

CALIFORNIA COASTAL COMMISSION

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**MISC**

May 22, 1998

TO: CALIFORNIA COASTAL COMMISSIONERS

FROM: PETER M. DOUGLAS, EXECUTIVE DIRECTOR

SUBJECT: STAFF RECOMMENDATION ON REVISED MAP OF POST-LCP CERTIFICATION JURISDICTION, COUNTY OF SAN LUIS OBISPO, MAP 107 (PISMO BEACH QUADRANGLE)
(for Commission consideration at its June 8-11, 1998 meeting)

This recommendation was developed by Jonathan Van Coops, Coastal Program Analyst, assisted by Pascale Soumoy, Environmental Services Intern, Mapping Program, working under the direction of Susan Hansch, Manager, Energy and Coastal Resources Division.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the revised post-LCP certification map 107 (Pismo Beach quadrangle), prepared by staff to show the revised areas where the Commission retains permit authority pursuant to Public Resources Code (PRC) §30519(b) and §30613, and where appeals of local government coastal development permit approvals are allowed pursuant to PRC §30603(a)(1) and (2) within the Avila Beach area of San Luis Obispo County. The revised map incorporates changes to all properties affected by the State Lands Commission's 1970 Boundary Line Agreement 119

MOTION

Staff recommends that the Commission adopt the following motion:

I move that, for the reasons stated in the Staff Report and Recommendation dated May 22, 1998, the Commission hereby approve the revisions proposed by staff to the San Luis Obispo County Post-LCP Certification Map Sheet 107 for Avila Beach.

BACKGROUND ON POST-LCP CERTIFICATION MAP PROCEDURES

After the Commission certifies a local government's LCP, permit authority within that jurisdiction is delegated to that local government. However, pursuant to §30519(b) of the Coastal Act, the Commission retains permit authority (with certain exceptions) after LCP certification over developments occurring on tidelands, submerged lands, and public trust

lands. In addition to the retained permit jurisdiction, §30603 of the Coastal Act defines certain areas and types of development for which approvals by the local government may be appealed to the Commission. Appeal jurisdiction exists, for example, on lands within 100 feet of streams or wetlands, lands within 300 feet of the coastal bluffs, beaches, or estuaries, and lands between the sea and the first public road paralleling the sea.

The Commission's administrative regulations (14 CCR §13576) provide that a map portraying the areas of continuing Commission permit and appeal jurisdiction be adopted in conjunction with the final LCP certification. An update procedure is also described and provides the basis for revisions of the map by the Commission. Within these regulations is implicit the idea that, while the adopted map should portray the various jurisdiction boundaries with reasonable accuracy, it remains only a cartographic representation, and not a precise definition of the jurisdiction. These maps may be revised from time to time where there are changed circumstances or where additional information becomes available indicating that the mapped boundaries do not reflect the jurisdictional criteria established in the Coastal Act and the Commission's implementing regulations. Additionally, where the boundaries are inaccurate, the Commission may assert jurisdiction as appropriate regardless of the boundaries depicted on the map.

STAFF ANALYSIS

The Commission first adopted Post-LCP Certification permit and appeal jurisdiction maps for the County of San Luis Obispo on May 13, 1988. Based on these maps, the Commission's continuing permit jurisdiction in the community of Avila Beach exists only on lands lying below the mean high tide line (MHTL), and within potential public trust lands located along the shoreline and adjacent to San Luis Obispo Creek. The primary source for the previous retained permit jurisdiction boundary was map 107 (Pismo Beach quadrangle, scale 1:24,000) from the set showing potential public trust areas prepared for the Commission by the State Lands Commission staff in the late 1970's using, among other sources, U.S. Coast and Geodetic Survey (now known as the National Geodetic Survey) Topographic maps produced in the mid to late 1800's.

These historic maps and other documents and information are typically analyzed wherever the public trust component appears to be the controlling boundary criterion. Given the complexity involved in precisely mapping potential public trust boundaries, however, it is understood that boundary delineations based on these sources may include or exclude areas subject to the trust. Questions regarding the exact location and extent of public trust lands are generally referred to the State Lands Commission for determination.

The revision which is the subject of this report and recommendation was initiated by one of the property owners, Mr. Roger Lyon, for the purpose of refining the boundary in an area where the previous delineation of the Commission's permit and appeal jurisdiction included, or was based on, former locations of San Luis Obispo Creek (see Exhibit 2). The Commission staff did a boundary determination for Mr. Lyon's property in August of 1997, which placed his property partly inside and partly outside the Commission's

retained permit jurisdiction. As mentioned above, this determination was based on the location of the potential public trust lands delineated by the State Lands Commission staff in the late 1970's (see Exhibits 3 and 4).

After receiving the Commission staff's boundary determination, Mr. Lyon contacted the State Lands Commission, whose further research indicated the current adopted boundary needs revision to reflect a 1970 Boundary Line Agreement (BLA No. 119), and other applicable case law. The Boundary Line Agreement (BLA 119) that is the basis for the recommended change was a result of a quiet title action involving the State, the Port San Luis Harbor District, and owners of property adjacent to the boundary line established by the BLA (San Miguelito Park Co. v. Port San Luis Harbor District et al. - SLO Co. Superior Court No. 33953). During the 1950's the State had apparently granted sovereign lands to the Harbor District that included a portion of San Luis Obispo Creek, and owners of adjacent properties sued the State and District, challenging the State's interest in a portion of the area included in the statutory grant to the District. The BLA was intended to resolve the ownership dispute by setting the boundary of sovereign lands along this part of San Luis Obispo Bay.

As described in greater detail below, the recommended revision redesignates the boundaries of the Commission's retained permit and appellate jurisdiction in the subject area to be consistent with BLA 119. Specifically, it changes from retained permit jurisdiction to appeal jurisdiction the areas that: (1) are no longer subject to a public trust claim because of BLA 119, including Mr. Lyon's property; and (2) do not satisfy any of the other criteria for the assertion of Commission retained permit jurisdiction. The areas of San Luis Obispo Creek that are subject to tidal influence do satisfy the tidelands component of these criteria and are therefore retained in the Commission's permit jurisdiction (see Exhibit 6).

Permit Jurisdiction Revisions

In the lower San Luis Obispo Creek estuary, approximately 35 acres located below MHTL are retained within the Commission's permit jurisdiction, as shown in Exhibit 6.

Appeal Jurisdiction Revisions

In the area adjacent to the lower San Luis Obispo Creek estuary, approximately 64 acres previously included in the retained permit jurisdiction are located between the Sea and the First Public Road Paralleling the Sea (Hwy 101), and are therefore changed to the Commission's appeal jurisdiction, as shown in Exhibit 6. All other appeal areas remain as depicted on Exhibit 2.

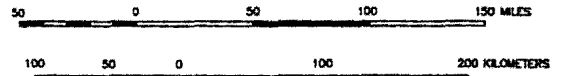
NOTE: Due to the reproduction cost of the large scale map sheet 107, only the 8.5 X 11 size maps have been included with the staff report. Copies of the full-size map will be available at the County of San Luis Obispo, at Coastal Commission offices in San Francisco and Santa Cruz, and at the Commission meeting in Santa Barbara.

EXHIBIT 1

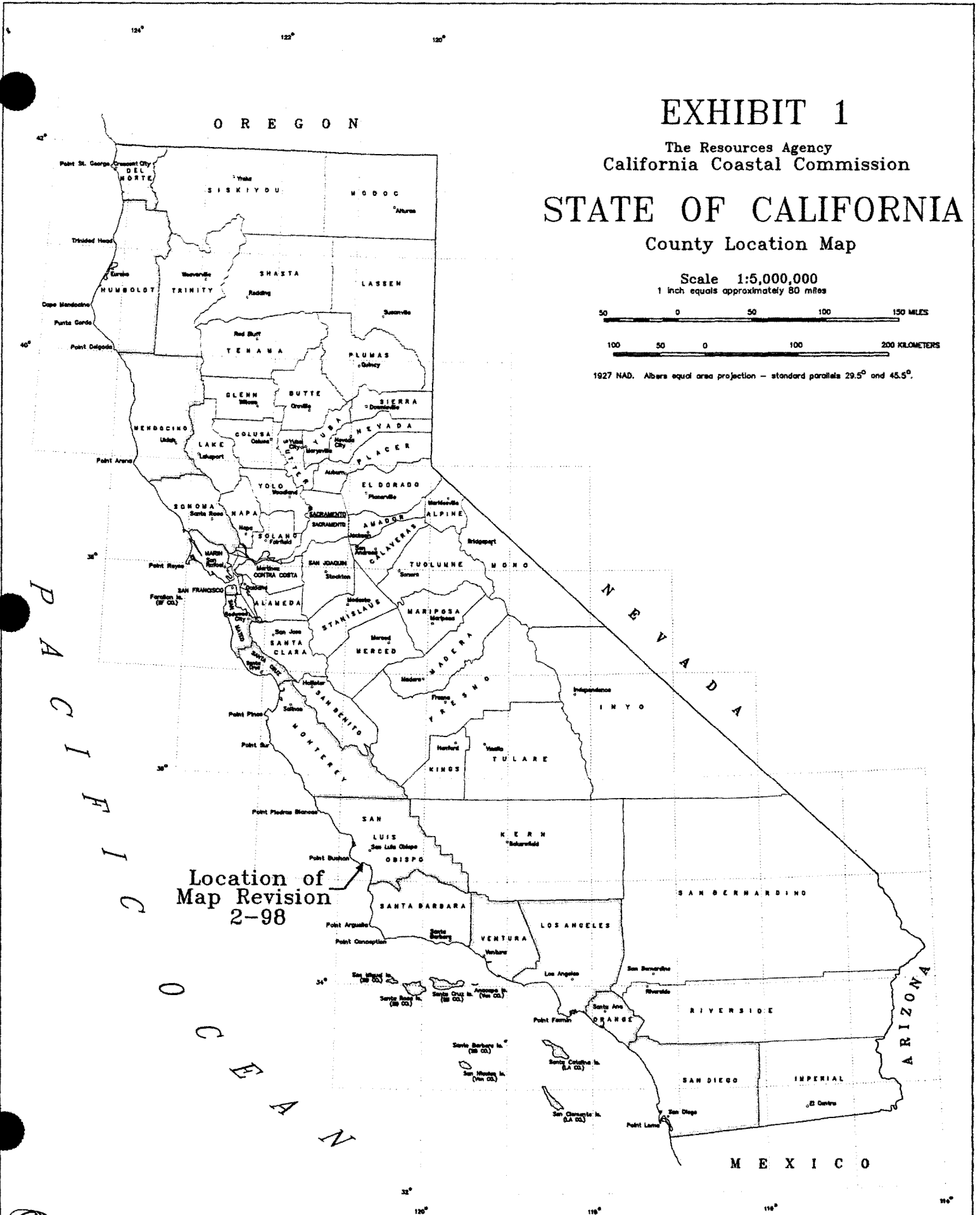
The Resources Agency
California Coastal Commission

STATE OF CALIFORNIA County Location Map

Scale 1:5,000,000
1 inch equals approximately 80 miles



1927 NAD. Albers equal area projection - standard parallels 29.5° and 45.5°.



Location of
Map Revision
2-98

A B C D E F G H I J K L M N O



Permit Jurisdiction

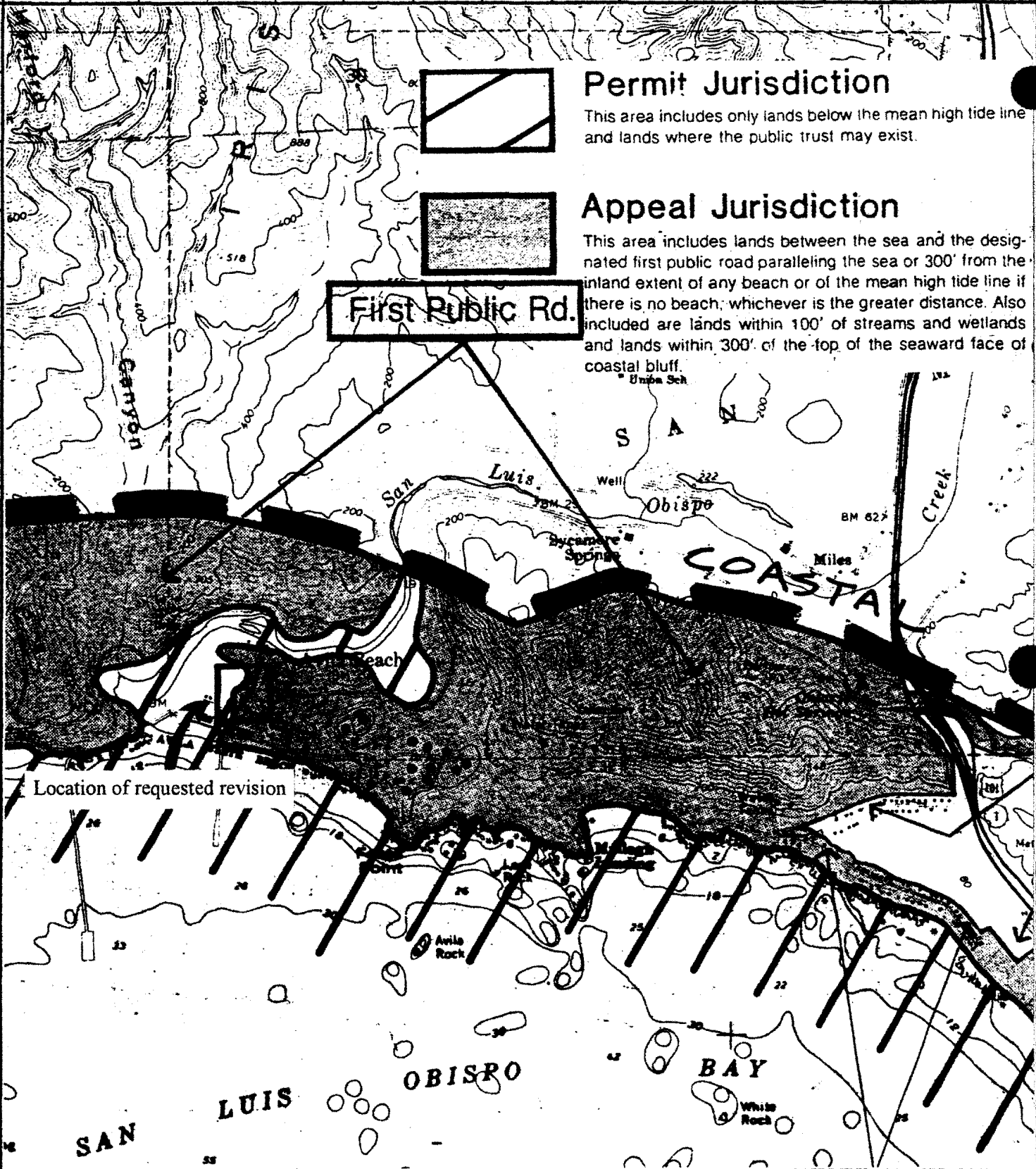
This area includes only lands below the mean high tide line and lands where the public trust may exist.



Appeal Jurisdiction

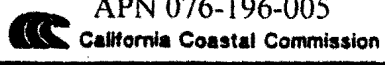
This area includes lands between the sea and the designated first public road paralleling the sea or 300' from the inland extent of any beach or of the mean high tide line if there is no beach; whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of coastal bluff.

First Public Rd.

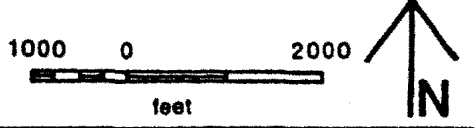


Location of requested revision

Map Revision 2-98
APN 076-213-11
APN 076-196-005

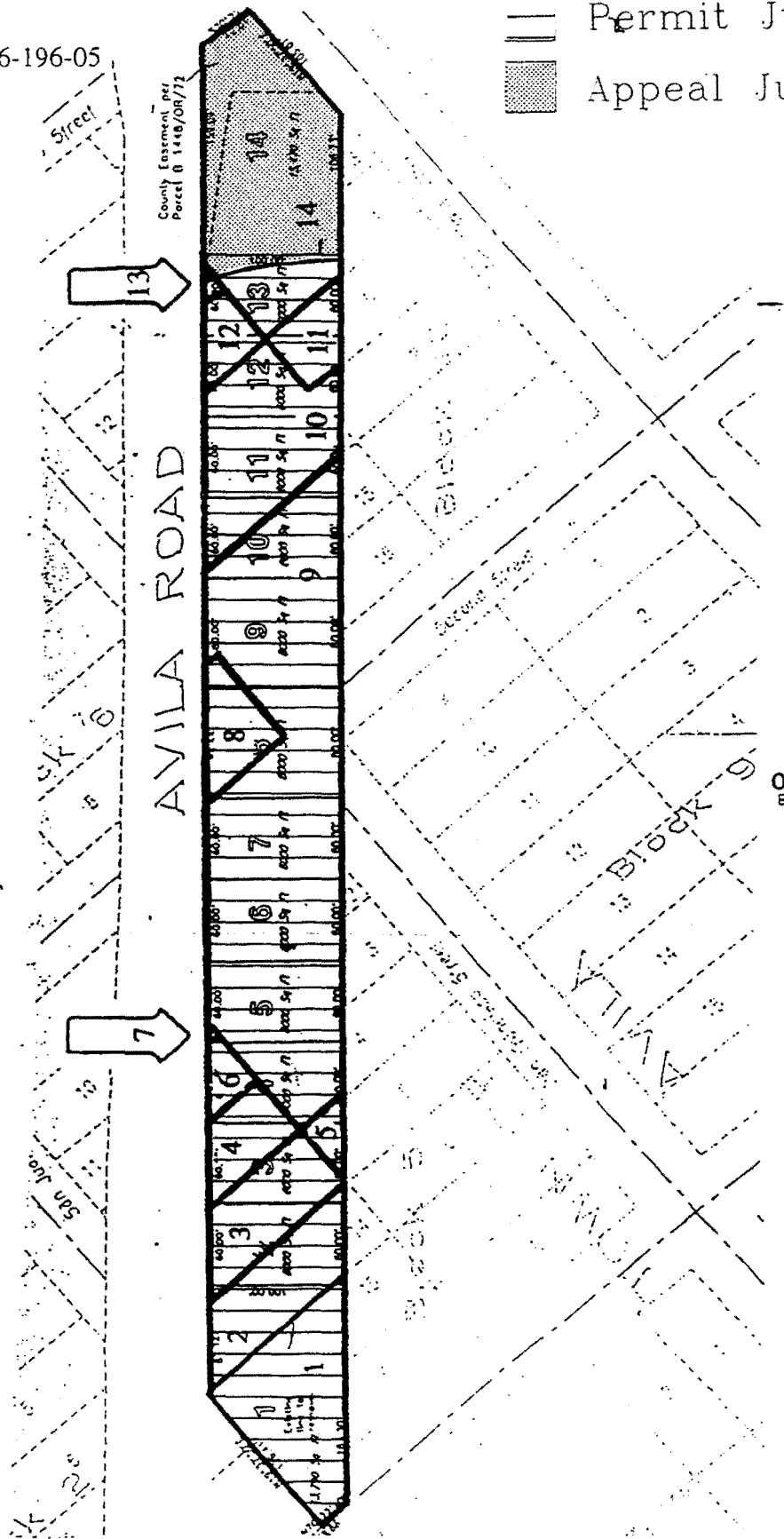


Portion of San Luis Obispo County's adopted Post-LCP Certification Map #107 (Pismo Beach Quadrangle)



BD 38-97
APN 076-213-11, 076-196-05

||| Permit Jurisdiction
▨ Appeal Jurisdiction

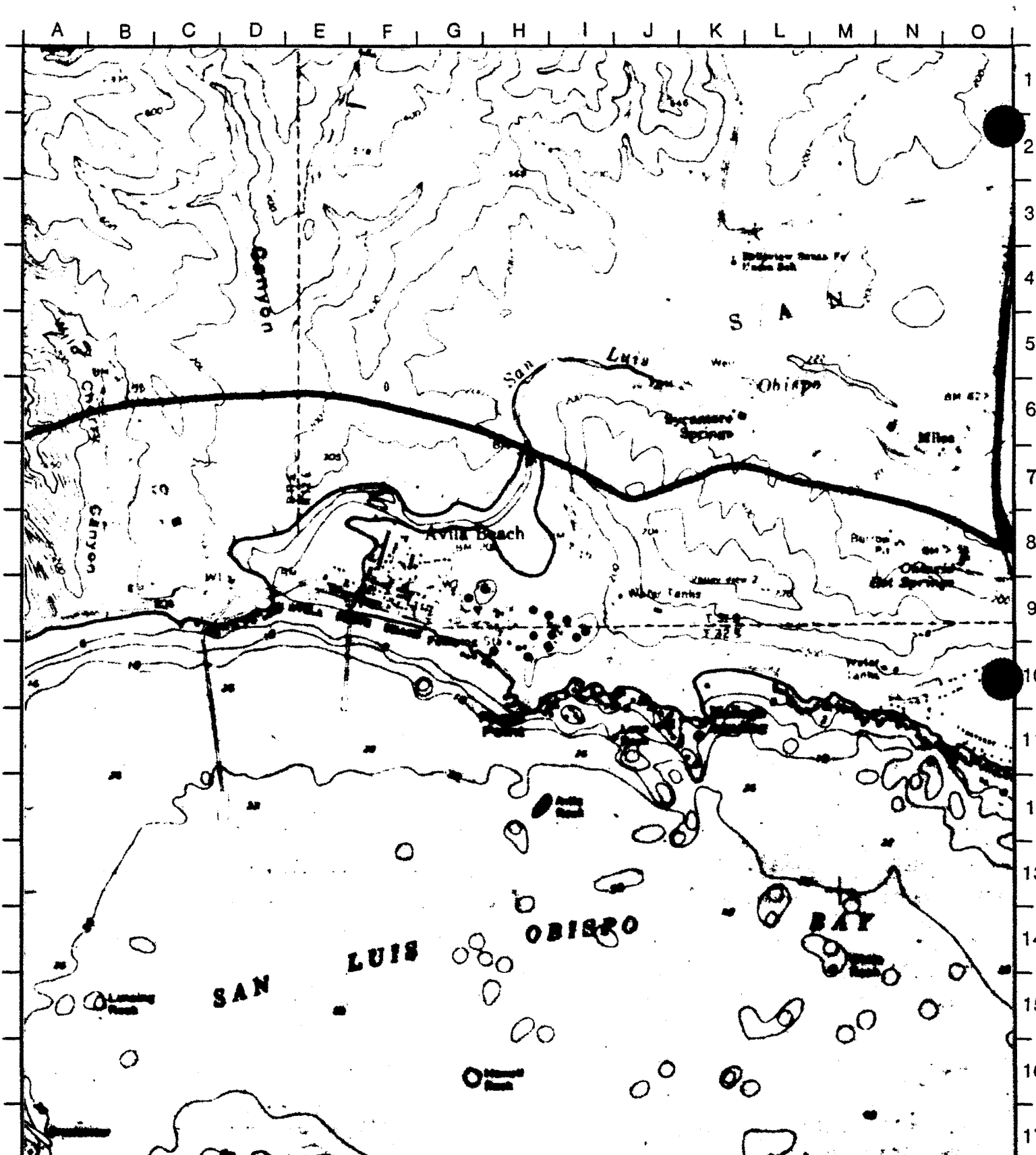


Map Revision 2-98
Avila Beach

Property map from previous
Boundary Determination



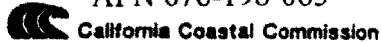
EXHIBIT 3



Map Revision 2-98

APN 076-213-11

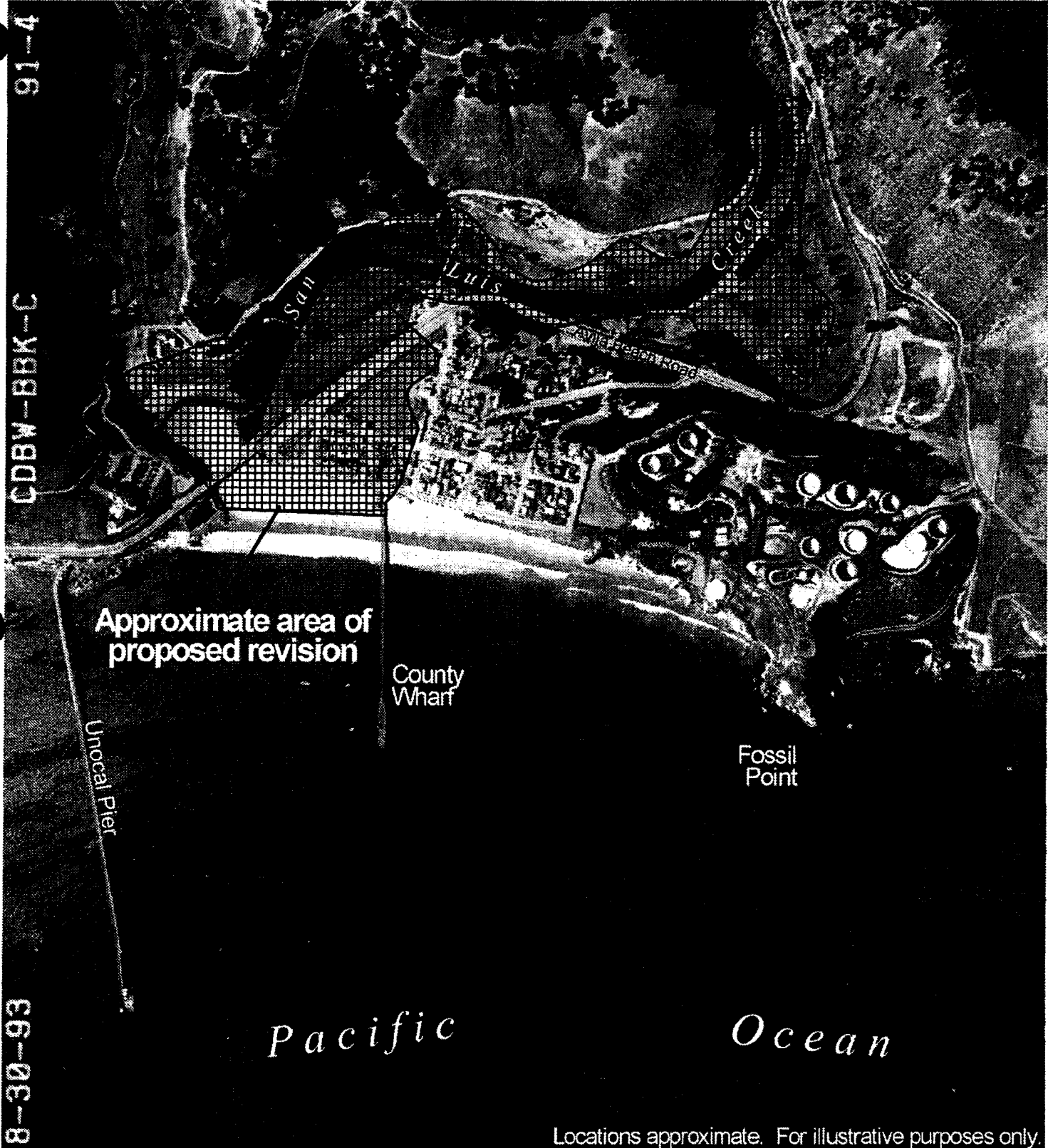
APN 076-196-005



Portion of potential public trust lands
map from State Lands Commission
Map # 107 (Pismo Beach Quadrangle)

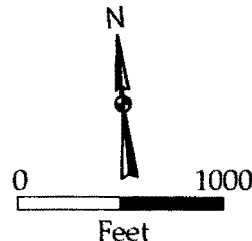


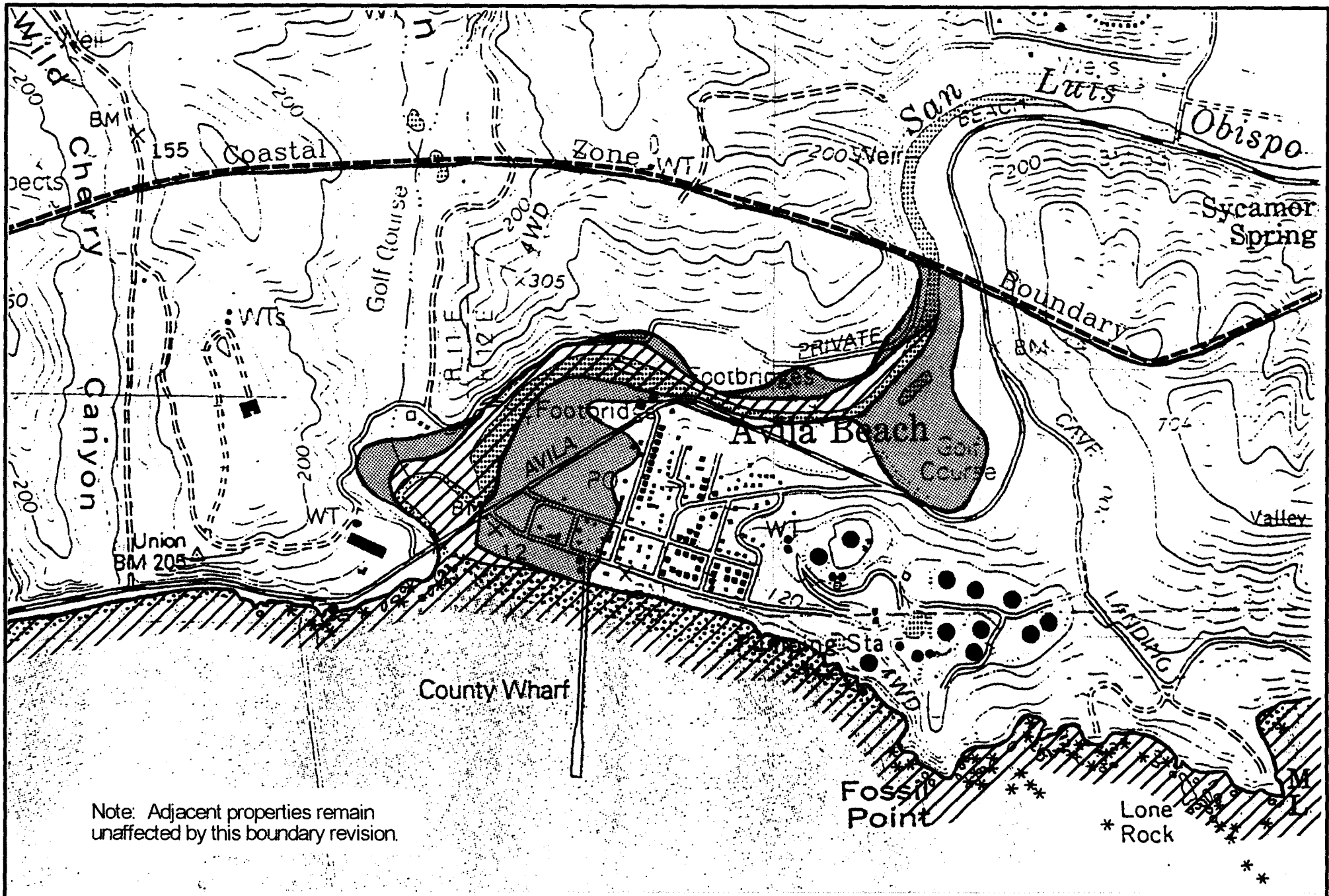
Proposed Post-LCP Certification Map Revision Avila Beach



Locations approximate. For illustrative purposes only.

Photo Source: California Department of Boating and Waterways
August 30, 1993, Flightline 91, Frame 4, Original Scale 1:12,000



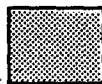


Note: Adjacent properties remain unaffected by this boundary revision.

Map Revision 2-98
 San Luis Obispo Creek
 Avila Beach



Area remaining in Commission's permit jurisdiction



Area to be changed from Commission's permit jurisdiction to Commission's appeal jurisdiction

Base Map Source: Pismo Beach U.S.G.S. 75 quadrangle (#107)



EXHIBIT 6