CALIFORNIA COASTAL COMMISSION
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Request Filed: May 8, 1998
Staff: Jack Liebster-NC
Staff Report: June 19, 1998
Hearing Date: July 8, 1998
Commission Action

STAFF REPORT: REQUEST FOR RESONSIDERATION

APPLICATION NUMBER: **A-1-SMC-97-013-R**

APPLICANT: **MARYANNE and JOE LUCHINI**

AGENTS: AARONSON, DICKERSON, COHN & LANZONE; BOB CAMPBELL; J. R. RODINE; PAUL GUMBINGER

PROJECT LOCATION: Along the west side of Highway 1, 800 feet south of the Half Moon Bay City limits, San Mateo County, APN 066-081-080

PROJECT DESCRIPTION: Construct a new 3,490-square-foot, two-story, single family residence and 2,000+ foot-long driveway.

COMMISSION ACTION AND DATE: Approved with conditions (on appeal from decision of San Mateo County to approve permit with conditions) on April 8, 1998. On May 12, 1998, the Commission approved Revised Findings to support is action.

STAFF NOTES:

1. Postponement

On June 11,1998, the Commission granted the request of the applicants to postpone action on their request for Reconsideration to allow them additional time to submit information supporting that request. At the time of this writing, no additional information has been filed. If such information is received in time, staff will provide copies for the Commission and may prepare an addendum to respond to any information supporting the original reconsideration request that is not adequately addressed by the existing staff report. The staff recommendation and the proposed findings on the reconsideration request that follow are unchanged from those contained in the staff report dated May 27, 1998, sent before the June 11, 1998 Commission meeting.

2. Procedure

Consistent with Section 30627 of the Coastal Act, the Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted. Cal. Code of Regs., Title 14, Section 13109.2

The regulations provide that the grounds for reconsideration of a permit action shall be as stated in Coastal Act Section 30627:

> "The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision."

Section 30627(b)(4) of the Coastal Act also states that the Commission "shall have the discretion to grant or deny requests for reconsideration." Section 30627 (c) provides that a decision to deny a reconsideration request is not subject to appeal.

On May 8, 1998, Joe and Maryanne Luchini submitted a request for reconsideration of the Commission's decision to approve their proposed residence with conditions. This request was made within the 30 day period following the final decision on the application as required by Section 30627 of the Coastal Act and Section 13109 of the Commission's regulations. As summarized below, the Applicants contend the Commission made an error of fact or law that has the potential to alter the Commission's decision. If a majority of the Commission votes to grant reconsideration, the permit application will be scheduled for the July 1998 meeting at which the Commission will consider it as a new application (Cal. Code of Regs., Title 14, Section 13109.5(d)). If the Commission does not grant reconsideration, the April 8, 1998 decision to approve the project with conditions, and the Revised Findings reflecting that decision, will stand.

3. Amendment

The Applicants' representatives have informally expressed the desire that the Commission consider allowing the house to be located a few hundred feet west of the conditioned site, to be constructed in the previously-proposed Mediterranean design style, and to be built at the size originally proposed: 3042 square feet plus a 448 square foot garage. However, each of these issues was thoroughly addressed by the Commission in its original action.

Since Reconsideration is, as discussed in the staff recommendation below, not warranted in this case, the means for requesting such a change in the permitted size of the house would be to propose an amendment to the permit. Commission Regulation 13166(a) provides in part:

> (a) Applications for amendments to previously approved developments shall be filed with the Commission.
>
> (1) An application for an amendment shall be rejected if, in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of a partially approved or conditioned permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted ...(emphasis added)

If such a proposed amendment were submitted without "newly discovered material information," sect. 13166(a)(1) would require the Executive Director to reject the application. However, if a proposed amendment was submitted consistent with Section 13166, staff could bring forward a recommendation to the Commission on the proposed amendment at a future date.

SUMMARY OF APPLICANT'S CONTENTIONS:

The request for reconsideration is based on an assertion consistent with the grounds stated in Section 30627(b)(3) of the Coastal Act that the Commission's decision is based upon an error of fact or law which has the potential of altering the Commission's initial decision in that: (1) the evidence does not establish that the property is prime agricultural land; (2) the Commission created an error of law in the balancing of the competing policies relative to visual resources; and (3) the Commission has violated Section 30010 of the Coastal Act by exercising its powers to take property for public use without compensation.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission deny the request for reconsideration.

I. STAFF RECOMMENDATION

Motion I

"I move that the Commission reconsider CDP No. A-1-SMC-97-013.

Staff Recommendation

Staff recommends a NO vote which will result in the adoption of the following resolution and findings to deny reconsideration and uphold the Commission's initial action on the project. A majority of the Commissioners present is required to pass the motion.

Resolution for Denial of Request for Reconsideration of A-1-SMC-97-013

"The Commission hereby denies the request for reconsideration of the proposed project on the grounds that no new relevant information has been presented which, in the exercise of reasonable diligence, could not have been presented at the hearing on A-1-SMC-97-013-R and that no error of fact or law has occurred which has the potential for altering the Commission's initial decision."

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and History:

The Applicants request reconsideration of the Commission's approval with conditions for a house on the subject parcel at its April 8, 1998 meeting. **The Revised Findings for that action, adopted by the Commission May 12, 1998, are hereby incorporated into these current findings.**

The subject parcel is a narrow 4.88-acre strip of land on the blufftop extending west from Highway 1 to the ocean. This property is approximately 800 feet south of the Half Moon Bay city limits, on the rural side of the urban-rural boundary defined by the LCP. The parcel is immediately adjacent to the Cowell State Beach accessway and trail which runs along it to the south. The lands south of the accessway are in active, productive agricultural operations.

Applications for this project were submitted to the County of San Mateo on or about June 6, 1996. The applications included a Planned Agricultural Permit (PAD), a Coastal Development Permit (CDP), and an Architectural Review (ARC) approval.

The project as proposed was for construction of a two-story, 3,490-square-foot single-family residence, including a 448-square-foot, two car garage. The proposed residence was a Mediterranean-style structure, 28 feet high, 25 feet wide, and 77 feet long, located on the eastern portion of the parcel near the ocean. A driveway would have run more than 2,000 feet from Highway 1 to the residence.

The San Mateo County Board of Supervisors held a public hearing to review a local appeal of the Planning Commission approval on February 11, 1997 and voted 3 to 0 to approve the project with conditions.

The County's approval of the project was appealed to the Coastal Commission by the Committee for Green Foothills (CGF), and by Commissioners Areias and Calcagno on March 3, 1997. After a public hearing on April 10, 1997, the Commission determined that the appeal raised a substantial issue regarding project's conformance with policies of the San Mateo County certified Local

Coastal Program (LCP) because the project as approved by the County (1) failed to evaluate the project for its consistency with the LCP policies that limit conversion of prime agricultural lands; (2) would allow a water connection for a non-agricultural residential use in the rural area of the County where water connections are limited to agricultural uses; (3) did not cluster non-agricultural development in locations most protective of the agriculture on the site; and (4) was not clustered near existing development but would instead block views from the Scenic Highway and the adjacent Cowell State Beach access trail.

On April 8, 1998, the Commission held a de novo hearing on the project, and approved the project with conditions. The conditions include relocating the residence to the eastern part of the parcel, adjacent to the existing neighboring development; protecting the agricultural soils on the balance of the property through an agricultural deed restriction; redesigning the residence to a style more in keeping with the traditional rural architecture; and reducing the size of the house to 2,700 square feet, plus a 448 sq. ft. garage.

B. Grounds for Reconsideration

Pursuant to Section 30627(b)(4) of the Coastal Act, the Commission has the discretion to grant or deny requests for reconsideration. Section 30627(a)(1) states that the Commission shall decide whether to grant reconsideration of any decision to deny an application for a coastal development permit or any term or condition of a coastal development permit which has been granted. The applicant requests that the Commission's conditional approval of the permit be reconsidered. (Please see Exhibit 1)

Section 30627 (b)(3) states in relevant part that a basis for a request for reconsideration shall be that an error of fact or law has occurred which has the potential of altering the initial decision or that new information has come to light that could not have been produced at the hearing. If the Commission votes to grant reconsideration, it will consider the permit application as a new application at a subsequent hearing.

C. Issues Raised By The Applicant

The Applicants' request for reconsideration asserts that the Commission's decision is based upon an error of fact or law in that: "(1) the evidence does not establish that the property is prime agricultural land; (2) the Commission created an error of law in the balancing of the competing policies relative to visual resources; and (3) the Commission has violated Section 30010 of the Coastal Act by exercising its powers to take property for public use without compensation."

1. Prime Agricultural Land

The Applicants assert that the Commission committed an error of fact or law because, as argued in their initial submissions made to the Commission, it is

the Applicants' contention that this property is not made up of prime agricultural land. "Exhibit A" attached to Exhibit 1 consists of sections of materials submitted by the Applicants prior to staff preparation of its recommendation on the De Novo portion of the Commission's action on the appeal. These materials discuss in detail the Applicants's position that the land is not capable of agricultural production because of its configuration, soil, and lack of water.

However, this contention, and the applicant's evidence in support of the contention, have already been considered by the Commission. As the Commission discussed during its hearing on the project, the relevant questions under the certified LCP relate to the definitions of agricultural land and the policies applicable to such land currently contained in the LCP. These issues are discussed in detail on pages 9 through 17 of the Revised Findings adopted for the project. In part the Commission found (page 13):

> ...The Applicants imply that the Commission need not impose conditions designed to protect agricultural resources in conformance with the certified LCP agricultural policies as, in their view, agricultural use of the property is not feasible. This argument misses the point because the project must be evaluated under the currently certified LCP policies. As discussed in detail below, these policies designate this property for agricultural use. Whether or not the property should continue to be designated and zoned under the certified LCP for agricultural use and whether or not the LCP agricultural policies should be changed are issues that may be appropriate to consider in the context of a future LCP amendment. For purposes of reviewing the current permit application, however, the question is whether the proposed project is consistent with the existing certified LCP policies and the public access policies of the Coastal Act.
>
> The parcel is Prime Agricultural Land, as that term is defined in Policy 5.1 of the certified LCP. According to the U.S. Department of Agriculture Soil Survey, San Mateo Area the parcel consists of the two soil types WmB2 and WmC2, which the Survey lists as Class III soils. These same soil types make up large parts of the Giusti Farms agricultural lands immediately to the south, usually farmed with artichokes and brussels sprouts (Jack Olsen, Farm Bureau Executive Administrator, oral communication, Mar. 12, 1997). This evidence establishes that the land of the Luchini parcel meets the definition of prime agricultural lands under Policy 5.1, as "Class III lands capable of growing artichokes or Brussels sprouts."
>
> ...It must be understood that ... an agricultural evaluation is <u>not</u> necessary for lands to be considered prime agricultural land. Crop values, cultivation costs and other cost data used in ...[such] analyses all change over time. Recognizing the changing nature of these factors, the LCP, as does the Coastal Act itself, focuses on the long-term value of the resource itself - the agricultural <u>land</u> and <u>soils</u>, and their intrinsic capability to raise food and fiber. As noted above, the subject parcel's soils meet the test for prime agricultural land.

It is clear that the Commission understood at the time of their decision on the application that whether the parcel was or was not prime agricultural land was a significant issue. Based on evidence in the record the Commission concluded that since the land is capable of growing artichokes or brussels sprouts, even though the site may not be currently used for that purpose for various reasons, the land on the subject property meets the definition of prime agricultural land contained in Policy 5.1 of the LUP. Therefore, the Commission finds that an error of fact or law with respect to the Commission's interpretation of whether the property is prime agricultural land has not occurred.

The Commission further finds that even if an error of fact or law with respect to the Commission's interpretation of whether the property is prime agricultural land had occurred, the error does not have the potential of altering the initial decision. The provisions of Conditions 1 and 2 to cluster the development at the eastern portion of the property were necessary not only to protect prime agricultural lands consistent with LCP Policies 5.5 and 5.8, but also to be consistent with Policy 5.15, which requires such clustering to protect any "existing or potential agricultural uses" irrespective of the question of prime agricultural land (Revised Findings, page 17). The Commission found that clustering the proposed home next to the existing residential buildings on the adjacent parcels to the north would be most protective of the potential agricultural use of the parcel. In that location the house would occupy area that largely could not be used for growing crops because of the need to maintain a buffer between cultivated lands and existing residences. As the Commission found, "clustering the residence adjacent to the neighboring house allows it to largely fit within the pesticide buffer already delineated around the existing house." Therefore, the Commission would have imposed the conditions limiting the siting of the house to a certain area and protecting the balance of the property for potential agricultural use even if the Commission had determined that the subject property did not consists of prime agricultural lands.

Finally, as discussed below, the Commission's decision to require relocating the house was also substantially grounded in reducing the impacts on visual resources, not just agricultural land.

Therefore, there is no error of fact or law which has the potential of altering the Commission's initial decision. Therefore, the reconsideration request must be denied.

2. Visual Resources

The Applicants contend that:

> "the Commission's decision to cluster the house at the highway constitutes a violation of Coastal Act Section 30007.5 regarding resolution of policy conflicts. The Coastal Act provides that conflicts between competing policies be resolved in a manner which, on balance, is

> most protection of coastal resources. The Commission applied the policy regarding clustering although it clearly violated the requirement in Section 30251 of the Act regarding protection of views from scenic highways and the requirements in the San Mateo County General Plan and the policy of the State of California to protect views from designated scenic highways."

Their submittal states"

> "In making its decision in April, the Commission determined that the Luchini house should be located adjacent to existing development directly to the north and adjacent to the coast highway. Ms. Luchini had proposed that the development instead be located 2,260 feet from the highway. It is the Appellant's (sic)... position that locating the house at the proposed location would best serve the competing policies of the Coastal Act. It would be located farther from the highway and, therefore, not interfere with the views from the passing motorists and it would be located further from the trail and screened by landscaping so as to allow those persons walking on the trail some physical separation from the structure."

As extensively discussed in the adopted Findings incorporated herein (especially pages 17 through 26), the Commission appropriately applied the policies of the LCP Visual Resources Component. The house location required by the Commission is in fact the location most protective of visual resources overall. As noted in the Findings, the house as proposed by the Applicants would have disrupted the open visual character of the coastal terrace, block a portion of the shoreline view from the Scenic Highway, and visually dominate the adjacent public recreational trail and accessway. In contrast, as noted on page 24 of the adopted Findings:

> As conditioned, the project is consistent with Policies 8.15 and 8.31 and the General Plan policies cited in 8.31 because the house would be set back up to 400 feet from the highway so that, when seen from the scenic highway to the south, it would be silhouetted against existing development rather than the important views on the property. From the north the house would be completely screened from view by the terrain and existing neighboring structures. Looking west from the Scenic Highway immediately adjacent to the property, no coastline or other important views are visible because Highway 1 is recessed into the topography at this location.

The Applicant contends that the Commission created an error of law by not balancing the LCP policies that the Commission relied upon against other competing policies that the applicant believes would have called for siting the house close to the bluff. The other policies the applicant refers to include Section 30251 of the Coastal Act, unspecified "requirements in the San Mateo County General Plan," and an unspecified "policy of the State of California."

The Applicant also cites Coastal Act Section 30007.5 which requires that conflicts between competing policies of the Act be resolved in a manner on balance most protective of coastal resources. The argument advanced by the Applicant fails to recognize that it is the LCP, not the Coastal Act which is the standard of review in this case. As of the time the project was acted upon, the LCP had no provisions comparable to Section 30007.5. Furthermore, Section 30251 of the Coastal Act, the San Mateo County General Plan in its entirety, and an unspecified "policy of the State of California" are also not part of the certified LCP. Therefore, the Commission did not create an error of law by not balancing its interpretation of the certified LCP policies against these other policies as neither the balancing procedure nor the "competing policies" referred to by the applicant are part of the standard of review for the project.

Moreover, even if Sections 30007.5 and 30251 of the Coastal Act and the General Plan were to have been part of the certified LCP and thus part of the standard of review for the project, the Commission finds that there is no error of fact or law which has the potential of altering the initial decision. Section 30251 of the Coastal Act states in applicable part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas; that the development minimize the alteration of natural land forms; that the development be visually compatible with the character of the surrounding area, and that new development in highly scenic areas be subordinate to the character of its setting. The Commission found that as conditioned to require the house to be clustered next to the adjacent residence, the house "will be subordinate to the distinct rural character of the site," The Commission also found that the project as conditioned would be consistent with the provision of Policy 8.15 that prevents development from substantially blocking views to and along the shoreline because the house would be silhouetted against existing development, completely screened from view by the terrain and neighboring structures (See pages 23 and 24 of the Revised Findings). These findings are similar to those that would be required to find consistency with Section 30251 of the Coastal Act. Thus, the project as approved by the Commission is consistent with both the LCP visual policicies cited by the Commission in its revised findings and Section 30251 of the Coastal Act, and applying 30251 would not have created a different result. Finally, the alleged policy conflicts with the County General Plan simply do not exist, as discussed on page 24, paragraph 2 of the adopted Findings. Also, even if there were a conflict with the General Plan or the unspecified "policy of the State of California," LCP implementation Section 6328.13 clearly states that in such a case "the plans, policies, requirements or standards of the Local Coastal Program shall take precedence."

Therefore, there is no error of fact or law which has the potential of altering the Commission's decision. Therefore, the reconsideration request must be denied.

3. "Damage to Property Without Compensation"

The Applicants contend the Commission committed an error of fact or law in that it "exercised its power to grant a permit in a manner which takes or damages private property for public use without the payment of compensation therefore" (sic).

It is rather difficult to respond to this assertion, because the Applicant gives no indication of what taking or damage allegedly occurred. In the attachments submitted (pages numbered 14-15), the Applicants' representatives claim that "denying the residential use would result in a taking of the Property." But, in fact, the Commission approved the residential use. Moreover, the Commission's approval contained no provision for public use of the Applicant's property. In approving the residence with conditions that would make it consistent with the requirements of the applicable land use plans and zoning (in this case the LCP), the Commission simply excercised its authority under the Coastal Act in a manner consistent with Section 30010.

The text cited by the applicant appears in Section 30010 of the Coastal Act, which states:

> 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 therefor. 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.

The courts have observed that there are no brightline rules that either courts or government entities can use to determine when a regulatory action constitutes a taking. Instead, whether the application of a regulation will cause a taking requires an ad hoc factual inquiry into several factors. These factors include the economic impact of the regulation on the property, particularly "the extent to which the regulation has interfered with distinct investment-backed expectations." (Penn Central Transp. Co. v. New York City (1977) 438 U.S. 104, 124). These investment-backed expectations must be "reasonable." (Keystone Bituminous Coal Assn. v. Debenedictis (1987) 480 U.S. 470, 495.) Further, a land use regulation or decision may cause a taking if it denies an owner all economically viable use of his or her land unless there are well-established principles in state property or nuisance law that justify a restriction on all use. (Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003.) Another factor that must be considered is whether the land use regulations at issue substantially advance a legitimate state interest. (Nollan v. California Coastal Commission (1987) 483 U.S. 825.). Finally, the courts have ruled that any exactions imposed by an agency's land use decision must be reasonably related in extent and nature to the impacts of the development.

With regard to "reasonable investment-backed" expectations, in the ordinary course of the planning process, the applicant generally has the burden of coming forward and demonstrating that a use provided for by government is not economically viable. The Applicants have made no such demonstration. In fact, in previously submitted materials they indicated that the property was inherited, and was thus not an "investment" per se. At that time, and continuing to this date, the property was zoned for Agriculture (PAD). In this zone, residences are only a conditionally-allowed use. Thus, the "reasonable expectation" of use is agriculture, or a residence with conditions, which is precisely the use authorized by the Commission.

While section 30010 instructs the Commission to construe the policies of the Coastal Act 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 approving a permit application. In relation to the other tests applied by the courts, the conditions required on this project as approved substantially advance legitimate state interests for coastal resource protection as expressed in the Coastal Act and the Local Coastal Program and are reasonably related in extent and nature to the impacts of the development. The potential impacts of the project on these resources are extensivley discussed in the Revised Findings incorporated herein. In summary, the project as proposed was inconsistent with the LCP policies that (1) require development to protect visual resources by appropriate siting and design, (2) limit water connections for non-agricultural residential uses in the rural area; (3) limit conversion of prime agricultural lands; and (4) require non-agricultural development to be clustered in locations most protective of agriculture.

The special conditions attached to the permit generally relocated the proposed development and required design changes that are necessary to protect state coastal resources consistent with the County's certified LCP. As conditioned, the residence would be relocated to the eastern part of the parcel, adjacent to the existing neighboring development. The agricultural soils on the balance of the property would be protected for future use by an agricultural deed restriction. These conditions will carry out the state interest in reducing impacts on agricultural soils as codified in both the Coastal Act and the LCP and are reasonably related in extent and nature to the impacts of the project as proposed since they will keep the project from precluding potential agricultural use of the property while still allowing for a house to be built. Similarly, the conditions for redesign of the residence to a smaller scale and a style more in keeping with the traditional rural architecture, and clustering the residence with adjacent development, are directly related to and necessary for advancing the well-established state interest in protecting the scenic value of its coastline. Requiring these special conditions, is not an error of law, but, quite the contrary, required by law to mitigate the adverse impacts of the project, and allow the Commission to approve a residence at all. There has been in this case, therefore, no error of fact or law with the potential of altering the Commission's initial decision. Therefore, the reconsideration request must be denied.

D. Summary

As discussed above, the issues presented in the Applicant's request for reconsideration do not comprise errors of fact or law. Even if the alleged errors had been made, the Commission would have acted to approve the project with the same conditions. The Applicant did not assert that new evidence had arisen. Therefore, neither of the requirements for reconsideration have been met, and the reconsideration request must be denied.

Exhibit 1: Applicants' Request for Reconsideration

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May 7, 1998

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: **Appeal No. A-1-SMC-97-013**

Dear Mr. Douglas:

This submittal shall constitute a Request for Reconsideration pursuant to the California Coastal Act, Section 30627. This Request for Reconsideration is filed subsequent to the Commission's action on April 8, 1998, wherein they issued a Notice of Intent To Issue Permit to Mary Anne Luchini for development of her property located in San Mateo County.

The Commission has scheduled a further hearing on this matter for May 12, 1998 so as to adopt revised findings. Appellant reserves the right to submit additional information based upon the revised findings which are recommended to the Commission for its May 12, 1998 hearing. This application for reconsideration is submitted at this time prior to the May 12, 1998 hearing so as to comply with the time limits found in Section 30627 of the Coastal Act and to preserve the right to request said consideration.

Pursuant to California Coastal Act, Section 30627(a)(3), "The basis of a Request for Consideration shall be either that there is relevant new evidence which in the exercise of reasonable diligence could not have been presented at the hearing on the matter, or that an error of fact or law has occurred which has the potential of altering the initial decision." In this instance, it is Appellant's contention that the Commission's decision is based upon an error of fact or law in that: (1) the evidence does not establish that the property is prime agricultural land; (2) the Commission created an error of law in the balancing of the competing policies relative to visual resources; and (3) the Commission has violated Section 30010 of the Coastal Act by exercising its powers to take property for public use without compensation.

EXHIBIT NO. 1
APPLICATION NO. A-1-SMC-97-013-R
Request for Reconsideration

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Decision Regarding the Prime Agricultural Land

In reaching it's decision, the Costal Commission indicated that the project would "impermissibly convert agricultural land and fail to cluster non-agricultural development in a location most protective of agriculture. As argued in the initial submissions made to the Commission, it is Appellant's contention that this property is not made up of prime agricultural land. Attached hereto as Exhibit "A" are those sections of the earlier submitted applications which discuss in detail the Appellant's position relative to the characterization of this land. Contrary to the Commission's findings, the land is not capable of agricultural production because of its configuration, soil, and lack of water. The finding of the Commission on the agricultural character of the land is not supported by the evidence submitted to the Commission.

Visual Resources

In making its decision in April, the Commission determined that the Luchini house should be located adjacent to existing development directly to the north and adjacent to the coast highway. Ms. Luchini had proposed that the development instead be located 2,260 feet from the highway. It is the Appellant's position that locating the house at the proposed location would best serve the competing policies of the Coastal Act. It would be located farther from the highway and, therefore, not interfere with the views from the passing motorists and it would be located further from the trail and screened by landscaping so as to allow those persons walking on the trail some physical separation from the structure.

The Commission's decision to cluster the house at the highway constitutes a violation of Coastal Act Section 30007.5 regarding resolution of policy conflicts. The Coastal Act provides that conflicts between competing policies be resolved in a manner which, on balance, is most protective of coastal resources. The Commission applied the policy regarding clustering although it clearly violated the requirement in Section 30251 of the Act regarding protection of views from scenic highways and the requirements in the San Mateo County General Plan and the policy of the State of California to protect views from designated scenic highways.

Damage Property Without Compensation

The decision of the Commission violates the requirements of Section 30010 of the Coastal Act in that the Commission has exercised its power to grant a permit in a manner which takes or damages private property for public use without the payment of compensation therefore.

Based upon the above referenced errors, the Luchini's request reconsideration of the

Commission's April decision. As indicated above, the Luchinis will submit additional information in support of this request once the Commission has acted on the proposed findings at its May 12, 1998 meeting.

Very truly yours,

JOE LUCHINI

MARY ANNE LUCHINI

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County was correct in its decision to allow residential development on the Property as provided for in the Local Coastal Program.

ISSUE 1 - INCONSISTENCIES WITH AGRICULTURAL POLICIES

As indicated within the Commission Staff Report, the Appellants contend that the approval of the project would "impermissibly convert agricultural land and fail to cluster non-agricultural development in a location most protective of agriculture inconsistent with LCP policies 5.8, 5.10, 5.15 and 1.8."

A. The County's Approvals Would Not Impermissibly Covert Agricultural Land Because The Property Cannot Be Put Into Viable Agricultural Production Due to a Lack of Water Needed for Agricultural Usage, the Size of the Parcel and Poor On Site Soils

In granting approval for the project, the County determined that the parcel was land suitable for agriculture. The Coastal Commission Staff Report contends that the County was mistaken in this determination and the parcel is instead prime agricultural land.

Division 5 of the County's LCP is the agricultural component of the program. Section 5.1 defines prime agricultural land as follows:

1. All land which qualifies for rating as Class I or Class II in the U.S. Department of Agriculture Soil Conservation Service Land Use Capability Classification as well as all Class III land capable of growing artichokes or brussel sprouts.

2. All land which qualifies for rating 80-100 Storie Index Rating.

3. Land which supports livestock for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the U.S. Department of Agriculture.

4. Land planted with fruit or nut bearing trees, vines, bushes, or crops which have a non-bearing period of less than 5 years and which normally return during the commercial bearing period, on an annual basis, from the production of unprocessed agricultural plant production not less than $200 per acre.

5. Land which has returned from the production of an unprocessed agricultural plant product an annual value that is not less than $200 per acre within 3 of the 5 previous years.

The $200 per acre amount in subsection 4 and 5 shall be adjusted regularly for inflation,

EXHIBIT A

using 1965 as the base year, according to a recognized Consumer Price Index.

Section 5.3 of the LCP defines lands suitable for agriculture as follows: "lands on which existing or potential agricultural use is feasible, including dry farming, animal grazing, and timber harvesting."

It is important to note that single family residences are allowed as conditional uses both on prime agricultural land pursuant to Section 5.5(b)(1) and on land designated as suitable for agriculture pursuant to 5.6(b)(1).

In order to convert prime agricultural land to a conditionally permitted residential use four factors must be analyzed pursuant to LCP Policy 5.8. They are as follows:

1. That no alternative site exists for the use.

2. Clearly defined buffer areas are provided between agricultural and non-agricultural uses.

3. The productivity of any adjacent agricultural land will not be diminished.

4. Public service and facility expansions and permitted uses will not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

Similar findings must be made to convert land suitable for agriculture to residential use pursuant to LCP Policy 5.10. The five factors that must be examined in converting land suitable for agriculture are as follows:

1. All agriculturally unsuitable land on the parcel has been developed or determined to be undevelopable.

2. Continued or renewed agricultural use of the soils is not feasible as defined by Section 30108 of the Coastal Act.

3. Clearly defined buffer areas are developed between agricultural and non-agricultural uses.

4. The productivity of any adjacent agricultural lands is not diminished.

5. Public service and facility expansions and permitted uses do not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

In acting on the Coastal Development Permit, the County found that the project conformed with the policies' requirements and standards of the Local Coastal Program. At finding #5 the

County specifically indicated "that the project conforms to the specific findings required by policies of the San Mateo County Local Coastal Program, particularly those findings relating to the conversion of land suitable for agriculture" (i.e., LCP Policy 5.10 referenced above). At finding #8 the County indicated:

> "[T]hat denying the residential use would result in the taking of private property as it is:
> (a) unlikely that a viable commercial agriculture operation could be maintained on the Property, even with the water connection, due to the size and irregular shape of the parcel;
>
> (b) no other economic viable use other than agriculture could be made of the Property without a water connection;
>
> (c) all the types of uses identified in the Planned Agricultural District (PAD) Zoning District, for the types of soil on this project site (lands suitable for agriculture), would require water to be a viable use; and
>
> (d) the possibility of purchase of the subject parcel by the adjoining parcels to the north and south has been explored and no interest has been shown.

The County went on to state at finding #9:

> "[T]hat the agricultural viability study for the project identifies artichokes and brussel sprouts as the only viable crops based on the soil conditions and climate of this location, that these types of crops are heavily water dependent, and that the probable net operating annual income would be approximately $600."

In light of the evidence which was presented to the County Board of Supervisors, it is the Respondent's contention that the Board of Supervisors' findings of conformance with LCP Policy 5.10 was appropriate.

The County was correct in its conclusion that this Property falls under lands defined as "suitable for agriculture" pursuant to Section 5.3 of the LCP. Appellants contend that the Property is prime agricultural land because it is Class III land capable of growing artichokes and brussel sprouts. The information provided to the County and once again, to the Coastal Commission, will demonstrate that the land is not capable of growing artichokes and brussel sprouts due to the parcel's irregular shape, poor soils and lack of water necessary for an agricultural use.

Section 30241.5 of the Coastal Act provides that if the viability of existing agricultural use is an issue in a local coastal program the determination of viability shall include, but not be limited to, consideration of an economic feasibility evaluation containing the following elements:

1. An analysis of the gross revenue from the agricultural products grown in the area for 5 years immediately preceding the date of the filing of a proposed local program.

2. An analysis of the operational expenses excluding the cost of land associated with the production of agricultural products grown in the area for 5 years immediately preceding the date of filing of a proposed local coastal program.

The Staff Report of February 11, 1997 prepared for the San Mateo County Board of Supervisors at page 3, paragraph 2, references an agricultural viability study provided by the State Agricultural Bureau and University of California. As indicated in the Staff Report, artichokes and brussel sprouts were identified as the only viable crop for the land because of the soil conditions and climate. Both of these crops are heavily water dependent. The Report concludes that the probable net operating income per acre on this parcel is $123.83 resulting in an annual profit of $600. Attached as Exhibit "D" is a report prepared for the Board of Supervisors by the Applicant. This report is based upon data provided by the San Mateo County Farm Bureau. This data confirms the State Agricultural Bureau/University of California data to the effect that the parcel is not agriculturally viable.

The County Staff Report also indicates:

"b. All attempts to locate a source of on-site groundwater have failed. There is an existing 2-inch diameter water main line on-site that serves three customers (Vint, Navarro and Giusti). The water line marginally serves Giusti Farms (who has additional water sources) and thus lacks the capacity to deliver the quantity flow/time required to grow artichokes and Brussels sprouts.

d. The Giustis have no interest in leasing the subject Property due to the lack of water, its small acreage and the confining, narrow irregularity of the parcel."

Further evidence that the Property is not prime agricultural land is found in the report of Ken Oster, Area Soils Scientist for the United States Department of Agriculture. As indicated by Mr. Oster, the Luchini Property is not found on the prime farm land list or the farm lands of statewide importance list for San Mateo County because the map units found on the Property do not meet the criteria for these lists as described in the National Conservation Planning Manual. He further indicates that neither map unit would be on these lists even if they had a developed irrigation system. See Exhibit "A".

In a report prepared by Doyle Goins for Jack Olsen, Executive Administrator of the San Mateo County Farm Bureau, Mr. Goins concludes:

"because of the low levels of Calcium and Potassium, it would be very hard to farm these blocks. The Magnesium and Sodium being at very high levels, would replace the Calcium and Potassium making the soil very tight and not draining properly. The

PH levels are very low for movement of most elements including Calcium, Magnesium, Potassium and Phosphorous".

See Exhibit "C". Finally, as indicated by Mr. Oster in a June 3, 1997 report " neither soil would be Unique Farmland unless it had a developed irrigation system capable of irrigating artichokes, brussel sprouts or other local crops of high economic importance." See Exhibit "A". As was indicated above, there is no irrigation system because there is no water available on site and the adjacent property owners are unwilling to sell their water allocation so as to allow for adequate levels of water to irrigate the above referenced crops.

Other agricultural uses of the Property have been explored and rejected as well. The Property is not suited for greenhouses as shown by the letter from Silva Wholesale Florists attached hereto as Exhibit "E" and incorporated herein by reference. Also attached is a letter from Cabrillo Farms attesting that the small size of the parcel and the lack of water renders the Property infeasible for growing crops. See Exhibit "F" attached hereto and incorporated herein by reference. Also, attached is a letter from Ernie Alves, a retired dairy farmer, declaring that the parcel is not suitable for dairy farming. See Exhibit "G" attached hereto and incorporated herein by reference. Finally attached is a letter from the Peppered Paints indicating that the Property is also not suitable for a commercial or private stable. See Exhibit "H" attached hereto and incorporated herein by reference.

In order to be productive agricultural land, adequate water is required. As shown in the letters analyzing the Property for agricultural purposes by Ken Oster, Bert Silva and Bruno Santini, each indicate that the lack of water precludes this from being a viable agricultural site. As indicated by the Respondent in her application to the County of San Mateo, the land does not have water and attempts to find water by drilling have failed. The owner has attempted to purchase water from the adjacent property owner and that request was refused. Attached hereto and incorporated herein as Exhibit "I" is Mr. Gusti's letter of November, 1995, in which he expresses an unwillingness to allow Ms. Luchini to purchase his water allocation. As indicated in the water well driller's report and letter from Geotechnical Consultants, Inc., "the possibility of obtaining a potable and sustainable domestic supply on the parcel, in our opinion, is remote and not a practical or economic solution at this time. Therefore, we recommend that you pursue other water supply options that may be available to you." See Exhibit "J" attached hereto and incorporated herein by reference. In light of this information, it is the Respondent's contention that the County was correct in its determination that this Property did not constitute prime agricultural land.

LCP Policy 5.6(b) provides that a single family residence is a conditionally permitted use within lands suitable for agriculture. In order to place a conditionally permitted use upon agricultural land, five determinations must be made as provided in LCP Policy 5.10. It provides for the establishment of a conditionally permitted use if it is demonstrated that:

1. All agriculturally unsuitable land on the parcel has been developed or determined to be undevelopable.

2. Continued or renewed agricultural use of the soils is not feasible as defined by Section 30108 of the Coastal Act [i.e., "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors].

3. Clearly defined buffer areas are developed between agricultural and non-agricultural uses.

4. The productivity of any adjacent agricultural lands is not diminished.

5. Public service and facility expansions and permitted uses do not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

Contrary to the allegation in the Staff Report, these factors were discussed by the County Board of Supervisors in granting its approval. Attached as Exhibit "K" and incorporated herein by reference, is a copy of the October 9, 1996 Planning Commission Staff Report. At page 4 of that Report, Staff indicated that the project complied with the planned agricultural district regulations of the County. The substantive criteria which was required to have been met prior to the issuance of a permit are found in Section 6355 of the County's zoning regulations. Those criteria require the provision of an adequate water supply, that the proposal would not detrimentally affect productivity of adjacent agricultural lands, that agricultural and non-agricultural uses would be clearly separated and that it would be determined that the agricultural use of the soil was not capable of being accomplished in a successful manner. Planning Commission Staff concluded that the site was roughly 90 feet wide and 2,616 feet long. As such, it was too narrow to be reasonably developed for productive agricultural uses. Additionally, the State access trail separated the parcel from the agricultural properties located directly to the south. Given these physical constraints, it was indicated by Staff that in their opinion the proposal would not diminish agricultural uses on adjacent properties or on the site itself. See Exhibit "K". Based on the above referenced information, Respondent contends that the County was correct in its conclusion that the Property was not prime agricultural land due to its inability to support a viable commercial crop. Evidence before the County established that the soil conditions limit the type of viable crops to brussel sprouts and artichokes, the size of the parcel makes this type of commercial production unfeasible and most importantly, there is no water to support this or any other type of agricultural use of the land.

In summary, it is Respondent's contention that the County acted appropriately in viewing this parcel as land suitable for agricultural. Likewise, the County was correct in its determination to allow conversion of this to the conditionally permitted residential use because the Property's soil, size and lack of water render it useless as agricultural land.

There was no evidence presented to the County which would have demonstrated that conversion to a residential use would result in diminished productivity of adjacent agricultural land. There was likewise no indication to the County that residential development would impair agricultural viability by increased assessment costs or degraded air and water quality. Finally, a

clearly defined buffer zone exists between the Property and adjacent agricultural uses. Not only is the Cowell Beach Access Trail located between the Property and the adjacent agricultural use, but the County conditioned the project on the owner recording a statement with the County acknowledging the agricultural usage on the adjacent property.

In reviewing the Coastal Commission Staff Report regarding the 300 foot buffer zone, Respondent again surveyed the Property and determined that the approved house is located approximately 150 feet past the end of the Giusti lands. The approved location is therefore within the 300 foot buffer zone. Respondents have no objection to moving the house westward so as to comply with the 300 foot buffer zone. This would not only satisfy the buffer zone requirement but would also move the house further from the highway and the trail. Attached as Exhibit "L" is a map of the Property. The green "X" demonstrates where the house would be located when shifted westward to comply with the 300 foot buffer zone. This relocation would place the house westward approximately 300' beyond the point at which the trail veers sharply south. The added distance from the trail and highway satisfies the concerns raised regarding visibility of the structure from the trail and highway and complies with the 300 foot buffer zone required due to adjacent agricultural use of the Giusti property.

B. Relocation of the HouseAs Suggested by the Applicant Properly Serves the Goals of the LCP Regarding Viability And It Will Not Conflict With Agricultural Development on the Adjacent Parcel

This issue is raised twice by Appellants. A discussion of this issue is found in response to Issue 3, Inconsistency with Visual Resource Policies, page 11 of this response.

ISSUE 2 - INCONSISTENCY WITH PUBLIC WORKS POLICIES

The Appellants contend that the approved project would allow a connection to urban water services for a non-agricultural use outside the urban rural boundary contrary to LCP Policies 2.14 and 2.37.

A. Residential Development of this Property Would Not Conflict With LCP Policies 2.14 and 2.37 Because The Property Currently Has a Water Line Crossing It

When this project was evaluated by the County's Planning Staff on October 9, 1996, the Staff Report noted that the proposed connection to the Coastside County Water District would be consistent with LCP Policy 2.14(C) which allows exceptions to the requirement to confine urban level services to urban areas in cases where the District maintains some rural lands in order to maintain service to existing rural customers and where all other alternatives have been explored.

In this instance, the Applicant had obtained two well permits to test for water well locations

on the site. In 1990 as well as 1995, attempts were unsuccessful in locating sufficient potable water in quantity and quality to serve residential use of the site. See Exhibit "J". A public water line serving adjacent properties both north and south of the site is currently located on the Property along the Cabrillo Highway frontage. This water line was constructed in the 1940's by the Army Corps of Engineers. The line serves several properties whose water meters are located in an easement on the parcel. County Staff indicated that these circumstances were "fairly unique" and therefore approval of the water connection in this case would not set a precedent conflicting with the goals of the LCP. The Planning Staff noted that the only other location where the same situation occurs is along Miramontes Road. The connection of the public water facilities would not require the extension of public water service nor would it affect the level of service to existing users because the water line already crosses the Luchini property. Therefore the extension was consistent with the relevant local coastal program requirements.

The Staff recommendation relative to this question was the same when the matter was considered by the Board of Supervisors. In the Staff Report dated November 13, 1996 staff indicates that the proposal would qualify for an exception under Policy 2.14(C) because the Coastside County Water District water main which provides service to existing customers on either side of the subject Property actually crosses the Property thereby making unnecessary any extension of existing services. See Exhibit "M" attached hereto and incorporated herein by reference. As indicated above, this public water line has been located on the site since the mid-1940's when it was installed by the Army Corp of Engineers.

The Coastal Commission's strict interpretation of Policy 2.14(C) would allow water service in the rural area only if it were to continue a service which already existed at the time the local coastal program was adopted in 1981. This approach would disallow any new service connections in the rural area even in situations where a water main extension is not required.

Even though under this interpretation of Local Coastal Program Policy 2.14, a hookup would normally not be allowed solely for residential purposes, a residential use might be authorized if necessary to allow reasonable economic use of the Property. The Coastal Act specifically recognizes that the Act is not to be construed as authorizing a local government to exercise its power to deny a permit in a manner that takes private property (Public Resources Code Section 30010). Further, Section 8 of Measure A, the Coastal Protection Initiative, which adopted Policy 2.14(c), states that the provisions of Measure A are not applicable to the extent that they would violate State or Federal constitutional provisions, which include the prohibition against taking property.

The County Staff concluded that it was unlikely that a viable commercial agricultural operation could be maintained on the Property even with a water connection because of the size and irregular shape of the 4.88 acre parcel. The long and narrow shape of the parcel could not realistically support a viable commercial agricultural cooperation. Additionally, greenhouse development on the parcel would require side setbacks of twenty feet from the property line leaving only a very small area which could be devoted to agricultural use. Access to an agriculture or floraculture operation for maneuvering agricultural equipment would consume additional area on

site and limit the commercial agricultural viability of the Property. See Exhibit "M".

Staff concluded that it was unlikely that any viable economic use could be made of the Property without a water connection because all types of uses identified in the Planned Agricultural District (PAD) for the type of soil on this project site would require water to be a viable use. The following uses are allowed on land suitable for agriculture: agriculture; non-residential development customarily considered accessory to agricultural uses (barns, sheds, stables, fences, etc.); dairies; greenhouses; nurseries; animal fanciers; farm labor housing; single family residences; affordable multiple family residences; schools; fire stations; commercial recreation; acquaculture activities; wineries; timber harvesting; processing; storing; packaging of agricultural products; uses ancillary to agriculture (agricultural grading equipment, agricultural rental supplies, etc.); kennels or catteries and scientific/technical research and test facilities. All the allowable uses would require water in order to be sustainable. Considering the necessity for water and the numerous failed attempts to find water on site, the failure to allow the water connection would have, in the mind of County Staff, risen to the level of a taking of the Property.

Based upon the foregoing arguments, Respondents contend that the County was correct in its determination that the project was consistent with the LCP Policies concerning urban services outside the Urban Service Boundary.

ISSUE 3 - INCONSISTENCY WITH VISUAL RESOURCE POLICIES

The Appellants contend that the project would substantially block important coastal views from the Cowell State Beach access trail, is not in scale with the rural character of the area, and would not be clustered near existing development so as to be inconsistent with LCP Policies 8.5 and 8.15. Appellants further contend that the project as sited and designed does not fit the physical setting, is not subordinate to the pre-existing character of the site and does not enhance the scenic and visual qualities of the area contrary to LCP Policy 8.18, does not relate in size and scale to the adjacent buildings contrary to LCP Policy 8.20 and does not meet standards that apply to development in scenic corridors in rural areas referenced by LCP Policy 8.31.

The Committee for the Green Foothills further contends that Condition 6 of the County's approval is unclear in that it requires a revised planting plan which would provide additional shrub and tree plantings to reduce or eliminate views of the proposed residence.

A. Coastal Views Would Not Be Impaired by This Residential Development

This portion of the Respondent's submission addresses the issues raised by Appellants regarding views vis a vis the approved house location. As indicated in the discussion of Issue 1, at pages 3-9, Respondent proposes shifting the house westward to comply with the 300 foot Telon buffer zone. This movement would moot these arguments because the house would not be adjacent to the trail. It would be located beyond the point at which the trail veers southward. The house

would also be moved further from the highway. This location is shown on Exhibit "L" with a green "X".

The County Planning Commission staff in its initial report indicated that the proposed house site would be located 2,000 feet from Highway 1 and would not exceed 28 feet in height. Due to a 10 foot berm along Cabrillo Highway and the general downward sloping terrain of the site, the house will not be visible from Highway 1 north and adjacent to the site. The roof and portions of the top floor of the house may be visible at one point exactly 9/10ths of a mile south of the site for a distance of 1/10 of a mile. Once the landscaping matures, no portion of the house will be visible from the scenic Coastal Highway. Therefore, placement of the house at the approved location would provide the least amount of visibility from the Highway. The Staff Report prepared for the County Board of Supervisors further discussed this issue by indicating that it would be impossible to locate a house on this site which did not impact either the view from Highway 1 or the view along Cowell State Beach access. Clustering the residence near the Scenic Highway will result in literally blocking the coastal view for the multitude of motorists who travel both north and south on the Cabrillo Highway. Placement of the house on the approved location would not negatively impact the view from Highway 1 and it would be screened from view on the access trail by landscaping.

Section 3251 of the Coastal Act provides that permitted development shall be cited and designed to protect views to and along the ocean and scenic coastal areas. LCP Policy 8.15 prohibits development from substantially blocking views to or along the shoreline from coastal roads, roadside rests and vista points, recreational areas and beaches. The Appellant's claim of view obstruction from the coastal walking trail should have no impact on this decision. A walking trail serving a limited patronage cannot be compared with the Coastal Scenic Highway, which affects the general populace. A "trail" cannot possibly be construed as a scenic highway. The Cowell State Beach Trail is not included in the category of views to be protected. This trail is not a coastal road, coastal rest area, vista point, recreation area, or beach.. The trail, which is man made, by its existence actually impairs the previously natural vistas. The applicants are in compliance with LCP 8.15 since the proposed development does not block any views from the scenic coastal road.

LCP Policy 8.18(A) requires that new development be located, cited and designed so that its presence enhances the scenic and visual qualities of the area. LCP Policy 8.31 directs that the policies of the scenic element of the County's general plan be applied and that the special regulations for Cabrillo Highway Scenic Corridor be applied. Section 4.39 of the San Mateo County General Plan provides as to scenic roads that they be given special recognition and protection to travel routes in rural and unincorporated urban areas which provide outstanding views of scenic vistas. Table 4.6 of the San Mateo County General Plan lists Cabrillo Highway State Route #1 from the southern limits of the City of Half Moon Bay to the Santa Cruz County line as a state designated scenic route. Placement of the house in the approved location furthers these aims because it is removed from the area visible from the highway.

The Commission Staff asserts that the location of the approved house would result in blocking the views to and along the coast line from Cowell Beach Access trail located adjacent to

the Property. The planting of trees along the south side of the house will result, over a period of years, in a dense growth of foliage which will screen the house so as to make it less visible from the access trail. If the house were moved toward Highway 1 and clustered next to the existing development, there would be no way to screen this from public view. It would not only impact views along the beach trail but would also impact views along the scenic highway. In granting approval for the location of this house a choice was made by the County in regard to the house placement so as to least impact views. It is Respondent's contention that the County's determination was appropriate in light of the inability to satisfy all LCP policies in providing for development of this Property. As the California Legislature has indicated in the Coastal Act at Section 30007.5 "[T]he legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources." It is Respondent's contention that the location of the house as approved by the County of San Mateo grants the greatest protection to views because of its distance from Highway 1, on a downward sloping portion of the Property. This physical location in conjunction with the requirement of tree planting will result in the least visibility from Highway 1.

B. The Architectural Design of the Residence is Compatible With The Area Due to Its Informal Farmhouse Style

Appellants contend that the approved project does not relate in size and scale to the adjacent development. As a point of clarification the existing residences to the north are two stories high with wood stucco exterior finish and are painted white. Respondents contend that this in itself is entirely out of context with the visual character of the area.

The Luchini residence has been completely redesigned to reflect an informal farm house type of character with exterior walls covered with wood siding stained a natural earth tone color. This exterior treatment will blend the residence into the site. The garage has been turned 90 degrees to allow for additional Monterey Cypress tree planting to entirely screen the residence from the south when traveling northward along the State Scenic Corridor (Cabrillo Highway) and when walking westward along the Cowell State beach access trail. Refer to Gumbinger Associates Drawings No. A-1, A-2 & A-3 revised 4/9/97, attached hereto as Exhibit "1" and incorporated herein by reference. Respondents contend that this design and location is far more appropriate for the physical setting and enhances the scenic and visual quality of the area.

ISSUE 4 - INCONSISTENCY WITH LOCATING & PLANNING NEW DEVELOPMENT POLICIES

The Appellants contend that the project would have significant adverse impacts on coastal resources, including impacts on scenic and visual resources and agricultural inconsistent with LCP Policy 1.8.

A. There is No Evidence To Establish That Residential Development Will Adversely Impact Coastal Resources or Diminish the Ability of Others to Use Agricultural Land

LCP Section 1.8(a) allows for new development as defined in Section 30106 of the California Coastal Act of 1976 in rural areas only if it is demonstrated that it will not:

1. Have significant adverse impacts, either individually or cumulatively on coastal resources; and

2. Diminish the ability to keep all prime agricultural land and other land suitable for agriculture (as defined in the agricultural component), in agricultural production.

The Staff Report prepared for the Coastal Commission indicates that Appellants contend that approval of this project is contrary to policy 1.8(a)(2) because the approved location of the house, landscaping and driveway would take up and convert more agricultural land than an alternative location closer to the road. Additionally, by locating the house in the middle of the lot, it limits the potential of combining portions of the lot with the agricultural land on adjacent parcels to facilitate renewed agricultural use of the soils.

As discussed in Section 1 above, while this land may be theoretically suitable for agriculture, in reality it cannot be put into agricultural production due to the size of the parcel, its irregular shape, and its lack of water. Additionally, no adjacent land owner with agricultural lands is interested in purchasing the Property so as to place it into agricultural production. As a result, the land is not useable as agricultural land. The location of the home in its approved location, as discussed in Section 3, represents the best location for protection of views. It will not be noticeable from any point on the Coastal Scenic Highway, and the landscaping will diminish its impact on the few patrons who chose to walk on the adjacent trail. In light of these factors, Respondents contend that the project is not inconsistent with LCP 1.8 because it will not have significant adverse impact on coastal resources or diminish the ability to keep agricultural land in agricultural production.

CONCLUSION

In reviewing Ms. Luchini's application for permits, the County took a detailed and thoughtful look at this Property. Having done so, it came to the conclusion that agricultural development of this Property was impossible due to the lack of water. Due to this lack of water, it was the County's position that to require agricultural uses would result in a taking. This conclusion was supported by the fact that an agricultural use was first of all physically impossible due to the lack of water and secondly, economically impossible as well due to poor soils and the size of the parcel. If the application of the LCP Resource Protection Policies would result in a denial of all economically beneficial or productive use of the Property, the County was correct in its conclusion that it would result in a taking requiring the compensation of the property owner. Lucas v. South Carolina Coastal Council (1992) 112 S.Ct. 2886, 2893. A taking results if a public entity's refusal to issue a permit

leaves the owner with no viable economic use of the Property. Healing v. California Coastal Commission (1994) 22 Cal.App.4th 1158, 27 Cal.Rptr.2nd 758. In order to resolve the issue of whether a land owner has been denied economically viable use of property so as to constitute a taking, the fact finder must analyze the economic impact of the refusal on the claimant and the extent to which such refusal has interfered with investment backed expectations. Proper analysis should also address (a) the history of the property; (b) the history of development; (c) the history of zoning regulations; (d) how development changed when title passed; (e) the present nature and extent of the property; (f) what the reasonable expectations of the land owner and neighboring owners were under state common law; and (g) what the diminution in the investment based expectation of the land owners were. Reahard v. Lee County (11th Cir. 1992) 968 F.2d 1131, 1136.

An analysis of this Property will show that the Bello Family and Maryanne Bello Luchini have owned the Property since 1965. Since their acquisition of the Property it has remained as a vacant site. It has never been put into agricultural productivity nor can it be in the future due to its size, poor soils and the lack of water. The only development potential for this Property which is physically possible is a residential use. It is the Applicants' contention that the County acted reasonably in determining to issue the permits necessary for development as a residential site. As indicated in finding #8 of the approvals granted by the County, "denying the residential use would result in a taking of the Property as it is (a) unlikely that a viable commercial agricultural operation could be maintained on the Property, even with the water connection, due to the size and irregular shape of the parcel; (b) no other economic viable use other than agriculture could be made of the Property without a water connection; and (c) all the types of uses identified in the Planned Agricultural District (PAD) Zoning District for the types of soil on this project site, (land suitable for agriculture) would require water to be a viable use and (d) the possibility of purchase of the subject parcel by the adjoining parcels to the north and south has been explored and no interest has been shown".

In light of the evidence presented to the County and additional evidence submitted with this response to the Coastal Commission, it is the Applicants' position that development as a residential site is appropriate and constitutes the only development potential for this project. Applicants respectfully request that the Coastal Commission deny the appeal in its entirety therefore allowing them to proceed with development as contemplated and approved by the County of San Mateo.

At paragraph 4 of page 3 in your May 12 letter you request added information on why artichoke cultivation or the listed permitted/conditionally permitted uses would not be economically viable on the property.

The October 31 submittal at pages 3-9 and Exhibits A through J discuss this issue in depth. A copy of those pages and Exhibits are attached for your reference as Exhibit 4. We believe this information constitutes substantial evidence needed by the Commission to authorize the conditionally permitted residential use. This information clearly establishes that no viable agricultural use is possible due to the size of the parcel, the poor soils and the lack of adequate water.

Enclosed are aerial photographs dating back to 1943. These photographs were obtained by Joe R. Bennie, who is a licensed land surveyor. His transmittal letter for these photographs is also included for the Commission's review. As indicated in his transmittal letter, no agricultural production has ever been engaged on the property from 1943 to the present date. Mr. Bennie contacted Hank Sciaroni recently retired from the U.S. Department of Agriculture. As indicated in his letter, Mr. Sciaroni indicates that to the best of his knowledge no agricultural production has taken place on the property since 1948. He also points out that there is a lack of water for irrigation. These photographs and his letter are attached as part of Exhibit 5.

→ 4. **Alternatives**

(A) Alternative Locations - The site for the house was discussed in the October 31 submittal at pages 11-13. Those pages are attached as Exhibit 6 for your reference.

Ms. Luchini contends that placement of the house, in the approved location or alternate location as proposed in her October 31st submittal, provides a project which better serves the goals of the L.C.P. First, building the home along the northern property line as proposed by Staff, so as to cluster it with the Navarro property structures, poses a problem with the county's zoning regulations. The Luchini parcel is 90 feet wide and the county's zoning regulations require a 20 foot side yard setback. To move the house along the northern property line, a variance would be needed.

In earlier conversations with the county's planning staff, they expressed the opinion that findings for a variance from the side yard setback could not be made due to the topography of this property. In addition to the side yard set back issues the house in this location would be wedged between the Navarro building, the public parking lot and, most undesirably, a permanent latrine. As such it would afford little or no privacy or any benefit to the Luchinis, the Navarros and the public at large.

Second, moving the house to any of the three alternative locations suggested by the Coastal Commission Staff makes it far more visible not only from the highway but from the trail. In the approved location, the land elevation is 106' and the house would be 2,020' from the highway. In Ms. Luchini's proposed alternative location the land elevation is 107.5 feet and the house would be 2,260' from the highway. All three (3) locations identified by the Commission staff in the May 12, 1997 letter are at a significantly higher elevation and much closer to the highway. Alternative A(1)(i.e., 400' from the eastern property line) is at an elevation of 136.3 feet. Alternative A(2) (i.e., just west of the coastal crest of the rise in the property approximately 200 feet from the eastern property line) is at an elevation of 138-139'. The third alternative A(3) (aligned with the Cowell Beach Access Trail parking lot) is at an elevation of 138-139'. This demonstrates that each of the Commission Staff's proposed alternative sites would result in a structure closer to the highway and sited at a higher elevation. As a result, the structure would be far more visible both from the highway and along the trail. The approved location and alternative location suggested by Ms. Luchini are sited lower and further from the highway and trail. Because of this, either of these two locations would serve the greater public good. The locations proposed by Commission staff conflict with the scenic highway policies of the State and County. They place the house at a higher elevation adjacent to the scenic coastal highway. This in no way achieves the goals of the County LCP or the Coastal Act.

Finally, clustering the Luchini home near the Navarro property will interfere with agricultural production on the Gusti property. This interference will arise from the location of the house within the 300 foot Telon buffer zone. Ms. Luchini's proposed location falls outside the 300 feet Telon

buffer zone and therefore will not interfere with agricultural production currently engaged in by the Gustis' on their property.

In summary, Ms. Luchini contends that the placement of the house, in the approved location or the alternative location proposed by Ms. Luchini in the October 31 submittal, most appropriately achieves the goals of the LCP. To place the house in any of the three locations proposed in the May 12 letter will result in clustering of homes near existing structures, but such clustering will be prominently visible from the coast highway and from the adjacent trail. This is of no benefit to anyone. The policies relative to the scenic coastal highway are undermined. The Luchinis have no measure of privacy and the users of the trail have full view of the structure at the trail head. Clustering would also interfere with the adjacent agricultural lands because the houses would fall within a 300 foot Telon buffer zone. In light of these factors, it is Ms. Luchini's contention that the approved or alternative location that she suggests is a far more favorable location from all parties' perspectives. The home is away from the highway, away from the trail and built at a lower elevation on the property. As such it blends into the topography and is separated so as to allow continued agricultural usage on adjacent property.

(B) Size and Design of the House - The issues raised in this portion of your letter are fully discussed in pages 11-13 of the October 31st submittal. Those pages are attached to this Response as Exhibit 6.

(C) Construction Standards - Ms. Luchini does not object to constructing of a driveway with materials that are colored to blend in with the surrounding landscape as provided for in Policy 8.19 and Zoning Code Section 6325.1(c) and sufficiently porous so as to avoid offsite runoff.

5. **Adverse Effects on Visual Resources** - Some months ago Ms. Luchini advised that she would grant the Coastal Commission permission to enter and erect story poles if the Staff