning would be the preferred time, however please advise as to what works best for you.

As you may know, the Wolcott proposal includes the development of two, single-family homes as referenced above. Lot 33 will accommodate 1111 10th St. while Lots 1 and 32 are considered a single parcel for purposes of building 1113 10th St.

Consequently, each building site should be viewed independently in connection with any Takings Analysis so that some "economically viable use" may be conferred on the sites respectively.

It is Mr. Wolcott's hope to bring this matter to hearing before the Commission as soon as possible. I look forward to working with you to complete a staff report accordingly.

Feel free to contact me concerning the attachment or scheduling the appointment. In advance, thank you for your timely attention. As always, feel free to contact me with any other questions you may have.

Jeff Edwards

CC: Anthony Wolcott

J. H. EDWARDS COMPANY
A REAL PROPERTY CONCERN

May 2013

Here are the responses to the questions from Anthony Wolcott:

1. Purchased April 1973, lots 1, 2 & 32 from Max Read, lot 33 purchased from Security Pacific Bank.
2. Lots 1, 2 & 32 \$28,000, lot 33 \$7,500.
3. Due to the passage of time I have no way of determining full market value, at time of purchase, other than what I paid for the properties.
4. The zoning or land use category for the properties has been Single-Family Residential or the equivalent since my ownership. In March of 1988, the San Luis Obispo County Local Coastal Program/Land Use Plan was certified. Residential uses are principally permitted under the LCP.
5. The subject parcels were created with the Town of El Moro, Woods Revised Map. The CC&R's created at that time are still in effect; however do not restrict development of the property for residential purposes in any way.
6. None
7. In 8/88 I sold lots 1, 32 & 33 to Jay Farbstein for \$208,500.
In 1/04 I sold lot 2 to Michael Miller for \$225,000.
In 1/09 I reassumed ownership of lots 1, 32 & 33 through a Deed in Lieu process from Jay Farbstein.
8. No.
9. From 1972 thru 1987 had numerous offers to list the property but since I had on interest in selling, prices were not discussed. After 1/09 deed in lieu process, no solicitations.
10. (a) Property Taxes:
2008-2009 = \$3,505.00
2009-2010 = \$3,564.00
2010-2011 = \$2,520.00
2011-2012 = \$2,536.00
2012-2013 = \$2,127.00

(b) & (c) N/A

(d) O&M costs
\$450.00 Botanist Report (1984)
\$3,500 Building plans for home (1984)
\$250.00 Percolation tests (1984)
\$1,800.00 Archaeological Report (1984)
\$900.00 trip expenses/consultations
\$1,750.00 Brad Fogle representation (1984)
\$4,870.00 misc. cost for current application (2012/2013)
11. No.

ATTACHMENT 4

STATE OF CALIFORNIA—THE RESOURCES AGENCY

ARNOLDO SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 3000
SAN FRANCISCO, CA 94105-2319
VOICE AND TDD (415) 904-2360
FAX (415) 904-5400

Th 5a



Filed: May 8, 2000
Staff: YinLan Zhang – SF
Staff Report: March 24, 2006
Hearing Date: April 13, 2006

STAFF REPORT – APPEAL DE NOVO

APPEAL NO.: A-2-SON-00-16

APPLICANT: Ronald Aloise

AGENTS: Allan Cohen
Scot Stegeman
Peter Simon

LOCAL GOVERNMENT: Sonoma County

ACTION: Approval with Conditions

SUBSTANTIAL ISSUE: The Commission found that the appeal of the local government action on this project raised a substantial issue of consistency with the County of Sonoma's LCP on October 12, 2000.

PROJECT LOCATION: 1695 Bay Flat Road, Bodega Bay, Sonoma County.
APN 100-060-09

PROJECT DESCRIPTION: Construction of a 2,600-square-foot, 3-bedroom, 4-bath single-family residence with detached garage and guesthouse.

APPELLANTS: Linda Kepner
Californians Organized to Acquire Access to State Tidelands

1.0 EXECUTIVE SUMMARY

The proposed development, approved by Sonoma County in May 2000, is a 2,556-square-foot, 16-foot tall single-family residence with a detached garage and guesthouse on a vacant 0.25-acre

A-2-SON-00-16 (Aloise)
Staff Recommendation on de novo

Policies 18 and 22 in Chapter III of the County LCP prohibit filling of wetland for residential use. Policy 24 prohibits the removal of vegetation from wetlands unless it is shown to be essential for habitat viability. Policy 25 prohibits the construction of residential structures within 100 feet of wetlands. Policy 26 prohibits construction of residential structures between 100 and 300 feet of wetlands unless an environmental assessment finds the wetland would not be affected by such construction. The proposed development would fill wetlands, remove wetland vegetation, and result in residential development within 100 feet of wetlands in conflict with these policies. Therefore, the Commission finds that the proposed development is inconsistent with Policies 18, 22, 24, 25 and 26 in Chapter III of the Sonoma County certified LCP and must be denied.

3.7 Viable Economic Use of the Parcel

The Commission's action does not constitute a final decision regarding the application of the LCP to this development proposal. Denial of the permit application would not preclude the applicant from obtaining necessary approvals to develop the project site in the future. Approval of a coastal development permit for development of the site would be allowable based on a showing that either: (1) the proposed development is consistent with the LCP, or (2) development of the site in a manner that does not fully conform to the requirements of the LCP is necessary to avoid a regulatory taking pursuant to Section 30010 of the Coastal Act. However, the applicant has not provided the information and analysis necessary to support either of these alternatives.

Alternatives Analysis

As discussed above, the proposed development is inconsistent with the LCP because the proposed driveway, guesthouse, and garage would fill wetlands and because the proposed residence would be located within 100 feet of wetlands (Exhibit 17). It is possible that the applicant could eliminate the guesthouse and garage and use an alternative access to the site that would not affect the wetlands on the lower portion of the parcel may be feasible. For example, an existing access road provides access to three properties east of the subject parcel is immediately adjacent to the property (Exhibit 3). At this point, it is unknown whether the applicant could use this road to access his property and avoid the wetland fill. The applicant asserts that this alternative is infeasible because the owners of the road have refused to grant the applicant permission to use the road, however, he has not provided any documentary evidence, such as letters from these property owners, in support of this assertion.

Another potential alternative that would avoid wetland fill for the proposed driveway, assuming that the proposed guest house and garage have been eliminated from the proposed development, would involve locating parking on Bay Flat Road instead of on-site. The LCP requires on-site parking for a minimum of two vehicles within the RR zoning district, but the applicant could apply for a variance to this requirement. According to Section 26C-333 of the LCP Zoning Code, a variance may be granted if the applicant demonstrates that given the special circumstances of his property, a strict application of the zoning requirements would deprive his property the privileges enjoyed by other properties in the vicinity and under identical zoning classifications. Thus, if necessary to allow a viable economic use of the property while avoiding wetland fill, the County or the Commission on appeal may approve a variance to the on-site parking restrictions.

A-2-SON-00-16 (Aloise)

Staff Recommendation on de novo

The proposed residence is within approximately 30-40 feet of the wetland area within the lower portion of the site, inconsistent with Policies 25 and 26 in Chapter III of the LUP. The subject parcel is long and narrow, approximately 60 feet wide and 200 feet in length. The wetland area is located in the front, lower portion of the property, within approximately 60 feet of Bay Flat Road. Thus, it appears that a redesigned house could be set back 100 feet from the wetland area. However, this alternative cannot be fully evaluated without a wetland delineation.

Without an alternatives analysis to conclude that no feasible alternatives are available, the Commission cannot establish that a development must be approved to avoid taking of private property. Furthermore, even if the Commission must approve a development as required by Section 30010 of the Coastal Act, a wetland delineation would be necessary to determine the location and extent of an approvable development. The Commission must approve only the minimum development necessary with the least impacts to coastal resources to provide viable economic use of the property. If there is no feasible alternative that can avoid or eliminate all significant impacts to resources, then the alternative that results in the fewest or least significant impacts must be selected. Any impacts that cannot be avoided through the implementation of siting or design alternatives must be mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to mitigate impacts on the project site. However, mitigation cannot be substituted for implementation of the project alternative that would avoid impacts to the resources, to the maximum extent feasible in this case. Therefore, facts regarding the alternatives and the wetlands are integral in the Commission's decision over whether a development must be approved to avoid a taking and the kind of development that would be approvable.

Takings

Depending on the outcome of the requested alternatives analysis, application of the wetland protection policies of the LCP in this case may be in conflict with Coastal Act Section 30010, which provides that the policies of Local Coastal Programs "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation." If strict implementation of the restrictions in the LCP would cause a taking of property, these policies must not be so applied and instead must be implemented in a manner that will avoid this result.

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the policies of the LCP altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to apply the requirements of the LCP. Therefore, in this situation, the Commission must still comply with the LCP wetland protection policies, by avoiding impacts that would disrupt and/or degrade wetlands, to the maximum extent that this can be achieved without taking the property.

If the proposed development must be approved within the 100-foot wetland buffer in order to provide an economically viable use, siting and design alternatives must be considered in order to identify the alternative that can avoid and minimize impacts to the wetland to the greatest extent feasible.

A-2-SON-00-16 (Aloise)
Staff Recommendation on de novo

Recent court decisions demonstrate that to answer the question whether implementation of a given regulation to a specific project will cause a taking requires an ad hoc factual inquiry into several factors. Specifically, the courts have consistently indicated that this inquiry must include consideration of the economic impact that application of a regulation would have on the property. A land use regulation or decision may cause a taking if it denies an owner all economically viable use of his or her land. (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S. Ct. 2886; also see *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 495, citing *Agins v. Tiburon* (1980) 447 U.S. 255, 260.) Another factor that must be considered is the extent to which a regulation or regulatory decision "interferes with reasonable investment backed expectations." (*Keystone Bituminous Coal Assn. v. DeBenedictis*, supra, 480 U.S. 470, 495, citing *Kaiser Aetna v. United States* (1979) 444 U.S. 164, 175.) In addition, in order to avoid allegations of a taking, certain types of mitigation measures, such as exactions requiring the dedication of a fee interest in property, must be "roughly proportional" to the impact remediated. (*Dolan v. City of Tigard* (1994) 114 S. Ct. 2309.) Other factors that may be reviewed in conducting a takings analysis include whether the land use regulation substantially advances a legitimate state interest. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825.) This latter factor is not a significant limitation in analyzing this permit application because the state's interest in protecting wetlands is well recognized. Finally, it is necessary to consider whether the property proposed for development by the applicant is subject to existing limitations on the owner's title, such as prescriptive rights, that might preclude the proposed development. It is also necessary to ensure that the proposed development would not constitute a nuisance.

The information necessary for this ad hoc inquiry is specific and incumbent upon the applicant to provide. In its findings for substantial issue, the Substantial Issue staff report identified that a takings analysis would be necessary for the de novo review of the permit application and directed the applicant to provide specific information necessary for this analysis. Staff reiterated this request in its July 21, 2005 letter in which staff requested the applicant respond to eleven specific questions for purposes of the takings analysis (Exhibit 6). Thus far, the applicant has provided only a partial response to the Commission's requests for information necessary to assess the reasonable economic use of the property. Specifically, on February 13, 2006, the applicant provided property tax information for fiscal years 2003-2004, 2004-2005, and 2005-2006. This is only a partial response to one of the eleven items necessary for the "takings analysis" that the Commission has requested from the applicant. Without a complete response that provides all of the information requested as well as the alternatives analysis discussed above, the Commission cannot suspend the implementation of LCP Chapter III Policies 18, 22, 24, 25, and 26 to comply with Section 30010 of the Coastal Act, and thus, must deny the development as proposed.

3.8 California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. The Commission incorporates its findings

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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**F11b**

Filed:	11/26/04
180 th day:	5/25/05
Staff:	JB-SC
Staff report prepared:	2/24/05
Hearing date:	3/18/05
Hearing item number	F11b

COASTAL DEVELOPMENT PERMIT APPLICATION**Application number**3-02-114**Applicant**.....Richard Kelly and Carmen Green**Project location**.....537 Honolulu Ave., Oceano, San Luis Obispo County (APN 061-081-016).**Project description**.....Construct a duplex consisting of two 2,309 square foot residential units with associated grading and landscaping.**File documents**.....Coastal Act; San Luis Obispo County Permit #D000333P; Biological and Botanical Survey (Terrence Lilley, 2001); Wetland Delineation (Althouse and Meade, Inc., 2003).**Staff recommendation** ...Approval with Conditions

Summary: The applicant proposes to construct a duplex consisting of two 2,309 square foot residential units (including living areas, garage, and decking) and ornamental landscaping on a 6,000 square foot parcel. The project is located in the community of Oceano in south San Luis Obispo County. The site is within the Coastal Commission's permit jurisdiction because it is located on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. The Coastal Act is therefore the standard of review. The County's LCP, however, may be used for guidance.

The Applicant has submitted a wetland delineation for the property, which delineates the entire 6,000 square foot parcel as a wetland under the Coastal Act. Wetland indicators including hydrophytic plants, hydric soils, and hydrology were identified on the parcel. In addition, the property contains suitable habitat for sensitive wetland plant and animal species. Therefore, under the Coastal Act the project is analyzed as the review of new development entirely within a wetland.

The project would result in direct, indirect, and cumulative impacts to wetland habitats that are considered significant and unavoidable. The structures, paving, and ornamental landscaping proposed on the site are inconsistent with Coastal Act Section 30233 because the entire site is considered to be a wetland and residential use is not allowed in wetlands. Although residential development in wetlands is not consistent with the policies of Chapter 3 of the Coastal Act, some development of the site must be



California Coastal Commission
March 2005 Meeting in Newport Beach

Staff: J.Bishop Approved by:

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above, ongoing disruptions will result from residential development and subsequent use of the site. Such activities may include: installation of a storm drainage system, utility trenching, exterior lighting and, over the long run, ordinary residential activities on the premises such as allowing dogs or other activity in the habitat area. Also, there is no buffer proposed between the development and the surrounding wetlands. None of the development activity described is dependent on a location within the wetland resource area. In addition, this development and its associated activities, individually and collectively, will result in a significant disruption of the wetland area onsite as well as surrounding the proposed project. Therefore, this project cannot be found consistent with Coastal Act Section 30233.

Coastal Act Section 30233, however, must be applied in the context of other Coastal Act requirements, particularly Section 30010. This section provides that the policies of the Coastal Act "shall not be construed as authorizing the commission . . . to exercise [its] power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation." Thus, if strict construction of the restrictions in Section 30233 would cause a taking of property the section must not be so applied and instead must be implemented in a manner that will avoid this result.

Recent court decisions demonstrate that to answer the question whether implementation of a given regulation to a specific project will cause a taking requires an ad hoc factual inquiry into several factors. Specifically, the courts have consistently indicated that this inquiry must include consideration of the economic impact that application of a regulation would have on the property. A land use regulation or decision may cause a taking if it denies an owner all economically viable use of his or her land. (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S. Ct. 2836; also see *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 495, citing *Agins v. Tiburon* (1980) 447 U.S. 255, 260.) Another factor that must be considered is the extent to which a regulation or regulatory decision "interferes with reasonable investment backed expectations." (*Keystone Bituminous Coal Assn. v. DeBenedictis*, supra, 480 U.S. 470, 495, citing *Kaiser Aetna v. United States* (1979) 444 U.S. 164, 175.)

In addition, in order to avoid allegations of a taking, certain types of mitigation measures, such as exactions requiring the dedication of a fee interest in property, must be "roughly proportional" to the impact remediated. (*Dolan v. City of Tigard* (1994) 114 S. Ct. 2309.)

Other factors that may be reviewed in conducting a takings analysis include whether the land use regulation substantially advances a legitimate state interest. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825.) This is not a significant consideration in analyzing this permit application because the state's interest in protecting wetland habitat is well recognized.

Finally, in still other individual cases it may be necessary to consider whether the property proposed for development by the applicant is subject to existing limitations on the owner's title, such as prescriptive rights, that might preclude the applied for use, or that the proposed use would be a nuisance. The question as to whether the any portion of the development is subject to prescriptive rights does not apply in this case. Furthermore, development of the parcel with residential units in the configuration proposed by the applicant would not constitute a nuisance.

The Applicant (Richard Kelley and Carmen Green) submitted adequate financial information to demonstrate a sufficient real property interest in the privately held property to allow some development. Staff has determined that the Applicant bought the property in 2001, but for well below fair market



value. During the period when the Applicant purchased the property, these parcels and other parcels in the Tract were designated in the LCP and zoned for multi-family residential use, although the LCP also includes policies that would severely limit development on this site as well. Continued residential development on similar lots within the Oceano airport area over the intervening years has also occurred. Thus, in the year that the parcels were purchased, the Applicant could have legitimately assumed that limited development of multi-family homes on these lots was a reasonable expectation. Therefore, in view of the other residential uses in the vicinity of the privately held parcels, the Commission finds that the proposed residential use is a reasonable economic use, and also that the uses allowed by Coastal Act Section 30233 would not provide an economic use (i.e. the site is too small for a port, energy, or industrial facility; and restoration or nature study would not be an economic use).

In view of the findings that (1) none of the uses provided for in Section 30233 would provide an economic use, (2) residential use of the property would provide an economic use and (3) the applicant had a reasonable investment backed expectation that although the site was constrained, thus the low purchase price, some residential use would be allowed on the property. The Commission further finds that denial of a residential use, based on the inconsistency of this use with Section 30233 could constitute a taking. Therefore, consistent with Coastal Act Section 30010 and the Constitutions of California and the United States, the Commission determines that full implementation of Section 30233 to prevent residential use of the subject property is not authorized in this case.

Having reached this conclusion, however, the Commission also finds that Section 30010 only instructs the Commission to construe the policies of the Coastal Act, including Section 30233, in a manner that will avoid a taking of property. It does not authorize the Commission to otherwise suspend the operation of or ignore these policies in acting on permit applications.

Moreover, while the applicant may have reasonably anticipated that residential use of the subject properties might be allowed, the Coastal Act and the County LCP provided notice that such residential use would be contingent on the implementation of measures necessary to minimize the impacts of development on wetlands. Thus, the Commission must still comply with the requirements of Section 30233 by protecting against the significant disruption of wetland values at the site, and avoiding impacts that would degrade these values, to the extent that this can be done consistent with the direction to avoid a taking of property. Mitigations must also be generally proportionate to the adverse impacts caused by development of residences and associated infrastructure.

e. Maximizing Wetland Protection

The project site is a wetland within the meaning of Section 30233 of the Coastal Act. This section of the Act requires that such habitat areas be protected against significant disruption or degradation. Strict application of this section is not authorized in this situation, however, because to do so would cause a taking of property in violation of Section 30010 of the Coastal Act, as well as the California and United States Constitutions. Therefore, the Applicant may be permitted to develop a portion of the property, subject to Special Conditions that will reduce or mitigate the impact on wetland habitat to the maximum extent feasible.

In order to maximize protection of the wetland habitat in light of constitutional takings issues, the project must be reduced in scope from that proposed, and conditioned as necessary to minimize disruption to sensitive habitat that would accompany any development of this property. Therefore, Special Condition 1 requires that the entire development envelope be reduced in size. Reducing the size

Before a taking claim can be analyzed it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be treated as a single parcel for takings purposes. In determining whether lots should be so treated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition and the extent to which the parcel has been treated as a single unit (e.g., *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 [nine individual lots treated as single parcel for takings purposes]; *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318; *Forest Properties Inc. v. Big Bear Municipal Water District*, (Fed. Cir. 1999) 177 F. 3rd 1360).

Applying these factors, the Commission concludes that the two lots on which the project is proposed can and should be analyzed for takings purposes as a single parcel. There are many reasons to support this. First, both lots are owned by the Applicant and were acquired at the same time in 2001. Second, both lots share a common assessors parcel number (APN 061-081-016). Third, the Applicant purchased the lots for a single purchase price, and the parties to the sale did not assign separate values or purchase prices to the two lots. Fourth, the two lots are contiguous, and are subject to the same local land use zoning of multi-family residential (MFR). Fifth, the Applicant has treated the two lots as a single unit. This is evidenced by the fact that the project includes a duplex with each unit covering a portion of both lots, and common landscaping. Finally, a review of the chain of title for the property shows that these lots have been conveyed over time as a single unit and never in divided ownership. In summary on this point, the takings doctrine treats APN 061-081-016 as a single parcel for the purpose of determining whether a taking occurred.

In addition, Commission staff analyzed the modified development envelope to be sure that the reduced size would still provide for a reasonable economic use of the site. After evaluating a number of possible design alternatives, Staff concluded that the reduced development envelope does provide for a reasonable economic residential use, while at the same time maximizes resource protection. For example, the approved envelope could allow for a single residential unit of approximately 2,400 s.f.; two smaller units oriented towards the front of the parcel of approximately 1,200 s.f. each; or a two-unit condominium/duplex of approximately 1,400 s.f. each (with shared parking garage, driveways, and walls). Based on data provided by the Applicant, even the smallest project assumed (a 15 x 50 foot building envelope providing a single unit with a living area of 1,200 s.f. including a single car garage and a small yard) would be worth between \$500,000 and \$550,000.

In order to maximize protection of the wetland habitat in light of constitutional takings issues, the project must be reduced in scope from that proposed, and conditioned as necessary to minimize disruption to sensitive habitat that would accompany any development of this property. Therefore, Special Condition I requires that the entire development envelope be reduced in size. Reducing the size of the development envelope would minimize site disturbance and have the effect of retaining a larger amount of wetland habitat area. Special Condition I requires a modified development envelope, reducing the development envelope of the overall project to 2,400 square feet (40% lot coverage) while at the same time orienting structures toward the fronting street (Honolulu Ave.), further from undisturbed wetland habitat and drainage areas which provide greater connectivity to surrounding wetland areas. As described, the neighboring lawn has encroached onto the front and side of the property. Locating the development envelope towards Honolulu Avenue utilizes this already disturbed



area and will reduce overall wetland habitat losses. The remainder of the property (60%) is required to remain in open space. This percentage of allowed lot coverage is consistent with previous Commission action taken on residential use in wetlands in this same general area of Oceano (see Bachman SFD, CDP #3-01-121).

In addition to the reduced size of the development envelope, appropriate mitigation for the impact to wetland habitat in Oceano includes the preservation of open space/habitat areas and restoration and long-term maintenance of these areas. Special Condition 2 requires that the undeveloped area on the property shall be preserved in open space, subject to a deed restriction that prohibits uses that are inconsistent with habitat restoration and preservation (Special Condition 11).

In conjunction with this requirement, Special Condition 3 requires that the applicant to submit a revised landscape plan using exclusively native wetland vegetation appropriate to the Oceano area. Landscaping shall include, but is not limited to, the development envelope and the area of turf grass encroaching on the property fringe from the neighbors yard. The most effective and efficient way to deal with weedy species is to prevent invasions. Preventing invasion is of greater conservation benefit in the long run than the far more costly and difficult efforts to control a widespread pest species. Therefore, Special Condition 3 will reduce the potential for invasive plant species to adversely impact the surrounding wetland habitat in the immediate project area as well as to minimize disruption to adjacent wetland habitat throughout the life of the development. These conditions shall run with the land in order to ensure that future owners are aware of the constraints associated with this site.

Mitigation is also required to offset the unavoidable impacts of the proposed project. This includes both the permanent loss of 2,400 square feet of wetlands attributable to the project's development envelope, the ongoing disruptions to the value of surrounding wetlands, and the cumulative impacts of residential development on the Oceano Lagoon wetland complex. Initially, Staff believed that the most appropriate mitigation for these impacts would be achieved through retirement of a wetland parcel of equal size and/or value within the same wetland area. However, within the context of the local approval and the recommendations of the Department of Fish and Game, it was determined that offsite restoration was adequate. Thus, Special Condition 4 requires mitigation in the form of an offsite wetland mitigation plan that would require the applicant to identify, in coordination with the County and the Department of Fish and Game, an offsite mitigation area within Oceano on which 18,000 square feet of wetland habitat will be restored and permanently protected. The condition is designed for establishment of replacement wetland habitat at a ratio of 3:1 (3 x 6,000 square feet of impacted wetlands (2,400 s.f. directly affected + 3,600 s.f. indirectly affected due to lack of buffering = 18,000 square feet of mitigation). It is also important to consider the roughly 1,200 s.f. of wetland lost within the street right-of-way. A greater than 1:1 mitigation ratio is appropriate given the uncertain success rate for any offsite habitat restoration effort. A larger restoration area also mitigates for the ongoing and cumulative wetland disturbances attributable to residential development. The County and the Department of Fish and Game have also required a mitigation ratio of 3:1. This mitigation is proportional to the impact caused by the development.

To avoid potential impacts to sensitive species during construction and to assure that the permit conditions and mitigations are being implemented, Special Condition 6 requires an environmental monitor, approved by the Executive Director, to be present during construction activities.

Although the entire lot is considered to be a wetland, to prevent takings, some development of the parcel

must be allowed. However, Coastal Act standards require that permitted development be limited to the constitutionally mandated minimum level of intensity. Thus, only as conditioned does the project maximize the protection of coastal wetlands, and satisfy Constitutional issues.

2. Water Quality

a. Applicable Water Quality Policies

Coastal Act Sections 30230, 30231, and 30232 provide:

Section 30230. Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232. Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

b. Consistency Analysis

The proposed project has the potential to degrade wetland habitat through the proposed construction of residential units, altering natural drainage patterns, and contributing sediments and pollutants to coastal wetlands. Construction activities can adversely impact coastal water quality by causing erosion and sedimentation through the removal of vegetation and the movement of dirt. The increase in impervious surfaces that will result from the project will also impact water quality by altering natural drainage patterns and providing areas for the accumulation of pollutants that will eventually be carried into wetland areas by storm water. The proposed project would significantly increase the amount of impervious surface at the site due to the construction of a roof, driveway, and other hard improvements. The driveway, in particular, can accumulate automobile by-products contributing to polluted runoff (e.g., petroleum hydrocarbons, heavy metals such as lead, copper, zinc and cadmium, etc.).

Minimizing sedimentation and impervious surfaces resulting from new development is one way to reduce nonpoint source runoff. The primary mechanisms for minimizing impervious surfaces, in this case, are to require construction best management practices (BMP's) and limit the development to a single shared driveway. With less impervious area for pollutants to collect upon, there is a reduction in polluted runoff ultimately flushed off site. This can be accomplished by reducing the size of impervious surfaces and implementing erosion control BMP's during and after construction. Special Conditions 1



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**Th9d**

Filed:	6/17/02
49 th day:	8/5/02
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Staff:	JB-SC
Staff report prepared:	7/18/02
Hearing date:	8/08/02
Hearing item number	Th9d

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-01-121

Applicant.....Charles Bachman

Project location.....1525 Fountain Ave., Oceano, San Luis Obispo County.

Project descriptionConstruct a 2,100 square foot single-family residence with approximately 944 square feet of decks and porches and includes a 546 square foot attached garage.

File documents.....Coastal Act; San Luis Obispo County Certified Local Coastal Program; Wetland Delineation (Holland, Moody, 5/30/01); Herpetological Survey (Andoli, 5/3/01); CCC Staff Biologist Memorandum (Dixon, 4/15/02).

Staff recommendation ...Approval with Conditions

Summary: The applicant proposes to construct a two-story 2,100 square foot single-family residence on a 9,375 square foot lot adjacent to the airport in the community of Oceano in San Luis Obispo County. The site is within the Coastal Commission's permit jurisdiction by virtue of being located on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. This area has been previously filled in order to build the Pismo-Oceano Airport and the surrounding neighborhood. The Coastal Act is therefore the standard of review. The County's LCP, however, may be used for guidance.

The proposed development is located entirely within a wetland system. These wetlands, although substantially altered, are considered environmentally sensitive habitat areas (ESHA) because they include plant or animal life or their habitats, which 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. The project would result in direct and indirect impacts to wetland habitats. The project and the cumulative impacts to wetland habitats are considered significant and unavoidable.



California Coastal Commission
August, 2002 Meeting in San Luis Obispo

Staff: JB-SC Approved by:

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Finally, the San Luis Obispo County certified LCP allows for a 25-foot minimum front setback. As mentioned the LCP can provide guidance to the Commission when analyzing development proposals within wetland areas. The applicant proposes a 30-foot front setback from Fountain Avenue, which positions the house 5 feet further towards the rear of the property than required. As discussed in the biological reports, the rear of the property contains a number of mature willows, includes a drainage swale for the westerly flow of water towards Oceano lagoon, and provides the most suitable habitat areas for wetland species.

d. Conclusion

The project site is an environmentally sensitive habitat area within the meaning of Section 30240 of the Coastal Act. This section of the Act requires that such habitat areas be protected against significant disruption or degradation. Strict application of this section is not authorized in this situation, however, because to do so would cause a taking of property in violation of Section 30010 of the Coastal Act, as well as the California and United States Constitutions. Therefore, the Applicant may be permitted to develop a portion of the property, subject to Special Conditions that will reduce or mitigate the impact on wetland habitat to the maximum extent feasible.

Those areas along the northeastern edge of the airport (where the proposed development would occur) are only sparsely developed and maintain some wetland values. To properly recover and preserve viable wetland habitat requires large contiguous tracts of wetland plants, soils, and hydrology for the establishment of a diverse native wetland. Therefore, in order to preserve viable wetland habitat and mitigate impacts of this non-resource dependent use to the maximum extent feasible, additional mitigating conditions are necessary. Appropriate conditions in this case include the submission of revised final plans prior to issuance of the CDP, limiting the development footprint, requiring the restoration and enhancement of wetland areas surrounding the development footprint, requiring the driveway to be constructed using permeable materials, and placing a conservation restriction on the open space/habitat areas, as required by Special Conditions 1, 2, 3, and 4 of this permit approval.

To offset this loss of habitat area, Special Condition 2 requires that the entire development envelope be slightly reduced, thereby effectively limiting the length and overall size of the proposed driveway. Reducing the size of the driveway would have the effect of retaining a larger amount of area available for viable wetland restoration. This project modification also represents some compensation for the disturbance area of the paving, resulting in the loss of wetland habitat areas. In addition, permeable materials are required to be used in the design of the proposed driveway. Special Condition 2 requires a modified development footprint, reducing the coverage and composition of the driveway while at the same time effectively moving the residence forward toward the fronting street, further from sensitive plants and drainage areas suitable to support wetland habitat.

Special Conditions 2 and 4 require that the undeveloped area on the property shall be preserved in open space, subject to a deed restriction that prohibits uses that are inconsistent with habitat restoration and preservation. Special Condition 3 requires that all of the wetland area outside the designated building envelope shall be restored. Definition of a building envelope will help reduce the potential for adverse impacts to the environmentally sensitive habitat in the immediate project area as well as to minimize disruption to wetland habitat throughout the life of the development. These conditions shall run with the land in order to ensure that future owners are aware of the constraints associated with this site. Appropriate mitigation for the impact to wetland habitat in Oceano includes the preservation of open space/habitat areas and restoration and long-term maintenance of these areas. This mitigation is



essentially, roughly proportional to the impact caused by the new development. Thus, special Condition 3 requires the applicants' botanist to submit a plan for the wetland restoration and enhancement component of the project. The plan should also identify construction-related measures to be implemented before and after construction. Special Conditions 5 and 6 require the development of a fencing plan and biological monitoring daily during grading and weekly during other aspects of construction.

Finally, in order to protect the unique soils associated with coastal wetlands, on which sensitive native habitats depend, as well as to prevent spoils disposal and runoff from adversely impacting other sensitive habitat areas, Special Condition 7 requires the Permittee incorporate recommended design and construction measures from the submitted Soils Engineering Report (Earth Systems Pacific Soils Engineering Report, 3/13/01). These measures include, site preparation and grading, utility trenching techniques, foundation types, and erosion control and drainage improvements.

2. Public Access

a. Applicable Public Access Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

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

b. Consistency Analysis

The Coastal Act requires that all projects proposed between the first public road and the sea be analyzed for compliance with the public access and recreation policies of the Coastal Act. In this case, the project will not have any impact on the public's ability to physically or visually access the coast. Thus, the project is consistent with the public access requirements of the Coastal Act.

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Th13a

Filed: 7/8/1998
Action Deadline: None
Staff: Katie Butler
Staff Report: 3/26/2015
Hearing Date: 4/16/2015

STAFF REPORT: DE NOVO HEARING

Application Number: A-3-SLO-98-061

Applicant: Anthony Wolcott

Project Location: Undeveloped end of 10th Street, at 1111 and 1113 10th Street, along Morro Bay in the unincorporated community of Los Osos, San Luis Obispo County (APNs 038-052-001 and 038-052-026)

Project Description: Construction of two single-family residences, shared access driveway, and drainage improvements.

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION

The Applicant proposes to construct two approximately 2,000 to 3,000 square-foot single family residences with a shared driveway on two vacant and undeveloped parcels. The proposed project is located at the northern terminus of 10th Street in the unincorporated community of Los Osos, in San Luis Obispo County, immediately adjacent to the Morro Bay National Estuary. San Luis Obispo County approved the proposed project on May 12, 1998, and that approval was appealed to the Commission. On April 14, 1999, the Commission found that the County's approval raised a substantial LCP conformance issue, primarily in terms of sensitive habitat, and took jurisdiction over the coastal development permit (CDP) application. Since 1999, staff has corresponded multiple times with the Applicant in order to obtain information necessary for de novo review, but the Applicant did not provide the requested information and thus the item was placed in suspended status awaiting the time when the Applicant again wished to pursue the

application. Ultimately, in 2011, as part of an effort to clear items that were no longer being pursued, staff requested that the Applicant withdraw the application due to 12 years of inactivity. At that time, the Applicant requested that the Commission continue to process the application, and staff has been working with the Applicant, San Luis Obispo County, and other applicable agencies (Regional Water Quality Control Board (RWQCB) and U.S. Fish and Wildlife Service) since that time to obtain the necessary information to bring the application to a Commission hearing. Thus, the CDP application is now before the Commission for consideration and action.

The project is inconsistent with the LCP's wastewater and environmentally sensitive habitat area (ESHA) policies. With respect to wastewater, the project site lies within an area that is not yet served by a sewer system, and within a longstanding septic system prohibition zone established by the RWQCB due to groundwater contamination issues that have plagued the Los Osos basin for decades as a result of individual septic systems. Thus, the project does not have access to adequate wastewater services, and cannot be approved. Although the County is currently constructing a community sewer system for the Los Osos area, that system is not yet complete, nor have the conditions been met to allow any service. In fact, the CDP approved by the Commission for the sewer system included conditions that require the County to update the LCP and prepare a communitywide Habitat Conservation Plan (HCP) to address allowable development on undeveloped lots within Los Osos prior to any sewer connections. An important part of the LCP update is to identify which properties lie within the developable urban area and thus are going to be allowed to connect to the sewer system ultimately. The Applicant's property is in an undeveloped ESHA area bordering Morro Bay, and it is not clear at this time whether the Applicant's property will be allowed to connect, and this will not be decided until the LCP is updated. The County is currently working on the LCP update, but it is not clear when it will be complete, and it is not clear when it will be acted on locally and then ultimately by the Commission.¹ In short, the Applicant currently has no means of providing wastewater service, and thus the project is not approvable under the LCP.

In terms of ESHA, the project site is also almost entirely comprised of wetland and related resources associated with the Morro Bay National Estuary, and it is mapped in the LCP as a Sensitive Resource Area (i.e., ESHA per this LCP). The Commission's ecologist has evaluated the site, and concluded that the entire site is ESHA. The LCP prohibits non-resource dependent development in this ESHA area, and thus the project is inconsistent with the LCP on this point as well.

In situations in which the LCP requires denial of a project, the Commission typically determines whether that denial would result in an unconstitutional taking of private property without just compensation. If denial would likely result in an unconstitutional taking, then the Commission may interpret the LCP in a manner that would avoid that result. In this situation, while the parcels in question are entirely ESHA, a takings claim related to a denial is not yet ripe because there is currently no allowable wastewater service for the site, necessitating project denial at this time. Because the takings claim is not ripe, the issue of whether project denial based on ESHA would effectuate a taking has not been evaluated.

¹ The County indicates that allowable hookups are not likely to occur until at least 2020.

In sum, staff recommends that the Commission deny the CDP for the project. The motion and resolution to implement this recommendation is found on page 4.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. FINDINGS AND DECLARATIONS	4
A. PROJECT LOCATION AND SITE DESCRIPTION	4
B. PROJECT DESCRIPTION	5
C. PROJECT HISTORY	5
D. PUBLIC SERVICES	7
E. BIOLOGICAL RESOURCES	19
F. OTHER ISSUES	28
G. LCP CONSISTENCY CONCLUSION	28
H. TAKINGS ANALYSIS	28
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	32

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Map

Exhibit 2 – Project Site Photographs

Exhibit 3 – Proposed Project Plans

Exhibit 4 – Staff and Applicant correspondence (1999 to 2011)

Exhibit 5 – Correspondence regarding building permits for the project (1988 to current)

Exhibit 6 – Project Site Habitat Map

Exhibit 7 – Estero Area Plan Combining Designations Map

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **deny** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **NO** vote on the following motion. Failure of this motion will result in denial of the CDP and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-SLO-98-061, and I recommend a no vote.*

***Resolution to Deny CDP:** The Commission hereby denies Coastal Development Permit Number A-3-SLO-98-061 and adopts the findings set forth below on grounds that the development will not be in conformity with San Luis Obispo County Local Coastal Program policies and Coastal Act access and recreation policies. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse effects of the development on the environment.*

II. FINDINGS AND DECLARATIONS

In this de novo review of the proposed CDP application, the standard of review is the San Luis Obispo County certified LCP and, because the project is located between the first public road and the sea, the public access and recreation policies of the Coastal Act.

A. PROJECT LOCATION AND SITE DESCRIPTION

The project site is located in the northern portion of the unincorporated community of Los Osos/Baywood Park, in San Luis Obispo County, immediately adjacent to the Morro Bay National Estuary. The site is located at the northern terminus of 10th Street and is surrounded by Morro Bay National Estuary to the north and east, single family residences to the south and southwest, and the El Moro Elfin Forest open space area to the northeast, approximately half of which is part of Morro Bay State Park. The project site consists of APN 038-052-001 (Lot 33, 1111 10th Street) which is 9,600 square feet (0.2 acre) in size and APN 038-052-026 (Lots 1 and 32, 1113 10th Street) which is 16,800 square feet (0.38 acre) in size. A portion of the proposed common driveway would also be located within the 16,000-square foot (0.4-acre) County right-of-way adjacent to the property at the end of 10th Street.

All of the Applicant's property as well as the County's right-of-way property is undeveloped, and is comprised of woody vegetation except for the shoreline frontage, which extends out into the wetland marsh and open water of Morro Bay. The woody vegetation is primarily riparian habitat consisting of willows and other riparian species, as well as pygmy oak woodland. A portion of the middle of the site is coastal scrub habitat. The site slopes moderately from southeast in the County right-of-way to the northwest wetland area.

The site is located within the urban services line (USL) of the Estero Planning Area of the San

Luis Obispo County Local Coastal Program (LCP) Land Use Plan (LUP) and is designated Single Family Residential. It is also within a sensitive resource area (SRA) and archeologically sensitive area as shown on the LCP combining designations map. See project location maps and site photos in **Exhibit 1 and Exhibit 2**.

B. PROJECT DESCRIPTION

The proposed project consists of two approximately 2,000 to 3,000 square-foot single family residences on two undeveloped parcels at 1111 and 1113 10th Street with a common driveway on the undeveloped County right-of-way extending from the paved section of 10th Street (see **Exhibit 3**).² The residence at 1111 10th Street would be single level with a height of 14 feet above average finished grade and would require 69 cubic yards of fill. The residence at 1113 10th Street would be split level with a height of 14 feet above average finished grade and would require approximately 167 cubic yards of fill. Both residences would be constructed on pilings, with the exception of the garages, which would be constructed on slab-on-grade foundations. The shared driveway would range from 12 to 18 feet in width with a total length of 250 feet from the currently paved section of 10th Street to the westernmost residence, and would be comprised of both asphalt and pervious interlocking concrete pavers. Approximately 110 feet of the driveway length would be located in the public right-of-way at the end of 10th Street, resulting in approximately 5,400 square feet of disturbance within the public right-of-way. The total disturbed area for the entire project would be approximately 20,873 square feet, or just under one half acre.

The project would include drainage elements to address runoff from the roof surfaces of the residences, runoff from an existing County drainage facility to the east of the site, and runoff from 10th Street and the proposed driveway. Such elements include an approximately 250-foot long rock-lined drainage swale and rip rap energy dissipator at the southwestern corner of the property, where water would then flow freely into the marsh area associated with the Morro Bay National Estuary. No water treatment mechanisms, such as an oil and grease separator and/or sedimentation basin, are proposed for site runoff. The County's original approval included a requirement to connect the residences to the future Los Osos community sewer or obtain approval from the Regional Water Quality Control Board for an onsite septic system. The Applicant intends to connect the residences to the future sewer system.

See **Exhibit 3** for the proposed project plans.

C. PROJECT HISTORY

The current Applicant, Anthony Wolcott, applied for two similar houses in the late 1980s. Ultimately, the Coastal Commission approved two CDP applications for the project site on July 14, 1988. CDP application number 4-87-115 involved a 2,841-square foot residence at 1113 10th

² The project approved by the San Luis Obispo County Board of Supervisors on May 12, 1998 consisted of two similarly sized residences that were sited approximately 50-75 feet to the southeast of the proposed project in order to be set back from the wetland area of the site (although some wetland encroachment would still have occurred). The County approved a variance to the LCP's minimum 25-foot wetland setback to allow development in this setback area as well as in the wetland itself. As proposed now, the residences would have no setback from wetland, and in fact would be located in the wetland itself.

Street and CDP application 4-87-117 involved a 1,906-square foot residence at 1111 10th Street, both of which included septic systems and development deemed at that time to be adjacent to environmentally sensitive habitat areas (ESHA) (riparian, wetland, and pygmy oak woodland). The approvals included special conditions addressing protection of ESHA and archaeological resources. After the Commission's approval, the Applicant's biological consultant notified staff of a discrepancy between the habitat map he created for the project and the one included in the staff report. After further investigation, it was determined that the map as well as the biological report itself had been altered by the Applicant to show less sensitive habitat on the sites than the biological consultant had identified. A new biological report and onsite investigation by Commission, County, and California Department of Fish and Game staff revealed more extensive sensitive habitat on the site than what had previously been presented to the Commission in the altered report. The Commission determined that additional conditions and a substantially changed recommendation would have been required in order for the projects to be consistent with the Coastal Act and the San Luis Obispo County LCP. As such, the Commission revoked its approvals of CDPs 4-87-115 and 4-87-117 on November 15, 1988.

The current Applicant then sold the property to Jay Farbstein, and Mr. Farbstein applied for CDPs from the County for two similar residences. On May 12, 1998, some ten years after the original CDPs had been revoked by the Coastal Commission, the San Luis Obispo County Board of Supervisors approved CDPs, including variances to LCP requirements, for the development of two single-family residences at the project site.³ The County's approvals were appealed by three separate appellants, and on April 14, 1999, the Commission determined that the appeals raised a substantial issue regarding project conformance with the certified LCP with respect to ESHA, wetlands, coastal watersheds, and visual resources.

In May 1999, following the substantial issue hearing, Coastal Commission staff requested, in writing, additional information from Mr. Farbstein, including a Regional Water Quality Control Board (RWQCB) approval for wastewater treatment and completion of Endangered Species Act consultation with the U.S. Fish and Wildlife Service (USFWS). Mr. Farbstein did not respond, and five years passed. Subsequently, Coastal Commission staff sent additional correspondence to Mr. Farbstein again in October 2004 after not receiving a response to the previous information request, and requested the needed information once again. This letter also recommended that Mr. Farbstein withdraw the application pending resolution of the outstanding wastewater and sensitive habitat issues, particularly in light of unfolding circumstances regarding the community's plans for wastewater treatment. Mr. Farbstein and Coastal Commission staff exchanged several letters in late 2004 and early 2005 regarding continued processing of the application, including a letter from Mr. Farbstein stating that he was working on resolving sensitive habitat issues and that he continued to disagree with staff regarding the RWQCB's role in the project. Following some 6 more years where Commission staff did not hear from Mr. Farbstein, and as part of an effort to clear items that were no longer being pursued, staff sent another letter to the Applicant in late 2011 requesting withdrawal of the application due to inactivity. In response, staff received a letter back in November 2011 from the current Applicant,

³ County file numbers D960345V, D880295D, D960346V, and D880338D. The two CDPs approved by the County have been combined into one file number for Commission appeal purposes.

who by then had purchased the property back from Mr. Farbstein,⁴ and who requested that the Commission continue to process the application. Staff has been working with the Applicant, San Luis Obispo County, and other applicable agencies (RWQCB, USFWS) since that time to obtain information regarding wastewater, building permits, and sensitive species that is necessary to bring the application to a Commission hearing. See **Exhibit 4** for correspondence between Coastal Commission staff and the Applicant since May 1999.

In short, following the SI determination in 1999, staff asked the Applicant to provide the information necessary for the matter to be scheduled for de novo review, but the Applicant did not provide that information, and did not actively pursue the project for many years. The project was in a suspended status at that time given the lack of interest on behalf of the Applicant for pursuing it. It was not until 2011, some 12 years later, that the Applicant indicated that he wanted to actively pursue the project again, and that Staff and the Applicant engaged on information exchange, which has been ongoing since that time. The Applicant ultimately requested that the matter be scheduled for the Commission's April meeting in San Rafael, and thus the project is scheduled for that hearing.

D. PUBLIC SERVICES

The certified San Luis Obispo County Local Coastal Program is comprised of the Coastal Zone Land Use Element (CZLUE) and the Coastal Zone Land Use Ordinance (CZLUO). The CZLUE is comprised of four parts: the Framework for Planning, the Coastal Plan Policies, the four area plans (Estero, North Coast, San Luis Bay, and South Coast), and the land use maps.

The LCP includes a series of policies aimed at ensuring that adequate public services are available to support development. This includes ensuring that essential resources, such as water supply and wastewater treatment capacity, are available to serve new development and that commitment of these resources to development does not adversely affect coastal resources. The following LCP public service procedures, policies, and standards are relevant to the proposed project:

Coastal Plan Public Works Policy 1: Availability of Service Capacity. New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable.

The applicant shall assume responsibility in accordance with county ordinances or the rules and regulations of the applicable service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or

⁴ Anthony Wolcott, the current Applicant and the applicant for the original CDPs that had been revoked by the Coastal Commission in 1988, purchased the property back from Jay Farbstein in January 2009.

reduction of the density that could otherwise be approved consistent with available resources. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.021c (DIVISIONS OF LAND), 23.04.430 AND 23.04.432 (OTHER DEVELOPMENT) OF THE CZLUO.]

Coastal Plan Public Works Policy 6: Resource Management System. *The county will implement the Resource Management System to consider where the necessary resources exist or can be readily developed to support new land uses. Permitted public service expansions shall ensure the protection of coastal natural resources including the biological productivity of coastal waters. In the interim, where they are identified public service limitations, uses having priority under the Coastal Act shall not be precluded by the provision of those limited services to non-priority uses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Coastal Plan Public Works - Resource Management System. *The Land Use Element also establishes the Resource Management Program and the procedure for annual review of capital improvement projects. In most general terms, the goal of the Resource Management System is to support population growth balanced with the resources required to support that growth. A workable resource management policy must be based on the realization that the question is not whether population growth should be accommodated, but where and how much growth can be accommodated consistent with the protection of natural resources and community values. The RMS must resolve issues of distribution and location, rather than growth versus no-growth. In guiding future growth, the RMS relies upon anticipating which resources may face shortages and how the shortages may be overcome or if they cannot be overcome without adversely affecting the productivity of the natural environment, how the growth can be redirected elsewhere.*

The Land Use Element identifies appropriate locations for different land uses on the basis of minimizing conflicts between them. The Resource Management System refines that approach by also considering where the necessary resources exist or can be readily developed to support new land uses. The RMS was designed for use in urban areas by initially estimating capacity levels for four essential resources: water, sewage disposal, schools and roads. While other resources are needed to support the human use of land, those four have the most direct relationship to physical development, and are the most critical in an urban context.

The Resource Management System uses three levels of alert to identify potential and progressively more immediate urban resource deficiencies. The alerts are intended to occur while sufficient time is available for correcting a shortage before a crisis develops. Threshold population levels corresponding to the three levels of concern have been defined for the basic resources of each community. When resource monitoring indicates a threshold population level may have been reached, the Planning Department will notify the Board of Supervisors. Implementation of a public works project or management techniques would then occur only after public hearings on the validity of resource information being used, and action by the Board, including the adoption of ordinances if necessary to address specific community resource problems.

Level I: Resource Capacity Problem. *The first indication that a potential resource capacity problem exists or is anticipated. A resource problem is identified when either the initial area plan resource inventory (where data are sufficiently accurate) or data obtained from capacity studies after LUE adoption indicate the capacity of a resource will be reached within a time period critical to the particular resource.*

Level II: Diminishing Resource Capacity. *Reached when a public work project is needed to correct a deficiency, and the time needed to complete the project is the same as the time when the resource is estimated to reach its maximum safe yield (e.g., remaining sewer plant capacity is enough to handle the current growth rate for five more years, which is also the time needed to complete a plant expansion project). The primary purpose of Level II is to identify the point at which a public work project must be initiated, and if necessary, to extend the time available to correct the resource deficiency.*

Level III: Resource Capacity Met or Exceeded. *This is the most critical level of concern. Level III occurs when the capacity (maximum safe yield) of a resource has been met or exceeded, and creates a deficiency of sufficient magnitude that drastic actions must be taken to protect public health and safety. While the intention of the Resource Management System is to entirely avoid reaching Level III through a prior series of alerts, it is still possible that such a situation may occur. The alerts are intended to occur while sufficient lead time is available for correcting a shortage before a crisis develops. Once an alert level has been identified, it is with the discretion of the County Board of Supervisors to implement resource management techniques which may range from conservation measures and capital improvement programs to develop restrictions. The Land Use Element planning area reports identify the existing level of concern based upon available information concerning water, sewer, roads and school capacity. ...*

Coastal Plan Coastal Watersheds Policy 1: Preservation of Groundwater Basins. *The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Coastal Plan Coastal Watersheds Policy 2: Water Extractions. *Extractions, impoundments and other water resource developments shall obtain all necessary county and/or state permits. All pertinent information on these uses (including water conservation opportunities and impacts on in-stream beneficial uses) will be incorporated into the data base for the Resource Management System and shall be supplemented by all available private and public water resources studies available. Groundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for optimum populations of marine organisms, and for the protection of human health. (Public works projects are discussed separately.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

Estero Area Plan – Chapter 3 Public Facilities, Services, and Resources

A. Water Supply 1. Areawide Water Supply - Policy: Monitor water demand through the Resource Management System to assure that new development can be supported by available water supplies without depleting groundwater supplies and/or degrading water quality.

B. Sewage Disposal - Policy: Monitor sewage flows through the Resource Management System to assure that new development can be accommodated by sewage disposal capacities.

Estero Area Plan – Chapter 4 Land Use Policies and Programs

I. Areawide Land Use and Marine Resource Policy

B. Development Within Resource Capacities

1. Adequate public or private resource capacities shall be available to serve proposed development. Within urban areas, adequate water supply and sewage disposal capacities shall be available to serve both existing and potential development within the community before approval of new land divisions using those services. Land divisions requiring urban service extensions beyond the USL/URL shall be prohibited.

Estero Area Plan – Chapter 7 Planning Area Standards

VI. Los Osos Urban Area Standards

COMMUNITYWIDE: The following standards apply to all land uses within the Los Osos Urban Reserve Line.

A. On-Site Wastewater Disposal. New development using on-site wastewater disposal systems shall protect coastal water quality and meet the requirements of the Regional Water Quality Control Board.

CZLUO 23.04.430 - Availability of Water Supply and Sewage Disposal Services. A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL....

The County's Building and Construction Ordinance (Title 19) is not part of the LCP and therefore not part of the standard of review here, but is included because compliance with this code remains a requirement to obtain building permits in San Luis Obispo County. Chapter 7 of Title 19 includes the County's water supply verification requirement and retrofit/conservation requirements. In addition, Chapter 10 of Title 19 addresses the Baywood Park and Los Osos building prohibition areas. These Title 19 chapters are included in **Appendix B**.

Los Osos Wastewater and Water Supply Issues

Beginning in the early 1970s, the RWQCB began to raise environmental health and safety concerns regarding the use of septic systems in Los Osos.⁵ In particular, the shallow depth of

⁵ Septic systems handle sewage by separating the sewage solids from the sewage fluids. Solids are collected in septic tanks and eventually pumped out and disposed off-site, while fluids flow directly into on-site soil through septic leach fields. Thus, a septic system's efficiency in neutralizing the liquid waste is dependent on the ability of the soil to treat and disperse sewage pollutants. Key controlling factors for soil in this respect include its composition and the vertical distance between leach fields and groundwater. When septic systems fail, either by direct leakage or by clogged and/or inoperative leach fields, there is high potential for ground and surface water contamination.

groundwater in some areas of Los Osos resulted in inadequately treated septic discharges into groundwater and surface water, including due to flooding of leach fields in wet weather.⁶ Such discharges have resulted in environmental degradation, including to adjacent Morro Bay (from both surface flow and lateral seepage of inadequately treated septic discharge) and to groundwater resources more generally.⁷ Groundwater contamination issues were and are compounded by the fact that the Los Osos area obtains its potable water supply from local groundwater aquifers. The Los Osos groundwater basin is comprised of multiple aquifer layers underlying the Los Osos community and surrounding areas that are the main sources of municipal, domestic, and agricultural water for the area. Three separate water purveyors (Los Osos Community Services District, Golden State Water Company, and S&T Mutual Water Company) extract and provide water from the basin to the Los Osos community.

The RWQCB took a series of steps to address water contamination concerns, beginning with adopting an interim Basin Plan in 1971 that included a provision prohibiting septic system discharges in much of Los Osos after 1974. This was done because the RWQCB had found that groundwater quality was deteriorating, particularly as it related to increasing concentrations of nitrates and fecal coliform bacteria, and that individual septic tank systems were a major contributing factor. In 1983, the RWQCB subsequently determined that the situation was worsening, and amended the Basin Plan (through Resolution No. 83-13) to prohibit discharge of waste from individual and community sewage systems after November 1, 1988 within portions of the Baywood Park/Los Osos area known as the “Prohibition Zone.” The subject property is located within the RWQCB designated Prohibition Zone.

As of January 8, 1988, the RWQCB also established a discharge moratorium that effectively halted all new construction and all major expansions of existing development until a solution to the septic tank pollution problem could be developed and implemented. Even so, the identified problems have continued. According to the RWQCB, as a general guideline, septic systems are normally limited to one residential system per acre. In many areas of Los Osos, the density is more than ten times that limit.⁸

After adoption of Order 83-13, RWQCB staff directed County staff to stop issuing permits for additional onsite septic systems within the Prohibition Zone, as well as permits that would increase the amount of waste discharged from onsite systems. Thus, since 1988, the Los Osos community has essentially been under a building moratorium that has prohibited development of undeveloped properties. The County has approved remodels in Los Osos only if those projects would not increase the amount of waste discharged from onsite septic systems. Specifically, no additional plumbing fixtures and no additional bedrooms, which would possibly increase

⁶ For example, in the low-lying Baywood Park area of Los Osos few of the septic systems can meet RWQCB criteria for separation between the bottom of a leach field and groundwater. In addition, many of the smaller lots in Los Osos are too small for leach fields, and as a result they utilize deeper seepage pits that also can lead to inappropriate discharge to groundwater.

⁷ Sewage contains a variety of constituents of significant concern to human and environmental health and safety, including primarily nitrates, bacteria (such as fecal coliform), and viruses. Excessive nitrate levels can lead to health problems and can also cause algal blooms in surface water, which consume large quantities of dissolved oxygen resulting in adverse impacts to aquatic life. Bacteria and viruses likewise pose potential health risks from direct contact with and ingestion of contaminants in surface and ground water, as well as through secondary consumption (e.g., eating contaminated shellfish).

⁸ Central Coast Regional Water Quality Control Board website, Los Osos Enforcement Actions and Information page: http://www.waterboards.ca.gov/centralcoast/water_issues/programs/los_osos/index.shtml

occupancy, are allowed in remodels. The County has allowed remodels and additions that in some cases increased house sizes without increasing the numbers of bathrooms, bedrooms, or plumbing fixtures. In addition, between 1988 and 2005, the RWQCB issued numerous cease-and-desist orders (CDOs) against the owners of individual sewage disposal systems within the Prohibition Zone that continued to discharge waste. Some of these CDOs have been litigated and settled and some are still ongoing.

In addition to contamination issues, the Los Osos groundwater basin has been in an overdraft state and experiencing seawater intrusion beginning as early as the 1970s. As a result of these ongoing water supply and quality problems, LCP policies were developed that require, among other things, that new development: 1) demonstrate the availability of adequate water and sewage disposal capacity; 2) protect the long-term integrity of groundwater basins; 3) protect coastal water quality and meet the requirements of the RWQCB; and 4) maintain groundwater levels to ensure that the quality of coastal waters is sufficient for biological resources and human health. LCP policies also prioritize development and growth within the urban services line (USL) to reduce the burden on the groundwater supply, and also envision a future wastewater treatment plant to help address water quality problems in the basin.

The LCP also includes a Resource Management System (RMS) that serves to facilitate planning by allowing communities to anticipate resource needs and the County to take action to protect communities' economic interests, public health and safety, and the long-term availability of essential resources, including with respect to water supply and wastewater disposal. The RMS System uses three Levels of Alert (also called Levels of Severity - LOS) to identify potential and progressively more immediate resource deficiencies. The LCP defines Alert Level III as "when the capacity (maximum safe yield) of a resource has been met or exceeded. At Level III there is a deficiency of sufficient magnitude that drastic actions may be needed to protect public health and safety." The County's most recent biennial RMS Resource Summary Report (2010-2012) identified LOS III for both water supply and wastewater in Los Osos on account of the ongoing seawater intrusion, overpumping and exceedance of safe yield,⁹ and contamination issues described above.

With respect to water supply, the best available scientific data regarding safe yield of the basin indicates that there is inadequate water supply to accommodate both existing demand and all development that would be allowed on presently vacant parcels within the USL. The 2013 Draft Basin Plan for the Los Osos Groundwater Basin ("the Basin Plan") was prepared by San Luis Obispo County and the three water purveyors in Los Osos as part of an adjudication of water resources in the basin. The Basin Plan identifies seven action programs, including related groundwater monitoring, water efficiency, water reinvestment, and supplemental water, to bring the basin into sustainability. According to the Basin Plan, groundwater production from the basin has been unsustainable since the late 1970s, and despite significant efforts to reduce water withdrawals, the basin continues to be over-pumped today. As described in the Basin Plan, the total production from the groundwater basin in 2012 was 2,610 acre-feet, in excess of the Basin

⁹ Safe yield, also referred to as 'sustainable yield,' is the amount of water that can be extracted from the basin without potentially adversely impacting the long-term health of the basin.

Plan's estimated sustainable yield for that year of 2,450 acre-feet.¹⁰ The LCP's Estero Plan, which was certified by the Commission in 1988, estimated safe yield between 1,300 and 1,800 acre-feet per year. Under either estimate, the groundwater basin is being overdrafted. This is of particular concern in light of the LCP policies described above that specifically require the preservation and protection of groundwater basins.

To address the water supply issues in Los Osos, the County currently requires new development within the USL to offset its water demand at a 2:1 ratio (as required by Title 19 of the Municipal Code (**Appendix B**)). In such cases, projects pay in-lieu fees to improve the water efficiency of existing development, in theory resulting in no additional increase of water withdrawals from the basin. Both the County and the Coastal Commission have viewed this as a temporary measure until such time that a communitywide solution is adopted and funded under the Basin Plan and have found that such an approach is consistent with the requirements of CZLUO Section 23.04.430.

Various wastewater collection and treatment projects were proposed from the late 1980s onward to address the water quality problems with individual septic systems in Los Osos. In 2010, the final Los Osos Wastewater Project (LOWWP) was approved by the Coastal Commission.¹¹ Construction on the approved wastewater treatment plant began in August 2012 and the project is scheduled to be operational in the spring of 2016.¹² The LOWWP is intended to serve all developed parcels in Los Osos (approximately 4,000), and the CDP approval included a specific prohibition against wastewater service to undeveloped properties in the service area (approximately 701 parcels) unless and until the Estero Area Plan is amended to identify new buildout limits for the Los Osos community. Special Condition 6 from the LOWWP CDP states:

6. Wastewater Service to Undeveloped Properties. *Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats.*

The County's approval of the LOWWP, the conditions of which were incorporated into the Commission's CDP approval, also included a similar requirement:

86. No Service to Undeveloped Properties. *...To prevent the wastewater treatment system from inducing growth that cannot be safely sustained by available water supplies, the sewer authority is prohibited from providing service to existing undeveloped parcels within the service area, unless and until the Estero Area Plan is amended to incorporate a sustainable buildout target that indicates that there is water available to support such development*

¹⁰ See Los Osos Community Services District website link to Public Review Draft for the Basin Plan for the Los Osos Groundwater Basin, January 2015:
<http://www.slocountywater.org/site/Water%20Resources/Reports/pdf/Los%20Osos%20Basin%20Plan.pdf>.

¹¹ CDP number A-3-SLO-09-055/069.

¹² Email from Matt Janssen, San Luis Obispo County Building Division Manager to Katie Butler, Coastal Commission Coastal Planner December 3, 2014.

without impacts to wetlands and habitats.

The County has prepared a public review draft Los Osos Community Plan (dated January 30, 2015) (to be inserted into the Estero Area Plan) that would constitute the required LCP amendment. The draft Community Plan includes a requirement for successful completion and implementation of the Basin Plan programs (described above) that would be required prior to approval of any new development. The Community Plan will also need to include the mitigations from the Habitat Conservation Plan (HCP), which was also required by the conditions of the LOWWP CDP (County Condition No. 92). This HCP is required for the remaining habitat within the Los Osos area where development might be considered, including habitat remaining on individual vacant lots (such as the subject parcels), prior to providing wastewater treatment service to undeveloped parcels. The HCP is intended to act as an overall conservation program that would address sensitive species and habitats in Los Osos in light of the impacts associated with buildout of the community. The County is prohibited from providing service to undeveloped parcels until an LCP amendment that includes the required HCP mitigations is certified by the Commission. In terms of timing, the County expects a final HCP sometime in 2017.¹³ According to the County, the County will need to wait until the HCP is completed before finalizing the LCP amendment and submitting the amendment for Coastal Commission submittal. Once the LCP amendment is certified and in effect, the draft LCP policies regarding the groundwater basin require successful completion and implementation of the specific programs identified in the Basin Plan. According to the Basin Plan, full implementation of the programs is not expected until 2019. Given the amount of time still required for completion of the HCP, the LCP amendment, and Basin Plan programs, the County's best estimate for when the undeveloped parcels might be able to begin connections to the community sewer system is at least five more years (i.e., approximately 2020).¹⁴

An important part of the required Los Osos LCP update is to identify which properties lie within the developable urban area and thus are going to be allowed to ultimately connect to the sewer system. The Applicant's property is in an undeveloped ESHA area bordering Morro Bay, and it is not clear at this time whether the Applicant's property will be within the area allowed to connect, and this will not be decided until the LCP is updated, for reasons described below.

Wastewater Analysis

The LCP requires that adequate public or private service capacities be available to serve new development (Coastal Plan Public Works Policy 1, Estero Area Plan Chapters 3 and 4 policies listed above, and CZLUO Section 23.04.430). In addition, Coastal Plan Public Works Policy 1 also requires a finding that sufficient services exist to serve new development given the outstanding commitment to existing lots within the USL. The LCP also includes policies that require protection of the long-term integrity of the groundwater basins (Coastal Plan Coastal Watersheds Policy 1) and describes the County's Resource Management System (RMS) Levels of Alert which address sewage disposal, among other community resource problems.

The undeveloped project site is located within the RWQCB septic Prohibition Zone described

¹³ Personal communication from Kerry Brown, San Luis Obispo County Planner, to Katie Butler, Coastal Commission Coastal Planner March 12, 2015.

¹⁴ Id.

above. As such, new septic systems are not allowed, and therefore onsite wastewater disposal is not an option for the project. Instead, the Applicant proposes to connect the two residences to the community sewer system that is currently under construction. As described above, once construction of the LOWWP and all associated infrastructure (collection lines, etc.) is completed, the approximately 4,000 *existing developed* parcels in the LOWWP service area may connect to the system. As described above, however, undeveloped properties cannot connect until (1) the LCP is updated, and (2) the updated LCP allows for those properties to be connected to the sewer. With respect to the latter, the LCP update is intended to define the area in which infill development is going to be allowed (and covered by the HCP). Those boundaries are only now available in draft form, and will not be final until approved and certified as part of the LCP by the Coastal Commission. It is not clear at the current time whether the subject parcels will be in the in-fill development area. Given they are completely ESHA and located outside of the existing developed area, it is possible that they will not be identified as in-fill development sites in that regard.

In short, there is not adequate wastewater service available to serve the proposed development, and it cannot be found consistent with the LCP on this point. It is possible that the Applicant may be allowed to connect to the under-construction sewer system, but it is not certain and it will not be known until the LCP is updated and sewer service to undeveloped properties consistent with the LCP update is allowed.

The Applicant states that he is not subject to the conditions of the LOWWP CDP for undeveloped parcels because he claims to have maintained County building permits for the site since the 1980s (although the site remains physically undeveloped). The building permit issue has been discussed for many years as it relates to onsite septic for the site. RWQCB staff has provided a number of comments related to development of the project site beginning in 1988 (see **Exhibit 5**). The primary subject of communications between the Applicant, RWQCB, and the County regarding wastewater treatment for the site has been whether or not the project would be subject to the building moratorium or is “grandfathered” in because of building permits obtained prior to the moratorium date. Obviously the question of timing and the septic moratorium is no longer relevant because the Applicant is no longer proposing onsite septic systems, but the Applicant believes that the presence of building permits puts his sites in the developed parcel category for purposes of the community sewer.

The building permits at issue relate to the original CDPs (CDPs 4-87-115 and 4-87-117) that were revoked by the Commission in 1988. In a December 9, 1988 letter to the County (a month following Coastal Commission revocation of their CDP approvals for the site), RWQCB staff stated that if building permits were issued prior to the January 8, 1988 moratorium and remained valid since that time, that the project could be considered to be “existing.” The County, in a December 27, 1988 letter to the Applicant, subsequently determined that the building permits were deemed “frozen” until the Applicant resolved “problems” with the Coastal Commission. The next written correspondence, dated September 30, 1994 from the RWQCB on the Administrative Draft EIR for the current project states that the previous building permits were suspended (as stated by the County), and then reactivated in March 1992. The RWQCB then states that because these permits did not remain valid (and hence necessitated “reactivation”) that the project must be considered a new project and would be subject to the moratorium.

Between 1994 and 2005, several letters were exchanged between the RWQCB and the County concluding that the building permits had been “frozen,” and as recently as 2012, the County sent a letter to the Los Osos Community Services District once again stating that the building permit applications remain “suspended” due to pending approval by the Coastal Commission. In response to a request by Commission staff, the County sent a final determination via email on December 3, 2014 reiterating that the building permits were frozen, and on December 10, 2014 clarified to Commission staff and the Applicant via email that the permits have suspended status, but that the Applicant did not have “valid” County building permits because they were never issued. More importantly, the County stated in that email that, in terms of the community sewer, it was their opinion that the project parcels are subject to the LOWWP CDP Special Condition No. 6 because no development exists on the site.

It is clear that the issue of building permits for this site has created confusion over the past 26 years, largely because of interpretation by various staff members at both the County and RWQCB. It is the Commission’s position that valid building permits do not exist for the site because building permits cannot be issued in the Coastal Zone absent first having received an approved CDP. As stated above, CDPs 4-87-115 and 4-87-117 were revoked by the Commission on November 15, 1988. The subject building permits are associated with these original CDP actions. Given that the Commission revoked the CDPs, there are no CDP approvals to which the building permits would be associated. Thus, any building permits that might have been associated with these two CDPs became null and void when the Commission revoked the CDPs because a building permit in the coastal zone must be associated with an approved CDP.

In addition, the building permit question is irrelevant to the question of whether or not the site is physically developed for purposes of LOWWP CDP Special Condition No. 6 and County Special Condition Nos. 86 and 92. The site is clearly undeveloped. No structures, paving, or other physical development exist on either parcel. The development that is the subject of this current CDP application would be the first physical development to occur on the site. LOWWP Special Condition No. 6 and County Special Condition No. 86 specifically apply to “undeveloped properties.” In adopting and incorporating these conditions, the Commission did not intend to mean properties that may have existing entitlements (which this project does not), properties at some stage of permit review, and/or properties in the pipeline for development.

An urgent need exists to connect the 4,000 or so developed parcels in Los Osos to the community sewer system. Those parcels are currently using onsite septic systems that are contributing to ongoing and worsening groundwater contamination of the basin. The remaining undeveloped and infill parcels equal a significant amount of development potential, and the Commission’s findings related to LOWWP Special Condition No. 6 and County Condition Nos. 86 and 92 describe the importance of identifying appropriate and sustainable buildout limits for the Los Osos community. Both conditions require undeveloped and infill properties to wait until such buildout limits, and any appropriate mechanisms to stay within such buildout limits, are established through the LCP. Furthermore, the required amendment of the Estero Area Plan to address buildout limits and the required adoption of an HCP that addresses sensitive habitat on undeveloped parcels may yield a lesser amount of actual developable parcels. In other words, sites such as this with significant habitat resources, close proximity to the Morro Bay National

Estuary, on the urban fringe, and an existing sensitive resource overlay (all as discussed below in the ESHA section) may be prohibited or severely restricted from developing in the future.

At this time, the proposed project cannot be found consistent with Coastal Plan Public Works Policy 1, Estero Area Plan Chapters 3 and 4 policies, and CZLUO Section 23.04.430, which require adequate public services for new development, because no wastewater treatment is available to serve the proposed residences. New development on these, as well as the numerous other undeveloped parcels in Los Osos, may be permitted once all the required planning steps have been completed, but it is not appropriate at this time to approve development without the necessary wastewater services. Approval of a sewer connection for this undeveloped site prior to completion of the required planning steps would also be inconsistent with the Coastal Plan Public Works Policy 1 requirement to ensure that there are sufficient services to serve new development, especially given the already outstanding commitment of the LOWWP to serve existing developed lots within the USL. Connection of existing developed lots to the community sewer is an immediate priority for the County given the longstanding problems with those lots' septic systems. Furthermore, onsite septic systems for the project would not be approvable by the RWQCB and would be inconsistent with additional LCP requirements to protect coastal water quality (Coastal Plan Coastal Watersheds Policy 2 and Estero Area Plan Chapter 7, Los Osos Urban Area Standards). As such, the Commission denies the Applicant's CDP request based on lack of available wastewater treatment and resultant inconsistency with the LCP's public service policies and standards.

Water Supply Analysis

As described above, the project site is located within the USL and within an area designated RMS Alert Level III for water. Water supply for the project would be provided by the Los Osos Community Services District (LOCSO). The LOCSO issued a conditional intent-to-serve letter for the project in July 2000 and again in November 2006, both of which expired after one year. The Applicant applied to the LOCSO again in February 2011 and was issued another conditional intent-to-serve letter in August 2012 that included a number of special conditions that the LOCSO found necessary for the protection and management of the groundwater basin and protection of the health and safety of area residents. These conditions included written verification from the RWQCB that the project is consistent with the current Basin Plan, written verification from the County that the project meets all current County requirements for construction, and written verification from the Coastal Commission that the project has been granted a CDP and that it is consistent with all applicable conditions of the LOWWP CDP. The LOCSO granted a one-year extension in July 2013 that expired in July 2014. The Applicant received a two-year extension of this conditional intent-to-serve letter on December 18, 2014.

As described above, water extractions from the Los Osos Groundwater Basin exceed safe yield, resulting in inadequate water supply capacity to support existing water demand in Los Osos. Coastal Plan Public Works Policy 1 and the Estero Area Plan require new development to demonstrate adequate public service capacity to serve the development. CZLUO Section 23.04.430 requires the applicable approval body to determine that there is adequate water available to serve the proposed development. CZLUO Section 23.04.430 also gives priority to infill development within the USL over development proposed between the USL and the urban reserve line (URL).

In 2008, the County adopted an ordinance (Section 19.07.042 of Title 19 of the Municipal Code – see **Appendix B**) that requires new development in Los Osos to save twice the amount of water it will use. When the ordinance was adopted, the average water use per existing residential connection in Los Osos and the amount of water each new house would use was calculated at approximately 0.34 acre feet per household per year, or 303 gallons per day.¹⁵ This section of Title 19 was designed to be overly conservative and require new residences to retrofit enough residences to save 900 gallons per day, effectively saving three times the amount of water used. As of April 2014, after six years of communitywide retrofitting, the average household water use in Los Osos is 0.17 acre feet per year, or approximately 150 gallons per day, which is half of what it was in 2008.¹⁶ Per the LOWWP CDP, the goal is to get that down to 50 gallons per day. According to the County, retrofitting opportunities are far fewer than in 2008, but recently adopted state standards for new construction require residences to use approximately 0.15 acre feet per year, further reducing demand. So while retrofitting opportunities are diminishing, new residences are more water efficient. The County has indicated that the retrofit program was never intended to allow substantial development in Los Osos, but instead has allowed the County to issue one to two building permits a year for new residences (outside the RWQCB septic prohibition zone) until a communitywide solution for water supply is adopted and funded.^{17,18}

The County and the Commission view the retrofitting effort through Title 19 as a temporary measure to reduce water demand in the community until the Basin Management Plan is implemented. Although Title 19 is not part of the LCP and therefore not part of the standard of review for this project, compliance with this municipal code provision reduces existing water demand by reducing water currently used by existing development. As such, the Commission could find that the proposed project is consistent with the requirements of the LCP, namely Public Works Policy 1 and CZLUO Section 23.04.430. However, because the project is being denied because of lack of wastewater treatment, the requisite water supply findings for approval are not needed at this time.

Conclusion

In conclusion, the proposed project cannot be found consistent with the LCP's public service capacity policies with respect to wastewater treatment because no wastewater service is available for the project. The site may be able to connect to the community sewer system once construction of the system and the required planning steps for undeveloped properties are completed, but it is unknown when that will occur. It is also speculative at this time to presume that all of the undeveloped properties in Los Osos, including these parcels, will be allowed to develop once the LCP amendment and HCP are completed. Those processes may yield new development restrictions for properties such as these that contain significant habitat resources. As such, the project cannot be approved consistent with the LCP requirement for available and adequate public services, and the project is denied. Although special conditions, including a condition to comply with Title 19 retrofitting requirements, could potentially bring the project

¹⁵ Email from Schani Siong, San Luis Obispo County Department of Planning and Building to Daniel Robinson, Coastal Commission Coastal Planner, April 22, 2014.

¹⁶ Id.

¹⁷ Id.

¹⁸ Between 2008 and 2013, the County issued 11 building permits in Los Osos for new SFDs outside the RWQCB septic prohibition zone.

into conformance with the LCP's water supply policies, such a condition is not appropriate at this time given the project's inconsistency with the LCP's wastewater availability policies, which require denial of the proposed project.

E. BIOLOGICAL RESOURCES

The LCP includes strong protections for the County's biological resources. Applicable policies from the LCP include:

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

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

Coastal Plan Wetland Policy 7: Protection of Environmentally Sensitive Habitats *Coastal wetlands are recognized as environmentally sensitive habitat areas. The natural ecological functioning and productivity of wetlands and estuaries shall be protected, preserved and where feasible, restored. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE CZLUO.]*

Coastal Plan Wetland Policy 8: Principally Permitted Use *Principally permitted uses in wetlands are as follows: hunting, fishing and wildlife management; education and research projects. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-172 OF THE CZLUO.]*

Coastal Plan Wetland Policy 13: Diking, Dredging or Filling of Wetlands *All diking, dredging and filling activities shall conform to the provisions of Section 30233, 30411 and 30607.1 of the Coastal Act. These policies establish the appropriate uses, criteria for evaluation of a project and requirements for restoration or replacement. Allowable activities within open coastal waters, wetlands (with the exception of Morro Bay and the Santa Maria River mouth), estuaries and lakes include:*

a. New or expanded port, energy, and coastal dependent industrial facilities, including commercial fishing facilities.

- b. Maintenance dredging of existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- c. In wetlands areas only, entrance channels for new or expanded boating facilities, and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411 for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland; provided, however, that in no event shall the size of the wetland area used for such boating facility, including berthing space, turning basins, necessary navigational channels, and any necessary support service facilities be greater than 25 percent of the total wetland area to be restored.*
- d. In open coastal waters, other than wetlands, including streams, estuaries and lakes, new or expanded boating facilities.*
- e. Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- f. Mineral extraction, including sand for restoration of beaches, except in environmentally sensitive areas.*
 - g. Restoration purposes.*
 - h. Nature study, aquaculture, or similar resource-dependent activities.*
 - i. Maintenance of flood control facilities by permit.*

Coastal Plan Wetland Policy 16: Adjacent Development Development adjacent to coastal wetlands shall be sited and designed to prevent significant impacts to wetlands through noise, sediment or other disturbances. Development shall be located as far away from the wetland as feasible, consistent with other habitat values on the site. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

Coastal Plan Wetland Policy 17: Wetland Buffer In new development, a buffer strip shall be required and maintained in natural condition along the periphery of all wetlands. This shall be a minimum of 100 feet in width measured from the upland extent of the wetland unless a more detailed requirement for a greater or lesser amount is included in the LUE or the LUO would allow for adjustment to recognize the constraints which the minimum buffer would impose upon existing subdivided lots. If a project involves substantial improvements or increased human impacts, necessitating a wide buffer area, it shall be limited to utility lines, pipelines, drainage and flood control facilities, bridges and road approaches to bridges, and roads when it can be demonstrated that: a) alternative routes are infeasible or more environmentally damaging, and b) the adverse environmental effects are mitigated to the maximum extent feasible. Access paths and/or fences necessary to protect habitats may also be permitted. The minimum buffer strip may be adjusted by the county if the minimum setback standard would render the parcel physically unusable for the principal permitted use. To allow a reduction in the minimum standard set-back, it must be found that the development cannot be designed to provide for the standard. When such reductions are permitted, the minimum standard shall be reduced to only the point at which the principal permitted use (development), modified as much as is practical from a design standpoint, can be accommodated. At no point shall this buffer be less than 25 feet. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.172 OF THE CZLUO.]

Coastal Plan Terrestrial Environments Policy 29: Protection of Terrestrial Habitats

Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site. Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]

Coastal Plan Terrestrial Environments Policy 30: Protection of Native Vegetation *Native trees and plant cover shall be protected wherever possible. Native plants shall be used where vegetation is removed. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

Coastal Plan Terrestrial Environments Policy 35: Protection of Vegetation *Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE CZLUO.]*

CZLUO 23.11.030 – Definitions:

Environmentally Sensitive Habitat Area (Mapped ESHA). *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 easily be disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations. Is the same as an Environmentally Sensitive Habitat. [Amended 2004, Ord. 3048]*

Environmentally Sensitive Habitat Area (Unmapped ESHA). *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 easily be disturbed or degraded by human activities and development. They include, but are not limited to, known wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats that may not be mapped as Land Use Element combining designations. The existence of Unmapped ESHA is determined by the County at or before the time of application acceptance and shall be based on the best available information. Unmapped ESHA includes but is not limited to:*

- a.*** *Areas containing features or natural resources when identified by the County or County approved expert as having equivalent characteristics and natural function as mapped other environmental sensitive habitat areas;*
- b.*** *Areas previously known to the County from environmental experts, documents or recognized studies as containing ESHA resources;*

c. Other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection. [Amended 2004, Ord. 3048]

CZLUO 23.07.164 - SRA Permit and Processing Requirements

e. Required findings: 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 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.*
- (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. ...*

CZLUO 23.07.170 - Environmentally Sensitive Habitats

b. Required findings: Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:

- (1) 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.*
- (2) The proposed use will not significantly disrupt the habitat.*

e. Development standards for environmentally sensitive habitats. All development and land divisions within or adjacent to an Environmentally Sensitive Habitat Area shall be designed and located in a manner which avoids any significant disruption or degradation of habitat values. This standard requires that any project which has the potential to cause significant adverse impacts to an ESHA be redesigned or relocated so as to avoid the impact, or reduce the impact to a less than significant level where complete avoidance is not possible.

(1) Development within an ESHA. In those cases where development within the ESHA cannot be avoided, the development shall be modified as necessary so that it is the least environmentally damaging feasible alternative. Development shall be consistent with the biological continuance of the habitat. Circumstances in which a development project would be allowable within an ESHA include:

i. Resource dependent uses. New development within the habitat shall be limited to those uses that are dependent upon the resource.

CZLUO 23.07.172 - Wetlands

Development proposed within or adjacent to (within 100 feet of the upland extent of) a wetland area shown on the Environmentally Sensitive Habitat Maps shall satisfy the requirements of this section to enable issuance of a land use or construction permit. These provisions are intended to maintain the natural ecological functioning and productivity of wetlands and estuaries and where feasible, to support restoration of degraded wetlands.

a. Location of development: *Development shall be located as far away from the wetland as feasible, provided that other habitat values on the site are not thereby more adversely affected.*

b. Principle Permitted Uses in wetlands: *Hunting, fishing, wildlife management, education and research projects.*

c. Department of Fish and Game review. *The State Department of Fish and Game shall review all applications for development in or adjacent to coastal wetlands and recommend appropriate mitigation measures where needed which should be incorporated in the project design.*

d. Wetland setbacks: *New development shall be located a minimum of 100 feet from the upland extent of all wetlands, except as provided by subsection d(2). If the biological report required by Section 23.07.170 (Application Content) determines that such setback will provide an insufficient buffer from the wetland area, and the applicable approval body cannot make the finding required by Section 23.07.170b, then a greater setback may be required.*

(1) Permitted uses within wetland setbacks: *Within the required setback buffer, permitted uses are limited to passive recreation, educational, existing non-structural agricultural development in accordance with best management practices, utility lines, pipelines, drainage and flood control of facilities, bridges and road approaches to bridges to cross a stream and roads ...*

(2) Wetland setback adjustment: *The minimum wetland setback may be adjusted through Minor Use Permit approval (but in no case shall be less than 25 feet), provided that the following findings can be made:*

(i) *The site would be physically unusable for the principal permitted use unless the setback is reduced.*

(ii) *The reduction is the minimum that would enable a principal permitted use to be established on the site after all practical design modifications have been considered.*

(iii) *That the adjustment would not allow the proposed development to locate closer to the wetland than allowed by using the stringline setback method pursuant to Section 23.04.118a of this title.*

CZLUO 23.07.176 - Terrestrial Habitat Protection:

The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.

a. Protection of vegetation. *Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat.*

Analysis

Site Characteristics

The 0.2 and 0.4-acre project sites plus the approximately 0.4-acre County right-of-way are located on the southern shore of the Morro Bay National Estuary in an undeveloped area just past the edge of the northern end of the Baywood Park residential neighborhood. The most recent botanical survey of the site was conducted in April 1993 by BioSystems Analysis, Inc. and an

earlier botanical survey was conducted by David Keil in June-July 1987. The results of these surveys are included in the 1997 FEIR prepared for the project. The site is comprised of five primary habitat types: pygmy oak woodland, central coastal scrub, central coast arroyo riparian forest, coastal brackish marsh, and ruderal (see **Exhibit 6**). The majority of the parcels are mapped as a Sensitive Resource Area (SRA) and wetland ESHA on the Los Osos URL Combining Designations Map of the LCP (see **Exhibit 7**).

The pygmy oak woodland on the site is dense woodland (with a tree cover of nearly 100%) comprised of gnarled coast live oaks (generally 10-20 feet high) with limited understory. Pygmy oak woodland occupies the northern two-thirds of the County right-of-way and extends into the northeast corner and southern boundaries of APN 038-052-026 (Lots 1 and 32). In total, this habitat type comprises 0.14 acre of the project sites and right-of-way. Pygmy oak woodlands have limited distribution within San Luis Obispo County. The project site is contiguous with the pygmy oak woodland that is part of the protected El Moro Elfin Forest, a 90-acre natural area owned by the County and the California Department of Parks and Recreation. This habitat type has been designated as a highly sensitive habitat by the San Luis Obispo County LCP and is listed as sensitive in the California Natural Diversity Database (CNDDDB).

Central coast scrub is characterized by a moderately-dense to dense shrub cover and variable, but generally moderately-dense herb cover. On the project site, the scrub habitat is dominated by black sage (*Salvia mellifera*), California sagebrush (*Artemisia californica*), dune eriogonum (*Eriogonum parvifolium*), spiny redberry (*Rhamnus crocea*), mock heather (*Ericameria ericoides*), bush monkeyflower (*Mimulus aurantiacus*), and deerweed (*Lotus scoparius*). A wide variety of herb species also occur in this habitat type on the site, including approximately 30 suffrutescent wallflower (*Erysimum insulare* spp. *suffrutescens*) plants identified during the 1993 survey. Suffrutescent wallflower is a special status species that is included on List 4 (Plants of Limited Distribution – A Watch List) in the California Native Plant Society's (CNPS) *Inventory of Rare and Endangered Vascular Plants of California*. Central coast scrub occupies a triangular area in the eastern portion of the project site and a portion of the right-of-way, for a total of 0.18 acre. Central coast scrub is a common habitat type in the Los Osos/Baywood region, but is listed as sensitive in the CNDDDB.

Central coast arroyo willow riparian forest develops in areas with a permanent groundwater supply. The riparian forest at the site is dominated by treelike shrubs such as arroyo willow (*Salix lasiolepis*), California wax myrtle (*Morella* (previously *Myrica*) *californica*), and American dogwood (*Cornus sericea* spp. *sericea*) and is characterized by dense (80-100%), almost impenetrable shrub/tree cover. This habitat type occupies the western two-thirds of the project sites for a total of 0.37 acre. Central coast arroyo willow riparian forest is considered wetland habitat according to both Federal and State regulations and is listed as a sensitive habitat in the CNDDDB.

A thin strip of coastal brackish marsh occurs along the northwest edge of the project sites and extends down from the properties toward the open water of Morro Bay, occupying about 0.01 acre of the project sites. It is dominated by tall, emergent aquatic herbs viscid tule (*Scirpus acutus*) and California tule (*Scirpus californicus*). This habitat, also called freshwater marsh, is best characterized as coastal brackish marsh because it receives both freshwater (from springs and groundwater seepage) and salt water (from tidal flow). This habitat is considered a wetland according to both Federal and State regulations and is listed as sensitive in the CNDDDB.

The remainder of the project site, at the end of 10th Street in the right-of-way and in the southwest corner of the property, is comprised of ruderal habitat that has been heavily disturbed by grading, dumping of dirt and garden waste, and vehicle and foot traffic. These areas are vegetated primarily with weedy, non-native species and total 0.07 acre of the project site.

According to the 1997 FEIR prepared for the project, the habitats on the project sites may support a number of Federal and State-listed special-status wildlife species, including, but not limited to, California black rail (*Lateralus jamaicensis coturniculus*), yellow warbler (*Dendroica petechia*), Cooper's hawk (*Accipter cooperi*), black legless lizard (*Anniella pulchra nigra*), Morro shoulderband snail (*Helminthoglypta walkeriana*), and Mimic tyronia/Brackishwater snail (*Tyronia imitator*). However, no comprehensive wildlife surveys for these species have been conducted on the sites, except for December 2014 and February 2015 surveys for Morro shoulderband snails.

See the project habitat map in **Exhibit 6**.

ESHA Determination

The Commission finds that the entire project site, with the exception of the identified 0.07 acre of ruderal areas in the County's right-of-way nearest the paved portion of 10th Street and at the southwest corner of the property, are ESHA. All of the habitat types at the project site, with the exception of ruderal, are sensitive habitats listed in the CNDDDB. Two of the habitats (central coast arroyo willow riparian forest and coastal brackish marsh) are also wetlands. Development of the surrounding area has displaced nearby land formerly occupied by these sensitive plant communities, resulting in elimination of many stands over the years. The project parcels and the County right-of-way, however, remain almost entirely undisturbed and are contiguous with protected marsh habitat associated with the Morro Bay National Estuary and protected pygmy oak habitat in the El Moro Elfin Forest. The sites are also likely to support one or more sensitive wildlife species and are already mapped mostly as ESHA by the LCP. The Commission's Ecologist, Dr. Jonna Engel, has reviewed the relevant project materials and has concluded that the entire project area (other than the small ruderal area) is ESHA.

LCP Consistency

The LCP contains numerous policies that require ESHA protection, preservation and enhancement. CZLUO Section 23.11.030 defines ESHA 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 easily be disturbed or degraded by human activities and development." The LCP specifically includes areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection within the definition of ESHA.

ESHA Policy 1 provides two development restrictions regarding ESHA. First, only resource-dependent uses shall be allowed within ESHA. Second, new development within or adjacent to locations of ESHA shall not significantly disrupt the resource. ESHA Policy 2 provides specific permit requirements that a development must conform to, such as demonstrating that there will be no significant impact on sensitive habitats, and that proposed development or activities will be consistent with the biological continuance of the habitat. Wetland Policies 8 and 13 provide the allowed uses and activities in wetlands, which do not include residential use. Wetland Policy 17 and CZLUO Section 23.07.172 require a minimum 100-foot wetland buffer from development,

which may only be reduced to no less than 25 feet if the buffer would render the parcel physically unusable for the principally permitted use. Policy 29 emphasizes that protection for terrestrial habitat should be placed on the entire ecological community, and that only resource-dependent uses shall be permitted within the identified sensitive habitat portion of the site. Policy 29 also requires that development adjacent to ESHA shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. Policy 30 provides that native trees and plant cover shall be protected wherever possible, and requires that native plants shall be used where vegetation is removed. Policy 35 provides protection of vegetation that serves as cover for endangered wildlife and states that such vegetation must be protected against any significant disruption of habitat value, and also requires that development be designed to disturb the minimum amount possible of wildlife or plant habitat. CZLUO Section 23.07.176 implements Policies 29, 30, and 35 and generally repeats those policies' requirements.

CZLUO Section 23.07.164 provides that within an SRA, the decision-making body must find that the development will not create significant adverse impacts on the natural features of the site or vicinity that were the basis for the SRA designation, and that the development will preserve and protect those features through site design. Similarly for ESHA, CZLUO Section 23.07.170 requires the decision-making body to find that the development will have no significant negative impact on the identified sensitive habitat, and that the proposed use will be consistent with the biological continuance of the habitat and will not significantly disrupt the habitat.

As proposed, the two residences would be located almost entirely in the wetland area (central coast arroyo willow riparian forest) of the site (see **Exhibit 6**). The majority of the residences, a portion of the driveway, and a portion of the drainage swale would remove a total of 0.21 acre (9,377 square feet) of the 0.37 acre (16,066 square feet) central coast arroyo willow riparian forest on the site. The project would also remove essentially all of the central coast scrub on the properties, as well as most of the central coast scrub within the County right-of-way. Specifically, construction of the residences, driveway, drainage swale, and water lines would remove a total of 0.16 acre (6,889 square feet) of the 0.18 acre (7,698 square feet) of central coast scrub. In addition, construction of the driveway, a portion of the residence at 1113 10th Street, and the drainage swale would remove a total of 0.06 acre (2,481 square feet) of the 0.14 acre (6,167 square feet) of pygmy oak woodland on the property and adjacent right-of-way. A small amount of coastal brackish marsh could also be removed as a result of the drainage swale outfall at the southwest property edge. Vegetation clearing and construction in each of these habitats could result in take of special status wildlife species listed above and would result in permanent loss of habitat for breeding, feeding, and shelter for these species. The project does not include any ESHA or wetland buffers or other protection measures, and in fact the proposed project is situated directly in the wetland.

The proposed project is inconsistent with the LCP's use limitations within ESHA. Coastal Plan ESHA Policies 1 and 29 and CZLUO Section 23.07.170(e)(1)(i) provide that, within an ESHA, only uses dependent on the resource are allowed. Similarly, Coastal Plan Wetland Policy 8 describes the principally permitted uses in wetlands (i.e. hunting, fishing, wildlife management, education, and research) and Wetland Policy 13 provides a list of uses for which fill of wetlands is allowed. This list does not include residential uses, and in fact, Morro Bay open water and wetlands are assigned even greater protection by Wetland Policy 13, where fill for any reason is

prohibited. Wetland Policy 7 also mandates that the natural ecological functioning and productivity of wetlands be protected, preserved and, where feasible, restored. The proposed project would result in outright removal of 18,731 square feet (0.43 acre) of ESHA, which includes fill and removal of approximately 0.21 acre (9,377 square feet) of Morro Bay wetland habitat. The project is inconsistent with the fundamental terrestrial ESHA and wetland use policies because the two proposed residences are not resource dependent and would be located in Morro Bay wetlands and sensitive central coast scrub and marsh habitat, which is prohibited by the LCP. While the LCP requires protection, preservation of wetland and other sensitive habitats, the proposed project would have the opposite effect because it would eliminate wetlands and would impact other sensitive habitats, including central coast scrub, brackish marsh, and pygmy oak forest. The project also does not propose any restoration or mitigation for this loss. Given the degree of ESHA present, alternative siting and design would not make a residential development proposal approvable on any portion of the Applicant's parcels.

The proposed project is also inconsistent with ESHA policies that require development to not significantly disrupt the habitat and habitat values, and to be consistent with the biological continuance of the habitat (Coastal Plan ESHA Policies 1, 2, 29, 35 and CZLUO Section 23.07.170). Removal and permanent site coverage that forever precludes functioning habitat in the coverage area, as well as the fragmentation of the habitat due to the proposed development, is a direct and significant disruption of habitat value. It would also be impossible to assure the long-term continuance of habitats that have been permanently removed and replaced with structural development. Likewise, after development, the residential uses would directly abut any remaining habitat on the site and in the immediately adjacent area without any buffer. The residences would introduce various disturbances and stresses that would, in both the short- and long-term, impact the long-term sustainability of the habitat communities, including both plants and wildlife.

Furthermore, the proposed project could not meet the LCP's wetland setback requirements in Coastal Plan Wetland Policy 17 and CZLUO Section 23.07.172(d) because a 100-foot setback would essentially preclude any development area on the site. Even if the remainder of the non-wetland areas of the site were not ESHA, more than half of the Applicant's parcels are wetland habitat and a 100-foot setback would extend beyond the properties' boundaries, eliminating any developable area. If the requisite findings could be made for a reduced 25-foot wetland setback, a small area of the Applicant's property would remain in Lot 1; however, that area is coastal scrub and pygmy oak ESHA, and development there would be inconsistent with the ESHA policies discussed above. As such, the project cannot meet the LCP's wetland setback requirements or the LCP's terrestrial habitat protection policies.

The proposed project would also be inconsistent with CZLUO Section 23.07.176, which requires preservation and protection of rare and endangered wildlife species through preservation of their habitats. This CZLUO section emphasizes protection of the entire ecological community, not just individuals of a species, and requires development to be sited to minimize disruption of habitat. The project would remove a total of 18,731 square feet of ESHA that has the likelihood of supporting a number of special status wildlife species, including approximately 6,889 square feet of coastal scrub habitat that could support the federally-endangered Morro shoulderband snail.¹⁹

¹⁹ Although the December 2014 and February 2015 surveys found no Morro shoulderband snails on the site at the time of the surveys, the coastal scrub habitat on the parcels could support this species in the future.

Because of the habitat composition of the site, no alternative project configuration or design(s) exists that would minimize disruption of habitat for these species.

In sum, the project site is a highly sensitive complex coastal ecosystem that may provide habitat for a number of protected plant and animal species. The LCP limits development within ESHA to resource-dependent uses and prohibits fill of wetlands for residential uses, and because almost the entire site is ESHA, the LCP requires the Commission to deny all residential development proposed on the Applicant's parcels.

Conclusion

The proposed project is located in and adjacent to ESHA, including high value wetland and pygmy oak habitat that is contiguous with the adjacent Morro Bay National Estuary and the protected El Moro Elfin Forest. The project proposes development that is prohibited in ESHA and that would remove ESHA and adversely affect ESHA not removed, including off-site ESHA, inconsistent with the LCP. Even if the proposed project were otherwise approvable, it does not meet habitat setback or species protection requirements. Therefore, the proposed project is inconsistent with the LCP's ESHA and wetland and terrestrial habitat policies, and cannot be approved consistent with the LCP and would require a "takings" override, which, because of the denial on wastewater grounds, is not necessary at this time.

F. OTHER ISSUES

Typically, the proposed project would need to be evaluated for consistency with the LCP's policies and standards related to public access, visual resources, hazards, landform alteration, hydrology and water quality, cultural resources, parking and traffic, land use and zoning, etc. However, because the project is being denied based on a lack of adequate wastewater treatment and ESHA and public access inconsistencies, these issues will not be evaluated in this de novo review.

G. LCP CONSISTENCY CONCLUSION

As discussed above, the proposed project is inconsistent with the LCP's policies and standards that require that adequate public services, namely wastewater service, be available to serve new development and that this type of development assure no adverse impacts to ESHA and wetlands. Thus, the project is denied.

H. TAKINGS ANALYSIS

In enacting the Coastal Act, the Legislature anticipated that the application of development restrictions could deprive a property owner of the beneficial use of his or her land, thereby potentially resulting in an unconstitutional taking of private property without payment of just compensation. To avoid an unconstitutional taking, the Coastal Act provides a provision that allows a narrow exception to strict compliance with the Act's regulations. Coastal Act Section 30010 provides:

The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Although the judiciary will be the final arbiter on constitutional takings issues, the Coastal Act imposes on the Commission the statutory duty to assess whether its action might constitute a taking so that the Commission may take steps to avoid it. If the Commission concludes that its action does not constitute a taking, then it may deny the project with the assurance that its actions are consistent with Section 30010. If the Commission determines that its action could constitute a taking, then the Commission could also find that application of Section 30010 would require it to approve some development. In this latter situation, the Commission could propose modifications to the development to minimize its Coastal Act inconsistencies while still allowing some reasonable amount of development.

In the remainder of this section, the Commission considers whether, for purposes of compliance with Section 30010, its denial of the proposed development on the Applicant's property could constitute a taking. As discussed further below, the Commission finds that under these circumstances, denial of the proposed project likely would not, because the takings claim is not yet ripe.

General Principles of Takings Law

The Takings Clause of the Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation."²⁰ Article 1, section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation...has first been paid to, or into court for, the owner." Despite the slightly different wordings, the two "takings clauses" are construed congruently, and California courts have analyzed takings claims under decisions of both state and federal courts. (*San Remo Hotel v City and County of San Francisco* (2002) 27 Cal. 4th 643, 664.) The "damaging private property" clause in the California Constitution is generally not implicated by takings cases, and is not relevant to the current analysis. Because Section 30010 is a statutory bar against an unconstitutional action, compliance with state and federal constitutional requirements concerning takings necessarily ensures compliance with Section 30010.

The United States Supreme Court has held that the taking clause of the Fifth Amendment proscribes more than the direct appropriation of private property (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393). Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (*Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523). The first category consists of those cases in which government authorizes a physical occupation of property (*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419). The second category consists of those cases whereby government merely regulates the use of property (*Yee*,

²⁰ The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

503 U.S. at 522-523). Moreover, a taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation (*Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S.470, 488-489, fn. 18). The Commission's actions are evaluated under the standards for a regulatory taking.

The Court has identified two circumstances in which a regulatory taking may occur. The first is the "categorical" formulation identified in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1014. In *Lucas*, the Court found that regulation that denied all economically viable use of property was a taking without a "case specific" inquiry into the public interest involved. (*Id.* at 1014). The *Lucas* court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless" (*Id.* at 1016-1017 (*emphasis in original*); *Riverside Bayview Homes*, 474 U.S. at 126 (regulatory takings occur only under "extreme circumstances."²¹)).

The second circumstance in which a regulatory taking might occur is under the three-part, *ad hoc* test identified in *Penn Central Transportation Co. (Penn Central) v. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the character of the government action, its economic impact, and its interference with reasonable, investment-backed expectations (*Id.* at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur (*see id.* (rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*)).

However, before a landowner may seek to establish a taking under either the *Lucas* or *Penn Central* formulations, it must demonstrate that the taking claim is "ripe" for review. This means that the takings claimant must show that government has made a "final and authoritative" decision about the use of the property (*MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348). Premature adjudication of a takings claim is highly disfavored, and the Court's precedent "uniformly reflects an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it" (*Id.* at 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (*Id.*). These general takings principles are reviewed for denial of the proposed project.

The Commission's denial of the proposed project likely would not result in a regulatory taking.

As analyzed above, application of Coastal Plan Public Works Policy 1, Estero Area Plan Chapters 3 and 4 policies, and CZLUO 23.04.430 require denial of the proposed development on

²¹ Even where the challenged regulatory act falls into this category, government may avoid a taking if the restriction inheres in the title of the property itself; that is, background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (*Lucas, supra*, 505 U.S. at pp. 1028-1036).

the grounds that the site is located in a RWQCB-mandated onsite septic prohibition zone and Los Osos lacks a community wastewater treatment system at the present time. Thus, it could be argued that the regulations result in an unconstitutional taking of the Applicant's private property. However, based on the law and facts analyzed below, it is unlikely that such a temporary denial of development would constitute an unconstitutional taking in this case.

At this time, application of Coastal Plan Public Works Policy 1, Estero Area Plan Chapters 3 and 4 policies, and CZLUO 23.04.430 have the effect of a moratorium on new development in Los Osos that requires new wastewater treatment. The United States Supreme Court has upheld certain development moratoriums when challenged on the basis of a regulatory takings (*Tahoe-Sierra Preservation Council, Inc., et. al. v. Tahoe Regional Planning Agency et. al.*, (2002) 535 U.S. 302 (*Tahoe-Sierra*)). In the *Tahoe-Sierra* case, the Court reasoned that, "Logically, a fee simple estate cannot be rendered valueless by a temporary prohibition on economic use, because the property will recover value as soon as the prohibition is lifted" (*Id. at 332*). The Court also explained that land use planners widely use moratoriums to preserve the status quo while formulating a more permanent development strategy (*Id. at 337*). "In fact, the consensus in the planning community appears to be that moratoria, or 'interim development controls' as they are often called, are an essential tool of successful development" (*Id. at 337-38*). Here, Coastal Plan Public Works Policy 1, Estero Area Plan Chapters 3 and 4 policies, and CZLUO Section 23.04.430 have the effect of a temporary prohibition on economic use, and as soon as the community wastewater treatment system is operational and the additional required planning steps (Estero Area Plan LCP amendment and HCP) are completed, the prohibition would be lifted. Moreover, these LCP policies and CZLUO regulation are an essential component of a comprehensive LCP planning tool that ensures that growth in Los Osos is efficient and sustainable, not exceeding the community's resource carrying capacity. It also ensures the protection of significant resources, such as Morro Bay water quality, and is intended to protect the groundwater aquifer from adverse impacts such as nitrate contamination.

This position is also consistent with the California Court of Appeal for the Fourth District reasoning in *Charles A. Pratt Construction Co., Inc., v. California Coastal Commission*, (2008) 162 Cal. App. 4th 1068 (*Pratt v. CCC*). In *Pratt*, the plaintiff argued that the Coastal Commission's decision to deny a CDP based on lack of water, due to the requirements of CZLUO Section 23.04.430(a) was an unconstitutional taking. The Court of Appeal upheld the Commission's denial of the CDP and found that it was not an unconstitutional taking. It stated that the plaintiff-applicant failed to cite any authority that: (1) denial of a development permit because of water supply constitutes a taking; or (2) that the setting of priorities for water use in the face of an insufficient supply constitutes a taking. The court stated, "Even where the lack of water deprives a parcel owner of all economically beneficial use, it is the lack of water, not a regulation that causes the harm" (*Id.*). The court also found that an "intent-to-serve letter" from a community water supplier did not change the result because there is no rule that the water company's determination is definitive (*Id.*). "It is undisputed," the court continued, "that there is substantial evidence from which the Commission could conclude the groundwater basin from which the water would come is in overdraft" (*Id.*). The court further reasoned that the plaintiff-applicant failed to demonstrate with sufficient certainty that his development would have adequate supply of water. As in *Pratt*, in this case it is the lack of wastewater service in Los Osos that has delayed the Applicant's ability to develop the site.

In sum, it is unlikely that the Commission's decision to deny the proposed development, on the grounds that it is inconsistent with Coastal Plan Public Works Policy 1, Estero Area Plan Chapters 3 and 4 policies, and CZLUO 23.04.430, would result in an unconstitutional taking. Although the regulations' effect is a *de facto* moratorium on new development at this time, this effect of the regulations is temporary in nature and caused by a lack of available wastewater treatment for undeveloped properties.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 CDP applications about the consistency of the application with any applicable requirements of CEQA. This report has discussed the relevant coastal resource issues with the proposed project. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

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 the 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 the project was approved as proposed. Accordingly, the Commission's denial 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.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. San Luis Obispo County Local Coastal Program, originally certified February 1988
2. San Luis Obispo County file records for D960345V, D880295D, D960346V, and D880338D
3. San Luis Obispo County, Environmental Division, Department of Planning and Building, *Final EIR for Farbstein Development Plans ED89-201 (D880338D) and ED89-220 (D880295D), State Clearinghouse No. 92031011*, April 1997.
4. Coastal Commission files for CDP Applications 4-87-115 and 4-87-117
5. Coastal Commission CDP file for the Los Osos Wastewater Project (CDP A-3-SLO-09-055/069)
6. Los Osos Community Services District, Golden State Water Company, and S&T Mutual Water Company, *Updated Basin Plan for the Los Osos Groundwater Basin*, January 2015.
7. Ecological Assets Management, LLC. *Morro Shoulderband Snail Protocol Survey Report for 1111 (APN 038-052-001) and 1113 (APN 038-052-026) 10th Street, Los Osos, California*. March 4, 2015.
8. San Luis Obispo County Code of Ordinances, Title 19 (Buildings and Construction)
9. San Luis Obispo County Planning & Building. *Public Review Draft, Los Osos Community Plan*. January 30, 2015.

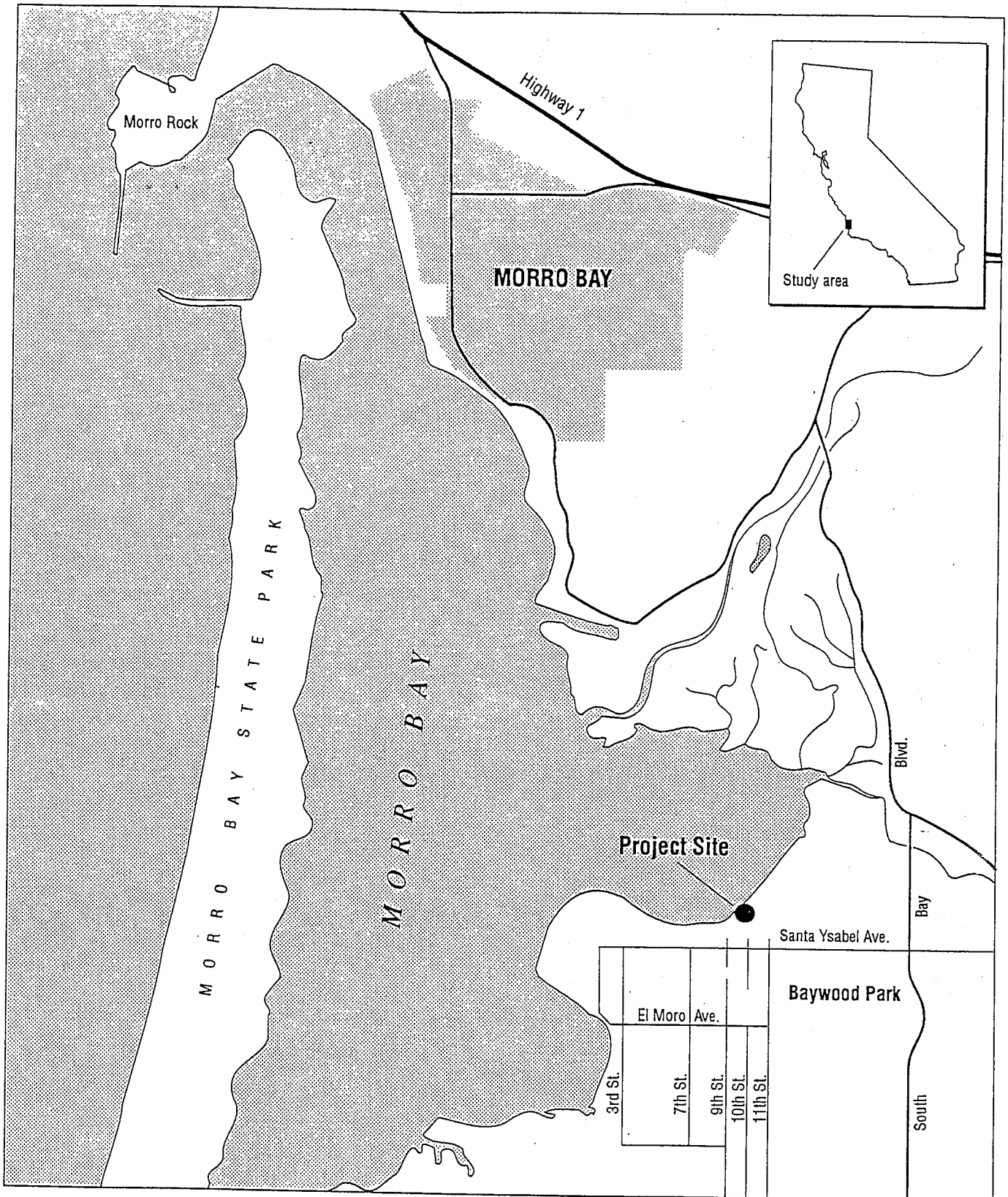


Exhibit 1
A-3-SLO-98-061

1 of 1

Figure 3-1. Location map, Farbstein development project, San Luis Obispo County, California.

Wolcott Site



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100 ft



Source: Applicant (February 25, 2015)



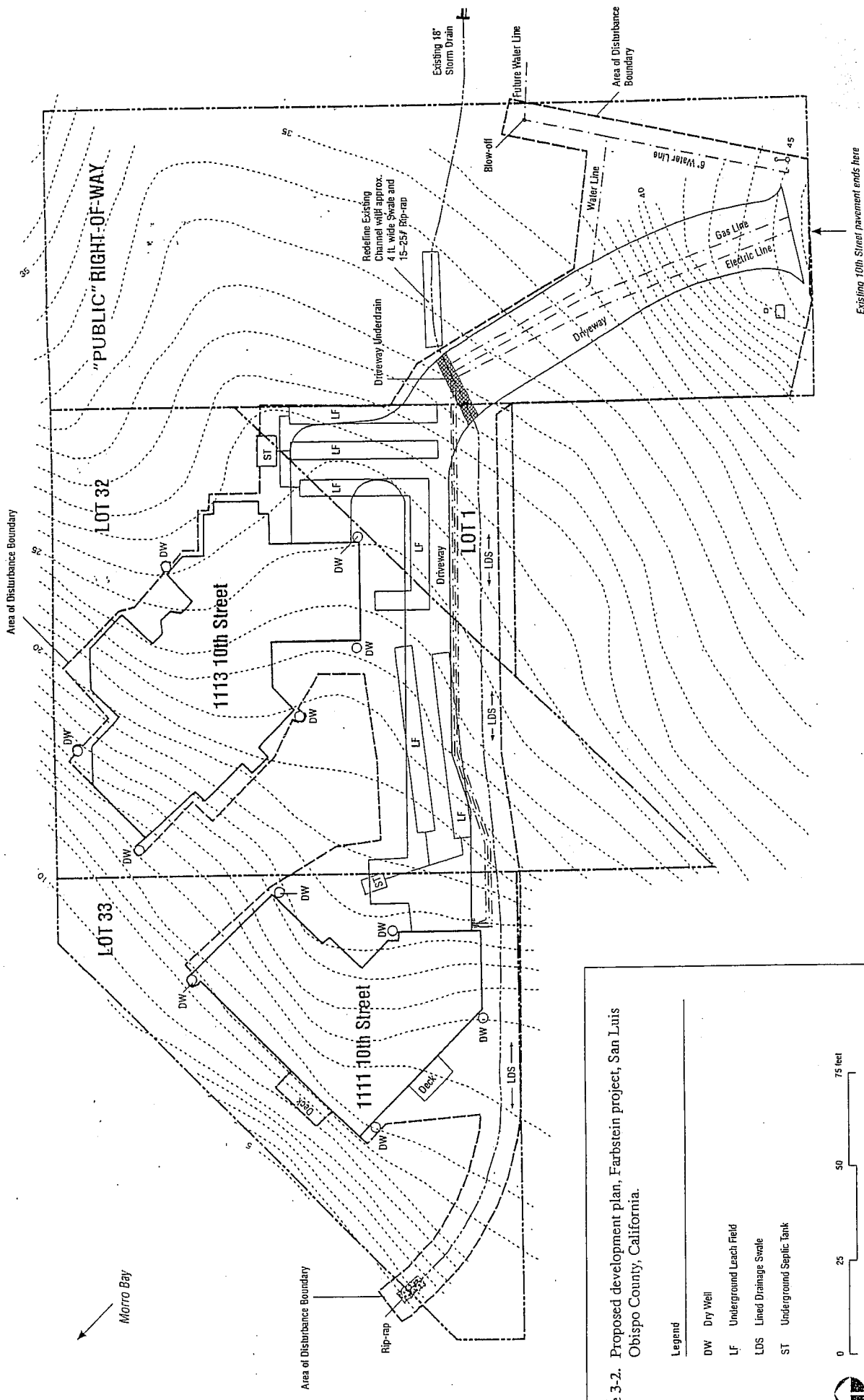
Source: Applicant (January 27, 2015)



Source: Applicant (January 27, 2015)



Source: Applicant (January 27, 2015)



Existing 10th Street pavement ends here

Prepared by BioSystems Analysis, Inc./1993

Figure 3-2. Proposed development plan, Farbstein project, San Luis Obispo County, California.

Legend

- DW Dry Well
- LF Underground Leach Field
- LDS Lined Drainage Swale
- ST Underground Septic Tank



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200



May 17, 1999

Jeff Edwards
PO Box 6070
Los Osos, CA 93412-6070

Subject: **Construction of Two Single Family Residences at 1111 and 1113 10th Street in Los Osos, San Luis Obispo County (Coastal Development Permit Application A-3-SLO-98-061)**

Dear Mr. Edwards:

As you know, on April 14, 1999, the Coastal Commission determined that the appeals of the above referenced project raised a substantial issue. The Commission then continued the De Novo hearing in order to provide additional time to resolve outstanding issues regarding the project's consistency with the San Luis Obispo County certified Local Coastal Program (LCP). Additional information needed to address these issues includes evidence that there is an adequate and effective means of treating project wastewater (i.e., Regional Water Quality Control Board approval for on-site septic systems), and that project impacts to sensitive species have been effectively addressed, (e.g., completion of the U.S. Fish and Wildlife consultation process required by the Endangered Species Act).

I understand that you are willing to pursue these approvals prior to the scheduling of the De Novo hearing, but prior to doing so, would like assurance that, if such approvals are obtained, the staff would not oppose development of the project site. Unfortunately, I can not make such a commitment at this time, as the details of these approvals, and their consistency with LCP sensitive habitat and water quality protection requirements are unknown. In addition, there are other factors that will need to be considered in the staff's analysis, including alternative project designs that minimize impacts on environmentally sensitive habitats to the greatest degree feasible. I can assure you, however, that our staff is willing to work with you and keep you apprised of these issues as we prepare our recommendation. In addition, the staff recommendation will certainly take into account the need to allow for a reasonable economic use of the property by the owner.

Please contact staff analyst Steve Monowitz if you have any questions, or would like to proceed with the De Novo hearing prior to obtaining septic system approval by the Regional Water Quality Control Board or completing the U.S. Fish and Wildlife Service consultations required by the Endangered Species Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles F. Lester".

Charles Lester
District Manager

Cc: Kate Symonds, U.S. Fish and Wildlife Service
Sorrel Marks, Regional Water Quality Control Board
Jay Farbstein

Exhibit 4
A-3-SLO-98-061
1 of 17

CALIFORNIA COASTAL COMMISSION

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



October 15, 2004

Jeff Edwards
PO Box 6070
Los Osos, CA 93412-6070

Subject: **Status of Coastal Development Permit Application A-3-SLO-98-061 for the Construction of Two Single-Family Residences at 1111 and 1113 10th Street, Los Osos**

Dear Mr. Edwards:

On April 14, 1999, the Coastal Commission determined that the above referenced appeal raised a substantial issue, then continued the De Novo hearing on the Coastal Development Permit application. On May 17, 1999, this office wrote you a letter (attached) identifying the additional information needed to proceed with the De Novo review, and providing you with the opportunity to request a De Novo hearing without submitting the requested information. The Commission staff has not received a response to this letter.

Final action on the application is long overdue and should be pursued immediately. We are therefore reiterating our request for additional information, and informing you of our intent to schedule the De Novo hearing for the Commission's February 2005 meeting. Given the nature of the outstanding issues (i.e., public service capacities and sensitive habitats), and current community efforts to resolve these issues, the Commission staff strongly encourages you to withdraw the application pending before the Commission, and if you are still interested in pursuing development, re-submit a new application to the County. This will allow the County to reconsider your application in light of the significant changed (and still unfolding) circumstances with respect to how the community of Los Osos is addressing these issues, particularly with respect to documenting an appropriate source of wastewater treatment and a plan for avoiding and mitigating impacts to environmentally sensitive habitats, including the Morro shoulderband snail.

We would appreciate hearing from you as soon as possible regarding how you would like to proceed. If you would like any additional information to be considered as part of the February 2005 De Novo review, it should be submitted no later than January 2, 2005. Please feel free to contact me if you have any questions or would like to discuss these matters further.

Sincerely,

A handwritten signature in cursive script that reads "Steve Monowitz".

Steve Monowitz
Permit Supervisor
Central Coast District Office

Cc: Matt Janssen, San Luis Obispo County Planning Department
Deb Hillyard, California Department of Fish and Game
Steve Kirkland, US Fish and Wildlife Service
Jay Farbstein, Applicant
David Dubbink, Appellant
Gary Freiberg, Appellant
Morro Coast Audubon Society, Appellant

Exhibit 4
A-3-SLO-98-061
2 of 17

J.H. EDWARDS CO.

A REAL PROPERTY CONCERN

December 30, 2004

RECEIVED

JAN 10 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
CENTRAL COAST AREA OFFICE
725 Front Street, Suite 300
Santa Cruz, CA 95960

Attention: Steve Monowitz, Permit Supervisor

Subject: CDP A-3-SLO-98-061 for two (2) residences
@ 1111 & 1113 10th St., Los Osos

Dear Mr. Monowitz:

I am receipt of your letter dated October 15, 2004 concerning the above referenced project. I understand you have been on an extended leave and have just returned. Please allow me to welcome you back and wish you a happy new year. Clearly, 2005 will prove to be a challenge. In any event, I wanted to respond to your letter as requested.

As you are aware, the above matter has been pending for some time. I would characterize the delay as being associated with the complex and multi-layered regulatory morass that affects development along our coast versus any changed circumstances. This observation is based upon my twenty plus years of experience in dealing with development in Los Osos and on the central coast.

While I appreciate your suggestion to withdraw the pending application and resubmit a new application to the county, it would create further delays to the project with no recognizable benefit to the applicant or the process. As you are aware, a focused environmental impact report was prepared for the project and the issues captured in that document are still quite relevant and the analysis very current.

For example, the primary environmental issue associated with the subject proposal is the mitigation for potential impacts to riparian habitat. As you may recall, the center piece of the mitigation program is the dedication of a strategically located property near the Sweet Springs Preserve. Please see the enclosed assessor's parcel map. The site is over 15,000 square feet and contains habitat quite similar to that of the subject property. The mitigation site also offers significant scenic view shed qualities. The firm of Levine*Fricke is currently preparing a biological inventory of the mitigation site. I respectfully submit, the mitigation site will represent a minimum 2:1 replacement for any lost riparian habitat on the development site.

With regard to the Morro shoulderband snail (MSS), I am taking advantage of the wet weather and have initiated a protocol survey to determine the presence or absence of (MSS) on the subject property. If the species is absent then I will obtain a concurrence

Exhibit 4

A-3-SLO-98-061

Page 2
December 30, 2004
Steve Monowitz

letter from the U.S. Fish & Wildlife Service (US FWS). If presence is determined, then I plan to file an individual Habitat Conservation Plan (HCP) with the (US FWS) using the proposed mitigation site as an off set for any potential impacts to the (MSS). Please be aware, I have successfully processed two (2) other individual HCP's in the past and have considerable experience with their preparation.

With regard to water service, I had a Los Osos Community Services District (LOCSD) approved "intent to serve" letter, however it has expired. Enclosed please find a copy of the letter I recently sent to the district requesting a new letter. The matter should be heard and approved by the district board at their February 3rd meeting.

Concerning waste water, please be advised that the Regional Water Quality Control Board (RWQCB) does not have regulatory purview of the subject development. Pursuant to a Memorandum of Understanding (MOU) with the County of San Luis Obispo, the regulation of septic systems such as are proposed with the subject development lies with the county Department of Planning & Building and the Department of Environmental Health. Consequently, the fact that I have approved construction permits for the development which were reviewed by the county in accordance with the (MOU), no other approval from the state is required. For your information, Resolution 83-12 which delineates septic system design criteria by (RWQCB) has been codified by the county in Title 19 (Building & Construction Code).

In summary, I will furnish you the following documents as soon as they become available.

1. Biological Resource Inventory (074-115-009)
2. Results of the protocol survey for the (MSS)
3. Approved Intent to Serve Letter from (LOCSD)

With regard to a February hearing date, I believe that may be pressing time a bit. I respectfully request a hearing in April or May. I am working with Jonathan Bishop on a sea wall in Cayucos and I hope to focus my efforts on that for the February or March meeting. In advance, thank you for your assistance in bringing the subject application to the commission for consideration and approval. Please do not hesitate to contact me with any questions you may have.

Sincerely,

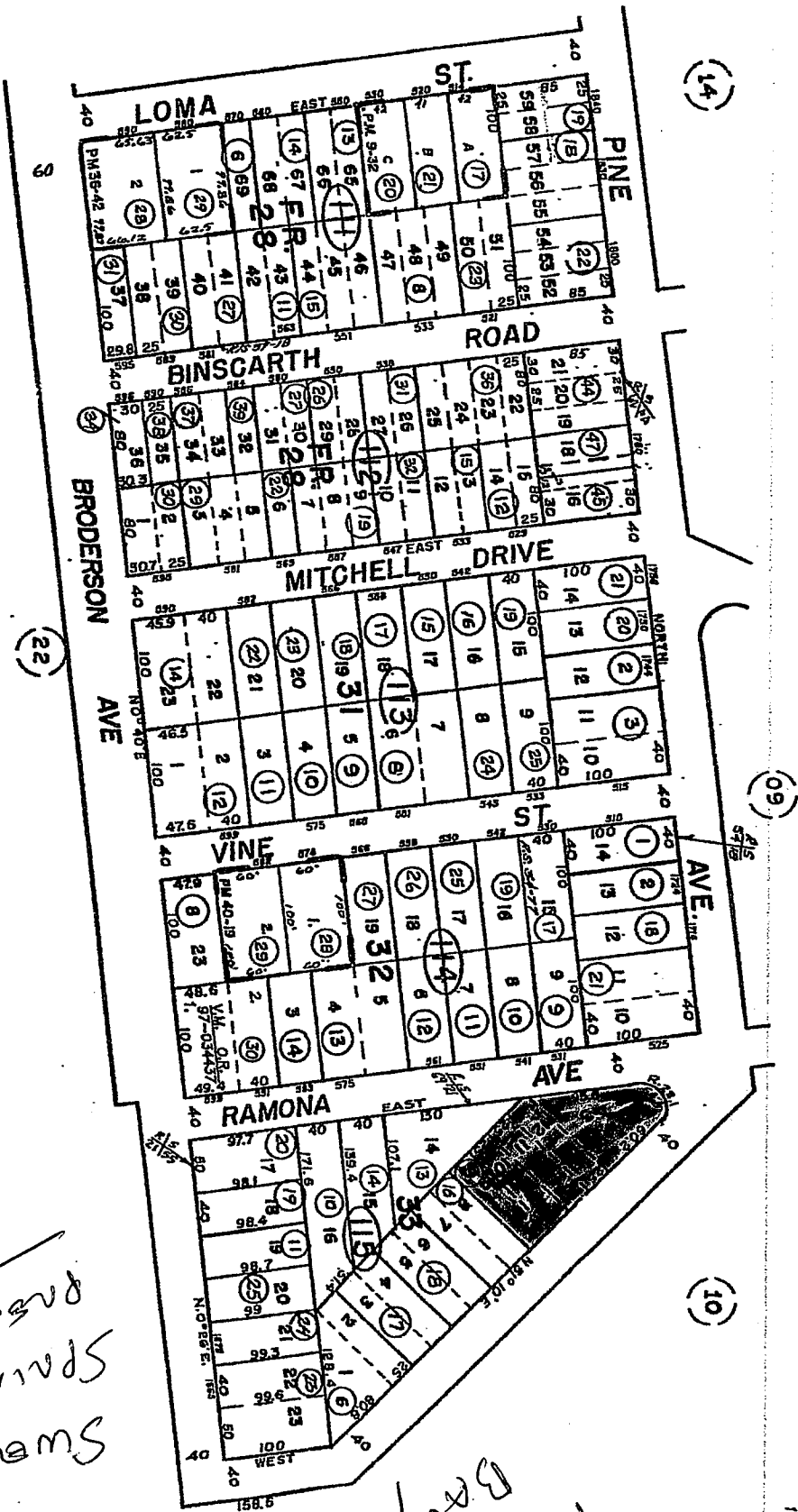
Jeffrey H. Edwards

c- Jay Farbstein
enclosures

CCC REF. # A-3-SLO-98-061

074-111

Exhibit
A-3-SLO-98-061
5 of 17



REV#	DATE	REVISIONS

THIS MAP IS PREPARED FOR
ASSESSMENT PURPOSES ONLY.

**MITIGATION
PARCEL**

LOS OSOS
ASSASSOR'S MAP, COUNTY OF
SAN LUIS OBISPO, CA.
BOOK 074 PAGE 11

NOV 12 1997

074-115-009

15,239 A

*SPRINGS
SWEST
PARCELS*

Mona Bay

1" = 100'

J.H. EDWARDS CO.

A REAL PROPERTY CONCERN

December 29, 2004

Los Osos Community Services District
2122 9th Street
P.O. Box 6064
Los Osos, CA 93412

Attention: Bruce S. Buel, General Manager

Subject: Water "will serve" letter request

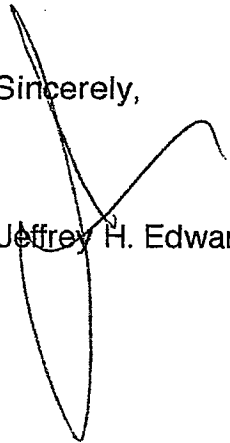
Dear Mr. Buel:

I represent the Jay Farbstein, who is the owner of two homesites located at the north terminus of 10th Street, north of Santa Ysabel in Los Osos. A map is attached which shows more precisely the location 1111 and 1113 10th Street.

The properties lie within the water district administered by the community services district. Mr. Farbstein intends to build two single-family homes in the near term. Your board approved an Intent to Serve application on July 6, 2000. Since the approval is good for only one (1) year, I respectfully request a new letter from the district, indicating its ability to serve the subject parcels with water service for domestic and fire protection purposes. Enclosed please find a copy of the prior submittal for your convenient review. I am also providing the required application fee herewith.

In advance, thank you for your timely attention to my request. I understand the matter may be considered at the February 3rd meeting. Please feel free to contact me with any questions you may have.

Sincerely,


Jeffrey H. Edwards

c- Jay Farbstein

enclosure

CALIFORNIA COASTAL COMMISSION

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



January 10, 2005

Jeff Edwards
P.O. Box 6070
Los Osos, CA 93412

Subject: Response to Your Letter Dated December 30, 2004 Regarding CDP Application A-3-SLO-98-061 for Two Residences at 1111 and 1113 10th St., Los Osos

Dear Mr. Edwards:

Thank you for your response to my letter of October 15, 2004, which I received on January 6, 2005 by fax. Per your request, the hearing on the above referenced application will be scheduled for the Commission's April 2005 meeting in Santa Barbara. In preparation for this hearing, I would like to respond to some of the points raised in your letter.

1. Status of Application

Your letter attributes the long time period in which this matter has been pending to "the complex and multi-layered regulatory morass that affects development along our coast." I do not agree with this characterization. In May 1999, the Commission staff informed you of the specific pieces of information needed to resolve the issues raised by the appeal. Since that time, you have indicated your intention to provide this information, but have yet to submit such materials. In order for this information to be considered for the April 2005 hearing, Commission staff must receive it by February 25, 2005. Given the length of time you have been afforded to respond to the Commission's concerns, it is our intention to proceed with the April hearing whether or not the requested information is submitted.

2. Re-submittal to County

You have rejected our recommendation to submit a new application to the County because "it would create further delays to the project with no recognizable benefit to the applicant or the process." Similarly, in response to my observation that a new application provides the appropriate vehicle to address current planning issues, you state that "a focused environmental impact report was prepared for the project and the issues captured in that document are still quite relevant and the analysis very current." Again, I must disagree with your position on these matters. The wide range of issues identified as being unsatisfactorily resolved by the Coastal Commission's Substantial Issue Determination in April 1999 clearly indicates that a more thorough and up to date environmental analysis is needed. This would be most appropriately completed in conjunction with a new development application, as further discussed below.

3. Unresolved Issues

One of the most critical needs is an expanded alternatives analysis. In contrast to your opinion that "the primary environmental issue ... is the mitigation for potential impacts to riparian habitat", it is the avoidance of such impacts that will be the focus of our review. Mitigation can only be considered where impacts to environmentally sensitive habitat areas (ESHA) cannot be avoided. As we have discussed, it is our opinion that the EIR and the County's analysis did not exhibit 4

A-3-SLO-98-061

7 of 17

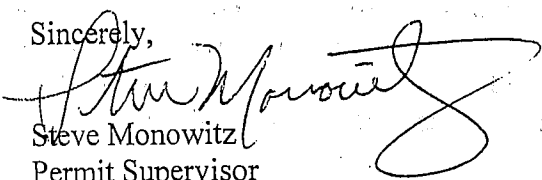
adequately address opportunities to avoid and minimize impacts to ESHA, as required by the LCP.

Your letter acknowledges the need for an analysis of potential impacts to the Morro shoulderband snail (not addressed by the original EIR), and evidence that the Los Osos Community Services District will provide water to the project. These additional reviews will yield new information that must be taken account in the design of the project. Submittal of a new application is the most appropriate method for you to ensure that these important resource constraints are addressed in a comprehensive and contemporary manner. It would be inappropriate for you to assume that the Commission will redesign the project to avoid and minimize impacts to ESHA, or resolve public service capacity issues, through conditions of approval. A failure to address these critical LCP issues, in accordance with current standards, may be grounds for denial.

Finally, with respect to wastewater treatment, you state: "the Regional Water Quality Control Board does not have regulatory purview of the subject development". Please be aware that Estero Area Plan Standard 1 for the South Bay Urban Area requires new development to meet the septic tank requirements of the Regional Board. Thus, irrespective of the Board's regulatory jurisdiction, their review of the proposed septic system is warranted under the development standards of the certified LCP, particularly in light of the project's proximity to Morro Bay, the area's shallow depth to groundwater, and current efforts to establish a communitywide treatment system. Evidence that both the Regional Board and San Luis Obispo County are satisfied with a specific septic system design will be critical to establish the project's consistency with the Public Works, ESHA, and Coastal Watershed provisions of the LCP.

In conclusion, I strongly encourage you to reconsider your decision to pursue the pending application, which was submitted without critical information regarding sensitive habitats, public services, and feasible alternatives. The development proposed by this application was designed without adequate consideration of critical resource constraints – a deficiency that cannot be easily resolved through mitigation or conditions of approval. An updated submittal that addresses the relevant issues in a present-day fashion will benefit the applicant by minimizing the possibility that the current application will be denied, and will benefit the process by providing the information that is needed to ensure the protection of coastal resources. Please feel free to contact me if you would like to discuss these matters further.

Sincerely,


Steve Monowitz
Permit Supervisor

cc: Matt Janssen, San Luis Obispo County Planning Department
Sorrell Marks, Regional Water Quality Control Board
Bruce Buel, Los Osos CSD
Deb Hillyard, California Department of Fish and Game
Steve Kirkland, US Fish and Wildlife Service
Jay Farbstein, Applicant
David Dubbink, Appellant
Gary Freiberg, Appellant
Morro Coast Audubon Society, Appellant

J.H. EDWARDS CO.

A REAL PROPERTY CONCERN

February 2, 2005

California Coastal Commission
CENTRAL COAST AREA OFFICE
725 Front Street, Suite 300
Santa Cruz, CA 95960

RECEIVED

FEB 07 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Attention: Steve Monowitz, Permit Supervisor

Subject: CDP A-3-SLO-98-061 for two (2) residences
@ 1111 & 1113 10th St., Los Osos

Dear Mr. Monowitz:

Thank you for the letter dated January 10, 2005 concerning the above referenced project. Mr. Farbstein and I are as eager to bring the above matter to hearing as you appear to be.

By way of update, I have retained Dan Dugan of Tenera Environmental to perform a protocol survey for the Morro shoulderband snail. As you may know, the survey necessitates five (5) visits to formalize an absence determination. If no snails are found, then the results are forwarded to the U.S. Fish & Wildlife Service and they will respond with a letter of "concurrence." If presence is determined then a Habitat Conservation Plan will be needed to allow for a "take" to occur. Given the Service has stated they only have time to work on the community-wide HCP, then the project would have to be conditioned accordingly.

Additionally, I have secured the services of Levine * Fricke who will be preparing a biological inventory of the mitigation site at Ramona Avenue and Pine Avenue in Los Osos. Furthermore, in consultation with the Morro Coast chapter of the Audubon Society, it appears they are interested in taking title to the mitigation property as the lots are strategically located and may serve to facilitate additional acquisitions for expansion of the Sweet Springs Preserve. The lots are over 15,000 square feet in area and contain habitat similar to that of the subject property. The mitigation site also offers significant scenic view shed qualities. As previously indicated, the mitigation site will represent a minimum 2:1 replacement for any lost riparian habitat on the development site.

With regard to further alternatives analysis, please be reminded that the applicant prepared several iterations of alternative site plans that you have reviewed. Generally, the size of each residence has been significantly reduced to avoid and minimize impacts to the riparian habitat. It may also be helpful for you to review the EIR which contained a fairly extensive alternatives analysis. What is helpful to remember is that the applicant has two (2) legal parcels and is proposing two (2) modest homes with confined building footprints resulting in small disturbance areas.

Exhibit 4

A-3-SLO-98-061

P.O. Box 6070 • Los Osos, CA 93412 • Tel: (805) 528-1567 • Fax: (805) 528-4473 • Email: jhe.realproperty@thegrid.net 9 of 17

Page 2
February 2, 2005
Steve Monowitz

As I explained in my prior letter regarding water service, the Los Osos Community Services District (LOCSD) approved "intent to serve" letter expired. The renewal was scheduled to be heard in February, however it is now set for the March meeting.

Concerning waste water, I remind you that the Regional Water Quality Control Board (RWQCB) does not have regulatory purview of the subject development. Pursuant to a Memorandum of Understanding (MOU) with the County of San Luis Obispo, the regulation of septic systems such as are proposed with the subject development lies with the county Department of Planning & Building and the Department of Environmental Health. Consequently, the fact that I have approved construction permits (PMT. 2002-16046 and 2002-17739) for the development which were reviewed by the county in accordance with the (MOU), no other approval from the state is required. For your information, Resolution 83-12 which delineates septic system design criteria by (RWQCB) is fully codified in Title 19 (Building & Construction Code) under section 19.20.222 - Private Disposal Systems.

In summary, I will furnish you the following documents as soon as they become available.

1. Biological Resource Inventory (074-115-009)
2. Results of the protocol survey for the (MSS)
3. Approved Intent to Serve Letter from (LOCSD)

In advance, thank you for your assistance in bringing the subject application to the commission for consideration and approval. Please do not hesitate to contact me with any questions you may have. I believe it may be helpful to meet and review the site design and to conduct a field visit for both the project and mitigation sites.

Sincerely,

Jeffrey H. Edwards

c- Jay Farbstein

CALIFORNIA COASTAL COMMISSION

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



October 13, 2011

Jay Farbstein
375 Los Cerros
San Luis Obispo, CA 93401

Subject: **Appeal A -3-SLO-98-061 (Farbstein SFD's)**

Dear Mr. Farbstein:

I am writing with regard to the coastal development permit (CDP) application that you submitted to San Luis Obispo County, the approval of which was subsequently appealed to the California Coastal Commission (County CDP Application Numbers D880295D; D880338D; D960345V; D960346V/Appeal Number A-3-SLO-98-061). On April 14, 1999, the Commission found that this appeal raised a substantial issue with respect to the proposed project's consistency with the San Luis Obispo County certified Local Coastal Program (LCP) and/or the Coastal Act's access and recreation policies and took jurisdiction over the CDP application. As of today, such CDP application is pending de novo hearing and review.

After the Commission took jurisdiction over your appeal, Commission staff contacted you in an attempt to obtain additional information regarding the proposed development and/or to coordinate on hearing scheduling. However, we have not heard from you since January 2005. Given this long delay in your response, it appears that you are no longer interested in pursuing the development proposed that is the subject of Appeal Number A-3-SLO-98-061. If you no longer wish to undertake this development, please sign and return the enclosed form officially withdrawing your CDP application/appeal from consideration by the Commission and acknowledging that the San Luis Obispo County approval of this CDP is null and void and of no further force and effect, and that you are not authorized to undertake such development.

If you do wish to continue to pursue this development or if you have any questions about this letter, please contact Jonathan Bishop, Coastal Planner, at the address and phone number above by November 13, 2011 to coordinate on next steps, including a schedule for submittal of any necessary information required to allow a de novo hearing on your appeal to be scheduled.

Sincerely,

A handwritten signature in black ink that reads "DAN CARL".

Dan Carl
District Manager
California Coastal Commission - Central Coast District

Enclosure: Coastal Development Permit Application Withdrawal Election Form

Cc: Jeff Edwards, Agent

Exhibit 4
A-3-SLO-98-061
11 of 17

CALIFORNIA COASTAL COMMISSION

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

**Coastal Development Permit Application Withdrawal Election Form**

I hereby withdraw CDP Application Numbers D880295D; D880338D; D960345V; and D960346V, which were approved by San Luis Obispo County on May 12, 1998, and which approval was appealed to the California Coastal Commission as Appeal Number A-3-SLO-98-061 on July 8, 1998. I understand that by submitting this withdrawal to the California Coastal Commission I am both acknowledging that the approval of CDP Application Numbers D880295D; D880338D; D960345V; and D960346V by San Luis Obispo County are null and void and of no further force and effect, and that I will no longer pursue Appeal Number A-3-SLO-98-061 before the California Coastal Commission. Thus, I recognize that I am not authorized to undertake the development that I proposed in my application for CDP Application Numbers D880295D; D880338D; D960345V; and D960346V, as approved by San Luis Obispo County, and that (a) Appeal Number A-3-SLO-98-061 is moot; (b) there will be no hearings on the Appeal Number A-3-SLO-98-061; and (c) the appeal file is closed.

Signature

Printed Name

Date

RECEIVED

NOV 07 2011

California Coastal Commission,
Central Coast Area

Anthony F. Wolcott
1918 Irvine Ave.
Newport Beach, CA 92660
(949)645-0668

November 1, 2011

Subject: Appeal A-3 SLO 98 061

Dear Mr. Bishop:

Thank you for sending the material I requested in such a timely manner. After our recent phone conversation I felt it might be prudent to send you documentation pertinent to the change in ownership of the two properties impacted by the above mentioned appeal. Those documents are enclosed.

As we discussed, I would like to keep the applications and appeal ongoing with the intent of offering a single home project smaller in size and scope with concomitant reduction in environmental impacts.

Sincerely,

Anthony F. Wolcott

Copy - Keep

RECORDING REQUESTED BY:
Fidelity National Title Company
Escrow No.: 08-400101050-BB
Locate No.: CAFNT0940-0940-0001-0400101050
Title No.: 08-400101050-RB

When Recorded Mail Document and Tax Statement To:
Anthony F. Wolcott and Rachel A. Wolcott,
Trustees of the Wolcott Trust dated August 10, 1996 (Living Revocable Trust)
1918 Irvine Avenue
Newport Beach, CA 92660

JULIE RODEWALD
San Luis Obispo County - Clerk/Recorder

AB
3/13/2009
8:00 AM

Recorded at the request of
Fidelity Title Company

DOC#: **2009011957**



Titles: 1 Pages: 8
Fees 29.00
Taxes 0.00
Others 30.00
PAID \$59.00

APN: 038-052-001, 038-052-026

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED (Deed in Lieu)

SURVEY MONUMENT FEE \$10.00

The undersigned grantor(s) declare(s)

1. The Grantees herein were the Beneficiaries (Anthony Frederick Wolcott-aka Anthony F. Wolcott, Trustee)
2. The amount of the unpaid debit (together with costs to transfer title) was: \$157,845.00
3. The amount paid by the grantee over and above the unpaid debt was: -0-
4. The Documentary Transfer tax is: -0-

[x] Unincorporated Area

FILED	FEE PAID	EXEMPT	OUT OF STATE
	00		

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Jay Farbstein and Linda Farbstein**, husband and wife

hereby **GRANT(S) to Anthony F. Wolcott and Rachel A. Wolcott, Trustees of the Wolcott Trust dated August 10, 1996 (Living Revocable Trust)**

the following described real property in the County of San Luis Obispo, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SEE EXHIBIT "B" ESTOPPEL AFFIDAVIT ATTACHED HERETO AND MADE A PART HEREOF

DATED: January 21, 2009

State of California)
County of LOS ANGELES)

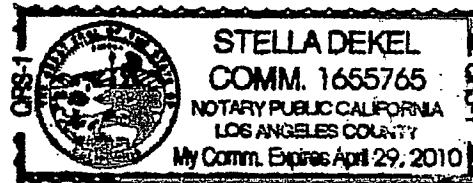
Jay Farbstein
Jay Farbstein

Linda Farbstein
Linda Farbstein

On FEBRUARY 6TH, 2009 before me,
STELLA DEKEL, Notary Public

(here insert name and title of the officer), personally appeared
Jay Farbstein and Linda Farbstein,

who proved to me on the basis of satisfactory evidence to be the person(x) whose name(x) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(x) on the instrument the person(x), or the entity upon behalf of which the person(x) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Stella Dekel (Seal)

RECEIVED

NOV 07 2011

California Coastal Commission,
Central Coast Area

MAIL TAX STATEMENTS AS DIRECTED ABOVE

Exhibit 4

Escrow No.: 08-400101050-BB
Locate No.: CAFNT0940-0940-0001-0400101050
Title No.: 08-400101050-RB

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UN-INCORPORATED AREA, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lots 1, 32 and 33 in Block 23 of the Town of El Moro, in the County of San Luis Obispo, State of California, according to Wood's Revised Map of El Moro, filed for record February 11, 1901 in Book A, Page 80 of Maps, in the office of the County Recorder of said County.

APN: 038-052-001, 038-052-026

2010/11 SECURED TAX BILL
03922

FOR FISCAL YEAR: **2010/11** DATE BILLED: **10-22-10** TAX RATE AREA: **112-065** ASSESSMENT NO.: **038,052,001**
CORTAC #: BILL NUMBER: **2010/11 038,052,001 42**

FOR CITIES, COUNTY, SCHOOLS, OTHER TAXING AGENCIES
IN SAN LUIS OBISPO COUNTY

FRANK L. FREITAS

PROPERTY DESCRIPTION: **TN EL MORO LT 33 BL 23**

County Tax Collector
1055 Monterey Street, Rm D-290
County Government Center
San Luis Obispo, CA 93408

1111 10TH ST LSOS
ASSESSED OWNER AS OF **01-01-2010**
WOLCOTT ANTHONY F TRE ETAL

PROPERTY VALUE ALLOCATION	ASSESSED VALUE	TAXING AGENCY	TAX RATE / \$100	AMOUNT
LAND	99,763	PROP 13 1% TAX RATE	1.00000	997.64
IMPROVEMENTS		STATE WATER PROJ	.00290	2.88
PERSONAL PROPERTY		AV TAX SUBTOTAL	1.00290	1,000.52
FIXTURES / EQUIPMENT		LOCSD WASTE TREATMT		225.64
		LO J DRAINAGE CHG		18.00
		LO B FIRE SPECIAL TX		16.32

The total values listed above less the exemptions listed below equal the net property value.

EXEMPTION	AMOUNT

Tax Information on the Web!
See www.slocounty.ca.gov/tax

*4-3-11
Pd ch # 2034
to 20.24*

RECEIVED

NOV 07 2011

California Coastal Commission,
Central Coast Area

The Tax Collector is not responsible for payments made on wrong assessments. Be sure this bill is for property on which you are obligated to pay taxes.

SEE REVERSE SIDE FOR IMPORTANT TAXPAYER INFORMATION

We accept as negotiable instruments only checks and money orders drawn in U.S. dollars on U.S. banks.

NET PROPERTY	FIRST INSTALLMENT	SECOND INSTALLMENT	TOTAL
99,763	630.24	630.24	1,260.48
VALUE:	DUE DATE: 11-01-10 DELINQUENT: 12-10-10	DUE DATE: 02-01-11 DELINQUENT: 04-11-11	TAX DUE:

2010/11 SECURED TAX BILL
03923

FOR FISCAL YEAR
2010/11

DATE BILLED
10-22-10

TAX RATE AREA
112-078

ASSESSMENT NO.
038,052,026

CORTAC #

BILL NUMBER

2010/11 038,052,026 19

FOR CITIES, COUNTY, SCHOOLS, OTHER TAXING AGENCIES
IN SAN LUIS OBISPO COUNTY

FRANK L. FREITAS

PROPERTY DESCRIPTION: TN EL MORO PTN BL 23

1113 10TH ST LSOS

County Tax Collector
1055 Monterey Street, Rm D-290
County Government Center
San Luis Obispo, CA 93408

ASSESSED OWNER AS OF 01-01-2010
WOLCOTT ANTHONY F TRE ETAL

PROPERTY VALUE ALLOCATION	ASSESSED VALUE	TAXING AGENCY	TAX RATE / \$100	AMOUNT
LAND	99,763	PROP 13 1% TAX RATE	1.00000	997.64
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FIXTURES / EQUIPMENT		LOCSD WASTE TREATMT		225.64
		LO J DRAINAGE CHG		18.00
		LO B FIRE SPECIAL TX		16.32
The total values listed above less the exemptions listed below equal the net property value.				
EXEMPTION	AMOUNT			

Tax Information on the Web!
See www.slocounty.ca.gov/tax

*4-3-11
Ad ch # 2035
\$ 630.24*

RECEIVED

NOV 07 2011

California Coastal Commission,
Central Coast Area

The Tax Collector is not responsible for payments made on wrong assessments. Be sure this bill is for property on which you are obligated to pay taxes.

SEE REVERSE SIDE FOR IMPORTANT TAXPAYER INFORMATION

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NET PROPERTY VALUE	FIRST INSTALLMENT	SECOND INSTALLMENT	TOTAL
99,763	630.24	630.24	1,260.48
	DUE DATE: 11-01-10 DELINQUENT: 12-10-10	DUE DATE: 02-01-11 DELINQUENT: 04-11-11	

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD —
CENTRAL COAST REGION1102 A LAUREL LANE
SAN LUIS OBISPO, CALIFORNIA 93401
(805) 549-3147

December 9, 1988

Mr. Fred Norton, Chief Building Official
Building and Safety Department
San Luis Obispo County
Room 310 - County Government Center
San Luis Obispo, CA 93408

Dear Mr. Norton:

SUBJECT: PERMIT EXTENSIONS

I recently met with Mr. Jeff Edwards to discuss several projects he is planning in the Los Osos/Baywood Park area of San Luis Obispo County. During our conversation, he asked if building permits obtained prior to the Regional Board's moratorium in January would remain valid if time extensions were obtained for them. I told him that any valid permit issued prior to the Board's action would be exempt from the moratorium as long as it remained valid under existing county ordinances.

Apparently, Mr. Edwards holds Construction Permit Nos. 56490 and 56541 to build single family dwellings on lots located at 1113 and 1111 Tenth Street, Los Osos, and he has been unable to start construction on either dwelling. He said that the permits were issued in 1987, and that extensions have kept them valid to the present time. If the permits were issued prior to January 8, 1988, and they have remained valid since issued, they are not subject to the Regional Board's moratorium. However, if either permit expires or is rendered invalid for any reason at any time, the proposed project becomes subject to the moratorium as a "new" project. The Regional Board would then have to hold a hearing to determine if the project could be considered to have been "existing."

This interpretation of the Regional Board's moratorium is consistent with discussions we have had from time to time, but I do not believe that I have stated it in writing before. Given the County's limitations on permit extensions, I would expect that there are now very few projects which would fit these conditions. Please call me if you have any questions on the matter.

Very truly yours,

William R. Leonard
William R. Leonard
Executive Officer

cc: Jeff Edwards



Department of Planning and Building
San Luis Obispo County

County Government Center
San Luis Obispo
California 93408
(805) 549-5600

Paul C. Crawford, ACP
Director

December 27, 1988

Mr. Jeff Edwards
Post Office Box 6070
Los Osos, CA 93402

Dear Mr. Edwards:

RE: Permit numbers 56490 (issued 4/3/87) and 56541 (issued 3/25/88)

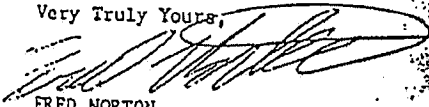
This letter will verify the suspension of these permits is rescinded effective November 15, 1988. This is the date the California Coastal Commission will hear the appeal of their coastal land use permits and withdraw those coastal land use permits. As you are aware, and have taken some of the necessary steps, construction may not start until you have obtained a coastal land use permit from San Luis Obispo County.

Further, we agreed to look upon the start date requirement in Title 19 of the San Luis Obispo County Code as "frozen" during the suspension period, until your problems with the California Coastal Commission were resolved. Since the number of days between the date of our suspension letter of August 22, 1988 and the Coastal Commission hearing on November 15, 1988 is 85, we will add that number of days to the extension of the start dates. This means that the final start date, including all extensions, of permit number 56490 is December 27, 1988 instead of October 3, 1988.

We are also in receipt of your letter of December 19, 1988 requesting a second and final extension of the start date for permit number 56541. We are granting this request and by adding the 85 days, the final date to start construction will be December 19, 1989 instead of September 25, 1989.

If you have any questions, please contact Doug Morris, Supervising Plans Examiner, or me at 549-5602.

Very Truly Yours,


FRED NORTON
Chief Building Official

cc: Jay and Linda Farbstein
Post Office Box 1752
San Luis Obispo, CA 93406

FH/sm/046H/3329H
12-23-88

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD —
CENTRAL COAST REGION

81 HIGUERA STREET, SUITE 200
SAN LUIS OBISPO, CA 93401-5427
(805) 549-3147



September 30, 1994

Mr. Doug Morris, Principal Plans Examiner
San Luis Obispo County Planning and Building Dept.
County Government Center
San Luis Obispo, CA 93408

RECEIVED
OCT 04 1994
S.L.O. COUNTY
PLANNING DEPT.

Dear Mr. Morris:

FARBSTEIN DEVELOPMENT -- BAYWOOD PARK

The purpose of this letter is to clarify a statement in the Administrative Draft EIR for the "Farbstein Development Plan." The Farbstein Development is located within the Los Osos/Baywood Park Prohibition Area. The applicant originally filed building permit applications for two residences in March 1987. These applications were suspended and then the applications were reactivated on March 24 and 27, 1992.

The draft EIR states "since the applicant originally filed building permit applications in March of 1987, the proposed project is not subject to the prohibition." We disagree with this statement. In fact, the statement conflicts with a letter we wrote on December 9, 1988 to clarify this issue.

Our December 9, 1988 letter states "any valid permit issued prior to the Board's action would be exempt from the moratorium as long as it remained valid under existing county ordinances... If either permit expires or is rendered invalid for any reason at any time, the proposed project becomes subject to the moratorium as a 'new' project. The Regional Board would then have to hold a hearing to determine if the project could be considered to have been 'existing'."

Since the project did not remain valid, the project must be considered a new project. The Regional Board could consider this project at an exemption hearing. The likelihood of the Regional Board granting an exemption is remote. The Regional Board has only granted two prohibition exemptions. The first was for Monarch Grove School. The Regional Board granted this exemption because the quantity of new discharge was considered minimal since students and most employees were already located at another local facility. The second exemption was for Richard Bock. The Regional Board granted this "exemption" because Mr. Bock demonstrated he had complied with the terms of the January 8, 1988 cut off date for new septic tank systems.

We hope this information helps clarify the terms and conditions of the Los Osos Baywood Prohibition.

If you have any questions, please contact Angela G. Carpenter at 542-4624.

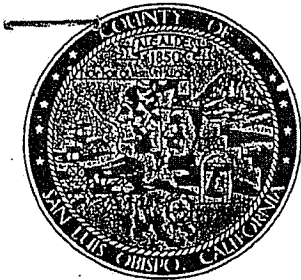
Sincerely,

ROGER W. BRIGGS
Executive Officer

AGC/sm:Frbstein.ltr

Encl.: RWQCB Dec. 9, 1988 letter

Exhibit 5
A-3-SLO-98-061
3 of 12



Department of Planning and Building San Luis Obispo County

Alex Hinds, Director
Bryce Tingle, Assistant Director
Barney McCay, Chief Building Official
Norma Salisbury, Administrative Services Officer
Ellen Carroll, Environmental Coordinator

DATE: October 7, 1994

Rodger Briggs, Executive officer
California Regional Water Quality Control Board
Central Coast Region
81 Higuera Street, Suite 200
San Luis Obispo, CA. 93401-5427

RE: Farbstein Development - Baywood Park

Dear Mr. Briggs:

Thank you for your letter dated September 30, 1994 stating your position in regards to the administrative Draft EIR for the Farbstein Development Plan, Los Osos.

We do not concur with your position on the status of these projects. Our records show that the projects did remain valid under existing county ordinances.

In December of 1988 we suspended issued permits 56490 and 56541 for these projects solely to allow the permittee to obtain coastal land use permits from our county. We agreed to look upon the start date requirement in Title 19 of the San Luis Obispo County Construction Ordinance as "Frozen" during the suspension period until the matter was resolved by the California Coastal Commission. These permits were never considered "expired", and therefore would remain valid in accordance with William R. Leonard's December 9, 1988 letter. (see attached letters dated December 27, 1988 and December 9, 1988)

We hope this clarifies your concerns, and we would be willing to meet with you to discuss any questions that you may have. You may contact me at Te1. 781-5625.

Thank you


Doug Morris, Principal Plans Examiner

cc: Mr. Farbstein

Angela G. Carpenter, CRWQCB
Kathy Bouchard, Deputy County Counsel
Barney MC Cay, Chief Building Official
Forrest Wermuth, Principal Building Inspector
Pat Beck, Principal Planner
Melissa Mooney, Environmental Coordinator office

DEPARTMENT OF PLANNING AND BUILDING
OFFICE MEMORANDUM

DATE: October 7, 1994
TO: Kathy Bouchard, Deputy County Counsel
FROM: Doug Morris, Principal Plans Examiner
SUBJECT: Farbstein Development - Administrative Draft EIR - Baywood Park.

Kathy, please find attached correspondence between ourselves and the California Regional Water Quality Control Board (CRWQCB) regarding the Farbstein Development Administrative Draft EIR of which we appear to be at issue.

BACKGROUND:

We issued construction permits 56490 and 56541 to these people prior to the Los Osos Moratorium however to resolve an appeal with the California Coastal Commission we agreed to suspend the permits and consider them "frozen in time" until this problem was taken care of. (see attached letter dated December 27, 1988).

To resolve their problems however, the Farbsteins were required to proceed with a full EIR within our department. (Melissa Mooney is the Environmental Planner ~~handling~~ the project). We are in essence allowing the time for the EIR to be credited towards their projects and therefore are not considering them "expired" whereby they would be subject to the moratorium.

We would like to meet with you prior to us meeting with CRWQCB.

Thank you-

cc: Melissa Mooney, Environmental Coordinator office ✓
Barney MC Cay, Chief Building official
Pat Beck, Principal Planner
Forrest Wermuth, Principal Building Inspector
Bob Mourenza, Supervising Plans Examiner



California Regional Water Quality Control Board

Central Coast Region



Peter M. Rooney
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov>
81 Higuera Street, Suite 200, San Luis Obispo, California 93401-5427
Phone (805) 549-3147 • FAX (805) 543-0397

Pete Wilson
Governor

December 23, 1998

Jeff Edwards
J.H. Edwards Co.
P. O. Box 6070
Los Osos, CA 93412

Dear Mr. Edwards:

FARBSTEIN DEVELOPMENT PLANS, 1111 & 1113 TENTH STREET, LOS OSOS


We have reviewed your October 23, 1998 letter regarding the Farbstein Development Plans and have the following comments.

When the prohibition became effective on January 8, 1988, the Regional Board allowed to proceed those projects which had completed the permit application process prior to that date. Permits which expired after January 8, 1988, would not be reissued, however permits which remained valid could proceed as "existing" discharges not subject to the January 8, 1988 moratorium. You have provided (and San Luis Obispo County Department of Planning and Building has verified) documentation that permits for the Farbstein Development Plans predate the 1988 deadline and have remained valid. Therefore, the project is not affected by the January 8, 1988 moratorium date.

Please note however, that any wastewater system associated with the proposed project must comply with Basin Plan criteria for on-site disposal systems. Compliance with Basin Plan criteria appears unlikely for the proposed project due to lot size and depth to ground water. Furthermore, the proposed discharge would be in violation of Resolution No. 83-13 which prohibits discharge in Los Osos from on-site systems after November 1, 1988, and subject to any enforcement actions which may result from such violations. Development of the property should be connected to a community sewer system.

If you have questions regarding this matter, please contact Sorrel Marks (549-3695) or Brad Hagemann (549-3697) of my staff.

Sincerely,


For Roger W. Briggs
Executive Officer

cc: Doug Morris
SLO Co. Dept. of Planning and Building
County Government Center
San Luis Obispo, CA 93408

Filename: H:\nososos\farbst.ltr

Task Code #: 401-02

File to: Agency/SLO Co, ISDS, Los Osos

California Environmental Protection Agency

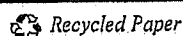


Exhibit 5
A-3-SLO-98-061
6 of 12

Exhibit D



Alan C. Lloyd, Ph.D.,
Agency Secretary

California Regional Water Quality Control Board Central Coast Region



Arnold Schy
Govt

Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Acrovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

June 7, 2005

Jon Seitz, Los Osos CSD Legal Counsel
Shipsey & Seitz, Inc.
P. O. Box 953
San Luis Obispo, CA 93406

RECEIVED
JUN 08 2005
BY: *[Signature]*

Dear Mr. Seitz:

FARBSTEIN DEVELOPMENT AT 1111 AND 1113 TENTH STREET, LOS OSOS, SAN LUIS OBISPO

This letter is provided at your request to clarify the Central Coast Regional Water Quality Control Board's (Central Coast Water Board's) regulatory authority and findings relative to the proposed Farbstein residential development in Los Osos.

The Farbstein development plan (as we understand it) includes two residential units proposed for 1111 and 1113 Tenth Street, Los Osos, within the Central Coast Water Board's on-site discharge prohibition area. In order for the project to proceed using on-site wastewater disposal (prior to installation of the community sewer), the applicant must demonstrate compliance with the following conditions:

- a) The project must have been appropriately authorized/permited by San Luis Obispo County on or before January 8, 1988 (prohibition implementation date).
- b) The project's permit with San Luis Obispo County must have remained valid since January 8, 1988.
- c) Any wastewater disposal system proposed to serve the development must comply with the Central Coast Water Board's criteria for siting and design of on-site disposal systems, described in the Water Quality Control Plan, Central Coast Basin (Basin Plan). We will also require installation of private sewer laterals to facilitate connection to the community sewer when available.

We do not currently have records demonstrating compliance with all of the conditions above. Also, the State Water Resources Control Board is currently developing statewide criteria for on-site systems and we anticipate the statewide regulations will be adopted in the near future. The proposed project must also comply with these statewide requirements, when such regulations have been promulgated. It is also important to note that discharges from the proposed project may be subject to enforcement actions by the Central Coast Water Board as such discharge would violated Resolution No. 83-13 (prohibition of on-site discharges) until connected to a community system.

If you have questions, please call Sorrel Marks at 549-3695 or Gerhardt Hubner at 542-4647.

Sincerely,

[Signature]
Roger W. Briggs
Executive Officer

cc: Bruce Buel, Los Osos CSD, P. O. Box 6064, Los Osos, CA 93412
Jeff Edwards, P. O. Box 6070, Los Osos, CA 93412
Steve Monowitz, California Coastal Commission, 725 Front St., Suite 300, Santa Cruz, CA 95060

http://wdr/wdr/facilities/san_luis_obispo.ca/Los_Osos/project_reviews/farbstein.ltr

California Environmental Protection Agency

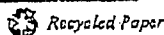


Exhibit 5
A-3-SLO-98-061
7 of 12



May 15, 2012

President
Marshall E. Ochylski

Mr. Matt Jansen
San Luis Obispo County Planning Department
Room 200, County Government Center
San Luis Obispo, CA 93408

Vice President
Leonard A. Moothart

Dear Mr. Jansen:

Directors
Craig V. Baltimore
David S. Vogel
R. Michael Wright

I am corresponding on behalf of the Los Osos Community Services District to ascertain if the projects for 1111 10th Street (Parcel - 038-052-001) and 1113 10th Street (Parcel - 038-052-026) were permitted by San Luis Obispo County on or before January 8, 1988, and if the permits have remained valid since that date.

Interim General Manager
Francis M. Cooney

If you have any questions, please call me at 805-528-9370. Thank you for your help in this matter.

District Accountant
Amparo Haber

Sincerely,

Fire Chief
Robert Lewin

Francis M. Cooney
Interim General Manager

Battalion Chief
Phill Veneris

Mailing Address:
P.O. Box 6064
Los Osos, CA 93412

Offices:
2122 9th Street, Suite 102
Los Osos, CA 93402

Phone: 805/528-9370
FAX: 805/528-9377

RECEIVED MAY 18 2012



SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND
BUILDING

County Government Center • San Luis Obispo, California 93408 • Telephone (805) 781-5600

May 17, 2012

Mr. Francis M. Cooney
Interim General Manager – Los Osos Community Services District
P.O. Box 6064
Los Osos, CA 93402

Re: 1111 10th Street (Parcel 038-052-001) and 1113 10th Street (Parcel 038-052-026)

Dear Mr. Cooney,

I have reviewed the long history on these parcels. Consistent with decisions made in 1994 and in 2007 the applications/permits associated with these parcel are valid. The exact status is *suspended* (due to pending approval by the California Coastal Commission). Upon approval by the Coastal Commission the applicant may submit plans for review and further permit processing.

If you have any questions, please call me at (805) 781-1314, or email cjourney@co.slo.ca.us or Matt Janssen at (805) 781-5104 or email mjanssen@co.slo.ca.us.

Respectfully,

Cheryl Journey
Chief Building Official, County of San Luis Obispo

Cc Jeff Edwards

Butler, Katie@Coastal

From: mjanssen@co.slo.ca.us
Sent: Wednesday, December 10, 2014 9:29 AM
To: Jeff Edwards
Cc: cjourney@co.slo.ca.us; Julie Tacker; Butler, Katie@Coastal; rachwlct@aol.com; kbrown@co.slo.ca.us
Subject: Re: Wolcott building permits

Mr. Edwards:

In a nutshell, here's how we see the situation for the Wolcott permits.

First, the permits were "frozen" long ago and are now considered "suspended" - but never issued. Because of this, it is our opinion the parcels are subject to Special Condition #6 of the Los Osos Wastewater Treatment Plant because there is no development on either site.

Second, Intent to Serve letters are required for us to process building permits and will be required again for us to remove the "suspended" status from these permits and begin plan checking (this statement assumes a CDP for two residences is approved by the Coastal Commission).

Finally, you don't have "valid" County building permits because they were never issued.

Let us know if you have additional questions or comments.

Matt Janssen

From: Jeff Edwards <jhedwardscompany@gmail.com>
To: "mjanssen: co.slo.ca.us" <mjanssen@co.slo.ca.us>
Cc: "Butler, Katie@Coastal" <Katie.Butler@coastal.ca.gov>, cjourney@co.slo.ca.us, Julie Tacker <julietacker@charter.net>, "m" <rachwlct@aol.com>
Date: 12/04/2014 06:47 AMrachwlct@aol.co
Subject: Re: Wolcott building permits

Good morning Mr. Janssen,

Thank you for the email confirming the validity of 56490/PMT2014-16046 & 56541/PMT2012-17739 for two single family homes at 1111 & 1113 10th Street, in Los Osos. It is unfortunate it took nearly one year for a determination to be made again. I have maintained the validity of these permits well before the Coastal Commission found SI.

However, your reference to the Los Osos Wastewater Project CDP and its applicability to the subject project is misplaced. The statement that the Conditions of Approval regarding vacant parcels applies to the Wolcott parcels is conclusionary and without analysis.

Special Condition #6 for CDP A-3-SLO-09-055/069 states, "**Wastewater Service to Undeveloped Properties.** Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on the conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats."

Exhibit 5
A3-SLO-09-061

First of all, the subject properties are not "undeveloped properties" within the meaning of Special Condition #6. There are no other vacant properties within the Prohibition Zone that have pending valid construction permits. Furthermore, the residences may be served by individual onsite septic systems subject to the provisions of Regional Board Resolution 83-12. Clearly the subject properties are distinguished from other vacant lots within the Prohibition zone.

Please be advised of the following requirements as a prerequisite to the Wolcott moving forward.

1. Receipt of a CDP from the CCC.
2. Maintenance of a Water Intent-to-Serve Letter from the LOCSD.
3. A Title 19 Plumbing Retrofit Certificate for each new residence.
4. Concurrence from the US Fish & Wildlife Service regarding the MSS or an Incidental Take Permit under section 10a(1)b under the Federal Endangered Species Act.

In closing, I respectfully submit it is impossible to have valid County building permits and at the same time be subject to the provision in Special Condition #6.

Thank you,
Jeff Edwards

Julie Tacker
Administrative Assistant

J.H. Edwards Company
P.O. Box 6070
Los Osos, CA 93412
805.235.0873 - Jeff
805.235-8262 - Julie
805-528-3569 - Office

On Wed, Dec 3, 2014 at 2:04 PM, <mjanssen@co.slo.ca.us> wrote:
Katie:

First, thanks for your patience regarding the Wolcott building permits.

Second, after careful review of all existing correspondence we have come to the conclusion that the two building permits in question (56490/PMT2014-16046 & 56541/PMT2012-17739) are still active in our system. This determination is consistent with the determination reached by our Building Official, Cheryl Journey, on May 17, 2012 in her letter to Los Osos Community Services District .

There was some confusion on our end after the 1988 Coastal Development Permit was revoked by the Coastal Commission (i.e, Fred Norton's letter of December 27, 1988 was ambiguous as to the exact status of the permits). However, our next letter from Doug Morris on October 7, 1994, cleared up any remaining confusion - the permits were "frozen" (aka active but suspended).

Finally, as we discussed on the phone the other day, the Conditions of Approval for the Wastewater

Treatment Plant regarding vacant parcels applies to the two Wolcott parcels (i.e., the Water Management Plan, the Habitat Conservation Plan, and LCP Amendment must all be complete and approved prior to any vacant parcel being developed). While the plant is scheduled to be operational in the Spring of 2016 for the 4000 or so developed parcels, these three conditions affecting vacant parcels will likely take longer to complete.

Let me know if you need more information.

Again, thanks for your patience.

Matt Janssen
Building Division Manager
SLO County Planning & Building
(805) 781-5104

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[Scanned @co.slo.ca.us]

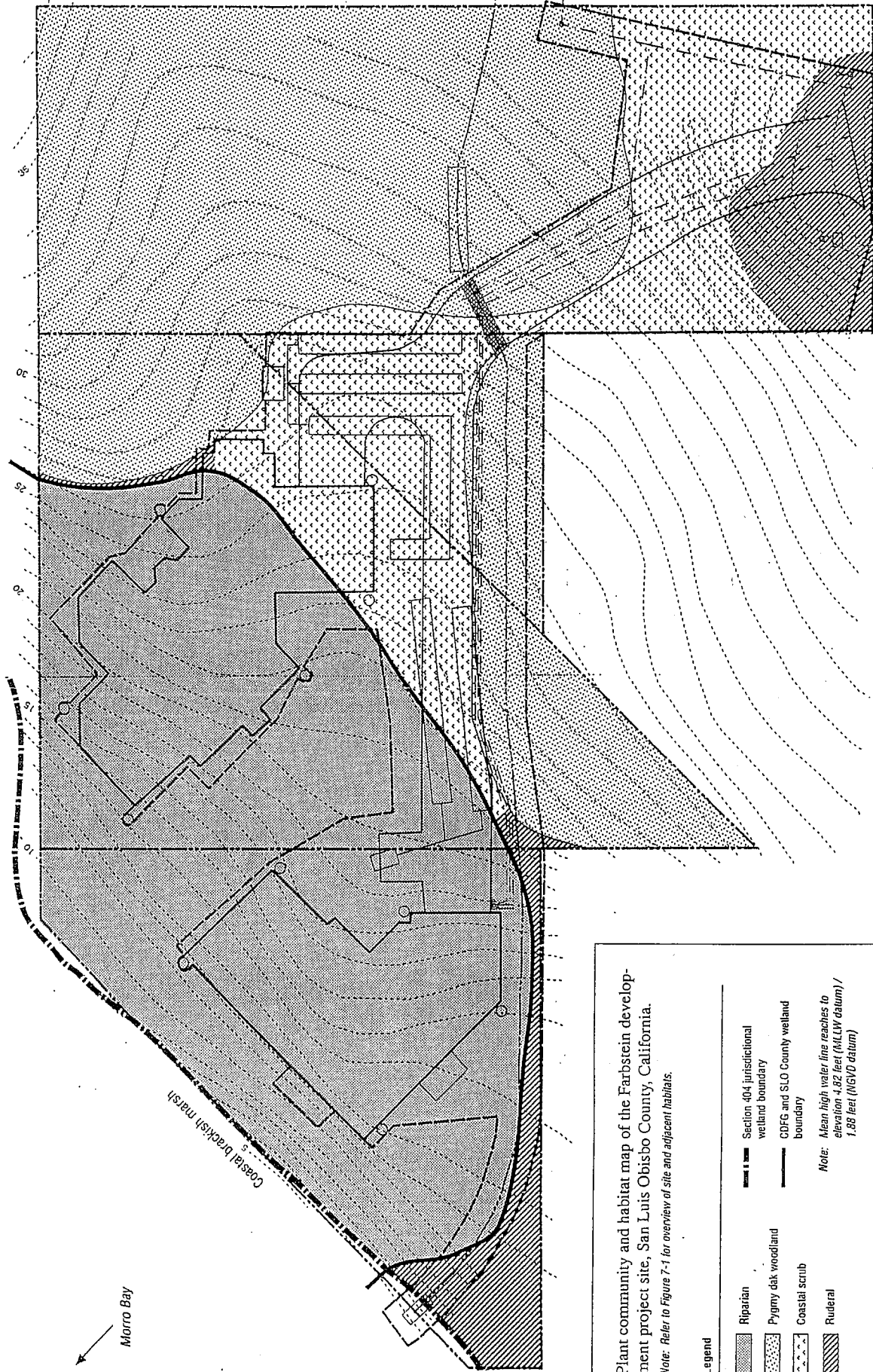


Figure 4-1. Plant community and habitat map of the Farbstein development project site, San Luis Obispo County, California.

Note: Refer to Figure 7-1 for overview of site and adjacent habitats.

- Legend**
- Riparian
 - Pinyon oak woodland
 - Coastal scrub
 - Ruderal
 - Section 404 jurisdictional wetland boundary
 - CDFG and SLO County wetland boundary
- Note: Mean high water line reaches to elevation -4.82 feet (MLLW datum) / 1.88 feet (NGVD datum)



Prepared by BioSystems Analysis, Inc./1991





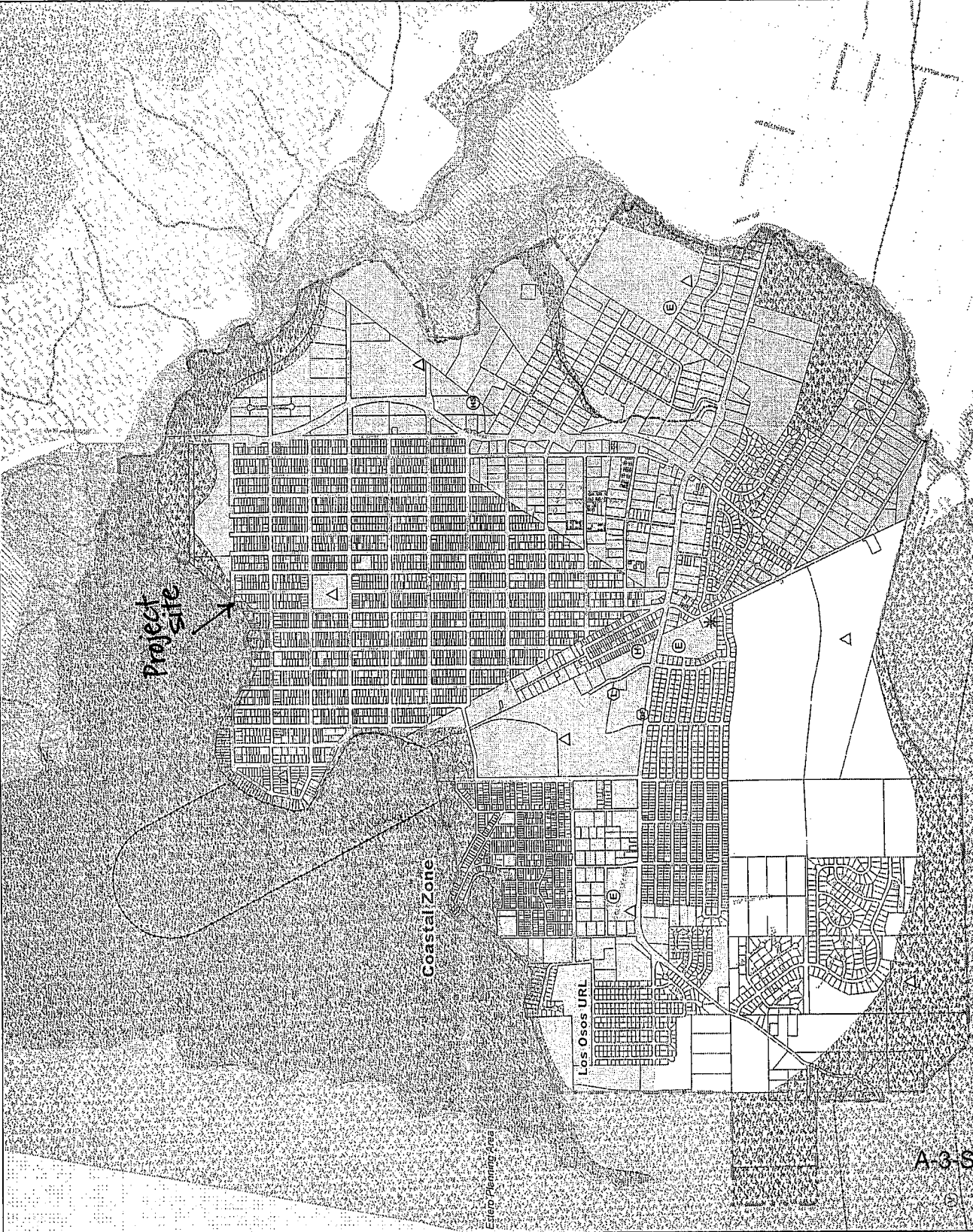
PLANNING & BUILDING
COUNTY OF SAN LUIS OBISPO

0 1,050 2,100 4,200
Feet

LOS OSOS URBAN RESERVE LINE COMBINING DESIGNATIONS MAP

LEGEND

- Coastal Zone Boundary
- Planning Area Boundary
- Planning Sub Area Boundary
- Lake or Pond
- Los Osos Urban Reserve Line
- Combining Designations
- H - Historic
- V - Visitor Serving Area
- ASA - Archaeological Sensitive Area
- AR - Airport Review Area
- EX - Extractive Area
- E - Energy Extractive Area
- F - Flood Hazard
- GSA - Geologic Study Area
- GSA - Aqueal Photo
- GSA - Los Osos Fault
- SRA - Sensitive Resources Area
- ESH - Environmentally Sensitive Habitat
- Coastal Stream
- Marine Habitat
- Riparian Vegetation
- Terrestrial Habitat
- Wetland
- Proposed Public Facilities
- Fwy Interchange
- Proposed Elementary School
- Proposed Government Facility
- Proposed High School
- Proposed Library
- Proposed Park
- Proposed Police Station
- Proposed Sewage Treatment Facility
- Proposed Solid Waste Facility
- Proposed Water Treatment Facility
- Reservoir



Revised March 7, 2014

Source: County of San Luis Obispo, Department of Planning and Building, ParcelQuest; USGS National Hydrography Dataset; California Department of Finance, FEMA